IRS Promises Swift Action On Guidance After Supreme Court Strikes Down DOMA

The U.S. Supreme Court’s June 26 decision to strike down Section 3 of the Defense of Marriage Act (DOMA) has opened a host of tax planning opportunities – and challenges – for same-sex couples, employers, and others. In a 5 to 4 decision, the Supreme Court held that Section 3 of DOMA is unconstitutional as a deprivation of the equal protection of persons that is protected by the Fifth Amendment. On June 27, the IRS announced it will move swiftly to provide guidance on regs and rules impacted by the Court’s decision.

CCH Take Away. “The decision leaves much uncertainty for taxpayers,” Annette Nellen, CPA, immediate past chair, Individual Income Tax Technical Resource Panel, American Institute of Certified Public Accountants (AICPA), told CCH. “The IRS needs to issue formal guidance to help taxpayers and practitioners. In the past, the IRS has posted frequently asked questions (FAQs) on its website about same-sex marriage and IRS Chief Counsel has issued some determinations but formal guidance has been lacking,” Nellen explained.

Comment. “The decision is merely step one,” Chuck Schultz, CPA, national partner, estate and gift practice, McGladrey, Washington, D.C., told CCH. Same-sex couples and practitioners both need to be proactive and anticipate how the decision will impact past open tax years and future tax planning. Indeed, because of the Court’s ruling, practitioners have a fiduciary responsibility to advise affected clients of the changes, Schultz noted.

Background
After her sex-same spouse died, the widow sought to claim the estate tax exemption for surviving spouses. Section 3 of DOMA, which defines marriage for federal purposes as only a legal union between one man and one woman as husband and wife, barred her claim. The estate paid the estate taxes and the widow filed for a refund. A federal district court and the Court of Appeals for the Second Circuit both found unconstitutional Section 3 of DOMA. The Supreme Court granted certiorari and heard oral arguments in March 2013.

Court’s ruling
Writing for the majority, Justice Kennedy said that “regulation of domestic relations is an area that has long been regarded as a virtually exclusive province of the States. When the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States. Marriage laws may vary from State to State, but they are consistent within each State.”

Kennedy explained that “DOMA’s principal effect is to identify a subset of state-sanctioned marriages and make them unequal. The principal purpose is to impose inequality.” Kennedy further noted that “by creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law. This places same-sex couples in an unstable position of being in a second-tier marriage.”

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Supreme Court
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The dissent would have upheld DOMA. Justice Scalia, writing for the dissent, said that “DOMA avoids difficult choice-of-law issues that will now arise absent a uniform federal definition of marriage.” Scalia added that “DOMA preserves the intended effects of prior legislation against then-unforeseen changes in circumstance.”

Comment. “The Supreme Court’s decision puts couples in a same-sex marriage on equal footing with opposite-sex couples in many ways for purposes of federal tax law, but there are outstanding issues remaining.” Shamik Trivedi, manager, Washington National Tax Office, Grant Thornton, LLP, told CCH. “The IRS may issue transition guidance for individuals and estates for the current filing year and for prior years as well,” Trivedi noted.

IRS guidance
After the Supreme Court announced its decision, President Obama directed all federal agencies to revise their rules and regulations to reflect the Court’s ruling. The IRS posted an announcement on its website that it is working with the U.S. Departments of Treasury and Justice to swiftly provide revised guidance in the near future.

Among the many areas where the IRS is expected to provide guidance are:
- Filing status;
- IRAs;
- 401(k)s and other plans;
- American Opportunity Tax Credit;
- Child and dependent care credit;
- Estate tax marital exclusion;
- Estate tax portability;
- Health Savings Accounts;
- Adoption benefits;
- Family stock attribution rules;
- Innocent spouse rules;
- FICA payroll tax refunds; and
- Numerous provisions under the Patient Protection and Affordable Care Act.

Comment. “Further guidance from the IRS would be most welcome,” Todd Solomon, partner, McDermott Will & Emery, LLP, Chicago, told CCH. “It is not clear what rights are afforded to a married same-sex couple living in a state that does not recognize same-sex marriage. It is possible that the answer can vary for different purposes (for example, state of residence may very well carry the day for tax filing and imputed income purposes, but it is possible the IRS could say that state of celebration governs for pension plan purposes),” Solomon observed.

Comment. Individuals, like Edith Windsor whose same-sex married partner has died, should explore the possibility of a refund of estate taxes paid, Jane Bernardini, CPA, a member of the Estate Planning Committee of the New York State Society of CPAs, told CCH. Same-sex couples should also review their life insurance and other estate planning tools, Bernardini said.

Employee benefits
Under DOMA, same-sex married couples could not share all the employee benefits available to opposite-sex married couples. Employers that allowed employees to add their same-sex spouse to their health plan had to impute income to the employee for federal income tax purposes. Same-sex couples also could not take full advantage of health FSAs, HSAs and similar arrangements.

Comment. “The decision is a wake-up call for employers to review their policies, practices, and forms to ensure the employer has made deliberate choices about when/how to cover same-sex employees and opposite-sex employees and their families, and that the policies, practices, and forms in place actually reflect those choices,” Kimberly McCarthy, partner, Partridge Snow & Hahn, LLP, Providence, R.I., told CCH. “This case creates significant issues for all employers, but especially those in states in which same-sex marriage or civil unions are legal,” McCarthy noted.

Comment. “The complexities associated with the differential treatment of opposite-sex and same-sex couples may come to an end, at least in those states that allow or recognize same-sex marriages,” Elizabeth Dold, principal, The Groom Law Group, Washington, D.C., told CCH. “The ruling may require extensive revision to, among other things, retirement plan documents, health plan documents, COBRA and FMLA policies, and an employer’s income tax withholding and employment tax payroll practices,” Dold explained.

Section 2
Section 2 of DOMA, which was not before the Supreme Court, provides that states do not have to recognize same-sex marriages performed in other states. In his dissent, Chief Justice John Roberts noted that the question of whether states could continue to utilize the traditional definition of marriage was not before the Court. Roberts emphasized that the majority held that the decision and its holding “are confined to those lawful marriages—referring to same-sex marriages that a State has already recognized.”

House Democrats have introduced legislation, the Respect of Marriage Act, to repeal Section 2 of DOMA, but the House is unlikely to take up the bill in the near future. Similar legislation is expected to be introduced in the Senate.

For more details and analysis of the Supreme Court’s decision on Section 3 of DOMA, see the CCH Briefing: Supreme Court Strikes Down DOMA on CCH IntelliConnect. For client communications, see also CCH’s Client Letter Toolkit on IntelliConnect.

IRS Provides Relief For Minimum Essential Coverage Requirement Under Code Sec. 36B Premium Assistance Tax Credit

◆ Notice 2013-41

The IRS has provided relief for individuals under the Patient Protection and Affordable Care Act (PPACA). Notice 2013-41 discusses whether an individual who may be eligible for the Code Sec. 36B premium assistance tax credit is being offered minimum essential coverage (MEC).

■ CCH Take Away. MEC is one of the critical areas of the health care law. It is relevant not only for the tax credit but for the individual and employer mandates.

■ Comment. The U.S. Department of Health and Human Services (HHS) may designate health benefits not specified in the Tax Code as MEC. In just-issued final regs, HHS designated state high risk pools and self-funded student health coverage as MEC for a one-year transition period, for plan years beginning before January 1, 2015.

Minimum essential coverage

Lower-income individuals who are eligible to purchase insurance coverage through an Affordable Insurance Exchange will qualify for the premium tax credit if the individual is not eligible for other MEC. To be eligible for the credit, the individual’s household income must be between 100 percent and 400 percent of the federal poverty level.

An individual will not be eligible for the credit if he or she is eligible for other MEC, including employer-sponsored coverage that is affordable and that provides minimum coverage. Employer-sponsored coverage is affordable if the employee’s annual premium for self-only coverage does not exceed 9.5 percent of the participant’s household income.

The IRS explained that MEC includes coverage under various government-sponsored programs: Medicare Part A, Medicaid, the Children’s Health Insurance Program (CHIP), and the TRICARE program. The notice indicates when individuals are eligible for MEC under these programs (and therefore ineligible for the Code Sec. 36B credit).

The IRS also described self-funded student health plans and state high-risk pools. Starting January 1, 2015, sponsors of these plans may apply to HHS to be recognized as MEC. Thus, after 2014, Notice 2013-41 applies to these plans only if their specific coverage is recognized as MEC.

Eligibility for MEC

Notice 2013-41 provides the following rules:

■ An individual who loses Medicaid or CHIP coverage for failure to pay premiums is treated as eligible for Medicaid or CHIP, respectively, during any period that the individual is forbidden from re-enrolling. Thus, the individual is treated as eligible for MEC and cannot qualify for the premium tax credit.

■ An individual who cannot enroll in CHIP during a pre-enrollment waiting period is treated as not eligible for CHIP. Thus, the individual is not eligible for MEC and can qualify for the premium tax credit.

■ Individuals who become eligible for government-sponsored coverage only if determined to be disabled or suffering a particular disease, will not be able to determine their eligibility on their own. Accordingly, these individuals will not be eligible for MEC unless the government in fact determines that they are disabled or blind (for Medicaid), or disabled or ill (for Medicare).

Because of administrative difficulties, individuals who might be eligible for certain programs will not be treated as eligible for MEC unless they are in fact enrolled in one of those programs. These programs include:

■ Medicare Part A;
■ State high-risk pools, to the extent designated as MEC by the Department of Health and Human Services (HHS);
■ Self-funded student health plans, to the extent designated as MEC by HHS; and
■ TRICARE programs.

■ Comment. The IRS noted that some of these programs, such as Medicare Part A, receive a lower government subsidy. This would disadvantage persons who could only enroll at high cost and have to forgo subsidized health coverage.

References: FED ¶46,447; TRC INDIV: 57,600.

IRS Provides Relief From Individual Mandate For Participants In Fiscal Year Health Plans

◆ Notice 2013-42

The IRS has provided relief for individuals under the Patient Protection and Affordable Care Act (PPACA). Notice 2013-42 describes the application of the individual mandate to employees eligible for health insurance coverage under a fiscal-year plan.

■ CCH Take Away. The individual mandate under Code Sec. 5000A takes effect on January 1, 2014 and is one of the key provisions of the health care law. The IRS continues to issue guidance so that employees, employees, and others understand their benefits and responsibilities under PPACA.

Maintenance of MEC

Under the individual mandate, individuals who are not exempt must maintain minimum essential coverage (MEC) for each month beginning on or after January 1, 2014, or else must pay an individual shared responsibility payment. Individuals are responsible for their dependents. MEC includes coverage under an eligible

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IRS Issues Proposed Reliance Regs On Reporting Code Sec. 36B Credit

**Background**

The Patient Protection and Affordable Care Act (PPACA) created the Code Sec. 36B credit. The Code Sec. 36B credit is generally available beginning in 2014 to qualified taxpayers based on the taxpayer’s income in relation to the federal poverty guidelines and the affordability of employer-provided health insurance from an Exchange.

- **CCH Take Away.** The IRS indicated that it may provide transition relief before the regs are finalized.
  - The agency did not elaborate on the transition relief.

**Fiscal year plans**

Many employer-sponsored plans do not operate on a calendar year, the IRS indicated in Notice 2013-42. Generally, an employee cannot enroll in a health plan after the plan year begins. The IRS explained that for a fiscal year employer plan that begins in 2013 and ends in 2014, individuals would have to enroll in coverage in the plan in 2013, even though the individual mandate does not yet apply, to have coverage in 2014, when the mandate does apply.

The IRS stated that proposed regs regarding the employer shared responsibility payment (the employer mandate) provide transition relief to employers offering a fiscal year plan. If an employer offers adequate coverage for the first fiscal year beginning in 2014, the employer will not be liable for a payment under the individual mandate during the transition period beginning January 2014 and continuing through the end of the 2013-2014 plan year.

- **Comment.** The IRS noted that the proposed regs already provide transition relief for cafeteria plan elections for employer-provided health plans with a fiscal year beginning in 2013. Employers may permit employees to make new elections for 2014.

**Examples**

Notice 2013-42 provides two examples to illustrate the application of the transition rule. In Example (1), a taxpayer is unmarried with a five-year old daughter. They are eligible to enroll in an employer-sponsored plan. Examples

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IRS Will No Longer Issue Comfort Rulings Under Code Sec. 355

◆ Rev. Proc. 2013-32

The IRS has announced that it will no longer rule on whether a transaction qualifies for nonrecognition treatment under Code Sec. 355. Instead, the IRS will only rule on significant issues under related Tax Code sections (such as nonrecognition and basis) that result from the application of Code Sec. 355.

**CCH Take Away.** “The big story is that the IRS is significantly changing its position on Sec. 355,” Annette Ahlers, partner, Moss Adams LLP, Los Angeles, told CCH. “The revenue procedure is focusing on Sec. 355; that’s the expansion of the no-rule area. The IRS has been slowly cutting back on Sec. 355 rulings; they’ve been doing this already,” Ahlers said.

**Comment.** “This is a big change,” Ahlers said. “Spinoffs are common transactions. A lot of small companies, like S corporations and family-owned businesses, would request a ruling. It was a way for companies to get that assurance that the transaction was tax-free. There could be a big impact if the transaction was taxable,” she said.

**Significant issues**
The IRS will continue to rule on one or more issues that are significant. Rev. Proc. 2013-32 does not limit the number of significant issues that the IRS may rule on. The IRS reserves the right to rule on any other issues if it believes that a ruling is in the best interests of tax administration.

A significant issue is an issue of law that is not essentially free from doubt and that is germane to the tax consequences of the transaction. However, if two Code sections overlap, and one is essentially free from doubt, the IRS may not rule, unless the issue under the related Code section is significant. The IRS encouraged taxpayers to call and consult with Chief Counsel on whether an issue is significant and the IRS will rule.

**Comment.** “We may not agree that your issue is significant,” Ahlers paraphrased. She noted that a factual issue is not a significant issue.

**Comment.** In Rev. Proc. 2009-25, the IRS provided a pilot program for issues arising under Code Sec. 355 that involved part of a larger transaction. The IRS has now ended the pilot program.

References: FED ¶46,445; TRC IRS: 12,214.

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**Code Sec. 36B Credit**
Continued from page 4

Exchanges will provide qualified taxpayers with a written statement that includes this same information on or before January 31 of the year following the calendar year of coverage.

The proposed regs apply to tax years ending after December 31, 2013. The IRS explained that Exchanges and taxpayers may rely on the proposed regs until the agency issues final regs or other guidance.

**Comment.** The IRS requested comments on whether the proposed collection of information will have practical utility; how the quality, utility, and clarity of the information may be enhanced; and burden reduction.

References: FED ¶49,577; TRC INDIV: 58,150.

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**FY Health Plans**
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sored plan with a fiscal year beginning August 1, 2013 and ending July 31, 2014, but do not enroll in the plan. The notice concludes taxpayer and her daughter are eligible for transition relief for January 2014 through July 2014.

In Example (2), married individuals work for separate employers. The individuals are both eligible to enroll in the plans offered by their respective employers, one a fiscal-year plan (August 1, 2013-July 31, 2014) and one a calendar year plan. Neither individual enrolls in an employer plan. The notice concludes that both individuals are eligible for transition relief for the period in 2014 covered by the fiscal year plan (January 2014 through July 2014), even though the individuals could have enrolled in a calendar year plan.

References: FED ¶46,448; TRC INDIV: 42,554.

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**Background**
The IRS sets out its procedures for taxpayers to obtain a private letter ruling in a revenue procedure each year, the most recent being Rev. Proc. 2013-1. The IRS identifies areas it will not rule on in a separate revenue procedure, in this case Rev. Proc 2013-3.

Ordinarily, the IRS stated, it will not rule on part of an integrated transaction. However, if part of a transactions falls into a no-rule area, the IRS may still rule on other parts of the transaction. Furthermore, the IRS ordinarily will not issue comfort rulings on an issue that is clearly and adequately addressed by statute, regs or other authorities.

**Corporate no-rule**
Prior to Rev. Proc. 2013-32, the IRS had already announced that it would not rule on whether a transaction qualified for nonrecognition treatment under Code Secs. 332, 351, 368, or 1036, or the tax consequences resulting from the application of those sections, unless there was a significant issue.

**Comment.** “Since the early 1990’s, the IRS has quit ruling on standard reorganizations under Code Secs. 332 or 368, for example,” Ahlers said. “If you read Rev. Proc. 2013-3, you’ll see almost all the reorg provisions - formations, distributions, etc.,” she said.

If there was a significant issue, the IRS would rule on the entire transaction, unless a no-rule area applied. This was the situation for rulings under Code Sec. 355 - the IRS would still rule on the entire transaction.

**Comment.** “Now, they won’t rule on the overall transaction for a tax-free spinoff under Code Sec. 355. This had been one of the last areas where the IRS would rule on the overall transaction,” Ahlers said.

References: FED ¶49,577; TRC INDIV: 58,150.
Tax Court Finds Provision Of At-Cost Services To Corporation’s Sole Owner Is Not A Constructive Dividend

◆ Welle, 140 TC No. 19
The sole owner of a C corporation did not receive a constructive dividend as a result of the corporation furnishing him construction services without charging its standard profit margin, the Tax Court has held. The IRS failed to persuade the court that the corporation’s forgone profits gave rise to a constructive dividend.

■ CCH Take Away. According to the IRS, the Tax Court’s decision in Magnon, 73 TC 980, CCH Dec. 36,799 (1980) stands for the proposition that a shareholder receives a constructive dividend equal to the cost of the services provided to the shareholder by a corporation plus the corporation’s customary profit margin. The Tax Court explained that it had held in Magnon that the amount of the costs and overhead for electrical services provided by a corporation to a shareholder without expectation of repayment was a constructive dividend. However, the court reiterated that it had not held that the constructive dividend the shareholder received included an amount corresponding to the corporation’s forgone profit.

Court’s analysis
The court first noted Code Sec. 61(a)(7) includes dividends in a taxpayer’s gross income. A dividend is any distribution of property that a corporation makes to its shareholders out of its earnings and profits accumulated after February 28, 1913, or out of its earnings and profits for the tax year. Property encompasses money, securities, and any other property except stock in the distributing corporation. Additionally, the provision of services by a corporation to its shareholders may constitute property. The crucial concept in a finding that there is a constructive dividend is that the corporation has conferred a benefit on the shareholder to distribute available earnings and profits without expectation of repayment, the court found. Where a corporation constructively distributes property to a shareholder, the constructive dividend received by the shareholder is measured by the fair market value of the benefit conferred, the court added.

The court found that the IRS had failed to explain how a corporation’s decision not to make a profit on services provided to a shareholder who fully reimburses the corporation for the cost of the services, including overhead, constitutes a distribution of property that reduces the corporation’s earnings and profits. A finding that a shareholder received a constructive dividend from a corporation is only appropriate where “corporate assets are diverted to or for the benefit of a shareholder, the court held. The court concluded that the corporation’s provision of services to the taxpayer at cost did not result in the diversion of corporate assets or the distribution of its earnings and profits. Moreover, the provision of services to the taxpayer at cost was not in purpose or effect an implement for the distribution of corporate earnings” and profits.

■ Comment. The court questioned the timing of the IRS’s constructive dividend adjustment but did not explore the issue in detail because the taxpayer did not raise it.

References: CCH Dec. 59,576; TRC CCORP: 6,308.10.

Tax Court Will Review APA Cancellations By IRS Under Abuse Of Discretion Standard

◆ Eaton Corp. and Subs., 140 TC No. 18
The Tax Court has found that the abuse of discretion standard was the proper standard for reviewing the cancellation of advance pricing agreements (APAs) between the IRS and a corporation. The APAs were subject to the IRS’s discretion to revoke, cancel, or revise if the corporation did not comply with their terms.

■ CCH Take Away. The Tax Court decided the motions on a limited record, and therefore only determined that the appropriate legal standard for reviewing the cancellations was “abuse of discretion.” The Tax Court did not rule on whether or not the IRS abused its discretion in canceling the APAs at issue.

Background
A corporation entered into two APAs with the IRS to establish a transfer pricing methodology for covered transactions between the corporation and its subsidiaries. The parties agreed that the APAs’ legal effect and administration were governed by Rev. Procs. 96-53 and 2004-40. These stated that the IRS could revoke, cancel or revise the APAs if the corporation failed to comply with any of the requirements set forth in the APAs.

The IRS determined that the corporation had not complied with the APAs and canceled them. The IRS then issued the corporation a deficiency notice, applied an alternative transfer pricing methodology, and adjusted the corporation’s income under Code Sec. 482.

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National Taxpayer Advocate’s Mid-Year Report To Congress Provides 2014 Objectives

◆ IR-2013-63, National Taxpayer Advocate Report to Congress: Fiscal Year 2014 Objectives

The limited IRS budget creates an environment where the IRS cannot give due consideration to taxpayer rights or fundamental tax administration principles, National Taxpayer Advocate Nina Olson cautioned in her mid-year report to Congress. Olson simultaneously issued a special report on the IRS’s use of questionable criteria to screen applicants for tax-exempt status and made recommendations.

CCH Take Away. “The IRS is an institution in crisis,” Olson said in her report. “In my view, however, the real crisis is not the one generating headlines. The real crisis facing the IRS—and therefore taxpayers—is a radically transformed mission coupled with inadequate funding to accomplish that mission.”

Mid-year report

Olson identified issues that the Office of the Taxpayer Advocate plans to prioritize during the upcoming fiscal year and describes current challenges facing the IRS. These are items and processes the IRS must improve, including:

- How it assists tax return preparer fraud victims;
- Oversight of the tax preparer industry;
- Provision of effective and timely relief to identity theft victims;
- Conducting education and outreach to taxpayers about their responsibilities under the Affordable Care Act;
- Resolution procedures for erroneous revocations of the tax-exempt status of small Code Sec. 501(c)(3) organizations; and
- Establishment of more reasonable “settlement initiatives” for taxpayers with legitimate reasons for overseas bank and financial accounts.

Special report

Olson also reported on the IRS’s use of inappropriate criteria to review applications for tax-exempt status from certain groups. Olson attributed the failure to a combination of: lack of guidance and transparency; absence of adequate checks and balances; management and administrative failures; and the Exempt Organizations (EO) office’s “cultural difficulty” with TAS.

References: FED ¶46,446; TRC IRS: 3,058.

APA Cancellations
Continued from page 6

The corporation argued that the APAs were enforceable contracts and that the IRS, because it had initiated the cancellation, had to demonstrate that the corporation failed to comply with the APAs. The IRS responded that the revenue procedures governing APAs reserved to it the discretion to administer the APAs. Because the IRS canceled the APAs pursuant to that discretion, the cancellations were administrative determinations subject to an abuse of discretion standard of review.

Court’s analysis

The Tax Court found that it had deficiency jurisdiction to review the IRS’s cancellations of the APA contracts and subsequent adjustments for abuse of discretion. To review the merits of the deficiency determination, however, the Tax Court found that it would need to review the APA cancellations.

The APAs were subject to the discretion reserved to the IRS by the applicable revenue procedures, the Tax Court found. The IRS had exercised that administrative discretion by canceling the APAs; therefore, the cancellations were administrative determinations. The Tax Court followed its own precedent and ruled that it would review administrative determinations necessary to determine the merits of a deficiency determination under the abuse of discretion standard.

References: CCH Dec. 59,575; TRC INTL: 15,206.15.

Fifth Circuit KO’s FOCus Tax Shelter For Lack Of Economic Substance; Limits Penalties

The Fifth Circuit Court of Appeals has affirmed a federal district court decision holding that a series of partnership transactions marketed under “Family Office Customized” or FOCus program lacked economic substance and that $18 million in claimed losses should therefore be disregarded. The Fifth Circuit also affirmed a 20 percent penalty for negligence under Code Sec. 6662.

Comment. The taxpayers did “win” on two penalty issues, however, that will serve to limit IRS’s penalty reach in similar cases. The Court of Appeals held that the taxpayer could not be assessed two 20 percent penalties under Code Sec. 6662. The court also affirmed the district court’s decision that the 40 percent penalty for a substantial valuation misstatement did not apply to a transaction lacking economic substance.

Listed transaction. The IRS attacked schemes similar to the FOCus program in Notice 2000-44, the “Son of BOSS” currency straddle, and Notice 2002-50, the partnership straddle tax shelter. The courts concluded that the FOCus program was not designed to make a profit, and that the investments had no business purpose and no economic substance.

Nevada Partners Fund, LLC, CA-5, 2013-2 ustc ¶50,398; TRC BUSEXP: 15,354.

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**Income**
A couple underreported their income from an unincorporated trucking business, a child care business, a rental business and real estate activities. Their income was reconstructed using the bank deposits method, and the taxpayers proved only that a portion of the deposits were not taxable.

*Kobel, TC, CCH Dec. 59,577(M), FED ¶48,095(M); TRC INDIV: 6,050.*

**Liens and Levies**
A federal district court, acting *sua sponte*, reversed a partial summary judgment order that had reduced a *pro se* couple’s taxes to judgment and validated tax liens against their properties. Newly discovered evidence raised genuine issues of material fact regarding the amount of the couple’s tax liabilities and the timeliness of the IRS collection action.

*Maris, DC Nev., 2013-2 USTC ¶50,403; TRC IRS: 45,202.*

The IRS properly determined to proceed with a levy to collect a nonfiler’s tax deficiencies after he failed to demonstrate his correct tax liabilities.

*Mfum, CA-3, 2013-2 ustc ¶50,399; TRC IRS: 51,056.15.*

The Tax Court properly dismissed an individual’s petition challenging an IRS levy for failure to prosecute. Despite being granted two continuances, the individual failed to appear for trial. He also had a history of delays and was warned several times that his case could be dismissed.

*Flaherty, CA-9, 2013-2 ustc ¶50,395; TRC LITIG: 6,656.15.*

**Refund Claims**
A federal district court refused to reconsider its decisions to deny refunds of penalties that an employer paid for failing to deposit and pay payroll taxes during two quarters. The employer’s motion to reconsider raised arguments that it could have presented during trial, and failed to show that it had filed an administrative refund claim before it filed suit.

*Babcock Center, Inc., DC S.C., 2013-2 ustc ¶50,397.*

**Deficiencies and Penalties**
In determining an individual’s deficiency for one year, interest on a prior overpayment ran from the date it was made until the date his return for the deficiency year was due, and interest on the underpayment accrued from that same return due date until the deficiency was paid.

*Carione, CA-2, 2013-2 ustc ¶50,401; TRC PENALTY: 9,052.*

**Sales and Exchanges**
A corporation’s leasehold interest was not like kind with respect to fee interests in two other real estate properties. The leasehold interest exchanged was a short-term real property interest with a term of 21 years and 4 months remaining and was not equivalent to the 30-year leasehold interest that Reg. §1.1031(a)-1(c) recognized as the equivalent of a fee interest.

*VIP’s Industries Inc., TC, CCH Dec. 59,574(M), FED ¶48,092(M); TRC SALES: 27,158.05.*

**Jurisdiction**
The Tax Court lacked jurisdiction over a deficiency petition absent notices of deficiency or determination.

*Starling, CA-11, 2013-2 ustc ¶50,402; TRC LITIG: 6,062.*

The Tax Court lacked jurisdiction over a petition filed by an individual who was never issued a notice of deficiency or a notice of determination.

*Ryskamp, CA-9, 2013-2 ustc ¶50,396; TRC LITIG: 6,106.05.*

A couple’s complaint alleging that collection actions by IRS employees and agents violated the Racketeer Influenced and Corrupt Organizations Act (RICO) was properly dismissed for failure to state a claim.

*Kenner v. Kelly, CA-9, 2013-2 ustc ¶50,394; TRC IRS: 45,114.*

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**IRS Issues Final Regs On Coverage Of Preventive Services**
The IRS has issued final regs on the coverage of certain preventative services under the *Patient Protection and Affordable Care Act* (PPACA). Previously, the IRS had established a temporary safe harbor from enforcement of the contraceptive coverage requirement. The final regs provide that the general requirement to provide coverage for certain preventive services without cost sharing is subject to the religious employer exemption and eligible organization accommodations.

*TD 9624, FED ¶47,021; TRC COMPEN: 45,228.*

**IRS Updates Per Se Corporation List To Include Croatian Version Of Public LLC**
The IRS has announced that it will issue temporary and proposed regs modifying Reg. §301.7701-2 to include the Croatian “dionicko drustvo” on the per se corporation list in Reg. §301.7701-2(b)(8). These temporary and proposed regs will apply to such entities formed on or after July 1, 2013. The regs will also apply to an entity formed before such date from the date after July 1, 2013, on which, in the aggregate, a 50-percent or more interest in such entity is owned by any person or persons who were not owners of the entity as of July 1, 2013.

*Notice 2013-44, FED ¶46,451; TRC STAGES: 24,104.*