

IRS Practice & Procedure Update

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Disaster Relief

- Section 7508A permits postponement of specified acts for taxpayers affected by Presidentially declared disasters
 - “Permits” – IRS must publish a Notice or other guidance providing relief
 - Statute provides for postponements of up to 1 year – prior to 9/11/01 postponements of up to 120 days were permitted
 - Specified Acts
 - Filing of elections
 - Filing of returns and claims for refund
 - Tax court filings
 - Payments of tax
 - Expiration of statutes of limitations

Disaster Relief (cont'd)

- Affected Taxpayers include:
 - Any individual whose principal residence is located in a covered disaster area;
 - Any business entity whose principal place of business is located in a covered area;
 - Any individual or business not located in a covered disaster area but whose records necessary to meet a deadline are maintained in a covered area;
 - NOTE: NOT owners whose pass-through entities are affected taxpayers
- Mark affected returns in red with applicable disaster designation – i.e., HURRICANE IVAN

Collection Issues

- The IRS' pendulum is swinging again
- Revenue Officers are focused on:
 - Filings and
 - Payments
- When representing clients, consider:
 - Collection Due Process
 - Installment Agreements
 - Offers In Compromise

Collection Issues (cont'd)

- Collection Due Process
 - Taxpayer has a right to a notice and a hearing at Appeals
 - Potential Appeals Issues:
 - Appropriateness of collection action
 - Spousal defenses
 - Collection alternatives
- Installment Agreements – section 6159
 - Allows taxpayer to pay tax due in installment payments (usually monthly)
 - Consider guaranteed installment agreements for amounts of \$10,000 or less
 - Compliant taxpayer
 - Cannot pay their tax due in full
 - Agrees to pay within 3 years

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Collection Issues (cont'd)

- Offers In Compromise – section 7122
 - IRS may compromise if there is:
 - Doubt as to Collectability, or
 - Doubt as to Liability
 - Offers must be processable – Form 656
 - Fee -- \$150

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Tax Shelter Regulations

- Taxpayer must disclose “reportable transactions”
- What are Reportable Transactions?
 - Listed Transactions – same as or “substantially similar” to one the IRS has determined to be a tax avoidance transaction and identified in published guidance
 - Confidential Transactions – offered under conditions of confidentiality for which taxpayer has paid a minimum fee
 - Minimum fee generally \$250,000 for corporations and \$50,000 for all other taxpayers

Tax Shelter Regulations (cont'd)

- Transactions with Contractual Protection for Tax Advisor Fees
 - Taxpayer has a right to a refund of fees if part of the intended tax consequences are not sustained, or
 - Contingent fee based on realizing tax benefits
- Certain loss transactions
 - Corps: \$10 million in one year/\$20 million in any combination of years
 - Others: \$2 million/\$4 million
 - Exceptions in Rev. Proc. 2003-24

Tax Shelter Regulations (cont'd)

- Certain transactions with significant book-tax differences
 - \$10 million book-tax difference in a single year
 - » No netting
 - » Look to GAAP income for book
 - Applies only to SEC companies and companies with \$250 million of gross assets or more
 - Exceptions in Rev. Proc. 2003-25
- Certain transactions involving brief asset holding periods
 - Tax credit of more than \$250,000 generated
 - Asset held for 45 days or less
- Disclose on Form 8886
- Listing requirement imposed on advisors applies to most reportable transactions

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The American Job Creation Act of 2004 What Changed ??? Disclosure Penalties

- Taxpayer Penalties for Failing to Disclose a Reportable Transaction
 - On Individuals
 - \$100,000 (listed transactions)/\$10,000 (all others)
 - Other Taxpayers
 - \$200,000 (listed transactions)/\$50,000 (all others)
 - Even if the Taxpayer ultimately prevails on the merits
 - Reasonable cause
 - Does not apply for listed transactions
 - For others, Commissioner's authority limited, and subject to Congressional reporting
 - Effective Date
 - Returns due after enactment

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What Changed ??? Accuracy Related Penalty

- New Section 6662A
 - Imposed on understatements attributable to “reportable avoidance transactions”
 - Listed and reportable transactions with a significant tax avoidance purpose
 - Penalty is 20% if transaction adequately disclosed
 - 30% if transaction NOT adequately disclosed
 - Calculated based on “understatement” calculated per the highest applicable tax rates, without regard to actual return
 - 20% penalty can be waived if Taxpayer acted in good faith and believed more likely than not
 - Reliance on tax adviser only if not a material adviser to the transaction
 - Effective Date
 - Tax years ending after enactment

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What Changed ??? Statutes of Limitations

- Retroactively effective for tax years for which statute of limitations still open as of date of enactment
- Statute of Limitations extended when a taxpayer fails to disclose a listed transaction
- Extended solely with regard to the listed transaction
- Until one year after the transaction is disclosed to the IRS

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What Changed ???

Material Advisors

- Material Advisors required to file information returns
 - Information Return to be prescribed by the Secretary
- Material Advisor defined as any person who provides material aid, assistance or advice regarding a reportable transaction if such person receives fees greater than \$250,000 (\$50,000 from individual taxpayers)
- Supplements “listing” obligation
- Penalty for failure to file:
 - \$50,000 for most;
 - Greater of \$200,000 or 50% of gross fee for listed transactions
 - Intentional disregard and Limited Waivers Apply

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Section 9100 Relief

- Commissioner may grant a reasonable extension of time for making an election provided:
 - Time for filing is not expressly prescribed by statute
 - Request for extension is filed within a reasonable amount of time; and
 - Granting the extension will not jeopardize the interests of the government
- Automatic 9100 relief
 - 12 month extension for certain regulatory elections
 - 6 month extension for most elections – but rarely applies
 - Rev. Proc. 2003-33 – section 338 elections
 - Rev. Proc. 2002-59 – check the box elections

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Section 9100 Relief (cont'd)

- Absent Automatic Relief
 - Show the taxpayer has acted reasonably and in good faith
 - Request before IRS discovers failure to make the election;
 - Intervening events beyond the taxpayer's control;
 - Taxpayer was unaware of the necessity for the election;
 - Reasonable reliance on written advice of the IRS; or
 - Reasonably relied on a qualified tax professional who failed to make, or advise the taxpayer to make, the election
 - Not granted if
 - Taxpayer chose not to make the election, or
 - Taxpayer is using hindsight