

Federal Income Tax Update 2018

By:
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General Taxation

1.) Deductions

A.) FAA 20174901F

1. Taxpayer provides education
2. Students receive reduction if successful in term and attend first 2 weeks of next term
3. Taxpayer deducted the estimated reduction
4. Must meet “all events test”
 - a) All events must have occurred and liability determined with reasonable accuracy
5. Students did not attend the 2 weeks before deduction though all events not met
 - a) Taxpayers argued Giant Eagle

1.) Deductions

B.) ILM 201748008

1. Taxpayer deducts disgorgement payment
2. Section 162 (f) denies fines and penalties
 - a) Origin of liability not use of funds
 - b) Deductible if remedial measure to compensate another person
3. Supreme Court ruled in Kokesh that disgorgement non-deductible
 - a) Taxpayer may not deduct the disgorgement payment

1.) Deductions

C.) R.J. Channels, Inc. T.C. Memo 2018-27

1. Taxpayer provides tax services
2. Receives and deposits fees
 - a) May reimburse if some changes occur
3. Paid deducted expenses on behalf of clients
 - a) Received reimbursements
4. Fees received fully taxable
 - a) All events test and claim of right doctrine
5. Expenditures not deductible
 - a) Do not meet Sec 162 requirements

1.) Deductions

D.) FAA 20180101F

1. Taxpayer is a grocery store
2. Customers who buy specific items get coupons to get gas at unrelated gas store
3. Taxpayer can reduce revenue by coupons
 - a) Gas free not reduced price
4. IRS cites Tax Court decision in Giant Eagle
 - a) What about rebates?

2.) Charitable Contributions

A.) Mart Green CA-10

1. Taxpayer created a trust for children
 - a) Allowed charitable contributions
2. Trust purchase real estate and donated to charity
3. Sec 641 (c) (1) allows deduction for donations of trust's gross income
 - a) Not limited to percent in Sec 170 (a)
 - b) If real property then donation is the basis not value of the property

2.) Charitable Contributions

B.) Harbor Lofts Assoc. 151 T.C. No. 3

1. Taxpayer has leased property for 61 years
 - a) Has some benefits and detriments
2. Taxpayers and owner make a facade conservation easement donation
3. Taxpayer is not the owner
 - a) Cannot claim contribution deduction as lessee

2.) Charitable Contributions

c.) New Jersey Council of Teaching Hospitals

149 T.C. No. 22

1. Taxpayer is a tax-exempt entity
2. It receives money from group that issues credit cards to members and one that uses group purchasing program
3. Not royalty or for convenience of members
 - a) Subject to UBIT

3.) Loan and Sections 465 and 469

A.) Golan T.C. Memo 2018-76

1. Taxpayer purchased solar panels
 - a) Downpayment
 - b) Host property owner credits
 - c) Promissory note
2. Promissory note only purchase price
 - a) Increase if make down payments
3. The promissory note qualifies under Section 465
4. Participated for more than 100 hours
 - a) Section 469 does not apply

3.) Loan and Sections 465 and 469

B.) ILM 201805013

1. Taxpayer purchased interests in 3 S corps
2. Taxpayer acquired an interest in an LLC
 - a) Guaranteed significant liability
3. Taxpayer wants to combine these activities
 - a) Taxpayer fails to prove that those receiving 65% of the losses are actively engaged in the management of businesses
 - b) Treat as separate

3.) Loan and Sections 465 and 469

C.) AOD 2017-07

1. IRS non-acquiesce to Stanley v. U.S.
2. Taxpayer, an attorney, had stock in corporation subject to Sec. 83
 - a) Greater than 5%
3. Corporation had rental and non-rental real estate
4. Section 469 does not apply

4.) PLR 201816008

- A.) Taxpayer engaged in TV broadcast services
- B.) Under federal law had to sell or change the spectrums
- C.) Sold spectrum and purchased stock of corporate that provide broadcast services
- D.) Sale meets Section 1033
 1. Purchased corporation a replacement
 2. Meets control 80% vote and 80 % others.

5.) Ordinary vs. Capital

A.) Alta Wind CA-FA Ct.

1. Taxpayer purchased windfarm businesses before business started
2. Allocated purchase price to tangible assets
3. Section 1060 applies to purchase of business or assets with goodwill
 - a) Goodwill purchased

5.) Ordinary vs. Capital

B.) James C. Cooper CA-9

1. Taxpayer transferred a patent to a corporation
2. Claim capital gain under Section 1235 (a)
 - a) If transfer substantially all then capital gain
3. 2017 TCJA revised Section 1221 and 1231
 - a) “Patent invention, model or design” not capital assets
 - b) Did not revoke Section 1235 (a)
 - 1) What is the result if a patent is substantially transferred?

C.) Sugar Land Ranch Development T.C. Memo 2018-21

1. Taxpayer purchased and started to develop land for sale
2. Stopped development decided to sell land
3. Capital gain since not inventory

5.) Ordinary vs. Capital

D.) CRI-Leslie LLC CA-11

1. Taxpayer purchased a hotel and restaurant
 - a) Operated as business
2. Had a sale contract
 - a) Received a \$9.7 million deposit
 - b) Purchase cancelled contract
 - 1) Taxpayer kept deposit
 - c) Reported capital gain
3. Section 1234 A only applies to capital assets
 - a) Fact that Section 1231 would result in capital gain on sale not relevant
 - b) Since asset not capital gain so ordinary

5.) Nora Mihelick DC-Fla

A.) Taxpayer was divorced

B.) At time of divorce her husband sued for paying himself excess compensation

1. Divorce agreement requires taxpayer to pay husband $\frac{1}{2}$ of any loss on the litigation.

C.) Husband lost. Taxpayer paid him \$300,000

1. Claimed refund under Section 1341

D.) Court rules payment not deductible under Section 165 (c) (2)

1. Therefore Section 1341 does not apply

6.) CCA 201825028

- a) A tax return preparer may be subject to a penalty under Section 6694
 - 1. Fact that employed to do return immaterial
- b) The firm of the employee subject to penalty may also be subject to penalty if work not meeting requirements
- c) In rare cases the owner of the firm may also be subject to penalty

Individual Taxation

1.) Tax Returns

A.) Fansu Camara 149 T.C. No. 13

1. Married taxpayer incorrectly filed a single return
 - a) IRS issued notice based on married filing separately
 - b) Taxpayer filed a joint return instead
2. Section 6013 governs joint return
 - a) Sec 6013 (b) permits taxpayer to change from separate to joint return
 - b) Sec 6013 (b) (2) has 4 limitations
 - 1) Applies to “separate returns”
 - 2) Since single return not applicable
 - a. Same for head of household

1.) Tax Returns

B.) Alice Coggen DC-No. Car.

1. Spouse filed joint return
 - a) He signed for both
2. Taxpayer wants to file a separate return
 - a) Fact that spouse “forged signature” immaterial
 - b) Cannot file separate since she effectively allowed him to file joint return

2.) Income

A.) Samuel E. Ginsburg Court of Fed. Claims

1. Taxpayer bought and developed property in Brooklyn, NY
2. Qualified for redevelopment credit
 - a) State removed 2011 tax liability and gave taxpayer \$1,864,600
3. Taxpayer claimed cash was non-taxable
4. Court ruled the following
 - a) The part of the “credit” that reduced state tax not taxable
 - b) Cash received was not a refund
 - c) Does not qualify as recovery of capital
 - d) Not a non-taxable contribution to capital
 - e) Not a general-welfare exclusion
 - f) Result – cash received taxable income

2.) Income

B.) Wayne Ramsey CA-5

1. Taxpayer returned from Delta Airlines
2. Post-retirement, Delta paid him cash and paid for a life insurance policy
3. Taxpayer argues that cash for life insurance not taxable
 - a) Told Delta he does not want insurance
4. Court confirms Tax Court decision – taxable
 - a) Taxpayer did not prove cost of insurance below Sec. 79 (a) \$50,000 limit

2.) Income

C.) Jon Palsgaard T.C. Memo 2018-82

1. Taxpayer retired because of physical injury
2. Received Social Security Disability Insurance benefit
 - a) Included in income – Sec. 86
3. Taxpayer argued excluded under Sec. 104
 - a) Did not sue or threaten to sue
 - b) Exclusion does not apply

2.) Income

D.) Jacques L. French T.C. Summ. Op. 2018-36

1. Taxpayer's spouse had several surgeries and other medical problems
2. Taxpayer negotiated a reversion to the loan from BAC for his home
 - a) BAC said it did not agree
 - b) Taxpayer sued
 - c) BAC made changes and paid cash to taxpayer
3. Taxpayer did not report part of the cash as a liability adjustment
 - a) Settlement agreement does not mention this
 - b) Result – amount taxable
4. Taxpayer excludes the remainder under Section 104 (a) (2)
 - a) Settlement does not mention
 - b) At best for non-physical medical problems
 - c) Fully taxable
 - 1) Includes payment to taxpayer's attorney

2.) Income

E.) Daniel Smethers T.C. Memo 2018-140

1. Taxpayer moved out of home in 2009 and sold in 2010
2. Received two debt reductions
3. Court ruled taxable
 - a) Taxpayer failed to prove insolvency
 - b) Taxpayer failed to prove reduction was for his primary residency

3.) Divorce

A.) Sky M. Lucas T.C. Memo 2018-80

1. Taxpayer is a partner and manager of an investment partnership
 - a) He deferred some of his income
2. Spouse files for divorce
 - a) Demands half the deferred income and value of partnership
3. Court rules for \$6,600,000 to spouse
4. Taxpayer claims legal and professional fees of \$1,300,000 in 2010 and \$1,600,000 in 2011
 - a) Section 162 or 212
5. Court ruled non-deductible
 - a) Origin of claim doctrine

3.) Divorce

B.) David Stapleton T.C. Summ. Op. 2017-87

1. Taxpayer gets divorced
2. Couple agrees to sell property that previously was a home and divide sale price
 - a) Sale did not occur for several years
3. Taxpayer and former spouse agree that spouse would purchase the property
 - a) Price less than basis
4. Taxpayer claims loss
 - a) Section 1041 denies gains or losses if sale is related to cessation of marriage
 - b) Court ruled that sale under Section 1041
 - 1) Loss non-deductible

4.) Simmons v. Comm. 150 T.C. No. 8

A.) Taxpayer purchased a home

1. Debt was non-recourse

B.) After 5 years rented house

1. Value had declined

C.) Had a short sale of house

1. Claimed loss on sale and COD income on debt cancellation
2. Since non-recourse debt it is one transaction not two

5.) Terry Varyan T.C. Memo 2018-129

A.) Taxpayer joined a joint venture

1. He bought land other person built homes
2. Unable to sell property or receive money spent

B.) Taxpayer claimed business bad debt

1. Court ruled not a business for taxpayer
2. Not a debt but an investment

6.) Passive Losses

A.) Charles Brumbaugh T.C. Memo 2018-40

1. Taxpayer active in real estate business
2. Creates partnership to buy plane
 - a) Has agreement with independent company to manage plane
 - b) Can use plane to go to real estate
 - 1) Allow others to lease plane
3. Cannot treat the real estate and plane as one business
4. Taxpayer not material participant
 - a) Loss non-deductible under Section 469

6.) Passive Losses

B.) Shane Robison T.C. Memo 2018-88

1. Taxpayer purchased land
2. Create partnership to do horse breeding then changed to cattle raising
3. Losses for 2000 through 2015
4. Court denied IRS rule that Section 183 denies hobby losses
5. Section 469 applies since activities were similar to investment not business

6.) Passive Losses

C.) Barry Conner T.C. Memo 2018-6

1. Taxpayer is sole owner of S Corporation that builds buildings
2. Taxpayer sole owner of several LLCs that buy and sell property
3. Since minimum sales treat the LLCs as investments not trade or business
 - a) Affects individual's investment interest deduction
4. You cannot combine different entities for Section 469
 - a) Taxpayer is a real estate professional
 - b) Only 1 LLC is rental
 - c) Since taxpayer did not materially participate in rental, loss non-deductible

7.) Martin Washburn Jr. T.C. Memo 2018-110

A.) Taxpayer arranged for a fraudulent loan to a business he was a partial owner

B.) Found guilty and paid restitution to OPIC the creditor

C.) In stipulation agree to argue a below the line deduction

1. Cannot argue in court above the line because of stipulations

D.) Non-deductible

1. Loan repayment

2. Not part of his trade or business

3. Not result of a profit activity

8.) Estelle Grainger T.C. Memo 2018-117

- A.) Taxpayer purchased discounted clothing from Talbots
- B.) Contributed them to Goodwill
- C.) Deducted as contribution the “price on the tag” which is significantly above purchase price
- D.) Deduction limited to purchase price because did not prove FMV or meet contribution requirements

9.) Retirement Programs

A.) Celia Mazzei 150 T.C. No. 7

1. Taxpayer created a foreign sales corporation (FSC) that was purchased by a Roth IRA
2. Court ruled excess contribution
 - a) Substance vs. form doctrine
 - b) Raised question of purchase price

9.) Retirement Programs

B.) John Kirkpatrick T.C. Memo 2018-20

1. Taxpayer is divorced
 - a) Divorce proceedings requires him to give ex-spouse \$100,000 for IRA and \$40,000 for attorney fees
 - b) Taxpayer has IRA to distribute the \$140,000 to him
 - c) He writes personal check to ex
2. Court requires taxpayer to recognize the \$140,000 as income
 - a) Fees do not meet Sec. 408
 - b) Cash must go from his IRA to her IRA.
 - 1) Distribution to him is taxable

9.) Retirement Programs

C.) Albert Anthony Oliver T.C. Summ. Op. 2018-16

1. Taxpayer retired at age 55
2. He made a contribution to his retirement fund
3. He received retirement distributions
 - a) Amount excluded is contribution divided by 360
 - b) He argues he is not going to live 30 years because of health problems
 - c) Court says it must enforce the rule even if not beneficial

10.) Judith Badgely DC-Cal.

- A.) Taxpayer's mother created a grantor retained annuity trust (GRAT)
 - 1. Grantor to receive the annuity for 15 years or death
 - 2. Grantor died in less than 15 years
- B.) Sec. 2036 has rule that trusts are included in the grantor estate
 - 1. Regulations hold that this applies if grantor dies before end of annuity
- C.) Code and regulation requires trust to be included in grantor's estate

11.) Full-Circle Staffing, LLC T.C. Memo 2018-66

- A.) A husband and wife formed and owned several businesses
- B.) It created a trust, Watchmen, that was treated as owning the businesses
 - 1. It made significant charitable contributions
- C.) Court considered if trust was a sham
 - 1. If taxpayer's relationship with property given to trust changed
 - 2. Trust has independent trustee
 - 3. Economic interest passed to other trust beneficiaries
 - 4. Taxpayer bound by trust agreement or law
- D.) Court rule trust a sham
 - 1. Taxpayer required to report income of the business

12.) PLR 201831011

A.) Taxpayer responsible for wrongful death

1. Sued by family of the deceased

B.) Insurance company and law firm refused to settle

C.) Taxpayer became bankrupt because of judgement

1. Sued insurance company and law firm
2. Received substance settlement
3. Excluded settlement from income

D.) Taxation based on reason for award

1. Taxable if for lost profits
2. Excluded if return of capital
3. Court and IRS ruled that award to cover tax in excess of taxpayer's basic liability non-taxable
4. Current award non-taxable

13.) Charles Martin 149 T.C. No. 12

A.) Taxpayer ran a farm

B.) Formed an S Corporation

1. Transferred farm business to corporation
2. Rented the farm property to corporation
3. Reported rent as non-earned income

C.) Section 1402 specifically says that rent of farm property is earned income if material participation

1. Based on prior appellate decision not earned since reasonable rent

14.) Jeffrey Heedram T.C. Memo 2018-25

- A.) Taxpayer filed for relief of tax liability under Sec. 6015 (f)
- B.) Fact that he lived with ex-spouse does not prevent relieve since for financial benefit
- C.) Sending \$400 a month to mother for her needs and his children's needs considered for taxpayer
- D.) Ex-spouse assumed to pay the tax liability
- E.) Therefore he is eligible for tax relief

15.) Robert Manashi T.C. Memo 2018-106

- A.) Taxpayer was 100% owner of S Corporation
- B.) The corporation return omitted out \$800,000 of revenue
- C.) IRS imposed tax and penalties after 3 but before 6 years
- D.) 6 years applies if omissions greater than 25%
 - 1. Not applied if information disclosed
 - 2. IRS can and must review corporate returns that are relevant
- E.) The S Corporation returns do not have the disclosed information.
 - 1. Tax and penalty applies

16.) Russel Allen DC-Wisconsin

- A.) Taxpayer sued a utility company for damages on his business
- B.) Taxpayer received economic damages, tort damages, and interest
- C.) Economic damages ordinary not capital gain
- D.) Tort damages ordinary income
 - 1. In suit no evidence of damages to property

17.) William Benton 151 T.C. No. 1

- A.) Taxpayer failed to file his 2012 tax return
- B.) IRS sent him a notice of deficiency
- C.) Taxpayer went to court to argue he did not owe tax
- D.) The court ruled for IRS for tax and penalties
 - 1. Sec. 6651 (a) (1) failure to file
 - 2. Sec. 6651 (a) (2) failure to pay tax
 - a) Notice of deficiency treated as a return
 - 3. Sec. 6673 for frivolous arguments

18.) Donald Taylor CA-9

A.) Taxpayer penalized for preparing false returns for clients

B.) He paid less than full penalty

1. In court asks courts to rule on the refund of the paid penalty

C.) Sec. 6694 requires full payment before court can consider return

1. Exception – pay 15% and file for refund within 30 days of earlier of IRS denial of refund or 6 months after filing for refund

Corporate Taxation

1.) Kathleen Norgaard DC-Mass

- A.) Taxpayer and her husband bought 100% of a corporation
- B.) Corporation received a Small Business Administration (SBA) loan
 - 1. Taxpayer guaranteed loan
- C.) Taxpayer repaid loan
- D.) Corporation ended without repaying taxpayer for her loan payment
 - 1. She claimed business bad debt
- E.) Contribution not loan
 - 1. Lack of written debt, no collateral, and no repayment plan

2.) Notice 2018-28

- A.) Section 163 (j) limits interest expense deduction
- B.) If file consolidate return, limit on whole consolidate group
 - 1. If controlled but not filing consolidate, regulation might treat as one corporation
- C.) Corporation do not have investment income or investment interest expense
- D.) Corporation that is a party would be instructed as to allocated business interest

3.) Prop. Reg. 104397-18 Sec. 168 (k)

A.) Taxpayer can elect to deduct cost of qual. property.

1. Recovery period 20 years
2. Computer software not subject to Sec 197
3. Can be previously used
 - a) Not used by taxpayer or related party
4. Includes property deemed purchased under Sec 338 or Sec 336 (e)
5. Cannot be purchased from corporation in taxpayer's consolidated group
 - a) Cannot be previously used by another member of consolidated group

4.) ILM 201827011

A.) Corporation entitled to DRD

1. Must hold stock for at least 45 days
2. Eliminate day with a reduction in risk of loss

B.) Comparable securities owned by related party or partnership treated as owned by taxpayer

C.) DRD denied because of reduced risk.

5.) PLR 201736002

A.) Taxpayer is an investment advisor

B.) Taxpayer is working with acquirer to buy Target

C.) Taxpayer pays support funds to Target shareholders to sell to acquirer

1. Qualifies under Section 162

2. Does not meet Section 263 capitalization rule

- a) Does not meet intangible definition and requirements

6.) Baker Hughes DC-Texas

- A.) Taxpayer owned a Russian subsidiary
- B.) Subsidiary had an agreement with unrelated party to perform services
 - 1. Failure to perform would result in significant payment to unrelated
- C.) Russia threatens liquidation of sub if assets not increased
 - 1. Taxpayer transferred funds
 - 2. Claimed bad debt deduction
- D.) Court ruled capital contribution
 - 1. Shareholders generally treated as making contribution instead of loan
- E.) Not a payment of a guarantee
 - 1. If qualified, bad debt deduction
 - 2. Not required
 - a) Voluntary payment to bolster financial position

7.) Norma Stone CA-9

A.) Taxpayer owned a corporation

1. It sold all its assets

B.) Taxpayer sold stock to a foreign corporation

1. Corporation borrowed money to pay stock purchase
2. Liquidated purchased corporation
3. Used cash to pay liability
 - a) No assets remain
 - b) Tax liability of asset sale not paid

C.) Taxpayer liable as transferee

1. Transaction lacked economic substance
2. Taxpayer liable under state law

8.) Pacific Mgt. Group T.C. Memo 2018-131

A.) Small group of individuals owned corp.

1. Corp. very profitable

B.) Created a partnership

C.) Created S corps that owned corp. stock

1. S corps owned by ESOP

D.) Corp. paid partnership factoring fees

1. Partnership transferred money to S corps

E.) Factoring fees lack economic substance

1. Reclaim as dividends

9.) Worthless Subsidiary

A.) PLR 201829004

1. Parent owns Holding
2. Holding owns active Sub.
3. Holding and Sub. will “check the box” into DREs
4. Holding insolvent
 - a) Section 332 does not apply
 - b) Holding uses Sub’s earning for purposes of Section 165 (g) (3)
5. Parent can claim loss

B.) PLR 201830005

1. Similar to PLR 201829004
2. Section 165 (g) (3) loss limited by Reg. Sec. 1.1504-36

10.) TD 9833 Final Regs. 337 (d) and 732 (f)

A.) Sec. 337 (d)

1. Corporation owns an interest in a partnership
2. Transfers appreciated property to partnership
3. Partnership distributes corp. stock to corp.
 - a) Deemed gain recognized
 - b) Includes stock options and warrants
 - c) Examples show percent allocation

B.) Sec. 732 (f)

1. Corp. is partners
2. Partnership distributes stock of corp. that corp. partner controls
3. Basis in hands of corp. less than basis in partnership
 - a) Adjust partnership basis

11.) Notice 2018-30

A.) Modifies Notice 2003-65

B.) Sec 382 limits deduction of NOL carryforward after ownership change

1. Amount adjusted by RBIG & RBIL

C.) One option is to use an assumed Sec 338 transaction

D.) New Sec 168 (k) depreciate will increase RBIG under Sec 338

1. Does not apply

12.) Clemen Benenson CA-1

A.) Taxpayer used DISC to fund a Roth IRA

B.) IRS argued substance vs. form

1. Tax as dividend and excess Roth IRA contribution

C.) CA-1 reverses Tax Court

1. Transaction not subject to the tax argued by IRS

Partnership Taxation

1.) ILM 201741018

A.) US corp. and Foreign corp. create LLC

B.) US corp. contributes cash

1. Foreign country treats as loans
2. US treats as capital

C.) US and Foreign to receive distribution based on contribution not income

1. Guaranteed payment under Sec 707 (c)

D.) US corp. sells interest to Foreign corp.

1. Partnership transferred money to S corps

E.) Allocation failed Sec 704 economic effect requirement

1. US Partner argues that foreign country required contributions to maintain capital meets the Sec 704 requirement
2. Since taxpayer not required to make contribution to meet required distribution in liquidation it does not meet requirement

2.) Prop. Reg. 104397-18 Sec 168 (k)

- A.) Property distributed by partnership to partner under Sec 732 does not qualify for Sec 168 (k) deduction
- B.) Distribution that increases basis under Sec 754/734 does not qualify under Sec 168 (k)
- C.) Purchase of partnership interest that has Sec 754/743 may qualify under 168 (k) if partner did not use property before

3.) Reg 131186-17 Sec 707 (a)(2)(B)

A.) Rule removes proposed regulation

1. Old rule for recourse and non-recourse liability to be maintained
2. Bottom dollar payment obligation will be applied based on recent proposed regulation
3. Treasury considering contingent liabilities and disguised sales

4.) PLR 201834010

- A.) Taxpayer has 2 properties received from related party within 2 years of Sec 1031 exchange
- B.) Taxpayer disposes both properties
 1. First in a Sec 1031 exchange
 2. Second in a Section 721 contribution
- C.) Both of these dispositions meet the not tax avoidance requirements

5.) Marc White T.C. Memo 2018-102

- A.) Taxpayer ended working for Mercedes
- B.) He joined ex-wife to form new business
 - 1. No written documents
- C.) Taxpayer only contributor
- D.) Based on facts partnership does not exist

6.) Argosy Technologies LLC T.C. Memo 2018-35

A.) Husband and wife form LLC

B.) They reported income but did not file partnership tax return

C.) Failure to file penalty applied

1. Taxpayers failed to make the Section 761 (f) election

7.) Grecian Magnesite Mining 149 T.C. No. 3

A.) A foreign partner had entity redeemed

B.) Court ruled that entity not aggregate approach applies

1. 2017 Tax Act changes outcome

S Corporation Taxation

1.) CCA 201747006

- A.) The separation of the S corporation and shareholder same as C corporation and shareholder
- B.) This rejects the Peter Morton case decision

2.) PLR 201834007

A.) Taxpayers A & B are getting divorced

B.) Stock of S corp. transferred to a trust

1. Some A liabilities are transferred to trust
2. Distribution of S corp. will pay liab.
3. Distribution between A & B adjusted for liab. payment

C.) Class of stock affected by distribution

1. The special transfer not treated as creating second class of stock

3.) Loss

A.) Dana Messina T.C. Memo 2017-213

1. Taxpayers formed an S corp.
2. S corp. forms a sub that merged into an S corp.
 - a) The acquired S corp. was a QSUB
 - b) The QSUB had two loans
 - 1) These are treated as its parent's loan
3. Taxpayer formed another S corp.
 - a) If acquired one of the QSUB loans
 - b) Acquired by new S corp. to maintain its maturity over other loan
4. Taxpayers argued that they are the real lenders to the S corp.
 - a) Provides ability to deduct loss
 - b) Court rejects
 - 1) Not an incorporated pocketbook
 - 2) Not taxpayer's agent
 - 3) Step transaction does not apply

3.) Loss

B.) Homero Meruelo T.C. Memo 2018-16

1. Taxpayer claim loan to S corporation
 - a) Cash was from a related S corp.
2. Court rejects taxpayer's position
 - a) Reg 1.1366-2 (a) that the loan must be direct from shareholder
 - b) Back to back loans valid
 - c) Economic outlay doctrine still applies

3.) Loss

C.) Rupert Phillips CA-8

1. Taxpayer 50% owner of S corp.
2. Taxpayer guarantees S corp. debt
 - a) Corp. fails to pay
 - b) Creditor demands cash from taxpayer
 - 1) Taxpayer has not paid
3. Guarantee does not create loan to S corp.
 - a) Payment can
 - b) This is application of economic outlay doctrine