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STATE & LOCAL TAX ALERT

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Quarterly California Tax Legislative Update

July 2014 - September 2014

Dear Friends & Clients,

The purpose of this Quarterly California Tax Legislative Update is to provide our clients and prospective clients with timely and meaningful updates that affect both their personal income and business taxes.

The 3rd quarter of 2014 saw an expansion of the California film and television tax credit as well as additional guidance on the application process for the new California Competes Credit. The State finally provided guidance on a confusing and complex topic, the taxation of out-of-state LLC members. Finally, a recent California Court of Appeals decision may broaden the application of the California real estate transfer tax to changes in control of legal entities.

California Enacts Film and Television Tax Credit Expansion

The California Film and Television Job Retention and Promotion Act was signed into law by Governor Jerry Brown on September 18th, 2014. The new law significantly increases the amount of film and television tax credit and eligibility to participate in the film and television tax credit program. For a more detailed analysis of the expanded film and television tax credit program, please click on the following link: http://www.greenhassonjanks.com/tax-alerts/tax-alerts-detail/california-enacts-film-and-television-tax-credit-expansion

California Announces 2nd Round of Applications for the Competes Credit

The State of California recently announced three application periods for the California Competes Credit Program for fiscal year 2014/2015. The State has allocated over $150 million to the program for fiscal year 2014/2015. Companies heavily focused on certain industries, including biotechnology, technology, agriculture and manufacturing, should consider the impact of this credit on their future California tax posture. For a more detailed analysis of the California Competes Credit program, please click on the following link: http://www.greenhassonjanks.com/tax-alerts/tax-alerts-detail/california-announces-2nd-round-of-applications-for-the-california-competes

California Addresses the Taxation of Out-of-State LLC Members

The California Franchise Tax Board recently issued Legal Ruling 2014-01, which addresses the taxation of an out-of-state Corporate LLC member. The ruling addresses a number of situations where an out-of-state Corporate LLC member is subject to tax in California and other situations where an out-of-state Corporate LLC member is not subject to tax in the state. We have summarized these situations as follows:

1. LLC corporate members are not considered doing business in California if:
    - The LLC's only activity in California is that it is registered to do business with the California Secretary of State.
    - The LLC is legally incorporated in California, but is not "doing business" in the State.
2. LLC corporate members are considered doing business in California when:

- The LLC is commercially domiciled in California.
- The LLC is actively doing business in California.
- The managing member of the LLC is based in California.
- The California sales of the LLC attributable to the corporate partner exceed a certain amount (generally $500,000 of California source sales).

The taxation of out-of-state Corporate LLC members used to be complex and confusing based on the lack of prior guidance by the State. Legal Ruling 2014-01 attempts to provide clear guidance on whether out-of-state Corporate LLC members are required to file income/franchise tax returns in the California. It is important that a member in a LLC consult with their tax advisors as to whether it has a filing requirement in California based on the activities of the LLC.

Real Estate Transfer Tax Could Apply to Change in Control of Legal Entity Ownership

In a recent California Court of Appeals decision, the Court ruled that the California real estate transfer tax applies to a change of control of a legal entity that owns real property in California. See *926 North Ardmore Avenue, LLC v. County of Los Angeles*, Cal. App. Ct., No. B248536 (9/22/14).

Under California law, the State has granted local jurisdictions with the ability to impose a transfer tax on the sale of real property. The prevailing thought in California is that the real estate transfer tax applies primarily to a change in control of real property itself. While the State has enacted statutes that govern the imposition of the real estate transfer tax, charter jurisdictions have the option of incorporating the State's statutes or enacting their own laws, including the application of the transfer tax and the amount of transfer tax imposed. For example, the counties of Oakland and San Francisco have chosen to enact separate local ordinances that impose the tax on a change of control of a legal entity. A number of other jurisdictions, including Los Angeles and San Diego County, have interpreted the State's statutes to apply to a change in control of a legal entity as well as the sale of the real property itself.

The case creates the potential that the real estate transfer tax may apply to any change of control of a legal entity even in situations where there is a reorganization or merger of a business. While the taxpayer has the ability to appeal this decision at the California Supreme Court level, it is important that any business that is looking to sell or purchase a legal entity interest speak with their tax advisors on the potential application of the California real estate transfer tax. &

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