2008 Workbook

WHAT'S NEW SUPPLEMENT

January 15, 2009

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ILLINOIS
UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN

2008 Workbook

Table of Contents

CORRECTIONS TO 2008 FEDERAL TAX WORKBOOK

Page	Correction or Addition
109	For purposes of clarification, the text following the heading **Form 4797, Part IV,** up to the **note box,** is replaced with the following: "Form 4797, Part IV, is used to report the recapture of an IRC §179 expense deduction for property placed in service after 1986 when the business use of property placed in service in a previous year is reduced to 50% or less during the recapture period. The recapture period of the expense election is the entire recovery period of the qualifying §179 property (see IRC §179(d)(10)). Part IV is also used to recapture depreciation on listed property when the business use decreases to 50% or less as required under §280F(b)(2). The recapture for each property must be computed separately on a statement attached to Form 4797 and the total entered in Part IV. The recapture amount equals the §179 expense deduction taken minus the MACRS depreciation amount that would have been allowed on the expense amount from the time the property was placed in service up to and including the year of recapture (see Treas. Reg. §1.179-1(e)(1)) . The §179 expense deduction is reported on Line 33(a) and the recomputed depreciation is reported on line 34(a). The difference is reported on Line 35(a) and is then transferred to either Schedule C or F, depending on which schedule the original deduction was taken. If the property is listed property (defined in §280F(d)(4)), the total of both the §179 deduction and the MACRS depreciation is reported on Line 33(b). Next, the depreciation that would have been allowed if the property had not been used more than 50% in a qualified business is computed using the alternative MACRS method and reported on Line 34(b). The difference is reported on Line 35(b) and then transferred to either Schedule C or F." The **Note** box text is replaced with the following: "In both scenarios, the recapture amount will increase SE income. It will also increase the basis of the property."
109	The three figures in column (a) on lines 33–35 at the bottom of the page should be in column (b) since the example pertains to an SUV, which is listed property.
272	Under **Tax Result 1 for Example 27,** in the second sentence after the words "tax savings" add the words "from depreciation." After the second sentence add the following: "Paul can also deduct his actual costs of operating the vehicle, including gas, insurance, repairs, and license in addition to depreciation expense."
329	In the **Note box** at the bottom of the page, delete the last sentence.
335	In the 4th line of the table at the bottom of the page, change the "Long-term gain on sale of the **1,000** shares" to "… **500** shares…"
390	In the paragraph under **Tax Result for Example 13,** delete the second and third sentences and replace them with the following: "This is allowed since IRC §197(c)(2) excludes "self-created intangibles" (such as Carla's goodwill) from the definition of amortizable §197 intangibles. Thus, Carla has a $50,000 long-term capital gain on the goodwill and a $339 ordinary §1245 gain on the sale of the purchased franchise agreement." Then, delete all the remaining text on the page above the **Note box.** Add the sentence: "If Carla's goodwill had been purchased rather than created, she would be required to report the franchise agreement and the goodwill as the sale of a single asset on Form 4797, Part III."
401	In the first sentence under **Net Capital Gain and Qualified Dividend Tax Rate,** change the first part of the sentence from "For years 2008 and 2009" to "For the years 2008 through 2010."

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Page	Correction or Addition
409	Under **Enhanced Expense Deduction —** In the third sentence of the second paragraph, change “new” to “newly acquired.”
429	Change **Example 9** to: “Use the same facts as **Example 8,** except Ryan sold the condo for $98,000. Ryan’s 2011 recapture amount is $5,000, since the recapture is limited to the gain on the property.”
431	Under the **New Law** section of **Example 10,** change the Code section in line (3) from §1221 to §121.
432	In **Example 12,** change the date in the second line to January 1, 1994 and change the parenthetical comment at the end of the sentence to “a full 17-year period.” Also, change the date range in the first line following the second paragraph to “January 2, 1994 through January 1, 2014.”
439	In the second paragraph under **Receiving Benefits before Normal Retirement Age,** change the second sentence to “This percentage gradually decreases for taxpayers born after 1954 but before 1960.”
501	Change the first part of the next to last sentence on the page to: “If the interest would **not** be deductible when the taxpayer paid it…” Change the first part of the last sentence on the page to: “If the interest would be deductible when the taxpayer paid it…”
544	In the second paragraph above the **Caution box,** change the last sentence to read: “An asset that is purchased under a written binding contract in 2008 is still required to be placed in service by December 31, 2008.” Add the following sentence to the end of the paragraph: “However, a one-year extension of the placed-in-service date applies to certain transportation property and certain property with a recovery period of ten years or more.”
572	In the **note box,** change “Chapter 8, ‘IRS Update’” to “Chapter 2, ‘Ethics.’”
587	The following should be inserted before the last sentence at the bottom of the page: “Treas. Dec. 9408 specifies that the parent revoking a written declaration must provide written notice of the revocation to the other parent. Such revocation is effective no earlier than the taxable year that begins in the first calendar year after the calendar year in which the parent provides the written notice of revocation.”
588	In **Example 2,** insert the following after the third sentence: “Yugo provides written notice of the revocation to Zelda on December 31, 2009, the last day he can do so to make the revocation effective for the 2010 taxable year.”
644	After **Estimated Tax Payments,** change the “>” symbol to “.”
645	After the first heading for **Daycare Providers**, add “For 2007 Returns” after “Standard Meal Allowance.” After the second heading for Daycare Providers, add “For 2008 Returns.”
IL-8	In the first sentence following **Withholding Exemptions**, insert “non-individual,” after “nonresident.”
3 of Supplement	In the third bullet point under **Energy Conservation Incentives,** the last part of the sentence after “and” should read: “reinstating the credit for 2009 only.”
11 of Supplement	In the sentence following **Tiebreaker Rule,** insert “as a qualifying child” before “…and has a higher AGI for the tax year…”

NEW TAX LEGISLATION

An unprecedented financial rescue plan and tax relief package (H.R. 1424) was passed by Congress and signed by President Bush on October 3, 2008. H.R. 1424 is divided into three separate sections, each of which includes tax provisions. The sections of this bill are:

- The Emergency Economic Stabilization Act of 2008
- The Energy Improvement and Extension Act of 2008
- The Tax Extenders and Alternative Minimum Tax Relief Act of 2008

The definition of a qualifying child was modified by the passage of H.R. 6893, the Fostering Connections to Success and Increasing Adoptions Act of 2008. This was enacted on October 7, 2008.

In mid-December, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) was passed by the House and Senate and sent to President Bush, who signed the bill on December 23, 2008. Congress thought it imperative to have the legislation passed before the end of 2008 in order to assist many businesses in their recovery efforts.

Tax provisions of each bill with the widest impact are analyzed below.

THE EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

The foundation of this Act is the rescue plan designed to loosen the credit market by giving the Secretary of the Treasury the authority to purchase up to $700 billion of troubled assets in order to promote financial market stability. In addition, there are key tax elements in this Act that are aimed at relieving the pressure on financial institutions and helping homeowners avoid foreclosure.

FANNIE MAE AND FREDDIE MAC STOCK LOSSES

Banking regulators approved investments in preferred stock of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Many community banks held these preferred shares in their investment portfolios. These investments became worthless when the government took control of Fannie Mae and Freddie Mac.

Under **previous regulations**, banks recognized a capital gain or loss on the sale of preferred stock in these institutions. Any loss on such sales could only be used to offset any capital gains. Corporations were not allowed to deduct capital losses that exceeded capital gains.

The **new law** allows banks to treat losses on their worthless preferred stock in Fannie Mae and Freddie Mac as **ordinary losses,** rather than capital losses. In order to qualify for ordinary loss treatment, the financial institution must have either:

- Owned the preferred stock on September 6, 2008, or
- Sold or exchanged the preferred stock on or after January 1, 2008 and before September 7, 2008.

Note. Many community banks suffered losses on preferred stock of Fannie Mae and Freddie Mac in excess of $1 million. This provision provides immediate tax relief to those institutions. The provision does **not** apply to individual taxpayers who invested in such stock. Individual taxpayers must continue to recognize capital losses on their worthless stock and are subject to the $3,000 excess capital loss limitation.

EXTENSION OF MORTGAGE FORGIVENESS DEBT RELIEF ACT

The new bill extends provisions of the Mortgage Forgiveness Debt Relief Act for an additional three years. Previously, discharges of up to $2 million of cancellation of debt income (CODI) attributable to the taxpayer's principal residence occurring after 2006 and before 2010 were excluded from income for federal tax purposes. Under the new Act, these provisions expire at the end of 2012.

Only debt acquired for the purchase, construction, or substantial improvement of a principal residence qualifies for the exclusion. The debt must be secured by the residence.

This provision applies to debt discharged between January 1, 2007 and December 31, 2012.

Note. For more detail on the Mortgage Forgiveness Debt Relief Act, see Chapter 13 of the 2008 *University of Illinois Federal Tax Workbook.*

THE ENERGY IMPROVEMENT AND EXTENSION ACT OF 2008

ENERGY INCENTIVES

The placed-in-service date for IRC §45 renewable electricity energy credit property is extended until December 31, 2010 for most qualifying sources. For wind and coal sources, the extension is through the end of 2009.

The IRC §48 investment tax credit and IRC §25D residential energy-efficient property credit are extended through 2016. The §48 credit now includes geothermal power systems, and the fuel cell credit cap is increased to $1,500 per half-kilowatt of capacity. The $2,000 credit cap on solar electric investments under §25D is removed, and small wind and geothermal investments are added to the list of qualifying property.

H.R. 1424 extends the excise taxes on coal until the Black Lung Disability Trust Fund can repay the total amount borrowed from the general fund, with interest. This provision eliminates the 2014 phaseout of the coal excise tax.

TRANSPORTATION INCENTIVES

Plug-in Electric Drive Passenger Vehicles

A new tax credit for **plug-in** electric drive passenger vehicles and light trucks with a gross vehicle weight of 8,500 pounds or less ranges between $2,500 and $7,500. The credit is based on $2,500 plus $417 per kilowatt-hour of traction battery capacity in excess of four kilowatt hours. The credit is available for tax years beginning in 2009 and ends after the total number of these vehicles sold in the United States exceeds 250,000.

Higher credits are available for heavier vehicles. The rules are similar to the alternative motor vehicle credit for hybrid vehicles. For business-use vehicles, the credit is claimed as part of the business credit. For personal-use vehicles, the new qualified plug-in electric drive vehicle credit is claimed. If a vehicle is used for both business and personal purposes, the credit is allocated between the two categories.

Note. The only vehicle that qualifies today is the Tesla Roadster made by Tesla Motors. GM announced it will begin production of the Chevrolet Volt in 2010. It expects the cost to be approximately $40,000. The Tesla Roadster sells for $100,000 and travels 244 miles per charge.

Exemption from Heavy Vehicle Excise Tax

An exemption from the heavy vehicle 12% excise tax is provided for the cost of idling reduction units designed to eliminate the need for truck engine idling at vehicle rest stops or other temporary parking locations. The cost of installation of advanced insulation, which can reduce energy consumption by vehicles carrying refrigerated cargo, is also exempt.

This change applies to sales and installations after October 3, 2008.

Bicycle Commuters

The Act adds bicycle commuting to the types of commuting expenses deductable by an employer and tax-free to the employee. Previously, only van pooling, transit passes, and qualified parking were excludable by the employee.

Employers may give an employee up to $20 per month to reimburse the cost of purchasing, repair, and storage of a bicycle. To qualify for reimbursement, the employee must use the bicycle for a substantial portion of travel between the employee's residence and work. In addition, the employee may not receive any other type of travel reimbursement. This provision applies for bicycle travel reimbursements beginning after tax year 2008.

> **Example 1.** Lance's employer pays employees who commute to work on bicycles $20 for each commuting month. Lance rides his bicycle to work most days from April 1, 2009, to September 30, 2009. The employer pays Lance $120 ($20 × 6). This amount is deductible by the employer and nontaxable to Lance.

Other Energy Extensions

Other incentives include an extension through 2012 of the IRC §168 50% bonus depreciation for cellulosic biomass ethanol production facilities and a 2-year extension of the IRC §179C refinery expensing election.

ALTERNATIVE FUEL INCENTIVES

H.R. 1424 extends through 2009 the IRC §40A $1 per gallon tax credit for biodiesel production, the $1 per gallon credit for biomass-produced diesel, and the $.10 per gallon credit for small producers. Additionally, diesel produced from a mixture of petroleum and biomass is eligible for a $.50 per gallon credit.

The IRC §6426 alternative fuels credit is extended through 2009 for all fuels except hydrogen. The hydrogen credit is set to expire in 2014. In order to continue eligibility for the credit, certain types of qualifying coal production must achieve at least 50% carbon dioxide sequestration as of October 2009.

ENERGY CONSERVATION INCENTIVES

The energy conservation provisions of H.R. 1424 include:

- Changing the allowable recovery period for the cost of "smart" electric meters and grid equipment to 10 years instead of 20 years. A smart meter typically identifies electric consumption in greater detail than a conventional meter. The information is then transmitted back to the power company.
- Extending the deduction for energy-efficient property in commercial buildings through 2013. This includes property installed as part of interior lighting systems; heating, cooling, ventilation, and hot water systems; or building envelope. The property must reduce the building's energy and power costs by at least 50%.
- Expanding the home energy-efficient property credit to include certain biomass-powered stoves and asphalt roofs containing cooling granules placed in service in 2009. The credit is reinstated for 2009 only for other types of property. This includes natural gas, propane, and oil water heaters if they have an energy factor of at least 0.80 or a thermal efficiency of at least 90%. The credit continues to apply to exterior doors and windows, insulation, heat pumps, furnaces and central air conditioners. This credit was available for 2006 and 2007 purchases, but is not available for 2008 purchases.

- Extending the energy-efficient home tax credit under IRC §45L through 2009. This credit is **only available to contractors** for the manufacture or construction of new qualified homes. To qualify for the $2,000 credit, the home must achieve a 50% energy savings for heating and cooling over a 2004 level. The home must be no more than three stories high.
- Increasing the IRC §45M energy-efficient appliance credit and extending it through 2010. The credit is available to manufacturers of energy-efficient refrigerators, clothes washers, and dishwashers. The new law changes the qualifying standards.
- Allowing 50% bonus depreciation for reuse and recycling equipment. The taxpayer's original use of the property must begin after August 31, 2008. The equipment must perform a process allowing worn or superfluous material to be turned into material that can be used in manufacturing consumer and commercial products. This can include packaging material.

REVENUE PROVISIONS

Revenue provisions of this Act are expected to raise nearly $17 billion. The most prominent of these measures include:

- Freezing the IRC §199 qualified production activities deduction at 6% for gross receipts derived from the sale, exchange, or other disposition of oil, natural gas, or any primary product thereof. The §199 deduction was scheduled to increase to 9% in 2010.
- Beginning in 2011, requiring brokers to report to the IRS cost basis information for certain stock and other security transactions and whether the gains or losses are long-term or short-term. The information will be reported on Form 1099-B, *Proceeds from Broker or Barter Exchange Transactions*. This provision covers corporate stock acquired on or after January 1, 2011. When an average basis method is permitted for the stock, the acquisition date is on or after January 1, 2012. For other types of specified securities, the applicable acquisition date is on or after January 1, 2013.

  Unless specifically identified by the investment customer, the information is reported on a "first-in first-out basis."

  Beginning in 2009, brokers have until February 15 to file Forms 1099-B.
- Extending the .2% temporary FUTA surtax for the 2009 tax year.

THE TAX EXTENDERS AND ALTERNATIVE MINIMUM TAX RELIEF ACT OF 2008

This section of H.R. 1424 renews many about-to-expire or already expired tax relief provisions, provides a 1-year alternative minimum tax (AMT) patch, offers disaster relief for specified regions, and allows new tax benefits.

AMT PATCH

The new law increases the AMT exemption to the following amounts for 2008 and allows personal credits against AMT.

Filing Status	Exemption Amount
Married Filing Jointly or Qualifying Widow(er)	$69,950
Single and Head of Household	46,200
Married Filing Separately	34,975

The corporate exemption of $40,000 and the estate and trust exemption of $22,500 were not changed.

The AMT exemption phaseout range was not changed. It starts at $150,000 for taxpayers using the married filing jointly or surviving spouse status and for corporations. The phaseout begins at $112,500 for unmarried individuals and at $75,000 for married taxpayers filing separately. The exemption is reduced by $25 for each $1 over the starting phaseout amount.

EXTENSION OF AMT CREDIT ALLOWANCE FOR INDIVIDUALS WITH LONG-TERM UNUSED CREDITS

This provision helps taxpayers with unused AMT credits, which came about primarily from exercising incentive stock options (ISOs). These taxpayers paid AMT on the value of stocks when they exercised ISOs and later sold the stock at a loss. Congress provided some relief to these taxpayers in 2006.

Under the old law, the AMT credit amount was reduced for taxpayers with AGIs above $100,000 (single) and $150,000 (MFJ). Taxpayers received a refundable credit of the greater of (a) $5,000 or the long-term unused minimum tax credit; or (b) 20% of the credit. The income phaseout is eliminated under the new law.

The new law allows an individual a refundable AMT credit that is the greater of:

- 50% of the long-term unused minimum tax credit, or
- The amount of the refundable AMT credit determined for the previous year.

Example 2. Ernesto exercised an ISO in 2004 and still owns the stock. He paid $20,000 of AMT on his 2004 tax return due to the creation of phantom AMT income. He claimed no minimum tax credits on his 2005 and 2006 returns and claimed a $3,000 minimum tax credit on his 2007 return. His minimum tax credit carryforward to 2008 is $17,000 ($20,000 – $3,000).

Under the revised AMT refundable credit formulas, Ernesto is entitled to claim a 2008 AMT refundable credit of $8,500. The credit is reported on Form 8801, *Credit for Prior Year Minimum Tax*.

Using the revised formula, Ernesto's AMT refundable credit is the greater of:

- $3,000, the prior year refundable AMT credit, or
- $8,500, 50% of the long-term unused minimum tax credit.

Additional provisions are included in the new law. For the 2008 and 2009 tax years, taxpayers who paid underpayment penalties and interest due to exercising ISOs can increase their AMT refundable credit for the amount paid. If the taxpayer has an outstanding AMT tax liability, these amounts are abated, plus penalties and interest.

Note. For more information about AMT Refundable Credits, see Chapter 9 of the 2008 *University of Illinois Federal Tax Workbook* (written before the new law was enacted).

INDIVIDUAL EXTENDER PROVISIONS

Deduction for State and Local Sales Taxes

Taxpayers can elect to take an itemized deduction for state and local general sales taxes rather than state income taxes. Taxpayers may use the IRS table provided in the 1040 instructions. In addition, they can increase the table amount for any general sales tax paid on the purchase of motor vehicles, boats, or airplanes. If these additional purchases are taxed at a rate higher than the general rate, any excess over the general rate is disregarded. This provision is extended to the end of 2009.

Qualified Tuition and Expenses Deduction

A provision allowing an above-the-line deduction for qualified higher education expenses has been extended to December 31, 2009. The maximum deduction is $4,000 for taxpayers with AGIs of $65,000 or less ($130,000 for MFJ). Taxpayers with income exceeding that limit but under $80,000 ($160,000 MFJ) can deduct up to $2,000 in qualified expenses.

> **Note.** For an in-depth discussion of the Tuition and Fees Deduction, see Chapter 6 of the 2008 *University of Illinois Federal Tax Workbook.*

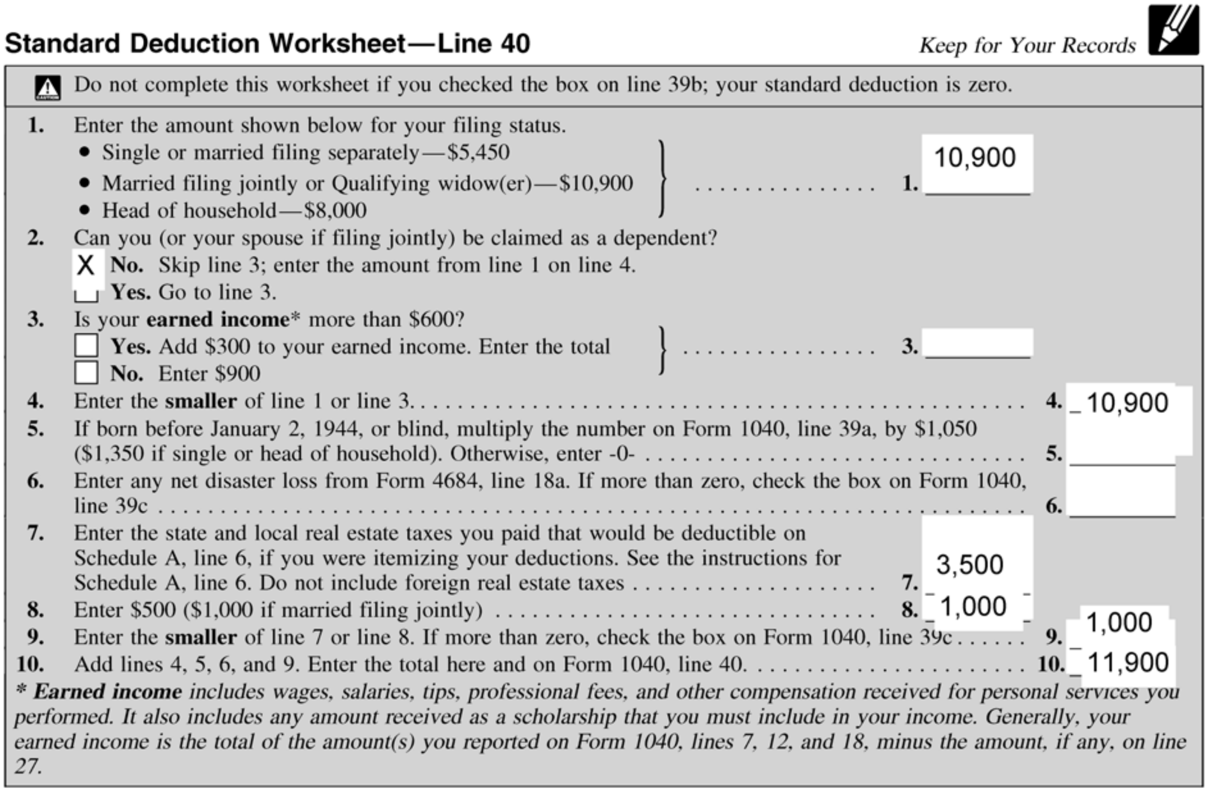
Teacher Expense Deduction

The bill extends the provision allowing an above-the-line deduction for up to $250 of unreimbursed material expenses incurred by teachers to the end of 2009. The materials must be used by the teacher in the classroom. To qualify, the taxpayer must work in a school for at least 900 hours during the school year and teach students in grades kindergarten through 12.

Standard Deduction for Non-Itemizer's Real Estate Taxes

A real property tax calculation was added to the standard deduction for taxpayers who do not itemize by the Housing and Economic Recovery Act of 2008. This deduction is the lesser of $500 ($1,000 for MFJ) or the amount allowable as a deduction of state, local, and foreign real property taxes. The provision was set to expire at the end of 2008. It is extended to the end of 2009.

Example 3. Mark and Lauralee file a joint tax return. They have no dependent children and are under age 65. They paid $3,500 of real estate tax in 2008. Their standard deduction of $11,900 is calculated using the worksheet on page 35 of the Form 1040 instructions.



Standard Deduction Worksheet—Line 40

Keep for Your Records

Do not complete this worksheet if you checked the box on line 39b; your standard deduction is zero.

1. Enter the amount shown below for your filing status.
   - Single or married filing separately—$5,450
   - Married filing jointly or Qualifying widow(er)—$10,900
   - Head of household—$8,000

   . . . . 1. 10,900
2. Can you (or your spouse if filing jointly) be claimed as a dependent?

   ☒ **No.** Skip line 3; enter the amount from line 1 on line 4.

   ☐ **Yes.** Go to line 3.
3. Is your **earned income*** more than $600?

   ☐ **Yes.** Add $300 to your earned income. Enter the total

   ☐ **No.** Enter $900

   . . . . 3. ______
4. Enter the **smaller** of line 1 or line 3. . . . . 4. 10,900
5. If born before January 2, 1944, or blind, multiply the number on Form 1040, line 39a, by $1,050 ($1,350 if single or head of household). Otherwise, enter -0- . . . . 5. ______
6. Enter any net disaster loss from Form 4684, line 18a. If more than zero, check the box on Form 1040, line 39c . . . . 6. ______
7. Enter the state and local real estate taxes you paid that would be deductible on Schedule A, line 6, if you were itemizing your deductions. See the instructions for Schedule A, line 6. Do not include foreign real estate taxes 7. 3,500
8. Enter $500 ($1,000 if married filing jointly) 8. 1,000
9. Enter the **smaller** of line 7 or line 8. If more than zero, check the box on Form 1040, line 39c 9. 1,000
10. Add lines 4, 5, 6, and 9. Enter the total here and on Form 1040, line 40. . . . . 10. 11,900

** **Earned income** includes wages, salaries, tips, professional fees, and other compensation received for personal services you performed. It also includes any amount received as a scholarship that you must include in your income. Generally, your earned income is the total of the amount(s) you reported on Form 1040, lines 7, 12, and 18, minus the amount, if any, on line 27.*

IRA Charitable Distributions

A provision of the Pension Protection Act of 2006 (PPA) allowing taxpayers over age 70½ to make tax-free distributions of up to $100,000 per year from their IRAs to qualified charities is extended to the end of 2009. **The contribution must go directly to the charity from the IRA.** The plan may not issue the check payable to the taxpayer, who then makes the donation. The contribution is applied against the taxpayer's minimum distribution requirement.

Note. Taxpayers may want the plan to make the check payable to the charity but mail it to the taxpayer. Then, the taxpayer can hand it to the charity and make sure he gets the appropriate receipt for the donation and that the donation is made timely.

Treatment of Dividends of Regulated Investment Companies (RICs)

A provision permitting RICs to designate certain dividends (or a portion thereof) as interest-related is extended to taxable years of the RIC beginning before January 1, 2010.

BUSINESS EXTENDERS

Research Credit

The research tax credit of 20% of the amount by which a taxpayer's qualified research expenses exceed its base amount for a taxable year is extended to the end of 2009. The new law eliminates the alternative incremental method of calculating the credit. The alternative simplified method of calculating the credit now uses 14%.

New Markets Tax Credit

The new markets credit allowance date is extended through December 31, 2009. The provision allows up to $3.5 billion of qualified equity investments for the year.

15-year MACRS Recovery Period for Qualified Leasehold Improvements

The provision shortening the cost recovery period of certain leasehold improvements from 39 to 15 years extends to the end of 2009. The straight-line method of depreciation using the half-year convention is required. The 15-year recovery period is not elective. If a taxpayer wants to use a longer recovery period, she must make an election to use ADS.

Note. The Economic Stimulus Act of 2008 allows 50% bonus depreciation for these same improvements. Therefore, a taxpayer can deduct 50% of the cost and then depreciate the remainder over 15 years.

Example 4. Canton Supply spends $350,000 on qualified leasehold improvements to its office in 2009. They are entitled to a total depreciation deduction for that year of $180,833.

$350,000 × 50%	$175,000
($350,000 − $175,000) ÷ 15 ÷ 2	5,833
	$180,833

15-Year MACRS Recovery Period for Restaurant Improvements and Buildings

The provision shortening the cost recovery period of certain restaurant improvements from 39 to 15 years extends to the end of 2009. Restaurant buildings placed in service in 2009 now qualify as 15-year MACRS property. The straight-line method of depreciation is required. More than 50% of the building's space must be used for the preparation of, and seating for, on-premise consumption of prepared meals.

15-Year MACRS Recovery Period for Qualified Retail Improvement Property

Retail business interior improvements placed in service in 2009 qualify for the 15-year MACRS recovery period using the straight-line method. The building must be at least three years old when the improvement is placed in service. The half-year convention is used unless the mid-quarter convention applies.

The rules are similar to those for qualified leasehold improvements placed in service in 2009. The difference is that this provision applies to owner-occupied buildings. While the mid-month convention does not apply to qualified retail improvement property, it continues to be §1250 property. Therefore, §179 is not applicable.

The 15-year recovery period is required. Taxpayers must elect to use ADS if they want to depreciate the improvements over a longer period. Unlike qualified leasehold improvements, qualified retail improvements are not eligible for 50% bonus depreciation.

Tax Treatment Modification of Payments to Controlling Exempt Organizations

Interest, rent, royalties, and annuities paid to a tax-exempt organization from a controlled entity are generally treated as unrelated business income. Under a provision of the Pension Protection Act of 2006 (PPA), payments to a tax-exempt organization by a controlled entity that were less than fair market value were excludable from the exempt organization's unrelated business income. H.R. 1424 extends this provision to the end of 2009.

Tax Credit for Maintenance of Railroad Tracks

The tax credit of 50% of gross expenditures of short-line railroads for maintaining railroad tracks that they own or lease is extended to the end of 2009. This provision also allows a credit against AMT.

Charitable Deduction Provisions

Four provisions dealing with charitable deductions are extended to December 31, 2009.

1. **Basis Adjustment to S Corporation's Stock for Charitable Contributions of Property**. Before the PPA was enacted, shareholders of an S corporation contributing to a charity reduced their stock basis by their pro rata share of the fair market value of the contribution. This was changed under the PPA so that the shareholder's basis reduction in the S corporation stock is equal to the pro rata share of the shareholder's adjusted basis of the contributed property.

2. **Enhanced Deduction for Qualified Computer Contributions.** This provision encourages businesses to contribute computer equipment and software to elementary, secondary, and post-secondary schools by permitting an enhanced deduction for these contributions.

   C corporations making qualified computer contributions may claim an enhanced deduction, which is defined as the corporation's basis in the contributed property plus one-half of the ordinary income that would have been realized if the property was sold. This enhanced deduction is limited to twice the corporation's basis in the property.

   The computer equipment and technology that may be contributed include computer or peripheral equipment, computer software, and fiber optic cable for computer use. The equipment or technology must be for use within the United States for educational purposes. An eligible donee is one of the following:

   a. An educational organization that normally maintains a regular faculty and curriculum with students regularly enrolled and attending at the place where educational activities are normally held;

   b. A tax-exempt entity organized mainly for purposes of supporting elementary and secondary education;

   c. A private foundation that contributes the property to a donee described in (a) or (b) within 30 days after receiving the contribution; or

   d. A public library.

   Additionally, the property must be donated no later than three years after acquisition by the corporation. If the corporation constructed or assembled the property, the contribution must occur no later than the date construction or assembly is substantially completed.

3. **Enhanced Deduction for Food Inventory Contributions.** This provision allows any taxpayer engaged in a trade or business to take an enhanced deduction for the contribution of food inventory. Food inventory contributions must be items fit for human consumption and must be contributed to a qualified charity or private operating foundation for use in the care of infants, the ill, or the needy.

   The amount of the enhanced deduction for food inventory donations is the basis of the donated item plus one-half of the item's appreciation, not to exceed two times the basis of the donated item. Appreciation of the food item is defined as the amount of gain that would be realized if the donated item was sold at fair market value on the date of the contribution.

   For taxpayers other than C corporations, the total deduction for food inventory contributions is limited to no more than 10% of the taxpayer's net income from the trade or business. However, the 10% limitation is removed for food contributions by qualified ranchers and farmers from October 3, 2008 through December 31, 2008. A qualified rancher or farmer is a taxpayer whose gross income from the trade or business of farming is more than 50% of the taxpayer's gross income for the taxable year.

Observation. Normally, the farmer or rancher will not receive a charitable deduction of the food inventory. Because the food is produced by the taxpayer, it likely has a zero basis. Even though the deduction is limited to twice the basis, two times zero is zero.

4. **Enhanced Deduction for Book Inventory Contributions.** The provision allows C corporations to claim an enhanced charitable deduction for donations of books to public schools. The amount of the enhanced deduction that may be taken is the basis of the donated item plus one-half of the item's appreciation, not to exceed two times the donated item's basis.

   Qualified book contributions are those made to a public school providing elementary or secondary education, which maintain a regular faculty and curriculum and have a regularly enrolled student body. Additionally, the donee school must certify in writing that:

   - The books are suitable for use in the school's education programs, and
   - The books will actually be used in the school's educational programs.

Work Opportunity Tax Credit for Hurricane Katrina Employees

The work opportunity tax credit for those employed within the core Hurricane Katrina disaster area is extended through August 28, 2009. This applies to those employees hired before August 26, 2009. The credit is 40% of the first $6,000 of qualified wages paid during the first year of employment.

ADDITIONAL TAX RELIEF AND OTHER TAX PROVISIONS

Refundable Child Tax Credit Rules Liberalized for 2008

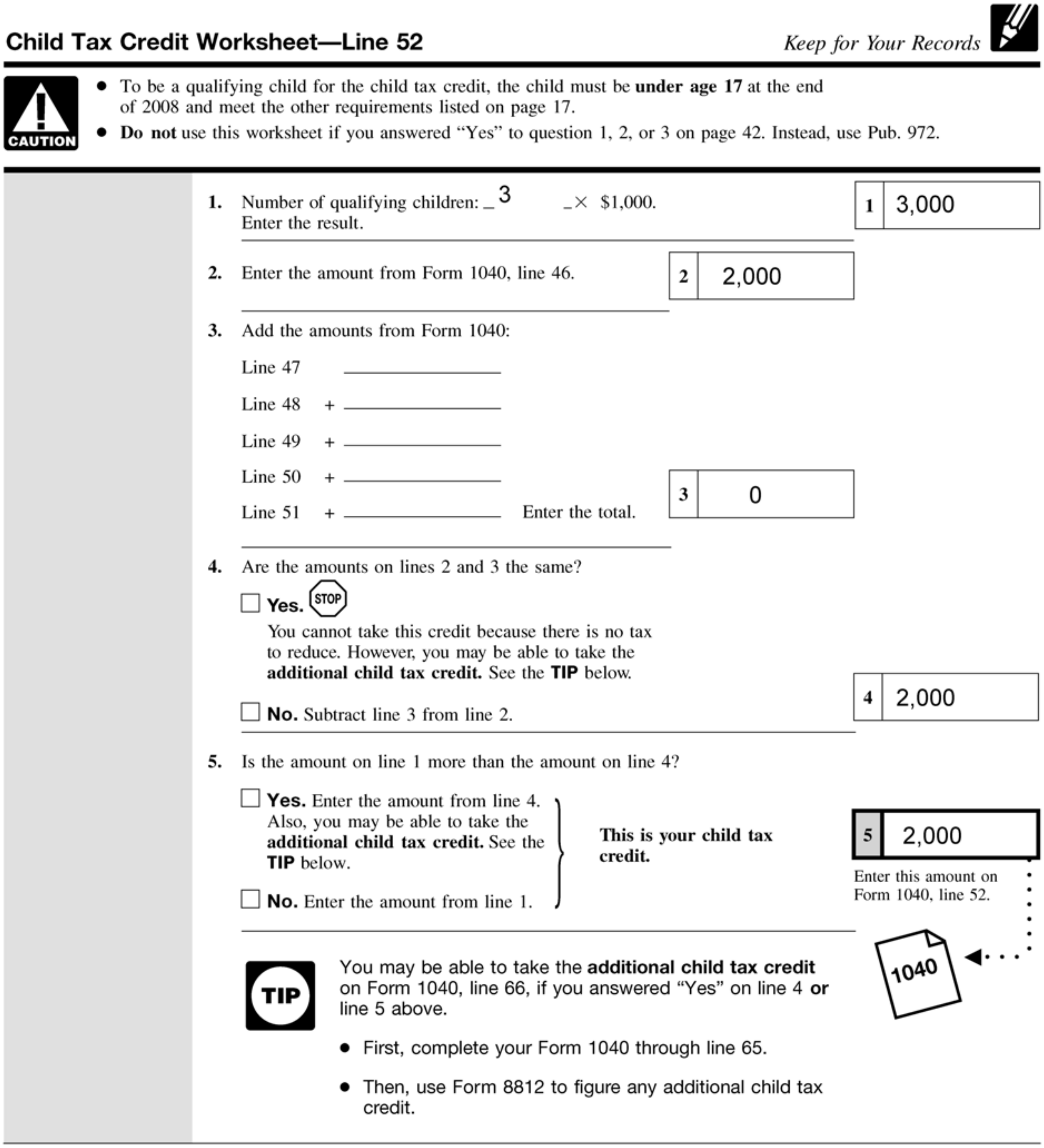
Under previous regulations, certain taxpayers whose federal income tax liability minus specified nonrefundable credits was less than the regular nonrefundable child tax credit were entitled to a **refundable additional child tax credit**. This refundable credit is computed on Form 8812, *Additional Child Tax Credit*. Before passage of the new bill, the refundable credit amount for 2008 was 15% of total earned income in excess of $12,050.

Passage of H.R. 1424 lowered the earned income threshold from $12,050 to $8,500. As a result, a greater number of lower income individuals are entitled to the additional child tax credit on their 2008 federal tax returns.

Example 5. In 2008, Halley, a single mother of three children, earned wages of $10,000. She is eligible to claim the dependency exemption for her children. Halley has no other income for the year. Her tax liability before the child tax credits is $2,000.

If the threshold for the refundable child tax credit had not been lowered from $12,050 to $8,500, Halley would not be entitled to an additional child tax credit on Form 8812. However, under the new regulations, Halley is eligible for $225 of additional child tax credit.

Halley's completed 2008 *Child Tax Credit Worksheet* and Form 8812, *Additional Child Tax Credit* follow:



Child Tax Credit Worksheet—Line 52 *Keep for Your Records*

CAUTION

- To be a qualifying child for the child tax credit, the child must be **under age 17** at the end of 2008 and meet the other requirements listed on page 17.
- **Do not** use this worksheet if you answered "Yes" to question 1, 2, or 3 on page 42. Instead, use Pub. 972.

1. Number of qualifying children: 3 × $1,000. Enter the result. **1** 3,000

2. Enter the amount from Form 1040, line 46. **2** 2,000

3. Add the amounts from Form 1040:

Line 47 ____
Line 48 + ____
Line 49 + ____
Line 50 + ____
Line 51 + ____ Enter the total. **3** 0

4. Are the amounts on lines 2 and 3 the same?

☐ **Yes.** STOP You cannot take this credit because there is no tax to reduce. However, you may be able to take the **additional child tax credit.** See the **TIP** below.

☐ **No.** Subtract line 3 from line 2. **4** 2,000

5. Is the amount on line 1 more than the amount on line 4?

☐ **Yes.** Enter the amount from line 4. Also, you may be able to take the **additional child tax credit.** See the **TIP** below.

☐ **No.** Enter the amount from line 1.

This is your child tax credit. **5** 2,000

Enter this amount on Form 1040, line 52.

1040

TIP You may be able to take the **additional child tax credit** on Form 1040, line 66, if you answered "Yes" on line 4 **or** line 5 above.

- First, complete your Form 1040 through line 65.
- Then, use Form 8812 to figure any additional child tax credit.

For Example 5

Form **8812**

Department of the Treasury
Internal Revenue Service (99)

Additional Child Tax Credit

Complete and attach to Form 1040, Form 1040A, or Form 1040NR.

1040
1040A
1040NR
8812

OMB No. 1545-0074

2008

Attachment
Sequence No. **47**

Name(s) shown on return: **Halley**

Your social security number

Part I All Filers

1	Enter the amount from line 1 of your Child Tax Credit Worksheet on page 43 of the Form 1040 instructions, page 38 of the Form 1040A instructions, or page 19 of the Form 1040NR instructions. If you used Pub. 972, enter the amount from line 8 of the worksheet on page 4 of the publication	**1**	3,000
2	Enter the amount from Form 1040, line 52, Form 1040A, line 33, or Form 1040NR, line 47	**2**	2,000
3	Subtract line 2 from line 1. If zero, **stop**; you cannot take this credit	**3**	1,000
4a	Earned income (see instructions on back). If your main home was in a Midwestern disaster area when the disaster occurred, and you are electing to use your 2007 earned income, check here ▶ ☐	**4a**	10,000
b	Nontaxable combat pay (see instructions on back)	**4b**	
5	Is the amount on line 4a more than $8,500? ☐ **No.** Leave line 5 blank and enter -0- on line 6. ☑ **Yes.** Subtract $8,500 from the amount on line 4a. Enter the result	**5**	1,500
6	Multiply the amount on line 5 by 15% (.15) and enter the result	**6**	225

Next. Do you have three or more qualifying children?

☐ **No.** If line 6 is zero, stop; you cannot take this credit. Otherwise, skip Part II and enter the **smaller** of line 3 or line 6 on line 13.

☑ **Yes.** If line 6 is equal to or more than line 3, skip Part II and enter the amount from line 3 on line 13. Otherwise, go to line 7.

Part II Certain Filers Who Have Three or More Qualifying Children

7	Withheld social security and Medicare taxes from Form(s) W-2, boxes 4 and 6. If married filing jointly, include your spouse's amounts with yours. If you worked for a railroad, see instructions on back	**7**	
8	**1040 filers:** Enter the total of the amounts from Form 1040, lines 27 and 58, plus any taxes that you identified using code "UT" and entered on the dotted line next to line 61. **1040A filers:** Enter -0-. **1040NR filers:** Enter the total of the amounts from Form 1040NR, line 53, plus any taxes that you identified using code "UT" and entered on the dotted line next to line 57.	**8**	
9	Add lines 7 and 8	**9**	
10	**1040 filers:** Enter the total of the amounts from Form 1040, lines 64a and 65. **1040A filers:** Enter the total of the amount from Form 1040A, line 40a, plus any excess social security and tier 1 RRTA taxes withheld that you entered to the left of line 43 (see instructions on back). **1040NR filers:** Enter the amount from Form 1040NR, line 60.	**10**	
11	Subtract line 10 from line 9. If zero or less, enter -0-	**11**	
12	Enter the **larger** of line 6 or line 11	**12**	

Next, enter the **smaller** of line 3 or line 12 on line 13.

Part III Additional Child Tax Credit

13	**This is your additional child tax credit**	**13**	225

1040
1040A
1040NR

◀ *Enter this amount on Form 1040, line 66, Form 1040A, line 41, or Form 1040NR, line 61.*

For Paperwork Reduction Act Notice, see back of form. Cat. No. 10644E Form **8812** (2008)

5-Year Recovery Period for Certain Farming Machinery and Equipment

A 5-year MACRS recovery period is provided for machinery and equipment (other than grain bins, cotton ginning assets, fences, or other land improvements) used in a farming business. The original use must commence with the taxpayer in 2009, and the assets must be placed in service in 2009. Unless the taxpayer is required to use the ADS depreciation system, the equipment will be depreciated using the 150% declining balance method.

Modification of Preparer Penalties

The standard for imposition of the tax return preparer penalty under §6694 for undisclosed positions is reduced from the strict requirement that a preparer have a reasonable belief that a tax position is "more likely than not" to be sustained on its merits (greater than 50%) to one of "substantial authority" for a tax position (1 in 3 chance). The preparer standard for disclosed positions is "reasonable basis." For tax shelters and reportable transactions with significant avoidance or evasion purposes, the tax return preparer standard is a reasonable belief that such a transaction is more likely than not to be sustained on its merits.

For undisclosed and disclosed positions, the new standards are effective for returns prepared after May 25, 2007. The revised standard for tax shelters and reportable transactions applies to returns prepared for tax years ending after October 3, 2008.

> **Note.** For more information on Preparer Penalties, see Chapter 2 of the 2008 *University of Illinois Federal Tax Workbook*. Chapter 2 was written before the change to IRC §6694.

DISASTER RELIEF

Tax Relief for Midwestern Disaster Area

The bill provides tax relief for victims of floods, severe storms, and tornadoes in federally-declared disaster areas between May 20, 2008 and August 1, 2008, in Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin. The term "federally-declared disaster area" replaces the former term "Presidentially-declared disaster area." Among the more prominent disaster-related provisions included in this section of the bill are the following:

Tax-Favored Withdrawals. There is a waiver of the 10% early-withdrawal penalty for distributions from an IRA or tax-favored retirement plan (qualified retirement or annuity and §403(b)) that are considered qualified Disaster Recovery Assistance distributions. Other features include the following:

1. The waiver is limited to amounts up to $100,000;
2. The mandatory withholding rules applicable to eligible rollover distributions do not apply;
3. Participants receiving a qualified distribution are allowed to report the income tax resulting from receipt of the distribution ratably over three years; and
4. Amounts distributed may be recontributed to the plan over a 3-year period following the distribution, and these recontributed amounts are not includible in income. For example, if a participant receives a qualified distribution in 2008 and then recontributes the distribution amount in 2009, the participant may file an amended return requesting a refund for the amount taxed on the distribution in 2008.

Recontribution of Home Purchase Withdrawals. Distributions from certain retirement plans for home purchases that were not completed because of a disaster in the Midwestern area may be recontributed to such plans in certain circumstances. The distribution must have been made no more than six months before the applicable disaster date and no later than the applicable disaster date. The distribution must have been intended for the purchase or construction of a principal residence in the Midwestern disaster area. If the recontribution is made between the applicable disaster date and March 3, 2009, it may be made without tax or penalty.

Qualified Plan Loans. The limitation on loans from 401(k), 403(b), or 457 plans is increased up to the lesser of $100,000 (when combined with all other outstanding plan loans) or 100% of the vested benefit for participants who sustained an economic loss in a Midwestern disaster area.

Personal Casualty Loss Limitation Suspension. The Act eliminates the 10% AGI reduction and $100 floor for deductibility of nonbusiness casualty losses resulting from the disasters in the Midwest for taxpayers who itemize. A taxpayer may elect to report the 2008 loss on his 2007 income tax return.

> **Example 6.** Ted and Helen live outside of Quincy, Illinois and were victims of the Midwest floods. Their house and furnishings sustained over $70,000 in damages. Their insurance did not cover $1,000 of the damage, resulting in a $1,000 personal casualty loss. The couple's 2008 AGI is $150,000. Prior to the change in the law, they would not be entitled to a tax deduction because the 10% limitation would apply and the loss did not exceed $15,000 ($150,000 × 10%).

Earned Income Determination. A taxpayer's earned income is used to determine the amount of both the earned income and refundable child tax credits available. Victims of the Midwestern floods are allowed to use their earned income from the previous year to claim these credits.

Dependency Status. Taxpayers will not lose their dependency status, filing status, deductions, or credits because of temporary relocations due to the flooding.

> **Example 7.** Ted and Helen, from **Example 6,** took their two young children to live with grandparents while they rebuilt their house. Consequently, the children lived with them for less than six months during 2008. The Act provides they can claim the children as dependents and receive the refundable child tax credit and earned income credit.

Additional Personal Exemption for Housing Victims. Taxpayers who house up to four dislocated persons from the Midwestern disaster in their principal residences for a minimum of 60 days are allowed an additional personal exemption of $500 per dislocated person, up to a maximum of $2,000. The additional exemption amount is calculated on Form 8914, *Exemption Amount for Taxpayers HousingIndividuals Displaced by Midwest Floods.* The amount is then reported on line 42 of Form 1040.

> **Example 8.** Because Ted and Helen's two children lived with their grandparents over 60 days in 2008, the grandparents are entitled to an additional exemption amount of $1,000 (2 × $500) when they file their 2008 income tax return.

Cancellation of Indebtedness Exclusion. Individuals are not taxed on personal debt that is discharged due to damage suffered from the Midwestern disaster. The debt is treated in the same manner as debt forgiveness under IRC §108(a). Therefore, if the taxpayer has any tax attributes such as a net operating loss or unused credits, they must be reduced by the amount of the forgiven debt.

> **Example 9.** Ted and Helen had $4,000 of debt remaining on their swimming pool. After the flood, the lender forgave the debt, generating $4,000 of CODI for Ted and Helen. At the time of the flood, the taxpayers had a $3,000 NOL carryforward. Consequently, they must offset the $3,000 NOL tax attribute against the CODI. The remaining $1,000 of debt forgiveness will **not** be taxable. Ted and Helen cannot use any of the NOL to offset other income.

Extension of Replacement Period for Property. Under previous law, taxpayers did not recognize a gain for homes damaged or destroyed because of a federally-declared disaster if the taxpayer replaced the property within a 4-year period. Destroyed business property had to be replaced within two years to avoid gain recognition. This replacement period for nonrecognition of gain is extended to five years for principal residences and business property that was damaged or destroyed in the Midwestern disaster area. The replacement property must be located in the same county.

Employee Retention Credit. Employers with 200 or fewer employees located in the Midwestern disaster area who continue to pay their employees while their businesses are inoperable are eligible for a tax credit on up to $6,000 wages paid per employee. The tax credit is 40% of qualified wages, or a maximum $2,400 credit per employee ($6,000 × 40%). The wages must be paid after the applicable disaster date and before January 1, 2009.

Hope Scholarship and Lifetime Learning Credit Expansion. This provision doubles the maximum Hope credit to $3,600 and the maximum lifetime learning credit to $4,000 for students attending institutions in the Midwestern disaster area. Additionally, room and board expenses qualify for the expanded credit. The increase applies to tax years 2008 and 2009.

> **Example 10.** Donyetta was a student at the University of Illinois in 2008. The university is not in a county classified as a federally-declared disaster area. Therefore, her lifetime learning credit for 2008 is limited to $2,000. In January 2009, she transfers to the University of Iowa, which is in a federally-declared disaster area. Donyetta is entitled to a maximum $4,000 lifetime learning credit in 2009 assuming she meets all applicable rules of IRC §25A.

Additional Depreciation. Businesses that suffered damages may claim an additional first-year depreciation deduction of 50% of the cost of new real and personal property investments in the disaster area. The property must be placed in service by an eligible taxpayer by the last day of the third calendar year following the applicable disaster date (or the fourth calendar year for nonresidential real and residential rental property). Qualified property does not have to be new, but the original use of the property in the disaster area must be by an eligible taxpayer on or after the applicable disaster date. This provision pertains to disasters declared after December 31, 2007 and before January 1, 2010.

Demolition and Debris Removal Costs. For property damaged in the Midwestern storms, demolition and clean-up costs can be currently deducted rather than capitalized as required in non-storm areas. The current deduction is limited to 50% of the costs incurred between the date of the disaster and December 31, 2010. The expense must be for structure demolition or removal of debris. The property must be located in the disaster area and held for use in a trade or business or as inventory.

> **Example 11.** Lionel, a resident of Iowa City, Iowa, owns a restaurant destroyed by the flood. Wanting to remain in the restaurant business, he began investigating possible acquisitions. He saw a riverfront restaurant which had been totally destroyed. He contacted the owner and was able to purchase the property and its contents for $80,000. He incurred $30,000 of expense to demolish the building and have the debris removed. He is entitled to a current deduction of $15,000 ($30,000 × 50%). Lionel's basis in the property after demolition is $95,000.
>
> Lionel then erects a restaurant on the lot. He pays $400,000 for the structure. He is entitled to a $200,000 bonus depreciation deduction plus regular depreciation in the year he places the restaurant into service. However, the restaurant must be placed into service no later than December 31, 2012.

§179 Expense Increase. The maximum §179 expense is increased by the lesser of $100,000 or the cost of qualified property. The increase is available for qualifying expenditures made in the disaster area through the end of 2011. The phaseout threshold for property placed in service is increased by the lesser of $600,000 or the cost of qualified property.

> **Example 12.** Lionel in **Example 11** pays $200,000 for new restaurant equipment in 2009. Lionel is eligible for up to $233,000 of §179 expense (the regular 2009 limit of $133,000 plus an additional $100,000 for property in a Midwestern disaster area.) This equipment qualifies for a $200,000 §179 deduction assuming Lionel has enough qualifying income.

5-Year NOL Carryback. The net operating loss (NOL) carryback period is extended from two to five years for certain losses in the Midwestern disaster area.

Suspension of Limitations on Charitable Contributions. The limitation of 10% of a corporation's taxable income or 50% of an individual's AGI for charitable deductions in a taxable year is temporarily waived for charitable cash contributions to Midwestern disaster relief efforts. This applies to contributions paid during the period beginning on the earliest applicable disaster date and ending on December 31, 2008.

Increase in Standard Mileage Rate for Charitable Use. For taxpayers assisting in Midwestern disaster relief efforts, the charitable mileage rate is increased to 70% of the current standard business mileage rate, rounded up to the next higher cent, beginning on the applicable disaster date and ending on December 31, 2008. Thus, the charitable mileage rate in effect for the period between May 20, 2008 and July 1, 2008 is $.36 (.505 × 70%). For the period from July 1, 2008 through December 31, 2008, the charitable mileage rate is $.41 (.585 × 70%).

Income Exclusion for Mileage Reimbursements to Charitable Volunteers. Reimbursements for operating expenses of a personal vehicle used in connection with charitable work that are in excess of the statutory charitable mileage rate are generally taxable income to the recipient. However, reimbursements for charitable mileage up to the amount of the standard business mileage rate are not considered taxable income when incurred in connection with the Midwestern disasters.

Hurricane Ike Disaster Tax Relief

The increase in the low-income housing tax credits and the tax-exempt bond rules currently available in the Gulf Opportunity Zone are extended to areas impacted by Hurricane Ike.

National Disaster Relief

Tax relief is provided for **victims of all federally-declared disasters** occurring between December 31, 2007 and January 1, 2010.

Casualty Loss Limitation Suspension. The 10% of AGI and $100 floor for deductibility of nonbusiness casualty losses by taxpayers who itemize has been reformed. The bill waives the 10% rule, raises the $100 floor to $500, and allows nonitemizers to use these losses as a standard deduction.

Qualified Disaster Expenses. Under the provisions of H.R. 1424, disaster victims are allowed to expense 50% of demolition costs, and clean-up and environmental remediation expenses.

5-Year NOL Carryback. The NOL carryback period is extended from two to five years.

Additional Depreciation. Businesses that suffered damages may claim an additional first-year depreciation deduction of 50% of the cost of new real and personal property investments in a federally-declared disaster area. All depreciation deductions are exempt from AMT. This provision applies to property placed in service through December 31, 2011, or December 31, 2012 for real property.

§179 Expense Increase. The maximum §179 expense is increased by the lesser of $100,000 or the cost of qualified property. The increase is available for qualifying expenditures made in the disaster area through the end of 2011. The phaseout threshold for property placed in service is increased by the lesser of $600,000 or the cost of qualified property.

Increased Standard Deduction. The bill increases the standard deduction by the amount of the disaster loss for tax years beginning after 2007. The increased standard deduction does not apply to victims of the Midwest floods. The loss is reported on Form 4684, *Casualty and Thefts*, line 18c, and then taken to Form 1040, line 40. The box on line 39c must also be checked.

Note. A complete list of the federally-declared disaster areas can be found at **www.irs.gov/newsroom/article/0,,id=98936,00.html.**

IRS Pub. 4492 details all of the tax relief available to victims of the Midwestern floods.

REVENUE PROVISIONS

There is only one revenue-raising provision in the Tax Extenders section of H.R. 1424. It is expected to raise $25 billion over 10 years.

Inclusion of Deferred Compensation Paid by Tax Indifferent Parties

The bill taxes individuals on a current basis if the individuals receive deferred compensation from a tax indifferent party, such as an offshore corporation in a low or no-tax jurisdiction.

SUMMARY

The following table shows the current expiration date of some of the extended tax breaks:

IRC Section(s)	Provision	New Expiration Date
25D	Reinstatement of nonbusiness energy property credit (2009 only)	12/31/2009
25D	Residential energy efficient property credit	12/31/2009
26(a)(2)	Nonrefundable personal credits allowed against AMT	12/31/2008
38(b)(23) and 45L(a)	Energy efficient home credit	12/31/2009
41(h)(1)(B)	Research credit	12/31/2009
45D	New markets tax credit	12/31/2009
48	Solar energy, fuel cell, and micro turbine energy credits	12/31/2016
55	Increased AMT exemption	12/31/2008
62(a)(2)(D)	Above-line deduction for teacher's classroom supplies	12/31/2009
63(c)	Real property tax standard deduction for nonitemizers	12/31/2009
108(a)(1)(E)	Discharge of qualified principal residence debt exclusion	12/31/2012
164(b)(5)	Deduction for general state and local sales taxes	12/31/2009
168(e)	15-year recovery period for restaurant and leasehold improvements	12/31/2009
170(e)	Computers, food inventory, and book inventory enhanced charitable deductions	12/31/2009
179D	Deduction for energy efficient property in commercial buildings	12/31/2013
222	Above-line tuition and fee deduction	12/31/2009
408(d)(8)(F)	Direct tax-free distributions from IRA to charity	12/31/2009
1367(a)(2)	S corporation stock basis adjustment for charitable contribution	12/31/2009

FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008

H.R. 6893 was signed into law by the president on October 7, 2008. This Act makes a number of significant improvements to the child welfare system, but the provision that has the most far-reaching tax consequence is the modification in the definition of a qualifying child.

CLARIFICATION OF QUALIFYING CHILD DEFINITION

For tax years beginning after 2008, the following changes are made to the uniform definition of a qualifying child for purposes of the dependency exemption, dependent care, earned income tax credit, and head of household filing status.

1. **Age Test.** The qualifying child must be younger than the taxpayer or be permanently and totally disabled.
2. **Tiebreaker Rule.** If the parents may claim an individual as a qualifying child, but neither parent actually claims the child, another taxpayer may claim the individual as a qualifying child. However, this other taxpayer must otherwise be eligible to claim the child as a qualifying child and have a higher AGI for the tax year than any parent eligible to claim the child.

Example 13. In 2009, 10-year-old Sally lives with her mother, Rhonda, her father Sam, and her aunt, Rita. Rhonda and Sam are not married. Rhonda's AGI is $25,000, Ted's AGI is $32,000, and Rita's is $30,000. Since Ted's AGI is higher than Rita's, Sally cannot be a qualifying child of Rita for 2009, even if neither Rhonda nor Ted claims Sally on their respective returns.

3. **Child's Marital Status.** A qualifying child cannot file a joint return (except to claim a refund) with a spouse for the taxable year.

Observation. A dependent was already prohibited from filing a joint return under previous law. Although this change does not affect the dependency exemption, it can affect other tax benefits that incorporate the definition of "qualifying child."

4. **Child Tax Credit.** A qualifying child for purposes of the child tax credit must also be the dependent of the taxpayer.

WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008

The WRERA primarily affects businesses and concerns the amount they are required to contribute to fund employee retirement plans. It clarifies some provisions of PPA and changes others. It also contains a provision regarding required minimum distributions (RMD) and two penalty measures affecting S corporations and partnerships.

REQUIRED MINIMUM DISTRIBUTIONS

Many retirement account balances declined substantially in 2008. Congress was concerned that requiring a retiree to take a 2009 RMD based on the December 31, 2008 balance of the account could pose a future hardship. To ease the impact of this situation, the RMD rules for defined contribution arrangements under IRC §401(a)(9), including individual retirement accounts (IRAs), are suspended for 2009 only.

The intent of the requirements set forth in §401(a)(9) is to encourage taxpayers to receive and pay tax on defined amounts of distributions. This also includes distributions from Roth IRAs after the death of an account owner. To enforce the RMD rules, Congress previously enacted a 50% penalty for failure to take the required distribution. Plan distributions must generally be taken over five years if distributions have not begun when a participant dies. This rule does not apply if distributions commence no later than one year after the participant's death and are payable over the life expectancy of the designated beneficiary. Because 2009 RMDs are not required, 2009 is not included when determining the five-year period.

To compute the required distribution amount, divide the January 1 account balance by the taxpayer's life expectancy. The life expectancy to be used for this calculation is found in life expectancy tables provided by the IRS in Pub. 590. Normally, the first distribution must be taken by April 1 of the later of the year following the year in which the taxpayer attains the age of 70½ or the year the taxpayer retires. The owner of an IRA must follow the age-70½ rule, as must a qualified plan participant who is a 5% owner of the employer. If the RMD is delayed until April 1 of the year following retirement, a second RMD must be taken before the end of the same year.

> **Example 14.** Raoul is the owner of an IRA. He attains age 70½ in 2007. Therefore, he may take an RMD in 2007 or wait until 2008 and take two RMDs.
>
> **Example 15.** Raoul, from **Example 14,** has an IRA account balance of $1.2 million as of January 1, 2008, and a life expectancy of 27.4 years. If he waits to take the first RMD in 2008, he must take a payment of $43,796 before April 1, 2008 ($1,200,000 ÷ 27.4). The second payment, due before the end of 2008, is also $43,796 since both payments are based on the January 1 balance of the IRA.

PENSION PLAN FUNDING

The PPA contained many requirements regarding the funding of pension plans. The Act created numerous penalties for inadequately funded plans if full funding was not restored. The WRERA has lessened these requirements. These provisions are typically the concern of plan administrators rather than tax preparers.

REVENUE PROVISIONS

Congress enacted legislation requiring tax bills to be revenue neutral ("pay-go rules"). Recent tax bills have ignored the pay-go rules due to the downturn in the economy. The WRERA is no exception. However, two revenue raising provisions are included.

S CORPORATION PENALTY

The WRERA increased the failure-to-file IRC §6699(b) penalty for S corporations from $85/month/shareholder to $89/month/shareholder up to a maximum of 12 months for returns required to be filed after December 31, 2008. The IRS anticipates this will increase revenue by $38 million over the next 10 years.

The penalty can be abated if the corporation can show reasonable cause for the failure to file.

PARTNERSHIP PENALTY

The WRERA also increases the §6698(b)(1) failure-to-file penalty for partnerships from $85/month/partner to $89/month/partner up to a maximum of 12 months for returns filed after December 31, 2008. Congress anticipates this change to generate $42 million of revenue over 10 years.

RECENT RULINGS, CASES, AND IRS INFORMATION

AMORTIZATION AND DEPRECIATION

Bonus Depreciation

Rev. Proc. 2008-65, IRB 2008-44 (Oct. 10, 2008)

IRC §§168, 38, 53, 41, 52, and 6401

☞ Electing Out of Bonus Depreciation to Gain Refundable Credits

Purpose. Rather than claiming 50% additional depreciation on purchases made after March 31, 2008 and before the end of 2009, corporations may elect to increase their limitations on business credits and the AMT credit. The election falls under IRC §168(k)(4).

Analysis. For a corporation's first tax year ending after March 31, 2008, and for any subsequent tax years, a corporation can elect to forgo the Economic Stimulus Act's (ESA) 50% first-year bonus depreciation on eligible qualified property placed in service by the taxpayer (§168(k) election). Instead, the corporation can increase each of the limitations relating to the general business credit described in IRC §38(c) and AMT credit described in IRC §53(c). Consequently, a corporation can claim unused credits from tax years beginning prior to January 1, 2006 that are allocable to research expenditures or AMT liabilities.

Unless the §168(k) election is made, §38(c)(1) limits the general business credit to the excess of the taxpayer's net income tax less the greater of the tentative minimum tax for the taxable year or 25% of the taxpayer's net regular tax liability that exceeds $25,000. Similarly, §53(c) limits the minimum tax liability to the regular tax liability (less certain credits) less the tentative minimum tax for the taxable year. Making the §168(k) election allows the corporation to increase the §§38(c) and 53(c) credits by the amount of forgone bonus depreciation. The corporation makes an allocation between the credit limitations.

If the corporation makes the §168(k) election, it must use the straight-line method of depreciating the property for all eligible qualified property.

According to the Ordering Rules for Applying Elections set forth in §168(k), two elections must be considered:

- The election not to claim the ESA bonus first-year depreciation under §168(k)(2)(D)(iii) for all property in a particular class, and
- The election to apply the provisions of §168(k)(4) to all eligible qualified property (i.e., accelerate the AMT and research credits in lieu of bonus depreciation).

A taxpayer may make both elections; if this is done, the taxpayer applies the provisions of §168(k)(2)(D)(iii) first.

The maximum amount of increase for any taxpayer is the lesser of:

- $30 million, or
- 6% of the total of the business credit increase amount and the AMT credit increase amount.

The amount of the business credit increase is the portion of the credit allowable under §38 (without regard to §38(c)) for the first tax year ending after March 31, 2008, which is allocable to carryforwards of the business credit to that tax year that are (1) from tax years commencing before January 1, 2006, and (2) properly allocable to the research credit determined under §41(a). However, a business credit carryforward allocable to the research credit from a tax year commencing before January 1, 2006 which expired before the first tax year ending after March 31, 2008, is not taken into account in determining the amount of the business credit increase.

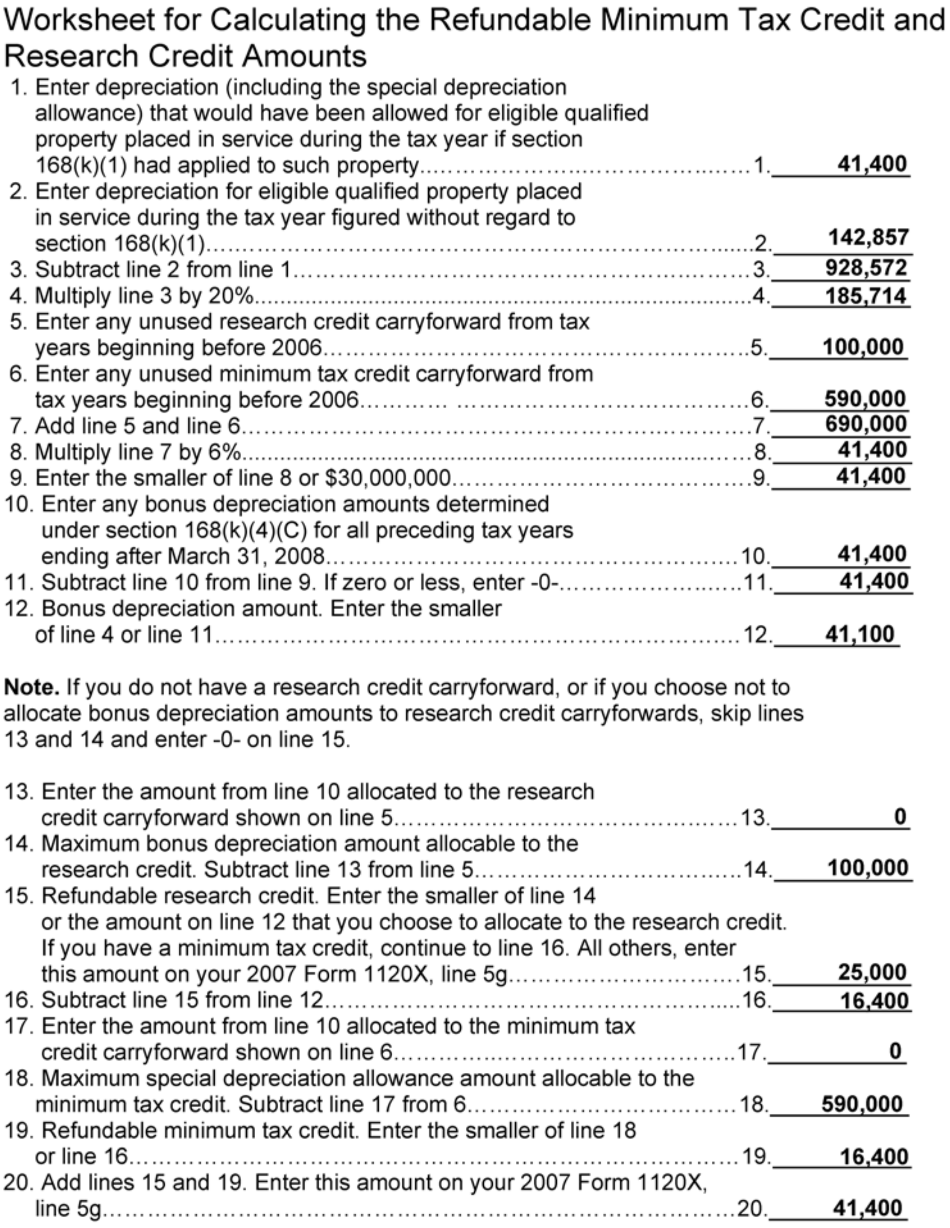
The amount of the AMT credit increase is the portion of the minimum tax credit under §53(b) for the first tax year ending after March 31, 2008, which takes into account only the adjusted minimum tax for tax years commencing before January 1, 2006. Minimum tax credits for this purpose are determined on a first-in, first-out basis.

The IRS advised that fiscal-year taxpayers making the election for a 2007 fiscal year ending after March 31, 2008, should make the election and claim the refundable credit on an amended return, rather than on the original return.

> **Example 16.** Innovation Designs, Inc. (IDI), a calendar-year corporation, makes the §168(k)(4) election for the taxable year ending December 31, 2008. IDI's bonus depreciation amount is $1 million, its business credit increase amount is $100,000 and its AMT credit increase amount is $590,000. IDI's maximum increase amount is $41,400, which is the lesser of $30 million or ((.06 × ($100,000 + $590,000)). IDI's bonus depreciation amount that may be used to increase credits is $41,400. IDI can allocate the increased limitation in any manner it chooses as long as the total allocated amount does not exceed $41,400.

The IRS provides the worksheet below[1] to use in calculating the refundable minimum tax credit and research credit amounts. It has been filled in to reflect the amounts in **Example 16.**

Effective Date. October 10, 2008.



Worksheet for Calculating the Refundable Minimum Tax Credit and Research Credit Amounts

1. Enter depreciation (including the special depreciation allowance) that would have been allowed for eligible qualified property placed in service during the tax year if section 168(k)(1) had applied to such property……………………1. **41,400**
2. Enter depreciation for eligible qualified property placed in service during the tax year figured without regard to section 168(k)(1)……………………2. **142,857**
3. Subtract line 2 from line 1……………………3. **928,572**
4. Multiply line 3 by 20%……………………4. **185,714**
5. Enter any unused research credit carryforward from tax years beginning before 2006……………………5. **100,000**
6. Enter any unused minimum tax credit carryforward from tax years beginning before 2006……………………6. **590,000**
7. Add line 5 and line 6……………………7. **690,000**
8. Multiply line 7 by 6%……………………8. **41,400**
9. Enter the smaller of line 8 or $30,000,000……………………9. **41,400**
10. Enter any bonus depreciation amounts determined under section 168(k)(4)(C) for all preceding tax years ending after March 31, 2008……………………10. **41,400**
11. Subtract line 10 from line 9. If zero or less, enter -0-……………………11. **41,400**
12. Bonus depreciation amount. Enter the smaller of line 4 or line 11……………………12. **41,100**

Note. If you do not have a research credit carryforward, or if you choose not to allocate bonus depreciation amounts to research credit carryforwards, skip lines 13 and 14 and enter -0- on line 15.

13. Enter the amount from line 10 allocated to the research credit carryforward shown on line 5……………………13. **0**
14. Maximum bonus depreciation amount allocable to the research credit. Subtract line 13 from line 5……………………14. **100,000**
15. Refundable research credit. Enter the smaller of line 14 or the amount on line 12 that you choose to allocate to the research credit. If you have a minimum tax credit, continue to line 16. All others, enter this amount on your 2007 Form 1120X, line 5g……………………15. **25,000**
16. Subtract line 15 from line 12……………………16. **16,400**
17. Enter the amount from line 10 allocated to the minimum tax credit carryforward shown on line 6……………………17. **0**
18. Maximum special depreciation allowance amount allocable to the minimum tax credit. Subtract line 17 from 6……………………18. **590,000**
19. Refundable minimum tax credit. Enter the smaller of line 18 or line 16……………………19. **16,400**
20. Add lines 15 and 19. Enter this amount on your 2007 Form 1120X, line 5g……………………20. **41,400**

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[1] www.irs.gov/pub/irs-utl/amtresearchworksheet.pdf

BANKRUPTCY AND DISCHARGE OF INDEBTEDNESS

Cancellation of Debt Income

***David Isaac Plotinsky v. Comm'r,* TC Memo 2008-244 (Oct. 29, 2008)**

IRC §§102 and 61(a)(12)

☞ Forgiven Student Loans Not Excludable as Gift

Facts. David Plotinsky financed a portion of his college education with federal student loans during 1993 through 1997. He then financed a portion of his law school education with several additional federal student loans during 1997 through 2000.

Key Bank USA/American Education Services (AES) offered consolidation of student loans as part of its business services. To induce persons with student loans to consolidate those loans with AES, AES offered a payment incentive program. Under AES's incentive program, if an individual consolidated his student loans by taking out a loan from AES and subsequently made 36 consecutive on-time monthly payments on the loan, AES would discharge a portion of the loan.

After graduating from law school, Plotinsky consolidated his federal student loans through AES in August 2001. The promissory note that Plotinsky signed did not mention any incentive program for the loan repayment.

His employer, the U.S. House of Representatives, paid $6,288 on his consolidated student loan during 2004. Plotinsky did not make any additional loan payments during that year. In 2004, AES discharged $3,043 of the loan after 36 consecutive timely payments were made on the consolidated student loan. AES issued a Form 1099-C, *Cancellation of Debt,* to Plotinsky for 2004, which showed $3,043 of canceled debt.

Plotinsky filed his 2004 Form 1040, reporting $76,917 of gross income which did not include the $3,043 of cancellation of debt income. Instead, he attached a note to his return that said he had received the cancellation of debt but was not reporting this amount as income because he interpreted IRS Pub. 525 to state that the cancellation constituted a gift rather than income.

In 2006, the IRS issued a notice of deficiency to Plotinsky for the taxable year 2004 taxing the omitted $3,043 of discharged student loan income.

Issues. Whether Plotinsky is entitled to exclude $3,043 of cancellation of debt income from his gross income for 2004.

Analysis. Cancellation of debt income is generally includible in gross income, although there are certain exceptions to this rule. The exception that Plotinsky relied on pertains to the value of property acquired by gift. Under IRC §102(a), the debtor has no income resulting from a discharge of a loan if such discharge constitutes a gift from the creditor to the debtor. For the exception to apply, it must be found that there was "a release of something to the debtor for nothing."[2]

Holding. The Tax Court held that AES offered its incentive program in order to induce individuals to consolidate their student loans with AES. Pursuant to this incentive program, AES discharged $3,043 of Plotinsky's consolidated student loan because 36 consecutive timely payments had been made on the loan. The Tax Court stated that AES did not intend to discharge the $3,043 out of "detached and disinterested generosity" or "out of affection, respect, admiration, charity or like impulses." Thus, Plotinsky failed to prove the discharge of debt was intended as a gift from AES. The Court ruled that Plotinsky must include the $3,043 in his gross income for the taxable year 2004.

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[2] *Helvering v. Am. Dental Co.,* 318 U.S. 322, 331 (1943).

Turnover of Tax Refund

***In Re: James W. Graves and Kathryn P. Graves,* No. CO-08-038 United States Bankruptcy Appellate Panel of the Tenth Circuit (Oct. 22, 2008)**

IRC §1398

☞ Denial of Motion for Turnover of Tax Refund Affirmed

Facts. James and Kathryn Graves (Debtors) filed their 2006 federal income tax return, which showed they were entitled to a $3,000 refund for overpayment of taxes. On September 20, 2008, the couple filed a voluntary Chapter 7 bankruptcy petition. In January 2008, Jeffrey Weinman, the trustee, filed a motion for turnover of the couples' tax refund for 2006; and this matter was considered at a hearing held in March 2008. The bankruptcy court denied the trustee's motion, and the trustee then filed a notice of appeal in April 2008.

Issues. Whether a tax refund that the Debtors elected to apply in prepayment of a subsequent year's tax liability is subject to turnover.

Analysis. Bankruptcy trustees are given certain powers by the Bankruptcy Code, which include the authority to compel turnover of estate property from anyone who has the property in their "possession, custody, or control, during the case." The trustee's contention in this case is that the Debtors' 2006 tax overpayment is property of the estate and, thus, subject to turnover. The Debtors responded that they were never in possession, custody, or control of the refund because of their election to apply the overpayment to a subsequent tax year.

Section 542 of the Bankruptcy Code limits turnover to "property that the trustee may use, sell, or lease," and which is in the debtors' possession or control during the bankruptcy case.

Holding. The Appellate Panel affirmed the bankruptcy court's decision that the funds sought by the Trustee were not within the Debtors' possession, custody, or control; thus, turnover of the prepaid taxes was properly refused.

◆

CREDITS

Alternative Motor Vehicle Credit

IRS News Release IR-2008-113 (Oct. 6, 2008)

IRC §30B

☞ Qualified Lean-Burn Technology Vehicles Certified for Credit

Purpose. The IRS acknowledged that certain lean-burn technology vehicles qualify for the alternative motor vehicle tax credit.

Analysis. Previously, only hybrid, fuel cell, and alternative fuel vehicles were certified for the alternative motor vehicle tax credit. Now, certain advanced lean-burn technology vehicles, which generally run on diesel fuel, are also certified.

To claim the credit, the vehicle must be acquired for use or lease by the taxpayer; and the vehicle's original use must begin with the taxpayer. This credit is phased out beginning at the time a manufacturer sells 60,000 qualified hybrid and advanced lean-burn technology vehicles.

The qualifying vehicles with their respective credit amounts are as follows:

- 2009 Volkswagen Jetta 2.0L TDI Sedan — $1,300
- 2009 Volkswagen Jetta 2.0L TDI SportWagen — $ 1,300
- Mercedes GL 320 Blue TEC — $ 1,800
- Mercedes R 320 Blue TEC — $ 1,550
- Mercedes ML 320 Blue TEC — $ 900

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DEDUCTIONS

Economic Performance

ILM 200834019 (May 7, 2008)
IRC §461

☞ Liability for Cash Rebates Not Incurred on Date of Sale

Facts. The taxpayer is a retailer of consumer products and uses the accrual method of accounting. The taxpayer has a cash rebate program wherein the customer pays full price for the product at checkout but receives a rebate offer at the time of the purchase. In order to receive the rebate, the customer must comply with all terms of the offer. A third-party administrator is used to process rebates. Often, payment for a rebate is issued several months after a rebate request is submitted.

A field auditor asked whether all events establishing the fact of the taxpayer's liability for the cash rebate have occurred at the time of the product sale which in turn would allow the taxpayer to treat the liability as incurred in the year of issuance.

Analysis. Treas. Reg. §1.461(g)(3) states that when the taxpayer's liability is to pay a rebate, refund, or similar payment to another person, economic performance occurs as payment is made to the person to whom the liability is owed.

Treas. Reg. §1.461-5(b)(1) presents a recurring item exception to the rule of economic performance. Under this exception, a liability is treated as incurred for a taxable year if:

1. All events have occurred at the end of the taxable year that establish the fact of the liability and the amount can be determined with reasonable accuracy;
2. Economic performance occurs on or before the earlier of:
   - **a.** The date that the tax return is filed for the taxable year, or
   - **b.** The 15th day of the 9th calendar month after the end of the taxable year;
3. The liability is recurring; and
4. Either the amount of the liability is not material or accrual of the liability results in better matching of the liability against the income to which it relates than would be the case if the accrual of the liability was made in the taxable year during which economic performance takes place.

Holding. The IRS stated in this legal memorandum that a retailer cannot treat obligations to pay cash rebates as incurred on the date a product is sold because the liability to pay the rebate is not certain until such time as the customer complies with the requirements of the rebate.

◆

Restitution Paid

Ltr. Rul. 200834016 (May 20, 2008)
IRC §165

☞ IRS Rules on Deductibility of Restitution Paid as Fraud Settlement

Facts. A physician practicing through an S corporation was indicted for insurance fraud. As part of the settlement, it was agreed that the physician would pay a criminal penalty to New Jersey. He also agreed to provide restitution to the insurance companies to which the fraudulent claims were submitted.

A request for a ruling was submitted on behalf of the physician as to whether the restitution payments he made to insurance companies are deductible as losses incurred in a trade or business under IRC §165(c)(1) or, alternatively, as losses incurred in a transaction entered into for profit under §165(c)(2).

Analysis. Under §165(c)(1), repayment of fraudulently obtained funds is not deductible. Thus, the physician is not entitled to a deduction for the restitution paid to the insurance companies under §165(c)(1).

Under IRC §165(c)(2), taxpayers who repay embezzled funds are ordinarily entitled to a deduction in the year in which the funds are repaid. Rev. Rul. 82-74 holds that a convicted arsonist is entitled to a loss deduction under §165 for restitution paid to an insurance company in the taxable year in which repayment is made to the extent that the proceeds were previously included in income.

Holding. The physician was allowed to deduct the amounts paid in restitution to the insurance companies as a loss on his federal income tax return.

> **Note.** The restitution paid is reported as a miscellaneous itemized deduction.

* * *

Timing of Deduction for Medical and Dental Services

TAM 200846021 (July 23, 2008)
IRC §§404, 461, and 105

☞ Employer's Accrual of Deductions for Employees' Medical and Dental Services

Purpose. This technical advice memorandum deals with whether a company that has self-insured medical and dental plans for employees may deduct these payments within the tax year if the service providers are paid for their services more than 2½ months after the end of the tax year.

Background. An accrual method taxpayer, operating on a 52/53 week taxable year ending in December, maintains self-insured medical and dental plans for its eligible employees. The plans use the calendar year for their plan years.

An eligible employee of the company may receive medical and dental services under the plans by arranging for an appointment with the selected service provider. The service provider then bills a third-party administrator (TPA) for the services provided. Claims are generally filed by the service provider. The TPA reviews the bills and then pays the service providers for covered services. The taxpayer reimburses the TPA from its general assets. There is sometimes a delay by the service provider in billing the TPA; thus, on occasion it is more than 2½ months after the end of the taxable year in which the services were provided before the TPA pays the service provider.

It is the practice of the taxpayer to deduct the expenses in the taxable year during which the services were provided to the employees, even in those cases in which claims are paid more than 2½ months after the end of the taxable year.

Analysis. When payments are made more than 2½ months following the close of the taxpayer's taxable year, the timing of the deduction depends on:

1. When the medical and dental reimbursements paid by the plans would be included in the income of participating employees if these reimbursement amounts were not excludible from the employees' income, and
2. Whether the payments are made by an IRC §419(e) welfare benefit fund.

Regarding the first issue, the provisions of the plan state that eligibility for benefit reimbursement is determined by whether the individual is a participant in the plan on the date services are provided. Thus, eligible employees of the plan are considered to receive reimbursements in the same calendar year in which they receive the medical and dental services.

For the second issue, the taxpayer represents that the plans are not welfare benefit funds under §419(e).

Holding. The expenses are deductible by the taxpayer in the taxable year during which the medical and dental services are provided under the plan because that is the time that economic performance occurs according to the provisions of IRC §461.

◆

EMPLOYMENT TAX ISSUES

FICA Taxation

***Center for Family Medicine et al. v. U.S.*, No. 4:05-cv-04049 U.S. Dist. Ct. for District of South Dakota (Aug. 6, 2008)**
IRC §§3121(a) and 3121(b)

☞ Medical Residents Not Subject to FICA Taxation

Facts. Center for Family Medicine (CFM) and University of South Dakota School of Medicine Residency Program (USDSMRP) operate accredited medical residency programs in which they provide their residents with stipends and other benefits. In the course of operating the residency programs, CFM and USDSMRP (plaintiffs) withheld FICA tax from the stipends paid to their residents.

The plaintiffs filed a complaint seeking a refund of FICA taxes on stipends paid to their residents for the taxable years ending December 31, 1995 through December 31, 2003, on the grounds that the residents fall under the "student exception" to FICA taxation.

Issues. Whether the payments to medical residents are exempt from FICA taxation because of the "student exception."

Analysis. Social security and Medicare taxes are imposed on wages received as a result of employment, as defined in §3121(b). This Code section specifically excludes service performed in the employ of:

- *a school, college, or university; or*
- *an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 218 of such Act;*

> *if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university.*

In determining whether the residents qualified as students, the court in previous cases first looked at two factors set forth in §3121(b)(10). These factors deal with whether the residents were "enrolled" and "regularly attending classes." The court found that additional consideration must be given as to whether the work performed by the residents is "incident to and for the purpose of pursuing a course of study."

The court considered arguments as to whether an employer-employee relationship existed. The plaintiffs argued that the residency programs are the employers of the medical residents. The IRS argued the provider hospitals were the residents' employers since they had the ability to influence applicant selection and control the residents through enforcement of hospital rules and bylaws. Additionally, the IRS argued that the hospitals hosted the residents and the residents served under the immediate control of physicians at the hospitals and that the residents provided services beneficial to the provider hospitals.

Another issue in the case dealt with the legal status of the residency programs. The IRS argued that CFM is not a school because it is not part of a fully-integrated unit that is a part of a medical school and that the CFM residents add value to the clinic's patient care.

Holding. The court found that:

- The residency programs were the employers of the medical residents because the residency programs retained substantial control over the residents;
- CFM qualified under the common definition of the word "school" because it is a non-profit, "charitable, educational, and scientific" corporation whose purposes include the "recruiting and training and education of medical interns and residents and other allied health professionals," according to CFM's articles of incorporation; and
- The purpose of the residency programs is to provide medical residents with an education and, ultimately, with the capability of practicing medicine.

Thus, the District Court held that CFM and USDSMRP are entitled to a refund of FICA taxes paid on medical residents' stipends. However, the plaintiffs are not entitled to a refund for taxes paid for head residents who elected to stay after completing their residency programs. The chief residents are considered, in essence, coordinators of the residency programs, not students.

Note. For other cases similar to the one presented above, see *State of Minnesota v. Apfel* and *U.S. v. Mayo Foundation for Medical Education & Research.*

◆

ESTATE AND GIFT

Estate and Gift Taxes

Pub. 950, Introduction to Estate and Gift Taxes

IRC §§2001 and 2511

This publication gives a general explanation of estate and gift taxes and clarifies how much money or property can be gifted during one's lifetime or transferred to heirs at death before tax is owed. Important changes highlighted include the following:

- The top marginal tax rate for estates and gifts decreased from 46% in 2006 to 45% in 2007. It will remain at 45% through 2009.
- For 2010, the estate tax has been repealed, and the highest gift tax rate will be decreased to 35%.
- These provisions are currently set to expire after December 31, 2010.

The publication also clarifies when a gift or estate tax return must be filed; explains the unified credit and generation-skipping transfer tax; and gives a list of resources to consult if more information is needed.

◆

INFORMATION REPORTING

Rental Real Estate Activity

GAO Report GAO-08-956 (Aug. 2008)

IRC §§162 and 167

☞ GAO Recommendations for Improved Real Estate Reporting Compliance

In a report entitled "Actions that Could Improve Real Estate Reporting Compliance," the GAO estimates that at least 53% of individuals with rental real estate misreported their rental real estate activities for the 2001 tax year. This resulted in an estimated $12.4 billion of net misreported income, according to the report.

The most common error was inaccurately reporting rental real estate expenses. An estimated 43% of taxpayers with rental real estate activity fell into this category. This includes 2.1 million taxpayers who failed to substantiate their reported expenses. The GAO report indicated that this resulted in $5.2 billion of lost tax revenue.

Of the taxpayers misreporting their rental real estate activity, an estimated 75% underreported their net rental income. The GAO report indicates that approximately one-third of these taxpayers underreported their income by less than $1,000. For the 25% of taxpayers misreporting their rental real estate activity who overreported their rental income, the median overstatement was $518.

The GAO report recommends that rental real estate activities be subjected to improved information reporting, although the agency acknowledged that a requirement for increased information reporting would place a substantial burden on taxpayers and return preparers.

The report noted that existing law makes it difficult to determine whether taxpayers' rental real estate activity should be treated as a trade or business. Consequently, the GAO recommends that the tax code be amended to subject all taxpayers with rental activity to the trade or business reporting requirements.

In order to motivate paid tax return preparers to question their clients more carefully to obtain more accurate income and expense information, the GAO recommends that the IRS begin requiring additional detail on tax returns. The report notes that 80% of individual taxpayers reporting rental real estate activity use a paid tax return preparer.

Note. The complete GAO report can be found at **www.gao.gov/new.items/d08956.pdf.**

◆

IRS PROCEDURES — MISCELLANEOUS

Unemployment Issues

Pub. 4128, Tax Impact of Job Loss

IRC §§67, 72(t), 85, 217, 401, 408, and 1401

This publication explains the tax issues associated with job loss such as unemployment compensation, severance pay, IRAs, pension plans, job search expenses, and possible moving costs. Additionally, it discusses self-employment issues for the newly unemployed.

◆

Tax Return Disclosure Consent

Rev. Proc. 2008-35, IRB 2008-29 (July 1, 2008)

IRC §7216

☞ Guidance on Consent to Disclose Tax Return Information

Purpose. The IRS issued guidance to tax return preparers concerning the content and format of consents to disclose and use tax return information for taxpayers filing Form 1040. The revenue procedure also provides specific requirements for electronic signatures.

Analysis. A taxpayer's consent must be obtained in a separate written document for each disclosure or use of tax return information. This documentation can be furnished on paper or electronically.

If a taxpayer consents to disclose or use tax return information electronically, the taxpayer must provide an electronic signature to the tax return preparer that verifies that the taxpayer consented to the disclosure or use. The taxpayer's signature on the consent must be obtained in one of the following ways:

- Assigning a personal identification number (PIN) at least five characters long to the taxpayer. The taxpayer must affirmatively enter the PIN as the taxpayer's signature authorizing the disclosure or use.
- Having the taxpayer affirmatively type in her name and then hit "enter" to authorize the consent.
- Any other manner in which the taxpayer affirmatively enters at least five characters unique to that taxpayer which are used by the return preparer to verify the taxpayer's identity.

Under final regulations issued in January 2008, tax return preparers in the United States were prohibited from disclosing a taxpayer's social security number (SSN) to preparers outside of the United States. The preparer was required to redact the taxpayer's SSN before disclosing the return information outside the United States.

The IRS has now provided a limited exception to this rule. If both the U.S. preparer and the preparer outside the United States have adequate procedures to safeguard the SSN, a taxpayer may consent to a U.S. preparer's disclosure of the SSN to a preparer outside the United States. For this purpose, an adequate data protection safeguard is a program, policy, and practice that meets or conforms to one of the following data security or privacy frameworks:

- The U.S. Dept. of Commerce "safe harbor" framework for data protection;
- A foreign law data protection safeguard which includes a security component;
- A framework that complies with requirements of a financial or similar industry-specific standard generally accepted as best practices for technology and security for that industry;
- AICPA/CICA Privacy Framework requirements;
- The requirements of the most recent version of IRS Pub. 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies and Entities;* or
- Any other data security framework providing the same level of privacy protection as contemplated by one or more of the above frameworks.

Effective Date. January 1, 2009.

> **Note.** Additional information regarding information disclosure is in the 2008 *University of Illinois Federal Tax Workbook* on pages 54–55.

◆

Information Security

Treasury Inspector General for Tax Administration Report #2008-20-176 (Sept. 17, 2008)

☞ IRS Needs to Address Computer System Weaknesses

Purpose. The Treasury Inspector General for Tax Administration (TIGTA) conducted a review to determine whether the IRS's Office of Research, Analysis, and Statistics (RAS) maintained effective security controls over its information systems.

Analysis. The RAS organization is the main provider of statistics about the tax system and contains a significant amount of sensitive taxpayer data. It provides IRS officials with research tools and analyses to support management decisions.

Several weaknesses over the management of access to the computer systems were identified during TIGTA's review. These include the following:

- Controls to prevent unauthorized users from accessing the computer systems were not properly utilized;
- Unencrypted sensitive data was transferred between computers;
- Controls to detect inappropriate security events were not effective and virus protection software was not current;
- Offsite storage was not used for backup files; and
- Database security was not adequate.

TIGTA made the following recommendations after conducting its review:

- Designate a security officer to monitor compliance with IRS security requirements;
- Require system administrators and managers to ensure all system access controls are followed;
- Implement secure processes for transferring sensitive data between computers;
- Implement and monitor a process to validate that system access is limited;
- Ensure that audit and accountability controls are sufficient;
- Require the use of offsite storage for system and data backup files; and
- Verify that intrusion detection systems are installed and that virus protection software is current.

Following TIGTA's review, the Director of RAS agreed with the recommendations and stated that many of the corrective actions have already been taken.

◆

IRS Levy

***DT Floormasters, Inc. v. U.S.,* No. 4:07-cv-0112-DFH-WGH, U.S. Dist. Ct. for Southern Dist. Of Indiana (Jul. 10, 2008)**
IRC §7426

☞ Funds Transferred to Payroll Service Company Subject to IRS Levy

Facts. DT Floormasters, Inc. (Floormasters) sells and installs commercial flooring in California. They had a contract with Innovative Personnel Solutions, Inc. (IPS), under which IPS, an Indiana company, provided standard payroll services, including paying employees' wages, all federal, state and local payroll taxes, worker's compensation and medical insurance, and benefits. Each week, Floormasters sent funds via wire transfer to IPS' bank account at 1st Independence Bank. IPS then overnighted the payroll checks to Floormasters, who distributed the checks to employees.

Floormasters transferred $105,233 to the bank account of IPS for payroll checks on July 21, 2005. The next day, the IRS levied IPS' account at 1st Independence Bank for taxes IPS owed the IRS and seized funds which included those Floormasters had just transferred to cover its payroll. After the seizure, Floormasters paid another payroll service company to issue checks to the employees who were unpaid because of the levy on IPS' account.

Floormasters subsequently filed suit, claiming that the IRS improperly levied funds belonging to Floormasters. They contended the funds held by IPS were in trust for Floormasters. The IRS position was that the funds became 1st Independence Bank's property when the money was wired to the bank account.

Issues. Whether the funds seized from IPS' bank account were the property of Floormasters or 1st Independence Bank.

Analysis. Federal courts "look to state law for delineation of the taxpayer's rights or interest."[3] The parties in this case agreed that whether the funds in IPS' account in an Indiana bank were held in trust for Floormasters was governed by Indiana law. Federal law determines whether the taxpayer's rights or interests constitute property under a federal revenue act.

According to Ind. Code §30-4-1-1(a), "a trust is a fiduciary relationship between a person who, as trustee, holds title to property and another person for whom, as beneficiary, the title is held." The contract between Floormasters and IPS did not contain any language expressly creating a trust or transforming the traditional debtor-creditor relationship into a fiduciary relationship.

However, the Seventh Circuit said "the words used in a document are not always conclusive evidence of a trust. The principal consideration is intent."[4] The Service Agreement between Floormasters and IPS did not show sufficient intent to create an express trust. Instead, the contract indicated an intention to create an equal relationship between the parties: "IPS shall be an independent contractor of Customer and shall not be its principal, director, agent, master, servant, employer or employee." Further, IPS could have used a separate agreement to designate the account as a trust since the choice of creating a trust was available on the Bank's signature card form for the account. The signature card for the IPS bank account identified it as a for-profit corporate account belonging to IPS, rather than as a trust.

Holding. The Court ruled that the funds in the bank account of IPS were not held in trust for Floormasters. When the IRS served its Notice of Levy, the funds belonged to the bank, were owed to IPS, and were thus subject to levy to pay IPS' tax obligations.

◆

IRS PROCEDURES — PENALTIES

Income Tax Deficiency

***Ilya Roytburd v. Comm'r,* TC Memo 2008-198 (Aug. 26, 2008)**

IRC §6673

☞ Taxes and Penalty Assessed on Unexplained Bank Deposits

Facts. The IRS assessed deficiencies in Mr. Ilya Roytburd's 2002 and 2003 tax returns of over $41,000, plus penalties, based on unexplained deposits to Roytburd's bank account. At a hearing, the IRS stated that Roytburd had conceded all adjustments to his income except for an increase to his 2002 taxable income of $38,767, which was deposited in his account at Sovereign Bank.

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[3] *Drye v. U.S.,* 528 U.S. 49, 52 (84 AFTR 2d 99-7160) (1999)

[4] *Judd v. First Federal Savings and Loan Ass'n of Indianapolis,* 710 F.2d 1237, 1241 (7th Cir. 1983)

At the trial, held in November 2007, the IRS conceded that the $38,767 adjustment was overstated by $7,000 and that Roytburd was not liable for self-employment tax. The IRS presented bank records showing that two wire transfers totaling $28,000 were deposited into Roytburd's saving account in 2002 from First Clearing Corp. There was also a deposit from Travelers Indemnity Co. of $2,441 and another deposit from an unidentified source for $1,326. Roytburd testified that he received checks for an insurance claim and for unemployment compensation. He stated that the wire transfers were money that he moved from other accounts but offered no further explanation for the deposits.

Issues. Whether the assessment of tax deficiency based on unexplained bank deposits of $31,767 into Roytburd's account during 2002 is valid.

Analysis. At the conclusion of the trial, the court requested that briefs be submitted. As Roytburd was appearing pro se, he was cautioned about adhering to Rule 151, which sets forth the requirements for the form and content of briefs. The brief submitted by the IRS complied with Rule 151 and contained proposed findings of fact and legal argument. Roytburd answered this brief with a document that neither proposed any findings of fact nor objected to the IRS's proposed findings of fact. Instead, Roytburd's argument, essentially, was that he was not a U.S. citizen or taxpayer. He claimed to be domiciled in the sovereign Republic of Pennsylvania and that he was a state citizen. Roytburd went on to argue that the case against him should be dismissed unless he could be proved a "U.S. citizen" during the period at issue.

Roytburd's brief did not contain any argument concerning the bank deposits. Further, at trial, his only explanation about the deposits was that they were primarily from other bank accounts, which he did not identify. Roytburd did not offer any type of evidence to corroborate his claim that he was redepositing already taxed or nontaxable funds, although the Court had previously advised Roytburd that unexplained bank deposits were prima facie evidence of income.

Holding. The court found that Roytburd failed to prove that the bank deposits of $31,767 were from a nontaxable source. Therefore, the determination of a deficiency in tax for 2002 was sustained.

Roytburd was assessed a penalty of $5,000 under IRC §6673(a)(1) because he persisted in advancing frivolous, groundless arguments for the purpose of delaying the collection of federal income tax.

◆

RETIREMENT

Early Distributions

***Bernard W. and Deborah L. Evers v. Comm'r*, TC Summ. Op. 2008-140 (Nov. 3, 2008)**

IRC §§72(t) and 213

☞ No Exception Allowed for Early Distribution Used to Pay Medical Expense Loan

Facts. Bernard and Deborah Evers borrowed $15,000 in 2003 to pay expenses incurred in the treatment of infertility. They used part of the loan proceeds to pay medical expenses of $12,010 for in vitro fertilization procedures.

Mr. and Mrs. Evers withdrew $16,250 from their qualified retirement account in 2004. They used $13,000 of this withdrawal in partial repayment of the loan.

The couple timely filed their Form 1040 for 2004 on which they reported total income of $104,713. They included the $16,250 distribution in their reported income but did not include the additional 10% additional tax under IRC §72(t) which is due on withdrawals from qualified retirement plans before the account owner attains age 59½.

In November 2006, the IRS sent the Evers a notice of deficiency which included the 10% additional tax of $1,625 for a premature distribution from their qualified retirement plan. Mr. and Mrs. Evers petitioned the Tax Court for a redetermination of the deficiency, contending that they are eligible for an exception to the 10% additional tax because the distribution from their qualified retirement account was used to cover medical expenses.

Issues. Whether the Evers are eligible for the §72(t)(2)(B) exception to the 10% additional tax under §72(t) for the $16,250 early withdrawal from their qualified retirement account.

Analysis. An exception is allowed under §72(t)(2)(B) "… to the extent such distributions do not exceed the amount allowable as a deduction under §213 to the employee for amounts paid during the taxable year for medical care (determined without regard to whether the employee itemizes deductions for such taxable year)." The §213 medical expense deduction is allowable only for expenses actually paid during the taxable year.

Holding. The §72(t)(2)(B) exception is limited to deductible medical expenses paid during the taxable year of the distribution. The Tax Court held that this exception does not apply to the medical expenses that the Evers paid in 2003 with the borrowed funds because the taxable year of the early distribution was 2004.

◆

Retirement Plan Compliance

Rev. Proc. 2008-50 (Aug. 14, 2008)

IRC §§401, 403, and 408

☞ Employee Plans Compliance Resolution System

Purpose. This revenue procedure updates the comprehensive system of correction programs for retirement plan sponsors that have not met the requirements of §§401(a), 403(a), 403(b), 408(k), or 408(p). The system, called the Employee Plans Compliance Resolution System (EPCRS), permits plan sponsors to correct failures and thereby continue providing their employees with retirement benefits on a tax-favored basis.

Analysis. EPCRS includes the following elements:

- **Self-correction (SCP).** A plan sponsor that has established compliance practices and procedures may correct insignificant operational failures under a Qualified Plan, a 403(b), a SEP, or a SIMPLE IRA plan, if the SEP or SIMPLE plan is established and maintained on a document approved by the IRS. This may be done without paying any fees or sanctions. Additionally, for Qualified Plans that are subject to favorable determination letters from the IRS or 403(b) plans, the plan sponsors may generally correct even significant operational failures without payment of any fees or sanctions.
- **Voluntary correction with IRS approval (VCP).** At any time before audit, a plan sponsor may pay a limited fee and receive IRS approval for correction of deficiencies in a Qualified Plan, 403(b) plan, SEP, or SIMPLE IRA plan. There are also special procedures for anonymous and group submissions under VCP.
- **Correction on audit (Audit CAP).** If a failure is identified on audit, the plan sponsor can correct the failure and pay a sanction. This sanction will bear a "reasonable relationship to the nature, extent, and severity of the failure, taking into account the extent to which correction occurred before audit."

Effective Date. This revenue procedure is generally effective January 1, 2009; however, plan sponsors are permitted to apply the provisions on or after September 2, 2008.

◆

TAX FRAUD

Economic Substance Doctrine

***Reginald Jarret et al. v. Comm'r*, TC Summm. Op. 2008-94 (July 31, 2008)**
IRC §§1401, 1402, 6662, 6651, 162, and 274

☞ Increase in Self-Employment Tax Imposed Due to Lack of Economic Substance

Facts. Between 1975 and 1998, Thomas Jarrett was the sole proprietor of a tax return preparation business known as TJ's Enterprises. In March 1998, Thomas formed a North Carolina corporation named Trecom, Inc. (Trecom) for the tax return preparation business. Thomas and his son, Reginald, were each 50% shareholders in Trecom; and Thomas and his wife, Juda, were officers of Trecom.

After Trecom was formed, Thomas continued to carry on the operation of his tax return preparation business as he had previously done. Clients of the business continued to pay for services by writing checks to Thomas personally or to TJ's Enterprises, not to Trecom. No bank account was opened in the name of Trecom. In 1999, Thomas had two bank accounts — one in his name and one in the name of TJ's Enterprises.

Thomas received payments from clients of his tax return preparation business totaling approximately $7,000 in 1999. Some of these funds were deposited in TJ's Enterprises' bank account; other funds were spent by Thomas for personal purposes without first being deposited into a bank account.

Thomas prepared and filed a joint return with Juda for 1999. The return included a Schedule C for TJ's Enterprises that reported $17,444 in gross income (including the $7,000 Thomas received for tax return preparation fees). The Schedule C listed $16,420 in expenses, which included $7,000 that Thomas allegedly paid to Trecom for professional services purportedly rendered by Trecom to TJ's Enterprises. Taxable income of $1,024 was reported, on which Thomas paid self-employment tax of $145. Thomas' return also included a Schedule E, in which he reported $7,000 as passthrough income from Trecom, the amount listed on his Schedule C as paid to Trecom for professional services.

Reginald operated a cabinet installation business as a sole proprietorship in 1999. He performed no services for Trecom and did not receive a salary from Trecom.

Thomas prepared Reginald's 1999 federal tax return. It included a Schedule C for Reginald's cabinet installation business, which reported $20,149 in gross income. Expenses of $19,363 were claimed, which included $7,200 that Reginald allegedly paid to Trecom for professional services. The Schedule C showed $786 in taxable income, on which Reginald calculated self-employment tax of $111. Reginald included a Schedule E with his return, which reported $7,200 as passthrough income from Trecom, the amount listed on his Schedule C as paid to Trecom for professional services.

Thomas also prepared and filed Trecom's 1999 Form 1120S. Trecom's reported income was $14,200, which consisted solely of the $7,000 and $7,200 allegedly paid to Trecom by Thomas and Reginald, respectively.

Issues. Whether Thomas and Reginald owe self-employment tax on income from their sole proprietorships that they passed through an S corporation.

Analysis. Self-employment tax is due on income derived from the self-employment of an individual, less allowable expenses. Income from a trade or business operated as a sole proprietorship generally is subject to self-employment taxes.[5]

Income from a trade or business operated as an S corporation and passed through to shareholders is generally not considered self-employment income and therefore is not subject to self-employment tax.[6]

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[5] IRC §§1402(a) and (b)

[6] Rev. Rul. 59-221; January 1, 1959

The IRS conducted an audit of Thomas and Juda's 1999 return. The $7,000 in Schedule C expenses for payments allegedly made to Trecom was disallowed, and the passthrough income of $7,000 from Trecom was removed as a result of the audit. Because of these adjustments, Thomas's self-employment tax liability increased from $145 to $1,134, although Thomas was allowed a deduction for half of the recalculated self-employment tax.

Reginald's 1999 return was also audited. The audit disallowed $8,078 in expenses Reginald reported, which included the $7,200 that Reginald claimed he had paid to Trecom, along with vehicle and storage expenses. The audit also removed the $7,200 of passthrough income that Reginald reported from Trecom. These adjustments caused Reginald's 1999 self-employment tax to be increased from $111 to $1,252. Reginald was also allowed a deduction for half of the recomputed self-employment tax.

Holding. It was established that Thomas and Reginald operated their businesses as sole proprietors; thus, the income in question is properly treated as earned by Thomas and Reginald individually, rather than by Trecom.

The court held that the alleged $14,200 reported as paid by Thomas and Reginald to Trecom, and then reported as income from Trecom to Thomas and Reginald lacked economic substance and should be disregarded. These offsetting payments had no business purpose and produced only self-employment tax avoidance for Thomas and Reginald. Thus, the $7,000 and $7,200 were held to be includable in Thomas and Reginald's gross income, respectively, and are subject to self-employment tax.

Additionally, a 20% penalty under IRC §6662(a) was imposed due to negligence or disregard of federal income tax rules.

◆

Identity Theft

Pub. 4535, Identity Theft Prevention and Victim Assistance

This publication answers the following questions:

- What is identity theft?
- How can you minimize becoming a victim?
- What if you are a victim of identity theft?
- How could identity theft impact your tax records?
- How can you protect your tax records?
- What should you do if your tax records are affected by identity theft?
- What if you receive an email claiming to be from the IRS?

> **Note.** Additional information regarding identity theft is found beginning on page 61 of the 2008 *University of Illinois Federal Tax Workbook.*

◆

TRAVEL AND TRANSPORTATION EXPENSE

Travel Expenses

Rev. Proc. 2008-59, IRB 2008-41 (Sept. 25, 2008)
IRC §§162, 274, and 62

☞ New Simplified Per Diem Rates for Post-September 30, 2008 Travel

Purpose. The IRS released the "high-low" simplified per diem rates for travel after September 30, 2008.

Analysis. The new high-cost area per diem is $256 (a $19 increase), which consists of $198 for lodging and $58 for meals and incidental expenses (M&IE). The new per diem rate for all other areas is $158 (a $6 increase), which consists of $113 for lodging and $45 for M&IE.

For travel in the continental United States (CONUS), a payor reimbursing an employee using the actual per diem method for the first nine months of 2008 cannot switch to the high-low per diem method for that employee until the beginning of 2009. Similarly, a payor using the high-low method to reimburse an employee for the first nine months of 2008 must continue using that method to reimburse that employee for the remainder of 2008. However, the payor may continue to use the high-low rates previously in effect for the remainder of 2008. There is no requirement to switch to the new rates for the last three months of the year.

For travel outside the continental United Stated (OCONUS), the payor may reimburse the employee's actual expenses, use the M&IE-only per diem method, or use the regular federal per-diem rate.

More detail about the CONUS and OCONUS rates can be found at **www.gsa.gov.**

Effective Date. For travel after September 30, 2008.

◆

ADDITIONAL INFORMATION

The following information should be used in conjunction with Issue 4, Chapter 10, on pages 382–384 of the *2008 University of Illinois Federal Tax Workbook.*

TAX CONSEQUENCES FOR LANDOWNERS WHO GRANT EASEMENTS TO WIND ENERGY COMPANIES

Background. Illinois was the number three state for the erection of wind turbines in 2007, trailing only Colorado and Texas. As such, many landowners have already signed various easements with wind energy companies and many more will do so in the future. In order to provide assistance to University of Illinois Tax School enrollees on this topic, the following example explains how the various easement proceeds are reported on tax returns of clients.

Example 17. Matt bought an 80-acre tract of land in 2000 for $320,000 ($4,000/acre). He allocated $15,000 of the purchase price to the drainage tile located underneath the 80 acres. In 2008, he granted two **temporary (non-exclusive) easements** to ABC Wind Farm, LLC:

1. The **Collection and Distribution Line easement** for the erection, installation, and maintenance of certain facilities for the transmission of electric power over and across a certain portion of property.
2. The **Construction easement** granted during the initial construction and installation of the Collection Distribution Line facilities.

He also granted an **exclusive perpetual easement** to ABC Wind Farm, LLC in 2009. This is referred to as the **Transmission easement** for the same purposes as described in the Collection and Distribution Line easement (see 1 above). In addition, he is paid in 2009 for crop damages on the 80 acres.

Note. The perpetual easement contract states the area covered by the easement is "XX feet wide by XX feet long."

Tax Solution

The payments for the two temporary (non-exclusive) easements granted in 2008 is reported on Schedule E as rental income. Any expenses Matt paid in 2008 relating to the easements, such as legal fees to negotiate the amount of the easement proceeds, is also deducted on the 2008 Schedule E.

The payment for the exclusive permanent easement granted in 2009 is reported in Part 1, Form 4797. Matt's cost basis should be determined using the methods shown in Q & As 9B and 9C on page 384 in the *2008 Federal Tax Workbook*. The cost basis also includes any legal or other expenses incurred in conjunction with the permanent easement. Any gain is an IRC §1231 gain.

The payment for crop damages is reported as other income on Matt's 2009 Schedule F.

Note. In this hypothetical example, no wind turbines were installed on Matt's 80-acre tract. Many landowners have received and will receive substantial easement payments even though no wind turbines are erected on their land. If a wind turbine is installed on Matt's 80 acres in 2009, he will report the annual lease amount on Schedule E as rental income. In addition, any related expenses, such as the real estate tax allocation to the area covered by the separate wind turbine lease contract, will be deducted on Schedule E.

AMT REFUNDABLE CREDIT

Following is a revision of **Example 2** from page 322 of the *2008 University of Illinois Federal Tax Workbook*. As explained above, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 changed the formula for computing the AMT refundable credit to the greater of:

- 50% of the long-term unused minimum tax credit, or
- The amount of the refundable AMT credit determined for the previous year.

Example 18. Harry exercised an incentive stock option in 2003 and retained the stock. This was not a cashless exercise like most employees utilize. The 2003 joint return of Harry and his wife, Carrie, reported the following:

Regular 2003 tax	$ 5,000
2003 AMT due to phantom income from the ISO exercise	80,000
Total 2003 tax	$85,000

Their joint returns for 2004, 2005, and 2006 reported the following:

Year	Regular Tax	Tentative Minimum Tax (Form 6251)	Minimum Tax Credit (Form 8801)
2004	$5,000	$0	$ 5,000
2005	5,000	0	5,000
2006	5,000	0	5,000
Total minimum tax credits used for 2004, 2005, and 2006			$15,000

The amount of their **long-term unused minimum tax credit** carried forward to 2007 was **$65,000** ($80,000 carried forward minimum tax credit − $15,000 total minimum tax credits used in prior years). Harry and Carrie used a $5,000 minimum credit each year for three years to offset their regular tax liability.[7]

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[7] IRC §53(e)(3)(A)

The amount of their 2007 **AMT refundable credit** from their 2007 Form 8801 (not shown) was **$13,000.** Their AMT refundable credit is 20% of their long-term unused minimum tax credit carried forward to 2007 ($65,000 × 20% = $13,000).[8]

Harry and Carrie's carryforward to 2008 is $52,000 ($65,000 – $13,000). Under the new laws, Harry and Carrie are entitled to minimum tax credits of $26,000 for both 2008 and 2009 ($52,000 × 50%).

Tax Result for Example. Harry and Carrie are entitled to a nonrefundable minimum tax credit of $6,723 and a refundable credit of $19,277, for a total of $26,000 in minimum tax credits for 2008. They also have a $26,000 credit carryforward to 2009.

Following are Harry and Carrie's 2008 Forms 1040, 6251, and 8801.

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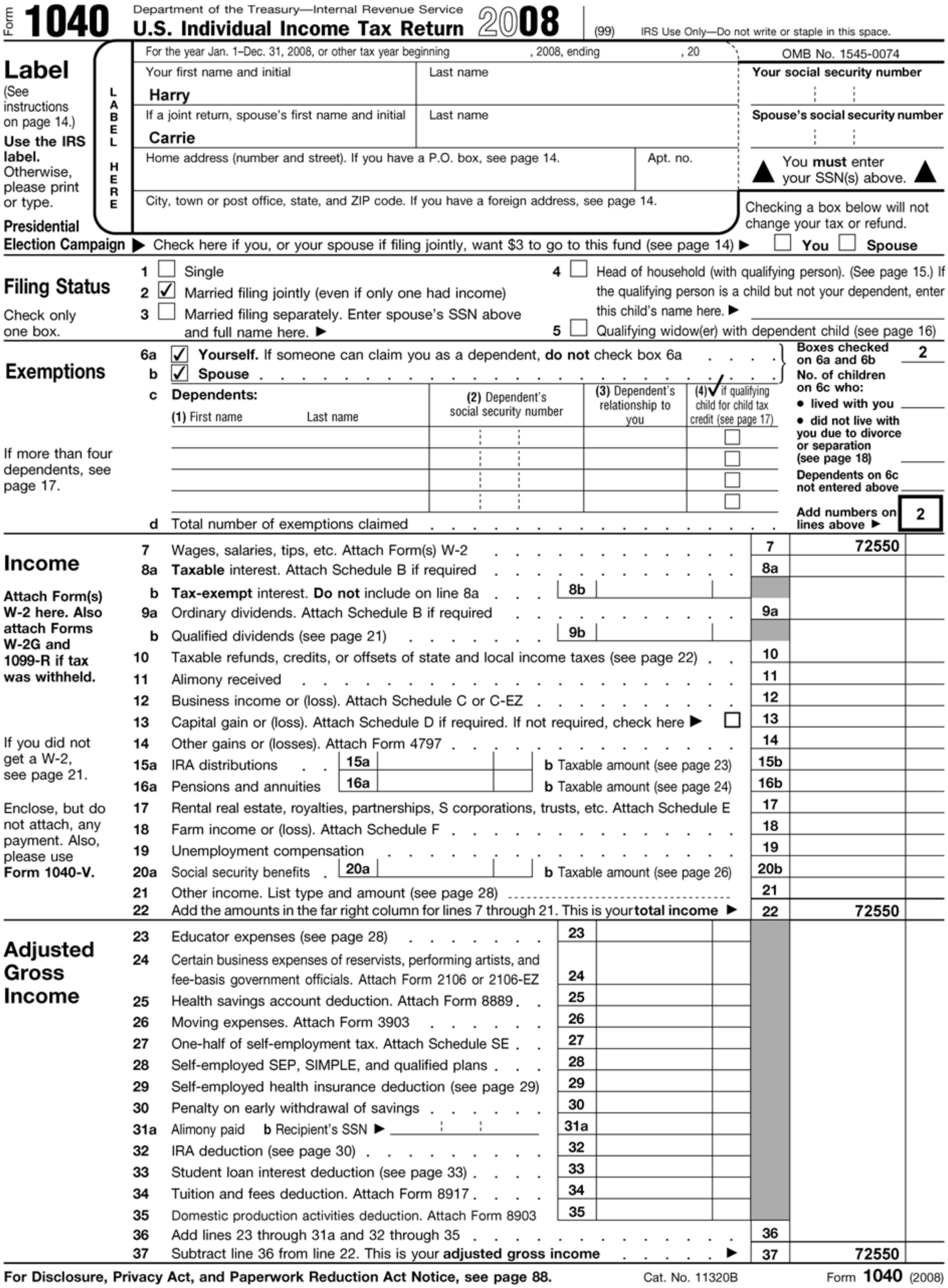
[8] IRC §53(e)(2)(A)

For Example 18



Form **1040** Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return 2008 (99) IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 2008, or other tax year beginning , 2008, ending , 20
OMB No. 1545-0074

Label (See instructions on page 14.) **Use the IRS label.** Otherwise, please print or type.
LABEL HERE

Your first name and initial **Harry**	Last name	**Your social security number**
If a joint return, spouse's first name and initial **Carrie**	Last name	**Spouse's social security number**
Home address (number and street). If you have a P.O. box, see page 14.	Apt. no.	▲ You **must** enter your SSN(s) above. ▲
City, town or post office, state, and ZIP code. If you have a foreign address, see page 14.		Checking a box below will not change your tax or refund.

Presidential Election Campaign ▶ Check here if you, or your spouse if filing jointly, want $3 to go to this fund (see page 14) ▶ ☐ **You** ☐ **Spouse**

Filing Status
Check only one box.

1 ☐ Single
2 ☑ Married filing jointly (even if only one had income)
3 ☐ Married filing separately. Enter spouse's SSN above and full name here. ▶
4 ☐ Head of household (with qualifying person). (See page 15.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶
5 ☐ Qualifying widow(er) with dependent child (see page 16)

Exemptions

6a ☑ **Yourself.** If someone can claim you as a dependent, **do not** check box 6a
b ☑ **Spouse**
Boxes checked on 6a and 6b: 2

c **Dependents:**

If more than four dependents, see page 17.

(1) First name Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qualifying child for child tax credit (see page 17)
			☐
			☐
			☐
			☐

No. of children on 6c who:
- lived with you
- did not live with you due to divorce or separation (see page 18)

Dependents on 6c not entered above

d Total number of exemptions claimed
Add numbers on lines above ▶ 2

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see page 21.

Enclose, but do not attach, any payment. Also, please use **Form 1040-V.**

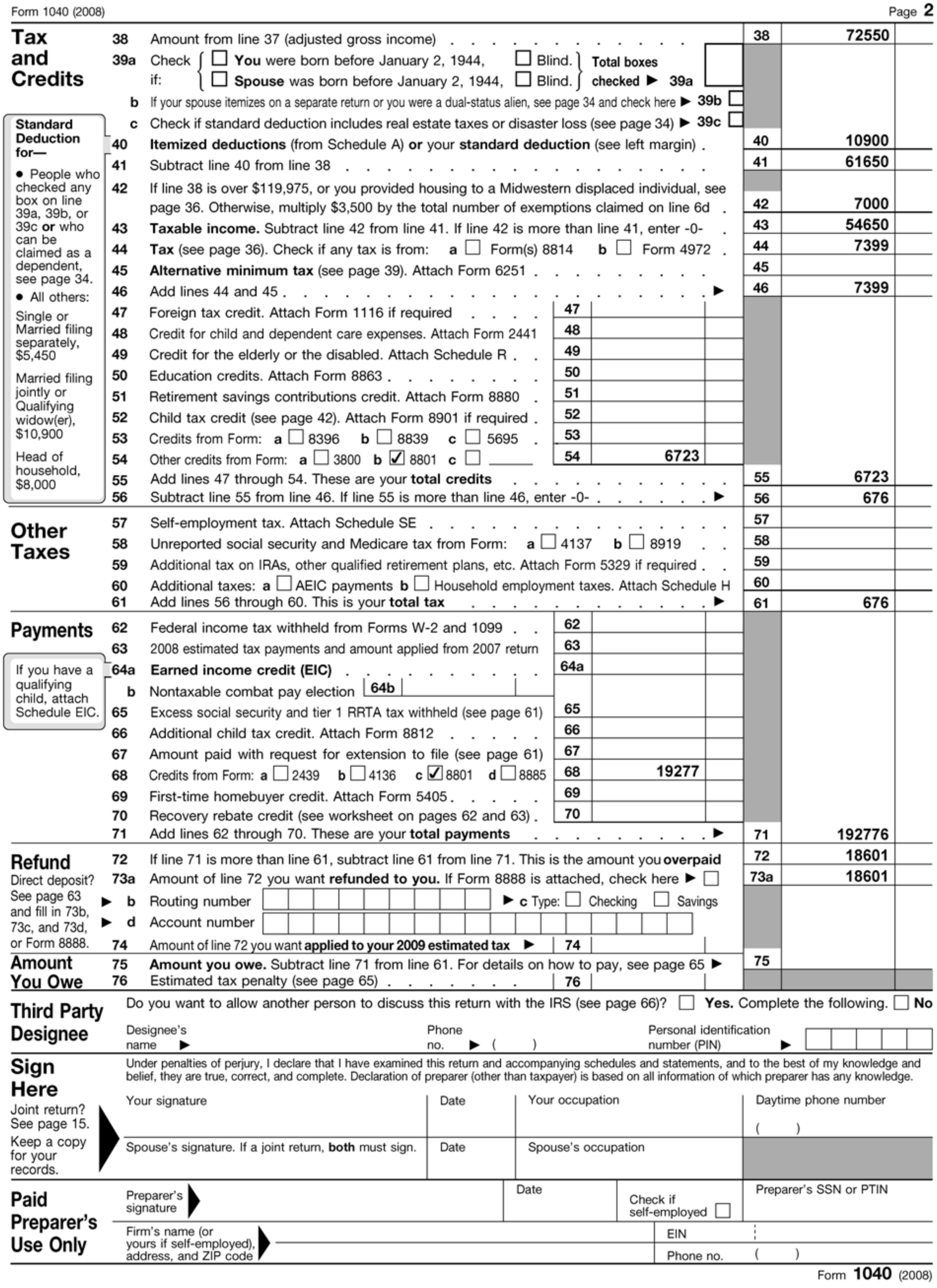
7	Wages, salaries, tips, etc. Attach Form(s) W-2			7	72550
8a	**Taxable** interest. Attach Schedule B if required			8a	
b	**Tax-exempt** interest. **Do not** include on line 8a	8b			
9a	Ordinary dividends. Attach Schedule B if required			9a	
b	Qualified dividends (see page 21)	9b			
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 22)			10	
11	Alimony received			11	
12	Business income or (loss). Attach Schedule C or C-EZ			12	
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐			13	
14	Other gains or (losses). Attach Form 4797			14	
15a	IRA distributions	15a		b Taxable amount (see page 23) 15b	
16a	Pensions and annuities	16a		b Taxable amount (see page 24) 16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E			17	
18	Farm income or (loss). Attach Schedule F			18	
19	Unemployment compensation			19	
20a	Social security benefits	20a		b Taxable amount (see page 26) 20b	
21	Other income. List type and amount (see page 28)			21	
22	Add the amounts in the far right column for lines 7 through 21. This is your **total income** ▶			22	72550

Adjusted Gross Income

23	Educator expenses (see page 28)	23			
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24			
25	Health savings account deduction. Attach Form 8889	25			
26	Moving expenses. Attach Form 3903	26			
27	One-half of self-employment tax. Attach Schedule SE	27			
28	Self-employed SEP, SIMPLE, and qualified plans	28			
29	Self-employed health insurance deduction (see page 29)	29			
30	Penalty on early withdrawal of savings	30			
31a	Alimony paid b Recipient's SSN ▶	31a			
32	IRA deduction (see page 30)	32			
33	Student loan interest deduction (see page 33)	33			
34	Tuition and fees deduction. Attach Form 8917	34			
35	Domestic production activities deduction. Attach Form 8903	35			
36	Add lines 23 through 31a and 32 through 35			36	
37	Subtract line 36 from line 22. This is your **adjusted gross income** ▶			37	72550

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 88. Cat. No. 11320B Form **1040** (2008)

For Example 18



Form 1040 (2008) Page **2**

Tax and Credits	38	Amount from line 37 (adjusted gross income)		38: 72550
	39a	Check if: ☐ **You** were born before January 2, 1944, ☐ Blind. ☐ **Spouse** was born before January 2, 1944, ☐ Blind. **Total boxes checked** ▶ 39a ☐		
	b	If your spouse itemizes on a separate return or you were a dual-status alien, see page 34 and check here ▶ 39b ☐		
Standard Deduction for— • People who checked any box on line 39a, 39b, or 39c **or** who can be claimed as a dependent, see page 34. • All others: Single or Married filing separately, $5,450 Married filing jointly or Qualifying widow(er), $10,900 Head of household, $8,000	c	Check if standard deduction includes real estate taxes or disaster loss (see page 34) ▶ 39c ☐		
	40	**Itemized deductions** (from Schedule A) **or** your **standard deduction** (see left margin)		40: 10900
	41	Subtract line 40 from line 38		41: 61650
	42	If line 38 is over $119,975, or you provided housing to a Midwestern displaced individual, see page 36. Otherwise, multiply $3,500 by the total number of exemptions claimed on line 6d		42: 7000
	43	**Taxable income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-		43: 54650
	44	**Tax** (see page 36). Check if any tax is from: a ☐ Form(s) 8814 b ☐ Form 4972		44: 7399
	45	**Alternative minimum tax** (see page 39). Attach Form 6251		45:
	46	Add lines 44 and 45 ▶		46: 7399
	47	Foreign tax credit. Attach Form 1116 if required	47:	
	48	Credit for child and dependent care expenses. Attach Form 2441	48:	
	49	Credit for the elderly or the disabled. Attach Schedule R	49:	
	50	Education credits. Attach Form 8863	50:	
	51	Retirement savings contributions credit. Attach Form 8880	51:	
	52	Child tax credit (see page 42). Attach Form 8901 if required	52:	
	53	Credits from Form: a ☐ 8396 b ☐ 8839 c ☐ 5695	53:	
	54	Other credits from Form: a ☐ 3800 b ☑ 8801 c ☐ ______	54: 6723	
	55	Add lines 47 through 54. These are your **total credits**		55: 6723
	56	Subtract line 55 from line 46. If line 55 is more than line 46, enter -0- ▶		56: 676
Other Taxes	57	Self-employment tax. Attach Schedule SE		57:
	58	Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919		58:
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required		59:
	60	Additional taxes: a ☐ AEIC payments b ☐ Household employment taxes. Attach Schedule H		60:
	61	Add lines 56 through 60. This is your **total tax** ▶		61: 676
Payments	62	Federal income tax withheld from Forms W-2 and 1099	62:	
	63	2008 estimated tax payments and amount applied from 2007 return	63:	
If you have a qualifying child, attach Schedule EIC.	64a	**Earned income credit (EIC)**	64a:	
	b	Nontaxable combat pay election 64b		
	65	Excess social security and tier 1 RRTA tax withheld (see page 61)	65:	
	66	Additional child tax credit. Attach Form 8812	66:	
	67	Amount paid with request for extension to file (see page 61)	67:	
	68	Credits from Form: a ☐ 2439 b ☐ 4136 c ☑ 8801 d ☐ 8885	68: 19277	
	69	First-time homebuyer credit. Attach Form 5405	69:	
	70	Recovery rebate credit (see worksheet on pages 62 and 63)	70:	
	71	Add lines 62 through 70. These are your **total payments** ▶		71: 192776
Refund	72	If line 71 is more than line 61, subtract line 61 from line 71. This is the amount you **overpaid**		72: 18601
Direct deposit? See page 63 and fill in 73b, 73c, and 73d, or Form 8888.	73a	Amount of line 72 you want **refunded to you.** If Form 8888 is attached, check here ▶ ☐		73a: 18601
▶	b	Routing number ☐☐☐☐☐☐☐☐☐ ▶ c Type: ☐ Checking ☐ Savings		
▶	d	Account number ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐		
	74	Amount of line 72 you want **applied to your 2009 estimated tax** ▶	74:	
Amount You Owe	75	**Amount you owe.** Subtract line 71 from line 61. For details on how to pay, see page 65 ▶		75:
	76	Estimated tax penalty (see page 65)	76:	

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see page 66)? ☐ **Yes.** Complete the following. ☐ **No**

Designee's name ▶ Phone no. ▶ (   ) Personal identification number (PIN) ▶ ☐☐☐☐☐

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See page 15. Keep a copy for your records.

Your signature	Date	Your occupation	Daytime phone number ( )
Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	

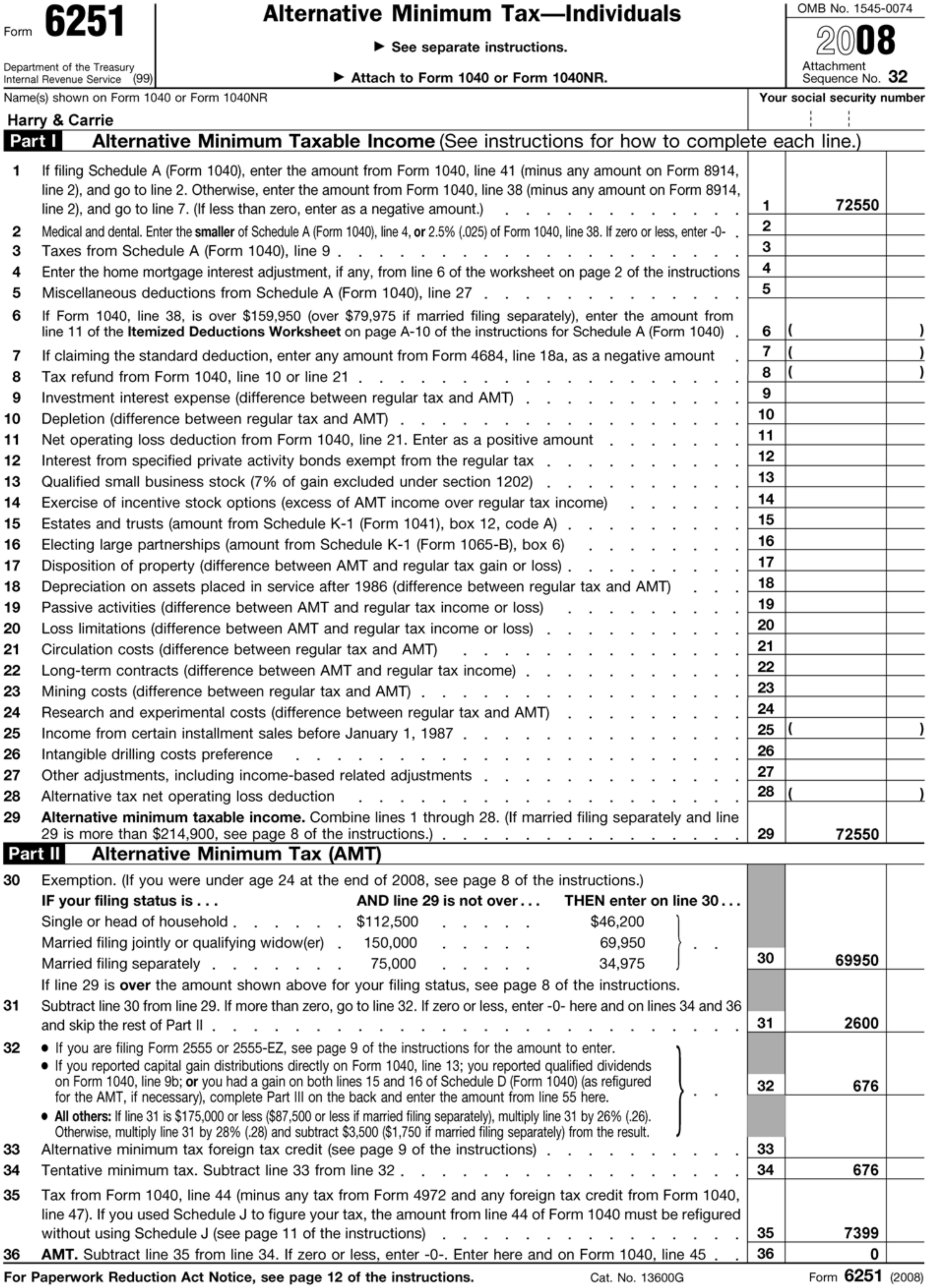
Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ▶		EIN	
		Phone no.	( )

Form **1040** (2008)

Printed on recycled paper

For Example 18



Form **6251**

Department of the Treasury
Internal Revenue Service (99)

Alternative Minimum Tax—Individuals

► See separate instructions.

► Attach to Form 1040 or Form 1040NR.

OMB No. 1545-0074

2008

Attachment
Sequence No. **32**

Name(s) shown on Form 1040 or Form 1040NR: Harry & Carrie

Your social security number

Part I **Alternative Minimum Taxable Income** (See instructions for how to complete each line.)

1	If filing Schedule A (Form 1040), enter the amount from Form 1040, line 41 (minus any amount on Form 8914, line 2), and go to line 2. Otherwise, enter the amount from Form 1040, line 38 (minus any amount on Form 8914, line 2), and go to line 7. (If less than zero, enter as a negative amount.)	1	72550
2	Medical and dental. Enter the **smaller** of Schedule A (Form 1040), line 4, **or** 2.5% (.025) of Form 1040, line 38. If zero or less, enter -0-	2	
3	Taxes from Schedule A (Form 1040), line 9	3	
4	Enter the home mortgage interest adjustment, if any, from line 6 of the worksheet on page 2 of the instructions	4	
5	Miscellaneous deductions from Schedule A (Form 1040), line 27	5	
6	If Form 1040, line 38, is over $159,950 (over $79,975 if married filing separately), enter the amount from line 11 of the **Itemized Deductions Worksheet** on page A-10 of the instructions for Schedule A (Form 1040)	6	( )
7	If claiming the standard deduction, enter any amount from Form 4684, line 18a, as a negative amount	7	( )
8	Tax refund from Form 1040, line 10 or line 21	8	( )
9	Investment interest expense (difference between regular tax and AMT)	9	
10	Depletion (difference between regular tax and AMT)	10	
11	Net operating loss deduction from Form 1040, line 21. Enter as a positive amount	11	
12	Interest from specified private activity bonds exempt from the regular tax	12	
13	Qualified small business stock (7% of gain excluded under section 1202)	13	
14	Exercise of incentive stock options (excess of AMT income over regular tax income)	14	
15	Estates and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	15	
16	Electing large partnerships (amount from Schedule K-1 (Form 1065-B), box 6)	16	
17	Disposition of property (difference between AMT and regular tax gain or loss)	17	
18	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	18	
19	Passive activities (difference between AMT and regular tax income or loss)	19	
20	Loss limitations (difference between AMT and regular tax income or loss)	20	
21	Circulation costs (difference between regular tax and AMT)	21	
22	Long-term contracts (difference between AMT and regular tax income)	22	
23	Mining costs (difference between regular tax and AMT)	23	
24	Research and experimental costs (difference between regular tax and AMT)	24	
25	Income from certain installment sales before January 1, 1987	25	( )
26	Intangible drilling costs preference	26	
27	Other adjustments, including income-based related adjustments	27	
28	Alternative tax net operating loss deduction	28	( )
29	**Alternative minimum taxable income.** Combine lines 1 through 28. (If married filing separately and line 29 is more than $214,900, see page 8 of the instructions.)	29	72550

Part II **Alternative Minimum Tax (AMT)**

30 Exemption. (If you were under age 24 at the end of 2008, see page 8 of the instructions.)

IF your filing status is . . .	**AND line 29 is not over . . .**	**THEN enter on line 30 . . .**
Single or head of household	$112,500	$46,200
Married filing jointly or qualifying widow(er)	150,000	69,950
Married filing separately	75,000	34,975

If line 29 is **over** the amount shown above for your filing status, see page 8 of the instructions.

30	Exemption	30	69950
31	Subtract line 30 from line 29. If more than zero, go to line 32. If zero or less, enter -0- here and on lines 34 and 36 and skip the rest of Part II	31	2600
32	• If you are filing Form 2555 or 2555-EZ, see page 9 of the instructions for the amount to enter. • If you reported capital gain distributions directly on Form 1040, line 13; you reported qualified dividends on Form 1040, line 9b; **or** you had a gain on both lines 15 and 16 of Schedule D (Form 1040) (as refigured for the AMT, if necessary), complete Part III on the back and enter the amount from line 55 here. • **All others:** If line 31 is $175,000 or less ($87,500 or less if married filing separately), multiply line 31 by 26% (.26). Otherwise, multiply line 31 by 28% (.28) and subtract $3,500 ($1,750 if married filing separately) from the result.	32	676
33	Alternative minimum tax foreign tax credit (see page 9 of the instructions)	33	
34	Tentative minimum tax. Subtract line 33 from line 32	34	676
35	Tax from Form 1040, line 44 (minus any tax from Form 4972 and any foreign tax credit from Form 1040, line 47). If you used Schedule J to figure your tax, the amount from line 44 of Form 1040 must be refigured without using Schedule J (see page 11 of the instructions)	35	7399
36	**AMT.** Subtract line 35 from line 34. If zero or less, enter -0-. Enter here and on Form 1040, line 45	36	0

For Paperwork Reduction Act Notice, see page 12 of the instructions. Cat. No. 13600G Form **6251** (2008)

For Example 18

Form **8801**

Department of the Treasury
Internal Revenue Service (99)

Credit for Prior Year Minimum Tax— Individuals, Estates, and Trusts

▶ See separate instructions.
▶ Attach to Form 1040, 1040NR, or 1041.

OMB No. 1545-1073
2008
Attachment Sequence No. **74**

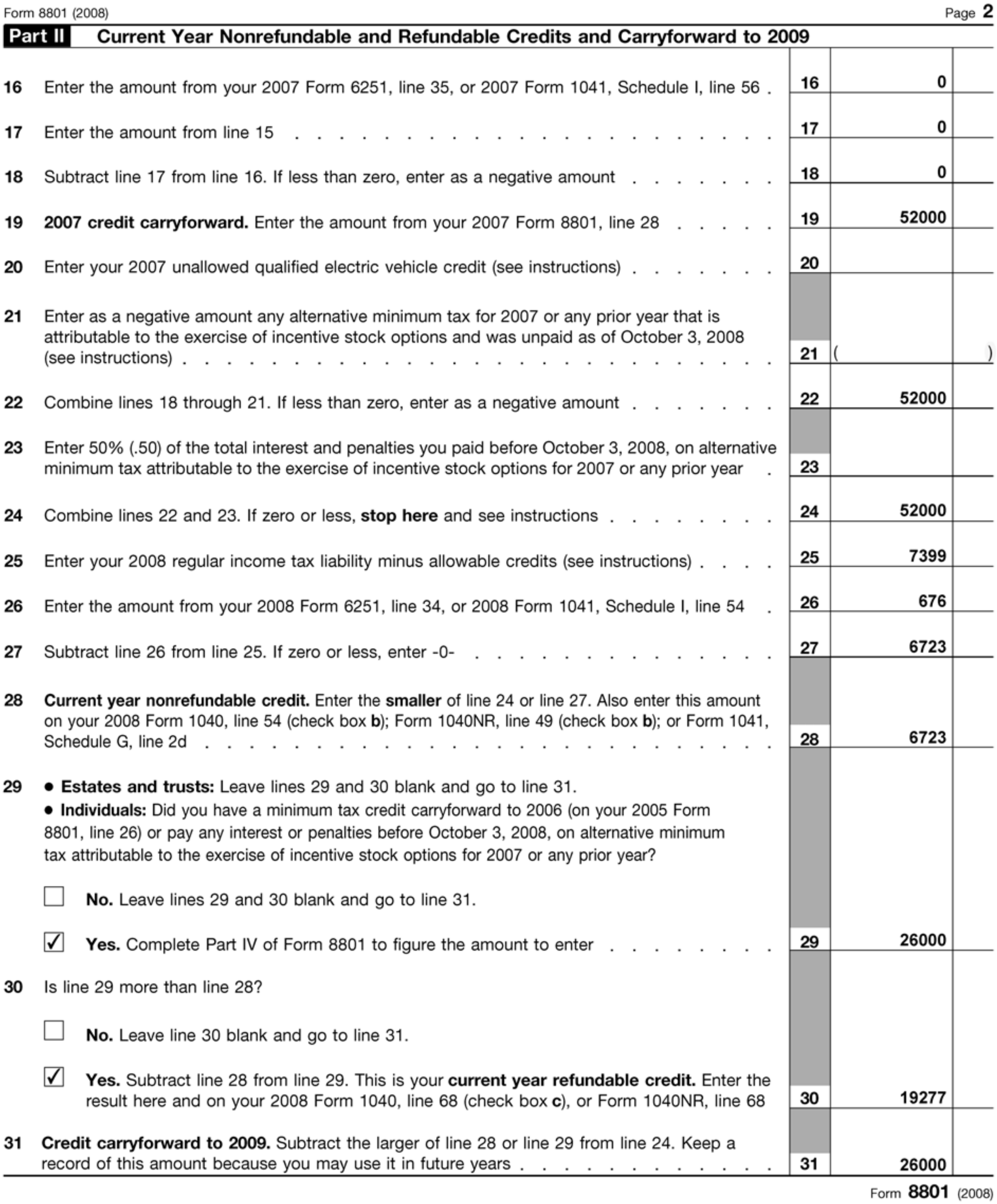
Name(s) shown on return: Harry & Carrie
Identifying number

Part I **Net Minimum Tax on Exclusion Items**

1	Combine lines 1, 6, and 10 of your 2007 Form 6251. Estates and trusts, see instructions . .	1	0
2	Enter adjustments and preferences treated as exclusion items (see instructions).	2	0
3	Minimum tax credit net operating loss deduction (see instructions)	3	( )
4	Combine lines 1, 2, and 3. If zero or less, enter -0- here and on line 15 and go to Part II. If more than $207,500 and you were married filing separately for 2007, see instructions. . . .	4	0
5	Enter: $66,250 if married filing jointly or qualifying widow(er) for 2007; $44,350 if single or head of household for 2007; or $33,125 if married filing separately for 2007. Estates and trusts, enter $22,500 . .	5	
6	Enter: $150,000 if married filing jointly or qualifying widow(er) for 2007; $112,500 if single or head of household for 2007; or $75,000 if married filing separately for 2007. Estates and trusts, enter $75,000	6	
7	Subtract line 6 from line 4. If zero or less, enter -0- here and on line 8 and go to line 9 . . .	7	
8	Multiply line 7 by 25% (.25)	8	
9	Subtract line 8 from line 5. If zero or less, enter -0-. If this form is for a child under age 18, see instructions	9	
10	Subtract line 9 from line 4. If zero or less, enter -0- here and on line 15 and go to Part II. Form 1040NR filers, see instructions	10	
11	• If **for 2007** you filed Form 2555 or 2555-EZ, see page 2 of the instructions for the amount to enter. • If **for 2007** you reported capital gain distributions directly on Form 1040, line 13; you reported qualified dividends on Form 1040, line 9b (Form 1041, line 2b(2)); **or** you had a gain on both lines 15 and 16 of Schedule D (Form 1040) (lines 14a and 15, column (2), of Schedule D (Form 1041)), complete Part III of Form 8801 and enter the amount from line 51 here. Form 1040NR filers, see instructions. • **All others:** If line 10 is $175,000 or less ($87,500 or less if married filing separately for 2007), multiply line 10 by 26% (.26). Otherwise, multiply line 10 by 28% (.28) and subtract $3,500 ($1,750 if married filing separately for 2007) from the result. Form 1040NR filers, see instructions.	11	
12	Minimum tax foreign tax credit on exclusion items (see instructions)	12	
13	Tentative minimum tax on exclusion items. Subtract line 12 from line 11	13	
14	Enter the amount from your 2007 Form 6251, line 34, or 2007 Form 1041, Schedule I, line 55 .	14	
15	**Net minimum tax on exclusion items.** Subtract line 14 from line 13. If zero or less, enter -0-	15	0

For Paperwork Reduction Act Notice, see page 4 of the instructions. Cat. No. 10002S Form **8801** (2008)

For Example 18



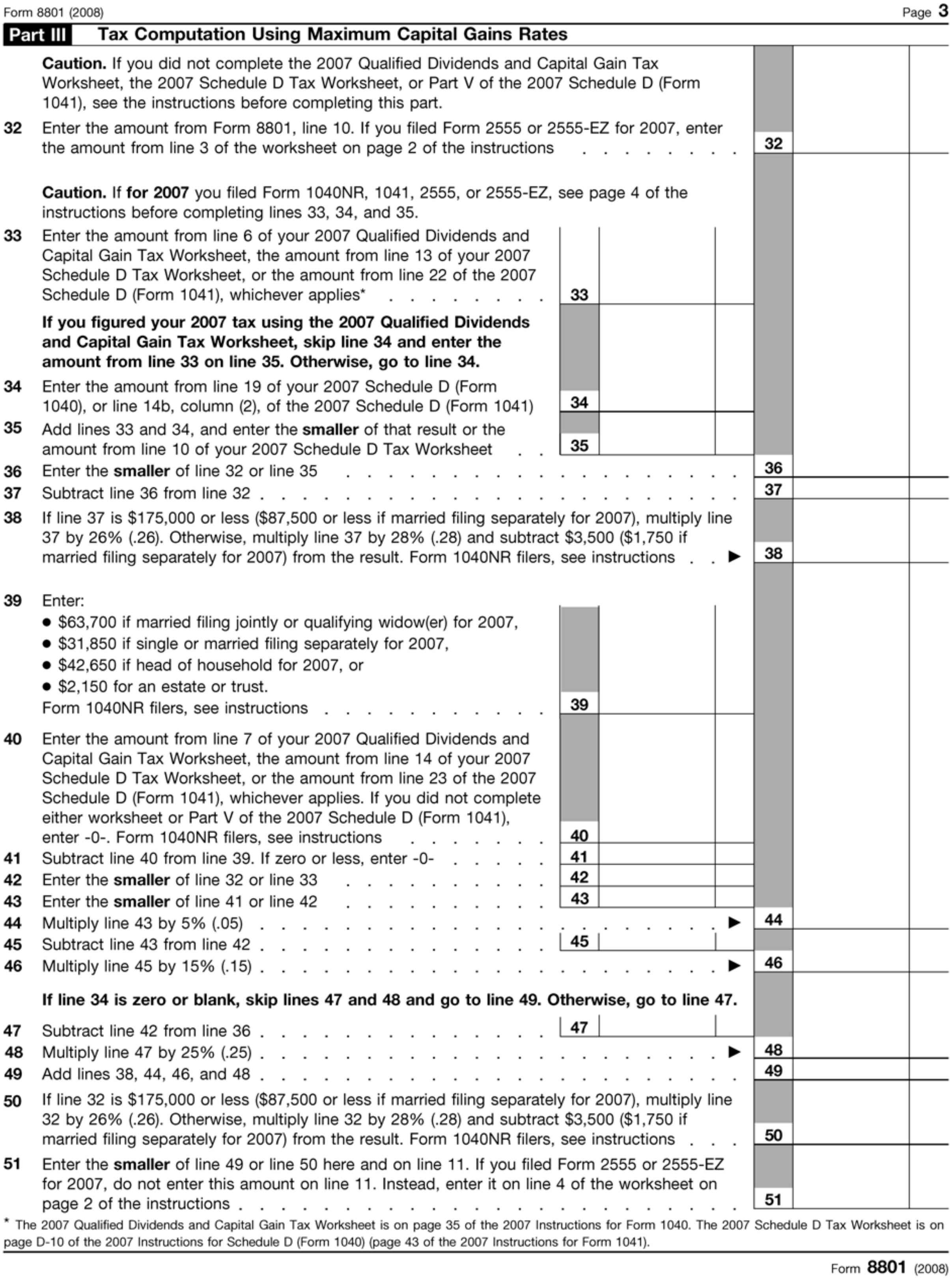
Form 8801 (2008) Page **2**

Part II **Current Year Nonrefundable and Refundable Credits and Carryforward to 2009**

16	Enter the amount from your 2007 Form 6251, line 35, or 2007 Form 1041, Schedule I, line 56	16	0
17	Enter the amount from line 15	17	0
18	Subtract line 17 from line 16. If less than zero, enter as a negative amount	18	0
19	**2007 credit carryforward.** Enter the amount from your 2007 Form 8801, line 28	19	52000
20	Enter your 2007 unallowed qualified electric vehicle credit (see instructions)	20	
21	Enter as a negative amount any alternative minimum tax for 2007 or any prior year that is attributable to the exercise of incentive stock options and was unpaid as of October 3, 2008 (see instructions)	21	( )
22	Combine lines 18 through 21. If less than zero, enter as a negative amount	22	52000
23	Enter 50% (.50) of the total interest and penalties you paid before October 3, 2008, on alternative minimum tax attributable to the exercise of incentive stock options for 2007 or any prior year	23	
24	Combine lines 22 and 23. If zero or less, **stop here** and see instructions	24	52000
25	Enter your 2008 regular income tax liability minus allowable credits (see instructions)	25	7399
26	Enter the amount from your 2008 Form 6251, line 34, or 2008 Form 1041, Schedule I, line 54	26	676
27	Subtract line 26 from line 25. If zero or less, enter -0-	27	6723
28	**Current year nonrefundable credit.** Enter the **smaller** of line 24 or line 27. Also enter this amount on your 2008 Form 1040, line 54 (check box **b**); Form 1040NR, line 49 (check box **b**); or Form 1041, Schedule G, line 2d	28	6723
29	• **Estates and trusts:** Leave lines 29 and 30 blank and go to line 31. • **Individuals:** Did you have a minimum tax credit carryforward to 2006 (on your 2005 Form 8801, line 26) or pay any interest or penalties before October 3, 2008, on alternative minimum tax attributable to the exercise of incentive stock options for 2007 or any prior year? ☐ **No.** Leave lines 29 and 30 blank and go to line 31. ☑ **Yes.** Complete Part IV of Form 8801 to figure the amount to enter	29	26000
30	Is line 29 more than line 28? ☐ **No.** Leave line 30 blank and go to line 31. ☑ **Yes.** Subtract line 28 from line 29. This is your **current year refundable credit.** Enter the result here and on your 2008 Form 1040, line 68 (check box **c**), or Form 1040NR, line 68	30	19277
31	**Credit carryforward to 2009.** Subtract the larger of line 28 or line 29 from line 24. Keep a record of this amount because you may use it in future years	31	26000

Form **8801** (2008)

For Example 18



Form 8801 (2008) Page **3**

Part III **Tax Computation Using Maximum Capital Gains Rates**

Caution. If you did not complete the 2007 Qualified Dividends and Capital Gain Tax Worksheet, the 2007 Schedule D Tax Worksheet, or Part V of the 2007 Schedule D (Form 1041), see the instructions before completing this part.

32 Enter the amount from Form 8801, line 10. If you filed Form 2555 or 2555-EZ for 2007, enter the amount from line 3 of the worksheet on page 2 of the instructions **32**

Caution. If **for 2007** you filed Form 1040NR, 1041, 2555, or 2555-EZ, see page 4 of the instructions before completing lines 33, 34, and 35.

33 Enter the amount from line 6 of your 2007 Qualified Dividends and Capital Gain Tax Worksheet, the amount from line 13 of your 2007 Schedule D Tax Worksheet, or the amount from line 22 of the 2007 Schedule D (Form 1041), whichever applies* **33**

If you figured your 2007 tax using the 2007 Qualified Dividends and Capital Gain Tax Worksheet, skip line 34 and enter the amount from line 33 on line 35. Otherwise, go to line 34.

34 Enter the amount from line 19 of your 2007 Schedule D (Form 1040), or line 14b, column (2), of the 2007 Schedule D (Form 1041) **34**

35 Add lines 33 and 34, and enter the **smaller** of that result or the amount from line 10 of your 2007 Schedule D Tax Worksheet . . **35**

36 Enter the **smaller** of line 32 or line 35 . . . . **36**

37 Subtract line 36 from line 32 . . . . **37**

38 If line 37 is $175,000 or less ($87,500 or less if married filing separately for 2007), multiply line 37 by 26% (.26). Otherwise, multiply line 37 by 28% (.28) and subtract $3,500 ($1,750 if married filing separately for 2007) from the result. Form 1040NR filers, see instructions . . ▶ **38**

39 Enter:

- $63,700 if married filing jointly or qualifying widow(er) for 2007,
- $31,850 if single or married filing separately for 2007,
- $42,650 if head of household for 2007, or
- $2,150 for an estate or trust.

Form 1040NR filers, see instructions **39**

40 Enter the amount from line 7 of your 2007 Qualified Dividends and Capital Gain Tax Worksheet, the amount from line 14 of your 2007 Schedule D Tax Worksheet, or the amount from line 23 of the 2007 Schedule D (Form 1041), whichever applies. If you did not complete either worksheet or Part V of the 2007 Schedule D (Form 1041), enter -0-. Form 1040NR filers, see instructions **40**

41 Subtract line 40 from line 39. If zero or less, enter -0- **41**

42 Enter the **smaller** of line 32 or line 33 . . . . **42**

43 Enter the **smaller** of line 41 or line 42 . . . . **43**

44 Multiply line 43 by 5% (.05) . . . . ▶ **44**

45 Subtract line 43 from line 42 . . . . **45**

46 Multiply line 45 by 15% (.15) . . . . ▶ **46**

If line 34 is zero or blank, skip lines 47 and 48 and go to line 49. Otherwise, go to line 47.

47 Subtract line 42 from line 36 . . . . **47**

48 Multiply line 47 by 25% (.25) . . . . ▶ **48**

49 Add lines 38, 44, 46, and 48 . . . . **49**

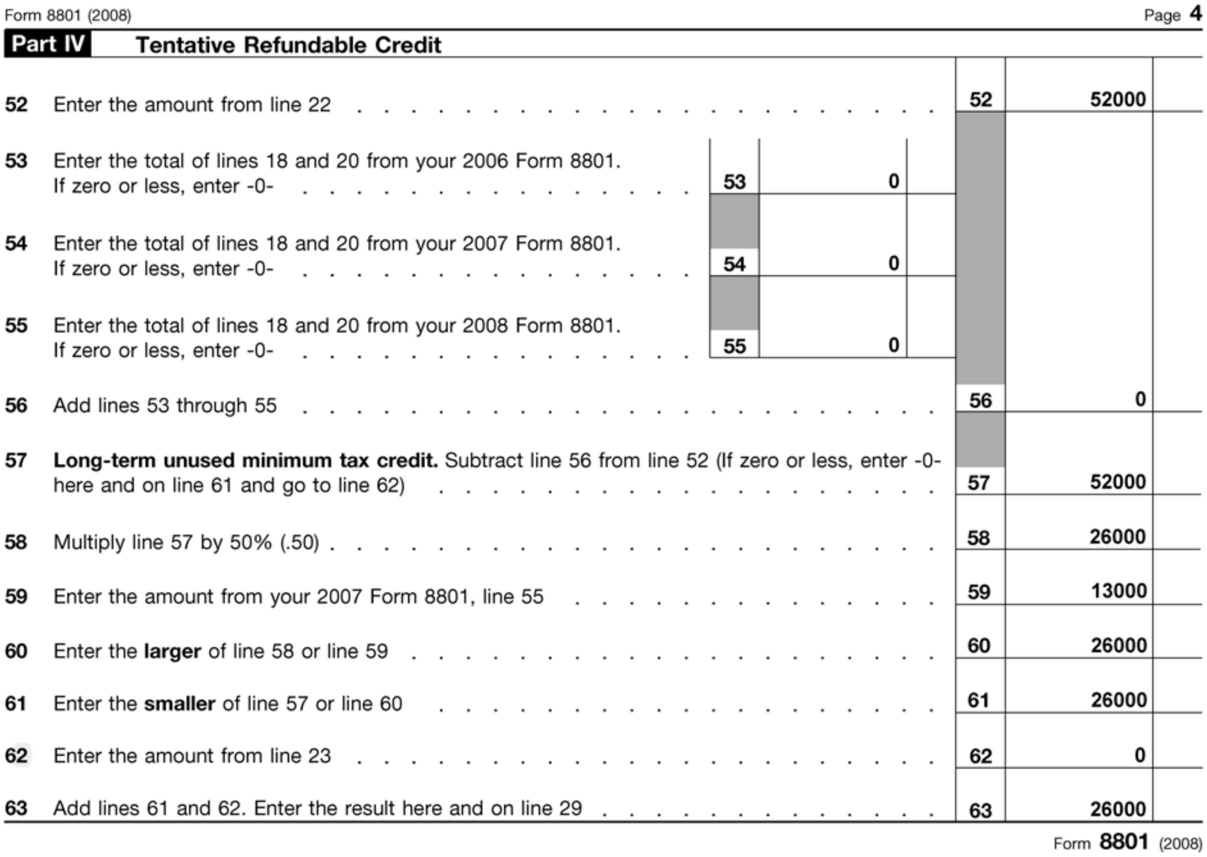
50 If line 32 is $175,000 or less ($87,500 or less if married filing separately for 2007), multiply line 32 by 26% (.26). Otherwise, multiply line 32 by 28% (.28) and subtract $3,500 ($1,750 if married filing separately for 2007) from the result. Form 1040NR filers, see instructions . . . **50**

51 Enter the **smaller** of line 49 or line 50 here and on line 11. If you filed Form 2555 or 2555-EZ for 2007, do not enter this amount on line 11. Instead, enter it on line 4 of the worksheet on page 2 of the instructions **51**

* The 2007 Qualified Dividends and Capital Gain Tax Worksheet is on page 35 of the 2007 Instructions for Form 1040. The 2007 Schedule D Tax Worksheet is on page D-10 of the 2007 Instructions for Schedule D (Form 1040) (page 43 of the 2007 Instructions for Form 1041).

Form **8801** (2008)

For Example 18



Form 8801 (2008) Page **4**

Part IV **Tentative Refundable Credit**

52	Enter the amount from line 22			52	52000
53	Enter the total of lines 18 and 20 from your 2006 Form 8801. If zero or less, enter -0-	53	0		
54	Enter the total of lines 18 and 20 from your 2007 Form 8801. If zero or less, enter -0-	54	0		
55	Enter the total of lines 18 and 20 from your 2008 Form 8801. If zero or less, enter -0-	55	0		
56	Add lines 53 through 55			56	0
57	**Long-term unused minimum tax credit.** Subtract line 56 from line 52 (If zero or less, enter -0- here and on line 61 and go to line 62)			57	52000
58	Multiply line 57 by 50% (.50)			58	26000
59	Enter the amount from your 2007 Form 8801, line 55			59	13000
60	Enter the **larger** of line 58 or line 59			60	26000
61	Enter the **smaller** of line 57 or line 60			61	26000
62	Enter the amount from line 23			62	0
63	Add lines 61 and 62. Enter the result here and on line 29			63	26000

Form **8801** (2008)

2009 IRS REFUND INFORMATION FOR e-FILERS

The following chart is from IRS Publication 2043 and shows the projected date that direct deposit refunds will be sent and paper checks mailed, based on the date an e-filed tax return is accepted by the IRS. However, as the note at the bottom of the chart indicates, the IRS does not guarantee that refunds will be processed on the specifiied dates.

2009 IRS *e-file* Refund Cycle Chart

Transmitted and accepted (by 11:00 am) between…	Direct Deposit Sent*	Paper Check Mailed*
Jan 16 and Jan 22 2009	Jan 30, 2009	Feb 6, 2009
Jan 22 and Jan 29 2009	Feb 6, 2009	Feb 13, 2009
Jan 29 and Feb 5 2009	Feb 13, 2009	Feb 20, 2009
Feb 5 and Feb 12 2009	Feb 20, 2009	Feb 27, 2009
Feb 12 and Feb 19 2009	Feb 27, 2009	Mar 6, 2009
Feb 19 and Feb 26 2009	Mar 6, 2009	Mar 13, 2009
Feb 26 and Mar 5 2009	Mar 13, 2009	Mar 20, 2009
Mar 5 and Mar 12 2009	Mar 20, 2009	Mar 27, 2009
Mar 12 and Mar 19 2009	Mar 27, 2009	Apr 3, 2009
Mar 19 and Mar 26 2009	Apr 3, 2009	Apr 10, 2009
Mar 26 and Apr 2 2009	Apr 10, 2009	Apr 17, 2009
Apr 2 and Apr 9 2009	Apr 17, 2009	Apr 24, 2009
Apr 9 and Apr 16 2009	Apr 24, 2009	May 1, 2009
Apr 16 and Apr 23 2009	May 1, 2009	May 8, 2009
Apr 23 and Apr 30 2009	May 8, 2009	May 15, 2009
Apr 30 and May 7 2009	May 15, 2009	May 22, 2009
May 7 and May 14 2009	May 22, 2009	May 29, 2009
May 14 and May 21 2009	May 29, 2009	May 29, 2009
May 21 and May 28 2009	Jun 5, 2009	Jun 12, 2009
May 28 and Jun 4 2009	Jun 12, 2009	Jun 19, 2009
Jun 4 and Jun 11 2009	Jun 19, 2009	Jun 26, 2009
Jun 11 and Jun 18 2009	Jun 26, 2009	Jul 3, 2009
Jun 18 and Jun 25 2009	Jul 3, 2009	Jul 10, 2009
Jun 25 and Jul 2 2009	Jul 10, 2009	Jul 17, 2009
Jul 2 and Jul 9 2009	Jul 17, 2009	Jul 24, 2009
Jul 9 and Jul 16 2009	Jul 24, 2009	Jul 31, 2009
Jul 16 and Jul 23 2009	Jul 31, 2009	Aug 7, 2009
Jul 23 and Jul 30 2009	Aug 7, 2009	Aug 14, 2009
Jul 30 and Aug 6 2009	Aug 14, 2009	Aug 21, 2009
Aug 6 and Aug 13 2009	Aug 21, 2009	Aug 28, 2009
Aug 13 and Aug 20 2009	Aug 28, 2009	Sep 4, 2009
Aug 20 and Aug 27 2009	Sep 4, 2009	Sep 11, 2009
Aug 27 and Sep 3 2009	Sep 11, 2009	Sep 18, 2009
Sep 3 and Sep 10 2009	Sep 18, 2009	Sep 25, 2009
Sep 10 and Sep 17 2009	Sep 25, 2009	Oct 2, 2009
Sep 17 and Sep 24 2009	Oct 2, 2009	Oct 9, 2009
Sep 24 and Oct 1 2009	Oct 9, 2009	Oct 16, 2009
Oct 1 and Oct 8 2009	Oct 16, 2009	Oct 23, 2009
Oct 8 and Oct 15 2009	Oct 23, 2009	Oct 30, 2009
Oct 15 and Oct 22 2009	Oct 30, 2009	Nov 6, 2009

Refund Inquiries

Taxpayers who e-filed can get refund information 72 hours after the electronic return data is acknowledged as accepted by the IRS. To check the status of a refund go to *www.irs.gov* and click on Where's My Refund? Taxpayers without internet access can get refund information by calling 1-800-829-1954 or 1-800-829-4477.

*** The IRS does not guarantee a specific date that a refund will be deposited into a taxpayer's financial institution account or mailed.**

Tax Rates and Useful Tables (as of January 14, 2009)

Please note. Corrections for all of the chapters are available at **www.TaxSchool.uiuc.edu.** For clarification about acronyms used throughout this chapter, see the Acronym Glossary at the end of the Index.

INFLATION ADJUSTED ITEMS AND OTHER USEFUL INFORMATION

	2008	2009
Standard Deductions		
Joint or Qualifying Widow(er)	$ 10,900	$ 11,400
Single	5,450	5,700
Head of Household	8,000	8,350
Married Filing Separately	5,450	5,700
Additional for Elderly/Blind — MFJ, MFS, QW	1,050	1,100
Additional for Elderly/Blind — Single, HoH	1,350	1,400
Taxpayer Claimed as Dependent	900	950
Personal and Dependent Exemption Deduction	3,500	3,650
Long-Term Care Premiums		
Age 40 or less	310	320
Age more than 40 but not more than 50	580	600
Age more than 50 but not more than 60	1,150	1,190
Age more than 60 but not more than 70	3,080	3,180
Age more than 70	3,850	3,980
Child's Unearned Income Without Kiddie Tax	1,800	1,900
Beginning/Ending of Personal Exemption Phaseout Range — Based on AGI		
Joint or Qualifying Widow(er)	239,950 / 362,450	250,200 / 372,700
Single	159,950 / 282,450	166,800 / 289,300
Head of Household	199,950 / 322,450	208,500 / 331,000
Married Filing Separately	119,975 / 181,225	125,100 / 186,350
IRC §179 Deduction Limit	250,000	133,000
IRC §179 Asset Limitation	800,000	530,000

	2008	2009
Beginning/Ending of Itemized Deduction Phaseout Range — Based on AGI		
Joint, Single, Head of Household	$159,950	$166,800
Married Filing Separately	79,975	83,400
FICA/SE Tax Information		
OASDI Tax Maximum Earnings	102,000	106,800
FICA (OASDI and HI) Tax Rate (Employee)	7.65%	7.65%
SE Tax Rate	15.30%	15.30%
Self-Employed Health Insurance Deduction	100%	100%
Estimated Tax Payments (AGI ≤ $150,000)		
Prior Year Tax % or	100%	100%
Current Year Tax %	90%	90%
Earnings Ceiling for Social Security		
Under full retirement age	13,560	14,160
The year full retirement age is reached	36,120	37,680
The month full retirement age is reached, and above	Unlimited	Unlimited
Earnings Required to Earn One Quarter of Social Security Coverage	1,050	1,090
Gift Tax Applicable Exclusion Amount	1,000,000	1,000,000
Estate Tax Applicable Exclusion Amount	2,000,000	3,500,000
Maximum Gift	12,000	13,000
Capital Gain Rates (Maximum for Noncorporate Taxpayers)		
Adjusted Net Capital Gain (Assets held more than 12 months)	15%	15%
For those in 15% bracket	0%	0%
For those in >15% bracket	15%	15%
For Recapture Gain on Real Estate	25%	25%
For Most Collectibles	28%	28%
Adoption Credit		
Special Needs Child	11,650	12,150
Other Children	11,650	12,150
Phaseout Amount	174,730 / 214,730	182,180 / 222,180

	2008	2009
Hope and Lifetime Learning Credits		
Phaseout — Single, HoH, QW	48,000– 58,000	50,000– 60,000
Phaseout — MFJ	96,000–116,000	100,000–120,000
Earned Income Tax Credit		
One child		
Minimum earned income for maximum EITC	8,580	8,950
Maximum Amount of Credit	2,917	3,043
Phaseout Amount (single and head of household)	15,740 / 33,995	16,420 / 35,463
Phaseout Amount (married filing jointly)	18,740 / 36,995	19,540 / 38,583
Two or More Children		
Minimum earned income for maximum EITC	12,060	12,570
Maximum Amount of Credit	4,824	5,028
Phaseout Amount (single and head of household)	15,740 / 38,646	16,420 / 40,295
Phaseout Amount (married filing jointly)	18,740 / 41,646	19,540 / 43,415
No children		
Minimum earned income for maximum EITC	5,720	5,970
Maximum Amount of Credit	438	457
Phaseout Amount (single and head of household)	7,160 / 12,880	7,470 / 13,440
Phaseout Amount (married filing jointly)	10,160 / 15,880	10,590 / 16,560
Child Tax Credit	1,000	1,000

Daycare Provider
Standard Meal Allowance for 2008 Returns
July 1, 2007 through June 30, 2008

	48 States	Alaska	Hawaii
Breakfast	$1.11	$1.76	$1.29
Lunch/Dinner	2.06	3.34	2.41
Snack	.61	.99	.72

Daycare Provider
Standard Meal Allowance for 2009 Returns
July 1, 2008 through June 30, 2009

	48 States	Alaska	Hawaii
Breakfast	$1.17	$1.86	$1.36
Lunch/Dinner	2.18	3.53	2.55
Snack	.65	1.05	.76

Child Tax Credit AGI Phaseout — 2008

Filing Status	Beginning Phaseout
MFJ	$110,000
Single, HOH, QW	75,000
MFS	55,000

M&IE (Meals-and-Incidental-Expense-Only) Rates for Transportation Workers for Travel Away from Home on or after October 1, 2008

CONUS (continental United States) localities	$52
OCONUS (outside the continental United States) localities	58

High and Low Per Diem Reimbursements October 1, 2007 through September 30, 2008

High cost areas	$237 ($58 for M&IE)
Basic/low cost areas	$152 ($45 for M&IE)

High and Low Per Diem Reimbursements on or after October 1, 2008

High cost areas	$256 ($58 for M&IE)
Basic/low cost areas	$158 ($45 for M&IE)

DEPRECIATION LIMITS FOR LUXURY VEHICLES — 2007 AND 2008[1]

Tax Year	Passenger Vehicles	Passenger Vehicles	Trucks and Vans	Trucks and Vans	Electric Vehicles	Electric Vehicles
Placed in service in 2008						
1	$2,960	$ 2,960 [a]	$ 3,160	$ 3,160 [a]	b	b
2	4,800	4,800	5,100	5,100		
3	2,850	2,850	3,050	3,050		
4 or more	1,775	1,775	1,875	1,875		
Placed in service in 2007						
1	$3,060	$ 3,060	$ 3,260	$ 3,260	b	b
2	4,900	4,900	5,200	5,200		
3	2,850	2,850	3,050	3,050		
4 or more	1,775	1,775	1,875	1,875		
Placed in service in 2006						
1	$2,960	$ 2,960	$3,260	$ 3,260	$ 8,980	$ 8,980
2	4,800	4,800	5,200	5,200	14,400	14,400
3	2,850	2,850	3,150	3,150	8,650	8,650
4 or more	1,775	1,775	1,875	1,875	5,225	5,225
Placed in service in 2005						
1	$2,960	$ 2,960	$3,260	$ 3,260	$ 8,880	$ 8,880
2	4,700	4,700	5,200	5,200	14,200	14,200
3	2,850	2,850	3,150	3,150	8,450	8,450
4 or more	1,675	1,675	1,875	1,875	5,125	5,125
Placed in service in 2004						
1	$2,960	$10,610	$3,260	$10,910	$ 8,880	$31,830
2	4,800	4,800	5,300	5,300	14,300	14,300
3	2,850	2,850	3,150	3,150	8,550	8,550
4 or more	1,675	1,675	1,875	1,875	5,125	5,125
Placed in service after May 5, 2003 and before January 1, 2004						
1	$3,060	$10,710	$3,360	$11,010	$ 9,080	$32,030
2	4,900	4,900	5,400	5,400	14,600	14,600
3	2,950	2,950	3,250	3,250	8,750	8,750
4 or more	1,775	1,775	1,975	1,975	5,225	5,225

[a] 50% bonus depreciation is available for new passenger vehicles (maximum of $10,960) and new trucks and vans (maximum of $11,160) placed in service in 2008 only.

[b] New and used electric vehicles placed in service after December 31, 2006 do not have special depreciation limits; use the appropriate column to the left.

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[1] Rev. Proc. 2006-18 and Rev. Proc. 2007-11

NET OPERATING LOSS CARRYBACK

	For NOLs Before 2001 and After 2002	For NOLs in 2001 and 2002
Regular NOL	2 years [a]	5 years, but may elect 2 years
Eligible Loss NOL	3 years	5 years, but may elect 3 years
Farm Loss NOL	5 years, but may elect 2 years	5 years, but may elect 2 years

[a] Extended to 5 years for certain federally-declared disaster areas.

NOTE: NOLs for tax years beginning before August 6, 1997 are carried forward 15 years. Any subsequent NOL is carried forward 20 years.

SAVER'S CREDIT PHASEOUT — 2009

	AGI Phaseout		
Credit Rate	MFJ	HOH	Single, MFS, QW
50%	$ 0–33,000	$ 0–24,750	$ 0–16,500
20%	33,001–36,000	24,751–27,000	16,501–18,000
10%	36,001–55,500	27,001–41,625	18,001–27,750
0%	Over $55,500	Over $41,625	Over $27,750

QUALIFIED RETIREMENT PLAN LIMITATIONS

	2008	2009
Contributions/Deferrals		
Maximum deductible employee annual retirement contribution **(401(k), 403(b), 457, SARSEP, Thrift Savings Plans)**	$ 15,500	$ 16,500
Catch-up contributions (age 50 or over)	5,000	5,500
Maximum annual deferral under **SIMPLE**	10,500	11,500
Catch-up deferral (age 50 or over)	2,500	2,500
Maximum **traditional and Roth IRA** annual contributions (the annual limit is lesser of 100% of taxable compensation or listed amount)	5,000	5,000
Catch-up contributions (age 50 or over)	1,000	1,000
Catch-up for certain 401(k) participants whose employer filed for bankruptcy	3,000	3,000
Maximum employer contribution to **SEP IRA** (the annual limit is lesser of 25% of compensation or listed amount)	46,000	49,000
Income limitations		
Maximum annual benefit for a **defined benefit plan** (based on annual compensation, the annual limits may be less) [a]	185,000	195,000
Maximum annual contribution to **all defined contribution plans** (the annual limit is lesser of 100% of compensation or listed amount)	46,000	49,000
Earnings threshold for **highly-compensated employees**	105,000	110,000
Earnings threshold for **key employee in top-heavy plan**	150,000	160,000

[a] Treas. Reg. §1.415(b)-1 and IRC §415(b)

UNIFORM LIFETIME TABLE/SINGLE LIFE EXPECTANCY TABLE

This chart combines the *Uniform Lifetime Table* and the *Single Life Expectancy Table* found in IRS Pub. 590, *Individual Retirement Arrangements.*

Age	Single Life	Uniform Life	Age	Single Life	Uniform Life	Age	Single Life	Uniform Life	Age	Single Life	Uniform Life
10	72.8	86.2	34	49.4	62.3	58	27.0	38.7	82	9.1	17.1
11	71.8	85.2	35	48.5	61.4	59	26.1	37.8	83	8.6	16.3
12	70.8	84.2	36	47.5	60.4	60	25.2	36.8	84	8.1	15.5
13	69.9	83.2	37	46.5	59.4	61	24.4	35.8	85	7.6	14.8
14	68.9	82.2	38	45.6	58.4	62	23.5	34.9	86	7.1	14.1
15	67.9	81.2	39	44.6	57.4	63	22.7	33.9	87	6.7	13.4
16	66.9	80.2	40	43.6	56.4	64	21.8	33.0	88	6.3	12.7
17	66.0	79.2	41	42.7	55.4	65	21.0	32.0	89	5.9	12.0
18	65.0	78.2	42	41.7	54.4	66	20.2	31.1	90	5.5	11.4
19	64.0	77.3	43	40.7	53.4	67	19.4	30.2	91	5.2	10.8
20	63.0	76.3	44	39.8	52.4	68	18.6	29.2	92	4.9	10.2
21	62.1	75.3	45	38.8	51.5	69	17.8	28.3	93	4.6	9.6
22	61.1	74.3	46	37.9	50.5	70	17.0	27.4	94	4.3	9.1
23	60.1	73.3	47	37.0	49.5	71	16.3	26.5	95	4.1	8.6
24	59.1	72.3	48	36.0	48.5	72	15.5	25.6	96	3.8	8.1
25	58.2	71.3	49	35.1	47.5	73	14.8	24.7	97	3.6	7.6
26	57.2	70.3	50	34.2	46.5	74	14.1	23.8	98	3.4	7.1
27	56.2	69.3	51	33.3	45.5	75	13.4	22.9	99	3.1	6.7
28	55.3	68.3	52	32.3	44.6	76	12.7	22.0	100	2.9	6.3
29	54.3	67.3	53	31.4	43.6	77	12.1	21.2	101	2.7	5.9
30	53.3	66.3	54	30.5	42.6	78	11.4	20.3	102	2.5	5.5
31	52.4	65.3	55	29.6	41.6	79	10.8	19.5	103	2.3	5.2
32	51.4	64.3	56	28.7	40.7	80	10.2	18.7	104	2.1	4.9
33	50.4	63.3	57	27.9	39.7	81	9.7	17.9	105	1.9	4.5

Column 1: Age refers to either the owner while living or the beneficiary after owner's death.

Column 2: Single Life is used for a beneficiary.

Column 3: Uniform Life is used by owner before death.

OTHER RATES FOR VEHICLES

	2007	Jan. 1–Jun. 30 2008	Jul. 1–Dec. 31 2008	2009
Auto Standard Mileage Allowance				
Business	$0.485	$0.505	$0.585	$0.55
Charity Work	0.14	0.14	0.14	0.14
Medical/Moving	0.20	0.19	0.27	0.24
Qualified Transportation Fringe				
Vehicle/Transit Pass Limit	$ 110	$ 115	$ 115	$ 120
Qualified Parking Limit	215	220	220	230

TAX RATES FOR 2009

Tax Rate Schedule
Single Taxpayers
For Tax Years Beginning in 2009

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Over
$ 0	$ 8,350	10.0%	$ 0
8,350	33,950	835.00 + 15.0%	8,350
33,950	82,250	4,675.00 + 25.0%	33,950
82,250	171,550	16,750.00 + 28.0%	82,250
171,550	372,950	41,754.00 + 33.0%	171,550
372,950		108,216.00 + 35.0%	372,950

Tax Rate Schedule
Married Individuals Filing Joint Returns and Surviving Spouses
For Tax Years Beginning in 2009

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Ove
$ 0	$ 16,700	10.0%	$ 0
16,700	67,900	1,670.00 + 15.0%	16,700
67,900	137,050	9,350.00 + 25.0%	67,900
137,050	208,850	26,637.50 + 28.0%	137,050
208,850	372,950	46,741.50 + 33.0%	208,850
372,950		100,894.50 + 35.0%	372,950

Tax Rate Schedule
Married Individuals Filing Separate Returns
For Tax Years Beginning in 2009

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Over
$ 0	$ 8,350	10.0%	$ 0
8,350	33,950	835.00 + 15.0%	8,350
33,950	68,525	4,675.00 + 25.0%	33,950
68,525	104,425	13,318.75 + 28.0%	68,525
104,425	186,475	23,370.75 + 33.0%	104,425
186,475		50,447.25 + 35.0%	186,475

Tax Rate Schedule
Head of Household
For Tax Years Beginning in 2009

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Ove
$ 0	$ 11,950	10.0%	$ 0
11,950	45,500	1,195.00 + 15.0%	11,950
45,500	117,450	6,227.50 + 25.0%	45,500
117,450	190,200	24,215.00 + 28.0%	117,450
190,200	372,950	44,585.00 + 33.0%	190,200
372,950		104,892.50 + 35.0%	372,950

Tax Rate Schedule
Trusts and Estates
For Tax Years Beginning in 2009

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Over
$ 0	$2,300	15.0%	$ 0
2,300	5,350	345.00 + 25.0%	2,300
5,350	8,200	1,107.50 + 28.0%	5,350
8,200	11,150	1,905.50 + 33.0%	8,200
11,150		2,879.00 + 35.0%	11,150

Tax Rate Schedule
Corporate
For Tax Years Beginning in 2009

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Over
$ 0	$ 50,000	15.0%	$ 0
50,000	75,000	7,500.00 + 25.0%	50,000
75,000	100,000	13,750.00 + 34.0%	75,000
100,000	335,000	22,250.00 + 39.0%	100,000
335,000	10,000,000	113,900.00 + 34.0%	335,000
10,000,000	15,000,000	3,400,000.00 + 35.0%	10,000,000
15,000,000	18,333,333	5,150,000.00 + 38.0%	15,000,000
18,333,333		6,416,667.00 + 35.0%	18,333,333

FEDERAL LAND BANK INTEREST RATES FOR VALUING FARMLAND UNDER SPECIAL USE VALUATION RULES OF IRC §2032A

Farm Credit Bank District in Which Property is Located	2008 Interest Rates
AgFirst, FCB	7.56%
AgriBank, FCB	6.38%
CoBank, ACB	6.11%
Texas, FCB	6.47%
U.S. AgBank, FCB	6.09%

Farm Credit System Bank	Location of Property
AgFirst, FCB	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia
AgriBank, FCB	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming
CoBank, ACB	Alaska, Connecticut, Idaho, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington
Texas, FCB	Alabama, Louisiana, Mississippi, Texas
U.S. AgBank, FCB	Arizona, California, Colorado, Hawaii, Kansas, New Mexico, Nevada, Oklahoma, Utah

INTEREST RATES FOR NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS OF TAX 1999–2009

Calendar Quarter Beginning	Rate on Underpayments	Rate on Overpayments
1/1/2009	5%	5%
10/1/2008	6%	6%
7/1/2008	5%	5%
4/1/2008	6%	6%
1/1/2008	7%	7%
10/1/2007	8%	8%
7/1/2007	8%	8%
4/1/2007	8%	8%
1/1/2007	8%	8%
10/1/2006	8%	8%
7/1/2006	8%	8%
4/1/2006	7%	7%
1/1/2006	7%	7%
10/1/2005	7%	7%
7/1/2005	6%	6%
4/1/2005	6%	6%
1/1/2005	5%	5%
10/1/2004	5%	5%
7/1/2004	4%	4%
4/4/2004	5%	5%
1/1/2004	4%	4%
10/1/2003	4%	4%
7/1/2003	5%	5%
4/1/2003	5%	5%
1/1/2003	5%	5%
10/1/2002	6%	6%
7/1/2002	6%	6%
4/1/2002	6%	6%
1/1/2002	6%	6%
10/1/2001	7%	7%
7/1/2001	7%	7%
4/1/2001	8%	8%
1/1/2001	9%	9%
10/1/2000	9%	9%
7/1/2000	9%	9%
4/1/2000	9%	9%
1/1/2000	8%	8%
10/1/1999	8%	8%
7/1/1999	8%	8%
4/1/1999	8%	8%
1/1/1999	7%	7%

FEDERAL APPLICABLE RATES FOR JANUARY 2007 THROUGH JANUARY 2009

For the newest AFR tables, go to **www.irs.gov/taxpros/lists/0,,id=98042,00.html** .

January 2007

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	4.88%	4.82%	4.79%	4.77%
Mid-term AFR	4.58%	4.53%	4.50%	4.49%
Long-term AFR	4.73%	4.68%	4.65%	4.64%

February 2007

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	4.93%	4.87%	4.84%	4.82%
Mid-term AFR	4.69%	4.64%	4.61%	4.60%
Long-term AFR	4.86%	4.80%	4.77%	4.75%

March 2007

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	5.06%	5.00%	4.97%	4.95%
Mid-term AFR	4.86%	4.80%	4.77%	4.75%
Long-term AFR	5.01%	4.95%	4.92%	4.90%

April 2007

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	4.90%	4.84%	4.81%	4.79%
Mid-term AFR	4.61%	4.56%	4.53%	4.52%
Long-term AFR	4.81%	4.75%	4.72%	4.70%

May 2007

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	4.85%	4.79%	4.76%	4.74%
Mid-term AFR	4.62%	4.57%	4.54%	4.53%
Long-term AFR	4.90%	4.84%	4.81%	4.79%

June 2007

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	4.84%	4.78%	4.75%	4.73%
Mid-term AFR	4.64%	4.59%	4.56%	4.55%
Long-term AFR	4.91%	4.85%	4.82%	4.80%

July 2007

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	4.97%	4.91%	4.88%	4.86%
Mid-term AFR	4.95%	4.89%	4.86%	4.84%
Long-term AFR	5.15%	5.09%	5.06%	5.04%

August 2007

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	5.00%	4.94%	4.91%	4.89%
Mid-term AFR	5.09%	5.03%	5.00%	4.98%
Long-term AFR	5.31%	5.24%	5.21%	5.18%

September 2007

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	4.82%	4.76%	4.73%	4.71%
Mid-term AFR	4.79%	4.73%	4.70%	4.68%
Long-term AFR	5.09%	5.03%	5.00%	4.98%

October 2007

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	4.19%	4.15%	4.13%	4.11%
Mid-term AFR	4.35%	4.30%	4.28%	4.26%
Long-term AFR	4.88%	4.82%	4.79%	4.77%

November 2007

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	4.11%	4.07%	4.05%	4.04%
Mid-term AFR	4.39%	4.34%	4.32%	4.30%
Long-term AFR	4.89%	4.83%	4.80%	4.78%

December 2007

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	3.88%	3.84%	3.82%	3.81%
Mid-term AFR	4.13%	4.09%	4.07%	4.06%
Long-term AFR	4.72%	4.67%	4.64%	4.63%

January 2008

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	3.18%	3.16%	3.15%	3.14%
Mid-term AFR	3.58%	3.55%	3.53%	3.52%
Long-term AFR	4.46%	4.41%	4.39%	4.37%

February 2008

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	3.11%	3.09%	3.08%	3.07%
Mid-term AFR	3.51%	3.48%	3.46%	3.46%
Long-term AFR	4.46%	4.41%	4.39%	4.37%

March 2008

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	2.25%	2.24%	2.23%	2.23%
Mid-term AFR	2.97%	2.95%	2.94%	2.93%
Long-term AFR	4.27%	4.23%	4.21%	4.19%

April 2008

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	1.85%	1.84%	1.84%	1.83%
Mid-term AFR	2.87%	2.85%	2.84%	2.83%
Long-term AFR	4.40%	4.35%	4.33%	4.31%

May 2008

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	1.64%	1.63%	1.63%	1.62%
Mid-term AFR	2.74%	2.72%	2.71%	2.70%
Long-term AFR	4.21%	4.17%	4.15%	4.13%

June 2008

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	2.08%	2.07%	2.06%	2.06%
Mid-term AFR	3.20%	3.17%	3.16%	3.15%
Long-term AFR	4.46%	4.41%	4.39%	4.37%

July 2008

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	2.42%	2.41%	2.40%	2.40%
Mid-term AFR	3.45%	3.42%	3.41%	3.40%
Long-term AFR	4.60%	4.55%	4.52%	4.51%

August 2008

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	2.54%	2.52%	2.51%	2.51%
Mid-term AFR	3.55%	3.52%	3.50%	3.49%
Long-term AFR	4.58%	4.53%	4.50%	4.49%

September 2008

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	2.38%	2.37%	2.36%	2.36%
Mid-term AFR	3.46%	3.43%	3.42%	3.41%
Long-term AFR	4.58%	4.53%	4.50%	4.49%

October 2008

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	2.19%	2.18%	2.17%	2.17%
Mid-term AFR	3.16%	3.14%	3.13%	3.12%
Long-term AFR	4.32%	4.27%	4.25%	4.23%

November 2008

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	1.63%	1.62%	1.62%	1.61%
Mid-term AFR	2.97%	2.95%	2.94%	2.93%
Long-term AFR	4.24%	4.20%	4.18%	4.16%

December 2008

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	1.36%	1.36%	1.36%	1.36%
Mid-term AFR	2.85%	2.83%	2.82%	2.81%
Long-term AFR	4.45%	4.40%	4.38%	4.36%

January 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.81%	0.81%	0.81%	0.81%
Mid-term AFR	2.06%	2.05%	2.04%	2.04%
Long-term AFR	3.57%	3.54%	3.52%	3.51%