Treasury Identifies Regs For Re-Evaluation Under Executive Order

Notice 2017-38

The Treasury Department has identified eight recent regulations for re-evaluation under Executive Order (EO) 13789, Identifying and Reducing Tax Regulatory Burdens. Treasury reported that it would propose reforms to these regs, which could include repeal, in a final report to the White House later this year.

**Take Away.** “The notice reflects the list of major regulatory projects with which the general business communities was at odds, such as the final regulations under Section 385, as well as an under-the-radar project, like the final regulations under Section 7602. Notably, Treasury acknowledges that the IRS did not overstep its regulatory authority on any of these eight regulatory projects, and rather, the regulations were chosen because they either impose an undue financial burden on U.S. taxpayers or an undue complexity to the tax law,” Shamik Trivedi, Manager, Washington National Tax Office, Grant Thornton LLP, told Wolters Kluwer.

**Comment.** Treasury’s roster includes Proposed Regulations under Section 103 on Definition of Political Subdivision (REG-129067-15). “This proposed regulation attempts to jettison long-standing guidance from 1944 and put in its place a new arbitrary standard for determining what entities can issue tax-exempt bonds for public infrastructure. The proposed changes are very disruptive to the market and have the potential to raise the costs of financing infrastructure at a critical time,” Linda Schakel, Partner, Ballard Spahr LLP, Washington, D.C., told Wolters Kluwer.

**Background**

Since taking office, President Trump has issued several EOs that impact federal regulations. EO 13771 provides that whenever a federal agency proposes for notice and comment or otherwise promulgates a new regulation, the agency must identify at least two existing regulations to be repealed, unless prohibited by law. EO 13777 directs federal agencies to convene regulatory reform task forces.

**EO 13789**

In April, President signed EO 13789. This EO required Treasury to review all regulations issued on or after January 1, 2016, that are significant in respect to contracting certain tax-policy goals. Under the EO, “significant” is “all such regulations that: (1) impose an undue financial burden on U.S. taxpayers; (2) add undue complexity to the federal tax laws; or (3) exceed the statutory authority of the IRS.”

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IRS Posts CbC Reporting Resources


The IRS has developed a Country-by-Country (CbC) reporting resources page on its website. The page highlights the reporting obligations of taxpayers and the exchange of information with other tax authorities. The agency has also posted frequently asked questions (FAQs) about CbC reporting and competent authority agreements (CAAs).

- **Take Away.** “The CAAs are implemented under Action 13 of the Organisation for Economic Co-Operation and Development’s (OECD) Base Erosion and Profit Shifting (BEPS) project, requiring jurisdictions to exchange standardized CbC reports beginning in 2018,” Michael Chittenden, Counsel, Miller & Chevalier Chartered, Washington, D.C., and managing editor for the firm’s Tax Withholding & Reporting Blog, told Wolters Kluwer. “These CbC reports will assist each jurisdiction’s tax authorities to identify the bases of economic activity for each of these companies, in order to combat tax base erosion and profit shifting.”

**Background**

The IRS explained that it is developing Form 8975, Country-by-Country Report. Form 8975 is to be used to report a U.S. multinational entity (MNE) group’s income, taxes paid, and other indicators of economic activity on a country-by-country basis. The reporting period covered by Form 8975 is the period of the ultimate parent’s annual applicable financial statement that ends with or within the parent’s tax year, or, if the parent does not prepare an annual applicable financial statement, the ultimate parent’s tax year.

Beginning on September 1, 2017, Form 8975 may be filed for a reporting period with the income tax return for the tax year of the ultimate parent of the U.S. MNE with or within which the reporting period ends. Revenue Procedure 2017-23, the IRS added, allows for U.S. ultimate parents to file Form 8975 for periods beginning after January 1, 2016, and prior to the required reporting period.

**Information exchange**

Information will be exchanged automatically with tax authorities with which the U.S. has a CAA, the IRS explained. A U.S. MNE group’s information will only be exchanged with those countries in which the U.S. MNE group reports doing business.

Reference: TRC INTL: 18,150.

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**Regulations**

Continued from page 1

**Eight regs**

Treasury reported that 105 temporary, proposed and final regs were issued from January 1, 2016 through April 21, 2017. Fifty three regulations were minor or technical in nature, Treasury explained.

Treasury identified the following regs under EO 13789:

- Proposed Regulations under Section 103 on Definition of Political Subdivision (REG-129067-15).
- Temporary Regulations under Section 337(d) on Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs) (TD 9770).
- Final Regulations under Section 7602 on the Participation of a Person Described in Section 6103(n) in a Summons Interview (TD 9778).
- Proposed Regulations under Section 2704 on Restrictions on Liquidation of an Interest for Estate, Gift and Generation-Skipping Transfer Taxes (REG-163113-02).
- Temporary Regulations under Section 752 on Liabilities Recognized as Recourse Partnership Liabilities (TD 9788).
- Final and Temporary Regulations under Section 385 on the Treatment of Certain Interests in Corporations as Stock or Indebtedness (TD 9790).
- Final Regulations under Section 987 on Income and Currency Gain or Loss With Respect to a Section 987 Qualified Business Unit (TD 9794).
- Final Regulations under Section 367 on the Treatment of Certain Transfers of Property to Foreign Corporations (TD 9803).

**Comment.** Treasury explained that it “considered the degree to which the regulation at issue imposed compliance costs or resulted in tax liabilities that exceed the minimum required to achieve the relevant statutory objectives.” To assess “undue complexity,” Treasury “considered the extent to which the regulation at issue imposed new substantive, computational, or other requirements not required to achieve the relevant statutory objectives, or introduced rules that added uncertainty for taxpayers.” Treasury added that it anticipates presenting a final report to President Trump by September 18, 2017.

References: FED ¶46,311; TRC SALES: 51,056.05.
IRS Combines Master And Prototype, Volume Submitter Programs Into New Opinion Letter Program

Rev. Proc. 2017-41

The IRS has restructured the master and prototype and volume submitter pre-approved programs into a single program. The IRS also described procedures for issuing opinion letters on the qualification of pre-approved plans. According to the IRS, the changes are intended to encourage employers that currently maintain individually-designed plans to move to pre-approved plans.

Take Away. Rev. Proc. 2017-41 brings largely welcomed changes to the pre-approved plan program, while preserving the availability of Form 5307 determination letter filings. And the two-month extension of opening the defined contribution program gives pre-approved sponsors some much needed time to digest the new rules (and the new cumulative list) and modify their submissions accordingly. Elizabeth Thomas Dold, Principal, Groom Law Group, Chartered, Washington, D.C., told Wolters Kluwer. "We are eagerly awaiting the issuance of the final piece of guidance, which is the updated List of Required Modifications to be posted on the IRS website."

Requirements

Under Rev. Proc. 2017-41, pre-approved plans must satisfy certain requirements. These include procedures for amendments by the providers and adopting employers. Other requirements include provisions regarding how an employee is defined and how service with any employer aggregated under Code Secs. 414(b), (c), (m), or (o) and associated regulations is credited.

Opinion letters

Opinion letters, the IRS announced, will be issued only to providers or mass submitters. The IRS explained that opinion letters will not be issued for certain plans. Rev. Proc. 2017-41 also describes the various user fees.

The IRS added that it is updating the forms that plans use to request opinion letters. Until the forms are available, an application for an opinion letter must be made in accord instructions in Rev. Proc. 2017-41. An opinion letter issued to a provider is not transferable to any other entity.

References: FED ¶46,308; TRC RETIRE: 51,052.

Background

In 2015, the IRS announced that the staggered remedial amendment determination letter program would be eliminated because of constraints on resources. Plan sponsors would no longer be able to apply for determination letters on their individually designed defined contribution and defined benefit plans, except for initial qualification and qualification upon termination.

Rev. Proc. 2017-41

In Rev. Proc. 2017-41, the IRS announced that the master and prototype and volume submitter programs are combined and replaced by a single opinion letter program involving two types of plans: standardized plans and nonstandardized plans. A pre-approved plan may utilize either of two formats: a basic plan document with an adoption agreement or a single plan document. Highlights include:

- An adopting employer of any nonstandardized plan may adopt minor modifications.
- Elimination of the prohibition against combining a money purchase plan with a Code Sec. 401(k) or profit-sharing plan in the same pre-approved plan document.
- A nonstandardized plan that contains an ESOP may include a Code Sec. 401(k) feature.
- A nonstandardized plan that contains a cash balance formula may permit the rate used to determine an interest credit to be based on the actual return on plan assets.
- Elimination of the prohibition against submitting an application for an opinion letter for a non-electing church plan.
- Any nonstandardized plan may provide for either safe harbor or non-safe harbor hardship distributions.

IRS Releases Training Materials On Qualified Derivative Dealer Status, Compliance and Reporting

LTRs 201727005, 201727006

The IRS has released internal training slides on the rules surrounding qualified derivative dealer (QDD) status, including compliance and reporting obligations. La- beled “Qualified Derivative Dealers Training, May 2 and 3, 2017,” the information generally tracks the existing rules and guidance under Code Sec. 871(m) treatment of dividend-equivalent payments.

Take Away. Although the positions presented by the QDD slides are by in large noncontroversial, there is at least one major exception, according to Tara Ferris, Principal, Ernst & Young LLP, New York. Ferris pointed out to Wolters Kluwer that Slide #24 in particular, if representative of the government’s view, seems to settle the question over whether the IRS would treat inter-branch trades as recognized transactions for purposes of the QDD net delta calculation. Government officials on recent panels had reasoned that inter-branch trades should not be recognized because those trades aren’t real transactions for tax purposes. Slide #24 confirms that position, despite recent commentary that hoped for the “more reasonable position” that, for the continued on page 4
Incomplete Appraisal Summary Nixes Charitable Donation Deduction

RERI Holdings I, LLC, 149 TC No. 1

The Tax Court has found that a taxpayer’s failure to provide a complete appraisal summary prevented its purported charitable donation deduction. The taxpayer’s failure could not be excused by substantial compliance, the court held.

Take Away. Heightened substantiation requirements apply to charitable contributions made by certain donors, the court explained. To meet the requirements, the donor must obtain a qualified appraisal of the contributed property, attach a fully completed appraisal summary to the return on which the deduction is first claimed, and maintain records containing specified information. The appraisal summary must provide, among other things, the adjusted cost or other basis of the donated property.

Background

The taxpayer, a limited liability company (LLC), acquired real property in 2002. The taxpayer paid approximately $3 million for the property. In 2003, the taxpayer assigned the property to a university. The taxpayer claimed a charitable contribution deduction of about $33 million for its assignment.

Court’s analysis

A donor’s failure to comply with the substantiation requirements may be excused if the donor shows substantial compliance, the court found. In determining whether a donor has substantially complied with the regs, the court looks to the purpose of the regs. The court explained that it generally considers if the donor provided sufficient information to permit the IRS to evaluate the reported contribution, as intended by Congress.

Here, the taxpayer’s appraisal summary showed that it acquired the property by purchase in 2002 but it showed no amount in the space provided for the donor’s cost or other adjusted basis. The lack of this information, the court found, prevented the appraisal summary from achieving its intended purpose. “The significant disparity between the claimed fair market value and the price the taxpayer paid to acquire the property just 17 months before the assignment, had it been disclosed, would have alerted the IRS to a potential overvaluation of the property,” according to the court.

The taxpayer’s failure could not be excused by substantial compliance, the court found. Because the donor did not satisfy the substantiation requirements, the court concluded that the donor was not entitled to any deduction.

Penalty

The IRS assessed penalties for valuation misstatements.

After a lengthy discussion of jurisdiction and valuation, the court found that the taxpayer did not have reasonable cause for, or act in good faith with respect to, its claim of a charitable contribution deduction that resulted in a gross valuation misstatement. The court added that no partner would be able to avoid the penalty on the basis of the reasonable cause exception.

References: Dec. 60,954; TRC INDIV: 51,456.20.

QDD
Continued from page 3

limited purpose of determining each QDD’s net delta exposure, a transaction between QDDs that are branches would be respected. “So what the IRS’s position is going to do is to create a QDD liability for a lot of QDDs that really shouldn’t have one because, if you measure their true economic exposure, they’re flat,” Ferris concluded.

Background

For withholding purposes, an exception under Code Sec. 871(m) allows QDD to avoid dividend equivalent payments as U.S. source dividends under certain circumstances. The IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with Code Sec. 871(m) regulations: (1) for any delta-one transaction and for complying with QDD provisions of the qualified intermediary (QI) agreement for 2017; and (2) for any non-delta-one transaction for 2018.

Training materials

The IRS training slides consist of a Day 1 technical overview, covering common equity derivative transactions, a Section 871(m) overview, QDD eligible entities and tax liability; withholding, and other concerns; and a Day 2 review of the duties and concerns of a QDD, including QDD status applications, documentation requirements, withholding and reporting obligations and QDD compliance (including calendar year 2017 phase-in), and examples).

Some of the many aspects covered within the QDD training materials include:

- A required QDD compliance program specifically includes written policies and procedures, training and QDD tax liability determinations that ensure that the QDD has appropriate systems to identify Code Sec. 871(m) transactions.
- A QDD must treat any dividend equivalent as a U.S. Source dividend.
- A QDD is required to obtain a withholding certificate (or other appropriate documentation) from each of its counterparty to whom it makes a dividend equivalent payment.
- 2017 phase-in year for QDD transactions involves the IRS taking into account good faith efforts of QDDs when administering and enforcing the QDD rules.

Reference: TRC INTL: 3,558.
Third Circuit Affirms Tax Court In Denying Duplicative Losses

Duquense Light Holdings, Inc., CA-3, June 29, 2017

Affirming the Tax Court, the Court of Appeals for the Third Circuit has upheld the disallowance of a parent corporation’s deductions for losses from the sale of a subsidiary’s assets. The Third Circuit agreed with the IRS and the Tax Court that taxpayer failed to show the deductions were not duplicative of losses the corporation had already claimed from the sale of the same subsidiary’s stock.

**Take Away.** The Third Circuit noted that the decision would impact the continuing viability of the so-called Ilfeld doctrine. This rule demonstrates that the Tax Code should not be interpreted to allow a taxpayer the practical equivalent of a double deduction absent a clear declaration of intent by Congress. The Ilfeld doctrine thus remains good law in the consolidated-return context, the Third Circuit concluded.

**Background**

The parent corporation sold 50,000 shares of its stock, with a basis of approximately $223 million, in a wholly owned subsidiary for $4 million in 2001. On its return, the parent claimed a deduction for $199 million in capital losses. The parent filed Form 1139, Corporate Application for Tentative Refund, in which it carried back a portion of those stock losses to the 2000 tax year.

The subsidiary subsequently sold five of its own subsidiaries. This sale took place in 2002. The parent claimed capital losses of $59.6 million under Code Sec. 165. The parent filed another Form 1139, carrying back losses to the 2000 tax year.

In 2003, the subsidiary sold all of its remaining assets. The parent deducted more capital losses. The parent carried back these losses to the 2000 tax year.

According to the IRS, the parent’s claimed losses from the subsidiary’s asset sales duplicated the claimed losses from the 2001 disposition of stock. The Tax Court ruled against the taxpayer, finding that the asset loss deductions for 2002 and 2003 should be disallowed. According to the Tax Court, there was no genuine issue of material fact as to whether the parent’s claimed deductions represented the same economic loss.

**Court’s analysis**

The Ilfeld doctrine requires a clear declaration of intent to allow a double deduction for a single economic loss, the court found. Its application, the court explained, is premised on a factual question: Did the deductions claimed by the taxpayer reflect the same economic loss? In this case, the question was whether the 2001 loss and the losses in 2002 and 2003 were duplicative.

The Third Circuit rejected the taxpayer’s argument that the Tax Court had applied an irrebutable presumption that the deductions were duplicative. The Tax Court had reviewed the evidence in the record and found that the IRS had met its burden for summary judgment. “There was nothing irrebuttable in the Tax Court’s analysis; it concluded that taxpayer simply failed to rebut the IRS’s claims as required by ordinary summary judgment practice,” the appellate court held.

Additionally, the Third Circuit rejected the taxpayer’s reliance on the Federal Circuit’s decision in Rite Aid Corp., 255 F.3d 1357, (2001). The Federal Circuit had held that the duplicated loss component of Reg. §1.1502-20 was an invalid exercise of regulatory authority. The Third Circuit found nothing in Rite Aid that would preclude it from applying the Ilfeld doctrine.

Further, the appellate court found that Code Sec. 165 did not specifically authorize the taxpayer to claim a duplicative deduction of the losses in 2002 and 2003. Code Sec. 165(a) broadly allows a single deduction for any loss, but it does not contemplate the possibility of a double deduction, the court found.

**Comment.** The dissent objected to what it called the majority’s triple authorization standard. “The triple authorization standard obliges the regulation to bear much more weight than the caselaw demands,” the dissent noted.

Reference: TRC SALES: 15,212.

**IRS Signals Nonacquiescence In EITC Decision**

The IRS has announced its nonacquiescence in a 2016 Tax Court decision about the earned income tax credit (EITC) (Tsehay, Dec. 60,726(M), TC Memo. 2016-200).

**Background.** The taxpayer timely filed his 2013 return claiming, among other credits, the EITC. The taxpayer filed as head of household. The IRS changed the taxpayer’s filing status from head of household to single. The IRS also disallowed the EITC.

**Tax Court’s decision.** The court found that Code Sec. 32(a)(1) provides an eligible individual with an earned income credit against the individual’s income tax liability, subject to a phaseout. The amount of the credit to which an eligible individual is entitled increases if the individual has a qualifying child. The court found that the taxpayer had “three or more” qualifying children for tax year 2013. Therefore, the taxpayer was entitled to the EITC. However, the taxpayer did not qualify for head of household filing status. The Tax Court found that the taxpayer’s correct filing status for 2013 was married filing separately.

**IRS position.** The IRS will not acquiesce to the holding that a taxpayer whose filing status is married filing separately is entitled to an EITC.

IRS AOD, FED ¶46,307; TRC INDIV: 57,252.
The IRS has provided interim guidance to its examiners on handling early “opt-in” elections for the new centralized partnership audit regime, for tax periods beginning after November 2, 2015, and before January 1, 2018. Specifically directed toward Large Business and International Division and Small Business/Self-Employed Division employees, the guidance covers the mechanics of what examiners must do during the initial phase of handling an “early elect-in” election.

**Take Away.** The Bipartisan Budget Act of 2015 (BBA) centralized partnership audit regime replaced the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) audit procedures beginning with 2018 tax year audits, but with an earlier “opt-in” opportunity for electing partnerships. Temporary regs (TD 9780, August 2016) already spelled out for taxpayers rules regarding the time, form and manner for making the election. The latest guidance reflects these regs from the IRS examiner’s perspective, with step-by-step instruction on required paperwork and deadlines.

**Background**

Under the new centralized partnership audit regime, Code Secs. 6221 and 6225 provide that adjustments to partnership income, gain, loss, deduction or credit are determined at the partnership level, rather than at each partner’s level, and that any additional tax, referred to as the imputed underpayment, is collected from the partner. Although this new audit regime is generally not effective for audits of partnership tax years beginning before 2018, the BBA allows partnership to elect to have the new regime apply earlier, pursuant to the regulations that specify the time, form, and manner for making this election.

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**IRS Unveils New Campaign To Educate Tax Professionals About Scams**

The IRS has launched the “Don’t Take the Bait” campaign to increase awareness in the tax professional community about phishing and other cybercrimes. The IRS emphasized that cybercriminals are increasing targeting tax professionals.

**Comment.** “We’ve been warning tax professionals that they are increasingly the targets of national and international cybercriminal rings. These syndicates are well-funded, knowledgeable and creative. It’s going to take all of us working together to combat these identity thieves,” IRS Commissioner John Koskinen said in a statement.

The “Don’t Take the Bait” campaign will cover phishing, identity theft, account takeovers, ransomware attacks, remote takeovers, business email compromises and more. Phishing scams try to trick tax professionals into opening an infected link or attachment or disclosing usernames and passwords. Cyberthieves also are interested in stealing return preparers’ e-Services passwords, Electronic Filing Identification Numbers (EFINs), Centralized Authorization File (CAF) numbers and Preparer Tax Identification Numbers (PTINs), the IRS warned.

The goal of phishing thieves is to monetize their stolen information, the IRS explained. As the IRS, states and tax industry have made inroads into tax-related identity theft, criminals need even more information to better impersonate taxpayers. This is why tax professionals, who hold sensitive financial data, are critical targets, the agency added.

**Instructions**

The IRS memorandum asks examiners to refer to the “early elect-in” rules in TD 9780. In addition, however, the instructions map out, in practical terms, what examiners should look for in assuring compliance. These include, among others, the following considerations:

- An IRS examiner should provide written notification of the partnership’s selection for examination via a new Contact Letter (Letter 2205-D).
- The “opt in” election can be made for any timely filed, late filed or non-filed partnership return as long as the election is made within 30 days, with no extensions, from the date of written notification of selection for examination.
- A tax matters partner (TMP) or an individual authorized to sign the partnership return may make the “opt-in” election; however, during the subsequent examination, new Code Sec. 6223 requires that the partnership must designate a “partnership representative.”
- To make the election, the partnership should use new Form 7036, Election Under Section 1101(g)(4) of the Bipartisan Budget Act of 2015 (alternatively, the partnership can prepare its own statement but must follow all requirements specified in the regs).
- Immediately upon receiving an election, the examiner is instructed to notify the IRS “BBA Point(s) of Contact (BBA POC)” designated to monitor elections and provide subject matter expertise regarding the BBA centralized partnership audit regime.
- Taxpayers should be informed of Incomplete Forms 7036 as quickly as possible, but the 30-day deadline will keep running.
- The election may also be made when filing an Administrative Adjustment Request (AAR) after January 1, 2018, for tax periods beginning before January 1, 2018, pursuant to guidance not yet available.
- An IRS examiner must wait at least 30 days after a valid election is received...
IRS Issues 2017 Cumulative List Of Changes In Plan Qualification Requirements

Notice 2017-37

The Cumulative List of changes in plan qualification requirements for pre-approved defined contribution plans for 2017 has been released. The IRS identified changes to be taken into account in a pre-approved plan document.

Take Away. The 2017 Cumulative List should be used to submit opinion letter applications for pre-approved plans during the third six-year remedial amendment cycle, which began February 1, 2017, and ends January 31, 2018, the IRS explained. Defined contribution plans may be submitted for approval during the on-cycle submission period, which begins October 2, 2017, and ends October 1, 2018.

Comment. The IRS reported that prior Previous Cumulative Lists included items that the IRS does not intend to review in connection with third-cycle opinion letter application. These items have been removed from the 2017 Cumulative List.

Background

Cumulative Lists identify changes in qualification requirements that will be considered by the IRS in its review of pre-approved plan documents for purposes of issuing opinion letters. A change in the qualification requirements includes a statutory change or a change in the requirements provided in regulations or other guidance.

Before Rev. Proc. 2016-37 was issued last year, Cumulative Lists were used by the IRS to review individually designed plan documents and pre-approved plan documents. Under Rev. Proc. 2016-37, beginning this year, the IRS will use Cumulative Lists to review pre-approved plan documents submitted for opinion letters. The agency will use required amendments lists, to review individually designed plan documents submitted for determination letters.

2017 Cumulative List

The 2017 Cumulative List details items the IRS has identified for review in determining whether a defined contribution plan document, filed for an opinion letter, was properly updated. These include:

- Rev. Rul. 2013-17, which provides that for federal tax purposes, the terms spouse, husband and wife, husband, and wife include an individual married to a person of the same sex.

TAX BRIEFS

Internal Revenue Service

The IRS has corrected Rev. Proc. 2017-40, I.R.B. 2017-26, 1339, which provided general requirements and conditions for the development, printing and approval of all substitute tax forms to be acceptable for filing in lieu of official IRS-produced and distributed forms.

Announcement 2017-8, FED ¶46,310;
TRC FILEBUS: 12,052.10

Jurisdiction

The Tax Court properly dismissed for lack of jurisdiction an individual’s petition for innocent spouse relief. The individual’s failure to file her petition within the statutorily prescribed period deprived the Tax Court of jurisdiction to review her claim.

Matuszak, CA-2, 2017-2 ustc ¶50,269;
TRC LITIG: 6,130.05

Tax Crimes

An individual was properly convicted for tax evasion. A rational juror could conclude from the evidence that the individual voluntarily and intentionally violated his known legal duty to pay taxes. Moreover, the court could reasonably conclude that the individual’s failure to file returns was relevant conduct for determining the amount of loss. Finally, the cumulative effect of any errors the trial court made did not result in a fundamentally unfair process.

Daniels, CA-6, 2017-2 ustc ¶50,263;
TRC IRS: 66,052

Summons

An individual’s petition to quash an IRS administrative summons requesting financial information was properly dismissed for lack of jurisdiction. The Tax Court properly dismissed for lack of jurisdiction an individual’s petition for

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records for accounts in his name and the names of his businesses was denied. There was a close enough legal relationship between the assessed taxpayer and the summoned bank records to invoke the notice exception.

Ngo, CA-9, 2017-2 ustc ¶50,270; TRC IRS: 21,104

Income
Payments received by a fireman who retired on disability were not excludable from gross income as worker’s compensation because they were determined by reference to the individual’s age, length of service and average final compensation. Therefore, the exclusion for workmen’s compensation did not apply.

Taylor, TC, CCH Dec. 60,958(M), FED ¶48,072(M); TRC INDIV: 33,402.10

An individual was not entitled to exclude from income an amount he received to settle his workplace discrimination case. There was no credible evidence that the taxpayer had suffered an on-the-job physical injury, for which he could be compensated.

Rajcoomar, TC, CCH Dec. 60,955(M), FED ¶48,069(M); TRC INDIV: 6,354.20

Deductions
The IRS properly disallowed an LLC’s charitable contribution deduction after determining that the golf course company did not make a qualified contribution of an easement. In order to take the qualified conservation deduction, the mortgages must have subordinated their mortgages to the charity’s interest before the LLC conveyed the easement.

RB Golf, LLC., CA-8, 2017-2 ustc ¶50,266; TRC INDIV: 51,364.25

Liens and Levies
A federal district court properly dismissed a married couple’s wrongful levy claims against the government of the U.S. Virgin Islands and the Bureau of Internal Revenue (BIR). The couple’s complaint presented no facts to support the allegation that the BIR acted purposefully or negligently to collect a past due tax liability while an installment agreement was pending.

Hassen v. U.S.V.I, CA-3, 2017-2 ustc ¶50,264; TRC IRS: 45,114

Interest Abatement Claims
Married taxpayers were not entitled to interest on a remittance that the husband made in connection with his criminal case. The taxpayers failed to show that the remittance constituted a payment, let alone an overpayment entitled to interest. In addition, the IRS correctly calculated the interest due and did not abuse its discretion by denying an interest abatement.

Garavaglia, TC, CCH Dec. 60,957(M), FED ¶48,071(M); TRC PENALTY: 9,056.20

The Tax Court properly sustained a proposed levy to collect a married couple’s tax liabilities. The couple’s interest-abatement claims were waived because they failed to properly raise one claim during the CDP hearing and they signed a Form 870, Waiver of Restriction on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, which waived their right to contest the assessment and collection of the deficiency and any interest provided by law.

Day, CA-9, 2017-2 ustc ¶50,267; TRC IRS: 51,056.25

Refund Claims
A federal district court properly granted the government summary judgment because the taxpayers failed to raise a genuine dispute of material fact regarding their entitlement to a refund of withheld taxes. The district court did not abuse its discretion by admitting into evidence the IRS’s computerized records or by relying on the IRS’s statement of facts supporting summary judgment.

Smith, CA-9, 2017-2 ustc ¶50,271; TRC LITIG: 9,052

Collection Due Process
The Tax Court properly sustained an IRS action to collect unpaid trust fund recovery penalties from an individual. The individual failed to raise any permissible issues or defenses at his Collection Due Process (CDP) hearing and he could not challenge the existence or amount of the underlying tax liability at the CDP hearing because he had a prior opportunity to do so and did not exercise it.

Heintz, CA-9, 2017-2 ustc ¶50,265; TRC IRS: 51,056.30

Tax Assessments
An IRS Appeals officer properly sustained proposed collection actions against a limited liability company (LLC) because the entity could not establish reasonable cause for its failure to timely file and pay its employment taxes. The entity’s failure to timely file and deposit taxes resulted from its reliance on an unqualified part-time employee and supervision of an employee’s work product is a factor wholly under an employer’s control.

Xibitmax, LLC, TC, CCH Dec. 60,956(M), FED ¶48,073(M); TRC PENALTY: 3,050

An attorney was barred from re-litigating her entitlement to innocent spouse relief. The taxpayer had more than a fair opportunity to raise a claim for relief from joint and several liability in a prior Tax Court proceeding that resulted in a final determination regarding the tax year at issue.

Rogers, TC, CCH Dec. 60,956(M), FED ¶48,070(M); TRC LITIG: 6,130.35

Deficiencies and Penalties
Married individuals had unreported gross receipts in amounts determined by the IRS using the bank deposits method, were denied a claimed rental real estate loss and were subject to accuracy-related penalties. The taxpayers did not prove that the IRS’s analysis was erroneous and did not produce any credible evidence that they were entitled to a home office deduction, or a rental real estate loss. Accuracy-related penalties were imposed.

Ellison, TC, CCH Dec. 60,960(M), FED ¶48,074(M); TRC INDIV: 6,052

Memorandum
Continued from page 6

before issuing a notice of administrative proceeding (NAP) in case the partnership wants to file an AAR under Section 6227 as amended by the BBA.  ■ Comment. The memorandum states that its purpose is to issue “interim guidance.” Audits of pre-2018 partnership returns are likely well into the early 2020’s and, therefore, there is the expectation that additional guidance will be needed.

Reference: TRC PART: 60,700.