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Inside this Issue

IRS Agrees With Tax Court: Only One IRA Rollover Contribution In One-Year Period; Provides Transition Relief

◆ *Ann. 2014-15*

The IRS has announced that it will issue new proposed regs and revise Publication 590, Individual Retirement Arrangements (IRAs), to reflect the Tax Court's decision in *Bobrow, TC Memo. 2014-21, CCH Dec. 59,823(M).* In *Bobrow,* the Tax Court held in January that a taxpayer could make only one nontaxable rollover contribution within each one-year period regardless of how many IRAs the taxpayer maintained. The one-year limitation under Code Sec. 408(d)(3)(B) is not specific to any single IRA maintained by an individual but instead applies to all IRAs maintained by a taxpayer. The new proposed regs will be prospective, the IRS added; the old rule will continue to apply to IRA distributions occurring before January 1, 2015.

■ ***CCH Take Away.*** "Although the pending change may not be welcomed, the Announcement is helpful to (1) understand where the IRS is heading, and have a full opportunity to comment as part of the pending regulations process, and (2) appreciate the change will be prospective, granting some much needed time for system/document changes," Elizabeth Thomas Dold, principal, The Groom Law Group, Washington, D.C., told CCH.

Background

Bobrow involved a married couple who received distributions from various IRAs. The Tax Court looked to Code Sec. 408(d)(3)(B). The plain language of Code Sec. 408(d)(3)(B), the court found, limits the frequency with which a taxpayer may elect to make a nontaxable rollover contribution. The one-year limitation is not specific to any single IRA maintained by a taxpayer but instead applies to all IRAs maintained by a taxpayer. A taxpayer who maintains multiple IRAs may not make a rollover contribution from each IRA within one year, the court concluded.

■ ***Comment.*** The Tax Court noted that individuals who maintain more than one IRA may make multiple direct rollovers from the trustee of one IRA to the trustee of another IRA without triggering Code Sec. 408(d)(3)(B).

■ ***Comment.*** The one-year limitation period does not reset during each calendar or tax year. It runs for a full 365 days (366 days if overlapping a leap-year's February 29th), ending on the date of the IRA distribution being tested rather than at the end of the 60-day period within which the recipient must redeposit the distribution into another qualified plan.

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The IRS explained that existing proposed regs (§1.408-4(b)(4)(ii)) and Publication 590 provide that the limitation is applied on an IRA-by-IRA basis. The IRS intends to withdraw the existing proposed regs and revise Publication 590 to adopt the *Bobrow* decision. The new proposed regs would

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Route to: ________ ________ ________ ________ ________

IRS Issues 2014 Auto And Truck Maximum FMVs For Cents-Per-Mile/Fleet-Average Valuation

◆ *Notice 2014-11*

The IRS recently issued the maximum fair market value (FMV) amounts that designate the proper valuation rule for employers calculating fringe benefit income from employer-provided automobiles, trucks, and vans first made available for personal use in 2014. Taxpayers with employer-provided vehicles within the designated FMV amounts may apply the vehicle cents-per-mile rule or fleet average valuation rule, as appropriate.

■ ***CCH Take Away.*** "The cents-per mile valuation rule is very restricted," Barbara Nowotny, CPA, CFP, Barbara Nowotny LLC, Bellaire, Texas, told CCH. "You can only use it if the FMV of your automobile does not exceed $16,000 [$17,300 for trucks and vans]. Also, the vehicle has to actually be driven 10,000 miles or more during the year. Those two requirements will exclude a lot of vehicles." Nowotny explained that if an employer could not use the cents-per-mile valuation rule, there were other rules not addressed in the Notice it could use—the commuting rule and the lease value rule. The commuting rule is only for employer-sponsored commuting pools. "The third rule is the one I see most often in practice—the lease value rule. "

Background

An employer that has provided a vehicle for an employee's personal use must include the value of that personal use in that employee's income and wages as a fringe benefit under Code Sec. 61. Employers and taxpayers may calculate the value of their personal use using several valuation methods, including the cents-per-mile valuation rule outlined in Reg. §1.61-21(e) or the fleet average valuation rule under Reg. §1.61-21(d).

Cents-per-mile valuation rule

The mileage allowance rate for 2014 is 56 cents-per-mile (down from 56.5 cents-per-mile for 2013). The maximum 2014 FMV amounts for use of the cents-per-mile valuation rule are:

- $16,000 for a passenger automobile (the same as for 2013); and
- $17,300 for a truck or van, including passenger automobiles such as minivans and sport utility vehicles, which are built on a truck chassis (up from $17,000 in 2013).

■ ***Comment.*** CCH correctly projected the 2014 FMV amounts for use of the cents-per-mile valuation rule. *See the November 27, 2013 issue of this newsletter for details.*

Fleet-average valuation

Employers maintaining a fleet of at least 20 automobiles can value the FMV of each automobile as equal to the average value of the entire fleet. The fleet average value is the average of the FMV of all automobiles used in the fleet.

The maximum FMV amounts for use of the fleet-average valuation rule in 2014 are $21,300 for a passenger automobile (up from $21,200 in 2013) and $22,600 for a truck or van (up from $22,300 in 2013).

References: FED ¶46,294; TRC COMPEN: 33,152.10.

Rollover

Continued from page 1

provide that the IRA rollover limitation applies on an aggregate basis.

Prospective. Adoption of the Tax Court's decision, the IRS noted, will require IRA trustees to make changes in the processing of IRA rollovers and disclosure documents, which will take time. Therefore, the IRS will not apply the *Bobrow* interpretation of Code Sec. 408(d)(3)(B) to any rollover that involves an IRA distribution occurring before January 1, 2015. The new proposed regs would not be effective before January 1, 2015.

■ ***Comment.*** The IRS explained it intends to issue new proposed regs regardless of the ultimate resolution of *Bobrow* in the courts.

■ ***Comment.*** The Financial Industry Regulatory Authority (FINRA) recently cautioned individuals that competition among financial firms for IRA business is strong, which often advertise about rollovers. FINRA did not directly comment on *Bobrow* but recommended that IRA owners seek professional advice before rolling over retirement funds.

References: FED ¶46,293; TRC RETIRE: 66,702.

Supreme Court Rules Severance (SUB) Payments Subject To FICA

At press time, the Supreme Court released its much-anticipated decision in *In re Quality Stores (572 U.S.___ (2014))*, holding for the IRS. Reversing the Sixth Circuit, the Court ruled that the involuntary severance (SUB) payments under review constituted taxable wages subject to payroll taxes under the Federal Insurance Contributions Act (FICA). *Full analysis will appear in next week's issue of this newsletter.*

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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*

IRS Highlights Exam Activity; Attributes 2012 AGI Increase To Net Capital Gains

◆ *2013 IRS Data Book, IR-2014-34; Winter 2014 Statistics of Income Bulletin, IR-2014-33*

The IRS has issued its annual Data Book for fiscal year (FY) 2013, which provides statistical information on examinations, collections, and other activities. In particular, the Data Book shows the categories of taxpayers that have drawn the most attention from IRS examiners during FY 2013. The IRS also issued its Winter 2014 Statistics of Income (SOI) bulletin, featuring articles on individual adjusted gross income (AGI) for 2012, sales of capital assets from 2004 to 2007, split-interest trusts for 2012, and nonprofit charitable organizations in 2010.

■ ***CCH Take Away.*** Susan Long, professor, Syracuse University and co-director, Transactional Records Access Clearinghouse (TRAC), cautioned against overemphasizing the audit rates reported in the Data Book without looking more closely at what an audit means. "The hours spent on a corporate audits keep rising for smaller corporations (they were up for each asset class between FY 2012 and FY 2013) until you reach $250 million in assets or more," Long told CCH. "For large corporate categories, in contrast, up and including the $20 billion or more asset size firm, hours per audit keep shrinking. . . . This remains true even though the additional tax change per hour spent continues to be largest with the corporations with $1 billion in assets or higher, and the very highest with the very largest corporations with $20 billion in assets or more."

Returns/collections

The IRS reported that during FY 2013 it processed more than 240 million individual, corporate, and employment tax returns, paid out approximately $364 billion in tax refunds, and generated $2.9 trillion in revenue for the federal government. The IRS also reported that during FY 2013 it had suspended or rejected more than 5.7 million suspicious returns claiming approximately $17.8 billion in fraudulent tax refunds.

Exam coverage: individuals

Individual returns filed in 2012, including both business and nonbusiness taxpayers, were audited at an overall 1.0 percent rate during FY 2013, based on more than 145.8 million individual returns filed. Broken down further, individual business tax returns (other than farm returns), were audited at a 1.78 percent rate, based on 759,179 audited returns out of more than 42.7 million filed.

Exam coverage: small businesses

Partnerships and S corps filed a total of approximately 80.3 million returns during FY 2013, a slight increase from FY 2012 when these types of entities filed only 79.9 million returns. Despite the increase in the number of returns filed, the audit rate dropped during FY 2013 from 0.5 percent in FY 2012 to 0.4 percent.

Exam coverage: corporations

The IRS examined approximately 1.4 percent of all corporate returns (other than S corps) during FY 2013, based on a total of nearly 1.96 million returns and 28,235 examinations. The IRS reported that during FY 2013 it recommended nearly $16.7 billion in additions to tax for corporate returns. The additions to tax recommended for returns filed by corporate taxpayers with more than $20 billion in assets comprised almost 52 percent of the total additions to tax. Large corporations with total assets between $5 billion and $20 billion experienced an audit rate of nearly 61 percent, representing a dramatic increase from FY 2012 when the audit rate for this same category of taxpayer was 45 percent.

AGI

The IRS reported that although individual taxpayers filed 144.9 million U.S. individual income tax returns for 2012—a .04 percent decrease from the 145.6 million returns filed for 2011—overall adjusted gross income increased by nine percent from 2011 to 2012, reportedly the highest increase in AGI since the period between 1996 and 1997.

■ ***Comment.*** The increase in AGI can be partly explained by the large increase in net capital gains. The IRS reported that net capital gains increased by 60.4 percent from

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IRS To Shift Some TE/GE Functions To Chief Counsel

The IRS has announced a shift of some responsibilities from the Tax Exempt and Government Entities (TE/GE) Division to the Office of Chief Counsel (TE/GE). Functions to transfer include revenue rulings and procedures, private letter rulings, and technical advice. These functions are already performed by Chief Counsel offices for other Tax Code provisions.

■ ***Comment.*** "The realignment makes sense," Nancy Ortmeyer Kuhn, member, Jackson & Campbell, P.C., Washington, D.C., told CCH. "It's a big deal and has been a long time coming," said Kuhn, who is head of the firm's Tax Group. "It will reduce duplication, streamline processes, and create efficiencies. The IRS will be able to provide leaner staffing for some projects."

Realignment. "TE/GE is one of the few places in the IRS where published guidance, private letter rulings and technical memoranda are worked on outside of Chief Counsel," the IRS explained. "This change will bring TE/GE in alignment with the other three IRS business operating divisions, which use Counsel for their guidance and legal work." The shift should have relatively little impact on practitioners and organizations in the TE/GE area, the IRS indicated.

Timing. Tax law specialists and support staff will shift from TE/GE to Chief Counsel, the IRS said. The IRS has notified the National Treasury Employees Union (NTEU) and continues to work on the details of the realignment. The agency aims to complete the realignment by October 1, 2104.

IRS Statement; TRC IRS: 3,108.

IRS Enters Into Settlement With Appraisers Who Overvalued Building Façade Easements

◆ *IR-2014-31*

The IRS has imposed a five-year suspension on appraisers who overvalued building façade easements for charitable contribution deductions. The appraisers acknowledged violating Circular 230's due diligence requirements in agreeing to the suspension.

- ***CCH Take Away.*** The IRS has discovered valuation problems with façade easements. In some cases, the façade was already subject to restrictions under local zoning ordinances. As a result, the taxpayer would be giving up nothing, or very little. In elevating the latest suspensions to a news release from its National Office, the IRS is clearly sending a warning to other appraisers that it will be aggressive in contesting valuations.
- ***Comment.*** The appraisers agreed to disclosure of the terms of the settlement.

Background

Taxpayers may claim a charitable deduction for the value of a qualified conservation contribution. Facade easements may qualify as a qualified conservation contribution. Generally, taxpayers agree not to modify the façade of their historic building and they give an easement to this effect to a charitable organization. The easement must be granted exclusively for conservation purposes.

Settlement

In this case, the IRS reported that the appraisers prepared reports valuing facade easements donated over several tax years. On behalf of each donating taxpayer, an appraiser completed Part III, Declaration of Appraiser, of Form 8283, Noncash Charitable Contributions, certifying that the appraiser did not fraudulently or falsely overstate the value of such facade easement. In valuing the facade easements, the appraisers applied a flat percentage diminution, generally 15 percent, to the fair market values of the underlying properties prior to the easement's donation.

The appraisers acknowledged violating Section 10.22(a)(1) of Circular 230, for failing to exercise due diligence in the preparation of documents relating to IRS matters. The appraisers also acknowledged violating Section 10.22(a)(2) of Circular 230 for failing to determine the correctness of written representations made to Treasury.

- ***Comment.*** Appraisers need to understand that they are subject to Circular 230, and must exercise due diligence," Karen Hawkins, director, IRS Office of Professional Responsibility, said. "Taxpayers expect advice rendered with competence and diligence that goes beyond the mere mechanical application of a rule of thumb based on conjecture and unsupported conclusions."

The appraisers agreed to a five-year suspension of valuing facade easements and undertaking any appraisal services that could subject them to penalties under the Tax Code. The appraisers also agreed to abide by all applicable provisions of Circular 230, the IRS reported.

- ***Comment.*** If the claimed value is based on an appraisal and results in a substantial valuation misstatement, a substantial estate or gift tax valuation understatement, or a gross valuation misstatement, the appraiser may be liable for the Code Sec. 6665A penalty.

Reference: TRC INDIV: 51,458.15.

Tax Court Remands Offer-In-Compromise To IRS; Agency Failed To Consider Public Policy & Equity

The Tax Court has remanded an offer-in-compromise (OIC) to the IRS for further consideration because the agency rejected the OIC without considering public policy and equity grounds for accepting the taxpayers' offer. At the same time, the court rejected the taxpayers' argument that the IRS was obligated to accept the OIC as a matter of law.

Background. The taxpayers (husband and wife) offered an OIC of $10,000 to settle a deficiency of $69,000 plus interest. The deficiency resulted from criminal conduct by the taxpayers' bookkeeper, who embezzled funds and routed them through taxpayers' bank accounts. The taxpayers agreed that the proposed deficiency was correct. The IRS proposed to levy on taxpayers' property. IRS Appeals' officials upheld the proposed levy.

The IRS may accept an OIC on grounds of effective tax administration (ETA). The taxpayers' circumstances did not qualify as an economic hardship, so acceptance of the offer was not required under the ETA standard for hardship.

Court's analysis. The court concluded that the IRS failed to consider an ETA settlement on public policy and equity grounds. Despite the IRS's wide discretion, it must still review the issues the taxpayers raised during the hearing and the undeveloped record demonstrated that the IRS did not fully considered the ETA OIC as required. The IRS should consider whether the theft losses were exceptional circumstances. The court rejected the IRS's argument that the public policy and equity examples in the IRS regs (Reg. §301.7122-1(c)(3)(iv)) were the only basis for accepting the taxpayers' offer.

Bogart, TC Memo. 2014-46, CCH Dec. 59,854(M); TRC IRS: 42,056.15.

AGI

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$310.9 billion in 2011 to $498.7 billion in 2012. Taxpayers likely were accelerating their investment income into 2012 prior to the scheduled expiration of taxpayer-friendly long-term capital gains rates.

References: FED ¶¶46,296, 46,295; TRC IRS: 9,402.

IRS Chief Counsel Denies Treatment Of Expenses As Specified Liability Losses Entitled To Extended NOL Carryback

◆ *FAA 20141002F*

IRS Chief Counsel, in field attorney advice, has rejected a taxpayer's argument that expenses incurred in connection with workers compensation claims should be treated as specified liability losses (SLLs). Accordingly, net operating losses (NOLs) resulting from the expenses are not entitled to the 10-year carryback that applies to SLLs.

■ ***CCH Take Away.*** NOLs ordinarily are entitled to a two-year carryback and a 20-year carryforward. However, a taxpayer that has an SLL, as defined in Code Sec. 172(f), can treat the losses as a separate NOL that can be carried back for 10 years. SLLs include payments that satisfy a liability under a Federal or state workers compensation act. The taxpayer failed to convince Chief Counsel that expenses incurred to contest or investigate workers compensation claims were entitled to treatment as SLLs, the same as the claims payments themselves.

■ ***Comment.*** One problem is that a liability cannot be treated as an SLL unless the act giving rise to the liability occurred at least three years before the beginning of the current year (and the taxpayer used the accrual method of accounting). Generally, workers compensation expenses (including insurance premiums and self-insured expenses) would be paid no more than a year before the covered period. The IRS indicated that deductions for liabilities for premiums for workers compensation insurance do not generally qualify as SLL because they do not satisfy the three-year rule.

Background

The taxpayer filed a voluntary bankruptcy petition under Chapter 11. The taxpayer self-insured its workers compensation liabilities, and used the accrual method of accounting. For the year at issue, the taxpayer had an NOL. Taxpayer claimed that a portion of the NOL was an SLL, namely workers compensation benefits and costs associated with workers compensation claims in three states: California, Oregon, and Washington.

The IRS proposed to disallow SLL treatment for taxpayer's deductions for legal fees paid to contest or investigate claims, and for certain other expenses. The taxpayer did not show that it satisfied the three-year rule.

The taxpayer argued that it paid legal fees and related costs, as well as administrative costs associated with claims, that were required under the states' workers compensation laws and, therefore, were SLLs. The taxpayer also argued that workers compensation insurance premium costs are SLLs and that these payments costs administrative costs as well as compensation claims.

■ ***Comment.*** The IRS summarized the taxpayer's argument as: workers compensation insurance premium payments are SLLs; and these payments cover administrative costs as well as the cost of compensating claimants.

State law

California requires that a self-insured employer pay a security deposit to the state to secure its workers compensation obligations, including claims themselves and administrative costs. The deposit required under California law must be 125 percent of the estimated future liability for workers compensation, plus 10 percent of the estimated future liability for administrative and legal costs relating to self-insured claims. The state can use the security deposit to reimburse administrative costs and workers compensation obligations of an insolvent self-insurer.

■ ***Comment.*** In the case of *In re Harvard Industries (3d Cir. 2009),* the court treated additional insurance premiums paid by a self-insured employer to cover the insurer's administrative costs as SLLs

Chief Counsel's analysis

Chief Counsel concluded that California's requirement that the self-insured employer pay a deposit does not result in actual liabilities under the state's workers compensation law. A deposit based on an estimate of contingent liabilities is not relevant. The facts did not demonstrate, and the taxpayer did not prove, that state law obligated the taxpayer to pay the expenses claimed as SLL. The taxpayer also failed to demonstrate that it satisfied the three-year rule. Chief Counsel also rejected the taxpayer's reliance on Harvard Industries, because employers who purchase workers compensation insurance cannot normally claim SLL treatment for the premiums.

Reference: TRC BUSEXP: 45,154.25.

Number of Returns Filed Tops 75 Million; TIGTA Warns Of Growing Phone Scam

The IRS has received more than 75 million individual returns so far this filing season, approximately one-half the 149 million returns the agency expects to be filed. At the same time, the Treasury Inspector General for Tax Administration (TIGTA) warned taxpayers of a growing IRS phone scam.

Returns. Approximately 69 million returns have been e-filed, the IRS reported. The number of returns prepared by tax professionals so far this filing season shows a decline of 1.8 percent compared to the same time last year. The number of self-prepared returns filed electronically has grown 5.9 percent compared to the same time last year.

Phone scam. TIGTA reported that callers claiming to be from the IRS tell intended victims they owe taxes and must pay using a prepaid debit card or wire transfer. The callers threaten those who refuse to pay with arrest, deportation or loss of a business or driver's license.

■ ***Comment.*** "This is the largest scam of its kind that we have ever seen," Treasury Inspector General for Tax Administration J. Russell George said.

www.irs.gov, www.treasury.gov/TIGTA; TRC INDIV: 54,000.

Tax Court Denies Capital Loss Deduction; Transaction Lacked Economic Substance

◆ *Humboldt Shelby Holding Corp. and Subs., TC Memo. 2014-47*

The Tax Court has upheld the IRS's disallowance of $75 million in claimed capital losses, finding that the paired-option transaction giving rise to the losses lacked economic substance. The court found that the taxpayer had carried out a specific and targeted scheme to generate capital losses almost exactly offsetting inherited capital gains.

■ ***Reminder.*** The Second Circuit Court of Appeals has agreed to hear another economic substance case (*American International Group Inc., DC-NY, 2013-2* USTC *¶50,255).* Many observers are watching the appeal for clarification of the economic substance doctrine.

Background

A taxpayer created a number of business entities, including a holding corporation. The corporation acquired two other corporations with significant built-in gains. The taxpayer also created limited liability companies, to which he contributed offsetting short-term options. The taxpayer withdrew from the LLCs after the options expired. The taxpayer subsequently sold the stock and claimed capital losses of $75 million, which represented approximately the same amount as the built-in gains.

Court's analysis

The court first found that whether a transaction has economic substance is a factual determination and the transaction will be respected if it constituted a genuine multiple-party transaction, compelled by business or regulatory realities with tax-independent considerations not shaped solely by tax avoidance features. The Second Circuit, where an appeal would lie in this case, has endorsed a flexible approach in assessing economic substance. The Second Circuit evaluates both the transaction's objective economic substance and the taxpayer's subjective business purpose for engaging in the transaction, the court found.

■ ***Comment.*** The court characterized these two inquiries not as distinct prongs of a rigid two-step analysis but as factors to consider in the overall inquiry of whether the transaction had any practical economic effect other than the creation of tax losses.

In certain circumstances, an investor may use paired options as a legitimate means of generating gains, the court found. Here, the court found that any purported business purpose masked the real purpose. The options, the court found, could have resulted in a $320,000 loss or a $510,000 profit. These economic effects were inconsequential compared to the multi-million dollar tax benefit the options were guaranteed to generate.

The taxpayer argued that he had not initiated the transaction on the advice of a tax shelter

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AFRs Issued For April 2014

◆ *Rev. Rul. 2014-12*

The IRS has released the short-term, mid-term, and long-term applicable interest rates for April 2014.

Applicable Federal Rates (AFR) for April 2014

	Annual	Semiannual	Quarterly	Monthly
Short-Term				
AFR	.28%	.28%	.28%	.28%
110% AFR	.31%	.31%	.31%	.31%
120% AFR	.34%	.34%	.34%	.34%
130% AFR	.36%	.36%	.36%	.36%
Mid-Term				
AFR	1.81%	1.80%	1.80%	1.79%
110% AFR	1.99%	1.98%	1.98%	1.97%
120% AFR	2.17%	2.16%	2.15%	2.15%
130% AFR	2.35%	2.34%	2.33%	2.33%
150% AFR	2.72%	2.70%	2.69%	2.68%
175% AFR	3.17%	3.15%	3.14%	3.13%
Long-Term				
AFR	3.32%	3.29%	3.28%	3.27%
110% AFR	3.65%	3.62%	3.60%	3.59%
120% AFR	3.99%	3.95%	3.93%	3.92%
130% AFR	4.33%	4.28%	4.26%	4.24%

Adjusted AFRs for April 2014

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	.26%	.26%	.26%	.26%
Mid-term adjusted AFR	1.35%	1.35%	1.35%	1.35%
Long-term adjusted AFR	3.32%	3.29%	3.28%	3.27%

The Code Sec. 382 adjusted federal long-term rate is 3.32%; 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 3.56%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.59% and 3.25%, 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 2.2%.

FED ¶46,292; TRC ACCTNG: 36,162.05.

Tax Briefs

Tax Crimes

An individual was properly convicted of conspiracy to defraud the government and for knowingly making a false refund claim. The fact that only the husband's trust returns were mentioned in the indictment did not preclude the government from relying on the extremely similar evidence that fell within the charged dates and of which the individual clearly had notice. Further, the government did not violate the individual's right against self-incrimination. The IRS agent's testimony established that the individual and her husband began withdrawing money from their bank account as soon as they became aware of the IRS's investigation.

Phillips, CA-7, 2014-1 USTC ¶50,215; TRC IRS: 66,060.10.

An owner and a CEO of an S corporation were properly convicted conspiracy to defraud the government and for filing false income tax returns. The evidence was sufficient to establish that the CEO created an account for the corporation for making and signing false tax returns. Further, the sentencing court properly calculated the tax loss attributable to the CEO and included the amount of tax refund claimed by the owner because the CEO jointly engaged in the fraudulent scheme along with the owner, reported compensation and withholdings from the corporation.

Hunte, CA-11, 2014-1 USTC ¶50,214; TRC IRS: 66,308.

Summons

An individual's petition to quash IRS third-party summonses seeking records relating her tax liability from two financial institutions was dismissed as untimely. The individual failed to file her petition within 20 days from the mailing date of the notice; therefore, the court lacked jurisdiction to hear the petition.

Madanian, DC Mass., 2014-1 USTC ¶50,216; TRC IRS: 21,106.

Income

A decedent's estate was not entitled to a refund of income taxes for the tax year at issue because the decedent constructively received the income in that year, not in the year the stock certificates were actually redeemed. Despite the funds being available to the decedent without substantial limitation, she failed to actually receive the income due to her own volition; therefore, the income was constructively received in the tax year at issue.

Santangelo, Jr., DC Miss., 2014-1 USTC ¶50,222; TRC ACCTNG: 6,152.05.

Liens and Levies

Federal tax liens were foreclosed on a parcel of real property held by a corporation as the nominee or alter ego of a tax debtor. The individual was the true beneficial owner

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IRS Ends Qualified Payment Card Agent Program For Reporting Transactions, Removes Deadwood Guidance

The IRS has taken procedural steps to officially end the Qualified Payment Card Agent (QPCA) Program. Enactment of Code Sec. 6050W under the *Housing Assistance Tax Act of 2008* made the QPCA Program obsolete.

Background. The QPCA Program, implemented in 2004 and revised in 2007, had been designed to enhance the accuracy of information reporting in transactions where a payment card was accepted as payment. Under the QPCA Program, a payment card organization could apply to be designated as a QPCA. Once designated, the QPCA could act on behalf of a payor/cardholder to solicit, collect, and validate the name and taxpayer identification number (TIN) of a payee/merchant, so that the payor/cardholder could meet any reporting obligation under Code Sec. 6041.

QPCA Program obsolete. Enactment of Code Sec. 6050W in 2008 and resulting changes to the regs under Code Sec. 6041 obsoleted the QPCA Program by requiring payment card organizations, rather than payor/cardholders, to report payments made in payment card transactions to payees/merchants. In a housekeeping measure to officially end the QPCA Program, certain prior Notices and Rev. Procs. have now been declared obsolete, 2007 proposed regs are withdrawn, and certain regs under Code Sec. 3406 and 6724 are appropriately amended or withdrawn.

- ***Comment.*** The IRS also reasoned that no harm will be done by ending the QPCA Program since no taxpayers would be affected. To date, no one ever applied to be designated as a QPCA and no one has been designated as a QPCA.

NPRM REG-163195-05; FED ¶49,613; TRC FILEBUS: 18,106.

Deadline Looms For Unclaimed $760 Million In 2010 Tax Refunds

The IRS has announced that it has refunds totaling nearly $760 million for an estimated total of 900,000 taxpayers who did not file a federal income tax return for 2010. A claim for a tax refund must be filed within three years from the time the return was filed (or two years from the time the tax was paid, whichever is earlier) and the window for 2010 refunds will close on April 15, 2014. After that time unclaimed refunds become property of Treasury.

Potential refund amounts. The IRS has broken down the $760 million into total potential refunds per state and total estimated number of individuals who might claim a refund. For example, 15,700 Alabama taxpayers could be eligible for a total of approximately $12.5 million in refunds, reflecting an average potential refund per taxpayer of $547. The median potential refund in all but two states is more than $500.

IR-2014-30; TRC FILEIND: 15,250.

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of the property and the tax liens properly attached to it.

Powell, DC Miss., 2014-1 USTC *¶50,224; TRC IRS: 45,158.*

An individual's tax liabilities were reduced to judgment and federal tax liens were foreclosed on real property held by an LLC as the individual's nominee or alter ego. The property was transferred to the individual's close friend in anticipation of an adverse action by the IRS.

Sabby, DC Minn., 2014-1 USTC *¶50,217; TRC IRS: 45,160.*

Refund Claims

An individual's refund claim was dismissed for failure to state a claim because the IRS offset his refund against an existing tax liability. Since the IRS acted lawfully under Code Sec. 6402(a) when it applied the individual's overpayment to his existing tax liability, the individual had no right to refund.

McKinzy, DC Kan., 2014-1 USTC *¶50,223; TRC IRS: 33,302.*

The IRS acted within its authority when it offset a company's overpayment for the base tax year against its deficiencies for several subsequent years. The IRS complied with Code Sec. 1314(b) by refunding the net amount due to the company within the one-year limitations period. Therefore, the company was not entitled to an additional refund.

El Paso CGP Company, L.L.C., CA-5, 2014-1 USTC *¶50,219; TRC IRS: 30,316.*

Married taxpayers were not allowed to credit an overpayment from one year against a deficiency from the prior year. The taxpayers were also liable for additions to tax for failure to file returns, failure to pay income tax, and failure to pay estimated tax.

Wolfington, TC, CCH Dec. 59,853(M), FED ¶47,969(M); TRC LITIG: 6,134.05.

A railroad was not entitled to a refund of railroad retirement taxes paid on the exercise of nonqualified stock options (NQSOs). Contrary to the district court's finding, the terms "compensation" and "any form of money remuneration" in the Railroad Retirement Tax Act (RRTA) are inherently ambiguous; therefore, the definition of compensation found in Reg. §31.3231(e)-1 was entitled to *Chevron* deference.

BNSF Railway Company, CA-5, 2014-1 USTC *¶50,213; TRC PAYROLL: 3,150.*

Tax Credits

An individual did not qualify for a first-time homebuyer credit because she held an ownership interest as a joint tenant in a property that was her principal residence within three years of her purchase of her new home.

Ballington, DC S.C., 2014-1 USTC *¶50,221; TRC INDIV: 57,952.*

Estates and Trusts

The co-administrators of a decedent's estate were personally liable for the decedent's unpaid tax liabilities under 31 U.S.C. § 3713(b). The administrators' lawyers received multiple notices from the IRS concerning the unpaid taxes and the lawyers' knowledge was imputed to the administrators.

Shriner, DC Md., 2014-1 USTC *¶50,218; TRC IRS: 60,206.*

Retirement Plans

An individual who was under the age 59-1/2 at the time she withdrew money from her retirement plan was liable for the 10-percent early distribution tax under Code Sec. 72(t). There was no evidence that she used the withdrawn funds to pay any expense that would allow her to avoid the tax.

Fields, TC, CCH Dec. 59,856(M), FED ¶47,972(M); TRC RETIRE: 42,552.

Economic Substance

Continued from page 6

promoter. The court found that the taxpayer was himself a tax shelter promoter. The taxpayer did not need to consult a promoter because he was familiar with the mechanics of the transaction. The court concluded that tax avoidance alone motivated the transaction.

Penalty

The court also found that the underpayment resulted from a gross valuation misstatement and upheld an accuracy-related penalty in the amount of 40 percent. The court noted that the taxpayer was a sophisticated tax planner who should have known that reporting $75 million in losses from a transaction that cost $320,000 would result in a significant tax underpayment.

■ ***Comment.*** The court also denied a deduction for professional fees. Costs associated with the transaction could not be deducted as business expenses.

References: CCH Dec. 59,855(M); TRC BUSEXP: 30,168.

First Circuit Upholds Deficiency Adjustments, Penalties On Criminal Lawyer's Returns

The First Circuit Court of Appeals has affirmed the Tax Court's decision in *F. Lee Bailey, TC Memo. 2012-96, CCH Dec. 59,011(M),* upholding many of the IRS's adjustments made in its notices of deficiency relating to a well-known criminal attorney's tax returns. The deficiencies related to several issues including the recognition of income relating to misappropriated client funds.

Collateral estoppel challenge. The First Circuit found that the taxpayer had failed to timely challenge the Tax Court's application of the doctrine of collateral estoppel, which supported its ruling that the taxpayer had held his client's stock in trust (as found in prior cases) and recognized income from the time he misappropriated it. The taxpayer only raised the issue in his reply brief, which was untimely, the First Circuit found.

However, the First Circuit found that the doctrine would have applied even if it were to review the issues *de novo.* "We note that most of [the taxpayer's] arguments are directed toward the merits of the relevant prior federal court rulings, but as a general matter, application of collateral estoppel principles does not include reassessment of prior rulings on the merits," the First Circuit held.

Bailey, CA-1, March 14, 2014, 2014-1 USTC *¶50,212; TRC INDIV: 6,054.*