

Federal Tax Update – April 2021

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INDIVIDUALS

In *Hagnazarzadh v. Commissioner*, TC Memo 2021-47, the Tax Court agreed with IRS that over \$6.7 million in unexplained bank deposits constituted income to a couple who provided no specifics in their testimony that the deposits were non taxable.

In *Baum v. Commissioner*, TC Memo 2021-46, a couple was denied a theft loss for \$300,000 that they had invested in a water purification company as they were unable to prove fraud or false representations in the inducement; the Court noted in any event that there was a “reasonable prospect of recovery” in bankruptcy proceedings.

In Action on Decision 2021-1, IRS announced its nonacquiescence in *Schrieber v. Commissioner*, TC Memo 2017-32, in which the Tax Court decided that a retirement plan interest that could not be cashed in or borrowed against does not count as an asset for purpose of the insolvency exclusion.

In Letter Ruling 202114001, IRS determined that a male same sex couple cannot deduct surrogacy expenses paid to the sister of one of the couple but can deduct their own directly attributable expenses.

In Letter Ruling 202115004, IRS allowed revocation of an election out of the installment method where the regular preparer was sick and the taxpayer hired a new accountant who reported the entire gain on the return in the year of sale, IRS noting that the taxpayer did not use hindsight in requesting relief and was not motivated by an intent to “avoid” taxes.

BUSINESS

In *Berry v. Commissioner*, TC Memo 2021-42, the Tax Court determined that a check of \$250,000 from a major client of a development company intended to start an unrelated auto racing activity constituted income to the recipient corporation where it could not prove the intention of a capital contribution or loan.

In *De Los Santos v. Commissioner*, 156 TC No. 9, the Tax Court concluded that the compensatory element of split dollar life insurance is income to an S corporation shareholder and is not a distribution attributable to the stock.

In *Mylan Inc. v. Commissioner*, 156 TC No. 10, the Tax Court determined that legal fees incurred as part of the process to obtain FDA approval of drugs had to be capitalized; however, the Court ruled that legal expenses incurred in defending against patent infringement claims were deductible as ordinary and necessary business expenses.

In *Olsen v. Commissioner*, TC Memo 2021-41, the Tax Court denied depreciation deductions and solar energy tax credits to investors in a tax shelter alleged to be a solar business; the Court found that the underlying assets were never placed in service and that there was no attempt to derive a genuine profit aside from the purported tax savings benefit.

In *Plentywood Drug v. Commissioner*, TC Memo 2021-25, the Tax Court disagreed with IRS and found that four pharmacy owners were being paid fair market rent by their controlled corporation notwithstanding the lack of a written lease and the informal manner in which they determined the rent by calling up shops in town and the neighboring town.

In *Patients Mutual Assistance Collective Corporation v. Commissioner*, 127 AFTR2d 2021-_____, the Ninth Circuit Court of Appeals agreed with the Tax Court that a large marijuana dispensary did not get to inventory disallowed expenses as a “workaround” to the denial of business expenses beyond cost of goods sold.

In *United States v. Edwards*, 127 AFTR2d 2021-_____, the Eleventh Circuit Court of Appeals agreed with a Georgia Federal District Court that a business owner who became aware of unpaid payroll taxes after they had accrued was personally liable because he did not use all unencumbered funds to pay the back taxes notwithstanding that he tried to keep the company going to preserve its ability to repay the tax debt.

In Notice 2021-25, IRS confirmed that the 100 percent business meals deduction for 2021 and 2022 applies not only to meals on premises but also otherwise eligible takeout meals though not from an establishment such as a grocery store, drug store or convenience store that primarily sells food not for immediate consumption.

PROCEDURE

In *United States v. Rum*, 127 AFTR2d 2021-_____, the Eleventh Circuit Court of Appeals agreed with a Florida District Court that an individual who owned several stores and opened a numbered overseas bank account was liable for the willfulness penalty for failing to file an FBAR; the taxpayer attempted to blame his failure on preparers but two returns were marked as self-prepared.

In *Landa v. United States*, 127 AFTR2d 2021-_____, the Court of Federal Claims concluded that the IRS definition of “beneficial interest” controls whether an individual has a reporting requirement for a foreign bank account and not the local law of the particular country; the Court also concluded that the 50 percent willfulness penalty is not a “cruel and unusual punishment.”

In *Mendu v. United States*, 127 AFTR2d 2021-259, the Court of Federal Claims determined that the FBAR penalty is not a tax requiring full payment in order to obtain court jurisdiction, meaning that a taxpayer can pay a minimal amount to challenge imposition.

In *United States v. Page*, 127 AFTR2d 2021-_____, an Arizona Federal District Court concluded that the two-year period for IRS to recover erroneous refunds, in this case almost \$300,000, is measured from the date of receipt of the check and not from its negotiation which was more than one year later.

In *Mattson v. United States*, 127 AFTR2d 2021-1539, the Court of Federal Claims determined that a couple did not sign amended returns and IRS properly did not process a claim for refund.

In *In Re: Juntoff*, 127 AFTR2d 2021-_____, an Ohio Bankruptcy Court opined that the shared responsibility payment is not a tax measured by income or gross receipts and is not an excise tax on a transaction and, accordingly, is dischargeable in bankruptcy.

In *United States v. Helton*, 127 AFTR2d 2021-_____, the Sixth Circuit Court of Appeals agreed with a Tennessee Federal District Court that a self-employed attorney could not discharge otherwise dischargeable income tax debts for years in which he drove an expensive car, purchased numerous luxury gifts for his wife and ate at restaurants almost every day.