Labhart Miles consulting group, inc.

States of Affair

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INSIDE THIS ISSUE:

Dear Readers,

Our efforts to "go green" have been so successful that we've not sent a paper newsletter recently. We've sent out e-versions, but we miss the paper, and hope you do too. As the economy shows some signs of recovery, we are beginning to see cautious optimism among our clients and colleagues for 2010. We are reminded that optimism fuels more optimism. Thank you to our readers for your continued support of Labhart Miles. And a special thank you to those clients who have taken their valuable time to provide us with referrals. There is no greater compliment than a referral from a client.

Kindest Regards,
Bill & Monika

California's New Use Tax Registration Requirement for Service Businesses Due Date April 15

In July 2009, during a special session of the California legislature, ABX4-18 (Evans (D)) was introduced and passed without much fanfare. This legislation mandates new use tax reporting and filing requirements on thousands of California businesses. The purpose of this new requirement is to register all businesses with gross revenues greater than $100,000 for any of the last three years who are not already registered with the BOE. In theory, most manufacturers and retailers are already registered, so this requirement is aimed at service businesses such as accountants, attorneys, consultants, etc., regardless of whether these businesses have purchased everything in California and already paid the applicable sales tax. The filing deadline is April 15, 2010, and there is no grace period or amnesty for late filing – interest and penalties may also be charged. For more specific guidance and answers see the FAQ for ABX4-18 (Nov. 1, 2009) on the BOE website or contact Labhart Miles. If your company is already registered with the Board of Equalization for sales/use tax, please keep filing as usual. If your company is subject to the filing requirement but missed the deadline, we recommend you file as soon as possible to avoid additional interest and penalties.

New Federal Tax Hiring Credit

On March 18, 2010, President Obama signed the HIRE Act. The program provides an incentive for employers to hire and retain new workers by exempting an employer from paying the employer portion (6.2%) of Social Security taxes for the remainder of 2010 for qualified new hires. (A qualified new hire has not worked more than 40 hours during the 60 days prior to hire.) A related business tax credit can also be claimed by the employer for each qualified individual hired after February 3, 2010 who remains with the employer for a year. The credit is the lesser of $1,000 or 6.2% of wages of the new employee. The IRS is formulating guidance regarding the reporting and deposit issues created by the new Act. We will have more guidance once these issues have been addressed.

Speaking Out:

Conferences:

Pacific Coast Bankers' Bank – Executive Management Conference:

Bankers – look for the Labhart Miles booth at PCBB's annual conference in San Francisco May 2 – 5, 2010. This will be our sixth year as a sponsor. We encourage all participants to stop by our booth to hear about tax benefits available to community banks.

In the Community:

Monika Miles has been elected National President-Elect of the American Society of Women Accountants for 2010-2011. She will serve as National President of the organization in 2011-2012. ASWA is a nationwide member based organization with almost 4,000 members in over 80 chapters.

Monika has been selected as chair of the American Cancer Society California Division, Inc.'s Making Strides Against Breast Cancer (MSABC) events for fiscal year 2010. In October 2010, California will hold 16 Making Strides events, with anticipated participation of more than 100,000 walkers statewide.

Advocacy:

We continue to participate in the California Economic Opportunity Network ("CEON"), an advocacy group focusing on educating CA legislators about the enterprise zone programs and benefits.

Multi-State Tax News

States Are Taking Liberties with Policy Interpretations

Budget woes continue to make headlines, and it's clear that the current economic crisis is hitting state governments very hard. From the tax perspective, we often read about "tax gaps", proposed legislation to broaden tax bases, and audit activity – all of which adversely impact our clients. Unfortunately, in times like these, the states' natural reaction is to promote aggressive audit positions by flooding taxpayers with onerous, unauthorized policy changes using the audit process. As practitioners, we're seeing an increase in audit activity and a disturbing trend where revenue departments are making policy without a statutory change, promulgating regulations or precedent setting case law.

What can a company do?

- *Be aware of changes, make pro-active tax decisions and demand the authority for disallowances*
- *Write letters. Legislators still read their mail, and are impacted by noise around an issue.*
- *Become a little outraged. Individuals and companies are bound to pay only the legal amount of tax they owe – no more. Certainly not more as a result of a revenue department's retroactive, arbitrary policy changes.*
- *When revenue departments make arbitrary policy changes, taxpayers, when prevailing, should seek payment for their audit defense fees.*

New York: The taxability of software for sales tax purposes is a gray area in many states because it is often difficult to determine the true object of a transaction that has a software component (which is often taxable, particularly if transferred on a disk), and a non-taxable service component. It is grayer with "software as a service" and "computing in the cloud" where customers may not download anything at all. As highlighted in *The Journal of Multistate Taxation and Incentives* (March/April 2010; Vol.20, Number 1), New York's Department of Taxation and Finance, in two advisory opinions, reached conflicting conclusions as to the taxability of software/services in cases with very similar facts but without providing much of an explanation for the conflicts other than to say that the older position "does not represent current policy".

California: Lenders can deduct interest earned on qualified loans made to borrowers in one of the state's 42 enterprise zones. The statute places restrictions on the "trade or business" of the borrower as to qualification of the loan. The Franchise Tax Board had previously ruled more broadly on this issue as it relates to investment real estate. However, in recent audits lenders are experiencing a much more restrictive treatment of this provision. Loans that previously had qualified are now being disallowed.

In both examples, the tax statutes have not changed, regulations have not been promulgated, and there have been no precedent setting court decisions. Merely the revenue agencies' interpretations have changed. Thus, both issues may end up being decided in the courts – an expensive exercise for taxpayers trying to navigate the arbitrary and inconsistent positions being taken by revenue departments. ●

California Corner

For our Banking Clients… and Others – One More Potential Ball to Juggle

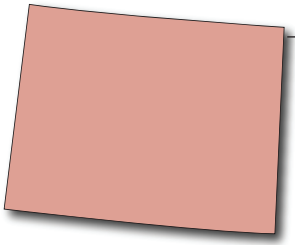
ABX8 8 (Evans, et. al. (D) – Committee on Budget), as part of the Democratic budget tax fix, which has passed the Senate and is waiting for action in the Assembly, would, as of this writing:

- Require financial institutions doing business in California to "operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible."
- Suspend professional licenses of delinquent taxpayers
- Expand the definitions of "abusive tax avoidance transactions", increase applicable penalties, and prevent judicial review of such transactions
- Expand sales tax nexus to out-of-state retailers entering into agreements with Californians who refer customers through a website (similar to New York's law change related to Amazon.com)

The first bullet, above, would pile one more task upon our community banks just when they need it least. If the financial institution does not have the technical ability to process the data exchange, or is without the ability to employ a third-party data processor to process the data exchange, the institution may forward a list of all account-holders, SSN or other tax ID numbers to the State and the FTB will do the match. The legislature has left it up to the Franchise Tax Board to prescribe rules and regulations.

If the institution is deemed by its supervisory banking authority that it is under some level of stress, the FTB can temporarily suspend the match program. Additionally, the FTB, at its discretion, can institute civil proceedings to enforce the match program – $50 for each record not provided not to exceed $100,000 per institution. ●

EZ Update :
Congratulations to Hesperia – On April 1, 2010, Hesperia received its final designation from Housing and Community Development as a full fledged enterprise zone. And that's no April fools joke!



Colorado Attempts to Snag Out-of-State Retailers

In an emergency regulation, 39-21-112.3.5, dated March 1, 2010, Colorado has promulgated a regulation which requires "non-collecting retailers" (NCRs) to, among other things, post a notice on every invoice to in-state purchasers that includes the following:

- the NCR is not obligated and does not collect Colorado sales tax,
- the purchase is subject to Colorado sales tax,
- the purchase is not exempt merely because it is made over the internet or remotely, and
- the State requires the taxpayer (customer) to file a sales/use tax return at the end of the year.

NCRs are also obligated to provide purchasers an end-of-year summary to assist with the taxpayer's filing. This requirement pertains to all NCRs making $100,000 or more in Colorado sales during the year. The penalties for the NCRs are $5.00 per invoice documenting a sale to a Colorado purchaser on which the required notice does not appear. A waiver of penalties is possible if the NCR begins to provide the notices or begins to collect sales tax prior to May 1, 2010. And if Colorado has thought of this reporting requirement, it will not be too long before other states proceed down this path. If you have any questions about this new requirement please contact Labhart Miles. ●

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State Tax Solutions

Contact us for a free consultation.

Labhart Miles Consulting Group:

- *Member of the California Association of Enterprise Zones (CAEZ)*
- *Associate members - Western Independent Bankers*
- *Sponsors of the Pacific Coast Bankers' Bank Executive Management Conference*
- *Editors of the Journal of Multistate Taxation and Incentives*
- *A wealth of experience in Big 4, Industry, and State Government*
- **labhartmiles.com**

Insight

Amnesty Programs — Spring 2010

Massachusetts – April 1, 2010 – June 1, 2010

Nevada – July 1, 2010 – October 1, 2010

Pennsylvania – April 26, 2010 – June 18, 2010

City of Philadelphia – May 3, 2010 – June 25, 2010

For the programs above, most taxes are covered in all jurisdictions, but for your particular circumstances please do not hesitate to contact Labhart Miles for more information.

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