TAX TALK
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• Jay Maschas, Chair •
• Alexander Bushel, Editor •

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FROM THE CHAIR
By Jay Maschas

With the start of July, my term as Chair of the Taxation Section officially ended. As Chair, you are ultimately responsible for ensuring the success of the section. However, the Taxation Section simply would not be a successful organization without the dedication and hard work of so many individuals. Reflecting upon my past seven years of involvement with the section, the Taxation Section has been fortunate to have so many council members, study group chairs, and section members willing to expend an incredible amount of time and effort to further the section’s goals.

Without the efforts of these individuals, the Taxation Section would not have been able hold the annual Tax Professionals Networking Night, organize the first ever low income taxpayer representation project with the Maryland Tax Court, co-sponsor a Diversity in Transaction Practice panel at the University of Baltimore Law School, co-sponsor a presentation on 1031 exchanges, carry on the tradition of the annual Irving Shulbank Memorial Dinner, and execute a well-attended presentation on “Trump Tax Jeopardy” at the MSBA’s annual meeting in Ocean City, Maryland. With that being said, my sincere thanks to the incoming Chair Gerald W. Kelly, Jr., incoming vice-Chair Beverly Winstead, the committee chairs, and the Taxation Section council members for their help this year.

I would also like to thank the chairs of the Study Groups for continuing these educational programs year after year: Katrina C. Kamantauskas-Holder, (Employee Benefits), Megan A. Schaeffer and Rob Owings (Estate and Gift Tax), Diana Gary (Montgomery County/Prince George’s County Tax), Gary Hyman (State Tax), Giovanni Alberotanza (Tax Controversy), Jon May (Tax-Exempt Organizations), and Seth Groman (Transactional Tax). If you have never attended a Study Group, I strongly encourage you to do so. The Study Groups allow practitioners the chance to personally interact with government employees and subject matter experts.

I would like to recognize the award winners at this year’s annual Irving Shulbank Memorial Dinner. The co-recipients of the Tax Excellence Award were Louis I. Kaplan and Charles Winner, partner and attorney emeritus, respectfully, at Nusinov Smith. Mr. Kaplan maintains affiliation with the Maryland State Bar Association’s Section of Taxation Employee Benefits and Estates and Trust Study Groups, where he served as the first chairman. Mr. Winner served on many committees, including the Ethics Committee, of which he is a past chair, the Citizen’s Law Related Education Committee, and, as Section Counsel, the Arbitration and Mediation Section of the Maryland State Bar Association. The J. Ronald Shiff Memorial Pro Bono Award was given to Olufolajimi “Jimi” Kolawole. Mr. Kolawole has given a substantial amount of his time and resources to assisting low income taxpayers at the Maryland Volunteer Lawyer Services.

In closing, it has been an honor and a privilege to serve as Chair of the Section and I thank you for this opportunity. The Taxation Section will be in good hands for upcoming year with our incoming officers. Best wishes and I look forward to seeing you at next year’s events!

- Jay Maschas
2016-2017 Chair, MSBA Taxation Section
In recent years, the tax community has engaged in an effort to promote transparency in tax administration. This effort culminated in Maryland with the passage of Senate Bill 843 by the 2016 General Assembly and was enacted in Chapter 582 of the Acts of 2016 (the “Act”). Included in a statute that largely addressed the evaluation process of certain tax credits are four lines that could provide Maryland taxpayers with the ability to obtain guidance through private letter rulings (“PLRs”).

Specifically, the Act required the Comptroller to adopt procedures and protocols related to the implementation of a PLR process intended to provide guidance to taxpayers. The legislation was hailed in tax blogs and tax publications, such as Tax Analysts and the Council On State Taxation’s Scorecard on Tax Appeals & Procedural Requirements. Unfortunately, the kudos may have been premature, as Maryland’s 2017 legislative session has called into doubt the future prospects of the Act’s PLR process.

To understand the purpose of the Act’s PLR process, it is important to consider the context in which the Act was adopted. In 2016, calls for transparency were brought to the forefront as a result of recommendations made by the Maryland Economic Development & Business Climate Commission, also known as the “Augustine Commission,” in its final report to the General Assembly’s Senate President and House Speaker. The Augustine Commission recommended that the Comptroller “[i]nstitute a private letter ruling process to provide tax guidance and adopt an appropriate administrative fee to be paid by the requesting taxpayer.” Although the Act provides no definition of a PLR, the report describes private letter rulings as:

[W]ritten statements issued to a taxpayer that

interpret and apply tax laws to the taxpayer’s represented set of facts. This guidance generally may not be relied on as precedent by other taxpayers. The degree to which a private letter ruling is binding on the tax administrator that issues the guidance varies from state to state.

A recent survey of the policies of tax departments in 50 states and the District of Columbia acknowledged that there is a variety of practices among the states regarding letter rulings. Although Maryland has not had a PLR process, the Comptroller does have authority to issue “declaratory rulings,” pursuant to statute and administrative regulation. Taxpayers may petition the Comptroller for a declaratory ruling with respect to the application of laws or regulations, administered by the Comptroller, to a particular set of facts. A declaratory ruling is binding as to the petitioner and will not expire as long as the taxpayer’s facts and the applicable laws do not change. The Comptroller has the ability to publish declaratory rulings of general interest. Additionally, the Comptroller has the discretion to decline to issue the ruling. In fact, the Comptroller’s Office declines to issue declaratory rulings the vast majority of the time. Instead, the Comptroller often opts to provide opinion letters of a non-binding nature that are not made available to the public. Whereas Maryland law provides that a declaratory ruling binds the Comptroller and the petitioner on the facts set forth in the petition, an opinion letter is merely a non-binding document that addresses a general question from a taxpayer about a tax issue. Opinion letters typically state that the opinions expressed in them are not binding on the Comptroller. Such non-binding guidance falls short of what taxpayers seek in a declaratory ruling, PLR, or other written determination because taxpayers should be able to rely on guidance provided by a taxing authority.

The relatively small number of declaratory rulings from the Comptroller’s Office is a result of the Comptroller’s lack of adequate staffing to facilitate the undertaking of providing legal opinions and interpretations of Maryland’s tax statutes and regulations to the hundreds of taxpayers and tax practitioners that request guidance each year. Fortunately, so it was thought, the Act provided a solution to remedy the personnel shortage. Section 2(b) of the Act required the Comptroller to request additional resources if he determined that
Several Maryland photographers collect sales and use tax on the sale of the digital images they provide to their customers, if nothing else for the notion that it is better to be “safe than sorry.” However, in the present digital age, many people obtain digital images solely through electronic means by way of e-mail or a shared electronic file, as opposed to printed images, a CD or USB drive. If the purchaser only receives the purchased images through electronic means and does not receive anything tangible from the photographer, must sales and use tax be collected? Reviewing the Maryland General Tax Code, sales and use tax is imposed on a retail sale in Maryland. Md. Code Ann., Tax-Gen. § 11-102(a). “Retail sale” includes the sale of tangible personal property or a taxable service. Md. Code Ann., Tax-Gen. § 11-101(h)(1)(i)-(ii). “Tangible personal property” which means “corporeal personal property of any nature; or an accommodation.” Md. Code Ann., Tax-Gen. § 11-101(k). Digital images provided through electronic means only, such as e-mail, are not considered tangible personal property because the purchaser does not receive a physical product (such as a CD, USB drive, DVD or printed images). In addition to tangible personal property, Section 11-101 also provides that a retail sale includes the sale of a taxable service. See, Md. Code Ann., Tax-Gen. § 11-101(h)(1)(i)-(ii). To qualify as a taxable service, the services must be one of the thirteen specified taxable services in Md. Code Ann., Tax-Gen. § 11-101(m). At the moment, photography services are not one of them.\(^1\) In response to an inquiry, a member of the Maryland Comptroller’s Office wrote that “Maryland takes the position that the sale of a digital product that is transferred electronically where the buyer does not have the right to receive a physical product, such as a CD, DVD, USB drive, or other data storage device, is not a sale of tangible personal property.” Further, she wrote, “[s]ince it is also not one of the 13 specified taxable services, the sale of a digital product that is transferred by email is not a taxable sale in Maryland at this time.” However, photographers should proceed with caution for two reasons. First, sales and use tax will apply to sales of finished prints, as well as sales of digital products transferred by tangible means. If the sales and use tax applies, even if the photographer provides its customer with one photograph, it must be calculated on the entire price of the transaction including all labor, artistic or creative services, props used, as well as the tangible product. This means once a photographer transfers images to a customer through a physical device or provides printed images, the entire transaction becomes taxable. Second, sales and use tax varies by state and some states require the collection of sales and use tax on images even if they are transferred solely by electronic means. Take one of our neighboring states, Virginia, for example. In Virginia, sales and use tax applies to “sales of photographs, portraits, prints, slides from camera film, photos, blueprints, frames, camera film, etc.” and the “tax is applicable to the total charge to the customer for a photograph, slide, etc., including, but not limited to, charges for labor, photocomposition, setting design, photography time, and any other components of the charge regardless of whether such components are separately stated.” 23 Va. Admin. Code 10-210-2050. If a photographer provides the images through electronic means only, they should take preventative measures to avoid discrepancies with the Maryland Comptroller’s Office and state on their invoices the method used to deliver the digital images to their customers. In addition, it is important to keep informed concerning any changes the Legislature makes to the Maryland Sales and Use Tax statute; as the member at the Maryland Comptroller’s Office wrote, “the sale of a digital product that is transferred by email is not a taxable sale in Maryland at this time.” (emphasis added).

\(^1\) The thirteen taxable services include: (1) fabrication, printing, or production of tangible personal property by special order; (2) commercial cleaning or laundering of textiles for a buyer who is engaged in a business that requires the recurring service of commercial cleaning or laundering of the textiles; (3) cleaning of a commercial or industrial building; (4) cellular telephone or other mobile telecommunications service; (5) “900”, “976”, “915”, and other “900”-type telecommunications service; (6) custom calling service provided in connection with basic telephone service; (7) a telephone answering service; (8) pay per view television service; (9) credit reporting; (10) a security service, including a detective, guard, or armored car service; and a security systems service; (11) a transportation service for transmission, distribution, or delivery of electricity or natural gas, if the sale or use of the electricity or natural gas is subject to the sales and use tax; (12) a prepaid telephone calling arrangement; or (13) the privilege given to an individual under § 4-1102 of the Alcoholic Beverages Article to consume wine that is not purchased from or provided by a restaurant, club, or hotel. Md. Code Ann., Tax-Gen. § 11-101(m).

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INDIVIDUALS
Public Law 114-239, the United States Appreciation for Olympians and Paralympians Act of 2016, excludes from income the value of any medal or prize money won in Olympic competition retroactive to awards after 2015.

Public Law 114-292, the Combat-Injured Veterans Tax Fairness Act, extended the statute of limitations on recovery of improper withholding on disability benefits from combat injuries not subject to taxation where the Department of Defense improperly withheld taxes; the statute of limitations on refunds will not expire until one year after affected individuals are provided notice of the improper withholding along with instructions for filing an amended return.

In Elkins v. United States, 118 AFTR2d 2016-________, an Ohio Federal District Court determined that the exclusion for wrongfully incarcerated individuals receiving compensation does not extend to family members for loss of consortium.

In Bobo v. Commissioner, TC Summary Opinion 2016-74, the Tax Court found that $20,500 cash paid to a couple for vacating their home in lieu of foreclosure was not taxable as it was part of the “purchase price” and the house was disposed at a loss.

In Hatcher v. Commissioner, TC Memo 2016-188, the Tax Court determined that an individual who lent in excess of $600,000 to her ex-boyfriend to develop a comic strip had a nonbusiness bad debt as she was not engaged in the business of lending money.

In Partita Partners, LLC v. United States, 118 AFTR2d 2016-________, a New York Federal District Court denied a deduction for a façade easement on a Manhattan building because additional exterior construction was permitted, inconsistent with the requirements for a charitable contribution which requires maintenance and protection of the entire existing exterior.

In Long v. Commissioner, TC Summary Opinion 2016-88, the Tax Court allowed an individual almost continuously employed to deduct the cost of an MBA degree from Wharton as an employee business expense as the degree did not qualify him for a new trade or business.

In Pham v. Commissioner, TC Summary Opinion 2016-73, the Tax Court refused to allow a couple to offset winnings reported by a casino where they kept no documentation or other proof to support losses; they stated that they gave up writing down their losses because it was “bad for your psyche…you need to be strong mentally” when playing cards.

In Polsky v. Commissioner, 118 AFTR2d 2016-________, the Third Circuit Court of Appeals agreed with a Pennsylvania Federal District Court that the child tax credit is unavailable for a disabled child over the age of 17 despite the child continuing as a dependent.

In Letter Ruling 201648001, IRS concluded that payments of spousal support not terminating on the recipient’s death under the terms of the document did not terminate automatically under Minnesota law as a result of language in the Separation Agreement removing jurisdiction of the Court to effectuate a modification.

RETIREMENT PLANS
In Ozimkoski v. Commissioner, TC Memo 2016-228, the Tax Court determined that a widow owed tax on amounts improperly rolled over into her IRA that should have been paid to her late husband’s estate where she utilized the funds to effectuate a settlement with his son; she was also liable for the penalty on early withdrawal.

In Letter Ruling 201640026, IRS waived the 60-day rollover time limit where the taxpayer was disabled with an autoimmune disease and was taking care of her mother and a delay in the sale of a primary residence did not allow timely restoration of funds.

In Letter Ruling 201647014, IRS waived the 60-day rollover rule for an IRA distribution made to a disabled individual who mistakenly deposited the distribution in a non-IRA account but determined that it could not waive under the law an issue with a second distribution caused by a second rollover in a 12-month period.

ESTATES
In United States v. Spoor, 118 AFTR2d 2016-6018, the Eleventh Circuit Court of Appeals reversed a Florida Federal District Court and determined that an IRS estate tax lien takes priority over administrative expenses including Personal Representative fees where the estate qualifies and elects to pay over 14 years.

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INDIVIDUALS

Proposed Regulations under Code Section 172 clarify the definition of “support” for the dependency allowance, indicating that paid health insurance premiums but not life insurance premiums are treated as support; the Proposed Regulations also provide that, where the highest adjusted gross income of two parents must be determined due to equal custody, all income on a joint tax return of one or both of the parents is to be counted.

In Smyth v. Commissioner, TC Memo 2017-29, the Tax Court expressed sympathy for a grandmother providing sole support for two grandchildren where the son had gotten a tax refund “check from the government, and cashed it to spend on drugs”; the Court stated that even a parent or parents not providing support have a statutory right to dependency allowances and, if claimed, may not be taken by a grandparent under any circumstance.

In Olson v. Commissioner, TC Memo 2017-33, the Tax Court determined that a teacher who was forced to retire due to an on the job injury and whose disability payments ceased at age 60 when retirement benefits commenced in a new amount determined by reference to age and years of service could not exclude payments following the conversion.

In Schieber v. Commissioner, TC Memo 2017-32, the Tax Court concluded that a defined benefit plan is not an asset for purpose of determining the insolvency exception to the general principle that relief from indebtedness is taxable; a Court reasoned that the interest in the pension plan could not be used immediately to pay the income tax on the relief from indebtedness.

In Hardy v. Commissioner, TC Memo 2017-16, the Tax Court determined that a plastic surgeon did not need to group his ownership interest in a surgical center with his professional practice, thus allowing his passive income from the center to offset other passive losses; the Court noted that the surgeon’s income from the center was based on a distributive share and not on how many surgeries he performed (and noting that his involvement in the surgical center LLC was akin to that of a limited partner and that the self-employment tax did not apply).

In Zarrinnejar v. Commissioner, TC Memo 2017-34, the Tax Court determined that a dentist who worked 14 hours per week was a “real estate professional” after proving that he spent over 1,000 hours in real estate including brokerage-related activities and managing his four rental properties; he was able to show through contemporaneous records not only his hours but also that he did substantially all the work on his own rentals, resulting in permitted losses in excess of $200,000 in each of three years.

In Makhlouf v. Commissioner, TC Summary Opinion 2017-1, the Tax Court found that an individual with one rental property in the United States and another in Egypt fell far short of the 750 hours needed to be considered a real estate professional; the Court found that few of the entries on a spreadsheet were contemporaneous and that the time claimed to be expended was “implausible.”

In Quintal v. Commissioner, TC Summary Opinion 2017-3, the Tax Court determined that payments were not alimony where conflicting provisions labeled them as “unallocated support” (originally titled alimony) and alternative language labeled them as child support.

In Malev v. Commissioner, Bench Opinion in Docket No. 1282-16S, the Tax Court determined that integrative medical care costs, otherwise known as “alternative” medicine, are deductible based on a subjective test of whether the individual believed that they may be effective at least where they are of the type that would not be routinely incurred for non-medical reasons, stating that medical care must take into account not only what is known but what is less understood as well, namely the role that an individual’s state of mind plays in the treatment of disease.

In Izen v. Commissioner, 148 TC No. 5, the Tax Court agreed with the IRS disallowance of a charitable donation of $338,080 for a 50 percent interest in an early generation private jet acquired three years before for $21,000; besides issues of valuation, the strict statutory substantiation requirements were defective.

In Sas v. Commissioner, TC Summary Opinion 2017-2, the Tax Court held that over $80,000 in legal fees paid by a bank executive terminated for alleged breach of fiduciary duty where the bank sought to recover a prior year bonus could only be deducted as a miscellaneous itemized deduction; the taxpayer counterclaimed on the suit by the bank, alleging employment discrimination but the Court found that the expenses related to retention of the bonus and not for seeking income on account of discrimination.

In Liljeberg v. Commissioner, 148 TC No. 6, the Tax Court determined that students from other countries working in the United States during the summer were not away from their “tax home” as they were not working in their home (continued on page 11)
FEDERAL TAX UPDATE

April–June 2017

By David S. De Jong

INDIVIDUALS

In Alexander v. Commissioner, TC Summary Opinion 2017-23, the Tax Court determined that a disbarred attorney who assisted a lawyer for payment had taxable compensation and did not receive a gift for the work done.

In Bates v. Commissioner, TC Memo 2017-72, the Tax Court determined that an individual who received compensation for emotional distress, lost wages and attorney fees because she was terminated for missing too many workdays due to a back injury could not exclude any of the settlement payments as the “origin of the claim” was discrimination and wrongful discharge and not the physical injury itself.

In Watts v. Commissioner, TC Memo 2017-114, the Tax Court determined that the abandonment of a partnership interest gave rise to a capital loss rather than an ordinary loss; the Fifth Circuit Court of Appeals in a surprise 2015 decision had ruled that the abandonment of stock gave rise to an ordinary loss.

In Hurford Investments No. 2, Ltd. v. Commissioner, Docket No. 23017-11, the Tax Court granted summary judgment to a taxpayer who had argued that a transferee of phantom equity has a capital asset following a taxable transfer with the ability to get a step up in tax basis as the result of death.

In Cooke v. Commissioner, TC Memo 2017-74, the Tax Court gave a narrow definition to the term “repair or maintenance work” for purpose of the 14-day limitation on personal use of a property and determined that the use for other purposes related to the property constitutes a personal day.

In Penley v. Commissioner, TC Memo 2017-65, the Tax Court found that a full-time employee did not work more hours in real estate selling and managing three rental properties than the 2,194 hours he spent in his unrelated employment; in McNally v. Commissioner, TC Memo 2017-93, the Tax Court determined that a junior high teacher was not a “real estate professional” and did not spend more time managing 6-8 rental properties than he did teaching; his time descriptions were vague and included terminology such as “real estate stuff.”

In Windham v. Commissioner, TC Memo 2017-68, the Tax Court determined that a stockbroker who averaged 2½ hours a day in the office and who claimed 900 hours a year managing 11 properties was a real estate professional and met the test for material participation on a property by property basis, allowing her to deduct losses on these properties.

In RP Golf, LLC v. Commissioner, 119 AFTR 2d 2017-________, the Eighth Circuit Court of Appeals agreed with the Tax Court that a charitable deduction for a conservation easement cannot be claimed if the land is subject to unsubordinated bank mortgages; in Ten Twenty Six Investors v. Commissioner, TC Memo 2017-115, the Tax Court disallowed a conservation easement where the donor failed to record the grant for two years; the Court determined that the delay violated the requirement of perpetuity of the restriction.

In Fakiris v. Commissioner, TC Memo 2017-126, the Tax Court denied a charitable deduction on a bargain sale of a theater because the transferee was restricted from selling the theater for five years.

In Wainwright v. Commissioner, TC Memo 2017-70, the Tax Court determined that an individual who owned other properties with a friend of over 35 years was an equitable owner of an interest in another property titled solely in the friend’s name where he was found to have benefits and burdens of ownership as he paid mortgage payments and maintained the property.

In Adkins v. United States, 119 AFTR2d 2017-737, the Federal Circuit Court of Appeals disagreed with the Court of Federal Claims and stated that an individual may claim a theft loss in the year in which there appears no reasonable prospect of recovery despite continuing to maintain a claim in the courts.

In Creigh v. Commissioner, TC Summary Opinion 2017-26, the Tax Court denied a deduction for the cost of an MBA to a software engineer who testified that the courses she took “did not really help in my area, in terms of project management” and found that the degree would qualify her for a new business.

In Action on Decision 2017-5, IRS indicated its disagreement with Tsehay v. Commissioner in which the Tax Court allowed the father of five children to claim the earned income credit on a married filing separate return in violation of the statute.

RETIREMENT PLANS

In Trimmer v. Commissioner, 148 TC No. 14, the Tax Court determined that IRS abused its discretion in not waiving the 60-day rollover period in the case of a retired police officer suffering from depression who put IRA distributions in a joint bank account with his wife and did not make a correction for almost a year until meeting with his tax preparer.

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Shulbank Dinner
May 18, 2017

Chair Jay Maschas presents the 2017 Tax Excellence Award to Louis Kaplan and the family of Charles Winner.

Incoming Secretary & Treasurer Liz Shaner presents the 2017 MSBA Tax Council Book Prize to winner Michael Sellitto.

MSBA Conference "Jeopardy!"

David Polashuk and Elissa Borges start Trump Tax Jeopardy at the MSBA Annual Meeting in Ocean City.

Trump Tax Jeopardy contestants Glen Frost, Mark Schwieghofer, and Greg Will take a break before the final jeopardy question.
In Chief Counsel Advice 201643020, IRS advised that the failure to show prior gifts on a gift tax return causing liability to be understated does not cause an extended statute of limitations for assessing additional tax on the reported gift.

BUSINESS
In Estate of Backemeyer v. Commissioner, 147 TC No. 17, the Tax Court allowed a farmer’s widow to deduct expenses for seed, fertilizer and fuel in the year following his death although they were deducted by the husband in the preceding year; notwithstanding that no estate tax was paid, the Court allowed the heir a deduction for the business use of inherited property.

In Wasco Real Properties I, LLC v. Commissioner, TC Memo 2016-224, the Tax Court determined that an almond growing farm partnership must capitalize property taxes and interest because the land is used to grow the almond trees; the taxpayer argued unsuccessfully that the property taxes and interest related not to the production of the trees but to the underlying farmland.

In Chaganti v. Commissioner, TC Memo 2016-222, the Tax Court determined that an attorney could not deduct an $18,000 court sanction, noting that allowing such a deduction would substantially dilute the actual punishment imposed.

In Transupport, Inc. v. Commissioner, TC Memo 2016-216, the Tax Court agreed with IRS that four sons of the business owner, each averaging $657,000 in compensation, received excessive compensation from a C corporation where they failed to detail their purported tasks before the Court which reduced the average allowable deduction to $232,000 apiece; the father’s compensation which averaged $477,000 per year was reduced to an average of $353,000.

In Hargis v. Commissioner, TC Memo 2016-232, the Tax Court found that a couple had insufficient basis in a business taxed as an S corporation as loans were not made directly by the taxpayers although they were called “co-obligors” rather than “guarantors” on certain of the obligations; rather, the Court considered the loans as running directly between the lenders and the operating company.

In Franklin v. Commissioner, TC Memo 2016-207, the Tax Court gave an S corporation shareholder credit for basis when he made payment under a guarantee.

In Mack v. Commissioner, TC Memo 2016-229, the Tax Court required a partner in a New York law firm to report his distributive share of partnership income; he had reported only a fraction of this amount, claiming that remaining amounts were left in the Firm to pay partnership expenses.

In Carmody v. Commissioner, TC Memo 2016-225, the Tax Court determined that a salesman raced horses as a hobby and did not have a profit motive; he had 20 straight years of losses despite some winning horses, never creating a formal business plan, budget or projections.

In Hylton v. Commissioner, TC Memo 2016-234, the Tax Court found that a horse breeding, training, showing and sales activity was not engaged in for profit despite the taxpayer’s extensive knowledge of horses and the running of the operation in a business like manner where expenses over a 17-year period exceeded $18 million with revenues of $1.3 million and not a single profitable year.

In Vest v. Commissioner, TC Memo 2016-187, the Tax Court found that a CPA who had sold his practice for a substantial amount was not engaged in a business activity when he spent millions of dollars in investigating his father’s 1946 death apparently by hanging; he had hired a manuscript writer and public relations individuals but there was insufficient interest in a book or movie.

In Moyer v. Commissioner, TC Memo 2016-236, the Tax Court, noting that an activity not engaged in for profit may be broader than a hobby, determined that an individual engaged in human relations training who ran losses for six consecutive years after losing Dupont as a primary client could not deduct those losses; the Court found that the activity was used “as a vehicle to claim various personal, living or family expenses as business deductions.”

In McClendon v. United States, 118 AFTR2d 2016-5464, a Texas Federal District Court determined that the owner of a large medical practice was liable for unpaid payroll taxes when its chief financial officer stole $10 million and the owner, after learning of the theft and the nonpayment of payroll taxes, lent the business money for specific purposes other than paying back taxes; the Court rejected his argument that he had encumbered the funds by directing their usage and that this should shield him from liability.

In Noffke v. United States, 118 AFTR2d 2016-______, the Court of Federal Claims determined that a CPA who was chief financial officer and executive vice president of a corporation was liable for unpaid payroll taxes although the approval of the chief executive officer was needed to pay bills; the CFO had check-signing authority.

In Fitzpatrick v. Commissioner, TC Memo 2016-199,
the Tax Court determined that the wife of a 50 per-
cent business owner with signature authority but who
spent about one hour per week at the business, in part
due to a severely disabled child, was neither a respon-
sible person nor had knowledge of unpaid payroll taxes.
In Notice 2016-66, IRS imposed disclosure requirements
applicable in most circumstances to both captive insurance
companies and those parties using captives for insurance.
In Action on Decision 2016-3, IRS announced its non-
aequescence to a decision of the Third Circuit Court of
Appeals in Giant Eagle v. Commissioner, 117 AFTR2d
2016-674, in which the Court allowed a retailer to ac-
crue outstanding customer loyalty discounts on gasoline.

The Office of Associate Chief Counsel (Passthroughs and Spe-
cial Industries) announced that IRS will cease rulings on multiple
S corporation issues including whether S corporation status is
jeopardized by unplanned disproportionate distributions, miss-
ing information on Form 2553 or a lost S status confirmation.

In Chief Counsel Advice 201640014, IRS determined that a
franchisee who was active in operations was required to pay self-
employment tax not only on his guaranteed salary but also on
his flow through income as he was not akin to a limited partner.

In Chief Counsel Advice 201642035, IRS reached a contra-
dictory conclusion to a prior Letter Ruling and stated that a
termination fee from a party that arises out of a stock acquisi-
tion deal gives rise to capital gain or loss for the recipient fol-
lowing a netting with capitalized expenses in the transaction.

In Letter Ruling 201645017, IRS stated that a coffee
shop providing a location for Bible study and church
meetings, among other activities, did not qualify
for exempt status as more than an insubstantial amount
of its activities were furthering nonexempt purposes.

In Technical Advice Memorandum 201650014, IRS determined
that a corporation responsible for grading and soil compac-
tion was involved in residential construction such that it was
eligible to use the completed contract method of accounting.

In Chief Counsel Advice 201653017, IRS stated that a C
 corporation cannot avoid the accumulated earn-
ings tax by lacking liquidity where activities con-
sisted solely of holding various partnership interests.

PROCEDURE
In Byers v. United States Tax Court, 118 AFTR2d 2016-
5996, a District of Columbia Federal District Court ruled
that the US Tax Court is not a federal agency subject to the
Freedom of Information Act as 2015 legislation made the
Court independent of the Executive Branch of Government.

In Bohanec v. United States, 118 AFTR2d 2016-5537,
a California Federal District Court determined that a couple’s failure to timely file an FBAR report was will-
ful where they stopped using a bookkeeper or keeping
any books after opening a foreign bank account and made
several misrepresentations under penalty of perjury.
In Urgent Care Nurses Registry, Inc. v. Commissioner,
TC Memo 2016-198, the Tax Court once again ruled that
a corporation not in good standing does not have jurisdic-
tion in Tax Court and accordingly threw out its petition.

In Snodgrass v. Commissioner, TC Memo 2016-235, the Tax
Court rejected the claim of a nonfiler since 1983 that IRS did
not send Notices of Deficiency to her last known address.

In Adolphson v. Commissioner, 118 AFTR2d 2016-
________, the Seventh Circuit Court of Appeals agreed with the Tax
Court that it has no jurisdiction to consider a challenge
that a “Final Notice of Intent to Levy” was not sent to
the last known address, leaving affected taxpayers with
only a possible administrative remedy or the need to pay
and file a claim for refund; the Court noted that the result
here differs from a mismailing of a Notice of Deficiency,
the validity of which may be resolved by the Tax Court.

In United States v. McGrew, 118 AFTR2d 2016-
________, a Mis-
sissippi Federal District Court permitted the Government to fore-
close its tax liens against real property owned by a revocable trust
where the delinquent taxpayer was both trustee and beneficiary.
In Smith v. Commissioner, TC Memo 2016-186, the Tax
Court did not allow substantive issues to be brought up at
a collection due process hearing where the individual who
was assessed the Trust Fund Recovery Penalty received prior
notices but did not choose previously to contest the liability.

In Morton v. Commissioner, TC Memo 2016-227, the
Tax Court sustained an IRS levy against an individual
who was asked to explain the use of a $1.4 million with-
drawal from his IRA and refused to provide information.

In United States v. Peeler, 118 AFTR2d 2016-
________, a Mis-
sissippi Federal District Court determined that a
transfer of community property to a wife’s separate name upon divorce did not prevent
an IRS foreclosure on the property for the husband’s tax
debts during the marriage, also finding that the entire com-
munity property was liable for pre-separation liability and
a one-half interest was liable for post-separation liability.

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In United States v. Candy, 118 AFTR2d 2016-________, A Texas Bankruptcy Court found that a couple who earned more than $20 million per year could not discharge federal income taxes of more than $2.8 million in a bankruptcy due to willful evasion by living a lavish lifestyle while knowing a tax debt existed.

In Revenue Procedure 2016-57, IRS announced new mediation procedures to be conducted by Appeals in certain offers in compromise issues (value of assets, dissipation of assets, deviation from standards, projections of future income, doubt as to liability, etc.) and in certain Trust Fund Recovery Penalty matters such as responsibility, willfulness and payment designation).

In a letter from IRS Appeals Chief Kirsten Wielobob to the practitioner community, IRS appeared to reverse itself by stating “Appeals will no longer grant in-person conference solely upon taxpayer request” though it did not elaborate beyond stating that it wished to better allocate resources and “get the right work to the right Appeals employee.”

In Notice 2017-10, IRS announced that syndicated conservation easements offering charitable contribution deductions at least 2½ times larger than the amount invested will be considered as “listed transactions.”

In an Executive Order, President Trump directed agencies including IRS to waive, defer, grant exemptions from or delay the implementation of any provision in the Affordable Care Act that imposes any cost or penalty; on the IRS website, IRS announced that it will not reject 2016 tax returns that are silent on whether a taxpayer has complied with the individual health insurance mandate provisions of the Affordable Care Act.

In Letter Ruling 201706004, IRS indicated that a court order approving a change in beneficiary designation from an inter vivos trust that was never actually created to the surviving spouse cannot create a “designated beneficiary” for purpose of avoiding the general rule that, where minimum distributions had not commenced prior to death, a decedent’s account must be completely distributed within five years in the absence of a designated beneficiary.

In Letter Ruling 201707001, IRS accepted a court reformation of trust beneficiaries to allow a surviving spouse, beneficiary of multiple IRAs through a trust in which she had complete discretion, to rollover IRAs to that trust.

In Estate of Hake v. United States, 119 AFTR2d 2017-727, a Pennsylvania Federal District Court found that there was reasonable cause for a late filing of an estate tax return when the attorney incorrectly advised that there was a one year rather than a six month filing extension, distinguishing the case from those where the deadline was known but the professionals were negligent.

In Estate of Kollsman v. Commissioner, TC Memo 2017-40, the Tax Court valued a painting by Pieter Brueghel at the $2.1 million dollar number proffered by the IRS expert less a 5 percent discount related to anticipated cleaning where the estate’s expert had claimed a $500,000 value and the work was sold four years after death at $2.4 million; the taxpayer unsuccessfully attempted to attribute the rise in value to the superb cleaning efforts and a market rise due to Russian investors.

In Notice 2017-15, IRS indicated that an individual’s remain-
ing unified credit and generation skipping transfer exemption may be increased on the next filed return by amounts utilized in transfers to a same sex spouse prior to the US Supreme Court decision in Windsor although any prior taxes paid cannot be refunded after expiration of the statute of limitations.

In Letter Ruling 201707007, IRS ruled that a transfer of assets under a divorce agreement by a husband into a trust for the benefit of his wife but where he retained a reversionary interest has no income or gift tax consequences but will ultimately be included in the husband’s estate whether he survives or predeceases his wife (subject in the latter case to a reduction by the fair market value of the wife’s interest).

BUSINESS

Proposed Regulations under Code Section 6230 et seq. require the election out of a centralized audit by eligible partnerships to be on a timely filed return including extensions; the Regulations make it clear that IRS can adjust the return of a partner which is inconsistent with the partnership return through a mathematical correction under which the Tax Court will not have jurisdiction [THESE PROPOSED REGULATIONS HAVE BEEN WITHDRAWN BY THE NEW ADMINISTRATION].

In Zarinnegar v. Commissioner, TC Memo 2017-34, the Tax Court declined to allow an estimate of most categories of deductible expenses where no records were produced and the Court had only the testimony of a husband-wife team of dentists regarding the expenses.

In Robb Evans & Associates, LLC v. United States, 119 AFTR2d 2017-1001, the First Circuit Court of Appeals reversed a Massachusetts Federal District Court and disallowed a Court-appointed receiver’s use of Code Section 1341 which lets taxpayers deduct an amount included in income in an earlier year if the taxpayer is later required to repay the amount and it is established that the taxpayer did not have an unrestricted right to the income; the Court determined that a fraudster cannot have an unrestricted right to ill-gotten gains and that the receiver stood in the position of the taxpayer.

In Sensenig v. Commissioner, TC Memo 2017-1, the Tax Court determined that large amounts transferred to a corporation with little other equity and without a loan agreement were equity and not debt especially when no commercial lender would have provided funds under the circumstances.

In Qinetiq US Holdings, Inc. v. Commissioner, 119 AFTR2d 2017-330, the Fourth Circuit Court of Appeals agreed with the Tax Court that a corporation could not take a deduction for the value of stock transferred to a key employee six years prior; the corporation claimed the lapse of a transferability restriction but the Court opined under the facts that voluntary termination of employment or termination for cause was unlikely and thus there was no substantial risk of forfeiture.

In Dalton v. Commissioner, TC Memo 2017-43, the Tax Court determined that a withdrawing S corporation stockholder had to report over $450,000 shown on his K-1 despite receiving no distributions in the year that he withdrew.

In McClendon v. United States, 119 AFTR2d 2017-506, a Texas Federal District Court found the owner of a family medical practice liable for $4 million dollars in unpaid trust taxes resulting from employee embezzlement where the owner lent $100,000 to the business to pay employees four days after discovery of the theft; he was found liable for the full trust portion because he failed to submit evidence that all other unencumbered funds were used to pay IRS.

In Shaffran v. Commissioner, TC Memo 2017-35, the Tax Court determined that the elderly father of a business co-owner was not a responsible individual for unpaid employment taxes where, as an unauthorized signator, he signed four checks when the owners were out of town; he had little involvement with the business, hanging out about 12 hours per week and with no managerial responsibility.

IRS Form 7004, as revised, grants a six-month extension for calendar year C-Corporations from April 15 until October 15 notwithstanding the statutory deadline of September 15; in a website posting IRS reiterated that it is granting an additional month on extended calendar year C-Corporation returns beyond that set forth in the 2015 statutory revision.

In Chief Counsel Memorandum 2017-1, IRS indicated that an employer who fails to pay FICA taxes in the year that deferred compensation is earned must pay the taxes in the year when it is paid if the limitations period has expired for the year when the compensation was earned.

In Legal Advice issued by Associate Chief Counsel 2017-002, IRS determined that an accrual basis taxpayer may not accrue the anticipated liability on rewards that can be redeemed either for products or used as a discount on products, indicating that a hybrid as opposed to a straight redeemable award does not get the early accrual.

In Field Attorney Advice 20171201F, IRS indicated that a business remains liable for unpaid payroll taxes notwithstanding that it used an employee leasing company which failed to pay the required tax.

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In Chief Counsel Advice 201713010, IRS determined that the costs of satisfaction of regulatory conditions in order to permit a merger may be expensed depending on their nature (direct costs of a merger must be capitalized).

PROCEDURE
In Sexton v. Hawkins, 119 AFTR2d 2017-552, a Nevada Federal District Court ruled that the federal statute regulating tax professionals does not extend to the offering of written tax advice but is limited to those representing taxpayers before IRS in an administrative proceeding (a District of Columbia Federal District Court had previously determined that practice before IRS does not include return preparation).

In Ruddy v. Commissioner, TC Memo 2017-39, the Tax Court determined that an assessment was within the statute of limitations when the Notice of Deficiency was sent within three years of the deemed filing date and the actual assessment was done within 60 days of the failure of the taxpayer to file a petition (150 days from the issuance of the Notice of Deficiency).

In Schuster v. Commissioner, TC Memo 2017-15, the Tax Court determined that a credit against another year’s tax liability is not a refund for purpose of the two-year limitation on IRS recovering erroneous refunds from taxpayers.

In Keller Tank Services II, Inc. v. Commissioner, 119 AFTR2d 2017-869, the Tenth Circuit Court of Appeals agreed with the Tax Court that a taxpayer may challenge underlying tax liability at a Collection Due Process hearing only if the taxpayer had no opportunity to dispute the liability through judicial review or Appeals; in James v. Commissioner, 119 AFTR2d 2017-1050, the Fourth Circuit Court of Appeals concurred and in Bitter v. Commissioner, TC Memo 2017-46, the Tax Court reiterated its same interpretation.

In Lindsay Manor Nursing Home, Inc. v. Commissioner, 140 TC No. 9, the Tax Court accepted the IRS interpretation of the law that allows only individuals and not businesses to obtain a levy release due to economic hardship.

In United States v. Davis, 119 AFTR2d 2017-529, the Fifth Circuit Court of Appeals concurred with a Louisiana Federal District Court that IRS could seize and sell a residence owned by the marital community where the husband was one of several individuals responsible for payment of over $3 million in trust fund liabilities and had defaulted on modest monthly payments; the Court also concurred that the entire equity in the house after satisfaction of the prior liens was payable to IRS as the spouse had died and state law provided that a separate obligation of one spouse during the community property regime could be satisfied from the entire property after termination of the marital community.

In United States v. Baker, 119 AFTR2d 2017-______, the First Circuit Court of Appeals agreed with a Massachusetts Federal District Court that the transfer of assets to a spouse following a divorce was a fraudulent conveyance when his separate returns were the subject of an ongoing audit; despite the divorce, they continued to live and vacation together.

In In Re Pendergraft, 119 AFTR2d 2017-566, a Texas Bankruptcy Court concluded that it has the jurisdiction to determine innocent spouse status in the case of an IRS claim against a bankruptcy estate provided the individual had followed the required prior administrative procedures.
In Smaaland v. Commissioner, TC Memo 2017-31, the Tax Court determined that a divorcee had actual knowledge of unreported income of her former husband and denied innocent spouse relief under all three subsections in the law.

In Okorogu v. Commissioner, TC Memo 2017-53, an immigrant physician on welfare was granted equitable innocent spouse relief when she was physically abused on at least ten separate occasions and was kept in the dark as to finances, not being allowed to spend more than $10 while her husband purchased multiple expensive vehicles.

In Lock v. Commissioner, TC Summary Opinion 2017-10, the Tax Court gave innocent spouse relief to a divorced spouse on a joint assessment with her former husband, a Government contractor in Iraq, who improperly claimed an income earned abroad exclusion and deducted disallowed employee business expenses; the Court found that she was unsophisticated and did not know the facts or review the tax returns.

The IRS Website has been revised to state that, effective March 27, 2017, it will return new Offers in Compromise with the application fee if a taxpayer has any past due tax returns but will keep the initial payment submitted; a return on a valid extension is not considered a past due return.
average speed of 70 miles per hour for 24 consecutive hours).

In Jacobs v. Commissioner, 148 TC No. 24, the Tax Court determined that game day meals provided by the Boston Bruins to their players, coaches and traveling staff for away games were fully rather than 50 percent deductible as a de minimis fringe benefit.

In Zudak v. Commissioner, TC Summary Opinion 2017-41, the Tax Court determined that an otherwise employed individual who organized film festivals was engaged in a hobby although he showed significantly increasing revenues and rapidly declining losses for the two years following the year of audit.

In Vest v. Commissioner, 119 AFTR2d 2017-813, the Fifth Circuit Court of Appeals agreed with the Tax Court that an individual who spent about $1 million investigating his father’s suspicious death many years before could not deduct the expense; the taxpayer claimed a business opportunity to write a book and make a movie.

In Hodges v. United States, 119 AFTR2d 2017-653, the Tenth Circuit Court of Appeals agreed with an Oklahoma Federal District Court that a temporary manager of sev-

eral nursing homes was liable for the Trust Fund Recovery Penalty on unpaid payroll taxes, rejecting his defenses of possible harm to nursing home residents and reliance on an Oklahoma statute giving nursing home temporary managers the ability to contract for indebtedness as necessary.

In Byrne v. United States, 119 AFTR2d 2017-1824, the Sixth Circuit Court of Appeals reversed a Michigan Federal District Court, determining that the Chief Executive Officer and President did not willfully fail to pay over payroll taxes when they had no actual knowledge and relied on incorrect audited financial statements showing no unpaid taxes and accordingly did not personally investigate despite prior issues of unpaid taxes.

In Lewis v. Commissioner, TC Memo 2017-117, the Tax Court found that a minister receiving $1 per year was not engaged in a business for profit.

In Castigliola v. Commissioner, TC Memo 2017-62, the Tax Court determined that three co-owners of a professional limited liability company engaged in the practice of law were liable for self-employment tax not only on their guaranteed payments but also on their flowthrough income.

In United States v. Commander, 119 AFTR2d 2017-620, a New Jersey Federal District Court found a 50 percent owner of a company to be responsible for the unpaid trust payroll taxes although the co-owner had primary financial responsibility; after the taxpayer had knowledge of the unpaid taxes, sufficient funds existed to pay the taxes and he had check signing authority.

In Stettner v. Commissioner, TC Memo 2017-113, the Tax Court balanced nine factors and determined that an individual who engaged in auto racing for several years, having large losses in the first two years and small profits in the next three years, was involved in a hobby as opposed to having an actual honest profit objective.

In Crissey v. Commissioner, TC Summary Opinion 2017-44, the Tax Court declined to let a retired salesman deduct expenses for transportation and advertising where he attempted to start a consulting business but never had a dollar of revenue.

In Jacobs v. Commissioner, IRS determined that a stockholder’s transfer of the result in Scott Singer Installations v. Commissioner in which the Tax Court had determined that a building is placed in service when substantially completed and in a condition or state of readiness for business as evidenced by an occupancy permit and not at the later time when actually first used.

In Action on Decision 2017-2, IRS announced that it disagreed with the decision of a Louisiana Federal District Court in Stine, LLC v. United States, in which the Court had determined that a building is placed in service when substantially completed and in a condition or state of readiness for business as evidenced by an occupancy permit and not at the later time when actually first used.

In Action on Decision 2017-3, IRS announced that it disagreed with the decision of the Ninth Circuit Court of Appeals in Shea Homes, Inc. v. Commissioner reversing the Tax Court; the Ninth Circuit had allowed a developer using the completed contract method to report income and expenses on substantial completion of the entire community rather than on a home by home basis, at least where the homes shared community amenities.

In Action on Decision 2017-4, IRS indicated that it agreed with the result in Scott Singer Installations v. Commissioner in which the Tax Court had determined that a stockholder’s transfer of funds to a corporation cannot be considered a loan when there is no reasonable expectation of repayment as best evidenced by whether a disinterested creditor would lend funds to the business.

In an Executive Order, President Trump directed that tax-exempt status not be denied nor any penalty be imposed on any religious organization for taking a political stance from a religious perspective.

In Letter Ruling 201717010, IRS determined that a C corporation which performed a particular medical test and prepared a laboratory report for health providers was eligible for the 100 percent exclusion on the disposition of small business stock, finding that it was not engaged in performing nonqualifying services in the field of health.

In Letter Ruling 201725022, IRS determined that an S cor-
poration which maintained several medical buildings did not receive passive investment income which could have led to loss of S status despite delegating leasing and build-out functions.

PROCEDURE

In Steele v. Commissioner, 119 AFTR2d 2017-818, a District of Columbia Federal District Court ruled that IRS could not charge a user fee for PTINs.

In United States v. Padron, 119 AFTR2d 2017-764, a Texas Federal District Court, noting that the courts are in disagreement, determined that IRS can get an injunction against a taxpayer (here one owing over $2.7 million in unpaid payroll taxes) if appropriate for the enforcement of Internal Revenue laws without reference to the traditional equitable factors which would have required irreparable harm to IRS if the injunction were not granted, a balancing between this harm and the potential injury to the taxpayer, the probability that IRS would succeed on the merits and the public interest.

In Haynes v. United States, 119 AFTR2d 2017-________, a Texas Federal District Court sustained a late filing penalty against an individual whose preparer filed electronically on the due date but the return did not go through due to an improper entry.

In Bulakites v. Commissioner, TC Memo 2017-79, the Tax Court imposed the accuracy penalty on an individual who claimed improper deductions for alimony, interest and a net operating loss imposed the accuracy penalty on an individual who claimed improper deductions for alimony, interest and a net operating loss and blamed it on TurboTax; the Court noted that “tax preparation software is only as good as the information one inputs into it.”

In Whitsett v. Commissioner, TC Memo 2017-100, the Tax Court declined to impose an accuracy-related penalty of $108,000 on a physician who turned over all information on a stock sale to his preparer who failed to report the transaction accurately, the Court noting that “although petitioner is a highly educated person and a skilled physician, she had no knowledge of Federal income taxation.”

In Murray v. Commissioner, TC Memo 2017-67, the Tax Court assessed a penalty against a petitioner for instituting a proceeding primarily for delay when he first claimed that he was dead and then pretended that he had moved to Costa Rica.

In Ervin v. United States, 119 AFTR2d 2017-725, a Kentucky Federal District Court required IRS to refund an accuracy-related penalty based on a jury verdict notwithstanding that the taxpayer had received a settlement from the tax advisor which might constitute a double recovery.

In LG Kendrick, LLC v. Commissioner, 119 AFTR2d 2017-1488, the Tenth Circuit Court of Appeals agreed with the Tax Court that a taxpayer who had a prior opportunity to contest the underlying tax liability is precluded from bringing up substantive issues at a Collection Due Process hearing, yet the Court stated that IRS in its discretion could hear substantive issues.

In Taft v. Commissioner, TC Memo 2017-66, the Tax Court gave innocent spouse relief to a nurse whose husband secretly liquidated corporate stock and retirement funds in order to pay for an affair and the husband signed his wife’s name on the authorization for electronic filing.

In Harris v. Commissioner, TC Summary Opinion 2017-21, the Tax Court gave innocent spouse status to a divorced woman as IRS could not prove that she knew her former husband was not operating a cattle farm for profit.

In Yancey v. Commissioner, TC Memo 2017-59, the Tax Court determined that a gambler’s ex-wife did not qualify for innocent spouse relief despite the decree putting responsibility on the husband, since, as the preparer of the return, he knew she was double counting his gambling losses.

In Conrad v. Commissioner, TC Memo 2017-116, an individual was denied innocent spouse relief under all three subsections inasmuch as she was aware that both her first husband who died and her second husband from whom she was divorced worked with a tax preparer who created fake partnership losses causing the underlying deficiency.

In Palomares v. Commissioner, 119 AFTR2d 2017-2021, the Ninth Circuit Court of Appeals reversed the Tax Court and ruled that an error by a volunteer attorney in filing the “injured spouse” form rather than the “innocent spouse” form on behalf of a non-English speaking battered wife put IRS on sufficient notice of the claim so as not to bar innocent spouse status for failure to timely assert the claim.

In Rubel v. Commissioner, 119 AFTR2d 2017-742, the Third Circuit Court of Appeals agreed with the Tax Court that the Tax Court had no jurisdiction to hear an appeal from denial of innocent spouse status when the petition was filed after the 90th day notwithstanding an intervening letter from IRS following the Notice of Deficiency which gave an incorrect deadline for filing the petition.

In W. Zintl Construction, Inc. v. Commissioner, TC memo 2017-119, the Tax Court agreed that a company’s going concern value is an asset for consideration in whether to except an Offer in Compromise submitted on behalf (continued on Page 16)
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of a corporation; however, the Court found that IRS miscomputed the reasonable collection potential by adding back the unpaid tax liability to the computed value.

In In Re: Giacchi, 119 AFTR2d 2017-733, the US Court of Appeals for the Third Circuit agreed with a Pennsylvania Federal District Court and, following the weight of authority with only the Eighth Circuit disagreeing, ruled that tax liability for a year is nondischargeable in bankruptcy following the preparation of a Substitute for Return by IRS.

In Thaxton v. United States, 119 AFTR2d 2017-804, a West Virginia Bankruptcy Court determined that interest on the Trust Fund Recovery Penalty is a nondischargeable in bankruptcy.

In Cardaci v. United States, 119 AFTR2d 2017-1735, the Third Circuit Court of Appeals disagreed with a Pennsylvania District Court and stated that actuarial considerations are required in determining the percentage of proceeds that IRS retains on the forced sale of tenants by the entirety real estate; the Court distinguished real estate from cash accounts held as tenants by the entirety.

In News Release 2017-102, IRS announced that it will only accept online payments for letter rulings, determination letters and closing agreements effective June 15, 2017.

In Chief Counsel Advice 201719026, IRS stated that a taxpayer reporting undisclosed income from foreign sources for the eight preceding years under the OVDP program cannot offset years of tax liability with a loss in another year unless the usual statute of limitations has not run on the loss year.

MD Letter Ruling...
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resources. A PLR system provides the transparency necessary for effective tax administration, which benefits both the state and its taxpayers. The General Assembly’s refusal to provide adequate funding for a PLR system signals the (low) priority it places on this important matter. An inadequately funded PLR system will not be able to provide taxpayers and tax professionals with timely, thorough, and complete letter rulings. It is imperative that the General Assembly provide the Comptroller with the necessary funding to implement the PLR system that it mandated. Without funding, the Act is merely a weak attempt by the General Assembly to pacify taxpayers’ requests for transparency in tax administration. Maryland taxpayers deserve better.

Endnotes
1 DeAndre R. Morrow and Jessica A. Eisenmenger are associates in Eversheds Sutherland (US) LLP’s Washington D.C. office. The views expressed in this article are those of the authors only, are intended to be general in nature, and are not attributable to Eversheds Sutherland (US) LLP or any of its clients, and do not constitute legal advice.
2 2016 Maryland Laws Ch. 582 (S.B. 843).
5 Id. at p. 47.
6 Id. at p. 46.
8 Md. State Gov’t Code Ann. § 10-305; Md. Regs. Code §03.01.01.03.
9 Md. Code Regs. § 03.01.01.03(A).
10 Md. Code Regs. § 03.01.01.03(D).
11 Md. Code Regs. § 03.01.01.03(E).
12 Md. Code Regs. § 03.01.01.03(C).
14 2016 Maryland Laws Ch. 582 (S.B. 843).
15 Testimony of Comptroller Peter Franchot, Fiscal Year 2018 Budget Presentation Letter, P. 8.
16 Id.
17 2017 Maryland Laws Ch. 150 (H.B. 150); 2017 Report of the Senate Budget and Taxation Committee - Recommendations, Reductions and Summary of Action Pertaining to HB150, p. 33 (Budget Bill FY2018).