THE TAX ADVISER

Individual Taxation: Digest of Recent Developments: Part II

INDIVIDUALS

by David R. Baldwin, CPA; Lawrence H. Carlton, CPA; Karl L. Fava, CPA; Donna Haim, CPA; Jonathan Horn, CPA; Susanne Morrow, CPA; S. Miguel Reyna, CPA; Kenneth L. Rubin, CPA; Kaye F. Sheridan, DBA, CPA; Amy M. Vega, CPA; and Donald J. Zidik Jr., CPA

Published April 01, 2014

EXECUTIVE SUMMARY

- The Tax Court held that a taxpayer with a home-based tax preparation business was not entitled to deduct lodging expenses incurred to get away from her clients during tax season because they were nondeductible personal expenses.
- A nonresident alien who filed a joint income tax return was not subject to the Sec. 6048 foreign trust reporting requirements because he did not make a proper election under Sec. 6013(g).
- In Rev. Proc. 2013-34, the IRS revised its criteria for granting equitable innocent spouse relief under Sec. 6015(f) or 66(c). Among other changes, the new procedure gives greater weight to the presence of abuse in determining whether relief should be granted.
- The IRS announced that it will no longer argue that the Tax Court should limit its review of Sec. 6015(f) cases to an abuse of discretion or that the court should limit its review to the administrative record.

This is the second of a two-part article covering recent developments affecting taxation of individuals, including regulations, cases, and IRS guidance. The items are arranged in Code section order. The first part, which appeared in the March issue, covered Sec. 1, *Tax Imposed*, through Sec. 170, *Charitable, etc., Contributions and Gifts*. Part II covers developments from Sec. 183, *Activities Not Engaged in For Profit*, through Sec. 7703, *Determination of Marital Status*.

Sec. 183: Activities Not Engaged in For Profit

In *Phillips*,[1] the Tax Court denied business deductions a taxpayer claimed for vehicle, travel, meal, and rent expenses for his bowling activities, concluding that the taxpayer lacked a profit motive. The taxpayer reported no gross receipts from bowling and $28,243 in expenses on his Schedule C, *Profit or Loss From Business (Sole Proprietorship)*. He did not carry on his activity in a businesslike manner, such as by hiring a coach to improve his game, or participate in any tournaments. The taxpayer could not substantiate amounts deducted (due to not keeping records of his expenses other than bank statements) and admitted some of the expenses claimed as deductions were not related to his bowling activities.

Sec. 213: Medical, Dental, etc., Expenses

Humphrey[2] reminds taxpayers and practitioners of three important facts about medical expense deductions. First, Medicare taxes are *not* deductible on Schedule A as medical expenses (or as a tax, for that matter)—in *Humphrey*, the taxpayer tried to do just that. Second, to successfully deduct items such as health food and supplements or gym memberships, taxpayers must prove that they are spending in excess of what they normally would have spent for a verifiable and credible medical reason. In this case, the taxpayer met that standard on the supplements, but not on the gym membership.

Third, and perhaps most important, taxpayers must be able to provide the IRS with the name and address of each person to whom payment for medical expenses was made, as well as the amount and date of the payments. The IRS may also require taxpayers to substantiate the expenses with statements, invoices, or similar documentation.[3] Because the taxpayer failed to do this for his claimed payments for dental services, the deduction was denied.

McGraw[4] provides an important reminder concerning the use of deductible medical expenses to avoid the 10% additional tax imposed by Sec. 72(t) on early distributions from qualified plans. The taxpayer's friend offered to help roll over funds from an annuity account into a better-performing annuity. Instead, the taxpayer received a check for $67,440, which he realized meant

that no rollover had occurred. Around the same time, his wife became pregnant, and he decided that he would use the funds to defray any unanticipated pregnancy-related expenses. When his wife suffered complications in December 2009, she was hospitalized for delivery by caesarean section.

The taxpayer did not include the annuity distribution on his 2009 return and while he did itemize deductions using Schedule A, *Itemized Deductions*, he listed no medical expenses on the form. On audit, he provided no substantiation for medical expenses, even though on the date of the trial his wife allegedly discovered a document substantiating approximately $5,700 of medical expenses, although the document was not produced in court. The taxpayer testified that his best recollection was that the medical expenses totaled $5,000 to $6,000 and he had spent the rest "for all the baby things that you do." He also admitted to having medical insurance. Not surprisingly, the court upheld the IRS assessment of tax on the unreported $67,440, the additional 10% tax on early distribution, and a 20% accuracy-related penalty under Sec. 6662.

Sec. 215: Alimony, etc., Payments

Faylor[5] stands for the proposition that an agreement requires both parties to agree. The taxpayer and his wife separated in May 2007. For the remainder of the year, both spouses' attorneys exchanged letters with offers containing varying amounts of temporary support along with related terms and conditions. Although they seemed to agree on a monthly support figure of $5,000, they continued to exchange letters with differing terms and conditions. Neither party signed any of the proposed agreements. Despite this, in September 2007, the taxpayer began transferring $5,000 a month into a joint checking account for his wife to use.

On May 23, 2008, the couple was granted a divorce, and the decree awarded alimony of $2,500 a month for six months, followed by $1,500 a month for an additional 66 months. On his 2008 tax return, the taxpayer claimed a deduction for alimony of $36,500 ($16,500 paid under the decree plus $5,000 a month transferred to the joint account in January through April 2008). The court agreed with the IRS's denial of the deduction for the $20,000 paid between January and April 2008 since it was not paid under a divorce or separation agreement. Referring to factors established in two prior cases, the court determined that the exchange of letters did not establish the existence of a written separation agreement,[6] and that the letters clearly showed there was no meeting of the minds between the spouses.[7] An intriguing sideline is that the court did not address one of the IRS's other arguments, that the transfers were not "payments in cash." In an era of electronic payments, PayPal, and cash transfers via email, that argument raises some serious concerns, if the IRS continues to make it and a court upholds it in the future.

Raisig[8] is a case that never should have gotten to the Tax Court, even the small case division. Despite clear language in the separation agreement identifying payments as child support, the taxpayer attempted to deduct the amounts as alimony. The IRS denied all of the deductions except for a mysterious sum of $1,628 (which was apparently reported by the taxpayer's ex-spouse as income). The court issued summary judgment for the IRS but, interestingly, despite the facts in the case, did not also issue a summary judgment on the taxpayer's liability for a Sec. 6651(a)(1) addition to tax and a Sec. 6662(a) accuracy-related penalty.

In *Nye*,[9] a drafting error cost the taxpayer a $346,250 alimony deduction. As part of the settlement of his 1990 divorce, John Nye agreed to pay his ex-wife, Alice, monthly alimony of $3,600 plus an additional $150 a month in lieu of health insurance coverage. In late 2006, Alice asked the court to modify the judgment to increase her monthly alimony payment. In late 2007, the two ex-spouses reached a settlement requiring John to make a lump-sum payment of $350,000 in exchange for Alice's filing a quitclaim deed on their former joint home and the elimination of any future alimony obligations. John made the payment on Jan. 28, 2008, and on Feb. 4, 2008, the court issued a final judgment modifying the dissolution order to reflect the agreement. The IRS allowed John an alimony deduction of only $3,750 (the amount due for January 2008 under the original agreement) for 2008. The IRS's argument, which the court agreed with, was that the settlement agreement was silent on whether John's obligation to pay the $350,000 would cease if Alice died before he made the payment. Because the agreement was silent, state law governed the issue and under state law the obligation would survive if Alice died. Therefore, under Sec. 71(b)(1)(D), the payment did not qualify as alimony.

Sec. 263: Capital Expenditures

In *Niv*,[10] a mortgage broker/real estate agent-investor was denied deductions for expenses associated with his real estate investment activities. Invoices, receipts, and credit card statements the taxpayer provided showed that purchases claimed as material expenses on the taxpayer's Schedule C were in fact purchases of raw lumber, lighting, fixtures, and doors and windows. The taxpayer deducted the materials as "other expenses" claiming that they were used for repairs to keep his properties in efficient operating conditions under Regs. Sec. 1.162-4. The

court concluded that the purchases were capital expenditures for improvements or replacements that added value to the taxpayer's investment properties, requiring capitalization under Sec. 263 (a)(1).

Sec. 274: Disallowance of Certain Entertainment, etc., Expenses

In *Linzy*,11 a sole proprietor of a home-based tax return preparation business was disallowed deductions for Schedule C expenses for travel and business use of her home (discussed in the next section). The taxpayer claimed that she was entitled to deduct her travel expenses because the travel was necessary "just to get rest" so that she could perform her job. She operated her business out of her home, and clients would call her at all hours. The travel expenses were ultimately deemed to be personal and not business expenses because staying at a hotel to avoid her clients was a personal, rather than a business, choice. Her deductions for meal expenses with employees and clients also were disallowed because of lack of substantiation and proof of business purpose.

Sec. 280A: Disallowance of Certain Expenses in Connection With Business Use of Home, Rental of Vacation Homes, etc.

The taxpayer in *Linzy*,12 discussed in the preceding section, was also disallowed the deduction for Schedule C expenses for business use of her home. The taxpayer stated she was entitled to a lease deduction amounting to half of her mortgage payments for the business use of the first-floor of her home, where she claimed she ran her tax preparation business. The deductions were disallowed because the taxpayer did not provide any evidence that she used the first floor of her residence exclusively on a regular basis for a business purpose.

Expenses for depreciation, business use of a motor home, and a personal vehicle deduction for a married couple's consulting business were largely denied in *Dunford*.13 The motor home was used for both business and personal travel, and the taxpayers failed to prove part of the motor home was used exclusively and regularly as their place of business. All deductions (other than deductions for interest expense on the motor home) that the taxpayers claimed for the business use of the motor home were disallowed. In addition, although taxpayers may claim a deduction for actual vehicle expenses (e.g., depreciation, maintenance, gasoline, and insurance) or use the standard mileage rate, they cannot do both. Only the mileage rate deduction, which was substantiated by the taxpayers' business activity logs, was allowed by the court.

Sec. 280F: Limitation on Depreciation for Luxury Automobiles; Limitation Where Certain Property Used for Personal Purposes

In *Phillips*,14 the Tax Court denied business deductions a taxpayer claimed for vehicle, travel, meals, and rent expenses related to his bowling activities (discussed above under Sec. 183). In addition to the deductions disallowed as hobby losses, the taxpayer could not take any deduction for listed property, as defined in Sec. 280F(d)(4)(A), for which proper records must be kept. The taxpayer did not maintain any records, such as a mileage log or planner for the business use of his vehicle, despite checking the box on his return that he kept written evidence of his business use. He also failed to record or keep records of his travel, meals, and rent expenses paid for business activities.

In *Castillo*,15 a real estate sales agent was subject to depreciation recapture for the vehicles he supposedly used for business. The taxpayer owned a number of vehicles, one of which was a Hummer that he occasionally used. On his 2006 and 2007 tax returns, the taxpayer claimed deductions for numerous vehicles and claimed all of his vehicles were used 100% for business. The taxpayer claimed a Sec. 179 deduction in 2006 when he purchased the Hummer. Evidence and testimony from witnesses and the taxpayer suggested the Hummer was used primarily for advertising and was otherwise used minimally for business purposes, i.e., not more than 50% of the time. Based on the rule in Sec. 280F(b)(2) that depreciation must be recaptured when business use of listed property does not exceed 50% of total use, the court held that the taxpayer was subject to recapture on the Sec. 179 deduction for the Hummer because he was unable to prove that he used it more than 50% for business during 2007.

Sec. 469: Passive Activity Losses and Credits Limited

In a Tax Court small tax case, the individual did not establish that he or his wife met the 750-hour test of Sec. 469(c)(7)(B)(ii) (which each spouse must meet separately); therefore, he was not permitted to deduct his rental real estate losses.16 Further, the taxpayers did not keep a contemporaneous log of the time spent on the properties at issue (to prove that the taxpayers were active participants in the business of the rental properties). His wife constructed "after-the-fact" logs, as permitted by Temp. Regs. Sec. 1.469-5T(f)(4), but the logs contained many estimates, which made it difficult to determine whether the taxpayer had met the 750-hour test; therefore, the passive losses of $111,042 and $141,133 for the rental properties were properly disallowed.

In another small tax case, a married couple was not allowed to deduct expenses on the Schedule E, *Supplemental Income and Loss*, for three rental properties as trades or businesses.17 The wife performed personal services for the real estate activities but did not materially participate in each rental activity. The taxpayers did not elect to group their rental real estate activities, so material participation needed to be determined separately for each activity, and each spouse had to separately satisfy any participation requirement. The wife submitted a binder that she believed sufficiently documented her real estate activities for the tax year at issue. She also spent time looking for additional rental properties to buy. Nonetheless, the total hours spent on the rental properties (and the prospecting activity) was still less than the necessary 750 hours to qualify for the Sec. 469(c)(7) exception. The taxpayers provided the court with a log accounting for the time spent on these activities created using the wife's phone and Outlook software, but the court found it left much to be desired. The court held that these activities were passive activities, and the rental losses were disallowed.

In a Tax Court memorandum case, married taxpayers had a house, which was rented to a tenant, for which they claimed a loss.18 The loss was disallowed because neither the husband nor the wife was a real estate professional or had materially participated in the rental activity for the tax year at issue. The couple did not qualify for the limited exception under Sec. 469(i) because their modified adjusted gross income exceeded $150,000, the amount at which the exception completely phases out.

Sec. 1001: Determination of Amount of and Recognition of Gain or Loss

In *Obedin*,19 the taxpayers failed to substantiate the basis of a real estate project that they had sold. Although the IRS agent acknowledged that two payments to contractors had been made on the projects, the taxpayers failed to prove that the amounts were not already included in their basis or that they were properly chargeable to the project's capital account. The court upheld the examining agent's calculation of the property's basis.

Sec. 1011: Adjusted Basis for Determining Gain or Loss

In *Malonzo*,20 another small tax case, a taxpayer who abandoned her house after she was unable to rent it recognized capital gain, not the ordinary loss she claimed. The fair market value of the residence was less than the outstanding mortgage debt balance when the taxpayer defaulted on the note and the lender foreclosed. The court determined that the foreclosure of the mortgage loan was a "sale or exchange" of property and that the difference between the taxpayer's basis and the amount of the mortgage was capital gain.

Sec. 1012: Basis of Property—Cost

In a district court case, *Youngquist*,21 the taxpayer failed to substantiate his basis for 20 sales of stock in one of his brokerage accounts. The taxpayer calculated his basis using an "aggregate basis theory," based on the net result of withdrawal and deposit transactions from a bank account. The court rejected this and explained that 20 different sales could have different holding periods and might require short-term or long-term capital gain treatment. Furthermore, the taxpayer was unable to provide proof of the deposit and withdrawal transactions. In addition, the court stated that a taxpayer cannot rely on his own uncorroborated testimony to establish basis. The court upheld the IRS's determination that the basis was zero.

Sec. 1033: Involuntary Conversions

The IRS granted a one-year extension to farmers and ranchers to replace livestock that they were forced to sell due to drought conditions and therefore defer any tax on capital gains.22 The normal replacement period for livestock is four years. Relief is provided to farms located in jurisdictions that are listed as suffering exceptional, extreme, or severe drought conditions by the National Drought Mitigation Center during any weekly period from Sept. 1, 2012, through Aug. 31, 2013. Sales of other livestock, such as those raised for slaughter or held for sporting purposes, and poultry are not eligible.

Sec. 1035: Certain Exchanges of Insurance Policies

The IRS ruled that an exchange of annuity contracts was a tax-free exchange under Sec. 1035 (a)(3).23 The taxpayer was the beneficiary of four fixed annuity contracts and one variable annuity contract her deceased mother owned. The taxpayer wanted to increase the amount of her payouts over her own life expectancy and therefore transferred ownership of two contracts with two different companies to a third company, which issued a new annuity contract in the exchange.

Sec. 1091: Loss From Wash Sales of Stock or Securities

The Treasury Department has amended regulations that provide guidance for taxpayers electing to establish a mixed straddle using a straddle-by-straddle identification.24 The regulations will apply to identified mixed straddles established after the regulations are published as final in the

Federal Register, which the IRS hopes to do no later than June 30, 2014. The new rules also amend some of the examples in the regulations.

Sec. 1221: Capital Asset Defined

In *Long*,[25] the Tax Court held that the taxpayer received ordinary income from a payment he received for his position in a lawsuit. The court found that it was the taxpayer's intention to acquire property, construct a condominium building, and sell the units to customers in the ordinary course of business. Therefore, the condominium units were not capital assets under Sec. 1221(a)(1). The court also considered other factors, including the taxpayer's everyday business as a developer and his efforts to develop the property. The taxpayer also hired architects, printed promotional materials, and advertised to increase sales.

Sec. 6013: Joint Returns of Income Tax by Husband and Wife

In response to an inquiry,[26] the Office of Chief Counsel advised that a nonresident alien who filed a joint income tax return was not subject to Sec. 6048 reporting requirements and Sec. 6677(a) penalties because he did not make a proper election under Sec. 6013(g). The nonresident alien was required to attach a statement to his joint return for the first tax year for which the election was to be in effect, stating:

1. That the election is being made;
2. That the requirements of Regs. Sec. 1.6013-6(a)(1) are met for the tax year; and
3. The name, address, and taxpayer identification number (TIN) of both spouses and their signatures.

Where the taxpayer failed to properly make the election, Sec. 6013(g) did not apply.[27] Therefore, the nonresident alien maintains his status as a nonresident and is not subject to the penalty for failure to file information returns required under Sec. 6048.

Sec. 6015: Relief From Joint and Several Liability on Joint Return

In *Alvarado*,[28] the taxpayer was married to her husband until the fall of 2008. At the time of their separation, the husband was a full-time student and lacked the funds he needed to move out of their home. The husband decided to withdraw the retirement benefits that he had earned prior to becoming a full-time student. The husband asked the taxpayer to sign a required termination notice, and she complied. The husband received $9,769 from his retirement account and used the funds to move out shortly after.

The couple became legally divorced on March 17, 2009. They also filed their final joint 2008 income tax return that same day. Only the taxpayer's income appeared on the 2008 income tax return; the $9,769 of retirement benefits was omitted. The taxpayer received a refund of 2008 income tax in the amount of $3,390 and issued a check to her ex-husband for $1,039.68 of the refund as they had previously agreed.

The IRS later determined that the taxpayer was liable for $2,847 of tax due to the understatement of income on the 2008 joint income tax return. The taxpayer responded by filing Form 8857, *Request for Innocent Spouse Relief*. The IRS denied her request for relief, determining that she knew or had reason to know of the understatement of income, she failed to show it would be unfair to hold her responsible, and she benefited from the 2008 tax refund.

The Tax Court affirmed the IRS determination under Secs. 6015(b) and (c), stating that the taxpayer knew or had reason to know of the understated income because she signed the termination notice allowing her husband to receive the retirement benefit income. The taxpayer contended that she was entitled to relief, however, under Sec. 6015(f). The Tax Court considered the following eight factors as set forth under Rev. Proc. 2003-61, Section 4.03:

1. Marital status;
2. Economic hardship;
3. Knowledge of the error;
4. Legal obligation of nonrequesting spouse;
5. Significant benefit;
6. Compliance with income tax laws;
7. Abuse; and
8. Mental or physical health.

The Tax Court held that factors 2 and 3 weighed against relief because the taxpayer was aware of the retirement benefit income that gave rise to the understatement, and she failed to show that she would suffer economic hardship if denied relief from joint and several liability. However, the court concluded that factors 1, 5, and 6 weighed in favor or relief because the taxpayer was divorced when she made the request, she did not receive any significant benefit from the

retirement income that gave rise to the understatement, and she had complied with the income tax laws following the 2008 tax year. The court determined that factors 4, 7, and 8 were neutral, which resulted in only two factors weighing against relief and three factors weighing in favor of relief. After considering and weighing all factors, the court held that it would be inequitable to hold the taxpayer liable for the 2008 tax liability that was attributable to her husband's retirement benefit income and that she was entitled to relief under Sec. 6015(f).

In Action on Decision 2012-07,29 the IRS announced that it will no longer argue that the Tax Court should limit its review of Sec. 6015(f) cases to an abuse of discretion or that the court should limit its review to the administrative record.

In Chief Counsel Notice CC-2013-011,30 the IRS provided guidance on the litigation process for Sec. 6015 cases. The notice was issued in response to the Tax Court's applying both a *de novo* scope and *de novo* standard of review to a Sec. 6015 case,31 which led the IRS to announce that it will no longer argue with the Tax Court on this point, but instead provided guidance to taxpayers seeking relief under Sec. 6015.

The IRS published proposed regulations to amend Regs. Sec. 1.6015-5 on requesting relief from joint and several liability under Sec. 6015.32 The proposed regulations follow prior guidance from Notice 2011-70 by removing the two-year deadline for electing relief under Sec. 6015(f). The proposed regulations would become effective as of July 25, 2011, when Notice 2011-70 was issued.

On Sept. 16, 2013, the IRS released Rev. Proc. 2013-34,33 which revises the rules for spouses requesting relief from income tax liability under Secs. 66(c) and 6015(f) and applies a greater weight to the factor of abuse in determining whether taxpayers qualify for relief. The new revenue procedure also provides clarity on the economic hardship factor by tying it to federal poverty guidelines. The revenue procedure modifies and supersedes Rev. Proc. 2003-61.34

The new revenue procedure provides threshold requirements for requesting relief and a list of factors to be considered in determining whether relief should be granted. Under the procedure, streamlined determinations of equitable relief under Secs. 66(c) and 6015(f) now apply to understatements of income tax instead of only underpayments. The new revenue procedure also provides clarity on a number of areas that were uncertain under Rev. Proc. 2003-61. The significant changes in Rev. Proc. 2013-34 include the following:

New time frame adopted: Relief must be requested no later than the 10-year limitation period for collection under Sec. 6502 if the taxpayer is seeking relief from an outstanding liability or the limitation period for a credit or refund if the taxpayer is seeking a refund of taxes paid (generally the later of three years from when the return was filed or two years from when the tax was paid).

Presence of abuse: The IRS will give greater deference to a finding of abuse present in a marriage.

Economic hardship factor: Minimum standards based on income, expenses, and assets have been established for determining if the requesting spouse would suffer economic hardship absent relief, and a lack of economic hardship now is neutral rather than weighing against relief.

Knowledge factor: Actual knowledge of the understatement item is no longer weighed more heavily than other factors under consideration. In an underpayment case, if it can be established that the requesting spouse believed payment on the understated item would be made within a reasonable time, this will weigh in favor of relief.

Legal obligation factor: The revenue procedure clarifies that a requesting spouse's legal obligation to pay outstanding tax liabilities is a factor to consider in addition to whether the nonrequesting spouse has a legal obligation to pay the tax liabilities.

Significant benefit factor: Any significant benefit that the requesting spouse would receive if relief were granted will be considered neutral in cases where abuse is involved. This will also be considered as a neutral factor where only the nonrequesting spouse received a benefit or if neither party received a significant benefit.

Compliance with tax laws: A requesting spouse's subsequent compliance with tax laws may now be seen as a favorable factor, whereas previously this was neutral.

Sec. 6654: Failure to Pay Estimated Tax Penalties

In a Tax Court case, the taxpayer did not file a 2006 federal income tax return.35 In 2007, he filed a frivolous Form 1040, *U.S. Individual Income Tax Return*, with zeroes on each income line. The taxpayer received two 2007 Forms 1099-MISC, *Miscellaneous Income*, totaling $76,685 of nonemployee compensation. Contrary to the income reported on the Forms 1099-MISC he received, he attached to his 2007 Form 1040 two "corrected" Forms 1099-MISC showing no compensation.

In general, Sec. 6654 requires an annual payment of estimated taxes equal to the lesser of (1) 90% of the tax on the return for the tax year or (2) 100% of the tax shown on the return for the previous year. Since the taxpayer did not file a return for 2006, the prior-year liability rule did not apply.

The Tax Court determined that the taxpayer's 2007 Form 1040 was frivolous and he did have a 2007 tax liability. Therefore, because the taxpayer had not made any estimated tax payments for 2007, the court upheld the IRS's assessment of estimated tax penalties because he failed to make any payments.

In *Schlusser*, the taxpayer was liable for failure to pay estimated tax penalties even though he was incarcerated for the years he did not file tax returns.[36] The taxpayer received taxable income from a false invoicing scheme and other sources while he was in jail.

Sec. 7703: Marital Status

In response to an inquiry,[37] the Office of Chief Counsel advised that an individual's spouse is considered to be a member of the household during temporary absences from the household due to special circumstances. The advice stated that a taxpayer cannot be considered unmarried for purposes of subtitle A of the Code if his or her spouse is only temporarily absent from the household and plans to return in the future. Therefore, a married taxpayer is ineligible for head-of-household status based on a spouse's nonpermanent absence.

Footnotes

[1] *Phillips*, T.C. Memo. 2013-215.

[2] *Humphrey*, T.C. Memo. 2013-198.

[3] Regs. Sec. 1.213-1(h).

[4] *McGraw*, T.C. Memo. 2013-152.

[5] *Faylor*, T.C. Memo. 2013-143.

[6] *Nemeth*, T.C. Memo. 1982-646.

[7] *Levanthal*, T.C. Memo. 2000-92.

[8] *Raisig*, T.C. Summ. 2013-55.

[9] *Nye*, T.C. Memo. 2013-166.

[10] *Niv*, T.C. Memo. 2013-82.

[11] *Linzy*, T.C. Memo. 2013-219.

[12] Id.

[13] *Dunford*, T.C. Memo. 2013-189.

[14] *Phillips*, T.C. Memo. 2013-215.

[15] *Castillo*, T.C. Memo. 2013-72.

[16] *Hofinga*, T.C. Summ. 2013-43.

[17] *Bugarin*, T.C. Summ. 2013-61.

[18] *Azimzadeh*, T.C. Memo. 2013-169.

[19] *Obedin*, T.C. Memo. 2013-223.

[20] *Malonzo*, T.C. Summ. 2013-47.

[21] *Youngquist*, No. 3:11-cv-06113-PK (D. Or. 4/17/13).

[22] IRS News Release IR-2013-81 (10/18/13).

[23] IRS Letter Ruling 201330016 (4/16/13).

[24] T.D. 9627.

[25] *Long*, T.C. Memo. 2013-233.

[26] Chief Counsel Advice 201325013 (6/21/13).

[27] *Kravetz*, T.C. Memo. 1985-486.

[28] *Alvarado*, T.C. Summ. 2013-41.

[29] AOD 2012-07 (6/17/13).

[30] CC-2013-011 (6/7/13).

[31] *Wilson*, 705 F.3d 980 (9th Cir. 2013), aff'g T.C. Memo. 2010-134.

[32] REG-132251-11.

[33] Rev. Proc. 2013-34, 2013-43 I.R.B. 397.

[34] Rev. Proc. 2003-61, 2003-2 C.B. 296.

[35] *Walbaum*, T.C. Memo. 2013-173.

[36] *Schlusser*, T.C. Memo. 2013-185.

[37] Chief Counsel Advice 201334041 (8/23/13).

EditorNotes

David Baldwin is a tax manager with Cleveland Estes Avellone PLLC in Phoenix. Lawrence Carlton is director of taxes with Carlton & Duran CPAs PC in Bedford, Mass. Karl Fava is a principal with Business Financial Consultants Inc. in Dearborn, Mich. Donna Haim is a tax manager with Harper & Pearson Co. PC in Houston. Jonathan Horn is a sole practitioner specializing in taxation in New York City. Susanne Morrow is a tax partner with Ernst & Young LLP in San Francisco. Miguel Reyna is the sole owner of Reyna CPAs PLLC in Dallas. Kenneth Rubin is a partner with RubinBrown LLP in St. Louis. Kaye Sheridan is a professor and director of the Troy University School of Accountancy in Troy, Ala. Amy Vega is a senior tax manager with Grant Thornton LLP in New York City. Donald Zidik is a senior manager with Marcum LLP in Needham, Mass., and an adjunct professor of taxation at Suffolk University in Boston. Mr. Horn is chair and the other authors are members of the AICPA Individual and Self-Employed Tax Technical Resource Panel. For more information about this article, contact Mr. Horn at jmhcpa@verizon.net.