

State and Local Tax Bulletin

August 10, 2010
Tennessee Edition



Tennessee Tax Update: Highlights from the 2010 Legislative Session

By Joseph W. Gibbs, Patricia Head Moskal and Brian S. Shelton

Upcoming Seminars Involving Members of Our SALT Practice Group

September 3 & 21, 2010

Alabama Society of CPAs – Alabama Sales and Use Tax Seminar in Birmingham, Alabama. Bruce Ely, Jimmy Long and Will Thistle will be speaking on numerous sales, use, rental and business license tax topics. A similar seminar will be offered on September 21 in Montgomery, Alabama for CPAs. For more information, go to www.ascpa.org.

September 22, 2010

Unclaimed Property Reporting, Lorman Educational Services, Birmingham, Alabama. Chris Grissom and Jimmy Long will be speaking on the topics of *Unclaimed Property Fundamentals and General Legal Issues On Unclaimed Property*. For more information, please visit www.lorman.com.

September 27, 2010

45th annual Southern Federal Tax Institute, Atlanta, Georgia. Bruce Ely will be a panelist discussing the topic *The States Are After Your Clients: What Can You Do?* For more information, please visit www.sfti.org/schedules.html.

Tennessee's "Technical Corrections Bill" – 2010 Tennessee Public Chapter 1134

The Tennessee General Assembly passed the Administration's annual omnibus tax legislation, known as the "Technical Corrections Bill," which Governor Bredesen signed into law on June 30, 2010. 2010 Tenn. Pub. Ch. 1134 (the "Act"). A few highlights of the major provisions of the 2010 Act include:

Sales and Use Taxes

- A reworked definition of "resale" that specifically removes from the "sale for resale" provisions the sale of tangible personal property to a dealer for use in the business of selling services. The amended definition also specifically identifies other transactions that remain within the sale for resale provisions, such as the sale of repair or installation parts to a dealer for use in the dealer's performance of repair or installation services, the sale of mobile telephones, and the sale of food or beverages to a hotel, motel or inn if such food or beverages subsequently are provided to guests as part of the lodging accommodations.
- Creation of a sales and use tax credit for building materials, machinery, equipment, computer software, furniture and fixtures used in qualified restoration projects.
- Clarification of the sales and use tax exemption on the sale of computer software to religious, educational and charitable institutions.

Franchise and Excise Taxes

- A new credit against franchise and excise taxes for a key tenant's expenses incurred in relocating to the Nashville Medical Trade Center and for certain advertising expenses promoting the Nashville Medical Trade Center.
- A new credit against franchise and excise taxes for a company's capital investments of at least \$25,000,000 or more for a qualified development project on certain property, including brownfield property.
- A revised definition of a "captive real estate investment trust" or "captive REIT" to mean a REIT in which any entity or individual has at least an 80% ownership interest; and a new definition of "captive REIT affiliated group" to be a captive REIT and another entity in which the captive REIT directly or indirectly has a 50% ownership interest. Captive REIT affiliated groups are required to compute net earnings for excise tax purposes on a combined

continued on page 2

basis, and the deduction allowed under I.R.C. Section 561 for dividends paid by the captive REIT is required to be added back to the captive REIT's earnings for excise tax purposes. A captive REIT affiliated group also is required to compute its net worth for franchise tax purposes on a consolidated basis. The captive REIT provisions described above do not apply to a REIT owned by a bank, a bank holding company, or a public REIT.

Economic Incentives

- Extension of the refundable franchise and excise tax headquarters relocation credit for insurance companies relocating their qualified headquarters facilities to Tennessee.
- Extension of the sales tax exemption and industrial machinery credit to materials handling equipment and racking systems purchased with respect to an additional category of warehouse and distribution facility expansions, provided certain investment levels are met.
- Exemption from franchise tax base and extension of sales and use tax credits to certain green energy production facilities producing electricity using clean energy technology.
- Repeal of sunset provisions applicable to franchise and excise tax credits for film and television production.
- Authorization for the commissioner of revenue to lower the wage and investment criteria for the annual additional jobs tax credit and headquarters relocation credit for investments and jobs created within a central business district or economic recovery zone.
- Election for certain airline companies with headquarters in Tennessee to convert any available and unused jobs tax credits into a refundable credit discounted to net present value.
- Extension of annual additional jobs tax credit to integrated customers of certified green energy supply chain manufacturers.

Other Noteworthy Tax Legislation

In addition to the omnibus tax legislation, there were a number of other bills enacted during the 2010 legislative session that impact Tennessee tax laws. The following are a few highlights:

Flood Relief/Sales Tax Refund

2010 Tenn. Pub. Ch. 1114 (Senate Bill 231). This act provides a refund of sales taxes paid by individuals receiving disaster assistance through FEMA on the purchase of certain major appliances, residential

building supplies and residential furniture purchased between May 1, 2010 and September 30, 2010. See the Tennessee Department of Revenue's website for more information at <http://www.tn.gov/revenue/misc/floodrelief.htm>.

Drug Tax

2010 Tenn. Pub. Chap. 962 (House Bill 3164). This act rewrites the statute imposing tax on unauthorized substances, colloquially known as the "Drug Tax," in response to the Tennessee Supreme Court decision that the prior version of the Drug Tax act was unconstitutional. *Waters v. Farr*, 291 S.W.3d 873 (Tenn. 2009). The prior statute was struck down because the drug tax could not be classified under the Tennessee Constitution as either a tax on merchants, a tax on peddlers, or a tax on privileges and, therefore, was beyond the state's power to tax.

Processing of Property Tax Relief Applications

2010 Tenn. Pub. Ch. 932 (Senate Bill 3361). This act authorizes a municipality to contract with another official within the same county to process property tax relief applications received from low income taxpayers 65 years of age or older, totally and permanently disabled taxpayers, and disabled veterans and their spouses.

Greenbelt Property Appraised Values

2010 Tenn. Pub. Ch. 928 (Senate Bill 3191). This act clarifies that the appraised value of land classified as agricultural, forest, or open space under the greenbelt statute for property tax purposes should not be deemed determinative of the fair market value of the property for any purpose other than property tax purposes (i.e., transfer tax purposes).

Limitations on Secured Party's Liability for Delinquent Personal Property Taxes

2010 Tenn. Pub. Ch. 1007 (House Bill 3259). This act revises Tennessee personal property tax statutes to provide that a secured party is only obligated to withhold and pay delinquent personal property taxes (limited to 4 tax years) attributable to the collateral securing the taxpayer's obligation to the secured party, and the secured party is not liable for the entire delinquent personal property tax obligations of the taxpayer. This legislation was passed in response to a 2009 decision by the Tennessee Court of Appeals that a secured party's purchase money security interest in a single item of personal property was subordinate to the local government's tax lien for the entire unpaid personal property tax liability of the taxpayer and not just as to the property tax attributable to the secured party's collateral. *State ex rel. Davis v. A&F Construction*, 2009 WL 499421 (Tenn. Ct. App. Feb. 26, 2009).

For more information, please contact Joe Gibbs, Pat Moskal or Brian Shelton at the numbers listed below.

Joseph W. Gibbs
(615) 252-2317
jgibbs@babac.com

Patricia Head Moskal
(615) 252-2369
pmoskal@babac.com

Brian S. Shelton
(615) 252-2313
bshelton@babac.com

Bradley Arant Boulton Cummings LLP Office Locations:

ALABAMA

One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
(205) 521-8000

200 Clinton Avenue West, Suite 900
Huntsville, AL 35801
(256) 517-5100

The Alabama Center for Commerce
401 Adams Avenue, Suite 780
Montgomery, AL 36104
(334) 956-7700

MISSISSIPPI

188 E. Capitol Street, Suite 400
Jackson, MS 39201
(601) 948-8000

NORTH CAROLINA

100 North Tryon Street, Suite 2690
Charlotte, NC 28202
(704) 332-8842

TENNESSEE

1600 Division Street, Suite 700
Nashville, TN 37203
(615) 244-2582

WASHINGTON, DC

1133 Connecticut Avenue NW,
12th Floor
Washington, DC 20036
(202) 393-7150

This newsletter is sent to our friends as a courtesy of Bradley Arant Boulton Cummings LLP. If you would prefer not to receive future emailings of this type, please email our practice group assistant, Sherry Barber, at sbarber@babac.com.

This newsletter is a periodic publication of Bradley Arant Boulton Cummings LLP and should not be construed as legal advice or legal opinions on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult your own lawyer or other tax advisor concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our practice group.

The Alabama State Bar requires the following disclosure: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

©2010 Bradley Arant Boulton Cummings LLP

SALT Practice Group:

Bruce P. Ely, Chair
(205) 521-8366
bely@babac.com

Joseph W. Gibbs
(615) 252-2317
jgibbs@babac.com

W. Stanley Gregory
(334) 956-7604
sgregory@babac.com

Christopher R. Grissom
(205) 521-8514
cgrissom@babac.com

K. Wood Herren
(205) 521-8505
wherren@babac.com

James E. Long, Jr.
(205) 521-8626
jelong@babac.com

Patricia Head Moskal
(615) 252-2369
pmoskal@babac.com

Brian S. Shelton
(615) 252-2313
bshelton@babac.com

William T. Thistle, II
(205) 521-8985
wthistle@babac.com

Robert D. Thorington
(334) 956-7609
rthorington@babac.com

Robert C. Walthall
(205) 521-8308
rwalthall@babac.com

Stephen M. Wilson
(601) 592-9957
swilson@babac.com

www.babac.com