Deloitte.

Multistate Tax
EXTERNAL ALERT

Compromise Potential for Tennessee Intangible Expenses – Program Expires September 30, 2013

August 2, 2013

Overview

In 2004, Tennessee changed its law to require taxpayers to disclose intangible expenses paid to affiliated companies for excise tax purposes.[1] Since that time, the Department of Revenue (the "Department") has regularly reviewed the disclosures to determine the substance of the underlying transactions. In some instances, where the Department determined that intangible expenses were not related to bona fide, arms-length transactions, assessments were issued disallowing the deduction of the intangible expense.[2]

In November 2011, the Department started allowing taxpayers who had intangible expense deductions disallowed on the merits, or who were concerned about potential disallowance of those deductions to request a compromise and settlement on the issue.[3] The compromise request was considered for open tax years ending on or before June 30, 2012. The terms of the compromise required taxpayers to remit all tax and interest due as a result of the disallowance of a specific percentage of the intangible expense deduction.

In May 2012, Tennessee enacted legislation providing only specific types of intangible expenses paid to affiliates could be deducted in calculating the excise tax base.[4] The law now requires that for all tax years ending on or after July 1, 2012, taxpayers with intangible expenses must request pre-approval from the Commissioner in order to deduct those expenses, and provides certain safe harbors in which the deduction is allowed without pre-approval.[5]

Compromise Potential

The Department recently released Notice 13-06 that sets an expiration date for the intangible expense deduction compromise and settlement program.[6] For tax years ending on or before June 30, 2012, taxpayers concerned about the validity of their intangible expense deductions should request a compromise with the Department by September 30, 2013.[7] After September 30, 2013, the Department will continue to review deductions taken on such returns on a case-by-case basis; however, the Department will no longer recommend compromises on the same terms.[8]

For tax years ending on or after July 1, 2012, the new law discussed above applies to all intangible expense deductions. Failure to add back intangible expenses that were either not preapproved or do not meet one of the statutory exceptions will subject the taxpayer to a negligence penalty.[9]

---

[1] See Tennessee Notice # 11-17 (November 2011).
[2] *Id.*
[3] *Id.*
[4] Tenn. Code Ann. § 67-2-2006(b)(2); Tennessee Notice # 12-16 (October 2012).
[5] *Id.*
[6] Tennessee Notice # 13-06 (June 2013).
[7] *Id.*
[8] *Id.*
[9] Tennessee Notice # 13-06 (June 2013); Tenn. Code Ann. § 67-1-804(b)(2).

Contacts

For questions regarding this potential compromise and settlement program with the State of Tennessee, please contact any of the following Deloitte Tax professionals.

Glenn Sparks
Director
Deloitte Tax LLP, Nashville
glsparks@deloitte.com
(615) 259-1884

Amber Rutherford
Manager
Deloitte Tax LLP, Nashville
amberrutherford@deloitte.com
(615) 259-1830