Inside Highlights

"You may be thinking that what happened in places like Nazi Germany, the Soviet Union, Mao's China, Pol Pot's Cambodia and scores of other countries in recent history could not, for some reason, happen in the U.S. Actually, there's no reason it won't at this point. All the institutions that made America excellent — including a belief in capitalism, individualism, self-reliance and the restraints of the Constitution — are now only historical artifacts."

— Doug Casey, Chairman, Casey Research, from an article titled "The Ascendance of Sociopaths in US Governance" available at www.caseyresearch.com

Tax and Financial Strategies

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Wealth Creation Strategies

Audit-Proofing Charitable Donations

In issue # 51 of *WCS*, we reported horror stories on lost deductions for charitable donations because the precise "letter of the law" wasn't adhered to. A number of clarifications for securing such deductions may be helpful:

1. For each donation of money (cash, check or credit card) of $250 or more, a letter is required from the charity specifying:
   a. the date and amount of the donation
   b. the charity's name and address
   c. the date the letter is written, ***and***
   d. a statement specifying that no goods or services were received for the contribution ***or***, if goods or services were received, the fair market value (FMV) of such goods or services. In the latter case, only the excess of the amount given over the FMV of any goods or services received is deductible. For example, if you give PBS $200 and get concert tickets worth $150, your deductible contribution is $50.
2. For donations of money of less than $250, your cancelled check or other receipt will generally suffice, unless the IRS decides you engaged in a series of donations intended to evade the $250 per donation limit. How about simply getting that letter?
3. Money gifts aren't deductible without receipts or a check. If you donate using a "church plate," write a check the night before and toss it (rather than cash) onto the plate. A cash envelope system is okay only if the church sends you a receipt for such cash donations. Cash donations to vagrants on the side of the road aren't deductible; instead, give to your local homeless shelter and ask the panhandler why he or she isn't at an AA or Al-Anon meeting. They usually belong at one or the other or both.
4. Donations of used (non-money) goods totaling less than $250 can be made to an unattended drop box if you have a good list of the items donated, their original costs and current fair market values (i.e., what would the items sell for at a Goodwill or American Cancer Discovery shop).
5. Donations of used goods totaling $250 or more require dated, signed receipts. Don't leave these at an unattended drop box!
6. Donations of used goods totaling $500 or more over the course of the calendar year require dated, signed and itemized receipts. Please use our "non-cash charitable contributions" worksheet, sent with our "by mail" package, or some facsimile to record such donations. The worksheet(s) should be acknowledged by an attendant at the charity at time of donation; you must also retain the non-itemized receipt they provide. Use one such (set of) worksheet(s) per donation "event."
7. Pictures of used goods donated are always helpful, regardless of the amount.
8. Generally, only items in good or better condition are deductible. In addition, donations of items with "minimal monetary value," such as socks or underwear, are not deductible. (For the story behind this, Google "Bill Clinton's underwear donations.")
9. The value of your time, services or expertise are never deductible. (If they were, we'd all find a way to never pay any taxes.)
10. Out-of-pocket expenses for new goods purchased for qualified charities (such as those caring for feral or abandoned animals or food banks) require a contemporaneous written acknowledgement from the charity each time $250 or more is spent. We would encourage such letters for donations of any amount; after all, how does the IRS know such purchases were donated to a qualified charity?
11. The cost of travel, including air,

other transportation, lodging and meals while serving charitable organizations, is deductible if there is "no significant element of personal pleasure, recreation, or vacation" during the travel. Such deductions are all or nothing—for example, you can't deduct a "charitable portion" of an airfare. Expenses incurred to attend a charity's convention are deductible only if you are a "chosen representative." Actual gas expense or mileage at 14 cents per mile is deductible while providing services for a charitable organization if a written log is kept, showing the organization's name, date, miles driven and purpose of the trip.

12. Appraisals are required for donations of $5,000 or more throughout a calendar year, whether as single items or a category of items (e.g., total clothing = $5,000+, or total furniture = $5,000+). There are also special rules for donations of motor vehicles. Talk to us if any such contributions are contemplated.
13. Any written evidence required in items 1 through 12 above must be obtained on or before the ***earlier*** of the date you actually file the tax return ***or*** the tax return's due date, including extensions. For example, if we e-file your return March 1 any required letters for prior year donations must be dated before March 2. If we file November 1 and had filed an extension, letters must be dated October 15 or earlier.
14. While we normally discourage sending receipts to us for tax return preparation, we need to see copies of the receipts and non-cash charitable contributions worksheets when total donations of non-cash items are $500 or more during the year. In addition, contrary to our normal preferences on excess paperwork submissions, we like to maintain copies of charitable organization letters acknowledging cash donations of greater than $1,000 per donee per year (the larger the donation, the more we'd like to have copies of such letters; this ***definitely*** applies to donations exceeding $5,000). Note that copies of checks for any donations do NOT help us—please do ***not*** send them.
15. If you are unsure whether a charity is qualified (i.e., meets the rules for tax return deductibility), you can check here: www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations-Select-Check. To see how "efficient" a charity is in actually spending your donations on helpful charitable endeavors, see www.charitynavigator.org.

The Tax Court Disallows Auto Deductions for Lack of "Contemporaneous Corroborative Evidence"

Several recent Tax Court cases highlight the need for taxpayers to keep "contemporaneous" records with regard to business driving.

While a "log" can legally be reconstructed, the judge in a recent case* pointed out such a reconstruction must be made from "corroborative evidence created at or near the time of the expenditure to support a taxpayer's reconstruction 'of the expenditure or use [of the automobile or truck]…'" Further, there must be "a high degree of probative value to elevate [a log] to the level of credibility of a contemporaneous record." In this case, the taxpayer failed to keep receipts for the vehicles' expenses and offered only "general and uncorroborated testimony, along with a handwritten summary sheet of expenses and an estimate of the business use of each vehicle." The judge ruled that such "evidence does not have the high degree of probative value necessary to elevate it to the credibility of a contemporaneous log" and disallowed ***the entire deduction***.

This and a number of other recent cases have been egregious. In at least two recent cases brought against real estate agents, all claimed mileage was disallowed. Even though the courts acknowledge that real estate agents practically drive for a living, in one** the judge wrote, "Although we have little doubt that [the taxpayer] incurred vehicle expenses to meet with real estate sales clients, we give no weight to the notebook or the day planner as evidence of the miles that she actually drove for these purposes." It didn't help that she answered "no" to the question on the tax return asking "do you have written supporting documents?" and that she produced a 2013 day planner to document her business activities for a 2008 audit.

Once upon a time, we could win audits without an auto log if "other evidence" existed, so long as the auditor could say, "It's only logical there was business driving." While we haven't suffered any audits recently in which business use of auto was scrutinized, the IRS has won several recent tax court cases with similar facts as in the one above. We suspect the IRS, based on these cases, has decided to strictly enforce rules requiring contemporaneous logs. In other words, estimates of business use of auto are no longer enough to win an audit or a Tax Court case.

Then what must be provided in an audit to win?

1. a contemporaneously-kept log book showing:
   a. date you drove
   b. business purpose of the drive
   c. number of business miles
   d. recommended: odometer readings beginning of day and end of day, but at least beginning and end of year (or throughout the year, to corroborate total daily, weekly or monthly driving)
2. Repair and maintenance receipts showing odometer readings, which an auditor can use to tie in to the log (does mileage between repairs/maintenance dates tie in to the claimed mileage between those dates?)

3. Receipts for all other business-car expenses, including fuel, insuance, DMV fees and interest or lease costs
4. Proof of cost of the vehicle and, if traded into, proof of cost of other vehicle(s) from which you traded
5. Appointment calendar or book to see that it ties in with the mileage log

Long ago, there was a kinder, gentler IRS. In the matter of foreign financial accounts, the kinder, gentler IRS has gone out the window. The Tax Court has disallowed deductions we previously have won in similar situations, showing the IRS, with the support of a Congress that makes law, has become less kind and gentle in diverse areas. Congress has long said deductions are "a matter of legislative grace." In other words, the taxpayer bears the burden of proving entitlement to any deductions claimed. It appears there are more hoops to jump through to get what we have long taken for granted. The only good news is we don't get all the government we pay for.

* *Leon E. Daniels and Margaret I. Daniels, Petitioners v. Commissioner of Internal Revenue, Respondent*, Tax Court Summary Opinion 2014-16

** *Toraino Hardnett and Marvell Preston-Hardnett v. Commissioner of Internal Revenue*, Tax Court Summary Opinion 2013-56

The Purported Health Care Act Incentivizes Direct Payments to Medical Providers: This Could Lead to a Renaissance

To access the blue items below, view the HTML version found on the main WCS page: www.dougthorburn.com.

Government has distorted medical markets, pricing and decisions for much of the last 100 years. In the name of protecting consumers from incompetent doctors, an early 1900s decree limited the number of doctors by decreasing the number of medical schools. (In case you've never heard of "medical malpractice," there are still plenty of bad doctors.) Due to a druggist mistakenly adding anti-freeze to some drugs ("to sweeten the them"), prescriptions for many drugs were required beginning in 1938—again, under the guise of protecting consumers. (If you think this has made drugs safer, try reading the fine print on TV commercials or magazine ads touting drugs.)

Because of WWII wage and price controls, employers had to compete for good employees by offering tax-free medical coverage, which translated to higher-than-allowed compensation. This led to a non-portable, employer-based, third-party payer system that insulated consumers from costs, rather than portable, patient-based health insurance, in which patients shopped for medical goods and services like they do for everything else.

Because Social Security discouraged seniors from saving for old age and the price of medical care had already begun to increase at rates faster than inflation—due to the third-party payer system that discouraged health care consumers from price-shopping and which caused seniors to lose coverage at retirement—a "single-payer" (a hybrid socialist-private) system for seniors, Medicare, was created in 1965. Medicare cost ten times more than projected in inflation-adjusted terms just 25 years later. In addition, it left enormous gaps in coverage for extended hospital stays and long-term care that were largely hidden from view, since most elderly people tend to trust government to take care of them if that's what government says it will do.

In 1994, the passage of HIPAA (the grotesquely mis-named "Health Insurance Portability and Accountability Act") prevented medical providers from sharing with others any information about patients. The Army realized this prevented them from offering appropriate care for military personnel "abusing" (i.e., addictively using) alcohol and other drugs (see the 2012 *Army 2020 Report,* available online by searching "Army 2020 report"); they asked for and received specially-carved out exceptions to HIPAA rules. (Dealing with medical issues related to addiction, including diseases caused or exacerbated by as well as injuries from addiction-related accidents, likely takes 25-50% of all medical dollars. Addiction can rarely be diagnosed without knowing the patient's behaviors, which can be ascertained efficiently only by conferring with people close to the patient. HIPAA prevents this.) No one else received such exemptions.

Ironically, the latest distortion, caused by another fantastically misnamed piece of legislation, the 2,800-page "Patient Protection and Affordable Care Act," has opened the floodgates to free-market medicine in the form of increasing numbers of "self-pay" options. The Act is so top-down, heavy-handed and unaffordable (unaffordable for lower-income people without the subsidies, which will increasingly serve to discourage such people from increasing their incomes), patients are increasingly seeking out more affordable health care via cash-pay options. The Act has so complicated doctors' lives with absurd levels of paperwork and distorted compensation for medical providers, grossly underpaying for some services and overpaying for others, many are opting out of the insurance- and government-reimbursement markets. Patients and medical providers seeking to get top-heavy intrusive government out of the equation are increasingly finding each other; we expect this to accelerate as increasing numbers of medical providers "opt out" and as queuing begins in the U.S. The Internet is accommodating this change. With apologies to my left-leaning friends, a side benefit (from a libertarian perspective) is that the panoply of lies and market distortions has helped to reignite a post-Watergate view of government.

Patients are finding that prices are much lower or can be negotiated in this burgeoning free market, as has been

the case for unsubsidized medical care (think: Lasik, dentistry and plastic surgery) for years. The premiere free market provider of surgery services, the Surgery Center of Oklahoma (be sure to check out "Dr. Smith's blog," or surgerycenterofoklahoma.tumblr.com, which is one of the best in the blogosphere), offers transparent prices one-half to one-tenth of "normal" prices for roughly 190 surgeries, which range from pacemaker placement and hip replacement to bunionectomy and knee replacement. How do they keep costs down? They don't take any government or insurance payments. It's cash only and up-front. Even more amazing (unless you compare the plummeting cost of computers, which consumers pay for directly, with the skyrocketing cost of government schooling, which others pay for): their prices are about half of what Medicare pays Oklahoma City hospitals for the same procedures, and less than even what Medicaid pays those hospitals.

Even those with "insurance" will want to consider using free market providers. First, such providers are free-thinking individuals and, I suspect, every bit as creative and competent (if not more so in the aggregate) than many who remain within the bureaucratic system (this is not to imply those who stay in the system aren't often great; my doctor, Kamran Rabbani, M.D., is terrific). Second, the Act introduced many American consumers to high deductibles, which discourages overuse of the scarce resource of medical care. For many buying "insurance" under the Act, this makes it profitable to go outside the system and negotiate far cheaper treatment and procedures. If you find you have no coverage for a particular treatment or procedure (either because you haven't hit your deductible or because the procedure isn't covered), traditional insurance and medical providers will charge the "going" rate, which is the "discounted" rate an insurer or government will pay. If you go outside the system in the first place, you can usually negotiate a far lower rate. Third, you may find your cost going outside the system is less than the cost of the deductible; free market prices can be that much lower. Fourth, everything is upended at year-end, when many people who've hit their deductibles go for additional medical procedures they've otherwise been deferring. If you know you haven't and won't hit your deductible but you need or want something done, you may as well go outside the traditional system and get the best price possible. Fifth, you may find providers who accept purported health care act "insurance" are so few and far between, you may decide not to queue up and instead go direct to a cash-pay provider.

Those whose incomes are below a certain threshold are forced onto Medicaid by the Act. The reimbursements are so low, rapidly decreasing numbers of decent doctors accept Medicaid patients. Those who have assets but little income may be wise to forego the system and use free market providers, because the "claw-back" rule that has long required estates to pay back nursing home costs now also applies to the "administrative costs" of Medicaid for recipients age 55 and over. The state will place a lien on assets and recover their costs when the recipient dies. California has determined that their "administrative cost" of Medi-Cal (California's version of Medicaid) is currently $611 per month, which is charged until the individual applies for Medicare. Opting for self-coverage may be less expensive than a potential $73,320 claw-back, which your heirs are subject to ($611 monthly for someone in the Medi-Cal system ages 55 through 64).

As alternatives are rapidly growing, the options are too numerous to describe in full. Here's a compendium of web sites and related articles, along with my brief comments for each. We recommend browsing the article at www.DougThorburn.com, where you can directly click on each "quote" below, which will take you to the linked article or web site. One warning: *caveat emptor*. Most are likely excellent, but there could be a few turkeys among them. We'd love to hear your experience with any you try, including any not mentioned here.

Comprehensive looks at consumers opting out of the system: "how to opt out," and how it's worked for the Surgery Center of Oklahoma to have opted out: "Surgery Center of OK."

Best overview of self-pay alternatives is at "self-pay patient," where I found many of the sites listed below. Best free market-oriented medical blogs (while you can view direct, and must do so to see the archives, for convenience I subscribe to these and many other blogs via "The Old Reader"): "self-pay patient" and "Surgery Center of OK."

An interview with Dr. G. Keith Smith of the Surgery Center of Oklahoma, in which he compares our state-corporatist health care with a free market model and why big business loves government (crony capitalism—"crapitalism"—in action): "why big business loves government."

Concierge medicine: article at "concierge medicine;" prices are often very reasonable for primary care (monthly fee plus often heavily discounted prices for doctor visits, lab fees, mammograms, CAT scans, MRIs, colonoscopies, etc.) and the competition is fierce, as the number of concierge medical providers has increased by 50% from a few years ago, with more than 5,500 choices as of this writing.

Health sharing ministries/cooperatives (which must be faith-based to get around the draconian Act rules: articles at "five sharing ministries;" ministries at "liberty health share," "altrua health share," "the health coop" and "Samaritan ministries."

Medical tourism, which allows you to combine a vacation with a medical procedure for a fraction of the cost of just the procedure in the U.S.: article at "interest in medical tourism continues to grow;" details and how to do this at "med retreat" (beware of books on the subject, as changes are occurring too rapidly for books to keep up with; use patient message boards for current recommendations and books for background info).

Buying prescriptions online: article at "how to buy Rx online;" drug seller "Med Ctr. of Canada."

Services by phone (telemedicine): excellent overview at "telemedicine." Services that look interesting (but again, I have not personally checked

out any of these): "call doc," "doctor on demand," "connect2docs," "American well," "1st call MD" and "24/7 doc Rx."

Pricing transparency: article at "new health care approach." Price comparisons: for medical care, "health care blue book," "clear health costs;" description of and support for, at "clear health costs," "OK co-pay," "pricing health care;" for prescriptions, "good Rx;" for dentistry, "brighter." Medical care price shopping ideas: "pretend to be uninsured." Specific prices for an amazing array of major medical procedures at three top-notch surgery centers: "Surgery Ctr. of OK," "Regency Health Care" and "California Surgery."

"Single-payer" systems work in other countries as well as any other government system, which is to say, "not very well." Such systems inevitably end up with rationing via long waiting lines and less politically popular care being proscribed. Here are just a few articles, which also serve to debunk some of the myths many were sold when this legislation was rammed down our throats: "British National Health Service (NHS) errors proliferate;" "Swedish health care has huge problems;" "British patients shun the NHS and pay for private doctors;" "VA, sold as a model of single-payer, ends up with queuing and unnecessary deaths;" "NHS fails to feed patients;" "Chronic underfunding of the NHS."

New "College Access Tax Credit" for California Taxpayers

For California taxpayers only, a new credit is available from tax years 2014 through 2016 for contributions made to the College Access Tax Credit Fund, a state-run program. The California tax credit is 50-60% of the contribution; the full amount is allowed as a charitable deduction on the federal tax return for those itemizing personal deductions. However, the "fund" is limited to $500 million per year for all taxpayers and those participating must receive a credit certification and allocation from the California Educational Facilities Authority (CEFA). The contributions will be used to provide Cal Grants to low-income college students. Because targeted subsidies serve to drive up overall costs of the item subsidized, we're not big fans of such credits, but mention it because it's a big credit. For some, the state credit and federal deduction will pay nearly all of the cost of the donation. If you choose to take advantage of this please let us know and we will assist.

The Taxation of Bitcoin Transactions

While Bitcoin is treated as digital currency by its users, the IRS views it as financial property, subjecting it to enormously complicated tax reporting.

- Those who sell Bitcoins sell a capital asset. If you buy a Bitcoin for $100 and sell it for $600, tax is due on a $500 capital gain.
- If you buy a Bitcoin for $100 and use that Bitcoin to purchase $600 worth of merchandise, tax is due on a $500 capital gain. (Really!) The IRS view is that you "sold" that Bitcoin for $600 and used the $600 to purchase the merchandise.

Considering the accounting nightmares the second situation creates, even those supporting the concept of a free market currency may not wish to use Bitcoins for everyday (or even non-everyday) purchases or sales.

But there's more:

- Payment in Bitcoin for business services requires the issuance of 1099s to each non-corporate entity to whom you paid $600 or more per year in dollar value of Bitcoins paid, valued at date of payment.
- If you "mine" Bitcoins, income (and possibly self-employment) tax is owed on their value at the moment the Bitcoins are successfully mined. Note: the IRS can determine who should be reporting income from mining operations by tracking purchases of the specialized hardware required for mining.
- Retailers must collect and remit sales tax based on the dollar value of the Bitcoins received for items sold.

Be sure to inform us if you have made any transactions using Bitcoins. Be aware that if Congress were to authorize the IRS to treat those with even small unreported Bitcoin transaction gains as they treat those with unreported foreign financial accounts, a huge percentage of your Bitcoins are at risk of confiscation. Keep in mind, too, you could have deductible losses.

The taxing power has often been referred to as the power to destroy. The tax complications of reporting Bitcoin transactions alone could destroy this burgeoning young currency within the U.S. before it has a chance to succeed, although technology will, in time, likely overcome these tax calculation burdens. (I won't speak to foreign users where, for emerging economies, Bitcoin has *enormous* potential benefits.)

On the other hand, there are problems with Bitcoin as money. It doesn't have a history of stable value and the idea that it has intrinsic value is questionable (free-market theoreticians disagree on this). So far, I think it is clearly superior to all other currencies: since its inception, it has increased rather than declined in value. Every fiat (paper) currency has declined in value over time (the U.S. dollar has plummeted more than 95% in value since the inception of the Federal Reserve Act of 1913). But, Bitcoin is not money—yet. For more information on Bitcoin, see www.Bitcoin.org.

The following is a handy comparison of money (gold/silver), currency (U.S. Dollars) and Bitcoin.

Attribute	Money = Gold or Silver	Currency = US $	Bitcoin
Durable (store of value over the very long term)	Yes — forever	No — Has declined in value by 95% in 100 years	Too new to know; has increased in value but volatile
Divisible	Yes	Yes	Yes
Transportable and convenient (easy to use and carry)	Yes	Yes	Yes, due to computer power
Impossible or hard to counterfeit	Yes	Generally, due to technology	Yes, but how secure is it? *
Readily acceptable in most transactions	Arguably yes (would be if legal tender)	Yes	No, at least not yet
Homogenous (uniform in value and form)	Yes	Yes	Yes
Perceived to have value, requiring a limited supply (scare, but not too scarce; a store of value)	Yes	Temporarily, yes; but not durable	Purportedly yes, but see* below

* The question is: "Can Bitcoin be trusted?" Of the five original board members of the Bitcoin Foundation, whose stated mission is to "standardize, protect and promote the use of Bitcoin cryptographic money for the benefit of users worldwide," one was indicted for money laundering and another is the head of Mt. Gox, the Bitcoin exchange that "lost" 65,000 of its members' Bitcoins. Two or three of the remaining members resigned following a new board member's being accused of an association "with alleged pedophilia." Such allegations of financial and sexual crimes are signal clues to likely alcohol or other-drug addiction. On the other hand, many such young start-ups and innovations have been created by alcoholics during the early stage of addiction, when alcoholism fuels egomania, often resulting in overachievement and, often, criminal behaviors. Such innovations can "work" in the long-run—consider Ted Turner's CNN, Van Gogh's art and Ignaz Semmelweis, who told other doctors of the mid-19th century they could save patients' lives by simply washing their hands before each surgery. All three were alcoholics who were told their innovations were "crazy" before they became accepted.

Online Gambling Account Was Deemed a Foreign Financial Account—Costing $40,000 in Penalties

Current foreign financial account reporting requirements and associated non-reporting penalties are disproportionate to the purported "crime" (see *WCS* issue # 49 for the full story). Here's an example of the sort of egregious penalties that can befall an innocent John who failed to file an FBAR (Foreign Bank and Financial Account Report) when he held more than $10,000 in (unbeknownst to him) foreign financial accounts.

Jon Hom gambled online, holding more than $10,000 between two well-known online poker companies (PokerStars.com and PartyPoker.com). In an audit, the IRS ruled an online gambling account is "a bank, securities, or other financial account," and found the accounts were "located in" a foreign country, subjecting Hom to draconian penalties. Hom took his case to Tax Court.

The Court first found the online gambling accounts were "other" financial accounts because a "person acting for a person" as a financial institution is considered a "financial agency" and, therefore, a financial account.

Having lost on the first point, Hom argued that "location" refers to the geographic location of the funds. The IRS argued that "location" refers to the location of the financial institution that created and manages the account. The court, incredibly, sided with the IRS, arguing the account's location is determined by the main location of the host institution, not where the actual money is stored after it's sent to the institution. Hom was hit with a $40,000 penalty for failure to file two years of FBARs.

Bitcoin is another gray area. Tyler S. Robbins, in his "A Primer on Bitcoin Taxation in the U.S.," (www.bitcointax.info), wrote months before the Hom decision that he "is aware of the opinion that online poker accounts are exempt from FBAR reporting." Oops! While admonishing taxpayers to "err on the side of caution with respect to disclosing foreign assets," Robbins argued that depositing Bitcoin into an online "wallet" is arguably not reportable on an FBAR by those who maintain possession of the money (one's own "keys") because nothing has been entrusted to a third party custodian. The only thing that may prevent such penalties at this point is that the IRS has, for tax year 2013 only, ruled Bitcoin to be property. This exempts it from FBAR reporting rules, because it is not, then, currency (or securities or, incredibly, coins held in a foreign country), which is subject to such rules. However, holding Bitcoin in a brokerage where the specific address

of the coin is unknown is clearly the use of a custodial account and, therefore, subjects the Bitcoin owner to FBAR reporting, or failing that, horrific penalties.

As Robbins suggests, we advise erring on the side of caution. When in doubt, report.

The irony in the Hom case is that he lost in two other ways. First, gambling is nearly always a fool's errand—in the long run, most players lose; odds are (cute, huh?), Hom lost. Second, the tax treatment of gambling winnings is among the most unfavorable of any type of income. Wins are reported in gross income while any offsetting losses are limited to winnings each calendar year, and are deductible only as an itemized deduction, artificially inflating Adjusted Gross Income. In one recent case a retiree, whose losses exceeded her $300,000 in winnings, paid $15,000 more in income taxes, including a Medicare premium surcharge, than if she had never gambled. Whoever said tax law had to make sense or be fair?

Who Must File FBAR Reports?

Foreign Bank and Financial Account Reports, commonly known as FBARs, must be reported by June 30 every year by U.S. citizens (regardless of where they reside), U.S. residents and U.S. entities who:

- own an aggregate of more than $10,000 at any time (even for a nanosecond) during the preceding year,
- which are held in "foreign financial accounts," and
- in which they hold a "financial interest" *or* over which they have signature authority.

Foreign financial accounts include not only the obvious bank and securities accounts, but also foreign pensions, cash value life insurance and joint accounts with relatives that can be accessed, even if one never accesses such accounts. As noted in the article above, they even include online poker accounts. A "financial interest" means the person is the owner of record, someone else holds title for the person's benefit, ***or*** the person owns more than 50% of an entity which, in turn, holds title. Age is irrelevant; even toddlers must file. People who didn't even know they owned such an account are among those who have been subjected to $10,000 per account per year penalties for failure to file. "Signature authority" means the person can control the disposition of account assets through either written or oral communication.

The bit of good news is, "generally" the IRS will not impose penalties for failure to file delinquent FBARs if there was no underreported tax liability *and* the taxpayer has not previously been contacted for an audit or for delinquent FBAR returns. This "generally," however, does not always apply. Keep in mind, the IRS can be capricious in its wielding of law. We only wish tax law, especially in an area that is esoteric and for which most violations are innocent, was as infrequently enforced as the illegal crossing of borders.

New "Get Out of Jail Free" Cards For Failure to Disclose Foreign Accounts and Retirement Plan Owners Who Failed to File Form 5500

We published a scathing piece on the draconian penalties for failure to disclose foreign financial accounts in issue # 49 of *Wealth Creation Strategies*. We are not the only ones who have criticized the government for this "one size fits all" draco-like approach. The National Taxpayer Advocate's Nina Olson has stated that the failure to draw any meaningful distinction between those who willfully failed to report foreign financial accounts (likely a small fraction of overall numbers) vs. those who inadvertently failed to do so "discouraged taxpayers from self-correcting errors" by unnecessarily imposing enormous penalties on everyone. To encourage "voluntary compliance," the penalties for "eligible" taxpayers residing inside the U.S. have been (temporarily?) lowered from 27.5% to 5% of the highest account balance for those who "come clean" before the IRS catches them (and possibly 0% for those outside the U.S.). We hope all our clients with previously undisclosed offshore accounts have now disclosed, but we cannot know what we don't know. If there are any of you left with such accounts, please contact us immediately so we can discuss and act on before year-end. But beware: the penalty has been increased to 50% for those taxpayers the IRS snares first, and this includes those who enter the new version of the "OVDI"—the Offshore Voluntary Disclosure Initiative—after it "becomes public knowledge" that the financial institution where the account is held is under investigation by U.S. authorities (a true tax-trap).

There's an even smaller chance that any of our clients have failed to file Form 5500, which is yet another reporting form for which draconian penalties are imposed for non-filing ($25 per day up to $15,000 per year of such non-filing). This "information" form must be filed for small businesses with certain types of retirement plans, including Keoghs, defined benefit plans, defined contribution plans, money purchase pension plans and profit sharing plans (IRAs, SIMPLEs and SEPPs are exempted). A new program allows penalties to be forgiven for certain plans that cover only the taxpayer, the taxpayer and spouse, or taxpayer and partners of a partnership and their spouse(s). If there are any of you with such plans, please contact us immediately to discuss and act on before year-end. The "get out of jail free" card program ends June 2, 2015.

IRS Scammers Call and Threaten — They are Imposters

A number of you have panicked over phone calls from purported IRS agents threatening to have you arrested. These are imposters. IRS agents never call out of the blue and certainly won't threaten to make an arrest (they will simply find and arrest you if that is their intent). It turns out such threats are a nationwide and growing problem.

Tell-tale signs of a scam include calling about taxes owed without first mailing numerous official notices, making demands for payment of tax without first giving many opportunities to question or appeal the tax, asking for over-the-phone payment (especially via pre-paid debit cards) and threatening to send agents or local law enforcers to have you arrested for non-payment. If you ever get such a call and want to put your mind at ease, simply Google the phone number they claim they are calling from. You will find the number associated with all manner of scams.

K-1's for IRAs and Other Retirement Plans

We've been at the receiving end of increasing numbers of K-1s for IRAs, Roth IRAs and other retirement plans. These are most frequently issued for holdings of "publicly traded partnerships," which are publicly traded stocks taxed as partnerships (rather than corporations which, contrary to the incorrect belief of so many, are taxed at higher rates than individuals particularly when the tax impact of double taxation is factored in). Generally, we don't want or need them.

If you are not certain the holding is in your IRA or other plan, look at the named partner in Part II of the form (left side about half-way down). If it clearly says your name and "IRA" (or other plan), please do NOT send us this form, unless the following applies.

If your IRA or other retirement plan owns the partnership interest, look in Box 20 in the lower right side. If there is a code "V" and the number next to it, combined with all other such code "V"s among your K-1s exceeds $1,000, we must talk. In this very rare instance (we've never seen a case) you have "UBTI," or "Unrelated Business Taxable Income," which is subject to a 35% tax rate even though the interest is held inside what is otherwise a tax-deferred (or in the case of Roth IRAs, permanently tax-free) retirement plan. If all such Box 20 code "V"s total less than $1,000, there is no reason to send us any K-1s held inside retirement plans. Careful though we are, if we receive them we could err and add income (or loss) from such K-1s to your income tax return. And that's not good for anyone.

A Few Timely Quotes

"Combining health care with government invariably results in the individual's interests versus the state's interests scenario playing out. Guess who has historically won this battle? Once the 'state' is paying for healthcare, the 'state' determines what health care will be paid for—even what qualifies as meeting the definition of health care. After all, 'public' resources are distributed by popular vote and that's not good news for the sick minority. That the federal government is mandating the collection of virtually everyone's health information and data should be of great concern to anyone who has followed any history of what governments typically do with information. They desire this information simply because they intend to use it. To ration."

— G. Keith Smith, MD, http://surgerycenterofoklahoma.tumblr.com/post/93992811002/obamacare-goebbels-and-ginsburg

"When I am discussing the State with my colleagues at Duke, it's not long before I realize that, for them, almost without exception, the State is a unicorn [a creature that exists in your imagination but does not and cannot exist in reality]. I come from the Public Choice tradition, which tends to emphasize consequentialist arguments more than natural rights, and so the distinction is particularly important for me. My friends generally dislike politicians, find democracy messy and distasteful, and object to the brutality and coercive excesses of foreign wars, the war on drugs, and the spying of the NSA.

"But their solution is, without exception, to expand the power of 'the State.' That seems literally insane to me—a non sequitur of such monstrous proportions that I had trouble taking it seriously.

"Then I realized that they want a kind of unicorn, a State that has the properties, motivations, knowledge, and abilities that they can imagine for it. When I finally realized that we were talking past each other, I felt kind of dumb. Because essentially this very realization—that people who favor expansion of government imagine a State different from the one possible in the physical world—has been a core part of the argument made by classical liberals for at least 300 years."

— Michael Munger, Director of the philosophy, politics, and economics program at Duke University, http://fee.org/the_freeman/detail/unicorn-governance

"The 1689 Bill of Rights used the term 'illegal' extensively with reference to acts of government, and a couple are right on point…:

"That the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is **illegal**;

"That the pretended power of dispensing with laws or the execution of laws by regal authority, as it hath been assumed and exercised of late, is **illegal**;….

"That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is **illegal**;….

"That all grants and promises of fines and forfeitures of particular persons before conviction are **illegal** and void."

— The 1689 Bill of Rights, An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown, http://avalon.law.yale.edu/17th_ century/england.asp; cited at www.American-Thinker.com