

## TAX SECTION E-ALERT

May 30, 2008

### TAX NEWS YOU CAN USE –

#### The Rebate Two-Step

For married clients on extension who don't qualify for a stimulus rebate on a joint return, the IRS has given us a two-step process that may help buy that HDTV (and give you an extra return prep fee). An IRS [FAQ](#) asks if a married taxpayer who amends to file jointly after originally filing separately would have to return a rebate that would not have been available on the joint return. The IRS response was simply, "No."

In the FAQ, one spouse had a SSAN, but the other had an ITIN, and the rebate legislation is clear in stating that both spouses have to have social security numbers on a joint return to get rebates. This strategy *might* also apply where one spouse files separately to avoid having the rebate offset by the other spouse's back taxes, child support, or student loan payments. Although we don't have a FAQ for these less sympathetic cases, the IRS has had a tough time getting the rebates out, and may just not want to deal with returned rebates. There's a transaction cost for the taxpayer (your fee), but you've already collected and entered the information for the original return. Note that this strategy won't work if your client already filed jointly because you can't amend a return to change to married filing separately (let alone changing back to jointly again). The IRS released the FAQs on April 14, so many married couples who didn't have two social security numbers filed jointly and won't get a rebate this year, but they may be able to apply for it on their 2008 return using this two-step process. That's the rebate two-step — and-a-one, and-a-two...

#### Stimulus Payment Withdrawals from IRAs Are Tax and Penalty Free

[IR-2008-68](#) announced that economic stimulus payments directly deposited into IRAs and other tax-favored accounts may be withdrawn tax-free and penalty-free.

#### New Expatriation Tax Rules Passed by Congress

[The Heroes Earnings Assistance and Relief Tax Act of 2008, which has passed the House and Senate prior to Memorial Day, and is expected to be signed by the President in the next week,](#) contains rules for taxing individuals who expatriate, alters the tax treatment of foreign subsidiaries of U.S. companies for employment tax purposes, and increases penalties for failure to file returns.

The act imposes a mark-to-market regime for taxing gain of U.S. citizens and long-term U.S. permanent residents who expatriate. All property of a covered expatriate would be treated as sold on the day before the expatriation at fair market value. Gains in excess of \$600,000, adjusted for inflation after 2008, would be includible in income and taxed. Also, a gift tax is imposed on U.S. citizens or residents who receive on or after the date of enactment qualifying gifts or bequests from an expatriated individual (or an individual who immediately before death was a covered expatriate). There is also a 30 percent withholding tax on qualifying deferred compensation paid to a covered expatriate.

Many of our [comments to Congress](#) and [in prior years](#) were reflected in the final legislation.

## **AMT Relief for High-Income Individuals**

Recently released IRS statistics have drawn attention to a provision in the 2004 Jobs Act that has led to a doubling of the number of high-income individuals paying no tax. (10,000 such returns for 2005, compared with 5,000 for 2004.) The provision (Code § 59) removed the prior 90% limitation on the use of foreign tax credits against the alternative minimum tax. Some of these high-income individuals appear to be investing in flow-through entities, e.g., hedge funds, with substantial foreign tax credits.

## **Foreign Bank and Financial Account Information Report Deadline is 6/30, and IRS is Enforcing Penalties**

The IRS has announced that it intends to enforce penalties for FBAR noncompliance – as far back as 6 years. It might be possible to negotiate for one year of penalties if compliance is started. Effective March 24, 2008, IRS has delegated the authority ([Delegation Order 4-35](#)) to handle such enforcement to various government officials, including: investigation of possible civil violations of the FBAR requirements; issuance, service and recommendation of enforcement of summonses; preparation and filing of proofs of claims for FBAR penalties; referral to the Justice Department for the institution of proceedings; issuance of administrative rulings; and approval of written agreements relating to a person's civil liability for a FBAR penalty.

Tax practitioners with clients with foreign bank accounts should notify clients of their responsibility to file the "Report of Foreign Bank and Financial Accounts" (Treasury Form TD F 90-22.1, referred to as FBAR) on or before June 30, 2008. The AICPA also reminds tax practitioners that when gathering information for Form 1040s and Form 1120s to ask clients about the existence of foreign bank accounts and to disclose the information in Question 7, Part III of Form 1040, Schedule B, Interest and Ordinary Dividends, and disclose it on Line 6a of Schedule N of Form 1120. Taxpayers who are currently filing Form 5471, Form 8858, Form 8865 or Form 3520 may also be subject to FBAR reporting requirements. Be aware that a new TD F 90-22.1 is being developed and expected to be released possibly over the next year.

This TD F 90-22.1 form is required to be filed by U.S. citizens and residents (including an individual, corporation, partnership, trust or estate) who have a financial interest in or signature or other authority over any financial accounts (including bank, securities, mutual funds or other types of financial accounts in a foreign country), if the aggregate value of such accounts exceeded \$10,000 at any time during 2007. For more information on this, see the forms and instructions for [TD F 90-22.1](#) and see related [IRS international tax forms instructions and publications](#) for the definition of a financial interest, [frequently asked questions on FBAR](#), and [a detailed summary](#).

The AICPA Tax Division's International Tax Resource Panel's Reporting Requirements Task Force has developed two guides on foreign income reporting and the TD F 90-22.1 ([guide 1](#) and [guide 2](#)).

## **REPRESENTING YOUR INTERESTS**

### **More AICPA Comments Submitted on Section 67(e) on Trust and Estate Administrative Costs**

The AICPA Trust, Estate, and Gift Tax TRP's Section 67(e) Task Force drafted and submitted additional comments regarding [Notice 2008-32](#) and proposed regulations ([REG-128224-06](#)) related to the deductibility of administrative costs incurred by estates and trusts, taking into

account the Supreme Court's opinion in *Knight*. AICPA makes suggestions about what guidance and safe harbors should be included in future regulations. See [all the AICPA comments](#) on this issue over the past year, including the May 2008 comments.

### **Tax Section Member Service Contact Information**

Members can update their records and ask questions about Tax Section member benefits at 800-513-3037 or [taxsection@aicpa.org](mailto:taxsection@aicpa.org).

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