# CLIENT LETTER

## 2011 Second Quarter Federal Tax Developments

Dear Client:

During the second quarter of 2011, there were many important federal tax developments. This letter highlights some of the more important federal tax developments for you. As always, please give our office a call or send us an email if you have any questions about these developments.

**Mileage rates.** The IRS announced a mid-year adjustment to the 2011 optional mileage rates to reflect an increase in gasoline prices since the rates were set in late 2010. The business standard mileage rate rises to 55.5 cents-per-mile and the medical/moving standard mileage rate to 23.5 cents-per-mile, both representing a 4.5 cents-per-mile increase for the second half of 2011. The charitable standard mileage rate, which is determined by statute, is unchanged for the second half of 2011.

**Information reporting.** In April, President Obama signed the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (2011 Taxpayer Protection Act) (P.L. 112-9). Previously, the Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148) required businesses, charities and government entities to file information returns (Form 1099) for all payments of $600 or more in a calendar year to a single vendor, other than to a tax-exempt vendor, made after December 31, 2011. The PPACA also repealed the long-standing reporting exception for payments made to corporations. The Small Business Jobs Act of 2010 (2010 Small Business Jobs Act) (P.L. 111-240), required landlords to file a Form 1099 to report certain rental property expense payments of $600 or more in conjunction with their rental properties. Reporting under the 2010 Small Business Jobs Act was mandated for qualified payments made after December 31, 2010. The new law repeals these reporting requirements as if they had never been enacted.

**Foreign accounts.** In February 2011, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued final rules under the Bank Secrecy Act for reporting certain foreign accounts. Subsequently, the IRS and FinCEN announced a one-year extension of filing Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR) for certain individuals and certain financial professionals with signature authority over, but no financial interest in, foreign financial accounts. Additionally, the IRS suspended certain information reporting requirements under the Foreign Account Tax Compliance Act (FATCA) title of the Hiring Incentives to Restore Employment (HIRE) Act (P.L. 111-147).

In January 2011, the IRS announced an offshore voluntary disclosure initiative (OVDI) to encourage taxpayers to report undisclosed foreign accounts. In exchange for making voluntary disclosure of unreported foreign accounts and fully cooperating with the IRS, taxpayers may be eligible for a reduced penalty framework. The 2011 OVDI will be available only through August 31, 2011. In limited situations, however, the IRS will consider extending that deadline for up to

90 days upon a taxpayer's request and a good faith showing that all relevant materials cannot be submitted by the August 31, 2011 deadline. The IRS also provided opt-out procedures.

**Filing season.** As of the morning of the April 18 filing deadline, IRS reported that e-filed tax returns had topped the 100 million mark during the 2011 tax filing season, a record for e-filing. The 100 million figure represents an 8.8 percent increase from the 2010 tax season.

**Basis.** In Carpenter Family Investments, LLC, 136 TC No. 17, the Tax Court rejected IRS regulations that impose an extended six year limitations on assessments due to overstated basis. The court found that events since its last decision on the issue - namely, issuance of final regulations and Supreme Court's Mayo (131 SCt 704 (2011) decision - did not change its holding that the IRS is limited to the general, three-year limitations period in basis-overstatement situations.

**Whistleblower awards.** The IRS whistleblower program was significantly overhauled in the Tax Relief and Health Care Act of 2006 (P.L. 109-432). In April, the IRS described how the agency may pay whistleblower awards and impose income tax withholding on awards. Additional guidance is expected as the agency moves forward in finalizing proposed regulations, the IRS reported.

**Withholding.** The IRS issued final regulations explaining when governmental entities must withhold three percent on payments they make to contractors providing property or services. The final regs delay the effective date of the withholding requirement until payments made after December 31, 2012. Among other provisions, the regulations will generally only apply to payments of $10,000 or more. The withholding requirement, enacted in the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222), remains controversial and is the subject of numerous repeal measures in Congress.

**Health care reform.** In April, the IRS expanded interim relief from reporting the cost of employer-provided health insurance coverage on Forms W-2, Wage and Tax Statement. Under the Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148), employers generally are required to report the cost of coverage on Forms W-2 starting with Forms W-2 issued in 2012 for the 2011 tax year. In Notice 2010-69, the IRS issued interim relief, making reporting optional for all employers for 2011. Notice 2011-28 provides further relief.

The IRS released in May a framework on how it may implement the employer's shared responsibility requirements under the Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148). The framework describes which employers may be affected and how the number of employees and any assessable payments will be calculated. The PPACA does not require employers to provide health insurance to their employees but imposes assessable payments on certain large employers after 2013 that generally fail to offer full-time employees the opportunity to enroll in minimum essential coverage under an employer plan or offer full-time employees the opportunity to enroll in minimum essential coverage but, among other things, the minimum essential coverage is unaffordable and an employee receives a tax credit or cost-sharing.

**<u>Health savings accounts.</u>** The IRS provided inflation-adjusted amounts for health savings accounts (HSAs) for 2012. The amounts generally increased from 2011. For calendar year 2012, the annual contribution limit for an individual with self-only coverage under a high deductible health plan (HDHP) is $3,100, up from $3,050 for calendar-year 2011. The corresponding limit for an individual with family coverage under an HDHP is $6,250, up from $6,150 for calendar-year 2011. For calendar year 2012, an HDHP is defined as a health plan with an annual deductible that is not less than $1,200 for self-only coverage and $2,400 for family coverage. These amounts are unchanged from calendar year 2011.

**<u>Killer B transactions.</u>** The IRS issued final regulations that target so-called Killer B stock-for-stock triangular reorganizations that some domestic parents have used to repatriate the earnings of foreign subsidiaries tax-free. The final regulations generally track proposed regulations issued in 2008, and apply to transactions occurring on or after May 19, 2011.

**<u>Innocent spouse relief.</u>** In June, the Court of Appeals for the Fourth Circuit upheld the two-year limitations period for requesting Code Sec. 6015(f) equitable innocent spouse relief (Jones, CA-4, June 14, 2011). The Fourth Circuit concluded that the regulations represented a reasonable approach to resolving ambiguity. The Tax Court previously found the regulations invalid.

**<u>FUTA surtax.</u>** The 0.2 percent federal unemployment act tax (FUTA) surtax expired after June 30, 2011. Prior to July 1, 2011, FUTA was made up of the permanent 6.0 percent rate and the 0.2 percent surtax for a combined tax rate of 6.2 percent. The 0.2 percent surtax, originally enacted in 1976, had been extended by the Worker, Homeownership and Business Assistance Act of 2009 (2009 Worker Act) (P.L. 111-92) through 2010 and the first six months of 2011. As a result of the expiration of the surtax, the FUTA tax rate falls to 6.0 percent before any state unemployment tax credits are taken into account.

If you have any questions about these or any federal tax developments, please contact our office.

Sincerely yours,

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