

Federal Tax Update January 2022

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INDIVIDUALS

In *Hewitt v. Commissioner*, 128 AFTR2d 2021-7033, the Eleventh Circuit Court of Appeals reversed the Tax Court and found IRS regulations to be arbitrary and capricious which would have taken away a deduction for donation of a conservation easement because improvements to the area of the easement would not have inured on a subsequent sale in at least pro rata part to the donee organization.

In *Nelson v. Commissioner*, in a Bench Opinion the Tax Court determined that the tax home of an individual whose employer had offices in Washington, DC and Dallas and whose additional self employment income took him for periods to Atlanta, the Dominican Republic and Africa had his tax home in the DC area as he derived most of his income from employment and DC was the primary location of his employer; accordingly, the Court allowed most of his pre-2018 employee business expenses as unreimbursable and most of his expenses from self employment.

In *Struble v. Commissioner*, TC Summary Opinion 2022-1, the Tax Court determined pre-2018 employee business expenses for an army sergeant who rotated between several military bases to be commuting expenses and also rejected other expenses including travel to the funeral of a military friend as lacking a business purpose.

RETIREMENT AND ESTATE PLANNING

In *In Re: Hoffman*, 129 AFTR2d 2022-_____, the Eleventh Circuit Court of Appeals reversed a Georgia Federal District Court and held that Roth IRAs enjoy the same protection from creditors as do traditional IRAs.

In Notice 2022-6, IRS set forth three alternative methods effective 2023 and optional for 2022 to determine when a distribution from a retirement plan is a “substantially equal periodic payment” including the required minimum distribution method, the fixed amortization method and the fixed annuitization method.

BUSINESS

In *Camelot Banquet Rooms v. Small Business Administration*, 129 AFTR2d 2022-_____, the Seventh Circuit Court of Appeals overruled a Wisconsin Federal District Court and found that restrictions on “gentlemen’s clubs” from receiving aid under the PPP program was not unconstitutional as a violation of freedom of speech.

In *Elbasha v. Commissioner*, TC Memo 2022-1, the Tax Court denied substantial expenses claimed by an emergency room contract physician for lack of substantiation where he only presented a chart showing these costs as well as overseas continuing medical education where no need for the purported conferences was shown and they were proximate to the location of his family.

In *EZE v. Commissioner*, in a Bench Opinion the Tax Court denied a deduction for most business expenses of a rideshare driver who claimed his records were left in a car that was sold after an accident; the Court also denied about 90 percent of over \$110,000 of claimed medical expenses.

In *Altria Group v. United States*, 129 AFTR2d 2022-_____, a Virginia Federal District Court held that the portion of punitive damages awarded to an individual that went to the State pursuant to a “split recovery statute” where such awards are shared is not a fine or penalty for a violation of any law and is accordingly fully deductible by the payor.

PROCEDURE

In *Oosterwijk v. United States*, 129 AFTR2d 2022-_____, a Maryland Federal District Court refused to abate substantial penalties when a taxpayer’s CPA firm failed to file an extension and subsequently incorrectly advised the taxpayer that penalties would stop on a late filed extension; the first time penalty abatement policy did not apply due to a \$6 abatement several years prior.

In *United States v. Schwarzbaum*, 129 AFTR2d 2022-_____, the Eleventh Circuit Court of Appeals agreed with a Florida Federal District Court that reckless conduct by

an individual constitutes the “willful” conduct required for assessment of the 50 percent FBAR civil penalty.

In *Coffey v. Commissioner*, the US Supreme Court denied certiorari on a case decided by the Eighth Circuit Court of Appeals at 127 AFTR2d 2021-912, reversing the Tax Court by holding that the forwarding by the Virgin Islands tax authority to the Internal Revenue Service does not constitute a filing in the United States and start the statute of limitations running; the taxpayer attempted to argue that she was a bona fide resident of the Virgin Islands with no US filing requirement but the IRS disagreed.

In *Brown v. United States*, 129 AFTR2d 2022-330, the Federal Circuit Court of Appeals affirmed a decision of the Court of Federal Claims that unsigned amended returns cannot be processed and that IRS cannot waive the signature requirement inasmuch as the mandate is statutory.

In *Rewwer v. United States*, 129 AFTR2d 2022-_____, an Ohio Federal District Court concluded that taxpayers filed a timely claim for refund when they utilized Forms 843 rather than 1040-X and the forms were signed by their preparer under a power of attorney that apparently did not exist; the Court stated that a notice “fairly advising the Commissioner of the nature of the taxpayer’s claim” suffices despite formal defects causing the need to file Forms 1040-X after the statute of limitations would have run.

In *Goodrich v. United States*, 129 AFTR2d 2022-_____, the Fifth Circuit Court of Appeals reversed in part a Louisiana Federal District Court and held that a “usufruct” interest under Louisiana law is that of an unsecured creditor which does not restrict the right of IRS to seize the property.

In *Blappert v. Commissioner*, in a Bench Opinion the former wife of a physician was given innocent spouse relief over the objection of her husband as she had no actual knowledge of omitted income and was not involved in supplying the outside accountant with information beyond her own earnings statements.

A new Attorney’s Audit Technique Guide was issued with a model document list and list of questions; the suggested focus is on unreported income, deferred income and noncash income as well as improper payment of personal expenses and employee-independent contractor issues (IRS also released an Audit Technique Guide for child care providers).