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**Subject: Decision Regarding Application of Intangible Expense
Add-Back Statute in Ohio**
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To Our Clients and Friends:

A recent decision in Ohio illustrates the difficulty taxpayers face in meeting exceptions to intangible expense add-back statutes. By way of background, more and more states are addressing intercompany pricing issues by statutorily disallowing certain intercompany expenses and excluding certain intercompany income. These "anti-passive investment company" provisions are usually quite detailed and complex, and generally apply to transactions with investment or holding companies, rather than transactions with operating companies.

The typical legislation generally disallows otherwise deductible interest expense and intangible expenses, such as royalties, resulting from certain related-party transactions. The typical legislation also generally contains exceptions whereby taxpayers may overcome intercompany expense disallowance adjustments in certain instances.

In the attached decision, Family Dollar Stores of Ohio, Inc. v. Ohio Tax Commissioner, Ohio Board of Tax Appeals, Docket No. 2005-V-469, January 4, 2008, the Appellate Tax Board applied a strict statutory construction analysis in rejecting the taxpayer's claim that it was entitled to deduct intercompany licensing fees. The Appellate Tax Board ignored the taxpayer's substantive arguments (that an exception to the add-back statute was met), and lacked jurisdiction to address the constitutionality of the add-back statute.

If you have any questions regarding the within, or any other state and local tax matters, please do not hesitate to contact me.

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