



OILHEAT ADVISOR

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A Newsletter for the Oilheat Industry from Gray, Gray & Gray Certified Public Accountants

Does the New Tax Law Have a Present for You?

By Michael D. Koppel, CPA

Could installing a new heating system offer a hefty new tax deduction - for the company doing the installation? The answer may be, "Yes."

The American Jobs Creation Act of 2004 (AJCA) is new tax legislation passed by Congress and signed by President Bush late in 2004. The AJCA was originally intended to replace the extraterritorial income deduction which the World Trade Organization (WTO) had deemed provided an unfair advantage to U.S. exporters. It grew to be much more.

The cornerstone of the AJCA is a new deduction for U.S. production activity. The first thing to remember about this new deduction is that the activities that qualify are very broadly defined. While you might expect that manufacturing would be considered production, the definition of production also includes construction performed in the U.S., along with engineering or architectural services performed for construction in the U.S.

What does all this have to do with the retail fuel oil industry? While there is no definitive answer, it is my opinion that, when a fuel oil dealer installs a new heating system, that activity will qualify as construction and qualify for the deduction. Mere cosmetic changes, such as painting, will not qualify. It would seem to me, based on the limited definitions available, that the installation of a heating system would qualify as construction. (IMPORTANT NOTE: This is my personal opinion, and



does not constitute a tax opinion on which you can rely. The issue of a "production deduction" is still quite new and not fully defined.)

The amount of the available deduction is considerable. The maximum deduction is the lesser of 9% of qualified production activities income or the taxpayer's taxable income. (Qualified production activities income is defined as the taxpayer's domestic production receipts reduced by: (1) cost of goods sold related to those receipts; (2)

other expenses directly related to those receipts; (3) a proper share of other deductions and expense that are not directly allocable to any receipts.) The amount of the deduction is also limited to 50% of the taxpayers gross wages reported on Forms W-2. The 9% is phased in over 5 years as follows: 3% for years beginning in 2005 and 2006; 6% for years beginning in 2007 through 2009; and 9% for years beginning in 2010 and thereafter.

The issues surrounding this "production deduction" are very complicated. This short article only provides a brief overview of the issue. If you provide installation services, I advise you to contact our tax department or your tax advisor to determine how the production deduction may benefit you.

If these definitions are upheld by the IRS, heating contractors may enjoy a generous new "production deduction" beginning in 2005.



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Who Works for You?

Do you employ independent contractors in your fuel oil business? Do you treat your drivers or service technicians as independent contractors? Do you hire seasonal help and pay them as contractors? If so, you may have some explaining to do.

The Internal Revenue Service (IRS) has a list of 20 questions they use to determine the true status of a worker. It is very difficult to "prove" independent status of a worker.

If the IRS conducts an employment audit and finds that some or all of the independent contractors you hire should actually be classified as employees, it could cost you dearly. You may be held responsible for back payroll taxes, workers' compensation payments, unemployment payments and significant penalties.

Massachusetts has recently enacted a statute that makes it even more difficult to establish that a worker should be classified as an independent contractor. Under the wage laws in Massachusetts, all workers are *presumed* to be employees. It is up to the employer to prove that the work was performed by an independent contractor, not an employee.

The new statute indicates that a worker will be deemed to be an independent contractor only if:

- The business does not control or direct the performance of services;
- The services performed by the worker are outside the usual course of business;
- The worker is customarily engaged in an independently established trade or business of the same nature as the services provided.

The lesson here is to make sure your independent contractors are truly independent. Otherwise, you may end up paying the price for employees you did not know you had.

Celebrating 60 Years

2005 marks the sixtieth anniversary of the founding of Gray, Gray & Gray. When Robert Gray opened a small CPA office in downtown Boston shortly after World War II, he could not have known how the firm would grow and expand over the next six decades. Robert was soon joined by brothers Milton and Mervin - and Gray, Gray & Gray's first fuel oil client, Coan Oil.

Sixty years later, Coan Oil is still a client, and Gray, Gray & Gray has become the nation's premier accounting firm for the fuel oil industry. Over the years we have developed such innovative services as our annual oilheat industry survey, FuelTrack™ management analysis program, FuelExchange™ merger & acquisition service, established an industry-wide standard for fuel delivery costs, and served as a strong advocate for the professionalism and growth of the industry.

We have grown from three brothers to more than fifty professionals, and have moved from cramped offices in Boston to our new building in Westwood, MA - which we recently expanded to almost double our office space.

Through it all, we have remained true to our roots. Our client list includes fuel oil dealers of all sizes, and from more than a dozen states. We hope we will soon be able to count you among them.

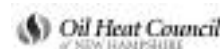
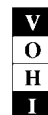
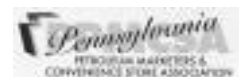
Oil Survey Results

The results of our 13th annual Oilheat Industry Survey have been released. Below are the overall industry results. Complete survey results, including state-by-state breakdowns for many states, are available on Gray, Gray & Gray's web site at: www.gggcpas.com, or by calling John Nardozi at (781) 407-0300.



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