

Federal Tax Update

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INDIVIDUALS

In Friedman v. Commissioner, TC Memo 2015-177, the Tax Court required an individual who had lent almost \$5 million to his daughter's finance company to report monthly payments of scheduled interest as taxable notwithstanding the unlikelihood of repayment of principal.

In Dunnigan v. Commissioner, TC Memo 2015-190, the Tax Court concluded that hardship is not an exception to the general rule that relief from indebtedness is taxable; as a result, a 76 year old man fighting serious cancer who did not come under any of the exceptions was forced to pay tax on the cancellation income.

In Cooper v. Commissioner, TC Memo 2015-191, a couple who made 12 loans to private individuals and businesses over a six year period was denied a business bad debt for \$925,000 as their lending practices lacked business formalities and they did not hold themselves out as being in the lending business.

RETIREMENT PLANS

In Fish v. Commissioner, TC Memo 2015-176, a patent attorney attempted unsuccessfully to argue that he should be allowed to offset a required IRA distribution with losses realized within the IRA during the year.

ESTATES

In Estate of DiMarco v. Commissioner, TC Memo 2015-184, the Tax Court denied a charitable deduction on an estate return for bequests to two churches where the bequests were being challenged by individual heirs inasmuch as the statute denies a deduction unless the likelihood of the deducted amounts passing to noncharitable beneficiaries is "so remote as to be negligible."

In Legal Advice issued by Field Attorneys 20152201E, IRS determined that a transfer was inadequately disclosed to IRS, keeping open the statute of limitations on gifts, where

the valuation was explained in a one-paragraph supplement describing two partnerships (one where an incorrect identification number was provided).

BUSINESS

Final Regulations under Code Section 368 set forth rules for F reorganizations allowing de minimis departures from the six requirements for a qualifying nontaxable reorganization for purposes unrelated to taxation and also allow a recapitalization, redemption or distribution at the same time as the reorganization.

In Rochlani v. Commissioner, TC Memo 2015-174, the Tax Court denied losses on an individual's personal return where he set up a C corporation but used a personal bank account and personal credit cards to pay for the expenses, the Court noting that a corporation need not keep books and records or maintain separate accounts or credit cards in order to be recognized as a separate taxable entity.

In Frontier Custom Builders, Inc. v. Commissioner, 116 AFTR2d 2015-5251, the Fifth Circuit Court of Appeals agreed with the Tax Court that a custom home builder must capitalize most costs of production including employee salaries and yearend bonuses in the same way as a speculative home builder.

In Revenue Procedure 2015-43, IRS announced that it will not issue advanced rulings, except for unique and compelling circumstances, on corporate divisions when the active trade or business is less than 5 percent of the gross assets or when investment securities are two-thirds or more of the gross assets.

In Letter Ruling 201536006, IRS indicated that amounts paid to protect against patent infringement are deductible whereas those incurred in defending or perfecting title to the patent must be capitalized with a reasonable allocation necessary if costs are incurred for both purposes.

PROCEDURE

In Tilden v. Commissioner, TC Memo 2015-188, the Tax Court determined that a Petition was filed late when received by the Tax Court on the 98th day where it bore not only a postmark by Stamps.com on the 90th day but also a certified mail sticker with a tracking number showed delivery to the post office on the 92nd day.

In Canaday v. Commissioner, TC Summary Opinion 2015-57, the Tax Court allowed an individual to bring up substantive issues at a Collection Due Process (CDP) hearing even if there was a prior opportunity to contest the liability where the taxpayer had no prior Appeals conference.

In Scott v. Commissioner, TC Memo 2015-180, a Mary Kay sales team manager with an accounting degree was denied innocent spouse status when her husband made a \$250,000 error in her net income in a single year as she was charged with having knowledge of her net income notwithstanding that she did not actually review the return.

In Rothkamm v. United States, 116 AFTR2d 2015-5263, the Fifth Circuit Court of Appeals reversed a Louisiana Federal District Court and indicated that a third party whose assets are seized for the tax debt of another, in this case the spouse, has only a nine month period in which to sue rather than the longer period available to taxpayers themselves.

In Revenue Procedure 2015-44, IRS announced an end to its arbitration program available after an unsuccessful Appeals process, noting that only two cases were settled using arbitration during a 14-year period; mediation is still available.
