BNA

Daily Tax Report®

NUMBER 141 FRIDAY, JULY 22, 2011

HIGHLIGHTS

Rules Would Clarify When Derivative Exchanges Occur During Transfers

IRS issues temporary rules that, if finalized, will clarify that there is no exchange to a nonassigning counterparty under tax code Section 1001 when a securities dealer or clearinghouse transfers or assigns a derivative contract to another dealer or clearinghouse. Temporary and final rules (T.D. 9538) would amend and expand tax code Section 1001 to include derivative contracts other than notional principal contracts. The need to amend that section was increased by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203), which IRS says will necessitate, in some cases, the movement of entire books of derivatives contracts. **G-1**

IRS to Rely on HHS Decisions for Tax Exempt Healthcare CO-OP Status

IRS will largely piggyback on HHS determinations when it comes to deciding if new health care CO-OPs should be granted tax-exempt status, Doug Mancino, partner with Hunton & Williams, tells BNA. The new CO-OPs, which have been touted as an alternative to current health insurance, must be approved by both HHS and IRS. Mancino says he believes those that have proven to HHS that they meet the requirements for getting a contract with HHS—a realistic business plan, proper governance structure, and other requirements—will be granted the equivalent of deemed tax-exempt status by IRS. **G-5**

BNA INSIGHTS: IRS Staggers FATCA Implementation

Mark Leeds of Greenberg Traurig writes that with Notice 2011-53, IRS is debunking the old saying that good things and bad things both come in threes. Most interested parties did not consider either of the service's first two notices addressing implementation of the Foreign Account Tax Compliance Act—Notices 2010-60 and 2011-24—to be good news, he explains, adding many affected parties responded to those two notices by asking for leniency. ''IRS took those comments seriously and in Notice 2011-53 provided a delayed timetable for the implementation of the FATCA withholding rules,'' Leeds writes. ''This is clearly very good news.'' **J-1**

Obama, Congress Still Far Apart as Senate to Vote on GOP Budget Plan

Fleeting rumors that President Obama and House Speaker Boehner were close to a deal was called ''premature exuberance'' as the two sides continue to be far apart on an agreement to increase the debt limit. Senate Majority Leader Reid tells senators that he wants to move up the vote on a Republican proposal to force deep spending cuts and balance the national budget, which the president has vowed to veto. The vote is scheduled to occur Saturday. **G-3** . . . One of the questions that constantly divides Democrats and Republicans reared its ugly head after Democrats pounced on a statement from Grover Norquist indicating that allowing the Bush-era tax cuts to expire would not constitute a tax increase. **G-2**

TEXT

FINANCIAL PRODUCTS: IRS final, temporary rules (T.D. 9538) addressing when derivative contracts do not cause exchanges to nonassigning counterparties under Section 1001. **L-1**

FINANCIAL PRODUCTS: IRS proposed rules (REG-109006-11) addressing when derivative contracts do not cause exchanges to nonassigning counterparties under Section 1001. **L-3**

ENERGY: Incentivizing Offshore Wind Power Act (Unnumbered), by Sens. Carper, Snowe. **TaxCore**

TAXCORE: *For a complete listing of today's full text documents, look in the contents section.*

ALSO IN THE NEWS

ENERGY: Sens. Carper and Snowe propose legislation that would offer financial incentives through tax credits for investment in offshore wind energy. **G-2**

MEXICO: Maquiladora representatives in Mexico are raising concerns about new rules that apply value-added taxes to the sale of goods by foreign principals to Mexican entities within the Maquila regime. **I-4**

MARYLAND: Lawmakers in Montgomery County, Md., vote to repeal a charge levied on the carbon dioxide emissions of the former Mirant Mid-Atlantic LLC. **H-2**

COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. ISSN 0092-6884

HIGHLIGHTS

Continued from previous page

TIGTA: Taxpayer Advocate Should Improve Processes to Find Broad Issues

The Taxpayer Advocate Service does not have effective processes to identify systematic problems affecting taxpayers, the Treasury Inspector General for Tax Administration finds in an audit report. The Internal Revenue Service's TAS office should improve its screening process, which will help identify and resolve broad-based taxpayer problems, the report says. This could reduce or prevent similar problems in the future, TIGTA adds. **G-1**

Ex-Credit Suisse Employees, Swiss Financial Adviser Indicted for Evasion

Three former Credit Suisse employees and the founder of a Swiss trust company have been charged in a federal court in Virginia with conspiring with other Swiss bankers to defraud the United States by assisting U.S. customers in hiding $3 billion in Swiss accounts, the Justice Department and IRS announce. **K-3**. . . The Swiss financial adviser who owned and operated Sinco Treuhand AG in Zurich is indicted in a federal court in Manhattan on charges of conspiring with U.S. taxpayers to hide more than $184 million at various Swiss banks, the Justice Department announces. **K-1**

Cuomo Signs Bill Closing N.Y. Double Jeopardy Tax Evasion Loophole

Gov. Cuomo signs a bill to close a loophole in the state's double jeopardy provisions that prohibits the state from bringing criminal tax evasion charges against a defendant who was previously prosecuted in federal court for federal tax evasion involving the same criminal transactions. The bill, which takes effect in 90 days, amends the state Criminal Procedure Law to allow for the prosecution of tax evasion involving state or New York City taxes in cases where the defendant was previously prosecuted in federal court for the same criminal transactions. **H-1**

Swiss Banks Pursuing Talks With U.S. Officials to Resolve Concerns

Switzerland is still pursuing talks with the United States on a possible agreement aimed at resolving outstanding matters with Swiss financial institutions suspected of assisting clients in evading U.S. taxes, despite reports that American authorities have rejected the idea, a Swiss government official says. Roland Meier, Swiss Department of Finance spokesman, declines to comment on a report in the Swiss weekly newspaper *SonntagsZeitung* that the United States has informed Switzerland it is not interested in pursuing such an agreement. **I-1**

Euro Zone Bank Shelves Tax Proposal to Help Finance Greece Bailout

Faced with opposition from Germany, the European Central Bank's plan to impose a tax on banks and use the revenue to help finance a new multiannual Greek bailout is withdrawn from a broader plan designed to reduce Greece's massive public debt. Following a meeting between French President Sarkozy and German Chancellor Merkel on the eve of an emergency summit of euro zone leaders, European Union diplomats say the bank tax was swept aside because of German concerns. **I-2**

FASB, IASB to Seek More Comment On Joint Lease Accounting Proposal

The Financial Accounting Standards Board and the International Accounting Standards Board bow to constituent pressure and vote in favor of exposing their joint lease accounting standard for a further round of public comment. FASB Chairman Leslie Seidman sums up the vote across the two boards as "unanimous." **I-3**

COPYRIGHT POLICY: Authorization to photocopy selected pages for internal or personal use is granted provided that appropriate fees are paid to Copyright Clearance Center (978) 750-8400, http://www.copyright.com. Or send written requests to BNA Permissions Manager: (703) 341-1636 (fax) or permissions@bna.com (e-mail). For more information, see http://www.bna.com/corp/copyright or call (703) 341-3316. For Customer Service call 800-372-1033 or fax 800-253-0332.

Daily Tax Report

PRESIDENT AND CHIEF EXECUTIVE OFFICER: Paul N. Wojcik
PUBLISHER AND EDITOR-IN-CHIEF: Gregory C. McCaffery
VICE PRESIDENT AND GROUP PUBLISHER: Michael Eisenstein
EXECUTIVE EDITOR: Rebecca Pearl McCracken

MANAGING EDITOR: Paul F. Albergo
ASSISTANT MANAGING EDITOR: Michael R. Triplett
ASSIGNMENTS: Mack A. Paschal, Manager; Patrick Ambrosio, Gwen Holmes
COPY DESK: Sean Barry, Theresa A. Barry, Jane Bowling, Gloria Deigh, Steve France, Elizabeth Grover, Dave Harrison, Sue Doyle, John Kirkland, Ellen E. McCleskey, Isabella Perelman, Karen Saunders, John Seidenberg, Ronald Taylor
STAFF WRITERS: Alison Bennett, Cheryl Bolen, Brett Ferguson, J. P. Finet, Diane Freda, Lynn Garner, Diana I. Gregg, Christine Grimaldi, Aaron E. Lorenzo, Jonathan Nicholson, Nancy Ognanovich, Heather M. Rothman, Adam Snider, Liz White, Robert T. Zung
CONTRIBUTING EDITORS: Galit Allemeier, Pamela Atkins, Michael Baer, Kevin A. Bell, Kathleen David, Dana Domone, Kenneth P. Doyle, Dolores W. Gregory, Nadine Gjurich, Mary Hughes, Susan Raleigh Jenkins, Alison Johanson, Molly Moses, Priya D. Nair, Jeanne M. Rauch-Zender, Victoria M. Roberts, Denise Ryan, Steven Roll, Sarah Stevens, Alan Stowell, Peyton M. Sturges, Joe Tinkelman, Barbara Yuill
CORRESPONDENTS: Paul Connolly, Chief of Correspondents; Rita McWilliams, Asst. Chief of Correspondents
STAFF CORRESPONDENTS; *Albany, N.Y.,* Gerald Silverman; *Atlanta,* Barney Tumey; *Austin, Texas,* Nancy Moore; *Boston,* Martha W. Kessler, Rick Valliere; *Chicago,* Michael J. Bologna, Thomas D. Wilder; *Cincinnati,* Bebe Raupe; *Denver,* Tripp Baltz; *Houston,* Susanne Pagano; *Lansing, Mich.,* Nora Macaluso; *Los Angeles,* Tom Gilroy; *New York,* John Herzfeld, Stephen Joyce; *Norwalk, Conn.,* Steve Burkholder, Denise Lugo; *Philadelphia,* Lorraine McCarthy; *Phoenix,* William Carlile; *Portland, Ore.,* Tom Alkire; *Raleigh, N.C.,* Andrew Ballard; *Sacramento, Calif.,* Laura Mahoney; *San Francisco,* Joyce E. Cutler, *St. Louis,* Christopher Brown; *St. Paul, Minn.,* Mark Wolski; *Tampa, Fla.,* Drew Douglas; *Washington, D.C.,* Jeff Day.
INTERNATIONAL CORRESPONDENTS: *Beijing,* Kathleen Mclaughlin; *Berlin,* Andrea Schuessler; *Bogota, Columbia,* Mike Ceaser; *Brussels,* Joe Kirwin; *Buenos Aires,* David Haskel; *Copenhagen,* Marcus Hoy; *Geneva,* Daniel Pruzin; *London,* Stephen Bouvier; *Madrid,* Brett A. King; *Mexico City,* Nacha Cattan; *Moscow,* Sergei Blagov; *New Delhi,* Tripti Lahiri; *Ottawa,* Peter Menyasz; *Paris,* Rick Mitchell; *Rio de Janeiro,* Ed Taylor; *Rome,* Eric J. Lyman; *Seoul,* James Lim; *Sydney,* Murray Griffin; *Tokyo,* Toshio Aritake
INDEX EDITORS: J. Kelley Summers, Manager; Lorraine Sorrel
GRAPHICS: Cordelia D. Gaffney, Manager; Mike Foley
DAILY TAX REPORT (ISSN 0092-6884) is published daily, Monday through Friday, except for federal holidays, at the annual subscription rate of $4,139 for a single print copy.

BNA
1801 S Bell Street
Arlington, VA 22202
Telephone: 703-341-5858
Fax: 703-341-1660
Email: dtr@bna.com
Correspondence concerning editorial content should be directed to the managing editor.
For customer service, documents, or research call 800-372-1033 or 703-341-3500.

In This Issue

Federal Tax & Accounting / *Page G-1*

State Tax & Accounting / *Page H-1*

International Tax & Accounting / *Page I-1*

BNA Insights / *Page J-1*

Tax Decisions & Rulings / *Page K-1*

TaxCore Text / *Page L-1 and Online*

Calendar / *Page N-1*

FEDERAL TAX & ACCOUNTING

CFCs IRS corrects rules on tax on repatriated profits G-6

ENERGY Carper, Snowe bill offers tax credits to propel investment in offshore wind farms G-2

EXEMPT ORGANIZATIONS IRS to rely heavily on HHS decisions for tax exempt health care CO-OP status G-5

FINANCIAL PRODUCTS IRS guidance would clarify when derivative exchanges occur during transfers G-1

TAX ADMINISTRATION TIGTA: Taxpayer Advocate Office should improve processes G-1

TAX POLICY Democrats seize Norquist's statement on tax cuts as opening; he retreats after uproar G-2

TAX PRACTICE Hearing set on new IRS paid tax preparer rules G-6

TAX REFORM Finance Committee to examine tax code from CEOs' perspective G-5

U.S. BUDGET White House, Congress still far apart as Senate to vote on GOP budget plan G-3

STATE TAX & ACCOUNTING

CALIFORNIA FTB seeks stakeholder input to update mission, goals, strategic plan H-2

FLORIDA Business carryover period for tax credits under state scholarship program extended H-1

MARYLAND Montgomery County repeals fee levied on carbon emissions of power plant H-2

MASSACHUSETTS New draft guidance unveiled on filing rules for short-year filers H-3

MICHIGAN Tax amnesty program nets more than $76 million for state Treasury H-1

NEW YORK Cuomo signs legislation closing double jeopardy loophole for tax evasion H-1

INTERNATIONAL TAX & ACCOUNTING

ACCOUNTING FASB, IASB to seek more comment on joint lease accounting proposal I-3

BRAZIL District court expands listing of inputs qualifying for PIS, Cofins credits I-3

EUROPEAN UNION Euro zone bank shelves tax proposal to help finance new bailout for Greece I-2

ITALY Mediation required for all tax disputes in effort to reduce backlog of court cases I-2

SWITZERLAND Talks pursued with U.S. officials to resolve tax evasion concerns with Swiss banks I-1

BNA INSIGHTS

INFORMATION REPORTING Mañana is good enough for me: IRS staggers the dates for FATCA implementation J-1

TAX DECISIONS & RULINGS

PROPERTY TAXES California court upholds penalty for late payment of property taxes K-1

TAX PROSECUTIONS Eighth Circuit affirms tax conviction, remands for recalculation of tax loss K-1

Former Credit Suisse employees indicted for role in stashing billions for U.S. clients K-3

Swiss financial adviser indicted, accused of hiding $184 million for clients K-1

TAXCORE TEXT

ENERGY Incentivizing Offshore Wind Power Act (Unnumbered), by Sens. Carper, Snowe .... TaxCore

FINANCIAL PRODUCTS T.D. 9538 on addressing when derivative contracts do not cause exchanges to nonassigning counterparties under Section 1001 .... L-1

REG-109006-11 on addressing when derivative contracts do not cause exchanges to nonassigning counterparties under Section 1001 .... L-3

TAX PROSECUTIONS Indictment in United States v. Singenberger .... TaxCore

Indictment in United States v. Walder............... TaxCore

United States v. McLain .... TaxCore

CALENDAR

Legislative Calendar N-1

President's Calendar N-6

TABLE OF CASES

Avalonbay Communities Inc. v. County of Los Angeles (Cal. App. Ct.) K-1

United States v. McLain (8th Cir.) K-1

United States v. Singenberger (S.D.N.Y.) K-1

United States v. Walder (E.D. Va.) K-3

CODE SECTION INDEX

SECTION 351 T.D. 9530.. G-6

SECTION 358 T.D. 9530.. G-6

SECTION 367 T.D. 9530.. G-6

SECTION 951 T.D. 9530.. G-6

SECTION 956 T.D. 9530.. G-6

SECTION 957 T.D. 9530.. G-6

SECTION 1001 REG-109006-11 .... G-1, L-3

T.D. 9538.. G-1, L-1

SECTION 1031 T.D. 9530 .... G-6

SECTION 7202 United States v. McLain .... K-1, TaxCore

SECTION 7206 United States v. Singenberger .... K-1, TaxCore

TAXCORE

For full-text tax documents and IRS hearing transcripts refer to: http://news.bna.com/tcln/. To register for *TaxCore* contact BNA Customer Relations at 800-372-1033.

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. DTR ISSN 0092-6884

Federal TAX & ACCOUNTING

Tax Administration

TIGTA: Taxpayer Advocate Office Should Improve Processes to Find Broad Issues

The Taxpayer Advocate Service does not have effective processes to identify systematic problems affecting taxpayers, the Treasury Inspector General for Tax Administration found in an audit report released July 21.

The Internal Revenue Service's TAS office should improve its screening process, which will help identify and resolve broad-based taxpayer problems, the report said. This could reduce or prevent similar problems in the future, TIGTA said.

The office finds areas in which groups of taxpayers are experiencing problems with IRS and conducts projects to identify solutions. The process TAS uses to identify systematic problems have to be effective because of its limited resources, the report said.

It also must be able to measure the impact of projects on taxpayers. Current performance measures do not offer enough information to assess whether projects positively benefit tax administration, the report said. TAS needs to develop performance measures to capture the projects' effectiveness in identifying and resolving systematic issues that affect taxpayers, TIGTA recommended.

''Our report found that improvements can be made to make it more effective,'' J. Russell George, Treasury Inspector General for Tax Administration, said in a release. ''In particular, improving the screening process it uses to identify systemic issues will assist TAS management in identifying and resolving broad-based taxpayer problems, thereby preventing or reducing similar problems in the future.''

Current System Doesn't Find Broad-Based Issues. TIGTA's audit reviewed 25 of 134 projects closed in fiscal year 2009 and found that documentation for 13 projects revealed the issue was not a systematic problem.

The National Taxpayer Advocate, who works with the TAS office, should require TAS to perform and document sufficient research to establish that a systematic issue exists before beginning a project, TIGTA recommended. In its response to the report, IRS said it had begun implementing significant changes to the issue review process. IRS is also working to revise its measures for systematic problem resolution work, according to the report.

Currently, TAS relies on IRS employees and external stakeholders to submit systematic issues for a project review online. The office should use information and data from the Case Advocacy Program, which addresses individual or business taxpayer problems, to find issues to review as a Systemic Advocacy Project, TIGTA said in the report.

However, IRS disagreed with the recommendation, stating TAS already uses the data from the advocacy program to find systematic issues for projects. During interviews, TAS personnel told TIGTA they do not analyze advocacy program data to identify potential projects, but rely on submissions. Therefore, the office should formalize and document a process to analyze the data to find issues that can be addressed in a project, the report said.

Text of the report, The Identification and Evaluation of Systemic Advocacy Projects Designed to Resolve Broad-Based Taxpayer Problems Can Be Improved (2011-10-052), is available at http://www.treasury.gov/tigta/auditreports/2011reports/201110052fr.pdf.

Financial Products

IRS Guidance Would Clarify When Derivative Exchanges Have Occurred During Transfers

The Internal Revenue Service July 21 issued temporary rules that, if finalized, will clarify that there is no exchange to a nonassigning counterparty under tax code Section 1001 when a securities dealer or clearinghouse transfers or assigns a derivative contract to another dealer or clearinghouse.

Temporary and final rules (T.D. 9538) would amend and expand tax code Section 1001 to include derivative contracts other than notional principal contracts. At the same time, IRS issued proposed rules (REG-109006-11) that are based on the temporary rules.

The need to amend that section was increased by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203), which IRS said will necessitate, in some cases, the movement of entire books of derivatives contracts.

''In particular, there is a concern that the assignment of derivative contracts may create a taxable event for the nonassigning counterparties to the assigned contracts,'' IRS said.

The temporary rules also provide that transfers or assignments are permitted by the terms of the contract when consent of the nonassigning counterparty is required and when it is not.

Consent of Nonassigning Parties. Section 1001 of the Internal Revenue Code spells out the rules for the computations and recognition of gain or loss from a sale or other disposition of property.

Many notional principal contracts permit assignment only with the consent of the nonassigning counterparty, IRS said. There has been some uncertainty as to whether a contract that requires that consent as a condition to assignment will be treated as a deemed exchange.

Commenters have also suggested that the scope of Section 1001 is too narrow because it applies only to notional principal contracts.

A public hearing is scheduled for Oct. 27.

The guidance will appear in the *Federal Register* on July 22.

Texts of the temporary and final rules (T.D. 9538) and proposed rules (REG-109006-11) are in Section L.

Energy

Carper, Snowe Bill Offers Tax Credits To Propel Investment In Offshore Wind Farms

Sens. Tom Carper (D-Del.) and Olympia Snowe (R-Maine) proposed legislation July 21 that would offer financial incentives through tax credits for investment in offshore wind energy.

The Incentivizing Offshore Wind Power Act (bill unnumbered) would extend investment tax credits for the first 3,000 megawatts of offshore wind facilities, or about 600 turbines, put into service by amending Section 48 of the Internal Revenue Code, according to a release about the legislation. After being awarded a credit, companies would have five years to install an offshore wind facility and cannot receive other production or investment tax credits along with the offshore wind investment credit.

''This legislation is essential to encourage the continued growth of this fledgling industry,'' Carper said in a statement.

Job-Generating Legislation. The act has been praised for its ability to not only offer incentives for developing renewable energy but also for creating jobs. The Offshore Wind Development Coalition said the act could lead to employment for tens of thousands of workers in high-paying, clean-tech jobs with the potential to become the newest manufacturing sector.

''I'm encouraged by this bipartisan legislation to expand offshore wind energy through targeted tax incentives,'' said Sen. Chris Coons (D-Del.), a co-sponsor of the bill, in a statement. ''By tapping the offshore wind energy sector, we are further ensuring our country remains a leader in clean, renewable energy development that will create a wealth of new high-tech jobs in the region.''

The bill, which is modeled after the 2005 Energy Policy Act's production tax credit for nuclear power, would allow Treasury to allocate a 30 percent tax credit for the first 3,000 megawatts of offshore wind energy.

The facilities can be located in ''the inland navigable waters of the United States, including the Great Lakes, or in the coastal waters of the United States, including the territorial seas of the United States, the exclusive economic zone of United States, and the outer Continental Shelf of the United States.''

These facilities can generate electricity that is more consistent than onshore wind and are located near major cities, Snowe said in a statement. Winds off the Atlantic Coast could generate 330-giga-watts of power—enough to power nine states from Massachusetts to North Carolina, according the release, which cited the University of Delaware.

Better Option For Offshore Wind Sector. Previously, practitioners had criticized renewable energy subsidies, like the Investment Tax Credit (ITC), because they are temporary and can cause uncertainty in the market (99 DTR G-1, 5/23/11). Because it takes longer to develop renewable energy projects, the temporary nature of these credits can be a hindrance for generating financial support in the industry, practitioners said.

In 2009, as a part of the American Recovery and Reinvestment Act of 2009, Congress extended production tax credits for all wind through the end of 2012. Currently, the deadline for wind farms—onshore or offshore—to qualify for the ITC is an almost impossible barrier for offshore wind because of the long lead time required for development, according to the Offshore Wind Development Coalition.

Other types of renewable energy projects have longer deadlines like 2013 for marine and hydrokinetic facilities or 2016 for solar energy projects. Even for onshore wind development, the 2012 deadline is attainable, but offshore farms face a longer investment time, a still developing industry, and higher initial costs.

Although projects are in the development process in Delaware, Massachusetts, Rhode Island and New Jersey, no offshore wind project has been built in the United States partially because of federal permitting delays. Without the bill, the credits might not be available for wind projects being developed and permitted off the Atlantic Coast and in the Great Lakes, according to the coalition's statement.

''This law would send the necessary signals to the financial markets that offshore wind farms can be developed and financed,'' said Jim Lanard, Offshore Wind Development Coalition president, in a statement. ''The current unavailability of the ITC for offshore wind farms may effectively put financing for these projects out of reach. Equally troublesome, if the ITC is renewed only for short periods just before it expires, as is often the case with other 'extenders', it may never be usable for offshore wind. The Carper-Snowe bill overcomes the ITC-related challenges that offshore wind developers currently face.''

The legislation will help the U.S. reach its goal of operating 20 percent wind energy by 2030, said Sen. Snowe in a statement.

Text of the bill is in TaxCore. Information about the Offshore Wind Development Coalition is at http://www.OffshoreWindDC.org.

Tax Policy

Democrats Seize Norquist's Statement on Tax Cuts as Opening; He Retreats After Uproar

One of questions that constantly divides Democrats and Republicans reared its ugly head again July 21 after Democrats pounced on a statement from Grover Norquist indicating that allowing the Bush-era tax cuts to expire would not constitute a tax increase.

Typically, Republicans interpret the failure to extend an expiring tax cut as a tax increase, while Democrats view it as the expiration of a temporary benefit—in this case, the lower tax rates enacted in 2001 and 2003 and extended in Dec. 2010 (242 DTR GG-1, 12/20/10).

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. DTR ISSN 0092-6884

More than 200 House Republicans and 41 Senate Republicans signed onto the ''Taxpayer Protection Pledge'' sponsored by Norquist's Americans for Tax Reform. The signees agreed to oppose all efforts to increase the marginal tax rates for individuals and businesses and to oppose any net reduction or elimination of deductions and credits unless matched dollar for dollar by reducing the tax rates.

Norquist told the *Washington Post*, ''Not continuing a tax cut is not technically a tax increase,'' and when asked specifically if not continuing a tax cut would violate the pledge, Norquist responded, ''We wouldn't hold it that way.''

Offering a Lifeboat. Sen. Charles Schumer (D-N.Y.), a member of the Finance Committee, read Norquist's statement as a signal to Republicans opposed to any debt ceiling increase deal that includes changes in revenues that they should back down in order to avert default on Aug. 2.

''This is a development the significance of which should not be underestimated,'' Schumer said on the Senate floor. ''Norquist is trying to signal to the House GOP that their no-compromise position is untenable, deteriorating, and bad for their party and the country. The House GOP is on an iceberg that is melting into the ocean and even Grover Norquist is offering them a lifeboat.''

House Speaker John Boehner (R-Ohio) told reporters that he disagrees with Norquist's comments and believes that allowing the tax cuts to expire would constitute a tax increase.

While many Republicans have said that an increase in the debt ceiling must be accompanied by significant spending cuts, many Democrats—including President Obama—have expressed support for what they call a ''balanced approach'' that both cuts spending and raises some taxes. However, in the Senate, a handful of Republicans have indicated a willingness to listen to details of a bipartisan plan that includes spending cuts and tax increases.

''The hall monitor when it comes to enforcing the Republican Party's anti-tax pledge has given House Republicans a hall pass. They should use it,'' said Schumer, vice chairman of the Senate Democratic Conference and chairman of the conference's Policy Committee.

Rescinding the Statement. But at the same time Schumer was speaking on the Senate floor, Americans for Tax Reform released a statement ''to clarify concerns'' raised by Norquist's original comments. The statement said the anti-tax organization opposes all tax increases on the American people and noted that a failure to extend the 2001 and 2003 tax cuts and to extend the patch that keeps the alternative minimum tax from impacting more middle-income families would be a tax increase.

''The outlines of the plans are deliberately hazy, but it appears that both Obama's Simpson-Bowles commission proposal and the Gang-of-Six proposal dramatically increase taxes on the American people,'' ATR said. ''It is a violation of the Taxpayer Protection Pledge to trade temporary tax reductions for permanent tax hikes.''

White House spokesman Jay Carney said that notwithstanding Norquist's ''absolutism,'' there has been a ''significant amount of movement in terms of both public opinion and Republican opinion about the need to take a balanced approach'' to significant deficit reduction and that the White House hopes that support creates some momentum.

ATR went further and called on lawmakers to keep tax reform separate from negotiations to raise the debt ceiling and reduce the deficit.

''Tax reform that reduces tax rates and broadens the tax base on a revenue neutral basis should be done separately and not in a rush under duress from parties hostile to the interests of taxpayers,'' ATR said.

The Pledge: Impediment or Lubricant to Deal? Tax reform should be a conversation separate from the ongoing debate over the debt ceiling, said Chuck Marr, with the Center on Budget and Policy Priorities. The debt ceiling should be routine, and using the debt limit as a crisis-generating event is a major mistake that puts the country at risk, Marr said.

Marr would not comment on the Norquist pledge specifically. Generally speaking, however, the position that tax increases are not an option and are completely off the table is an impediment to negotiations, he said. The roadblock is not new, he said, but it has been heightened recently with the focus on the long-term deficit issue.

But the Heritage Foundation's Curtis Dubay disagreed, telling BNA that rather than a hindrance, the Norquist pledge has aided negotiations. True tax reform does not raise taxes, he said. The pledge keeps conservatives in line and reminds them that true tax reform is revenue neutral.

''The president is trying to trick Americans into his version of tax reform,'' Dubay said. Tax hikes should be off the table and Boehner has repeatedly stated that he is open to any deal that does not include raising taxes, he said.

BY HEATHER M. ROTHMAN AND RACHEL BOEHM

U.S. Budget

White House, Congress Still Far Apart; Senate to Vote on Republican Budget Plan

Fleeting rumors that President Obama and House Speaker John Boehner (R-Ohio) were close to a deal were called ''premature exuberance'' July 21 as the two sides appear to remain far apart on an agreement to increase the debt limit and reduce the federal deficit.

As negotiations continue between the White House and congressional leaders, Senate Majority Leader Harry Reid (D-Nev.) July 21 told senators that he wanted to move up the vote on a Republican proposal to force deep spending cuts, balance the national budget and limit Congress's ability to raise taxes, which President Obama has vowed to veto.

Although Reid told lawmakers on the Senate floor that he is trying to schedule a vote on the Cut, Cap, and Balance Act (H.R. 2560) as early as July 22, the request was met with objections by Senate Republican Leader Mitch McConnell (R-Ky.), who an aide said does not want to cut short debate on the measure.

The vote had been scheduled to occur on July 23.

H.R. 2560 would put in place sharp spending cuts in fiscal 2012, multi-year statutory spending caps, and

only allow an increase in the debt ceiling if Congress sends to the states a separate balanced budget and tax limitation amendment to the U.S. Constitution.

Overall, with fewer than 12 days to go before hitting a hard deadline of Aug. 2 for defaulting on the nation's obligations, the White House and congressional leaders had little progress to report. The top four Democratic leaders in the House and Senate were called to the White House for a meeting late July 21, but left without commenting.

Backup Plan Being Readied. Obama spokesman Jay Carney said the White House is supporting moves by Reid and McConnell to vote on a backup plan to increase the debt limit.

An aide to Reid said the Democratic leader and McConnell are still laying the groundwork for bringing their own compromise to the Senate floor soon. Reid is planning to use the pending ''sense of the Senate'' budget measure as a vehicle for their plan to raise the debt limit, the aide said.

The aide said Reid and McConnell are discussing offering their plan as an amendment to a bill (S. 1323) that calls for ''shared sacrifice'' in resolving the budget deficit. The aide said the proposal could be offered as early as July 22, but that an actual vote on the plan would not happen until well into the week of July 25.

Rumors early in the day July 21 that the president and Boehner were close to a deal were quickly squashed. Carney said that in fact ''there is no progress to report,'' although administration officials were continuing to work on getting the most significant deficit reduction package possible.

On Capitol Hill, a Democratic aide called the reports of a White House-Boehner deal ''premature exuberance'' and downplayed another report that Obama was considering a package of $3 trillion in spending cuts for a promise of tax reform, and likely increased revenues, later.

''It's hard to find Democratic votes without revenues as part of it,'' the aide said.

Carney declined to talk about the meetings held July 20 at the White House with Republican leaders, but called them constructive and useful. ''And we are going through the process of examining what's possible, what we can get, what can be done in a balanced way to achieve significant deficit reduction,'' he said.

''What is not in doubt is that Congress will act to ensure that the debt ceiling is raised and that we do not risk default,'' Carney said. The president still supports an increase in the debt limit that would last into 2013, he added.

Time for Debate Is Now. In remarks on the Senate floor, Reid invited all senators to continue their debate on the cut, cap, and balance proposal.

''[T]his is the time to come and debate it to their heart's content,'' Reid said, even as private meetings continued on the larger deal.

''If they want to debate it late tonight, we're here to do it late tonight. If they want to debate it tomorrow for a period of time, they can do that, but . . . I think this piece of legislation is about as weak and senseless as anything that has ever come on this Senate floor, and I am not going to waste the Senate's time day after day on this piece of legislation.''

Reid called the bill ''anathema'' to the country. ''The American people should understand that this is a bad piece of legislation,'' he said.

Pressure to Vote for GOP Plan. Other Senate Republicans continued to put pressure on vulnerable Democrats running for reelection in 2012 to vote for the legislation, which they characterized as the only bill that has sufficient support in the House to be approved.

Sens. Jim DeMint (R-S.C.) and Tom Coburn (R-Okla.) said the legislation is the only one they see likely to be passed before Aug. 2. ''This bill is the only one that has a chance to meet the deadline,'' Coburn said at a July 21 press conference with other GOP lawmakers from the Senate and House.

While Senate Budget Chairman Kent Conrad (D-N.D.) called the plan ''dangerous'' and said it had never even had a hearing, proponents of the measure said it represents a compromise as it would allow Obama to raise the debt limit.

Rep. Jim Jordan (R-Ohio) said it was better than any plan developed behind closed doors, including the proposal of the bipartisan ''gang of six.''

DeMint said the Republican's bid to take back the White House and the Senate in 2012 will be helped by a full and extended debate on the House bill. ''Then let's see who the public's with,'' he said.

Boehner: Still Communicating. Earlier in the day, Boehner said he was still communicating with the White House.

At his weekly press conference, Boehner said, ''I always believe that keeping the lines of communication were important. And frankly, I think it would be irresponsible, on behalf of the Congress and the president, not to be looking at backup strategies for how to solve this problem.''

House Democratic Leader Nancy Pelosi (D-Calif.), was asked at her regular press conference if Democrats were under any obligation to vote for extending the debt ceiling if a deal was reached with Republicans.

''What the bill looks like will depend on who can vote for it. Because in the past we have not said that we will hold you up. 'We need to lift the debt ceiling, but only if you do this and this and this','' Pelosi said.

Members of the Senate gang of six also briefed House Democrats on their 10-year plan late July 20. A Democratic aide said, ''Lots of people think it's pretty interesting,'' but there was ''clear concern'' by some members on the idea of changing the federal inflation measure to an updated Consumer Price Index, called the chain-weighted CPI.

The proposed change in the CPI used for federal benefit programs and tax brackets would lead to less spending and higher revenues. But some members are concerned about the impact of us such a change on the elderly.

By Cheryl Bolen, Nancy Ognanovich, and Jonathan Nicholson

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. ISSN 0092-6884

Exempt Organizations

IRS to Rely Heavily on HHS Decisions For Tax Exempt Health Care CO-OP Status

The Internal Revenue Service will largely piggyback on Health and Human Services Department determinations when it comes to deciding whether new health care cooperatives should be granted tax exempt status, Doug Mancino, partner with Hunton & Williams, told BNA July 19.

The new Consumer Operated and Oriented Plans (CO-OPs), which have been touted as an alternative to current health insurance, must be approved by both HHS and IRS.

Mancino said he believes those that have proven to HHS that they meet the requirements for getting a contract with HHS—a realistic business plan, proper governance structure, and other requirements—will be granted the equivalent of deemed tax exempt status by IRS.

''The IRS will peg its determination as to tax-exempt status on the fact that the organization has successfully gone though all the hoops with HHS,'' he said.

Because health care in its entirety is so important to the current administration, health policy will almost always trump tax policy, a tax source who asked not to be named told BNA July 21. ''It doesn't mean the IRS will end up taking positions that are clearly inconsistent with tax laws, but those responsible for promulgating health policy will be taking the lead on this.''

Sticking to Commonly Used Terms. Under the program, HHS will award loans and grants to entities applying to become qualified nonprofit health insurance issuers. The loans and grants will provide assistance in meeting start-up costs and the solvency requirements of the states in which the groups seek to be licensed as qualified health plan issuers.

Following the recent rollout of proposed HHS regulations for tax exempt CO-OPs, and previously issued IRS guidance, Mancino said IRS is likely to apply existing interpretations of commonly used terms for exempts to the CO-OPs. Terms already defined and that have long been in application in the tax code for exempts—such as outright prohibitions against inurement of net earnings and electioneering, and limitations on lobbying—are likely to be picked up from IRS Notice 2011-23, which addressed some of the IRS requirements for CO-OPs (48 DTR G-2, 3/11/11).

Mancino said he is working on a letter to IRS on behalf of the American Bar Association Section of Taxation that will recommend that IRS not adopt separate new terms, and rely on long-standing, well-understood terminology in relation to the CO-OPs.

Raising the Money. The most repetitive comment at a packed meeting July 18 to roll out HHS proposed regulations on CO-OPs was that it is difficult to get seed money for funding, he said.

HHS proposed standards for the private, nonprofit organizations that seek to offer health plans through the insurance exchanges scheduled for operation in 2014.

''One of the questions that came out at the meeting was if someone else front-ends the costs of starting up a CO-OP whether they can be reimbursed from loan proceeds,'' Mancino said. The answer to that is not yet clear and will probably emerge as part of the comment process, he said.

Only 50 to 100 CO-OPs are expected to make the grade, and with good reason, Matthew Amodeo, partner with Drinker Biddle in Albany, N.Y., told BNA July 21.

''On top of the money they are going to have to borrow from the federal government, they will also have to raise, independently, enough money to satisfy whatever the state regulatory requirements are for reserves,'' he said. ''A lot of people are going to have cold water thrown on them in terms of how many of these will get off the ground.''

Furthermore, since the CO-OPs are targeted to individuals and small businesses—the two riskiest insurance markets, with susceptibility to high dollar claims—many of them will have a hard time competing against conventional insurers who are better situated financially to withstand those risks.

Milt Cerny, counsel with McGuireWoods, said HHS has forecast a high default rate on the loans, but if that happens IRS is not likely to take the position that there was private inurement—disproportionate benefit flowing to a CO-OP insider—in violation of IRS rules. If the loans and their application were made in conformance with HHS rules, that will be good enough, he said.

Lobbying and Marketing. Other information that emerged from the HHS meeting, Mancino said, included that none of the loan proceeds can be used for lobbying or marketing. The difficulty will be in interpreting what is marketing versus education and outreach, he said. On governance, he said it was clarified that a majority of the CO-OP board must be members of the CO-OP. On how to define ''substantially all'' in rules that say substantially all of the CO-OP business must be the provision of individual and small group health plans, Mancino said he expects IRS to bypass its traditional interpretation that the term means 85 percent, and once again rely on HHS's determination of compliance.

By Diane Freda

In Brief

Finance to Examine Tax Code from CEOs' Perspective

Top executives from some of the nation's largest corporations will testify before the Senate Finance Committee July 27 about how the tax code affects hiring and economic growth.

The hearing is the latest in a series examining how to simplify the Internal Revenue Code and make it more efficient and fair for all types of taxpayers. Other hearings have focused on the tax treatment of debt financing and equity financing, complexity and the tax gap, tax administration practices around the world, and lessons learned from the 1986 overhaul of the tax code.

Witnesses scheduled to testify include Michael Duke, president and chief executive officer of Wal-Mart Stores Inc.; Thomas Falk, chairman and CEO of Kimberly-Clark Corp.; Gregory Lang, president and CEO of PMC-Sierra Inc.; and Larry Merlo, president and CEO of CVS Caremark Corp.

IRS Corrects Rules on Tax on Repatriated Profits

The Internal Revenue Service July 21 issued a technical correction to month-old final and temporary rules (T.D. 9530) aimed at preventing U.S. shareholders of controlled foreign corporations from avoiding income taxation in certain situations when the CFCs acquire U.S. property in an exchange.

The rules were released June 23 (122 DTR G-1, 6/24/11). The correction noted that the name of Acting Assistant Treasury Secretary (Tax Policy) Emily McMahon was spelled incorrectly in the rules' signature block.

Hearing Set on New IRS Paid Tax Preparer Rules

The House Ways and Means Oversight Subcommittee will hold a hearing July 28 on the Internal Revenue Service's new paid tax return preparer program.

According to a July 21 news release, the hearing will begin at 9:30 a.m. in Room 1100 of the Longworth House Office Building. A list of invited witnesses will be issued at a later date, it said.

''This hearing is a continuation of the Subcommittee's oversight of the IRS and the alarming rates of tax noncompliance,'' the subcommittee chairman, Charles Boustany Jr. (R-La.), said in the release. ''With so many Americans relying on paid professionals to prepare their returns, it is critical that we better understand what the IRS is doing and what impact the new regulations will have on taxpayers, paid tax return preparers, and tax compliance.''

Text of the hearing announcement and information about submission of comments for the record is at http://waysandmeans.house.gov/News/DocumentSingle.aspx?DocumentID=253142.

COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC.
DTR ISSN 0092-6884

State TAX & ACCOUNTING

Florida

Business Carryover Period for Tax Credits Under State Scholarship Program Extended

TAMPA, Fla.—Florida businesses now can carry forward an additional two years of their unused credits available under a program designed to help low-income students attend private school, the state's Department of Revenue announced in a July 20 internet posting.

In Tax Information Publication No. 11ADM-02, the department also said the period to carry forward unused credits has been increased to five years from the three years previously allowed.

The changes to the Florida Tax Credit Scholarship Program took effect July 1 and were contained in a bill (H.B. 965) signed in June by Gov. Rick Scott (R) after passage by lawmakers during the 2011 legislative session (108 DTR H-2, 6/6/11).

Under the program, taxpayers receive a tax credit for use against their liability for corporate income tax, insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders, or alcoholic beverage taxes on beer, wine, and spirits.

''The Scholarship Funding Tax Credit against corporate income tax is the only credit that has been in effect for more than three years,'' the department said in the TIP.

''Thus, corporate income taxpayers whose three-year carry forward period had not expired on July 1, 2011, have up to an additional two (2) years to carry forward the unused credits. Taxpayers must still apply for and receive approval to carry forward unused Scholarship Funding Tax Credits.''

Rescinded Credits. Also under H.B. 965, taxpayers are no longer restricted to just one ''rescindment'' of an allocation of Scholarship Funding Tax Credit within three tax years, the TIP said, adding that taxpayers can request and receive approval for rescindment of any number of previous allocations of credits. Applications for rescindment must still be filed with the DOR for approval and may be made online at http://www.myflorida.com/dor, the TIP said.

DOR also said that, effective for tax years ending on or after July 1, the limitation on the use of a credit to 75 percent of the tax due is eliminated for both corporate income tax and insurance premium tax. Now, state law allows corporate income and insurance premium taxpayers to take the credit against up to 100 percent of the corresponding tax due for the tax year.

However, a credit claimed against the insurance premium tax still may not exceed the tax due after making deductions for assessments made pursuant to worker's compensation administrative assessments, credits for taxes paid to firefighters and police officers pension trust funds, and credits for income taxes and emergency excise taxes paid and a salary credit, the TIP noted.

BY DREW DOUGLAS

Text of TIP No. 11ADM-02 is available at http://dor.myflorida.com/dor/tips/tip11adm-02.html.

Michigan

45-Day Tax Amnesty Program Nets More Than $76 Million for State Treasury

LANSING, Mich.—A 45-day tax amnesty program generated more than $76 million in revenue for fiscal 2011, the Michigan Department of Treasury said July 21.

Returns related to the Michigan Business Tax generated the most money from the program, bringing in more than $23 million in revenue and interest. About 2,600 of the more than 37,000 tax returns filed under the program related to the MBT, the Treasury said.

''While Treasury will not have a final analysis for several weeks yet, I am very pleased with the success of the 2011 Tax Amnesty program,'' Treasurer Andy Dillon said in a statement. ''Based on what is still preliminary data, Tax Amnesty generated more than $62 million for the state's general fund and another $14 million for the school aid fund this fiscal year.''

The amnesty program, signed into law in 2010 by former Gov. Jennifer Granholm (D), allowed delinquent taxpayers to waive criminal and civil penalties if they filed returns and made full payment of all taxes and interest due (193 DTR H-1, 10/7/10). When the program was announced, it was estimated the plan would bring in about $61.8 million. The budget for the current year estimated it would generate $88 million.

More than 15,000 taxpayers submitted applications for amnesty under the program, which ran from May 15 to June 30.

Individual income tax returns accounted for about $19 million in taxes and interest, and sales tax returns generated an additional $17.8 million, the department said.

BY NORA MACALUSO

New York

Gov. Cuomo Signs Legislation Closing Double Jeopardy Loophole for Tax Evasion

ALBANY, N.Y.—Gov. Andrew M. Cuomo (D) signed a bill July 21 to close a loophole in the state's double jeopardy provisions that prohibits the state from bringing criminal tax evasion charges against a

defendant who was previously prosecuted in federal court for federal tax evasion involving the same criminal transactions (A. 8247).

The bill, which takes effect in 90 days, amends the state Criminal Procedure Law to allow for the prosecution of tax evasion involving state or New York City taxes in cases where the defendant was previously prosecuted in federal court for the same criminal transactions (120 DTR H-2, 6/22/11).

Cuomo signed the legislation without comment along with more than 70 other bills.

The bill was backed by New York Attorney General Eric T. Schneiderman (D), Manhattan District Attorney Cyrus R. Vance Jr. (D), and the state's District Attorneys Association.

Schneiderman said the bill would close the ''Helmsley loophole,'' citing a tax evasion case several years ago involving hotel operator Leona Helmsley. The state was barred from prosecuting Helmsley for the same criminal transactions involved in her federal case, according to Schneiderman.

''By cracking down on tax violations, this law ensures there will no longer be one set of rules for the powerful and another for everyone else,'' Schneiderman said in a statement. ''The days of giving tax evaders a free pass are over.''

BY GERALD B. SILVERMAN

Text of the bill is available at http://assembly.state.ny.us/leg/?default_fld=&bn=A08247&term=2011&Text=Y.

California

FTB Seeks Stakeholder Input To Update Mission, Goals, Strategic Plan

SACRAMENTO, Calif.—The Franchise Tax Board is updating its five-year strategic plan, and is taking input for the first time from stakeholders representing businesses and tax practitioners to revise its mission and goals through a series of focus groups in July.

Past strategic plans have focused on the importance of revenue collection and mandates that FTB must carry out to administer state tax laws, FTB staff said at a July 19 focus group. Through the new strategic plan, the agency is also recognizing that services FTB provides to taxpayers are an important part of generating that revenue.

The agency's draft mission statement for discussion at the focus groups states: ''We provide the services and information to help taxpayers file accurate and timely tax returns and pay the proper amount they owe. We do this by developing knowledgeable and engaged employees, and enforcing the law with fairness and integrity, while responsibly managing the public funds entrusted to us.''

Underpinning the mission statement are strategic goals related to service, enforcement, and organization. Under those goals are the foundational principles of protecting taxpayer privacy, transparency, making decisions based on the public's best interest, expanding the use of information technology to reduce costs, and improving revenue collection through the agency's Enterprise Data to Revenue project.

The mission statement, goals, and foundation are in draft form, and FTB staff said they expect to make many revisions based on input from stakeholders before the strategic plan becomes final in late 2011.

Less Enforcement, More Compliance. FTB's mission statement in its 2007-2011 strategic plan states: ''The mission of the Franchise Tax Board is to collect the proper amount of tax revenue, and operate other programs entrusted to us, at the least cost; to serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

Tax practitioners invited to attend the July 19 focus group said the plan should place less emphasis on enforcement, and place more emphasis on encouraging compliance and a two-way relationship with taxpayers and practitioners. The plan should make it clear that enforcement actions are a last resort for the agency, after other options have been exhausted.

Practitioners also questioned whether FTB should place greater emphasis on protecting taxpayer privacy, as well as the agency's efforts to be more flexible in the face of state budget cuts and use of technology to improve efficiency.

FTB staff members are conducting three focus groups with stakeholders in July, and will review a draft strategic plan for 2012-17 with its advisory board at the end of August. The FTB advisory board meets at least once a year with the FTB executive officer and senior staff. The group consists of representatives from stakeholder organizations such as the California Society of Certified Public Accountants, the California Taxpayers Association, Senate and Assembly tax committees, Internal Revenue Service, Society of Enrolled Agents, and others.

The three-member FTB is expected to weigh the new plan at its December meeting.

BY LAURA MAHONEY

Text of the current strategic plan (2007-2011) is available at http://www.ftb.ca.gov/aboutftb/stratgic/StraPlanFINAL_012907.pdf.

Maryland

Montgomery County Repeals Fee Levied on Carbon Emissions of Power Plant

Lawmakers in Montgomery County, Md., voted July 19 to repeal a charge levied on the carbon dioxide emissions of the former Mirant Mid-Atlantic LLC after hearing from County Council Vice President Roger Berliner that ''it is no longer legally feasible'' to defend the fee in light of a recent court ruling.

The $5-per-ton levy applied solely to electricity producer Mirant, now known as GenOn Mid-Atlantic LLC since its merger with RRI Energy Inc. (108 DTR K-1, 6/8/10).

GenOn scored a victory recently when the U.S. Court of Appeals for the Fourth Circuit ruled that the company was not barred under federal law from challenging the fee because it was not a ''tax'' per se but a ''punitive regulatory matter'' (*GenOn Mid-Atlantic LLC v.*

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. ISSN 0092-6884

Montgomery County, 4th Cir., No. 10-1882, 6/20/11) (120 DTR K-2, 6/22/11).

Overturned Earlier Decision on Fee Being 'Tax.' The circuit court ruling overturned an earlier decision by the U.S. District Court for the District of Maryland that the fee was a tax and, therefore, GenOn was barred from challenging it under the Tax Injunction Act, which aims to prevent taxpayers from disrupting state finances through litigation.

Having ruled that the charge was not a tax, the circuit court remanded the case to the district court for further examination of GenOn's claims.

This prompted county officials to reconsider whether a costly legal fight was worth the roughly $15 million per year expected to be generated from the carbon charge.

''It makes little sense for the county to continue to expend resources litigating this matter,'' Berliner said during a public meeting at which the 9-0 repeal vote was taken.

He said the county would not retreat from its goal of cutting greenhouse gases and would continue to lower emissions from its fleet, assist residents in weatherproofing their homes, and explore other means to reach a goal of cutting emissions 80 percent by 2050.

County to Return $8.4 Million. The repealed carbon charge applied only to entities whose emissions exceeded 1 million tons annually. GenOn's coal-fired plant in Dickerson, Md., which emits more than 3 million tons of carbon dioxide per year, was the only facility that met that criterion.

Having repealed the carbon charge, the county will return the $8.4 million that GenOn already paid to cover its emissions since the fee took effect, plus interest, which still is being calculated and is likely to total less than $5,000, county spokesman Patrick Lacefield told BNA.

He said the county had suspected that the carbon fee would be challenged in court and had not relied on GenOn's payments when crafting its fiscal year 2012 budget.

Under the initial plan, half of the revenue collected from the fee was to be spent on county greenhouse gas reduction programs, with the other half going into the general fund.

GenOn spokeswoman Misty Allen told BNA the underlying court case that prompted the county's repeal ''hasn't officially been concluded so we're still under our corporate policy of not commenting on litigation.''

By Kathy Lundy Springuel

Massachusetts

New Draft Guidance Unveiled On Filing Rules for Short-Year Filers

BOSTON—A working draft of a release explaining the rules that short-year tax filers should use to file returns was circulated for comment July 19 by the Massachusetts Department of Revenue.

The draft technical information release (TIR 11-XX) restates and clarifies the extended due date rule announced by DOR in a 2009 technical information release (TIR 09-18) for filers who must file electronically (201 DTR H-2, 10/21/09).

The 2009 TIR stated that for tax returns due after Jan. 1, 2010, a ''taxpayer required to file before the electronic filing method is available will receive an automatic filing extension for the period between the required filing date and 30 days after the date the electronic filing method is available.''

Clarifying 2009 Rules. The July 19 draft release issued by DOR clarifies that the rule announced in 2009 postponing the filing due date until the filing method becomes available also applies to tax returns due in subsequent years from any filer required to file electronically. The draft notes however, that payment of any tax liability must be made by the original due date.

In addition, the draft TIR addresses how short-year filers mandated to file electronically are to handle returns if the electronic versions are not available.

In certain cases, if the form is not available and the short-year filers are permitted to use paper returns, they may use the prior year's paper return forms, adjusting them as needed to account for changes in the law. However, if the correct forms are not available and the filers are required to file electronically, the draft TIR explains that the commissioner will extend the due date for the returns. The draft explains how those extended due dates will be determined.

Comments on the draft TIR related to filing rules for short-year filers are due Aug. 2.

By Martha Kessler

The draft TIR on short-year filing rules is at http://www.mass.gov/?pageID=dorterminal&L=7&L0=Home&L1=Businesses&L2=Help+%26+Resources&L3=Legal+Library&L4=Technical+Information+Releases&L5=TIRs+-+By+Year%28s%29&L6=2011+Releases&sid=Ador&b=terminalcontent&f=dor_rul_reg_tir_tir_11_xx_draft_filers&csid=Ador.

International TAX & ACCOUNTING

Switzerland

Talks Pursued With U.S. Officials to Resolve Tax Evasion Concerns With Swiss Banks

GENEVA—Switzerland is still pursuing talks with the United States on a possible agreement aimed at resolving outstanding matters with Swiss financial institutions suspected of assisting clients in evading U.S. taxes, despite reports that American authorities have rejected the idea, a Swiss government official said July 21.

Roland Meier, Swiss Department of Finance spokesman, declined to comment on a report in the Swiss weekly newspaper *SonntagsZeitung* that the United States has informed Switzerland it is not interested in pursuing such an agreement.

''Switzerland is in discussions with the U.S. authorities about a general solution to settle tax problems of the past,'' Meier told BNA. ''We do not comment on the development of these talks. Switzerland is willing to find a solution within the framework of Swiss legal norms.''

SonntagsZeitung reported July 17 that U.S. authorities sent a letter two weeks earlier to Michael Ambuhl, Switzerland's State Secretary for International Financial and Tax Matters, declaring that the United States was not interested in negotiating an agreement aimed at resolving outstanding tax matters concerning all Swiss financial institutions suspected of assisting U.S. clients to evade U.S. taxes. The weekly cited an unnamed source with ''inside knowledge'' of the matter.

The talks continue as U.S. authorities on July 21 charged three former Credit Suisse employees and the founder of a Swiss trust company with conspiring with other Swiss bankers to defraud the United States by helping U.S. customers hide $3 billion in Swiss accounts (see related report in this issue). In February, four others were charged in an indictment for their roles in the conspiracy (37 DTR K-6, 2/24/11).

Heading Off Another UBS Affair. The Swiss efforts are intended to head off a repeat of the 2009 UBS affair, when Switzerland's largest bank, was forced to hand over details on more than 4,000 secret bank accounts held by U.S. nationals in order to settle proceedings that could have led to the loss of the bank's operating license in the United States for facilitating tax fraud (159 DTR GG-1, 8/20/09). It was once estimated that those accounts held $18 billion in assets.

UBS also agreed earlier that year to hand over details on 255 accounts held by U.S. taxpayers and pay a $780 million fine to settle allegations of conspiring to defraud the U.S. government (31 DTR K-1, 2/19/09).

Those efforts appear to have failed after Credit Suisse, Switzerland's second largest bank, acknowledged July 15 that it is under investigation by the U.S. Justice Department as part of ongoing efforts by U.S. authorities to crack down on tax evasion through offshore and private Swiss banking entities (137 DTR I-1, 7/18/11).

Pressure to Reveal Secret Accounts. The move marks the latest setback for the Swiss banking system, which has been under mounting pressure from the United States and neighboring European Union countries to reveal information about secret Swiss bank accounts held by their nationals.

The Swiss Bankers Association, which represents the country's banking industry, declined to comment on the Swiss-U.S. talks.

Walter Boss, a tax attorney with the Zurich law firm Poledna Boss Kurer AG, said the problem in the negotiations has been that U.S. authorities not only want an ''enormous amount of money'' from the Swiss banks for settling the matter but also a great amount of data on bank clients and client advisers.

''This is contrary to Swiss law which has already been 'bent' in the case of UBS,'' Boss declared, adding it is ''commonly acknowledged'' that the Swiss parliament was unlikely to approve a second Swiss-U.S. tax settlement similar to the one it was asked to approve for the UBS settlement last year.

The fallout from the American tax evasion investigation involving Credit Suisse and other private Swiss banking entities could have a chilling effect on financial institutions dealing with U.S. clients.

HSBC Private Bank, for example, has decided to no longer offer wealth management services to U.S. private clients from locations outside of the United States.

''After a review of services that can be provided to U.S. clients from locations outside of the U.S., we believe that U.S. clients will be better served by our Private Banking teams in the United States,'' said a HSBC Private Bank spokesman in Geneva.

Facing Problems With Other Countries. Swiss authorities are also refusing to comment on reports that a separate agreement with Germany on resolving outstanding tax matters was also at risk because Swiss banks were balking at paying billions to German tax authorities as part of the deal.

Germany's *Handelsblatt* newspaper reported July 19 that Swiss banks may be obliged to reach a deal by making an upfront payment of up to 4 billion euro ($5.75 billion) and another payment equivalent to 30 percent of the income generated by the secret Swiss accounts of German nationals over the past 10 years.

With an estimated 150 billion euro ($215 billion) of private German funds currently stashed away in Swiss banks, the cost of the income charge could be as high as 10 billion euro ($14 billion), *Handelsblatt* said, adding that the Swiss-German talks were expected to continue through the fall.

Meier declined to comment on the Swiss-German negotiations, which Swiss president Micheline Calmy-Rey said last May were expected to be concluded by the middle of the year.

The agreement with Germany, as well as a separate agreement currently being negotiated with the United Kingdom, would impose a withholding tax on the earnings of Swiss bank accounts held by German and U.K. nationals, with most of the money collected then being transferred to Germany.

Balking at Some Agreements. Unlike an existing agreement between Switzerland and the European Union which imposes a withholding tax on interest earnings, the deals with Germany and the U.K. would include the possible taxation of earnings from dividends, income from collective investments, capital gains, and other possible earnings sources.

Boss said the problem for Swiss banks is that they would have to guarantee payments to Germany up to a certain agreed amount. Should German account holders decide to abandon Switzerland and transfer their money elsewhere, which Swiss authorities cannot prevent, Swiss banks could end up fully footing the bill from their own funds, he said.

In addition, some Swiss banks are balking at participating in such an agreement on the grounds that they do not hold unreported German funds and should therefore be excluded from footing part of the bill, Boss added.

By Daniel Pruzin

Italy

Mediation Required for All Tax Disputes In Effort to Reduce Backlog of Court Cases

ROME—Tax disputes in Italy will have to first go through a mediation process before being heard by a judge, according to a legal reform process first launched last year.

The reform, mandated by parliament in the final session of 2009, is aimed at reducing the backlog of court cases. The main plan of the strategy is to require mediation with a professional mediator in hopes of making some quick decisions, either based on compromise between the tax collection agency and the corporation or individual in question, or based on precedent involving similar cases.

The change is valid for all levels of tax disputes, from small individual audits to cases of alleged tax fraud and large corporate tax investigations. The plan took effect July 18 and will remain in effect for one year, at which point it will be evaluated to determine whether it should be extended indefinitely.

The plan requires disputes to be brought before a mediator. If one or both sides dispute a decision, it will be reviewed by a judge, who can decide whether a hearing is warranted. If not, the decision cannot be appealed.

The change is a controversial one: it was opposed by tax collection authorities, the main industrial lobby group, and attorneys. Several have said they will seek to have the change overturned by a European court.

By Eric J. Lyman

European Union

Euro Zone Bank Shelves Tax Proposal To Help Finance New Bailout for Greece

BRUSSELS—Faced with opposition from Germany, the European Central Bank's plan to impose a tax on banks and use the revenue to help finance a new multiannual Greek bailout was withdrawn July 20 from a broader plan designed to reduce Greece's massive public debt.

Following a meeting between French President Nicolas Sarkozy and German Chancellor Angela Merkel on the eve of a July 21 emergency summit of euro zone leaders, European Union diplomats said the bank tax was swept aside because of German concerns that it would be take too long to be get approved and, if backed by the 17 euro zone countries, would be too complex to implement.

The bank tax was proposed by France in recent days as a way to overcome divisions in the euro zone about how private creditors should be required to contribute to the new Greek bailout package. Germany, the Netherlands, and Finland have been insisting that private creditors holding Greek debt take a partial loss by being required to extend bond maturities.

Before proposing a bank tax, France in June proposed a bond rollover plan to accommodate the German-Dutch-Finnish private creditor demands, and that scheme was a complex version of so-called Brady bonds used to resolve a sovereign debt crisis in Latin America in the 1980s, as it ultimately involved government guarantees.

However, credit rating agencies said both the French rollover plan and the German-Dutch-Finnish "haircut" plan would mean Greek bonds would be downgraded to a "selective default." Further complicating the discussions was the position of ECB, which said it would no longer be able to hold Greek debt downgraded to "selective default" as collateral for the liquidity it was providing to Greek banks.

Faced with that Gordian knot, France proposed a 0.0025 percent tax on all assets held by euro zone banks for five years. The French government estimated the tax would raise approximately $14.2 billion per year.

Bank Protests. European banks, which already face levies imposed to help cover the cost of the financial crisis (11 DTR I-2, 1/18/11), as well as a financial transaction tax due to be proposed in November, howled in protest.

ECB backed the European banking industry in saying that the French proposal was too complicated. It added that it would impose a burden on banks that had not made any Greek bond investments.

"The idea was only brought forward in order to bridge the gap between the euro zone countries on the issue of making the private sector contribute to the Greek bailout in a way that would not trigger a credit rating downgrade to selective default or default," said a French diplomat, who spoke to journalists on the condition of anonymity.

By Joe Kirwin

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. DTR ISSN 0092-6884

Accounting

FASB, IASB to Seek More Comment On Joint Lease Accounting Proposal

LONDON—The Financial Accounting Standards Board and the International Accounting Standards Board bowed to constituent pressure July 21 and voted in favor of exposing their joint lease accounting standard for a further round of public comment.

FASB chairman Leslie Seidman summed up the vote across the two boards as ''unanimous.''

Speaking up in favor of re-exposing the leases document, FASB member Larry Smith said a June 15 vote to re-expose the revenue recognition standard for a further round of public comment made it hard to justify any decision against re-exposing leases (116 DTR I-1, 6/16/11).

''When you take a look at the decision we made with respect to revenue recognition and compare that to the [decisions] on leasing, I think there are much stronger technical arguments in terms of the decisions we've made to re-expose with respect to leases than there were for revenue recognition.''

He continued, ''With the decision we made on revenue recognition, I think we'd be hard pressed not to re-expose leases.''

In a press notice issued July 21, Hans Hoogervorst, IASB chairman, said, ''Although we have yet to conclude our deliberations on this project, the direction of travel indicates that there are aspects of our revised proposals that would benefit from additional input from interested parties.''

'Right-of-Use' Model Proposed. FASB and IASB issued an exposure draft Aug. 17, 2010, setting out proposals to eliminate the off-balance sheet accounting treatment of operating leases (158 DTR I-1, 8/18/10).

If eventually confirmed by the two boards, the proposals would require entities to record on their balance sheets all finance and operating leases using the ''right-of-use'' accounting model. In fact, the proposals would largely scrap the distinction between operating and finance leases.

In their place, both lessees and lessors would be required to record assets and liabilities arising from lease contracts. Under the performance-obligation approach, a lessor would recognize a lease liability while continuing to recognize the underlying asset.

Where the lessor had largely transferred asset risk under the lease, the board proposed that it would derecognize the rights in the underlying asset but continue to recognize a residual asset representing its rights to the underlying asset at the end of the lease term—the derecognition approach.

Recent Decisions Represent 'Significant Changes.' To begin the July 21 discussion, Seidman noted, ''We made very good progress at the joint meeting over the last couple of days and we made some important decisions, especially related to lessor accounting which does represent a pretty significant change from what was in the exposure draft.

''There are a number of decisions that we have made that do represent significant changes, including the discussions over the last couple of days on lessor accounting, the definition of a lease, the decisions relating to certain variable lease payments.

''Others have pointed out the close relationship between lessor accounting and the revenue recognition project,'' she concluded.

Constituent Pressure Driving Re-exposure. Also driving the decision to revisit the issue of re-exposure were demands from constituents. ''Both boards have received a number of letters recently that are suggesting that we re-expose the conclusions that we've reached during our redeliberations on the leasing project,'' Seidman acknowledged.

In a June 13 letter, copied to the European Financial Reporting Advisory Group, the European Commission, and the Swedish ministry of justice, the Association of Swedish Finance Houses, called on IASB to re-expose the leasing standard.

The letter criticized the boards' outreach activities, the quality of the exposure drafts, and the need to comment on both revenue recognition and lease accounting in tandem.

On the issue of outreach, the association wrote: ''Targeted outreach activities . . . are not a substitute for a consultation with all constituents from a due process stand point, especially since it is by no means clear whom have [sic] been involved and what has been said during those activities.''

As for the quality of the lease-accounting exposure draft, the association noted, ''Many constituents are concerned that the EDs [exposure drafts] have been discussion papers in substance rather than exposure drafts. . . . Regarding Leases, no complete ED for both lessee and lessor accounting has been issued yet. Therefore it is of immense importance that the Board re-exposes its proposals on Leases.''

The two boards had previously committed, as a minimum, to post a staff draft of the putative leasing standard in order to give constituents an opportunity to comment on the document ahead of its final publication.

BY STEPHEN BOUVIER

Comments to IASB from the Association of Swedish Finance Houses can be found at http://www.ifrs.org/Current+Projects/IASB+Projects/Leases/ed10/Late+letters.htm.

Brazil

Brazilian District Court Expands Listing Of Inputs Qualifying for PIS, Cofins Credits

RIO DE JANEIRO—Brazilian companies July 20 won an important legal battle over tax credits when a federal district court issued a decision expanding the list of inputs that qualify to receive credits for the payment of Brazil's PIS and Cofins social security contribution taxes.

In 2002 and 2003, Brazil's congress passed two laws that eliminated the cumulative impact of PIS and Cofins taxes (172 DTR G-3, 9/5/02). Prior to these laws, the two taxes were charged at every stop along a company's production line, but this was altered to make sure the taxes were only paid at the final stop.

To guarantee this, companies were allowed to receive credits for these taxes on a list of inputs. Since then, however, companies have been attempting to expand this list. The general rule followed by tax officials has been to apply the definition of inputs used for Brazil's excise tax (IPI) which limits them to items that the company uses directly in the manufacture of its products or in the supply of services that it renders (184 DTR I-4, 9/23/08).

But in its July 20 ruling on a case involving a Brazilian firm, the southern district court said the definition should be that which applies to income taxes, a far broader definition that includes any expense ''necessary, usual and normal'' for a company's operations.

The court said that there was no reason to use the excise tax definition of inputs for PIS and Cofins, since the two taxes are completely different. The excise tax is charged on operations involving industrial goods, while PIS and Cofins are charged on a company's total sales revenues.

''Seen in this manner, an input could integrate the stages that result in the product or service or even later stages that are necessary for the functioning of the production factor,'' the court said.

Specifically, the court said the company had been correct in claiming $448,000 in credits for services of logistics and warehousing. The court also cited an April ruling by the appeals organ of Brazil's tax department that accepted the definition of inputs used for income taxes.

Precedential Ruling? Tax attorneys called the ruling significant since it was the first by a district court in favor of companies and should serve as an important precedent. Previous decisions on the same question had all gone against taxpayers.

''The district court's ruling is a relief for taxpayers because it creates fair conditions for the use of these credits,'' said attorney Mauricio Fino of the law firm Barbosa, Mussnich and Aragao. He predicted that other companies which have not been able to use PIS/Cofins credits because of the tax department's narrow definition of inputs will now be strengthened in their appeals.

Other attorneys said that the broader definition of inputs could be used to claim credits for items such as electricity, rents, the depreciation of assets, and advertising.

A spokesman for the finance ministry's legal department said the government had not yet received official notification of the decision from the court and would wait for this before deciding whether to appeal to Brazil's superior court of justice.

The high court began to consider a similar case in June but suspended its voting after the first three justices voted in favor of the affected company.

BY ED TAYLOR

Mexico

New Maquila Rules Applying VAT To Foreign Sales Spur Concerns

MEXICO CITY—Maquiladora representatives in Mexico are raising concerns about new rules that apply value-added taxes to the sale of goods by foreign principals to Mexican entities within the Maquila regime.

The Finance Ministry published the changes to the Maquila program, known as IMMEX, on June 30 in Mexico's *Official Gazette*. The amended rules state that a Mexican company receiving goods from a foreign resident must pay VAT.

This would apply to maquiladoras that not only manufacture goods for export but also virtually import some of the goods back into Mexico to be sold, some experts say.

''The company resident in national territory that receives merchandise must withhold VAT to the foreign resident,'' states the amendment to Miscellaneous Foreign Trade rule 3.8.4. ''As long as the transfer of merchandise is carried out in national territory.''

PricewaterhouseCoopers said in a July 19 news alert that the changes mean the sale of a virtually exported good would now be considered an internal sale subject to VAT withholdings. ''This represents an important change in the VAT treatment of virtually exported/imported goods in Mexico,'' the PwC report stated.

Two VATs. While tax experts note that the VAT withheld by the Mexican acquirer of goods is recoverable or creditable (36 DTR I-5, 2/25/10), maquila representatives say waiting at least two months to recuperate VAT could have a negative impact on companies.

''They are paying two VATs—the VAT for a Mexican sale and the VAT for importation,'' said Ignacio Valdes, committee member of the maquiladora chamber CNIMME and Ernst & Young's maquila industry leader. ''This has an impact on cash flow that can affect the companies' operations.''

Valdes said other concerns raised by CNIMME are that it is not clear whether the rules will strip away tax benefits for maquiladoras.

''The maquila benefits only apply if the product is exported. Since the Mexican government removed that rule and this [process] is no longer an export, will this affect maquila benefits?'' Valdes asked.

Companies, he said, also are worried that the rules may require foreigners to fulfill Mexican fiscal requirements and register in Mexico to receive tax receipts in order for their Mexican entity to be able to deduct taxes.

Three-Month Delay Sought. CNIMME has asked the government to delay enforcement of the rule for three months from its July 1 effective date. The government's Tax Administration Service did not return e-mails and calls seeking comment.

PwC did not mention Valdes' concerns, and said the new rule allows a maquiladora duly registered as a ''certified entity'' to transfer temporarily imported goods owned by a foreign resident to other Mexican resident entities for their definitive importation.

The report concluded that the foreign principals would continue to be treated as not having a permanent

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. DTR ISSN 0092-6884

establishment for tax purposes in Mexico; in other words, their tax benefits would not be impacted. It also stated that administrative changes include the requirement of the nonresident seller to separately state VAT in the invoice, and follow the invoicing rules applicable to nonresidents that do not have a permanent establishment.

Mexico's VAT is 16 percent, and 11 percent for companies located in the border zone.

BY NACHA CATTAN

BNA Insights

Mañana Is Good Enough for Me: IRS Staggers the Dates for FATCA Implementation

BY MARK LEEDS

There is an old saw that posits that good things and bad things both come in threes; well, the Internal Revenue Service has debunked that old adage by releasing Notice 2011-53 on July 14.

The first two IRS releases addressing the implementation of the Foreign Account Tax Compliance Act (FATCA), Notice 2010-60 and Notice 2011-34, contained detailed procedures for foreign financial institutions (FFIs) to implement and comply with Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (the ''Code''). Most interested parties did not consider either notice to be good news and many affected parties responded to these notices by asking for leniency in the implementation of the FATCA withholding rules.

IRS took those comments seriously and in Notice 2011-53 provided a delayed timetable for the implementation of the FATCA withholding rules. This is clearly very good news.

There is uncertainty, however, as to whether IRS will extend the effective date for withholding that would be applicable to non-financial foreign entities (NFFEs)

Brief FATCA Background

The FATCA provisions contain an extraordinary set of penalty tax rules for FFIs that do not:

- conduct due diligence on their account holders, equity holders, and debt holders to ferret out U.S. persons who are holding assets outside of the United States, and
- disclose the identity of such persons to IRS.[1]

Specifically, if the FFI does not comply with the FATCA rules, then ''withholdable payments'' to it for its own account and on behalf of its customers are subject to U.S. federal income tax withholding.[2] Withholdable payments include items of U.S.-source income, such as interest and dividends, as well as gross proceeds ''from the disposition of any property of a type which produce interest or dividends from sources within the United States.''[3] If the payment is made for the account of a nonparticipating FFI, ''no credit or refund shall be allowed or paid with respect to such tax.''[4]

In other words, if an FFI does not comply with the FATCA rules, it will be subjected to gross proceeds withholding on its U.S.-source income and gross proceeds and will not be able to recover the withheld amounts.

Statutory Effective Dates

The legislation enacting the FATCA provisions is effective for payments made after Dec. 31, 2012. Such legislation provides, however, that payments made on obligations outstanding on March 18, 2012, are not subject to FATCA.

The single most important announcement in Notice 2011-53 is that withholding agents will not be required to withhold any amounts under FATCA (now commonly referred to as Chapter 4 withholding) with respect to payments to FFIs made prior to Jan. 1, 2014.

Section I of Notice 2010-60 provides that grandfather protection will not be afforded to equity investments ''or any legal agreement that lacks a definitive expiration or term.'' Neither Notice 2010-60 nor Notice 2011-34, however, provided any phase-in for the FATCA provisions, and FFIs were anticipating that the FATCA withholding rules would simply apply to affected payments beginning in 2013.

Notice 2011-53 Defers FATCA Withholding for Payments to FFIs

Withholding Obligations

The single most important announcement in Notice 2011-53 is that withholding agents will not be required to withhold any amounts under FATCA (now commonly referred to as Chapter 4 withholding) with respect to payments to FFIs made prior to Jan. 1, 2014. Beginning in 2014, withholding will be required on cer-

[1] See Code Section 1471(d)(2) (financial accounts include depository accounts, custodial accounts, and debt and equity investments in the FFI).
[2] Code Section 1471(a).
[3] Code Section 1473(1)(A).
[4] Code Section 1473(1)(A).

Mark Leeds (leedsm@gtlaw.com; (212) 801-6947) is a tax shareholder with the law firm of Greenberg Traurig in New York. Leeds's professional practice includes work on federal income tax reporting issues.

tain so-called withholdable payments made to noncompliant FFIs.

Withholdable payments subject to withholding in 2014 include interest, dividends, and other items of fixed or determinable annual or periodical (FDAP) income. Beginning in 2015, withholding will be required on gross proceeds from the sale of U.S. stock or debt by noncompliant FFIs.[5]

Passthrough payments are both withholdable payments and payments that are attributable to withholdable payments.[6] Only FFIs are subject to withholding on passthrough payments. In Notice 2011-34, IRS promulgated a controversial rule for determining whether a payment is attributable to a passthrough payment. Under this controversial rule, a payment made by an FFI is treated as attributable to withholdable payments based upon a fraction, the numerator of which is the U.S. assets held by the FFI and the denominator of which is its worldwide assets. Under Notice 2011-53, withholding on passthrough payments made to noncompliant FFIs ''will begin no earlier than January 1, 2015.'' As a result, FFIs will not be required to compute their passthrough payment percentage until the first quarter of 2014.

FFI Registration

In light of the delayed effective date for FFI withholding, IRS pushed back the timing for FFIs to register with IRS. For FATCA purposes, FFIs are divided into two camps—participating FFIs and nonparticipating FFIs:

- Participating FFIs are those financial institutions that have agreed, by executing a written agreement with IRS, to comply with the FATCA due diligence and reporting requirements.
- Nonparticipating FFIs are non-U.S. financial institutions that have not agreed to do so.

In Notice 2011-53, IRS provided that FFIs may enter into FFI agreements any time prior to Jan. 1, 2014. Those that enter into FFI agreements prior to July 1, 2013, will be designated as participating FFIs by Jan. 1, 2014, and the FFI agreements will be effective as of July 1, 2013. Those that enter into FFI Agreements after July 1, 2013, will be treated as participating FFIs by Jan. 1, 2014, but may not be designated as such by that time, and will be treated as entering into their FFI agreements on the date that the agreement is actually entered into.

Due Diligence Requirements

Notice 2011-53 also delays the requirements for non-U.S. financial institutions to implement procedures to determine if an account is a U.S. account, that is, an account owned by U.S. persons or owned by a foreign entity that in turn is owned by U.S. persons.[7] The date by which the due diligence must be completed will depend upon when the account was opened and the balance in the account:

- **New Accounts.** FFIs must conduct due diligence on accounts opened after the effective date of an FFI Agreement when the account is opened.
- **Private Banking Account Balances of $500,000 or More.** FFIs must conduct due diligence on private banking accounts opened before the effective date of their FFI agreements with balances of $500,000 or more on the effective date of their FFI agreements within one year after such effective date.
- **Private Banking Account Balances of Less Than $500,000.** FFIs must conduct due diligence on private banking accounts opened before the effective date of their FFI agreements with balances of less than $500,000 by the later of Dec. 31, 2014, or one year after the effective date of their FFI agreements.
- **All Other Accounts.** FFIs must conduct due diligence on accounts that are not described above within two years of the effective date of their FFI agreements.

Reporting to IRS

If the FFI has received an IRS Form W-9, Request for Taxpayer Identification Number and Certification, from an account holder by June 30, 2014, the FFI must report the account to IRS by Sept. 30, 2014. For these accounts, IRS has reduced the amount of information that must be reported in 2014 to information on the account holder, the account balance on Dec. 31, 2013, and the account number. More robust reporting, in accordance with Notice 2011-34, will be required in subsequent years.

If a U.S. account open in 2014 has not waived any reporting restrictions so that information can be reported to IRS, the account must be treated as a recalcitrant account and must be reported to IRS as such by Sept. 30, 2014.

Clarification on Grandfathered Payments

As noted above, grandfathered payments include certain obligations outstanding on March 18, 2012. In Notice 2011-53, IRS extended grandfather protection to any agreement that could produce passthrough payments (determined based upon the issuer's passthrough payment percentage). IRS did not change its rule that agreements with no definitive terms, such as equity securities, are ineligible for grandfather protection.

[5] Code Section 1473(1)(A).
[6] Code Section 1471(d)(7).
[7] See Code Section 1471(d)(1).

COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC.
DTR ISSN 0092-6884

Tax DECISIONS & RULINGS

Tax Prosecutions

Eighth Circuit Affirms Tax Conviction, Remands for Recalculation of Tax Loss

The U.S. Court of Appeals for the Eighth Circuit July 21 affirmed a man's conviction on charges of failing to pay employment taxes, but vacated a district court's calculation of loss to the government because the improper deductions he ''gifted'' to other individuals were never claimed (*United States v. McLain*, 8th Cir., No. 09-3292, 7/21/11).

Francis Leroy McLain was convicted of failing to account for and pay employment taxes by the U.S. District Court for the District of Minnesota, sentenced to four years in prison, and fined $75,000. McLain managed a temporary staffing agency for nurses that failed to file either a Form 941, Employer's Quarterly Federal Tax Returns, or pay employment taxes between 2002 and 2005.

McLain challenged his conviction on several grounds, including a claim that the district court erred in admitting evidence related to his compliance with Minnesota tax law. He contended that evidence related to his compliance with Minnesota law was irrelevant to the federal charges and its potential prejudice substantially outweighs its probative value.

''We agree with the district court that such evidence was highly relevant to McLain's willfulness, a necessary element of the crime charged,'' wrote Judge Bobby Shepherd for the Eighth Circuit. ''In addition, because McLain's beliefs were a central issue at trial, the district court did not abuse its discretion in finding the evidence highly probative and not outweighed by any unfair prejudice.''

Loss to Government Miscalculated. McLain also contended the district court miscalculated his sentence under the sentencing guidelines. He said the district court included the amount of tax deductions he gave as ''gifts'' to two other individuals in its calculation of a tax loss to the government. However, the district court did not find that either individual filed a return claiming the false deduction.

Shepherd said Internal Revenue Code Section 7206(2) cannot be violated if a false return is never prepared.

''We have laid out three essential elements to a violation of section 7206(2): '(1) the defendant aided, assisted, procured, counseled, advised or caused the preparation and presentation of a return; (2) the return was fraudulent or false as to a material matter; and (3) the act of the defendant was willful,' '' wrote Shepherd. ''The second element—the return was fraudulent or false as to a material matter—cannot be met if no return was actually prepared.''

McLain was represented by Joseph S. Friedberg of Minneapolis. The government was represented by Michael L. Cheever.

Text of the decision is in TaxCore.

Tax Prosecutions

Swiss Financial Adviser Indicted, Accused of Hiding $184 Million for Clients

The Swiss financial adviser who owned and operated Sinco Treuhand AG in Zurich was indicted July 21 in the U.S. District Court for the Southern District of New York on charges of conspiring with U.S. taxpayers to hide more than $184 million at various Swiss banks, the Justice Department announced (*United States v. Singenberger*, S.D.N.Y., No. 11-cr-00620-LAK, 7/21/11).

Beda Singenberger of Zurich conspired with his U.S. clients from 1998 to 2009 to hide their Swiss-based accounts, and the income generated from them, from the Internal Revenue Service, according to the indictment. It said he had more than 60 U.S. clients and opened dozens of accounts on their behalf, often using sham entities.

In 2008, when it became publicly known that UBS AG was being investigated by U.S. law enforcement and being pressured to identify its U.S. account holders, Singenberger moved his clients' accounts from UBS to other Swiss banks and put them into the names of sham entities, DOJ said.

Singenberger prepared, and provided to the various Swiss banks, IRS forms that falsely and fraudulently stated that the real owners of the undeclared accounts maintained at the banks were not U.S. taxpayers, DOJ said. At the same time, he was submitting to the Swiss government a form required under that country's law law—the Form A—which truthfully stated that a U.S. taxpayer was the actual owner of the account.

Text of the indictment is in TaxCore.

Property Taxes

California Court Upholds Penalty For Late Payment of Property Taxes

LOS ANGELES—A taxpayer whose delinquent property tax payment was the result of inadvertent employee error was not entitled to have a late payment penalty cancelled because the error was not beyond the company's control, a state appellate court ruled (*Avalonbay Communities Inc. v. County of Los Angeles,* Cal. App. Ct., No. B225422, 7/21/11).

The unanimous opinion by a three-judge panel of the Second Appellate District of the California Court of Ap-

peal was first filed June 22, but was not certified for publication. Following requests by three California counties—Los Angeles, Orange, and Stanislaus—the court July 21 ordered it published.

The ruling marks the third virtually identical opinion on the question of late property tax payment penalty cancellation in state appellate courts in the last year. There had previously been very little judicial guidance on the matter, Deputy Los Angeles County Counsel Richard Girgado, who represented the county in the instant case, told BNA.

In California, taxpayers are permitted to submit property taxes due to the relevant county tax collector in two, semi-annual installments. The first is considered delinquent if it is not received by Dec. 10, and the second if it is not received by April 10.

In April 2006, plaintiff Avalonbay Communities Inc. prepared an internal ''funds transfer request'' specifying that $2.1 million should be wired to the Los Angeles County Tax Collector on April 6.

Manager Failed to Wire Money. However, due to ''human error,'' the company's cash management manager failed to wire the amount on the scheduled date. When she discovered the error on April 12, two days after the deadline, she immediately wired the money.

The county notified Avalon that it would be assessed a 10 percent late payment penalty.

In June 2006, Avalon requested that the Tax Collector cancel the penalty pursuant to Revenue and Taxation Code section 4985.2 because the late payment was ''inadvertent.'' After reviewing Avalon's request, the county tax collector determined that the late payment was solely the result of employee error, which was insufficient to support cancellation under 4985.2, the appellate panel wrote in its summary of the case.

After an appeal to the County Board of Supervisors was denied, Avalon filed a petition for writ of mandate claiming the error was beyond the company's control. In a May memorandum filed in support of the writ, Avalon admitted that its late payment was the result of ordinary neglect and mistaken inadvertence, but nevertheless argued that 4985.2 ''required cancellation unless the evidence showed the taxpayer had acted with 'willful neglect','' the court added.

Alternatively, Avalon argued that regardless of what standard of negligence applied, the company could not be held responsible for errors committed by its employees.

Court Rejects Company's Statute Interpretation. The trial court in June 2009 rejected Avalon's interpretation of the statute, holding that 4985.2 ''must be interpreted to mean that a penalty cancellation for a late payment must be supported by reasonable cause, meaning the late payment was caused by circumstances beyond the taxpayer's control, and not due to its own negligence.''

In its discussion of Avalon's appeal, the three-judge panel noted that 4985.2 allows for cancellation of the late penalty if: a) the failure to make a timely payment was due to reasonable cause and circumstances beyond the taxpayer's control; or b) there was an inadvertent error in the amount paid, providing the proper amount was paid within 10 days after notice of the shortage was mailed by the tax collector.

Avalon argued that it was entitled to cancellation of the penalty under 4985.2(a) because there was no evidence that the company acted with willful negligence; and secondly that the company could not be held responsible for negligent acts committed by employees.

In essence, Avalon argued that the tax collector had to cancel the penalty ''because the undisputed evidence showed that its delinquent payment was the result of an inadvertent act of ordinary negligence,'' the court noted.

Checks Mailed to Wrong Tax Collector. But in a case decided by another California appellate district in 2010, *ZC Real Estate Tax Solutions Limited v. Ford*, that court held that 4985.2(a) ''does not permit cancellation of a tax penalty if the delinquent payment was caused by the taxpayer's own mistake,'' the appellate panel in the instant case wrote.

In that case, an employee of ZC Real Estate inadvertently mailed property tax checks to the wrong county tax collector. When the error was discovered on April 12, the taxpayer immediately wired the proper payments to the correct tax collector, but was nevertheless assessed a 10 percent late payment penalty.

In that case, too, ZC Real Estate argued that cancellation was required because there was no evidence of willful neglect. But the appellate court concluded that 4985.2 plainly required that the late payment had to be due to circumstances beyond the taxpayer's control.

The court in the instant case agreed.

''The facts of this case cannot be meaningfully distinguished from *ZC Real Estate*,'' the panel wrote. ''The undisputed evidence demonstrates that Avalon's delinquent payment was the result of a mistake made by its own employees,'' it added.

And while Avalon urged the Second Appellate District to adopt a different interpretation than the *ZC Real Estate* court, it demurred, stating that ''we agree *with ZC Real Estate's* conclusion that, when considered as a whole, the statute clearly precludes cancellation if the failure to make a timely payment was due to circumstances within the taxpayer's control.''

Employee Negligence Claim Rejected. The panel also rejected Avalon's argument that employee negligence was a circumstance beyond its control.

''Avalon's contention that a corporate employer cannot be held responsible for its employees' mistakes is unsupported by any legal citation and we find no merit in it,'' the court wrote.

In a footnote, the appellate court also noted that after briefing and oral arguments were completed in its case, the Fourth Appellate District issued an almost identical ruling in a case involving late payment of property taxes due to an internal error in formatting a spreadsheet (*First American Commercial Real Estate Services Inc. v. County of San Diego*).

''*First American* provides further support for our conclusion that where, as here, a late tax payment was the result of an avoidable mistake committed by the taxpayer, section 4985.2, subdivision (a) provides no grounds for relief,'' the court in the instant case wrote.

Robert A. Pool, of Gangloff, Gangloff & Pool in Bellflower, Calif., who represented Avalon, told BNA July 21 that in light of the three appellate court decisions on the matter, an appeal was not likely.

By Tom Gilroy

Text of the ruling is at http://www.courtinfo.ca.gov/opinions/documents/B225422.PDF.

COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC.
DTR ISSN 0092-6884

Tax Prosecutions

Former Credit Suisse Employees Indicted For Role in Stashing Billions for U.S. Clients

Three former Credit Suisse employees and the founder of a Swiss trust company were charged July 21 in the U.S. District Court for the Eastern District of Virginia with conspiring with other Swiss bankers to defraud the United States by helping U.S. customers in stashing $3 billion in Swiss accounts, the Justice Department and Internal Revenue Service announced (*United States v. Walder*, E.D. Va., No. 11-cr-00095-GBL, 6/21/11).

The superseding indictment issued July 21 named as defendants Markus Walder, former head of North America Offshore Banking with Credit Suisse; Susanne D. Ruegg Meier, a former manager with the bank; and Andreas Bachmann, a former banker with a Credit Suisse subsidiary. Also charged was Josef Dorig, the founder of a Swiss trust company.

In February, four other defendants—Marco Parenti Adami, Emanuel Agustino, Michele Bergantino, and Roger Schaerer, were charged in an indictment for their roles in the conspiracy, DOJ said (37 DTR K-6, 2/24/11).

News of the July 21 indictment cranks up the heat on Credit Suisse, which acknowledged July 15 that it is under investigation by the U.S. Justice Department as part of ongoing efforts by U.S. authorities to crack down on tax evasion through offshore and private Swiss banking entities (137 DTR I-1, 7/18/11).

Swiss government officials told BNA July 21 they are pursuing talks with U.S. officials to resolve outstanding tax concerns with Swiss financial institutions (see related report in this issue).

Designed to Evade Income Taxes. In the July 21 indictment, DOJ said the bankers engaged in illegal cross-border banking that was designed to assist U.S. customers in evading their income taxes by opening and maintaining secret bank accounts with Credit Suisse or with other Swiss banks. As of 2008, the bank maintained thousands of secret accounts for U.S. customers with as much as $3 billion in total assets under management in those accounts, it said.

DOJ said the conspiracy dated back to 1953 and involved two generations of U.S. tax evaders, including customers who inherited secret accounts at the banks. Additionally, the conspirators utilized a representative office in New York City to provide unlicensed and unregistered banking services to U.S. customers with undeclared accounts, DOJ said.

Walder, Schaerer, and their co-conspirators allegedly made false statements and provided misleading information to the Federal Reserve Bank of New York and to IRS to conceal the bank's U.S. cross-border business and the role the New York office had in the business, DOJ said.

Walder Supervised Cross-Border Business. Walder supervised the U.S. cross-border banking business, including the New York office headed by Schaerer. He also led a Geneva-based team of bankers, overseen by Adami and a Zurich-based team of bankers led by Ruegg Meier, DOJ said. It said Ruegg Meier was a member of Credit Suisse's senior management and served as a private banker, providing unlicensed and unregistered banking services to U.S. customers with undeclared accounts with the bank.

According to DOJ, Bachmann was a private banker for a wholly-owned subsidiary of Credit Suisse who traveled to the United States to assist U.S. taxpayers in evading U.S. taxes through the use of secret bank accounts. It further claimed that Dorig's Swiss trust company was a preferred provider of Credit Swiss and assisted U.S. customers in forming and maintaining nominee tax haven entities and opening secret accounts.

The defendants and their co-conspirators solicited U.S. customers to open secret accounts because Swiss bank secrecy would permit them to conceal from IRS their ownership of accounts with Credit Suisse and other Swiss banks, DOJ said. It added that Credit Suisse employees destroyed statements and other account records that were sent to the New York office via e-mail or facsimile so the records would not be maintained in the United States.

Text of the indictment is in TaxCore.

TaxCore Text

The documents in this section are from today's *TaxCore*. To access all of today's *TaxCore* documents and the *TaxCore* archives, go to: http://pubs.bna.com/ip/bna/txc.nsf/mainview. To register for *TaxCore*, contact BNA Customer Relations.

IRS Final, Temporary Rules (T.D. 9538) Addressing When Derivative Contracts Do Not Cause Exchanges to Nonassigning Counterparties Under Section 1001

These rules are scheduled to be published in the *Federal Register* dated July 22, 2011.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9538]

RIN 1545-BK14

Modifications of Certain Derivative Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that address when a transfer or assignment of certain derivative contracts does not result in an exchange to the nonassigning counterparty for purposes of § 1.10011(a). The text of these temporary regulations also serves as the text of the proposed regulations (REG-109006-11) set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date*: These regulations are effective on July 22, 2011.

Applicability Date: For the date of applicability, see § 1.1001-4T(d).

FOR FURTHER INFORMATION CONTACT: Andrea M. Hoffenson, (202) 6223920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1001 of the Internal Revenue Code (Code) provides rules for the computation and recognition of gain or loss from a sale or other disposition of property. For purposes of section 1001, § 1.1001-1(a) of the Income Tax Regulations generally provides that gain or loss is realized upon an exchange of property for other property differing materially either in kind or in extent. As a general matter, the assignment of a notional principal contract is treated as a taxable disposition to a nonassigning counterparty if the resulting contract differs materially either in kind or in extent. See *Cottage Savings Association v. Commissioner*, 499 U.S. 554, 566 (1991) [1991-2 CB 34, 38] (''Under [the Court's] interpretation of [section] 1001(a), an exchange of property gives rise to a realization event so long as the exchanged properties are 'materially different'-that is, so long as they embody legally distinct entitlements.''). Section 1.10014(a) provides, however, that the substitution of a new party on a notional principal contract is not treated as a deemed exchange of the contract by the nonassigning party for purposes of § 1.1001-1(a) if two conditions are satisfied: the assignment is between dealers in notional principal contracts and the terms of the contract permit the substitution.

Many notional principal contracts permit assignment of the contract only with the consent of the nonassigning counterparty. There has been some uncertainty as to whether a contract that requires the consent of the nonassigning counterparty as a condition to assignment will satisfy the second requirement of § 1.1001-4(a) as described in the previous paragraph. In addition, commenters have suggested that the scope of § 1.1001-4 is too narrow because it only applies to notional principal contracts. The need to amend § 1.1001-4 has been increased by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 (124 Stat 1376 (2010)) (Dodd-Frank), which in some cases will necessitate the movement of entire books of derivative contracts. In particular, there is a concern that the assignment of derivative contracts may create a taxable event for the nonassigning counterparties to the assigned contracts.

The IRS and the Treasury Department agree that § 1.1001-4 should be amended and expanded to include derivative contracts other than notional principal contracts. These temporary regulations replace the current, final regulations of § 1.1001-4.

Explanation of Provisions

These temporary regulations provide that there is no exchange to the nonassigning counterparty for purposes of § 1.1001-1(a) solely because a dealer in securities or a clearinghouse transfers or assigns a derivative contract to another dealer in securities or clearinghouse, provided that the transfer or assignment is permitted by the terms of the contract. The derivative contracts to which these regulations apply are those described in section 475(c)(2)(D), 475(c)(2)(E), or 475(c)(2)(F). In addition, these temporary regulations provide that transfers or assignments are permitted by the terms of the contract when consent of the nonassigning counterparty is required as well as those transfers or assignments that do not require consent. If consideration passes between the assignor and assignee in

connection with the transfer or assignment, the consideration will not affect the treatment of the nonassigning counterparty for purposes of § 1.1001-4. If any consideration is paid to or received by the nonassigning counterparty, however, the payment or receipt of the consideration is analyzed under the general principles of section 1001 to determine its effect on the nonassigning counterparty. In addition, any changes to the terms of the contract are analyzed under the general principles of section 1001 to determine whether there has been a sale or disposition of the contract by the parties.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Andrea M. Hoffenson, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1001-4 is revised to read as follows:

§ 1.1001-4 Modifications of certain derivative contracts.

(a) through (d) [Reserved]. For further guidance, see § 1.1001-4T(a) through (d).

Par. 3. Section 1.1001-4T is added to read as follows:

§ 1.1001-4T Modifications of certain derivative contracts (temporary).

(a) *Certain assignments*. For purposes of § 1.1001-1(a), the transfer or assignment of a derivative contract is not treated by the nonassigning counterparty as a deemed exchange of the original contract for a modified contract that differs materially either in kind or in extent if—

(1) Both the party transferring or assigning its rights and obligations under the derivative contract and the party to which the rights and obligations are transferred or assigned are either a dealer in securities or a clearinghouse;

(2) The terms of the derivative contract permit the transfer or assignment of the contract, whether or not the consent of the nonassigning counterparty is required for the transfer or assignment to be effective; and

(3) The terms of the derivative contract are not otherwise modified in a manner that results in a taxable exchange under section 1001.

(b) *Definitions*. (1) *Dealer in securities*. For purposes of this section, a *dealer in securities* is a taxpayer who meets the definition of a dealer in securities in section 475(c)(1).

(2) *Clearinghouse*. For purposes of this section, a *clearinghouse* is a derivatives clearing organization (as such term is defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)) or a clearing agency (as such term is defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))) that is registered, or exempt from registration, under each respective Act. .

(3) *Derivative contract*. For purposes of this section, a *derivative contract* is a contract described in section 475(c)(2)(D), 475(c)(2)(E), or 475(c)(2)(F) without regard to the last sentence of section 475(c)(2) referencing section 1256.

(c) *Consideration for the assignment*. Any consideration for the transfer or assignment that passes between the party transferring or assigning its rights and obligations under the contract and the party to which the rights and obligations are transferred or assigned will not affect the treatment of the nonassigning counterparty for purposes of this section.

(d) *Effective/applicability date*. This section applies to transfers or assignments of derivative contracts on or after July 22, 2011.

(e) *Expiration date*. The applicability of this section expires on or before July 21, 2014.

Steven T. Miller
Deputy Commissioner for Services and Enforcement.

Approved: July 15, 2011

Emily S. McMahon
Assistant Secretary of the Treasury (Tax Policy).

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. DTR ISSN 0092-6884

IRS Proposed Rules (REG-109006-11) Addressing When Derivative Contracts Do Not Cause Exchanges to Nonassigning Counterparties Under Section 1001

These proposed rules are scheduled to be published in the *Federal Register* dated July 22, 2011.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-109006-11]

RIN 1545-BK13

Modifications of Certain Derivative Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to whether an exchange for purposes of § 1.1001-1(a) occurs for the nonassigning counterparty when there is an assignment of certain derivative contracts. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by Oct. 20, 2011. Outlines of topics to be discussed at the public hearing scheduled for Thursday, October 27, 2011, must be received by Thursday, October 20, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-109006-11), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-10900611), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-109006-11). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Andrea Hoffenson, (202) 622-3920; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1001. The temporary regulations provide that the transfer or assignment of a derivative contract in certain situations is not an exchange to the nonassigning counterparty for purposes of § 1.1001-1(a). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, October 27, 2011, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC. Due to building security procedures, visitors must enter through the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the ''**FOR FURTHER INFORMATION CONTACT**'' section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Thursday, October 20, 2011. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Andrea M. Hoffenson, Office of Associate Chief Council (Financial Institutions and Products). However, other person-

nel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1001-4 is revised to read as follows:

§ 1.1001-4 Modifications of certain derivative contracts.

[The text of the proposed amendments to § 1.1001-4 is the same as the text for § 1.1001-4T(a) through (d) published elsewhere in this issue of the **Federal Register**].

Steven T. Miller
Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011-18531 Filed 07/21/2011 at 8:45 am; Publication Date: 07/22/2011]

 ■ COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC.

Fast Answers: Federal Tax

Tax FAQs at your fingertips!

Easy-to-use and covering more than 3,000 questions facing tax practitioners on a daily basis, **Fast Answers: Federal Tax** takes the most sought-after content in BNA's renowned ***Tax Practice Series*** chapters and puts it into an easy-to-use question and answer format that's perfect for new and seasoned tax professionals.

Fast Answers: Federal Tax gives you the best of BNA's expert, tax-practitioner authors who provide in-depth, practical guidance and:

✓ Cover a wide range of topics including Individual Tax, C Corporations, S Corporations, International Tax, Tax Exempt Organizations

✓ Provide quick answers and best-practice solutions to the most common and not-so-common tax topics you'll face in your day-to-day work

✓ Give you easy access to more than 3,000 questions with links to the related Tax Practice Series chapter for easy reference and context within the larger tax scenario

Available in BNA's Tax Practice Series
Sign up for a FREE 15-DAY TRIAL
Visit www.bna.com/fastanswers

Calendar

LEGISLATIVE CALENDAR

SENATE

Floor Action

July 21

Met at 9:30 a.m.

Began consideration of the motion to proceed to the consideration of **H.R. 2560**, to cut, cap, and balance the federal budget.

Passed **S. 1103**, to extend the term of the incumbent director of the Federal Bureau of Investigation.

To reconvene July 22.

July 20

Reached a unanimous-consent-time agreement providing that when the Senate receives **H.R. 2560**, to cut, cap, and balance the federal budget, it be ordered to be read twice and placed on the calendar; provided further, that when the Senate considers the motion to proceed to the bill, the time until 2 p.m. be equally divided and controlled between the two leaders, or their designees, with senators permitted to speak therein for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

Received a message from the president of the United States transmitting, pursuant to law, a report relative to the former Liberian regime of Charles Taylor and on the continuation of the national emergency blocking property of certain persons and prohibiting the importation of certain goods from Liberia that was established in Exec. Order No. 13348 on July 22, 2004; which was referred to Banking.

Received the following nominations:

- Michael Walter Fitzgerald, of California, to be a U.S. district judge for the Central District of California; and
- routine lists in the Air Force, Army, and Navy.

Reports Filed

July 20

NONE.

Bills & Resolutions Introduced

July 20

(INFRASTRUCTURE) NELSON (Neb.): S. 1389, to exempt any road, highway, or bridge damaged by a natural disaster, including a flood, from duplicative environmental reviews if the road, highway, or bridge is reconstructed in the same location; to Environment.

(TAX LIENS) LEVIN and BEGICH: S. 1390, to amend the Internal Revenue Code of 1986 to simplify, modernize, and improve public notice of and access to tax lien information by providing for a national, Internet accessible, filing system for federal tax liens, and for other purposes; to Finance.

(VETERANS' BENEFITS) TESTER: S. 1391, to amend title 38, U.S. Code, to improve the disability compensation evaluation procedure of the secretary of veterans affairs for veterans with post-traumatic stress disorder or mental health conditions related to military sexual trauma, and for other purposes; to Veterans' Affairs.

(ENVIRONMENT) COLLINS and others: S. 1392, to provide additional time for the administrator of the Environmental Protection Agency to issue achievable standards for industrial, commercial, and institutional boilers, process heaters, and incinerators, and for other purposes; to Environment.

(ENVIRONMENT) BARRASSO: S. 1393, to prohibit the enforcement of a climate change interpretive guidance issued by the Securities and Exchange Commission, and for other purposes; to Banking.

(NUCLEAR ENERGY) WEBB and ALEXANDER: S. 1394, to allow a commissioner of the Nuclear Regulatory Commission to continue to serve on the commis-

TODAY'S CONGRESSIONAL MEETINGS

SENATE

Scheduled to meet.

Continues on motion to proceed to H.R. 2560, debt limit.

Committee Meetings Scheduled

None.

HOUSE

Meets at 9 a.m.

Considers H.R. 2551, Legislative Branch appropriations.

Committee Meetings Scheduled

VETERANS' AFFAIRS, Disability Assistance Subcommittee: Pending legislation (markup), 10 a.m., 334 CHOB.

LEGISLATIVE CALENDAR

Continued from previous page

sion if a successor is not appointed and confirmed in a timely manner; to Environment.

Committee Action

Area code for all telephone numbers is 202 unless otherwise stated.

Location Key:
(Times and locations are subject to change.)
S—Senate side of U.S. Capitol Building
SC—Senate side of U.S. Capitol Building
SD—Senate Dirksen Office Building
SH—Senate Hart Office Building
SR—Senate Russell Office Building
SVC—Senate side of Capitol Visitor Center

July 21

AGRICULTURE, full committee held a hearing on the nomination of Mark P. Wetjen, of Nevada, to be a commissioner of the Commodity Futures Trading Commission.

ARMED SERVICES, full committee held a hearing on the following nominations: James A. Winnefeld Jr., U.S. Navy, for reappointment to the grade of admiral and to be vice chairman of the Joint Chiefs of Staff; Gen. Raymond T. Odierno, U.S. Army, for reappointment to the grade of general and to be chief of staff of the U.S. Army; and Gen. William M. Fraser III, U.S. Air Force, for reappointment to the grade of general and to be commander of the U.S. Transportation Command.

BANKING, full committee held a hearing on enhanced oversight after the financial crisis, focusing on the ''Wall Street Reform Act'' at one year.

COMMERCE, Surface Transportation Subcommittee held a hearing on making roads safer, focusing on reauthorization of the motor carrier safety programs.

ENERGY, full committee ordered reported the following legislation: S. 916, to facilitate appropriate oil and gas development on federal land and waters, and to limit dependence of the United States on foreign sources of oil and gas; and S. 512, to amend the Energy Policy Act of 2005 to require the secretary of energy to carry out programs to develop and demonstrate two small modular nuclear reactor designs; but did not complete action on S. 917, to amend the Outer Continental Shelf Lands Act to reform the management of energy and mineral resources on the Outer Continental Shelf.

ENVIRONMENT, full committee held a hearing on legislative issues for transportation reauthorization.

FOREIGN RELATIONS, full committee held a hearing on the nomination of Sung Y. Kim, of California, to be ambassador to the Republic of Korea.

HEALTH, EDUCATION, LABOR, & PENSIONS, full committee held a hearing on improving for-profit higher education, focusing on a roundtable discussion of policy solutions.

INDIAN AFFAIRS, full committee held an oversight hearing on floods and fires, focusing on emergency preparedness for natural disasters in the native communities.

JUDICIARY, full committee ordered reported the following legislation: S. 1231, to reauthorize the Second Chance Act of 2007; S. 27, to prohibit brand name drug companies from compensating generic drug companies to delay the entry of a generic drug into the market; and S. 1228, to prohibit trafficking in counterfeit military goods or services; and ordered favorably reported the following nominations: Christopher Droney, of Connecticut, to be a U.S. circuit judge for the Second Circuit; Robert David Mariani, of Pennsylvania, to be a U.S. district judge for the Middle District of Pennsylvania; Cathy Bissoon, of Pennsylvania, to be a U.S. district judge for the Western District of Pennsylvania; Mark Raymond Hornak, of Pennsylvania, to be a U.S. district judge for the Western District of Pennsylvania; Robert N. Scola Jr., of Florida, to be a U.S. district judge for the Southern District of Florida; and Clayton D. Johnson, of Oklahoma, to be a U.S. marshal for the Northern District of Oklahoma; but did not consider the following legislation: S. 401, to help federal prosecutors and investigators combat public corruption by strengthening and clarifying the law; S. 657, to encourage, enhance, and integrate Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty; S. 409, to ban the sale of certain synthetic drugs; S. 605, to amend the Controlled Substances Act to place synthetic drugs in Schedule I; and S. 839, to ban the sale of certain synthetic drugs; and did not consider the following nomination: Steve Six, of Kansas, to be a U.S. circuit judge for the Tenth Circuit.

SELECT INTELLIGENCE, full committee held a closed hearing on certain intelligence matters.

SPECIAL AGING, full committee held a hearing on reducing drug costs to Medicare.

July 20

HEALTH, EDUCATION, LABOR, & PENSIONS, full committee ordered favorably reported the following nominations: Phyllis Nichamoff Segal, of Massachusetts, to be a member of the board of directors of the Corporation for National and Community Service; Lisa M. Quiroz, of New York, to be a member of the board of directors of the Corporation for National and Community Service; John D. Podesta, of the District of Columbia, to be a member of the board of directors of the Corporation for National and Community Service; Matthew Francis McCabe, of Pennsylvania, to be a member of the board of directors of the Corporation for National and Community Service; Marguerite W. Kondracke, of Tennessee, to be a member of the board of directors of the Corporation for National and Community Service; Jane D. Hartley, of New York, to be a member of the board of directors of the Corporation for National and Community Service; Richard Christman, of Kentucky, to be a member of the board of directors of the Corporation for National and Community Service; Dan Arvizu, of Colorado, to be a member of the National Science Board of the National Science Foundation; Alan I. Leshner, of Maryland, to be a member of the National Science Board of the National Science Foundation; Wil-

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. DER ISSN 0148-8155

liam Carl Lineberger, of Colorado, to be a member of the National Science Board of the National Science Foundation; Aaron Paul Dworkin, of Michigan, to be a member of the National Council on the Arts; and Eric S. Edelman, of Virginia, to be a member of the board of directors of the U.S. Institute of Peace.

Committee Meetings Scheduled

July 22

NONE.

HOUSE

Floor Action

July 22

To meet at 9 a.m.

Considers **H.R. 2551**, making fiscal 2012 appropriations for the Legislative Branch.

July 21

Met at 10 a.m.

Began consideration of **H.R. 1315**, to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to strengthen the review authority of the Financial Stability Oversight Council of regulations issued by the Bureau of Consumer Financial Protection.

During consideration, adopted the following:

- a Paulsen amendment to clarify that the nonvoting members of the council are allowed to petition against any rule made by the Consumer Financial Protection Bureau, even if they represent an industry the CFPB is not permitted to regulate;
- a Quigley amendment to require the Financial Stability Oversight Council to provide live online streaming or broadcasting of council meetings pertaining to review of Consumer Financial Protection Bureau regulations;
- a Chu amendment to give additional responsibility to the commissioner responsible for oversight of the bureau's activities pertaining to the protection of older consumers, minorities, youth, and veterans; the commissioner would be required to research how language barriers can lead to unfair and abusive lending practices, and report to the full commission ways to protect consumers from these unfair and deceptive practices; and
- a Lankford amendment to require the inspector general of the Board of Governors of the Federal Reserve System and the CFPB to submit an annual report to Congress no later than Feb. 1, 2012, and every year thereafter, which identifies all new guidance, regulation, and rules prescribed by the bureau, any bureau authority which overlaps with other federal agencies and departments, bureau administrative expenses, and bureau unobligated balances.

Rejected a Maloney amendment that sought to strike section 1023 of the Dodd-Frank law giving the Financial Stability Oversight Council the ability to override Consumer Financial Protection Bureau rules.

Pending are the following:

- a Jackson Lee (Texas) amendment that seeks to restore a two-thirds majority vote in order for the Financial Stability Oversight Council to overrule Consumer Financial Protection Bureau regulation;
- a DeFazio amendment that seeks to eliminate potential conflicts of interest by providing that no member of the Financial Stability Oversight Council may participate in a vote to issue a stay of, or set aside, a regulation issued by the Bureau of Consumer Financial Protection if said regulation would affect an institution for which that individual was employed in the preceding two years;
- a Miller (N.C.) amendment that seeks to require specific disclosure of information related to filing agency petitions to the Financial Stability Oversight Council to overturn Consumer Financial Protection Bureau rulemaking;
- a Jackson Lee (Texas) amendment that seeks to restore time limits in which the Financial Stability Oversight Council must review and make a determination on regulations issued by the Consumer Financial Protection Bureau; and
- a Maloney amendment that seeks to transfer all authority that the Consumer Financial Protection Bureau would receive to the secretary of the treasury if no commission chair is in place by July 21 until such time as a chair has been confirmed by the Senate.

Earlier, by a vote of 238-177, agreed to **H. Res. 358**, the rule providing for consideration of the bill.

Prior to that, by a vote of 227-173, agreed to order the previous question on the resolution.

Agreed, by a vote of 239-172, to **H. Res. 359**, the rule providing for consideration of **H.R. 2551**, making fiscal 2012 appropriations for the Legislative Branch.

The Government Accountability Office released the following reports: *Afghanistan: Actions Needed to Improve Accountability of U.S. Assistance to Afghanistan Government* (GAO-11-710); *Federal Reserve System: Opportunities Exist to Strengthen Policies and Processes for Managing Emergency Assistance* (GAO-11-696); *Securities Fraud Liability and Secondary Actors* (GAO-11-664); and *Space and Missile Defense Acquisitions: Periodic Assessment Needed to Correct Parts Quality Problems in Major Programs* (GAO-11-404).

GAO products are available at http://www.gao.gov.

July 20

Read a message from the president of the United States wherein he notified Congress that the national emergency and related measures dealing with the former regime of Charles Taylor are to continue in effect beyond July 22, 2011; which was referred to Foreign Affairs; and ordered printed (H. Doc. No. 112-45).

Reports Filed

July 20

H.R. 290, to amend title 36, U.S. Code, to ensure that memorials commemorating the service of the U.S. Armed Forces may contain religious symbols (H. Rept. No. 112-156).

H.R. 295, to amend the Hydrographic Services Improvement Act of 1998 to authorize funds to acquire hydrographic data and provide hydrographic services specific to the Arctic for safe navigation, delineating the U.S. extended continental shelf, and the monitoring and description of coastal changes (H. Rept. No. 112-157).

H.R. 441, to authorize the secretary of the interior to issue permits for a microhydro project in nonwilderness areas within the boundaries of Denali National Park and Preserve, to acquire land for Denali National Park and Preserve from Doyon Tourism Inc., and for other purposes, with amendments (H. Rept. No. 112-158).

H.R. 470, to further allocate and expand the availability of hydroelectric power generated at Hoover Dam (H. Rept. No. 112-159, Pt. 1).

H.R. 489, to clarify the jurisdiction of the secretary of the interior with respect to the C.C. Cragin Dam and Reservoir (H. Rept. No. 112-160).

H.R. 643, to provide for the exchange of certain land located in the Arapaho-Roosevelt National Forests in Colorado, with an amendment (H. Rept. No. 112-161).

H.R. 670, to convey certain submerged lands to the Commonwealth of the Northern Mariana Islands in order to give that territory the same benefits in its submerged lands as Guam, the Virgin Islands, and American Samoa have in their submerged lands (H. Rept. No. 112-162).

H.R. 686, to require the conveyance of certain public land within the boundaries of Camp Williams, Utah, to support the training and readiness of the Utah National Guard, with an amendment (H. Rept. No. 112-163).

H.R. 765, to amend the National Forest Ski Area Permit Act of 1986 to clarify the authority of the secretary of agriculture regarding additional recreational uses of National Forest System land that is subject to ski area permits (H. Rept. No. 112-164, Pt. 1).

H.R. 944, to eliminate an unused lighthouse reservation, provide management consistency by incorporating the rocks and small islands along the coast of Orange Co., Calif., into the California Coastal National Monument managed by the Bureau of Land Management, and meet the original congressional intent of preserving Orange County's rocks and small islands (H. Rept. No. 112-165).

H.R. 1022, to authorize the secretary of the interior to conduct a study of alternatives for commemorating and interpreting the role of the Buffalo Soldiers in the early years of the national parks (H. Rept. No. 112-166).

H.R. 1141, to authorize the secretary of the interior to study the suitability and feasibility of designating prehistoric, historic, and limestone forest sites on Rota, Commonwealth of the Northern Mariana Islands, as a unit of the National Park System (H. Rept. No. 112-167).

H.R. 1160, to require the secretary of the interior to convey the McKinney Lake National Fish Hatchery to North Carolina (H. Rept. No. 112-168).

H.R. 2596, making fiscal 2012 appropriations for the departments of Commerce and Justice, and science, and related agencies (H. Rept. No. 112-169).

H.R. 320, to designate a Distinguished Flying Cross National Memorial at the March Field Air Museum in Riverside, Calif. (H. Rept. No. 112-170).

S. 266, to redesignate the Noxubee National Wildlife Refuge as the Sam D. Hamilton Noxubee National Wildlife Refuge (H. Rept. No. 112-171).

H. Res. 358, providing for the consideration of H.R. 1315, to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to strengthen the review authority of the Financial Stability Oversight Council of regulations issued by the Bureau of Consumer Financial Protection, and for other purposes (H. Rept. No. 112-172).

H. Res. 359, providing for the consideration of H.R. 2551, making fiscal 2012 appropriations for the Legislative Branch (H. Rept. No. 112-173).

Bills & Resolutions Introduced

July 20

(AVIATION) MICA and others: H.R. 2594, to prohibit operators of civil aircraft of the United States from participating in the European Union's emissions trading scheme, and for other purposes; jointly to Transportation and Foreign Affairs.

(HEALTH CARE) VAN HOLLEN and others: H.R. 2595, to amend the Public Health Service Act to provide for the establishment of permanent national surveillance systems for multiple sclerosis, Parkinson's disease, and other neurological diseases and disorders; to Energy & Commerce.

(APPROPRIATIONS) WOLF: H.R. 2596, making fiscal 2012 appropriations for the departments of Commerce and Justice, and science, and related agencies, and for other purposes.

(INTERNATIONAL AFFAIRS) PALLONE and others: H.R. 2597, to amend the International Claims Settlement Act of 1949 to allow for certain claims of nationals of the United States against Turkey, and for other purposes; jointly to Foreign Affairs and Judiciary.

(EDUCATION) BISHOP (N.Y.): H.R. 2598, to establish a science, technology, engineering, and math (STEM) master teacher corps program; to Education & the Workforce.

(GSEs) HAYWORTH and others: H.R. 2599, to prevent Fannie Mae, Freddie Mac, and other federal residential and commercial mortgage lending regulators from adopting policies that contravene established state and local property assessed clean energy laws; to Financial Services.

(HEALTH CARE) LANCE and others: H.R. 2600, to provide for implementation of the National Pediatric Acquired Brain Injury Plan; to Energy & Commerce.

(PUBLIC LANDS) LUJAN and others: H.R. 2601, to provide permanent authority for the Forest Service and the Bureau of Land Management to enter into stewardship contracting projects with private persons or other public or private entities to perform services to achieve land management goals for National Forest System lands and the public lands that meet local and rural

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. DER ISSN 0148-8155

community needs; jointly to Natural Resources and Agriculture.

(INFRASTRUCTURE) PAULSEN and others: H.R. 2602, to improve the accountability and transparency in infrastructure spending by requiring a life-cycle cost analysis of major infrastructure projects, providing the flexibility to use alternate infrastructure type bidding procedures to reduce project costs, and requiring the use of design standards to improve efficiency and save taxpayer dollars; to Transportation.

(ENVIRONMENT) POSEY and others: H.R. 2603, to prohibit the enforcement of a climate change interpretive guidance issued by the Securities and Exchange Commission, and for other purposes; to Financial Services.

(TAX POLICY) SLAUGHTER and others: H.R. 2604, to amend the Internal Revenue Code of 1986 to provide for the treatment of securities of a controlled corporation exchanged for assets in certain reorganizations; to Ways & Means.

(HEALTH CARE) HASTINGS (Fla.) and others: H. Res. 360, expressing support for the sixth IAS Conference on HIV Pathogenesis, Treatment, and Prevention and the sense of the House that continued commitment by the United States to HIV/AIDS research, prevention, and treatment programs is crucial to protecting global health; jointly to Foreign Affairs and Energy & Commerce.

(INTERNATIONAL AFFAIRS) PAYNE and others: H. Res. 361, concerning efforts to provide humanitarian relief to mitigate the effects of drought and avert famine in the Horn of Africa, particularly Somalia, Ethiopia, Djibouti, and Kenya; to Foreign Affairs.

Committee Action

Area code for all telephone numbers is 202 unless otherwise stated.

Location Key:
(Times and locations are subject to change.)
H—House side of U.S. Capitol Building
HC—House side of U.S. Capitol Building
HT—House Terrace
H2—Ford House Office Building
HVC—House side of Capitol Visitor Center
CHOB—Cannon House Office Building
LHOB—Longworth House Office Building
RHOB—Rayburn House Office Building

July 21

AGRICULTURE, Nutrition Subcommittee held a hearing on agricultural programs, focusing on title IV nutrition programs;

Full committee held a hearing on derivatives reform.

EDUCATION & THE WORKFORCE, full committee ordered reported H.R. 2587, to prohibit the National Labor Relations Board from ordering any employer to close, relocate, or transfer employment under any circumstance.

ENERGY & COMMERCE, Health Subcommittee held a hearing on bioterrorism, controlled substances, and public health issues.

RULES, full committee granted an open rule for floor debate of H.R. 2584, making fiscal 2012 appropriations for the Department of the Interior, environment, and related agencies.

SCIENCE, full committee ordered reported H.R. 2096, to advance cyber security research, development, and technical standards.

VETERANS' AFFAIRS, Economic Opportunity Subcommittee favorably reported to the full committee the following legislation: H.R. 2274, the amend title 38, U.S. Code, to direct the secretary of veterans affairs and the secretary of defense to submit to Congress annual reports on the Post-9/11 Educational Assistance Program; H.R. 1911, to amend the Servicemembers Civil Relief Act to permanently extend the period of protections for servicemembers against mortgage foreclosures; H.R. 2329, to amend the Servicemembers Civil Relief Act to provide for certain requirements for financial institutions that are creditors for obligations and liabilities covered by that law; H.R. 1263, to amend the Servicemembers Civil Relief Act to provide surviving spouses with certain protections relating to mortgages and mortgage foreclosures; H.R. 2302, to direct the secretary of veterans affairs to notify Congress of conferences sponsored by the Department of Veterans Affairs; H.R. 2345, to extend the authorization of appropriations for the secretary of veterans affairs to pay a monthly assistance allowance to disabled veterans training or competing for the Paralympic Team and the authorization of appropriations for the secretary of veterans affairs to provide assistance to U.S. Paralympics Inc.; and H.R. 2301, to amend title 38, U.S. Code, to direct the secretary of veterans affairs to make payments to educational institutions under the Post-9/11 Educational Assistance Program at the end of a quarter, semester, or term.

WAYS & MEANS, Oversight Subcommittee announced a July 28 hearing on the new Internal Revenue Service paid tax return preparer program; 9:30 a.m., 1100 LHOB; contact 225-3625.

July 20

FOREIGN AFFAIRS, full committee ordered reported the fiscal 2012 Foreign Relations Authorization Act.

RULES, full committee granted rules for floor debate of the following legislation: H.R. 2551, making fiscal 2012 appropriations for the Legislative Branch; and H.R. 1315, to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to strengthen the review authority of the Financial Stability Oversight Council of regulations issued by the Bureau of Consumer Financial Protection.

Committee Meetings Scheduled

July 22

VETERANS' AFFAIRS, Disability Assistance Subcommittee to mark up the following legislation: H.R. 923, to amend title 38, U.S. Code, to exempt reimbursements of expenses related to accident, theft, loss, or casualty loss from determinations of annual income with respect to pensions for veterans and surviving spouses and children of veterans; H.R. 1025, to recognize the service in the reserve components of certain persons by honoring

them with status as veterans under law; H.R. 1826, to reinstate criminal penalties for persons charging veterans unauthorized fees; H.R. 1898, to amend title 38, U.S. Code, to clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes; and H.R. 2349, to amend title 38, U.S. Code, to direct the secretary of veterans affairs to annually assess the skills of certain employees and managers of the Veterans Benefits Administration; 10 a.m., 334 CHOB; contact 225-3527.

JOINT/CONFERENCE COMMITTEES

Committee Action

July 21

NONE.

Committee Meetings Scheduled

July 22

NONE.

PRESIDENT'S CALENDAR

White House Announcements

July 21

President Obama sent the following nominations to the Senate:

Roslyn Ann Mazer, of Maryland, to be inspector general of the Department of Homeland Security, vice Richard L. Skinner; and

Maureen K. Ohlhausen, of Virginia, to be a federal trade commissioner for a term of seven years from Sept. 26, 2011, vice William E. Kovacic.

July 20

President Obama sent a message to Congress regarding the continuation of the national emergency with respect to the former Liberian regime of Charles Taylor.

The president sent the following nomination to the Senate:

Michael Walter Fitzgerald, of California, to be a U.S. district judge for the Central District of California, vice A. Howard Matz.

The President's Appointments

July 21

President Obama met with senior advisors at the White House.

The president and Vice President Biden met for lunch at the White House.

The president met with General Cartwright at the White House.

The president met with Marc Morial, president of the National Urban League, and Ben Jealous, president of the National Association for the Advancement of Colored People, at the White House.

The president and vice president met with Secretary of Treasury Geithner at the White House.

COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC.

BNA
DAILY TAX REPORT

Electronic Resources

NUMBER 141 FRIDAY, JULY 22, 2011

INDEX

Index-Summary updates for Daily Tax Report are available on a monthly basis.
http://www.bna.com/daily/dtr

INTERNET SOURCES

Listed below are the addresses of websites consulted by editors of Daily Tax Report and also websites for official government information. The links provided by BNA are to external websites maintained by federal or state organizations in the U.S., foreign or international governing bodies, or nongovernmental organizations of interest to our subscribers. BNA has no control over their content, timeliness, or availability.

Internal Revenue Service
http://www.irs.gov

Treasury Department
http://www.ustreas.gov

U.S. Tax Court
http://www.ustaxcourt.gov

Treasury Inspector General for Tax Administration
http://www.treas.gov/tigta/

White House
http://www.whitehouse.gov/

U.S. House of Representatives
http://www.house.gov

U.S. Senate
http://www.senate.gov

Congressional Record
http://www.access.gpo.gov/su_docs/aces/aces150.html

Government Accountability Office
http://www.gao.gov

Federal Register
http://www.ofr.gov/inspection.aspx

http://www.ofr.gov/

http://www.federalregister.gov/

Financial Accounting Standards Board
http://www.fasb.org

Public Company Accounting Oversight Board
http://www.pcaobus.org/

International Accounting Standards Board
http://www.iasb.org.uk

BNA PRODUCTS

BNA publishes information products for professionals in a variety of electronic formats including the titles listed below.

Daily Tax Report
http://www.bna.com/products/corplaw/dtr.htm

BNA TaxCore
http://www.bna.com/products/tax/dttc.htm

Daily Report for Executives
http://www.bna.com/products/corplaw/der.htm

BNA Tax & Accounting
http://www.bnatax.com

Transfer Pricing Report
http://www.bnatax.com/Transfer-Pricing-Report-p7899/

Weekly State Tax Report
http://www.bnatax.com/Weekly-State-Tax-Report-p7901/

Securities Regulation & Law Report
http://www.bna.com/products/corplaw/srlr.htm

Pension and Benefits Daily
http://www.bna.com/products/eb/pend.htm

BNA CONTACTS

Daily Tax Report's Home Page
http://www.bna.com/products/corplaw/dtr.htm

BNA's Home Page
http://www.bna.com

BNA Tax & Accounting
http://www.bnatax.com

BNA Customer Support—Customer Service, Content, Training, and Technical Support
www.bna.com/contact

BNA PLUS, e-mail
BNAPLUS@bna.com

BNA Software
http://www.bnasoftware.com

 COPYRIGHT © 2011 BY THE BUREAU OF NATIONAL AFFAIRS, INC. DTR ISSN 0092-6884