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IRS Extends Deadline For Furnishing Individuals With Certain ACA Forms

Notice 2016-70

The IRS has extended the date for furnishing to individuals 2016 Form 1095-B, Health Coverage, and 2016 Form 1095-C, Employer-Provided Health Insurance Offer and Coverage. At the same time, the IRS extended penalty transition relief.

- ***Take Away.*** "Another year of good faith reporting standard is welcomed relief for employers and insurers alike, in light of the potential $520 per return reporting penalty and the complexities of the rules and the new AIR system, "Elizabeth Thomas Dold, principal, The Groom Law Group, Washington, D.C., told Wolters Kluwer. "The automatic 30-day extension for furnishing the returns is also helpful, particularly with the uncertainty surrounding the future of the ACA," Dold added
- ***Comment.*** The IRS did not extend the time for employers, insurers, and other providers of minimum essential coverage to file with the agency the 2016 Forms 1094-B, 1095-B, 1094-C, and 1095-C. The due date remains February 28, 2017, if not filing electronically, or March 31, 2017, if filing electronically.

Background

Under Code Sec. 6055, every provider of "minimum essential coverage" must report coverage information by filing an information return with the IRS and furnishing a statement to individuals. Code Sec. 6056 requires applicable large employers (ALEs) to file information returns with the IRS, and provide statements to their full-time employees about the health insurance coverage the employer offered.

The IRS developed Form 1094-B, Transmittal of Health Coverage Information Returns, and Form 1095-B for Code Sec. 6055 reporting. The agency also developed Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and Form 1095-C for Code Sec. 6056 reporting.

Previous extension

Notice 2016-4 extended the due dates for the information-reporting for 2015 under Code Secs. 6055 and 6056 (both those for furnishing to individuals and for filing with the IRS). The furnishing deadline for the 2015 Forms 1095-B and 1095-C was extended from February 1, 2016, to March 31, 2016, and the filing deadline for the 2015 Forms 1094-B, 1095-B, 1094-C, and 1095-C was extended from February 29, 2016, to May 31, 2016, if not filing electronically, and from March 31, 2016, to June 30, 2016, if filing electronically.

New extension

Now, the IRS has determined that another extension is warranted. According to the IRS, employers, insurers, and other providers of minimum essential coverage need additional

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IRS Revamps Fast-Track Mediation

Rev. Proc. 2016-57

The IRS has announced a new, optional fast-track mediation program. Fast Track Mediation-Collection (FTMC) is intended to assist taxpayers in resolving, on an expedited basis, certain offer-in-compromise disputes and trust fund recovery penalty disputes.

- ***Take Away.*** FTMC will be administered by the Small Business/Self-Employed (SB/SE) Collection function in the IRS. Although Collection is an operating unit of SB/SE, all collection cases, regardless of type of taxpayer, are handled by Collection. Any type of taxpayer may participate in FTMC as long as the taxpayer meets the eligibility requirements and the taxpayer's case is being worked in Collection.

Background

In 2002, the IRS implemented fast-track mediation (FTM) nationwide. The program generally allowed eligible taxpayers in SB/SE's examination or collection functions to resolve qualified cases through mediation. An IRS Appeals mediator would act as a neutral third party. The Appeals mediator would not have settlement authority and could not render a decision regarding any issue in dispute. The IRS reported that requests for FTM have been infrequent, which prompted the agency to replace FTM with a new program.

- ***Comment.*** Contributing to the low usage of FTM has been a separate program called Fast Track Settlement, the agency reported. However, FTS is only available to taxpayers in Examination.

New program

The new program – FTMC – may be used only when all other collection issues are resolved but for the issue(s) for which FTMC is being requested. The issue(s) to be mediated must be fully developed with clearly defined positions by both parties so the unagreed issues can be resolved quickly. The IRS described "quickly" as "usually within 30 or 40 calendar days. "

The IRS explained that FTMC is generally appropriate for OIC and TFRP cases. These include OIC issues such as the value of a taxpayer's assets, including those held by a third party and the determination of a taxpayer's proportionate interest in jointly held assets. TFRP issues include whether a person was required to collect, truthfully account for, and pay over income, employment or excise taxes.

Certain cases are ineligible for FTMC. They include collection due process (CDP) cases, cases referred to the U.S. Department of Justice and Collection Appeals Program (CAP) cases. Rev. Proc. 2016-57 describes in detail certain OIC cases ineligible for FTMC.

Optional

Either the taxpayer or Collection may initiate a request to participate in FTMC, the IRS explained. However, Appeals will not accept an issue for FTMC unless both parties agree to participate in the process.

Resolution

If the parties resolve any of the disputed issues during the mediation session, Collection will secure the appropriate closing documents from the taxpayer. Collection will close the case through established OIC or TFRP case closing procedures, the IRS explained.

- ***Comment.*** Rev. Proc. 2016-57 is effective November 18, 2016. Further, Rev. Proc. 2003-41 is obsoleted.

References: FED ¶46,456; TRC IRS 24,106.25.

Extension

Continued from page 1

time beyond January 31, 2017, to prepare 2016 Forms 1095-B and 1095-C to be furnished to individuals. As a result, the due date for furnishing 2016 Form 1095-B and 2016 Form 1095-C is extended from January 31, 2017, to March 2, 2017.

- ***Comment.*** The IRS noted that some taxpayers may not receive Form 1095-B or Form 1095-C by the time they are ready to file their 2016 tax return. The IRS instructed taxpayers to rely on other information received from their employer or other coverage provider for purposes of filing their returns.

Penalties

Under Code Sec. 6721, the IRS may impose a penalty for failing to timely file an information return or for filing an incorrect or incomplete information return. Code Sec. 6722 provides a penalty for failing to timely furnish an information statement or for furnishing an incorrect or incomplete information statement. These penalty provisions apply to information reporting requirements under Code Secs. 6055 and 6056.

The IRS has now extended transition relief from penalties to reporting entities that can show that they have made good-faith efforts to comply with the information-reporting requirements under Code Secs. 6055 and 6056 for 2016 (both for furnishing to individuals and for filing with the IRS) for incorrect or incomplete information reported on the return or statement. However, no relief is provided in the case of reporting entities that do not make a good-faith effort to comply with the regulations or that fail to file an information return or furnish a statement by the due dates, the agency explained.

References: FED ¶46,457; TRC HEALTH: 6,104.

REFERENCE KEY

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

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Wolters Kluwer Computes 2017 Luxury Vehicle Limits, Fringe Benefit Caps

Based on inflation factors now available, Wolters Kluwer has projected the annual "luxury vehicle" depreciation caps for use in connection with vehicles first placed in service in calendar year 2017. Also computed are the projected maximum fair market values (FMVs) to be used in 2017 to determine availability of the cents-per-mile method in determining the fringe benefit value of the personal use of employer-provided vehicles.

- ***Take Away.*** Overall, the CPI-U for new cars once again decreased slightly from the previous year but rounding rules kept the projected depreciation caps for 2017 the same as for 2016. The price of trucks and vans, however, increased slightly, with rounding creating no change from 2016 except for a $100 rise in third-year depreciation. Computations under Code Sec. 280F call for use of the "new cars" and "new trucks" components of the October 2016 Consumer Price Index, Urban (CPI-U) that were released by the Bureau of Labor Statistics on November 17, 2016.
- ***Comment.*** Enhanced first year vehicle write-offs due to bonus depreciation—a significant benefit to most businesses—will once again be available for 2017 at a full, 50 percent level capped at $8,000. Following the bonus depreciation phased-out schedule under the *Protecting Americans from Tax Hikes Act of 2015* (PATH Act), however, this $8,000 bump-up in the first year depreciation cap for passenger automobiles will be reduced to $6,400 for passenger automobiles placed in service in 2018 and to $4,800 for passenger automobiles placed in service in 2019. Similar phase-outs will apply to trucks and vans.

2017 vehicle depreciation caps

The projected luxury auto depreciation limits under Code Sec. 280F for passenger automobiles placed in service in 2017 are:

- $3,160 for the first year, the same as for 2016 ($11,160 for 2017, same as for 2016, if bonus depreciation is elected);
- $5,100 for the second tax year, the same as for 2016;
- $3,050 for the third tax year, the same as for 2016; and
- $1,875 for each tax year thereafter, the same as for 2016.

Trucks and vans

The projected maximum depreciation limits under Code Sec. 280F for trucks and vans first placed in service during the 2017 calendar year are:

- $3,560 for 2017, the same as for 2016 ($11,560 for 2017, same as for 2016, if bonus depreciation is elected);
- $5,700 for the second tax year, the same as for 2016;
- $3,450 for the third tax year, up $100 from 2016; and
- $2,075 for each tax year thereafter, same as for 2016.

Cents-per-mile valuation

One permitted method that an employer can use to value the personal use of an employer-provided automobile is the standard mileage allowance rate, which for 2016 is 54 cents-per-mile for business-related travel (the 2017 mileage rate is expected to be announced sometime in mid-December 2016), but only if the vehicle's FMV does not exceed certain amounts. The maximum FMVs for use of the vehicle cents-per-mile valuation rule in 2017, as projected, will be:

- $15,900 for a passenger automobile (same as for 2016);
- $17,800 for a truck or van, which includes minivans and SUVs built on a truck chassis (up from $17,700 in 2016); and
- $21,100 for a fleet passenger automobile (down from $21,200 for 2016) and $23,300 for a fleet truck or van (up from $23,100 for 2016).

Reference: TRC DEPR: 3,504.05.

IRS Extends Penalty Relief For Educational Institutions Filing Form 1098-T

Ann. 2016-42

The IRS has extended penalty relief for educational institutions required to file Forms 1098-T, Tuition Statement, for the 2017 calendar year. The *Protecting Americans from Tax Hikes Act of 2015* (PATH Act) revised the reporting framework for educational institutions. The IRS previously announced penalty relief earlier this year applicable for 2016 Forms 1098-T, Tuition Statement.

- ***Take Away.*** "The revised tuition reporting requirement forces institutions to make major modifications to well-established systems in order to adopt a new payment application methodology. This is no small undertaking," John Walda, President and CEO, National Association of College and University Business Officers (NACUBO), Washington, D.C., told Wolters Kluwer.

Background

Code Sec. 6050S imposes reporting requirements, related to higher education tax benefits, on educational institutions. The information return must include the name, address, and taxpayer identification number of any individual who is or has been enrolled at an eligible education institution and with respect to whom certain transactions are made; or with respect to whom certain payments were made or received.

Before the PATH Act, educational institutions could report either the aggregate amount of payments received for qualified tuition and related expenses or the aggregate amount billed for tuition and expenses. The PATH Act tweaked these requirements. The PATH Act requires educational institutions to report only the aggregate amount of qualified tuition and related expenses received during the calendar year. This change in the

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IRS Launches Registration For 2017 Health Care Tax Credit Advance Payments

IR-2016-148, www.irs.gov

A new registration and enrollment process has opened for taxpayers eligible for the health coverage tax credit (HCTC). Qualified taxpayers may receive the HCTC on an advance monthly basis.

- ***Take Away.*** Qualified individuals should have been notified of their eligibility for the HCTC by the U.S. Department of Labor (DOL), the Pension Benefit Guaranty Corporation (PBGC) or a state workforce agency, the IRS explained.

Background

Qualified taxpayers may be eligible for the HCTC to help offset the cost of health insurance. Generally, these are individuals who are eligible Trade Adjustment Assistance (TAA) recipients or alternative TAA recipients or eligible PBGC pension recipient. The *Trade Preferences Extension Act of 2015* (2015 Trade Act) reauthorized the TAA program. The 2015 Trade Act also extended the HCTC.

TAA is intended to help dislocated workers who have been adversely affected by international trade. TAA provides a weekly payment to a worker who has exhausted his or her unemployment insurance benefits and is enrolled in an eligible training program. Alternative TAA provides a wage subsidy to eligible workers over the age of 50.

Taxpayers can elect to file for the HCTC with an end-of-the-year tax credit on their return or by enrolling in the advance credit option. The advance credit option provides 72.5 percent of the payable premium for a qualified health insurance plan. This amount is forwarded by the IRS to the insurer.

Qualified health insurance for purposes of the HCTC includes, among other types of coverage, COBRA coverage, coverage offered through a qualified State high risk pool and coverage under a group health plan that is available through the employment of the eligible individual's spouse. Individuals covered under Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and TRICARE are not eligible for the HCTC.

Registration

The IRS explained that taxpayers may begin registering to participate in the 2017 Advance Monthly Payment program for the HCTC. Taxpayers must file Form 13441-A, HCTC Monthly Registration and Update, with all required supporting documents. After registering and enrolling, taxpayers are responsible for paying 27.5 percent of their health insurance premiums in advance to the HCTC program. Individuals who do not request advance monthly payments and pay 100 percent of their health insurance premiums in 2017 can claim the HCTC when they file their 2017 return in 2018.

- ***Comment.*** Supporting documents include a copy of the taxpayer's health insurance bill dated within the last 60 days that shows the taxpayer's name, monthly premium amount, and dates of coverage. The IRS noted on its website that processing a taxpayer's registration may take up to six weeks.

Reference: TRC HEALTH: 15,152.

IRS Reminds Taxpayers About ITIN, Refund Changes For 2017 Filing Season

With 2017 fast approaching, the IRS has reminded taxpayers about new rules for refunds and individual taxpayer identification numbers (ITINs). Both changes were put in place by the *Protecting Americans from Tax Hikes Act of 2015* (PATH Act).

ITINs. The PATH Act requires taxpayers to renew their ITINs. Any ITIN issued prior before 2013 or that has not been used for tax-years 2013, 2014 and 2015, will no longer be valid for use on a tax return after 2016. The IRS reminded taxpayers with expiring ITINs to renew them soon. The renewal process, the IRS cautioned, can take between seven and 11 weeks, the agency reported.

Refunds. The IRS also reminded taxpayers that the PATH Act may impact certain refunds next year. The PATH Act generally requires that no credit or refund for an overpayment for a tax year will be made to a taxpayer before the 15th day of the second month following the close of that tax year, if the taxpayer claimed the earned income tax credit (EITC) or additional child tax credit (ACTC) on the return. The provision in the PATH Act applies to credits or refunds made after December 31, 2016.

IR-2016-50; TRC FILEIND: 18,052.

Form 1098-T

Continued from page 3

PATH Act is effective for expenses paid after December 31, 2015, for education furnished in academic periods beginning after that date.

- ***Comment.*** Educational institutions reported qualified tuition and related expenses on Form 1098-T either as payments received for the calendar year in Box 1 of the form or as amounts billed during a calendar year in Box 2 of the form.

Ann. 2016-17

In Ann. 2016-17, the IRS informed educational institutions that no penalties will be imposed with respect to Forms 1098-T if the educational institution reports aggregate amount billed instead of the aggregate amount received. The penalty relief in Ann. 2016-17 applied to 2016 Forms 1098-T only.

- ***Comment.*** 2016 Forms 1098-T are required to be filed by February 28, 2017 or March 31, 2017, if electronically filed, the IRS explained.

Extended relief

Now, the IRS has extended the penalty relief. The relief under Ann. 2016-17 will

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Employer Overfunded Pension Plan Allowing For Retirement At Age 45; Excise Tax Triggered On Contributions

Pizza Pro Equipment Leasing, Inc., 147 TC No. 14

The Tax Court has held that an employer was liable for tax deficiencies for nondeductible contributions it made to a defined benefit plan under which normal retirement age was age 45. Additionally, the employer's failure to correctly account for the nondeductible contributions was unreasonable, and, therefore, penalties were correctly imposed.

- ***Take Away.*** Generally, under Code Sec. 404, an employer may deduct timely paid contributions to a qualified plan as described under Code Sec. 401. However, Code Sec. 415 places limits on the amounts that an employer may pay to a participant in a defined benefit plan. An employer is not afforded a deduction for benefits in excess of that limitation.

Background

The employer, had adopted a defined benefit (DB) pension plan. The plan was considered a qualified plan under Code Sec. 401 for the years at issue. The plan had one single participant, who was the president of the corporation. The normal retirement age under the plan was age 45, or, alternatively, the fifth anniversary of the participation date.

The IRS filed substitute Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, on behalf of the taxpayer. On audit of the plan, the IRS determined that the plan's funding did not appropriately account for proper Code Sec. 415 reductions for benefits that began before age 62. As such, the IRS asserted that portions of the taxpayer's contributions to the plan were nondeductible because the plan's funding did not fully account for such deductions.

Tax Court's analysis

The Tax Court, siding with the IRS, held that the taxpayer had not properly computed its deductible contributions with respect to its defined benefit pension plan. The court determined that the IRS had properly applied the appropriate mortality adjustments for reducing the maximum benefits allowed under Code Sec. 415(b)(2)(C) for retirement age before 62, as the taxpayer's plan did not provide for forfeiture of the participant's benefits upon his death.

The Tax Court agreed with the IRS's argument that the annual benefit limitation under Code Sec. 415 was to be converted into a lump sum using a factor that accounted for interest and mortality before discounting for the time value of money for the plan's early retirement age before being reconverted into an annual benefit using the same factor. As such, the court determined that the taxpayer's plan was overfunded and that portions of its contributions were, therefore, nondeductible. Accordingly, the court found the taxpayer liable for Code Sec. 4972 excise taxes for the nondeductible contributions that the taxpayer made to the plan.

- ***Comment.*** Code Sec. 4972 imposes a tax equal to 10 percent of the nondeductible contributions under a qualified employer plan; however, an employer may elect not to pay the tax.

Additionally, the Tax Court sustained the IRS's assessment for additions to tax for the taxpayer's failure to file a Form 5330 for the tax years at issue and timely pay the Code Sec. 4972 excise taxes. The taxpayer argued that because there was no guidance on how to make an election under Code Sec. 4972, the act of not filing an excise tax return on Form 5330 constituted an election. The court was unpersuaded by this argument.

- ***Comment.*** Also, the court found that since the taxpayer's former counsel was a promoter of the taxpayer's plan, the taxpayer could not reasonable rely on his advice.

References: Dec. 60,738; TRC RETIRE: 33,552.

Form 1098-T

Continued from page 4

also apply to 2017 Forms 1098-T. The IRS explained that educational institutions will have the option of reporting either the amount of payments of qualified tuition and related expenses received or the amount of qualified tuition and related expenses billed without being subject to penalties.

References: FED ¶46,453; TRC FILEBUS: 9,370.15.

Tax Court Vacated: Eighth Circuit Remands Midco Transaction

A corporation sold land, it only asset, for $470,000. That sale was immediately followed by MidCoast Investments' purchase of its stock for a price equal to all of the cash held by the corporation, less a certain percentage of the corporation's combined federal and state tax liability for the year. The next year, MidCoast sold all of the corporation's shares.

Tax Court's decision. The Tax Court found that, although the corporation's payment to MidCoast had been a fraudulent transfer, the shareholders' liability for the fraudulent transfer was limited to $59,000, which was the difference between the amount the shareholders received through the stock sale and the amount they would have received if they had instead liquidated the corporation and paid tax. The IRS appealed to the Eighth Circuit.

Eighth Circuit analysis. The Eighth Circuit found that other courts applying state statutes similar to the one in question in this case recognized that state fraudulent-transfer law is flexible and looks to equitable principles like substance over form. Therefore, the Tax Court should have considered the IRS's argument that a liquidating distribution had taken place. If the Tax Court had considered the IRS's argument, the outcome might have been different under which the IRS could be entitled to collect the full amount of its claim from the former shareholders, the appellate court concluded.

Stuart, CA-8, November 14, 2016; 2016-2 USTC ¶50,468; TRC IRS: 30,150.

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Tax Court Finds Like-Kind Exchange Was Structured To Avoid Code Sec. 1031(f)

The Malulani Group, Limited, TC Memo. 2016-209

The Tax Court has found that a real estate leasing company could not defer recognition of the gain it realized on an exchange of property with its subsidiary. According to the court, the transaction had been structured to avoid the purposes of Code Sec. 1031(f).

- ***Take Away.*** The IRS did not dispute that the exchange satisfied the requirements of Code Sec. 1031(a)(a). The controversy arose over application of Code Sec. 1031(f).

Background

The taxpayer did business as a commercial real estate leasing company in Hawaii. In 2006, the taxpayer received an offer for a parcel of real property it owned in Maryland. The offer reserved to the taxpayer the right to effect an exchange of the property under Code Sec. 1031. The taxpayer retained an intermediary. The taxpayer transferred the Maryland property to the intermediary, which sold the property.

The taxpayer had to identity replacement property within 45 days after the sale of the Maryland property. The taxpayer identified three replacement properties, all of which were owned by its subsidiary. The intermediary purchased one of the parcels of property, which was located in Hawaii and transferred it to the taxpayer as replacement property for the Maryland property.

The taxpayer realized gain from the sale of the Maryland property but deferred recognition of the gain under Code Sec. 1031. The IRS determined that the gain from the sale of the Maryland property did not qualify for deferred recognition under Code Sec. 1031.

Court's analysis

The court first noted that a nonsimultaneous exchange, such as took place in this case, where the relinquished property is transferred before the replacement property is acquired, generally may qualify for nonrecognition of gain. The taxpayer must identify the replacement property, and then receive it, within 45 days and 180 days, respectively, after the transfer of the relinquished property.

Code Sec. 1031(f), the court found, is intended to curb abuses involving related parties. The legislative history of this provision, the court added, explained that if a related party exchange is followed shortly thereafter by a disposition of the property (before two years under Code Sec. 1031(f)(1)(C)), the related parties have, in effect, 'cashed out' of the investment, and the original exchange should not be afforded nonrecogni-

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AFRs Issued For December 2016

Rev. Rul. 2016-27

The IRS has released the short-term, mid-term, and long-term applicable interest rates for December 2016.

Applicable Federal Rates (AFR) for December 2016

Short-Term	**Annual**	**Semiannual**	**Quarterly**	**Monthly**
AFR.	74%	.74%	.74%	.74%
110% AFR	.81%	.81%	.81%	.81%
120% AFR	.89%	.89%	.89%	.89%
130% AFR	.96%	.96%	.96%	.96%
Mid-Term				
AFR	1.47%	1.46%	1.46%	1.46%
110% AFR	1.62%	1.61%	1.61%	1.60%
120% AFR	1.76%	1.75%	1.75%	1.74%
130% AFR	1.91%	1.90%	1.90%	1.89%
150% AFR	2.20%	2.19%	2.18%	2.18%
175% AFR	2.58%	2.56%	2.55%	2.55%
Long-Term				
AFR	2.26%	2.25%	2.24%	2.24%
110% AFR	2.50%	2.48%	2.47%	2.47%
120% AFR	2.72%	2.70%	2.69%	2.68%
130% AFR	2.95%	2.93%	2.92%	2.91%

Adjusted AFRs for December 2016

	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term adjusted AFR	.55%	.55%	.55%	.55%
Mid-term adjusted AFR	1.09%	1.09%	1.09%	1.09%
Long-term adjusted AFR	1.68%	1.67%	1.67%	1.66%

The Code Sec. 382 adjusted federal long-term rate is 1.68%; 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 1.68%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.43% and 3.18%, respectively, however, the appropriate percentage for non-federally subsidized new buildings placed in service after July 30,2008, 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 1.8%. The applicable rate of interest for 2017 for purposes of Code Secs. 846 and 807 is 1.46%

References: FED ¶46,454: TRC ACCTNG: 36,162.05.

TAX BRIEFS

Internal Revenue Service

The IRS has updated Notice 2013-1, in which the IRS provided guidance concerning the federal income tax treatment of per capita payments to members of Indian tribes from the settlement of the tribal trust cases. The settlement proceeds from the tribal trust cases are in lieu of amounts that would have been held in a trust fund account for the tribe by the Secretary of the Interior. The per capita payments an Indian tribe makes from the tribal trust case settlement proceeds are excluded from the gross income of the members of the tribe receiving the payments. The new guidance updates an appendix with a list of Indian tribes that have reached settlements in these cases.

Notice 2016-65, FED ¶46,455; TRC INDIV: 33,500

Administrative Remedies

An individual's claim for unauthorized collection activity damages was dismissed because he failed to exhaust his administrative remedies. Although he described the disclosure as having to do with tax calculation, rather than tax collection, it is not the disclosure's content but its context that determines whether Code Sec. 7433 applies. Therefore, if the disclosure occurred in the course of tax collection activity Code Sec. 7433 provides the exclusive remedy.

Hom, DC Calif., 2016-2 USTC ¶50,471; TRC IRS: 45,114

Tax Crimes

An attorney was properly convicted of tax evasion. The attorney did not dispute that he had substantial deficiency and he set up his law firm as an LLC with a nominee owner in order to avoid an IRS levy. Moreover, a rational trier of fact could conclude that the statements the attorney made to the IRS agent were not accurate and constituted an affirmative act to evade.

Boisseau, CA-10, 2016-2 USTC ¶50,476; TRC IRS: 66,052

A petition for review was denied in the following case:

An individual was properly convicted and sentenced for tax evasion and willful failure to file tax returns. There was sufficient evidence presented at trial to show that the individual willfully engaged in at least one overt act in an attempt to evade the payment of taxes and that he willfully failed to file tax returns.

Tuka, CA-3, 2016-1 USTC ¶50,320

Summons

A law firm's petition to quash third-party summonses was denied and the summonses were ordered enforced. The law firm was unable to rebut the government's *prima facie* case by submitting an incomplete search and redacted summaries.

Neuberger, Quinn, Gielen, Rubin & Gibber, P.A., DC Pa., 2016-2 USTC ¶50,475; TRC IRS: 21,100

Income

An individual was required to include in gross income unreported retirement plan distributions that he withdrew from his wife's IRA during their divorce. The taxpayer provided no evidence that the amount was rolled over within 60 days of the distributions or that the trust's account was a qualifying retirement account. In addition, the rollover account was not for the benefit of the taxpayer's ex-wife for whom the original account was maintained.

Skog, TC, CCH Dec. 60,739(M), FED ¶48,155(M); TRC RETIRE: 42,454

An individual was required to include in gross income an amount he withdrew from an individual retirement account (IRA), interest income received from banks during two tax years and interest payment received from the IRS during one tax year at issue. In addition, the taxpayer was required to include an amount of unexplained deposits for the two tax years as he failed to explain that these deposits did not represent items of unreported gross income. Further, the taxpayer was required to include in gross income an amount of cancelled debt from a bank as he did not testify that he was insolvent in the tax year at issue. However, the taxpayer was not required to include in gross income an amount he owed to his wholly-owned S corporation as the elimination of the amount did not result in constructive distribution to the taxpayer. Further, the taxpayer was liable for the various penalties.

Franklin, TC, CCH Dec. 60,735(M), FED ¶48,151(M); TRC INDIV: 6,052

Deductions

The IRS has determined that packages of multiple video channels, such as those marketed by cable television and satellite television companies, were not qualified films for purposes of the domestic production activities deduction (DPAD) under Code Sec. 199. Nevertheless, although a package could not be considered a "motion picture film or video tape," each of the individual films included in a package would be so considered, and if that film were produced by the taxpayer, then it could be considered a qualified film.

TAM 201647007; TRC BUSEXP: 6,152

Losses

The Tax Court applied incorrect definitions of "deposits" and "loans" when analyzing whether a money transfer company was a "bank" and, thus, could offset its capital losses against ordinary income.

MoneyGram International, Inc. CA-5, 2016-2 USTC ¶50,477; TRC RIC: 12,050

Jurisdiction

The claims court did not have jurisdiction to adjudicate individual partners' untimely tax assessment claims. Under Code Sce. 7422, the court does not have jurisdiction to adjudicate partnership items, including taxpayer refund claims alleging that the IRS untimely assessed federal income taxes.

Isler, FedCl, 2016-2 USTC ¶50,469; TRC LITIG: 9,052

An individual's claims for refund and wrongful levy were dismissed for lack of jurisdiction. The individual did not provide any evidence to support his claim that he paid the assessed taxes in full or that he filed a refund claim with the IRS. In addition, the court lacked jurisdiction over the individual's wrongful levy claim to the extent that he alleged it separately from his tax refund claim.

Dezman, FedCl, 2016-2 USTC ¶50,465; TRC LITIG: 9,050

Liens and Levies

Married taxpayers' tax liabilities were reduced to judgment and tax liens on their tenants by the entirety vacation home were

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ordered foreclosed. The court refused to exercise its discretion to allow the couple time to sell the properties on the open market. Since there was evidence that the couple were not motivated sellers, the government was entitled to move ahead with the sale of the couple's vacation home.

Cazzell, DC Mo., 2016-2 USTC ¶50,467; TRC IRS: 45,150

Two individuals' federal tax liabilities were reduced to judgment and tax liens attaching to property held solely by the ex-wife were foreclosed. Neither individual contested the assessments as evidenced by the account transcripts nor did they provide any evidence to show that the assessments were arbitrary or without foundation. Therefore, the assessments were presumed valid and correct.

Bedford, DC Fla., 2016-2 USTC ¶50,466; TRC IRS: 45,150

Refund Claims

A married couple's refund claim for an alleged casualty loss to their home dismissed for lack of jurisdiction because the couple failed to show they timely filed their claim. The taxpayers testified they had no recollection of mailing the refund claim and there was no evidence regarding the mailing practices of the law firm.

Jacob, DC Mich., 2016-2 USTC ¶50,473; TRC LITIG: 9,050

The taxpayers' refund claims were rejected because the government's breach of a closing agreement did not invalidate the timely assessments against them. The IRS's breach of the closing agreement may have entitled the taxpayers to a contractual remedy; however, they did not request one. Moreover, the law of the case precluded any claims relating to the amount of the assessments.

Davis, DC Calif., 2016-2 USTC ¶50,470; TRC IRS: 39,050

A federal district court properly reduced a married individual's federal tax liabilities to judgment and foreclosed tax liens on his jointly owned property. While the government could not obtain a judgment against the individual personally for the debt that was discharged, the tax liabilities gave rise to tax liens that continued to attach to property he held prior to filing for bankruptcy.

Dew, CA-4, 2016-2 USTC ¶50,464; TRC IRS: 45,158

Deficiencies and Penalties

An individual who operated as a tax return preparer for many years was liable for deficiencies because he underreported his income and overstated his deductions for business expenses. The taxpayer was also subject to fraud penalties. The taxpayer did not respond to affirmative allegations in the IRS's answer to his petition, so the facts on which the IRS's motion for summary judgment were decided were deemed admitted by the taxpayer.

Pena, TC, CCH Dec. 60,736(M), FED ¶48,152(M); TRC ACCTNG: 3,150

A member of an Indian tribe was liable for income tax and penalties on distributions derived from the tribe's gaming business. The taxpayer failed to show that any of the distributions were derived from nongaming sources. The taxpayer also was liable for failure to timely file and pay penalties because she failed to show reasonable cause.

S. Jim, DC Fla., 2016-2 USTC ¶50,474;

Administrative and Litigation Costs

The Tax Court properly denied the taxpayers' claims for administrative and litigation costs and refused to impose sanctions on the IRS's attorneys. The court's finding that the IRS's position was substantially justified was not an abuse of discretion. Moreover, the attorneys did not unreasonably or vexatiously multiply the proceedings.

Ratke, CA-9, 2016-2 USTC ¶50,472; TRC LITIG: 3,154

Exchange

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tion treatment. Further, Code Sec. 1031(f)(4) provides that nonrecognition treatment does not apply to any exchange which is part of a transaction or series of transactions structured to avoid the purposes of Code Sec. 1031(f). Therefore, Code Sec. 1031(f)(4) may disallow nonrecognition treatment of deferred exchanges that only indirectly involve related persons because of the interposition of qualified intermediaries.

Here, the court looked to whether the transaction has been structured to avoid the purposes of Code Sec. 1031(f). The court found that the transaction had effectively allowed the taxpayer to cash out of a significant investment in real property under the guise of a non-taxable like-kind exchange. The court concluded that the transaction had been structured to avoid the purposes of Code Sec. 1031(f) and the taxpayer was not entitled to defer gain realized on the sale of the Maryland property.

References: Dec. 60,737(M); TRC SALES: 3,206.

IRSAC Releases 2016 Annual Report

The Internal Revenue Service Advisory Council (IRSAC) has released its annual report for 2016. IRSAC identified several areas of concern and made several recommendations on a range of tax administration issues including:

- Evaluating the effects of penalties on voluntary compliance;
- Promoting confidentiality of treaty-exchanged information;
- Improving fraud prevention through individual taxpayer and business master file authentication;
- Enhancing the IRS2Go mobile application and online accounts; and
- Revising and updating Circular 230.

Comment. "IRSAC members play an important role in tax administration by providing insights from outside the agency on the most pressing tax issues of the day," IRS Commissioner John Koskinen said in a statement. "They volunteer their time and energy for the benefit of all taxpayers," he added.

IR-2016-149, TRC IRS: 3,060.