DOMESTIC TAX
AND LEGAL UPDATE
FEBRUARY 2011

FEDERAL TAX & LEGAL ISSUES

Dodd-Frank Act and HUD Update:

- Employer retaliation may become only a secondary consideration for employees if the SEC enacts proposed enhanced Whistleblower regulations. These regulations would enable the SEC to offer employees substantial financial award for providing valid tips leading to successful enforcement actions by the agency against employers. Employers are advised to follow certain key elements to successful risk management in this area. These elements include maintaining written compliance programs, providing ongoing employee education on compliance requirements and conducting audits of existing programs.

- The Consumer Financial Protection Bureau is slated to take over consumer related affairs, effective July 21, 2011. Real Estate Settlement Practices Act (RESPA) and Truth In Lending (TILA) disclosures will now fall within their purview. The CFPR believes they taken a major step toward going live by creating a website, www.consumerfinance.gov , which allows consumers access to information relating to credit cards, mortgages, student loans, and other kinds of consumer products. They are trying to engage the public, and the web page even has a labeled Suggestion tab. They have commissioned a video to detail their efforts to strengthen the economy, protect American families and improve financial services narrated by actor/producer Ron Howard.

They are pledging to combine and simplify mortgage disclosures well before the statutory mandate of July 2012.

IRS Updates for 2010-2100:

Filing Dates:

Because of tax changes, no itemized tax returns can be filed prior to mid-February, 2010.

2010 Individual tax returns are due to be filed on or before 4/18/11 because of Emancipation Day in Washington DC. The annual filing extension date is 10/17/11, but any tax owed is still due by 4/18/11.
2010 LLC Partnership taxes are due by 4/18. The annual filing extension date is 9/15/11.
2010 S-Corp Taxes are due by 3/15. The annual filing extension date is 9/15/11.

Mileage Rates:

2010 mileage rates: .50/business; .16.5/medical or moving; .14/charitable
2011 mileage rates: .51/business; .19/medical or moving; .14/charitable

Gift Tax Exclusion:

2010 - Gift Tax Exclusion remains $13,000; Maximum gift tax rate 35%.

Tax Withholding for 2011:

Tax withholding rates have been reduced from 6.2% to 4.2% for individuals. Employers must credit adjustments back to employees by 3/31/11.

Self-Employment withholding rates have been reduced from 12.4% to 10.4%.

Both withholding calculations are up to a maximum of $106,800 net earnings and these temporary rate reductions are only good through 12/3/11 and revert to prior withholding rates on 1/1/12.

Capital Gains Exclusions and Residential Home Rentals:

Capital Gains Exclusions may remain intact even where primary residence has been rented out, provided it was owner's primary residence for at least 2 of the 5 years prior to the sale. This would hold true for rental property converted to primary residence, or primary residence converted to rental property. Depreciation claimed may be recaptured and taxable for the period the property was used for rental purposes.

Tax Relief Extensions:

- Energy Tax Credits for 2011 reduced to 10% (from 30%) of project total not to exceed $500.
  Energy Star Windows $200 Max credit.
  Water Heater replacement $300 Max credit.
  Air Conditioning $300 Max credit.
  Insulation/doors/roof $500 Max credit.
  Furnace (95% efficiency required) $150 Max credit.

Also, note that if credit was used in past it is counted against $500 allowed in 2011. Exception is big-ticket energy conversions (30% through 2016) for installation of geothermal heat pumps, solar energy systems, and wind turbines, with no Max credit; fuel cells with $500 Max. credit.

- Child Tax Credit extended through 2012. It remains a $1,000 Max for each qualified child. Qualifying child is: 16 and younger, immediate family, supported by you, claimed as dependent, US citizen/resident alien and resides with you at least ½ the year.

- Education deductions and credits have been extended through 2012.

- Mortgage Debt Cancellation Tax Exclusion remains in effect through 2012.

Estate Tax Legislation:

2010 no estate tax for 2010 deaths.
2011-2012 – estate tax exemption $5,000,000 per person and Max tax rate 35%; unless modified by 12/31/2012, the estate tax exemption will return to $1,000,000 and a Max tax rate of 50%.

Homebuyer Credits and Repayment Obligations:

- Military Extension is available to those buyers who contract to purchase a home by 4/30/11 and close by 6/30/11. To qualify, an individual must have been on active duty outside USA for at least 90 days between 12/31/08 and 5/1/10.

- 2008 homebuyer credits must begin to be repaid in equal annual installments over 15 years. Exclusions: death of home homeowner before tax is paid in full; if sale of house has insufficient proceeds to repay credit.

Because all homeowners who claimed the 2008 homebuyer credit, must repay it, it may not be necessary for employers to compensate a transferring employee for such repayments. If the home is sold, (or ceases to be the employee's principal residence – i.e. renting) the entire unpaid balance is due that year. The employee's repayment time is escalated, but employee would have had to repay the money anyway.

- 2009-2010 homebuyer credits do not require repayment if the home is used as the primary residence for at least 3 years. If property is sold or ceases to be the primary residence prior to the expiration of 3 years, (i.e. renting) entire amount may have to be repaid. (Either $8,000-First Time Homebuyer or $6,500-Extended Homebuyer)

Repayment is qualified by extent of gain – if no gain, no repayment.

Employee's basis in property is reduced by the amount of the credit, but employee should be questioned about other increases in basis due to improvements before employer determines whether to reimburse employee for the repayment of the homebuyer credit.

Red Flag Rules:

Red Flag Rules are FTC rules, which require financial organizations and creditors to have detailed anti identity theft security plans in place. Most recently, the FTC has more clearly defined which kinds of companies are subject to these requirements. If a company regularly loans money to consumers or uses consumer credit reports in the making of consumer loans, they are subject to these rules. It has now been clarified to provide that companies, that may advance funds on behalf of a consumer for expenses incidental to a service provided by a creditor, i.e. relocation programs and products, are exempt from these rules.

Although the Red Flag Rules may not directly apply to most relocation transactions, the reason behind the Rules, protection of consumers from identity theft, is a valid and major consideration in the relocation world. Many companies in the relocation process collect and maintain non-public information belonging to transferring employees and having a good security plan in place for your company is still an important risk management tool. Additional information is available on the FTC's website: www.ftc.gov.

Private Transfer Fees:

US Federal Housing Finance Agency has proposed regulation that will prohibit Fannie Mae, Freddie Mac and Federal Home Loan Banks from issuing or purchasing mortgages where the property is subject to a Private Transfer Fee Covenant. The regulation is currently open for public comment, but it is expected that the regulation will be approved and go into effect sometime in 2011.

The ban will not be retroactive to existing loans/mortgages, but will be prospective. Individual states may also have their own requirements that affect such covenants.

What is a private transfer fee covenant?

They are a written covenant that runs with the land and have been used as a method of defraying the cost of development, maintenance or capital improvements by the original developer of an area. The specific terms are typically found within CCR's of an association or subdivision. Because of this, they are easily lost in the fine print, and not always called out by a title commitment.

Payments tend to be due upon sale of the property, and may be as much as 1% of the purchase price. These are covenants that run with the land for extended periods of time, even 99 years, and due upon each subsequent sale of a property.

Those fees that are tied to common expenses within a non-profit association, (i.e. condominiums, coops, and planned unit developments) and used for specific purposes, such as keeping reserves properly funded, are not affected by the proposed ban.

For relocation this poses a major concern because if a property is subject to such a covenants, a prospective buyer may not be able to obtain mortgage financing, and it will effectively render the property unsalable.

We are recommending that clients incorporate questions about private transfer fees into their employee questionnaires/disclosures, as well as incorporating such questions into listing broker instructions, as listing brokers are often more familiar with the details of various developments/subdivisions.

Currently 19 states have passed laws restricting Private Transfer Fees, but these restrictions range from requiring notice to be provided to any prospective buyer to making them unenforceable.

STATE TAX & LEGAL ISSUES

Illinois:

- Illinois Income Tax Increase was signed into law by Governor on January 13, 2011, effective 1/1/11.

Individuals increased from 3% to 5%.

Corporations increased from 4.8 % to 7%.

- Closing Protection Letters became mandatory on 1/1/11, by amendment to 215 ILCS 155/1, et seq. Letters must be issued to lenders, buyers and sellers for all residential real estate transactions and non-residential transactions under $2,000,000. They are provided by the issuing title insurance company to protect the parties to a transaction from any actions of the local closing agent. The statute also provides for fees of not less that $25 to a buyer, $50 to a seller, $25 to a lender and $50 to a borrower on a re-finance transaction to be charged for providing these letters.

- All real estate agents and brokers must be in compliance with the new broker licensing requirements by 4/30/2012. If a currently licensed agent fails to pass the broker's exam, he or she will be required to participate in additional 90 hours of renewal education.

- Civil Unions were signed into by Governor Quinn on 1/31/11, effective immediately. It extends the same legal obligations, responsibilities, protections and benefits afforded spouses to those who are civil union participants.

Delaware:

Delaware Non-Resident Estimate Tax Payments:

Effective 1/1/2011, Delaware requires the payment of estimated capital gains tax at the time of the recording of every deed. All sellers (residents and non-residents) must file a Form 5403 including the payment of the estimated tax due or the county recorders will not record the deed.

Non-residents must pay estimated tax on gain unless there is exclusion. Non-resident status includes any corporate seller who is either not a Delaware corporation or otherwise registered to do business in Delaware.

Generally, given current market conditions there is no gain in a relocation transaction, so there is no tax due, but the completed forms will need to accompany all deeds. It does provide an increase in paperwork required for Delaware closings and this form should be included in transfer documents provided to all sellers.

New York:

- State Income Tax changes include provisions that define the New York source of income of non-residents to incorporate income from items such as covenants not to compete and severance agreements related to a business or employment previously carried on in New York.

- New York has also enhanced its Qui Tam laws to allow for income tax fraud to be a covered activity for which a realtor may file suit against an individual or company on behalf of the government, thereby being entitled to a possible compensation of 15-25% of any recovery. Other states, including Texas, California, Delaware, Florida, Illinois, Indiana, Nevada and Rhode Island, maintain whistleblower statues, which also cover tax issues.

California:

- Short Sale Protection Changes- Effective 1/1/11, on the short sale of home with purchase money loan for a 1-4 unit residential dwelling, the borrower/seller is now exempt from the lender obtaining a deficiency judgment for any short fall. Loans made after a home is purchased, and refinanced or second mortgage taken out may still be subject to a deficiency judgment in certain cases. SB 931 does not apply to California foreclosures.

- California now requires that a bona fide tenant of a property going through a foreclosure must be notified of their statutory rights, by separate cover sheet or included in a 90-day termination notice. A tenant's lease may be terminated upon 90 days written notice where the buyer of the foreclosure property intends to use the property as his or her personal residence.

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