

# NewsNotes

## APPEALS MEDIATION PROCESS EXPANDED AND UPDATED • TAX INCENTIVES FOR RETIREMENT SAVINGS • LATE ENTITY CLASSIFICATION ELECTIONS • AUTOMATIC ACCOUNTING METHOD CHANGE PROCEDURES • COD INFORMATION REPORTING RULES FINALIZED



### FROM THE IRS

#### Appeals Mediation Process Expanded and Updated

On September 11, the IRS expanded the number of cases that are eligible to go through mediation in Appeals and updated the mediation procedures (Rev. Proc. 2009-44).

The IRS Appeals function is designed to resolve tax controversies without litigation. The mediation program (which was authorized in 1998 and established in 2002) is an extension of the Appeals function and is intended to help increase voluntary taxpayer compliance.

Mediation may be used to resolve issues in qualifying cases while they are under consideration by Appeals. It may be used only after Appeals settlement discussions are unsuccessful and generally when all other issues are resolved except the issue(s) for which mediation is being requested. The mediation process is voluntary.

Under Rev. Proc. 2009-44, mediation is available for:

- Legal issues;
- Factual issues;
- Compliance or Appeals coordinated issues (unless the taxpayer has declined the opportunity to discuss such issues during the regular Appeals process);

- Certain early referral issues when an agreement is not reached;
- Issues for which a request for competent authority assistance has not yet been filed;
- Unsuccessful attempts to enter into a closing agreement; and
- Certain offer in compromise and trust fund recovery penalty cases.

The revenue procedure provides that, for offer in compromise cases with liabilities of \$50,000 or more, the IRS Chief Counsel's office must review any settlement or agreement reached.

The guidance spells out the application process, what the agreement to mediate must contain, how mediators will be selected, and particulars of the mediation sessions.

The IRS's previous Appeals mediation guidelines, contained in Rev. Proc. 2002-44, are superseded by the new revenue procedure, which is effective October 5, 2009.

#### IRS Boosts Tax Incentives for Retirement Savings

The IRS has released several pieces of guidance designed to increase tax incentives for retirement savings. The initiatives include expanded opportunities

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for automatic enrollment in Sec. 401(k) plans, vehicles for taxpayers to save their tax refunds and convert accrued vacation time into savings, and better explanations of the available options for taxpayers receiving rollover distributions from Roth and non-Roth employer plans.

### Retirement Plans

The IRS issued preapproved automatic enrollment language so that 401(k) plan sponsors will not have to seek IRS approval to adopt automatic enrollment (Notice 2009-65). The notice includes two sample plan amendments. This should allow plan sponsors to adopt automatic enrollment more quickly.

The IRS has also issued guidance that will allow automatic enrollment in SIMPLE IRAs (Notices 2009-66 and 2009-67). Notice 2009-66 gives guidance for plan sponsors and Notice 2009-67 contains a sample plan amendment.

The IRS also issued a ruling that allows 401(k) plans to institute voluntary automatic contribution increases (Rev. Rul. 2009-30). The new procedures are illustrated using two specific fact situations: One involves a basic automatic contribution arrangement, and the other involves an eligible automatic contribution arrangement described in Sec. 414(w).

### Tax Refund Savings

Another new initiative will allow taxpayers to purchase U.S. savings bonds with their tax refunds by checking a box on their tax return. This will be implemented in 2010, and starting in 2011 taxpayers will also be able to add co-owners to the bonds.

### Converting Vacation Time into Savings

Two new revenue rulings will allow workers who leave their jobs and receive cash payments for their unused vacation time to contribute those amounts to their 401(k) plans (Rev. Ruls. 2009-31 and 2009-32).

### Plain-English Explanation of Certain Rollovers

The IRS also issued a "plain-English" roadmap explaining the various options

involved in rolling over money from a retirement plan when changing jobs that may be given to recipients of eligible rollover distributions from an employer plan to satisfy the requirements of Sec. 402(f) (Notice 2009-68). One explanation covers distributions from Sec. 402A Roth accounts, and the other covers distributions from non-Roth accounts.

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### Guidance on Late Entity Classification Elections

On September 3, the IRS released Rev. Proc. 2009-41, which gives eligible entities guidance on how to obtain relief when they make a late entity classification election. The relief is available for 3 years and 75 days after the requested effective date of the eligible entity's classification election.

Under the check-the-box regulations, a business that is not classified as a corporation can elect for federal tax purposes to be treated as an association or a partnership, or (if the business has a single owner) it can elect to be disregarded as an entity separate from its owner. The business makes the election by filing Form 8832, Entity Classification Election, with the IRS Service Center designated on the form. If the business is required to file a federal tax or information return for the tax year the election is made, it must also attach a copy of the form to its tax return for the year it wants to make the election.

In Rev. Proc. 2009-41, the IRS extends the date for entities to make an initial classification election or to change a classification election. To be eligible for the extended late election relief, the business must have failed to obtain its desired classification solely because it failed to timely file Form 8832, and either it has not filed a federal tax or information return for the first year in which the election was intended because the due date has not passed or it has filed all its required federal returns (since the time of the intended election) consistent with the classification it intended to obtain.

To make a late election under the provisions of the revenue procedure, an eligible entity must file a completed Form 8832 with the applicable IRS Service Center

within 3 years and 75 days of the effective date of the election, along with a statement explaining the reason for its failure to make the election on time. The IRS will notify the entity if the late election relief is being granted.

Entities that want to obtain late election relief through a letter ruling request (because they do not meet the eligibility requirements in the revenue procedure) must include this representation with the request:

All required U.S. tax and information returns of the entity (or, if the entity was not required to file any such returns under the desired classification, then all required U.S. tax and information returns of each affected person as defined in Section 4.02 of Rev. Proc. 2009-39) were filed timely or within 6 months of the due date of the respective return (excluding extensions) as if the entity classification election had been in effect on the requested date. No U.S. tax or information returns were filed inconsistently with those described in the prior sentence.

Rev. Proc. 2009-41 is effective September 28, 2009, for requests pending with the IRS on that date and requests made after that date.

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### Automatic Accounting Method Change Procedures Modified

The IRS has modified the procedures for obtaining automatic consent to change an accounting method. Rev. Proc. 2009-39 amplifies, modifies, and clarifies various earlier pieces of guidance that had established the general procedures for taxpayers to secure advance IRS consent to an accounting method change.

Last year, the IRS released comprehensive accounting method change guidance in the form of Rev. Proc. 2008-52. The new revenue procedure contains various amendments to that guidance. It addresses:

- When a method change requires a Sec. 481(a) adjustment;
- When an IRS examination is considered to have begun ("on the date the

taxpayer is contacted in any manner by a representative” of the IRS);

- When a taxpayer is considered to be under examination;
- When a taxpayer under examination can apply for an accounting method change; and
- When a taxpayer can file a single application for two or more accounting method changes.

The revenue procedure addresses how a taxpayer can change its method of accounting from capitalizing repair or maintenance costs under Sec. 263(a) to treating them as deductible business expenses. It also discusses:

- Accounting for tenant construction allowances;
- Dispositions of building structural components and other tangible depreciable assets;
- Certain uniform capitalization methods used by resellers and producers;
- Timing of incurring various legal liabilities;
- Changes in the inventory price index method; and
- Changes to dollar-value pools of manufacturers.

The revenue procedure is generally effective for Forms 3115, *Application for Change in Accounting Method*, filed on or after August 27, 2009.

### REGULATIONS

## COD Information Reporting Rules Finalized

The IRS on September 16 issued final regulations regarding information returns for cancellation of indebtedness by certain entities (T.D. 9461). The regulations are designed to avoid premature reporting by certain entities that are currently required to file information returns and to reduce the number of returns required to be filed. They finalize temporary regulations that were issued in November 2008 (T.D. 9430).

Sec. 6050P requires certain entities to file information returns with the IRS and to furnish information statements to debtors, reporting discharges of indebtedness of \$600 or more. Sec. 6050P originally applied only to financial institutions,

credit unions, and federal executive agencies. These “applicable financial entities” were required, under regulations released in 1996, to issue Forms 1099-C, *Cancellation of Debt*, whenever certain identifiable events occurred. The 1996 regulations also instituted a “36-month rule,” which created a rebuttable presumption that if a creditor had not received a payment on a loan in 36 months, it was required to issue Form 1099-C.

The Debt Collection Improvement Act of 1996, P.L. 104-134, expanded Sec. 6050P to cover any executive, judicial, or legislative agency and expanded the definition of “applicable financial entity” to include any organization for which lending money is a significant trade or business. The expansion of the scope of Sec. 6050P raised concerns that the 36-month rule might trigger a reporting requirement even when an entity has not legally or practically discharged a debt. In response to these concerns, the final regulations restrict the scope of the 36-month rule to those entities that were within its original scope. This will reduce the information reporting burden on commercial lenders and other entities that were not originally within the scope of the 36-month rule and should protect debtors from receiving information returns that prematurely report cancellation of indebtedness income from those entities.

Several issues raised by the temporary regulations’ lone commenter were not addressed in the final regulations, including what information (if any) must be supplied to a debtor prior to filing Form 1099-C, what constitutes “significant bona fide collection activity” that will rebut the presumption of the 36-month rule, and how to report the discharge of a debt that has been reduced to judgment. The IRS says it will consider these issues and determine whether to provide further guidance.

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