

Executive's Tax & Management Report

Wealth-building strategies plus
late-breaking tax news

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DEALING WITH THE IRS

Execs Concerned About Risk of Audits

With governments looking for additional revenue during tough economic times, the increased possibility of a tax audit is the top tax risk facing organizations, according to a recent survey of senior business professionals.

Some 30 percent of respondents polled during a Tax Governance Institute (TGI) Web cast ranked the possibility of a tax audit as their organization's most significant task risk.

Other top anticipated tax risks include the following:

- Increased regulatory requirements (27 percent)
- Accuracy of tax provisions (26 percent)

"As countries and states seek additional revenue, corporate tax executives are bracing for a round of heightened regulatory scrutiny," said Hank Gutman, principal at KPMG LLP (www.kpmg.com) and executive director of the TGI. "Companies know they will need to have documentation in place and accessible to demonstrate compliance with the many domestic

E-File Reaches New Milestones

Security, accuracy and quicker refunds are among the reasons that record numbers of taxpayers are filing their federal income tax returns electronically, according to the IRS.

As of April 24, the IRS had accepted 90.6 million e-filed income tax returns, which marks a jump of nearly six percent compared to the same time last year. The increase is at least partly due to a 19.3 percent surge in individual income tax returns filed from home computers—31.2 million in all as of April 24, according to the IRS.

Nearly 70 percent of individuals chose to e-file their tax returns this year, up from 61 percent in 2008.

Taxpayers who received a filing extension can use IRS e-file until October 15.

The IRS reports that the error rate for an electronically prepared and filed return is less than one percent, compared to an error rate of approximately 20 percent for a return prepared on paper. In addition, taxpayers owed a refund can receive it in as little as 10 days when they use electronic filing and direct deposit, according to the IRS. Those who owe can pay electronically—either by debiting their financial account or using a credit card. ■

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and international tax requirements they regularly address in today's global economy."

What to Expect Before an IRS Audit

So what should you do if you receive an audit notice from the IRS? The first step is to consult with a qualified tax professional.

During a recent *Tax Talk Today*® Web cast, Al Thomson and Cynthia Jeanguenat, enrolled agents who own their own tax businesses in Virginia, discussed tips for practitioners and taxpayers to consider when preparing for an IRS audit.

After learning that they will be audited, some taxpayers delay in contacting a tax professional. "If you've prepared the return, generally, they call you right away," Thomson said during *Tax Talk Today's* "Surviving the IRS Audit" Web cast. But, in other cases, taxpayers will often "procrastinate, hope that the audit will go away, not pay attention to the letter."

He continued, "At some point, they realize they need to prepare for the audit and contact us."

Once the contact is made, taxpayers should expect to be asked many questions. "[D]uring that initial interview, we are going to be asking a lot of questions," Jeanguenat said. "Our objective is to know that taxpayer better than the IRS. And what we also want to determine at that initial meeting is what records that we have to substantiate, you know, what is being requested, what records do we have to obtain, for instance, bank statements, credit card statements, those types of things. What records could be reconstructed?"

She continued, "[W]e also want to try and ascertain what might be negotiable during the audit itself. So, in other words, we are going to really be conducting an audit with that taxpayer in the initial interview to try and determine, you know, where we stand."

The keywords are "research, organize and prepare so that when we get to the audit ... we're ready," she said. "That's the bottom line."

The tax practitioner will be looking for whether the taxpayer has original documentation to substantiate the expenses and deductions claimed on the return and whether the return was prepared correctly (in cases where someone else prepared it), according to Thomson. "There may, in fact, be mistakes on the return; it happens."

Jeanguenat said taxpayers should expect to do the following at an initial meeting with a tax professional:

- Answer many questions about the return and related documents
- Sign a Form 2848, Power of Attorney
- Sign an engagement letter, outlining what the enrolled agent will do, expectations, fees, etc.
- Be asked to pay a retainer

Who Should Go to the Audit?

When a business return is being audited, "it's often beneficial to have the taxpayer at the audit because they know the workings of that business," Nancy Como, small business/self-employed examination policy senior program manager for the IRS, said during the Web cast. In cases where a practitioner is representing a taxpayer, she said the IRS expects the practitioner to:

- be prepared to explain how the return was prepared,
- discuss how the business operates, and
- understand its income and expenses.

If the practitioner can't do those things, the IRS might ask the practitioner to bring in the

taxpayer to provide details, according to Como.

However, the enrolled agents participating in the discussion prefer that their clients do not go to audits. “[T]hey are hiring us, the representative, to represent them,” said Jeanguenat.

“I don’t think I’ve ever had a taxpayer accompany me to an audit,” Thomson added. “My job is to make sure that I know the information that the IRS is looking for—to understand the records, understanding the operation of the business and to focus on the questions that are raised in the audit.”

If the practitioner is prepared and able to provide all needed information, “[t]hen the taxpayer is not necessary during the audit,” Como said.

An IRS audit can be confrontational, “but it really shouldn’t be,” Thomson said. “I think it’s important for the practitioners to recognize that the auditors are there to do a job. The parameters of the audit have been set out, usually with the initial notice, and as enrolled agents, attorneys, CPAs, professional practitioners, we are there to represent our clients and to resolve the issue.”

Other Insights into the Process

Here are more audit tips gleaned from Web cast panelists:

- **Consult with an enrolled agent, CPA or tax attorney.**

“The ability of an un-enrolled preparer to represent their client at audit is somewhat limited in that they can provide information and represent their client, but an un-enrolled preparer is not permitted to go beyond that process,” Thomson said. “So it’s possible that you’ll have someone who is working with a client, you get to the end of an audit, you have a disagreement, you don’t

have an agreed-upon outcome, and the practitioner—in that case, the un-enrolled practitioner—cannot continue with an appeal. They’re not permitted to represent a client at appeals, whereas an enrolled agent, an attorney or a CPA, can.”

- **Understand that preparation can limit the scope of the audit.** In general, IRS examiners begin an audit by “looking at the largest, most questionable items,” said Barbara Fiebich, small business/self-employed examination policy senior program manager for the IRS. “And if you’re able to work through those issues and the documentation is provid-

ed and everything is checking out okay, if the examiner was planning on looking at additional issues, based on the condition of the records for the largest items, they may decide to limit the scope of the examination and not look into those items.” That benefits the taxpayer, practitioner, and the IRS, “because we’re concluding the audit even quicker than we normally would have... .”

Just as examiners can limit the scope of examinations, they also can expand it, she added.

“That sometimes comes up where you have the taxpayer

Survey Highlights Additional Tax Issues

Forty-four percent of executives cited compliance and reporting as the tax function most focused on by their companies during the past six months, according to a survey conducted during a recent Tax Governance Institute (TGI) Web cast. Twenty-one percent pointed to tax savings, and 37 percent said they focused on identifying and increasing the potential use of tax refunds, credits and incentives.

“By being alert to both overpayment of estimated taxes and opportunities to claim credits or utilize incentives, companies can reclaim some much-needed cash, a valuable commodity in today’s difficult marketplace,” said Scott Vance, principal at KPMG LLC (www.us.kpmg.com) and moderator of the Web cast.

“In difficult economic times, tax professionals can play a critical, strategic role for their enterprises by both limiting compliance risks and effectively managing their refund and incen-

tives opportunities,” said Hank Gutman, principal at KPMG and TGI’s executive director.

In addition, the survey found the following:

- Forty-seven percent of companies kept tax department resources about constant during the past six months, compared to 28 percent that reported a decrease in in-house tax resources.
- Sixty-nine percent said tax risk management is an integral part of their company’s enterprise risk management policy.
- Fifty-one percent said there has been no significant change in reporting by the company’s tax function to the board and audit committee. Eighteen percent said that such reporting has risen in the last six months.

To view a replay of the Web cast, visit www.taxgovernanceinstitute.com. ■

present and there's a question that the taxpayer doesn't understand or they may go on about how they travel and do this and do that, and that's one of the reasons that I prefer not to have a taxpayer present during an audit," Thomson said. "It's an opportunity for chit-chat that may raise questions for no reason other than the taxpayer's just chit-chatting and it leads to additional questions from the audit."

■ **Be prepared to adjust your state return.** If the IRS finds that you owe federal income taxes, you may also hear from your state revenue department and vice versa. That's because the IRS has agreements with certain states to exchange data. "The benefit is, the taxpayer isn't going to have to come in for a whole other complete state audit here if the adjustment is made based on what

the federal adjustment was," Como said. "And that saves time for the practitioner, the taxpayer, and most importantly, for the states."

Tax Talk Today is a series of free, IRS-sponsored, interactive programs geared toward tax professionals. A transcript, audio and audio podcast of the "Surviving the IRS Audit" Web cast will be available at www.taxtalktoday.tv through December 31, 2009. ■

MANAGING YOUR BUSINESS

Pandemic Planning 101

Does your company have a plan in place to continue operating in the event of a pandemic? If not, experts at CCH, publisher of EXECUTIVE'S TAX & MANAGEMENT REPORT, suggest that you get started on one.

Only 27 percent of companies participating in the 2007 CCH Unscheduled Absence Survey had a plan in place to cope with widespread employee illness. However, that figure was nearly double the 2006 rate—when only 14 percent of surveyed companies reported having such a plan.

"In 2007, there was heightened awareness of the need for pandemic planning because of concern over a possible avian flu pandemic," said CCH Workplace Analyst Heidi Henson, J.D. "That outbreak never materialized; hopefully organizations have continued to develop plans in the meantime."

More recently, the H1N1/swine flu outbreak this spring prompted much media coverage on the need for continuity planning, especially considering that the virus could come back with a vengeance in the fall.

Swine Flu Is "a Wake-up Call"
CCH (hr.cch.com), part of Wolters Kluwer Law & Business, said the

potential for a swine flu pandemic should serve as "a wake-up call" to the many organizations that lack a plan, since planning ahead can help reduce the impact on operations, employees, customers and the general public.

A flu pandemic differs from other types of emergencies, such as natural disasters and terrorist events, because a pandemic would be a widespread, extended event, CCH explained. That is, it would affect multiple areas of the United States and other countries and would likely be characterized by multiple waves of outbreaks in the same geographic area—with each outbreak potentially lasting six to eight weeks over the course of a year or more, according to CCH.

"A pandemic could affect as many as 40 percent of the workforce during periods of peak illness. Employees could be absent because they are sick, they must care for sick family members or for children if schools or day care centers are closed, or they are afraid to come to work," Henson said. "Lack of continuity planning can result in a cascade of failures as employers attempt to address challenges of a pandemic with insufficient resources and employees who might not be adequately trained in the jobs they will be asked to perform."

"Presenteeism" Poses a Risk to Organizations

Part of planning for a pandemic involves addressing "presenteeism" (*i.e.*, the phenomenon that occurs when employees show up for work sick), CCH reported. Presenteeism can be costly to an organization in two main ways:

1. Risking the spread of disease
2. Diminishing productivity, quality and attention to safety

"We all know what it feels like to have the flu—you're not operating at 100 percent, you may not even be operating at 50 percent," said CCH Employment Law Analyst Brett Gorovsky, J.D. "The bottom line for most organizations is that it's in everyone's best interest for sick workers to simply stay away, even in normal times."

"Employers need to discourage both the 'hero employee'—and even more so, the 'hero boss'—who try to muddle their way through the day when they shouldn't," he added. "Employees are sensitive to the differences between what management says and what it means, and when they see their supervisors coming in sick, they're convinced that's what's expected of them also."

Five Basic Steps to Prepare for a Pandemic

How do you get started? To help businesses prepare for a pandemic, CCH recommends the following basic steps:

1. Identify a pandemic coordinator or team and establish defined roles and responsibilities for preparedness and response planning.
2. Identify key employees and key work processes needed to maintain business operations during a pandemic.
3. Establish (or review) an emergency communications plan.
4. Seek up-to-date information from local and state health and emergency management resources.
5. Remind employees to get in the habit of washing their hands often and cover their mouths and noses when they cough and sneeze. ■

DEALING WITH THE IRS

Phishing Tops Tax Scam List Again

For the second consecutive year, phishing (*i.e.*, e-mail and Internet-based ploys to steal financial information from taxpayers) topped the IRS's annual list of the most egregious tax schemes and scams.

When announcing the 2009 "dirty dozen" list of tax scams, IRS Commissioner Doug Shulman urged taxpayers not to be tricked into revealing their personal information to scam artists. "Taxpayers should be wary of scams to avoid paying taxes that seem too good to be true, especially during these challenging economic times," he said. "There is no secret trick that can eliminate a person's tax obligations. People should be wary of anyone peddling any of these scams."

The IRS cautioned that the use of tax schemes can result in significant penalties, interest and possible criminal prosecution for scam artists and taxpayers alike.

Here is an overview of the IRS's list of top schemes:

1. **Phishing.** Internet-based scam artists use this tactic to trick unsuspecting victims into revealing personal or financial information. Once criminals have that information, they use it to steal a victim's identity, access bank accounts, run up credit card charges or apply for loans in the victim's name.

Some phishing scams are difficult to detect, because they often take the form of an e-mail that seems to come from a legitimate source, such as the IRS. The IRS cautions taxpayers that it never initiates unsolicited e-mail contact about taxpayers' tax issues. Those who receive an unsolicited e-mail purporting to come from the IRS are encouraged to forward the message to phishing@irs.gov, following instructions available at IRS.gov.

2. Hiding income offshore.

"The IRS aggressively pursues taxpayers and promoters involved in abusive offshore transactions," the IRS stated. "Taxpayers have tried to avoid or evade U.S. income tax by hiding income in offshore banks, brokerage accounts or through other entities."

The IRS reported that other tax evasion schemes involve:

- offshore debit cards
- credit cards
- wire transfers
- foreign trusts
- employee-leasing schemes
- private annuities or life insurance plans
- electronic funds transfer and payment systems
- offshore business merchant accounts
- private banking relationships

3. Filing false or misleading forms.

In this type of scam, individuals attempt to claim refunds they are not entitled to by filing false or misleading returns.

4. Abuse of charitable organizations and deductions.

The misuse of tax-exempt organizations is an ongoing problem, according to the IRS. "Abuse includes arrangements to improperly shield income or assets from taxation and attempts by donors to maintain control over donated assets or income from donated property," the IRS stated. In addition, the IRS continues to investigate schemes involving the donation of non-cash assets (e.g., easements on property, closely-held corporate stock and real property). "Often, the donations are highly overvalued or the organization receiving the donation promises that the donor can purchase the items back at a later date at a price the donor sets," the IRS explained. "The Pension Protection Act of 2006 imposed increased penalties for inaccurate appraisals and new definitions of qualified appraisals and qualified appraisers for taxpayers claiming charitable contributions."

5. Return preparer fraud.

According to the IRS, dishonest return preparers profit by

skimming a portion of their clients' refunds and charging inflated fees for return preparation services. They also tend to lure new clients by promising large tax refunds.

6. Frivolous arguments.

"Promoters of frivolous schemes encourage people to make unreasonable and unfounded claims to avoid paying the taxes they owe," the IRS warned. Taxpayers are subject to a \$5,000 penalty if they file a tax return or make a submission based on a position that has been identified as a frivolous legal position by the IRS.

7. False claims for refund and requests for abatement.

In this scam, a request is made for abatement of previously assessed tax using Form 843, Claim for Refund and Request for Abatement—often listing "Failed to properly compute and/or calculate Section 83-Property Transferred in Connection with Performance of Service" as a reason, according to the IRS. Many individuals involved in this scam have not previously filed tax returns but are asking the IRS to abate tax that has been assessed through the Substitute for Return Program.

8. Abusive retirement plans.

Abuses in retirement plan arrangements continue. "The IRS is looking for transactions that taxpayers are using to avoid the limitations on contributions to IRAs, as well as transactions that are not properly reported as early distributions. Taxpayers should be wary of advisers who encourage them to shift appreciated assets into IRAs or companies owned by their IRAs at less than fair market value to cir-

cumvent annual contribution limits," the IRS warned, noting that one variation includes the use of limited liability companies to engage in activity that is considered prohibited.

9. Disguised corporate ownership.

This tactic involves taxpayers forming corporations and other entities in certain states primarily to disguise the ownership of a business or financial activity, according to the IRS. These entities, the IRS said, can be used to facilitate the following activities:

- underreporting of income
- fictitious deductions
- non-filing of tax returns
- participating in listed transactions
- money laundering
- financial crimes
- terrorist financing

10. Zero wages.

Those involved in this scheme typically use a Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., or a "corrected" Form 1099 to improperly reduce their taxable income to zero. Some taxpayers also try to claim zero wages by submitting a statement rebutting wages and taxes reported by a payer to the IRS. "Sometimes fraudsters even include an explanation on their Form 4852 that cites statutory language on the definition of wages or may include some reference to a paying company that refuses to issue a corrected Form W-2 for fear of IRS retaliation," the IRS stated. "Taxpayers should resist any temptation to participate in any of the variations of this scheme."

11. Misuse of trusts. The IRS urged taxpayers to consult with a trusted professional before transferring assets into trusts. "While there are many legitimate, valid uses of trusts in tax and estate planning, some promoted transactions promise reduction of income subject to tax, deductions for personal expenses and reduced estate or gift taxes," the service warned. "Such trusts rarely deliver the promised tax benefits and are being used primarily as a means to avoid income tax liability and hide assets from creditors, including the IRS."

12. Fuel tax credit scams. Those who improperly claim the fuel tax credit could be liable for a \$5,000 penalty, because it is considered a frivolous tax claim, according to the IRS. Despit the risk of a penalty, the IRS has been receiving "unreasonable" claims for the fuel tax credit. "Some taxpayers, such as farmers who use fuel for off-highway business purposes, may be eligible for the fuel tax credit. But some individuals are claiming the tax credit for nontaxable uses of fuel when their occupation or income level makes the claim unreasonable."

To report suspected tax fraud activity, download Form 3949-A, Information Referral, from IRS.gov. Be sure to include specific information about who is being reported, the activity, how the activity became known, when the alleged violation took place and the amount of money involved.

Whistleblowers can submit allegations of fraud to the IRS by filing Form 211, Application for Award for Original Information, and following the procedures outlined in Notice 2008-4, Claims Submitted to the IRS Whistleblower Office under Section 7623. ■

Consider Tax Issues Early in Bankruptcy Process

By Adriane Brown

Bankruptcy is something that no one wants to think about, because it is incredibly difficult to admit that your business is struggling. However, in today's volatile market, bankruptcies are on the rise. According to Jones Day law firm, business bankruptcies were up 63 percent in 2008 from the previous year. People are trying to spend less; business loans are more difficult to get; investors are trying to find less risky places to invest their money. All of these things make running a struggling business even more difficult.

However, a business owner can make a bad thing worse by not considering the tax implications of bankruptcy early enough in the process. When business owners recruit help early, they are more likely to be able to restructure quickly or at least come out of the bankruptcy filing feeling more in control. Some business owners wait so long that they are forced into involuntary bankruptcy filing by creditors and lose all control of the process.

Bankruptcy is detailed in Title 11 of the U.S. Code. Within Title 11, there are many categories, including Chapter 11 reorganization. The purpose of Chapter 11 is to provide the debtor a temporary deferment from creditors and allow him to continue to operate the business while the restructuring plan is being developed. This helps minimize the substantial losses that would occur during liquidation. Two major tax considerations when filing Chapter 11 bankruptcy are the income related to the relief of debt and the protection of net operating losses (NOLs).

Income from Relief of Debt

Generally, a debtor is required to recognize any relief from debt as an increase to taxable income. Relief from debt is not just a total forgiveness of a loan; it stems from any major change to a debt instrument including:

- a change in the timing of the payments,
- an exchange of debt instruments for equity, or
- changes in the nature of the debt instrument.

Alternatively, under Section ("Code Sec.") 108 of the Internal Revenue Code, a debtor does not have to recognize cancellation of debt income to the extent that he is insolvent. Instead, the debtor is allowed to reduce tax attributes that could be used by the debtor to lower taxable income in future years. These tax attributes are to be reduced in the following order set by the Code:

- Net operating losses
- General business credits
- Minimum tax credits
- Capital loss carryovers
- Tax basis of assets
- Passive activity loss and credit carryovers
- Foreign tax credit carryovers

If the cancellation of debt income is larger than the tax attributes available to the debtor, there is no further tax consequence.

Protection of NOLs

NOLs generally can be carried back two years and then carried forward 20 years to reduce or eliminate future taxable income. (As a side

note, there is a special rule for 2008 that allows eligible small businesses to carry back a NOL five years.)

A business that is considering Chapter 11 bankruptcy probably will have a significant NOL carrying forward. A NOL is not currently helpful to a business with no taxable income, but if the restructuring works and the company becomes profitable again, the NOL can reduce or eliminate the tax generated in the early profitable years. Simply put, the NOL is worth protecting.

The problem that arises in a lot of cases with struggling companies results from the rules in Code Sec. 382. In this code section adopted in 1986, Congress attempts to ensure that NOLs stay with the business that originally sustained the losses. The Code Sec. 382 limitation states that if, in a three-year rolling period, stock ownership by five percent of holders increases by more than 50 percent, the deductibility of the loss corporation's NOL is greatly limited.

Changes in ownership are pervasive for struggling businesses. A struggling company will often issue new stock to raise capital, lose shareholders because of poor profit performance, or issue stock as payment for debt. All of these actions could trigger the change in ownership limitation.

Companies under Chapter 11 are privy to two special exceptions. The first is under Code Sec. 382(I) (5). This exception reduces the NOL by the amount of interest deducted on debt that is converted to stock as part of the Chapter 11 reorganization in the year of the ownership change and the three previous years. After this

deduction, there is no Code Sec. 382 limitation on the NOL for future tax years. However, the company must meet certain criteria to qualify for this election:

- The previous stockholders and creditors must end up owning at least 50 percent of the reorganized company's stock.
- The debt must have been held by a person who at all times held a beneficial interest in the indebtedness.
- Shareholders and creditors must receive their 50-percent stock ownership in discharge of their interest and claims against the Chapter 11 company.
- The creditors receiving the stock must have held the debt due from the company for at least 18 months on the date of bankruptcy filing, or the debt

must have resulted from the regular course of business.

After a company qualifies for this exception, there may not be an additional Code Sec. 382 ownership change within two years. The Code Sec. 382(I)(5) exception places a heavy burden on the reorganized company to clearly identify its creditors and shareholders but can be enormously beneficial if the company makes a turnaround and has future taxable income.

The second exception is under Code Sec. 382(I)(6) and applies to all companies that are not covered under the Code Sec. 382(I)(5) exception. The Code Sec. 382(I)(6) exception reflects any increase in value due to cancellation of debt income and imposes a fair value-based limitation on NOLs. This limitation is different from the

normal Code Sec. 382 limitation because it is based on the lesser of the pre-change gross asset value or the post-change stock value. These calculations have several adjustments and are complex but can sometimes result in a greater benefit than the Code Sec. 382(I)(5) exception. Both avenues should be considered before deciding whether to elect out of the Code Sec. 382(I)(5) exception.

In conclusion, while admitting defeat is painful, facing bankruptcy fully aware of the options and recruiting knowledgeable help can result in a company that reorganizes successfully, maintains tax assets and emerges profitable.

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PERSONAL TAXES

Tax Benefits for Home Energy Efficiency

“Going green” at home this year can boost your tax savings next year, thanks to incentives in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) for investing in energy-efficient home improvements or installing alternative energy equipment.

At press time, the IRS expected to update certification guidelines, but said that, in the meantime, homeowners seeking such tax credits could temporarily rely on existing manufacturer certifications or appropriate Energy Star labels for purchasing qualifying products.

“These new, expanded credits encourage homeowners to make improvements that will make their homes more energy efficient,” said IRS Commissioner Doug Shulman. “People can improve their homes and save money over the long run.”

The new law provides for a uniform credit of 30 percent of

the cost of qualifying improvements—up to \$1,500. For example, those improvements include adding the following:

- Insulation
- Energy-efficient exterior windows
- Energy-efficient heating and air conditioning systems

According to the IRS, P.L. 111-5 replaces the old law combination available in 2007 of a 10-percent credit for certain property and a credit equal to cost—up to a specified amount—for other property. It also raises to \$1,500 the limit on the amount that can be claimed for improvements placed in service during 2009 and 2010. Under the previous law, the lifetime limit was \$500.

The new law also increases the energy efficiency standards for certain items placed in service

after February 17, 2009. Those items include the following:

- Building insulation
- Exterior windows, doors and skylights
- Certain central air conditioners
- Natural gas, propane or oil water heaters

Finally, the new law generally eliminates the cap on the 30-percent tax credit for alternative energy equipment (e.g., solar water heaters, geothermal heat pumps and small wind turbines installed in a home).

For more information on tax incentives in the American Recovery and Reinvestment Act that encourage investment in renewable energy projects, see the March issue of EXECUTIVE'S TAX & MANAGEMENT REPORT. Additional information on a variety of energy items is available in the special Recovery section of IRS.gov. ■

Credit Phaseout Begins for Ford Hybrids

Taxpayers who bought or leased a hybrid passenger automobile or light truck manufactured by Ford Motor Company for use by March 31, 2009, may claim the full applicable tax credit. However, the credit will phase out for purchases after that, the IRS recently announced.

The start of the phaseout was triggered in the fourth quarter of 2008 when the total number of Ford hybrids sold reached the 60,000-vehicle threshold. From January 1, 2006, to December 31, 2008, Ford sold 66,157 hybrid vehicles, according to the IRS.

Credit Amounts

For vehicles purchased for use or lease before April 1, 2009, the full credit amount applies as follows:

- 2005, 2006, 2007 Ford Escape (two-wheel drive): \$2,600

- 2008, 2009 Ford Escape (two-wheel drive): \$3,000
- 2005, 2006, 2007, 2009 Ford Escape (four-wheel drive): \$1,950
- 2008 Ford Escape (four-wheel drive): \$2,200
- 2010 Ford Fusion: \$3,400
- 2008, 2009 Mercury Mariner (two-wheel drive): \$3,000
- 2006, 2007, 2009 Mercury Mariner (four-wheel drive): \$1,950
- 2008 Mercury Mariner (four-wheel drive): \$2,200
- 2010 Mercury Milan: \$3,400

The credit is 50 percent of the full credit for qualified vehicles purchased for use or lease on or after April 1, 2009, and on or before September 30, 2009. The credit drops to 25 percent of the full credit for vehicles

bought on or after October 1, 2009, and on or before March 31, 2010. No credit is allowed for purchases on or after April 1, 2010.

Other Manufacturers

Two other manufacturers, Honda and Toyota/Lexus, also have surpassed the 60,000-vehicle threshold for the hybrid tax credit. No credit is allowed for Honda hybrids purchased this year or for Toyota/Lexus hybrids after September 30, 2007, according to the IRS.

Full credit amounts continue to be available for the purchase of qualified hybrids from GM (Cadillac, Chevrolet, GMC and Saturn), Mazda, Mercedes-Benz, Nissan and Volkswagen. The specific credit amounts vary by model. ■

TAX CREDITS

Tap Credit for Plug-in Electric Vehicles

Those who purchase “plug-in” electric vehicles with certain types of batteries this year may qualify for one of two new tax credits created under recent legislation.

The credits apply to purchases of various types of electric vehicles, which may include what are commonly known as neighborhood electric vehicles, according to the IRS.

Under the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), a new tax credit is available for low-speed or two- or three-wheel electric vehicles (*e.g.*, motor scooters) that are purchased after February 17, 2009, and before January 1, 2012.

The credit amount is 10 percent of the cost of the vehicle—up to a maximum credit of \$2,500. “To qualify, a vehicle must be either a low-speed vehicle that is propelled to a significant extent by a rechargeable battery with a capacity of at least 4 kilowatt hours or be a two- or three-wheeled vehicle that is propelled to a significant extent by a rechargeable battery with a capacity of at least 2.5 kilowatt hours,” the IRS states.

In addition, the Emergency Economic Stabilization Act of 2008 (P.L. 110-343) created a tax credit for vehicles that have at least four wheels and draw propulsion using a rechargeable traction battery with at least four kilowatt

hours of capacity, the IRS explains. The minimum credit for 2009 is \$2,500—with a cap of \$7,500 to \$15,000, depending on the vehicle’s weight and battery capacity.

Neighborhood electric vehicles (*i.e.*, low-speed, four-wheeled vehicles manufactured primarily for use on public streets, roads and highways) may qualify for both credits during 2009, if bought after February 17, 2009. However, the IRS notes that a taxpayer may claim only one of the credits for the same vehicle.

The credit does not apply to vehicles manufactured primarily for off-road use, such as for use on a golf course, according to the IRS. ■

Vehicle, Parking Deductions Denied

Without proper substantiation of employee business expense deductions, a taxpayer risks losing the deductions.

NEW CASE ▶ A sales consultant claimed thousands of dollars in unreimbursed employee expenses on her 2005 federal income tax return, but the IRS said she was not entitled to the deductions and determined that she owed \$2,728 in federal income tax. The sales consultant, Cristina A. Osorio, took her case to Tax Court [*C.A. Osorio*, T.C. Summary Opinion 2009-57, Docket No. 25924-07S (filed Apr. 29, 2009)].

Case Background

As a sales consultant for Southern Wine and Spirits, Osorio drove her own vehicles to service her customer accounts in the Greater Miami area. Her employer did not reimburse her for her related expenditures, so she claimed \$18,458 in unreimbursed employee expenses on her Schedule A, *Itemized Deductions* (before application of the Internal Revenue Code Section (“Code Sec.”) 67(a) two-percent floor on miscellaneous itemized deductions).

On her Form 2106, *Employee Business Expenses*, she reported the following expenses:

- Vehicle expense: \$10,177
- Parking fees, tolls and transportation: \$420
- Travel expenses: \$0
- Unspecified business expenses: \$7,861
- Meals and entertainment: \$0

The vehicle expense deduction was calculated based upon 23,520 business miles at the standard mileage rates of 40.5 and 48.5 cents per mile for two vehicles. Osorio

did not claim a deduction on her Form 2106 for the actual transportation expenses of her vehicles.

Unreimbursed Employee Expenses

Under Code Sec. 162(a), taxpayers are entitled to a deduction for ordinary and necessary expenses paid or incurred during the tax year in carrying on any trade or business. However, deductions generally are allowed only to the extent that they are substantiated.

In some cases, the court may estimate a deductible amount, if the taxpayer establishes that he or she has incurred a deductible expense but cannot substantiate the exact amount. However, that does not apply to items listed in Code Sec. 274(d) (*e.g.*, entertainment, gifts and traveling expenses, such as meals and lodging while away from home).

According to the court, Code Sec. 274(d) and related regulations require taxpayers to substantiate their deductions by adequate records or sufficient evidence to corroborate the taxpayer’s own testimony as to the following:

- Amount of the expenditure or use
- Time of the expenditure or use
- Place of the expenditure or use
- Business purpose of the expenditure or use
- Business relationship between the taxpayer and the persons entertained or receiving the gift

Written evidence carries more weight in the eyes of the court than oral evidence, especially when the written evidence is created at or near the time of the expenditure or use. “Although a contemporaneous log is not required, a record made at or near the time of the expenditure

or use that is supported by sufficient documentary evidence has a higher degree of credibility than a subsequently prepared statement,” the court said. “The corroborative evidence required to support a statement not made at or near the time of the expenditure or use must have a high degree of probative value to elevate the statement and evidence to the level of credibility reflected by a record made at or near the time of the expenditure or use supported by sufficient documentary evidence.”

The Code Sec. 274(d) “adequate records” requirement can be satisfied if the taxpayer maintains an account book, diary, log, statement of expense, trip sheets or similar record and documentary evidence, which together establish each element of expenditure or use, according to the court. “The adequate record must be prepared or maintained in such manner that each recording of an element or use is made at or near the time of the expenditure or use.”

How much detail is required to substantiate the taxpayer’s business use? That may vary, depending on the facts and circumstances. For example, the court explains, say a taxpayer who uses a vehicle for both business and personal purposes—and whose only business use of the vehicle is to make deliveries to customers on an established route—may satisfy the adequate record requirement in either of the following two ways:

1. Recording the total number of miles driven during the taxable year, the length of the delivery route once and the date of each trip at or near the time of the trips.
2. Establishing the date of each trip with a receipt, record of

delivery or other documentary evidence.

So what did the court say about Osorio's deduction for vehicle expenses? It concluded that she is not entitled to a deduction based on the standard mileage rate.

Before the Tax Court, Osorio asserted for the first time that she is entitled to a deduction for the following actual expenses:

- Gas: \$1,519.49
- Car payments: \$3,684.04
- Insurance: \$1,789.21
- Repairs: \$382.78

The court disagreed, saying taxpayers generally "are prohibited from claiming deductions for automobile expenses using both the actual cost method and the standard mileage rate ... In addition, because the Court has concluded that ... [Osorio's] evidence was not sufficient to substantiate her claimed deduction based on the standard mileage rate, it also does not sufficiently substantiate her claimed deduction based on the actual costs of her transportation expenses."

The court also nixed most of Osorio's claimed \$420 deduction for parking fees, tolls and transportation expenses, saying she could substantiate only \$21.25.

Deduction for Unspecified Business Expenses

There are seven types of unspecified business expenses for which Osorio says she is entitled to—even though she did not previously claim a deduction for them. However, the court allowed a deduction only for the dry cleaning of employer-provided "logo'd" shirts.

Here is an overview of the unspecified business expenses and the court's justifications for its decision:

■ **Meals and entertainment.**

Osorio attempted to substanti-

ate a \$1,169.83 deduction for meals and entertainment with handwritten notes on several pages of her bank statements. The notes stated: "Food w/customer," "meals w/customer" or "meals" for charges for several dates at various restaurants. However, that alone does not prove that the business relationship exists. Nor does it "indicate the business reason for the entertainment, the nature of the business benefit derived or expected to be derived an [sic] account of the entertainment, or the nature of any business discussion or activity," the court explained, adding that Osorio's "handwritten notations are not adequate to substantiate the business purpose of her meals and entertainment expenses."

■ **Travel.** With only a handwritten note on a bank statement and no explanation of the business purpose of a \$127.75 deduction for travel expenses incurred in Orlando, Florida, the court disallowed this deduction as well. Noting that Osorio's customer accounts were within the Greater Miami area, the court noted that the business purpose of her travel to Orlando is not clear. Since she "did not testify about this issue or provide any other corroborating evidence, the Court finds that her handwritten notation is not adequate to substantiate the business purpose of her travel."

■ **Gifts.** On several pages of bank statements, Osorio handwrote "gift for customer" next to charges at various merchants on several dates. However, the court said she was not entitled to a \$410.32 deduction for gift expenses, because she did not provide a description of the gifts, substantiate the business reason for the gifts

or the nature of the business benefit derived or expected to be derived on account of the gifts, or substantiate the business relationship between her and the recipients. "In addition, without a receipt or other corroborative evidence to substantiate ... [her] claim that she purchased gifts for her customers, the Court does not accept her self-serving statement that her purchases were made for those purposes."

- **Cell phone.** The court said Osorio is not entitled to a \$2,893.44 deduction for cell phone expenses, because she did not substantiate the amount of her business use of her cell phone, her total use or the business purpose of each business use. Aside from handwritten notes on her bank statements, she did not provide a receipt or other evidence to substantiate her claim of payments to Verizon for her cell phone use.
- **Supplies.** Similarly, Osorio provided only a "self-serving statement" that \$117.96 in supplies were work-related, and the court said she was not entitled to the deduction.
- **Clothing, shoes and dry cleaning.** The court allowed a \$100.96 deduction for the dry cleaning of her employer-provided "logo'd shirts," subject to Code Sec. 67(a) (relating to the two-percent floor). But it disallowed the other \$1,388.54 for clothing, shoes and dry cleaning. "Clothing is a deductible expense only if it is required for the taxpayer's employment, is unsuitable for general or personal wear, and is not so worn," the court explained. "If the cost of acquiring clothing is deductible, then the cost of maintaining the clothing is also deductible." Osorio again relied only on handwritten notes on

her bank statements to substantiate the deductions. Although she was sometimes required to wear the “logo’d shirts,” her clothing expenses did not include “logo’d shirts”—only professional-looking apparel and shoes. She acknowledged that the purchased clothing could have been worn outside of work and that the dry cleaning expenses were for both the purchased clothing and for the logo’d shirts.

- **Grooming.** Osorio tried to claim a \$1,774.62 deduction for “grooming” expenses (*i.e.*, amounts she spent on her nails and hair), arguing that

those expenses are “work related” since she had to “have a certain look” for her job. The court disagreed, saying, “Grooming ... is an inherently personal expense and amounts expended for grooming are not deductible regardless of whether an employer requires a certain look.”

Itemized Deductions

Although the court concluded that Osorio is entitled to a miscellaneous itemized deduction for unreimbursed employee expenses of \$122.21, it noted that the amount does not exceed the two-percent floor.

According to the court, her remaining itemized deductions are:

- \$479 in state sales taxes, and
- \$1,025 in charitable contributions

Added together, that totals \$1,504, which is less than the \$5,000 standard deduction for 2005. Assuming that Osorio would want the greater deduction, the court sustained the IRS’s use of the standard deduction.

Note: Although Tax Court summary opinions may not be used or cited as precedent, they do provide useful insight into the Tax Court’s interpretation of the law. ■

DEALING WITH THE IRS

Nixed Deductions—No Laughing Matter for Comedian

To claim business expense deductions, a taxpayer must prove that he or she was engaged in a trade or business during the relevant tax year.

RECENT CASE ▶ The IRS said that Gabriel J. Loup, an aspiring standup comedian/actor, was not entitled to business expense deductions for tax year 2003, because he did not show that he was actively involved in an acting/comedy trade or business during that year. That determination set the stage for Loup to take his case to Tax Court [*G.J. Loup*, 97 TCM 1099, Dec. 57,725(M), TC Memo. 2009-23, Docket No. 2851-06 (filed Feb. 4, 2009)]. Here’s what the court had to say.

Background Information

Loup signed a one-year contract with the Morgan Agency, a talent agent, in October 2002. Under the agreement, the Morgan Agency

would act as Loup’s agent for television commercials.

He worked as a pharmaceutical company representative and a licensed intensive care unit nurse during 2003.

Loup claims that he joined a sketch comedy group, called the 9 Layer Dipz, sometime in 2002 or earlier. He and other members of the group wrote, produced and directed their own comedy show.

On Schedule A, *Itemized Deductions*, of his timely filed 2003 Form 1040, *U.S. Individual Income Tax Return*, Loup claimed \$16,704 in deductions, including \$13,761 (a figure that was later reduced to \$12,811) under “Job Expenses and Most Other Miscellaneous Deductions.” He detailed those expenses in Form 2106-EZ, *Unreimbursed Employee Business Expenses*, and a statement attached to his return.

Loup later acknowledged that his accountant should have

claimed those deductions on Schedule C instead of Schedule A.

In November 2005, the IRS issued Loup a notice of deficiency, and he filed a petition with the Tax Court. The parties agreed that the issue before the Tax Court was whether he is entitled to Schedule C deductions.

Court Analysis

Under Internal Revenue Code Section (“Code Sec.”) 162(a), a taxpayer is entitled to a deduction for “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.” The court uses three factors to determine whether a taxpayer is engaged in a trade or business:

1. Whether the taxpayer undertook the activity intending to earn a profit
2. Whether he or she is regularly and actively involved in the activity

3. Whether the taxpayer's activity has actually commenced

Loup acknowledged that nearly all of his relevant activities in 2003 related to the 9 Layer Dipz.

In arguing his case, Loup presented four advertisements for the 9 Layer Dipz performances. However, the court noted that the advertisements did not include the year in which those performances were to take place. One ad simply stated that the group would perform on "WEDNESDAYS AT 8PM," while another contained no day, time or date. The remaining two ads did not specify the year, but did make reference to the days and months that the group would perform. Specifically, one said the group would perform on Wednesdays, January 14, 21 and 28, while the other listed a date of Wednesday, April 28.

At trial, Loup testified that the ad for Wednesday, April 28, referred to a 2003 show, but April 28, 2003,

was a Monday not a Wednesday, according to the court. Although it did not question the sincerity of Loup's belief, the court said he was mistaken about the dates.

The court also pointed out that January 14, 21 and 28, 2003—the dates listed in another advertisement—were Tuesdays, not Wednesdays, and that all of the relevant dates—January 14, 21 and 28, and April 28—fell on Wednesdays in 2004. As a result, the court concluded that those 9 Layer Dipz performances actually took place in 2004.

In examining Loup's self-prepared log of expenses relating to the 9 Layer Dipz in 2003, the court said it does not show that he was engaged in an active trade or business during 2003, especially in light of the date discrepancies above and because he could not recall when he had created the log, saying only that "It was created shortly after we had the expenses."

By itself, the 2002 Morgan Agency contract does not establish the existence of an ongoing active acting/comedy trade or business in 2003, according to the court. "The contract is insufficient for that purpose, as it sheds no light on ... [Loup's] 2003 acting/comedy activities."

Loup did present evidence relating to subsequent years, showing that he was later engaged in substantial acting/comedy activities, but the court said those years were not part of this case.

Since Loup did not demonstrate that he was engaged in any acting/comedy activity in 2003, he is not entitled to the business expense deductions under Code Sec. 162 for 2003. As a result, the court said it did not need to address substantiation of the claimed expenses or the extent to which the claimed expenses were nondeductible personal expenses. ■

DEALING WITH THE IRS

Execs Can Glean Insight from IRS Strategic Plan

From tax code complexity and human capital challenges to IT-related security risks and globalization to changing business models, officials at the IRS face some of the same issues that executives in the private sector confront. The IRS's five-year strategic plan provides insight into management strategies for addressing those challenges and trends.

Major Trends Affecting the IRS

The Strategic Plan 2009-2013 identifies six major trends affecting the IRS in the next five years:

1. **Increasing complexity of tax administration.** New tax provi-

sions, adjustments for expiring tax provisions and short implementation periods that often accompany legislative mandates "strain management capacity and demand substantial resources," according to the plan. To administer the tax code in a fair and timely manner, the IRS states that it "must be nimble in ... [its] staffing, have meaningful, just-in-time training models in place, and reinforce ... [its] commitment to acting quickly."

2. **Growing human capital challenges.** More than half of IRS employees and managers are at least 50 years old; 39 percent of executives and 20 percent of

managers are already eligible for retirement. "Replacing these people will be challenging in an increasingly competitive environment for graduates, particularly in critical fields such as IT and accounting. The IRS must grow employees' and managers' skills and sophistication, even while more senior people retire," the plan states.

3. **Explosion in electronic data, online interactions and related security risks.** According to the plan, "attempts at identity theft and phishing (*i.e.*, online scams to steal personal data) related to federal income taxes increased more than sevenfold in 2008."

The service plans to modernize its systems, improve training and continually enhance its safeguards in response to growing IT security risks.

4. Accelerating globalization.

Consider the following facts cited in the IRS plan:

- Between 1994 and 2004, U.S.-based corporations more than tripled their foreign profits.
- Fifty-eight percent of that profit was earned in low-tax or no-tax jurisdictions.
- The number of multinational corporations worldwide has grown by 20 times since 1990.
- U.S. businesses now make wide use of offshoring and outsourcing, which often involve sophisticated and complex transfer pricing systems.
- A new set of accounting standards, the International Financial Reporting Standards (IFRS), has been created by the international community and is becoming a popular alternative to the Generally Accepted Accounting Principles (GAAP).
- Between 2001 and 2006, the percentage of Americans' income originating from foreign sources doubled.
- From 2003 to 2005, the number of individual Americans paying taxes in another country increased by 30 percent.

"As taxpayers expand into global markets, we must keep up with their ever-diversifying needs—assessing our international presence and developing the skills and relationships needed to ensure that taxpayers with income abroad pay the taxes they owe," the plan states.

5. Expanding role of tax practitioners and other third parties

in the tax system. An increasing number of taxpayers are using paid preparers (60 percent in 2007 compared to 51 percent in 1993) and tax preparation software (27 percent in 2007 versus eight percent in 1993) to prepare their federal income tax returns, according to the plan. Over the next five years, the IRS says it will need to acknowledge the role of enrolled agents, CPAs and tax attorneys in the tax system and balance efforts to serve them effectively while helping ensure that they meet professional standards and comply with the law.

6. Accelerating change in business models.

As business models change, the IRS expects its interactions with business taxpayers to become more complicated. "Already we are seeing a rapid rise in 'pass-through' companies, which pass their profits through to their members or shareholders, who then pay the taxes on their individual returns," the plan reports.

Commissioner Outlines Two Overarching Goals

The IRS plans to invest in its workforce and in technology to meet two main goals that are emphasized in the strategic plan:

1. Improve taxpayer service to make voluntary compliance easier. "We will work harder to incorporate taxpayer perspectives, expedite resolution of taxpayer issues, and provide timely guidance to help all taxpayers pay their fair share of taxes," Commissioner Doug Shulman wrote in the plan. "We will also strengthen our partnerships with tax practitioners, preparers, and other third parties in the system."

Before implementing major changes or introducing new services and processes, the IRS will use focus groups, surveys and

other feedback methods to gain a better understanding of taxpayer preferences, according to the plan.

New programs will be rolled out in phases, and the IRS will strive to make its services accessible to all segments of the public.

To ensure effective tax administration, the IRS plans to provide faster issue resolution and tailored service to tax practitioners, tax preparers and other third parties and to treat them as the "first line of compliance" by providing them with the tools and information to encourage taxpayer compliance and prevent mistakes.

2. Enforce the law to ensure everyone meets their tax obligations. "We will be timely in our enforcement actions and expand the approaches and tools we use in compliance activities," Shulman pledged. "We will meet the challenges of globalization by improving our expertise and coordinating better with international organizations."

In expanding enforcement approaches and tools, the IRS plans to use more soft notices and other nonaudit contacts, review and enhance its current notice regimen, expand incentives for taxpayers to conduct independent external audits and increase self-correction opportunities for taxpayers.

The IRS also plans to use a variety of methods to target existing and emerging high-risk areas by, among other things, continuing to focus on corporations, high-income individuals, business income and flow-through entities, as well as pursuing promoters of tax schemes and increasing its focus on criminal investigations.

Finally, the IRS will take steps to ensure that tax practitioners adhere to professional standards and the law, including administering a system of sanctions and penalties and identifying fraudulent preparers and other areas of abuse and noncompliance. ■

Obama Calls for Tax Code Simplification

As if dealing with a recession, corporate bailouts and a potential flu pandemic within his first 100 days in office were not enough, President Barack Obama also indicated that he is ready to tackle the tax code.

"... [W]e need to simplify a monstrous tax code that is far too complicated for most Americans to understand, but just complicated enough for the insiders who know how to game the system," Obama said on April 15—a day he acknowledged "isn't exactly everyone's favorite date on the calendar."

Obama said he had already asked his Economic Recovery Board to complete "a thorough review of how to simplify our tax code" and report its finding to him by the end of the calendar year. "It's going to take time to undo the damage of years of carve-outs and loopholes. But I want every American to know that we will rewrite the tax code so that it puts your interests over any special interests. And we'll make it easier, quicker and less expensive for you to file a return, so that April 15th is not a date that is approached with dread every year."

Risk Management Helps Protect Reputation

More than 80 percent of surveyed risk management executives at major corporations in the United States and Europe say that their companies are making substantial efforts to manage reputation risk and that they have increased such efforts over the last three years, according to a new report from The Conference Board (www.conference-board.org).

"Safeguarding reputation is even more critical today because companies have developed successful ways to make reputation risk management part of their overall risk management," says Ellen Hexter, Director, Enterprise Risk Management at The Conference Board and co-author of the report with Sandy Bayer, President of Bayer Consulting.

"In addition, different stakeholder groups are becoming more sophisticated in how they drive corporate reputations. Critics on the Internet can now transmit their opinions and complaints around the world with ease. Most importantly, consumers have high expectations that companies will not only produce quality products and services, but also will act ethically in their creation and distribution."

"Although reputation is the quintessential intangible asset, a strong corporate reputation yields concrete benefits—higher market value, stronger sales, and an increased ability to hire the best and the brightest," says Bayer.

As a result of the survey findings, The Conference Board Research Working Group offers the following recommendations:

- Actively involve boards of directors in reputation risk management.
- Demonstrate to leaders and management teams in business units the impact of their actions on reputation.
- Integrate reputation risk management with enterprise risk management or other risk management programs.
- Quantify the value of reputation.
- Use and nurture employees as corporate ambassadors.

Payroll Deduction for Computers, Appliances

If you're looking for a no-cost-to-you perk to help cash-strapped employees, then you might want to look into an employee purchase program, which allows employees to pay for such purchases through payroll deductions.

Forty-five percent of adults working full-time for a company that provides employee benefits would be "at least somewhat likely" to purchase a desktop or laptop if they were able to do so through their employer, according to a recent online survey conducted by Harris Interactive® on behalf of Purchasing Power (www.PurchasingPower.com), a voluntary benefit provider of employee purchase programs. Twenty-four percent would be "likely or very likely" to make such a purchase.

In addition, the survey found that 38 percent would be at least somewhat likely to buy a high-definition television, and 37 percent might buy a washer, dryer or refrigerator, if they could pay for those purchases through payroll deduction.

"Providing non-traditional voluntary benefits as part of the benefit package is a logical service employers can offer their employees, especially in today's economic climate, to help them acquire life-enhancing products should they chose to do so," said Richard Carrano, president and chief financial officer of Purchasing Power. "Although it's a benefit fully paid for by the employee, offering this type of employee benefit helps employers show they care about their employees and want to help. Adding a benefit like this also helps raise employee morale in today's economic environment." ■

Deadline Looms for ID Theft Plan

Creditors and financial institutions required by the Federal Trade Commission (FTC) to implement identity theft prevention programs have until August 1, 2009, to do so.

Under the Fair and Accurate Credit Transactions Act of 2003 (FACTA) (P.L. 108-159), the FTC and other financial regulatory agencies were directed to create rules requiring creditors and financial institutions with covered accounts to implement programs that would identify, detect and respond to patterns, practices or specific activities that could indicate identity theft, according to an FTC statement.

The FTC announced in April that it would begin enforcing its new "Red Flags Rules" (www.ftc.gov/redflagsrule) on August 1.

A "creditor" includes "any entity that regularly extends or

renews credit—or arranges for others to do so—and includes all entities that regularly permit deferred payments for goods or services. Accepting credit cards as a form of payment does not, by itself, make an entity a creditor," the FTC explained.

According to the FTC, "financial institutions' include entities that offer accounts that enable consumers to write checks or make payments to third parties through other means, such as other negotiable instruments or telephone transfers."

"The rules require creditors to implement a written Identity Theft Prevention Program designed to detect the warning signs—or red flags—of identity theft in their day-to-day operations, take steps to prevent the crime, and mitigate the damage it inflicts," said Elizabeth Milito,

senior executive counsel, National Federation of Independent Business Small Business Legal Center (www.nfib.com).

She identified four main components of a complying plan. First, "the plan must identify potential red flags your business is likely to come across. This includes receiving written notices from credit reporting agencies and suspicious account activity," she said.

Second, "the plan must establish procedures to detect the red flags you have identified in the first step. The third step is to act appropriately when a red flag is detected. This could mean notifying a customer, contacting law enforcement, closing an account, etc.," she explained. Finally, "the plan must be reviewed periodically to identify new potential sources of risk." ■

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