

Elder Client PLANNER

Spidell's strategic tax advisor

Roth restructure leads to excess penalty

TAX: Limitations period remains open if excess Roth IRA contributions aren't reported on return.

By Tim Hilger, CPA

Editor

The Tax Court has held that the statute of limitations for assessing the excise tax on excess contributions to a Roth IRA remains open where a taxpayer fails to report the contributions on his return.¹ Even though taxpayers timely filed their 1040s for the years in question, the court ruled that Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts — which is required to report the contributions — is a separate return.

In addition, the court denied the taxpayers' request for waiver of penalties based on reasonable cause. One of the taxpayers was a highly educated, successful businessman who should have suspected that the transaction recommended by his tax professional was "too good to be true."

Facts of the case

The excess contributions in the case were caused by an attempt to use a so-called "Roth restructure transaction" to disguise excess contributions to the taxpayer's Roth IRA.

Robert Paschall, an MIT graduate, amassed a \$1.3 million balance in a regular IRA. In 2000, Grant Thornton sold Paschall on the benefits of a "Roth restructure transaction" that involved corporate formations, transfers, and mergers to turn Paschall's \$1.3 million in his regular IRA into a \$1.3 million transfer to a Roth IRA, with no tax being paid along the way. Paschall didn't understand how it worked, and he didn't ask for or receive an opinion letter about it.

Paschall timely filed his 1040s for the years at issue (2002 through 2006) but didn't attach Form 5329 to his returns. In either 2003 or 2004, he received a letter from Grant Thornton stating that they were turning over to the IRS the names of people who had engaged in Roth restructures.

In 2008, the IRS issued notices of deficiency to Paschall for 2002 through 2006 indicating he owed large amounts of tax plus penalties.

See Roth, page 2

False and revenge 1099s create nuisance

TAX: Taxpayers receiving false 1099s are put in the position of trying to prove a negative — that they didn't receive income.

By Tim Hilger, CPA

Editor

An Ohio homebuilder was recently sentenced to 16 months in prison and ordered to pay \$379,852 in restitution to the IRS for filing false 1099s.¹

A quick search on the Internet using the term "false 1099s" will quickly reveal that the receipt of false 1099s is a growing nuisance to many taxpayers. Even more

interesting is a search on "revenge 1099s," where you may find individuals recommending revenge 1099s for failure to pay rent² and for failure to pay legal fees.³

For an individual receiving an incorrect 1099, the nuisance factor can be considerable. The IRS will assume that the 1099 is correct and will issue a deficiency notice to the taxpayer who doesn't report the 1099 income. This essentially puts the taxpayer in the classically impossible position of trying to prove a negative — that they didn't receive the income.

The law

An information return does not, on its own, create tax liability, nor is it the final

See Revenge, page 2

In this Issue

Wife couldn't complete husband's rollover after his death

Case is a reminder that trustee-to-trustee transfers are safer.

Article on page 4

American owners of Mexican real estate must form foreign trusts

A Mexican residential trust is a burden in the U.S., but is often necessary to own property in Mexico.

Article on page 4

Reverse mortgages: When is interest deductible?

Interest on a reverse mortgage can be deductible — later.

Article on page 5

IRS extends relief to more innocent spouses

Article on page 7

Decedent's estate not entitled to deduct payments to son

Article on page 8

Online sellers will get new Forms 1099-K

Article on page 8

Tax planning for 2011 — Part 1: Tax rates

Article on page 9

News Briefs

Article on page 11

Form 8939 due November 15, 2011

Article on page 12

E-mail us:

ecplanner@spidell.com

Elder Client PLANNER

Editorial Staff

Publisher: Lynn Freer, EA, President of Spidell Publishing, Inc.,* specializes in writing and speaking on California tax law. She works closely with all state tax agencies, is often consulted for input on policy decisions, and always has the inside information on what's happening at the state level.

Editor: Tim Hilger, CPA, is associate editor of *Spidell's California Taxletter*[®] and *Spidell's Analysis & Explanation of California Taxes* and editor of *Spidell's Elder Client Planner*[™]. He has authored innumerable articles, reports, and self-studies on tax, financial, and accounting matters. He has a Bachelor of Science in business administration (accounting) from California State University, Long Beach, and a Master of Science in taxation from Golden Gate University.

Associate Editor: Renée Rodda, J.D., is editor of *Spidell's California Taxletter*[®] and *Analysis & Explanation of California Taxes*, and associate editor of *Spidell's Elder Client Planner* newsletter. Renée lectures extensively on tax issues that impact California taxpayers and aging Americans. She has authored numerous articles and publications including "A Practical Guide to Trusts" as well as self-study courses and webinars, including a course on the complicated issues facing California Registered Domestic Partners. She is a graduate of Chapman University School of Law with a Tax Law Emphasis.

Staff Writer: Bill Frederick, EA, writes for *Spidell's California Taxletter*[®] and *Spidell's Elder Client Planner*[™]. Bill has a Bachelor of Science in business administration from California State University, Los Angeles, and a Masters degree in taxation from Golden Gate University. He has specialized in a variety of different subjects in the tax industry — exempt organizations, state-and-local tax, and coding tax software for estates and trusts.

Managing Editor: Kathryn Zdan, EA, is Spidell Publishing's Managing Editor. She writes and assists in research and editing articles for *Spidell's California Taxletter*[®] and *Spidell's Elder Client Planner*[™]. She also updates many of Spidell's special reports. She has a master's degree from California State University, Fullerton, and completed her undergraduate work at the University of Michigan.

ECP staff

Sacramento Contributor: Debra Peterson, J.D., LL.M., CPA
Contributor: Claudia Hill, EA, MBA
Copy Editor: Austin Lewis
Newsletter Layout: Michelle Nuesse

Roth, continued from page 1

Background

The amount of contributions a taxpayer may make to a Roth IRA in any given year is limited.²

A 6% excise tax applies to excess Roth IRA contributions, computed on the lesser of:³

- The amount of the excess contribution; and
- The fair market value of the account as of the end of the tax year.

The excise tax is imposed each year until the excess contribution, plus earnings, is eliminated. Taxpayers must file a Form 5329 for each year they have excess contributions in their IRA.

Moreover, a 5% penalty is imposed for each month or part of a month that a required return is filed after the prescribed due date, but not to exceed 25% in the aggregate.⁴ The addition to tax doesn't apply if it is shown that such failure is due to reasonable cause and not due to willful neglect.

The general rule regarding the statute of limitations is that the amount of any tax must be assessed within three years of the filing of the return.⁵ However, in case of a failure to file a return, the tax may be assessed "at any time."⁶

Form 5329 is a separate return

The taxpayer argued that the statute of limitations barred the IRS from assessing deficiencies for tax years 2002–2004, because he timely filed Forms 1040 for those years. He asserted that Form 5329 was not a separate tax return from Form 1040, that the statute of limitations started running when he filed the Forms 1040, and that the statute had expired before IRS issued the notices of deficiency for the 2002, 2003, and 2004 tax years.

Agreeing with IRS, the Tax Court held that Form 5329 is a separate tax return from

Form 1040 and that because Paschall never filed Forms 5329, the statute of limitations had never started running. The court noted that both Form 941 and Form 1099 report compensation but "filing Form 1099 does not start the statute of limitations running for purposes of Form 941." The "relevant inquiry," according to the court, "is whether the return filed sets forth the facts establishing liability." Accordingly, the 6% excess contributions penalty could be assessed at any time. The taxpayer was hit with that penalty plus late filing penalties, late payment penalties, and interest.

Another Roth restructure shot down

Another individual who engaged in Grant Thornton's "Roth restructure transaction" plan also made an excess contribution of \$1,610,000 to his Roth IRA.⁷ Along with the additional tax on excess contributions, taxpayers were assessed the §6662(a) accuracy-related penalty for each year in amounts totaling \$123,000. The reasonable cause exception to the accuracy-related penalty did not apply. Even though the plan was recommended by a respected professional organization, the taxpayer admitted he had doubts yet never asked for a written opinion letter or sought the advice of an independent adviser. **S**

¹ *Paschall v. Comm.*, (2011) 137 TC 2

² IRC §§408(c)(3), 408A(c)(2)

³ IRC §4973

⁴ IRC §6651(a)(1)

⁵ IRC §6501(a)

⁶ IRC §6501(c)(3)

⁷ *Swanson v. Comm.*, TCM 2011-156

Revenge, continued from page 1

word on the taxable income of a taxpayer. However, the IRS's determination of deficiency has a presumption of accuracy that generally places the burden of proof on the taxpayer.⁴

View from the trenches — true client story

My client, Kathy, received an IRS notice claiming she had failed to report COD income reported on a 1099 from AnyBank. The source appeared to be a credit card. She swore that she had never had a credit card or other debt with AnyBank and that she'd never defaulted on a debt of any kind.

It took 14 months to win this one with the IRS. Their first response was to tell us contact the bank and get them to correct the 1099. Unfortunately, AnyBank had ceased to exist and their records were a shambles. We never received a corrected 1099.

Stubbornness was the key to victory in this matter. Numerous phone calls and letters to the IRS seemed to wear them down and inexplicably they dropped the matter. In accordance with my billing rate, however, the value of my time exceeded the tax at stake (and that doesn't count the value of Kathy's time).

See **Revenge**, page 3

Revenge, continued from page 2

In any court proceeding, however, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return and the taxpayer has fully cooperated with the IRS, the burden of proving the income shifts to the IRS.⁵

Full cooperation by the taxpayer includes:

- Providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents in the taxpayer's control that are reasonably requested by IRS; and⁶
- Bringing the reasonable dispute over the income item to the IRS's attention within a reasonable period of time.⁷

While the law does provide that the burden of proof may shift to the IRS under IRC §6201(d), note that the shift occurs only in "any court proceeding." Court proceedings are generally undesirable due to cost and other factors. Unfortunately, the law doesn't provide any other recourse.

Recommended action

Based on the foregoing, most practitioners recommend the following course of action:

- Have the client call the 1099 issuer and request a corrected 1099;
- Draft a letter to the issuer demanding a corrected 1099 or an accounting of the transaction that led to the 1099;
- Draft a letter to the IRS stating that the 1099 is false and that the issuer has been contacted;
 - o Attach a copy of the letter to the issuer; and
 - o State that the taxpayer will invoke §6201(d) shifting the burden of proof to the IRS. **S**

¹ *Roy W. Bradford, Sr. v. U.S.* (June 21, 2011) Ohio Southern District Court Case No. 3:2011cv00216

² See www.seattlerentals.com/landlordblog/

Revenge 1099 hit parade

Recent cases have highlighted the use of the revenge 1099. Just for fun, here's a short hit parade.

Hell hath no fury role reversal

A taxpayer argued that the \$10,500 in checks she received from her former boyfriend was a gift, not taxable income.⁸ The taxpayer had received a 1099-MISC from her ex-boyfriend for the payments he had made to her. He claimed they were wage income, although according to her she had never worked for him.

The court found the taxpayer's testimony to be forthright and the ex-boyfriend's testimony to be untrue. The court determined that the \$10,500 was paid to the taxpayer with "detached and disinterested generosity" and held that it was a gift, not reportable income.

The cop and the doc

A police officer claimed that a \$25,000 payment to him and his wife was a gift rather than income.⁹ The money was given to them by a doctor who had been having an affair with the wife. When the husband found out about the affair, he lured the doctor to his home and confronted him, threatening to sue him for \$150,000 and report him to the medical board.

At this point, the doctor told the husband that while he did not have \$150,000, he did have \$25,000 and paid the husband. The husband, in turn, reported him to the medical board.

The doctor's accountant then sent a 1099-MISC for tax year 1999 to the husband and wife; they did not report the income on their 1999 return.

The husband and wife claimed that the money should be treated as a gift because it was the doctor's idea to pay it. The court disagreed and held the money to be income, because they believed that the doctor had paid the money as an alternative to being sued and to close the matter; i.e., it was a business expense.

Jilted mother-in-law issues 1099

A taxpayer issued a 1099-C to her ex-son-in-law after he failed to pay her back for debt he incurred on her credit card and after her daughter divorced him.¹⁰ Her ex-son-in-law filed suit, claiming that the filing was fraudulent and was done only with the intent to cause him to pay extra tax.

Although the taxpayer was not required to file a 1099-C, she was not prohibited from doing so. Because of the oral agreement between the two parties, the taxpayer had a good-faith belief that she was canceling a bona fide debt when she filed the 1099-C; therefore, the filing was not fraudulent.

2007/03/not-going-to-pay-rent-irs-audit-for-you.html

⁵ IRC §6201(d)

⁶ Id.

⁷ H Rept. No. 104-506 (PL 104-168)

⁸ *Jue-Ya Yang v. Comm.*, TCS 2008-156

⁹ *Peebles v. Comm.*, TCS 2006-61

¹⁰ *Cavoto v. Hayes* (February 28, 2011) U.S. Court of Appeals for the Seventh District, Case No. 10-2681

³ Freedman, E. "Revenge is now a lot less sweet" (November 13, 2008) PA Law Practice Management Available at: www.pa-lawpracticemanagement.com/revenge-is-now-a-lot-less-sweet/

⁴ *Hence v. Comm.*, TCM 1992-671

This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice and assumes no liability whatsoever in connection with its use. Since tax laws are constantly changing and are subject to differing interpretations, we urge you to do additional research before acting on the information contained in this publication.

ELDER CLIENT PLANNER (ISSN No. 1550-0470) is published monthly on the fifteenth day of each month by Spidell Publishing, Inc., 1158 North Gilbert Street, Anaheim, California 92801-1401. Periodicals postage paid at Anaheim, CA, and additional entry office. Telephone: (714) 776-7850. Fax: (714) 776-9906. E-mail: subscriptions@spidell.com. Web site: www.elderclientplanner.com. The subscription price is \$199 for 12 months. ©2011, Spidell Publishing, Inc. POSTMASTER: Please send address changes to Elder Client Planner, P. O. Box 61044, Anaheim, California 92803-6144. Federal law prohibits unauthorized reproduction of the Elder Client Planner. All reproduction must be approved in writing by Spidell Publishing, Inc. Publisher Emeritus: Robert Spidell. Publisher: Lynn Freer. Editor: Tim Hilger. Associate Editors: Renée Rodda. Staff Writer: Bill Frederick. Managing Editor: Kathryn Zdan. Copy Editor: Austin Lewis. Newsletter Layout: Michelle Nuesse.

Wife couldn't complete husband's rollover after his death

TAX: Case is a reminder that trustee-to-trustee transfers are safer

By Tim Hilger, CPA

Editor

The IRS has declined to waive the 60-day rollover requirement where, due to a taxpayer's death, it would be impossible to complete a rollover.¹ Because the amount was received by the taxpayer from the plan prior to his death, his wife was precluded from rolling the funds to her own IRA.

Plan had mandatory distribution provision

The taxpayer ended his employment and the company's plan mandated a

Based on the facts, the wife requested a ruling from the IRS that they waive the 60-day rollover requirement and allow her to make a rollover to an IRA in her name.

Background

The IRS may waive the 60-day requirement where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the taxpayer.² Rev. Proc. 2003-16 provides that the IRS will consider all relevant facts including an inability to complete a rollover due to death (and many other factors).

IRC §402(c)(9) provides that, if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the rollover provisions

after the participant's death. However, in this case the distribution was made before the participant's death and she was precluded from rolling the funds into her own account.

The IRS did not rule as to whether the participant's death could have been a factor leading to a waiver; nor did it need to. The distribution was not the wife's and she had no authority to deposit the funds into her husband's IRA. Prior rulings pertaining to death have generally dealt only with rollover delays caused by the taxpayer's grief over the death of a loved one.³

Caught in limbo

Had the taxpayer died before taking the distribution, the wife could have rolled the distribution into her own account under IRC §402(c)(9). Had he completed the rollover, the wife could have inherited the IRA. In either case, there would have been no taxable distribution.

This is another reason why taxpayers should use trustee-to-trustee transfers instead of 60-day rollovers when shifting their retirement funds. There is less possibility of error with trustee-to-trustee transfers because the taxpayer doesn't handle the funds being transferred. **S**

"There is less possibility of error with trustee-to-trustee transfers"

complete distribution of a participant's account. The taxpayer received a check and initiated arrangements to move the funds to an IRA. In the meantime he deposited the funds into a joint savings account with his wife. However, he died before completing the transfer to the IRA.

shall apply to such distribution in the same manner as if the spouse were the employee.

Ruling

The IRS ruled that it is impossible for the wife to complete the proposed rollover. IRC §402(c)(9) allows rollover when plan assets are distributed to a surviving spouse

¹ PLR 201123048

² IRC §402(c)(3)(B)

³ PLRs 200608029, 200608027, 200603033

American owners of Mexican real estate must form foreign trusts

TAX: A Mexican residential trust is a burden in the U.S., but is often necessary to own property in Mexico.

By Bill Frederick, EA

Staff Writer

According to the 2000 Mexican census, the total number of U.S. born residents and U.S. citizens residing in Mexico was 358,614 people, and with the acquisition of property in Mexico comes complex U.S. reporting requirements for foreign trusts.

Ownership restrictions

To own property in most of Mexico, a non-Mexican citizen is required to establish a Mexican residential trust (MRT) or a "fideicomiso" as they are known in Mexico. An MRT is required to own the underlying land when the property is located within 100 kilometers (62 miles) of Mexico's international borders, or 50 kilometers (31 miles) from its coastline.

This is commonly referred to as the "restricted zone." This zone includes most of the Baja Peninsula and all beach properties in Mexico. Any U.S. person who transfers property to, or has an interest in, an MRT must report the transaction to the IRS.

Filing requirements

A U.S. person who makes a transfer to, or receives a distribution from, a foreign trust is generally required to report the transaction on Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts.

A U.S. person who is treated as the owner of a foreign trust is required to complete Part II of Form 3520 and must ensure that the foreign trust annually files Form 3520-A, Annual Information Return of Foreign Trust with U.S. Owner.¹

The creation of an MRT is a "reportable event" that requires reporting on Form 3520. When the U.S. owner

See Mexican, page 5

Mexican, continued from page 4

transfers property or money to the MRT, presumably for property repairs and improvements, the transfer must be reported along with any distributions.

The owner of the MRT must also file an annual information return on Form 3520-A which provides an accounting of all trust activities and operations for the year, including the name of a U.S. agent.²

A U.S. agent could be the grantor, the grantor's attorney, or another person acting as trustee in the U.S. This person is appointed by the U.S. owner of the trust via a binding agreement. The U.S. agent is responsible for complying with a summons or request by the IRS to examine the books and records of the trust. The Mexican bank trustee cannot act as the U.S. agent.

Foreign trust penalties

The failure to timely comply with the reporting requirements for Form 3520 subjects the grantor to a penalty of up to 35% of the gross reportable amount. The gross reportable amount is the amount distributed from or transferred to the MRT during the year.

EXAMPLE 9-1: In 2009, Edgar, a U.S. person and non-Mexican citizen, forms an MRT to purchase a vacation home for \$500,000 in Ensenada, Mexico. Unfortunately, he fails to mention the home or the MRT to his accountant. In 2011, the IRS sends a notice for failure to report the trust. The IRS requests a filing within ninety days and imposes a penalty of \$175,000 ($\$500,000 \times 35\%$). If the information returns were timely filed, no penalties would have been due.

Trust Reporting Requirements

A trust is considered a U.S. person if:

- A U.S. court is able to exercise primary supervision over the administration of the trust (court test); and
- One or more U.S. persons have the authority to control all substantial decisions of the trust (control test).

Note: A U.S. court has supervision control over an MRT because an MRT is required to have a U.S. agent.

Events that are required to be reported include:

- The creation of a foreign trust by a U.S. person;
- The transfer of money or property to a foreign trust by a U.S. person; and
- The death of a U.S. resident, if the decedent was the owner or beneficiary of any portion of a foreign trust.³

Events that are not required to be reported include:

- Sales for fair market value to a foreign trust; and
- Transfers involving deferred compensation or a charitable trust.

If the failure to comply goes beyond 90 days of when the IRS has given notice, an additional \$10,000 penalty applies for each 30-day period (or portion thereof) that such failure continues. The maximum penalty shall not exceed the actual reportable amount.⁴

Similarly, failure to file Form 3520-A results in a penalty equal to 5% of the gross value of the portion of the trust's assets owned by the U.S. person.

Due Dates

Caution: The due dates for Forms 3520 and 3520-A are not the same. Form 3520 follows the due date of Form 1040, including extensions. However, the due date for the Form 3520-A is March 15, with a six-month extension available by using Form 7004.



- 1 IRC §§6048; 7701(a)(30)(E), (31)(B)
- 2 IRC §6048(a)(4)
- 3 IRC §6048(a)(3)(A)
- 4 IRC §§ 6038D, 6677

Reverse mortgages: When is interest deductible?

TAX: Interest on a reverse mortgage can be deductible – later.

By Lynn Freer, EA
Publisher

Many of our clients, and even some of us, have taken out a reverse mortgage. While in San Diego, one of our seminar attendees told me he turned his first trust deed into a reverse mortgage so his monthly expenses would be reduced to almost nothing. He also said that he didn't need the deduction now that he was retiring. That's a good thing, because the interest isn't deductible until it is actually paid.

Unfortunately, many of our clients (or their beneficiaries) still want to take the deduction. Here are the rules.

Accrued interest

Accrued interest is not currently deductible, so, until the taxpayer pays

the interest, there is no deduction.¹ When the interest is paid, the interest may be:

- Qualified residence interest;
 - o Acquisition debt; or
 - o Equity debt;
- Investment interest; or
- Personal (nondeductible) interest.

EXAMPLE 9-2: Blane has no mortgage on his home. He takes out a reverse mortgage of \$300,000. The reverse mortgage is a line of credit that he will draw upon to support himself. In the first month, he withdraws \$150,000 to pay off his car loan and credit card bills, to take a trip, and to support himself for a year.

He sells the home before he withdraws any additional cash from the credit line. At the time he sells, there is \$60,000 of accrued interest. Only two-thirds, or \$40,000, of the interest is deductible, because of the \$100,000 equity debt limitation ($\$100,000 \div \$150,000$).

Reverse, continued from page 5

EXAMPLE 9-3: Brad takes out a reverse mortgage to pay off the \$100,000 loan he has on his house. That \$100,000 is acquisition debt. He also borrows an additional \$120,000. He uses \$20,000 of those funds to repair his roof and cement block wall, and he uses the remaining \$100,000 for personal living expenses.

Brad sells the home and \$50,000 of interest is paid in escrow. His deduction is computed as follows:

	Total	Acquisition debt	Equity debt
Original mortgage	\$100,000	\$100,000	
Roof and wall repairs	\$20,000	\$20,000	
Cash for living expenses	\$100,000		\$100,000
Subtotal	\$220,000	\$120,000	\$100,000
Acquisition debt interest	\$27,273 (\$50,000 × \$120,000 ÷ \$220,000)		
Equity debt interest	\$22,727 (\$50,000 × \$100,000 ÷ \$220,000)		

Qualified residence interest

Unfortunately, cash-basis borrowers may not deduct interest from a reverse mortgage until the loan is paid off. Because the interest on most reverse mortgages is added monthly to the outstanding loan balance (to be paid at the end of the loan), it isn't deductible annually. Interest is only deductible by the borrower when it is actually paid.² Actual or constructive payment does not occur when the interest is added to the outstanding loan balance.³

Actual payment means the taxpayer made the interest payment to the lender, while constructive payment means that the funds were available for the bank to draw upon at any time. Because interest added to the outstanding loan balance is neither paid to the bank nor available for the bank to draw upon, there is no actual or constructive payment of the interest. This is the case with a reverse mortgage.

Acquisition debt

Assuming the homeowner actually pays the interest, the deduction may be limited. Unless the loan qualifies as acquisition indebtedness, interest is not deductible to the extent the equity indebtedness exceeds \$100,000. Plus, equity indebtedness interest is not

deductible for alternative minimum tax purposes.⁴

In many cases, when a reverse mortgage is acquired, the homeowner pays off an existing loan that qualifies as acquisition indebtedness. To the extent the reverse mortgage loan exceeds the existing loan balance, it is not acquisition debt.

EXAMPLE 9-4: Billy has a \$200,000 loan on his residence. It is acquisition debt. He gets a reverse mortgage to pay off the debt and he will continue to live in the house but not be required to make payments.

Billy sells the home when there is \$20,000 accrued interest. That interest is fully deductible as acquisition debt.

Investment interest

In some rare instances, the taxpayer may use the proceeds of the reverse mortgage to acquire investment or business property. If the taxpayer can trace the interest to the property, the interest, when paid, would be traced to the property purchased.⁵

As such, the interest could be classified as:

- Investment interest;
- Passive activity interest; or
- Business interest.

EXAMPLE 9-5: Brianna takes out a reverse mortgage on her home. She takes the \$100,000 proceeds to invest in the stock market. She sells the home and the \$20,000 of accrued interest would be deductible as investment interest when paid.

In the year the \$20,000 interest is paid, Brianna has \$5,000 of net investment income. She may deduct \$5,000 of investment interest and she may carry forward the remaining \$15,000.

EXAMPLE 9-6: Ben dies when there is a reverse mortgage on his property. Under the terms of his trust, his daughter Bernadette is granted the right to live in the house for five years — at which point she inherits the property.

The trust must refinance the property. The property is owned by the trust, and Bernadette occupies it as her principal residence. When the interest is paid, the trust is entitled to a deduction for the interest.

If, however, under the terms of the trust, Bernadette inherits the property at Ben's death, when she refinances the property and the interest is paid she may not deduct the interest.

Special rules for estates and trusts

If the homeowner dies, the interest will reduce the taxable value of an estate. However, in most cases, a taxpayer with a reverse mortgage would not have an estate tax liability.

For purposes of determining whether any interest paid or accrued by an estate or trust is deductible as qualified residence interest, any residence held by the estate or trust will be treated as a qualified residence of the estate or trust if the residence is a qualified residence of a beneficiary who has a present interest in the estate or trust, or an interest in the residuary of such estate or trust.⁶

Thus, it appears that the interest is deductible if the beneficiary occupies the residence. That deduction is taken on the income tax return of the trust or estate, Form 1041, U.S. Income Tax Return for Estates and Trusts.

These rules do not apply if the beneficiary inherits the property and pays the mortgage interest.



¹ Rev. Rul. 80-248

² IRC §461(a)

³ Rev. Rul. 80-248

⁴ IRC §56

⁵ Temp. Treas. Regs. §1.163-8T

⁶ IRC §163(h)(4)(D)

IRS extends relief to more innocent spouses

TAX: The two-year limit will no longer apply to requests for equitable spouse relief.

By Renée Rodda, J.D.

Associate Editor

The IRS recently announced that, in an effort to make relief available to more spouses, they are eliminating the two-year time limit that applied to equitable relief requests.¹ The change goes into effect for new requests and requests currently being considered by the IRS.

The Notice also states that if the relief sought involves a refund of tax, then the statute of limitations on credits or refunds provided in IRC §6511 will apply. The Notice does not extend any applicable statute of limitations.

Transitional rules

Pending the modification of the regulations, taxpayers may rely on Notice 2011-70. The following rules will apply:

- **Future requests:** The IRS will no longer apply the two-year limit to new innocent spouse requests;
- **Pending requests:** For individuals who have already submitted relief

requests that the IRS has under consideration or in suspense, the IRS will consider the requests even if they were filed more than two years after the first collection activity was taken;

- **Previously denied requests:** A taxpayer whose equitable relief request was previously denied solely due to the two-year limit may reapply using IRS Form 8857, Request for Innocent Spouse Relief; and
- **Pending and final litigation:** The IRS will not apply the two-year limit in any pending litigation involving equitable relief, and where litigation is final, the IRS will suspend collection action if the IRS stipulated that the individual's request for relief would have been granted had the request been timely. However, the IRS has stated that its decision not to collect is prospective only, and no refunds or credits will be available.

New regulations coming

Existing regulations state that spouse requests seeking equitable relief must be filed within two years of when the IRS first takes collection action against the requesting spouse.² The IRS plans to issue new regulations formally removing this time limit.

Relief from joint liability

Under federal tax laws, when two people file a joint tax return, both individuals are treated as agreeing to joint and several liability. This means that the IRS can collect any outstanding tax due from either spouse. However, there are provisions in the IRC commonly known as "innocent spouse laws" that authorize the IRS to grant relief to qualifying debtors.

There are three types of relief from joint and several liability for spouses who filed joint returns:

- **Innocent Spouse Relief:** Provides relief from additional tax if the taxpayer's spouse or former spouse failed to report income, reported income improperly, or claimed improper deductions or credits;³
- **Separation of Liability Relief:** Provides for the allocation of additional tax owed between spouses or former spouses because an item was not reported properly on a joint return. The tax allocated to the taxpayer is the amount for which he or she is responsible;⁴ and
- **Equitable Relief:** May apply when a taxpayer does not qualify for innocent spouse relief or separation of liability relief for something not reported properly on a joint return and generally attributable to his or her spouse. A taxpayer may also qualify for equitable relief if the correct amount of tax was reported on the joint return but the tax remains unpaid.⁵

Equitable relief

All of the following threshold conditions must be met to be considered for equitable relief:

- The liability for which relief is sought, subject to limited exceptions, is attributable to the nonrequesting spouse;
- Relief isn't available under the innocent spouse or separation of liability provisions;
- The liability is unpaid when relief is requested. However, relief in the form of a refund of liabilities may be available for certain post-request installment payments;
- No assets were transferred between the spouses as part of a fraudulent scheme;
- No disqualified assets were transferred to the individual by the nonrequesting spouse (if there were, relief is available only to the extent the liability exceeds their value); and
- The requesting taxpayer didn't file the joint return with fraudulent intent.

The requesting taxpayer must show that it was reasonable to believe that the other spouse would pay the reported liability (partial relief may be available) and that he or she will suffer economic hardship if relief isn't granted.

NOTE: The Notice only addresses the rules for equitable relief. It does not eliminate the two-year requirement for innocent spouse relief, or separation of liability relief.



¹ IRS Notice 2011-70

² Treas. Regs. §1.6015-5(b)(1)

³ IRC §6015(b)

⁴ IRC §6015(c)

⁵ IRC §6015(f)

Decedent's estate not entitled to deduct payments to son

TAX: The alleged agreement between the son, who was an attorney, and his mother could not be proven.

By Bill Frederick, EA
Staff Writer

An estate was denied a deduction for an alleged \$1.24 million liability owed to the decedent's son because the liability could not be proven.¹ The alleged liability was for care services provided by the son, but there was no contract or written agreement to support the son's claim.

Practice Pointer

The underlying conflicts among the siblings in this case should serve as a reminder if you have clients in similar circumstances. Encourage them to put any agreements and understandings in writing, as family disputes are common when a death occurs.

The agreement

The son cared for his now deceased mother by living with and caring for her for nine years. According to the son, his mother agreed to pay him \$400 a day for the care, but payment would be deferred until her death. However, there was no proof of such an agreement aside from the son's self-serving testimony.

Estate deductions

A trust or estate may deduct certain expenses for the administration of an estate or trust paid or incurred in furtherance of the trustee's fiduciary duties. This includes expenses for the collection of assets, the payment of outstanding debts, and the distribution among those entitled to share in the estate. These expenses generally include trustee, executor and attorney fees, accountant and appraisal fees, interest, taxes, and other miscellaneous expenses paid due to the existence of the estate or trust.²

A trust is considered terminated when all the assets have been distributed, except for a reasonable amount set aside in good faith to pay contingent liabilities and expenses.³

The son served as the estate's attorney, accountant, and executor. He kept thorough records of the decedent's medications, hospital visits, and diagnoses. He tracked her blood sugar, blood pressure, and body temperature two or three times a day, and made notes about her bed sores several times a day.

The son claimed a deduction on the estate tax return for the \$1.24 million he alleged the estate owed him for caring for his mother, but the circumstances were questionable. There were no corroborating witnesses and there was no other evidence. He never documented the fact that his mother agreed to compensate him for his services. Also, applicable New Jersey law dictates a presumption that services provided to a family member living in the same household are rendered gratuitously.

The son claimed that he was "not thinking like a lawyer" when he failed to document compensation for his

personal care services, but the court noted that he did prepare a power of attorney for the decedent during the same period.

Administrative expenses

The estate was allowed to deduct amounts paid to the son for legal services and for his services as executor. The court also allowed a deduction for the unpaid liability of \$44,200 in executor commissions paid to the son, even though the commissions were paid after the return was filed. However, the deduction for administrative expenses was reduced from \$55,400 to \$600 because the son could not substantiate his legal fees. He kept no record of the time he spent, and had the burden to justify the value of his services. **S**

¹ *Estate of Emilia W. Olivo, Dec. and Anthony M. Olivo v. Comm.*, TCM 2011-163

² IRC §§641, 2053

³ Treas. Regs. §1.641(b)-3(b)

Online sellers will get new Forms 1099-K

TAX: Many taxpayers will now be forced to accurately report their online sales.

By Bill Frederick, EA
Staff Writer

Taxpayers that sell products on Amazon or eBay, commonly via PayPal or similar online services, may fail to mention their income to their accountant from these

often part-time businesses.¹ Beginning in 2011, there is a reminder — new Form 1099-K.

Most sellers file a Schedule C (Form 1040) to report their gross income from selling products online. However, these sellers tend to have poor bookkeeping records. The new 1099-K will provide a challenge to summarize all allowable deductions because the Form 1099-K will report the gross earnings before subtractions for commissions and fees paid to the online service.

What are the requirements?

Starting in the 2011 tax year, new IRS regulations require all businesses that process credit card and electronic payments to send a Form 1099-K to sellers with more than:

- 200 transactions; and
- \$20,000 gross income paid to them.²

An aggregation rule requires payment organizations to determine the total number of transactions that the individual merchant receives during the year. The types of payments

See **1099-K**, page 9

1099-K, continued from page 8

affected include any payment card or third-party payment transaction (such as those offered by PayPal). These third-party payment organizations transfer funds through their networks to payees, similar to how a credit card company pays merchants.

Payments made to an individual merchant qualify for the requirement, but it does not apply to a business entity. Forms must be filed the same as other 1099 forms — on or before January 31 to the payee and on or before February 28 (March 31 if filing electronically) of the following year to the IRS.³ Most service providers will gather this information on a secure Web site rather than sending a paper form W-9.

This is all good news for states that are looking for increased income and sales tax revenue, as it has been difficult to track these occasional online sellers. The 1099-K will influence more sellers to properly collect applicable income and sales taxes.

EXAMPLE 9-7: In 2011, Andy provides his social security number to eBay and sells products in 250 online auctions on the Web site to earn gross income of \$25,000. Because he conducts more than 200 transactions and earns over \$20,000, he will receive a Form 1099-K from eBay. Andy should report \$25,000 of gross income on his Schedule C before subtracting commissions and fees paid to eBay (the online service provider).

In 2012, Andy moves his online sales to Amazon and conducts 250 auctions to earn a gross amount of \$15,000. Andy is subject to backup withholding in 2012 and will receive a Form 1099-K that reflects backup withholding of \$4,200 (28% x \$15,000) if he does not supply his TIN to Amazon. If Andy provides his TIN, he will not receive a Form 1099-K because his gross income is under the \$20,000 threshold.

Backup withholding

This requirement to report gross income from online sales also includes a withholding requirement starting with the 2012 tax year. Similar to the requirement for other 1099 forms, the 1099-K imposes 28% federal withholding when a tax identification number (TIN) has not been provided to the third party (i.e., eBay, PayPal, or Amazon). Starting with the 2012 tax year, this backup withholding applies for sellers with more than 200 transactions at any income level.⁴

Penalties for non-filing

The penalty for failure to file accurate Form 1099-K information returns is \$100 per payee, with a maximum of \$1,500,000 per year.⁵



- 1 IRC §6050W
- 2 Treas. Regs. §1.6050W-1(c)(4)
- 3 Treas. Regs. §1.6050W-1(g)
- 4 IRC §3406, Notice 2011-42
- 5 IRC §6724(d)(1)(B)(xxii), (2)(D)

Tax planning for 2011 — Part 1: Tax rates

TAX: Currently the 2010 Tax Relief Act provides a stable planning environment, but what about rates in 2012 and 2013.

By Tim Hilger, CPA
Editor

What a difference a year makes in tax planning. A year ago, tax planning revolved around the uncertainty of whether key tax provisions would be extended. Most of those crucial provisions were extended through 2011 or 2012, providing us with a relatively stable planning environment.

Tax Relief Act

Many provisions of EGTRRA¹ and JOBS² were scheduled to expire at the end of 2010. On December 17, 2010, the President signed the Tax Relief Act,³ which:

- Extended many key tax breaks; and
- Extended lower tax rates, including lower capital gains rates.

A big bonus: The Act provided for the AMT exemption amount for 2011 (along with extended the allowance of nonrefundable credits against AMT). This is one of the few years in which we can plan knowing the AMT exemption amount.

Tax rates

Unless Congress acts, the reduced tax rates will go away in 2013. This means that the top tax bracket would go back up to 39.6%.

Capital gains

The Tax Relief Act retained lower capital gains rates through 2012. Those rates are currently scheduled to

NOTE: Medicare hospital insurance (HI) tax comes into play in 2013, meaning many taxpayers could see a double whammy in 2013 if the lower rates aren't extended.

go back up to 10% and 20% beginning in 2013.

Qualified dividends

The effective tax on qualified dividends will skyrocket. They have enjoyed treatment as capital gains, which includes a reduction in capital gains rates. Both are scheduled to go away in 2013 and dividends will once again be taxed as ordinary income.

Top tax rates as scheduled					
Income	2011/12		2013		Increase
	Top rate	Top rate	HI tax	Total top rate	
Ordinary	35%	39.6%	3.8%	43.4%	8.4%
Capital gains	15%	20%	3.8%	23.8%	8.8%
Qualified dividends	15%	39.6%	3.8%	43.4%	28.4%

Tax planning, *continued from page 9*

An individual who has a 15% rate on qualified dividends in 2011 and 2012 may see that rate go as high as 39.6% in 2013 (and higher due to the health insurance tax going into effect in 2013).

HI tax coming in 2013

The additional Medicare Hospital Insurance tax is coming in 2013.

Keep in mind that the tax is two-fold:

- A 0.9% tax on earned income above threshold amounts; and
- A 3.8% tax on investment income.

Also, keep in mind that the tax on investment income is 3.8% of the lesser of investment income or modified adjusted gross income over certain threshold amounts. As such, non-investment income may

Tax bracket	January 1, 2001–May 5, 2003	May 6, 2003–2007	2008–2012	2013
10% and 15%	8% and 10%, respectively	5%	0%	10%
25% and above	20%	15%	15%	20%

cause or increase the tax by pushing the taxpayer above the threshold amounts.

Possible year-end legislation

So far, no federal tax legislation has been enacted in 2011. However, the debt ceiling agreement provides that a Congressional committee must make recommendations by late November and Congress will vote by

year-end. Tax proposals that once seemed radical but are now getting bipartisan support include further limitations on the home mortgage interest deduction, elimination of AMT, elimination of miscellaneous itemized deductions, reduction of favored treatment of capital gains, repeal of deductions for state taxes, and allowance of charitable contributions as a deduction only to the extent the contribution amount exceeds 2% of AGI. If enacted, any of these changes would likely begin in 2013 and, in some cases, would be phased in.

Planning for rate changes

Planning around rate changes is a two-step process. First, you have

Top marginal tax rates

There is a popular notion that tax brackets are historically low so we must assume that rates will go up.

In truth, historic rates have been changing less in recent years. In fact, in the last 15 years, the top marginal rate has changed only 4.6%. Compare the top rate today of 35% to the top rate in 1963 of 91%. Even as recently as 1986, the top rate was 50%. Assuming a constant overall rate is not just the only assumption you can make, it is a reasonable one.

Tax Year(s)	Top Marginal Rate (%)	Tax Year(s)	Top Marginal Rate (%)
1913-15	7	1950	84.36
1916	15	1951	91
1917	67	1952-53	92
1918	77	1954-63	91
1919-21	73	1964	77
1922	58	1965-67	70
1923	43.5	1968	75.25
1924	46	1969	77
1925-28	25	1970	71.75
1929	24	1971-80	70
1930-31	25	1981	69.125
1932-35	63	1982-86	50
1936-39	79	1987	38.5
1940	81.1	1988-90	28
1941	81	1991-92	31
1942-43	88	1993-2000	39.6
1944-45	94	2001	39.1
1946-47	86.45	2002	38.6
1948-49	82.13	2003-12	35

EXAMPLE 9-8: George is ready to sell his business and retire. He's been given two offers:

- \$900,000 cash; or
- \$1 million on installments, with interest only until 2013. Beginning in 2013, he would receive principal payments of \$200,000 per year for five years, 2013 through 2017.

George has zero basis in the business. The entire sale is capital gain. He is single and has \$200,000 of other income every year.

The net result is that George will have more net after tax by selling the business for \$900,000 cash than for \$1 million. By selling in 2011 he enjoys a 15% capital gains rate and is not subject to the HI tax.

By reporting the income in 2013 through 2017 he is subject to a combined 23.8% rate. (Of course, George could accept the \$1 million offer and elect out of installment reporting, but he would need to have the cash available to pay the tax).

Tax planning, *continued from page 10*

Key provisions extended	
Extended through 2011	Extended through 2012
<ul style="list-style-type: none"> ● Credit for nonbusiness energy property ● \$250 deduction for educator expenses ● Deduction for sales taxes in lieu ● Above-the-line deduction for qualified tuition expenses ● Deduction for mortgage insurance premiums ● IRA to charity exclusion 	<ul style="list-style-type: none"> ● Qualified dividends ● Personal exemption and itemized deduction phaseouts eliminated ● American Opportunity Tax Credit ● Expanded Child Tax Credit ● Third-child EITC ● Adoption Credit and exclusion for employer-provided adoption assistance ● Expanded Child and Dependent Care Credit

to believe the lower rates will not be extended. Second, you have to ignore many of the proposals being tossed around Washington to make some substantial changes to the Code (e.g., eliminating or limiting the home mortgage interest deduction). Third, you must run counter to the standard strategy of deferring income and

accelerating deductions (instead, you would want to increase taxable income in lower-rate years).

For 2011, you would generally want to use the default strategy of minimizing taxable income and waiting until 2012, when we should have a clearer picture to consider the opposite strategy. However, consider the example on

Page 10 in which a choice must be made in 2011. **§**

- ¹ Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16)
- ² Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27)
- ³ Tax Relief, Unemployment Insurance Reauthorization and Job Relief Act of 2010 (P.L. 111-312)

News Briefs

Long-term care expenses deductible

— Services provided by caregivers to an elderly woman with dementia were for maintenance and personal care that was required because of her diminished capacity, and were provided as part of a plan of care prescribed by a licensed health care practitioner.¹ Therefore, they were qualified long-term care services and were deductible as medical expenses. However, the cost of supplies paid to the caregivers could not be substantiated or tied to medical care and were not deductible.

¹ *Estate of Lilian Baral v. Comm.*, (2011) 137 TC 1

Taxpayer was not a day trader — An individual was not allowed to deduct losses from his sales of securities above the \$3,000 limit for investors because he was not a trader in securities.² The taxpayer was an investor rather than a dealer or trader in securities, so market-to-market election did not apply. As a result, he was subject to the \$3,000 limitation on capital losses and could not carry forward the resulting NOL.

Although the individual made a substantial dollar value of sales (\$20 million), he only made 469 trades over three years. The Court said that for a

taxpayer to be considered a trader, (1) the activity must be substantial (defined as frequent, regular, and continuous); and (2) he must seek to catch the swings in the daily market movements and to profit from these short-term changes rather than to profit from the long-term holding of investments. In addition, they noted that the majority of the stocks that he purchased and sold were held for over 30 days — which tends to indicate investment, not trading activity.

² *Richard Kay, Jr. v. Comm.*, TCM 2011-159

Tax Court determines lower value than IRS for LLC

— The value of a decedent's 15% ownership interest in an LLC was determined by using the discounted cash flow method and was discounted for lack of control and marketability.³ The publishing company produced over 41 newspapers and other publications. The estate return originally valued the LLC interest at \$34.9 million. However, the IRS later determined the value to be \$49.5 million, and the Tax Court disagreed. The methods and calculations used by the IRS were partially followed, but a 23% minority interest discount and a 31% lack of marketability discount were allowed. This resulted in the lowest

valuation of \$32.6 million, which was \$2.3 million lower than the estate's expert originally calculated.

³ *Estate of Louise Paxton Gallagher v. Comm.*, TCM 2011-148

Taxpayer's disclaimer of funds from retirement plans is qualified

— A spouse's disclaimer of the balance in various retirement accounts satisfies the requirements for making a qualified disclaimer.⁴ The accounts consisted of traditional IRA and 403(b) retirement accounts at two brokerage firms. The decedent's daughter received a court order granting her petition to disclaim the spouse's interests in the retirement accounts and the disclaimer trust established by the will. The daughter, as administrator, then disclaimed the spouse's interests. Based on the facts submitted and the representations made, the spouse's disclaimer of the balance of retirement accounts satisfies the requirements for making a qualified disclaimer, and the spouse does not accept any portion of the decedent's retirement accounts for the purpose of the gift tax regulations.

⁴ PLR 201125009

Form 8939 due November 15, 2011

ESTATES: The IRS releases more information, but no form yet.

By Renée Rodda, J.D.

Associate Editor

The IRS has issued guidance for executors of estates who are electing out of the estate tax and opting to have the no estate tax and carryover basis rules apply for 2010 decedents.¹ The guidance confirms that the election will be made using Form 8939, Allocation of Increase in Basis for Property Acquired from a Decedent, and establishes a due date of November 15, 2011.

Although the IRS has issued guidance on the requirements for the 8939, they have not released the final version of the form. They stated that they expect to issue Form 8939 and the related instructions early this fall.²

Also missing from these new releases is information on the 2010 Form 706, which is due September 19, 2011, for decedents dying prior to December 18, 2010. As this newsletter went to press, the final 706 had not been released.

New guidance

In addition to verifying that the 8939 will be used to elect out of the estate tax, and establishing a November 15 due date for the 8939, Notice 2011-66 provides this guidance:

- Form 8939 may be amended or revoked, but only on a subsequent 8939 filed on or before November 15, 2011. Once the November 15 deadline passes, the 8939 election becomes irrevocable. An amended 8939 may only be filed after the

due date to allocate additional basis increases, or to report additionally discovered property, but not to reduce a basis allocation or revoke the election.

- An executor may not file a Form 706 and a conditional Form 8939 that would take effect only if an estate tax audit results in an increase in the gross estate above the \$5 million exclusion amount.
- If multiple Forms 8939, or Forms 8939 and Form 706, are filed for the same estate by different individuals, the IRS will issue a letter to all individuals filing those forms. Those individuals will have 90 days from the date of the IRS letter to collectively sign and file either a restated Form 706 or Form 8939. If those individuals do not respond to the IRS letter, the IRS will examine the file to see if the estate executor filed a timely 8939 or 706. If not, the IRS will decide whether the 8939 election applies, or if the estate should opt for the default estate tax provisions.
- If an executor has not been appointed, any person inheriting property from the estate may file a Form 8939 for their inherited property. If the IRS receives multiple 8939s allocating basis in excess of the basis increase available to the estate, the IRS will notify all individuals who filed an 8939. Those individuals will have 90 days from the date of the IRS letter to collectively sign and file a restated Form 8939. If not, the IRS will allocate the basis additions in the manner they see fit.

The guidance also clarifies the due dates for gift tax returns reporting generation skipping transfers (GSTs). For GSTs made in 2010, review Notice 2011-66 and Revenue Procedure

2011-41 to ensure that all filing deadlines are properly met.

Note: The guidance makes it clear that where the executor has not made a valid election on Form 8939, and the beneficiaries are in disagreement, the IRS will settle the dispute. However, these provisions apply to estates in excess of \$5 million. Hopefully, with an estate of that size, an executor will be appointed and he or she will file a timely Form 8939.

2010 deaths

The 2010 Tax Relief Act (the Act) reinstated the estate tax for deaths on or after January 1, 2010, and before January 1, 2013.³ Under the new law, the maximum estate tax rate is 35%, with an exclusion amount of \$5 million.⁴

For decedents dying in 2010, however, the executor may elect to use the \$5 million exemption and 35% rate, or the no estate tax and carryover basis provisions under EGTRRA (P.L. 107-16).⁵

For more information on these rules, see “2010 Tax Relief Act – estate tax provisions” in the February 2011 issue of *Spidell’s Elder Client Planner*.[®]

¹ IRS Notice 2011-66, Rev. Proc. 2011-41

² IR-2011-83

³ Act §301; IRC §2056A

⁴ Act §§302, 303; IRC §2010

⁵ Act §301; IRC §§1014, 1022, 2010

Learn how to file Form 8939 at Spidell’s 2011 2-Day Estate and Trust Seminar. See the ad in this issue, or visit www.caltax.com for more information.

User Name and Password to Research Back Issues at the Elder Client Planner Web Site

Don’t forget! *Spidell’s Elder Client Planner*™ newsletter can be found on the Web at www.elderclientplanner.com. As a subscriber, you get free access to our searchable database of previous articles, extra examples and links, special reports, and more.

Your username is **earned** and your password is **income**.

Spidell's 2011 2-Day Estate and Trust Seminar

Get 16 hours of CPE for one low price: \$595*

Five locations: Las Vegas • Reno • Foster City • Orange • Burbank

Day 1 (8:30 a.m. – 12:05 p.m.)



Estate Taxes for 2010-2012

Debra Petersen, CPA, J.D., LL.M.

- Understand how the new estate tax bill works
- See how spouses share the estate tax exemption
- Find out how the new law affects U.S. nonresidents
- Learn about basis issues and the 2010 tax changes

Day 1 (1:05 p.m. – 4:45 p.m.) and Day 2 (8:30 a.m. – 12:05 p.m.)



Form 1041 and Form 541 Trust Tax Preparation

Robert Manton, CPA

- Get a hands-on course in preparing trust returns
- Compare trust versus estate tax elections
- Go through case studies that show how federal and California trust laws work
- Prepare correct returns when the trust has rentals and depreciation
- Walk through the preparation of a final return

Day 2 (1:05 p.m. – 4:45 p.m.)



Trust Accounting – Why and How

Donita Joseph, CPA

- Understand the differences between trust and book accounting
- See why trust accounting is so critical
- Learn to classify principal versus income
- Properly account for annuities, IRAs, administration expenses, and more

SPIDELL SPEAKERS:

Debra Petersen, CPA

Debra, founder of Petersen Law, specializes in tax and estate planning and is an adjunct professor with the University of Pacific's McGeorge School of Law. Debra worked for the California Franchise Tax Board for 18 years, and prior to that she worked for Arthur Andersen & Co. and Coopers & Lybrand. Debra will be speaking at Spidell's 2011 2-Day Estate and Trust Seminar.

Robert Manton, CPA

Robert is a partner with the firm McNally & Manton, CPAs Inc., serving the Orange County and Los Angeles areas for over 35 years. Estate and trust taxation has been his niche and specialty for over 20 years. He teaches estate and trust seminars, including in-house programs for large firms. He is known for his to-the-point speaking style and his ability to provide practical solutions to everyday situations. Robert will be speaking at Spidell's 2011 2-Day Estate and Trust Seminar.

Donita Joseph, CPA, MBT

Donita is a partner with Windes & McClaughry Accountancy Corp. in Long Beach, California. She is the partner in charge of the firm's Estate & Trust Group, and she is currently the Chair of the Committee on Estate Planning for the California Society of Certified Public Accountants (CalCPA).

Spidell Publishing: Experienced ... Trusted ... Connected!

Spidell Publishing, Inc.®

Spidell's 2011 2-Day Estate and Trust Seminar

Get 16 hours of CPE for one low price! (\$595*)

At this power-packed 2-day seminar you'll:

- See how to compute basis for 2010 deaths
- Find out how 2011 estate tax will work
- Compare various types of trusts
- Learn about estate planning without trusts
- Much, much more...

All Spidell seminars include:

- FREE parking, continental breakfast, lunch, and soda break
- Spidell's top-rated speakers
- A profit-generating manual
- 100% money back guarantee
- Personal and professional staff that cater to your CPE needs

This seminar is designed to meet the requirements for 14 federal and 2 California hours of continuing education for tax preparers; 16 hours for CPAs, PAs, CFPs, and EAs; and 13.5 hours for attorneys.

This presentation is designed to meet the requirements for the specified number of hours of continuing education. This presentation has been designed to meet the requirements of the Office of Professional Responsibility of the Internal Revenue Service; including Code 31 of Federal Regulations 10.6(g); the California State Board of Accountancy; the California Bar Association; the Certified Financial Planner Board of Standards; and the California Tax Education Council. This does not constitute an endorsement by these groups. The state boards of accountancy have final authority on the acceptance of individual courses for CPE credit. For more information regarding administrative policies such as complaints or refunds, contact Spidell Publishing at 714-776-7850. There are no prerequisites required. A listing of additional requirements to renew tax preparer registration may be obtained by contacting CTEC at P.O. Box 2890, Sacramento, CA 95812-2890, or by phone at 877-850-2832, or on the internet at www.CTEC.org.



Spidell Publishing, Inc. is registered with the National Association of State Boards of Accountancy (NASBA), as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN, 37219-2417. Web Site: www.nasba.org. This seminar is designed to meet the requirements for 16 hours of continuing education for the California Board of Accountancy. Basic Level. Field of Study: Taxes. Delivery method: Group Live. For more information regarding administrative policies, such as complaints or refunds, contact Spidell Publishing at (714) 776-7850. There are no prerequisites or advanced preparation required.

Special room rates for Las Vegas and Reno

A limited number of rooms are reserved for Spidell attendees. Attendees must mention group codes below.

Las Vegas Seminar: 10/20/11 and 10/21/11
 Harrah's Las Vegas Casino & Hotel
 Hotel Guestroom rate on 10/19 and 10/20 — \$65.00
 Hotel Guestroom rate on 10/21 — \$99.00
 Cut-off date to make a reservation is 9/19/11
 Room reservations: (800) 214-9110 — Reference ID Code: **SHSE11**

Reno Seminar: 10/24/11 and 10/25/11
 Silver Legacy Resort Casino
 Hotel Guestroom rate on 10/23, 10/24, and 10/25 — \$40.00 per room per night
 Cut-off date to make a reservation is 9/23/11
 Room reservations: (800) 687-8733 — Reference ID Code: **SPIDELL**

2011 2-Day Estate and Trust Seminar Schedule

Days	Dates	City	Location	Seminar Hours
Thursday and Friday	October 20 - 21	Las Vegas	Harrah's Las Vegas Casino & Hotel	8:30 a.m. - 5:00 p.m.
Monday and Tuesday	October 24 - 25	Reno	Silver Legacy Resort	8:30 a.m. - 5:00 p.m.
Thursday and Friday	October 27 - 28	Foster City	Foster City Crowne Plaza	8:30 a.m. - 4:45 p.m.
Tuesday and Wednesday	November 1 - 2	Orange	DoubleTree Hotel Orange	8:30 a.m. - 4:45 p.m.
Thursday and Friday	November 3 - 4	Burbank	Pickwick Gardens	8:30 a.m. - 4:45 p.m.

Source Code: ECP911

Spidell's 2011 2-Day Estate and Trust Seminar \$595*

Call for group discounts of 5 or more.

Location: _____ Date: _____

- Payment enclosed. Check # _____
- Charge my: MC Visa AmEx Discover

Name _____

Company Name _____

Address _____

City/State/ZIP _____

Phone _____ Fax _____

E-mail _____

Card Number _____

Billing ZIP _____ Exp Date _____ Security Code _____

Signature _____

*Additional \$40 fee for registration at the door. Please use a separate form for each person registering. \$100 cancellation fee if you cancel fewer than seven (7) days before the seminar. Request refunds by November 30, 2011.

Seminar includes continental breakfast, lunch, and parking.

We need your professional license/registration number(s) for continuing education credit.	
CPA No.	PA No.
EA No.	CTEC No.
CA Bar No.	CFP No.

Order by fax: (714) 776-9906 or phone: (714) 776-7850 Order by mail: P.O. Box 61044 • Anaheim, CA 92803-6144 Order online: www.caltax.com



Take one day this fall and be armed with everything you need to file 2011 returns – easily and correctly

The California Legislature is going crazy!

- Conformity going, going, gone!
- Massive business tax changes
- New nonresident income tax grabbers
- New payroll, property, and sales taxes

Sort out federal laws that start this year.

- Health care update
- What extenders are still there for 2011
- Medicare and self-employed health insurance change
- Big 1099 changes: basis reporting, other changes

Here are some of the topics we'll discuss at Spidell's Fall Federal and California Tax Update

Significant federal issues

- Understand new basis reporting rules
- See who needs a 1099 – and who doesn't
- Find out which 2010 extenders will still be there for 2011
- Uncover benefits and pitfalls of health care provisions
- Learn how to handle revenge 1099s
- Get even more info on foreclosures and COD
- See what depreciation benefits are still there
- See how Roth conversions work for 2011 and later
- Look at installment sale reporting for businesses (including your practice)
- Sort through filing status for nontraditional families (including roommates and RDPs)

Critical California issues

- See what happens if last year's conformity bill goes away
- Learn when to use the new individual use tax tables
- Find out how new child care credit rules work
- Uncover the FTB's new rules for sponsorship income
- Look for new withholding from rental income
- See who must make payments electronically
- Avoid a surprise lease increase due to a property tax increase

- Understand new rules for multi-state businesses
- Compare federal and state taxation of RDPs and same-sex married couples
- Don't start tax season without Spidell's Conformity Guide

Vital practice issues

- Learn about important Circular 230 changes
- See when PTIN renewal will happen
- Take home a chart of education requirements for CPAs, EAs, and tax preparers
- See who needs to take the federal exam – and when

Pesky administrative issues

- Prepare for IRS visits to your practice
- Protect your client in a QuickBooks® audit
- Find out about COD audits
- Uncover California and federal audit issues

New estate tax law

- Understand how to transfer estate tax exemption between spouses
- Learn about new estate tax rules
- Tell your clients about gift tax and changing title on property



Spidell Publishing, Inc. is registered with the National Association of State Boards of Accountancy (NASBA), as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN, 37219-2417. Web Site: www.nasba.org. This seminar is designed to meet the requirements for 8 hours of continuing education for the California Board of Accountancy. Basic Level. Field of Study: Taxes. Delivery method: Group Live. For more information regarding administrative policies, such as complaints or refunds, contact Spidell Publishing at (714) 776-7850. There are no prerequisites or advanced preparation required.

This seminar is designed to meet the requirements for 4 hours of California and 4 hours of federal continuing education for tax preparers; 8 hours for CPAs, PAs, EAs, and CFPs; and 6.75 hours for attorneys.

This presentation is designed to meet the requirements for the specified number of hours of continuing education. This presentation has been designed to meet the requirements of the Office of Professional Responsibility of the Internal Revenue Service; including Code 31 of Federal Regulations 10.6(g); the California State Board of Accountancy; the California Bar Association; the Certified Financial Planner Board of Standards; and the California Tax Education Council. This does not constitute an endorsement by these groups. The state boards of accountancy have final authority on the acceptance of individual courses for CPE credit. For more information regarding administrative policies such as complaints or refunds, contact Spidell Publishing at 714-776-7850. There are no prerequisites required. A listing of additional requirements to renew tax preparer registration may be obtained by contacting CTEC at P.O. Box 2890, Sacramento, CA 95812-2890, or by phone at 877-850-2832, or on the internet at www.CTEC.org.

The 2011/2012 Fall Federal and California Tax Update Seminar pricing is as follows:

Before November 1: \$209

After November 1: \$224

It only takes one day!

Your full-day seminar includes: Free parking, continental breakfast, lunch, coffee all day, and afternoon soda break.

Register by
**November 1 and
SAVE \$15**

Spidell's 2011/2012 Fall Federal and California Tax Update Seminar

8:30 a.m. to 4:45 p.m.

Day	Date	City	Venue
Monday	Nov. 14	Modesto	DoubleTree Modesto
Tuesday	Nov. 15	Concord	Hilton Concord
Tuesday	Nov. 15	Bakersfield	DoubleTree Bakersfield
Wednesday	Nov. 16	San Rafael	Embassy Suites San Rafael
Wednesday	Nov. 16	San Luis Obispo	Alex Madonna Expo Center
Thursday	Nov. 17	Oxnard	Residence Inn River Ridge
Friday	Nov. 18	Escondido	California Center for the Arts
Friday	Nov. 18	Burbank	Pickwick Gardens
Monday	Nov. 21	City of Industry	Pacific Palms Conference Center
Monday	Nov. 28	Sacramento	DoubleTree Sacramento <i>New location</i>
Tuesday	Nov. 29	So. San Francisco	So. San Francisco Conference Center
Thursday	Dec. 1	Fresno	Radisson Fresno
Monday	Dec. 5	Monterey	Embassy Suites Monterey Bay
Monday	Dec. 5	Cathedral City	Doral Desert Princess Resort
Tuesday	Dec. 6	Rohnert Park	DoubleTree Sonoma
Wednesday	Dec. 7	Ontario	DoubleTree Ontario <i>New location</i>
Thursday	Dec. 8	San Diego	Scottish Rite Event Center
Monday	Dec. 12	Torrance	Torrance Marriott
Monday	Dec. 12	Santa Barbara	Fess Parker's DoubleTree Resort
Tuesday	Dec. 13	Culver City	DoubleTree L.A. Westside - <i>Formerly Radisson</i>
Wednesday	Dec. 14	Woodland Hills	Warner Center Marriott
Thursday	Dec. 15	Anaheim	Anaheim Marriott
Friday	Dec. 16	San Jose	DoubleTree San Jose

Day	Date	City	Venue
Monday	Dec. 19	Oakland	Hilton Oakland Airport
Monday	Dec. 19	Burbank	Pickwick Gardens
Tuesday	Jan. 3	Costa Mesa	Hilton Costa Mesa
Wednesday	Jan. 4	Stockton	Hilton Stockton
Thursday	Jan. 5	Berkeley	DoubleTree Berkeley Marina
Friday	Jan. 6	Valencia	Hyatt Regency Valencia
Friday	Jan. 6	Milpitas	Embassy Suites Milpitas
Monday	Jan. 9	Del Mar	Hilton Del Mar
Monday	Jan. 9	Sacramento	DoubleTree Sacramento <i>New location</i>
Tuesday	Jan. 10	So. San Francisco	So. San Francisco Conference Center
Tuesday	Jan. 10	Pasadena	Hilton Pasadena
Wednesday	Jan. 11	Culver City	DoubleTree L.A. Westside - <i>Formerly Radisson</i>
Thursday	Jan. 12	Santa Rosa	Flamingo Conference Resort and Spa
Friday	Jan. 13	Westlake Village	Hyatt Westlake Plaza
Friday	Jan. 13	Long Beach	Long Beach Marriott
Monday	Jan. 16	San Ramon	San Ramon Marriott
Monday	Jan. 16	Sacramento	Radisson Sacramento <i>New location</i>
Tuesday	Jan. 17	Anaheim	Hilton Anaheim
Wednesday	Jan. 18	Woodland Hills	Warner Center Marriott
Thursday	Jan. 19	Burbank	Pickwick Gardens
Friday	Jan. 20	San Jose	DoubleTree San Jose
Monday	Jan. 23	San Diego	Scottish Rite Event Center
Tuesday	Jan. 24	Riverside	Riverside Convention Center



2011/2012 Fall Federal and California Tax Update Seminar

SOURCE CODE: ECP911

2011/2012 Fall Federal and California Tax Update \$224 \$209*
8:30 a.m. - 4:45 p.m. (Includes lunch)

Call for group discounts of 11 or more. Cannot combine with Early Bird Special.

Location:

Date:

Payment enclosed. Check # _____

Charge my: MC Visa AmEx Discover

Card Number _____

Billing Zip _____

Exp Date _____

Security Code _____

Name _____

Company Name _____

Address _____

City/State/ZIP _____

Phone _____

Fax _____

E-mail _____

(Tell us where to e-mail your follow up letter)

Signature _____
*Offer expires November 1, 2011. Additional \$20 fee for registration at the door. Please use a separate form for each person registering. \$50 cancellation fee if you cancel fewer than seven (7) days before the seminar. Request refunds by January 31, 2012. Seminar includes continental breakfast, lunch, and parking.

We need your professional license/registration number(s) for continuing education credit.

CPA No.	PA No.
EA No.	CTEC No.
CA Bar No.	CFP No.

Order by fax (714) 776-9906 or phone (714) 776-7850

Order by mail: P.O. Box 61044 • Anaheim, CA 92803-6144

Order online: caltax.com



Get the most practical CPE without leaving your office.

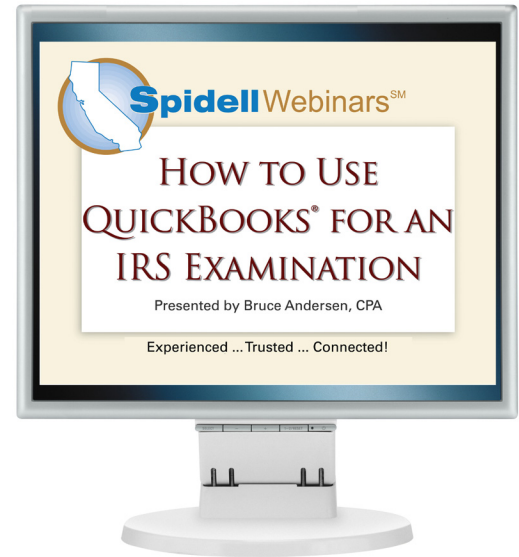
How to Use QuickBooks® for an IRS Examination

Webinar Presenter: *Bruce Andersen, CPA*

Tuesday, September 27 — Noon to 2:00 p.m. Pacific Time

With this webinar you will:

- Receive a complete “how-to” manual for preparing a QuickBooks® file for examination
- Unlock the reporting toolset within QuickBooks® to use when the IRS asks for it
- Learn the steps to export schedules to Excel
- Clean up the headers of QuickBooks® Reports
- Learn how to prepare report schedules asked for by the IRS
- Learn about QuickBooks® audit tools
- Review strategies for managing the IRS examination
- Use screen shots to help you get the results you need
- Receive step-by-step instruction on using QuickBooks® in an IRS examination



About the presenter:

Bruce has been a CPA in California since 1983 and is a member of CalCPAs. His firm specializes in personal and business income tax returns, small business accounting, and QuickBooks® training and consulting. Bruce has a Master of Science in taxation from Golden Gate University as well as an MBA from California State University Bakersfield. Bruce is an Advanced Certified QuickBooks® Pro Advisor.

\$79 webinar features:

- Unlimited number of people may watch and listen on one computer and print course outline
- Includes 2 hours of CPE for one attendee (CPAs only)
- Reference manual and PDF of PowerPoint slides

You must have computer speakers to listen to this webinar

— Add CPE for only \$19 per additional attendee —



Spidell Publishing, Inc. is registered with the National Association of State Boards of Accountancy (NASBA), as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN, 37219-2417. Web Site: www.nasba.org. This webinar is designed to meet the requirements for 2 hours of continuing education for the California Board of Accountancy. Basic Level. Field of Study: Technical. Delivery method: Group Internet-Based. For more information regarding administrative policies, such as complaints or refunds, contact Spidell Publishing at (714) 776-7850. There are no prerequisites or advanced preparation required.



P.O. Box 61044 • Anaheim, CA 92803-6144 • E-mail: webinars@spidell.com
Phone: (714) 776-7850 • Fax: (714) 776-9906 • Web site: www.caltax.com



How to Use QuickBooks[®] for an IRS Examination

Webinar Presenter: *Bruce Andersen, CPA*

Tuesday, September 27 — Noon to 2:00 p.m. Pacific Time

\$79 webinar will include:

- Unlimited number of people may watch and listen on one computer and print course outline
 - Reference manual and PDF of PowerPoint slides
 - 2 hours of CPE for one attendee (CPAs only)
- You must have computer speakers to listen to this webinar.**

Additional CPE Cost: \$19 per attendee

REGISTRATION INSTRUCTIONS:

1. Be sure to provide the name, license/registration number, and e-mail address for all CPE recipients.
2. Approximately one week before the webinar, you will receive an e-mail that contains a link "Want to prepare your system ahead of time?" It is important to click on the link and follow the instructions, as it will ensure system compatibility. (Additional attendee CPE recipients will not get this e-mail.)
3. We will e-mail the webinar specifics to the primary registrant by 5 p.m. on September 26. The e-mail will include your link to join the webinar and the course materials.
4. Additional CPE attendees will be sent an e-mail with instructions on how to receive their CPE credit after the webinar. These attendees must take a short exam to get credit.

SOURCE CODE: ECP911

Please register me (us) for the following **Spidell Webinar** and **CPE Certification(s)**:

How to Use QuickBooks[®] for an IRS Examination . . . \$79 **CPE @ \$19 per additional attendee QTY: _____**
This course qualifies for 2 hours of CPE for one attendee. (CPAs only)

TOTAL \$ **Check No.** **Charge my:**

Name:		<input type="checkbox"/> Discover
Company Name:		<input type="checkbox"/> AmEx
Address:		<input type="checkbox"/> MC
City/State/ZIP:		<input type="checkbox"/> Visa
Phone:	Fax:	
E-mail:		
Card Number:		
Expiration:	Billing ZIP:	Security Code:
Signature:		

We need your professional license number for continuing education credit.
CPA/PA Number:

For faster service, register by fax:
(714) 776-9906.

Credit card required for e-mail, fax, and phone registrations.

Or, go to our Web site and register: www.caltax.com.

*No refunds will be given after noon on the day before the webinar. (CPE available for \$19 per additional attendee)

Additional Attendee CPE Information:

Name	E-mail address	License/Registration number
Register by fax (714) 776-9906 or phone (714) 776-7850	Register by mail P.O. Box 61044 • Anaheim, CA • 92803-6144	Register online www.caltax.com