It has been an honor to serve as the Chair of the Tax Council for the past year, which has been both busy and productive. To paraphrase, a critical component of the Section’s mission is to promote the study and practice of tax law in Maryland. I strongly believe that we were able to advance that mission this year.

In November, the Section’s Tax Professionals Networking Night in Columbia was very well attended and brought together tax practitioners from academia, the bench, government, and private practice. For those that have not attended this event, it is an excellent opportunity to spend an evening with your peers in a relaxed, social setting.

In April, the Section presented a symposium at, and in partnership with, the University of Baltimore School of Law. The distinguished panel included regulators, academics, politicians, and private practitioners who discussed the impact of the Tax Cuts and Jobs Act (“TCJA”) on Maryland taxpayers. The event, which was free for Tax Section members, drew in excess of 70 attendees.

This year, the Council also established a permanent committee to support the publication of Maryland Taxes, the definitive resource on Maryland tax law. This committee will ensure the continuation of this vital resource for Maryland tax attorneys in the years to come.

In May, the annual Shulbank Memorial Dinner was held at The Center Club in Baltimore. The Section’s Tax Excellence and J. Ronald Shiff Memorial Pro Bono Awards were presented, as well as the Section’s second annual scholarship to a law student interested in practicing law in the State of Maryland. Steven M. Gevarter, a former member of the Council, received the Tax Excellence award. The Local Taxpayer Advocate for Maryland, James P. Leith, received the Shiff Award. Siyu Selena Qian was awarded the Section’s book prize. Congratulations to all of the recipients and thank you to our keynote speaker, David R. Brinkley, Secretary of the Maryland Department of Budget and Management.

The Council and Section continued to remain active in serving as instructors, mentors, and volunteers to various pro bono organizations throughout the year. The Section’s seven study groups met regularly and provided presentations on various areas of substantive tax law featuring guest speakers from State and Federal agencies, as well as private practitioners.

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By Gregory L. Waterworth*

An issue that has lurked among the shadows for nearly 20 years has at last surfaced in the tax practice world. No, it does not have to do with the 2017 Tax Cuts and Jobs Act. It surrounds two seemingly simple questions: (1) what does “financial disability” mean, and, more importantly, (2) how does one prove it?

The idea of “financial disability” is relatively new to tax law. It all started with an extra zero. In 1984, Stanley McGill mailed to the Internal Revenue Service a request to extend his time to file his income tax return, along with a check for $7,000. Mr. McGill ultimately failed to file his income tax return for the year. He died four years later, and his daughter, Marian Brockamp, began administering his estate and discovered the $7,000 payment. She realized that Mr. McGill intended to send the Service only $700, not $7,000. She filed a claim for refund, explaining that at the time Mr. McGill made his large overpayment, he was 93 years old and “mentally deranged” or “senile.”

In 1991, the Service denied the refund claim stating that under the plain language of I.R.C. § 6511 the period of limitations for filing a refund claim had expired. Mrs. Brockamp then filed a refund suit, arguing that the period of limitations for filing a refund claim was equitably tolled by her father’s mental instability. Ultimately, the case went all the way to the Supreme Court, which held that Section 6511 did not authorize any form of equitable tolling. Although Mrs. Brockamp never received a refund, her case inspired Congressional action.

The Internal Revenue Service Restructuring and Reform Act of 1998 added a new exception to the period of limitations for filing a refund claim. The new Section 6511(h) suspends running of the statute of limitations during any period during which a taxpayer is “financially disabled.” “Financially disability” exists if an “individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or” continuously last longer than a year. Additionally, Section 6511(h) authorizes the Secretary to determine the form and manner of proving financial disability. The Service has done so through Revenue Procedure 99-21 (the “Revenue Procedure”).

The Revenue Procedure requires two letters as proof of financial disability. One is a written statement by a physician, and the other a self-certification. No other evidence is accepted. The first letter requires a physician to set forth: (1) the name and description of the impairment; (2) “the physician’s medical opinion” that the impairment prevented management of the taxpayer’s financial affairs; (3) “the physician’s medical opinion” that the impairment was or can be expected to result in death or last continuously for more than a year; (4) the specific time period during which impairment prevented management of financial affairs; and (5) a certification that the statement is true, correct, and complete.

On the surface, these requirements appear reasonable, but as applied and enforced, the Revenue Procedure can effectively contradict the very purpose of Section 6511(h). The Revenue Procedure presents practitioners with two major stumbling blocks: the definition of “physician” and the requirement of forcing that physician to make a legal, not a medical, conclusion.

The Revenue Procedure asks for a statement from a physician who treated the impaired taxpayer. It borrows its definitions of “physician” from Section 1861(r)(1) of the Social Security Act and 42 U.S.C. § 1395x(r). These definitions, however, seem confused and inappropriate in light of the Revenue Procedure’s.

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Section 6511 authorizes a taxpayer to file a claim for refund within between three years from the time the return was filed or two years from the time the tax was paid, whichever is later.


The self-certification is a written statement where taxpayers must affirm that no one was authorized to act on their behalf in financial matters during the period of financial disability. The issues with the Revenue Procedure that this article addresses do not arise from this certification.
In December 2015, Congress passed and President Obama signed into law the Fixing America’s Surface Transportation (FAST) Act (Public Law Number 114-94), creating Internal Revenue Code section 7345. This new Code section requires the Secretary of the Treasury to notify the Secretary of State if a certification has been made that an individual has a “seriously delinquent tax debt.” Thereafter, the Secretary of State generally will deny a passport application or revoke a current passport of the seriously delinquent taxpayer.

The State Department is responsible for issuing U.S. passports. The IRS does not have the authority to issue or deny a U.S. passport. Under 22 U.S.C. 2714(a), the State Department may issue a U.S. passport to a taxpayer in emergency situations or for humanitarian reasons regardless of the IRS certification.

When presented with a certification for a taxpayer’s seriously delinquent debt, the State Department will hold the passport application or renewal request for 90 days. This allows the taxpayer to resolve any certification issues with the IRS before the State Department denies an application for a passport or renewal because of tax debt. See Internal Revenue Manual section 5.1.12.27.7 (12-20-2017).

On January 16, 2018, IRS Notice 2018-1 alerted taxpayers that the IRS and State Department would begin implementation of section 7345. However, regulatory guidance has not yet been issued regarding coordination between these two agencies. Since regulatory guidance could be issued at any moment and thus begin implementation. Now is the time for taxpayers to resolve their tax debts or risk the loss of their passport.

Section 7345(b)(1) defines seriously delinquent tax debt as follows:

- Unpaid,
- Legally enforceable tax liability of an individual,
- Greater than $51,000, and
- The IRS has filed a Notice of Federal Tax Lien and the period to challenge it has expired or the IRS has issued a levy.

The $51,000 threshold is indexed for inflation and includes penalties and interest. Once a taxpayer is certified, partially paying the balance under the threshold will not reverse the certification. See Internal Revenue Manual section 5.1.12.27.2.2 (12-20-2017).

Beyond fully paying the tax debt, the following are several statutory exceptions to seriously delinquent tax debt pursuant to section 7345(b)(2):

- Paying the debt under an approved installment agreement under section 6149 or paying the debt under an accepted offer in compromise under section 7122,
- A pending collection due process hearing under section 6330, or
- A pending innocent spouse election under section 6015(b) or (c) or pending innocent spouse relief under section 6015(f).

Internal Revenue Code Section 7508(a) provides another statutory exception for taxpayers serving in a combat zone.

Pursuant to Internal Revenue Manual section 5.1.12.27.4 (12-20-2017), there are additional exclusions from certifications of seriously delinquent tax debt. The passports of the following delinquent taxpayers will not be at risk:

- Debt in currently not collectible (CNC) status,
- Debt from tax related to identity theft,
- Debt in bankruptcy,
- Debt in a pending installment agreement or offer in compromise,
- Located in a disaster area, or
- Debt pending an IRS adjustment that will fully pay the tax.

Section 7345(c) requires the IRS to notify the Secretary of State within 30 days of the reversal of a certification of seriously delinquent tax debt that was fully satisfied, becomes legally unenforceable, or ceases to be a seriously delinquent debt based upon the statutory exclusions. Section 7345(d) requires the IRS to contemporaneously notify the taxpayer both of certification and reversal of certification, as applicable.

If the taxpayer believes the certification is erroneous, he or she can request the certification reversal by calling the phone number on the Notice CP508C, “Notice of certification of your seriously delinquent federal tax debt to the State Department.” Taxpayers can seek judicial review of the certification in a U.S. district court or the U.S. Tax Court under section 73454(e).
As If! Restitution Order Does Not Permit the IRS to Collect Penalties and Interest without First Assessing a Tax Liability

By Brandon N. Mourges

On October 3, 2017, the United States Tax Court issued an opinion in Klein v. Commissioner, 149 T.C. No. 15, which creates a potential roadblock for the Internal Revenue Service (“the Service”) in civil cases stemming from criminal matters. In particular, the Tax Court held that the Service cannot use a criminal order of restitution as the sole basis for assessing penalties and interest. Instead, the Service can use the restitution order to collect only the amount of restitution “as if” it was a tax.

In order to create a basis for assessing and collecting related penalties and interest, the Service must separately assess the amount of restitution as a tax – using statutory assessment procedures. As a result, in some situations where the amount ordered as criminal restitution is greater than what is ultimately determined as the civil tax deficiency (e.g., where deductions are not properly calculated or are disallowed), taxpayers may be able to use the analysis set forth in Klein as a means to contest and reduce penalties or interest, even if they cannot reduce the amount of restitution itself.

Background. The Kleins, a husband and wife, were criminally prosecuted for filing false tax returns for several years. Mr. Klein ultimately pled guilty to one violation of 26 U.S.C. § 7206(1) and two non-tax violations. Mrs. Klein pled guilty to one violation of 26 U.S.C. § 7206(1). As a result of their guilty pleas, the Kleins were sentenced to a term of incarceration and significant restitution orders stemming from the 2003 through 2006 tax years. The restitution orders were based upon the government’s calculation of federal tax loss, which was in turn calculated through a bank deposits analysis.

After the Kleins were released from prison, they fully paid the restitution; however, the Service then filed Notices of Federal Tax Lien (“NFTL”) claiming significant delinquency penalties and related interest were still due and owing to the Service as a direct result of the restitution orders. Importantly, even though six years had elapsed since the criminal case concluded, no civil examination was ever conducted by the Service, no statutory notice of deficiency was ever issued to the Kleins, and no formal assessment was ever made against them.

The Kleins requested Collection Due Process hearings wherein they contested the collection of the penalties and interest contained within the NFTLs. The Kleins essentially argued that the filing of the NFTLs was improper since the restitution order had previously been satisfied in full. When the Service disagreed with the Kleins on the liability issue (i.e., finding that penalties and interest were due), the Tax Court reviewed liability on a de novo basis, as no statutory notice of deficiency had been issued and, hence, no opportunity for a challenge had previously been afforded to them.

In Tax Court, the Service argued that it could collect penalties and interest that were computationally based on a restitution order, pursuant to I.R.C. § 6201(a)(4)(A). In the Service’s view, that statute authorized the Service to treat the restitution order as a tax for purposes of I.R.C. §§ 6601, 6651, and other provisions. In response, the Kleins argued that I.R.C. § 6201(a)(4) only enabled the Service to “assess and collect the amount of restitution…for failure to pay any tax…in the same manner as if such amount were such tax.” Emphasis supplied. That is, an order of restitution did not conclusively determine tax due and could not, without more, serve as a basis for imposing interest or other addition, such as penalties. In the Kleins’ view, I.R.C. § 6201(a)(4) was merely a collection mechanism.

The Tax Court agreed with the Kleins on the grounds of statutory construction principles. It held that this statute did not intend to treat restitution as a tax assessment for all purposes. Instead, the purpose of I.R.C. § 6201(a)(4) was to create a means by which the Service could administratively create an account for its own accounts receivable when restitution was ordered in a criminal case. In other words, the Service could treat restitution orders as if they were tax assessments for purposes of collecting restitution; however, restitution orders do not constitute a tax assessment in other contexts of the tax code. In passing the law, Congress related that the

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Federal Tax Update

By David S. De Jong

**JULY-SEPTEMBER, 2017**

INDIVIDUALS

In *Lopez v. Commissioner*, TC Memo 2017-171, the Tax Court determined that income earned by a child in a beauty pageant is reportable by the child and not by the parents notwithstanding a state law on legal entitlement to the winnings; the parents had attempted to deduct expenses which were ten times the amount of the income.

In *Rajcoomar v. Commissioner*, TC Memo 2017-129, the Tax Court denied a taxpayer an exclusion for damages arising out of physical injury where his employer failed to make workplace accommodations for an injury received, the Court noting that the source of the claim was anti-discrimination laws; in *Maciuje v. Commissioner*, TC Summary Opinion 2017-49, the Tax Court reached the same result where there was an allegation of sexual contact but not physical injury.

In *Taylor v. Commissioner*, TC Memo 2017-132, the Tax Court determined that a fireman’s disability retirement pay was taxable as it was determined by age, length of service and compensation notwithstanding that it was subject to future medical examinations.

In *Yorklic v. Commissioner*, TC Memo 2017-143, the Tax Court determined that an individual who received unemployment compensation but was required in the same year to repay it had to pick up the benefits as income when he delayed repayment to the following year.

In *Acone v. Commissioner*, TC Memo 2017-162, the Tax Court found that a pilot for a Korean airline was ineligible for the income earned abroad exclusion even though he was “stationed” in a South Korean city because he spent 40 percent of each year in the United States and stayed only in hotels in South Korea while his family remained in the United States; the Court found that he was nothing more than a transient with no steps to establish bona fide residence.

In *Linde v. Commissioner*, TC Memo 2017-180, the Tax Court determined that a helicopter pilot in his mid-50s who spent two-thirds of the year working in Iraq and one-third in the United States with his wife and adult children was a bona fide resident of Iraq despite stating his intention to return to the United States upon retirement which was not in the foreseeable future; the Court noted that his ties were closer to Iraq than the United States with some involvement in the local community and with a local bank account notwithstanding that he kept a driver’s license and voter registration in the US and that he lived in a large metal container home for security in Iraq.

In *Thompson v. Commissioner*, 120 AFTR2d 2017-5146, the Ninth Circuit Court of Appeals agreed with the Tax Court that an individual working in Antarctica could not claim the income earned abroad exclusion as Antarctica is a sovereignless region and not a foreign country.

In *Owens v. Commissioner*, TC Memo 2017-157, an individual who had made at least 89 loans over a 35 year period was found to be in the business of lending.

In *Hickam v. Commissioner*, TC Summary Opinion 2017-66, the Tax Court agreed with IRS that a mortgage broker is not a real estate professional for purpose of the passive activity loss rules.

In *Silipigno v. United States*, 120 AFTR2d 2017-5046, a New York Federal District Court denied a purported net operating loss carryback where the taxpayer could not prove that his tax liability reported for the carryback year was correct and notwithstanding the expiration of the statute of limitations on the earlier year.

In *Turan v. Commissioner*, TC Memo 2017-141, the Tax Court agreed with IRS that a taxpayer could not prove that he directed his broker as to specific shares of identical stock to be sold and was accordingly required to use FIFO in determining cost basis; the taxpayer claimed he was unable to accomplish the direction online or get assistance by phone.

In *Morrissey v. United States*, 120 AFTR2d 2017-________, the Eleventh Circuit Court of Appeals agreed with a Florida Federal District Court that a gay man could not deduct the costs of in vitro related procedures as they were not paid for the purpose of affecting the taxpayer’s own reproductive function; the Court also denied a “equal protection” argument.

In *Ohde v. Commissioner*, TC Memo 2017-137, the Tax Court determined that a helicopter pilot in his mid-50s who spent two-thirds of the year working in Iraq and one-third in the United States with his wife and adult children was a bona fide resident of Iraq despite stating his intention to return to the United States upon retirement which was not in the foreseeable future; the Court noted that his ties were closer to Iraq than the United States with some involvement in the local community and with a local bank account notwithstanding that he kept a driver’s license and voter registration in the US and that he lived in a large metal container home for security in Iraq.

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Finally, a digital archive of the Section’s historical records, which will be made available online to members in the near future, was created this year. The Council partnered with volunteer students from Atholton High School in Howard County, who spent many hours on the weekends scanning and organizing the records.

I hope to see all of you in Ocean City for the MSBA Annual Meeting where the Section will explore, in a Jeopardy game show format, resolving tax liabilities through Offers in Compromise or IRS installment agreements versus bankruptcy proceedings. This program is being presented in conjunction with the Consumer Bankruptcy Section.

I’d like to thank Vice-Chair Beverly Winstead and Secretary/Treasurer Elizabeth Shaner for all of their support and hard work.

Chair...
(continued from Page 1)

I would like to note that the definition of “financial disability” in the Revenue Procedure 99-21 is quite broad and includes a wide range of conditions. However, it is not clear whether these conditions are sufficient to establish financial disability as defined under Section 6511(h). Therefore, the Service may reject claims for relief from the statute of limitations based on these conditions.

The Service is not ignorant of these concerns, and on October 17, 2017, the Department of the Treasury and the Service issued notice and request for comments on the Revenue Procedure 99-21. The American Bar Association Section of Taxation submitted a comment authored primarily by practitioners working in Low Income Taxpayer Clinics. The authors argued that their clients’ experiences expose the Revenue Procedure’s shortcomings. Along with a detailed breakdown of the Revenue Procedure’s origin, legislative history, legal implications, and anecdotes, the comment recommends four revisions. The first is to expand the definition of physician to include psychologists. The second is the removal of the current requirement that medical professionals make legal determinations as to taxpayers’ ability to manage their financial affairs. The third is to forego the limitation of two letters as proof and to permit more expansive presentation of evidence to establish financial disability. The last asks the Service to publish a list of conditions that would act as prima facie evidence of meeting the impairment requirement.

Although the fate of the Revenue Procedure remains unknown, the Service’s request for comments could mark a first step in the right direction. As the ABA Tax Section comment quips, if Mr. McGill tried to claim financial disability today, his would likely be rejected. Until the Revenue Procedure is changed, Section 6511(h)’s relief from the harsh limits of the statute of limitations on refund claims will remain out of reach of many of those it was intended to aid.

Greg Waterworth is a Student Attorney of the University of Baltimore Tax Clinic and J.D. Candidate for the May 2018 class of the University of Baltimore School of Law. He received his B.A. in 2013 from the University of Maryland. He would like to thank Professor John B. Snyder, III, the Director of the University of Baltimore Tax Clinic, for his mentorships and assistance with this article.

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PASSPORTS...
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Taxpayers with seriously delinquent debt of over $51,000 who do not want to risk the denial or revocation of their U.S. passports should consider resolving their tax debts as soon as possible.

Restitution...
(continued from Page 4)

statute would mainly enable the Service to better track payments of restitution that were delivered by a taxpayer to the District Court, but related to restitution due to the Service.

In order for the Service to assess related penalties and interest (i.e., statutory additions to tax), the Service must first conduct a civil examination and issue a statutory notice of deficiency. This principle applies even if the penalties and interest are merely computational. Statutory additions must be based on the ultimate tax determined and cannot simply be based solely on a restitution order. In so holding, the Tax Court dictated that the Service was free to assess penalties and interest once a civil determination of taxes was issued.

Practice Pointers. Klein indicates that the Service must, or at least should, conduct a civil examination – sometimes referred to as a civil closing – in matters resulting from criminal tax prosecutions. Without making an assessment (restitution-based or otherwise), the Service cannot assess penalties or interest against affected taxpayers. Moreover, without such an assessment, the Service may not use any collection mechanisms to collect interest and penalties.

The holding in Klein potentially provides criminal tax defendants with a means for challenging penalties and interest. Even though a restitution order may be used as a conclusive means for assessing tax – even if deductions were erroneously disallowed in the criminal context or the restitution otherwise overstates the deficiency – it is not conclusive for purposes of establishing liability for penalties, interest, and other tax-related matters. The Service must first conduct a civil examination in order to assess penalties and interest relating to purported deficiencies. During the civil examination, taxpayers can challenge the underlying tax due in an effort to reduce the potential assessment of penalties and interest even if they cannot attack the validity of the restitution order. Taxpayers can also raise procedural challenges such as the expiration of the statute of limitations, if applicable. In light of Klein, the Service may work with the Department of Justice to further limit taxpayers’ potential challenges in negotiated plea agreements. Practitioners should be careful not to limit taxpayers’ ability to challenge the tax due in cases where restitution may overstate their actual liability, after accounting for deductions, credits, and other oversights. Otherwise, taxpayers could be forced to pay exorbitant penalties and interest that are not appropriately due.

For taxpayers who have related state tax deficiencies, the holding in Klein may allow for similar challenges. That is, if the Service does not conduct a civil examination and simply relies on a restitution order to collect tax, the Comptroller may not be able to assess tax or additions to tax. For instance, pursuant to Maryland Annotated Code, Tax-General § 13-1101, the Comptroller is only permitted to assess tax within three years from the later of the due date of the tax return or the filing of the tax return. If a taxpayer did not intend or attempt to evade taxes due to Maryland and no civil closing is conducted by the Service, additional assessments by the Comptroller may be time-barred due to the statute of limitations for assessment. See TG § 13-1101(b) (no limitations period for assessments stemming from false returns or attempts to evade tax). This may occur because if the Service simply relies on a restitution order and does not conduct a civil examination, no report of federal adjustment will be administratively issued by the Service to the Comptroller. By statute, the Comptroller is not able to rely on the exception to the general three-year statute of limitations period without first receiving such a report. See TG § 13-1101(c) (one year limitations period on assessments where the Service issues a report of federal adjustments). Furthermore, the reasoning in Klein should support the notion that a restitution order (or any computation of unreported income in a criminal case) cannot be used as a deficiency assessment on a de facto basis.

John Pontius is the founder of Pontius Tax Law, LLC in Rockville, Maryland.
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Disallowed a charitable contribution deduction for $145,000 purportedly representing 20,000 items donated to Goodwill in a single year, the Court noting that the taxpayers have “failed woefully to satisfy the substantiation requirements.”

In Gardner v. Commissioner, TC Memo 2017-165, the Tax Court, noting that “there is no hunting like the hunting for tax deductions”, agreed with IRS that a donation of 177 animal specimens by a big game hunter was worth $138,000 based on market price rather than the $1.426 million claimed by the taxpayer based on replacement cost.

In Reri Holdings I, LLC v. Commissioner, 149 TC No. 1, the Tax Court disallowed a charitable contribution deduction for a remainder interest because it did not comply with the statutory substantiation requirements including disclosure of basis (which would have shown a valuation of ten times the cost of the interest one year before).

In RP Golf, LLC v. Commissioner, 119 AFTR2d 2017-2338, the Eighth Circuit Court of Appeals agreed with the Tax Court that a taxpayer could not take a charitable deduction for a conservation easement where two mortgages remained on the property and the taxpayer could not prove their subordination to the easement (only an alleged oral agreement).

In BC Ranch LP v. Commissioner, 120 AFTR2d 2017-5469, the Fifth Circuit Court of Appeals determined that the ability to tweak boundaries of a conservation easement does not violate the “perpetuity” rule and remanded the case back to the Tax Court for further proceedings.

In 310 Retail, LLC v. Commissioner, TC Memo 2017-164, the Tax Court allowed a deduction for a conservation easement by determining that the deed executed with the gift constituted a “contemporaneous written acknowledgement” and, by stating that there was “consideration of One Dollar ($1.00) and other good and valuable consideration”, it effectively set forth that no goods or services were provided in exchange for the contribution.

In McGuire v. Commissioner, 149 TC No. 9, the Tax Court refused to look at equitable issues and indicated that the law was clear and required a couple to repay an advance health care premium tax credit when their income rose during the year; in Walker v. Commissioner, TC Summary Opinion 2017-50, the Tax Court ruled that incorrect advice by a health insurance exchange does not modify the requirement that an individual repay an advance health insurance premium tax credit for which there was no entitlement due to rising income.

In Martin v. Commissioner, 149 TC No. 12, the Tax Court concluded that rent payments received for the use of a farm and structures were not subject to self-employment tax because fair market rent was paid apart from the landlord’s material participation in the farm.

In CA 2017-1, IRS confirmed that settlement payments made by an oil company for home remediation following petroleum contamination are generally nontaxable as they are for lost value or capital; however, per diem meal payments are taxable if victims are provided with temporary housing including kitchens.

Retirement Plans

In Frias v. Commissioner, TC Memo 2017-139, the Tax Court determined that an employee received a constructive distribution from her retirement plan even though the loan default arose from her employer’s failure to properly withhold and transmit withholding intended to repay the loan; in Gowen v. Commissioner, TC Summary Opinion 2017-57, the Tax Court ruled that income from such a constructive distribution is reported in the year when the cure period expires.

In Block Developers v. Commissioner, TC Memo 2017-142, the Tax Court determined that family members in a limited liability company made “excess” contributions to a Roth IRA when the LLC was created as a conduit from the husband-father’s construction company as a means of funding retirement benefits.

In Omoloh v. Commissioner, TC Summary Opinion 2017-64, the Tax Court sustained an early withdrawal penalty on a taxpayer who received IRA distributions as the Court failed to believe that he was at least age 59½; his certificate of naturalization, his college transcript and a court petition showed that he was less than age 59½ while a newly issued birth certificate obtained during the pendency of the case showed him to be two years older.

In a Treasury Department Website Posting, Treasury announced that it is phasing out the myRA retirement savings program with no new enrollments permitted.

In Chief Counsel Advice 201736022, IRS stated that missed installment repayments on a 401(k) loan will not be considered a deemed distribution if the delinquency is resolved within the applicable cure period which must not extend beyond the last day of the calendar quarter following the missed payment.

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ESTATES

In Estate of Sower v. Commissioner, 149 TC No. 11, the Tax Court backed up the IRS position that, absent a closing agreement, it can adjust the unused exemption of the first spouse to die even if the estate tax return was “accepted as filed” following the first death.

In Estate of Simmons v. United States, 120 AFTR2d 2017-5109, an Indiana Federal District Court determined that an IRS lien for back federal income taxes and trust fund recovery penalties had priority over the payment of administrative expenses (in this case Personal Representative fees for the spouse) of an estate, stating that IRS may in its discretion not assert priority.

In Notice 2017-38, IRS announced, pursuant to President Trump’s Executive Order to review all tax regulations issued in the final year of the Obama administration, that it is reviewing the controversial rules on discounting in estate and gift tax valuations.

In Legal Advice Issued by Field Attorneys 20172801F, IRS concluded that the statute of limitations remained open on a gift tax return lacking a description of the transferred property and the method used to determine value.

BUSINESS

In Gregory v. Commissioner, 149 TC No. 2, the Tax Court interpreted the law on waste disposal reclamation expenses to allow a cash basis taxpayer to create a deductible reserve for future costs.

In Avrahami v. Commissioner, 149 TC No. 7, the Tax Court took 105 pages to disallow a jewelry store chain’s deduction for payments to a captive insurance company where total insurance costs soared from $150,000 to $1.3 million under the captive; the Court declined to impose an accuracy penalty as the taxpayer relied upon professional advice.

In Simonelli v. Commissioner, TC Memo 2017-188, the Tax Court denied a deduction to a retired government lawyer who wrote off his son’s LLM tuition on the grounds that he hoped they would practice law together although neither father nor son was actively practicing law at the time of payment.

In Balyan v. Commissioner, TC Memo 2017-40, the Tax Court, citing lack of substantiation, allowed only about $6,000 of the $51,000 in business expenses claimed by a nurse to offset gross receipts of $35,000.

In Rutter v. Commissioner, TC Memo 2017-174, the Tax Court, after balancing all of the applicable factors including the fact that no conventional lender would put up money, determined that advances of an entrepreneur in the millions of dollars to a corporation without promissory notes, interest or any attempt to collect were really equity contributions.

In Kardash v. Commissioner, 120 AFTR2d 2017-5400, the Eleventh Circuit Court of Appeals agreed with the Tax Court that a stockholder who received dividend payments while the corporation was insolvent was subject to transferee liability notwithstanding that he was unaware that two co-owners had siphoned all of the cash out of the corporation.

In United States v. Hartman, 120 AFTR2d 2017-5091, a Michigan Federal District Court determined that a 50 percent owner of a company was liable for trust fund taxes although his co-owner had internal responsibility for payment; he allowed other bills to be paid once he became aware that the checks for payroll taxes were sitting unmailed in a drawer.

In Revenue Procedure 2017-52, IRS announced that it would again rule under a pilot program of 18 months on the tax consequences of a corporate division; in recent years, IRS would only rule on any unique issues in a division.

In Letter Ruling 201731015, IRS determined that a software user group with membership limited to organizations licensed to use particular software does not qualify as a tax-exempt business league.

In Letter Ruling 201736002, IRS ruled that a company may deduct rather than capitalize payments to a target company’s shareholders to induce them to approve an acquisition by a third company to whom the taxpayer served as an investment advisor as the payments were not for acquisition of an asset.

PROCEDURE

In Rivera v. Internal Revenue Service, 120 AFTR2d 2017-5796, the Tenth Circuit Court of Appeals agreed with a New Mexico Federal District Court that a non-credentialed tax return preparer could not seek to enjoin the IRS from establishing a voluntary education program.

In United States v. Moore, 120 AFTR2d 2017-5188, a New Jersey Federal District Court denied IRS an injunction against an orthodontist with 20 years of tax delinquencies which would have prohibited him from owning, operating or serving as an employee in any practice for five years or until he could demonstrate that he is likely to resume operating without interfering (continued on Page 10)
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with Internal Revenue laws; the Court noted that such a step is appropriate against tax preparers but not in a punitive manner against others.

In Camara v. Commissioner, 149 TC No. 13, the Tax Court reversed its prior position, in light of contrary decisions by the Fifth and Eighth Circuit Courts of Appeal, and ruled that a married person filing improperly as single or head of household has not filed a “separate” return, facilitating a correction to a joint return within the statute of limitations without certain restrictions applicable where a married filing separate return was first filed.

In Edwards v. Commissioner, TC Summary Opinion 2017-52, the Tax Court determined that a timely filed joint return initiated by a divorcing husband not bearing the wife’s signature or authorization was invalid where the wife subsequently but timely filed a married filing separate return.

In Bedrosian v. United States, 120 AFTR2d 2017-5253, a Pennsylvania Federal District Court determined that a pharmaceutical executive who had unreported Swiss accounts did not willfully fail to file FBAR returns; his first accountant never asked about the accounts for many years and they advised him to do nothing after he asked.

In Rodriguez v. Commissioner, TC Memo 2017-173, the Tax Court excluded over 700 pages of documents produced by an attorney at trial involving his own expenses when he failed to comply with the 14-day rule of providing documents to the other side and the documents provided were totally inadequate.

In Estate of Chicorel v. United States, 119 AFTR2d 2017-5152, a Michigan Federal District Court determined that the filing of a proof of claim in a probate court tolls the 10-year statute of limitations on collection as if IRS had filed suit.

In Borenstein v. Commissioner, 149 TC No. 10, the Tax Court recognizing that an odd result was created, interpreted a statute literally and denied a refund of an overpayment to an individual who filed a tax return between two and three years after the deemed date of prepayments but received a notice of deficiency between one and two years from the extended due date; according to the Court, the three-year lookback period is inapplicable where a notice of deficiency is issued prior to the third year after the extended due date.

In Holland v. United States, 119 AFTR2d 2017-5233, a Michigan Federal District Court found that the transfer of assets to a limited partnership with adequate consideration could not be set aside on grounds of alter ego, fraudulent conveyance or nominee status where there was adequate consideration – in this case a partnership interest; IRS contended that it was left with only the ability of seizing a partnership interest rather than the underlying assets and asserted that there is not equivalent value when the debtor becomes “execution proof.”

In In Re Kardash, 120 AFTR2d 2017-________, a Florida Bankruptcy Court held that an IRS claim against an individual as a transferee in a fraudulent transfer gives no priority and that IRS is simply an unsecured creditor.

In Bruce v. Commissioner, TC Memo 2017-172, the Tax Court declined to allow a disabled army veteran to argue that his disability payments were nontaxable inasmuch as he had an opportunity to raise the issue following receipt of a Notice of Deficiency but did not file a Tax Court petition at that time.

In Mohamed v. Commissioner, TC Summary Opinion 2017-69, the Tax Court refused to allow a CPA to bring up substantive issues regarding preparer penalties at a CDP hearing inasmuch as he had previously presented his case before Appeals and chose then not to challenge the assessment in Tax Court.

In Rogers v. Commissioner, TC Memo 2017-130, the Tax Court denied innocent spouse status for a wife of a tax shelter promoter when she had a law degree and MBA, the Court noting that her testimony about the extent of her ignorance was not credible; in Ryke v. Commissioner, TC Memo 2017-144, the Tax Court declined to give innocent spouse status to a doctor who remained married to a lawyer who she knew had major financial problems and, accordingly, could have assumed that the unpaid liability on the returns would not be paid.

In Cojocar v. Commissioner, TC Memo 2017-189, an individual earning $170,000 per year was denied innocent spouse relief where his former wife made $30,000 per year and the divorce decree required him to pay the couple’s outstanding tax liability.

In Notice 2017-47, IRS announced that partnerships will not be penalized for missing the new March 15 deadline if they filed a return or an extension by April 15, 2017 (and, in the case of an extension, filed the return by September 15, 2017).

Internal Revenue Service Office of Appeals announced that it is restoring the right to in-person conferences with detailed guidance to follow.

In Chief Counsel Advice 201735021, IRS stated its position that the Tax Court could not review a case where payroll taxes were assessed against a corporate officer who took no sal-

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ary, proffering that the Tax Court shares jurisdiction with the Federal courts only in worker classification cases and where taxpayers are seeking Section 530 relief.

OCTOBER - DECEMBER 2017

INDIVIDUALS

Public Law 115-63, the Disaster Tax Relief and Airport and Airway Extension Act of 2017, modifies existing law to provide tax relief to victims of Hurricanes Harvey, Irma and Maria as follows:

- Allows casualty losses to be claimed without the 10 percent of adjusted gross income floor as well as by non-itemizers (in their case by increasing the standard deduction by the net disaster loss) with no reduction for alternative minimum tax purposes while increasing the $100 per casualty floor to $500.
- Suspends the adjusted gross income limitations on related charitable contributions.
- Allows optional use of prior year earned income in determining the allowable earned income tax credit and child tax credit.

Public Law 115-97, the Tax Cuts and Jobs Act:

- Reduces all cost of living adjustments throughout the Internal Revenue Code effective 2018 for years thereafter by converting indexing to chained CPI-U (C-CPI-U) which assumes consumers look for substitute items rather than absorbing rising prices.
- Eliminates like-kind exchanges other than for real property effective 2018 (with protection for forward or reverse exchanges in progress as of December 31, 2017).
- Excludes vacations, meals, lodging, tickets and gift certificates from employee achievement and length of service awards, essentially limiting this tax free benefit to tangible personal property or a limited array of tangible choices effective 2018.
- Repeals the exclusion for qualified bicycle commuting reimbursement for 2018-2025.
- Excludes discharges of student loans (including private loans) from income where the discharge is on account of death or total and permanent disability for 2018-2025.
- Removes self-created patents, inventions, models, designs, secret formulas or processes, copyrights, literary, musical or artistic compositions from the definition of capital assets effective 2018 (though certain transfers of patents continue to get capital gain treatment under Code Section 1235).
- Changes the treatment of alimony to make it nondeductible to the payer and taxfree to the recipient for divorce or separation instruments after 2018; existing agreements which were modified follow old law unless new law is expressly made applicable.
- Ends the deduction for moving expenses and the exclusion on employer-paid moving expenses for 2018-2025 except for active duty military who move by order to a permanent change installation.
- Increases the standard deduction for 2018 to $24,000, $18,000 and $12,000 for married filing jointly, head of household and unmarried with indexing for 2019-2025 before the increase expires.
- Ends the income phaseout on total itemized deductions from 2018-2025.
- Lowers the floor to 7½ percent of adjusted gross income for all individuals to deduct medical expenses in 2017 and 2018.
- Caps the deduction for personal taxes at $10,000 ($5,000 married filing separate) for years 2018-2025, considering property taxes and either state, local and foreign income taxes or sales taxes.
- Reduces the maximum interest deduction on residences to the cost of acquisition financing including improvements on $750,000 effective December 16, 2017 and through 2025 except in the case of binding contracts scheduled to close in 2017 that actually close by March 31, 2018; existing acquisition debt including refinancing remains under prior law but no deduction is available after the expiration of the term of the original indebtedness (if not amortized, then the earlier of the term of the first refi or 30 years).
- Eliminates the deduction for interest on home equity indebtedness 2018-2025.
- Increases the maximum deduction for cash donations to public charities to 60 percent of adjusted gross income, disallows deductions for donations coupled with preferred seating at college sports events and ends direct donee reporting as a possible alternative to the donor obtaining contemporaneous written acknowledgement; all changes are effective 2018 except the last provision is effective 2017.
- Eliminates the deduction for personal theft losses as well as for casualty losses for 2018-2025 except for those in disaster areas as declared by the President; however, these losses may be used to reduce casualty and theft gains in the same year.
- Offers relief in 2016 and 2017 for casualty losses to residents in Presidentially declared disasters in 2016 by waiving the 10 percent of adjusted gross income floor (though raising the minimum loss to $500) and permitting casualty deductions by non-itemizers.
- Terminates the deduction for all miscellaneous itemized

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dinars to the 2 percent of adjusted gross income floor for 2018-2025.  
• Includes the expenses of gamblers as part of their losses for 2018-2025, for purpose of denying a deduction when losses exceed winnings.  
• Discontinues personal exemptions for 2018-2025.
• Creates seven new rate brackets for 2018-2025 (10%, 12%, 22%, 24%, 32%, 35% and 37%); in 2018 the 37% bracket starts at $600,000 of taxable income for married couples filing jointly, $500,000 for singles and $300,000 for married individuals filing separately (the 35% bracket for singles starts at $200,000 as opposed to $416,700 in 2017); indexing for cost of living begins in 2019.  
• Revises “Kiddie Tax” rates for 2018-2025 to disregard the income of parents and to apply trust and estate income tax rates to the unearned income of applicable children.
• Raises the individual alternative minimum tax exemption for 2018-2025 to $109,400 for married couples filing jointly, $70,300 for singles and $54,700 for married individuals filing separately with the phaseouts computed at 25 percent of excess alternative minimum taxable income over $1 million for married couples filing jointly and $500,000 for others; exemptions and phaseout levels are increased for cost of living in 2019 and subsequent years.  
• Doubles the child tax credit to $2,000 for each qualifying child from 2018-2025 with the refundable portion (15 percent of earned income greater than $2,500) up to $1,400 per child subject to cost of living increases in 2019 and subsequent years with the phaseout at $50 per $1,000 or fraction over the thresholds of $400,000 for married couples filing jointly and $200,000 for others (the child’s social security number must be issued by the due date of the return and provided); a $500 nonrefundable credit applies for qualifying defendants other than children who are U.S. citizens or residents (or in the case of a child where the social security number rules are not met).  
• Repeals the individual mandate for health insurance coverage effective 2019.

In Knez v. Commissioner, TC Memo 2017-205, the Tax Court determined that a married individual who filed improperly as head of household could change to a married filing joint status even after issuance of a Notice of Deficiency; the Court noted that it previously permitted a change from an improper single filing status to married filing joint after issuance of a Notice of Deficiency and distinguished both situations from a change from married filing separate to married filing joint after the Notice of Deficiency.  

In Gaylor v. Mnuchin, 120 AFTR2d 2017-6128, a Wisconsin Federal District Court determined that the housing allowance available to ministers and other religious leaders constitutes a violation of the principal of separation of state and church.  

In Wolens v. Commissioner, TC Memo 2017-236, the Tax Court applied US law to a UK divorce order which was silent on whether spousal payments ceased on the death of the recipient and found that they would continue as a matter of law and, accordingly, denied an alimony deduction (the payor argued unsuccessfully that the law of New York where the parties were married and the recipient continued to live should apply); in Logue v. Commissioner, TC Memo 2017-234, the Tax Court applied Texas law where a Settlement Agreement was silent and reached the same result.  

In Hudson v. Commissioner, TC Memo 2017-221, the Tax Court found that a pilot for Korean Airlines who spent a majority of his time in the United States and stayed at a hotel in Korea when in that country was not a bona fide foreign resident but was a resident of the United States where his family stayed.  

In Okonkwo v. Commissioner, 120 AFTR2d 2017-6758, the Ninth Circuit Court of Appeals agreed with the Tax Court that a couple could not utilize over $300,000 in losses over three years from renting a residence to their daughter at $2,000 per month when the prior tenant had paid $6,000 per month.  

In Syed v. Commissioner, TC Memo 2017-226, the Tax Court determined that a 75-year old urologist who worked full time in the practice did not participate over 500 hours per year in a surgical center; he testified that he spent “at least ten hours per week” at the center but offered no details and accordingly could not use flow through losses.  

In Palmolive Building Investors, LLC v. Commissioner, 149 TC No. 18, the Tax Court denied a deduction for a conservation easement not passing the “perpetuity” requirement due to two liens on the property not fully subordinate in all events to the easement.  

In Salt Point Timber, LLC v. Commissioner, TC Memo 2017-245, the Tax Court denied a deduction for a charitable easement because under certain circumstances the easement could pass to a non-charitable group.  

In Colliver v. Commissioner, TC Summary Opinion 2017-93, the Tax Court denied a deduction for education courses leading to a master degree for a school speech pathologist who had been allowed to work temporarily pending her degree, the Court finding that the education qualified her for a new profession.  

In Czarnecki v. United States, 118 AFTR2d 2017-5372, the Court of Federal Claims ruled that costs of a Ph.D. program (continued on Page 13)
did not qualify an engineer for a deduction as it would have permitted him to commence a career in education while not on the evidence improving required skills.

In Mihelick v. United States, 119 AFTR2d 2017-5358, a Florida Federal District Court determined that a reimbursement of $300,000 by a former wife to the husband resulting from a 50 percent indemnification provision in their Separation Agreement was not deductible to her although the reimbursement was caused by a claim of a minority stockholder based on an allegation of excess compensation to the husband.

In Barry v. Commissioner, TC Memo 2017-237, the Tax Court disallowed a deduction for the legal fees of an individual seeking to recoup excess alimony payments as not incurred in the production of income.

In Boneparte v. Commissioner, TC Memo 2017-193, the Tax Court determined that a tunnel bridge agent who spent about one-half of his nights in Atlantic City and kept incomplete records was not engaged in the business of gambling.

In Revenue Procedure 2017-60, IRS concluded that deterioration in concrete foundations as the result of using pyrrhotite in the concrete mixture gives rise to a casualty loss upon written evaluation from a licensed engineer indicating that the foundation was made with defective concrete containing that mineral.

In News Release 2017-210, IRS advised that prepayments of real property taxes in 2017 for a subsequent period will only be deductible if the taxes have actually been assessed as determined by state or local law.

In Letter Ruling 201743011, IRS determined that an employer overpayment of a defined benefit pension which is not corrected due to employer discretion does not give rise to relief from indebtedness income.

RETIRED PLANS

Public Law 115-63, the Disaster Tax Relief and Airport and Airway Extension Act of 2017, modifies existing law to provide tax relief to victims of Hurricanes Harvey, Irma -and Maria as follows:

- Lengthens the time limitation to the extended due date of the return plus timely extensions for rolling over outstanding loan balances in employer plans where the plan is terminated or the employee severs employment effective for 2018 deemed distributions.
- Eliminates the 10 percent penalty on early withdrawal on distributions from qualified retirement plans, governmental plans and IRAs in 2016 and 2017 for victims of Presidentially declared disasters in 2016 who resided in the affected area, permitting this income to be reported ratably over three years and allowing recontributions in the form of rollovers within three years of distribution.
- Doubles to $6,000 in 2018 the maximum annual accrual in a Section 457 defined contribution plan (using actuarial equivalents for defined benefit plans) for volunteer firefighters with cost of living adjustments beginning in 2019.
- Prohibits a reconversion from a Roth IRA to a traditional IRA if previously moved from a traditional to a Roth effective 2018.

In a Memo of the Tax Exempt and Government Entities Division, IRS indicated that a retirement plan will be in violation of the required minimum distribution rules if it fails to locate a participant aged 70½ because of a failure to locate the former employee unless it has searched employer and plan records, attempted contact through mailing addresses, email address and phone numbers found in records, as well as used an outside locator service or similar.

In Letter Ruling 201742034, IRS waived the 60-day rollover time period where a divorcing wife failed to receive promised funds from her husband.

ESTATES

Public Law 115-97, the Tax Cuts and Jobs Act:

- Doubles the applicable exemption for the estate, gift and generation-skipping tax to $11.2 million in 2018 as indexed for cost of living beginning in 2019 and reverting to half the adjusted amount in 2026.
- Cuts the number of income tax brackets for trusts and estates to four from 2018-2025 with the 37 percent bracket commencing at over $12,500 in taxable income.
- Permits distributions of up to $10,000 per year from one or more Section 529 plans to a child for public or private (secular or religious) elementary or secondary education effective 2018.
- Increases the aggregate annual ABLE contribution limit of $15,000 for 2018-2025 as indexed after 2018 for cost of living by allowing the disabled beneficiary to contribute (continued on Page 14)
an added amount equal to the lesser of the beneficiary’s compensation for the current year or the poverty level for a one-person household for the preceding year ($12,060 for 2016); the provision also creates a credit only for the disabled individual of 10-50 percent of contributions depending on filing status and adjusted gross income with a maximum credit of $1,000.

- Allows rollovers from Section 529 plans to ABLE accounts, either for the disabled transferor or for a disabled family member effective after December 22, 2017 and before 2026; such rollovers count toward the annual ABLE contribution limit of $15,000 as indexed after 2018 for cost of living.

Proposed Regulations under Code Section 2704, which would have restricted discounting in the case of transfers of partial interests in entities, were formally withdrawn by the Internal Revenue Service.

In Smith v. Commissioner, TC Memo 2017-218, the Tax Court found a sham where a couple transferred all of their liquid assets to an S corporation which then moved those assets into a family limited partnership and subsequently liquidated the S corporation and claimed a loss as the result of a 40 percent combined discount for lack of marketability and lack of control upon dissolution of the S corporation; the Court imposed an accuracy penalty notwithstanding that the advice came from an attorney-CPA.

In Chief Counsel Advice 201747005, IRS denied a charitable deduction to a trust when the original language was modified by consent (rather than through a controversy in interpretation) to allow donations to private foundations.

**BUSINESS**

Public Law 115-97, the *Tax Cuts and Jobs Act*:

- Allows cash basis accounting effective 2018 tax years for all businesses (except “tax shelters”) provided average gross receipts of the three preceding years are less than $25 million in average revenue as indexed for cost of living beginning in 2019, C corporations except personal service businesses and partnerships with a corporate partner must then change to accrual and others must use a method that clearly reflects income (all changes in accounting method consistent with the statute will be deemed to have IRS consent and a 4-year adjustment period will be allowed if a change in method increases taxable income).

- Exempts businesses with less than $25 million indexed in average gross receipts effective 2018 tax years from the uniform capitalization rule otherwise requiring certain costs of self-produced property to be included in inventory or be part of basis (a change in handling will be a change in accounting method).

- Allows businesses with long term contracts and less than $25 million indexed in average gross receipts to use the completed contract method for contracts entered into after December 31, 2017 in tax years ending after that date.

- Permits accrual basis businesses to generally defer the reporting of advance payments to the next year but prohibits income deferrals effective 2018 tax years in any event beyond the year when income is shown on applicable financial statements.

- Repeals effective 2018 the election to rollover realized capital gain within 60 days on the sale of publicly listed securities into common stock or partnership interests in specialized small business companies.

- Requires the inclusion in income of contributions to capital by governmental entities, customers or prospects after December 22, 2017 unless under an existing development plan.

- Allows state governors as of December 22, 2017 to designate certain low income areas as “qualified opportunity zones” allowing deferral of capital gains through reinvestments in corporations and partnerships (90 percent of assets must be in the zone) and gains on sales of such investments are made taxfree after ten years.

- Denies a deduction for costs of local lobbying after December 22, 2017 (other lobbying and political expenditures were previously nondeductible).

- Expands the denial of a deduction for payment of penalties on or after December 22, 2017 to include amounts paid at the direction of governmental entities or certain nongovernmental entities related to a violation or potential violation of any law but other than as restitution.

- Disallows a deduction for any settlement, payout or atollment agreement.

- Makes meals provided by employers to employees at or near an employer-operated eating facility subject to the 50 percent disallowance rule from 2018-2025 and nondeductible thereafter.

- Permits accrual basis businesses to generally defer the reporting of advance payments to the next year but prohibits income deferrals effective 2018 tax years in any event beyond the year when income is shown on applicable financial statements.

- Repeals the 9 percent deduction for income attributable

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• Eliminates the two-year net operating loss carryback except for farmers effective for 2018 tax years, creating an indefinite carryforward but allowing the NOL to be used only against 80 percent of subsequent year tentative taxable income.

• Requires research and development expenses including software that are incurred in post-2021 tax years to be amortized over five years (15 years if outside the United States) with continuing amortization in the event of abandonment.

• Removes computer equipment as “listed property” effective with 2018 acquisitions.

• Expands bonus depreciation to include used property effective for 2018 acquisitions.

• Limits the business interest deduction (excluding floor planning interest) beginning with 2018 tax years for businesses with a prior three-year average gross receipts of greater than $25 million (indexed) to an amount equal to the sum of business interest income plus 30 percent of adjusted taxable income from the business (without deductions for interest, net operating loss and for 2018-2021 depreciation, amortization and depletion) with an indefinite carry forward; the test is at the entity level but partners and S corporation shareholders can adjust to pick up added business interest paid personally (real property businesses can irrevocably opt out of the limitation by using ADS to depreciate real property with its new recovery period of 30 years for residential property and farming businesses can irrevocably opt out by using ADS to depreciate property with a recovery period of ten years or more).

• Expands Section 179 expensing effective 2018 tax years to $1 million of qualifying capital expenditures with a dollar for dollar reduction at $2.5 million of capital expenditures indexed beginning in 2019; eligible property is expanded to include tangible personal property in connection with the providing of lodging and to include replacement roofs, HVAC, alarm systems and security systems in nonresidential real property.

• Indexes for cost of living the $25,000 Section 179 deduction for SUVs 6001-14,000 pounds beginning in 2019.

• Expands bonus depreciation to include used property effective September 28, 2017 and raises the deduction to 100 percent for property placed in service September 28, 2017 through 2022 and 80, 60, 40 and 20 percent respectively for 2023-2026 before expiration.

• Increases allowable depreciation on luxury cars in 2018 to $10,000 for first year, $16,000 for second year, $9,600 for third year and $5,560 thereafter with future year acquisitions indexed for cost of living.

• Shortens the cost recovery period for original use farm machinery and equipment from seven to five years and permits double declining balance for 10-year or less property effective 2018 acquisitions.

• Creates a 15-year writeoff period for “qualified improvement property” placed in service after 2017 encompassing nonstructural improvements generally placed in service at least three years after the building itself.

• Eliminates the two-year net operating loss carryback (continued on Page 16)
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2018 years.

- Abolishes the corporate alternative minimum tax effective 2018 tax years with unused credits available to offset regular tax liability in part for 2018-2020 and the balance in 2021.

- Imposes a one-time tax where a U.S. corporation owns a foreign subsidiary, requiring each 10 percent shareholder to include in income a pro rata share of the subsidiary’s accumulated post-1986 earnings and profits using the higher E&P of November 2, 2017 or December 31, 2017; the tax is computed at 15½ percent to the extent of the shareholder’s share of cash and cash equivalents and 8 percent on the balance with installments equal to 8 percent of the liability for 2017-2021 tax years followed by 15 percent, 20 percent and 25 percent respectively in each of the three succeeding years (S corporations may defer until cessation of business, conversion to C status or sale of stock by the electing shareholder).

- Requires U.S. shareholders owning 10 percent or more of a foreign “controlled foreign corporation” to include a pro rata portion of that corporation’s global intangible low-taxed income (“GILTI”) unless otherwise already subject to U.S. taxation; GILTI is the net income of the CFC in excess of an assumed 10 percent base return on the adjusted basis of depreciable assets.

- Creates a new deduction (“Qualified Business Income Deduction”) for unincorporated businesses from 2018-2025 under which a non-corporate business owner can deduct against taxable income an amount equal to the lesser of 20 percent of business income earned in the U.S. (which excludes capital gains/losses, dividends and nonbusiness interest) determined by distributive shares excluding owner wages or guaranteed payments in the case of a flow through entity or 20 percent of tentative taxable income less net capital gain with joint filers phased out between $315,000 and $415,000 of taxable income and others phased out between $157,500 and $207,500 as to qualified business income from personal service activities (the phaseout start is indexed in 2019 and subsequent years for COLA); an additional limitation tied to employee wages (including elective deferrals) and qualified property at year-end applies when this range is reached (combined qualified business losses carryforward and reduce combined qualified business income in subsequent years).

- Requires that individuals with business losses greater than $250,000 ($500,000 on a joint return) for 2018-2025 after application of the passive loss rule add the excess to a net operating loss carryforward; the thresholds are indexed for cost of living in 2019 and subsequent years.

- Creates a 3-year holding period to obtain long term capital gain for partnership interests acquired after 2017 that are disproportionate to capital and are received for services from a business involved in raising capital for investing in specified assets.

- Repeals for 2018 and subsequent tax years the provision which terminated a partnership for tax purposes upon certain 50 percent changes in ownership.

- Expands for 2018 and subsequent years the existing rule effectively forcing a one-time application of Section 754 on admission of a partner where the partnership’s adjusted basis in property exceeds its fair market value by more than $250,000 to include situations where the transferee would be allocated a net loss in excess of $250,000 upon a hypothetical disposition of assets.

- Treats gains or losses on sales of partnership interests after November 26, 2017 as effectively connected with a U.S. business to the extent an asset sale would have been connected; the transferee of a partnership interest must withhold 10 percent on the sale unless the transferor certifies that it is not a foreign corporation or nonresident alien.

- Allows nonresident aliens to be current beneficiaries of an electing small business trust (ESBT) effective 2018.

- Creates favorable treatment for S corporations converting to C status within two years of December 21, 2017 by permitting a 6-year spread of any income caused by being forced to use an accrual method of accounting and by allowing the accumulated adjustments account to be returned taxfree based on the ratio of AAA to accumulated earnings and profits.

- Imposes a 21 percent tax on tax-exempt organizations effective 2018 tax years on compensation over $1 million paid to anyone who was among its five highest compensated employees for any year after 2016 (this includes payments by many universities to football and basketball coaches).

- Requires the separate computation of unrelated business taxable income effective for 2018 years when an exempt organization has multiple businesses and prohibits losses from one business to offset profits from another (grandfathering pre-2018 net operating losses).

Proposed Regulations under Code Section 6227 set forth that adjustments under the centralized partnership audit regime can be “pushed out” to the ultimate owners in the case of a multi-tier partnership; absent an affirmative election to continue the push out, tax liability will fall on such tier at its entity level.

In Barnhart Ranch Company v. Commissioner, 120 AFTR2d 2017-5614, the Fifth Circuit Court of Appeals agreed with the Tax Court that a cattle business was owned by a corporation and was not an agent for the underlying individuals.

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In Lender Management, LLC v. Commissioner, TC Memo 2017-246, the Tax Court found that a management company was engaged in carrying on a business where it provided direct management services to three other family companies, each of which held investments in a different class of assets.

In Wycoff v. Commissioner, TC Memo 2017-203, the Tax Court rejected a deduction for huge management fees paid by chemical operative companies to a related company as part of a tax avoidance scheme.

In VHC, Inc. v. Commissioner, TC Memo 2017-220, the Tax Court denied a business bad debt deduction for millions of dollars advanced, finding that there was no intention to force repayment; the arrangement continued even after the company first claimed a bad debt deduction.

In Messina v. Commissioner, TC Memo 2017-213, the Tax Court determined that S corporation shareholders who lent money to a qualified subchapter S subsidiary (QSUB) did not get basis in these loans as they were not made directly to the parent.

In Feinberg v. Commissioner, TC Memo 2017-211, the Tax Court refused to allow a Colorado licensed marijuana seller to deduct cost of goods sold based on industry averages where the seller had some records and they showed a lesser percentage in relation to gross receipts.

In Huzella v. Commissioner, TC Memo 2017-210, the Tax Court stated that a coin dealer could estimate his basis in certain inventory but only in appropriate circumstances when there is a foundation upon which an estimate may be made.

In In Re: Health Diagnostic Laboratory, Inc., 120 AFTR2d 2017-6736, a Virginia Bankruptcy Court went against the weight of authority and determined that S status is not an asset of a corporation and, as such, the conversion to C status could not be challenged by the bankruptcy trustee as a fraudulent conveyance.

In Welch v. Commissioner, TC Memo 2017-229, the Tax Court found that a ranch with cattle, hay and horse operations was operated with the intention of making a profit notwithstanding reported losses of almost $10 million over a three-year period, the Court noting that a taxpayer’s “suffering years of multimillion-dollar losses beyond an activity’s startup phase does not bar a profit motive” but warning that future losses must be “reined in” as it cannot be considered a for-profit activity ad infinitum.

Federal District Court found two shareholder-officers in a law firm to be personally liable for unpaid payroll taxes where the third shareholder-employee had embezzled from the Firm; the two individuals found liable had been aware of the unpaid taxes for several years before they discovered the theft but allowed other bills to be paid.

In Chief Counsel Advice 201741018, IRS objected to the allocation of partnership losses to those partners who had no obligation to restore any negative capital account in the event of liquidation.

In Chief Counsel Advice 201748008, IRS set forth its position that amounts paid to the Government as disgorgement for violating a federal securities law are penalties and are therefore nondeductible.

PROCEDURE

Public Law 115-97, the Tax Cuts and Jobs Act:
• Expands the $500 preparer penalty per return to include failure to exercise due diligence in claiming head of household status effective 2018 tax years.
• Extends the time period to two years for third party claims to recover wrongful levies by IRS effective for seizures after March 22, 2017.

In United States v. Coinbase, Inc., 120 AFTR2d 2017-5538, a California Federal District Court allowed enforcement of a summons which sought to obtain information on “virtual currency” trading; the Court noted that IRS showed that it may obtain information not in its possession and relevant to a legitimate purpose through enforcement and that it had satisfied all required administrative steps.

In Auto Pride Collision East, Inc. v. United States, 120 AFTR2d 2017-5578, a Michigan Federal District Court determined that it had no jurisdiction to hear a challenge to an IRS penalty without payment of the penalty amount even if the principal liability, which was unchallenged, was paid; the Court indicated a different result would be reached where a penalty does not constitute an independent issue and the amount of principal itself is being challenged.

In Banister v. United States, 120 AFTR2d 2017-5546, the Ninth Circuit Court of Appeals agreed with a Nevada Federal District Court that a taxpayer representative can be liable for the civil penalty of aiding and abetting an understatement of tax liability through the preparation of documents in connection with a CDP hearing.

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In United States v. Bussell, 120 AFTR2d 2017-5444, the Ninth Circuit Court of Appeals agreed with a California Federal District Court that the civil penalty for willful FBAR violations does not violate the “Excessive Fines Clause” of the US Constitution.

In Pearson v. Commissioner, 149 TC No. 20, the Tax Court found a petition to have been filed late when an attorney’s staff got postage and a certified mail label through Stamps.com on the 89th day and testified that the petition was mailed on the same day but the post office tracking commenced two days later.

In Fidelity and Deposit Company of Maryland v. Ohio Department of Transportation, 120 AFTR2d 2017-5528, an Ohio Federal District Court determined that IRS could not levy on payments to a contractor working on a road project as, under Ohio law, the surety bond company had the only interest in the funds until completion of the project.

In Lessard v. Commissioner, TC Summary Opinion 2017-95, the Tax Court denied innocent spouse relief through separation of liability to a wife married and divorced in one year who was aware of retirement plan income but claimed she did not review the return to see that it was unreported; she also failed to get equitable relief in the absence of hardship.

In In Re Petersen, 120 AFTR2d 2017-6368, a California Bankruptcy Court, seemingly disregarding precedent in the Ninth Circuit, took the minority position that tax liability on late filed returns can be dischargeable if requisite time periods are satisfied and no Substitute for Return (SFR) was issued previously.

In Ivy v. Commissioner, 120 AFTR2d 2017-________, the DC Circuit Court of Appeals agreed with the District Court for DC that IRS has the right to offset tax refunds for delinquent student debt.

• Suspends the 10 percent adjusted gross income floor on casualty losses in the case of the California wildfire disaster and permits these losses to be claimed by non-itemizers but sets forth a $500 minimum.

In McKenny v. United States, 121 AFTR2d 2018-314, a Florida District Court determined that proceeds from a lawsuit intended to make a client of a CPA firm whole for its negligence were taxfree.

In Sun v. Commissioner, 121 AFTR2d 2018-356, the Fifth Circuit Court of Appeals agreed with the Tax Court that gross income includes misappropriated funds, the Court noting that it is no longer a loan when entrusted money is not used for the agreed purpose notwithstanding an intent to repay; however, portions of the loan were made to the individual’s controlled corporation and they became constructive dividends upon personal misappropriation.

In Kiselev v. Commissioner, TC Summary Opinion 2018-2, the Tax Court ruled that a Russian citizen working as a graduate research assistant at Purdue University could exclude $22,000 from gross income pursuant to the US-Russia tax treaty which exempted grants from income; the Court determined that “grant” was to be defined broadly under the treaty and not necessarily by applying US tax law.

In Spireas v. Commissioner, 121 AFTR2d 2018-________, the Third Circuit Court of Appeals agreed with the Tax Court that royalties paid to the inventor on a technology license agreement were ordinary income and not capital gain inasmuch as the inventor had not transferred all of his rights away – as to the technology in general and as to the particular product which was not even in existence at the time of the alleged transfer.

In Sugar Land Ranch Development, LLC v. Commissioner, TC Memo 2018-21, the Tax Court determined that the intention of property owners changed from development to investment four years prior to a bulk sale, giving capital gain to the seller.

In CRI-Leslie, LLC v. Commissioner, 121 AFTR2d 2018-794, the Eleventh Circuit Court of Appeals agreed with the Tax Court that a hotel owner who retained an advance deposit when a sale of the property did not go through had to report ordinary income rather than capital gain on the retained deposit, the Court accepting the distinction between a Section 1231 asset and a capital asset under which a retained deposit would have given rise to capital gain.

In Keefe v. Commissioner, TC Memo 2018-28, the Tax Court

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found that an individual who spent years renovating a property purportedly for rental but never actually having a tenant was not in the business of renting and could only claim a capital loss deduction; in *Levitz v. Commissioner*, TC Summary Opinion 2018-10, the Tax Court concluded that the acquisition of a single piece of property for the purpose of resale is by itself not sufficient to cause an individual to be in the business of real property development and gave capital loss treatment to the individual.

In *Conner v. Commissioner*, TC Memo 2018-6, the Tax Court determined that losses on undeveloped lakefront property held by a couple gave rise to a $2 million capital loss rather than an ordinary loss as the land was held for investment purposes notwithstanding that the taxpayer was a developer.

In *Franco v. Commissioner*, TC Summary Opinion 2018-9, the Tax Court found that a licensed architect spent in excess of 1,100 hours managing two rental properties (one of them a “fourplex”) making him a “real estate professional” as he spent less than 700 hours providing architectural services; the Court relied not only on his testimony but also on a contemporaneous activity log as well as email exchanges and receipts; in *Pourmirzaie v. Commissioner*, TC Memo 2018-26, the Tax Court rejected calendars provided by the owner of four rental properties who was attempting to show that she performed more than 750 hours of services related to the properties, the Court noting that the calendar was not kept contemporaneously and was inconsistent with her testimony.

In *Tolin v. Commissioner*, TC Memo 2018-29, an attorney was able to show material participation in a horse breeding activity through phone records; the Court noted that he was an “inconsistently phoning micromanager.”

In *In Re: Nora*, 121 AFTR2d 2018-900, a Minnesota Bankruptcy Court denied a casualty loss where a lawyer “lost” business records in a foreclosure on her residence.

In *Platts v. Commissioner*, TC Memo 2018-31, the Tax Court denied a deduction of an appraised value of a building to a charity both because it should have been valued for building parts and for failure to get a timely qualified appraisal.

In *Colbert v. Commissioner*, TC Summary Opinion 2018-7, the Tax Court allowed a security guard employed to drive and protect celebrities to deduct the cost of a pistol as he was required to carry a concealed weapon while on duty but disallowed most other employee business expenses including clothing suitable for street wear, a gym membership to look good for celebrities and office in home expenses.

In *Jahangirian v. Commissioner*, TC Summary Opinion 2018-14, the Tax Court determined that an individual whose family was in California but who worked continuously in multiple jobs in Oklahoma, visiting his family three times during the calendar year in issue, had his tax home in Oklahoma as his plans for working there were indefinite; the Court disallowed almost $45,000 in expenses related to his home in Oklahoma.

The Financial Crimes Enforcement Network confirmed that the FBAR extension from April 15 until October 15 is automatic and no extension form need be filed.

In *Notice 2018-71*, IRS warned of the consequences for failure to report virtual currency transactions including criminal charges of tax evasion and/or filing a false tax return.

In *Chief Counsel Advice 201810007*, IRS determined that the value of tax preparation services provided for the benefit of employees working outside the United States is includable in gross income and is not a working condition fringe benefit, one which (historically at least) would be deductible as a business expense if employee-paid.

**RETIREMENT PLANS**

*PL 115-123, the Bipartisan Budget Act of 2018:*

- Directs IRS to issue regulations to be effective in 2019 deleting the waiting period for new contributions after a hardship distribution.
- Permits penalty-free replacements of amounts improperly levied on retirement plans or IRAs by IRS effective 2018.
- Permits penalty-free withdrawals of up to $100,000 from retirement plans and IRAs through 2018 by residents within the California wildfire disaster area, allowing the income to be reported over three years, and permits re-contributions within three years to avoid the reporting of income (also permitting re-contributions by July 30, 2018 of withdrawals to purchase or improve a home in the disaster area); the maximum borrowing amount from plans permitting loans is increased to the lesser of 100 percent of the participant’s vested balance or $100,000.

In *Kirkpatrick v. Commissioner*, TC Memo 2018-20, the Tax Court agreed with IRS that a physician was subject to tax on a $100,000 withdrawal from an IRA which he was ordered to transfer to his wife pursuant to a divorce; however, he failed to accomplish a direct transfer from the IRA as required.

In *In Re: Kees*, 121 AFTR2d 2018-______, an Oregon Bankruptcy Court determined that an Individual Retirement Account transferred from a spouse’s IRA as part of a divorce

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settled is an exempt asset in bankruptcy (unlike one transferred from a decedent).

In Shank v. Commissioner, TC Memo 2018-33, the Tax Court noted that the Cohan rule is applicable to estimating basis in appropriate circumstances and allowed an individual to estimate his basis in an IRA where he was not eligible for deductible contributions for a number of years due to high adjusted gross income.

BUSINESS

Public Law 115-12, the Federal Register Printing Savings Act of 2017, delays until 2022 the “Cadillac” tax on employers for excess employer-sponsored health insurance coverage and delays until 2020 the excise tax on certain medical devices.

Treasury Regulations under Code Section 199A will specifically exclude architects and engineers as service businesses based on Congressional intent, according to Donna Trier, Deputy Assistant Secretary for Tax Policy.

Proposed Regulations under Code Section 706 delineate how basis adjustments are to be made following an audit under the new centralized examination procedures.

In RJ Channels, Inc. v. Commissioner, TC Memo 2018-27, the Tax Court required a corporation to include in income over $268,000 in fees related to tax services where the fees were returnable if favorable results were not achieved.

In Sensenig v. Commissioner, 121 AFTR2d 2018-364, the Third Circuit Court of Appeals agreed with the Tax Court that advances to a company were capital contributions rather than loans as they were both undocumented and beyond amounts that a disinterested investor would lend based upon the financial circumstances; in Burke v. Commissioner, TC Memo 2018-18, the Tax Court agreed with IRS that over $11 million put into a business in Belize were capital contributions rather than loans; the Court balancing 11 factors and characterizing the inbound funds as a contribution notwithstanding that financing was obtainable from other lenders.

In Wells v. Commissioner, TC Memo 2018-11, the Tax Court determined that about $250,000 paid by the owner of grapevines for underground piping, road improvements and similar represented capital expenditures and could not be expensed.

In Bass v. Commissioner, TC Memo 2018-19, the Tax Court denied all business expenses claimed by a part time landscaping and janitorial service provider, not only those requiring contemporaneous records but also all other expenses, finding that there was little documentary evidence and none of probative value.

In Thompson v. Commissioner, TC Summary Opinion 2018-11, the Tax Court refused to allow vehicle costs of a mountain researcher who had no contemporaneous records but rather estimated the mileage to three destinations and multiplied that number by the quantity of trips he thought he had taken to each destination.

In Norgaard v. United States, 121 AFTR2d 2018-880, a Massachusetts Federal District Court denied a business bad debt deduction on an individual guarantor’s payment of a corporate SBA loan used to expand the business.

In Christopher C.L. Ng MD, Inc. APC v. Commissioner, TC Memo 2018-14, the Tax Court completely denied a deduction where a C corporation deducted 100 percent of home mortgage payments as rent for use of a portion of the home; the doctor did not report any reciprocal rental income on his personal return and the Court declined to make any sort of estimate.

In Transupport, Inc. v. Commissioner, 121 AFTR2d 2018-788, the First Circuit Court of Appeals agreed with the Tax Court that amounts paid by a C corporation to the owner’s three sons ($575,000, $675,000 and $720,000) in each of three consecutive years were unreasonably high in light of the routine work done by the sons.

In Argosy Technologies, LLC v. Commissioner, TC Memo 2018-35, the Tax Court stated that a husband-wife LLC could not argue that it had a single owner to avoid the penalty on late filing of a partnership return where it had filed partnership returns in the past.

In Bennett v. Bascom, 121 AFTR2d 2018-______, a Kentucky Federal District Court determined that IRS had a valid tax lien as to an estate’s 40 percent share of proceeds from the sale of assets in two limited partnerships, finding based on notes receivable on the books that disproportionate payments to the decedent were loans not reducing the decedent’s interest rather than distributions.

In Ford v. Commissioner, TC Memo 2018-8, the Tax Court determined that an heiress, whose few business records were commingled with her personal accounts, was not running a weekend music venue with the intention of making a profit.

In Davis v. United States, 121 AFTR2d 2018-915, a Colorado Federal District Court found a coowner of a business personally responsible for unpaid payroll taxes notwithstanding that

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the other owner had primary responsibility for the financial affairs of the company and that the other owner testified that she exercised “total” control; the Court noted he had signing authority although he was in the field and had used his authority to direct a downpayment on a sports car.

In Field Advice Memorandum 20180101F, IRS allowed a grocery store to deduct the future costs of fuel reward card redemptions from gross income in the year that the rewards were earned inasmuch as they could be redeemed for gas with no contingency on the future purchase of gas, distinguishing this program from those which offer only discounts in which case no immediate deduction is allowable.

In Letter Ruling 201804001, IRS accepted a corporation’s S status from inception after multiple corrective actions due to failure to get all signatures on the election, issuing a second class of stock and making disproportionate distributions.

In Chief Counsel Advice 201808016, IRS stated that an employer may offset self-employment tax paid by its workers against its liability for employees’ share of social security where the workers were found to be employees rather than an independent contractors.

PROCEDURE

PL 115-123, the Bipartisan Budget Act of 2018:

• Directs IRS to create a Form 1040SR for use in 2019 and subsequent returns for those over 65 whose income is limited to social security, interest and dividends, retirement distributions, annuities and capital gains/losses.
• Forbids IRS from increasing user fees on installment agreements after February 5, 2018 and requires that IRS not charge the fee to lower income individuals who do direct debit and to return the fee on successful completion if the low income individual is unable to use direct debit.

In United States v. Askins & Miller Orthopaedics, PA, 121 AFTR2d 2018-427, a Florida Federal District Court declined to give IRS an injunction requiring compliance with employment tax obligations; in United States v. Best Rate Tree & Landscaping, Inc., 121 AFTR2d 2018-878, a North Carolina Federal District Court granted an injunction under similar facts.

In Marinello v. United States, 121 AFTR2d 2018-1053, the US Supreme Court by a 7 to 2 vote reversed a decision of the Second Circuit Court of Appeals affirming the conviction by a New York Federal District Court jury of obstructing or impeding administration of the Internal Revenue laws, the Court holding that a conviction could not be sustained for failure to keep records and that this ‘omnibus’ statute applies only to conduct after notification of an audit or other targeted administrative action.

In Whistleblower 23711-15W v. Commissioner, TC Memo 2018-34, the Tax Court struck down an attorney’s claim of a whistleblower award for showing tax evasion using offshore entities, finding that IRS did not use the information provided because it was inadmissible due to attorney-client privilege.

In Huene v. United States, 121 AFTR2d 2018-775, a California Federal District Court dismissed an action against an IRS Program Manager for failing to abate a late deposit penalty caused when the owner’s son died in a plane crash and no one knew the accessing password in time for the next deposit, the Court stating that the decision to leave the penalty in place, later reversed, does not amount to “cruel and unusual punishment” in violation of the Eighth Amendment.

In Ankerberg v. Commissioner, TC Memo 2018-1, the Tax Court sustained the imposition of a civil fraud penalty against a CPA who underreported gross receipts by $110,000 over a three year period and overstated expenses by $67,000 during the same years; the CPA blamed his errors on bad eyesight although he continued to prepare returns for clients and never stopped driving a car.

In Cash v. United States, 121 AFTR2d 2018-430, the Third Circuit Court of Appeals reversed a Pennsylvania Federal District Court and stated that a claim for refund of the Shared Responsibility Penalty belongs on Form 843 rather than Form 1040X as a penalty rather than a tax is involved; in In Re: Chesteen, 121 AFTR2d 2018-741, a Louisiana Bankruptcy Court agreed that the individual mandate under the Affordable Care Act is a penalty and not a tax in the context of priories in a bankruptcy proceeding.

In United States v. Schmidt, 121 AFTR2d 2018-714, a Washington Federal District Court determined that a conveyance of property by a tax delinquent in order to pay back a loan was valid and could not be set aside as a fraudulent conveyance as the transfer was for purpose of resolving a dispute and not for avoidance of tax payments.

In Montana v. The Real Property Located at 6350 West Montana Highway, 121 AFTR2d 2018________, a Montana Federal District Court determined that an earlier federal tax lien gave the United States priority over Montana which sought forfeiture of property related to production and manufacture of marijuana.
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In United States v. Poff, 121 AFTR2d 2018-________, the Ninth Circuit Court of Appeals agreed with a Washington Federal District Court that once veteran disability benefits are banked they can be seized in an IRS levy (in this case on an inmate trust account); in Maehr v. Commissioner, 121 AFTR2d 2018-________, a Colorado Federal District Court reached the same result.

In Bishop v. Commissioner, TC Summary Opinion 2018-1, the Tax Court gave innocent spouse relief to a divorced individual whose wife had withdrawn retirement funds into a joint account; the Court noted that he should have known of the distribution but believed that he did not have actual knowledge.

In Minton v. Commissioner, TC Memo 2018-15, the Tax Court gave equitable relief to the former wife as to certain joint liability with her then husband, convinced by her testimony that she believed the taxes would be paid out of proceeds from a “big contract” that never occurred.

In Heedram v. Commissioner, TC Memo 2018-25, the Tax Court gave equitable innocent spouse relief to a divorced husband, finding that the factor of hardship was neutral despite the fact that he sent $400 monthly to his family in Jamaica.

In Internal Revenue Service v. Davis, 121 AFTR2d 2018-________, a New Jersey Federal District Court agreed with the weight of authority that a tax debt may not be discharged in bankruptcy after a Substitute for Return (SFR) has been filed by IRS, citing that returns filed after assessment are not “returns” for discharge purposes; in In Re: Ward, 121 AFTR2d 2018-________, a Florida Bankruptcy Court with no evidence other than the testimony of the widow of a CPA, determined that an individual tax return was not filed prior to the filing of the bankruptcy case not permitting discharge of the liability in bankruptcy.

In Notice 2018-1, IRS set forth procedures related to revocation or denial of passports, indicating that an individual denied a passport has no administrative appeal rights beyond the contact person but may file suit in either Tax Court or Federal District Court.

In News Release 2018-52, IRS announced that it will close the Offshore Voluntary Disclosure Program (OVDP) on September 28, 2018 but will continue the Streamlined Filing Compliance Procedures thereafter for those unaware of their obligations.

The IRS Manual was revised to indicate that taxpayer representatives will now be asked for their social security number and date of birth in addition to their CAF number for verification of identity.