Wolters Kluwer

NOVEMBER 5, 2015
ISSUE NUMBER 45

FEDERAL TAX WEEKLY

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Obama Signs Budget Agreement Repealing TEFRA Partnership Audit Rules, Lawmakers Turn To Extenders

Bipartisan Budget Act of 2015

President Obama has signed the *Bipartisan Budget Act of 2015,* which repeals the TEFRA unified partnership audit rules and replaces them with streamlined procedures. The 2015 Budget Act also repeals automatic enrollment in certain employer-sponsored health plans and makes a number of pension-related changes. The 2015 Budget Act was approved by a vote of 266 to 167 in the House on October 28 and by a vote of 64 to 35 in the Senate on October 30; and signed into law by President Obama on November 2.

- **Take Away.** "The federal budget deal clears the decks of one of the most contentious year-end legislative issues," Dustin Stamper, director, Washington National Tax Office, Grant Thornton, LLP, told Wolters Kluwer. "We are cautiously optimistic that this will free up lawmakers so they can address the tax extender provisions that expired at the end of 2014, a little sooner than was originally feared."

TEFRA/ELP

The 2015 Budget Act repeals the TEFRA and electing large partnership (ELP) rules and sets out a streamlined structure for auditing partnerships and their partners at the partnership level. Under the streamlined procedures, the IRS would examine the partnership's items of income, gain, loss, deduction, credit and partners' distributive shares for a particular year of the partnership (the so-called "reviewed year"). Any adjustments would be taken into account by the partnership in the year that the audit or any judicial review is completed (the so-called "adjustment year"). The 2015 Budget Act allows partnerships with 100 or fewer qualifying partners to opt-out of the new audit regime. Partnerships that opt-out will be audited under the general rules applicable to individual taxpayers.

- **Planning Note.** The 2015 Budget Act delays the effective date of TEFRA for returns filed for partnership tax years beginning after 2017. However, subject to certain exceptions, partnerships may choose to apply the new regime to any partnership tax year beginning after the date of enactment (November 2, 2015).
- **Comment.** The 2015 Budget Act also clarifies that Congress did not intend for the family partnership rules to provide an alternative test for whether a person is a partner in a partnership.

Automatic enrollment

The 2015 Budget Act repeals the requirement under the Affordable Care Act (ACA) that employers with more than 200 full-time employees automatically enroll new full-time employees in one of the employer's health benefits plans.

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IRS Reduces PTIN User Fee, Reminds Preparers Of Changes In Practice Rights

TD 9742, NPRM REG-121496-15, IR-2015-123

The IRS has issued temporary and proposed regs reducing the user fee charged for applying for or renewing a preparer tax identification number (PTIN). At the same time, the IRS reminded preparers of changes in practice rights before the agency after 2015.

- **Take Away.** "User fees are based on the cost to administer the program they are collected to support. The Registered Tax Return Preparer (RTRP) program is defunct, and the administrative costs to operate the voluntary program are less. It should follow that the PTIN fees should also be less. This is welcome news for the thousands of tax professionals who are required to obtain or renew their PTIN," Cindy Hockenberry, EA, director, Education and Research Services, National Association of Tax Professionals (NATP), told Wolters Kluwer.

Background

PTINs. Individuals 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 submitted to the IRS, generally must obtain a PTIN. There are exceptions for preparers of certain forms and returns, including the Form W-2 series; Form W-7, Application for IRS Individual Taxpayer Identification Number; Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding; Form 1098 series; and Form 1099 series.

In TD 9503, the IRS established a $50 user fee to apply for or renew a PTIN. A separate vendor fee of $14.25 for new applications and $13 for renewal applications is paid directly to the vendor.

PTINs

The IRS has recalculated the costs of providing PTIN-related services. The IRS explained that its initial calculation of the PTIN user fee at $50 was based on an estimate of 1.2 million PTIN holders. The actual number has been closer to 700,000 PTIN holders. This recalculation has resulted in a reduction in the PTIN user fee from $50 to $33 for application or renewal, effective November 1, 2015.

The vendor fee, however, is increasing. For initial PTIN applications, the vendor fee will increase from $14.25 to $17. The vendor fee for renewal PTIN applications will increase from $13 to $17, effective November 1, 2015.

Practice before the IRS

CPAs, enrolled agents and attorneys have and will continue to have unlimited practice rights before the IRS. However, non-credentialed preparers have limited practice rights. Effective for tax returns and claims for refunds prepared and signed after December 31, 2015, the limited right to represent clients before the IRS held by non-credentialed preparers will be accorded to only those preparers participating in the Annual Filing Season Program, the IRS explained. These preparers will only be permitted to prepare tax returns; they will not be authorized to represent clients before the IRS, except in regard to returns they prepared before January 1, 2016.

References: FED ¶49,673; TRC IRS: 6,106.05.

Budget Agreement

Continued from page 525

Pension funding stablization

The Moving Ahead for Progress Act (MAP-21) provided for segment rate stabilization on the funding of single-employer defined benefit (DB) plans. The interest rates generally used to determine the present value of a single-employer defined benefit plan's liabilities are the three segment rates under ERISA. The 2015 Budget Act extends the funding stabilization rules for DB plans through 2019.

Other provisions

Among other provisions, the 2015 Budget Act also:

- Expands the availability of private sector DB plans to use separate mortality tables.
- Accelerates the Pension Benefit Guaranty Corporation (PBGC) premium payment due date.
- Increases premiums paid to the PBGC.
- Allocates funds to the Disability Trust Fund.

Extenders

Many popular but temporary tax incentives expired at the end of 2014. An extenders package (the Tax Relief Extension Act of 2015, Sen. 1946) has cleared the Senate Finance Committee and awaits action by the full Senate. The House, meanwhile, has approved several stand-alone extenders bills.

For further details and analyses, see the Briefing: Bipartisan Budget Act of 2015 on IntelliConnect.

REFERENCE KEY

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

FEDERAL TAX WEEKLY, 2015 No. 45. FEDERAL TAX WEEKLY is also published as part of CCH Tax Research Consultant by Wolters Kluwer, 4025 W. Peterson Avenue, Chicago, IL 60646-6085. Editorial and Publication Office, 1015 15th St., NW, Washington, DC 20005. © 2015 CCH Incorporated and its affiliates. All rights reserved.

IRS Issues Guidance On Private Activity Bond Restrictions For State And Local Governments

TD 9741, NPRM REG-140379-02

The IRS has issued guidance on the allocation and accounting, and certain remedial actions, for purposes of the private activity bond restrictions that apply to tax-exempt bonds issued by state and local governments. At the same time, the IRS partially withdrew certain proposed regs.

- **Take Away.** The IRS acknowledged that there have been expanded types of bonds that provide a tax benefit (tax-advantaged bonds) since previous guidance had been issued. The latest guidance, the IRS explained, is intended to reflect this expansion.

Background

Under Code Sec. 103, interest on state and local governmental bonds is generally excluded from gross income. However, interest on a private activity bond, other than a qualified private activity bond within the meaning of Code Sec. 141, is not excluded under Code Sec. 103. Code Sec. 141 sets forth tests to determine if a state or local bond is a private activity bond.

Under Code Sec. 103, interest on state and local governmental bonds is generally excluded from gross income. However, interest on a private activity bond, other than a qualified private activity bond within the meaning of Code Sec. 141, is not excluded under Code Sec. 103. Code Sec. 141 sets forth tests to determine if a state or local bond is a private activity bond. The tests include the private business use test and the private security or payment test in Code Sec. 141(b), and the private loan financing test in Code Sec. 141(c).

The IRS issued final regs under Code Sec. 141 in 1997. At that time, the IRS reserved most of the general allocation and accounting rules for purposes of Code Sec. 141. The IRS issued an advance notice of proposed rulemaking (REG-142599-02) in 2002. Final regs were unveiled in 2004. However, because of the interrelationship between the remedial action provisions under Code Sec. 141 and the allocation and accounting rules, the provisions relating to Code Sec. 141 were not finalized at that time.

Final regs

The final regs clarify that an issuer's allocation of proceeds to expenditures for purposes of the arbitrage investment restrictions also applies to expenditures for purposes of the private activity bond tests. The final regs adopt general pro rata rules.

The final regs also simplify the definition of project. Under the final regs, the definition of project covers all facilities or capital projects financed in whole or in part with proceeds of a single issue of bonds. This definition, the IRS explained, permits an issuer in its bond documents to identify as a single project all of the properties to be financed by proceeds of a single bond issue.

- **Comment.** Some commentators, the IRS reported, expressed concerns about the definition of project, which they viewed as too narrow. Other commentators said that the definition of project was too broad.

Additionally, the final regs address allocation rules for mixed-used projects. These projects are funded in part with tax-exempt bonds and in part with other funds. The final regs also provide rules for remedial actions, which permit an issuer to redeem or defease bonds at any time in advance of a deliberate action that would cause the private business tests to be met.

Partnerships

Proposed regs generally treated a partnership as an entity that is a nongovernmental person for purposes of the private activity bond tests. The final regs provide aggregate treatment for all partnerships. Further, the final regs provide a rule for measuring the private business use of financed property resulting from the use of the property by a partnership that includes a partner that is a nongovernmental person.

References: FED ¶¶47,038, 49,672; TRC SALES: 51,100.

D.C. Circuit Allows AICPA Challenge To AFSP To Move Forward

The Court of Appeals for the District of Columbia Circuit has found that the American Institute of Certified Public Accountants (AICPA) has standing to challenge the IRS's Annual Filing Season Program (AFSP). The AFSP, created after the IRS's Registered Tax Return Preparer (RTRP) program was struck down, generally is intended to enable non-credentialed tax return preparers to obtain a record of completion when they voluntarily complete a required amount of continuing education.

Background. The AICPA argued that the IRS lacked statutory authority to implement the AFSP, acted arbitrarily and capriciously in adopting it, and failed to engage in required notice and comment rulemaking. The district court found that the AICPA lacked standing to challenge the AFSP.

Court's analysis. On appeal, a three judge panel of the D.C. Circuit reversed the lower court. The panel found that the AICPA adequately alleged the program will subject its members to an actual or imminent increase in competition and that it therefore has standing to pursue its challenge. The panel further found that "we see nothing at all speculative or attenuated about the Institute's contention that unenrolled preparers with government-backed credentials will be better able to compete against other credentialed preparers, and especially against uncredentialed employees of [Institute} members."

AICPA, CA-D.C., October 30, 2015; 2015-2 USTC ¶50,538; TRC IRS: 3,200.

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Tax Court Affirmed: Real Estate Developer Cannot Use Home Construction Contract Method To Defer Income

Howard Hughes Company, LLC, CA-5, October 27, 2015

The Court of Appeals for the Fifth Circuit has affirmed the Tax Court's holding (Dec. 59,924) that a real estate developer could not use the home construction contract method to defer income under Code Sec. 460(e). The court agreed that the developer should use the percentage of completion method (PCM) to compute gains from sales of real property under long-term construction contracts.

- **Take Away.** Under the PCM, a taxpayer must report income annually based on the percentage of the contract completed in that year. Under the completed contract method, a taxpayer can defer reporting any income, even if payments are received, until its costs reach 95 percent of the total estimated contract costs. The taxpayer improperly deferred over $200 million a year for two years using the completed contract method, the IRS and the courts concluded.

Background

The taxpayer sold and developed commercial and residential real estate. The taxpayer owned a large plot of land that it divided into villages, parcels, and individual lots. It sold property in the development to builders and buyers who would construct homes on the property. The taxpayer generally constructed the development's infrastructure up to individual lot lines. In some cases, the buyer or builder was responsible for some of the infrastructure. The taxpayer did not build any homes, perform home construction work, or make any improvements within the boundaries of any lots.

Accounting

A long-term contract is a contract to construct property that is not completed in the same year it is entered into. The PCM applies to this contract. However, if the contract is a home construction contract, the taxpayer can use the completed contract method. Under Code Sec. 460(e)(6)(A), the home construction contract method can be used if at least 80 percent of the total estimated contract costs will involve building, construction, etc. with respect to (1) dwelling units and (2) improvements to real property directly related to the dwelling units and located on the site of the dwelling units.

- **Comment.** Members of Congress were concerned that home developers had trouble paying taxes under the PCM because they received small down payments and were incurring extra expenses that raised the cost of housing.

Reg. §1.460-3(b)(2)(iii) provides that a taxpayer can include in the cost of dwelling units the allocable share of the costs expected to be incurred for any common improvements that benefit the dwelling units and that the taxpayer is obligated to construct within the tract(s) of land that contain the dwelling units.

Court's analysis

The courts agreed that a contract is not a home construction contract unless the taxpayer incurred costs to build houses or "dwelling units." They rejected the taxpayer's argument that the statute only requires some causal relationship between dwelling units and the construction costs incurred. The law allows costs of improvements to be included in the cost of the dwelling units, but this required that the taxpayer build dwelling units. Here, the taxpayer did not build any homes and therefore did not incur any dwelling unit costs.

References: 2015-2 USTC ¶50,536; TRC ACCTNG: 33,152.05.

Nonprofit Corporation Cannot Restrain IRS From Opening Revocation Letter From Public Inspection

The Tax Court has found that a nonprofit corporation could not restrain the IRS from opening for public inspection the final adverse determination letter revoking its tax-exempt status. Neither could the corporation prevent the IRS from publicly releasing the portions of the letter and the accompanying examination report that discussed the IRS's findings on private inurement.

Background. Code Sec. 6110 provides that written determinations and background file documents relating to written determinations are generally open to public inspection. A written determination is a ruling, determination letter, technical advice memorandum or Chief Counsel advice.

Court's analysis. The documents at issue should be made available for public inspection under Code Sec. 6110(a), subject to the deletions required by Code Sec. 6110(c), the Tax Court found. Because the determination letter and the accompanying examination report issued to the tax-exempt corporation constituted a "written determination" that was properly "issued," the Tax Court found that its jurisdiction was limited to deciding the propriety of the IRS's proposed deletions. The Tax Court did not have the authority to order the IRS to withhold the letter and report from public inspection altogether. Furthermore, the taxpayer's argument that the IRS's withdrawal of the determination letter prior to disclosing it amounted to an admission that the letter was an "obvious error" was not persuasive.

Finally, the Tax Court found there was no legal basis for the corporation's argument that the IRS should be restrained from disclosing the section of the examination report discussing private inurement.

Anonymous, 145 TC No. 10, Dec. 60,433; TRC IRS: 9,400.

Costs Of Internet Domain Names Are Code Sec. 197 Intangibles, IRS Advises

CCA 201543014

The IRS has concluded, in Chief Counsel Advice (CCA), that costs incurred to acquire Internet domain names must be capitalized under Code Sec. 263(a) as intangible assets. Costs of trademarks and certain other intangible items qualify as Code Sec. 197 intangibles that must be amortized over 15 years.

- **Take Away.** Code Sec. 197 provides a benefit to taxpayers by allowing amortization of intangible assets ratably over 15 years. Otherwise, the asset arguably has an indefinite useful life and could not be written off during the life of the business. Certain intangibles created by the taxpayer cannot be amortized, unless the asset is created as part of the acquisition of assets that are a trade or business.

Background

In 2013, a company purchased two Internet domain names as part of an asset acquisition of a trade or business (Situation 1). The company will use the names in its trade or business. One name is a generic domain name; the other is non-generic. In 2014, the same company purchased two domain names from existing holders, to use in its trade or business: one generic, one non-generic (Situation 2). A non-generic name is usually a company or product name. A generic name typically describes a product or service using generic terms associated with the topic.

The facts provided do not indicate how the company will use the names in its trade or business. The facts do not indicate whether the generic names are associated with a website already constructed and maintained, or whether the non-generic names are registered or function as trademarks.

Applicable law

Under Code Sec. 263, a taxpayer generally must capitalize an amount paid to acquire an intangible. An example of an intangible that must be capitalized is a trademark, as defined in Reg. §1.197-2(b)(10). Costs of a domain name also must be capitalized because the name is an intangible asset. Capitalization is required for both generic and non-generic domain names.

Customer-based intangibles are a Code Sec. 197 intangible. These include amounts paid for a customer base, a circulation base, an undeveloped market, insurance or mortgage servicing, or other relationships with customers involving the future provision of goods or services.

A franchise, trademark, or trade name is also a Code Sec. 197 intangible. Acquisition of these items is the acquisition of a trade or business. A trademark includes a name, symbol or device adopted and used to identify goods and services and distinguish them from items provided by others.

Domain names

Certain domain names are registered as trademarks and are Code Sec. 197 intangibles. But most domain names are not registered. Because the facts are incomplete, the CCA assumed that each purchased domain name is associated with a website that is already constructed and maintained, and that the taxpayer purchased the generic names to use in its trade or business to generate advertising revenue on the website or to increase its market share through the website.

Non-generic domain names. This is usually a company or product name used to identify goods and services associated with the website. To be a qualified Code Sec. 197 intangible, the name must also be used to distinguish a company's goods and services from those provided by others. If the name meets these requirements, it can be amortized over 15 years. Here, for both Situations 1 and 2, the company must amortize these costs over 15 years. If the name is not a trademark, it meets the definition of a customer-based intangible and can still be amortized.

Generic domain name. This describes a product or service using a generic name, rather than a company or product name, and is not a trademark under Code Sec. 197. However, it is a customer-based intangible under Code Sec. 197 if it is associated with a website that is already constructed and maintained by the acquiring taxpayer for use in its trade or business, to generate advertising revenue or increase market share. Therefore, under both Situations 1 and 2, the costs of generic names can be amortized over 15 years.

Reference:TRC BUSEXP: 9,104.20.

Donor's Stock Transfer To Children Was Not a Gift; Business Reason Predominated

Redstone Est., 145 TC No. 11

The Tax Court has found that a donor did not make a taxable gift to his children when he transferred disputed shares of stock to a trust pursuant to a settlement agreement. The transfer was made in the ordinary course of business because it was bona fide, made at arm's length, and lacked donative intent.

- **Take Away.** For tax years after 1970 and before 1982, the gift tax was computed on a quarterly basis, except where taxable gifts for a calendar year did not exceed \$25,000. The gift tax does not apply to a transfer for full and adequate consideration in money or money's worth, or to ordinary business transactions. The regulations define a "transfer of property made in the ordinary course of business" as "a transaction which is bona fide, at arm's length, and free from any donative intent."

Background

The donor, his father, and his brother were all equal shareholders of a corporation.

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IRS Proposal Could Expedite Air Transportation Excise Tax Exclusion On Certain Frequent Flyer Mile Rewards

Notice 2015-76

The IRS and the Treasury Department have requested comments on a new proposal that would allow a taxpayer to immediately reduce its liability for the 7.5-percent transportation excise tax under Code Sec. 4261(a) for certain amounts paid to an airline's air mileage rewards program. The IRS has provided a safe harbor methodology and has requested public comments.

- **Take Away.** "This methodology would have a tremendous advantage for big companies like the credit card issuers who are buying frequent flyer miles from the airlines to act as incentives for their customers," David Taylor, CPA and partner, Anton Collins Mitchell LLP, told Wolters Kluwer. "For example, you might use your credit card to accumulate frequent flyer miles, and the credit card company would have to buy those miles from the airline. So the credit card company would pay the airline, which is also collecting the excise tax on amounts paid for airline travel. Without this methodology, the only way the credit card company would be able to recover the excise tax on portions not paid for airline travel would be to file a refund claim. What this would ultimately do for all of these companies would be to alleviate the need to file a refund claim."

Background

Code Sec. 4261(a) and (e)(3)(A) imposes a 7.5-percent excise tax on amounts paid for taxable transportation of any person, which includes air transportation within the United States. However, the Tax Code authorizes Treasury to exclude from the excise tax certain mounts attributable to mileage awards that are used for things other than for air transportation. Accordingly, Treasury and the IRS are considering a possible methodology for determining a reduction in the excise tax base for amounts paid for mileage awards.

- **Comment.** Currently, taxpayers such as credit card companies are required to pay an excise tax on all frequent flyer miles purchased from an airline mileage awards program, and then must file a claim for credit or refund for tax paid on those frequent flyer miles that were ultimately redeemed for things other than taxable air transportation. Nontaxable amounts could include payments for items such as international air transportation, restaurant gift cards, magazine and newspaper subscriptions, free hotel nights, and items from the airline's shopping catalog.

Methodology

The elective safe harbor methodology would allow a taxpayer to reduce its Code Sec. 4261(a) tax base by the percentage of the total amount of miles that was redeemed for non-air fare miles. The tax base would be reduced based on redemption data from that program for the calendar year immediately preceding the calendar year in which the election year begins.

- **Example.** On April 1, 2015, a credit card company purchases 5 million airline miles from an airline company for \$0.01 per mile, meaning its Code Sec. 4261(a) tax base is 5 million × \$0.01 (\$50,000). The amount of excise tax due on this particular purchase would be \$50,000 × 7.5 percent. However, if the airline's redemption data showed that during the base period (the immediately preceding calendar year) of January 1, 2014, through December 31, 2014, 30 percent of the total airline miles redeemed were redeemed for items other than taxable air transportation, then the taxpayer would reduce its \$50,000 tax base by 30 percent (\$50,000 – \$15,000) to arrive at the new tax base of \$35,000. Its excise tax liability on the April 1 purchase would therefore be \$35,000 × 7.5 percent rather than \$50,000 × 7.5 percent.

Reference: TRC EXCISE: 9,102.05.

Stock Transfer

Continued from page 529

When the donor left the family business in 1971, he demanded his share of the stock. The father refused, arguing that a portion of the donor's shares were held in an "oral trust" for the donor's children.

In 1972, the parties reached a settlement: The donor was recognized as the owner of two-thirds of the shares registered in his name; the remaining one-third of the shares was transferred to a trust for the benefit of the donor's children. The IRS subsequently determined this transfer was a taxable gift.

Court's analysis

The transfer was made in the ordinary course of business because it was bona fide, made at arm's length, and lacked donative intent, the Tax Court found. The donor and his father and brother had legitimate positions regarding the ownership of the shares, and the transfer to the children represented a bona fide settlement of a genuine dispute. There was no donative intent because the donor was forced to acknowledge the oral trust in order to receive the remaining shares of stock. Finally, the Tax Court found adequate consideration. The consideration received by the donor was the recognition by his father and brother that he was the owner of two-thirds of his interest in the company stock and that he would be paid in exchange for those shares.

References: Dec. 60,434; TRC ESTGIFT: 3,158.

TAX BRIEFS

International

The current list of countries that may require participation in, or cooperation with, an international boycott is as follows: Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen.

Boycott Notice, FED ¶46,438; TRC INTL: 21,050

Jurisdiction

A class action filed by a doctor against his employer, a hospital, for failure to file a Federal Insurance Claim Act (FICA) tax refund on his behalf or advise him of his opportunity to seek a FICA tax refund was dismissed for failure to state a claim. The individual's claim was essentially a tax refund suit and preempted by Code Sec. 7422. The suit could only be brought against the United States and not against employers. Since the hospital acted as a collection agent of the government, the hospital was protected under Code Sec. 7422 from the refund claim.

Reuss v. Orlando Health, Inc., DC Fla., 2015-2 USTC ¶50,527; TRC LITIG: 9,052

Income

Married individuals underreported their income in amounts determined by a bank deposits analysis conducted by the IRS. The taxpayers were denied claimed business expense deductions as unsubstantiated. The taxpayers were liable for an addition to tax for filing a late return for one of the tax years at issue and were subject to accuracy-related penalties due to negligence failure to maintain adequate records.

Lawson, TC, Dec. 60,439(M), FED ¶48,149(M); TRC BUSEXP: 3,100

Deductions

An individual's business expense deductions were properly disallowed because his international business consulting activity was not engaged in for profit. He was liable for an accuracy-related penalty under Code Sec. 6662(a) and could not demonstrate reasonable cause for his understatement of taxes because he did show proof of reliance on his tax preparer.

Strode, CA-9, 2015-2 USTC ¶50,530; TRC BUSEXP: 15,100

An individual was not entitled to an individual retirement account (IRA) deduction in excess of the amount determined by the IRS and was liable for an accuracy-related penalty. The taxpayer's arguments were not persuasive. His main argument that the disallowed contributions could be carried forward as "excess contributions" was contradicted by the plain language of Code Sec. 4973(b).

Dunn, TC, Dec. 60,436(M), FED ¶48,146(M);TRC RETIRE: 66,250

Anti-Injunction Act

An individual's action seeking refund and injunctive relief against the IRS to prevent it from withholding his Social Security benefits was dismissed. The Anti-Injunction Act barred his suit seeking to enjoin the assessment and collection of taxes and the individual failed to establish that the IRS could not ultimately prevail on the merits.

Kelly, DC N.H., 2015-2 USTC ¶50,533; TRC IRS: 45,152

Partnerships

The Tax Court properly held that a partner was required to recognize his respective share of capital gains incurred by the partnership. Although the partner claimed to have ceased being a partner prior to the years at issue, his interest in the partnership had not been completely liquidated and hence, he remained a partner for tax purposes, regardless of his status under local law. His request to adjust his tax liability was rejected as a new issue brought up after trial.

Brennan, CA-9, 2015-2 USTC ¶50,529; TRC PART: 18,102

False Tax Returns

The evidence sufficiently established an individual's intent to corruptly interfere with tax laws and to file false tax returns; therefore, his motion for judgment of acquittal was denied. The government proved through circumstantial evidence that the individual acted knowingly, corruptly, intentionally and voluntarily and the government was not required to present direct evidence.

Hee, DC Hawaii, 2015-2 USTC ¶50,534; TRC IRS: 66,204

The evidence was sufficient to convict an individual for aiding and assisting in preparation and presentation of false and fraudulent individual income tax returns. The individual was a professional tax preparer and his name appeared on the tax returns. He claimed deductions and expenses on the returns of his clients although they testified that they did not incur the expenses or provide the individual with any documentation to claim those deductions.

Perez, CA-5, 2015-2 USTC ¶50,532; TRC IRS: 66,204

Liens and Levies

The government was entitled to foreclose its federal tax liens against a couple's property and sell the property in order to recover their outstanding liability. Considering the property's deteriorating condition and the parties' interest in maximizing the return from the sale, the court ordered a judicial sale of the property.

U.S. Kim, DC Calif., 2015-2 USTC ¶50,537; TRC IRS: 45,160

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IRS Clarifies Effective Date For New Listed Transactions Guidance

The IRS has clarified in amended notices that the phrase "effective date of this notice" in sections 2.01 and 2.05 of Notice 2015-73 and sections 2.01 and 2.05 of Notice 2015-74 means January 1, 2011. The notices were previously issued by the IRS on October 21, 2015. *For more information, see the October 29, 2015, issue of this newsletter.*

- **Comment.** Notices 2015-73 and 2015-74 identified transactions known as "basket options contracts" and "basket contracts" as listed transactions.

FED ¶¶46,435, 46,436; TRC FILEBUS: 9,458.10.

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Tax Briefs

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A determination to sustain a Notice of Federal Tax Lien (NFTL) to collect a couple's outstanding tax liabilities was inapplicable because the tax liabilities were discharged in a Chapter 13 bankruptcy. An IRS settlement officer (SO) could not pursue a collection action for tax liabilities that were discharged in the bankruptcy and, therefore, the taxpayers' claim that the SO abused her discretion in sustaining the lien was moot.

Trumbly, Jr., TC, Dec. 60,435(M), FED ¶48,145(M); TRC IRS: 51,056.15

Refund Claims

A couple's claim for refund of their remittance to the IRS was barred by the statute of limitations because the individuals intended the remittance to be treated as an estimated tax payment, rather than as a deposit. Along with their remittance, the couple returned a signed copy of Form 4549, Income Tax Examination Changes, which indicated their approval for immediate assessment and collection of the remittance and they did not submit any written statement with instructions to treat the remittance as a deposit.

Bolt, DC S.C., 2015-2 USTC ¶50,535; TRC IRS: 36,052.05

Collection Due Process

An IRS settlement officer did not abuse her discretion by sustaining a proposed lien to collect an individual's tax liabilities for two years at issue. The individual was not entitled to challenge the underlying liabilities at his Collection Due Process hearing because he did not take advantage of a prior opportunity to contest his underlying tax liabilities for both years.

Powers, TC, Dec. 60,438(M), FED ¶48,148(M);TRC IRS: 51,056.25

The Appeals Office sustained a proposed levy and a filing of notices of lien to collect an individual's trust fund recovery penalties (TFRPs). The TFRPs were attributed to the unpaid employment taxes of a staffing company the taxpayer owned. The taxpayer was not allowed to challenge the underlying liability because she failed to raise the issues as a part of a Collection Due Process (CDP) hearing even though she had been afforded a prior opportunity to do so when she received a Letter 1153, Trust Funds Recovery Penalty Letter.

Clues, TC, Dec. 60,437(M), FED ¶48,147(M); TRC IRS: 51,056.15

Deficiencies and Penalties

A doctor was a responsible person liable for trust fund recovery penalties with respect to a company in which he owned a significant interest. Moreover, the individual's conduct in failing to pay over the trust fund penalties was willful. Despite the knowledge of the company's failure to pay over trust fund taxes, the individual continued to pay other creditors before paying the government. The statute of limitations did not bar assessment of the penalty.

Sabaratnam, DC Calif., 2015-2 USTC ¶50,531; TRC PAYROLL: 6,306.05

Bankruptcy

A real estate corporation that was the debtor in a bankruptcy proceeding, could not claim a net operating loss sustained by a Mexican entity created by some of the corporation's members for the purpose of entering into real estate transaction in Mexico. The entity was not a mere dummy corporation, nor the agent of the taxpayer, and the taxpayer was not the beneficial owner of the entity. The form of the entity was chosen by its creators and was respected.

In re E.C.J. Investments, Inc., BC-DC Fla., 2015-2 USTC ¶50,528; TRC BUSEXP: 3,150

Tax-Exempt Status

Operation of a certain public event by a tax-exempt organization was not substantially related to the organization's exempt purpose. Further, fees paid to the organization by vendors at the event did not constitute "rents from real property" under Code Sec. 512(b)(3)(A)(i).

Technical Advice Memorandum 201544025, FED ¶47,428; TRC EXEMPT: 15,156

Retirement Plans

Cost-of-living adjustments (COLAs) that affect pension plan dollar limitations and other retirement-related provisions have been released by the IRS, effective January 1, 2016. *Wolters Kluwer previously covered this development in the October 29 issue of this newsletter.*

Notice 2015-75, FED ¶46,441; TRC COMPEN: 27,508.10

Disaster Relief

On October 21 and 28, 2015, the IRS updated its list of South Carolina counties in which taxpayers affected by severe storms and flooding and who reside or have a business may qualify for special tax relief. The list of counties now includes Fairfield, Greenville, Marion, and Spartanburg.

South Carolina Disaster Relief Notice Updated (SC-2015-71), FED ¶46,422

IRS Releases 2015 Discount Factors/Tables For Insurance Companies

The IRS has provided insurance companies with tables setting forth the loss payment patterns and discount factors for the 2015 accident year. The loss payment pattern discount factor tables are used to compute discounted unpaid losses for each line of business under Code Sec. 846 using discount factors published by the IRS. The factors were determined using the applicable interest rate for 2015 of 1.68 percent, and by assuming all loss payments occur in the middle of the calendar year.

The IRS also provided insurance companies with tables setting forth the salvage discount factors for the 2015 accident year. The salvage discount factors are used by insurers in computing discounted estimated salvage recoverables under Code Sec. 832. The factors were determined using the applicable interest rate for 2015 of 1.68 percent, and by assuming all estimated salvage is recovered in the middle of each calendar year.

Rev. Procs. 2015-52, 2015-54; FED ¶¶46,439, 46,440.

Sample Client Letter On Bipartisan Budget Act Of 2015

On November 2, 2015, President Obama signed the *Bipartisan Budget Act of 2015*. The new law repeals the TEFRA unified partnership audit rules and the automatic enrollment in certain employer-sponsored health savings plans, extends pension funding stabilization, and more. Some of the changes are effective immediately, while others have delayed effective dates. Practitioners can email this letter to clients to alert them to the significant provisions in the new law.

RE: Bipartisan Budget Act of 2015
Dear Client:

Tax-related legislation often is included in non-tax bills, and a new law—the *Bipartisan Budget Act of 2015*—is one. On November 2, President Obama signed the 2015 Budget Act, which repeals the TEFRA unified partnership audit rules and replaces them with streamlined procedures. The Budget Act also repeals automatic enrollment in certain employer-sponsored plans, health plans extends defined benefit (DB) pension stabilization provisions, increases premiums paid to the Pension Benefit Guaranty Corporation (PBGC), and more. The 2015 Budget Act does not, however, extend the so-called tax extenders, which will likely wait for Congressional action later this year.

Spending cuts and revenue raisers

Four years ago, Congress passed and President Obama signed the *Budget Control Act of 2011*. The 2011 Budget Control Act imposed sequestration (across the board spending cuts) on federal spending for defense and non-defense programs. The 2015 Budget Act eases sequestration and avoids some of the deepest spending cuts.

To offset the additional spending, lawmakers needed new revenue. Congress and the White House looked to TEFRA partnership audit repeal as a major revenue source. TEFRA repeal is expected to generate more than $9 billion over 10 years from enhanced compliance activities. Extension of pension stabilization is projected to raise $6.5 billion over 10 years. The Budget Act was approved by a vote of 266 to 167 in the House on October 28 and by a vote of 64 to 35 in the Senate on October 30; and signed into law by President Obama on November 2.

"Under the 2015 Budget Act, the TEFRA and ELP rules are repealed. In their place, the 2015 Budget Act provides a streamlined structure for auditing partnerships and their partners at the partnership level."

Partnership audits—TEFRA

Before the 2015 Budget Act, three different regimes generally applied for auditing partnerships:

- Partnerships with more than 10 partners are audited under unified TEFRA procedures that are then binding on the partners;
- Partnerships with 100 or more partners that elect to be treated as Electing Large Partnerships (ELPs) are subject to a unified audit under which any adjustments are reflected on the partners' current year return rather than on an amended prior-year return; and
- Partnerships with 10 or fewer partners, which are audited as part of each partner's individual audit.

TEFRA partnership-level audit procedures apply to partnerships that have more than 10 partners. If any partner is not an individual, C corporation or the estate of an individual, or if any partner is a nonresident alien, the TEFRA unified procedure applies without regard for the number of partners. Since enactment, the universe of partnerships has changed. Partnerships have grown in number and complexity. The IRS often finds it hard to determine whether a partnership is a TEFRA partnership. If the IRS applies the wrong procedures, it may jeopardize any assessment it makes.

Electing large partnerships

An electing large partnership (ELP) is, for any partnership tax year, any partnership if the number of persons who were partners in the partnership in the preceding partnership tax year equaled or exceeded 100, and the partnership elects the application of the large partnership procedures. The audit procedures for electing large partnerships are similar to the TEFRA procedures in that adjustments to partnership items by the IRS are determined at the partnership level.

Repeal and streamlined procedures

Under the 2015 Budget Act, the TEFRA and ELP rules are repealed. In their place, the 2015 Budget Act provides a streamlined structure for auditing partnerships and their partners at the partnership level. Generally, the IRS would examine the partnership's items of income, gain, loss, deduction, credit and partners' distributive shares for a particular year of the partnership (the so-called "reviewed year"). Any adjustments would be taken into account by the partnership, not the individual partners, in the year that the audit or any judicial review is completed (the so-called "adjustment year"). The 2015 Budget Act allows partnerships with 100 or fewer qualifying partners to opt-out of the new audit regime. Partnerships that opt-out

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WASHINGTON REPORT *by the Wolters Kluwer Washington News Bureau*

Congress passes, Obama signs Bipartisan Budget Act

President Obama signed on November 2 the *Bipartisan Budget Act of 2015, which* repeals the TEFRA audit procedures and also repeals automatic enrollment in health plans of certain employers under the *Affordable Care Act* (ACA). Additionally, the new law extends pension funding stabilization and raises premiums paid to the Pension Benefit Guaranty Corporation (PBGC).

In a statement after passage of the bill in the Senate, President Obama said, "The Bipartisan Budget Act is paid for in a responsible, balanced way, in part with a measure to ensure that partnerships like hedge funds pay what they owe in taxes just like everybody else."

For more details and analysis of the Bipartisan Budget Act of 2015 see the lead article in this week's newsletter and a special briefing on Intelliconnect.

Lawmakers seek leadership of Ways and Means

At press time, the main contenders to chair the House Ways and Means Committee appear to be Reps. Kevin Brady, R-Texas, Patrick Tiberi, R-Ohio, and Rep. Devin Nunes, R-Calif. The chairmanship of committees is decided by the majority leadership and they may make an announcement in early November. After a decision is made, the Ways and Means Committee is expected to start work on a bill to extend the so-called tax extenders. Under former chair, Rep. Paul Ryan, R-Wisc., who is now Speaker of the House, the Ways and Means Committee approved a number of standalone extenders bills. However, President Obama has signaled his opposition to making selected extenders permanent because of their cost and the lack of offsets in the House bills.

Negotiations continue on highway bill with offsets

The Senate October 28 approved, by unanimous consent, the Surface Transportation Extension Act of 2015 (HR 3819), which would extend current highway funding through November 20. The House approved the measure on October 27. The short-term extension was necessary as current funding was set to expire on October 29 and the House and Senate will need to go to conference to work out the differences between their respective long-term bills.

In July, the Senate approved the Developing a Reliable and Innovative Vision for the Economy (DRIVE) Bill (HR 22). The measure is funded for three years with revenue from tax compliance measures and funds for the remaining three years to be determined by the next Congress. The House transportation bill, the Surface Transportation Reauthorization and Reform Bill of 2015 (HR 3763), has no revenue offsets and lawmakers in that chamber have conceded that they might have to accept the Senate's revenue raisers.

Oversight Committee introduces resolution to impeach Koskinen

House Oversight and Government Reform Committee Chair Jason Chaffetz, R-Utah, has introduced a resolution seeking the impeachment of IRS Commissioner John Koskinen, According to Chaffetz, Koskinen failed to cooperate with Congress in its investigation into the IRS's handling of applications for tax-exempt status from conservative organizations. The resolution charges that Koskinen engaged in "a pattern of deception that demonstrates his unfitness to serve as Commissioner of the Internal Revenue Service."

The IRS issued a statement on October 27 regarding the charges, stating that the agency "vigorously disputes the allegations in the resolution. We have fully cooperated with all of the investigations."

Senate investigation. In related news, Koskinen told the Senate Finance Committee on October 27 that the agency is implementing recommendations made by the SFC concerning applications by organizations requesting tax-exempt status. In August, the SFC released the final report on its investigation into the IRS's processing of applications for tax-exempt status. The report included 36 recommendations.

"Our report clearly shows that political targeting at the IRS resulted from a number of bad decisions made by a number of different officials," SFC Chair Orrin Hatch, R-Utah, said. "What we found, on a bipartisan basis, was alarming bureaucratic dysfunction," added SFC ranking member Ron Wyden, D-Oregon.

TIGTA reviews insurers compliance for advance Code Sec. 36B payments

The health insurers that were approved to participate in the Code Sec. 36B advance premium tax credit and/or cost-sharing reduction programs and received subsidy payments on behalf of taxpayers were generally tax compliant, the Treasury Inspector General for Tax Administration (TIGTA) has found. The federal government has paid more than $13 billion to health insurers participating in the Affordable Care Act advance premium tax credit and cost-sharing reduction subsidy programs from January through September 2014.

Health insurers wishing to participate in the ACA Health Insurance Marketplace apply through a website maintained by the U.S. Department of Health and Human Services (HHS). The application process requires health insurers to attest to compliance with federal and state laws related to specific ACA provisions and requirements. Attestation to the status of federal tax compliance is not currently required of health insurers as part of this application process; however, Congressional interest in preventing individuals and entities with unpaid federal tax debts from receiving federal funds has been an ongoing concern in recent years, TIGTA explained.

TIGTA reviewed 365 health insurers and found that none of them had been convicted of a felony, and none were currently listed in the Excluded Parties List System as ineligible to receive any federal payments or benefits. TIGTA made no recommendations to the IRS in the report.

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will be audited under the general rules applicable to individual taxpayers.

The 2015 Budget Act delays the effective date of TEFRA repeal to returns filed for partnership tax years beginning after 2017. However, subject to certain exceptions, partnerships may choose to apply the new regime to any partnership tax year beginning after the date of enactment (November 2, 2015).

As with all tax laws, the IRS will need to issue regulations and guidance about repeal of TEFRA and the ELP rules. Our office will keep you posted on developments.

Family partnerships

The 2015 Budget Act also clarifies that Congress did not intend for the family partnership rules to provide an alternative test for whether a person is a partner in a partnership. The determination of whether the owner of a capital interest is a partner should be made under the generally applicable rules defining a partnership and a partner. Further, the 2015 Budget Act clarifies that a person is treated as a partner in a partnership in which capital is a material income-producing factor whether the interest was obtained by purchase or gift and regardless of whether the interest was acquired from a family member.

Automatic enrollment

The ACA generally required employers with more than 200 full-time employees to automatically enroll new full-time employees in one of the employer's health benefits plans (subject to any authorized waiting period), and to continue the enrollment of current employees in a health benefits plan offered through the employer. The ACA directed the IRS and the U.S. Departments of Health and Human Services (HHS) and Labor (DOL) to develop regulations and guidance to implement automatic enrollment. In 2012, the agencies announced they would delay the issuance of guidance. So, to date, no guidance has been issued. The 2015 Budget Act repeals the automatic enrollment provision, effective as of the date of enactment (November 2, 2015).

Pension funding stabilization

Employers maintaining DB plans generally are required to make a contribution for each plan year to fund plan benefits. The minimum funding rules for single-employer DB plans specify the interest rates and other actuarial assumptions that must be used in determining the present value of benefits for purposes of a plan's target normal cost and funding target. Present value is determined using three interest rates, called segment rates.

The Moving Ahead for Progress Act (MAP-21) provided for segment rate stabilization on the funding of single-employer DB plans. Generally, the segment rates under the single-employer plan funding rules are adjusted under the MAP-21 rules if the rate determined under the regular rules is outside a specified range of the average of the segment rates for the preceding 25-year period. The Bipartisan Budget Act extends the funding stabilization rules for DB plans through 2019.

In related news, the 2015 Budget Act gives DB plans some flexibility in their use of mortality tables. Present values and related age calculations are determined by use of mortality tables issued by the IRS that reflect actual pension plan experience and projected trends based on that experience. In lieu of these tables, an employer may use mortality tables that are specific to its own plan if the employer receives prior approval from the IRS to use the tables. The Bipartisan Budget Act expands the availability of private sector DB plans to use separate mortality tables for plan years beginning after December 31, 2015.

Disability Trust Fund

The Disability Trust Fund pays for disability benefits under Social Security. The federal government had projected that the Disability Trust Fund would be insolvent after 2026 because of the increasing number of beneficiaries relative to the number of workers paying into the system. To avoid insolvency, the 2015 Budget Act changes the allocation of payroll taxes between the Disability Trust Fund and the Old-Age and Survivors Insurance Trust Fund. The new law allocates to the Disability Insurance Trust Fund an additional 0.57 percentage points (for a total of 2.37 percentage points of the total combined 12.4 percent payroll tax) in 2016, 2017 and 2018.

Pension Benefit Guaranty Corporation

The Pension Benefit Guaranty Corporation (PBGC) is the pension provider of last resort for many individuals. The PBGC insures pensions and provides benefits when a private plan no longer can make those payments. The PBGC is funded by premiums paid by pension plans. The 2015 Budget Act increases these premiums. The PBGC's single-employer fixed premium will increase to $68 for 2017, $73 for 2018, and $78 for 2019, and subsequently re-indexed for inflation. The variable rate premium will continue to be indexed for inflation, but will be increased by an additional $2 in 2017, an additional $3 in 2018, and an additional $3 in 2019.

The 2015 Budget Act also accelerates when payments must be made. For plan years beginning in 2025, the due date for premiums will be the 15th day of the ninth calendar month beginning on or after the first day of the premium payment year.

Tax extenders

Notably absent from the 2015 Budget Act are the tax extenders. These popular tax breaks are temporary and, under current law, expired after 2014. They include the state and local sales tax deduction, higher education tuition and fees deduction, teacher's classroom expense deduction, research tax credit, bonus depreciation, Indian employment credit, transit benefits parity, film and television production special expensing, and more. Unless extended, these incentives will be unavailable for 2015. The expectation is that Congress will extend the tax breaks but the question is when. Some observers predicted the extenders would be part of the 2015 Budget Act. One stumbling block to their extension is their cost. Many lawmakers want to offset the cost of the extenders with either more spending cuts or new revenue raisers. Our office will keep you posted of developments.

If you have any questions about the 2015 Budget Act, please contact our office.

Sincerely yours.

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COMPLIANCE CALENDAR

November 6

Employers deposit Social Security, Medicare, and withheld income tax for October 31, November 1, 2, and 3.

November 10

Employees who received $20 or more in tips during October must report them to their employer. Form 4070 may be used.

November 12

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

November 16

Employers deposit Social Security, Medicare, and withheld income tax for November 7, 8, 9, and 10.

November 18

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

November 20

Employers deposit Social Security, Medicare, and withheld income tax for November 14, 15, 16, and 17.

TRC TEXT REFERENCE TABLE

The cross references at the end of the articles in Wolters Kluwer Federal Tax Weekly (FTW) are text references to 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 33,152.05	528	FILEBUS 9,322	494	PART 3,100	490
ACCTNG 36,162.05	517	FILEBUS 9,458.10	531	PART 3,504	506
BUSEXP 3,050	518	FILEBUS 15,100	483	PART 60,054	496
BUSEXP 9,056	481	FILEIND 15,204.05	514	PART 60,552	506
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COMPEN 27,252.10	513	INTL 18,102.10	491	RETIRE 57,212.20	431
ESTGIFT 3,158	529	IRS 3,200	527	RETIRE 75,454.10	446
ESTGIFT 51,162.20	493	IRS 6,106.05	526	RIC 3,064.10	459
EXCISE 9,102.05	530	IRS 9,400	528	SALES 6,156	507
EXCISE 12,054	493	IRS 24,106	504	SALES 12,154.20	446
FARM 3,206.10	481	IRS 30,220	467	SALES 12,452	492
FILEBUS 9,108	501	IRS 60,102	495	SALES 45,254.05	491
FILEBUS 9,158.12	478	IRS 66,360	505	SALES 51,100	527

CONFERENCES

November 13: Wolters Kluwer presents a webinar "Preparing Form 1040NR: U.S. Nonresident Alien Income Tax Return." This session will provide an overview of the basic tax concepts and issues of nonresident aliens in the U.S. and their tax filing requirements. For more information, visit *www.krm.com/cch* or call (800) 775-7654.

November 16–17: The American Bar Association Section of Taxation co-sponsors the Executive Compensation National Institute in Philadelphia. The program will feature government speakers and will address issues related to compensating senior corporate executives: private practitioners, in-house corporate counsel, employee benefit consultants, service providers, compensation managers and consultants. For more information, visit *americanbar.org*.

November 16–17: The AICPA hosts its program "Sophisticated Tax Planning for Your Wealthy Clients" in Boston. For more information or to register, visit *www.cpa2biz.com*.

November 23–24: The California Society of CPAs hosts its two-day Tax Update and Planning Conference in Burbank and San Francisco. The event will feature a detailed review of the biggest changes in individual and corporate taxation for 2015, practical advice for guiding your clients to minimize tax costs and best practices to help you prepare for the upcoming tax season. For more information, visit *info.calcpa.org/tax-update-and-planning-conference-2015*.

December 3–4: The Novogradac Tax Credit Housing Finance Conference takes place in Las Vegas. Housing industry experts will discuss what the positive developments in the affordable housing industry and what they could mean for low-income housing tax credit investments in 2016. Visit *www.novoco.com* to register.

December 8–9. The University of Cincinnati College of Business hosts its 48th Annual UC Federal Income Tax Conference in Cincinnati. Experts will cover the latest developments in federal tax law. For more information call 513-558-1810 or visit *www.business.uc.edu/taxconference*.