



Vantage Points - Spring Edition

Spring is my favorite season in Huntington. So many trees and bushes in bloom. Iris and rhododendron are providing the color right now; coreopsis look like they will be next. Roses will follow. Renewal is upon us -- and a news update is in order!!

Our newsletter may be short on tips for your garden, but has three legal topics well-covered. Wes Agee, with a long and successful practice in business and corporate law, has our lead article focusing on consumer tax breaks for conserving energy. Check out what is available, and note that some of the opportunities are short-lived. Michael Estep, in our labor and employment section, addresses some workplace discrimination issues we're seeing right now. We also showcase Lee Hall, a veteran litigation attorney with a substantial insurance practice, who has authored a note about some very important changes in insurance regulations, which have been in effect since late April.

We have found this newsletter to be an excellent way to provoke thought on some important and current practice issues. Back issues are available on our website. Call or e-mail the author, your law firm contact or me with questions, and also ideas for future articles.

In closing, maybe I do have a gardening tip. Buy some fertilizer – and use it!! Best wishes for a great start to your summer



Warmly,

Barry Taylor
Chief Executive Officer



Consumer Tax Breaks for Conserving Energy

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If you are thinking about making your home more energy efficient or purchasing a hybrid car, you may be eligible for some income tax breaks. However, as discussed below, currently these tax breaks may not help taxpayers subject to the Alternative Minimum Tax (AMT).

In August of 2005, Congress passed and President Bush signed the Energy Tax Incentives Act of 2005. This massive piece of legislation took over four years of negotiations and went through numerous revisions before becoming law. Much of the \$14.5 billion in tax breaks are for the benefit of oil and natural gas companies and electric utilities, but there are tax credits and provisions that will have an impact for small businesses and individual home owners. In this article, we will address briefly only the provisions pertaining to home improvers and hybrid car purchasers.

The consumer tax breaks in this Act are in the form of tax credits. Credits are dollar-for-dollar reductions of your federal income tax and, therefore, are worth more than a deduction. These tax credits are not enough by themselves to justify any home improvement projects, but if you are already planning some upgrades, these “gifts” from the IRS may help you shave money from your tax bill.

I. EFFICIENT HOMES

(A) Energy Efficient Improvements to Existing Homes

This tax credit is up to 10% of the cost of energy-saving home improvements for a “lifetime” maximum of \$500. The credit is limited to improvements completed after December 31, 2005 and before January 1, 2008. Though the amount you can claim for specific improvements is capped, a combination of improvements can be made to reach the \$500 limit. Qualifying improvements and the applicable tax benefit include:

1. Exterior windows, including skylights and storm windows with a credit of 10% of the total cost up to \$200.
2. Insulation, exterior doors or pigmented metal roofs, including seals to limit air infiltration (such as caulk, weather stripping, and foam sealants) as well as storm doors with a credit of 10% of the cost of the product (but not the installation) up to \$500.
3. Central air conditioner, heat pump, or water heater with a credit of up to \$300 towards the full purchase price, including installation costs.
4. Furnace or boiler with a credit of up to \$150 towards the full purchase price, and/or \$50 for an efficient air-circulating fan in a furnace, including installation costs.

To qualify for these tax credits, it will take some “energy” on your part since there are specific guidelines as to what is eligible for the credits. So, before you purchase a new hot water heater, for instance, make sure it is on the eligible list. Qualifying equipment and items generally must satisfy IRS-approved energy-efficiency standards. Windows, doors and insulation must meet specified requirements, however, all ENERGY STAR windows qualify. Metal roofs must have pigmented coatings that meet ENERGY STAR requirements. Heating and cooling equipment must meet stringent efficiency requirements and not even all ENERGY STAR products will qualify. In addition, windows, doors, insulation and roofs must be expected to last at least five (5) years. Manufacturers can certify in packaging or on the company’s website which of the products qualify for the tax credit. Retailers, contractors and manufacturers should be able to assist you in determining what levels of insulation and what other products qualify.

All the improvements must be installed in or on a taxpayer’s principal residence in the United States. In order to obtain these tax credits, you will need to file the appropriate IRS form with your tax returns. In addition, you will need to keep receipts proving that you purchased the improvements and a copy of the manufacturer’s certification (or the ENERGY STAR label for windows). Accountants and tax advisors should also be able to provide more guidance.

The maximum tax credit for any combination of the items above is \$500.

(B) Solar Energy Devices

Solar energy devices are in a different category and the potential tax credit is significantly higher and can be taken in addition to the 10% or \$500 credit mentioned above. Home owners who install:

1. A solar water heater used in a principal or secondary residence that meets certain certification requirements may be eligible for a credit not to exceed \$2,000 for a taxable year; and/or
2. Modular solar panels, commonly known as photovoltaics, PV panels or PV's, that provide either a supplemental or exclusive source of electricity to your principal or secondary residence are also eligible for a credit worth 30% of the cost, up to \$2,000 for a taxable year.

The maximum tax credit is \$2,000 per system or a potential \$4,000. No part of either solar equipment system is eligible to heat hot tubs or swimming pools or run electrical pumps.

3. Taxpayers are also allowed a 30% tax credit for the purchase of qualified fuel cell power plants. The credit may not exceed \$500 for each 0.5 kilowatts of capacity.

II. HYBRID CARS

In addition to tax credits designed to prod us to use less energy at home, there are tax credits for purchasing certain fuel-efficient vehicles, known as hybrids. A hybrid car combines an internal combustion engine with another propulsion system that uses an on-board rechargeable energy source, such as electric batteries. Beginning January 1, 2006, hybrid-car buyers may be eligible for tax credits ranging from \$250 to \$3,400 depending on the fuel economy and the weight of the vehicle. Hybrid vehicles that use less gasoline than the average vehicle of similar weight and that meet an emissions standard qualify for the credit. "Lean-burn" diesel vehicles could also qualify, but currently available diesel vehicles do not meet the emission standard. There is a similar credit for alternative fuel vehicles and for fuel cell vehicles. If individuals and businesses buy more than one vehicle, they are eligible to receive a tax credit for each. If a tax-exempt organization buys a hybrid vehicle, the retailer is also eligible to receive another credit.

The tax credit for hybrid vehicles is available for vehicles placed in service, beginning January 1, 2006, but there is a potential penalty for waiting too long to buy. Each auto maker can sell only 60,000 vehicles that qualify for the credit, so credits on popular models could disappear long before the tax break expires at the end of 2009.

Unless Congress changes the AMT, it is likely that many upper-middle-income home owners and car buyers may be prevented from receiving these tax breaks. A provision in the Tax Code which had the effect of exempting this type of energy savings credit expired at the end of 2005. The AMT was introduced in 1969 as a parallel tax system originally designed to insure the very wealthy did not deduct their way out of paying their share. Too many deductions or credits trigger the AMT for unsuspecting taxpayers. Since the AMT is not indexed for inflation, each year more taxpayers become ensnared in the AMT web as our cost of living increase. Unless Congress acts soon, the AMT threatens to affect 20 million taxpayers this year and 30 million by 2010. A tax-reform panel has recommended eliminating the AMT, but repeal would cost the U.S. Treasury \$1.2 trillion over the next decade. So, hope for some AMT relief to be passed by Congress before the filing deadline for your 2006 return.

To take advantage of the tax breaks and achieve long-term energy savings, you should start prioritizing your home improvement energy projects and hybrid car purchases now. Once a list with related costs is made, consulting a tax advisor is essential to help sort through all the new rules and to structure your purchases for maximum tax benefit.





Employment Discrimination: Reduce the Chances of Facing a Claim, While Building a Defense

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Employment discrimination is not something that only affects large companies with fully staffed human resources departments. On the contrary, it can and does affect small companies as well. Moreover, the effect that a claim of employment discrimination, even one with no merit, has on a small company can be devastating as a result of defense costs and time and effort required to defend the claim. While an employer cannot control whether a current or former employee will bring an employment discrimination claim against it, there are steps that can be taken to reduce the chances of a claim being filed, while also building a defense in the event that a claim is filed.

A. Generally know what the law requires.

It is important that managers and other individuals who will be involved in making decisions regarding employee discipline have a general understanding of anti-discrimination laws [e.g., Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the West Virginia Human Rights Act, etc...]. There are various resources from which this information can be obtained, including various government agency websites, information from human resources organizations, college courses, and seminars. A general understanding of the law is not only important when making an employment decision, but can play a role if a claim is filed when the manager or decision maker is asked during the course of legal proceedings if he or she knows what the law provides.

B. Be consistent in treatment of employees.

All similarly situated employees should be treated consistently. This will typically represent the centerpiece of defending a discrimination claim. However, this does not mean that an employer cannot consider mitigating facts and circumstances [e.g., length of employment, lack of previous disciplinary problems, etc...], but the employer must be able to articulate and explain how those facts and circumstances caused the employee to be treated differently from the employee claiming to be a victim of employment discrimination.

C. Allow employees to raise concerns.

Provide employees with a method by which they can make complaints and/or raise concerns and ensure that each complaint and/or concern is addressed, even if the response is that the issue was considered but no further remedial action is required. Employees who have such an outlet typically feel less compelled to file a claim of employment discrimination.

D. Consider how the action would appear to a judge or jury.

Finally, consider how a judge or jury would view the decision that is being contemplated. While the legal standard for whether or not an individual is the victim of employment discrimination is not whether the employee was treated fairly, this is often the standard that a jury will look to in deciding a case. Thus, before taking an adverse action against an employee, consider whether the average person would feel that the employee was treated fairly.

While taking these steps will not necessarily prevent an employer from facing an employment discrimination claim, these steps tend to make employees feel that they have been treated fairly and also tend to show that the employer took affirmative steps to prevent employment discrimination.





Insurance Regulation Series 14 Update: Unfair Trade Practices

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West Virginia has adopted amendments to the Insurance Regulation Series 14 on Unfair Trade Practices effective April 24, 2006, which govern communications with policy holders and claimants. While many of the previous time frames in Series 14 remain in effect, several changes, including requirements and prohibitions, merit immediate attention.

1. With regard to recordkeeping,

- * Include a date notation on all written communications received by or sent by the insurer;
- * Note in the file or retain a copy of all forms mailed to the claimant;
- * Note the substance and date of any oral communication within the claim file.

(114-14-3)

2. The regulations now contain several new affirmative requirements and prohibitions regarding claims investigation and settlement:

- * Every insurer shall deny a claim in writing or make a written offer within 10 working days of completing its investigation (114-14-6.3)

- * Every insurer shall conduct and prompt, thorough, fair and objective investigation of claims (114-14-6.1);

- * No insurer shall attempt to settle a claim by making an offer that is unreasonably low considering the following:

The evidence submitted by the claimant;

The legal authority;

The advice of its claims adjuster;

Opinions of independent experts,

Probable liability of the insured and likely verdict;

Any other evidence presented to the Insurance Commissioner (114-14-6.4)

3. The new regulation actually increases, albeit slightly, the time period for notifying claimants of a delay in the investigation. If an insurer needs more than 30 calendar days from receipt of the proof or notice of a claim, it shall notify the claimant in writing within 15 days after the 30-day period expires. The insurer shall then send written notification of the delay to the claimant every 45 calendar days until the investigation is complete. Note that settlement of total and partial settlements of property damage claims under automobile policies are governed by shorter time frames under 114-14-7. (114-14-6.7)

4. Insurers are now prohibited from offering any incentive or compensation to its employees based on savings resulting from an improper denial of a claim. (114-14-6.15)

5. An insurer may not deduct a premium payment from settlement money or claim payment owed without insured's consent. (114-14-6.16)

6. Any notice rejecting any element of a claim must contain: (1) the identity and address of the claims processing office of the insurer; (2) the claim number; (3) a notice that the claimant has the option of contacting the Commissioner; (4) the Commissioner's mailing address, telephone number and website address. (114-14-6.17)

7. Within 90 days of the effective date of this rule, every insurer shall adopt and communicate to its claims agents written standards for the prompt investigation and processing of claims. (114-14-8)

For more information regarding these rules, a complete summary of all changes to the regulations or a copy of the new regulations, please call Lee Hall.

