



DAILY TAX REPORT



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HIGHLIGHTS**IRS Says Contingent Fee Permissible Before Written Notice of Examination**

IRS says in Notice 2008-43 that practitioners can charge a contingent fee under Circular 230 for services rendered in connection with the examination of a tax return or claim for refund filed before a taxpayer has received a written notice of examination. IRS also adds a new exception under Section 10.27 of the circular that permits practitioners to charge a contingent fee for whistleblower claims under tax code Section 7623. Final regulations (T.D. 9359) for standards of practice before the IRS, published Sept. 26, allowed practitioners to charge a contingent fee for services rendered in connection with examinations, challenges to original returns, or amended returns or claims for refund or credit, if those claims were filed within 120 days of the taxpaying receiving written notice of those actions. **G-1**

Justices Hear Arguments on Grant of Stamp Tax Exemption in Bankruptcy

The Supreme Court hears arguments in *Florida Department of Revenue v. Piccadilly Cafeterias Inc.*, a Chapter 11 bankruptcy case that addresses the issue of whether asset transfers that occur prior to the confirmation of a plan qualify for the exemption from state stamp taxes found in Section 1146(a) of the Bankruptcy Code. The case is an appeal of an 11th Circuit decision which found that the Bankruptcy Code's provision that provides an exemption to state stamp acts to a Chapter 11 debtor with a confirmed plan applies to pre-confirmation transfers necessary to the consummation of a confirmed plan of reorganization. The ruling created a split among the circuits, with the Third and Fourth circuits having concluded that the exemption may not apply to such transfers. **K-1**

IRS Monitors E-File Compliance, Cracks Down on Filers Using Pay Stubs

A senior IRS official says the agency is closely monitoring compliance in the electronic return filing area, with a focus on the forbidden practice of preparers filing returns using the last pay stub rather than an employee's W-2—frequently done to facilitate RALs. Mary Coleman, acting director of exam policy for IRS's SB/SE Division, stresses that no filing of returns is allowed using pay stubs, although returns technically can be prepared using the stubs as long as they are not transmitted. Speaking at an American Payroll Association conference, Coleman says IRS will be checking for this practice during its 1,453 random monitoring visits of approved e-file providers in 2008. **G-5**

FASB OKs FSP on Consolidation, Equity Guidance for Not-for-Profits

FASB finalizes work on a staff position that addresses conflicts in existing authoritative accounting literature concerning consolidation and equity method guidance for not-for-profit organizations. The board says the changes contemplated under FSP SOP 94-3-a and AAG HCO-a, Omnibus Changes to Consolidation and Equity Method Guidance for Not-for-Profit Organizations, are being proposed in conjunction with work being done to codify U.S. GAAP. **G-2** . . . FASB says it will proceed with the balloting process toward issuing final

TEXT

TAX PRACTICE: IRS Notice 2008-43 providing interim rules for contingent fees under Circular 230. **TaxCore**

TAX PROCEDURE: IRS chief counsel notice (CC-2008-011) on limitations on contacts with informants who are taxpayer employees or representatives. **TaxCore**

R&D: CRS report, *Research and Experimentation Tax Credit: Current Status and Selected Issues for Congress*. **TaxCore**

HEALTH CARE: CRS report, *Medicaid Provider Taxes*. **TaxCore**

TAXCORE: For a complete listing of today's full text documents, look in the contents section.

ALSO IN THE NEWS

NEW YORK: A coalition of labor unions, consumer groups, and others urges state lawmakers to enact "a millionaire's tax" to help close the state's projected budget deficit for the 2008-09 fiscal year. The Better Choice Budget Campaign is supporting a temporary increase in the state personal income tax for individuals earning more than \$1 million per year. It says the increased revenue from the tax increase could be used for health, education, and infrastructure needs. It also could be used to help lower property taxes. **H-1**

State TAX & ACCOUNTING

New York

Coalition of New York Groups Calls For Higher Income Tax on Millionaires

ALBANY, N.Y.—A coalition of labor unions, consumer groups, and others urged state lawmakers March 26 to enact “a millionaire’s tax” to help close the state’s projected budget deficit for the 2008-09 fiscal year.

The coalition, which is called the Better Choice Budget Campaign, is supporting a temporary increase in the state personal income tax for individuals earning more than \$1 million per year.

The coalition said the increased revenue from the tax increase could be used for health, education, and infrastructure needs. It also could be used to help lower property taxes.

The tax increase is included in the state budget approved by the Democratic-controlled state Assembly (A. 9810), but is opposed by Republicans who control the state Senate. Leaders from the two houses are currently meeting in joint conference committees to iron out differences in the two houses’ budget plans before the April 1 start of the fiscal year.

The Better Choice Budget Campaign supports the Assembly plan, but would support other similar measures, according to Jo Brill, a spokeswoman for the Fiscal Policy Institute, which is a member of the coalition.

New York is facing an estimated budget gap of \$4.6 billion in FY 2008-09. The state budget is about \$124 billion.

Under the state Assembly plan, the top personal income tax rate would be raised by about 1 percent for taxpayers with incomes of \$1 million or higher. The tax increase would raise an estimated \$1.5 billion.

Among the groups in the Better Choice Budget Campaign are New Yorkers for Fiscal Fairness, the Fiscal Policy Institute, the Public Employees Federation, and the New York Public Interest Research Group.

BY GERALD B. SILVERMAN

Further information on the coalition’s tax proposal is available at <http://www.fiscalpolicy.org/>

California

California Senate OKs Excluding Forgiven Mortgage Debt From Taxable Income

SACRAMENTO, Calif.—The California Senate March 24 passed a bill that would conform to federal law by allowing taxpayers to exclude forgiven mortgage debt from taxable income.

S.B. 1055 by Sen. Mike Machado (D) passed 34-0, and will now move to the Assembly for consideration.

The bill would apply to borrowers whose lenders agree to a short sale, a short payoff, a loan modification, or a loan refinance in which some or all of the borrower’s original debt obligation is forgiven. Under current state law, such forgiven debt is taxable to the borrower at the ordinary income rate for California.

The bill would conform California law to the federal Mortgage Forgiveness Debt Relief Act (Pub. L. No. 110-142), signed by President Bush Dec. 20, 2007 (245 DTR G-2, 12/21/07), with one difference. The federal law applies to debts that are forgiven between Jan. 1, 2007, and Jan. 1, 2010. To reduce the revenue loss for California, the state measure would apply only through Jan. 1, 2009.

According to the Franchise Tax Board, the bill would result in revenue losses of \$5 million in fiscal year 2007-08, \$7 million in 2008-09, and \$1 million in 2009-10. About 8,300 taxpayers would benefit from the measure. It would apply only to debt from owner-occupied homes.

The bill is supported by the California Bankers Association, California Chamber of Commerce, California Credit Union League, California Mortgage Bankers Association, and the Greenlining Institute.

BY LAURA MAHONEY

For more information on the bill see <http://www.leginfo.ca.gov>. Click on the Bill Information button and enter the bill number in the search box.

Colorado

Colorado Clarifies Temporary Employees Qualify Under New Employees Tax Credits

Colorado enacted legislation (H.B. 1034) clarifying that new employees under the new business facility employees tax credit and the aircraft manufacturer new employees tax credit includes leased or temporary workers.

The measure, signed into law March 6, amended the new business facility employees credit to provide that a taxpayer could only claim a credit for employees for whom:

- the taxpayer withholds Social Security, Medicare, and income taxes under the taxpayer’s own federal and state taxpayer identification numbers; or
- the taxpayer is the work-site employer, and an employee leasing company, as the employing unit for, or co-employer with, the taxpayer, withholds Social Security, Medicare, and income taxes under the employee leasing company’s own federal and state taxpayer identification numbers.

The legislation also amended the aircraft manufacturer new employees credit to provide that the aircraft manufacturer is the work-site employer, and an employee leasing company, as the employing unit for, or