The Tax Adviser

Recent developments in individual taxation

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EXECUTIVE SUMMARY

- For divorce or separation instruments executed after Dec. 31, 2018, in general, alimony will not be deductible by the payer spouse or includible in the payee spouse's gross income.
- The Tax Court held that the grandchildren of a taxpayer's common law husband did not qualify as her dependents because they had no direct relation by blood or adoption, the state she lived in did not recognize common law marriage, and the children had not been placed with her as foster children.
- The TCJA reduced the limitation on mortgage acquisition debt for purposes of the mortgage interest deduction to $750,000 and suspended the deduction for home-equity indebtedness. However, in guidance, the IRS clarified that home-equity debt that is used to buy, build, or substantially improve the taxpayer's home that secures the home-equity loan is deductible, subject to the limitation on mortgage acquisition debt.
- The TCJA amended Sec. 164, limiting the amount of the itemized deduction for state and local taxes (other than those paid or accrued in carrying on a trade or business) to $10,000 ($5,000 for married taxpayers filing separately).
- In two cases in which taxpayers claimed they qualified as real estate professionals to be able to deduct passive activity losses, the courts rejected these claims because the taxpayers were unable to substantiate the amount of time they spent on these activities and upheld IRS penalties for substantial understatements of tax assessed against the taxpayers.
- In a Tax Court case, the court held that a short sale of property and the cancellation of nonrecourse debt secured by the property were part of one sale or exchange transaction, and the amount the taxpayers realized from the transaction included the discharged nonrecourse debt.

This article is a semiannual review of recent developments in the area of individual federal taxation. It analyzes several hobby loss cases, cases on qualifying as real estate professionals, and two innocent spouse cases, among many other key topics affecting individuals. The items are arranged in Code section order.

Sec. 1: Tax imposed

P.L. 115-97 (known as the Tax Cuts and Jobs Act (TCJA)) introduced new tax rates for individuals, effective for 2018 through 2025, with a new top rate of 37% instead of 39.6%.[1] Special brackets apply for children with unearned income.[2]

The system for taxing capital gains and qualified dividends did not change under the TCJA, except that the income levels at which the 15% and 20% rates apply were altered (and will be adjusted for inflation after 2018). For 2018, the 15% rate will start at $77,200 for married taxpayers filing jointly, $51,700 for heads of household, and $38,600 for other individuals. The 20% rate will start at $479,000 for married taxpayers filing jointly, $452,400 for heads of household, and $425,800 for other individuals.[3]

Sec. 24: Child tax credit

The TCJA increased the amount of the child tax credit to $2,000 per qualifying child for 2018 through 2025.[4] The maximum refundable amount of the credit is $1,400. The act also created a new nonrefundable $500 credit for qualifying dependents who are not qualifying children. The threshold at which the credit begins to phase out was increased to $400,000 for married taxpayers filing a joint return and $200,000 for other taxpayers.

Sec. 36: First-time homebuyer credit

A bankruptcy court determined that the first-time homebuyer credit is dischargeable as a general unsecured debt in bankruptcy.[5] First-time homebuyers who purchased a home between April 9, 2008, and May 1, 2010, were required to pay the credit back at the rate of 6⅔% a year for 15 years beginning two years after the home's purchase. The taxpayer purchased a home in 2008 and claimed the tax credit on her 2008 income tax return. In 2017, the taxpayer filed a voluntary petition for bankruptcy listing the credit as a general unsecured debt of $4,000. The IRS filed a proof of claim listing a priority claim in the amount of $393, the outstanding tax liability for the year, taking the position that the repayment was a tax that arose each year, not a loan, and therefore not a prepetition claim dischargeable in bankruptcy.

The bankruptcy court decision focused on whether the repayment was the payment of a debt under the Bankruptcy Code. The existence of a valid bankruptcy claim rests on whether a claimant had a right to payment and whether that right arose prior to the bankruptcy filing. The court noted that the IRS has consistently referred to the repayment of the homebuyer's credit as a repayment both in news releases and the instructions for Form 5405, *Repayment of the First-Time Homebuyer Credit*. Because the IRS had a right to payment that was a prepetition claim and that was not a priority tax debt, it was therefore dischargeable in bankruptcy.

Sec. 36B: Refundable credit for coverage under a qualified health plan

Eligibility: In *Keel*,[6] the Tax Court held that a taxpayer could not disregard cancellation-of-debt (COD) income in determining her eligibility for the premium tax credit. Since the COD income pushed the taxpayer over the income eligibility threshold, she had to repay the advance premium tax credits paid on her behalf for that year.

***Determination of coverage*:** In February 2018, the IRS provided questions and answers about the employer shared-responsibility payment for a large employer that does not offer health coverage to its full-time employees. These FAQs affect the determination of coverage and calculation of the premium tax credit, as these questions and answers may help determine whether an employee has minimal essential coverage in a particular month.[7]

Sec. 61: Gross income defined

***State credits*:** The *Ginsburg* case involved a taxpayer who had participated in a New York state program that provided an incentive to investors to rehabilitate certain areas in the state.[8] In this program, New York provides state income tax credits to taxpayers who meet the requirements of the Brownfield Redevelopment Tax Credit program, which is designed to encourage reclamation of land contaminated by industrial use by applying a percentage of a project's costs against a corporation's franchise tax or an individual's income tax liability. Any excess amount may be deferred to another tax year or credited as an overpayment of state taxes. New York does not tax any portion of the credit as income.

From 2004 to 2011, the taxpayers acquired and restored an abandoned shoe factory, a property located in a Brownfield site, and converted it into a residential rental building in Brooklyn. New York certified the taxpayers' Brownfield program application in December 2011. As a result, the taxpayers were to receive a payment from New York representing 10% of their site preparation and tangible property expenses, which would first be applied as a credit against their New York state income tax liability. The taxpayers could then choose to have any remaining credit deferred to another year or transferred directly to them as a cash payment.

In 2013, the taxpayers received a payment from New York for $1,864,618, the credit amount that exceeded their 2011 state income tax liability. The taxpayers did not include the $1.8 million payment as income on their 2013 federal tax return, arguing that (1) the tax credit was not income, but a recovery of capital; and (2) even if the credit was income, it was excludable (a) as a nontaxable contribution to capital, (b) under the "tax benefit rule," or (c) under the "general welfare" exclusion. The IRS argued that while the portion of the tax credit that reduced the taxpayers' state tax liability to zero is not taxable by law, the $1.8 million excess credit payment was income under Sec. 61 and not subject to any exclusion.

The Court of Federal Claims held that the excess state credit paid to the taxpayers was subject to federal income tax and did not qualify for any exclusion or exception from income. Federal law designates how state-created legal rights or interests will be taxed. As the taxpayers never actually paid $1,864,618 to the state as tax, to label the $1.8 million payment a refund would allow the state and the taxpayers to manipulate federal income tax laws. The excess Brownfield program credit was in substance a cash transfer from the state to the taxpayers with no strings attached since the taxpayers were free to save, spend, or transfer the excess credit. Thus, the cash payment was an accession to wealth for the taxpayers.

Further, no exclusions or exceptions to Sec. 61 gross income applied. Because there was no sale, the excess credit was not a return of capital. The state did not pay for a partnership interest in the project; therefore, the payment was not a nontaxable contribution to capital. The tax benefit rule was inapplicable since the payment was not a refund of previously paid taxes. Lastly, the payment was not need-based and therefore was not excludable from income as welfare.

***S corporation income*:** In *Enis* (also discussed under Sec. 165),[9] the taxpayer-wife, who was a shareholder in an S corporation, had excluded income from that corporation, claiming she did not have beneficial ownership of the shares. She argued she did not have beneficial ownership because the other shareholders had removed her powers to exercise her rights as a shareholder by not sharing financial information with her. However, the court found that she had retained beneficial ownership of the shares despite the conflicts and therefore had to include her pro rata share of the corporation's income in her income. The court noted that she did not cite any authority for the proposition that a shareholder could exclude income from an S corporation because of poor relationships with other shareholders.

Sec. 63: Taxable income defined

The TCJA increased the standard deduction for the years 2018 through 2025. The new standard deduction is $24,000 for married taxpayers filing jointly, $18,000 for heads of household, and $12,000 for all other individuals.[10] The TCJA did not change the additional standard deduction for elderly and blind taxpayers.

Sec. 66: Treatment of community income

Taxpayers Doran Kraus and Leanne Lao married in 1988 and divorced in 2010. During the marriage, Kraus was the sole income earner and took responsibility for the couple's finances, including reporting and paying federal income taxes. Kraus failed to file several tax returns and to pay the tax. In 2006, the IRS recorded a notice of federal tax liens against Kraus for his 2001-2004 federal income taxes. In 2009, the IRS assessed civil penalties against Kraus for frivolous tax submissions. In 2012, the IRS granted Lao "innocent spouse relief" under Sec. 66, relieving her of any personal tax liability for items of community income attributable to Kraus. And, in 2016, the IRS refiled a Notice of Federal Tax Lien for Kraus's 2001-2004 federal income taxes. Among other items at issue in this case, a district court addressed the IRS's ability to foreclose on its tax liens on the subject property.

The court held that, while Sec. 66 innocent spouse relief prevented the assessment of a tax against Lao individually in any separate property she possessed, it did not affect the ability of the IRS to pursue collection remedies against her interest in community property.[11] Kraus's tax liabilities all arose during Lao and Kraus's marriage, and the liens attached when those liabilities were assessed. Under Washington law, "all debts of each spouse that are acquired during the marriage attach to the marital community as a whole" and "[o]ne spouse's tax liabilities are presumed to be community debts if they are incurred during marriage."[12]

The court explained that while Lao may have obtained innocent spouse relief in 2012 for her separate property, she failed to produce evidence to overcome the presumption that the federal tax liens attached to the whole of the subject property when the liabilities were assessed. Even if Lao ultimately obtained a separate property interest in the subject property after the divorce, she could only take that separate interest subject to any preexisting liens or mortgage. Therefore, any separate interest that Lao possessed in the subject property must lie in the equity that exceeded the preexisting mortgage and liens.

The court also noted that while the entire value of the property was subject to any liens that preexisted Lao and Kraus's divorce, because that property was community property at the time those liens attached, it was unclear if statutory interest or other penalties assessed after the divorce could be collected against the full value of the property or merely Kraus's now-separate interest in any equity that exceeded all preexisting liens. Because the parties did not address this issue, the court requested a supplemental briefing from the parties before making a final decision.

Sec. 67: 2% floor on miscellaneous itemized deductions

For the years 2018 through 2025, the TCJA suspended the miscellaneous itemized deductions allowed under Sec. 67.[13]

Sec. 68: Overall limitation on itemized deductions

The TCJA suspended the overall limitation on itemized deductions for the years 2018 through 2025.[14]

Sec. 71: Alimony and separate maintenance payments (repealed)

Sec. 71 is repealed by the TCJA.[15] Alimony payments are not includible in the recipient's income for any divorce or separation instrument (as defined in Sec. 71(b)(2)) executed after Dec. 31, 2018, and any divorce or separation instrument (as so defined) executed on or before that date and modified after that date if the modification expressly provides that the repeal of Sec. 71 applies to the modification.

Sec. 72: Annuities; certain proceeds of endowment and life insurance contracts

On Oct. 31, 2017, the IRS issued Announcement 2017-15, which allowed Sec. 401(k) plans and similar employer-sponsored retirement plans to make loans and hardship distributions to employees and former employees for needs arising from Hurricane Maria or the California wildfires, and relaxed procedural and administrative rules that normally apply to retirement plan loans and hardship distributions. The relief applied to loans and hardship distributions made no later than March 15, 2018.

This relief was in addition to the relief provided in IRS News Releases CA-2017-06, VI-2017-02, and PR-2017-02 under Sec. 7508A for victims of these disasters, and to any future news releases providing relief related to these disasters, and was separate and in addition to the relief provided to victims of Hurricane Maria in September 2017 by the Disaster Tax Relief and Airport and Airway Extension Act.[16]

Sec. 107: Rental value of parsonages

In *Gaylor*, a federal district court enjoined the government from enforcing the "parsonage allowance" exclusion.[17] In a prior order, the court held that Sec. 107(2), which excludes from the gross income of a "minister of the gospel" a "rental allowance paid to him as part of his compensation," is unconstitutional as it violates the Establishment Clause of the First Amendment because it does not have a secular purpose or effect and a reasonable observer would view the statute as an endorsement of religion.

The court denied the taxpayers' request that the IRS partially refund taxes they paid but that would have been reduced if they had been permitted to claim a housing allowance as an exclusion of income under Sec. 107(2). Additionally, the court held that an injunction nullifying Sec. 107(2) prospectively to be an appropriate remedy in this case and agreed that the relief be stayed for 180 days after the resolution of any appeals, in light of the substantial changes to tax policy and administration that would occur upon enforcement of the injunction.

Sec. 108: Income from discharge of indebtedness

In *Simonsen* (also discussed under Sec. 1001),[18] the taxpayers bought their home with nonrecourse debt. Five years later they moved out and converted their home to a rental property. Not long after, they completed a short sale of the property, and the bank discharged the debt. The taxpayers claimed that the short sale and

consequent debt forgiveness were two separate transactions — a sale of the property and a cancellation of the debt secured by the property — and reported a substantial deductible loss and excludable COD income. The IRS determined that it was one sale or exchange, there was no COD income, and there was no loss.

In a fully reviewed decision, the Tax Court held that the short sale and debt forgiveness were part of one sale or exchange, and the amount realized included the discharged nonrecourse debt. As a result, the taxpayers did not realize any COD income. Additionally, when applying Regs. Sec. 1.165-9(b)(2), there was neither gain nor loss on the sale because the amount realized was greater than the taxpayers' loss basis in the property but less than their gain basis in the property, under that regulation. Finally, the Tax Court found that the taxpayers were not liable for any Sec. 6662 penalties because the IRS did not prove that the examiner had obtained written approval for the penalty from a supervisor as required under Sec. 6751(b)(1) and the taxpayers demonstrated a good-faith attempt to determine the correct tax treatment of the short sale.

Sec. 112: Certain combat zone compensation of members of the Armed Forces

Under the TCJA, members of the U.S. Army, U.S. Navy, U.S. Marine Corps, U.S. Air Force, and U.S. Coast Guard who performed services in the Sinai Peninsula can now claim combat zone tax benefits retroactive to June 2015.[19] Among other benefits, eligible service members may be able to exclude part or all of their combat pay from their income for federal income tax purposes.

The IRS announced on April 13, 2018, that service members who previously paid tax on this income may be due a refund.[20] They may file an amended tax return by filing Form 1040X, *Amended U.S. Individual Income Tax Return*, if they already filed a tax return for tax years 2015, 2016, and 2017. Eligible service members should review IRS Publication 3, *Armed Forces' Tax Guide*, available at irs.gov/pub/irs-pdf/p3.pdf.

Sec. 151: Allowance of deduction for personal exemptions

The TCJA suspended all personal exemptions for the years 2018 through 2025.[21]

Sec. 152: Dependent defined

The Tax Court held that a taxpayer could not claim dependency exemptions for her common law husband's grandchildren.[22] Additionally, the taxpayer was denied the child tax credit, the earned income tax credit, and head-of-household filing status. The dependents claimed were not "qualifying children" as they had no direct relation by blood or adoption to the taxpayer, because the state in which she resided did not recognize common law marriage and the children had not been formally placed as foster children.

Sec. 162: Trade or business expenses

In *Lakhani*[23](also discussed under Sec. 165), the taxpayer, who was an accountant and a professional gambler, claimed that takeouts (a percentage of all monies wagered on a horse race that a racetrack retains to offset its business costs) a racetrack deducted from his wagers were ordinary and necessary business expenses deductible separate from his wagers. The court held that because the takeout was used to discharge debts of the racetrack, not of the bettors, the taxpayer could not take a deduction for any part of the takeout.

Sec. 163: Interest

The TCJA amended Sec. 163 by reducing the $1 million limit for married taxpayers filing jointly and all other taxpayers (except for married taxpayers filing separately who were limited to $500,000) on home-acquisition debt to $750,000 for all taxpayers (except that the limit is $375,000 for married taxpayers filing separately), effective Jan. 1, 2018, through Dec. 31, 2025.[24] Additionally, the TCJA eliminates the additional deduction for "home equity debt," therefore eliminating the previously allowed interest deduction on a principal balance up to $100,000. As such, interest on home-equity loans obtained between Jan. 1, 2018, and Dec. 31, 2025, will not be deductible if the loan proceeds are used other than to buy, build, or substantially improve a taxpayer's qualified residence that secures the loan.

In February, the IRS issued a news release that provided the following three examples of how taxpayers may still be able to deduct interest paid on home-equity loans if the loan is secured by the qualified residence and does not exceed the cost of the residence (along with other requirements).[25]

Example 1: In January 2018, a taxpayer takes out a $500,000 mortgage to purchase a main home with a fair market value of $800,000. In February 2018, the taxpayer takes out a $250,000 home-equity loan to put an addition on the main home. Both loans are secured by the main home, and the total does not exceed the cost of the home. Because the total amount of both loans does not exceed $750,000, all of the interest paid on the loans is deductible. However, if the taxpayer used the home-equity loan proceeds for personal expenses, such as paying off student loans and credit cards, then the interest on the home-equity loan would not be deductible.

Example 2: In January 2018, a taxpayer takes out a $500,000 mortgage to purchase a main home. The loan is secured by the main home. In February 2018, the taxpayer takes out a $250,000 loan to purchase a vacation home. The loan is secured by the vacation home. Because the total amount of both mortgages does not exceed $750,000, all of the interest paid on both mortgages is deductible. However, if the taxpayer took out a $250,000 home-equity loan on the main home to purchase the vacation home, then the interest on the home-equity loan would not be deductible.

Example 3: In January 2018, a taxpayer takes out a $500,000 mortgage to purchase a main home. The loan is secured by the main home. In February 2018, the taxpayer takes out a $500,000 loan to purchase a vacation home. The loan is secured by the vacation home. Because the total amount of both mortgages exceeds $750,000, not all of the interest paid on the mortgages is deductible. A percentage of the total interest paid is deductible (see IRS Publication 936, *Home Mortgage Interest Deduction*).

Sec. 164: Taxes

The TCJA amended and limited the amount of state and local tax that can be deducted under Sec. 164.[26] For tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026, taxpayers may claim an itemized deduction of up to $10,000 for married taxpayers filing jointly, single taxpayers, and heads of household ($5,000 for married taxpayers filing separately) for the *aggregate* of:

1. State and local property taxes *not* paid or accrued in carrying on a trade or business or activity described in Sec. 212 and

2. State and local income, war profits, and excess profits taxes (or sales taxes in lieu of income, etc., taxes) paid or accrued in the tax year.

Foreign real property taxes may not be deducted.[27] State and local property taxes when paid or accrued in carrying on a trade or business or an activity described in Sec. 212 (generally, to produce income) may be deducted on Schedule C, *Profit or Loss From Business*, Schedule E, *Supplemental Income and Loss*, or Schedule F, *Profit or Loss From Farming*, respectively. However, state and local income, war profits, and excess profits taxes are not allowed as a deduction on Schedule C, Schedule E, or Schedule F.

On May 23, 2018, IRS Notice 2018-54 was issued, which announced that Treasury and the IRS intend to propose regulations in response to the various "state efforts to circumvent the new statutory limitation on state and local tax deductions" provided by Section 11042 of the TCJA by allowing taxpayers to make transfers to funds controlled by state or local governments, or other transferees specified by the state, in exchange for credits against the state or local taxes that the taxpayer is required to pay. Notice 2018-54 further states that taxpayers in those states "should be mindful that federal law controls the proper characterization of payments for federal income tax purposes."

Sec. 165: Losses

Theft loss: In a Tax Court decision (also discussed under Sec. 61), the husband and wife taxpayers were not allowed a theft loss deduction for payments by an S corporation (of which the wife was a shareholder) of personal expenses of another shareholder.[28] The Tax Court found that the taxpayers failed to prove the other shareholder had committed theft under Florida or federal law, in particular noting that the corporation consistently reported the payments as repayments on a loan to that shareholder on its books and tax return and the wife had access to this information most of the time she held her interests in the S corporation.

Gambling loss: In *Lakhani* (also discussed under Sec. 162),[29] the Ninth Circuit held that a gambler could not deduct the race track takeout that the racetrack deducted from all wagers to cover its business costs as a separate trade or business deduction not subject to the rules related to deduction of gambling losses because the takeout was used to discharge debts of the racetrack, not of the bettors.

Casualty losses: The TCJA limited the deduction taxpayers can take for personal casualty losses to losses attributable to a federally declared disaster, for the years 2018 through 2025.[30]

Sec. 166: Bad debts

Despite his "post hoc tax planning" efforts, a taxpayer's advances to a company were deemed capital contributions instead of bona fide debts.[31] During 1995 to 2011, the taxpayer "loaned" approximately $11 million to the company, which was formed by a longtime friend and continued by the friend's surviving spouse after the friend died. According to the taxpayer, all the advances to the company were loans, even though the taxpayer received 50% ownership in the business and, at the time of the advances, no formal loan document was drafted. Each time the taxpayer advanced money, "he did so without setting a time for repayment, and at the time of trial, he had not received a single repayment of any advance or even of interest."

While working with tax attorneys in 2010 to help reduce his tax liability from capital gains of an unrelated activity, the taxpayer created promissory notes. As part of the tax planning, some of the promissory notes were "sold" for $1 to the friend's surviving spouse, and the company retired some of the outstanding "debt" from the notes. The court found the notes and the overall tax planning was "more likely than not orchestrated by [the taxpayer] and his attorneys to offset the large capital gains" that the taxpayer incurred in 2010 and 2011 and therefore were not proof that advances were loans.

Sec. 170: Charitable, etc., contributions and gifts

Conservation easement: In *Wendell Falls Development, LLC*,[32] a land developer was not entitled to a charitable deduction for the placement of a conservation easement on acreage bordering parcels of land that it was developing as a residential community because the developer clearly expected to derive a substantial benefit from the easement in the form of an increase in the value of the planned community. The county where the land was located purchased the land from the developer on the condition that a conservation easement be placed on the property, limiting the use of the land to a park. In addition to its conclusion that the developer received a significant benefit, the Tax Court also found the easement did not diminish the property's value since the highest and best use for the land was as a park both before and after the easement.

Quid pro quo: Similarly, in *Triumph Mixed Use Investments III, LLC*,[33] a land developer was denied a charitable contribution deduction for land and development credits it transferred to the city of Lehi, Utah. The court found that the developer's transfer was made to induce the city council to approve its area development plan, and as such, the transfer was part of a quid pro quo arrangement in which Triumph received substantial value.

Self-substantiation: An individual was denied a charitable contribution to the inactive church he founded in *Davis*.[34] Before 2008, the church held weekly services and collected money and clothing to donate to the poor. After the 2008-2009 recession, the taxpayer was forced to seek work out of state, and the church discontinued its weekly services. During the year at issue, the church's only activity was giving away clothing and other items to individuals the taxpayer considered needy. To substantiate the donations, the taxpayer provided a letter on the church's letterhead that he signed. The Tax Court found that the letter failed to meet the substantiation requirements of Sec. 170 for noncash contributions. It also found that letter was unreliable, as it was not contemporaneous because it was sent after the taxpayer had filed his return, and it was signed by the taxpayer, whose testimony the court did not believe was credible.

Substantiation: In *Moore*,[35] the taxpayers were denied deductions for noncash charitable contributions due to lack of proper substantiation. Regs. Sec. 1.170A-13(b)(1) requires a taxpayer to substantiate (1) the name of the donee organization; (2) the date and location of the donation; (3) a description of the property in reasonably sufficient detail; and (4) the fair market value of the donated property. Although the taxpayers produced receipts from two charitable organizations, and the court acknowledged that it was clear the taxpayers made noncash contributions to those organizations, their receipts did not include a description of the property donated, so the court held they were not sufficient to substantiate the contributions.

Income-based limit: The TCJA increased the income-based percentage limit for charitable contributions of cash to public charities to 60%.[36] It also denies a charitable deduction for payments made for college athletic event seating rights.[37]

Sec. 179: Election to expense certain depreciable business assets

A taxpayer who was a software developer was denied a Sec. 179 deduction for computer equipment because he failed to substantiate the purchase of the equipment.[38] The taxpayer produced no receipts for the equipment purchases, and he produced only one credit card statement showing a purchase at an electronics store, which did not describe what was purchased.

Sec. 183: Activities not engaged in for profit

***Lack of profit motive*:** In *Williams*, after applying the nine-factor test in Regs. Sec. 1.183-2, the Tax Court held that a taxpayer had failed to prove that his consistently nonprofitable ranching activity was engaged in for a profit.[39] From 2000 to 2015, the taxpayer failed to report a net profit from the Schedule F activity. During this time, he reported an overall net loss of $1.7 million from the ranching activity, while reporting income from non-Schedule F activity, mainly from writing associated with his chiropractic degree and bachelor's degree in biochemistry, totaling $3 million. Points that the Tax Court found weighed against the taxpayer's claim of a profit motive included that, although the taxpayer engaged the services of a bookkeeper and a CPA, he did not operate the business in a businesslike manner because he never reviewed the ranching activity's financial statements with either the bookkeeper or the CPA; he did not establish a formal written business plan; and, after five years of operating the ranch at a loss, the taxpayer never changed the operating structure of the ranching activity. In addition, the court also found the taxpayer did not devote sufficient time to the ranching activity, devoting only an average of six to eight hours per week to it, while devoting approximately 32 hours per week to his profitable writing activity.

***Profit motive*:** In contrast to the *Williams* case above, in *Welch*, another ranching activity was deemed to have a profit motive despite years of losses.[40] The taxpayer in the case was a college economics professor for 40 years. Again, the Tax Court applied the nine-factor test in Regs. Sec. 1.183-2 to determine whether the taxpayer had a profit motive. The taxpayer did not have a written business plan for the ranching activity, but the court determined that in this specific case, that did "not negate a profit motive." Points the court cited as favoring the taxpayer included that the taxpayer made changes to the overall ranching activity three separate times due to a lack of profit; had been involved in agriculture since he was in middle school and had obtained a degree in agricultural economics; and had 25 employees in his ranching activity who had the experience necessary to conduct the ranching activities, including a ranch manager who had been associated with ranching his entire professional career. In addition, although he spent four days per week on other nonranching endeavors, the taxpayer was still in daily contact with the ranch manager.

***Lack of profit motive*:** In *Ford*,[41] the taxpayer, a former country music artist, purchased a club primarily for country music writers to have up-and-coming artists perform their songs. The expenses of running the club consistently exceeded the revenue from admission. The Tax Court held that the club was not an activity engaged in for profit because the taxpayer did not have the intent to make a profit from the club. The court found that the taxpayer "had no expertise in club ownership, maintained inadequate records, disregarded expert business advice, nonchalantly accepted [the club's] perpetual losses, and made no attempt to reduce expenses, increase revenue, or improve [the club's] overall performance" and that the taxpayer was "primarily motivated" by the personal pleasure she received from owning a performance venue.

***Miscellaneous itemized deductions*:** Indirectly associated with Sec. 183, the TCJA suspended the deduction of miscellaneous itemized deductions subject to the 2%-of-adjusted-gross-income (AGI) threshold on Schedule A, *Itemized Deductions*, as noted under Sec. 67. Consequently, if an activity is deemed to be a hobby activity as described in Sec. 183 and the associated regulations, expenses of the activity are no longer deductible from tax years 2018 through 2025, even though the income from the activity is reportable income on Form 1040, *U.S. Individual Income Tax Return*, line 21.

Sec. 212: Expenses for production of income

The Tax Court ruled in *Harrell* (also discussed under Sec. 262) that married taxpayers were not entitled to a deduction in 2009 for funeral or estate administration expenses they paid in 1994 and 1996 for the wife's father's estate.[42] The taxpayers claimed that under Sec. 691(b) they could deduct the funeral and estate

expenses as deductions from income in respect of a decedent. The court ruled that funeral and administration expenses are clearly personal and family expenses that are not deductible under Sec. 691(b) from income in respect of a decedent. The taxpayers also claimed that they were entitled to a deduction for estate tax paid on income in respect of a decedent under Sec. 691(c). The court denied this deduction because the taxpayers did not produce evidence that a federal estate tax return was filed or that federal estate tax was paid for the wife's father's estate.

Sec. 213: Medical, dental, etc. expenses

***Egg donor*:** The Eleventh Circuit affirmed the IRS's decision to deny a taxpayer's claimed deduction for medical care on his 2011 tax return.[43] The taxpayer, who has been in a relationship with his male partner since 2000, argued that the nearly $55,000 he spent for a woman who served as the egg donor and gestational surrogate were qualified medical expenses that exceeded 7.5% of his AGI. Additionally, the taxpayer argued the IRS's disallowance of his deductions violated his right to equal protection under the law. The court found that the term "function of the body" in Sec. 213(d)(1), which defines medical care, referred to functions of the body of the taxpayer (or his or her spouse or dependent). Because the *in vitro* fertilization (IVF) procedure did not affect the function of the taxpayer's body, the expenses for the procedure were not deductible expenses for medical care.

Regarding the taxpayer's equal protection argument, the court found that because the IRS has consistently refused deductions sought by heterosexual taxpayers for IVF-related expenses similar to those incurred by the taxpayer, it did not treat him differently because of his sexual orientation. Thus, the court concluded that in disallowing the deductions, the IRS neither violated any fundamental right of the taxpayer nor discriminated against the taxpayer on the basis of any characteristics.

***AGI threshold*:** For 2017 and 2018, the TCJA reduced the threshold for deduction of medical expenses to 7.5% of AGI.[44]

Sec. 215: Alimony, etc., payments

***Repeal*:** Sec. 215 is repealed by the TCJA.[45] Alimony payments are not deductible for any divorce or separation instrument (as defined in Sec. 71(b)(2)) executed after Dec. 31, 2018, and for any divorce or separation instrument (as so defined) executed on or before that date and modified after that date if the modification expressly provides that the repeal of Sec. 71 applies to the modification.

***Liability ends on death of spouse*:** The Tax Court held in *Davidson* that the taxpayer was not entitled to a $22,176 alimony deduction for tax year 2012.[46] The taxpayer argued that his payments to his ex-wife satisfied the requirements to be alimony set out in Secs. 215(a) and (b) and all of the factors in Sec. 71(b), while the IRS argued that the payments did not meet the requirement in Sec. 71(b)(1)(D) that the liability to make the payments ends upon the death of the payee spouse. The court found that the payments were not deductible alimony because under the applicable state law, his obligation would not end upon his ex-wife's death.

Sec. 262: Personal, living, and family expenses

In *Harrell*, also discussed under Sec. 212, the court ruled that the taxpayer's funeral and estate administrative expenses are nondeductible personal and family expenses. As such, these expenses are also not allowable expenses in computing a net operating loss.[47]

Sec. 267: Losses, expenses, and interest with respect to transactions between related taxpayers

Sec. 267 restricts a payer's ability to deduct an expense until it is included in the gross income of the payee. One of the limitations on deducting these payments is when the payee is a related person.

In *Petersen*,[48] payments accrued to employee stock ownership plan employee shareholders were determined to be payments to related parties and not deductible until the year they were reported in income by the payees.

Sec. 280A: Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

Below-market rent: In *Okonkwo*,[49] the Ninth Circuit determined that married taxpayers were not entitled to claim deductions in excess of rental income for a second home that they rented to their daughter at below-market rates. Based on the evidence before it, the court rejected the taxpayers' argument that the daughter paid fair rent because, in addition to her cash rent payments, she paid rent in services.

Home office: In *Rogers*,[50] the taxpayers' home office deductions for the years in which they allegedly used 50% of their principal residence for business were denied. The Tax Court denied the deductions because the taxpayers admitted that they did not use the "office" rooms in the house exclusively for business and that the business use consisted primarily of records storage, which in itself did not qualify for the home office deduction.

Sec. 469: Passive activity losses and credits limited

The following cases address qualification as a real estate professional, material participation requirements, and proper grouping of passive activities under Sec. 469. Two cases of note provide examples of when records are inadequate to substantiate a taxpayer's involvement in an activity, and its potential consequences to the preparer.

Material participation: In *Syed*,[51]the Tax Court upheld the IRS's determination that the taxpayers had losses in the years 2009-2011 that were passive and not deductible against other income from the medical practice of Asif Syed, a urologist. The court also held Syed and his wife liable for negligence penalties. The losses were generated from a limited partnership interest in a medical center in Texas, an LLC that held two rental properties, and a family limited partnership that held the Syeds' ranch. Dr. Syed's main source of income was from his medical practice.

The IRS requested substantiation to support their claim of material participation in one activity, and for real estate professional status for other real estate activities. The Syeds' records consisted of noncontemporaneous activity logs and calendars prepared after the audit had commenced, which the Service found "wholly inadequate" to prove their material participation. Additionally, the Syeds were uncooperative during the audit, requiring the IRS to serve formal discovery requests for information.

For the limited partnership interest in the medical center, the Syeds only provided Dr. Syed's verbal estimate of hours of participation, which the IRS rejected as inadequate and not credible and, therefore, failed to establish that he spent more than 500 hours working for the medical center, as required under Temp. Regs. Sec. 1.469-5T(e).

The taxpayers claimed real estate professional status under Sec. 469(c)(7) on their tax returns, and nonpassive loss treatment for the losses from the LLC that held the rental property, based on Mrs. Syed's participation in the real estate LLC. However, during the years under audit Mrs. Syed also was a full-time employee of the medical practice. Her presence in the office for those hours was supported through interviews with Dr. Syed's staff. Furthermore, the IRS interviewed the commercial tenants of the rental real estate held in the LLC, who stated they had never met nor seen the Syeds at the property from 2009-2011.

The Syeds also claimed the losses from the family limited partnership that held the ranch were nonpassive because Dr. Syed materially participated in the ranch activities, claiming he raised livestock at the ranch for the years in question. According to the court, Dr. Syed produced no written contemporary evidence about his participation in the ranch activity, his testimony about his activities was not credible, and, based on his schedule at his medical practice, it was improbable that he spent enough time on the ranch activity to have materially participated in it.

In discussing why the reasonable-cause exception to the accuracy-related penalties assessed by the IRS did not apply, the court noted that the Syeds' tax preparer's "unquestioning acceptance of their losses as nonpassive, in the absence of any contemporaneous participation records, does not inspire confidence."

***Real estate professionals*:** A similar result occurred in *Pourmirzaie*,[52]with the taxpayers claiming real estate professional status for 2010-2011, related to their rental real estate activities for five properties in Arizona, California, and Washington state. As in *Syed*, the taxpayers had no contemporaneous records and produced calendars after the fact. The Tax Court noted that the calendars had them working at the properties for all but two weekends in 2010, and that certain dates with entries for hours spent at a property conflicted with other records they provided, which showed them either not present at that property on that date or out of the country. Similar to *Syed*, the court upheld the IRS's assessment of the 20% substantial-underpayment penalty.

***Caution*:** Tax professionals should take note that the *Syed* court's comment about the preparer's competency may establish grounds for the taxpayer to hold the preparer responsible for the penalties.

For these two cases, the preparer should have asked the taxpayers for more evidence to support their real estate professional status. Although the cases do not disclose the identities of the preparers, if they were CPAs, they would be subject to the AICPA Statements on Standards for Tax Services (SSTSs). SSTS No. 1, *Tax Return Positions*, prevents a CPA from signing a tax return without either substantial authority or a disclosure in the absence of substantial authority, but where there is a reasonable basis, which must be disclosed on Form 8275, *Disclosure Statement*.

***Grouping of activities*:** Under Regs. Sec. 1.469-4(c)(2), a taxpayer is permitted to group two activities together if certain factors are present that establish that the activities constitute an appropriate economic unit. That regulation says the factors given the greatest weight in determining whether grouped activities are an appropriate economic unit are (1) similarities and differences between the two businesses; (2) the extent of common control; (3) the extent of common ownership; (4) geographic location of the business activities; and (5) interdependencies between or among the activities. Taxpayers must report the grouping and any regrouping of activities under the rules in Rev. Proc. 2010-13.

In *Brumbaugh*,[53]the taxpayer in 2007 treated as nonpassive the losses passed through to him from an LLC taxed as a partnership wholly owned by the taxpayer and his wife that operated an aircraft chartering business. The taxpayer was a 60% owner of a C corporation that developed real estate and had its headquarters in

Bakersfield, Calif. The LLC used the services of a management company to maintain the plane and operate the chartering business. In 2007, there were 66 chartered flights on the aircraft, only one of which was for the real estate development company. Because the year under audit was before Rev. Proc. 2010-13 was issued, it is unlikely there was an affirmative election for the grouping. However, the Sec. 469 regulations were in effect, and the court evaluated whether the grouping factors were present and supported the taxpayer's position that he met the material participation requirements and thus could deduct the loss as nonpassive.

The court found that none of the factors described in Regs. Sec. 1.469-4(c)(2) were present for these two activities and that they could not be grouped. Therefore, the charter business loss was passive because the taxpayer presented no information to substantiate the other requirements under Temp. Regs. Sec. 1.469-5T for material participation. The court also upheld the assessment of the 20% substantial-underpayment penalty, as the taxpayer did not keep records to support his position and did not assert he relied on his tax preparer as a reasonable-cause defense against the penalty.

Sec. 911: Citizens or residents of the United States living abroad

A Tax Court case (also discussed under Sec. 3121) involved a taxpayer who was a pilot with Korean Air during the years in question (2011 and 2012).[54] Among the issues before the court was whether the taxpayer qualified for the foreign earned income exclusion for his income from the airline because he lived abroad. The court found that he did not qualify because all the evidence pointed to the United States as his residence when he worked for Korean Air. Among other things, he had little contact with Korean culture and testified that he intended to spend all his time off in the United States, where he and his wife owned three residences.

Sec. 1001: Determination of amount of and recognition of gain or loss

The Tax Court held in *Simonsen*[55] (also discussed under Sec. 108)that the taxpayers' short sale of a rental property and the cancellation of the debt secured by the property was one transaction. The taxpayers argued that they were two separate transactions. The court found that the sale of the property, the transfer of cash, and the assignment of the sale proceeds had the same practical effect as other transactions, such as foreclosures, reconveyance in lieu of a foreclosure, abandonment, and repossession. Similar to these other transactions, the sale and the debt discharge were one sale or exchange for Sec. 1001 purposes because the loans were discharged as a result of a single transaction involving the sale of encumbered property. The court also found that the debt was nonrecourse debt and the amount realized on the sale of the property included the discharged debt. The court concluded that there was neither a gain nor a loss on the short sale of the home, as the amount realized ($555,960) fell between the basis used to calculate a loss for the property ($495,000) and the basis used the calculate a gain on it ($695,000).

Sec. 1041: Transfers of property between spouses or incident to divorce

The Tax Court held in *Stapleton*[56]that a loss on the sale of ranch property transferred to the taxpayer as part of a divorce settlement, and then later sold to his ex-wife due to a challenging real estate market, was disallowed because the court considered the sale to effect the division of property that the couple owned within the meaning of Temp. Regs. Sec. 1.1041-1T(b). Broadly construing Sec. 1041 in accordance with the legislative history and relevant case law, the court found that the sale was related to the "cessation of the marriage." Pursuant to the transfer agreement for the ranch property, both the taxpayer and his ex-wife had retained

significant rights and obligations in the ranch property after their marriage was dissolved. Therefore, the court found the division of the couple's marital property was not completed until the property was sold after five years.

Sec. 1221: Capital asset defined

***Contract payments*:** A district court affirmed a Bankruptcy Court's decision that contract value payments were ordinary income and not capital gains.[57] The taxpayer was a district manager for Farmers Insurance Group (Farmers). The taxpayer argued that a district manager's insurance agency was a capital asset that was transferred under a contract. The court found that the taxpayer did not own any assets related to the "agency," as it was owned by Farmers, and that he was asserting that he was selling goodwill, but that goodwill cannot be transferred apart from the business with which it is connected. Therefore, the only interest that the taxpayer retained was a contractual right to perform services, which is not considered a capital asset.

***Sales of realty*:** The Tax Court held in *Levitz*[58]that the real estate activities of the taxpayer and his son did not constitute a trade or business and that the taxpayer was a real estate investor, so his losses from sales of real property were treated as capital losses rather than ordinary losses. In making its determination, the Tax Court weighed the factors considered in the Ninth Circuit (to which an appeal of the case would lie) in determining whether property is held primarily for sale to customers in the ordinary course of a taxpayer's trade or business. Among the factors weighing against the taxpayer were that he did not show that he engaged in real estate activities with continuity and regularity or provide evidence of how often he would work or devote time to the real estate activities; did not keep books and records in a manner consistent with a trade or business; hired no employees for the real estate activities; and maintained no office.

Sec. 3121: Wages

A recent Tax Court case (also discussed under Sec. 911) involved a taxpayer who was a pilot with Korean Air during the years in question (2011 and 2012) and determined whether he was an independent contractor liable for self-employment tax.[59] The taxpayer came to fly for Korean Air after being required to submit his application through a recruiting agency. He chose to use Global Airline Pilots (GAP) because it was based in the United States and his pay would therefore be higher. During the interview process, his interactions only involved Korean Air — at no time did he interview with representatives from GAP. Upon accepting a position with Korean Air, the taxpayer entered into an agreement with GAP that described his employment status as follows: "The Crew Member is an independent contractor and is not an employee or agent of GAP." The agreement also stated that his flight base was in Korea and that the contract term was five years.

In a notice of deficiency, the IRS, among other issues, determined self-employment tax for both 2011 and 2012 related to the taxpayer's work as a pilot. The court, in analyzing whether he was an employee or independent contractor applied the seven common law principles outlined in *Weber*:[60]

- The degree of control exercised by the principal over the details of the work;
- Which party invests in the facilities used in the work;
- The individual's opportunity for profit or loss;
- Whether or not the principal has the right to discharge the individual;

- Whether the work is part of the principal's regular business;
- The permanency of the relationship; and
- The relationship the parties believe they are creating.

The Tax Court noted that the critical factor is the degree of control the principal exercised. Referencing its opinion in *Ellison*,[61] the court highlighted that an employer-employee relationship exists when the principal controls the methods to be used in doing the work and controls the details and means by which the desired result is to be accomplished. Applying this standard, the court concluded that the taxpayer was an employee of Korean Air because, while flying its aircraft, he was required to abide by the policies and procedures outlined by Korean Air and, during the time of his contract, his schedule and his time off were determined by Korean Air.

The court also explicitly rejected the IRS's assertion that the terminology of the GAP agreement determined the taxpayer's work status. Specifically, the court cited Regs. Sec. 31.3121(d)-1(a)(3), which states:

If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

Sec. 5000A: Requirement to maintain minimum essential coverage

***Affordability exemption*:** In Notice 2017-74, the IRS provided guidance on computing the affordability exemption for taxpayers who have a family member who is (1) not eligible for coverage under an eligible employer-sponsored plan, and (2) resides in an area that does not offer a bronze-level qualified plan.

***Individual mandate repealed*:** The TCJA reduced the amount of the penalty under Sec. 5000A to zero for months beginning after Dec. 31, 2018, effectively repealing the requirement that individuals obtain health insurance that provides minimum essential coverage, starting next year.[62] Unlike most of the TCJA changes affecting individuals, this one does not sunset after 2025.

Sec. 6015: Relief from joint and several liability on joint return

A taxpayer was granted partial relief under Sec. 6015(f) from tax liability attributed to business income of a former spouse.[63] For tax year 2009, the taxpayer filed a joint return with her husband that included a large early withdrawal from her Sec. 401(k) plan (that her husband told her would fund an investment prospect), income from his Schedule C, a minor amount of interest income, and a $3,000 capital loss. At the time of filing, the taxpayer knew that they could not pay the tax liability, but she believed her husband's statements that he had a large contract that was imminent and would help them to alleviate their financial troubles. This was a lie, and the tax liability was not paid before their divorce in 2013.

During testimony, the taxpayer stated that from early in her marriage she was verbally abused and discovered that her husband had lied about his past employment. She also discovered that her husband received cash payments for some of the work he performed and did not disclose the income to her. After their divorce, he withdrew all the funds from their joint checking account and made threats against her that resulted in her requesting a restraining order. Before the divorce, the couple attempted to resolve their financial issues with bankruptcy proceedings, but after the divorce the taxpayer could not afford to finish the process. In 2014, she

filed Form 8857, R*equest for Innocent Spouse Relief*, requesting relief. In June of 2015, the IRS Appeals Office issued a final notice of determination denying her relief for failure to meet the conditions for relief under Sec. 6015(f). After selling her home in 2016, she paid the balance due and the additional penalties and interest.

The court, in examining the case, relied on the seven threshold conditions set forth in Rev. Proc. 2013-34 that a spouse must meet to qualify for relief under Sec. 6015(f). The court and the IRS agreed that the first six conditions were clearly satisfied and that the case hinged on condition seven, the attribution rule. Regarding her 401(k) withdrawal, the court examined the facts and circumstances for why the money was withdrawn. Again, relying on Rev. Proc. 2013-34, the court did not find that the funds were misappropriated — even though the taxpayer testified credibly that she was misled about the investment prospects, she did not testify that the funds were specifically withdrawn to pay the tax liability and were instead misused.

Further, the court found that the abuse exception did not apply in this case. While the taxpayer was verbally abused throughout the marriage, she was not restricted from contesting how items were reported on the tax return. Finally, while the court recognized the duplicity of the investment opportunity touted by her ex-husband, the taxpayer was not defrauded in this situation. She withdrew the money herself with full knowledge that the funds were going to be invested and could ultimately be lost. Accordingly, the taxpayer was not granted relief from the tax reliably resulting from the 401(k) withdrawal.

The court did grant relief to the taxpayer from the tax liability associated with her ex-husband's business activity. While she did not qualify for streamlined relief, primarily because she could not demonstrate that she would suffer undue economic hardship since she had already paid the tax due, the court found it inequitable to hold her accountable for his portion of the liability. She reasonably believed that the "big contract" her husband touted would pay for the liability, and her lack of sophistication in such matters, along with the abuse suffered during her marriage, were factors that weighed in her favor.

Footnotes

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[1]Sec. 1(j).

[2]Sec. 1(j)(4).

[3]Sec. 1(j)(5).

[4]P.L. 115-97, §11022.

[5]*In re Betancourt*, No. 17-40739-13 (Bankr. W.D. Mo. 2/1/18).

[6]*Keel*, T.C. Memo. 2018-5.

[7]IRS, "Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act," available at www.irs.gov (https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act).

[8]*Ginsburg*, 136 Fed. Cl. 1 (2018).

[9]*Enis*, T.C. Memo. 2017-222.

[10]Sec. 63(c)(7).

[11]*Kraus*, No. C16-5449 (W.D. Wash. 4/3/18).

[12]Id., quoting *Smith*, No. C11-5101 (W.D. Wash. 6/1/12).

[13]P.L. 115-97, §11045.

[14]P.L. 115-97, §11046.

[15]P.L. 115-97, §11051(b)(1)(C).

[16]Disaster Tax Relief and Airport and Airway Extension Act of 2017, P.L. 115-63.

[17]*Gaylor*, No. 16-cv-215-bbc (W.D. Wis. 12/13/17).

[18]*Simonsen*, 150 T.C. No. 8 (2018).

[19]P.L. 115-97, §11026.

[20]IRS news release, IR-2018-95 (April 13, 2018).

[21]P.L. 115-97, §11041.

[22]*Sharp*, T.C. Memo. 2017-208.

[23]*Lakhani*, No. 14-72576 (9th Cir. 5/10/18), aff'g 142 T.C. 151 (2014).

[24]P.L. 115-97, §11043.

[25]IRS news release, IR-2018-32 (Feb. 21, 2018).

[26]P.L. 115-97, §11042.

[27]Sec. 164(b)(6).

[28]*Enis*, T.C. Memo. 2017-222.

[29]*Lakhani*, No. 14-72576 (9th Cir. 5/10/18), aff'g 142 T.C. 151 (2014).

[30]P.L. 115-97, §11044.

[31]*Burke*, T.C. Memo. 2018-18.

[32]*Wendell Falls Development, LLC*, T.C. Memo. 2018-45.

[33]*Triumph Mixed Use Investments III, LLC*, T.C. Memo. 2018-65.

[34]*Davis*, T.C. Memo. 2018-56.

[35]*Moore*, T.C. Memo. 2018-58.

[36]P.L. 115-97, §11023.

[37]P.L. 115-97, §13704.

[38]*Cai*, T.C. Memo. 2018-52.

[39]*Williams*, T.C. Memo. 2018-48.

[40]*Welch*, T.C. Memo. 2017-229.

[41]*Ford*, T.C. Memo. 2018-8.

[42]*Harrell*,T.C. Memo. 2017-76.

[43]*Morrissey*, 871 F.3d 1260 (11th Cir. 2017).

[44]P.L. 115-97, §11027.

[45]P.L. 115-97, §11051.

[46]*Davidson*, T.C. Memo. 2018-38.

[47]*Harrell*,T.C. Memo. 2017-76.

[48]*Petersen*, 148 T.C. No. 22 (2017).

[49]*Okonkwo*, No. 16-71020 (9th Cir. 7/31/17).

[50]*Rogers*, T.C. Memo. 2018-53.

[51]*Syed*,T.C. Memo. 2017-226.

[52]*Pourmirzaie*, T.C. Memo. 2018-26.

[53]*Brumbaugh*,T.C. Memo. 2018-40.

[54]*Hudson*, T.C. Memo. 2017-221.

[55]*Simonsen*, 150 T.C. No. 8 (2018).

[56]*Stapleton*, T.C. Summ. 2017-87.

[57]*Pexa*, No. 2:16-cv-00994-TLN (E.D. Cal. 5/8/18).

[58]*Levitz*, T.C. Summ. 2018-10.

[59]*Hudson*, T.C. Memo. 2017-221.

[60]*Weber*, 103 T.C. 378, 387 (1994), aff'd, 60 F.3d 1104 (4th Cir. 1995).

[61]*Ellison*, 55 T.C. 142 (1970).

[62]P.L. 115-97, §11081.

[63]*Minton*, T.C. Memo. 2018-15.

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