MAINE TAX ALERT

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TAX CHANGES IN THE BUDGET BILL

The Maine State Budget for fiscal years 1998-9 includes tax provisions affecting corporations, exemption amount for individuals and state reimbursement for business personal property tax . Corporations known as 80-20 corporations will be included as part of the base for Maine net income and combined reporting effective for tax years beginning on or after January 1, 1997. The personal exemption amount has been increased by $50 to $2,150 as the first move toward conformity with the federal personal exemption amount. The revenue targeting fund, or "tax cap" was repealed.

The Business Equipment Tax Reimbursement Program has been amended by the bill. Effective after April 1, 1996, reimbursement for personal property tax will be reduced by one year for each year the taxpayer included the property under the ITC base. Eligible property includes construction-in-process commenced after April 1, 1995. Beginning after April 1, 1996, eligible property excludes office furniture, including tables, chairs, desks, bookcases, filing cabinets, modular office partitions and lamps and lighting fixtures. Items of this type of property which were eligible for reimbursement for 1996 remain eligible for reimbursement. Also the Investment Tax Credit is repealed for personal property placed in service after April 1, 1996.

Entities which are public utilities and some communications companies are excluded from the business equipment tax reimbursement program, beginning after April 1, 1995. These are: radio paging services, mobile telecommunications services, cable television companies, satellite-based direct television broadcast services and multichannel, multipoint television distribution services.

The Legislature still has before it nearly a hundred tax bills in addition to the changes passed in the State Budget on March 25. The June Tax Alert will include a synopsis of Maine tax changes from the 118th Maine Legislature and the Special Session.

YOUR CLIENTS' TAX DUE RETURNS

We are ready to help your clients who are unable to pay all of the tax due on their individual income tax returns.

Your clients should pay all they can with their returns. However, should any of your clients be unable to pay the full amount with the return, please attach a payment plan request to the return. The request should include details of the amount your client can pay per month. The requested payment plan should pay down all of the debt in a maximum of six months. Any amounts not paid by the April 15th due date are subject to interest and penalty for overdue tax. Your client will receive monthly bills based upon the payment agreed for each month.

We often help taxpayers who, in a year past faced with a large tax due on a return and did not file the return. The taxpayer is then subject to failure to file penalties in addition to failure to pay penalties and interest due on the unpaid balance on the return. For a taxpayer unable to pay all the tax due with the return, the best option

is to request a payment plan with the return filing. You may call (207)621-4300 to find out more about payment plans for individual income taxes.

TELEFILE IS CATCHING ON

As of late March, the total number of Maine individual income tax returns filed by telephone is 19,500. Of these 98% are refund returns and 2% are tax due returns with a few zero balance returns. We expect that the tax due returns will be filed closer to the due date in April. Some callers hang up as soon as they learn that the calculated tax results in a balance due rather than the refund they had expected. The total is already three times the total number of TeleFile returns for the 1996 tax season.

For paper refund returns, the State refund date is now 20 days after we receive the return, down from 31 days on average last year at this time. As of March 27, the Bureau of Taxation has sent out over 213,000 1996 individual income tax refunds averaging $315.00.

COUPLE PLEADS GUILTY TO TAX CHARGE

On March 13, 1997 , Roseann M. Zak and her husband Francis J. Zak of Rockport, Maine pled guilty to 6 counts of failing to file Maine income tax returns for the years 1989-1994.

The Zaks moved to Maine in 1984 from Bridgeport, Connecticut and decided to become tax protesters for religious and philosophical reasons. Before the actions taken by the State in this criminal case, the Zaks had not filed any Maine returns during their years as residents of Maine. Their income averaged $50,000 per year. Roseann Zak works as a nurse at a Rockport hospital. Francis Zak is a retired Bridgeport, Connecticut, police officer. The Zaks have not filed federal returns for these periods.

The State recommended a 45 day jail sentence for each defendant. Justice John Atwood of Knox County Superior Court declined to impose any jail term but instead imposed on each defendant, a 200 hour public service work requirement, 18 months suspended sentence, probation for two years, and a $250 fine. The conditions of probation for both of the Zaks is restitution of $18,590.63 within the first 20 months of probation and timely filing and payment of future tax returns.

APPELLATE DECISIONS

A. ISSUE -Use Tax - Instrumentalities of Interstate and Foreign Commerce: Whether the taxpayer used two vehicles at least 80% of the time for 2 years from purchase as instrumentalities of interstate or foreign commerce and were therefore exempt from use tax under 36 M.R.S.A.e1760(41).

The Bureau accepted the taxpayer's affidavits of exemption of use tax on appeal and canceled a previous assessment but stated that "the Bureau reserves the right to review these purchases for compliance with the Sales and Use Tax Law within 2 years from the date of purchase." On subsequent audit, the Bureau found that the vehicles had not been used in interstate or foreign commerce 80% of the time.

The vehicles transported product from one Maine city to another. The taxpayer argued that this use was a part of foreign commerce because the goods were subsequently shipped to foreign markets. With regard to sufficient use, the taxpayer argued that 80% of the miles traveled were eligible for the exemption.

The Bureau denied both claims. The product was stored in the destination Maine city, not as a necessary interruption of a delivery of the product to a particular interstate or foreign destination, but rather as a holding point until the warehouse had either decided where to ship the product or had accumulated sufficient product to make the shipment economical. The foreign commerce therefore begins with shipment from the

warehouse. The taxpayer's use was intrastate or local because they carried cargo that both originated and terminated within the State of Maine. [See Sales and Use Tax Instruction Bulletin No. 41.]

As to the 80% issue, the Bureau held that the law states that the purchaser must use the vehicle "not less than 80% of the time for the next 2 years as an instrumentality of interstate or foreign commerce." The Bureau also held that a day-based approach for measuring interstate commerce usage was consistent with the statute. Under this method, the 80% test is calculated by days of use in intrastate commerce and days of use in interstate or foreign commerce.

B. ISSUE - Use Tax - Instrumentalities of Interstate and Foreign Commerce: Whether the taxpayer was exempt from use tax on its purchase and subsequent use of a tugboat. [36 M.R.S.A.e1760(41)]

This case hangs upon the question of whether the tugboat provides "motive power for the carrying of a bona fide payload," or whether it is being "dispatched to a specific location at which it will be ...used as motive power for the carrying of" a payload in interstate or foreign commerce. The term "motive power" is not defined in the statute. As a result, the decision in this case required careful examination of tugboat operation in the course of its responsibilities in assisting a cargo ship to berth.

A cargo ship must reduce power to such a slow speed as it approaches the port that the ship's rudder has little or no effect. The tugboat provides the maneuverability necessary for safe and accurate berthing. It was determined, in this case, that the cargo ship provides primary motive power to transport its cargo and that the tugboat provides motive power to steer the cargo ship into the berth. The decision in this case was that the incidental involvement of the tug does not render the tug an instrumentality of interstate or foreign commerce under the narrow construction required under the law for exemptions from use tax. The purchase of the tug was, therefore, subject to use tax. This case has been appealed to Superior Court.

C. ISSUE - Use Tax - Whether the transfer of a vehicle from a corporation to an individual shareholder is subject to use tax.

The taxpayer, a 50% owner in a corporation, caused the corporation to transfer to himself a truck which had been purchased by the corporation a year earlier. All taxes were paid on the original truck purchase. The taxpayer registered the truck in his name, listing the transfer as a gift. The taxpayer did not pay tax on the truck when he registered it.

The Bureau of Taxation does not recognize a transfer of an asset from a corporation to an individual shareholder as a gift. Case law holds that it is close to impossible for a for-profit corporation to show "disinterested generosity" in a transaction that is clearly not "at arm's length." The transfer of the truck to the taxpayer from the corporation is therefore not classed as a gift. Because the transaction was not a gift, it is deemed to be a sale under section 1752(13) which defines a "sale" as any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration.

Maine law imposes a tax on all casual sales of motor vehicles. [36 M.R.S.A. e1764] The transfer of the truck from the corporation to a shareholder is a casual sale and the truck is taxable on the "sale price" defined as the total amount of the retail sale valued in money, whether received in money or otherwise. [36 M.R.S.A. e1752(14)]

An interesting point here is that the transfer of a truck or other item of tangible personal property from a majority shareholder to a corporation is not a taxable casual sale. [36 M.R.S.A. e1764]

ECONOMIST CHOSES MAINE

Michael J. Allen left the Washington, D.C. based U.S. Treasury's Office of Tax Analysis to join the Maine Bureau of Taxation in February as Director of Econometric Research. Mike is a native of Saugus, Massachusetts. He earned his Doctorate in Economics from Boston College and his undergraduate degree in economics from the University of Vermont. Mike will support the Bureau of Taxation and others with studies to illustrate the impact of tax legislation and various other tax related economic issues.

This post was previously held by William Gardner. Bill also came to Maine from Washington, D.C. where he worked with the U.S. Congress' Joint Committee on Taxation. He left Maine two years ago to work in Bishkek, Krygyzstan, as a consultant with the government of that new country for Barents Group, a division of KPMG Peat Marwick.

TAX SEMINAR SERIES OFFERED

Pierce Atwood is sponsoring a series of Maine tax seminars in Portland at their offices: a seminar on Maine sales and use tax on May 7 and on Maine corporate income taxation on June 25. Bureau of Taxation speakers will participate in both sessions. For more information, contact: Leslie Cormier Pierce Atwood, One Monument Square, Portland, ME 04101 Tel: (207)791-1143. .

TAX ALERT - Next Month

The May Tax Alert will include the Bureau of Taxation's third annual practitioner survey. This is your chance to let us know how we are doing with this publication, with taxpayer and practitioner service, forms and any other issues you want to tell us about. We have followed through on many of your suggestions. We are listening for more.