

## Federal Tax Update

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### INDIVIDUALS

In Sharp v. Commissioner, TC Memo 2013-90, a university professor demoted to a secretarial position who was diagnosed thereafter with stress and depression and was compensated by the school had to report the full settlement as income; alleged physical symptoms of muscle tension and migraines arose out of the emotional injuries and the settlement agreement made no mention of the physical problems.

In Puentes v. Commissioner, TC Memo 2013-277, a taxpayer was denied a mortgage interest deduction for payments she made on her brother's home as she could neither prove a legal obligation to make payments or an equitable entitlement to the property.

IRS Correspondence to Senator Barbara Boxer indicated that a state statute (in this case California) limiting recourse on a short sale to the proceeds of the transaction such that a homeowner is not personally liable for a deficiency precludes charging the taxpayer with taxable relief from indebtedness.

### RETIREMENT PLANS

In Roberts v. Commissioner, 141 TC No. 19, the Tax Court determined that an individual whose IRA was depleted by his then wife's forging of his name was not liable on a separate return for taxes or penalty on the early withdrawal although the funds were placed in a joint account; the taxpayer did not know about the withdrawal until he received a Form 1099 in the following year as the account was used solely by the wife.

### ESTATES

In Program Manager Technical Advice 2013-14, IRS reversed its position established in 2001 and indicated that a CDP notice is not required before levying against transferees for unpaid estate tax liability.

### BUSINESS

Proposed Regulations under Code Section 708 would require that a partnership continue the same amortization period for organization expense on a technical termination of a partnership where 50 percent or more of the total interest in capital and profits changes hands within a 12-month period.

Proposed Regulations under Code Section 752 require that a partner's basis from partnership liabilities be determined based on who has the economic risk of loss with sharing among partners bearing the economic risk of loss for the same liability.

In Austin v. Commissioner, 141 TC No. 18, the Tax Court determined that the causal definition in a restricted stock and employment agreement must be scrutinized and, if it does not match the meaning of that phrase as used in IRS Regulations, may result in a substantial risk of forfeiture; the generic rule of IRS is that termination for cause is not a substantial risk of forfeiture.

In Austin Otolaryngology Associates v. Commissioner, TC Memo 2013-293, a physician specializing in neurology was denied a deduction for expenses relating to hunting trips which were purportedly utilized both to build business relationships and to test devices to prevent hearing loss.

In Chaganti v. Commissioner, TC Memo 2013-285, the Tax Court determined that an attorney's payment in excess of \$18,000 to opposing counsel under a Federal District Court Order as the result of "unnecessarily dragging the case out" was not an "ordinary and necessary" business expense; the Court also determined that a \$2,300 fine payable to the Court for late payment of an earlier fine where the client did not show for a deposition was a nondeductible penalty, reserving a decision on the original sanction.

In Brown v. Commissioner, TC Memo 2013-275, the Tax Court determined that an airplane was not placed in service by year end when it was delivered on December 30 without modifications required under the contract (conference table and larger computer displays); although it was utilized for business purposes the next day, it was delivered back to the manufacturer on January 5 and the required modifications were completed late that month at which time it became "fully functional" for the specific needs of the business.

In Pilgrim's Pride Corporation v. Commissioner, 141 TC No. 17, the Tax Court determined that abandoned securities do not give rise to an ordinary loss but keep their character as a capital loss.

In DF Systems, Inc. v. Commissioner, 112 AFTR2d 2013-5647, the Fifth Circuit Court of Appeals agreed with the Tax Court that a transfer of funds by an individual from his business to another owned by his daughter was not a loan when there was no written agreement or other record establishing a definite amount to be advanced, terms of repayment, interest rate or collateral.

In Mathis v. Commissioner, TC Memo 2013-294, the Tax Court determined that a horse farm engaged in training and breeding with \$9 million in losses over a decade was not operated for a profit; the Court stated that, although the farm was run in a professional manner with a business and marketing plan, the taxpayers failed to consult financial experts (the Court did refuse to impose the accuracy penalty).

In Legal Advice Issued by Field Attorneys 20131601E, IRS determined that an exchange of worthless common stock for new common stock and two classes of preferred stock with potential value did not constitute a tax-free E reorganization as the fair market value of the post-reorganization stock must equal the fair market value of the pre-reorganization stock to constitute a tax-free recapitalization.

In Chief Counsel Advice 201351018, IRS indicated that a limited liability company keeps the same taxpayer identification number when it was initially taxed as a partnership and became a disregarded entity on departure of all of the owners except one.

## PROCEDURE

In Senyszyn v. Commissioner, TC Memo 2013-274, the Tax Court determined that a guilty plea to tax evasion establishes civil tax fraud and that only the amount of the fraud can be challenged because the specific amount of unreported income is not an “essential element” of a conviction.

In Stocker v. United States, the US Supreme Court refused to hear the taxpayer’s appeal from a decision of the Sixth Circuit Court of Appeals at 111 AFTR2d 2013-556 not allowing extrinsic evidence of proof of mailing in the absence of physical delivery, postmark or registration of mailing; the courts remain deeply divided with the Second Circuit and Court of Federal Claims in accord and the Eighth, Ninth and Tenth Circuits as well as the Tax Court permitting alternative methods of proving date of mailing in order to overcome a presumption of late filing.

In Central Motorplex, Inc. v. Commissioner, TC Memo 2013-286, the Tax Court permitted a dissolved corporation to maintain an action in court based on state law treating a dissolved corporation as continuing in existence indefinitely to the extent necessary to wind up and liquidate its business and affairs.

In Reilly-Casey v. Commissioner, TC Memo 2013-292, a real estate agent was denied equitable innocent spouse relief as the Court balanced the tests and found most of them in favor of IRS including no hardship, reason to know of the understatement and noncompliance with income tax laws in future years.

In Program Manager Technical Advice 2013-16, IRS indicated that the special rules applicable to federal contractors permitting continuous levies and prior to CDP hearings apply to all property of a debtor with one or more current federal contracts.

In Memorandum SBSE-05-1213-0089, IRS indicated that it must have 18 days advance notice before the “bar date” on bankruptcy filings not involving “priority claims” or it will consider the tax debt not discharged in bankruptcy; a determination will be made on a case by case basis for notices 19-29 days before the bar date.

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