

1999
FEDERAL TAX UPDATE:
CASES, REGULATIONS,
AND
ADMINISTRATIVE MATERIALS

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1. Early Referral Procedures - IRS Office of Appeals

1.1. Rev. Proc. 99-28; 1999-29 IRB 1 (07-01-99)

Outlines procedures for requesting an early referral of one or more unresolved issues from the Examination or Collection divisions to the Office of Appeals, including special procedures for requesting early referral of unresolved issues concerning an involuntary change of accounting method, employment taxes, employee plans, exempt organizations, or collections.

2. IRS Office of Appeals - Local Contacts

2.1. Local Appeals customer service representatives - Ann. 99-98 (10/04/99)

This IRS has released the telephone numbers of the Appeals Customer Service Representatives in the 33 IRS Appeals districts. The telephone number for the Upstate New York district is listed as (716) 551-5330, ext. 21, which is the number for Appeals Officer Rodney Krystoff.

3. United States Tax Court Rules

3.1. Interim Tax Court Rules

The Tax Court has adopted interim rules to provide taxpayers with guidance regarding changes to the court's jurisdiction brought about by the Taxpayer Relief Act of 1997 and the Internal Revenue Restructuring and Reform Act of 1998. The Tax Court has now has jurisdiction over 25 types of proceeding, each of which has its own set of procedural rules although there is a lot of duplication.

4. Tax Court Rule 142 - Burden of Proof

4.1. John D. Shea v. CIR, 112 T.C. No. 14 (04/01/99)

The Tax Court, in a divided opinion, held that the IRS will have the burden of proof where a notice of deficiency fails to describe the basis on which the Commissioner relies to support a deficiency determination, and the basis on which the Commissioner relies requires the presentation of evidence that is different than that which would be necessary to resolve the determinations that were described in the notice of deficiency. The court refused to apply *Abatti v. Commissioner*, 644 F.2d 1385 (9th Cir. 1981), revg. T.C. Memo. 1978- 392, after finding that the enactment of IRC Section 7522 made the holding of *Abatti* irrelevant because deficiency notices must now state the basis of the Commissioner's determination and could no longer be "broadly worded" as in *Abatti*.

5. Power of Attorney Forms

5.1. IRS simplifies process for filing and accessing powers of attorney - IR-1999-48 (05/24/99)

Taxpayers or their representatives may fax their signed Forms 2848, "Power of Attorney," or Forms 8821, "Tax Information Authorization," directly to the Centralized Authorization File Unit at their service center, which will enter the forms into a centralized database. IRS employees at any location may access data on a taxpayer's power of attorney form, thereby eliminating the need to ship paper documents from

one location to another or to repeatedly request faxes or mailings from taxpayers or their representatives. The facsimile number for the Andover Service Center CAF Unit is 978-474-9405

6. Internal Revenue Bulletin

6.1. Page Numbers in Internal Revenue Bulletins, Ann. 99-69 (07-12-99)

Beginning with Internal Revenue Bulletin (IRB) 1999-28, the page numbers will run consecutively from one IRB to the next. Since IRB 1999-27 ended on page 18, IRB 1999-28 starts with page 19. Previously, each IRB started with page one. This change is based on Announcement 99-36, 1999-16 IRB 10, which stated that reprints of weekly IRBs will be bound together to form the Cumulative Bulletin (CB). With this new numbering system, the page number for an item will be the same in the CB as it is in the IRB.

7. IRS Reorganization

7.1. IRS Releases Reorganization Blueprint

The reorganized IRS will be built around organizational units with end-to-end responsibility. The key change will be the creation of four operating divisions serving specific groups of taxpayers: wage and investment, small business and self-employed, large and mid-size business, and tax-exempt and government entities. Two support organizations - information systems and agencywide shared services - will provide common services for all divisions. The National Office will be much smaller and will set broad policy, review plans and goals of the operating units, and develop major improvement initiatives

8. Letter Ruling Fees

8.1. Letter Ruling Fees Reduced for Small Business - IR-1999-04 (01/11/99)

The IRS has announced that business with less than \$1 million of gross income now qualify for the special \$500 user fee for private letter rulings. The standard fee is \$5,000. Previously, the special \$500 user fee was available only to businesses with less than \$150,000 in gross income.

9. Industry Specialization Program

9.1. ISP Settlement Guidelines

The Service has released an updated list of ISP settlement guidelines that have been approved by its Appeals Division. The list is updated to June 30, 1999. The list at the IRS web site (www.irs.gov/prod/bus_info/tax_pro/coord.html), however, contains ISP documents dated 08/26/99 and should be consulted for the most recent ISP documents. In addition to the specific industry ISP's, the IRS web site contains industry wide ISP's dealing with: Covenants Not to Compete; Dollar Value LIFO; Employment Contracts; Health Insurance Deductibility for Self-employed Individuals; Meal Allowances; Qualifying Wages under Section 41 in Determining the Tax Credit for Increasing Research Activities; Research Credit for Internal Use Software; and Retroactive Adoption of an Accident and Health Plan.

10. Market Segment Specialization Guides on Particular Industries

10.1. MSSP Audit Guide for Carpentry/Framing - (02/01/99)

The guide supplements the MSSP for construction and outlines some of the audit techniques that apply to small businesses engaged in remodeling, home improvement, carpentry, woodworking, framing, and residential building. The guide also highlights examination issues that are unique to the carpentry and framing industry, such as the failure to comply with employment tax requirements, nonpayment of liabilities, unreasonable compensation, and diverting materials and labor for personal use.

10.2. MSSP Audit Guide for Scrap Metal Industry - (02/01/99)

The guide outlines the examination techniques for major issues that auditors may encounter when auditing scrap metal purchasers and sellers, such as inadequate substantiation of purchases, unreported income, assignment of income, and unreasonable compensation and constructive dividends. Also, it highlights some common industry issues, such as unreasonable accumulations of earnings and profits, double deduction of expenses, capitalization of the proper amounts for direct and indirect costs for inventories, and loans to shareholders.

10.3. MSSP Audit Guide for Veterinary Medicine - (04/22/99)

The guide outlines some of the basic balance sheet issues auditors may encounter when auditing veterinary medical practices. It also highlights specific issues that are unique to the veterinary industry, such as the sale of customer records, valuation of tangible and intangible assets, income reporting issues, passive income recharacterization, and asset leasing.

10.4. MSSP Audit Guide for Manufacturing Industry (05/01/99)

The guide follows the natural progression of an income tax audit for field examinations, beginning with the planning stages and continuing through the package audit, balance sheet, sales, inventory, and expense. The guide focuses on changes in accounting methods and inventory because those issues occur in most audits of manufacturing businesses. It also contains sections on LIFO inventories, the research credit, the tool and die business, production greater than 12 months, and self-constructed assets.

10.5. MSSP Audit Guide on Aviation Tax (02/01/99)

The guide outlines the examination techniques for the aviation market segment, which includes commercial and noncommercial air transportation, such as scheduled commercial airlines, on-demand air taxi services, charter airlines, integrated packaged delivery companies, travel agencies and tour brokers, businesses and individuals operating aircraft for their own use, purchasers of airline tickets, and marketers of fuel used in aircraft. The guide also highlights specific issues, such as return filing and deposit requirements, fuel taxes, air transport of persons and property, commercial airlines and scheduled flights, air charter, corporate flight departments, and tour operators and travel agencies.

11. FOIA Regulations for Treasury Department

11.1. Proposed revisions and updates to regulations on the disclosure of records under the Freedom of Information Act. (05/06/99)

The Department of the Treasury is revising and updating its regulations on the disclosure of records under the Freedom of Information Act (FOIA). These regulations incorporate requirements of the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231) with respect to records maintained in electronic formats, the timing of agency responses to FOIA requests, and other procedural matters.

12. IRS Employee Evaluation Criteria

12.1. Final regulations on the adoption of a balanced system to measure organizational performance and employee performance within the IRS. (08/05/99)

The IRS has published final regulations on its adoption of a balanced system to measure organizational performance and employee performance within the IRS. These regulations further prescribe rules relating to the measurement of employee performance and implement requirements that all employees be evaluated on whether they provided fair and equitable treatment to taxpayers and bar use of records of tax enforcement results to evaluate or to impose or suggest goals for any employee of the IRS. These regulations implement sections 1201 and 1204 of the Internal Revenue Restructuring and Reform Act of 1998. [Effective September 7, 1999]

13. Section 1(h) - Maximum Capital Gains Rate

13.1. Proposed regulations. (08/06/99)

The proposed regulations address the taxation of capital gains from sales or exchanges of interests in partnerships, S corporations, and trusts. The proposed regulations interpret the look-through provisions of section 1(h) and explain the rules on dividing the holding period of a partnership interest. The regulations reflect changes made to section 1(h) by the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998. [Effective: the date the regulations are published as final regulations in the Federal Register]

13.2. Final regulations on the taxation of capital gains on installment sales of depreciable property which adopt, without change, the proposed regulations published January 22, 1999. (08/20/99)

The final regulations address the treatment of an installment sale of depreciable real property when the gain to be reported consists of both 25 percent gain and 20/10 percent gain. The regulations also address the interaction of section 453, section 1231, and the capital gains rates. The regulations reflect amendments to section 1(h) by the Taxpayer Relief Act of 1997. [Effective August 23, 1999.]

14. Section 25A - HOPE Scholarship Credits

14.1. Proposed regulations on the HOPE scholarship credit and the lifetime learning credit. (01/05/99)

The proposed regulations contains rules for the HOPE scholarship credit and the lifetime learning credit under section 25A, which was added by the Taxpayer Relief Act of 1997. The proposed regulations identify who is eligible to claim each credit, as well as the types of expenses to which each credit applies. The regulations also address coordination of the credits with each other, and coordination of the credits with other non-taxable scholarships or educational assistance. [Effective on the date the regulations are published in the Federal Register as final regulations. Taxpayers may rely on the proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in the proposed regulations, the future guidance will be applied without retroactive effect.]

15. Section 42 - Low-Income Housing Credit

15.1. Proposed regulations on the low-income housing credit. (01/07/99)

The proposed regulations require state and local housing agencies to (1) annually report their compliance monitoring activities to the IRS; (2) conduct on-site habitability inspections of low-income housing projects; and (3) review local government reports on building code violations. They also provide new requirements for making carryover allocations and for correcting administrative errors and omissions. Under the proposed regs, the agency must provide an annual report to the IRS, confirming that it has satisfied the new compliance monitoring requirements. In addition, a project owner must certify annually that for the preceding 12-month period the project was suitable for occupancy and the building inspection agency did not issue a violation report. If a violation report was issued, the owner must submit a copy of it with the annual certification. [Effective on the date the final regulations are published in the Federal Register.]

15.2. Low-Income Housing Credit - MSSP Guide (08/26/99)

The MSSP guide contains audit techniques for the following subjects: qualified low-income housing projects, eligible basis, qualified basis, calculating the low-income housing tax credit, federal financing, recapture of the credit, extended use commitments, qualified nonprofit organizations, and development fees and soft costs. The guide also highlights specific related issues, such as tax liability restrictions, at-risk limitations, passive loss limitations, and the alternative minimum tax.

15.3. Rental Assistance Payments - Rev. Rul. 99-39 (09-20-99)

Pursuant to §1.42-16(b)(3) of the Income Tax Regulations, the Internal Revenue Service has determined that certain rental assistance payments made to a building owner on behalf or in respect of a tenant under the Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901-12912) are not grants made with respect to a building or its operation under §42(d)(5) of the Internal Revenue Code. These rental assistance payments are provided under 24 C.F.R. 574.300(b)(5).

16. Section 59 - Special Minimum Tax Rules

16.1. Paul J. Pekar v. CIR, 113 T.C. No. 12 (09/01/99)

The Tax Court held that a U.S. citizen who resided in Germany and the United Kingdom during 1995 is not entitled to relief from the AMT under either the U.S.-Germany tax treaty or the U.S.-U.K. tax treaty because his FTC was limited by section 59(a)(2)(A).

17. Sections 61, 102, 170 - IDA's

17.1. Individual Development Accounts, Rev. Rul. 99-44, (10/14/99)

The IRS has ruled on the income tax consequences of deposits into Individual Development Accounts, created by the Assets for Independence Act, Pub. L. No. 105-285, Title IV (Oct. 27, 1998), which are accounts for low-income individuals and their families to which matching funds can be deposited by qualified charitable entities and state or local government entities. The IRS ruled that:

(1) Interest earned by an IDA project participant on funds deposited in the participant's personal account is currently includible in the participant's gross income under *section 61*.

(2) A project participant may exclude, as a gift under *section 102*, parallel funds paid for a qualified expense of the project participant.

(3) A donor may deduct under *section 170* a contribution to a qualified entity for the qualified entity's IDA project, subject to the limitations of that section.

18. Section 71 - Divorce - Alimony v. Property Settlement

18.1. Estate of Monte H. Goldman v. CIR, 112 T.C. No. 21 (06/01/99)

The Tax Court held that: (1) in ascertaining the applicability of subparagraph (B) of section 71(b)(1), the divorce or separation instrument need not mimic the statutory language of that subparagraph (e.g., the instrument need not specifically refer to sections 71 and 215); and (2) a divorce or separation instrument contains a "non-alimony designation" under IRC Section 71(b)(1)(B) if the substance of such a designation is reflected in the instrument.

19. Section 79 - Group Term Insurance

19.1. Final regulations that revise the uniform premium table used to calculate the cost of employer- provided group-term life insurance coverage. (05/28/99)

The final regulations revise the uniform premium table used to calculate the cost of employer- provided group-term life insurance coverage. The final regulations adopt, with modifications, the proposed regulations published January 13, 1999. [Effective July 1, 1999 subject to transitional rules.]

20. Section 110 - Lessee Construction Allowances

20.1. Proposed regulations on the safe harbor under section 110, which allows a lessee in a short- term lease of retail space to exclude from income construction allowances it uses to construct qualified long-term real property. (09/17/99)

The proposed regulations define the term "qualified long-term real property" as section 1250 property other than residential rental property and property with a class life of less than 27-1/2 years. If the lessee constructs qualified long-term real property at the leased retail space, the proposed regulations presume that the construction allowance is used to construct or improve the lessor's property without requiring direct tracing of the allowance. The proposed regulations allow the lessee to spread the construction allowance over the tax year received and the following 8-1/2 months. The propose regulations require the lessee and lessor to provide information about the amounts received and spent. Failure to furnish the information will subject the parties to a penalty under section 6721. [Effective for leases entered into on or after the date final regulations are published in the Federal Register]

21. Section 119 - Employer-provided Meals

21.1. Boyd Gaming Corp. v. CIR, 177 F.3d 1096 (05/12/99)

The Ninth Circuit, reversed the Tax Court, and held that a Las Vegas casino operator may deduct 100 percent of the meals provided to its employees because its "stay-on-premises" policy was a substantial, noncompensatory business reason for furnishing meals to its employees. The Ninth Circuit concluded that the Tax Court had misread *Commissioner v. Kowalski*, 434 U.S. 77 (1977) and that the Tax Court had attempted to second guess Boyd's business judgment. The Ninth Circuit stated that "Kowalski is consistent with our earlier decision *Caralan v. Commissioner*, 442 F.2d 606 (9th Cir 1971), in which we held that the Tax Court may not substitute a business judgment that is contrary to the unimpeached and uncontradicted evidence presented by the taxpayer."

21.2. IRS Acquiesced to Boyd Gaming- Ann. 99-77 (08-09-99)

The IRS acquiesced to the opinion of *Boyd Gaming Corporation v. Comm'r*, 177 F.3d 1096 (9th Cir. 1999), rev'g T.C. Memo 1997-445, withdrew the proposed training materials relating to the application of section 119 to employer-provided meals in the hospitality industry, and terminated the settlement initiative for that issue.

22. Section 148 - Arbitrage Bond Restrictions

22.1. Final regulations on arbitrage restrictions that apply to exempt bonds issued by state and local governments. (12/30/98)

The final regulations address the use of proceeds of tax-exempt State and local bonds to acquire higher-yielding investments. The final regulations adopt, with modifications, the proposed regulations published June 27, 1996. [Effective 03/01/99]

22.2. Corrections to the final regulations on the arbitrage restrictions applicable to tax-exempt bonds. (07/08/99)

The corrections to the final regulations on the arbitrage restrictions applicable to tax-exempt bonds added three paragraphs to the "effective dates" section, including

guidance on the safe harbor for establishing the fair market value of guaranteed investment contracts and yield restricted defeasance escrow investments. [Effective as of December 30, 1998]

22.3. Proposed regulations on the arbitrage and related restrictions that apply to tax-exempt bonds issued by state and local governments. (08/24/99)

The proposed regulations modify section 1.148-1(e) to clarify which prepayments are investment-type property under section 148(b)(2)(D). The proposed regulations establish that prepayments that give rise to investment-type property can occur after the contract for property or services is entered into, and make other non-substantive, clarifying changes. It is intended that these regulations address only the potential issue created by the *City of Columbus v. Commissioner*, 112 F.3d 1201 (D.C. Cir. 1997), which held that a prepayment for property cannot occur after the property is acquired. [Effective date to be determined and set forth in final regulations]

22.4. Proposed regulations on the treatment of broker's commissions or similar fees as qualified administrative costs for tax-exempt bonds issued by state and local governments. (08/27/99)

The proposed regulations modify section 1.148-5(e)(2) to provide a safe harbor for determining whether brokers' commissions and similar fees incurred in connection with the acquisition of guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow are treated as qualified administrative costs. The proposed regulations create a single rule for qualified administrative costs that applies to a broker's commission or similar fee incurred in connection with a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow. To fairly compensate most brokers, the proposed safe harbor provides a higher safe harbor limit than is currently provided for in section 1.148-5(e)(2)(iv). [Applicable to bonds sold on or after the date 90 days after the issuance of the final regulations]

23. Section 162 - Deductions

23.1. Expense v. Capitalized Cost - Norwest Corp., et al. v. CIR, 112 T.C. No. 09 (03/08/99)

The Tax Court applied *INDOPCO Inc. v. Commissioner*, 503 U.S. 79 (1992), and held that an acquired subsidiary that was acquired by another subsidiary of the same parent may not deduct a portion of the salaries it paid to its officers in 1991, the acquisition year, because that portion was attributable to the services those officers performed in the transaction.

23.2. Post Retirement Expense - Merlin A. Steger v. Commissioner, 113 T.C. No. 18 (10/01/99)

The Tax Court held that an attorney can deduct the entire cost of a nonpracticing malpractice insurance policy in the year in which he retired from the practice of law, regardless of whether or not the policy was a capital asset.

23.3. Litigation Expenses - George W. Guill v. CIR, 112 T.C. No. 22 (06/18/99)

The Tax Court held that all of the litigation costs incurred by the taxpayer to recover actual and punitive damages was deductible as a business expense under IRC Sec-

tion 162 even though the punitive damages award was taxable as non trade or business income.

23.4. Optional Standard Mileage Rates - Ann. 99-7 (01-01-99)

This announcement informs taxpayers that the Internal Revenue Service is postponing until April 1, 1999, the effective date of the 31 cents-per-mile rate established in Rev. Proc. 98-63, to be published in 1998-52 I.R.B. (Dec. 28, 1998). The Service has decided to make this change because it understands that many employers and employees will require additional time to implement the new rate. Accordingly, the business standard mileage rate of 32.5 cents per mile set forth in Rev. Proc. 97-58, 1997-2 C.B. 587, continues to apply with respect to mileage allowances paid to an employee before April 1, 1999, for transportation expenses paid or incurred before that date. The 32.5 cents-per-mile rate also continues to apply for purposes of computing the amount allowable as a deduction for business-related transportation expenses paid or incurred before April 1, 1999. All other provisions of Rev. Proc. 98-63 will be effective January 1, 1999.

23.5. Optional Standard Mileage Rates - Rev. Proc. 99-38 (10-08-99)

The optional standard mileage rates used in computing the deductible costs paid or incurred on or after January 1, 2000, for operating an automobile for business, charitable, medical, or moving purposes have been announced. The rate for the business use of an automobile is 32.5 cents per mile, up from 31 cents per mile. The rate for the charitable use of an automobile remains at 14 cents per mile, while the rate for using the automobile for medical and moving purposes also remains 10 cents per mile. Rev. Proc. 99-38 supersedes Rev. Proc. 98-63..

23.6. Commuting v. Transportation Expenses - Rev. Rul. 99-7 (02-01-99)

Discusses the circumstances under which daily transportation expenses incurred by a taxpayer in going between the taxpayer's residence and a work location are deductible under §162(a).

23.7. Lease In/Lease Out Transactions - Rev. Rul. 99-14 (03-29-99)

A taxpayer may not deduct, under sections 162 and 163 of the Code, rent and interest paid or incurred in connection with a lease-in/lease-out (LILO) transaction that lacks economic substance.

24. Section 163(h) - Interest Deductions

24.1. Robert W. Carlson v. CIR, 112 T.C. No. 17 (04/30/99)

The Tax Court held that §163(h) prohibits the shareholders of an S-corporation from deducting interest they paid in accordance with §453(l)(3) due to an election by their S-corporation under §453(l)(3) to use installment sales reporting for the sale of time-shares because although the interest is imposed on the shareholders it is attributable to the trade or business of the S-corporation rather than the trade or business of the individual shareholders.

24.2. Allen v. United States, 173 F.3d 533 (4th Cir., April 20, 1999)

The Fourth Circuit, reversing a district court, held that a real estate developer is not entitled to deduction for interest paid on an income tax deficiency even though the deficiency arose from his trade or business because individual income tax deficiency

interest is always nondeductible personal interest in accordance with temp. reg. §1.163-9T(b)(2)(i)(A).

25. Section 168 - Depreciation

25.1. Recovery Period for Certain Personal Property Used in Rental Real Estate Activities; Correction, Ann. 99-82 (08-09-99)

The 1998 instructions for Form 4562, Depreciation and Amortization, and Publication 527, Residential Rental Property, classify certain personal property used in a rental real estate (appliances, carpeting, furniture, etc.) as 7-year property. The correct classification is 5-year property. This property is included in Asset Class 57.0. Distributive Trades and Services (see Rev. Proc. 87-56, 1987-2 C.B. 674). Therefore, the correct recovery period to be used for the regular tax is 5 years under the General Depreciation System (GDS) and 9 years under the Alternative Depreciation System (ADS). The Announcement specifies the procedures to be filed for correcting returns that reflect the error in the instructions.

26. Section 172 - Net Operating Loss

26.1. MSSP Audit Guide on Net Operating Losses for Individuals (02/01/99)

The guide is a quick reference on computing NOLs, claiming NOL deductions, and calculating NOL carrybacks and carryforwards for individuals. It also highlights specific issues, such as statute of limitation dates, credits, allocations, bankruptcy, and alternative minimum tax.

27. Section 179 - Expensing Deduction

27.1. Dennis L. Hayden v. CIR, 112 T.C. No. 11 (03/19/99)

The Tax Court upheld the validity of regulation §1.179-2(c)(2) which precludes the flow through of a partnership's §179 expensing deduction to the partners to the extent that the deduction is "more than the partnership's taxable income limitation for that taxable year." The taxpayers had argued that the income limitation for §179 expense deductions should be applied at the partner level rather than at the partnership level.

28. Section 195.-Start-up Expenditures

28.1. Expenses for Investigating Business Opportunities Rev. Rul. 99-23 (05-17-99)

Expenditures incurred in the course of a general search for, or investigation of, an active trade or business in order to determine whether to enter a new business and which new business to enter (other than costs incurred to acquire capital assets that are used in the search or investigation) qualify as investigation costs that are eligible for amortization as start-up expenditures under §195. However, expenditures incurred in the attempt to acquire a specific business do not qualify as start-up expenditures because they are acquisition costs under §263. The nature of the cost must be analyzed based on all the facts and circumstances of the transaction to determine whether it is an investigation cost incurred to facilitate the whether and which decisions, or an acquisition cost incurred to facilitate consummation of an acquisition.

29. Section 213.-Medical Expenses

29.1. Smoking Cessation Expenses, Rev. Rul. 99-28 (06-21-99)

Uncompensated amounts paid by taxpayers for participation in a smoking-cessation program and for prescribed drugs designed to alleviate nicotine withdrawal are expenses for medical care that are deductible under §213, subject to the 7.5 percent limitation. However, amounts paid for drugs (other than insulin) not requiring a prescription, such as nicotine gum and certain nicotine patches, are not deductible under §213.

30. Section 220 - Medical Savings Accounts

30.1. Continuation Past October 1, 1999 - Ann. 99-95 (10/01/99)

Sections 220(i) and (j) of the Internal Revenue Code provide that if the number of Medical Savings Account (MSA) returns filed for 1998 or a statutorily specified projection of the number of MSA returns that will be filed for 1999 exceeds 750,000, then October 1, 1999, is a "cut-off" date for the MSA pilot project. The Internal Revenue Service (IRS) has determined that the applicable number of MSA returns filed for 1998 is 32,371 and that the applicable number of MSA returns projected to be filed for 1999 is 44,784 (after reduction in each case for statutorily specified exclusions, such as the exclusion for previously uninsured taxpayers). Consequently, October 1, 1999, is not a "cut-off" date and 1999 is not a "cut-off" year for the MSA pilot project.

31. Section 221 - Student Loan Interest

31.1. Proposed regulations on the interest deduction for qualified education loans. (01/20/99)

The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, the Internal Revenue Restructuring and Reform Act of 1998, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. [Effective for interest paid after the date they are published in the Federal Register as final regulations. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations.]

32. Section 263A - Uniform Capitalization Rules

32.1. Proposed regulations that revise the historic absorption ratio election under the current section 263A regulations. (05/21/99)

The proposed regulations revise the historic absorption ratio election under the current section 263A regulations to prevent substantial mismatching of income and related expenses caused by significant changes in a taxpayer's circumstances during the "qualifying period." The proposed regulations affect taxpayers who elect to use the simplified production or resale methods with the historic absorption ratio election. [Effective for taxable years beginning after May 24, 1999]

33. Section 263A - Uniform Capitalization Rules

33.1. John J. Reichel v. CIR, 112 T.C. No. 02 (01/07/99)

The Tax Court held that a real estate developer must capitalize real estate taxes he paid relating to land he purchased for development, even though he never began developing the property.

34. Section 274 - Travel and Entertainment

34.1. The General Services Administration has published corrections to the December 2, 1998, listing of maximum per diem rates for government travel in the continental United States. (02/10/99) [Effective January 1, 1999.]

Lodging rates do not include any taxes. They are now room rates only. Actual costs paid for lodging taxes may be reimbursed to the traveler as a miscellaneous expense (see part 301-11). Additional seasons (up to four) have been added where appropriate. Some counties now have more than one rate. Many previously combined locations are now shown separately with different rates. There is one new M&IE tier of \$46.

34.2. Amended Per Deim Rates

The General Services Administration has amended the listing of maximum per diem rates for government travel in the continental United States to include Great Neck as a new per diem locality in New York and to increase the maximum lodging amount in Fort Worth, Texas. (02/10/99) [Effective January 1, 1999.]

34.3. Amended Per Deim Rates

The General Services Administration has amended the listing of maximum per diem rates for government travel in the continental United States, adding localities in Michigan, New Jersey, New York, and West Virginia and increasing the maximum lodging amount in Charleston, N.C. (04/05/99) [Effective April 5, 1999]

34.4. Amended Per Deim Rates

The General Services Administration has amended the listing of maximum per diem rates for government travel to increase the maximum lodging amounts and to combine, add, and remove some localities in California, Illinois, New Jersey, North Carolina, Utah, and Virginia. (07/19/99) [Effective July 19, 1999.]

34.5. Section 274 - Travel and Entertainment - IRS Legal Memorandum - ILM 199917059 (02/08/99)

Concluded that although taxpayers can use the federal per diem rate to substantiate meals and incidental expenses (M&IE), they cannot use the federal rate to substantiate lodging expenses, but must require actual documentation to satisfy reg. §1.274-5T(c)(2)(iii)(A).

35. Section 280A - Deductions - Office in Home

35.1. Walter R. Strohmaier v. CIR, 113 T.C. No. 05 (08/03/99)

The Tax Court applied *Commissioner v. Soliman*, 506 U.S. 168 (1993) and distinguished *Walker v. Commissioner*, 101 T.C. 537 (1993), finding that an insurance salesman who worked out of his apartment could not deduct a portion of his rent and could not deduct mileage to travel from his apartment to his customer's homes because the taxpayer's residence was not his principal place of business due to the fact that the most "important function" of the business - the closing of the sale - always occurred at the customer's home or place of business.

36. Section 338 - Stock Purchase/Asset Purchase

36.1. Proposed regulations on determining the amount realized and the amount of basis allocated to each asset transferred in a deemed or actual asset acquisition. (08/04/99)

The proposed regulations clarify the treatment of deemed or actual asset acquisitions under §338 and §1060. They also modify (1) the organization of the regulations to make them more administratable, (2) the accounting rules that apply to deemed and actual asset acquisitions, and (3) the residual method mandated for allocating consideration and basis. The proposed regulations do not address the consistency rules or the international aspects of §338. [Effective on the date that final regulations are published in the Federal Register]

37. Section 355 - Controlled Firm Stock

37.1. Proposed regulations on gain recognition on a distribution of stock or securities in a controlled corporation. (05/03/99)

The proposed regulations specify that a distribution is not a disqualified distribution under §355(d)(2) and reg. §1.355-6(b)(1) as long as it (and any related transaction) doesn't violate the purposes of §355(d). The regulations describe transactions that don't violate the purposes of §355(d) and provide some examples. They also include examples demonstrating the application of the two-pronged purpose test and an anti-avoidance rule, which permits the IRS to treat any distribution as a disqualified distribution if the distribution's principal purpose is to avoid the purposes of §355(d). The proposed regulations also contain definitions of the relevant terms and phrases.

37.2. Proposed regulations defining the scope of a plan under section 355(e) - the so-called "Morris Trust" regulations. (08/19/99)

The proposed regulations interpret and apply §355(e) which was added by the Taxpayer Relief Act of 1997 to overrule *Commissioner v. Mary Archer W. Morris Trust*, 367 F.2d 794 (4th Cir. 1966), a case in which a target company tailored its businesses to meet an acquirer's conditions, followed by a threshold spin-off under §355 and a tax-free stock-for-stock exchange. [Applicable to distributions occurring after the regulations are published as final regulations in the Federal Register.]

38. Section 367 - Foreign Corporations

38.1. Final regulations on the treatment of distributions to foreign shareholders under section 367(e)(1) and (2). (08/06/99)

The final regulations adopt, with modifications, the temporary and proposed regulations published August 14, 1996, and the temporary and proposed regulations published January 16, 1990. The final regulations address the tax consequences of three types of distributions to foreign shareholders: a distribution by a U.S. company of its subsidiary's stock under §355 (outbound distribution); a liquidation of a U.S. company into a foreign parent company under §332 (outbound liquidation); and a liquidation of a foreign corporation into a foreign parent company in a transaction under §332 (foreign-to-foreign liquidation). [Effective August 9, 1999, but. Reg. §1.367(e)-2 applies to distributions occurring on or after September 8, 1999, or, if taxpayer elects, to distributions in tax years ending after August 8, 1999]

38.2. CMI International Inc. v. CIR, 113 T.C. No. 01 (07/13/99)

The Tax Court held that a consolidated group did not realize gain through a transfer of an interest in Mexican U.S.-dollar- denominated debt in exchange for stock, because there was no transfer of "appreciated property".

39. Section 368(a)(1)(C) - Stock for Property

39.1. Proposed regulations on the solely for voting stock requirement under section 368(a)(1)(C). (06/11/99)

The proposed regulations reverse the IRS's long-standing position that the acquisition of a partially controlled subsidiary's assets doesn't qualify as a tax-free reorganization. The IRS's former position was articulated in Rev. Rul. 54-396 (1954-2 C.B. 147) and was upheld by *Bausch & Lomb Optical Co. v. Commissioner*, 30 T.C. 602 (1958), aff'd, 267 F.2d 75 (2d Cir.), cert. denied, 361 U.S. 835 (1959) (the Bausch & Lomb doctrine). Under the proposed regulations an acquiring corporation's preexisting ownership of a portion of a target corporation's stock generally would not prevent the solely for voting stock requirement from being satisfied. Rev. Rul. 54-396 (1954-2 C.B. 147) will become obsolete when the proposed regulations are issued in final form.

Applicable to transactions occurring after the date that a Treasury decision adopting the regulations is published in the Federal Register, except that they do not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations are published as final regulations in the Federal Register, and at all times thereafter.

40. Section 382 - NOL Carryovers

40.1. Final regulations on the application of section 382 to controlled groups. (07/02/99)

The final regulations adopt, with modifications, the proposed regulations published June 27, 1996. The final regulations require adjustments to the value of a loss corporation that is a member of a controlled group if the loss corporation is a component member of the same controlled group as another member (1) on December 31 of the tax year in which a pre-change loss arises (or the change date, if earlier) and (2) on the date that the loss corporation has an ownership change. The final regulations are applied by determining the controlled group for each year's pre-change loss of the corporation. The final regulations also include an irrebutable presumption that some built-in losses are attributable to the period before a particular tax year.

The final regulations are effective as of June 25, 1999. The rules in reg. §1.382-5 on successive ownership changes, however, apply to a loss corporation's tax years beginning on or after January 1, 1997. Reg. §1.382-8, which relates to controlled groups, generally applies to a loss corporation that has an ownership change for a controlled group loss on or after January 1, 1997. For members of controlled groups that have ownership changes before that date, transition rules are provided. The rules in reg. §1.382-1(a)(iv) on separate tracking of some loss corporations apply to testing dates on or after January 29, 1991. The rules in reg. sections 1.382-2(a)(4) and (a)(5) on successor or predecessor corporations in other than corporate reorganizations apply to testing dates on or after January 1, 1997.

41. Section 404 - Plan Contributions

41.1. Sklar, Greenstein & Scheer P.C. v. CIR, 113 T.C. No. 09 (08/13/99)

The Tax Court held that a corporation's payment to a third party of litigation expenses for its money purchase plans was not a deemed contribution to the plan and, thus, are not subject to the limits on deductibility under §404.

42. Section 408A - Roth IRAs

42.1. Final regulations on Roth IRAs. (02/03/99)

The final regulations adopt, with modifications, the proposed regulations published September 3, 1998. The final regulations clarify that conversions and recharacterizations made with the same trustee may be accomplished by redesignating the account or annuity contract, instead of opening a new account or issuing a new annuity contract for each conversion or recharacterization. The regulations also specify that a change in filing status or a divorce won't affect the application of the four-year spread for 1998 conversions. [Effective February 3, 1999, and applies to tax years beginning on or after January 1, 1998]

42.2. Deadline Extended for Recharacterization - Ann. Ann. 99-104

Taxpayers who timely filed their 1998 returns may elect to recharacterize their 1998 Roth IRA conversions or other IRA contributions by following the procedures in reg. §1.408A-5, Q&A 6, on or before December 31, 1999. To make the election, taxpayers must timely file amended 1998 returns that reflect the recharacterization.

43. Section 411 - Minimum Vesting

43.1. Final regulations that change the rules for qualified retirement plan benefits that are protected from reduction by plan amendment. (01/07/99)

The final regulations adopt, without modifications, the proposed regulations published September 4, 1998 [Effective January 8, 1999]

44. Section 446 - Methods of Accounting

44.1. General Motors Corp. v. CIR, 112 T.C. No. 19 (05/25/99)

The Tax Court held that the consolidated return regulations constitute a method of reporting, not an accounting method, and that General Motors's rate support deductions are not subject to deferral under reg. §1.1502-13(b)(2).

45. Section 451 - Year of Inclusion

45.1. Aldrich H. Ames v. CIR, 112 T.C. No. 20 (05/28/99)

The Tax Court held Aldrich Ames liable for taxes and accuracy-related penalties for failing to report payments from the KGB in 1989 through 1992, rejecting his double jeopardy argument and his assertion that he constructively received all the income in 1985.

46. Section 460 - Long-Term Contracts

46.1. Proposed regulations that describe how to properly account for income from long-term contracts under section 460. (04/30/99)

The proposed regulations incorporate the relevant portions of reg. §1.451-3 and Notices 89-15, 1989-1 C.B. 634, and 87-61, 1987-2 C.B. 370. The proposed regulations also modify and amplify some of those provisions. [Applicable to any contract entered into on or after final regulations are published in the Federal Register.]

47. Section 467 - Deferred Rental Payments

47.1. Final regulations under section 467 on the treatment of increasing or decreasing rents, or deferred or prepaid rent. (05/17/99)

The final regulations adopt, with modifications, the proposed regulations published June 3, 1996. (See also the new proposed regulations immediately below for additional modifications.) The final regulations add tax avoidance provisions and safe harbor provisions. [Effective May 18, 1999]

47.2. Proposed regulations that modify the final regulations under section 467 on the treatment of increasing or decreasing rents, or deferred or prepaid rent. (05/17/99)

The proposed regulations eliminate the \$2 million constant rental accrual exception, reflecting the IRS and Treasury's determination that the exception inappropriately permits some rental agreements to avoid the application of constant rental accrual. Because the exception was included in the proposed regs, however, it will continue to apply to agreements entered into on or before July 19, 1999. [Effective July 19, 1999]

48. Section 468B - Designated Settlement Funds

48.1. Proposed regulations under section 468B on qualified settlement funds and other funds, trusts, and escrow accounts. (01/29/99)

Proposed amendments to the Income Tax Regulations under section 468B, which was added by section 1807(a)(7)(A) of the Tax Reform Act of 1986 (Public Law 99-514, 100 Stat. 2814) and was amended by section 1018(f) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647, 102 Stat. 3582). The proposed regulations affect qualified settlement funds, qualified escrow accounts and qualified trusts established in connection with deferred like-kind exchanges, escrow accounts established in connection with sales of property, disputed ownership funds, and parties to these escrow accounts, trusts, and funds. [Applicable to accounts established after the date final regulations are published in the Federal Register, with some transition rules.]

49. Section 469 - Passive Loss Limitations

49.1. Fransen v. U.S., 84 AFTR2d Par. 99-5358 (10-01-99)

Affirming a district court decision, the Fifth Circuit held that the taxpayers may not treat their rental income as passive activity income, because reg. §1.469-2(f)(6) provides that income a taxpayer receives from renting his property to his own business is not passive activity income.

50. Section 472 - LIFO Inventories

50.1. Mountain State Ford Truck Sales Inc. v. CIR, 112 T.C. No. 07 (03/02/99)

The Tax Court held that for purpose of an election to use the LIFO method for inventory, the term "cost" in §472(b)(2) and reg. §1.472-2(b) means actual cost rather than replacement cost.

51. Section 475 - Mark-to-Market Accounting

51.1. Proposed regulations on electing to use the mark-to-market method of accounting. (01/27/99)

The proposed regulations reflect the changes contained in Section 1001(b) of the Taxpayer Relief Act of 1997 for dealers in commodities and traders in securities or commodities regarding the election to use the mark-to-market method of accounting for their businesses. The proposed regulations also provide guidance on statutory changes to section 475 contained in the section 7003 of Internal Revenue Service Restructuring and Reform Act of 1998, which generally prohibits the application of mark-to-market accounting to nonfinancial customer paper. The proposed regulations also provide guidance to taxpayers who are using mark-to-market accounting for nonfinancial customer paper.

The proposed regulations in section 1.475(c)-2(d)(1) apply to every taxpayer who is required by section 475(c)(4) to cease using mark-to-market accounting for nonfinancial customer paper. These regulations are applicable for all taxable years ending after July 22, 1998. Proposed sections 1.446-1(c)(2)(iii), 1.471-12, and 1.475(c)-2(d)(2) are applicable for all taxable years ending on or after January 28, 1999. The proposed regulations in sections 1.475(e)-1 and 1.475(f)-2 generally apply to securities or commodities acquired on or after March 1, 1999. The rules concerning the time and manner for making the mark-to-market elections for commodities dealers and securities and commodities traders are generally applicable for taxable years ending on or after January 28, 1999.

52. Section 482 - Allocations

52.1. Examination of returns and claims for refund, credit, or abatement - Rev. Proc. 99-32 (08/23/99)

Sets forth the Service's position regarding adjustments that may be made to conform the accounts of taxpayers to reflect allocations made under §482.

53. Section 501(c)(3) - Charitable Organizations Qualification

53.1. Redlands Surgical Services v. CIR, 113 T.C. No. 03 (07/19/99)

The Tax Court held that the taxpayer was not entitled to 501(c)(3) exempt status because it was not operated exclusively for exempt purposes due to its ceding to private parties effective control over the operation of a partnership in which it was a partner.

54. Section 512 - Unrelated Business Taxable Income

54.1. Common Cause v. CIR, 112 T.C. No. 23 (06/22/99)

The Tax Court held that payments derived from Common Cause's rental of its mailing list, with the exception of list-brokers commissions, constituted royalties under section 512(b)(2) and, thus, were not unrelated business taxable income.

55. Section 663 - Complex Trust Exclusions

55.1. Proposed regulations on the separate share rules that apply to estates. (01/05/99)

The proposed regulations conform the existing regulations to the amendments to §663 by section 1307 of the Taxpayer Relief Act of 1997 which extended the separate share rule to estates. In addition, the proposed regulations address two specific matters involving separate share treatment of interests in estates: the treatment of the spousal elective share and the treatment of an electing revocable trust under IRC §645. The proposed regulations provide that substantively separate and independent shares of different beneficiaries are to be treated as separate estates for purposes of computing the distributable net income. The proposed regulations also provide that a surviving spouse's statutory elective share of a decedent's estate is a separate share and that a revocable trust that elects to be treated as part of a decedent's estate is a separate share. [Applicable to estates of decedents dying after the date that the Treasury decision adopting these rules as final regulations is published in the Federal Register.]

56. Section 672 - Trust Definitions and Rules

56.1. Final, temporary, and proposed regulations issued on trusts with foreign grantors. (08/05/99)

On June 5, 1997, the IRS published proposed regulations under sections 643(h), 671, 672(f), and 7701. The IRS has adopted, with modifications, the proposed regulations under section 643(h) and 672(f) as final. The proposed regulations under section 671, as revised, are included in as temporary regs, and the proposed regulations under section 7701 are withdrawn.

For dates of applicability of section 1.643(h)-1, see section 1.643(h)-1(h). For dates of applicability of section 1.671-2T(e), see section 1.671-2T(e)(7). For dates of applicability of sections 1.672(f)-1 through 1.672(f)-5, See sections 1.672(f)-1(c), 1.672(f)-2(e), 1.672(f)-3(e), 1.672(f)-4(h), and 1.672(f)-5(c).

57. Section 691 - Income in Respect of a Decedent

57.1. Estate of Robert E. Cartwright v. CIR, 84 AFTR2d Par. 99-5057 (07-12-99)

A divided Ninth Circuit has affirmed a Tax Court decision that a law firm's payment of life insurance proceeds to a shareholder's estate was part payment for the shareholder's stock and part payment for work in process, the latter of which was income in respect of a decedent.

58. Section 708.-Continuation of Partnership

58.1. Termination of LLC - Rev. Rul. 99-6 (02-08-99)

Addresses the federal income tax consequences when a taxpayer purchases all of the ownership interests in a domestic limited liability company (LLC) that is classified as a partnership under §301.7701-3, causing the LLC's status as a partnership to terminate under §708(b)(1)(A) of the IRC.

59. Section 721.-Nonrecognition of Gain or Loss on Contribution

59.1. Single Member LLC - Rev. Rul. 99-5 (02-08-99)

Addresses the federal income tax consequences when a single member domestic limited liability company (LLC) is disregarded for federal tax purposes as an entity separate from its owner under §301.7701-3 changes to an entity with more than one owner that is classified as a partnership for federal tax purposes

60. Section 809 - Mutual Life Insurance Companies

60.1. Reduction in Certain Deductions of Mutual Life Insurance Companies, Rev. Rul. 99-3 (01-19-99)

Discusses whether a life insurance subsidiary of a mutual holding company is a mutual life insurance company for which the deduction for policyholder dividends is reduced pursuant to sections 808(c)(2) and 809.

61. Section 816 - Life Insurance Companies

61.1. Central Reserve Life Corp. v. CIR, 113 T.C. No. 19 (10/12/99)

The Tax Court held that an insurance company that writes cancelable accident and health (CA&H) insurance is a life insurance company because the company's accrued unpaid losses on CA&H insurance are not "unpaid losses" within the meaning of section 816(c).

62. Section 901 - Foreign Tax Credit

62.1. Compaq Computer Corp. v. Commissioner, 13 T.C. No. 17 (09/21/99)

The Tax Court held that Compaq Computer is not entitled to a \$3.4 million foreign tax credit for taxes withheld from a dividend paid on American Depository Receipts of a foreign corporation that Compaq bought and sold in a transaction designed to eliminate market risks. The court concluded that every aspect of the transaction "was deliberately predetermined and designed . . . to yield a specific result and to eliminate all economic risks and influences from outside market forces." The court also found that Compaq had no business purpose for the transaction other than obtaining a federal income tax benefit to offset the previously recognized capital gain. The court rejected Compaq's position that the FTC provisions in general, and the enactment of *section 901(k)* in particular, indicate that Congress did not intend for the economic substance doctrine to apply under these circumstances. The court stated that "The foreign tax credit serves to prevent double taxation and to facilitate international business transactions. No bona fide business is implicated here, and we are not persuaded that Congress intended to encourage or permit a transaction such as the ADR transaction, which is merely a manipulation of the foreign tax credit to achieve U.S. tax savings."

63. Section 904 - Foreign Tax Credit Limitation

63.1. Final, temporary, and proposed regulations on the allocation of loss recognized on the disposition of stock and other personal property and the computation of the foreign tax credit limitation. (01/08/99)

The regulations addressed the allocation of loss on the disposition of stock (section 1.865-2) and other personal property (section 1.865-1) and also contained proposed amendments to the grouping rules under section 1.904-4(c), and the computation of the foreign tax credit limitation. The loss allocation regulations primarily affect taxpayers that claim the foreign tax credit and that incur losses with respect to personal property. They are designed to modify existing guidance with respect to loss allocation. The foreign tax credit limitation regulations affect taxpayers claiming foreign tax credits that have passive income or losses and are necessary to modify existing guidance with respect to the computation of the limitation.

The regulations are effective January 11, 1999, except that section 1.904-4(c)(2)(ii)(A) and (B) are effective March 12, 1999 and section 1.904-4(c)(3)(iv) is effective December 31, 1998. For dates of applicability of sections 1.865-1T, 1.865-2, and 1.865-2T, see sections 1.865-1T(f), 1.865-2(e), and 1.865-2T(e), respectively. For dates of applicability of section 1.904-4(c), see section 1.904-4(c)(2)(i).

Note: on June 18, 1997, the Tax Court held in *International Multifoods Corporation v. Commissioner*, 108 T.C. 579 (1997), that loss on the disposition of stock is generally allocated based on the residence of the seller, consistent with the approach of the proposed regulations.

64. Section 954 - Foreign Base Company Income

64.1. Withdrawal of the temporary and proposed regulations on the use of hybrid entities to avoid subpart F income and simultaneously issued new proposed regulations on the same subject. (07/09/99)

The IRS has withdrawn the temporary and proposed regulations on the use of hybrid entities to avoid subpart F income and has simultaneously issued new proposed regulations on the same subject. The major feature of the repropoed regulations is they are only effective for payments made in tax years commencing after the date that is five years after the regulations become final, but no earlier than July 1, 2000. The repropoed regulations also contain the permanent grandfather relief featured in Notice 98-35, but not the complicated transitional rules.

65. Section 956 - Foreign Corporations - CFC Earnings Investment

65.1. The Limited Inc. v. Commissioner, 113 T.C. No. 13 (09/07/99)

The Tax Court has held that certificates of deposit (CDs) purchased by a fourth-tier foreign subsidiary of The Limited Inc. from a first-tier domestic subsidiary were investments in U.S. property within the meaning of section 956 and not "deposits with persons carrying on the banking business." The court accepted the IRS position that \$174.9 million used to purchase the CDs represented an "increase in earnings invested in United States property," taxable under section 951 and rejected the taxpayer's argument that CDs were excepted from the definition of U.S. property because they are "deposits with persons carrying on the banking business" under section 956(b)(2)(A). The court reasoned that section 956 does not provide an excep-

tion for deposits with "banks," but rather for "deposits with persons carrying on the banking business." The court held that "a person carrying on the banking business, for purposes of section 956(b)(2)(A), must, at the very least, provide banking services useful to a controlled corporation engaging in business activities in the United States."

66. Section 1041 - Transfers Incident to Divorce

66.1. John B. Young v. CIR, 113 T.C. No. 11 (08/20/99)

The Tax Court held that IRC §1041(c) applies to a transfer of land in 1992 by a taxpayer to his ex-spouse in satisfaction of a judgment obtained by the ex-spouse against the taxpayer on a promissory note that was originally given by the taxpayer to the ex-spouse as part of a property settlement incident to a divorce in 1989.

67. Section 1221 - Capital Asset - Definition

67.1. William T. Gladden v. CIR, 112 T.C. No. 15 (04/15/99)

The Tax Court held that an Arizona partnership's water distribution rights were a capital asset and that relinquishment constituted a sale or exchange, but that no part of the partnership's tax basis in its land was allocable to the water rights.

68. Section 1275 - OID Definitions

68.1. Final regulations on the federal income tax treatment of inflation-indexed debt instruments, including Treasury inflation-indexed securities. (09/03/99)

The final regulations adopt, without modifications, the proposed published January 6, 1997. The final regulations provide rules for the treatment of certain debt instruments that are indexed for inflation and deflation, including Treasury Inflation-Indexed Securities. The final regulations generally require holders and issuers of inflation-indexed debt instruments to account for interest and original issue discount (OID) using constant yield principles. In addition, the final regulations generally require holders and issuers of inflation-indexed debt instruments to account for inflation and deflation by making current adjustments to their OID accruals. [Effective September 7, 1999]

69. Section 1291 - Foreign Tax Deferral Interest

69.1. Withdrawal of some of the proposed regulations on the taxation of shareholders of passive foreign investment companies on the payment of distributions or on the disposition of a PFIC's stock. (02/01/99)

The IRS has withdrawn section 1.1291-8 of the notice of proposed rulemaking that was published in the Federal Register on April 1, 1992, providing guidance under the passive foreign investment company (PFIC) rules relating to the mark to market election for regulated investment companies (RICs) that are shareholders of PFICs. That section was withdrawn because Taxpayer Relief Act of 1997 enacted section 1296(e)(2) of the Internal Revenue Code, which allows certain RICs to elect to mark to market their PFIC stock.

70. Section 1296 - Passive Foreign Investment Co.

70.1. Proposed regulations on the new mark-to-market election under section 1296 for passive foreign investment company (PFIC) stock. (02/01/99)

The proposed regulations relate to the new mark to market election for stock of a passive foreign investment company (PFIC). The proposed regulations interpret changes made by the Taxpayer Relief Act of 1997. The proposed regulations affect persons holding PFIC stock that is regularly traded on certain U.S. or foreign exchanges or markets or holding stock in certain PFICs comparable to U.S. regulated investment companies (RICs). The proposed regulations also reserve treatment of and request comments on making the mark to market election for options on marketable stock.

The regulations are proposed to be applicable for shareholders whose taxable years end on or after the date these regulations are published as final regulations in the Federal Register. In addition, it is proposed that shareholders may elect to apply these regulations to taxable years beginning after December 31, 1997.

71. Section 1301 - Income averaging

71.1. Proposed regulations for averaging farm income (10/07/99)

The Taxpayer Relief Act of 1997 added section 1301, effective for tax years beginning after December 31, 1997, and ending before January 1, 2001. Section 2011 of the Tax and Trade Relief Extension Act of 1998 later eliminated the January 1, 2001, ending date. The proposed regs identify who qualifies as being engaged in a farming business. The regs also outline how farmers may make, change, or revoke a farm income averaging election. The proposed regs include instructions on how to calculate the tax. They also contain rules for designating farm income as elected farm income.

72. Section 1361 (S-Corps), Section 351 (Transfer to Controlled Entity), and Section 318 (Constructive Ownership)

72.1. Private Letter Ruling - 199924024

The Service ruled that the restructuring of a parent corporation and its subsidiary into qualified subchapter S subsidiaries (QSSSs) held by a newly formed S corporation holding company will be tax-free. The net effect of the ruling is that the built in gains tax is not triggered when a corporation ceases to exist upon the making of a QSSS election. The built in gains taint follows the assets to the parent corporation

73. Section 1366 - S Corp. Passthrough

73.1. Miller v. U. S., 39 F. Supp. 2d 678 (ND WV 03/10/99)

The district court held that gain on the sale of S Corp stock does not create basis to use suspended losses. The taxpayer had argued that the passive activity loss and nonrecourse liability rules allowed them to offset the gain from the taxpayer's complete redemption of his stock interest in a subchapter S corporation. The district court held that under section 1366(d)(1), a sub-s shareholder's loss was limited to his adjusted stock basis because he made no further economic outlays during 1993 to increase his adjusted basis. The taxpayers argued that the rules of sections 465 and 469 create basis in the form of unrecognized gain (section 469) that can be offset by

losses (section 465). The court disagreed, explaining that an S corporation shareholder's basis is determined under sections 1366 and 1367, after which the at-risk and passive-loss rules apply to further limit any deductible passthrough loss.

73.2. Farly v. U.S., 99-1 U.S. Tax Cas. (CCH) P50,370 (03/03/99)

A U.S. district court has held that S corporation shareholders were not entitled to increase their stock basis by the amount of discharge-of-indebtedness (DOI) income realized by the corporation.

74. Section 1397E - Zone Academy Bonds

74.1. Temporary and proposed regulations that change the method for determining the credit rate for qualified zone academy bonds and provide reimbursement rules. (07/01/99)

The temporary regulations provide guidance to state and local government issuers of qualified zone academy bonds. The temporary regulations change the method of ascertaining the qualified zone academy bond credit rate and provide reimbursement rules. State and local governments that issue qualified zone academy bonds will be affected by the temporary regs. The text of the temporary regulations also serves as the text of the proposed regs. [Effective July 1, 1999]

75. Section 1441 - Nonresident Alien Withholding

75.1. Amended final regulations on income tax withholding on payments to foreign persons and related deposit and reporting requirements. (12/30/98)

The amendments reflect Notice 98-16, 1998-15 IRB 12 which stated the IRS intended to amend the regulations to extend the effective date and to change the transition rules for obtaining new withholding certificates and statements that contain the information and representations required by the final regs.

76. Section 1502 - Consolidated Return Regulations

76.1. Final regulations on consolidated group members' deductions and losses, including built-in deductions and losses. (06/25/99)

The regulations adopt, adopts, with modifications, the proposed regulations published June 27, 1996. The regulations provide rules for computing the limitation with respect to separate return limitation year (SRLY) losses, and the carryover or carry-back of losses to consolidated and separate return years. The regulations also eliminate the application of the SRLY rules in certain circumstances in which the rules of section 382 of the Internal Revenue Code also apply.

The regulations apply to tax years in which a consolidated return's due date (without extensions) is after June 25, 1999. Several special effective dates apply, however, including an effective date that addresses transitional issues relating to the adoption of the overlap rule.

76.2. Corrections to the final regulations on consolidated group members' deductions and losses, including built-in deductions and losses. (07/30/99)

The corrections affect sections on (1) the separate return limitation year limit on built-in losses, (2) net operating losses, and (3) consolidated net section 1231 gain or loss. [Effective July 2, 1999.]

76.3. Final regulations on the application of sections 382 and 383 to consolidated groups. (07/02/99)

The final regulations adopt, with modifications, the proposed regulations published June 27, 1996, relating to limitations on net operating loss carryforwards and certain built-in losses and credits following an ownership change with respect to consolidated groups. The regulations include rules for determining whether a loss group or a loss subgroup has an ownership change, for computing a consolidated section 382 limitation or subgroup section 382 limitation, and for applying sections 382 and 383 to corporations that join or leave a group. The rules are necessary to provide guidance to such groups on the use of certain of their tax attributes. [Effective June 25, 1999]

76.4. Final regulations on the foreign tax credit limitation for consolidated groups. (08/10/99)

The final regulations adopt, with minor modifications, the proposed regs published December 28, 1998. The final consolidated return regulations relate to the treatment of overall foreign losses and separate limitation losses in the computation of the foreign tax credit limitation. The regulations replace existing guidance with respect to overall foreign losses and provide guidance with respect to separate limitation losses. The regulations affect consolidated groups that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business. [Effective August 11, 1999]

77. Section 2031 - Gross Estate Defined

77.1. Estate of Richard R. Simplot v. CIR, 112 T.C. No. 13 (03/22/99)

The Tax Court held that a decedent's 23.55 percent ownership of the outstanding voting stock required that a voting privilege premium be considered for purposes of valuation of that stock even though the decedent's voting stock did not represent a controlling share of the outstanding voting stock.

78. Section 2036 - Retained Life Estates

78.1. Estate of Cyril I. Magnin v. CIR, 184 F.3d 1074 (9th Cir. 07/13/99)

Reversing a Tax Court decision, the Ninth Circuit held that property transferred by a decedent was excludable from his gross estate under section 2036(a) because he had received "adequate and full consideration for the portion transferred (the remainder interest). The court held that "adequate and full consideration" need only equal the value of a remainder interest transferred by the decedent rather than the value of the entire fee, rejecting the IRS's reliance on *United States v. Past*, 347 F.2d 7 (9th Cir. 1965), which held that "adequate and full consideration" equals the value of the entire property interest transferred to a trust, and following instead *D'Ambrosio v. Commissioner*, 101 F.3d 309 (3d Cir. 1996),

79. Section 2044 - Marital Deduction Property

79.1. Estate of Harriett R. Mellinger v. CIR, 112 T.C. No. 04 (01/26/99)

The Tax Court held that for valuation purposes a minority block of shares held by a QTIP trust was not to be merged with the shares held by the decedent's revocable trust.

80. Section 2501 - Gift Tax

80.1. IRS Acquiesces - Eisenberg v. Commissioner, 155 F. 3d 50 (2d Cir. 1998), rev'g T.C. Memo. 1997-483

In Eisenberg, the Second Circuit reversed the Tax Court and held that a donor may reduce gifted stock's value to reflect built-in capital gains tax on the corporation's sole appreciated asset. The appeals court reasoned that under the Tax Reform Act of 1986, a corporation can't avoid paying the tax upon sale, distribution, or liquidation, and thus a hypothetical buyer would consider the certainty of that tax and reduce the price he is willing to pay for the stock. The court noted that the Tax Court itself had recently reached a similar conclusion in *Estate of Davis v. Commissioner*, 110 T.C. 530 (1998). The IRS announced acquiesce in the Eisenberg opinion to the extent that it holds that there is no legal prohibition against such a discount. The IRS, however, characterized the Eisenberg decision as a holding that, in valuing closely-held stock, a discount for the built in capital gains tax liabilities could apply depending on the facts presented. The applicability of such a discount, as well as its amount, will be treated by the IRS as factual matters to be determined by competent expert testimony based upon the circumstances of each case and generally applicable valuation principles

81. Section 2702 - Transfers of Interests in Trusts

81.1. Proposed regulations that amend the rules for determining whether a retained interest in a grantor retained annuity trust or a grantor retained unitrust is a qualified interest under section 2702(b). (06/28/99)

The proposed regulations apply to a grantor retained annuity trust (GRAT) and a grantor retained unitrust (GRUT) in determining whether a retained interest is a "qualified interest." The proposed regulations will affect individuals who have made a transfer in trust to a family member and have retained an interest in the trust. The proposed regulations clarify that a trust that uses a note, other debt instrument, option or similar financial arrangement to satisfy the annual payment obligation will not meet the requirements of section 2702(b). [Effective September 20, 1999 with transitional rules]

82. Section 3121 - Wages Defined

82.1. Final regulations on when amounts deferred under or paid from a nonqualified deferred compensation plan are wages for FICA tax purposes under section 3121(v)(2). (01/28/99)

Final regulations under section 3121(v)(2) of the Internal Revenue Code that provide guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA). Section

3121(v)(2), relating to treatment of certain nonqualified deferred compensation, was added to the Code by section 324 of the Social Security Amendments of 1983. These regulations provide guidance to employers who maintain nonqualified deferred compensation plans and to participants in those plans. [Effective January 29, 1999]

82.2. Final regulations on the supplemental annuity tax on railroad employers. (08/05/99)

The final regulations provide guidance to employers covered by the Railroad Retirement Tax Act. The Railroad Retirement Tax Act imposes a supplemental tax on those employers, at a rate determined by the Railroad Retirement Board, to fund the Railroad Retirement Board's supplemental annuity benefit. These regulations provide rules for applying the exception from the supplemental annuity tax with respect to employees covered by a supplemental pension plan established pursuant to a collective bargaining agreement and for applying a related excise tax with respect to employees for whom the exception applies. [Effective August 1, 1999]

82.3. IRS Legal Memorandum - ILM 199917011 (01/13/99)

Discusses whether payments to employees that an employer treats separately from wages are disguised wages subject to employment taxes.

82.4. 303 West 42nd St. Enterprises Inc. v. IRS, 181 F.3d 272, (2nd Cir., June 18, 1999)

The Second Circuit reversed a summary judgment in favor of the IRS in a refund suit based on the safe harbor provision of section 530 of the Revenue Act of 1978 for employment taxes assessed against the taxpayer for "fantasy performers". The court held that under section 530 the taxpayer may rely on the classification practice of a "significant segment" of the industry and did not require that there be "uniformity of practice" in the industry for section 530 to be applicable.

83. Section 3306 - FUTA Definitions

83.1. Final regulations on when amounts deferred under or paid from a deferred compensation plan are taken into account for FUTA purposes under section 3306(r)(2). (01/28/99)

This document contains final regulations under section 3306(r)(2) of the Internal Revenue Code, that provide guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Unemployment Tax Act (FUTA). Section 3306(r)(2), relating to treatment of certain nonqualified deferred compensation, was added to the Code by section 324 of the Social Security Amendments of 1983. These regulations provide guidance to employers who maintain nonqualified deferred compensation plans. [Effective January 29, 1999]

84. Section 4975 - Prohibited Plan Transaction Tax

84.1. Gideon L. Medina v. CIR, 112 T.C. No. 06 (02/22/99)

The Tax Court held that a loan from a qualified pension plan to the plan sponsor's only shareholder constitutes a prohibited transaction under section 4975, even

though the loan was treated as a distribution for income tax purposes under section 72(p).

85. Section 4980B - Group Health Continuation Coverage

85.1. Final regulations on the continuation coverage requirements that apply to group health plans. (02/02/99)

The final regulations reflect statutory amendments to the COBRA continuation coverage requirements since COBRA was enacted. The regulations are intended to provide clear, administratable rules regarding COBRA continuation coverage. The regulations give comprehensive guidance on many questions under COBRA, with a view to enhancing the certainty and reliance available to all parties - including employees, qualified beneficiaries, employers, employee organizations, and group health plans - in determining their COBRA rights and obligations. The guidance is designed to further the protective purposes of COBRA without undue administrative burdens or costs on employers, employee organizations, or group health plans. [Apply with respect to qualifying events occurring in plan years beginning on or after January 1, 2000.]

NOTE: A new set of proposed regulations addressing additional issues under the COBRA continuation coverage provisions was also published by the IRS. See below.

85.2. Proposed regulations on COBRA continuation coverage requirements under section 4980B. (02/02/99) [

The proposed regulations provide guidance under section 4980B of the Internal Revenue Code relating to the COBRA continuation coverage requirements applicable to group health plans. The proposed regulations supplement the final regulations referenced above. The regulations will generally affect sponsors of and participants in group health plans, and they provide plan sponsors and plan administrators with guidance necessary to comply with the law.

86. Section 6015 - Innocent Spouse Relief - IR-1999-06 (01/12/99)

The IRS has finalized and released the new versions of the innocent spouse relief form (revised Form 8857, Request for Innocent Spouse Relief) and the accompanying publication (Publication 971, Innocent Spouse Relief). The new versions reflect changes made by the Internal Revenue Service Restructuring and Reform Act of 1998.

87. Section 6038B - Transfers to Foreign Persons

87.1. Final regulations on information reporting requirements under section 6038B for transfers by U.S. persons to foreign partnerships and foreign corporations. (02/04/99)

The regulations implement amendments made by the Taxpayer Relief Act of 1997 that require a United States person who transfers property to a foreign partnership to furnish certain information with respect to such transfer. The final regulations also require certain cash transfers to foreign corporations to be reported. The regulations provide guidance needed to comply with the reporting requirements with respect to transfers of cash to foreign corporations and transfers of property to foreign partnerships.

The final regulations are effective January 1, 1998, except that the amendments to reg. section 1.6038B-1 are effective February 5, 1999. The final regs clarify that transfers made between August 5, 1997, and January 1, 1998, may be reported either in accordance with the final regs or in accordance Notice 98-17, 1998-11 IRB 6.

88. Section 6041 - Information at Source

88.1. IRS Legal Memorandum - ILM 199928029 (05/14/99)

Concluded that personal injury attorneys are subject to section 6041's reporting requirements if they exercise significant oversight and management functions over payments to cover a client's medical bills from a settlement award. If attorneys don't exercise such control over the payment, they are not subject to section 6041 for that payment. The memorandum relied upon Rev. Rul. 93-70, 1993-2 C.B. 294; Rev. Rul. 77-53, 1977-1 C.B. 368; and Rev. Rul. 59-328, 1959-2 C.B. 379.

89. Section 6045 - Returns of Brokers

89.1. Proposed regulations outlining reporting requirements for payments made to attorneys. (05/20/99)

The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The proposed regulations will affect attorneys who receive payments of gross proceeds on behalf of their clients, and certain payors (defendants in lawsuits and their insurance companies and agents) that in the course of their trades or businesses make payments to these attorneys. [Apply to payments made after December 31, 1999]

90. Section 6049 - Interest Payment Info. Returns

90.1. Proposed regulations that eliminate the requirement that issuers of collateralized debt obligations or regular interests in real estate mortgage investment conduits place information on the face of the certificates. (05/19/99)

The proposed regulations rescind reg. section 1.6049-7(g) and eliminate the requirement that certain information be set forth on the face of a collateralized debt obligation (CDO) or regular interest in a Real Estate Mortgage Investment Conduit (REMIC). Implementing the proposal should reduce the burden imposed on issuers of CDOs and regular interests without impairing the flow of tax information to either the holders of those instruments or the IRS. [Effective on the date the regulations are published in the Federal Register as final regulations]

91. Section 6061 - Signing of Returns

91.1. Herbert C. Elliott v. CIR, 113 T.C. No. 07 (08/10/99)

The Tax Court held that a Form 1040 submitted on behalf of an individual and signed only by his attorney was not a valid return and did start the running of the statute of limitations on assessment.

92. Section 6091 - Place for Filing Return

92.1. IRS Legal Memorandum - ILM 199933039 (06/26/99)

Concluded that revenue officers have the authority to request and receive hand-carried, delinquent returns, but have no authority to require taxpayers to file directly with them rather than mailing the returns.

93. Section 6104 - Exempt Organization Information

93.1. Final regulations under section 6104(d), providing guidance for exempt organizations, other than private foundations, that must disclose their exemption application and three most recent annual information returns to the public. (04/08/99)

The final regulations relate to the public disclosure requirements of section 6104(d) of the Internal Revenue Code (Code), as amended by the Tax and Trade Relief Extension Act of 1998. These final regulations apply only to tax-exempt organizations (organizations described in sections 501(c) or (d) and exempt under section 501(a)) other than private foundations. These final regulations provide guidance for tax-exempt organizations (other than private foundations) required to make their applications for tax exemption and annual information returns available for public inspection. In particular, these regulations provide guidance for tax-exempt organizations required to comply with requests made in person or in writing from individuals who seek a copy of those documents. These regulations describe how a tax-exempt organization can make those documents widely available and, therefore, not be required to provide copies in response to individual requests. These regulations also address the standards that apply in determining whether a tax-exempt organization is the subject of a harassment campaign and provide guidance on the applicable procedures for obtaining relief from the requirement that copies of documents be provided in response to requests. [Effective June 8, 1999]

93.2. Proposed amendments to the final regulations issued April 9, 1999, on the public disclosure requirements described in section 6104(d). (08/10/99)

The proposed amendments would remove existing section 301.6104(d)-1 (relating to public inspection of private foundation annual information returns). The proposed amendments also would revise sections 301.6104(d)-2 through 301.6104(d)-5 to apply the provisions to all tax-exempt organizations, including private foundations, and redesignate existing sections 301.6104(d)-2 through 301.6104(d)-5 as sections 301.6104(d)-0 through 301.6104(d)-3, respectively. [Effective 60 days after the date these regulations are published as final regulations in the Federal Register.]

94. Section 6109 - Identifying Numbers

94.1. Temporary and proposed regulations that allow income tax return preparers to elect to use alternative identification numbers in place of their social security numbers. (08/11/99)

The IRS is proposing regulations that allow income tax return preparers to elect an alternative to their social security number (SSN) for purposes of identifying themselves on returns they prepare. The text of the temporary regulations also serve as

the text of the proposed regulations. The regulations affect individual preparers who elect to identify themselves using a number other than the SSN.

94.2. Final regulations on taxpayer identification numbers for children who are in the process of being adopted. (09/21/99)

Final regulations under section 6109 relating to taxpayer identifying numbers. The final regulations provide rules for obtaining IRS adoption taxpayer identification numbers (ATINs), which are used to identify children placed for adoption. The regulations assist prospective adoptive parents in claiming tax benefits with respect to these children. [Effective September 22, 1999]

95. Section 6214 - Tax Court Jurisdiction

95.1. Estate of Frank A. Branson v. CIR, 113 T.C. No. 02 (07/13/99)

A divided Tax Court held that under the doctrine of equitable recoupment, an estate is entitled to a credit for the income tax overpaid by the residuary legatee on the gains recognized on the sales of stock.

96. Section 6221 - Partnership Level Tax Treatment

96.1. Temporary and proposed regulations on the unified partnership audit procedures. (01/25/99)

Final and temporary regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The unified partnership audit procedures generally provide administrative rules for the auditing of partnership items at the partnership level. These regulations modify the existing unified partnership audit procedures to comply with the Taxpayer Relief Act of 1997 (1997 Act) and the Internal Revenue Service Restructuring and Reform Act of 1998 (1998 Act), and add new regulations to administer the new unified partnership audit provisions added by the 1997 Act. In general, the text of the temporary regulations also serves as the text of the proposed regulations. [Effective January 26, 1999]

97. Section 6226(f) - TEFRA Proceedings - Tax Court Jurisdiction

97.1. Crop Associates - 1986 v. Commissioner, 113 T.C. No. 15 (09-14-99)

The Tax Court held that it does not have jurisdiction to consider an affirmative defense of equitable recoupment in a TEFRA partnership case because equitable recoupment is not a partnership item. The court reasoned that it was prohibited by section 6226(f) from considering the equitable recoupment defense, which is a defense to a claim for payment. If the IRS were to make a claim for payment, the court noted, the claim would be against the partners following a tax assessment resulting from a computational adjustment. The court cited reg. section 301.6231(a)(3)-1, which provides a list of partnership items but does not include equitable recoupment on the list. The court also pointed out "certain partner-level determinations are necessary elements to the defense of equitable recoupment, [making] consideration of that defense . . . inconsistent with our limited jurisdiction."

98. Section 6302 - Collection Time and Method

98.1. Final regulations on the deposit of federal taxes by electronic funds transfer. (07/12/99)

Final regulations relating to the deposit of Federal taxes by electronic funds transfer (EFT). The final regulations raise the reporting threshold from \$50,000 to \$200,000 in aggregate tax deposits. For calendar years beginning after 1999, the proposed regulations provide rules under which certain taxpayers must make deposits by EFT. The final regulations also expand the types of nondepository tax payments for which voluntary payment by EFT is allowed to include nondepository payments of Federal income, estate and gift, employment, and various specified excise taxes.

98.2. Final regulations that change the de minimis deposit rule for quarterly and annual return periods. (07/12/99)

The final regs provide that taxpayers with \$ 1,000 or less in employment taxes during a return period (quarterly or annual) do not have to make deposits. Rather, they may pay the entire amount owed with their timely filed return for that period. [Effective June 17, 1999]

99. Section 6321 - Liens for Taxes

99.1. Temporary and proposed regulations on notifying taxpayers who are named in a federal tax lien notice. (01/19/99)

Temporary and proposed regulations relating to the Collection Due Process Procedures for notification required to be provided to any taxpayer named in a notice of lien under section 6323. [Effective January 19, 1999]

100. Section 6323 - Priority of Liens

100.1. Proposed regulations on the withdrawal of notices of federal tax liens. (06/30/99)

The proposed regulations reflect changes made to section 6323 of the Internal Revenue Code of 1986 by the Taxpayer Bill of Rights 2. The proposed regulations provide that a district director, the director of a service center or the Assistant Commissioner (International)(the relevant person being referred to as "the director") may withdraw a notice of federal tax lien if the director determines that one of the conditions enumerated in paragraph (b) of the regulations exists. The notice of federal tax lien is withdrawn by filing a notice of withdrawal in the office in which the notice of federal tax lien is filed and providing the taxpayer with a copy of the notice. Following the withdrawal of a notice of federal tax lien, chapter 64 of subtitle F, relating to collection, is applied as if the IRS had never filed a notice of federal tax lien. The withdrawal of a notice of federal tax lien does not affect the underlying tax lien. The withdrawal simply relinquishes any lien priority the IRS had obtained under section 6323 of the Code when the IRS filed the notice being withdrawn. [Effective when the final regulations are published in the Federal Register]

101. Section 6330 - Hearing Before Levy

101.1. IRS Legal Memorandum - ILM 199935059 (07/08/99)

Concluded that one spouse's request for a collection due process hearing does not preclude the Service from continuing collection activities against the other, nonrequesting spouse. Although collection action would normally continue if the couple was separated or divorced, if the spouses have the same address or the Service knows they are still married, the Service usually won't pursue collection action against the spouse that didn't request a hearing.

102. Section 6331 - Levy and Distraint

102.1. Temporary and proposed regulations on providing taxpayers notice of their right to a hearing before levy. (01/19/99)

Temporary and proposed regulations relating to the Collection Due Process Procedures for notice to taxpayers of a right to a hearing before levy. [Effective January 19, 1999]

102.2. Levy on Pension Plan Rights - IRS Legal Memorandum - ILM 199936041 (06/08/99)

Concluded that the IRS can levy against a participant's vested pension plan interest and exercise the taxpayer's right to receive substantially reduced early retirement benefits.

102.3. Levies and Single Member LLC - IRS Legal Memorandum - ILM 199930013 (04/18/99)

Concluded that the IRS can only collect from an individual's property, not the individual's limited liability company's property, even though the entity is disregarded for tax purposes, but also listed several alternative means of levying upon the taxpayer's interest in the assets of the LLC.

103. Section 6404 - Abatement of Interest and Penalties

103.1. William Woodral v. CIR, 112 T.C. No. 03 (01/12/99)

The Tax Court held that:

Despite legislative history to the contrary, the unambiguous language of IRC Section 6404(g) grants the court jurisdiction to review the IRS's failure to abate interest under both IRC Section 6404(a) (excessive interest, untimely assessed interest, or erroneously or illegally assessed interest) and IRC Section 6404(e) (interest attributable to an error or delay in performing a ministerial act).

Interest on employment taxes can be abated by the IRS under IRC Section 6404(a); but

Interest on employment taxes cannot be abated by the IRS under IRC Section 6404(e).

103.2. Robert Yuen v. CIR, 112 T.C. No. 12 (03/19/99)

The Tax Court held that it lacked jurisdiction under IRC Section 6404(g) to review a re-submission of an abatement request to the IRS that was originally submitted and denied before the effective date (July 30 1996) of section 6404(g). The court distin-

guished *Banat v. Commissioner*, 109 T.C. 92 (1997) in which the court had held that the it had jurisdiction pursuant to section 6404(g) with respect to a request for abatement of interest filed with the IRS before the effective date of section 6404(g) but denied by the IRS after the effective date of the provision.

103.3. Eldon Harvey Krugman v. CIR, 112 T.C. No. 16 (04/28/99)

The Tax Court held that:

The IRS is not prohibited from taking administrative collection action during the 180-period allowed for filing a petition to review an IRS denial of a request for abatement of interest under IRC Section 6404;

The court does not have jurisdiction in a proceeding under IRC Section 6404 to determine if the IRS abused its discretion with respect to a denial to abate an addition to tax; and

IRC Section 6404 does not permit the abatement of interest for the period between the date the taxpayer files a return and the date the IRS commences an audit, regardless of the length of that period or the reasons for the delay.

103.4. Ivan Gati v. CIR, 113 T.C. No. 08 (08/11/99)

The Tax Court held that the principles applied in deficiency cases brought under IRC Section 6213(a) with regard to timeliness of a petition and jurisdiction will also be applied to the review of abatement of interest cases brought under IRC Section 6404.

103.5. William Grant Lee v. CIR, 113 T.C. No. 10 (08/18/99)

The Tax Court held that that the 11-year delay between the issuance of the deficiency notice and settlement was not due to ministerial error by the IRS within the meaning of IRC Section 6404(e) because the delay was attributable to the IRS's decision not to pursue the underlying tax court case until after a related criminal tax matter had been completed, the taxpayer did not make an attempt to bring the underlying tax court case to trial or settlement, and some of the delay was due to procedural motions in the underlying tax court case.

103.6. Jeffrey R. Taylor v. Commissioner, 113 T.C. No. 16 (09/15/99)

The Tax Court held that the Service's decision not to proceed with a civil examination while a criminal tax investigation proceeded against the taxpayer was not a "ministerial act."

104. Section 6411 - Deficiency - Carryback and Refund Adjustments

104.1. Interlake Corp. v. CIR, 112 T.C. No. 10 (03/18/99)

The Tax Court held that the IRS could use the deficiency procedures to recover from a successor common parent a tentative refund erroneously paid to the old common parent of a consolidated group because the tentative refund did not constitute a rebate for purposes of computing the successor common parent's deficiency.

105. Section 6501 - Limitations on Assessment

105.1. ICI Pension Fund v. CIR, 112 T.C. No. 08 (03/05/99)

The Tax Court held that: (1) a non-resident taxpayer who requests and receives a refund of withheld tax is no longer excepted from filing a tax return; and (2) a form

1042 filed by a withholding agent of income paid to a non-resident is not the filing of a tax return by the non-resident for purposes of the statute of limitations on assessment under IRC Section 6501.

105.2. Mildred Cotler Trust v. United States, 184 F.3d 168, (2nd Cir. 07/02/99)

The Second Circuit, reversing a district court decision, has held that the fraud exception of section 6501(c)(1) cannot be established solely by reliance on the taxpayer's concession of the fraud penalty in a stipulated decision document in a Tax Court case.

106. Section 6511 - Limitations on Refunds

106.1. Robert E. Wadlow v. CIR, 112 T.C. No. 18 (05/11/99)

The Tax Court held that an election under IRC Section 183(e) (postponing determination of hobby-loss issue) has the effect of an agreement to extend the period for assessment and therefor automatically extends the statute of limitations for claiming a refund or credit.

106.2. Dantzler v. U.S., 183 F.3d 1247, (11th Cir. August 10, 1999)

Held that a remittance with an application for an automatic extension of time to file a tax return is a tax payment rather than a tax deposit, and, therefore, the statute of limitations for claiming a refund begins to run from the date of payment.

107. Section 6512 - Tax Court Jurisdiction

107.1. Edward Turney Savage v. CIR, 112 T.C. No. 05 (02/16/99)

The Tax Court held that it lacks jurisdiction to decide whether the IRS properly assessed interest and penalties for 1990 and 1991 (years to which the taxpayer applied a reported overpayment for 1993), because the deficiency notice related only to 1993.

108. Section 6621. - Determination of Interest Rate

108.1. Fourth Quarter Interest Rates - Rev. Rul. 99-36 (08-30-99)

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 1999, will be 8 percent for overpayments (7 percent in the case of corporate overpayments), 8 percent for underpayments, 5.5 percent for the portion of a corporate overpayment exceeding \$ 10,000, and 10 percent for large corporate underpayments. (Same as previous quarter).

109. Section 6653(b) - Fraud Penalty

109.1. Martin Schachter v. Commissioner, 113 T.C. No. 14 (09/14/99)

The Tax Court held that a credit is not allowed against civil fraud penalties for criminal fines imposed under section 7201, because criminal fines and civil fraud penalties serve different congressional purposes, and the criminal fines in this case were not remedial.

110. Section 6664 - Penalty Definitions and Special Rules

110.1. Gerald A. Sadler v. CIR, 113 T.C. No. 04 (07/29/99)

The Tax Court held that a tax attorney admitted to practice before the court was liable for an underpayment and fraud penalties for reporting large amounts of withholding tax that were never paid and claiming large refunds on his tax returns.

111. Section 6695 - Return Preparer's Penalties

111.1. Temporary and proposed regulations outlining alternative ways return preparers may satisfy the requirement that they retain manually signed copies of returns or refund claims. (12/31/98)

The regulations provide that, if an income tax return preparer presents for a taxpayer's signature a return or claim for refund that has a copy of the preparer's manual signature, the preparer may either retain a photocopy of the manually signed copy of the return or claim for refund or use an electronic storage system meeting the requirements of section 4 of Rev. Proc. 97-22, (1997-1 C.B. 652) or procedures subsequently prescribed by the Commissioner, to store and produce a copy of the return or claim manually signed by the preparer. [Effective December 12, 1998]

112. Section 7122 - Compromises

112.1. Temporary and proposed regulations that expand the IRS's offer in compromise program. (07/19/99)

The temporary and proposed regulations provide additional guidance regarding the compromise of internal revenue taxes. The temporary regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998 and the Taxpayer bill of Rights II. The temporary regulations contain a significant new basis upon which the IRS may accept an offer in compromise. The IRS believes that it is now authorized to compromise tax liabilities based on equity, hardship, or promotion of public policy in addition to doubt as to liability and doubt as to collectibility.

113. Section 7436 - Employment Status Determinations - Tax Court Jurisdiction

113.1. Henry Randolph Consulting v. CIR, 112 T.C. No. 01 (01/06/99)

The Tax Court held that although IRC Section 7436 gives it jurisdiction over worker classification issues (i.e., independent contractor vs. employee status), including entitlement to relief under section 530 of the Revenue Act of 1978, the court does not have jurisdiction with respect to the amount of employment tax determined to be due after resolution of the classification issues.

114. Section 7502 - Timely Mailing Is Timely Filing

114.1. Temporary and proposed regulations on the treatment of a timely mailing as a timely filing under section 7502. (01/14/99)

Temporary and proposed regulations relating to timely mailing treated as timely filing and paying under section 7502. The proposed regulations generally reflect changes to the law made since 1960 and include rules for on electronic postmarks.

115. Section 7520 - Valuation Tables

115.1. Temporary and proposed regulations that revise the actuarial tables for valuing annuities, interests for life or terms of years, and remainder or reversionary interests. (04/29/99)

Temporary and proposed regulations revise actuarial tables used for the valuation of partial interests in property under section 7520 for purposes of sections 642(c)(5) and 664, the Estate Tax Regulations under section 2031, and Gift Tax Regulations under section 2512. [Applicable to for valuation dates after April 30, 1999]

Note: see also the corrections issued on June 22, 1999, referenced below.

115.2. Corrections to the temporary and proposed regulations that revise the actuarial tables for valuing annuities, interests for life or terms of years, and remainder or reversionary interests. (06/22/99) [Effective May 1, 1999]

116. Section 7701 - Definitions

116.1. Proposed regulations that recharacterize for tax purposes financing arrangements involving fast-pay stock. (01/06/99)

Proposed regulations that recharacterize, for tax purposes, financing arrangements involving fast-pay stock. The regulations are design to prevent taxpayers from using fast-pay stock to for tax avoidance. The regulations recharacterize certain fast-pay arrangements. A fast- pay arrangement is any financing arrangement in which a corporation has outstanding two or more classes of stock, one of which is fast- pay stock. The regulations identify fast-pay arrangements and recharacterize certain of them as arrangements directly between the holders of the fast-pay stock and the other shareholders (the benefited shareholders) in the corporation. The regulations also impose reporting requirements on certain corporations with outstanding fast-pay stock and on certain shareholders that participate in fast-pay arrangements. These reporting requirements apply to all fast-pay arrangements, whether or not they are subject to recharacterization. [Effective February 27, 1997]

116.2. Final regulations under section 7701 on the definition of a trust as a U.S. person (domestic trust) or foreign trust. (02/01/99)

Final regulations providing guidance regarding the definition of a trust as a United States person (domestic trust) or a foreign trust. This document also provides guidance regarding the election for certain trusts to remain domestic trusts for taxable years beginning after December 31, 1996. The regulations incorporate changes to the law made by the Small Business Job Protection Act of 1996 and by the Taxpayer Relief Act of 1997. The final regulations affect the determination of the residency of trusts as foreign or domestic for federal tax purposes. The final regs adopt, with modifications, the proposed regs published June 5, 1997.

116.3. Lease v. Purchase - Harry E. Peaden Jr. v. CIR, 113 T.C. No. 06 (08/09/99)

The Tax Court rejected the contentions of the IRS and held that Section 7701(h)(1) required complete disregard of a terminal rental adjustment clause (TRAC) contained in a master lease agreement when determining whether the substance of a transac-

tion is a lease or purchase. After disregarding the TRAC clause the court found that the transactions a issue were leases rather than purchases.

**116.4. Single Member LLC Employment Tax Liability -IRS Legal Memorandum -
ILM 199922053 (04/16/99)**

Concluded that the sole owner of a single-member limited liability company is personally liable for the employment taxes incurred by the LLC.