

## Tax News & Views Health Care Edition

### Final tangible property regulations

On September 13, 2013, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) released final regulations (T.D. 9636) that provide guidance on the application of Section 263(a) to amounts paid to acquire, produce, or improve tangible property, as well as rules for materials and supplies and proposed regulations (REG-110732-13) addressing dispositions and general asset accounts (collectively, the “2013 Regulations”).

### Background

On December 23, 2011, Treasury and the IRS released temporary regulations on the application of Section 263(a) to amounts paid to acquire, produce, or improve tangible property. The temporary regulations also provided revised rules for materials and supplies and general asset accounts. The 2013 Regulations contain certain changes from the temporary regulations (T.D. 9564) issued in 2011.

The 2013 Regulations are generally effective for tax years beginning on or after January 1, 2014; however, taxpayers are permitted to apply them to tax years beginning on or after January 1, 2012. Changes to comply with or adopt the nonelective provisions in the 2013 Regulations generally will be made through an accounting method change. Additional guidance, including procedures for taxpayers to comply with the 2013 Regulations, is expected to be issued in the future.

### Materials and supplies

Incidental materials and supplies (i.e., materials and supplies for which the taxpayer does not maintain a record of consumption or take physical inventories at year-end) are deductible when purchased. Nonincidental materials and supplies are deductible when used or consumed. The 2013 Regulations generally retain the 2011 temporary regulations definition of a material and supply, but increase the dollar per unit or property amount from \$100 to \$200.

A material and supply is defined as tangible property used or consumed in the taxpayer’s operations that is not inventory and is a component acquired to maintain, repair, or improve a unit of tangible property; fuel, lubricants, water, or similar items that are reasonably expected to be consumed in 12 months or less; a unit of property that

has an economic useful life of 12 months or less; a unit of property with an acquisition or production cost of \$200 or less; or property identified in published guidance.

### Amounts paid to acquire or produce tangible property

Amounts paid to acquire or produce tangible property must be capitalized. In addition, a taxpayer must capitalize amounts paid to facilitate the acquisition or production of tangible property, such as bidding costs, finders’ fees, or brokers’ commissions and costs of securing an appraisal.

### De minimis safe harbor election

The 2013 Regulations provide a new de minimis safe harbor election for taxpayers with an applicable financial statement and a written accounting policy expensing property costing \$5,000 or less. Eligible taxpayers may generally deduct amounts paid for property, where the per item or per invoice amount does not exceed \$5,000. In determining the per invoice or per item amount for purposes of applying the \$5,000 limit, transaction and other costs that are included on the same invoice as the item are included in determining the cost of the item. The de minimis safe harbor election is an annual, irrevocable election made by attaching a statement to the taxpayer’s timely filed (including extensions) original tax return. For taxpayers without an applicable financial statement, the dollar threshold is reduced from \$5,000 to \$500.

### Amounts paid to improve tangible property

The 2013 Regulations generally provide that amounts paid to improve a unit of real or personal tangible property must be capitalized. An amount is considered paid to improve a unit of property if it results in a betterment of the unit of property, a restoration of the unit of property, or an adaption of the unit of property to a new or different use. In general, the 2013 Regulations retain the unit of property definitions set forth in the 2011 temporary regulations.

### Small taxpayer safe harbor election

Taxpayers with average annual gross receipts of \$10 million or less can expense repairs, maintenance, and improvements that are made with respect to an owned or leased eligible building property if the total cost for the tax year is \$10,000 or less. Eligible building property is a



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building with an adjusted basis of \$1 million or less. The election is made annually by attaching a statement to the taxpayer's timely filed (including extensions) original tax return.

#### **Routine maintenance safe harbor**

The routine maintenance safe harbor allows a deduction of expenditures for routine and recurring activities that a taxpayer reasonably expects to perform more than once during the unit of property's alternative depreciation system class life as a result of a taxpayer's use of the property. The safe harbor is applicable to a building, structural components of buildings, and building systems if the taxpayer reasonably expects to perform the activities more than once within 10 years of the placed-in-service date.

#### **Capitalization election**

The 2013 Regulations provide taxpayers with an annual, irrevocable election to capitalize amounts paid during the taxable year for repair and maintenance of tangible property, which are capitalized on its books and records. The election applies to all amounts paid for repairs and maintenance that are capitalized on the taxpayer's books and records. The annual election is made by attaching a statement to the taxpayer's timely filed (including extensions) original tax return.

For a full summary of the 2013 Regulations and additional guidance, please contact a Deloitte professional.

#### **IRS issues Notice 2013-61 regarding same-sex spouse benefits**

##### **Background**

On June 26, 2013, the Supreme Court of the United States ruled in *United States v. Windsor* (Windsor) that Section 3 of the Defense of Marriage Act, which prevented federal recognition of state-sanctioned marriages of same-sex couples, was unconstitutional. As a result of Windsor, the IRS released [Revenue Ruling 2013-17](#) (the "ruling") on August 29, 2013. The ruling states that same-sex married couples whose marriages were legally sanctioned by any domestic or foreign jurisdiction are legally married for all federal tax purposes, including income, gift, and estate tax. The ruling applies regardless of whether or not the couple lives in a jurisdiction that recognizes same-sex marriage.

##### **Same-sex spouse benefits**

Prior to the Windsor decision, same-sex spouse benefits (such as employer-provided health coverage) were not eligible to be excluded from the employee spouse's gross income for federal tax purposes. As a result, if an employer provided these benefits to an employee, they were subject to Federal Insurance Contributions Act (FICA) taxes and federal income tax withholding. As a result of

Windsor, same-sex spouse benefits are excludable from the employee's gross income. For taxpayers who have been previously subject to tax based on such benefits, taxpayers may claim refunds and employers may seek refunds of employment taxes for open tax years.

#### **Notice 2013-61**

Notice 2013-61 (the "notice") was issued by the IRS on September 23, 2013. The notice provides guidance for employers and employees to make claims for refunds or adjustments for overpayment of FICA taxes and federal income taxes with respect to certain benefits provided to same-sex spouses. The notice provides special administrative procedures for employers and employees to correct overpayments of employment taxes for 2013 and prior open years with respect to employer-provided health coverage benefits or fringe benefits that were provided by the employer and are excludable from income. The notice provides two alternative procedures for employers filing employment tax returns for third and fourth quarters of 2013 to correct overpayments for calendar year 2013. The notice also provides procedures for employers filing Form 941-X for open tax years prior to 2013. The special administrative procedures are optional. Employers may use the regular procedures for correcting employment tax overpayments. Employers using either the special administrative procedures or regular procedures to claim refunds for prior years will be required to file Forms W-2c, *Corrected Wage and Tax Statement*. Forms W-2c will assist employees in claiming a refund of income tax.

For more information, please refer to [Notice 2013-61](#) or contact your Deloitte engagement team.

#### **Supreme Court will review Quality Stores decision**

The Supreme Court has agreed to review the *U.S. v. Quality Stores, 110 AFTR 2d 2012-5827* decision. Quality Stores made severance payments to its terminated employees, which were not attributable to the rendering of any particular employment services. Quality Stores initially withheld federal income tax and the employees' share of FICA tax and paid the employer's share of FICA tax, but later filed for a refund. In 2012, the Court of Appeals for the Sixth Circuit, affirming a district court, held that the severance payments were not subject to FICA taxes. The Sixth Circuit covers employers who reside in Kentucky, Michigan, Ohio, and Tennessee.

The IRS has been relying on the Federal Circuit's 2008 decision in *CSX Corp. v. U.S. 518 F.3d 1328 (Fed. Cir. 2008)*, which held that severance pay involved in the taxpayer's downsizing programs was subject to FICA. The Supreme Court will resolve the circuit split that currently exists between the Sixth and Federal Circuit Courts on the issue.

### Did you know?

#### IRS releases draft 2013 Form 990 and instructions

The IRS has issued a draft of the [2013 Form 990](#), Return of Organization Exempt From Income Tax, and draft instructions. The form itself is similar to the 2012 Form 990; however, a number of updates and clarifications have been made to the instructions to the form. Changes to the instructions include clarification that a short-period return cannot be e-filed unless it is an initial or final return, clarification of compensation reporting for director's compensation for nondirector independent contractor services, and clarification that "contributions" do not include donations of services or discounts provided on sales of goods. For a full list of 2013 significant changes, refer to the [2013 draft instructions](#).

#### Empowerment zone designations remain in effect through December 31, 2013

The IRS recently announced that empowerment zone designations will remain in effect through the end of 2013. Empowerment zones are certain economically distressed urban and rural areas where employers and other taxpayers may qualify for special tax incentives. The empowerment zone employment credit is 20% of the employer's qualified wages (up to \$15,000) paid or incurred during the calendar year on behalf of qualified empowerment zone employees. The credit is a component of the general business credit and is claimed by filing [Form 8844](#), Empowerment Zone Employment Credit, and Form 3800, General Business Credit.

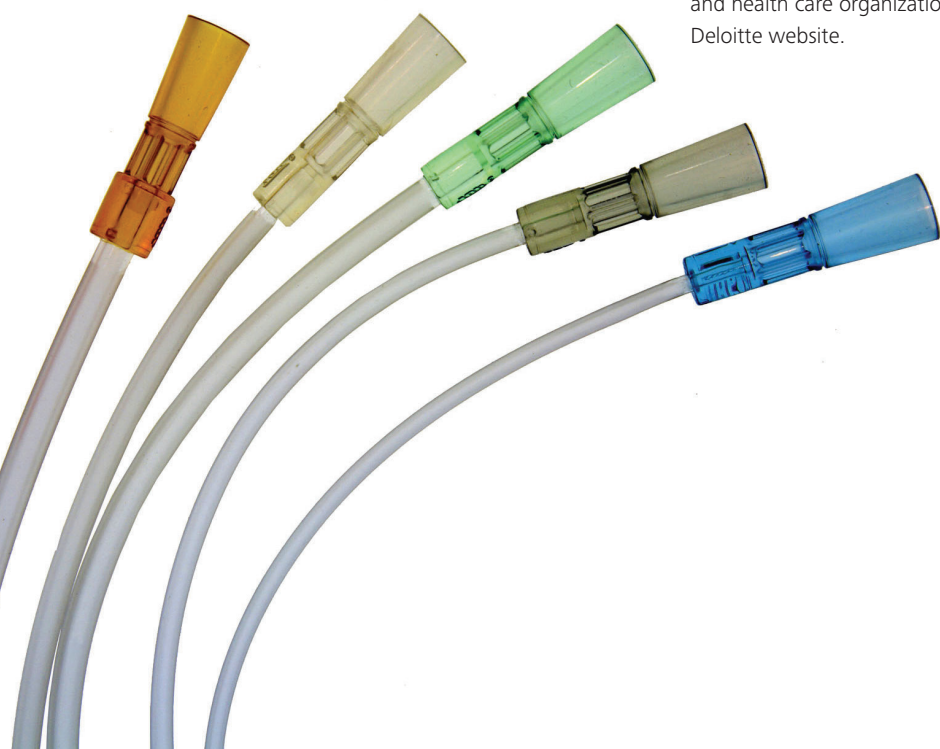
#### IRS information letter on employment tax responsibilities

The IRS released [information letter 2013-0031](#) that summarizes the employment tax responsibilities for common law employers, statutory employers, and employer agents. Employers are required to report, deposit, and pay federal employment taxes, such as FICA, Federal Unemployment Tax Act tax, and federal income tax withholding. Generally, whether a person is an employer is determined under the common law rules. However, there may be situations where the person with control of the payment of wages (statutory employer) or an employer agent is responsible for employment taxes. For additional explanation, refer to the information letter.

#### Deloitte Thoughtware

**Health Reform.** The health reform bills (HR3590 and HR4872) are now law and will trigger sweeping changes and disruptions – some rather quickly and some over many years. The industry is asking, "What now?" At Deloitte, we continue to explore and debate the specific questions facing the industry, and we look forward to helping our clients find and implement the appropriate answers for their organizations. To learn more, visit [Health Care Solutions](#) on the Deloitte website.

**Health Care Regulation.** With quality in the spotlight on a national level, hospitals across the country are renewing their commitment to confirming that their services meet the core measures for quality set by the government and that internal controls are in place to help determine that the collection and reporting of quality data are accurate, complete, and compliant with government reporting requirements. The financial and operational impacts of regulation and legislative oversight in the life sciences and health care industries are pervasive and constantly changing. [@Regulatory](#) is a monthly publication that apprises readers of the latest regulatory, legislative, and other public policy developments affecting life sciences and health care organizations. Visit [@Regulatory](#) on the Deloitte website.



## Deloitte Dbriefs

Deloitte Dbriefs are live webcasts that give you valuable insights on important developments affecting your business. Register for the following webcasts or view archived recordings by clicking on the respective hyperlinked button below.



### Financial Executives

#### ***Transforming Risk Management for Value Creation: Road-mapping Your Journey***, November 22, 2:00 PM ET

Many organizations have pieces of risk management in place, but not necessarily in alignment with their strategies and ways of doing business. How can risk management evolve from a functional responsibility to a managed discipline where strategy and execution are fully aligned and make positive impacts? We'll discuss:

- Cornerstones of risk transformation, including strategy, governance and culture, business and operating models, and data, analytics and technology.
- A risk transformation framework that guides organizations through the evolution.
- Considerations to help management and the organization prepare for a deeper discussion of risk transformation.

Learn how to transform risk management into a core competency that permeates the entire organization.

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#### ***Sanctioned Countries, Corruption, and Illicit Fund Flow: Navigating a Global Minefield***, December 4, 2:00 PM ET

Conducting business globally today involves many potential fraud and corruption risks that require the full attention of companies, from CEOs to analysts. Which countries are banned by U.S. policy, likely rampant with corruption, and may welcome dirty money? We'll discuss:

- Navigating the complex U.S. sanctions regulations that apply to Iran, North Korea, and other banned countries.
- Identifying corruption hot spots and doing business with political officials.
- Rooting out trade-based money laundering and other illicit flows of funds.

Gain insights on how to assess fraud, sanctions, and corruption risks around the globe and conduct appropriate due diligence to help stay out of harm's way.

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#### ***Planning, Budgeting, and Forecasting: New Approaches for a New Normal?***, December 18, 3:00 PM ET

A company's approach to its planning, budgeting, and forecasting (PBF) processes can significantly impact bottom line performance. How can you use PBF to achieve high-quality performance amid today's uncertainties? We'll discuss:

- Common barriers to effective PBF, including reliance on traditional annual budgeting and the need for forecasts that sensitize the organization to business changes.
- Innovative ways to execute on PBF and stay aligned with corporate strategy, including integration of PBF with resource allocation, operational planning, and other processes.
- PBF and performance management, including emergence of a standard performance management system architecture.

Hear results from Deloitte's 2013 Global PBF survey and gain insights on important organizational performance trends.

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### Industries

#### ***The Big Data Revolution: Unlocking the Power of Health Care Analytics***, November 5, 1:00 PM ET

Health care companies are on the verge of realizing significant gains from big data, but new tools and approaches are needed to get there. How can analytics help improve access and quality while driving down costs? We'll discuss:

- Tapping into the health care industry's vast information reserves and translating meaningful insights.
- Infrastructure and reporting applications needed to effectively access and interpret high-value data.
- Industry examples of how analytics are helping reduce costs and improve patient outcomes.

Discover how gamification can transform employee, customer and supplier behavior, creating new ways to team, work, and drive business outcomes.

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## Industries (cont'd)

### *The State of Health Care Transformation: Taking a Global Perspective, December 11, 1:00 PM ET*

With health care reform taking shape in the U.S. and new reform legislation becoming effective in 2014, health care system transformation could be far reaching and its impacts global in nature. How might these changes impact the global health care economy? We'll discuss:

- Transitioning from forward-looking projections to measuring quality improvements through outcomes.
- Lessons learned on a global level as changes in access to care are implemented.
- An update on initiatives being implemented to slow the rising cost of care.

Explore the implications of U.S. health care reform on a global scale and what lies ahead in 2014 for the industry

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## Technology Executives

### *Cognitive Computing: Can Computers Learn from Experience ?, November 7, 2:00 PM ET*

With recent advances in cognitive computing, computers may soon be able to help experts make better decisions by making sense of unstructured data. Systems are being trained today to sense, predict, infer and, in some ways, think. We'll discuss:

- Current breakthroughs in cognitive computing.
- Potential impacts of this technology on business, which includes making large amounts of specialized knowledge widely accessible.
- Types of investments companies are making in cognitive computing today, including cancer diagnosis, and financial recommendations.

Learn about recent advances in cognitive computing and ways it can help you improve business decision making.

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### *Cloudy With a Chance of Core: Managing Integration in an Increasingly Complex World, December 5, 2:00 PM ET*

As cloud adoption continues to rise, the scope of solutions is evolving – and businesses are mixing multiple cloud services, core systems, and data sources. Integrating cloud-to-cloud and cloud-to-internal systems is a must, but few organizations have a strategy, much less a platform for it. We'll discuss:

- Common scenarios requiring orchestration of disparate cloud services and integration to core legacy systems.
- Options for integrating cloud-to-cloud and cloud-to-core, including traditional middleware and cloud-based platforms.
- Practical examples of how enterprises are leveraging cloud architectures for business advantage.

Learn about recent advances in cognitive computing and ways it can help you improve business decision making.

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