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TAX ALERTS

Reinstatement of Airline Ticket Taxes

On August 5, 2011, Congress extends the Federal Aviation Administration (FAA) authorization to reinstate retroactively the airline ticket taxes for passengers who traveled during the lapse of the FAA's authorization. As a result of the bill Congress passed on August 5, 2011, passengers who purchased tickets prior to July 23 and traveled between July 23 and the date of enactment are not entitled to a refund of the airline ticket excise tax. Additionally, the Internal Revenue Service (IRS) intends to provide relief for passengers and airlines with respect to ticket taxes that were not paid or collected because of the lapse. The IRS intends to provide guidance to the airlines, which will allow for an orderly restart of the collection of ticket taxes. Airlines will have from the time of enactment of the legislation through 12:01 a.m. on August 8 to resume collection of the ticket taxes. The IRS is currently reviewing other effects of the legislation and will issue future guidance. Here are some of the frequently asked questions regarding the reinstatement of airline ticket taxes.

How are federal passenger air transportation excise taxes (commonly referred to as "ticket taxes") collected?

The tax generally is imposed on the "amount paid" for commercial air transportation. When a person purchases a ticket for air transportation, the airline collects the federal passenger air transportation excise taxes from the purchaser and then later pays the collected amount to the IRS. The amount of tax collected from the purchaser is shown on the purchaser's receipt as a separate line item, often labeled "federal taxes."

What just happened to the FAA excise tax?

On July 22, the FAA budget authority expired and with it, so did the authority for airlines to collect the excise taxes on tickets. On August 5, Congress passed an extension of the FAA authorization, which also retroactively reinstated the excise tax from July 23, 2011. During the roughly two-week lapse, airlines were not authorized to collect the taxes, but the retroactive reinstatement in the law put the taxes back in place as though they had never expired. The IRS is providing relief for airlines and taxpayers who purchased tickets during that two-week lapse. This means the IRS will not be retroactively collecting the tax since it was not collected and paid during this two-week period. Airlines had until 12:01 a.m. on Monday, August 8, to resume collection of the ticket taxes.

If I purchased my ticket before July 23, 2011 and traveled on or after July 23, 2011 during the partial-shutdown of the FAA, am I entitled to a refund for the federal air transportation excise taxes that I paid when I purchased the ticket?

If you purchased the tickets before July 23, when the lapse of the excise tax initially occurred, and traveled during the partial shutdown of the FAA, you are not entitled to a refund because of the retroactive reinstatement of the law.

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If I purchased my ticket after the tax initially expired and I traveled before it was reinstated, can the airline collect the tax?

No, airlines were not authorized to collect the tax during any lapsed period in which the tax did not apply.

If you purchased a ticket between July 23, 2001 and August 7, 2011 — regardless if you flew then or at a later date in time — the airlines were not authorized to collect the tax and so passengers did not pay the excise tax. While the tax was reinstated retroactively by Congress, the IRS has provided relief during this lapse for taxpayers and airlines and will not collect the excise tax covering that period.

If I purchased my ticket after the tax expired and I travel after it was reinstated, will I now have to pay the airline ticket tax since it was reinstated?

If you purchased your ticket during the two-week lapse of the tax and plan to travel after the tax was reinstated, you did not pay the airline ticket tax. However, the IRS is providing relief for these tax-payers and will not be collecting the excise tax on this ticket purchased during the lapsed period of time.

Which federal air transportation excise taxes expired at the end of July 22, 2011 and were retroactively reinstated on Aug. 5?

A. The following federal air transportation excise taxes were affected:

- The 7.5 percent tax on the base ticket price.
- The domestic segment tax of $3.70 per person per segment (a single takeoff and single landing).
- The international travel facilities tax of $16.30 per person for flights that begin or end in the U.S., or $8.20 per person for a flight that begins or ends in Alaska or Hawaii.
- The 6.25 percent tax on the amount paid for transporting property by air.

Other taxes and fees, such as state taxes, security fees, passenger facility charges (PFCs), and excess baggage fees, are not affected by the expiration of the taxes listed above.

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IRS Aimed to Tax Gifts to Nonprofit Organizations

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The media has reported that the Internal Revenue Service (IRS) is examining donors who made contributions to social welfare organizations, such as AARP, but allegedly failed to report them as taxable gifts. A great deal of uncertainty remains over the imposition of the gift tax for such gratuitous transfers. Donors should consider the tax ramifications, but the easiest approach is to keep annual contributions below the gift tax annual exclusion amount. However, an IRS memo directs that further resources should not be expended on the issue, and current examinations should be closed.

What is a social welfare organization?

Social welfare organizations are not organized for profit, but are operated exclusively for the promotion of social welfare and are exempt from income tax if no part of earnings inure to the benefit of an individual (or group of individuals). Examples of groups in this category include AARP, the American Civil Liberties Union, Delta Dental, the National Rifle Association, and the Sierra Club.

A social welfare organization may engage in political campaign activities on behalf of, or in opposition to, candidates for public office. But, such activities may not be the organization's primary purposes, and traditionally did not include any participation in political campaigns of any candidate for public office. They may engage in an unlimited amount of lobbying to influence legislation, so long as it is related to the organization's exempt purposes.

Relationship to gift tax

Gift tax is imposed on the transfer of money or other property by gift. The gift tax applies whether or not in trust, whether direct or indirect, whether real or personal, and whether tangible or intangible.

If a gift is made in property, the property's value at the date of the gift is the amount of the gift. Where property is transferred for less than full and adequate consideration in money or money's worth, the amount by which the value of the property transferred exceeds the value of the consideration received is considered a taxable gift. Currently, the first $13,000 of gifts made by a donor to each donee is excluded from a donor's taxable gifts. Thus, a "contribution" in excess of $13,000 by an individual to a social welfare organization is considered a taxable gift.

Congressional Research Service (CRS)

The CRS reported on the political campaign activities of social welfare organizations. They are allowed to engage in campaign activity subject to IRS regulations and the Federal Election Campaign Act (FECA), which also invalidated the prohibition on corporations and labor unions from using funds for electioneering or for advocating the election or defeat of a particular candidate.

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Government enforcement of the gift tax as a result of contributions made to social welfare organizations has been quite lax, if not nonexistent, for decades. Some argue whether one can influence the political process in this matter and whether the fit tax should be selectively enforced.

Campaign financing gets attention

During the 2008 election, the campaign activities of nonprofit social welfare organizations became the focus of the media, as they apparently spent millions of dollars to influence elections. The media's allegations were that social welfare organizations violated campaign finance laws by circumventing the limit on contributions made by individuals, seemingly acting as a conduit.

Social welfare organizations are required to disclose to the IRS when substantial contributions received from one individual or business total more than $5,000 during one year. The disclosure is required to include the contributors' names and addresses. The total contributions are provided to the IRS on the organization's tax return.

The IRS's position is that these contributions are taxable gifts. But decades of lax or no enforcement by the IRS has established a pattern of no gift tax due. Critics argue that we have a system of selective enforcement.

The government has had easy access to these donors through tax filings but never deemed it necessary to follow up on the payment of gift tax. Critics argue that the government owes the public a formal announcement of its intentions and that this should remain a campaign finance issue, not a tax issue.

Contributions to political organizations are not subject to gift tax but are publicly disclosed if the total contributions are $200 or more during the year. This is contrary to social welfare organizations where contributions over the current $13,000 limit are subject to fit tax but are not publicly disclosed. Revenue Ruling 82-216 explains that gratuitous transfers are subject to gift tax even though they may be motivated solely by a desire to advance social, political, or charitable goals. Contributions to charitable organizations are not subject to gift tax and are not publicly disclosed.

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Year-End Planning for Quicker Writeoffs for Capital Purchases

Depreciation deductions under current tax laws are far more generous this year than they will be next year. For those businesses that are confident enough to expand in these challenging economic times, now is an excellent time to buy machinery and equipment (and expense eligible qualified real estate purchases).

Buy Depreciable Property and Place it in Service in 2011 to Lock in 100% Bonus First-Year Depreciation

The 100% bonus depreciation only applies to qualified property acquired and placed in service after September 8, 2010 and before January 1, 2012 (placed in service before January 1, 2013 for certain aircraft and long-production-period property). For qualified property acquired and placed in service after December 31, 2011 and before January 1, 2013 (before January 1, 2014 for certain aircraft and long-production-period property), the first-year bonus depreciation allowance is scheduled to drop to 50%. Therefore, enterprises planning to purchase new depreciable property this year or the next should try to accelerate their buying plans, if doing so makes sound business sense.

How to qualify for bonus depreciation for 2011

In general, an asset purchased in 2011 qualifies for the 100% bonus first-year depreciation if:

- It is property to which the modified accelerated cost recovery system (MACRS) rules apply with a recovery period of 20 years or less; computer software other than computer software covered by Internal Revenue Code Section 197; qualified leasehold improvement property; or certain water utility property;

- It is acquired and placed in service after September 8, 2010 and before January 1, 2012 (placed in service before January 1, 2013 for certain long production property and aircraft); and

- Its original use commences with the taxpayer.

Limited exception for components

Prior to September 9, 2010, a taxpayer may have begun manufacturing, building, or producing a larger self-constructed property that is qualified property for use in its trade or business or for its production of income. If this larger self-constructed property meets the placed in service and original use requirements, the taxpayer may elect to treat any acquired or self-constructed component of that larger self-constructed property as being eligible for the 100% additional first-year depreciation deduction if the component is qualified property and is acquired or self-constructed by the taxpayer after September 8, 2010 and before January 1, 2012 (before January 1, 2013, for certain long production property and aircraft).

In general, the election must be made by the due date (including extensions) of the federal tax return for the taxpayer's tax year in which it placed the larger self-constructed property in service, and by attaching a statement to that return indicating that the taxpayer is making the election and whether the taxpayer is making the election for all or some of the components.

Reconditioned property

Additional capital expenses incurred by a business to recondition or rebuild property it acquired or owned satisfies the original use requirement, but the cost of reconditioned or rebuilt property acquired by the taxpayer does not. For example, on November 1, 2011, the taxpayer buys a used machine for $50,000 and reconditions it for $15,000. The purchase price is ineligible for bonus depreciation but the $15,000 reconditioning cost is eligible (assuming the other requirements are met), whether or not it is added to the cost of the machine or capitalized as a separate asset. The issue of whether property is reconditioned or rebuilt generally is a question of fact. However, a safe harbor provides that property containing used parts isn't treated as reconditioned or rebuilt if the cost of the used parts doesn't exceed 20% of its total cost.

100% First-Year Writeoff for Heavy SUVs

Under the current tax law, depreciation deductions (including Internal Revenue Code Section 179 expensing) that can be claimed for passenger autos are subject to dollar limits that are adjusted annually for inflation. For example, for passenger autos first placed in service in 2011, the adjusted first-year limit is $3,060. For light trucks or vans, the adjusted first-year limit is $3,260. Light trucks or vans are passenger autos built on a truck chassis, including minivans and sport-utility vehicles (SUVs) built on a truck chassis that are subject to the above limits because they are rated at 6,000 points gross (loaded) vehicle weight or less. For passenger autos, light trucks or vans that are eligible for bonus depreciation, the regular first-year dollar cap on depreciation and Code Sec. 179 expensing is increased by $8,000.

Heavy SUVs—those that are built on a truck chassis and are rated at more than 6,000 pounds gross (loaded) vehicle weight—are exempt from the luxury-auto dollar caps because they fall outside of the definition of a passenger auto. As five-year MACRS property, heavy SUVs are eligible for 100% bonus first-year depreciation (if they are otherwise qualified property and business use exceeds 50% of total use). Therefore, for example, a calendar-year taxpayer that buys and places in service a new $50,000 heavy SUV during 2011, and uses it 100% for business, may write off the entire cost on its 2011 tax return.

If the heavy SUV is bought and placed in service in 2012 instead of 2011, less generous rules will apply. Under Internal Revenue Code Section 179(b)(6), not more than $25,000 of the cost of a heavy SUV may be expensed. And, in the placed-in-service year, a taxpayer may claim a 50% bonus depreciation allowance for the cost of the heavy SUV that wasn't expensed, and depreciate the balance of the cost under the regular 5-year MACRS rules.

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Interest Rates Decrease for the Fourth Quarter of 2011

The Internal Revenue Services (IRS) announced on August 18, 2011 that interest rates will decrease for the fourth quarter of 2011 beginning on October 1, 2011. The rates will be as follows:

- three (3) percent for overpayments [two (2) percent in the case of a corporation];
- three (3) percent for underpayments;
- five (5) percent for large corporate underpayments; and
- zero and one-half (0.5) percent for the portion of a corporate overpayment exceeding $10,000.

Under the Internal Revenue Code, the rate of interest is determined on a quarterly basis. For taxpayers other than corporations, the overpayment and underpayment rate is the federal short-term rate plus 3 percentage points. Generally, in the case of a corporation, the underpayment rate is the federal short-term rate plus 3 percentage points and the overpayment rate is the federal short-term rate plus 2 percentage points.

The rate for large corporate underpayments is the federal short-term rate plus 5 percentage points. The rate on the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the federal short-term rate plus one-half (0.5) of a percentage point.

The interest rates announced are computed from the federal short-term rate during July 2011 to take effect on August 1, 2011, based on daily compounding.

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If Itemized Deductions are Removed to Solve Deficit Woes, How Will Taxpayers be Affected?

The soon-to-convene Joint Select Committee on Deficit Reduction (JSC) is supposed to come up in short order with $1.5 trillion in deficit reduction. How the JSC will accomplish this goal is unknown, but it may consider fundamental tax changes, including cutbacks in itemized deductions for individuals, such as the mortgage interest deduction.

2009 itemized deduction overview

The Internal Revenue Service (IRS)'s Winter 2011 Statistics of Income Bulletin indicates that total deductions—the sum of the standard deductions and total itemized deductions (after limitation)—amounted to $1,918.3 billion in 2009. The standard deduction was claimed on 65.8% of all returns filed (accounting for 39.2% of the total deductions amount). Itemized deductions were claimed on 32.5% of all returns filed (accounting for 60.8% of the total deduction amount). Overall, 45.6 million taxpayers claimed total itemized deductions (after limitation) of $1,165.9 billion. The interest paid deduction was the largest deduction, making up 36.7% of total itemized deductions (before limitation) or $432.8 billion. For 2009, an estimated 10 million taxpayers elected to deduct state and local general sales taxes instead of local income taxes. The total taxes paid deduction accounted for 35.8% of all itemized deductions. The deduction for medical and dental expenses amounted to $78.5 billion, while the charitable contributions deduction was $148.6 billion in 2009.

Average itemized deductions:

The 2009 averages shown on the table below are for those itemizers within the income range who claimed a deduction for that particular category. For example, while itemized deductions were claimed on 11,455,714 returns reporting adjusted gross income (AGI) in the $100,000 to $200,000 range, the medical expense deduction was claimed on only 947,851 of them—only 8.3%. Therefore, the $9,269 average medical deduction for that AGI category represents the average claimed on those 947,851 returns. In the $200,000 to $250,000 range, only about 3.3% of itemizers claimed medical and dental deductions. As income dropped, the percentage claiming the medical expense deductions rose. For certain other categories and income ranges, the averages are based on almost all itemizers claiming deductions. For example, 99.9% of itemizers with AGI of $100,000 to $200,000 or more claimed deductions for taxes paid.

2009 Average Deductions Claimed Bases on Adjust Gross Income
Adjusted Gross Income (AGI) in Thousands of Dollars

AGI	$0-15	$15-30	$30-50	$50-100	$100-200	$200-250	$250 & up
Medical	8,414	7,783	7,028	7,269	9,269	21,599	38,149
Taxes Paid	3,337	3,184	3,943	6,247	11,069	18,524	48,317
State & local tax <*>	802	961	1,644	3,125	6,302	11,624	37,612
Income Taxes Only	1,276	1,139	1,865	3,512	7,003	12,949	43,519
General Sales Tax Only	522	723	1,057	1,509	2,382	3,685	5,237
Contributions	1,496	2,048	2,274	2,775	3,888	5,947	18,488
Interest	8,839	8,434	8,699	10,133	13,456	17,572	25,527
Total itemized (after limitation)	16,164	15,608	16,404	20,350	28,952	41,595	89,432

<*> State and local taxes are the total of both income taxes and general sales taxes.

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Year-End Planning: Take Advantage of Business Provisions that May Sunset for Good on December 31, 2011

Although it is only August, taxpayers are well-advised to consider how to make the most of tax breaks that are available this year but may not be around next year, or may survive only in diluted form. Given the wrenching political battle that played out in July over deficits and the debt ceiling, many tax provisions expiring at the end of this year may not be given another lease on life. Those provisions that aid a particular industry or group of taxpayers could be the most at risk.

Tax Credits

Research credit: The research credit only applies for amounts paid or accrued before January 1, 2012. In general, the research credit equals the sum of: (1) 20% of the excess (if any) of the qualified research expenses for the tax year over a base amount (unless the taxpayer elected an alternative simplified research credit); (2) the university basic research credit (i.e., 20% of the basic research payments); (3) 20% of the taxpayer's expenditures on qualified energy research undertaken by an energy research consortium.

Work Opportunity Tax Credit (WOTC): The WOTC allows employers who hire members of certain targeted groups to get a credit against income tax of a percentage of first-year wages up to $6,000 per employee ($12,000 for qualified veterans; and $3,000 for qualified summer youth employees). Where the employee is a long-term family assistance (LTFA) recipient, the WOTC is a percentage of first- and second-year wages, up to $10,000 per employee. Generally, the percentage of qualifying wages is 40% of first-year wages; it's 25% for employees who have completed at least 120 hours but less than 400 hours of service for the employer. For LTFA recipients, it includes an additional 50% of qualified second-year wages. The term "wages" for WOTC purposes doesn't include any amount paid or incurred for an individual who begins work after December 31, 2011.

New markets tax credit (NMTC): A taxpayer who holds a qualified equity investment in a qualified community development entity (CDE) may be entitled to a NMTC. The credit is 39% of the qualified equity investment during a seven-year credit period. The investor may claim 5% in each of the first 3 years and 6% in each of the final 4 years. There is a national, annual limitation on the amount designated for this credit.

Differential wage payment credit for employers: Eligible small business employers that pay differential wages can claim a credit equal to 20% of up to $20,000 of differential pay made to an employee during the tax year. Differential wages are payments to employees for periods during which they are called to active duty with the U.S. uniformed services (for more than 30 days) that represent all or part of the wages they would have otherwise received from the employer. An eligible small business employer is one that: (1) employed, on average, less than 50 employees on business days during the tax year; and (2) under a written plan, provides eligible differential wage payments to each of its qualified employees. A qualified employee is one who has been an employee for the 91-day period immediately proceeding the period for which any differential wage payment is made. This credit won't be available for differential wages paid after December 31, 2011.

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New energy efficient home credit: An eligible contractor can claim a credit of $2,000 or $1,000 for each qualified new energy-efficient home either constructed by the contractor or acquired by a person from the contractor for use as a residence during the tax year. The credit won't apply to homes acquired after December 31, 2011.

Tax Deductions

100% bonus depreciation: The 100% bonus depreciation allowance applies only for qualified property acquired and placed in service after September 8, 2010 and before January 1, 2012 (placed in service before January 1, 2013 for certain aircraft and long-production-period property). For qualified property acquired and placed in service after December 31, 2011 and before January 1, 2013 (placed in service after December 31, 2012 and before January 1, 2014 for certain aircraft and long-production-period property), a 50% bonus depreciation allowance will apply.

Expensing allowance: The maximum amount that may be expensed under Internal Revenue Code Section 179 for tax years beginning in 2010 or 2011 is $500,000. For tax years beginning in 2012, the maximum amount will be $125,000 (indexed for inflation with 2006 as the base year). For tax years beginning in 2010 and 2011, the maximum annual expensing amount generally is reduced dollar-for-dollar by the amount of Section 179 property placed in service during the tax year in excess of $2,000,000 (the investment ceiling). For tax years beginning in 2012, the investment ceiling will be $500,000 (indexed for inflation with 2006 as the base year). In addition, if placed in service in a tax year beginning in 2010 or 2011, up to $250,000 per year of qualified real property is eligible for the Section 179 expensing. Qualified real property is one of the following types of property: (1) qualified leasehold improvement property, (2) qualified restaurant property, or (3) qualified retail improvement property.

15-year writeoff for specialized realty assets: Qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property placed in service after December 31, 2011 will no longer be eligible for a 15-year depreciation writeoff under MACRS. Instead, such property will have to be depreciated over 39 years.

Enhanced charitable contribution deductions: The following enhanced charitable contribution rules will not apply to contributions made after December 31, 2011:

- C corporation's enhanced charitable contribution deduction equal to the lesser of (a) basis plus half of the property's appreciation, or (b) twice the property's basis, for contributions of food inventory that is apparently wholesome food, i.e., meant for human consumption and meeting certain quality and labeling standards. The enhanced contribution is also available for a taxpayer other than a C corporation, but the aggregate amount of contributions of apparently wholesome food that may be taken into account for the tax year cannot exceed 10% of the taxpayer's aggregate net income for that tax year from all trades or businesses from which those contributions were made for that tax year.

- C corporation's enhanced charitable contribution deduction equal to the lesser of (a) basis plus half of the property's appreciation, or (b) twice the property's basis, for qualified contributions of book inventory to certain public schools if certain donee certification requirements are met.
- C corporation's enhanced charitable contribution deduction equal to the lesser of (a) basis plus half of the property's appreciation, or (b) twice the property's basis, for certain contributions of computer technology or equipment (software, computer or peripheral equipment, and fiber optic cable) to schools or libraries for use in the U.S. for educational purposes that are related to the donee's purpose or function.

Lower shareholder basis adjustments for charitable contributions by S corporations: A temporary tax incentive to encourage S corporations to make charitable donations of appreciated assets is available for contributions made in tax years beginning before January 1, 2012. Generally, an S corporation's charitable contribution of property provides its shareholders with a fair market value (FMV) deduction for gifts of property. In association with the charitable gift, shareholders must reduce their basis of shares in the corporation. Under the temporary incentive, shareholders reduce their basis in the stock of the S corporation by their pro rata share of the adjusted basis of the contributed property, rather than by the FMV of the charitable contribution that flows through to the shareholders. The lower basis reduction results in a proportionately larger gain when the stock is later sold by the shareholders. Therefore, shareholders benefit by having that reduction determined by the basis of the property (which is a smaller amount) rather than its FMV (a larger amount). For example, if in 2011 an S corporation with one individual shareholder makes a charitable contribution of stock with a basis of $100 and a FMV of $500, the shareholder is treated as having made a $500 charitable contribution and reduces the basis of his S corporation stock by $100. If the S corporation makes the contribution in tax years beginning after 2011, the shareholder will be treated as having made a $500 charitable contribution and will reduce the basis of his S corporation stock by $500.

Expensing election for costs of film and TV production: Taxpayers may elect to expense production costs of qualified film and television (TV) productions in the U.S., but only for productions commencing before January 1, 2012. Expensing doesn't apply to the part of the cost of any qualifying film or TV production that exceeded $15 million for each qualifying production. The limit is $20 million if production expenses are “significantly incurred” in certain low-income communities or isolated areas of distress.

Expensing of environmental remediation costs: Taxpayers may elect to treat qualified environmental remediation expenses that would otherwise be chargeable to a capital account as deductible in the year paid or incurred, but only if the expenses are paid or incurred before January 1, 2012. To be deductible currently, pre-2012 expenses must be paid or incurred in connection with the abatement or control of hazardous substances (including petroleum products) at a qualified contaminated site.

Empowerment Zone tax breaks: The designation of an economically depressed census tract as an “Empowerment Zone” makes businesses and individual residents within such a Zone eligible for special tax incentives, including: the 20% wage credit; liberalized Section 179 expensing rules ($35,000 extra expensing and the break allowing only 50% of expensing eligible property to be counted for purposes of the investment-based phase-out of expensing); tax-exempt bond

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financing under Internal Revenue Code Section 1394; and deferral under Internal Revenue Code Section 1397B of capital gains tax on sale of qualified assets sold and replaced. Empowerment Zone designations expire on December 31, 2011.

Miscellaneous Provisions Expiring on December 31, 2011

- For tax years beginning after December 31, 2008, and before January 1, 2012, the 100%-of-taxable-income limitation of percentage depletion for oil and gas from marginal wells applicable to independent producers and royalty holders owning interests in marginal wells is suspended. For tax years beginning on or after January 1, 2012, the 100% of the taxable income limit returns for marginal wells.

- A taxpayer may claim a 30% credit for the cost of installing qualified alternative vehicle refueling property for use in the taxpayer's trade or business (up to $30,000 maximum per year per location) or installed at the taxpayer's principal residence (up to $1,000 per year per location). This credit won't apply to property (except for hydrogen refueling property) placed in service after December 31, 2011.

- Under the energy efficient appliance credit, for appliances produced in 2011, and depending on their specifications, manufacturers can claim a (i) $25, $50, or $75 credit for each qualifying dishwasher; (ii) $175 or $225 credit for each qualifying clothes washer; (iii) $150 or $200 credit for each qualifying refrigerator.

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California Franchise Tax Board (FTB) Announces Changes to California Resident, Nonresident, and Real Estate Withholding

The California FTB has implemented changes to the processing of resident, nonresident, and real estate withholding forms and payments to accommodate its new, automated withholding system. These changes are effective August 29, 2011.

Submitting Form 589

Starting August 29, 2011, Form 589, Nonresident Reduced Withholding Request, must be submitted online or by mail. The FTB can no longer process a faxed Form 589. When submitting Form 589 online, taxpayers must fax any type of documentation (such as: IRS 8804-C, Schedule E, expense breakdowns) to the FTB at 916-845-9512. Taxpayer should include on the faxed documentation his/her name, taxpayer ID number, and the date that the Form 589 was submitted online. The FTB will process online requests within 10 business days and forms received by mail within 21 business days.

Withholding information notices

When taxpayers submit withholding Forms 592, Resident, and Nonresident Withholding Statement, 592F, Foreign Partner or Member Annual Return, or 593, Real Estate Withholding Tax Statement, the FTB now will issue taxpayers a notice if there is a mistake, an underpayment, or an overpayment. The FTB will include a description of any errors or balances and how taxpayers can contact it with any questions. If a taxpayer has a balance due, the FTB will mail a separate billing statement indicating the amount due.

Amending Forms 592, 592F, and 593

There are also new guidelines about amending a previously submitted Form 592, 592F, or Form 593. The taxpayer should prepare a new form with the correct information and check the "Amended" box at the top of the form. The taxpayer must mail the amended form to the FTB and include a letter explaining what changes were made and why.

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Personal Liability of Corporate Officers

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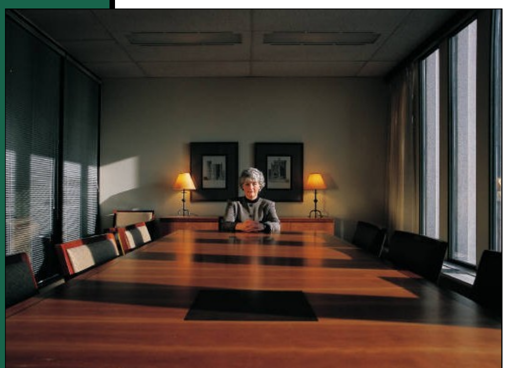

In a recent Court of Appeal case, the court upheld a refund of tax, assessed against and paid by corporate officers for a liability of their suspended corporation. However, the court also ruled that the amount paid by the corporation, $68,262, on behalf of the officers, was not refundable to the officers as they did not have standing as the persons who paid the tax.

The court found that the liability assessed against the officers was illegal, as it was assessed against the wrong party. Accordingly, there was no remaining amount due for penalties and interest assessed against the officers for their related corporate liability.

The facts

The ***Parmar*** case had to do with a suspended corporation during the period it was conducting business by distributing cigarettes and other tobacco products. The Board of Equalization (BOE) billed the officers directly for taxes owed for this activity. They reasoned that since the corporation was suspended during the audit period, it did not exist and the real sellers (or distributors) of these products were the corporate officers. Accordingly, they issued a Notice of Determination to the officers and never bothered to bill the corporation, even though it was no longer suspended when the determination was issued.

The lower court disagreed with the BOE and stated that corporations do continue to exist while they are suspended. The Second District Court of Appeal upheld that ruling and emphasized that while California Revenue Taxation & Code Section 23301 suspends the corporation's powers, the corporation continues to exist. As a result, the BOE should have billed the entity, and not the officers.

BOE policy

It has long been (for the past 45 years) the position and internal policy of the BOE to treat suspended corporations as non-existent. This policy was ruled illegal by the court in the ***Parmar*** case. The court held that the BOE overextended its authority, as it went beyond the statutory provisions of the State of California. They were ordered to refund the tax paid by the officers, but not the tax paid on the officers' behalf by the corporation.

BOE to pay attorney fees

The BOE was also ordered to pay the attorney fees under the private attorney general doctrine. The fundamental objective of the doctrine is to encourage suits effectuating a strong public policy by awarding substantial attorney fees to those who successfully bring such suits and thereby benefit a broad class of citizens. The court of appeal agreed with the trial court that the termination of a long-standing and illegal internal Board policy would affect not only those in the ***Parmar*** case, but also more than 240,000 closely held corporations subject to the cigarette and tobacco products distribution tax and 24 other similar tax and fee programs.

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As evidenced by the type of attorney fees awarded, this case has implications for any officers held personally liable solely due to their corporations being suspended. This would seemingly apply to any tax administered by the BOE, including sales and use tax.

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.

Arizona Department of Revenue Reminds Taxpayers that Amnesty Program Will Run from September 1 through October 1

The Arizona Department of Revenue has issued a news release in August 2011 that explains its implementation of the new law establishing a "tax recovery program" that will run from September 1, 2011 through October 1, 2011. The amnesty program will apply to most taxes administered by the department and allow qualified participants to pay back taxes and reduced interest for periods beginning on or after January 1, 2004 and ending before January 1, 2010. For taxpayers who participate in this amnesty program, all or part of the applicable civil penalties and additional interest "that have been, or could be, assessed or imposed for any taxable period during the applicable liability period without the need for the taxpayer to show reasonable cause or the absence of willful neglect" will be abated or waived. According to the news release, the goal of this program is to offer relief and a fresh start to those taxpayers who, for whatever reason, underreported or failed to file their taxes.

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.

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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

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