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Enriquez, Visco: Tax deduction benefits BP in blast settlement

Taxpayers should not be stuck with bill for companies' misdeeds

By Francisco Enriquez and Thomas Visco | November 20, 2013 | Updated: November 20, 2013 7:13pm

On March 23, 2005, a geyser of hydrocarbons erupted from a tower at the antiquated BP refinery in Texas City and ignited, triggering a series of explosions that rocked eastern Texas.

The blasts killed 15 workers and injured more than 170 others in the process.

In the aftermath of the explosion, investigators found "risk denial and risk blindness" that contributed to the explosion, and discovered the facility had also been leaking cancer-causing chemicals.

In the settlement BP signed with Texas Attorney General Greg Abbott for the release of hazardous chemicals during the explosion, the company paid $50 million.

Yet, the settlement was missing one critical clause: a sentence specifically forbidding BP from deducting the settlement payment from its taxes.

It might seem like an absurd notion BP could reap a tax deduction for the deadly 2005 explosion, yet it wouldn't be the first time a company received a tax deduction for such misdeeds.

Many companies deduct the cost of settlement payments for misdeeds like the Texas City disaster as an ordinary business expense.

But the intervention of enforcement agencies such as the attorney general's office could put a stop to this practice for good.

Wall Street companies have been able to collect billions in tax benefits for payments to settle charges of mortgage-lending abuse, money laundering for drug traffickers and other misdeeds.

If the companies had simply been fined for their disasters, they would not have been able to take these massive tax windfalls.

Likewise, when normal citizens pay parking tickets or late fees at the library, we can't deduct them from our taxes, even if we negotiate over the fine.

But when corporations negotiate to resolve charges for misdeeds, they can take advantage of a special loophole.

Federal law forbids companies from deducting public fines and penalties from their taxes, but if their lawyers negotiate payments through a legal settlement, then they can typically deduct the payments as a necessary and ordinary business expense unless enforcement agencies specifically forbid the deduction.

As Forbes tax expert Robert Wood points out, "The tax deduction for business expenses is broad enough to include most settlements and judgments."

The bottom line is this: If settlement agreements are silent on taxes, companies can likely claim a tax deduction for their settlements.

Every dollar of these write-offs must be paid for by taxpayers through program cuts, higher taxes or even higher federal debt.

Taxpayer dollars shouldn't be wasted to cover the cost of handouts for alleged violations of the law.

Texas agencies and Abbott shouldn't pass this price on to the average Texan. Preventing write-offs for wrongdoing has been done.

The U.S. Securities and Exchange Commission announced in 2003 that it would spell out the tax deductibility of all the fines and penalties it requires under settlement agreements.

The agency did so in its recent settlement with JPMorgan Chase & Co. over trading fraud.

Thankfully, bipartisan legislation addressing this issue has been co-sponsored in the U.S. Senate by Jack Reed, D-R.I., Charles E. Grassley, R-Iowa, John McCain, R-Ariz. and Elizabeth Warren, D-Mass. Similar legislation has been introduced in the U.S. House.

Texas Sens. John Cornyn and Ted Cruz should throw their weight behind the proposed legislation and bring to Washington the fight to protect Texans' tax dollars.

But we can't just wait for Washington to solve our problems. Texas can start to solve this problem today.

In August, Abbott also signed a settlement deal with Gulf Chemical & Metallurgical Corp. for $7.5 million for spewing dangerous chemicals, including arsenic, into the water and air.

Because there was no mention of the tax deductibility in the settlement, taxpayers could end up losing millions subsidizing the company's alleged violations of the Water Quality Control Act of Texas and the Clean Air Act.

Abbott has the potential to be a national leader in protecting taxpayers.

By instituting a policy to make future settlements nondeductible by default, the attorney general could save hard-working Texans millions of dollars.

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