

Federal Income Tax Update 2017

General:

1 – Wasco Real Properties T.C. Memo 2016-224

- Almond farming partnership required to capitalize property taxes and interest expenditures. Capital interest on borrowed money loaned to a related party.

2 – Estate of Steve Backemeyer 147 T.C. 17

- Farmer deducted seeds, fertilizer, etc. Beneficiary received items with bases and deducted them. Tax Benefit rule does not require recapturing the deductions.

3 – Jeremy Jacobs 148 T.C. No. 24

- Boston Bruins allowed to deduct 100% of the cost of food given to its players while out of town based on the de minimis fringe exception.

4 – Boris Putanec T.C. Memo 2016-221

- Taxpayers' loss deduction denied, since the liability was considered contingent rather than real.

5 – RERT Holdings LLC v Commissioner 149 T.C. No. 1

- Taxpayer failed to report the basis of land donated to a charity. This violated the rule and failed substantial compliance. Deduction denied. Reasonable cause to avoid penalty at entity level. Appellate courts vary on when to apply gross valuation penalty.

6 – Ten Twenty Six Investors T.C. Memo 2017-115

- Another example of a conservation easement contribution being non-deductible since not recorded in year of transfer.

7 – ILM 201651013

- Charitable deduction denied; trust instrument is modified.

8 – Lawrence G. Graev 147 T.C. No. 16

- Taxpayer denied conservation easement contribution. Taxpayer imposed 20% penalty even though not approved correctly by IRS.

9 – LTR 201702002

- Ruling allows a tax exempt hospital to join and lease the building to a tax exempt University Medical Hospital without losing tax exemption or creating unrelated income.

10 – TAM 201650014

- Taxpayer allowed to use the completed-contract method. Taxpayer works on soil where buildings will be constructed. This result is different from Howard Hughes Co. 805 F.3d 175 (2015).

11 – Estate of Mc Kelsey 148 T.C. No. 13

- Case reconfirms the tax rules of VPFCs. It also rules that an extension of the contract does not violate the open transaction doctrine.

12 – CCA 201645012

- Under Sec. 409A, the deferral of salary to a period beyond when it could have been received not subject to substantial risk of forfeiture unless the present value of the future payment is substantially greater than the original payment.

13 – ILM 201725027

- A service provider can arrange a back-to-back deferred compensation plan under section 409A. It will be taxable unless it meets all the requirements.

14 – AM 2017-002

- Taxpayer may not reduce the revenue received when client receives a hybrid coupon. In other words, taxpayer may not use reg. sec. 1.451-4(a)(1).

15 – Michael H. Wu CA-7

- Taxpayer made excessive contribution to IRA in 2007. Withdrew excess in 2010 before April 15th. Excess contribution penalty valid for 2007-2009. Withdrawal before tax return only applies to year of contribution. IRS position of correct interpretation of code section denied deference.

16 – Summa Holdings, Inc. CA-6

- The substance over form doctrine does not cause a Roth IRA to be treated as receiving excess contribution from a DISC corporation.

17 – Malulani Group T.C. Memo 2016-209

- Taxpayer denied like-kind exchange rule (Sec. 1031) since it acquired the disposed property from a related entity.

18 – LTR 201648013

- Like-kind exchange rule (Section 1031) applies even if qualified intermediary pay off property loan if taxpayer assumes new liability.

19 – PLR 201706009

- State law does not dictate which assets qualify as like-kind for purposes of Section 1031.

20 – AOD 2017-06

- IRS will not acquiesce to the Tax Court decision in Bartell that a valid Section 1031 transaction occurred.

21 – LTR 20170234

- Government restriction of a business resulting in an asset sale can qualify as a Section 1033 involuntary conversion.

22 – Greenteam Materials Recovery Facility T.C. Memo 2017-122

- Section 1253 provides that a sale of a franchise generates a capital gain.

23 – Wells Fargo & Co. v US DC. Minn.

- A tax shelter was treated as two separate transactions. The application of this economic substance and sham transaction doctrines was discussed and future application questioned.

Individual:

1 – AOD 2017-05

- IRS non-acquiesce on T.C. Memo 2016-200 where married taxpayer filing separately allowed an Earned Income Tax Credit.

2 – Ryan Fleischer T.C. Memo 2016-235

- Taxpayer is an investment advisor. He created an S Corporation and had it report the income from his services. The court applied the “control of earning the income” test to reclass the income as individual, not corporate.

3 – Michael Yoklic T.C. Memo 2017-143

- Taxpayer received unemployment income in July 2012. He was notified that he was not entitled to it before years end. He repaid in 2013. He must report income in 2012 under the claim of right doctrine. Not eligible for the doctrine of rescission because he did not make arrangements for repayment in 2012.

4 – Tony Pedregon Lopez T.C. Memo 2017-171

- Child participated in pageants. Child won some money. Parent paid expenses. Under Section 73, the income and expenses are reported on the child’s, and not the parent’s, tax return.

5 – Robert Polsky CA-3

- Taxpayer denied child tax credit since child, although disabled, is over 17 years of age.

6 – David Schieber T.C. Memo 2017-32

- A retired police officer was ruled insolvent because his monthly retirement payments are not treated as assets for the insolvency computation.

7 – Charles Adkins CA-4

- Taxpayer can deduct a theft loss even though still part of arbitration claim.

8 – Megan Zhao Creigh T.C. Summary Op. 2017-26

- Taxpayer has computer science degrees. She took an EMBA degree program. Costs not deductible since it qualifies her for a new business.

9 – Ellen Sas T.C. Summ. 2017-2

- Taxpayer was fired by her employer, and sued for compensation return. Husband had an accounting business. Taxpayer and employer settled. She paid and deducted legal fees as business expenses. Origin of claim places fees within employment, not business. Deductible below the line.

10 – Victoria Malev Tax Court Bench Opinion

- An alternative medical treatment is deductible even though it is a largely unrecognized treatment.

11 – Joseph F. Morrissey DC - Florida

- A homosexual male is not entitled to medical expense deductions for in vitro fertilization expenses.

12 – Arthur Dulik T.C. Summ. Op. 2017-51

- Taxpayer paid attorney for assistance with severance agreement. Deducted as business expense. Court ruled it itemized deduction under origin of claim doctrine.

13 – Mark Rutkoske 149 T.C. No. 6

- Case discusses the requirement of farming to qualify for a larger conservation easement contribution deduction.

14 – Michael and Theresa Devine T.C. Memo 2017-111

- Theresa suffered sexual harassment, pregnancy discrimination, and retaliation claims; received taxable settlement. Did not state physical injury.

15 – Cooke and Commissioner T.C. Memo 2017-074

- Taxpayer created an LLC partnership. It purchased Larry Bird's home and converted it into a bed and breakfast; It stopped renting and offered property for sale. Taxpayer came to area and stayed in home to try and sell it. Taxpayer claimed loss. Loss denied under Section 280A. Was residence for more than 14 days. Only repair and maintenance days not counted.

16 – PLR 201706004

- Taxpayer said a trust would be beneficiary of IRA. No trust created. Will said spouse inherits everything. State can remove reference to trust. Whether it does or not, the IRA is not an inherited IRA and distribution required within 5 years.

17 – Raymond S. McGaugh CA-7

- Taxpayer not treated as receiving a distribution from his IRA, even though he ordered Merrill Lynch to send cash to buy stock that it rejected.

18 – Jack Howard Taylor T.C. Memo 2017-132

- Taxpayer was a fireman that was forced to retire because of disability. Amounts received are taxable since based on age, length of service, and average final compensation.

19 – Louelia Salomon Frias T.C. Memo 2017-139

- Taxpayer borrowed money from her retirement plan when she needed to take a leave from work. She repaid the loan. The repayment ruled incorrect. Therefore, loan taxable plus 10% penalty.

20 – ILM 201736022

- Memo shows two situations in which taxpayer was able to cure the failure to repay a retirement funded loan.

21 – Stephen P. Hardy T.C. Memo 2017-16

- A surgeon may treat the income from the LLC that owns and runs a surgical center that he partially owns as passive income. Case discusses a TAM and passive loss carryover.

22 – Kurt Hickam T.C. Summ. Op. 2017-66

- Taxpayer's real estate mortgage brokerage is not a real estate professional. In addition, he did not have contemporaneous data of his time working.

23 – Hurford Investments No. 2 T.C.

- Case involves multiple issues related to income in respect of a decedent. The item is phantom stock, and its transfer to a partnership.

24 – Estate of Nancy Powell 148 T.C. 18

- Son tries to move cash and securities out of mother's estate before she dies by creating an LLC and contributing to a charitable lead annuity trust. Court adds all back into estate.

25 – Estate of Sheldon C. Sommers 149 T.C. No. 8

- If taxpayer paid gift tax within 3 years of death, increase the estate by the tax paid. Estates are reduced by liabilities. If the liability is a gift tax, it does not reduce the estate. The marital deduction is reduced by amounts that will pay other liabilities.

26 – ILM 201711009

- The determination of the 20% substantial valuation misstatement versus the 40% gross valuation misstatement must be calculated separately for each donated item. This is done on the pass through entity, whereas the \$5,000 exemption is done on the individual's return.

27 – Mae Asad T.C. Memo 2017-80

- Taxpayer, divorced, and her ex agreed to pay ½ each tax due on prior returns. Court accepts IRS percentages, which are different. Divorce decree not applicable.

Corporate:

1 – ILM 201651014

- Corporation had debentures converted into stock. Unamortized debt issuance costs must be capitalized.

2 – ILM 201716045

- Full discussion of what stock will be treated as preferred stock and which preferred stock is non-qualified under Section 351(g).

3 – Michael Bell CA-9

- Court of appeals confirms Tax Court decision that the property transfer was non-taxable under Section 351 and not a sale of property.

4 – Gregory Hann v. US Court of Fed. Claims

- Taxpayer received options as employee of a closely held corporation. Corporation had an IPO. Taxpayer agreed to exercise some of the options and sell them as part of the IPO. He has ordinary income equal to gross sale price minus option price. Amount paid to underwriter is a capital loss.

5 – Michael Tseytin CA-3

- Taxpayer bought stock of minority shareholder. Then had merger with “boot.” Tried to reclass. Not allowed under Danielson. Tried to argue loss. Each block separates and loss disallowed under Section 356.

6 – Rev. Rul. 2017-9

- Ruling discusses transactions referred to as “North-South” Spinoffs. May allow corporations to move assets around with gain recognition.

7 – ILM 201726012

- If a corporation that is part of a consolidated group owns a partnership interest and liquidates or merges into another member, sections 761(e) and 743 apply.

8 – ILM 201653017

- Taxpayer created corporation to own partnership interest of non-active partnerships. Corporation has no cash. Corporation subject to accumulated earnings tax because consent dividends could have been reported.

9 – William Rutter T.C. Memo 2017-174

- Taxpayer denied a bad debt deduction, “Loan” reclassified as a contribution. Even if a loan, it was a non-business loan resulting in a capital loss.

11 – PLR 201717010

- Corporation provides testing for health professionals. This is not healthcare services; therefore, the sale of the stock qualifies for non-taxation under Section 1202.

Partnership:

1 – Castigliola 2017 Tax Ct. MemoLEXIS 62

- Taxpayer is a member of a PLLC. Receives guarantee payment and income allocation. Since involved in management, the allocated income is earned income subject to self-employment tax.

2 – Jeffrey Herrmann and Mina Herrmann v. US (Ct. of Cl.)

- The \$18 million payment to Mina was to a non-partner under section 707 (a)(2)(A). Therefore taxed in the year received not this year of allocated partnership income.

3 – PLR 201714028

- An example of the transfer of property and liabilities in exchange for a partnership interest where the liabilities are rules qualified liabilities and the transfer is not a disguised sale under Section 707 (a)(2)(B).

4 – Thomas E. Watts v. Comm. T.C. Memo 2017-114

- Taxpayer had a capital loss not an ordinary loss. Taxpayer did not abandon the partnership interest without proving no liability existence. Also, the incentive theory is rejected.

S Corporation:

1 – Steven M. Peterson v. Comm. 148 T.C. No. 22

- ESOP owns some S corp stock. The corporation is accrual and employees are cash method. Under Section 267 (a)(2) accrued compensation not deductible until paid.

2 – Penley v. Comm. T.C. Memo 2017-65

- S Corp. owned by couple that rents property is subject to passive loss rules. Taxpayer did not provide sufficient evidence that he was a real estate professional. Case gives references to cases that evaluate evidence provided.

3 – PLR 201725022

- C Corporation can make an S election since rental activity is a business and not passive.

4 – Phillips v. Comm. T.C. Memo 2017-61

- Taxpayer cannot treat a guaranteed loan as a loan that permits a loss deduction.