

Federal Tax Update

By David S. De Jong

June, 2015

INDIVIDUALS

In Ibrahim v. Commissioner, 115 AFTR2d 2015-2126, the Eighth Circuit Court of Appeals reversed the Tax Court and permitted a married taxpayer to change his filing status after filing a Tax Court Petition based on a return in which he erroneously used head of household status.

In King v. Burwell, 115 AFTR2d 215-2203, the US Supreme Court interpreted the Affordable Care Act as allowing a tax credit to lower income individuals who purchase their insurance on the federal healthcare exchange where they reside in states that did not create a state-run exchange.

In Isaacs v. Commissioner, TC Memo 2015-121, the Tax Court denied a charitable deduction for a donation of 12 fossils for failure to obtain qualified appraisals.

In Greenberger v. United States, 115 AFTR2d 2015-844, an Ohio Federal District Court held that an individual could not claim a theft loss for publicly traded stock that became worthless due to lies of corporate management; the Court backed up the IRS position that misconduct by executives of public companies will not give rise to a theft loss as there is no specific intent to take the individual's property through fraud and cause transfer of the property to the wrongdoers.

In Chief Counsel Advice 201522004, IRS indicated that it considers State-required "late payment penalties" of wages to an employee as not constituting compensation for purpose of withholding, social security, medicare and unemployment as they are not compensating employees for services but are intended as punitive to the employer.

RETIREMENT PLANS

Public Law 114-26, the Defending Public Safety Employees Retirement Act, allows public safety workers to make withdrawals from their retirement accounts at age 50 instead of 55.

In Yale-New Haven Hospital v. Nicholls, 115 AFTR2d 2015-_____, the Second Circuit Court of Appeals agreed with a Connecticut Federal District Court that a domestic

relations order could be entered by a court after the death of a payor and be a ODRO when the property settlement agreement was signed prior to death.

In Ellis v. Commissioner, 115 AFTR2d 2015-2072, the Eighth Circuit Court of Appeals agreed with the Tax Court that an IRA lost its protected status causing immediate taxation upon use of funds to pay for a membership interest in a limited liability company for which the individual was to perform services.

ESTATES

In a Website Announcement, IRS announced that estate tax closing letters will only be issued upon request for returns filed after May 31, 2015.

BUSINESS

In Stough v. Commissioner, 144 TC No. 16, the Tax Court determined that an elective \$1 million payment by a lessee to a lessor to reduce future payments under the lease was includable by the lessor in income when received.

In McMillan v. Commissioner, TC Memo 2015-109, the Tax Court allowed a 50 percent deduction for legal fees by an individual running two Schedule Cs out of her home for costs incurred in dealing with mold and barking dogs in an action brought against the homeowners association; however, the Court found that a third activity – that of a dressage trainer and rider was a hobby where all factors either indicated the lack of a profit objective or were neutral and the taxpayer had \$588 in revenues and over \$155,000 in expenses over a six-year period.

In Bell v. Commissioner, TC Memo 2015-111, the Tax Court agreed with IRS recharacterizing a sale of assets to a newly formed corporation as a capital contribution, weighing 11 factors to determine the lack of an installment sale and requiring distributions from the corporation to be treated as dividends.

In Pelaluma FX Partners LLC v. Commissioner, 115 AFTR2d 2015-863, the DC Circuit Court of Appeals agreed with the Tax Court that the applicability of the accuracy penalty to individual partners in a TEFRA audit is to be determined at the entity level.

PROCEDURE

In Levi v. Commissioner, TC Memo 2015-118, the Tax Court found a tax return signed by a couple's attorney to be invalid as the IRS Power of Attorney does not include the power to sign tax returns.

In Heckman v. Commissioner, 115 AFTR2d 2015-2135, the Eighth Circuit Court of Appeals agreed with the Tax Court that the six-year statute of limitations upon an understatement of 25 percent of gross income is absolute and applies even if the taxpayer made an honest mistake or even if IRS had prior actual knowledge of the omission.

In Shah v. Commissioner, 115 AFTR2d 2015-856, the Seventh Circuit Court of Appeals reversed the Tax Court where a couple appeared to have settled a case on the substantive issues but disagreed with the computation and IRS moved successfully to ask the Tax Court to enter a decision using the IRS numbers.

In Quality Software Systems, Inc. v. Commissioner, TC Memo 2015-207, the Tax Court found that IRS did not abuse its discretion in refusing to reinstate a cancelled offer in compromise agreement after multiple small dollar breaches of subsequent timely filing and payment requirements.

In Wagner v. Commissioner, TC Memo 2105-120, the Tax Court accepted in full the proposed findings of fact of the IRS when the pro se taxpayer filed a post-trial brief which ignored the Court directives and consisted of 130 unnumbered pages consisting mostly of exhibits not admitted into evidence.

In Memorandum SBSE-04-0615-0045, IRS indicated that taxpayers who make reasonable efforts to obtain a bank account and are unsuccessful will not be penalized for failure to deposit taxes.

IRS Appeals Memo 25-0615-0005 implements a "quick look" policy in processing innocent spouse claims to accelerate those which figure to be easily resolved.

In Legal Advice issued by Field Attorneys 20152301E, IRS indicated that a technically defective extension of the statute of limitations will be treated as extending the limitations period when it was signed by the same individual who would have signed a correct extension.
