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TAX TREATMENT OF ENVIRONMENTAL TRANSACTIONS

*Sheldon D. Pollack**

This article focuses on the major federal income tax issues related to the costs imposed on U.S. businesses by federal environmental regulation. Manufacturing concerns, real estate developers, and even passive investors in real estate syndications can themselves facing potential liabilities and ultimately, required to expend significant sums to comply with the environmental statutes. This article evaluates the tax implications flowing from the most common and important transactions required or mandated under these laws. The environmental statutes have a substantial impact upon ongoing business operations (e.g., the establishment of emission controls, permitting, the development of waste management requirements, expenditures on new technology to reduce emissions, etc.). This form of regulation imposes substantial compliance cost on businesses. Environmental remediation costs are incurred where there are unpermitted discharges of contaminants into the environment (e.g., hazardous waste cleanups, soil and water remediation, wetlands restoration, etc.). These include cleanup operations required where hazardous materials have been "dumped" illegally — or in certain cases, before the dumping became illegal. Together, expenditures for environmental compliance and remediation are the costs that result from environmental transactions.

For the most common environmental transactions imposed by statute or regulation, this article identifies the relevant tax issues, considers the appropriate tax treatment, and discusses various planning opportunities frequently overlooked. Tax professionals and legal advisers representing businesses in environmental transactions (as well as in litigation arising out of such transactions) must be aware of the various tax issues and the potential impact on their clients. Rather than an after-thought, tax issues should be a driving factor from the very first stage of the environmental transaction—just as it is for any other complex, expensive business transaction.

*Associate Professor, University of Delaware; University of Rochester, B.A., 1974; Cornell University, Ph.D., 1980; University of Pennsylvania Law School, J.D., 1986. The author is particularly grateful to Professor Timothy F. Malloy of the UCLA School of Law, for his significant contributions to this article. Professor Richard W. Harris of Grand Valley State University and Andrew Dubroff of Ernst & Young, LLP, provided many useful comments on an earlier draft of this article. The Pennsylvania law firm of Manko, Gold & Katcher provided generous support for this project.