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# Standard Federal Tax Reports

*Taxes On Parade*

**Vol. 100, Issue No. 2, Report 2** **January 10, 2013**

## Inside this Issue





# Obama Signs American Taxpayer Relief Act; IRS Sets 2013 Withholding Rates

◆ *American Taxpayer Relief Act, P.L. 112-xxx; IR-2013-1, Notice 1036*

President Obama has signed the *American Taxpayer Relief Act* (ATRA), which averts the tax-side of the fiscal cliff by extending the Bush-era tax cuts for lower and moderate income taxpayers, permanently "patching" the alternative minimum tax (AMT), and extending a host of otherwise expiring tax provisions, including 50 percent bonus depreciation and enhanced small business expensing. ATRA also sets the maximum estate tax rate at 40 percent for 2013 and beyond. Left out of the new law is an extension of the 2012 payroll tax holiday. Passed in the waning hours of the 112th Congress, the new law sets the stage for what is expected to be a heated contest in 2013 between President Obama and the GOP over federal tax policy.

■ ***CCH Take Away.*** "Revenue raisers are certain to be part of the upcoming debate in Congress on spending cuts and sequestration," Abe Schneier, senior technical manager, American Institute of Certified Public Accountants (AICPA), told CCH. Some of President Obama's past proposals, such as repeal of the last-in, first-out (LIFO) method of accounting and a change in the taxation of carried interest, are likely to be revisited in 2013 as the White House and Congress grapple with reducing the federal deficit, Schneier noted. Corporate tax reform, which was not part of ATRA, could also be on the table in 2013.

■ ***Comment.*** An individual earning at or above the Social Security wage base for 2012 ($110,100) realized a $2,202 savings from the payroll tax holiday, Adam Lambert, CPA, managing director, employment tax services, Grant Thornton, LLP, New York, told CCH. That same individual will experience a "tax hike" of at least that amount in 2013 because of the expiration of the payroll tax holiday and because the Social Security wage base for 2013 is higher at $113,700.

## Income and payroll taxes

ATRA extends permanently the Bush-era tax rates for individuals except for taxpayers with taxable income above $400,000 ($450,000 for married couples filing a joint return and $425,000 for heads of households). Income above these thresholds will be taxed at 39.6 percent, effective January 1, 2013. The threshold amounts for the beginning of the 39.6 percent bracket are adjusted for inflation after 2013.

■ ***Comment.*** ATRA also revives the Pease limitation and the personal exemption phaseout (PEP) for higher income individuals but at different thresholds and adjusted for inflation for tax years after 2013 ($300,000 for married couples filing joint returns and surviving spouses; $275,000 for heads of households; $250,000 for single individuals; and $150,000 for married couples filing separate returns).

The 2012 payroll tax holiday reduced the employee-share of Old-Age, Survivors and Disability Insurance (OASDI) from 6.2 percent to 4.2 percent for calendar year 2012 up to the Social Security wage base. Self-employed individuals received a comparable benefit. ATRA does not extend the payroll tax holiday; consequently, the

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Route to: _____ _____ _____ _____ _____

## ATRA

*Continued from page 1*

employee share of OASDI taxes reverts to 6.2 percent for 2013 and beyond.

Shortly after President Obama signed ATRA, the IRS issued early release copies of the 2013 percentage method tables for income tax withholding. The IRS instructed employers to implement the 2013 withholding tables as soon as possible, but not later than February 15, 2013. Additionally, employers should implement the 6.2 percent employee OASDI tax rate as soon as possible, but not later than February 15, 2013. After implementing the 6.2 percent rate, employers should make an adjustment in a subsequent pay period to correct any under-withholding of OASDI tax as soon as possible, but not later than March 31, 2013, the IRS explained.

- ***Comment.*** "Many payroll processors prepared in advance for the expected expiration of the payroll tax holiday," Lambert told CCH. "The fate of the income tax rates was much less certain in the final weeks of 2012 and the IRS guidance is helpful," Lambert added.

## Capital gains/dividends

ATRA increases the maximum tax rate for qualified capital gains and dividends from the Bush-era rate of 15 percent to 20 percent for higher income taxpayers. The 20 percent rate will apply to the extent that an individual's income exceeds the thresholds for the 39.6 percent rate ($400,000 for single individuals, $450,000 for married couples filing jointly and $425,000 for heads of household).

## Children, family and education

ATRA makes permanent a number of incentives targeted to individuals, which were scheduled to expire after 2012, including:

- Child tax credit at $1,000 per qualifying child;
- Enhanced adoption credit/exclusion;
- Enhanced earned income credit; and
- Student loan interest deduction (removal of 60 month limitation).
  - ***Comment.*** ATRA also extends the American Opportunity Tax Credit (AOTC) through 2017. The higher education tuition deduction and the teachers' classroom expense deduction are extended through 2013.

## AMT

For 2012 and beyond, ATRA permanently patches the AMT by increasing the exemption amounts and allowing nonrefundable personal credits to the full amount of the individual's regular tax and AMT liability. The exemption amounts under ATRA are inflation adjusted for tax years beginning after 2012.

- ***Comment.*** The "patched" exemption amounts for 2012 are $50,600 for single individuals and heads of household; $78,750 for married couples filing jointly and qualifying widow(er)s; and $39,375 for married couples filing separately.

## Roth accounts

Generally, participants with 401(k)s and similar plans have been allowed to roll over funds to designated Roth accounts in the same plan subject to certain qualifying events or age restrictions. ATRA lifts most restrictions, and permits participants in 401(k) plans with in-plan Roth conversion features to make transfers to a Roth account at anytime.

- ***Comment.*** "This provision is optional with plan sponsors and is effective immediately for transfers after December 31, 2012," Elizabeth Dold, principal, The Groom Law Group, Washington, D.C. told CCH."Transfers result in taxable income in the year of conversion so individuals should have cash available to pay the tax."

## Tax extenders

ATRA extends a host of popular but temporary tax extenders. Many are extended retroactively to January 1, 2012 and through 2013.

For individuals, ATRA extends (not an exhaustive list):

- State and local sales tax deduction;
- IRA distributions to charitable organizations;
- Mortgage insurance premiums as deductible interest; and
- Code Sec. 25C residential energy efficient property credit.

For businesses, ATRA extends (not an exhaustive list):

- 50 percent bonus depreciation;
- Enhanced Code Sec. 179 expensing;
- Work Opportunity Tax Credit;
- New Markets Tax Credit;
- Research tax credit;
- 100 percent exclusion for gain on sale of qualified small business stock;
- Code Sec. 45 production tax credit for wind energy;
- Reduced recognition period for S corp built-in gains tax; and
- Credits for manufacture of energy efficient appliances and new homes.
  - ***Comment.*** "At some point, the White House and Congress must decide whether to extend the tax extenders again or, as was discussed in 2012, to allow them to permanently expire," Schneier told CCH.

## Estate/gift taxes

Effective for decedents dying after 2012, ATRA sets the maximum estate tax rate at 40 percent with a $5 million (inflation-adjusted) exclusion. ATRA also makes permanent certain Bush-era enhancements to the estate tax along with portability, which was enacted in the 2010 Tax Relief Act. Additionally, the new law provides for a 40 percent gift tax rate.

- ***Comment.*** CCH projects the 2013 unified estate and gift tax exclusion at $5.25 million indexed for inflation.

*For more details and analysis of ATRA, see the CCH Tax Briefing: American Taxpayer Relief Act, and CCH's Law, Explanation and Analysis on CCH IntelliConnect.*

*References: FED ¶¶46,226, 46,227; TRC PAYROLL: 6,054.*

***Reference Key***

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

STANDARD FEDERAL TAX REPORTS (USPS 518000) (ISSN 0162-3494), TOP Edition published weekly, except for the week of Christmas by CCH, a Wolters Kluwer business, 4025 W. Peterson Ave., Chicago, Illinois 60646-6085. Subscription rate $3,855 per year. Taxes on Parade sold separately, subscription rate $235 per year for the TOP Edition. Periodicals postage paid at Chicago, Illinois, and at additional mailing offices. **POSTMASTER:** SEND ADDRESS CHANGES TO STANDARD FEDERAL TAX REPORTS, 4025 W. PETERSON AVE., CHICAGO, IL 60646-6085. Printed in U.S.A.

# IRS Issues Proposed Reliance Regs On PPACA's Employer Mandate

◆ *NPRM REG-138006-12, Q&As*

The IRS has issued long-awaited proposed reliance regs on the Code Sec. 4980H employer shared responsibility provisions ("employer mandate") under the *Patient Protection and Affordable Care Act (PPACA)*. The IRS also issued Questions and Answers describing the PPACA's employer shared responsibility provisions.

- ***CCH Take Away.*** "I found the regulations to be helpful," Harvey Cotton, principal, Ropes & Gray LLP, Boston, told CCH. "They reflect a continuation of the IRS issuing a series of notices intended to inform employers."
- ***Comment.*** The proposed reliance regs include definitions; rules for determining status as an applicable large employer; rules for determining full-time employees; rules for determining assessable payments under Code Sec. 4980H(a); rules for determining whether an employer is subject to assessable payments under Code Sec. 4980H(b); and rules on the administration and assessment of assessable payments. "Employers can work within these rules," Cotton said. "There is enough lead time to think about eligibility or plan design, for example. I don't expect that any compliance dates in the proposed regs are going to change for calendar year plans."

## Background

Under Code Sec. 4980H as added by the PPACA, an applicable large employer is subject to a shared responsibility payment (an assessable payment) for months beginning after December 31, 2013 if any full-time employee is certified to receive an applicable premium tax credit or cost-sharing reduction and either:

- The employer does not offer to its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (Code Sec. 4980H(a)); or
- The employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that with respect to a full-time employee who has been certified for the advance payment of an applicable premium tax credit or cost-sharing reduction either is unaffordable relative to an employee's household income or does not provide minimum value (Code Sec. 4980H(b).

During 2011 and 2012, the IRS issued several notices to provide guidance on the employer mandate under Code Sec. 4980H.

## Applicable large employer

An applicable large employer is an employer that employed an average of at least 50 full-time employees during the preceding calendar year, including full-time equivalent (FTE) employees. The statute defines a full-time employee as an employee who on average was employed for at least 30 hours of service per week. The proposed reliance regs also treat 130 hours of service in a calendar month as full time. The proposed reliance regs determine FTEs by calculating the aggregate hours of service worked in a month by non-full time employees (up to 120 hours per employee) and dividing the total by 120.

- ***Comment.*** "Most employers are going to know whether they're an applicable large employer," Cotton said. "Employers at the margin will have to determine if they have 50 FTEs. You do that by counting hours. "Hours of service" is relevant for applicable large employer determinations and for penalty liability."

A new employer is an applicable large employer if it reasonably expects to employ an average of at least 50 full-time employees (including FTEs) during the current calendar year. The IRS explained that it declined to exempt new employers from any assessable payment, but requested comments on whether to provide safe harbors or presumptions to help new employees determine their status.

All entities treated as a single employer under Code Sec. 414 are treated as a single employer for determining whether the group is an applicable large employer. However, if the group is an applicable large employer, the penalty provisions apply to each company separately, the IRS explained.

- ***Comment.*** The proposed regs incorporate an optional look-back measurement method, as provided in Notice 2012-58, to determine full-time employees.

The preamble to the proposed reliance regs recognizes that the application of Code Sec. 4980H to temporary staffing agencies may be particularly challenging, and requests comments on possible rules. However, the IRS added that the final regs will contain an anti-abuse rule to address

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## *FinCEN Again Extends Time For Some FBAR Filings*

Treasury's Financial Crimes Enforcement Network (FinCEN) has announced a further extension of time for individuals with signature authority over but no financial interest in certain types of accounts to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR).

In 2011 and 2012, FinCEN gave individuals with signature authority over but no financial interest in one or more foreign financial accounts additional time to file FBARs. FinCEN also gave employees or officers of investment advisers registered with the Securities and Exchange Commission with signature authority over but no financial interest in foreign financial accounts additional time to file FBARs.

FinCEN reported that it continues to receive questions about the 2011 and 2012 extensions. Consequently, FinCEN decided to further extend to June 30, 2014 the FBAR filing date for those affected individuals.

*FinCEN Notice 2012-2, FED ¶46,213; FILEBUS: 9,104.*

# IRS Issues Comprehensive Update To Employee Plans Correction Procedures

◆ *Rev. Proc. 2013-12*

The IRS has issued a comprehensive revenue procedure that updates its Employee Plans Compliance Resolution System (EPCRS) in several important, plan-friendly ways. Rev. Proc. 2013-12 now becomes the go-to guidance for qualified plans, tax-sheltered annuities, and other retirement plans that want to correct plan failures without jeopardizing the plan's tax-exempt status.

■ ***CCH Take Away.*** The IRS's Tax Exempt and Government Entities Division has pioneered correction programs for retirement plans. Correction mechanisms used for qualified retirement plans have been extended to Code Sec. 403(b) annuities and nonqualified deferred compensation plans, for example. The new revenue procedure is the first comprehensive update to EPCRS since 2008.

## Background

EPCRS consists of three programs: the Self-Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (Audit CAP). SCP permits sponsors of qualified plans, 403(b) plans, and others to self-correct insignificant operational failures at any time, with no fees or reporting requirements.

The VCP can be used by plans that discover problems before they are audited. The sponsor pays a fee to preserve the plan's tax status. The Audit CAP is available when the IRS discovers a significant problem on audit. Plan sponsors must correct the plan, enter into a closing agreement, and pay a sanction.

## Changes

Rev. Proc. 2013-12 includes several significant changes. It expanded the application of EPCRS to form and operational failures of 403(b) plans. Plans may correct failures in the same manner as a qualified plan. Plans may also use VCP to correct a failure to timely adopt a written plan.

There are new VCP application forms and submission procedures. Plans will mail submissions to Covington, Ky, instead of Washington, D.C., and provide descriptions of failures and correction methods.

Rev. Proc. 2013-12 also provides consistent safe harbor correction methods for missed deferrals, correction of operational failures involving Code Sec. 436 restrictions, and reduced fees.

## Effective date

Rev. Proc. 2013-12 supersedes Rev. Proc. 2008-50 and is effective April 1, 2013. Plan sponsors may use the new procedures on or after December 31, 2012.

*References: FED ¶46,225; TRC RETIRE: 51,450.*

## Employer Mandate

*Continued from page 3*

the use of staffing agencies to evade Code Sec. 4980H.

### Assessable payments

The proposed reliance regs clarify the penalty provisions, under Code Sec. 4980H(a), that require applicable large employers to offer minimum essential coverage to their full-time employees for the month. The proposed reliance regs provide relief to employers that inadvertently miss some employees. Employers will be in compliance if they offer coverage to 95 percent of their full-time employees (or five employees, if greater than five percent of full-time employees), the IRS explained.

The proposed reliance regs affirm that the offer of coverage must be to both the full-time employee and his or her dependents. A dependent is defined as any child under 26 years of age, and does not include a spouse, the IRS explained.

■ ***Comment.*** "The regulations are operating within the confines of the statute," Cotton said. "There were lots of questions about words in the statute, for example, "to offer coverage." They've done a good job of beginning to answer that. The issue of dependents was also a big issue."

The Code Sec. 4980H(b) penalty applies to coverage that is "unaffordable," meaning that the coverage costs more than 9.5 percent of the employee's household income. Since employers may not be able to determine household income, the proposed regs provide three affordability safe harbors: the Form W-2 safe harbor (based on employee wages); the rate of pay safe harbor (based on hourly or monthly pay rates); and the federal poverty line safe harbor, the IRS explained.

The employer cannot be liable under both Code Secs. 4980H(a) and 4980H(b). Furthermore, the penalty cannot exceed the payment amount that would have been imposed under Code Sec. 4980H(a) if the employee had failed to offer coverage to its full-time employees.

■ ***Comment.*** "Any assessment will be payable only after notice and demand from the IRS," Cotton said. "The employer will have a chance to respond; it's not a matter of self-reporting. There will be an opportunity for people to figure this out. With focus and planning, people should be able to achieve compliance."

### Transition rules

The proposed reliance regs provide several transition rules. A major rule allows employers with plans on a fiscal year to wait to apply the standards until the first day of the first plan year that begins in 2014. Another rule exempts employers from penalties in 2014 if they must add dependent coverage to their health plans. Other transition rules apply to health plans offered through cafeteria plans and multiemployer plans.

■ ***Comment.*** "The transition rules are helpful and fairly expansive," Cotton said. "They address common-sense challenges that employers are going to face. Fiscal year relief is important. It gives employers some opportunity to plan."

*References: FED ¶¶49,557, 46,215; TRC COMPEN: 45,232.*

# Reg Package Eases Treatment Of TIPS And Zero Coupon Bonds

◆ *TD 9609, NPRM REG-140437-12*

The IRS has issued final, temporary and proposed regs that provide more favorable treatment to taxpayers that hold Treasury inflation-protected securities (TIPS) and zero coupon bonds. The final regs allow taxpayers to use the coupon bond method to determine the taxation of TIPS, rather than the more complex discount bond method. The temporary and proposed regs provide a deduction, rather than a capital loss, for writing off bond premium carryforward in the year a bond is retired or disposed of.

■ ***CCH Take Away.*** As economic conditions have changed, the IRS has responded by revising the bond premium and discount regs under Code Secs. 171 and 1275.

## TIPS

TIPS allow the principal amount of the bond to increase with inflation and decrease with deflation. This affects the amount of interest includible in the holder's income. Under previous rules, a straightforward coupon bond method could be used for inflation-indexed debt instruments, such as TIPS, issued with a de minimis amount of premium. However, at the time, TIPS had only been issued with a de minimis amount of premium.

In 2011, the IRS anticipated correctly that TIPS would be issued with more than a de minimis amount of premium. In Notice 2011-21 (April 8, 2011) and subsequent temporary regs (TD 9561), the IRS decided in favor of a single, uniform method of taxing TIPs rather than a separate, more complex discount bond method for premiums that were not de minimis. Thus, the coupon bond method was required for all TIPS, whether or not issued at a de minimis amount of premium.

The final regs in TD 9609 now adopt the temporary regs and are substantively the same. They include an example illustrating how to apply the coupon bond method to TIPS with more than a de minimis amount of premium.

■ ***Comment.*** The final regs apply to TIPS issued on or after April 8, 2011.

## Bond premium carryforward

In response to comments about taxable zero coupon bonds acquired at a premium, the IRS has issued temporary and proposed regs that allow bondholders to take an ordinary deduction, rather than a capital loss, for any accrued bond premium, when the bond is retired or disposed of.

The IRS explained that under current rules (Code Sec. 171), an electing bondholder can amortize bond premium by offsetting the qualified stated interest with the bond premium allocable to the same accrual period. If the bond premium exceeds the stated interest, the holder can deduct the excess bond premium. However, the deductible amount is limited by net interest inclusions on the bond from prior accrual periods. Any amount that cannot be deducted is carried forward as bond premium to the next accrual period.

For a zero coupon bond, including a Treasury bill, there is no qualified stated interest. Therefore, the bond premium will always exceed the stated interest and must be carried forward. Under current law, when the bond is sold, retired, or otherwise disposed of, the bond holder is merely entitled to a capital loss for the excess bond premium that has been carried forward.

## Temporary regs

The IRS has determined that the bond premium carryforward should be treated as an ordinary deduction in these circumstances. The temporary regs provide for this treatment. In addition, the regs extend this treatment to TIPS with any deflation adjustment attributable to bond premium.

■ ***Comment.*** The temporary regs apply to a bond acquired on or after January 4, 2013. However, taxpayers may apply them to a bond acquired before that date.

*References: FED ¶¶47,009, 49,559; TRC ACCTNG: 36,266.*

## *IRS Proposes To Create Truncated Taxpayer Identification Numbers*

The IRS recently released proposed regs to create optional truncated taxpayer identification numbers (TTINs) for use on paper or electronic payee statements.

***Background.*** In 2009, the IRS cautioned about the dangers of identity theft from the misappropriation and misuse of identification numbers on various types of paper statements provided to payees. The IRS launched a pilot program allowing filers of information returns to truncate an individual payee's nine-digit identifying number on paper payee statements.A TTIN displays only the last four digits of an individual's identifying number and is shown in the format XXX-XX-1234 or ***-**-1234.

■ ***Comment.*** The IRS identified some commonly used payee statements for which paper copies are issued: Forms 1098 (Mortgage Interest Statement), 1099-MISC (Miscellaneous Income), 1099-R (Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRS, Insurance Contracts, Etc.), 1099-S (Proceeds from Real Estate Transactions), 1099-C (Cancellation of Debt) and 1098-T (Tuition Statement).

***Proposed regs.*** Under the proposed regs, TTINs would be available to taxpayers as an alternative to using a taxpayer's Social Security number (SSN), the IRS individual taxpayer identification number (ITIN), or the IRS adoption taxpayer identification number (ATIN). However, a TTIN may not be used on Form W-2 (Wage and Tax Statement), which requires the employee's name and Social Security number, the IRS explained.

*NPRM REG-148873-09, FED ¶49,558; FILEBUS: 12,106.15.*

# IRS Issues 2013 Updates For Ruling Requests, Technical Advice, And No-Rule Procedures

◆ *Rev. Procs. 2013-1 through 2013-8*

The IRS has published its annual revisions to the general procedures for ruling requests, technical advice memoranda (TAM), determination letters, and user fees, as well as areas on which the Associate Chief Counsel offices will not rule. The new and revised procedures are generally effective beginning January 2, 2013, with the exception of some procedures for certain user fees and employee plan determination letters, which will be effective starting February 1, 2013.

■ ***CCH Take Away.*** The IRS updates these procedures annually at the beginning of each calendar year. They are comprehensive and supercede the 2012 revenue procedures on these issues. The 2013 revenue procedures make several updates from 2012, which affect, among other things, certain letter ruling requests, Employee Plan (EP) examination procedures, and when a technical advice memorandum (TAM) is required by the exempt organizations (EO) examinations office. The IRS has also added to its list of areas on which it will not issue advanced rulings.

## Annual updates

The revenue procedures include the following guidance on:

- *Rev. Proc. 2013-1:* letter rulings, closing agreements, determination letters, information letters, and oral advice issued by the offices of the Associate Chief Counsel;
- *Rev. Proc. 2013-2:* technical advice issued by the offices of Associate Chief Counsel to a director or an appeals area director;
- *Rev. Proc. 2013-3:* areas for which the Associate Chief Counsel offices will not issue letter rulings or determination letters;
- *Rev. Proc. 2013-4:* letter rulings, determination letters, and other advice to the public issued under the jurisdiction of the Commissioner, Tax Exempt and Government Entities (TE/GE) Division on EPs and EO matters;
- *Rev. Proc. 2013-5:* procedures for the furnishing of technical advice by EP and EO technical offices to IRS field offices by the Commissioner TE/GE on EP and EO matters;
- *Rev. Proc. 2013-6:* determination letters on the qualified status of certain pension, profit-sharing, stock bonus, annuity and employee stock ownership plans (ESOPs) and on the status for exemption of any related trusts or custodial accounts under Code Sec. 501(a);
- *Rev. Proc. 2013-7:* subject areas on which the Associate Chief Counsel (International) will not issue advance letter rulings or determination letters without unique and compelling circumstances;
- *Rev. Proc. 2013-8:* user fees for advice issued to the public on EP and EO matters.

## Changes

Highlights among the many changes that the IRS has made to its annual procedures include:

- *Rev. Proc. 2013-1.* The IRS has discontinued the expedited letter ruling process for certain letter ruling requests concerning whether a transaction constitutes a reorganization under Code Sec. 368 or a distribution under Code Sec. 355 or involving certain significant issues under the jurisdiction of the Associate Chief Counsel (Corporate), as described in section 7.02(4)(a) of Rev. Proc. 2012-1. Under the 2012 revenue procedure, the IRS had offered a 10-week expedited processing period.
- *Rev. Proc. 2013-3.* The IRS revised its list of areas under the jurisdiction of the various offices of Associate Chief Counsel for which it will not issue advance letter rulings or determination letters. No-rule areas now include: Whether certain casualty losses have been restored within a reasonable time for purposes of the Code Sec. 42 low-income housing credit; issues arising under subchapter K from partnerships claiming the Code Sec. 45 renewable energy production credit; whether or not a device intended for humans is a taxable medical device; and matters involving regulations governing practice before the IRS under Circular 230.
- *Rev. Proc. 2013-4.* The IRS has added language requiring all requests for letter rulings and determination letters and the documentation filed in support of them must be submitted in English or accompanied by an English translation.
- *Rev. Proc. 2013-5.* Section 4.04 of Rev. Proc. 2013-5 is clarified regarding when a TAM is required by the EO Examinations office. Rev. Proc. 2013-5 removes language from Rev. Proc. 2012-5 stating that a request for a TAM is not required if the Director, EO Examinations proposes to revoke or modify a letter ruling found to be in error or not in accord with the IRS's current views. However, the new revenue procedure retains language stating that a TAM is not required if the Director, EO Examinations proposes to revoke or modify a letter recognizing tax-exempt status issued by the headquarters office.
- *Rev. Proc. 2013-6.* The new revenue procedure clarifies in section 7.04, which documents to submit with an application for a determination letter on the qualified status of certain pension, profit-sharing, stock bonus, annuity and employee stock ownership plans (ESOPs). Rev. Proc. 2013-6 clarifies that the plan, all interim and other plan amendments adopted or effective during the plan's current remedial amendment cycle must be included in the application package along with a copy of the restated plan and trust instrument.

*References: FED ¶¶46,217, 46,218, 46,219, 46,220, 46,221, 46,222, 46,223, 46,224; TRC IRS: 12,250.*

# Tax Briefs

*Internal Revenue Service*

The IRS was required to produce certain documents relating to a reward agreement with a confidential informant withheld pursuant to the deliberative process privilege. The documents were directly relevant to whether the informant was entitled to payment under the reward agreement. Moreover, to the extent the deliberative process privilege protected the documents the informant demonstrated a compelling need sufficient to overcome the privilege.

*Confidential Informant 59-05071, FedCl, 2013-1 USTC ¶50,118; TRC IRS: 9,052.*

*Jurisdiction*

A couple's complaint seeking declaratory and injunctive relief and damages for alleged violation of their constitutional rights by IRS employees was dismissed for lack of subject matter jurisdiction. The couple failed to plead a statutory basis for a waiver of sovereign immunity in their complaint and lacked standing to pursue their claims for injunctive and declaratory relief.

*Kenner v. Holder, DC Calif., 2013-1 USTC ¶50,113; TRC IRS: 45,152.*

*Summons*

An individual's petition to quash IRS third-party summonses seeking bank records from a financial institution in connection with collecting the individual's tax liability was denied, and the summons was ordered enforced. The government established its *prima facie* case for enforcement, which the individual failed to rebut.

*Shiozawa, DC Calif., 2013-1 USTC ¶50,124; TRC IRS: 21,104.*

*Income*

A married couple could not offset the Social Security disability benefits received by the husband by the amount they reimbursed the husband's disability policy insurer for disability benefits paid under that policy. The couple was not liable for the accuracy-related penalty with respect to the portion of the tax understatement resulting from their not including the Social Security disability benefits in their taxable income. They were, however, liable for the penalty with respect to the portion of the understatement resulting from omitted dividend income.

*Brady, TC, CCH Dec. 59,402(M), FED ¶47,919(M); TRC INDIV: 6,204.*

The Tax Court properly held that the IRS's use of the bank deposits and cash expenditures method to reconstruct an individual's income was appropriate; therefore, the tax deficiencies assessed by the IRS were presumed correct. The individual failed to produce adequate records of income in order to rebut the IRS's calculations.

*MacGregor, CA-9, 2013-1 USTC ¶50,112; TRC ACCTNG: 3,156.*

*Anti-Injunction Act*

An administratively dissolved corporation's shareholders' requests for injunctive and declaratory relief and damages claims for alleged wrongful levy of their bank accounts were dismissed for lack of subject matter jurisdiction and for failure to state a claim. The Anti-Injunction Act barred their suit, and none of the statutorily or judicially created exceptions to the Act applied. The shareholders were not the taxpayers and lacked standing to bring their damages claim, and the company failed to exhaust its administrative remedies prior to claiming damages.

*Johnny McCool Logging Company, Inc., DC Miss., 2013-1 USTC ¶50,123; TRC LITIG: 9,258.05.*

*Liens and Levies*

An individual was jointly and severally liable for joint tax assessments. However, the government could not foreclose tax liens against a property for which the individual served as a trustee because the records did not establish the individual's legal and

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## *IRS Updates Exempt Organization Status Determination Letter/Ruling Procedures*

The IRS has updated the procedures governing IRS determination letters and rulings on the status of exempt organizations under Code Secs. 501 and 521. Rev. Proc. 2013-9 clarifies that the IRS will generally permit recognition of exempt status from the date of formation if the organization has always met the requirements for exemption, has applied within 27 months from the end of the month in which it was organized, and has not failed to file required Form 990 series returns or notices for three consecutive years, that a revocation under §6033(j) is by operation of law and therefore an organization will not have an opportunity for appeals consideration.

*Rev. Proc. 2013-9, FED ¶46,229; TRC EXEMPT: 12,102.05.*

## *IRS Updates Private Foundation Status Determination Letter Procedures*

The IRS has updated procedures on the issuance of determination and letter rulings for private foundation status, operating foundation status, and exemption operating foundation status under Code Secs. 509(a), 4942(j)(3), and 4940(d)(2), respectively.

Rev. Proc. 2013-10 clarifies that subordinate organizations included in a group exemption letter that want to change their public charity status must file Form 8940, Request for Miscellaneous Determination Under Section 507, 509(a), 4940, 4942, 4945, and 6033 of the Internal Revenue Code.

*Rev. Proc. 2013-10, FED ¶46,230; TRC EXEMPT: 12,102.05.*

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equitable title to that property under state (Florida) law.

*Barnes, CA-11, 2013-1 USTC ¶50,122; TRC FILEIND: 18,056.40.*

A land contract vendor could not extinguish tax liens recorded on the property because of the purchaser's failure to pay its employment taxes. 28 U.S.C. §2410, which provides the specific causes of action to which the government has consented, does not expressly reference land contract forfeitures; thus, the vendor's only available remedy was foreclosure through judicial sale.

*Rose Acceptance v. Alpena Collision, DC Mich., 2013-1 USTC ¶50,121; TRC LITIG: 9,254.05.*

*Refund Claims*

An individual was not entitled to refund of taxes paid on an employment discrimination award. The contingent attorney's fees were not awarded as damages for a physical injury or illness and the individual failed to include them in her taxable income. Therefore, the individual failed to show that she was entitled to a refund.

*Smallwood, DC Calif., 2013-1 USTC ¶50,125; TRC INDIV: 6,354.15.*

An individual's refund claim was dismissed because he failed to show that he exhausted his administrative remedies prior to bringing his action as required by Code Sec. 7422. Moreover, the individual filed a petition in the Tax Court, which acquired exclusive jurisdiction over the individual's refund claim for the tax and tax year at issue.

*Merritt, DC Mich., 2013-1 USTC ¶50,120; TRC IRS: 33,152.*

A federal district court has clarified its prior opinion to reflect that the individual *did* file a Form 1040X, Amended U.S. Income Tax Return, which sought to carryback a net operating loss (NOL) to the tax year at issue. However, that refund claim was invalid because the individual failed to pay his taxes in full prior to filing the refund claim with the IRS as required by Reg. §601.103(c)(3). Since no evidence of a valid administrative claim existed, the individual failed to meet the jurisdictional prerequisite necessary to bring his refund claim.

*Akers, DC Conn., 2013-1 USTC ¶50,117; TRC LITIG: 9,102.05.*

*Collection Due Process*

the IRS's improper collection efforts were properly dismissed. The company's claim that an IRS agent improperly applied its voluntary payments, instead of trust fund liability, failed because the company's overall liability was reduced; thus, the company did not suffer any economic harm.

*Gessert, CA-7, 2013-1 USTC ¶50,126; TRC IRS: 36,052.05.*

*Deficiencies and Penalties*

An individual, who acquired property subject to a federal tax lien through a fraudulent transfer, had transferee liability and, therefore, the government was entitled to a judgment against her. The transfer of the property to the wife was a fraudulent conveyance under state (New Jersey) law because the transfer was made with the intent to hinder collection of, or altogether avoid paying, the husband's federal tax liabilities. Since the property was mortgaged and there was no equity left in the property, the government was also entitled to a personal judgment against the wife to recover the value of the property.

*Patras, DC N.J., 2013-1 USTC ¶50,114; TRC IRS: 45,160.*

*Bankruptcy*

A debtor's federal income tax liabilities were not dischargeable in bankruptcy. Although the debtor filed his returns more than three years prior to the filing of his bankruptcy petition, his Collection Due Process (CDP) hearing request tolled the three-year look-back period.

*In re Lastra, BC-DC N.M., 2013-1 USTC ¶50,116; TRC IRS: 57,150.*

Chapter 13 trustees could not compel debtors to turn over their postpetition tax refunds. While the tax refunds were property of the estate, the trustees could not compel their turnover pursuant to section 542(a).

*Hymond, BC-DC Tex., 2013-1 USTC ¶50,115; TRC IRS: 57,060.*

*Sales and Exchanges*

A couple's transfer of floating rate notes (FRNs) to a program that "loaned" 90 percent of the market value of the FRNs back to them for a set period of time was a sale for tax purposes because the burdens and benefits of owning the notes were transferred to the "lender." Moreover, the lender's sale of the FRNs did not constitute theft, or involuntary conversion under Code Sec. 1033(a) because the couple knowingly entered into the transaction and the agreement clearly stated that the lender planned to sell the notes.

*Clark, DC Calif., 2013-1 USTC ¶50,119; TRC INDIV: 6,056.*

*Innocent Spouse Relief*

A widow was properly denied innocent spouse relief for the tax liability shown on the return she filed for the year her husband died because she satisfied only two of the eight threshold conditions of Rev. Proc. 2003-61, 2003-2 CB 297.

*Haggerty, CA-5, 2013-1 USTC ¶50,127; TRC INDIV: 18,052.05.*

### *Tax Court Finds Evidence Does Not Support Partial Allocation Of Residential Mortgage To Investment Property*

The Tax Court has found that a married couple was not entitled to a deduction of investment interest claimed in excess of an allowed deduction for qualified residence interest for the same property. The taxpayers had not substantiated the allocation of their mortgage debt to investment property.

***Court's analysis.*** The Tax Court found that the taxpayers' deduction for investment interest was not allowable. The evidence did not substantiate the partial allocation of the taxpayers' mortgage debt towards an investment portion. For example, the geographic boundaries between the residential and investment portions of the parcel remained unclear, and the taxpayers had financed the property with a single credit line deed representing acquisition and renovation costs.

*J.J. Norman, Jr., TC Memo. 2012-360, CCH Dec. 59,302(M).*