Wolters Kluwer

FEDERAL TAX WEEKLY

JANUARY 10, 2019
ISSUE NUMBER 2

INSIDE THIS ISSUE

IRS Issues 2019 Updates for Ruling Requests, Technical Advice, and No-Rule Procedures

Rev. Procs. 2019-1; 2019-2; 2019-3; 2019-4; 2019-5; and 2019-7

The IRS has issued its annual revisions to the general procedures for ruling requests, technical memoranda, determination letters, and user fees, as well as areas on which the Associate Chief Counsel offices will not rule. The revised procedures are generally effective January 2, 2019.

Rev. Proc. 2019-1

This procedure explains how the IRS provides advice to taxpayers in the form of letter rulings, closing agreements, determination letters and information letters, and orally on issues under the jurisdiction of the various Associate Chief Counsel offices. It supersedes Rev. Proc. 2018-1, I.R.B. 2018-1, 1. In addition to changes made throughout the guidance, significant changes in the new procedure include:

- Sections 1, 1.01, 3.07, 5.12, 5.14, 5.15, 6.08, 9.23, 10.07, 15.11, Appendix A, Appendix B, Appendix C, Appendix D, and Appendix E have been amended to reflect the name change from "Associate Chief Counsel (Tax Exempt and Government Entities)" to "Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes)."
- Section 5.15(3) has been removed to reflect the transfer of authority to waive excise tax under Code Sec. 4980F to the Commissioner, Tax Exempt and Government Entities Division, Employee Plans Rulings and Agreements.
- Section 8.02 has been amended to remove the exception for changes in accounting methods or accounting periods from the 21-day notification rule.
- Appendix A (Schedule of User Fees) has been amended with increased user fees to match the increase in costs incurred by the IRS. The new user fee schedule is effective February 2, 2019.
- Appendix E (Church Plan Checklist) has been amended to add a new item 11 to reflect the requirement that an applicant include a representation as to whether an election under Reg. §1.410(d)-1 to apply certain provisions of the Code and the Employee Retirement Income Security Act of 1974 (ERISA) to the plan has ever been made.

Rev. Proc. 2019-2

This procedure explains when and how an Associate Office provides technical advice conveyed in a technical advice memorandum (TAM), as well as a taxpayer's rights when a field office requests a TAM regarding a tax matter. It supersedes Rev. Proc. 2018-2, I.R.B. 2018-1, 106. Significant changes in the new procedure include:

- All references to Associate Chief Counsel (Tax Exempt and Government Entities) have been revised to read "Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes)." All references to "Appeals Policy" have been revised to read "Appeals Policy Planning Quality & Analysis."
- Section 3.04 has been amended to delete the mandatory TAM requirement in qualified retirement plan matters in cases concerning proposed adverse letters or proposed revocation letters on collectively bargained plans.
- Section 14.02 has been amended to clarify that requests for relief under Code Sec. 7805(b) on the revocation or modification of determination letters and letter rulings issued by TE/GE are handled under the procedures in sections 23 and 29 of Rev. Proc. 2019-4, and section 12 of Rev. Proc. 2019-5.

Rev. Proc. 2019-3

This procedure provides a revised list of areas under the jurisdiction of certain Associate Chief Counsel offices for which letter rulings or determination letters will not be issued. (Lists of areas of nonissuance under the jurisdiction of the Associate Chief Counsel (International) and the Commissioner, Tax Exempt and Government Entities Division (relating to plans or plan amendments) are presented in separate revenue procedures.) It supersedes Rev. Proc. 2018-3, I.R.B. 2019-1, 130.

The following have been added to the list of issues for which advance rulings will *not* be issued:

- *Gross Income.* Whether an amount is not included in a taxpayer's gross income under Code Sec. 61 because the taxpayer receives the amount subject to an unconditional obligation to repay the amount.
- *Trade or Business Expenses.* Whether a taxpayer is engaged in a trade or business. This area does not include a request for a ruling that relies on a representation from a taxpayer that the taxpayer is or is not engaged in a trade or business, or a request for a ruling that relies on factual information provided by the taxpayer evidencing the active conduct of a trade or business.
- *Losses; Carryovers in Certain Corporate Acquisitions; Regulations.* In determining whether a loss for worthless securities is subject to Code Sec. 165(g)(3), (i) whether the source of any gross receipts may be determined by reference to the source of gross receipts of a counter party to an intercompany transaction, as defined in Reg. §1.1502-13(b)(1) (e.g., an intercompany distribution to which Reg. §1.1502-13(f)(2) applies), other than an intercompany transaction to which Code Sec. 381(a) applies, and (ii) in an intercompany transaction to which Code Sec. 381(a) applies, whether the acquiring corporation takes into account historic gross receipts of the distributor or transferor corporation, if the intercompany transaction is part of a plan to claim a deduction for worthless securities under Code Sec. 165(g)(3).
- *Treatment of multiple trusts.* Whether two or more trusts shall be treated as one trust for purposes of subchapter J of chapter 1.
- *Returns Relating to the Cancellation of Indebtedness by Certain Entities.* Requests for a ruling that the creditor is not required to report a discharge that include as grounds for the request a dispute regarding the underlying liability.

The following issues have been modified:

- *Special Rules for Exchanges Between Related Persons.* Except in the case of (i) a transaction involving an exchange of undivided interests in different properties that results in each taxpayer holding either the entire interest in a single property or a larger undivided interest in any of the properties or (ii) a disposition of property in a nonrecognition transaction in which the taxpayer or the related party receives no cash or other property that results in gain recognition, whether a Code Sec. 1031(f) exchange involving related parties, or a subsequent disposition of property involved in the exchange, has as one of its principal purposes the avoidance of federal income tax, or is part of a transaction (or series of transactions) structured to avoid the purposes of Code Sec. 1031(f).

Rev. Proc. 2019-4

This procedure explains how the IRS provides advice to taxpayers on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division (TE/GE) Employee Plans Rulings and Agreements Office, and details the types of advice available to taxpayers, and the manner in which the advice is requested and provided. The new procedure supersedes Rev. Proc. 2018-4, I.R.B. 2018-1, 146. In addition to minor non-substantive changes, the following changes are made:

- Modifications to reflect Employee Plans Rulings and Agreement's current practice of considering voluntary requests for closing agreements to resolve certain income or excise tax issues that are ineligible for resolution under the Employee Plans Compliance Resolution System (EPCRS).
- Letter ruling requests may not be submitted via facsimile transmission.
- A new category called "Other Circumstances" for which determination letters can be requested has been added.
- Code Secs. 414(b), (c) and (m) have been added to the list of sections for which a determination is not made when a determination letter is issued in accordance with the revenue procedure.
- For a plan to be reviewed for, and a determination letter relied upon with

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

FEDERAL TAX WEEKLY, 2019 No. 2. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.

respect to, whether the terms of the plan satisfy one of the design-based safe harbors, the plan document must provide a definition of compensation that satisfies Reg. §1.414(s)-1(c).

- Employee Plans Rulings and Agreements will consider a request for an extension of time for making an election under Reg. §301.9100-3 to recharacterize annual contributions made to a Roth IRA. Employee Plans Rulings and Agreements will also consider recharacterization requests that relate to a conversion or rollover contribution to a Roth IRA but only if the rollover or conversion was made prior to January 1, 2018.
- SB/SE Exam will be notified if a request for an extension of time for making an election or other application for relief under Reg. §301.9100-3 is submitted when the return is under examination.
- Beginning April 1, 2019, VCP submissions and the applicable user fees must be made using www.pay.gov. Further, the payment of user fees for pre-approved plan submissions and letter ruling requests may not be made using www.pay.gov and such requests must still be accompanied by a check in the amount of the applicable user fee.
- Clarification has been provided regarding which forms must be submitted for VCP submissions made prior to April 1, 2019.
- User fee for Form 5310 will increase from $2,300 to $3,000 for submissions postmarked on or after July 1, 2019.

Rev. Proc. 2019-5

This procedure updates the procedures for organizations applying for, and the issuing of determination letters on, exempt status under Code Secs. 501 and 521. These apply to exempt organizations other than those relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans. The procedures also apply to revocation or modification of determination letters. In addition, the procedure provides guidance on the exhaustion of administrative remedies for declaratory judgment under Code Sec. 7428. Finally, new procedure provides guidance on applicable user fees for requesting determination letters. The new procedure supersedes Rev. Proc. 2018-5, I.R.B. 2018-1, 233. Notable changes include:

- "Tax Exempt and Government Entities" was changed to "Employee Benefits, Exempt Organizations, and Employment Taxes" throughout the document to reflect the office's name change.
- Section 2.02 was amended to add (6), which discusses Rev. Proc. 2018-15, I.R.B. 2018-9, 379.
- Section 2.03(1) was amended to clarify that a Code Sec. 501(c)(4) organization must submit a user fee along with its completed Form 8976.
- Section 3.02(4) was amended to clarify that the section only applies to an organization seeking to qualify under Code Sec. 501(c)(6).
- Sections 4, 15, and 18 were amended to reflect the new Form 1024-A.
- Section 4.09 was amended to clarify that a request for expedited handling of a determination letter will not be forwarded to the appropriate group for action unless the application is complete.
- Section 13 was amended throughout because Rev. Proc. 2018-32, I.R.B. 2018-23, 739, superseded Rev. Proc. 81-7, 1981-1 CB 621.
- Appendix A was amended to reflect the single user fee for non-1023-EZ exemption applications, and to reflect a change in the user fee for submissions postmarked on or after July 1, 2019, for advance approval of Code Sec. 4942(g)(2) set asides, Code Sec. 4945 advance approval of an organization's grant making procedures, and Code Sec. 4945(f) advance approval of voter registration activities.

Rev. Proc. 2019-7

This procedure provides an updated list of subject areas under the jurisdiction of the Associate Chief Counsel (International) for which it will not issue advance letter rulings or determination letters, or will issue letters only if justified by unique and compelling circumstances. Section 4.01(01) related to Code Sec. 367(a) has been removed as obsolete. There are no other changes except renumbering to reflect the foregoing and updates to cross references and citations. The new procedure supersedes Rev. Proc. 2018-7, I.R.B. 2018-1, 271

Guidance Coming on Enforcement Matters Under Centralized Partnership Audit Regime

Notice 2019-6

The Treasury Department and the IRS notified taxpayers that they intend to propose regulations addressing certain special enforcement matters under Code Sec. 6241(11). The guidance to be issued under Code Sec. 6241(11)(B)(vi) would be regarding two matters that the Secretary has determined present special enforcement considerations.

Proposed and final regulations are intended to be issued prior to 18 months after enactment of the Technical Corrections Act of 2018 (P.L. 115-141) so that the intended regulations described in this notice may apply to all partnership tax years beginning after December 31, 2017.

Partnership-Related Item Adjustment

One matter concerns certain situations in which an adjustment during an examination of a person other than the partnership requires a change to a partnership-related item. The regulations would allow the IRS to focus on a single partner or a small group of partners with respect to a limited set of partnership-related items without unduly burdening the partnership and avoiding procedural concerns about the appropriate level at which such items must be examined. Consequently, the regulations would provide that the IRS may determine that the centralized partnership audit regime does not apply to adjustments

to partnership-related items when the following conditions are met:

- the examination being conducted is of a person other than the partnership;
- a partnership-related item must be adjusted, or a determination regarding a partnership-related item must be made, as part of an adjustment to a non-partnership-related item of the person whose return is being examined; and
- the treatment of the partnership-related item on the return of the partnership under Code Sec. 6031(b) or in the partnership's books and records was based in whole or in part on information provided by, or under the control of, the person whose return is being examined.

QSub Partner

Another matter concerns situations where a QSub is a partner. The regulations would provide that this situation presents special enforcement considerations because partnership structures with QSubs as partners could have far more than 100 ultimate partners, including many thousands, and still potentially elect out of the centralized partnership audit regime. Allowing such a large partnership to elect out of the centralized partnership audit regime would give rise to significant enforcement concerns for the IRS and frustrate the efficiencies introduced by the centralized partnership regime. As a result, the regulations would provide that Code Sec. 6221(b) generally would not apply to a partnership with a QSub as a partner. The regulations would also provide, however, that if a partnership meets certain requirements, the partnership may make an election under Code Sec. 6221(b). The regulations would apply a rule similar to the rules for S corporations under Code Sec. 6221(b)(2)(A).

Request for Comments

Comments should be submitted no later than February 22, 2019.

Wyden Urges IRS to Waive Underpayment Penalties

The top ranking Democrat on the Senate Finance Committee (SFC) is urging the IRS to waive certain underpayment penalties for taxpayers during the 2019 tax filing season. In a January 3 letter addressed to IRS Commissioner Charles Rettig, SFC ranking member Ron Wyden, D-Ore., has said it "seems unavoidable" that millions of taxpayers expecting a refund this tax season will instead owe taxes because of Republican tax reform enacted just over a year ago.

In the letter, Wyden criticized the effect of the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) on middle-income taxpayers, as well as its "rushed" process of implementation. "As a result, Treasury had to jury-rig the current withholding allowances instead of properly revising the W-4 so that employees could update the number of allowances they claim with their employers," he wrote. Wyden suggested a one-time waiver during the 2019 tax filing season of "under-withholding penalties" in accordance with a recent IRS Information Reporting Advisory Committee (IRPAC) report. The IRPAC report estimated that a new IRS Withholding Calculator on the IRS website was not being used by most taxpayers. Additionally, a Government Accountability Office (GAO) report requested by Wyden estimated that approximately 30 million taxpayers' incomes could have been underwithheld in 2018.

Wyden Letter to Rettig

Safe Harbors Provided for Business Payments Made in Exchange for SALT Credits

Rev. Proc. 2019-12

The IRS has provided safe harbors for business entities to deduct certain payments made to a charitable organization in exchange for a state or local tax (SALT) credit. A business entity may deduct the payments as an ordinary and necessary business expenses under Code Sec. 162 if made for a business purpose. Proposed regulations that limit the charitable contribution deduction do not affect the deduction as a business expense.

Charitable Contributions and SALT Limit

An individual's itemized deduction of SALT is limited to $10,000 ($5,000 if married filing separately). Some states and local governments have adopted or considered adopting laws that allowed individuals to receive a tax credit for contributions to funds controlled by the state and local government.

Under proposed regulations, however, an individual, estate, and trust generally must reduce the amount of any charitable contribution deduction by the amount of any SALT credit he or she receives or expects to receive for the transfer. A *de minimis* exception allows a taxpayer to disregard up to 15 percent of the payment or transfer to the charitable organization.

C Corporations

If a C corporation makes the charitable payment in exchange for a state and local tax credit, it may deduct the payment as an

ordinary and necessary business expense to the extent of any SALT credit received or expected to receive.

Specified Pass-Through Entity

A specified pass-through entity may also deduct the payment as an ordinary and necessary business expense, but only if the SALT credit applies or is expected to apply to offset a SALT other than an income tax. A specified pass-through entity for this purpose is any business entity other than a C corporation that is regarded as separate from its owner for all federal income tax purposes (i.e., disregarded entity). The entity also must operate a trade or business within the meaning of Code Sec. 162 and be subject to SALT incurred in carrying on that trade or business that is imposed directly on the entity.

Effective Date

The safe harbors apply to any payments made to a charitable organization in exchange for a SALT credit paid on or after January 1, 2018.

Interim Guidance for Excise Tax on Excess Remuneration and Parachute Payments

Notice 2019-9

The IRS has issued interim guidance on the excise tax payable by exempt organizations on remuneration in excess of $1 million and any excess parachute payments made to certain highly compensated current and former employees in the tax year. The excise tax imposed by Code Sec. 4960 is equal to the maximum corporate tax rate on income (currently 21 percent).

Q&A on Section 4960

The current guidance is contained in a Question-and-Answer format. The interim guidance addresses:

- general application of Code Sec. 4960;
- applicable tax-exempt organizations and related organizations;
- covered employees;
- excess remuneration;
- medical and veterinary services;
- excess parachute payments;
- three-times-base-amount test for parachute payments;
- computation of excess parachute payments;
- reporting liability under Section 4960;
- miscellaneous issues; and
- the effective date.

Reliance

The IRS intends to issue proposed regulations under Code Sec. 4960 which will incorporate the interim guidance. Until future guidance is issued, taxpayers may rely on the rules in the interim guidance from December 22, 2017. Any future guidance

Neal Asks Treasury, IRS How Shutdown Will Impact 2019 Filing Season

The House's top tax writer has asked the Treasury and the IRS for information on how the partial government shutdown is expected to impact the 2019 tax filing season. On January 4, House Ways and Means Committee Chairman Richard Neal, D-Mass., sent letters to Treasury Secretary Steven Mnuchin and IRS Commissioner Charles Rettig with several questions pertaining to the IRS's handling of the upcoming filing season and tax reform implementation amidst the ongoing government shutdown.

The IRS has currently furloughed approximately 70,000 IRS employees, accounting for 87.5 percent of its workforce, according to Neal. Additionally, the IRS has ceased vital taxpayer services, which include answering taxpayer questions and accepting non-disaster relief transcript requests. The IRS has previously stated that it will not issue refunds in the midst of a government shutdown. "These actions are causing undue hardship to American taxpayers and IRS civil servants," Neal wrote. He also noted his concern with the shutdown encroaching on the first tax filing season after the implementation of tax reform.

Further, Neal asked when the 2019 tax filing season will begin, and whether refunds will be issued at any point during the shutdown. He also asked for a list of all IRS functions that have stopped or been reduced because of the lapse in appropriations.

Neal Letter to Rettig; Neal Letter to Mnuchin

FBAR Filing Deadline Extended for Certain Individuals with Signature Authority

The Financial Crimes Enforcement Network (FinCEN) has extended the time for certain individuals to file a Report of Foreign Bank and Financial Accounts (FBAR) to April 15, 2020, in light of ongoing questions regarding the filing requirement and its application to individuals with signature authority over, but no financial interest in, certain types of accounts. The filing date is extended for individuals whose filing due date for reporting signature authority was previously extended by FinCEN Notice 2017-1. The extension applies to the reporting of signature authority held during the 2018 calendar year, as well as all reporting deadlines extended by previous FinCEN Notices 2011-1, 2011-2, 2012-1, 2012-2, 2013-1, 2014-1, 2015-1, 2016-1 and 2017-1. The filing date remains unchanged for all other individuals with an FBAR filing obligation.

FinCEN Notice 2018-1

will be prospective and will not apply to tax years beginning before the guidance is issued. Until additional guidance is issued, taxpayers may base their positions upon a good faith, reasonable interpretation of the statute and legislative history, where appropriate. Specifically, the positions reflected in the guidance constitute a good faith and reasonable interpretation.

Comments Requested

The IRS and Treasury Department request comments on the topics addressed in the interim guidance and any other issues arising under Code Sec. 4960. Comments should be submitted no later than April 2, 2019.

More Hardship Exemptions from Individual Shared Responsibility Payments

Notice 2019-5

The IRS has identified additional hardship exemptions from the individual shared responsibility payment under Code Sec. 5000A that a taxpayer may claim on their 2018 federal income tax return without obtaining a hardship exemption certification from the Health Insurance Marketplace (Marketplace). This guidance supplements Notice 2014-76, I.R.B. 2014-50, 946, as supplemented by Notice 2017-14, I.R.B. 2017-6, 783.

Hardship Exemptions

Generally, under the individual mandate, all individuals are required to either maintain health insurance, pay an individual shared responsibility payment, or claim an exemption. The hardship exemption is one such exemption. An individual is exempt from the requirement to have minimum essential coverage for a month if they obtain a hardship exemption certification issued by the Marketplace certifying that the individual has suffered a hardship affecting his or her capability to obtain minimum essential coverage in that month. A taxpayer may also claim a hardship exemption for the taxpayer and any dependent of the taxpayer on a federal income tax return without obtaining a hardship exemption certification from the Marketplace if:

- the taxpayer or his or her dependent is eligible for a hardship exemption described in guidance released by the Department of Health and Human Services (HHS); and
- the exemption is allowed to be claimed on the taxpayer's federal income tax return without obtaining a hardship exemption certification from the Marketplace pursuant to guidance published by the Treasury Department and the IRS.

Notice 2014-76 and Notice 2017-14 provide a list of hardship exemptions that may be claimed on a tax return without obtaining an exemption certification.

To provide additional flexibility for the 2018 tax year, Health and Human Services (HHS) announced in guidance released on September 12, 2018, that all hardship exemptions may be claimed by a qualifying individual (or the taxpayer who may claim a qualifying individual as a dependent) on a federal income tax return for the 2018 tax year without obtaining a hardship exemption certification from the Marketplace. The option to claim an exemption on a Federal income tax return for the 2018 tax year applies in addition to the existing procedures for applying for hardship exemptions using the Marketplace exemption determination process. This notice applies to tax years beginning after December 31, 2017, and before January 1, 2019.

Final Regs Streamline Approval Requirements for Private Activity Bonds

T.D. 9845

Final regulations update and streamline the public approval requirements for tax-exempt private activity bonds issued by state and local governments. The regulations largely adopt proposed regulations that were released in 2017 (NPRM REG-128841-07), with some changes in response to public comments.

Host and Issuer Approvals

Under the final regulations, the governmental unit that issues private activity bonds (the issuer) and the governmental unit with jurisdiction over the location of the financed project (the host) must both approve the issue. There are additional rules for approvals of bonds for airports, high-speed rail facilities, qualified scholarship funding corporations, and volunteer fire departments. Further, the final regulations eliminate the host-approval requirements for mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds used to finance working capital expenditures.

The regulations provide two options for approving qualified 501(c)(3) bonds issued to finance pooled loan programs. First, the issuer may satisfy the general public approval requirements. Second,

the issuer may alternatively use a two-stage public approval process:

- The first stage may include only limited general information about projects to be financed, and a general description of the types of projects to be financed. This stage does not require host approval.
- The second stage before the issuer actually originates a loan must satisfy the normal public approval requirements, including issuer and host approval.

Public Notice and Hearing

Under the pre-approval final regulations, the public hearing requirements may be satisfied by a hearing held for another governmental purpose. The issuer must hold a hearing even if no one requests one. Teleconferences and webinars cannot replace a conventional public hearing.

The regulations expand the permitted methods to provide reasonable public notice for a public hearing for proposed bonds. These methods include radio or television broadcast, and postings on a governmental unit's public website. However, the requirement for posting alternative notice when the issuer posts notice on a website is eliminated. The final regulations also:

- shorten the minimum notice period from 14 days to seven days;
- allow a public notice and approval to name a general partner of an owner of a project as a true beneficial party of interest; and
- allow notice to be posted on an on-behalf issuer's public website rather than the governmental issuer's website.

The final regulations clarify that the maximum stated principal amount of bonds used to finance a project may be determined on any reasonable basis. It may also take into account contingencies, such as cost overruns or failures to receive construction approvals, regardless of whether they were reasonably expected at the time of the notice or approval. The final regulations also retain a number of components set out in the proposed regulations.

Effective Date

The final regulations apply to bonds issued pursuant to a public approval occurring on or after April 1, 2019. However, an issuer may apply the provisions of Reg. §1.147(f)-1(f)(6) regarding deviations in public approval information in whole, but not in part, to bonds issued pursuant to a public approval occurring before April 1, 2019.

TAX BRIEFS

Assessments

Tax assessments against a couple were properly reduced to judgment by the district court. The individuals failed to challenge the district court's sanctions regarding the fraudulent conveyance of the property at issue and the existence of a nominee relationship.

Bigley, CA-9, 2019-1 USTC ¶50,117

Bankruptcy

A federal district court properly affirmed the bankruptcy court's decision that confirmation of a debtor's Chapter 13 plan did not modify or strip the IRS's tax lien from the debtor's real property. The debtor did not file a motion for valuation of security with respect to the IRS lien. Further, the plan did not contain any explicit reference to the IRS lien or give any indication that the property was collateral for the tax debt. Therefore, the plan valued only the IRS's claim, not the lien.

In re Nomellini, CA-9, 2019-1 USTC ¶50,119

Cancellation of Debt Income

An award extended by the Financial Industry Regulatory Authority (FINRA) Dispute Resolution Panel that extinguished a debt owed by an individual to a financial services firm qualified as cancellation of debt (COD) income; therefore, the amount of the extinguishment was taxable as ordinary income. The individual was not able to satisfy the burden of answering in lieu of what the damages were awarded.

Connell, TC, Dec. 61,336(M)

Collection Due Process

An IRS motion seeking summary judgment was granted because there was no genuine dispute of material fact suggesting that an individual was wrongly denied a collection alternative on grounds of nonpayment of estimated tax payments in full.

Ransom, TC, Dec. 61,334(M)

Conservation Easement Donations

A partnership was not entitled to charitable contributions deductions for easements for two of the three tax years at issue. These easements did not protect conservation purposes in perpetuity because the easement deeds permitted the property to be used in ways inconsistent with the conservation purposes of the easements. However, the easement for a third tax year covered a specific, identifiable piece of real property, was granted in perpetuity, and was made exclusively for conservation purposes. It did not contain a reserved-right provision allowing the landowner to construct houses.

Pine Mountain Preserve, LLLP, TC, Dec. 61,337

A limited liability company (LLC) was entitled to a charitable contribution deduction for its donation of a conservation easement on a land, but the amount of the deduction was limited to the value of the easement determined by the Tax Court. Both the IRS and the LLC favored valuation opinions by experienced appraisers that were based on methods that did not meet the requirements of the statute. The court determined the value of the easement using an equally weighted average.

Pine Mountain Preserve, LLLP, TC, Dec. 61,338(M)

FBAR

The IRS did not abuse its discretion in assessing a heightened Report of Foreign Bank and Financial Accounts (FBAR) penalty when an individual engaged in "reckless disregard" of the legal duty to report. The American Jobs Creation Act of 2004 (P.L. 108-357) replaced the prior penalty for willful violations of federal tax law in 31 U.S.C. §5321(a)(5), thereby nullifying any inconsistent regulations governing the pre-2004 statute.

Kimble, FedCl, 2019-1 USTC ¶50,118

Liens and Levies

An IRS motion seeking summary judgment was granted. The settlement officer did not abuse her discretion in sustaining the proposed collection action on the basis of a taxpayer's failure to supply the necessary information.

Terrell, TC, Dec. 61,340(M)

Offers in Compromise

An IRS settlement officer (SO) did not abuse his discretion in denying a married couple's offer-in-compromise, because the taxpayers' reasonable collection potential far exceeded their final offer amount. Further, the taxpayers did not show that the SO's actions were arbitrary, capricious, or without sound basis in fact or law.

Gustashaw, TC, Dec. 61,339(M)

An individual's complaint seeking damages for wrongful denial of an offer-in-compromise (OIC) was dismissed for failure to state claim. The individual alleged that the IRS's actions that arose from denial of his OIC qualified as wrongful collection of his taxes. However, the statutory law provides relief only for injuries sustained as a result of wrongful collection of federal taxes, not the handling of the denial of the individual's OIC, since the handling of OICs does not constitute a collection activity.

Morales, Jr., DC N.J., 2019-1 USTC ¶50,120

Refund Actions

An individual was not entitled to a refund for the amount he paid to the IRS for overdue taxes. The IRS had already refunded the amount that it had incorrectly collected on a prior occasion. Two payments were made towards the individual's tax deficiency; the IRS reimbursed the individual for more than that total amount at issue. In addition, the individual was not entitled to claim $34 million in damages attributable to emotional distress. While the IRS did violate its own rules by sending the deficiency notices to the wrong address and then incorrectly collecting unpaid taxes, the individual failed to show that he was entitled to any pecuniary damages.

Wrhel, DC Wisc., 2019-1 USTC ¶50,116

Sham Partnership

The IRS properly determined that an LLC was a sham and was formed solely to evade taxes. The LLC and various Brazilian retailers, who purportedly contributed distressed consumer receivables to the LLC, did not form a *bona fide* partnership for servicing and collecting the receivables owed to the retailers. Further, the step transaction doctrine permitted the IRS to treat the Brazilian retailers' contributions and subsequent redemptions as a sale of assets. This led to basis in the uncollectible receivables being reduced from face value to what was paid for them, thereby voiding the bad-debt expenses the partnership tried to pass along to U.S. taxpayers.

Sugarloaf Fund, LLC, CA-7, 2019-1 USTC ¶50,114

Tax Court Proceedings

The Tax Court did not abuse its discretion by denying an attorney's motion to vacate, because he failed to demonstrate that such relief was appropriate. The taxpayer could not deduct business expenses beyond those already allowed by the IRS, and was subject to an addition to tax for failure to timely file returns and an accuracy-related penalty.

Canatella, CA-9, 2019-1 USTC ¶50,109

Tax Crimes

The District Court had subject matter jurisdiction over a criminal prosecution for tax evasion and interference with the administration of internal revenue laws. The individual's arguments in support of the motion to dismiss for lack of jurisdiction were frivolous and without merit.

MacAlpine, DC N.C., 2019-1 USTC ¶50,108

An individual who primarily engaged in a scheme to defraud the IRS by failing to report business and personal income was properly convicted of corruptly obstructing the IRS. The individual made false and fraudulent statements and attempted to impede the IRS's ongoing investigation by filing fraudulent corporate and individual returns.

Boulas, DC Mass., 2019-1 USTC ¶50,112

Tax Fraud

An individual was not liable for fraud penalty for the two tax years at issue. The IRS failed to prove by clear and convincing evidence that the taxpayer filed false and fraudulent returns with the intent to evade tax for the years at issue.

Mathews, TC, Dec. 61,335(M)

Supreme Court Docket

A petition for review was filed in the following case: The district court properly denied two limited liability companies' (LLCs') claims under the Right to Financial Privacy Act for lack of subject matter jurisdiction because LLCs do not fall under the Act's waiver of sovereign immunity.

Hohman, CA-6, 2018-2 USTC ¶50,312

A petition for certiorari was filed in the following case: A federal district court properly denied a married couple's motion to quash the IRS's summonses issued to their bank. The district court concluded that the couple lacked standing to challenge the summonses as violations of their clients' privacy, because their clients lacked a reasonable expectation of privacy in records held by the bank. Finally, compliance with *Powell* rendered the IRS's summonses reasonable, and as such the IRS was not required to issue John-Doe subpoenas.

Presley, CA-11, 2018-2 USTC ¶50,338