



- "Simplify key provisions to promote work, homes, health, charity, and savings while increasing or maintaining progressivity"
   Recommends eliminating all "tax expenditures", including all itemized deductions for
- individuals
- Eliminate all tax expenditures for business lower rates
- Reduce borrowing to \$5.4 trillion over next ten years
  - Cut domestic and defense spending
     Raise Social Security retirement age

Overhaul IRC

SCHNILDER DOWNS





#### **LEGISLATIVE UPDATE**

- The "Gang of Six," now four
- Objective: Draft legislation based on deficit reduction proposals of the
- A majority on the Commission proposed to:
  - eliminate the charitable contribution deduction
  - give taxpayers a tax credit equal to 12 percent of their charitable donations, provided annual donations exceeded 2% of AGI



## LEGISLATIVE UPDATE

- President Obama's fiscal 2012 budget outline
  - Caps deduction rate at 28% regardless of effective tax rate
  - Applies to all itemized deductions not just charitable contributions
- Increased recent pressure on "tax expenditures"



#### **LEGISLATIVE UPDATE**

- Patient Protection and Affordable Care Act
  - Medicare tax increase of 0.9% on employee wages in excess of \$200,000 effective January 1, 2013
  - Optional in 2011, W-2 statements issued must include the aggregate cost of employer sponsored health benefits
- Expanded Form 1099 reporting requirements to include payments made to corporations. Provision repealed in April 2011



- Form TD F 90-22.1 ("FBAR") must be filed by all U.S. persons who have a financial interest in, or signature authority over, a foreign bank or financial account
- A reporting exemption was carved out for public colleges and universities
- No exemption for private institutions of higher education and their employees



## **REGULATORY UPDATE (CONT'D)**

- Signature or other authority means the authority to control the disposition of money, funds, or other assets held in a financial account
- Foreign mutual funds or other pooled funds that issue shares to the general public, have a daily asset value determination and regular redemption are reportable
- Hedge funds and private equity funds that do not meet this criteria are not reportable

SCHWILDER DOWNS





## 2011 IRS OVDI Program

- Offshore Voluntary Disclosure Initiative ("OVDI") announced February, 2011 designed to bring offshore money back into the U.S. tax system and assist those with undisclosed offshore income to comply with federal tax law
- ODVI available through August 31, 2011

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## 2011 IRS OVDI Program

- Taxpayers who have reported all income from offshore sources, but failed to file certain information returns, will not be subject to failure to file penalties if certain requirements are met
- Program requirements:
  - No unreported tax liabilities
  - File complete and accurate original or amended offshore-related information returns
  - File Form TD F 90-22.1 "FBAR" for calendar years 2003 through 2010
  - All returns filed by August 31, 2011
  - Reasonable Cause Statement



## 2011 IRS OVDI Program

- Failure to File Penalties
  - Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation:
    - 10% Capital Contribution

    - Maximum \$100,000/return
       No maximum if failure was intentional
  - Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships
    - \$10,000/return
    - Maximum: \$50,000/return and 10% property transfer
      - Capped at \$100,000



- colleges and universities
- Interim report was published in May 2010
- Thirty audits in process
- Focus areas:
  - Unrelated business income activities
  - Executive compensation
  - Governance checklist
  - Cost allocations



- and lobbying
- www.cof.org/publicpolicy
- Political campaigning prohibited by statute







## **Cell Phones**

- . Small Business Jobs Act of 2010 "de-listed" cell phones
- · Per call substantiation requirements eliminated
- Employees must still substantiate "business use"
- Notice 2009-46 proposed four methods:
  - Evidence of a separate "personal use" device
  - De minimis personal use exclusion
  - Safe Harbor (75%) deemed business use
- Statistical Sampling Method
   De Minimis fringe benefit IRC §132(e)







## **Dormitory and Hotel Rentals**

- Other than students
  - Prospective students and families
  - Faculty members
  - SpeakersPerformers
- "Substantial and casual relationship must exist between rental and educational mission
- PLR 201106019 holds all non-student stays in dorms result in unrelated business income
- Reversal of 2006 position

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# 2010 FORM 990: SIGNIFICANT CHANGES

- Part VI, requires that the governing body must have adopted the policy before the end of its tax year in order to mark "yes"
  - Conflict of interest; document retention and destruction; whistleblower; and joint venture
- Part VI, an organization must provide the full Form 990 (i.e. cannot redact certain schedules such as Schedule B) to its governing body in order to answer "yes"
- Part VII and Schedule J, Compensation, updated to clarify reporting of contributions to and amounts deferred under qualified and nonqualified plans



## 2010 FORM 990: SIGNIFICANT CHANGES

- Schedule F, Foreign Activities, requires a reporting of investment, by region, as well as the book value as of the end of the year
- Schedule H, Hospitals, updated to reflect requirement of IRC Section 501(r), including certain information about community health needs assessments, financial assistance policies, and billings and collections
  - Requirement to attach audited financial statements

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#### 2010 FORM 990: SIGNIFICANT CHANGES

- Schedule K, Tax-Exempt Bonds, expanded to report additional information on allocation of proceeds and arbitrage calculations
- Schedule R, Related Organizations, requires reporting trusts if school owns more than 50% of the beneficial interests in the trust

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# **Graduate Level Tuition Waivers**

- Field Attorney Advice Memorandum 201039001F
- Traditionally, the IRS disallowed an exclusion under IRC §132 for graduate students that were not teaching or research assistants (because they didn't qualify for exclusion under IRC §117)
- FAA 201039001F allows a §132 exclusion of graduate level tuition waivers in excess of the limits of a §127 plan (\$5,250)



## **Sports Management Agreements**

- Institution transfers to an outside marketing firm:
  - Exclusive rights to name, logo, etc.
  - Rights to TV and radio broadcasting for athletic events
  - Game programsAdvertising
- In return, "royalty payments" to the institution
- Institution treats the amounts as nontaxable royalties under IRC §512(b)(2)









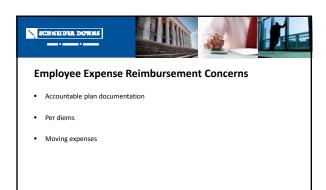




Automatic excess benefits







Prior to Audit

Review current policies

Review business practices

Determine compliance with withholding requirements

Discontinue any questionable practices



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