

## Federal Tax Update

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### INDIVIDUALS

In Brady v. Commissioner, TC Memo 2013-1, the Tax Court determined that social security disability payments that must be paid over as an offset to a private disability policy do not reduce the gross amount of social security income.

In Scheidelman v. Commissioner, TC Memo 2013-18, the Tax Court determined that a facade easement running with the land in perpetuity lacks value and denied a charitable deduction to a taxpayer who consented permanently to leaving the front of his Brooklyn home with a certain facade as requested by a neighborhood architectural trust.

In Adams v. Commissioner, TC Memo 2013-7, the Tax Court found that a like-kind exchange was not barred where the owner's son moved into the replacement property and paid less than fair market rent, the Court finding that the son was doing extensive renovations as a trade off for rent.

### ESTATES

In Estate of Giovacchini v. Commissioner, the Tax Court allowed evidence of a 2003 sale of property for \$29.5 million to be probative of the value at the time of a 2000 gift and 2001 death; the Court discounted the sales price for changes in value and other adjustments but rejected the Estate's argument that the values at the time of the gift and subsequent death were \$7.4 million and \$8 million respectively.

### BUSINESS

Proposed Regulations under Code Section 3604, if finalized, would create joint liability for a company and the agency providing it with employees in the case of unpaid payroll taxes properly reportable by the provider of workers.

In Reynoso v. Commissioner, TC Memo 2013-25, the Tax Court allowed a contractor who kept no records to deduct 30 percent of his total gross receipts as business expenses while he sought to deduct 60 percent of his gross receipts.

In Thousand Oaks Residential Care Home I, Inc. v. Commissioner, TC Memo 2013-10, the Tax Court found that wages and contributions to a defined benefit plan for several owners in the three years following sale of a business were unreasonable as to a portion of the \$800,000-\$900,000 paid to and on behalf of each during the three-year period; the Court did allow a portion of the payments to be treated as compensation in light of low salary in prior years, adopting a six-prong test in which it looked at the role of the individuals in the company, a comparison with other companies, the character and condition of the company, the extent of a conflict of interest, the consistency in compensation and an independent investor perspective.

In Humphrey, Farrington & McClain PC v. Commissioner, TC Memo 2013-23, the Tax Court backed up the IRS position that costs advanced to contingent clients by a law firm were nondeductible loans subject to a bad debt deduction in the event a case is closed without reimbursement.

In Revenue Procedure 2013-13, IRS announced an optional safe harbor method for claiming the office in home deduction under which an eligible individual would claim \$5 per foot utilized not to exceed 300 square feet in lieu of deducting utilities and depreciation; the depreciation that would have been claimed will be considered “allowable depreciation” only if the individual uses actual expenses in a succeeding year.

## PROCEDURE

Public Law 112-267 clarifies that federal thrift savings plans are within the levy power of IRS.

Proposed Regulations under Code Section 6042 et seq. would, if adopted, allow truncated taxpayer identification numbers on certain information returns and payee statements to reduce identity theft.

In Loving v. Internal Revenue Service, 111 AFTR2d 2013-\_\_\_\_\_, a District of Columbia Federal District Court issued an injunction against IRS, finding that the examination and continuing education requirements for non-attorney and non-CPA preparers fell outside of the power of IRS (the decision was immediately appealed).

In Mills v. Commissioner, TC Memo 2013-4, the Tax Court found an accuracy penalty appropriate where a couple relied on the advice of a former enrolled agent that they could amortize their contribution to three LLCs of “life, time and expertise” which they valued at \$5.25 million in the aggregate; the taxpayer argued unsuccessfully that they reasonably relied on a tax advisor that they thought was competent because he had a “boat and a busy office” (by the time of trial, he was in a federal penitentiary for stealing from Individual Retirement Accounts).

In Berkshire Bank v. Ludlow, the First Circuit Court of Appeals agreed with a Massachusetts Federal District Court that a single owner LLC was a “nominee” of the individual and that IRS could reach proceeds from the sale of real estate owned by the LLC for delinquent personal taxes of the individual; the Court noted that the LLC never had its own bank account and that mortgage payments were made from a personal account into which income was deposited (the Court cited other factors in its decision that are basic tenets of an LLC).

In Wilson v. Commissioner, 111 AFTR2d 2013-\_\_\_\_\_, the Ninth Circuit Court of Appeals in accord with the Eleventh Circuit determined that the Tax Court could review innocent spouse claims by accepting new evidence not in the administrative record from IRS Appeals and awarded innocent spouse status to the taxpayer for unreported income from a Ponzi scheme despite failing to provide information at the administrative proceeding.

In Tompkins v. Commissioner, TC Memo 2013-24, the Tax Court determined that a separated individual was entitled to innocent spouse relief as he had no knowledge of his wife’s income from a second job and a small bank account.

In Haggerty v. Commissioner, 111 AFTR2d 2013-411, the Fifth Circuit Court of Appeals agreed with the Tax Court that equitable innocent spouse relief should be denied to a widow who signed a joint tax return and did not pay full remaining liability resulting largely from an IRA withdrawal by her late husband of which she was aware and received a benefit from the payoff of a second trust on the home; the taxpayer argued that her husband was a “big, intimidating man” but the Court noted that he was dead at the time she signed the joint return.

In Action on Decision 2013-5, IRS indicated that it disagreed with a decision of the Tax Court in Patel v. Commissioner, 138 TC No. 23, in which the Court determined that a finding of uncertainty in the tax law in and of itself prohibits a taxpayer from being penalized; the IRS’s position is that the taxpayer must show that he investigated the law and obtained professional advice.

In Chief Counsel Notice 2013-5, IRS indicated that it may bypass a Power of Attorney and communicate directly with the taxpayer in a docketed Tax Court case where no attorney has entered an appearance.