

Cohen Smith & Company, P.A.

NEWSLETTER



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Florida Unclaimed Property



In recent months, we have assisted several clients in recovering monies from the State of Florida that they were not aware were being held by the State.

Often, due to a change of investment brokerage or change of address, amounts due to individuals and businesses are unable

to be forwarded. As a result, the payor is required to deposit these funds with the state, pending claims by the rightful owners.

In order to determine if you have potential unclaimed property, you should visit www.fltreasurehunt.org and perform a search for unclaimed property. You may also contact Claimant Services at 1-888-258-2253.

Taking a few minutes to perform an unclaimed property search for you, your business and/or your relatives may indeed result in a successful treasure hunt. Good luck and give us a call if we can assist you in filing a claim.

Form 1099 - Update



On March 4th, the House of Representatives by a vote of 314 to 112 passed H.R. 4, the “Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011,” clearing the bill for Senate consideration. The bill would retroactively repeal the new and unpopular Form 1099 information reporting rules carried in recent legislation.

Effective for payments made after 2010, the Small Business Jobs Act of 2010 (P.L.111-240) provides that subject to limited exceptions, a person receiving rental income from real estate is treated as engaged in the trade or business of renting property for information reporting purposes (Code Sec. 6041(h)). In particular, rental income recipients making payments of \$600 or more to a service provider in the course of earning rental income must provide an information return to the service provider and IRS.

H.R. 4 would repeal the provisions in Sec. 9006 of the Patient Protection and Affordable Care Act, that provides rules for payments to corporations and imposes a reporting requirement with respect to gross proceeds from property. It would also repeal Code Sec. 6041(h)’s application of information reporting requirements to recipients of rental income from real estate who are not otherwise considered to be engaged in the trade or business of renting property.



Deducting Repairs And Maintenance

Costs

We are often asked to explain the difference between costs that must be capitalized (added to basis and depreciated over time) and those that can be deducted. While the rules are complex, taxpayers are generally allowed to deduct the cost of making incidental repairs to their property used in carrying on any trade or business. However, to be deductible currently, a repair cost must not be subject to capitalization under IRC § 263 (a). Specifically, no deduction is allowed for:

- 1) Any amount paid for new buildings or for permanent improvements that increase the value of the property or
- 2) Any amount spent restoring property or in making good the exhaustion of property for which a depreciation allowance has been made.

Treas. Reg. § 1.263 (a)-1(b) specifies that capital expenditures include amounts paid or incurred to:

- 1) Add to the value or substantially prolong the useful life of property owned by the taxpayer or
- 2) Adapt property to a new or different use.

The IRS Large Business & International Division recently released an audit technique guide (ATG) that provides a framework for IRS examining agents to follow when examining this issue.

It provides useful insights into how the IRS will determine whether certain costs are deductible repair costs or capital expenditures. While the ATG does not provide any conclusions on substantive issues, it does provide procedures for agents to follow. Therefore, understanding what to expect can help insure your deductions are maximized and upheld if audited.

The ATG states that whether a cost qualifies as a deductible repair cost is a factual determination for which the burden of proof rests with the taxpayer. Taxpayers are required to keep sufficient contemporaneous records to support their determination that an expense qualifies as a deductible repair and maintenance cost.

The main body of the ATG provides suggestions for IRS agents to follow in planning and conducting their examination of repair costs. Specifically, it encourages agents to review taxpayer's repair costs including any correspondence. It also recommends the agent conduct interviews and site visits.



If you have any questions about whether or not an expenditure qualifies for an immediate deduction or how to maximize your repair and maintenance deductions, give us a call.

New Estate and Gift Tax Rules

Estate tax legislation has been debated in Congress for several years. The recent Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Act) includes estate tax provisions for individuals who died in 2010, as well as those who die in 2011 and 2012. Here is a brief summary.

\$5 Million Estate Tax Exemption and 35% Rate. For estates of individuals who

die in 2010 through 2012, the Act establishes a \$5 million federal estate tax exemption with the 2012 amount indexed for inflation. Large estates are taxed at 35% above the \$5 million threshold.

Electing out of the Estate Tax in 2010. For estates of decedents who died in 2010, executors are permitted to elect out of the estate tax rules (the default rules), and instead choose the modified carryover basis rules for property transferred at death. Although no estate tax will be due, assets transferred at death will not get the step-up in basis to date of death fair market value, and the transferees will owe income tax on the appreciation on those assets. Determining whether to follow the default rules or elect out of the estate tax will depend on many factors that will require professional guidance.

Unused Estate Tax Exemption. For the first time, married individuals who do not use up their estate tax exemption will be able to pass along unused amounts to a surviving spouse. In other words, unused exemptions of individuals who die in 2011 or 2012 (but not 2010) will be “portable.”

Unlimited Basis Step-ups for Inherited Assets. For heirs of decedents who die in 2011 and beyond, the rule is reinstated that allows the federal income tax basis of inherited capital-gain assets (such as real estate and stock) to be stepped up to reflect fair market value on the date of death. This favorable rule is also reinstated for decedents who died in 2010, unless the estate elects to instead use the modified carryover basis rule. With the restoration of the unlimited basis step-up rule, heirs will not owe any federal capital gains taxes on appreciation that occurs through the date of death—as long as that date is after 2010 or, for decedents who died in 2010, if their estate does not elect to use the modified carryover basis rules.

Estate and Gift Tax Exemptions and Rates Are Equalized. The Act sets the lifetime federal gift tax exemption for 2011 and 2012 at \$5 million—with the 2012 amount indexed for inflation (likewise for the generation-skipping transfer tax exemption). Thus, the gift and estate tax exemptions are equalized for 2011 and 2012. This is a huge improvement over the previous \$1 million gift tax exemption (which continued to apply for 2010). An unmarried person can now give away up to \$5 million while alive without paying any gift tax, and a married couple can give away up to \$10 million. However, to the extent you dip into your gift tax exemption, your estate tax exemption is reduced dollar-for-dollar. The tax rate on 2011 and 2012 gifts in excess of the \$5 million exemption is 35%, the same as the estate tax rate. Again, due to sunset provisions, the gift tax exclusion reverts back to \$1 million after 2012.

Minimizing estate and gift taxes is a complex process. So, please contact us for information on how to reduce these onerous taxes.



TAX CALENDAR

March 2011

March 10

Employees who work for tips. If you received \$20 or more in tips during February, report them to your employer. You can use Form 4070.

March 15

2010 income tax returns must be filed or extended for calendar-year corporations. If the return is not extended, this is also the last day for calendar-year corporations to make 2010 contributions to pension and profit-sharing plans.

Employers. For Social Security, Medicare, withheld income tax, and nonpayroll withholding, deposit the tax for payments in February if the monthly rule applies.

APRIL 2011

April 11

Employees who work for tips. If you received \$20 or more in tips during March, report them to your employer. You can use Form 4070.

April 18

Individuals. File an individual income tax return for 2010. If you want an automatic six-month extension of time to file your return, file Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return. Alternatively, you can get an extension by phone or over the Internet if you pay part or all of your estimated income tax due with a credit card. Then file Form 1040, 1040A, or 1040EZ by October 17.

If you are not paying your 2011 income tax through withholding (or will not pay in enough tax during the year that way), pay the first installment of your 2011 estimated tax. Use Form 1040-ES.

Note that April 18 is also the deadline for making contributions to IRAs or Roth IRAs for 2010.

Household employers. If you paid cash wages of \$1,700 or more in 2010 to a household employee, file Schedule H (Form 1040) with your income tax return and report any employment taxes. Report any federal unemployment (FUTA) tax on Schedule H if you paid total cash wages of \$1,000 or more in any calendar quarter of 2009 or 2010 to household employees.

Also report any income tax you withheld for your household employees.

Employers. For Social Security, Medicare, withheld income tax, and nonpayroll withholding, deposit the tax for payments in March if the monthly rule applies.

Partnerships/LLCs. File a 2010 calendar year return (Form 1065). Provide each partner with a copy of Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., or a substitute Schedule K-1. If you want an automatic five-month extension of time to file the return and provide Schedule K-1, file Form 7004. Then file Form 1065 by September 15.

Electing large partnerships. File a 2010 calendar year return (Form 1065-B). If you want an automatic five-month extension of time to file the return, file Form 7004. Then file Form 1065-B by September 15.

Trusts and Estates. File a 2010 calendar year return (Form 1041). Provide each beneficiary with a copy of Schedule K-1 (Form 1041), Beneficiary's Share of Income, Deductions, Credits, etc., or a substitute Schedule K-1. If you want an automatic five-month extension of time to file the return and provide Schedule K-1, file Form 7004. Then file Form 1041 by September 15.

Corporations. Deposit the first installment of estimated income tax for 2011.

Gift Tax Returns. If you made taxable gifts in 2010, file Form 709.

Other helpful line services



www.IRS.gov www.MyFlorida.com

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www.Volusia.org