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Important 2011 4th Quarter Federal Tax Developments

During the fourth quarter of 2011, there were many important federal tax developments. This letter highlights some of the more important federal tax developments for you. As always, please give our office a call or send us an email if you have any questions about these developments.

Tax legislation

President Obama signed the Temporary Payroll Tax Cut Continuation Act of 2011 on December 23, 2011, extending the employee-side payroll tax cut through the end of February 2012. In November, President Obama signed the 3% Withholding Repeal and Job Creation Act of 2011, which repeals three percent government withholding, enhances the Work Opportunity Tax Credit (WOTC) to cover more military veterans, expands the IRS's continuous levy authority, and more. In October, President Obama signed the Trade Adjustment Assistance Extension Act, enhancing the health care tax credit (HCTC) for qualified individuals. *CCH Federal Tax Weekly No. 1, January 5, 2012; CCH Federal Tax Weekly No. 51, December 22, 2011; CCH Federal Tax Weekly Issue No. 47, November 23, 2011; CCH Federal Tax Weekly Issue No. 42, October 20, 2011.*

In related news, the IRS advised employers to implement the reduced employee-side payroll tax rate as soon as possible in 2012 but no later than January 31, 2012. For any Social Security tax over-withheld during January, employers should make an offsetting adjustment in employees' pay as soon as possible but no later than March 31, 2012, the IRS instructed. *CCH Federal Tax Weekly Issue No. 1, January 5, 2012.*

Foreign accounts

The Foreign Account Tax Compliance Act (FATCA) generally requires certain U.S. taxpayers holding specified financial assets outside the United States to report them to the IRS. FATCA also requires foreign financial institutions to report directly to the IRS certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. The IRS posted a final version of Form 8938, Statement of Specified Foreign Financial Assets, and Instructions on its website in December. *CCH Federal Tax Weekly Issue No. 51, December 22, 2011.*

The IRS also issued a Fact Sheet alerting dual citizenship taxpayers, as well as U.S. citizens who reside abroad, to their obligation to file U.S. income tax returns and, if appropriate, a Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts. The IRS described possible penalties for failure to file, and grounds for avoiding the penalties. *CCH Federal Tax Weekly Issue No. 50, December 15, 2011.*

Mileage rates

The IRS announced in December that the business standard mileage rate for 2012 will be 55.5 cents-per-mile, which is unchanged from the second half of 2011. The standard mileage rate for medical and moving expenses will be 23 cents-per-mile, reflecting a 0.5 cents-per-mile reduction from 2011. The statutorily-determined rate for the charitable deduction remains unchanged at 14 cents-per-mile for 2012. *CCH Federal Tax Weekly Issue No. 50, December 15, 2011.*

Capitalization of tangibles

Just before year-end 2011, the IRS issued much-anticipated revised regulations on the capitalization of tangible assets. The IRS withdrew proposed regulations issued in 2008 and issued temporary and proposed regulations. The new guidance, the IRS explained, is intended to clarify existing standards and provide certain bright-line tests for applying the standards. The text of the temporary regulations serves as the text of the proposed regulations. The temporary regulations are binding on both taxpayers and the government. *CCH Federal Tax Weekly No. 1, January 5, 2012.*

Worker classification

A new IRS program - the Voluntary Classification Settlement Program (VCSP) - will enable employers to voluntarily reclassify their workers for federal employment tax purposes and take advantage of audit production and a reduced penalty framework. The VCSP is open to taxpayers currently treating their workers as independent contractors or other nonemployees and that want to prospectively treat the workers as employees. Other requirements also must be satisfied. *CCH Federal Tax Weekly Issue No. 39, September 29, 2011.*

Inflation adjusted amounts

The IRS issued cost of living adjustments (COLAs) for various provisions in the Tax Code for 2012. Because of inflation, many provisions are adjusted upward for 2012. For example, the standard deduction for single taxpayers increases from \$5,800 for tax years beginning in 2011 to \$5,950 for tax years beginning in 2012, and the standard deduction for married couples filing a joint return increases from \$11,600 for 2011 to \$11,900 for 2012. *CCH Federal Tax Weekly No. 43, October 27, 2011.*

Social Security wage base

The Social Security Administration (SSA) announced that the maximum amount of earnings subject to Social Security will be \$110,100 for 2012, up from \$106,800 for 2011. SSA also reported that the so-called "nanny tax" threshold will increase to \$1,800 for 2012. *CCH Federal Tax Weekly Issue No. 43, October 27, 2011.*

Qualified plans

Many retirement plan contribution and benefit limits will increase in 2012, the IRS announced. The 2012 cost of living adjustments (COLAs) affect a variety of retirement savings vehicles, including defined contribution plans, defined benefit plans, employee stock ownership plans (ESOPs), and individual retirement arrangements (IRAs). *CCH Federal Tax Weekly Issue No. 43, October 27, 2011.*

Decedents' estates

The IRS released final Form 8939, Allocation of Increase in Basis for Property Acquired From a Decedent, and its Instructions. Executors will use Form 8939 to make a "Section 1022 Election" to opt out of the 2010 estate tax and apply modified carryover basis. *CCH Federal Tax Weekly Issue No. 41, October 13, 2011.*

IRS basis regs

The U.S. Supreme Court agreed to resolve the split among the federal courts of appeal over IRS regulations that impose a six-year limitations period on assessments due to overstated basis. The government asked the Supreme Court to decide whether an understatement of gross income attributable to an overstatement of basis in sold property is an omission from income that can trigger the extended six-year assessment period; and whether a final Treasury regulation, which reflects the IRS's view that an understatement of gross income attributable to an overstatement of basis can trigger the extended six-year assessment period, is entitled to judicial deference. *CCH Federal Tax Weekly Issue No. 40, October 6, 2011.*

"Hot Stock" rule

The IRS finalized temporary regulations, which the agency described as mitigating the impact of the "hot stock" rule on Code Sec. 355 spinoffs if the controlled corporation is a member of the distributing corporation's separate affiliated group (SAG). The final regs generally adopt the substantive rules of the temporary regs without change. *CCH Federal Tax Weekly Issue No. 43, October 27, 2011.*

Per diem rates

The IRS issued the simplified per diem rates that taxpayers can use to reimburse employees for expenses incurred during business travel after September 30, 2011, retaining the high-low method. The simplified high-low per diems have increased for 2012 to \$242 for high-cost localities and to \$163 for all other localities, an increase from \$233 and \$160, respectively, for 2011. The IRS also announced it will not discontinue use of the "high-low" method for substantiating travel expenses. *CCH Federal Tax Weekly Issue No. 40, October 6, 2011.*

Whistleblowers

A whistleblower who reported her employer's significant tax underpayment to the IRS would be entitled to anonymity, the Tax Court held in December. However, the court found the whistleblower was not entitled to an award because the IRS had been unable to collect any additional tax from the employer. *CCH Federal Tax Weekly Issue No. 50, December 15, 2011.*

IRS operations

The Treasury Inspector General for Tax Administration (TIGTA) highlighted some of the management and performance challenges confronting the IRS for fiscal year (FY) 2012 in November. According to TIGTA, the challenges include: keeping taxpayer data secure; tax compliance initiatives; modernization; implementing major tax law changes; fraudulent claims and improper payments; providing quality taxpayer service operations; human capital; globalization; taxpayer protection and rights; and achieving program efficiencies and cost savings. *CCH Federal Tax Weekly Issue No. 47, November 23, 2011.*

Identity theft

A top IRS official told Congress that the IRS intends to take additional measures to combat identity theft during the 2012 filing season. In 2011, the IRS began issuing Identity Protection Personal Identification Numbers (IP PINs) to victims of identity theft under a pilot program. The IRS intends to expand the IP PIN program. *CCH Federal Tax Weekly Issue No. 45, November 10, 2011.*

Ponzi schemes

The IRS modified guidance issued in 2009 that allows investors to take losses in certain Ponzi schemes. The new guidance, the IRS explained, ensures that investors will still be able to deduct their losses if the lead figure in the Ponzi scheme has died. *CCH Federal Tax Weekly Issue No. 48, December 1, 2011.*