CURRENT FEDERAL TAX DEVELOPMENTS-DECEMBER DEVELOPMENTS
PENDLETON, OREGON
DECEMBER 17, 2009

AICPA ISSUES REVISIONS TO SSTSS EFFECTIVE JANUARY 1, 2010

SECTION: AICPA

CITATION: STATEMENTS ON STANDARDS FOR TAX SERVICES, NOVEMBER 2009

The AICPA Tax Executive Committee issued revisions to the Statements on Standards for Tax Services effective on January 1, 2010. These standards govern the conduct of CPAs when performing tax services and are considered enforceable standards under Rule 202 of the Code of Professional Conduct. The new standards revise and replace the prior standards.

Changes include combining what used to be standards 6 and 7 into the new SSTS No. 7 and renumbering No. 8 to the new No. 7. Some of the more significant substantive changes include revising the standards for a tax return position found in SSTS No. 1. Under the new SSTS No. 1 a CPA must comply with the more restrictive of the reporting standards under the rules of the taxing agency with jurisdiction over the item or the minimum AICPA standard.

The AICPA minimum standard requires that a CPA determine a position has a realistic possibility of success (that is, a 1 in 3 chance of success on its merits) positions without additional disclosure or that a disclosed position has a reasonable basis under the law. However, federal law generally imposes the "substantial authority" standard for return positions without disclosure, so CPAs will have to meet that higher standard for federal filings.

SSTS No. 7 (formerly SSTS No. 8) also had notable changes, adding that when written advice is provided it should comply with the standards of any applicable taxing agency in addition to the AICPA standard, a member should consider tax return reporting, disclosure and potential penalty issues when giving advice and adds to the list of factors to be considered when advice is given.

STATE COURT RULING RETROACTIVELY LABELING PAYMENTS TO EX-SPOUSE AS ALIMONY DID NOT CONTROL FEDERAL TAX TREATMENT

SECTION: 71

CITATION: NOVAK V. COMMISSIONER, TC SUMMARY OPINION 2009-185, 12/7/09

Even though she was able to get a state court to label the amounts she paid her ex-husband as alimony, Lori Novak was denied a deduction for the amounts in question. The Tax Court looked at how the payments had been determined in Lori's divorce case and came to the conclusion that the amounts she was paying were mainly her ½ of the joint debts. The court noted as well that the accounting for the payments gave her ex-husband, who had custody of their children, credit for $100 per month of alimony to Lori, and Lori's payments to him were reduced by that amount.

What about the state court order clarifying that her payments were alimony? That order was issued three years after the fact by a different judge than the one that originally presided. As well, the Tax Court noted, such a state court label doesn't settle the matter for federal tax law purposes—rather, you look to see if the payments meet the requirements of IRC §71.

CANCELLATION OF POLICY WHEN POLICY LOAN EXHAUSTED VALUE OF POLICY WAS INCOME UNDER §72 AND NOT CANCELLATION OF DEBT

SECTION: 72

CITATION: MCGOWEN V. COMMISSIONER, TC MEMO 2009-285, 12/14/09

The Tax Court rejected a taxpayer's argument that her income from the cancellation of her life insurance policy that took place when her outstanding loans exhausted her cash value in the policy was income from the discharge of indebtedness. Rather the Court held that the tax treatment must be computed using §72(e), treating as a gain on that the difference between their basis in the policy and the amount she was deemed to have received.

While the Court didn't go into details, presumably the taxpayers were insolvent and could have excluded under §108 any discharge of indebtedness. However in this case the taxpayers didn't fail to pay the loan—rather the loan was effectively paid off via the surrender (even if involuntary) of the policy that took care of the outstanding loan against the policy.

TAX NOT DUE ON CANCELLATION OF INDEBTEDNESS, AS COURT RULES ACTUAL CANCELLATION OCCURRED YEARS EARLIER THAN 1099C ISSUED

SECTION: 108

CITATION: LINKUGEL V. COMMISSIONER, TC SUMMARY 2009-180, 12/1/09

The IRS was found to have raised the issue of whether Thomas Linkugel had cancellation of indebtedness income for a year long after the actual effective discharge had taken place. Thomas and his then wife lost their home through foreclosure in 2000. After application of the sales proceeds, $35,247 remained unpaid on the recourse obligation.

The lender took no further action to collect that note. However the lender did file a Form 1099-C for 2006 reporting cancellation of indebtedness income and the IRS asserted that Thomas was taxable on that amount in that year.

The Tax Court did not agree. The Court noted that the sole evidence the IRS relied upon in determining that discharge took place in 2006 was the 1099-C. However, the court noted that under §6021(d) at trial the IRS was required to do further investigation if a taxpayer fully cooperated and had raised a reasonable question about the accuracy of the information return.

The Court found that actual discharge had taken place long before 2006, noting no collection activities had taken place since the foreclosure date. The court notes that the actual date of discharge is fact specific, but a key factor is the intent of the lender and the existence of an identifiable event—quite often the actual act of foreclosure.

IRS DELAYS EFFECTIVE DATE OF DEBIT CARD AND SMARTCARD REVENUE PROCEDURE USED FOR TRANSPORTATION BENEFIT

SECTION: 132

CITATION: NOTICE 2009-95, 12/14/09

The IRS has once again delayed the effective date of Revenue Ruling 2006-57 which outlined requirements for the use of smartcards and debt cards for providing a qualified transportation fringe benefit. The ruling listed requirements that had to be met that limited the use of such cards to acquiring only a transportation benefit. If that requirement was not met, such cards could only be used if it was part of an accountable plan that would require employees to document qualified use.

The rules were first scheduled to go into effect on January 1, 2008. However, it has been delayed twice before as the due date for compliance approached. Again the IRS has delayed the effective date because transit systems have indicated they have not been able to modify their systems to meet these requirements. The new effective date, barring yet another IRS delay, is for benefits provided on or after January 1, 2011. However, employers and employees may continue to rely on the ruling for transactions prior to the effective date.

EXPENSE OF OBTAINING MBA DEGREE ALLOWED AS BUSINESS DEDUCTION

SECTION: 162

CITATION: SINGLETON-CLARKE V. COMMISSIONER, TC SUMMARY OPINION 2009-182

Getting a degree does mean that a taxpayer will not be able to claim a deduction for business related education, though Lori Singleton-Clarke had to go to Tax Court to prevail in her case. Lori had over 20 years of experience, first as an acute bedside clinical nurse and then in nursing management positions. Lori determined that an MBA would be useful in job function, and she paid for and obtained her MBA. She claimed a deduction for the expense, and the IRS disallowed that deduction on exam.

The IRS claimed that pursuing the MBA both enabled Lori to obtain the job she currently holds and that in any event the degree qualified Lori for a new trade or business. The Tax Court found that despite the fact that the job description for Lori's job indicated a need for a degree in health care administration, her outstanding qualifications otherwise lead the Court to believe she would have obtained the job anyway.

The Court also disagreed that the MBA qualified her for a new trade or business. The Court emphasized that an MBA, unlike other degrees, does not qualify an individual for entrance to a profession. Rather the Court examined prior cases regarding MBAs, and noted that if the taxpayer is continuing an existing career an MBA is not generally going to qualify the taxpayer for a new trade or business. Cases where the expense of an MBA degree have not been allowed have been ones where the taxpayer did not have an existing career in which the MBA training would be used.

CASUALTY LOSS DEDUCTION ALLOWED FOR DAMAGE TO CAR INCURRED WHEN DRIVER FOUND TO BE NEGLIGENT, BUT NOT GROSSLY NEGLIGENT

SECTION: 165

CITATION: ROHRS V. COMMISIONER, TC SUMMARY OPINION 2009-190, 12/10/09

A taxpayer claimed a casualty loss deduction under §165 for damage to his vehicle incurred in a single vehicle accident. However, he was found at the time of the accident to have a blood alcohol level of 0.09, slightly above the legal level in California, and was cited for driving while intoxicated.

The IRS argued no deduction should be allowed, posing two arguments. First, the IRS contended that damage incurred to a vehicle when the owner was intoxicated amounted to gross or willful negligence, and in that case the loss is disallowed pursuant to the 1966 *Heyn* decision of the Tax Court. Second, the IRS argued that allowing a deduction for damage after a person had been convicted of driving under the influence frustrated public policy even if gross negligence wasn't shown.

However, the Tax Court noted that gross or willful negligence requires more than just simple negligence be proven. In this case, the taxpayer had taken steps to avoid driving immediately after consuming alcohol, and only drove his vehicle after he believed enough time had passed so he would no longer be impaired. As well, the fact that his blood alcohol level was only slightly above the legal limit argued for considering his actions merely negligent and not rising to the level of gross negligence required to block the deduction.

The Court also did not feel that allowing him a deduction for the loss would violate public policy. While recognizing the existence of a strong public policy against driving while intoxicated, the Court indicated that allowing this loss deduction would in no way reduce the penalty the state of California had imposed on the individual for his action, unlike the issue if a deduction had been allowed for a fine.

TAX PREPARER DISAPPEARING WITH TAXPAYER RECORDS CREATED SITUATION WHERE COURT ALLOWED USE OF ESTIMATES

SECTION: 165

CITATION: CARO V. COMMISSIONER, TC SUMMARY 2009-184, 12/3/09

Jose Diaz Caro was a compulsive gambler who kept meticulous records of his daily gambling activities. He used the services of a tax preparer to handle his return for 2006. However, the preparer made numerous errors in summarizing his information when he prepared the return, resulting in an understatement of his gambling income. The IRS did not question the losses claimed, but based on 1099s the IRS increased Jose's reported gambling income.

Unfortunately, Jose's preparer never returned his records despite Jose's repeated requests to receive back his information. As well, the preparer moved and left no information regarding where he was going, so Jose did not even know where this preparer was at this time. The *Court,* looking at Jose's lifestyle, concluded that it was highly likely that Jose had lost more money than his winnings in 2006.

Applying the principles outlined in the decision in the 1930 Second Circuit case of *Cohan v. Commissioner*, 39 F.2d 540, 544 the Court allowed a deduction for gambling losses equal to the winnings that Jose had in 2006, resulting in no tax deficiency.

CHARITABLE DEDUCTION UPHELD FOR PORTION OF SALE OF PROPERTY TO GOVERNMENT

SECTION: 170

CITATION: CONSOLIDATED INVESTORS GROUP V. COMMISSIONER, TC MEMO 2009-290, 12/16/09

The Ohio Turnpike Commission (OTC) and the taxpayer went through a long series of negotiations dealing with a transfer of property from the taxpayer (a partnership) to the Commissioner for the building of a turnpike interchange. The partnership wanted to sell to the OTC at a discounted value, in order to report the transaction as a part gift/part sale. However, the OTC was playing a bit of hardball, holding onto an extremely low value in the negotiations and filing suit based on that law value, even though (unknown initially to the partnership) the OTC had a later appraisal showing a much higher value. Eventually the litigation was settled and the parties agreed that the OTC would consent to signing the Form 8283 in the donee acknowledgement section.

The IRS raised a number of objections to the deduction. First the IRS argued there was no bargain sale, as what the partnership received was fair value. The Tax Court, analyzing the appraisals of both the IRS and the taxpayer, rejected that idea, holding *there* had been a bargain sale.

Second, the IRS argued that the taxpayers lacked donative intent, pointing out that the taxpayers had not surrendered the property until litigation took place—hardly, it would seem at first glance, a voluntary transfer arising from a "detached and disinterested generosity" that is necessary for a charitable donation. However, the Court found that the partnership forced the lawsuit primarily due to the extremely unreasonable actions of the Commission in not recognizing the true value of the property, necessitating the legal action to get a value recognized, even though they planned to transfer the property for less.

Third, the IRS complained that they had not met all of the technical substantiation *requirements of Reg.* §1.170A-13(c)(2), noting that the appraisal was not made within the required 60 days of the date of transfer and that it lacked certain information required. The Court held that while compliance with these regulations is mandatory to obtain the deduction, the taxpayer had substantially complied with the requirements and thus would be penalized for not having an appraisal that scrupulously met all of the requirements. The Court determined this situation was more like that in the *Bond* case (100 TC 42) than the facts in the *Hewitt* case (109 TC 258).

IRS ANNOUNCES AUTO MILEAGE RATES FOR 2010

SECTION: 274

CITATION: REVENUE PROCEDURE 2009-54, 12/3/09

For 2010, the IRS has announced the following mileage rates for mileage beginning January 1, 2010, reflecting decreases from the 2011 levels:

50 cents per mile for business miles driven

16.5 cents per mile for medical or moving

14 cents per mile for charitable

The use of the auto mileage rate is available in some cases as an alternative to the use of actual expenses.   The method cannot be used for more than four vehicles. It also cannot be used for any vehicle where the taxpayer previously claimed §179 treatment in a prior year, or where the Modified Accelerated Cost Recovery System was used in a prior year.

IRS EXTENDS DEADLINE TO ADOPT PLAN AMENDMENTS TO COMPLY WITH PLAN PROVISIONS MODIFIED BY WORKER, RETIREE AND EMPLOYER RECOVERY ACT OF 2008

SECTION: 401

CITATION: NOTICE 2009-97, 12/11/09

The IRS announced the deadline for qualified plans to be amended to comply with changes made by the Worker, Retiree and Employer Recovery Act of 2008 to items introduced in the Pension Protection Act of 2006. The deadline for making such amendments is the end of the first plan year that begins on or after January 1, 2010.

AMOUNTS DUE UNDER BONUS PLAN THAT REQUIRED EMPLOYEES REMAIN EMPLOYED UNTIL DATE OF PAYMENT COULD NOT BE ACCRUED DESPITE REQUIREMENT THAT AMOUNTS NOT PAID TO EMPLOYEES BE PAID TO CHARITY

SECTION: 461

CITATION: ILM 200949040, 12/4/09

An employer had an nonexecutive bonus plan that provided bonuses accrued for the prior year would be paid within 2 ½ months of the year end to the employee. However, the employee had to still be an employee of the employer at the time the bonus was paid. However, the company had determined that if forfeitures back to it from employees that left caused less than 90% of the bonus to be paid, an amount necessary to get to the 90% level would be paid to charity.

The corporation argued that since somebody would receive at least 90% of the bonus, it had a right to deduct that amount in the year accrued rather than the year paid, and was asking for IRS permission to change its method of accounting to reflect that treatment. The entity argued that such a deduction would be allowed either under §404 (for accrued payments of compensation) or §170 (for authorized charitable contributions).

In a legal memorandum the IRS concluded that such a treatment was not permissible. It found that it was not permissible to combine the tests under §404 and §170—and the plan satisfied neither if tested separately. All events had not occurred to fix the liability for payments for services to employees as of the end of year due to the requirement that they stay employed, and all the requirements for a charity contribution had not been met since no contribution would be made unless more than 10% of the bonus went unpaid.

IRS CHASTISED FOR POORLY SUPPORTED POSITION ON VALUE OF INTANGIBLES TRANSFERRED AND USE OF TEMPORARY REGULATIONS ISSUED 10 YEARS AFTER THE TRANSACTION

SECTION: 482

CITATION: VERITAS V. COMMISSIONER, 133 TC NO. 14, 12/10/09

The Tax Court was none too happy with the IRS's experts and its position in the case of Veritas Software v. Commissioner, 133 TC No. 14. The technical matter at issue was whether the taxpayer had properly valued existing intangibles under a cost sharing arrangement in which certain intangibles were transferred to an offshore subsidiary under §482.

During the examination the IRS made use of an expert to come up with its own value for the intangibles, deciding the proper value was $2.5 billion. The IRS based its assessment on that value. The taxpayer raised numerous objections to that experts report when it filed with the Tax Court. At this point the IRS, rather than dealing with the objections to that expert's report, brought in a new expert and now claimed the true value of $1.675 billion.

However, this expert made a number of errors of his own. He insisted upon using an income method to value the intangibles, but at trial made numerous concessions about errors in his methodology.

As well, he and the IRS attorneys made numerous references to the temporary regulations §§1.482-1T through 1.482-9T, regulations issued in January of 2009, regulations issued more than a decade after the transactions. As the Tax Court quipped, "Taxpayers are merely required to be compliant, not prescient," and applied the regulations actually in force at the time of the transaction to decide the case. The IRS position, both in the initial assessment and at trial, was found to be arbitrary, capricious, and unreasonable.

The Court found that generally the taxpayer's use of the comparable uncontrolled transaction method was more appropriate, though the Court did make some adjustments to the taxpayer's calculation.

Even if you never get near the specific issue of transfers of intangibles, the case is interesting for looking at the limits of the IRS's presumption of correctness (and how the IRS may lose that presumption at trial) and the importance of tracking what the status of regulations were at the time a transaction took place.

VEBA CANNOT AVOID LIMIT ON EXEMPT FUNCTION INCOME BY CLAIMING INVESTMENT INCOME USED TO PAY BENEFITS

SECTION: 512

CITATION: CNG TRANSMISSION MANAGEMENT VEBA V. COMMISSIONER, CA FC, NO. 2009-5025, 12/14/09

A VEBA was found to have taxable income on its investment income, even though it asserted that the amount, being less than the amount it paid out in benefits, should be exempt from taxation since the amounts were spent on benefits. The VEBA that such income, having been offset by the payment of benefits, could have caused its year-end account balance to exceed the limits found in §512(a)(3)(E)(i).

The Court of Appeals for the Federal Circuit sustained the ruling of the Court of Federal Claims, holding that the plain language of the statute simply looks to the account balance at the end of the year and the extent to which investment income caused that balance to exceed the statutory limits at year end. The Court stated that the VEBA could not escape tax via a "bookkeeping entry" that claimed to apply the investment income to member benefits.

While rejecting a comparison to the facts in *Sherwin-Williams Co. Employee Health Plan Trust v. Commissioner* that the VEBA argued existed, the Federal Circuit nevertheless commented that it agreed with the Court of Federal Claims that the Sixth Circuit had erred in its analysis of the law in deciding that case where the Sixth Circuit found that §512(a)(3)(B) imposed a limit on a VEBA's "accumulated funds" rather than its set-aside funds.

BASIS CALCULATION IS A CUMULATIVE AND NOT YEAR BY YEAR CALCUATION WHEN APPLYING "NOT BELOW ZERO" LIMIT FOUND IN §705(B)

SECTION: 705

CITATION: LEBLANC V. UNITED STATES, COURT OF FEDERAL CLAIMS, 1:05-CV-00743, 12/4/09

What does IRC §705(b) mean when it says, in computing partnership basis, that the amount will not go below zero? The taxpayer in this case claimed that it means that a taxpayer's basis gets reset to zero at that point, and any losses passed out in excess of that amount will never apply in computing basis. That was important because, in the taxpayer's case, the partnership later passed out amounts of income prior to the taxpayer's eventual abandonment of their interest, and they claimed a loss based on a calculation that added in that later income while ignoring a large first year loss that was in excess of their basis at the time.

The IRS disagreed, arguing that basis is a cumulative calculation as envisioned by §705, and the §705(b) stopping basis at zero only served as a temporary "hold" at that point until the cumulative calculation brought the basis above zero. If the IRS's position was correct, the taxpayer's basis in the activity would have been zero at the date of abandonment, and thus there would be no loss to deduct.

The Court of Claims agreed with the IRS's view, noting that if the taxpayers were correct, wildly different results would be obtained had that loss year been the final rather than first year of the partnership.

SON-OF-BOSS TRANSACTION FOUND TO LACK ECONOMIC SUBSTANCE, SO ISSUE OF RETROACTIVE APPLICATION OF REG. §1.752-6 NOT RELEVANT.

SECTION: 752

CITATION: PALM CANYON X INVESTMENTS V. COMMISSIONER, TC MEMO 2009-288, 12/15/09

The Tax Court dodged the question of whether Reg. §1.752-6 can be applied retroactively to unwind a Son-of-BOSS style transaction, instead ruling that the underlying transaction lacked economic substance. The court applied both the subjective and objective prong of the economic substance test. It found that the transaction failed the subjective prong, as the nontax reasons offered for executing the transaction were not credible. Among the reasons the court ruled that way included a finding that there was no real need for the taxpayers to hedge foreign currency in the foreseeable future (one of the purported reasons for entering into the transaction), no investigation into the foreign currency aspects of the transaction, a lack of rational economic behavior in pricing the contracts, the adding of a partner solely to be able to remove that partner to trigger the basis shift in liquidation of the partnership, and that the transaction was specifically developed as a tax shelter.

The transaction also failed the objective test, which requires showing the transaction had a reasonable prospect of earning a profit. The court found that the prospects of the transaction hitting the "sweet spot" where it would turn profitable were small (estimated at 1.3% by an individual involved). And, in any event, the fees paid were greater than any potential profit the transaction might produce.

The Court also found that since it held the case was appealable to the Court of Appeals for the District of Columbia, that the transaction was subject to a penalty under §6662 for a valuation misstatement. While the Fifth and Ninth Circuits had held that the valuation negligence penalty could not apply when a transaction was disregarded for economic substance, the Tax Court disagrees with that holding. While both parties originally stated the case was appealable to the Ninth Circuit, the IRS later disagreed and the Tax Court agreed with the IRS's new view. The Court also denied relief from any other penalties under §6662.

TRANSFER TO FAMILY LIMITED PARTNERSHIP WAS BONA FIDE SALE, AND THUS VALUE OF STOCK NOT INCLUDABLE IN TRANSFEROR'S ESTATE

SECTION: 2036

CITATION: ESTATE OF BLACK V. COMMISSIONER, 133 TC NO. 15, 12/14/09

The Tax Court ruled that a transfer to a family limited partnership of a taxpayer's interests in stock in a company he held a significant interest in, at the same time transfers by his son and two trusts for his grandchildren to the same partnership, was a bona fide sale for full and adequate consideration, and thus not subject to being yanked bank into the transferor's estate under §2036(a). The Tax Court applied the standard of the Third Circuit Court of Appeals, to which the case would be appealed, that the sale must be a good faith transfer that offers the transferor some benefit outside the transfer tax context.

The Court found that Mr. Black had a legitimate concern that shares of stock in the closely held company might be disposed of either by his grandchildren when their trusts terminated, or by his son due to feared (and eventually actual) divorce.

However, the estate of the decedent's spouse was denied a deduction for interest on a loan received from the partnership to enable her estate to pay its estate. The Tax Court that because, under the facts of the case, the only realistic way that loan could have been repaid per its terms would have been to have redeemed a portion of that estate's interest in the partnership, an action that would have served to create the same necessary liquidity had it been undertaken on the day the loan was made. The loan was deemed unnecessary, as the only effect of the loan as compared to a redemption was the creation of a deduction of $20 million for interest on the purported loan, playing off the fact that estate tax rates (which would create the benefit from the deduction) were higher than income tax rates.

FRESH FROM AFFIRMATION IN CHRISTIANSEN, TAX COURT RULES USE OF FORMULA CLAUSE FOR GIFT SPLIT BETWEEN CHARITIES AND OTHERS DID NOT VIOLATE PUBLIC POLICY

SECTION: 2503

CITATION: ESTATE OF PETTER V. COMMISSIONER, TC MEMO 2009-280, 12/7/09

Within a month of the Eighth Circuit affirming its holding in Christiansen that formula clauses in estate planning documents do not violate public policy, the Tax Court ruled again that a formula clause in a gift split between a charity and others that served to insure that any subsequent adjustment to the value of the assets transferred would not generate a gift tax was not a violation of public policy. The Court upheld the validity of the clause, as well as a full deduction for the value of the interests eventually treated as going to the charity as of the date of the gift for income tax purposes.

The formula clause provided that, effectively, the charities would receive the portion of the donated interests in the family LLC that would be in excess of what could pass gift tax free to the other donees. When the original value was challenged on exam, the amount that would go to charity was increased, something the IRS argued frustrated public policy giving no incentive to properly value the assets.

The Tax Court disagreed, noting in this case that the charities had an obligation, if they wished to maintain their tax exempt status, not to act "in cahoots with a tax-dodging donor." As well, the state's attorney general is given the right under state law with enforcing the charity's rights—so there were checks in place to prevent abuse, so that the threat of a gift tax was not needed to insure the items were properly valued.

IRS ADDS NEW INQUIRIES AND NEW SCHEDULE B-1 TO 2009 FORM 1065

SECTION: 6031

CITATION: 2009 FORM 1065, 12/15/09

The Form 1065 for 2009, while not being as radical a change as the one we saw when going to the 2008 1065 from the 2007 version, still has some new additions that indicate areas of IRS interest for partnerships. The changes for 2009 include:

Schedule B-1. A new Schedule B-1 has been added which will be required to be filled out when the partnership checks yes to questions 3a or 3b on Part B, indicating there is a greater than 50% partner.

§704(c) Issues. The partners' K-1 now contains an item "M" that asks if a partner contributed assets that had a built-in gain or loss. If the question is answered yes, a statement must be attached that describes each property the partner contributed, the date it was contributed and the amount of the built-in gain or loss.

§108(i) Elections. A new code has been added to the K-1 to report information related to any election the partnership makes under §108(i), added by the American Recovery and Reinvestment Act of 2009, to defer recognition of gain on the cancellation of certain debts that occur after 2008 but before 2011.

PROPOSED REGULATIONS OUTLINE BROKER BASIS REPORTING RULES TO BE EFFECTIVE IN 2011

SECTION: 6045

CITATION: REG-101896-09, 12/16/09

Proposed regulations have been issued by the IRS to govern the expanded reporting of adjusted cost basis for securities sold that will be required on Form 1099B. This rule will apply to any sale on or after January 1, 2011 for most corporate stock and any sale on or after January 1, 2012 for shares in a mutual fund or held in a dividend reinvestment plan. The proposed regulations, with run 141 pages, go into detail about various special issues in computing adjusting basis, including treatments of items such as wash sales.

The regulations also govern the required information to be reported when such covered securities are transferred to another reporting entity (such as when the taxpayer changes brokerage firms). The rules deal, as well, with basis adjustments to be taken into account and notations required to be made if the shares are gifted or inherited.

The IRS also issued a draft of the new Form 1099-B that will be used to report these cost basis figures.

The Energy Improvement and Extension Act of 2008 added these basis reporting rules.

IRS EXTENDS ATTRIBUTED TIP INCOME PROGRAM THROUGH DECEMBER 31, 2011

SECTION: 6053

CITATION: REVENUE PROCEDURE 2009-53, 12/1/09

The IRS extended the Attributed Tip Income Program, originally scheduled to end on December 31, 2009, for two additional years through December 31, 2011. The program, originally established in Revenue Procedure 2006-30, was established to simplify recordkeeping for the reporting of tip income. However, the IRS did reserve the right to terminate the program at any time.

Employers that participate in this program report tip income based on a formula that uses a percentage of the establishment's gross receipts, which are then allocated among the employees.

Employers that wish to make use of this program check a box on Form 8027, Employer's Annual Information Return of Tips and Allocated Tips. Employees of that employer are then able to elect to have their tip income computed under the program and reported as wages.

PROCEDURES FOR CORRECTING EMPLOYMENT TAX ERRORS IN VARIOUS SITUATIONS EXPLAINED BY IRS

SECTION: 6205

CITATION: REVENUE RULING 2009-39, 12/10/09

The IRS has issued new "X" series payroll tax reporting forms for the correction of payroll reporting errors, implementing changes to the regulations for interest free corrections found issued July 1, 2008 in TD 9405. Employers were given revised guidance on the submission of corrections of employment tax errors in the following ten situations by the IRS, explaining the use of the new Form 941-X:

(1) an underpayment of FICA tax and income tax withholding (ITW) when the error is not ascertained in the year the wages were paid; (2) an overpayment of ITW when the error is ascertained in the same year the wages were paid; (3) both an overpayment and an underpayment of FICA tax for the same tax period; (4) an underpayment of FICA tax when the employer's filing requirement has changed; (5) an underpayment of FICA tax and ITW resulting from a failure to file an employment tax return because the employer failed to treat any workers as employees; (6) an overpayment of FICA tax on wages paid to a household employee; (7) an overpayment of FICA tax when the error is ascertained close to the expiration of the period of limitations on credit or refund; (8) an underpayment of FICA tax and ITW ascertained in the course of an employment tax examination; (9) an underpayment of FICA tax and ITW ascertained in the course of the appeals process; (10) an underpayment of FICA tax and ITW resulting from the misclassification of employees ascertained in the course of the appeals process.

The new ruling renders Revenue Ruling 75-464 obsolete.

INTEREST DUE ON REQUESTS FOR REPAYMENTS OF AMOUNTS THAT REPRESENT EXCESS §6603 DEPOSITS EXPLAINED

SECTION: 6603

CITATION: CHIEF COUNSEL NOTICE CC-2010-002, 12/2/09

Taxpayers that end up asking for a refund of the amount of a payment made as a deposit in a tax dispute that turns out to be in excess of the tax actually due may be eligible for interest on that amount, but not based on the standard overpayment interest rules. The Chief Counsel's office explains that if a taxpayer submits an amount no greater than the maximum amount the taxpayer reasonably expects could be due for the items in dispute, interest would be paid under the rules of §6603 rather than the general rules for overpayments under §6611. Such an excess arose from a "disputable tax" as defined by §6603(d)(2)(A).

However, if the taxpayer puts on deposit an amount in excess of the amount that might reasonably expected to be the maximum tax due on the disputed amounts, no interest is due on any amount that is in excess of that maximum when it is later refunded.