

# Federal Tax Weekly

Issue Number 23

[www.CCHGroup.com](http://www.CCHGroup.com)

June 9, 2011

## Inside this Issue

|   |            |
|---|------------|
| <i>IRS Releases Final Circular 230 Regs.....</i>                                | <i>265</i> |
| <i>FBAR Deadline Extended For Certain Financial Professionals .....</i>         | <i>266</i> |
| <i>IRS Updates Offshore Voluntary Disclosure Initiative .....</i>               | <i>267</i> |
| <i>FUTA Surtax Set To Expire After June 30.....</i>                             | <i>267</i> |
| <i>IRS Provides Basis Safe Harbors For B Reorgs/Other Transactions .....</i>    | <i>268</i> |
| <i>Tenth Circuit Applies Six-Year SOL To Basis Overstatement .....</i>          | <i>268</i> |
| <i>IRS Proposes Changes To New Markets Tax Credit.....</i>                      | <i>269</i> |
| <i>Accrual Basis LLP Cannot Deduct Fee For Bond Guarantee Until Paid.....</i>   | <i>270</i> |
| <i>IRS Seeks Comments On Revised Form 990 .....</i>                             | <i>270</i> |
| <i>Tax Briefs.....</i>  | <i>271</i> |
| <i>IRS Updates Disaster Relief.....</i>   | <i>271</i> |
| <i>Practitioners' Corner: IRS Return Preparer Initiative Moves Forward.....</i> | <i>273</i> |
| <i>Washington Report.....</i>   | <i>274</i> |
| <i>Compliance Calendar.....</i>   | <i>276</i> |



**CCH Journals and Newsletters**  
Email Alert for the Current Issue  
Sign Up Here... [CCHGroup.com/Email/Journals](http://CCHGroup.com/Email/Journals)

## IRS Unveils Final Circular 230 Regs; Clarifies Professional Standards And Registered Tax Return Preparer Designation

◆ *TD 9527, Notice 2011-45*

**M**uch-anticipated final Circular 230 regs were recently issued by the IRS. The final regs carry forward the agency's expanded oversight of tax professionals, including the new category of registered tax return preparer. The final regs generally track proposed regs issued in 2010 with some modifications.

■ **CCH Take Away.** "The final regulations take a common sense approach to many provisions in Circular 230," Edward Karl, vice president, taxation, American Institute of Certified Public Accountants (AICPA) told CCH. Karl also commended the IRS for clarifying in Notice 2011-45 that the designation registered tax return preparer is not yet available. "The IRS attempted to minimize the confusion that some consumers may have about the designation of registered tax return preparer."

### Background

The proposed regs extended the rules of practice in Circular 230 to cover all tax return preparers. Previously, Circular 230 applied to certified public accountants (CPAs), enrolled agents (EAs), attorneys, and other specified tax professionals. The proposed regs also clarified professional standards, established a new registered tax return preparer designation, and, among other provisions, set the eligibility requirements to become a registered tax return preparer.

### Professional standards

The final regs, the IRS explained, are generally consistent with the professional standards in Code Sec. 6694. A practitioner may not willfully, recklessly or through gross incompetence, sign a return that he or she knows or should know contains a position that lacks a reasonable basis, is an unreasonable position under Code Sec. 6694(a)(2), or is a willful attempt to understate tax liability or a reckless disregard of the rules or regs as described in Code Sec. 6694(b)(2). Firm managers must take reasonable steps to ensure compliance with Circular 230. The IRS also clarified that preparers subject to a penalty under Code Sec. 6694 are not automatically subject to discipline under Circular 230.

### Registered tax return preparers

Preparers who seek the designation "registered tax return preparer" will be required to obtain a PTIN (if they do not already have a PTIN); pass a competency test; and satisfy continuing education requirements. The IRS will also administer compliance and suitability checks.

■ **Comment.** In Notice 2011-6, the IRS announced that certain supervised individuals will be exempt from the PTIN and competency testing requirements. The individual must be supervised by a CPA, EA, attorney, retirement plan agent, or actuary; be employed at the firm of the supervising person; and satisfy tax compliance and suitability checks.

*Continued on page 266*

Route to: \_\_\_\_\_

# IRS And FinCEN Extend FBAR Filing Deadline For Certain Financial Professionals

## ◆ IR-2011-57, FinCEN Notice 2011-1

The IRS and Treasury's Financial Crimes Enforcement Network (FinCEN) have announced a one-year extension of filing Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR) for certain financial professionals with signature authority over foreign financial accounts. All other United States persons required to file an FBAR for calendar year 2010 must meet the June 30, 2011 filing deadline.

■ **CCH Take Away.** In February 2011, FinCEN issued final regs under the *Bank Secrecy Act*, which amended the FBAR rules (*see the March 3, 2011 issue of this newsletter for details*). Among other provisions, the final regs clarified the definition of signature authority. Signature authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial

account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.

### Background

United States persons are required to file an FBAR if they had a financial interest in or signature authority over at least one financial account located outside of the United States; and the aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year to be reported. The FBAR must be received by the IRS on or before June 30 of the year following the calendar year being reported.

■ **Comment.** In the final regs, FinCEN rejected proposals to abolish reporting across the board by United States persons with signature authority.

### Limited exceptions

The IRS and FinCEN announced that certain individuals with only signature

authority are eligible for a one-year extension beyond the upcoming FBAR filing date of June 30, 2011. These individuals are:

- An employee or officer of a covered entity who has signature or other authority over and no financial interest in a foreign financial account of another entity more than 50 percent owned, directly or indirectly, by the entity (a "controlled person").
- An employee or officer of a controlled person of a covered entity who has signature or other authority over and no financial interest in a foreign financial account of the entity or another controlled person of the entity.

The IRS and FinCEN explained they are providing the extension to facilitate FBAR compliance. The agencies stressed that the upcoming reporting requirement for all other United States persons is unchanged.

*References: FED ¶46,371;  
TRC FILEBUS: 9,104.*

## Circular 230

*Continued from page 265*

A registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar employees of the IRS (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the return for the tax year or period under examination. Registered tax return preparers may not represent taxpayers before IRS Appeals, revenue officers, Chief Counsel or similar officers and employees of the IRS or Treasury.

Registered tax return preparers, in describing their professional designation, may not

use the term "certified" or imply an employer/employee relationship with the IRS. An example of an acceptable description for registered tax return preparers, the IRS indicated, is "designated as a registered tax return preparer by the Internal Revenue Service."

■ **Comment.** At press time, the IRS announced it is seeking comments on the content and administration of the competency test for registered tax return preparers (Notice 2011-18). *See next week's issue of this newsletter for details.*

### Practitioner privilege

The Code Sec. 7525 practitioner privilege does not apply to communications between

a registered tax return preparer and a taxpayer. The IRS explained that the advice a registered tax return preparer provides to a taxpayer ordinarily is intended to be reflected on a tax return and is not intended to be confidential or privileged.

### Education

Registered tax return preparers must complete 15 hours of continuing education during each registration year, with a minimum of three hours of federal tax law updates, two hours of tax-related ethics and 10 hours of federal tax law topics. The registration year is as each 12-month period that the registered tax return preparer is authorized to practice before the IRS.

■ **Comment.** The final regs generally carry forward the current framework for continuing education providers rather than requiring pre-approval of each program.

*References: FED ¶¶46,369, 47,023;  
TRC IRS: 3,200.*

### Reference Key

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

FEDERAL TAX WEEKLY, 2011 No. 23. FEDERAL TAX WEEKLY is also published as part of CCH Tax Research Consultant by CCH, a Wolters Kluwer business, 4025 W. Peterson Avenue, Chicago, IL 60646-6085. Editorial and Publication Office, 1015 15th St., NW, Washington, DC 20005. ©2011 CCH. All Rights Reserved.

## IRS Provides Good Faith Extension Of OVDI Deadline; Expands Qualification For Five Percent Penalty

◆ [www.irs.gov](http://www.irs.gov), *IRS Memorandum*

**T**axpayers who make a good faith effort to comply with the IRS's 2011 Offshore Voluntary Disclosure Initiative (OVDI) may be eligible for an extension beyond the August 31, 2011 deadline, the agency has announced. The IRS also expanded the scope of the OVDI's five percent penalty and provided opt out and removal procedures.

■ **CCH Take Away.** "One of the most important aspects of the announcement is that the IRS has now provided some measure of guidance for taxpayers who are considering opting out of the program," Daniel Gottfried, partner, Rogin Nassau, LLC, Hartford, Conn., told CCH. "A taxpayer would generally consider opting out if the penalties that the IRS seeks to impose in the program exceed what the taxpayer views as a likely result under the general audit and appeal procedure."

### Background

In exchange for making voluntary disclosure of unreported foreign accounts and fully cooperating with the IRS, taxpayers may be eligible for a reduced penalty framework. The 2011 OVDI penalty framework generally requires taxpayers to pay a penalty of 25 percent of the highest year's aggregate value of the account during the period covered by the OVDI. Certain taxpayers may qualify for lower penalties of 12.5 percent or five percent.

### Extension

The 2011 OVDI will be available only through August 31, 2011. In limited situations, however, the IRS will consider extending that deadline for up to 90 days upon a taxpayer's request and a good faith showing that all relevant materials cannot be submitted by the August 31, 2011 deadline.

In an updated FAQ, the IRS explained that requests for an extension must include a statement of items that are missing from the taxpayer's disclosure, the reasons why they are missing and what steps the taxpayer is

taking to obtain them. All requests for an extension must be in writing to the IRS.

### Five percent penalty

The five percent penalty may apply if the taxpayer can show that the foreign account was not used to hide income and the taxpayer did not have withdrawals of more than \$1,000 in any year, unless transferred to an account in the U.S. The five percent penalty may also apply in the case of a foreign resident who was unaware that he or she was a U.S. citizen.

In its updated FAQs, the IRS explained that the five percent penalty may also apply to taxpayers who are foreign residents and who met all of their tax requirements in that foreign country. In these cases, the taxpayer must have \$10,000 or less of U.S. source income each year.

### Opt Out

A taxpayer may elect to opt out of the 2011 OVDI by making an irrevocable election. Opting out is at the sole discretion of the taxpayer.

■ **Comment.** "The announcement also specifies what role the

existing agent would have after an opt out," Gottfried observed. "Again, this is something that was not previously subject to clear guidance. We now know that the agent will be expected to make a recommendation as to the treatment of a taxpayer who opts out. So, understanding the agent's disposition towards the taxpayer is of fundamental importance in considering whether an opt out is advisable."

### Removal

Removal of a taxpayer's request to come under the 2011 OVDI may be warranted where a taxpayer has declined to cooperate with the IRS. Removal is based on all the facts and circumstances.

■ **Comment.** The IRS explained that it may determine a taxpayer failed to cooperate, for example, where the taxpayer did not respond to written and telephone requests from the agency for longer than 60 days.

*Reference: TRC IRS: 9,104.*

### *FUTA Surtax Set To Expire After June 30, 2011*

The 0.2 percent federal unemployment tax (FUTA) surtax is scheduled to expire after June 30, 2011. Expiration of the surtax means the FUTA tax rate will drop to 6.0 percent effective July 1, 2011, absent Congressional action.

The FUTA tax currently comprises a permanent tax rate of 6.0 percent and a temporary surtax of 0.2 percent. The *Worker, Homeownership and Business Assistance Act of 2009* extended the surtax through 2010 and the first six months of 2011.

■ **Comment.** "One of the revenue raisers in President Obama's budget proposal is to make the surtax permanent with an added kicker that would raise the FUTA wage base from \$7,000 to \$15,000 in 2014 and index that amount for inflation in subsequent years," Dustin Stamper, manager, Washington National Tax Office, Grant Thornton, LLP, told CCH. Congress has not acted on any FUTA legislation so far this year.

Employers pay FUTA by filing Form 940, Employer's Annual Federal Unemployment Tax Return. In the Instructions for Form 940, the IRS notes the expiration of the FUTA surtax and advises taxpayers to visit its web site ([www.irs.gov](http://www.irs.gov)) for updated information.

■ **Comment.** CCH asked the IRS if it intends to adjust the 2011 Form 940 to reflect two FUTA rates in 2011 if the surtax expires but did not receive a response by press time.

*TRC PAYROLL: 3,358.*

## IRS Provides Safe Harbor Methods For Determining Basis Of Stock Acquired In Tax-Free Transactions

### ◆ *Rev. Proc. 2011-35*

The IRS has provided several safe harbor methods for corporations to use to determine the basis of stock acquired in certain tax-free transactions involving “transferred basis.” The methods involve surveys, statistical sampling, and estimation.

■ **CCH Take Away.** The income tax regs require a corporation acquiring another corporation’s stock in appropriate transactions to provide the amount of stock received and the basis of the transferred stock on its return for the year of the transaction. The IRS has recognized the difficulty and expense of obtaining this basis information and has, in the past, provided alternative methods of compiling the information. Rev. Proc. 2011-35 updates this guidance and expands it to all transferred basis transactions.

### Background

In certain corporate transactions, the basis of the Target corporation’s stock to Target’s shareholders is transferred to the Acquiring corporation. These transferred basis transactions include “B” reorganizations and Code Sec. 351(a) exchanges.

The optimal method for establishing basis is a survey of 100 percent of Target’s shareholders. However, it is time-consuming, burdensome and costly to contact each former shareholder. Rev. Proc. 81-70 authorizes estimating basis from the best available evidence and through sampling.

The IRS noted that market practices have changed. Stock of public companies is held primarily in street name; records reflect that the stock is held by a nominee, such as a clearing house or financial institution. As a result, the identification of beneficial owners and their stock bases is difficult.

### Rev. Proc. 2011-35

The IRS provided four different methods for determining basis. Taxpayers may use one or more methods in any combination. The IRS and the acquiring corporation may also agree on other methods for establishing basis.

The IRS reiterated that Acquiring must use the shareholder’s actual basis in the

stock if it has knowledge of the basis. Otherwise, the IRS will not challenge a determination of basis that complies with Rev. Proc. 2011-35.

### Surveying

In general, Acquiring must survey all registered, nominee and reporting shareholders that surrendered Target stock, unless it uses another method, such as sampling or estimation.

■ **Comment.** A registered shareholder is a Target shareholder that surrendered stock held in certificated form. A nominee shareholder is a member of a stock clearinghouse that holds stock on its own behalf or on behalf of clients, or that files with the Securities and Exchange Commission as an institutional investment manager. A reporting shareholder includes a five percent owner of publicly-traded stock; a one percent owner of nonpublic stock, an officer or director of Target, and an employer stock ownership plan or pension plan that holds Target stock on behalf of Target’s employees.

### Statistical sampling

Companies may use statistical sampling if the cost of surveying all surrendering shareholders is unreasonably high. Statistical sampling can be used if the actual basis is not known and the stock was not surrendered by a reporting shareholder. It

cannot be used for reporting shareholders or if the actual basis is known.

■ **Comment.** The statistical sampling procedures must comply with standard procedures recognized by the IRS.

### Estimation

Estimation can be used if the actual basis is not known and the shares were surrendered by a registered shareholder, or by a reporting shareholder that failed to respond to a survey. Estimation can also be used for shares surrendered by nominees, provided the actual basis is not known and the nominee shareholder was not a reporting shareholder, or was a reporting shareholder that failed to respond to a survey.

### Reporting and effective date

For the year of the transaction, corporations acquiring stock must include a statement with their timely filed original return that identifies the transaction and states that a basis study is pending. The corporation must provide basis amounts on a return filed for a year that is within two years. These requirements apply whether or not the corporation uses the methods described in Rev. Proc. 2011-35.

In general, Rev. Proc. 2011-35 applies to transactions completed on or after June 20, 2011, but it may be used for prior transactions if the corporation reports to the IRS by June 20, 2013.

*References: FED ¶46,368;  
TRC CCORP: 39,304.10.*

---

## Tenth Circuit Applies Six-Year Statute Of Limitations To Basis Overstatement

### ◆ *Salman Ranch, Ltd., CA-10, May 31, 2011*

The Tenth Circuit Court of Appeals, reversing the Tax Court, has upheld the IRS’s application of the six-year statute of limitations to an overstatement of basis. The court relied heavily on recent IRS regs issued after the IRS lost several court cases that limited the six-year statute to an understatement of income.

■ **CCH Take Away.** “The most troubling element of this case and *Grapevine Imports, Ltd., CA-FC, 2011-1 ustc ¶50,264* is not the deference given to the regulations but the courts’ willingness to apply them to previously pending cases arising from facts that occurred before the new regulations were promulgated.”

*Continued on page 269*

# IRS Proposes Changes In New Markets Tax Credit Program To Encourage Investments In Non-Real Estate Businesses

◆ *IR-2011-61, Advance NPRM REG-114206-11, NPRM REG-101826-11*

The IRS has proposed several changes to the new markets tax credit (NMTC) program to encourage more investment in non-real estate businesses located in low-income communities. The proposed regs would apply to tax years ending on or after the date of publication of final regs.

■ **CCH Take Away.** “The recent IRS NMTC notices regarding NMTC investing in non-real estate operating businesses are thought-provoking exercises that I expect to yield significant long

term results, but will have limited short-term impact,” Michael Novogradac, CPA, Novogradac & Company LLP, San Francisco, told CCH. “I commend Treasury and the IRS for taking these initial steps. I also expect that as the new round of application funding is being made available, more CDEs may apply with the goal of lending to non-real estate businesses.”

## Background

Code Sec. 45D, enacted in 2000, allows an NMTC for a qualified equity

investment (for cash) in a qualified community development entity (CDE). The CDE must invest substantially all of its funds in qualified low-income community investments. These include investments in, or loans to, qualified active low-income community businesses, providing financial counseling and other services, purchase of a loan from a CDE, or investing in or making a loan to a CDE. A qualified business is any trade or business, including the rental of real property located in a low-income community.

## Proposed changes

The IRS proposed various changes to the NMTC program. The advance notice would:

- Simplify the substantiation requirements for second-tier CDEs; and
- Change the reasonable expectation test.

The proposed regs would allow reinvestment of income from a non-real-estate business into community development financial institutions.

## Rationale

A primary CDE that invests in a second CDE must ensure that the proceeds are ultimately invested in a qualifying business or activity. This layer of substantiation has constrained the ability of a primary CDE to invest in a second CDE, particularly where the latter intends to make smaller loans to non-real estate businesses. The IRS would simplify the rules for certain smaller loans where the second CDE and the business are unrelated to the primary CDE, and where the business met basic qualification rules.

A CDE that receives returns on investments before the seven-year credit period expires must reinvest those proceeds. This discourages working capital and equipment loans which ordinary are for five years or less. Easing the reinvestment rules would address this.

References: *FED* ¶¶46,373, 46,374, 49,481; *TRC BUSEXP*: 54,900.

## Basis Overstatement

*Continued from page 268*

Matthew Lerner of Steptoe & Johnson LLP, told CCH.

## Background

The taxpayer engaged in a Son of BOSS (“Bond and Option Sales Strategy”) tax shelter transaction to generate an inflated basis for a ranch owned by the partnership. In an earlier case (*Salman II*, 2009-2 *ustc* ¶50,528), the IRS challenged the partnership’s 1999 income. In this case (*Salman III*), it challenged income for 2001 and 2002. In each case, the IRS asserted that the partnership had overstated the ranch’s basis and therefore understated the income reported on each year’s return. Also, in each case, the IRS issued Notices of Final Partnership Adjustments (FPAAs) more than three years, but less than six years, after the returns were filed.

■ **Comment.** Code Sec. 6501(a) normally requires the IRS to issue an FPA within three years after a return is filed. However, under Code Sec. 6501(e)(1)(A), the period is extended to six years “if the taxpayer omits from gross income” more than 25 percent of the amount of gross income stated in the return.

## Salman Ranch cases

In *Salman II*, the Federal Circuit, reversing

the Court of Federal Claims, held that the alleged overstatement of basis was not an omission from gross income and that the IRS could not apply the six-year statute of limitations. In *Salman III*, the Tax Court sided with the Federal Circuit, applying the three-year statute to the FPAAs for 2001 and 2002.

## Regs

The IRS issued temporary regs in October 2009 that defined an omission from gross income as including an overstatement of basis, outside of a trade or business. In March 2011, the Court of Appeals for the Federal Circuit affirmed the basis overstatement regs in *Grapevine*, effectively overruling its decision in *Salman Ranch II*.

## Tenth Circuit’s analysis

The Tenth Circuit concluded that the regs should be given judicial deference. The statute was ambiguous, allowing the IRS to fashion its own interpretation of the statute. Citing *Mayo Foundation, SCt*, 2011-1 *ustc* ¶50,143 and *Grapevine*, the court then concluded that the IRS’s interpretation was reasonable. Since the regs were final, it did not matter that the regs were prompted by litigation, were applied retroactively or were issued without notice and comment.

References: 2011-1 *ustc* ¶50,405; *TRC IRS*: 30,052.

## Accrual Basis LLP Cannot Deduct Fee For Bond Guarantee Until Paid, Chief Counsel Determines

### ◆ CCA 201121001

An accrual basis limited liability partnership (LLP) does not satisfy the economic performance rules and cannot deduct the fee it owes for a bond guarantee until it actually pays the fee. The liability does not accrue at an earlier time, IRS Chief Counsel determined.

- **CCH Take Away.** Accrual basis taxpayers must satisfy the all-events test to deduct an expense. Economic performance also is required for deducting a liability. Economic performance generally occurs when the taxpayer actually performs the activities he or she is obligated to perform. Here, paying the fee was the activity that had to be performed, so the fee was not deductible until paid.

### Background

Taxpayer, an LLP on the accrual method, was formed to construct and operate a housing project. A limited partner agreed to guarantee taxpayer's bond so that the taxpayer could obtain a lower interest rate. Taxpayer pays a "facility fee" annually for the guarantee, based on the outstanding principal balance of the bonds. Thus the amount of the fee can vary. The taxpayer deducted the amounts owed but did not pay the fees.

### Economic performance

Economic performance can occur at different times, depending on the nature of the liability, such as the provision of interest, services or property. Economic performance occurs as interest costs economically accrue. Here, the IRS determined that the guaranty fee was not interest. The limited partner had not made a loan, provided any funds, or assumed the primary obligation on the guaranteed debt.

Economic performance also occurs as services or property is provided. Citing *Centel Communications Co., CA-7, 90-2 ustc ¶50,603*, Chief Counsel determined that shareholders providing loan guarantees to a corporation were not providing services. The shareholders were assuming

additional financial risk as stockholders and were not performing services.

### Payment as performance

The limited partner was being paid to guarantee payment on the bond; not to finish a construction project. Chief Counsel determined that economic performance occurs as the taxpayer makes payments to

the limited partner. Under Reg. §1.461-4(g) (7), since specific rules are not provided for this liability, economic performance occurs as the taxpayer makes payments that satisfy the liability. Here, neither the statutory nor the regulatory rules provide for an earlier time when economic performance of the liability occurs, Chief Counsel observed.

*Reference: TRC ACCTNG: 12,100.*

---

## IRS Looks To Fine Tune Revised Form 990

### ◆ Ann. 2011-36

The IRS recently requested comments on possible refinements to Form 990, Return of Organization Exempt From Income Tax. Comments are requested on or before August 1, 2011.

- **Comment.** Many of the areas identified for additional revision affect transparency, especially in the key area of executive compensation.

### Compensation

One focus of Form 990 as redesigned in 2008 is compensation and the IRS has identified certain areas where refinements may be needed to capture the required information. Part VII of the Form 990 requires the organization to identify, among other things:

- Any of its former officers, key employees, or highest compensated employees (who had served in such capacities in the prior five years but not in the current tax year) who received over \$100,000 of reportable compensation from the organization and related organizations, in the aggregate;
- Its top five highest compensated independent contractors that the organization paid more than \$100,000.

- **Comment.** The IRS reported that the previous compensation reporting threshold for independent contractors was lower and under old Form 990, all former officers, directors, and trustees who received compensation during the

tax year were reportable, regardless of their level of compensation. The IRS requested comments whether the reporting thresholds should revert to their previous levels or remain unchanged.

The IRS also expressed concern that some tax-exempt organizations may be shielding from disclosure executive compensation that is paid through a management company. The agency requested comments on how payments to management companies, leasing companies and other entities should be reported on Form 990.

### Related organizations

Form 990 filers report information about related organizations on Schedule R. The IRS requested comments whether certain related organizations should be excluded from reporting on Schedule R.

### Other issues

The IRS also requested comments on:

- Reporting revenue from governmental units;
- Net asset reconciliation;
- Audited financial statements;
- Names and employer identification numbers of foreign grantees;
- Reporting bank deposits as loans or business transactions;
- Reporting of component parts of community trusts; and
- Activity codes.

*References: FED ¶46,372;  
TRC EXEMPT: 12,250.*

# Tax Briefs



## Internal Revenue Service

The calendar year 2011 inflation adjustment factors and reference prices have been published for the renewable electricity production credit, the refined coal production credit and the Indian coal production credit under Code Sec. 45.

*Notice 2011-40, FED ¶46,364;  
TRC BUSEXP: 54,550.*

The IRS has provided specifications for filing Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, with the Internal Revenue Service/Information Returns Branch electronically through the FIRE System. The new instructions must be used to prepare current and prior-year information returns filed beginning January 1, 2011.

*Rev. Proc. 2011-31, FED ¶46,365;  
TRC RETIRE: 78,052.*

## Jurisdiction

The Tax Court properly determined that it lacked subject matter jurisdiction over an individual's request for review of an adverse IRS Appeals determination. Because the individual failed to make a timely request for a CDP hearing, the individual was only entitled to an equivalent hearing, which could not be appealed.

*Tuttle, CA-9, 2011-1 USTC ¶50,402;  
TRC IRS: 48,058.30.*

An employee's claim against his employer for wrongful withholding of federal taxes from his wages was properly dismissed. The employer was under an obligation to withhold income tax from the employee's wages under Code Sec. 3402.

*S. Bell v. J.B. Hunt Transportation, Inc.,  
CA-11, 2011-1 USTC ¶50,404;  
TRC FILEIND: 15,306.*

## Tax Crimes

A dentist's conviction and sentence for attempted tax evasion was proper. The court's instructions to the jury suffi-

ciently conveyed to the jury that it was required to find that the individual tried to evade paying income taxes by willfully failing to report that income on his tax return.

*Maggert, CA-11, 2011-1 USTC ¶50,408;  
TRC IRS: 66,154.*

An individual's conviction for corrupt interference with the administration of the internal revenue laws and for willful failure to file tax returns was proper. The court's instructions to the jury on guilt beyond a reasonable doubt was sufficient and not misleading.

*Gardner, CA-3, 2011-1 USTC ¶50,407;  
TRC IRS: 66,154.*

## Income

The Tax Court properly held that an individual failed to present sufficient credible evidence to shift the burden of proof under Code Sec. 7491 regarding receipts he excluded from income.

*Harris, CA-4, 2011-1 USTC ¶50,406;  
TRC LITIG: 3,200.*

An individual who established that she would suffer economic hardship was entitled to equitable innocent spouse relief from joint and several liability under Code Sec. 6015(f) for tax liabilities attribut-

able to her husband. She showed that her expenses exceeded her income.

*Smith, TC, CCH Dec. 58,644(M),  
FED ¶48,064(M); TRC INDIV: 18,058.*

A handicapped child whose guardian purchased the child's parents' home was not entitled to the first-time homebuyer credit. The guardian's purchase of the home in his individual capacity, and its subsequent sale to himself as guardian, lacked economic substance.

*Rodriguez, TC, CCH Dec. 58,647(M),  
FED ¶48,067(M); TRC INDIV: 57,952.*

An individual failed to establish her entitlement to a dependency exemption, head of household filing status, and the earned income credit because she did not prove that her son was a qualifying child and therefore a dependent.

*Mbugua, TC, CCH Dec. 58,639(M),  
FED ¶48,059(M); TRC FILEIND: 3,150.*

Deposits made into church bank accounts were used to reconstruct the gross income of a minister and his wife. They had control over the accounts and used the funds for personal expenses.

*Chambers, TC, CCH Dec. 58,638(M),  
FED ¶48,058(M); TRC COMPEN: 6,554.*

*Continued on page 272*

## IRS Updates List Of Storm/Flood Victims Qualifying For Filing, Payment Relief

The IRS has again added to the list of counties in states within which victims of recent storms and flooding qualify for certain filing and payment relief.

**Alabama.** Disaster relief targeted to victims of severe storms, tornadoes and flooding beginning April 15, 2011 in Alabama has been updated by the IRS to include Escambia County.

**Tennessee.** The IRS has added the counties of Lincoln and Tipton to disaster relief for victims of severe storms, tornadoes and flooding beginning April 19, 2011 in Tennessee. The IRS also added the counties of Knox and Montgomery to disaster relief for victims of severe storms, tornadoes and flooding beginning April 25, 2011 in Tennessee.

*AL/TN-2011-26AL, AL/TN-2011-27TN, AL/TN-2011-30TN,  
FED ¶¶46,344, 46,349, 46,353; TRC FILEIND: 15,204.25.*

## Tax Briefs

*Continued from page 271*

### Deductions

Expenses related to an individual's purported website business were not deductible. She failed to demonstrate that the expenses related to a business or any other activity engaged in for a profit.

*Zhang, TC, CCH Dec. 58,643(M); FED ¶48,063(M); TRC BUSEXP: 15,054.*

Due to a lack of substantiation, an individual was denied deductions for meal and entertainment expenses, expenses related to vehicles, cell phones, supplies, payments to certain individuals and organizations, a payment to the IRS, utilities payments and licensing expenses. However, the taxpayer did substantiate payments for graphic-design-related items.

*B.B. Mali, TC, CCH Dec. 58,646(M); FED ¶48,066(M); TRC BUSEXP: 3,150.*

A volunteer who incurred unreimbursed expenses for caring for feral cats was assisting a Code Sec. 501(c)(3) organization. The Tax Court allowed the taxpayer to deduct certain percentages of the cost of caring for the feral cats

*Van Dusen, CCH Dec. 58,642; TRC INDIV: 51,056.05.*

### Frivolous Arguments

The penalty imposed against an individual for taking a frivolous position was increased after he filed a motion to vacate and a motion for reconsideration. He was explicitly warned that the penalty would be increased if he repeated his maintenance of frivolous tax litigation.

*Wnuck, TC, CCH Dec. 58,636; FED ¶48,056; TRC PENALTY: 3,260.15.*

### Liens and Levies

Federal tax liens had priority over a bank's security interest in a debtor's health insurance accounts receivable generated more than 45 days after the IRS perfected its earliest lien. The debtor's right to payment accrued only when the services were rendered, and not when the contracts were granted.

*In re Reitter Corporation, BC-DC P.R., 2011-1 USTC ¶50,398; TRC IRS: 48,152.*

A financial institution's misfiled mortgage lien on a tax debtor's property was not entitled to priority over properly filed Notices of Federal Tax Liens and the financial institution was not entitled to equitable subrogation. Under state (Michigan) law, the institution lacked a legitimate reason to invoke the court's equitable power.

*Mortgage Electronic Registration Systems, Inc. v. Church, CA-6, 2011-1 USTC ¶50,399; TRC IRS: 48,150.*

### Collection Due Process

A couple was not liable for failure to timely pay additions to tax because their failure to pay was due to monthly expenses significantly exceeding monthly income at the time their tax liabilities were due. reasonable cause. It was not an abuse of discretion, however, for the IRS Appeals office to determine that the couple's tax liabilities should be reported as currently not collectible.

*Semen, TC, CCH Dec. 58,645(M); FED ¶48,065(M); TRC PENALTY: 3,060.10.*

The Tax Court properly upheld the IRS's determination to collect an individual's outstanding tax liabilities by levy, and imposed sanctions for presenting frivolous arguments. Denial of a face-to-face CDP hearing was justified because the individual failed to present any nonfrivolous issues to be reviewed.

*L. Deems, CA-11, 2011-1 USTC ¶50,401; TRC IRS: 51,056.15.*

### Tax Assessments

The IRS was barred from collecting additions to tax because the assessments of the additions to tax were made more than three years after the underlying returns were filed. The filing date for the returns was the date that the individual's counsel delivered a package, containing returns and checks to pay his tax liabilities, to the IRS office that was handling his criminal tax investigation.

*Dingman, TC, CCH Dec. 58,640(M); FED ¶48,060(M); TRC IRS: 30,052.*

### Deficiencies and Penalties

An individual was not entitled to an award of administrative and litigation costs with respect to his deficiency determination. It was not unreasonable for the IRS to require substantiation for his alimony deduction even though the issue had been adjudicated in his favor in prior years.

*Polz, TC, CCH Dec. 58,641(M); FED ¶48,061(M); TRC LITIG: 3,154.10.*

### Offer-in-Compromise

The application of an individual's voluntary payment to his outstanding income tax liabilities and decision by the IRS Appeals Office to proceed with the collection was not an abuse of discretion.

*Currier, TC, CCH Dec. 58,637(M); FED ¶48,057(M); TRC IRS: 42,102.*

### Bankruptcy

Individual retirement accounts (IRA) inherited by a nonspouse beneficiary debtor prior to bankruptcy were excluded from the debtors' bankruptcy estate under 11 U.S.C. §522(d)(12). The accounts qualified as "retirement funds" because they were transferred to the debtors' IRA through a direct trustee-to-trustee transfer from his deceased parents' IRAs and were exempt from taxation under Code Sec. 408.

*In re Johnson, BC-DC Wash., 2011-1 USTC ¶50,411; TRC RETIRE: 66,800.*

Taxes withheld from a debtor's unemployment compensation and retirement account distribution that were refunded to the debtor were not exempt from the debtor's bankruptcy estate.

*In re Hebert, BAP-10, 2011-1 USTC ¶50,410; TRC PAYROLL: 3,000.*

A Chapter 11 debtor-corporation's objection to the IRS's administrative expense claim for three years of post-petition taxes was rejected. The federal financial assistance received by the debtor's non-stock mutual savings association subsidiary while it was under conservatorship was properly included in the debtor's consolidated tax returns because Code Sec. 597 applied.

*In re Franklin Savings Corporation, BC-DC Kan., 2011-1 USTC ¶50,409; TRC IRS: 57,062.*

# Practitioners' Corner

## IRS Return Preparer Initiative Moves Forward With Final Circular 230 Regs

The IRS's return preparer oversight initiative is moving forward along several fronts. First, the IRS is requiring all preparers who are compensated for preparing, or assisting in the preparation of, all or substantially all of any U.S. federal tax return, claim for refund, or other tax form to obtain a preparer tax identification number (PTIN) subject to some exceptions. Second, the IRS has modified Circular 230 to bring within its scope all preparers who prepare returns for compensation regardless of their credentials and has created a new category of designated practitioner: registered tax return preparer. Third, the IRS has undertaken related education and compliance activities, such as sending letters to preparers reminding them of their responsibilities to their clients and the tax law. The recent release of final Circular 230 regs clarifies many aspects of the return preparer initiative, especially the new designation of registered tax return preparer, limited practice, professional standards, and mandatory e-filing.

■ **Comment.** The IRS created a Return Preparer Office to implement the return preparer oversight initiative, particularly testing and continuing education. In the final Circular 230 regs, the IRS explained that its Office of Professional Responsibility (OPR) will continue to enforce Circular 230 as it relates to practitioner conduct and discipline. At the same time, the IRS removed references to OPR in the final Circular 230 regs. The IRS reported that took this action to give it flexibility to adjust responsibility between the offices as the return preparer initiative unfolds.

### New designation

One of the most significant changes in the final Circular 230 regs is the addition of

provisions governing registered tax return preparers. This designation was created by the IRS as part of its return preparer oversight initiative. The conduct of a registered tax return preparer in connection with the preparation of the return, claim for refund, or other document, as well as any representation of the client during an examination, will be subject

■ **Comment.** The tax compliance check looks to whether the preparer has filed all required tax returns and made all required tax payments. The suitability check looks to whether the preparer has engaged in any conduct that would justify suspension or disbarment.

---

*“One of the most significant changes in the final Circular 230 regs is the addition of provisions governing registered tax return preparers.”*

---

to the standards of conduct in Circular 230. Inquiries into possible misconduct and disciplinary proceedings relating to registered tax return preparer misconduct will be conducted under the provisions in Circular 230.

Registered tax return preparers are individuals who obtain or renew a PTIN, pass an IRS competency test and compliance/suitability checks, and satisfy continuing education requirements. Preparers who earn the designation registered tax return preparer will enjoy certain practice rights before the IRS. Generally, registered tax return preparers:

- May represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return or claim for refund for the tax year or period under examination.
- May not represent taxpayers before IRS Appeals, revenue officers, Chief Counsel or similar officers or employees of the IRS or the Department of Treasury.

The IRS intends to issue certificates or cards to individuals who earn the designation registered tax return preparer. Registered tax return preparers must have both a valid registration card or certificate and a current and valid PTIN number to practice before the IRS.

■ **Comment.** The term “registered tax return preparer” is not without its critics. Some practitioners have cautioned that the term registered tax return preparer signifies an endorsement from the IRS. In response, the IRS made a small change in wording in the final regs. The proposed regs would have allowed preparers to use the term “designated as a registered tax return preparer with the Internal Revenue Service” when describing their designation. The final regs remove the word “with” and replace it with the word “by.” A preparer may use the term “designated as a registered tax return preparer by the Internal Revenue Service.”

■ **Comment.** The IRS has estimated that 600,000 to 700,000

*Continued on page 275*

# Washington Report

by the CCH Washington News Bureau



## Deficit reduction/tax negotiations continue

House Democratic leaders appeared optimistic that there will be a bipartisan agreement to increase the debt limit before the Independence Day Congressional recess, paving the way for deficit reduction. Following a White House meeting on June 2, Rep. Nancy Pelosi, D-Calif., told reporters that lawmakers agreed that not defaulting on the debt is a “pivotal moment to enable us to do deficit reduction in a real way, in a balanced way and in a way that will give confidence to the markets.”

Prior to the meeting, White House Press Secretary Jay Carney acknowledged that the deficit-reduction talks led by Vice President Joseph Biden will not be able to resolve all disagreements but said there is enough common ground to achieve a significant bipartisan fiscal package. Treasury Secretary Timothy Geithner also indicated that negotiations are progressing.

On June 1, President Obama met with Republican leaders in Congress. House Majority Leader Eric Cantor, R-Va., repeated the GOP’s opposition to including tax increases in the ongoing deficit-reduction talks. House Ways and Means Committee Chair Dave Camp, R-Mich., said he urged the president to support a revenue-neutral comprehensive tax reform plan that boosts the economy and creates jobs.

## Ways and Means holds business tax hearing

The House Ways and Means Committee held a hearing on June 2 on business tax reform. “At a combined federal-state rate of over 39 percent, the United States has the second-highest corporate income tax rate in the developed world,” Chair Dave Camp, R-Mich., said. Camp added that the committee will also take up business taxation as part of comprehensive tax reform.

These issues, Camp said, include differences between tax accounting and financial accounting, the treatment of inventories and depreciable property, and trade-offs between marginal tax rates and targeted business tax preferences.

“The statutory corporate tax rate is an important factor in determining the effective rate a business must pay, but it is by no means the only factor,” Mark Stutman, tax practice leader, Grant Thornton, LLP, testified. “Virtually every country with a statutory corporate tax rate lower than the United States also burdens business activity with some form of a value-added tax. The effective business tax rate can only be measured by considering all of these factors, not just the statutory corporate tax rate.”

## IRS takes steps to protect taxpayers’ identities

IRS Commissioner Douglas Shulman told a House subcommittee on June 2 that the agency is taking a variety of steps to combat identity theft. “We have developed a comprehensive identity theft strategy that is focused on preventing, detecting, and resolving instances of tax-related identity theft crimes. In doing so, we are working to ensure that tax filing issues are resolved, and future instances of such crimes are minimized,” Shulman said.

Shulman reported the IRS has already blocked two million returns, many that had duplicate taxpayer identification numbers, which raised a red flag with agency personnel. Additionally, the IRS is considering ways to expand the use of Identity Protection Personal Identification Numbers (PINs) so that taxpayers can verify their identities when they file.

“While the IRS deserves credit for its efforts to recognize and address the issue of identity theft as it relates to taxes, this is a huge and growing crime victimizing more

and more law-abiding citizens every year,” Chair Todd Platts, R-Pa., said. “More must be done not only to stop tax fraud, but to help the innocent victims once the fraud has occurred.”

## Shulman affirms nonpartisan oversight of 501(c)(4)s

IRS Commissioner Douglas Shulman recently said that the agency’s oversight of Code Sec. 501(c)(4) organizations is nonpartisan. Shulman responded to a May 18, 2011 letter from Sen. John Thune, R-S.D., who questioned the agency’s enforcement of Code Sec. 501(c)(4) organizations.

“Your letter raises the general question regarding whether IRS enforcement policy as it pertains to 501(c)(4) organizations is influenced by political considerations,” Shulman said. “As head of the agency, I can assure you that the answer is an emphatic no.”

Shulman explained that recent news reports about Code Sec. 501(c)(4) organizations resulted from a single matter where an IRS employee followed up on an internal referral by sending letters to five taxpayers. “This activity was conducted as part of ongoing work that focuses broadly on gift tax non-compliance and is not part of any broader effort to look at donations to Code Sec. 501(c)(4) organizations.”

## U.S. negotiates tax treaty update with Japan

The Treasury Department announced on June 2 that the U.S. is negotiating amendments to its existing bilateral income tax treaty with Japan. The treaty entered into force in 2004. The first formal round of negotiations will take place June 8-10, 2011 in Washington, D.C. The negotiations will aim to bring the existing tax treaty into closer conformity with the current tax treaty policies of the U.S. and Japan, Treasury said in a statement.

## Practitioners' Corner

*Continued from page 273*

individuals will apply to become registered tax return preparers. These numbers compare to the approximately 420,000 unenrolled preparers who have obtained or renewed PTINs since September 2010, according to the IRS Return Preparer Office.

### Testing

The IRS clarified that competency testing to attain the designation registered tax return preparer will initially be limited to individual tax returns (Form 1040 series tax returns and accompanying schedules). Preparers who do not prepare individual returns for compensation will not be required to complete the initial competency test or become a registered tax return preparer at this time, the IRS indicated. However, the agency left open the door to requiring testing outside the 1040 universe in the future.

■ **Comment.** Individuals who obtain a provisional PTIN before the competency test is offered may prepare for compensation any tax return or claim for refund until December 31, 2013, as long as the individual renews his or her PTIN, passes a suitability check (when available), and pays the applicable user fee. After the competency examination is offered, only CPAs, EAs, attorneys, registered tax return preparers, and supervised preparers under Notice 2011-6 may obtain a PTIN.

### Limited practice

Circular 230 provides for limited practice before the IRS by certain individuals. Taxpayers can choose to represent themselves. An individual may also represent another taxpayer if they are in a special relationship, such as an immediate family member. An unenrolled tax preparer who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required to sign the tax return, may represent the taxpayer before revenue agents, customer service

representatives or similar officers and employees of the IRS during an examination of the tax year or period covered by that return. The unenrolled preparer, however, cannot represent taxpayers before IRS Appeals, revenue officers, Chief Counsel or similar officers or employees of the IRS or the Department of Treasury.

The final regs delete the limited practice authorization as it relates to unenrolled preparers. The IRS removed the limited practice authorization for unenrolled preparers as that category of preparer will no longer be recognized. Unenrolled preparers will have to become registered tax return preparers or seek another recognized designation.

### Standards

Code Sections 6694(a) and 6694(b) impose penalties on tax return preparers for conduct giving rise to certain understatements of liability on a return. For positions other than those with respect to tax shelters (as defined in Code Sec. 6662(d)(2)(C)(ii)) and reportable transactions to which Code Sec. 6662A applies, the Code Sec. 6694(a) penalty is imposed in an amount equal to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the preparer for an understatement of tax liability due to:

- An undisclosed position for which the tax return preparer did not have substantial authority; or
- A disclosed position for which there is no reasonable basis.

For positions with respect to tax shelters or reportable transactions to which Code Sec. 6662A applies, the Code Sec. 6694(a) penalty is imposed in an amount equal to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the preparer for an understatement of tax liability for which it is not reasonable to believe that the position would more likely than not be sustained on its merits.

Code Sec. 6694(b) applies to a preparer's willful or reckless conduct. The penalty for a preparer's willful attempt to understate a client's tax liability is the greater of \$5,000 or 50 percent of the income derived (or to be derived) by the preparer

with respect to the return. The penalty also applies to any reckless or intentional disregard of rules or regs by a preparer, subject to certain exceptions.

Under the final Circular 230 regs, a preparer may not willfully, recklessly, or through gross incompetence, advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return, or claim for refund containing a position, that:

- Lacks a reasonable basis;
- Is an unreasonable position as described in Code Sec. 6694(a)(2) (including regs and other guidance); or
- Is a willful attempt to understate the liability for tax or a reckless or intentional disregard of rules or regulations as described in Code Sec. 6694(b)(2) (including regs and other guidance).

The IRS reiterated in the final Circular 230 regs that a violation of Code Sec. 6694 is not a per se violation of Circular 230. If the IRS, however, assesses a penalty against a preparer under Code Sec. 6694 and also refers the preparer for possible discipline under Circular 230, an independent determination as to whether the practitioner engaged in willful, reckless, or grossly incompetent conduct subject to discipline under Circular 230 will be made before any disciplinary proceedings are instituted or any sanctions are imposed.

### E-file mandate

The IRS also reinforced the e-file mandate for paid preparers in the final Circular 230 regs. Generally, specified tax return preparers must electronically file covered returns if the preparer reasonably expects to file 100 or more covered returns in the 2011 calendar year. The threshold falls to 11 or more covered returns in the 2012 calendar year.

Under the final Circular 230 regs, disreputable conduct includes willfully failing to e-file a return when a preparer is required. The IRS explained that it cannot permit preparers to intentionally disregard the internal revenue laws and continue to practice before the agency. The IRS's added language is narrowly tailored to only apply to preparers who willfully fail to comply with the electronic filing requirement.

# Compliance Calendar

## ■ June 10

Employers deposit Social Security, Medicare, and withheld income tax for June 4, 5, 6, and 7.

Employees who received \$20 or more in tips during May report them to their employers.

## ■ June 15

U.S. citizens or resident aliens living and working or on military duty outside the U.S. and Puerto Rico file 2010 Form 1040, U.S. Individual Income Tax Return and pay any tax or interest due.

Monthly depositors must deposit Social Security, Medicare, and withheld income tax for May.

Individuals pay the second installment of 2011 estimated tax.

Corporations pay the second installment of estimated income tax for 2011.

Employers deposit Social Security, Medicare, and withheld income tax for June 8, 9, and 10.

## ■ June 17

Employers deposit Social Security, Medicare, and withheld income tax for June 11, 12, 13, and 14.

## ■ June 22

Employers deposit Social Security, Medicare, and withheld income tax for June 15, 16, and 17.

## ■ June 24

Employers deposit Social Security, Medicare, and withheld income tax for June 18, 19, 20 and 21.

## From the Helpline

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

**Q** What factors determine whether a taxpayer is otherwise engaged in a trade or business of renting property under new legislation?

**A** The treatment of a person as engaged in a trade or business for purposes of the Form 1099 reporting requirement, based solely upon the receipt of rental income from real estate, was repealed by the *Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (P.L. 112-9)*. Engaging in a trade or business requires substantial involvement on a regular basis in renting, servicing tenants, and maintaining the property. *See TRC SALES: 21,106.20*. Generally, a taxpayer is treated as materially participating in an activity if he or she is involved in the operations of the activity on a regular, continuous and substantial basis. *See TRC BUSEXP: 33,150*. Rental activities, however, generally are deemed to be passive activities under Code Sec. 469 unless a taxpayer not only materially participates, but also performs qualifying services. *See TRC BUSEXP: 33,106.40*.

**Q** Is a U.S. Citizen living outside of the United States entitled to the Section 121 exclusion on the sale of his home located outside of the U.S.?

**A** The specifics of whether a residence qualifies as a taxpayer's principal residence for purposes of Code Sec. 121 are contained in Reg. §1.121-1, and are determined on the individual facts and circumstances related to each taxpayer's situation. The regulations under Code Sec 121 contain no specific prohibition of the principal residence being extraterritorial for this purpose. Reg. §1.121-4(f) places restrictions only on taxpayers who are considered to be expatriates under Code Sec. 877(a). All requirements related to the exclusion must be met. *See TRC REAL: 15,150*.

## TRC Text Reference Table

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

|                   |     |                |     |                  |     |
|-------------------|-----|----------------|-----|------------------|-----|
| ACCTNG 36,162.05  | 246 | INDIV 51,200   | 200 | IRS 51,056.15    | 260 |
| BUSEXP 15,106.15  | 206 | INDIV 51,462   | 245 | IRS 57,062       | 272 |
| BUSEXP 18,802.10  | 255 | INTL 3,110     | 205 | IRS 57,150       | 257 |
| BUSEXP 36,106.40  | 254 | INTL 30,308.30 | 241 | IRS 66,154       | 271 |
| BUSEXP 54,900     | 269 | IRS 3,060.05   | 234 | IRS 66,204       | 259 |
| CCORP 9,312       | 234 | IRS 3,200      | 265 | IRS 66,462.10    | 259 |
| CCORP             | 268 | IRS 3,204      | 254 | LITIG 3,200      | 272 |
| COMPEN 12,382     | 208 | IRS 6,102      | 259 | LITIG: 9,058.05  | 209 |
| COMPEN 45,232     | 219 | IRS 9,052      | 247 | PART 21,300      | 222 |
| ESTGIFT 39,024    | 215 | IRS 21,106     | 259 | PART 60,056      | 219 |
| EXEMPT 21,202.15  | 229 | IRS 21,114     | 258 | PENALTY 3,260.05 | 272 |
| FILEBUS 9,104     | 267 | IRS 21,302     | 247 | PENALTY 3,260.10 | 272 |
| FILEBUS 9,320     | 243 | IRS 27,202     | 233 | PENALTY 3,260.15 | 272 |
| FILEIND 15,204.25 | 258 | IRS 30,052     | 268 | RETIRE 42,454    | 236 |
| FILEIND 15,306    | 271 | IRS 30,352.10  | 232 | RETIRE 66,754    | 222 |
| INDIV 6,052       | 247 | IRS 42,102     | 272 | RETIRE 66,800    | 272 |
| INDIV 18,052      | 221 | IRS 45,158     | 259 | SALES 15,100     | 257 |
| INDIV 30,204      | 256 | IRS 48,058.10  | 256 | SALES 33,060     | 231 |
| INDIV 30,100      | 247 | IRS 48,058.30  | 271 | SALES 51,508.05  | 220 |
| INDIV 36,056.05   | 272 | IRS 51,056     | 260 |                  |     |