

## WEBCAST QUESTIONS: TAX UPDATE FOR INDIVIDUALS - 1/23/2012

Are you saying S Corps are covered without a broker?

**For 2012, S corporations that invest in stock will be subject to cost basis reporting on stock sold in a brokerage account.**

What about the use of 8879 where no 8453 is filed?

**If you are sending paper attachments to the IRS for an e-filed 1040 (for which you would obtain the taxpayer consent on form 8879), the form 8453 is required.**

Please confirm - if avg cost method elected for a specific security, that election is permanent with respect to that security?

**Yes. For pre-2012 mutual fund shares, if the average cost method was used, that method is locked in for determining basis on future sales of such shares.**

do old regs regarding elections of method for mutual fund shares still applicable?

**No. For mutual shares acquired after 2011, basis is determined under the new rules, related to broker notification. Under these rules, the average cost election can be revoked prospectively.**

Would splitting of W-2 income keep the characteristic of the wages as "earned" income on the non-working RDP's Fed return as it relates to Roth contributions of the non-working RDP?

**No. The wages are treated as the earned income only of the person who received the W-2.**

What happens when you write a covered call on some but not all shares owned. How will the broker be required to report the blocks that will be used to report gain? As a correction to the above question, the stock gets called away and is assigned or treated as sold.

**If a stock is sold pursuant to a call option, option premium received is added to the sales proceeds received in calculating the gain on the sale. However, until 2013, brokers are not required to report option transactions on Form 1099-B.**

Can we attach pdf documents to e-filed 1040's instead of using a 8453?

**IRS still does not have the modernized e-file platform in place for 1040s allowing attachment of PDF files.**

What about 1099 issue and home care people who do not want a 1099-deduct expense anyway, assuming it is ok to deduct?

**Home care would not be a business expense reportable on a form 1099. Home care workers are generally domestic employees subject to W-2 reporting.**

What happens when you are using a part of your house for home office or rent a portion of your home? Can you carve that out before applying the \$1.1m limit?

**Our conclusion is that if you apply the Pub 936 method and treat the portion of the debt in the same way as debt proceeds allocable to a Schedule C business, you end up deducting interest on \$1.1 million on Schedule A, plus additional interest attributable to the home office on the Schedule C through the 8829. Getting this to run through the Form 8829 correctly may require a "jury rig".**

The 2011 Form 1040, Sch E instructions for 2011 on page E-8 indicate a computation of the basis in the S corp is to be attached to the Form 1040 when an S corp loss is claimed. The instructions refer to the 2011 S corp K-1 instructions which I do not see as having been released as yet. Do either of you know what detail of the basis computation will be asked for as an attachment? Basis from day 1 of the investment or just a current year roll-forward or other?

**Showing the rollforward of current year basis is sufficient. There's nothing formal on this, and failure to attach the statement would not prohibit claiming the loss.**

Did you just mention that the CA does not conform the Real Estate grouping and treated as non passive? please confirm this. thanks.

**California does not conform to the real estate professional rules.**

The parking lot question was in regards to a comment that renting land is considered a non-passive activity because it is non-depreciable and therefore cannot offset passive losses. Does this also apply to parking lots that are unimproved and are just spaces available for use?

**Rental of any property (parking lot or otherwise) at a profit will not generate passive income, if less than 30% of the unadjusted basis of the property is depreciable.**

An employee elected to contribute to a 401K plan in 2011 with the max amount of \$16,500. The employee discovered that this amount was not deducted by the company's payroll service. Can the employee still make the 2011 contribution in 2012 before he files his tax return?

**Not part of the course curriculum. We cannot answer this question without further research.**

On 1099's - a non-USA vendor is paid for services provided outside the USA to a USA bank account. Is this reportable under form 1099?

**No. The regs under sec. 6041-3 ad 4 provide that 1099 reporting is not required for payments that will not be reportable as US income of the foreign payee.**

If a client does not have written records as to business mileage (listed property), do you need to disclose this position & would it be adequate to check the boxes saying no written support for the deduction?

**Checking the box should be adequate disclosure for this purpose. The regs say that the taxpayer must have "adequate records" and that these must "generally" be written.**

## **WEBCAST QUESTIONS: Tax Update fo Businesses/Estates 1/24/2012**

Do retired US residents who do not have to file a 1040 because they are below required income limits, has to file an FBAR for any accounts they own/have signature rights outside the U.S.?

**Yes. The FBAR filing requirement is not tied to the Form 1040, unlike the new Form 8938, which is filed only if the taxpayer has to file a Form 1040.**

What forms would a US Citizen who resides in a foreign country and owns a principal residence in that country will have to file if he sells his home and deposits the funds in a foreign brokerage account?

**An FBAR if the account is worth over \$10,000, and a Form 8938, if the taxpayer's total foreign financial assets exceed the applicable threshold. (\$200,000 for an unmarried taxpayer living abroad).**

For purpose of 8938, do you have to report accounts that you have only signature authority over?

**No. The Form 8938 is used only to report accounts that you actually own.**

Do we go back and amend the schedule B for prior years ( were are now in 2011) & file the FBAR. What do we do? any comment?

**I am not entirely clear what you are asking, but if I assume that you are asking about a client who has failed to file an FBAR for a prior year. Filing a Form 1040X merely to check the yes box on Schedule B (if that is what you are suggesting) is not as crucial as filing the delinquent FBAR returns.**

Sole shareholder of US S-Corp owns >1% of Foreign Corp. S-Corp files 5471 provided by FC and includes Subpart F income on 1120-S which flows through to shareholder. Does not appear that FBAR is required, and for 2011 the 8938 would not be required - is this a correct assumption?

**Yes to both. If the S Corp does not own over 50% of the foreign corporation, then the S Corp need not file an FBAR. For 2011, Form 8938 is not required for domestic corporations. Regarding 2012, take a look at the Sec. 6038D proposed regulations.**

For the form 8938, pt 3 can be aggregate #s from the various foreign pshps, but, I will have to fill out separate Pt. 2 for each foreign partnerships?

**You must complete a separate Part II (on a continuation sheet) for each foreign financial asset. I see nothing that allows aggregation.**

Can you clarify what reporting is or is not required for PFICS for 2011? Is it just reporting on form 8938 or is no 8621 required to be filed?

**Read the discussion of Notice 2011-55 beginning on Page 2-65. As explained on Page 2-68, PFIC shareholders with form 8621 filing obligations as provided in the current instructions to the regulations (triggered by one of three circumstances explained on page 2-67) will continue to file Form 8621.**

**The 2010 Hire Act, in Sec. 1298(f), mandated annual reporting by PFICs effective 3/18/2010 (even if none of the three current filing triggers occurs); however, the IRS, in Notice 2011-55, suspends the automatic annual information reporting for PFICs until the IRS issues guidance on Sec. 1298(f). The IRS has not yet issued guidance on Sec. 1298(f). Unless the new Form 8621 (Sec. 1298(f) guidance) is issued before the 2011 tax return (or information return) is filed, for 2011, the taxpayer will only file if required by the current Form 8621 instructions.**

**If the new Form 8621 is released after the 2011 return is due (which is looking likely), then that new Form 8621, for the suspended 2011 year, will be attached to the 2012 return. See Notice 2011-55.**

Does US subsidiary have to file Form 926 when repaying the loan from Foreign parent company in addition to Form 1042 for withholding on interest paid on the loan?

**Form 926 is used to report transfers to foreign corporations mandated by IRC Sec. 6038B. As I read Sec. 6038B(a), which identifies reportable transactions, a loan repayment is not a transaction that requires reporting on Form 926. See Sec. 6038B and the regulations.**

I have a client who pays for two of her employees' health insurance, one gets Blue Cross and the other gets a supplemental Medicare policy. Do these premiums qualify for the credit? I've done a lot of reading and can't find anything specific about the type of insurance offered or whether it has to be available to everyone.

**This question is outside the course curriculum. Without detailed research, our initial reaction is that this situation would not satisfy the "qualifying arrangement", which looks for insurance made available by the employer for all employees. See Notice 2010-82 and Notice 2010-44 on the CD in the New Legislation chapter for TAXB 2010 and the 2010 Supplement.**

BONUS DEPRECIATION - Taxpayer is lessor of commercial building to a single tenant. Taxpayer put in over \$1 million HVAC and lighting improvements pursuant to the lease agreement. Can the taxpayer claim bonus depreciation on these new improvements in 2011? (There is no common area since there is only one tenant in the building. I am not sure if these qualify as interior improvements.)

**As I read the statute and the regs, if you have only a single tenant occupying the entire building, than all of the interior of the building is eligible to be qualified leasehold improvement property. The regs state:**

**Common area means any portion of a building that is equally available to all users of the building on the same basis for uses that are incidental to the primary use of the building. For example, stairways, hallways, lobbies, common seating areas, interior and exterior pedestrian walkways and pedestrian bridges, loading docks and areas, and rest rooms generally are treated as common areas *if they are used by different lessees of a building.***

**Only one lessee means no common area.**