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Taxpayers Should Consider Filing Refund Claims to Preserve Rights to Refund of Telecommunications Excise Tax

If your charges for long-distance telephone calls are based on the duration but not the distance of your calls, you may be entitled to a refund of federal communications excise taxes. For example, if you pay a flat rate of five cents per minute for all long-distance calls regardless of whether you are calling a party in a contiguous state or across the country, you may be able to recover the three percent federal communications excise tax that you paid on these calls.

Refunds Based on Plain Language of the Excise Tax Statute

The IRS collects excise taxes for toll telephone service. The excise tax is collected by telecommunications providers from their customers and paid over to the IRS quarterly. Toll telephone service is defined to include “a telephonic quality communication for which there is a toll charge which *varies in amount with the distance and elapsed transmission time* of each individual communication....” I.R.C. § 4252(b)(1)(A) (emphasis added). Taxpayers have asserted that it is clear from the plain language of the statute that the excise tax does not

apply to charges that vary only by the duration and not the distance of the calls. The IRS has argued that Congress intended to tax all long-distance telephone service and that the statute should be interpreted in light of that intent to impose the tax on long-distance charges despite changes in billing practices in the telecommunications industry.

Favorable Federal Court Decisions

The Court of Federal Claims and several federal district courts have agreed with taxpayers and held, based on the plain language of the excise tax statute, that the telecommunications tax applies to long-distance charges that vary by the duration *and* distance of the calls, but not to charges that vary only by the duration of the calls. The Eleventh Circuit Court of Appeals in *American Bankers Insurance Group v. United States*, 408 F. 3d 1328 (11th Circuit 2005), recently overturned the only district court decision that had found in favor of the IRS on the issue. The courts have emphasized that Congress can amend the statute to keep pace with changes in telecommunications industry

billing practices if Congress chooses to do so.

Recommended Action

The IRS has issued notices stating that telecommunications carriers must continue to collect from their customers and pay over to the IRS the excise tax on charges for long-distance services that vary by the duration, but not the distance, of the calls. Taxpayers seeking refunds of these taxes must file refund claims within the three-year

statute of limitations. The three-year period is measured from the due date of the excise tax returns, which is 30 days after the end of each calendar quarter. Accordingly, taxpayers who wish to preserve their right to obtain a refund of telecommunications excise taxes paid in the second quarter of 2002 must file refund claims with the IRS by July 31, 2005. Filing a timely refund claim will extend the statute of limitations and give you the option of waiting to see if the IRS decides to

concede the issue and begin processing refund claims or filing a refund suit if the IRS denies the claim.

We Can Help

Hunton & Williams' tax team advises clients on excise tax refund claims procedures. Please contact us if you have any questions regarding the federal communications excise tax and the procedures for preserving your rights by filing refund claims.

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