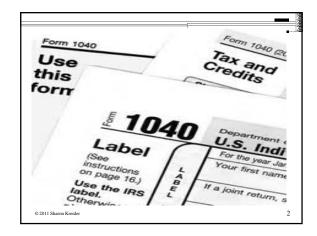
2011 Federal Tax Update

Sharon Kreider Georgia Society of CPAs August 2011



Individual Tax Highlights



- Provisions expire (again) 12-31-11
- Form 1099-B basis reporting begins
- FBAR reporting continues
- Foreign asset reporting begins
- IRS audits mortgage interest deduction
- AMT patched through 2011

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Extender Bill



- 2010 Rates Continue into 2011
- Planning easier
- Burden will be the same
 - Accelerate deductions, postpone income
- Roth IRA conversions still good
 - · 2010 spread for 2011 and 2012 was better

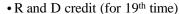
New Provisions for 2011



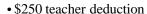
- \$1,000 employee retention credit (HIRE)
- Partial annuitization for non qualified contracts
- OTC drugs cannot be reimbursed
- SIMPLE cafeteria plan allowed
- F 1099B basis reporting begins
- F 1099K (credit card) reporting begins

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What Expires Dec. 31, 2011







- Sales tax in lieu of income tax
- 15-year recovery period for LHI, restaurant and retail improvements
- 100% bonus depreciation
- Sec 179 for real estate

Filing Status

- Is marriage out of date for the wealthy
- Community property rules apply for registered domestic partners
 - See Micka Oliver (TCM 2011-43) for more on community property
- MFJ for same-sex couples? (*Nancy Gill*)
 Is DOMA unconstitutional?

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Personal Exemption

- 2011 Personal Exemption \$3,700
 - No phase-out for high income in 2010- 2012
- Child Tax Credit extended through 2012

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5 "Qualifying Child" Tests

- 1. Relationship
- 2. Age
- 3. Abode
- 4. Support
- 5. No Joint Return



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4 "Qualifying Relative" Tests

- 1. Relationship
- 2. Gross income
 - **\$3,700 (2011)**
- 3. Support
- 4. Dependency

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Dependency Test

- **4. Dependency:** Individual must not be qualifying child of another
 - Exception: Notice 2008-5
 - ✓ "Other taxpayer" not required to file, or
 - ✓ Files just to get refund, then
 - ✓ The "dependent" may be claimed by another
 - Mamoudou Boyfriend can't claim girlfriend's kids

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Tie Breaking Rules

- 1. Between natural parents
- Parent with most time wins OR
- Time the same, parent with highest AGI
- 2. If neither a parent, highest AGI
- 3. If parent *may* claim and doesn't highest AGI wins

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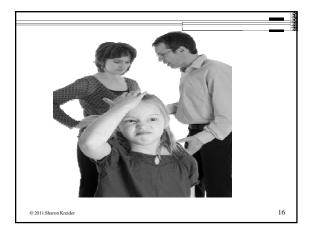
14

Medical Benefits~Child Under 27

- Insurers must permit continued coverage for child <27
- Health insurance of child <27 deductible if paid by parent
- Even if self-employed
- Unless child eligible under employer subsidized plan
- Effective as of March 30, 2010

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Divorce & Dependency Exemption

- Custodial parent always gets exemption
- Who is the custodial parent?
- Parent with most nightovers
 - · Exception: Parent working at night
- Temporary absences of child
 - Who would child normally have stayed with? (Sleepovers, summer camp, at hospital, etc.)

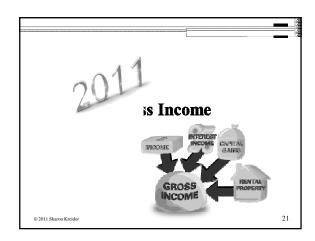
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Divorce Decree

- State Court can't determine a Federal deduction, include exemptions!
- *Mark Mihalick-Jarosak* Divorce decree irrelevant for determining custody! Similarly:
 - □ Thomas
 - □ Clinton
 - □ Gessic
- □ Hendrickson

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Tax on Dividend Income



- 0% or 15% rate effective to **12/31/2012**
- In 2013, rates go back to ordinary income (?)
- Plus 3.8% for some high income clients

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Tax on Net Capital Gain

- •0%, 15%, 25%, 28% rates through **2012**
- In 2013, rates go back to 10%/20%
- □ 3.8% Medicare tax starts in 2013 for some
- Who cares anyway if I have large capital loss carryovers
 - Some have a lifetime worth of capital losses

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Planning Points Success



- 0% rate good for transfers to parents or adult kids
- Installment sale proceeds taxed at rate when money collected
- AMT often makes rate higher than 15%
- Closely held corporations can pay dividends at lower rate through 2012

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Basis Reporting in 2011

- Form 1099-B must include
 - Adjusted basis of stock bought in 2011
 - Long-term or short-term character of gain/loss
- Basis
 - First-in, first-out (FIFO), unless
 - ^o Specific identification requested by customer
- 1099 due date extended to February 15

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Social Security Limits 2011

- FICA Wage Base \$106,800
- Maximum FICA \$6,034
- Maximum SE Tax \$14,204
- < 66 earned income ceiling: \$14,160
- Medicare B Annual Premium: \$1,384 \$4,429
 - ^o Up from \$3,700 in 2009 & \$1,062 in 2005

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John Doe

Medicare B Premium Surcharge

Individual	Married	2011
Under \$85,000	Under \$170,000	115.40
\$85,000-\$107,000	\$170,000-\$214,000	161.50
\$107,000-160,000	\$214,000-\$320,000	230.70
\$160,000-214,000	\$320,000-\$428,000	299.90
\$214,000+	\$428,000+	369.10

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One More Try for Stimulus

- FICA and SE tax reduced by 2% for 2011
 - 4.2% (down from 6.2%)
 - □ 10.4% (down from 12.4%)
- Replaces *make work pay* credit and *payroll tax holiday* for employers



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MedicareTaxonHighIncome 2013

- Additional 0.9% HI Tax on total wages of taxpayer and spouse in excess of:
- □ \$250,000 MFJ/ \$125,000 MFS
- \$200,000 Single and H of H
- Paid on Form 1040



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Medicare Tax Up on Some Earned Income in 2013

- Additional 0.9% HI withholding on separate wages in excess of:
 - ° \$200,000
- Employee contribution 2.35%
- Employer matching 1.45%
- Employer responsible to withhold/pay
- 0.9% applies for SE also

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Medicare Tax on Unearned Income

- Additional 3.8% Medicare tax on lesser of:
- Net investment income or
- Modified AGI in excess of
- · 250,000 MFJ/ \$125,000 MFS
- \$200,000 Single and H of H
- Highest 2013 marginal rate 43.4%
 - 8.4% higher than 2011

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Net Investment Income

- 1. Interest, dividends, royalties, annuities, rents
- 2. Income from passive activities
- 3. Trading financial instruments and commodities
- 4. Net gains from sales of non business property and gains from (2) and (3)
- 5. Earnings on working capital investment

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What's NOT Investment Income?

- Excludable gain on sale of home
- Active trade or business income
- Gain/losses on sale of S corp & P/S business
- □ §1231 property
- Tax-exempt municipal bonds
- Tax deferred non-qualified annuities
- Pension and IRA income

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Retirement Plan Distributions Not Included in Investment Income

- Including §401(k), §403(b), & §457 plans
- Warning: retirement distribution does increase AGI!
- Roth conversions more attractive because of this?

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Tax Planning - Maximize

1) Tax-exempt & municipal bonds



- 2) Roth-IRA distributions
- 3) Retirement plan distributions
- 4) Gains on sale of business property
- 5) Gifting and FLP
- 6) Real estate professional income

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Foreign Bank Account Reporting

- Required if financial accounts exceed \$10,000 in the aggregate
- Form TD F 90-22.1
- Due by June 30
- IRS has posted 54 FAQs on FBAR

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Foreign Asset Reporting

- New for 2011
- Reported on the Form 1040
- If foreign assets exceed \$50,000

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Adjustments to Gross Income

Advantages of

- Health Savings Accounts
 Lower health insurance premiums
 - Premiums up 131% since 1999
- Tax deduction for contribution to HSA
- Use pre-tax dollars to pay medical
- Accumulate unspent dollars from year to year for future medical
- HSAs need changes by 2014 to conform to health reform requirements

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HDHP/HSA Contribution Limits

2011	Family	Self Only
HDHP deductible of at least:	\$ 2,400	\$ 1,200
Out-of-pocket expense limit	\$11,900	\$ 5,950
Deductible contribution limit	\$ 6,150	\$ 3,050
Additional contribution for taxpayer age 55 or older	\$ 1,000 per spouse	\$ 1,000

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HealthBillImpactsFSAs&HSAs

- No over the counter medicines reimbursable from FSA or HSA after 2010
- FSA maximum of \$2,500 applies in 2013

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Qualified Tuition Program- §529

- \$13,000/\$26,000 annual gift limit
 - \$65,000/\$130,000 every five years
- Computers qualify as college expense
- What about losses in 529 plan?
- 3.8% Medicare tax avoided if incatax free for college expense
- www.savingforcollege.com

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Tuition Deduction

- Extended through 2011
- Limited to \$4,000
- o if AGI under \$65,000 (\$130,000 MFJ)
- Limited to \$2,000
- ^o if AGI between \$65k \$80k (\$160,000 MFJ)

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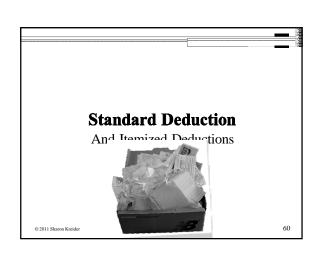
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\$250 Teacher Deduction

- Extended through 2011
- For qualified out-of-pocket expenses for books and classroom supplies
- For elementary or secondary school teachers working at least 900 hrs year



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Standard Deduction 2010 2011 Married Joint \$11,400 \$11,600 Head of House \$8,400 \$8,500 Single \$5,700 \$5,800 Married Separate \$5,700 \$5,800

ItemizedDeductionPhaseout2011

- No phaseout for 2010, 2011 and 2012
- New law always possible as Congress looks for more tax to address the deficit

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Federal Standard Mileage Rates		
	2010	2011
Business Mileage	50¢	51/55.5¢
Medical/ Moving	16.5¢	19/23.5¢
Charitable Mileage	14¢	14¢

Haircut on Medical Expenses Increases in 2013

- AGI haircut increases from 7.5% to 10%
 - □ Same as AMT
- Deferred to 2017 for Age 65+



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Tax Deduction

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- Sales tax deduction
 - Extended through 12-31-11
- Individual itemized deduction, either:
 - state and local income taxes, or
 - state and local general sales taxes
- No sales tax deduction when building new home (*Dewey, Naso*)

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Home Mortgage Interest

- IRS increasing audit attention (GAO)
 - Sampling for \$1 million limit
 - Looking at Form 1098 changes
- Exception to the direct tracing rule
- Exception to the personal interest rule
- Qualified debt on qualified residence
- PMI allowed through 2011

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#4: Home Mortgage Debt Limit

- •\$1 million home acquisition indebtedness
- \$100,000 home equity borrowing
- •\$1.1 million max on 1st and 2nd home
- Acquisition is to buy, build or improve
- Or purchase interest of divorced spouse

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§1.163-10(T)(o)(5) Election Out

- Elect *not* to have the home be treated as security
- Why do this?
 - Personal otherwise over \$100k limit
- Sample election in manual

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#4: Home Mortgage Debt Limit

Limit is per house, not per taxpayer
LTR 200911007



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Charitable Contributions Charitable Contributions Please Help Please Help Please Help 78

Contributing IRAs to Charities

- Extended through 12/31/2011
- Transfer can't exceed \$100,000 per year
- Must be distributed by trustee
- IRA owner must be at least 70½
- Distribution considered part of RMD
- Good at least to extent of RMD

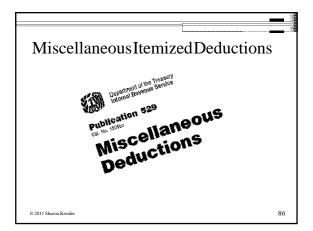
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Planning When Contributing IRA Funds to Charities

- 1. Non-itemizers get benefit
- 2. No 30%/50% base contribution limit
- 3. Maybe social security no longer taxable
- 4. Lowers Medicare Part B income
- 5. Lowers future RMD
 - and thus saves 3.8% Medicare tax
- 6. Lowers future IRD to beneficiary

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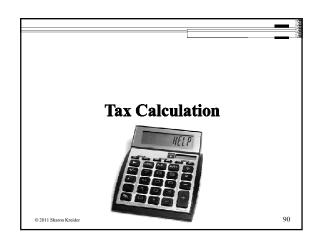
Deducting Work Clothing

- Uniforms, yes; Work Clothing, no!
 - ^o Uniforms required as condition of employment
 - ^o Can't be adaptable to street use
 - TV news anchor denied deduction for clothes, make up and Cosmopolitan Magazine (*Anietra Hamper*)
- Other Exceptions
- Safety clothing
- Military clothing
- Costumes

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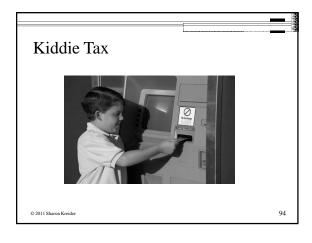
Alternative Minimum Tax

- Exemptions patched through 2011
- All nonrefundable personal credits may offset AMT through 2011
 - Child tax credit, retirement savings credit, residential energy efficient property credit, hybrid auto, plug-in electric

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AMT Exemption 2012 2011 Unmarried \$48,450 Exemption \$33,750 Phaseout \$112,500-\$306,300 \$112,500-\$247,500 Married Exemption \$74,450 \$45,000 \$150,000-\$447,800 \$150,000-\$330,000 Phaseout © 2011 Sharon Kreider



The "Kiddie" Tax Rate - 2011

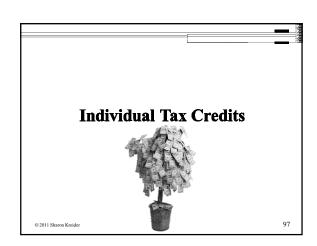
- "Net Unearned Income" of child under 19 (& 24 if still a student) taxed at parents' marginal tax rate
- Dividends: up to 15%, not 0% cap gain rate
- □ Interest: up to 35%, not 10% ord. inc. rate
- Base is \$950; Exemption is \$1,900
- 3.8% Medicare tax will apply if parents subject in 2013

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Planning Pointers for Kiddie Tax

- Delay income
- Use tax efficient mutual funds
- Invest in US savings bonds
- □ Move CUTMA to §529 plan
- Invest in muni bonds
- Distribute from trusts to avoid 3.8% Medicare on \$12k+ trust income

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Adoption Credit 2011

- Credit increased t \$13,360 in 2011
- Made refundable
- Effective for 2010 and 2011
- New Form 8839
- No e-filing!

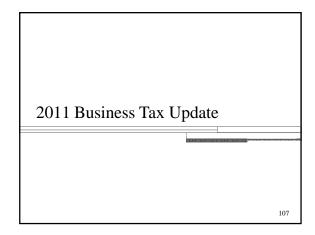
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Education Credits

- American Opportunity (Hope) Tax Credit (Extended through 2012)
- ^o 100% first \$2,000 + 25% of next \$2,000 = \$2,500
- ^o Available for first four years of c⁻¹¹
- Phase-outs
 - □ Single: \$80,000 \$90,000
- ° MFJ: \$160,000 \$180,000
- 40% of credit may be refundable
- Lifetime learning credit 20% of \$10,000





What's New for 2011

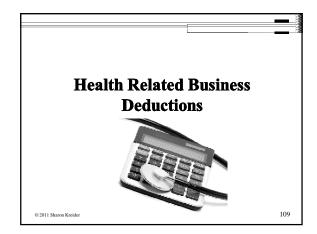


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- Employee retention credit
- Repeal of expanded 1099 reporting
- 1099K credit card reporting
- \$500,000 §179 expensing election
- §179 for some real estate
- 100% bonus depreciation
- 5 year general business credit carry back

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Health Related Fringe Benefits/Deductions

- §162(1) Self employed health insurance
- §105(b) Medical reimbursement plans
- §106 Employer contributions to health and accident plans
- §125 Flexible spending accounts
- §223 Health savings accounts

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Health Benefits Apply To Owners? Sch C Sch F 1065 1120 SE Health Ins. NA SE tax deduction? 2010 2010 2010 NA Yes only only only Tax free health ins. Х Medical reimbrsmt. Х SIMPLE 125 Х FSAs Х HSAs * If S corp shareholder is not an employee (i.e., no W-2 wages), there is no SE health insurance deduction.

Self Employed Health Insurance

- Premiums deductible "above the line"
- Problems
- Policy name in business or owner, but must be tied to one business activity
- Deduction limited to earned income of ONE SE activity (CCA200524001)
- IRS reverses position and says Medicare premiums qualify

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SE Health Insurance

- Qualified premiums include payment for
 - SE health insurance for SE taxpayer
 - Spouse
 - Dependents, and
 - New non dependent child under age 27 at year end

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Health Insurance Formalities Critical For S Corp Shareholder

- Health insurance must be tied to (but not in the name of) S Corp
- Cash payment must be made by S Corp (no journal entries)
- Premium payments must be added back to SH W2, but no FICA or Medicare
- S Corp deducts premium as officer salary

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Deducting Spouse's Health Insurance on Schedule C

- For Partners and Sch C and F proprietors
- Institute fringe benefit program for employees and their families
- Medical reimbursement (nondiscriminatory)
- Health insurance
- Adhere to requirements (Agriplan or Bizplan)

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Best of All Worlds

- Deduct 100% of spouse's (and their family's) medical expenses
- SE tax and income tax savings
- Creates parity with C corporations
- Cases
 - Losers: Shellito, Stephens, Snorek, Knowles, Albers, Eyler
 - Winners: Frahm, Speltz

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Forms 1099

- Expanded 109 reporting for corporations and rentals repeated
- 1099K reporting for credit card sales begins in 2011
 - Requires change to income reporting schedules

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Hobby Loss Rules

- Expenses deductible if
 - Incurred in trade or business (§162), or
 - For the production of income (§212)
- If no profit motive, expenses limited to income (§183)

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Hobby Loss Rules

- 9 Factors (§1.183-2(b))
 - 1. Manner activity carried on
 - 2. Expertise of taxpayer
 - 3. Time and effort expended
 - 4. Asset appreciation
 - 5. Taxpayer's previous business success

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Hobby Loss Rules

- 9 Factors (§1.183-2(b)) continued
 - 6. History of income and loss
 - 7. Occasional profits
 - 8. Taxpayer's financial status
 - 9. Any personal pleasure?

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Recent Hobby Cases

- Losers
- Bass fisherman skunked by IRS (Steve Lowe)
- Amway distributor (Roger Campbell)
- Science fiction memorabilia sales (Blanchette)

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§179 Expense Election

	2008-09	2010-11	2012
Maximum §179			
deduction	\$250,000	\$500,000	\$125,000
Phase out begins	\$800,000	\$2,000,000	\$500,000

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§179 Election For Real Estate

- §179 allowed for qualified real estate
- Qualified LHI property
- Qualified restaurant property
- Qualified retail improvement property
- 2010 & 2011 tax years only
- Annual limit \$250,000

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Beware the §179 Real Estate Trap!

- Excess §179 carryover from real estate only allowed to 2011
- Any remaining carryover treated as asset placed in service 1st day of 2011

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15 Year Lives Still Available for Real Estate

- 15 year lives extended through 2011 for
- Qualified leasehold improvements
- Qualified restaurant property
- Qualified retail improvement property
- Bonus depreciation available for
- Qualified LHI, and
- Qualified restaurant and retail improvements that are also qualified LHI

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§168(k) Bonus Depreciation

- Extended through calendar year 2012
- \$8,000 limit on luxury autos. Otherwise unlimited

1/1 - 9/8/2010	9/9/10 – 12/31/11	2012
50%	100%	50%

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Qualified §168(k) Property

- Original use commences with taxpayer after 12/31/07
- Acquired *and* placed in service 1/1/08 through 12/31/12
- Must be
 - ^o MACRS 20 year life or less
 - ^o Certain computer software, or
 - Water utility property
- Qualified LHI

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§179 Versus §168(k) §168(k) §179 New or used Both New only Placed in service All years, varying Calendar years 2008-2012 amounts Taxable income Yes limit MACRS life 20 Eligible property Personal prop only,

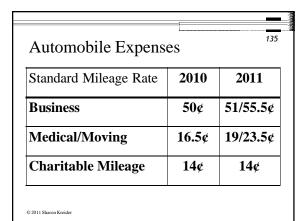
except some RE

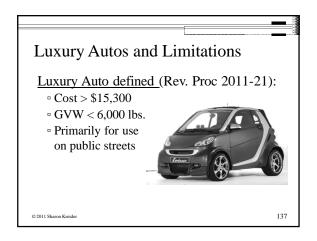
okay in 2010-2011

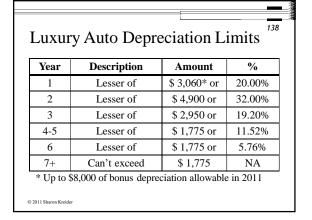
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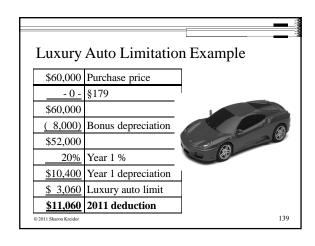
years of less

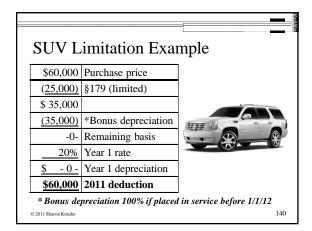
§179 Versus §168(k) §179 §168(k) All activities Types of activities Active trade or business only (rentals) Modify election Yes Generally - No Deduction limited \$500,000 in 2010-No limit 2011 1031 basis New boot only 100% of basis Purchase amount \$2,000,000 in None limits 2010-2011

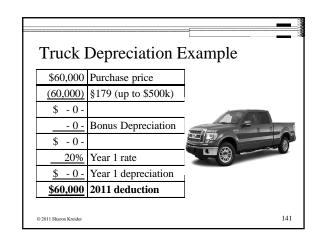


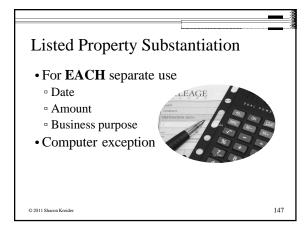














Other Listed Property Cases

- Substantiation advice from criminal tax preparer (Bennett)
- Mileage log after audit notice (Zeng)
- No mileage log (Coury)
- One winner: Listed property rules don't apply to Limo drivers (Hafeez)

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Cash Business ATG Minimum Income Probe

- Financial status analysis (Cash T)
- Interview taxpayer
- Tour of the business
- Evaluation of internal controls
- · Reconciliation of income to books
- Testing of gross receipts
- · Analysis of bank accounts
- · Analysis of business ratios
- Analysis of E-commerce activity

Employer Retention Credit

- \$1,000 business credit
- HIRE bill
 - Qualified employee works at least 52 weeks

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Thank you!