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*Business Advisor*

*Tax Planning*

*Tax Preparation*

*Retirement Planning*

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*Financial State-  
ments*

*Personal Financial  
Planning*

*Memberships*

American Institute of  
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countants

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countants

Society of Certified  
Senior Advisors



## ABOUT APPOINTMENTS

MON	TUE	WED	THU	FRI	SAT
9:30 AM	9:30 AM	Skiing at	9:30 AM	9:30 AM	9:30 AM
11:00 AM	11:00 AM	Eldora	11:00 AM	11:00 AM	11:00 AM
2:00 PM	2:00 PM	2:30 PM	2:00 PM	2:00 PM	
3:30 PM	3:30 PM	4:00 PM	3:30 PM	3:30 PM	
8:00 PM	8:00 PM		8:00 PM		

The table above shows the normal times each week when I set appointments. If you need an evening or Saturday appointment, you should call as soon as possible to set it up (I will give you the entry code for the office building).

During the first half of April, I may add appointments in between the regularly scheduled times. Then it's especially important to arrive near the scheduled time so that we don't encroach on the next appointment.

If you just need to drop materials off, my office door has a mail slot (now wider so you can insert large envelopes without folding) that you can use if I am not in.

If you need to call me, the best times are 10:45AM or 3:15PM. I'm most likely to be between appointments then, and can answer the phone "live."

Wednesday mornings I generally ski tour at Eldora. If you'd like to join me, please call for specifics.

## Taxpayers lose some...

**W**ash Sales and IRAs. There is a long-standing rule (Internal Revenue Code Section 1091) that "wash sales" do not give rise to a current loss. Wash sales of securities occur when you sell a security at a loss, and, within 30 days before or after, you buy substantially the same security. The loss is added to the basis of the replacement stock, and the acquisition date is adjusted for the difference in time between the purchase date of the original shares and the replacement shares.

One taxpayer pushed his luck too far and caused the IRS to issue Revenue Ruling 2008-5. In it, they ruled that if the replacement stock is acquired in a tax-deferred account like an IRA (including a Roth IRA) a wash sale does in fact exist, and the loss is disallowed. But it's worse than that. You can't adjust the basis of the retirement account to reflect the loss, so it's a permanent loss, not temporary.

A result of this ruling is that I may need to see your IRA activity to determine if a loss is a wash sale under this revenue ruling. You could unwittingly have done a wash sale if, for example, your accounts are traded actively through a broker under broad discretion.

America Counts on CPAs<sup>SM</sup>

**T**rusts and estates lose. There has been a long-standing argument regarding the deductibility of trust investment advisory fees. One camp has held that these are fully deductible as trust administration expenses. The other, including the IRS, has held that they are subject to the same 2% of adjusted gross income rule that individual investors have to abide by.

Now the Supreme Court has unanimously held that such fees are subject to the 2% rule. The test becomes: if an expense could only be incurred by a trust or estate, it isn't subject to the 2% rule, but, if it could be incurred by an individual, it is. So even if the trust instrument or state law imposes a fiduciary duty on the trustee/personal representative, and that duty is discharged through hiring professional investment advisors, the 2% rule must still be used.

**D**ouble loss in Ponzi Scheme. Here's hoping you never get caught in one. The Kaplans "invested" over \$5,000,000 with Slatkin, a schemer who told them that it earned over \$7,500,000. They dutifully reported the income on their tax returns. Later the scam fell apart, as they all do, and Slatkin filed for bankruptcy.

The Kaplans might have recovered about \$1,000,000 from the bankrupt estate, but couldn't deduct the theft loss in the year at issue (2001) until they knew exactly how much they would recover. As to the taxes paid on the phantom income, the proper way to recover it would be to file an amended return for the years the income was reported, not as a theft by the IRS (an unlawful taking). The statute of limitations had probably run so the amendment process wasn't available.

So they probably lost a total of over \$7,000,000 in the deal. This goes to show that

even wealthy people can keep too quiet about a "good deal" to their detriment.

... and win some

**H**Health Insurance for S-Corporation shareholders. In my June 2007 newsletter I discussed an article that had been posted to the IRS website that suggested S-corporation shareholders were at a disadvantage as compared to partners and proprietors regarding health insurance purchased by the shareholder.

Now the IRS has issued Notice 2008-1, which clarifies that health insurance costs are deductible even if the policy is in the name of the shareholder-employee. This is the position that I reached in my article. There are some extra hoops to follow in order to get the deduction: the corporation has to reimburse the employee if it doesn't pay the premium directly, and it has to include the premium in W-2 wages for the same year. If you meet the requirements for an open year, you can file an amended return to claim the additional deduction.

**D**ouble standard for disaster loss favors taxpayer. When taxpayers suffer a casualty loss, such as from Hurricane Katrina, they can elect to reduce the loss by funds expected to be received in the future, rather than report that income when they receive it.

But according to the IRS Office of Chief Counsel, referring to Regulation Section 1.165-1(d)(2) it can't do that. It has to look at the facts as they existed at the end of the year at issue without considering a potential recovery. So a Road Home grant received in 2006 or 2007 can be included in income in those years by the taxpayer, or they can elect to reduce the 2005 loss; but the IRS can't make that election during an examination of the 2005 return.

IRS Circular 230 requires that certain steps be taken by a tax advisor before his or her written tax advice may be relied upon to avoid IRS penalties. Accordingly, this newsletter is not intended by me to be used, and cannot be used, by any taxpayer for the purpose of avoiding tax penalties that may be imposed. Further, any written statement in this newsletter relating to a federal tax transaction or matter may not be used by any person to support the promotion or marketing of, or to recommend, any federal tax transaction or matter addressed herein.

**Practice the democratic method in all your affairs. Caucus on Feb. 5!**