

# TAX TALK

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• James W. Dawson, Jr., *Chair* •

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## FROM THE CHAIR

By James W. Dawson, Jr.

As I was pondering the topic for my “notes” for this issue of Tax Talk, I was reflecting on the past eight years that I have been involved with the Section Council. Bob Zouck, Clerk of the Maryland Tax Court, and himself a former Chair of the Section, suggested to me that I should become involved in the Section so I became a non-Council member of one of the several committees. At the time, I was an Assistant Director with the Comptroller’s Office. The Internal Revenue Service was represented on the Council, but no one from the Comptroller’s office had been involved for quite some time. Trusting that Bob would not “steer me wrong,” I accepted his invitation and now have the distinct honor of chairing the Section.

Many things have changed over the years. There was a restructuring of the committees to better serve the members of the Section. We now honor a member of the Section who has distinguished himself or herself in the practice of tax law with the Tax Excellence Award, and we recognize an individual or organization that has devoted time and talent to assist those who are less fortunate than us with the Pro Bono Award. Each of these awards is presented at the annual Irving L. Shulbank Dinner held in May. Nominations for these awards are now being solicited, so I ask that you begin thinking of an individual or individuals who are worthy of such recognition and submit nomination form included in this issue.

The one thing that has remained constant over the years is the energy, enthusiasm, and dedication exuberated by the members of the Council. Their tireless efforts to improve the practice of tax law in the State and to expand the services provided to the Section membership are remarkable and the successes enjoyed by the Council would not be possible without the hard work of its members. The Council is always looking for individuals who want to become active in the section. If you are interested please let me or one of the other members

of the Council know. There are always openings on the committees and subcommittees.

The Special Session of the Maryland General Assembly is over and the regular Session has begun. There are now in excess of 80 tax bills being considered by the General Assembly. Several of these bills have been introduced to either repeal or revise the provisions that were enacted during the Special Session. By now, most everyone is familiar with the laws enacted during the special session that affect taxes. If not, I recommend that you read the summary included in this issue.

The Council’s Legislative Committee put together a list of principles that it would apply in its review and analysis of pending legislation. The principles will be the basis for any position the Section will take on a bill and can be summarized as follows: simplicity, fairness, constitutionality, enforceability, compliance, transparency and consistency.

The Council does plan to take a position against the recently enacted law subjecting computer services to the sales and use tax and will strive for either its outright repeal or to work with the leaders of the General Assembly and with the Comptroller’s office to develop the law and regulations to make the provisions easier for the Comptroller’s office to administer and for businesses to be in compliance.

In the Summer issue of Tax Talk, I noted that one of the objectives of the Council this year was to develop a partnership with the Administration, General Assembly, and State agencies. The purpose of this partnership is to work with our leaders to develop sound tax policies and assist in the review and evaluation of proposed and pending tax legislation. Members of the Legislative Committee have met with Speaker Michael Busch and Comptroller Peter Franchot on several occasions to

*(continued on Page 2)*

## FROM THE CHAIR...

(continued from Page 1)

discuss tax policy and proposed legislation to identify potential administrative and implementation issues.

However, sometimes tax policy and ease of administration do not make it into the mix when the General Assembly is considering tax legislation as noted by one of the Legislative panelists at the Tax Policy Symposium who stated that sometimes its is driven just by the dollars. The State's budget has to balance and when the General Assembly needs revenue to make it happen, these issues are often overlooked. The Council will continue to strive to assist our State's leaders to ensure that the bills introduced and legislation enacted complies with the principles set forth above.

The Section sponsored numerous events during the fall.

If you were not able to join us for joint CLE program with the Litigation Section in October, the Advanced Tax Institute, the Tax Networking Night, or the Tax Policy Symposium, be sure to mark your calendars for the Annual Irving Shulbank Dinner and recognition of the Tax Excellence Award and the Pro Bono Award that will again be held in May and the annual Bar Conference scheduled for June 11-14, 2008 in Ocean City, Maryland. Look for additional information on these and other Section events in the upcoming issues of Tax Talk, in the Bar Bulletin, on the Section's website, and through the Section Listserv.

Best wishes and please do not forget to submit your nominations for the Tax Excellence and Pro Bono Awards.

### Calling For Nominations For The Tax Excellence Award

The Maryland State Bar Association's Section of Taxation is seeking nominations for the 2008 Tax Excellence Award. The Tax Excellence Award is presented annually to an attorney, law school professor, public official or member of the judiciary who exemplifies professional, academic or public service excellence, integrity, compassion and commitment in the areas of practicing, teaching or developing tax law or tax policy.

If you know an individual who should be considered, please send your nomination by email (cciraolo@rosenbergmartin.com) or fax (410.727.1115) to Caroline D. Ciraolo, Chair of the Tax Excellence Award Committee. You must include a brief statement as to why you feel the nominee is worthy of consideration. Nominations must be submitted on or before April 15, 2008. **See Page 7 for the Nomination Form.**

### TAX TALK © 2008 MSBA TAX SECTION

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Comments, contributions, and suggestions are greatly appreciated. Please direct them to the Editor.

Items contained in Tax Talk reflect the views of the individuals who prepared them and do not necessarily reflect the opinions of the MSBA Tax Section.

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**THE TAXATION SECTION**  
**OF THE MARYLAND STATE BAR ASSOCIATION**  
cordially invites you to the  
**ANNUAL IRVING SHULBANK**  
**MEMORIAL DINNER AND PROGRAM**

**KEYNOTE SPEAKER: THE HONORABLE SHELDON S. COHEN, ESQ., CPA**  
Director, Farr, Miller & Washington, LLC  
Former Commissioner of the Internal Revenue Service

**Date:** Tuesday, May 13, 2008  
**Location:** The Belvedere Hotel, One East Chase Street, Baltimore MD  
**Time:** 6:00 pm Cocktails (Open Bar)  
7:00 pm Dinner  
8:00 pm Presentation of The J. Ronald Shiff Memorial Pro Bono Award  
and The 2008 Tax Excellence Award  
8:15 pm Keynote Speaker: The Honorable Sheldon S. Cohen, Esq., CPA  
**Cost:** \$65.00 per person (Tables of 8 for \$520.00 are available.)

The Section thanks the following firms for their generous donations to help underwrite this dinner:

DLA Piper	Rosenberg   Martin   Greenberg, LLP
Gordon, Feinblatt, Rothman, Hoffberger, & Hollander, LLC	Selzer Gurvitch Rabin & Obecnny Shapiro Sher Guinot & Sandler, P.A.
Levy, Mann, Caplan, Hermann & Polashuk, LLP	Stein, Sperling, Bennett, De Jong, Driscoll & Greenfeig, P.C.
Miles & Stockbridge P.C.	Venable LLP
Ober   Kaler	Whiteford, Taylor & Preston LLP

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Taxation Section – Annual Irving Shulbank Memorial Dinner and Program on May 13, 2008

Please reserve \_\_\_\_\_ tickets @ \$65.00 per person for the following attendees:

Name \_\_\_\_\_ Firm \_\_\_\_\_  
Telephone \_\_\_\_\_ E-Mail \_\_\_\_\_  
Entrée Choice: \_\_\_ Grilled Mahi Mahi \_\_\_ Prime Rib of Beef \_\_\_ Vegetarian \_\_\_ Kosher

Name \_\_\_\_\_ Firm \_\_\_\_\_  
Telephone \_\_\_\_\_ E-Mail \_\_\_\_\_  
Entrée Choice: \_\_\_ Grilled Mahi Mahi \_\_\_ Prime Rib of Beef \_\_\_ Vegetarian \_\_\_ Kosher

Please include your check made payable to MSBA or fill out credit card information below:

Visa or MasterCard (Circle One) \_\_\_\_\_ Card Number \_\_\_\_\_ Exp.  
Date \_\_\_/\_\_\_/\_\_\_

Name of Card Holder \_\_\_\_\_ Signature \_\_\_\_\_

Please send reservation form and payment by no later than April 21, 2008 to:  
The Maryland State Bar Association, Inc., 520 West Fayette Street, Baltimore MD 21201  
Attention: Theresa L. Michael or Fax to 410-685-1016

## SECTION OF TAXATION SEEKS NOMINATIONS FOR THE J. RONALD SHIFF MEMORIAL PRO BONO AWARD

THE MARYLAND STATE BAR ASSOCIATION'S SECTION OF TAXATION ESTABLISHED AN ANNUAL PRO BONO AWARD IN MEMORY OF J. RONALD SHIFF, ESQUIRE, A PAST CHAIR OF THE SECTION AND A DISTINGUISHED TAX ATTORNEY WITH THE FIRM OF GORDON FEINBLATT. THIS ANNUAL AWARD RECOGNIZES THE EFFORTS AND DEDICATION OF ONE OR MORE INDIVIDUALS OR LAW FIRMS WHO HAVE PROVIDED MERITORIOUS PRO BONO SERVICES IN THE FIELD OF TAXATION, WITH SPECIAL CONSIDERATION GIVEN TO THOSE WHO HAVE REPRESENTED EITHER LOW INCOME TAXPAYERS OR ORGANIZATIONS WHO SERVE LOW-INCOME TAXPAYERS.

THE PRO BONO AWARD COMMITTEE IS NOW SEEKING NOMINATIONS FOR CANDIDATES FOR THE 2008 J. RONALD SHIFF MEMORIAL PRO BONO AWARD. NOMINATIONS MUST BE SUBMITTED BY APRIL 15, 2008.

FOR FURTHER INFORMATION, PLEASE CONTACT CAROLINE D. CIRAOLO, CHAIR OF THE PRO BONO AWARD COMMITTEE, AT (410) 547-7852 OR BY EMAIL AT [CCIRAOLO@ROSENBERGMARTIN.COM](mailto:CCIRAOLO@ROSENBERGMARTIN.COM).

### ELIGIBILITY AND CRITERIA FOR SELECTION FOR THE J. RONALD SHIFF MEMORIAL PRO BONO AWARD

#### Eligibility

- Eligible candidates include individual attorneys or law firms who render legal services to individuals or organizations in Maryland. Individuals who are members of the Tax Section Council or its committees (including those Past Chairs who remain on the Section Council for a period of time as outlined in the Section By-laws) are not eligible for nomination or consideration.
- Candidates must have performed a level of pro bono service that is measurable and within the parameters discussed in the criteria for selection section below. Bar association activities or other activities of a pro bono nature that benefit the profession or the practice of law will not be considered for purposes of this award.

#### Criteria for consideration and selection

Evaluation of pro bono services rendered include those provided over an extended period of time (not limited to the current year), as well as activities with intensive involvement over a limited time with significant impact:

- Handling a significant number of tax controversies for low-income taxpayers on a pro bono basis
- Voluntarily forming, operating or participating in organizations, such as low-income taxpayer clinics (LITCs) devoted to representation of low-income taxpayers, particularly if such participation is over an extended period
- Formation, supervision and participation in programs to assist taxpayers in the resolution of their tax controversies, including "attorney of the day" programs for the Tax Court
- Mentoring and teaching law students and other individuals who work for LITCs
- Preparation of resource materials for LITCs and other low-income programs
- Providing pro bono legal assistance to IRC section 501(c)(3) tax-exempt organizations, especially those formed to help low-income individuals. Special consideration should be given to those candidates who provide advice on tax matters to such organizations on a pro bono basis
- Providing legal services to individuals affected in periods of national crisis or natural disasters (such as victims or families of victims of terrorist attacks, floods, earthquakes, or hurricanes) or to individuals or family members of those who serve in the armed forces of the United States during war times, with special emphasis on assistance in providing advice on tax matters
- Providing education on tax matters to members of the general public (such as through speaker's forums, etc.), especially to groups consisting of low-income individuals





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# 2008 TAX EXCELLENCE AWARD NOMINATION FORM

SECTION OF TAXATION, MARYLAND STATE BAR ASSOCIATION

I/We have considered the eligibility/selection criteria for the above award and wish to nominate:

Name of Individual: \_\_\_\_\_

Firm/Organization: \_\_\_\_\_

Address of nominee: \_\_\_\_\_

Please provide a brief statement as to why this individual should be selected to receive the Tax Excellence Award—(narrative of specific details or achievements are encouraged): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Submitted by:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

May we contact you to discuss this nomination? \_\_\_\_\_

Please submit this nomination form by April 15, 2008 to:

Caroline D. Ciralo  
Chair, Tax Excellence Award Committee  
Rosenberg | Martin | Greenberg, LLP  
25 South Charles Street, Suite 2115  
Baltimore, Maryland 21201

Or via e-mail to: [cciralo@rosenbergmartin.com](mailto:cciralo@rosenbergmartin.com)

Or via fax to: 410-727-1115

Note: if using e-mail please fill out the form and convert it to a PDF document or contact the above via e-mail and a Word document will be e-mailed to you for you to use.

# CRIMINAL TAX CASES

By Caroline D. Ciraolo, Esquire

During the fiscal year ending (FYE) September 30, 2006, approximately 228,145,000 federal tax returns were filed (2006 IRS Data Book—Table 2). During this same period, the Internal Revenue Service (IRS or the “Service”) Criminal Investigation Division (CID) initiated 3,907 criminal investigations, an increase of almost 20 percent over the number of investigations initiated five years ago. During the 2006 fiscal year, the Service also recommended prosecution of 2,720 cases, filed information or indictments in 2,319 cases, and obtained 2,019 convictions (2006 IRS Data Book—Table 18).

Criminal tax cases are remarkable in that the conviction rate is above 90 percent and incarceration is likely. Of defendants sentenced for tax crimes in FYE 2006, 81.7 percent were incarcerated. There are many reasons for the government’s success in this area. Following are the basics of a federal criminal tax investigation which may shed some light on this success.

## History

The Criminal Investigation Division began as the Intelligence Unit in 1919 to investigate allegations of tax fraud. The first special agents were six US Post Office Inspectors. The Intelligence Unit gained national recognition in the 1930s for its role in the conviction of Al Capone and the investigation of the Lindbergh kidnapping.

In 1978, the Intelligence Unit was renamed Criminal Investigation, and today has approximately 4,400 employees around the world, including approximately 2,800 special agents. The IRS, through CID, is the only federal agency authorized to investigate potential criminal violations of the Internal Revenue Code.

The CID divides investigations into three interdependent programs: 1) Legal Source Tax Crimes, 2) Illegal Source Financial Crimes, and 3) Narcotics

Related Financial Crimes. Legal source tax crimes encompass a wide range of offenses, including tax evasion, nonfilers, employment tax fraud, abusive tax schemes and shelters, corporate and accounting fraud, bankruptcy fraud, insurance and Medicare fraud, and pension fund fraud.

## Current Priorities

The mission of CID is to assist in the enforcement of tax law by “investigating potential criminal violations of the Internal Revenue Code and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law.” To achieve this mission, CID has identified priorities and areas of emphasis, including, but not limited to:

**Abusive Tax Schemes**—These cases involve simple structuring of abusive trusts as well as sophisticated tax evasion strategies, including offshore credit and debit cards, foreign financial institutions, and complex shelters. The IRS is aggressively seeking to identify and investigate the promoters of such schemes, those individuals who aid or assist in furthering the schemes, and the investors.

**Nonfilers**—CID assigns a high investigative priority to taxpayers who fail to file income tax returns. Of particular interest are accountants, lawyers, public officials, high-income wage earners, and nonfilers who advocate militant, anti-government or tax protestor viewpoints.

**Corporate Fraud**—Corporate fraud encompasses complex tax and other financial crimes committed by large corporations and/or their executives. CID began prioritizing corporate fraud in FYE 2004, during which 107 such investigations were initiated. Examples of such cases include the investigations of World Com, Enron and Tyco.

**Refund Crimes**—CID continues to investigate questionable refund schemes

that involve high dollars and numerous participants, often focusing on unscrupulous tax return preparers who promote the preparation and filing of fraudulent returns. These cases often involve false Forms W2, earned income tax credit fraud, false itemized deductions, fraudulent credits, and false refund claims on prisoner returns.

**Employment Tax Crimes**—CID investigates a wide variety of employment tax schemes, including:

- a. Paying employees in cash to avoid reporting requirements
- b. Failing to file employment tax returns
- c. Filing false returns
- d. Closing a business to avoid mounting payroll tax liabilities only to reopen a new business under a new name to incur new liabilities (known as “pyramiding”)
- e. Employee leasing companies that fail to pay over to the IRS employment taxes due.

**Counter Terrorism**—CID works with the FBI’s Joint Terrorism Task Forces and the US Attorney Offices’ Anti-Terrorism Task Forces to pursue counterterrorism leads, using its financial expertise and resources to track the money. CID Special Agents work with the Treasury Office of Terrorism and Financial Intelligence, and the Office of Foreign Assets Control to investigate and freeze accounts controlled by individuals and organizations suspected of raising or facilitating the movement of funds to support terrorism.

**Organized Crime Drug Enforcement Task Force (OCDETF)**—Joining with OCDETF and High Intensity Drug Trafficking Area (HIDTA) investigations, CID uses its financial expertise and resources to investigate narcotics trafficking and money laundering organizations.

**Bank Secrecy Act**—CID coordinates with IRS Fraud Technical Advisors,

Bank Secrecy Act (BSA) Examiners, and the Financial Crimes Enforcement Network (FinCEN) to investigate BSA criminal violations and identify potential significant legal and illegal source tax cases, as well as money laundering, asset forfeiture, terrorist financing and narcotics investigations.

### Initiating an Investigation

Criminal investigations are initiated in a variety of ways. Some of the most common criminal referrals arise from pending civil audits, where a revenue agent examining a return discovers firm indications of fraud. Similar referrals can arise from other areas of the IRS, like the Collection Division, where a revenue officer attempting to collect a federal tax liability finds that false statements have been made or false documents submitted during the collection process, or that a taxpayer is willfully evading payment. The IRS coordinates these efforts through its Fraud Referral Program. Fraud technical advisors work with the various IRS divisions to promote fraud awareness and fraud training.

Other state or federal agencies make referrals to CID based on documents filed with, or representations made to such agencies or their representatives. Referrals may also arise from non-tax criminal grand jury investigations, or from a bankruptcy proceeding, during which it is discovered that a taxpayer filed fraudulent returns, hid assets to hinder or prevent the collection of tax, or committed other violations of the Internal Revenue Code.

It is important to note that the IRS encourages individuals to report suspected tax fraud. As a result, many referrals come from third parties and secondary sources, including disgruntled former or current employees, business associates, business competitors, former spouses, former friends, neighbors, newspaper articles, etc.

These referrals are processed by the IRS Whistleblower Office, which was established by the Tax Relief and Health Care Act of 2006. Information from individuals is often prompted by the prospect of a reward equal to 15 to 30 percent of

the total amount the IRS collects based on the information provided.

### From Civil to Criminal

Taking the common example of a pending civil audit, revenue agents are required to consult with their respective group managers and a local fraud technical advisor (FTA) at the first indication that a taxpayer willfully attempted to defeat or evade the assessment or payment of tax. In this context, "willfulness" is defined as "the voluntary, intentional violation of a known legal duty." (Cheek v. United States, 498 US 192, 201 (1991)).

In criminal cases, the government bears the burden of proving willfulness beyond a reasonable doubt and of negating a defendant's claim that they were ignorant of or misunderstood the law, or held a good-faith belief that their conduct did not violate the law (Id. at 201-202). To satisfy its burden, the government is permitted to offer circumstantial evidence, often referred to as the "badges of fraud."

In *Spies v. United States*, 317 US 492 (1943), the Supreme Court identified examples of such conduct: "keeping a double set of books, making false entries of alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or to conceal." (Id. at 499).

After identifying the first indication of fraud, the revenue agent continues to work with the manager and the FTA to document affirmative acts of fraud. When the revenue agent makes a "firm indication of fraud," the civil examination must be suspended, a detailed report must be prepared detailing potential adjustments, tax loss and badges of fraud, and the case must be prepared for referral to CID.

The IRS is not permitted to use its broad powers to gather evidence in a civil examination to investigate a criminal case (*United States v. Tweel*, 550 F.2d 297 (5th Cir. 1977)). It is important to

note, however, that this prohibition does not bar the government from simultaneously pursuing a criminal investigation and civil enforcement actions, otherwise referred to as "parallel proceedings."

The referral of a case to CID is generally not disclosed to the taxpayers or their representatives. Accordingly, a long period of silence from a revenue agent in the midst of a civil audit may be an indication that the case is being referred to CID. A taxpayer often learns that the case has been referred to CID when two or more special agents visit them.

In determining whether to accept a criminal referral, CID looks for significant egregious conduct. Simple understatement of income is generally not sufficient to convert a civil audit to a criminal prosecution. Instead, CID looks for patterns of substantial understatement or nonfiling, resulting in an aggregate tax loss to the government sufficient to warrant incarceration under the US Sentencing Guidelines (USSG).

CID also considers the deterrent value of the potential conviction and seeks to get the biggest "bang for its buck" by publicizing high-profile convictions. CID considers factors such as the taxpayer's occupation and industry, position and standing in the community, criminal history and nature of the offense.

An example of this is the recent indictment of Joseph R. Francis for tax evasion. The indictment alleges that Francis, whose Mantra Films, Inc. and Sands Media, Inc. produce and sell the *Girls Gone Wild* movies, deducted more than \$20 million in false business expenses on his corporations' income tax returns, and used offshore accounts and entities to hide millions of dollars in unreported income.

If CID accepts a criminal referral, it strives to make a timely decision on whether charges are warranted. Ten years ago, criminal investigations often lasted for years, and if taxpayers were ultimately charged and convicted, they often dissipated any assets that could be used to pay any resulting civil liabilities. In 2003, under the new administration of Commissioner Mark W. Everson, CID established a goal of completing

investigations within 425 days.

CID conducts criminal investigations through a variety of methods. Special agents will visit the taxpayer and attempt to conduct an interview, subpoena financial and business records, interview third parties, seek and execute search warrants and access information through a variety of databases. Special agents work closely with IRS computer investigative specialists who use specialized equipment and software to obtain and preserve electronic evidence.

If CID believes that criminal prosecution is warranted, the IRS Special Agent in Charge notifies the taxpayer of potential charges and offers an opportunity to present any defenses before the matter is referred to the Department of Justice. A taxpayer may present defenses in person at what is referred to as a “conference,” or submit defenses in writing. At this point, CID will not discuss or consider potential pleas, civil settlements or compromises of the tax liabilities. If CID is not persuaded by the defenses raised, it will refer the matter to the Department of Justice, Tax Division (Criminal Section).

When the Tax Division receives a case from CID, it will review the files and offer the taxpayer a final conference to present reasons why charges should not be pursued. This conference may be conducted in person, by phone, or in writing. This is the taxpayer’s final opportunity to present any defenses before the matter is referred to the local US Attorney’s Office for indictment and prosecution in the US District Court.

### Potential Charges

The most common criminal tax offenses are:

1. Willful attempt to evade or defeat any tax (evasion) under 26 USC § 7201
2. Willful failure to collect or pay over any tax (employment tax fraud) under 26 U.S.C. § 7202
3. Willful failure to file a return, supply information or pay tax due under 26 USC § 7203
4. Fraud and false statements (including aiding or assisting in preparation of false returns or refund claims) under

26 USC § 7206

5. Willful attempts to interfere with administration of internal revenue laws (obstruction) under 26 USC § 7212

6. Conspiring to defraud the government with respect to claims (i.e., refund claims) under 18 USC § 286

7. False, fictitious, or fraudulent claims under 18 USC § 287

8. Conspiring to commit offenses or to defraud the United States under 18 USC § 371

Criminal tax prosecutions will often involve multiple counts, multiple years and, if appropriate, conspiracy charges. Most offenses are felonies, subject to a six-year statute of limitations with statutory maximum imprisonment ranges of three, five or ten years. Failure to file returns, in violation of 26 USC § 7203, is a misdemeanor subject to imprisonment up to one year. However, the government rarely seeks to prosecute a single count misdemeanor tax case.

### Voluntary Disclosures

To encourage taxpayers to “come clean” with past offenses and get back into compliance, the IRS offers a voluntary disclosure policy for “legal source” tax offenders. The policy offers no substantive or procedural rights for the taxpayers, but a true voluntary disclosure will generally result in the IRS not recommending a case for criminal prosecution to the DOJ Tax Division, in part due to the lack of jury appeal of a repentant taxpayer who has come clean and cooperated in the investigation.

Moreover, there is case law supporting the position that a bad faith prosecution of a taxpayer after a true voluntary disclosure is subject to increased scrutiny (See *Groder v. United States*, 816 F.2d 139, 142 (4th Cir. 1987)). It is important to recognize, however, that the government has prosecuted taxpayers notwithstanding voluntary disclosures (See *United States v. Hebel*, 668 F.2d 995 (8th Cir. 1982); *United States v. Chocate*, 619 F.2d 21 (9th Cir. 1980); *United States v. Adams*, 832 F. Supp. 1138 (W.D. Tenn. 1993)).

A voluntary disclosure must be

truthful, complete, and timely—factors that are determined by CID. A taxpayer must fully cooperate with the Service to determine the accurate tax liability, make good faith arrangements to pay the full amount of tax, interest and penalties due, and be in full compliance with the tax laws.

To be timely, the disclosure must precede any “triggering” event. Such as:

1. The initiation of a civil audit or criminal investigation of the taxpayer, or directly related to the taxpayer
2. The receipt of information from a third party regarding the specific taxpayer’s noncompliance
3. The acquisition of information regarding the specific taxpayer from a criminal enforcement action such as a search warrant or grand jury subpoena

An IRS announcement of a civil compliance project, such as the pursuit of taxpayers using offshore credit cards to hide income, will not prevent a taxpayer in that category from making a true voluntary disclosure so long as the IRS has not initiated an examination or investigation of, or received information directly related to, the specific taxpayer.

### Going to trial

In deciding to go to trial, a defendant must fully understand the elements of each offense charged and the chances of success as well as the ramifications of failure based on the theories of defense (see *Plea Agreements and Sentencing* infra). While each criminal tax case will have its own distinctive elements, most cases involve common defenses, including:

1. The taxpayer relied in good faith on a professional advisor (attorney, accountant, financial consultant or return preparer).
2. The bookkeeper did it.
3. The taxpayer had a good faith misunderstanding of the law.
4. The complexity of the tax law simply prevents a finding of willfulness.
5. The taxpayer lacks the mental capacity to commit the crime.
6. The offensive conduct was so

obvious and so likely to be detected that it could not have been planned as part of a scheme to defraud or conceal.

7. The government's conduct was so offensive that the defendant should be acquitted.

As noted, the government has an extremely high conviction rate in criminal tax prosecutions. While there are acquittals and vacated convictions based on procedural errors at trial, most taxpayers indicted in a criminal tax case are well advised to consider the option of plea bargaining.

### Plea Agreements and Sentencing

When the Tax Division refers a case for prosecution, the US Attorney may accept a plea of guilty to the major count(s) of the indictment or information without prior approval of the Tax Division. Most criminal tax cases are disposed of by entry of a guilty plea, due in no small part to the high conviction rate following trials and the harsh impact of the US Sentencing Guidelines, even though the Guidelines are advisory, not mandatory following *United States v. Booker*, 543 U.S. 220 (2005).

The Guidelines calculate an advisory sentencing range based on the "tax loss," which includes the loss caused by the offense for which the taxpayer is convicted, as well as any other "relevant conduct." Relevant conduct includes "all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated." (USSG § 2T1.1 cmt. n.2).

A defendant's sentence may be based on tax loss associated with years that are not charged, or even for which the defendant is acquitted (USSG § 1B1.3(a)). The 2006 edition of the Guidelines provides the following tax table: (See **Figure 1**).

The Guidelines provide for reduced sentences for defendants who plead guilty and accept responsibility for their conduct. In addition, trial courts may consider a variety of factors set forth in 18 USC § 3553(a) to arrive at a reasonable sentence. In criminal tax prosecutions resulting in a guilty plea or conviction, a crucial role of defense counsel is to minimize the

tax loss and maximize the favorable § 3553(a) factors to arrive at the lowest sentence possible.

### Conclusion

Benjamin Franklin is often quoted as saying, "In this world, nothing is certain but death and taxes." The world of tax law, however, goes well beyond Ben's pithy statement and this short overview of criminal tax law. There are many treatises, manuals and other publications that delve into the evolving and growing number of nooks and crannies of this area of practice. Taxpayers should be cautious in their tax planning because the IRS has recovered from the public beating it took in Congressional hearings during the mid-1990s. Aggressive enforcement is again a top IRS priority.

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**Figure 1**

Tax	Aggregate Loss (Apply the Greatest)	Offense Level	Sentence Range
(A)	\$2,000 or less	6	0-6 months
(B)	More than \$2,000	8	0-6 months
(C)	More than \$5,000	10	6-12 months
(D)	More than \$12,500	12	10-16 months
(E)	More than \$30,000	14	15-21 months
(F)	More than \$80,000	16	21-27 months
(G)	More than \$200,000	18	27-33 months
(H)	More than \$400,000	20	33-41 months
(I)	More than \$1,000,000	22	41-51 months
(J)	More than \$2,500,000	24	51-63 months
(K)	More than \$7,000,000	26	63-78 months
(L)	More than \$20,000,000	28	78-97 months
(M)	More than \$50,000,000	30	97-121 months
(N)	More than \$100,000,000	32	121-151 months
(O)	More than \$200,000,000	34	151-188 months
(P)	More than \$400,000,000	36	188-235 months

(USSG § 2T4.1)

# 2007 MARYLAND SPECIAL SESSION

## TAX UPDATE

Prepared by James W. Dawson Jr.

The following is a summary of the significant tax legislation passed during the 2007 Special Session of the Maryland General Assembly and signed into law by Governor Martin O'Malley. All references are to the Tax-General Article (TG), Annotated Code of Maryland, unless otherwise noted.

### Income Tax

#### Residency Requirement

The Senate proposal to lower from 6 months to 3 months the time a person must maintain a place of abode in the State in order to be considered a resident for income tax purposes was rejected in the final legislation. Therefore, an individual who is not domiciled in Maryland must maintain a place of abode in Maryland for more than 183 days in order to be considered a statutory resident of Maryland.

#### Individual Income Tax Rates and Tax Brackets (TG § 10-105)

The individual income tax rates and tax brackets have been changed effective January 1, 2008. The new rates and brackets are as follows: (See **Figure 1**).

#### Nonresident Income Tax (TG § 10-105(d))

TG § 10-105 was amended to change the calculation of the State income tax for a nonresident. The State income tax of a nonresident is calculated using the following formula: (See **Figure 2**).

#### Exemption Amounts (TG § 10-211)

The personal exemption amount has been increased for individuals with federal adjusted gross income of up to \$100,000 (up to \$150,000 if filing joint) from \$2,400 to \$3,200. The additional exemption the may be claimed for each dependent who is at least 65 years of age on the last day of the tax year has also been increased from \$2,400 to \$3,200.

For taxpayers with income over the referenced FAGI limits, the exemption amount is as follows: (See **Figure 3**).

The Governor's proposal to double the personal exemption for the elderly and blind from \$1,000 to \$2,000 was not approved. Therefore, it remains at \$1,000.

#### Withholding

*Individuals* (TG § 2-106)  
Beginning January 1, 2008, the

income tax required to be withheld on wages for purposes of the withholding tables and withholding schedules shall be calculated without regard to the marginal State income tax rates less then 4.75%.

#### Pass-Through Entity Nonresident Tax Rates (TG § 10-102.1)

For tax years beginning after December 31, 2007, the tax rate to be applied to a nonresident individual member's (including nonresident fiduciaries) distributive or pro-rata share of a pass-through entity's nonresident taxable income is 6.75% (top marginal individual rate (5.5%) plus the nonresident tax rate (1.25%)). For nonresident entity members, the rate increases to 8.25% (the new corporation income tax rate).

#### Wagering Winning (TG § 10-908(d))

As a result in the increase in the marginal tax rates, beginning January 1, 2008, a payor is required to withhold at the rate of 8.5% (top marginal rate of 5.5% plus 3%) on a resident's winnings from wagering and 6.75% for nonresidents.

#### State Death Benefits and Eligible Rollover Distributions (TG § 19-908(e) and (f))

**Figure 1**

Joint, Surviving Spouse or Head of Household Filing Status

Taxable Income	Rate
\$1 - \$1,000	2%
\$1,001 - \$2,000	3%
\$2,001 - \$3,000	4%
\$3,001 - \$200,000	4.75%
\$200,001 - \$350,000	5%
\$350,001 - \$500,000	5.25%
In excess of \$500,000	5.5%

All Other Filing Statuses

Taxable Income	Rate
\$1 - \$1,000	2%
\$1,001 - \$2,000	3%
\$2,001 - \$3,000	4%
\$3,001 - \$150,000	4.75%
\$150,001 - \$300,000	5%
\$300,001 - \$500,000	5.25%
In excess of \$500,000	5.5%

The Board of Trustees of the State Retirement and Pension System are required to withhold from a payment of a death benefit to a resident payee the sum of 4.75% plus the county income tax rate applied to the payment.

If a payment to a resident payee is a designated distribution that is an eligible rollover distribution within the meaning of § 3405(c) of the Internal Revenue Code and the payment is subject to mandatory withholding for federal income tax purposes, the payor is required to withhold from the payment an amount equal to 7.75% of the payment.

Both of these changes are effective January 1, 2008. These amendments do not increase or decrease the amount of tax required to be withheld. The amendments remove references to the top marginal tax rates and insert a rate for withholding that is the same as under the law prior to the changes enacted during the Special Session.

Sale of Property by Nonresidents (TG § 10-912)

For tax years beginning after December 31, 2007, the tax rate to be applied to the total payment received by a nonresident individual pursuant to the sale or exchange of real property and associated tangible personal property is 6.75% (top marginal individual rate (5.5%) plus the nonresident tax rate (1.25%)). For nonresident entities, the rate increases to 8.25% (the new corporation income tax rate).

Refundable Earned Income Credit (TG § 10-704)

The statute was amended to provide

that an individual may claim a refund in the amount, if any, by which 25% (increased from 20%) of the federal earned income credit allowable for the taxable year exceeds the State income tax for the taxable year.

The amendment also eliminates the requirement that the individual have one or more dependents that may be claimed as exemptions in order to qualify for the refundable credit

If a county provides for a refundable county earned income tax credit, an individual may claim a refund of the amount, if any, by which the product of multiplying the federal earned income tax credit by 5 (increased from 4) times the county income tax rate for the taxable year exceeds the county income tax for the taxable year. The requirement that the individual have one or more dependents that may be claimed as an exemption has also been eliminated from the refundable county earned income tax credit. To date, no county has provided for a refundable county earned income tax credit under this section.

Effective for tax years beginning after December 31, 2007.

Corporation Income Tax (TG § 10-105)

For taxable years beginning after December 31, 2007, the corporation income tax rate is increased from 7% to 8.25%.

Section 179 Permanent Decoupling (TG § 10-210.1(b))

Amendments to TG § 10-210(b) provide for the permanent decoupling

from any changes made to § 179 of the Internal Revenue Code after December 31, 2002 that:

(1) increases above \$25,000 the dollar limitation set forth in IRC § 179(b)(1), or

(2) increases above \$200,000 the phase-out threshold set for in IRC § 179(b)(2).

Safe Harbor for Calculating Individual and Corporation Estimated Income Tax Payments (Section 8, Senate Bill 2)

For a taxable year beginning after December 31, 2007 but before January 1, 2009, the total estimated income tax payments must be at least 90% of the tax due on return for the current taxable year or:

(1) for individuals, 120% of the tax paid for the prior taxable year, reduced by the credit under TG § 10-703 (credit for taxes paid to another state); or

(2) for corporations, 130% of the tax paid for the prior taxable year.

Attorney Compliance (BOP § 10-313)

Effective January 1, 2008, before the annual fee that an attorney is required to pay to the Client Protection Fund of the Bar of Maryland is accepted and deemed paid, the Fund is required to verify through the Comptroller's Office that that the law has paid all undisputed taxes and unemployment insurance contributions payable to the Comptroller or the Secretary of Labor, Licensing, and Regulation or that the lawyer has provided for payment in a manner satisfactory to the unit responsible for collections.

**Figure 2**

<p>Applicable tax rate under TG § 10-105(a)</p>	X	<p>Nonresident's Maryland Taxable Income calculated without the subtractions under TG § 10-210(b), (e), and (f)</p>	X	<p>Nonresident's Maryland Taxable Income, calculated <i>with</i> the subtractions under TG § 10-210(b), (e), and (f)</p> <hr style="width: 50%; margin: 0 auto;"/> <p>Nonresident's Maryland Taxable Income, calculated <i>without</i> regard to the subtractions under TG § 10-210(b), (e), and (f)</p>	=	<p>Nonresident Income Tax</p>
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**Figure 3**

Joint, Surviving Spouse or  
Head of Household Filing Status

Taxable Income	Exemption Amount
\$150,001 - \$175,000	\$2,400
\$175,001 - \$200,000	\$1,800
\$200,001 - \$250,000	\$1,200
In excess of \$250,000	\$600

All Other (Excluding Dependent Taxpayers)

Taxable Income	Exemption Amount
\$100,001 - \$125,000	\$2,400
\$125,001 - \$150,000	\$1,800
\$150,001 - \$200,000	\$1,200
In excess of \$200,000	\$600

Maryland Business Tax Reform Commission

The Act creates a 17-member Maryland Business Tax Reform Commission that is charged with reviewing and evaluating the State's current business tax structure and making specific recommendations for changes to the State's business tax structure to provide for fair and equitable taxation for all corporations and other business entities doing business in the State.

The Commission's recommendation may include changes to the tax rates, tax base, measures to address tax avoidance strategies and elimination of ineffective or inefficient tax policies intended as economic development incentives.

At a minimum, the Commission study must include a review and evaluation of the following:

- (1) imposition of combined reporting using the "water's edge method" under the corporate income tax for unitary groups of affiliated corporations;
- (2) imposition of other types of business taxes, in lieu of or in addition to the current taxes imposed, including gross receipts taxes, value added taxes, and alternative minimum taxes; and
- (3) improved methods for evaluation of the effectiveness and efficiency of tax policies intended as economic development incentives.

The Commission is required to submit an interim report of its findings and recommendations to the Governor on or before December 15, 2010, and the final report on or before December 15, 2011.

Corporation Reporting Requirements  
Manufacturing Corporations

Senate Bill 2 renews the provisions under TG § 10-402 requiring a manufacturing corporation that has more than 25 employees and apportion its income to submit a report with its tax return that describes the difference in tax owed as a result of using the single sales factor apportionment method as compared to the 3-factor, double-weighted sales factor apportionment method. It must also report its Maryland and worldwide sales; Maryland and worldwide taxable income; and Maryland and worldwide book value of plant, property and equipment. This renewal is effective for tax years beginning after December 31, 2005.

*Senate Bill 2 also amends TG § 10-804 to:*

- (1) require an individual with Schedule C or Schedule E income to include a copy of those federal schedules with the individual's Maryland income tax return;
- (2) require a corporation to file the statements required under new TG § 10-804.1

*New TG § 10-804.1*

Corporate Groups: Each corporation that is required to file a Maryland income tax return that is a member of a corporate group must file a statement with the Comptroller a statement identifying each member of the corporate group that includes:

- (1) whether the member filed a Maryland income tax return;

(2) the total volume of sales by the member worldwide for the taxable year;

(3) the volume of sales made by the member in Maryland for the taxable year;

(4) the name of each state, other than Maryland, in which any member of the corporate group filed an income tax return for the taxable year;

(5) a listing of the members of the corporate group that are included in the combined or consolidated group for any state that requires combined or consolidated reporting.

Publicly Traded Corporations: Each publicly traded corporation doing business in the state must file a statement with the Comptroller containing the following information:

- (1) name of the corporation and street address of its principal place of business;
- (2) name and street address of any corporation that owns, directly or indirectly, 50% or more of the voting stock of the corporation;
- (3) corporation's 6-digit NAICS code number;
- (4) information specified by the Comptroller that is reported on or used in preparing the corporation's tax return filed, or would have been used if a return would have been required. Alternatively, the corporation may provide an explanation of why the corporation is not required to file Maryland income tax returns and the volume of gross receipts from sales to purchasers in Maryland.

**Publicly Traded Corporate Group with Worldwide Gross Receipts over \$100,000,000:** A publicly traded corporation that is a member of a corporate group and has worldwide gross receipts for the taxable year in excess of \$100,000,000 has a more onerous reporting requirement. It must submit the information required above for each member of the corporate group, whether or not the member is doing business in Maryland or is required to file a Maryland income tax return.

The corporation must also provide other information as required by the Comptroller for the corporation and each member of any corporate group of which the corporation is a member, including:

(1) the members of the corporate group that would be included in the combined group using the water's edge method and the difference in Maryland tax that would be owed if the corporation were required to use combined reporting;

(2) the sales factor that would be calculated for Maryland and the difference in Maryland tax if the corporation was required to use the throwback rule and adding to the numerator sales to: (a) the federal government; or (b) to a state

in which the selling corporation is not subject to an income or franchise tax measure by income;

(3) for any non-apportionable income on any state income tax return: (a) the amount and source of that income; (b) the state to which that income was allocated; and (c) if the principal executive office of the corporation is in Maryland, the difference in tax is 100% of the income was required to be allocated to Maryland;

(4) the number of full-time equivalent employees in the state on the last day of the tax year and the three previous years; and

(5) for U.S. corporation or affiliates of U.S. corporations, the profits before tax reported on the SEC form 10-K.

The statements required above are to be filed annually for all taxable years beginning after December 31, 2005 on or before the dates specified by the Comptroller in an electronic format as prescribed by the Comptroller. The statements must be made under oath and signed in the same manner as a tax return; are subject to audit by the Comptroller; and shall be treated as confidential taxpayer information.

A person who is required to file a statement and who willfully fails to file the statement or who files a false statement is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 5 years or both.

## SALES TAX

### Sales Tax Rate (TG § 11-104(a))

Effective January 3, 2008, the sales and will tax will increase to 6% from 5% as follows: (See **Figure 4**).

### Sales Through Vending Machines (TG §§ 11-104(b) & 11-301)

If a retail sale of tangible personal property or a taxable service is made through a vending or other self-service machine, the sales and use tax is 6%, applied to 94.5% (down from 95.25%) of the gross receipts from the vending machine sales.

### Vendor Discount for Collection and Timely Remittance of Sales Tax (TG § 11-105)

For the period beginning January 3, 2008 and ending June 30, 2011, the discount is to be computed at 1.2% of the first \$6,000 of tax due and .9% of

### Figure 4

#### Sales and Use Tax Rate is:

1 cent  
2 cents  
3 cents  
4 cents  
5 cents  
6 cents

#### Taxable Price is:

#### **Taxable Price Less Than \$1**

20 cents  
at least 21 cents but less than 34 cents  
at least 34 cents but less than 51 cents  
at least 51 cents but less than 67 cents  
at least 67 cents but less than 84 cents  
at least 84 cents

#### **Taxable Price of \$1 or more, 6 cents for each exact dollar and**

#### Excess over exact dollar is:

1 cent  
2 cents  
3 cents  
4 cents  
5 cents  
6 cents  
at least 1 cent but less than 17 cents  
at least 17 cents but less than 34 cents  
at least 34 cents but less than 51 cents  
at least 51 cents but less than 67 cents  
at least 67 cents but less than 84 cents  
at least 84 cents

the taxes in excess of \$6,000. However, the credit allowed may not exceed \$500 for each return. If a vendor files, or is eligible to file, a consolidate return, the total maximum credit that the vendor is allowed for all returns filed for any period is \$500.

#### Sales Made Prior to Rate Change for Delivery After January 2, 2008

The following is the language from Bulletin 07-02 issued by the Comptroller:

“Sale contracts entered into prior to January 3, 2008 are taxable at the 5% rate. The sales tax applies and must be collected and remitted at the time a sale is made, regardless of the time of payment of the price or time of delivery. If the sale is made by a vendor located outside of the State of Maryland who is not required to collect the Maryland tax, the use tax is due at the 6% rate when possession is taken in Maryland after January 2, 2008. Proper records must be maintained regarding the date and terms of a sale in order to justify collecting at the 5% rate where delivery or payment is made after January 2, 2008.

The tax rate due on applicable lease payments for tangible personal property is based on the lease payment period, regardless on the length of the lease or the date that the lease agreement was signed. Each lease payment period is considered to be a separate lease for sales and use tax purposes. Payment for lease periods due after January 3, 2008 will be subject to the 6% rate.”

#### Assumption or Absorption of Sales Tax (TG §§ 11-302, 11-402, & 11-601)

Beginning January 3, 2008, a vendor may assume or absorb all or any part of the Sales and Use Tax imposed on a retail sale or use and pay that Sales and Use Tax on behalf of the buyer. As required in TG § 11-302, the vendor must still separately state the sales and use tax on the record of sale at time of the sale. A

vendor who elects to assume or absorb all or a part of the tax must remit the tax due on that sale with the return that covers the period in which the vendor makes the sale.

#### Real Property Contractors and Subcontractors (Section 8, House Bill 5)

Pursuant to Section 8 of House Bill 5, the Comptroller is required to adopt regulations that will exempt from the increase in the rate of the sales and use tax any otherwise taxable sales of tangible personal property to contractors or builders to be used for the construction, repair, or alteration of real property, on contracts entered into prior to January 3, 2008.

The following guidance was issued by the Comptroller in Bulletin 07-02:

“Purchases by contractors and subcontractors of materials to be incorporated into and made a part of real property pursuant to a contract for the construction, repair or alteration of real property, when the contract is entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and the contract was entered into prior to January 3, 2008, shall be exempt from the additional 1% tax.

Purchasers may claim the exemption directly from the Comptroller's Office on Form COT/ST205, or as a credit on line 9 of a sales and use tax return. The credit allowed on the return cannot exceed the lesser of \$1,000 or the total amount of tax due and payable on the return. A contractor who files sales and use tax returns and purchases eligible materials upon which no tax has been charged, should include only the 5% tax on qualified purchases on line 7 of the return.

The General Assembly has also provided that the exemption may, to the extent practicable, be claimed from sellers at the point of sale. The Comptroller's Office has created Form COT/CD132 which may be used for

this purpose. A sample copy of this form is included in this bulletin. If accepted, it should be retained with the records of the sale. Sellers, if they choose to do so, may allow the 1% exemption for the convenience of their customers, if provided with a completed Form COT/CD132. Sellers who do recognize the exemption should simply not include the amount of the exemptions allowed in the amount of tax collected on line 2 of their next sales and use tax return. Sellers need to report the combined 6% and 5% tax collected on line 2 of the sales and use tax return.

The exemption is limited to purchases of materials which will be physically incorporated into real property. It does not extend to materials which will retain their status as tangible personal property, nor does it extend to purchases, including rentals, of consumables, supplies, tools, equipment, or taxable services, however essential they may be to the completion of a contract entered into prior to January 3, 2008.”

#### Real Property Contractor 1% Sales and Use Tax Exemption Certificate

(See **Figure 5**).

#### Tax-Free “Holidays”

*Tax-Free Week – Clothing and Footwear, Excluding Accessory Items (TG § 11-226)*

Beginning in calendar year 2010, the 7-day period from the second Sunday in August through the following Saturday is designated as a tax-free period for back-to-school shopping in Maryland during which the sales and use tax does not apply to the sale of any item or clothing or footwear, excluding accessory items, if the taxable price of the item of clothing or footwear is \$100 or less.

As in the past, accessory items, which are not exempt from the sales

## Figure 5

This is to certify that all tangible personal property purchased from \_\_\_\_\_ will be incorporated into the real property of:

Name of Job: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Date Contract Signed: \_\_\_\_\_

Expected Job Completion Date: \_\_\_\_\_

Tax may be charged at the rate of 5% if the seller chooses to recognize this certificate. I understand that the seller may choose not to accept this certificate and charge the 6% tax, in which case I can obtain a 1% refund from the Comptroller. I also understand that this certificate does not apply to tools, equipment or any other tangible personal property that is not physically incorporated into the real property of the above listed job.

Buyer's Name

Buyer's Address and  
Telephone Number

Signature

Buyer's MD Sales and  
Use Tax Registration No.  
(If applicable)

Date

COT/CD 132

November 2007

and use tax, include jewelry, watches, watchbands, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, and belt buckles.

*Tax-Free Weekend – Energy Star Appliances* (TG § 11-228)

Beginning in calendar year 2011, the weekend that consists of the Saturday immediately preceding the third Monday in February through the third Monday in February each year shall be a tax-free weekend during which the sales and use tax does not apply to the sale of any energy star product or solar water heater.

Energy star product is defined to mean an air conditioner, clothes washer or dryer, furnace, heat pump, standard size refrigerator, compact fluorescent light bulb, dehumidifier, or programmable thermostat that has been designated as meeting or exceeding the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy.

Tax on Computer Services (TG §§

11-101(c-1) & (m) and 11-219)

Effective July 1, 2008, the sales and use tax is applicable to "Computer Services." Computer service is defined to include: (i) computer facilities management and operations; (ii) custom computer programming; (iii) computer system planning and design that integrate computer hardware, software, and communication technologies; (iv) computer disaster recovery; (v) data processing, storage, and recovery; and (vi) hardware or software installation, maintenance, and repair. Computer service does not include: (i) internet access, as defined in the federal Internet Tax Freedom Act; (ii) typing or data entry on work processing equipment; (iii) computer training; (iv) the installation, maintenance, or repair of tangible personal property other than computer hardware or software that includes computer hardware or software as component part; or (v) a service otherwise described as computer service above that is provided as part of or in connection with: (a) electronic fund

transfers, financial transactions, automated teller machine transactions, or other banking or trust services; (b) business management, account management, personnel, payroll, employee benefit, or other administrative services; (c) educational, legal, accounting, architectural, actuarial, medical, medical diagnostic, or other professional services; or (d) telecommunications services.

The sales and use tax, however, will not apply to a sale of computer services for use by an individual participating in a home school program as an alternative to attendance at public or private school for elementary or secondary education

## Admissions & Amusement Tax

Electronic Bingo and Electronic Tip Jars (TG §§ 4-102 & 4-105)

The "net proceeds," defined to mean the total receipts from the operation of an electronic bingo machine or an electronic tip jar machine less the amount of money winnings or prizes paid out to players, is now subject to a State Admissions and Amusement tax at the rate of 20%.

The State Admissions and Amusement tax is in addition to any county or municipal admissions and amusement tax that may be assessed.

Maximum Combined Rate (TG § 4-105)

If gross receipts subject to the Admissions and Amusement Tax are also subject to the Sales and Use Tax, a county or a municipality may not set a rate so that, when combined with the Sales and Use Tax, the total tax rate will exceed 11% (up from 10%) of the gross receipts.

## Transfer of Controlling Interest

Beginning on July 1, 2008, a transfer of a controlling interest by a real property entity that occurs after June 30, 2008 is subject to the recordation tax as if the real property directly or beneficially

owned by the real property entity was conveyed by an instrument of writing that is recorded with the Clerk of the Circuit Court for a county or filed with the Department.

Controlling interest means more than 80% of: (1) of the total value of all classes of stock of a corporation; (2) of the total interest in capital and profits of a partnership, association, limited liability company, or other unincorporated form of doing business; or (3) of the beneficial interest in a trust.

Plan of transfer means an intentional plan or program to transfer the controlling interest in a real property entity.

A real property entity mean a corporation, partnership, association, limited liability company, limited liability partnership, other unincorporated form of doing business, or trust that directly or beneficially owns real estate that: (1) constitutes at least 80% of the value of its assets; and (2) has an aggregate value of at least \$1,000,000. The value of the real property is determined without reduction for any mortgage, deed of trust, or other lien on or security interest in the real property.

A real property entity does not include an entity with land holdings that are entirely subject to an agricultural use assessment under § 8-209 of the Tax-Property Article.

The recordation tax is imposed on the consideration paid for the transfer of the controlling interest in the real property entity. The consideration is reduced by the amount allocable to the assets of the entity other than real property. The entity has the burden of establishing to the satisfaction of the department the consideration paid for the other assets.

The recordation tax is not imposed on the transfer of a controlling interest if the transfer is completed over a period of more than 12 months, or the transfer is not made in accordance with a plan of transfer. There are other transfers to which the recordation tax is not imposed. The burden is on the

real property entity to establish the applicability of any exemption.

The entity is required to file a report of any transfer of a controlling interest that is completed within a period of 12 months or less within 30 days following the date of the final

transfer. The report must include: (1) the consideration paid; (2) the amount of assets other than real estate; and (3) any exemption to which the transfer may be eligible. The report must be accompanied by a \$20 filing fee and any tax, interest or penalty that is due.

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## **MARYLAND TAXES, 4TH EDITION WITH 2007 SUPPLEMENT (03/2008)**

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