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IRS Extends Repair Regs Five-Year Eligibility Limitation Waiver

Notice 2017-6

The IRS has announced an extension of the waiver of the eligibility rule for an additional year for taxpayers making certain automatic accounting method changes under the final tangible property regs (the so-called "repair regs"). The waiver applies to changes made for tax years beginning before January 1, 2017.

- ***Take Away.*** Taxpayers, the IRS explained, continue to transition to the final repair regs. To ease the transition, including the administrative costs for both the IRS and taxpayer where non-automatic consent would otherwise be required, the agency has announced this extension.

Background

Generally, a change to comply with the final repair regs is a change in method of accounting. Rev. Proc. 2015-13 provides the general procedures for a taxpayer to obtain the automatic or non-automatic consent of the IRS to change a method of accounting. Rev. Proc. 2016-29 provides the list of automatic changes in methods of accounting to which the automatic change procedures of Rev. Proc. 2015-13 apply.

Section 5 of Rev. Proc. 2015-13 provides that the automatic change procedures may not be utilized if the taxpayer has made or requested a change for the same item during any of the five tax years ending with the year of change. This rule, the IRS explained, generally precludes a taxpayer from using the automatic change procedures to change the treatment of the same item more than once within a five-year period.

In Rev. Proc. 2016-29, the IRS provided a waiver of this eligibility rule for a limited period of time. The eligibility rule does not apply to a taxpayer that makes one or more of the qualified changes in method of accounting for any tax year beginning before January 1, 2016.

Extension

Notice 2017-6 extends the eligibility rule waiver for one year to any tax year beginning before January 1, 2017, for taxpayers making certain automatic changes to utilize the final tangible property regulations under Code Sections 162(a) and 263(a) and for making certain automatic changes to depreciation and dispositions under Code Sec. 168.

The waiver applies to changes made under the following sections of Rev. Proc. 2016-29: (1) section 11.08, relating to changes in methods of accounting for tangible property under the final tangible property repair regulations; (2) section 6.14, relating to a change from a permissible to another permissible method of accounting for depreciation of MACRS property under Reg. §1.168(i)-1 (relating to general asset accounts), Reg. §1.168(i)-7 (relating to item accounts), and Reg. §1.168(i)-8 (relating to dispositions), as applicable; (3) section 6.15, relating to a change in method of accounting for disposi-

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IRS Finalizes Regs On Definitions And Reporting Requirements For PFIC Shareholders

TD 9806

The IRS has finalized regs on definitions and reporting requirements for shareholders of Passive Foreign Investment Companies (PFICs). The final regs generally track proposed regs issued in 2013 with certain modifications and clarifications.

- ***Take Away.*** The proposed regs provided an exception from reporting when the shareholder is not treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the Code Sec. 1291 fund stock, and, as of the last day of the shareholder's tax year, either the value of all PFIC stock considered owned by the shareholder is $25,000 (or $50,000 for shareholders that file a joint return) or less, or, if the stock of the Code Sec. 1291 fund is owned indirectly, the value of the indirectly owned stock is $5,000 or less. The final regs make no changes to this treatment.

Shareholders

The final regs, the IRS explained, modify the definition of shareholder in Reg. §1.1291-1 as announced in Notice 2014-28. Under the final regs, a United States person is not treated as a shareholder of a PFIC to the extent the person owns PFIC stock through a tax-exempt organization or account described in Reg. §1.1298-1(c)(1).

The IRS explained that the non-duplication rule in Reg. §1.1291-1(b)(8)(ii)(C)(2) states that a United States person will not be treated, as a result of applying Reg. §1.1291-1(b)(8)(ii)(C)(1), as owning (other than for purposes of determining whether a person satisfies the ownership threshold of Reg. §1.1291-1(b)(8)(ii)(A)) stock of a PFIC that is directly owned or considered owned indirectly under Reg. §1.1291-1(b)(8) by another United States person (determined without regard to Reg. §1.1291-1(b)(8)(ii)(C)(1)).

The IRS also clarified that the ownership rule of Reg. §1.1291-1(b)(8)(ii)(C)(1) does not apply to stock owned directly or indirectly by an S corporation; rather, the indirect ownership rule under Reg. §§1.1291-1(b)(8)(iii)(B) applies in those instances. Further, the agency clarified that the attribution rule in Reg. §1.1291-1(b)(8)(ii)(C) applies to all PFICs and not only Code Sec. 1291 funds.

Exceptions

The final regs, in accordance with Notice 2014-51, add Reg. §1.1298-1(c)(3), which provides that United States persons that own PFIC stock that is marked to market under a non-section 1296 MTM provision are not subject to Code Sec. 1298(f) reporting unless they are subject to Code Sec. 1291 under the coordination rule in Reg. §1.12911(c)(4)(ii).

The final regs also exempt a domestic partnership from Code Sec. 1298(f) reporting with respect to an interest in a PFIC for a tax year when none of its direct or indirect partners are required to file Form 8621 (or successor form) with respect to the PFIC interest Code Sec. 1298(f) and the final regs because the partners are not subject to the PFIC rules.

- ***Comment.*** Other exceptions cover PFIC stock held through certain foreign pension funds; certain dual resident taxpayers; and certain residents of U.S. Territories.

References: FED ¶47,005; TRC INTLOUT: 18,208.

Extension

Continued from page 1

tions of a building or structural component under Reg. §1.168(i)-8; (4) section 6.16, relating to a change in method of accounting for dispositions of tangible depreciable assets (other than a building or its structural components) under Reg. §1.168(i)-8; and (5) section 6.17, relating to a change in method of accounting for dispositions of tangible depreciable assets in a general asset account under Reg. §1.168(i)-1. The waiver also applies for purposes of the concurrent automatic changes that are specifically referenced in the preceding sections of Rev. Proc. 2016-29. The waiver also applies for purposes of the concurrent automatic changes that are specifically referenced in the preceding sections of Rev. Proc. 2016-29.

Transition rule

The IRS also provided a transition rule. If, before December 20, 2016, a taxpayer properly filed a Form 3115 under the non-automatic change procedures in Rev. Proc. 2015-13 requesting consent for a change in method of accounting described in Notice 2017-6, and the Form 3115 is pending on December 20, 2016 the taxpayer may choose to make the change of accounting method under the automatic change procedures in Rev. Proc. 2015-13 by following Rev. Proc. 2016-29 with certain modifications.

References: FED ¶46,204; TRC ACCTNG: 21,203.10.

REFERENCE KEY

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

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Exception To Contemporaneous Written Acknowledgment Requirement Not Self-Executing, Tax Court Holds

15 West 17th Street LLC, 147 TC No. 19

The Tax Court has rejected a taxpayer's argument that a donee's amended return satisfied the exception to the contemporaneous acknowledgment requirement under Code Sec. 170(f)(8)(D). That provision, the court held, is not self-executing.

- ***Take Away.*** The contemporaneous written acknowledgment rules apply not only to substantial contributions, as was the donation in this case. A donor claiming a deduction of $250 or more is required to obtain and keep a contemporaneous written acknowledgment for a charitable contribution. For all donations of property, including clothing and household items, obtain a receipt from the charity that includes the name of the charity, date of the contribution, and a reasonably-detailed description of the donated property, Ellen Minkow, CPA, partner, and Fred Slater, CPA, partner, MS1040 LLC, New York, told Wolters Kluwer.
- ***Comment.*** In Code Sec. 170(f)(8)(D), Congress provided an exception to the contemporaneous written acknowledgment requirement for certain gifts to charitable organizations. Generally, a contemporaneous written acknowledgment would not be required if the charitable organization files a return on a form and in accordance with regs as the IRS would issue.

Background

The taxpayer did business as a limited liability company (LLC). The taxpayer owned real property. In 2007, the taxpayer granted a perpetual conservation easement over part of the property to a charitable organization. The charitable organization acknowledged receipt of the easement but the letter did not state if the donee had provided any goods or services to the taxpayer or if the donee had otherwise given the taxpayer anything of value, in exchange for the easement.

The taxpayer claimed a charitable deduction of $64 million. The IRS disallowed the deduction and the taxpayer appealed to the Tax Court.

Court's analysis

The court first found that Code Sec. 170(f)(8)(A) provides that no deduction is allowed for any charitable contribution of $250 or more unless the taxpayer substantiates the gift by a contemporaneous written acknowledgment from the donee organization. The contemporaneous written acknowledgment must state, among other things, whether the donee supplied the donor with any goods or services in consideration for the gift and if so must furnish a description and good-faith estimate of the value of such goods or services. The contemporaneous written acknowledgment requirement, the court added, is a strict one.

The court further found that after the petition in this case was filed, the donee submitted an amended Form 990, Return of Organization Exempt from Income Tax. The amended return described the gift from the taxpayer and included a statement that the donee had provided the taxpayer with no goods or services in consideration for that gift. According to the taxpayer, this eliminated the need for a contemporaneous written acknowledgment, relying on Code Sec. 170(f)(8)(D).

However, the court found that Code Sec. 170(f)(8)(D) is not self-executing. The legislative history showed that Congress intended for the IRS to issue regs. The IRS has not issued regs under Code Sec. 170(f)(8)(D). Therefore, the taxpayer's reliance on that provision was misplaced.

- ***Comment.*** In 2015, the IRS proposed regs to implement the exception to the contemporaneous written acknowledgment requirement. The IRS withdrew the proposed regs in 2016 after push-back from many charitable organizations, which expressed concern over the scope of their proposed reporting responsibilities. The exception to the contemporaneous written acknowledgement requirement under Code Sec. 170(f)(8)(D) remains unavailable until final regs are issued, the IRS explained.

Dissent

The dissent would have found that the donee's compliance with Code Sec. 170(f)(8)(D) did not require the IRS to issue regs. The provision would be self-executing.

References: Dec. 60,766;
TRC INDIV: 51,454.10.

January 31 Marks New Deadline For Forms W-2, W-3, 1099-MISC

This filing season marks the first time where Forms W-2, Wage and Tax Statement, Forms W-3, Transmittal of Wage and Tax Statements, and Forms 1099-MISC, Miscellaneous Income must be filed with the IRS by employers and small businesses by January 31st. The forms report employee compensation and nonemployee compensation, respectively.

- ***Comment.*** The new deadline allows the IRS to match Forms W-2 and 1099-MISC with tax returns as they are filed in order to minimize the potential for tax fraud and identity theft.

New deadline. The *Protecting Americans Against Tax Hike Act of 2015* (PATH Act) has changed the deadlines for businesses to file Forms W-2, W-3 and 1099-MISC with the IRS to January 31, 2017 (rather than the end of February). Furthermore, the extended electronic filing due date of the end of March is no longer an option. However, one 30-day extension may granted to file Form W-2, but this extension is no longer automatic.

- ***Comment.*** The January 31 deadline has long applied to employers furnishing copies of these forms to their employees. That date remains unchanged.

IR-2016-143; TRC PAYROLL: 3,356.

IRS Releases Final Regs On Reporting Winnings From Bingo, Keno And Slot Machines; Revises Some Proposals

TD 9807

The IRS has issued final regs on the filing of information returns to report winnings from bingo, keno, and slot machine play. The final regs track proposed regs issued in 2015 with modifications.

- ***Take Away.*** For bingo, the term reportable gambling winnings means winnings of $1,200 or more from one bingo game, without reduction for the amount wagered. All winnings received from all wagers made during one bingo game are combined (for example, all winnings from all cards played during one bingo game are combined). For keno, the term reportable gambling winnings means winnings of $1,500 or more from one keno game reduced by the amount wagered on the same keno game. All winnings received from all wagers made during one keno game are combined (for example, all winnings from all "ways" on a multi-way keno ticket are combined). For slot machine play, the term reportable gambling winnings means winnings of $1,200 or more from one slot machine play, without reduction for the amount wagered.

Thresholds and reporting

The IRS reported that stakeholders opposed lowering the current reporting thresholds of $1,200 for bingo and slot machines and $1,500 for keno. The final regs make no changes to the current reporting thresholds for bingo, slot machines and keno. The final regs also provide that reportable gambling winnings in the case of bingo and slot machine play are not determined by netting the wager against the winnings, but reportable gambling winnings in the case of keno are determined by netting the wager in that one game against the winnings from that game.

Additionally, the final regs adopt the proposed optional aggregate reporting method with modifications. The final regs provide that the period used for purposes of the aggregate reporting method is now referred to as an "information reporting period" rather than as a "session." Further, an information reporting period is either a calendar day or a gaming day, so long as that period is applied uniformly by the payor to all payees during the calendar year, the IRS explained.

A payor may adopt a different information reporting period from one calendar year to the next, but may not change the information reporting period in the middle of a calendar year. Changes to a payor's information reporting period from one calendar year to the next must be implemented on January 1.

Slot machines

The final regs do not adopt the proposed rules for electronically tracked slot machine play. The IRS reported that stakeholders explained that one of the purposes of electronic player systems was for marketing and customer loyalty and current systems should not be used as a mandatory method for tracking winnings and wagers for purposes of tax reporting. Further, some stakeholders reported that their electronic player systems did not have the necessary controls to be used for tax reporting.

Identification

The final regs retain the proposed rule that payors obtain two forms of identification from the payee to verify the payee's identity. The final regs expand the roster of examples of acceptable government-issued identification to include tribal member identification cards issued by a federally recognized Indian tribe. The final regs provide an exception to the photo identification requirement if one of the forms of identification is a tribal identification card presented at a gaming establishment owned or licensed by the tribal government that issued the tribal member identification card.

References: FED ¶47,006; TRC FILEBUS: 9,204.

IRS Issues Proposed Regs On Withholding And Reporting For Horse Racing And Other Winnings

Proposed regs have been issued on the withholding and reporting rules for payments of gaming winnings from horse races, dog races and jai alai. The proposed regs, the IRS explained, are intended to more accurately cover exotic wagers.

Background. Whether winnings are subject to withholding depends on the type of wager, the proceeds, and in some cases. the odds associated with a wager. For horse races, dog races, or jai alai, payers withhold if the proceeds exceed $5,000 and are at least 300 times as large as the amount wagered, the IRS explained.

Proposed regs. The proposed regs amend the rules regarding how payers determine the wager amount in parimutuel wagering transactions for horse races, dog races, and jai alai. The proposed also provide a new rule on the treatment of exotic bets, for example multicontestant bets. Additionally, the proposed regs require payers to report the taxpayer identification numbers (TIN) of winners in lieu of Social Security numbers; and update payee identification provisions. Additionally, the proposed regs require payers to report the taxpayer identification numbers (TIN) of winners in lieu of Social Security numbers; and update payee identification provisions.

- ***Comment.*** In parimutuel betting, each type of bet on a contest goes into its own parimutuel pool, the odds and payouts adjust as amounts are wagered in the pool, and all winning bettors share the money placed in the particular pool less the applicable takeout, the IRS explained.

NPRM REG-123841-16; FED ¶49,731; TRC FILEBUS: 18,204.

STARS Transaction Lacked Economic Substance; District Court Reversed

Santander Holdings USA, Inc., CA-1, December 16, 2016

The First Circuit Court of Appeals has reversed a federal district court decision that a taxpayer was entitled to tax benefits that resulted from a structured trust advantaged repackaged securities (STARS) transaction. The court found that the STARS transaction lacked a legitimate business purpose, as there was no objective nontax economic benefit; therefore, the taxpayer was not entitled to claim tax credits nor interest deductions related to the transaction.

- ***Take Away.*** The district court's decision that the transaction had a legitimate nontax business purpose ran counter to decisions in three cases out of the Second Circuit, Eighth Circuit, and Federal Circuit where similar STARS transactions were found to have lacked economic substance. With the circuit court's decision in the foregoing matter, there is currently no split in the circuits and the matter will yet again escape Supreme Court review.

Background

The taxpayer, a U.S. bank, engaged in a STARS transaction with a bank in the U.K. For the tax years at issue, the IRS disallowed the taxpayer's claims for foreign tax credits, asserting that the payments to the taxpayer from a U.K. bank trustee arrangement operated as a tax rebate to the taxpayer for U.K. taxes paid. The IRS also contended that the STARS transaction was a sham in its entirety, as it lacked economic substance. The IRS assessed a tax liability and related penalties and interest, of which the taxpayer paid and sued to recover a refund.

The district court held that the payments made to the taxpayer was revenue to the taxpayer. As such, the revenue should have been included in assessing whether the taxpayer could have expected to profit from the STARS transaction. In addition, the district court found the trust and loan transactions had a legitimate purpose and allowed the claims for foreign tax credits and interest deductions.

Court's analysis

The First Circuit reversed and remanded the district court decision, holding that the STARS transaction was only profitable because the bank planned to obtain U.S. tax credits, and there was no other reasonable prospect in terms of creating profit. The court found that the trust assets never left the taxpayer's control, nor did they perform any function when placed in the trust that they could not without the trust besides creating the tax effect that made the monthly payments possible.

The court also concluded that the STARS transaction had no objective nontax economic benefit and that Congress did not intend that it would cover the type of generated transaction in which the taxpayer was involved. Additionally, the court found that the entire function of the trust transaction was to expose the taxpayer to U.K. taxation for the purpose of generating U.S. foreign tax credits to offset U.S. tax liability.

References: 2017-1 USTC ¶50,101; TRC INTLOUT: 3,120.

IRS Modifies Effective Dates In Temporary Deferral, Outbound Loss Event Regs

The IRS has announced that it will modify the effective dates of recently released temporary regs relating to the recognition and deferral of foreign currency gain or loss under Sec. 987 with respect to qualified business units (QBU). Reg. §1.987-12T(j)(1) provides that the section applies to any deferral event or outbound loss event that occurs on or after January 6, 2017. However, Reg. §1.987-12T(j)(2) applies the same to any deferral event or outbound loss event that occurs on or after December 7, 2016, if such deferral event or outbound loss even is undertaken with a principal purpose of recognizing Code Sec. 987 gain or loss.

Effective dates. The IRS stated that in order to prevent abuse, Reg. §1.987-12T(j)(2) is to be modified so that Reg. §1.987-12T will also apply to any deferral event or outbound loss event that occurs as a result of an entity classification election that is filed on or after December 22, 2016, and that is effective before December 7, 2016. In addition, Reg. §1.987-12T(j)(1) will be a loss event that occurs as a result of an entity classification election that is filed on or after January 6, 2017, and that is effective before that date.

Notice 2017-7; FED ¶46,205; TRC INTLOUT: 21,102.

Filing Disclosure Deadline Extended For Micro-Captive Insurance Transactions

Based upon requests from stakeholders, the IRS has extended until May 1, 2017, the time for filing participant and material advisor disclosure statements for certain micro-captive insurance transactions identified as transactions of interest in Notice 2016-66. This extension includes certain disclosure statements required to be filed with respect to micro-captive insurance transaction after November 1, 2016, and prior to May 1, 2017. In addition, for purposes of disclosure of transactions in which a captive enters into a contract with the insured, the 90-day period provided in Reg. §1.6011-4(e)(2)(i) is extended to 180 days.

Notice 2017-8; ¶46,210; TRC FILEBUS: 3,052.20.

IRS Adds Syndicated Conservation Easements To Roster Of Listed Transactions

Notice 2017-10

The IRS has announced that syndicated conservation easement transactions are "listed transactions." As a result, these transactions are subject to various reporting and disclosure rules.

- ***Take Away.*** "The IRS will likely focus any challenge to syndicated conservation easements on what the IRS considers to be inflated valuations," Joel Crouch, partner, Meadows, Collier, Reed, Cousins, Crouch & Ungerman, L.L.P., Dallas, told Wolters Kluwer. "However, the IRS may also challenge the tax benefits of the transactions based on partnership anti-abuse rules or the economic substance doctrine," Crouch noted.

Background

According to the IRS, some promoters are syndicating conservation easement transactions that claim to give investors the opportunity to claim charitable contribution deductions in amounts that significantly exceed the amount invested. Generally, a promoter identifies a pass-through entity that owns real property. Alternatively, a promoter may form a pass-through entity to acquire real property. Additional tiers of pass-through entities may be formed, the IRS explained.

The promoter subsequently syndicates ownership interests in the pass-through entity that owns the real property, or in one or more of the tiers of pass-through entities, using promotional materials suggesting to prospective investors that an investor may be entitled to a share of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the investor's investment.

After an investor invests in the pass-through entity, either directly or through one or more tiers of pass-through entities, the pass-through entity donates a conservation easement encumbering the property to a tax-exempt entity. Investors that held their direct or indirect interests in the pass-through entity for one year or less may rely on the pass-through entity's holding period in the underlying real property to treat the donated conservation easement as long-term capital gain property under Code Sec. 170(e)(1). The promoter would receive a fee or other consideration, which may be in the form of an interest in the pass-through entity, the IRS explained.

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AFRs Issued For January 2017

Rev. Rul. 2017-2

The IRS has released the short-term, mid-term, and long-term applicable interest rates for January 2017.

Applicable Federal Rates (AFR) for January 2017

Short-Term	**Annual**	**Semiannual**	**Quarterly**	**Monthly**
AFR	0.96%	0.96%	0.96%	0.96%
110% AFR	1.06%	1.06%	1.06%	1.06%
120% AFR	1.15%	1.15%	1.15%	1.15%
130% AFR	1.25%	1.25%	1.25%	1.25%
Mid-Term				
AFR	1.97%	1.96%	1.96%	1.95%
110% AFR	2.17%	2.16%	2.15%	2.15%
120% AFR	2.36%	2.35%	2.34%	2.34%
130% AFR	2.57%	2.55%	2.54%	2.54%
150% AFR	2.96%	2.94%	2.93%	2.92%
175% AFR	3.46%	3.43%	3.42%	3.41%
Long-Term				
AFR	2.75%	2.73%	2.72%	2.71%
110% AFR	3.02%	3.00%	2.99%	2.98%
120% AFR	3.31%	3.28%	3.27%	3.26%
130% AFR	3.58%	3.55%	3.53%	3.52%

Adjusted AFRs for January 2017

	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term adjusted AFR	0.71%	0.71%	0.71%	0.71%
Mid-term adjusted AFR	1.47%	1.46%	1.46%	1.46%
Long-term adjusted AFR	2.04%	2.03%	2.02%	2.02%

The Code Sec. 382 adjusted federal long-term rate is 2.04%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 2.04%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.54% and 3.23%, respectively, however, the appropriate percentage for non-federally subsidized new buildings placed in service after July 30,2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 2.4%. The deemed rate of return for transfers during 2017 to pooled income funds in existence for less than 3 taxable years is 1.2%.

References: FED ¶46,202; TRC ACCTNG: 36,162.05.

TAX BRIEFS

Internal Revenue Service

Victims of the wildfires that began on November 28, 2016 in parts of Tennessee may qualify for tax relief from the Internal Revenue Service. The IRS has postponed until March 31, 2017, certain deadlines for taxpayers who reside or have a business in the disaster area.

Tennessee Disaster Relief Notice (ATL-2016-11), FED ¶46,209; TRC FILEIND: 15,204.25

The IRS has provided the dollar amounts, increased by the 2017 inflation adjustment, for Code Sec. 1274A debt instruments arising out of sales or exchanges. The 2017 inflation-adjusted amount is $5,717,400 for Code Sec. 1274A(b) qualified debt instruments and $4,083,800 for Code Sec. 1274A(c)(2)(A) cash method debt instruments.

Rev. Rul. 2016-30, FED ¶46,206; TRC ACCTNG: 36,154.65

A table outlining the base period Treasury bill rate for the period that ended on September 30, 2016, has been released by the IRS. The figures in the table are to be used to determine the amount of interest to be paid each year by a shareholder of a domestic international sales corporation (DISC).

Rev. Rul. 2017-1, FED ¶46,201; TRC INTLOUT: 11,300

The IRS has proposed regulations relating to the deduction and use of contributions to qualified fund maintained for decommissioning nuclear power plants.

Proposed Regulations, NPRM REG-112800-16, FED ¶49,730; TRC ACCTNG: 12,208

Jurisdiction

Two district courts properly dismissed refund suits in four partnership cases due to lack of jurisdiction. Code Sec. 7422 deprives the courts of jurisdiction to consider a partner's claim for refund attributable to a partnership item, and the assessment period under Code Sec. 6229, at issue in this case, was a partnership item.

Rodgers, CA-5, 2017-1 USTC ¶50,105; TRC PART: 60,056

An individual was not entitled to dismiss for lack of jurisdiction the government's action to collect his allegedly unpaid federal income tax liabilities and to foreclose on federal tax liens. The individual's argument that jurisdiction was lacking because he is not a citizen of the United States and did not consent to the laws of the federal government was rejected.

Reilly II, DC Pa., 2017-1 USTC ¶50,103; TRC LITIG: 9,256

IRAs

An individual's Individual Retirement Account (IRA) withdrawal was a taxable distribution and was subject to the 10-percent additional tax. Although the taxpayer rolled over her husband's IRA into her own on his death, she used distributions she took from her own IRA to pay her stepson as part of the settlement agreement.

Ozimkoski, TC, CCH Dec. 60,761(M), FED ¶47,902(M); TRC RETIRE: 66,454

Summons

An IRS summons against a real estate appraiser who specialized in conservation easements was properly enforced. The individual's argument that the IRS had no legitimate purpose in requesting land appraisals that were not ultimately used by a taxpayer and filed with the IRS was rejected.

Clower, CA-11, 2017-1 USTC ¶50,107; TRC IRS: 21,300

Income

An attorney was liable for income tax on his full distributive share of partnership income. As a partner, it was the individual's obligation to report his share of the firm's income, whether or not it was distributed to him and whether or not that money was later used to pay firm expenses.

Mack, Jr., TC, CCH Dec. 60,762(M), FED ¶47,903(M); TRC PART: 3,052

An individual was not allowed to assign his earned income as an investment advisor to his S corporation. The taxpayer individually entered into a representative agreement with a financial services firm before the S corporation was incorporated.

Fleischer, TC, CCH Dec. 60,772(M), FED ¶47,913(M); TRC INDIV: 27,102

Deductions

A married couple was not entitled to deduct passthrough losses generated by their S corporations because they lacked sufficient basis in the S corporations' stock.

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Additional Guidance On User Fee Exemption For Employee Plans Determination Applications

The IRS recently released guidance outlining the circumstances governing eligibility for exemption from user fee requirement for employee plans determination applications filed on or after the start of the new year. The guidance provides the conditions under which the IRS will treat an application for a determination as being filed within a qualifying open remedial amendment period. With Notice 2017-1, the IRS will treat an application for a determination letter as being filed within a qualifying open remedial amendment period so long as the plan meets the so-called 10-year rule.

Notice 2017-1; FED ¶46,213; TRC RETIRE: 51,400.

IRS Provides Guidance On Maintaining CPEO Status

The IRS has released guidance describing and updating the procedures a certified professional employer organization (CPEO) must follow and the requirements it must satisfy to maintain its certification. The guidance also addresses procedures relating to the suspension and revocation of CPEO certification, voluntary termination of CPEO status and certain transition relief to CPEOs with an effective date of certification of January 1, 2017, that receive notice of certification after that date.

Rev. Proc. 2017-14; ¶46,208; TRC PAYROLL: 3,058.05.

Tax Briefs

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No basis is created for a shareholder when funds are advanced to an S corporation by a separate entity, even one closely related to the shareholder.

Harigs, TC, CCH Dec. 60,765(M), FED ¶47,906(M); TRC SCORP: 404.05

Investments

A corporation operating as a medical device company was not entitled to a grant related to investments it made after the year for which it was certified under Code Sec. 48D because it was not certified to make qualified investments after that year.

Silver Medical, Inc., TC, CCH Dec. 60,760, FED ¶47,901; TRC BUSEXP: 51,852

Losses

An individual did not engage in her quarter-horse activity primarily for profit, Despite the taxpayer's experience and knowledge of horse breeding , the activity never generated a profit and the taxpayer did not show that she sought or received financial advice from experts.

Hylton, TC, CCH Dec. 60,768(M), FED ¶47,909(M); TRC BUSEXP: 15,054

An individual was not allowed to deduct a passthrough loss from her husband's S corporation because the loss was not incurred in an active trade or business. The husband did not conduct his human-resources training activity with an actual and honest objective of making a profit.

Moyer, TC, CCH Dec. 60,770(M), FED ¶47,911(M); TRC BUSEXP: 3,058

Charitable Contribution Deduction

Two individuals were entitled to charitable contribution deductions, reduced by the court, for the conveyance of a conservation easement and a fee simple interest in real property. Valuation misstatement penalties were not imposed because the taxpayers acted reasonably and in good faith.

McGrady, TC, CCH Dec. 60,767(M), FED ¶47,908(M); TRC INDIV: 51,364

Liens and Levies

An IRS settlement officer (SO) did not abuse her discretion by sustaining a levy to collect outstanding tax liabilities. The deficiency notices mailed to the taxpayer's last known address and were returned as unclaimed, and the taxpayer offered no evidence of notification of any address other than the one the IRS used.

Snodgrass, TC, CCH Dec. 60,769(M), FED ¶47,910(M); TRC IRS: 51,056.15

Refund Claims

A petition for review was filed in the case of an ex-CEO who was required to forfeit his insider trading gains to the government using after-tax dollars; therefore, he was not entitled to a tax credit or a refund.

J.P. Nacchio, CA-FC, 2016-1 USTC ¶50,310;

Collection Due Process

The IRS's determination to collect by levy unpaid excise tax assessments was not an abuse of discretion. Both taxpayers received deficiency notices, therefore, they had a prior opportunity to contest their underlying tax liabilities.

Archer, TC, CCH Dec. 60,763(M), FED ¶47,904(M); TRC IRS: 51,056.25

An IRS settlement officer (SO) did not abuse her discretion by rejecting a taxpayer's proposed installment agreement. All the expense numbers provided by the taxpayer to the SO indicated that the taxpayer's proposed monthly installment amount was less than his demonstrated ability to pay, which is the minimum an SO should accept when arriving at an installment agreement.

Pitner, TC, CCH Dec. 60,771(M), FED ¶47,912(M); TRC FILEIND: 21,154.40

An IRS settlement officer (SO) did not abuse his discretion by sustaining the filing of a Notice of Federal Tax Lien (NFTL) to collect an individual's unpaid trust fund penalty liabilities. The taxpayer owned property in a county named in the NFTL through his wholly owned S corporation.

Jewell, TC, CCH Dec. 60,773(M), FED ¶47,914(M); TRC IRS: 51,056.20

Deficiencies and Penalties

The Tax Court did not err in imposing a fraud penalty on an individual who reported less than five percent of his taxable income for several years, and estimated his taxes rather than relying on available records. The returns in evidence were his and were signed or electronically authorized by him. Fraud was proven by clear and convincing evidence.

Sanchez, CA-9, 2017-1 USTC ¶50,106; TRC PENALTY: 6,058

Bankruptcy

A bankruptcy court erred when it deferred to the Tax Court for its calculation of interest on a debtor's underpayment. The Tax Court did not have jurisdiction over the calculation of interest because its jurisdiction was limited to redetermination of the deficiency.

Beane, CA-11, 2017-1 USTC ¶50,104; TRC IRS: 57,056.10

Easements

Continued from page 6

Listed transaction

Transactions entered into on or after January 1, 2010, that are the same as, or substantially similar to, the transactions described in Notice 2017-10, are listed transactions, the IRS reported. The IRS detailed various disclosure and reporting requirements and certain timeframes. Persons who have entered into these transactions after December 31, 2009, must disclose the transactions for each tax year in which the taxpayer participated in the transactions, provided that the period of limitations for assessment of tax has not ended before December 24, 2016, the IRS explained. Penalties for failing to disclose and satisfy other requirements apply, the agency cautioned.

References: FED ¶46,766; TRC INDIV: 57,454.

IRS Proposes Update To Mortality Tables For DB Plans

benefit pension plans (DB plans) to calculate the present value of a stream of expected future benefit payments for determining the plan's minimum funding requirements. The proposed regs also update the requirements that a plan sponsor must meet to obtain IRS approval to use substitute mortality tables that are specific to the plan. The changes are proposed to apply to plan years beginning on or after January 1, 2018.

NPRM REG-112324-15; FED ¶49,729; TRC RETIRE: 30,556.