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Inside this Issue

Supreme Court Clarifies Standard For Challenges To IRS Summonses

◆*Clarke, SCt., June 19, 2014*

In a unanimous decision, the Supreme Court has held that a taxpayer has a right to conduct an examination of IRS officials regarding their reasons for issuing a summons when the taxpayer points to specific facts or circumstances plausibly raising an inference of bad faith. Rejecting the approach adopted by the Eleventh Circuit Court of Appeals, the Supreme Court held the taxpayer cannot offer just naked allegations, but must offer some credible evidence to support the claim of improper motive.

■ ***CCH Take Away.*** "The *Clarke* decision reflects a logical effort by the Supreme Court to balance the government's need to use a summons as an investigative tool and the taxpayer's legitimate but difficult right to challenge the good faith use of the summons," Mark Allison, member, Caplin & Drysdale, Chartered, New York, told CCH. "The Supreme Court recognized the reality that taxpayers do not typically possess hard evidence of a lack of good faith but a court may reasonably find a plausible basis for such concerns that warrant further inquiry," Allison noted.

Background

The IRS launched an investigation of a partnership for the 2005–2007 tax years. During the course of the investigation, the IRS issued summonses to third parties, seeking testimony and records regarding the tax reporting obligations of the partnership and the tax deductions it claimed. The taxpayer failed to produce any material or provide any testimony as sought in the summons. The IRS moved to enforce the summons in federal district court.

■ ***Comment.*** To obtain enforcement of a summons, the government must establish that the summons is issued for a legitimate purpose, seeks information relevant to that purpose, seeks information that is not already in the IRS's possession, and that the summons satisfies all administrative steps required by the Tax Code. Once the IRS makes its prima facie showing, the burden shifts to the party opposing the summons. In *Powell, 64-2* USTC *¶9858,* the Supreme Court held that an improper purpose may include any purpose reflecting on the good faith of the investigation.

According to the taxpayer, the IRS issued the summons for an improper purpose, including alleged retribution for the partnership's refusal to extend the statute of limitations. The district court rejected the taxpayer's argument. The Eleventh Circuit, however, found that the taxpayer was entitled to a hearing to explore the allegation of improper purpose.

Court's decision

Justice Kagan delivered the Court's opinion. "A person receiving an IRS summons is . . . entitled to contest it in an enforcement proceeding. The summoned party must receive notice, and may present argument and evidence on all matters bearing on a summons's validity."

Summons enforcement proceedings, Kagan wrote, are to be "summary in nature." Kagan explained that courts may ask only

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Route to: ___________ ___________ ___________ ___________ ___________

IRS Revamps OVDP To Provide Relief For Nonwillful Violations; Tightens Other Aspects

◆ *IR-2014-73, FS-2014-6, FS-2014-7, Commissioner Statement, Revised FAQs*

The IRS has expanded streamlined procedures and made other changes to the Offshore Voluntary Disclosure Program (OVDP), while tightening some requirements and increasing penalties for intentional tax violations. The IRS also posted updated frequently asked questions (FAQs) about the OVDP and the most recent changes on its website.

■ ***CCH Take Away.*** "If you haven't disclosed, you should," James Mastracchio, partner and chair, Baker-Hostetler Tax Controversy Practice, Washington, D.C. told CCH. "Facing a large confiscatory penalty is difficult. The streamlined program will give nonwillful violators a good option."

■ ***Comment.*** The IRS reported that since 2009, more than 45,000 taxpayers have made voluntary disclosures, paying $6.5 billion in back taxes, interest and penalties. IRS Commissioner John Koskinen predicted that the changes to the OVDP will lead to a significant increase in the number of U.S. taxpayers coming forward to report undisclosed foreign assets.

Foreign account reporting

U.S. taxpayers, who include U.S. citizens living abroad and aliens residing in the United States, are required to report and pay taxes on their worldwide income from all sources, including foreign assets. Foreign accounts must be reported on Form 1040, Schedule B (Part III). Assets of certain values must be reported to the IRS on Form 8938, Statement of Foreign Financial Accounts. Foreign accounts above $10,000 must be reported to Treasury's Financial Crimes Enforcement Network (FinCEN) on Form 114, Report of Foreign Bank and Financial Accounts (FBAR).

■ ***Comment.*** Both civil and criminal penalties can apply to failures to report foreign assets. Since FinCEN delegated FBAR enforcement to the IRS, the OVDP programs apply to both income tax and FBAR reporting.

Voluntary disclosure

The IRS provided two prior OVDP programs that terminated in 2009 and 2011. In 2012, the IRS launched a third OVDP program that would be permanent until terminated by the agency. The 2012 program imposed a 27.5 percent penalty, in addition to back taxes and interest. The penalty applied to the highest aggregate value of offshore assets during the prior eight years (2004-2011). Taxpayers with less severe noncompliance could qualify for reduced penalties. Like the two prior programs, OVDP participants had to enter into a closing agreement with the IRS, but were protected from criminal prosecution.

During 2012, the IRS announced a streamlined filing compliance process ("streamlined procedures") for taxpayers who failed to disclose foreign accounts but who the agency determined were not willful evaders. The streamlined procedures were only available to nonresidents who failed to file any tax returns and who owed $1,500 or less in taxes per year. Taxpayers submitted a risk questionnaire to show their lack of intent, and were subject to different degrees of review based on the taxes due and the amount of risk.

Streamlined procedures

The streamlined procedures are now available to more U.S. taxpayers living abroad and to certain taxpayers living in the U.S. The IRS has eliminated the requirement that taxpayers owe $1,500 or less in taxes per year. Instead of filling out a risk questionnaire,

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Summonses

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whether the IRS issued a summons in good faith. "Absent contrary evidence, the IRS can satisfy that standard by submitting a simple affidavit from the investigating agent. Courts must eschew any broader role of "overseeing the [IRS's] determinations to investigate."

"The balance we have struck in prior cases comports with the following rule, applicable here: As part of the adversarial process concerning a summons's validity, the taxpayer is entitled to examine an IRS agent when he can point to specific facts or circumstances plausibly raising an inference of bad faith. Naked allegations of improper purpose are not enough: The taxpayer must offer some credible evidence supporting his charge."

The Eleventh Circuit, Kagan wrote, did not apply this standard. "We have no doubt that the Court of Appeals viewed even bare allegations of improper purpose as entitling a summons objector to question IRS agents. The court applied a categorical rule, demanding the examination of IRS agents even when a taxpayer made only conclusory allegations."

The Court vacated and remanded the case to the Eleventh Circuit. The Court instructed the Eleventh Circuit to consider the taxpayer's argument in light of the standard articulated in *Clarke.* "We leave to the Court of Appeals the task of deciding whether the district court asked and answered the relevant question—once again, whether the respondents pointed to specific facts or circumstances plausibly raising an inference of improper motive."

References: 2014-1 USTC ¶50,326; TRC IRS: 21,354.

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Reference Key

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

Agencies Clarify Orientation Period For PPACA's 90-Day Waiting Period

◆ *TD 9671*

The IRS and the U.S. Departments of Health and Human Services (HHS) and Labor (DOL) have clarified that one month is the maximum allowed length of any employment orientation period under the *Patient Protection and Affordable Care Act's* 90-day waiting period limitation for coverage. The one-month maximum is intended to prevent abuse, the agencies explained. The final regs generally apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2015.

■ ***CCH Take Away.*** The final regulations help to bring clarity, Tim Verrall, shareholder, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Houston, told CCH. The agencies also did a good job of reminding employers that there are separate requirements for the orientation period and the employer mandate under the Affordable Care Act, Verrall noted.

■ ***Comment.*** The agencies acknowledged that employment orientation periods are commonplace and they do not intend to call into question the reasonableness of short, bona fide orientation periods. However, the possibility of abuse increases as the length of the period expands, the agencies cautioned.

Background

The PPACA generally prohibits a group health plan or health insurance issuer offering group health insurance coverage from applying any waiting period—the period of time that must pass before the individual is eligible for benefits—that exceeds 90 days. The IRS along with HHS and DOL issued final regs in early 2014. If, under the terms of the plan, an individual can elect coverage that becomes effective on a date that does not exceed 90 days, the coverage is treated as complying with the 90-day limitation.

At the same time, the agencies also issued proposed regs on orientation periods. Generally, plans could condition eligibility on an employee's completion of a reasonable and bona fide employment-based orientation period, the agencies explained. The proposed regs set forth one month as the maximum length of any orientation period.

■ ***Comment.*** During an orientation period, the agencies explained that an employer and employee could evaluate whether the employment situation was satisfactory for each party, and any training processes would begin.

Final regs

Under the final regs, if a group health plan conditions eligibility on an employee's having completed a reasonable and bona fide employment-based orientation period, the eligibility condition is not considered to be designed to avoid compliance with the 90-day waiting period limitation if the orientation period does not exceed one month and the maximum 90-day waiting period begins on the first day after the orientation period. The one month period, the agencies explained, would be determined by adding one calendar month and subtracting one calendar day, measured from an employee's start date in a position that is otherwise eligible for coverage.

■ ***Comment.*** While a plan may impose substantive eligibility criteria, such as requiring the worker to fit within an eligible job classification or to achieve job-related licensure requirements, it may not impose conditions that are mere subterfuges for the passage of time, the agencies cautioned.

References: FED ¶47,026; TRC HEALTH: 9,116.10.

Offshore Disclosures

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taxpayers will attest (self-certify) that their previous noncompliance was due to nonwillful conduct. The IRS will review their circumstances to ascertain their lack of intent.

Taxpayers will be responsible for paying taxes on any unreported foreign income for the past three years and for reporting FBAR assets for the past six years. For taxpayers outside the U.S., all penalties will be waived. Taxpayers residing in the U.S. pay a miscellaneous offshore penalty of five percent; all other penalties are waived.

Taxpayers eligible for the streamlined procedures do not enter into a closing agreement. They are not protected from criminal prosecution, an IRS audit, or from subsequent IRS adjustments and penalties. For nonwillful violators, the streamlined procedures simply mean that taxpayers have an avenue of compliance.

■ ***Comment.*** Mastracchio gave an example of nonwillful conduct: someone who lived in a country with a territorial tax system, who then moved to the U.S., but was not familiar with the U.S.'s worldwide regime.

Changes to OVDP

At the same time, the IRS tightened some other aspects of the OVDP for taxpayers ineligible for the streamlined procedures. Taxpayers must provide increased information in the pre-clearance process, and must submit all account statements and pay the 27.5 percent penalty at the time of application. They may submit voluminous records electronically.

Additionally, the IRS eliminated the reduced penalties for nonwillful taxpayers in light of the expansion of the streamlined procedures. Significantly, the penalty increases from 27.5 percent to 50 percent for taxpayers who used a foreign financial institution or facilitator that the government publicly acknowledges to be under investigation.

■ ***Comment.*** "Doing streamlined or OVDP is an either/or proposition," Mastracchio said. "If you do streamlined, you can't do OVDP. So if you're doing streamlined, you better be sure that your conduct is not willful. If you think your conduct might be willful, you should go into the OVDP."

References: FED ¶¶46,365, 46,366, 46,367, 46,368; TRC FILEBUS: 9,104.

Circuit Split: Eleventh Circuit Finds IRS Must Prove Fraud To Impose Code Sec. 6701 Penalty

◆ *Carlson, CA-11, June 18, 2014*

Creating a split among the Circuits, the Eleventh Circuit Court of Appeals has found that the IRS must prove fraud to impose the Code Sec. 6701 penalty on a return preparer. The IRS needs to show that the preparer deceitfully prepared a return knowing it misrepresented or concealed something that understated the correct tax, the court found.

■ ***CCH Take Away.*** Under Code Sec. 6701, a penalty is imposed on any person (1) Who aids or assists in, procures or advises concerning the preparation or presentation of any portion of a return or other document; (2) Who knows or has reason to believe that the portion will be used in connection with any material matter arising under the tax laws; and (3) Who knows that portion, if so used, would result in an understatement of the tax liability of another person. The court noted that whereas Code Sec. 6694(a) and Code Sec. 6694(b) penalties can apply when a preparer is negligent or reckless, Code Sec. 6701 requires proof that the preparer knew his or her conduct would defraud the government. This penalty structure, the court explained, indicates that Code Sec. 6701 is designed to require the highest level of culpability among the civil penalties for preparers.

Background

The taxpayer was hired by a tax return preparation business. The taxpayer, who did not have any experience in return preparation, attended an in-house course conducted by her employer. After completing the course, the taxpayer began preparing federal income tax returns for individuals. In her second year of employment, the taxpayer began to prepare corporate returns.

Sometime later, the IRS began an investigation of the firm. The IRS discovered that deductions could not be substantiated in some of the returns prepared by the taxpayer. The IRS assessed penalties against the taxpayer under Code Sec. 6701 for aiding and abetting understatement of tax liability. A jury trial was held and the jury returned a verdict for the IRS on all penalties. The taxpayer appealed to the Eleventh Circuit.

Court's analysis

The Eleventh Circuit first found that over the taxpayer's objection, the trial court had instructed the jury that the IRS had the burden of proof by a preponderance of the evidence. According to the taxpayer, the correct standard of proof was by clear and convincing evidence. The question, the court found, is whether Code Sec. 6701 requires the IRS to prove fraud. If it does, Eleventh Circuit precedent would require the IRS to prove its case by clear and convincing evidence.

The third element of Code Sec. 6701 requires the IRS to prove that the preparer acted with actual knowledge that the document would deprive the government of tax it is owed, the court found. The standard, the court explained, may be paraphrased as requiring IRS to prove that the preparer actually knew that the return defrauded the government of tax it is owed.

The court rejected the IRS's argument that Code Sec. 6701 cannot be a fraud statute because the statute never uses the word "fraud." The lack of the word "fraud" is immaterial if the conduct the government must prove meets the definition of fraud, the court found.

The court acknowledged that other Circuits have ruled differently. In *Mattingly, 91-1* USTC *¶50,068,* the Eighth Circuit found that Code Sec. 6701 is properly grouped with the non-fraud civil tax penalties and therefore subject to a lower standard of proof. In *Barr, 95-2* USTC *¶50,572,* the Second Circuit found that the preponderance of the evidence is the appropriate standard of proof under Code Sec. 6701.

■ ***Comment.*** The court also found that in some of the alleged violations, the IRS had failed to present adequate supporting evidence. Absent this evidence, a jury could not reasonably infer that the preparer knew the returns contained understatements.

References: 2014-1 USTC *¶50,321;*
TRC PENALTY: 3,258.

IRS Expands Contractors' Right To Receive Summons Information

◆ *TD 9669, NPRM REG-121542-14*

The IRS has issued temporary and proposed regs that authorize private contractors to participate in IRS summons activity, authorizing them to receive information and to take testimony under oath. The revised regs apply to administrative summonses.

■ ***CCH Take Away.*** Under Code Sec. 6103(n), the IRS can disclose returns and return information to nongovernmental parties to assist the IRS in processing and using the information. The new regs "clarify" that this provision authorizes the IRS to use contractors to receive confidential information from a taxpayer and to take testimony from the taxpayer's witness.

Background

Under Code Sec. 7602, the IRS has the authority to examine a taxpayer's books and records to determine if taxes are due. If a taxpayer fails to produce the requested information, the IRS may issue

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Tax Court Lacked Jurisdiction To Vacate Final Decision; Initial Special Trial Judge Report Failed To Provide Any Grounds

◆ *Snow, 142 TC No. 23*

The Tax Court has dismissed a taxpayer's motion to vacate for lack of jurisdiction a Tax Court decision that became final in 1997. In 2005, following a change of Tax Court rules, the taxpayers received a copy of the Special Trial Judge's initial report, which would have found in the taxpayers' favor. The Tax Court found, however, that decision that ultimately found in favor of the IRS had become final.

- ***CCH Take Away.*** From 1983 to 2005, the Tax Court, following Rule 183, generally treated a Special Trial Judge's initial report to the Chief Judge as an internal document; therefore, a Special Trial Judge's initial report was not made available to the parties. Following the U.S. Supreme Court case *Ballard, SCt, 2005-1* USTC *50,211,* however, these reports were required to be made available.

Background

In 1995, the taxpayers filed petitions challenging IRS notices of deficiency. The Special Trial Judge recommended that the Chief Judge find in favor of the taxpayers. However, the Tax Court ultimately concluded that the petitions had been untimely filed. The taxpayers did not appeal, and the decision became final in 1997. In 2005, the taxpayers received a copy of the Special Trial Judge's report. In 2013 the taxpayers moved to vacate the original decision.

Court's analysis

The Tax Court found that it lacked jurisdiction to exercise its discretion to vacate the Tax Court's 1997 decision. Because the taxpayers had filed their motion to vacate after the 30-day period allotted under Tax Court Rule 162 for filing such motions, the Tax Court could only exercise its discretion to vacate if it had the jurisdiction to do so.

Because the decision had become final under Code Sec. 7481, the Tax Court found that its jurisdiction was severely limited by statute and case law. It found that none of the exceptions existed (fraud , prior lack of jurisdiction to grant the original decision sought to be vacated, or clerical error) to give it jurisdiction to exercise its discretion to vacate the original Tax Court decision.

The Tax Court also held that it did not have equitable power to expand its jurisdiction. "When a Tax Court decision becomes final and there is no jurisdiction in any other federal court, lack of jurisdiction trumps equity," it found. The Tax Court also rejected that taxpayers' argument that the Tax Court could exercise its jurisdiction under Rule 60(b)(4) of the Federal Rules of Civil Procedure to grant relief from a judgment that is void. The Tax Court found that the original decision had not been void because it had proper jurisdiction over the case in 1997.

Additionally, the Tax Court found that even if it was a deprivation of due process for the taxpayers not to receive notice of the Special Trial Judge's initial report in time to timely appeal, the taxpayers had not provided any support for their contention that the Tax Court could vacate a final Tax Court decision on the grounds that there was an alleged due process violation.

References: CCH Dec. 59,943; TRC LITIG: 6,954.05.

Contractors

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an administrative summons to the taxpayer to produce books, papers, records or other data, and to provide testimony under oath.

Specified IRS officials are authorized to issue summonses. A summons must provide specified information, including the name of the taxpayer, the identity of the person summoned, and a description of the items summoned.

The IRS must give advance notice to the taxpayer if it contacts a third party regarding the determination or collection of the taxpayer's liability. The taxpayer can file a motion to quash a third-party summons.

New regs

While IRS officers and employees remain responsible for issuing summonses and developing examinations, the temporary regs make clear that contractors are permitted to fully participate in a summons interview. This participation includes the receipt, review and use of summoned information, the analysis of data, being present during summons interviews, questioning the person providing testimony under oath, and asking the person's representative to clarify an objection or assertion of privilege.

The IRS explained that using persons from outside the agency or Chief Counsel promotes the efficient administration and enforcement of the tax laws. These persons can provide specialized knowledge, skills or abilities that IRS personnel assigned to the case may lack, such as expertise regarding transfer pricing.

While using outside persons to assist, the IRS will ensure that inherently governmental functions will be performed by the IRS. These include the decision to issue a summons, and decisions regarding whom to summon, what information to produce, and who must testify. The contractors role will be limited to functions that are not inherently governmental. The regs require that an IRS person be present when a contractor asks questions of a summoned witness under oath.

References: FED ¶¶47,025, 49,618; TRC IRS:21,056.

IRS Determines Surviving Spouse May Roll Over Roth IRAs Payable To Trust

◆ *LTR 201423043*

The IRS has determined that a surviving spouse may roll over two Roth IRAs, both of which were payable to a trust controlled by her, into her own Roth IRA. The two Roth IRAs would not be treated as inherited IRAs, the IRS also determined.

■ ***CCH Take Away.*** When the owner of a Roth IRA dies, the beneficiary must take required minimum distributions. In this case, the surviving spouse would not be required to take required minimum distributions because she could roll over the two Roth IRAs maintained by her late husband into her own Roth IRA.

Background

The taxpayer's spouse died. At the time of his death, the decedent maintained two Roth IRAs (X and Y). The decedent had designated Trust as the beneficiary of the two Roth IRAs, with the provision that upon his death, the taxpayer would become the sole trustee of Trust. Further, Trust would be divided into two sub-trusts, Marital Trust and Family Trust. Marital Trust would be funded with a pecuniary amount which, after certain adjustments, equals the amount of the minimum marital deduction required in order that the least possible federal estate tax will be payable at decedent's death. The remainder of Trust would be allocated to Family Trust.

The taxpayer intended to allocate the assets of Trust, other than Roth IRA X and Roth IRA Y, to Family Trust. As sole trustee of Trust, the taxpayer proposed to make a distribution of Roth IRA X and Roth IRA Y to herself as beneficiary of Marital Trust under her power to do so "for any purpose" because to do so would be in her "best interest." Further, the taxpayer intended to roll over the distribution into one or more IRAs set up and maintained in her own name. The taxpayer asked if both Roth IRAs would be treated as inherited IRAs and if she could roll over or have transferred, by means of a trustee to trustee transfer, Roth IRA X and Roth IRA Y into a Roth IRA set up and maintained in her name.

IRS analysis

An inherited IRA, the IRS noted, is an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. The rollover rules of Code Sec. 408(d)(3) do not apply to inherited IRAs.

The IRS also observed that generally, if the proceeds of a decedent's IRA are pay-

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AFRs Issued For July 2014

◆ *Rev. Rul. 2014-20*

The IRS has released the short-term, mid-term, and long-term applicable interest rates for July 2014.

Applicable Federal Rates (AFR) for July 2014

Period for Compounding	Annual	Semiannual	Quarterly	Monthly
Short-Term				
AFR	.31%	.31%	.31%	.31%
110% AFR	.34%	.34%	.34%	.34%
120% AFR	.37%	.37%	.37%	.37%
130% AFR	.40%	.40%	.40%	.40%
Mid-Term				
AFR	1.82%	1.81%	1.81%	1.80%
110% AFR	2.00%	1.99%	1.99%	1.98%
120% AFR	2.18%	2.17%	2.16%	2.16%
130% AFR	2.36%	2.35%	2.34%	2.34%
150% AFR	2.74%	2.72%	2.71%	2.70%
175% AFR	3.20%	3.17%	3.16%	3.15%
Long-Term				
AFR	3.06%	3.04%	3.03%	3.02%
110% AFR	3.37%	3.34%	3.33%	3.32%
120% AFR	3.68%	3.65%	3.63%	3.62%
130% AFR	3.99%	3.95%	3.93%	3.92%

Adjusted AFRs for July 2014

Period for Compounding	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	.31%	.31%	.31%	.31%
Mid-term adjusted AFR	1.40%	1.40%	1.40%	1.40%
Long-term adjusted AFR	3.06%	3.04%	3.03%	3.02%

The Code Sec. 382 adjusted federal long-term rate is 3.06%; 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 3.27%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.56% and 3.24%, respectively, however, the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before January 1, 2014, shall not be less than 9%; 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 2.2%; and the Code Sec. 7872(e)(2) blended annual rate for 2014 is .28%.

References: FED ¶46,369; TRC ACCTNG: 36,162.05.

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Summons

An individual's petition to quash third-party IRS summonses issued to three financial institutions was denied and the summonses were partly enforced. The government established its *prima facie* case for summons enforcement under *Powell*, which the individual failed to rebut.

Zajac, III, DC Fla., 2014-1 USTC ¶50,325; TRC IRS: 21,350.

Income

An individual proved that some of her unreported income came from nontaxable sources. She was not allowed a real property tax deduction or a home mortgage interest deduction as itemized deductions. She was entitled to substantial charitable deductions for which she had an acknowledgment from the donee. She was allowed depreciation deductions for her rental properties, but not in excess of the amount of the IRS adjustment. Finally, she was liable for the addition to tax for failure to timely file one return, and the accuracy-related penalty.

Anyanwu, TC, CCH Dec. 59,946(M), FED ¶48,062(M); TRC FILEIND: 9,052.

An individual was liable for self-employment tax on his income. The taxpayer was entitled to deductions reduced from what he claimed, based on inadequate substantiation. Also, he was liable for penalties for failure to file a return, failure to pay tax, and failure to make estimated tax payments.

Baker, TC, CCH Dec. 59,945(M), FED ¶48,061(M); TRC INDIV: 63,108.

Deductions

A limited liability company was not entitled to a charitable contribution deduction for its contribution of exterior and interior conservation easements on a build-

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IRA

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able to a trust, and are paid to the trustee of the trust, who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse is treated as having received the IRA proceeds from the trust and not from the decedent. The surviving spouse is ineligible to roll over the distributed IRA proceeds into his or her own IRA.

However, the IRS determined that this general rule would not apply where the surviving spouse is the sole trustee of the decedent's trust and has the sole authority and discretion under trust language to pay the IRA proceeds to him/herself. The surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in his or her name.

The IRS concluded that Roth IRA X and Roth IRA Y would not be treated as inherited IRAs. Additionally, the taxpayer could roll over by means of a trustee to trustee transfer, a distribution of the proceeds of Roth IRA X and Roth IRA Y into a Roth IRA set up and maintained in her own name.

Reference: TRC RETIRE: 66,750.

IRS Continues To Release Guidance On Offshore Reporting And Disclosure

The IRS continues to provide guidance and instructions relating to the disclosure and reporting of offshore assets. (*See the article in this week's newsletter on changes to the IRS's Offshore Voluntary Disclosure Program (OVDP).*)

OVDP. The IRS released new frequently asked questions (FAQs) on the revised OVDP programs, including transition rules for taxpayers who applied under the existing OVDP and now want to participate in the revised streamlined procedures program. Q&A-5 states that taxpayers in the OVDP who are eligible for the streamlined program will pay the streamlined miscellaneous offshore penalty, instead of the OVDP penalty.

FATCA. Beginning July 1, 2014, taxpayers will also be subject to the reporting regime under the *Foreign Account Tax Compliance Act* (FATCA). The IRS has been revising forms and instructions for taxpayers, intermediaries and foreign institutions that must report. The IRS recently released revised instructions for Form W-8IMY, which has been updated to reflect FATCA's withholding and documentation requirements.

FAQs, Form W-8IMY Instructions, www.irs.gov; TRC FILEBUS: 9,104.

D.C. Circuit Rejects Attempt To Nullify Tax Court Decision For Separation Of Powers Violation

The U.S. Court of Appeals for the District of Columbia Circuit has rejected a taxpayer's argument that the Tax Court is unconstitutionally biased in favor of the IRS because of a violation of the constitutional separation of powers. The taxpayer sought to have the D.C. Circuit vacate the Tax Court's decision against the taxpayer and have it reassigned to an "unbiased" judge

The D.C. Circuit found that the President's power to remove Tax Court judges for misconduct under Code Sec. 7443(f) does not violate the separation of powers between the executive and judicial branches. The court concluded that the Tax Court exercises executive authority as part of the Executive Branch and that presidential removal authority is constitutional.

Kuretski, CA-D.C., June 20, 2014; TRC LITIG: 6,000.

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ing. The taxpayer failed to prove that the fair market value (FMV) of the easement contribution exceeded the FMV of the consideration it received. The negligence penalty was imposed.

Seventeen Seventy Sherman St., LLC, TC, CCH Dec. 59,947(M), FED ¶48,063(M); TRC INDIV: 51,364.

A façade easement contributed by an individual to a historic preservation organization did not reduce the fair market value of the property and, therefore, the individual's contribution deduction was properly disallowed. The easement did not add any new restrictions on the use of the property because the historic preservation laws of New York City already required a specific historic review of any proposed changes to the exterior of the property.

Scheidelman, CA-2, 2014-1 USTC ¶50,324; TRC VALUE: 15,106.

An individual was not entitled to deduct unreimbursed employee expenses reported on Schedule A, Itemized Deductions. Although it was undisputed that the individual used his personal pickup truck for business and his vehicle expenses were not reimbursed by his employer, he failed to substantiate the business use of his vehicle.

Garza, TC, CCH Dec. 59,944(M), FED ¶48,060(M); TRC BUSEXP: 24,502.

Married individuals were denied deductions for various losses and expenses connected with real properties they owned due to a lack of proof. Further, they did not erroneously report capital contributions as gross receipts on their returns. Finally, the taxpayers were subject to accuracy-related penalties for the two years at issue based on substantial understatement of income tax.

Robinson, TC, CCH Dec. 59,942(M), FED ¶48,058(M); TRC FILEIND: 9,052.

An individual was not entitled to deduct unsubstantiated business expenses. He was also not entitled to deduct a capital loss carryforward on any of the returns at issue and was liable for the addition to tax for failure to timely file one return and for the accuracy-related penalty for each of the years at issue.

Cherizol, TC, CCH Dec. 59,941(M), FED ¶48,057(M); TRC BUSEXP: 3,200.

Signature Of General Partner Or LLC Member Manager Required For Form 1065 To Be Valid

IRS Chief Counsel has concluded that a Form 1065 that is not signed by a general partner or a limited liability company member manager is not a valid partnership return for purposes of starting the running of the period of limitations on assessment. Ultimately, however, Chief Counsel found that the return that starts the limitations period at issue was not the partnership return, but the return of the taxpayer whose liability is being assessed.

Background. The IRS received a Form 1065 from an LLC partly owned by a foreign entity. The preparer signature line for the Form 1065 was signed by a tax return preparer. The partnership signature line bore the name of the foreign entity.

Chief Counsel's analysis. Chief Counsel determined that the partnership return was invalid. It was not signed by a general partner or a limited liability company member manager as required by Code Secs. 6031, 6063, the Form 1065 instructions, and Publication 3402, Taxation of Limited Liability Companies. Chief Counsel also noted that the signer (in this case the person who signed using the name of the foreign entity) should sign the return by writing his/her name, rather than the name of the business entity. Nevertheless, the return that would properly determine the start of the running of the limitations period at issue was not the Form 1065, but the tax return of the taxpayer whose liability was being determined.

CCA 201425011; TRC PART: 18,160.05.

Liens and Levies

The government was entitled to foreclose its federal tax liens upon a married couple's residence. The tax liens were valid and subsisting against the couple's property despite an erroneous release of the liens against the wife's liens. Moreover, the couple could not avoid the foreclosure because the property was their personal residence. The IRS was not required to show that there were no alternative methods for collecting the amounts due.

Peters, DC Mo., 2014-1 USTC ¶50,319; TRC SALES: 3,302.35.

Bankruptcy

The government was not entitled to an order excepting an individual's tax liability from discharge under section 523 of the Bankruptcy Code. The individual's conviction, without more, did not establish his intent to evade tax. Moreover, the individual consistently testified that he embezzled the funds to save his company from involuntary bankruptcy and that he did not act with the intent to evade tax.

Parker, CA-9, 2014-1 USTC ¶50,318; TRC IRS: 45,158.

Estate Taxes

An estate that elected to pay federal estate taxes in installments under Code Sec. 6166 was not entitled to a refund of an overpayment of the undeferred portion of the tax because the IRS properly credited the overpayment against the estate's unpaid taxes. Even though the estate's payment was voluntary, the IRS was entitled to credit the payment to any outstanding tax liability regardless of the estate's designation.

McNeely Est., DC Minn., 2014-1 USTC ¶50,323; TRC IRS: 33,302.05.

Tax Shelters

An offshore portfolio investment strategy (OPIS) transaction lacked economic substance and, therefore, the losses generated were properly disallowed. The OPIS transaction offered no reasonable opportunity for profit outside of its tax benefits and the investor failed to show a nontax business purpose for participating in the transaction.

Reddam, CA-9, 2014-1 USTC ¶50,322; TRC BUSEXP: 30,168.