WHAT'S NEW SUPPLEMENT

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CORRECTIONS TO 2010 FEDERAL TAX WORKBOOK

Page — **Correction or addition**

22 — In item #5 near the bottom of the page, insert the word "ten" before the words "taxable years that immediately precede the taxable year."

26 — In **Example 16,** replace the existing table with the following:

Current-year RBIG	$50,000			
Current-year RBIL	(0)			
NRBIG "pre-limitation amount" (#1)	$50,000	$50,000		
Taxable income (#2)		80,000		
NUBIG at beginning of year (#3)		54,000		$54,000
Smallest of #1, #2, or #3			$50,000	
Multiply by BIG tax rate			× 35%	
BIG tax			$17,500	
BIG on building at time of conversion				(50,000)
BIG not recognized because of income limitation from 2009			$ 4,000	
BIG tax rate			× 35%	
BIG tax			$1,400	
BIG on receivables				(4,000)
NUBIG carryover				$ 0

90 — In the first paragraph of **Example 19,** change the amount in the last sentence from "$80,000" to "$110,000."

109 — Add the following **Note** at the bottom of the page: "SE tax was not included in the computation of Mark's total tax. Including his SE tax liability would increase his estimated payment allocation from $97 to $323. Karen's estimated payment allocation would be reduced from $2,903 to $2,677."

378 — In the first bullet point after the heading "Hiring Incentives to Restore Employment Act," delete the words "and Medicare."

473 — Insert the following before the heading "Annual Fee for Branded Prescription Drug Manufacturers and Importers": "IRS Notice 2010-69, which was issued on October 12, 2010, made the reporting requirement **optional** for Forms W-2 issued for 2011."

470 — In the **New Law** paragraph in the "Extension of Dependent Coverage" section, strike the sentence that reads: "This provision does not apply to adult children who are married."

SMALL BUSINESS JOBS ACT OF 2010

On September 27, 2010, the president signed the Small Business Jobs Act of 2010 (SBJA) into law. The main tax provisions of this act are summarized below.

EXPANSION OF IRC §179 EXPENSING ELECTION

Old Law. The maximum amount that a taxpayer may expense under IRC §179 is $250,000 for taxable years beginning in 2010. The maximum amount is reduced on a dollar-for-dollar basis when the amount of qualifying property placed in service during the year exceeds $800,000. Qualifying property is generally defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. For taxable years beginning before 2011, off-the-shelf computer software is treated as qualifying property.

The amount expensed under §179 for a taxable year may not exceed the taxable income derived from an active trade or business. Any amount not allowed as a deduction because of the taxable income limitation may be carried forward.

New Law. For taxable years beginning in 2010 and 2011, the SBJA increases the maximum amount a taxpayer may expense under §179 to $500,000. The phase-out threshold is increased to $2 million.

The definition of qualifying §179 property is temporarily expanded to include the following types of real property.

- Qualified leasehold improvement property (as defined in IRC §168(e)(6))
- Qualified restaurant property (as defined in IRC §168(e)(7))
- Qualified retail improvement property (as defined in IRC §168(e)(8))

The maximum amount of real property that may be expensed for purposes of §179 is $250,000. IRC §179 deductions attributable to qualified real property that are disallowed because of the trade or business taxable income limitation can only be carried forward to taxable years in which the definition of eligible §179 property includes qualified real property. Thus, if a taxpayer's §179 deduction for 2010 for qualified real property is limited by the taxpayer's trade or business income, the disallowed amount may be carried over to 2011. Any §179 amounts that are not used in 2011, plus any 2011 disallowed §179 deductions attributable to qualified real property, are treated as property placed in service in 2011 for purposes of computing depreciation. The §179 carryover amount from 2010 is considered property placed in service on the first day of the 2011 taxable year.

> **Example 1.** During 2010, Archon Company's only asset purchases eligible for §179 expensing are equipment costing $100,000 and qualified leasehold improvements costing $350,000. Archon is not subject to the taxable income limitation. The maximum §179 deduction the company can claim for 2010 is $350,000 ($100,000 for the equipment + $250,000 for the qualifying leasehold improvements).[1]

> **Example 2.** During 2010, Maxie Corporation's only asset purchases eligible for §179 expensing are equipment costing $300,000 and qualified leasehold improvements costing $300,000. Maxie is not subject to the taxable income limitation. Maxie can choose to expense $250,000 of qualified leasehold improvements and $250,000 of equipment. Alternatively, Maxie can choose to expense $300,000 of equipment and $200,000 of qualified leasehold improvements, or some other combination as long as the total §179 expense does not exceed $500,000, and the portion attributable to qualified leasehold improvements does not exceed $250,000.

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1. Example adapted from Joint Committee on Taxation, *Technical Explanation of the Tax Provisions in Senate Amendment 4594 to H.R. 5297, the "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010,* (JCX-47-10), Sep. 16, 2010.

Example 3. During 2010, Bargin Company's only asset purchases are §179-eligible equipment costing $100,000 and qualified leasehold improvements costing $200,000. Bargin has a taxable income limitation of $150,000. The maximum §179 deduction the company can claim for 2010 is $150,000, which is allocated pro rata between the properties, such that the carryover to 2011 is allocated $50,000 to the equipment ($150,000 taxable income limitation ÷ $300,000 total §179-eligible purchases × $100,000 equipment purchases) and $100,000 ($150,000 – $50,000) to the qualified leasehold improvements.

In 2011, Bargin had no asset purchases and had taxable income of $0. The $100,000 carryover from 2010 attributable to qualified leasehold improvements is treated as placed in property service as of the first day of the company's 2011 taxable year. The $50,000 carryover allocated to equipment is carried over to 2012.[2]

A taxpayer may elect to exclude real property from the definition of §179 property. Taxpayers that are close to reaching the $2 million phase-out threshold may find this election useful.

Effective Date. This provision is effective for taxable years beginning in 2010 and 2011 only.

BONUS DEPRECIATION EXTENDED

Old Law. Bonus first-year depreciation equal to 50% of the adjusted basis of qualified property is allowed for property placed in service during 2008 and 2009 (2009 and 2010 for certain long-lived and transportation property). The additional first-year depreciation is allowed for both regular tax and alternative minimum tax (AMT) purposes.

Qualifying property for purposes of bonus first-year depreciation must meet all of the following requirements.[3]

1. The property must be:
   a. MACRS property with an applicable recovery period of 20 years or less,
   b. Water utility property (as defined in IRC §168(e)(5)),
   c. Computer software (other than software covered by IRC §197), or
   d. Qualified leasehold improvement property (as defined in §168(k)(3)).
2. The original use of the property must commence with the taxpayer.
3. The taxpayer must purchase the property within the applicable time period.
4. The property must be placed in service after December 31, 2007, and before January 1, 2010 (An extension of one year is provided for certain property with a recovery period of 10 years or longer and certain transportation property.)

> **Note.** For more information on bonus depreciation, see Chapter 7, Depreciation, in the 2008 *University of Illinois Federal Tax Workbook.*

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2. Ibid.

3. Joint Committee on Taxation, *Technical Explanation of the Tax Provisions in Senate Amendment 4594 to H.R. 5297, the "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010,* (JCX-47-10), Sep. 16, 2010.

New Law. A provision in the SBJA extends the additional first-year depreciation for one year. Thus, qualified property acquired and placed in service during 2010 (or placed in service during 2011 for certain long-lived property and transportation property) is eligible for bonus depreciation.

For contractors using the percentage-of-completion method, the cost of qualified property is taken into account as a cost allocated to a contract as if bonus depreciation had not been enacted. Qualified property for this purpose is property otherwise eligible for bonus depreciation that also meets the following conditions.

- Has a MACRS recovery period of seven years or less, and
- Is placed in service after December 31, 2009, and before January 1, 2011 (or before January 1, 2012, for property with a longer production period).[4]

Example 4. Cerapi Corp. is a calendar-year taxpayer required to use the percentage-of-completion method to account for a long-term contract during 2010. During 2010, Cerapi purchases and places into service equipment with a cost basis of $500,000 and MACRS recovery period of five years. Cerapi uses the equipment exclusively in performing its obligation under the contract. In computing the percentage of completion, the depreciation on the equipment (assuming a half-year convention) taken into account as a cost allocated to the contract for 2010 is $100,000 (($500,000 ÷ 5) × 200% × 0.5). The amount of the depreciation deduction that may be claimed by Cerapi in 2010 with respect to the equipment is $300,000 ($250,000 bonus depreciation ($500,000 × 50%) + (($500,000 – 250,000 bonus depreciation ÷ 5 years) × 200% × 0.5).[5]

Effective Date. This provision applies to property placed in service in taxable years beginning after December 31, 2009.

START-UP EXPENDITURE DEDUCTION INCREASED

Old Law. Taxpayers can elect to deduct a maximum of $5,000 of start-up expenditures in the taxable year in which the trade or business activity begins. The $5,000 amount is reduced by the amount by which the total cost of start-up expenditures exceeds $50,000.[6]

New Law. For one year only, the SBJA increases the amount of start-up expenditures that a taxpayer can elect to deduct to a maximum of $10,000. This amount is phased out by the amount by which the total cost of start-up expenditures exceeds $60,000.

Effective Date. This provision is effective for taxable years beginning **only** in 2010.

QUALIFIED SMALL BUSINESS STOCK GAIN EXCLUSION

Old Law. Noncorporate taxpayers generally are allowed to exclude 50% of the gain from the sale of qualified small business stock held at least five years.[7] Sixty percent of the gain on the sale of qualified small business stock from certain empowerment-zone businesses may be excluded. A percentage of the excluded gain is an AMT preference item.[8] The taxpayer has to acquire the stock at original issue to be eligible for the exclusion. The limit on the gain from any single stock that a taxpayer may exclude is the greater of:

- Ten times the taxpayer's basis in the stock, or
- $10 million.

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4. See IRC §168(k)(2)(B).
5. Example adapted from Joint Committee on Taxation, *Technical Explanation of the Tax Provisions in Senate Amendment 4594 to H.R. 5297, the "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010,* (JCX-47-10), Sep. 16, 2010.
6. IRC §195(b)(1)(A).
7. IRC §1202.
8. IRC §57(a)(7).

The corporation's gross assets cannot exceed $50 million when the stock is issued. In addition, at least 80% of the value of its assets must be used in the active conduct of a qualified trade or business. A **qualified trade or business** means any trade or business **other than** the following.

- Any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset is the reputation or skill of one or more of its employees
- Any banking, insurance, financing, leasing, investing, or similar business
- Any farming business
- Any business involving the production or extraction of products to which a deduction is allowable under IRC §§613 or 613A (mines, wells, and other natural deposits)
- Any business that operates a hotel, motel, restaurant, or similar business[9]

The gain exclusion for qualified small business stock was increased to 75% for stock acquired between February 17, 2009, and January 1, 2011. The increase in the gain exclusion does not apply to the sale of empowerment-zone stock.

New Law. Under a provision in the SBJA, the gain exclusion is increased to 100% for qualified small business stock acquired during 2010. Thus, no regular or AMT tax is imposed upon the sale of qualified stock held at least five years.

Effective Date. This provision is effective for stock issued after September 27, 2010, and before January 1, 2011.

CARRYBACK OF GENERAL BUSINESS CREDIT

Old Law. A taxpayer's general business credit is limited to the amount that the taxpayer's net income tax exceeds the greater of:

- The tentative minimum tax for the taxable year, or
- 25% of the amount that the taxpayer's regular tax liability exceeds $25,000.[10]

A taxpayer's general business credit that exceeds the above limitation may be carried back one year and forward 20 years.[11]

New Law. For taxable years beginning in 2010, the SBJA extends the carryback period from one year to five years for the general business credits of eligible small businesses. The extended carryback period applies for both regular tax and AMT purposes. Eligible small businesses are defined as follows:

- Corporations with stock that is not publicly traded, partnerships, and sole proprietorships, **and**
- Average gross receipts for the preceding three taxable years that do not exceed $50 million.[12]

Effective Date. This provision is effective for credits determined in the taxpayer's first taxable year beginning after December 31, 2009.

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9. IRC §1202(e)(3).
10. IRC §38(c).
11. IRC §39(a)(1).
12. IRC §38(c)(5).

S CORPORATION BUILT-IN GAINS TAX

Old Law. A built-in gains (BIG) tax is imposed on assets sold by an S corporation that it held when it was converted from a C corporation, unless the assets are held for a statutorily-determined period of time. The statutory period is generally 10 years after conversion but was reduced to seven years for gains recognized in taxable years beginning in 2009 and 2010.

New Law. For taxable years beginning in 2011, the SBJA reduces the statutory period for recognition of built-in gains to five years after conversion from a C corporation to an S corporation. Thus, a BIG tax will not be imposed on converted property sold in a taxable year beginning in 2011 if the fifth year in the recognition period preceded the 2011 tax year.

> **Example 5.** Largo Corporation converted from a C corporation to an S corporation on January 1, 2006. If Largo sells a conveyor that was part of the C corporation property in its taxable year which begins January 1, 2011, no BIG tax is due because the 5-year recognition period was satisfied.

Effective Date. This provision is effective **only** for taxable years beginning in 2011.

> **Note.** For more information about the BIG tax, see Chapter 1, S Corporations, in the 2010 *University of Illinois Federal Tax Workbook.*

IRC §6707A PENALTY RELIEF

Old Law. IRC §6707A imposes a penalty for failure to comply with the reporting requirements of IRC §6011. IRC §6011 requires a taxpayer to disclose certain information regarding each "reportable transaction" in which the taxpayer participates.[13] A reportable transaction is one deemed to have a potential for tax avoidance or evasion.[14] There are five categories of reportable transactions:

1. Listed transactions
2. Confidential transactions
3. Transactions with contractual protection
4. Certain loss transactions
5. Transactions of interest[15]

The amount of the penalty varies depending on the type of the transaction and whether the taxpayer is an individual. For listed transactions, the maximum penalty is $100,000 for natural persons and $200,000 for all other taxpayers. For reportable transactions other than listed transactions, the maximum penalty is $10,000 for natural persons and $50,000 for all other taxpayers.[16]

New Law. The SBJA retains the current penalty amounts as the maximum penalty that can be imposed. However, it provides a general rule that a participant who fails to disclose relevant information regarding each reportable transaction in which the taxpayer participates is subject to a penalty of 75% of the reduction in tax reported on the participant's tax return as a result of participation in the transaction.

A minimum penalty is also established for failure to disclose a reportable transaction. The minimum penalty is $5,000 for natural persons and $10,000 for all other taxpayers.

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13. Treas. Reg. §1.6011-4.

14. IRC §6707A(c)(1).

15. Treas. Reg. §1.6011-4(b)(2)-(6).

16. Joint Committee on Taxation, *Technical Explanation of the Tax Provisions in Senate Amendment 4594 to H.R. 5297, the "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010,* (JCX-47-10), Sep. 16, 2010.

Example 6. Megalo Corporation participates in a single listed transaction over the course of three taxable years. The decrease in tax shown on the corporate returns as a result of participation in the transaction is $1 million in the first year, $100,000 in the second year, and $10,000 in the third year. If Megalo Corporation fails to disclose the listed transaction in all three years, the corporation is subject to three separate penalties: a penalty of $200,000 in the first year (as a result of the cap on penalties), a $75,000 penalty in the second year (computed under the general rule) and a $10,000 penalty in the third year (as a result of the minimum penalty) for total penalties of $285,000.[17]

Effective Date. This provision applies retroactively to all penalties assessed under §6707A after December 31, 2006.

DEDUCTION FOR SELF-EMPLOYED HEALTH INSURANCE

Old Law. In calculating AGI for income tax purposes, self-employed individuals may deduct the cost of health insurance for themselves, their spouses, dependents, and any children who have not attained age 27 as of the end of the taxable year.[18] However, for purposes of determining SECA taxes on net earnings from self employment, no deduction is allowed for the cost of health insurance for self-employed individuals and their family members.

New Law. In computing net earnings from self-employment for purposes of SECA taxes, a provision in the SBJA allows a deduction for the cost of health insurance of self-employed individuals, their spouses, dependents, and children who have not attained age 27 as of the end of the taxable year. This deduction only applies to the taxpayer's first taxable year beginning after December 31, 2009.

Effective Date. This provision is effective only for the taxpayer's first taxable year beginning after December 31, 2009.

CELL PHONES NO LONGER LISTED PROPERTY

Old Law. Cellular telephones are included in the definition of listed property. This means that no deduction is allowed unless the taxpayer adequately substantiates the expense and business usage of the property. If the listed property is used by an employee for personal use, the employer must substantiate that it included an appropriate amount in the employee's income.[19] Special depreciation rules apply to certain listed property, including cell phones.

New Law. The SBJA removes cell phones from the definition of listed property. Thus, the substantiation requirements and special depreciation rules for listed property do not apply to cell phones.

Effective Date. This provision is effective for all taxable years beginning after December 31, 2009.

REVENUE PROVISIONS

1099 Requirement for Rental Income Recipients

Old Law. Payors engaged in a trade or business are generally required to furnish information returns to every payee to which they make payments in the course of the payor's trade or business aggregating $600 or more in any taxable year. Payments that are subject to other specific reporting requirements are excepted from this general rule.

The information-reporting requirement is not applicable to persons engaged in a passive investment activity. Thus, a taxpayer with a rental real estate activity that is not considered a trade or business is not subject to the requirement.

> **Note.** Under a provision in the Patient Protection and Affordable Care Act (PPACA), payments made after December 31, 2011, to corporations and gross proceeds in consideration for property will be subject to the information-reporting requirements. For more information, see pages 459–460 in the 2010 *University of Illinois Federal Tax Workbook.*

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17. Example adapted from Joint Committee on Taxation, *Technical Explanation of the Tax Provisions in Senate Amendment 4594 to H.R. 5297, the "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010,* (JCX-47-10), Sep. 16, 2010.

18. IRC §162(l)(1).

19. Temp. Treas. Reg. §1.274-5T(e)(2)((i)(A).

New Law. A provision in the SBJA subjects recipients of rental income from real estate to the same information-reporting requirements as taxpayers engaged in a trade or business. For payments made after 2010, rental income recipients making payments of $600 or more to a service provider in the course of earning rental income are required to provide an information return to the service provider and to the IRS. This information return is typically a Form 1099-MISC.

Exceptions to this reporting requirement are made for the following:

- Military personnel, members of the Foreign Service, and employees of the intelligence community who rent their principal residence on a temporary basis
- Individuals who receive minimal amounts of rental income (as determined by the IRS)
- Individuals for whom the requirements would cause hardship (as determined by the IRS)

Effective Date. This provision applies to **all** payments made after December 31, 2010.

Increased Penalties for Failure to File Information Returns

Old Law. Persons who are required to file information returns and fail to do so by the prescribed filing date are subject to a penalty. This penalty varies based on when the correct information return is filed.

1. **First-tier penalty.** If a person files a correct information return with the IRS after the prescribed filing date but within 30 days after the prescribed filing date, the amount of the penalty is $15 per return, with a maximum penalty of $75,000 per calendar year.[20] The maximum penalty for small businesses is $25,000 per calendar year.[21]
2. **Second-tier penalty.** If a person files a correct information return with the IRS more than 30 days after the prescribed filing date but on or before August 1 of the calendar year in which the required filing date occurs, the amount of the penalty is $30 per return, with a maximum penalty of $150,000 per calendar year.[22] The maximum penalty for small businesses is $50,000 per calendar year.
3. **Third-tier penalty.** If a correct information return is not filed with the IRS on or before August 1 of the calendar year in which the required filing date occurs, the amount of the penalty is $50 per return, with a maximum penalty of $250,000 per calendar year.[23] The maximum penalty for small businesses is $100,000 per calendar year.
4. **Penalty for intentional disregard.** If the failure to file correct information returns with the IRS is due to intentional disregard of the filing requirement, the penalty imposed for each failure is $100, with no calendar year limit.[24]
5. **Penalty for failure to furnish payee statements.** The penalty for failing to furnish correct payee statements to taxpayers is $50 for each failure, up to a maximum of $100,000. If the failure is due to intentional disregard of the filing requirement, the amount of the penalty is the greater of:
   - $100, or
   - A fixed percentage of the aggregate items to be shown on the payee statements.[25]

   The cap on the penalty is not applicable.

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20. IRC §6721(b)(1).
21. A small business is defined in IRC §6721(d) as a firm having average annual gross receipts for the three most recent taxable years that do not exceed $5 million.
22. IRC §6721(b)(2).
23. IRC §6721(a)(1).
24. IRC §6721(e).
25. IRC §6722(c).

New Law. The SBJA amends IRC §6721 as follows.

1. **First-tier penalty.** The penalty is increased from $15 to $30 per failure, and the calendar-year maximum is increased from $75,000 to $250,000. For small businesses, the maximum is increased to $75,000.
2. **Second-tier penalty.** The penalty is increased from $30 to $60 per failure, and the calendar-year maximum is increased from $150,000 to $500,000. For small businesses, the maximum is increased to $200,000.
3. **Third-tier penalty.** The penalty is increased from $50 to $100 per failure, and the calendar-year maximum is increased from $250,000 to $1.5 million. For small businesses, the maximum is increased to $500,000.
4. **Penalty for intentional disregard.** The penalty for intentional disregard of the filing requirement is increased to $250 per failure.

Example 7. Zondra Corporation, whose average annual gross receipts for the most recent three taxable years is $100 million, filed 5,000 Forms 1099 which were due on February 28, 2011, with the IRS on July 30, 2011. The second-tier penalty on these information returns is $300,000 ($60 × 5,000). Zondra filed 20,000 Forms 1099, which were also due on February 28, 2011, with the IRS on August 31, 2011. The third-tier penalty on these returns is $1.5 million ($100 × 20,000 = $2 million, capped at $1.5 million).

The penalty for failure to furnish payee statements under IRC §6722 is revised to provide tiers and caps, similar to those for failure to file information returns with the IRS. The new penalty structure is as follows.

1. **First-tier penalty.** The penalty is $30 per failure, with a maximum of $250,000 per calendar year. For small businesses, the maximum is increased to $75,000.
2. **Second-tier penalty.** The penalty is $60 per failure, with a maximum of $500,000 per calendar year. For small businesses, the maximum is increased to $200,000.
3. **Third-tier penalty.** The penalty is $100 per failure, with a maximum of $1.5 million per calendar year. For small businesses, the maximum is increased to $500,000.
4. **Penalty for intentional disregard.** The penalty for intentional disregard of the filing requirement is the greater of:
   - $250, or
   - A fixed percentage of the aggregate amount of the items required to be reported correctly.[26]

Note. If businesses both fail to file information returns with the IRS and fail to furnish payee statements, they are subject to penalties under both §6721 and §6722.

Beginning after 2012, the above penalties will be adjusted for inflation every five years.

Effective Date. This provision applies to information returns required to be filed after December 31, 2010.

26. In the case of payee statements required under IRC §§6045(b), 6050K(b), or 6050L(c), the applicable percentage is 5% of the aggregate amount of items required to be reported correctly. For all other payee statements, the applicable percentage is 10% of the aggregate amount of items required to be reported correctly.

Elective Roth Contributions Allowed in §457 Plans

Old Law. Qualified Roth contributions into "applicable retirement plans" are treated as elective deferrals but are not excludable from gross income. The term **applicable retirement plan** for purposes of the Roth contribution program rules means:

- An employee trust described in IRC §401(a) which is tax exempt under IRC §501(a), and
- A plan in which the employer contributes amounts for an individual under an IRC §403(b) annuity contract.

New Law. A provision in the SBJA amends the definition of applicable retirement plan to include governmental §457(b) plans.

Effective Date. This provision is effective for taxable years beginning after December 31, 2010.

Rollovers to Roth-Designated Accounts

Old Law. Rollover distributions from eligible employer plans that are not from designated Roth accounts may be rolled over to eligible retirement plans that are not Roth IRAs or designated Roth accounts. An **eligible employer plan** is a qualified retirement plan, a §403(b) plan, and a governmental §457(b) plan. These distributions generally are not currently includible in the distributee's gross income.

Distributions from eligible employer plans may also be rolled over into a Roth IRA but are subject to rules that apply to conversions from a traditional IRA into a Roth IRA. Thus, such distributions are includible in gross income (except the portion that represents a return of after-tax contributions), and the 10% early-distribution tax does not apply.

> **Note.** Special rules apply to conversions from traditional IRAs to Roth IRAs made in 2010. See pages 151–159 in the 2010 *University of Illinois Federal Tax Workbook* for a detailed discussion of this topic.

New Law. A provision in the SBJA permits §401(k) plans, §403(b) plans, and governmental §457(b) plans with qualified designated Roth contribution programs to roll over accounts that are not designated Roth accounts into designated Roth accounts under the plan for the individual. However, plans that do not have designated Roth programs may not establish Roth accounts solely to accept these rollover contributions.

Under this provision, a permitted rollover contribution to a designated Roth account must be included in gross income by the individual (subject to basis recovery) in the same manner as if the distribution were rolled over into a Roth IRA.

> **Note.** Plans that include designated Roth programs are permitted but not required to allow employees (and surviving spouses) to make rollover contributions to designated Roth accounts. Plans that allow these rollover contributions to designated Roth accounts must be amended to reflect this plan feature. The IRS intends to provide employers with a remedial amendment period that allows employers to offer this option to employees for 2010 distributions and then have sufficient time to amend the plan.[27]

Effective Date. This provision is effective for distributions made after September 27, 2010.

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27. Joint Committee on Taxation, *Technical Explanation of the Tax Provisions in Senate Amendment 4594 to H.R. 5297, the "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010,* (JCX-47-10), Sep. 16, 2010.

Partial Annuitization Permitted

Old Law. Rev. Proc. 2010-3[28] identified partial annuitization of endowment and life insurance contracts as an area "under study."

New Law. A provision in the SBJA permits a portion of an annuity, endowment, or life insurance contract to be annuitized while the balance is not annuitized if the annuitization period is 10 years or more, or is for the life of at least one individual. This will allow holders of nonqualified annuities (annuity contracts held outside of a tax-qualified retirement plan or IRA) to elect to receive a portion of an annuity contract in the form of a stream of payments, leaving the remainder of the contract to accumulate income on a tax-deferred basis.[29]

Effective Date. This provision is effective for amounts received in taxable years beginning after December 31, 2010.

Cellulosic Biofuel Producer Credit

Old Law. The cellulosic biofuel producer credit is a nonrefundable income tax credit for each gallon of qualified cellulosic biofuel production for the taxable year. The credit is generally $1.01 per gallon.

New Law. The SBJA modifies the cellulosic biofuel producer credit to exclude processed fuels that are highly corrosive, such as crude tall oils (a waste byproduct of the paper manufacturing process).[30]

Effective Date. This provision is effective for fuels sold or used after December 31, 2009.

> **Note.** The PPACA modified the cellulosic biofuel producer credit to exclude fuels with significant water, sediment, or ash content (black liquor). See page 457 in the 2010 *University of Illinois Federal Tax Workbook* for more information.

Income from Guarantees

Old Law. In *Container Corp. v. Comm'r,*[31] the Tax Court recently rejected IRS arguments that fees paid by domestic corporations to foreign parents with respect to guarantees by the parent for the debts of the domestic corporation were analogous to interest. The Tax Court held that the payments were more closely analogous to compensation for services and that the source of the fees should be determined by reference to the residence of the foreign parent. Accordingly, the income was treated as income from foreign sources.[32]

New Law. The SBJA effectively provides a legislative override of the opinion in *Container Corp.* The source rules of IRC §§861 and 862 are amended to address income from guarantees issued after the date of enactment (September 27, 2010). Income from sources within the United States now includes amounts received, directly or indirectly, from noncorporate residents or domestic corporations for the provision of a guarantee of indebtedness of such resident or corporation.[33] Additionally, U.S.-source income includes amounts received, directly or indirectly, from any foreign person for the provision of a guarantee of indebtedness of such person, if the amount is effectively connected with income from the conduct of a trade or business in the United States.[34]

Effective Date. This provision applies to guarantees issued after September 27, 2010.

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28. Rev. Proc. 2010-3, 2010-1 IRB 110.

29. Senate Committee on Finance, *Summary of Modifications and Additions in the Small Business Jobs Act* (Jul. 21, 2010).

30. Senate Committee on Finance, *Summary of the Substitute Amendment to the Small Business Jobs Act* (Jul. 21, 2010).

31. *Container Corp. v. Comm'r*, 134 TC No. 5 (Feb. 17, 2010), *gov't notice of appeal filed* (5th Cir. June 1, 2010).

32. Joint Committee on Taxation, *Technical Explanation of the Tax Provisions in Senate Amendment 4594 to H.R. 5297, the "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010,* (JCX-47-10), Sep. 16, 2010.

33. IRC §861(a)(9)(A).

34. IRC §861(a)(9)(B).

Time for Payment of Corporate Estimated Taxes

Old Law. For corporations with assets of at least $1 billion, estimated tax payments due in July, August, or September 2015 are increased to 122.25% of the payment otherwise due by a provision in the Hiring Incentives to Restore Employment (HIRE) Act.

New Law. The SBJA increases the required payment of estimated tax otherwise due in July, August, or September 2015 under the HIRE Act by 36%.

Effective Date. This provision is effective on September 27, 2010.

PLAIN WRITING ACT OF 2010

On October 13, 2010, President Obama signed into law the Plain Writing Act of 2010. Federal government agencies will be required to use "plain writing" in documents used by the public. The term **plain writing** means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.[35]

The documents that are covered by the act include the following.

- Any document that is necessary for obtaining a federal government benefit or service or filing taxes
- Any document that provides information about a federal government benefit or service
- Any document that explains to the public how to comply with a requirement the federal government administers or enforces
- Letters, publications, forms, notices, or instructions

Examples of the affected documents include tax returns, federal college aid applications, and Veterans Administration forms.[36]

Sen. George Voinovich (R-Ohio), one of the sponsors of the legislation, said "It is vital that government forms and documents are easy for the American public to use and understand. Anyone who has done their own taxes understands how badly plain writing is needed. Americans spend 7.6 billion hours a year grappling with incomprehensible tax forms and instructions. In fact, 82% of Americans get so confused that they pay for help filing their taxes — stripping dollars from much-needed tax refunds. We work for the American people, and our constituents should be able to understand in clear language exactly what public documents ask of them."[37]

Within six months of the date of enactment, the Office of Management and Budget must develop and issue guidance on implementing the requirements of the act. Agencies have nine months after the date of enactment to train employees in plain writing.

35. Plain Writing Act of 2010 (H.R. 946), §3.

36. [www.iowapolitics.com/index.Iml?Article=212804] Accessed on Oct. 14, 2010.

37. Ibid.

TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION, AND JOB CREATION ACT OF 2010

President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Tax Relief Act) into law on December 17, 2010. The bill extends the "Bush-era tax cuts" for two years, reduces social security taxes by 2% in 2011, provides estate tax relief, and includes a 2-year AMT tax patch. It also contains new tax breaks for individuals and businesses and extends unemployment benefits for an additional 13 months. The bill will add $858 billion to the federal deficit over the next 10 years.[38]

Following is a summary of the principal provisions in the Tax Relief Act.

TEMPORARY EXTENSION OF TAX RELIEF

Individual Income Tax Rates

Old Law. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) created a new 10% regular income tax bracket for a portion of taxable income that was previously taxed at 15%. It also reduced the regular income tax rates of 28%, 31%, 36%, and 39.6% to 25%, 28%, 33%, and 35%, respectively. The EGTRRA rates were scheduled to sunset after December 31, 2010.

New Law. The Tax Relief Act extends the rates effective under EGTRRA for an additional two years (i.e., through December 31, 2012).

Itemized Deduction Limitation

Old Law. Prior to 2010, the total amount of allowable itemized deductions was limited for upper-income taxpayers. EGTRRA repealed the itemized deduction limitation over a 5-year period, until it was eliminated entirely in 2010. The phased-in repeal of the itemized deduction limitation was scheduled to sunset under EGTRRA at the end of 2010 and would become fully effective again in 2011.

New Law. Under a provision of the Tax Relief Act, the limitation on itemized deductions for upper-income taxpayers does not apply for two additional years (through 2012).

Personal Exemption Phaseout

Old Law. Prior to 2010, the deduction for personal exemptions[39] was reduced or eliminated for taxpayers with incomes over certain thresholds. EGTRRA repealed the personal exemption phaseout (PEP) over five years. The PEP was eliminated entirely in 2010. However, under the EGTRRA sunset, the PEP would become fully effective again in 2011.

New Law. The Tax Relief Act delays the PEP for an additional two years (through 2012).

Child Tax Credit

Old Law. Taxpayers with income under certain threshold amounts may claim a tax credit for each qualifying child under the age of 17. The maximum credit is $1,000 through 2010 and was scheduled to decrease to $500 thereafter. The credit is allowable against the regular tax and the alternative minimum tax (AMT) for taxable years beginning before January 1, 2011.

Taxpayers are eligible for an additional refundable child tax credit equal to 15% of earned income in excess of a threshold amount. This threshold was reduced from $10,000 to $3,000 for both 2009 and 2010 by the American Recovery and Reinvestment Act of 2009 (ARRA).

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38. Joint Committee on Taxation, *Estimated Budget Effects of the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" Scheduled for Consideration by the United States Senate* (JCX-54-10), December 10, 2010.

39. For 2010, the amount deductible for each personal exemption is $3,650; for 2011, the amount of the personal exemption is $3,700.

The additional child tax credit may be determined under an alternative formula for families with three or more qualifying children if this results in a larger credit than that determined under the earned income formula. Under the alternative formula, the additional credit is calculated as the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income tax credit. The earned income formula expires after 2010, so the alternative formula is the only method of obtaining a refundable child tax credit.

New Law. The Tax Relief Act extends the $1,000 child tax credit and allows it against both regular income tax and AMT through 2012.

The Tax Relief Act extends the earned income threshold of $3,000 for determining the refundable child tax credit through 2012. It also allows the use of the earned income formula in determining the refundable credit for an additional two years.

Marriage Penalty Relief

Old Law. EGTRRA increased the basic standard deduction for a married filing jointly (MFJ) couple to twice that of an individual filing as single. EGTRRA also increased the size of the 15% regular income tax bracket for a MFJ couple to twice the size of the corresponding bracket for a single individual filing a return.

New Law. The Tax Relief Act extends the marriage penalty relief as it relates to the standard deduction and the size of the 15% bracket through 2012.

Income Exclusion for Qualified Scholarships

Old Law. IRC §117 excludes from gross income amounts received from qualified scholarships by individuals who are degree candidates. The amount of the scholarship must be used for tuition and fees required for enrollment or attendance at a primary, secondary, or post-secondary educational institution.

The exclusion from gross income for qualified scholarships does not apply to any amount received by a student which represents payment for teaching, research, or other services that the student is required to perform as a condition for receiving the scholarship. An exception applies in the case of the National Health Service Corps Scholarship Program (NHSC Scholarship Program) and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program (the Armed Forces Scholarship Program) which provide education awards to participants on the condition that the participants perform certain services.

The exclusion from gross income for the NHSC Scholarship Program and the Armed Forces Scholarship Program was scheduled to sunset under EGTRRA after December 31, 2010.

New Law. The Tax Relief Act delays the sunset provision as it relates to the NHSC Scholarship Program and the Armed Forces Scholarship Program for two years. Thus, these benefits will be available through 2012.

Income Exclusion for Employer-Provided Educational Assistance

Old Law. Up to $5,250 of educational assistance provided by an employer to an employee may be excluded annually from gross income for income tax purposes and from wages for employment tax purposes.[40] Certain requirements must be satisfied in order for the exclusion to apply.

Under EGTRRA's sunset provisions, the exclusion would not be available for taxable years beginning after December 31, 2010. At that time, educational assistance would be excludable only if it qualified as a working condition fringe benefit.

New Law. The Tax Relief Act delays the sunset provision as it applies to the §127 exclusion from income and wages for employer-provided educational assistance for two years. Thus, the exclusion will be available through 2012.

40. IRC §§127 and 3121(a)(18).

Student Loan Interest Deduction

Old Law. Certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for the interest. The maximum allowable deduction is $2,500 per year. For 2010, the deduction is phased out for taxpayers whose adjusted gross income (AGI) is between $60,000 and $75,000 ($120,000–$150,000 for MFJ taxpayers).

For taxable years beginning after December 31, 2010, the phaseout ranges were scheduled to revert to pre-EGTRRA levels of $40,000–$55,000 ($60,000–$75,000 for MFJ taxpayers), adjusted for inflation. Additionally, the EGTRRA changes that extended the deductibility of interest beyond the first 60 months that interest payments are required would expire.

New Law. The Tax Relief Act delays the sunset provisions for the student loan interest deduction for two years (through 2012).

Coverdell Education Savings Accounts

Old Law. EGTRRA increased the amount that may be contributed annually to Coverdell education savings accounts (ESA) from $500 to $2,000 per designated beneficiary. Distributions from Coverdell ESAs are excludable from the gross income of the distributee if the amount of the distribution does not exceed the qualified education expenses incurred during the year. Qualified education expenses under EGTRRA include elementary and secondary education expenses as well as higher education expenses.

For taxable years beginning after December 31, 2010, the following changes made by EGTRRA were scheduled to expire.

- The increase in the contribution limit from $500 to $2,000
- The increase in the phaseout range for MFJ taxpayers from $150,000–$160,000 to $190,000–$220,000
- The expansion of qualified education expenses to include elementary and secondary education expenses
- Special age rules for special-needs beneficiaries
- Clarification that corporations and other entities are permitted to make contributions, without regard to the entities' income during the year
- Rules pertaining to the time when contributions are deemed to have been made and extending the time during which excess contributions may be returned without incurring additional tax
- Rules regarding coordination with the Hope and lifetime learning credits and qualified tuition programs

New Law. The Tax Relief Act delays the EGTRRA sunset provisions applicable to Coverdell ESAs for two years (through 2012).

American Opportunity Tax Credit

Old Law. The American Opportunity Tax Credit (AOTC) is a modification of the Hope Credit and is available for taxable years beginning in 2009 and 2010. The maximum annual AOTC amount is $2,500 per eligible student for qualified education expenses (including course materials) paid for each of the first four years of the student's post-secondary education in a degree or certificate program. Forty percent of the AOTC is refundable.

The AOTC is phased out for taxpayers with modified adjusted gross income (MAGI) between $80,000 and $90,000 ($160,000 and $180,000 for MFJ taxpayers).

New Law. A provision in the Tax Relief Act extends the modifications to the Hope credit that are known as the AOTC for an additional two years. Thus, the AOTC is available through 2012.

Adoption Credit

Old Law. Taxpayers with qualified adoption expenses may be eligible for either the adoption credit or an exclusion from income of employer-provided adoption assistance. EGTRRA increased the dollar limitation for the adoption credit and the income exclusion to $10,000, indexed for inflation. For 2010, the maximum adoption credit and exclusion from income for employer-provided adoption assistance under EGTRRA was $12,170 per eligible child. However, the Patient Protection and Affordable Care Act (PPACA) increased the credit and exclusion by an additional $1,000 for 2010 and 2011 and made the credit refundable.

For 2010, the adoption credit and the exclusion from income for employer-provided assistance both phase out for taxpayers with MAGI between $182,520 and $222,520. This phaseout range is indexed for inflation after 2010.

For taxable years beginning after December 31, 2011, both the adoption credit and the exclusion for employer-provided adoption assistance were to be available only for special-needs adoptions. The maximum credit and exclusion were both scheduled to be reduced to $6,000, and the phaseout range was to be reduced to $75,000-$115,000.

New Law. The Tax Relief Act extends the EGTRRA expansion of the adoption credit and employer-provided adoption assistance for one year. Accordingly, the maximum benefit for 2012 is $12,170 (adjusted for inflation) and is phased out for taxpayers with MAGI between $182,520 and $222,520 (adjusted for inflation). The credit is not refundable for taxable years after 2011.

> **Note.** The changes enacted under the PPACA to the adoption credit and exclusion from income for employer-provided adoption assistance were not extended by the Tax Relief Act. Thus, the refundability of the credit and the $1,000 increase in the maximum credit and exclusion apply to 2010 and 2011 only.

Employer-provided Child Care Tax Credit

Old Law. Employers may claim a tax credit of 25% of qualified expenses for employee child care and 10% of qualified expenses for child care resource and referral services. The maximum annual credit an employer can claim is $150,000.

Qualified child care expenditures include the amounts paid or incurred for the following purposes.[41]

- Acquiring, constructing, rehabilitating, or expanding property to be used as part of the taxpayer's qualified child care facility
- Operating the taxpayer's qualified child care facility
- Contracting with a qualified child care facility to provide child care services to the taxpayer's employees

This tax credit was set to expire for taxable years beginning after December 31, 2010.

New Law. The Tax Relief Act extended this tax benefit for two years (through 2012).

Dependent Care Tax Credit

Old Law. Taxpayers may obtain a tax credit for an applicable percentage of qualifying expenses to care for a qualifying individual while the taxpayer is working or looking for work. EGTRRA increased the amount of eligible expenses from $2,400 for one child and $4,800 for two or more children to $3,000 and $6,000, respectively. EGTRRA also increased the maximum applicable percentage from 30% to 35%.

The EGTRRA changes to the dependent care tax credit were set to expire December 31, 2010.

New Law. The Tax Relief Act extended the EGTRRA enhancements to the dependent care credit for two years (through 2012).

41. IRC §45F(c)(1)(A).

Tax Rate on Dividends

Old Law. Qualified dividend income is taxed to an individual at the same rates that apply to net capital gains for both regular tax and AMT purposes. For taxable years beginning after 2007 and before 2011, individuals in the 10% or 15% tax bracket have their qualified dividend income taxed at 0%. For individuals in higher brackets, qualified dividends are taxed at 15%.

Prior to passage of the Tax Relief Act, dividends received by individuals after 2010 would be taxed at ordinary income tax rates.

New Law. The regular and AMT rates for qualified dividend income in effect before 2011 are extended for two additional years (through 2012).

Capital Gains Rate

Old Law. For taxable years beginning after 2007 and before 2011, individuals in the 10% or 15% tax bracket have their net capital gains taxed at 0%. For individuals in higher brackets, net capital gains are taxed at 15%. These rates apply for both regular tax and AMT purposes.

Prior to passage of the Tax Relief Act, individuals in the 10% or 15% tax bracket would have capital gains taxed at a 10% rate after 2010. Individual in higher brackets would have net capital gains taxed at the maximum 20% rate.

New Law. The regular and AMT rates for net capital gains in effect before 2011 are extended for two additional years (through 2012).

Accumulated Earnings Tax

Old Law. The accumulated earnings tax is imposed on a corporation that is formed or used to avoid income tax for its shareholders by permitting earnings and profits to accumulate instead of being divided or distributed.[42] The tax is levied at a rate of 15% on accumulated taxable income of C corporations for taxable years beginning before 2011.

New Law. The Tax Relief Act extends the 15% accumulated earnings tax rate for two additional years. Thus, the 15% rate will apply to the accumulated earnings of C corporations for taxable years beginning before 2013.

Personal Holding Company Tax

Old Law. A tax is imposed on undistributed personal holding company income at a rate of 15%. The 15% rate expires at the end of 2010.

New Law. The Tax Relief Act extends the 15% rate on undistributed personal holding company income for two additional years. Thus, the 15% rate applies to taxable years beginning before January 1, 2013.

Collapsible Corporation Rules

Old Law. Before 2003, certain transactions of "collapsible" corporations[43] were recognized as ordinary income rather than long-term capital gain. The Jobs and Growth Tax Relief Reconciliation Act of 2003 repealed the collapsible corporation rules through December 31, 2010.

New Law. The Tax Relief Act extends the repeal of the collapsible corporation rules for two additional years. Thus, the rules do not apply to taxable years beginning before January 1, 2013.

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42. IRC §532(a).

43. IRC §341.

Earned Income Tax Credit

Old Law. The earned income tax credit (EITC) is available to certain low-income taxpayers. The amount of the EITC generally depends on the individual's earned income, AGI, number of qualifying children and filing status.

A provision in the ARRA increased the amount of the credit available to taxpayers with three or more qualifying children. For 2009 and 2010, taxpayers with three or more qualifying children may claim a credit of 45% of the first $12,590 of earnings, for a maximum credit of $5,666. The credit phases out for earnings between $16,450 and $43,352 ($21,460 and $48,362 for MFJ taxpayers).

The ARRA also raised the 2009 phaseout threshold for married couples to $5,000 above that for other filers. The increased threshold is $5,010 for 2010. Prior to passage of the ARRA, the phaseout threshold for married couples was $3,000 (indexed for inflation) greater than that of other filers.

New Law. The Tax Relief Act extends certain EITC provisions for two years (through 2012). These include the EITC rate of 45% for taxpayers with three or more qualifying children and the higher phaseout thresholds for MFJ taxpayers.

The Tax Relief Act also extends the following EITC provisions adopted for EGTRRA for two additional years (through 2012).[44]

- Simplified definition of earned income
- Simplified relationship test
- Use of AGI instead of MAGI
- Simplified tie-breaking rule
- Additional math error authority for the IRS
- Repeal of prior-law provision that reduced the EITC by the amount of an individual's AMT liability

ALTERNATIVE MINIMUM TAX RELIEF

Old Law. For taxable years beginning before 2010, the full amount of an individual's regular tax and AMT may be offset by nonrefundable personal credits. Nonrefundable personal credits include the following.

1. Child credit
2. Saver's credit
3. Residential energy-efficient property credit
4. Credit for certain plug-in electric vehicles
5. Credit for alternative motor vehicles
6. Credit for new qualified plug-in electric drive motor vehicles
7. Dependent care credit
8. Credit for the elderly and disabled
9. Credit for interest on certain home mortgages
10. Hope scholarship and lifetime learning credits
11. Credit for certain nonbusiness energy property
12. D.C. first-time homebuyer credit

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44. Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions Contained in the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" Scheduled for Consideration by the United States Senate* (JCX-55-10), December 10, 2010.

For taxable years beginning after 2009, certain nonrefundable personal credits (items 7-12 in the above list) are allowed only to the extent the individual's regular income tax liability exceeds the individual's tentative minimum tax.[45] The other nonrefundable personal credits are allowed to the full extent of the individual's regular tax and AMT.

Before passage of the Tax Relief Act, the exemption amounts for AMT purposes were as follows:

Filing Status	2009	After 2009
MFJ and surviving spouses	$70,950	$45,000
Single	46,700	33,750
MFS	35,475	22,500

New Law. The Tax Relief Act allows taxpayers to offset the entire regular tax and AMT liability by nonrefundable personal credits for 2010 and 2011.

The Tax Relief Act increases the AMT exemption amounts as follows:

Filing Status	2010	2011
MFJ and surviving spouses	$72,450	$74,450
Single	47,450	48,450
MFS	36,225	37,225

ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAXES

A gift tax is imposed on certain lifetime transfers and an estate tax is imposed on certain transfers at death. A generation-skipping transfer (GST) tax is imposed on certain transfers to a beneficiary (i.e., "skip person") who is more than one generation younger than the transferor.

Before passage of the Tax Relief Act, the estate and GST taxes were repealed for decedents dying and gifts made during 2010 but were reinstated for decedents dying and gifts made after 2010.

Exemption Amounts and Tax Rates

Old Law. Through 2009 and after 2010, a unified credit applies to taxable transfers by gift and at death. The unified credit offsets tax computed at the lowest estate and gift tax rates.

In 2009, the unified credit exemption amount was $3.5 million for estate tax purposes and $1 million for gift tax purposes. The highest estate and gift tax rate was 45%.

Under provisions of EGTRRA, the estate and GST taxes were repealed for decedents dying and generation-skipping transfers made during 2010. The gift tax remains in effect during 2010, with a $1 million exemption amount and a 35% tax rate.

The estate, GST, and gift tax provisions of EGTRRA sunset at the end of 2010. As a result, the tax rates and exemption amounts that would have been in effect had EGTRRA not been enacted apply in 2011 and later years. A single exemption amount of $1 million and a single graduated rate schedule with a top rate of 55% apply for purposes of determining the tax on cumulative taxable transfers by lifetime gift or bequest.[46]

45. Ibid.

46. Ibid.

New Law. The Tax Relief Act reinstates the estate and GST taxes, effective for decedents dying and transfers made after December 31, 2009. The applicable exclusion amount for estate tax purposes is $5 million in 2010 and is indexed for inflation for decedents dying after 2011. The maximum estate tax rate is 35%. The applicable exclusion amount for gift tax purposes is $1 million and the tax rate is 35%. For gifts made after December 31, 2010, the gift tax is reunified with the estate tax, with an applicable exclusion amount of $5 million and a maximum tax rate of 35%.

The GST tax exemption for decedents dying or gifts made after December 31, 2009 is the same as the exclusion amount for estate tax purposes (e.g., $5 million for 2010). The GST tax rate for transfers made during 2010 is 0%. For transfers made after 2010, the GST tax rate is equal to the highest estate and gift tax rate in effect for such year (e.g., 35% for 2011 and 2012).

Portability of Unused Exemption Between Spouses. Any applicable exclusion amount that remains unused at the date of death of a spouse who dies after December 31, 2010, generally is available for use by the surviving spouse, in addition to the surviving spouse's applicable exclusion amount. However, the Tax Relief Act does not allow a surviving spouse to use the unused GST tax exemption of a predeceased spouse.[47]

A surviving spouse may use a deceased spousal unused exclusion amount **only if an election is made on a timely filed estate tax return of the predeceased spouse,** even if the predeceased spouse is otherwise not required to file an estate tax return.

> **Example 8.** Herbert dies in 2011, having made taxable transfers of $3 million. He has no taxable estate. An election is made on Herbert's estate tax return to permit his wife, Wilma, to use Herbert's unused exclusion amount. Wilma has made no taxable gifts at the time of Herbert's death. Wilma's applicable exclusion amount is now $7 million (her $5 million basic exclusion amount plus Herbert's unused exclusion amount of $2 million). Wilma may use the $7 million exclusion amount for lifetime gifts or for transfers at her death.

If a surviving spouse is predeceased by more than one spouse, the amount of the unused exclusion available for use by the surviving spouse is limited to the lesser of $5 million or the unused exclusion of the last deceased spouse.[48]

> **Note.** Because the portability provision is scheduled to expire at the end of 2012, it can be utilized only in situations where both spouses die in 2011-2012, unless Congress extends the provision.

Basis in Property

Old Law. Property received from a donor of a lifetime gift generally has a carryover basis,[49] which means that the donee's basis is the same as the donor's basis. Any gift tax paid by the donor increases the basis of property transferred by lifetime gift, but the property's basis cannot exceed its fair market value (FMV) on the date of the gift.

Property passing from a decedent who died in 2009 generally has a "stepped-up" basis.[50] This means that the basis of property passing from a decedent's estate is generally the FMV on the date of the decedent's death. If the property's value on the date of the decedent's death was less than its adjusted basis, the property has a stepped-down basis when it passes from the decedent's estate.

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47. Ibid.

48. Ibid.

49. IRC §1015.

50. IRC §1014(a).

The rules providing for a stepped-up basis in property acquired from a decedent are repealed for assets acquired from decedents dying in 2010. Instead, a modified carryover basis applies.[51] Under the modified carryover basis rules, recipients of property acquired from a decedent receive a basis equal to the lesser of the decedent's adjusted basis or the FMV of the property on the date of the decedent's death. An executor may increase the basis in assets owned by the decedent and acquired by the beneficiaries at death by up to a total of $1.3 million. The basis of property transferred to a surviving spouse may be increased by an additional $3 million.

The modified carryover basis rules that determine the basis in property passing from a decedent who died in 2010 do not apply to decedents who die after December 31, 2010, as a result of the EGTRRA sunset.

New Law. Under a provision in the Tax Relief Act, the laws in effect prior to 2010, which provide for a stepped-up basis in property, generally apply to property passing from a decedent who dies after December 31, **2009.** However, the executor of a decedent's estate who died **during 2010** can elect to apply either of the following options.

1. The stepped-up basis rules with an estate tax based on the 35% top rate and $5 million exemption, or
2. The modified carryover basis rules and no estate tax.

> **Observation.** Estates of decedents dying in 2010 must elect to use the modified carryover basis rules in order to exclude the gain from the sale of a principal residence under IRC §121. Estates that elect the stepped-up basis rules in 2010 as well as estates of decedents dying **after** 2010 will not be eligible for the §121 exclusion.

State Death Tax Credit

Old Law. Before 2005, a credit was allowed against the federal estate tax for any estate, inheritance, legacy, or succession taxes ("death taxes") that were paid to any state on any property included in a decedent's estate.[52] Under EGTRRA, the amount of the credit allowed for state death taxes was reduced from 2002-2004. For decedents dying after 2004, the state death tax credit was repealed entirely[53] and replaced with a deduction for death taxes paid to any state on property included in a decedent's estate.[54]

The EGTRRA modifications to the state death tax credit are not applicable for decedents dying after December 31, 2010. Instead, the state death tax credit as in effect prior to 2002 applies.

New Law. The Tax Relief Act extends the EGTRRA provisions in regard to the state death tax deduction for two additional years (through 2012). Thus, for decedents dying in 2011 and 2012, the state death tax credit is repealed and replaced with a deduction for state death taxes paid.

TEMPORARY EXTENSION OF INVESTMENT INCENTIVES

IRC §179 Expensing Election

Old Law. For taxable years beginning in 2010 and 2011, the maximum amount a taxpayer may expense under IRC §179 is $500,000 of the cost of qualifying property placed in service during the year. The maximum amount is reduced on a dollar-for-dollar basis when the amount of qualifying property placed in service during the year exceeds $2 million. For taxable years beginning before 2012, off-the-shelf computer software is treated as qualifying property.

For taxable years beginning after 2011, the maximum amount a taxpayer can expense under §179 is $25,000. The maximum amount is reduced by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. Off-the-shelf computer software is no longer treated as qualifying property.

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51. IRC §1022(a).

52. IRC §2011(a).

53. IRC §2011(f).

54. IRC §2058.

New Law. Under a provision in the Tax Relief Act, the maximum amount a taxpayer may expense under §179 is $125,000 (indexed for inflation) for taxable years beginning in 2012. The maximum amount is reduced on a dollar-for-dollar basis when the amount of qualifying property placed in service during the year exceeds $500,000 (indexed for inflation).

The Tax Relief Act also extends the treatment of off-the-shelf computer software as qualifying property through 2012.

For taxable years beginning in 2013, the maximum amount a taxpayer can expense under §179 is $25,000. The maximum amount is reduced by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000.

Bonus Depreciation

Old Law. Bonus first-year depreciation equal to 50% of the adjusted basis of qualified property is allowed for property placed in service during 2008, 2009, and 2010 (2009–2011 for certain longer-lived and transportation property). The additional first-year depreciation is allowed for both regular tax and AMT purposes. A taxpayer may elect out of bonus depreciation for one or more classes of property for any taxable year.

Qualifying property for purposes of bonus first-year depreciation must meet all of the following requirements.[55]

1. The property must be:
   - **a.** MACRS property with an applicable recovery period of 20 years or less,
   - **b.** Water utility property (as defined in IRC §168(e)(5)),
   - **c.** Computer software (other than software covered by IRC §197), or
   - **d.** Qualified leasehold improvement property (as defined in §168(k)(3)).
2. The original use of the property must commence with the taxpayer.
3. The taxpayer must purchase the property within the applicable time period.
4. The property must be placed in service after December 31, 2007, and before January 1, 2011 (An extension of one year is provided for certain property with a recovery period of 10 years or longer and certain transportation property.)

If qualified property is acquired through a like-kind exchange, both the carryover basis of the relinquished property plus the excess basis (boot) of the replacement property qualify for bonus depreciation.[56]

New Law. The Tax Relief Act extends and expands the additional first-year depreciation. Under the new rules, the allowable first-year depreciation is 100% of the cost of qualified property placed in service after September 8, 2010 and before January 1, 2012 (with an extension of one year for certain longer-lived and transportation property). Fifty percent bonus depreciation will apply to qualified property placed in service in 2012 (2013 for certain longer-lived and transportation property).

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55. Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions Contained in the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" Scheduled for Consideration by the United States Senate* (JCX-55-10), December 10, 2010.

56. Treas. Reg. §1.168(k)-1(f)(5)(iii).

TEMPORARY EMPLOYEE PAYROLL TAX CUT

FICA Tax

Old Law. The FICA tax applies to employers and employees based on the amount of covered wages paid to the employee during the year. The tax is composed of two parts:

1. The old age, survivors, and disability insurance (OASDI) tax, which is 6.2% of covered wages up to the taxable wage base;[57] and
2. The Medicare tax, which is 1.45% of covered wages.

New Law. For 2011, the employee OASDI tax rate is reduced to 4.2% of covered wages. The employer's OASDI tax rate remains at 6.2%.

> **Note.** Employees that are not subject to social security tax, such as certain state and local governmental employees, will not derive any benefit from the FICA tax cut. These employees generally did receive a benefit from the Making Work Pay Credit, which expired at the end of 2010.

SECA Tax

Old Law. The SECA tax applies to self-employment (SE) income at a rate that parallels FICA taxes. The rate of the OASDI portion of SECA taxes is 12.4% and applies to SE income up to the FICA taxable wage base. The rate of the Medicare portion of SECA taxes is 2.9%, and there is no limit on the amount of SE income to which the tax applies.

In determining net earnings from self-employment, individuals may deduct the amount of net earnings from self-employment (determined without regard to this deduction) for the taxable year multiplied by one-half of the combined OASDI and Medicare rates (15.3% ÷ 2 = 7.65%).

For purposes of computing the income tax of an individual, a deduction is allowed for one-half of the SECA tax imposed on the individual's SE income for the taxable year.

New Law. A provision in the Tax Relief Act reduces the OASDI tax rate applicable to SE income by two percentage points, to 10.4% for taxable years that begin in 2011.

The rate reduction is not taken into account in determining the amount of net earnings from self-employment for the taxable year. Thus, the deduction for 2011 remains at 7.65% of SE income.

For the 2011 taxable year, the income tax deduction for a self-employed individual is computed at the rate of 59.6% of the OASDI tax paid, plus one-half of the Medicare tax paid.[58]

> **Note.** Transfers from the General Fund of the U.S. Treasury equal to the reduction in payroll taxes attributable to this provision will be made to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund, and the Social Security Equivalent Benefit Account (established under the Railroad Retirement Act of 1974). The transfers are to be made at such times and in such a manner as to replicate as much as possible the transfers which would have occurred if the provision had not been enacted.[59]

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57. The taxable wage base in 2010 and 2011 is $106,800.

58. The 59.6% rate replaces the 50% deduction allowed under the previous law. The revised rate allows the self-employed individual to deduct the full amount of the employer portion of SECA taxes. The employer OASDI tax rate for 2011 is 6.2%, while the employee portion is 4.2%, for a combined rate of 10.4%. Thus, the employer's share of total OASDI taxes is 6.2% ÷ 10.4%, or 59.6%.

59. Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions Contained in the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" Scheduled for Consideration by the United States Senate* (JCX-55-10), December 10, 2010.

TEMPORARY EXTENSION OF EXPIRING ENERGY PROVISIONS

Biodiesel and Renewable Diesel Credits

Old Law. An income tax credit is allowed for biodiesel and renewable diesel fuels sold or used on or before December 31, 2009.

New Law. The Tax Relief Act extends the credits for biodiesel and renewable diesel fuels for two additional years (through December 31, 2011).

Credit for Refined Coal Facilities

Old Law. A credit is available for refined coal. Refined coal is a fuel produced from coal that is used to produce steam or to produce steel industry fuel. The placed-in-service date for a qualifying refined coal facility is after October 22, 2004, and before January 1, 2010.

New Law. The Tax Relief Act extends the placed-in-service period for new refined coal facilities for two years (through December 31, 2011). The extension does not apply to refined coal facilities that produce steel industry fuel.

New Energy Efficient Home Credit

Old Law. A credit is available to eligible contractors for each qualified new energy-efficient home that is constructed and acquired by a person for use as a residence during the taxable year. The credit applies to homes purchased prior to January 1, 2010.

New Law. The Tax Relief Act extends the credit for two years. Thus, the credit applies to homes that are purchased prior to January 1, 2012.

Gas and Oil Well Percentage Depletion

Old Law. Under the percentage depletion method, 15% of the taxpayer's gross income from oil- or gas-producing properties is allowed as a deduction in each taxable year.[60] The deduction may not exceed 100% of the net income from the property in any year.[61] The 100% limitation has been suspended for taxable years beginning before January 1, 2010.

New Law. The Tax Relief Act extends the suspension of the 100% net-income limitation applicable to oil- and gas-producing properties for two years. Thus, the suspension applies to tax years beginning before January 1, 2012.

Alternative Fuels Credits

Old Law. Two excise tax credits are provided by the Code with respect to alternative fuel: the alternative fuel credit and the alternative fuel mixture credit. The credits generally expired after December 31, 2009.

New Law. The Tax Relief Act extends the alternative fuel credit and alternative fuel mixture credit for two additional years (through December 31, 2011).

Alcohol Fuels Credit

Old Law. Tax incentives are provided by the Code for the sale, use, and production of alcohol fuel and alcohol fuel mixtures. The incentives for alcohol generally are not available after December 31, 2010. For cellulosic biofuel, the incentive is not available after December 31, 2012.

New Law. The Tax Relief Act extends the incentives for alcohol fuels (other than the cellulosic biofuel producer credit) for an additional year. Thus, the alcohol fuel incentives are available through December 31, 2011.

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60. Ibid.

61. IRC §613(a).

Energy-Efficient Appliance Credit

Old Law. A credit is allowed for the production of certain energy-efficient dishwashers, clothes washers, and refrigerators. The credits differ based on the specifications of the appliance and the year of manufacture.

The energy-efficient appliance credits expired as of December 31, 2010.

New Law. The Tax Relief Act extends the credits for one year to include appliances manufactured in 2011. The provision modifies the standards and per-appliance credit amounts.

Nonbusiness Energy Property Credit

Old Law. A 30% credit is available under IRC §25C for the purchase of qualified energy-efficiency improvements to the envelope of existing homes. Additionally, a 30% credit is available under §25C for the purchase of the following.

- Qualified natural gas, propane, or oil furnace or hot water boilers
- Qualified energy-efficient property
- Advanced main air circulating fans

The credit applies to expenditures made after December 31, 2008, for property placed in service prior to January 1, 2011.

New Law. The Tax Relief Act extends the credits for one year (through 2011) but adjusts the credit structure and credit rates to conform to those that existed prior to the enactment of the ARRA. The following changes are made.

- Expenditures made from subsidized energy financing are not qualifying expenditures.
- Certain efficiency standards that were weakened by the ARRA are restored to their previous levels.
- Windows, skylights, and doors that meet the Energy Star standards are qualified improvements.
- A 10% credit for purchase of qualified energy-efficiency improvements to existing homes is provided by §25C.
- IRC §25C provides specified credits for the purchase of specific energy-efficient property originally placed in service by the taxpayer during the taxable year. The maximum credit for a taxpayer for all taxable years is $500, of which no more than $200 may be attributable to expenditures on windows. The allowable credits are:
  - $50 for each advanced main air circulating fan
  - $150 for each qualified natural gas, propane, or oil furnace or hot water boiler
  - $300 for each item of qualified energy-efficient property

Alternative Fuel Vehicle Refueling Property

Old Law. Taxpayers may claim a 30% credit for the cost of installing qualified clean-fuel vehicle refueling property. The property can be used in a trade or business of the taxpayer or installed at the taxpayer's principal residence. The credit may not exceed $30,000 per taxable year per location for property used in a trade or business. For qualified refueling property installed at the principal residence of the taxpayer, the credit may not exceed $1,000 per taxable year per location.

For property placed in service in 2009 or 2010, the maximum credit amounts available for business property were increased to $200,000 for qualified hydrogen refueling property and to $50,000 for other qualified refueling property. The maximum credit for nonbusiness property was increased to $2,000 for refueling property other than hydrogen refueling property. The credit rate was also increased from 30% to 50% during 2009-2010 for refueling property other than hydrogen refueling property.

The credit is available for property placed in service after December 31, 2005, and before January 1, 2011, except for hydrogen refueling property, which must be placed in service before January 1, 2015.

New Law. The Tax Relief Act extends the 30% credit for one year for alternative fuel refueling property (other than hydrogen refueling property, which continues under present law through 2014). Thus, the credit is available through 2011, subject to the maximum credit amounts in effect prior to 2009.

TEMPORARY EXTENSION OF EXPIRING INDIVIDUAL TAX PROVISIONS

Deduction for Teachers' Expenses

Old Law. An above-the-line deduction is allowed for certain expenses of eligible educators up to a maximum of $250 annually. This deduction is not allowed for taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the deduction for eligible educator expenses for two years. Thus, it is available for taxable years beginning before January 1, 2012.

Deduction of State and Local Sales Taxes

Old Law. At the election of the taxpayer, an itemized deduction may be taken for state and local general sales taxes in lieu of the itemized deduction for state and local income taxes. This election is not available for taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the provision that allows taxpayers to elect to deduct state and local sales taxes in lieu of state and local income taxes for two years. Thus, the election is available for taxable years beginning before January 1, 2012.

Contributions of Capital Gain Real Property for Conservation

Old Law. Contributions of capital gain property to certain charitable organizations are generally deductible up to 30% of the taxpayer's contribution base. For contributions made in taxable years beginning after December 31, 2005, the 30% contribution base limit on contributions of capital gain property by individuals does not apply to qualified conservation contributions. Instead, individuals may deduct the FMV of any qualified conservation contribution to an organization described in IRC §170(b)(1)(A) (i.e., public charities, private foundations, and certain governmental units), subject to a 50% contribution base limit. Excess contributions may be carried forward up to 15 years.

Qualified farmers and ranchers are allowed to deduct qualified conservation contributions up to 100% of the excess of the taxpayer's contribution base over the amount of all other allowable charitable contributions.

The special rules that apply to contributions of capital gain real property for conservation purposes do not apply to contributions made in taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the special rules applicable to contributions of capital gain real property for conservation purposes for two years. Thus, the rules apply to contributions made in taxable years beginning before January 1, 2012.

Deduction for Qualified Tuition and Related Expenses

Old Law. Individuals are allowed an above-the-line deduction for qualified tuition and related higher education expenses paid during the taxable year. The maximum deduction is $4,000 for an individual whose AGI for the year does not exceed $65,000 ($130,000 for MFJ taxpayers), or $2,000 for other individuals whose AGI does not exceed $80,000 ($160,000 for MFJ taxpayers).

The deduction is not available for taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the qualified tuition deduction for two additional years. Thus, it is generally available for taxable years beginning before January 1, 2012.

IRA Distributions for Charitable Purposes

Old Law. Individuals may exclude qualified charitable distributions from gross income for otherwise taxable IRA distributions. A taxpayer's exclusion may not exceed $100,000 per taxable year and must be made on or after the date the IRA owner attains age 70½.

Under present law, the exclusion from gross income does not apply to IRA distributions made in taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the exclusion for qualified charitable distributions for two years. Thus, the exclusion is available for distributions made in taxable years beginning before January 1, 2012.

The provision contains a special rule that permits taxpayers to elect to have qualified charitable distributions made in January 2011 treated as having been made on December 31, 2010. Accordingly, qualified charitable distributions made in January 2011 can be:

1. Treated as made in the taxpayer's 2010 taxable year and therefore permitted to count against the 2010 $100,000 exclusion limitation, and
2. Treated as made in the 2010 calendar year and therefore permitted to be used to satisfy the taxpayer's 2010 minimum distribution requirement.

Mortgage Insurance Premiums

Old Law. A tax deduction is allowed for those individuals who purchase a home and buy qualified mortgage insurance. Mortgage insurance premiums are treated as qualified residence interest if the mortgage insurance contract was issued on or after January 1, 2007. The provision terminates with respect to any amounts paid or accrued after December 31, 2010.

New Law. The Tax Relief Act extends the deductibility of qualified mortgage insurance for one year. Thus, the provision applies to qualified mortgage insurance premiums paid or accrued before December 31, 2011.

Exclusion from Income for Transportation Fringe Benefits

Old Law. Prior to February 17, 2009, the maximum amount that could be excluded as qualified transportation fringe benefits was $100 per month in combined vanpooling and transit pass benefits and $175 per month in qualified parking benefits. These limits were adjusted annually for inflation; the applicable 2009 amounts were $120 and $230, respectively. The ARRA increased the monthly exclusion for employer-provided vanpool and transit pass benefits to the same level as the exclusion for employer-provided parking (i.e., $230 for 2010). The temporary increase enacted by the ARRA expired on December 31, 2010.

New Law. The Tax Relief Act extends the increase in the monthly exclusion for employer-provided vanpool and transit pass benefits for one year (through December 31, 2011).

Refunds Disregarded in Determining Eligibility for Federal Benefits

Old Law. Qualifying individuals receive refundable credits under various provisions of the Code. The treatment of the various credits for purposes of determining eligibility for benefits or assistance under federal programs is not uniform.

New Law. Tax refunds and advance payments of refundable credits received by individuals after December 31, 2009 may not be taken into account over a 12-month period as a resource for purposes of determining the individual's eligibility for benefits or assistance under any federal program. This provision of the Tax Relief Act terminates on December 31, 2012.

BUSINESS TAX RELIEF

Research Credit

Old Law. A taxpayer may claim a research credit of 20% of the amount by which qualified research expenses for a taxable year exceed the taxpayer's base amount for the year.[62] The research credit expires for amounts paid or incurred after December 31, 2009.

New Law. The Tax Relief Act extends the research credit for two years, through December 31, 2011.

Indian Employment Tax Credit

Old Law. Employers are allowed a tax credit for the qualified wages and qualified employee health insurance costs paid or incurred by the employer for certain employees. Qualified employees are those who satisfy all of the following conditions.

- The employee is an enrolled member of an Indian tribe or the spouse of an enrolled member.
- The employee performs substantially all of the services for an employer within an Indian reservation.
- The employee has a principal place of abode on or near the reservation in which the services are performed.

The wage credit is available for wages paid or incurred in taxable years beginning before January 1, 2010.

New Law. The Tax Relief Act extends the employment tax credit provision for two years (through taxable years beginning before January 1, 2012).

Differential Wage Credit

Old Law. An eligible small business employer is allowed to take a 20% tax credit on the sum of eligible differential wage payments for each of the employer's qualified employees for the taxable year.[63] Differential wage payments are defined as the voluntary payments paid by employers to employees who are on active duty in the armed forces of the United States for more than 30 days. The differential wage payments represent all or a portion of the wages the individual would have received from the employer if the individual were performing services for the employer.[64]

The credit is available for differential wage payments made after June 17, 2008, and before January 1, 2010.

New Law. The Tax Relief Act extends the differential wage credit to amounts paid before January 1, 2012.

15-year Depreciation for Qualified Improvements

Old Law. The following types of property are eligible for a 15-year recovery period.

- Qualified leasehold improvements[65] placed in service before January 1, 2010
- Qualified restaurant property[66] placed in service before January 1, 2010
- Qualified retail improvement property[67] placed in service before January 1, 2010

New Law. The Tax Relief Act extends the provisions regarding the recovery period for qualified leasehold improvements, qualified restaurant property, and qualified retail improvement property for two years. Thus, qualified property placed in service before January 1, 2012, is eligible for a 15-year recovery period.

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62. IRC §41(a).
63. IRC §45P(a).
64. IRC §3401(h)(2).
65. IRC §168(e)(3)(E)(iv).
66. IRC §168(e)(3)(E)(v).
67. IRC §168(e)(3)(E)(ix).

Enhanced Charitable Deduction for Food Inventory Contributions

Old Law. Any taxpayer engaged in a trade or business is eligible to claim an enhanced deduction for donations 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 FMV on the date of the contribution.

The enhanced deduction does not apply to contributions of food inventory made after December 31, 2009.

New Law. The Tax Relief Act extends the enhanced deduction for contributions of food inventory for two years (through December 31, 2011).

Enhanced Charitable Deduction for Book Inventory Contributions

Old Law. C corporations may 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. The school must 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.

The enhanced deduction does not apply to contributions of book inventory made after December 31, 2009.

New Law. The Tax Relief Act extends the enhanced deduction for contributions of book inventory for two years (through December 31, 2011).

Enhanced Charitable Deduction for Computer Inventory Contributions

Old Law. 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 for the enhanced deduction must meet standards of functionality and suitability established by the Secretary of the Treasury.

The contribution must be to certain educational organizations or public libraries. 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 three years after the date construction or assembly is substantially completed.

The enhanced deduction does not apply to contributions of computer inventory made after December 31, 2009.

New Law. The Tax Relief Act extends the enhanced deduction for contributions of computer inventory for two years (through December 31, 2011).

Basis Adjustment to S Corporation's Stock for Charitable Contributions

Old Law. Shareholders of an S corporation that contributes to a charity reduce their stock bases by the shareholder's pro rata share of the adjusted basis of the contributed property. This provision applies to contributions made by an S corporation in taxable years beginning before January 1, 2010.

For contributions made by an S corporation in taxable years beginning after December 31, 2009, the amount of the reduction in basis is the shareholder's pro rata share of the FMV of the contributed property.

New Law. The Tax Relief Act extends the rules pertaining to S corporation charitable contributions for two years. Thus, for contributions made by an S corporation in taxable years beginning before January 1, 2012, shareholders reduce their stock bases by their pro rata share of the adjusted basis of the contributed property.

Work Opportunity Credit

Old Law. The work opportunity tax credit (WOTC) provides an incentive to employers to hire employees from targeted groups that traditionally face significant barriers to employment. The employers are allowed a tax credit for a portion of the qualified wages paid during the first one or two years that the employee works for the employer.

The WOTC is not available for individuals who begin work for an employer after August 31, 2011.

New Law. The Tax Relief Act extends the WOTC for four months. Thus, it is available for individuals who begin work for an employer after August 31, 2011 but before January 1, 2012.

Qualified Small Business Stock Gain Exclusion

Old Law. Noncorporate taxpayers generally are allowed to exclude 50% of the gain from the sale of qualified small business stock held at least five years. Sixty percent of the gain on the sale of qualified small business stock from certain empowerment-zone businesses may be excluded. The taxpayer has to acquire the stock at original issue to be eligible for the exclusion.

The limit on the gain from any single stock that a taxpayer may exclude is the greater of:

- Ten times the taxpayer's basis in the stock, or
- $10 million.

In order to qualify for the exclusion, the corporation's gross assets cannot exceed $50 million when the stock is issued. In addition, at least 80% of the value of the corporation's assets must be used in the active conduct of a qualified trade or business.

A percentage of the excluded gain is an AMT preference item.

The gain exclusion for qualified small business stock was increased to 75% for stock acquired between February 17, 2009, and September 27, 2010. The increase in the gain exclusion does not apply to the sale of empowerment-zone stock.

Under a provision in the Small Business Jobs Act, the gain exclusion was increased to 100% for qualified small business stock acquired after September 27, 2010 and before January 1, 2011. In addition, the minimum tax preference does not apply.

New Law. The Tax Relief Act extends the 100% exclusion and the exception from minimum tax preference treatment for one year. Thus, the provision applies to stock acquired before January 1, 2012.

BANKRUPTCY AND DISCHARGE OF INDEBTEDNESS

Bankruptcy

***Bruce Bryen v. U.S.,* No. 08-00012, U.S. Bankruptcy Court for the Eastern District of Pennsylvania (Aug. 13, 2010)**
IRC §6871

☞ CPA's $19 million Tax Debt Not Discharged in Chapter 7 Bankruptcy

Facts. Bruce Bryen (Bruce) began his career as a CPA in the 1970s. By the early 1980s, Bruce had a 50% interest in an accounting firm that he co-owned with his father, Fred Bryen (Fred). Fred formed and promoted tax shelters involving investments in "employee leasing" partnerships. Fred and Bruce recommended these investments to clients of their accounting firm.

Bruce personally invested in these employee leasing partnerships for the tax years 1980 and 1982–1988. He filed tax returns and paid the tax due reflected on each of the returns for those years.

The IRS issued notices of deficiencies to Bruce, in which his investments in the employee leasing partnerships for the tax years 1980 and 1982–1988 were disallowed. Bruce then filed three Tax Court petitions challenging the deficiencies.

Bruce and several other investors agreed that issues concerning the employee leasing partnership investments and related tax shelters should be tried in a single "test case." In 1996, the Tax Court issued its decision in the test case, reported as *Bealor v. Comm'r,*[68] concluding that the employee leasing partnership transactions were shams.

For approximately five years after the *Bealor* decision, Bruce did not receive any communication from the IRS regarding his additional tax liability. Then, in 2001, the IRS contacted Bruce and began negotiating the amount of his outstanding liability with him. In June 2002, Bruce signed three stipulations with the IRS which stated that he owed taxes due to substantial underpayment attributable to tax-motivated transactions. The tax deficiency set forth in the stipulations was $2.8 million.

During the next few months, Bruce did not make any payments towards his tax liability. Then, in April 2003, the IRS issued a notice of assessment for each of the years at issue which totaled $13.6 million, including penalties and interest.

In January 2004, Bruce filed a petition for relief under Chapter 7 of the Bankruptcy Code. His bankruptcy schedules disclosed assets worth $364,300, including $350,000 attributed to a pension, and a $19 million general unsecured debt for taxes owed to the IRS. He reported a monthly gross income at this time of $10,417, or approximately $125,000 per year. His monthly expenses were as follows:

Description	Amount
Mortgage payment	$1,050
Rent for mother's apartment	1,256
Utilities	500
Home maintenance	300
Food	650
Clothing	500
Recreation	2,500

68. *Bealor v. Comm'r,* 72 TCM (CCH) 730, 1996 WL 540109 (1996).

Bruce had not made any payments on his outstanding tax liability since 1996, when the *Bealor* case was decided. During the intervening years, he lived a lavish lifestyle with his girlfriend, Carolyn Walter, who holds a doctorate degree and is a college professor. The couple, who married in 2001, went on expensive vacations twice each year and maintained a principal residence and a vacation home. Carolyn paid all the couple's bills out of a bank account which was in her name only. Bruce gave Carolyn money to pay his share of the bills, but he did not use a checking account in order to avoid the risk of having it attached by one of his creditors.

Bruce was granted a Chapter 7 bankruptcy discharge in September 2004. It appears that he thought the tax debt had been discharged, but the IRS thought otherwise. In 2007, the IRS began collection activity with regard to the tax debt. The IRS's position was that the tax debt had not been discharged in bankruptcy because Bruce had willfully attempted to evade or defeat his tax obligations.[69] Bruce responded by filing a motion to reopen his bankruptcy case in order to obtain a determination of whether the tax debt was discharged. The court granted Bruce's request and he commenced an adversary proceeding.

Issue. Whether Bruce's tax debt was discharged in bankruptcy.

Analysis. 11 USC §523(a)(1)(C) excepts from discharge any tax debt "with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax." The IRS contends that the debt Bruce owes to the IRS should be excepted from discharge because of "willful evasion."

The court in *Fegeley*[70] held that the willful evasion clause of §523(a)(1)(C) requires proof of two elements:

1. **Conduct** (i.e., the debtor must engage in conduct that constitutes an attempt to evade or defeat the tax), and
2. **Scienter** (i.e., the debtor's mental state must be that he acted willfully).

The IRS asserted that Bruce's conduct showed that he evaded the tax debt in at least two ways. The first was that he failed to make some payment on his taxes when he had the means to do so. Secondly, he dealt in cash, paid his debts through others, and lived a lavish lifestyle. Bruce earned significant income during the relevant years prior to filing the bankruptcy petition and had only modest fixed living expenses. However, he allocated a quarter of his gross monthly pay for recreation. He also paid at least $12,000 per year for vacations and maintained two homes with his wife.

As articulated in *Fegeley,* the requisite mental state for "willfulness" is that a debtor's actions are "voluntary, conscious, and intentional."[71] Bruce argued that between the issuance of the *Bealor* decision in 1996 and the actual assessment of the additional tax liabilities in April 2003, he lacked intent to evade his tax obligations because he did not know how much he owed. The Court did not find his contention credible that he did not understand that he was facing a colossal tax liability which he could only pay, if at all, by modifying his lifestyle and making personal sacrifices. The Court was influenced by the fact that Bruce is a CPA who was a partner in a firm that handled tax matters.

The Court further stated two reasons they were convinced that Bruce had the requisite intent. First, §523(a)(1) refers to evading or defeating a "tax," not an "assessed tax." The Court was satisfied that Bruce was aware that he faced an enormous tax liability, even though the tax debt was not fully liquidated or assessed between 1996 and 2001. Second, between 2001 and June 2002, when he signed the IRS stipulations, Bruce knew how much he owed. However, he allowed the penalties and interest to continue to accrue, paid nothing toward the obligation, and filed his bankruptcy case to discharge the debt within 30 days after he could do so. During this time, he continued to enjoy an extravagant lifestyle. His expenses were divided equally with his well-educated, employed spouse. The Court stated that he had the money, knew he had an obligation, and chose not to pay it.

Holding. The Court concluded that the IRS met its burden of establishing by a preponderance of the evidence that Bruce willfully attempted to evade or defeat his tax liability. Accordingly, his debt for federal income taxes is excepted from bankruptcy discharge.

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69. 11 USC §523(a)(1)(C).

70. *In re Fegeley,* 118 F.3d 979, 983 (3d Cir. 1997).

71. Ibid.

Alimony

***Nancy Gallagher Maes v. U.S.,* No. 6:09-cv-00042; U.S. District Court for the District of Montana (Oct. 13, 2010)**
IRC §§71, 215, and 7422

☞ Tax Refund Denied after Payments Deemed Alimony

Facts. Nancy Maes and Dr. Paul Maes were divorced in February 2001. The couple has four children, two of whom were minors at the time the marriage was dissolved.

An amended divorce decree was filed in October 2001 and contains the terms of the parenting plan and support agreement. The decree specified that alimony was scheduled to decrease at certain time intervals. Ms. Maes was to receive $109,000 for the first five years, $91,000 for the next three years, and $25,000 for the next two years. The scheduled reductions occurred in the same years that the two younger children turned age 20; however, nothing in the divorce decree specified that the reductions were intended to correspond with the children maturing.

The accountant's letter that outlined the property division stated that the intent was to provide each party with half the husband's income for a time. Dr. Maes was also required to provide for child support in separate provisions.

Ms. Maes argues that since both reductions in payments occurred in years that one of the children turned age 20, the tax code characterizes the payments as child support. She made a motion for summary judgment, seeking a tax refund in this claim.

Issue. Whether payments Nancy Maes received from her ex-husband were child support or alimony.

Analysis. Payments received as alimony or separate maintenance payments must be included in taxable gross income.[72] Alimony does not include amounts that the divorce or separation instrument fix as child support.[73] Part of a payment is fixed as child support if any amount specified in the divorce instrument will be reduced:

- On the occurrence of a contingency relating to a child (e.g., attaining a certain age, marrying, dying, leaving school) which is specified in the divorce or separation instrument, or
- At a time which can clearly be associated with such a contingency.

If it can be demonstrated that the parties to the divorce or separation instrument did not discuss the contingency or reference the contingency in the agreement, the presumption that a payment is associated with a relevant contingency can be rebutted. In *Shepherd,*[74] the Tax Court held that a scheduled reduction in payments related to the child turning 18 only by coincidence. The alimony provision of the settlement agreement made no reference to the child turning 18.

The Maes' separation agreement does not reference an applicable childhood contingency. There was no reference in the agreement that the reductions related to the children turning 20.

Treas. Reg. §1.71-1 states that payments to the spouse that do not designate a specific portion to be used for child support are characterized as alimony. Because Dr. and Ms. Maes did not expressly designate a portion of the alimony payment as child support, the entire payment is taxable to Ms. Maes. Nancy Maes had discretion as to how she could spend the money; thus, the entire payment is taxable income.[75]

Holding. Nancy Maes' motion for summary judgment is denied.

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72. IRC §71(a).
73. IRC §71(c).
74. *Shepherd v. Comm'r*, TC Memo 2000-174 (May 25, 2000).
75. Treas. Reg. §1.71-1.

Unexplained Bank Deposits

***Yury Tribin v. Comm'r,* TC Memo 2010-224 (Oct. 14, 2010)**
IRC §§1, 61, 446, and 6001

☞ Bank Deposit Analysis Reveals Additional Taxable Income

Facts. Yury Tribin worked as an independent contractor with a company that specializes in the redesigning of closets. She reported income on Forms 1040 for the tax years at issue in this case — 2002, 2003, and 2004.

Tribin opened her home to several of her relatives who periodically stayed with her. In 2002, Tribin's sister from Columbia, Claudia Tribin-Mora, stayed with Tribin twice. During her second visit in November 2002, Tribin-Mora advanced $5,000 to Tribin. In February or March of 2003, Tribin-Mora decided to buy a car. Tribin purchased the car and obtained the loan in her own name on her sister's behalf because Tribin-Mora did not have a valid social security number. To repay the $5,000 advance from Tribin-Mora, Tribin made payments on the car loan until her sister got a job. When Tribin-Mora obtained employment, she gave Tribin cash each month to make that month's car loan payment. Tribin then wrote a check to the automobile finance company.

The IRS determined that Tribin failed to maintain or submit for examination complete accounts of her income-producing activities for 2002, 2003, and 2004. The IRS reconstructed Tribin's income by analyzing the bank deposits in her checking accounts. The IRS determined that Tribin had total bank deposits of $61,196; $111,043; and $65,564 for 2002, 2003, and 2004, respectively. After reducing these amounts by the identifiable deposits reported in income, transfers, and nontaxable deposits, unidentified deposits of $11,656, $15,619, and $16,087 remained at issue for the 2002, 2003, and 2004 tax years, respectively.

The IRS issued a notice of deficiency in November 2008, determining income tax deficiencies for the three tax years at issue.

Issue. Whether unidentified cash deposits are includable in Tribin's income for the 2002–2004 tax years.

Analysis. Taxpayers must maintain adequate records to substantiate their income and deductions. When the taxpayer fails to do so, the IRS is authorized to use whatever method it deems appropriate to determine the existence and amount of taxpayer's income so long as it clearly reflects income.[76]

Most of Tribin's unexplained deposits were small cash deposits, for which she provided little or no evidence that the deposits were not taxable. However, with respect to a series of transactions between Tribin and her sister, Tribin did present sufficient evidence that the deposits related to the car loan and that they should not be included in income. Because Tribin was merely a conduit for the car loan and the cash payments, the deposits to her account with Tribin-Mora's funds do not constitute taxable income to Tribin.

At trial, Tribin presented no credible evidence concerning the remaining unidentified deposits. Tribin had a difficult time remembering the sources of the multiple small cash deposits, but nonetheless stated that it "wasn't income because this money coming… from my family." She further said that some of the deposits were gifts and others were loans but presented no documentary evidence of the gifts or loans.

Holding. The Court found that the $5,000 loan from Tribin-Mora in 2002 and the cash deposits totaling $2,475 in 2003 that corresponded to the car payments made by Tribin on her sister's behalf are not includable in income. The remaining unexplained bank deposits identified by the IRS are includable in Tribin's taxable income.

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76. IRC §446(b); *Mallette Bros. Constr. Co., Inc. v. U.S.,* 695 F.2d 145, 148 (5th Cir. 1983); *Gowni v. Comm'r,* TC Memo 2004-154.

Information Reporting
IRS Notice 2010-67, IRB 2010-43 (Oct. 25, 2010)
IRC §§6045, 6045A, 6045B

☞ Penalty Relief Provided to Brokers for Reporting Certain Stock Transfers

Purpose. This notice provides transitional relief from the information reporting requirement beginning in 2011 applicable to transfers of securities by brokers and other custodians under IRC §6045A.

Analysis. The Energy Improvement and Extension Act of 2008 added IRC §§6045(g), 6045A, and 6045B to the Code. IRC §6045(g) provides that every broker required to report the gross proceeds from the sale of a covered security must also report the customer's adjusted basis in the security and whether any gain or loss on the security is long-term or short-term. This reporting is generally done on Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions.* A **covered security** includes all stock acquired beginning in 2011 **except:**

- Stock in a regulated investment company for which the average basis method is available, and
- Stock acquired in connection with a dividend reinvestment plan.

Both of the above 2011 exceptions are covered securities if acquired in 2012 or after.

In order to enable brokers to meet the §6045(g) requirements after a stock split, merger, or acquisition that affects basis, §6045B provides that an issuer of stock must report to the IRS and each stockholder or nominee a description of such action and the effect of that action on basis. This provision is effective beginning in 2011; for regulated investment companies, the requirement does not apply until 2012.

Beginning in 2011, a broker and any other person specified in Treasury Regulations that transfers custody of a covered security to a receiving broker must furnish a written statement that allows the receiving broker to satisfy the basis reporting requirements of §6045(g). This statement is generally to be furnished to the receiving broker within 15 days after the transfer.

In order to allow brokers and other custodians sufficient time to make programming changes necessary to comply with the regulations, the IRS will not assess penalties for failure to furnish transfer statements under §6045A for any transfer of stock in 2011 that is not incidental to the stock's purchase or sale.[77]

Information Reporting
IRS Notice 2010-69, IRB 2010-44 (Nov. 1, 2010)
IRC §6051

☞ Interim Relief from Requirement to Report Cost of Health Insurance on W-2

Purpose. This notice provides interim relief to employers with respect to reporting the cost of coverage under an employer-sponsored group health plan on Form W-2. Reporting the cost of such coverage will not be mandatory for Forms W-2 issued for 2011.

Analysis. The Patient Protection and Affordable Care Act of 2010, which was enacted on March 23, 2010, added IRC §6051(a)(14) to the Code. IRC §6051(a)(14) mandates that the cost of applicable employer-sponsored coverage must be reported on Form W-2, effective for taxable years beginning on or after January 1, 2011.

77. See Treas. Reg. §1.6045A-1(a)(1)(ii).

Pursuant to this notice, the §6051(a)(14) reporting requirement is not mandatory for Forms W-2 issued for 2011. Thus, employers that do not report the aggregate cost of employer-sponsored coverage on Forms W-2 issued for 2011 will not be subject to any penalties for failure to meet such requirements.

> **Note.** For more information about the requirement to report the cost of health insurance, see pages 472–473 in the 2010 *University of Illinois Federal Tax Workbook.*

Litigation Costs

***RI Unlimited Inc. v. Comm'r,* TC Memo 2010-205 (Sep. 22, 2010)**

IRC §§7430 and 3121

☞ Litigation Costs Awarded after IRS's Position Deemed Substantially Unjustified

Facts. RI Unlimited, Inc., (RI) provides medical transcription services to medical service providers. The company hires home-based medical transcriptionists to type medical documents from dictation files. RI treated the transcriptionists as independent contractors for employment tax purposes for the tax years 2000–2003.

RI's medical transcriptionists decide how often to work, pay all relevant expenses (e.g., personal computer, Internet service, medical reference texts, and the costs of maintaining a home office), and are paid per line of completed transcription.

In 2004, the IRS conducted an employment tax examination of RI for all quarters of calendar years 2000–2003. An issue in the examination was whether RI's transcriptionists were properly characterized as independent contractors or employees. RI's counsel provided documents and information to the IRS auditor. These documents included Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding,* copies of RI's independent contractor agreement, and copies of the confidentiality agreement the transcriptionists were required to sign.

After reviewing the materials provided, the IRS examiner concluded that RI's medical transcriptionists should be treated as statutory home workers under IRC §3121(d)(3)(C). RI's counsel sent a letter to the IRS examiner in June 2005 disputing the examiner's conclusion and asserting that RI was entitled to Section 530 relief. In August 2005, RI's counsel requested that the matter be transferred to the IRS Office of Appeals.

In February 2007, an IRS appeals officer proposed to settle the case by conceding all of the proposed tax for 2000–2002 and 75% of the proposed tax for 2003. In exchange, RI was to begin treating its medical transcriptionists as employees beginning July 1, 2007. RI rejected the settlement offer and in March 2007, the appeals officer issued a notice of determination which concluded that:

1. The transcriptionists were employees for federal employment tax purposes,
2. RI was not entitled to Section 530 relief, and
3. RI owed employment tax of $477,617.

In June 2007, RI filed a petition with the Tax Court, asserting that the IRS examiner erred in his determinations. In August 2008, RI's counsel wrote a letter which accompanied documents requested by the IRS in pretrial proceedings. The letter stated that even if its transcriptionists were employees for FICA tax purposes, RI was entitled to Section 530 relief. Enclosed were declarations of individuals with many years of experience in the industry who stated that over 25% of the firms in the medical transcription services industry treated their transcriptionists as independent contractors.

After reviewing all the materials submitted, the IRS informed RI that it would fully concede the case on the basis of Section 530. In July 2009, the parties stipulated that RI had no federal employment tax liability for the periods at issue and disposed of all issues in the case except RI's motion for litigation costs.

Issues. There were several issues raised in this case. The following analysis focuses on whether the IRS's position in this matter was substantially justified.

Analysis. IRC §7430(a) authorizes the award of reasonable litigation costs to the prevailing party in connection with any tax matter brought by or against the United States. In order for a taxpayer to be considered the prevailing party, it must be determined that the IRS's position in the court proceeding was not substantially justified. A position is substantially justified if it has a reasonable basis in both fact and law.[78]

RI contends that the IRS's position was not substantially justified because its medical transcriptionists could not have been statutory home workers pursuant to §3121(d)(3)(C). RI argued that the transcriptionists had the right to delegate work to subcontractors, the transcriptionists had a substantial investment in the facilities used in connection with the work, and some of the transcriptionists did not have a continuing relationship with RI.

The IRS claimed that its position had a reasonable basis in fact and law and was, thus, substantially justified. The IRS examiner who reviewed RI's Form SS-8 and confidentiality agreement contemplated that the transcriptionists would perform their work personally and their work would be done as part of a continuing relationship between RI and the transcriptionists. An IRS appeals officer reached the same conclusion after a similar analysis of the facts and applicable law. The appeals officer also specifically concluded that the transcriptionists' investment in computers, software, and medical reference materials was not a substantial investment for purposes of §3121(d)(3). The IRS never conceded that RI's transcriptionists are independent contractors but instead conceded the case on the basis of Section 530 relief.

Relief from employment taxes is available under Section 530 if the taxpayer demonstrates the following:

1. It did not treat an individual as an employee for employment tax purposes for any period,
2. It filed all required federal tax returns consistent with its treatment of the individual, and
3. It had a reasonable basis for not treating the individual as an employee.

One of the safe harbors a taxpayer can use to satisfy the "reasonable basis" requirement is the long-standing recognized practice of a significant segment of the industry in which such individual was engaged. Section 530(e)(2)(B) provides "in no event shall the significant segment requirement…be construed to require a reasonable showing of the practice of more than 25% of the industry (determined by not taking into account the taxpayer)."[79]

RI responded to the IRS's request for formal discovery on August 4, 2008. At that time, the declarations of four individuals stated that substantially more than 25% of the firms in the medical transcription services industry treated their transcriptionists as independent contractors for FICA tax purposes. The Court noted that these declarations provided evidence of a longstanding recognized practice of a significant segment of the industry.

RI had the burden of establishing its entitlement to Section 530 relief. RI had not met this burden in July 2007, the date the IRS first took its position on this issue in the court proceeding. However, a position that was reasonable when first taken may become unreasonable in the light of changed facts and circumstances.[80] When RI submitted the declarations on August 4, 2008, it shifted the burden of proof to the IRS to establish that RI was not entitled to Section 530 relief. The IRS failed to produce any credible evidence to the contrary. As a result, the IRS's position that RI was not entitled to Section 530 relief became substantially unjustified after August 4, 2008. At that time, the IRS's position lacked a reasonable basis in fact or law and RI is entitled to reasonable litigation costs incurred after this point.

Holding. The Court awarded RI reasonable litigation costs incurred after August 4, 2008, of $22,547.

78. *Corson v. Comm'r,* 123 TC 206 (2004); *Maggie Mgmt. Co. v. Comm'r,* 108 TC 443 (1997).

79. Small Business Job Protection Act of 1996, Pub. L. 104-188, sec. 1122, 110 Stat. 1766 (adding subsection (e) of act section 530).

80. Treas. Reg. §301.7430-5(c)(2).

Income Tax Deficiencies

***William Perry v. Comm'r,* TC Memo 2010-219 (Oct. 7, 2010)**
IRC §§6213, 6651, and 6402

☞ Tax Court Allows Overpayment to Offset Prior-Year Deficiency

Facts. In August 2008, the IRS issued a notice of deficiency to William Perry, assessing a $9,219 deficiency in Perry's 2002 federal income tax and additions of tax pursuant to IRC §6651. The IRS applied an overpayment of $4,416 from Perry's 2007 timely-filed return to offset part of the 2002 deficiency.

In November 2008, Perry filed a petition to contest the 2002 deficiency. He later filed a motion to enjoin the IRS from applying the 2007 overpayment to the 2002 deficiency and to order the IRS to refund the 2007 overpayment.

Issue. Whether the IRS violated restrictions on collection and assessment when it offset Perry's 2007 overpayment against his 2002 deficiency.

Analysis. Perry asserts that IRC §6213(a) prohibits the IRS from engaging in collection activities, including offsets, during the period in which the taxpayer may petition the Tax Court (generally 90 days after the deficiency notice is mailed), or, if the taxpayer files a petition, until the Tax Court's decision becomes final. Because the offset occurred during the 90-day period in which the IRS was barred from collection activities, Perry argues that it violated §6213(a). Accordingly, Perry maintains that the Court must order the IRS to refund the 2007 overpayment.

The IRS disputes that the offset violates §6213(a). An offset is not an assessment, a levy, or an in-court collection proceeding, the collection activities that are specifically barred by §6213(a). Furthermore, Treas. Reg. §301.6402-1 authorizes the IRS to offset an overpayment against any outstanding liability.

Although §6213(a) does not specifically prohibit offsets, Perry argued that the "underlying, fundamental principle" of the statute is that the IRS is prohibited from using any means of collecting a deficiency that a taxpayer may dispute in Tax Court during the 90-day period after the deficiency notice is mailed.

The Tax Court noted that §6213(a) limits the IRS's authority with respect to premature assessments, levies, and in-court collection proceedings. The parties to the case agree that the IRS did not **assess** the 2002 deficiency. An offset is also distinguishable from a **levy.** The court in *Sage* noted that "The Supreme Court has held that a levy is a means by which the Internal Revenue Service may acquire possession of a taxpayer's property…a 'set-off,' on the other hand, is the application of funds already in the Government's possession against a taxpayer's outstanding tax liability."[81] Finally, an offset is not a **proceeding in court** for the collection of a deficiency but is rather an administrative "bookkeeping operation."[82]

Holding. The Court held that the IRS did not violate §6213(a) and, accordingly, denies Perry's motion.

> **Note.** In August 2007, the IRS issued Rev. Rul. 2007-51, which permitted the IRS to offset refunds against unassessed liabilities. The examples in the revenue ruling pertained only to corporations, and the Office of Chief Counsel advised Congress that it was only applying the ruling to corporations.[83] The *Perry* decision may indicate that the IRS has changed its mind.

81. *Sage v. U.S.,* 908 F.2d 18, 27 (5th Cir. 1990).

82. See *Fulgoni v. U.S.,* 23 Cl. Ct. 119, 126 (1991).

83. Taxpayer Advocate Service 2008 Annual Report to Congress [www.irs.gov/pub/irs-utl/08_tas_arc_legrec.pdf] Accessed Oct. 19, 2010.

Change in Accounting Method

***Ramesh and Pragati Bosamia v. Comm'r,* TC Memo 2010-218 (Oct. 7, 2010)**
IRC §§481 and 6501

☞ Adjustment Allowed to S Corporation's Deductions from Closed Years

Facts. Ramesh and Pragati Bosamia were the sole shareholders of India Music, Inc. and Houston-Rakhee Imports (HRI). Both these companies were S corporations.

India Music purchased most of its inventory from HRI on credit. India Music used the accrual method and thus included the yearly increase in the accounts payable to HRI in cost of goods sold. However, no payments were made from India Music to HRI in seven years. HRI used the cash method of accounting and reported no income from its sales to India Music for 1998–2004, the years at issue in this case.

In August 2008, the IRS issued a notice of deficiency to the Bosamias for their tax year 2004, determining that India Music was not entitled to claim cost of goods sold for 1998–2004 until the sales were included in HRI's income. At the time the notice of deficiency was issued, the IRS was barred from assessing income tax deficiencies for the Bosamia's 1998–2002 tax years because of the expiration of the 3-year statutory period for assessment under IRC §6501(a). However, the IRS made a IRC §481 adjustment of $877,581 to the Bosamia's 2004 income, which reflected India Music's total cost of goods sold claimed on their tax returns for 1998–2003. Accordingly, the IRS assessed a deficiency of $295,818 and a $59,163 accuracy-related penalty under IRC §6662(a) on the Bosamia's 2004 tax return.

Issue. Whether the IRS may make an adjustment under §481 to the Bosamia's income for 2004 that arises from closed years.

Analysis. IRC §481(a) allows adjustments to prevent duplications or omissions attributable to a change in the method of accounting initiated by the taxpayer. These adjustments may include amounts arising from taxable years for which assessment is barred by expiration of the statutory assessment period.[84]

The IRS contends that a change in method of accounting occurred in this case. The Tax Court agreed, citing Treas. Reg. §1.481-1(a)(1):

> *A change in method of accounting to which section 481 applies includes a change in the overall method of accounting for gross income or deductions, or a change in the treatment of a material item.*

Treas. Reg. §1.446-1(e)(2)(ii)(a) states:

> *A material item is any item that involves the proper time for the inclusion of the item in income or the taking of a deduction.*

The Tax Court previously indicated that a change to comply with IRC §267(a)(2) is a change in the treatment of a material item.[85] An adjustment under §267(a)(2) simply causes a delay or timing difference. However, the Bosamias argue that §267 preempts §481 and prevents a §481 adjustment attributable to closed years, citing *Tate & Lyle, Inc. & Subs v. Comm'r*.[86] The Tax Court disagreed, noting that the holding in *Tate & Lyle* does not refer to or consider §481. Thus, the case does not provide a basis for the Bosamia's argument that a §481 adjustment from a closed year is prohibited.

Holding. The court held that §481 applies and the Bosamias are liable for the deficiency and the accuracy-related penalty.

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84. *Graff Chevrolet Co. v. Campbell,* 343 F.2d 568, 572 (5th Cir. 1965); *Hamilton Indus., Inc. v. Comm'r,* 97 TC 120, 125 (1991).

85. *Summit Sheet Metal Co. v. Comm'r,* TC Memo 1996-563.

86. *Tate & Lyle, Inc. & Subs. v. Comm'r,* 87 F.3d 99 (3d Cir. 1996), revg. and remanding 103 TC 656 (1994).

Failure to File
***Daniel Callahan v. Comm'r,* TC Memo 2010-201 (Sep. 14, 2010)**
IRC §§1, 61, 6651, 6654, and 6673

☞ Frivolous Arguments Result in Penalties

Facts. In 2005, Daniel Callahan worked as an assistant supervisor and clinician for the Midwest College of Oriental Medicine in Racine, Wisconsin. This institution is owned by Acupuncture Center, Inc. (ACI). Callahan was paid $13,150 for his services, which was reported on a Form 1099-MISC. He has a B.S. degree in economics, a master's degree in industrial relations, a B.S. and master's degree in nutrition and is working on a doctorate in nutrition. Although he is not an attorney, Callahan also has four years experience as a municipal court judge in Sturtevant, Wisconsin.

Callahan did not file a tax return for 2005, nor did he pay any federal income tax or make estimated tax payments for the year. In February 2008, the IRS sent Callahan a notice of deficiency which set forth the IRS's determination of his deficiency in income taxes for tax year 2005 and additions to tax under IRC §§6651 and 6654.

Issue. Whether payments received by Callahan in exchange for services are gross income subject to taxes.

Analysis. Callahan asserted that he is a citizen of the "Republic of Wisconsin" and not a citizen of the state of Wisconsin or of the United States. He therefore argued that he does not have to pay federal income taxes. This type of frivolous argument has been consistently rejected by courts.[87]

Callahan admitted that he was associated with ACI and was monetarily compensated for his services. However, he claims that the compensation he received during tax year 2005 is not income for federal taxation purposes. Rather, he contends that his time and talent are a like-kind exchange for the money received, analogous to an exchange of property. The Court disagreed and stated that the compensation he received is gross income under IRC §61(a).

The IRS contended that Callahan is liable for additions to tax for failure to file a return and failure to pay estimated income taxes under IRC §§6651(a)(1) and 6654(a), respectively. Although Callahan received a Form 1099-MISC from ACI, he did not file a tax return for 2005, nor did he offer a valid defense for his failure to file. Likewise, Callahan did not pay estimated taxes for 2005 but did not argue that any of the statutory exceptions to paying estimated taxes were applicable to his situation. Accordingly, the Court sustained the additions to tax under §§6651(a)(1) and 6654(a).

IRC §6673(a)(1) authorizes the imposition of a penalty not to exceed $25,000 whenever the taxpayer initiates proceedings primarily for delay or if the taxpayer's position in the proceedings is frivolous or groundless. The Court recognized that Callahan is a sophisticated person who holds advanced degrees and has experience as a municipal judge. He had previously made similar frivolous arguments before the Court; as a result of that proceeding, a penalty of $1,500 was imposed under §6673(a).[88] On appeal, the 7th Circuit affirmed the Tax Court's decision and imposed a "presumptive" $4,000 sanction for filing a frivolous appeal. Therefore, the Court in this case finds that Callahan was aware of the consequences of making frivolous arguments.

Holding. The Court sustained additions to tax under IRC §§6651(a)(1) and 6654(a) and assessed a $3,000 penalty under §6673(a).

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87. See *U.S. v. Hilgeford,* 7 F.3d 1340, 1342 (7th Cir. 1993); *U.S. v. Gerads,* 999 F.2d 1255, 1256 (8th Cir. 1993); *U.S.v. Sileven,* 985 F.2d 962 (8th Cir. 1993); *Bland-Barclay v. Comm'r,* TC Memo 2002-20; *Solomon v. Comm'r,* TC Memo 1993-509, *aff'd without published opinion* 42 F.3d 1391 (7th Cir. 1994).

88. *Callahan v. Comm'r,* TC Memo 2007-301, *aff'd* 334 Fed. Appx. 754 (7th Cir. 2009).

Filing Status

***Von Argyle v. Comm'r,* U.S. Court of Appeals, 3rd Circuit, No. 10-1837 (Oct. 14, 2010)**

IRC §§7703, 6662, and 280A

☞ Separate Living Arrangement Does Not Confer Single Filing Status

Facts. In 2008, the IRS issued a notice of deficiency to Von Argyle, a CPA, for tax years 2004, 2005, and 2006, asserting deficiencies of $7,478, $3,606, and $10,607, respectively. The IRS also assessed penalties under IRC §6662(a) for each year. Argyle filed a petition in Tax Court contesting the notice. Argyle and the IRS entered into a stipulation as to some of the relevant facts and the case proceeded to trial on various tax issues. The Tax Court issued a decision in September 2009, concluding that Argyle had not carried his burden of proof on the factual issues and incorporating the IRS's post-trial computation of deficiencies in the amounts of $2,180, $1,384, and $10,154 for the respective tax years, plus penalties.

Argyle contested the Tax Court's decision that he was not entitled to single filing status. Argyle's wife filed for divorce in August 2004, but a divorce was not granted during the tax years at issue in this case. Argyle and his wife lived apart during these years.

Argyle also challenged the ruling that he could not deduct his legal expenses related to criminal proceedings for assault. A woman who worked for a client of Argyle filed a criminal complaint against him after he kissed her at his home. Argyle was represented by Paul Gettleman in the proceedings and paid him $12,500 in 2004, $25,000 in 2005, and $25,000 in 2006. Argyle deducted these fees as "legal and professional services" on his tax returns, along with an additional $10,000 in legal fees he claims he paid Gettleman in 2005.

Issues. The issues in this case are:

- Whether Argyle was entitled to claim single filing status
- Whether to allow his claimed deductions for legal fees

Analysis. IRC §7703(a)(2) states that an individual legally separated from his spouse by a divorce decree or separate maintenance agreement is not considered married. The Tax Court concluded that Argyle was not entitled to single filing status because he was neither divorced nor a party to a decree of separate maintenance, rejecting Argyle's contention that his "separate and apart" living status conferred single filing status. The appeals court agreed with the Tax Court.

Argyle maintained that his legal fees in the criminal proceeding were deductible because the woman who filed the complaint against him did so because he had reprimanded her for misconduct in his client's business. He asserted that the *Gilmore*[89] court held that the test for deductibility is the origin and character of the legal claim for which the expense was incurred. The Tax Court concluded that Argyle failed to corroborate his claim that the employee engaged in misconduct. Argyle did not call Gettleman to testify, and the evidence established that the legal fees arose out of a personal relationship and were not deductible business expenses. The appeals court agreed with the Tax Court's conclusion.

Additionally, Argyle also challenged the Tax Court's conclusion that he took other improper business expense deductions. However, he did not present evidence to demonstrate that the Tax Court erred as to their findings.

Holding. The Court of Appeals affirms the judgment of the Tax Court on all issues.

89. *U.S. v. Gilmore*, 372 U.S. 39, 49 (1963).

Qualified Residence Interest

Rev. Rul. 2010-25, IRB 2010-44 (Oct. 14, 2010)
IRC §163

☞ Taxpayers Allowed to Deduct Interest on up to $1.1 Million of Mortgage Interest

Purpose. This revenue ruling provides guidance as to whether indebtedness incurred by a taxpayer to acquire, construct, or substantially improve a qualified residence can constitute home equity indebtedness to the extent it exceeds $1 million.

Analysis. There are two types of qualified residence interest under IRC §163(h)(3)(A). The first is **acquisition indebtedness** which is defined as any indebtedness incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer and is secured by the residence.[90] Acquisition indebtedness is limited to $1 million ($500,000 for MFS taxpayers).[91] The second type is **home equity indebtedness** which is any indebtedness, other than acquisition indebtedness, secured by a qualified residence. It is limited to the FMV of the qualified residence, reduced by the amount of acquisition indebtedness, up to a maximum of $100,000 ($50,000 for MFS taxpayers).[92]

In the scenario presented in this revenue ruling, an unmarried taxpayer purchased a principal residence for its fair market value (FMV) of $1.5 million. Taxpayer paid $300,000 and financed the remaining $1.2 million through a loan secured by the residence.

The IRS asserts that Taxpayer may deduct interest on $1 million as acquisition indebtedness. Taxpayer may also deduct, as home equity indebtedness, interest paid during the tax year on $100,000 of the remaining indebtedness of $200,000. The $200,000 is secured by the principal residence, is not acquisition indebtedness,[93] and does not exceed the FMV of the residence reduced by the acquisition indebtedness. Therefore, $100,000 is treated as home equity indebtedness.

The revenue ruling discusses two Tax Court decisions on this issue. In *Pau,*[94] the Tax Court limited the taxpayers' deduction for qualified residence interest to the interest paid on $1 million of the $1.33 million indebtedness incurred to purchase their residence. The court stated that the taxpayers in this case failed to demonstrate that any of their debt was not incurred in acquiring, constructing, or substantially improving their residence and thus was not acquisition indebtedness. The Tax Court followed the *Pau* ruling in *Catalano.*[95]

The IRS will not follow the decisions in *Pau* and *Catalano.* The revenue ruling states that *Pau* was based on the incorrect assertion that taxpayers must demonstrate that debt treated as home equity indebtedness was not incurred in acquiring, constructing, or substantially improving their residence. However, there are no such restrictions in §163(h)(3)(C); accordingly, the IRS will determine home equity indebtedness consistent with the provisions of this revenue ruling.

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90. IRC §163(h)(3)(B)(i).
91. IRC §163(h)(3)(B)(ii).
92. IRC §163(h)(3)(C).
93. By definition, any indebtedness described in §163(h)(3)(B)(i) in excess of $1 million is not acquisition indebtedness.
94. *Pau v. Comm'r,* TC Memo 1997-43 (Jan. 27, 1997).
95. *Catalano v. Comm'r,* TC Memo 2000-82 (Mar. 9, 2000).

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Please note. Corrections for all of the chapters are available at **www.TaxSchool.illinois.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

	2010	2011
Standard Deductions		
Joint or Qualifying Widow(er)	$ 11,400	$ 11,600
Single	5,700	5,800
Head of Household	8,400	8,500
Married Filing Separately	5,700	5,800
Additional for Elderly/Blind — MFJ, MFS, QW	1,100	1,150
Additional for Elderly/Blind — Single, HoH	1,400	1,450
Taxpayer Claimed as Dependent	950	950
Personal and Dependent Exemption Deduction	3,650	3,700
Long-Term Care Premium Limitations		
Age 40 or less	330	340
Age more than 40 but not more than 50	620	640
Age more than 50 but not more than 60	1,230	1,270
Age more than 60 but not more than 70	3,290	3,390
Age more than 70	4,110	4,240
Child's Unearned Income Without Kiddie Tax	1,900	1,900
Beginning/Ending of Personal Exemption Phaseout Range — Based on AGI		
Joint or Qualifying Widow(er)	N/A	N/A
Single	N/A	N/A
Head of Household	N/A	N/A
Married Filing Separately	N/A	N/A
IRC §179 Deduction Limit	500,000	500,000
IRC §179 Asset Limitation	2,000,000	2,000,000

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	2010	2011
Beginning/Ending of Itemized Deduction Phaseout Range — Based on AGI		
Joint, Single, Head of Household	N/A	N/A
Married Filing Separately	N/A	N/A
FICA/SE Tax Information		
OASDI Tax Maximum Earnings	106,800	106,800
FICA (OASDI and HI) Tax Rate (Employee)	7.65%	5.65%
SE Tax Rate	15.30%	13.30%
Self-Employed Health Insurance Deduction	100%	100%
Estimated Tax Payments (AGI $\leq$ $150,000)		
Prior Year Tax % or	100%	100%
Current Year Tax %	90%	90%
Earnings Ceiling for Social Security		
Under full retirement age	14,160	14,160
The year full retirement age is reached	37,680	37,680
The month full retirement age is reached, and above	Unlimited	Unlimited
Earnings Required to Earn One Quarter of Social Security Coverage	1,120	1,120
Gift Tax Applicable Exclusion Amount	1,000,000	5,000,000
Estate Tax Applicable Exclusion Amount	5,000,000	5,000,000
Maximum Gift	13,000	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	13,170	13,360
Other Children	13,170	13,360
Phaseout Amount	182,520 / 222,520	185,210 / 225,210

	2010	2011
Lifetime Learning Credits		
Phaseout — Single, HoH, QW	50,000– 60,000	51,000– 61,000
Phaseout — MFJ	100,000–120,000	102,000–122,000
Hope/American Opportunity Credit		
Phaseout — Single, HoH, QW	80,000– 90,000	80,000– 90,000
Phaseout — MFJ	160,000–180,000	160,000–180,000
Earned Income Tax Credit		
One child		
Minimum earned income for maximum EITC	8,970	9,100
Maximum Amount of Credit	3,050	3,094
Phaseout Amount (single and head of household)	16,450 / 35,535	16,690 / 36,052
Phaseout Amount (married filing jointly)	21,460 / 40,545	21,770 / 41,132
Two Children		
Minimum earned income for maximum EITC	12,590	12,780
Maximum Amount of Credit	5,036	5,112
Phaseout Amount (single and head of household)	16,450 / 40,363	16,690 / 40,964
Phaseout Amount (married filing jointly)	21,460 / 45,373	21,770 / 46,044
Three or More Children		
Minimum earned income for maximum EITC	12,590	12,780
Maximum Amount of Credit	5,666	5,751
Phaseout Amount (single and ehad of household)	16,450 / 43,352	16,690 / 43,998
Phaseout Amount (married filing jointly)	21,460 / 48,362	21,770 / 49,078
No children		
Minimum earned income for maximum EITC	5,980	6,070
Maximum Amount of Credit	457	464
Phaseout Amount (single and head of household)	7,480 / 13,460	7,590 / 13,660
Phaseout Amount (married filing jointly)	12,490 / 18,470	12,670 / 18,740
Child Tax Credit	1,000	1,000

Daycare Provider
Standard Meal Allowance for 2011 Returns
July 1, 2010 through June 30, 2011

	48 States	Alaska	Hawaii
Breakfast	$1.19	$1.89	$1.38
Lunch/Dinner	2.22	3.60	2.60
Snack	.66	1.07	.77

Daycare Provider
Standard Meal Allowance for 2010 Returns
July 1, 2009 through June 30, 2010

	48 States	Alaska	Hawaii
Breakfast	$1.19	$1.89	$1.38
Lunch/Dinner	2.21	3.59	2.59
Snack	.66	1.07	.77

Child Tax Credit AGI Phaseout — 2011

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

Locality	On or Before Sep. 30, 2009	Oct. 1, 2009–Sep. 30, 2010	Oct. 1, 2010–Sep. 30, 2011
CONUS (continental U.S.)	$52	$59	$59
OCONUS (outside the continental U.S.)	58	65	65

High and Low Per Diem Reimbursements

	On or Before Sep. 30, 2009	Oct. 1, 2009–Sep. 30, 2010	Oct. 1, 2010–Sep. 30, 2011
High cost areas	$256 ($58 for M&IE)	$258 ($65 for M&IE)	$233 ($65 for M&IE)
Basic/low cost areas	$158 ($45 for M&IE)	$163 ($52 for M&IE)	$160 ($52 for M&IE)

DEPRECIATION LIMITS FOR LUXURY VEHICLES[1]

Tax Year	Used Passenger Vehicles	New Passenger Vehicles	Used Trucks and Vans	New Trucks and Vans	Used Electric Vehicles	New Electric Vehicles
Placed in service in 2010						
1	$3,060	$3,060	$3,160	$3,160	[b]	[b]
2	4,900	4,900	5,100	5,100		
3	2,950	2,950	3,050	3,050		
4	1,775	1,775	1,875	1,875		
Placed in service in 2009						
1	$2,960	$ 2,960 [a]	$ 3,060	$ 3,060 [a]		
2	4,800	4,800	4,900	4,900	[b]	[b]
3	2,850	2,850	2,950	2,950		
4	1,775	1,775	1,775	1,775		
Placed in service in 2008						
1	$2,960	$ 2,960 [a]	$ 3,160	$ 3,160 [a]		
2	4,800	4,800	5,100	5,100	[b]	[b]
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		
2	4,900	4,900	5,200	5,200	[b]	[b]
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

[a] For 2008 and 2009, 50% bonus depreciation is available for new vehicles placed in service. The maximum first-year depreciation for new passenger vehicles is $10,960 for 2008 and 2009. The maximum first-year depreciation for new trucks and vans is $11,160 for 2008 and $11,060 for 2009.

[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.

1. Rev. Procs. 2006-18, 2007-11, 2009-24, and 2010-18

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SAVER'S CREDIT PHASEOUT — 2011

Credit Rate	AGI Phaseout		
	MFJ	HoH	Single, MFS, QW
50%	$ 0–34,000	$ 0–25,500	$ 0–17,000
20%	34,001–36,500	25,501–27,375	17,001–18,250
10%	36,501–56,500	27,376–42,375	18,251–28,250
0%	Over $56,500	Over $42,375	Over $28,250

QUALIFIED RETIREMENT PLAN LIMITATIONS

	2010	2011
Contributions/Deferrals		
Maximum deductible employee annual retirement contribution	$ 16,500	$ 16,500
(401(k), 403(b), 457, SARSEP, Thrift Savings Plans)		
Catch-up contributions (age 50 or over)	5,500	5,500
Maximum annual deferral under **SIMPLE**	11,500	11,500
Catch-up deferral (age 50 or over)	2,500	2,500
Maximum **traditional and Roth IRA** annual contributions	5,000	5,000
(the annual limit is lesser of 100% of taxable compensation or listed amount)		
Catch-up contributions (age 50 or over)	1,000	1,000
Maximum employer contribution to **SEP IRA**	49,000	49,000
(the annual limit is lesser of 25% of compensation or listed amount)		
Income limitations		
Maximum annual benefit for a **defined benefit plan**	195,000	195,000
(based on annual compensation, the annual limits may be less) [a]		
Maximum annual contribution to **all defined contribution plans**	49,000	49,000
(the annual limit is lesser of 100% of compensation or listed amount)		
Earnings threshold for **highly-compensated employees**	110,000	110,000
Earnings threshold for **key employee in top-heavy plan**	160,000	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.

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OTHER RATES FOR VEHICLES

	Jan. 1–Jun. 30 2008	Jul. 1–Dec. 31 2008	Jan. 1–Feb. 28 2009	Mar. 1–Dec. 31 2009	2010	2011
Auto Standard Mileage Allowance						
Business	$0.505	$0.585	$0.55	$0.55	$0.50	$0.51
Charity work	0.14	0.14	0.14	0.14	0.14	0.14
Medical/moving	0.19	0.27	0.24	0.24	0.165	0.19
Qualified Transportation Fringe (expressed as monthly limits)						
Vehicle/transit pass limit	$ 115	$ 115	$ 120	$ 230	$ 230	$ 230
Qualified parking limit	220	220	230	230	230	230
Qualified bicycle limit			20	20	20	20

TAX RATES FOR 2011

Tax Rate Schedule
Single Taxpayers
For Tax Years Beginning in 2011

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Over
$ 0	$ 8,500	10.0%	$ 0
8,500	34,500	850.00 + 15.0%	8,500
34,500	83,600	4,750.00 + 25.0%	34,500
83,600	174,400	17,025.00 + 28.0%	83,600
174,400	379,150	42,449.00 + 33.0%	174,400
379,150		110,016.50 + 35.0%	379,150

Tax Rate Schedule
Married Individuals Filing Joint
Returns and Surviving Spouses
For Tax Years Beginning in 2011

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Over
$ 0	$ 17,000	10.0%	$ 0
17,000	69,000	1,700.00 + 15.0%	17,000
69,000	139,350	9,500.00 + 25.0%	69,000
139,350	212,300	27,087.50 + 28.0%	139,350
212,300	379,150	47,513.50 + 33.0%	212,300
379,150		102,574.00 + 35.0%	379,150

Tax Rate Schedule
Married Individuals Filing Separate Returns
For Tax Years Beginning in 2011

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Over
$ 0	$ 8,500	10.0%	$ 0
8,500	34,500	850.00 + 15.0%	8,500
34,500	69,675	4,750.00 + 25.0%	34,500
69,675	106,150	13,543.75 + 28.0%	69,675
106,150	189,575	23,756.75 + 33.0%	106,150
189,575		51,287.00 + 35.0%	189,575

Tax Rate Schedule
Head of Household
For Tax Years Beginning in 2011

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Over
$ 0	$ 12,150	10.0%	$ 0
12,150	46,250	1,215.00 + 15.0%	12,150
46,250	119,400	6,330.00 + 25.0%	46,250
119,400	193,350	24,617.50 + 28.0%	119,400
193,350	379,150	45,323.50 + 33.0%	193,350
379,150		106,637.50 + 35.0%	379,150

Tax Rate Schedule
Trusts and Estates
For Tax Years Beginning in 2011

If Taxable Income Is			
Over	But Not Over	The Tax Is	Of the Amount Over
$ 0	$2,300	15.0%	$ 0
2,300	5,450	345.00 + 25.0%	2,300
5,450	8,300	1,132.50 + 28.0%	5,450
8,300	11,350	1,930.50 + 33.0%	8,300
11,350		2,937.00 + 35.0%	11,350

Tax Rate Schedule
Corporate
For Tax Years Beginning in 2011

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[2]

Farm Credit Bank District in Which Property is Located	2009 Interest Rates
AgFirst, FCB	7.63%
AgriBank, FCB	6.50%
CoBank, ACB	6.17%
Texas, FCB	6.59%
U.S. AgBank, FCB	6.23%

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

2. Rev. Rul. 2009-21, 2009-30 IRB 162.

INTEREST RATES FOR NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS OF TAX 2001–2011

Calendar Quarter Beginning	Rate on Overpayments	Rate on Underpayments
1/1/2011	3%	3%
10/1/2010	4%	4%
7/1/2010	4%	4%
4/1/2010	4%	4%
1/1/2010	4%	4%
10/1/2009	4%	4%
7/1/2009	4%	4%
4/1/2009	4%	4%
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%

INTEREST RATES ON CORPORATE OVERPAYMENTS AND UNDERPAYMENTS OF TAX 2007–2011

Calendar Quarter Beginning	Rate on Overpayments	Rate on Underpayments
Jan. 1, 2011	2%	3%
Oct. 1, 2010	3%	4%
Jul. 1, 2010	3%	4%
Apr. 1, 2010	3%	4%
Jan. 1, 2010	3%	4%
Oct. 1, 2009	3%	4%
Jul. 1, 2009	3%	4%
Apr. 1, 2009	3%	4%
Jan. 1, 2009	4%	5%
Oct. 1, 2008	5%	6%
Jul. 1, 2008	4%	5%
Apr. 1, 2008	5%	6%
Jan. 1, 2008	6%	7%
Oct. 1, 2007	7%	8%
Jul. 1, 2007	7%	8%
Apr. 1, 2007	7%	8%
Jan. 1, 2007	7%	8%

INTEREST RATES ON LARGE CORPORATE OVERPAYMENTS AND UNDERPAYMENTS OF TAX 2007–2011

Calendar Quarter Beginning	Rate on Overpayments	Rate on Underpayments
Jan. 1, 2011	0.5%	5%
Oct. 1, 2010	1.5%	6%
Jul. 1, 2010	1.5%	6%
Apr. 1, 2010	1.5%	6%
Jan. 1, 2010	1.5%	6%
Oct. 1, 2009	1.5%	6%
Jul. 1, 2009	1.5%	6%
Apr. 1, 2009	1.5%	6%
Jan. 1, 2009	2.5%	7%
Oct. 1, 2008	3.5%	8%
Jul. 1, 2008	2.5%	7%
Apr. 1, 2008	3.5%	8%
Jan. 1, 2008	4.5%	9%
Oct. 1, 2007	5.5%	10%
Jul. 1, 2007	5.5%	10%
Apr. 1, 2007	5.5%	10%
Jan. 1, 2007	5.5%	10%

APPLICABLE FEDERAL RATES FOR OCTOBER 2008 THROUGH JANUARY 2011

For the newest AFR tables, go to **www.irs.gov/app/picklist/list/federalRates.html** .

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%

February 2009

	Period For Compounding			
	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term AFR	0.60%	0.60%	0.60%	0.60%
Mid-term AFR	1.65%	1.64%	1.64%	1.63%
Long-term AFR	2.96%	2.94%	2.93%	2.92%

March 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.72%	0.72%	0.72%	0.72%
Mid-term AFR	1.94%	1.93%	1.93%	1.92%
Long-term AFR	3.52%	3.49%	3.47%	3.46%

April 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.83%	0.83%	0.83%	0.83%
Mid-term AFR	2.15%	2.14%	2.13%	2.13%
Long-term AFR	3.67%	3.64%	3.62%	3.61%

May 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.76%	0.76%	0.76%	0.76%
Mid-term AFR	2.05%	2.04%	2.03%	2.03%
Long-term AFR	3.58%	3.55%	3.53%	3.52%

June 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.75%	0.75%	0.75%	0.75%
Mid-term AFR	2.25%	2.24%	2.23%	2.23%
Long-term AFR	3.88%	3.84%	3.82%	3.81%

July 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.82%	0.82%	0.82%	0.82%
Mid-term AFR	2.76%	2.74%	2.73%	2.72%
Long-term AFR	4.36%	4.31%	4.29%	4.27%

August 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.83%	0.83%	0.83%	0.83%
Mid-term AFR	2.80%	2.78%	2.77%	2.76%
Long-term AFR	4.26%	4.22%	4.20%	4.18%

September 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.84%	0.84%	0.84%	0.84%
Mid-term AFR	2.87%	2.85%	2.84%	2.83%
Long-term AFR	4.38%	4.33%	4.31%	4.29%

October 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.75%	0.75%	0.75%	0.75%
Mid-term AFR	2.66%	2.64%	2.63%	2.63%
Long-term AFR	4.10%	4.06%	4.04%	4.03%

November 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.71%	0.71%	0.71%	0.71%
Mid-term AFR	2.59%	2.57%	2.56%	2.56%
Long-term AFR	4.01%	3.97%	3.95%	3.94%

December 2009

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.69%	0.69%	0.69%	0.69%
Mid-term AFR	2.64%	2.62%	2.61%	2.61%
Long-term AFR	4.17%	4.13%	4.11%	4.09%

January 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.57%	0.57%	0.57%	0.57%
Mid-term AFR	2.45%	2.44%	2.43%	2.43%
Long-term AFR	4.11%	4.07%	4.05%	4.04%

February 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.72%	0.72%	0.72%	0.72%
Mid-term AFR	2.82%	2.80%	2.79%	2.78%
Long-term AFR	4.44%	4.39%	4.37%	4.35%

March 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.64%	0.64%	0.64%	0.64%
Mid-term AFR	2.69%	2.67%	2.66%	2.66%
Long-term AFR	4.35%	4.30%	4.28%	4.26%

April 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.67%	0.67%	0.67%	0.67%
Mid-term AFR	2.70%	2.68%	2.67%	2.67%
Long-term AFR	4.40%	4.35%	4.33%	4.31%

May 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.79%	0.79%	0.79%	0.79%
Mid-term AFR	2.87%	2.85%	2.84%	2.83%
Long-term AFR	4.47%	4.42%	4.40%	4.38%

June 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.74%	0.74%	0.74%	0.74%
Mid-term AFR	2.72%	2.70%	2.69%	2.68%
Long-term AFR	4.30%	4.25%	4.23%	4.21%

July 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.61%	0.61%	0.61%	0.61%
Mid-term AFR	2.35%	2.34%	2.33%	2.33%
Long-term AFR	3.94%	3.90%	3.88%	3.87%

August 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.53%	0.53%	0.53%	0.53%
Mid-term AFR	2.18%	2.17%	2.16%	2.16%
Long-term AFR	3.79%	3.75%	3.73%	3.72%

September 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.46%	0.46%	0.46%	0.46%
Mid-term AFR	1.94%	1.93%	1.93%	1.92%
Long-term AFR	3.66%	3.63%	3.61%	3.60%

October 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.41%	0.41%	0.41%	0.41%
Mid-term AFR	1.73%	1.72%	1.72%	1.71%
Long-term AFR	3.32%	3.29%	3.28%	3.27%

November 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.35%	0.35%	0.35%	0.35%
Mid-term AFR	1.59%	1.58%	1.58%	1.57%
Long-term AFR	3.35%	3.32%	3.31%	3.30%

December 2010

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.32%	0.32%	0.32%	0.32%
Mid-term AFR	1.53%	1.52%	1.52%	1.52%
Long-term AFR	3.53%	3.50%	3.48%	3.47%

January 2011

	Period For Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term AFR	0.43%	0.43%	0.43%	0.43%
Mid-term AFR	1.95%	1.94%	1.94%	1.93%
Long-term AFR	3.88%	3.84%	3.82%	3.81%

IRS AUDIT TECHNIQUE GUIDES

Aerospace Industry **Pub. Date: Jan. 2005**

The IRS prepared a comprehensive audit technique guide (ATG) to assist examiners in evaluating research credit in the aerospace industry. The guide focuses on the particular unique aspects of the industry and provides examiners tools and tests to utilize in evaluating and auditing research credit.

Air Transportation **Pub. Date: Apr. 2008**

Overview of excise tax paid for transportation of persons or property by air

Cash Intensive Businesses **Pub. Date Apr. 2010**

Businesses that have substantial cash transactions are included in the consolidated cash intensive businesses ATG. Some of these businesses include bail bonds, beauty shops, car washes, check cashing establishments, coin-operated amusements, laundromats, scrap metal, and some convenience stores. Guidance is also provided on examination of income, interview techniques, and evaluation of evidence.

Child Care Provider **Pub. Date: Mar. 2009**

The child care provider ATG is intended to provide guidance to the examiner who is auditing a taxpayer in this industry and to provide tax-related guidance to taxpayers and other professionals in this industry.

Coal Excise Tax **Pub. Date: May 2005**

Provides excise tax agents with specific tools to examine issues relating to domestically produced coal.

Commercial Banking **Pub. Date: May 2001**

Overview of the industry; discusses potential issues and terminology unique to banking.

Construction Industry **Pub. Date: May 2009**

Overview of the industry including a glossary. Discusses types of contracts; types of contractors; methods of accounting; and joint ventures. This updated guide includes the filing locations for Rev. Proc. 92-29 elections (Chapter 7); includes contractor square footage costs (Chapter 11); and common errors in look-back interest filings (Chapter 5).

Cost Segregation **Pub. Date: Jan. 2005**

The IRS prepared a comprehensive audit techniques guide to assist examiners in evaluating cost segregation studies submitted by taxpayers in support of depreciation deductions. The guide is also beneficial for taxpayers and practitioners in preparing these studies.

Credit for Increasing Research Activities (i.e. Research Tax Credit) IRC §41 **Pub. Date: June 2005**

This ATG sets forth the Research Credit Technical Advisors' suggested guidelines for auditing research credit issues.

Executive Compensation — Fringe Benefits **Pub. Date: Feb. 2005**

Corporate executives often receive extraordinary fringe benefits that are not provided to other corporate employees. Any property or service that an executive receives in lieu of or in addition to regular taxable wages is a fringe benefit that may be subject to taxation.

Factoring of Receivables **Pub. Date: June 2006**

This ATG focuses on a strategy in which multinational corporations use factoring of accounts receivable among related parties to avoid U.S. taxation by shifting income offshore and reducing U.S. income by deducting expenses related to the same income.

Farmers — Pub. Date: July 2006

The agriculture industry ATG focuses on developing highly-trained examiners for the agricultural market segment. The guide contains examination techniques, common and unique industry issues, business practices, industry terminology and other information to assist examiners in performing examinations.

Foreign Insurance Excise Tax — Pub. Date: Apr. 2008

This ATG was designed to assist the examiner in conducting audits in which excise tax of foreign insurance transactions may be due.

Golden Parachutes — Pub. Date: Feb. 2005

The IRS has prepared a comprehensive ATG to assist examiners in evaluating parachute examinations. The parachute examination can occur during the examination of either the corporation's or the individual's return.

Hardwood Timber Industry — Pub. Date: Feb. 1998

Provides general and technical information useful to examiners in classifying, preplanning and examining returns relating to this industry.

Inland Waterways — Pub. Date: Dec. 2008

This ATG is intended to provide assistance to the examiner who is auditing a taxpayer for which the use of the inland waterways is an issue.

IRC 162(m) Salary Deduction Limitation — Pub. Date: Feb. 2005

Every publicly-held corporation maintains its executive compensation records differently. Likewise, every publicly-held corporation maintains different methods for compensating its executives. The examining agent must first learn the identity of the individual(s) within the corporation who are most familiar with how the executive compensation records are maintained.

IRC §183: Activities Not Engaged in For Profit — Pub. Date: June 2009

This ATG was developed to provide guidance to revenue agents and tax compliance officers in pursuing the application of IRC §183, Activities Not Engaged in for Profit (sometimes referred to as the "hobby loss rule").

The Laundromat Industry — Pub. Date: June 2000

Provides an explanation of water consumption analysis for reconstructing unreported income from the operation of a laundromat. This method is to be used only when there is a reasonable indication of unreported income.

Lawsuit Awards and Settlements — Pub. Date: Jan. 2001

This ATG focuses on taxability of law suit awards and settlements.

Ministers — Pub. Date: Apr. 2009

The ministers ATG is intended to provide guidance to the examiner who is auditing a taxpayer who is a minister and to provide tax-related guidance to taxpayers and other professionals in this industry.

New Markets Tax Credit — Pub. Date May 2010

The New Markets Tax Credit (NMTC) Program, enacted by Congress as part of the Community Renewal Tax Relief Act of 2000, is incorporated as §45D of the Internal Revenue Code. This section permits individual and corporate taxpayers to receive a credit against federal income taxes for making Qualified Equity Investments (QEIs) in qualified community development entities (CDEs).

New Vehicle Dealership **Pub. Date: Jan. 2005**

This ATG will give you the key to a quick and competent closure of any new vehicle dealership examination which hinges on narrowing the scope of the examination to items that may prove productive.

Nonqualified Deferred Compensation **Pub. Date: Feb. 2005**

The IRS has prepared a comprehensive ATG to assist examiners in evaluating nonqualified deferred compensation. A nonqualified deferred compensation (NQDC) plan is any elective or nonelective plan, agreement, method, or arrangement between an employer and an employee (or service recipient and service provider) to pay the employee compensation some time in the future.

Obligations Not in Registered Form **Pub. Date: June 2006**

Obligations Not in Registered Form D **Pub. Date: June 2006**

Oil and Gas Industry **Pub. Date: May 1996**

Provides information on basic operations and common terminology. Includes reference to royalty owners and an introduction to financial products.

Ozone Depleting Chemicals (ODC) Excise Tax **Pub. Date: Sep. 2007**

This ATG is used for industries involved with ozone depleting chemicals (ODC).

Partnerships **Pub. Date: Dec. 2002**

The ATG focuses on issues that fall within IRC §§701 through 761 (Subchapter K). Subchapter K deals primarily with the formation, operation, and termination of partnerships. Many issues arise during the initial or final year of the partnership.

Passive Activity Losses **Pub. Date: Feb. 2005**

Provides examiners with specific guidance on potential audit issues, issue identification and lead sheets and other job aids.

Placer Mining **Pub. Date: July 1999**

Provides guidelines for the examination of taxpayers in this industry. Focuses on small mining operations represented as sole proprietorships on Schedule C, but can be adapted for partnership and corporate returns.

The Port Project **Pub. Date: Aug. 1995**

Provides examiners assistance in auditing industries related to coastal and inland waterways.

Poultry Industry **Pub. Date: Dec. 2002**

The purpose of this guide is to highlight issues that are specific to or have a large impact on the poultry industry. Most of the issues in this guide relate directly to the major companies rather than the individual farmers. However, one chapter was devoted to the issues normally found in conjunction with a poultry grower audit.

Reforestation Industry **Pub. Date: Aug. 1995**

Overview of the industry; discusses issues that may be encountered, such as employment taxes; poor accounting records; etc.

Rehabilitation Tax Credit **Pub. Date: Dec. 2002**

Provides examiners with audit aids (i.e. issue checksheet, pro forma Information Document Request, and standardized audit reports, etc.) which assist in identifying and addressing common rehab tax credit issues.

Research Credit Claims: Credit for Increasing Research Activities §41 **Pub Date: May 2008**

This guide provides guidance on the handling and evaluation of research credit claims.

Retail Industry **Pub. Date: Feb. 2009**

Sections 48A and 48B - Advanced Coal and Gasification Project Credits **Pub. Date: May 2009**

Section 46 provides that the amount of investment credit for purposes of §38 for any taxable year is the sum of the credits listed in §46. Section 1307(a) of the Energy Tax Incentives Act of 2005, Pub. L. 109-58, 119 Stat. 594 (August 8, 2005), amended §46 to add two new credits to that list:The qualifying advanced coal project credit, (section 48A) and the qualifying gasification project credit, (section 48B).

Split Dollar Life Insurance **Pub. Date: Mar. 2005**

Split-dollar life insurance arrangements can be a key feature of executive compensation packages. Over the years, the IRS has provided limited guidance regarding the taxation of these arrangements. Beginning in 2001, transitional guidance on the valuation of split-dollar life insurance arrangements was provided in the form of notices and proposed regulations in anticipation of final regulations.

Sports Franchises **Pub. Date: Aug. 1999**

Focuses on major league franchises. Potential issues may include revenue (sponsorship, broadcast, season tickets), strike fund payments, stadium issues, player contracts, purchase/sale of franchise, league expansion, etc.

Stock-Based Compensation **Pub. Date: Feb. 2005**

The IRS has prepared a comprehensive ATG to assist examiners in evaluating stock-based compensation. Stock-based compensation generally consists of either the transferring of stock or the issuance of stock options to an employee or independent contractor.

Structured Settlement Factoring **Pub. Date: Nov. 2006**

Swine Farm Industry **Pub. Date: Dec. 2002**

Overview of the industry includes methods of accounting (accrual vs. cash), farm price inventory, unit livestock price, prepaid feed, income from discharge of indebtedness, selection fees, depreciation, grower issues, penalties, research credits, employment taxes, and excise taxes.

Tobacco Industry **Pub. Date: Mar. 1996**

Focuses on techniques for examining tobacco farmers, dealers and warehouse operations.

Veterinary Medicine **Pub. Date: Apr. 2005**

Overview of industry includes discussion of types of business entities (especially personal service corporation); cash vs. accrual method of accounting; and inventory vs. supplies.