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

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Small Business Tax Updates for 2013

- Affordable Care Act (ACA)
- Medicare Surtax
- Obamacare
- DOMA
- Windsor

Tax Rates

- For tax years beginning after 2012…
  - the income tax rates for many individuals will stay at 10%, 15%, 25%, 28%, 33% and 35%
  - 39.6% rate applies to taxable income above certain thresholds
    - $450,000 for joint filers and surviving spouses
    - $425,000 for heads of household
    - $400,000 for single filers
    - $225,000 for married filing separate
- These dollar amounts are inflation-adjusted for tax years after 2013.
- Top individual rate is now higher than top corporate rate

Individual Rates

	Prior Law	Current Law
Maximum tax rate on ordinary income	35%	39.6%
Medicare tax on investment income	N/A	3.8%
	35%	43.4%

*Certain wage and self employment income will be subject to an additional .9% Medicare tax

Individual Capital Gains & Qualified Dividend Rates

In 39.6% bracket of ordinary income	20%
In 25% to 39.6% bracket of ordinary income	15%
Below 25% bracket of ordinary income	0%

Corporate Tax Rates

Taxable Income	Tax Rate
$0 to $50,000	15%
$50,000 to $75,000	25%
$75,000 to $10,000,000	34%
$10,000,000+	35%

*Note: Benefit of the lower brackets is phased out for income greater than $100,000

Depreciation Provisions

The following depreciation provisions were retroactively extended (from 1/1/12) by the Act through 2014:

- 15-year straight line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements;
- Also are eligible for Section 179 (need statement attached to return)
- Must be in service by January 1, 2014

§179 Expense Election

Tax Years Beginning:	2008-09	2010-12	2013	2014 *if not extended*
Maximum §179 deduction	$250,000	$500,000	$500,000	$25,000
Phase out begins	$800,000	$2,000,000	$2,000,000	$200,000

*Limited to Taxable Income

*Carryforward unused

*Software (off-the-shelf) eligible only through 2013 (unless extended)

§168(k) Bonus Depreciation

- Extended through calendar year 2013 @ 50%
- $8,000 limit on luxury autos. Otherwise unlimited
- No profit limitation
- Limited to NEW Equipment only

1/1 – 9/8/2010	9/9/10 – 12/31/11	2012 - 2013	2014 *unless extended*
50%	100%	50%	-0-

§179 Versus §168(k)

	§179	§168(k)
New or used	Both	New Only
Placed in service	All years, varying amounts	Calendar years 2008-2013
Taxable income limit	Yes	No
Eligible property	Personal property only, except some R/E in 2010-2011	MACRS life 20 years or less
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)
Deduction limited	$500,000 in 2013	No limit
Purchase amount limits	$2,000,000 in 2013	None

§168(k) Planning Opportunities

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

Luxury Autos and Limitations

- Luxury Auto defined (Rev. Proc 2011-21)
  - Cost > $15,900
  - GVW < 6,000 lbs.
  - Primary for use on public streets

New Repair Regulations

- Apply to Tax Years Beginning on or after Jan 1, 2014
- Years beginning 1/1/12 – 12/31/13 are optional (retroactive)
- Specify what items are improvements (must be capitalized) versus repairs (expensed)

Improvements

- What are they? Amounts paid to increase the value for:
  - New building
  - Permanent improvements ("betterments")
    - Ameliorates ***material*** condition or defect from prior to ownership or production
    - ***Material*** addition (enlargement, expansion, extension)
    - ***Material*** capacity increase
  - Restoring Property
- Must be capitalized to a "Unit of Property" (UOP) when:
  - Result is a betterment to the UOP
  - UOP is restored
  - UOP is adapted to a new or different use

Unit of Property Defined

- Need to first determine UOP before determining if UOP was improved
- All components functionally interdependent comprise a single UOP
- Components functionally interdependent if one component is dependent on another
- Special rules for building, plant property, network assets, etc.

Building's Unit of Property

- Includes improvement to building structure or building systems
  - HVAC and ventilation
  - Plumbing and electrical
  - Escalators and elevators
  - Alarm systems (fire, burglar, etc.)
  - Gas distribution
  - Other improvements

Routine Maintenance Safe Harbor

- Repairs scheduled more than once during depreciable (class) life can be expensed
  - Property other than buildings
- Includes
  - Inspection, cleaning and testing
  - Replacement of comparable and commercially available parts
  - Maintenance on rotable/temporary parts

Routine Maintenance Considerations

- Factors to be considered include
  - Recurring nature of activity
  - Manufacturer's recommendation – refer to owner's manual
  - Industry practice
  - Taxpayer experience
  - Treatment on AFS

New AFS De Minimis Rules

- Deduct "de minimis" amount IF taxpayer:
  1. Has Applicable Financial Statement (AFS)
  2. Has written "de minimis" plan establishing a de minimis amount used on its AFS in place by the start of 2014, AND
  3. Book/Tax "de minimis" amount same
- Without an AFS, can apply for $500 de minimis (still must have written plan)

Applicable Financial Statement

- Financial statements:
  - Filed with SEC (the 10-K or Annual Statement to SH's)
  - Certified by independent CPA (and used for non-tax purpose, e.g. credit report, reports to owners, etc.) **OR**
  - Provided to any Federal or state agency *other than* the IRS

Plan Limits for 2013 and 2014

	2013	2014
Defined Benefit Plan Limit	$205,000	$210,000
Defined Contribution	$51,000	$52,000
Annual Compensation Limit	$255,000	$260,000
Annual Compensation Limit (Key Employee)	$165,000	$170,000
Elective Deferrals: 401(k), 403(b) and 457(b)	$17,500	$17,500
Catch-Up Contributions: 401(k), 403(b) and 457(b)	$5,500	$5,500
SIMPLE Deferrals	$12,000	$12,000
SIMPLE Catch-Up Contributions	$2,500	$2,500
SEP Minimum Compensation	$550	$550
Highly Compensated Employee	$115,000	$115,000

FSA "Use It or Lose It" Amended

- Section 125 (Cafeteria) Plans
  - Amount that can be contributed is reduced to $2,500/year
  - Now permitted to carryover $500 unused FSA balances
    - Cannot have both carryover AND grace period (up to 2.5 months)
    - Must amend plan
      - Can amend plan for plan years as early as January 1, 2013
      - By no later than December 31, 2014

Business Tax Breaks

The following business credits and special rules are extended:

- The research credit is modified and retroactively extended for two years through 2013. *(expected to be renewed for later years)*
- Exclusion of 100% of gain on certain small business stock (Sec. 1202)
  - acquired after Sept 27, 2010 and before Jan 1, 2014
  - Must be held more than 5 years (no pro-rating). Therefore, *earliest* this can be used is 2015.
  - Post-2013 will revert to 50% exclusion
  - Distinguish from 1045 "like-kind" gain deferral

Business Tax Breaks - Continued

- The reduction in S corporation recognition period for built-in gains tax is extended through 2013, with a 10-year period instead of a 5-year period.
  - Dispose now of BIG assets held for the five years, before returns to 10 years.
- The employer wage credit for employees who are active duty members of the uniformed services is retroactively extended for two years through 2013.
- The work opportunity tax credit is retroactively extended for two years through 2013.
- The enhanced charitable deduction for contributions of food inventory is retroactively extended for two years through 2013.

Inflation-Adjustments

- Social Security Wage Base
  - 2013: $113,700
  - 2014: $117,000
- 2013 Mileage Rates:
  - Business $0.565
  - Medical & Moving: $0.24
  - Charity: $0.14

Headaches

What Might Get Us In Trouble?

- AICPA reports top 5 malpractice issues
  - Choice of Entity
  - §754 Elections
  - Extension Payment Calculations
  - Late Filing of Estate Returns
  - Not Filing Forms 5471 and 5472

What Will We Hear from the IRS?

  - Reasonable Compensation
  - Worker Classification Issues

Reasonable Compensation Factors

- Employee's role in company
- External comparison with other companies
- Character and condition of the company
- Internal consistency in compensation
- Potential conflicts of interest

Worker Classification

- Employee v. Independent Contractor
  - Heat put on IRS to increase employee v. IC audits
  - 20 tests on Form SS-8 and Rev. Rul. 87-41 rejected by courts
  - State law determination irrelevant
- IRS can and does go after "responsible persons" for payroll taxes when employer does not pay

Who are Employees

- Common Law Employee
- Corporate Officer (always)
- Statutory Employee
- Not Optional
  - Determination based on facts
  - Cannot simply "agree" one way or the other

The IRS 20 Common Law Factors

1. Is the worker given **instructions**?
2. Is the worker provided **training**?
3. Are the workers services an integral part of the business operations?
4. Are services rendered personally?
5. Who hires, supervises and pays assistants?
6. Is there a continuing **relationship**?
7. Is there a **set hours** of work?

The IRS 20 Common Law Factors

8. Is **full time** required?
9. Is work completed on **employer's premises**?
10. Is there an order or sequence set?
11. Are oral or written **reports** required?
12. Is payment by hour, week or month?
13. Who pays for **business and/or traveling** expenses?
14. Who furnishes **tools and materials**?

The IRS 20 Common Law Factors

15. Is there a **significant investment**?
16. Can the **worker realize profit or loss**?
17. Does the worker **work for more than one firm**?
18. Are workers services **available to general public**?
19. **Can the employer discharge** the worker?
20. Does the worker have the right to **terminate without incurring liability**?

Corporate Officers and Directors

- Officers – **they are employees**
- Exception:
  - Do not perform any or minimal services
  - No remuneration
- **Directors are not employees per se**
  - Can be an employee if they work as such
  - If only role is as a Director, non-employee "director's fees" can be paid

Individual Provisions of the Affordable Care Act Effective in 2013

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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.

Additional 3.8% Medicare Surtax on Investment Income

- Beginning in 2013, the Act imposes an additional 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

Defining Net Investment Income

- New proposed regulations
  - Section 1.1411
  - Section 1.469
- Self rental
- Real estate professionals
- NOL carryovers
- Allocation of 2% floor on itemized deductions
- Allocation of PEASE phase-out
- Nonresident aliens
- "Net gains from disposition" may not be less than zero

Defining Net Investment Income

- Trade or business vs. Rental activity
- What are allocable expenses?
- Active vs. Passive participation
- S.E. (employment taxes) vs. 3.8% surtax

Additional 3.8% Medicare Surtax on Investment Income - Continued

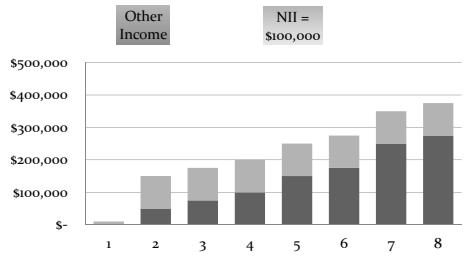
Items that are not subject to the additional 3.8% tax include:

- Income from wages, Social Security benefits, IRA, and other qualified retirement income and income from an active (non-passive) trade or business.
- Taxable portion of distribution from Section 529 plan, Coverdell or Archer account and HSA.

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.

"Net Investment Income" Fixed – Other Income Varies



3.8% Medicare Surtax Applicable to Estates & Trusts

Similar to individuals, the 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 2013 at $11,950.

Form 8960 Net Investment Income Tax—Individuals, Estates, and Trusts 2013

Part I Investment Income

Part II Investment Expenses Allocable to Investment Income and Modifications

Part III Tax Computation

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, i.e. cash balance plan
7. Maximize contributions to a deductible IRA/HSA
8. Installment sales – consider opting-out in 2012
9. Timing of deductions

IRA Limits for 2013 and 2014

	2013	2014
IRA Contributions	$5,500	$5,500
IRA Catch-up (age 50 +)	$1,000	$1,000
Deductible Contribution Phaseouts:		
Single & HOH	$59,000 - $69,000	$60,000 - $70,000
Married Joint (spouse covered)	$95,000 - $115,000	$96,000 - $116,000
Married Joint (Spousal IRA)	$178,000 - $188,000	$181,000 - $191,000
Married Separate	$0 - $10,000	$0 - $10,000
Roth IRA Contribution Phaseouts:		
Single & HOH	$112,000 - $127,000	$114,000 - $129,000
Married Joint	$178,000 - $188,000	$181,000 - $191,000
Married Separate	$0 - $10,000	$0 - $10,000

Increased Threshold for Medical Itemized Deductions

- For 2013, 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.

2013 Tax Changes as a Result of the American Taxpayer Relief Act

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Top Tax Rates

	2012	2013
	Rate	Rate
MFJ, Single, HOH	35%	39.6%
MFS	35%	39.6%
Estates & Trusts	35%	39.6%
Long-Term Capital Gains	15%	20%*
Short-Term Capital Gains	35%	39.6%
Collectibles (Long-Term)	28%	28%
Unrecaptured Section 1250	25%	25%
Qualified Small Business Stock Gains	14%	14%
Lower-Income LTCG Rate	0%	0%
AMT	26% / 28%	26% / 28%

* For certain taxpayers over threshold.

Tax Rates

- For tax years beginning after 2012…
  - the income tax rates for many individuals will stay at 10%, 15%, 25%, 28%, 33% and 35%
  - 39.6% rate applies to taxable income above certain thresholds
    - $450,000 for joint filers and surviving spouses
    - $425,000 for heads of household
    - $400,000 for single filers
    - $225,000 for married filing separate
- These dollar amounts are inflation-adjusted for tax years after 2013.

Personal Exemption Phaseout for High-Earners

For tax years beginning in 2013, the Personal Exemption Phaseout (PEP), which had previously been suspended, is reinstated with a starting threshold of…

- $300,000 for joint filers and surviving spouses
- $275,000 for heads of household
- $250,000 for single filers
- $150,000 for married taxpayers filing separately
- The total amount of exemptions that can be claimed by a taxpayer subject to the limitation is reduced by 2% for each $2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold.
- These dollar amounts are inflation-adjusted for tax years after 2013.
- Personal Exemption for 2013 is $3,900

Itemized Deduction Phaseout for High-Earners

For tax years beginning in 2013, the limitation on itemized deductions, which had previously been suspended, is reinstated with a starting threshold of…

- $300,000 for joint filers and surviving spouses
- $275,000 for heads of household
- $250,000 for single filers
- $150,000 for married taxpayers filing separately
- The total amount of itemized deductions is reduced by 3% of the amount by which the taxpayer's adjusted gross income (AGI) exceeds the threshold amount, with the reduction not to exceed 80% of the otherwise allowable itemized deductions.
- These dollar amounts are inflation-adjusted for tax years after 2013.

Capital Gains and Dividend Rates

- For tax years beginning in 2013, the top rate for capital gains and qualified dividends will permanently rise to 20% (up from 15%) for taxpayers with taxable income exceeding $400,000 ($450,000 for married taxpayers).
- For taxpayers whose ordinary income is generally taxed at a rate below 25%, capital gains and qualified dividends will permanently be subject to a 0% rate.
- Taxpayers who are subject to a 25% or greater rate on ordinary income, but whose income levels fall below the $400,000/$450,000 thresholds, will continue to be subject to a 15% rate on capital gains and qualified dividends.

Estate, Gift & Trust Tax Provisions

- The exemption level for 2013 is $5,250,000 ($5,340,000 for 2014)
- The top estate, gift and GST rate is 40%
- The portability feature that allows the estate of the first spouse to die to transfer his or her unused exclusion to the surviving spouse continues
- All changes are effective for individuals dying and gifts made after 2012
- Gift tax exclusion is $14,000 in 2013 and 2014

Permanent AMT Relief

- The Act permanently increases these exemption amounts and indexes them for inflation going forward. In 2013 the amounts are…
  - $51,900 for unmarried taxpayers
  - $80,800 for joint filers
  - $40,400 for married filing separately
- The Act permanently allows an individual to offset his entire regular tax liability and AMT liability by the nonrefundable personal credits.

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

Recovery Act Extenders

The Act extends for five years through 2017 the following items:

- The American Opportunity tax credit, which permits eligible taxpayers to claim a credit equal to 100% of the first $2,000 of qualified tuition and related expenses, and 25% of the next $2,000 of qualified tuition and related expenses (for a maximum tax credit of $2,500 for the first four years of post-secondary education);
- Eased rules for qualifying for the refundable child credit; and
- Various earned income tax credit (EITC) changes relating to higher EITC amounts for eligible taxpayers with three or more children, and increases in threshold phaseout amounts for singles, surviving spouses, and heads of households.

Historical Individual Extenders

The Act extends the following items for the period indicated beyond their prior termination date:

- The deduction for certain expenses of elementary and secondary school teachers, up to $250 extended through 2013;
- The exclusion for discharge of qualified principal residence indebtedness, which applied for discharges before Jan. 1, 2013 and which is now continued to apply for discharges before Jan. 1, 2014;
- Parity for the exclusions for employer-provided mass transit and parking benefits, which applied before 2012 and which is now revived for 2012 and continued through 2013;

Historical Individual Extenders

Continued -

- The treatment of mortgage insurance premiums as qualified residence interest, was extended through 2013;
- The option to deduct State and local general sales taxes, was extended through 2013;
- The special rule for contributions of capital gain real property made for conservation purposes, was extended through 2013; and
- The above-the-line deduction up to $4,000 for qualified tuition and related expenses, was extended through 2013.

Through the End of 2013

Tax-free distributions from individual retirement accounts plans for charitable purposes (Sec. 408(d))

- Maximum $100,000 annually
- Must be a direct transfer
- No income/no charitable deduction
- Must be over age 70 ½
- Must be made to a qualified charitable organization (Sec. 170)
- Required minimum distribution will qualify

Limited EITC Extension Through 2017

Earned income credit enhancements

- Increased amounts
- Refundable credit
- Form 8867 due diligence requirement

Child tax credit enhancements

- Increased amounts
- Refundable credit
- New questions to address on Form 8812
- More than four children special procedure

Coverdell Education Savings Accounts Made Permanent

The higher contribution amount and other Economic Growth Tax Relief Reconciliation Act changes to Coverdell Education Savings Accounts

- Maximum per year $2,000 (total for all accounts)
- Not deductible on form 1040
- Earnings grow tax free
- Distribution must be used for educational purpose

Child and Dependent Care Credit Enhancements Made Permanent

Child and Dependent Care Credit

- Credit between 20% and 35%
- Maximum $3,000/$6,000
- $15,000 through $43,000 AGI phase out

Business Use of Home

New optional simplified method

- Maximum 300 square feet
- Flat deduction of $5 per square foot

Form 8829 not required

For the latest information, go to irs.gov: Search: "Home Office FAQs"

Energy-Related Tax Breaks

The following energy credits are extended:

- The nonbusiness energy property credit for energy-efficient existing homes is extended through 2013. A taxpayer can claim a 10% credit on the cost of: (1) qualified energy efficiency improvements, and (2) residential energy property expenditures, with a lifetime credit limit of $500 ($200 for windows and skylights).
- The credit for energy-efficient appliances is retroactively extended for two years through 2013.

Pension Provision

- For transfers after December 31, 2012, in tax years ending after that date, plan provisions in an applicable retirement plan (which includes a qualified Roth contribution program) can allow participants to elect to transfer amounts to designated Roth accounts with the transfer being treated as a taxable qualified rollover contribution.
- Must amend your plan.

Reminder

- Charitable Contributions must have receipt letter if contribution over $250. Must state “No goods or services” were provided.

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.

Schedule D/Form 8949 Aggregate Transaction Reporting

- New lines 1a and 8a on Schedule D allow for reporting without using Form 8949, for transactions correctly reported to the IRS with the correct basis amount
- Substitute Form 1099-B reporting guidelines are to follow Form 8949 format
- For the latest information, go to: IRS.gov/scheduled or IRS.gov/form8949

SCHEDULE D (Form 1040)

Capital Gains and Losses

▶ Attach to Form 1040 or Form 1040NR.

▶ Information about Schedule D and its separate instructions is at www.irs.gov/form1040.

▶ Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.

OMB No. 1545-0074

2013

Attachment Sequence No. 12

Name(s) shown on return: Your social security number

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form(s) 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b				
1b Totals for all transactions reported on Form(s) 8949 with Box A checked				
2 Totals for all transactions reported on Form(s) 8949 with Box B checked				
3 Totals for all transactions reported on Form(s) 8949 with Box C checked				
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824				4
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				5
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your Capital Loss Carryover Worksheet in the instructions				6 ( )
7 Net short-term capital gain or (loss). Combine lines 1a through 6 in column (h). If you have any long-term capital gains or losses, go to Part II below. Otherwise, go to Part III on the back				7

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b				
8b Totals for all transactions reported on Form(s) 8949 with Box D checked				
9 Totals for all transactions reported on Form(s) 8949 with Box E checked				
10 Totals for all transactions reported on Form(s) 8949 with Box F checked				
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824				11
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				12
13 Capital gain distributions. See the instructions				13
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your Capital Loss Carryover Worksheet in the instructions				14 ( )
15 Net long-term capital gain or (loss). Combine lines 8a through 14 in column (h). Then go to Part III on the back				15

For Paperwork Reduction Act Notice, see your tax return instructions.

Cat. No. 11338H

Schedule D (Form 1040) 2013

AS OF 1, 2013 DO NOT FILE

Schedule D (Form 1040) 2013 Page 2

Part II **Summary**

16 Combine lines 7 and 15 and enter the result 16

- If line 16 is a **gain**, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below.
- If line 16 is a **loss**, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22.
- If line 16 is **zero**, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22.

17 Are lines 15 and 16 **both** gains?

☐ **Yes.** Go to line 18.

☐ **No.** Skip lines 18 through 21, and go to line 22.

18 Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** in the instructions . . . ► 18

19 Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** in the instructions . . . ► 19

20 Are lines 18 and 19 **both** zero or blank?

☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). **Do not** complete lines 21 and 22 below.

☐ **No.** Complete the **Schedule D Tax Worksheet** in the instructions. **Do not** complete lines 21 and 22 below.

21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of:

- The loss on line 16 or
- ($3,000), or if married filing separately, ($1,500)

Note. When figuring which amount is smaller, treat both amounts as positive numbers. 21

22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b?

☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42).

☐ **No.** Complete the rest of Form 1040 or Form 1040NR.

Schedule D (Form 1040) 2013

DRAFT AS OF JULY 31, 2013 DO NOT FILE

Foreign Tax Reporting Requirements

BLS
BELFINT • LYONS • SHUMAN
Certified Public Accountants

Form 8938 Statement of Specified Foreign Financial Assets

- Started in 2011
- Due with the income tax return including extensions.
- Filing thresholds

Filing Status	Value at 12/31	High Value
Single	$50,000	$75,000
Married Filing Joint (MFJ)	$100,000	$150,000
Married Separate (MFS)	$50,000	$75,000
Single – Living Abroad	$200,000	$300,000
MFJ – Living Abroad	$400,000	$600,000

- Currently applies only to individuals. Still no final regulations for domestic entity filing.
- There is no filing requirement if there is no income tax return required.

Form 8938 Statement of Specified Foreign Financial Assets - Continued

- Financial assets include bank accounts, trusts, estates, insurance policies, pension plans (not foreign social security), deferred comp plans, notes, bonds, stock or interest in foreign entities.
  - *Note: In the case of stock or interest in foreign entities, there may be additional filing requirements in the year of acquisition, year of disposition, and if more than 50% of the foreign entity is owned by U.S. citizens.*
  - *Note: In the case of trusts, there is a requirement to file Form 3520.*

Form 8938 Statement of Specified Foreign Financial Assets - Continued

- Conversion rates are used as of the last day of the year even if the asset was disposed of before the last day of the year. Use the Treasury's Financial Management Service rate found at www.fms.treas.gov.
- Civil penalty fines can be up to $10,000 plus an additional $10,000 per month after being notified by the IRS that you must file. Additional fines are assessed at 40% of the underpayment if no fraud and 70% of the underpayment if it is due to fraud.
- Does not relieve the FBAR filing requirement. This is in addition to the TD F 90-22.1.

Form TD F 90-22.1 Report of Foreign Bank and Financial Accounts (aka FBAR)

- Must be *received* by the IRS by June 30. There is no extension available.
- File if the aggregate value of the foreign financial accounts exceeded $10,000 at any time during the year.
- You are not exempt from filing even if you are not required to file an income tax return.
- Applies to individuals and legal entities (i.e. LLCs, corporations, partnerships, trusts, estates, etc.)

Form TD F 90-22.1 Report of Foreign Bank and Financial Accounts (aka FBAR) - Continued

- Financial assets include bank accounts, brokerage accounts, securities, commodity futures or options, insurance policy with cash value, annuity policy with cash value, or mutual funds.
- An account is deemed to be foreign if the physical location of the branch from which the account is maintained is outside of the U.S.

Form TD F 90-22.1 Report of Foreign Bank and Financial Accounts (aka FBAR) - Continued

- Having a financial interest in an account does not necessarily mean that the account is for the benefit of the individual/entity.
  - The account of an entity in with the U.S. person owns directly or indirectly more than 50% of the voting power, value of equity or assets, or interest in profits.
  - An agent, nominee, attorney, etc. acting on behalf of a U.S. person with respect to the account.
  - Signature authority (some exceptions)

Form TD F 90-22.1 Report of Foreign Bank and Financial Accounts (aka FBAR) - Continued

- Conversion rates are used as of the last day of the year even if the maximum value was not on the last day of the year. Use the Treasury's Financial Management Service rate found at www.fms.treas.gov.
- Civil penalty fines can be up to $10,000. Willful failure to file will result in a fine of the greater $100,000 or half of the balance of the account at the time of the violation.
- Voluntary Disclosure Program – no end date announced
  - As of December 2012, over $5.5 billion in revenues have been generated from voluntary disclosures.

Always Important!

- FBAR – Electronic filing requirement post-June 30, 2013 filings
  - http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Report-of-Foreign-Bank-and-Financial-Accounts-(FBAR)
- FATCA Form 8938 (note: still no 'entity' filing requirement, regs not issued)
  - http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA)

Summary

- Questions?
- www.IRS.gov
- Draft forms and instructions
  - www.IRS.gov/draftforms
- Thomas (The Library of Congress)
  - thomas.loc.gov