

Federal Tax Update – May 2021

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INDIVIDUALS

In *Fletcher v. Commissioner*, TC Summary Opinion 2021-9, the Tax Court concluded that an individual who received social security disability payments beyond when eligibility ended must include those payments in her gross income for the year received subject to an offset of benefits for the year of the repayment.

In *Chancellor v. Commissioner*, TC Memo 2021-50, the Tax Court disallowed deductions for sales tax and charitable contributions (as well as \$25,000 of unsubstantiated business expenses) where the taxpayer claimed her records were stolen and her testimony was vague such as her statement that she “had people that I was charitable to” including “helping with my family.”

In *Bailey v. Commissioner*, TC Memo 2021-55, a CPA who had previously lost his license lost multiple substantiation issues in Tax Court, the Court finding that he was unable to substantiate personal deductions as well as business deductions; in *Peeples v. Commissioner*, TC Summary Opinion 2021-12, the Tax Court denied all pre-2018 employee business expenses claimed by a construction worker as he provided no substantiation for his travel and special clothing.

RETIREMENT AND ESTATE PLANNING

In *Estate of Jackson v. Commissioner*, TC Memo 2021-48, the Tax Court in a 271 page opinion decided generally in favor of Michael Jackson’s estate on valuation issues related to intangibles, citing Jackson’s tarnished reputation, and largely rejected the expert testimony on behalf of IRS noting that the value in his image and likeness resulted from the post-death branding by his executors.

In *Estate of Morrissette v. Commissioner*, TC Memo 2021-60, the Tax Court determined that Code sections 2036 and 2038 do not apply to transfers made as part of split dollar agreements because of the “bona fide sale” exception.

In *Estate of Grossman v. Commissioner*, TC Memo 2021-65, the Tax Court allowed the marital deduction when an estate was left to the third wife despite a New York court previously finding that a Mexican divorce from the first wife was invalid; notwithstanding that the Tax Court held that New York law applied, the Court also found that New York applied the “place of celebration” test such that the third marriage, valid in Israel, must be recognized.

In *Andrews v. United States*, 127 AFTR2d 2021-_____, the Court of Federal Claims declined to make an analogy between failure to file an extension and erroneous tax advice and found that an attorney’s failure to extend the estate tax return was not reasonable cause for abatement of the late filing and late payment penalties.

BUSINESS

In *Jenkins v. Commissioner*, TC Memo 2021-54, the Tax Court found that multiple corporations were “alter egos” of individuals where the search warrant led to corporate seals for 11 companies and a passport and license plates from the “Kingdom of Kerguelen” (desolate islands 3,000 miles off the southern tip of Africa and grouped with several rock formations technically a part of France).

In *Berry v. Commissioner*, TC Memo 2021-52, the Tax Court concluded that \$9,900 in drag racing income over a two year period with far greater expenses was not part of the business purpose of a construction company in which the driver was a stockholder but belonged on a personal return (at least to the extent the expenses could be substantiated).

In *Adler v. Commissioner*, TC Memo 2021-56, the Tax Court denied deductions for business expenses including amounts paid to construction workers that could not be substantiated and were not evidenced by Form W-2 or 1099.

In *Frederick-Bey v. Commissioner*, TC Summary Opinion 2201-11, the Tax Court disallowed most of almost \$60,000 in expenses claimed by a network marketer who reported gross income of \$7,500, stating that the taxpayer failed to tie in the expenses to the business.

In *Preimesberger v. United States*, 127 AFTR2d 2021-_____, a California Federal District Court declined to give summary judgment to the Government on imposition of the Trust Fund Recovery Penalty on a 10 percent stockholder when Medicare reimbursements to a nursing home were late and the terms of a line of credit allowed

payment only of net payroll; Federal regulations prohibited closure of the facility which would have avoided the unpaid taxes.

In Action on Decision 2021-2, IRS expressed its disagreement with the Sixth Circuit Court of Appeals decision in *Machacek v. Commissioner*, 122 AFTR2d 2018-6268, which reversed the Tax Court and held that the benefit of split dollar insurance to an S corporation stockholder was taxable as a distribution and not as compensation.

In Chief Counsel Advice 202118009, IRS determined that any dividend income, including constructive dividends, received by a shareholder from a C corporation is subject to the Medicare tax on net investment income.

In Chief Counsel Advice 202118016, IRS set forth the issues associated with “monetized installment sale transactions” and found that they typically result in a deemed payment under either the “pledging rule” or the “economic benefit” doctrine.

In Chief Counsel Advice 202118019, IRS indicated that “reviewed year partners” may need to adjust basis as the result of IRS adjustments even if the tax is paid by the partnership and not pushed out to such partners.

PROCEDURE

In *CIC Services v. Internal Revenue Service*, 127 AFTR2d 2021-_____, a unanimous US Supreme Court reversed the Sixth Circuit Court of Appeals and narrowed the ability of IRS to avoid suits for injunctive relief; the Court permitted a challenge through the injunctive process to reporting requirements in micro-captive transactions, finding that the action was not an impermissible suit “for the purpose of restraining the assessment or collection of a tax.”

In *In Re: Givans*, 127 AFTR2d 2021-_____, a Florida Bankruptcy Court concluded that tax refund checks were tenants by the entirety property and not part of one spouse’s bankruptcy estate although all income was that of the bankrupt spouse.

In *Mason v. Commissioner*, TC Memo 2021-64, the Tax Court determined that IRS Appeals abused its discretion by refusing in a Collection Due Process hearing to review an Offer in Compromise that had been returned by the Centralized Unit which believed it was submitted for delay.

In *Ginos v. Commissioner*, TC Summary Opinion 2021-14, the Tax Court denied innocent spouse status to a former wife after balancing the factors including hardship which was found nonexistent because she had remarried an individual who was paying all of her expenses.

In Chief Counsel Advice 202118010, IRS ruled that its levy cannot reach funds placed in the account on the same day but after the time when the levy was actually made.