

Federal Tax Update

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INDIVIDUALS

Proposed Regulations under Code Section 172 clarify the definition of “support” for the dependency allowance, indicating that paid health insurance premiums but not life insurance premiums are treated as support; the Proposed Regulations also provide that, where the highest adjusted gross income of two parents must be determined due to equal custody, all income on a joint tax return of one or both of the parents is to be counted.

In Hardy v. Commissioner, TC Memo 2017-16, the Tax Court determined that a plastic surgeon did not need to group his ownership interest in a surgical center with his professional practice, thus allowing his passive income from the center to offset other passive losses; the Court noted that the surgeon’s income from the center was based on a distributive share and not on how many surgeries he performed (and noting that his involvement in the surgical center LLC was akin to that of a limited partner and that the self-employment tax did not apply).

In Makhlouf v. Commissioner, TC Summary Opinion 2017-1, the Tax Court found that an individual with one rental property in the United States and another in Egypt fell far short of the 750 hours needed to be considered a real estate professional; the Court found that few of the entries on a spreadsheet were contemporaneous and that the time claimed to be expended was “implausible.”

In Notice 2017-10, IRS announced that syndicated conservation easements offering charitable contribution deductions at least 2½ times larger than the amount invested will be considered as “listed transactions.”

In an Executive Order, President Trump directed agencies including IRS to waive, defer, grant exemptions from or delay the implementation of any provision in the Affordable Care Act that imposes any cost or penalty.

ESTATES

In Notice 2017-15, IRS indicated that an individual’s remaining unified credit and generation skipping transfer exemption may be increased on the next filed return by amounts utilized in transfers to a same sex spouse prior to the US Supreme Court

decision in Windsor although any prior taxes paid cannot be refunded after expiration of the statute of limitations.

BUSINESS

Proposed Regulations under Code Section 6230 et seq. require the election out of a centralized audit by eligible partnerships to be on a timely filed return including extensions; the Regulations make it clear that IRS can adjust the return of a partner which is inconsistent with the partnership return through a mathematical correction under which the Tax Court will not have jurisdiction [THESE PROPOSED REGULATIONS HAVE BEEN WITHDRAWN BY THE NEW ADMINISTRATION].

In Sensenig v. Commissioner, TC Memo 2017-1, the Tax Court determined that large amounts transferred to a corporation with little other equity and without a loan agreement were equity and not debt especially when no commercial lender would have provided funds under the circumstances.

In Qinetiq US Holdings, Inc. v. Commissioner, 119 AFTR2d 2017-330, the Fourth Circuit Court of Appeals agreed with the Tax Court that a corporation could not take a deduction for the value of stock transferred to a key employee six years prior; the corporation claimed the lapse of a transferability restriction but the Court opined under the facts that voluntary termination of employment or termination for cause was unlikely and thus there was no substantial risk of forfeiture.

In Chief Counsel Memorandum 2017-1, IRS indicated that an employer who fails to pay FICA taxes in the year that deferred compensation is earned must pay the taxes in the year when it is paid if the limitations period has expired for the year when the compensation was earned.

In Legal Advice issued by Associate Chief Counsel 2017-002, IRS determined that an accrual basis taxpayer may not accrue the anticipated liability on rewards that can be redeemed either for products or used as a discount on products, indicating that a hybrid as opposed to a straight redeemable award does not get the early accrual.

PROCEDURE

In Brodmerkle v. Commissioner, TC Memo 2017-8, the Tax Court determined that a couple who did not respond to a Request for Admissions effectively admitted the underlying adjustments including \$30,000 of unreported income.

In Schuster v. Commissioner, TC Memo 2017-15, the Tax Court determined that a credit against another year's tax liability is not a refund for purpose of the two-year limitation on IRS recovering erroneous refunds from taxpayers.

In United States v. Davis, 119 AFTR2d 2017-314, a Louisiana Federal District Court allowed IRS to foreclose on property rented by a law firm from two of its principals who were liable for unpaid trust fund taxes although a third property owner did not share in the liability; the Court analyzed whether IRS would get more money by foreclosing on the whole rather than on the partial interest in reaching its decision.
