Wolters Kluwer

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LB&I Announces Issue-Based Compliance Campaigns; Reviews Regulatory Freeze

IRS Rollout of Large Business and International Campaigns

The IRS Large Business and International Business (LB&I) division has revealed 13 new corporate compliance campaigns. The campaigns, as explained by LB&I, offer "a holistic response to an item of either known or potential compliance risks."

- ***Take Away.*** During a conference call with reporters on January 31, Doug O'Donnell, IRS Large Business and International Commissioner, said, "We are not saying that we know that we have a problem, nor that every instance where one of these campaign items might be on a return that there is noncompliance. What we are saying is that we either believe, or have indication that, there is risk, or we are concerned that there could be and we need to look at it in more depth," O'Donnell said.
- ***Comment.*** When asked how LB&I planned to approach the regulatory freeze executive order issued by President Trump, O'Donnell stated, "The executive orders coming out are being reviewed and the manner in which we will respond to them is still under consideration." Wolters Kluwer asked the IRS for clarification but did not receive a response by press time.

Background

In September 2015, the IRS announced that the LB&I Division would undergo a major re-organization. That change marked LB&I's transition away from a reliance on enterprise-wide coordinated industry case examinations to a more nuanced approach to identify and address compliance risks. Along with the changes came the identification of nine practice areas.

- ***Comment.*** The implementation of the new regime was done to replace the old, in which the IRS would audit a taxpayer every year for what could amount to decades. With yearly budgetary constraints and a continuously shrinking workforce, LB&I's changes are geared with the ever-present limitations in mind.

LB&I outlined a reorganization that would incorporate multi-layered campaigns meant to identify and address key compliance risks, identified by data analytics drawn from a range of sources and evaluated by specialized staff. From this, LB&I announced that it would craft a range of treatments tailored to address the perceived compliance risk.

In February 2016, the IRS announced the launch of a new examination process for the LB&I division. The new process, Publication 5125, Large Business & International Examination Process, effective as of May 1, 2016, encompasses three phases—planning, execution and resolution—and is issue-focused.

New audit campaigns

The transition to an issue-based compliance campaign marks the end of what LB&I calls "the culmination of an extensive effort to redefine large business compliance work and build

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IRS Updates Form 990-EZ; Adds "Help" Icons For Assistance

IR-2017-14

The IRS has unveiled an updated version of Form 990-EZ, Short Form Return of Organization Exempt From Income Tax. The updated form includes "help"icons designed to share key information needed to complete many of the fields on the form.

- ***Take Away.*** IRS Commissioner John Koskinen said that the agency has identified and reviewed areas on Form 990-EZ where filers have made the most mistakes. "One out of three paper filers had an error on their Form 990-EZ," Koskinen said. The help icons are intended to assist filers navigate the form.

Background

Many tax-exempt organizations must file an annual information return with the IRS. Generally, mid-size tax-exempt organizations file Form 990-EZ. Tax-exempt organizations, other than black lung benefit trusts and nonexempt charitable trusts that are not treated as private foundations, may file Form 990-EZ, Short Form Return of Organization Exempt From Income Tax, instead of Form 990 if their gross receipts for the year were less than $200,000; and their total assets at the end of the year were less than $500,000. Very small tax-exempt organizations file Form 990-N (also known as the e-Postcard) and large tax-exempt organizations file Form 990.

According to the IRS, more Forms 990-EZ are filed on paper than are filed electronically. In 2016, the agency processed approximately 263,000 Forms 990-EZ; 139,000 of which were filed on paper. The error rate for paper-filed Forms 990-EZ was 33 percent in 2016. The error rate in 2016 for electronically-filed 990-EZ returns was one percent.

Updated form

The help icons on the updated Form 990-EZ are marked in boxes with a blue question mark. The icons and underlying links work on any device with Adobe Acrobat Reader and Internet access. Once completed, filers can print Form 990-EZ and mail it to the agency, the IRS explained.

The IRS reminded filers that the new help icons do not replace the Form 990-EZ instructions. Filers should review the Form's instructions when completing a return and use the help icons as an additional tool.

Reference: TRC EXEMPT: 12,252.15.

LB&I

Continued from page 1

a supportive infrastructure inside LB&I." According to LB&I, it has identified its 13 campaigns through extensive data analysis, suggestions from IRS compliance employees and feedback from the tax community. LB&I's overarching goal is to improve return selection, identify issues representing a risk of noncompliance and make efficient use of limited resources, the division explained. The 13 campaigns correspond with a number of different potential tax issues.

- ***Comment.*** "We look at the [transactions on a return] where we think there is risk, and we respond according to what we see," O'Donnell said. "That response typically has been an examination. But what we are doing going forward is changing taxpayer behavior where there is noncompliance to compliance."

The treatment streams identified by O'Donnell are not limited to audits, but will include soft letters to taxpayers to encourage voluntary self-corrections, stakeholder and practitioner outreach, and follow-up examinations.

The initial offering of 13 campaigns represent only the beginning of LB&I's issued-based compliance campaigns. There will be additional campaigns added as the division continues to evaluate compliance needs.

- ***Comment.*** "[The initial 13] were chosen because we were ready to roll them out and they are items that do present, or that we believe present, a risk to use. We have not gotten to everything that has come in. Our employees have submitted a large number of ideas for campaigns and we continue to evaluate them," O'Donnell explained.

Campaign topics

The LB&I campaigns spotlight various issues of tax compliance. The list of 13 campaigns, as it currently stands, identifies the following areas of concern:

- Code Sec. 48C energy credit;
- Offshore voluntary disclosure program declines and withdrawals;
- Code Sec. 199 domestic production activities deductions;
- Micro-captive insurance;
- Related-party transactions;
- Deferred variable annuity reserves and life insurance reserves;
- Basket transactions;
- Completed contract method of accounting;
- TEFRA linkage plan strategy;
- S corporation losses claimed in excess of basis;
- Repatriation;
- Form 1120-F Nonfiler; and
- Inbound distributor.

Reference: TRC IRS: 3,106.

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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Passport Certifications Will Begin In Early 2017, IRS Posts On Website

www.irs.gov

The IRS has reminded taxpayers that Code Sec. 7345 allows the agency to certify to the U.S. State Department if an individual has seriously delinquent tax debt, which could impact obtaining or keeping a U.S. passport. At this time, the IRS has not started certifying tax debt to the State Department, the agency reported on its website.

- ***Take Away.*** Certifications to the State Department will begin in early 2017, the IRS posted on its website. Wolters Kluwer asked the IRS when a more specific timetable would be available but did not receive a response by press time.
- ***Comment.*** The IRS noted that the passport certification material on its website – at this time – was for informational purposes only.

Background

The *Fixing America's Surface Transportation Act of 2015* (FAST Act) included several revenue raisers to help offset the cost of highway and transportation spending. One offset requires the Treasury Department, upon receiving certification by the Internal Revenue Service (IRS) that any individual has a seriously delinquent tax debt, to transmit the certification to the State Department for action with respect to denial, revocation, or limitation of a passport for the individual. The FAST Act prohibits the State Department, upon receiving the certification, from issuing a passport except in emergency circumstances or for humanitarian reasons. The FAST Act also requires the State Department to revoke a passport previously issued; but allows a limited passport for return travel to the U.S.

Seriously delinquent tax debt

On its website, the IRS explained that seriously delinquent tax debt is an individual's unpaid, legally enforceable federal tax debt totaling more than $50,000 (including interest and penalties) for which a:

- Notice of federal tax lien has been filed and all administrative remedies under Code Sec.6320 have lapsed or been exhausted; or
- Levy has been issued.
- ***Comment.*** The $50,000 amount is indexed for inflation.

Some tax debt, the IRS explained, is not included in determining seriously delinquent tax debt. It includes tax debt:

- Being paid in a timely manner under an installment agreement entered into with the IRS.
- Being paid in a timely manner under an offer in compromise accepted by the IRS or a settlement agreement entered into with the U.S. Justice Department.
- For which a collection due process hearing is timely requested in connection with a levy to collect the debt.
- For which collection has been suspended because a request for innocent spouse relief under Code Sec. 6015 has been made.

State Department

Before denying a passport, the State Department will hold an applicant's application for 90 days. During this time, the individual can resolve any erroneous certification issues; make full payment of the tax debt; enter into a payment alternative, such as an installment agreement, the IRS reported. There is no grace period for resolving the debt before the State Department revokes a passport, the IRS added.

Notification to taxpayers

The IRS will notify taxpayers in writing if the agency makes a certification to the State Department. The agency will also notify taxpayers in writing if it reverses a certification. On its website, the agency stated that reversal of certification will be made as soon as practicable if the certification is erroneous. The IRS will provide notice within 30 days of the date the debt is fully satisfied, becomes legally unenforceable or ceases to be seriously delinquent tax debt.

Judicial review

Taxpayers may seek judicial review of certifications. If the Tax Court or a federal district court finds the certification was erroneous, the court may order the IRS to notify the State Department. There is no administrative process before filing suit in court, the IRS explained.

Reference: TRC FILEIND: 18,052.

Hybrid Rewards Program Not Entitled To Accounting Treatment Reserved For Premium Coupons

"Hybrid" coupons (coupons that may be redeemed for products or used as a discount on a purchase of a product -- depending on the customer's preferences upon redemption) are not considered premiums under Reg. §1.451-4, according to recent IRS Chief Counsel Advice. Accounting under this reg section is reserved solely for trading stamps and premium coupons, not hybrids.

Background. The accrual method taxpayer has a points-based loyalty rewards program designed to enhance its sales, 1 point for every $1 spent. Rather than continue to deduct the cost of points in the year a point is redeemed, the taxpayer proposes to use Reg. §1.141-4, which accelerates some of the costs.

Conclusion. Chief Counsel concluded that premium coupons, for which special treatment alone has been carved out, are used to promote the sale of the product with which the coupon is issued by allowing the consumer to collect coupons to acquire a different product. By their very nature, hybrid coupons promote not just the sales of the products with which the coupons are issued, but products bought in the future at a discount. Thus, by definition, hybrid coupons are not premium coupons.

AM 2017-002; TRC ACCTNG: 12,210.

Tax Court Finds Deficiency Notice Ambiguous But Taxpayer Not Misled

Dees, 148 TC No. 1

A divided Tax Court has found that although a deficiency notice was ambiguous, the IRS established that it had determined a deficiency --which was enough to establish jurisdiction. Further, the taxpayer was not misled by the ambiguous notice.

- ***Take Away.*** "The court's split opinions reflect the difficulties that arise from the unfortunate but not uncommon situations where the Commissioner's notice is not clear as to the determination or the amount of the deficiency," Mark Allison, member, Caplin & Drysdale, Chartered, New York, told Wolters Kluwer. "It is troubling that a taxpayer could bear the responsibility or consequences of failing to understand what is meant by such a notice or the circumstances in which the Commissioner could demonstrate that it should have been understood by the taxpayer."
- ***Comment.*** "Referencing the taxpayer's state of mind as a basis for jurisdiction is a recipe for disaster; as certain of the judges argued, the solution of a less than clear notice of deficiency should either be a lack of jurisdiction or a shift of the burden of proof to the Commissioner," Allison said. "The former may require an act of Congress, however, and the latter may not always provide the appropriate cure in some circumstances."

Background

The taxpayer claimed the Code Sec 36B premium assistance tax credit on his return. The IRS disallowed the credit. The agency issued a notice of deficiency, which read: "We determined that there is a deficiency in your income tax which is listed above." Above that sentence the notice stated: "Deficiency: $.00." The IRS included a computation which decreased refundable credits but erroneously computed a bottom-line deficiency of ".00." Elsewhere, the notice stated: "A decrease to refundable credit results in a tax increase." The taxpayer challenged the disallowance in the Tax Court.

The Tax Court instructed the IRS to explain the "$.00" deficiency. The IRS stated that the "$.00" amount was a clerical error. The correct amount was $484. According to the IRS, its clerical error did not invalidate the notice.

Court's analysis

The court first found that its jurisdiction in a deficiency case is based on the issuance of a valid notice of deficiency and a taxpayer's timely filing of a petition. The notice must provide a formal notification that a deficiency in taxes has been determined. Further, the notice must fairly advise the taxpayer that the IRS has, in fact, determined a deficiency and specify the year and amount. The court has held that it looks at the notice and all of the attachments as a whole when deciding if a notice of deficiency is valid.

The court outlined a two-prong inquiry. First, the court would look to see whether a challenged notice objectively put a reasonable taxpayer on notice that the IRS had determined a deficiency If the notice is sufficient to inform a reasonable taxpayer that the IRS has determined a deficiency, the notice is valid, the court noted. Second, the court would look to see if the taxpayer was prejudiced by an ambiguous notice. This would require a subjective inquiry, the court noted.

Here, the court found that the notice was ambiguous. However, the court found that the taxpayer was not misled by the ambiguous notice. The taxpayer had filed a petition to challenge the IRS's determination. The petition argued the IRS had erred in disallowing his Code Sec. 36B credit and that the taxpayer could show he was entitled to the credit. This established that the taxpayer was not misled by the notice, the court concluded.

Dissenting views

One dissenting view would have found that the notice did not advise the taxpayer that the IRS had determined a deficiency. In this case, the taxpayer was able to retain counsel. The dissent questioned if taxpayers who could not afford professional assistance would understand the notice.

References: Dec. 60,801; TRC LITIG: 6,106.05.

District Court Upholds Disallowance Of Medical Deduction For IVF Expenses

Morrissey, DC-Fla.

The Tax Court has upheld the IRS's disallowance of a claimed medical deduction related in vitro fertilization (IVF). The costs paid for IVF were for the expenses of the egg donor and surrogate; and not the taxpayer as required by Code Sec. 213, the court found.

- ***Take Away.*** The taxpayer argued that as a gay man he was effectively infertile. Therefore, the amounts he for egg donors and surrogates affected a function of his body, specifically, his reproductive "function." The court disagreed. The IVF procedures for others, such as the egg donor and the surrogate, did not affect the function or structure of the taxpayer's body.
- ***Comment.*** In *Magdalin, TC Memo. 2008-293,* the Tax Court held that the deductibility of medical expenses hinges on whether they were paid for medical care. If so, they are deductible medical expenses under Code Sec. 213. If not, they are nondeductible personal expenses under Code Sec. 262. The term medical care includes amounts paid for the diagnosis, cure, mitigation, treatment, or prevention

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Tax Court Cautions IRS About Narrow Construction Of Disclosures In Whistleblower Case

Insigna, TC Order, January 27, 2017

The Tax Court, in an order, has cautioned the IRS against an unduly narrow construction of Code Sec. 6103 (h)(4)(B). The observation arose in a whistleblower case.

- ***Take Away.*** Code Sec. 6103 protects returns and return information from disclosure except as authorized. The term 'return information' is broad and includes any information gathered by the IRS with regard to a taxpayer's liability.

Background

The court directed the IRS to produce from its audit, appeals and collection records documents that showed any direct relation to the transactions that the whistleblower reported for each of the target taxpayers. The IRS was required, among other things, to state if it had taken any action based upon the information provided by the whistleblower. In some cases, the IRS determined that its answers were limited by Code Sec. 6103. The whistleblower, apparently dissatisfied with the IRS's responses, filed a motion to determine the sufficiency of the agency's answers.

Court's analysis

Code Sec. 6103 (h)(4)(B), the court explained, provides that return information may be disclosed in a federal judicial proceeding pertaining to tax administration if the treatment of an item reflected on a return is directly related to the resolution of an issue in the proceeding. This non-disclosure exception applies to whistleblower proceedings, the court observed.

- ***Comment.*** "We warn [IRS] against an unduly narrow construction of 6103(h)(4)(B)," the court wrote.

The court also used a hypothetical example to illustrate collected proceeds. "If a whistleblower informed the IRS of a Year 1 transaction by a taxpayer, and if the IRS thereafter came to an explicit understanding with the taxpayer that included the taxpayer's filing of amended returns for Years 2 and 3 and its payment of tax for those years, we know of no reason (and respondent has not suggested any) that such payments might not constitute 'collected proceeds' for purposes of section 7623(b)."

- ***Comment.*** Code Sec. 7623(b) provides that if the taxes, penalties, interest and other amounts in dispute exceed $2 million, the IRS will pay 15 percent to 30 percent of the amount collected. If the case deals with an individual, his or her annual gross income must be more than $200,000. If a whistleblower submission does not meet the criteria for an award under Code Sec. 7623(b), the IRS may consider it under discretionary authority in Code Sec. 7623(a). This case apparently was a Code Sec. 7623(b) case. Only in those cases, may whistleblowers appeal to the Tax Code.

Additionally, the court noted that the whistleblower had requested information apparently known to certain agency employees. The IRS responded that these employees had retired and it was unable to answer the whistleblower's questions. The court observed that the IRS had not described any efforts to try to obtain information from the retired employees. Further, the IRS was in a better position to locate retired employees and obtain their cooperation than the whistleblower, according to the court.

Reference: TRC IRS: 9,206.

Medical Expense

Continued from page 4

of disease, or for the purpose of affecting any structure or function of the body, the Tax Court held.

Background

In 2010, the taxpayer and his partner decided to have a child through the IVF process. The surrogate, however, did not carry a child to term.

The taxpayer paid some $56,000 related to IVF costs. These included medical care, identification and retention, compensation, or reimbursement of expenses, incurred by the egg donor and the surrogate. The taxpayer also paid various fees, including legal fees. The taxpayer claimed a medical expense deduction of $9,500, which the IRS disallowed.

Court's analysis

The court first found that Code Sec. 213 limits the deduction for medical expenses to amounts paid for the medical are of the taxpayer, the taxpayer's spouse or the taxpayer's dependent. Here, the costs paid by the taxpayer were for the medical expenses of the egg donor and surrogate. Expenses paid for medical procedures performed on other individuals, such as third-party egg donors and surrogates, cannot be deducted, the court found.

Further, the court found that the expenses were not for the diagnosis, cure, mitigation, or treatment of any disease of the taxpayer, his spouse, or dependent, nor did they affect a structure or function of the body of taxpayer, his spouse, or dependent. The IVF procedures did not affect the function or structure of the taxpayer's body but rather the function or structure of the egg donor's body and the surrogate's body.

- ***Comment.*** The court rejected the taxpayer's argument that his circumstances were similar to those where a taxpayer pays expenses for a kidney donor when the kidney is to be implanted in the taxpayer's body. A donated kidney affects the function or structure of the taxpayer's body, the court observed.
- ***Comment.*** The court also rejected the taxpayer's argument that the disallowance of his deduction violated the equal protection clause of the U.S. Constitution, his request for injunctive relief, and his request for a declaratory judgment.

References: 2017-1 USTC ¶50,140; TRC INDIV: 42,074.20.

IRS Provides Guidance To Examiners On Foreign Currency Tax Rules; Disclosing Code Sec. 988 Losses

LB&I, FCU/C/18_2_1-04, FCU/P/18_02_01-05, FCU/C/18_02_01-06, FCU/C/18_02_01-07

The IRS has provided guidance to examiners on the foreign currency tax rules to determine a taxpayer's "functional currency." The IRS also reminded examiners about penalties where taxpayers fail to file Form 8886, Reportable Transaction Disclosure Statement, disclosing Code Sec. 988 losses, and the rules for official versus free market currency exchange rates.

- ***Take Away.*** The starting point to applying the foreign currency tax rules is to determine the taxpayer's functional currency, the IRS explained. This is the currency in which all of the taxpayer's taxable income and earnings and profits must be computed. Transactions, income and foreign taxes in any other currency then must be translated back into the taxpayer's functional currency under Code Sections 986, 987, 988 or 989.

Nonfunctional currency transactions

The IRS instructed its examiners to review the cash flow of transactions, how they are recorded for financial accounting and tax purposes, identify any foreign currency gain or loss that should be reported, as well as the source (U.S. or foreign) and character (ordinary or capital) of the transaction. Non-functional currency transaction amounts have to be translated into functional currency.

- ***Comment.*** An example of this type of transaction is paying an invoice in a non-functional currency, the IRS explained. When the U.S taxpayer owns, or has a position in, a non-U.S. currency asset or liability; an examiner should be able to measure, translate and establish when foreign currency gains and losses should be determined, the IRS instructed.

Code Sec. 988 losses

If a taxpayer incurs or deducts a foreign currency loss under Code Sec. 988 in excess of $10,000,000 for corporations and partnerships (with only corporate partners) ($50,000 for individuals and trusts), the taxpayer must file Form 8886, Reportable Transaction Disclosure Statement. Failure to file, the IRS reminded examiners, triggers penalties.

The IRS instructed its examiners to ask the taxpayer why Form 8886 was not filed. If the taxpayer does not provide an adequate explanation or exception for failing to file a Form 8886 Disclosure, or if the taxpayer provides a copy of a Form 8886 which is incomplete, examiners may begin the process of determining whether assessing penalties is appropriate the IRS explained.

- ***Comment.*** There is no reasonable cause exception to the penalty. The IRS Commissioner can rescind all or any portion of the penalty upon application by the taxpayer, but not for listed transactions. There is no judicial appeal of Commissioner's determination.

Rates

The IRS also provided guidance to examiners on the regulations governing the translation of a currency where the official government established rate differs from a free market rate. Generally, the spot rate is determined based on the prices at which the currency freely changes hands. However, in cases where the government rate and free market rate differ, the IRS explained that the rate which "most clearly reflects income" should be used for the spot rate. Generally, the rate that most clearly reflect income is the free market rate.

- ***Comment.*** The IRS identified jurisdictions that have an active free market or black market exchange rate for their currency that differs significantly from the government-imposed official rate.

Sourcing

Additionally, the IRS provided guidance to examiners on the on the sourcing of certain nonfunctional currency transactions under Code Sec. 988. The IRS explained that while Code Sections 861 through 865 provide the general rules for sourcing of worldwide net income for foreign tax credit purposes, Code Sec. 988(a)(3) and its regs govern the sourcing of certain exchange gains or losses.

Reference: TRC INTLOUT: 21,052.

Tax Court Upholds Presidential Authority To Remove Tax Court Judges For Cause

The Tax Court has found that Code Section 7443(f)), allowing the president to remove Tax Court judges for cause, is not unconstitutional. In addition, the court denied the taxpayers' petition to disqualify all Tax Court judges from hearing their petition for redetermination.

Background. The taxpayers, in a deficiency matter before the Tax Court, filed a motion to disqualify all Tax Court judges and to declare Code Sec. 7443(f) unconstitutional. They argued that the Tax Court was not within the executive branch and that the President's authority under Code Sec. 7443(f) violated separation of powers principles.

Tax Court's analysis. The Tax Court denied the taxpayers' motion, holding that, under the Rule of Necessity, it was proper for a Tax Court judge to rule on the taxpayers' contention of the constitutionality. The court also held that presidential authority to remove Tax Court judges for cause does not violate separation of powers principles, and that the Tax Court judges could exercise a portion of the judicial power of the United States. The court found that its jurisdiction was limited to the adjudication of public rights disputes, which did not infringe on the portion of the judicial power reserved for Article III judges.

Battat, 148 TC No. 2; Dec. 60,829; TRC LITIG: 6,052.

Changed Economic Circumstances Excused Accuracy-Related Penalty, But Not Penalty For Early Retirement Withdrawal

Cheves, TC Memo. 2017-22

The Tax Court has rejected the IRS's imposition of an accuracy-related penalty on a taxpayer who withdrew funds from his retirement accounts after losing his job. The court found that the taxpayer's changed economic circumstances contributed to his error and confusion.

- ***Take Away.*** The taxpayer acknowledged that he had underreported his income by failing to include certain early withdrawals from retirement accounts. While the court could not create a new early withdrawal exception for economic hardship, it could remove the accuracy-related penalty.

Background

The taxpayer became unemployed in 2010. The taxpayer exhausted his savings and turned to his retirement accounts for additional funds. The taxpayer withdrew approximately $28,000 from different retirement accounts at varying intervals.

The taxpayer requested that withhold additional amounts to pay any additional taxes resulting from the withdrawals. Amounts were withheld from only part of the distributions.

- ***Comment.*** During this time, the taxpayers was also making payments to his insurance agent and mistakenly believed that some of these funds were reimbursements for funds withdrawn from his retirement accounts.

On his 2011 return, the taxpayer reported only $12,500 of the $28,000 withdrawn from his retirement accounts. The taxpayer relied on Forms 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

Court's analysis

The court first found that Code Sec. 408(d) provides several exceptions to the general rule that distributions from an IRA are included in gross income. However, there is no exception for ordinary living expenses during times of economic hardship.

Here, the taxpayer had withdrawn more from his retirement accounts than he reported on his return. The taxpayer acknowledged his error. However, the court could not create an exception where one did not exist by stature. The court reiterated that there is no exception for economic hardship.

Further, the taxpayer withdrew the funds before he had attained age 59 1/2. Code Sec. 72(t) imposes an additional tax intended to discourage taxpayers from taking premature distributions from retirement plans. Although distributions for certain purposes may escape the additional tax, there is no economic hardship exception. The additional tax applied to the taxpayer's early withdrawal, the court found.

Accuracy-related penalty

The court did, however, find that the taxpayer had made a reasonable attempt to comply with the tax laws and had acted in good faith. The taxpayer had requested his insurance agent to withhold any additional tax due because of the early withdrawals from his retirement accounts. The taxpayer also reported the amount shown on his Form 1099-R. The court removed the accuracy-related penalty imposed by the IRS.

References: Dec. 60,823(M); TRC INDIV: 6,052.

TAX BRIEFS

Internal Revenue Service

The IRS was permitted to foreclose federal tax liens against real property owned by married individuals as a tenancy by entireties. The IRS sought to foreclose on two commercial properties owned by the husband and his wife. The wife owned an undivided interest in the properties which was protected against forced sale under state law.

Watson, DC Va., 2017-1 USTC ¶50,141; TRC IRS: 45,160

Jurisdiction

The Court of Federal Claims lacked jurisdiction over claims for a tax refund and for damages based on improper collection practices made by an individual taxpayer, and dismissed the action accordingly. Jurisdiction over such claims is assigned to the federal district courts. If the taxpayer's complaint were construed as seeking a tax refund, she failed to allege that she had paid the relevant tax liability, or that she had filed a claim with the IRS.

Robinson, FedCl, 2017-1 USTC ¶50,142; TRC LITIG: 9,052

Tax Crimes

An individual was properly convicted of conspiracy to defraud the U.S. and preparing false and fraudulent income tax returns. There was sufficient evidence for a reasonable fact-finder to find the individual guilty beyond a reasonable doubt.

Kosh, CA-8, 2017-1 USTC ¶50,139; TRC IRS: 66,052

Partnerships

A podiatrist was not entitled to deduct his distributive share of partnership losses because he failed to provide credible evidence regarding his basis in the partnership. Further, the taxpayer was liable for addition to tax for failure to timely file a return for the tax year at issue. Moreover, the Tax Court declined to find that the taxpayer's counsel and the IRS's counsel entered into a binding settlement agreement as there was no evidence or credible testimony that showed an offer and an acceptance. In addition, it was also unclear from the parties' briefs what the terms of the alleged settlement were.

Namen, TC, CCH Dec. 60,825(M), FED ¶47,938(M); TRC PART: 15,200

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Tax Briefs

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Litigation

A partnership was entitled to litigation costs because it was a party that made a valid qualified offer in a proceeding in which a tax liability was at issue and it incurred reasonable litigation costs. The partnership was a party because it was subject to a TEFRA partnership-level proceeding initiated by the tax matters partner and it met the net-worth requirements. The partnership made a timely, valid qualified offer for a reasonable amount and, therefore, the offer complied with Code Sec. 7430.

BASR Partnership, FedCl, 2017-1 USTC ¶50,144; TRC LITIG: 3,154

Collection Due Process

An IRS settlement officer's (SO) determination to uphold the filing of a Notice of Federal Tax Lien (NFTL) for a proposed collection action against an individual was sustained for five tax years at issue. The SO reasonably concluded that the notices of deficiency for those five years were actually mailed to the taxpayer at his last known address. Therefore, the SO properly determined that the tax for each year had been properly determined, even though the taxpayer did not receive the deficiency notices.

Noyes, TC, CCH Dec. 60,828(M), FED ¶47,941(M); TRC IRS: 51,056.20

An IRS settlement officer (SO) did not abuse her discretion in denying a couple's request for a collection alternative. In addition, it was held that the supplemental determination to proceed with the collection of levy was not an abuse of the SO's discretion and the proposed collection action was sustained. Two SO's requested on several occasions that the taxpayers provide a completed Form 433-A and copies of filed tax returns. However, the taxpayers did not provide the requested information. Finally, the SO properly based her supplemental determination on the required factors.

Craven, Jr., TC, CCH Dec. 60,824(M), FED ¶47,937(M); TRC IRS: 51,056

Tax Accounting

A corporation in the petrochemical industry was not eligible to report income from the two "Sale and Purchase Agreement" (SPA) contracts using the completed contract method of accounting for two tax years, since the dates specified in the two SPAs were not dispositive in determining whether the taxpayer, at the time it entered into the two SPAs, could have reasonably expected to complete the projects within two years from its commencement date. Further, the taxpayer was liable accuracy-related penalties based on substantial understatement of tax.

Basic Engineering, Inc., TC, CCH Dec. 60,827(M), FED ¶47,940(M); TRC ACCTNG: 33,254

An individual was liable for penalties under Code Sec. 6038(b) for failure to file Forms 5471 relating to his two Mexican corporations. The taxpayer was a U.S. shareholder and controlled the CFCs; therefore, he was a category 4 and category 5 filer and was required to file Forms 5471 for the years at issue.

Flume, TC, CCH Dec. 60,822(M), FED ¶47,935(M); TRC INTL: 3,752.05

The Tax Court properly upheld the IRS's income tax deficiency and penalty determinations against an individual. The IRS presented substantive evidence that the taxpayer failed to report income and the individual did show that the deficiency determination was arbitrary or erroneous. Moreover, the additions to tax for failure to timely file a required return and to pay estimated taxes were also proper.

Duggan, CA-9, 2017-1 USTC ¶50,138; TRC PENALTY: 3,308

Bank Secrecy Act

An action by married individuals against the government contesting penalties imposed on the taxpayers by the IRS for failing to file a Report of Foreign Bank and Financial Accounts (FBAR), as required by the Bank Secrecy Act, was dismissed based on sovereign immunity. The taxpayers asserted reasonable cause for failing to file the FBAR, attributing the failure to various accountants, and alleged violation of the Administrative Procedures Act (APA). Sovereign immunity precluded the taxpayers' suit because there were other remedies available.

Kentera, DC Wis., 2017-1 USTC ¶50,143; TRC FILEBUS: 9,104

Tax Court Finds Reportable Transaction Penalty Constitutional

The Tax Court has held that Code Sec. 6662A reportable transaction penalty is constitutional, and therefore, is not in violation of the Excessive Fines Clause of the Eighth Amendment.

Background. The taxpayers, a married couple, participated in a distressed-asset debt transaction, which was a tax shelter. The taxpayers claimed a loss related to the transaction that were partially carried back and forward to shield the taxpayers' income from taxation. The source of the loss was one that was a listed transaction described in Notice 2008-34. The taxpayers failed to disclose relevant facts related to the transaction, as required by law. Accordingly, the IRS assessed penalties under Code Secs. 6662A and 6664.

Tax Court's analysis. The Tax Court held that Code Sec. 6662A penalty of 30 percent did not violate the Eighth Amendment. The taxpayers argued that because Congress intended Code Sec. 6662A to deter taxpayers from entering into tax avoidance transactions, it is not purely remedial and is subject to review under the Eighth Amendment as a form of punishment. The court found that the primary goal of the Code Sec. 6662A penalty was to reinforce voluntary compliance with the existing disclosure requirements and deter taxpayers from using tax shelters.

In addition, the court found that the penalty was not excessive. The Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense. However, additions to tax are not meant to punish but raise revenue because they deter noncompliance with the tax law.

Thompson, 148 TC No. 3; Dec. 60,830; TRC PENALTY: 3,252.05.