Selected Individual, Small Business, Estate & Gift Tax Changes for 2012 & 2013

Including Provisions of the Affordable Health Care Act

Presented by:
Kathryn S. Schultz, CPA
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Jordon N. Rosen, CPA, AEP®
December 4 and 5, 2012

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Individual Provisions of the Affordable Care Act Effective in 2012 & 2013

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Introduction

After three days of oral arguments, the Supreme Court upheld most of the provisions of the Patient Protection and Affordable Care Act (PPACA). At the heart of the controversy was the constitutionality of Congress's power to tax and the "individual mandate" imposing a tax on those individuals that do not obtain adequate health insurance coverage. The Court let stand all of the tax provisions of the PPACA, which was enacted in March 2010. Several of the Act's provisions have already been implemented, while others become effective in 2013, 2014, and beyond.

Individual Provisions

The Individual Mandate

- Effective in 2014, the mandate requires that all applicable individuals carry a "minimum essential" amount of health coverage or pay a shared responsibility penalty for each month of noncompliance.
- Minimum essential coverage generally includes coverage under a qualified employer plan, an individual market plan, Medicare, Medicaid, and other government-sponsored coverage.

Individual Provisions - Continued

Certain groups of individuals will be exempt from the mandate.

Exempt individuals include (nonexclusive):
Incarcerated individuals
Individuals covered by Medicare or Medicaid
Individuals not lawfully in the United States
Members of an Indian tribe
Those of a religion conscientiously opposed to accepting benefits
Those unable to afford coverage if the cost of the employee contribution to certain plans exceeds eight percent of the individual's household income
Those individuals whose income is below the threshold for filing an income tax return

Individual Provisions - Continued

- The penalty for those individuals who are not exempt and do not obtain adequate health insurance coverage is calculated as the greater of:
  - An annual flat dollar amount

    OR
  - A percentage of the individual's household income for the year
  - Imposed on a monthly basis

Individual Provisions - Continued

- The annual flat dollar amount is $95 per individual and dependent for 2014, increasing to $325 in 2015 and $695 in 2016 and beyond. The amount is half of the above dollar amounts for those under age 18.

Individual Provisions - Continued

- The flat dollar amount is compared to a percentage of the excess to which household income exceeds the income tax filing threshold. The percentage applied is:
  - 1% in 2014, 2% in 2015, and 2.5% in 2016 and beyond.
  - The penalty is the higher of the two calculations, but cannot exceed certain national average dollar amounts offered through a health exchange.

    Example: For a household consisting of two parents and two children at least 18 years of age, none of whom has adequate health coverage, the penalty would be at least $380 in 2014 and at least $2,780 in 2016.

Individual Provisions - Continued

Premium Assistance Tax Credits

- Beginning in 2014, eligible low-income individuals who obtain coverage may be entitled to a fully refundable tax credit.
  - An individual may be eligible if their household income is between 100% and 400% of the federal poverty level for the taxpayer's family size.
  - The IRS is expected to furnish further guidance on this credit.

Individual Provisions - Continued

Increased Threshold for Medical Itemized Deduction

- For tax years beginning after 2012, the threshold for claiming medical expenses as an itemized deduction increases from 7.5% to 10% of adjusted gross income.
  - For individuals (or their spouse) age 65 or over, before the end of the year, the 10% threshold will not become effective until after 2016.
  - For alternative minimum tax purposes, the threshold remains at 10% of AMT adjusted gross income.

Individual Provisions - Continued

Over-the-Counter Drugs

- Effective after 2010, expenses incurred for nonprescription drugs, other than insulin, cannot be reimbursed under flexible spending arrangements (FSAs), medical savings accounts (MSAs) and Archer MSA plans.
- This limitation does not apply to items such as crutches, supplies, and bandages, but only to medicines or drugs.

Note: A bill currently pending in Congress would repeal the disqualification of reimbursement of over-the-counter drugs for FSA, MSA, or Archer MSA plans.

Individual Provisions - Continued

Additional Tax on Distributions from HSAs and MSAs

- Already in place since 2011, the Act imposes an increased penalty of 20% (up from 10% and 15%) for nonqualified distributions from FSAs, MSAs, and Archer MSAs on the amount required to be included in gross income, except for distributions made after the beneficiary's death, disability, or eligibility for Medicare.

Additional 0.9% Medicare Surtax on Wages and SE Income

- Beginning in 2013, employers will be required to withhold an additional 0.9% of Medicare tax on wages of an individual earning over $200,000.
- The additional Medicare tax would also apply to a couple filing a joint tax return when combined wages exceed $250,000 ($125,000 if married filing separately). In such cases, the additional tax would be paid with the couple's income tax return. The additional tax also applies to self-employment income.

Additional 0.9% Medicare Surtax on Wages and SE Income - Continued

Example: Husband and wife have W-2 earnings of $220,000 and $100,000, respectively, and file a joint return in 2013. Husband's employer withholds $180 of additional Medicare tax ($20,000 x 0.9%). Since their combined wages exceed the $250,000 threshold by $70,000, the total additional Medicare tax is $630. The additional $450 ($630 less $180 already withheld) is due with the couple's 2013 income tax return.

Additional 0.9% Medicare Surtax on Wages and SE Income - Continued

Note: The Act does not apply the additional Medicare tax to S corporate distributions, but only to wages paid to S corporate shareholders. Although a planning opportunity, a note of caution should be taken since the IRS looks closely at and has successfully challenged cases of unreasonable compensation and unusually high nontaxable distributions taken by S corporate shareholders during the tax year.

Planning

1. Monitor salary and year-end bonuses.
2. Accelerate bonuses and some wages that would otherwise be paid in early 2013 into 2012 to keep 2013 wages below the $200,000 threshold.
3. Defer 2013 year-end bonuses into 2014 if it would help avoid the additional tax in both years.

Additional 3.8% Medicare Surtax on Investment Income

- Beginning in 2013, the Act imposes an additional Medicare surtax of 3.8% on the lesser of net investment income or the excess of modified adjusted gross income over $200,000 ($250,000 if married filing a joint return; $125,000 if married filing separately).
- Net investment income is gross investment income reduced by allowable expenses.

Additional 3.8% Medicare Surtax on Investment Income - Continued

Investment income generally includes:
Interest and dividends
Annuities and royalties
Rents (except from a non-passive active trade or business)
Net gain from the sale of assets (e.g., stocks or bonds) other than from non-passive trade or businesses
Other gross income from a passive trade or business
Taxable portion from the sale of a home

Additional 3.8% Medicare Surtax on Investment Income - Continued

- Items that are not subject to the additional 3.8% tax include income from wages, Social Security benefits, tax-exempt bond, S corporation and partnership income, IRA, and other qualified retirement income and income from an active (non-passive) trade or business.

Additional 3.8% Medicare Surtax on Investment Income - Continued

Example: John has W-2 wages of $220,000 and interest and dividend income of $30,000. John will pay both the 0.9% increased Medicare tax on his wages in excess of $200,000 ($180) plus 3.8% ($1,140) on $30,000 of net investment income.

Planning

If possible, keep AGI under the applicable threshold. Consider where appropriate:

1. Investing in tax-free bonds
2. Converting to a Roth IRA (distributions are not taxable and there is no required minimum distribution)
3. Investing for growth, not income
4. Deferring income such as year-end bonuses
5. Tax-deferred annuities
6. Maximize contributions to an employer-sponsored 401(k) type plan or any other salary reduction plan offered
7. Maximize contributions to a deductible IRA

Dependent Coverage and Medical Benefits for Children

- The Act requires group health plans to provide dependent coverage for an adult child until they turn age 26.
- This aspect was effective for plan years beginning after September 23, 2010.
- The Act also extends the exclusion from income for medical care reimbursements under an employer-sponsored plan for an employees' child who will not attain age 27 by the end of the tax year.

Estates & Trusts Provisions of the Affordable Care Act Effective in 2013

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3.8% Medicare Surtax Applicable to Estates & Trusts

Similar to individuals, the 2010 Affordable Care Act imposes a 3.8% surtax on undistributed net investment income of estates and trusts for tax years beginning in 2013. The tax will be imposed on the lesser of:

- The estate's or trust's undistributed net investment income, or
- The excess (if any) of the adjusted gross income of the estate or trust over the dollar amount at which the highest tax bracket begins for that year ($11,650 in 2012).

3.8% Medicare Surtax Applicable to Estates & Trusts - Continued

The surtax will not apply to certain trusts:

- Charitable Remainder Trusts
- Simple trusts, since all net income is required to be currently distributed
- Grantor trusts to the extent the grantor or beneficiary is considered as owning that part of the trust since all items of income would be reported by the grantor or beneficiary

Planning

1. Make distributions during 2012 or fiscal year 2011 to shift income out of 2013 if the beneficiary's income will exceed $200,000 in 2013 ($250,000 if MFJ; $125,000 if MFS).
2. Elect the 65-day rule for amounts not actually distributed by the end of 2012. The election will treat amounts distributed within the first 65 days after the close of the tax year as if they were made on the last day of the previous year.
3. Estates with a revocable trust should consider making a Section 645 election to combine the filing of the two entities on a single return using a fiscal year end. Consider using a fiscal year end of September, October, or November, if available.

Planning - Continued

4. Fund a pecuniary bequest before the estate or trust is subject to the surtax. Funding the bequest would accelerate the gain into 2012, rather than in 2013 when it would be subject to the surtax.
5. Consider investments that keep net investment income to a minimum.
6. Where possible, allocate indirect expenses to income, rather than principal.
7. Where possible, leave more dividend income in the trust to the extent that the favorable lower rate still applies to qualified dividends after 2012.

Small Business Provisions of the Affordable Care Act

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Understanding the "Surtax"

Trade or Business Activity			
Entity	Materially Participate?	3.8% Tax	0.9% Tax
S-Corp	Yes	No	No
S-Corp	No	Yes	No

Real Estate Investments & the Surtax

Unrelated Rental Income

- Passive Investor
  - o Surtax will apply
- Real Estate Professionals w/material participation in rental activity
  - o Surtax will NOT apply

Real Estate Investments & the Surtax - Continued

Unrelated Rental Income Example

- Sam is a passive investor in an LLC whose only property is a commercial building that is rented by unrelated parties. Sam's share of net rental income is $40,000, and he receives $1,000 of interest income derived from investment of excess funds by the LLC.
- Sam is single, with MAGI of $30,000. Therefore, $41,000 will be subject to the 3.8% surtax.

Loans to Closely Held Businesses & the Surtax

Treatment of Loans

- If you make a loan to your closely held business (rather than a contribution of capital), then the interest income from this loan will be subject to the 3.8% surtax.
- If you contribute capital, then distributions made to an owner who is materially participating will not be subject to the 3.8% surtax.

Note: If distributions are made to a partner who materially participates, then they will likely have already been subject to the 0.9% tax on earned income.

Loans to Closely Held Businesses & the Surtax - Continued

Example

- Joe materially participates in DoYourBest, LLC. He loans the company $100,000 and receives $5,000 in interest income in 2013. His MAGI is $215,000, so the $5,000 in interest will be considered Net Investment Income and subject to the 3.8% surtax.

(The result would be the same if Joe was a passive investor.)

Small Employer Health Insurance Credit

For tax years 2010 through 2013, the maximum credit is 35% of health insurance premiums paid by a small business employer (25% for small tax-exempt entities).

The credit increases to 50% for 2014 and 2015, after which it expires.

In 2014 and 2015, the employer must participate in an insurance exchange in order to qualify for the credit.

Small Employer Health Insurance Credit - Continued

To qualify, the employer must:

- Have fewer than 25 full-time equivalent employees (FTE) during the tax year, and
- Have average annual wages for the year of less than $50,000 per FTE.

Note: Seasonal workers, sole proprietors, partners in partnerships, 2% or greater shareholders in S corporations, and 5% owners of companies (including family members of the above) are not counted as employees for purposes of the credit.

Full-Time Equivalent (FTE)

- Determine number of employer's FTE
- Total employee hours
  - Capped at 2080 per employee
- Divide by 2080 to convert to FTEs

FTE Example

Employees	2	3	4	5
	#	Total Hours	Qualified Hours	2x4
Working >2,080 hours	1	2,300	2,080	2,080
Working 2,080 hours	5	2,080	2,080	10,400
Working <2,080 hours	3	1,040	1,040	3,120
Total	9		2,080	15,600
FTE Equivalents 4/5				7

Example – 20 FTE with Average Payroll of $30,00

Initial Credit Amount	$90,000
# of Employees >10 Phase-out (20-10=10)	
Excess Emp 10 x 6.667% x $90,000=	60,000
Tentative Available Credit Amount:	*$30,000*
($30,000 - $25.000)/$25.000 = 20% 20% of $90,000	(18,000)
Maximum Credit	$12,000

Reduced Health FSA Contribution Limits

Beginning in 2013, the Act reduced the amount that can be contributed to a flexible spending arrangement (FSA) from $5,000 to $2,500 per year. The limit will be adjusted for inflation after 2013.

Note: The IRS is considering a modification to the current "use-it-or-lose-it" rule.

Note: Congress is currently considering a bill which would allow for up to $500 of unused balances under a health FSA to be distributed back to the participant, which would be included in compensation in the year of distribution.

Large Employer Provisions

Shared Responsibility Provision (Employer Mandate)

Beginning in 2014, the Act states that an applicable large employer will be subject to a "shared responsibility payment" if any full-time employee is certified to receive a premium tax credit (see above) or cost-sharing reduction payment.

•An applicable large employer is one that employs on average 50 or more full-time equivalent employees (30 hours or more per week) on business days during the preceding year.

•This would generally occur where an employer either does not offer minimum essential coverage to its full-time employees, or the plan is either unaffordable relative to the employee's household income or does not provide a minimum value (defined as paying at least 60 percent of benefits).

Large Employer Provisions - Continued

Shared Responsibility Provision (Employer Mandate) - Continued

- Beginning in 2014, any employer that is required to meet the shared responsibility requirements during a calendar year, must file a return with the IRS reporting the terms and conditions of the health care coverage provided to its full-time employees.

W-2 Reporting

The Act requires, for informational purposes only, that all employers disclose the aggregate cost of employer-sponsored coverage on an employee's W-2. After several reprieves, the IRS has stated that for 2012, reporting is only required by employers that filed 250 or more W-2s for the preceding calendar year.

The IRS has issued Notice 2012-9 describing which types of coverage must be reported.

Individual Income Tax Provisions & Planning for 2012

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FICA Limits

Tax Year	Limit	Employee Share
2011	$106,800	5.65%
2012	$110,100	5.65%
2013	$113,700	?

Top Tax Rates

	2012		2013
	Threshold	Rate	Rate
MFJ, Single, HOH	>$388,351	35%	?
MFS	>$194,176	35%	?
Estates & Trusts	>$11,650	35%	?
Long-Term Capital Gains		15%	?
Short-Term Capital Gains		35%	?
Collectibles (Long-Term)		28%	28%
Unrecaptured Section 1250		25%	25%
Qualified Small Business Stock Gains		14%	14%
Lower-Income LTCG Rate		0%	?
AMT		26% / 28%	26% / 28%

How Old Are You?

	Rules
13	Cannot claim a child care credit for children age 13 or older.
17	Cannot claim $1,000 child tax credit for children age 17 or older.
18	•Children working for parents' unincorporated business subject to FICA. •Generally cannot contribute to an ESA for children age 18 or older. •Adoption credit or exclusion generally unavailable for children age 18 or older. •Taxpayer qualifies for saver's credit (if neither a dependent nor student). •Kiddie tax no longer applies at age 18 (or 19-23 and full-time student) if child's earned income is greater than half of his support.
19	Exemption for dependent children who are not full-time students expires.
21	Children working for parents' unincorporated business subject to FUTA.
24	•Exemption for dependent children who are full-time students expires. •Can purchase savings bond and exclude income used for education. •Kiddie tax no longer applies.
25	Taxpayers with no children qualify for EIC.
27	Income exclusion for health insurance coverage and self-employed health insurance deduction for coverage of children age 26 and younger expires.

How Old Are You? - Continued

	Rules
30	Generally must distribute ESA when beneficiary reaches age 30.
50	•Eligible for catch-up contributions to IRAs, SIMPLE-IRAs, 401(k), and 403(b) plans. •Qualified public safety employees eligible for penalty-free withdrawals from a governmental defined benefit pension plan, if retired.
55	•Eligible for penalty-free withdrawal from employer retirement plan (but not an IRA) if separated from service. •Eligible for catch-up contributions to HSAs.
59 ½	•Penalty for early withdrawal from retirement accounts expires. •Roth IRA distributions are tax-free (if any Roth held for at least 5 years).
65	•Non-itemizers become eligible for a higher standard deduction. •Taxpayers with no children no longer qualify for EIC. •HSA and MSA withdrawals not used for medical costs are taxed but no longer subject to a 20% penalty. •Eligible for credit for the elderly.
70 ½	•Contributions no longer allowed to traditional IRAs. •Required minimum distributions from retirement plans (other than Roth IRAs) must begin.

[1] This chart appears in the Quickfinder ® Handbook (2011) published by Thomson Reuters.

Expired Tax Provisions

- Deduction for mortgage insurance premiums
- Deduction for state and local sales taxes instead of state and local income taxes
- Tuition and fees deduction
- Tax-free distribution from retirement accounts for charitable purposes

Expired Tax Provisions - Continued

- Adoption credit
- Credit for non-business energy property
- Plug-in electric vehicle credit
- Plug-in conversion credit
- Alternative fuel vehicle refueling property credit
- Indian employment credit

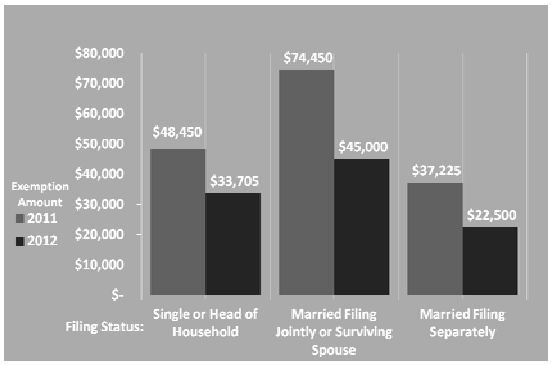
Expired Tax Provisions - Continued

- New energy efficient home credit
- Energy efficient appliance credit
- Employer wage differential for active duty members of uniformed services
- Work opportunity credit (except certain veterans)
- Deduction of expenses for school teachers

Reminders

- First-Time Homebuyer Credit repayment continues this year
- Report ½ of 2010 Roth IRA conversions or rollovers on 2012 Form 1040

AMT Exemption Amount



Alternative Minimum Tax

Triggers:

- State and local income tax – Not deductible for AMT
- Medical expenses – must exceed 10% of AMT/AGI
- Real Estate Taxes – not deductible for AMT
- Miscellaneous itemized deductions – not deductible for AMT
- Home equity loan interest not used to improve home
- Tax-exempt interest on private-activity bonds (except for certain bonds issued in 2009 and 2010)
- Accelerated depreciation
- Long-term capital gains and qualified dividends – although taxed at the same rate in 2012 as for ordinary tax purposes, large amounts could trigger an AMT situation

Alternative Minimum Tax - Continued

If subject to AMT in 2012, accelerating ordinary income into this year rather than in 2013 could save taxes:

•Maximum AMT Rate in 2012 – 28%

•Maximum Regular Rate in 2012 – 35%

•Maximum Regular Tax Rate in 2013 – (could be as high as 39.6% plus Medicare surtax)

Non-Refundable Credits & the AMT

The following can no longer be applied against the AMT:

- Credit for child and dependent care expenses
- Credit for elderly or disabled
- Mortgage interest credit
- Education

IRC 26(a)(2)

Traditional IRA Contribution Limitations and IRA Deductions Phase-Out Ranges

- More than $92,000 but less than $112,000 for MFJ return or qualifying widow(er)
- More than $58,000 but less than $68,000 for single or head of household return
- More than $0 but less than $10,000 for MFS return

IRC 219(g)

Roth IRA Contribution Limitations and Roth IRA Deductions Phase-Out Ranges

- More than $173,000 but less than $183,000 for MFJ return or qualifying widow(er)
- More than $110,000 but less than $125,000 for single or head of household return
- More than $0 but less than $10,000 for MFS return

IRC 219(g)

Traditional and Roth IRA Contribution Limits

Tax Year	Contribution Limit	Catch-Up Limit
2010 - 2012	$5,000	$1,000
2013	$5,500	$1,000

Charitable Contributions

General Rules:

•Must be supported by a cancelled check or credit card receipt

•Must be substantiated by a written acknowledgment from the charity if at least $250, which must include the date of the contribution and statement that no goods/services were provided in exchange

•Quid-pro-quo rules: Charity must provide FMV of services if soliciting at least $75

•Gifts to public charities – 50% of AGI Limit

Charitable Contributions - Continued

General Rules - Continued:

•Gifts to non-public operating foundations – 30% of AGI Limit

•Gifts of long-term capital gain property – 30% of AGI Limit (20% if to non-operating private foundation)

•5-year carryover of excess contribution over AGI limit

•Election to deduct tax basis rather than FMV

•Need for IRS Form 8283 and qualified appraisal for non-cash contributions

Charitable Contributions - Continued

Options:

- Check
- Cash – Problems due to not being able to produce the required cancelled check or credit card receipt
- Appreciated stocks, bonds, real estate, artwork, etc.
- Charitable remainder trust
- Charitable lead trust (portion constitutes a taxable gift)
- Donor-advised fund (organization must acknowledge that they have exclusive legal control)

Charitable Contributions - Continued

Options - Continued:

- Ordinary income property – Deduction is limited to the lesser of tax basis or FMV (i.e., held less than one year or inventory)
- Services – Deduction limited to out-of pocket costs
- Use of vehicle – 14¢ per mile
- Contribution of vehicle – Generally limited to the amount charity receives upon sale
- If over 70 ½ – Option to transfer directly from an IRA to a charity without income inclusion expired on December 31, 2011.

Estate, Gift, and GST Tax Rates and Issues

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Estate Tax Basic Exclusion and Maximum Tax Rate

Year	Exclusion	Rate
2010	$5,000,000 (or unlimited)	35%
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$1,000,000	55%

Gift Tax Applicable Exclusion and Maximum Tax Rate

Year	Exclusion	Rate
2010	$1,000,000	35%
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$1,000,000	55%

GST Applicable Exclusion and Maximum Tax Rate

Year	Exclusion	Rate
2010	$5,000,000	0%
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$1,000,000	55%

Portability

- Applicable exclusion amount is sum of:
  - Basic exclusion amount ($5 million), and
  - Deceased spousal unused exclusion amount
- Increases applicable exclusion of electing surviving spouse by unused exclusion of predeceased spouse
- Need to elect by filing Form 706
- Expires 12/31/2012, unless extended

Portability - Limitations Period

- If executor elects to increase applicable exclusion amount, then limitations period on predeceased spouse's return will be opened
- Limitations period opened only for purposes of making determination of unused exclusion amount

Electing Portability

- Executor of **first spouse** must elect portability on timely filed Form 706 (including extensions)
- Irrevocable election
- Election effective for estates after December 31, 2010
- Notice 2011-82, October 17, 2011

Extension to Elect Portability

- Notice 2012-21, March 5, 2012
- Six-month extension to file Form 706 and elect portability
- Form 4768 within 15 months of death
- Qualifying estate

Qualifying Estate, Notice 2012-21

- Decedent survived by a spouse
- Decedent's date of death is after December 31, 2010, and before July 1, 2011
- Fair market value of decedent's gross estate does not exceed $5,000,000

Protective Claims

- Rev. Proc. 2011-47, October 17, 2011
- Final regulations under IRC 2053
  - Issued in 2009
  - Amount deductible (for claim or expense) limited to amount actually paid
- Protective claim – preserve estate's right to refund for future amounts paid

Requirement for Protective Claims

- Filed before expiration of limitations period
- In writing
- State each ground upon which refund is claimed
- State facts sufficient to apprise of exact basis of claim
- Documentary evidence of authority of person filing claim

Forms for Protective Claims

- Form 843, Claim for Refund
  - Protective claim for refund under §2053
- Form 706, Schedule PC
  - Only available after 2012
- Separate claim must be filed for each claim or expense for which deduction may be claimed

Post 2012 Issues

- Exclusion of $1 million
- Top rate of 55%
- Additional 5% surtax on certain large estates
- State death tax credit/deduction
- QFOBI deduction

Small Business and Self-Employed Income Tax Planning and Provisions

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Medicare Premiums Paid by Self-Employed Individuals

CCA 201228037 – IRS clarifies that Medicare premiums paid for insurance for the taxpayer, their spouse, dependents, and child are deductible (subject to net income limit)

Refund Opportunity – File amended returns for open years to claim refund.

Section 179 Deduction

- Limited to $139,000 of qualified §179 property
- Phased out when qualifying property placed in service exceeds $560,000
- Qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property are no longer eligible for §179 expensing

IRB 2011-45 RC

IRC 179(F)

§179 Expense Election

	2008-09	2010-11	2012
Maximum §179 Deduction	$250,000	$500,000	$139,000
Phase-Out Begins	$800,000	$2,000,000	$560,000

§179 Rules

- §179 Deduction limited to taxable income
  - Unused portion is carried forward
  - Aggregate of active trades or businesses
    - Includes wages, even if from different business or of spouse

Bonus Depreciation

- Special depreciation allowance decreases from 100% to 50% in 2012 for most qualified property placed in service beginning 1/1/2012
- Special depreciation allowance rate continues at 100% for certain long-production property and noncommercial aircraft
- Nonresidential leasehold improvements now have 39-year recovery period; no longer 15-year property.

IRC 168(k)(5) & IRC 168(e)(3)

§168(K) Bonus Depreciation

- Extended through calendar year 2012 @ 50%
- $8,000 limit on luxury autos, otherwise unlimited
- MACRS 20-year life or less
- No profit limitation
- Limited to NEW equipment only

1/1 – 9/8/10	9/9/10 – 12/31/11	2012
50%	100%	50%

§179 Versus §168(K)

	§179	§168(K)
New or Used	Both	New Only
Placed in Service	All years, varying amounts	Calendar Years 2008-2012
Taxable Income Limit	Yes	No
Eligible Property	Personal property only, except some RE okay in 2010-2011	MACRS life 20 years or less

§179 Versus §168(K) - Continued

	§179	§168(K)
Recapture for Personal Use	Yes, if Business Use 50% or Less	No, Unless Listed Property
Types of Activities	Active Trade or Business Only	All Activities (Rentals)
Modify Election	Yes	Generally – No
Deduction Limited	$139,000 in 2012	No Limit
Purchase Amount Limits	$560,000 in 2012	None

§168(k) Planning Opportunities

- SUVs
  - o §179 expensing limited to $25,000
  - o §168(k) has no limit for SUVs
- Taxable Income
  - o §179 limited to taxable income
  - o §168(k) can create an NOL carryback

Luxury Auto Depreciation Limits

Year	Description	Amount	%
1	Lesser of	$3,160* or	20.00%
2	Lesser of	$5,100 or	32.00%
3	Lesser of	$3,050 or	19.20%
4-5	Lesser of	$1,875 or	11.52%
6	Lesser of	$1,875 or	5.76%
7+	Can't exceed	$1,875	N/A

*Up to $8,000 of bonus depreciation allowable in 2012

Luxury Auto Limitation Example

$60,000	Purchase Price
0	§179
$60,000	
($8,000)	Bonus Depreciation
$52,000	
20%	Year 1%
$10,400	Year 1 Depreciation
$ 3,160	Luxury Auto Limit
$11,160	***2012 Deduction***

SUV Limitation Example

$60,000	Purchase Price
($25,000)	§179
$35,000	
($17,500)	50% Bonus Depreciation
$17,500	
20%	Year 1 Rate
($3,500)	Year 1 Depreciation
$46,000	*2012 Deduction*

Repair of Depreciable Property

Reg. §1.263(a)-1(b) and §1.162-4

1. Does expenditure materially add to property's value? Was it an improvement or renovation?

OR

2. Does expenditure prolong the property's life? Or was it required by law or recommended by manufacturer?

Definition of Repairs

- Returns property to original state and does not make property:
  1. More valuable,
  2. More useful, or
  3. Longer lived
  - If expenditure is required to keep warranty in force or to retain operating license, it is a REPAIR.

Part 17 - Exempt Orgs <$50,000 Income

- New Form 990-N (e-Postcard) [electronic only!]
- Due 15th day of 5th month
  - o E.g., due May 15th for calendar year non-profit
- Penalty for non-compliance – lose status
  - o 275,000 Non-profits lost exempt status

Foreign Reporting Requirements

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Policy Considerations

- The reporting of foreign financial accounts on Form TD F 90-22.1 (FBAR) is required under Title 31, USC (Money and Finance – Bank Secrecy Act).
- The reporting of specified foreign financial accounts on Form 8938 is required under Title 26, USC (Internal Revenue Code).
- Certain foreign financial accounts are reported on both Form 8938 and the FBAR. However, the information required by the forms is not identical in all cases.

FBAR
Report of Foreign Bank & Financial Accounts

- Make sure you use the current form revised January 2012
- Can file jointly if spouse has no accounts held solely in their name
- Must file if aggregate value is >$10,000 at any time during the year
- Use highest value in each account to arrive at aggregate value
- Filed separately from tax return; must be ***received*** by June 30 – no extension

FBAR - Continued
Report of Foreign Bank & Financial Accounts

- Must file if owner or have signatory authority
- IRA owner and beneficiary not required to report foreign financial account in IRA
- All U.S. persons must file
  - U.S. resident = resident alien
  - U.S. person = U.S. resident, citizen, entity
- Penalty of $10,000 for non-willful violation; $100,000 or 50% of account for willful violation.

Form 8938
Statement of Specified Foreign Financial Assets

- Finalized December 2011 for 2011 filing season
- File with individual income tax return
- Non-filing penalty starts at $10,000
- Does not relieve the FBAR filing

Form 8938 - Continued

What is a Specified Foreign Financial Asset?

- Bank Accounts
- Trusts
- Estates
- Insurance Policies
- Pension Plans
- Deferred Comp Plans
- Notes, Bonds, Stocks
- Interest in Foreign Entities

Form 8938 - Continued

	Greater Than at any Time During the Year	Greater Than on Last Day of Year
Single/MFS	$75,000	$50,000
MFJ	$150,000	$100,000
Non-Resident Single/MFS	$300,000	$200,000
Non-Resident MFJ	$600,000	$400,000

Form 8938 - Continued

- Conversion rates are used as of the last day of the year even if sold during the year.
- Use Treasury's Financial Management Service rate at www.fms.treas.gov

Questions?

Belfint, Lyons & Shuman, CPAs
1011 Centre Road, Suite 310
Wilmington, DE 19805
302.225.0600

Kathryn S. Schultz, CPA
Director, Tax and Small Business
KSchultz@Belfint.com or 302.573.3916

Jordon N. Rosen, CPA, AEP®
Director, Estates and Trusts
JRosen@Belfint.com or 302.573.3911

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