

2011 Regional Forums - Individual Tax Developments

New Laws

Small Business Jobs Act of 2010 P.L. 111-240

2010 Tax Relief Act (Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010)
P.L. 111-312

Updated Regulations

Valuation tables in final regs reflect recent mortality data and broader range of interest rates T.D. 9540,
08/09/2011 ; Reg. § 1.170A-12, Reg. § 1.642(c)-6, Reg. § 1.664-4, Reg. § 20.2031-7, Reg. § 20.2056A-4, Reg.
§ 25.2512-5, Reg. § 25.2522(c)-3, Reg. § 1.7520-1, Reg. § 20.7520-1, Reg. § 25.7520-1

IRS releases draft version of Form 8938 for foreign financial asset holders

Cases and Rulings

Gain on sale of rebuilt house didn't qualify for homesale exclusion Gates (2010), 135 TC No. 1

Tax Court holds that 90% stock loan program was a disguised sale Calloway, (2010) 135 TC No. 3

Court paves the way to joint filing by same sex married couples Nancy Gill, et al. v. Office of Personnel
Management, et al., (DC MA 07/08/2010) 106 AFTR 2d ¶ 2010-5058

Costs of service animals used for mental health deductible as medical expenses Information Letter 2010-0129

Credit card rebates paid to charity yield charitable deductions for cardholders PLR 201027015

Forward contract/share lending agreements were taxable sales, not Sec. 1058 lending arrangements
Anschutz, (2010) 135 TC No. 5

Shelter lacked substance and couldn't offset huge compensation as district court had allowed
Sala v. U.S. (CA 10 7/23/2010) 106 AFTR 2d ¶ 2010-5109

Accountant was employee, not independent contractor Feaster, TC Memo 2010-157

Transfer of home to closely held shareholders was constructive dividend; penalties imposed
RVJ Cezar Corporation et al, TC Memo 2010-173

Personal goodwill received in sale of professional service corporation was corporate asset
Larry E. Howard v. U.S., (DC WA 7/30/2010) 106 AFTR 2d ¶ 2010-5140

Father-son farm was a partnership; each had equal interest in its expenses Holdner, TC Memo. 2010-175

Disability payments to firefighter under union's contract with city weren't excludable
John T. Bayse, TC Summary Opinion 2010-118

Recharacterization of activity from nonpassive to passive wasn't accounting method change PLR 201035016

“On call” time didn't count towards qualification as real estate professional under PAL rules
Moss (2010), 135 TC No.18

IRS provides relief for homeowners with corrosive drywall Rev Proc 2010-36, 2010-42 IRB ; IR 2010-102

Taxpayers allowed to deduct losses from horse breeding activity Johnny L. Dennis, TC Memo 2010-216

Taxpayer received ordinary income for performing services not ancillary to transfer of patent
Farris, TC Memo 2010-222

Debt on home purchase can be home equity debt as well as acquisition debt Rev Rul 2010-25, 2010-44 IRB

Payments that were reduced when children reached age 20 weren't child support
Maes v. U.S., (DC MT 10/13/2010) 106 AFTR 2d ¶ 2010-5385

Service providers at spa were independent contractors not employees
Cheryl A. Mayfield Therapy Center, TC Memo 2010-239

Court of Appeals affirms district court's dismissal of investors' claims based on tax shelter opinions
AFFCO Investments 2001 v. Proskauer Rose, 106 AFTR 2010-5426 (10/27/2010) 106 AFTR 2d ¶ 2010-5426

Tax Court upholds regs allowing fraud penalty on overstatement of wages withheld credits
Feller (2010), 135 TC No. 25

No deduction for donation of house to Fire Dept. where value of demolition services exceeded value of property
Theodore R. Rolfs and Julia A. Gallagher, (2010) 135 TC No. 24

FedEx drivers in multidistrict litigation largely held to be independent contractors
In re FedEx Ground Package System, Inc., (DC IN 12/13/2010)

Supreme Court holds that medical residents working full-time were employees for FICA purposes
Mayo Foundation for Medical Education and Research, et al. v. U.S. (S Ct 1/11/2011) 107 AFTR 2d ¶ 2011-312

Accuracy-related penalty not avoided by relying on advisers who were shelter promoters
106 LTD, David Palmlund, Tax Matters Partner, 136 TC No. 3

IRS may recharacterize dividend payments to S shareholder-employee as wages
Watson, P.C. v. U.S., (DC IA 12/23/10) 107 AFTR 2d ¶ 2011-305

Tax Court finds that losses of taxpayer in gambling business were limited to gambling gains
Mayo, (2011) 136 TC No. 4

Second settlement offer for those voluntarily disclosing unreported offshore income IR 2011-14 (2/08/2011)

IRS details penalty framework for voluntary disclosure of unreported offshore income

“Wrap fees” won't be treated as IRA or Roth IRA contributions PLR 201104061

Lactation expenses qualify as deductible medical expenses Ann. 2011-14, 2011-9 IRB

Taxpayers not entitled to deduct contributions to purported “family charity”
Setty Gundanna and Prabhavathi Katta Viralam, (2011) 136 TC No. 8

Second Circuit rejects attempt to defer recognition of employer-provided stock
Gudmundsson v. U.S., (CA 2 2/22/2011) 107 AFTR 2d ¶ 2011-456

Failure to use qualified escrow account in attempted 1031 exchange resulted in taxable gain
Ralph E. Crandall, Jr. and Dene E. Dulin, TC Summary Opinion 2011-14

Attorneys were employees of S corporation law firm
Donald G. Cave a Professional Law Corp., TC Memo 2011-48

IRS explains tax consequences of governmental homeowner-assistance payments Notice 2011-14, 2011-11 IRB

Real estate professional exception to PAL rule barred by short-term rental rule
Bailey, TC Summary Opinion 2011-22

Stockholder in residential co-op can't deduct assessment paid to fix damage to retaining wall
Alphonso, (2011) 136 TC No. 11

Deduction for payments to firm's founders via related entities disallowed as unreasonable
Mulcahy, Pauritsch, Salvador & Co., Ltd., TC Memo 2011-74

Police officer's disability pension didn't convert to retirement upon turning 50
Bakken, TC Summary Opinion 2011-55

Real estate professionals allowed late election to aggregate rental real estate interests
Rev Proc 2011-34, 2011-24 IRB

Trade officer of foreign consulate held to be common law employee Rosenfeld, TC Memo 2011-110

Out-of-pocket expenses of caring for foster cats qualified for charitable deduction
Van Dusen (2011), 136 TC No. 25

DC Circuit upholds regs that treat basis overstatement as triggering 6-year limitations period
Intermountain Insurance Service of Vail, LLC, Thomas A. Davies, TMP, (CA DC 6/21/2011) 107 AFTR 2d ¶2011-964

Taxpayers can't rely on preparer's omission of income to beat accuracy-related penalty
Stephen G. Woodsum and Anne R. Lovett, (2011) 136 TC No. 29

Nonresident's slot machine winnings taxed as not effectively connected with a U.S. Business
Sang J. Park (2011), 136 TC No. 28

Tax Court determines U.S. tax on nonresident golfer's endorsement income
Retief Goosen, (2011) 136 TC No. 27

Contractor held real estate as investor and realized capital gain on sale of subdivided lots
Mark S. Gardner, TC Memo 2011-137

Payments to caregivers for assisting and supervising dementia patient are deductible medical expenses
Estate of Lillian Baral, (2011) 137 TC No. 1

CEO could deduct legal fees incurred in defending against suit by disgruntled investor
Ramig, TC Memo 2011-147

Limitations period remains open if excess Roth IRA contributions aren't reported on return
Paschall, (2011) 137 TC No. 2

Purported day trader was mere investor—most losses and expenses disallowed
Richard Kay, Jr., TC Memo 2011-159

Individual's Drag Racing Hobby Losses Not Deductible
R.J. Zenzen, TC Memo. 2011-167, Dec. 58,701(M)

Taxpayer snared in fraudulent investment scheme denied theft loss and hit with penalty
Vincentini v. Comm., (CA 6 7/12/2011) 108 AFTR 2d ¶ 2011-5060

Taxpayer had constructive distribution on termination of life insurance policy Ledger, TC Memo 2011-183

Ninth Circuit finds Fifth Amendment inapplicable to offshore banking records

In re: M.H., (CA 9 8/19/2011) 108 AFTR 2d ¶ 2011-5203

C CORPORATION TAX DEVELOPMENTS

- Successive Deferred Exchanges Among Affiliated Entities Eligible for §1031 Treatment
PLR 201048025
- Business Tax Breaks Retroactively Reinstated and Extended by the 2010 Tax Relief Act
- Proposed Regs Provide Allocation of Sales-based Royalties Under Uniform Capitalization Rules—Preamble to Prop. Reg 12/16/10, Prop. Reg §§ 1.263A-1 to 3 and 1.471-3
- Corporation's Carryback of ATNOLD Wasn't a Carryover Allowing Deduction Offsetting AMTI—Metro One Telecommunications, Inc. (2010) 135 TC No. 28
- Deferral of Gift Card Income Widened to Include Cards Redeemable at Other Stores—Rev. Proc. 2011-18
- §7502's Timely-mailing Rule Inapplicable to Amended Return Showing Increased Tax Due—Chief Counsel Advice 201052003
- IRS's Retroactive Disqualification of Corporation's ESOP and ESOT Upheld—Michael C. Hollen, D.D.S., P.C., TC Memo 2011-2
- Supporting Schedule No Longer Required for R & D Costs Reported on Schedule M-3
- Taxpayer Couldn't Avoid Taxes by Restructuring Practice Through Shell Corporations
Tony L. Robucci, TC Memo 2011-19
- Taxpayer's Construction Activities Qualified for the Domestic Production Activities Deduction—Gibson & Associates, Inc. (2011), 136 TC No. 10
- Loans from Wholly-owned Corporations Were Unreported Constructive Distributions—Knutsen-Rowell, Inc., et al, TC Memo 2011-65
- Transactions to Divide Corporation's Business Among Feuding Shareholders Upheld as Tax-free—PLR 201113003
- Transactions to Divide Businesses Upheld as Tax-free Re-capitalizations and Spin-offs
PLR 201116001
- IRS Provides Guidance on Basis of Stock Acquired in Transferred Basis Transactions
Rev. Proc. 2011-35
- Temp. Regs Remove Duplicate Form 5472 Filing Requirement—T.D. 9529, 06/09/11; Reg. §§ 1.6038A-1T and 1.6038A-2T; Preamble to Prop. Reg. 06/09/11
- Final Regs Crack Down on Tax Avoidance Repatriations of CFC Earnings—T.D. 9530, 06/23/11, Reg. §§ 1.956-1 and 1.956-1T
- New Proposed Regs Would Clarify Exceptions to \$1 Million Deduction Limit on Top Officers' Pay—Preamble to Prop. Reg.; Prop. Reg. § 1.162-27
- Final Regs Clarify Code § 381 Carryovers of Tax Accounting Method and Inventories—T.D. 9534, 07/29/11; Reg. §§ 1.381(a)-1, 1.381(c)(4)-1, 1.381(c)(5)-1 and 1.446-1
- IRS Determines Tax Consequences of Spin-off Within Affiliated Group—PLR 201133003
- Start-up and Organizational Expenses—Deduction vs. Capitalization—Elections—Deemed Elections
- CA-9 Affirms; Personal Goodwill Received in Sale of PSC Was Corporate Asset—Larry E. Howard vs. U.S. (CA-9, 8/29/11) 108 AFTR 2d

S CORPORATION TAX DEVELOPMENTS

1. Overstatement of Basis Was Not Omission of Gross Income; Six-Year Assessment Limitation Period Did Not Apply *Home Concrete & Supply, LLC*, DC NC, 103 AFTR 2d ¶2009-361
2. Overstated Basis Was Omission from Gross Income *Grapevine Imports, Ltd.*, CA Fed Cir, 107 AFTR 2d 2011-1288
3. Six-Year Assessment Limitation Period Did Not Apply; Overstatement of Basis Was Not Omission of Gross Income *Carpenter Family Investments, LLC*, 136 TC —, No. 17, Dec. 58,606
4. Six-Year Limitation Period Applied Because Overstated Basis Was Omission from Income; New Regulations Entitled to *Chevron* Deference *Intermountain Insurance Service of Vail, LLC*, CA-D.C., 107 AFTR 2d 2011-2613
5. IRS Should Increase Examinations of Tax Returns with Losses from Rental Real Estate Activity, TIGTA Says
6. TIGTA Report: Actions Are Needed in the Identification, Selection, and Examination of Individual Tax Returns With Rental Real Estate Activity (Reference Number: 2011-30-005)
7. Bill Text Released Relating to S Corporation Modernization HR 1478 referred to the House Ways and Means Committee on April 12, 2011.
8. IRS Updates Optional Standard Mileage Rates Announcement 2011-40
9. Final Regulations Issued on Deduction of Start-up and Organizational Expenses T.D. 9542
10. Dividend Distributions to Undercompensated Shareholder Properly Recharacterized as Wages Subject to Employment Taxes *Watson, P.C.* DC Iowa 12/23/10) 107 AFTR 2d ¶2011-305

PARTNERSHIP TAX DEVELOPMENTS

1. Partnerships—partnerships as partner—proof—gross income—ordinary income vs. capital gain—refunds. *Rigas v. U.S.*, DC TX, 107 AFTR 2d 2011-788
2. TEFRA-partnership refunds: five steps to protect a partner's rights
3. Partnership losses—partner's distributive share—adjusted basis—assumption of liabilities—proof. *William P. Crouse, Jr., et ux. v. Commissioner*, (2011) TC Memo 2011-97, 2011 RIA TC Memo ¶2011-97
4. Partnership contributions for allocations of state tax credits were disguised sales Virginia Historic Tax Credit Fund 2001 LP, (CA 4 03/29/2011) 107 AFTR 2d 2011-633
5. Self-employment tax—net earnings from self-employment—partnership income and partner's distributive share—limited partner exclusion—limited partnership vs. limited liability partnership. *Renkemeyer, Campbell & Weaver, Llp, et al. v. Commissioner*, 136 TC No. 7
6. Partnership petitions—jurisdiction—multiple petitions—tax matters partner—partner status. *Devonian Program v. Comm.*, CA 3, 108 AFTR 2d 2011-5613
7. Accuracy-related gross valuation misstatement penalties—partnership contributions; tax shelters—sham nature of partnership; outside basis—items relating to partnership items—negligence and substantial understatement penalties—reliance on tax advisors—substantial authority—reasonable cause exception—partnership and partner transactions. *Jade Trading, LLC, et al. v. U.S.*, Ct Fed Cl, 107 AFTR 2d 2011-1832
8. Post-settlement assessments were computational adjustments; no deficiency notice needed *Bush*, (CA Fed Cir 8/24/2011) 108 AFTR 2d 2011-5217
9. CA9 upholds Tax Court's jurisdiction to determine Son of BOSS participant's deficiency *Napoliello*, (CA 9 8/23/2011) 108 AFTR 2d 2011-5211
10. Partnership and partner transactions—intent—business purpose; state vs. federal tax savings—disguised sales. *VA Historic Tax Credit Fund 2001, LP v. Comm.*, CA 4, 107 AFTR

ESTATE AND GIFT TAX DEVELOPMENTS

CA1 tosses estate's untimely refund suit, OKs reg limiting executor to one filing extension

Dickow v. U.S., (CA 1 08/19/2011) 108 AFTR 2d 2011-5202

Gross estate—trust assets—power of appointment—ascertainable standard—welfare Estate of Ann R.

Chancellor, et al. v. Commissioner, (2011) TC Memo 2011-172, 2011 RIA TC Memo ¶2011-172

Estate denied deduction for claim relating to care provided decedent by her son

Estate of Emilia W. Olivo, TC Memo 2011-163

Tax Court finds estate tax value of interest in publishing company was less than reported

Estate of Louise Paxton Gallagher, TC Memo 2011-148

No gifts triggered by trust transfers to resolve family discord

PLR 201119003

Ninth Circuit upholds inclusion of securities transferred to FLP in decedent's estate

Estate of Erma V. Jorgensen, (CA 9 5/4/2011) 107 AFTR 2d 2011-793

Settlement paid under botched will yields charitable deduction for estate

Estate of Antonio J. Palumbo, (DC PA 03/09/2011) 107 AFTR 2d 560

Ninth Circuit holds that palimony suit could qualify as a deductible claim against an estate

Estate of Bernard Shapiro, (CA 9 2/22/2011) 107 AFTR 2d 2011-483

Estate not entitled to fractional interest discount for land divided among children

Estate Of Axel O. Adler, TC Memo 2011-28

Beneficiaries weren't entitled to estate's unused loss carryovers due to settlement

Chief Counsel Advice 201047021

Estate's credit for tax on prior transfers limited; protective QTIP election untimely

Estate of Lucien J. Le Caer and Estate of Marie L. Le Caer, 135 TC No. 14

IRS Offers Filing and Penalty Relief for 2010 Estates; Basis Form Now Due Jan. 17; Extension to March

Available for Estate Tax Returns Notice 2011-76

TRUST AND ESTATE INCOME TAX DEVELOPMENTS

Trust modification prevents drafting error from resulting in costly transfer tax PLR 201132017

Trust's distribution of annuity contracts to beneficiaries won't be gratuitous transfer PLR 201124008

“Bundled fiduciary fees” are fully deductible until final regs are issued Notice 2011-37, 2011-20 IRB

Trust can't claim charitable deduction for full value of appreciated property though purchased with

trust gross income

Chief Counsel Advice 201042023

PROCEDURE DEVELOPMENTS

1. Procedure—Disputing Tax Liability in CDP Hearing: CCA 201040005

2. Procedure—Obtaining Copy of Return or Transcript: new toll-free number (1-800-908-9946)

3. Procedure—Filing a Superseding "First Return": CCA 201042037

4. Procedure—Cash Reporting Requirements: CCA 201044014

5. Procedure—Joint Tax Return after Substitute for Return: CCA 201044011

6. Procedure—Offshore Account Disclosure Program

7. Procedure—Reportable Transaction Disclosure: CCA 201045022

8. Procedure—Suit for Refund of Overpaid Tax: CCA 201044006

9. Procedure—Taxpayer's Correct Mailing Address: PMTA 01634

10. Procedure—Foreign Bank and Financial Accounts: IRC Sec. 6038D
11. Procedure—Guidance on Pre-approved IRAs Rev. Proc. 2010-48, 2010-50 IRB
12. Procedure—Attorney's Fees When Representing Yourself: *Hudson v. U.S.*, 106 AFTR 2d 2010-7017 (2nd Cir.)
13. Procedure—Piercing the Corporate Veil: TC Memo 2010-262 (Tax Ct.)
14. Procedure—Prisoners' Fraudulent Refund Claims: (number 2010-40-129)
15. Procedure—Sale of Marital Home to Pay One Spouse's Debt: *US v. Winsper*, 106 AFTR 2d 2010-6945 (D.C. W. Ky.)
16. Procedure—Innocent Spouse Relief: *James Kruse*, TC Memo 2010-270 (Tax Ct.)
17. Procedure—NOL Statute of Limitations: CCA 201049035
18. Procedure—Refund from IRS Failing to Release Levy: CCA 201049034
19. Procedure—Valuation Discount in Lien Discharge Case: CCA 201048036
20. Procedure—Arbitration and Mediation Program: IRS Ann. 2011-6, 2011-4 IRB
21. Procedure—Corporate Actions Affecting Stock Basis: Effective 1/1/11, IRC Sec. 6045B(a)
22. Procedure—Innocent Spouse Relief: *Robert McGhee*, TC Memo 2010-259 (Tax Ct.)
23. Procedure—Notice CCA 201050030
24. Procedure—Payment with Amended Tax Return: CCA 201052003
25. Procedure—Payments Requiring Information Reporting: SBSE-04-1210-068
26. Procedure—Preparer Electronic Filing Requirement: IRS Ann. 2010-96, 2010-52 IRB
27. Procedure—Refund after Limitations Expires: ILM 201048030
28. Procedure—Special PIN for Identity Theft Victims: (issue 2010-50, 12/21/10)
29. Procedure—E-signatures for Electronic Filing: Fact Sheet FS-2011-7
30. Procedure—Extended Limitations Period for Basis Overstatement *Beard v. Comm.*, 107 AFTR 2d 2011-552 (7th Cir)
31. Procedure—Allocation of Joint Return Tax Payments: . CCA 201106013
32. Procedure—Faxed Consent to Extend Limitations: CCA 201105040
33. Procedure—Taxpayer Consent to Disclosure: CCA 201105036
34. Procedure—Allocating Credits between Community Property Spouses: CCA 201108036
35. Procedure—Change of Address: IRS Tax Tip 2011-37
36. Procedure—Subordination of Tax Lien: *Alessio Azgari, Inc.*, 136 TC No. 9 (Tax Ct.)
37. Procedure—Summons Third-party Notice Requirement: CCA 201107024
38. Procedure—Circular 230 Sanctions: IRS Ann. 2011-24, 2011-12 IRB
39. Procedure—Correspondence Exam Program: 2010 IRS Data Book
40. Procedure—Filing Deadline Postponed by Hurricane: CCA 201109018
41. Procedure—Limitations Period for Basis Overstatement: *Grapevine Imports Ltd. v. U.S.*, 107 AFTR 2d 2011-XXXX (Fed. Cir.)
42. Procedure—Refund After Two-year Period Expires: CCA 201110011
43. Procedure—Refund Withholding and Offset: IRS Tax Tip 2011-59
44. Procedure—Offer in Compromise: *Larry Tucker*, TC Memo 2011-67 (Tax Ct.)
45. Procedure—Reporting Foreign Financial Accounts: Notice 2011-31, 2011-17 IRB
46. Procedure—Tax Lien Priorities: Regs. 301.6323(b)-1, 301.6323(c)-2, 301.6323(f)-1, and 301.6323(g)-1
47. Procedure—Taxpayer Assistance Orders: IRC Sec. 7811
48. Procedure—Information Reporting Requirements: H.R. 4, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, NTA-764, dated 4/13/11
49. Procedure—Managing Tax Records: IRS Tax Tip 2011-71
50. Procedure—Disclosures by Art Appraisal Office: PMTA 2011-010
51. Procedure—Tax Return Filed under Stolen SSN: PMTA 2011-009
52. Procedure—Withholding by Government Entities: TD 9524
53. Procedure—Abatement of Assessment: CCA 201118018
54. Procedure—FBAR Deadline Extended for Some Filers: News Release IR-2011-57
55. Procedure—Invalid Tax Return: PMTA 2011-13
56. Procedure—Offer in Compromise: *Stephen Johnson*, 136 TC No. 23 (Tax Ct.)
57. Procedure—Tax Deposit Earns No Interest: CCA 201120023
58. Procedure—Assessment Period for Tax Liability: *Martin Dingman*, TC Memo 2011-116 (Tax Ct.)
59. Procedure—Circular 230 Sanctions: Luis R. Hernandez, Complaint No. 2010-09

- 60. Procedure—Claims for Credit or Refund: Prop. Regs. 301.6402-2, 301.6402-3, and 301.6402-4
- 61. Procedure—County Reporting in Tax Lien Foreclosure: CCA 201122020.
- 62. Procedure—Extended Statute of Limitations: *Intermountain Insurance Service of Vail v. Comm.*, 107 AFTR 2d 2011-XXXX (Dist. Col. Cir.).
- 63. Procedure—Reporting Foreign Assets and Investments: Notice 2011-55, 2011-29 IRB.
- 64. Procedure—Examination versus Survey of Tax Return: CCA 201125026.
- 65. Procedure—Recovery of Erroneous Tax Refund: *Lawrence Willey*, TC Summ. Op. 2011-79 (Tax Ct.).
- 66. Procedure—Taxpayer Request for IRS to Sell Seized Stock: *Zapara v. Comm.*, 108 AFTR 2d 2011-XXXX, (9th Cir.).
- 67. Procedure—Collection Limitations Period: IRC Sec. 6503(c)
- 68. Procedure—Requirements for Tax Return Preparers: www.irs.gov
- 69. Procedure—Abatement of Interest on Tax Liability: *Estate of Nicolas Telesmanich*, TC Memo 2011-181 (Tax Ct.).
- 70. Start-up and Organizational Expenses: Final regulations TD 9542

TAX ACCOUNTING DEVELOPMENTS

Income Tax – Transfer of Restricted Property:

STROM v. U.S., 107 AFTR 2d 2011-1704 (641 F. 3d 1051) , 04/06/2011

Income Tax – Income Deferral – Foreign Sub Loan – Substance vs. Form:

MERCK & CO., INC. v. U.S., 107 AFTR 2d 2011-2596 (2011-1 USTC P 50461), 06/20/2011

Income Tax – Cell Phones Provided to Employees: Notice 2011-72, 2011-38 IRB, 09/14/2011

Income Tax – Capitalization/Expense of Electrical Transmission and Distribution Property

Rev. Proc. 2011-43, 2011-37 IRB 326, 08/19/2011

Income Tax - Capitalization of Success-Based Fee:

Rev. Proc. 2011-29, 2011-18 IRB 746, 04/08/2011

Income Tax – Capitalization/Expense of Wireless Network:

Rev. Proc. 2011-28, 2011-18 IRB 743, 04/04/2011

Income Tax – Capital Gains/Losses – Trader vs. Investor:

Richard Kay, Jr. v. Commissioner, TC Memo 2011-159

Income Tax – Prepaid Expenses – Deduction vs. Capitalization

Lattice Semiconductor Corporation v. Commissioner, TC Memo 2011-100

Income Tax – Regulated Investment Company – Qualifying Income:

Private Letter Ruling 201134014, 08/26/2011

BANKRUPTCY DEVELOPMENTS

1. Government Could Foreclose on Property Daughter Bought with Liened Funds; Transfer Not Set Aside; Fraudulent Transfer Not Proven (McCullough, DC Pa.), (Oct. 14, 2011)
2. Corporation Granted Extension of Time to Elect Out of Loss Corporation Rules (LTR 201138007), (Sep. 26, 2011)
3. Chapter 11 Attorney’s Fees Had Priority over Federal and State Tax Liens (In re J.R. Hale Contracting Company, BC-DC N.M.), (Sep. 1, 2011)
4. Inherited IRAs Excluded from Debtors’ Bankruptcy Estate (In re Johnson, BC-DC Wash.), (Jun. 6, 2011)
5. Nondischargeable tax debt: Untimely tax returns Mitchell J. Wogoman and Holly L. Wogoman, Plaintiffs v. Internal Revenue Service, Defendant., U.S. Bankruptcy Court, D. Colorado, 2011-2 U.S.T.C. ¶50,593, (Aug. 19, 2011)

EMPLOYEE BENEFITS DEVELOPMENTS

1. Business deductions—employee benefit programs; medical care reimbursement plans—farmers—spouses as employees—employee status—burden of proof. SHELLITO v. COMM., Cite as 108 AFTR 2d 2011-5952, 08/24/2011, Code Sec(s) 162; 3121; 7491
2. Trust fund penalties can be assessed against third-party payroll service providers
3. Newly-released information return for “one-participant” plans reflects changes Form 5500EZ
4. Tax Court says part-time university instructor wasn't employee - Donald T. Robinson, TC Memo 2011-99
5. Business deductions—ins. expenses—individual policy—solely owned corps.—accident or health plans—income exclusions. DKD Enterprises, Inc., et al., v. Commissioner, TC Memo 2011-29
6. Shareholder-employees taxable on life insurance policies with surrender charges exceeding stated value - Michael Schwab and Kathryn Kleinman, 136 TC No. 6

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7. IRS FAQs shed additional light on new settlement offer for workers misclassified as independent contractors - Voluntary Classification Settlement Program (VSCP)
8. Attorney, as alter ego of his law firm, was liable for its unpaid employment taxes - Western Management, Inc. v. U.S., (Ct Fed Cl 9/9/2011) 108 AFTR 2d ¶ 2011-5261
9. Employment tax collection action could begin more than 10 years after assessment - U.S. v. Booher, et al., (DC NV 7/22/2011) 108 AFTR 2d ¶ 2011-5113
10. Trust fund penalty applied even though no funds existed when owners discovered embezzlement - Oppliger v. U.S. (CA 8 3/29/11), 107 AFTR 2d ¶2011-631