

Tennessee extends intangible expense compromise program

June 21, 2013

In brief

The Tennessee Department of Revenue will continue until September 30, 2013, its settlement program with taxpayers regarding the state's disallowance of intangible expense deductions for tax years ending on or before June 30, 2012. The program applies to taxpayers that have been assessed or that are concerned about a potential assessment. Affected taxpayers should consider the merits of a proposed settlement before reaching out to the Department. [Tennessee Department of Revenue, [Notice 13-06](#), June 2013]

In detail

For tax periods beginning on or after January 1, 2004 and ending on or before June 30, 2012, Tennessee required taxpayers that incurred intangible expenses as a result of transactions with related parties to disclose such expenses in their franchise and excise tax returns. Failure to disclose such transactions may result in the commissioner adding back such deductions and imposing a 50 percent negligence penalty. In addition to the statutory addback, the Commissioner has the discretion to adjust related party transactions in order to prevent an evasion of tax.

In November 2011, the [state announced](#) that taxpayers that have received assessments

disallowing intangible expense deductions or that are concerned about a potential disallowance may be eligible to compromise and settle their outstanding or potential liability with the Department for any open year ending on or before June 30, 2012. [Click here](#) for our summary of the compromise program.

Under Notice 13-06, the Department announced its intention to evaluate any request to compromise on terms announced in its 2011 notice through September 30, 2013. Subsequently, the Department will review claimed deductions taken for years before June 30, 2012, on a case-by-case basis. The Department stated that it will not "continue to recommend compromises on

the same terms if contacted by the taxpayer after September 30, 2013."

Effective for tax periods ending on or after July 1, 2012, the state amended its addback provisions to require taxpayers paying intangible expenses to affiliated companies to file an application with the Commissioner and receive advanced approval before deducting such expenses. The 2012 legislation also amended the types of expenses that are deductible. The settlement program does not apply to expenses deducted pursuant to the amended addback provisions. [Click here](#) for our summary of the addback legislation.

The takeaway

This settlement program is the Department's continued attempt to resolve an exceptionally large volume of assessments issued following a review of related party expense disclosures. As noted, the settlement is available to taxpayers that have been assessed, as well as to those that want to come forward voluntarily.

When evaluating whether or not to come forward voluntarily, taxpayers should take note of the fact the Department is not assessing all taxpayers with related party intangible expenses. So far, its focus has been primarily on licensing companies with limited substance.

Although not detailed in the current, or previously-issued, notice, under the

terms of the settlement, participating taxpayers must agree to a disallowance of 25 percent of the deduction for intangible expenses. However, abatement of any penalties attributable to a failure to disclose the expense will need to be requested outside of the scope of settlement. In addition, interest will be owed on any additional tax resulting from the settlement.

Let's talk

If you have any questions regarding the compromise program, please contact:

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