Wolters Kluwer

SEPTEMBER 21, 2017
ISSUE NUMBER 38

FEDERAL TAX WEEKLY

INSIDE THIS ISSUE

IRS Exam Staffing Falls; Audit Coverage Declines

TIGTA Ref. No. 2017-30-072

IRS Exam staffing in fiscal year (FY) 2016 reached a 20-year low, the Treasury Inspector General for Tax Administration (TIGTA) has reported. As a result, the IRS undertook fewer audits.

- ***Take Away.*** "The decline in IRS personnel coupled with less money to hire and train new employees is having a direct impact on the tax professionals who need to do business with the IRS," Cindy Hockenberry, EA, Director, Tax Research and Government Relations, National Association of Tax Professionals (NATP) told Wolters Kluwer. "It's getting harder to communicate with examiners assigned to cases and even harder to schedule face-to-face time. Several Taxpayer Assistance Centers across the country have reduced their hours of operation, gone to appointment only, or closed completely. This makes resolving simple issues even more difficult."

Staffing

"Examination is a vitally important aspect of maintaining a voluntary tax compliance system because 85 percent of the Gross Tax Gap is comprised of underreported tax on timely filed returns," TIGTA reported. Although hiring increased in FY 2016, it did not make up for recent attrition and retirements, TIGTA found. Examination staffing in FY 2016 reached a 20-year low with 8,847 employees, a decrease of four percent from FY 2015 (9,189 employees) and 23 percent lower than FY 2012 (11,432 employees).

Overall, the number of IRS full-time employees has declined by some 14 percent since FY 2012. The decline in the number of employees is likely to continue, TIGTA predicted. Approximately 22 percent of full-time permanent employees in the IRS are eligible to retire, and the IRS expects this number to increase to 34 percent by 2019, TIGTA found. "Should this loss of staffing be realized, the gap created by the loss of knowledge and experience has the potential to materially affect the administration and enforcement of tax laws," TIGTA reported.

Audit coverage

Individuals. TIGTA reported that the IRS examined one of every 143 individual income tax returns in FY 2016. This reflected a 16 percent decline compared to FY 2015 and 30 percent fewer examinations than the five-year high reported in FY 2012. The IRS examined one in 17 returns in FY 2016 with more than $1 million in income, which, according to TIGTA, is a decline of 29 percent compared to FY 2015.

Corporations and S corps. TIGTA found that fewer corporate tax returns were examined during FY 2016 than any year since FY 2004. The number of S corp examinations fell 15 percent from FY 2015 to FY 2016 (one in every 295 S corp returns in FY 2016 compared to one in every 248 S corp returns in FY 2015).

Partnerships. Partnership examinations also declined, TIGTA found. The number of partnership returns examined decreased 24 percent from FY 2015 to 14,645 in FY 2016. "Due to

continued on page 426

Hurricane Tax Relief May Be Unveiled Soon; IRS Announces More Measures

IR-2017-154, IR-2017-156, Notice 2017-49, Notice 2017-52

Tax legislation to assist the victims of Hurricane Harvey and Hurricane Irma appears to be developing in Congress. Lawmakers from both side of the aisle have been discussing tax relief for victims of these disasters. At the same time, the IRS continues to announce relief measures.

- ***Take Away.*** At press time, the IRS announced that it has expanded relief to any area designated by the Federal Emergency Management Authority (FEMA), as qualifying for either individual assistance or public assistance in the entire state of Florida. This represents all 67 counties of Florida, the IRS explained.
- ***Comment.*** The IRS also announced that Hurricane Irma victims in Georgia have until January 31, 2018 to file certain individual and business tax returns and make certain tax payments. The tax relief postpones various tax filing and payment deadlines that occurred starting on September 7, 2017 in Georgia.

Legislation

On September 13, Rep. Lloyd Doggett, D-Texas, introduced a tax relief bill for Hurricane Harvey and Hurricane Irma victims. The bill generally would give qualified taxpayers the option of using their prior year, pre-hurricane income to compute their earned income tax credit (EITC) and child tax credit (CTC).

House Ways and Means Chair Kevin Brady, R-Texas, has signalled interest in legislation to ease some of the restrictions on Code Sec. 401(k) and other retirement plan penalties to assist victims of Hurricane Harvey and Hurricane Irma. As of press time, Brady has not yet introduced legislation.

Leave donations

Employees may elect to forgo vacation, sick or personal leave in exchange for cash payments an employer makes to a qualified charity. The IRS explained that it will not assert that these cash payments made to charitable organizations assisting Hurricane Irma victims are gross wages or income to the employee. The IRS also will not assert that an employer is permitted to deduct these cash payments exclusively under the rules of Code Sec. 170 rather than the rules of Code Sec. 162. The cash payments must be made before January 1, 2019.

Employee plans

Due to Hurricane Harvey and Hurricane Irma, affected defined benefit (DB) plans may be eligible for certain relief. Generally, relief for affected single employer DB plans includes postponement of certain deadlines and elections. The IRS also announced relief for affected multi-employer DB plans.

FBAR

Treasury's Financial Crimes Enforcement Network (FinCEN) has announced that FBAR extension filers affected by the Hurricane Irma have until January 31, 2018 to file. FinCEN added that it will work with any FBAR filer who lives outside the Hurricane Irma area but whose records are located in the disaster area regardless of where the filer resides.

Reference: TRC RETIRE: 30,550.

No Word On Treasury Review Of Tax Regs

At press time, the Treasury Department has not announced what changes, if any, it may make to eight tax regulations. In June, Treasury identified eight recent regs for re-evaluation under Executive Order (EO) 13789, Identifying and Reducing Tax Regulatory Burdens. Treasury reported that it might propose reforms to these regs, which could include repeal. At that time, Treasury also indicated that it anticipated presenting a report to President Trump by September 18, 2017.

Audit Coverage

Continued from page 425

a focus on partnership examinations in FY 2015, one of every 196 returns filed were examined; however, this number decreased to one of every 263 returns being examined in FY 2016," TIGTA reported.

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***

FEDERAL TAX WEEKLY, 2017 No. 38. FEDERAL TAX WEEKLY is also published as part of CCH Tax Research Consultant by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015. Editorial and Publication Office, 1015 15th St., NW, Washington, DC 20005.

IRS Updates Guidelines For Equivalency Determinations By Private Foundations

Rev. Proc. 2017-53

The IRS has updated the guidelines for private foundations to follow in making equivalency determinations for grants to foreign organizations. The new guidance modifies and supersedes Rev. Proc. 92-94.

- ***Take Away.*** To avoid certain excise taxes, a private foundation generally must make a minimum level of qualifying distributions each year. The private foundation also must avoid making taxable expenditures.
- ***Comment.*** Until further guidance is issued, sponsoring organizations of donor advised funds may use the guidelines in Rev. Proc. 2017-53 for purposes of applying the exception under Code Sec. 4966(c)(2)(A) to the excise tax imposed on taxable distributions under Code Sec. 4966.

Background

Generally, a private foundation must make an equivalency determination when it wants to treat a grant to a foreign organization as a qualifying distribution under Code Sec. 4942. An equivalency determination evaluates if the foreign organization satisfies certain criteria. The IRS described these requirements on Rev. Proc. 92-94. The IRS also provided a simplified procedure that private foundations could follow in making equivalency determinations.

Since issuance of Rev. Proc. 92-94, a number of changes have occurred, the IRS explained. These include the release of final regs in 2015. At that time, the IRS indicated it would update Rev. Proc. 92-94. In response, the IRS has issued Rev. Proc. 2017-53.

Updated guidelines

The IRS explained that Rev. Proc. 2017-53 provides guidelines that qualified tax practitioners may use for preparing written advice on which a domestic private foundation ordinarily may rely in making an equivalency determination that the grantee is a qualifying public charity. A qualified tax practitioner is an attorney, CPA, or enrolled agent who is subject to the standards of practice before the IRS in Circular 230. A qualified tax practitioner may include an attorney, CPA, or enrolled agent serving as an employee of the grantor.

In preparing written advice, a qualified tax practitioner must base the written advice on reasonable factual and legal assumptions, reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know; and use reasonable efforts to identify and ascertain the relevant facts. A qualified tax practitioner also must not rely upon representations, statements, findings, or agreements of the taxpayer or any other person if reliance on them would be unreasonable, relate applicable law and authorities to facts; and not base the advice on consideration of the possibility that a return will not be audited or that a matter will not be raised by the IRS on audit.

Additionally, the IRS explained that written advice needs to identify the tax-exempt purpose or purposes for which the grantee is organized. "Tax-exempt purposes include charitable, religious, educational, literary, or scientific purposes, or purposes to foster national or international amateur sports competition or to prevent cruelty to children or animals." Generally, the grantee is not expressly permitted to engage in activities for non-charitable purposes, other than as an insubstantial part of its activities, the IRS explained.

Reference: TRC EXEMPT: 21,460.

Wolters Kluwer Projects Inflation Adjustments

The Tax Code requires that federal income tax brackets and certain other figures be adjusted for inflation annually. Wolters Kluwer has projected the 2018 standard deduction, tax bracket amounts and other inflation-adjusted tax figures based on the relevant inflation data just released by the U.S. Department of Labor (DOL).

- ***Comment.*** These projections reflect current law. Wolters Kluwer will update these figures as necessary should pending tax legislation change any of the results.

Key figures. Key projected inflation-adjusted tax amounts that have increased for 2018 include:

The personal exemption for 2018 will rise $100 from its 2017 level, to $4,150.

The top 39.6 percent bracket start at: $480,050 for married joint filers (up from $470,700); $453,350 for heads of household (up from $444,550); $424,950 for unmarried filers (up from $418,400); $240,025 for married separate filers (up from $235,350); and $12,700 for estates and trusts (up $12,500 from 2017).

Filers subject to the alternative minimum tax (AMT) will see their exemption amounts increase: $86,200 for married joint filers (up from $84,500); $55,400 for unmarried filers (up from $54,300); $43,100 for married separate filers (up from $42,250); and $24,600 for estates and trusts (up from $24,100).

The annual gift tax exclusion will increase from $14,000 to $15,000 per donee in 2018.

www.bls.gov/cpi.

Proposed Regs Update, Clarify Rules for Registration-Required Obligations

NPRM REG-125374-16

Proposed regulations modify the definitions of registration-required obligations and registered form. The regs, which replace and supplement proposed regulations from 1993, generally apply to obligations issued after March 18, 2012.

- ***Take Away.*** The proposed regs centralize the definitions of registered form and registration-required obligation in Reg. §1.163-5, and are largely consistent with Notice 2012-20.

Registration required obligations

An obligation is of a type offered to the public and thus, is a registration required obligation, if it is traded on an established market as determined under Reg. §1.1273-2(f), without regard to the exception for small debt issues.

Pass-through certificates may be registration required obligations if they are issued by a grantor trust or a similar fund. A similar fund may be a partnership, disregarded entity, or fund that can vary its assets or the sequence of payments to holders, but not a business corporation. The fund must primarily hold debt instruments, but not necessarily a pool of loans. An interest that evidences co-ownership of an obligation, including a participation interest, may be registration-required.

Registered form

An obligation is in registered form if it is transferable through a book entry system, including a dematerialized (electronic) system. A physical certificate in bearer form is, nonetheless, in registered form if it is effectively immobilized in a clearing organization. An obligation is immobilized if it is transferable only through the organization's book entry system, and the organization can transfer the certificate only to a successor clearing organization that will also immobilize it. A clearing organization holds an obligation (or interests in it) for it members (usually banks and broker-dealers), and facilitates transfers among them by credits and debits to their accounts rather than by physical delivery of the obligation.

- ***Comment.*** These rules are consistent with rules for fully dematerialized obligations provided in Notice 2012-20, as well as Notice 2006-99, and the *Hiring Incentives to Restore Employment Act* (HIRE Act). However, a successor organization no longer must hold the physical certificate under the same terms as the predecessor, as long as the obligation remains effectively immobilized.

If the clearing organization terminates its business without a successor, or if the issuer requests the issuance of physical securities to avoid adverse effects from a change in tax law, a holder of an affected obligations has a right to obtain physical certificates in bearer form. However, the obligation will no longer be in registered form even if no holders request a bearer certificate. The default exception that applied these rules in an issuer event of default is eliminated.

Foreign target exception

Existing regulations are updated to reflect the HIRE Act's repeal of the foreign-targeted bearer obligation exception. The HIRE Act repealed rules that allowed foreign-targeted obligations to avoid the registration-required rules and qualify for the portfolio interest exception if they were reasonably designed to be sold only to non-U.S. persons. Foreign-targeted bearer obligations issued after March 18, 2012, are subject to the sanctions on bearer form obligations, and they must be in registered form to qualify for the portfolio interest exception.

Effective date

As provided in Notice 2012-20, the proposed regulations generally apply to obligations issued after March 18, 2012. However, taxpayers may continue to apply the default exception to obligations issued before the publication of the proposed regulations as final regulations. The rules for pass-through certificates will apply to obligations issued after the proposed regulations are published as final regulations. The new definitions for registration required obligations apply to bonds issued at least 90 days after the date the proposed regulations are published as final regulations.

Reference: TRC BUSEXP: 30,252.

IRS Extends Late-Return Penalty Relief To REMICs

The IRS has updated penalty relief for partnerships that missed the new March 15, 2017 deadline for filing a 2016 tax-year return or a timely request for an extension by that date to include real estate mortgage investment conduits (REMICs). The IRS posted an updated version of recently-released Notice 2017-47.

Background. In 2015, Congress revised the due date for partnership annual returns. Partnerships can obtain an automatic six month extension. The *Surface Transportation Act of 2015* made the change applicable to partnership returns for tax years beginning after December 21, 2015.

Penalty relief. On September 1, the IRS announced in Notice 2017-47 penalty relief for partnerships that missed the new March 15, 2017 deadline for filing a 2016 tax-year return or a timely request for an extension by that date, as long as they filed a return or extension request by the old April 18, 2017 deadline. *See the September 7, 2017 issue of this newsletter for details.*

Update. Now, Notice 2017-47 has been updated to apply to both partnerships and real estate mortgage REMICs, which are treated as partnerships for purposes of subtitle F of the Internal Revenue Code. Penalty relief will be granted automatically.

Notice 2017-47, Updated September 12, 2017; TRC PART: 18,160.05.

District Court Declines To Set Aside Jury's Pro-Taxpayer Verdict In Shelter Penalty Case

Ervin, DC-Ky., August 23, 2017

A federal district court has declined to overturn a jury's verdict in a tax shelter case. The court reiterated that it was the role of the jury to hear the evidence and to weigh the evidence. The jury, the court found, followed its instructions and the court would not disturb its decision.

- ***Take Away.*** The taxpayers had invested in a variation of a bond and options sales strategy (Son of BOSS) transaction. In *Jade Trading, LLC, 80 Fed.Cl. 11 (2007),* the Court of Federal Claims found that these transactions lacked economic substance.
- ***Comment.*** A trial court must affirm the jury verdict unless there was no legally sufficient evidentiary basis for a reasonable jury to find for the prevailing party and should refrain from interfering with a jury's verdict unless it is clear that the jury reached a seriously erroneous result, the court explained.

Background

The taxpayers were partners in a business. After selling the business, the taxpayers realized substantial gains. The taxpayers engaged in the challenged transactions, which generated several years of litigation.

Eventually, the taxpayers filed a refund action in federal district court. The taxpayers argued they had reasonable cause to claim their tax losses because they had relied in good faith on the advice of tax professionals. The jury returned a verdict in favor of the taxpayers and the IRS asked the court to overturn the verdict.

Court's analysis

The court first found that the reasonable cause defense is a narrow exception to liability for a tax-related penalty. A taxpayer must show that the advisor was a competent professional who had sufficient expertise to justify reliance; necessary and accurate information was provided to the advisor and the taxpayer actually received advice and relied in good faith on the advisor's judgment.

According to the IRS, the taxpayers never received any advice about the economic substance of the challenged transactions. The court found that the issue of economic substance had been previously litigated (in *Jade Trading*) and the instructions to the jury reflected this. "It is well-understood that the transactions lacked economic substance. The jury was simply charged with determining whether it was reasonable for the taxpayers to rely on their advisors' advice," the court observed.

The court found that the taxpayers' advisors had described the economic substance of the transactions. The advisors had understood the mechanics of the transactions and considered economic substance. The advisors had communicated this advice to the taxpayers. Further, the taxpayers had presented sufficient evidence to show that their advisors "rendered advice that contemplated and verified the economic substance of the transactions." A reasonable juror could find, the court held, that the advisors provided advice that was considered by the taxpayers. Therefore, the court declined to overturn the jury's verdict.

The court also rejected the IRS's alternative argument that even if the taxpayers had been adequately advised, the advice was based on unreasonable assumptions. The jury had been instructed that the advice "must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the taxpayer or any other person." The court found that the jury had followed this instruction.

Additionally, the court rejected the IRS's argument that the advisors had not given independent advice. According to the IRS, the taxpayers should have known that some of the advisors were promoters of the transactions. The jury, the court found, had considered evidence about the promoters and weighed conflicting evidence.

References: 2017-2 USTC ¶50,151; TRC PENALTY: 3,110.05.

IRS Reminds FFIs Of Approaching Renewal Deadline

Some foreign financial institutions (FFIs) need to renew their FFI agreements with the IRS by October 24, 2017, the agency has announced. The IRS also updated some recent FATCA regs.

Background. Under the *Foreign Account Tax Compliance Act* (FATCA), to avoid being withheld upon, FFIs may register with the IRS and agree to report certain account information. The IRS has created a FATCA registration system that FFIs use to register.

The IRS maintains a list (the FFI List) which includes all financial institutions, branches, direct reporting non-financial foreign entities, sponsored entities, and sponsored subsidiary branches, which have submitted a registration and have been assigned a Global Intermediary Identification Number (GIIN) at the time the list was compiled. The list is compiled on a monthly basis and published the first day of each month.

Renewal. The IRS reminded FFIs that they must renew, if required, their FFI agreements by October 24, 2017. Failure to renew, if required, may subject an FFI to removal from the FFI List and imposition of a 30 percent tax on certain U.S. source payments, the IRS explained.

Regs. The IRS also posted corrected proposed regs (NPRM REG-103477-14), which discuss reporting by FFIs. The IRS added the following text: "Withdrawal of Notice of Proposed Rulemaking: Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-130967-13) that was published in the Federal Register on Thursday, March 6, 2014 (79 FR 12868) is withdrawn."

IR-2017-135; TRC INTL: 36,060.

Chief Counsel Reviews CEO's Transfer of Securities

TAM 201737011

IRS Chief Counsel, in technical advice memoranda, has determined that a chief executive officer (CEO) retained the benefits and burdens of securities transferred from his hedge accounts to a trading account. The transfers were not sales under Code Sec. 1001, Chief Counsel found.

- ***Take Away.*** "There are no hard and fast rules of thumb that can be used in determining, for taxation purposes, when a sale was consummated, and no single factor is controlling; the transaction must be viewed as a whole and in the light of realism and practicality," Chief Counsel noted.

Background

A was the CEO and a majority shareholder of Broker, which operated as an S corp. A was also a majority shareholder of Parent, which owned part of Advisor, which manages a group of hedge funds. A served as the portfolio manager for these hedge funds and controlled investment activities.

A transferred certain securities from A's personal brokerage accounts held at Broker to a proprietary trading account also held at broker. The hedge fund transferred certain securities to Trading Fund held at Broker.

Statute and regs

Under Code Sec.1001(a), gain from the sale or other disposition of property is the excess of the amount realized therefrom over the adjusted basis provided in Code Sec. 1011 for determining gain, and the loss is the excess of the adjusted basis provided in Code Sec. 1011 for determining loss over the amount realized. Under Reg. 1.1001-1(a) of the Income Tax Regulations, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially in kind or in extent, is treated as income or loss sustained.

Code Sec. 1001(b) provides that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under Code Sec. 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under Code Sec. 1001, on the sale or exchange of property is recognized.

Chief Counsel's analysis

Chief Counsel explained that several questions arose. One question was whether A realized losses under Code Sec. 101 on the transfer of the personal securities? Chief Counsel further explained that the term "sale" for Code Sec. 1001(b) purposes caries its ordinary meaning: a transfer of property for money or a promise to pay money. The key to deciding whether a sale has occurred is whether the benefits and burdens of ownership have passed from the transferor to the transferee, Chief Counsel noted.

Here, Chief Counsel determined that A "generally enjoyed all of the economic risks and rewards associated with the shares in Trading Account." A retained the benefits and burdens of ownership of the securities Broker did not retain any control over voting or investment decisions. Accordingly, A did not realize losses under Code Sec. 1001 upon the transfer of securities from the Hedge Accounts to Trading Account, Chief Counsel determined.

Chief Counsel also determined that Hedge Fund realized losses under Code Sec. 1001 upon the transfer of securities to Trading Account. Chief Counsel found that the securities held by Hedge Fund in its brokerage accounts at Broker were not owned by A. Hedge Fund did not retain the benefits and burdens of ownership of the securities transferred to Trading Account, and, therefore, the transfers were sales under Code Sec. 1001.

Additionally, Chief Counsel determined that the losses sustained by the hedge fund were disallowed as a deduction by reason of Code Sec. 707(b), under which the Code Sec. 267 disallowance of loss deductions for sales or exchanges between related parties is extended to transactions between a partnership and a partner. Further, Chief Counsel determined that the wash sale exception of Code Sec. 267(d)(2) did not apply for purposes of determining subsequent gain. As a result, the losses were permanently disallowed to the hedge fund under Code Sec. 267(d)(1).

Reference: TRC SALES: 3,302.

Return Filed Post-Merger Triggered Statute Of Limitations

The Tax Court has found that a pro-forma return filed by the surviving corporation after a tax-free reorg was a valid return. The court rejected the IRS's argument that the taxpayer had failed to file a return.

Background. Corporation A merged into Corporation B in a tax-free reorganization. A did not file a return for 2002, the year of the merger. B filed a 2002 return, including a pro-forma Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return, for A's 2002 tax year. The IRS issued a notice of deficiency to A.

Court's analysis. The court first found that the notice of deficiency was issued nine years after the B filed its 2002 return. As a result, the limitations period had expired and assessment would be barred unless an exception applied. The IRS argued that the failure to file exception under Code Sec. 6501(c)(3) applied and tax could be assessed at any time.

The court found that the pro-forma return filed by B contained sufficient information to calculate A's tax liability. The pro-forma return reported income, deductions, and credits that were included in the notice of deficiency. The court further found that the IRS did not allege that the return was false or fraudulent.

New Capital Fire, Inc., TC Memo. 2017-177; Dec. 61,013(M); TRC IRS: 27,212.

District Court Finds Transfer Of Royalty Payments Not Fraudulent

Holland, DC-Mich., September 12, 2017

The IRS has failed to persuade a federal district court, in a tax lien dispute, that a songwriter fraudulently conveyed property to a nominee. The taxpayer had created a limited liability company (LLC) to receive royalty payments for his songs.

- ***Take Away.*** The taxpayer wrote many popular songs over a long career. As such, he owned the rights to his works. The taxpayer sought to monetize his future royalty payments by creating the LLC to receive the payments. The taxpayer borrowed against these future payments.

Background

According to the taxpayer, he had entered into agreements with recording studios to be paid royalties for songs he wrote. Sometime later, the taxpayer transferred his rights to an entity, a limited liability company, he created to receive payments under the royalty contracts in exchange for a $15 million loan. The taxpayer subsequently refinanced the loan through another lender.

The IRS argued that the taxpayer had taken these steps to monetize a substantial portion of the royalty contracts for his own personal benefit to fund his lifestyle while hindering his creditors and avoiding the collection of most of his federal tax obligations. The entity, the IRS further argued, was the alter ego or nominee of the defendant. As a result, the any tax liens on the taxpayer's property should apply to the entity. Further, these liens would be superior to any other claims.

Court's analysis

One type of nominee property is property fraudulently conveyed to a nominee. This approach may be used in an attempt to avoid a federal tax lien. In such cases, the IRS does not contend that the lien attaches to the nominee's property, but rather that the property legally belongs to the taxpayer because the attempted transfer was fraudulent. A federal tax lien attaches to the property to the extent the IRS can show that the taxpayer fraudulently conveyed his legal or equitable interest in it. The IRS demonstrates that a conveyance was fraudulent by showing that the transferee was the alter ego of the taxpayer, that the consideration for the transfer was inadequate, that the transfer rendered the taxpayer insolvent or that the transfer was otherwise fraudulent under state law.

Here, the court found that the IRS's evidence that the attempted transfer was fraudulent fell short. The government failed to show that the consideration for the transfer was inadequate. Further, the court found that the transfer did not render the taxpayer insolvent.

Reference: TRC IRS: 48,110.30.

TAX BRIEFS

Internal Revenue Service

For pension plan years beginning in September 2017, the IRS has released the 30-year Treasury bond weighted average interest rate, the unadjusted segment rates, the adjusted rates and the minimum present value segment rates.

Notice 2017-50, FED ¶46,363; TRC RETIRE: 30,556

The applicable reference price for determining the marginal well production credit (MWC) for tax years beginning in 2016 is $2.38 per 1,000 cubic feet (mcf). The credit amount is $0.14 per mcf.

Notice 2017-51, FED ¶46,359; TRC BUSEXP: 55,202

Updated by the IRS on August 30, 2017, to include the counties of Colorado, Fayette, Hardin, Jasper, Jefferson, Montgomery, Newton, Orange, Sabine, San Jacinto and Waller, and on September 5, 2017, to include the counties of Austin, Batrop, DeWitt, Gonzales, Karnes, Lavaca, Lee, Polk, Tyler and Walker. Victims of Hurricane Harvey that began on August 23, 2017 in parts of Texas may qualify for tax relief from the Internal Revenue Service. The president has declared Aransas, Austin, Batrop, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzalez, Hardin, Harris, Jackson, Jasper, Jefferson, Karnes, Kleberg, Lavaca, Lee, Liberty, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Tyler, Victoria Walker, Waller and Wharton a federal disaster area. Individuals who reside or have a business in this county may qualify for tax relief. The IRS has postponed certain deadlines for taxpayers who reside or have a business in the disaster area.

Texas Disaster Relief Notice Updated (TX-2017-09), FED ¶46,346; TRC FILEIND: 15,204.25

OECD

The automatic annual exchange of information on offshore financial accounts to the tax authorities of the residence country of account holders begins this month, according to the Organisation for Economic Co-operation and Development (OECD). 49 jurisdictions will begin exchanging information in September 2017. Another group will begin exchanging information in September 2018.

OECD Press Release on Additional Bilateral Exchange Relationships, FED ¶46,366; TRC INTL: 15,306

Jurisdiction

A petition for review was filed in the following case:

An individual's refund action arising from the assessment of tax shelter promoter penalties and the filing of a tax lien was properly dismissed for lack of jurisdiction.

Tax Briefs

Continued from page 431

The individual failed to allege facts sufficient to show he complied with the prerequisites to challenging a Code Sec. 6700 penalty. A district court does not have jurisdiction over penalty refund suits until the taxpayer has paid the required amount of the contested penalty.

Horne, CA-9, 2016-2 USTC ¶50,502

Income

A married couple did not receive unreported income from the exercise of a nonqualified stock option in the tax year at issue. The taxpayer demonstrated that he exercised the option and received the income in a year prior to that alleged by the IRS.

Powers, TC, CCH Dec. 61,015(M), FED ¶48,129(M); TRC CCORP: 39,254.20

A couple was required to include a distribution from their qualified retirement plan in their income and pay the early distribution tax. The taxpayers received the distribution prior to either attaining the age of 59-1/2. The taxpayers did not show that they rolled over an amount of the distribution to a qualified retirement plan or that a rollover was effected within 60 days of the distribution; therefore, they could not avail the rollover exception. The taxpayers were also subject to a substantial understatement penalty.

Cates, TC, CCH Dec. 61,014(M), FED ¶48,128(M); TRC RETIRE: 42,454

Dependents

An individual was not entitled to claim dependent exemption for his child because she was neither his "qualifying child" nor "qualifying relative" for the tax year at issue. The taxpayer was not the child's custodial parent and he failed to get a Form 8332 or other written statement. Further, he could not claim a child tax credit (CTC) or qualify for head-of-household filing status.

Seeliger, TC, CCH Dec. 61,011(M), FED ¶48,125(M); TRC INDIV: 57,452

False Tax Returns

Various businesses were not entitled to dismiss a law firm's claim that they knowingly filed false information returns. The firm alleged that the businesses: (1) filed fraudulent information returns with the IRS; (2) with the purpose of defrauding the IRS or harassing the firm; and (3) despite knowing that the funds were not income to the firm. In addition, the firm provided copies of the false Forms 1099 and alleged that account transcripts confirmed that the forms were filed with the IRS. Therefore, the law firm stated a claim for fraudulent filing of information returns.

Eddy Leal, P.A. v. Bimini Development, DC Fla., 2017-2 USTC ¶50,340; TRC PENALTY: 3,202.35

An individual was properly convicted of filing false tax returns, making false refund claims and attempting to interfere with tax administration. All the evidence was properly admitted and the jury was properly instructed.

Wrubleski, CA-11, 2017-2 USTC ¶50,333; TRC IRS: 66,356.05

Liens and Levies

A service provider's lien did not have priority over a federal tax lien because its liens were inchoate. Since the service provider's liens were inchoate, they were subordinate to the government's tax liens. Moreover, the government's foreclosure on its liens released the service provider's liens. Therefore, the service provider's liens would no longer attach to the property.

Ochescu, DC Nev., 2017-2 USTC ¶50,338; TRC IRS: 48,152.05

Refund Claims

An individual's claim to a refundable credit for excise taxes he allegedly paid on propane purchases was rejected. The Tax Court reasonably disbelieved his outlandish assertion that he spent over $25,000 on propane for a space heater.

Ibeagwa, CA-7, 2017-2 USTC ¶50,331; TRC BUSEXP: 54,800

Deficiencies and Penalties

The Tax Court properly upheld deficiencies and penalties assessed against an individual and imposed a frivolous position penalty. The IRS's determination was correct. In addition, a $5,000 sanction for filing a frivolous appeal was ordered.

Schneider, CA-8, 2017-2 USTC ¶50,337; TRC PENALTY: 3,308

Loss

An entity that transferred publicly traded securities to a trading account through hedge accounts and a hedge fund did not realize losses on the transfer. The trading account was in fact the alter ego of the entity; the entity was the tax owner of the trading account and its securities. As a partnership separate from the entity, the hedge fund realized the losses; however, loss deductions were permanently disallowed under Code Sec. 267(d)(1).

Technical Advice Memorandum 201737011, FED ¶47,419; TRC SALES: 3,302.35

Petition for Redetermination

A *pro se* married couple's petition for redetermination was dismissed for want of prosecution. The taxpayers failed to appear on the scheduled trail date. The taxpayers did not have sufficient or justifiable reason for failing to appear for trial.

Patacsil, TC, CCH Dec. 61,012(M), FED ¶48,126(M); TRC LITIG: 6,456.15

IRS Announces Applicable Reference Price For Marginal Well Production Credit

The IRS has announced the applicable reference price for qualified natural gas production from qualified marginal wells during tax years beginning in 2016 for determining the marginal well production credit (MWC).

Update. The applicable reference price for tax years beginning in 2016 is $2.38 per 1,000 cubic feet (mcf). The IRS also announced the credit amount used for determining the MWC for tax years beginning in calendar year 2016. The credit amount is determined using the 2016 inflation adjustment factor of 1.2332 and the applicable reference price of $2.38 per mcf. The credit amount for tax years beginning in calendar year 2016 is $0.14 per mcf, the agency explained.

Notice 2017-51; TRC BUSEXP: 55,202.

Wolters Kluwer Projects 2018 Tax Rate Brackets And Other Inflation-Adjusted Figures

The U.S. Department of Labor has released the Consumer Price Index (all urban) for August 2017, which is the last statistic needed to compute the inflation adjustments for the 2018 tax brackets and many of the deductions and credits that are built into the Tax Code. Although the IRS traditionally does not release these figures officially until later in the year, Wolters Kluwer has projected the inflation-adjusted figures for 2018 using the formulas specified in the Code, with the caveat that "tax reform" legislation may change final results.

2018 tax schedules

Married Filing Jointly (and Surviving Spouses)

Not over $19,050	10% of taxable income
$19,050 to $77,400	$1,905 + 15% of taxable income in excess of $19,050
$77,400 to $156,150	$10,657.50 + 25% of taxable income in excess of $77,400
$156,150 to $237,950	$30,345 + 28% of taxable income in excess of $156,150
$237,950 to $424,950	$53,249 + 33% of taxable income in excess of $237,950
$424,950 to $480,050	$114,959 + 35% of taxable income in excess of $424,950
Over $480,050	$134,244 + 39.6% of taxable income in excess of $480,050

Head of Household

Not over $13,600	10% of taxable income
$13,600 to $51,850	$1,360 + 15% of taxable income in excess of $13,600
$51,850 to $133,850	$7,097.50 + 25% of taxable income in excess of $51,850
$133,850 to $216,700	$27,597.50 + 28% of taxable income in excess of $133,850
$216,700 to $424,950	$50,795.50 + 33% of taxable income in excess of $216,700
$424,950 to $453,350	$119,518.00 + 35% of taxable income in excess of $424,950
Over $453,350.00	$129,458.00 + 39.6% of taxable income in excess of $453,350

Single (Other than Heads of Household and Surviving Spouses)

Not over $9,525	10% of taxable income
$9,525 to $38,700	$952.50 + 15% of taxable income in excess of $9,525
$38,700 to $93,700	$5,328.75 + 25% of taxable income in excess of $38,700
$93,700 to $195,450	$19,078.75 + 28% of taxable income in excess of $93,700
$195,450 to $424,950	$47,568.75 + 33% of taxable income in excess of $195,450
$424,950 to $426,700	$123,303.75 + 35% of taxable income in excess of $424,950
Over $426,700	$123,916.25 + 39.6% of taxable income in excess of $426,700

Married Filing Separate

Not over $9,525	10% of taxable income
$9,525 to $38,700	$952.50 + 15% of excess over $9,525
$38,700 to $78,075	$5,328.75 + 25% of excess over $38,700
$78,075 to $118,975	$15,172.50 + 28% of excess over $78,075
$118,975 to $212,475	$26,624.50 + 33% of excess over $118,975
$212,475 to $240,025	$57,479.50 + 35% of excess over $212,475
Over $240,025	$67,122.00 + 39.6% of excess over $240,025

Estates and Trusts

Not over $2,600	15% of taxable income
$2,600 to $6,100	$390.00 + 25% of taxable income in excess of $2,600
$6,100 to $9,300	$1,265.00 + 28% of taxable income in excess of $6,100
$9,300 to $12,700	$2,161.00 + 33% of taxable income in excess of $9,300
Over $12,700	$3,283.00 + 39.6% of taxable income in excess of $12,700

2018 personal exemption

For 2018 the personal exemption will remain at $4,150. The phaseout of the personal exemption for higher income taxpayers will rise slightly, however, beginning after taxpayers pass the same income thresholds set forth for the limitation on itemized deductions, detailed below.

- ***Comment.*** The personal exemption will completely phaseout when income surpasses the following levels: $442,500 (married joint filers); $415,850 (heads of household); $389.200 (unmarried taxpayers); and $221,250 (married filing separate).

continued on page 435

House approves FY 2018 IRS budget

The House approved an IRS budget for fiscal year (FY) 2018 as part of a package of funding bills on September 14 by a vote of 211 to 198. The bill funds the IRS at $11.1 million for FY 2018. The House budget is $111 million above the amount requested by President Trump. At press time, the Senate has not taken up an IRS budget for FY 2018.

The House bill directs the IRS to strengthen cybersecurity and information technology, and improve customer service, including telephone service and correspondence response times. The House bill also prohibits the IRS from rehiring former employees unless employee conduct and tax compliance is given consideration. Additionally, the House bill bars the IRS from using funds to determine church exemptions unless the IRS Commissioner has consented and Congress has been notified.

SFC holds hearing on individual tax reform

The Senate Finance Committee (SFC) held a September 14 tax reform hearing examining the individual side of the tax code. The hearing was intended to be the first in a series of hearings leading up to the committee's draft of comprehensive tax reform legislation, according to SFC Chair Orrin Hatch, R-Utah.

The SFC has had more than 60 hearings focused on tax reform since 2011, Hatch noted, adding, "I think we're capable and ready to get to work on producing a bill." Hatch appeared to emphasize during opening statements the importance of clarifying the committee's role in tax reform.

Much of the hearing focused on specific credits and deductions that, according to witnesses, either hinder or encourage economic growth. Specifically, witnesses remarked upon the child tax credit, but disagreed as to its significance toward economic growth and tax code progressivity.

Lawmakers review how IRS resolves taxpayer disputes

The House Ways and Means Oversight Subcommittee held a September 13 hearing entitled "IRS Reform: Resolving Taxpayer Disputes." Lawmakers and witnesses discussed issues with current IRS dispute resolution procedures and how to improve the agency's ability to better resolve taxpayer disputes in a timely, efficient and cost-effective manner.

Chastity Wilson, CPA, vice chair of the AICPA Internal Revenue Service (IRS) Advocacy and Relations Committee, explained that problems have arisen because penalty disputes currently are handled independently within each of the primary IRS divisions. "It has been our experience that there is no consistency across the IRS divisions on the application of penalty relief provisions," Wilson testified.

Kathy Petronchak, director of alliantgroup, LP's IRS Practice and Procedures unit and former commissioner of the IRS Small Business/Self Employed (SB/SE) Division, urged Congress to provide adequate funding for the Service. Doing so would allow the IRS to upgrade its IT systems, train its employees to ensure competence in handling tax issues and provide timely guidance to taxpayers, she stated. Petronchak told Congress that, because of a lack of training, there are agents handling audits dealing with issues they have never seen before.

Lawmakers introduce Cryptocurrency Tax Act

Rep. Jared Polis, D-Colorado, and Rep. David Schweikert, R-Arizona, recently introduced the Cryptocurrency Tax Act of 2017. The bill, the lawmakers explained, is intended to create a structure for taxing purchases made with cryptocurrency. "Similar to foreign currency transactions, it allows consumers to make small purchases with cryptocurrency up to $600 without burdensome reporting requirements," the lawmakers said in a statement.

Transition to new e-Services platform taking longer than expected

The IRS reported on September 14 that the transition to a new e-Services platform is taking longer than anticipated. Therefore, some applications will be offline for an unspecified period. Some applications are available. They include Registration Services, Transcript Delivery System and TIN Matching. The IRS is in the process of launching a new e-Services platform. Additionally, the IRS is establishing a new e-Services agreement and will require all e-Services users to re-register and re-validate their identities using a two-factor authentication process. *For more details see the September 14, 2017 issue of this newsletter.*

IRS holds hearing on centralized partnership audit regime

The America Institute of CPAs (AICPA), among others, recommended during a September 18 IRS hearing that the IRS make changes to improve the proposed rules on partnership audits. The hearing focused on the centralized partnership audit regime put in place by the Bipartisan Budget Act of 2015 (BBA). The IRS issued regulations earlier this year.

The BBA regime replaces the TEFRA procedures, under which the IRS currently conducts partnership audits, which would become effective for tax years beginning after December 31, 2017. Sarah Allen-Anthony, Crowe Horwath LLP, testified on behalf of the AICPA, that the proposed rules would be a significant departure from current law. Allen-Anthony is a member of the AICPA's Partnership Tax Technical Resource Panel. "A bedrock principle of partnership taxation is that all items of income and expense flow through to the partnership's owners, including adjustments related to IRS audits," Allen-Anthony said. "The regime replaces this long-standing method with one where the default mechanism requires the partnership to pay any additional tax due, resulting in significant administrative and accounting complexities."

Allen-Anthony also commented on the partnership audit regime currently including no reference to a partnership's right to challenge IRS determinations with the IRS Office of Appeals. The appeals process is a "vital option," according to Allen-Anthony, and allows taxpayers to resolve an issue without having to go to Tax Court.

Continued from page 433

2018 standard deduction

For 2018, the standard deduction will rise as follows: $6,500 for unmarried taxpayers and married separate filers; $13,000 for married joint filers; and $9,550 for heads of household (compared to $6,350, $12,700, and $9,350, respectively, for 2017).

The 2018 standard deduction for an individual claimed as a dependent on another taxpayer's return, as in 2017, will be either: $1,050 or $350 plus the dependent's earned income, whichever is greater.

The additional standard deduction for the blind and aged who file as married taxpayers will rise to $1,300 in 2018, from $1,250 in 2017. For unmarried aged or blind taxpayers, the amount of the additional standard deduction also rises, from $1,550 to $1,600.

Limitation on itemized deductions

For higher income taxpayers who itemize their deductions, the limitation on itemized deductions for 2018 will be imposed at income above levels:

- For married couples filing joint returns or surviving spouses, the income threshold will be $320,000, up from $313,800 in 2017.
- For heads of household, the threshold will be $293,350, up from $287,650 in 2017.
- For single taxpayers, the threshold will be $266,700, up from $261,500 in 2017.
- For married taxpayers filing separate returns, the 2018 threshold will be $160,000, up from $156,900 in 2017.

AMT exemptions

Wolters Kluwer projects that, for 2018, the AMT exemption for married joint filers and surviving spouses will be $86,200, (up from $84,500 in 2017). For heads of household and unmarried single filers, the exemption will be $55,400 (up from $54,300 in 2017). For married separate filers, the exemption will be $43,100, (up from $42,250, in 2017). For estates and trusts, the exemption will be $24,600 (up from $24,100 in 2017.)

Other adjusted amounts

IRA Contributions. The maximum amount of deductible contributions that can be made to an IRA will remain the same for 2018, at $5,500 (or $6,500 for taxpayers eligible to make catch-up contributions). For 2018, however, the allowable amount of deductible IRA contributions will phaseout for married joint filers whose income is between than $101,000 and $121,000 if both spouses are covered by a retirement plan at work (up from $99,000 and $119,000 in 2017). The income phaseout ranges increase for married joint filers with only one spouse covered by a retirement plan through work: For these filers, the phaseout range for 2018 will be $189,000 to $199,000, up from $186,000 to $196,000 for 2017.

For heads of household and unmarried filers who are covered by a retirement plan at work, the 20187 income phaseout range for deductible IRA contributions is $63,000 to $73,000, up from, $62,000 to $72,000 for 2017.

Adoption Credit. The adoption credit for 2018 increases to $13,840, up from $13,570 for 2017 The income phaseout range for the credit will be $207,580 to $247,580 for 2018.

Saver's Credit. For 2018, the saver's credit will be available up to maximum AGI limits and filing status as follows: joint filers: $38,000, AGI for a 50-percent credit, $41,000 for a 20-percent credit, and $63,000 for a 10-percent credit; heads of household: $28,500, AGI for a 50-percent credit, $30,750 for a 20-percent credit, and $47,250 for a 10-percent credit; other filers: $19,000 AGI for a 50-percent credit, $20,500 for a 20-percent credit, and $31,500 for a 10-percent credit.

Education Savings Bond Interest Exclusion. When U.S. savings bonds are redeemed to pay expenses for higher education, the interest may be excluded from income if the taxpayer's income is below a certain range. For 2018, the phase-out range for single filers will start from $79,700 (up from $78,150 for 2017). For joint filers the 2018 phase-out range will start from $119,550 (up from $117,250 for 2017).

Medical Savings Accounts. The minimum–maximum range for premiums used to determine whether a medical savings account (MSA) is tied to a high deductible health plan for 2018 will be $2,300 to $3,450 for self-only coverage (up from $2,250 to $3,350 for 2017) and $4,600 to $6,850 for family coverage (up from $6,750 to $8,250 for 2017).

Self-only coverage plans are subject to a $4,600 maximum amount for annual out-of-pocket costs (up from $4,500 for 2017). Family coverage plans have a $8,400 annual limit (up from $8,250 for 2017).

Limitation on Flexible Spending Arrangements (FSAs). The limitation on the amount of salary reductions an employee may elect to contribute to a cafeteria plan under an FSA increases to $2,650 in 2018, up from $2,600 for 2017.

Long-term Care Insurance. The per diem exclusion for long-term care insurance proceeds for 2018 will be $360 per day (same as for 2017). The dollar level of long-care premiums deductible as health insurance premiums will rise, ranging from $420 for those 40 years or younger to $5,200 for those over 70 years of age.

Qualified Transportation Fringe Benefits. For 2018 the monthly cap on the exclusion for qualified parking or the combined value of transit passes and commuter highway vehicles will be $260, up from $255 for 2017.

Educators Deduction. The annual above-the-line maximum deduction for expenses related to classroom and professional development expenses remains at $250 for 2018.

Section 179 Deduction. Allowable Code Sec. 179 expensing for 2018 is capped at $520,000, with an annual property investment limit of $2,070,000 (up from $510,000 and $2,030,000, respectively, for 2017).

Estate and Gift Tax. The gift tax annual exemption will remain the same for 2017, at $14,000. However, the unified estate and gift tax applicable exclusion will increase from $5,490,000 in 2017 to $5,600,000 for 2018.

Gifts to Noncitizen Spouses. The first $152,000 of gifts made in 2018 to a spouse who is not a U.S. citizen will not be included in taxable gifts, up from $149,000 for 2017.

Foreign Earned Income. The amount of the 2018 foreign earned income exclusion under Code Sec. 911 will be $104,100, up from $102,100 for 2017.

Reporting of Foreign Gifts. The 2018 threshold amount for foreign gifts for purposes of the Code Sec. 6039F reporting requirement increases to $16,111, up from $15,797 for 2017.

COMPLIANCE CALENDAR

Note: Victims of Hurricanes Harvey and Irma should check for extended filing dates.

■ September 22
Employers deposit Social Security, Medicare, and withheld income tax for September 16, 17, 18, and 19.

■ September 27
Employers deposit Social Security, Medicare, and withheld income tax for September 20, 21, and 22.

■ September 29
Employers deposit Social Security, Medicare, and withheld income tax for September 23, 24, 25, and 26.

■ October 4
Employers deposit Social Security, Medicare, and withheld income tax for September 27, 28 and 29.

■ October 6
Employers deposit Social Security, Medicare, and withheld income tax for September 30, October 1, 2, and 3.

TRC TEXT REFERENCE TABLE

The cross references at the end of the articles in Wolters Kluwer Federal Tax Weekly (FTW) are text references to Tax Research Consultant (TRC). The following is a table of TRC text references to developments reported in FTW since the last release of New Developments.

ACCTNG: 36,162.05	342, 390	FILEIND 21,156.05	363	IRS 30,124	379
BUSEXP 9,104.20	419	HEALTH 3,150	390	IRS 36,052.05	411
BUSEXP 9,104.30	388	HEALTH 3,300	350, 351	IRS 42,100	392
BUSEXP 18,210.05	397	HEALTH 3,322	411	IRS 45,152	341
BUSEXP 24,912	387	HEALTH 6,104	363	IRS 66,304	344, 388
BUSEXP 30,168	377	INDIV 33,354	342	IRS 66,454	362
BUSEXP 30,256	378	INDIV 51,364	375, 386, 400	LITIG 6,136.25	352
BUSEXP 48,052	376	INDIV 51,456	330	PART 18,160	387, 410
BUSEXP 51,184	416	INDIV 54,050	413	PAYROLL 6,106	365
BUSEXP 54,552.15	339	INDIV 54,052	391	PAYROLL 9,352	364
COMPEN 3,000	417	INTL 3,558	362	PENALTY: 9,152	417
COMPEN 3,050	340	INTL 15,220	353	RETIRE 3,302	410
CCORP 3,302.10	351	INTL 18,150	415	RETIRE 15,304	385
DEPR 3,504	355	INTL 18,204	389	RETIRE 39,502	412
DEPR 6,154	415	INTL 36,050	364	RETIRE 42,804	356
ESTGIFT: 39,306	401	INTL 36,052	399	RIC: 6,104.25	377
EXCISE 6,166.05	352	INTLOUT 9,252	354	SALES 6,212.05	343
EXEMPT 15,206	391	IRS 3,200	338	SALES 6,350	403
EXPAT: 12,100	402	IRS 6,106.05	416	SALES 30,604	374
FILEBUS 9,450	365	IRS 21,402	418	SALES 51,056.05	366
FILEIND 15,204	340, 401	IRS 24,150	354	SALES 51,552	399
FILEIND 18,052	375, 376	IRS 27,206.15	373		

FROM THE HELPLINE

The following questions have been answered recently from the perspective of research assistance (not legal advice) by our Wolters Kluwer Tax Research Consultant Helpline (1-800-344-3734).

Q Assume that an Sub S corp owns waterfront lot with basis of, say, $220,000 and appraised value of $180,000. The lot is donated to a University. The University writes a letter to donor saying they intend to sell the lot. The real estate agent, using comparables at the time, puts lot on the market for $125,000. he University sells the lot for $112,000 within a year of receiving the lot. How much is the donation deduction and is appraisers signature and appraisal required to be attached to the Form 8283. And, what happens to the basis in excess of the deduction claimed?

A Generally, the charitable deduction for gifts of property is measured by the fair market value of the property on the date of the contribution. In determining the fair market value of donated real estate, courts have looked to the sale prices of comparable parcels of land and to the price received by a charitable donee that sells donated land soon after the contribution date. An appraisal generally must be made within 60 days before the donation. *See FED ¶11,660.01, .021, and .022; and TRC VALUE: 15,050, 15,100, 15,102, 15,152, 15,250, and 15,252.*

The appraisal must be signed and accompany the Form 8283. In addition, the appraiser should be the one who completes Part III of Form 8283. In addition, the appraisal should meet the requirements described in Code Sec. 170(f)(11)(E), Reg. §1.170A-13(c)(5), and Notice 2006-96. If the donor's basis in contributed property exceeds the fair market value, the difference between the donor's basis and the property's fair market value generally cannot be deducted as a loss because of the loss limitations in Code Sec. 165(c). *See TRC INDIV: 51,152.*

Q If a person that was an limited partner during the tax year, can he sign the Form 1065 for that year if he became a GP by the time the return was ready for signature in the following year?

A As discussed in *FED ¶36,643.01,* Reg. 1.6063-1, Signing of returns, statements, and other documents made by partnerships, provides that returns "shall be signed by any one of the partners." However, the instructions to Form 1065 are more stringent in requiring that a general partner or LLC member manager sign the return. Within the Instructions for Form 1065 itself, there appears to be no statement restricting the signing partner based on membership during the tax year covered by the return.