Federal Tax Update

By David S. De Jong

March, 2015

INDIVIDUALS

In Howard v. Commissioner, TC Memo 2015-38, the Tax Court determined that a long distance truck driver who lived in his truck but used his mother's home as a mailing address had no "tax home" and could not deduct travel expenses; the Court did allow a deduction for "truck stop electrification" expenses which allowed powering the truck without diesel fuel while taking mandated rest breaks.

RETIREMENT PLANS

In Letter Ruling 201510060, IRS ruled that two extra payments received from an IRA where distributions caused by bank error upon acquisition of a predecessor institution did not jeopardize the "equal periodic payment" exception to the general rule that payments may not start before age 59½.

BUSINESS

In Midwest Eye Center, S.C. v. Commissioner, TC Memo 2015-53, the Tax Court agreed with IRS that $1 million of a $2 million bonus paid by a C corporation to its sole owner was a disguised dividend despite an increased workload as other surgeons left the practice.

In Kardash v. Commissioner, TC Memo 2015-51, the Tax Court determined that minority shareholders of a business shared pro rata liability for corporate taxes as transferees, notwithstanding that they had no knowledge of the fraud, where the majority owners distributed almost all of the cash out of the business.

In Bedrosian v. Commissioner, 144 TC No. 10, the Tax Court determined that the deductibility of legal fees paid by a partner is determined at the individual level in a TEFRA audit; however, with a decision at the entity level that the partnership was a sham, the issue of deductibility was effectively already decided.

In Lamas v. Commissioner, TC Memo 2014-59, the Tax Court permitted a businessman to aggregate hours in two like condominium conversion projects with different family minority owners to show time in excess of 500 hours in the activity; the Court permitted recreation of the approximate number of hours spent based on collateral documentation as opposed to a log (disregarding testimony of a disgruntled brother-in-law who turned on the businessman and changed his testimony after being caught misappropriating assets).

Frequently Asked Questions under Code Section 162 address the de minimis safe harbor on expensing tangible personal property, allowing a writeoff of up to $500 ($5,000 in the case of a business with a written accounting procedure and preparing an audited statement or filing financial statements with a governmental agency); the taxpayer does not file Form 3115 to establish or change use of the de minimis safe harbor but should include an annual election with each tax return (without the safe harbor, IRS will determine if expensing properly reflects economic income).

PROCEDURE

In Medical Weight Control Specialist v. Commissioner, TC Memo 2015-52, the Tax Court concluded that retroactive reinstatement of good standing status is insufficient to validate a Tax Court petition filed when a corporation was not in good standing.

In In Re Wilson, 115 AFTR2d 2015-485, a California Bankruptcy Court ruled that the failure to file penalty is dischargeable after three years from the original due date of the return notwithstanding that an extension was filed and the return was actually filed after the extended due date.

In Musa v. Commissioner, TC Memo 2015-58, the Tax Court found that a restaurant owner who took $2 million in cash home over 5 years, depositing very little, was liable for the 75 percent civil fraud penalty rather than the 20 percent accuracy penalty, rejecting the taxpayer’s blame on the accountant.

In Gyorgy v. Commissioner, 115 AFTR2d 2015-978, the Seventh Circuit Court of Appeals agreed with the Tax Court that an IRS notice of deficiency was sent to an individual’s “last known address” when sent to the location set forth on the last filed tax return even if it was many years earlier in the absence of receipt from the individual of an address change; the Court stressed that addresses on information returns sent by third parties do not properly notify IRS of a change in address.

In Program Manager Technical Advice Memorandum 2014-19, IRS indicated that when it had knowledge regarding a taxpayer’s incarceration as the result of prosecution for tax offenses, the “last known address” for purpose of the validity of a notice of deficiency becomes the prison.
