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A Quarterly Update of Essential Tax Information

DEALER TAX WATCH

Volume 7, Number 1 | Publisher: Willard J. De Filipps, C.P.A. | June 2000

DEALER TAX WATCH *OUT*

If you had called me personally to ask, "What's happening lately with IRS audits of dealers and dealerships that I need to know about?"... Here's what I'd say:

#1. SERVICE TECHNICIAN TOOL RENTAL & REIMBURSEMENT PLANS. On the heels of Update #3 last quarter, two more developments make the outlook even gloomier for these plans. At our recent Niche Conference, the IRS indicated that it is now very close to finally releasing a Coordinated Issue Paper on these plans. This paper is expected to take a very negative view towards these plans and their "purported" benefits.

In a related development, the Tax Court Memo Decision reported on page 12 held that several individuals who leased their trucks to carriers for a rental fee that was equivalent to their vehicle expenses were not engaged in the separate activity of leasing their trucks to the carriers.

Accordingly, the lease arrangements with the carriers had no independent economic significance and all of the income the owner-operators received from the carriers was wage income. The expenses they incurred in the operation of their trucks were deductible only as Schedule A itemized deductions, subject to the percent-of-AGI limitations imposed by Section 67(a).

#2. DEALERS CAN'T TAKE FAST WRITE-OFFS FOR VSC PREMIUMS PAID. In another Tax Court case involving several dealerships, the issue was whether the dealerships (who were primary obligors on Vehicle Service Contracts) could take accelerated deductions for the insurance premiums that were incurred in connection with the extended warranty contract sales. The IRS said those insurance premium expenditures were required to be amortized more slowly and ratably over the years covered by the vehicle service warranty.

In *Toyota Town, Inc.* (T.C. Memo 2000-40), the Tax Court upheld the IRS. This case involved taxable years which bridged the introduction of the Service Warranty Income Method (SWIM). The Court said that a dealer can't expect the benefit of a tax deferral under the SWIM method and at the same time accelerate deductions of the write-off of the cost of the insurance premium paid for loss protection on those policies.

#3. IRS AUDIT ACTIVITY & NEW STANDARDS FOR EXAMINING AGENTS. Although the IRS does not like to be referred to as "kinder and gentler," there seems to be evidence that taxpayers in general are faring better in their dealings with the IRS. The article on page 19 reflects on several developments in this regard.

WATCHING OUT FOR

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Dealer Tax Watch Out

(Continued from page 1)

If "fewer IRS audits" as shown by the table on page 24 indicate that the IRS is now less on the offense than it has been in the past, then clearly the Service is becoming "kinder and gentler." This result, however is not necessarily because the Service wants things to be this way; rather budgets are tight and resources seem to be limited wherever you look in the IRS.

The IRS is undergoing major efforts to emphasize the ***Service*** aspect of its name and to introduce initiatives so it can deal more proactively with developments that are likely to become significant tax issues. Evidence of one such initiative is discussed below.

#4. IRS IS ZEROING IN ON ELECTRONIC RECORD-KEEPING REQUIREMENTS. Over the last few years, we have noted the emphasis the IRS is placing on what constitutes *adequate* books and records and *adequate* recordkeeping procedures.

In December 1999, we reported Mary Baker's comments: "Although I would like to say that we've made progress on the general issue of dealer software and whether or not it meets the requirements of our Revenue Procedure 98-25 as far as the retention of electronic records, we can only juggle so many balls at once....But, just to let you know that we have recognized that there are some problems when our computer people go out to a dealership and try to load up the electronic information, they're having a problem accessing that. That is something that I hope in the next year we will have some more time to focus on."

At our Niche Conference, the Service announced that the Motor Vehicle Industry Technical Adviser (MVTA) division has identified an area of potential non-compliance that affects automobile dealerships and possibly other taxpayers. Specifically, the Service expressed concern that dealerships may not be in compliance with the electronic recordkeeping requirements of Internal Revenue Code Section 6001. The MVTA is forming an industry working group to formulate possible industry resolution strategies and has scheduled an informational meeting in July on this subject.

Section 6001 and its underlying Regulations provide that taxpayers must maintain records and that such books and records must be available for inspection. Furthermore, they provide that such records ***must be maintained for as long as the contents may become material in the administration of the Internal Revenue Code***.

Revenue Ruling 71-20 provides that the term "records" includes all machine-sensible data used for recording, consolidating, and summarizing accounting transactions, as well as all records within a taxpayer's automatic data procession (ADP) system. Revenue Procedure 98-25 specifies the basic requirements considered essential when records are maintained within an ADP system. For more about Revenue Procedure 98-25, see page 3 for previous coverage in the December 1998 *Dealer Tax Watch*.

The Service has indicated that its Computer Audit Specialists (CAS) and others have identified both hardware and software problems when attempting to access electronic records maintained by automobile dealerships. Some of the obstacles encountered by these specialists include, but are not limited to: (1) back-up information is not retained; (2) if back-up information is retained, it cannot be accessed without the specific version of software used to generate the records and access to the dealer's equipment; and (3) if back-up information is maintained, it does not contain adequate ***transactional*** detail.

The Service also indicated the possibility that the very significant issue involving the development of software to track actual cost for parts inventory computation purposes (arising out of the Tax Court's decision in *Mountain State Truck Ford Sales)* may be brought in under this overall "recordkeeping" initiative.

RECORDKEEPING RED FLAGS

- Whenever a dealer changes computer vendors and/or systems, continuing compliance with Rev. Proc. 98-25 and Rev. Rul. 71-20 should be a key element on the CPA's or computer consultant's due diligence checklist.
- Any time a dealer's computer system ***crashes*** and all, or much, of the accounting data is lost or compromised, compliance with 98-25 and 71-20 should be ascertained or reasonable steps should be taken to comply.
- If a dealer is significantly at risk due to non-compliance, during the period when you've been CPA for the dealership, what does your engagement letter say about this?

#5. DEALER CONSULTANT CONFERENCES. During the quarter, two conferences of special interest to auto dealer CPAs and consultants were offered. The National Buy-Here, Pay-Here Dealers Convention was held in Las Vegas on May 31-June 2. Later in the month, the De Filipps 3rd Annual CPA-Auto Dealership Niche Conference was held in Chicago on June 26-28. Both Conferences are summarized in articles on pages 4 and 7.

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A limited supply of the 500-page Manual from the De Filipps CPA-Auto Dealership Niche Conference are available for purchase. For more information, call 847-577-3977.

#6. A TAX BREAK RIGHT UNDER OUR NOSES. In the article on page 5, Ken Shilson observes that there may be a very significant tax break right under some of our noses. Revenue Procedure 2000-22 now allows small taxpayers to forget about keeping track of inventories and using the accrual method. That's right; if they're small enough, they can use the cash method instead.

Although there are many conditions and eligibility requirements, smaller independent used car dealers, in particular, may be significantly helped by Rev. Proc. 2000-22.

#7. NEW SERVICES AND RESOURCES FOR DEALER CONSULTANTS. As part of our continuing service to readers, this issue calls attention to four new services and resources. The days of being a jack-of-all-trades are long gone. Specialized help is available for dealers and their CPAs and consultants in many new areas.

See page 23 for more about H2H Consulting Services, Mac Leod Consulting Group, *CARLAW* and *Spot Delivery*, and Auto Dealership Buy/Sell Reports.

WARNING: DEALERSHIP SOFTWARE PROGRAMS MUST SAVE ALL THE DETAIL REQUIRED BY REV. PROC. 98-25.

Often examining agents will bring in another IRS computer audit specialist (CAS) to help them get into the software programs that the dealerships are using, and to use that information in a format that assists the agent in conducting the examination. Typically, a CAS will go into a file to extract certain information, to prepare a comparative analysis between years, or to choose a month's activity or a particular line item to sample. There are many different ways that a CAS may take information and reformat it.

Apparently, many agents have found that some software programs used in dealerships delete all of the details for a particular month once that current month's information has been input, rolled over into the next month, and summarized. Mary Burke Baker pointed out that this does not comply with the provisions of Revenue Procedure 98-25. If electronic forms of recordkeeping are used by the dealership, then the IRS has the right to have that same information available to it when it comes in to audit the dealer.

CPAs should review the software used in dealerships to see whether the audit trail produced by that software is appropriate. It is not sufficient to have only the summary information retained in case there is an IRS audit. The dealership must be able to rerun that month's activity and produce the same summary after the fact for the IRS to examine. The Service has the right to be able to come in and look at the same electronic records that were used in the actual preparation of the tax return.

Revenue Procedure 98-25 updates the basic requirements to be satisfied by taxpayers who maintain their records on computers, effective for tax years beginning after December 31, 1997. A taxpayer with assets of $10 million or more must comply with this revenue procedure and with the record retention requirements set out in Revenue Ruling 71-20. For purposes of Rev. Proc. 98-25, a controlled group of corporations–as defined in Section 1563–is considered to be one corporation, and all assets of all members of the group are aggregated.

It may come as a surprise to some to find out that Section 8 of Rev. Proc. 98-25 contains a requirement that a taxpayer must promptly notify its District Director if any machine-sensible records are lost, stolen, destroyed, damaged, or otherwise no longer capable of being processed, or are found to be incomplete or materially inaccurate. The taxpayer's notice to the District Director must identify the affected records and include a plan that describes how, and in what timeframe, the taxpayer proposes to replace or restore the affected records in a way that assures that they will be capable of being processed.

Furthermore, the taxpayer's reconstruction plan must demonstrate that all of the requirements of Rev. Proc. 98-25 will continue to be met with respect to the affected records.

Among other consequences, failure to comply with this revenue procedure may result in the imposition of various penalties, including the Section 6662(a) accuracy-civil penalty and the Section 7203 willful failure criminal penalty.

(*Dealer Tax Watch*, Dec. 1998, Update item #5)

NATIONAL BUY-HERE, PAY-HERE CONVENTION AND RELATED USED CAR & BHPH INDUSTRY DEVELOPMENTS

The Rio Suite Hotel & Casino was the site of the **2000 NATIONAL BUY-HERE, PAY-HERE DEALERS CONVENTION** held May 31-June 2, 2000. At the Convention, dealers from around the nation and Canada heard nationally recognized experts and interacted with sponsors and exhibitors who play prominent roles within the buy-here, pay-here industry.

More than 600 attendees made this the largest buy-here, pay-here convention ever held. Representatives from some of the nations most successful dealerships answered questions and interacted with attendees.

Among the participants were Automotive Credit Services, Charlie Falk Autos, Linnehan's Credit Now Auto Company, Easton Motors, Eldorado Motors, J. D. Byrider, Lease Plus Auto Leasing, Ltd., One Stop Auto Finance Centers, Paul Sherry Car & Credit, Regal Automotive, Superior Auto Credit, and Ugly Duckling Corporation.

Attendees also heard speakers from Adtel, AUL, Dakota Video & Post, FINOVA Capital Corporation, Thomas Hudson (attorney), Manheim Auctions, NFCAR, Kenneth Shilson (CPA), Special Finance Magazine, Used Car News, Versidata.Com, and ZoomLot.Com. These speakers discussed various ways to increase cash flow and profitability, reduce legal risks and taxes, and locate additional financing.

In addition, new cutting-edge technology involving several new internet products was discussed and demonstrated during the show. Dealers also interacted with other sponsors in workshops covering warranties, related finance companies, note sales, and new credit analysis and collection techniques.

Despite the enormous size of the convention group, the willingness of all speakers and attendees to freely exchange information and their own personal secrets of success was refreshing and stood out throughout the entire Convention.

This conference had the contagious enthusiasm like you would find at one huge "20 Group" meeting, only it was about 30 times larger. This spirit of enthusiastic cooperation started from the top with Ken Shilson and spread throughout all of the presentations, panels and moderators. Any CPA or consultant to dealers who are involved with either independent used car operations, BHPH activities, or just looking to extend their used car operations in a franchise setting would find this Convention to be very beneficial both in terms of information and industry contacts.

All Convention attendees became members of the National Association of Buy-Here, Pay-Here Dealers (NABD), which is a special interest group for the betterment of the self-finance industry. NABD also announced a new web site exclusively for buy-here, pay-here dealer members at www.bhphinfo.com. Next year's Convention is planned for Las Vegas, Nevada on May 23rd through May 25th, 2001. You can obtain further information by visiting the new web site or calling (713) 290-8171.

In addition to being the founder to NABD, and the driving force behind the convention, Ken Shilson recently authored two articles of great interest to consultants to used car dealers. We thank him for permission to incorporate them almost in their entirety below.

INTERNET BASED SOFTWARE FOR THE USED CAR INDUSTRY

In his article *Exciting New Technology For The Used Car Industry–Internet-Based Software*, Ken reported that the next twelve months will bring some exciting new technology products to the used car industry. In his opinion, none will be more helpful than several new software products which are based on the internet. Although some dealers may be skeptical, he believes that there is no question that internet-based software is the wave of the future for software developers.

Below are some of the reasons that Ken offers in support of his beliefs, as well as some of the concerns dealers may have about this new technology:

(1) Internet-based software will permit dealers to access far more information that any PC based systems currently in existence. For instance, if the used car industry were to retain inventory information on internet-based software it would be possible for individual dealers to locate specific vehicles by merely searching the database on their own computer. Some companies have now developed customer lead generation software which can be used to find new prospects. Accounting software ... that will be available, too. Process new loan applications and check customer credit, no problem. Virtually all the information needed to run a profitable dealership will soon be available via the internet right on your own computer. This will allow dealers to access the information quickly, more efficiently, and at less cost, which will allow them to make better and more timely business decisions.

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(2) Some dealers perceive that the use of internet software will be far too slow for the fast-paced world of used car dealerships. However, new communication connections now make transmission speeds much more affordable and faster. High speed T1 lines, DSL, cable modems, satellite dishes and recent wireless technology makes high-speed internet access both available and affordable to most users. Because actual calculations are performed at an off-site host server and because the transmission of the data is often minimal, many applications will run as efficiently over telephone modems as they do on local networks.

(3) Dealers who are concerned about security and who don't want unknown users to access confidential data will welcome the continuing development of secure internet servers for the maintenance and storage of dealership files. Security enhancements now can provide dealers with the necessary security needed for protection and back-up of confidential information. The use of encryption for e-mail attachments provides the necessary security for communications over public channels.

(4) Advantages of internet-based software to developers include:

- Assurance that all users have the most current version of their product,
- Reduction of technical support calls because the vendor is not required to support multiple versions of the same product and because system performance is not adversely affected by conflicts with other software residing on the user's own computer,
- Facilitation of better technical support because it puts the dealer and the software vendor "on the same page." The best news for the dealer is that all of the above translates to faster, more efficient, less-costly technical support.

(5) Dealers will benefit from more stable products with fewer service problems. For example, industry-wide compatibility will be established. Also, there will be common access to company databases from a dealer's office or from other remote locations.

(6) Internet-based applications will greatly expand the ability of selected dealer employees to access and/or exchange data in real time, using devices like cell phones and pagers. A salesman can enter information through a Palm-Pilot™ or process a loan application on-line. This will create a whole new wave of e-commerce loan processing systems which could change credit scoring, analysis, and the funding process.

(7) Internet-based software will also facilitate the development of add-ons for existing programs which enhance their capabilities. Add-on modules can be used to analyze, report, and graph data from applications and databases which will greatly enhance a dealers business tools.

Ken concludes that the success of internet-based software is not guaranteed, even though it offers superior business solutions. The reason he offers is simply that people resist change. Computer users are still getting comfortable with a keyboard and a mouse.

Dealers who lack computer skills and who are skeptical about new technology will not embrace the aforementioned changes quickly. However, the information which this new software can provide will offer dealers a competitive advantage which can't be ignored. The choice will then be theirs.

REVENUE PROCEDURE 2000-22 MAKES CASH METHOD AVAILABLE TO SMALL DEALERS

In a second article (*New IRS Procedure Provides Important Tax Relief For Small Dealers*) co-authored with Steven L. Goldberg, a tax manager in his firm, Ken and Steve discussed Revenue Procedure 2000-22. Under this Revenue Procedure, used car dealers no longer have to account for used car inventories or use the accrual method in reporting purchases and sales of automobiles for income tax purposes.

For the last ten years, all buy-here, pay-here dealers with inventory under the accrual method of reporting their taxes were required to pay taxes on sales of cars before they collected all the payments from the purchasers/customers. This procedure has been referred to as the "tax on phantom income" because frequently dealers who sell automobiles to subprime customers never collect the sales proceeds because such customers frequently default on repayment of the installment contracts.

In new Revenue Procedure 2000-22, the IRS now excepts automobile dealers (and all other small businesses who qualify) with average annual gross receipts of $1 million or less (provided they don't regularly use a non-cash method for keeping their books, records, and for financial reporting) from having to account for car inventories and from using the accrual method of reporting purchases and sales. The isolated use of the accrual method, for example, on a one-time basis to obtain a bank loan, does not violate this requirement.

Rev. Proc. 2000-22 indicates that taxpayers who qualify for this exception may not deduct inventory as a cost of sale until the year the car is actually sold. The new procedure doesn't specify whether this deduction for inventory/merchandise costs must be

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taken using specific identification or First-In, First-Out (FIFO), or whether methods of cost identification such as Last-In, First-Out (LIFO) may be used.

Apart from simplified bookkeeping, the main advantage of this new procedure will be the deferral of income until payment is actually received instead of recognizing the income at the time the car is sold.

The test for determining whether average annual gross receipts is $1 million or less is computed by averaging the dealer's average gross receipts for a three (3) year tax period which includes the year of change or implementation. Gross receipts for purposes of this computation must include all receipts actually reported for federal income tax purposes. For example, in a typical dealership gross receipts would include amounts received from car sales, interest income, warranties, credit life, and other add-ons and rents. However, gross receipts would not include sales tax or other similar items, nor amounts collected for title and license fees.

Dealers in existence for less than three (3) years must determine annual gross receipts for the number of years of their actual existence. Gross receipts for partial years must be annualized. Dealerships with related finance or other affiliates must aggregate gross receipts with all other related entities in computing gross receipts.

Dealers who have been reporting using the accrual method may change to the cash method by following the automatic change in accounting provisions of Revenue Procedure 99-49 with some modifications, including the fact that dealers presently in audit, appeals, or before the Tax Court aren't restricted in their use of such automatic change procedures.

A dealer may still make an automatic change for the calendar year ending December 31, 1999 retroactively, if the dealer filed its original federal tax return before July 15, 2000. Approval is obtained by filing Form 3115 in duplicate and attaching the original copy to an amended tax return by no later than November 13, 2000. The other copy of the Form 3115 must be filed with the IRS National Office. The new revenue procedure provides details about which parts of the form must be completed. The process is highly technical, and dealers are encouraged to consult with a qualified tax advisor before filing.

Qualifying dealers who want to change to the cash method also must make any necessary changes to their automobile inventory method as required for cash-basis taxpayers. Dealers who capitalize financing and other costs or who use the LIFO method will have special transitional considerations. The effect of such inventory adjustments may be spread over four (4) tax years if properly elected.

Used car dealers who change to the cash method and later exceed the $1 million annual gross receipts test must subsequently change back to the inventory and to the accrual method in the year such receipts exceed $1 million dollars and for all subsequent years thereafter.

Although the new procedure is effective for tax years ending after December 16, 1999, the IRS will not challenge a dealer's use of the cash method (and failure to account for inventories) in earlier years under certain circumstances. Careful application of these retroactive provisions may generate significant tax refunds for dealers who previously paid taxes using the accrual method.

Although this new procedure offers some much needed tax relief to small dealers (particularly those in the buy-here, pay-here industry), growing dealerships who presently qualify for this exception but who are likely to exceed the gross-receipts threshold in the near future may want to remain on the accrual method to avoid having to change accounting methods twice. As these new regulations are highly technical and require careful implementation, dealers who intend to consider changing to the cash method are encouraged to consult with a qualified tax advisor.

A VALUABLE RESOURCE

For CPAs and consultants getting into the used-car operations or Buy-Here, Pay-Here areas or already specializing in them, Ken, his firm and the NABD web site are all great resources which should not be overlooked.

Kenneth Shilson is Managing Director of Kenneth Shilson & Associates, P.C., a CPA firm in Houston, Texas, representing new and used car dealers throughout the nation. Mr. Shilson is a founder of the National Association of Buy-Here, Pay-Here Dealers (NABD, www.bhphinfo.com). Steven L. Goldberg, CPA, is the Tax Manager at that firm. Reprints of the above articles may be obtained and/or further questions may be directed to Ken or Steve via e-mail (shilson@flash.net) or through their web site (www.kenshilson.com).

De FILIPPS 3rd ANNUAL CPA-AUTO DEALERSHIP NICHE CONFERENCE

CONFERENCE REPORTS

CPAs, industry consultants and auto dealership controllers came from across the country to Chicago on June 26-28 for the ***De Filipps 3rd Annual CPA-Auto Dealership Niche Conference*** to see and hear how advances in technology, increasing competition at both corporate and dealer levels, the rise of E-commerce and the restructured IRS are likely to affect their businesses.

Throughout two-and-a-half days of presentations, the words so-called medicine men proclaiming the age of direct manufacturer-to-customer sales channels and the end of the dealership networks were refuted by a faculty of top industry officials and specialists. Their collective advice was that CPAs and professional consultants advising dealers can help them ensure profitability into the 21st Century by keeping themselves and their dealers informed of changing trends and by incorporating new ways of thinking into evolving strategies which need to be given a reality check on an almost daily basis.

RECORD-BREAKING INDUSTRY PROFITS ... BUT FOR HOW LONG?

The Conference opened with a mid-year update on the status of the auto dealer industry presented by Robert B. Dilmore, Sr., of Management Performance Groups, Inc., Atlanta. In discussing "*What's Happened So Far & What May Happen Next*," Dilmore warned that while the industry cheers nearly a decade of record-breaking revenue and profit, signs are appearing that may foreshadow leaner times ahead.

A combination of increasing personnel expenses, fixed expenses and failing margins leads Dilmore to believe that a belt-tightening in the near future may become necessary. When weakening consumer confidence and rising fuel costs are added to this scenario, there is cause for concern.

As car makers seek to increase revenue and consolidate control over operations, the rise of e-commerce will contribute to accelerating change in the industry. Indeed, it may have already done so.

Dilmore observed that Morgan Stanley's recent announcement that the Internet has already made the dealer network obsolete is a bit premature. However, combined with General Motors statement that in three years only 20% of automobiles will be purchased in showrooms, it shows that the push for direct-to-customer operations is becoming a reality that dealers must prepare for and confront.

DEALERS ACROSS THE COUNTRY FIGHT BACK

Focusing on the shift by manufacturers towards "direct-to-customer" operations which would effectively remove the vast dealer network, Daniel E. Myers, Esq. discussed dealers' efforts to fight back against the Factories. Myers was the focus of a recent article in *The Wall Street Journal* (Wednesday, May 10, 2000) which discussed the attack on dealers and the dealers' response. The *WSJ* article indicated that, with rare unity, dealers were scoring early wins and revving up in state franchise wars.

In his Conference presentation, Myers summarized various and sundry threats to the dealer body by the manufacturers and his firm's activities in protecting dealers. A partner in the Tallahassee-based law firm of Myers, Forehand & Fuller, P.A., Myers has successfully fought for legislation in many states to protect the dealers from direct competition from manufacturers. His most recent notable success was in Arizona in helping dealers persuade that state legislature to strengthen laws to restrict auto makers from selling their automobiles directly on line. These laws provide that:

- Manufacturers cannot act as a dealer group;
- Auto companies must share "leads" from Internet inquiries;
- Manufacturers cannot influence price or location regarding dealer operations.

Myers urged CPAs to be proactive in helping their dealers protect their franchises. One way he suggested is to look at the franchise laws for the state the dealer is in. Some state laws are very protective of dealer interests. Others offer dealers very little protection, and Myers indicated that dealers should expect the manufacturers to mount their attacks sooner and more aggressively in those states where the dealer protection laws are weak.

RECENT TAX & IRS DEVELOPMENTS

Four Conference speakers addressed recent tax and IRS developments affecting auto and truck dealers. In his presentation entitled *When Worlds Collide...*, Willard J. De Filipps reported that the IRS' insistence that dealers use actual cost, not replacement cost, when valuing parts inventories, "has troubling implications for all dealers."

De Filipps explained that the recent *Mountain State Ford Truck Sales* decision affects every dealer, not just those who use the Last-In, First-Out (LIFO)

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inventory method for valuing their parts inventories. Dealerships have always used replacement cost when valuing their inventories, and no software exists for dealers to compute actual cost. Nevertheless, the IRS is continuing to look for ways to do this and satisfy the holding of the Tax Court.

Relief could come quickly if Congress were to act to change the law. In fact, De Filipps asked the National Taxpayer Advocate, Val Oveson, to appeal directly to Congress to change the actual cost requirement to allow the more realistic use of replacement cost. De Filipps reported that Oveson unfortunately declined to take any action on the matter. The *Mountain State Ford* case is currently on appeal.

Other areas he discussed included (1) whether the "kinder, gentler" IRS is a myth or a reality, (2) the LIFO conformity settlement update arising from Revenue Procedure 97-44 and unanswered questions over what constitutes a "reasonable" estimate, (3) service technician tool rental and reimbursement plans, (4) multiple dealership entities and planning opportunities, and (5) using gifts in business succession and estate planning. In his comments on gifts and gift tax returns, he placed special emphasis on the recently finalized regulations requiring "adequate disclosure" before the statute of limitations will ever start to run.

With regard to "adequate disclosure," De Filipps advised CPAs in the audience that if they reported gifts on 1999 gift tax returns and did not take into consideration these new requirements, it may be appropriate to file amended gift tax returns of 1999 in order to start the running of the statute of limitations on the valuations used.

Mary Baker, Patricia Leatherwood and Terri Harris represented the IRS at the Conference. Mary Baker who was formerly the Motor Vehicle Industry Specialist became the Technical Advisor Manager for the Entertainment and Technology Group effective June 4th. She outlined the activities of the IRS' Motor Vehicle Program, discussed current federal tax issues for dealers from the IRS perspective, and introduced Terri Harris as the Interim Motor Vehicle Technical Advisor.

Baker emphasized that the Technical Advisor Program is a part of the Prefiling and Technical Guidance Segment of the Large and Mid-Size Business Division of the restructured IRS. She indicated that the Service will now be placing greater emphasis on resolving issues earlier and completely, especially through prefiling agreements and alternative issue resolution.

She also discussed the *Mountain State Ford* case, various developments affecting service technician tool plans and depreciable life of real estate. In her comments on Section 62(c) "tool plans," Baker made it quite clear that there is no tax law requirement in Section 62(c) that requires a dealer to have a third-party administer the plan! She also indicated that a Coordinated Issue Paper addressing these plans should be coming out very soon...and it is likely to be very adverse to these plans.

Patricia Leatherwood, Chief of the Internal Revenue Service Exam Division: Illinois District, Chicago, discussed how the restructured and streamlined Internal Revenue Service has the mission of providing fair, balanced business practices to dealer organizations. See the article on page 19 for more information on the "kinder, gentler" IRS and the eight new IRS audit standards.

8 STANDARDS

- audit planning,
- audit scope,
- income probes,
- audit techniques,
- workpapers and reports,
- application of tax law,
- timeliness, and
- customer relations and professionalism.

During the interactive tax panel, Terri Harris joined the others in fielding a wide variety of questions. She indicated that one area the Service would be looking into involves electronic recordkeeping requirements. For more about this, see Update item #4 on pages 2 and 3. Harris also said that Conference attendees would receive copies of Coordinated Issue Papers on technician tool plans and Depreciable Real Estate Lives for Service Bays when they become available.

GOODWILL & BUSINESS VALUATIONS

To avoid large income tax payments during the purchase or sale of a dealership, the seller usually insists on a stock transaction. Buyers, on the other hand, prefer an asset sale. According to David A. Duryee, of Moss Adam Advisory Services, Seattle, it is possible to allocate all or portions of the goodwill to the dealer principal to escape taxation at the corporate level.

Recent Tax Court cases have determined that shareholders may possess valuable assets that can be sold on an individual, instead of a corporate, basis. This establishes a precedent for "personal" goodwill, which can be allocated to the individual shareholder and the corporation. As such, this personal goodwill would not be subject to the double tax incurred through the sale of C Corporate assets or an S Corporation with built-in gains.

SUCCESSION PLANS MINIMIZE ESTATE TAXES

Chicago attorney Terrell J. Isselhard, Esq. of Chuhak & Tecson, P.C., discussed the dynamics of auto dealership business planning, emphasizing wealth, harmony and business continuity. He outlined several options (including estate freezes and the use of buy-sell agreements) designed to avoid the steep taxes that may occur when a dealership is passed along to the next generation.

An estate freeze lets parents give appreciating property to their children during their lives instead of retaining the property until death. This planning technique minimizes the estate tax and maximizes the amount of property passing to one's children.

Buy-sell agreements allow the purchase or sale or options if certain situations, outlined in the agreement, occur. These establish the value of the stock for Federal estate tax purposes upon the death of the shareholder.

Isselhard's extensive materials include case study analyses, charitable remainder trust diagrams, flow-charts of numerous entity arrangements and rearrangements, and useful checklists such as *What Are The Issues That Need To Be Reviewed, Considered And Planned?*

He also included *A Strategic Auto Dealership Planning Matrix* that reflects goals, format, marketing, financing, management and expenses in their relationship to the four business stages of start-up, maturity, expansion and succession planning.

REINSURANCE & CHOICES OF JURISDICTION

There is increasing competition now between governments wanting U.S. companies to register their offshore domiciles on their territories. This spells good news for the industry, according to John Steve Mailho of Mailho Company, Sonoma, CA.

A pioneer in developing offshore reinsurance companies as profit centers for automobile dealers, Mailho indicated that increased global competition now requires these foreign jurisdictions to treat U.S. dealers' domestic reinsurance companies more like *customers* than they have in the past. These governments are under greater pressure to come up with incentive deals that offer dealers the most value for maintaining cash reserves on their territory.

Conference attendees were especially pleased when Mailho announced that everyone in attendance would receive a free copy of the new edition of his book, *What You Don't Know Leaves Money on the Table*, when it becomes available in the fall.

RELATED FINANCE COMPANIES HELP USED CAR OPERATIONS

Kenneth B. Shilson, Managing Director of Houston-based Kenneth Shilson & Associates, P.C., noted that the rising costs of new vehicles are making it increasingly more attractive for Americans to purchase used cars and trucks and that an increasing percentage of industry profits will come from this segment of the market. In order to capitalize on this emerging situation, Shilson encouraged dealers to set up Related Finance Companies (RFCs) for operational efficiencies and for tax advantages.

RFCs improve a dealer's ability to raise additional capital, insulate notes from dealership operating liabilities, separate finance collections from dealership collections, and help the dealer in his/her succession and estate planning.

OTHER CONFERENCE PRESENTATIONS

Other Conference presentations which were supplemented with extensive hand-out materials addressed:

- Fixed operations (Eugene White discussed benchmarks, ratios, traps and future developments affecting net profit)
- Factory warranty audits and sales incentives (Ben W. Plymale)
- Dealer fraud cases and how not to become one (Carl Woodward)
- Hiring practices which may constitute traps for the unwary dealer (John P. Boggs)

DRIVING TO PROFITABILITY

Consultant Mark D. Schmitz, Ph.D. of Park City, Utah wrapped up the Conference with sage advice sprinkled with common sense and humor. His presentation, entitled *Driving to Profitability: What Sharp Dealers Look At*, showed attendees how they could analyze a dealer's financial statements and operating reports and prepare effective summaries that should lead to change.

Schmitz provided many practice aids and a wealth of information that can be easily adapted by a CPA in a one-on-one consulting situation with a dealer client. His "Analysis Process" summary for dealer consultants is on page 10.

Throughout his presentation, Schmitz humorously called attention to many situations that consultants should consider as ***red flags*** whenever they appear. He called them his "watch it" list. These red flag situations, listed on page 11, are "bound to screw-up the dealership" if not closely monitored.

A RESOURCE FOR YOUR LIBRARY

The 500-page Manual from the De Filipps 3rd Annual CPA-Auto Dealership Niche Conference is available for purchase. For more information, call 847-577-3977.

THE ANALYSIS PROCESS

	ANALYSIS STEPS
Analysis of a dealership's or department's financial condition should follows a logical progression as shown to the right. It begins with a review of the most recent statement.	1 Review Financial Statement
Next we "spread" statements or otherwise create a trend from previous periods.	2 Spread Financial Statements
This leads to **ratios** which are nothing more than comparisons of lines from the statement. Margins and inventory turns are good examples.	3 Ratio Calculations
A key step is comparing the ratios to historical levels or averages and standards. 20 groups and factory composites are extremely useful.	4 Trend & Comparative Analysis
Using trends and comparisons, negative or positive situations should be obvious to even novices.	5 Problem Identification
Having found the problems or strengths, it is important to quantify them in $'s. Rather than noting that the used cars gross profit margin is 2% below other dealerships, we'd like to know that achieving the extra 2% would add $5,000 to gross profit.	6 D-R-D Dollar-Ratio-Dollar Calculations
Next we identify the likely causes of the problems (or strengths!) using causation diagrams or common sense.	7 Causation Analysis
This hopefully leads to policy changes and solutions.	8 Solutions

DEALERSHIP RED FLAGS ... A "WATCH IT" LIST

During his presentation entitled *Driving to Profitability: What Sharp Dealers Look At*, Mark Schmitz called attention to many situations that consultants should see as red flags whenever they appear. These red flag situations are "bound to screw-up the dealership" if not closely monitored.

So, watch it ...

- When the Dealer's son takes over ... (only thing worse: if *two sons* or *sons-in-law* take over)
- When the "Big D" (Divorce) looms for the dealer
- When the dealer owns a boat longer than 60 feet
- When the dealer owns any airplane
- When the dealer won't give the bank a 13th month statement
- When the dealer thinks "profits = cash flow"
- When the dealer has a single digit handicap (is he spending too much time on the golf course?)
- When the dealer buys a second store, especially if it's more than a mile away
- When the dealer gets into a 50-50 Partnership
- When the dealer switches to S-Corp status and/or to LIFO
- When the dealer runs for elected office
- When the dealer wants to floor used cars
- When the dealer ignores "creepers" (creeper costs)
- When the dealer gets elected Association President or to a Dealer Council
- When the dealer buys equipment with cash
- When the dealership has non-dealership assets ("Crapola") on the balance sheet
- When there are extensive shareholder and related company receivables
- When the dealer gets involved in side-show ventures
- When the dealer decides to buy a professional sports team
- When the dealer decides to build a corporate ID facility
- When every manager can give spiffs
- When the dealer only uses one wholesaler for used cars
- When the dealer becomes a member of a Union Negotiating Team
- When the dealer believes there's no problem a Cap Loan wouldn't solve
- When the dealer hires a "hot-shot" consultant
- When the techs leave at 2:00 PM

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ANOTHER ARRANGEMENT FAILS TO DELIVER EQUIPMENT RENTAL BENEFITS ... *DE PAZ ET.AL v. COMMISSIONER*

TOOL PLAN UPDATE PART 4

Things are starting to look even worse for auto dealers who set up technician tool rental and reimbursement plans. The IRS has indicated that it is very close to final publication of a Coordinated Issue Paper that is expected to take a very negative view towards these plans and their "purported" benefits.

In a related development, the Tax Court has recently held that several individuals who leased their trucks to carriers for a rental fee that was equivalent to their vehicle expenses were not engaged in the separate activity of leasing their trucks to the carriers. Accordingly, for income tax purposes, the lease arrangements with the carriers had no independent economic significance and all of the income the owner-operators received from the carriers was wage income.

The expenses they incurred in connection with the operation of their trucks were deductible, but only as Schedule A itemized deductions, subject to the percent-of-AGI limitations imposed by Section 67(a).

In Tax Court Memorandum Decision 2000-176 (*Marcos de Paz et. al. v. Commissioner*), May 26, 2000, the Tax Court considered similar situations involving three different California taxpayers, each of whom took the position that part of the income they earned from their trucking activity could be allocated to a separate leasing activity.

Although the IRS initially took the position that self-employment tax should be imposed, it backed away from this position in favor of the result above. In addition, although the IRS originally determined that accuracy-related penalties under Section 6662(a) should be imposed, it eventually conceded that these penalties did not apply.

The individuals involved (Marcos de Paz, Jose Batres and Agustin Perez) were each employed by different trucking companies and entered into agreements with their employers regarding their working relationships.

The individuals reported their income in slightly different ways. De Paz reported only wage income, and included no Schedule C, Schedule E nor any other listing of expenses in his tax return in connection with his alleged rental income. Mr. Batres and Mr. Perez reported wage income, and reported rental income in a separate Schedule E, with an offsetting amount of vehicle/rental equipment expense so that the net rental income zeroed out.

CLARIFYING THE ISSUE

Although the IRS initially sought to reclassify the rental income in Schedule C, it later reconsidered this position in light of the broader argument that since the lease arrangements had no independent economic significance, all of the income received by each taxpayer should simply be treated as wage income... with offsetting deductions allowable only in Schedule A to the extent applicable.

The taxpayers took the position that as owner-operators, they were engaged in two separate activities: (1) ***leasing*** of their trucks to the respective carrier companies for a rental which was the equivalent of their vehicle expenses, and (2) ***providing the service of driving their trucks*** for wages.

The IRS did not see it that way at all. The IRS position was that each taxpayer was engaged in a single activity and that activity was "providing transportation of cargo for the carriers by use of their own vehicle." Placed in this context, the Court had to determine whether the leases had *independent significance* so as to give rise to a separate business activity.

THE COURT'S ANALYSIS OF THE LEASES

Although the Court had to interpret three different legal contracts or agreements, it stated that the general tenor of each was the same. The purpose of each agreement was to enable the carriers to obtain transportation services through the lease of tractor equipment that was owned by an independent contractor, with the tractor equipment to be furnished with a qualified driver.

Under the agreements, each owner-operator purported to lease his tractor-trailer to the carrier company and warranted that (1) the equipment would be in good condition, (2) placards would be placed on the vehicle showing that it is operated by the carrier, (3) he would operate the vehicle as an independent contractor, and (4) he would be responsible for all expenses necessary for the operation of the equipment.

Under the agreements, which could be terminated by either party upon short notice, compensation was paid by the carriers to the drivers in accordance with industry-wide scheduled tariffs. The Court indicated parenthetically that it understood that compensation for transporting cargo was generally divided 60%-40% between the carrier and the owner-operator for standard size and distance hauls.

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Under these arrangements, the carrier assumed liability for bodily injury to, or the death of, any person resulting from negligent operation, maintenance or use of the equipment. However, the cost of this insurance was deducted from the compensation due to the owner-operator who also agreed to furnish insurance covering those times when the tractor would be operated without a trailer.

The individual owner-operators are service providers who either owned and drive their own trucks or who own more than one truck and hire other drivers to drive their vehicles for them. However, in order to provide services to a carrier, an individual owner-operator must agree to qualify under various safety provisions that are dictated by the carrier, its insurance carrier and government regulations.

A landmark case involving lease interpretation is *Frank Lyon Co. v. United States,* 435 U.S. 561, (1978). In citing this case, the Tax Court noted that "labels used in formal written documents do not necessarily control the tax consequences of a given transaction."

The Court said that it would look to the substance of the transaction in order to determine the correct tax consequences and that it was well established, under the doctrine of *Gregory v. Helvering*, that the economic substance of a transaction, rather than its form, controls for Federal income tax purposes. Accordingly, the fact that the agreements to be interpreted state that the transactions are leases does not govern.

As a practical matter, the individual owner-operators retained control of the use of their vehicles at all times and they were responsible for all operating expenses. The carriers never acquired possession of the vehicles. Although each owner-operator was required to display the carriers' placard on the side of his truck while it was being used for that carrier, the placard could be removed if the truck was to be used for other purposes. More importantly, there was no definite lease term and the individual owner-operators were always free to use their trucks how and for whom they wished, provided they removed the placards of any other company. They could accept or reject loads as they wished. They could earn as much or as little as they wanted because they were free to use their equipment as much or as little as they wanted.

The Court concluded that the leases only served the carriers' needs to comply with governmental regulations which had been put into place to protect the public by preventing common carriers from evading liability for accidents caused by independent drivers and from potentially confusing the public as to who was financially responsible for the vehicles.

The Court observed that requiring separate (lease) arrangements relative to insurance ensured that adequate insurance coverage was in place and minimized the carrier's overall insurance-monitoring responsibilities. However, in most, if not all cases, the owner-operators paid for this insurance by having the cost deducted from their hauling proceeds.

CONCLUSION

Considering all of the foregoing, the Court concluded that for income tax purposes, the lease arrangements with the carriers really had no independent economic significance. As a consequence, all of the income the owner-operators received from the carriers should be treated as wage income.

This Tax Court Memo Decision, involving several related situations, and *Shotgun Delivery, Inc. v. USA* (reported in the March, 2000 issue of the *Dealer Tax Watch)* significantly strengthen any position the IRS may take against auto dealer service technician tool rental and/or reimbursement plans.

DEALERS CAN'T HAVE FAST WRITE-OFF OF PREMIUMS PAID FOR VEHICLE SERVICE CONTRACT INSURANCE IRS PREVAILS AGAIN IN *TOYOTA TOWN, INC.*

EXECUTIVE SUMMARY

Warning: This article could put you to sleep quickly. If you stay awake and read it, it could bore you to tears unless you're really a serious student of dealer/obligor VSCs. The recent holding of the Tax Court in *Toyota Town, Inc.* (which this article is about) doesn't change any of the tax rules applicable to VSCs and you won't be any smarter on the subject after reading the article. The reason it is so long (notwithstanding the merciful omission of much additional background information that could have been included) is that Toyota Town unsuccessfully tried to argue that it should be treated as an exception to the general rule because of its creative accounting which the Court simply didn't buy.

BACKGROUND

Before 1992, most automobile dealers accounted for extended service contracts by reporting only the net amount of taxable income from each sale (i.e., sales price less premiums). In other words, the industry-wide practice at that time was to include the sales price of the service contract less (i.e., net of) the premiums paid in income in the year that the service contract was sold.

An early 1990 IRS draft Position Paper stated that dealers who were acting as principals in an extended service contract must include the full sales price of the extended service contract in income and amortize the premiums paid over the life of the contract.

As a follow-up, in 1992, the IRS issued Revenue Procedures 92-97 and 92-98 which address the tax treatment of service contracts in which the dealer is the party with primary liability (dealer-obligor service contracts). Extended service contracts under which the dealer operates only as an agent are not subject to these revenue procedures.

Revenue Procedure 92-97 provided for expeditious consent to change a method of accounting for the costs of multi-year insurance policies purchased in conjunction with the sale of multi-year dealer-obligor service warranty contracts. The IRS' position was that if a dealership purchases a multi-year insurance policy in connection with the sale of extended service contracts to customers by paying a lump sum premium in advance, then the dealership must capitalize the amount paid and deduct it by amortizing it over the life of the insurance policy.

The deadline for applying for a change in method of accounting under this revenue procedure was the first taxable year ending on or after June 12, 1992. Any taxpayer who failed to file by that deadline was required to apply for a change in method of accounting under the terms, conditions and limitations of what was then Revenue Procedure 92-20 (now 97-27 and 98-60).

Revenue Procedure 92-98 provided for the Service Warranty Income Method (SWIM) which offers an alternative to the way that dealer-obligor contracts were treated. The SWIM method allows a taxpayer to spread a portion of the extended service warranty income over the term of the contract and pay a non-deductible interest charge for the tax deferral which results. The SWIM method addresses the cash flow problem otherwise created by the IRS' view of the income tax treatment of dealer-obligor service contracts.

However, a dealer who wishes to elect the SWIM method must be in conformity with the IRS accepted method described in Revenue Procedure 92-97 (i.e., amortizing the premium paid for insurance over the life of the service contract rather than netting it against income from the sale of the service contract).

If a taxpayer is not currently amortizing insurance costs over the life of the insurance policy, then the taxpayer must first adopt the restrictive method described in Revenue Procedure 92-97 before it will be permitted to change to the SWIM method. See the September, 1999 *Dealer Tax Watch* for two more detailed articles on the SWIM method, and a checklist for VSC issues and problem areas.

Over the years, there have been several developments in the area of extended service contracts. In *Hinshaw's Inc. v. Commissioner*, T.C. Memo 1994-327, the Court held that amounts collected for extended service contracts constituted gross income. In LTR 9417028, the IRS held that the car dealer involved did not need to include in income amounts paid by car buyers for extended service insurance contracts sold by a third party because the dealer was an agent rather than the obligor.

A further discussion of the *Hinshaw's* case and Letter Ruling 9417028 can be found in the September, 1994 *Dealer Tax Watch* on pages 22-23.

More recently, the Tax Court addressed similar vehicle service contract issues in the *Rameau Johnson* case. The initial case in the Tax Court is discussed

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in the September, 1997 issue of the *Dealer Tax Watch* on pages 15-25, and the subsequent reversal of a portion of the Tax Court's holding was also discussed in the September, 1999 issue of the *Dealer Tax Watch* on pages 6-9.

NOW ALONG COMES *TOYOTA TOWN*

It would appear that the current case, *Toyota Town, Inc.,* may be rationalized as an effort by the taxpayers to try to fit their situation within the narrow exception that the Appeals Court allowed in the *Rameau Johnson* appeal.

However, as the Court notes in *Toyota Town*, the facts in this case do not fall within the exception language allowed by the Court of Appeals for the Eighth Circuit when it upheld the Tax Court's holding in *Rameau Johnson* that the cost of insurance premiums was required to be capitalized and amortized over the life of the insurance coverage.

The reversal of a part of *Rameau Johnson* by the Court of Appeals was ***only*** with respect to certain fees paid for administrative services provided by an administrator unrelated to the insurer, and that holding was that such fees were deductible in the year of payment.

However, those facts as specific to the *Rameau Johnson* situation were not the same as those in *Toyota Town* because *Toyota Town* stipulated, and all other evidence indicates, that ***all*** amounts that the Toyota Town dealerships paid to Western General were for ***insurance*** costs. Therefore, that took it out of the portion of the reversal of the *Rameau Johnson* decision that was favorable to the dealer taxpayers.

THE FACTS IN *TOYOTA TOWN*

This case actually involves over half-a-dozen dealerships and various individual shareholders of dealerships being operated as S-corporations.

The issue involved simply related to whether the dealerships could deduct insurance premium expense incurred in connection with the sales of extended warranty agreements under the convention that they had initially adopted, or whether those insurance premium expenditures had to be amortized ratably over the years in issue.

The Court held that the Service was right and that ratable amortization was proper. This case involved the taxable years ending in 1991, 1992 and 1993, which bridged the introduction of Revenue Procedure 92-97 and 92-98 and the SWIM (Service Warranty Insurance Method) and its correlative adjustments.

The dollars involved in the dealerships' adjustments were not large, as is sometimes typical of cases where the IRS is quibbling with taxpayers over when deductions should commence or at what rate they should be allowed.

The facts of this case make it clear that the dealer was the primary obligor in the sale of extended warranty agreements (which the Court referred to as EWAs). The facts are also clear that each EWA or VSC (vehicle service contract) expressly provided that it was a service contract between the dealer and the vehicle purchaser and it described the dealer as acting as a principal and not as an agent on behalf of any insurer.

The dealer did have an arrangement with Western General Insurance Company, an unrelated entity. Under this arrangement, the dealer purchased (for a single lump sum payment with respect to each vehicle service contract) coverage under which Western General agreed to issue and maintain individual insurance policy coverage at the dealer's expense which would insure a dealer for covered cost of repairs and/or replacements incurred by the dealer and covered under the extended service warranty agreement.

As required both by the terms of the insurance arrangements and by Revenue Procedure 92-98, the dealerships made all payments to Western General within 60 days after the extended warranty agreement was purchased by a customer purchasing a vehicle.

The dealerships in this case elected to report their income under the Service Warranty Income Method provided in Revenue Procedure 92-98. This election allowed them to defer the recognition of a portion of the advance payment over the life of the service warranty obligation. Under the revenue procedure, the amounts that were treated as qualified advance payments were spread over the life of the contracts, along with the appropriate non-deductible imputed interest amount. For purposes of computing the deferral period and the "interest equivalent" imputed income, all advance payments for service warranty contracts sold during the taxable year were effectively treated ***as if*** they were entered into, and payments were received, on the first taxable day of the year.

Note that this assumption that all contracts were treated ***as if*** they were entered into on the first day of the taxable year was simply a convenience to make the computations less complicated. Otherwise, specific identification of each contract and its applicable amortization period would have been required.

The Court was clearly aware that Revenue Procedure 92-98 allowing dealers to use the SWIM method attached further conditions to the use of that favorable election. One of these conditions was that the SWIM method was not available to a taxpayer unless the

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taxpayer used the proper method of accounting for amounts paid or incurred for insurance costs that covered the taxpayer's risks under the service warranty contracts.

This correlative requirement was set forth in Revenue Procedure 92-97 and the importance of this requirement is essentially what the *Toyota Town* case is all about.

Revenue Procedure 92-97, in addressing the accounting for insurance costs, provides that the lump sum amounts paid in advance for multi-year insurance policies (to insure a consumer durable goods seller's obligations to customers under multiple warranty contracts sold to them) must be capitalized and pro-rated or amortized over the life of the insurance policy.

TOYOTA TOWN TRIED TO USE THE SAME "AS IF" ASSUMPTION FOR EXPENSES THAT IT WAS REQUIRED TO USE FOR INCOME

What Toyota Town did, and what the IRS took exception to, related to the fact that Toyota Town attempted to write-off the insurance premium costs ***as if*** each insurance contract had been paid for on the first day of the taxable year in which the extended warranty agreement had been sold.

Fact: Revenue Procedure 92-98 treated the proceeds from the sale of extended warranty agreements ***as if*** they had been received on the first day of the taxable year in which the warranty agreement was sold for purposes of computing the amount of income required to be included each year in connection with those sales. Apparently, the Toyota Town dealers believed that it should be equally appropriate for the corresponding deduction for insurance premium costs to use the same ***as if*** or deemed date as the beginning of the year for convenience or practicality purposes.

Accordingly, the dealerships took deductions for the amounts paid to Western General for the assumption for the vehicle service contract liabilities by capitalizing such amounts and amortizing them in a manner which departed from the method required by Revenue Procedure 92-97.

The taxpayers computed their amortization deductions using an accounting convention under which the premium payment and policy inception were deemed to have occurred on the first day of the taxable year in which the policy was purchased, irrespective of the actual date of payment and policy inception.

Although this matched the "first-day-of-the-year" convention adopted by Revenue Procedure 92-98, it was clearly not the convention required by Revenue Procedure 92-97. The Court said, "This methodology, which resembled the convention prescribed in Revenue Procedure 92-98 for the recognition of income from the qualified advanced payment amount resulted in Petitioners' taking amortization deductions in the first taxable year of a policy's inception equal to a full year's worth of amortization, without regard to the actual date of payment and policy inception.

"In effect, this increase in the first year's amortization deduction caused it, as well as each ensuing years' deduction, to match the ratable portion of the deferred EWA (extended warranty agreement) income required to be included pursuant to the terms of Revenue Procedure 92-98. As a result, the 'net' income recognized by Petitioners consisted only of the excess of the aggregate EWA prices charged to the Petitioners' customers over the aggregate premiums paid by Petitioners to Western General in the year of inception of an EWA, plus the imputed income represented by the interest-equivalent factor in each of the years of the contract term."

This was a timing mismatch up with which the Tax Court would not put.

TWO DIVERSIONS

Interestingly, the taxpayers first tried a surprise tactic which was not allowed by the Tax Court. The taxpayers attempted to argue at trial that the amounts it paid to Western General were not included in their income on the basis of the "claim of right" doctrine. The Tax Court disallowed this additional argument saying that it believed that the IRS concluded that the dealers were not contesting the inclusion in their income of the amounts paid to Western General, and further, that the IRS would be prejudiced if the dealers were permitted to raise this issue for the first time at this later date.

Another diversionary tactic which the taxpayers unsuccessfully attempted involved arguing that their payments to Western General were not for ***insurance*** policies. In effect, the dealerships argued that the coverage was for something other than insurance. The Tax Court did not buy into that argument at all.

The Tax Court also commented that in the *Hinshaw's, Inc.* case (T.C. Memo 1994-327) it had held, in almost identical circumstances, that the prepayment of the multi-year insurance policies covering that dealer's obligations were not deductible in the year of payment, but must be amortized over the life of the insurance coverage.

The Tax Court also mentioned its decision in *Johnson* (108 T.C.) as well. Although the Toyota Town dealerships attempted to argue that their policies with Western General had no surrender value, the Court did not agree with their line of reasoning. In all respects, the dealers were primarily liable on the extended

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warranty agreements, notwithstanding the fact that they had transferred the risk of loss associated with that liability to Western General.

THE COMMISSIONER WAS REASONABLE & THERE WAS NO ABUSE OF DISCRETION

The Tax Court rejected all of the dealers' arguments that the Commissioner had abused his discretion in requiring them to change their method of accounting.

The dealers had contended that their method of accounting for the insurance costs which involved deducting a full year's worth of the premiums for the first year, regardless of the actual date of commencement of coverage, resulted in a "clear reflection of income." The taxpayers argued there was a clear reflection of income because their method more closely matched this expense with the associated income which was, under the requirements of Revenue Procedure 92-98, required to be recognized under a similar convention that treated that income as if it had been received on the first day of the year, without regard to the actual date of receipt. According to this neat, logical construct, the dealers argued that the accounting method required by the IRS distorted income because it limited the deduction of the expense associated with the extended warranty agreement to a partial year's portion notwithstanding the fact that a full year's portion of the associated income was required to be recognized immediately.

The Tax Court did not allow the dealers to "devise a method that more closely matches the income and expense associated with the qualified advance payment." The Court said that the dealers were wrong for at least two reasons. First, it was not an abuse of discretion by the Commissioner to establish ***reasonable*** conditions on the use of an accounting method that has been established administratively.

TAXPAYERS METHOD WAS ILLEGAL

Furthermore, even disregarding any authority of the Commissioner to impose conditions on the use of an administratively established accounting method, the dealers would not be entitled to use the premium amortization method they were using because ***that method was in direct violation of the Regulations.***

In connection with the taxpayers' attempted defense of their method as being in compliance with the Regulations, the Court pointed out that the Commissioner may only be prevented from changing a taxpayer's method of accounting if that method is specifically authorized in the Internal Revenue Code or in the Income Tax Regulations. The method that the dealers were using to amortize their insurance premium payments to Western General, "by contrast, violates the Regulations."

The Court noted that a prepayment for multi-year insurance coverage creates an asset having a useful life longer than a taxable year, and that prepayment must be capitalized. The prepaid insurance is an intangible, and its coverage period gives it a determinable useful life, making it eligible for a "depreciation allowance" under Regulation Section 1.167(a)-3.

The rules for computing a proper period for a depreciation allowance, to the extent relevant, provide that "the period for depreciation of an asset shall begin when the asset is placed in service and shall end when the asset is retired from service. A proportionate amount of one year's depreciation is allowable for that part of the first and last year during which the asset was in service."

Accordingly, the dealerships claim for a full year's amortization in the first year that a multi-year insurance policy was acquired or placed in service, without regard to the determination of when during the year the policy was in fact placed in service, directly convenes the rule in Regulation Section 1.167(a)-10(b). That rule allows only a "proportionate part of one year's depreciation" in the first and last years of a period of service.

The dealers had offered no other authority in support for their method of amortization. They had simply argued that "by precisely matching the recognition of the deferred insurance expense with the recognition of the deferred income permitted in Revenue Procedure 92-98...for their extended warranty agreements, they had effected a clear reflection of income" which the IRS should not be permitted to disturb.

The Court overruled the dealers' contentions stating that a method of accounting that is "plainly inconsistent" with valid regulations does not clearly reflect income within the meaning of Section 446(b).

REASONABLE ADMINISTRATIVE CONDITIONS

The dealers in this case attempted to portray the Commissioner and the IRS as attempting to "force" them to change from a method of accounting which clearly reflects income to one which does not. The Tax Court pointed out that the Commissioner was not attempting to "force" a change in the dealers' accounting methods.

Rather, the Commissioner was simply relying upon his authority under Section 446(b) in administratively establishing a revenue procedure which provided a method of accounting for certain prepaid service income and to which were attached certain (reasonable) conditions on taxpayers should they elect to use that administratively provided method.

Since the dealers voluntarily elected to use the method, which provided them with tax benefits in the form of a deferral of a portion of the prepaid service

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 (Continued from page 17)

income, they were required to respect the conditions attached by the Commissioner to the use of that method.

The Court said that the Commissioner imposed certain (reasonable) conditions upon a taxpayer's eligibility to elect the Rev. Proc. 92-98 SWIM method. These reasonable conditions included specifically the requirement that an electing taxpayer account for insurance expense associated with the warranty contracts under the method set forth in Revenue Procedure 92-97.

The taxpayers disregarded this requirement and used a different method to write-off their insurance premium expenses. The dealers then attempted to justify their treatment based on the use of the same "convention" that deems all amounts involved as having been incurred on the first day of the taxable year, regardless of the actual date of incurrance. Because of the matching achieved under their method, the dealers contended that their method "clearly reflected income" while the method required by the IRS did not.

TAXPAYER MUST COMPLY WITH REASONABLE CONDITIONS

The Court stated that the dealers could not avail themselves of the benefits of the deferral provided in Revenue Procedure 92-98 without adhering to the conditions on its use imposed by the Commissioner. It cited *Mulholland v. United States*, a case in which the taxpayer's failure to adhere to the conditions of a revenue procedure rendered it ineligible for its benefits.

The Court noted that even without the issuance of Revenue Procedure 92-98, the Commissioner generally would have discretion under Section 446(b) to prevent taxpayers from deferring prepaid service income until the periods when related costs will be incurred and taken into account. It cited a string of familiar cases as precedent: *Schlude, American Auto Association v. United States, Automobile Club of Michigan v. Commissioner, RCA Corp. v. United States, Rameau Johnson v. Commissioner*, and *Hinshaw's, Inc. v. Commissioner.*

Accordingly, the Toyota Town dealers were entitled to defer the income under the service warranty income method only if they meet all of the conditions imposed upon them in order to be eligible. It is not an abuse of discretion for the Commissioner to impose as a condition on the election of the method in Revenue Procedure 92-98 a requirement that the Petitioners use the method in Revenue Procedure 92-97 to account for their insurance expense ***"since this condition, does no more than require adherence to existing Regulations."***

The Court said that the Commissioner's broad discretion to determine whether a method of accounting clearly reflects income under Section 446(b), along with the requirement in Section 446(e) that the Commissioner's consent must be secured for any change in accounting method, provides the Commissioner with the authority to impose the condition that it did in connection with the use of the SWIM method under Revenue Procedure 92-98.

The Court further said that the taxpayers' argument that its method of accounting for insurance expense produced "superior matching of income and related expense" was unavailing. The matching of income and related expense does not necessarily result in a clear reflection for tax purposes. A prepayment for services to be performed in the future must be recognized when received, even though this would mismatch revenue and expenses. Were it not for Revenue Procedure 92-98, existing law would require an even greater mismatch of the extended warranty agreement income and the associated insurance expense than the so-called "distortion" that the dealers were trying to avoid would otherwise produce. Existing law would require the recognition of the entire amount of income in the year of receipt without regard to the period in which the related insurance expense would be deferred.

The Court held that the Commissioner acted within his authority under Section 446(b) in allowing a taxpayer-favorable deferral of income in the form of the SWIM method. The Court also held that "the Commissioner is not required to make further concession of accelerating deductions beyond the requirements of existing law."

THE MORAL OF THE STORY

The moral of *Toyota Town, Inc.* is simply that the taxpayer can't expect to have it both ways: It can't expect the benefit of a tax deferral under the SWIM method while at the same time accelerating deductions of the write-off of the cost of the insurance premium paid to protect itself against loss on those policies.

The Court's holding in *Toyota Town* was not inconsistent with the reversal of a portion of its holding in *Rameau Johnson* since all of the amounts in question in the *Toyota Town* case involved "insurance" costs.

SOME MID-YEAR REFLECTIONS ON IRS AUDIT ACTIVITY & NEW STANDARDS FOR EXAMINING AGENTS

THE "NEW" IRS

The good news seems to be that for the present, a lesser degree of IRS audit activity is obvious everywhere. The not so good news is that there still is lots that the IRS could look into if only it had more time, people and resources.

The table on page 24 reflects the steady decline in IRS audits of corporate tax returns over the last seven fiscal years 1992 through 1998. For corporate returns showing Schedule L Balance Sheets with assets between $1 Million and $5 Million, there has been almost a one-third decline during this 7-year period from 9.93% down to 6.35%.

For corporate returns with assets between $5-$10 Million, there has been almost a 30% decline (from 18.78% to 13.44%). And, for corporate returns with assets between $10-$50 Million, there has been almost a 25% decline (from 23.20% down to 17.74%).

In a recent *Automotive News* article, April 10, 2000, "Tax Experts Advise Dealers to be Vigilant," it was reported that "now Federal officials worry the drop in audits and enforcement activity might encourage more people and businesses to cut corners or cheat." It was also reported that the IRS has assured Congress that multi-million dollar investments in new technology will enable it to do a better job with the staff it expects to have on board. However, even by hiring additional auditors, the IRS would be hiring replacements for only about a third of those who left or retired in the last few years.

Many former highly ranked IRS employees are taking positions with Big 5 accounting firms, large legal firms and large organizations. Many doubt that the IRS can overcome this "brain drain" easily or quickly simply by hiring new employees or promoting from within.

More recently, *Tax Notes* (June 19, 2000) reported that the lack of resources is showing up in IRS performance measures and it concluded that "overall, the numbers show that the IRS is taking longer to do many of its various tasks. They also show that where possible, the IRS is trying to decrease its work load to match its stretched resources."

WORKING SMARTER

One aspect that should not be overlooked is that even with "stretched resources," there are many ways by which IRS employees can work not faster nor harder, but "***smarter***." One example mentioned recently at the Tax Executives Institute mid-year conference was that the IRS will rely increasingly on the Internet to gather pertinent information for corporate audits. In March, 1998, one IRS official issued an internal memorandum authorizing employees to use the Internet for research.

Reporting on this, Steve Mailho indicated that another IRS International Branch Chief said that an Internet search can provide valuable information about a particular industry, the technical steps involved in a manufacturing process, amounts companies charge each other for certain products, and other data helpful in an audit.

Applying similar opportunities to work smarter to the audits of auto dealerships, there is absolutely no doubt now that an abundance of information is available at everyone's fingertips to track dealer trends, benchmarks, performance statistics and many other measures. With these tools available, not only to CPAs and dealer consultants ... but also to any intelligent IRS agent who wants to employ them ... what used to be impossible to obtain information can now be obtained very quickly, at a reasonable cost and in a format that permits easy comparison of a specific dealer with a composite of many others.

Much has been written about the IRS' new prefiling agreement program which is designed to resolve taxpayers disputes "at the front end," rather than at the back end of a potentially extended litigation process. Prefiling agreements allow taxpayers and the IRS to resolve issues from both a factual and a legal issues standpoint and these agreements are in the nature of closing agreements. If you're interested in this, *Tax Notes*, in its January 24, 2000 issue, provides significant discussion in articles on this initiative.

Also, the IRS has changed the old "industry specialist" program to now call it the "technical advisor" program, with the emphasis designed to work across different industries to achieve consistency in IRS positions and to seek input from industry representatives in evaluating industry issues. (See *Update* item #4 on page 2.)

Finally, in connection with its overall image change, the IRS recently issued new audit standards for examining agents. These eight standards appear on pages 20-22.

Whether *kinder or gentler,* one can't say yet. However, it is certainly a *different* IRS that dealers and their CPAs can expect to "do business with" in the 21st century. *

IRS AUDIT STANDARDS

1. ***AUDIT PLANNING***	***PURPOSE*** This standard measures whether the pre-audit plan identified material issues; whether initial requests for information were clear, concise, appropriate, and addressed the potential issues selected; and, if necessary steps were taken to set the groundwork for a complete examination. ***OVERVIEW*** This standard encompasses, but is not limited to, the following fundamental concerns: 1. Consideration of collectibility, 2. Review of internal documents, 3. Identification of significant or potential issues, 4. Preparation of initial interview questions, 5. Contact with the taxpayer regarding scheduling of appointment and requesting necessary records, 6. Proper consideration and processing of power of attorney forms.
2. ***AUDIT SCOPE***	***PURPOSE*** This standard measures whether consideration was given to the large, unusual, and Questionable (LUQ) items on the return and those that become evident throughout the course of the examination. This standard also measures whether consideration was given to the filing and examination potential of all returns required to be filed by the taxpayer, including those entities in the taxpayer's sphere of influence and responsibility. In addition, this standard measures whether appropriate steps were taken to assure compliance when other taxpayers were affected. ***OVERVIEW*** This standard encompasses, but is not limited to, the following fundamental considerations: 7. Absolute Dollar Value, 8. Relative Dollar Value, 9. Multi-year Comparison, 10. Intent to Mislead, 11. Whipsaw Impact, 12. Industry/Business Practice, 13. Compliance Impact, etc. This standard also considers the analysis of return information and, when warranted, the pick-up of related, prior, and subsequent year returns. In accordance with IRM 4.2.5.6, the examination should include checks for filing of information returns.

3. ***INCOME PROBES/ DETERMINATION***	***PURPOSE*** This standard measures whether the steps taken have verified that the proper amount of income was reported. ***OVERVIEW*** The steps taken during the examination of income are dependent on the facts and circumstances of the case. Consideration should be given to tax return information and the taxpayer's books and records. Examiners should also consider responses to interview questions, the outcome of the minimum income probes, and the results of the financial activity analysis. Gross receipts need to be examined regardless of whether the taxpayer maintained a double entry set of books. For business returns, the taxpayer's internal controls should be evaluated to gain an understanding of the policies and procedures used to safeguard business assets and avoid material misstatements of financial information. Books and records are to be reconciled and tied to match the return.
4. ***AUDIT TECHNIQUES***	***PURPOSE*** This standard measures whether the issues examined were completed to the extent necessary to provide sufficient information to determine the substantially correct tax. ***OVERVIEW*** The depth of the examination is determined through inspection, inquiry, interviews, observation, and analysis of appropriate documents, ledgers, journals, oral testimony, third-party records, etc., to ensure full development of the relevant facts concerning issues of merit. Interviews provide information not available from other documents. A property planned and executed interview will provide an understanding of the taxpayer's financial history, business operations, and accounting records. Specialists should be consulted when expertise is needed to ensure proper development of unique or complex issues. Audit techniques should adhere to the principles outlined in IRM 4.2.7.2.2.
5. ***WORKPAPERS/ REPORTS***	***PURPOSE*** This standard measures the documentation of the examination's audit trail, techniques used, procedures applied, and the examiner's activity on the case. It also measures whether the reports and workpapers document the audit sufficiently to support the conclusions reached, whether computations are accurate, and the examiner's use of RGS/EOAD. ***OVERVIEW*** Workpapers are the principal support for the examiner's report. They document the procedures applied, audit tests performed, information inspected and obtained, and the conclusions reached during the examination. Reports are needed to summarize the written presentation of audit finding in terms of content, format and accuracy. All necessary information is contained in the report, so there is a clear understanding of the reason for each examination adjustment.

IRS AUDIT STANDARDS

6. ***APPLICATION OF LAW / TAX DETERMINATION***	***PURPOSE*** This standard measures whether the conclusions reached were based on correct application of tax law. ***OVERVIEW*** This standard includes consideration of applicable law, regulations, court cases, revenue rulings, etc., to support the technical and factual conclusions, including penalties.
7. ***TIMELINESS***	***PURPOSE*** This standard measures the utilization of time, as well as timeliness of actions, throughout the examination process. ***OVERVIEW*** Time is an essential element of a quality examination. This standard considers the use of time relative to the complexity of the issues, the time span required to complete the case, and the timeliness of the examination process.
8. ***CUSTOMER RELATIONS/ PROFESSIONALISM***	***PURPOSE*** This standard measures whether the customer needs were promptly addressed, that prompt and professional communications reduced the taxpayer burden, and the rights of the taxpayer were respected. ***OVERVIEW*** In an effort to promote good customer relations with the taxpayer, the IRS has pledged to provide service to each taxpayer that will make filing easier, will provide quality service to the taxpayer who needs help with returns or accounts, and will provide prompt, professional, helpful treatment to taxpayer in cases where additional taxes may be due. Customer service means adopting business practices that make compliance easier and ensuring tax laws are applied fairly, observing the rights of the taxpayer.

NEW SERVICES & RESOURCES FOR DEALER CONSULTANTS

H2H CONSULTING SERVICES, LLC

H2H Consulting Services, LLC offers a professional closing service to assist CPAs, dealer consultants and dealers.

This professional closing service employs experienced industry veterans who–among other things–analyze and interpret the buy-sell agreement into its individual components, quantify exactly what is being bought and sold, construct a comprehensive Bill of Sale document, count the inventories, verify lien balances, prepare the closing statement, create original accounting entry documents and exchange funds in the correct amount.

The Principals of H2H Consulting Services are Tarry Hoskins, III, and John H. Haley who bring many years of GM insight to the table. They may be reached at 21 Newport Drive, Wayne Pennsylvania 19087; 1-800-793-5009 or 610-648-0690; tthoskinsiii@earthlink.net and jhhaley@earthlink.net.

MAC LEOD CONSULTING GROUP, LLC

MacLeod Consulting Group, LLC provides other specialized services to CPAs, consultants and dealers in the areas of business management, franchise realignments, training, internet and e-commerce consulting, and dealer web site promotional mailings.

MCG was recently selected by General Motors as an approved consultant for its Motors Holding and Minority Dealer Development consulting pool. In addition, it was recently granted permission to use GM's Profit Center Business Management software and allowed the use of GM composite group information in the analysis of GM dealer operations.

Norm MacLeod, Principal of MacLeod Consulting Group, is available to help consultants to GM dealerships through its Profit Enhancement Package (PEP) which draws data about a dealership and compares data and trends over the last three years and current year-to-date to virtually every facet of the dealership's operations. GM's full library of composite group information can now be used by MacLeod Consulting Group to better serve its dealer consulting clients. Individually selected composites enhance the historical comparisons of dealer performance by adding similar and/or benchmark "best of" group composites to each comparison.

Further information on how you and your dealers can work with Norm MacLeod may be obtained by contacting him at 127 S. Main Street, Suite 2, Plymouth, MI 48170; 734-354-8955 or 1-877-662-5363; www.macleodconsulting.com; norman@macleodconsulting.com.

CARLAW AND *SPOT DELIVERY*

CARLAW provides legal compliance information to those involved in financing and leasing new and used vehicles. This monthly reporting service tracks changes in legislation, litigation and regulation pertinent to automobile finance and leasing in all 50 states and the District of Columbia.

CARLAW was founded by attorney Thomas B. Hudson in 1993. Mr. Hudson has more than twenty-five years experience in compliance and consumer financial services law. He is now senior partner with Hudson Cook, LLP, which has offices in Washington, DC, Maryland, California and Virginia. The firm limits its practice to consumer financial services issues and has more than 900 clients nationwide. *CARLAW* also is part of a network of attorneys who serve as State Editors across the country who keep the publication up-to-the-minute on developing issues.

SPOT DELIVERY is a newsletter published especially for automobile dealers. It features cases and legal issues of particular interest to dealers in the day-to-day operation of their businesses. *SPOT DELIVERY* is written in layman's terms and is easily applied by the auto dealers to keep their businesses in compliance with the increasingly complicated tangle of litigation and constantly changing regulation.

These two publications are produced by the Consumer Credit Compliance Company, LLC. To subscribe, contact the Consumer Credit Compliance Company, LLC toll free at 1-877-464-8326, fax: 410-451-3500 or e-mail Teresa Rohwedder at trohwedder@hudco.com. Also, for a sample issue of *Spot Delivery* and for other valuable industry information, visit their Web site at www.creditcompliance.com.

AUTO DEALERSHIP BUY/SELL REPORTS

Finally, another resource invaluable to those interested in closing data and financial details of recent transactions can be found in *Auto Dealership Buy/Sell Reports.* This service is published quarterly by WD&S Publishing in Metuchen, NJ. These dealership transaction summaries have been extracted from an extensive data base compiled by business valuation resources which is the creation of Dr. Shannon Pratt.

Further information can be obtained by contacting Jim Muntz, Publisher, WD&S Publishing, 732-588-4440; www.dealersedge.com.

DECLINE IN IRS AUDITS OF CORPORATE TAX RETURNS

FISCAL YEARS 1992 THROUGH 1998

Return Type / Business Size	Percent of Returns Audited						
	Fiscal Year						
	98	**97**	**96**	**95**	**94**	**93**	**92**
All Corporate - Form 1120 Returns	2.04	2.62	2.28	1.96	2.13	2.97	2.90
Less than $250,000 in Assets	0.75	1.16	0.99	0.75	0.78	1.29	1.18
Between $250,000 - $1,000,000 Assets	2.49	3.49	2.71	2.14	2.42	4.03	4.00
Between $1,000,000 - $5,000,000 Assets	6.35	7.72	6.57	5.96	7.00	9.59	9.93
Between $5,000,000 - $10,000,000 Assets	13.44	15.98	13.95	14.72	15.66	19.31	18.78
Between $10,000,000 - $50,000,000 Assets	17.74	19.97	19.67	19.61	22.20	23.26	23.20
Between $50,000,000 - $100,000,000 Assets	17.53	19.25	20.75	21.49	24.29	25.38	28.48
Between $100,000,000 - $250,000,000 Assets	19.00	22.53	26.78	27.78	30.63	32.28	31.31
Over $250,000,000 in Assets	37.27	45.86	48.38	50.92	54.68	55.52	54.63

The *De Filipps' Dealer Tax Watch* newsletter is a quarterly publication of essential tax information by Willard J. De Filipps, CPA, P.C., 317 West Prospect Avenue, Mt. Prospect, IL 60056. It is intended to provide accurate, general information on tax matters and it should not be construed as offering accounting or legal advice or accounting or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only. Readers should consult their certified public accountant, attorney and/or other competent advisors to discuss their own situations and specific income, gift and estate tax questions. Mechanical or electronic reproduction or photocopying is prohibited without permission of the publisher. Annual subscription: $395. Back issues available for $70 each. Not assignable without consent. Any quoted material must be attributed to *De Filipps' Dealer Tax Watch* published by Willard J. De Filipps, CPA, P.C. Editorial comments and article suggestions are welcome and should be directed to Willard J. De Filipps at cpawjd@aol.com. Phone: (847) 577-3977; FAX (847) 577-1073. **INTERNET**: http://www.defilipps.com.
De Filipps' Dealer Tax Watch format designed by *Publish or Perish, Inc.* (630) 627-7227.

De Filipps' DEALER TAX WATCH

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