

# State and Local Tax Bulletin

February 15, 2010  
Alabama Edition



## Department of Revenue Publishes Proposed Amendments to Composite Return and QIP Regulations

By: Bruce P. Ely & William T. Thistle

### Upcoming Seminars Involving Members Of Our SALT Practice Group

#### February 22-24, 2010

Council On State Taxation – 2010 Sales Tax Conference and Audit Session, San Diego, California. Bruce Ely will be a co-panelist in a presentation on Dealing with Contingent Fee Audits and Class Action Law Suits. For more information, please visit the COST website: [www.statetax.org](http://www.statetax.org).

#### March 22-23, 2010

2010 ABA/IPT Advanced Income Tax Seminar. Chris Grissom will be a co-speaker with Erica Horn of Stites & Harbison PLLC and David Shipley of McCarter & English, LLP. Their topic will be "Add-Back Statutes: The Construction of Exemptions, the Disappointing Decision in the VFJ Ventures Case, Other Pending Litigation and Similarly Annoying Issues." For more information, please visit the ABA website: <https://meetings.abanet.org/meeting/tax/ipt10>.

#### March 22, 2010

Bruce Ely and Will Thistle will be speaking to Accounting students at the University of Alabama Business School in Tuscaloosa on the interaction between attorneys and auditors in the context of tax accrual workpapers, FIN 48 and the work product doctrine. For more information concerning the topic or for a copy of their outline, please contact the speakers or the Practice Group assistant, Sherry Barber.

On Tuesday, February 9, the Alabama Department of Revenue posted on its website proposed regulations that would substantially modify its recently certified regulations regarding composite income tax return and payment requirements for Subchapter K entities with nonresident members/partners, the exemption for qualified investment partnerships ("QIPs"), and the qualification requirements for a QIP.

The new proposals are a marked improvement and contain amendments that result from a collaborative effort by an ad hoc group of tax practitioners, including the authors, and key officials of the Department. The proposed regulations are intended to amend the regulations the Department certified to the Legislative Reference Service ("LRS") on January 11 and which became final on February 15. Prior to certifying the regulations, the Department received numerous comments during the two October hearings, at which a number of concerned taxpayers, tax practitioners, several investment fund managers, and business and professional groups submitted lengthy comment letters or appeared and testified as to various aspects of the original set of proposed regulations. To its credit, the Department clearly took many (though certainly not all) of the comments into consideration in revising the regulations prior to certification. Thankfully, after certifying the regulations, key Department officials recognized that the regulations still needed modification, and expressed their desire to continue working with the group of CPAs, tax attorneys and investment fund managers and to issue rule amendments.

Since the regulations were certified, the Department, true to its word, has provided members of the working group with revised versions of the regulations for their review and comment. This review process, which involved numerous e-mails, conference calls, and memoranda, displayed a refreshing spirit of cooperation between tax practitioners and the Department.

Given the looming due date for 2009 composite returns and payments, the Department believed that taxpayers and tax practitioners needed clear guidance on how these rules will operate. Therefore, the Commissioner and his staff elected to issue the revised proposals to amend the previously certified regulations. Although these proposed regulations are just that—proposed—Department officials have indicated that taxpayers and tax practitioners may rely upon them until they are finalized or withdrawn. In addition to the proposed regulations, Department officials have announced that they will post on its website instructions regarding

*continued on page 2*

the filing of composite income tax returns, and, as part of the "transition rule" for the 2009 tax year, a schedule that Subchapter K entities may use to reconcile the composite payment being remitted with the amount otherwise due.

According to Curtis Stewart, the Department's Director of Tax Policy and Research and primary contact person on this regulation project, the Department will, in addition to posting the proposed regulations on its website, submit them to the LRS for official publication in the March edition of the *Alabama Administrative Monthly*. The new proposals will go through the formal rulemaking process pursuant to the Alabama Administrative Procedure Act. The comment period will continue until the rulemaking hearing, which is currently set for April 28 at 2:00 p.m., in Room P-104 on the Plaza Level of the Gordon Persons Building in Montgomery.

Although the proposed regulations contain many positive revisions and clarifications, several concerns continue to exist or arose as a result of the latest set of proposals, despite the best efforts of the ad hoc working group and the Department. We encourage our readers doing business through Subchapter K entities in Alabama, or who have clients that do so, to promptly review these proposals, which can be found on the Department's website [<http://www.revenue.alabama.gov/rulehear.html>], and on our firm's website [<http://www.babc.com/services/xpqServiceDetail.aspx?xpST=ServiceDetail&service=225&op=richTextB&ajax=no>] and to submit their comments to the Department before **April 28**.

Please contact Bruce Ely, Will Thistle, or Jimmy Long of our SALT Practice Group if you have any questions regarding how the new regulations may affect your company or clients. Written comments and questions should be filed directly with the Department. Our firm represents multiple parties in this rulemaking project.

### Bradley Arant Boulton Cummings LLP Office Locations:

#### ALABAMA

One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203  
(205) 521-8000

200 Clinton Avenue West, Suite 900  
Huntsville, AL 35801  
(256) 517-5100

The Alabama Center for Commerce  
401 Adams Avenue, Suite 780  
Montgomery, AL 36104  
(334) 956-7700

#### MISSISSIPPI

188 E. Capitol Street, Suite 400  
Jackson, MS 39201  
(601) 948-8000

#### NORTH CAROLINA

100 North Tryon Street, Suite 2690  
Charlotte, NC 28202  
(704) 332-8842

#### TENNESSEE

1600 Division Street, Suite 700  
Nashville, TN 37203  
(615) 244-2582

#### WASHINGTON, DC

1133 Connecticut Avenue NW,  
12th Floor  
Washington, DC 20036  
(202) 393-7150

*This newsletter is sent to our friends as a courtesy of Bradley Arant Boulton Cummings LLP. If you would prefer not to receive future emailings of this type, please email our practice group assistant, Sherry Barber, at [sbarber@babc.com](mailto:sbarber@babc.com).*

This newsletter is a periodic publication of Bradley Arant Boulton Cummings LLP and should not be construed as legal advice or legal opinions on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult your own lawyer or other tax advisor concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our practice group.

The Alabama State Bar requires the following disclosure: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

©2010 Bradley Arant Boulton Cummings LLP

### SALT Practice Group:

Bruce P. Ely, Chair  
(205) 521-8366  
[bely@babc.com](mailto:bely@babc.com)

Joseph W. Gibbs  
(615) 252-2317  
[jgibbs@babc.com](mailto:jgibbs@babc.com)

W. Stanley Gregory  
(334) 956-7604  
[sgregory@babc.com](mailto:sgregory@babc.com)

Christopher R. Grissom  
(205) 521-8514  
[cgrissom@babc.com](mailto:cgrissom@babc.com)

K. Wood Herren  
(205) 521-8505  
[wherren@babc.com](mailto:wherren@babc.com)

James E. Long, Jr.  
(205) 521-8626  
[jelong@babc.com](mailto:jelong@babc.com)

Patricia Head Moskal  
(615) 252-2369  
[pmoskal@babc.com](mailto:pmoskal@babc.com)

Brian S. Shelton  
(615) 252-2313  
[bshelton@babc.com](mailto:bshelton@babc.com)

William T. Thistle, II  
(205) 521-8985  
[wthistle@babc.com](mailto:wthistle@babc.com)

Robert D. Thorington  
(334) 956-7609  
[rthorington@babc.com](mailto:rthorington@babc.com)

Robert C. Walthall  
(205) 521-8308  
[rwalthall@babc.com](mailto:rwalthall@babc.com)

[www.babc.com](http://www.babc.com)