

2010 Regional Forums

Individual Developments

New Laws

Tax Changes for Individuals in the "Worker, Homeownership, and Business Assistance Act of 2009" P.L. 111-92

New law extending homebuyer credit closing date and IRS guidance on it IR 2010-80

Haiti earthquake relief donations before March 2010 may be deducted on 2009 returns

IR 2010-12 ; P.L. 111-126, An Act to Accelerate the Income Tax Benefits for Charitable Cash Contributions for the Relief of Victims of the Earthquake in Haiti

HIRE Act with hiring incentives and foreign compliance rules awaits President's signature
(HIRE Act, P.L. 111-147)

President signs financial reform package with new exclusions from Code Sec. 1256 treatment
Restoring American Financial Stability Act of 2010

House passes Education Jobs Act carrying foreign-related tax offsets
Education Jobs and Medicaid Assistance Act

Updated Regulations

Final regs update rules on installment payment of tax liabilities

Preamble to TD 9473, 11/24/2009 ; Reg. 301.6159-1

Final regs explain deduction of travel expenses by state legislators

T.D. 9481, 04/07/2010 ; Reg. 1.162-24

Cases and Rulings

Interests in LLPs and LLCs weren't presumptively passive under PAL rules

Garnett (2009), 132 TC No. 19

LLC interest wasn't equivalent to a limited partnership interest for PAL purposes

Thompson v. U.S., (Ct Fed Cl 7/20/2009) 104 AFTR 2d ¶2009-5124

Charter boat losses OK'd; LLC interest not limited partnership interest for PAL rules

Hegarty, TC Summary Opinion 2009-153

Managing member's LLC interest not equivalent to limited partnership interest for PAL purposes

Newell, TC Memo 2010-23

IRS acquiesces in decision holding LLC interest not equivalent to a limited partnership interest for PAL purposes

Action on Decision Memorandum

Travel deductions but not unsubstantiated cell phone expenses OK'd for temporary work assignment

Senulis, TC Summary Opinion 2009-97

Same-sex couple wasn't entitled to joint filing status

Merrill, TC Memo 2009-166

Court paves the way to joint filing by same sex married couples

Nancy Gill, et al. v. Office of Personnel Management, (DC MA 07/08/2010) 106 AFTR 2d ¶ 2010-5058

Meal deduction for seaman aboard fishing vessel subject to 50% limit

Kurtz v. U.S., (CA 11 7/23/2009) 104 AFTR 2d ¶2009-5137

IRS explains how self-employment tax applies to businesses abroad

Self-Employment Tax for Businesses Abroad, International Tax Gap Series

Cost of doctorate in psychology not deductible as education expense

Tax Court holds basis overstatement isn't omission of income for 6-year limitations period

Beard, TC Memo 2009-184

Basis overstatement did not trigger 6-year limitations period

Intermountain Insurance Service of Vail, LLC, Thomas A. Davies, TMP, TC Memo 2009-195

Chief Counsel Notice explains how to handle overstated basis cases in Tax Court

Chief Counsel Notice 2010-001

Tax Court holds basis overstatement didn't trigger 6-year limitations period; contrary regs held invalid

Intermountain Insurance Service of Vail, LLC, Thomas A. Davies, TMP, (2010) 134 TC No. 11

Salesman wasn't statutory employee; deductions were subject to 2% of AGI floor

Rosemann, TC Memo 2009-185

Refund denied on tax from exercise of option for stock with fraudulently inflated value

Gourley v. U.S., (Ct Fed Cl 8/26/2009) 104 AFTR 2d ¶ 2009-5302

Court rejects efforts to reduce income from compensatory stock besieged by fraud

Gudmundsson v. U.S., (NY DC 10/26/2009) 104 AFTR 2d ¶ 2009-5533

Payment to settle trade secret misappropriation taxable as ordinary income

Freda et al, TC Memo 2009-191

Neither hardship nor disability shielded taxpayer from early distribution penalty

Dollander, TC Memo 2009-187

Debt on home purchase can be home equity debt as well as acquisition debt

Chief Counsel Advice 200940030

Brief stint as a contract attorney was insufficient to support business deductions

Ernestine Forrest, TC Memo 2009-228

Guidance issued on mark-to-market rules for expatriates Notice 2009-85, 2009-45 IRB

Taxpayers prevail in challenging reported debt cancellation income

McCormick, TC Memo 2009-239

Payouts to departing partner were guaranteed payments Wallis, TC Memo 2009-243

Life insurance surrender triggered ordinary income from loan satisfaction

Barr, TC Memo 2009-250

PAL activity groupings and regroupings must be reported to IRS

Rev Proc 2010-13, 2010-4 IRB

Tax Court finds restitution payments were deductible as business expense

Cavaretta, TC Memo 2010-4

Settlement payment for depression wasn't excludable from gross income

Wells, TC Memo 2010-5

Medical deduction denied for in vitro fertilization costs of taxpayer who wasn't infertile

Magdalin v. Comm., (CA 1 12/17/2009) 105 AFTR 2d ¶ 2010-335

Portion of settlement with former employer was excludable

Julie Leigh Domeny, TC Memo 2010-9

Whistleblower's award under Federal False Claims Act wasn't excluded from income

Albert Campbell (2010), 134 TC No. 3

Qualified small business stock doesn't include options to acquire stock

Natkunanathan, TC Memo 2010-15

Sex change costs except those for breast augmentation held deductible as medical expenses

O'Donnabhain (2010), 134 TC No. 4

60-day deadline doesn't apply to direct rollover via check to eligible retirement plan

Wife had no survivorship interest in deceased husband's rollover IRA

Charles Schwab & Co v. Debickero, Cheryl M. (CA 9 1/22/2010) 105 AFTR 2d ¶ 2010-407

Value of clothing exempt from taxation under de minimis fringe benefit rule PLR 201005014

Pension Asset Transfer scheme shot down by Tax Court

Karl L. Matthies And Deborah Matthies, 134 TC No. 6

Sixth Circuit looks to reasonably prudent spouse's knowledge of understatement

Greer v. Comm., (CA 6 2/17/2010) 105 AFTR 2d ¶ 2010-490

Tax Court found salesman was a common law employee

Thomas & Carol Rosato, TC Memo 2010-39

Sixth Circuit finds settlement payments for false imprisonment not excludable

Stadnyk v. Comm., (CA 6 2/26/2010) 105 AFTR 2d ¶ 2010-537

Settlement from car accident was excluded income not reportable on Form 1099

Chappell v. International Steel Group, (DC IN 2/26/2010) 105 AFTR 2d ¶ 2010-563

Farmer couldn't deduct medical reimbursements paid to working spouse

Milo L. Shellito, TC Memo 2010-41

Court found no substantial compliance with charitable contribution substantiation rules

Friedman, TC Memo 2010-45

Court disallows claimed losses from cabin rental under PAL and vacation home rules

Charles M. Akers, TC Memo 2010-85

Court advances IRS case against S corporation for underpaying employment taxes

Watson v. U.S., (DC IA 05/27/2010) 105 AFTR 2d ¶ 2010-908

California domestic partners are subject to community property laws for federal tax purposes

Chief Counsel Advice 201021050

IRS explains impact of California community property law on domestic partners

PLR 201021048 ; Chief Counsel Advice 201021049

IRA's failure to have a designated beneficiary couldn't be corrected after death

PLR 201021038

Failure to elect aggregation of real estate activities results in disallowed deduction

Anjum Shiekh, TC Memo 2010-126

High compensation held mostly reasonable for multi-role owner-employee

Multi-Pak Corp., TC Memo 2010-139

Construction company's workers were employees, not independent contractors

Bruecher Foundation Services Inc v. U.S. (CA 5 06/18/2010) 105 AFTR 2d ¶ 2010-997

Gain on sale of rebuilt house didn't qualify for homesale exclusion

Gates (2010), 135 TC No. 1

Tax Court holds that 90% stock loan program was a disguised sale

Callloway, (2010) 135 TC No. 3

Public servants were employees whose expenses were miscellaneous itemized deductions

Davis, TC Summary Opinion 2010-89

Forward contract/share lending agreements were taxable sales, not Sec. 1058 lending arrangements

Anschutz, (2010) 135 TC No. 5

Shelter lacked substance and couldn't offset huge compensation as district court had allowed

Sala v. U.S. (CA 10 7/23/2010) 106 AFTR 2d ¶ 2010-5109

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

Transfer of home to closely held shareholders was constructive dividend; penalties imposed

RVJ Cezar Corporation et al, TC Memo 2010-173

Personal goodwill received in sale of professional service corporation was corporate asset

Larry E. Howard v. U.S., (DC WA 7/30/2010) 106 AFTR 2d ¶ 2010-5140

Father-son farm was a partnership; each had equal interest in its expenses

Holdner, TC Memo. 2010-175

Disability payments to firefighter under union's contract with city weren't excludable

John T. Bayse, TC Summary Opinion 2010-118

Other Items of Interest

IRS unveils 2010 list of notorious tax scams—the “Dirty Dozen” IR 2010-32

C Corporations and Sub-Chapter S Corporations

1. Tax Alert Development 2010.
 - IRS Rules on Reasonableness of C Corporation Sole Shareholder’s Compensation. Multi-Pak Corp T.C. Memo 2010-139
 - IRS Guidance Regarding Tax Issues Resulting from Spin-Off. Chief Counsel Advice 201023056
 - Prepaid Income Not Built-In Gain for Purposes of IRC 382 Loss Limitations. Reg 1.382-7
 - Simple Cafeteria Plans May Provide Tax-Free Benefits to Employee-Shareholders of Small C Corporations.
 - IRS Releases Draft Form and Instructions to Report Uncertain Tax Positions. Ann 2010-30
 - IRS Not Prevented From Challenging Removal of Costs from Inventory Under UNICAP Rules. Chief Counsel Advice 201013035
 - Corporation Gets Worthless Stock Deduction on Merger with Wholly-Owned Subsidiary. PLR 201006003
 - Payments Not Part of Spinoff Transaction Were Includible in Income. LAFA 20100301F
 - No Waiver for Parent Corporation That Wanted to Reconsolidate. PLR201002002
 - IRS Requires Passive Activity Loss Groupings and Regroupings to be Reported. Rev Proc 2010-13
 - IRS Explains When a Business Must Capitalize Incentive Payments Made to Customers. PLR 201032025
 - Reporting Requirements for Payment Card and Third-Party Payment Transactions Established In Final Regs. TD 9496 8/13/2010
 - IRS Analyzes Sales-Leaseback Transactions Involving Retailer’s Newly Constructed Stores. PLR 201027045
 - Capital Contributions Can’t Increase Shareholder’s Basis in Loans to S Corporation. Nathel (CA2, 6/2/2010) 105 AFTR 2010-927
2. Tax Adviser, August, 2010. S Corporations: Facing the 15% Sunset by Daniel Rowe, CPA, published August 1, 2010.
3. Tax Adviser, August, 2010. Planning to Escape the S Corporation Built-in Gains Tax in 2010, Avoiding S Corporation Debt Obligations that are a Second Class of Stock case studies by Albert B. Ellentuck, Esq., published August 1, 2010.
4. Tax Adviser, July, 2010. Sec.465 Traps for the Unsuspecting S Corporation Shareholder by Lewis Taub, CPA, published July, 2010.
5. Tax Adviser, June, 2010. The Story of Basis by Jeanne Sullivan, J.D., LL.M., published June 1, 2010.
6. Tax Adviser, April, 2010. S.Corp. Shareholder Basis for Circular or Certain Back-to-Back Loans: Editor Rick Klahsen, CPA.
7. Tax Adviser, April, 2010. S Corporation Basis Reductions for Nondeductible Expenses by Sydney S. Traum, J.D., LL.M., CPA, published April 1, 2010.

8. Tax Adviser, April, 2010. Consequences of S Corporation Termination in a Reorganization, a case study by Albert B. Ellentuck, Esq., published April 1, 2010.
9. Tax Adviser, January, 2010. C Corporations as S Corporation Subsidiaries, a case study by Albert B. Ellentuck, Esq., published January 1, 2010.
10. Tax Adviser, January, 2010. Final Regs. Issued on S Corp. DOI Income Exclusion and Tax Attributes, by Alistair M. Nevius, J.D., published January 1, 2010.
11. Tax Adviser, December, 2009. Recapture of Sec.179 Expense Deduction for Pass-through Entities, Editor: Michael D. Koppel, CPA, PFS
12. Tax Adviser, December, 2009. Recognizing When an S Corporation has Accumulated Earnings and Profits, a case study by Albert B. Ellentuck, Esq., published December 1, 2009.
13. Tax Adviser, November, 2009. Current Developments in S Corporations (Part II) by Hughlene Burton, Ph.D., CPA, and Stewart S. Karlinsky, Ph.D., CPA, published November 1, 2010.
14. Tax Adviser, October, 2009. Current Developments in S Corporations (Part I) by Stewart S. Karlinsky, Ph.D., CPA; Hughlene Burton, Ph.D., CPA, published October 1, 2010.
15. Tax Advisor Planning System (RIA) – Highlights of 2010 Hiring Act., published March, 2010.

Partnerships

Gift Tax—Limited Partnership Interests: *Walter M. Price* , TC Memo 2010-2 (Tax Ct.).

LLC Member Not Limited Partner for PAL Purposes: *Lee Newell* , TC Memo 2010-23 (Tax Ct.).

Gift Card Sales by Disregarded Entity: FAA 20100901F.

Income Tax—Passive Loss Treatment of LLC Interests: *Thompson* case [104 AFTR 2d 2009-5124 (Ct Fed Claims, 2009)], action on decision, the IRS announced its acquiescence in result only

Collection against Sole Owner of LLC: *Medical Practice Solutions LLC* , TC Memo 2010-98 (Tax Ct.).

Extended Limitations Period for Partnership Items: *Intermountain Insurance Service of Vail LLC* , 134 TC No. 11 (Tax Ct.).

Levy on Partnership Draw: *U.S. v. Moskowitz, Passman & Edelman* , 105 AFTR 2d 2010-2126 (2nd Cir.).

Simultaneous Gift and Sale of LLC Interests: *Suzanne Pierre* , TC Memo 2010-106 (Tax Ct.).

New Markets Tax Credit: Rev. Rul. 2010-16 and Rev. Rul. 2010-17, 2010-26 IRB .

Partnership Allocations: Reg. 1.704-3

Partnership Tax Return Statistics: The IRS has posted tables with tax year 2008 statistics for partnerships to its website (see www.irs.gov/taxstats/bustaxstats/article/0,,id=97153.00.html)

Series Limited Liability Companies: Proposed revisions to Reg. 301.7701-1 (found in REG-119921-09)

Partnership Contribution Disguised Sale: *Canal Corporation and Subsidiaries* , 135 TC No. 9 (Tax Ct.).

Designation of Tax Matters Partner: FAA 20103001F.

Estate, Gift and Trusts

- A. Entire Property Interest Erroneously Included in Decedent's Estate—Estate of Stewart, 106 AFTR 2d 2010 (CA-2, 2010)
- B. Court Applies Section 2036 Favorably to Family Partnership—Estate of Black (2009) 133 TC No 15
- C. Using a Personal Residence Defective Grantor Trust (DGT) to Capitalize on Reduced Values
- D. Valuation of Lottery Prize Payments for Estate Tax Purposes—Courts Split on Valuation Method
- E. Assets Transferred by Decedent to FLP Were not Includable in Gross Estate—Estate of Shurtz, TC Memo 2010-21
- F. Beneficiaries Were Liable as Transferees for Estate Tax Deficiencies—Estate of Upchurch, T.C. Memo 2010-169
- G. Partnership Transfer Restrictions Disregarded for Valuation Purposes—Holman, 105 AFTR 2d 2010-1802
- H. 2010 and Beyond—The Transfer Tax Odyssey

- I. Transfer of LLC Interests Did not Qualify for Gift Tax Exclusion—Fisher, 105 AFTR 2d 2010-1347 (DC Ind., 2010)
- J. New Section 2511(c)—Transfers to Non-grantor Trusts Treated as Completed Gifts.
- K. Final Regs (TD 9468, 10/16/09) on the Effect of Post-death Events on Valuing an Estate
- L. Formula Clause Changes Taxable Gift into Charitable Donation—Estate of Petter (2009) TC Memo 2009-280
- M. Gift Tax Paid by Recipients of QTIP Remainder Included in Gross Estate—Norgens, 133 T.C. 17
- N. Interim Guidance on Trustee Fees—Notice 2010-32

Tax Accounting

Capitalization of Royalty Costs: *Robinson Knife Manufacturing Co. v. Comm.* , 105 AFTR 2d 2010-XXXX (2nd Cir.).

Percentage-of-completion Accounting Method: *Koch Industries Inc. v. U.S.* , 105 AFTR 2d 2010-XXXX (10th Cir.).

Passive Activity Losses: *James Moss* , 135 TC No. 18 (Tax Ct.).

Change in Accounting Method: CCA 201033038 .

Capitalized Incentive Payments: Ltr. Rul. 201032025 .

Employee's Legal Expense Deduction: *James Purdy* , TC Summ. Op. 2010-26 (Tax Ct.).

Employment Taxes—Severance Payments: *U.S. v. Quality Stores, Inc.* , 105 AFTR 2d 2010-1110 (DC Mich.).

Personal Service Corporations: *Kraatz & Craig Surveying Inc.* , 134 TC No. 8 (Tax Ct.).

Real Estate Professionals: *Donald William Trask* , TC Memo 2010-78 (Tax Ct.).

Defective Merchandise Vendor Allowance CCA 200945034 .

Depreciation on Leased Aircraft: TAM 200945037 .

Loan Interest Paid by Government Agency: CCA 200943028 .

Substantiating Employees' Business Expenses: Rev. Proc. 2009-47, 2009-42 IRB .

Change of accounting from capitalization to deduction as repairs designated Tier 1 item

Tier I Industry Director's Directive on Repairs vs. Capitalization Change in Accounting Method Rev Proc 2009-39

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

Bankruptcy

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2. **CCH Federal Tax Weekly, Assets Remain Subject To IRS Lien After Tax Liabilities Discharged In Bankruptcy, (Nov. 12, 2009) Prince, 133 TC No. 12** ©2010 Wolters Kluwer. All Rights Reserved.
3. **Federal Tax Day - Current, Debtor Required To Turn Over Bankruptcy Estate's Share of Post Petition Tax Refunds; Prima Facie Case For Pro Rata By Days Method Established (In re Meyers, CA-7), (Aug. 5, 2010)** ©2010 Wolters Kluwer. All Rights Reserved.
4. **Federal Tax Day - Current, Inherited IRA Not Exempted from Debtor's Bankruptcy Estate (In re Chilton, BC-DC Tex.), (Mar. 11, 2010)** ©2010 Wolters Kluwer. All Rights Reserved.
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6. **Like-kind exchange relief for those snared by QIs in bankruptcy or receivership** Rev Proc 2010-14, 2010-12 IRB © 2010 Thomson Reuters/RIA. All rights reserved.

Procedure

Reliance on Preparer to Avoid Penalties: *Estate of Edsel Stiel* , TC Memo 2009-278 (Tax Ct.).

Seizure of Taxpayer's Residence: CCA 200947036 .

Tour of Taxpayer's Business Premise: CCA 200949048 .

Employee Benefits—Transportation Fringes: Notice 2009-95, 2009-52 IRB .

Penalties—Preparer Taking Electronic Refund CCA 200950042 .

Reporting Sales of Securities: Proposed regulations (found in REG-101896-09)

Return of Tax Deposit: CC-2010-002.

Tax Return Disclosure Rules Rev. Rul. 2010-4, 2010-4 IRB and Rev. Rul. 2010-5, 2010-4 IRB .

Penalty—Reportable Transactions *Sydney Smith* , 133 TC No. 18 (Tax Ct.).

Procedure—Disclosure Authorizations Notice 2010-8, 2010-3 IRB .

Procedure—Blind Trusts: Rev. Proc. 2010-11, 2010-2 IRB .

Changes to Tax Forms and Publications: www.irs.gov/formspubs/article/0,,id=109875,00.html

Reporting Corporations' Uncertain Tax Positions: IRS Ann. 2010-9, 2010-7 IRB .

Procedure—Offer in Compromise: SBSE-05-0110-004.

Direct Rollover Not Subject to 60-day Deadline: Ltr. Rul. 201005057 .

Mailing Address Changes for Some Taxpayers: News Release IR-2010-16 .

Penalties—Failure to Deposit Payroll Taxes: *Ken Ryan, Inc.* , TC Summ. Op. 2010-18 (Tax Ct.).

Procedure—Release of Levy: IRC Sec. 6331(k)(2)

Income Tax—Canadians Emigrating to U.S.: Rev. Proc. 2010-19, 2010-13 IRB .

Procedure—Foreign Bank and Financial Accounts: Notice 2010-23 , 2010-11 IRB, supplementing Notice 2009-62, 2009-35 IRB 260 .

Procedure—Payee's Name on Refund Check: ILM 201012033 .

Procedure—Taxpayer with Two Identification Numbers: PMTA 2009-161.

Taxpayer Change of Address: Rev. Proc. 2010-16, 2010-19

Return Preparer Penalty: CCA 201016078 .

NOL Carryback and PAL Rules: Ltr. Rul. 201017007 .

Levy on Education Savings Accounts: CCA 201017044 .

Business Information Reporting News Release IR-2010-68 .

IRS Whistleblower Program: See IRM 25.2.2 (6-18-2010), which is available at www.irs.gov

California Resident's Offer in Compromise: CCA 201021049 .

Statute of Limitations for Assessment CCA 201023053 .

Employee Benefits—Leave Donation Programs INFO 2010-0057.

Employee Benefits—Transit Passes and Qualified Parking: INFO 2010-146.

CPA Disbarred for Failing to Exercise Due Diligence: News Release IR-2010-82 .

Fraudulent Filing of Information Returns: *Cavoto v. Hayes* , 105 AFTR 2d 2010-XXXX (DC N. Ill.).

Constitutional Right against Self-incrimination: *U.S. v. Shadley* , 106 AFTR 2d 2010-XXXX (D.C. E. Dist. Calif.).

Comedian Sinbad Liable for Unpaid Taxes *U.S. v. Adkins* , 106 AFTR 2d 2010-XXXX (D.C. Cent. Cal.).

Payment Card Reporting Rules: Regs. 1.6041-1, 1.6050W-1, 1.6050W-2, 31.3406(a)-2, 31.3406(b)(3)-5, 31.3406(d)-1, 31.6051-4, 301.6721-1 and 301.6722-1.

Tax Court Deadline Determined from FedEx Label: *Rogelio Martinez* , TC Summ. Op. 2010-117 (Tax Ct.).

Penalties—Failure to File Early IRA Distribution Form: CCA 201034024 .

Foreign Account Reporting and Disclosure: Notice 2010-60, 2010-37 IRB .

Tax Practitioner's Privilege: *Green v. Beer* , 106 AFTR 2d 2010-XXXX (D.C. S. N.Y.).

Economic Substance Codification Notice 2010-62, 2010-40 IRB .

Penalties—Transactions Lacking Economic Substance: Notice 2010-62 , 2010-40 IRB, IRS Memo LMSB-20-0910-024.

Allocation of Couple's Estimated Tax Payment CCA 201035023 .

Employee Benefits and Employment Taxes

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