

# 2011 Regional Forums - Individual Developments

## New Laws

### Accelerated capital cost recovery provisions in the Small Business Jobs Act of 2010

On September 27, 2010, the President signed into law H.R. 5297, the Small Business Lending Funding Act. The tax title of this bill, the "Small Business Jobs Act of 2010" (the Act, P.L. 111-240) includes a number of important tax provisions for businesses large and small, and changes for individuals as well.

#### Substantially Increased Expensing Deduction for 2010 and 2011

New law. For tax years beginning in 2010 or 2011: (1) the dollar limitation on the expense deduction is \$500,000; and (2) the reduction in the dollar limitation starts to take effect when property placed in service in a tax year exceeds \$2,000,000 (beginning-of-phaseout amount). (Code Sec. 179(b)(1) and Code Sec. 179(b)(2), as amended by Act Sec. 2021(a))

Note, however, that for tax years beginning after 2011, there's a \$25,000 dollar limit on expensing and a \$200,000 beginning-of-phaseout amount. (Code Sec. 179(b)(2)(C))

#### Up to \$250,000 of Qualified Real Property Eligible for Expensing in 2010 and 2011

New law. For any tax year beginning in 2010 or 2011, a taxpayer may elect to treat up to \$250,000 of qualified real property as Code Sec. 179 property. (Code Sec. 179(f)(1), as amended by Act Sec. 2021(b))

Qualified real property is:

- (A) qualified leasehold improvement property described in Code Sec. 168(e)(6),
- (B) qualified restaurant property described in Code Sec. 168(e)(7) (without regard to the placed-in-service date specified in Code Sec. 168(e)(7)(A)(i) for Code Sec. 168 depreciation purposes) and
- (C) qualified retail improvement property described in Code Sec. 168(e)(8) (without regard to the placed-in-service date specified in Code Sec. 168(e)(8)(E) for Code Sec. 168 depreciation purposes). (Code Sec. 179(f)(2)(C))

The qualified property must be depreciable, acquired for use in the active conduct of a trade or business, and can't be certain ineligible property (i.e., used for lodging, used outside the U.S., used by governmental units, foreign persons or entities, and certain tax-exempt organizations, air conditioning or heating units).

#### Other Code Sec. 179 Expensing Changes

New law. Under the Act, a taxpayer's ability to revoke a Code Sec. 179 election without IRS consent applies to any tax year beginning after 2002 and before 2012. (Code Sec. 179(c)(2), as amended by Act Sec. 20121(c)) The Act also provides that computer software is qualifying property for purposes of the Code Sec. 179 election if it is placed in service in a tax year beginning after 2002 and before 2012. (Code Sec. 179(d)(1)(A)(ii), as amended by Act Sec. 20121(d))

#### Bonus First-Year Depreciation Extended Through 2010

New law. The Act extends 50% bonus first-year depreciation for one year, i.e., makes it available for qualifying property acquired and placed in service in 2010 (as well as 2011, for certain long-lived property).

## **Temporary Reduction in S Corporation Built-in Gain Period**

New law. For tax years beginning after Dec. 31, 2010, the Act provides that for S corporation tax years beginning in 2011, no tax is imposed on the net unrecognized built-in gain of an S corporation if the fifth year in the recognition period preceded the 2011 tax year. (Code Sec. 1374(d)(7)(B)(ii), as amended by Act Sec. 2014(a))

RIA observation: Thus, a seven tax year period applies for the 2009 and 2010 tax years, while a five year period will apply for the 2011 tax year. S corporations that are considering selling assets that may be subject to the built-in gains tax might consider delaying the sale of the assets until the 2011 tax year in order to avoid the tax.

## **Major Rewrite for Penalty for Failure to Report Shelter Transactions**

New law. For penalties assessed after Dec. 31, 2006, the Act completely replaces the Code Sec. 6707A penalty structure. Except as provided below, the amount of the penalty with respect to any reportable transaction is 75% of the decrease in tax shown on the return as a result of the transaction (or which would have resulted from the transaction if it were respected for federal tax purposes). (Code Sec. 6707A(b)(1), as amended by Act Sec. 2041(a))

The amount of the penalty for any reportable transaction for any tax year can't exceed:

- (1) for a listed transaction, \$200,000 (\$100,000 in the case of a natural person); and
- (2) for any other reportable transaction, \$50,000 (\$10,000 in the case of a natural person). (Code Sec. 6707A(b)(2))

The Act also establishes a minimum penalty for a failure to disclose a reportable or listed transaction. The amount of the penalty for any transaction for any tax year can't be less than \$5,000 for a natural person and \$10,000 for any other person. (Code Sec. 6707A(b)(3))

## **Cell Phones Removed From Listed Property Category**

New law. For tax years beginning after Dec. 31, 2009, the Act removes cellular telephones (cell phones) and other similar telecommunications equipment from the categories of "listed property" under Code Sec. 280F. (Code Sec. 280F(d)(4)(A), as amended by Act Sec. 2043(a)) Thus, the heightened substantiation requirements and special depreciation rules that apply to listed property don't apply to cell phones.

## **2010 Tax Relief Act's Two-Year "Sunset Relief" Protects Key Individual Tax Breaks**

On December 17, the President signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Tax Relief Act, P.L. 111-312). The 2010 Tax Relief Act extends for two years the Bush-era tax cuts, retains for two years favorable tax rates for long-term capital gains and qualified dividends, provides significant estate and gift tax relief, and includes a two-year AMT "patch."

## **Reduced Individual Tax Rates Extended for Two Years**

New law. Under Sec. 101 of the 2010 Tax Relief Act, the tax rate schedules for individuals will remain at 10%, 15%, 25%, 28%, 33% and 35% for two additional years, through 2012. In addition, the size of the 15% tax bracket for joint filers and qualified surviving spouses will remain at 200% of the 15% tax bracket for individual filers through 2012.

## **Withholding and Other Tax Rates Stay Unchanged**

The following rates are tied in one way or another to the tax rates for individuals. Thus, although not expressly amended by the 2010 Tax Relief Act, they will remain unchanged for 2011-2012 because the Act extends current tax rates for individuals through 2012. The rates that follow will remain at current levels, instead of increasing under the EGTRRA sunset rule:

*Accumulated earnings tax rate (Code Sec. 532).* This rate stays at 15% instead of rising to 39.6%.

*Personal holding company tax rate (Code Sec. 541).* This rate stays at 15% instead of rising to 39.6%.

*Minimum withholding rate on supplemental wages under flat rate method (Code Sec. 3402).* This rate will stay at 25% instead of rising to 28%. (For supplemental wage payments totalling more than \$1 million for a calendar year, the rate stays at 35% instead of rising to 39.6%).

*Withholding rate on gambling winnings (Code Sec. 3402(q)).* This rate stays at 25% instead of rising to 28%.

*Backup withholding rate on reportable payments (Code Sec. 3406).* This rate stays at 28% instead of rising to 31%.

*Voluntary withholding rates on certain federal payments (e.g., Social Security benefits) (Code Sec. 3402).* These rates stay at 7%, 10%, 15%, or 25%, instead of rising to 7%, 15%, 28%, 31%.

*Voluntary withholding rate on unemployment benefits (Code Sec. 3402).* This rate stays at 10% instead of rising to 15%.

## **Increased Standard Deduction Amounts Extended for Two Years**

New law. Under Sec. 101 of the 2010 Tax Relief Act, the standard deduction for married taxpayers filing jointly (and qualified surviving spouses) remains at 200% of the standard deduction for single taxpayers for two additional years, through 2012.

## **No 3%/80% Limitation on Itemized Deductions for 2011 and 2012**

New law. Under Sec. 101 of the 2010 Tax Relief Act, the itemized deductions of higher-income taxpayers are not reduced for two additional years, through 2012.

## **No Phase-Out of Personal Exemptions For 2011 and 2012**

New law. Under Sec. 101 of the 2010 Tax Relief Act, a higher-income taxpayer's personal exemptions are not phased out for two additional years (for 2011 and 2012) when AGI exceeds an inflation-adjusted threshold.

## **Reduced Capital Gains and Qualified Dividends Rate Extended for Two Years**

New law. Under Sec. 102 of the 2010 Tax Relief Act, adjusted net capital gain will be taxed at a maximum rate of 0/15% for two additional years, through 2012. A qualified dividend paid to individuals will be taxed at the same rates as adjusted net capital gain through 2012. In addition, the 2010 Tax Relief Act also extends for two years, through 2012, the rules excluding qualified dividend income from net capital gain in computing unrecaptured section 1250 gain taxed at a 25% rate; and the holding period rule for determining when dividends on stock qualify as qualified dividend income.

## **Expanded Child Tax Credit Extended for Two Years**

New law. Under Secs. 101 and 103 of the 2010 Tax Relief Act, the \$1,000 child tax credit is extended and allowed to be used against regular income tax and the AMT for two years, through 2012. The formula for determining the refundable child credit, with the earned income threshold of \$3,000 (but not adjusted for

inflation) is extended for two years, through 2012. Also extended for two years is the treatment of the refundable portion of the child tax credit as not constituting income or a resource in determining the eligibility or amount of benefits or assistance under any Federal program or State or local program financed with Federal funds.

### **Expanded Earned Income Tax Credit Extended**

New law. Secs. 101 and 103 of the 2010 Tax Relief Act extend for two years, through 2012, the following provisions: (1) the simplified definition of earned income; (2) the simplified relationship test; (3) use of AGI instead of modified AGI; (4) the simplified tie-breaking rule; (5) additional math error authority for IRS; (6) the repeal of the prior-law provision reducing an individual's EITC by the amount of his AMT liability; and (7) increases in the beginning and ending points of the credit phase-out for married taxpayers by \$5,000. (Committee Report)

The 2010 Tax Relief Act also extends for two years, through 2012, the 45% rate for taxpayers with three or more qualifying children and the higher phase-out thresholds for married couples filing joint returns. (Code Sec. 32(b)(3), as amended by Act Sec. 103(c))

### **Expanded Adoption Credit and Employer-Provided Adoption Assistance Extended One Year**

New law. Under Sec. 101 of the 2010 Tax Relief Act, the expanded adoption credit and exclusion from income for employer-provided adoption assistance are extended for one year, through 2012, but the PPACA changes to the adoption credit for 2010 and 2011 (relating to the \$1,000 increase in the maximum credit and the refundability of the credit) aren't extended. Thus, for 2012, the maximum benefit is \$12,170 (indexed for inflation after 2010), and is phased out ratably for taxpayers with modified AGI between \$182,520 and \$222,520 (indexed for inflation after 2010). (Act Sec. 101(b), Committee Report)

### **Expanded Employer-Provided Child Care Tax Credit Extended Through 2012**

New law. Under Sec. 103 of the 2010 Tax Relief Act, the employer-provided child care tax credit is extended for two years, through 2012.

### **Expanded Dependent Care Tax Credit Extended Two Years**

New law. Under Sec. 101 of the 2010 Tax Relief Act, the expanded dependent care tax credit applies for two additional years, through 2012.

### **Numerous Education Incentives Extended Two Years**

New law. Under the 2010 Tax Relief Act, the AOTC, the NHSC Scholarship Program and the Armed Forces Scholarship Program exception, the exclusion for employer-provided educational assistance, the student loan interest deduction, and Coverdell education savings accounts rules are extended for two years, through 2012. (Act Sec. 101, Act Sec. 103(a))

### **Boosted AMT Exemption Amounts for 2010 and 2011**

New law. The 2010 Tax Relief Act patches the AMT exemption amounts for 2010 and 2011. (Code Sec. 55(d), as amended by Act Sec. 201)

### **Personal Nonrefundable Credits May Offset AMT and Regular Tax for 2010 and 2011**

New law. For tax years beginning during 2010 or 2011, the 2010 Tax Relief Act allows an individual to offset his entire regular tax liability and AMT liability by the nonrefundable personal credits. (Code Sec. 26(a)(2), as amended by Act Sec. 202)

## **Economic Stimulus Incentives in the 2010 Tax Relief Act**

On December 17, the President signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Tax Relief Act, P.L. 111-312). The 2010 Tax Relief Act extends for two years the Bush-era tax cuts, retains for two years favorable tax rates for long-term capital gains and qualified dividends, provides significant estate and gift tax relief, and includes a two-year AMT "patch." It also contains new tax breaks, including 100% first-year writeoffs of qualifying property placed in service after Sept. 8, 2010 and before Jan. 1, 2012, and a payroll/self-employment tax cut of two percentage points for 2011 for employees and self-employed individuals. Plus it extends a host of expired and expiring tax breaks for businesses and individuals as well as a number of key disaster relief provisions.

### **Bonus Depreciation Extended; Temporary 100% Deduction in Placed-in-Service Year**

New law. The 2010 Tax Relief Act extends and expands additional first-year depreciation to equal:

... 100% of the cost of qualified property placed in service after Sept. 8, 2010 and before Jan. 1, 2012 (before Jan. 1, 2013 for certain longer-lived and transportation property); and

... 50% of the cost of qualified property placed in service after Dec. 31, 2011 and before Jan. 1, 2013 (after Dec. 31, 2012 and before Jan. 1, 2014 for certain longer-lived and transportation property). (Code Sec. 168(k)(5), as amended by Act Sec. 401(a))

### **First-Year Depreciation Cap for 2011/2012 Autos and Trucks Boosted by \$8,000**

New law. The 2010 Tax Relief Act provides that the placed-in-service deadline for "qualified property" is Dec. 31, 2013 (Dec. 31, 2014 for the aircraft and long-production-period property). (Code Sec. 168(k)(2)(A)(iv), as amended by Act Sec. 401(a))

RIA observation: Thus, for a passenger auto that is qualified property under Code Sec. 168(k), (and isn't subject to the election to decline bonus depreciation and AMT depreciation relief), the Act extends the placed-in-service deadline for the \$8,000 increase in the first-year depreciation limit from Dec, 31, 2010 to Dec. 31, 2012.

### **Boosted Expensing Amounts for 2012**

New law. For tax years beginning in 2012, the 2010 Tax Relief Act increases the maximum expensing amount under Code Sec. 179 from \$25,000 to \$125,000 and increases the investment-based phaseout amount from \$200,000 to \$500,000. The \$125,000/\$500,000 amounts will be indexed for inflation. However, for tax years beginning after 2012, the maximum expensing amount drops to \$25,000 and the investment-based phaseout amount drops to \$200,000. (Code Sec. 179(b), as amended by Act Sec. 402)

The Act also provides that off-the-shelf computer software is expensing eligible property if placed in service in a tax year beginning before 2013 (a one-year extension). (Code Sec. 179(d)(1)(A)(ii) Finally, it provides that for tax years beginning before 2013 (also a one-year extension), an expensing election or specification of property to be expensed may be revoked without IRS's consent. But, if such an election is revoked, it can't be re-elected. (Code Sec. 179(c)(2))

### **Temporary Employee/Self-Employed Payroll Tax Cut for 2011**

New law. For remuneration received during 2011, the Act reduces the employee OASDI tax rate under the FICA tax by two percentage points to 4.2%. Similarly, for self-employment income for tax years beginning in 2011, the Act reduces the OASDI tax rate under the SECA tax by two percentage points to 10.4% percent. (Act Sec. 601) As a result, for 2011, employees will pay only 4.2% Social Security tax on wages up to \$106,800 and

self-employed individuals will pay only 10.4% Social Security self-employment taxes on self-employment income up to \$106,800.

RIA observation: The maximum savings for 2011 will be \$2,136 (2% of \$106,800) per taxpayer. If both spouses earn at least as much as the wage base, the maximum savings will be \$4,272.

## **Tax Breaks for Individuals Retroactively Reinstated and Extended by the 2010 Tax Relief Act**

On December 17, the President signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Tax Relief Act, P.L. 111-312). The 2010 Tax Relief Act extends for two years the Bush-era tax cuts, retains for two years favorable tax rates for long-term capital gains and qualified dividends, provides significant estate and gift tax relief, and includes a two-year AMT "patch." It also contains new tax breaks, including 100% first-year writeoffs of qualifying property placed in service after Sept. 8, 2010 and before Jan. 1, 2012, and a payroll/self-employment tax cut of two percentage points for 2011 for employees and self-employed individuals. Plus it extends a host of expired and expiring tax breaks for businesses and individuals as well as a number of key disaster relief provisions.

This Special Study explains the individual income tax provisions that were added or extended by the 2010 Tax Relief Act. The majority of the affected provisions had expired at the end of 2009, including the above-the-line deduction for educator expenses and the allowance of tax-free charitable transfers from a taxpayer's IRA, and these were retroactively resuscitated and extended through 2011. The Act also adds a new provision which disregards tax refunds for purposes of determining a taxpayer's eligibility for benefits under any federal program or federally-financed State or local program.

### **Above-the-Line Deduction for Educator Expenses Reinstated and Extended**

New law. The 2010 Tax Relief Act retroactively extends the educator expense deduction for two years so that it applies to expenses paid in incurred in tax years 2010 and 2011. (Code Sec. 62(a)(2)(D), as amended by Act Sec. 721)

### **State and Local Sales Tax Deduction Reinstated and Extended**

New law. The 2010 Tax Relief Act retroactively extends this provision for two years so that taxpayers can elect to deduct state and local sales and use taxes for tax years beginning before Jan. 1, 2012. (Code Sec. 164(b)(5), as amended by Act Sec. 722)

### **Liberalized Rules for Qualified Conservation Contributions Reinstated and Extended**

New law. The 2010 Tax Relief Act retroactively extends for two years the 50% and 100% limitations on qualified conservation contributions of appreciated real property so that they apply to contributions made in tax years beginning before Jan. 1, 2012. (Code Sec. 170(b)(1)(E), as amended by Act Sec. 723)

### **Above-the-Line Deduction for Higher Education Expenses Reinstated and Extended**

New law. The 2010 Tax Relief Act retroactively extends the qualified tuition deduction for two years so that it can be claimed for tax years beginning before Jan. 1, 2012. (Code Sec. 222(e), as amended by Act Sec. 724)

### **Nontaxable IRA Transfers to Eligible Charities Reinstated and Extended**

New law. The 2010 Tax Relief Act retroactively extends this provision for two years so that it's available for charitable IRA transfers made in tax years beginning before Jan. 1, 2012. (Code Sec. 408(d)(8)(F), as amended by Act Sec. 725) In addition, a taxpayer can elect for such a distribution made in January of 2011 to be treated as if it were made on Dec. 31, 2010. (Act Sec. 725(b)) Thus, a qualified charitable distribution made in Jan. 2011 is allowed to be (1) treated as made in the taxpayer's 2010 tax year and thus so allowed to count against

the 2010 \$100,000 limitation on the exclusion, and (2) treated as made in the 2010 calendar year and so allowed to be used to satisfy the taxpayer's minimum distribution requirement for 2010. (Committee Report)

### **Increase in Excludible Employer-Provided Mass Transit and Parking Benefits Extended**

New law. The 2010 Tax Relief Act extends this increase in the monthly exclusion for employer-provided transit and vanpool benefits, so that the exclusion for employer-provided transit and vanpool benefits is equal to that of the exclusion for employer-provided parking benefits, through Dec. 31, 2011. (Code Sec. 132(f)(2), as amended by Act Sec. 727)

RIA observation: Based on Consumer Price Index (CPI) data, RIA has calculated that this exclusion will remain at \$230 per month in 2011.

### **Treatment of Mortgage Insurance Premiums as Deductible Qualified Residence Interest Extended**

New law. The 2010 Tax Relief Act extends this provision for one year so that a taxpayer can deduct, as qualified residence interest, mortgage insurance premiums paid or accrued before Jan. 1, 2012. (Code Sec. 163(h)(3)(E), as amended by Act Sec. 759)

### **Temporary Exclusion of 100% of Gain on Certain Small Business Stock Extended**

For 2010, a taxpayer may exclude all of the gain on the disposition of qualified small business stock acquired after Sep. 27, 2010 and before Jan. 1, 2011, and 75% of the gain from such stock acquired after Feb. 17, 2009 and before Sep. 28, 2010. Under pre-Act law, the exclusion was to be limited to 50% of gain for stock acquired after Dec. 31, 2010.

New law. The 2010 Tax Relief Act extends this provision for one year so that taxpayers may continue to exclude 100% of gain from the disposition of qualified small business stock acquired before Jan. 1, 2012. (Code Sec. 1202(a)(4), as amended by Act Sec. 760)

## **Updated Regulations**

**Valuation tables in final regs reflect recent mortality data and broader range of interest rates** T.D. 9540, 08/09/2011 ; Reg. § 1.170A-12, Reg. § 1.642(c)-6, Reg. § 1.664-4, Reg. § 20.2031-7, Reg. § 20.2056A-4, Reg. § 25.2512-5, Reg. § 25.2522(c)-3, Reg. § 1.7520-1, Reg. § 20.7520-1, Reg. § 25.7520-1

IRS has issued final regs that contain updated actuarial tables for valuing annuities, life estates, remainders, and reversions. The updated tables reflect more recent mortality experience and a broader range of interest rates. These tables are generally effective for annuities, interests for life or terms of years, and remainder or reversionary interests valued on or after May 1, 2009.

### **IRS releases draft version of Form 8938 for foreign financial asset holders**

*Recent guidance.* In Notice 2011-55, 2011-29 IRB, IRS suspended the Code Sec. 6038D reporting requirements until it releases Form 8938. After new Form 8938 is released in its final form, individuals for whom the filing of Form 8938 was suspended for a tax year will have to attach the form for the suspended tax year to their next income tax return required to be filed with IRS.

Part I of the draft form requires information about foreign deposit and custodial accounts, including the maximum value of any such account during the tax year. Part II has similar entries for "other foreign assets," but notes that specified foreign financial assets that have been otherwise reported on Forms 3520, 3520-A, 5471, 8621, or 8865, do not have to be included on Form 8938. Part III asks for a summary of tax items

attributable to the accounts and assets reported in Parts I and II, including associated items such as interest, dividends, and royalties. Part IV requires disclosure of the number of the filed forms referenced in Part II on which any foreign financial assets that were excepted from Part II were reported.

## **Cases and Rulings**

### **Gain on sale of rebuilt house didn't qualify for homesale exclusion Gates (2010), 135 TC No. 1**

In a reviewed decision, the Tax Court has held that taxpayers, who voluntarily demolished and constructed a new house on their property in order to enlarge and remodel their home, couldn't exclude the gain on the sale of the new house under the Code Sec. 121 exclusion for the sale of a principal residence. Although the taxpayers owned and used their old house as a principal residence for at least two of the five years before the sale, the Code Sec. 121 exclusion didn't apply because they never lived in the new house and it was never used as their principal residence.

### **Tax Court holds that 90% stock loan program was a disguised sale Calloway, (2010) 135 TC No. 3**

In a case of first impression for it, the Tax Court has held that a purported loan transaction program netting a taxpayer 90% of the value of his IBM stock, with no obligation to repay the amount, was in fact a disguised sale. The program was promoted by a company that engaged in some 1,700 similar transactions involving approximately \$1 billion.

### **Court paves the way to joint filing by same sex married couples Nancy Gill, et al. v. Office of Personnel Management, et al., (DC MA 07/08/2010) 106 AFTR 2d ¶ 2010-5058**

A Federal district court in the State of Massachusetts, which allows same-sex couples to marry, has held that Section 3 of the Defense of Marriage Act violates equal protection principles embodied in the Fifth Amendment to the U.S. constitution. The decision paves the way for those individuals who brought the suit to file Federal income tax returns jointly with their spouses to do so.

### **How decision not to defend the Defense of Marriage Act affects same-sex married couples' taxes Statement of the Attorney General on Litigation Involving the Defense of Marriage Act 3/3/11**

The Attorney General has announced that the Justice Department will no longer defend the constitutionality of Section 3 of the Defense of Marriage Act, which denies recognition of same-sex marriages for purposes of administering Federal law. However, Section 3 will remain in effect unless Congress repeals it or there is a final judicial finding that strikes it down. In the meantime, the government will continue to enforce it.

RIA observation: The decision not to defend Section 3 has no impact on same-sex couples who are not legally married.

### **Costs of service animals used for mental health deductible as medical expenses Information Letter 2010-0129**

An IRS Information Letter (IL) to a member of Congress makes it clear that the costs of buying, training, and maintaining a service animal to assist an individual with mental disabilities may qualify as a deductible medical expense if the taxpayer can establish that he is using the service animal primarily for medical care to alleviate a mental defect or illness and that he would not have paid the expenses but for the disease or illness.

**Credit card rebates paid to charity yield charitable deductions for cardholders**  
**PLR 201027015**

IRS has privately ruled that an individual will not realize income from, and will qualify for charitable deductions for, rebates he designates to be paid to charities under a credit card program when he makes purchases by credit card. However, IRS concluded that a sample written acknowledgment provided by the taxpayer would not satisfy the Code Sec. 170(f)(17) record keeping requirements.

**Forward contract/share lending agreements were taxable sales, not Sec. 1058 lending arrangements**  
**Anschutz, (2010) 135 TC No. 5**

The Tax Court has held that variable prepaid forward contract transactions that incorporated a share lending agreement reduced the taxpayer's risk of loss and opportunity of gain. Thus, the integrated transactions were current taxable sales of the underlying stock, and not a Code Sec. 1058 lending arrangement.

**Shelter lacked substance and couldn't offset huge compensation as district court had allowed**  
**Sala v. U.S. (CA 10 7/23/2010) 106 AFTR 2d ¶ 2010-5109**

The Court of Appeals for the Tenth Circuit has reversed a district court decision that would have allowed an individual to offset \$60 million of compensation income with losses from a Son-of-Boss transaction. Disagreeing with the district court, the Appeals Court found that the transaction lacked economic substance.

**Accountant was employee, not independent contractor**      **Feaster, TC Memo 2010-157**

The Tax Court has determined that an accountant was an employee, not an independent contractor. As a result, he could not deduct business expenses on Schedule C.

**Transfer of home to closely held shareholders was constructive dividend; penalties imposed**  
**RVJ Cezar Corporation et al, TC Memo 2010-173**

A new Tax Court decision illustrates the need for closely held corporations to be wary of constructive dividends when dealing with their owners. A closely held construction company's transfer of a home to its shareholders resulted in dividend/capital gain income to them, and taxable gain to the corporation. What's more, both the shareholders and the corporation were held liable for accuracy related penalties.

**Personal goodwill received in sale of professional service corporation was corporate asset**  
**Larry E. Howard v. U.S., (DC WA 7/30/2010) 106 AFTR 2d ¶ 2010-5140**

A district court has held that the amount received by a sole shareholder (dentist) on the sale of his professional service corporation (engaged in a dental practice) that was allocated to his personal goodwill was in fact a corporate asset. As a result, the amount was recharacterized as a dividend to him from his corporation.

**Father-son farm was a partnership; each had equal interest in its expenses**  
**Holdner, TC Memo. 2010-175**

The Tax Court has concluded that the farming activity operated by a father and son was a partnership for Federal income tax purposes and that, in the absence of substantial proof rebutting the presumption of equality, each had equal interests in the partnership income, expenses, and other partnership items.

**Disability payments to firefighter under union's contract with city weren't excludable**  
**John T. Bayse, TC Summary Opinion 2010-118**

The Tax Court has held that payments made by a city to a firefighter injured in the line of duty had to be included in his gross income. The payments, which were made under a collective bargaining agreement, weren't made under a workmen's compensation act as compensation for personal injuries or sickness, and so weren't excludable under Code Sec. 104(a)(1).

**Recharacterization of activity from nonpassive to passive wasn't accounting method change**  
**PLR 201035016**

In a Technical Advice Memorandum (TAM), IRS has concluded that a recharacterization of a taxpayer's activities from nonpassive to passive for purposes of the Code Sec. 469 passive activity loss (PAL) rules didn't result in a change in accounting method, warranting a Code Sec. 481(a) adjustment.

**“On call” time didn't count towards qualification as real estate professional under PAL rules**  
**Moss (2010), 135 TC No.18**

The Tax Court has held that the time that a taxpayer was “on call” to perform activities for his rental properties didn't count toward satisfying the 750-hour service performance requirement for a real estate professional under Code Sec. 469(c)(7)(B) of the passive activity loss (PAL) rules. As a result, the taxpayer's losses from his rental properties were limited to the \$25,000 allowance under Code Sec. 469(i) (subject to phaseout limitations).

**IRS provides relief for homeowners with corrosive drywall**  
**Rev Proc 2010-36, 2010-42 IRB ; IR 2010-102**

IRS is allowing individuals with corrosive drywall to apply a safe harbor formula to treat the costs of repairing the defective drywall as a casualty loss. The safe harbor applies for original and amended federal income tax returns filed after Sept. 29, 2010.

RIA observation: In an earlier article at Weekly Alert 6 07/16/2009, we reported that IRS Associate Chief Counsel George Blaine responded to legislators' requests that IRS clarify whether damage caused by defective Chinese drywall can result in a casualty loss deduction with a conditional “yes.” IRS has now responded with a definite yes at least for those who qualify for and take advantage of the safe harbor.

**Taxpayers allowed to deduct losses from horse breeding activity**  
**Johnny L. Dennis, TC Memo 2010-216**

The Tax Court has held that a married couple engaged in their horse breeding activity with a bona fide profit objective under Code Sec. 183. As a result, they could deduct losses from the activity that IRS had sought to bar.

**Taxpayer received ordinary income for performing services not ancillary to transfer of patent**  
**Farris, TC Memo 2010-222**

The Tax Court has found that sales and training services performed by a taxpayer for a company to which he had previously sold his needleless syringe patents were not in connection with or ancillary to the transfer of the patents. Thus, income received by the taxpayer for those services was ordinary compensation income.

## **Debt on home purchase can be home equity debt as well as acquisition debt**

**Rev Rul 2010-25, 2010-44 IRB**

A new revenue ruling concludes that acquisition indebtedness incurred by a taxpayer to buy, build, or substantially improve a qualified residence can also qualify as home equity indebtedness under Code Sec. 163(h)(3)(C) to the extent it exceeds \$1 million. As a result, a taxpayer can deduct up to \$1.1 million of the debt securing the purchase of his principal residence.

RIA observation: The new ruling formally adopts the position taken by IRS in Chief Counsel Advice 200940030. That Chief Counsel Advice rejected contrary holdings in two Tax Court Memo cases and a contrary IRS position in an earlier Field Service Advice. The new ruling is a rare instance of IRS adopting a more taxpayer favorable position than one taken by the courts.

## **Payments that were reduced when children reached age 20 weren't child support**

**Maes v. U.S., (DC MT 10/13/2010) 106 AFTR 2d ¶ 2010-5385**

A Montana district court has held that payments by an ex-husband to his former spouse were alimony even though they were reduced by specified amounts in years that coincided with their two children reaching the age of 20.

## **Service providers at spa were independent contractors not employees**

**Cheryl A. Mayfield Therapy Center, TC Memo 2010-239**

The Tax Court has held that cosmetologists, nail technicians and massage therapists who performed services at a spa were not its employees but rather were independent contractors. Accordingly, the spa did not owe employment taxes and penalties as IRS had contended.

## **Court of Appeals affirms district court's dismissal of investors' claims based on tax shelter opinions**

**AFFCO Investments 2001 v. Proskauer Rose, 106 AFTR 2010-5426 (10/27/2010)  
106 AFTR 2d ¶2010-5426**

The U.S. Court of Appeals has affirmed a district court's dismissal of investors' RICO and securities fraud claims seeking damages against the law firm, Proskauer Rose, based on the investors' reliance on tax shelter opinion letters used to market the scheme.

## **Tax Court upholds regs allowing fraud penalty on overstatement of wages withheld credits**

**Feller (2010), 135 TC No. 25**

In a reviewed decision, the Tax Court's majority opinion has held that Reg. § 1.6664-2(c)(1) and Reg. § 1.6664-2(g), Example (3), were valid, and so the taxpayer was subject to the Code Sec. 6663 fraud penalty. Where a taxpayer overstates his prepayment credits, such as the credit for wages withheld, that overstatement can result in a tax underpayment on which the fraud penalty can be imposed.

## **No deduction for donation of house to Fire Dept. where value of demolition services exceeded value of property**

**Theodore R. Rolfs and Julia A. Gallagher, (2010) 135 TC No. 24**

The Tax Court has ruled that taxpayers weren't entitled to any charitable contribution deduction for their donation of their lake house to the local volunteer fire department because they received a substantial benefit in the form of demolition services that exceeded the value of the house.

**FedEx drivers in multidistrict litigation largely held to be independent contractors**  
**In re FedEx Ground Package System, Inc., (DC IN 12/13/2010)**

In a multidistrict litigation (MDL) in which delivery drivers from 26 states sought determinations that they were employees of FedEx for purposes including reimbursement of business expenses and entitlement to overtime pay, a district court has held that the majority of the drivers were independent contractors. The court engaged in a state-by-state analysis and concluded, that in most instances, the drivers weren't employees because FedEx didn't retain on a nationwide basis the right to either control the means by which the drivers perform their work or terminate the drivers at will.

**Supreme Court holds that medical residents working full-time were employees for FICA purposes**  
**Mayo Foundation for Medical Education and Research, et al. v. U.S. (S Ct 1/11/2011)**  
**107 AFTR 2d ¶ 2011-312**

The Supreme Court, affirming a decision by the Court of Appeals for the Eighth Circuit, has in a unanimous decision upheld the validity of regs that disqualified medical residents from the Code Sec. 3121(b)(10) FICA student exception because they were full-time employees.

**Accuracy-related penalty not avoided by relying on advisers who were shelter promoters**  
**106 LTD, David Palmlund, Tax Matters Partner, 136 TC No. 3**

The Tax Court has held that a taxpayer could not avoid the Code Sec. 6662(a) accuracy-related penalty by asserting reasonable reliance on his attorney and accountants because they were promoters of the shelter that led to the penalty. In so holding, the Tax Court defined an adviser as someone who participates in structuring the transaction or who is otherwise related to, has an interest in, or profits from the transaction.

**IRS may recharacterize dividend payments to S shareholder-employee as wages**  
**Watson, P.C. v. U.S., (DC IA 12/23/10) 107 AFTR 2d ¶2011-305**

A district court has concluded that an S corporation shareholder-employee's \$24,000 salary in 2002 and 2003 was unreasonably low, and allowed IRS to reclassify as salary over \$67,000 in dividend payments to the officer during each of those years. The corporation will also owe employment taxes on the reclassified dividend payments.

**Tax Court finds that losses of taxpayer in gambling business were limited to gambling gains**  
**Mayo, (2011) 136 TC No. 4**

The Tax Court has held that the allowable losses from wagering transactions of a taxpayer engaged in the trade or business of gambling were limited under Code Sec. 165(d) to the extent of his gains from such transactions. But, the Court further held that the trade or business expenses incurred by the taxpayer in the conduct of the trade or business of gambling, other than the cost of wagers, weren't subject to the Code Sec. 165(d) limitation, and were instead deductible under Code Sec. 162(a).

**Second settlement offer for those voluntarily disclosing unreported offshore income**  
**IR 2011-14 (2/08/2011)**

IRS has unwrapped a second special voluntary disclosure initiative that will give taxpayers with undisclosed income from hidden offshore accounts for the 2003—2010 period the chance to get current with their taxes. The new voluntary disclosure initiative will be available through Aug. 31, 2011. The new initiative carries higher penalties than the original disclosure initiative announced in 2009, but the penalties can be mitigated under certain circumstances.

## **IRS details penalty framework for voluntary disclosure of unreported offshore income**

IRS's Deputy Commissioner for Services and Enforcement has issued a Memorandum on 3/10/2011 carrying the penalty framework to be applied to voluntary disclosure requests containing offshore issues, i.e., the 2011 Offshore Voluntary Disclosure Initiative (2011 OVDI). The memo reveals that the penalty framework will be available to anyone that makes a voluntary disclosure after the first disclosure initiative ended in 2009 (the 2009 OVDI) through Aug. 31, 2011. It also opens up the possibility of a refund for those who paid the penalty under the original voluntary disclosure but would have paid less if the new disclosure initiative had applied to them.

## **“Wrap fees” won't be treated as IRA or Roth IRA contributions      PLR 201104061**

IRS has privately ruled that a financial institution's “wrap fees” that are paid for separately by the institution's clients won't be treated as IRA or Roth-IRA contributions. The fees, which depend on the value of the clients' assets, are overhead-type expenses rather than commissions or broker's fees.

## **Lactation expenses qualify as deductible medical expenses      Ann. 2011-14, 2011-9 IRB**

In an announcement, IRS has concluded that breast pumps and other supplies that assist lactation are medical care under Code Sec. 213(d) because, like obstetric care, they are for the purpose of affecting a structure or function of the body of the lactating woman.

## **Taxpayers not entitled to deduct contributions to purported “family charity” Setty Gundanna and Prabhavathi Katta Viralam, (2011) 136 TC No. 8**

The Tax Court has concluded that married doctors weren't entitled to a charitable contribution deduction for their transfers of appreciated stock to their “account” in a Code Sec. 501(c) organization that they used to pay their son's college tuition and related expenses. Further, the taxpayers were required to include in gross income the capital gain realized when the organization sold the appreciated stocks and the investment income generated by the property in the account.

## **Second Circuit rejects attempt to defer recognition of employer-provided stock Gudmundsson v. U.S., (CA 2 2/22/2011) 107 AFTR 2d ¶ 2011-456**

The Court of Appeals for the Second Circuit has affirmed a district court decision dismissing a married couple's claim for refund based on a purported overvaluation of stock which was distributed to the husband under an employee incentive compensation plan and which subsequently plummeted in value. The district court properly determined that the stock was both transferrable and not subject to a substantial risk of forfeiture on the distribution date, so the taxpayers weren't entitled under Code Sec. 83 to defer its recognition or valuation to a later date.

## **Failure to use qualified escrow account in attempted 1031 exchange resulted in taxable gain      Ralph E. Crandall, Jr. and Dene E. Dulin, TC Summary Opinion 2011-14**

The Tax Court has determined that taxpayers' failure to use a qualified escrow account in an attempted like-kind exchange rendered them ineligible for nonrecognition of gain under Code Sec. 1031. As a result, they wound up with taxable gain on the surrendered property under Code Sec. 1001(c).

## **Attorneys were employees of S corporation law firm Donald G. Cave a Professional Law Corp., TC Memo 2011-48**

The Tax Court has held that an S corporation law firm's sole shareholder, associate attorneys and law clerk were employees of the firm for employment tax purposes, and that the firm did not qualify for Sec. 530 relief with

respect to any of these individuals. Accordingly, it sustained IRS's determination that the firm was liable for employment taxes and penalties for 2003 and 2004.

### **IRS explains tax consequences of governmental homeowner-assistance payments** **Notice 2011-14, 2011-11 IRB**

A new Notice explains the income tax and information return consequences of payments made to or on behalf of homeowners under various government programs designed to prevent avoidable foreclosures of homeowners' homes and stabilize housing markets. In general, homeowners may exclude the payments from income, and may deduct all payments they actually make during 2010–2012 to the mortgage servicer, HUD, or the State HFA on the home mortgage. The aid payments aren't subject to information reporting, and there are transition rules for payments that are incorrectly reported.

### **Real estate professional exception to PAL rule barred by short-term rental rule** **Bailey, TC Summary Opinion 2011-22**

The Tax Court has ruled that a taxpayer didn't meet the qualifying real estate professional's exception to the *per se* passive activity loss (PAL) rule, despite long hours of participation in her properties. Her hours of participation for one of her properties didn't count for purposes of meeting the 750-hour test for real estate professionals because it was used for short-term rentals.

### **Stockholder in residential co-op can't deduct assessment paid to fix damage to retaining wall** **Alphonso, (2011) 136 TC No. 11**

The Tax Court has held that a stockholder in a residential cooperative housing corporation could not deduct as a casualty loss her share of an assessment to fix damage to a retaining wall on the co-op's premises because she didn't possess a property interest in the grounds. It also rejected the owner's alternative argument that she was entitled to a deduction for the assessment under Code Sec. 216(a), enumerating deductions allowed to co-op housing stockholders.

### **Deduction for payments to firm's founders via related entities disallowed as unreasonable** **Mulcahy, Pauritsch, Salvador & Co., Ltd., TC Memo 2011-74**

The Tax Court has held that an accounting firm wasn't entitled to deduct “consulting” payments made to related entities that were subsequently passed on to the firm's founders. The entities didn't provide any services to the firm during the years at issue, and the firm's argument that the payments were actually compensation for services provided by its founders failed where the structure of the payments showed that they were profit distributions intended to eliminate the firm's taxable income.

### **Police officer's disability pension didn't convert to retirement upon turning 50** **Bakken, TC Summary Opinion 2011-55**

The Tax Court has determined that the disability pension of a police officer, who became permanently disabled from injuries sustained in the line of duty before he was eligible to retire, remained nontaxable under Code Sec. 104 when he reached the eligible retirement age of 50. The Court concluded that although his benefits were deemed for retirement under state law, they remained payable on account of his disability for federal tax purposes and thus were excluded from gross income.

## **Real estate professionals allowed late election to aggregate rental real estate interests** **Rev Proc 2011-34, 2011-24 IRB**

In a Revenue Procedure, IRS has provided guidance that allows certain real estate professionals to make a late election under Reg. § 1.469-9(g) to treat all interests in rental real estate as a single rental real estate activity for purposes of the passive activity loss (PAL) rules.

## **Trade officer of foreign consulate held to be common law employee** **Rosenfeld, TC Memo 2011-110**

The Tax Court has determined that a “trade officer” of the British Consulate General (BCG) was a common law employee, not an independent contractor, even though the BCG categorized him as self-employed for tax purposes. Accordingly, the taxpayer wasn't entitled to report his BCG earnings and expenses on a Schedule C or make deductible simplified employee pension (SEP) plan contributions from his BCG salary.

## **Out-of-pocket expenses of caring for foster cats qualified for charitable deduction** **Van Dusen (2011), 136 TC No. 25**

The Tax Court has held that a taxpayer could claim a charitable contribution deduction for some of her out-of-pocket expenses of caring for foster cats because the expenses qualified as unreimbursed expenditures incident to the rendition of voluntary services to a charity and the taxpayer substantially complied with the recordkeeping requirements of Reg. § 1.170A-13(a) (dealing with contributions of less than \$250).

## **Basis overstatement and Statute of Limitations**

The Seventh Circuit Court of Appeals held that a six-year statute of limitations applies to overstatements of basis. (Beard, January 26, 2011). The Court of Appeals for the Federal Circuit also ruled in favor of the IRS (Grapevine Imports, Ltd., March 11, 2011). The decisions uphold IRS regulations that specifically apply the six-year limitation period to the assessment of tax attributable to partnership items. The decisions also continue a split among the circuit courts of appeal whether an overstatement of basis is an omission of gross income for purposes of the Code Sec. 6501(e) six-year limitations period. In February, two other courts of appeal ruled against the IRS. The Fourth Circuit Court of Appeals (in Home Concrete & Supply, February 7, 2011) and the Fifth Circuit Court of Appeals (in Burks, February 9, 2011) found that an overstatement of basis is not an omission of gross income.

## **DC Circuit upholds regs that treat basis overstatement as triggering 6-year limitations period** **Intermountain Insurance Service of Vail, LLC, Thomas A. Davies, TMP, (CA DC 6/21/2011) 107 AFTR 2d ¶2011-964**

Widening a split in the Circuits, the Court of Appeals for the District of Columbia has reversed the Tax Court and validated IRS regs providing that a basis overstatement is an omission of income for purposes of the 6-year limitations period. The regs qualified for *Chevron* deference, and passed the two-part *Chevron* test.

RIA observation: In upholding the regs, the Court of Appeals for the District of Columbia joins the Court of Appeals for the Federal Circuit and the Courts of Appeals for the Seventh, and Tenth Circuits. The Fourth and Fifth Courts of Appeals have struck down the regs. The Ninth Circuit has found on similar facts, but in a case that pre-dated the regs, that a basis overstatement didn't constitute an income omission for Code Sec. 6501(e) purposes. The Supreme Court may very well be asked to render the final verdict on this contentious issue.

**Taxpayers can't rely on preparer's omission of income to beat accuracy-related penalty**  
**Stephen G. Woodsum and Anne R. Lovett, (2011) 136 TC No. 29**

The Tax Court has held that an investment firm director and his wife couldn't avoid an accuracy-related penalty arising from their return preparer's failure to include a \$3.4 million capital gain on their return. Although the taxpayers hired competent professionals and provided them with all relevant information, including over 160 information returns, their argument that they relied professional advice was rejected where the overall facts of the case showed that the omission wasn't the result of any analysis or judgment.

**Nonresident's slot machine winnings taxed as not effectively connected with a U.S. Business**  
**Sang J. Park (2011), 136 TC No. 28**

The Tax Court has held that a South Korean nonresident alien's gambling winnings from slot machines were taxable under Code Sec. 871(a) as U.S.-source income that's not "effectively connected" with a U.S. business.

**Tax Court determines U.S. tax on nonresident golfer's endorsement income** **Retief Goosen, (2011) 136 TC No. 27**

The Tax Court has determined endorsement fees and bonuses that a United Kingdom (U.K.) resident and professional golfer received from worldwide endorsement agreements with various companies was part personal services income and part royalty income. The Court also held that a portion of the royalty income from all the endorsement agreements was U.S.-source income.

**Contractor held real estate as investor and realized capital gain on sale of subdivided lots**  
**Mark S. Gardner, TC Memo 2011-137**

The Tax Court has determined that a contractor who bought a parcel of land with the intent of building multi-family housing to generate rental income, but instead sold three subdivided lots due to financial pressures, held the property as an investor and realized short-term capital gain on the lots' sale. The Court also determined that the contractor wasn't entitled to deduct taxes and engineering costs associated with a separate property that was later sold at a profit, finding that they were pre-production costs that must be capitalized under Code Sec. 263A.

**Payments to caregivers for assisting and supervising dementia patient are deductible medical expenses**  
**Estate of Lillian Baral, (2011) 137 TC No. 1**

The Tax Court has held that payments made to caregivers for providing physician-ordered assistance and supervision to a patient suffering from dementia qualified as long-term care services under Code Sec. 7702B(c) and were thus deductible amounts paid for medical care under Code Sec. 213(d)(1)(C).

**CEO could deduct legal fees incurred in defending against suit by disgruntled investor**  
**Ramig, TC Memo 2011-147**

The Tax Court has concluded that a chief executive officer (CEO), who was also a board member and minority shareholder, could deduct legal fees in defending against charges that he made misrepresentations to an investor in the company. The legal fees were deductible under Code Sec. 162 as the ordinary and necessary expenses of his business of rendering services to his company as an employee.

**Limitations period remains open if excess Roth IRA contributions aren't reported on return**      **Paschall, (2011) 137 TC No. 2**

The Tax Court has held that the statute of limitations for assessing the excise tax on excess contributions to a Roth IRA remains open where a taxpayer fails to report the contributions on his return. The excess contributions in the case were caused by an attempt to use a so-called "Roth restructure" transaction to disguise excess contributions to the taxpayer's Roth IRA. The taxpayer also was held liable for additions to tax under Code Sec. 6651(a)(1).

**Purported day trader was mere investor—most losses and expenses disallowed**  
**Richard Kay, Jr., TC Memo 2011-159**

The Tax Court has held that a businessman's stock-market trading activities didn't rise to the level of a trade or business. Accordingly, his losses claimed over the \$3,000 capital loss limitation were disallowed, as were his business deductions for associated trading costs.

**Individual's Drag Racing Hobby Losses Not Deductible**  
**R.J. Zenzen, TC Memo. 2011-167, Dec. 58,701(M)**

An individual's drag racing activity was not an activity engaged in for profit and, therefore, his losses were not deductible. The individual failed to show that he had a real opportunity to earn a profit from his drag racing activity.

**Taxpayer snared in fraudulent investment scheme denied theft loss and hit with penalty**  
**Vincentini v. Comm., (CA 6 7/12/2011) 108 AFTR 2d ¶ 2011-5060**

The Court of Appeals for the Sixth Circuit, affirming the Tax Court, has concluded that an individual who claimed a theft loss failed to show that there was no reasonable prospect of recovery in a fraudulent investment scheme. In addition, the Court found that the taxpayer's reliance on an advisor associated with the scam was insufficient to establish a good faith defense against a Code Sec. 6662 penalty for the false losses he claimed under the scheme.

**Taxpayer had constructive distribution on termination of life insurance policy**  
**Ledger, TC Memo 2011-183**

The Tax Court has concluded that a taxpayer recognized taxable income on the maturity of his life insurance policy when the insurance company applied the policy's maturity value to the outstanding balance of his loans on the policy. This constructive distribution was a payment of the policy proceeds that was gross income to the taxpayer to the extent it exceeded his investment in the contract.

**U.K. Remittance Basis Charge is creditable tax**      **Rev Rul 2011-19, 2011-36 IRB**

A new revenue ruling concludes that the United Kingdom's Remittance Basis Charge, (RBC), in combination with the remittance basis of taxation, is an income tax for which a credit is allowable under Code Sec. 901.

**Ninth Circuit finds Fifth Amendment inapplicable to offshore banking records**  
**In re: M.H., (CA 9 8/19/2011) 108 AFTR 2d ¶ 2011-5203**

The Court of Appeals for the Ninth Circuit has held that the Fifth Amendment privilege against self-incrimination may not be used by a taxpayer under grand jury investigation for the use of his undisclosed Swiss bank accounts.

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