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House Budget Committee Chair Suggests Corporate Tax Rate Increase

The House Budget Committee chair has suggested a corporate tax rate increase as congressional Democrats actively look to repeal and revamp Republicans' tax reform. The committee held a February 27 hearing to examine the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97), in which Chairman John Yarmuth, D-Ky., criticized the GOP tax law.

Prehearing Positioning

Based on statements made prior to the hearing, Committee Democrats were expected to largely criticize the TCJA for favoring wealthy taxpayers while Republican members were likely to tout the TCJA's upward economic effects.

"One year after President Trump and congressional Republicans enacted their tax cut for the wealthy and large corporations, none of their promised results are happening," so began a February 25 Democratic House Budget Committee prehearing document. "The Members of Congress have the responsibility to fully understand the tax law's effects and help redirect the nation's tax and fiscal policy in the right direction."

The Democratic prehearing document noted some of the following criticisms of certain TCJA consequences:

- tax cuts heavily tilted toward corporations and wealthy taxpayers;
- $1 trillion in stock buybacks in 2018;
- encourages sending factories and jobs overseas; and
- created more special-interest "loopholes" and tax breaks.

However, House Budget Committee Republicans praised the TCJA in a February 25 press release for providing broad socioeconomic tax cuts as well as economic growth. "The [TCJA] law delivered much-needed tax relief to workers, families, and businesses – unleashing job creation, investment, and economic growth," the press release said. Additionally, Republican members of the committee highlighted some of the following statistics related to the TCJA:

- increases in 80 percent of wage earners' take-home pay;
- middle-income tax cuts;
- unemployment levels lowest since the 1960s; and
- 3.1 percent increase in wages and salaries – the largest increase in over 10 years.

TCJA Criticisms

"Under the Republican tax law, nearly all of the tax cuts are going to the top one percent and corporations," Chairman Yarmuth said in his opening statement at the February 27 hearing. "For American families this law is a huge and predictable failure. For the federal budget it's a huge and predictable drain," he added. Also, Yarmuth stated that a corporate tax rate increase would be prudent, though he chose not to specify an exact percentage.

Further, each of the three Democratic-chosen witnesses criticized the TCJA for disproportionally benefiting corporations and wealthy taxpayers. Moreover, William G. Gale, co-director of the left-leaning Urban-Brookings Tax Policy Center (TPC), told lawmakers that the TCJA was "poorly drafted" and comprised of "complicated tax changes."

Gale highlighted some of the following criticisms of the TCJA in his testimony:

- minimal effects on long-term economic growth;
- provides disproportionately large benefits to high-income households; and
- exacerbates federal deficit issues.

Republican Rebuttal

However, Republican members of the House Budget Committee at the hearing referenced several "real world" examples of how the TCJA has positively impacted small businesses. To that end, committee ranking member Steve Womack, R-Ark., said that lawmakers should be hearing more from small business owners rather than tax policy experts who merely study the law.

Lana Pol, the only small business owner on the witness panel, praised the TCJA while testifying on behalf of the National Federation of Independent Business. "The [TCJA] provided tax relief that allowed us to invest in our employees with raises and our businesses with a significant facility expansion and new vehicles," Pol testified. "We are not alone. Record levels of small business owners are increasing employee compensation," she added.

Notably, Pol suggested that Congress make permanent the individual and small business TCJA provisions that are scheduled to sunset after 2025. These TCJA provisions were enacted temporarily in large part because of certain Senate budget rules.

Several Democrats have criticized Republicans for making corporate tax cuts permanent while enacting temporary tax cuts for individuals and small businesses. However, House and Senate Republican tax writers are pushing for making permanent the individual and small business provisions. Little to no movement is expected on that legislative effort in the currently divided Congress.

Tax Reform Not Responsible for Withholding Errors, Senior Treasury Official Says

A senior Treasury official has said that tax reform is not responsible for taxpayers' withholding errors in 2018. Senate Democrats have criticized the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) and the Trump administration for the anticipated increase in taxpayers who underwithheld during the 2018 tax year.

"Let's call it what it is, this is tax penalty entrapment," Senate Finance Committee (SFC) ranking member Ron Wyden, D-Ore., said in a February 26 press release. Wyden and 39 other Senate Democrats asked Treasury and the IRS in February to waive taxpayers' underpayment penalties associated with implementation of the TCJA.

Underpayment Penalties

In January, the IRS announced in IR-2019-3 that it would waive the underpayment penalty for taxpayers who paid at least 85 percent of their total tax liability during the 2018 tax year. The usual threshold is 90 percent.

Several Republican lawmakers and tax practitioners have encouraged the IRS to further lower the 85 percent income threshold it is using this filing season for the assessment of underpayment penalties. However, a senior Treasury official told Senate Democrats in a recent letter that "tens of millions" of taxpayers are underwithheld every year, regardless of the TCJA's implementation.

"The TCJA, and our implementation of the law through the withholding tables and Form W-4 instructions, will not cause tens of millions of taxpayers to be underwithheld," J. Brady Howell, senior advisor within Treasury's Office of Legislative Affairs, wrote in a February 25 letter to Senate Democrats. "Rather, tens of millions of taxpayers are under-withheld every year, due to taxpayers' choices or the difficulties some taxpayers face in adjusting withholding to account for changes in their circumstance each year," Howell added.

Moreover, the lowered 85 percent threshold the IRS intends to use for underpayment penalties this filing season "will provide substantial relief to many taxpayers without creating large windfalls" for taxpayers would have underwithheld regardless of the TCJA, Howell noted. Nearly 30 million taxpayers are expected to have underpaid taxes last year, according to a recent report by the nonpartisan Government Accountability Office (GAO).

REFERENCE KEY

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

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Senate Confirms IRS Chief Counsel; Grassley Talks 2019 Tax Filing Season

The Senate confirmed President Donald Trump's pick for IRS Chief Counsel on February 27. Michael J. Desmond was confirmed for the presidentially appointed position, one of only two at the IRS, by an 83-to-15 vote.

"We are extremely proud to have Mike join the overall IRS team, and Mike is extremely proud to come onboard," IRS Commissioner Charles "Chuck" Rettig wrote in a February 27 email sent to IRS employees. "He is a fabulous choice to lead one of the largest legal teams in the country. There was strong bipartisan support for Mike's confirmation, and we are excited that he will take the oath of office in the coming days." Rettig was nominated by Trump in February of 2018 and sworn in as IRS commissioner last October.

2019 Filing Season

Meanwhile, Senate Finance Committee (SFC) Chairman Chuck Grassley, R-Iowa, speaking from the Senate floor on February 27, said that the 2019 tax filing season is running smoothly. "All systems are operating as expected, returns are being processed, and refunds are being sent out without any major complications," Grassley said. "At one point, the IRS processed 1.9 million returns in an hour – that's 536 in a single second," he added.

Generally, the IRS and the Trump administration continue to garner criticism from Democrats citing lower tax refunds and complications arising from tax reform implementation. However, Grassley characterized certain claims that smaller tax refunds equate to a tax increase as a falsehood. "Anyone telling the American public that a smaller refund is the same as a tax increase is being intentionally misleading and doing a disservice to the public," Grassley said. "The size of one's tax refund merely reflects what you overpaid the IRS in your paychecks last year."

Tax Debt Holders May Not Be Able to Renew, Obtain Passport

The IRS reiterated its warning from last year that taxpayers may not be able to renew their current passport or obtain a new passport if they owe federal taxes. In January 2018, the IRS implemented new procedures based on provisions of the Fixing America's Surface Transportation (FAST) Act. These procedures affect taxpayers with a seriously delinquent tax debt, which is $52,000 or more.

The IRS must notify the State Department of seriously delinquent taxpayers, and the State Department in turn is required to deny their passport application or renewal and, in the case of a valid passport, may also revoke the passport or limit the taxpayer's ability to travel outside the United States. The IRS will resolve cases by reversing a taxpayer's certification within 30 days when the taxpayer no longer has a seriously delinquent tax debt. This can be achieved either through payment in full, payment plans, or offers in compromise.

IR-2019-23

Tax Refunds Rebound; Neal Wants Form 1040 Answers

IRS Website: Filing Season Statistics for Week Ending February 22, 2019.

Tax refunds this filing season have rebounded after a slow start, now averaging higher than last year's figures. The average tax refund this year through February 22 was $3,143, marking a 1.3 percent increase from last year, according to IRS data released on February 28.

Many Democratic lawmakers have blamed the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) for tax refunds averaging smaller at the start of the filing season. However, smaller refunds are actually good news, according to Treasury and several top Republican lawmakers. "Smaller refunds mean that people are withholding appropriately based on their tax liability, which is positive news for taxpayers," a Treasury spokesperson previously told Wolters Kluwer.

Tax Filing Season Oversight

In related news, the House Ways and Means Oversight Subcommittee announced on February 28 that it has scheduled a March 7 hearing to examine this year's tax filing season. National Taxpayer Advocate Nina Olson is expected to testify.

Neal Demands 1040 Answers

Meanwhile, House Ways and Means Committee Chairman Richard Neal, D-Mass., has "demanded" answers from IRS Commissioner Charles Rettig related to IRS Form 1040, as noted in Neal's February 28 press release. Neal and Ways and Means Oversight Subcommittee Chairman John Lewis, D-Ga., expressed concern in a February 27 letter to Rettig that the IRS will not have provided certain information by the original deadline previously set forth by the lawmakers in a February 14 letter.

Neal and Lewis have twice requested various information related to third-party analysis on the new Form 1040 and its six schedules. As indicated in the second letter, the lawmakers expect a response from the IRS by March 7. Notably, March 7 is also the scheduled date of the Oversight Subcommittee hearing on the 2019 tax filing season.

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Low-Income Housing Credit Regs Detail Submetered Utility Charge Treatment

T.D. 9850

Final regulations cover the treatment of submetered utility costs paid by a low-income housing tenant, in situations where the building owner sells tenants energy produced from a renewable resource and the owner does not purchase the energy from a local utility company.

Treatment of Submetered Utility Payments

A low-income tenant's payment (based on submetering) to a building owner for renewable resource energy acquired by the owner is treated as paid directly by the tenant to the person from whom the owner acquired the energy. Accordingly, the payment is not considered a payments of gross rent to the owner, and the rent that the owner might otherwise have collected is reduced by a "utility allowance."

Maximum Charge to Tenant

A building owner may not charge a low-income tenant more than a local utility would have charged if the utility had provided the renewable resource energy directly to the tenant.

If the energy is available from multiple local utilities, the rate that the owner charges is limited to the highest rate charged. In determining the applicable rate, an owner may rely on the rates published by the utilities.

Qualifying Renewable Resource Energy

Energy is produced from a renewable resource if it is produced from energy property described in Code Sec. 48 or by a facility described in specified sections Code Sec. 45.

A building owner does not need to claim an energy credit under either of these Code Sections or own the source from which the renewable energy is produced. These rules for building owners continue to apply even if the energy credits expire.

Effective Date

The final regulations apply to a building owner's tax years beginning on or after March 4, 2019, when they are scheduled to be published in the Federal Register. A building owner may apply the regulations to earlier tax years, however.

IRS Issues FAQ on Deduction of Attorney Fees

The IRS has issued a Frequently Asked Question (FAQ) on Code Sec. 162(q). The FAQ addressed whether taxpayers are not allowed to deduct their attorney's fees related to the settlement of a sexual harassment claim if the settlement is subject to a nondisclosure agreement. The FAQ explained that such taxpayers were not precluded by Code Sec. 162(q) from deducting attorney's fees related to the settlement or payment if the fees are otherwise deductible.

Section 162(q) FAQ

CFC Partners Required to Increase E&P for Subpart F Inclusions

Eaton Corporation and Subsidiaries, 152 TC No. 2, Dec. 61,413

The upper-tier controlled foreign corporation (CFC) partners of a domestic partnership were required to include in gross income their distributive share of income inclusions under subpart F from lower-tier CFCs, and increase earnings and profits (E&P) by the same amount. Regulations under Code Sec. 964 provided preliminary steps for conforming a foreign corporation's profit and loss statement to that of a domestic corporation. The general rules of Code Sec. 312 that governed earnings and profits computations of domestic corporations then applied.

Interaction Between 964 and 312

The rules in Code Sec. 964(a) provide that, with an exception for a depreciation rule in Code Sec. 312(k)(4), the earnings and profits of a foreign corporation are computed according to rules substantially similar to those that apply to domestic corporations, under regulations prescribed by the Secretary. The Tax Court found that regulations reasonably could be read to include regulations under Code Sec. 312.

The Code Sec. 964 regulations required the following steps be taken before the Code Sec. 312 rules could be applied:

- preparation of a profit and loss statement;
- U.S. accounting adjustments; and
- tax adjustments.

The general rules of subpart F and Code Sec. 312 applied because there were no specific rules covering the treatment of a CFC's distributive share of partnership income, or subpart F income inclusions, specifically. Subpart F required upper-tier CFC partners to compute gross income as if they were domestic corporations. As partners in a domestic partnership, they were required to include their distributive shares of the partnership's income, including subpart F income inclusions, from lower-tier foreign corporations.

Under the Code Sec. 312 regulations, E&P is determined by taking into account all items includible in gross income under Code Sec. 61. Because the inclusions under subpart F were included in gross income, E&P was increased by those amounts.

Dissenting Opinion

A dissenting opinion disagreed with the Tax Court's conclusion that Code Sec. 964 incorporated the rules of Code Sec. 312 based on the reference to the depreciation rule. The dissent also disagreed with the Tax Court's statement that Code Sec. 964 provided that the same general rules apply to E&P computations for domestic and foreign corporations because the statute referred to rules "substantially similar" to those applicable to domestic corporations.

Supervisor's Approval Unnecessary for Computer Generated Penalty

C.S. Walquist, 152 TC No. 3, Dec. 61,414

An accuracy-related penalty that was determined by an IRS computer program without any human review was automatically calculated through electronic means. Therefore, the penalty was not subject to the written supervisory approval requirement under Code Sec. 6751.

Automatically Calculated Penalty

The IRS determined a couple's deficiency in tax through its Automated Correspondence Exam (ACE) system, and assessed a penalty for substantial understatement of taxes. The individuals did not respond to the 30-day letter generated by the computer program, or to the notice of deficiency. Since the substantial understatement penalty was determined mathematically by the computer software program without the involvement of a human IRS examiner, the penalty was automatically calculated through electronic means.

Supervisory Approval Requirement

The Tax Court noted that the purpose of supervisory approval is to ensure that penalties are imposed only where appropriate and not as bargaining chips. Computer-determined penalties typically do not raise this concern. Further, the court noted that if it were to decide the other way, it would have to determine the identity of the computer's immediate supervisor. Quoting Lear, the court stated, "that way madness lies."

Sanctions

The individuals were also liable for a penalty for persisting in frivolous litigation. They advanced numerous frivolous positions despite being warned against the same on previous occasions. The individuals also failed to comply with the Tax Court's rules by repeatedly refusing to confer with the IRS's counsel to prepare the case for trial; therefore, the case was dismissed for lack of proper prosecution by the individuals.

IRS Satisfied Supervisory Approval Requirement for Multiple Penalties

Palmolive Building Investors, LLC, 152 TC No. 4, Dec. 61,416

The IRS satisfied the supervisory approval requirement while asserting multiple penalties in connection with a limited liability company (LLC), even though the initial determination of all of the penalties was not made at the same time or by the same individual. Since each penalty at issue was initially determined and then approved in writing by a supervisor before being communicated to the LLC, the IRS satisfied the requirement.

Background

The IRS initially sent a 60-day letter to the LLC proposing adjustments to the LLC's partnership return. The IRS also attached Form 5701, Notice of Proposed Adjustment, signed by an IRS agent, and Forms 886A, Explanation of Items, justifying two penalties. Later, while the case was under consideration in Appeals, an appeals officer concluded that additional alternative penalties should be imposed, and prepared a Form 5402-c, Appeals Transmittal and Case Memo, to which he attached a proposed Final Partnership Administrative Adjustment (FPAA).

Determination and Approval

In each of the four penalties at issue, the penalty was initially determined by an

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individual who obtained his supervisor's written approval before the penalty determination was communicated to the LLC. Moreover, the statutory law does not require supervisory approval to be made on a particular form; the statutory law was satisfied by approval made on Form 5701 or Form 5402-c, with the subordinate's initial determination of penalty attached.

Related decision at *Palmolive Building Investors, LLC,* 149 TC No. 18, Dec. 61,041.

APMA Introduces Functional Cost Diagnostic Model

The IRS' Advance Pricing and Mutual Agreement (APMA) Program has introduced a Functional Cost Diagnostic (FCD) Model. The FCD Model, an Excel workbook, guides the user through various "functional" cost entries that a controlled taxpayer incurs for activities surrounding core functions within the scope of a proposed Advanced Pricing Agreement (APA) process. Tax professionals who want the Excel workbook should e-mail a request to lbi.ttpo.apma.feedback@irs.gov and include "FCD Model Request" on the subject line.

Additional information on the APMA can be obtained from the IRS website, at https://www.irs.gov/businesses/corporations/apma.

Beneficiaries Liable for Unpaid Estate Tax

D. Ringling, DC S.D., 2019-1 USTC *¶60,709*

The beneficiaries of a decedent's estate were liable for the decedent's unpaid estate tax. Prior to his death, the decedent owned property jointly with each of his three daughters. Within three years of his death, the decedent transferred property to his grandson, including two parcels of real property, the family farm, a certificate of deposit, and a corn crop. Nearly eight years after his death, the estate tax return was filed, reporting the jointly owned property, the property transferred to the grandson, and other property. Although the beneficiaries made a few payments to satisfy the estate tax liability, it remained substantially unpaid.

Tax Not Paid When Due

To establish transferee liability under Code Sec. 6324(a)(2), the government must prove that: (1) the estate tax was not paid when due and (2) the transferee, surviving joint tenant, or beneficiary received property that was includible in the gross estate under Code Secs. 2034-2042. After the estate tax return was filed, the IRS assessed estate tax, interest and penalties. Although partial payments were made, the estate tax was never paid in full. One of the estate beneficiaries sought to contest the motion for summary judgment by asserting that a typographical error created a genuine dispute of material fact. However, the beneficiary provided no evidence that the liability amount in the evidence submitted by the government was disputed.

Property Includible in Estate

The corn crop and certificate of deposit given to the grandson and the forgiveness of a loan on real property between the decedent and the grandson were transfers that occurred within three years of the decedent's death. Thus, the transfers were includible in the gross estate under Code Sec. 2035. In addition, the decedent retained a life estate and the right to income from the family farm. Therefore, the farm was includible in the decedent's gross estate under Code Sec. 2036.

The decedent owned government bonds, two vehicles, and a checking account with one or all of his daughters as joint tenants with right of survivorship. As a result, the jointly owned property was included in the decedent's gross estate under Code Sec. 2040. Finally, life insurance policies, of which the three daughters were the beneficiaries, were includible in the gross estate under Code Sec. 2042. The government established transferee liability under Code Sec. 6324(a)(2), and each beneficiary was liable for the estate tax to the extent of the value of the property received as of the date of death.

Estimated Tax Penalty Waived for Farmer and Fisherman Returns Filed by April 15

Notice 2019-17; IR-2019-24

The IRS will waive the estimated tax penalty for any qualifying farmer or fisherman who files their 2018 federal income tax return and pays any tax due by Monday, April 15, 2019. The deadline is Wednesday, April 17, 2019, for taxpayers residing in Maine or Massachusetts.

Background

Qualifying farmers and fishermen are subject to special rules requiring them to make only one installment payment of estimated income tax due on January 15 of the year following the tax year. However, farmers and fishermen who chose to forgo their quarterly estimated tax payments for 2018 generally must file their 2018 federal return and pay any tax due by Friday, March 1, 2019. The rule applies if farming or fishing income was at least two-thirds of the total gross income in either 2018 or the preceding tax year.

Relief Provided

The IRS is providing relief because, due to certain rule changes, many farmers and fishermen may have difficulty accurately determining their tax liability by the March 1 deadline that usually applies to them. For 2018, an individual who received at least two-thirds of his or her total gross income from farming or fishing during either 2017 or 2018 qualifies as a farmer or fisherman.

Requesting the Waiver

Farmers and fishermen requesting this waiver of the addition to tax must attach Form 2210-F, Underpayment of Estimated Tax by Farmers and Fishermen, to their 2018 tax return. The form can be submitted electronically or on paper. The taxpayer's name and identifying number should be entered at the top of the form, and the waiver box (Part I, Box A) should be checked. The rest of the form should be left blank.

Forms, instructions, and other tax assistance are available on IRS.gov. The IRS toll-free number for general tax questions is 1-800-829-1040.

Acquiescence in Result Only in Meals as De Minimis Fringe Benefits Case

AOD-2019-1

The IRS has acquiesced in result only in *J.M Jacobs,* 148 TC No. 24, Dec. 60,947, relating to whether the taxpayer's expenses for provision of pregame meals at away city hotels to professional hockey players and team personnel were *de minimis* fringe benefits under Code Sec. 132(e)(2) and were thus exempt from the 50-percent deduction limit for meal and entertainment expenses under Code Sec. 274(n)(1). The Tax Court had held that the expenses incurred by the National Hockey League team which the taxpayer owned, to provide meals to the players and team personnel at away city hotels, satisfied the exception to the general 50-percent limitation. Further, the court concluded that the taxpayer provided the meals at employer-operated eating facilities.

The IRS disagreed with the reasoning that the court used to reach its conclusion that: (1) the away city hotels were the National Hockey League team's "business premises"; (2) the taxpayer's team "leased" the hotel meeting room; and (3) the taxpayer's team did not provide the meals in a manner that discriminated in favor of highly compensated employees. However, the IRS did not challenge the conclusion that sports teams have business premises in the cities in which the away games occur at the time of the games for purposes of Code Secs. 119 and 132(e)(2). Moreover, the IRS concluded that the taxpayer's arrangements with the hotels were not leases and the team had no possessory interest in the physical property. Finally, the IRS did not appeal the decision because of the fact-specific nature of *Jacobs* and the IRS's intention to publish regulations under Code Secs. 119 and 132(e)(2) regarding employer-provided meals to address the issues presented in the case prospectively.

The IRS would follow *Jacobs* only with respect to cases involving sports teams in which the material facts were substantially identical to those present in *Jacobs* prior to the effective date of such regulations.

TAX BRIEFS

Examination

A generic transmission of IRS Publication 1, Your Rights as a Taxpayer, to a husband and wife did not qualify as a reasonable notice in advance to apprise them that the IRS may contact third parties for seeking information pertaining to the couple. The IRS sought billing records and invoices for the husband's work representing capital defendants for the state (California) government. In fact, the IRS did not take any additional steps to notify the couple that it would be sending a summons to the state court. Therefore, the IRS deprived the couple of a meaningful opportunity to volunteer information, such as billing records that they most likely possessed, before the third-party contact had been made.

Baxter, CA-9, 2019-1 USTC ¶50,160

Illegal Drug Sales

Shareholders of a limited liability company (LLC) were denied deductions, because they could not meet their burden of proving that the IRS's determination that the LLC was unlawfully trafficking in a controlled substance was erroneous. As a result, Code Sec. 280E precluded the deduction of the taxpayers' business expenses, and the Tax Court had properly rejected their challenge to the deficiency.

Feinberg, CA-10, 2019-1 USTC ¶50,161

Innocent Spouse Relief

A requesting spouse was entitled to relief from joint and several liability under Code Sec. 6015(f) under a streamlined determination. The taxpayers were divorced both before the spouse filed her request for innocent spouse relief and before she filed joint federal income tax returns with her husband. If she was not afforded relief, the requesting spouse would be homeless and without sufficient income to provide for her basic living needs. Finally, she did not have knowledge of her husband's inability to pay, and reasonably relied on her past experiences and years of abuse and control

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prevented her from adequately questioning the underpayments.

Contreras, TC, Dec. 61,415(M)

Interest Rates

The IRS has announced that the interest rates for the calendar quarter beginning April 1, 2019, will be 6 percent for overpayments (5 percent in the case of a corporation), 6 percent for underpayments and 8 percent for large corporate underpayments. The interest rate for the portion of a corporate overpayment exceeding $10,000 is 3.5 percent. The interest rates are computed by using the federal short-term rate based on daily compounding determined during January 2019.

Rev. Rul. 2019-5

Liens and Levies

An IRS settlement officer (SO) did not abuse her discretion by sustaining a proposed levy to collect an individual's outstanding tax liability. The court determined that even if the taxpayer had submitted a collection alternative, the SO could have rejected his proposal on the grounds of the taxpayer's lack of compliance with his tax filing obligations for tax years 2012-2016.

Grumbkow, TC, Dec. 61,417(M)

Overpayments

The Tax Court had properly refused to treat a notice CP59 response, which was sent to the IRS by a married couple within the applicable look-back period, as either a valid claim for credit or a binding contract between them and the IRS. The response was premature and unspecific. Further, the taxpayers offered no legal support for the proposition that common law contract principles could be used to circumvent clear statutory or regulatory mandates.

Linton, CA-10, 2019-1 USTC ¶50,157

Payroll Taxes

The owner and president of a company was liable for trust fund recovery penalties because he was the "responsible person" who willfully failed to deposit the company's payroll taxes. The company had properly withheld employment taxes from its employees' paychecks, but used those withholdings to pay its operating expenses rather than paying them to the IRS as required by law.

Nutter, DC Ohio, 2019-1 USTC ¶50,159

Refund Claims

The Federal Claims Court lacked subject-matter jurisdiction over a refund claim that was not duly filed. The taxpayer did not sign the claim (Form 843), and the requirement that the claim be verified and signed by the taxpayer under penalty of perjury was jurisdictional. The taxpayer did not demonstrate by a preponderance of the evidence that Form 2848, Power of Attorney and Declaration of Representative, was a broad authorization that extended to the signing of a claim for refund.

Wilson, FedCl, 2019-1 USTC ¶50,162

Supreme Court Docket

A petition for review was filed in the following case: A foundation was liable for a tax deficiency as a transferee of a transferee. The foundation was not misled as to the basis for the deficiency; the notice was sufficient to confer jurisdiction upon the Tax Court.

Diebold Foundation, Inc., CA-2, 2018-2 USTC ¶50,491

A petition for review was filed in the following case: The district court did not abuse its discretion by including the "filing" element along with the knowledge of "falsity" element to the jury instructions on filing a false tax return by two individuals.

Chang, CA-9, 2018-2 USTC ¶50,333

A petition for review was filed in the following case: The Tax Court properly determined that the IRS was not required to process a second amended return filed by an individual that excluded imputed income from a former employer's purchase of a life insurance policy. Moreover, the Tax Court lacked jurisdiction to determine interest in the deficiency case because none of the general exceptions applied.

Ramsay, CA-5, 2018-2 USTC ¶50,345

A petition for review was denied in the following case: A district court did not use incorrect sentencing guidelines or error in calculating the fine range for a repeat offender who committed sophisticated tax fraud. The individual's fine resulted from "the reasoned exercise of discretion".

Zukerman, CA-2, 2018-2 USTC ¶50,354

A petition for certiorari was filed in the following case: A Washington-based marijuana dispensary's attempt to overturn the IRS's decision to disallow all of its business expense deductions was dismissed. Because ordinary and necessary business deductions are statutorily-authorized deductions, Congress can pass laws such as Code Sec. 280E, which disallow certain ordinary and necessary business deductions to taxpayers trafficking controlled substances.

Alpenglow Botanicals, CA-10, 2018-2 USTC ¶50,311