

Publications

Summa Holdings Inc. v. Commissioner— Substance Over Form May No Longer Prevail

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In 2015, the U.S. Tax Court applied the longstanding “substance over form” principle to prevent a shifting of value to Roth IRAs, and recharacterized a transaction involving a domestic international sales corporation (DISC) to prevent an abusive transaction. Rather than DISC commissions, the court reclassified these payments as dividends and then as regular contributions to Roth IRAs, following the Internal Revenue Service’s position.

The U.S. Court of Appeals for the Sixth Circuit recently reversed that holding, with a very taxpayer-friendly decision. This potentially opens the door to the same (or perhaps substantially similar structures) in the future, at least in the Sixth Circuit. Set forth in the attached article is a brief summary of the lay of the land, the case, and the lessons to be learned.