IRS Unveils Long-Awaited Proposed Preparer Penalty Regs; More Details, Few Surprises

◆ NPRM REG-129243-07

The IRS has unveiled proposed return preparer penalty regs, reflecting the monumental changes made to Code Sec. 6694 by the Small Business and Work Opportunity Tax Act of 2007 (2007 Small Business Tax Act). The much-anticipated proposed regs describe, among other controversial items, the new more likely than not standard in Code Sec. 6694(a), penalties for noncompliance, the responsibilities of non-signing preparers, and adequate disclosure. As promised, the IRS has scheduled a hearing on the proposed regs this summer and predicted that the regs will be finalized in time for the 2009 filing season.

CCH Take Away.

While practitioners have been anxiously awaiting release of the proposed regs, pending legislation could make much of them irrelevant. The House has already approved legislation (H.R. 6049) equalizing the preparer penalty and taxpayer penalty standards at substantial authority for nonabusive undisclosed positions, Thomas Ochsenschlager, Vice President – Taxation, AICPA, told CCH. The provision is part of the so-called “extenders bill.” A similar provision is part of the House-approved Taxpayer Assistance Act of 2008 (H.R. 5719).

Example. A new statute is silent as to whether the taxpayer may take advantage of certain tax benefits. Treasury and the IRS have not issued any interpretative guidance for the newly enacted provision. A well-reasoned construction of the statutory text supports the position that a taxpayer may claim the tax benefits. Adam, a preparer, may avoid the Code Sec. 6694(a) penalty by taking the position that he reasonably believed that the taxpayer’s position would more likely than not be sustained on its merits.

Caution. The requirement that a position satisfies the more likely than not standard must be satisfied on the date the return is deemed prepared.

Comment. All of the facts and circumstances will be taken into account in determining if a preparer satisfies this standard, including the preparer’s due diligence.

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Preparer Regs
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Reliance on taxpayer information
Under the proposed regs, a preparer may rely in good faith and without verification on information furnished by another advisor, another tax return preparer or other party. Additionally, a preparer may rely in good faith without verification upon a tax return that has been previously prepared by a taxpayer or another tax return preparer and filed with the IRS.

Caution. The IRS reiterated its earlier warning that a preparer may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer. If the information appears to be incorrect or incomplete, the preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete.

Penalties
The proposed regs describe the penalty under Code Sec. 6694(a) for understatement due to an unreasonable position and the penalty under Code Sec. 6694(b) for an understatement due to willful, reckless, or intentional conduct.

The Code Sec. 6694(a) penalty will not be imposed if, considering all the facts and circumstances, it is determined that the understatement was due to reasonable cause and that the tax return preparer acted in good faith. The proposed regs describe various factors the IRS will take into account.

Example. While preparing the 2008 tax return for an individual taxpayer, Alice realizes that the taxpayer did not provide a Form 1099 for a bank account that had produced significant taxable income in 2007. When Alice inquired about any other income, the taxpayer furnished the Form 1099 to Alice for use in preparation of the 2008 tax return. Alice did not know that the taxpayer owned an additional bank account that generated taxable income for 2008 and the taxpayer did not reveal this information to the tax return preparer notwithstanding Alice’s general inquiry about any other income. Alice signed the taxpayer’s return as the tax return preparer. Alice is not subject to a penalty under Code Sec. 6694.

One preparer one firm rule
The IRS also indicated that it is revisiting the one preparer one firm rule. In its place, the IRS has proposed a preparer-per-position within a firm approach. Under the proposed regs, only one person within a firm would be considered primarily responsible for each position giving rise to an understatement and, accordingly, be subject to the penalty.

The individual signing the return will continue to be held responsible for all of the positions on a return, but if another individual is determined (either via information received from the signing individual or from other sources) to have primary responsibility for a position giving rise to the understatement, that other individual will be responsible under Code Sec. 6694. If there are one or more nonsigning tax return preparers at the same firm and no signing preparer at the firm, the individual within the firm with supervisory responsibility for the position will be responsible for the Code Sec. 6694 penalty.

OPR referral
Many practitioners have expressed alarm that a violation of Code Sec. 6694(a) would automatically trigger referral to the IRS Office of Professional Responsibility (OPR). The IRS eased their concern in the proposed regs. “In keeping with a balanced enforcement program for tax return preparers, the IRS intends to modify its internal guidance so that a referral by revenue agents to OPR will not be per se mandatory when the IRS assesses a tax return preparer penalty under section 6694(a) against a tax return preparer who is also a practitioner within the meaning of Circular 230.”

Non-signing preparers
The proposed regs do not carve out an exception for non-signing preparers. A non-signing preparer is any preparer who is not a signing preparer but who prepares all or a substantial portion of a return or claim for refund within the meaning of §301.7701-15(b) (3) with respect to events that have occurred at the time the advice is rendered.

However, the IRS created a safe harbor. In determining whether an individual is a nonsigning preparer, the proposed regs provide that any time spent on advice that is given with respect to events that have occurred, which is less than five percent of the aggregate time incurred by the person with respect to the position(s) giving rise to the understatement will not be taken into account in determining whether an individual is a nonsigning preparer.

Disclosure
The proposed regs describe disclosure of a position for signing preparers and non-signing preparers. For signing preparers, disclosure includes, among other methods, Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, as appropriate, or on the tax return in accordance with the annual revenue procedure (Rev. Proc. 2008-14). The proposed regs also describe three ways that non-signing preparers may disclose a position.

Caution. Disclosures must be tailored to the taxpayer’s facts and circumstances. Boilerplate language is not sufficient, the IRS warned.

References: FED ¶49,807; TRC IRS: 6,150.
IRS Examples Underscore Important Changes To Supplemental Wage Payment Withholding

**Rev. Rul. 2008-29**

The IRS has issued new guidance on federal income tax withholding on supplemental wages. The new guidance explores nine common situations involving the payment of supplemental wages and reflects important changes made by the American Jobs Creation Act of 2004 (2004 Jobs Act).

**CCH Take Away.** “Specifically, through its nine examples — covering commissions, bonuses, severance, and accrued leave/sick pay — it identifies supplemental wages and instructs on how to determine the applicable withholding rate,” Elizabeth Dold, Groom Law Group Chartered, Washington, D.C., told CCH. “Unfortunately, it is not as simple as withholding at a flat 25 percent rate. As employers are generally liable for any failed withholding (along with related penalties and interest), this guidance is welcomed.”

**Background**

An employee may receive, in addition to regular wage payments, supplemental wages. Examples of supplemental wages are bonuses, commissions, overtime pay, and vacation pay. In 2006, the IRS issued final regs on when employers must withhold income tax from supplemental wages and how much must be withheld.

**New guidance**

In Rev. Rul. 2008-29, the IRS describes nine different situations involving the payment of supplemental wages:

- Commissions paid at fixed intervals with no regular wages paid to the employee;
- Commissions paid at fixed intervals in addition to regular wages paid at different intervals;
- Draws paid in connection with commissions;
- Commissions paid to the employee only when the accumulated commission credit of the employee reaches a specific numerical threshold;
- A signing bonus paid prior to the commencement of employment;
- Severance pay paid after the termination of employment;
- Lump sum payments of accumulated annual leave;
- Annual payments of vacation and sick leave; and
- Sick pay paid at a different rate than regular pay.

**Vacation and sick leave**

The IRS explored the common situation of annual payments of vacation and sick leave. In this example, the employer maintains a plan that pays its employees at the end of approximately each 12-month period a lump sum payment known as a vacation and sick leave allowance. An employee receives this payment whether or not he or she has been absent from work because of vacation or illness. However, in the event of absenteeism because of vacation or illness, the employee receives no regular pay for the period of absence.

The IRS noted that the annual payment of the vacation and sick leave allowance is a supplemental wage payment, because it is not a payment at a regular rate for the current payroll period. The employer can use the aggregate procedure to determine income tax withholding with respect to the leave allowance payment. The supplemental wages are not paid concurrently with regular wages, the IRS observed, and the employer meets one of the requirements for use of optional flat rate withholding (the supplemental wage payment must be either not paid concurrently with regular wages or separately stated on the payroll records of the employer). If the employer has withheld income tax from regular wages paid during the calendar year or the preceding calendar year, the employer can use optional flat rate withholding to determine withholding on the leave allowance payment, the IRS concluded.

**References:** FED ¶46,466; TRC COMPEN: 27,202.

Research Credit Regs Now Govern Election And Calculation Of New Alternative Simplified Credit

**T.D. 9401, NPRM REG-149405-07**

The IRS issued temporary and proposed regs that explain how to elect and calculate the alternative simplified credit (ASC) for determining the taxpayer’s research tax credit under Code Sec. 41. The regs also explain changes made to the alternative incremental research credit (AIRC).

**CCH Take Away.** Businesses can use one of three methods to calculate the research credit: the regular research credit, the AIRC or the ASC. The ASC was added to Code Sec. 41 and the AIRC was amended by the Tax Relief and Health Care (TRHCA) Act of 2006. The credits apply different calculations. Both alternative credits are calculated at 12 percent of qualified research expenditures (QREs), while the regular research credit is 20 percent.

**Comment.** The alternative credit provisions apply to tax years ending after December 31, 2006. TRHCA extended the research credit through December 31, 2007. Although Congress allowed the credit to expire at the end of 2007, Congress is expected (although it has not guaranteed) to adopt extenders legislation that would...
Tax Court Denies Second Request For Innocent Spouse Relief; Doesn’t Accept “Amendment” Argument

The Tax Court has held that the taxpayer’s second claim for relief from joint and several liability under Code Sec. 6015(f)’s equitable innocent spouse provision was not a qualifying request for relief. The court further held that it lacked jurisdiction because the taxpayer failed to petition the court within 90 days of the final notice of determination that she was not entitled to equitable relief based on her first claim.

Court’s analysis
The court admitted that the taxpayer’s second Form 8857, Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief), contained more detailed factual allegations than in her first request for relief. However, the court observed that most of the allegations had been raised and considered during administrative review of her first request. Therefore, the court concluded that the taxpayer’s second request was best characterized as seeking reconsideration of her first request for relief, with reiterations of those claims.

The court was not impressed by the taxpayer’s reference to a provision in the Internal Revenue Manual (IRM), which indicates that in some instances the IRS might reconsider a notice of final determination on the basis of newly submitted information. It is well settled that the IRM does not have the force of law, is not binding on the IRS and does not provide any rights to the taxpayer, the court explained.

No second shot
Since the taxpayer failed to timely file a request for relief from the court within 90 days of the notice of final determination, the court concluded it lacked jurisdiction. The second Form 8857 was not a qualifying request for relief and the taxpayer was not entitled to a second final administrative determination.

References: CCH Dec. 57,463; TRC INDIV: 18,052.20.

Research Credit Regs
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extend the credit through 2008, retroactive to January 1, 2008.

Alternative credits
Corporations can claim the ASC equal to 12 percent of the amount by which the corporation’s QREs exceed 50 percent of the average QREs for the three preceding tax years. If the corporation has no QREs in one of the three preceding years, it can claim a credit of six percent of its current year QREs. If the corporation has a short taxable year, it applies the QREs as if incurred at the same rate over 12 months.

The regular research credit is 20 percent of the excess of a corporation’s QREs over its base amount, which is a ratio of QREs to total gross receipts for 1984 through 1988. The AIRC is an increasing percentage of QREs that exceed specified percentages of average annual gross receipts for the preceding four years. TRHCA stepped up the AIRC to 12 percent of QREs that exceed two percent of the average annual gross receipts for the four preceding years.

Elections
The temporary regs explain how to make and revoke elections to claim the ASC. Generally, the regs track the existing regs for electing the AIRC. The election is made on Form 6765, Credit for Increasing Research Activities, and applies to all subsequent years until revoked. While revocation requires the IRS’s consent, the IRS is deemed to consent if the corporation claims the regular or AIRC credit on a timely-filed (including extensions) Form 6765. The election or revocation cannot be made on an amended return.

Comment. Fiscal year 2007 taxpayers can claim the AIRC for the portion of their fiscal year in 2006 and can then switch to the ASC for the portion of their fiscal year in 2007. The AIRC would be treated as revoked for all years after the 2006 fiscal year.

References: FED ¶¶47,037, 49,806; TRC BUSEXP: 54,164.15.

President Signs Military Tax Relief Bill; Stimulus Payment Distribution Passes Half-Way Mark

President Bush on June 17 signed the Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081) into law. The new law makes permanent and enhances some temporary tax incentives targeted to active military personnel, reservists and military families.

In other news Treasury and the IRS distributed more than half of the estimated 130 million economic stimulus payments as of June 13. More than 76 million payments have been made by direct deposit or by mail to eligible recipients, Treasury reported.

Comment. Some taxpayers have reportedly received duplicate economic stimulus payments. “If a taxpayer receives more than one payment, the erroneous payment should be returned to the IRS,” an agency spokesperson told CCH. If the erroneous payment was a paper check, the check should be marked “VOID” in the endorsement section on the back of the check and a note should be attached indicating that it is the return of an erroneous economic stimulus payment. The two items should be returned to the IRS Center where the taxpayer normally files his or her return, the spokesperson advised. If the erroneous payment was a direct deposit, the taxpayers should contact his or her bank. “The bank will know the proper procedures for returning the money.”

During the week of June 9-13, Treasury and the IRS distributed 9.526 million economic stimulus payments totalling $7.032 billion. As of June 13, nearly $64 billion had been distributed. Distribution is expected to continue through mid-July for returns processed by the IRS by April 15.

TDNR HP-1021
**Damage Payments For Terminating Merger Agreement Were Ordinary Income, IRS Determines**

◆ **LTR 200823012**

Amounts paid for terminating a merger agreement are taxable as ordinary income rather than capital gain, the IRS determined in a private letter ruling. The amounts, known as termination payments, are treated as a substitute for lost profits that the participant expected to receive from the transaction.

- **CCH Take Away.** The taxpayer requested a ruling that the fees were ordinary income, not capital gain. The tax treatment of the fees, and the certainty of an IRS ruling, may have been more important to the party being taxed, than a possibly fruitless effort to treat the fees as capital gain, treatment that generally would be more favorable.

  - **Comment.** The ruling is silent on the treatment of the fees by the payor, that is, whether the fees were deductible or must be capitalized. Determining whether these costs are deductible requires an analysis of the final regs under Code Sec. 263 on the capitalization of costs related to intangible assets. Regs. §1.263(a)-5(b)(8) and §1.263(a)-5(l), Examples 13 and 14, discuss the treatment of merger termination payments. TAMs 200512021 and 200521032 also discuss these types of fees. If the mergers are mutually exclusive (the taxpayer could do one but not both transactions), the costs must be capitalized. If they are not mutually exclusive (the taxpayer can do both transactions), the costs are deductible. In this case, the mergers appear to be mutually exclusive, so the payments must be capitalized.

**Background**

Publicly-traded Corporations A and B agreed that A would acquire B for cash and common stock of A. B had the right to terminate the agreement if it received a superior, third-party offer. Termination of the agreement by either party under certain circumstances obligated that party to pay termination fees to the other party. B had to pay additional termination fees if it was acquired by a third party. The agreement did not identify the purpose of the fees.

C, an unrelated company made a tender offer to purchase all of B’s shares. B entered into negotiations with C and paid a termination fee to A. After C acquired B, B paid A the additional termination fee.

**Termination fees**

The IRS explained that the termination fees were income. The fees were similar to liquidated damages, as compensation for injuries in the event of a breach. The termination fee provision protects each party’s contractual interests and the fees are paid in lieu of damages for failing to carry out the contract.

The fees were payment for the expectations of the injured party that would have been met if the agreement had been implemented, the IRS explained. These expectancy damages are often equated with lost profits.

**Ordinary income**

Accordingly, in this case, the IRS determined, the bargained-for termination fees were for the recovery of the loss of anticipated profits. This is ordinary income, the IRS determined, citing two Tax Court decisions. Moreover, since the termination fee provision in the parties’ agreement is silent whether to allocate the recovery to lost profits or damages to capital, the recovery is treated as lost profits, not as damages to capital.

- **Comment.** The IRS cited the Tax Court’s decision in Vanderlaan, T.C. Memo. 1962-130, where the failure to allocate the damages meant that all amounts were allocated to lost profits and none were allocated to goodwill.

The IRS also determined that Code Sec. 1234A did not apply. This provision treats the termination gain with respect to a capital asset as capital gain.

Reference: FED §(to be reported);
TRC SALES: 15,054.65.

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**IRS Changes Reporting Of ESOP Dividends, Effective Next Year**

◆ **Ann. 2008-56**

The IRS has announced that dividends on employer securities distributed from an employee stock ownership plan (ESOP) under Code Sec. 404(k) must be reported on a Form 1099-R that does not report any other distributions. Payments of Code Sec. 404(k) dividends made directly from the corporation to plan participants or their beneficiaries will continue to be reported on Form 1099-DIV. The new treatment is generally effective beginning in 2009.

- **Comment.** Participants who receive Code Sec. 404(k) dividends must include them in their gross income. The dividends are also ineligible to be rolled over and are not subject to withholding or the 10 percent tax on early distributions from qualified plans.

**Background**

In Announcement 85-168, the IRS permitted plans to use Form 1099-DIV to report payment of Code Sec. 404(k) dividends. At that time, payments reported on Form 1099-R and its predecessor forms could not be reported on Form 1040A, the IRS explained.

**New reporting requirement**

Distributions from a plan made in 2009 or later and are Code Sec. 404(k) dividends must be reported on a Form 1099-R that does not report any other distributions. Other distributions, which are not Code Sec. 404(k) dividends, must be reported on a separate Form 1099-R.

- **Comment.** The IRS indicated it will require a special code in box 7 of Form 1099-R.

References: FED ¶46,463;
TRC RETIRE: 75,158.
The IRS has ruled that a foreign corporation’s right under a notional principal contract (NPC) to receive payments based on a U.S. real estate index did not qualify as an interest in U.S. real property under Code Sec. 897(c)(1). The foreign corporation will not be required to recognize gains or losses for U.S. tax purposes from disposition of its interest in the contract as if it were engaged in a trade or business in the U.S. under Code Sec. 897(a).

Comment. The IRS stressed that resulting index was broad-based in nature, making it impossible for a single investor to own or lease a material percentage of any of the real estate the index valued.

Not a USRPI

Code Sec. 897(a) requires foreign corporations to recognize federal tax gain or loss on the disposition of a U.S. real property interest (USRPI). Such an interest includes U.S. land ownership; improvements; leaseholds; and options to acquire, lease or improve the U.S. property. Reg. §1.897-1(d)(2)(i) also holds that a direct or indirect right to share in the appreciation in value of real property can qualify as a USRPI.

In this instance, the IRS ruled that the foreign corporation’s right to profit from an increase in the U.S. real estate index was not a USRPI. The agency reasoned that the broad-based nature of the index prevented the agreement from granting the foreign corporation a “direct or indirect right to share in the appreciation in the value…[o]f the real property” under Reg. §1.897-1(d)(2).

Comment. Last year, in Notice 2007-55, the IRS announced that it would pursue claims against foreign governments that claim tax exemption for liquidating distributions from privately-held real estate investment trusts (REITs) and other qualified investment entities to the extent that the distribution originates from USRPI. Because of this USRPI relationship, the IRS will consider the special exception for foreign government income under Code Sec. 892 inapplicable.

References: FED ¶46,465; TRC INTLIN: 6,056.

IRS Provides Safe Harbors For Auction Rate Preferred Stock

Notice 2008-55

Continuing its efforts to assist theailing credit market, the IRS recently released guidance providing relief to regulated investment companies (“RICs”) exclusively investing in tax-exempt debt instruments. In response to “significant liquidity needs in the auction rate securities market as a result of recent significant auction failures,” the guidance assists regulated investment companies (RICs) exclusively investing in tax-exempt debt instruments.

If RIC issuers use third parties to achieve liquidity (“liquidity providers”) in the wake of a failed auction, a safe harbor for consistently treating the auction-rate preferred stock as equity rather than as debt is available. At the same time, similar treatment has also been granted to auction rate preferred stock held by liquidating partnership.

Dutch-auction stock

Dutch-auction preferred stock is preferred stock with a fixed redemption value. Periodically, however, bids are accepted (a dutch auction) on the dividend rate at which the stock will pay. Because the investment strategies of the investors closely resemble those of debt-holders and because the stock itself has features common to debt, a question often arises as to whether this dutch-auction preferred stock is actually stock.

Auction rate preferred stock qualifying as equity is eligible for the deduction for dividends received by corporations under Code Sec. 243(a). If classified as debt, a corporate holder must include dividends into income under Code Sec. 61.

Liquidity provider relief

Given the tumultuous state of the U.S. credit market, many dutch-auctions for auction rate financial instruments have failed to successfully garner investors. There are not enough buyers for the instruments willing to accept a return on investment at or below the maximum specified by the instrument’s terms.

Comment. In Notice 2008-41, the IRS provided relief to auction rate tax-exempt bonds whose dutch-auctions had failed. It allowed issuers to purchase their own bonds without facing classification as a taxable reissuance; refund the bonds with issuance of refunding bonds; and re-tender them for purchase.

As a result, RIC issuers have asked to be able to expand their customer base by selling auction rate preferred stock to money market funds. However, money market funds generally cannot acquire these types of financial instruments under the Securities and Exchange Commission’s Rule 2a-7. Auction rate preferred stockholders can only sell their stock on the periodic auction dates; preventing money market funds from having the liquidity required under Rule 2a-7.

To assist RIC issuers in their efforts to expand their customer base, the IRS now will allow a safe harbor for treatment of their auction rate preferred stock as equity when the RIC uses a liquidity provider to gain money market fund customers. To receive this treatment, the RIC issuer must meet the certain requirements and generally must use the liquidity provider on or after February 12, 2008.

Liquidating partnerships

The IRS also will hold auction rate preferred stock held by liquidating partnerships to be equity instruments. To qualify for this special treatment, 95 percent of the partnership assets must be auction rate preferred stock and the partnership must issue two classes of equity interests:

- Interests entitled to preferred variable return on capital, and
- Residual inverse interests entitled to all remaining income

References: FED ¶46,468; TRC CCORP: 3,300.
Pension Plan
For pension plan years beginning in June 2008, the IRS has released the corporate bond weighted average interest rate, the permissible range of interest rates used to calculate current plan liability and to determine the required contribution under Code Sec. 412(l) for plan years through 2008, and the current corporate bond yield curve and related segment rates for the purpose of establishing a plan’s funding target under Code Sec. 430(h)(2).

Jurisdiction
A federal district court lacked subject matter jurisdiction over claims for damages and injunctive relief relating to an IRS lien and levy made by a doctor, his wife and his two corporations. However, the doctor’s wife and one corporation properly stated claims for wrongful levy under Code Sec. 7426.

Tax Fraud Schemes
An individual was preliminarily enjoined from promoting or selling decoding services and tax-fraud schemes on websites or through seminars. Injunctive relief was necessary because she would likely, unless enjoined, continue to promote her tax-fraud scheme.

Summons
A petition to quash IRS summonses issued to an individual, whose business entities were suspected of participating in distressed asset and debt (DAD) tax shelters, was denied and the summonses were ordered enforced.

Deductions
Unsubstantiated loss deductions were denied, and negligence and delay penalties were imposed on a taxpayer who raised only tax-protestor type arguments to contest his deficiency.

IRS Extends Filing/Payment Deadlines For Victims In Midwest And Other Disaster Areas
Storm and flood victims in 10 states have been granted more time to make quarterly estimated tax payments normally due on June 16, 2008. These states are Iowa, Indiana, Wisconsin, Arkansas, Colorado, Georgia, Maine, Mississippi, Missouri and Oklahoma. Businesses will also have extra time to file various returns and pay any taxes due. Specific due dates vary by location. Also, affected taxpayers in these areas who suffered uninsured or unreimbursed property damage can choose to claim these losses on their 2007 tax returns.

Penalty notices. An affected taxpayer who receives a penalty notice from the IRS should call the telephone number on the notice to have the IRS abate applicable interest, late filing or late payment penalties.

Comment. The IRS stated that its computer systems automatically identify taxpayers located in covered disaster areas and apply automatic filing and payment relief.

An IRS summons was ordered enforced. The government’s declaration that the Powell requirements had been met established a prima facie showing that it was entitled to enforcement.

FPAAs
The IRS timely mailed notices of the beginning of an administrative proceeding (NBAPs) and notices of final partnership administrative adjustment (FPAAs) with respect to a limited partnership. The IRS complied with all applicable procedures in mailing the NBAPs and FPAAs at issue.

An IRS summons was ordered enforced. The government’s evidence was relevant and properly admitted. Further, the sentencing enhancement under the sentencing guidelines and Code Sec. 7202 was not a double counting of the same underlying conduct.

Jurisdiction
A federal district court lacked subject matter jurisdiction over claims for damages and injunctive relief relating to an IRS lien and levy made by a doctor, his wife and his two corporations. However, the doctor’s wife and one corporation properly stated claims for wrongful levy under Code Sec. 7426.

Deductions
Unsubstantiated loss deductions were denied, and negligence and delay penalties were imposed on a taxpayer who raised only tax-protestor type arguments to contest his deficiency.

IRS Extends Filing/Payment Deadlines For Victims In Midwest And Other Disaster Areas
Storm and flood victims in 10 states have been granted more time to make quarterly estimated tax payments normally due on June 16, 2008. These states are Iowa, Indiana, Wisconsin, Arkansas, Colorado, Georgia, Maine, Mississippi, Missouri and Oklahoma. Businesses will also have extra time to file various returns and pay any taxes due. Specific due dates vary by location. Also, affected taxpayers in these areas who suffered uninsured or unreimbursed property damage can choose to claim these losses on their 2007 tax returns.

Penalty notices. An affected taxpayer who receives a penalty notice from the IRS should call the telephone number on the notice to have the IRS abate applicable interest, late filing or late payment penalties.

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FS-2008-21, FED ¶46,467; TRC DEPR: 3,600.

Summary Judgment

The government was entitled to summary judgment against a taxpayer who failed to raise either an issue of material fact or any issue of law that would preclude the entry of summary judgment under Tax Court Rule 121.

Taylor, TC, CCH Dec. 57,465(M), FED ¶48,079(M); TRC IRS: 42,120.

Liens and Levies

The IRS was entitled to foreclose federal tax liens against a divorced couple’s personal property held in receivership. The property was subject to a valid lien, and no wrongful levy claim was timely filed.

Norem v. Norem, DC Texas, 2008-1 ustc ¶50,368; TRC IRS: 48,150.

An individual’s action challenging the IRS levy on her pension funds was not dismissed, but was transferred to the judicial district where she resided. She had exhausted her administrative remedies prior to timely filing suit, and her allegations raised considerable questions about the propriety and duration of the levy.

Wallace, DC D.C., 2008-1 ustc ¶50,369; TRC LITIG: 9,254.15.

An individual’s action challenging an IRS levy on her joint bank account was not filed within the nine-month statutory period required for commencing a wrongful levy suit. Further, the statute of limitations could not be equitably tolled.

Scheafnocker, DC Pa., 2008-1 ustc ¶50,372; TRC IRS: 51,156.15.

Refund Claims

A married individual, who filed a separate return, was not entitled to a refund of amounts withheld from his wages that were used to satisfy a community tax debt. The individual was separated, but still married, when he filed his Form 1040 for the tax year at issue.

Cooper, 2008-1 ustc ¶50,378; TRC INDIV: 24,150.

Collection Due Process

The IRS did not abuse its discretion in determining to proceed with collection of an individual’s unpaid taxes. The taxpayer raised frivolous and groundless arguments. As a result, she was liable for a $1,000 delay penalty.

Wolcott, TC, CCH Dec. 57,467, FED ¶48,081(M); TRC IRS: 51,056.25.

An insurance company that surrendered a married couple’s property to the IRS in response to a notice of levy was immune from suit for complying with the levy notice.

McGraw, DC Wash., 2008-1 ustc ¶50,382; TRC IRS: 51,064.05.

An individual’s complaint seeking an order directing the IRS to cease and desist from levying taxes against him was dismissed because it did not include sufficient facts to support the claims advanced. The complaint did not allege a constitutional violation or address the court’s jurisdiction.

Tyler, DC Neb., 2008-1 ustc ¶50,383; TRC IRS: 45,152.

Offer-in-Compromise

An IRS Appeals officer’s determination to reject married taxpayers’ offer-in-compromise did not consider certain relevant factors and, therefore, was remanded. The record was unclear as to why the Appeals officer found that the taxpayers were not good candidates and why the offer in compromise was denied.

Dailey, TC, CCH Dec. 57,461(M), FED ¶48,075(M); TRC IRS: 42,056.15.

Withholding Taxes

An employer was required by law to withhold federal income taxes and Federal Insurance Contributions Act (FICA) taxes from an employee’s wages.

El, DC., 2008-1 ustc ¶50,379; TRC FILEIND: 15,306.

Bankruptcy

A debtor, who was the founder, president and sole shareholder of a corporation, failed to overcome the presumptive validity of the IRS’s proof of claim for trust fund taxes assessed against him. The assessments were based on returns purportedly signed by the debtor.

In re Casini, BC-DC N.J., 2008-1 ustc ¶50,371; TRC IRS: 57,062.

Attorney Sanctioned

The attorney and personal representative of an estate was sanctioned personally for using Tax Court procedures primarily for delay purposes, requiring him to pay any fees or excessive costs incurred by the IRS as a result of his bad behavior.

Allison Est., TC, CCH Dec. 57,462(M), FED ¶48,076(M); TRC LITIG: 6,816.15.

Foreign Income

The taxpayer was not entitled to exclude from gross income under Code Sec. 119(a) the value of claimed Air Force housing, or claimed Code Sec. 912 cost-of-living allowances.

Middleton, TC Memo. 2008-150, CCH Dec. 57,464(M); TRC COMPEN: 36,504.

IRS Seeks Comments On Worldwide Interest Expense Allocations

The IRS has requested comments on the forthcoming election under Code Sec. 864(f)(6) to allocate and apportion interest expense on a worldwide affiliated group basis. The IRS is also seeking comments on a related provision under Code Sec. 864(f)(5).

Under the American Jobs Creation Act of 2004 (2004 Jobs Act), taxpayers may make a one-time election to allocate and apportion interest expense on a worldwide affiliate group basis. The Code Sec. 864(f)(6) election may be made only for the first tax year beginning after December 31, 2008. Code Sec. 864(f)(5) permits a one-time election to expand the financial institution group of a worldwide affiliated group that has made the election.

Caution. The House has approved legislation, the Energy and Tax Extenders Act of 2008 (H.R. 6049), delaying the effective date of the worldwide interest allocation rules for 10 years, until tax years beginning after December 31, 2018.

Notice 2008-54, FED ¶46,464; TRC CONSOL: 45,106.