

JUNE 2009  
VOLUME 23  
ISSUE 6

# Federal Tax Course Letter

## In This Issue

<b>NET OPERATING LOSSES</b>	
IRS Simplifies NOL Carryback Rules .....	1
<b>EMPLOYMENT TAXES</b>	
Differential Wages Paid to Military Exempt from FICA/FUTA.....	4
<b>TAX CREDITS</b>	
First-Time Homebuyer Credit.....	5
<b>TAX PRACTICE &amp; PROCEDURE</b>	
Innocent Spouse Reg Imposing Time Limit Invalid.....	7
<b>BUSINESS TAXATION</b>	
S Election Available for Partnership Converting to Corporation .....	9
<b>TAX PRACTICE &amp; PROCEDURE</b>	
Credit and Debit Card Fees for Electronic Payment Deductible .....	10
<b>TAX DEDUCTIONS</b>	
Regs Address Prepaid Mortgage Insurance Premium Deductions.....	10
Consumer and Business Energy Tax Incentives.....	12
<b>ESTATE &amp; GIFT TAX</b>	
Proposed Regs Address Retained Interest in Trusts .....	14
<b>CORPORATE TAXATION</b>	
New Pilot Program Simplifies Code Sec. 355 Ruling Requests.....	15
<b>TAX CALENDAR:</b>	
<b>JUNE 2009</b> .....	15

## NET OPERATING LOSSES

# IRS Simplifies NOL Carryback Rules

In Rev. Proc. 2009-26, IRB 2009-19, the IRS provides that electing small businesses (ESBs) that missed the April 17, 2009, deadline to make an election to claim a three-, four- or five-year carryback period for 2008 net operating losses (NOLs) have another opportunity to take advantage of this tax break. Interested taxpayers need to either file:

- Form 1045, *Application for Tentative Refund*;
- Form 1139, *Corporation Application for Tentative Refund*; or
- an amended federal income tax return.

Newly released Rev. Proc. 2009-26 is a response to the many invalid claims for NOL carrybacks that were filed by taxpayers who failed to follow inarticulately drafted Rev. Proc. 2009-19, IRB 2009-14, 747, where the IRS tried to advise taxpayers on three-, four- or five-year NOL carryback procedures.

To clear up the confusion, in Rev. Proc. 2009-26, the IRS modi-

fies Rev. Proc. 2009-19 to provide that an ESB may elect a three-, four- or five-year carryback period simply by filing a Form 1045, Form 1139 or amended return that carries back the NOL for three, four or five years. Although Forms 1045 and 1139 ordinarily are due within 12 months after the tax year of the NOL, Code Sec. 172(b)(1)(H)(iii) requires that the taxpayer elect a three-, four- or five-year carryback within six months after the due date (excluding extensions) of the return for the tax year of the NOL. Thus, a taxpayer that seeks to make a timely election using Form 1045, Form 1139 or an amended return must file the form in advance of its ordinary due date.

This revenue procedure also explains (1) how a taxpayer elects a three-, four- or five-year carryback if the taxpayer previously filed an election to forgo an NOL carryback period; and (2) how a taxpayer elects a three-, four- or five-year carryback if the taxpayer is a partner of an ESB that is a partnership, a shareholder of an

## Federal Tax Course Letter

### Author

Susan Flax Posner J.D., LL.M.  
in Taxation

### Managing Editor

Kurt Diefenbach

### Coordinating Editor

Barbara Mittel

### Production Coordinator

Kathie Luzod

### Executive Editor

Elice Webster

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought—*From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers*. All references to FTC are to Federal Tax Course: A Guide for the Tax Practitioner.

FEDERAL TAX COURSE LETTER (ISSN 1059-6321) is published monthly by CCH, a Wolters Kluwer business 4025 W. Peterson Ave., Chicago, Illinois 60646. Subscription inquiries should be directed to 4025 W. Peterson Ave., Chicago, IL 60646. Telephone: (800) 449-8114. Fax: (773) 866-3895. E-mail: cust\_serv@cch.com. ©2009 CCH. All Rights Reserved. Photocopying or reproducing in any form in whole or in part is a violation of federal copyright law and is strictly forbidden without the publisher's consent. No claim is made to original governmental works; however, within this product or publication, the following are subject to CCH's copyright: (1) the gathering, compilation, and arrangement of such government materials; (2) the magnetic translation and digital conversion of data, if applicable; (3) the historical, statutory, and other notes and references; and (4) the commentary and other materials.

ESB that is an S corporation or a sole proprietor.

Rev. Proc. 2009-26 applies to any taxpayer that is an ESB, a partner of a partnership that is an ESB, a shareholder in an S corporation that is an ESB, or a sole proprietor of a business that is an ESB, and that incurred an NOL for any tax year ending in 2008 or beginning in 2008.

### Background

Taxpayers are allowed to carry back an NOL from a trade or business to apply as a deduction against prior income and to deduct any unabsorbed loss from future years' income [Code Sec. 172(b)]. An NOL is defined as the excess of allowable business deductions over gross income in a tax year, with the required adjustments [Code Sec. 172(c) and (d); Reg. §1.172-2]. Code Sec. 172(a) allows a taxpayer to claim a deduction equal to the aggregate of the NOL carryovers and carrybacks to another tax year in which gross income exceeds business deductions. An NOL for any tax year generally must be carried back to each of the two years preceding the tax year of the NOL and may be carried forward 20 years. A taxpayer may elect to waive the entire carryback period [Code Sec. 172(b)(3)]. If this election is made, the loss may be carried forward only. The election must be made by the return due date (including extensions) for the tax year of the NOL. The election is irrevocable.

For NOLs arising in tax years ending after December 31, 2007, an eligible ESB may elect to carry back its appli-

cable 2008 NOL to three, four or five years preceding the tax year of the NOL [Code Sec. 172(b)(1)(H)]. An eligible ESB is a small business that is a corporation or partnership that meets the gross receipts test for the tax year (gross receipts of \$15 million or less) in which the loss arose (or in the case of a sole proprietorship, that would meet such test if the proprietorship were a corporation).

Any election under Code Sec. 172(b)(1)(H) must be made by the due date (including extension of time) for filing the taxpayer's return for the tax year of the NOL [Code Sec. 172(b)(1)(H)(iii)]. The election is irrevocable and may be made only for one tax year.

### Procedures to Follow

#### Electing on Original Return.

A taxpayer may make the election under Code Sec. 172(b)(1)(H) by attaching a statement to the taxpayer's timely filed federal income tax return for the tax year in which the applicable 2008 NOL arises. The statement must state that the taxpayer is electing to apply Code Sec. 172(b)(1)(H) and specify the length of the NOL carryback period elected by the taxpayer (three, four or five years). If the taxpayer's tax year of the applicable 2008 NOL ends before February 17, 2009, the taxpayer must make the election on or before the later of the due date (including extensions of time) of the taxpayer's return for that tax year or April 17, 2009.

**Electing on an Appropriate Form.** A taxpayer who did not make the election under Code Sec. 172(b)(1)(H) on an original

return may make the election by filing the appropriate form applying the NOL carryback period chosen by the taxpayer. No statement or label is required with the appropriate form. The appropriate form is:

- For corporations: Form 1139, *Corporation Application for Tentative Refund*, or Form 1120X, *Amended U.S. Corporation Income Tax Return*
- For individuals: Form 1045, *Application for Tentative Refund*, or Form 1040X, *Amended U.S. Individual Income Tax Return*
- For estates or trusts: Form 1045, or amended Form 1041, *U.S. Income Tax Return for Estates and Trusts*

A taxpayer that makes the election under Code Sec. 172(b)(1)(H) by filing an amended return must file the return for the earliest tax year to which the taxpayer is carrying back the applicable 2008 NOL. The taxpayer should not file an amended return for the applicable 2008 NOL tax year.

The appropriate form must be filed on or before the later of the date that is six months after the due date (excluding extensions) for filing the taxpayer's return for the tax year of the applicable 2008 NOL or April 17, 2009. If a taxpayer makes the election by filing an appropriate form that amends a prior refund claim, the amendment also will apply to a carryback of any alternative tax NOL for the same tax year. In the case of an amended application for a tentative carryback adjustment, the 90-day period will begin on the date the amended application is filed.

### Partnerships, S Corporations and Sole Proprietorships

- A partner in a partnership that qualifies as an ESB may make the Code Sec. 172(b)(1)(H) election for its distributive share of the qualifying ESB partnership income, gain, loss and deduction that is both allocable to the taxpayer under Code Sec. 704 and allowed in calculating the taxpayer's applicable 2008 NOL.
- A shareholder in an S corporation that qualifies as an ESB may make the Code Sec. 172(b)(1)(H) election for its *pro rata* share of the qualifying ESB S corporation income, gain, loss and deduction under Code Sec. 1366 that is allowed in calculating the shareholder's applicable 2008 NOL.
- An owner of a sole proprietorship that qualifies as an ESB may make the Code Sec. 172(b)(1)(H) election for the qualifying ESB sole proprietorship income, gain, loss and deduction that is allowed in calculating the taxpayer's applicable 2008 NOL.

In determining whether a partnership, S corporation or sole proprietorship qualifies as an ESB, the gross receipts test applies at the partnership, corporate or sole proprietorship level. The aggregation rules of Code Sec. 448(c)(2) apply to determine whether the partnership, S corporation or sole proprietorship meets the gross receipts test of Code Sec. 448(c).

The amount of the taxpayer's applicable 2008 NOL that

the taxpayer may carry back under Code Sec. 172(b)(1)(H) is limited to the lesser of (1) the taxpayer's items of income, gain, loss or deduction that are allowed in calculating the taxpayer's applicable 2008 NOL and are from one or more partnerships, S corporations or sole proprietorships that qualify as ESBs; or (2) the taxpayer's applicable 2008 NOL.

**Example 1.** Partnerships A, B and C have average annual gross receipts of \$10 million, \$12 million and \$14 million, respectively. Partner T owns a 40-percent interest in each partnership. None of the partnerships is required to be aggregated with any other entity for purposes of the aggregation rules of Code Sec. 448(c)(2). Partner T may apply its election under Code Sec. 172(b)(1)(H) to the portion of its applicable 2008 NOL attributable to its distributive share of the income, gain, loss, and deduction of each of Partnerships A, B and C.

**Example 2.** The facts are the same as in Example 1, except that Partnerships A and B are under common control. Accordingly, Partnerships A and B are treated as one person under the aggregation rules. Because the aggregated average annual gross receipts of Partnerships A and B exceed \$15 million, Partnerships A and B do not qualify as ESBs. Partner T may not apply its election under Code Sec. 172(b)(1)(H) to the portion of its applicable 2008 NOL attributable to its distributive share of the income, gain, loss and deduction of Partnerships A and B. Partner T may apply its election under Code Sec. 172(b)(1)(H) to the portion of its applicable 2008 NOL attributable to its distributive share of income, gain, loss and deduction of Partnership C. ■

# Differential Wages Paid to Military Exempt from FICA/FUTA

In Rev. Rul. 2009-11, IRB 2009-18, the IRS concludes that differential wage payments made by an employer to employees while on active military duty for more than 30 days are subject to income tax withholding but are not subject to Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes. In addition, the ruling provides that employers may use either the aggregate method or optional flat rate withholding to calculate the amount of income tax required to be withheld on these supplemental wages, and the payments must be reported by the employer on the employee's Form W-2.

## Legal Background

Code Sec. 3402(a) generally requires every employer making a payment of wages to deduct and withhold upon those wages a tax determined in accordance with prescribed tables or computational procedures. Code Secs. 3101 and 3111 impose taxes under FICA on employees and employers for wages paid with respect to employment. Code Sec. 3301 imposes tax under FUTA on employers on wages paid with respect to employment.

Code Sec. 3401(a) defines "wages" as all remuneration for services performed by an employee for his employer, subject to certain exceptions.

Beginning in 2009, Code Sec. 3401(h) provides that, for purposes of income tax withholding, any

differential wage payment is to be treated as a payment of wages by the employer to the employee and is thus subject to income tax withholding. The term "differential wage payment" is defined as any payment that:

- is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days; and
- represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.

## Facts

M, an employer, has employees who are called or voluntarily enlist for active military service in the United States uniformed services for periods exceeding 30 days. M continues making payments to the individuals in an amount equal to the difference between the compensation they receive for their military service and the wages the employees would have received from M if the employees were performing services for M. The payments supplement compensation received by the employees from the federal government for their military service.

## IRS Analysis and Conclusion

The IRS concluded that payments made by M to the employ-

ees while they are in military service with the United States uniformed services constitute "differential wage payments" under Code Sec. 3401(h) because these payments represent all or a portion of the wages the individuals would have received if still performing services for M and are made while the individuals are actively serving in the United States uniformed services for a period of duty scheduled to exceed 30 days. Therefore, these payments are treated as wages for income tax withholding purposes, and M must withhold income taxes on the differential wage payments.

However, the differential wage payments are not wages for purposes of FICA and FUTA taxes because the individuals are scheduled to be on active military duty for an extended period of time, rather than being temporarily absent. Because Code Sec. 3401(h) does not address the FICA and FUTA treatment of differential wage payments, the IRS followed the holding in Rev. Rul. 69-136, 1969-1 CB 252, which provides that differential wage payments do not constitute wages subject to FICA or FUTA taxes. Therefore, M was not required to withhold or pay FICA or FUTA tax, with respect to the differential wage payments.

## Supplemental Wage Withholding

Differential wage payments are supplemental wages because they are not a payment for

services for the nonmilitary employer in the current payroll period. As a supplemental wage, if the amount of the differential pay, when added to all other supplemental wages paid by the same employer to the employee during the calendar year does not exceed \$1 million, then the amount of the income tax withholding is determined under either the aggregate procedure or under optional flat rate withholding.

Under the aggregate procedure, M adds the differential wage payment to the employee's regular wages, if any, for the payroll period and treats the aggregate of the two as if it constituted a single wage payment for the payroll period. The withholding method used by M with respect to regular wages is then used to calculate the withholding on this single

wage payment, and M takes into consideration the Form W-4 submitted by the employee.

Alternatively, M may determine the income tax withholding on the differential wage payment using optional flat rate withholding, if certain requirements are satisfied. Optional flat rate withholding may be used provided that (1) the differential wage payment is either not paid concurrently with regular wages or is separately stated on the payroll records of the employer, and (2) income tax has been withheld from the regular wages paid to the employee during the calendar year of the differential wage payment or the preceding calendar year. The determination of the amount of tax to be withheld under optional flat rate withholding is made without reference to

any payment of regular wages, without allowance for the number of withholding allowances claimed by the employee on Form W-4, and without regard to whether the employee has requested additional withholding on Form W-4.

If the differential wage payment, when added to all supplemental wage payments previously made by M to the employee during the calendar year, exceeds \$1 million, the rate used in determining the amount of withholding on the excess shall be equal to the highest rate of tax.

### Information Reporting

Because differential payments are treated as wages subject to income tax withholding, the IRS concluded that the employer must report the payments on each employee's Form W-2. ■

---

## TAX CREDITS

# First-Time Homebuyer Credit

In the online portion of its Web Site entitled Frequently Asked Questions (FAQs), the IRS updated its explanation of the \$8,000 first-time homebuyer credit. The IRS provides that in order to claim the one-time tax credit, taxpayers must qualify as first-time homebuyers who buy their first principal residence after April 8, 2008, and before December 1, 2009. A taxpayer's principal residence is defined as the one that the taxpayer lives in most of the time and can be a house, houseboat, house trailer, cooperative apartment, condominium or other type of residence.

The first-time homebuyer credit is equal to the lesser of:

- \$8,000 if the taxpayer purchased his or her home in 2009 (\$7,500 in 2008), but only half of that amount if the taxpayer is married filing separately; or
- 10 percent of the purchase price of the home if the taxpayer purchased his or her principal residence in the United States after April 8, 2008, and before December 1, 2009.

The credit is claimed on Form 5405, *First-Time Homebuyer Credit*, and must be filed with the taxpayer's federal income tax return. However, taxpayers are not required to claim the credit.

### First-Time Homebuyer Defined

A "first-time homebuyer" is defined as an individual (and if married, the individual's spouse) who has not owned another principal residence at any time during the three years prior to the date of purchase of the principal residence. Taxpayers (including spouse, if married) who owned a principal residence at any time during the three years prior to the date of purchase are not eligible for the credit. To qualify for the credit, the residence must be purchased. Therefore, a taxpayer planning to build and occupy a home in 2009 cannot

claim the credit prior to construction and use the funds for construction costs. A taxpayer who constructs his or her main home will be treated as having purchased it on the date he or she first occupied the home. A taxpayer who owned a principal residence outside of the United States within the last three years is not disqualified from taking the credit for a purchase within the United States.

If a taxpayer inherited a home and lived in the inherited home prior to purchasing a home, the taxpayer would be unable to claim the first-time homebuyer credit because the ownership interest in the prior principal residence would preclude the taxpayer from being considered a first-time homebuyer. As long as the taxpayer owned and used the prior home as his or her principal residence, then he or she is not a first-time homebuyer. No exception is available for taxpayers who did not buy their prior residences.

Taxpayers affected by Hurricane Katrina or other disasters may qualify as first-time homebuyers when they purchase a new principal residence if their principal residence became uninhabitable more than three years ago and they have not formally disposed of the uninhabitable home or purchased or built a new home in the interim.

### Income Phase-out

The credit is phased out for higher-income taxpayers. For a married couple filing a joint return, the phase-out range is a taxpayer's modified adjusted gross income (MAGI) of \$150,000 to \$170,000. For other

taxpayers, the phase-out range is \$75,000 to \$95,000. This means that the full credit is available for married couples filing a joint return whose MAGI is \$150,000 or less and for other taxpayers whose MAGI is \$75,000 or less.

If a taxpayer doesn't owe taxes and/or his or her income is exempt from tax and the taxpayer is not required to file a tax return, the taxpayer may nevertheless claim the first-time homebuyer credit and claim a tax refund. Having tax-exempt income does not preclude the taxpayer's eligibility to claim the credit. Although there are maximum income limits for qualifying first-time homebuyers, there are no minimum income criteria. Thus, someone with no taxable income who qualifies as a first-time homebuyer may file a tax return for the sole purpose of claiming the first-time homebuyer credit and receiving a tax refund.

### Eligibility

The credit cannot be claimed if any of the following apply:

- The taxpayer is a nonresident alien.
- The taxpayer was eligible to claim the District of Columbia first-time homebuyer credit for any tax year. This rule does not apply for a home purchased in 2009.
- The taxpayer's home financing came from tax-exempt mortgage revenue bonds. This rule does not apply to a home purchased in 2009.
- The taxpayer's home is located outside the United States. Taxpayers may not claim the credit for homes purchased in the U.S. Territories

- The taxpayer sells the home, or it ceases to be his or her main home, before the end of 2009.
- The home is a vacation home or rental property (renting out two of the bedrooms will not disqualify the taxpayer from claiming the credit).
- The taxpayer acquired the home by gift or inheritance.
- The taxpayer acquired the home from a related person. A "related person" includes the following:
  - A spouse, ancestor (parent, grandparent, *etc.*) or lineal descendant (children, grandchildren, *etc.*)
  - A corporation in which the taxpayer directly or indirectly owns more than 50 percent in value of the outstanding stock of the corporation
  - A partnership in which the taxpayer directly or indirectly owns more than 50 percent of the capital interest or profits interests

**Practice Pointer.** Step-relatives are neither ancestors nor lineal descendants and are therefore not related persons for purposes of the first-time homebuyer credit.

### Repayment of Credit

**Homes Purchased in 2008.** For homes purchased in 2008, the credit (which was only \$7,500) operates like an interest-free loan because it must be repaid over a 15-year period. The taxpayer generally must repay the credit over a 15-year period in 15 equal installments. The repayment period begins in 2010 and the taxpayer must include the first installment as additional tax on

his or her 2010 tax return. If the taxpayer's home ceases to be his or her principal residence before the 15-year period is up, the taxpayer must include all remaining annual installments as additional tax on the return for the tax year in which that event occurs. This includes situations where the taxpayer sells the home, converts it to business or rental property, or the home is destroyed, condemned or disposed of under threat of condemnation.

**Homes Purchased in 2009.** The taxpayer must repay the tax credit only if the home ceases to be his or her main home within the 36-month period beginning on the purchase date. This includes situations where the taxpayer sells the home, converts it to business or rental property, or the home is destroyed, condemned or disposed of under threat of condemnation. The taxpayer must repay the credit by including it as additional tax on the return

for the year the home ceases to be his or her main home. If the home continues to be the taxpayer's main home for at least 36 months beginning on the purchase date, the taxpayer need not repay any of the credit

### **Application of First-Time Homebuyer Credit Between Unmarried Taxpayers**

In Notice 2009-12, the IRS provides that if two or more unmarried individuals buy a principal residence, they can allocate the first-time homebuyer credit between the individual owners using any reasonable method. The total amount allocated cannot exceed the smaller of \$8,000 or 10 percent of the purchase price. A reasonable method is any method that does not allocate all or a part of the credit to a co-owner who is not eligible to claim that part of the credit. A reasonable method includes allocating the credit between

taxpayers who are eligible to claim the credit based on (1) the taxpayers' contributions toward the purchase price of a residence as tenants in common or joint tenants, or (2) the taxpayers' ownership interests in a residence as tenants in common.

**Example.** A and B, who are not married, purchased their first principal residence as tenants in common on June 29, 2009. They do not have MAGI in excess of the MAGI threshold. A contributes \$45,000 and B contributes \$15,000 towards the \$60,000 purchase price of a residence. Each owns a one-half interest in the residence as tenants in common. The allowable credit is limited to 10 percent of the purchase price, or \$6,000. A and B may allocate the allowable \$6,000 credit three-fourths to A and one-fourth to B based on their contributions toward the purchase price of the residence, one-half to each based on their ownership interests in the residence, or using any other reasonable method (for example, the entire credit to A or B). ■

---

## **TAX PRACTICE & PROCEDURE**

# **Innocent Spouse Reg Imposing Time Limit Invalid**

**I**n *C.M. Lantz* [132 TC No. 8, Dec. 57,784 (2009)], the Tax Court held that Reg. §1.6015-5(b) (1), which imposes a two-year limitations period on requests for innocent spouse relief, was an invalid interpretation of the equitable relief provisions of Code Sec. 6015(f). Thus, the IRS abused its discretion by failing to consider all the facts and circumstances when it denied an individual's claim for innocent spouse relief solely on the

basis that the claim was filed more than two years after the IRS's first collection action. The Tax Court determined that the regulation was not a permissible construction of the statute because it was contrary to Congressional intent. According to the court, Congress intended to provide two kinds of remedies, and it was not reasonable for the IRS to adopt a deadline for the equitable remedy of Code Sec. 6015(f) that was no

more lenient than the two-year deadline for the traditional remedy in Code Sec. 6015(b) and Code Sec. 6015(c).

### **Facts**

The taxpayer and her husband, a dentist, timely filed a joint income tax return for the year at issue. Subsequently, the husband was arrested and convicted of Medicare fraud. As a result of the conviction, he was sentenced to federal prison

and incarcerated for three years. Upon his release from prison, he moved to a halfway house where he lived for three months prior to his death.

In an attempt to seek relief from joint tax liability for the tax year at issue, the taxpayer filed Form 8857, *Request for Innocent Spouse Relief*, under Code Sec. 6015(f). The request was filed over two years after the first collection action was taken against her. The IRS denied the taxpayer's request for innocent spouse relief because her claim was filed more than two years after the first collection activity.

### Legal Background

Code Sec. 6013(d)(3) provides that taxpayers filing joint federal income tax returns are each responsible for the accuracy of their returns and are jointly and severally liable for the entire tax liability due for the year of the return. Joint and several liability applies to all joint returns filed, even when an underpayment exists that is the sole responsibility of only one spouse. The harshness of this rule is mitigated by innocent spouse relief, which is an escape hatch for a qualifying spouse. Thus, in certain circumstances, a so-called innocent spouse may obtain relief from joint and several liability by qualifying for innocent spouse relief under Code Sec. 6015, which provides that a spouse who made a joint return may elect to seek relief from joint and several liability under Code Sec. 6015(b) (dealing with relief from liability for an understatement of tax with respect to a joint return). To qualify for relief under Code Sec. 6015(b) or Code Sec. 6015(c), the request-

ing spouse must make an election not later than two years after the IRS has begun a collection action [Code Sec. 6015(b)(1)(E) and (c)(3)(B)]. If relief is unavailable under either Code Sec. 6015(b) or (c), an individual may seek equitable relief under Code Sec. 6015(f).

Code Sec. 6015(f) does not impose the two-year limitations period. However, a two-year limitations period for requesting relief under Code Sec. 6015(f) was included in Notice 98-61, 1998-2 CB 756, 757, and in Rev. Proc. 2000-15, 2000-1 CB 447; Rev. Proc. 2003-61, 2003-2 CB 296; and in Reg. §1.6015-5.

### Court Analysis and Conclusion

In resolving the issue, the court first applied the standard of review set forth in *Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc.* [S.Ct., 467 US 837 (1984)], by addressing whether Congress had directly spoken on the issue of restricting Code Sec. 6015(f) equitable relief to a two-year limitations period. The court noted that Code Sec. 6015(b) and Code Sec. 6015(c) both have two-year limitations periods for applications requesting relief from joint income tax liability. However, the court observed that Code Sec. 6015(f) contains no such limitation and that it can therefore “generally [be] presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another.” The court therefore concluded that by explicitly creating a two-year limitation in Code Sec. 6015(b) and Code Sec. 6015(c) but not Code Sec. 6015(f),

“Congress has ‘spoken’ by its audible silence.” Therefore, the court concluded that the regulation fails the first prong of *Chevron* because it imposes a limitation that Congress explicitly incorporated into subsections (b) and (c) but omitted from subsection (f).

The court also noted that under Code Sec. 6015(f)(2), the equitable remedy is available only if relief is not available to the spouse under Code Sec. 6015(b) or Code Sec. 6015(c), which both apply a two-year filing rule. Thus, the equitable relief available under Code Sec. 6015(f) should be easier to qualify for than the relief under subsection Code Sec. 6015(b) or Code Sec. 6015(c). Thus, in order for Code Sec. 6015(f) relief to be more broadly available than under the two-year filing rule of Code Sec. 6015(b)(1)(E) and (c)(3)(B), a deadline under subsection (f) would need to be longer than two years.

The court therefore concluded that Reg. §1.6015-5(b)(1), which provides that a spouse must request equitable innocent spouse relief under Code Sec. 6015(f) no later than two years from the first collection activity against the spouse was an invalid interpretation of Code Sec. 6015.

### IRS Addresses Handling of Equitable Innocent Spouse Relief Claims Post-Lantz

In Chief Counsel Notice CC-2009-012, the IRS Office of Chief Counsel issued guidance to its attorneys regarding equitable innocent spouse relief petitions under Code Sec. 6015(f) that were filed more than two years after collection

activity had commenced in light of *Lantz*, where the Tax Court found that the two-year statute of limitations was inapplicable to innocent spouse requests under Code Sec. 6015(f).

The Chief Counsel attorneys are advised to no longer file summary judgment motions in pending cases where equitable innocent spouse relief petitions were filed more than two years after the first collection activ-

ity had commenced. However, IRS attorneys are to continue to argue the unavailability of equitable innocent spouse relief for claims in such cases. The two-year issue is to be raised at all appropriate levels of the proceeding, in light of the IRS's disagreement with the *Lantz* decision.

If the IRS denied equitable relief solely because of the regulations' two-year rule, the attor-

ney should submit the case to the IRS's Centralized Innocent Spouse Operations unit for a determination on the merits. If the unit decides that the taxpayer is not entitled to relief, its conclusion and analysis should be submitted to the Tax Court. If the unit concludes that the taxpayer is entitled to relief, the attorney should consult with IRS headquarters "concerning the best course of action." ■

---

## BUSINESS TAXATION

# S Election Available for Partnership Converting to Corporation

In Rev. Rul. 2009-15, IRB 2009-21 (May 7, 2009), the IRS ruled that when an unincorporated entity initially taxed as a partnership becomes a corporation for tax purposes, the corporation is eligible to elect to be taxed as an S corporation effective its first tax year. Additionally, the corporation will not be deemed to have an intervening short tax year in which it was a C corporation. This is an important consideration because it means that the corporation avoids any exposure to capital gains tax or accumulated earnings and profits tax.

### Facts

**Situation 1.** On January 1, 2009, X is organized as an unincorporated entity that is classified as a partnership for federal tax purposes. X elects under the check-the-box regulations to be treated as an association for federal tax purposes, effective January 1, 2010. On February 1, 2010, X files an election to be

taxed as an S corporation, effective January 1, 2010.

**Situation 2.** On January 1, 2009, Y is organized as an unincorporated entity that is classified as a partnership for federal tax purposes. Y converts into a corporation under a state law formless conversion statute, effective January 1, 2010. As a result of the conversion, Y is classified as a corporation for federal tax purposes. On February 1, 2010, Y files an election to be taxed as an S corporation, effective January 1, 2010.

### Legal Background

Code Sec. 1362(b)(a) provides that a small business corporation may make an election to be treated as an S corporation for any tax year (1) at any time during the preceding tax year, or (2) at any time during the tax year and on or before the 15th day of the third month of the tax year.

Reg. §301.7701-3(g)(1)(i) provides that, if an eligible entity classified as a partnership elects

under Reg. §301.7701-3(c)(1)(i) to be classified as an association, the following is deemed to occur: the partnership contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners.

### IRS Analysis and Conclusion

**Situation 1.** The IRS concluded that when X, an entity classified as a partnership for federal tax purposes, elects under the check-the-box regulations to be classified as an association, the following steps are deemed to occur: X contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter X liquidates by distributing the stock of the association to its partners. These deemed steps are treated as occurring immediately before the close of the day before the election is effective. Thus, the

partnership's tax year ends on December 31, 2009, and the association's first tax year begins on January 1, 2010. Therefore, the partnership will not be deemed to own the stock of the association during any portion of the association's first tax year beginning January 1, 2010, and X is eligible to elect to be an S corporation effective January 1, 2010. Additionally, because the partnership's tax year ends immediately before the close of the day on December 31, 2009, and the association's first tax year begins at the start of the day on January 1, 2010, the deemed steps will not

cause X to have an intervening short tax year in which it was a C corporation.

**Situation 2.** The IRS concluded that the conversion of a partnership into a corporation under a state law formless conversion statute is treated in the same manner as if the entity had made an election to be treated as an association under the check-the-box regulations. Therefore, Y is deemed to contribute all of its assets and liabilities to the corporation in exchange for stock in the corporation, and immediately thereafter Y liquidates by distributing the stock of the corporation

to its partners. As in Situation 1, the partnership will not be deemed to own the stock of the corporation during any portion of the corporation's first tax year beginning January 1, 2010, and Y is eligible to elect to be an S corporation effective January 1, 2010. Additionally, because the partnership's tax year ends immediately before the close of the day on December 31, 2009, and the corporation's first tax year begins at the start of the day on January 1, 2010, the deemed steps will not cause Y to have an intervening short tax year in which it was a C corporation. ■

---

## TAX PRACTICE & PROCEDURE

# Credit and Debit Card Fees for Electronic Payment Deductible

The IRS has announced that convenience fees charged for paying federal individual income taxes electronically by credit or debit cards are deductible for taxpayers who itemize [IR-2009-37]. The announcement represents a change from the IRS's previous position on the deductibility of such fees.

Although federal law prohibits the IRS from charging any fees associated with credit or debit card transactions, card processors typically charge taxpayers a convenience fee for paying their taxes by credit or debit cards. These convenience fees average approximately 2.5 percent of the tax payment. In

order to deduct the convenience fees, taxpayers must be eligible to file a Form 1040 Schedule A to itemize their deductions, and also have enough miscellaneous expenses to exceed two percent of the taxpayer's adjusted gross income. Fees are deductible in the tax year they are paid. ■

---

## TAX DEDUCTIONS

# Regs Address Prepaid Mortgage Insurance Premium Deductions

The IRS has released temporary regulations that explain how to allocate prepaid mortgage insurance premiums to determine the amount of the prepaid premium that is treated as qualified residential interest each year under Code Sec. 163(h)(4)(F) and therefore deducted on

the taxpayer's federal income tax return through December 31, 2010. The temporary regulations require borrowers to allocate the deduction for prepaid premiums on Federal Housing Administration (FHA) or private mortgage insurance ratably over the shorter of an 84-month

period or the term of the loan. The temporary regulations also impose an information reporting requirement on the recipient of mortgage insurance premiums.

### Legal Background

Mortgage insurance may be required if a taxpayer purchas-

ing a home doesn't have sufficient funds to make a full down payment and the lending institution requires the homebuyer to obtain the mortgage insurance to guarantee repayment of the loan amount. Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the tax year in connection with acquisition indebtedness on a taxpayer's qualified residence are treated as qualified residence interest and are therefore deductible subject to a phase-out based on the taxpayer's adjusted gross income [Code Sec. 163(h)(3)(E)]. Code Sec. 163(h)(3)(E)(ii) provides that the amount allowed as a deduction is phased out ratably by 10 percent for each \$1,000 (\$500 in the case of a married individual filing a separate return) that the taxpayer's adjusted gross income exceeds \$100,000 (\$50,000 in the case of a married individual filing a separate return).

The deduction is not allowed if the taxpayer's adjusted gross income exceeds \$110,000 (\$55,000 in the case of a married individual filing a separate return).

The mortgage insurance premium deduction is available from January 1, 2007, through December 31, 2010. Prior to enactment of Code Sec. 163(h)(3)(E), taxpayers could not deduct premiums paid for mortgage insurance as qualified residence interest. For purposes of this deduction, qualified mortgage insurance means mortgage insurance provided by the Veterans Administration, the FHA or the Rural Housing Administration, and private mortgage insurance [Code Sec. 163(h)(4)(E)].

Amounts paid for qualified mortgage insurance that are properly allocable to periods after the close of the tax year are treated as paid in the period to which they are allocated. No deduction is allowed for the unamortized balance if the mortgage is paid before its term (except in the case of qualified mortgage insurance provided by the Department of Veterans Affairs or Rural Housing Administration).

Code Sec. 6050H(h) provides that any person who, in the course of a trade or business, receives from an individual premiums for mortgage insurance aggregating \$600 or more for any calendar year, must file an information return.

#### **Simplified Method for Allocating Prepaid Mortgage Insurance Premiums**

In Notice 2008-15, IRB 2008-4, 4, the IRS explained how individuals should allocate prepaid qualified mortgage insurance premiums and how entities receiving premiums should report them for the 2007 tax year. Individuals who obtained a mortgage that qualified as acquisition indebtedness on a qualified residence and in connection with the mortgage paid a qualified mortgage insurance premium for private mortgage insurance or FHA mortgage insurance issued that year but extending beyond the year had to allocate the prepaid premium ratably over the shorter of:

- the stated term of the mortgage; or
- 84 months, beginning with the month in which the insurance was obtained, to determine the amount treated as

deductible qualified residence interest for the year.

The notice also required reporting entities that were required to file the 2007 Form 1098 to report, in box 4 of Form 1098, either the amount of prepaid qualified mortgage insurance premiums actually received or the amount determined under the 84-month allocation method.

#### **New Temporary Regulations**

In Temporary Reg. §1.163-11T(a) (1) the IRS explains how to allocate prepaid qualified mortgage insurance premiums to determine the amount of the prepaid premium that is treated as qualified residence interest each year under Code Sec. 163(h)(4) (F). The IRS basically follows the guidance previously set forth in Notice 2008-15 and provides that the premium must be allocated ratably over the shorter of:

- the stated term of the mortgage; or
- a period of 84 months, beginning with the month in which the insurance was obtained.

If a mortgage is satisfied before the end of its stated term, no deduction as qualified residence interest will be allowed for any amount of the premium that is allocable to periods after the mortgage is satisfied. This allocation requirement applies only to mortgage insurance provided by the FHA or private mortgage insurance and does not apply to mortgage insurance provided by the Department of Veterans Affairs or the Rural Housing Service. The rules apply to prepaid qualified mortgage

insurance premiums paid or accrued on or after January 1, 2008, and on or before December 31, 2010, for mortgage insurance provided by the FHA or private mortgage insurers issued on or after January 1, 2007.

### **Information Reporting Requirements**

In Temporary Reg. §1.6050H-3T the IRS requires any person who, in the course of a trade

or business receives premiums, including prepaid premiums, for mortgage insurance from any individual aggregating \$600 or more for any year, to file an information return setting forth the total amount received from that individual during the year. Whether a person receives \$600 or more of mortgage insurance premiums is determined on a mortgage-by-mortgage basis. A recipient need not aggregate

mortgage insurance premiums received on all of the mortgages of an individual to determine whether the \$600 threshold is met. Therefore, a recipient need not report mortgage insurance premiums of less than \$600 received on a mortgage, even though it receives a total of \$600 or more of mortgage insurance premiums on all of the mortgages for an individual for a calendar year. ■

---

## **TAX DEDUCTIONS**

# **Consumer and Business Energy Tax Incentives**

A number of tax breaks are available for both individuals and businesses that are willing to take advantage of the energy incentives described below.

### **Plug-in Electric Vehicle Credit**

Plug-in electric vehicles using certain types of batteries may qualify for a new tax credit if purchased this year. The Emergency Economic Stabilization Act of 2008 (EESA) and the American Recovery and Reinvestment Act of 2009 (ARRA) created two new tax credits for various types of electric vehicles.

The ARRA created a tax credit for low-speed or two- or three-wheel electric vehicles, such as motor scooters, purchased after February 17, 2009, and before January 1, 2012. The amount of the credit 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 four 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 EESA 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. For 2009, the minimum credit is \$2,500, and the credit tops out at \$7,500 to \$15,000, depending on the weight of the vehicle and the capacity of the battery.

During 2009, low-speed, four-wheeled vehicles manufactured primarily for use on public streets, roads and highways (neighborhood electric vehicles) may qualify both for the EESA credit and, if purchased after February 17, 2009, for the ARRA credit for low-speed electric vehicles. A taxpayer may not claim both credits for the same vehicle. Vehicles manufactured primarily for off-road use, such

as for use on a golf course, do not qualify for either credit.

### **Residential Energy Property Credit**

The ARRA increases the energy tax credit for homeowners who make energy efficient improvements to their existing homes. The credit rate is increased to 30 percent of the cost of all qualifying improvements, and the maximum credit limit is raised to \$1,500 for improvements placed in service in 2009 and 2010. The credit applies to improvements such as adding insulation, energy-efficient exterior windows and energy-efficient heating and air conditioning systems.

### **Residential Energy Efficient Property Credit**

This nonrefundable energy tax credit will help individual taxpayers pay for qualified residential alternative energy equipment, such as solar hot water heaters, geothermal heat pumps and wind turbines. The

new law removes some of the previously imposed maximum amounts and allows for a credit equal to 30 percent of the cost of qualified property.

### **Conversion Kits**

A tax credit is available for plug-in electric drive conversion kits. The credit is equal to 10 percent of the cost of converting a vehicle to a qualified plug-in electric drive motor vehicle that is placed in service after February 17, 2009. The maximum amount of the credit is \$4,000. The credit does not apply to conversions made after December 31, 2011. A taxpayer may claim this credit even if the taxpayer claimed a hybrid vehicle credit for the same vehicle in an earlier year.

### **Alternative Motor Vehicle Credit Allowed As a Personal Credit Against AMT**

Starting in 2009, the alternative motor vehicle credit is available, including the tax credit for purchasing hybrid vehicles, to be applied against the Alternative Minimum Tax (AMT). Prior to the new law, the alternative motor vehicle credit could not be used to offset the AMT. This means the credit could not be taken if a taxpayer owed AMT or was reduced for some taxpayers who did not owe AMT.

### **New Clean Renewable Energy Bonds**

The amount of funds available to issue new clean renewable energy bonds is increased from the one-time national limit of \$800 million to \$2.4 billion. These qualified tax credit bonds can be issued to finance certain types of facilities that generate electric-

ity from renewable sources (for example, wind and solar).

### **Qualified Energy Conservation Bonds**

The amount of funds available to issue qualified energy conservation bonds is increased from the one-time national limit of \$800 million to \$3.2 billion. These qualified tax credit bonds can be issued to finance governmental programs to reduce greenhouse gas emissions and other conservation purposes.

### **Extension of Renewable Energy Production Tax Credit**

The “eligibility dates” of a tax credit for facilities producing electricity from wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower and marine and hydrokinetic renewable energy is extended. The “placed-in-service date” for wind facilities is also extended to December 31, 2012. For the other facilities, the placed-in-service date is extended from December 31, 2010 (December 31, 2011, in the case of marine and hydrokinetic renewable energy facilities) to December 31, 2013.

### **Election of Investment Credit in Lieu of Production Credit**

Businesses who place in service facilities that produce electricity from wind and some other renewable resources after December 31, 2008, can choose either the energy investment tax credit, which generally provides a 30-percent tax credit for investments in energy projects or the production tax credit, which can provide a credit of up to 2.1 cents per kilowatt-hour for electricity produced from renewable sour-

es. A business may not claim both credits for the same facility.

### **Repeal of Certain Limits on Business Credits for Renewable Energy Property**

The \$4,000 limit on the 30-percent tax credit for small wind energy property and the limitation on property financed by subsidized energy financing is repealed with respect to property placed in service after December 31, 2008.

### **Coordination with Renewable Energy Grants**

Business taxpayers also can apply for a grant instead of claiming either the energy investment tax credit or the renewable energy production tax credit for property placed in service in 2009 or 2010. In some cases, if construction begins in 2009 or 2010, the grant can be claimed for energy investment credit property placed in service through 2016. For qualified renewable energy facilities, the grant is 30 percent of the investment in the facility and the property must be placed in service before 2014 (2013 for wind facilities).

### **Temporary Increase in Credit for Alternative Fuel Vehicle Refueling Property**

The new law modifies the credit rate and limit amounts for property placed in service in 2009 and 2010. Qualified property (other than property relating to hydrogen) is now eligible for a 50-percent credit, and the per-location limit increases to \$50,000 for business property (increases to \$2,000 for other/residential locations). Property relating to hydrogen keeps the 30-percent rate as before, but the per-business location limit rises to \$200,000. ■

# Proposed Regs Address Retained Interest in Trusts

The IRS has issued proposed regulations that provide a methodology to be used to calculate the value of a trust includible in the grantor's gross estate under Code Sec. 2036 if the grantor held a graduated retained interest in property or in trust, specifically a grantor retained trust (GRT) or a charitable remainder trust (CRT). The regulations also address the value of the portion includible in a decedent's estate if the decedent retained the right to receive an annuity or other payment that was not income, which was not effective until the death of the current recipient.

The portion of the corpus of a GRT or a CRT includible in the decedent's gross estate under Code Sec. 2036 is that portion of the trust corpus necessary to generate a return sufficient to pay the decedent's retained annuity, unitrust or other payment. Consistent with this approach, the proposed methodology measures the amount of corpus needed to generate sufficient income to produce the payments that would have been due even after the decedent's death, as if the decedent had survived and continued to receive the retained interest. Thus, under the proposed methodology, the amount of corpus necessary to produce the retained graduated interest is the sum of:

- the amount of corpus required to generate sufficient income to pay, without reducing or

invading principal, the annual amount payable to the decedent at the decedent's death calculated pursuant to Reg. §20.2036-1(c)(2)(i); and

- for each succeeding year of the trust, the amount of corpus required to generate sufficient income to pay, without reducing or invading principal, the increase (if any) in the annuity, unitrust or other payment for that year, deferred until the beginning date of that increase [Proposed Reg. §20.2036-1(c)(2)(ii)].

The proposed regulations include a complex formula for calculating that amount of corpus for each succeeding year [Proposed Reg. §20.2036-1(c)(2)(ii)(B)(3)]. In addition, an example is provided that illustrates the application of the complex computation [Proposed Reg. §20.2036-1(C)(3), Example 7].

Also, Reg. §20.2036-1(c)(1)(ii), Example 1 provides an example in which trust income is payable to D and C, D's child, in equal shares during their joint lives and, on the death of the first to die of D and C, all trust income is to be paid to the survivor. The example concludes that, if D dies before C, 100 percent of the trust corpus, reduced by the present value of C's life interest, is includible in D's gross estate under Code Sec. 2036. Fifty percent of the trust corpus is includible in D's gross estate because D retained the right to receive 50 percent of

the trust's income for life. The remaining 50 percent of the trust corpus (less the present value of C's outstanding life interest) is includible in D's gross estate because at D's death D retained the right to receive all of the trust income if D survived C. This result is consistent with Reg. §20.2036-1(b)(1)(ii).

Finally, the proposed regulations amend Reg. §20.2036-1(b)(1)(ii) to clarify the computation of the includible amount if the decedent retained the right to receive an annuity or other payment (rather than income) after the death of the current recipient of that interest. Example 1 of Reg. §20.2036-1(c)(1)(ii) was expanded to provide an illustration of this computation. In general, under this computation, the amount includible is the portion of the date-of-death value of the trust corpus required to produce sufficient income to satisfy the annuity or other payment the decedent would have been entitled to receive if the decedent had survived the current recipient, reduced by the present value of the current recipient's interest. However, the amount includible will not be less than the amount of corpus required to produce sufficient income to satisfy the annuity or other payment the decedent was entitled to receive for the trust's year in which the decedent's death occurred. In no event, however, shall the amount includible exceed the value of the trust corpus on the date of death. ■

# New Pilot Program Simplifies Code Sec. 355 Ruling Requests

In Rev. Proc. 2009-25, IRB 2009-24, the IRS explains a new pilot program that will permit taxpayers to submit requests for private letter rulings on portions of integrated transactions relating to corporate divisions under Code Sec. 355 without having to request a ruling on the entire transaction. The new program will apply to ruling requests postmarked or received by the IRS after May 4, 2009, and will simplify the ruling request process for Code Sec. 355 transactions because the IRS will be able to issue a ruling on a single part of a complicated integrated transaction relating to corporate divisions.

## Background on IRS Ruling Request Policy

Ordinarily, the IRS will not issue a letter ruling on only part of an integrated transaction. If however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued.

In addition, the IRS generally does not issue letter rulings with respect to an issue

that is clearly and adequately addressed by statute, regulations, decisions of a court or authorities published in the Internal Revenue Bulletin. Similarly, unless the IRS determines that there is a significant issue, the IRS will not issue a ruling on whether a transaction qualifies for nonrecognition treatment under Code Sec. 332, Code Sec. 351 or Code Sec. 1036. Likewise, absent a significant issue, the IRS will not issue a ruling as to whether a transaction constitutes a corporate reorganization within the meaning of Code Sec. 368(a)(1)(A).

## New Procedures

The objective of Rev. Proc. 2009-25 is to streamline the private ruling request process under Code Sec. 355. In accordance with this objective, taxpayers are allowed to request rulings on one or more issues that:

- are solely under the jurisdiction of the Associate Chief Counsel (Corporate),
- are significant, and

- involve the tax consequences or characterization of a transaction (or part of a transaction) that occurs in the context of a Code Sec. 355 distribution.

Under the pilot program, taxpayers may request and the IRS may issue a ruling on part of a transaction rather than on the larger transaction. In addition, taxpayers may request and the IRS may issue a ruling on a particular legal issue under a Code section or a section of the Income Tax Regulations rather than a ruling that addresses all aspects of that Code or Regulations section. For example, the IRS may rule on whether the acquisition of the assets of one corporation by another corporation meets the continuity of business enterprise requirement of Reg. §1.368-1(d) or is described in Code Sec. 355(b)(2)(C), even though the ruling does not address overall qualification of the transaction under Code Sec. 368 or Code Sec. 355, respectively, as long as the acquisition occurs in the context of a Code Sec. 355 distribution. ■

## Tax Calendar: June 2009

### June 1

- **Wagering tax.** File Form 730 and pay the tax on wagers accepted during April.
- **Heavy highway vehicle use tax.** File Form 2290 and pay the tax for vehicles first used in April.

### June 10

- **Employees who work for tips.** Employees who received \$20 or more in tips in May must file Form 4070 to report tip income to employers.
- **Communications and air transportation taxes under the alternative method.** Deposit

the tax included in amounts billed or tickets sold during the first 15 days of May.

### June 12

- **Regular method taxes.** Deposit the tax for the last 16 days of May.

### June 15

- **Individuals.** Use Form 1040-ES to pay 2009 estimated tax by this date if not paying income tax for the year through withholding (or will not pay in enough tax that way). This is the second installment of 2009 estimated tax.
- **U.S. citizens or resident aliens living and working (or on military duty) outside the United States and Puerto Rico,** must file Form 1040 and pay any tax, interest, and penalties due by this date. If additional time is needed, file Form 4868 to obtain an additional four-month filing extension. Then file Form 1040 by October 15. However, if a participant in a combat zone, it may be possible to obtain a further extension of the filing deadline.
- **Corporations.** Deposit the second installment of corporate estimated tax for 2009. A worksheet, Form 1120-W, is available to determine

estimated tax liability.

- **Social Security, Medicare and withheld income tax.** If the monthly deposit rule applies, deposit the tax for payments in May.
- **Nonpayroll withholding.** If the monthly deposit rule applies, deposit the tax for payments in May.

### June 25

- **Communications and air transportation taxes under the alternative method.** Deposit the tax included in amounts billed or tickets sold during the last 16 days of May.

### June 29

- **Regular method taxes.** Deposit the tax for the first 15 days of June.

### June 30

- **Wagering tax.** File Form 730 and pay the tax on wagers accepted during May.
- **Heavy highway vehicle use tax.** File Form 2290 and pay the tax for vehicles first used in May.
- **Floor stocks tax for ozone-depleting chemicals (IRS No. 20).** Deposit the tax for January 1, 2009.

To subscribe to Federal Tax Course Letter call 800-449-8114 or email [cust\\_serv@cch.com](mailto:cust_serv@cch.com)



a Wolters Kluwer business

4025 W. Peterson Avenue  
Chicago, IL 60646

PRESORTED  
FIRST-CLASS MAIL  
U.S. POSTAGE  
**PAID**  
CCH