

PUBLICATION

Spotlight on Tennessee: Intangible Expense Settlement Program – ACTION Required by September 30, 2013

June 24, 2013

The Tennessee Department of Revenue (Department) has issued Notice #13-06, dated June 2013, encouraging taxpayers subject to the Tennessee Excise Tax who took deductions for "intangible expenses" paid to affiliated or related companies in tax years ending on or before June 30, 2012, to request a compromise and settlement of the deductibility of such expenses before September 30, 2013. Examples of such expenses include trademark, copyright and patent royalties, licensing fees and certain intercompany interest, among others.

The Department's settlement program, initially announced in November 2011, allows businesses to enter into a settlement and compromise with the Department under terms outlined by the Department. The settlement program may ease some concerns about whether previously deducted intangible expenses would be disallowed on audit, as a result of variances issued to other taxpayers by the Department on business purpose and economic substance or other grounds. Under the terms of the settlement program announced in Notice #11-17 for most taxpayers, the taxpayer would agree to add back previously deducted intangible expenses and then the Department would permit the taxpayer to file amended Franchise/Excise Tax Returns and deduct a specific percentage of the expense (usually it was 75 percent). The taxpayer under this settlement program would pay the tax associated with the agreed disallowed amount, plus interest, and generally no penalties would be imposed. We reviewed the original announcement in our December 8, 2011 Tax Alert, "[Spotlight on Tennessee: Settlement Opportunity for Previously Deducted Intangible Expenses.](#)"

By Notice #13-06, the Department is reminding taxpayers that the settlement program is still available, but essentially will be closed to taxpayer requests after September 30, 2013 (or at least not open on as favorable of terms if the request to settle is made after September 30.) After such date, the Department states in Notice #13-06 that such deduction taken in years ending on or before June 30, 2012, will be reviewed on a "case-by-case" basis but that the Department will not recommend the same settlement terms "if contacted by the taxpayer after September 30, 2013."

In 2012, Tennessee enacted amended intangible expense add-back legislation applicable to tax years ending on or after July 1, 2012. Generally speaking, beginning with their tax year ending after that date, an "intangible expense" paid by a taxpayer to an affiliate is deductible only if it meets one of three statutory exceptions or if the taxpayer files an application (Form IE-A) and obtains the approval of the Commissioner of Revenue to deduct the affiliated intangible expense. We detailed this legislation in our May 1, 2012 Tax Alert, "[Spotlight on Tennessee: A Change of Seats on the Intangible Expense Add-Back Bandwagon.](#)"

If you would like to discuss the Department's intangible expense settlement program, or the application process for taxable years ending on or after July 1, 2012, please contact one of the attorneys in the Firm's Tax Department.