



NATHAN WECHSLER & COMPANY
PROFESSIONAL ASSOCIATION
CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

*Year End Tax Planning
and
Year End Tax Reporting*

TO: All Clients

FROM: Nathan Wechsler & Company
Professional Association

DATE: December 1, 2011

Another year is coming to an end. We again want to take time to remind you of certain tax planning opportunities as well as reporting requirements imposed on you by the Internal Revenue Service and state authorities.

Please call us if you have any questions on the following material or if you need assistance in preparing the required forms, as you have the final responsibility for meeting these reporting requirements.

Nathan Wechsler & Company, P.A. is dedicated to serving our clients and we look forward to working with you in the upcoming year.

LETTER INDEX

Page

Year End Tax Planning

Retirement plan tax incentive for employers	1
Domestic production activities deduction.....	1
Energy tax breaks.....	1
Code section 179 expense election for business property.....	1
Additional first-year ("bonus") depreciation.....	2
Depreciation/expensing deductions for vehicles	2
Cell phone tax treatment.....	3

Common Reporting Issues

Electronic deposit requirement	3
Form 1099	3
Form 1099-S.....	4
Form 1098	4
Magnetic media or electronic reporting requirements.....	4
Cash reporting requirements	4

Common Tax Issues

Vehicle usage	5
Mileage reimbursement rate	5
Cafeteria plan - section 125.....	5
Employee contributions to retirement plan account	5
Health insurance benefits - "S" corporations.....	5
Change in FICA wage base	5
Qualified pension plan employee contribution limits	6
Definition of independent contractor	6
Lump-sum and certain other distributions from retirement plans	6
Household employee	6
Tax-exempt organizations - proxy tax.....	7
Small tax-exempt organizations:	
Form 990-N (e-Postcard).....	7
Charitable contributions substantiation.....	7
Hire Act - retained newly hired workers credit.....	7
Small employer health insurance credit	7

State of New Hampshire

New Hampshire annual reports.....	8
New hire reporting	8
Abandoned property reporting.....	8

State of Massachusetts

Form 1099	8
Electronic filing and payments.....	8
Withholding	8
Consolidated return filing requirements	9

States of Maine, New York and Vermont

Withholding	9
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Year End Tax Planning

Retirement Plan Tax Incentive for Employers:

Small employers (100 employees or less) that establish qualified retirement plans that are first effective after December 31, 2001 may be eligible to claim a tax credit based on 50% of the cost of establishing and/or maintaining the plan. The maximum credit for any tax year is \$500. Generally, the credit may be claimed for qualified costs incurred in each of the first three years of the plan.

Domestic Production Activities Deduction:

The “American Jobs Creation Act of 2004” introduced a deduction for domestic production activities. Businesses can deduct a percentage of income earned from production activities undertaken in the U.S. (including manufacturing, food production, software development, film and music production, production of electricity, natural gas or water, construction, engineering and architectural services). The deduction is a percentage of the smaller of (1) the qualified production activities income of the taxpayer for the tax year, or (2) taxable income (modified adjusted gross income, for individual taxpayers) without regard to the manufacturing deduction, for the tax year. The percentage is 9% for tax years beginning in 2010 and later tax years. An employer's deduction for domestic production activities cannot exceed 50% of domestic production activity wages reported for the tax year.

Energy Tax Breaks:

The “Energy Tax Incentives Act of 2005” contains tax incentives designed to improve energy production, transportation and efficiency. These tax breaks generally include tax credits for:

- Builders to construct energy efficient homes (plus deductions to design and build energy efficient buildings);
- Individuals to make energy saving improvements to their residences;
- Individuals to buy vehicles powered by alternative fuels;
- Manufacturers to make energy saving dishwashers, clothes washers, and refrigerators; and
- Businesses to buy fuel cell power plants and microturbine power plants.

It also has a host of tax incentives designed to stimulate the production of energy, particularly from alternative sources. These include accelerated write-offs for expenses, and new and expanded tax credits for producers.

Code Section 179 Expense Election for Business Property:

The Code Section 179 election for expensing certain depreciable property placed in service during tax years beginning in 2010 and 2011 includes a maximum amount that may be expensed of \$500,000. The maximum annual expensing amount is reduced by the amount, on a dollar for dollar basis, that the cost of qualifying property placed in service during that tax year exceeds \$2,000,000. Off-the-shelf software also qualifies for the Code Section 179 expensing election. Typical property that would not be eligible for Section 179 expensing includes: investment property, real property structural components including most HVAC units, property used in connection with a rental house or apartment, property used 50% or less in a trade or business, and property acquired by gift, inheritance, trade or from certain related parties. For 2012 the maximum 179 expenses will be \$125,000, with the phase-out starting at \$500,000.

Additionally, for tax years beginning in 2010 and 2011, certain qualified real property up to \$250,000, may be expensed under Code Section 179. This qualified real property includes certain leasehold improvement property, certain restaurant property, and certain retail property. This \$250,000 expensing limit is part of the overall \$500,000 limit, and not an additional amount.

Additional First Year ("Bonus") Depreciation:

In addition to the usual depreciation allowed for business property, taxpayers may take an extra "bonus" depreciation deduction for the first year certain property is placed in service. A bonus first-year depreciation deduction of 100% of adjusted basis is allowed for qualified property (most new personal property and software) acquired and placed in service after Sep. 8, 2010, and before Jan. 1, 2012 (Jan. 1, 2013 for certain long-production-period property). The assets must be new, which means that their original use must start with the purchasing taxpayer. There is no maximum expensing amount as there is with the Code Section 179 expense and the two methods may be used concurrently, although there are special rules that apply to vehicles.

Depreciation/Expensing Deductions for Vehicles:

Here is a review of the rules you need to know about your 2011 deduction for autos, vans, minivans, and trucks (which includes SUVs) bought in 2011 and used for business this year.

Business autos bought this year

If you have already bought or will buy an auto (not a van, minivan, or truck) for business this year, your maximum combined deduction for depreciation and Code Section 179 expensing for 2011 is \$3,060, or \$11,060 if the vehicle is new and bonus depreciation is also employed. This is the same as for qualifying business autos bought in 2011. This maximum depreciation deduction applies to passenger autos rated at 6,000 pounds *unloaded* gross vehicle weight or less. Virtually all passenger autos fall into this category.

Trucks and vans bought this year

Trucks and vans subject to the "luxury auto" rules have separate depreciation dollar limits. Trucks and vans are defined as passenger autos that are built on a truck chassis and include minivans and sport-utility vehicles (SUVs) that are built on a truck chassis. If you have already bought or will buy a truck or van for business this year, your maximum depreciation and Code Section 179 expensing deduction for 2011 is \$3,160, or \$11,160 if the truck or van is new and bonus depreciation is also employed.

This maximum depreciation deduction applies to trucks and vans rated at 6,000 pounds gross (loaded) vehicle weight or less. Trucks and vans that are not likely to be used for personal driving because of their design (e.g., panel trucks with limited seating) are not subject to the "luxury auto" rules regardless of their weight.

Heavy SUVs bought this year

SUVs, which are trucks, are exempt from the above luxury-auto rules if they are rated at more than 6,000 pounds gross (loaded) vehicle weight. Many luxury and near-luxury-class SUVs fall in this category. The "American Jobs Creation Act of 2004" has limited "Code Section 179" expense on the purchase of any heavy SUV after October 22, 2004 to \$25,000.

All of the above dollar limits apply only if you use the vehicle 100% for business. (This condition is automatically met if a corporation treats a non-owner employee's personal use of a vehicle as compensation income and keeps the proper records. If the driver is a 5% company owner an additional condition applies - his or her business use must be more than 50% of total use.) The dollar limits are reduced proportionately for any personal use.

Cell Phone Tax Treatment

The 2010 Small Business Act removes cell phones from the category of “listed property” for tax years beginning after December 31, 2009. Thus, the heightened substantiation requirements and special depreciation rules that apply to listed property no longer apply to cell phones. To support a deduction for the cell phones, the employer need only substantiate their cost, in much the same way as the employer supports the deduction for other types of business equipment. Unless an employee’s personal use of a employer-provided cell phone is specifically excluded from income (e.g., as a de minimis fringe benefit), that non-business cell phone use will need to be calculated and reported to the employee as taxable compensation.

Common Reporting Issues

Electronic Deposit Requirement:

Beginning January 1, 2011, a taxpayer must deposit all depository taxes (such as employment, excise, and corporate income taxes) electronically using the Electronic Federal Tax Payment System (EFTPS). The Federal Tax Deposit Coupon (Forms 8109 and 8109-B) cannot be used after December 31, 2010. The new rules require all of the following to be deposited via EFT: corporate income and corporate estimated taxes, unrelated business income taxes of tax-exempt organizations, private foundation excise taxes, taxes withheld on nonresident aliens and foreign corporations, estimated taxes on certain trusts, FICA taxes and withheld income taxes, non-payroll taxes (including backup withholding), Federal Unemployment Tax Act (FUTA) taxes, and excise taxes reported on Form 720, Quarterly Federal Excise Tax Return. Some businesses paying a minimal amount of tax could, however, continue to make their payments with the related tax return, instead of using EFTPS.

Form 1099:

Payments to unincorporated entities (individuals, proprietors, LLCs, and partnerships) for the following are to be reported to the IRS if they equal or exceed the indicated amounts. These forms must be distributed to the recipient by January 31, 2012 and must be filed with the IRS by February 28, 2012 (April 2, 2012 if filing electronically).

<u>Payments for:</u>	<u>Equal or Exceed</u>	<u>Form</u>
Dividends	\$ 10	1099-DIV
Interest (generally)	10	1099-INT
Royalties	10	1099-MISC
Distributions from retirement plans	10	1099-R
Liquidating distributions	600	1099-DIV
Interest (paid in the course of a trade or business)	600	1099-INT
Fees paid for services, commissions, prizes and awards	600	1099-MISC
Rents	600	1099-MISC
Certain property received as a result of a foreclosure	All must be reported	1099-A
Proceeds from broker and barter exchanges	All must be reported	1099-B
Distributions from health and medical savings accounts	All must be reported	1099-SA

Payors of tax-exempt interest are required to file an information return with payees and the IRS showing the aggregate amount of tax-exempt interest paid during the calendar year.

Form 1099-S:

Real estate transactions in excess of \$600 must be reported on Form 1099-S by the person responsible for closing the transaction. This normally would include an attorney, title company, mortgage lender or real estate broker. If no person is responsible for closing the transaction, the buyer may be subject to the reporting requirements. The real estate transaction reporting rule does not apply if the seller is a corporation. The information-return-to-IRS requirement does not apply to a sale of a principal residence for \$250,000, or less, under certain circumstances.

Form 1098:

Recipients of \$600 or more of mortgage interest received from an individual, in connection with a trade or business are required to report such receipts. This form must be distributed by the recipient by January 31, 2012 and must be filed with the IRS by February 28, 2012.

Magnetic Media or Electronic Reporting Requirements:

High volume filers of Forms 1099 or W-2 are required to submit their filings to the IRS using magnetic media rather than filling out paper forms. If you are required to file on magnetic media, you may choose to file electronically instead. Electronic submissions are filed using the Filing Information Returns Electronically System (FIRE System).

If you file **250 or more** W-2s for the year, you must file those using magnetic media or electronic reporting.

For Forms 1099, magnetic media or electronic reporting is required for **any type** of Form 1099 for which you are making more than 250 filings. The IRS can impose substantial penalties for failure to comply with this requirement.

Example 1:

<u>Form</u>	<u># of Filings</u>
1099-INT	200
1099-DIV	50
1099-MISC	300

Result:
Magnetic media (or electronic reporting) is required for Form 1099-MISC filings but not for Forms 1099-INT and 1099-DIV filings.

Example 2:

<u>Form</u>	<u># of Filings</u>
1099-INT	200
1099-DIV	50
1099-MISC	150

Result:
Magnetic media (or electronic reporting) is not required for any of the filings (even though the total 1099 filings exceed 250).

The due date for filing information returns with the IRS is February 28, 2012 for magnetic media and is extended to April 2, 2012 for returns filed electronically.

Cash Reporting Requirements:

The receipt of cash of more than \$10,000 in one transaction (or connected transactions) in the conduct of a trade or business will necessitate reporting on Form 8300 unless certain exclusions apply. This reporting to the IRS is required within 15 days of the receipt of the cash.

The term "cash" includes US and foreign coin and currency. Personal checks of any amount are not considered cash. Bank drafts, traveler's checks and money orders having a face amount of \$10,000 or less are considered cash. Other negotiable instruments may be considered cash in certain circumstances.

Penalties for failure to file Form 8300 can be in excess of \$25,000.

Common Tax Issues

Vehicle Usage:

As in prior years, an employee's personal use of an employer-provided automobile is a taxable fringe benefit. It is subject to both income tax withholding and FICA tax. The benefit is also subject to Federal unemployment tax. Personal use includes commuting. Correct reporting of this on Form W-2 is required in order to preserve an employer's tax deduction with respect to the vehicle.

Mileage Reimbursement Rate:

For 2011, the standard rate for reimbursing business miles is 51 cents per mile for mileage driven from January 1, 2011 through June 30, 2011. The rate increased to 55.5 cents per mile for mileage driven from July 1, 2011 through December 31, 2011. At the time of this letter, the 2012 rate had not been pronounced.

Cafeteria Plan - Section 125:

Amounts are not subject to income tax withholding, FICA tax, and Federal unemployment tax.

Employee Contributions to Retirement Plan Account:

Amounts are not subject to income tax withholding. These amounts are subject to FICA tax and Federal unemployment tax.

Health Insurance Benefits - "S" Corporations:

Health insurance premiums paid by "S" Corporations on behalf of each over-2% shareholder must be included in the shareholder's Form W-2. These amounts are exempt from FICA tax and Federal unemployment tax. An over-2% shareholder will generally be allowed a 100% deduction from gross income (on the individual's Form 1040) for health insurance premiums.

Change in FICA Wage Base:

FICA taxes are divided into two components and are withheld from employees' wages (and matched by employers) at the following rates and wage bases:

	2011			2012		
	<u>Employee</u>	<u>Employer</u>	<u>Base</u>	<u>Employee</u>	<u>Employer</u>	<u>Base</u>
Social Security (old age, survivors' and disability insurance)	4.20%	6.20%	\$106,800	*	6.20%	\$110,100
Medicare (hospital insurance)	1.45%	1.45%	Unlimited	1.45%	1.45%	Unlimited

If you prepare payroll, you will be required to update your software to accommodate any annual changes in withholding tables. An important change for 2011 was that the employee portion of social security was reduced to 4.2%. This applies only to the employee portion and this rate applies to both employed and self-employed persons.

*Currently scheduled to return to 6.20% for 2012, but may be extended.

Qualified Pension Plan Employee Contribution Limits:

	<u>2011</u>	<u>2012</u>
401(k)	\$ 16,500	\$ 17,000
401(k) "catch-up" limit (age 50 or older)	\$ 22,000	\$ 22,500

Generally, at the time of contribution, employee deferrals under the limits stated above are exempt from Federal income tax withholding, but FICA and Federal unemployment taxes normally apply.

Employer-made contributions to a qualified plan are exempt from employment taxes.

Definition of Independent Contractor:

The IRS has distinguished between independent contractors and employees. If an employee is incorrectly treated as an independent contractor, substantial penalties may be imposed on the employer.

The degree of control a company exercises over an individual is the primary test used by the IRS in identifying employees. However, the IRS has a list of 20 different factors which are used to determine independent contractor status. This list can be made available to you upon request.

Please contact us with your specific questions concerning this issue.

Lump-sum and Certain Other Distributions from Retirement Plans:

Lump-sum and certain other distributions from retirement plans are subject to a 20-percent withholding requirement if the distribution is paid directly to an employee. The 20-percent withholding is required even if the distribution from a pension or profit-sharing plan is eligible to be rolled over into an IRA. The withholding requirement does not affect the taxability of a distribution. Distributions from pension and profit-sharing plans will still be eligible for rollover into an IRA. However, the 20 percent withheld from the distribution will become taxable unless the employee can roll over an equivalent amount into the IRA from personal funds. The 20-percent withholding can then be claimed as a credit on the individual's Form 1040.

The 20-percent withholding requirement can be avoided if an individual arranges to have the funds transferred directly from trustee to trustee.

Household Employee:

If you have a household employee, you may need to withhold and pay Social Security and Medicare taxes, or you may need to pay federal unemployment tax, or you may need to do both. You may also be responsible for state unemployment taxes.

You do not need to withhold federal income tax from your household employee's wages. But, if your employee asks you to withhold it, you can choose to do so.

Tax-Exempt Organizations – Proxy Tax:

Trade associations and other organizations that collect dues or fees from members should disclose the amount of these dues or fees expected to be used for lobbying purposes. Failure to do so will result in the organization being subject to a proxy tax, at 35%, on lobbying expenditures.

Small Tax-Exempt Organizations – Form 990-N (e-Postcards):

Beginning in 2008 and continuing this year, small tax-exempt organizations that previously were not required to file returns may be required to file an annual electronic notice, Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required to File Form 990 or 990-EZ*. The Form 990-N is due by the 15th day of the fifth month after the close of the tax period. Organizations that do not file this notice for three consecutive years will lose their tax-exempt status.

Charitable Contributions Substantiation:

While all contributions must be substantiated, outright contributions in excess of \$250 or more, or quid-pro-quo contributions in excess of \$75, require a written receipt from the charitable organization. The charitable organization must provide such information, but it is the responsibility of the taxpayer claiming a charitable deduction to be sure to have received a contemporaneous written acknowledgement. Failure to do so will cause the contribution to be nondeductible. A canceled check does not qualify as written substantiation for a contribution in excess of \$250.

Contributions of vehicles (as well as boats and airplanes) require stricter documentation/receipt requirements as well as possible limitations on the amount that is tax deductible. If a vehicle is contributed to a charity that sells the vehicle to a third party without doing any major repairs, the deduction allowed will be limited to the proceeds received by the charity from the sale of the vehicle. The charity must include the amount of the proceeds received on the written acknowledgement.

Hire Act – Retained Newly Hired Workers Credit:

If an employee that qualifies for Social Security tax relief is employed for 52 consecutive weeks, the employer will qualify for a business tax credit equal to the lesser of \$1,000, or 6.2% of wages paid in the 52-week period. The retained employee must be a qualified employee (worked no more than 40 hours in the previous 60 days), must have begun employment after February 3, 2010, and the employer must have a signed W-11 affidavit from the employee. In order to qualify, the employee must earn, in the second 26-week period, at least 80% of what was earned in the first 26-week period. Employers will qualify for the credit once for each employee in the year when the 52 consecutive week requirement has been met. Therefore, calendar year employers will not qualify until 2011. Fiscal year employers qualify in the fiscal year end that the employee has worked 52 consecutive weeks. This credit cannot be carried back to a tax year beginning before 3/18/10. The credit can be carried forward 20 years.

Small Employer Health Insurance Credit:

Under the Patient Protection and Affordable Care Act, effective for tax years beginning after December 31, 2009, an eligible small employer (ESE) may claim a tax credit for nonelective contributions to purchase health insurance for its employees. An ESE is an employer with no more than 25 full-time equivalent employees (FTEs) employed during its tax year, and whose employees have annual full-time equivalent wages that average no more than \$50,000. However, the full credit is available only to an employer with 10 or fewer FTEs and whose employees have average annual full-time equivalent wages from the employer of not more than \$25,000. The contributions must be provided under a qualifying arrangement, i.e., one requiring the ESE to make a nonelective contribution for each

employee who enrolls in certain defined qualifying health insurance offered by the ESE equal to a uniform percentage (not less than 50%) of the premium cost of the qualifying health plan. The credit is a general business credit, can be carried back for one year and carried forward for 20 years, and can offset alternative minimum tax. This credit is available to most small business and tax exempt organizations. The credit is refundable to tax exempt organizations, even if they owe no other tax.

State of New Hampshire

New Hampshire Annual Reports:

Corporations, Limited Liability Companies and Limited Liability Partnerships are required to file an annual report with the Secretary of State by April 1 of each year, along with a \$100 fee.

New Hire Reporting:

All employers must file a New Hire Reporting form within 20 days after hiring a new employee or rehiring an employee. The form should also be filed for all individuals with whom you contract for services, other than casual labor, when reimbursement for services in this state is anticipated to exceed \$2,500. The form is filed with the Department of NH Employment Security.

Abandoned Property Reporting:

All businesses that hold unclaimed monies belonging to customers/clients are required to report and turn all monies over to the State. Voiding any unclaimed check is not adequate. The State then makes efforts to locate the rightful owners and return the funds. The reports are filed annually, due November 1.

Please contact us if you think this applies to your business.

State of Massachusetts

Form 1099:

All companies doing business in Massachusetts are subject to 1099 reporting requirements which are essentially the same as the federal reporting requirements. Copies of the federal 1099s may be used to satisfy the Massachusetts requirement.

Electronic Filing and Payments:

Corporations with gross receipts over \$100,000 must electronically file their MA state tax returns and make all business tax payments electronically.

Partnerships with 25 or more partners, or gross receipts over \$50,000 must electronically file their MA state tax returns and make all business tax payments electronically.

Pass-through Entity Withholding Requirements:

Starting January 1, 2009 a pass-through entity (partnership, S corporation, or LLC) that files a return in MA will have to pay quarterly income tax withholding payments unless certain affirmations are made

on the new form PTE-EX ("Withholding Exemption Certificate for Members of a Pass-Through Entity"). The reasons an individual would be exempt from this withholding are: 1) the member of the pass-through entity is a MA resident, 2) is part of a composite filing, or 3) taxpayer asserts that he will make estimated tax payments. This PTE-EX must be filed annually on or before the last day of the first month of the taxable year (or within thirty days of joining the organization, whichever is later).

Consolidated Return Filing Requirements:

Starting with the tax years beginning on or after January 1, 2009, affiliated corporations with 50-percent or greater common ownership will be required to file a unitary combined return. Unitary combined groups will include C corporations, S corporations, and several other types of investment, insurance and financial institutions.

States of Maine, New York & Vermont

Withholding:

The states of Maine, New York and Vermont require pass-through entities to withhold income taxes from the state-sourced distributive income of nonresident partners, shareholders, or beneficiaries.