Greetings and welcome to another eventful year with the YLD’s Tax Law Committee. As a primer, our Committee provides young tax attorneys and new attorneys interested in tax law an opportunity to network and to gain access to a number of educational and professional resources. The Committee aims to keep its members educated about the tax system and informed about development opportunities.

We would like this year to be a year of outreach and collaboration. Even in today’s age of email and conference calls, we still need opportunities to meet each other face-to-face in order to develop relationships to help guide each other through our careers. As such, we want to focus on outreach to you, our members, by holding a variety of events, including live programs and local networking opportunities throughout this bar year.

Additionally, as a tax attorney, you likely recognize the important role taxation has in nearly every practice area. We want to focus on outreach to grow our membership through collaboration with other YLD committees and ABA affiliates. Our Committee provides a variety of educational programs for its members, most importantly access to the teleconferences, quarterly reports, and electronic newsletters that contain not only advanced tax law programs (201 practice series articles), but also nuts and bolts courses (101 practice series articles) that many non-tax lawyers would find beneficial to their practice. Through co-sponsorships with other committees, we can help non-tax attorneys identify tax issues, enhance our profile and
demonstrate value, and provide more lawyers with access to all of the great member benefits we provide.

To achieve these goals we need your support and participation. The Tax Law Committee needs help writing newsletters, articles, program proposals, and resolution proposals! If you are not already involved in our Committee’s activities, or, if you would like to become more involved, please contact either of our co-chairs, Joel Fine or Vlad Frants. There is a place for you, and we want you to be involved!

With that said, we will also be featuring Tax Law Committee members with “Membership Profiles” this year. Please contact us if you would like to be featured in a “Membership Profile.”

YLD Tax Law Committee Website:

http://www.americanbar.org/groups/young_lawyers/committees/tax_law.html

We look forward to working with you in the coming bar year; if you have any questions, please reach out to us. We are happy to answer any ABA questions you may have.

ARTICLES >>

The Student-Loan Interest Deduction: It’s Time for a Change

By: Travis W. Thompson

About the Author: Travis is an associate with William E. Taggart, Jr. APC in Oakland, California. He earned his J.D. and LL.M. in Taxation from Golden Gate University School of Law, and his B.A. in Philosophy from the University of California, Berkeley. Travis is currently enrolled at the Massachusetts Institute of Technology where he is studying the implications Artificial Intelligence has on business strategy and tax compliance.

This article will briefly discuss the history and requirements of the student-loan interest deduction pursuant to 26 U.S.C. § 221 (“Section 221”). Furthermore, the article explores the segment of United States taxpayers that actually take the deduction and why Congress should reform Section 221 to include more student-loan borrowers.

Introduction

Something is afoot in the Nation’s Capital. After failing to repeal the Affordable Care Act, the Republican controlled Senate and House of Representatives have their sights set upon Tax Reform. With it, a slew of tax deductions have been proposed for extinction. The House and Senate versions of the most recent tax bill include eliminating the incredibly stringent student-loan interest deduction made possible by Section 221. There is no better time to talk about the history and requirements of Section 221, those who qualify for the deduction, and why the law is in need of reform.
The History of Section 221

Before the 1997 Taxpayer Relief Act (“TRA”), student loan interest was generally treated as personal interest and, as such, was not allowed as an itemized deduction. The 1997 TRA added Section 221, which allows taxpayers who are legally required to pay interest on qualified education loans to take a federal income tax deduction for their interest payments. For student-loan interest paid on education loans before 2002, the deduction for interest was only allowed on interest payments due and paid during the first 60-month period.

What is Section 221 and Who is Eligible?

A taxpayer is entitled to a Section 221 student-loan interest deduction only if the taxpayer has a legal obligation to make interest payments under the terms of a qualified education loan. No deduction is allowed to an individual if that individual is claimed as a dependent on another taxpayer’s return for the taxable year. In addition, a married taxpayer is allowed to claim the deduction only if the taxpayer and the taxpayer’s spouse file a joint return.

Maximum Deduction and Limitations

The income limitations prescribed by Section 221 make it difficult to take the deduction. Under the current law, taxpayers can take an above-the-line deduction up to $2,500 in interest paid toward qualifying student loans. But the $2,500 deduction begins to phase out for single taxpayers who have a modified adjusted gross income of $65,000, and married-filing jointly taxpayers with a modified adjusted gross income of $130,000. Single taxpayers with a modified adjusted gross income over $80,000, or married-filing jointly taxpayers with a modified adjusted gross income of $160,000 cannot take the deduction at all.

A Need for Reform

At first glance, it is easy to see why the student-loan interest deduction has been optioned for the chopping block – the majority of taxpayers with student loan interest simply do not take the deduction, or do not qualify for the deduction in the first place. In 2015, a little over 12 million borrowers included a student-loan interest deduction on their Form 1040. There are an estimated 44 million borrowers with student-loan debt in the United States alone. That amounts to a little over 3 in 10 taxpayers who have student loan interest and actually take the deduction.

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2 Id.
3 Treas. Regs. §§ 1.221-1(b)(1), -2(b)(1).
4 Treas. Regs. §§ 1.221-1(b)(1), -2(b)(1).
5 26 U.S.C. § 221(c); Treas. Regs. §§ 1.221-1(b)(2), -2(b)(2).
7 26 U.S.C. § 221(b)(1); Treas. Regs. §§ 1.221-1(b)(1),(c),(d)(1)-(3).
8 Id.
9 Id.
While the majority of taxpayers with student-loan interest do not take the deduction, Congress’s insistence on eliminating the interest deduction could not come at a worse time. As of 2017, there is over $1.3 trillion in outstanding student loan debt in the United States. With the majority of millennial college graduates moving to cities and urban areas for work, many exceed the income limitations of Section 221 because the cost of living is their respective cities requires them to earn more money. Those living in high cost of living areas are often prevented from saving, in turn, making it harder to buy their first home. In essence, many college graduates have swapped mortgage debt for student-loan debt.

Conclusion

Instead of eliminating the student-loan interest deduction, Congress should expand upon it to provide for the rise of the college graduates living in metropolitan areas. To help stimulate the economy, and make it easier for college graduates living in cities to save to buy a home, Congress should eliminate the income phase out regulations for Section 221 entirely. Similar to the mortgage interest deduction prescribed in 26 U.S.C. § 163, there should be a deduction allowed for “all” interest paid within the taxable year on student-loan indebtedness, no matter the taxpayer’s income.

Tax Due Diligence in Asset Acquisitions

By: Asel T. Mukeyeva

About the author: Asel is an associate tax attorney at Husch Blackwell, LLP and works in the firm’s Kansas City office. Asel works on a broad range of Federal tax, state and local tax and tax controversy matters.

This article discusses tax considerations in business acquisitions of assets

Businesses are sold and bought all the time. Prior to the actual sale, a buyer and a seller may engage legal counsel to assist with negotiations of the sale terms, drafting of a sale agreement and the closing. As a general rule, legal counsel for the buyer engage in a pre-sale legal due diligence review of the business to assess potential risks of the business and advise the buyer on the structuring of the transaction. One important aspect of the legal due diligence review for the buyer and the seller are tax considerations, which may have an effect on the purchase price and the form of the transaction, which could be structured as a stock sale, an asset sale, or a deemed asset sale. This article will discuss tax due diligence considerations for the buyer in an asset purchase transaction.

As a general rule, the buyer may be more inclined to purchase the company’s assets rather than its stock because by purchasing the company’s assets, the buyer will not be assuming any potential risks associated with the company’s historic operations. In addition, by purchasing the company’s assets, the buyer’s basis in the assets of the company will equal to

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12 Id.
the purchase price paid, which, as a general rule, will be higher than the company’s inside basis (that would apply in the case of a stock purchase). Thus, the buyer may be able to benefit from higher depreciation deductions in an asset purchase transaction.

In the case of an asset purchase, buyer’s tax due diligence considerations will be primarily related to state tax laws related to real property transfer taxes, sales and use taxes and transferee liability as further discussed below.

Real Property Transfer Taxes

If the seller company owns real property or leases real property, which the seller company intends to transfer to the buyer as part of the asset sale, the buyer must consider state real property transfer tax laws and determine whether it would be subject to any transfer tax liability. Some, but not all states, impose a real property transfer tax on the transfer of real property and the recording of a deed or similar document with the state’s register of deeds. In some cases, transfer taxes may be imposed on long-term leases of real property.

Thus, as part of its due diligence review, the buyer must determine all the states where the seller owns real property, including real property leases. The buyer must review the laws of each state with respect to real property transfer taxes: if the state imposes such tax, whether such tax would apply to the buyer’s intended purchase of real property, and the amount of the potential tax liability.

Sales and Use Taxes

As a general rule, state laws impose a sales tax on the sale of tangible personal property at retail. Unless otherwise exempted by specific provisions of state law, a sale of all or substantially all of the assets of a business will be deemed as a sale at retail. Thus, in the case of a business sale, which includes sales of tangible personal property, a seller may be subject to state sales tax.

However, as a general rule, state sales tax laws provide for specific exemptions from sales tax in the case of bulk sales or sales of substantially all of the business assets. In the case of inventory sales, state laws provide for a sale for resale exemption, which usually require that the buyer provide a resale exemption certificate to the seller at the time of sale. In the case of the sale of equipment, furniture and other non-inventory items, state laws provide for an isolated or occasional sale exemption. However, these laws may vary from state to state and these exemptions may not always be available. In addition, some states may provide for different rules with respect to sales of motor vehicles, semi-trailers or trailers.

Successor Liability

In addition, the buyer may be subject to a state successor liability if the seller company did not file sales or use tax returns or if a sales or use tax deficiency arises. In order to avoid this liability, some states allow the potential buyer to request a statement from the state’s department of revenue or a similar authority providing that no tax is due from the seller or the

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15 Although sales tax is usually imposed on the seller, the terms of a sale agreement may provide that the buyer would be responsible and would indemnify the seller of all transfer taxes, including sales and use taxes.
amount of taxes that are due. If a purchaser obtains such statement from the state authority within the required time period, the purchaser will be released from any sales and use tax liability.

Although an asset purchase transactions offers more protection to the buyer with respect to historic risks of the seller business, the buyer may still have a tax exposure with respect to state transfer taxes, as discussed below. Thus, the buyer must consider state laws with respect to real property transfer taxes, sale and use taxes and transferee liability, and include these considerations for purposes of determining and negotiating the purchase price and mitigating its tax exposure.

ABA Young Lawyer’s Division CONFERENCES >>

We hope to see you at one of the upcoming ABA Young Lawyer’s Division meetings:

- ABA Midyear Meeting – February 2 – 4, 2018, Vancouver, British Columbia
- YLD Spring Conference – May 10 – 12, 2018, Louisville, KY
- ABA Annual Meeting – August 2 – 4, 2018, Chicago, IL
- YLD Fall Conference – October 25 – 27, 2018, Charleston, SC

ABA Tax Section CONFERENCES >>

A list of the upcoming ABA Tax Section meetings:

- ABA Institute of Criminal Tax Fraud – December 6-8, 2017 – Las Vegas, NV
- ABA Tax Section - Midyear Meeting – February 8-10, 2018, San Diego, CA

ABA 2017 – 2018 INITIATIVES >>

Home Safe Home

During the 2017-2019 bar years, the ABA YLD is committed to making home a safe place for everyone through its national anti-domestic violence public service project, Home Safe Home.

Growing Lawyers Growing Leaders

Growing Lawyers, Growing Leaders is designed to help young lawyers develop leadership and management skills while mastering the art of developing and nurturing strategic and new business relationships.

Access to Education

The ABA YLD dedicates its resources to underserved and often overlooked communities. To combat the crisis of unequal access to education in these very populations, ABA YLD is investing in education through its 2016-2017 Access to Education public service project.

What Do Lawyers Do?
Web-based tool and live programming for undergraduate students, particularly racial and ethnic minorities, that shares nuts and bolts information on the legal profession, steps to take to prepare for law school, and other ways to navigate your way to becoming an attorney.

Young Lawyer Toolkit

Web-based resource center for young lawyers, regardless of practice area. The Toolkit includes five main categories: Diversity & Inclusion; Law Practice Management; Solo Practitioners; Litigation; and Transactional.

WEBINARS >>

The following webinars are available on the ABA website:

- Could this be the Future of Student Loan Payments?
- Hero or Traitor? The Case of SGT Bowe Bergdahl
- How to Out-Market the Other Lawyers
- How to Pay Down Your Law School Debt...On Your Timeline
- Online Marketing Strategies
- Student Loan Best Practices in the Face of Political Change
- Using Social Media to Brand and Grow Your Practice

TAX DEADLINES >>

- Form W-2 (electronic or mail) – due by January 31, 2018
- Form 1065, Partnership Return – due by March 15, 2018
- Form 1120S – S Corporation Return – due by March 15, 2018
- Form 1040 – Individual Return – due by April 17, 2018
- FinCEN 114 – FBAR Return – due by April 17, 2018
- Form 1041 – Trust/Estate Return – due by April 17, 2018
- Form 1120 – C Corporation Return – due by May 15, 2018
- Form 990 Series – Return of a Tax Exempt Organization – due by May 15, 2018

101 Practice Series Articles
Call for Submissions

The ABA Young Lawyers Division – Taxation Section is currently accepting article submissions for its 101 Practice Series. As stated on the ABA website, the following provides more information on the 101 Practice Series itself and other requirements for submissions:

The 101 Practice Series is an online resource for new lawyers covering basic training in both substantive and practical aspects of law practice. With over 300 quick tips and tools, this series is an essential resource for lawyers in their first three years of practice and is exclusively available to ABA members. The 101 articles are specifically geared toward the new lawyer. This is not a law review, scholarly journal, or magazine. The resource is designed to deliver specific, practical information in an easy-to-read format that maintains a professional presentation. The writing must be clear and concise, using common
words and generally short sentences in short paragraphs to communicate practical information. When feasible, authors should write in the active voice and include tips, lists, bullet points, examples, good quotes, lively writing, and other techniques to facilitate the readers' grasp of information. In general, the practice series follows the Chicago Manual of Style, 15th edition, and Webster's 11th edition. Most articles are fewer than 300 words; the longest features are approximately 600 words. A completed single title author form must accompany all submissions.

Authors may write on any tax-related topic. While there is no set deadline for article submissions, articles will be accepted on a rolling basis. We encourage writers to submit their articles as soon as possible. Please visit the ABA website for the list of current 101 Practice Series articles published in the taxation section.

Lastly, please email your article submissions to Asel Mukeyeva (asel.mukeyeva@huschblackwell.com) or Travis Thompson (tthompson@wtjrlaw.com).