TAX TALK

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• **Beverly L. Winstead,** ***Chair*** •

• **Alexander Bushel,** ***Editor*** •

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From the Chair

By: Beverly L. Winstead

Dear Tax Section Members:

At the start of this new term, I shared with you three priorities for our illustrious section. They are: (1) Diversity and Inclusion; (2) Resource Creation and Management; and (3) Mentoring. Here's how we're doing so far with each priority.

Diversity and Inclusion

We now have a Diversity and Inclusion Committee within the Council to promote diversity and inclusion within our membership and leadership. Led by Sean Elavia, this committee is tasked in the short term with obtaining demographic information about Section members; identifying underrepresented lawyers within the Section; partnering with local law schools to introduce more prospective lawyers to the tax field and our section; and creating an action plan to increase diversity within the section. We're excited about what our Committee will produce for our Section as we intentionally seek to make our Section more representative of the legal field in general and better able to address the diverse needs of our clients.

Thank you for showing up in November to our Tax Networking Night (TNN), a mixer for tax professionals held this year at the Prime Rib restaurant. Because you showed up and invited your friends within the tax field—despite the horrible weather—this TNN was very well attended and included tax professionals of varying backgrounds. It's evidence that we are already making strides to create a more inclusive and welcoming environment. You can watch a video from the successful evening at msba.org/TaxNetworkingVideo.

I urge our Section members to continue to prioritize diversity and inclusion not just within the Section, but in your daily lives and the tax field as a whole. In the words of Anthon St. Maarten, "We are not supposed to all be the same, feel the same, think the same, and believe the same. The key to continued expansion of our universe lies in diversity…" With that being said, here are just a few ways we can continue to make diversity and inclusion a priority:

1) Faithfully attend our upcoming events and invite colleagues with diverse backgrounds to join us at our upcoming joint meeting (TBD), the Shulbank Dinner on May 22, 2019 and our annual meeting in Ocean City on June 14, 2019.

2) If you are planning a program for our Section specifically

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Keep up to date by visiting the Taxation Section's webpage:
msba.org/for-members/sections/taxation

Handling Crypto Safely

By Victoria Kelly, Esq.[1]

As the IRS ramps up efforts to enforce compliance with rules governing cryptocurrency transactions, crypto has become taxpayer kryptonite. You can minimize the taxpayer's exposure with appropriate documentation and tax return preparation.

You don't have to be a data scientist to know that cryptocurrency is the new big thing. *Business Insider* reported in January 2018 that the overall value of the global cryptocurrency market hit an all time high of more than $700 billion[2]. While that number has since dropped to a more modest $210 billion at the time of this writing, according to data tracked by Coin Market Cap[3], cryptocurrency is still a worldwide economic force.

So what exactly is cryptocurrency? For tax purposes, the IRS defines it as a "digital representation of value that functions as a medium of exchange", but has no status as legal tender.

Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" virtual currency. Bitcoin is one example of a convertible virtual currency. Bitcoin can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.[4]

Bitcoin[5] and other virtual currency is valued using blockchain technology, "an open, distributed ledger that can record transactions between two parties efficiently and in a verifiable and permanent way".[6] Although Wikipedia references iterations of digital currency dating back to 1983, Bitcoin, the one that launched the digital currency boom, is said to have been developed in 2009 by Satoshi Nakamoto.[7]

The IRS' first and only substantive pronouncement on the tax treatment of virtual currency was IRS Notice 2014-21, where the IRS made it clear that it regards virtual currency as property, not currency.[8] As property, virtual currency's basis is its fair market value in U.S. dollars on date of receipt.[9] Conversion of virtual currency into dollars may generate capital gains and losses under IRC Sections 1221 and 1222.[10] Since it's property, not currency, conversion of virtual currency into dollars will not generate a foreign exchange gain or loss under IRC Section 988.[11] That said, if virtual currency is exchanged for an employee's services, it's subject to withholding,[12] and if exchanged for an independent contractor's services, it's subject to self-employment tax. [13]Taxpayers who "mine" virtual currency by using their own computers to "validate Bitcoin transactions and maintain the public Bitcoin transaction ledger" receive virtual coins in return. The value of these coins is reported as worldwide income. [14]

Classifying virtual currency as property rather than true currency means that when you buy a cappuccino with Bitcoin,

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1 Principal of Victoria Eve Kelly, LLC, based in Bethesda, handling tax controversies, advice and preparation, and estate planning.

2 Will Martin, *The global cryptocurrency market hit a new record high above $700 billion*, (Jan. 3, 2018, 5:57 AM), Business Insider, https://nordic.businessinsider.com/bitcoin-price-global-cryptocurrency-market-capitalisation-january-3-2018-1/ , accessed 10/30/18

3 CoinMarketCap, Global Charts, *Total Capitalization*, https://coinmarketcap.com/charts/, accessed 10/30/18

4 IRS Notice 2014-21, IRB 2014-16 (Rev. April 14, 2014), available at https://www.irs.gov/pub/irs-drop/n-14-21.pdf, accessed 10/30/18 [hereinafter IRS Notice 2014-21].

5 "Bitcoin" is capitalized in this writing, though the lower case may appear elsewhere.

6 Marco Iansiti & Karim R. Lakhani, *The Truth About Blockchain*, Harvard Business Review, https://hbr.org/2017/01/the-truth-about-blockchain, accessed 10/30/18, referencing the original article as appearing in the January - February 2017 issue of Harvard Business Review, pp.118–127.

7 Cryptocurrrency, (last edited October 29, 2018, at 08:36 (UTC)), https://en.wikipedia.org/wiki/Cryptocurrency, accessed 10/30/18. There's some question about Mr. Nakamoto's true identity. Wikipedia describes him as "pseudonymous", and efforts to track him down have been unsuccessful. See Sarah-Jane Morin, *Tax Aspects of Cryptocurrency*, The Practical Lawyer, February 2018, at 21, and citations therein, available at https://www.morganlewis.com/-/media/files/publication/outside-publication/article/2018/practical-lawyer-tax-aspects-of-cryptocurrency.ashx?la=en&hash=964857DDC610DFC5C0C8A2426D77ACA4E935ADD7, accessed 10/30/18.

8 IRS Notice 2014-21, p. 2, Q&A 1.

9 IRS Notice 2014-21, p. 3, Q&A 4.

10 See IRS Notice 2014-21, pp. 3-4. Q&A 6 and 7.

11 IRS Notice 2014-21, p. 2, Q&A 2.

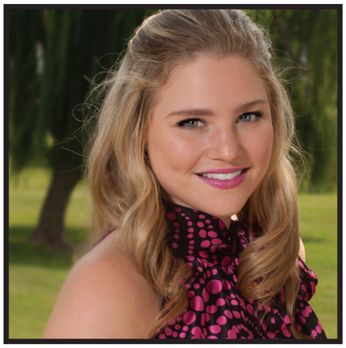
12 IRS Notice 2014-21, pp. 4-5, Q&A 11.

13 IRS Notice 2014-21, p. 4, Q&A 10.

14 IRS Notice 2014-21, p. 4, Q&A 8.

Twenty Years of LITC: the Maryland Perspective

By: Hayley Hassan [1]



This past July, the Low Income Taxpayer Clinic (LITC) program celebrated its twentieth anniversary. On July 22, 1998, Congress enacted the LITC program as part of the IRS Restructuring and Reform Act of 1998.[2] Since its creation, Low Income Taxpayer Clinics have represented the most underserved members of the community while also providing invaluable experience for student and volunteer attorneys. As of today, 134 Low Income Taxpayer Clinics exist in 48 states and the District of Columbia.[3] Between 2012 and 2016, Low Income Taxpayer Clinics represented more than 52,400 low income taxpayers with federal tax controversies and assisted more than 450,000 low income taxpayers in understanding their rights and responsibilities under the tax code. [4]

Section 7526(c)(4) of the I.R.C. sets for the criteria used in granting funding for Low Income Taxpayer Clinics. Consideration is given to:

a. The numbers of taxpayers who will be served by the clinic, including the number of taxpayers in the geographical area for whom English is a second language;
b. The existence of other low-income taxpayer clinics serving the same population;
c. The quality of the program offered by the low-income taxpayer clinic, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing service to low-income taxpayers; and
d. Alternative funding sources available to the clinic, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the clinic.[5]

LITCs are operated by a variety of nonprofit organizations, many of which are academic institutions.[6] In 2007, when the LITC program approached its tenth anniversary, Nancy S. Abramowitz wrote about the educational and public service goals that Low Income Taxpayer Clinics serve.[7] In discussing academic LITCs in particular, Professor Abramowitz emphasized the importance of the goals of clinical legal education, "to train the students to think [and] produce trade specialists in legal services, [but also to foster] sensitivity to the broader issues of justice." [8]

In my experience as a student attorney at the University of Baltimore Law School Low Income Taxpayer Clinic, I have been trained to effectively communicate with a variety of taxpayers, and I have witnessed the importance of sensitivity firsthand. I have found an incredible feeling of satisfaction in helping those who truly need it, and I have also gained a newfound confidence in myself. I take enormous pride in representing low income taxpayers. The majority of LITC clients are often overlooked, ignored and left to figure out their complicated tax matters on their own. In addition to the stress of their tax matters, they often face other highly stressful situations, such as homelessness, unemployment, illness, disability and more. The opportunity to represent my clients thoroughly, respectfully, and vigorously is an experience I value greatly. Most

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1 Hayley Hassan, J.D., University of Baltimore, expected 2019; University of Baltimore Low Income Taxpayer Clinic Student Attorney, fall 2018. Ms. Hassan is the student liaison to the MSBA Tax Section Council. Ms. Hassan is also the Executive Board Business Editor for the *University of Baltimore Law Review*, President of the Business and Tax Law Association, Vice-President of the Federalist Society and a recipient of the Royal Graham Shannonhouse III award.
I would like to thank Professor John B. Snyder, III and Professor Elena A. Fowlkes for their input in the preparation of this article.

2 Taxpayer Advocate Service, *Low Income Taxpayer Clinics Celebrate 20 Years of Taxpayer Service*, taxpayeradvocate.irs.gov (July 18, 2018), https://taxpayeradvocate.irs.gov/news/litc-20-years?history

3 Id.

4 Id.

5 I.R.C. § 7526(c)(4).

6 Publication 5066 (Rev. 02-2018) Catalog Number 61675T Department of the Treasury Internal Revenue Service, www.irs.gov.

7 Nancy Abramowitz, "Thinking About Conflicting Gravitational Pulls LITCS: The Academy and the IRS," 56 Am. U. L. Rev. 1127, 1129 (June, 2007).

8 Abramowitz, 56 Am. U. L. Rev. 1127, 1134 (June, 2007); *See Also* Robert MacCrate, Yesterday Today and Tomorrow? Building a Continuum of Legal Education and Professional Development, 10 Clinical L. Rev. 805, 823 (1994).

The Importance of Filing a State Report of Federal Adjustment

By Elena A. Fowlkes, Esq., LL.M.[1]

The last thing a taxpayer wants to do after being audited and assessed an increase in federal taxable income is contact his state taxing authority and report the increase so that the state tax can be adjusted as well. In fact, many taxpayers operate on the assumption that the state will receive any pertinent information directly from the IRS, and that there is no need to volunteer this information. This assumption would be partly correct—state taxing authorities do receive adjustment information directly from the IRS, and because state taxable income is calculated based on the federal, a summary assessment will be made if no adjustment report is received. There are, however, significant consequences to not voluntarily filing such a report—under the 2005 bankruptcy law amendments, any tax debt which was not timely reported as required will be barred from discharge in any future bankruptcy. This, along with the effect of the failure to file on the assessment statute of limitations, should serve as an incentive to file any required report, especially in light of the fact that the increase will be reported by the IRS anyway.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") added language to the existing bankruptcy law that broadened the requirements that must be met in order to qualify for a discharge of tax debts.[2] Prior to the 2005 amendment, assessments resulting from a Substitute for Return (SFR) were excluded from bankruptcy discharge, even if a taxpayer subsequently filed an original return that was accepted by the IRS.[3] BAPCPA added language that broadened this exclusion, requiring that in addition to having filed all necessary returns, all *equivalent reports or notices* must be timely filed as well, or the taxpayer would face the same bar to bankruptcy discharge as though a return had not been filed.[4]

In Maryland, any time the Internal Revenue Service issues a final determination increasing federal taxable income, the taxpayer is required to submit a report of that increase to the Comptroller within 90 days[5]. Such a report is required to include a statement of the increase, a copy of any audit materials and, if the taxpayer disputes the increase, an explanation of why the increase is being disputed.[6] Courts have held this report to fall squarely within the realm of an "equivalent report or notice" as required by BAPCPA, rendering the failure to timely file such a report a total bar to eventual bankruptcy relief.

Two arguments that are often made in cases which involve the nondischargeability of tax debt due to the failure to file a §13-409(b) report center around whether this report bears sufficient similarity to a tax return to be an "equivalent report or notice" and whether the taxpayer must himself furnish the report. Courts have consistently held that a §13-409(b) report is an equivalent report or notice, which must be timely furnished by the taxpayer.

In *Maryland v. Ciotti*, the taxpayer argued that since the report required under Md. Tax-General §13-409(b) need not be submitted under penalty of perjury or even signed, it was not equivalent to a return, and thus could not amount to an equivalent report or notice.[7] The court in *Ciotti* was not swayed, however, stating that despite the lack of a signature requirement that the report required is equivalent in function to a return, even if it is not equivalent in form.[8] *Ciotti* also raised the issue of whether

1 Assistant Director of the University of Baltimore's Low Income Taxpayer Clinic

2 The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Pub.L. 109–8, 119 Stat. 23, enacted April 20, 2005.

3 11 U.S.C. 503(a)(1)(B). See also Chief Counsel Memorandum 2010-16. Note that there is an exception for taxpayers who utilize the safe-harbor rules of §6020(a), which are beyond the scope of this article.

4 BAPCPA provides that a discharge under Chapter 7 "does not discharge an individual debtor from any debt — (1) for a tax . . . (B) with respect to which a return *or equivalent report or notice*, (emphasis added) if required — (i) was not filed or given late and within 2 years of filing the bankruptcy, or was fraudulent or evasive." BAPCPA at §523(a)

5 Md. Tax-General §13-409(b). *See also* Md. Code Regs. 03.04.02.1.1.

6 Md. Tax-General §13-409(b).

7 *Maryland v. Ciotti*, 421 B.R. 202 (D. Md. 2009), aff'd, 638 F.3d 276, 2011 U.S. App. LEXIS 4492 (4th Cir. Md. 2011).

8 The 2005 amendments to the Bankruptcy Code, contained in BAPCPA, include a paragraph which states that, "for the purpose of this subsection, the term "return"

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Partnership Audit Rules – Maryland Should Adopt the Model Act

By: Walter R. Calvert [1]

While the IRS has adopted regulations that provide procedural rules for the audit of partnerships for federal income tax purposes, those procedural rule generally do not apply for state income tax purposes. For state income tax purposes, states typically conform to federal substantive tax law, but that conformity generally does not carry over to state tax procedures.

A group of 'interested parties" working with the Multistate Tax Commission ("MTC") has prepared a draft model statute (the "Model Act") that would fill this gap. The Model Act provides unified procedural rules for state tax purposes that apply when federal partnership adjustments result in adjustments at the state level. Maryland should join with other interested parties at the local level in adopting the Model Act.

As state income taxes generally are based on federal income tax, IRS adjustments to items of federal taxable income, gain, loss and deduction resulting from an audit of a partnership generally flow down to state tax returns for all states imposing an individual or corporate income tax. At the state level the methods to report such federal adjustments varies widely.

While the MTC adopted a model act in 2003 providing rules for states on how to report federal audit adjustments, that act has not been widely adopted and no state has adopted it in its entirety. The new Model Act, addressing only partnership audit adjustments, is needed to update the existing procedural rules at the state level to better conform to the federal procedures and at the same time create uniformity as to such procedures among the states for the benefit of both taxpayers and tax administrators.

[1] Walter R. Calvert is a partner at Venable LLP's Baltimore office. His practice focuses on state and local taxation, tax credits, opportunity zone funds, public finance, project finance, and exempt organizations.

Like the federal rules, key components of the Model Act address who is responsible for payment of resulting tax liability (the partnership or its partners), what date triggers the running of time periods by which the partnership and/or the partners must act to contest or pay that tax liability, and what are those time periods.

The general or default rule as to who pays under the Model Act differs from the federal rule: The federal rule anticipates payment at the partnership level with an option to elect pushing the liability out to the partners. See Treasury Regulation Sections 301.6225-1, 301-6625-2, 30.6625-1, and 301.6625-2 for key provisions of the federal procedures. In contrast, for reasons unique to state taxation discussed below, the Model Act default rule is payment by the partners with an option to elect to have the partnership pay the audit liability.

Among fundament examples of the coverage of the Model Act needed at the state level are a definition of "final determination" and uniform time periods after the final determination by which the partnership must act to give notice to its partners of the resulting state level adjustment and the date by which the tax liability must be paid. As is most common among the states, Maryland does not have a definition of "final determination" for federal audit adjustments. And without such a clear starting point, dates by which notices and payment are due for state purposes lack certainty.

The Model Act provides a primary definition of "final determination date" that applies generally to federal adjustments resulting from partnership audits with two variations for situations in which the taxpayer was a member of a combined or consolidated report at the state level and when the adjustments result from an amended return filed by the taxpayer. The primary rules sets the final determination date as the first day on which no federal adjustment remains to be finally determined at the federal level, whether by the IRS or in the courts. The key timing rule triggered by that date is that the partners (or partnership if so elected) must report and pay to the state any resulting tax liability within 180 days of the final determination date.

Why should state partnership audit procedures begin with a general rule (tax burden born at the partner level) different from the federal rule (tax burden placed at the partnership level)?

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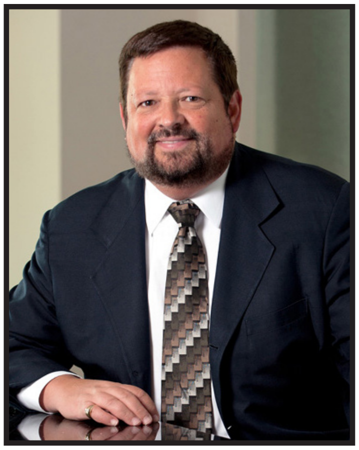
Federal Tax Update

By David S. De Jong

April, 2018 – June, 2018



INDIVIDUALS

In Johnson v. Commissioner, TC Summary Opinion 2018-31, the Tax Court stated that the test as to primary physical custody between divorced parents as to dependency allowances is based on comparative number of nights as opposed to comparative time with the children.

In Palsgaard and Kelly v. Commissioner, TC Memo 2018-82, the Tax Court rejected two arguments of a disabled physician that social security disability benefits are excludable from income – as akin to workers compensation or payments on account of physical injury.

In Voigt v. Commissioner, TC Summary Opinion 2018-25, the Tax Court agreed with IRS that an individual who was laid off from Tulane University and received tuition waivers for his children as part of his severance package was properly taxed on the value of the benefit as the general exclusion for undergraduate education of dependents only applied to current employees or to those who retired or became disabled.

In Hamilton v. Commissioner, TC Memo 2018-62, the Tax Court determined that a taxpayer's assets for purpose of the insolvency exception to the general rule that cancellation of indebtedness is taxable included transfers made to a child where the taxpayer continued to enjoy the benefit of the transferred funds.

In Hatcher v. Commissioner, 121 AFTR2d 2018-1397, the Fifth Circuit Court of Appeals agreed with the Tax Court that an individual who lent her then boyfriend in excess of $582,000 was not in the business of lending and could only claim a capital loss when only $7,000 of it was repaid.

In Leslie v. Commissioner, 121 AFTR2d 2018-1991, the Ninth Circuit Court of Appeals agreed with the Tax Court that a lump sum payment to a spouse was additional alimony as it was called "spousal support" although placed in a section of the separation instrument entitled "division of community and co-owned property"; the Court noted that under California law alimony payments stopped necessarily on the death of the recipient notwithstanding lack of specific language in the document.

In Davidson v. Commissioner, TC Memo 2018-38, the Tax Court determined that payments made toward marital debt were not deductible alimony as the family law court had decreed that the former wife should not receive any alimony and that the obligation did not necessarily terminate upon the recipient's death under Arkansas law.

In Wendell Falls Development, LLC v. Commissioner, TC Memo 2018-45, the Tax Court denied a $1.8 million charitable contribution deduction for land donated to a county for use of a park inasmuch as the Court determined that a quid pro quo would exist as the homes to be developed near the park would become more desirable and hence the conservation easement did not diminish value.

In Azam v. Commissioner, TC Memo 2018-72, the Tax Court failed to believe a couple who claimed that they turned over a "black book" containing receipts and logs to IRS but it was not returned and accordingly they were unable to prove significant personal and business expenses at trial; in Singh v. Commissioner, TC Memo 2018-79, the Tax Court disallowed tens of thousands of dollars of claimed itemized deductions and hundreds of thousands of dollars in claimed business expenses that could not be substantiated; the couple alleged that records were lost for multiple reasons including the death of the accountant, seizure by local officials and destruction in a fire.

In Davis v. Commissioner, TC Memo 2018-56, the Tax Court denied a deduction for $1,700 of cash donations and $1,391 of noncash donations to an inactive church where the donor was the church's president and senior minister and the only substantiation was a non-contemporaneous letter from the taxpayer himself.

In Farolan v. Commissioner, TC Summary Opinion 2018-28, the Tax Court disallowed a taxpayer's deduction for otherwise allowable business and personal expenses due to inadequate substantiation including uncorroborated contributions to her church though the court took note of her "sincere testimony" (the Court also denied a deduction for clothing worn to trade shows as they were found suitable for street wear); in Fiedziuszko v. Commissioner, TC Memo 2018-75, the Tax

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Chair...

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or for another organization within your professional capacity, intentionally seek out and invite lawyers with diverse backgrounds to speak on the panels you organize.

With increased diversity and inclusion in our membership and our professional world, we increase opportunities to exchange ideas and perspectives that will help us better serve our clients, the tax profession and our world. I appreciate your continued dedication to this goal.

Resource Creation and Management
Our section is working with the Maryland Volunteer Lawyer Services to provide our members with free online trainings to help us better address the needs of our clients. Since September, we have been continually adding these resources to the MSBA website. Additionally, Council, led by Jordan Halle, is currently working on updating chapters in Maryland Taxes. Maryland Taxes is an invaluable resource to use, as we navigate state taxes for our clients. Be sure to check out the tax section site at MSBA.org to stay current on all the latest resources we have available.

Mentoring
Our recruiting efforts for seasoned attorneys to be mentors and new lawyers/students to be mentees are underway. If you'd like to participate in our mentorship program or would like more information on what the program entails, please contact Tim Wagner at twagner@bakerdonelson.com by **January 11, 2019**.

I am so encouraged and inspired by your commitment thus far. Let's keep striving for our goals together. As always, if I can be of any assistance to you please reach out to me directly. I welcome your feedback as we seek to move our Section forward.

With warm regards,

Beverly Winstead

Beverly Winstead, Esq.

Crypto...

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you're disposing of an asset, and you're liable for gain or loss on disposition. As one writer put it:

> Consider this scenario. You buy $10 worth of bitcoin and the value of your bitcoin rises to $30 over the next few months. You then go to the store and pay for a $30 purchase with your bitcoin. Well, since you originally paid just $10 for your bitcoin, this represents a $20 gain, even though you spent the bitcoin rather then [*sic*] selling it, and would be considered a taxable capital gain.
>
> While a one-time situation like this wouldn't be terrible, imagine if you used bitcoin as your only payment method. You're expected to keep track of *every* transaction and whether it resulted in a capital gain or not.[15]

Investors trading one virtual currency for another have sometimes cast the transaction as a like-kind exchange under I.R.C. Sec.1031, apparently viewing this treatment as a "loophole". Reporting on Form 8824, *Like Kind Exchanges*, obedience to the niceties of "Qualified Intermediaries" used when the sale and purchase constituting the exchange are not simultaneous[16], and consideration of whether virtual currency even qualified for 1031 treatment, did not seem to figure much into investors' calculations.[17] In any case, the Tax Cuts and Jobs Act now

[15] Matthew Frankel, Did You Make Money in Bitcoin? Here Are 2 Ways to Lower Your Tax Bill, (Dec. 16, 2017 at 7:03AM), The Motley Fool, https://www.fool.com/investing/2017/12/16/did-you-make-money-in-bitcoin-here-are-2-ways-to-l.aspx, accessed 10/30/18. See also IRS Notice 2014-21, p. 4, Q&A 7, "A taxpayer generally realizes capital gain or loss on the sale or exchange of virtual currency that is a capital asset in the hands of the taxpayer."

[16] I.R.C. Sec. 1031(a)(3); Treas. Reg. Sec. 1.1031(k)-1(g)(4).

[17] Sean Williams, 3 Ways the IRS is Taxing Cryptocurrencies, (May 3, 2018 at 12:10PM), The Motley Fool, https://www.fool.com/taxes/2018/05/03/3-ways-the-irs-is-taxing-cryptocurrencies.aspx, accessed 10/18/2018. See also, Robert Wood, House and Senate Tax Bills Kelly

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Crypto...

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limits like-kind exchanges to real estate.[18]

Reporting by taxpayers of virtual currency transactions has been inconsistent at best. In 2017, the IRS filed a petition against virtual currency exchange Coinbase, seeking records of nearly all their customers for tax years 2013, 2014, and 2015.[19] The Court ruled that the IRS had a legitimate investigatory purpose for seeking records, observing that

> Coinbase is the largest U.S. exchange of bitcoin into dollars with at least 5.9 customers served and 6 billion in transactions while only 800 to 900 taxpayers a year have electronically filed returns with a property description related to bitcoin from 2013 through 2015. This discrepancy creates an inference that more Coinbase users are trading bitcoin than reporting gains on their tax returns.[20]

Finding the original IRS summons overbroad, the Court narrowed the scope of discovery, and enforced production.[21]

In February 2018, Reuters found that fewer than 100 out of 250,000 taxpayers filing tax returns through Credit Karma as of that month reported a virtual currency transaction. Putting participants' lack of reporting in context, 57% of 2,000 Americans surveyed by that same company in conjunction with research firm Qualtrics said they'd realized some gains from cryptocurrencies. Roughly the same percentage admitted they hadn't reported the transactions to the IRS, even though almost half said they understood how cryptocurrency transactions affected their taxes. [22]

Cryptocurrency "Like Kind" Exchanges: Expert Blog, Cointelegraph, November 30, 2017, https://cointelegraph.com/news/house-and-senate-tax-bills-kill-cryptocurrency-like-kind-exchanges-expert-blog, accessed 10/30/18.

18 The Tax Cuts and Jobs Act, Public Law No: 115-97 (12/22/2017), U.S. Government Publishing Office, available at govinfo.gov, https://www.govinfo.gov/app/search/%7B%22query%22%3A%22Public%20Law%20No%3A%20115-97%20(12¼22¼2017)%22%2C%22offset%22%3A0%7D, accessed 10/30/18.

19 U.S. v. Coinbase, No.17-cv-01431-JSC (N.D. Cal. Nov. 28, 2017).

20 *Id*, at 6.

21 *See Id*.

22 Anna Irrera, *Few Americans reporting cryptocurrency trading to IRS for now*: report, reuters.com, (Feb. 13, 2018), https://www.reuters.com/article/us-bitcoin-taxes/few-americans-reporting-cryptocurrency-trading-to-irs-for-now-report-idUSKBN1FX0RF, accessed 10/30/18.

Not surprisingly, the IRS has responded by increasing scrutiny and enforcement. The IRS Criminal Investigation Division reportedly entered into a contract with Chainalysis for tracking cryptocurrency transactions, and ordered more training for agents.[23] In a news release published March 23, 2018, the IRS reminded taxpayers of their reporting obligations, warning that a failure to properly report could result in audit, interest and penalties, and possible criminal charges resulting in imprisonment of three to five years, along with $250,000 fines[24].

Even as taxpayers face greater scrutiny and enforcement, cryptocurrency is still the wild west. The American Institute of Certified Public Accountants ("AICPA") has twice sent letters to the IRS offering recommendations, and asking for guidance.[25]

Besides the IRS, multiple other federal agencies oversee the cryptocurrency market. As one writer observed:

> [C]ryptocurrencies at a federal level are regulated by the Financial Crimes Enforcement Network (FinCen), the Office of Foreign Assets Control (OFAC), the Internal Revenue Service (IRS), the Commodity Futures Trad-

23 Robert Wood, *IRS Bitcoin Hunt Ramps Up, But Tax Amnesty Could Follow: Expert Blog*, Cointelegraph, (Dec. 10, 2017), https://cointelegraph.com/news/irs-bitcoin-hunt-ramps-up-but-tax-amnesty-could-follow-expert-blog, [referring incorrectly to "Chainanalysis"], accessed 10/30/18.

24 *IRS reminds taxpayers to report virtual currency transactions*, IR-2018-71, March 23, 2018, available at https://www.irs.gov/newsroom/irs-reminds-taxpayers-to-report-virtual-currency-transactions, accessed 10/30/18.

25 Letter from Annette Nellin, Chair, AICPA Tax Executive Committee to Internal Revenue Service, Titled *Updated Comments on Notice 2014-21: Virtual Currency Guidance*, submitted May 30, 2018, available at https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20180530-aicpa-comment-letter-on-notice-2014-21-virtual-currency.pdf, accessed 10/30/18; Letter from Troy K. Lewis, Chair, AICPA Tax Executive Committee to Internal Revenue Service, Titled *Comments on Notice 2014-21: Virtual Currency Guidance*, submitted June 10, 2016, available at https://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/AICPA-Comment-Letter-on-Notice-2014-21-Virtual-Currency-6-10-16.pdf, accessed 10/30/18.

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CRYPTO...

(continued from Page 8)

ing Commission (CFTC) and the Securities Exchange Commission (SEC) which characterize cryptocurrencies as money, property, commodity and a security respectively.[26]

[26] Selva Ozelli, *Supplemental IRS Guidance on Taxation of Cryptocurrencies is Needed: Expert Take*, Cointelegraph, (June 2, 2018), https://cointelegraph.com/news/supplemental-irs-guidance-on-taxation-of-cryptocurrencies-is-needed-expert-take, accessed 10/30/18.
MONEY: *See* 31 CFR § 1010.100(ff)(5)(i)(A); FIN-2013-G001, issued March 18, 2013, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies", available at https://www.fincen.gov/resources/statutes-regulations/guidance/application-fincens-regulations-persons-administering, accessed 10/30/18; Office of Foreign Assets Control, United States Department of the Treasury, Resource Center, OFAC FAQs: Sanctions Compliance, Topic: *Additional Questions from Financial Institutions,* Subtopic: *Questions on Virtual Currency*, FAQs 560, 03-19-2018, Question: "Are my OFAC compliance obligations the same, regardless of whether a transaction is denominated in digital currency or traditional fiat currency?" Answer: "Yes, the obligations are the same.", https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx#559, accessed 10/30/18.
COMMODITY: See, In the Matter of: Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan, CFTC Docket No. 15-29, p. 3, available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliprorder09172015.pdf, accessed 10/30/18.
SECURITY: Chairman Clayton stated his own views: "By and large, the structures of initial coin offerings that I have seen promoted involve the offer and sale of securities and directly implicate the securities registration requirements and other investor protection provisions of our federal securities laws." Jay Clayton, Chairman, U.S. Security and Exchange Commission, "Public Statement", 12/11/2017, *Statement on Cryptocurrencies and Initial Coin Offerings*, https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11, accessed 10/30/18.

In the current regulatory environment, virtual currency is an audit flag. If we view the audit process as starting with the return, audit *prevention* is an important goal of tax preparation. Beyond providing accurate numbers, the return is useful for addressing issues proactively through explanation and documentation. In other words, the return can answer questions before the IRS asks them. [27]

With that in mind, I recently prepared a Form 1040 for a taxpayer who'd received over a dozen payments of non-employee compensation in the virtual currency Etherium, The payor, a company operating in Latin America, had not issued a Form 1099-MISC, *Miscellaneous Income*. To reflect the payments, I created a spreadsheet, and divided it in half. I titled the left side "Non-Employee Compensation", and listed amounts paid in Etherium, the dates received, and their dollar equivalent as reported by Etherium, to arrive at total compensation. I titled the right side "Capital Gain on Conversion", and listed the date each payment was converted from Etherium to dollars, the taxpayer's good faith estimate (so labeled) of gain on conversion of each payment, to arrive at total gain. (There were no losses.) I attached a PDF of the spreadsheet when I electronically filed the return. Since there's no form or officially approved way of documenting conversions of cryptocurrency to dollars, or to another cryptocurrency, one expert offered her view that the IRS believes taxpayers should use "best efforts". "The key issue with a lot of these transactions is that it'll be better to try to do the best you can . . . rather than avoiding it altogether." [28]

[27] Victoria Eve Kelly, *Audits of Individuals and Small Business*, Slides 6 – 7, Tax Tuesday Webinar, (Sept.11, 2018), Maryland Volunteer Lawyers Service, https://mvlslaw.org/wp-content/uploads/2018/10/Audits-of-Individuals-and-Small-Business.pdf, accessed 10/30/18.

[28] Darla Mercado, quoting Sarah-Jane Morin, Esq., Morgan Lewis and Bockius, *Got crypto? Here's how to avoid an audit from the IRS* , cnbc.com,
Updated April 3, 2018, 1:40 PM, EDT, https://www.cnbc.com/2018/04/02/got-crypto-heres-how-to-avoid-an-audit-from-the-irs.html, accessed 10/30/18.

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attorneys will never personally experience the obstacles LITC clients face daily. The idea that clinical legal education exists to foster a sensitivity to the "broader issues of justice" can only be realized by serving those that desperately need justice the most. LITC programs by their very nature allow student attorneys to do just that.

As we now celebrate twenty years of Low Income Taxpayer Clinics, Professor Abramowitz's message still rings true. With the recent changes in tax law and an ever increasing number of underserved members of the community, it is important to once again remember the true goals of Low Income Taxpayer Clinics in evaluating clinical success. Low Income Taxpayer Clinics were created with the intent to assist members of the community that need it the most, as well as to foster a deep understanding of the importance of pro bono work for the future lawyer.

Low Income Taxpayer Clinics throughout the nation are making tremendous accomplishments. Under the dynamic leadership of the Office of the Taxpayer Advocate (TAS), LITC programs are thriving. Attorneys, CPAs, enrolled agents, interpreters, students and other volunteers numbering in the thousands actively work to uphold the LITC mission to promote representation, education, and advocacy[9]. A mere glance at the most recent LITC Program Report illustrates the remarkable achievements made by LITCs across the nation. In 2017, 11.8 million dollars in grants were given to 138 organizations, and 4,200 taxpayers were brought into compliance.[10] In 2016, LITCs held over 2,100 events to educate more than 60,500 low income and ESL taxpayers.[11] LITC programs have helped low income taxpayers save their homes from foreclosure, receive the refunds they're entitled to, recover from fraud and identity theft, and save thousands.[12] This success is no small feat. While the numbers speak for themselves, the positive change brought by LITCs into low income communities is the true measurement of success.

Here in Maryland, the University of Baltimore School of Law LITC, the University of Maryland School of Law LITC and the Maryland Volunteer Lawyers Service (MVLS) LITC are actively representing numerous low income taxpayers. Our programs represent clients with issues ranging from U.S. Tax Court litigation in obtaining innocent spouse relief to identity theft issues. MVLS provides free trainings for volunteer attorneys and free tax return preparation services for low income taxpayers. The programs additionally continue to promote outreach and education to vulnerable taxpayers. On October 17, 2018, the clinics held one of their regular Pretrial Pro Bono Days, providing brief advice to unrepresented taxpayers with cases pending in U.S. Tax Court. On October 27, 2018, both programs hosted a free tax literacy lecture and on-site assistance event for members of the Baltimore community. Moreover, both law schools clinics, MVLS, and members of the MSBA Tax Section were present at the Tax Court Calendar Call on November 5, 2018 to counsel and offer representation to taxpayers.

It has been an honor to be an LITC student attorney. I know that thanks to my experience with the LITC, volunteer representation will always be a part of my career going forward. I am so thankful for the opportunity to participate in the LITC program, and I can't wait to see its continued success.

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[9] Publication 5066 (Rev. 02-2018) Catalog Number 61675T Department of the Treasury Internal Revenue Service, www.irs.gov.

[10] Id. at 3.

[11] Id. at 4.

[12] Id.

Federal Adjustment...

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the provision of the adjustment information by the IRS was sufficient to meet the requirements of §13-409(b). In examining the plain language of the statute,[9] the court found that the taxpayer has an affirmative responsibility to provide this information.

In *Brown v. Comptroller*, another consequence of the failure to file a §13-409(b) report can be seen. In this case, the Browns claimed that the increase in tax assessed by Maryland was out of statute, and thus could not be assessed beyond one year from receiving a report of adjustment. Although the Browns never filed a report of adjustment with the Comptroller, it was their position that the report made by the IRS was sufficient to satisfy the reporting requirement, and start the clock ticking on the limitation period. The court, unconvinced by the Browns' argument, found instead that because the Browns did not themselves file an adjustment report, the one-year limitation period to make an assessment was not triggered, and instead remained open as though no report had ever been made. [10]

Prudent representation of a taxpayer who has been given a final determination by the IRS that has resulted in an increase of federal taxable income would dictate that a taxpayer should be advised to file an amended state return containing all of the federal audit information with their home state within the time period allotted, or in the alternative, a statement of dispute along with the audit materials and the reasoning behind the contention of error. Otherwise, the taxpayer may find the unintended consequences of failing to do so may permanently close the door to potential remedies that would have been otherwise available.

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means a return that satisfies the requirements of applicable nonbankruptcy law (*including applicable filing requirements*) (emphasis added). See BAPCPA, Pub. L. No. 109-8, 119 Stat. 23 (2005) at 523(a).

9 Md. Tax-General §13-409(b) states that, ""*the person* [to whom the final determination increasing the federal taxable income was given] *shall submit* to the tax collector a report of federal adjustment"

10 *Brown v. Comptroller of the Treasury*, 747 A.2d 243, 237 (Md. Ct. Spec. App. 2000).

Partnership Audit...

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Largely due to sourcing and nexus. For federal income tax purposes, all of the income tax liability due to and audit adjustment is due and payable to the federal government. In contrast, when a federal adjustment trickles down to the state tax return, whether a particular state subjects the entire federal adjustment to its tax depends, among other things, on who the partners of the audited partnership are and how their income gets sourced.

If the partnership engages in a multistate business, then it typically will apply an apportionment factor at the entity level to determine for its partners what portion of the federal income adjustment is sourced to the state for income tax purposes. A corporate partner engaged in a multistate business may have its own apportionment factors that come into play to determine what portion of the partnership level adjustment from the partnership is sourced to the state on its return.

A nonresident individual partner typically will be subject to the state's income tax only on the portion of the federal audit adjustment relating to "business income" to the extent such business income of the partnership is apportioned to the state at the entity level. And a nonresident individual partner may avoid taxation entirely on "nonbusiness income" affected by the audit adjustments as such income may be sourced only to such individual's state of residence.

The Model Act has many more detailed rules beyond the scope of this article. It addresses various outlier and exemption situations. For example, very large audit adjustments can result in trivial amounts of taxable income and resulting tax liability to a particular partner. And at the more complex extreme are the tiered partnerships where an audit adjustment will flow up through one or more partners that are themselves partnerships. The Model Act does a noble job of reasonably addressing and providing rules for the most common of these outlier situations.

The trickle down of a federal audit adjustment is complicated enough given, for example, the numerous ways in which states decouple from substantive federal income tax laws, without partnerships having to deal at the same time with the absence of clear procedural rules for implementing federal adjustment and/or inconsistent procedural rules among the states.

Do others agree that the Model Act is a good thing? Among the groups that have participated in the Model Act drafting process are the ABA Tax Section SALT Committee Task Force, the AICPA, the Council on State Taxation, the Institute for Professionals in Taxation, the Master Limited Partnership Association and the Tax Executives Institute. To judge for yourself what you think of the Model Act, take a look at the Act and the process that led to its final

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Partnership Audit...

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terms. The Model Act draft as of July 2018 can be found at: http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Partnership-Informational-Project/Proposed-Model-RAR-Statute-7-18-18-Version-with-minor-changes-discussed-at-UniCom.pdf.aspx?lang=en-US

And background, comments throughout the drafting process, information as to its current status and more regarding the Model Act are available at:
http://www.mtc.gov/Uniformity/Project-Teams/Partnership-Informational-Project

As noted, the Model Act differs on many procedural points from the federal partnership audit procedures. But these differences have been proposed and vetted by the drafters to take account of the many ways in which state income tax determinations for partners and partnerships differ from the federal results.

No uniform act is ever perfect. On both the taxpayer side and the states' side compromises must be made in the interests of having an act that reasonably accommodates the needs of both interest group. Among other common benefits, the Model Act serves the interests of both taxpayers and taxing authorities by providing administrative ease in having to learn and apply only one set of procedural definitions, deadlines, exemptions and exceptions, etc. among the several states affected by a federal adjustment to a multistate partnership. Maryland should take on the role as a leader among the states in enacting the Model Act.

2019 will the year for state tax administrators and legislators to focus on the Model Act. Technical review will be needed to assure that the terms of the Model Act mesh with procedural rules and definitions in existing state tax law. The Tax Section should join with the MD AICPA and other Maryland interest groups to provide the technical advice needed to conform the Model Act and Maryland tax law and to promote the Model Act's benefits to the Comptroller's staff and key legislators. The 2019 legislative session may be too soon to expect passage of the Model Act, but getting underway now may at least sets the stage for adoption in 2020.

Federal Tax Update...

(continued from Page 6)

Court again disallowed unsubstantiated expenses including church donations despite "credible" testimony (the Court also threw out over $27,000 in alleged donations of clothing and electronics in a single year to Goodwill).

In Fehr v. Commissioner, TC Summary Opinion 2018-26, the Tax Court disallowed substantial employee business expenses claimed by a sales manager due to inadequate substantiation and huge charitable deductions of property due to inadequate descriptions or acknowledgements.

In Lakhani v. Commissioner, 121 AFTR2d 2018-1709, the Ninth Circuit Court of Appeals agreed with the Tax Court that an accountant could not deduct separate and apart from a losing horse racing wager itself an amount equal to the percentage of his wagers representing the track's takeout that is not returned to bettors.

In Notice 2018-37, IRS announced that future regulations will apply pre-2019 law to income from an alimony trust payable to a former spouse pursuant to a divorce or separation instrument executed before 2019 (unless modified after that date with language stating that post-2018 law applies).

In News Release 2018-122, IRS set forth its adverse position on avoiding the limits on deductibility of state and local taxes through alternative characterization of the payments as charitable contributions, noting that federal tax law and not state characterizations control the deduction.

In Letter Ruling 201819004, IRS ruled in the case of a disability plan for police officers that paid the greater of 50 percent of final average compensation or the retirement value based on employer and employee contributions that payments are excludable by the officer or spouse (in the case of a deceased officer) to the extent that benefits do not exceed 50 percent of final average compensation; IRS also ruled that such payments made to spouses pursuant to a domestic relations order are not excludable.

RETIREMENT PLANS

In Pizza Pro Equipment Leasing, Inc. v. Commissioner, 121 AFTR2d 2018-682, the Eighth Circuit Court of Appeals agreed with the Tax Court that a defined benefit plan with a normal retirement age of 45 was overfunded in light of the special limitations where a stated normal retirement age is less than 62.

In Marks v. Commissioner, TC Memo 2018-49, the Tax Court determined that deemed distributions of two promissory notes

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from an IRA were not income because the IRA was disqualified a decade prior to the distributions for impermissible loans.

In <u>Revenue Ruling 2018-17</u>, IRS stated that a payment by a trustee of an IRA to a state unclaimed property fund is subject to federal income tax withholding.

In <u>Letter Ruling 201821008</u>, IRS allowed a surviving spouse to rollover her husband's Section 457 governmental plan to an IRA in her name notwithstanding that his estate was the beneficiary and her husband had not yet reached age 70½ and would have been subject to the "five year rule" on distributions in the absence of a rollover.

In <u>Letter Ruling 201822033</u>, IRS waived the 60-day rollover deadline where the taxpayer claimed that she relied to her detriment on the incorrect tax advice provided by her husband.

ESTATES

In <u>Estate of Cahill v. Commissioner</u>, TC Memo 2018-84, the Tax Court rejected numerous arguments of an estate that the includible asset in a split dollar life insurance policy was the termination right of $183,700 rather than the $9,611,624 death benefit where the decedent had paid $10 million for the policy.

BUSINESS

In <u>Sarvak v. Commissioner</u>, TC Memo 2018-68, the Tax Court denied a business bad debt deduction for unsecured advances made to a business partner that were shown on the books as advances but were not evidenced by notes and were unsecured; the Court expressed doubt that these amounts were loans in light of the last payment changing hands only ten days before the yearend when worthlessness was claimed.

In <u>Dynamo Holdings Limited Partnership v. Commissioner</u>, TC Memo 2018-61, the Tax Court determined that advances between related companies were bona fide loans when the transfers were shown as debt on the company books notwithstanding the lack of contemporaneous formalities, allowing the borrower to deduct the interest expense; notes were subsequently executed and repayments commenced.

In <u>Povolny Group, Incorporated v. Commissioner</u>, TC Memo 2018-37, the Tax Court held that payments from three entities to a fourth were capital contributions and also constructive dividends to the individual in the absence of a note and consistency among the parties; the Court noted that "[t]aking money from one corporation and routing it to another will almost always trigger bad tax consequences unless done thoughtfully."

In <u>Triumph Mixed Use Investments III, LLC v. Commissioner</u>, TC Memo 2018-65, the Tax Court determined that a real estate development company could not get a charitable deduction of $11 million for land transferred to a city as it was found to be an exchange for approval of a development plan notwithstanding that the agreement with the city contained a "no consideration" clause and language that the donation was voluntary.

In <u>Gaunt v. Commissioner</u>, TC Memo 2018-78, the Tax Court disallowed a deduction for amounts paid by a father's business to his son's business where the son did not have a proper license and the father billed jobs on behalf of the son, the Court ignoring the agency relationship and simply stating that it was not an "ordinary and necessary" business expense.

In <u>Little Mountain Corporation v. Commissioner</u>, 121 AFTR2d 2018-870, the Ninth Circuit Court of Appeals agreed with the Tax Court in denying a commodities brokerage business a deduction for almost $900,000 in "consulting fees" made payable to "cash" in amounts less than $10,000 and allegedly given to another company but cashed by various individuals with no relation to that company; the taxpayer issued no 1099s and provided no specificity at trial.

In <u>Velez v. Commissioner</u>, TC Memo 2018-46, the Tax Court refused to allow a tax attorney to deduct $19,000 in automobile expenses although he maintained five offices across Ohio as he neither maintained a formal mileage log nor could produce a calendar (he tried unsuccessfully based on credit card statements to reconstruct a log two days before trial); in <u>Dimitrov v. Commissioner</u>, TC Summary Opinion 2018-21, the Tax Court disallowed automobile expenses of a business which purchased and renovated real property where contemporaneous records were not kept and summaries contained numerous irregularities.

In <u>Moore v. Commissioner</u>, TC Memo 2018-58, the Tax Court disallowed meals and entertainment expenses of an online instructor as she could not show a business purpose for those expenses she could prove; in <u>Vallejo v. Commissioner</u>, TC Memo 2018-39, the Tax Court disallowed business expenses proven by a part-time self-employed engineer because he failed to tie in the purpose of the expenses, noting that his testimony was "irrelevant and unhelpful."

In <u>Lucas v. Commissioner</u>, TC Memo 2018-80, the Tax Court agreed with IRS that almost $3 million in legal fees over a two-year period in which the taxpayer was divorcing was not deductible as business expenses or otherwise; the Court distinguished these expenses where the taxpayer was attempting

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to show the nonmarital character of distributions from a prior case decided favorably for an individual whose business was being disrupted by a divorcing spouse.

In Nicholson v. Commissioner, TC Summary Opinion 2018-24, the Tax Court allowed some expenses of an engineer who moonlighted as a musician and produced two albums despite showing no revenues; however, the Court disallowed expenses which allegedly "enhanced his artistic creativity and productivity" such as dining out with his children, bowling, hiking and camping, and traveling to new destinations.

In Reserve Mechanical Corporation v. Commissioner, TC Memo 2018-86, the Tax Court found that the taxpayer, a captive, was not an insurance company because there was no true shifting of risk.

In Alterman v. Commissioner, TC Memo 2018-83, the Tax Court determined that the statutory ban on deduction of business expenses other than cost of goods sold for those in the marijuana business extends to expenses associated with other products in the case of a unitary business (while most of the other products complimented the sale of marijuana; the business also sold chicken soup); in Loughman v. Commissioner, TC Memo 2018-85, the Tax Court held that certain wages were improperly placed in cost of goods sold and that there was no impermissible discrimination by disallowing the deduction for wages to an owner-officer of a marijuana business who had to report the underlying income.

In Pexa v. United States, 121 AFTR2d 2018-730, a California Federal District Court, following prior decisions of the Seventh and Ninth Circuit Courts of Appeal, found that termination payments received by a retiring insurance agent were ordinary income and not capital gain; the Court noted that the insurance carrier reserved property rights such that the retiree did not have a capital asset.

In Phillips v. Commissioner, 121 AFTR2d 2018-1776, the Eleventh Circuit Court of Appeals agreed with the Tax Court that shareholders in an S corporation are not entitled to an increase in basis due to guaranteed loans which were never paid inasmuch as an "economic outlay" is required to obtain a basis increase; in Hargis v. Koskinen, 121 AFTR2d 2018-________, the Eighth Circuit Court of Appeals agreed with the Tax Court and rejected an S corporation owner's argument that he could get basis in his stock through guarantees, although the Court seemed to accept a principal from the Eleventh Circuit factually distinguishable here that a guarantor could get basis if the lender looked to him as if he were the obligor.

In Robison v. Commissioner, TC Memo 2018-88, the Tax Court found that a computer science executive with a 500 acre ranch which lost $9 million over 18 years was attempting to make a profit in light of the professional manner of operations but found that he did not spend the needed 500 hours for material participation; in Williams v. Commissioner, TC Memo 2018-48, the Tax Court determined that a chiropractor who had 15 years of losses from a ranch did not have a profit motive inasmuch as he did not have a business plan, financial statement or other similar records which might have showed a profit intent.

In Barker v. Commissioner, TC Memo 2018-67, the Tax Court concluded that an individual with nine consecutive years of losses was attempting to make a profit through music promotion of artists including his son; however, the Court threw out many deductions based on lack of substantiation.

In Samadi v. Commissioner, TC Summary Opinion 2018-27, the Tax Court denied a deduction for over $38,000 in expenses over two years with no offsetting income in the case of an individual who showed his primary occupation as a "tax specialist" but who sought to get into the business of flipping homes; the Court determined that a business had not yet commenced despite the taxpayer having obtained a real estate license and did not need to get into other issues such as the veracity of the mileage logs.

In Sherman v. Commissioner, TC Summary Opinion 2018-16, the Tax Court gave the same result as in a case five years earlier and found that nonqualified deferred compensation benefits from Mary Kay are subject to self-employment tax because the payments are tied to prior labor – in this case average commissions over the five years prior to retirement.

In Hampton Software Development, LLC v. Commissioner, TC Memo 2018-87, the Tax Court found that a property manager of an apartment complex was an employee and not an independent contractor and also denied Section 530 relief due to lack of consistency and failure to issue 1099s.

In Notice 2018-28 and in News Release 2018-82, IRS provided interim guidance for the business interest expense limitation under the Tax Cuts and Jobs Act, indicating that consolidated groups share a single $25 million revenue base before application of the limitation.

In IRS Tax Tip 2018-68, IRS appeared to accept the legislative intent despite a needed technical correction by recognizing that nonstructural improvements to a building are generally "15 year property" and accordingly are subject to 100 percent bonus depreciation (in any event they may apparently be expensed).

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Federal Tax Update...

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In Letter Ruling 201821012, IRS found that relinquishment of television broadcast spectrum rights based on fear of being forced to operate on less reliable frequencies constitutes a disposition under threat of condemnation and is an involuntary conversion under Code Section 1033.

In Legal Advice Issued by Field Attorney 20182502F, IRS permitted a business to deduct an ongoing commitment fee to secure a line of credit, noting that it did not create, acquire, enhance or facilitate a distinct intangible or future benefit.

PROCEDURE

In United States v. Law Offices of Forbush-Moss PSC, 121 AFTR2d 2018-1503, a Kentucky Federal District Court granted a permanent injunction against the law firm and sole owner requiring compliance with tax laws; the Court found it "necessary and appropriate" to issue the injunction following years of continued noncompliance with filings and required payments; in United States v. Pest Bureau, Inc., 121 AFTR2d 2018-2051, a South Carolina Federal District Court granted an injunction against a business and its employees and attorneys, enjoining them from continuing to fail to withhold and pay over employment and unemployment taxes under penalty of civil and criminal sanctions for contempt of court.

In United States v. Kenny, 121 AFTR2d 2018-1925, an Ohio Federal District Court granted an injunction requiring an individual to comply with ongoing tax obligations following 25 years of "sustained non-compliance" during which time he lived an extravagant lifestyle that was well beyond his means; in Hudak v. United States, 121 AFTR2d 2018-________, a Maryland Federal District Court ordered an individual owing in excess of $2.3 million in back payroll taxes to make installment payments to IRS despite resigning employment and shifting income to his wife who received payments as an independent contractor from the same company.

In Full-Circle Staffing, LLC v. Commissioner, TC Memo 2018-66, the Tax Court found that a trust which had majority ownership of four partnerships was a sham, causing taxation of the individual on sufficient enough income such that a six-year statute of limitations applied on assessment.

In Jones, Bell, Abbott, Fleming & Fitzgerald, LLP v. United States, 121 AFTR2d 2018-2085, a California Federal District Court sustained a late filing penalty imposed on a law partnership as it could not prove timely mailing of an extension; the Firm's testimony was limited to its Comptroller testifying that he knew he prepared the extension and placed it in the office mail and the mail clerk testifying about his procedures.

In Becker v. Commissioner, TC Memo 2018-69, the Tax Court threw out up to $3.5 million in civil fraud penalties or, alternatively, accuracy penalties because IRS could not prove at trial a requirement that the penalty determination was approved in writing by a supervisor despite admission during trial of "fake deductions that amounted to over $1.2 million over the course of four years" and omissions of "great dollars of income."

In United States v. Garrity, 121 AFTR2d 2018-629, a Connecticut Federal District Court, following the weight of authority on both points, held that an FBAR violation can be shown by the preponderance of the evidence and that willfulness can be shown by reckless conduct as an alternative to intentional violation of a known legal duty.

In United States v. Colliot, 121 AFTR2d 2018-775, a Texas Federal District Court reached a different result than had the Ninth Circuit Court of Appeals and ruled that IRS could not impose an FBAR penalty permitted by recent statute to the extent that lower amounts provided for in earlier regulations had not been changed to reflect the increase.

In Schuster v. Commissioner, 121 AFTR2d 2018-1228, the Eleventh Circuit Court of Appeals agreed with the Tax Court that an erroneous credit to a taxpayer's account not actually refunded to him but rather credited as an overpayment to the following year is not a refund subject to a two-year statute of limitations on IRS recovery; the Court concluded that the usual ten-year statute on collections applies in this case.

In United States v. Thompson, 121 AFTR2d 2018-________, an Oregon Federal District Court, dealing with a return that was filed on April 13, 2007 where the Government filed a lawsuit on May 22, 2017, found that the suit was filed before expiration of the statute of limitations as the IRS assessment was not made until May 28, 2007.

In United States v. Gerard, 121 AFTR2d 2018-640, an Indiana Federal District Court set aside the transfer of a wife's interest in tenancy by the entirety property to her husband where she owed payroll taxes; she unsuccessfully argued that the transfer was for consideration inasmuch as he provided most of the funds for acquisition of the properties and she had consumed more of the joint assets in the past.

In Weiss v. Commissioner, 121 AFTR2d 2018-1853, the District of Columbia Circuit Court of Appeals agreed with the Tax Court that the 30-day period for a timely CDP appeal is

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measured from the mailing date of the notice and not from the date on the letter; the Court noted that it had to choose between a "taxpayer deliberately attempting to manipulate the Code to prevent paying his own taxes or a government agency that seems not to care whether it provides the citizenry with notice of their rights and liabilities."

In Gallagher v. Commissioner, TC Memo 2018-77, the Tax Court held that it has jurisdiction to review collection alternatives (in this case an Offer in Compromise) which includes years that were not the subject of a CDP hearing but indicated that it lacked jurisdiction to consider any substantive tax issue for non-CDP years.

In United States v. Hendrick, 121 AFTR2d 2018-665, a Pennsylvania Federal District Court agreed with a prior decision of the Ninth Circuit Court of Appeals that requesting a CDP hearing suspends the statute of limitations during its pendency plus 120 days as opposed to the 90 days set forth directly in the statute; the Court indicated that the 90 days does not start to run until the 30-day appeal period has concluded irrespective of whether the taxpayer filed an appeal.

In Hale v. Commissioner, TC Memo 2018-93, the Tax Court agreed with IRS that the widow of a lawyer who committed suicide receiving almost $8 million in life insurance did not qualify as an innocent spouse as her ability to pay was considered more significant than other factors supporting relief.

In Findling v. United States, 121 AFTR2d 2018-________, a Michigan Federal District Court determined that an earlier ex-spouse's lien against nonqualified retirement plan assets of her former husband has priority over a subsequent IRS tax lien.

In In Re: Quiroz, 121 AFTR2d 2018-1421, an Oklahoma Bankruptcy Court determined that tax debts could be discharged in bankruptcy, finding no willful attempt to evade the payment of taxes in the case of an immigrant who was not sophisticated and did not know how to use a computer notwithstanding the submission of a grossly inaccurate 433A-OIC (blamed on his accountant) and expenditures for a Cadillac and Jaguar, a $4,000 charitable donation and $5,000 per year in withdrawals at casinos.

In In Re: Parrish, 121 AFTR2d 2018-1413, a North Carolina Bankruptcy Court concluded that the individual shared responsibility penalty for failure to obtain health insurance is, in fact, a penalty and not a tax for priority purposes in a bankruptcy action.

In Letter Ruling 201815005, IRS ruled that grants to homeowners to modify their dwellings to secure them to their foundations and to prevent lateral movement are taxable to homeowners in that they do not qualify under the "general welfare" exclusion as the payments were not tied to individual or family need.

In Chief Counsel Advice 201818015, IRS concluded that an internet domain name used in a business is an asset generally exempt from levy in the absence of a jeopardy assessment or approval at a high level.

In Chief Counsel Advice 201820018, IRS concluded that it could seize equipment involved in the marijuana industry without violating federal drug laws.

July-September, 2018

INDIVIDUALS

Proposed Regulations under Code Section 164 generally deny a charitable deduction to the extent of any state or local tax credit for a contribution in lieu of payment of taxes; an exception is carved out where the tax reduction is no more than 15 percent of the amount transferred.

In Jusino v. Commissioner, TC Memo 2018-112, the Tax Court denied the personal exemption, child credit and earned income credit to a couple who had lost parental rights to children who were adopted by their aunt.

In De Los Santos v. Commissioner, TC Memo 2018-155, the Tax Court determined that a split dollar life insurance arrangement generated income to a key employee to the extent of the cost of current life insurance protection plus the cash value of the policy to which he had current access.

In Jackson v. Commissioner, TC Summary Opinion 2018-43, the Tax Court determined that speculative contingent obligations do not count as liabilities for purpose of determining insolvency and whether relief from indebtedness may be nontaxable; the contingent liability in this case related to possible buyback payments.

In Yaryan v. Commissioner, TC Memo 2018-129, the Tax Court allowed only a nonbusiness bad debt for losses incurred in a real estate joint venture as the taxpayer's activities did not constitute a business (this case disfavors those hoping on a broad definition of business for the Section 199A deduction).

In Householder v. Commissioner, TC Memo 2018-136, the Tax Court agreed with IRS that a successful financial advisor was unable to take huge losses related to horse breeding inasmuch as

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Federal Tax Update...

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he did not materially participate in the activity, the Court noting that "reading, talking and thinking" do not count toward the required hours nor do any hours which were expended solely for the purpose of avoiding passive losses.

In Birdsong v. Commissioner, TC Memo 2018-148, the Tax Court determined that the wife of a physician whose sole work outside the home was to manage nine rental units was a real estate professional as the Court accepted her testimony and corroborating documentation that showed upwards of 1,100 hours of time for the year in issue.

In Vanderhal v. Commissioner, TC Summary Opinion 2018-41, the Tax Court found that a husband's payments of a student loan of his ex-wife following a divorce constituted the payment of alimony notwithstanding that his assumption of the obligation was placed in a section of the Separation Agreement titled "Tax Free Transfers", the Court stating that the other requisites of alimony were satisfied and the agreement did not clearly categorize the payments as other than alimony.

In Grainger v. Commissioner, TC Memo 2018-117, the Tax Court disallowed most of the $85,000 in charitable deductions for clothing claimed by a grandmother who would purchase at discounted prices and deduct the original retail price.

In Harbor Lofts Associates v. Commissioner, 151 TC No. 3, the Tax Court determined that a long-term lessee could not claim a charitable deduction for the contribution of a façade easement as the leasehold was not a qualified real property interest.

In Raifman v. Commissioner, TC Memo 2018-101, the Tax Court denied a couple a theft loss deduction arising from "investment" in a tax shelter, reasoning that the intention of the program was to defraud the US Treasury and not the couple.

In Evensen v. Commissioner, TC Memo 2018-141, the Tax Court found that a tax preparer, alleging over $176,000 in losses from a Ponzi scheme, failed to prove multiple elements of her claim and disallowed a theft loss; the Court also denied an additional $100,000 of alleged theft loss from unpaid compensation, noting that she was a cash basis taxpayer.

In Washburn v. Commissioner, TC Memo 2018-110, the Tax Court denied a deduction for restitution payments arising from a fraudulent loan as the loan proceeds were not taxable income when received.

In Information Letter 2018-9, IRS clarified that it will disallow a 2017 deduction for property taxes not yet assessed (generally requiring the tax rate and the deemed value of the property to be finalized).

In Letter Ruling 201831011, IRS ruled that recovery by an insured against an attorney for malpractice constitutes tax free recovery of capital where the lost monies would have been tax free due to physical injury.

RETIREMENT PLANS

In United States v. Young, 122 AFTR2d 2018-________, a Michigan Federal District Court, agreeing with the First, Sixth, Seventh and Ninth Circuit Courts of Appeal, allowed a criminal defendant's retirement plan to be levied upon to satisfy a restitution order following a criminal conviction; the Court determined that the Mandatory Victim's Restitution Act superseded ERISA.

In Thompson v. United States, 122 AFTR2d 2018-5738, a California Federal District Court held that the exception to the 10 percent penalty in the event of an IRS levy does not apply to a withdrawal by the participant due to the threat of levy.

BUSINESS

Proposed Regulations under Code Section 199A exclude real estate from the Qualified Business Income Deduction unless constituting a business under Code Section 162 (except in the case of rentals to a controlled business); the Proposed Regulations also contain anti-abuse rules to discourage a "specified service business" from spinning off nonprofessional functions, permit small amounts of specified service income by all businesses and adopt a very narrow "catch-all" as to when the principal asset is the "reputation or skill" of at least one employee.

In Yapp v. Commissioner, TC Memo 2018-147, the Tax Court disallowed a deduction for hundreds of thousands of dollars of expenses prior to the start of operations, the Court noting that a business is commenced upon first sales; in De Sylva v. Commissioner, TC Memo 2018-165, the Tax Court again reached the same result.

In Allen v. United States, 122 AFTR2d 2018-5352, a Wisconsin Federal District Court found that a jury award of damages was taxable in its entirety based on a claim for lost farming profits; the taxpayer attempted to argue that a portion was nontaxable recovery of capital from stray voltage on his property diminishing his enjoyment but no evidence of such was presented at trial.

In Singh v. Commissioner, 122 AFTR2d 2018-5109, the Ninth

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Circuit Court of Appeals agreed with the Tax Court and IRS which disallowed approximately $200,000 in cost of goods sold, other business expenses and itemized deductions, constituting every deduction claimed on the return, because the taxpayer could not substantiate a single item, claiming his records were destroyed in a fire.

In Archer v. Commissioner, TC Memo 2018-111, the Tax Court disallowed most business expenses related to both a construction activity and a marketing activity (as well as charitable deductions) for lack of substantiation beyond testimony and handwritten notes; in Weaver v. Commissioner, TC Summary Opinion 2018-40, the Tax Court denied all business expense deductions for a music production business which lacked substantiation and used almost exclusively rounded numbers.

In Champions Retreat Golf Founders, LLC v. Commissioner, TC Memo 2018-46, the Tax Court denied a charitable deduction for an easement of over $10 million as the golf course owners could not show that the easement provided a habitat for "rare, endangered, or threatened species of animals, fish, or plants" and could not qualify alternatively for preserving open space as it could not be enjoyed by the general public; in PBBM-Rose Hill, Limited v. Commissioner, 122 AFTR2d 2018-5131, the Fifth Circuit Court of Appeals agreed with the Tax Court that there were multiple deficiencies in an attempted easement in perpetuity and denied a charitable contribution for a conservation easement and concurred that a gross valuation misstatement penalty can apply when the issue is denial of a deduction.

In Najafpir v. Commissioner, TC Memo 2018-103, the Tax Court denied an office in home deduction to a self-employed smog tester as the stored business records did not constitute inventory which would have created an allowable deduction for office in home in the absence of meetings in the space.

In Becnel v. Commissioner, TC Memo 2018-120, the Tax Court disallowed a deduction related to ownership and operation of a $2 million yacht by a developer who tainted his case by labeling expenses under various nondescript categories.

In Forlizzo v. Commissioner, TC Memo 2018-137, an attorney with a master of laws in taxation degree was denied a deduction for the alleged worthlessness of an LLC interest when he presented no substantiation as to the entity's worthlessness when certain individual assets did have value and the taxpayer did not abandon his interest.

In Alpenglow Botanicals LLC v. United States, 122 AFTR2d 2018-5035, the Tenth Circuit Court of Appeals agreed with a Colorado Federal District Court that the denial of most deductions for a cannabis business does not violate the Eighth or Sixteenth Amendments as deductions arise from legislative grace.

In Mowry v. Commissioner, TC Memo 2018-105, the Tax Court ruled that disproportionate distributions in an S corporation do not in and of itself create a second class of stock which would terminate the S election.

In Potter v. Commissioner, TC Memo 2018-153, the Tax Court determined that a payment upon retirement of an insurance agent that is tied to prior year commissions is subject to self-employment tax as it arose from an income producing activity of the agent.

In Nix v. Commissioner, TC Memo 2018-116, the Tax Court determined that a Mary Kay "consultant" was not engaged in an activity for profit when her gross income over a three-year period was less than $5,000 and her expenses were more than $85,000, the Court noting that she deducted vacations in Europe and Disney World as well as 20 trips to volley ball tournaments in which her daughter participated.

In News Release 2018-178, IRS clarified that businesses can deduct payments to charities for which they receive state tax credits provided the expense is an "ordinary and necessary" business expense (which would appear to preclude a flow through or disregarded entity from successfully getting around the $10,000 deduction cap on personal taxes).

PROCEDURE

In American Institute of Certified Public Accountants v. IRS, 122 AFTR2d 2018-5139, the DC Circuit Court of Appeals reversed a District of Columbia Federal District Court and held that required registration of unenrolled return preparers does not violate the Administrative Procedure Act.

In Presley v. United States, 122 AFTR2d 2018-2178, the Eleventh Circuit Court of Appeals agreed with a Florida District Court that bank records of a law firm are not confidential communications but registries of financial transactions and may be the subject of an IRS summons.

In Ioane v. Hodges, 122 AFTR2d 2018-________, the Ninth Circuit Court of Appeals agreed with a California Federal District Court that an IRS agent did not have immunity from suit where she had entered a home pursuant to a search warrant and insisted on being in the bathroom while the owner relieved herself.

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In United States v. Erilus, 122 AFTR2d 2018-5493, a Florida Federal District Court followed precedent and found that an injunction against further tax preparation could be imposed on preparers with a history of preparing returns knowing that they were incorrect; in United States v. Vazquez, 122 AFTR2d 2018-5941, a California Federal District Court granted injunctive relief against a tax preparer for alleged ongoing preparation of fraudulent tax returns.

In Lowery v. United States, 122 AFTR2d 2018-________, a North Carolina Federal District Court concluded that preparer penalties cannot be assessed against an owner of a firm unless the owner prepared a portion of the return.

In Williams v. Commissioner, 151 TC No. 1, the Tax Court held that managerial approval on a penalty assessment is not required where a taxpayer position is frivolous or groundless.

In Guess v. Commissioner, TC Memo 2018-97, the Tax Court held that the statute of limitations can be extended by fraud even if the fraud penalty could not be imposed due to lack of managerial written approval.

In Deaton Oil Company, LLC v. United States, 122 AFTR2d 2018-________, the Eighth Circuit Court of Appeals agreed with an Arkansas Federal District Court that the timely filing and paying of payroll taxes is a nondelegable duty and IRS need not abate penalties because of the business' reliance upon a nonperforming employee and outside CPA.

In United States v. Wadham, 122 AFTR2d 2018-5060, a Colorado Federal District Court reached the same conclusion as a Texas Federal District Court several months previously and held that the FBAR penalty was capped by the amount shown in old regulations and not by the increased amount in newer statute; in Norman v. United States, 122 AFTR2d 2018-5089, the Court of Federal Claims disagreed with two earlier 2018 Federal District Court decisions regarding the maximum amount of the FBAR penalty, allowing imposition of the increased statutory penalty notwithstanding that earlier regulations with the lower penalty have not been amended.

In United States v. Estate of Schoenfeld, 122 AFTR2d 2018-________, a Florida Federal District Court indicated that an FBAR penalty survives the death of the account holder and an action may be maintained against the estate or a distributee.

In Azarian v. Commissioner, 122 AFTR2d 2018-5279, the Eighth Circuit Court of Appeals stated that it did not have jurisdiction to hear an appeal where the Tax Court reclassified distributions from an S corporation as wages for reason that the appeal arose from an employment tax audit and the Tax Court's jurisdiction is limited to determining whether a worker is an employee or independent contractor (the decision forces affected taxpayers to pay, file a claim for refund and subsequently go into Federal District Court or US Claims Court).

In Guerra v. Teixeira, 122 AFTR2d 2018-5124, a Maryland Federal District Court agreed with a prior decision out of Virginia that Code Section 7434(a), providing for civil damages for filing a fraudulent information return, was not intended to address situations where one receives a Form 1099 as an independent contractor rather than a W-2 as an employee.

In In Re: Johnson, 122 AFTR2d 2018-________, a Georgia Bankruptcy Court held that an IRS tax lien does not have priority over judgment creditors until the notice of lien is filed.

In Bletsas v. Commissioner, TC Memo 2018-128, the Tax Court stated that the Trust Fund Recovery Penalty can be assessed against applicable individuals even where the entity is paying under an installment agreement.

In Arlin Geophysical Company v. United States, 122 AFTR2d 2018-________, a Utah Federal District Court allowed IRS to seize corporate assets for an individual tax debt on a theory that the corporation was a nominee of the individual who had been convicted of tax fraud and had a history of comingling entity and individual monies.

In United States v. Brabant-Scribner, 122 AFTR2d 2018-5557, the Eighth Circuit Court of Appeals agreed with a Minnesota Federal District Court that, after balancing the equities, it could authorize forced sale of a principal residence notwithstanding the pendency of an Offer in Compromise (in this case the Offer was for $1,000 to settle $578,000 in debt); in United States v. Gower, 122 AFTR2d 2018-5033, a Florida Federal District Court approved a seizure of a principal residence with potential equity of $143,000 where a couple owed $153,000 for six years and had sought installment agreements for as low as $1 per month.

In United States v. Orr, 122 AFTR2d 2018-5716, a Texas Federal District Court permitted IRS to seize the community property interest of a tax delinquent in the marital home.

In United States v. Nelson, 122 AFTR2d 2018-5088, a South Dakota Federal District Court refused to allow IRS to keep more than 50 percent of proceeds from the sale of a couple's primary residence where only the husband owed back taxes; IRS argued unsuccessfully that a "homestead interest" is not a vested property right under state law.

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In United States v. Ness, 122 AFTR2d 2018-5570, a Minnesota Federal District Court ruled that IRS may sell a remainder interest in property owned by a tax delinquent but subject to his parents' life estate.

In Loveland v. Commissioner, 151 TC No. 7, the Tax Court found that IRS abused its discretion in failing to consider multiple collection alternatives in the case of a couple who lost their home to foreclosure about the time that the husband became disabled from a heart condition and the wife was fighting cancer causing both to retire.

In Merlo v. Commissioner, TC Summary Opinion 2018-47, an IRS revenue agent was granted innocent spouse relief as to disability income unknown to him that his former wife received and then deposited in a separate checking account; in Neitzer v. Commissioner, TC Memo 2018-156, the Tax Court granted innocent spouse status to a wife separated from her husband who did not know her husband would not or could not pay the liability and had a deteriorating medical condition.

In Jacobsen v. Commissioner, TC Memo 2018-11, the Tax Court granted innocent spouse status to a former spouse for the first year of his wife's embezzlement but denied innocent spouse status for the next year when he knew of the theft.

In Benson v. Commissioner, TC Memo 2018-157, a husband was denied innocent spouse equitable relief following separation where he entered into a joint return which included known income from fraudulent overbilling by his wife.

In Coggin v. United States, 122 AFTR2d 2018-5171, a North Carolina Federal District Court struck down separate returns by a widow where joint returns had previously been filed prior to her husband's death, the Court noting that the widow had a filing responsibility due to separate income and, by not filing separately, she acquiesced in the joint returns where her husband forged her signature.

In In Re: Clothier, 122 AFTR2d 2018-5520, a Tennessee Bankruptcy Court engaged in statutory interpretation and determined that the pendency of a Chapter 13 reorganization does not extend the three-year period before filing and discharging taxes in a Chapter 7 bankruptcy.

In In Re: Harold, 122 AFTR2d 2018-5590, a Michigan Bankruptcy Court denied discharge of two years in bankruptcy when the alleged original filing date of the return could not be proven and IRS records showed an original being submitted several days before the filing of the bankruptcy petition.

In Slone v. Commissioner, 122 AFTR2d 2018-5245, the Ninth Circuit Court of Appeals reversed the Tax Court on the facts and found transferee liability for shareholders when they depleted the corporation of funds leaving it unable to pay taxes.

In News Release 2018-176, IRS announced that it will update procedures for voluntary disclosure of off shore accounts in the near future as the prior program ended on September 28 except for those not acting willfully who continue to qualify for the Streamlined Filing Compliance Procedures.

In Program Manager Tax Advisory 2018-17, IRS noted that it has the burden of proof for establishing the FBAR penalty by a preponderance of the evidence; it also noted that "willfulness" includes "recklessness" and "willful blindness."

A revision to Internal Revenue Manual 8.6.4.1.3 allows specific dollar settlements without a Schedule of Adjustments in cases involving nonrecurring issues and no other taxpayers.

A National Taxpayer Advocate Blog criticized IRS policy not to copy taxpayer representatives on passport revocations arising from "serious tax delinquency."

In Chief Counsel Advice 201825078, IRS expressed its agreement with a 2014 Sixth Circuit case holding that preparer penalties can apply to an employee of a business preparing its return internally.

In Chief Counsel Advice 201827012, IRS clarified that judicial approval is required before seizure of a property owned by a tax delinquent and used as a principal residence of the delinquent's spouse, former spouse or minor child as well as the delinquent himself.