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Inside this Issue

IRS Asserts It Is Moving Forward From Mistakes Over Conservative Groups

◆ *TIGTA, Ref. No. 2013-10-053*

The IRS has learned from the mistakes revealed in the Treasury Inspector General for Tax Administration (TIGTA) recent report on the agency's extra scrutiny of applications for Code Sec. 501(c)(4) status from conservative groups, the agency's former head has told Congress. TIGTA discovered that the agency had used inappropriate criteria that identified conservative organizations for additional review.

■ ***CCH Take Away.*** "The fact that this issue originates from Cincinnati is not surprising," Fred Slater, CPA, partner, MS1040, New York, told CCH. National Taxpayer Advocate Nina Olson has reported various problems in that office, Slater observed. In 2012, Olson reported that the Cincinnati Determinations Unit had seen an increase in applications for tax-exempt status with the volume of open inventory for FY 2012 more than double the FY 2010 level.

■ ***Comment.*** "First and foremost, as Acting Commissioner, I want to apologize on behalf of the IRS for the mistakes that we made and the poor service we provided," former Acting Commissioner Steven Miller told the House Ways and Means Committee on May 17. "The agency is moving forward. We have previously worked to correct issues in the processing of the cases described in the report and have implemented changes to make sure that this type of thing never happens again."

Extra scrutiny

The controversy started on May 10 when IRS Exempt Organizations (EO) Director Lois Lerner told the May 2013 Meeting of the American Bar Association's Section of Taxation in Washington, D.C. that IRS personnel in the Determinations Unit in Cincinnati had inappropriately selected applications for tax-exempt status containing names such as "Tea Party" or "patriot" for additional review. Lerner's comments came just days before TIGTA released its report.

TIGTA's findings

On May 14, TIGTA reported that the IRS had used inappropriate criteria that identified for review conservative organizations applying for tax exempt Code Sec. 501(c)(4) status based upon their names or policy positions. According to TIGTA, ineffective management at the IRS allowed inappropriate criteria to be developed and stay in place for more than 18 months, which resulted in substantial delays in processing certain applications, and allowed unnecessary information requests to be issued.

■ ***Comment.*** "The reason that these criteria were inappropriate is that they did not focus on tax-exempt laws and regulations," Treasury Inspector J. Russell George told lawmakers on May 17. "For example, 501(c)(3) organizations may not engage in political campaign intervention. 501(c)(4) organizations can, but it must not be their primary activity," George said.

According to TIGTA, the Determinations Unit developed and used inappropriate

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Route to: _____ _____ _____ _____ _____

IRS Posts Q&A On Applications For Tax-Exempt Status; Acknowledges Delays For Conservative Groups

◆ *www.irs.gov*

The IRS has posted new questions and answers (Q&A) about the application process for organizations seeking tax-exempt status on its website. The IRS described the application process for Code Sec. 501(c)(3) organizations and Code Sec. 501(c)(4) social welfare organizations and acknowledged the much-publicized delays and lengthy information requests for conservative groups.

■ ***CCH Take Away.*** The Q&A were posted on the IRS's website shortly after news broke of the agency's extra scrutiny of applications from conservative groups for Code Sec. 501(c)(4) status.

Applications

The IRS explained that the agency's role is to determine whether an organization meets the legal requirements for tax-exempt status. One requirement relates to the amount of political campaign intervention (political activity) in which tax-exempt organizations may engage. Code Sec. 501(c)(3) organizations are prohibited from engaging in any political activity, the IRS explained. Other organizations, including Code Sec. 501(c)(4) organizations, may only engage in a limited amount of political activity, the IRS added.

Centralization

Cases are selected for centralization, the IRS explained, if there are indications in the application that the organization may engage in political campaign intervention, lobbying, or advocacy. "During certain periods (August 2010 to July 2011 and January 2012 to June 2012), specific names, terms and policies (such as "Tea Party" and "Patriot") were inappropriately used as criteria in determining which cases should be centralized," the agency acknowledged.

The IRS reported that 300 cases were centralized during the identified time periods. Approximately 70 of those cases included the name "Tea Party."

Mistakes

Applicants whose cases were centralized, the IRS reported, experienced inappropriate delays and over-expansive information requests in some cases. This was caused by ineffective processes and not related to the selection criteria used for the centralization of a case, the agency explained. The agency reiterated on its website that it found no indication of political bias.

■ ***Comment.*** Since centralization, more than 175 applications have been approved to date, the IRS added.

Reference: TRC EXEMPT: 12,054.10.

IRS

Continued from page 1

criteria to identify applications from organizations with the words "Tea Party" in their names. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names ("Patriots" and "9/12") or policy positions. The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status, TIGTA reported.

TIGTA further discovered that the Determinations Unit sent requests for information that TIGTA found to be unnecessary. This created burden on the organizations that were required to gather and forward information that was not needed by the Determinations Unit and generated delays in processing the applications, TIGTA reported.

■ ***Comment.*** George told lawmakers that examples of the unnecessary information requested included the names of past and future donors, listings of all issues important to the organization and what the organization's positions were regarding the issues, and whether officers or directors have run for public office or would be running for public office in the future.

Recommendations and changes

TIGTA recommended that the IRS develop a formal process for the Determinations Unit to request assistance from other groups, develop guidance for specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention, develop training or workshops to be held before each election cycle, and provide oversight to ensure that potential political cases, some of which have been in process for three years, are approved or denied expeditiously.

TIGTA also recommended that the IRS develop procedures to better document the reason(s) applications are chosen for review by the team of specialists (for example, evidence of specific political campaign intervention in the application file or specific reasons the EO function may have for choosing to review the application further based on past experience). The IRS proposed instead to review its screening procedures to determine whether, and to what extent, additional documentation can be implemented without having an adverse impact on the timeliness of case processing. Additionally TIGTA recommended that guidance on how to measure the primary activity of Code Sec. 501(c)(4) social welfare organizations be part of Treasury's Priority Guidance Plan.

Reference: TRC EXEMPT: 12,050.

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Reference Key

FED references are to *Standard Federal Tax Reporter*
USTC references are to *U.S. Tax Cases*
CCH Dec references are to *Tax Court Reports*
TRC references are to *Tax Research Consultant*

Supreme Court Finds U.K. Windfall Profits Tax Qualifies For Foreign Tax Credit; Resolves Circuit Split

◆ *PPL Corp. et al., Sup. Ct. May 20, 2013*

In a unanimous decision, the Supreme Court has found that a United Kingdom (U.K.) windfall profits tax was a creditable excess profits tax for purposes of allowing a foreign tax credit under Code Sec. 901. In a substance-over-form analysis that resolved a split among the circuits, the Supreme Court looked beyond the fact that the windfall profit tax was formally imposed on value, finding such characterization by the U.K. to be "an artificial construct" and that it, in essence, was "nothing more than a tax on actual profits above a threshold."

- ***CCH Take Away.*** "In explaining its substance-over-form analysis, the Supreme Court squarely rejected the Third Circuit's formalistic analysis, which focused only on the fact that the U.K. Parliament considered the tax to be based on the valuation of the company," Daniel Gottfried, partner, Rogin Nassau, LLC, Hartford, Conn., told CCH. The Supreme Court sided with the taxpayer in explaining that the U.K. windfall tax was based on the "actual profits" earned by each company. Therefore, the Supreme Court concluded, its predominant character was that of an income tax, Gottfried explained.
- ***Comment.*** The additional advantage gained through use of a substance-over-form approach in showing entitlement to a foreign tax credit may prove particularly helpful to taxpayers in future IRS challenges.

Background

The U.K. imposed a one-time windfall profits tax on several utility companies that were privatized between 1984 and 1996. The taxpayer, a U.S. corporation that was part owner of one of the U.K. power companies that had been privatized, filed a refund claim with the IRS seeking a foreign tax credit for its share of the windfall tax paid. The IRS disallowed the refund and the taxpayer sought relief in the Tax Court.

The Tax Court found that the predominant character of the windfall tax was that of an income tax and it was a creditable income tax under Code Sec. 901. The Third Circuit, however, reversed (2012-1 USTC ¶50,115), finding that the U.K windfall tax failed to satisfy the gross receipts requirement for consideration as an income tax under Reg. §1.901-2. The Supreme Court granted certiorari.

Supreme Court's analysis

The Supreme Court evaluated the U.K. windfall profits tax based on the normal manner in which the tax applied. The Court stressed that, contrary to an argument made by the IRS, the creditability of a foreign tax does not depend how it is characterized by a foreign government. The standard used to determine whether a tax is creditable is whether its predominant character is "that of an income tax in the U.S. sense," according to the Court. Therefore, the Court tested the U.K. tax by evaluating whether it was likely to reach net gain or net income, as described under the regulations.

The Court found that the U.K. windfall profits tax applied to net gain. Using a substance-over-form analysis, it determined that the tax was economically equivalent to an income tax on the difference, over a threshold amount, between the profits actually earned during a particular period and the amount determined by the U.K. as an amount it would have earned based upon what the private investors had paid for it.

Although the tax was nominally imposed on value (the difference between a company's flotation value and its imputed profit-making value), the Court found that "imputed profit-making value" in this case was "an artificial construct" based on the profits a company actually realized during the relevant period. The computation of the U.K. windfall tax depended upon gross receipts that were actually known. Therefore, the tax was based on true net income and was creditable under Code Sec. 901.

References: 2013-1 USTC ¶50,335; TRC INTLOUT: 3,104.

Filing/Payment Deadlines Unchanged By IRS Office Closures

The IRS has reminded taxpayers to continue filing returns and pay any taxes due as usual, despite the upcoming IRS office closures resulting from sequestration (across-the-board spending cuts). All IRS offices will be closed on May 24, June 14, July 5, July 22, and August 30, 2013, but filings and payments should continue because these days are not considered federal holidays under the Tax Code. Neither tax-filing nor tax-payment deadlines are affected by the closures.

The IRS advised taxpayers to take the furlough days into account if they need to contact the IRS with questions about their returns or payments. The agency also indicated that two more furlough days may be announced before the end of fiscal year (FY) 2013.

Unavailable services. IRS toll-free hotlines, the Taxpayer Advocate Service, taxpayer assistance centers, the online "Where's My Refund?" tool, and the Online Payment Agreement services will be unavailable on the furlough days.

Available services. The Electronic Federal Tax Payment System (EFTPS) will operate as usual, as will some online tools such as the Withholding Calculator, Order a Transcript, Earned Income Tax Credit Assistant, Interactive Tax Assistant, the preparer tax identification number (PTIN) system, Tele-Tax, and the Online Look-up Tool. Also available are many phone-based automated services, the IRS explained.

IR-2013-51, FED ¶46,398; TRC IRS: 3,150.

IRS Requests Comments On Changing Conclusive Presumption Regs For Worthless Debts

◆ *Notice 2013-35*

The IRS has requested comments on whether to change the conclusive presumption regs that allow banks and other regulated corporations to write off bad debts as worthless under Code Sec. 166. The IRS asked specifically whether changes to bank regulatory standards require changes to the tax regs, and whether the tax regs are still consistent with Code Sec. 166.

■ ***CCH Take Away.*** Debts charged off by banks and other regulated corporations are presumed worthless under Code Sec. 166 in the year that the corporations must change off the debt under regulatory standards. The IRS stated that the standards applied by the regulators must result in loan classifications similar to the criteria for worthlessness under Code Sec. 166. Because regulatory standards have changed, the IRS decided it must reevaluate whether regulatory standards are "an acceptable surrogate for independent investigation" of worthlessness by the IRS.

Conclusive presumption regs

Treas. Reg. §1.166-2(d)(1) and (3) provide two alternative rules that provide a conclusive presumption of worthlessness for banks and other regulated corporations. Under the "specific order method," a bank or other corporation can write off a debt (1) if Federal or state regulatory authorities issue a specific order that the debt is worthless, or (2) if the regulators have established write-off policies and the regulators confirm in writing, as part of an audit, that the write-off would have been the subject of a specific order.

Under the "book conformity method" (for banks only), the regulator must issue an express determination that the bank applies loan loss classification standards that are consistent with regulatory standards. The standards are set forth in the Uniform Agreement on the Classification of Assets and Securities Held by Banks (1991) or similar guidance issued by appropriate federal regulator, such as the Comptroller of the Currency.

Changing standards

The IRS believed that regulatory standards for worthlessness were similar enough to the tax standards under Code Sec. 166 when the tax regs were issued, but the standards have now changed. The 1991 standards are no longer used; important changes were made to bank standards in 2004 and 2009 by bank regulators and by the Financial Accounting Standards Board, which regulates financial statement reporting.

The IRS also has received questions about applying the specific order method to other regulated corporations, particularly insurance companies and government-sponsored enterprises.

Comments requested

The IRS requested comments by October 8, 2013. Issues for comment included:

- Which corporations are regulated in a manner consistent with the tax standards, and which should be covered by the revised rules?
- Should the regs be modified to reflect changes in bank regulatory standards? If so, how?
- Are current bank regulatory standards under GAAP sufficiently similar to Code Sec. 166 standards of worthlessness?

References: FED ¶46,402; TRC BUSEXP: 48,250.

Form 1099-C Precludes Bank's Proof Of Claim, Bankruptcy Court Finds

◆ *Reed, BC-DC Tenn., May 14, 2013*

A Form 1099-C, Cancellation of Debt, issued by a bank to a debtor, constituted convincing evidence against the bank that it had canceled or discharged a taxpayer's deficiency balance under Code Sec. 6050P, a Tennessee bankruptcy court has found. It would be inequitable to require the debtor to report the cancellation of debt income on his Form 1040 and pay tax on it, but then allow the creditor to collect the debt, the court reasoned.

■ ***CCH Take Away.*** The bankruptcy court's findings were in contravention of several IRS information letters (INFO. 2005-0207 and INFO. 2005-0208), which stated the IRS did not view issuance of a Form 1099-C as an admission from a creditor that it had discharged a debt and can no longer pursue collection. The bankruptcy court found that information letters were only "entitled to respect" if they had the power to "persuade," which, it held, these letters did not. Lenders as a group will certainly have an interest in proving this decision wrong. Taxpayers may have mixed feelings, depending upon whether or nor it is advantageous to have income recognized when, for example, an insolvency and principal residence exclusion may apply. In the meantime, banks and other lenders may think twice before issuing a Form 1099-C if it forecloses any future right to collection.

Background

Code Sec. 6050P provides that an applicable entity, such as a financial institution, that discharges an indebtedness of any person of at least $600 must file a Form 1099-C information return with the IRS. A discharge of indebtedness is deemed to have occurred—and, therefore, a Form 1099-C is required to be filed—only if an identifiable event has occurred.

A debtor received a Form 1099-C from a bank, noting that $5,074 of debt had been discharged in that tax year. The debtor then reported as income on his tax return for that year. Subsequently, the debtor entered Chapter 13 bankruptcy, and the bank filed a proof of claim for $18,825, which included the amount reported on the 1099-C, inter-

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EBSA Releases Proposals On Lifetime Stream Of Income Payments For Defined Contribution Plans

◆ *EBSA ANPRM*

The U.S Department of Labor's Employee Benefits Security Administration (EBSA) is considering proposed regs that would require pension benefits statements under defined contribution plans to present accrued benefits as an estimated lifetime stream of income payments in addition to being presented as an account balance. In the same just-issued advance notice of proposed rulemaking, EBSA would also require a participant's accrued benefits to be projected at his or her retirement date and converted to and expressed as an estimated lifetime stream of payments.

■ ***CCH Take Away.*** "This proposal is aimed to help participants in defined contribution plans understand what their account balances can provide in the way of a monthly lifetime payment, to better prepare for retirement (and the risk of outliving their retirement savings)," Elizabeth Dold, principal, The Groom Law Group, Chartered, Washington, D.C., told CCH. "Although the proposal comes with administrative burdens and costs for plan sponsors and service providers, hopefully they would be outweighed by increased awareness (and increased savings) by plan participants. There will be considerable commentary on these and related issues as the project moves through the administrative process."

Background

In 2010, EBSA requested comments on lifetime income options for participants and beneficiaries in retirement plans. The agency intended to study how it could or should enhance the retirement security of participants in employer-sponsored retirement plans and in individual retirement arrangements by facilitating access to, and use of, lifetime income products or other arrangements designed to provide a lifetime stream of income after retirement.

Concepts

EBSA described a number of concepts it is considering:

- A participant's pension benefit statement would show his or her current account balance and an estimated lifetime income stream of payments based on such balance. The lifetime income illustration would assume the participant had reached normal retirement age as of the date of the benefit statement, even if he or she is much younger.
- For a participant who has not yet reached normal retirement age, his or her pension benefit statement also would show a projected account balance and the estimated lifetime income stream based on such balance as well as on assumed future contributions and investment returns. This account balance and the related lifetime income payment would be expressed in current dollars.
- Both lifetime income streams (for example, the one based on the current account balance and the one based on the projected account balance) would be presented as estimated monthly payments based on the expected mortality of the participant. In addition, if the participant has a spouse, the lifetime income streams would be based on the joint lives of the participant and spouse.
- Pension benefit statements would contain an understandable explanation of the assumptions behind the lifetime income stream illustrations. Pension benefit statements also would contain a statement that projections and lifetime income stream illustrations are estimates and not guarantees.

Comments requested

EBSA requested comments on whether, and how, a worker's quarterly or annual pension benefit statement could present his or her accrued benefits as an estimated lifetime stream of payments, in addition to being presented as an account balance. EBSA also requested comments on the safe harbor assumptions used for the calculator, interest rate assumptions, and disclosure of assumptions.

Reference: TRC RETIRE: 51,352.

Form 1099-C

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est, attorney's fees, and collection costs. In support of its claim, the bank produced two IRS information letters that stated issuance of a 1099-C was not an admission that a debt had been canceled or discharged.

Court's analysis

IRS information letters that stated a creditor could still pursue collection of a debt for which it had previously issued a Form 1099-C were not determinative, and the language of the regulations under Code Sec. 6050P were open to interpretation, the court found. To the contrary, the court found that the information letters outlining how the IRS viewed a 1099-C were in direct conflict with the Internal Revenue Code, which included cancellation of indebtedness income in its definition of gross income.

The court found that while issuance of a 1099-C did not in and of itself discharge a debt, the court found that it did reflect evidence that the issuing financial institution had canceled or discharged the debt. Because a Form 1099-C is not required except after the occurrence of "identifiable event," the issuance of a Form 1099-C seems to indicate that some event resulting in cancellation or discharge has occurred.

The court also found that it was in the interest of justice and equity to prevent the creditor from pursuing its claim for the amount reported on Form 1099-C after the debtor had included it as gross income on his tax return and paid tax on it. However, the debtor was still liable for interest, collection costs, and attorney's fees that were already due on the promissory note up to the date of underlying debt's cancellation.

References: 2013-1 USTC ¶50,325; TRC SALES: 12,452.

IRS Chief Counsel Nixes Dividend Received Deduction Where Stock Hedged With S&P 500 Index Options

◆*FAA20131902F*

In Field Attorney Advice, IRS has determined that Standard and Poor's (S&P) 500 index options held by a parent corporation would be treated as a position held by the parent's related subsidiaries for purposes of the requisite holding period for the dividend received deduction.

■ ***CCH Take Away.*** According to the parent corporation, tax considerations were not sought, asked about or addressed in the establishment of the option program. Chief Counsel, however, determined the parent's business reasons did not alter its conclusion that the options were executed with the circumscribed purpose to diminish the risk of loss with respect to the stocks under Code Sec. 246.

Background

The parent company, X, owned 100 percent of four related entities (collectively called Related Party Subsidiaries). The Related Party Subsidiaries were part of an affiliated group of corporations, along with X, which filed a consolidated tax return.

To hedge against price fluctuations of the equity security portfolio of X and the Related Party Subsidiaries, X initiated a strategy utilizing put and call options on the S&P 500 index. X was a writer and a purchaser of both puts and calls. X recognized that its strategy was a straddle under Code Sec. 1092.

X reported dividend received deductions on its return. Some of the dividends in connection with the deductions came from the corporations for which X purchased S&P 500 index options to hedge its exposure to fluctuations in the fair market value of these corporations. The IRS indicated that it would deny the dividend received deductions claimed with regard to these corporations under Code Sec. 246(c)(4)(C).

Chief Counsel's analysis

Chief Counsel first noted that a corporation is entitled to a dividends received deduction of a percentage of dividends received from a domestic corporation that is subject to income tax. However, no deduction is allowed if the taxpayer did not hold the underlying shares of stock for a specified period of time; that is, the taxpayer held the stock for 45 days or less during the 91-day period beginning

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AFRs Issued For June 2013

◆*Rev. Rul. 2013-12*

The IRS has released the short-term, mid-term, and long-term applicable interest rates for June 2013.

Applicable Federal Rates (AFR) for June 2013

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	.18%	.18%	.18%	.18%
110% AFR	.20%	.20%	.20%	.20%
120% AFR	.22%	.22%	.22%	.22%
130% AFR	.23%	.23%	.23%	.23%
Mid-Term				
AFR	.95%	.95%	.95%	.95%
110% AFR	1.05%	1.05%	1.05%	1.05%
120% AFR	1.14%	1.14%	1.14%	1.14%
130% AFR	1.24%	1.24%	1.24%	1.24%
150% AFR	1.44%	1.43%	1.43%	1.43%
175% AFR	1.67%	1.66%	1.66%	1.65%
Long-Term				
AFR	2.47%	2.45%	2.44%	2.44%
110% AFR	2.72%	2.70%	2.69%	2.68%
120% AFR	2.96%	2.94%	2.93%	2.92%
130% AFR	3.22%	3.19%	3.18%	3.17%

Adjusted AFRs for June 2013

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	.18%	.18%	.18%	.18%
Mid-term adjusted AFR	.95%	.95%	.95%	.95%
Long-term adjusted AFR	2.47%	2.45%	2.44%	2.44%

The Code Sec. 382 adjusted federal long-term rate is 2.47%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 2.70%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.39% and 3.17%, respectively, however, the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before January 1, 2014, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 1.20%.

References: FED ¶46,400; TRC ACCTNG: 36,162.05.

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Jurisdiction

A state (Massachusetts) family court judge had the authority to grant a noncustodial parent the right to claim his minor children as dependents on his federal tax returns. Contrary to the custodial parent's argument, Code Sec. 152 did not preempt the state court judge's authority to allocate the dependent exemptions. While a state court order is not itself sufficient to allocate dependent exemptions under Reg. §1.152-4(g), there is nothing in the regulation that precludes a state court from allocating dependent exemptions or ordering the custodial parent to execute the appropriate form releasing the custodial parent's right to the exemption.

Iv v. Hang, MAAppCt, 2013-1 USTC ¶50,329; TRC FILEIND: 6,152.55.

A federal district court had subject matter jurisdiction over a financial institution's lien priority claim against the government. A suit to determine the priority and validity of a federal tax lien arises under Code Sec. 6323. Therefore, the bank's lien priority claim raised a federal question over which the court had jurisdiction.

HSBC Bank USA, N.A. v. Curtin, DC Ill., 2013-1 USTC ¶50,327; TRC LITIG: 9,252.05.

Deductions

The Tax Court made determinations regarding a number of claimed losses and deductions by the taxpayers, a married couple, disallowing many as unsubstantiated or lacking a business purpose. The court analyzed the taxpayer's one-aircraft transport business using the Code Sec. 183 factors and determined that it was not engaged in for profit. No business records supported the taxpayers' claims regarding purported rental expenses, and the taxpayers' grape farm never produced any income. The court also sustained an accuracy-related penalty imposed by the IRS.

Heinbockel, TC, CCH Dec. 59,537(M), FED ¶48,055(M); TRC BUSEXP: 3,200.

A medical corporation was entitled to deduct most of a False Claims Act settlement paid to the government as a business expense because the payment constituted compensatory damages. A payment made in satisfaction of a claim against a business may be deductible as an ordinary and necessary business expense. It was reasonable to conclude the vast majority of the settlement was compensatory based on the large amount of prejudgment interest necessary to make the government whole on the losses incurred by the fraud. Moreover, the settlement specifically included fines that could have been intended to cover the bulk of any punitive damages against the corporation. Finally, some portion of the payment constituted a mandatory penalty under the FCA.

Fresenius Medical Care Holdings, Inc., DC Mass., 2013-1 USTC ¶50,323; TRC BUSEXP: 18,802.10.

Liens and Levies

The IRS wrongfully levied five payments made by a business purchaser to the business seller/tax debtor to which a bank had a superior security interest. The bank had a superior interest in the five payments because its security interest in the payments attached before the year two tax lien was filed.

First Bancorp, Inc., DC Ky., 2013-1 USTC ¶50,326; TRC IRS: 48,106.

Bankruptcy

A debtor was entitled to quash an individual's garnishment to collect a judgment because the debtor's payment of backup withholding to the IRS was proper. The debtor was required under Code Sec. 6041(a) to report the payment to the IRS on Form 1099, Miscellaneous.

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IRS To Refund Fees For Cancelled Registered Return Preparer Test Appointments

The IRS has announced that, in light of the U.S. District Court for the District of Columbia's injunction of its registered tax return preparer (RTRP) oversight initiative in *Loving, 2013-1* USTC *¶50,156,* it will refund fee amounts collected for scheduled registered tax return preparer test appointments canceled because of the injunction. The IRS will also refund fees from return preparers who tested on or after January 18, 2013, the date on which the district court enjoined enforcement of the program.

Automatic refund. Refunds will be processed automatically by July 19, 2013. No action on the part of the return preparer is necessary to obtain the refund.

Other refund requests. The IRS stated that no additional refund or reimbursement requests related to the RTRP regs are being considered at this time.

Refund for Cancelled RTRP Test Appointments; www.irs.gov; TRC IRS: 3,204.30.

IRS Announces Disaster Relief For Illinois Storm And Flood Victims

The IRS has provided temporary relief from certain filing and payment requirements to victims of severe storms and flooding that began on April 16, 2013 in the following Illinois counties: Cook, DeKalb, DuPage, Fulton, Grundy, Kane, Kendall, Lake, LaSalle, McHenry, and Will. Specified filing and payment deadlines falling on or after April 16, 2013 and on or before May 1, 2013, have been postponed until July 1, 2013.

IL-2013-28, FED ¶46,397; TRC FILEIND: 15,204.25.

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Additionally, the debtor was required to withhold a portion of the payment under Code Sec. 3406(a) because the individual refused to provide his TIN or to complete a Form W-9.

Childers v. Receivables Performance Management LLC, DC Wash., 2013-1 USTC ¶50,322; TRC FILEBUS: 18,064.

Retirement Plans

An individual was liable for the 10-percent additional tax on early distributions that she took from each of her two qualified retirement plans because neither of the distributions qualified for any of the hardship exceptions in Code Sec. 72(t)(2). The first-time home purchase exception did not apply because she did not have legal title to the property and she failed to prove that she was an equitable owner. The accuracy-related penalty was imposed because the imposition of the early distribution tax, along with her failure to report income and retirement plan distributions, resulted in her substantially understating her tax.

Ung, TC, CCH Dec. 59,538(M), FED ¶48,056(M); TRC RETIRE: 42,554.224.

Tax Credits

The IRS has released the 2013 inflation adjustment factor for the carbon dioxide (CO2) capture credit. The inflation adjustment factor for 2013 is 1.0626. The credit is $21.25 per metric ton of qualified CO2 under Code Sec. 45Q(a)(1) and $10.63 per metric ton of qualified CO2 under Code Sec. 45Q(a)(2).

Notice 2013-34, FED ¶46,394; TRC BUSEXP: 55,600.

Constitutional Rights

The Sixth Amendment rights of a CPA who pled guilty to aiding and abetting tax evasion were not violated when the court denied him new counsel because his dissatisfaction with his attorney was not justified. The CPA admitted that he thoroughly discussed his case with his appointed counsel, was satisfied with the job his counsel had done, and that no one had promised him leniency in exchange for his guilty plea. Moreover, the plea agreement clearly stated the charges to which he pled guilty and the sentence that was likely to be imposed upon him. Further, there was sufficient evidence to show that the counsel provided competent and effective assistance to the individual.

Baisden, CA-8, 2013-1 USTC ¶50,324; TRC IRS: 66,460.

Admissions and Stipulations

An individual was liable for tax on capital gains and other income due to deemed admissions he made by failing to respond to IRS requests for admission. He was also subject to failure-to-file and accuracy-related penalties. A notice of deficiency filed by the IRS was timely because deemed admissions by the taxpayer indicated that he filed a return less than three years prior to the issuance of the deficiency.

Hoang, TC, CCH Dec. 59,539(M), FED ¶48,057(M); TRC LITIG: 6,606.

Work Privilege

A law firm's challenge to the order seeking production of documents for which the IRS only claimed the attorney-client and/or attorney work product privileges was partly granted. Of the requested documents, a memorandum pertaining to a legal opinion in response to a request for assistance regarding whether accuracy-related penalties could be imposed on the firm partners was not pre-decisional or deliberative so as to be entitled to deliberative process privilege because the IRS relied upon it as statement of law and public policy.

Kearney Partners Fund, LLC, DC Fla., 2013-1 USTC ¶50,328; TRC IRS: 9,454.

Deduction

Continued from page 6

on the date that is 45 days before the date on which such share becomes ex-dividend with respect to the dividend.

Chief Counsel further observed that under Code Sec. 246(c)(4), a taxpayer's holding period is reduced where the taxpayer's risk of loss is diminished for the underlying shares of stock. Code Sec. 246(c)(4)(C) provides that a taxpayer has diminished its risk of loss by holding one or more other positions with respect to substantially similar or related property.

Based on X's concessions, Chief Counsel assumed that the options held by X represented a position, the options diminished the risk of loss with respect to the equity holdings of the Related Party Subsidiaries, and options qualified as substantially similar or related property with respect to the stock. Chief Counsel determined that upon entering the options, X knew that the positions would offset the domestic equity portfolio accounts of the Related Party Subsidiaries and, in fact, entered into the option strategy to offset risk of loss in the equity portfolios.

Reference: TRC CCORP: 9,204.10.

Self-Prepared, E-Filed Returns Increase In 2013

The IRS has announced that more than 43.5 million people self-prepared and e-filed their tax returns from home during the 2013 filing season. The IRS also reported that it has issued refunds totaling nearly $258 billion.

E-filing. Overall, the IRS reported that 113.9 million returns were e-filed through May 10, 2013. Tax professionals e-filed 70.3 million returns, which reflected almost no change from 2012. Individuals self-prepared and e-filed 43.5 million returns, up from 41.7 million in 2012.

Refunds. Approximately 80 percent of all refunds issued through May 10, 2013 were direct deposit, the IRS reported. The average refund amount in 2013 is $2,860, down from $2,921 in 2012.

IR-2013-52, TRC FILEIND: 18,052.