


**SCHNEIDER DOWNS**  
INSIGHT • INNOVATION • EXPERIENCE



### EACUBO 2011

COLLEGE AND UNIVERSITY TAX UPDATE

Susan M. Kirsch, CPA, JD  
Shareholder

---

---

---

---

---

---

---

---

**SCHNEIDER DOWNS**



### LEGISLATIVE UPDATE

- National Commission on Fiscal Responsibility and Reform
  - “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

2

---

---

---

---


---

---

---

---

**SCHNEIDER DOWNS**



### LEGISLATIVE UPDATE

- The “Gang of Six,” now four
- Objective: Draft legislation based on deficit reduction proposals of the Commission
- 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

3

---

---

---

---


---

---

---

---

**SCHMIDT & DOWNS**



### 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"

4

---

---

---

---


---

---

---

---

**SCHMIDT & DOWNS**



### 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 Provision repealed in April 2011

5

---

---

---

---


---

---

---

---

**SCHMIDT & DOWNS**



### REGULATORY UPDATE

- Final FBAR rules issued February, 2011
- Final FinCen regulations effective March, 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 exceeding \$10,000 at any time during the calendar year
- A reporting exemption was carved out for public colleges and universities
- No exemption for private institutions of higher education and their employees

6

---

---

---

---

---

---

---

---



### 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

7

---

---

---


---

---

---

---

---



### 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
- OVDI available through August 31, 2011

8

---

---

---


---

---

---

---

---



### 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

9

---

---

---

---


---

---

---

---

**SCHMIDT DOWNS**



### 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

10

---

---

---

---


---

---

---

---

**SCHMIDT DOWNS**



### IRS Questionnaire

- In September 2008, IRS sent 400 questionnaires to public and private 4-year 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

11

---

---

---

---


---

---

---

---

**SCHMIDT DOWNS**



### GUIDE TO ADVOCACY

- Advocacy vs. lobbying
- "A Foundation's Guide to Advocacy" outlines the differences between networking and lobbying
- [www.cof.org/publicpolicy](http://www.cof.org/publicpolicy)
- Political campaigning prohibited by statute

12

---

---

---

---


---

---

---

---

**SCHMIDT & DOWNS**



### 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)

13

---

---

---

---


---

---

---

---

**SCHMIDT & DOWNS**



### Dormitory and Hotel Rentals

- Other than students
  - Prospective students and families
  - Faculty members
  - Speakers
  - Performers
- “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

14

---

---

---

---


---

---

---

---

**SCHMIDT & DOWNS**



### 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

15

---

---

---

---


---

---

---

---

**SCHMIDT DOWNS**



### 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

16

---

---

---

---

---

---

---

---

**SCHMIDT DOWNS**



### 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

17

---

---

---

---


---

---

---

---

**SCHMIDT DOWNS**



### 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)

18

---

---

---

---


---

---

---

---

**SCHMIDT DOWNS**



### 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 programs
  - Advertising
  - Stadium signage
- In return, “royalty payments” to the institution
- Institution treats the amounts as nontaxable royalties under IRC §512(b)(2)

19

---

---

---

---


---

---

---

---

**SCHMIDT DOWNS**



### Sports Management Agreements

- Is marketing firm acting as an agent of the institution?
- IRS agents look through to character of income
  - Advertising income = UBI

20

---

---

---

---


---

---

---

---

**SCHMIDT DOWNS**



### FORM 990 CONSIDERATIONS

- IRS Announcement 2011-36
- Request for public comment
- Form 990 disclosures
- Key questions
  - Compensation thresholds
    - Indy contractors/ACEs > \$100,000
    - Key employees > \$150,000
    - Appropriate?

21

---

---

---

---


---

---

---

---

**SCHNEIDER DOWNS**



### FORM 990 CONSIDERATIONS

- Indirect foreign expenditures
  - 2008-2010 no disclosure unless tracked
  - Should indirect expenses be disclosed?
  - Adoption of procedures and system modifications
  - Ex: Expenses of listing "study abroad" program and website, course catalogue

22

---

---

---

---


---

---

---

---

**SCHNEIDER DOWNS**



### FORM 990 CONSIDERATIONS

- Revenue from Government/Component units
  - Grant?
  - Fee for service?
- Reporting on audited financial statements
  - Qualified/unqualified /adverse opinions
  - Schedule O explanation
  - Foundation position

23

---

---

---

---

---

---

---

---

**SCHNEIDER DOWNS**



### FORM 990 CONSIDERATIONS

- Schedule R: Related Organizations
  - Controls or controlled by
  - Supporting organization
  - Sponsoring organization or contributing employer to a VEBA
  - Beneficial interests in trusts
  - Exceptions?

24

---

---

---

---


---

---

---

---





### IRS Employment Tax Audits

- Audits will focus on
  - Worker Classification
  - Officer Compensation
  - Fringe Benefits
  - Employee Expense Reimbursements
  - Compliance with withholding rules
- Excess benefits
- Automatic excess benefits

25

---

---

---


---

---

---

---

---



### Fringe Benefit Concerns

- Awards and Prizes
  - Gift cards
  - Spousal Travel
- Cell Phones
- Loans and loan forgiveness
- Company cafeterias
- Legal settlements
- Employee discounts
- Club dues

26

---

---

---


---

---

---

---

---



### Executive Compensation Concerns

- Deferred compensation arrangements
- Insurance
- ERISA violations
- State law violations

27

---

---

---


---

---

---

---

---



### Employee Expense Reimbursement Concerns

- Accountable plan documentation
- Per diems
- Moving expenses

28

---

---

---


---

---

---

---

---



### Prior to Audit

- Review current policies
- Review business practices
- Determine compliance with withholding requirements
- Discontinue any questionable practices

29

---

---

---


---

---

---

---

---



### QUESTIONS???

---

---

---


---

---

---

---

---



**Circular 230 Disclosure**

*This advice is not intended or written to be used for, and it cannot be used for, the purpose of avoiding any federal tax penalties that may be imposed, or for promoting, marketing or recommending to another person, any tax related matter.*

31

---

---

---

---

---

---

---

---