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National Association of Enrolled Agents

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20 March 2009

LEGISLATIVE NEWS

Congress Takes Action to Reclaim Bonuses

Following a week of public outrage over the \$165 million in bonuses paid out to executives of the plagued insurance giant AIG, lawmakers in the House overwhelmingly approved a new excise tax measure aimed to recover taxpayer money and prevent similar situations in the future. The House voted on March 19 to approve HR 1586 by a vote of 328 to 93. Offered by House Ways and Means Chairman Charles B. Rangel (D-NY), the legislation would impose a 90-percent tax on the bonuses of highly paid individuals who work for firms that received more than \$5 billion in TARP funds. AIG is the recipient of \$170 billion in federal bailout money under the Troubled Asset Relief Program (TARP) and is currently slated to receive another \$30 billion in the coming months. The measure allows for individual employees to pay back the bonus to the institution and avoid the excise taxes and is effective for bonuses earned or paid on or after January 1, 2009, and through the period during which the company has at least \$100 million in TARP funds.

Senate Finance Committee Chairman Max Baucus (D-MT) and ranking member Charles E. Grassley (R-IA) introduced a companion bill, the Compensation Fairness Bill of 2009 (S. 651), which differs from the House version. The Senate bill would impose a 35-percent excise tax on both employers and employees on retention bonuses and other bonuses. The proposal would also put a cap on the amount of income employees of these companies are allowed to defer tax free. Small banks, as defined by the tax code, and entities that received less than \$100 million in TARP funds would be exempt from the legislation. **E@lert** anticipates the Senate will take-up and approve the measure next week and could send a bill to President Obama's desk by the beginning of April after working out the differences with the passed House version.

TAX ADMINISTRATION NEWS

IRS Releases Guidance for Victims of Ponzi Schemes, Fraud

Testifying before the Senate Finance Committee, IRS Commissioner Doug Shulman announced the plan to allow for investors to claim losses due to fraud as theft loss as opposed to capital loss (in [Revenue Ruling 2009-09](#)). Investors, including those who are suing Bernie Madoff, can claim a theft loss equal to 95 percent of their investments, minus any withdrawals, reinvested gains and payouts from the Securities Investor Protection Corporation, the government-chartered fund formed to help protect investors in failed brokerage firms.

A theft loss based on a Ponzi scheme entered into with a profit motive can be

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considered a § 165(c)(2) capital loss with no deduction limitation under section 165(h). Newly issued [Revenue Procedure 2009-20](#) provides that the IRS will deem the loss to be the result of theft if either the promoter was charged under state or federal law with the commission of fraud, embezzlement or a similar crime that would meet the definition of theft or the promoter was the subject of a state or federal criminal complaint alleging the commission of such a crime, and either there was some evidence of an admission of guilt by the promoter or a trustee was appointed to freeze the assets of the scheme. IRS also gave affected taxpayers latitude to claim a theft loss in 2008 by allowing a deduction in the year in which the loss is discovered. It also maneuvered around the general recovery rule by implying that taxpayers were precluded from filing a claim only if there was a reasonable expectation of recovery -- not very likely based on accounts of available assets Madoff holds.

Additional leeway is created with the Service's position that a taxpayer can take a theft loss using the revenue procedure's safe harbor, and if future recovery is made it will be included in gross income and taxed under the tax benefit rule.

The amount that may be deducted by a taxpayer claiming a theft loss includes not only the initial amount invested in an arrangement, but all additional investments and earnings, including taxed phantom income reinvested, minus reimbursements or recovery claims. The Service also said that a theft loss addressed under this guidance would not trigger a disclosure obligation under reg. section 1.6011-4(b)(5). Investors who are suing third-parties involved in such a scheme, and who, as a result, may have some prospect of recovery, are permitted to claim a deduction equal only to 75 percent of their investments.

IRS Issues Guidance on New NOL Carryback Provision for Small Businesses

On Tuesday, the IRS announced that qualifying small businesses with deductions exceeding their income in 2008 are able to get a refund of taxes paid in prior years through a new net operating loss (NOL) tax provision. The new provision, enacted as part of the most recent stimulus bill (the American Recovery and Reinvestment Act of 2009 ([P.L. 111-5](#))), enables small businesses with a net operating loss in 2008 to elect to offset this loss against income earned in up to five prior years.

[Rev. Proc 2009-19](#) lists the qualifying conditions for the new five-year carryback provision, most importantly that a small business must have no greater than an average of \$15 million in gross receipts over a three-year period ending with the tax year of the NOL. If a small business previously elected to waive the carryback of 2008 NOL but now wants to elect this special carryback, the small business may revoke its previous election to waive the carryback. The election revocation must be made on or before April 17, 2009. [Form 1045](#) (Application for Tentative Refund) or [Form 1139](#) (Corporation Application for Tentative Refund), whichever the taxpayer uses, generally must be filed within one year after the end of the tax year of the NOL. Further, the current year's tax return must be filed by the date the Form 1045 or Form 1139 is filed.

However, the normal two-year carryback still remains available if the small business does not elect the special carryback provision. If the loss exceeds the income for the carryback period, the taxpayer can continue to carry forward the remaining balance of the NOL for up to 20 years.

EAs may want to consult [IRS' FAQ page](#) and should keep in mind that a number of the decisions taxpayers make in this domain are irrevocable, so great care will need to be exercised.

STATE NEWS

Florida: Governor Signs Decoupling Legislation

Florida Governor Charlie Crist (R) signed FL SB 1112, which according to CCH changes the way the state decouples from federal bonus depreciation and the §

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179 expense election. The full amount deducted for federal income tax purposes as § 168(k) bonus depreciation for property placed in service in 2008 must be added back to federal taxable income. However, a subtraction from federal taxable income is allowed for the taxable year and the six subsequent years equal to one-seventh of the amount by which taxable income was increased by the addback. The same approach holds true for any amount in excess of \$128,000 expensed under § 179.

MISCELLANEOUS

Everything but the Kitchen Sink

According to an IRS announcement, the Online Employer Identification Number Assistant on the Service's website will be unavailable all day on Saturday, March 28th...IRS will be eliminating nearly all of the dozen or so inserts currently included with a CP 161 notice (sent to business taxpayers). As of March 9, the notice will include only two inserts: Pub 1 (Your Rights as a Taxpayer) and a payment envelope...According to SSA, nine states (California, Florida, Illinois, Indiana, Massachusetts, Nebraska, Oregon, Pennsylvania, and Virginia) now require employers to remit child support payments electronically... IRS and multiple community partners are providing free tax preparation and assistance tomorrow, March 21. Free return preparation is limited to those earning \$42k or less, though there is no income limitation on those in need of other services from IRS walk-in sites...

Quote

"Falsehoods not only disagree with truths, but usually quarrel among themselves."

-Daniel Webster—American politician and orator (1782–1852)

ASSOCIATION NEWS

Let Your TiVo Tape It

If you can't watch NBC's *The Today Show* live on April 1, be sure to tape it from 7 am until 11 am (EDT) so you can see fellow EAs in action. The four-hour marathon call-in tax advice panel includes Frank Degen, EA, USTCP; Sherrill Gregory, EA, USTCP; David Hatt, EA; Jennifer MacMillan, EA; Sandra Martin, EA; David Mellem, EA; Diana Molina, EA; and Jack Wood, EA, with Ray LaLuna, EA, as an alternate. As one of the EA panelists said last year during a rare break: "I don't work this hard in my own business."

NAEA May Meeting

The 2009–2010 NAEA board of directors will be installed on Friday, May 8, and the new board will meet on Saturday, May 9. Both events will happen at the Hamilton Crowne Plaza Hotel, Washington, DC. To reserve your room at the discounted \$153 rate, please contact the Crowne Plaza at 800-263-9802 or 202-218-7537 and identify yourself as a member of the National Association of Enrolled Agents. The code is **2009 Board of Directors Meeting** (reservation deadline for the discount is April 17, 2009). Please complete and fax the [attached form](#) to reserve your space at the Installation Dinner.

Ready to Renew?

March 20 is the first day of spring, and thus the first day of the membership renewal period for the majority of NAEA members. Looking to get this taken care of early?

- Log onto www.naea.org with your NAEA id as your user name and your five-digit zip as your password, and choose "View/Edit My Profile'."
- At the top of the page is a tab labeled "My Dues;" click that. This will bring up your dues invoice. Check that nothing has changed over the past year and add any contributions that you'd like to make, then click "Continue to Checkout" at the bottom of the page.
- The system will give you a summary of your membership items; choose "Continue to Payment."
- Enter your payment information, and choose "Submit Payment."
You'll receive an email confirmation immediately thanking you for your payment. Our members are the most valuable resource NAEA has, and we appreciate your continued support and participation.

Online Registration Now Open for NTPI!

For the first time, you can register online for NTPI—no printing or faxing, just enter your information on a secure site and you'll receive an email confirmation. Click on "Online Registration Now Available" on the [NTPI information page](#) and avoid the paperwork.

IRS Tax Forum

The discount code for the IRS Forums is **ASSOC196**. Information, including registration, can be found at www.taxforuminfo.com

CCH Offers a Stimulating Discount

As an NAEA member, you are entitled to a 30% discount off the price of this essential reading: ***CCH's American Recovery and Reinvestment Act of 2009 – Law, Explanation and Analysis***. In addition to the complete text of added, amended or repealed Code sections with controlling committee reports, this volume contains crisp and practical guidance on the implications of the changes to the law, including how various taxpayer groups and situations are affected. Order your copy by going to the [NAEA partner page](#) and entering the word "Recovery" under "Keywords."

Proof of Completion of Complimentary March CPE

Many NAEA members are taking advantage of the opportunity to view the ***Webinar Cancellation of Debt Income*** at no charge during the month of March. There have been some questions regarding proof of completion of the one credit hour of CPE that the course provides. To receive credit for the course:

- At the end of the program, you will see a slide that says "click on slide to take survey and earn credit." Click there.
- On the next screen, fill out your first and last name and click "take survey."
- Either fill in the survey or go to the bottom of the survey and click "finished."
- A message will be displayed confirming your completion of the course. Please print out a copy of this notice for your records. A confirmation e-mail will automatically be sent to NAEA.

If you have not yet seen [Cancellation of Debt Income](#) at no charge, go to the registration page and click on "Buy Now." Enter the coupon code "NAEAMarch."

The Sincerest Form of Flattery

It may be a first. A Fairfield, CA, man is [accused](#) of falsely presenting himself as an enrolled agent, and is facing an additional 16 felony charges following a lengthy investigation by the Treasury Inspector General for Tax Administration. The indictment contends that Keith Thayer Towns submitted power of attorney forms to the IRS in which he claimed to be an enrolled agent. "Paid preparers are a critical component and stakeholder in tax administration," J. Russell

George, the Treasury Inspector General for Tax Administration, said in a prepared statement. "When preparers overstate their professional qualifications, it impacts taxpayers' faith in the system."

RALs Are Tougher To Come By This Year

NAEA's Senior Director of Government Affairs Bob Kerr is quoted in an [Associated Press article](#) about this year's more stringent requirements in obtaining a refund anticipation loan (RAL). Being rejected for the controversial short-term loans that have routinely been granted in the past, "are the subject of a mounting number of complaints with attorneys general, the Better Business Bureau and on websites like ConsumerAffairs.com," the article states.

EAs In Action

James Weikart, EA, has his own [website](#) and this week he's discussing the advantages of buying vs. renting.

EAs In the News

Paula Williams, EA, is quoted in a *Ventura County (CA) Star* [item](#) about what people need to know and do about their 401(k)s in this volatile market.

Eva Rosenberg, EA, weighs in on often-overlooked interest deductions in a Fidelity Interactive Content Services [web article](#). Qualifiers include more than just the standard mortgage deduction, and could include interest paid on a loan to purchase land or other investments.

Sharon Tabor Warren, EA, is quoted in another Fidelity [posting](#). This one is about preparing for an audit, and she offers tips for preparing for the audit and steps the taxpayer can take to make sure that they're in the best possible position going in to the audit. "If I have prepared the client's tax return for the year under audit, I ask them for an IRS power of attorney, Form 2848, and to forward their audit notice to me. Then, I tell them to sit back and relax—I'll handle it from there."

Claudia Hill, EA, is quoted in *The Wall Street Journal* online edition [piece](#) on the Homebuyer Credit. "We've had numerous calls because people are confused," she's quoted as saying. "The problem is when things are this complicated, many people don't get the benefits that Congress intended for them."

Cynthia Jeanguenat, EA, comments to Fox News and reported by [Accountingweb.com](#) that more taxpayers are providing their own economic stimulus plans by filing early. "People are creatures of habit and tend to come in at the same time every year. But some of these folks who already are in I don't normally see until the middle or third week of March."

Errol Quinn, EA, is the expert consulted by [expoproperties.com](#) to explain the difference between Section 1231 property and Section 1245 property.

News You Can Use

EA Pride is alive and well this tax season with more EAs in the news, on TV and radio, and on blogs than ever before. Make sure that your clients know that you are part of an expanding network of newsworthy enrolled agents and that they can find EAs—just like you—on *The Today Show*, April 1. If you're using Outlook you can add that information to your email signature block this way: Select Tools and then Options. Select the Mail Format tab, and within that tab, select Signatures. Then select Edit (or New, if you don't already have a signature block). After your signature block, add something like: See my fellow Enrolled Agents in action on NBC's *The Today Show*, Wednesday, April 1, from 7 am until 11 am EDT. Call in with your tax question and get an expert answer!

Care To Share?

If you've had a humorous encounter, have good news to pass along, want to tell us about a class your teaching or a presentation you made, we'd love to

hear it. Send it to NAEA Director of Communications Martha J. Lockwood, CAE, APR (mlockwood@naea.org), and you may just see yourself in an upcoming *E@lert*.

NAEA appreciates the support of its sponsors:

Paychex and NAEA announce the Enrolled Agent Program whereby NAEA members receive a 10% discount on first-year standard payroll processing fees. Check out our [press release](#)! Paychex is utilizing its 1,200-strong sales force to build public awareness for the enrolled agent profession—a true win-win-win. Program details are located [here](#).

Prometric—Did you know that perhaps less than half the tax professionals practicing in the U.S. are licensed? Becoming an enrolled agent can give accountants and tax professionals an edge in the job marketplace. Visit www.prometric.com/irs for more information or download the [Enrolled Agent Candidate Information Bulletin](#).

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Carolina Connection—Mark your calendars for the SCSEA & NCSEA 2009 Convention to be held May 11–13, 2009 at the Sheraton Hotel, North Charleston, SC. There will be 16 hours of representation (Bob McKenzie) and 16 hours of tax issues for the elderly (Jerry Riles and Wayne Hebert) plus 2 hours of ethics. More details and the registration form are available [here](#).

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Tax Talk Today—Tax Talk Today's next program is [“Specialty Taxes: Estate and Gift and Employment Taxes”](#) on Tuesday, May 12, 2009 from 2–3:00 pm ET.

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