



ARKANSAS SOCIETY OF • ACCOUNTANTS

RESPECTED ACCOUNTING PROFESSIONALS SERVING OUR COMMUNITIES

Monthly Newsletter

March 2008

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• FROM YOUR PRESIDENT'S PEN •



Dear Members

I love movies, but as I've gotten older, it's much harder to find the time to watch them. Some of you might have watched the *Oscars* a couple of weeks ago, some of you may have heard that the *Oscars* were on, some of you may not realize there is such a thing as an *Oscar* (an award given to recognize excellence in film industry). There was a time when *Oscar* night was a big deal around my house. The first time I ever went to Prescott in 1994 to visit the home of my then future in-laws, we watched the *Oscars* together; except for Mr. Dalrymple, not surprisingly, he was working on tax returns. I knew I was in love when I found a girl who would watch the *Oscars* with me. As I was working at the kitchen table during *Oscar* night this year, I realized that I had not seen a single film that was nominated for a best picture *Oscar*. Consider the following films: *No Country for Old Men*, *Atonement*, *Juno*, *Michael Clayton*, and *There Will be Blood*. These were the best picture nominees for 2007. I hadn't seen a single one of

the films, and that makes me absolutely sick! I remember one weekend around 1996 BK (before kids), Katherine and I saw *Slingblade*, *The English Patient*, and *Shine*, all 3 *Oscar* nominees, in the same weekend just to make sure we were ready for *Oscar* night. How could this happen to me?

It's amazing how priorities change as we get older and take on more responsibilities. Back on that first *Oscar* night in 1994 with the Dalrymples, there was no little Hank or Georgie to have to worry about. On that night, I was certainly not worrying about getting tax returns completed. Now, there are many people counting on me to help them with their finances. It's amazing the amount of difference we can make in the lives of our clients. Who do they come to when they are thinking about starting a new business? Who do they come to when they are trying to plan for their financial future? I take that responsibility very seriously. I was recently a guest on a local TV talk show. I was there to talk about the new Economic Stimulus Act of 2008, and to give out other general information that might be of interest during tax season. I studied up before the show. Why? Because I'm supposed to be an expert in the field of taxes, and I wanted to make sure I gave out the correct

information. On air is not the time to goof up and say something crazy like 2008 IRA contributions are limited to \$4,000 for those under 50, and \$5,000 for those over 50. That would be heresy! Newsflash.....You're clients are counting on you too. As a profession, we have to know our facts, and knowing our facts takes time. Here's an interesting tidbit. Did you know that the Bible has approximately 775,000 words in it? For comparison, the tax code has about 2.8 million words. Who has time for movies when my clients expect me to know all 2.8 million words in the code?

I do still occasionally watch movies. It's just the types of movies I watch have changed. If it's not one of the kids' movies, it's usually going to be something that doesn't require a lot of thinking. I spend plenty of time each week trying to help solve real issues. When I watch a movie, I'm content to see Charles Bronson or Clint Eastwood kill the bad guys just because their bad. I "think" enough the rest of the week.

Brad Crain, C.P.A.
President

NEW WASH-SALE TRAP

The IRS has closed a loophole that had been used to sidestep the wash-sale rule—a rule that bars taking a tax loss when reacquiring substantially identical securities within 30 days before or after the date of a sale. It had been believed that selling a security at a loss in a taxable account and reacquiring the same security in an IRA, Roth IRA, or other tax-deferred account within the wash-sale period

would not trigger the wash-sale rule. The IRS now says otherwise.

Ruling: If the IRA owner causes his/her IRA to reacquire the identical securities just sold from his taxable account, no loss can be claimed.

More bad news: The basis of securities in the IRA cannot be increased by the loss not taken in the taxable account, so the write-off for the loss is gone forever—with no tax benefit now or later. (Revenue Ruling 2008-5)

Don't forget to take a little time away from your desk.

Dealing with the IRS Office of Appeals

In cases involving less complex issues, appeals officers generally do not need to meet personally with the taxpayer or his/her representative. Documents of explanations not considered by the revenue agent when he proposed the tax adjustment can be mailed to the appeals officer with a cover letter. If this settles your case satisfactorily, fine. However, if the appeals officer informs you that he will sustain the decision(s) of the revenue agent, insist on a personal meeting. During the meeting, you'll have the chance to discuss the issues at length and not have your position summarily rejected because the appeals officer is eager to hang up the phone. The personal interaction also helps in the give and take of negotiations.

Be Prepared to Document Your Deductions

The IRS is now requiring tax return preparers

to adopt a standard of “more likely than not” before they claim a deduction or take a particular tax position on a client’s income tax return—meaning more likely than not that the return is upheld (ultimately by a court). The tax return preparer is now liable for a penalty of up to the greater of \$5,000 or 50% of the income he/she earned from preparing the tax return.

**Go get a cup of coffee or whatever
you normally drink.
Water is very good for you.**

Unusual Medical Expense Deductions

Many costs that don’t look like medical expenses in fact can be deducted. If a cost is incurred to alleviate a medical condition or physical handicap, it probably can be deducted as a medical expense even if it doesn’t appear to be “medical.” Deductions have been allowed for

.....A clarinet and lessons bought on a doctor’s advice to correct overbite.

.....A cat trained to alert a hearing impaired owner to unusual sounds.

.....Paint removal when lead-based paint was a health hazard.

.....New siding on a house when the owner was allergic to the old siding.

.....A reclining chair used to alleviate a heart condition, on a doctor’s advice.

.....Sex counseling recommended by a psychiatrist.

.....Legal expenses incurred to authorize medical treatment.

.....Smoking cessation programs.

.....Special controls installed in an automobile to enable a handicapped individual to drive.

.....Boarding school in Arizona (travel, room, and board) for a child with respiratory problems.

.....Whiskey prescribed by a doctor to alleviate angina pain.

.....A wig purchased on a doctor’s advice to relieve mental stress from hair loss.

Strategy: If you incur a cost that appears non-medical but that is really medically related....

.....Get a statement from your doctor confirming that the cost has a medical purpose, should the IRS ask.

.....Check IRS Publication 502, Medical and Dental Expenses, to see if special rules apply to the item. If no restrictions apply, deduct it!

NEGLECT NOT EXCUSABLE

The IRS was considering whether Timothy Seivers was personally liable for \$200,000 of employment taxes owed by a business

when he declared bankruptcy. Via automated procedures that apply in all bankruptcy cases, the IRS checked Seivers's tax debts. It found they were minimal on his personal tax return, so it didn't file a claim in the bankruptcy case. Later, an IRS auditor held that Seivers did owe the \$200,000 of taxes, but did not tell the IRS's bankruptcy case division. The IRS finally made a late claim for them, arguing that its "excusable neglect" permitted it. Court: The IRS is a "sophisticated creditor" and its neglect is not excusable. Claim dismissed. In Re: Timothy J. Seivers, Bankr. WDPa. No.05-10656.

Notice 2008-28

PURPOSE

This notice informs certain individuals not otherwise required to file an income tax return how to request the economic payment authorized by H. R. 5140, the Economic Stimulus Act of 2008.

BACKGROUND

The Economic Stimulus Act of 2008 (Act) amended p. 6428 of the Internal Revenue Code (Code) to provide economic stimulus payments to eligible individuals. For this purpose, an eligible individual is an individual other than a nonresident alien, as estate or trust, or an individual who can be claimed as a dependent under p. 151 of the code for the taxable year. Section 6428 (g) authorizes advance refunds and credits of the economic stimulus payments to be made in 2008.

In general, the amount of the 2008 economic stimulus payment is the lesser of: **(1)** the

individual's net income tax liability for 2007, or **(2)** \$600 (\$1200 in the case of a joint return). However, as provided in p. 6428(b), an individual (or married couple filing jointly) with at least \$3,000 of "qualifying income" in 2007 may receive a minimum payment of \$300 (\$600 in the case of a joint return) has no net income tax liability for 2007. Qualifying income for purposes of p. 6428(b) means: **(1)** earned income includible in gross income for federal income tax purposes; **(2)** social security benefits (including monthly retirement, survivor and disability benefits, but not including supplemental security income (SSI) payments) and Tier I railroad retirement benefits described in p. 86 of the Code; and **(3)** disability compensation, disability pension and survivor benefits from the Department of Veterans Affairs pursuant to Chapters 11, 13, or 15 of Title 38 or the United States Code.

In order to receive an economic stimulus payment if 2008, an eligible individual must file an income tax return for 2007. Most eligible individuals are required by p. 6012(a) of the Code to file an income tax return because their gross income for 2007 exceeds the sum of their exemption amount plus the applicable standard deduction, or are required by p. 6017 of the Code to file an income tax return with respect to self-employment tax on net earnings from self-employment tax of \$400 or more. Additionally, some eligible individuals who are not required by p. 6012 or p. 6017 to file an income tax return nevertheless file to obtain refunds of withheld tax (e.g., tax withheld on wages under p. 31 of the Code).

Eligibility for the 2008 economic stimulus payment, and the amount of that payment,

is based on the information reported on the taxpayer's filed income tax return for 2007. See p. 6428(g). Thus, individuals who are required by p. 6012(a) or p. 6017 to file an income tax return, or who file to obtain a refund of withheld tax, will not need to file any extra forms or call the Service to request the payment in 2008.

Many individuals with low earned income or other qualifying income (e.g., social security benefits and certain disability or survivor benefits from the Department of Veteran Affairs) may not be required by p. 6012(a) to file an income tax return and may not file an income tax return to receive a refund of withheld taxes. This notice informs these individuals of the minimum filing necessary to obtain the economic stimulus payment in 2008.

DISCUSSION

Section 6428(g)(1) of the Code treats an eligible individual as having made a payment in 2007 against the income tax in an amount equal to the amount of the economic stimulus payment. Thus, the amount of the 2008 economic stimulus payment is treated as an overpayment of tax for 2007 which, as provided in p. 6012(g)(3), the Service is directed to refund or credit to the eligible individual.

Section 6204 of the Code and p. 301.6402-3 of the Regulations on Procedure and Administration authorize taxpayers to seek a refund or credit of overpaid income tax by filing a properly executed individual income tax return. In the case of an eligible individual (or married couples filing jointly) who is not required by p. 6012(a) or 6017 to file an income tax return, but who had qualifying income in 2007 that equals or exceeds \$3,000, the service will treat a 1040A

prepared in the following manner as a valid claim for refund in the amount of the 2008 economic stimulus payment.

1. In the blank space at the top of page 1 of form 1040A, eligible individuals should write the words "Stimulus Payment" above the title of the form.
2. Eligible individuals should enter names, mailing address, and social security numbers on the appropriate lines of Form 1040A and should enter filing status and exemption information on lines 1 through 6d of the form.
3. Eligible individuals should enter wages and other compensation (including net earnings from self-employment) received in 2007 on line 7 of Form 1040A.
4. Eligible individuals should enter qualifying income received in 2007 in the form of social security benefits, Tier 1 railroad retirement benefits and certain other disability or survivor benefits on line 14a of Form 1040A. Individuals who do not have documentation of the exact amount of these government provided benefits may estimate their annual benefit by multiplying their monthly benefit , prior to any deductions for withheld taxes or Medicare premiums, by the number of months during 2007 that they received the benefit.
5. Eligible individuals who are members of the Armed forces of the United States should enter any nontaxable combat zone compensation received in 2007 that they elect to treat as earned income on line 40b of Form 1040A.

6. Eligible individuals who request direct deposit of their economic stimulus payment into their account at a bank or other financial institution should complete lines 44b through 44d of form 1040A. Eligible individuals may not request a deposit of the stimulus payment into an account that is not in the eligible individual's name.
7. Eligible individuals should sign and date the form under the penalties of perjury statement, and should enter the identifying information of any third party designee or paid preparer, if applicable, at the bottom of page 2 of Form 1040A.

Based on the information provided on Form 1040A, the Service will compute the amount of the stimulus payment that will be refunded or credited.

THIS INFORMATION HAS BEEN
FURNISHED TO US BY THE INTERNAL
REVENUE SERVICE OFFICE IN LITTLE
ROCK, ARKANSAS.

LESSONS FROM THE TAX COURT

Add tax insult to injury. A new decision by the Tax Court of Appeals for the District of Columbia finally ends one of the most topsy-turvy cases in recent years (see SBTS, September 2007). The court rejected a request to review the reversal of a tax-free award for non-physical damages. This tax treatment is only available for damages resulting from physical injuries.

The case: A taxpayer filed a complaint against her employer for unlawful discrimination in 1994. The administrative law judge awarded her \$45,000 for past and future emotional distress and \$25,000 for injury to her professional reputation. She reported the entire award as taxable income.

Subsequently, the taxpayer filed for a refund, which the IRS denied. She sued in federal district court, claiming that the award did not represent taxable income within its constitutional meaning. A trial court rejected her claim, but the D.C. Circuit Court surprisingly sided with the taxpayer. After the IRS petitioned for a rehearing, the Court of Appeals, on its own motion, vacated its judgment and reheard the case earlier this year. Then the three-judge panel reversed the original decision. Reason: The panel said that imposing tax on compensatory damages for emotional distress and injury to professional reputation was not unconstitutional.

The taxpayer requested that the full court rehear the panel's decision. On September 14, 2007, the court denied the request. It noted no member of the court had requested a vote on the petition. (Murphy, CA-DC, No. 05-5139, 9/14/2007)

Awards for nonphysical injuries, such as emotional distress, will continue to be taxable. You can choose to fight the issue in a different jurisdiction, but you will be facing an uphill battle.

**HAVE A NICE DAY AND BE SURE
AND DON'T WORK TOO HARD.**



**APPLICATION FOR MEMBERSHIP IN
THE ARKANSAS SOCIETY OF
ACCOUNTANTS**

P.O. Box 725
Newport, Arkansas 72112
asalaverne@hughes.net
www.arspa.org

Last Name First Name Middle Initial Business Phone Home Phone

Business Address

How many years of accounting have you had? _____ Date of Birth _____

Sole Practitioner [] Partner [] Employee [] Corporate Officer []

Name of Firm _____ Number of Employees _____

Name of Partner(s) _____

Are you a Licensed, Registered or Certified Public Accountant? _____ If yes, give License# _____

Are you an Accredited Public Accountant? _____ If yes, give Accreditation # _____

Are you an Enrolled Agent _____ If yes, give EA # _____

Do you hold an Associate or Baccalaureate degree with a minimum of 24 semester hours in Accounting? Yes _____ No _____

Are you engaged in any other trade or profession? _____ If yes, please describe _____

Please list other accounting organizations in which you hold membership: _____

I hereby state that the accompanying statements are correct to the best of my knowledge and belief. I further state that I will abide by the Constitution and By-Laws of the Society and will practice in strict conformity with the Code of Ethics and Rules of Professional conduct adopted by the Society.

Date _____ Signature of applicant _____

Annual dues are payable IN FULL in advance and are prorated for credit by ASPA on a monthly basis to August 31 - the end of ASPA's fiscal year.

[] Membership Annual Dues \$85.00 [] Firm Annual Membership \$50.00 [] Diamond State Annual Dues \$15.00
(Non-Residents only)

Do Not Write Below This Line

State Member Approving Membership

Signature

Title

Date

Sponsor, If Any

FOR ASPA OFFICE USE ONLY

Amount

Date Received

Control Number

*State Society dues payments may be deductible as an ordinary and necessary business expense. However, they are not deductible as charitable contributions for Federal income tax purposes.

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FOR YOUR INFORMATION

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