

Tax Digest

A periodic electronic newsletter highlighting developments of interest to today's companies on the move.

Third Quarter 2010

LEGISLATION

House Energy Tax Bill Based on Section 48C Likely to be Released Soon

The Chairman of the House Ways and Means Committee, Sander Levin (D-Mich), expects to release an energy tax bill soon. Levin recently told reporters that the legislative language for such a bill would "start with" the section 48C advanced energy property manufacturing tax credit program. Section 48C provides a 30 percent investment credit to the manufacturers of solar panels, wind turbines, geothermal systems, and other mechanisms used in clean energy production. Levin added that "there are other direct tax credits, direct payments, for wind, for solar, so it's essentially going to focus in on manufacturing." Rep. Chris Van Hollen (D-Md.), a Ways and Means member and assistant to House Speaker Nancy Pelosi (D-Calif.), added that it is important to continue other incentives, including the ARRA Section 1603 energy grant program.

HIRE Act

The Hiring Incentives to Restore Employment (HIRE) Act's main purpose is to reduce the ranks of the unemployed, but creating a tax credit for creating jobs is only one avenue in which your business may benefit from the \$18B tax legislation.

Health Care Reform Acts

The Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 (HCERA), carry broad lists of provisions. Some of these provisions include: employer mandates, individual mandates, tax increases and reporting requirements that will start affecting companies immediately, but also for several years to come.

FEDERAL

Change in Financial Accounting Standards for Multiple-Deliverable Revenue Arrangements

The Emerging Issues Task Force (EITF) and the FASB recently revised the guidance on accounting for multiple-deliverable revenue arrangements (Accounting Standards Update (ASU) No. 2009-13, *Revenue Recognition (Topic 605): Multiple-Deliverable Revenue Arrangements (a consensus of the FASB Emerging Issues Task Force)*). ASU 2009-13 represents a significant shift from the existing guidance, and its application is expected to enable vendors to account for products or services (deliverables) separately rather than as a combined unit. This change in the U.S. GAAP rules for revenue recognition for multiple-deliverable arrangements will necessitate companies to determine whether any change in book practices will result in a change in method of accounting for tax purposes, which may require consent of the IRS National Office.

Intangible Asset Disposals

Recent ruling may provide tax savings opportunities

In [PLR 201016053](#), the Service ruled that where a taxpayer could separately identify and distinguish acquired customer-based intangibles from self-created customer-based intangibles, the taxpayer could separately calculate gains on the sale of each, thereby avoiding section 1245 ordinary income recapture on the sale of the self-created customer-based intangibles. To receive this favorable treatment the taxpayer was required to show that the assets had a readily ascertainable value separate and distinct from goodwill and useful life. The underlying technical analysis in the ruling could also provide tax advantages when trying to avoid section 197 anti-churning limitations and the application of the section



H O R N E
CPAs & Business Advisors

An Independently Owned Member
McGLADREY ALLIANCE



Tax Digest

1374 BIG tax. However, the taxpayer carries the significant burden of establishing and defending under exam that the intangibles in question have a readily ascertainable value separate and distinct from goodwill and useful life.

Merger and Acquisition Transaction Costs: Who Gets the Benefit?

Private Equity Funds (PEFs), strategic acquirers, and targets incur various costs in merger and acquisition (M&A) transactions. The determination of which party receives the benefit of the expenditures (either current or future deductions) is not always as clear cut as the parties may first believe. Professional service costs (e.g., legal, accounting, and investment banking fees) are one of the most significant costs incurred in an M&A transaction.

Proposed Carried Interest Legislation and its Affect on Family Limited Partnerships

Legislation currently pending in Congress would substantially change the tax treatment of partners (and taxpayers related to such partners) who provide certain services to investment partnerships. Although this legislation originally targeted the taxation of the managers of hedge fund and private equity partnerships, the current proposals would negatively impact many partners in other businesses (notably, real estate) and possibly "typical" family investment partnerships.

S Corporation Planning for Additional Medicare Payroll Tax

The *2010 Health Care and Education Reconciliation Act* passed by Congress this year, increases Medicare payroll tax for taxpayers with income in excess of \$200,000 for individuals and \$250,000 for married couples filing jointly starting in the year 2013. Shareholders of S Corporations may be able to avoid paying the new 0.9 percent Hospital Insurance Medicare tax on compensation over the \$200,000 and \$250,000 threshold by limiting their compensation to these amounts and taking the excess income as distributions. Partners in partnerships would have a more difficult time separating the types of income. Shareholders of S Corporations may also be

able to shield some of the new 3.8 percent "unearned income Medicare contributions" on investment income over the \$200,000 and \$250,000 threshold through estate-planning. By transferring some of the investment assets from the S Corporation to the younger generation, some of the additional 3.8 percent "unearned income Medicare contributions" may be avoided.

Government Wins another Case Applying the Disguised Sales Rules

In *Canal Corp. and Subsidiaries v. Commissioner, T.C.*, No. 14090-06, 135 T.C. No. 9, Aug. 5, 2010, the court ruled in favor of the Service, holding that the purported leveraged partnership structure implemented by the parties to the transaction was in reality a disguised sale of assets under section 707(a)(2)(B). This is the second case in less than a year where the government has successfully challenged and won cases based upon the application of the disguised sale rules. In late 2009 a New Jersey District Court sided with the government in *In re G-I Holdings Inc.*, No. 2:20-cv-03082 (D.N.J. Dec. 14, 2009), also a highly structured partnership transaction intended to avoid characterization of a property transfer as a sale.

Construction Projects Eligible for Energy Grant Program

To qualify for the Energy Grant Program under the American Recovery and Reinvestment Act of 2009, qualified energy property must be placed in service by Dec. 13, 2010. Property placed in service before the corresponding energy credit termination date may also be eligible for the program if construction begins before Dec. 31, 2010. Construction commences when physical work of a significant nature begins such as excavation or pouring concrete. Preliminary activities such as designing and site preparation do not constitute construction. For work to be performed under contract, construction starts when significant physical work begins under a binding contract. For businesses planning to take advantage of the Grant Program, it is important to move things forward so that construction begins before the end of the year.

Favorable Guidance for Research Tax Credit and Intercompany Sales

Calculating a research tax credit for a controlled group of companies is one of the most complicated issues in tax practice. Congress added section 41(f) to the Code directing that “all members of the same controlled group of corporation shall be treated as a single taxpayer.” Although conceptually simple, calculating the research tax credit can be complicated as taxpayers try to aggregate research expenses and gross receipts attributable to each member of the controlled group. A recent court order in *Proctor and Gamble v. United States* provides some favorable guidance to taxpayers calculating a group credit.

INTERNATIONAL TAX

Tax Relief for Taxpayers Affected by Hurricane Alex

Mexico’s Northeast region was severely affected by the unprecedented amounts of rain brought in by Hurricane Alex during the first days of July. The states that suffered the most damages were Nuevo León, Tamaulipas and Coahuila. A considerable number of their municipalities were officially declared National Disaster Zones (NDZ). These three states are large contributors to the Mexican economy, and are home

to important centers of economic activity such as Monterrey, Saltillo, Nuevo Laredo and the U.S.-Mexico automotive parts corridor. They also house a significant amount of businesses and export manufacturing facilities owned or operated by U.S. Companies. In response to these unfortunate events, on July 16, 2010 Mexico’s Ministry of Finance (SHCP) published a decree that offers relief from certain tax filings for qualifying taxpayers that reside in the NDZ (Decree). The provisions of this Decree are effective July 16, 2010.

Refund Opportunity for U.S. Limited Liability Companies Filing in Canada

New guidance from the Tax Court of Canada and the Canada Revenue Agency (CRA) has presented an opportunity for U.S. limited liability companies to claim refunds for tax paid in Canada. Prior to the enactment of the 5th Protocol of the U.S.-Canada Income Tax Treaty, LLCs did not qualify for treaty benefits because they were not considered U.S. residents for treaty purposes. The 5th Protocol provided relief for LLCs by looking through the entity to the shareholders’ residency to determine qualification for treaty benefits. Due to a recent court case, the CRA is accepting refund claims from certain U.S. LLCs for periods prior to the enactment of the 5th Protocol. Any refunds received from Canada will require a corresponding adjustment to the U.S. foreign tax credit.

Tax Digest

Third Quarter 2010

LEGISLATION

House Energy Tax Bill Based on Section 48C - Likely to be Released Soon

HIRE Act

Health Care Reform Acts

FEDERAL

Change in Financial Accounting Standards for Multiple-Deliverable Revenue Arrangements

Intangible Asset Disposals

Merger and Acquisition Transaction Costs: Who Gets the Benefit?

Proposed Carried Interest Legislation and its Affect on Family Limited Partnerships

S Corporation Planning for Additional Medicare Payroll Tax

Government Wins another Case Applying the Disguised Sales Rules

Construction Projects Eligible for Energy - Grant Program

Favorable Guidance for Research Tax Credit and Intercompany Sales

INTERNATIONAL TAX

Tax Relief for Taxpayers Affected by Hurricane Alex

Refund Opportunity for U.S. Limited Liability Companies Filing in Canada



HORNE

CPAs & Business Advisors

1020 Highland Colony Parkway, Suite 400
Ridgeland, MS 39157

Address Service Requested

Information provided in this publication has been obtained by HORNE LLP from sources believed to be reliable. However, HORNE LLP guarantees neither the accuracy nor completeness of any information and is not responsible for any errors or omissions or for results obtained by others as a result of reliance upon such information.

The McGladrey Alliance is a premier affiliation of independent accounting and consulting firms. The McGladrey Alliance member firms maintain their name, autonomy and independence and are responsible for their own client fee arrangements, delivery of services and maintenance of client relationships. The McGladrey Alliance is a business of RSM McGladrey, Inc., a leading professional services firm providing tax and consulting services. McGladrey is the brand under which RSM McGladrey, Inc. and McGladrey & Pullen, LLP serve clients' business needs. McGladrey, the McGladrey logo and the McGladrey Alliance signatures are used under license by RSM McGladrey, Inc. and McGladrey & Pullen, LLP.

This publication does not, and is not intended to, provide legal, tax, or accounting advice.

For more information about HORNE's tax services, visit www.hornetax.com.

Tax Digest

Third Quarter 2010

Printed in U.S.A.

©2010 RSM McGladrey, Inc. All Rights Reserved. Used with Permission.