



BDO Seidman, LLP
Accountants and Consultants

Adjusted Notice on the D.C. Case – Protective Refund Claims for D.C. Unincorporated Business Tax

The Tax Practice at **BDO Seidman, LLP** is among the largest tax advisory practices in the United States. With more than 30 offices and 250 independent alliance firm locations in the United States, BDO Seidman, LLP has the bench strength and coverage to serve you.

For assistance or more information, please contact:

Jon Zefi
BDO Seidman, LLP
State and Local Tax Consulting Group
(212) 885-7488

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.

State Tax Alert

Nonresident individuals of the District of Columbia maintaining an unincorporated business within the District of Columbia should file a protective refund claim for open years for D.C. unincorporated business tax paid, as a result of a March 8, 2006 D.C. Superior Court decision (Bender v D.C.).

In this case, the D.C. Superior Court ruled as a matter of law (Summary Judgment) that the unincorporated business tax is an income tax and, therefore, if imposed on a nonresident individual of D.C. is in violation of the D.C. Self-Government and Governmental Reorganization Act of 1973 (Home Rule Act), which prohibits the District from imposing an income tax on nonresidents. The case is being appealed by the Department with the D.C. Court of Appeals, with oral arguments scheduled to begin in June 2006.

In the interim, unincorporated businesses should continue to file D.C. unincorporated franchise tax returns, including returns due for the 2005 tax year and pay this tax on the business' entire net income from D.C. sources. However, the refund claim may be filed with the Department now, although the Department will not act on any claims and will hold them in suspense until the final adjudication of this case. A protective refund claim under the Bender case must be filed in the following format.

Submit a completed D-30, Unincorporated Business Franchise Tax Return, with the words "Bender Claim" clearly displayed across the top of page. The D-30 should be identical to the last one submitted for the period down to Line 35. If adjustments are claimed above Line 35, this needs to be noted in a separate cover letter attached to the D-30. The cover letter and return must then be identified as an amended return. Line 36 needs to be recalculated to eliminate the taxed portion of the income allocated to non-resident individual partners.