



Tax News Flash

In This Acuity Update:

- **\$5 Million Unified Credit Here Today; Who's to Say If It Will Stay?**
- **3% Withholding on Government Contracts Officially Gone**
- **Can Civil Union Partners File Joint Returns in Hawaii? Attorney General Says Yes**

\$5 Million Unified Credit Here Today; Who's to Say If It Will Stay?

In late 2010, the President signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which made substantial changes in the estate, gift, and generation-skipping transfer (GST) taxes for transfers in 2010-2012. Among other changes, the 2010 Act reinstated the estate, gift, and GST taxes with a unified credit corresponding to \$5 million in value; this means that gifts of up to \$5 million (over and above the annual exclusion amount) could be made free of the estate and gift tax system.

Alas, however, the \$5 million is under attack. House Ways and Means Committee member Jim McDermott (D-Wash.) and Rep. Charles Rangel (D-N.Y.) have introduced H.R. 3467 (Nov. 17, 2011), "the Sensible Estate Tax Act of 2011," which would, among other things, raise the top estate and gift tax rate (and the sole GST tax rate) to 55 percent, and return the unified credit to 2001 levels (corresponding to only \$1 million in value). The bill, if approved in its current form, would be effective for gifts made, generation-skipping transfers completed, and decedents dying after December 31, 2011. This bill is in its early stages and may well get amended or killed, but do you want to take the chance that it will pass? If you are considering large gifts, think about making them before the end of 2011.

3% Withholding on Government Contracts Officially Gone

On November 21, President Obama signed H.R. 674, the "3% Withholding Repeal and Job Creation Act" (the Act), and the Act was recently assigned a Public Law number, 112-56. This means that Code Sec. 3402(t)'s controversial 3% withholding requirement on government contractor payments is repealed. Government contractors now can breathe a sigh of relief, because the effective date provisions in the Act repeal section 3402(t) before it ever becomes effective.

The Act also amends the Code Sec. 51 work opportunity tax credit (WOTC) to give employers a bigger credit for hiring certain qualified veterans through Dec. 31, 2012; it pays for these changes by extending the Code Sec. 6331(h)(3) continuous 100% tax levy on "specified payments" to vendors for goods and services sold or leased to the federal government to include payments for property, and tightening eligibility for the refundable health-related tax credit under Code Sec. 36B.

Can Civil Union Partners File Joint Returns in Hawaii? Attorney General Says Yes

On October 19, 2011, the Attorney General of Hawaii issued a formal opinion to Director of Taxation Fred Pablo, stating that civil union partners can file their taxes in Hawaii using Married Filing Jointly status.

The Hawaii Income Tax Law provides in section 235-93(a), HRS, that a “husband and wife, having that status for purposes of the Internal Revenue Code and entitled to make a joint federal return for the taxable year, may make a single return jointly of taxes under this chapter for the taxable year.” For federal law purposes, however, the Defense of Marriage Act (DOMA), Pub. L. No. 104-199, 110 Stat. 2419, makes clear that only opposite-sex couples are recognized as eligible to file a joint federal return. The question then put to the Attorney General was whether this federal conformity principle and the State’s civil union act, Act 1, Session Laws of Hawaii 2011 conflict, and if so, which way the conflict is resolved.

[Attorney General Opinion No. 2011-2](#), after reviewing both the federal and state legislation, found that there was a strong State intent to allow civil union partners to be eligible for benefits and privileges including specifically the right to file a joint return, and that there was a federal intent that the DOMA apply only to federal law and not preempt the ability of the States to confer rights and benefits upon same-sex couples. The Opinion concluded that

civil union partners have the same tax filing status options as married couples for Hawaii income tax purposes for taxable years beginning after December 31, 2011. The definitions of "marriage" and "spouses" under DOMA, which are limited to one man and one woman, do not preclude civil union partners from filing joint tax returns for Hawaii income tax purposes. We add that the tax filing status of civil union partners, however, may be different for federal and Hawaii income tax purposes after the State's Civil Union Act takes effect, which should be considered when determining the appropriate Hawaii income tax form.

(Emphasis in original.) The Department of Taxation’s Rules Office has advised that the Department is presently looking at handling this situation by making tweaks in the N-11 form and/or instructions.

If you have questions about any of these news items,
your client service team at Accuity can bring you the resources that you may need.

Please do not hesitate to contact your client service team for more information or Thomas Yamachika at (thomas.yamachika@accuityllp.com)

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