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Tax News Update

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I. What's New for 2011 Tax Returns?

A. Individuals.

1. The individual tax rates remain at 10, 15, 25, 28, 33, and 35 %.
2. Basic standard deduction amounts have increased for 2011.
3. The deduction for each personal exemption is \$3,700 for 2011.
4. Inflation-adjusted income amounts that trigger the reduction of allowable itemized deductions and personal exemptions for high-income taxpayers are repealed for 2011.
5. "Kiddie tax" amount is \$1,900 for 2011.
6. The standard mileage rate for all business use of a car is 51 cents per mile for January 1 through June 30, 2011, and 55.5 cents per mile for July 1 through December 31, 2011.
7. Per diem rates under the high-low method of substantiating travel expenses are \$242 for high-cost localities and \$163 for low-cost localities for travel after 9/30/11.
8. Student loan interest, up to \$2,500 in 2011, may be deducted "above-the-line" by qualifying taxpayers.
9. The transportation fringe benefit exclusion amount for employer provided parking and employer-provided transit passes or vehicles is \$230 per month for 2011.
10. The maximum Code Sec. 179 deduction for 2011 is \$500,000; ceiling \$2,000,000.

B. Tax Credits.

1. For 2011, the maximum earned income credit for eligible taxpayers with no qualifying children is \$464, with one qualifying child is \$3,094, with two qualifying children is \$5,112, and with three or more qualifying children is \$5,751
2. The child tax credit is \$1,000 for 2011
3. The education tax credits (American Opportunity (modified Hope) and lifetime learning) are \$2,500 and \$2,000, respectively, for 2011

C. Withholding.

1. The 2011 OASDI wage base for FICA and self-employment tax purposes is \$106,800.

2. The 2011 wage threshold for “Nanny Tax” reporting is \$1,700.

II. What’s Changed for 2012?

A. Provisions That Expired on 12/31/11

1. Green Provisions.

a. *Environmental Remediation Costs* - The Election to expense environmental remediation costs under Code Sec. 198(h) .

b. *Sec. 40A Biodiesel and Renewable Income Tax Credit* - tax credits for biodiesel and renewable diesel under Code Sec. 40A.

c. *Alternative Fuel and Fuel mixture tax credits* - Alternative fuel and fuel mixture tax credits under Code Sec. 6426(d)(5) and Code Sec. 6426(e)(3) .

d. *New Energy Efficient Homes Tax Credit* - Credit for construction of new energy efficient homes under Code Sec. 45L .

e. *Energy Efficient Appliance Tax Credit* - Energy efficient appliance credit under Code Sec. 45M).

f. *Residential Energy Property Credit* – Under Code Sec. 25C expires.

g. *Mine Rescue Training Credit* – the 20 percent credit for training rescue team employees.

2. Research

Sec. 41(h)(1)(B) Research Tax Credit - The Research credit under Code Sec. 41(h)(1)(B) .

3. Charitable Provisions.

a. *Food Inventory Deduction* - Enhanced charitable deduction for contributions of food inventory under Code Sec. 170(e)(3)(C).

b. *Book Inventory Deduction* - Enhanced charitable deduction for contributions of book inventories to public schools under Code Sec. 170(e)(3)(D)

c. *Computer Contributions* - Enhanced deduction for corporate contributions of computer equipment for educational purposes under Code Sec. 170(e)(6)(G) .

d. *S Corporations* - Lower shareholder basis adjustments for charitable contributions by S corporations under Code Sec. 1367(a).

e. *Capital Gain Real Property* - Special rules to encourage contributions of capital gain real property for conservation purposes under Code Sec. 170(b)(1)(E) and Code Sec. 170(b)(2)(B).

4. Empowerment Zones

a. *Overview.*

Empowerment Zone tax breaks under Code Sec. 1391, Code Sec. 1394, Code Sec. 1396, Code Sec. 179, and Code Sec. 1397B .

b. *District Columbia.*

District of Columbia Enterprise Zone (DC Zone) tax breaks under Code Sec. 1400(f), Code Sec. 1400A(b), and Code Sec. 1400B(b)(2)(A)(i)

c. *Puerto Rico.*

The inclusion of Puerto Rico as “within the U.S.” for purposes of determining a taxpayer's domestic production gross receipts (DPGR) under Code Sec. 199(d)(8)(C) .

5. Reduced Built In Gain Recognition Period.

Reduced S corporation recognition period for built-in gains tax under Code Sec. 1374(d)(7) .

6. Small Business Stock Exclusion.

Exclusion of 100% of gain on certain small business stock under Code Sec. 1202(a)(4)

7. Individual Provisions

- a. Allowance of personal tax credits against regular tax and AMT under Code Sec. 26(a)(2)
- b. Tax-free distributions (up to \$100,000 annually for taxpayers 70- 1/2 and older) from individual retirement plans for charitable purposes under Code Sec. 408(d)(8) .
- c. The deduction for mortgage insurance premiums for qualified mortgage insurance in connection with acquisition indebtedness.
- d. The provisions that enhanced the adoption credit to \$13,170, and made it refundable for 2011 are not extended. The adoption credit in 2012, adjusted for inflation will be \$12,650.
- e. The deduction for state and local sales tax in lieu of state and local income tax not extended through December 31, 2011.
- f. Above-the-line for qualified tuition and related expenses is not extended after December 31, 2011.
- g. The \$250 above –the-line deduction for teachers and oter scholl professionals.

8. Who Cares?

- a. The exclusion from a tax-exempt organization's unrelated business taxable income (UBTI) of interest, rent, royalties, and annuities paid to it from a controlled entity under Code Sec. 512(b)(13)(E)(iv)
- b. Exception under subpart F for certain income from the active conduct of a banking or similar business under Code Sec. 953(e)(10) and Code Sec. 954(h)(9)
- c. Look-through treatment for payments between related controlled foreign corporations (CFCs) under the foreign personal holding company rules under Code Sec. 954(c)(6)

B. Tax Rates, etc

1. This year's income tax brackets are a bit wider than those for 2011, because of an increase in inflation during the 12-month period ending last August that's used to figure the adjustments.

2. The income tax rates for this year didn't change because the Bush tax cuts were extended through 2012.

3. The standard deductions for 2012 also increase by small amounts.

a. Married couples can claim \$11,900.

b. If one spouse is age 65 or older...\$13,050.

c. If both are...\$14,200. Singles can take \$5,950. Those 65 and up can deduct \$7,400.

d. Heads of households can get \$8,700 plus \$1,450 more once they reach age 65.

e. Blind people get \$1,150 more (\$1,450 if unmarried and not a surviving spouse).

f. Personal exemptions increase to \$3,800 for filers and their dependents.

4. High-incomers don't lose any itemized deductions and personal exemptions.

D. Changes for Tax Preparation Industry

1. Expiring PTINs.

PTINs issued after Sept. 27, 2010 and before Oct. 16, 2011 expired on Dec. 31, 2011 and must be renewed. PTINs valid in 2011 can still be renewed at:

[http://www.irs.gov/taxpros/article/0,,id=210909,00.html?banner=PTIN.](http://www.irs.gov/taxpros/article/0,,id=210909,00.html?banner=PTIN)

2. E-file Mandate.

a. Beginning in 2012, tax return preparers who expect to file 11 or more individual, estate, or trust returns in a calendar year must e-file. (Rev Proc 2011-25, 2011-17 IRB)

b. If the tax return preparer is a member of a firm, then in the aggregate if the firm expects to file more than 10 individual income tax returns then the tax return preparer is a specified tax return preparer

c. An individual income tax return is one that is filed by an individual, estate or trust (1040 series - 1041 series - 990-T when the exempt organization is a trust subject to tax under section 511(b)).

d. Does not apply if the taxpayer, by way of a hand-signed statement, informs the tax return preparer that the taxpayer, not the preparer, will file the paper return with the IRS.

e. A specified tax return preparer can be waived from this requirement due to undue hardship by filing the proper forms with the IRS for consideration

f. Form 8944, Preparer e-file Hardship Waiver Request must be filed prior to the time a specified tax return preparer or the firm files an individual tax return for the calendar year; generally must be submitted between October 1, of the taxable year and February 15, of the filing year

g. Lack of computer or software equipment or lack of desire to obtain such equipment alone will not constitute an undue hardship

h. Other exceptions may be set forth by the IRS as administrative exceptions

3. Continuing Education (CE) Requirements Apply.

a. Starting in 2012, registered tax return preparers must complete 15 hours of CE each year: 10 hours of federal tax law topics, three hours of tax law updates, and two hours of ethics and/or professional conduct.

<http://www.irs.gov/taxpros/article/0,,id=239684,00.html>

b. Anyone who is required to take the Registered Tax Return Preparer competency exam must take Continuing Education credits

c. Attorneys and certified public accountants do not have to take continuing education credits

d. Only credits offered by an IRS approved provider will count toward the continuing education credits required by the IRS

e. Required records must be retained for four years

4. Earned Income Credit

a. Heightened due diligence requirements for earned income tax credit (EITC) claims.

b. For tax years ending on or after Dec. 31, 2011, paid tax return preparers must file a due diligence checklist (Form 8867) with any refund claim or federal tax return claiming the EITC. (Reg. § 1.6695-2)

5. New Form 2848 Power of Attorney

a. Requires the representative to disclose their License/Bar or Enrollment Number on the signature line

b. A Form 2848 has to be filed for each individual; Representatives of a Husband and Wife who file jointly must file a 2848 for each individual

E. Federal Payroll Tax Changes for 2012

1. Payroll Tax Cut

a. The Temporary Payroll Tax Cut Continuation Act of 2011.

(1) The Temporary Payroll Tax Cut Continuation Act of 2011 was enacted late last year.

(2) It temporarily extends the two percentage point payroll tax cut for employees, continuing the reduction of their Social Security tax withholding rate from 6.2% to 4.2% of wages paid through Feb. 29, 2012.

(3) Shortly after its passage, the IRS instructed employers to implement the new payroll tax rate as soon as possible in 2012 but not later than Jan. 31, 2012.

b. Recapture

(1) The law also includes a “recapture” provision, which applies only to those employees who receive more than \$18,350 in wages during the two-month period (i.e., two-twelfths of the 2012 wage base of \$110,100).

(2) This provision imposes an additional income tax on these higher-income employees in an amount equal to 2% of the amount of wages they receive during the two-month period in excess of \$18,350 (and not greater than \$110,100).

c. Self-Employed

In addition, under the new law, the social security tax rate for a self-employed individual remains at 10.4%, for self-employment income of up to \$18,350 (reduced by wages subject to the lower rate for 2012).

d. Tax Year 2012

Congress is going to try to negotiate a deal to extend the payroll tax cut for all of 2012. If a deal is struck to extend it for the full year, the recapture provision for employees would not apply.

2. W-2s.

Employers may now submit up to 50 W-2 forms through W-2 Online (previously, up to 20 W-2 forms).

3. Unemployment Tax.

a. The 0.2% federal unemployment tax (FUTA) surtax expired on June 30, 2011.

b. The FUTA tax rate, before consideration of state unemployment tax credits, is 6.2% from Jan. 1, 2011 to June 30, 2011, and 6.0% after June 30, 2011.

c. Employers in 20 states (and in the Virgin Islands) will see their state unemployment tax credits reduced on their 2011 FUTA return because their state failed to repay its federal unemployment insurance loans before the required deadline.

F. Business Changes

1. Estimated taxes for large corporations.

a. For a corporation with assets of at least \$1,000,000,000 (determined as of the end of the previous tax year), the amount of any required installment of corporate estimated tax which is otherwise due in July, Aug. or Sept. of 2012 is 100.5% of that amount, and

b. The amount of the next required installment after the installment due in July, Aug. or Sept. of 2012 is appropriately reduced to reflect the amount of the 0.5% increase. (P.L. 112-43, Sec. 502, P.L. 112-41, Sec. 505)

2. Work Opportunity Credit

a. Work Opportunity Credit –

(1) Available for businesses and tax-exempt organizations that hire qualified veterans that do not start work after December 31, 2012

(2) Businesses claim the credit as part of the general business credit pursuant to I.R.C. section

b. Credit amounts:

(1) Up to \$4,800 credit (credit is equal to 40% of “qualified wages” not to exceed \$12,000) for a “qualified veteran” under section 51(d)(3)(A)(ii)(I)

(2) Disabled veteran who is hired not more than 1 year after discharge or release from active duty

(3) Up to \$5,600 credit (credit is equal to 40% of “qualified wages” not to exceed \$14,000) for a “qualified veteran” under section 51(d)(3)(A)(iv)

(4) Veteran who, during the 1 year prior to the hiring date, has aggregate periods of unemployment equal to or more than 6 months

(5) Up to \$9,600 credit (credit is equal to 40% of “qualified wages” not to exceed \$24,000) for a “qualified veteran” under section 51(d)(3)(A)(ii)(II)

(6) Disabled veteran who, during the 1 year prior to the hiring date, has aggregate periods of unemployment equal to or more than 6 months

c. Expiration

The WOTC under Code Sec. 51 generally can't be claimed for an individual who begins work for the employer after Dec. 31, 2011.

d. However, the WOTC continues to be available for employers that hire qualified veterans who began work for the employer before Jan. 1, 2013.

e. Credit for hiring veterans extended and enhanced.

(1) *Old Law*

A law enacted last November extended and enhanced a credit for hiring qualified veterans. Before the law was passed, the credit would have been available only if the qualified veteran were hired before Jan. 1, 2012, and only certain veterans were considered qualified veterans.

(2) *New Law*

The new law (a) extends the credit for hiring qualified veterans, (b) adds two new classes of veterans who are considered qualified veterans, (c) increases the credit for hiring certain qualified veterans, (d) "fast-tracks" the process for certifying that an individual is a qualified veteran, and (e) provides tax-exempt employers with a credit against payroll tax for hiring qualified veterans.

3. Bonus Depreciation

a. The Tax Relief Act increased the bonus for qualifying assets acquired after September 8, 2010, and placed in service through December 31, 2011, from 50 percent to 100 percent.

b. The bonus rate for assets placed in service in 2012 is 50%; no bonus depreciation after 2012.

4. Code Sec. 1250 Expensing - Longer write-off Period for Certain Property.

a. For specialized realty assets - qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property-

placed in service in tax years 2010 and 2011, up to \$250,000, have been expensable subject to Code Sec. 179 limitations.

b. After 2011, a 39-year (up from 15-year) writeoff period generally applies.

5. Reduced Sec. 179 Expensing.

a. For a tax year beginning in 2012, the Code Sec. 179 expensing election is reduced to \$139,000, with a \$560,000 investment-based ceiling (down from \$500,000/\$2 million).

b. For tax years beginning after 2012, it will be further reduced to \$25,000 with a \$200,000 investment-based ceiling.

c. Additionally for a tax year beginning after 2011, expensing can no longer be claimed for qualified real property.

6. Who Cares - Basis reporting requirements.

a. The complex stock basis and character reporting rules under Code Sec. 6045(g) apply to shares in a regulated investment company (RIC, i.e., a mutual fund), or

b. Stock acquired in connection with a dividend reinvestment plan (DRP), if acquired after 2011.

F. Individual Changes

1. Reduced Alternative Minimum Tax (AMT) Exemption Amounts.

a. Absent another AMT “patch,” the AMT exemption amounts for tax years beginning after 2011 revert to the significantly lower “permanent” amounts of \$33,750 for unmarried taxpayers, \$45,000 for joint filers, and \$22,500 for marrieds filing separately.

b. This is down from \$47,450 for individuals and \$72,450, for marrieds filing jointly in 2010, and \$48,750, and \$74,470, respectively in 2011

2. No Parity for Exclusion from Income for Employer-provided mass transit and parking benefits.

For 2012, unless Congress changes the rules, the exclusion for qualified parking rises from \$230 to \$240 due to an inflation adjustment, but falls from \$230 to \$125 for employer-provided transit and vanpooling benefits.

G. Estate Law Changes

1. The estate tax exemption for 2012 rises to \$5,120,000, thanks to inflation.
2. The rate stays at 35%.
3. The annual gift tax exclusion remains at \$13,000 per donee.
4. The special estate tax valuation of real estate is increasing as well.
5. Up to \$1,040,000 of farm or business real estate can receive discount valuation.
6. And more estate tax qualifies for an installment payment tax break. If a closely held business or businesses make up more than 35% of an estate, as much as \$486,500 of tax can be deferred, and IRS will charge only 2% interest.
7. Rev Proc 2011-48 - Procedure for Filing/claiming a Protective Claim for Refund for Estate Tax.
 - a. Protective claim for refund of estate tax based on a deduction under section 2053:
 - (1) For amounts that are not paid or otherwise deductible at the time the Estate Tax Return (or GST Return) is filed, 20.2053-1(d)(5)(i) permits the filing of a protective claim for refund
 - (2) May be filed in compliance with the time frame set forth in IRC section 6511(a)
 - b. Claim should be filed within 3 years from the time the return was filed or 2 years from the time the tax was paid (whichever is later); If no return was filed then within 2 years from the time the tax was paid
 - c. Claim must include the following:

(1) identify the outstanding claim or expense that would have been deductible under 2053(a) or (b) if it had been paid

(2) explain the reasons and contingencies delaying the actual payment

(3) statement that it is under penalties of perjury

(4) there must be a separate protective claim for each claim or expense under section 2053

d. A 2053 claim or expense will be deemed to include ancillary expenses related to resolving the claim (attorneys' fees, court costs, appraisal fees, accounting fees); do not need to separately identify such expenses

e. Who can file:

(1) Fiduciary or individual with legal authority claim must include documentary evidence (cert copies of letters testamentary, letters of administration, etc.) that establishes the legal authority

(2) If individual is the same individual who filed the Tax Return then only a statement affirming that it is the same person and that the individual is still acting in representative capacity on behalf of the estate

f. Manner of filing claim:

(1) If decedent died on or after January 1, 2012 a protective claim for refund can be filed using a Schedule PC or Form 843

(2) If decedent died after October 19, 2009 and before January 1, 2012 must use a Form 843

(3) Must notify Service within a reasonable time when the contingency for payment has been resolved and the amount deductible has been established

(a) Reasonable time = 90 days after the claim has been paid or after the amount becomes certain and is no longer subject to a contingency

(b) Notification after the 90 day time frame should provide sufficient explanation to establish reasonable cause for the delay

(c) If there are multiple payments, the 90 day period starts with regard to the entire amount on the date of the last and final payment

(4) Generally the Service will not engage in a substantive review of the claim until the amount has been established

(5) Service will refund the overpaid estate tax on a timely filed protective claim even if the claim or expense does not become deductible under section 2053 until after the 6511(a) filing deadlines have expired

H. Retirement Plan Limitations.

1. 401(k).

The maximum amount that an employee may elect to defer to an Code Sec. 401(k) cash or deferred compensation plan is \$17,000 in the 2012 tax year (up from \$16,500 in 2011).

2. SEPs

The maximum amount that an employee/participant may elect to defer to a savings incentive match plan for employees (SIMPLE plan) remains at \$11,500.

3. Defined Contribution Plans

The limitation on total annual contributions to defined contribution plans is \$50,000 (up from \$49,000 in 2011).

4. Defined Benefit Plans

The annual benefit limit for defined benefit plans is \$200,000 (up from \$195,000 in 2011).

5. Code Sec. 457 Deferred Compensation Plans

The limitation on deferrals for Code Sec. 457 deferred compensation plans of state and local governments and tax-exempt organizations increases from \$16,500 to \$17,000 in

2012. The limitation used in the definition of a highly compensated employee increases from \$110,000 to \$115,000 in 2012.

6. Health Savings Plans

The maximum aggregate annual contribution that can be made to a health savings account in 2012 is \$3,100 for self-only coverage (up from \$3,050 in 2011) and \$6,250 for family coverage (up from \$6,150 in 2011).

7. Definition of Control Employee

The employee compensation amount used in the definition of “control employee” for purposes of the auto commuting valuation rule increases from \$195,000 to \$205,000 in 2012.

8. Definition of “Company Officers”.

The compensation amount used in the definition of company officers who are ineligible for the commuting valuation rule increases from \$95,000 to \$100,000 in 2012.

III. New Capitalization Rules.

A. The IRS has issued new regulations for determining whether amounts paid to acquire, produce, or improve tangible property may be currently deducted as business expenses or must be capitalized.

B. The regulations will affect virtually all taxpayers that acquire, produce, or improve tangible property.

C. They are comprehensive, voluminous and virtually rewrite the rules in this area. For example:

1. They provide detailed definitions of “materials and supplies” and “rotable and temporary spare parts”;

2. Prescribe new rules and elective de minimis and optional methods for handling their cost.

3. They also have rules for differentiating between deductible repairs and capitalizable improvements, among many other items.

D. The regulations generally are effective in tax years beginning after Dec. 31, 2011. However, to add to their complexity, some of the new rules in the regulations do not supersede prior IRS guidance.

IV. Foreign Tax

A. Reopen Voluntary Disclosure Program

1. Overview.

a. The Service is reopening its amnesty program, which allows individuals with undeclared accounts abroad to turn themselves in and avoid criminal prosecution by paying any back taxes due plus penalties.

b. The previous two rounds of amnesty brought in more than \$4 billion.

c. Now, the IRS is getting information on scofflaws from more Swiss banks, and it's working on getting data from banks in other countries.

d. Unlike prior amnesty programs, the new version will have slightly higher penalties for those who failed to report large account balances and will continue indefinitely.

2. The Program

a. In lieu of all other penalties the offshore penalty will be:

(1) 5% penalty (same as 2011)

(a) To qualify if meet these four requirements:

(i) Did not open or cause the account to be opened unless the bank caused the new account to be opened

(ii) Exercise minimal, infrequent contact with the account

(iii) Has not withdrawn more than \$1,000 from the account in any year for which the TP was non-compliant (except for a withdrawal closing the account and transferring the funds to a US account)

(iv) Can establish that all applicable US taxes have been paid on the funds deposited to the account

(b) Also qualifies if taxpayer is a foreign resident who was unaware they were a US Citizen

(c) Also qualifies if taxpayer is a foreign resident who meets the following conditions: (i) resides in a foreign country; (ii) has made a good faith showing that he or she has timely complied with all tax reporting and payment requirements in the country of residency, and (iii) has \$10,000 or less of US source income each year

(2) 12.5% penalty (same as 2011 – see Q&A above)
for TP's whose highest aggregate account balance (including FMV of assets in undisclosed offshore entities and the FMV of any foreign assets that were either acquired with improperly untaxed funds or produced improperly untaxed income) is less than \$75,000

(3) 27.5% penalty (2011 was 25% – see Q&A above) unless qualifies for either of the above penalties

b. IRS Discretion

(1) The 2011 program indicates that the IRS has no discretion in settling the cases for any amount less than what is due, however, it states that there may be situations where a TP would owe less if the special offshore initiative did not exist.

(2) It states that a TP will never be required to pay a penalty greater than what they would be liable for under existing statutes.

(3) The examiner will compare the payment under the OVDI structure and the payment under existing law and the TP will pay the lesser.

c. Additional Information

(1) This information is not addressed in the release regarding the 2012 program (2012-5, January 9, 2012) and there is no Q&A up on the IRS website yet for the new structure.

(2) For information re the 2011 program see:

B. New Foreign Asset Reporting Guidance and Form

1. IRS Guidance

The IRS issued detailed guidance on the new law requiring individuals with an interest in a “specified foreign financial asset” during the tax year to attach a disclosure statement to their income tax return for any year in which the aggregate value of all such assets is greater than \$50,000 (or a dollar amount higher than \$50,000 as the IRS may prescribe).

2. Form 8938

In addition, the IRS issued Form 8938 (Statement of Specified Foreign Financial Assets), which individual taxpayers will use starting in the 2012 tax filing season to report specified foreign financial assets for tax year 2011.

a. The guidance consists of detailed temporary regulations.

b. They define terms that apply for purposes of the reporting requirement; provide rules to determine if a specified individual must file a Form 8938 with their annual return; define what are specified foreign financial assets; detail what information needs to be reported; provide guidelines for valuing specified foreign financial assets; list exceptions to the reporting requirements; and describe the penalties that apply for failure to comply with the reporting requirements

3. Definition of Specified Foreign Financial Asset

The definition of “specified foreign financial asset:

a. “Financial accounts” maintained by a “foreign financial institution”

b. The following foreign financial assets if they are held for investment and not held in an account maintained by a financial institution:

- (1) Stock or securities issued by someone that is not a U.S. person
- (2) Any “interest” in a foreign entity
- (3) A capital or profits interest in a foreign partnership
- (4) An interest in a foreign trust or foreign estate

(5) Any financial instrument or contract that has an issuer or counterparty that is not a U.S. person

(6) A note, bond, debenture, or other form of indebtedness issued by a foreign person

(7) An interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap or similar agreement with a foreign counterparty

(8) An option or other derivative instrument with respect to any of these examples or with respect to any currency or commodity that is entered into with a foreign counterparty or issuer

IV. Innocent Spouse.

A. Basic Requirements.

1. Joint return filed which has an understatement of the tax due due to the erroneous items of the other spouse.

2. At the time of signing the taxpayer did not know or have reason to know of the understatement.

3. It would be unfair to hold the innocent spouse liable for the understatement.

B. Notice 2012-8

1. Notice 2012-8, 2012-4 IRB, IR 2012-3 updating Rev Proc 2003-61, 2003-2 CB 296 was issued by the IRS revising threshold requirements for equitable relief and the factors used in evaluating Innocent Spouse requests under section 6015(f).

2. Section 4.03(2)(b) set minimum standards for the economic hardship equitable factor in determining whether relief should be granted. Further, the lack of finding hardship will not weigh against relief.

3. Section 4.03(2)(c)(i) states that actual knowledge of the item giving rise to an understatement or deficiency will no longer be weighed more heavily than other factors.

4. Further, if the nonrequesting spouse abused the requesting spouse or maintained financial control over the household expenses, then that will weigh in

favor of relief even if the requesting spouse had knowledge or reason to know of the items giving rise to the understatement or deficiency.

5. Section 4.03(2)(c)(ii) provides that the Service will consider whether or not the requesting spouse reasonably expected the nonrequesting spouse to pay the liability within a reasonably prompt time when determining whether the requesting spouse had knowledge or reason to know that the nonrequesting spouse would not pay the tax reported as due.

6. Section 4.03(2)(d) states that the IRS will consider the requesting spouse's legal obligation to pay as a factor in determining whether equitable relief should be granted.

7. Section 4.03(2)(f) includes the requesting spouse's subsequent compliance with all Federal income tax laws as a factor that may weigh in favor of relief.

V. American Payroll Association's 5 Tips for Businesses to Avoid Compliance Penalties When Paying Contractors

1. Form 1099-MISC must be issued to any noncorporate service providers who were paid at least \$600 for services, sole proprietorships, partnerships, attorneys, and medical service providers who do business as corporations.

2. Form 1099-MISC does not need to be filed for any contractor who was paid electronically; the bank or credit card company who made the payment will send the contractor a 1099-K.

3. The pilot program for the truncation of taxpayer identification numbers (TINs) has been extended to include 1099s through the 2012 calendar year.

4. The APA advises employers who are unsure about sending a 1099-MISC to send one anyway because they could be subject to penalties for not sending all qualified service providers a Form 1099-MISC.

5. File forms on time.

VI. Miscellaneous

A. Professional Gamblers - Ronald Andrew Mayo and Leslie Archer Mayo v. Commissioner, 136 T.C. 81 (2011)

1. Professional gamblers can deduct their business expenses on Schedule C, IRS now concedes.

2. It will follow a 2011 Tax Court ruling allowing a gambler to write off gambling-related expenses such as meals, lodging and transportation as Schedule C business expenses.

3. These costs can reduce self-employment income and can even create a net operating loss.

4. Although gambling losses are deductible only to the extent of winnings, the expenses are not considered wagering losses.

5. Casual gamblers who aren't in the business of gambling can't write off

B. Jumbo Mortgages – CCA 201201017 -Publication 36

1. A break for folks with home mortgages over the \$1- million or \$1.1-million cap:

a. Interest on excess borrowings may still be deducted if the funds are allocable to a business or used for investment purposes, the Revenue Service says in a memo to the field.

b. Even though IRS regulations treat interest on the excess as nondeductible if the taxpayer elects to lump all the debts together when figuring the interest write-off, the memo says folks who do so can ignore the regulations.

c. They can use the method such as the one in Pub. 936, which allows a deduction for interest on excess proceeds used for business or investment.

2. Interest on the first \$1 million of debt incurred to buy the home and the first \$100,000 of home equity loans is fully deductible.

C. Passive Loss for LPs and LLCs

1. IRS is easing the passive loss tests for limited partners and LLC owners.
2. Their losses aren't presumptively passive, the Service says in proposed rules.
3. IRS is changing the regulations after losing in court.
4. Limited partners or LLC owners who have management rights can escape passive loss treatment by demonstrating that they meet one of seven standard tests for material participation.
5. This relief should enable more limited partners and LLC members to deduct their losses in the activity.

D. Family Limited Partnerships.

1. Est. of Liljestrand, TC Memo. 2011-259.
 - a. Family limited partnership can be a useful vehicle to trim estate tax.
 - b. But not if it was set up primarily for tax savings, the Tax Court says.
 - c. A retired doctor transferred his income-producing real estate to a limited partnership and gave away a portion of the venture to his adult children.
 - d. However, the firm did not follow basic formalities, such as having regular meetings.
 - e. The partnership allowed the doctor to commingle his personal funds with those of the business.
 - f. In addition, he needed to take large distributions from it in order to support himself.
 - g. That was enough to convince the Court to ignore the entity and include the full value of the transferred realty in the doctor's estate.

2. Estate of Turner

E. Right to Purchase Life Insurance - Rev. Rul. 2011-28.

1. Having the power to buy an insurance policy from a trust is OK'd by IRS.
2. This right won't cause estate tax woes, according to a new revenue ruling.
3. A taxpayer set up an irrevocable trust with an independent trustee and gave cash to the trust to purchase life insurance policies on his life.
4. The trust instrument gave the donor the power at any time to acquire the policies by substituting property of equal value, and the trustee had a fiduciary obligation to ensure an equal exchange.
5. The policies held by the trust won't be taxed in the donor's estate

J. Fringe Benefits

1. Need to know whether or not a fringe benefit is taxable income?
2. The Revenue Service has a handy guide to fringes, a training manual for agents that has been updated for 2012 to reflect the Service's current views. It covers the gamut of perks...cars, per diems, education, cell phones, etc.as well as whether payroll taxes are due and how to report taxable fringes.
3. Go to www.irs.gov/pub/irs-tege/fringe_benefit_fslg.pdf to view the handbook.

K. IRS Easing Rules on Deducting Low Cost Materials and Supplies (Rev. Rul. 2012-1).

1. IRS is easing rules on deducting low-cost materials and supplies. Businesses will be able to write off items that cost \$100 or less without having to depreciate them, IRS says in regulations taking effect this year.
2. The company prepaid both contracts on July 1, and expected to sign similar leases and service contracts in later years.

3. The Service said a special rule allowing payers to write off the cost of recurring tax items up front doesn't apply, so the payments are deducted ratably over the term of the lease and service contracts.

IV. What's Ahead This Year and Beyond?

A. Individual Tax Rates.

1. Tax Relief Act extended individual tax rates of 10,15,25,33, and 35 percent for 2012.

2. If allowed to expire rates will revert to higher 2001 levels of 15, 28, 31, and 39.6 percent.

B. Capital Gains and Dividends

1. Qualified capital gains and dividend are currently taxed at a maximum of 15 percent.

2. If allowed to expire capital gains will be taxed at 20 percent, and dividends at maximum rate of 39.6.

C. Limitation on Itemized Deductions

The so-called "Pease" limits on itemized deduction would act in 2013 and beyond to reduce otherwise allowable itemized deductions to be reduced by 3 percent for higher income tax payers to the extent that AGI exceeds a certain level – projected to be \$173,650.

D. Other Provisions

1. Personal Exemption Phase Out
2. Mitigation of Marriage Penalty
3. Dependent Care Credit
4. Employer Provided Child Care
5. American Opportunity Tax Credit
6. Child Care Tax Credit
7. Earned Income Tax Credit

8. Educational Assistance Exclusion
9. Student Loan Interest Deduction Phase-out
10. Coverdell Education Savings Account
11. Scholarships.

E. The Federal Estate Tax

Applicable Exclusion Amount reverts to \$1,000,000, top rate 55%

F. Health Care

Starting in 2013 the provisions of the Health Care and Education Reconciliation Act take effect.