

“Rollovers as Business Start-Ups”

- LMSB Memorandum, 10/01/08
 - “Rollovers as Business Start-ups” (ROBS) transactions are the subject of special guidance to IRS auditors
 - Use of an individual’s own retirement account to fund a start-up business for the individual is very hard to do within the tax and ERISA rules
 - Common “operational defects” include valuation of stock purchased by the plan, limitations on participation by other employees, and transactions for the personal benefit of the business owner

2010 Plan Limits

- IRS News Release IR-2009-94
 - Most are unchanged from 2009
 - IRA Phase Outs Minor Changes
 - Single Participant \$56,000 rather than \$55,000
 - MFJ other spouse only participant \$167,000 from \$166,000
 - Roth \$167,000 from \$166,000

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409A Regulations

- Proposed Sec. 409A regulations, 12/5/08
 - Apply 409A only to deferred compensation for years in which there is non-compliance
 - Total amount deferred, using “reasonable actuarial assumptions” will be subject to tax and additional penalty
 - Plan may not be affected, all the weight of non-compliance can fall on the individual participant

Withholding on Deferred Comp

- Notice 2008-115, 12/10/08
 - Guidance on reporting and withholding on deferred compensation paid in 2008
 - Inclusions are treated as supplemental wages for withholding purposes (see Rev. Rul. 2008-29, 6/16/08 for guidance on such withholding)
 - Includes guidance on reporting amount of additional tax due on amounts included in income under IRC Sec. 409A

Sale of Gift Cards

- TAM 200849015, 12/8/08
 - Gift Card sales are income when purchased from a subsidiary of retailer, not when redeemed
 - Advance payment rule of Reg. Sec. 1.451(a) does not apply
 - Taxpayer receiving payment is not taxpayer who holds merchandise for sale to customers
 - Taxpayer has unrestricted right to funds
 - Possibility of refund later not controlling for tax purposes
 - Some card values are never redeemed

Self-Insured Medical Plan Deductions

- TAM 200846021, 7/23/08
 - Employer may accrue liability and deduct amounts owed to service providers in self-insured medical plan, for services provided before year-end, so long as payment is made within 2½ months after year end.
 - Economic performance rules of IRC Sec. 461 would be met by such payments

Medical Insurance Premiums of S Corporation Shareholder

- Notice 2008-1, 12/13/2007
 - Medical insurance premiums paid for a greater than 2% shareholder, must be included in W-2 in order to be deducted by S corporation and by the shareholder
 - Amounts are subject to federal withholding, but not FICA or Medicare tax

Open Account Debt Regulations: S corporations

- Open Account Debt Regulations, 10/20/2008
 - Tax Court decision - *Brooks* (T.C. Memo 2005-204) is inconsistent with purpose of Reg. 1.1367-2
 - When loans from a shareholder exceed \$25,000 the amount is no longer considered open account debt.
 - That limits the technique of loaning money in to an S corp to get basis for claiming losses shortly before year-end, then repaying such loans immediately after year-end

Shareholder's Indirect Loans to S Corporation

- Donald Rusell, T.C. Memo 2008-246, 10/30/08
 - S corp shareholders did not increase basis for losses by guaranteeing corporation's debt
 - Nor did they increase basis by becoming co-makers of debt
 - Nor did they increase basis by having funds transferred to the S corporation from other entities they owned
 - Loans must be direct from shareholders and must involve an increase in risk . . . an "outlay" of funds

Non-Owner Contribution to Capital

- LMSB-04-1008-051, 11/18/08
 - Contribution-to-Capital doctrine cannot be used to exclude non-owner payments to a partnership from income
 - IRC Sec. 118 clearly excludes “Contributions to the capital of a corporation” from income
 - If state or local development grants are to be part of financing, an LLC is the wrong entity selection unless it elects to be treated as a corporation by checking the box and filing Form 8832

Debt Satisfied With Partnership Interest

- REG-164370-05, 10/31/08
 - Proposed regs explain application of IRC Sec. 108(e)(8) to transfer of a partnership interest to a creditor in satisfaction of a partnership debt
 - FMV of debt-for-equity interest may be liquidation value if conditions requiring capital account maintenance, consistent treatment by creditor and all partners, and limitation on transfers are met.
 - Rules are generally taxpayer friendly if the conditions are met, otherwise “facts and circumstances” test may result in taxable income

Payments to Former Partner Ordinary Income

- *Wallis v. Commissioner*, TC Memo 2009-243, 10/27/09
 - Retiring partner received \$80,000 for “Schedule C Interests
 - Received 1099MISC
 - Tax Court ruled §736(b)(1) payments
 - Not impressed by complaint about 1099MISC

Economic Development Grant

- LTR 200901018, 9/30/08, released 1/2/09
- Economic development grant is not income
 - Non-shareholder contribution to capital, was:
 - A permanent part of the transferee's working capital structure.
 - Not compensation for a service to the grantor
 - Bargained for
 - Employed in or contributed to the production of additional income

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263A and Royalty Payments

- Robinson Knife; T.C. Memo 2009-9, 1/14/09
 - Royalties paid for use of trademarks must be capitalized under IRC Sec. 263A
 - Treasury regulations require “royalties” to be included in production costs
 - Since Robinson used simplified method for other production costs, IRS could use simplified method for royalties

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Vehicle Value Limitation

- Rev. Proc. 2009-12, 1/16/09
- Annual vehicle value limitation imposed when a taxpayer uses the cents-per-mile valuation rule under Reg. 1.61-21(e) [*\$.55 for 2009*]
 - Vehicle placed in service in 2009
 - Passenger automobile - \$15,000
 - Truck or van - \$15,200
 - 20 or more vehicles, use \$19,000 for auto, \$19,900 for truck or van

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Credits vs Depreciation

- Rev. Proc. 2009-16, 1/23/09
- Explains how corporations can elect to claim additional credits in lieu of additional first-year bonus depreciation
 - Made by due date of first return due after 3/31/08
 - S corp can only use credits against built-in gain
 - File Form 3800 and/or 8827 plus Form 4562 claiming straight line depreciation
 - Automatic 6 month extension to make election

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Business Bad Debts

- Trinity Industries, Inc., 132 T.C. No. 2, 1/28/09
- Deferred payments don't defer recognition of reporting
 - Customer withheld payment for new product claiming defect in product delivered earlier
 - IRC Sec. 461 is easy to understand . . .
 - All events fixing right to receive income
 - Amount of income can be determined with reasonable accuracy

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NOLs Affected by Government Stock Purchases ?

- Notice 2009-14, 1/30/09
- Emergency Economic Stabilization Act (EESA), allows Treasury to acquire interests in various business entities.
 - Stock or debt will be classified as such, except
 - Stock and/or warrants will be ignored for purposes of IRC Sec. 382 (limitation on use of NOLs following change in ownership)

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Automatic Contributions to 401(k)s

- T.D. 9447, Final Regulations on Automatic Contribution Arrangements, 2/24/09
 - Provide for automatic default contribution for employees who do not make an affirmative election for qualified plan contributions
 - Automatic enrollment applies only to employees covered by automatic contribution arrangements

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S Corporation Built-In Gains

- MMC Corp., CA 10, No. 08-9002, 1/13/09
- IRC Sec. 481(a) adjustments arising before an S corporation election was made are built-in gains, and subject to tax under IRC Sec. 1374.
 - Built-in gains tax applies to any item of income attributable to a C corporation year
 - A Section 481(a) adjustment from an accounting method change in a C corporation year is such an item

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Safe Harbor for Back-to-Back Loans For S Corporations ?

- AICPA Suggested, on May 29, 2009 that a safe harbor be adopted for determining whether a shareholder loan increased the shareholder's "at risk" basis in an S corporation
- There is no definition in the Code or Regulations of "indebtedness of the S corporation to the shareholder" and that has led to many misunderstandings with taxpayers who lost deductions for what they see as "technicalities"

FICA on Medical Residents' Stipends

- Mayo Foundation, CA 8, 6/12/09
 - District Court made a mistake !
 - Medical residents are employees, not students.
 - It doesn't matter whether you apply the old or the new regulations, the answer is the same.
 - Eighth Circuit joins the Second, Sixth, Seventh, and Eleventh . . .
 - Mayo Foundation must withhold and match FICA and Medicare tax on residents wages.

Failure to Honor Levy

- U.S. v. Mission Primary Care; DC S MS; 5:07-cv-00162; 7/13/09
 - Medical clinic made payments to, or for the benefit of, a physician after being served with Notice of Levy
 - Including \$2,000 paid on the day Notice was received, but after its receipt
 - IRC Sec. 6332 says that person served with Notice of Levy is responsible if not honored
 - Clinic owes the IRS \$43,200 !

Reportable Transactions

- Notice 2009-55; 7/15/09
 - Provides list of "Transactions of Interest" that have been identified by IRS in prior guidance
- Notice 2009-59; 7/15/09
 - Updates list of "Listed Transactions"
 - 34 transactions remain "Listed"
 - 2 are removed from "Listed" classification but are still apparently "Reportable"
 - Part II of Notice 98-5 – foreign tax credit generators
 - Notice 2002-70 – reinsurance transactions with captive

Owner Liable for Employment Taxes on Misclassified Workers

- U.S. vs Raymond Porter; USDC S IA, 7/21/2009
- At the conclusion of a long court fight, the owner of an animal feed supplement company is found personally liable for the unpaid federal trust fund taxes that should have been withheld from employees wages.

Tool Reimbursement Plan

- LTR 200930029, released 7/24/09
 - Revenue Ruling 2005-52 dealt with a tool reimbursement plan that did not meet the statutory requirements for exclusion from employee’s wages
 - This LTR explains how to design such a plan that will reimburse tool costs as a tax free benefit to qualified employees . . . It can be done !

Recovery Period – Parking Garages

- LMSB-04-0709-029, 7/31/09
 - An open-air parking structures is a building, not a land improvement.
 - LTR 8724037 dealt with a structure of stacked grates holding machinery, not anything like a parking garage
 - Even though partially open, it has partial walls and each floor serves as the roof for the floor below.
 - The structure clearly provides interior space

2010 Section 179 Limits

- Revenue Procedure 2009-50
 - Includes all nonplan inflation adjustment amounts
 - Section 179
 - Increase expires 12/31/09
 - Scheduled 2010 Amounts
 - \$134,000 maximum
 - \$530,000 begins phase out

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Privileged Communications Regarding Tax Accrual

- U.S. v. Textron; CA 1; 8/13/09
 - Internally prepared tax planning memoranda are not “privileged communications”
 - Section 7525 privilege does not apply because the memos were not between the accountant and the client, giving or asking for, tax advice.
 - Work product privilege does not apply because the memos were not prepared for litigation, but to satisfy statutory financial reporting requirements .
 - Also see ECC 200932057

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- 9/2/09, FASB issued Accounting Standards Update (ASU) 2009-06, “Income Taxes (Topic 740) - - Implementation Guidance on Accounting for Uncertainty in Income Taxes and Disclosure Amendments for Nonpublic Entities.”
- Non-public entities not required to disclose tabular reconciliation of uncertain return positions or summary of exposures that would change the effective tax rate

Joint Committee on Taxation

- 9/9/09 Report on Business Tax Provisions in Administration's Fiscal 2010 Budget Proposal
 - Codify "economic substance" doctrine
 - Repeal LIFO
 - Repeal "lower of cost or market" method
 - Bar tax deduction for punitive damages
 - Increase taxes on oil and gas producers
 - Make R&D credit permanent
 - Reduce depreciation on some assets

Section 10.27; Circular 230

- Proposed Regulation on contingent fees for tax services, 7/28/09
 - May not charge contingent fee except for defending a client under examination or who has been assessed a penalty.
 - Contingent fee includes, but is not limited to, any fee that depends on the specific tax result obtained in a given transaction

THANK YOU