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If you have any questions regarding this bulletin, please contact any member of our Tax and Wealth Planning or Green Businesses practice groups.

In this issue:

Kerry-Boxer Climate Change Bill - Tax Issues and Implications

The Kerry-Boxer climate change bill (the "Senate Bill") that was introduced in the Senate on September 30th contains a number of new programs directed at reducing pollution, decreasing America's foreign energy dependence, and increasing economic activity associated with clean energy production. When evaluating the Senate Bill however, it is important to consider not only its environmental and economic implications, but its tax consequences as well. This is particularly true for those companies most likely to be impacted by the Senate Bill: those which emit more than 25,000 cubic tons of CO2 or certain other identified green house gases, and those which will be involved in the trading of Allowances and Credits.

For example, the IRS has previously addressed certain tax consequences associated with similar programs in the context of the sulfur dioxide ("SOX") emission allowance program established under the Clean Air Act Amendments of 1990. However, there are significant differences between the SOX program and the proposed programs contained in the Senate Bill. Therefore, it is not clear whether the tax consequences for participants in the new programs would be the same as for participants in the SOX program. As a result, there is significant uncertainty with respect to the tax treatment of transactions that would occur under the Senate Bill. Additionally, a thorough understanding of the tax implications of the Bill is important in light of the recent VAT tax abuse arising from the EU carbon trading.

In this issue of the Tax Bulletin, we have set out these and other tax issues raised by the Senate Bill and discussed their possible treatment. If you have any questions regarding the issues that we have raised in this Bulletin, please contact one of the authors listed here. To view previous issues of the Tax Bulletin, please click here.

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