New guidance and rollover relief for waiver of 2009 RMDs. IRS has issued additional guidance on the waiver of 2009 required minimum distributions (RMDs). It provides transition relief through Nov. 30, 2009, so that a plan won't be treated as having an operational failure for allowing waivers of 2009 RMDs and related payments before being amended, and rollover relief for 2009 RMD waivers and related payments. In general, retirement plan or IRA withdrawals that were made despite the 2009 RMD waiver won't face tax if rolled over to a retirement plan within 60 days. The new guidance includes an extension of the 60-day rollover period to Nov. 30, 2009, for certain distributions. However, no more than one distribution from an IRA may be rolled over. The rollover relief gives older taxpayers an unusual opportunity to correct an inadvertent mistake that otherwise would unnecessarily increase their taxable income for 2009. It also give some individuals a "retroactive" chance to reduce their tax bill if their financial circumstances have improved during the course of 2009.

Administration launches new initiative to boost retirement savings. The Administration has issued a barrage of guidance designed to increase retirement savings. Three revenue rulings, four notices, and new IRS website explanations make it easier for employers to provide for automatic retirement plan enrollments and automatic contribution increases, permit unused leave to be converted into retirement savings, give employees a clearer understanding of rollover options, and permit income tax refunds to be used to purchase U.S. Savings Bonds. The new developments will, to be sure, make it easier for employers to offer automatic enrollments, and enhance the chances that taxpayers won't spend their lump-sum payouts. However, the real trail blazers are the ruling that permits the dollar value of unused paid time off to be contributed to a 401(k) plan, and Treasury's new policy of allowing taxpayers to funnel tax refunds directly into U.S. Savings Bonds.

IRS halts enforcement of tax shelter penalty in some cases. The IRS has suspended through the end of this year its efforts to collect penalties under IRC §6707A in some cases. This provision imposes a penalty of $100,000 per individual and $200,000 per entity for each failure to make special disclosures with respect to a transaction that IRS characterizes as a "listed transaction" or "substantially similar" to a listed transaction. The suspension applies where the annual tax benefit from the transaction is less than $100,000 for individuals or $200,000 for other taxpayers. The IRS implemented the suspension after Congressional leaders complained that IRC §6707A can result in disproportionate penalties for small businesses that thought they were investing in legitimate benefits plans, but unknowingly invested in listed tax shelter transactions. Taxwriters informed IRS that an effort is under way to enact legislation that would ease IRC §6707A's application.

Basis overstatement can trigger 6-year limitations period under new regs. The IRS has issued temporary regulations under which an understated amount of gross income reported on a return resulting from an overstatement of unrecovered cost or other basis is an omission of gross income for purposes of the 6-year period for assessing tax and the minimum period for assessment of tax attributable to partnership items. The 6-year limitations period applies when a taxpayer omits from gross income an amount that's greater than 25% of the amount of gross income stated in the return. Several courts have held that a basis overstatement is not an omission of gross income for this purpose. In response to these decisions, the IRS issued temporary regulations to clarify that an omission can arise in that fashion. How courts will react to the clarification remains to be seen.

Roth IRA was not an eligible S corporation shareholder. The Tax Court agreed with the IRS that a Roth IRA can't be the shareholder of an S corporation. As a result, the corporate taxpayer was taxable as a C corporation for the year involved. Had the Court agreed with the taxpayer, the corporation's earnings would have escaped taxes

altogether. They would not be taxed each year as they passed through to the Roth IRA (the corporation's sole shareholder) and, if applicable Roth IRA requirements were met, would not be taxed when withdrawn from the Roth IRA. The Court prevented that result but the decision was not unanimous. Some judges dissented and others wrote their own concurring opinions.

Next year's tax figures increase slightly if at all. Inflation data that is finalized each August is used by the IRS to compute the following year's standard deductions, exemptions, tax brackets and other key items. IRS has determined that, because of the extremely low inflation over the past 12 months, for the first time ever, many key tax items will not increase next year or will increase only slightly (see ¶12). Items that won't increase include the personal exemption and the standard deduction for all but heads of household. Some tax brackets will remain the same but most will increase slightly.

IRS can examine tax accrual workpapers. A Federal appellate court has held that so-called tax accrual workpapers are not protected by the work-product privilege. That privilege protects work done for litigation, not in preparing financial statements, and the workpapers were prepared to support financial filings and gain auditor approval. As a result, the IRS could examine the tax accrual workpapers in auditing the taxpayer.

Electing deferral of income on repurchased debt. A business generally will wind up with debt discharge income if it repurchases its debt for less than the outstanding amount of the debt. However, under a provision added to the tax law earlier this year, debt discharge income from reacquisition of business debt at a discount in 2009 and 2010 can be deferred until 2014, and then included in income ratably over five years. The IRS has now issued procedures for taxpayers who wish to elect to defer recognizing cancellation of debt income under this new provision, including the time and manner for making the election and specific procedures for partnerships, S corporations, tiered pass-through entities, and foreign entities.

Simplified per diem rates increased effective Oct. 1, 2009. Reimbursements of an employee's business travel costs (lodging, meal and incidental expenses (M&IE)) at a per diem rate are payroll-and income-tax free if simplified substantiation is provided and the daily rate doesn't exceed the federal per diem rate (the maximum amount that the federal government reimburses its employees) for the locality of travel for that day. While the per diem rates vary by travel destination, employers can make reimbursements at the simplified “high-low” per diem rates, which assign one per diem rate to high-cost areas within the continental U.S., and another to non-high-cost areas. The IRS has issued the “high-low” simplified per diem rates for post-Sept. 30, 2009, travel. An employer may reimburse up to $258 for high-cost localities ($193 for lodging and $65 for M&IE) and $163 for other localities ($111 for lodging and $52 for M&IE). The list of high-cost areas is also updated.