

MARKS PANETH STATE AND LOCAL TAX ADVISOR: HIGHLIGHTING KEY TAX LAW CHANGES

CALIFORNIA: REFUND CLAIMS FOR TAX PAID ON GAIN FROM THE SALE OF START-UP COMPANIES' STOCK

Based on legislation signed into law by California (CA) Governor Gerry Brown on October 4, 2013, investors in "qualified small business stock" (QSBS) of CA. companies will not owe CA income tax on 100% of the gain from the sale of their QSBS interest retroactive to 2008-2012 based on the previously decided case, Cutler v. Franchise Tax Board, that struck down the 50% income tax exclusion on gains from the sale of QSBS of CA companies. The new law reverses the decision in the Cutler case. Note: To qualify as a QSBS company under the new law, the Company must have 80% of its payroll as measured by total dollar value, attributable to employment located within CA.

Action Steps:

- For 2012 CA income tax returns not yet filed: Claim the 50% exclusion (or deferral) on Form 540, Schedule D and report the entire gain from the sale of the QSBS and immediately underneath that line, write "QSBS exclusion" and report the exclusion amount as a negative number. Then report the 50% exclusion on Form 450, Schedule P, Line 10 as an alternative minimum tax preference item.
- For taxpayers who filed their CA income tax returns for years 2008-2012, claimed the 50% exclusion and were assessed tax on the full gain on the sale of their QSBS interest, all pending notices will be withdrawn and closing letters will be mailed.
- For taxpayers who filed their CA income tax returns and did NOT claim the 50% exclusion of the gain on the sale of their QSBS interest, refund claims may be filed under the new law for all years open under the 4 year statute of limitations (SoL) for years 2008-2012 from the date the returns were filed. Under the new law (Rev. and Tax Code Section 18135), taxpayers that filed their 2008 CA income tax returns have until June 30, 2014 to file their refund claims, even though the 4 year SoL has otherwise expired.

Amended Returns (i.e., claims for refund) should state in red across the top of page one, "QSBS CLAIM FOR REFUND". If you need assistance with filing the returns, please contact us.

DOING BUSINESS IN THE CLOUD IS GREAT, EXCEPT FOR TAX TRAPS

New York State, along with other states, is zeroing in on services that haven't been taxed before, and cloud computing is right up there on the list. In this [short video](#), Steven Bryde discusses the complications of taxation on companies using the Internet to do business.

FOR MORE INFORMATION



If you have questions about the information contained in this newsletter or any state or local tax matter, please contact Steven P. Bryde by phone at 212.503.8806 or by email at sbryde@markspaneth.com.

ABOUT STEVEN P. BRYDE

[Marks Paneth Tax Principal Steven P. Bryde, JD](#), is a recognized state and local tax (SALT) specialist with approximately 25 years of public accounting experience. He has worked in both global and regional public accounting firms. His broad background also includes over 7 years of experience working in industry as a tax attorney for a global energy corporation.

Mr. Bryde uses his state and local tax expertise across the 50 states to benefit the firm's clients by developing tax-saving ideas as well as providing counsel on mergers and acquisitions, business-entity choice/formation and tax controversy representation. He also offers guidance on SALT planning for foreign inbound and US outbound clients.

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