

## Federal Tax Update

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### INDIVIDUALS

In Schumann v. Commissioner, TC Memo 2014-138, the Tax Court determined that an individual who made in excess of \$6 million in wages over two years could not be a qualified real estate professional although he owned two commercial rental properties, 12 residential rental properties, an airplane hangar and two apartments on a cruise ship; the taxpayer claimed that he did little work for the businesses from which he was paid.

In Halbig v. Burwell, 114 AFTR2d 2014-5225, the US Court of Appeals for the DC Circuit reversed a DC Federal District Court and determined that the individual health care premium tax credit is limited to insurance purchased on an Exchange established by a state and not one established by the federal government for residents of a state that did not establish an Exchange, the effect being to create more exemptions from the individual mandate as the cost rises in relation to income; on the same day, the Fourth Circuit Court of Appeals sustained a decision of a Virginia Federal District Court in King v. Burwell, 114 AFTR2d 2014-5259, which reached the opposite conclusion.

In Miller v. Commissioner, TC Summary Opinion 2014-74, a non-owner who was the only New York employee of a Los Angeles company and worked from her studio apartment shown on the company's website as the local address of the business was permitted to claim an office in home deduction for one-third of the apartment notwithstanding de minimis personal use in the office space which included a desk, shelving units, a bookcase and a sofa; she was denied a business deduction for the cost of three evening dresses which she wore to company events but did not use them for personal purposes as they were not within her taste.

In Chief Counsel Advice 201427016, IRS clarified that whether an individual elects or not to treat all rental properties as one does not affect status as a qualified real estate professional under the 750 hour test.

In Chief Counsel Advice 201428008, IRS determined that suspended passive activity losses from renting a former principal residence are not lost to excluded gain on a disposition within three years and remain available to offset future passive activity gains.

## RETIREMENT PLANS

Final Regulations under Code Section 401, et seq., allow defined contribution plans to purchase deferred annuities up to the lesser of \$100,000 indexed in \$10,000 increments or 25 percent of the employee account balance; the value of the account balance is excluded from the minimum distribution computation and a straight life annuity need not be commenced until age 85 adjusted for mortality changes.

Proposed Regulations under Code Section 408 reflect the recent decision of the Tax Court in Bobrow v. Commissioner, TC Memo 2014-21, with IRS effectively acquiescing in the decision of the Court that an individual may not make an IRA-to-IRA rollover if another was made in the preceding one-year period even if it was from another account; this restriction does not affect direct transfers.

In Letter Ruling 201428012, IRS refused to waive the 60-day rollover period where an individual simply forgot to redeposit the funds; in Letter Ruling 201429033, IRS refused to waive the 60-day rollover period where a distribution was utilized to pay medical expenses and there was no ability to replace the funds until after the deadline.

## BUSINESS

Final Regulations under Code Section 1366 indicate that a shareholder's basis in his stock in an S corporation is only increased by bona fide indebtedness determined under general federal income tax principles based on all facts and circumstances with guarantees only giving basis to the extent of performance.

In Dickinson v. Commissioner, TC Memo 2014-136, the Tax Court determined that \$33,000 transferred between an individual and his business partner which was never repaid could not be deducted as a bad debt despite testimony of the intention to create a loan; the Court was bothered both because there was no documentary evidence such as a note, collateral or repayment plan (although other courts would disagree) and the financial problems of the debtor making repayment unlikely at the time of the loan.

In Gardner v. Commissioner, TC Memo 2014-148, the Tax Court determined that a cattle operation was not run in a professional manner and found that losses over a three year period of more than \$680,000 were unusable as the activity was not engaged in for profit.

IRS Form 1023-EZ was revised to limit eligibility to use the short-form application for non-profit status to organizations projecting annual gross receipts of less than \$50,000 (down from \$200,000) and total assets of less than \$250,000 (down from \$500,000).

In Chief Counsel Advice 201430013, IRS determined that a wholly owned limited liability company constituting a disregarded entity and having a separate and distinct trade or business could use an accounting method different from that of its parent.

## PROCEDURE

In Ridgely v. Lew, 114 AFTR2d 2014-5249, a District of Columbia Federal District Court determined that IRS exceeded its statutory authority in restricting practitioners from charging on a contingency arrangement in preparing claims for refund.

In United States v. Park, 114 AFTR2d 2014-5136, the Second Circuit Court of Appeals reversed a New York Federal District Court which gave probation to a tax defendant because of the cost of incarceration, indicating that cost is not a relevant factor in sentencing.

In Valteau, Harris, Koenig & Mayer v. Commissioner, TC Memo 2014-144, the Tax Court found that remittances of payroll taxes through a depository bank with designated applications do not bind IRS when they were past due remittances not eligible for submission to a depository bank and should have been sent directly to IRS.

In Eichler v. Commissioner, 143 TC No. 2, the Tax Court indicated that IRS may send a notice of intent to levy during the pendency of a taxpayer's attempt to seek an installment agreement but may not actually levy during that time.

In United States v. Winsper, 114 AFTR2d 2014-5218, a Kentucky Federal District Court balanced the equities and allowed IRS to force sale of property held by a couple for the tax debt of only the husband.

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