8-27-2010

Cases, Regulations and Statutes

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any business, financial operation, or venture is carried on, and which is not . . . an estate or trust or a corporation.”11

The court acknowledged that a partnership for federal income tax purposes is basically the same as the definition of a partnership for commercial law purposes12 but more detailed,13 although the federal statute controls for determining the existence of a partnership for federal income tax purposes.14 The Tax Court in Holdner15 then proceeded to cite approvingly to a 1964 Tax Court decision, Luna v. Commissioner,16 which listed eight factors that are relevant in determining whether an enterprise is a partnership for federal income tax purpose—(1) the agreement of the parties and their conduct in executing its terms; (2) the contributions, if any, which each party has made to the venture; (3) the parties’ control over income and capital and the right of each to make withdrawals; (4) whether each party was a principal and co-proprietor, sharing a mutual obligation to share losses; (5) whether business was conducted in the joint names of the parties; (6) whether the parties filed federal partnership income tax returns otherwise represented to others that they were joint venturers; (7) whether separate books of account were maintained for the venture; and (8) whether the parties exercised mutual control over and assumed mutual responsibilities for the enterprise.17 Interestingly, the Tax Court in the 1964 case refused to find that a partnership (or joint venture) existed.18

The Tax Court in Holdner19 found that seven of the eight factors supported the holding that the operation was a partnership for federal income tax purposes and the one remaining factor neither supported nor weighed against the court’s finding.

The outcome

The Tax Court held that the arrangement in Holdner20 was a partnership for federal income tax purposes in the years in question (2004 through 2006) and that the individuals involved were equal partners in the partnership. It followed that the income, expenses and other partnership items had to be allocated accordingly.21

Would the result have been different under the regulations in effect for taxable years beginning on or after May 19, 2008?

That would seem to turn on the perceived importance of the presumption in the earlier regulations.

ENDNOTES


2 Holdner v. Comm’r, T.C. Memo. 2010-175.

3 Id.

5 I.R.C. § 179.

6 Holdner v. Comm’r, T.C. Memo. 2010–175.

7 I.R.C. § 6662(a), (b)(1).


9 Holdner v. Comm’r, T.C. Memo. 2010-175.


12 Holdner v. Comm’r, T.C. Memo. 2010-175, footnote 18.

13 Id.


15 Holdner v. Comm’r, T.C. Memo. 2010-175.


17 Id.

18 Id.

19 Holdner v. Comm’r, T.C. Memo. 2010-175.

20 Id.

21 Id.

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

CLAIMS. The IRS has issued internal interim guidance on policies and procedures for completing an initial case analysis in Chapter 7, Chapter 11, and Chapter 12 bankruptcy cases. These procedures will be incorporated into Internal Revenue Manual (IRM) 5.9.6, IRM 5.9.8 and IRM 5.9.9. SB/SE-05-0710-034, July 8, 2010.

DISCHARGE. The debtor, a CPA, incurred income tax liability for investments in sham employee leasing partnerships. Lawsuits and audit negotiations took several years but eventually resulted in signed stipulations as to the amount taxes owed. Instead of paying the taxes, the debtor continued an affluent lifestyle, including a second residence and luxury vacations. The court held that the tax liability was nondischargeable under Section 523(a)(1)(C) for willfully attempting to evade payment of the taxes. In re Bryen, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,568 (Bankr. E.D. Penn.
SALE OF CHAPTER 12 ESTATE PROPERTY. The debtor filed for Chapter 12 and, with permission of the Bankruptcy Court, sold the debtor’s farm, resulting in $29,000 of capital gain. The debtor’s plan included the capital gains as an unsecured claim to be paid to the extent of other unsecured claims. The IRS objected to the plan, arguing that the capital gains were the post-petition personal responsibility of the debtor because no taxable entity was created in the bankruptcy estate. The debtor cited In re Knudsen, 581 F.3d 696 (8th Cir. 2009), aff’d, 389 B.R. 643 (N.D. Iowa 2008), aff’d in part, 356 B.R. 480 (Bankr. N.D. Iowa 2006), which held that, under Section 1222(a)(2)(A), taxes generated by the sale of Chapter 12 estate property could be treated as unsecured claims of the estate. The Bankruptcy Court in this case had rejected the holding of In re Knudsen, and held that the statute was clear that no separate taxable entity was created in Chapter 12 proceedings; therefore, post-petition sales of estate property were taxable to the debtor personally. The Bankruptcy Court also had held that the taxes were not entitled to the administrative expenses exception in Section 1222(a)(2)(A) because the taxes were not entitled to priority under Section 507. On the first appeal the District Court reversed, holding that, in accordance with In re Knudsen, In re Daves, 382 B.R. 509 (Bankr. D. Kan. 2008), aff’d, 415 B.R. 815 (D. Kan. 2009), and In re Schilke, 379 B.R. 899 (Bankr. D. Neb. 2007), aff’d, 2008 U.S. Dist. LEXIS 68176 (D. Neb. 2008), the legislative history and purpose of Section 1222(a)(2)(A) required that income taxes resulting from postpetition sales of a Chapter 12 debtor’s property were administrative expenses entitled to application of Section 1222(a)(2)(A). On further appeal, the Ninth Circuit Court of Appeals reversed in a two to one decision, holding that, because there is no bankruptcy estate entity created in Chapter 12, the estate cannot be liable for a tax resulting from the postpetition sale of estate property. This decision creates a split of authority among the Ninth, Eighth and Tenth Circuits, see In re Ficken, 2009 Bankr. LEXIS 3008 (Bankr. D. Colo. 2009), aff’d, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,409 (Bankr. 10th Cir. 2010). See Harl, “Major Development in Income Taxation of Chapter 12 Bankruptcy Debtors,” 20 Agric. L. Dig. 145 (2009). A future issue of the Digest will publish an article on this case by Dr. Neil Harl. In re Hall, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,566 (9th Cir. 2010), rev’g, 393 B.R. 857 (D. Ariz. 2008), rev’g, 376 B.R. 741 (Bankr. D. Ariz. 2007).

DISCLAIMERS. The taxpayer had, on advice of an attorney, made a disclaimer of an interest in a qualified personal residence trust which passed to the taxpayer’s sister. The disclaimer was determined to be unqualified because it was made more than nine months after the taxpayer had received a contingent interest in the property. The disallowance of the disclaimer resulted in significant gift tax on the transfer to the sister and the taxpayer sought to revoke the disclaimer of the interest in the trust property. The court held that the disclaimer was revoked due to mistake and the gift tax liability removed. Breakiron v. Breakiron Gunonis, 2010-2 U.S. Tax Cas. (CCH) ¶ 60,597 (C.D. Mass. 2010).

The taxpayer was the remainder beneficiary and trustee of a trust established by a decedent. The taxpayer was a director of a charitable foundation which was the further remainder holder of the taxpayer’s interest in the trust. The taxpayer executed a timely written disclaimer of the taxpayer’s interest in the trust, resulting in that property passing to the foundation. The foundation held the disclaimed property in a separate account over which the taxpayer could not exercise any control. The IRS ruled that the taxpayer’s fiduciary duties for the trust and position as director of the foundation did not constitute an acceptance of the trust property; therefore, the disclaimer was effective and did not result in any gift tax liability. Ltr. Rul. 201032002, April 27, 2010; Ltr. Rul. 201032010, April 27, 2010.

GENERATION-SKIPPING TRANSFERS. The taxpayer created an irrevocable trust for the taxpayer’s spouse and descendants and transferred property in excess of the taxpayers GST exemption amount. In the next tax year, the taxpayer’s GST exemption amount increased. The taxpayer relied on a law firm to prepare all tax returns which failed to allocate any GST exemption to the trust on Form 709. Before any taxable distributions, terminations or other events which could give rise to GST tax liability, the taxpayer sought an extension of time to file an amended Form 709 with the GST exemption allocation. The IRS granted the extension. Ltr. Rul. 201032024, May 5, 2010.

Prior to September 25, 1985, the decedent had created irrevocable trusts for several children and the beneficiaries of one of the trusts were two grandchildren. Because of the need for different investment needs of the two beneficiaries, the trustees and beneficiaries of the trust agreed to split the trust into two separate trusts. The IRS ruled that the split of the trust into two trusts would not subject the trusts to GSTT. Ltr. Rul. 201032026, April 28, 2010.

TRANSFER WITH RETAINED INTERESTS. The decedent owned a multi-residence building used as a personal residence and a rental property. The decedent transferred an equal share of the rental property and a 49 percent interest in the residence to the decedent’s son. The decedent continued to receive
all the income from the rental property. The decedent continued to live in the residence paid almost 90 percent of the expenses for the property. The estate claimed that the son had agreed to an equal share of all income and expenses, but no evidence was presented that the son was obligated to reimburse the decedent for the expenses or that the decedent owed any of the income to the son. Thus, the Tax Court held that the transfers were valid gifts but the full value of the rental property was included in the decedent’s estate, under I.R.C. § 2036(a)(1) because the decedent retained the economic benefits of the rental property. The IRS argued that the transfer of the residence was not a completed gift because the deed was not recorded until after the death of the decedent. The Tax Court held that the transfer of the 49 percent interest was a completed gift because the parties executed a deed and the son used the property as a residence. The court noted that, under New York law, recording of a deed was not required for completion of a gift of real property. On appeal the appellate court disagreed with the Tax Court that there was an implied agreement that the decedent would retain a substantial economic benefit from the property. The appellate court remanded the case to the Tax Court to determine the decedent’s and son’s shares in the properties.

Estate of Stewart v. Comm’r, 2010-2 U.S. Tax Cas. (CCH) ¶ 60,596 (2d Cir. 2010), vac’g and rem’g, T.C. Memo. 2006-225.

VALUATION. The decedent’s estate included stock in a C corporation which owned real property used as a summer camp for children. The estate valued the property using book value because the summer camp operation did not generate much cashflow, had deteriorating profits over the years and the property had significant appreciation from factors other than the existence of the summer camp. The court approved the book value appraisal amount and allowed a 5 percent discount for lack of marketability of the decedent’s interest in the corporation and a dollar-for-dollar discount for built-in long term capital gain. The IRS appraiser had used a comparison with six closed-end funds to value the property. The court rejected the use of these comparables because the funds did not share enough characteristics with the summer camp property. Harl will have an article in the next issue of the Digest, examining, in particular, the significance of the Tax Court’s acceptance of dollar-for-dollar discounting Estate of Jensen v. Comm’r, T.C. Memo. 2010-182.

BAD DEBT DEDUCTION. The taxpayer and unrelated person purchased an equal share of a property used for a bed and breakfast operation. Both parties paid the mortgage until the unrelated party became ill, and the taxpayer paid both payments. The taxpayer claimed a bad debt deduction for the amount owed by the unrelated party. The court upheld the IRS disallowance of the deduction because the taxpayer failed to prove the taxpayer’s basis in the property or debt and there was evidence that the taxpayer had exchanged the taxpayer’s interest for other property. Stewart v. Comm’r, T.C. Memo. 2010-184.

BUSINESS EXPENSES. The taxpayer was employed as an accountant and joined an online travel service which paid commissions for the sale of travel packages. The taxpayer did not make any sales through this service and only purchased one travel package for the taxpayer’s personal use. The taxpayer entered into a lease and claimed the lease expenses as a business expense on a Schedule C for the travel sales service. The taxpayer cancelled the travel sales service within two months but continued the lease of the residence for another four months. The taxpayer claimed the rent payments as a business deduction. The court held that the rent was unreasonable for a business activity without any income and which was abandoned after only two months. Therefore, the rent was a nondeductible personal expense. The appellate court affirmed in an opinion designated as not for publication. Outerbridge v. Comm’r, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,547 (4th Cir. 2010), aff’g, T.C. Memo. 2009-173.

CHARITABLE DEDUCTION. The taxpayer partnership purchased several improved parcels of real estate in New Orleans, including an historic building. The partnership granted a facade conservation easement to the historic building to a nonprofit organization. The partnership claimed a charitable deduction for the value of the easement based on a reduction in value of the historic building and the neighboring buildings owned by the partnership. The easement did not place any restrictions on the neighboring buildings, however, and the Tax Court held that the deduction could not include any loss of value of the neighboring buildings. In addition, the Tax Court rejected the partnership’s use of the reconstruction cost method of valuation because it was unlikely that the building would be rebuilt if destroyed. The Tax Court also rejected use of the income method of valuation because any income from the use of the building was too speculative. The valuation was restricted to the comparable method. On appeal, the appellate court held that the effect on valuation of neighboring properties should have been allowed in valuing the easement because changes to the neighboring building were limited by aspects of the easement. The appellate court also held that the Tax Court should have allowed the valuation to factor in the effect on the highest and best use of all the neighboring properties owned by the partnership. Whitehouse Hotel Limited Partnership v. Comm’r, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,564 (5th Cir. 2010), vac’g and rem’g, 131 T.C. 112 (2008).

COOPERATIVES. The taxpayer was a non-exempt cooperative which invested in a limited liability company for the purpose of providing corn for an ethanol plant owned by the LLC. The LLC was treated as a disregarded entity for tax purposes. The cooperative’s members contracted to supply corn and if some members were unable to meet the corn contract amounts, the cooperative would purchase additional corn from nonmembers and other members. Cooperative net profits were paid to the members only. In a Field Attorney Advice letter, the IRS ruled that the amounts paid to the members were not patronage-sourced payments entitled to be deducted from the cooperative’s income to the extent the amounts represented income from purchases of corn from nonmembers. In addition, the IRS noted that the payments from income from nonmember transactions were not made subject to an enforceable written
agreement executed before the payments, but were paid by
discretion of the cooperative’s board. FAA 20103101F, Aug.
11, 2010.

DEPENDENTS. The taxpayer was divorced and the divorce
decree awarded custody of their four children to the taxpayer’s
former spouse. A stipulation, which was not signed by the parties,
provided that the taxpayer and former spouse would each claim
specifically-designated two of the four children as dependents
on their tax returns. However, the taxpayer claimed one of the
former spouse’s children as a dependent without including a Form
8332, Release of Claim to Exemption for Child of Divorced or
Separated Parents, for the child not covered under the divorce
decree. The former spouse apparently also claimed that child as a
dependent, although the case is not clear on that point. The court
held that the taxpayer could not claim that child as a dependent
because the taxpayer failed to file Form 8332, failed to prove
that the child lived with the taxpayer more than one-half of the
year and failed to prove that the taxpayer provided support for
that child. The court noted that, under the divorce decree, the
taxpayer was allowed to claim the deduction for the child, the
divorce decree alone was insufficient to satisfy the From 8332
requirement because the decree was not signed by both parents.

DISASTER LOSSES. On July 27, 2010, the President
determined that certain areas in Idaho are eligible for assistance
from the government under the Disaster Relief and Emergency
Assistance Act (42 U.S.C. § 5121) as a result of a severe storms
and flooding, which began on June 2, 2010. FEMA-1927-DR.
On August 3, 2010, the President determined that certain areas
in Texas are eligible for assistance from the government under
the Act as a result of Hurricane Alex which began on June 30,
2010. FEMA-1931-DR. Accordingly, taxpayers in the areas may
deduct the losses on their 2009 federal income tax returns. See
I.R.C. § 165(i).

DISCHARGE OF INDEBTEDNESS. The IRS has issued
proposed regulations relating to the application of I.R.C. § 108(i)
to partnerships and S corporations. The proposed regulations
provide rules regarding the deferral of discharge of indebtedness
income and original issue discount deductions by a partnership
or an S corporation with respect to re-acquisitions of applicable
debt instruments after December 31, 2008, and before January
1, 2011. The regulations affect partnerships and S corporations
with respect to re-acquisitions of applicable debt instruments
and their partners and shareholders. 75 Fed. Reg. 49427 (Aug. 13,
2010).

The IRS has issued proposed regulations under I.R.C. § 108(i)
primarily affecting C corporations regarding the acceleration of
deferred discharge of indebtedness income and deferred original
issue discount (OID) deductions under I.R.C. § 108(i)(5)(D),
and the calculation of earnings and profits as a result of an election
under I.R.C. § 108(i). The proposed regulations also
provide rules applicable to all taxpayers regarding deferred OID
deductions under I.R.C. § 108(i) as a result of a re-acquisition
of an applicable debt instrument by an issuer or related party. 75

INTEREST RATE. The IRS has announced that, for the period
October 1, 2010 through December 31, 2010, the interest rate paid
on tax overpayments remains at 4 percent (3 percent in the case
of a corporation) and for underpayments remains at 4 percent.
The interest rate for underpayments by large corporations remains
at 6 percent. The overpayment rate for the portion of a corporate
overpayment exceeding $10,000 remains at 1.5 percent. Rev. Rul.

LIKE-KIND EXCHANGES. The taxpayer corporation owned
a commercial property which it sold to a qualified intermediary
bank which, in turn, sold the property to an unrelated trust. The bank
used the proceeds to purchase another commercial property
owned by an LLC which was related to the taxpayer. The bank then
transferred the new property to the taxpayer. The Tax Court
and appellate court found that the taxpayer entered into the exchange
for the principal purpose of avoiding the income tax consequences
of the sale of the first property and purchase of the replacement
property. The courts focused on the excessive complexity of the
transactions compared to a simple sale of the first property and the
easy purchase of the second property from the related entity. The
court found that the only reason for the structure of the transactions
was to reap the benefit of the gain deferment from treatment as a
like-kind exchange. Ocmulgee Fields, Inc. v. Comm’r, 2010-2
U.S. Tax Cas. (CCH) § 50,565 (11th Cir. 2010), aff’d, 132 T.C.
105 (2009).

NET OPERATING LOSSES. The IRS has issued guidance,
in Q&A format, under § 13 of the Worker, Homeownership, and
(2009), which allows taxpayers to elect a 3, 4, or 5-year net operating
loss (NOL) carryback instead of a normal 2-year carryback. The
election applies to an applicable NOL, which is an NOL for a
taxable year ending after December 31, 2007, and beginning before
January 1, 2010. The notice answers frequently asked questions
about election procedures, deadlines, and eligibility; the alternative
tax net operating loss deduction; and the 50 percent limitation on
an NOL carried back to the 5th preceding taxable year. Notice

NONBUSINESS ENERGY CREDIT. The IRS has published
seven issues about the Nonbusiness Energy Property Credit: (1)
The new law increases the credit rate to 30 percent of the cost of all
qualifying improvements and raises the maximum credit limit to
$1,500 claimed for 2009 and 2010 combined. (2) The credit applies
to improvements such as adding insulation, energy-efficient exterior
windows and energy-efficient heating and air conditioning systems.
(3) To qualify as “energy efficient” for purposes of this tax credit,
products generally must meet higher standards than the standards
for the credit that was available in 2007. (4) Manufacturers must
certify that their products meet new standards and they must provide
a written statement to the taxpayer such as with the packaging of
the product or in a printable format on the manufacturers’ web
site. (5) Qualifying improvements must be placed into service
after December 31, 2008, and before January 1, 2011. (6) The
improvements must be made to the taxpayer’s principal residence
located in the United States. (7) To claim the credit, attach Form
5695, Residential Energy Credits to either the 2009 or 2010 tax
return. Taxpayers must claim the credit on the tax return for the
year that the improvements are made. Homeowners who have been considering some energy efficient home improvements may find these tax credits will get them bigger tax savings next year. For more information on this and other key tax provisions of the Recovery Act, visit IRS.gov/recovery. IRS Summertime Tax Tip 2010-16.

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer partnership had a change in ownership of its partnership interests in a tax year. The taxpayer relied on a tax advisor to file the income tax return but failed to make the I.R.C. § 754 election to adjust the basis of partnership property. The IRS granted an extension of time to make the election. Ltr. Rul. 201030005, April 21, 2010; Ltr. Rul. 201031006, April 21, 2010; Ltr. Rul. 201032001, April 30, 2010.

PASSIVE ACTIVITY LOSSES. The taxpayer and spouse owned three rental real properties for which the couple did not elect to combine into one activity for federal tax purposes. The couple claimed losses from the rental activity which were disallowed by the IRS as passive activity losses. The taxpayer was employed by a real estate agency and received wages plus a percentage of the profits; however, the taxpayer’s personal rental properties were not part of the employment. The taxpayers were not eligible for the exception in I.R.C. § 469(c)(7)(B)(ii) because the taxpayer failed to demonstrate that the taxpayer performed more than 750 hours per year on any of the three rental properties and the court held that the taxpayer’s work for the real estate agency could not be included in the 750 hours. The court applied the 750 hour requirement against each property because the taxpayer had not elected to combine the three properties into one activity. Bahas v. Comm’r, T.C. Summary Op. 2010-115.

The taxpayers, husband and wife, owned rental real property and filed their joint return with an election to treat all of their properties as a single rental real estate activity under Treas. Reg. § 1.469-9(g)(3). However, the taxpayers failed to include a statement with the income tax return as described in Treas. Reg. § 1.469-9(g)(3). The IRS granted the taxpayers an extension of time to file the statement required by the regulation. Ltr. Rul. 201031008, April 26, 2010; Ltr. Rul. 201031009, April 26, 2010.

RECORDKEEPING. The IRS has published a few things taxpayers should know about recordkeeping. In most cases, the IRS does not require records to be kept in any special manner but taxpayers should keep any and all documents that may have an impact on a federal tax return. Individual taxpayers should usually keep the following records supporting items on their tax returns for at least three years: bills, credit card and other receipts, invoices, mileage logs, canceled, imaged or substitute checks or any other proof of payment, and any other records to support deductions or credits claimed on a return. Taxpayers should normally keep records relating to property until at least three years after they sell or otherwise dispose of the property. Examples include: a home purchase or improvement, stocks and other investments, individual retirement arrangement transactions, and rental property records.

Small business owners must keep all employment tax records for at least four years after the tax becomes due or is paid, whichever is later. Examples of important documents business owners should keep include: Gross receipts: Cash register tapes, bank deposit slips, receipt books, invoices, credit card charge slips and Forms 1099-MISC. Proof of purchases: Canceled checks, cash register tape receipts, credit card sales slips and invoices. Expense documents: Canceled checks, cash register tapes, account statements, credit card sales slips, invoices and petty cash slips for small cash payments. Documents to verify assets: Purchase and sales invoices, real estate closing statements and canceled checks. For more information about recordkeeping, see IRS Publications 552, Recordkeeping for Individuals, 583, Starting a Business and Keeping Records, and Publication 463, Travel, Entertainment, Gift, and Car Expenses. These publications are available at www.irs.gov or by calling 800-829-3676. IRS Summertime Tax Tip 2010-18.

RETURNS. The IRS has published five tax tips for recently married taxpayers. Notify the Social Security Administration. Taxpayers should report any name change to the Social Security Administration, so the taxpayers’ name and Social Security number will match when the taxpayers file the next tax return. Informing the SSA of a name change is quite simple. File a Form SS-5, Application for a Social Security Card, at your local SSA office. The form is available on SSA’s website at www.socialsecurity.gov, by calling 800-772-1213 or at local offices. Notify the IRS. If you have a new address you should notify the IRS by sending Form 8822, Change of Address. Taxpayers may download Form 8822 from IRS.gov or order it by calling 800–829–3676. Notify the U.S. Postal Service. Taxpayers should also notify the U.S. Postal Service when they move so the USPS can forward any IRS correspondence. Notify Your Employer. Taxpayers should report any name and address changes to the employer(s) to make sure the taxpayer receives the Form W-2, Wage and Tax Statement, after the end of the year. Check Your Withholding. If both the taxpayer and spouse work, the taxpayers’ combined income may place them in a higher tax bracket. Taxpayers can use the IRS Withholding Calculator available on www.irs.gov to determine the correct amount of withholding needed for their new filing status. The IRS Withholding Calculator provides Form W-4, Employee’s Withholding Allowance Certificate, that can be printed out and given to the employer so they can withhold the correct amount from wages. IRS Summertime Tax Tip 2010-17.

Consistent with a Financial Management Service initiative announced in April of 2010, the IRS has issued proposed regulations to significantly increase the number of electronic transactions between taxpayers and the federal government. The proposed regulations would eliminate the rules for making federal tax deposits by paper coupon because the paper coupon system will no longer be maintained by the Treasury Department after Dec. 31, 2010. The proposed regulations generally maintain existing rules for depositing federal taxes through the Electronic Federal Tax Payment System (EFTPS). Using EFTPS to make federal tax deposits provides substantial benefits to both taxpayers and the government. EFTPS users can make tax payments 24 hours a day, seven days a week from home or the office. Deposits can be made online with a computer or by telephone. EFTPS also significantly reduces payment-related errors that could result in a penalty. The system helps taxpayers schedule dates to make
payments even when they are out of town or on vacation when a payment is due. EFTPS business users can schedule payments up to 120 days in advance of the desired payment date. Information on EFTPS, including how to enroll, can be found at www.eftps.gov or by calling EFTPS Customer Service at 1-800-555-4477. Some businesses paying a minimal amount of tax may make their payments with the related tax return, instead of using EFTPS. For more information, see Publication 4132, which explains the process of enrolling and paying via the Internet; Publication 966, The Secure Way to Pay Your Federal Taxes for Businesses and Individuals; Publication 4169, Tax Professional Guide to Electronic Federal Tax Payment System; Publication 4320, EFTPS Toolkit, which contains PDF(s) and descriptions of EFTPS educational materials and their intended target audience, and is for use by tax professionals and financial institutions to assist in educating their clients on the benefits of EFTPS; and Publication 4275, Express Enrollment for New Businesses. IR-2010-092.

SAFE HARBOR INTEREST RATES

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</table>


TAX COURT. The IRS has issued a notice which provides, as a job aid, step by step instructions for eFiling, including a list of documents eligible for eFiling in the Tax Court. The IRS also issued two other Chief Counsel Notices on eFiling, one authorizing attorneys in the Office of Chief Counsel to commence eFiling and the other describing in detail office-wide eAccess, eService, and eFiling policies and protocols. CC-2010-013, CC-2010-14, CC-2010-15, Aug. 19, 2010.

The taxpayer received a notice of deficiency on April 20, 2009, with the statement that an appeal to the Tax Court must be made within 90 days from the date of the notice. The appeal was sent in a 2-day express letter with two labels. The first label was generated by the taxpayer using the FedEx web site and listed July 20, 2009 as the mailing date. The second label was generated by FedEx after receiving the package and listed a July 21, 2009 mailing date. The court held that, under Notice 97-26, 1997-1 C.B. 413, the FedEx-generated label is treated as the official mailing date; therefore, the appeal was not filed by 90 days after the notice of deficiency and the appeal was dismissed for lack of jurisdiction. Martinez v. Comm’r, T.C. Summary Op. 2010-117.

TAX LIEN. The taxpayers, husband and wife, owned their home as tenants by the entirety. The husband owed back taxes and the IRS sought to foreclose on the home for payment of the taxes. The wife challenged the foreclosure on the basis that the wife owned most of the home and that it would be inequitable to force the sale. The court noted that there was evidence that the wife assisted the husband in transferring assets to the wife alone in an effort to avoid tax liens. In addition, the court held that, under Michigan law, each spouse was entitled to half of the proceeds of the sale of property held as tenants by the entirety. The court held that the foreclosure and sale of the property was proper, with the proceeds allocated half to each spouse. United States v. Barr, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,544 (6th Cir. 2010), aff’g, 2008-2 U.S. Tax Cas. (CCH) ¶ 50,539 (E.D. Mich. 2008).

TAX RETURN PREPARERS. The IRS has announced that a new online application system for compensated tax return preparers is expected to go live in mid-September. Under proposed regulations, compensated tax return preparers will need to obtain, or reapply for, a PTIN and pay a user fee using this new comprehensive system, which is part of a series of steps planned to increase oversight of federal tax return preparation. Tax return preparers will be creating PTIN accounts with the IRS when they use the new system. The launch of the new online application system and proposed user fees are dependent on the publication of final regulations on user fees and final regulations of the requirement to obtain a PTIN.

Proposed Regulations Released Related to Circular 230 The IRS also issued proposed regulations that would amend Treasury Circular 230, the rules governing practice before the IRS. The proposed regulations generally would extend current regulations that apply to attorneys, certified public accountants and other specified tax professionals to all tax return preparers, including currently unenrolled tax return preparers. The proposed regulations would clarify the definition of practice, establish a new registered tax return preparer designation and the eligibility requirements for becoming a registered tax return preparer, repropose standards with respect to the preparation of tax returns, revise rules regarding continuing education providers, and amend multiple other sections of Circular 230. Tax professionals and other interested parties have until Oct. 7, 2010, to submit comments regarding the proposed regulations.

Existing PTIN Application Process to Suspend Operations. In preparation for the launch of the comprehensive new PTIN system, the IRS will cease issuing PTINs effective Aug. 22, 2010, Form W-7P, Application for Preparer Tax Identification Number, and through e-services – Online Tools for Tax Professionals. If a tax return preparer applies for a PTIN before Aug. 22, 2010, the tax return preparer will have to reapply once the new online PTIN application system begins. IR-2010-091.

WORKERS’ COMPENSATION. The taxpayer was a firefighter who was injured in the course of employment. Under a collective bargaining agreement between the union and city, the taxpayer received hazardous duty injury payments until the taxpayer’s retirement. The court held that the payments were not excludible from taxable income as payments made under a workers’ compensation law because the collective bargaining agreement was not enacted into legislation or otherwise given the force of law. Bayse v. Comm’r, T.C. Summary Op. 2010-118.
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