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Inside this Issue

“Green Book” Brings Details/Some Surprises To Administration’s Tax Proposals.....1

New Regs Clarify How To Allocate/ Report Prepaid Mortgage Insurance Premium Deductions3

Partnership Converting To Corporation Can Make Immediate Sub S Election.....3

IRS Nonacquiesces In CDP Case That Disqualified Appeals Officer4

IRS Launches Pilot Rulings Program For “Significant” Sec. 355 Issues.....5

Tax Court Has Jurisdiction Over Trust Fund Penalty As Part Of CDP Review.....5

IRS Releases FAQs On Offshore Compliance Initiative6

IRS Fine-Tunes Information On First-Time Homebuyer Credit.....6

Tax Briefs.....7

IRS Reminds Small Tax-Exempts Of May 15 E-Postcard Deadline.....7

Collateral Estoppel Bars Employment Tax Avoidance.....8



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Administration Releases Details Of Tax Cuts; \$736.5 Billion For Individuals, \$71 Billion For Businesses

◆ *General Explanations of the Administration’s FY 2010 Revenue Proposals*

Treasury has released its long-awaited explanations of President Obama’s fiscal year (FY) 2010 tax proposals (known as the “Green Book” for the color of its cover). As expected, the administration is calling for extensive reform of the international tax rules, repeal of LIFO, higher tax rates on upper income individuals and other offsets to pay for extended middle income tax breaks, health care reform and deficit reduction. The details released by Treasury largely track preliminary FY 2010 budget materials previously issued by the White House, but with considerably more detail. Individual tax cuts would total \$736.5 billion over 10 years and business tax cuts would total \$71 billion over 10 years.

■ **CCH Take Away.** One of the largest proposed revenue raisers would be repeal of LIFO (estimated at \$65 billion). “LIFO repeal is not a surprise,” Barry Tovig, partner, Ernst & Young, LLP, Washington, D.C., told CCH. “However, the proposal to also repeal the lower-of-cost-or-market (LCM) method is a surprise,” Tovig added. “Taxpayers that have been on LIFO for many years have enormous LIFO reserves,” AICPA Vice President Taxation Thomas Ochenschlager told CCH. “If required to go off LIFO, they would need to recapture LIFO.” The Administration has proposed an eight-year recapture.

■ **Comment.** Congress has already signaled its opposition to some of the

president’s proposals, most notably a permanent extension of the Making Work Pay credit. Lawmakers are also reluctant to limit itemized deductions to 28 percent for higher-income individuals.

International reforms

Along with deferring a deduction of expenses related to deferred income, the president has called for reforming the foreign tax credit, limiting the shifting of income through intangible property transfers, limiting earnings stripping by expatriated entities, preventing repatriation of earnings in certain cross-border reorganizations, and repealing the current 80/20 company rules. Existing check-the-box rules would also be overhauled to curb abuses.

The foreign tax credit reforms would put in place a matching rule to prevent the separation of creditable foreign taxes from associated foreign income. Additionally, the deemed-paid foreign tax credit for a tax year would be determined on the amount of the consolidated earnings and profits of the foreign subsidiaries repatriated to the U.S. taxpayer in that tax year. Treasury officials have predicted that the international reform proposals will raise more than \$200 billion in revenue.

■ **Comment.** “The international provisions would move the U.S. in the opposite direction from our trading parties,” Barbara Angus, partner, Ernst & Young, LLP, Washington, D.C., predicted. Many in the business community see the proposals as burdensome on U.S. competitive-

Continued on page 2

Route to: _____

Green Book

Continued from page 1

ness. Administration officials, on the other hand, have called for a “level playing field.”

■ **Comment.** “Recently, in the preamble of a proposed cross border reg (REG-209006-89), Treasury and the IRS raised the issue of whether the boot-within-the gain rule of Code Sec. 356(a)(1) is appropriate in the context of an acquisitive asset reorganization involving a foreign acquiring corporation, based on the policy of Code Sec. 367(b),” Joseph Calianno, partner, Grant Thornton, LLP, Washington, D.C., told CCH. “Many practitioners believe that Treasury and the IRS should refrain from modifying the boot-within-the gain rule of Code Sec. 356. Nevertheless, the administration seems to be focusing on this issue in the international context,” Calianno observed.

Individuals

After 2010, the top individual marginal tax rates will revert to 39.6 and 36 percent. The Administration has proposed allowing these rates to return for individuals with incomes above \$200,000 and married couples filing jointly with incomes above \$250,000. The 28 percent bracket would be expanded to insulate middle-income taxpayers from any tax increase.

■ **Caution.** It is unclear if the \$200,000/\$250,000 amounts refer to adjusted gross income or taxable income. A Treasury official said that the 36 percent rate would apply to taxable income above the following amounts but less than the income levels at which the 39.6 percent rate would apply: \$200,000 less the standard deduction and one personal exemption indexed from 2009, for single filers and \$250,000 less the

standard deduction and two personal exemptions, indexed from 2009, for married couples filing jointly.

The Administration would make permanent several temporary individual incentives, including:

- Making Work Pay credit (with income phaseouts indexed for inflation and the rate at which the credit phases out reduced from two percent to 1.6 percent;
- American Opportunity Education Tax Credit;
- Expanded EITC; and
- Enhanced child tax credit.

The Administration also proposed tools to combat underreporting by individuals with undisclosed offshore accounts. A variety of information reporting requirements would be imposed along with an overhaul of the qualified intermediary (QI) program.

Retirement savings

The Administration would require employers without retirement plans to offer automatic enrollment for IRAs on a payroll-deduction basis. Small employers (generally those with fewer than 10 employees) would be exempt. Employers would claim a temporary tax credit (\$25 per employee up to \$250 each year for two years). The president also called for an expanded Saver’s credit.

■ **Comment.** “These arrangements currently are rare,” Jan Jacobson, senior counsel, retirement policy, American Benefits Council, Washington, D.C., told CCH. Jacobson noted that the Administration did not propose mandatory automatic enrollment in 401(k)s, as some observers had predicted.

Capital gains

Higher-income taxpayers (individuals with incomes above \$200,000 and married couples filing jointly with incomes above \$250,000) would be subject to a 20 percent tax on long-term capital gains and qualified dividends. The

current zero and 15 percent rates would be extended permanently for individuals with incomes up to \$200,000 and for married couples filing jointly with incomes up to \$250,000.

Estate/gift tax

The president has proposed new modifications to estate and gift tax valuation discounts. Generally, the basis of property in the hands of the recipient would be no greater than the value of the property as determined for estate or gift tax purposes. Reporting requirements would also be imposed. Additionally, minimum terms would be required for grantor retained annuity trusts.

Businesses

The administration has proposed a mix of tax cuts and hikes for businesses. The tax cuts include a permanent research tax credit and elimination of capital gains tax on investments in certain small business stock. Targeted for tax increases is the oil and gas industry. Provisions slated for repeal include the Code Sec. 199 deduction for oil and gas production, expensing of intangible drilling costs, and the credit for production from marginal wells.

■ **Comment.** Several bills have been introduced in Congress to expand the temporary NOL carryback to all businesses. Treasury officials have said that the administration supports expansion of the NOL carryback but they have not indicated by how much.

Offsets

The proposed tax breaks would be partially offset by repealing LIFO, reforming the international tax rules, taxing carried interest as ordinary income, and codifying the economic substance doctrine. Additional revenue would be raised by expanded information reporting (payments to corporations, recipients of rental income, and others), higher penalties for failing to file information returns and a new penalty for failing to comply with electronic filing requirements.

Tax administration

A number of proposals would strengthen tax administration. These include allowing the IRS to levy prior to a CDP hearing for certain federal contractors and making willful failure to file a return a felony.

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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*

New Regs Clarify How To Allocate/Report Prepaid Mortgage Insurance Premium Deductions

◆ *T.D. 9449, NPRM REG-107271-08*

The IRS has issued temporary and proposed regs covering the allocation of prepaid mortgage insurance premiums for purposes of the additional qualified interest deduction temporarily allowed through 2010. For borrowers, the deduction for prepaid premiums on FHA or private mortgage insurance must be allocated ratably over the shorter of an 84 month period or the term of the loan. For mortgage servicers, the regs require reporting on the total amount received—all prepaid premiums as well as mortgage interest—from the homeowner during the calendar year.

■ **CCH Take Away.** The new regs continue through 2010 the basic allocation rules set forth in Notice 2008-15, which covered 2007 only. In the case of reporting by the mortgage servicer to the IRS on Form 1098, Mortgage Interest Statement, however, the regs are stricter than Notice 2008-15. The amount reported starting for 2008 must be the entire prepaid amount rather than only the amount allocable to the tax year covered by the report.

Background

Homebuyers who do not have sufficient funds to make a full down payment on a home may be required to obtain mortgage insurance to guarantee repayment in the event of death or disability. Until 2007, mortgage insurance premiums were not

deductible. The *Tax Relief and Healthcare Act of 2006* temporarily changed that by including premiums paid on home mortgage insurance within the definition of qualified residence interest under Code Sec. 163(h). This treatment allows homeowners to deduct the premium payments against federal tax as if they were interest on a home mortgage. The *Mortgage Forgiveness Debt Relief Act of 2007* extended this benefit for premiums paid or accrued on or before December 31, 2010.

■ **Comment.** For purposes of the deduction, “qualified mortgage insurance” means mortgage insurance provided by the FHA, Veterans Administration (VA), the Rural Housing Administration (RHA), and private mortgage insurance.

Qualified mortgage insurance premiums

In January 2008, the IRS released Notice 2008-15 to address calculating the premium deduction for the 2007 tax year. Under Notice 2008-15, taxpayers were allowed to allocate prepaid mortgage insurance premiums paid over the shorter period of:

- The stated term of the mortgage; or
- 84 months, beginning with the month in which the insurance was obtained.

In Notice 2008-15, the IRS also allowed entities required to report mortgage interest and insurance premiums on Form 1098, Mortgage Interest Statement, to satisfy this requirement by reporting prepaid amounts either:

- Based on the amount of prepaid qualified mortgage premiums actually paid by the taxpayer during 2007; or
- The allocated amount, as determined by the 84-month allocation method.

New regs

The new regs follow the 84-month allocation period in Notice 2008-15. The IRS explained that 84 months approximates the typical life of the average mortgage insurance contract. It rejected calls for a shorter, 36-month period, which would have coincided with the Department of Housing and Urban Development’s policy of refunding prepaid premiums on FHA loans.

On the lender’s side, the temporary and proposed regs tightened up the original Notice 2008-15 guidelines. The regs now require entities filing Form 1098 to report the taxpayer’s total amount of mortgage insurance premiums, including prepaid premiums, actually received during the year.

■ **Comment.** Recipients of over \$600 or more of mortgage insurance premiums are required to report these amounts to the IRS under Code Sec. 6050H(h). The IRS ignored as unnecessary requests to state that there are separate \$600 thresholds for reporting mortgage interest under Code Sec. 6050H(a) and mortgage insurance premiums under Code Sec. 6050H(h).

*References: FED ¶¶47,018, 49,240;
TRC REAL: 6,060.*

Partnership Converting To Corporation Can Make Immediate Sub S Election

◆ *Rev. Rul. 2009-15*

The IRS has ruled that a partnership that converts to a corporation at the beginning of the calendar year under check-the-box or a state law’s formless conversion statute can elect S corp status for the corporation’s first year. The election is effective immediately, with all transactions on the conversion deemed to take place on December 31 and with no intervening

C corporation being deemed to exist even for one day.

■ **CCH Take Away.** Because the ruling provides that, under the facts, there is no intervening C corporation that exists on the conversion even for a single day, the corporation avoids any earnings or profits issue, built-in gains tax exposure and, by implication, the possibility of hav-

ing an impermissible shareholder that would invalidate its S corp status. The ruling was intended to “bring comfort” to partnership-to-S conversions, “without any further implications,” IRS officials said at the May Meeting of the American Bar Association Section of Taxation on May 8 in Washington, D.C.

Continued on page 4

IRS Nonacquiesces In Collection Due Process Case That Disqualified Appeals Officer

◆ *AOD 2009-01*

The IRS has nonacquiesced in a federal appeals court decision (*Cox v. Commr., CA-10, 2008-1 USTC ¶50,165*) concluding that an Appeals officer should be disqualified from holding a collection due process (CDP) hearing. The court found that the officer had “prior involvement” in the case because he had considered the same liabilities of the taxpayers in a prior CDP proceeding by looking at the taxpayers’ compliance history.

■ **CCH Comment.** The IRS’s nonacquiescence does not necessarily indicate that Appeals will regularly assign Appeals officers with even a tenuous connection to a case. The underlying facts in this case took place in the early 2000s, prior to a renewed sensitivity on the part of Appeals to preserving a reputation of independence from exam. While the IRS likely now would not assign an Appeals officer with any

prior relationship to the same taxpayer, it is also just as likely that, due to the current budget squeeze and increased caseload in Appeals brought about by a flood of CDP hearings, mistakes will happen in assignments. The IRS’s nonacquiescence indicates that the agency does not want those mistakes to be fatal to its enforcement procedures.

Background

The taxpayers contested a levy to collect their 2001 and 2002 taxes. The Appeals officer assigned to conduct the CDP hearing previously held a CDP hearing on the collection of the taxpayers’ 2000 tax liability. The Appeals officer considered the taxpayers’ failure to pay their 2001 and 2002 liabilities in determining that collection for 2000 should proceed. The Tax Court upheld the Appeals officer’s prior actions; the Tenth Circuit reversed.

■ **Comment.** Code Sec. 6330 requires that taxpayers receive a

fair CDP hearing conducted by an impartial Appeals officer who has no prior involvement with the unpaid taxes that are the subject of the hearing. An IRS reg excludes prior CDP hearings from the definition of prior involvement. The Tenth Circuit concluded that the statute was clear and that the reg was an invalid interpretation that was not entitled to deference.

IRS response

The IRS stated that prior involvement refers to an Appeals officer having considered the tax year at issue in a prior non-CDP context. No disqualifying involvement arises when the same officer holds consecutive CDP hearings for the same taxpayer with new, unpaid liabilities. The IRS indicated it will adhere to the decision in cases appealable to the Tenth Circuit, but will contest the position in all other circuits.

References: FED ¶46,366; TRC IRS: 51,056.15.

Partnership To S Corp

Continued from page 3

Background

Entity X is organized on January 1, 2009 as an unincorporated entity that is classified as a partnership under federal tax law. Under the check-the-box regs, X elects to be a corporation, effective January 1, 2010. One month later, X elects to be an S corp, effective January 1, 2010. All of the January 1 stockholders still own X stock one month later, and enter into the S corp election. The second scenario followed the first, except that a state formless conversion statute was used in place of check-the-box.

Check-the-box regs

The check-the-box regs deem the conversion to take place in two steps: the partnership contributes its assets to the corporation in exchange for stock, and then distributes the stock to its partners in liquidation. For a theoretical instance in time, therefore, the

corporation’s stock is owned by a partnership, which would be an impermissible S corp shareholder.

When a partnership elects to convert to a corporation effective January 1, however, the new ruling confirms that the regs deem the partnership assets to be contributed to the corporation on the previous day, in this case December 31 of the prior year. The partnership also receives the corporation’s stock and distributes the stock to its partners in liquidation on December 31. The entity is treated as a corporation beginning January 1, when the partners, and not the partnership, are the stockholders.

The IRS noted that Rev. Rul. 2004-59 treats the conversion of a partnership into a corporation under state law in the same manner as if the partnership had made an election under the check-the-box regs.

S corp regs

A small business corporation can make an S corp election for any tax year during

the preceding tax year, or by the fifteenth day of the third month of the tax year. For a retroactive election to take effect in the same year, the corporation has to qualify as an S corp for the period before the election was made, and all shareholders before the election was made have to consent to the election.

Valid election

Both X and Y validly converted to a corporation, effective January 1, 2010, and made an S corp election that was effective January 1, 2010, the IRS determined. The partnerships are deemed not to own the stock of the corporation during any portion of the corporation’s first taxable year, beginning January 1, 2010.

Because the S corp election is effective January 1, 2010, neither X nor Y will have an intervening short taxable year as a C corp.

References: FED ¶46,363; TRC SCORP: 200.

IRS Launches Pilot Rulings Program For “Significant” Issues Under Code Sec. 355

◆ *Rev. Proc. 2009-25*

The IRS has launched a pilot program to issue private letter rulings on transactions or a portion of an integrated transaction involving Code Sec. 355. The ruling request must involve a “significant” issue and must be solely within the jurisdiction of the IRS Associate Chief Counsel (Corporate).

■ **CCH Take Away.** Generally, the IRS will not rule on a portion of an integrated transaction, so the pilot program provides a real benefit to corporate taxpayers and practitioners. It not only expands the IRS ruling program; it imports a special status to transactions (and parts of transactions) that occur “in the context of a 355 distribution.”

■ **Comment.** Sec. 3.01(38) of Rev. Proc. 2009-3 describes a “significant” issue. The issue must meet three tests: it is not clearly and adequately addressed by existing authorities; it is not essentially free from doubt (taxpayer’s counsel is unable to render an unqualified opinion on the legal consequences); and it must be legally significant and germane

to determining the transaction’s major tax consequences.

■ **Comment.** Code Sec. 355 involves the spin-off of corporate subsidiary stock to the shareholders of the parent corporation. The Tax Code is concerned that a transaction styled as a spin-off will be used as a “device” to pay dividends tax-free. Generally, the IRS will not issue a ruling under Code Sec. 355, including whether the spin-off has a good business purpose or is part of a “plan” or device to avoid tax on dividends. However, the IRS will rule on a Code Sec. 355 non-plan issue if an adverse ruling would result in a person acquiring 50-percent or more of the subsidiary’s stock.

Current restrictions

The IRS ordinarily will not rule on part of an integrated transaction. If part of a transaction falls under a no-rule area, however, the IRS may still rule on other parts of the transaction.

An issue is not significant, and the IRS will not rule, if the issue is clearly and adequately addressed by statute, regs, court decisions, revenue rulings, revenue procedures, notices, or other authority.

Without a significant issue, the IRS will not rule on Code Sec. 332 liquidations, Code Sec. 351 transfers, and Code Sec. 368(a) (1) reorganizations.

New program

The issue must be significant and must arise in the context of a Code Sec. 355 spin-off. The IRS will rule not only on a portion of a transaction, but also on a particular legal issue, without insisting that the ruling address all legal issues. For example, the IRS will rule on whether a corporate acquisition meets the continuity of business enterprise requirement of Reg. §1.368-1(d) without addressing the overall qualification of the transaction under Code Sections 368 or 355. However, the IRS reserved the right to rule on any other issue or part of the transaction (including an adverse ruling).

■ **Comment.** The IRS advised taxpayers to contact a ruling branch to discuss whether the IRS will rule on only part of the transaction.

If requested, the IRS will try to issue the ruling within 10 weeks. The taxpayer does not have to state a compelling need to justify the request for expedited treatment.

*References: FED ¶46,360;
TRC CCORP: 39,400.*

Tax Court Has Jurisdiction Over Trust Fund Penalty In CDP Review

◆ *Mason, 132 TC No. 14*

The Tax Court has determined that a taxpayer must receive a Code Sec. 6672 notice of intent to assess a trust fund recovery penalty to have had an opportunity to dispute the liability under collection due process (CDP) hearing rules. Since the taxpayer did not receive the notice, she did not have an opportunity to dispute the underlying liability. Nevertheless, the court found that she was still liable for the trust fund recovery penalty.

Background

The taxpayer was the majority shareholder and principal officer of a corpo-

ration that failed to remit employment taxes. The IRS mailed a notice of intent to assess a trust fund penalty to the taxpayer at her last known address. However, the taxpayer never received the notice. The IRS notified the taxpayer of its intent to file a notice of federal tax lien relating to the penalties. She administratively appealed the notice, but the IRS proceeded with the lien filing. The taxpayer’s abatement request was also denied.

Valid notice

The Tax Court found that the taxpayer never received the notice, and as such

did not have the opportunity to dispute the liability. However, the court found the notice was nevertheless valid for purposes of assessing the penalty.

Responsible person

The court also found that the taxpayer was a “responsible person” for purposes of the trust fund penalty. She exhibited six indicia of a responsible person, including authority to write checks and manage the corporation.

*References: CCH Dec ¶57,807;
TRC IRS: 51,056.25.*

IRS Releases FAQs On Offshore Compliance Initiative; Monitors Amended Returns For “Quiet” Disclosures

◆ *FAQs, www.irs.gov*

Recently posted Frequently Asked Questions (FAQs) on the IRS web site add details to the agency’s temporary voluntary offshore disclosure program. At the same time, the IRS warned it is closely reviewing amended returns reporting increases in income to discover taxpayers making “quiet” disclosures of unreported offshore income.

■ **CCH Take Away.** “The IRS has clarified how to deal with clients who have signatory authority over a foreign bank account and who failed to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (known as FBAR) but did not misreport income because they did not legally own the account,” Jim Mastracchio, partner, Caplin & Drysdale, LLP, Washington, D.C., told CCH. These situations may involve individuals with signatory rights for an aging family member, Mastracchio explained.

Background

In exchange for full disclosure of offshore accounts by taxpayers not under investigation, the IRS will agree not to seek criminal prosecution. Taxpayers must pay all back taxes plus interest and penalties, although the IRS will waive the 75 percent fraud penalty. The initiative ends on September 23, 2009.

■ **Example.** David, who is in the 35 percent tax bracket, had undisclosed assets in a foreign account in 2008. The account grew from \$1 million in 2003 to \$1.3 million in 2008 through interest income. Although the amount on deposit may have been in the account for many years, it is assumed for purposes of the example that it is not unreported income in 2003. The example also assumes that David filed returns but did not include the foreign account or the interest income on the return and the maximum applicable penalties are imposed.

The IRS accepts David’s request to participate in the initiative. According to the IRS, David would pay \$386,000 plus interest. This includes tax of \$105,000 (six years at \$17,500) plus interest; an accuracy-related penalty of \$21,000 (\$105,000 x 20-percent); and an additional penalty, in lieu of the FBAR and other potential penalties that may apply, of \$260,000 (\$1.3 million x 20-percent).

Quiet disclosure

Some taxpayers have attempted to make quiet disclosures; that is, they have filed amended returns and paid tax and interest for previously unreported offshore income without otherwise notifying the IRS. The IRS encouraged these individuals to nonetheless come forward.

Taxpayers making quiet disclosures and declining to participate in the initiative risk criminal prosecution.

■ **Planning Note.** Taxpayers who reported and paid tax on all taxable income, but did not file FBARs, should not use the voluntary disclosure process. These taxpayers should file the delinquent FBAR reports according to the instructions and explain in writing why the reports are late. The IRS advised that it will not impose a penalty for the failure to file the FBARs.

Payments

Generally, the initiative requires taxpayers to pay all taxes, interest and penalties in full when a closing agreement is signed. Taxpayers who cannot make these payments in full may make payment arrangements, the IRS advised. The agency will determine if the inability to pay is genuine.

■ **Comment.** The IRS did not specify what types of payment options may be available.

Practitioners

If a taxpayer declines to participate in the initiative after consulting with a Circular 230 practitioner, the practitioner must advise the taxpayer of the consequences of noncompliance. Additionally, the IRS will not discuss hypothetical situations with practitioners.

IRS Fine-Tunes Information On First-Time Homebuyer Credit With New FAQs

◆ *FAQs, www.irs.gov*

The IRS has updated its online Frequently Asked Questions (FAQs) about the enhanced \$8,000 first-time homebuyer credit. The enhanced credit was enacted in the *American Recovery and Reinvestment Tax Act of 2009* and applies to homes purchased after December 31, 2008 and before December 1, 2009.

Inherited home

To qualify as a first-time homebuyer, the taxpayer and spouse must not have owned their principal residence for three years before the purchase of the qualifying home. In the new FAQs, the IRS stated that inheriting a home and living in the inherited home as a principal residence would preclude an individual from being considered a first-time homebuyer. There is no exception for taxpayers who did not buy their prior residence.

Step-relative

An acquisition of a home from a related person is not a qualified purchase. Related persons include spouses, ancestors and lineal descendants, controlled entities, and trusts, fiduciaries and beneficiaries. In the FAQs, the IRS clarified that step-relatives are not related persons because they are not ancestors or lineal descendants.

Continued on page 8

Tax Briefs

Inflation Adjustment

The IRS has published the inflation adjustment factors and reference prices to be used in computing the renewable electricity production credit for calendar year 2009. The inflation adjustment factors and reference prices apply to sales in calendar year 2009 of kilowatt hours of electricity produced in the U.S. or a U.S. possession from qualified energy resources.

*Notice 2009-40, FED ¶46,365;
TRC BUSEXP: 54,550.*

Internal Revenue Service

The IRS has published the inflation adjustment factors and reference prices to be used in computing the renewable electricity production credit for calendar year 2009.

*Notice 2009-40, FED ¶46,365;
TRC BUSEXP: 54,550.*

The IRS is inviting the public to suggest tax issues that need clarification to be considered for inclusion on the 2009-2010 Guidance Priority List. The deadline for consideration on the original list is May 31, 2009.

*Notice 2009-43, FED ¶46,359;
TRC IRS: 12,350.*

For pension plan years beginning in May 2009, the IRS has released the corporate bond weighted average interest rate, the permissible range of interest rates used to calculate current plan liability and to determine the required contribution under Code Sec. 412(l) for plan years through 2009, and the current corporate bond yield curve and related segment rates for the purpose of establishing a plan's funding target under Code Sec. 430(h)(2).

*Notice 2009-45, FED ¶46,364;
TRC RETIRE: 15,304.05.*

The April 13, 2009, notice granting relief to victims of severe storms and flooding in Minnesota was updated by the IRS on May 7, 2009, to include Beltrami, Marshall and Polk counties.

*Minnesota Disaster Relief Notice MN 2009-34, Updated, FED ¶46,338;
TRC FILEIND: 15,204.25.*

The April 24, 2009, notice granting relief to victims of severe storms and flooding in Georgia was updated by the IRS on May 8, 2009, to include Ben Hill, Camden, Montgomery and Tattnall counties.

*Georgia Disaster Relief Notice, Updated,
FED ¶46,352; TRC FILEIND: 15,204.25.*

The April 30, 2009, notice granting relief to victims of severe storms and tornadoes in Arkansas was updated by the IRS on May 9, 2009, to include Ashley County.

*Arkansas Disaster Relief Notice AR 2009-07,
Updated, FED ¶46,356;
TRC FILEIND: 15,204.25.*

The April 30, 2009, notice granting relief to victims of severe storms, tornados and straight-line winds in Florida was updated by the IRS on May 4, 2009, to include Dixie and Gilchrist counties.

*Florida Disaster Relief Notice FL 2009-34,
Updated, FED ¶46,355; TRC FILEIND:
15,204.25.*

Jurisdiction

A federal appeals court lacked subject matter jurisdiction to directly review a notice of federal tax lien. Furthermore, requests for a writ of prohibition or a writ of mandamus were denied because the individual had other means to challenge the federal tax lien.

*Mozingo, CA-4, 2009-1 USTC ¶50,364;
TRC LITIG: 9,252.05.*

A couple's damages claim for the IRS's alleged violation of the Internal Revenue Code alleged insufficient facts to support a claim for which relief could be granted. They failed to describe when, where and how the IRS engaged in misconduct.

Lindsey, DC D.C., 2009-1 USTC ¶50,363.

Tax Crimes

The sentence imposed on an individual convicted of aiding and assisting in the preparation of false tax returns was vacated

Continued on page 8

IRS Reminds Small Tax-Exempts Of May 15 Deadline To File E-Postcards

The IRS has reminded small tax-exempt organizations of the May 15 deadline to file their annual electronic information on Form 990-N, also called the e-Postcard. Tax-exempt organizations with gross annual receipts of \$25,000 or less must file a Form 990-N. The May 15 deadline also applies to tax-exempt organizations whose tax year ends on December 31. Those with a different tax year must file by the 15th day of the fifth month after the close of the tax year.

Forms 990-N must be filed online; a paper form is not available. Form 990-N is a simple, internet-based form that asks a few identifying questions about the organization. If an organization fails to file Form 990-N for three consecutive years, it automatically loses its tax-exempt status.

IR-2009-49, FED ¶46,362; TRC EXEMPT: 12,252.

Low-Income Housing Credit

The IRS has clarified that utility costs paid by a tenant based on actual consumption in a submetered, rent-restricted unit are to be treated as paid directly by the tenant for purposes of the low-income housing tax credit (LIHC). Those utility costs are not to be treated as paid by the building's owner.

Notice 2009-44, FED ¶46,361; TRC BUSEXP: 54,214.10.

Tax Briefs

Continued from page 7

and remanded because the government did not provide a reasonable estimate of the aggregate tax loss attributable to the preparer's crime. The government's use of a non-random sample to calculate the average tax loss per return resulted in an average tax loss that was not representative of all the returns filed by the individual.

Ahanmisi, CA-4, 2009-1 USTC ¶50,365.

Summons

A couple lacked standing to quash summonses in which they were not identified and could not raise challenges on behalf of business entities named in the summonses because they were not attorneys. Other third-party summonses that did reference the couple were not quashed because the couple failed to rebut the IRS's *prima facie* showing of good faith.

Bates, CA-9, 2009-1 USTC ¶50,366.

Income

Payment received by an individual pursuant to a settlement agreement was not excludable from her gross income as compensation for physical injury or physical sickness. Under the settlement agreement, the payment was specifically intended to compensate her for emotional distress, not to award damages for physical illness or injuries.

Seidel, CA-9, 2009-1 USTC ¶50,370; TRC INDIV: 6,354.15.

Deductions

An individual's deduction for his charitable contribution of conservation easements relating to two parcels of land was properly reduced because the valuation provided by his appraiser was excessive.

Hughes, TC, CCH Dec. 57,808(M), FED ¶48,035(M); TRC INDIV: 51,368.15.

Liens and Levies

The IRS followed proper procedures before proceeding with a levy action against an individual. Assessment was not required since the IRS sought to collect only amounts that he listed as taxes due on his returns.

Chandler, CA-10, 2009-1 USTC ¶50,367.

Collateral Estoppel Prevents Corporation From Denying Employment Tax Liability

The Tax Court has found that the criminal conviction of a corporation's president/sole shareholder for willful failure to collect and pay employment and withholding taxes collaterally estopped the corporation from arguing that temporary workers it hired were instead employees of its clients and from denying liability for payment of the taxes.

The corporation had failed to withhold or pay the employment taxes of its workers who opted to be paid in cash.

Fraudulent intent. The Tax Court found that the conviction of the corporation's president/sole shareholder precluded the corporation from denying fraudulent intent under the doctrine of collateral estoppel. Moreover, even if the corporation was not precluded from arguing that it was not liable, the court indicated it would have classified the workers as common law employees, or alternatively as statutory employees. The court also imposed fraud penalties under Code Sec. 6663(a).

Hi Q Personnel, Inc., 132 TC No. 13, CCH Dec ¶57,806; TRC PAYROLL: 3,052.

Collection Due Process

The Tax Court properly found that an individual was precluded from contesting the validity of his underlying tax liabilities in a CDP hearing. The individual had previously received notices of deficiency and had a prior opportunity to dispute his tax liabilities.

Lavi, CA-2, 2009-1 USTC ¶50,369; TRC IRS: 51,056.

Deficiencies and Penalties

The principal officer and majority shareholder of four companies was a responsible person for purposes of the trust fund recovery penalties assessed against him in

connection with the companies' unpaid withholding taxes. The individual also failed to rebut the presumptive validity of the assessments.

Kavanaugh, DC Pa., 2009-1 USTC ¶50,368; TRC PAYROLL: 6,306.05.

A tax-shelter investor was entitled to a partial abatement of interest that accrued on his deficiency. The IRS delayed the performance of a ministerial act when it failed to promptly assess the interest within 30 days after the taxpayer waived restrictions on his deficiency assessment.

Corson, TC, CCH Dec. 57,809(M), FED ¶48,036(M); TRC PENALTY: 9,056.20.

First-Time Homebuyers

Continued from page 6

Recapture

To qualify for the credit, the purchaser must own and use the property as the principal residence. If the taxpayer stops using the property as the principal home before the 36-month period expires, the credit must be repaid. While the credit for 2008 purchases had to be repaid eventually in any event, the 36-month recapture rule continues to apply for both 2008 and 2009 qualifying purchases. The new FAQs indicate that the entire credit

must be repaid in full on the tax return filed for the year the property ceased to be the principal residence. The credit is reflected as additional taxes owed. Form 5405 will be revised for 2009 to discuss recapture.

Mortgage payor

If a taxpayer buys a home, puts the deed and mortgage in the taxpayer's name, and lives in the home as the principal residence, the taxpayer is eligible for the credit, even if the taxpayer does not make the mortgage payments.

Reference: TRC INDIV: 57,952.