


New Yorkers Subject to Double Tax on Gambling Winnings

For New York residents who gamble outside New York State and are lucky enough to win, they are unlucky when it comes to the New York State Department of Taxation and Finance.

That agency has ruled that a New York State resident taxpayer, who won a slot machine jackpot in Atlantic City, and paid a New Jersey non-resident income tax on the winnings, was not entitled to a credit against his New York State tax liability.

Usually, when a resident of New York State pays tax to another state on earnings derived from sources within such other state (which also are taxable in New York State), he/she is allowed a credit (Resident Credit) against his/her New York tax for all or a portion of the taxes paid to that other state.


In what will be an unpopular decision for New York residents gambling in New Jersey and Connecticut, New York State has held that gambling winnings are not considered to be "income derived from sources within another state" (unless the taxpayer is a professional gambler) and, therefore, the taxpayer is not entitled to a credit against his/her New York tax for the New Jersey non-resident tax paid.

Connecticut recently enacted a statute which subjects gambling winnings to its tax if the winnings are required by the Internal Revenue Service to be reported by the casino or other payer. 

IRS Auctions and Sales

Effective immediately, real and personal property that has been seized or acquired for nonpayment of federal taxes, and will be sold at auction, can be found on the U.S. Treasury website – www.ustreas.gov/auctions/irs.

The site provides details on upcoming auctions and the specific property to be sold.

Auction items include jewelry, homes, automobiles, and boats. The IRS no longer mails notices of future sales. 

Notable and Quotable

Audit Partner **Howard Weiner** addressed the more than 90 participants from 22 countries at the 2002 conference of DFK International, the worldwide association of independent accounting firms and business advisers, held in Vancouver, Canada. Howard spoke on "Life After Enron" and the implications of the current accounting scandals on the worldwide accounting profession, investors and credit grantors.

Tax Partner **Alan E. Weiner**, a member of the DFK International Executive Committee, also participated in the conference, his 19th consecutive annual meeting.

As part of the intense media coverage surrounding the Enron scandal, *Bowman's Accounting Report* asked Managing Partners around the country to share their thoughts on the profession's rapidly changing management issues. Holtz Rubenstein Managing Partner **Frank Candia** opined that the best case scenario would be "(t)hat Enron becomes a wake-up call to the profession...The end result will be better quality engagements with clients, third parties, and the profession benefiting."

Tax Partner **Arnold Haskell** has become a well-known tax lecturer, most recently educating fellow CPAs

(continued on page 6)

This Issue

- ⇒ New Yorkers Subject to Double Tax on Gambling Winnings
- ⇒ IRS Auctions and Sales
- ⇒ New Jersey Enacts Business Tax Reform Act
- ⇒ CyberNotes – Start Your Day with a :-)
- ⇒ Connecticut Institutes Tax Amnesty Program
- ⇒ Beware! On the Lookout for Scams and Cheaters
- ⇒ Certain Home Sellers Eligible for Reduced Capital Gain
- ⇒ *The Adviser Corner: Sarbanes-Oxley Act: What Does it Mean to Me?*
- ⇒ New York State Sales Tax Exemption for Manufacturers
- ⇒ Senior Citizen (Age 50+) Alert
- ⇒ Beneficiary Designation Form for Retirement Plans
- ⇒ Capital Loss Tax Planning - 2002
- ⇒ Split-Dollar Insurance in a State of Flux
- ⇒ Priority Mail vs. First Class
- ⇒ DFK Firm Spotlight

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New Jersey Enacts Business Tax Reform Act

This summer, New Jersey's governor signed into law a \$1.8 billion business tax package known as the Business Tax Reform Act. The Business Tax Reform Act is effective for taxable years beginning on or after January 1, 2002. Here is summary of key changes brought upon by the Business Tax Reform Act:

Corporate

- Corporations now are subject to an "alternative minimum assessment" (AMA). Corporations must pay the greater of their normally computed Corporation Business Tax (CBT) liability or their AMA. The AMA is computed using either allocated (New Jersey) gross receipts or allocated (New Jersey) gross profits, based on an ascending scale. Businesses with less than \$2 million in gross receipts or \$1 million in gross profits are excluded from the AMA. The AMA is not imposed upon S Corporations, investment companies, professional corporations, or entities that are cooperatives for federal tax purposes. Corporations will receive a credit carryforward, which may be carried forward to be offset against CBT in a

future year when their CBT liability exceeds their AMA liability, to the extent that the AMA exceeds their CBT liability.

- The corporate minimum tax, which was \$210 in 2001, increases to \$500 beginning with the 2002 calendar year. The minimum tax for corporations that are members of affiliated or controlled groups with total payrolls of \$5 million or more is \$2,000.

- No deductions for net operating loss (NOL) carryforwards are allowed for tax periods beginning in calendar years 2002 and 2003. However, the usual seven-year carryforward is extended by two years for all disallowed NOL carryovers.

- The phaseout of tax on S corporations is frozen at the rate of 1.33% for privilege periods ending on or after July 1, 2001, but on or before June 30, 2006. The rate will drop to 0.67% for privilege periods ending on or after July 1, 2006, but on or before June 30, 2007, and will decrease to 0% for privilege periods ending on or after July 1, 2007. Formerly, the rate was to reach 0% for privilege periods ending on or after July 1, 2003.

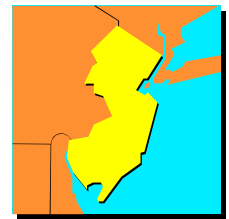
- The tax rate for corporations with

less than \$50,000 of net taxable income is reduced from 7.5% to 6.5%.

- A "throwout rule" has been established to calculate a corporation's New Jersey sales allocation factor. Sales made to states (other than New Jersey) in which the taxpayer is not subject to tax on income, business presence or business activity, do not enter into either the New Jersey numerator or denominator ("everywhere sales") of the receipt fraction. As a result of this change, more of the corporation's income will be subject to the corporate income tax. This provision does not extend to non-CBT taxpayers (i.e. Partnerships, LLCs, etc.). Keep in mind that New Jersey still requires a corporation to have a regular place of business outside New Jersey in order to apportion its income.

Partnership/Limited Liability Company

- Each domestic and foreign partnership including limited liability companies (LLCs) and professional corporations with more than two owners



must pay a fee of \$150 per partner/member/professional at the time it files its New Jersey tax return, up to a maximum of \$250,000. Also, the entity must make an additional installment payment of 50% of that year's fee, toward the following year's filing fee.

- Each partnership and limited liability company also must make a payment on the share of the income of each nonresident partner (corporate, trust, partnership, individual, or estate) at a 9% rate for corporate partners and a 6.37% rate for noncorporate partners. The payment is credited to separate accounts for each partner and may be credited against their respective tax liabilities.

Estate Tax

- New Jersey has elected to decouple the state estate tax from the federal estate tax and maintain the \$675,000 estate tax exclusion, effective for resident decedents who pass (or passed) away after December 31, 2001. The federal Economic Growth and Tax Relief

CyberNotes: Start Your Day with a :-)

Anyone who travels the Internet or uses e-mail knows that it's full of its own lingo. In fact, the "language" has grown so much that you even may have needed a web dictionary to translate what someone has sent to you, to determine whether you've been complimented or insulted!

Well, just like websites that provide foreign language translations, visit netlingo.com, an online dictionary of the Internet, to see what your children, parents, or friends may have said to you.

Not only can netlingo.com explain the difference between terms like "alt tag", "alt text", and "alt-tab", it also gives a list of smileys you can use in your own e-mail messages. A smiley (a.k.a. emoticon) is a sequence of characters on your computer keyboard whose resulting image you see by tilting your head to the left.


For example, you probably know the following lingo – :-) [happy]; :-([sad]. Netlingo.com can expand your vocabulary with such "phrases" as:

(:-D	Blabber Mouth	:-*	Kiss
C=:-)	Chef	=8-0	Yikes!
};-X	Cat	:-.)	Cindy Crawford
:3-]	Dog	@@@@:-)	Marge Simpson

Use Netlingo.com to help you compose an appropriate response, so you won't be :-e 

Reconciliation Act of 2001 phases out the federal estate tax over 10 years and raises the exclusion to \$1 million for estates of those who pass away in 2002 and 2003.

Miscellaneous Changes

- New Jersey has disallowed the deduction of the 30% “bonus” depreciation that was allowed for certain property for federal tax purposes under the federal “Job Creation and Worker Assistance Act of 2002.” The new law returns the New Jersey depreciation rules to New Jersey law as it stood before the enactment of the federal law. This provision is effective for taxable years beginning after 2001. 


Connecticut Institutes Tax Amnesty Program

Connecticut has established a tax amnesty program for the period September 1, 2002 through November 30, 2002. The program allows both business and non-business taxpayers to apply for amnesty in connection with unreported or underreported tax liabilities (either returns not filed or returns filed but taxes underreported), or unpaid tax liabilities (returns filed but taxes unpaid).

Amnesty applies to any taxable periods ending on or before March 31, 2002. A taxpayer who qualifies for amnesty is not subject to civil penalties or criminal prosecution, and any interest owed is set at a fixed rate.

Amnesty will not be granted to any taxpayer who:

- (1) has received notice from the Department that an audit examination is being conducted for the same taxable period that amnesty is being sought, or
- (2) is a party to any criminal investigation or to any civil or criminal litigation.

Note: New York has not yet issued any updated information regarding the effective date of its tax amnesty program. 




BEWARE!

ON THE LOOKOUT FOR SCAMS AND CHEATERS

New Financial Scam Surfaces

A new scam using fake bank correspondences and IRS forms is tricking taxpayers into disclosing personal and bank information.


Individuals receive a letter from their bank stating that the bank is in the process of updating its records to exempt them from reporting interest or having tax withheld on interest paid accounts. Interest income must be reported on the taxpayer's tax return and banks are legally required to report the interest to the IRS. The letter is accompanied by a phony IRS form that requests detailed financial data, such as account numbers and passwords. The taxpayer is instructed to fax the completed form to a specific phone number within seven days or they will lose the reporting and withholding exemption. The forms are used to gain access to the taxpayer's finances.

This scam has been reported in New York, Maine, Georgia, North Carolina, Texas, California, and Washington. To report a phony letter call the Treasury Inspector General for Tax Administration (TIGTA) at (800) 366-4484 or write the TIGTA at P.O. Box 589, Ben Franklin Station, Washington, DC 20044-0589. 

States Are Digging Deep For Cheats

Due to declining revenues, states are beginning to use powerful computer systems to find individual and corporate taxpayers who haven't paid their fair share of taxes.

These data mining systems can store, analyze, and cross-match immense databases to find delinquent taxpayers. It only takes a few minutes for state revenue departments to compare their tax collection records with millions of records from a wide variety of sources to identify people and businesses who might not be paying enough taxes. The Washington State Legislature has stated that it would rather see all taxpayers pay their fair share before raising taxes.


As of now only Texas, Iowa, and Virginia have implemented these data mining systems, but other states are expected to follow soon. In the last two years Texas already has recovered \$158 million. Vendors of these systems are now offering to take a cut of the additional revenues generated by the technology, enabling more states to put these systems into action. 

Certain Home Sellers Eligible for Reduced Capital Gain

Taxpayers who sold their principal residence for a gain are allowed to exclude up to \$250,000 (\$500,000 if married filing jointly) of the capital gain if they lived in the home for two out of the last five years. Under certain circumstances some of the exclusions may be prorated if the sale occurred before the two-year period was met, for reason of health, change of employment, or “unforeseen circumstances.”

The IRS recently has issued a notice stating that forthcoming regulations will consider the death of a taxpayer's

spouse, man-made disasters, and acts of war as unforeseen circumstances. Taxpayers affected by the September 11, 2001 terrorist attacks may qualify under the “unforeseen circumstance” provision.

The maximum exclusion amount is reduced to the proportion of the two-year period that the taxpayer fulfilled the statutory requirement. Thus, an affected taxpayer who owned and occupied a residence for one year, and who did not exclude gain on the sale of another home during that period, will be able to exclude half of the regular amount (\$125,000 of gain for singles, \$250,000 for joint filers). 

**SARBANES-OXLEY ACT:
What Does it Mean to Me?**

By – Howard Weiner, CPA,
Thomas Caner, CPA

The answer to the title question is:
It depends.

If you are an owner of a privately-held company, the answer is – not much, at least today. But if you are an executive, director, or employee of a publicly traded company, the answer should be – a lot, since corporate operations and responsibilities, as well as relationships with auditors, counsel, and security analysts will change significantly.



Howard Weiner, CPA

On July 30, 2002, reacting to Enron, WorldCom, and the other accounting scandals that have been in the news, President Bush signed the Sarbanes-Oxley Act (the “Act”). As enacted, the Act applies **only** to companies with publicly traded securities, though it remains to be seen if individual states adopt any of its provisions for non-public companies. Federal agencies also are reviewing the Act’s provisions, and we may see changes for not-for-profit entities receiving federal funds.



Thomas Caner, CPA

While the Act has been written in “plain English,” some of the provisions are general directives mandating that the SEC establishes the specific rules and guidelines. These directives have various deadlines and should be issued over the next few months.

Audit Committees

The Act greatly enhances the power and authority of public companies’ audit committees, comprised of a selected independent group of directors. Auditors will now report to the audit committee instead of management. The independent audit committees will have the authority to hire and fire the auditors, as well as setting the audit fee. The committee also has the responsibility of pre-approving all

non-audit services that the auditor may provide. Audit committees also will have to set up a system to monitor complaints about accounting problems and protecting whistleblowers.

Audit Services

The Act prohibits the auditing firm from performing certain services for the public company. These include bookkeeping, internal audit outsourcing services, and other management functions. Many of these rules are not new, as SEC rules have long prohibited bookkeeping and other management-type services. Accounting firms cannot perform the audit of a company if one of the company’s executives or key financial personnel was employed by the firm within the past year.

Accounting Oversight Board

A new body, known as the Public Company Accounting Oversight Board (the “Board”), has been established to oversee the accounting profession. The Board, comprised of five members (only two of whom can be accountants), will have the power and responsibility to register and inspect accounting firms, conduct investigations, and establish auditing, quality control, and other standards it deems necessary.

Not all of these rules are new. For instance, in connection with our membership in the SEC Practice Section of the American Institute of CPAs, Holtz Rubenstein has submitted to a rigorous peer review inspection every three years. The Section was established in 1977, and Holtz Rubenstein was the first Long Island based firm to have a peer review, each time receiving an unqualified opinion, the highest level possible.

Corporate Governance

As seen recently in the news, CEOs and CFOs will have to certify as to the accuracy of their company’s financial statements. This will include an annual assessment of the effectiveness of their company’s internal controls. Further, the Act makes it illegal to lie to the auditors.

Effective July 30, 2002, public companies are now prohibited from making any loans to directors and executive officers. Further, executives will be required to forfeit bonuses based on

financial statements that are subsequently restated for accounting errors.

Expanded Corporate Disclosure

Corporate insiders who buy or sell stock will now have to report such transactions to the SEC within two business days, and companies will have to post these reports on their websites. Further, public companies also will be required to disclose material events on a “real-time” basis. Off-balance sheet transactions, wherein obligations and liabilities are kept off a company’s balance sheet through the use of unconsolidated affiliates (this was at the heart of Enron’s troubles), will have to be fully disclosed. The Act makes it a federal offense to destroy records to impede or obstruct a government investigation, with fines and/or imprisonment of up to 20 years.


Foreign Companies

The provisions of the Act extend to foreign companies whose securities are registered with the SEC. Foreign accounting firms also are subject to the same rules as their U.S. counterparts if they substantially participate in the audit of financial statements of companies whose stock is traded in the U.S.

Special Studies

In addition to setting new rules, the Act also requires various federal agencies to study certain issues and report back to Congress for follow up. These include mandatory rotation of auditing firms and the use and disclosures of special purpose entities (another Enron issue). The SEC also will consider the adoption of a principles-based accounting system, wherein a general theory is applied to a set of facts and circumstances, as compared to our current rules-based accounting system. A broad change in accounting systems could affect everyone, even privately-held companies.

There are many questions as to how provisions of the Act will be interpreted. Again, the SEC will be issuing guidance on implementing certain provisions. This will be an ongoing process and we will be monitoring it to update you.

If you have any questions, contact Audit Partner Howard Weiner at HWeiner@hrcpa.com or Audit Manager Tom Caner at TCaner@hrcpa.com, or call them at 631-752-7400. 


New York State Sales Tax Exemption for Manufacturers

A recent advisory opinion held that a manufacturer's use of fork lifts and other equipment to unload raw materials at its plant was exempt from New York State sales tax as production equipment, provided the equipment was used predominantly (more than 50% of use) to unload raw materials or to move materials to storage or other areas of the production process.

The acts of visually checking and verifying package contents did not rise to the level of handling to make the unloading of raw materials an administrative activity. Therefore, the use of the equipment in unloading the raw materials was deemed to be used directly in production and was exempt.


Additionally, steel racking used to store the raw materials after being unloaded was exempt from sales tax as production equipment if such racking was used predominantly to store raw materials or materials that were in the production process.

Since production began with the unloading of the raw materials, racking used to store it subsequent to unloading was deemed to be used directly in production and exempt.

Manufacturers should furnish a properly completed Exempt Use Certificate, Form ST-121, to the supplier within 90 days of the sale in order to purchase the fork lifts, racking, and other equipment exempt from tax. 

Senior Citizen (Age 50 +) Alert

AARP (formerly known as the American Association of Retired Persons) costs very little (\$12.50 for one year or \$29.50 for three years) and provides some great benefits.

The AARP hotel discounts are often better than those of other membership organizations, and there's an intriguing discount for AOL users of the \$23.90 monthly fee plan. AARP members can get it for \$21.51 per month. In essence, in just about one year, you can make back your three-year AARP membership fee. Go to www.aarp.org/aol for details. 


Beneficiary Designation Form for Retirement Plans

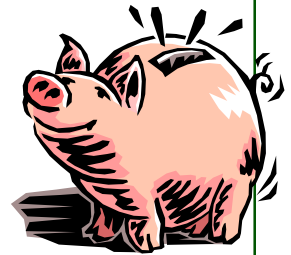
Who is going to receive the funds in your retirement plans once you die? Are your parents, children, grandchildren or other family members going to receive your retirement assets? Many people rely on the information located in the will to allocate the assets. However, this is incorrect.

The key is to fill out the proper beneficiary designation form to properly pass on your non-probate assets (i.e. 401(k)s, Individual Retirement Accounts, pension/profit-sharing plans, and insurance policies) to your family members. If the beneficiary designation form is not filled out properly, your children and loved ones may not be able to receive the funds from any of your retirement accounts.

The beneficiary designation form is among the papers that you received after you opened your Individual Retirement Account ("IRA"), Keogh, 401(k), or employer-sponsored pension or profit-sharing plan. The purpose of the form is for you to name someone to receive your retirement plan assets when you die.

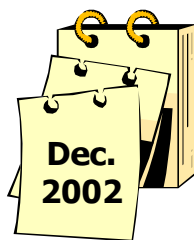
Retirement assets are a significant source of income; therefore, people should learn the best ways to pass on the funds when they die. The beneficiary designation form overrides your will when it comes to passing along non-probate assets, such as 401(k)s, IRAs and insurance policies. By incorrectly completing the beneficiary designation form, or not completing it at all, your retirement funds may go to your estate and subsequently be distributed to the heirs, instead of those you may truly wish to receive those assets.

Take steps now to properly manage your accounts. 




Capital Loss Tax Planning – 2002

Too many people wait until December before deciding to trigger a loss on the sale of a security. In part, this is because that's when all of the publicity about year end tax planning hits the newspapers; however, many taxpayers feel "married" to their securities – that is, they believe that the price of a stock that they own will rise from the ashes to once again regain the lofty price it held a while back.



The tax law prevents you from claiming a loss on a stock sold 30 days before or after the purchase of the same security. But if you want to be sure that you continue to hold your current stock position (that is, the same number of shares) so as not to miss out when the

stock climbs dramatically, determine how much of a loss you want to trigger for 2002 and purchase the appropriate number of shares now (at the current depressed price) so that come December (or November) you can sell the old shares (which have a high tax basis) and trigger the desired loss for 2002.

Of course, consideration should be given to how much you need to spend to use this technique, but with some of the high flyers now trading for pennies, it shouldn't take much of an economic outlay. Also, if you bought the stock at different times, you need to give special instructions to the broker if you are intending the sale to be against a particular purchase (generally the lot purchased at the highest cost). This commonly is referred to as a "versus purchase" transaction. 

Split-Dollar Insurance in a State of Flux

A popular executive compensation technique (also used for estate planning), commonly referred to as “split-dollar” insurance, has received plenty of publicity in business journals over the past two years. Actions by the IRS and, now, Congress have created a climate of uncertainty for the future use of these policies.

Insurance policies can be purchased in a myriad of forms. Basically speaking, a split-dollar policy is a whole life insurance policy (that’s a policy which has a cash surrender value feature) wherein the cash value of the policy is owned by one party (for example, an employer in the case of an executive compensation package or a family member in the situation where estate planning is involved) and the beneficiary of the risk portion of the policy is a different party (for example, the executive’s family or, where used for estate planning, a trust).

This Holtz Rubenstein alert is provided to caution businesses and those individuals planning their family’s needs to review any split-dollar purchases (no matter when made) and to speak with their professional adviser to determine whether it is or will be the subject of IRS or Securities and Exchange Commission (“SEC”) scrutiny.

Be attentive to the following:

- Depending upon how the policy ownership is structured, and the relationship of the parties, the value of the policy may be viewed as compensation, a dividend, a gift or a loan.

- Possibly, the SEC might view split-dollar policies as an interest-free loan – a no, no for public companies under the recently enacted Corporate Responsibility Act of 2002. 

DFK Firm Spotlight: Kidmans DFK

DFK International is the worldwide association of independent accounting and business advisory firms in which Holtz Rubenstein is actively involved. Through our affiliation we are able to provide enhanced services to you and to other clients throughout the United States and the world.

This issue we spotlight one of DFK’s members in Australia– Kidmans DFK, located in Melbourne. We invite you to visit them at www.kidmansmelbourne.com.au. 


Priority Mail vs. First-Class

Is Priority Mail another government oxymoron? If your main concern is getting a package delivered as quickly as possible, then you may want to think twice before sending it Priority Mail.

Recent statistical studies reveal that a Priority Mail shipment costing \$3.85 takes more than a half a day longer to reach it’s destination than a first-class delivery costing only 37 cents. According to the Postal Rate Commission’s most recent figures, the typical piece of Priority Mail takes 2.7 days, a whopping 13 hours longer than it took them in the summer of 2001.

Why such a dramatic slowdown? Postal officials blame new security restrictions set in motion as a result of the anthrax attacks and rigorous explosives screening for cargo on passenger planes. The US Postal Service says, “that has forced some Priority Mail shipments off of planes and onto slower moving-trucks”. For deliveries intended to reach their destination within three days, Priority Mail has shown a 33% miss rate compared to 19% for first-class mail. Since shorter-distance (less than 600 miles) Priority Mail shipments often move by truck just like first-class, “it might not make sense.” But cents do add up over time.

Furthermore, on June 30, 2002, the post office increased prices for Priority Mail by about 13.5% depending on shipment weight & distance compared to a 3% increase on first-class postage. After price increases, consumer savings boost from \$3.16 to \$3.48 per shipment by using first-class mail over priority mail.

The US Postal Service has set up a domestic/international postal calculator at <http://postcalc.usps.gov/> where consumers can compare shipment methods; prices and estimated delivery times to best fit their needs. 



(continued from page 1)


Notable & Quotable

at the annual Federal Tax Update Conference in Utica, New York. Arnie reviewed the major provisions of the Job Creation and Worker Assistance Act of 2002, as well as a summary of current cases and rulings.

The firm is pleased to welcome **Jay E. Feingold** to the firm as a supervisor in the audit department. Jay relocated to New York from Florida, where he worked with a public accounting firm for five years, working with not-for-profit

companies, manufacturers, software developers, and public companies.

Promotion Time: The firm also is pleased to announce the promotion of Senior Accountant **Lori Catapano** to supervisor. She has been with the firm for 5 years and looks forward to more direct relationships with her manufacturing, health care, service industry, and not-for-profit clients as an audit supervisor.

In addition, four of our staff have been promoted to senior accountant – **Paul Garrett, Jessica Jones-Nagle, Philip Locrotondo, and William Mitchell**; and our newest semi-senior-level accountants are **Kimberly Finnegan, Nadine Galvez, Gianni Iaboni, Jennifer Ladasky, Nicholas Tambakis, and Tiiu Weismantle**. 

This publication is designed to present matters of general interest relating to accounting, taxation and business management. It is not intended to constitute accounting or tax advice. All articles were written by the staff of Holtz Rubenstein & Co., LLP. Please consult your HR & Co. adviser before taking any specific actions.

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