WINDES & McCLAUGHRY
ACCOUNTANCY CORPORATION
Certified Public Accountants & Consultants
EXCEEDING EXPECTATIONS SINCE 1926

April 2012
TAX ALERTS

Mandatory Financial Bank Account Reporting (FBAR) E-Filing Is Postponed

The Treasury Department's Financial Crimes Enforcement Network (FinCEN) announced that it is postponing its requirement that Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), be filed electronically until July 1, 2013. FinCEN reminds taxpayers that the delay in the e-filing requirement does not relieve anyone of the obligation to file a paper FBAR and does not postpone the paper-filing due date.

Last July, FinCEN announced that it had developed an electronic filing system for FBARs, called the BSA E-Filing System. Last September, It proposed making FBAR e-filing mandatory, starting with FBARs due June 30, 2012.

The FBAR filing requirements, authorized under the Bank Secrecy Act, have been in place since 1972. The FBAR form is used to report a financial interest in, or signature or other authority over, one or more financial accounts in foreign countries. No report is required for a year if the accounts' aggregate value does not exceed $10,000 at any time during that year.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

Depreciation Dollar Limits Released for 2012 Business Autos, Light Trucks, and Vans

The Internal Revenue Service (IRS) has released the inflation-adjusted annual depreciation limits for business autos, light trucks, and vans (including minivans) placed in service by the taxpayer in 2012 and the annual income inclusion amounts for such vehicles first leased in 2012. Most depreciation deduction limits are $100 higher than those that applied for 2011. The new income inclusion tables require smaller income inclusion amounts for vehicles first leased by the taxpayer in 2012.

Contact us at taxalerts@windes.com

Recent legislation's effect on luxury auto limits

First-year luxury auto dollar limits are enhanced for new vehicles bought and placed in service in 2012, and otherwise eligible for bonus depreciation. Under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, new assets generally acquired and placed in service after December 31, 2011 and before January 1, 2013 are eligible for 50% bonus first-year depreciation. Unless a taxpayer elects out for autos, light duty trucks or vans that are subject to the luxury-auto limits under Internal Revenue Code (IRC) Section 280F, and are qualified property under the bonus depreciation rules of IRC Section 168(k), the regular first-year dollar limit for eligible vehicles bought and placed in service in 2012 is increased by $8,000.

Year-by-year limits for 2012

There are four sets of dollar limits for vehicles placed in service by the taxpayer in 2012. Two are for passenger autos that are not trucks or vans and are subject to the luxury-auto limits of IRC Section 280F (they are rated at 6,000 pounds unloaded gross vehicle weight or less). One set of limits applies to autos for which the bonus depreciation rules do not apply under IRC Section 168(k) (the auto is pre-owned or not used more than 50% for business, the taxpayer elects out of IRC Section 168(k) or elects to increase its alternative minimum tax (AMT) credit limit instead of claiming bonus first year depreciation); the other set of limits applies to autos for which the bonus depreciation rules do apply.

There also are two sets of limits for light trucks or vans (passenger autos built on a truck chassis, including minivans and sport-utility vehicles (SUVs) built on a truck chassis) that are subject to the luxury-auto limits (they are rated at 6,000 pounds gross (loaded) vehicle weight or less). One set of limits applies to light trucks and vans for which the bonus depreciation rules do not apply under IRC Section 168(k); the other set of limits applies to light trucks and vans for which the bonus depreciation rules do apply. Certain non-personal-use vehicles are exempt from the luxury auto limits regardless of their weight.

The following are the annual depreciation dollar caps for vehicles that are subject to the luxury-auto limits of IRC Section 280F and placed in service by the taxpayer in calendar year 2012.

If the bonus first-year depreciation rules don't apply to an auto (not a truck or van):

- $3,160 for the placed-in-service year;
- $5,100 for the second tax year;
- $3,050 for the third tax year; and
- $1,875 for each succeeding year.

If the bonus depreciation rules do apply to an auto (not a truck or van):

- $11,160 for the placed-in-service year;
- $5,100 for the second tax year;
- $3,050 for the third tax year; and
- $1,875 for each succeeding year.

If the bonus depreciation rules do not apply to a light truck or van (passenger auto built on a truck chassis, including minivan and sport-utility vehicle (SUV) built on a truck chassis):

- $3,360 for the placed-in-service year;
- $5,300 for the second tax year;
- $3,150 for the third tax year; and
- $1,875 for each succeeding year.

If the bonus depreciation rules do apply to a light truck or van:

- $11,360 for the placed-in-service year;
- $5,300 for the second tax year;
- $3,150 for the third tax year; and
- $1,875 for each succeeding year.

Lease income inclusion tables

A taxpayer that leases a business auto may deduct the part of the lease payment representing business/investment use. If business/investment use is 100%, the full lease cost is deductible. So that lessees cannot avoid the effect of the luxury auto limits, however, they must include a certain amount in income during each year of the lease to partially offset the lease deduction if the vehicle's fair market value exceeds certain dollar limits. The income inclusion amount varies with the initial fair market value of the leased auto and the year of the lease and is adjusted for inflation each year.

Tables 5 and 6 of Revenue Procedure 2012-23 carry the income inclusion tables for passenger autos with a lease term beginning in 2012 and a fair market value over $18,500, and light trucks and vans with a lease term beginning in 2012 with a fair market value over $19,000.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

Greater Tax-Wise Retirement Options Will Be Available Soon!

Retired employees often start taking benefits by age 65 and, under the minimum distribution rules, must begin taking distributions from their retirement plans when they reach age 70 ½. According to Treasury, a 65-year old female has an even chance of living past age 86, while a 65-year old male has an even chance of living past age 84. The government has become concerned that taxpayers who normally retire at age 65 or even age 70 will outlive their retirement benefits.

The government has found that most employees want at least a partial lump-sum payment at retirement, so that some cash is currently available for living expenses. However, under current rules, most employer plans do not offer a partial lump-sum coupled with a partial annuity. Employees often

are faced with an "all or nothing" decision, where they would have to take their entire retirement benefit either as a lump-sum payment when they retire or as an annuity that does not make available any immediate lump-sum cash cushion. For retirees who live longer, it becomes difficult to stretch their lump-sum benefits.

Longevity solution

To address this dilemma, the government is proposing new retirement plan rules to allow plans to make available a partial lump-sum payment while allowing participants to take an annuity with the other portion of their benefits. Furthermore, to address the problem of employees outliving their benefits, the government would also encourage plans to offer "longevity" annuities. These annuities would not begin paying benefits until ages 80 or 85. They would provide taxpayer a larger annual payment for the same funds than would an annuity starting at age 70 ½. Of course, one reason for the better buy-in price is that the taxpayer or taxpayer's heirs would receive nothing if the taxpayer dies before the age 80 or 85 starting date. But many experts believe that it is worth the cost to have the security of knowing that this will help prevent the taxpayer from "outliving their money."

To streamline the calculation of partial annuities, the government would allow employees receiving lump-sum payouts from their 401(k) plans to transfer assets into the employer's existing defined benefit (DB) plan and to purchase an annuity through the DB plan. This would give employees access to the DB plan's low-cost annuity purchase rates.

According to the government, the required minimum distribution (RMD) rules are a deterrent to longevity annuities. Because of the minimum distribution rules, plan benefits that could otherwise be deferred until ages 80 or 85 have to start being distributed to a retired employee at age 70 ½. These rules can affect distributions from 401(k) plans, 403(b) tax-sheltered annuities, individual retirement accounts under IRC Section 408, and eligible governmental deferred compensation plans under IRC Section 457.

Tentative limitations

The Internal Revenue Service (IRS) proposes to modify the RMD rules to allow a portion of a participant's retirement account to be set aside to fund the purchase of a deferred annuity. Participants would be able to exclude the value of this qualified longevity annuity contract (QLAC) from the account balance used to calculate RMDs. Under this approach, up to 25 percent of the account balance could be excluded. The amount is limited to 25 percent to deter the use of longevity annuities as an estate planning device to pass on assets to descendants.

Coming soon

Many of these changes are in proposed regulations and would not take effect until the government issues final regulations. The changes would apply to distributions with annuity starting dates in plan years beginning after final regulations are published, which could be before the end of 2012.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

Administration Unveils Framework for Business Tax Reform

A reduced corporate tax rate, elimination of many business tax preferences, a new minimum tax on overseas profits, and much more are all part of President Obama's recently released Framework for Business Tax Reform (the "Framework"). The much-anticipated blueprint of the administration's plans for corporate tax reform was unveiled on February 22, 2012 in Washington, D.C.

The Framework contains a large number of general business-oriented proposals which, according to the administration, will make the tax laws less complicated for businesses and increase the nation's competitiveness in the global economy. A reduction in the corporate tax rate would be fully paid for by repeal of business tax preferences. The Framework also calls for a new minimum tax on overseas profits and encourages companies to return work to the U.S. by offering a new relocation tax incentive. Congressional reaction to the administration's Framework was mixed. Democrats in Congress generally applauded the Framework for laying out a plan to reduce the corporate tax rate, a proposal that enjoys bipartisan support in Congress. Republicans were less enthusiastic, but some GOP lawmakers said that the Framework could serve as a starting point for comprehensive tax reform. While the November elections certainly play a part in the release of the current proposals, major tax reform now is considered inevitable by most observers. The question remains, however, as to how it will develop over the coming months.

Five-part framework

The President's overall proposal, which currently is framed only in general terms, is grounded in five elements:

- Eliminating tax expenditures and subsidies, broadening the corporate tax base, and cutting the corporate tax rate from 35 percent to 28 percent;
- Strengthening U.S. manufacturing and innovation by effectively lowering the rate for manufacturers to 25 percent (through an enhanced manufacturing credit), making the research tax credit permanent, and providing a number of clean-energy incentives;
- Fixing the international tax system that includes imposing a minimum tax on overseas profits, creating a 20 percent tax credit for moving operations back to the U.S., denying deductions for moving operations overseas, limiting the transfer of patents and other intellectual property to offshore subsidiaries, and delaying deductions for interest paid for overseas investments;
- Simplifying and cutting taxes for small businesses (not just for corporations) through a number of reforms, including a 100 percent expensing up to $1 million; cash accounting for businesses with gross receipts up to $5 million; enhanced deductions for startup expenses, and an enhanced Code Section 45R small employer health insurance tax credit; and

- Restoring fiscal responsibility and not adding to the deficit through making reform revenue neutral, including a need to do so for whatever portion of the $250 billion in reoccurring extender tax benefits that Congress deems necessary to continue.

Individual tax reform

In unveiling this framework for business tax reform, Treasury Secretary Timothy Geithner stated that individual tax reform does not necessarily need to be considered at the same time as business tax reform. With individual tax reform clearly the most politically volatile component to total tax reform, most Washington observers believe that tax reform will follow a sequential route, with business tax reform going first.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

How Does a Taxpayer Guard Against Identity Theft?

The number of tax-return-related identity theft incidents has almost doubled in the past three years to well over half a million reported during 2011, according to a recent report by the Treasury Inspector General for Tax Administration (TIGTA). Identity theft in the context of tax administration generally involves the fraudulent use of someone else's identity in order to claim a tax refund. In other cases, an identity thief might steal a person's information to obtain a job, and the thief's employer may report income to the Internal Revenue Service (IRS) using the legitimate taxpayer's Social Security Number (SSN), thus making it appear that the taxpayer did not report all of his or her Income.

In light of these dangers, the IRS has taken numerous steps to combat identity theft and protect taxpayers. There are also measures that a taxpayer can take to safeguard his/her against identity theft in the future and assist the IRS in the process.

IRS does not solicit financial information via email or social media

The IRS will never request a taxpayer's personal or financial information by email or social media such as Facebook or Twitter. Likewise, the IRS will not alert taxpayers to an audit or tax refund by email or any other form of electronic communication, such as text messages and social media channels. If you receive a scam email claiming to be from the IRS, forward it to the IRS at phishing@irs.gov. If you discover a website that claims to be the IRS but does not begin with 'www.irs.gov', forward that link to the IRS at phishing@irs.gov.

How identity thieves operate

Identity theft scams are not limited to users of email and social media tools. Scammers may also use a phone or fax to reach their victims to solicit personal information. Other means include:

- Stealing your wallet or purse
- Looking through your trash
- Accessing information you provide to an unsecured Internet site.

How do I know if I am a victim?

Your identity may have been stolen if a letter from the IRS indicates more than one tax return was filed for you or the letter states you received wages from an employer you do not know. If you receive such a letter from the IRS, leading you to believe your identity has been stolen, respond immediately to the name, address, or phone number on the IRS notice. If you believe the notice is not from the IRS, contact the IRS to determine whether the letter is a legitimate IRS notice.

If your tax records are not currently affected by identity theft, but you believe you may be at risk due to a lost wallet, questionable credit card activity, or credit report, you need to provide the IRS with proof of your identity. You should submit a copy of your valid government-issued identification, such as a Social Security card, driver's license or passport, along with a copy of a police report and/or a completed IRS Form 14039, Identity Theft Affidavit, which should be faxed to the IRS at 1-978-684-4542.

What should I do if someone has stolen my identity?

If you discover that someone has filed a tax return using your SSN, you should contact the IRS to show the income is not yours. After the IRS authenticates who you are, your tax record will be updated to reflect only your information. The IRS will use this information to minimize future occurrences.

What other precautions can I take?

There are many things you can do to protect your identity. One is to be careful when distributing your personal information. You should show employers your Social Security card to your employer at the start of a job, but otherwise do not routinely carry your card or other documents that display your SSN. Only use secure websites while making online financial transactions, including online shopping. Generally, a secure website will have an icon, such as a lock, located in the lower right-hand corner of your web browser or the address bar of the website with read "https://…" rather than simply http://. Never open suspicious attachments or links, even just to see what they say. Never respond to emails from unknown senders. Install anti-virus software, keep it updated, and run it regularly.

For taxpayers planning to e-file their tax returns, the IRS recommends use of a strong password. Afterwards, save the file to a CD or flash drive and keep it in a secure location. Then delete the personal return information from the computer hard drive. Finally, if working with an accountant, query him or her on what measures are taken to protect your information.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

What Are Employer Share Responsibility Assessable Payments Under the PPACA?

The Patient Protection and Affordable Care Act (PPACA) introduced many new requirements for individuals and employers. One of the new requirements is an employer-shared responsibility assessable payment. At this time, there is little guidance for employers other than the language of the PPACA and some requests for comments from government agencies. The Internal Revenue Service (IRS), the U.S. Department of Labor (DOL), and the Department of Health and Human Services (HHS) are developing guidance for employers.

Shared responsibility payment

The PPACA imposes a shared responsibility assessable payment on certain large employers per Internal Revenue Code (IRC) Section 4980H. The provisions about shared responsibility for large employers are among the most complex in the PPACA.

Generally, a large employer will be subject to an assessable payment if any full-time employee is certified to receive a premium assistance tax credit and either the employer does not offer full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an employer plan or the employer offers full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage that either is unaffordable or does not provide minimum value. The shared responsibility payment requirement is scheduled to be effective after 2013.

The PPACA describes how to calculate the shared responsibility payment. The annual assessable payment is based on all (excluding the first 30) full-time employees. The annual assessable payment is based on the number of full-time employees who are certified to receive an advance payment of an applicable premium tax credit. The shared responsibility payment requirement applies to "large" employers. The PPACA describes a large employer as generally an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. The PPACA includes special rules for employers that employ seasonal workers. The PPACA exempts small firms that have fewer than 50 full-time employees.

More guidance expected

In 2011, the IRS, DOL and HHS alerted employers that the agencies would be developing rules and regulations to implement the PPACA's shared responsibility payment requirement. The agencies also requested comments from employers and interested parties.

The IRS observed that the definitions of employer and employee are key in determining whether an employer may incur a shared responsibility payment and, if so, to what extent. The IRS indicated that it would likely define "employer" to mean the entity that is the employer of an employee under the common-law test. Generally, employee would mean a worker who is an employee under the common-law test. An employer's status as a large employer would be based on the sum of full-time employees and full-time equivalent employees, the IRS noted.

Contact us at taxalerts@windes.com

Keep in mind that the IRS's observations are just that at this time. The IRS has not issued proposed regulations. It is unclear when proposed regulations may be released. Additionally, the Supreme Court has agreed to take up the PPACA and the Court could rule that all or part of the PPACA, including the employer-shared responsibility payment, is unconstitutional.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

Internal Revenue Service (IRS) Announces Penalty Relief and Expanded Installment Agreements

This article is reproduced with permission from Spidell Publishing, Inc.

As part of its "Fresh Start" initiative, the IRS announced today penalty relief for unemployed taxpayers and an expanded installment agreement program.

The penalty relief portion of the program applies to the failure-to-pay penalty and is available to two taxpayer classes (and is subject to AGI limits):

- Taxpayers who have been unemployed for any period of 30 consecutive days or longer at any time in 2011 (or in 2012 up to April 17); and
- Self-employed individuals who experienced a reduction of 25% or greater in their business income in 2011 relative to 2010.

To obtain penalty relief, a taxpayer must do three things:

- File the return by April 17, 2012 or obtain an extension and file by October 15, 2012;
- File Form 1127-A by April 17, 2012, regardless of whether the return is extended; and
- Pay taxes due by October 15, 2012.

The IRS stresses that taxpayers will still be subject to other penalties and interest. They also stress that the failure-to-file penalty will still be in effect, so taxpayers must timely file. In addition, the IRS has broadened installment agreements by raising the threshold for simple installment agreements from $25,000 to $50,000.

IR-2012-31 is available at www.irs.gov/newsroom/article/0,,id=255312,00.html.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

The Franchise Tax Board (FTB) Is Auditing Internal Revenue Code (IRC) Section 1031 Exchange

In the January 2012 issue of *Tax News*, the FTB announced that one of their top audit issues continues to be like-kind exchanges, also known as Section 1031 exchanges. California conforms, without modification, to IRC Section 1031, pertaining to exchanges of like-kind property.

Common audit issues

According to the FTB, common Section 1031 issues include:

- Gains not being properly sourced to California upon disposition of non-California replacement property received in a California deferred exchange;
- Taxpayer fails to report other property (boot) in the exchange;
- Taxpayers do not meet identification or other technical requirements of Section 1031;
- Relinquished and/or replacement property are not held for investment or for productive use in a trade or business (i.e., property is used for personal purposes or is held primarily for sale); and
- The taxpayer who transfers relinquished property is a different taxpayer from the party who acquires replacement property.

Section 1031 exchange requirements

Under IRC Section 1031, if certain conditions are met, taxpayers defer gain from the sale of property, either in part or in full. There are three general requirements:

- There must be an exchange, as opposed to a separate sale and reinvestment, by the same taxpayer;
- The relinquished property and replacement property must be "like kind;" and
- Both the property given up and the replacement property must be held for investment or for productive use in a trade or business. Property held for personal use or primarily for sale is generally not eligible for nonrecognition treatment.

Out-of-state property

If a taxpayer exchanges real property located in California for property located either inside or outside of California, the gain is not recognized on the initial transaction. This applies whether the taxpayer exchanging the property is a resident of California or a nonresident of California.

If the taxpayer is a resident of California when the out-of-state property is sold, the full amount of gain is taxable. Residents are taxed on income from all sources. If the taxpayer is a nonresident when the property is sold, the previously unrecognized California gain is taxable to California, according to the FTB.

Contact us at taxalerts@windes.com

Using an intermediary

It is rarely possible for an individual to do a direct swap of real estate with another individual because they must each have properties of approximately equal values that the other wants. Generally, the individual will conduct a buy and a sell but will place an intermediary between himself and the buyer and the seller. The result will be a swap with the intermediary.

In the case of these multi-party deferred exchanges, two strict sets of requirements must be met. First, there are certain time requirements. Second, the transferor can never be in actual or constructive receipt of money or other non-like-kind property.

Time requirements

The exchange must meet two separate time requirements:

- *Identification of replacement property:* The replacement property must be specifically identified, in writing, on or before the 45th day after the date of the transfer of the relinquished property. The individual may identify up to three alternative properties, or any number of properties, so long as the aggregate fair market value (FMV) does not exceed 200% of the FMV of properties relinquished in the exchange.

- *Receipt of replacement property:* The replacement property must be received on or before the earlier of 180 days after the date of the transfer of the relinquished property or the due date (including any extension actually filed) of the return for the taxable year in which the relinquished property was transferred. The replacement property actually received must be substantially the same property as identified in the 45-day requirement; i.e., there must have been no substantial changes made to the property.

Avoiding constructive receipt

For purposes of the like-kind exchange rules, the taxpayer is treated as receiving money or other property when the money or other property is available to him. In order to avoid constructive receipt, the funds from the "sale' of the taxpayer's property must be held in an account;

- The terms of which restrict the taxpayer's access to the funds; and
- By an individual who is not under the control of the taxpayer.

Recent federal case

A taxpayer's escrow account did not restrict access to and use of the funds in the account and, therefore, was not a qualified escrow account for like-kind exchange purposes.

The Court was not persuaded by the taxpayers' intent argument or the fact that they never actually used the proceeds in the account. The lack of required restrictive language meant that the taxpayers had constructive receipt of the funds, which is sufficient to void the non-recognition. The taxpayers had taxable gain.

Contact us at taxalerts@windes.com

The regulations provide four safe harbors based on commonly used security, guaranty, and intermediary arrangements. The use of an intermediary is the most common.

The use of a qualified intermediary (QI) to facilitate a like-kind exchange qualifies as a safe harbor only if the agreement between the taxpayer and QI expressly limits the taxpayer's right to receive, pledge, borrow, or other obtain the benefits of money or other property held by the intermediary.

The taxpayer's rights to terminate the QI are disregarded for this purpose. The taxpayer can receive money or other property from another party to the exchange without violating the safe harbor so long as the money is not received from the QI.

Who can be a QI?

A QI is a person who is not the taxpayer or a disqualified party and who enters into a written agreement with the taxpayer stating that the QI will perform specified duties. The QI:

- Acquires the property to be relinquished by the taxpayer;
- Transfers the relinquished property to the "buyer;"
- Acquires the replacement property from the “seller” and
- Transfers the replacement property to the taxpayer.

A disqualified party is defined as:

- A person who is the agent of the taxpayer;
- A person who is related to the taxpayer; or
- A person who is related to the taxpayer's agent.

The regulations specify that a person who has been the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the two-year period ending on the date of the transfer of the first relinquished property is treated as an agent of the taxpayer. Therefore, a tax professional cannot be his client's QI.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

Do Not Forget to Report a Change in Ownership to the Board of Equalization

This article is reproduced with permission from Spidell Publishing, Inc.

Property that has changed ownership or control is subject to a reporting requirement. Failure to notify the county assessor may result in the assessment of failure-to-file penalties. These penalties apply to individuals and entities selling properties as well as entities that have a change in ownership or control.

For changes in ownership on or after January 1, 2012, the period for reporting a change of ownership has been extended from 45 to 90 days. The maximum penalty for failure to file has increased from $2,500 to $5,000 for property eligible for the homeowner's property tax exemption.

Who must file?

When title to a piece of California real property is transferred, a change in ownership report is typically filed when the title transfer is recorded. However, if the transfer is not reported, or if a change in ownership report is not filed, Form BOE-502-AH, Change in Ownership Statement, or BOE-502-D, Change in Ownership Statement - Death of Real Property Owner, must be filed within 90 days (previously 45) of the date of transfer.

For legal entity transfers, there are three circumstances that require the filing of Form BOE-100-B, Statement of Change in Control and Ownership of Legal Entities, with the BOE:

- When there is a change in control of a legal entity, and the legal entity owned an interest in California real property (as of the date of the change), the person or legal entity acquiring control must file;
- When there is a change in ownership of a legal entity that owned an interest in California real property, the entity must file; or
- When the BOE requests an entity to file, regardless of whether or not a change in control or ownership of the legal entity has occurred, or whether the legal entity owned an interest in real property.

What is a change in ownership or control?

- ***Change in control of legal entity:*** When any person or entity obtains control through direct or indirect ownership, or control of more than 50% of the voting stock of a corporation or of a majority ownership interest in any other type of legal entity, a change in ownership of any and all the real property owned by the entity occurs. The first two questions on the FTB corporate returns address this; and
- ***Cumulative transfers by original co-owners:*** When voting stock or other ownership interests representing, over time, cumulatively more than 50% of the total interest in a legal entity, are transferred by any of the original co-owners in one or more transactions, the real property, which was previously excluded from change in ownership under California Revenue & Taxation Code (R&TC) Section 62(a)(2), must be appraised.

Contact us at taxalerts@windes.com

EXCEPTION: R&TC Section 64(b) excludes from change in ownership transfer of real property or legal entity ownership interest among members of an affiliated group in a tax-free reorganization. There is no change in ownership when a transfer of real property to a legal entity results solely in a change in the method of holding title to the real property. In other words, there is no change in ownership when the proportional ownership interest of the transferors and transferees - whether directly or indirectly through stock, partnership interest, or otherwise, in each and every piece of real property transferred - remains exactly the same both before and after the transfer.

Penalty

If a person or legal entity fails to report a change in ownership as required, the county assessor will impose a penalty and add it to the property tax bill. The penalty is the lesser of $100, or 10% of either:

- The taxes that apply to the new base-year value of the real property (e.g., land, improvements, and fixtures) reassessed if a change in control or change in ownership has occurred; or
- The current year's taxes on the real property as of the date the 90-day period expired if a change in control or change in ownership has not occurred.

The maximum penalty for failure to file is $5,000 for property eligible for the homeowner's property tax exemption, and $20,000 for property not eligible for the homeowner's exemption.

EXAMPLE: Jack is the sole owner of XYZ Corporation, which owns a real property in California. In January 2012, Jack gifts a 60% interest to his son.

XYZ must file Form BOE-100-B within 90 days of the change of ownership or be subject to a penalty.

Penalty abatement

The penalty can only be abated if the person or legal entity:

- Files a written application for abatement of penalty within 60 days of being notified of the penalty by the assessor; and
- Establishes that the failure to file within 90 days was due to reasonable cause and not due to willful neglect.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

Worker Misclassification May Lead to Retirement Account Problems

This article is reproduced with permission from Spidell Publishing, Inc.

When a terminated independent contractor heads to the unemployment office, that individual may set off a chain of events that can be very costly to his or her former employer and, possibly, to him/herself. Whether that worker was naïve or conniving in seeking unemployment does not matter; it is likely that the state unemployment department will initiate an investigation as to whether the worker was properly treated as an independent contractor or should have been treated as an employee.

If the investigation results in a reclassification from independent contractor to employee, it is well known that the costs of back taxes, penalties and interest may be high for the company. The total cost may go up if the reclassified worker is entitled to the benefits the company's employees receive, including retirement benefits, and may go up geometrically if he or she is *retroactively* entitled. By the same token, a worker who is a Schedule C filer may find that he has made excess contributions to his Simplified Employee Pension (SEP) or individual 401(k) when his Schedule C income goes down because his self-employment income is reclassified as salary.

While the costs of improper classification are going up, so are the chances of getting caught improperly classifying workers. Federal and state governments are no longer passively waiting for misclassified workers to wander into unemployment offices; they are using ever more aggressive compliance initiatives. Moreover, Congress is weighing in with a pending bill that, if enacted, will increase both the costs of misclassification and the compliance measures required to defend independent contractor status.

Reclassified worker denied SEP contributions

The Tax Court recently sided with the Internal Revenue Service (IRS) and disallowed a taxpayer's business deductions and SEP contribution after the worker was reclassified from independent contractor to employee.

Michael Rosenfeld began work as a consultant in 1985, and in 2003 he signed a three-year letter of appointment with a British company to spur investment in the United States. The company treated him as an independent consultant and Rosenfeld reported his income on Schedule C, deducting business expenses and self-employment tax. He also established a SEP and made contributions based on the net business income.

Strike 1: His Schedule C expenses were disallowed.

Strike 2: He was not entitled to make SEP contributions because he had no self-employment in come after the reclassification.

Strike 3: The contribution to the SEP was an over-contribution and, as such, was subject to a 6% excise tax.

Rosenfeld argued that the excise tax should not be assessed for the 2003 tax year because he did not make the 2003 contribution until early in 2004. The court rejected this argument because Rosefeld had designated the contribution as a 2003 contribution and had made it on a timely basis for the 2003 taxable year.

Reclassified worker entitled to employee benefits

If a worker is reclassified as an employee, that worker may be entitled to benefits received by the company's employees and, further, may be entitled retroactively. It is irrelevant that the worker may have negotiated a higher hourly rate than comparable employees to compensate the worker for the lack of benefits.

The landmark case on this issue is ***Vizcaino v. Microsoft***. Microsoft hired independent contractors who signed agreements stating, among other things, that they would not be entitled to employee benefits. Those individuals worked side-by-side with regular employees performing identical functions working the same hours for the same supervisors. They submitted invoices for their work.

The IRS audited Microsoft and reclassified the workers as employees. Microsoft reached an agreement with the IRS in which it paid certain back payroll taxes and issued retroactive W-2s to the workers. The IRS, it turns out, was the least of Microsoft's problems because the workers realized that if they were common law employees, they should have been eligible to participate in the company's benefit programs including the 401(k) plan and the employee stock purchase plan.

Hindsight was not real tough for these workers - the company's stock value had skyrocketed during the period in which they were improperly classified and purchasing the stock at timely discounted values would have been extremely profitable to them. They were right. Microsoft settled with these employees for $96.9 million.

To date, there is no statutory or regulatory authority granting reclassified workers the rights to retroactive employee benefits, so workers must resort to the courts. Since ***Vizcaino v. Microsoft***, other lawsuits have followed, most notably the pending suits against FedEx where potential settlements are estimated to be up to $1 billion.

Even more problems (and their fixes)

An employee may only maintain a tax-qualified plan for the exclusive benefits of employees. Plans are required to provide benefits to employees on a nondiscriminatory basis and to perform nondiscrimination testing. When an employer hires an independent contractor, the employer is correct when excluding the contractor from the plan.

When a worker is reclassified as an employee, the plan's status is jeopardized because the plan impermissibly excluded an eligible employee from participation in the plan. To maintain the plan's tax qualified status, the employee may need to correct operational failures in accordance with its own terms under the IRS Employee Plans Compliance Resolution System.

In addition to making retroactive contributions as required under the terms of the plan, the employer may need to rerun all nondiscrimination testing and possibly file amended Forms 5500 for affected plan years.

Contact us at taxalerts@windes.com

Increased compliance pressure

The government's interest in worker misclassification is gaining momentum.

In 2009, the GAO issued a comprehensive report titled "Employee Misclassification: Improved Coordination, Outreach, the Targeting Could Ensure Detection and Prevention." The report recommended increased scrutiny to both Congress and the IRS.

Later in 2009, the IRS announced that they would begin a three-year National Research Program focused on employment taxes and worker classification. They estimated that they would perform 2,000 employment tax examinations.

In September 2011, the IRS and the Department of Labor (DOL) signed a memorandum of understanding pledging to work together to curb employee misclassification. Several states have also signed agreements with the DOL.

Recently, the IRS has put in place the Fresh Start Initiative that enables employers to voluntarily reclassify independent contractors as employees, take advantage of reduced penalties, and gain protection from a federal employment tax audit. To gain the advantages of the program, the taxpayer must agree to prospectively treat the class of workers as employees for future tax periods.

Proposed legislation

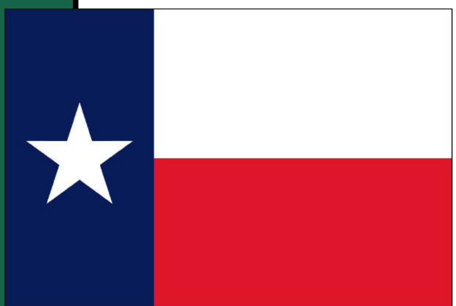
If enacted, the Employee Misclassification Prevention Act (EMPA) would further increase the stakes of worker misclassification. It would amend the Fair Labor Standards Act of 1938 to impose new obligations on employers who use independent contractors and new penalties on employers who misclassify employees and independent contractors. Similar legislation was introduced in the Senate last April, suggesting that the issue is gaining traction in Congress.

If enacted, EMPA would:

- Require employers to keep records of hours worked and payments to independent contractors. Failure to do so would create a presumption that the worker is an employee;
- Require employers to provide written notice to every worker of his or her worker classification that also directs the worker to a DOL website that describes the different classifications and informs the worker of his or her rights under EMPA;
- Prohibit an employer from retaliating against a worker who exercises his/her rights under EMPA;
- Impose double liquidated damages for violations of minimum wage and overtime pay resulting from the misclassification;
- Impose civil penalties of up to $1,100 for a first offense and $5,000 for repeat or willful violations; and
- Require state unemployment agencies to conduct misclassification audits of employers.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

Texas Tax Amnesty for Businesses Available June 12 Through August 17, 2012



Texas Comptroller of Public Accounts, Susan Combs, has announced Project Fresh Start, a limited tax amnesty program under which penalties and interest will be waived for taxpayers who file delinquent tax reports and pay all taxes due, or amend reports that underreported taxes and pay the taxes due. Reports originally due before April 1, 2012 are eligible for the program. The amnesty period runs from June 12 through August 17, 2012.

Businesses eligible for amnesty

Amnesty is available to taxpayers who failed to file a tax report originally due before April 1, 2012, underreported tax on a previously filed report, or do not have a permit to report and remit Texas taxes. A taxpayer who has signed a settlement agreement or voluntary disclosure agreement before the beginning of the amnesty period is ineligible. The amnesty does not apply to filing periods under audit or identified for an audit.

Taxes and fees eligible for amnesty

The amnesty is available for all state and local taxes and fees administered by the Comptroller's office, with the exception of Public Utility Commission gross receipts assessments. City, county, metropolitan transit authority, and other local sales taxes are included in the program. Amnesty also applies to International Fuel Tax Agreement (IFTA) taxes, but it only covers taxes due to Texas, as shown on the IFTA tax report supplement (Form #56-102); taxes due to other states, Mexican states, or Canadian provinces are not eligible.

Sports and community venue tax and property taxes are not administered by the Comptroller and are not eligible. The Unclaimed Property program is not a part of tax amnesty.

How to apply for amnesty

To apply for amnesty, a taxpayer must file an original report by submitting a paper return, with "Amnesty" written across the top of the return and on the check or money order. If amending a report, the taxpayer must submit the corrected figures on a paper return, and write "Amnesty" across the top of the return and on the check or money order. If submitting a tax application and registering for the first time, the taxpayer must write "Amnesty" on the application, as well as on the return and check or money order.

Returns and payments

Returns and payments must be made payable to the Comptroller of Public Accounts and sent to:

Taxpayer Amnesty,
Comptroller of Public Accounts,
P.O. Box 13232,
Austin, Texas 78711-3232.

Contact us at taxalerts@windes.com

Amnesty payments can also be made at a Comptroller field office.

The Texas taxpayer number must be included on the check or money order. Taxpayers who do not have a permit or are not registered to collect Texas taxes and fees, or do not have an account with the Comptroller's Office, must write their Federal Employer Identification numbers or Social Security numbers on the check or money order.

Installment plans are not available

To be eligible for the amnesty, a taxpayer must pay all taxes or fees due, in full, related to the amnesty returns filed. All amnesty reports and payments must be submitted via a paper return to facilitate the waiver of penalty and interest. The return cannot be filed electronically; neither can payment be made electronically. Taxpayers otherwise required to file and pay electronically will not be penalized.

Failure to pay taxes owed during amnesty

Taxpayers who fail to pay taxes or fees owed during the amnesty period will be responsible for all taxes, fees, penalties and interest owed. Penalties and interest are determined as follows: payments from one to 30 days late result in a penalty of 5% of tax due; payments 31 to 60 days late result in a penalty of 10% of tax due; and, for payments more than 60 days late, interest accrues beginning on the 61st day after the due date in addition to penalties. An additional 50% fraud penalty can also be assessed.

Further information

Taxpayers with questions about the amnesty program can call (800) 252-1390 or visit one of the Comptroller's local field offices.

For more information about this article, please contact us at taxalerts@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, (310) 316-8130, or (213) 239-9745.

Contact us at taxalerts@windes.com

WINDES & MCCLAUGHRY ACCOUNTANCY CORPORATION
Certified Public Accountants & Consultants
EXCEEDING EXPECTATIONS SINCE 1926

Windes & McClaughry is a recognized leader in the field of accounting, assurance, tax, and business consulting services. Our goal is to exceed your expectations by providing timely, high-quality, and personalized service that is directed at improving your bottom-line results. Quality and value-added solutions from your accounting firm are essential steps toward success in today's marketplace. You can depend on Windes & McClaughry to deliver exceptional client service in each engagement. For over eighty-five years, we have gone beyond traditional services to provide proactive solutions and the highest level of capabilities and experience.

Windes & McClaughry's team approach allows you to benefit from a breadth of technical expertise and extensive resources. We service a broad range of clients, from high-net-worth individuals and nonprofit organizations to privately held businesses and publicly traded companies. We act as business advisors, working with you to set strategies, maximize efficiencies, minimize taxes, and take your business to the next level.

an independent member of BAKER TILLY INTERNATIONAL

Headquarters
111 West Ocean Boulevard
Twenty-Second Floor
Long Beach, CA 90802

Tel: (562) 435-1191

Los Angeles Office
601 South Figueroa Street
Suite 4950
Los Angeles, CA 90017

Tel: (213) 239-9745

Orange County Office
18201 Von Karman Avenue
Suite 1060
Irvine, CA 92612

Tel: (949) 271-2600

South Bay Office
21515 Hawthorne Boulevard
Suite 840
Torrance, CA 90503

Tel: (310) 316-8130

Visit us online at: www.windes.com