

Federal Tax Update

By David S. De Jong

August, 2013

INDIVIDUALS

Final Regulations under Code Section 5000A provide guidance on the individual mandate of the “shared responsibility payment” effective in 2014; they provide that the penalty does not apply for a “short coverage gap” of less than three full calendar months.

In Golit v. Commissioner, TC Memo 2013-191, the Tax Court agreed with IRS that a taxpayer did not prove that an individual born two years later than her was an adopted son or otherwise qualified as a dependent.

In Humphrey v. Commissioner, TC Memo 2013-198, the Tax Court permitted an individual with prostate cancer to deduct supplements and health foods as alleviating the disease but did not permit him to deduct gym membership as he could not show that the costs exceeded what he otherwise would have spent.

In Hessing v. Commissioner, TC Memo 2013-179, the Tax Court determined that a father was the equitable owner of property that was sold notwithstanding title in the son’s name for credit and other reasons, and he and not the taxpayer son had to report gain on the disposition of the property.

In Revenue Ruling 2013-17, IRS indicated that it would recognize same sex marriages lawfully entered into (but not same sex or opposite sex civil unions) irrespective of any subsequent change in residence; same sex couples must file as married effective with 2013 returns and may choose to file or amend to be unmarried or married for prior open years.

IRS Form 8960, issued in draft, was released to allow individuals with net investment income to compute the Medicare tax effective 2013.

RETIREMENT PLANS

In an unnumbered FAQ Dated August 29, 2013, IRS indicated that qualified retirement plans must treat same sex couples legally married as married for all purposes under the retirement plan laws.

ESTATES

In Letter Ruling 201332001, IRS determined that the transfer of a joint and survivor life insurance policy from one trust to another in order to incorporate special needs provisions for a disabled daughter fell within the exceptions to the “transfer for value” rule where the transferee is a grantor trust and it paid the interpolated terminal reserve value plus the prepaid premium.

BUSINESS

In Dunford v. Commissioner, TC Memo 2013-189, the Tax Court denied an office in home deduction for a motor home used in a consulting business noting “it is implausible to suggest that, in the cramped quarters of a motor home, an unclosed area like the countertop would somehow be exclusively reserved to business activity.”

In Deseret Management Corporation v. United States, 112 AFTR2d 2013-5530, the Court of Federal Claims allowed a tax free swap of radio stations, indicating that the intangible value in both situations was generally in the licenses and that significant goodwill apart from the licenses did not exist due to lack of customer loyalty.

In Kumar v. Commissioner, TC Memo 2013-184, the Tax Court determined that a 40 percent S corporation shareholder needed to report the flow through income from a Form K-1 notwithstanding his argument that he was no longer a beneficial owner of the stock because he had been kept from participation in its affairs.

In Glass Blocks Unlimited v. Commissioner, TC Memo 2013-180, the Tax Court agreed with IRS that a tradesperson who took no compensation from his 100% owned S Corporation but took dividends of approximately \$30,000 each year should have treated the entire distributions as wages.

In Sean McAlary LTD, Inc., TC Summary Opinion 2013-62, the Tax Court determined that annual base pay for a realtor who owned his own business and was the sole worker was unreasonably low at \$24,000 (with increased compensation if he recruited additional agents) and adjusted the compensation upward to \$83,200 (which still left \$157,800 of flow through income exempt from payroll taxes).

In Bartlett v. United States, TC Memo 2013-182, the Tax Court found that a bull breeding activity evidenced after the fact by a log did not involve the material participation of the owner when ranch hands were on the subject property daily and the taxpayer only periodically; his attempt to establish 500 hours in the activity was weakened by his log which was inconsistent with credit card statements and showed on one day he spent 28 hours in the activity.

In Bagley v. United States, 112 AFTR2d 2013-5166, a California Federal District Court determined that an individual's conduct in prosecuting a qui tam ("whistleblower") action against his former employer where he was involved in the prosecution over a ten-year period constituted a "business activity", allowing attorney fees to be deducted in reaching adjusted gross income.

In Rosenfeld v. Commissioner, 112 AFTR2d 2013-5638, the Ninth Circuit Court of Appeals agreed with the Tax Court that a trade officer working for a foreign government is a common law employee despite having no withholding and was not entitled to make a contribution to a retirement plan.

In Gerstenbluth v. Credit Suisse Securities, LLC, 112 AFTR2d 2013-_____, the Second Circuit Court of Appeals agreed with a New York Federal District Court and followed the weight of authority and determined that an age discrimination award is subject to FICA withholding.

In Revenue Procedure 2013-30, IRS consolidated its procedures to request "simplified" relief for a late S corporation election, allowing the procedure to be used for three years and 75 days after the date for which the election was intended to be effective but requiring that reasonable cause be shown as well as diligence in correcting the mistake on discovery.

In Field Attorney Advice 2013-3101F, IRS indicated that an abandonment loss could not be claimed by a corporation exploring two alternative reorganizations until such time as both were abandoned; if either was chosen, total cost of both would be required to be capitalized.

PROCEDURE

Proposed Regulations under Code Section 6015 allow the seeking of equitable innocent spouse relief during the entire period of collection but clarify that receipt of a refund or credit depends on whether that time period remained open as of the filing date of innocent spouse relief.

Proposed Regulations under Code Section 6159, if finalized, would increase the user fee for installment agreements from \$105 to \$120 except low income taxpayers would remain at \$43 (with reinstatements from \$45 to \$50) and the fee for Offers in Compromise from \$150 to \$186.

In Santa v. Commissioner, TC Memo 2013-178, the Tax Court granted innocent spouse relief to a former husband as IRS was unable to show that he had actual knowledge of a taxable withdrawal of his former wife from a retirement plan although it was deposited in a joint bank account.

In Kellam v. Commissioner, TC Memo 2013-186, a former husband was granted innocent spouse relief for a year in which he did not review a tax return with overstated deductions as the former wife worked directly with the preparer who engaged in electronic filing such that he had no actual knowledge of the overstatement; innocent spouse relief was denied for the prior year in which he had an opportunity to review the return.

In Syring v. United States, 112 AFTR 2d 2013-5174, a Wisconsin Federal District Court determined that an estate's payment to IRS was not a deposit which would not have been subject to the statute of limitations on refunds, determining that the accompanying letter caused IRS to treat it as a payment against the ultimate liability.

In Chief Counsel Advice 201333008, IRS determined that the six-year statute of limitations on understatement of gross income on a tax return is determined by utilizing gross income shown on the originally filed return and not any amended return.