

Federal Tax Weekly

Issue Number 28

www.CCHGroup.com

July 17, 2008

Inside this Issue

Regs OK Deemed Election To Write Off Start-Up And Organizational Expenses325

Final Escrow Account Regs Exempt Small Businesses From Tax In Deferred Like-Kind Exchanges326

IRS Updates Form 2848 Power of Attorney.....327

Lawmakers Work To Finish Housing Bill With Tax Incentives327

IRS Addresses Deductibility Of Limited Partner's Share Of Investment Interest Expense.....328

Limited Partner To Report Allowable Interest Expense On Schedule E.....328

Family Wealth Planning Gets Boost With Private Trust Companies Serving As Trustees.....329

IRS Allows Tax-Free Division Of Single Charitable Remainder Trust Into Separate Trusts.....329

Planning For Consolidated Losses Withstands Economic Substance..... 330

IRS Sorts Out Treatment Of Management Fees Incurred By Upper-And Lower-Tier Partnerships.....330

Tax Briefs.....331

Practitioners' Corner: Client Letter On 2nd Quarter Tax Developments....333

Washington Report.....334

No Estate Tax Breaks For Retained Annuity/Unitrust Interests335

Regs Provide Deemed Election To Write Off Start-Up And Organizational Expenses

◆ *T.D. 9411, NPRM REG-164965-04*

The IRS issued temporary, final and proposed regs providing deemed elections to deduct start-up and organizational expenses. Allowing a deemed election now avoids the necessity of taxpayers having to formally file a separate election on Form 4562, Depreciation and Amortization. The regs apply to a proprietorship's start-up expenses and to a corporation's or partnership's organizational expenses. They also reflect enhancements to the deduction rules enacted in the *American Jobs Creation Act of 2004* (2004 Jobs Act).

■ **CCH Take Away.** The IRS stated that the deemed election rule was appropriate because most taxpayers elect to deduct the expenses and the rule would reduce the administrative burden of making an election. "The fact that you're deemed to make the election in the year the trade or business begins is quite helpful," Ellen McElroy of Pepper Hamilton LLP, Washington, D.C., told CCH. The regs address the problems of a company that failed to make the election and clarify what happens when a company makes a mistake.

Start-up and organizational expenses

Individuals may begin to write-off expenses under Code Sec. 195 in the year in which they begin an active trade or business. Corporations may begin to deduct

organizational expenses under Code Sec. 248, and partnerships may begin to deduct organizational expenses under Code Sec. 709, in the year that the corporation or partnership begins business. The expenses include amounts incurred in prior years.

The 2004 Jobs Act changed each provision to allow a first-year deduction of the lesser of \$5,000 or the start-up/organizational expenses, reduced dollar-for-dollar by the amount that the expenses exceed \$50,000. The reduction is based on total expenses, including those incurred on or before October 22, 2004. Expenses that cannot be deducted in the first year must be amortized over 15 years. Prior to the 2004 Jobs Act, taxpayers could elect to amortize start-up and organizational expenses over 60 months.

■ **Comment.** The first-year write-off of up to \$5,000 will benefit small businesses. The longer amortization period will hurt larger businesses but is consistent with the 15-year amortization period for Code Sec. 197 intangibles. The deduction cannot be accelerated under the Code Sec. 179 expensing rules or the Code Sec. 168 bonus depreciation rules.

■ **Comment.** The regs "didn't tackle the really difficult question of whether a company is in a start-up mode or is expanding its business," McElroy commented. If a company expands its business with an acquisition, it can deduct the expenses cur-

Continued on page 326

Escrow Account Final Regs Exempt Small Facilitators From Taxation In Deferred Like-Kind Exchanges

◆ T.D. 9413

The IRS has issued much-anticipated final regs on the taxation of escrow account income in deferred like-kind exchanges that exempt small businesses from taxation. The exemption applies to businesses that establish escrow accounts to facilitate the deferred exchange. Larger companies that act as facilitators will be taxed on the account's income and on certain imputed income, unless the funds are attributed to the taxpayer who deposited the funds in the escrow.

■ **CCH Take Away.** Proposed regs issued in February 2006 were heavily criticized by Congress and by small facilitators as a threat that could drive them out of business by taxing them on funds held in the escrow accounts and imputed interest income. The IRS's solution was to devise an exemption for small businesses. Mary Foster, president of the Federation of Exchange Accommodators, told CCH that the IRS "made a good effort to consider our concerns. The regs are generally fair, especially to small business." Foster said the regs exempt enough companies.

Earnings on funds

The regs apply to an escrow account, trust or fund that holds cash or relinquished property to facilitate the like-kind exchange. The cash and property are identified as exchange funds that secure the transferee's obligation to transfer replacement property, the act that accomplishes the like-kind exchange.

In general, the exchange funds are treated as loaned by the transferee to the facilitator. The facilitator is then taxed on all items of income, deduction and credit attributable to the funds. If the bank holding the fund pays a fee to the facilitator, this is treated as compensation, not as interest earned on the account.

■ **Comment.** Howard Levine of Roberts & Holland LLP, Washington, D.C., told CCH that the concept of treating the exchange funds as a loan "is entirely correct." The regs exempted small business facilitators from these provisions if the exchange funds treated as a loan do not exceed \$2 million and the funds are held for six months or less. The IRS may increase the exemption amount in the future. Levine questioned the exemption level. "It is difficult to see how [for example] a \$20 million transaction with 90 percent leverage is a small transaction."

■ **Comment.** Foster was pleased that the regs allow for the payment of transaction fees to a facilitator. She said a big concern was whether the bank holding the escrow account could pay a transaction fee to a qualified intermediary (QI) that was not affiliated with the bank. "The old regs appeared to prohibit fees to nonbank QIs," Foster told CCH.

The lender, not the facilitator, is taxed on income from the fund if the income will be paid to the lender. The income is taxed when it is earned or credited, not at the later date when it is paid to the lender. If income of the fund is used to pay a transaction fee of the lender's, the income will first be credited to the lender, who is then deemed to pay it to the facilitator.

Multiple accounts

If the funds are held with a bank in an account or sub-account that is separately identified with a taxpayer name and identification number, only the earnings on the account are treated as earnings attributable to the funds. The funds will not be treated as held in a commingled account. If the account earns excess interest, this interest will be taxed to the facilitator.

Continued on page 327

Deemed Election

Continued from page 325

rently rather than have to amortize them over 15 years, she indicated.

Elections

The deemed election will replace a requirement to make a separate written election and to identify the amount of start-up or organizational expenses. The election is irrevocable. Changing the election, or

changing the year in which the business begins, is a change of accounting method requiring the IRS's consent.

■ **Caution.** The election restrictions also apply if the taxpayer chooses to capitalize the expenses rather than write them off as start-up or organizational expenses. Taxpayers may forego the deemed election by clearly electing to capitalize the expenses on a timely return for the year the trade or busi-

ness begins. McElroy observed that the regs "don't specify exactly how to do [this election]." McElroy also speculated that some IRS agents might use the lack of an affirmative election under the new rule as a sword to challenge the year that the taxpayer wrote off the expenses.

Effective date

The temporary regs apply to expenses paid or incurred after September 8, 2008. Taxpayers may choose to apply all the regs to expenses paid or incurred after October 22, 2004, the effective date of the *2004 Jobs Act*, provided the statute of limitations has not expired for the particular year.

*References: FED ¶¶47,048, 49,816;
TRC BUSEXP: 9,450.*

Reference Key

FED references are to *Standard Federal Tax Reporter*
USTC references are to *U.S. Tax Cases*
CCH Dec references are to *Tax Court Reports*
TRC references are to *Tax Research Consultant*

FEDERAL TAX WEEKLY, 2008 No. 28. FEDERAL TAX WEEKLY is also published as part of CCH Federal Tax Service and SmartTax by CCH, a Wolters Kluwer business, 4025 W. Peterson Avenue, Chicago, IL 60646-6085. Editorial and Publication Office, 1015 15th St., NW, Washington, DC 20005. ©2008 CCH. All Rights Reserved.

IRS Updates Form 2848 To Reflect Enrolled Retirement Plan Agents; Student Attorneys/CPAs

◆ *Form 2848, Rev. June 2008*

The IRS has revised Form 2848, "Power of Attorney and Declaration of Representative," to reflect the new Circular 230 designation of enrolled retirement plan agent (ERPA) along with student attorneys and student CPAs.

Form 2848

A practitioner can represent a taxpayer before the IRS only if the taxpayer gives the practitioner a power of attorney and the practitioner files a declaration of representative. Both of these actions may be accomplished by filing Form 2848. The form also identifies the tax matters for which the representative may represent the taxpayer before the IRS with express exceptions for unenrolled return preparers.

- **Comment.** The IRS will accept a power of attorney not filed on Form 2848 if it contains substan-

tially the same information required by the form.

ERPA

In 2007, the IRS added ERPAs to the final Circular 230 rules. ERPAs may represent taxpayers under the Employee Plans Determination Letter, the Employee Plans Compliance Resolution System, and the Employee Plans Master and Prototype and Volume Submitter programs. ERPAs may also represent taxpayers on matters related to Form 5500, Annual Return/Report of Employee Benefit Plan, filings. However, they may not represent taxpayers on actuarial issues.

- **Comment.** The ERPA program, according to the IRS, will mirror the Enrolled Agent program. To obtain the ERPA designation, individuals will be required to pass an examination covering retirement plan matters, apply for enrollment

and satisfy renewal and continuing education requirements. The IRS is currently soliciting bids to develop and administer the test and anticipates having the program operational by April 2009.

Student practitioners

A taxpayer may authorize a student attorney or student CPA who works in a Low Income Tax Clinic or Student Tax Clinic program to represent him or her under a special order from the IRS Office of Professional Responsibility. A law student or CPA student may receive permission to practice before the IRS by virtue of his or her status as a student under Sec. 10.7(d) of Circular 230.

- **Comment.** The authority of a student attorney or student CPA generally will be limited to practicing under the supervision of a practitioner.

Reference: TRC IRS: 3,208.05.

Escrow Account Regs

Continued from page 326

Loan treatment

The IRS rejected comments that the exchange funds should not be treated as loaned to the facilitator. The IRS commented that when the facilitator benefits from the use of the funds, characterizing the funds as a loan is consistent with the substance and with the definition of a loan under the imputed interest rules of Code Sec. 7872.

In response to criticism that the imputed interest rate was too high, however, the IRS devised a special rate that is the lower of the short-term annual federal rate (AFR) or the investment rate on a 13-week Treasury bill made on the date of the deemed loan.

Effective dates

The regs will apply to transfers of relinquished property and to facilitator loans issued on or after October 8, 2008. For transfers before that date, the IRS will not challenge a reasonable, consistent method of taxing the earnings.

References: FED ¶47,049; TRC ACCTNG: 12,222, SALES: 30,600.

Lawmakers Work To Finish Housing Bill With Tax Incentives

Pressure continues to build on lawmakers to quickly pass a comprehensive housing bill, with tax incentives to encourage home ownership. The Senate approved \$14 billion in tax breaks as part of its \$300 billion housing bill (the *Foreclosure Prevention Act of 2008, H.R. 3221*) on July 11. The House had passed its own version earlier this year. Negotiations to reconcile the two bills are currently underway.

Tax breaks. Both the House and Senate bills would give first-time homebuyers a refundable tax credit equivalent to an interest-free loan equal to 10 percent of the purchase price of the home. The House bill caps the credit at \$7,500; the Senate bill at \$8,000. Income restrictions would apply under both bills. Taxpayers would have 15 years to repay the credit. Additional benefits include:

- Additional standard deduction for real property taxes;
- Simplification and temporary increase in the low-income housing credit;
- Temporary increase in mortgage revenue bonds;
- Updating the rules for real estate investment trusts (REITs); and
- Repeal of the alternative minimum tax (AMT) limitations on tax-exempt housing bonds, low-income housing credit and rehabilitation credit.

Offsets. Both the House and Senate have proposed enhanced information reporting requirements as offsets. The House bill would require mandatory cost basis reporting by brokers for transactions of publicly-traded securities. The Senate bill would require information reporting on payment card and third-party network transactions. The Senate bill would also increase the penalties for failing to file information, partnership and S corp returns, along with boosting the minimum penalty for failing to file a return.

- **Comment.** President Bush has threatened to veto the Senate bill over objections unrelated to the tax incentives.

IRS Provides More Guidance On Deductibility Of Limited Partner's Distributive Share Of Investment Interest Expense

◆ *Rev. Rul. 2008-38*

New guidance sheds more light on the deductibility of an individual limited partner's distributive share of investment interest expense. The new guidance amplifies Rev. Rul. 2008-12 issued in February.

■ **Comment.** In Rev. Rul. 2008-12, the IRS determined that a noncorporate limited partner's distributive share of partnership interest expense incurred in the business of the partnership is subject to the Code Sec. 163(d) limitation on the deduction of investment interest.

Two scenarios

Situation 1. A partnership is engaged solely in trading securities for its own account and not for customers. Henry owns an interest in the partnership as a limited partner. Henry does not materially participate in the activity in which the partnership is engaged. The tax year for the partnership and Henry is the calendar year.

The partnership incurs indebtedness in its business of trading securities. In Year 1, Henry's distributive share of the partnership's income, gain, loss, deduction, and credit includes \$200x of interest expense incurred by the partnership with respect to its indebtedness. Henry's net investment income for Year 1 is equal to \$150x. During Year 1, Henry's distributive share of the partnership's interest expense is only the interest paid or accrued by Henry on indebtedness properly allocable to property held for investment.

Situation 2. The facts are the same as in Situation 1, except that during Year 1 Henry also pays \$100x of interest expense on indebtedness properly allocable to stocks and bonds held by him for investment.

Outcomes

Situation 1. Henry's only investment interest for Year 1 is his \$200x distributive share of partnership's interest expense in Year 1. This investment interest is subject to the limitation on investment interest in

Code Sec. 163(d)(1), which limits Henry's deduction for investment interest in Year 1 to \$150x, the amount of his net investment income for that year. Henry may deduct \$150x of his \$200x distributive share of the interest expense of the partnership in Year 1. The \$50x of interest expense not allowed as a deduction for Year 1 is treated as investment interest paid or accrued in Year 2.

Henry's distributive share of the partnership's Year 1 interest expense, allowed under Code Sec. 163(d)(1), is deductible in arriving at his adjusted gross income (AGI). While Henry's distributive share of the partnership's interest expense is subject to the investment interest limitation in Code Sec. 163(d)(1), the investment interest limitation does not affect the character of the interest expense for other purposes of the Tax Code. The \$150x of Henry's distributive share of the Year 1 interest expense of the partnership is deductible in arriving at Henry's AGI and is not an itemized deduction as defined in Code Sec. 63(d).

Situation 2. In Situation 2, Henry's total investment interest expense for Year

1 is \$300x. Henry may deduct \$150x of this investment interest expense in Year 1. To the extent that Henry's \$150x of allowed investment interest deduction is attributable to indebtedness incurred in the partnership's business, the deduction is taken into account in arriving at Henry's AGI. To the extent the \$150x of allowed investment interest deduction is attributable to the indebtedness attributable to the stock and bonds held for investment, the deduction is not taken into account in arriving at Henry's AGI. It is reported as an itemized deduction.

■ **Planning Note.** If the individual's aggregate investment interest expense is greater than the individual's net investment income, the individual must allocate the taxpayer's net investment income to the two categories of investment interest expenses using a reasonable method of allocation. According to the IRS, one reasonable method is the *pro-rata* method.

*References: FED ¶46,511;
TRC BUSEXP; 21,202.*

Limited Partner To Report Allowable Amount Of Distributive Share Of Interest Expense On Schedule E

Earlier this year, the IRS determined in Rev. Rul. 2008-12 that a noncorporate limited partner's distributive share of partnership interest expense incurred in the business of the partnership is subject to the Code Sec. 163(d) limitation on the deduction of investment interest. Now, the IRS has clarified how a nonmaterially participating individual limited partner described in Rev. Rul. 2008-12 should report the allowable amount of his or her distributive share.

This information, the IRS announced, should be reported on Schedule E. Interest paid or accrued on indebtedness allocable to property held for investment described in Code Sec. 163(d)(5)(A)(ii) is a trade or business deduction under Code Sec. 62(a)(1). It is deductible -- after the application of the Code Sec. 163(d)(1) limitation -- in determining the taxpayer's adjusted gross income.

■ **Comment.** The interest deduction of the limited partner that is properly reportable on Schedule E should be identified on a separate line in Part II, Line 28, column (a), as "investment interest," followed by the name of the trading partnership that paid or incurred the interest expense, and the amount of such interest expense should be entered in column (h).

Ann. 2008-65, FED ¶46,509; TRC BUSEXP: 21,202.

Family Wealth Planning Gets Boost: IRS Allows Significant Tax Benefits For Private Trust Companies Serving As Trustees

◆ Notice 2008-63

The IRS has issued a proposed revenue ruling that would provide both tax and nontax benefits to wealthy families who partially or completely own a private trust company (PTC) that serves as trustee of a family trust or trusts. The revenue ruling would not only give such family members more control over the family trust, but also minimize their exposure to estate, income, gift, and generation-skipping transfer (GST) taxes. The benefits would apply in two situations highlighted in the proposed revenue ruling.

Background

A husband and wife established separate irrevocable trusts for each of their three children and grandchildren. Each child or grandchild is the primary beneficiary of their respective trusts. Only the grantors make contributions. Each trust instrument gives the trustee discretionary authority to distribute trust income and principal to the primary beneficiary of the trust during the primary beneficiary's lifetime. Additionally, each primary beneficiary has testamentary power to appoint the trust corpus to or for the benefit of one or more family members or charitable organizations.

In *Situation 1*, PTCs are governed by state law. Under the statute, the PTC must establish a Discretionary Distribution Committee

(DDC), which possesses exclusive authority to make discretionary distribution decisions. The statute does not restrict who may serve on the DDC, but no family member on the DDC may make discretionary distribution decisions with respect to any trust of which that person (or his or her spouse) is either a grantor or beneficiary, or to which he or she (or spouse) owes an obligation of support.

In *Situation 2*, no statute governs formation or operation of PTCs. However, the PTC's governing documents impose the same restrictions and rights as the state statute in *Situation 1*.

Estate and income taxes

Under the proposed revenue ruling, neither the appointment nor service of a PTC as trustee will, itself, cause the value of any portion of the family trust's assets to be included in the grantor's or beneficiary's gross estate under Code Sections 2036, 2038, or 2041. A grantor or beneficiary who is also an owner, shareholder, manager, and/or employee of a PTC will not be subject to estate tax under Code Sections 2036(a), 2038(a) or 2041 merely because of their position in, or relationship to, the PTC.

■ **Comment.** Neither appointment nor service of a PTC as trustee will alone cause a grantor or beneficiary to be treated as the trust's owner for

purposes of the grantor trust rules of Code Sections 674 or 675. Whether a grantor is the owner of the trust, or any portion of it, under Code Sec. 675 is a question of fact. Whether a grantor is treated as an owner for purposes of Code Sec. 674 depends on the powers of the trustee and proportion of DDC members with authority to act with regard to that trust.

Gift and GST taxes

The proposed revenue ruling would provide that the value of property transferred to a trust of which a PTC is a trustee in either *Situation 1* or *2*, above, will not be deemed to be completed gifts for Code Sec. 2501 gift tax purposes. Distributions of income or principal from a trust of which a PTC is trustee, as described in both situations above, will not be deemed to be a gift by any member of the DDC, such as the grantor, for Code Sec. 2501 gift tax purposes.

Moreover, the proposed revenue ruling would provide that a PTC's trustee status will not by itself subject the trust to GST taxes. Thus, the PTC's trustee status in *Situations 1* and *2* will not, by itself, affect the trust's exempt status if otherwise exempt from GST taxes.

*References: FED ¶46,520;
TRC ESTTRST: 3,116.*

IRS Allows Tax-Free Division Of Single Charitable Remainder Trust Into Separate Trusts

◆ Rev. Rul. 2008-41

The IRS has released guidance that allows for a pro rata division of Code Sec. 664(d) charitable remainder trust (CRT) without adverse tax impact. The guidance explains the rules in connection with two specific factual situations, each involving a state court with jurisdiction over the trust having approved a pro rata division to provide one separate trust for each recipient living at the time of the division. When done properly, the pro rata division of a CRT will not cause any of the separate trusts

to fail to qualify as a CRT, will not trigger a taxable sale and will not subject the division to excise taxes for self-dealing or otherwise.

■ **CCH Take Away.** One example in the ruling involved multiple non-charitable beneficiaries, typical in a family wealth planning situation. The other example involved splitting up the benefits to the non-charitable beneficiaries in a divorce, predictably the most common situation in which this ruling will be used in the future.

Example

In the divorce situation, the CRT is separated so that each spouse is entitled to receive from his or her separate trust the same share of the annuity or unitrust amount as the recipient was entitled to receive under the terms of the original CRT. Each spouse, however, relinquishes all interest in the original trust's right of survivorship. The IRS noted that because of the right of survivorship in each of the separate trusts, the value of the remainder payable to the remainder beneficiaries may be larger than

Continued on page 330

IRS Fails To Negate Corporate Tax Planning For Consolidated Losses On Economic Substance Doctrine

◆ *Shell Petroleum Inc., DC Texas, July 11, 2008*

A federal district court has found that an oil producing taxpayer was entitled to a federal income tax refund of nearly \$19 million, plus interest for the 1990 tax year based on the carry-back of consolidated net capital losses. The court found that the taxpayer's restructuring transaction qualified for nonrecognition of gain or loss under Code Sec. 351(a) and that its business purpose withstood the IRS's sham transaction argument.

Economic substance

The taxpayer engaged in a restructuring transaction in which exploration and production assets (producing and non-produc-

ing properties) were transferred to a newly formed subsidiary in exchange for shares of auction-preferred stock sold to unrelated investors. The court found the transaction to have economic substance in that it served a legitimate business purpose by increasing cash flow and preserving long-term properties even though the transaction was structured to maximize tax benefits.

The court noted that the taxpayer incurred "real losses" from the transfer of the producing and non-producing properties because the purchase prices for such properties far exceeded their market value at the time of the exchange. The court emphasized that the taxpayer's losses distinguished it from the manufactured tax losses typical of a sham transaction; thus, the taxpayer had

incurred capital losses from the sale of the stock in 1992 and was entitled to carry the consolidated net capital losses back to the 1990 tax year.

Tax evasion

The court rejected the IRS's argument that it could disallow the taxpayer's losses under Code Sec. 482 to prevent tax evasion. There was no indication that the IRS had made an allocation under Code Sec. 482, according to the court. The court further found that even if an allocation had been made the taxpayer's deduction from the Code Sec. 351 exchange would still be upheld because it was not an improper attempt to evade taxes.

References: 2008-2 USTC ¶50,422; TRC CCORP: 3,052.

Charitable Remainder Trust

Continued from page 329

the present value of that interest as computed at the creation of the original trust.

No tax consequences

Under the facts of Rev. Rul. 2008-41, the IRS gave the following green light to planning CRTs:

- A pro rata division of a CRT into separate trusts does not cause a CRT or any of the separate trusts to fail to qualify as Code Sec. 664(d) CRTs.
- A CRT divided equally into separate trusts is not a sale, exchange, or other disposition producing gain or loss. Under Code Sec. 1015(b) the basis of each separate trust's share of each asset immediately after the division of a CRT is the same share of the basis of that asset in the hands of a CRT immediately before the division. Furthermore, Code Sec. 1223(2) provides that each separate trust's holding period of each asset transferred to it by a CRT includes the holding period of the asset as held by the CRT immediately before the division.
- The private foundation status under Code Sec. 507(a)(1) of a CRT is not terminated as a result of the division

of the CRT because no notice of termination was filed or was required to be filed. Accordingly, the excise tax imposed under Code Sec. 507(c) does not apply.

- Upon the pro rata division, none of the recipients, if any, receive any additional interest in the assets of the CRT and no self-dealing transaction occurs within

the meaning of Code Sec. 4941(d) irrespective of the difference in the value of the separate remainders.

- A CRT divided pro rata does not constitute a Code Sec. 4945(d) and (h) taxable expenditure with respect to the assets transferred to the separate trusts.

References: FED ¶46,515; TRC ESTTRST: 15,354.

IRS Sorts Out Treatment Of Management Fees Incurred By Upper- And Lower-Tier Partnerships

The IRS has ruled that where an upper-tier partnership is engaged solely in the business of holding limited partnership interests in lower-tier partnerships that are engaged in the business of trading securities, management fees paid or incurred by the upper-tier partnership are not a deductible Code Sec. 162 ordinary and necessary business expense paid or incurred on behalf of its lower-tier partnerships. Instead, those upper-tier partnership's management fees are deductible as an ordinary and necessary expense for the collection of income under Code Sec. 212. The agency also ruled that:

- A management fee paid or incurred by a lower-tier partnership is deductible as an ordinary and necessary business expense;
- The lower-tier partnership's management fee is taken into account in computing the lower-tier partnership's taxable income or loss;
- The upper-tier partnership's distributive share of taxable income or loss of a lower-tier partnership is taken into account in computing the upper-tier partnership's taxable income or loss; and
- The individual limited partner's distributive share of the upper-tier partnership's taxable income or loss is taken into account in computing the limited partner's tax liability.

Rev. Rul. 2008-39, FED ¶46,510; TRC PART: 18,350.

Tax Briefs

Identity Theft

Some taxpayers have received e-mails fraudulently claiming to be sent from the IRS and stating that the taxpayer is eligible for an economic stimulus payment. The bogus e-mail instructs the recipient to click on a link and fill out an online form with personal and financial information. The IRS continues to warn taxpayers that it does not request personal or financial information via e-mail.

IR-2008-88, FED ¶46,517; TRC IRS: 3,110.

Governmental Plans

Proposed regulations under Code Secs. 401(a)(9) and 403(b) permit a governmental plan to comply with the required minimum distribution (RMD) rules by using a reasonable and good-faith interpretation of Code Sec. 401(a)(9). The change gives plans more flexibility to comply with the RMD rules and allows them to take into account state laws permitting certain distribution options, as well as administrative issues associated with these rules.

*NPRM REG-142040-07, FED ¶49,817;
TRC RETIRE: 42,170.*

Refinery Property

Temporary and proposed regulations have been issued relating to the election to expense qualified refinery property under Code Sec. 179C. The regulations are effective July 9, 2008, but taxpayers may rely on the regulations for tax years prior to the effective date.

*T.D. 9412, FED ¶47,046;
TRC BUSEXP: 18,900.*

Foreign REMIC Investment

Final regs were recently released regarding foreign persons with interests in U.S. real estate mortgage investment conduits (REMICs). Adopting the substance of the proposed regs, the final regs accelerate recognition of phantom income by these investors through disregard of tax-avoidance transfers of their interests to a U.S. domestic partnership.

*T.D. 9415, FED ¶47,050;
TRC RIC: 9,252.20.*

IRS Forms

The IRS has provided the general rules and specifications for reproducing paper and computer-generated paper substitutes for the January 2008 revision of Form 941, Employer's Quarterly Federal Tax Return, and

for the January 2006 revision of Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors.

*Rev. Proc. 2008-32, FED ¶46,518;
TRC FILEBUS: 12,052.10.
Continued on page 332*

IRS Distributes Last Economic Stimulus Payments To Early Filers

On July 11, Treasury and the IRS issued the last of more than 100 million economic stimulus payments to taxpayers who filed before April 15. The government is now switching gears to issue payments to individuals whose returns were not processed before April 15.

Treasury and the IRS announced a payment distribution schedule in March. At that time, the IRS indicated that payments would be made first to taxpayers whose returns had been filed and processed before April 15.

Now, the IRS will continue processing returns and issuing payments to individuals whose returns were filed on or after April 15. A return must be filed by October 15 to receive a payment this year.

■ **Comment.** While Congress extended the stimulus payments to military personnel with spouses lacking Social Security numbers in the recently-passed *Heroes Earnings Assistance and Relief Tax Act*, it did not offer the same treatment to legal non-immigrant workers without SSNs, Kathleen Collins, EA, Savannah, Ga., told CCH. Legal non-immigrant workers generally have individual taxpayer identification numbers (ITINs) and not SSNs. "I had a number of clients who would have qualified for an economic stimulus payment but for their H-1B visa status," Collins said.

IRS Notice, TRC INDIV: 57,900.

National Taxpayer Advocate Sees Identity Theft, Indebtedness Income, And Private Tax Collections As Most Serious Problems

The National Taxpayer Advocate's Fiscal Year (FY) 2009 Objectives Report emphasizes identity theft as deserving of its top priorities for the coming fiscal year. While the report acknowledges that the IRS is reforming some aspects of its approach to identity theft, the report also notes that IRS procedures for dealing with victims have contributed significantly to the problem. The Taxpayer Advocate Service (TAS) will work with the IRS to develop and improve its procedures for assisting victims of identity theft in FY 2009.

The report also identified the following additional problem areas for focus during FY 2009:

- Educating and assisting taxpayers on the tax consequences of cancelled debt income;
- Analyzing the performance of the private debt collection program;
- Correcting the problems and inefficiencies in correspondence examinations; and
- Addressing the alternative minimum tax liability incurred by taxpayers who have exercised incentive stock options.

IR-2008-87, FED ¶46,512; TRC IRS: 3,058.

Tax Briefs

Continued from page 331

The IRS has released the general rules for filing, and IRS and Social Security requirements for reproducing, paper substitutes for Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, for wages paid during the 2008 calendar year.

*Rev. Proc. 2008-33, FED ¶46,519;
TRC FILEBUS: 12,052.10.*

The IRS has issued revised specifications for electronically filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, for large food or beverage establishments.

*Rev. Proc. 2008-34, 2008FED ¶46,508;
TRC PAYROLL: 3,406.25.*

Pension Plan

For pension plan years beginning in July 2008, the IRS has released the corporate bond weighted average interest rate, the permissible range of interest rates used to calculate current plan liability and to determine the required contribution under Code Sec. 412(l) for plan years through 2008, and the current corporate bond yield curve and related segment rates for the purpose of establishing a plan's funding target under Code Sec. 430(h)(2).

*Notice 2008-65, FED ¶46,513;
TRC RETIRE: 15,304.10.*

Jurisdiction

An individual's petition seeking review of the Tax Court's decision was dismissed for lack of jurisdiction. His notice of appeal was not filed within the 90-day filing period.

*Mitchell, CA-10, 2008-2 USTC ¶50,416;
TRC LITIG: 6,962.*

Tax Crimes

Two individuals were properly convicted of conspiracy and assisting in the preparation and presentation of false income tax returns in violation of 18 U.S.C. §371 and Code Sec. 7206(2).

*Ferrand, CA-5, 2008-2 USTC ¶50,423;
TRC IRS: 66,204.*

An individual could not appeal his sentence imposed for conspiracy and aiding and assisting in the preparation of false tax returns because he had entered a guilty plea and waived his right to appeal.

*Shields, CA-9, 2008-2 USTC ¶50,425;
TRC IRS: 66,204.*

Summons

An administrative summons was not enforced because the company receiving the summons did not possess the requested documents.

*Smith Barney, DC Pa., 2008-2 USTC ¶50,413;
TRC IRS: 21,366.*

An individual's petition to quash IRS third-party summonses that were served upon attorneys and that sought records and correspondence relating to legal or professional fees paid by the individual was denied. The information sought did not fall within the scope of the attorney-client privilege.

*Gertz, DC Ind., 2008-2 USTC ¶50,417;
TRC IRS: 21,402.15.*

Liens and Levies

IRS levies on an individual's bank account and Social Security benefits were procedurally valid. The individual's claims that the levies violated his constitutional rights and his requests for return of the seized property and for damages were dismissed for lack of subject matter jurisdiction. He was also denied injunctive relief.

*McKean, DC D.C., 2008-2 USTC ¶50,420;
TRC LITIG: 9,254.05.*

Regs clarifying where taxpayers should file notices of a nonjudicial foreclosure sale of property subject to a federal tax lien and claims for return of improperly levied property have been adopted. Such notices should be sent to the IRS official and office specified in the relevant IRS publications.

*T.D. 9410, FED ¶47,047;
TRC IRS: 51,154.20.*

Assessments

The Third Circuit Court of Appeals granted the government's petition for rehearing in *U.S. v. Schiaffino* and vacated the opinion it issued on April 22, 2008. The district court was required to remand the case to state court instead of dismissing the case outright.

*Schiaffino, CA-32008-1 USTC ¶50,309,
TRC IRS: 27,218.*

Deficiencies and Penalties

The Tax Court properly determined that an individual was liable for deficiencies and penalties for failure to file returns. She was also liable for penalties for maintaining proceedings primarily for delay but sanctions were not imposed for raising frivolous arguments on appeal.

*Bachman, CA-10, 2008-2 USTC ¶50,414;
TRC LITIG: 6,816.*

IRS Announces Additional REMIC/Trust Rules For Streamlined Modification Of Subprime ARMs

The tax status of certain securitization vehicles that contain modified subprime residential adjustable rate mortgage (ARM) loans will not be challenged, the IRS has announced. Rev. Proc. 2008-47 amplifies and supersedes prior guidance (see Rev. Proc. 2007-72) by extending its provisions to additional loan modifications.

In the case of transactions to which Rev. Proc. 2008-47 applies, the IRS will not:

- Challenge a securitization vehicle's qualification as a REMIC on the grounds that the transactions are not among the exceptions listed in Reg. §1.860G-2(b)(3);
- Contend that the transactions are prohibited transactions under Code Sec. 860F(a)(2) on the grounds that the transactions resulted in one or more dispositions of qualified mortgages and that the dispositions are not among the exceptions listed in Code Sec. 860F(a)(2)(A)(i)-(iv);
- Challenge a securitization vehicle's classification as a trust under §301.7701-4(c) on the grounds that the transactions manifest a power to vary the investment of the certificate holders; or
- Challenge a securitization vehicle's qualification as a REMIC on the grounds that the transactions resulted in a deemed reissuance of the REMIC regular interests.

Rev. Proc. 2008-47, FED ¶46,514; TRC RIC: 9,300.

Practitioners' Corner

Sample Client Letter On Second Quarter 2008 Federal Tax Developments

The rush of federal tax news during the second quarter of 2008 has many practitioners and clients scrambling to keep up with all of the important developments. CCH has prepared a "Second Quarter 2008 Federal Tax Developments" client letter. Practitioners can send or email this letter to clients to alert them about some of the important federal tax developments in the second quarter of 2008.

Note. The letter includes references to CCH's Federal Tax Weekly. Practitioners can refer to CCH's Federal Tax Weekly for more information about these developments but should delete the CCH references in their communications with clients.

Dear Client:

Summer is here and the tax news continues to come at a frantic pace. Not only did Congress pass two new tax laws, the IRS also gave taxpayers some relief at the gas pump and sent out tens of millions of economic stimulus payments. We'd like to highlight some of the more important federal tax developments from the second quarter of 2008 (April, May and June) for you. As always, if you have any questions about these developments, or any others, please give our office a call or send us an e-mail.

Mileage reimbursement rates. Just before July 4, the IRS announced some very good news for businesses and individuals struggling with record-high gasoline prices. The IRS raised the business standard mileage reimbursement rate from 50.5 cents-per-mile to 58.5 cents-per-mile. It also raised the standard mileage rate for medical and moving expenses from 19 cents-per-mile to 27 cents-per-mile. However, the charitable standard mileage rate remains at 14 cents-per-mile. Taxpayers may use the higher rate for business use of an automobile (and the higher medical/moving rate) for the period

July 1, 2008 through December 31, 2008. Travel before July 1 must be computed using the old rate of 50.5 cents-per-mile. *CCH Federal Tax Weekly, No. 26, June 26, 2008.*

Economic stimulus payments. The Treasury Department and the IRS have

incentives. The farm bill, among other things, creates new tax credits for securing agricultural chemicals and cellulosic fuels along with authorizing new forestry conservation bonds. The military bill, among other things, allows reservists called to ac-

"Practitioners can send or e-mail this letter to clients to alert them about some of the important federal tax developments in the second quarter of 2008."

distributed more than 100 million economic stimulus payments to qualifying Americans. Despite some minor glitches, most qualifying individuals have received, or will soon receive, their payments. However, millions of qualifying taxpayers, especially seniors and disabled veterans, have not yet filed a 2007 return to claim a payment. If you are expecting a payment and have not received one, or if you know of a senior citizen or disabled veteran who has not filed a return, please contact our office. *CCH Federal Tax Weekly, No. 14, April 3, 2008; CCH Federal Tax Weekly, No. 19, May 8, 2008.*

When Congress authorized the economic stimulus payments in January, it also approved temporary 50-percent bonus depreciation. Many taxpayers have been asking for clarification about this bonus depreciation and in April, the IRS announced that it will issue guidance sometime in 2008. In the meantime, the IRS indicated that businesses can rely on temporary regulations from 2003. *CCH Federal Tax Weekly, No. 16, April 17, 2008.*

Two new tax laws. Just before Memorial Day, Congress passed two new tax laws: a comprehensive farm bill and a military tax relief act. Both include significant tax

tive duty to make penalty-free withdrawals from IRAs, 401(k)s and other arrangements and creates a temporary differential pay tax credit for small employers. *CCH Federal Tax Weekly, No. 22, May 29, 2008.*

While the tax provisions in the farm and military acts are targeted to farmers and military personnel, the offsets are more wide-reaching. Lawmakers needed to find billions of dollars to pay for the tax cuts. They used some of the least controversial offsets (tougher rules on U.S. government contractors and individuals who renounce their U.S. citizenship, limiting farm losses and reducing the ethanol production tax credit), leaving more controversial offsets, particularly a proposed change in the taxation of "carried interest," to possibly pay for future tax cuts.

Pending legislation. Congress continues to debate the so-called "extenders bill," which would extend many popular but temporary tax cuts. These include the alternative minimum tax (AMT) "patch," the state and local sales tax deduction, energy tax incentives, and employer tax breaks. The House version of the extenders bill would also expand the refundable child

Continued on page 335

Washington Report

by the CCH Washington News Bureau



Senate approves housing legislation

The Senate on July 11 approved a housing bill by a 63 to 5 margin (*H.R. 3221*) that contains nearly \$14.5 billion in tax relief; clearing the way for the measure to return to the House, which is expected to make minor changes before passage. The Senate and House are expected to quickly concur over the differences and send the legislation to President Bush for his signature. *For further details, see page 327 of this newsletter.*

Senate Appropriations Committee approves IRS FY 2009 budget of \$11.5 billion

The Senate Appropriations Committee on July 10 approved a fiscal year (FY) 2009 IRS budget of \$11.5 billion by a unanimous vote of 29-0. The budget, included in the FY 2009 Financial Services and General Government Appropriations bill, represents a \$430 million increase (3.9 percent) over the Service's FY 2008 budget and is \$163 million higher (1.4 percent) than the Bush administration request for FY 2009. The committee approved the IRS budget as part of Treasury's FY 2009 budget of \$12.7 billion. The proposed IRS budget includes a \$63 million increase in funding for taxpayer services, to \$2.2 billion.

The budget also includes \$5.1 billion for IRS enforcement and \$282 million for the Business Systems Modernization program, an increase of \$59 million, or 27 percent above the president's request.

Rumors of final preparer penalty regs before Election Day quashed

An IRS official has dismissed rumors that final Code Sec. 6694 regs will be issued before Election Day (November 4, 2008), but said they will be out in time for the 2009 filing season. Richard S. Goldstein, special counsel to the IRS Associate Chief Counsel (Procedure & Administration), spoke during a webcast about the proposed

regulations sponsored by the American Law Institute-American Bar Association (ALI-ABA) on July 11. Goldstein also cautioned practitioners "not to let 6694 drive the way you do business."

The IRS issued proposed regs in June (*NPRM REG-129243-07, I.R.B. 2008-27, 32*) requiring a preparer to disclose a position on a return when the new standard cannot be satisfied. They also permit preparers to advise clients of the penalty standards and contemporaneously document, in the preparer's files, that this advice was provided. The agency said that final regulations will be in place for the 2009 filing season. "We are working hard at getting them out before the end of the year," Goldstein said.

OPR to shed more light on practitioner misconduct

Enhanced publicity of sanctioned practitioners will help deter misconduct by others and protect taxpayers, a senior official with the IRS Office of Professional Responsibility (OPR) indicated on July 11. Carolyn H. Gray, OPR Acting Deputy Director, emphasized that the office's work is to help practitioners "get back on the straight and narrow." Gray spoke during a webcast sponsored by the American Law Institute-American Bar Association (ALI-ABA).

In May, the OPR announced that it was revamping how it publicizes practitioner misconduct (Announcement 2008-50, *I.R.B. 2008-21, 1024*). The OPR will issue more frequent announcements listing the names of practitioners sanctioned for violating the IRS's rules of practice in Circular 230, along with a brief description of their misconduct and the type of sanction imposed.

The OPR has been revitalized, Gray said, by the appointment of a new director and a nearcomplete turnover of its senior staff. "We are ramping up to get the really difficult cases." Besides referrals of alleged misconduct under Circular 230, the OPR

also uses internal means to identify problems, Gray said. "A new data system will allow us to slice and dice our data to find where abuses are."

Shulman urges IRS employees to resolve service/enforcement issues early

Commissioner Douglas H. Shulman told IRS employees on July 9 that the Service should aim to resolve taxpayer issues, both service- and enforcement-related, at the earliest moment. Shulman, in an email to the IRS's nearly 100,000 employees, also indicated that the Service will strive to improve the quality of the written communications it sends to taxpayers and announced the creation of a special task force to look at how the Service can attract talented employees.

Resolving open issues more quickly will "save both the IRS and the taxpayer extra work down the line," Shulman predicted. He also said that the Service's business groups should better coordinate their activities when a taxpayer deals with multiple divisions in order to ensure a "quick and trouble-free" hand-off. "In order to make voluntary compliance easier, we must not only meet legal requirements but walk a mile in the taxpayers' shoes and help them navigate the system," he stated.

Worker reimbursement "tool plans" not accountable plans

In a newly revised Coordinated Issue Paper (CIP), the IRS has stated that numerous "Employee Tool and Equipment Plans," which reimburse workers for use of their personal tools, are not "accountable plans" as defined in Reg. §1.62-2(c)(2). Therefore, amounts paid to workers under these plans are not excludable from Form W-2 wage income. The plans fail to meet the accountable plan requirements of business connection, substantiation, and return of excess payments.

Final Regs Keep Full Estate Tax Inclusion For Retained Annuity And Unitrust Interests

◆ T.D. 9414

Final regs have been issued to address the estate tax consequences of property transferred to a trust in which a decedent retained use of, or the right, to an annuity at the time of death. After a vetting of the issue through the proposed regs process, the IRS rejected practitioner suggestions and maintained in the final regs the position that the portion of certain charitable remainder trusts (CRTs) and grantor retained trusts (GRTs) includible in a decedent's estate was equal to the portion of the trust principal necessary to generate a return sufficient to yield the decedent's retained annuity or unitrust payment.

Retained interests

Under Code Sec. 2036, a decedent's estate must include the value of property transferred to a trust before death if the decedent retained an interest in the property at the time of death or for a period without regard

to the decedent's death. Code Sec. 2039 applies the same rule to annuities received by the decedent. Adopting guidance under Rev. Ruls. 76-273 and 82-105, the proposed regs amended Reg. §20.2036-1 by including the total amount of property in which the decedent retained an interest, and from which he/she also received an annuity, in the value of the gross estate under Code Sec. 2036.

Comments rejected

Proposed reg commentators criticized the amendment, claiming that only the present value of the unpaid annuity payments as of the date of death should be included in the gross estate's value. Some commentators even claimed that where the present value of these unpaid payments on the date of death is zero, no amount at all should be included in the value of the gross estate.

The IRS rejected these arguments, believing it was on firm ground based on the

language of Code Sec. 2036, its legislative history, and case law. The agency pointed out that Code Sec. 2036 was created to prevent taxpayers from keeping property out of the value of their gross estates by giving it away before death, but retaining use or the benefits from it. It did not matter whether the retained interest came from the income or the corpus of the property transferred to the trust, the IRS determined, just so long as the decedent retained an interest at the time of his/her death or for a period that extended beyond the time of death.

Furthermore, the IRS, in its preamble to the final regs, distinguished this situation from those constituting bona fide sales of property to third parties in exchange for an annuity. Those situations involved negotiation and an arms-length agreement for a sale to take place that could legitimately set the value.

References: FINH ¶43,121;
TRC ESTGIFT: 24,104.

Practitioners' Corner

Continued from page 333

tax credit. Under current law, the credit is refundable to the extent of 15 percent of the taxpayer's earned income in excess of a \$10,000 floor (\$12,050 as adjusted for inflation for 2008). The bill reduces the floor to \$8,500 for 2008. Additionally, Congress must approve an IRS budget for FY 2009. We'll keep you posted of developments with all the pending bills.

Health Savings Accounts. Health Savings Accounts (HSAs) are one of the fast-growing ways to save for health care. Distributions from an HSA, which are used for qualified medical expenses, are tax-free. In May, the IRS announced new 2009 inflation adjustments for HSAs. The annual limit on deductible contributions to an HSA will rise to \$3,000 for 2009, up from \$2,900 for 2008. This limit applies to an individual with self-only coverage under a high-deductible health plan (HDHP). The annual limit for deductible contributions for an individual with family coverage under a HDHP

will rise to \$5,950 for 2009, up from \$5,800 for 2008. The deduction limits for self-only and family coverage are indexed for inflation. Individuals who are 55 and older may also make a catch-up contribution of \$1,000, up from \$900 in 2008. *CCH Federal Tax Weekly, No. 21, May 22, 2008.*

Tax gap. According to the IRS, the difference between what taxpayers owe and what they actually pay is about \$300 billion. This is called the "tax gap." The IRS is using many tools to help close the tax gap. One tool is education. In April, the IRS launched a campaign to educate self-employed small business owners about their federal tax responsibilities. The campaign will provide new Schedule C, Profit or Loss from Business, filers with improved and updated educational materials through its web site, small business workshops and other outreach events. *CCH Federal Tax Weekly, No. 18, May 1, 2008.*

Tax shelters. The IRS has invested huge resources into combating abusive tax shelters. Often, taxpayers agree to settle rather

then try to fight the IRS in court. However, some cases do go to trial. The IRS won several tax shelter cases in the second quarter of 2008, but also suffered some setbacks. In April, a federal court rejected the IRS's argument that a transaction (called Son of BOSS) was an abusive tax shelter. *CCH Federal Tax Weekly, No. 18, May 1, 2008.* A few weeks later, another court found that a similar Son of BOSS transaction was an abusive tax shelter. *CCH Federal Tax Weekly, No. 21, May 22, 2008.* A short time later, yet another court found that a Sale In, Lease Out (SILO) transaction was an abusive tax shelter. *CCH Federal Tax Weekly, No. 23, June 5, 2008.* So it's been a mixed bag of successes and setbacks for the IRS. Nonetheless, the IRS has vowed to continue litigating these complex tax shelter cases.

These are just some of the many federal tax developments in the second quarter of 2008. Please don't hesitate to contact our office if you have any questions about these or other developments.

Sincerely,

Compliance Calendar

■ July 18

Employers deposit Social Security, Medicare, and withheld income tax for July 12, 13, 14, and 15.

■ July 23

Employers deposit Social Security, Medicare, and withheld income tax for July 16, 17, and 18.

■ July 25

Employers deposit Social Security, Medicare, and withheld income tax for July 19, 20, 21, and 22.

■ July 30

Employers deposit Social Security, Medicare, and withheld income tax for July 23, 24, and 25.

TRC Text Reference Table

The cross references at the end of the articles in *CCH Federal Tax Weekly (FTW)* are text references to *CCH Tax Research Consultant (TRC)*. The following is a table of TRC text references to developments reported in *FTW* since the last release of *New Developments*.

| | | | | | |
|--------------------|-----|-----------------|-----|------------------|-----|
| ACCTNG 15,154.20 | 323 | INDIV 6,354.05 | 319 | IRS 51,056.25 | 319 |
| ACCTNG 27,408 | 308 | INDIV 12,050 | 318 | IRS 51,154.20 | 332 |
| ACCTNG 36,162.05 | 305 | INDIV 18,058 | 307 | IRS 66,154 | 319 |
| BUSEXP 9,450 | 325 | INDIV 21,154 | 319 | IRS 66,204 | 332 |
| BUSEXP 18,900 | 331 | INDIV 33,310.05 | 307 | IRS 66,356 | 319 |
| BUSEXP 18,908 | 319 | INDIV 57,452 | 319 | IRS 66,460 | 319 |
| BUSEXP 21,202 | 328 | INDIV 57,900 | 331 | IRS 66,462.05 | 320 |
| BUSEXP 24,506 | 301 | INDIV 60,054.10 | 306 | LITIG 3,154.05 | 320 |
| BUSEXP 33,050 | 320 | IRS 3,000 | 319 | LITIG 6,816 | 320 |
| BUSEXP 54,552 | 323 | IRS 3,058 | 331 | LITIG 6,816 | 332 |
| CCORP: 3,052 | 329 | IRS 3,208.05 | 327 | LITIG 6,962 | 332 |
| CCORP: 3,300 | 319 | IRS 3,110 | 331 | LITIG 9,254.05 | 332 |
| CCORP: 45,054.10 | 323 | IRS 6,114.10 | 317 | NOL 6,154 | 318 |
| COMPEN: 15,056.30 | 314 | IRS 6,200 | 320 | PART 18,350 | 331 |
| ESTGIFT: 24,104 | 335 | IRS 21,366 | 332 | PAYROLL 3,406.25 | 331 |
| ESTTRST 3,116 | 329 | IRS 21,402.15 | 332 | PAYROLL 6,306 | 320 |
| ESTTRST 15,302 | 304 | IRS 27,052 | 332 | RETIRE 9,256 | 317 |
| ESTTRST 15,354 | 329 | IRS 27,204 | 319 | RETIRE 15,304.10 | 332 |
| FILEBUS: 6,104.40 | 319 | IRS 27,218 | 332 | RETIRE 57,200 | 319 |
| FILEBUS: 12,052.10 | 331 | IRS 33,212.10 | 319 | RIC 9,252.20 | 331 |
| FILEBUS: 15,110 | 319 | IRS 45,160 | 307 | RIC 9,300 | 332 |
| FILEIND: 3,154.10 | 307 | IRS 48,056.25 | 307 | SALES 30,600 | 326 |
| FILEIND: 6,152.45 | 315 | IRS 48,056.25 | 308 | SALES 51,552.20 | 323 |
| FILEIND: 15,204.05 | 313 | IRS 48,150 | 307 | SCORP 458.05 | 315 |
| | | IRS 51,056 | 307 | | |

From the Helpline

The following questions have been answered recently by our "CCH Federal Tax Service" Helpline (1-800-449-8114).

Q A deceased relative of my client has received an economic stimulus check. May they keep the funds?

A The economic stimulus checks are for individuals with qualifying income of at least \$3,000. This criteria for receiving the checks does not exclude individuals who subsequently died. See *FED ¶38,869.021; Federal Tax Weekly, No. 13, March 27, 2008.*

Q What IRS guidance (if any) allows taxpayers to use farm crops to fund a charitable remainder trust?

A While there is no specific guidance available for this issue, Letter Ruling 9413020 previously allowed a taxpayer to fund a unitrust with separate irrevocable transfers of slaughter cattle and crops. These two transfers took place within a span of several weeks in 1993. See *TRC ESTGIFT: 45,202*

Q *Federal Tax Weekly No. 26* states that the standard mileage rate for medical expenses rose from 20 cents to 28 cents, effective July 1, 2008. Wasn't the previous rate set at 19 cents per mile?

A In Rev. Proc. 2007-70, the IRS set the various mileage rates for transportation expenses paid or incurred in 2008. In that procedure, the IRS reduced the mileage rate for moving and medical travel from 20 cents-per-mile (which was effective for 2007) to 19 cents-per-mile. See *TRC BUSEXP: 24,506.*