



Venable LLP, an *AmLaw* 100 firm, is headquartered in Washington, DC and has offices across the country.

Our nearly 600 attorneys practice in all areas of corporate and business law, complex litigation, intellectual property, and regulatory and government affairs. To learn more about Venable's capabilities, please see our complete list of [services](#).

Venable attorneys produce periodic alerts and newsletters covering a variety of topics and practice areas. For your convenience, we have assembled below a collection of the latest alerts and newsletters from May 2011. To view the full text of an article, please click on the title of the piece.

[California DFI: CA Money Transmission Act Does Not Apply to Credit Counseling Agencies](#)

A new California Department of Financial Institutions ("CA DFI") Staff Opinion Letter makes clear that nonprofit credit counseling agencies ("CCAs") that offer and provide debt management plans ("DMPs") to California consumers are not considered to be engaged in "money transmission" and therefore are not required to be licensed under the recently enacted California Money Transmission Act ("CA MTA").

[Capitol View - May 2011](#)

In this issue:

- [FY2012 Budget Plans](#)
- [Federal Appropriations Earmarks: Have We Moved From Feast to Famine?](#)
- [Bumpy Road Ahead for Immigration Reform](#)
- [Bart Stupak, Former Congressman and Chair of House Energy and Commerce Subcommittee, Joins Venable](#)

[Container Liner Shipping Sector "Dawn Raided" in EU](#)

The European Commission, which has responsibility for enforcing the EU's antitrust rules, announced that it has raided the offices of a number of companies active in the container liner shipping sector. Raids of this kind are carried out when the Commission has reason to believe that companies have violated the EU's antitrust rules prohibiting cartels or other restrictive agreements and abuse of a dominant market position. History tells us that investigations of this kind often lead to further proceedings and investigations from other jurisdictions. Companies that are active in the liner sector or related sectors, whether in the EU or elsewhere, may wish to take the opportunity to promptly undertake a review of their businesses to determine whether this investigation gives rise to new business risks or otherwise alters their risk profile.

[The End of Wage-and-Hour Class Actions](#)

In a decisive victory for employers, the United States Supreme Court held that, under the Federal Arbitration Act, an arbitration agreement can prohibit an individual from commencing or participating in a class action. The California Supreme Court had established a rule that an employment arbitration agreement was not enforceable if it waived an individual's right to file a class action. The U.S. Supreme Court, in a 5-4 decision, held that state laws cannot interfere with an arbitration agreement's elimination of the class action mechanism to resolve disputes. Employers can use this ruling to essentially eliminate one of the biggest litigation threats facing their business – the wage-and-hour class action.

IRS Denies 501(c)(3) Status to Bankruptcy Counseling Agency

On April 29, 2011, the Internal Revenue Service (“IRS”) issued Private Letter Ruling (“PLR”) 201117036 denying a nonprofit credit counseling agency (“CCA”) tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (“Code”) because its primary activity would have been the provision of pre-bankruptcy certification and post-bankruptcy counseling for fees.

Although not the first piece of guidance to address the tax-exempt status of credit counseling agencies, this private letter ruling – addressing the particular facts of one organization – provides insight into the IRS’s approach regarding bankruptcy counseling and debtor education providers, and could have a significant impact on a large number of credit counseling agencies. The impact may be more far-reaching than merely bankruptcy counseling and debtor education, and may result in a rethinking of counseling methodology and business relationships for debtor education – as well as sources of funding across the industry.

SBA Final Rule Addresses Impact of Protest Decisions and Revises Small Business Recertification Requirement

Under a Final Rule that became effective March 4, 2011, the Small Business Administration (SBA) has established uniform standards across all small business programs that address how initial and appeal decisions in set-aside eligibility protests will impact the procurement at issue. This Final Rule also removes a requirement for small businesses to recertify their size status where a federal procurement solicitation is substantially modified such that initial offers are no longer responsive and revised proposals must be submitted.

For government contractors, these changes increase the likelihood that filing and prosecuting a meritorious size protest will result in meaningful relief and decrease the risk that a contractor will lose an opportunity to compete in a protracted procurement where the solicitation has been substantially re-written.

U.S. Supreme Court Upholds Class-Action Waivers: What It Means for Consumer Product and Service Providers

In a profoundly significant decision with far-reaching implications, the U.S. Supreme Court on April 27, 2011, overturned an appellate court decision that held that an arbitration clause in a consumer agreement containing a class-action waiver was unconscionable, and therefore unenforceable, as a matter of law. Organizations can use this ruling to help eliminate the threat of consumer class actions by using carefully drafted contract language.

We would also like to highlight upcoming Venable events that you may be interested in attending. Please click on the event title for additional information.

Ensuring Compliance with Small Business Set-Aside Requirements: Lessons for Small and Large Businesses

Tuesday, June 7, 2011

7:30 a.m. - 9:30 a.m. EDT

Recent Small Business Administration (SBA) legislation has increased the regulation and the resulting penalties for companies not in compliance with the small business programs. The unexpected suspension of GTSI Corp. last fall and the extensive corrective action required to lift the suspension serves amongst a number of examples of SBA non-compliance situations that caught the attention of many government contractors and indicated that the SBA would begin scrutinizing and enforcing its regulations in a manner

not previously seen.

Government contractors have a number of simple steps which they can take to protect themselves and ensure their compliance with SBA regulations. Venable attorneys and SC&H consultants who routinely deal with small business teaming agreements and the SBA regulations will provide their unique insight on how government contractors can protect themselves.

Sheraton Baltimore Washington Airport Hotel - BWI

1100 Old Elkridge Landing Road
Linthicum Heights, MD 21090

Registration and more information is available on the [SC&H website](#).

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How Investment Advisers and Financial Services Professionals Are Being Impacted by (and Can Take Advantage of) What is Happening in Washington, DC

Wednesday, June 8, 2011

6:00 p.m. - 8:00 p.m. PDT

Please join us for a cocktail reception and informative panel discussion on how investment advisers are being impacted by, and can also take advantage of, what is happening in Washington, DC.

Topics include: implementation and oversight of the Dodd-Frank Act, how the federal budget debate may affect certain key sectors of the economy, and an assessment of the political landscape in Washington, DC and its impact on California-based companies.

The program will be presented by members of Venable's [Legislative Practice Group](#), headquartered in Washington, DC.

Venable's Los Angeles office

2049 Century Park East
Suite 2100
Los Angeles, CA 90067

Please RSVP by June 2 to Vanessa Yaptangco at VYaptangco@Venable.com or 310.229.0322.

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Sponsorships, Advertising, Endorsements and Cause Marketing: Understanding Critical UBIT Issues for Nonprofits

Thursday, June 16, 2011

Schedule:

12:00 - 2:00 p.m. EDT

12:00 p.m. - Lunch and Networking

12:30 p.m. - Program and Webinar

This program will focus on some of the most confusing yet important unrelated business income tax (UBIT) issues confronting nonprofit organizations: corporate sponsorships, advertising, licensing arrangements, endorsements and royalties, and cause-related marketing. There are critical distinctions in this area that are important to understand, and there are a host of valuable planning techniques of which every nonprofit (and their advisers) should be aware. The panel of experienced legal, tax and accounting professionals will focus on current IRS enforcement patterns in this area, proactive practical tips and suggestions, what to do if the IRS comes knocking, expense allocation strategies, and other key audit and accounting issues.

Venable's DC Office
575 7th Street, NW
Washington, DC 20004

RSVP by June 9 to asample@Venable.com. Please indicate whether you will attend the luncheon or participate via webinar.

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