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July Fourth Holiday Schedule

Due to the Independence Day holiday, *Wolters Kluwer Federal Tax Weekly* comes to you this week under a revised schedule to reflect government and court closings; it is eight pages in length. *Wolters Kluwer Federal Tax Weekly* returns to its regular length next week.

Code Sec. 36B Credit Available In All Exchanges, Supreme Court Holds

King, SCt., June 25, 2015

In a 6 to 3 decision, the U.S. Supreme Court has held that the Code Sec. 36B premium assistance tax credit is not limited to enrollees in state-run Health Insurance Marketplaces (previously referred to as Exchanges). Enrollees in federally-facilitated Marketplaces may also claim the credit, if eligible, the Court held.

- ***Take Away.*** "The decision from the Supreme Court accepted the government's argument: that a technical glitch cannot be allowed to undermine the fundamental purposes of the law, so the statute must be interpreted to provide subsidies for all individuals enrolled through Exchanges," Kimberly McCarthy, Partner, Partridge, Snow & Hahn LLP, Providence, R.I., told Wolters Kluwer.
- ***Comment.*** "The Court found that the interpretation that subsidies were only available in State Exchanges would 'destabilize the individual insurance market in any State with a Federal Exchange,' and likely create the very 'death spirals' that Congress designed the Act to avoid," Kathryn Bakich, Senior Vice President and National Health Compliance Practice Leader at The Segal Group, Washington, D.C., told Wolters Kluwer.

Background

The IRS issued regs after enactment of the *Affordable Care Act* (ACA) providing that the Code Sec. 36B credit would be available to qualified enrollees in both federally-facilitated and state-run Marketplaces. Several court challenges followed where the plaintiffs argued that the regs were contrary to the language of the ACA.

- ***Comment.*** At the heart of the controversy was whether the statutory language within Code Sec. 36B: "an Exchange established by the State under [42 U.S.C. §18031]" should be read to include federally-facilitated Marketplaces.

In 2014, the Fourth Circuit upheld the Code Sec. 36B regs in *King*. The Court of Appeals for the District of Columbia Circuit struck down the regs in *Halbig, 2014-2* USTC *¶50,366*, creating a split among the circuits. The Supreme Court agreed to take up *King* and heard oral arguments in March 2015.

Supreme Court's decision

Writing for the majority, Chief Justice Roberts first noted that when statutory language is plain, it must be enforced according to its terms. "But often times the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." The majority found that the ACA was ambiguous and looked to the broader statute. "A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme."

Roberts further explained that "Congress based the Affordable Care Act on three major reforms: first, the guaranteed issue and community rating requirements; second, a requirement that individuals maintain health insurance coverage or make a payment to the IRS; and third, the tax credits for individuals with household incomes between 100 percent and 400 percent

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Nationwide Right To Marriage For Same-Sex Couples, Supreme Court Holds

Obergefell, SCt., June 26, 2015

Two years after the U.S. Supreme Court addressed same-sex marriage in *Windsor, 2013-2* USTC *¶50,400,* the Court has held that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex. Further, states must recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

- ***Take Away.*** "The (*Obergefell*) decision means that there is no more distinction between same-sex spousal benefits and opposite-sex spousal benefits," Todd Solomon, Partner, McDermott, Will & Emery LLP, Chicago, told Wolters Kluwer. "For example, health benefits for same-sex spouses formerly had to be taxed at the federal (pre-*Windsor*) and sometimes state level. Now they do not."
- ***Comment.*** *Obergefell* was not a tax case, but the Supreme Court's decision will impact married same-sex couples not only with return filing but in other areas, such as employee benefits and health care. The decision also reinforces the IRS's ruling that domestic partners are not married for purposes of federal tax law. The IRS is expected to issue guidance to reflect the impact of *Obergefell.*

Background

In *Windsor,* the Supreme Court took up a challenge to Section 3 of the *Defense of Marriage Act* (DOMA). The Court, in a 5 to 4 opinion, struck down Section 3, which defined marriage for federal purposes as only the union between members of the opposite sex. After *Windsor,* the IRS announced that it would take a place of celebration approach to same-sex marriage. The IRS also announced that *Windsor* had no effect on domestic partners for filing purposes (because domestic partners are not married) and issued guidance for retirement plans and health insurance plans.

Obergefell decision

Justice Kennedy delivered the majority opinion in *Obergefell.* Kennedy likened the right to marriage to choices about family relationships, procreation, and childrearing. Kennedy explained that in interpreting the Equal Protection Clause of the Fourteenth Amendment, "the Court has recognized that new insights and societal understandings can reveal unjustified inequality…" The state bans on same-sex marriage, Kennedy wrote, result in the denial to same-sex couples all of the benefits afforded to opposite-sex couples. "This denial to same-sex couples of the right to marry works a grave and continuing harm. The Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry."

Dissent. Each of the four dissenting judges wrote a separate opinion. Chief Justice Roberts would have found that the fundamental right to marry does not include a right to make a state change its

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Code Sec. 36B

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of the federal poverty line."

"Here, the statutory scheme compels us to reject petitioners' interpretation because it would destabilize the individual insurance market in any State with a Federal Exchange," Roberts wrote. Additionally, "the structure of Section 36B itself suggests that tax credits are not limited to State Exchanges."

"Section 36B allows tax credits for insurance purchased on any Exchange created under the Act. Those credits are necessary for the Federal Exchanges to function like their State Exchange counterparts," Roberts concluded.

- ***Comment.*** Roberts noted the Court's opinion in *NFIB v. Sebelius, 2012-2* USTC *¶50,573,* which upheld the ACA's individual shared responsibility provision, where the dissent observed that "without the federal subsidies… the Exchanges would not operate as Congress intended and may not operate at all."

Dissent. The dissent would have struck down the IRS regs as contrary to the language of the ACA. "It is hard to come up with a reason to include the words 'by the State' other than the purpose of limiting credits to State Exchanges," Justice Scalia wrote for the dissent.

- ***Comment.*** "If the ruling had gone the other way, individual market premiums were expected to skyrocket, as healthy people that lost their subsidies dropped coverage, but sick people that desperately needed coverage remained," McCarthy noted. "Moreover, a ruling against the administration would have undermined the employer mandate: employers no longer facing 'pay or play' penalties may well have restricted coverage, or dropped it altogether."

For more details and analysis of the Supreme Court's opinion in King, see the special Briefing on IntelliConnect.

References: 2015-1 USTC ¶50,356; TRC HEALTH: 3,300.

REFERENCE KEY

FED references are to ***Standard Federal Tax Reporter***
USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***
TRC references are to ***Tax Research Consultant***

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Obama Signs Trade Bills With Tax Offsets

HR 1295, HR 2146

President Obama on June 29 signed the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015* (HR 2146) and the *Trade Preferences Extension Act of 2015* (TPEA) (HR 1295). The trade bills enhance or change several tax provisions as well as extending the Health Coverage Tax Credit (HCTC).

- ***Take Away.*** "Congress was able to find enough revenue to cover the trade bills with fairly noncontroversial provisions, but this could lead to more pain down the road," Dustin Stamper, Director, Washington National Tax Office, Grant Thornton LLP, told Wolters Kluwer. "Now that lawmakers have picked the lowest hanging fruit, they'll have to dig a little deeper when looking for revenue for other priorities like transportation spending.".

Education

The *Trade Preferences Extension Act* provides that taxpayers must possess a valid information return (Form 1098-T, Tuition Statement) to claim the tuition and fees deduction, the American Opportunity Tax Credit (a temporarily enhanced version of the HOPE credit) and the Lifetime Learning credit. Another provision in the new law waives certain penalties for educational institutions that fail to file information returns with accurate taxpayer identification numbers (TINs) of students.

Information returns

The *Trade Preferences Extension Act* overhauls the penalty structure for information returns and payee statements. The changes to the penalty structure are effective for information returns and payee statements required to be filed/furnished after 2015.

Child tax credit

A U.S. citizen or resident living abroad may be eligible to elect to exclude from U.S. taxable income certain foreign earned income and foreign housing costs under Code Sec. 911. The *Trade Preferences Extension Act* limits the child tax credit for taxpayers who elect to exclude from gross income for a tax year any amount of foreign earned income or foreign housing costs. These taxpayers will not be able to claim the refundable portion of the child tax credit for the tax year.

HCTC

The *Trade Preferences Extension Act* renews the Code Sec. 35 HCTC, which had expired after 2013. Qualified individuals (and in some cases family members) may claim the HCTC to help offset the cost of health insurance. Covered individuals generally must qualify for Trade Adjustment Assistance (TAA) or qualify as an eligible Pension Benefit Guaranty Corporation (PBGC) pension recipient.

- ***Comment.*** The new law makes the HCTC retroactive to January 1, 2014 and available for months beginning before January 1, 2020.

Corporate taxes

The *Trade Preferences Extension Act* shifts corporate estimated tax payments for corporations with at least $1 billion in assets. The amount of corporate estimated tax due in July, August or September 2020 is increased by eight percent and the amount of the next required installment is reduced to reflect the prior increase.

Public safety officers

The *Defending Public Safety Employees' Retirement Act,* included in HR 2146, provides certain federal public safety officers with an exemption from the 10-percent penalty on early distributions from a qualified retirement plan. The provision applies to distributions made after December 31, 2015.

For more details and analysis of the trade bills, see the special Briefing on IntelliConnect.

Marriage

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definition of marriage. Justice Thomas wrote that "To the extent that the Framers would have recognized a natural right to marriage that fell within the broader definition of liberty, it would not have included a right to governmental recognition and benefits. Instead, it would have included a right to engage in the very same activities that petitioners have been left free to engage in."

Return filing

After *Windsor,* same-sex married couples in states that did not recognize their marriages have had to file two sets of returns: one for federal taxes, another for state taxes. In light of *Obergefell,* states that did not recognize same-sex marriage will presumably have to treat married same-sex married couples the same as married opposite-sex couples for filing purposes.

Domestic partners

In Rev. Rul. 2013-17 and in frequently asked questions on its website, the IRS emphasized that its nationwide recognition of same-sex marriage did not extend to registered domestic partners. The IRS explained that registered domestic partners are not married under state law; therefore, domestic partners are not married for federal tax purposes. Registered domestic partners may not file a federal return using a married filing separately or jointly filing status. The Supreme Court's decision in *Obergefell* makes no change to this treatment of domestic partners.

- ***Comment.*** "Now that there is full marriage equality, employers might consider eliminating unmarried partner benefits," Solomon noted. "But this decision is not a simple one and there are many factors to consider."

For more details and analysis of the Supreme Court's opinion in Obergefell, see the special Briefing on IntelliConnect.

References: 2015-1 USTC ¶50,357; TRC FILEIND: 3,202.

Proposed Reliance Regs Define Municipal Bonds' Issue Price For Arbitrage Restrictions

NPRM REG-138526-14

The IRS has reissued proposed reliance regs that would define the issue price of a municipal bond for applying the arbitrage investment restrictions under Code Sec. 148. The rules would apply to issuers of tax-exempt and other tax-favored bonds, such as Build America Bonds.

- ***Take Away.*** Arbitrage involves investing the proceeds from a bond issue at a higher interest rate than the interest rate owed by the issuer on the bonds. Code Sec. 148(h) determines the yield on a bond issue using the issue price, rather than sales proceeds reduced by issue costs. According to the IRS, Congress wanted to ensure that issuers bear the cost of issuing bonds and not recover the costs through arbitrage profits.

Background

Under existing regs, the issue price for bonds generally follows the definition used for computing original issue discount on debt under Code Sec. 1273 and 1274. The issue price of publicly-offered bonds is the first price at which a substantial amount of bonds is sold to the public. The regs defined substantial amount as 10 percent and determined the issue price as of the sale date, based on "reasonable expectations" regarding the initial offering price.

2013 regs

The IRS issued proposed regs in 2013 (NPRM REG-148659-07) that would have changed the definition of issue price. The regs retained the rules that determined issue price under Code Sec. 1273 and 1274 as the first price at which a substantial amount of bonds is sold to the public. The regs proposed to change the 10 percent standard to 25 percent and to define the issue price as the first price at which 25 percent or more of the bonds in an issue are actually sold to the public. Thus, issue price would be based on actual sales rather than reasonably expected sales.

Some taxpayers objected to several features of the 2013 proposed regs, including the 25 percent safe harbor and the use of actual sales. They said that insufficient sales of bonds could prevent a timely determination of issue price on the sale date of the bonds. Also, because the underwriter bears the risk of any market fluctuation after the sale date, any later change in price on the market would not affect the costs paid by the issuer.

2015 regs

The IRS decided to withdraw the portion of the 2013 regs that would amend the definition of issue price for tax-exempt bonds. The 2015 proposed regs would continue to define the issue price as the first price at which a substantial amount of bonds is sold to the public, using actual sales prices to determine issue price. The regs would retain the 10 percent threshold as a substantial amount of bonds.

However, the regs would provide an alternative method for determining the issue

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IRS Clarifies Requirement That Hospitals List Doctors Covered By Financial Assistance Policy

Notice 2015-46

The IRS has provided guidance to clarify the requirement in Code Sec. 501(r)(4) that a tax-exempt hospital establish a written financial assistance policy (FAP) and include a list of providers, other than the hospital facility itself, that are covered and not covered by the FAP. The provider list applies to all private physician groups and third-party providers of health care in the hospital facility. Notice 2015-46 applies to tax years beginning after December 29, 2015

- ***Take Away.*** The *Affordable Care Act* (ACA) imposed additional requirements on charitable hospitals in Code Sec. 501(r)(3) to (r)(6). Hospitals are particularly sensitive to these requirements and do not want to jeopardize their tax-exempt status for minor violations. Rev. Proc. 2015-21 provides relief for two categories of failures: (1) failures that are not willful or egregious, provided the hospital corrects and discloses the failure; and (2) errors that are minor, inadvertent, or due to reasonable cause, which are not treated as failures if corrected promptly after discovery.

Background

Under 2014 final regs (TD 9708), a hospital facility must have a FAP that applies to all emergency and necessary medical care provided in the hospital by the facility itself. Because it is common for non-employee doctors and practices to provide health care in a hospital, the regs require that the FAP disclose which services provided in the hospital are covered by the FAP and which are not.

The FAP must include a list of medical providers, other than the hospital itself, and specify which providers are and are not covered by the FAP. The IRS has received a number of questions and comments about the practicalities of providing a current providers' list and issued the current guidance to clarify the list requirement.

Provider list

The IRS reiterated that the FAP must include a list of any providers of emergency or other medical care in the hospital. The FAP must specify which providers are covered by the FAP and which are not. The hospital may identify providers by

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IRS Issues Interim Guidance For Excise Tax Field Examiners/Appeals Cases

SBSE-04-0615-0041, SBSE-04-0615-0046

The IRS Small Business/Self-Employed Division (SB/SE) has issued two new items of interim guidance for how field personnel should approach excise tax cases. The first piece of guidance addresses the statute of limitations for certain excise tax cases transmitted to and from Appeals. The second piece of guidance informs IRS excise tax examiners that the First Time Abate (FTA) administrative penalty waiver is available, effective immediately.

- ***Take Away.*** In July 2014, the IRS issued a memorandum for appeals employees as a part of its Appeals Judicial Approach and Culture (AJAC) Project. Several changes listed in the memorandum impacted the processing of SB/SE Excise Tax cases, the most significant of which related to the statute of limitations.

Statute of limitations

SBSE-04-0615-0041 states that excise tax cases closing to Appeals for the first time on and after September 2, 2014, require at least 365 days on the statute of limitations for assessment when they are received in Appeals. In addition, the guidance clarifies that there must be at least 210 days remaining on the statute of limitations when a case is received in Excise Tax, if Appeals returns the case to Excise Tax for consideration of new information or new issues raised by the taxpayer.

There must also be at least 180 days remaining on the statute of limitations when a case is received in Appeals, if Appeals previously released jurisdiction of the case and returned it to Excise Tax for additional work. The interim guidance also states that IRS examiners should plan for 30 days to allow for shipping and processing a case through Technical Services before being sent to Appeals. Examiners should also account for time needed to review the protest, prepare any rebuttal, and close the case from the group. If a statute extension is not received, the case will be processed based on the proposed changes.

FTA penalty waiver

SBSE-04-0615-0046 clarifies that the FTA administrative penalty waiver currently outlined in Internal Revenue Manual (IRM) sections 4.24.9.1.1.1 and 4.24.9.1.2 may now be utilized by excise tax examiners, effective immediately. Previously, the IRM had specified that the FTA administrative waiver should not be cited or used by excise tax employees. The IRS stated, however, that it will incorporate the change into IRM 4.24.9. IRM sections 4.24.9.1.1.1, 4.24.1.9.1.2, and 4.24.9.1.3 will be eliminated from IRM 4.24.9. In the meantime, the IRS directed excise tax examiners to consult the Penalty Handbook, IRM 20.1, for complete information on penalties.

Reference: TRC IRS: 33,402.

Bonds

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price of bonds if a substantial amount is not sold to the public as of the sale date. This method would allow the issuer to treat the initial offering price to the public as the issue price, provided that the underwriter fills all orders at this price if received on or before the sales date.

- ***Comment.*** The alternative method would require the underwriter to certify that it would not fill an order from the public after the sale date but before the issue date at a higher price than the initial offering price, unless there was a market change for the bonds after the sale date (such as a change in interest rates).

Other features

The proposed regs would retain the rule that the issue price of bonds with different payment and credit terms is determined separately. The regs would define the public as any person other than an underwriter. An underwriter would be any person that agrees to participate in the initial sale to the public. The preamble discusses how to document the initial offering price and stresses that the issuer should maintain documentation to support its determination of the issue price.

The regs are proposed to apply prospectively to bonds sold at least 90 days after publication of final regs. However, issuers may rely on the proposed regs for bonds sold or after June 24, 2015 and before the final regs take effect.

References: FED ¶49,655; TRC SALES: 51,150.

FAP

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practice group, rather than by individual, or by the name of the entity that bills the patient. Hospitals may also specify providers by department, if all providers in the department are covered by the FAP, or by type of service.

If a provider is covered by the FAP in some circumstances but not others, the facility must indicate when the medical care is covered and is not covered by the FAP. The hospital is not required to indicate whether a provider is covered by the financial aid policy of another entity.

A provider list may be maintained in a separate document from the FAP, provided the document shows when it was created or updated. While the FAP itself must be formally adopted by the hospital, an update of the provider list does not have to be formally adopted.

Errors and omissions in the provider list will be considered minor and inadvertent as long as the hospital takes "reasonable steps" to ensure that the list is accurate. Updating the list at least quarterly will satisfy this reasonableness requirement.

References: FED ¶46,354; TRC EXEMPT: 3,154.

Tax Court Imposes Transferee Liability On Shareholders Of Corporation Using "Midco" Tax Shelter Transaction To Avoid Taxes

Shockley, TC Memo. 2015-113

The Tax Court has imposed transferee liability under Code Sec. 6901 on two individuals that received distributions from an insolvent corporation after the corporation sold its assets for a substantial gain and was unable to pay taxes on the gain. After recasting the transaction, the court determined that the shareholders received liquidating transfers from the corporation and that the shareholders were liable because they took part in a fraudulent transfer under state law.

- ***Take Away.*** The corporation's shareholders were advised that a stock sale would net them $94 million, compared to $75 million from an asset sale. The difference represented the "avoided" corporate tax on the built-in gains from the corporation's assets. The buyers of the corporation's assets sought to purchase the assets directly, rather than buy stock in the corporation. The parties engaged in a "Midco transaction" that interjected a third party to buy stock from the shareholders and then sell the corporation's assets to the interested buyers. The IRS determined in Notice 2001-16 that these "intermediary transaction tax shelters" were abusive.

Background

Married taxpayers each owned approximately 10 percent of the shares of a media corporation that owned and operated television and radio stations. They also were the general partners of a limited partnership that owned 3.5 percent of the corporation's stock. The corporation sought to sell its stock; however, buyers in the broadcasting industry preferred to purchase corporate assets directly.

With the assistance of a company that facilitated stock sales, the shareholders sold their stock to a newly created company for $94 million. The taxpayers and their partnership received $26 million for their stockholdings and reported the transaction on their tax return as a stock sale. The stock purchaser then sold the media corporation's assets to various buyers. These steps reflected the use of a Midco transaction.

On its corporate income tax return, the media corporation reported that it had zero taxes due and zero assets. The IRS asserted that the corporation owed $41 million in income taxes and subsequently asserted transferee liability against the media corporation's eight largest shareholders.

The IRS claimed that the corporation was liable for taxes on the sale of its appreciated assets and that the taxpayers were each liable for a portion of the unpaid taxes, because they received transfers from the corporation. To impose liability on the shareholders, the IRS disregarded the stock sale and recast the transaction as an asset sale by the corporation while owned by the taxpayers, followed by liquidating distributions by the corporation to the shareholders. Since the transaction was set up as a stock sale to an unrelated party, the taxpayers, on the other hand, claimed that they had not received any transfers from the media corporation and could not be liable as transferees.

Court's analysis

To impose transferee liability under Code Sec. 6901, the IRS had to show an independent basis for imposing liability on the transferees under state law or equity principles. Here, state law imposes liability where a debtor (in this case, the corporation) transfers property to a transferee (the shareholders) and thereby avoids creditors' (the IRS's) claims. A transfer is fraudulent and can result in transferee liability if the debtor made a transfer without receiving equivalent value and the debtor was insolvent.

The taxpayers argued that the transaction's form must be respected, that the "substance over form" doctrine did not apply under state law, and that the doctrine could not be used to impose transferee liability. The Tax Court disagreed. The state's courts apply the doctrine in the same manner as federal courts, it concluded. The use of a Midco transaction lacked economic substance, had no business purpose, and served the sole purpose of tax avoidance, the same as the transaction in *Diebold (2nd Cir. 2013)*. The court chose to disregard the form and deemed the taxpayers to have received distributions from the media corporation in a de facto liquidation.

After finding that the shareholders were transferees, the court concluded that they were liable under state law. The IRS's claims satisfied the three requirements of state law: its claim as a creditor arose before the transfer (to the shareholders) was made; the debtor made the transfer without receiving reason-

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IRS Reminds Tax Professionals To Register For Nationwide Forums

The IRS has issued a reminder to tax professionals that they may now register for one of the five Nationwide Tax Forums it will offer during summer 2015. The first forum will be held July 7 through 9 in National Harbor, Maryland, near Washington D.C. Other locations include Denver, July 28 through 30; San Diego, August 11 through 13; Atlanta, August 25 through 27; and Orlando, Florida, September 1 through 3. The events will feature more than 40 seminars on business and individual taxation, the *Affordable Care Act*, representation before the IRS, business entities, collection due process (CDP) hearings, IRS Appeals, and more. In some locations, local state tax and revenue administrations will present their own seminars.

Continuing education credits are also available for many of the attendees. Enrolled agents and certified public accountants (CPAs) may earn up to 18 continuing professional education credits in each forum location. Certified financial planners may also be eligible to receive credits, the IRS stated.

IR-2015-79.

TAX BRIEFS

Internal Revenue Service

The IRS has provided the specifications for the private printing of red-ink substitutes for the 2015 revisions of information returns, preparing acceptable substitutes of the official forms, and using official or acceptable substitute forms to furnish information to recipients. Substitutes that totally conform to the specifications may be privately printed and filed as returns with the IRS.

Rev. Proc. 2015-35, FED ¶46,353; TRC FILEBUS: 12,052.10

The Electronic Tax Administration Advisory Committee (ETAAC) has presented its 2015 Annual Report to Congress. In this report, the ETAAC recommends an accelerated digital-first taxpayer service strategy to improve taxpayer service and compliance.

IR-2015-93, FED ¶46,352; TRC IRS: 3,052

Jurisdiction

The Tax Court's second order dismissing a couple's petition was vacated for failing to state the basis for the court's finding of lack of jurisdiction. The Tax Court dismissed the couple's petition for costs for lack of jurisdiction, but failed to resolve whether the deficiency notices had, in fact, been issued by the IRS. Therefore, the second order was opaque in comparison to the first order granting the couple' petition since it failed to state the precise reason for lack of jurisdiction.

Edwards, CA-D.C., 2015-1 USTC ¶50,346; TRC IRS: 27,156

A federal district court had jurisdiction over a nonprofit organization's constitutional challenge to the IRS's process for determining the tax-exempt status of Israel-related organizations. The Declaratory Judgment Act (DJA) did not limit the court's jurisdiction because the organization's constitutional claim was not a tax collection claim barred under the AIA and the DJA. The organization did not claim that the IRS denied it a preferred tax status or sought to restrain the IRS's attempts to assess or collect taxes.

Z Street, CA-D.C., 2015-1 USTC ¶50,345; TRC IRS: 45,152

Tax Crimes

A retired chiropractor convicted of tax evasion waived his arguments pertaining to the timeliness of his prosecution, the alleged duplicity of the indictment, and the lack of unanimity jury instruction by failing to timely raise them before the trial court and, therefore, his motion seeking reversal of his conviction was denied. The individual should have raised the issues during or before trial to give the trial court an opportunity to prevent the occurrence of the errors which the individual now claimed as justification for reversal of his conviction or a new trial.

Madsen, CA-10, 2015-1 USTC ¶50,349; TRC IRS: 66,154

A federal district court's order imposing restitution upon a tax return preparer convicted of violating Code Sec. 7206 by making and subscribing a false income tax return and of aiding and assisting in the preparation of false tax return was vacated. The court adopted the presentence investigation report (PSR) and erroneously authorized restitution under 18 U.S.C. §3663A, which mandated restitution for certain crimes that did not arise under the Tax Code, instead of ordering restitution pursuant to 18 U.S.C. §3583(d).

Feast, CA-5, 2015-1 USTC ¶50,348; TRC IRS: 66,462.25

Summons

A couple's petition to quash an IRS third-party summons issued to a bank seeking trust account bank records in connection with an IRS audit of the couple's tax return was denied. The couple failed to rebut the government's *prima facie* case for summons enforcement under the *Powell* requirements.

Schwartz, DC Fla., 2015-1 USTC ¶50,352; TRC IRS: 21,300

A federal district court lacked subject matter jurisdiction over an individual's complaint seeking to quash an IRS third-party collection summons issued to a bank. The summons was issued to investigate accounts the individual may have maintained in his wife's name to shield them from the IRS. Since the summons was issued in aid of collection of the individual's tax penalty, the individual was not entitled to notice of the summons, and did not have the right to bring a petition to quash summons under Code Sec. 7609(b).

Haber, DC N.Y., 2015-1 USTC ¶50,350; TRC IRS: 21,106

Information Returns

A law firm's request that the court keep under seal tax returns and return information that were filed by a taxpayer along with her summary judgment motion was allowed. The disclosure of tax return information would result in an invasion of privacy, since the documents would be accessible to the public and Congress's public policy concern under Code Sec. 6103 outweighed the public's interest in accessing the documents.

Guzman v. The Consumer Law Group, P.A., DC Ga., 2015-1 USTC ¶50,355; TRC IRS: 9,052

Income

An individual was required to report income from stock sales and capital gains along with taxable dividend income, since she owned and controlled both the brokerage account used to sell stocks and generate taxable dividends and the checking account where the proceeds were deposited. She was also liable for an accuracy-related penalty for substantial understatement of income tax.

Read, TC, Dec. 60,331(M), FED ¶48,041(M); TRC INDIV: 6,052

Deductions

An individual was denied deductions because his consulting activity was not engaged in for profit. Further, the taxpayer was subject to accuracy-related penalties based on negligence and substantial understatement of tax.

Strode, TC, Dec. 60,333(M), FED ¶48,043(M); TRC BUSEXP: 15,050

An individual was not entitled to claim a passthrough loss deduction for the year at issue. The taxpayer filed an amended return claiming that the income for the year at issue was fully offset by a by a net operating loss carryback, but failed to provide any evidence substantiating the loss de-

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duction. The taxpayer was also liable for fraud penalties.

Reinhard, TC, Dec. 60,332(M), FED ¶48,042(M);TRC PENALTY: 6,058

The IRS denied deductions claimed by a corporation in its tax returns as improper and assessed taxes, penalties and interest against the corporation. The IRS's assessment was entitled to a legal presumption of correctness, which the corporation failed to rebut. The corporation failed to meet its burden of proving that the tax deductions it claimed were deductible business expenses.

Amp Tree Service, Inc., DC Calif., 2015-1 USTC ¶50,354; TRC IRS: 27,200

Frivolous Arguments

Payments received by an individual in exchange for services provided to various agricultural businesses were includible in gross income and, therefore, constituted taxable income. The individual was liable for additions to tax for failure to file his income tax return, pay estimated tax, and pay the income tax due for the tax year at issue. The individual was also liable for a frivolous argument sanction in Tax Court. The individual had been involved in a prior proceeding where he had raised similar frivolous claims and had been provided notice that his arguments were tax protestor arguments and that such arguments could result in a penalty.

Foryan, TC, Dec. 60,330(M), FED ¶48,040(M); TRC INDIV: 6,052

Liens and Levies

An individual's outstanding federal tax liabilities were reduced to judgment and tax liens were foreclosed on property held by an entity that was the individual's alter ego. The tax liens arose on all the individual's property and rights to property when he failed to pay assessed taxes, despite the government's notice and demand. Therefore, the government could foreclose its federal tax liens against his property.

Fraughton, DC Utah, 2015-1 USTC ¶50,353; TRC IRS: 45,158

Refund Claims

An individual's complaint seeking a refund of taxes was barred by the statute of limitations, and she failed to show that she qualified under Code Sec. 6511(h) for the financial disability exception to the applicable limitations period. The individual failed to provide documentation from a physician establishing financial disability for the relevant tax period during which she was prevented from managing her own financial affairs. Also, the psychologist's letter she produced as evidence was inadequate because it failed to show that the individual was financially disabled during the relevant time period.

Pull, DC Calif., 2015-1 USTC ¶50,351; TRC IRS: 36,052.05

Tax Assessments

The government was properly entitled to reduce to judgment tax assessments against an individual and foreclose tax liens on real property the individual transferred to a fictitious entity. The individual's claim that the court lacked jurisdiction over the government's action was without merit because he established a basis for personal jurisdiction by conceding that he was domiciled in the forum state.

Novell, CA-8, 2015-1 USTC ¶50,347; TRC IRS: 45,158

Disaster Relief

Victims of severe storms, tornadoes, straight-line winds and flooding in parts of Texas, which began on May 4, 2015, may qualify for tax relief from the Internal Revenue Service. The president has declared Bastrop, Blanco, Caldwell, Cooke, Dallas, Denton, Eastland, Fort Bend, Fannin, Gaines, Grayson, Guadalupe, Harris, Hays, Henderson, Hidalgo, Johnson, Liberty, Milam, Montague, Navarro, Nueces, Rusk, Smith, Travis, Van Zandt, Walker, Wichita, Williamson and Wise counties federal disaster areas. Individuals who reside or have a business in this county may qualify for tax relief. The IRS has postponed certain deadlines for taxpayers who reside or have a business in the disaster area.

Texas Disaster Relief Notice (HOU-05-2015), FED ¶46,334;

U.S. Supreme Court Declines To Review Automaker's Overpayment Interest Case

The U.S. Supreme Court has denied an automobile manufacturer's petition for review of a lower court's decision that it was not entitled to approximately $475 million in overpayment interest on cash-bond deposits that it remitted to the government to stop the accrual of underpayment interest. Although the cash-bond deposits were later converted to advance tax payments on which overpayment interest did accrue, the Sixth Circuit Court of Appeals had found that Code Sec. 6611(b)(1) only provides for interest from the "date of overpayment." The Sixth Circuit further found that the manufacturer's cash-bond deposits were not payments and, therefore, were not overpayments.

- ***Comment.*** "We are disappointed that the Supreme Court declined to hear our appeal which presented an important issue regarding when taxpayers are entitled to recover interest on taxes overpaid to the government," the automaker said in a statement.

Ford Motor Company v. United States, SCt. No. 14-1085, cert. denied June 22, 2015; TRC FILEBUS: 6,106.20.

Transferee Liability

Continued from page 318

ably equivalent value; and the debtor was insolvent. The IRS's claims arose at the time of the sale; the corporation receiving nothing on the transfer of $26 million to the taxpayers; and the corporation was insolvent because its tax debt of approximately $39 million arose at the time of the sale, while its assets were worth only $7.5 million.

Finally, the court rejected the taxpayer's argument that the IRS could not collect from them until it had exhausted its collection efforts against the corporation. It concluded that state law does not require a creditor to pursue all reasonable collection efforts against the transferor.

References: Dec. 60,329(M); TRC IRS: 60,052.