COLE, EVANS & PETERSON
CERTIFIED PUBLIC ACCOUNTANTS

WILLIAM JEFFERSON COLE, C.P.A.
CAROL T. BARNES, C.P.A.
C. WILLIAM GERARDY, JR., C.P.A.
BARRY S. SHIPP, C.P.A.
STEVEN W. HEDGEPETH, C.P.A.
STEVEN R. BAYER, C.P.A.
TIMOTHY R. DURR, C.P.A.
BAILEY B. BAYNHAM, C.P.A.
ROBERT A. BUSBY, C.P.A.
ANNE-MARIE COLE, C.P.A.
TIMOTHY W. BORST, C.P.A.
ERIC D. SMITH, C.P.A.
KYLE S. DOBBINS, C.P.A.
MATTHEW R. HAHN, C.P.A.
FAYE D. CAMPBELL, C.P.A.

JOHN A. CASKEY, C.P.A.
J. AMY HEMMINGS, C.P.A.
LINDA K. BIBLE, C.P.A.
BRENDA B. GRIMM, C.P.A.
DILLON WRIGHT, C.P.A.
KATHRYN THAXTON GRAY, C.P.A.
JANA JOHNSTON COX, C.P.A.
KELLY B. NELSON, C.P.A.
GEORGE D. FAUBER III, C.P.A.
ANDREW K. WILHITE, C.P.A.
R. SCOTT MOORE, C.P.A.

FIFTH FLOOR TRAVIS PLACE
624 TRAVIS STREET
SHREVEPORT, LOUISIANA 71101-3012

www.cepcpa.com

M. ALTON EVANS, JR.
PARTNER EMERITUS

AUSTIN G. ROBERTSON, JR., C.P.A.
OF COUNSEL

TELEPHONE (318) 222-8367
TELECOPIER (318) 425-4101

MAILING ADDRESS:
P. O. DRAWER 1768
SHREVEPORT, LOUISIANA 71166-1768

APRIL 2014

GRATITUDE

"In ordinary life, we hardly realize that we receive a great deal more than we give, and that it is only with gratitude that life becomes rich!"

-- Dietrich Bonhoeffer

We will celebrate the Tuesday, April 15 completion of the filing season with our traditional holiday by closing the accounting office on the following day, Wednesday, April 16. The computer center will be open. We will honor our staff with an appreciation luncheon at noon on Friday, April 18, and we will be closed (including the computer center) that afternoon. We are indebted to our staff for their excellent performance and to our clients for the opportunities of working for them. To both staff and clients – ***Thank you!***

PENALTIES ABOUND

ObamaCare Insurance

We continue to receive notices of new rules on ObamaCare. A recent one concerns medical reimbursement plans and individual policy insurance plans as employee benefits under ObamaCare. This new regulation results in a very complex determination of plan qualification. After reviewing the new rules and the commentaries, we conclude that determining compliance for medical reimbursement plans, reimbursement of individual policy premiums, direct payment of individual policy premiums, etc. is outside our area of expertise. We also believe that the cost and complexity of compliance and the onerous penalties for violations (inadvertent or not) of $100 per day per employee ($36,500 per year, per employee) probably make such plans inappropriate for small employers. For example, if a three-employee company that, in good faith, attempted to comply with but misunderstood the rules, it would be subject to a penalty of more $100,000 for only the first year of error.

If you are involved with a small employee benefit plan involving individual health insurance policy premiums or with a medical reimbursement plan, you might want to consider discontinuing the plan (the tax benefits are probably not worth the cost of ensuring compliance to avoid severe penalty vulnerability). If you want to continue such a plan, we suggest that you consult a qualified employee benefit attorney.

In summary, the cost and complexity of the regulations and the severity of the penalties

(Continued on reverse)

have caused us to conclude that small employer plans involving individual health insurance policies, reimbursement of premiums on individual policies, and all types of medical reimbursement plans are probably no longer appropriate.

LLCs and Partnerships

As the due date for calendar-year partnership and LLC returns nears, we are reminded of the extreme penalties that the law imposes for late filing of a partnership's return of income. The penalty was originally introduced in 1978 at $50 per partner per month with a maximum penalty per partner of $250. The monthly penalty is now $195 per partner per month for up to 12 months for a maximum penalty of $2,340 per partner. This is an increase of 836% from the original maximum of $250. For example, a partnership with 100 partners that erroneously believed that it had a valid five-month extension and filed after four months and one day (believing it was filing on time) would owe a penalty of $97,500. Even a relatively small investment club or family investment partnership (or LLC) with 15 partners/members filing one day late would owe $2,925 (15 times $195) as filing one day late incurs a full month's penalty. Partnerships are allowed automatic five-month extensions simply by filing a form by the original due date of the return. Accordingly, these severe penalties are not attempts to cause earlier filing, but are revenue-raising traps set for the unwary or careless. They are a tax on errors, procrastination, carelessness, etc. Regardless of its motivation, Congress has made it very expensive to miss a due date on a partnership return. Identical penalties apply to late S corporation returns.

If you are responsible for filing a partnership return, you should ensure that the return is either filed or extended by the due date (April 15 for calendar-year partnerships) to avoid late-filing penalties. You should also obtain and retain proof of mailing.

THE ONLY THING THAT WORKS
(FOR PROOF OF TIMELY MAILING, THAT IS)

With the end of the filing season just a few days away, we remind you of the IRS's requirements for proving that a return was timely filed. Generally, a return is deemed timely filed when it is timely mailed with proper postage and a proper address. If, for some reason, the document is misdirected or lost and, when later discovered, a legible postmark shows timely mailing, no problem should arise. If the postmark shows a date after the due date of the return or document, or if the postmark is illegible, the IRS considers the items as filed when it actually receives them.

Only registered or certified mail with a receipt stamped by the post office showing a timely date of mailing will suffice to prove timely mailing. Accordingly, we suggest that all significant returns and documents be mailed to the Internal Revenue Service via the U. S. Postal Service certified with a return receipt requested and that you have the post office stamp the mailing date on your receipt.

Cole, Evans & Peterson, CPAs

www.cepcpa.com

624 Travis Street Shreveport, Louisiana 71101 (318) 222-8367

Tax & Business Alert

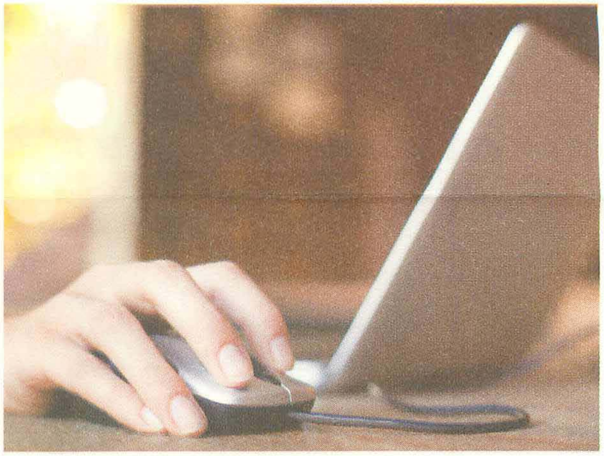
APRIL 2014

TAX IMPLICATIONS OF INVESTOR OR TRADER STATUS

Most taxpayers who trade stocks are classified as investors for tax purposes. This means any net gains are going to be treated as capital gains versus ordinary income. That's good if your net gains are long-term from positions held more than a year. However, any investment-related expenses (such as margin interest, stock tracking software, etc.) are deductible only if you itemize and, in some cases, only if the total of the expenses exceeds 2% of your adjusted gross income.

Traders have it better. Their expenses reduce gross income even if they can't itemize deductions, and not just for regular tax purposes, but also for alternative minimum tax purposes. Plus, in certain circumstances, if they have a net loss for the year, they can claim it as an ordinary loss (so it can offset other ordinary income) rather than a capital loss, which is limited to a $3,000 ($1,500 if married filing separate) per year deduction once any capital gains have been offset. Thus, it's no surprise that in two recent Tax Court cases the taxpayers were trying to convince the court they qualified as traders. Although both taxpayers failed, and got hit with negligence penalties on top of back taxes, the cases provide good insights into what it takes to successfully meet the test for trader status.

The answer is pretty simple. A taxpayer's trading must be "substantial." Also, it must be designed to try to catch the swings in the daily market movements, and to profit from these short-term changes rather than from the long-term holding of investments.



So, what counts as substantial? While there's no bright line test, the courts have tended to view more than a thousand trades a year, spread over most of the available trading days in the year, as substantial. Consequently, a few hundred trades, especially when occurring only sporadically during the year, are not likely to pass muster. In addition, the average duration for holding any one position needs to be very short, preferably only a day or two. If you satisfy all of these conditions, then even though there's no guarantee (because the test is subjective), the chances are good that you'd ultimately be able to prove trader versus investor status if you were challenged. Of course, even if you don't satisfy one of the tests, you might still prevail, but the odds against you are presumably higher.

If you have any questions about this area of the tax law or any other tax compliance or planning issue, please feel free to contact us. ■

DOUBLE BENEFIT FROM A TAX DEDUCTION

For most taxpayers, the amount of federal income tax they pay depends on where they fall in the federal income tax brackets and the breakdown of their taxable income between ordinary (e.g., wages) and capital gains from the sale of assets (e.g., common stock). Taxpayers eligible for the lower federal income tax brackets (those under 25%) on their ordinary income can generally expect to be taxed at 0% on their long-term capital gains. Taxpayers in the 25% or higher federal income tax brackets can generally expect to be taxed at either 15% or 20% (again, exceptions apply) on at least a portion of their long-term capital gains.

It seems inevitable that as federal taxable income increases, the rate we pay on at least a portion of that income also increases. The converse should and does apply. That is, as federal taxable income decreases, the rate of tax we pay on at least a portion of that income also decreases. In addition, if a taxpayer has a long-term capital gain that, after considering ordinary income, is partially taxed at the 0% rate, any additional deduction that decreases ordinary income will simultaneously decrease the tax rate on a comparable amount of long-term capital gain from 15% to 0%. This has the effect of producing a double benefit for that deduction, as shown in the following example.

> **Example:** Jack and Julie, filing jointly for 2014, have net ordinary income of $60,000 and a long-term capital gain from the sale of stock of $40,000, for total income of $100,000. For 2014, the joint rates applicable to ordinary taxable income change from 15% to 25% at $73,800. Accordingly, $13,800 ($73,800 - $60,000) of their long-term capital gain will be taxed at 0% and the balance of $26,200 ($40,000 - $13,800) is taxable at 15%. All income, both capital and ordinary, is taxed at a rate of 15% or less.
>
> If Jack and Julie contribute $11,000 to their deductible IRAs ($5,500 each for 2014, assuming they are both under age 50), they receive a 30% tax rate savings, even though their highest tax bracket is 15%. The $11,000 IRA deduction reduces ordinary income at the 15% rate, but also shifts $11,000 of capital gain taxation from the 15% to the 0% bracket, for another 15% savings. This produces a total tax benefit of 30% on the $11,000 reduction.
>
> A similar impact would occur for any expenditure or deduction that reduced ordinary income (i.e., Section 179 expense, additional interest expense, etc.). Conversely, adding ordinary income at the 15% bracket would cause a 30% impact, as additional ordinary income would push a portion of the capital gains formerly at 0% upward into the 15% bracket. ■

TAX CALENDAR

April 15

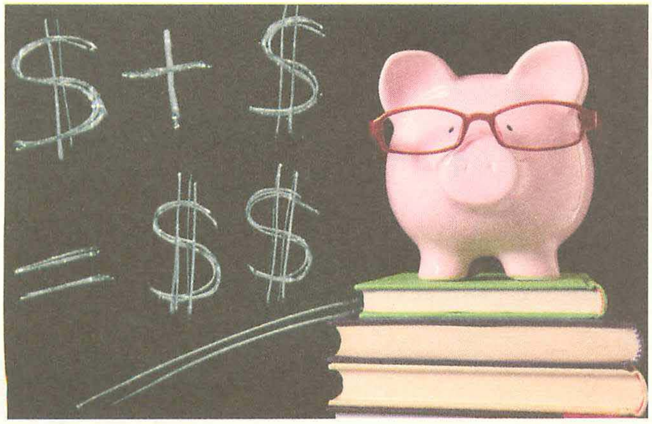
- Besides being the last day to file (or extend) your 2013 personal return and pay any tax that is due, 2014 first quarter estimated tax payments for individuals, trusts, and calendar-year corporations are due today. So are 2013 returns for trusts and calendar-year estates, partnerships, and LLCs, plus any final contribution you plan to make to an IRA or Education Savings Account for 2013. SEP and Keogh contributions are also due today if your return is not being extended.

June 16

- Second quarter estimated tax payments for individuals, trusts, and calendar-year corporations are due today.

COLLEGE FINANCIAL AID BASICS

After your children have submitted their financial aid applications and started receiving award letters from various colleges, it may be difficult to interpret and compare their offers. The following information should be helpful in this regard.



College financial aid is usually characterized as either self-help aid or gift aid. It is awarded based on either need or merit. *Self-help aid* must be repaid through financial obligation (loans) or service to the college (work-study). These offers are awarded primarily on the basis of need. *Gift aid* is financial aid that does not require repayment or work (i.e., grants and scholarships). It may be awarded based on either merit or need. Obviously, gift aid is the most desirable form of financial aid.

Merit-based aid is awarded to a student with a special talent (e.g., academic, musical, athletic). Students who have a high GPA, a high class rank, and excellent standardized test scores can earn substantial merit scholarships that can cover a significant amount of college costs. Heavy involvement in activities that colleges are most interested in (athletics, leadership, journalism, music, etc.) will help earn even more scholarship dollars.

The better college financial aid awards usually are given to students with merit. The student's unique skills and abilities and the college's interest will determine the amount of merit-based aid offered. Need-based financial aid is awarded solely on the financial needs of the family.

Much financial aid awarded comes from the federal government. This aid is available to students enrolled in an eligible program at a school participating in the federal student aid programs. An *eligible program* is a course of study that leads to a degree or certificate and meets the U.S. Department of Education's requirements. Eligible schools include four-year or two-year public or private educational institutions, career schools, or trade schools.

Aid may cover school expenses, including tuition and fees, room and board, books and supplies, transportation, and some personal expenses. Once need has been established, eligible students may be offered some combination of the following types of federal student aid:

a. **Work-study.** The Federal Work-Study Program encourages community service and work related to each student's course of study. Students earn at least the current federal minimum wage, but the amount might be higher depending on the type of work and the skills required.

b. **Loans.** The federal government offers two primary loan programs that may be part of a college's financial aid offer to an eligible student: Perkins loans and Stafford loans. These loans are desirable because they offer low interest rates and generous repayment terms.

c. **Grants.** The federal government offers several grant programs for certain low-income students or students in certain fields of study (such as the TEACH grant).

After submitting the financial aid application, the student will receive a Student Aid Report that indicates the amount of money the family (student and parents) is expected to contribute to the student's college expenses for the upcoming school year. This is the Expected Family Contribution (EFC). All colleges will use this number as the basis for awarding their need-based financial aid.

Families will receive college financial aid awards that will state the amount and type of financial aid offered. Students may accept, decline, or negotiate any part of an aid award. The college should not be allowed to pressure students into accepting an aid award before they have time to receive and compare awards from other colleges. Students should request an extension to reply if they have not received all aid awards. When a particular college will not grant an extension, students can accept the aid award to safeguard the award at that college. The acceptance does not commit the student to attending the college; it merely holds the aid award for the student.

COLE EVANS & PETERSON
624 TRAVIS ST STE 500
SHREVEPORT, LA 71101-3014

MONITORING SECTION 530 ELIGIBILITY

As the IRS continues to focus on worker classification, it has become increasingly important that eligible businesses take precautionary steps to ensure compliance with Section 530 to avoid a costly reclassification. Section 530 of the Revenue Act of 1978 (not part of the Internal Revenue Code) allows the business to treat a worker as an independent contractor (i.e., as not being an employee) for employment tax purposes regardless of the worker's status under the common law control rules. Many businesses rely on Section 530 relief to provide protection.

Section 530 relief is available only if the business meets all the following requirements:

1. Files all information returns (i.e., Form 1099-MISC) for the workers or classes of workers at issue for the current year.

2. Has not and will not treat the workers at issue (or classes of workers performing substantially similar job positions) as employees on income tax returns, payroll tax returns, or other returns filed by the business during the year.

3. Has a reasonable basis for treating the workers as independent contractors. The law provides certain safe harbors to meet this requirement, or the business can rely on some other reasonable basis.

These requirements must be met each year. If the company fails to file Form 1099-MISC on a worker, it loses Section 530 relief for that worker for that year. More importantly, if the business fails to treat the worker (and workers performing substantially similar job positions) as an independent contractor during a particular year, it loses the Section 530 relief (for the year of violation and for all subsequent years) for the entire class. Thereafter, the company cannot obtain Section 530 relief for that class of workers.

Consistency in treatment and information is the key. A business that wants to use the Section 530 rules to classify workers must be aware of the importance of consistent treatment across the years and throughout the ranks of workers holding substantially similar positions. Treating even one worker as an employee can eliminate Section 530 treatment for all workers within the same class.