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adviser

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IRS Liberalizes 60-Day Rollover Rule for IRA and Pension Distributions

Generally, traditional IRA proceeds and pension plan distributions may be excluded from a taxpayer's gross income if they are rolled over to another qualifying plan within 60 days. If a rollover is not made within 60 days, the distribution is taxable to the recipient and may be subject to a 10% early withdrawal penalty.

The IRS has issued a new Revenue Procedure in which it will automatically waive the 60-day rule if financial institution error caused the rollover to be untimely. The automatic waiver is granted only if:

- A financial institution receives funds on behalf of a taxpayer prior to the expiration of the 60-day rollover period
- The taxpayer follows all procedures required by the financial institution for depositing the funds into an eligible retirement plan within the 60-day period
 - Solely due to an error on the part of the financial institution, the funds are not deposited into an eligible retirement plan
 - The funds are deposited into an eligible retirement plan within one year from the beginning of the 60-day rollover period
 - There would have been a valid rollover if the financial institution had deposited the funds as instructed.

Taxpayers who don't qualify for automatic waiver of the 60-day rule may be able to obtain a waiver by applying for a private letter ruling if failing to

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Notable and Quotable

In June, Tax Partner **Arnie Haskell** officially takes over as president of the Suffolk chapter of the New York State Society of CPAs (NYSSCPA). As president, Arnie will preside over all chapter activities, events, and initiatives, and will set the agenda for the chapter in the coming year. He is a past chairman for the Tax Committee of the Suffolk Chapter and moved up in the ranks of the board of directors, serving as secretary, vice president, and eventually, president-elect.

The people at Holtz Rubenstein know the value of Co-Founding Partner **Paul Rubenstein**. Now he's been honored by the Advancement for Commerce, Industry, and Technology ("ACIT") as well. During their 40th anniversary celebration, ACIT honored 40 Long Island business leaders, including Paul. ACIT Executive Director Margaret Buzzell says, "Paul always has been a great supporter of business and has supported this organization since 1968."

In his retirement, when Paul is not at the office several times a week, he is involved in the American Cancer Society, Hospice Care Network, and the Long Island Philharmonic. He also loves spending time on the golf course, traveling, and spending time with his 3 grandchildren.

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New York State and City to Increase Sales Tax Rates

At press time, New York State and City were about to increase their sales tax rates. Generally, the sales tax rate imposed at the time of sale is controlling. However, there are transitional rules that address situations in which a subsequent change in the rate could affect the sales tax imposed on the transaction.

For those contractors with on-going, long-term contracts, special rules may allow them to continue to be subject to the pre-increased rate on materials purchased for the job. This is a reminder that certain contracts entered into prior to the date of enactment, where the work will be performed and materials purchased after the date of the increase (probably June 1, 2003), are subject to the lower pre-increased sales tax rate. The contractor must pay the additional sales tax imposed on all purchases of materials and supplies delivered after the effective date of the rate change; however, the contractor will be allowed a credit or a refund on all such purchases used solely in the performance of that contract.

Additionally, companies that make retail sales of tangible personal property may be subject to the increased

sales tax rate. A sale takes place when title or possession of the tangible personal property is transferred. Generally, if goods are shipped on or after the date of the increase, you will be required to collect the increased rate of tax because the sale is recorded when the goods are shipped. However, exceptions to the above rule may apply when the increase is enacted.

Also, companies that lease tangible personal property and collect sales tax on each monthly payment they receive from the lessees will be subject to the rate increase. The companies must collect the revised rate on lease payments they receive from their cus-

tomers on or after the date of the increase because each lease payment is considered a separate transaction. This rule is not applicable to a long-term auto lease (one year or more) because the sales tax is paid up front.

It is also important to note that the same principles mentioned above apply when counties increase the local sales tax rate.



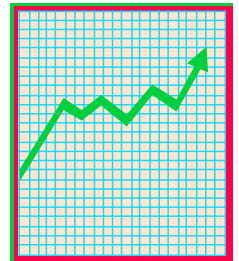
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IRS Liberalizes 60-Day Rollover Rule

waive the rule would “offend equity and good conscience.”

The IRS will consider all the facts and circumstances of the taxpayer’s case, including:

- Errors committed by a financial institution that are not eligible for the automatic waiver
- Inability to complete a rollover due to death, disability, hospitalization, incarceration
- Restrictions imposed by a foreign country
- Postal error
- Use of the amount distributed (for example, in the case of payment by check, whether or not the check was cashed)
- Time elapsed since the distribution occurred.



Holtz Rubenstein Comments on SEC Matters

Our firm recently issued its newsletter on SEC matters. If you are not on the mailing list for our SEC mailings, and if you want a copy, contact Clare Burns at cburns@hr CPA.com or call her at 631-752-7400, ext. 293.



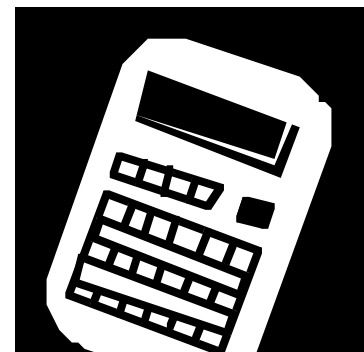
CyberNotes

DoltYourself.com

With summer approaching, it’s the perfect time to start those home improvement projects you’ve been putting off. If you want to enhance your home **DoltYourself.com** is a handy tool for planning home improvement projects. The site takes you step-by-step through home decorating and improvement projects. Many articles are illustrated, and some even feature animation. You can find information on remodeling fireplaces, bathrooms, and kitchens; repairing and installing appliances; home decorating with carpets, tiles, and wallpaper; maintaining lawns and gardens; and building decks and patios. **DoltYourself.com** even has a section on building a new home that allows you to order plans online.

MyWay.com

“No banners. No pop-ups. No kidding.” **MyWay.com** offers an ad-free alternative Internet start page which functions very much like Yahoo. It comes with a free email account and in a matter of minutes can be configured to display local news, weather, stock quotes and more.



IRS K-1 Matching Program—Take 2!

The Internal Revenue Service recently announced a plan to reinstate an enhanced K-1 matching program. The program initially was established to encourage taxpayers to properly report income from pass-through entities being reported on their individual income tax returns. It originally was launched in June 2002 and was designed to match information from schedules K-1 filed by partnerships, S corporations, and trusts. The program was suspended in August 2002 due to numerous “false positive mismatches” that resulted in unnecessary notices being mailed to taxpayers. The new and improved program is set to launch later this year.

How does the new and improved system work?

The IRS will begin issuing notices to taxpayers if there is a mismatch in the information reported on their 2001 tax returns. The IRS has implemented additional filters into the screening process to help reduce the number of notices issued. If a taxpayer receives a notice, he/she is given the opportunity to explain any discrepancy. In many cases, the taxpayer or tax professional can resolve the issues with a letter or phone call.

Points Paid for a Mortgage—Deductible or Not?

With mortgage rates the lowest they've been in 35 years, many homeowners are considering the possibility of refinancing their mortgage. Whether you are refinancing an existing mortgage or purchasing a new home, it is important to consider the tax treatment of the various fees that you may incur. The tax treatment of points may be perhaps the most confusing.

What are points?

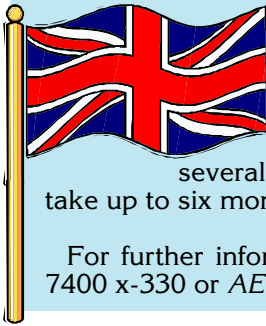
The term points is used to describe certain charges paid to obtain a home mortgage. They also are referred to as loan origination fees or premium charges. If the payment of any of these

Attention Business Travelers: Claim a VAT Refund

If you find yourself spending a fair amount of time in the United Kingdom, you may be in line for a refund of the Value Added Tax (“VAT”) paid as part of your hotel stay or of registration fees for a meeting. Your stay may be one visit or several throughout the year.

In connection with a hotel stay, it is best to know before you make the trip as to whether you will be making a claim. For example, if the claim will be made by a partnership or corporation, it is highly recommended that the hotel bill be made out with the traveler's name and the entity's name immediately thereunder. Also, an original invoice must be filed with the refund claim and it is best to request a “zero balance” bill upon checking out from the hotel.

Inland Revenue (the UK Internal Revenue Service) requires that the U.S. entity making the claim prove that it is a business entity paying taxes in the United States. Accordingly, a letter to that effect must be requested, by way of a special procedure, from the Internal Revenue Service.



The claim is a time consuming process and, for that reason, generally it only is done when there are several thousand dollars to be claimed. The VAT refund can take up to six months to receive.

For further information, contact partner Alan E. Weiner at 631-752-7400 x-330 or AEWeiner@hrcpa.com.



In a complementing effort, the IRS also announced the redesigning of Schedule K-1 and Schedule E for 2003. The revised forms and instructions are expected to be easier to understand and help improve the way information from pass-through entities is reported.



Tax Exemption for Cleaning Services Used as Part of New Building Construction

Charges for cleaning services related to construction of a new residential building are exempt from New York Sales tax. The New York State Department of Taxation and Finance has ruled the cleaning services tax-exempt because the services rendered under the agreement between the owner/developer of the building and the cleaning contractor during construction qualified as part of the capital improvement. The owner/developer has been advised to issue a Capital Improvement Certificate to the cleaning contractor.

The recent Advisory Opinion did not address the taxability of cleaning services when provided in other circumstances, such as in conjunction



with repair and maintenance services or as routine janitorial services. Generally, services to real property (including cleaning services) not performed as part of a capital improvement would be taxable.



**Pension Plans:
Must Yours be Audited by an
Independent Qualified Public
Accountant?**

By Jay Feingold, CPA

The general rule of thumb used to be that pension plans, such as profit sharing plans, 401(k) plans, defined benefit plans and other pension benefit plans, with fewer than 100 participants at the beginning of the plan year did not require an annual audit.



Jay Feingold

However, the Department of Labor's ("DOL") Pension and Welfare Benefits Administration (recently renamed the Employee Benefits Security Administration - "EBSA")

has issued a final rule that amended small pension plan regulations.

The amended regulations require pension plans with fewer than 100 participants to submit annual financial statements reported on by an independent qualified public accountant with the plan's annual Form 5500 Annual Return/Report of Employee Benefit Plan to the EBSA. These amended regulations were designed to increase the security of assets in small pension plans. Your plan may be able to avoid this audit requirement if it meets certain criteria listed below; however, the waiver is further conditioned upon the disclosure of certain information to participants and beneficiaries.

A waiver may be claimed if:

- 1) At least 95% of the plan's assets constitute qualifying plan assets. Qualifying plan assets include assets held by a bank, an insurance company or a registered broker-dealer. Qualifying plan assets also include investment and annuity contracts issued by an insurance company, shares issued by a registered investment company (i.e.: mutual funds), and qualifying employer securities, as defined by the Employee Retirement Income Security Act ("ERISA"), as amended.

Additionally, loans to participants generally are considered qualifying

assets. Non-qualifying assets would include assets such as real estate, automobiles, boats, certain partnership interests and/or other assets not listed above as "qualifying." If your company sponsors a 401(k) plan that only invests in mutual funds or insurance company annuity contracts, then the plan should meet the criteria to claim a waiver.

- 2) Any person handling non-qualifying plan assets is bonded in accordance with the requirements of ERISA, and the bond amount is not less than the value of the non-qualifying plan assets. ERISA currently requires that all persons handling plan assets be bonded for a minimum of 10% of the amount of funds handled, up to \$500,000. In order to meet the criteria for a waiver, the plan must have a fidelity bond in an amount equal to or exceeding the amount of non-qualifying assets.

If your plan's assets include less than 10% of non-qualified assets, the bond acquired to meet the 10% rule of ERISA may be adequate to cover the value of the non-qualified assets, thus meeting the criteria without having to increase the fidelity bond coverage over the minimum required by ERISA.

In addition to meeting one of the above criteria, the plan must disclose certain information to participants and beneficiaries in the plan's summary annual report. This disclosure includes the name of each regulated financial institution holding or issuing qualifying plan assets and the amount of such assets as of the end of the plan year. If the plan has more than 5% of its assets in non-qualifying plan assets, the plan also must disclose the name of the surety company issuing the bond. Additionally, the plan must provide a notice that, upon request and without charge, participants and beneficiaries may examine or receive copies of evidence of the required bond and statements received from the regulated financial institutions describing the qualifying plan assets. Further, participants and beneficiaries must receive a notice stating that they should contact the Regional Office of the DOL's EBSA if they are unable to examine or obtain copies of the regulated financial institution statements

**New IRS Form TD
F 90-22.56 Required for
Money Service Businesses**

The Internal Revenue Service ("IRS"), by way of an Information Release, discusses the requirement that businesses that issue or redeem money orders or traveler's checks must now use a new form to report suspicious activities to the IRS. These businesses, referred to as "money service businesses" ("MSBs"), must use this form when conducting a money service transaction that is both suspicious and is for \$2,000 or more.

The release indicates that this new form, TD F 90-22.56 Suspicious Activity Report by Money Services Business, must be filed by MSBs which include convenience stores, grocery stores, service stations, drug stores and liquor stores with respect to:

Transactions conducted or attempted by, at, or through a money

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or evidence of the required bond.

So, what should you do if your company sponsors a retirement plan with fewer than 100 participants? First, determine if the plan has more than 5% of its assets invested in non-qualifying plan assets. If so, determine if the plan's current fidelity bond amount is at least equal to or greater than the value of those non-qualifying assets. If so, you may claim a waiver as long as you make the required disclosures. If the bond amount appears to be insufficient, the alternatives are to increase the bond amount in order to meet the criteria for waiver, or to engage an independent qualified public accountant to audit the plan.

It is important to note that incremental increases to fidelity bond amounts only may have a marginal impact on the bond premium.

For more information, contact Audit Manager Jay Feingold at 631-752-7400 x-213 or JFeingold@hrcpa.com.



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New IRS Form Required for Money Service Businesses

services business involving or aggregating funds or other assets of at least \$2,000 when the money services business knows, suspects, or has reason to suspect that it:

1) Involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity;

2) Is designed to evade the requirements of the Bank Secrecy Act, whether through structuring or other means; or

3) Serves no business or apparent lawful purpose, and the reporting business knows of no reasonable explanation for the transaction after examining all available facts.

All affected businesses must file the form within 30 days of learning of a suspicious transaction, and must keep a copy of the filed form and supporting documentation for five years from the date it is filed.

This appears to place the onus for identifying and determining whether an illegal activity or transaction has taken place on businesses and their employees. The form can be obtained from the IRS website, www.irs.gov.



New York Sales Tax: Taxability of Asphalt Sealcoating

In a recent advisory opinion, the New York State Department of Taxation and Finance ruled that a contractor's charge for the first-time sealcoating of new pavement would qualify as a capital improvement and would not be subject to New York Sales Tax. The initial sealcoating service would be considered part of the capital improvement project that included the installation of the asphalt if

- the contractor could substantiate that the sealcoating service relates directly to its installation of asphalt that is known to have been a

capital improvement to real property, and

- the installation of asphalt occurred within the twelve-month period immediately preceding the first application of the sealcoating performed on the asphalt.

The contractor must receive a properly completed Certificate of Capital Improvement (Form ST-124) from its customer. The contractor must have a means of record-keeping that associates the invoice for the initial installation of the asphalt and its properly completed
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Are Your Long Term Disability Insurance Benefits Tax Free?

With this issue, we begin a regular feature on benefits. It will include tips on all aspects (e.g., how to purchase; tax considerations; etc.) of all types (life; disability; health; etc.) of insurance and is authored by Mark Senders, CLU, Managing Director of Holtz Rubenstein Benefits Consulting, LLC. If you have any questions or would like to schedule an appointment with Mark about your company's employee benefits, your life insurance, or, as you will see, your disability insurance, Mark can be reached at 631-752-7400, x-355.

How Long Term Disability Insurance premiums are treated has a major consequence on how the benefits are taxed. If the premiums are paid by the employer and not taxed to the employee, then the benefits would be taxable to a disabled employee. If the premiums (generally an inconsequential addition to taxable income) are included in the employee's taxable income, then the benefits would be tax-free.

For an employee earning \$90,000, the additional taxable income in a typical group plan only would be \$450 per year. Paying tax on this small amount would enable the subsequently disabled employee to receive \$54,000 (note that the most common disability coverage benefit is 60% of the earnings) in benefits totally tax-free. "You would be surprised as to how many companies do not take advantage of this simple planning opportunity," says Mark Senders.



Do a Yearly Review of Important Personal Documents

Just as you get your car inspected every year and do yearly maintenance on your home, you also should do yearly maintenance on your financial plans and your will and other documents that name beneficiaries. Such documents include your IRAs, life insurance, pension plan, mutual funds, and bank accounts. Over the years,

you may forget whom you have designated for what. To avoid costly mistakes, make sure these documents reflect your current wishes. By doing this, you will also become up to date on where your current finances stand.

After doing this, you may find that you need to do some financial and tax planning. Ask yourself; do I have enough life insurance? Do I put enough away into my IRAs and 401(k)s? Are my investments diversified? If you are self-employed, do you have a Keogh or SEP plan to save for retirement? These are not just one-time questions, but issues that should be reviewed regularly and updated as needed.

Don't put it off knowing that a review might raise new issues. Fine-tuning a little bit each year is easier than trying to revise an entire financial plan all at once. Checking beneficiaries is a good first step to keeping your personal, financial, and other long-term plans up to date.

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Points paid for a mortgage - deductible or not?



ment, that explicitly states the points incurred on the loan. Points may be identified as “loan origination fees,” “loan discount,” “discount points,” or simply, “points”;

2. The points must be computed as a percentage of the principal amount of the loan; and

3. The total of your down payment plus other cash paid by the time you close must be at least as much as the amount of points charged.

Points on a second home

Points paid on a loan to purchase or improve your second home do not qualify for full, immediate deduction, since the loan does not relate to your principal residence. They must be spread out (amortized) over the life of the loan.

Points paid in connection with a refinancing

The rules pertaining to points incurred in the purchase of a home apply in the case of a refinancing as well. However, there are additional rules that depend on the use of the proceeds. To the extent the proceeds are used to repay the old mortgage, the points

must be amortized over the life of the new mortgage. If a portion of the proceeds is used to make improvements to the home, the points are deductible in the same proportion as the portion of the proceeds of the new mortgage used to make the improvements. There are certain limitations which may affect the deductibility of the points, including the \$100,000 limit on home equity indebtedness and the \$1,000,000 limit on home acquisition indebtedness.

What about points from an old mortgage that are currently being amortized? If you have been deducting points each year, the unamortized balance may be written off in the year the old mortgage is refinanced.

What if the seller pays the points?

Sellers sometimes agree to pay the points on a buyer's mortgage loan. If this is the case, you can deduct the points in the year you acquire the home. However, your tax basis in your home is reduced by the amount of the seller-paid points. There are some limitations on the deductibility of seller-point points.

The bottom line

The tax treatment of the points you pay may influence your decision about which financing arrangement is best for you. Although current interest rates may give you a better bottom line, making a tax-smart decision will make it even better.

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New York Sales Tax: Taxability of Asphalt Sealcoating



Certificate of Capital Improvement with the subsequent invoice and associated Certificate of Capital Improvement for the sealcoating performed on the new asphalt.

It should be noted that not all installations of new asphalt qualify as capital improvements to real property. For example, asphalt installed on a parking lot or driveway that is only partially resurfaced is a taxable repair to real property and does not qualify as a capital improvement. Any sealcoating performed on such an installation constitutes a taxable repair or maintenance to real property.

Note to contractor: As with all capital improvements, although the consumer is exempt from sales tax, you must pay sales tax on the materials that you use to perform the capital improvement.

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Notable and Quotable

In his spare time, Senior Tax Manager **Barry Nagler** is a thoroughbred horse enthusiast. He combined his two loves, publishing “Tax Considerations of Horse Ownership” in the Long Island publication *Horse Directory*. Barry used to run a thoroughbred training facility and is a former horse owner.

Audit Manager **Paul Becht** and Senior Auditor **Harold Deiters** are busy organizing the 3rd Annual Young CPAs Forum, scheduled for July. Unlike traditional CPE courses, the Forum is a two-day session, geared to address current issues facing young professionals.

This publication is designed to present matters of general interest relating to accounting, taxation and business management. It is not intended to constitute accounting or tax advice. Articles were written by the staff of Holtz Rubenstein & Co., LLP and The American Institute of Certified Public Accountants. Please consult your HR & Co. adviser before taking any specific actions.

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DFK Firm Spotlight: Langdowns DFK

DFK International is the worldwide association of independent accounting and business advisory firms in which Holtz Rubenstein is actively involved. Through our affiliation, we are able to provide enhanced services to you and to other clients throughout the United States and the world.

This issue we spotlight one of DFK's members in the United Kingdom – Langdowns DFK. We invite you to visit them at www.langdowns.co.uk.

