Federal Tax Update

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Tax Update Podcast

- Free weekly update on tax matters (at least until tax season)
- Found at http://www.edzollartaxupdate.com
- Audio files to listen to along with materials in most cases
- Archives have more detailed discussions on some issues in today’s presentation

Today’s Presentation

- Overview of Major Law Changes
- Top Developments
- Other Rulings and Cases
- Slides at http://www.edzollars.com

Budget Reconciliation Process

- House and Senate Have Very Different Bills
- Some Items Common to Both
- Special Provisions in Each
Budget Reconciliation Bill—Extenders

- Expiring 2005
  - Research Tax Credit
  - Work Opportunity Credit
  - Welfare-to-Work Credit
  - Individual AMT Relief
  - State Sales Tax Deduction
  - Pension Funding Relief
  - Leasehold Improvements
  - Except for AMT Relief, both bills extend these by one year (House passed stand alone AMT relief)

- Expiring 2006
  - Active Financing Income
  - 2 Year Extension in House, Not in Senate Bill

- Expiring 2007
  - Internet Tax Moratorium
  - Small Business Expensing
  - Small Business Expensing Extended 3 years in House Bill, 2 years in Senate bill

Budget Reconciliation Bill—Extenders

- Expiring 2008
  - Capital Gains Relief
  - Dividend Relief
  - 2 Year Extension in House Bill, Not in Senate (but Senate expects it back in)
  - Major “hot button” item

Budget Reconciliation Bill

- Katrina Relief in Senate Bill, Not in House Bill (House passed stand-alone bill)
- Senate Bill Has A Number of Revenue Raiser
  - Include higher of fair value or fully loaded cost for aircraft use by any employee in W-2 (would be effective as of date of enactment)
  - One year move up the estimated tax safe harbor at 120% of prior year tax for 2006 (budget smoothing strikes again)
Major Law Changes

- Katrina Emergency Tax Relief Act of 2005
- Energy Tax Incentives Act of 2005
- Highway Reauthorization Act of 2005
- American Jobs Creation Act of 2004
- Working Families Tax Relief Act of 2004

Katrina Emergency Tax Relief Act of 2005

- Charitable Contributions (p. 8)
  - Individual
  - Corporate
- Work Opportunity Credit Expansion (p. 8)
- Relief Directed at Affected Area (pp. 6-10)

Energy Tax Incentives Act of 2005

- Residential Credits (p. 11)
  - Energy Conservation Property
  - Energy Efficient Property
- Clean Fuel Vehicles (p. 12)
- §197 Recapture (p. 12)

Highway Reauthorization Act of 2005

- Generally non-income tax provisions (p. 13)
- See summary in materials
### Working Families Tax Relief Act of 2004
- Uniform Definition of a Child (p. 14)
  - Simplification of Definitions
  - Change for Divorced Parents
- Extension of Various Provisions

### American Jobs Creation Act of 2004
- Major Tax Act
- Tax Shelter Provisions
- Solve ETI problem with European Union
- Impacts Many Clients for Good and Ill

### AJCA 2004 – Shelter Provisions
- Reportable Transaction Disclosure Penalties (p. 16)
  - Harshly Penalize Playing the Audit Lottery Odds
  - Penalty on Failure to Disclose
  - Limited IRS Ability to Waive
  - Cannot Waive if Involve Listed Transactions
  - See list of listed transactions on page 60 of materials
  - Also guidance on reporting on p. 35 and late reporting on p. 36 (though that deals with statute and not penalty issue)

### AJCA 2004 – Shelter Provisions
- Nonqualified Deferred Compensation (NQDC) (p. 17)
  - New §409A
  - Harsh Penalty on recipient if NQDC not in compliance with §409A
  - Broad definition of NQDC
  - For termination solution—must pay out by 12/31/05
  - Documentation in place by 12/31/06
### AJCA 2004 – Shelter Provisions

- Other Loophole Closers
  - Foreign Bank Account Reporting (p. 18)
  - Five Year Waiting Period for §121 exclusion if property obtained in §1031 exchange (p. 19)
  - Charitable contributions of automobiles (p. 20)

### AJCA 2004 – ETI Solution

- New §199 – Qualified Domestic Production Deduction (p. 20)
  - Affects Domestic Enterprises
  - Entity with “Qualified Domestic Production Income”
    - Includes "qualified" manufacturing, construction, architectural services, engineering services, movie production, sound recordings...
    - Check the definition
  - Complexity for entities with "mixed" operations

### AJCA 2004 – Other Issues

- Change in Treatment for Start-up and Organizational Expenses (p. 22)
  - Expensing for "small" enterprises (phased out as amount rises)
  - 15 Year (rather than 60 month) amortization for items not allowed to be expensed
  - Covers §§195, 248 and 709 expenses

### AJCA 2004 – Other Issues

- Legal Fees Netted Against Award in Some Cases (p. 23)
  - Gives partial relief from USSC’s Banks and Banaitis decision (p. 70)
  - Only applies to specified federal causes of action
  - Other causes of action may not net fees against expenses (USSC settled the matter)
Key Practice Management Developments

• IRS Releases Updated Circular 230 Written Advice Standards
  (Revisions to Circular 230 §§10.35, 10.36, and 10.37, Effective June 29, 2005) p. 30
  - Effective June 30, 2005 new rules apply to written advice provided by CPAs on tax matters
  - Covered Opinions
  - Disclaimers (when effective and when not)
  - Other written advice
  - Best practices rules

Key Business Developments

• S Corporation Compliance Study
  (IRS News Release IR-2005-76) p. 51
  - “Lucky 5,000” 2003 and 2004 S Corporation Returns Subjected to Detailed Exam
  - Likely Issues
    • Owner Compensation (FICA evasion)
    • Number and type of Shareholders
    • Built-in gain
    • Excess passive income

Key Practice Management Developments

• IRS Proposes Specific “Opt-In” Consents for Information Disclosure
  (Proposed Regulations §101.7216-1, 2 and 3, IRS Notice 2005-93, 12/7/05) in new matter document
  - Would redefine consents under §7216 (violation of which is a criminal offense)
  - Aimed at forcing disclosure of offshore outsourcing and officially enabling e-filing (undisclosed) domestic outsourcing
  - Note that applies to any third party disclosures (including mortgage applications)
  - Effective 30 days after final regulations published (probably sometime next summer)

Key Business Developments

• IRS Announces Settlement Initiative with 1/23/06 Deadline
  (Announcement 2005-80, 10/27/05) p. 53
  - The IRS has announced an offer to enter into settlements for tax matters related to a number of specified transactions
  - Transactions include
    • Certain §412(i) plans
    • Certain §419 structures
    • Certain S Corporation/ESOP structures
    • Parking expense reimbursement plans
Key Business Developments

- IRS Extends Deadline to Participate in §1441 Compliance Program
  (IRS Revenue Procedure 2005-71, 11/3/05) p. 25
  - Deadline extended from 12/31/05 to 3/31/06
  - Relates to withholding required for payments to foreign persons
  - Normally a program like this means the IRS expects to play hardball with those who fail to come forward now

Key Business Developments

- Final §179 Regulations Contain Good News
  (Regulations §§1.179-2, 1.179-4, 1.179-5, 1.179-6, 7/12/05) p. 25
  - IRS regulations explaining the increased 179 election were issued
  - Dealt with provision allowing taxpayers to change a 179 election
    - Taxpayers can change both ways, allowing taxpayers to add items to the 179 election during an exam
    - Can only remove an item once—one you amend to undo a 179 election, you can't put it back

Key Business Developments

- IRS Announces 2006 Mileage Rates
  (Revenue Procedure 2005-78, 12/2/05) p. 46
  - Business rate is 44¢ a mile
  - Medical and moving goes to 18¢ a mile
  - Charitable fixed by statute (but note special Katrina rates)

Key Business Developments

- Mileage Reimbursement Rate Raised for Last Four Months of 2005
  (IRS Announcement 2005-71, 9/12/05) p. 47
  - In response to the increase in fuel prices due to Hurricane Katrina, the IRS has raised the standard mileage rates that are not specifically set in the IRC
  - Standard mileage rate 48.5¢ a mile
  - Moving and medical rate 22¢ a mile
  - Charitable does not change except for Katrina related rates found
Key Business Developments

• Per Diem Rates Updated for Final Three Months of 2005
  (Revenue Procedure 2005-67, 10/4/05) p. 48
  – Simplified High Low Rates Raised Effective 10/1/05
  – High cost facility rate goes to $226
  – Low cost facility rate goes to $141
  – Employers can elect to continue to use old rates
  – Cannot switch methods mid year (from high low to GSA per diem)

Key Business Developments

• Prohibited Transaction with Loans to Non-controlled Entities
  (Joseph J. Rollins, T.C. Memo 2004-256, 11/15/04) p. 83
  – CPA trustee of his company’s 401(k) loaned to entities in which had minority investment
  – Prohibited Transaction under §4975
  – Consider impact on IRA transactions with clients “pushing the envelope”

Key Business Developments

• Reasonable Compensation Determined by Comparables Even with Adequate Return
  (Marine, Inc., T.C.Memo 2004-207, 9/16/04, T.C.Memo 2005-5, 1/6/05) p. 84
  – Tax Court denied deduction for $13 million of $20 million
  – Return to investors was shown to be better than competitors (Home Depot and Lowe’s)
  – Court ruled that wasn’t the exclusive test—comparable CEOs paid less (though their companies earned less)
  – Issue will be if appellate court views independent investor test as sole test

Key Business Developments

• Royalty Payments to Related Party Deemed Excessive and Disallowed
  (Chickie’s and Pete’s Inc., TC Memo 2005-243, 10/18/05) p. 79
  – Taxpayer paid a royalty from controlled corporation to self for use of trade name and menu
  – Rate was greater than amount paid by unrelated third party for the same rights (Court did not find differences in actual rights granted significant)
  – It’s not just compensation that is a problem!
Key Business Developments

- Brother to Brother Sale Triggered Limitation on Use of NOLs
  (Gather Industries Holding Co. Inc., 124 T.C. No. 1, 1/25/05) p. 82
  - A sale from one brother to another brother triggered the application of §382
  - Shares not deemed owned by brothers via attribution rules of §318

Key Business Developments

- Section 1031 Matters
  - Cannot use parking to qualify pre-owned real estate as replacement property for §1031 exchange
    (Revenue Procedure 2004-31, 7/20/04) p. 52
  - Using an intermediary didn’t move exchange outside related party rules
    (Rogers Brothers, Ltd, 124 TC 45, 2/9/05) p. 65
  - However, IRS rules sale of timber by related party after exchange of timberland did not trigger gain recognition
    (PLR 200541037, 10/14/05) p. 63

Key Business Developments

- Section 1031 Matters
  - IRS ruling on interaction of §121 and §1031 (you can use both)
    (Revenue Procedure 2005-14, 2/3/05) p. 27

Key Business Developments

- Filing Form 2553 by LLC Will “Check the Box”
  (TD 9203, 5/20/05) p. 45
  - An LLC can elect corporate status by filing a 2553 only per final regulations
  - Will no longer need to separately file to elect corporate status
  - Can be applied retroactively
Key Business Developments

- 2006 Limits on Compensation for Plans
  (IRS News Release IR-2005-120, 10/17/05, Notice 2005-75, 11/7/05) p. 37
  - Compensation limit rises to $220,000 for 2006
  - 401(k) Maximum Deferral $15,000
  - Maximum “Catch Up” $5,000

Key Business Developments

- Social Security FICA Wage Limits for 2006
  (SSA website: http://ssa.gov/OACT/cola/col.html)
  (IRS Notice 2005-46, 11/14/05) p. 56
  - $94,200 for 2006, up from $90,000 for 2005
  - Domestic employee threshold $1,600 for 2006, up from $1,500 for 2005

Key Business Developments

- Fringe Benefit Issues
  - Calling it a “tool allowance” no better than calling it an “auto allowance” (well, unless you are a rig welder...)
  (Revenue Ruling 2005-52, 8/3/2005) p. 41
  - Gift certificates don’t qualify as de minimus fringe even if $35
  (TAM 2004-03) p. 41

Key Business Developments

- IRS Changes Position on Signing Bonus and Termination Payments for FICA Purposes
  - Signing bonus represents FICA Wages (reverses position in Revenue Ruling 58-145)
  - Termination payment represents FICA wages (reverses Revenue Rulings 55-520 and 58-301)
  - However, see University of Pittsburgh case decided in October that held payments for tenure rights were not FICA wages
Key Business Developments

- Use It or Lose It Rules Relaxed
  (Notice 2005-42, 5/18/05) p. 63
  - For health and dependent care reimbursement plans
  - Gives 60 days into following year to incur additional expenses to use up any unused portion of prior year deferral
  - Employer must amend plan before this can be used, and amendment must be in place by 12/31/05 for 2005

Key Business Developments

- IRS Issues Tightened Regulations on Valuing Life Insurance in Qualified Plans
  (TD 9223 and Revenue Procedure 2005-25) p. 64
  - IRS was concerned “not springing value” policies that, essentially, still sprung
  - Cash surrender value is not the equivalent of fair market value
  - Aimed at policies designed to have “magic restorative powers” after being distributed
  - Defined benefit plans may now be overfunded

Key Business Developments

- Mandatory Efile for “Large” Entities and Procedure to Ask for Permission to File on Paper
  (TD 9175, 1/12/05, Notice 2005-48, 11/18/05) p. 37
  - Certain entities will be required to efile 2005 returns (see list)
  - Must request permission to file on paper will be deemed not to have filed
  - Can be turned down

Key Business Developments

- IRS Rules on Development Activities that Did not Create UBIT
  (PLR 200310029, 3/11/05, PLR 200332057, 8/12/05, PLR 200330029, 7/29/05) p. 27
  - IRS ruled on fact patterns where charities activities to enable the sale of parcels of land did not rise to the level to trigger UBIT
  - Provides potential guidance in §1031 situations (can’t trade inventory)
Key Business Developments

• IRS Proves to be a Sore Loser
  - Changed S Corporation Built-In gain regulations to reverse 10th Circuit result in *Colorado Gas Compression* case (TD 9276, 12/21/04) p. 29
  - On phone excise tax, announced will continue to collect even in circuit with loss (and then lost twice more) (American Bankers Insurance Group, CA I I, 46 H 6d 1328, 5/10/05; Notice 2005-79, 10/20/05; OfficeMax, Inc., CA 6, 2003-2 USTC ¶70,246, 11/2/05, National Railroad Passenger Corporation, CA DC, 12/9/05) p. 79

Key Individual Developments

• Fifth Circuit Affirms Tax Court’s Second Try at Resolving *Strangi* Case But Skips Big Issue
  (Albert Strangi, deceased, Roselle Gailey, Independent Executrix v. Commissioner, 417 F3d 468, 7/15/05) p. 76
  - Addressed only §2036(a)(1) failure (implied retention of life estate)
  - Did not decide applicability of §2036(a)(2) (Byrum applicability)
  - What CPAs should be doing

Key Business Developments

• Trust Must Apply 2% of AGI Limitation to Investment Advisory Fees
  (Roldan Testamentary Trust, 124 TC 394, 6/27/05) p. 86
  - The Tax Court reaffirmed, in an 18-0 decision, their position that investment fees paid by a trust are subject to the 2% limit
  - This is so despite the legal duty imposed on the fiduciary
  - At variance with Sixth Circuit’s *O’Neill Trust* decision

Key Individual Developments

• Estate Gets Discounts on Highly Liquid Partnership
  (Estate of Kelley, TC Memoandum 2005-235) p. 78
  - In a case decided after *Strangi*, an estate received a 32% discount on a partnership
  - Assets consisted of cash and certificates of deposit—about as liquid as you can get
  - IRS dropped §2036 arguments at trial (don’t know why)
Key Individual Developments

- Tax Liability Implicit in IRA Does Not Reduce Value for Estate Tax Purposes
  
  **D. F. Kohn Estate, 125 T.C. No. 11, 11/18/95** p. 74
  
  - Tax Court reaffirms its position that this is not the same as closely held stock
  - Emphasized that
    - Willing buyer would not take over the tax attributes
    - §891(c) provides relief from double taxation (albeit far from perfect relief)

Key Individual Developments

- Decedent, and not Partnership, Owner of Real Estate Despite 1065s Filed for Over 20 Years
  
  **(Estate of Marie A. Maniglia v. Commissioner, TC Memoandum 2003-247, 10/26/95)** p. 83
  
  - Key lesson—Formalities count when taxpayer controls them
  - Next lesson—Don’t hire an accountant who had a “tax evasion problem” and a bad memory

Key Individual Developments

- Buy/Sell Agreement Failed to Set Price of Redemption Even Though Control Went to Employees
  
  **Blount v. Commissioner, 2005-2 USTC ¶9,589 (CA11)** p. 68
  
  - A taxpayer owned a corporate with one other owner and the firm’s ESOP
  - First owner died and was redeemed
  - Remaining owner reduced buyout amount because of concern about company
  - Court held he had unilateral right to modify and it no longer set the value

Key Individual Developments

- IRS Announces 2006 Inflation Adjusted Figures
  
  
  - Standard deduction will be $10,300 for joint return filers, $7,550 for head of household and $5,150 for those filing single and married filing separately.
  - Personal exemption $3,300
  - Gift tax exclusion for present interest rises to $12,000
  - HSA Limits also announced
Key Individual Developments

- Single Six Month Extension in 2005
  (TD9229, 11/07/05) p. 47
  - Eliminate the 2688 and the 4868 will be good for
    six months
  - Applies to virtually all noncorporate entities
  - Form 7004 will be used by filers other than
    individuals (not just limited to corporations)

Key Individual Developments

- No Medical Deduction for Prescription Drugs
  Brought in from Canada
  (IRS Information Letter 2005-0011, 5/14/05) p. 46
  - Such importation is illegal, per the FDA's position
  - Regulations deny deduction for illegal drugs
  - Same logic should apply for reimbursements
    from FSAs

Key Individual Developments

- In Private Ruling, IRS Allows a Taxpayer to
  Divide Unallocated Arbitration Award
  Between IRA and Taxable Account
  (PLR 20054006, 7/1/05) p. 30
  - Taxpayer received arbitration award covering
    taxable and IRA accounts
  - Amount computed for IRA by taxpayer's method
    allowed to be rolled back into IRA account
  - Note, this is a private letter ruling but suggests
    the possibility is there to get the funds back into
    the IRA and escape current tax

Key Individual Developments

- IRS Believes Spouse’s Right to Elect Against
  CRT Invalidates CRT
  (Revenue Procedure 2005-24, 6/10/05) p. 33
  - The IRS “discovered” that if a spouse has a state
    granted right to claim an elective share of a CRT, 
    that right, even if never exercised, invalidates the
    CRT
  - Must get a waiver valid under state law within
    time limits
  - Taxpayer can stumble into this by moving from
    one state to another
  - Pre 6/28/05 trusts grandfathered (sort of)
### Key Individual Developments

**New York Can Tax All Wages of Employee Who Mainly Telecommuted from Tennessee**  
*Haslaby v. Tax Appeals Tribunal, New York State Court of Appeals, US Supreme Court cert. Denied 10/31/05* p. 86  
- US Supreme Court denied cert in the case on 10/31/05  
- New York’s highest court held that location in Tennessee was for convenience of employee, not employer  
- Therefore, wages taxable to New York

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**IRIS Clarifies AMT Treatment of Refinanced Home Mortgage Debt**  
*(Revenue Ruling 2005-11, 3/17/05)* p. 44  
- The IRS clarified that a second refinancing doesn’t change home acquisition debt to something else for AMT purposes  
- Code section worded “awkwardly” to say the least  
- Came out late in tax season

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**“Borrowing” from an IRA Proves to Be a Dangerous Practice**  
*IRA Law Review 2005/40(2), 11/7/05* p. 26  
- Taxpayer bought home, using funds from IRA to temporarily get down payment  
- Planned to refinance shortly after, but Hurricane hit and was unable to timely complete  
- IRS denied relief since was using outside designed purpose of rollover

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**IRA Early Distribution Tax Exception Only Applies to Current Year Education Expenses**  
*(Linda Louis Loder-Burkert and Timothy Burkert, TC Memo 2005-162, 7/3/05)* p. 73  
- Taxpayer wanted to roll from plan to IRA and take distribution for education expense—but discovered might get more in plan if she waited  
- Charged education expenses and paid off credit cards in later year after getting extra money in plan  
- No exception for prior year expenses
Key Individual Developments

- Transfer of Third Party Debt Does Not Qualify as Alimony
  (Lofthouse, 125 TC No. 13, 11/22/05) p. 65
  - Taxpayer transferred note from son to his former spouse in satisfaction of past and future alimony
  - Fails “cash or cash equivalent” requirement—is ruled not to be a cash equivalent
  - As well, payments from debtor would not cease on death of recipient

Other Cases and Developments

- IRS Releases Audit Statistics
  (IRS Commissioner Presentation, 11/3/05) p. 28
  - Individuals
    - FY2005 examined 0.93% of returns (FY2004 examined 0.77%)
    - $100K and up examined 1.58% in FY2005 vs. 1.25% in FY2004
  - Small business corporations (< $10 million) FY 2005 0.79% vs FY 2004 0.32%

Other Cases and Developments

- Extension of Time Denied to Make Election on Forgiveness of Debt
  (LET-2005-1851, 7/23/05) p. 40
  - Taxpayer’s preparer did not file Form 982 to notify of reduction of tax attributes under §108, but rather used 8082 (Notice of Inconsistent Treatment)
  - As well failed to reduce basis in later years
  - Denied relief under Regulation §301.9100-3

Other Cases and Developments

- Do It Yourself Will Transfer Found, Despite Language Problems, to Qualify for Marital Deduction
  (Estate of Sneed, 2005-2 ustc §60,512, 11/10/05) p. 81
  - Taxpayer wrote his own will, and included in it a clause that provided the residual would go to his wife, but only if she survived long enough after his death to receive the distribution—otherwise it transferred per stirpes
  - Court held, based on specific provisions in state law, that decedent’s intent caused problematical provisions to be stricken from will for state law purposes
Other Cases and Developments

- IRS Warns of Potential Consequences to Issuer of 1099 Apparently Issued to “Get Even”
  (IRS Information Letter 2005-0123, 9/30/05) p. 44
  - IRS ruled a 1099-INT issued by car dealer due to an unfavorable (to the dealer) resolution of a financing dispute should not have been issued
  - Commented on consequences under §7434 to issuer

Other Cases and Developments

- Expanded Access to E-services for Preparers Who File More than 5 Returns
  (IR-2005-33, 5/21/05) p. 39
  - Dropped from old floor of 100
  - Offers a number of features
  - Demands password change quite often

Other Cases and Developments

- S Corporation Disproportionate Distribution Correction Allowed to Avert Termination Due to Second Class of Stock
  (PLR 200524009, 6/17/05) p. 81
  - Corporation paid income tax liabilities of shareholders directly to governmental entities resulting in disproportionate distribution
  - CFO made corrective distributions once made aware of the problem
  - S election not terminated, rules IRS

Other Cases and Developments

- Nonrefundable Mortgage Purchase Commitment Fees Were Properly Classified as Options
  (Federal Home Loan Mortgage Corporation, 125 TC No. 12, 11/21/05) p. 82
  - Taxpayer received 0.5% nonrefundable fee to enter into a contract to purchase a mortgage at the lender’s option
  - Tax Court found the contract had economic substance as option and the earnings process was not complete
Other Cases and Developments

**Changes to EIN Requirements for Disregarded Entities Proposed**
(REG-114371-05, Issued October 17, 2005) p. 32
- Would require disregarded entity to obtain its own EIN for payroll and excise tax purposes
- Could no longer use EIN of owner
- Would be effective year after year regulations go final

**Proposed Regulations to Make Registered/Certified Mail Sole Method for Prima Facia Proof of Filing**
(Proposal Regulation §301.7302-1, 9/21/04) p. 39
- Meant to resolve a split in circuits (6th already adopts this position)
- Even if the client is in a circuit that doesn’t go along with this, still makes sense to use these methods

**Legal Settlement Divided Between Deductible and Nondeductible Based on Amounts Paid by Partnership vs. Partner**
(Rage, TC Memoandum 2005-276, 11/29/05) p. 80
- Taxpayer was involved in litigation on farm loan defaulted upon by deceased spouse’s family
- Records not clear on how settlement was paid
- Court held deductible to extent paid by partnership (§162) but must be capitalized for amount paid by partner

**IRS Provides Guidance for Aircraft Expense Limitation Coverage**
(IrS Notice 2005-24, 5/27/05) p. 39
- Guidance for implementing the limitation on deduction of aircraft related expense from AJCA 2004
- Provides computational support
Other Cases and Developments

- IRS Seeks to Limit Applicability of *Amdahl*
  Decision on Employer Home Sale Benefit to Relocating Employees
  *(Revenue Ruling 2005-74, 11/30/05) p. 41*
  - IRS outlines three fact patterns
  - Emphasizes that blank deed alone will not be deemed to trigger *Amdahl* result
  - Evaluates burdens and benefits of ownership rather than technical title status.

Other Cases and Developments

- Assignment of Income to S Corporation Not Valid
  *(Arnold v. Commissioner, T.C. Memo. 2005-235, 10/31/05) p. 65*
  - Customers need to acknowledge they are dealing with the corporation
  - Clients who cannot get customers to pay to corporation have a problem

Other Cases and Developments

- IRS Releases Guidance on Election to Create Family Group for S Corporation Qualification Purposes
  *(Notice 2005-31, 11/22/05) p. 86*
  - Describes method to be used to make the election to treat as a family group
  - Defines the common ancestor and entities that can be included in family group
  - Can be relied upon until regulations are issued

Other Cases and Developments

- Claim of Right Theory Did Not Serve to Delay Stock Sale Despite Shareholder’s Dispute of Sale
  *(Ridgecrest, T.C. Memo. 2005-274, 11/28/05) p. 71*
  - Shareholder forced out under terms of shareholder agreement, but attempted to dispute arbitration decision
  - Placed funds “in trust” and then unsuccessfully litigated all the way to state’s top court
  - Was income in year of receipt
  - Also had to pick up S corporation income—was beneficial owner prior to sale
Other Cases and Developments

- Taxpayer’s Still Has to Produce Some Evidence to Invoke Cohan Rule
  (Kolbeck v. Commissioner, TC Memorandum 2005-253, 10/31/05) p. 73
  - Taxpayer had records confiscated and destroyed by employer
  - However, offered no evidence to support deduction and did not take obvious steps to give court a basis for estimating

Other Cases and Developments

- Gift of Real Estate Valued Based on Purchase Price Paid 17 Months Earlier
  (Wortmann v. Commissioner, TC Memorandum 2006-227, 9/29/05) p. 86
  - Taxpayers purchased property that had been a financially unsuccessful monastery
  - Leased to a charity for 17 months, then donated
  - Taxpayer’s appraisal not believed by court

Other Cases and Developments

- Disaster Relief Payments from State Not Excludable from Income
  (Revenue Ruling 2006-46, 7/1/05) p. 32
  - Came out before Hurricanes of 2005
  - Can use §1033 to defer gain if property is replaced

Other Cases and Developments

- Payments From Supplier to Help Finance Expansion Were Income and Not a Loan
  (Rams Print & Fancy Food, Ltd. v. Commissioner, TC Memorandum 2005-233, 10/5/05) p. 85
  - Taxpayer received advance from supplier and signed note
  - Court ruled that even though the form was a loan, the reality was an advance payment of a rebate and taxable as income in year of receipt
Other Cases and Developments

- IRS Publishes Cost Segregation Audit Guide
  - IRS guide to auditors on evaluation cost segregation studies
  - Should study this if you are involved in this

Other Cases and Developments

- IRS Updates Audit Guide for Construction Contractors
  (MSA Audit Guide - Construction Industry, 2/22/05) p. 45
  - Details tax issues for contractors
  - Useful reference for construction clients

Other Cases and Developments

- Undocumented Advances Not Treated as Loans to Corporation
  (Hodges Products Co. Inc., T.C. Memo 2005-32, 2/21/05) p. 85
  - Taxpayers advanced loans to corporation—received interest at 10% despite corporation’s ability to borrow at a lower rate
  - Did not pay dividend to avoid Tennessee tax

Other Cases and Developments

- Taxpayer Granted Redemption Treatment Despite Spouse’s Continued Involvement with Corporation
  (Ward, 124 TC 16, 3/3/05) p. 84
  - Taxpayer was redeemed in his shares, however kept a number of interests, including wife had a 10 year employment agreement
  - Note that the Court declined to look at an alternative attack because the IRS raised it too late—so be very careful with this case
Other Cases and Developments

- No adjustment for AMT for subtraction for targeted jobs credit
  - Another case, this time for the Federal Circuit, holds that the AMT is not a “pure” second tax system
  - Even though no benefit for AMT purposes, still have to do the addback for §51 credit

Other Cases and Developments

- Qualified Amended Return for Accuracy Related Penalties Defined
  (Regulation Section 1.6664-2(c), TD 9186, 3/2/03) p. 48
  - Amendment filed before IRS contacts taxpayer is “qualified amended return”
  - Meant to encourage voluntary compliance

Other Cases and Developments

- Wage Payments to Former Spouse to Compensate for Retirement Income Not Taken Taxable to Former Spouse
  (DuBlin, 124 TC 100, 3/31/05) p. 87
  - Taxpayer continued to work, therefore former spouse was not being paid her 1/2 of pension
  - Paid share of wages in lieu of that payment
  - Not considered an impermissible assignment of income

Other Cases and Developments

- IRS Clarifies Impact of Spouse’s Non-HDHP Coverage on HSA Eligibility
  (Revenue Ruling 2005-35, 4/13/05) p. 42
  - The IRS outlined the impact of
    - Spouse who has non-HDHP coverage
    - Spouse with no coverage
  - Outlines when you can have “family” coverage even if the spouse is not covered
Other Cases and Developments

• IRS Answers Questions on Their Views on Specified Liability NOLs
  (Notice 2005-20, 2/10/05) p. 56
  - Specified liability NOLs get 10 year carryback
  - IRS gives questions and answers on what qualifies for this purpose

Other Cases and Developments

• IRS Rules that Merger Termination Fees Are Ordinary Income
  (TAM 2004-36033) p. 63
  - IRS Ruled Fees are Ordinary Income and Not a Return of Capital
  - Represents Fee Received to Avoid Litigation

Other Cases and Developments

• Forming Nevada Corporation to Own REIT Shares Did Not Allow Income to Escape State Taxation
  (Bridges V. Autonoma, S. Ct. Louisiana, 5/24/05) p. 31
  - AutoZone formed a REIT that owned real property in Louisiana and rented to their stores
  - REIT owned 100% by a Nevada corporation formed solely to hold REIT shares
  - Louisiana Supreme Court rules income still subject to Louisiana tax

Other Cases and Developments

• IRS Rules on Classification of Assets of Outdoor Entertainment Venture
  (TAM 200500015, 12/2/04) p. 33
  - IRS ruled the assets were not "Theme or Amusement Park" class 80.0 assets
  - Be sure to check out IRS Publication 946
Other Cases and Developments

- Distribution of Partnership Valued by Reference to Underlying Assets per IRS (TAM200445013, 7/13/04, Released 10/2/04) p. 36
  - IRS Ruled that a corporation may not discount the value of what it is distributing by first placing the assets into a partnership
  - Not surprising given IRS views of family limited partnerships

Other Cases and Developments

- IRS Establishes Standards for Treating Foreign Adoptions as Final (Revenue Procedure 2005-31, 6/15/05) p. 41
  - Finalized Guidance in Notice 2003-15
  - Provides rules for adoptions subject to Intercompany Adoption Act of 2000 certification and for those not subject to those provisions

Other Cases and Developments

- Simplified Low Income Housing Credit Filings (TD 9228, 11/7/05) p. 53
  - Simplified Filing for Form 8609
  - File once rather than 15 times