Title: 2012 Mid-Year Tax Update
By: Jeffrey A. Miller
Copyright: The Law Offices of Marc J. Lane, A Professional Corporation
Date: August 1, 2012

The Lane Report: August 2012

At the Law Offices of Marc J. Lane, P.C., we strive to keep you informed about helpful planning topics each month. This month we are discussing a topic near and dear to everyone's heart: taxes.

The following is a summary of the most important tax developments that have occurred in the past three months that may affect you, your family, your investments, and your livelihood. Please call us for more information about any of these developments and what steps you should implement to take advantage of favorable developments and to minimize the impact of those that are unfavorable.

Supreme Court upholds health care legislation. In a landmark decision, the Supreme Court, by a margin of 5-4, has largely upheld the health care legislation enacted in 2010, including the controversial individual mandate. As a result, for tax years ending after Dec. 31, 2013, nonexempt U.S. citizens and legal residents will have to maintain minimum essential health insurance coverage or pay a penalty / tax (the proper name still being debated). But the "tax" law includes a small employer health insurance credit (which has already gone into effect), and premium assistance credits for low and middle income individuals and families. Other future tax changes in the legislation include higher Medicare taxes on high-income taxpayers and an increase in the floor beneath medical expense deductions for many taxpayers.

Regulations explain portable estate tax exclusion. The IRS has issued regulations on the requirements for electing portability of a Deceased Spousal Unused Exclusion (DSUE) amount to the surviving spouse. They also include rules governing the surviving spouse's use of this DSUE amount. The regulations are favorable for taxpayers in many ways including the following:

- They correct a statutory glitch that could have reduced the portable exclusion for some surviving spouses.
- They provide special relief for estates making the portability election that wouldn't otherwise be required to file an estate tax return. The relief consists of eased filing requirements under which detailed values need not be provided for property qualifying for the charitable or marital deduction.
- They clarify that a surviving spouse can use a DSUE amount when making a gift and get another DSUE amount upon remarrying and surviving another spouse.
- They clarify that remarriage alone does not affect an individual's DSUE amount.

Although these regulations are generally favorable to taxpayers, this is still a very technical area of estate tax law where most clients will need some help to stay compliant and keep the IRS away from one's inherited wealth.

Court allows estate tax marital deduction for decedent's same-sex spouse. A district court has ruled in favor of a surviving same-sex spouse's constitutional challenge to section 3 of the Defense of Marriage Act, which denies recognition of same-sex marriages for purposes of administering Federal law. The court found that this provision violates the equal protection clause of the Constitution. As a result, it allowed a marital deduction to the estate of the deceased same-sex spouse for the amount she left to the spouse who brought the suit.

Supreme Court says that basis overstatements cannot trigger six-year limitations period. Late in 2010, the IRS issued final regulations treating an understated amount of gross income reported on a return resulting from an overstatement of basis (cost of property for tax purposes) as an omission of gross income for purposes of the six-year period for assessing tax. The six-year limitations period applies when a taxpayer omits from gross income an amount that's greater than 25% of the amount of gross income stated in the return. Several courts had held that a basis overstatement is not an omission of gross income for this purpose. In response to these decisions, the IRS issued the 2010 regulations to clarify that an omission can arise in that fashion. Some courts upheld the regulations and others rejected them. The Supreme Court has resolved the dispute by rejecting the regulations and holding that a basis overstatement is not an omission of gross income for the extended limitation period.

Liberalize rules for deducting non-away-from home lodging. The IRS has issued regulations permitting certain non-away-from-home lodging expenses to be treated as deductible business expenses by the employer and tax-free working condition fringe benefits or accountable-plan reimbursements to the employee. For example, under a safe harbor rule in the regulations, local lodging expenses are treated as ordinary and necessary business expenses if the lodging is (1) necessary for the individual to participate fully in or be available for a bona fide business meeting, conference, training activity, or other business function; (2) for a period that does not exceed five calendar days and does not recur more frequently than once per calendar quarter, and (3) not lavish or extravagant under the circumstances and does not provide any significant element of personal pleasure, recreation, or benefit. An additional requirement applies for an employee: his employer must require him to remain at the activity or function overnight.

Relief for financially-strapped taxpayers. The IRS has expanded its "Fresh Start" initiative, which is designed to help struggling taxpayers who owe taxes by offering more flexible terms in its offer in compromise program. These changes may allow some taxpayers to resolve their tax problems in as little as two years, as compared to four or five years in the past. Specifically, the IRS has revised the calculation for the taxpayer's future income and expanded the allowable living expense allowance

category and amount. The agency also will allow taxpayers to repay their student loans and state and local delinquent taxes.

Guidance on employers' withholding obligations for post-2012 additional Medicare tax. The health reform legislation includes a provision that, effective for tax years beginning after 2012, imposes an additional 0.9% Medicare tax on taxpayers (other than corporations, estates, or trusts) receiving wages with respect to employment in excess of $200,000 ($250,000 for married couples filing jointly and $125,000 for married couples filing separately). The IRS has released new guidance, in question and answer format, on the 0.9% additional Medicare tax. Among other items, the guidance reveals that:

- All wages that are currently subject to Medicare tax are also subject to the additional Medicare tax if they are paid in excess of the applicable threshold for an individual's filing status.
- The additional Medicare tax applies to employees who are nonresident aliens or U.S. citizens living abroad if their wages exceed the applicable thresholds.
- An employer must begin withholding the additional Medicare tax once an employee's wages are over the threshold.
- An employer need not notify an employee when it begins withholding the additional Medicare tax.
- An employer begins withholding the additional Medicare tax in the pay period in which it pays wages to the employee exceeding the $200,000 threshold and not earlier, even if the employee's annual wages are expected to exceed the threshold.

Conclusion. When it comes to the tax law, the only thing that is constant is change. Congress has the power to tax and spend and seemingly the insatiable need to tinker with the Internal Revenue Code. Additionally, the Treasury Department and our courts often must clarify the tax laws that are just a little bit fuzzy, or sometimes even incomprehensible. That's why we're here to help. If you have any questions regarding any of the above tax law changes and how they may affect your personal or business planning, please call Marc Lane at (312) 372-1040 or (800) 372-1040, or email him at mlane@MarcJLane.com… and we'll try to make your own life a little bit less taxing.

Jeffrey A. Miller is Of Counsel with the Law Offices of Marc J. Lane, A Professional Corporation. Mr. Miller received his undergraduate degree from the University of Illinois. Mr. Miller received his law degree and his masters of laws (LLM) in taxation, with honors, from IIT Chicago-Kent College of Law. Mr. Miller is also a Certified Public Accountant and a Certified Financial Planner.

The Lane Report newsletter is a publication of The Law Offices of Marc J. Lane, a Professional Corporation. We attempt to highlight and discuss areas of general interest that may result in planning opportunities. Nothing contained in The Lane Report should be construed as legal advice or a legal opinion. Consultation with a professional is recommended before implementing any of the ideas discussed herein. Copyright © 2012 The Law Offices of Marc J. Lane, A Professional Corporation. Reproduction, in whole or in part, is

forbidden without prior written permission.

"Protecting Today's Wealth. Building Tomorrow's." and the Marc J. Lane Wealth Group logo are trademarks of The Law Offices of Marc J. Lane, a Professional Corporation Registered in U.S. Patent and Trademark Office and may be registered in certain other jurisdictions. "Marc J. Lane Wealth Group" is a trademark of The Law Offices of Marc J. Lane, a Professional Corporation and may be registered in certain jurisdictions.

Any tax information or written tax advice contained herein is not intended or written to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on your or any other person. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice).

180 N. LaSalle Street, Suite 2100 • Chicago, IL 60601-2701 • Phone: 312.372.1040 • Nationally: 800.372.1040 • Fax: 312.346.1040 • www.marcjlane.com