

## EXPIRING TAX PROVISIONS

By Bruce L. Olson

There are a number of helpful tax provisions scheduled for expiration that have been extended by Congress generally for one or two year periods. A number of those "extenders" will expire at the end of 2011 absent Congressional action, but given the climate in Congress, there is some question that some of them may be extended. As a result, you may want to consider taking advantage of these provisions, assuming they make business sense, prior to the end of the year. Some of the more popular provisions are listed below.

### Tax Credits

- Research credit (Section 41(h)(1))
- Work opportunity tax credit (Section 51(c)(4))
- New markets tax credit (Section 45D(f)(1))
- Differential wage payment credit for employers (Section 45P)
- New energy efficient home credit (Section 45L(g))

### Tax Deductions

- 100% bonus depreciation (Section 168(k)(5)) (qualified property must be acquired and placed in service before January 1, 2012); 50% bonus depreciation applies for certain property placed in service before January 1, 2014)
- Expensing allowance (Section 179) (maximum amount is \$500,000, reduced to \$125,000 for years thereafter) (up to \$250,000 per year is available for certain qualified real property)
- 15-year write off for certain specialized real estate assets (Section 168(e)(3)(E))
- Enhanced charitable deductions for C corporations contributing wholesome foods, certain book inventories and certain computer technology or equipment to certain charitable and educational entities (Section 170(e)(3))
- Charitable contributions by S corporations – lower shareholder basis adjustments available (Section 1367(a)(2))
- Expensing election for certain film and TV production costs (Section 181(f))
- Expensing of certain environmental remediation costs (Section 198(h))❖

## RQN INTRODUCES ITS HOSPITALITY GROUP

Ray Quinney & Nebeker's Hospitality Law Practice Group is comprised of lawyers with unique experience in resolving legal issues for local and national hospitality industry clients. RQ&N is the only Utah-based law firm that is a member of the Global Alliance of Hospitality Lawyers. We are also a member of the National Association of Alcoholic Beverage Licensing Attorneys. We represent resorts, hotels, restaurants, bars, golf courses, meeting and convention planners, and operators of arenas, outdoor concert venues and film festivals on legal issues.

### Tax & Business Newsletter

Samuel A. Lambert – Editor

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The Tax & Business Newsletter features selected developments in Federal and Utah law. It should not be relied upon for substantive tax or business advice. Contact your attorney to resolve tax or legal questions.

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Fall 2011 Issue

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### ALSO INSIDE THIS ISSUE

2	Physician Recruitment – Can a Medical Practice Impose a Covenant Not To Compete?
3	President Obama Proposes \$1.5 Trillion in Tax Increases to Cut Deficit
4	Expiring Tax Provisions

## PROTECT YOUR COMPANY'S PRESENCE ON THE INTERNET

By Scott B. Finlinson

Domain names are becoming more and more important to businesses' marketing efforts on the Internet. Not only are they part of a company's brand, but they are also a key factor in the search engine algorithms for Google and Bing. Most businesses have domains ending in .COM, .NET or .ORG.

It may be news to a lot of people, but last spring, ICANN (the Internet Corporation for Assigned Names and Numbers) approved the establishment of a top-level domain specifically for sexually explicit material. The new .XXX domain is intended as a voluntary option for "adult entertainment" web sites.

Business owners wishing to protect their business names and trademarks from unauthorized registration in the new .XXX domain have just weeks to act.

Registered trademark owners who are not part of the adult content community may apply to opt out and block the registration of their trade names in the .XXX domain during the "Sunrise B" period, which runs from September 7 – October 28, 2011. Unlike other new domain extensions, there is a one-time fee for the .XXX Sunrise B application with no annual fees.

The Sunrise B period is specifically for those outside of the adult entertainment industry who do not wish to register any names in the .XXX extension and would like to block and protect their business names and trademarks from being registered by others.

The reason this is important for you to know is that while your business and website are not related to the adult industry, nor would you ever use a site with a .XXX extension, there is a chance that someone in the adult industry could use your domain name or business trademark in connection with the .XXX extension. For example, if someone registered [www.yourcompanyname.xxx](http://www.yourcompanyname.xxx), it would be a legitimate domain name, and they, not you, would own it.

Acting during the Sunrise B period is extremely important. After October 28, domain names become available to the general public for registration—with the potential that your company's name or trademark could be attached to a .XXX domain.

If you would like assistance in blocking your company's name, trademark or domain name to a .XXX extension, please feel free to contact us.❖

## Reminder of RQN Fall Seminar

Please be reminded that the Firm's Annual Tax & Business Seminar is scheduled to be held on Thursday, November 3, 2011, from 1:30 to 4:30 p.m. at the Little America Hotel, 500 South Main Street, Salt Lake City, Utah. Please contact Christy McCarthy at 801-323-3403, or send an RSVP email to [taxseminar@rqn.com](mailto:taxseminar@rqn.com) to register for the Seminar. You may also register at the door.



## PHYSICIAN RECRUITMENT – CAN A MEDICAL PRACTICE IMPOSE A COVENANT NOT TO COMPETE?

By Bryan K. Bassett

A number of our medical practice clients that recruit new physicians into their practice receive hospital assistance, often in the form of an income guarantee. It is critical that such arrangements are properly structured in compliance with the physician recruitment exception to the “Stark” regulations (administered by the Centers for Medicare and Medicaid Services – “CMS”), as well as the practitioner recruitment exception under the federal Anti-Kickback Statute (“AKS”, administered by the Office of Inspector General – “OIG”).

One key issue for medical practices under the Stark regulations is the extent to which practice “restrictions” may be imposed on the recruited physician. CMS has become more lenient over the last several years in allowing restrictions. At present, the Stark regulations provide that the physician practice may not impose on the recruited physician practice restrictions that *unreasonably* restrict the recruited physician’s ability to practice medicine in the geographic area served by the hospital. In Stark Phase III commentary, CMS indicated that a physician practice is permitted to impose the following restrictions: 1) restrictions on moonlighting; 2) prohibitions on soliciting patients and/or employees of the physician practice; 3) requiring that the recruited physician treat Medicaid and indigent patients; 4) requiring that the recruited physician not use confidential or proprietary information of the physician practice; 5) requiring the recruited physician to repay losses of his or her practice that are absorbed by the practice in excess of any hospital recruitment payments; and 6) requiring the recruited physician to pay a predetermined amount of reasonable damages if the physician leaves the physician practice and remains in the hospital service area.

In addition to the above-described six permitted restrictions, in the same commentary CMS stated they are persuaded that categorically prohibiting physician practices from imposing non-compete provisions may have the unintended effect of making it more difficult for hospitals to recruit physicians. Accordingly, CMS indicated that a physician practice may impose a limited, reasonable non-compete clause on the recruited physician. As a caveat to this, however, CMS noted that nothing in the applicable Stark regulation should be construed as prohibiting a hospital that provides financial assistance to the hiring physician practice from entering into an agreement with the practice that prohibits the hiring physician practice from imposing a non-compete agreement or other practice restriction.

In a recent 2011 CMS Advisory Opinion (AO), CMS determined that under the specific facts presented in the request for an opinion, a non-competition provision did not impose practice restrictions that unreasonably restricted the recruited physician’s ability to practice medicine in the geographic area served by the hospital. Some of the key facts in the CMS determination included: 1) the time period was reasonable; 2) the distance requirement was reasonable based on the geographic area served by the hospital; 3) even with the time period and distance restrictions, the recruited physician would still be permitted to practice at certain other hospitals both within and outside of the subject hospital’s geographic service area; and 4) CMS relied upon the certification of the party requesting the AO that the non-competition provision complied with applicable state and local laws (if any

*Covenant Not to Compete - continued on page 3*



## PRESIDENT OBAMA PROPOSES \$1.5 TRILLION IN TAX INCREASES TO CUT DEFICIT

By McKay M. Pearson

President Barack Obama recently proposed raising \$1.5 trillion over 10 years through tax increases and elimination of certain tax preferences to reduce the federal deficit. President Obama's proposal includes dealing with Bush-era tax cuts, the "Buffett" rule, and limitations on deductions. As many had anticipated, President Obama proposed that many Bush-era tax cuts for higher income taxpayers not be extended after 2012. A new proposal from the White House and President Obama is known by many as the "Buffett Rule," named after billionaire investor Warren Buffett. In that proposal, tax rates would be higher on those making over \$1 million per year, thus ensuring that "millionaires" do not pay a smaller share of income than middle income taxpayers.

The president's proposal to reduce the deficit also includes further limitations on the amount of itemized deductions and certain other tax expenditures for higher income taxpayers. Additional proposals include reforms to the international tax system, repeal of LIFO and lower-of-cost or market methods of accounting, modified sales of life insurance contract rules, and other miscellaneous rules.

President Obama is pushing for Congress to enact his proposal as stand-alone bills. He has informed Congress that tax increases are vital to deficit reduction and warned that he will veto any legislation for the joint committee that reduces the deficit through spending cuts alone.❖



**MCKAY PEARSON SPOTLIGHT:** McKay is currently serving as an officer of the firm (corporate secretary), and chair of the firm's hospitality group. He generally practices in and represents clients in a wide variety of matters, including tax, corporate and business planning, mergers and acquisitions, and estate planning. McKay is very involved in the hospitality industry, including the acquisition and sale of hotels and restaurants, and all aspects of licensure for this industry. McKay has been with the firm over 14 years, maintains an AV Preeminent (5.0) rating with Martindale-Hubbell, and has also been voted by his peers throughout the state as one of Utah's "Legal Elite."

*Covenant Not to Compete - continued from page 2*

practice restriction or condition does not comply with applicable state and local laws it runs a significant risk of being considered “unreasonable” by CMS).

As *strong cautions* on all of the above, the Stark regulations and the AKS are very complex and are ever changing, an AO cannot be relied upon by any party other than the party that requested and received the AO from CMS, and the facts of every physician recruitment and the terms of every hospital recruitment agreement are different. Accordingly, every recruitment arrangement must be properly reviewed and analyzed under the Stark regulations and the AKS, and an appropriate physician employment agreement must be prepared as a companion document to the hospital recruitment agreement.

Ray Quinney & Nebeker P.C. has a strong health care group that includes attorneys from the tax, corporate, nonprofit, real estate, employment, litigation and other sections of the firm. Please contact us if we can be of assistance to your medical practice or other healthcare industry clients.❖

