

PUBLICATION

October 31 Amendment Deadline for Bank Holding Company Tax Allocation Agreements

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On June 19, 2014, the federal banking agencies issued a final Addendum to their Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure which may require non-S corporation bank holding company organizations to amend their tax allocation agreements by October 31, 2014. Because of some controversial decisions by bankruptcy courts where either bank holding companies have filed bankruptcy or subsidiary banks have failed, the banking regulators have decided that clarification of these tax allocation agreements is needed to confirm that the holding companies are only acting as agents for their subsidiaries with respect to tax refunds. Also, compliance with 23A and 23B (Banking Affiliates Act) directs that language be inserted to assure that refunds are paid promptly to the subsidiaries when received by the holding companies.

Below is a sample paragraph provided in the Addendum which may be added to current tax allocation agreements to assist in compliance:

The [holding company] is an agent for the [IDI and its subsidiaries] (the "Institution") with respect to all matters related to consolidated tax returns and refund claims, and nothing in this agreement shall be construed to alter or modify this agency relationship. If the [holding company] receives a tax refund from a taxing authority, these funds are obtained as agent for the Institution. Any tax refund attributable to income earned, taxes paid, and losses incurred by the Institution is the property of and owned by the Institution, and shall be held in trust by the [holding company] for the benefit of the Institution. The [holding company] shall forward promptly the amounts held in trust to the Institution. Nothing in this agreement is intended to be or should be construed to provide the [holding company] with an ownership interest in a tax refund that is attributable to income earned, taxes paid, and losses incurred by the Institution. The [holding company] hereby agrees that this tax sharing agreement does not give it an ownership interest in a tax refund generated by the tax attributes of the Institution.

The Addendum recommends that all tax allocation agreements be reviewed and amended as necessary by the October 31 deadline. If you have questions about the tax deadline, please contact your Baker Donelson attorney or a member of our Corporate/Mergers and Acquisitions Group.