

Federal Tax Update – January 2021

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INDIVIDUALS

In *Hairston v. Commissioner*, TC Summary Opinion 2021-2, the Tax Court determined that social security benefits are fully taxable in the year received despite a subsequent obligation to repay a portion.

In *Kelley v. Commissioner*, TC Memo 2021-2, the Tax Court determined that taxation of a portion of social security benefits at zero taxable income for married individuals filing separately is constitutional.

In *Brown v. Commissioner*, TC Summary Opinion 2021-4, the Tax Court disallowed expenses of an individual on schedules A, C and E because he provided no substantiation and no credible estimates and, in any event, failed to establish that he was a real estate professional as his three rental properties showed no income.

In *Mann v. United States*, 127 AFTR2d 2021-447, the Fourth Circuit Court of Appeals agreed with a Maryland Federal District Court that taxpayers could not take a charitable deduction of \$675,000 representing the appraised value of the structure razed by a charity which previously disassembled some of the house and salvaged useful components with the remainder left for demolition; the Court reasoned that the taxpayers did not convey their entire interest in the house, failed to record that the house was transferred (though the land was not) and did not provide an accurate appraisal of what was actually donated.

In *Soboyede v. Commissioner*, TC Summary Opinion 2021-3, the Tax Court found that a lawyer who divided time between Washington, DC and Minnesota had his “tax home”

in the District of Columbia where he had greater wages and taxable income, disallowing expenses claimed in nearby Maryland for apartment rent at his tax home.

RETIREMENT AND ESTATE PLANNING

In *United States v. Abell*, 127 AFTR2d 2021-_____, the First Circuit Court of Appeals agreed with a Massachusetts Federal District Court that a married person does not have a vested interest in a spouse's retirement plan prior to divorce such that the spouse could preclude an otherwise lawful seizure for satisfaction of a restitution award for embezzlement.

BUSINESS

In *Bruneau v. Commissioner*, TC Summary Opinion 2021-1, the Tax Court accepted an IRS analysis of bank deposits and determined the underreporting of gross receipts, the Court also denying various deductions including depreciation of improvements for lack of adequate books and records.

In *Aspro Inc. v. Commissioner*, TC Memo 2021-8, the Tax Court ruled that a C corporation could not deduct "management fees" paid to three shareholders who collectively owned 100 percent of the company, two being individuals and one being a C corporation; the payor did not enter into any written agreement with its shareholders and almost all of the tentative profits were taken out, the Court finding that the evidence indicated disguised distributions.

In *Costello v. Commissioner*, TC Memo 2021-9, the Tax Court decided that an individual who attempted to raise cattle and then sought to grow different crops on 6,000 acres in Mexico was still in a startup phase and had not commenced any active business allowing a current deduction; in *Whatley v. Commissioner*, TC Memo 2021-11, the Tax Court found that a cattle farm (which had no cattle until the IRS audit) which was converted to a tree farm was operated as a hobby by its banker owner.

In Notice 2021-7, IRS granted permission for employers using "annual lease value" to value personal use of a vehicle by an employee to switch to cents per mile for use after March 12, 2020 in the case of vehicles costing no more than \$50,400; if cents per mile is continued for 2021, it must be used for all subsequent years.

In Letter Rulings 202103001-202103007, IRS granted relief to preserve an S election where a single owner LLC owned by an individual issued membership interests to nonqualifying trusts but subsequently corrected.

PROCEDURE

In *United States v. Kaufman*, 127 AFTR2d 2021-342, a Connecticut Federal District Court concluded that the \$10,000 nonwillful FBAR penalty applies per form and not per bank account; the courts are divided on the issue.

In *Grajales v. Commissioner*, 156 TC No. 3, the Tax Court concluded that the “penalty for early withdrawal” from a retirement plan is not a penalty for purpose of requiring written supervisory approval on a timely basis during the administrative process, the Court noting that an “exaction” may be a tax for one purpose and a penalty for another.

In *Ramey v. Commissioner*, 156 TC No. 1, the Tax Court determined that a CDP appeal was late when it was timely received at the last known address shared by multiple businesses and taken in by an individual not authorized to accept mail on the taxpayer’s behalf.

In *United States v. Henco Holding Corporation*, 127 AFTR2d 2021-_____, the Eleventh Circuit Court of Appeals agreed with a Georgia Federal District Court that IRS was not required to separately assess shareholders for transferee liability and that the state statute of limitations was not applicable against IRS.