

# **Recent Developments in Federal Income Taxation**

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To obtain today's outline and slides:

<https://tinyurl.com/outline-feb19>

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**Wasco Real Properties I, LLC v. Commissioner,  
744 Fed. A[ppx. 534 (9th Cir. 12/13/16)  
*Outline: item B.1.a, page 3***

- Three tax partnerships purchased land, a portion of which they used to grow almond trees.
- The partnerships paid interest on loans incurred to finance the purchase, and paid property taxes on the land.
- Issue:
  - Are the interest and property taxes paid by the partnerships capital expenditures under the uniform capitalization rules of § 263A?
- Held: Yes, as to the interest and property taxes corresponding to the portion of the land on which almond trees were grown. Growing the almond trees is a production of those trees within the reach of section 263A.

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**Notice 2019-2  
2019-2 I.R.B. 281 (12/14/18)  
*Outline: item D.1, page 3***

- Standard mileage rate for business miles in 2019 goes up to 58 cents per mile (from 54.5 cents in 2018).
- Medical/moving rate for 2019 goes up to 20 cents per mile (from 18 cents in 2018).
- Charitable mileage rate remains fixed by § 170(i) at 14 cents.
- The portion of the business standard mileage rate treated as depreciation goes up to 26 cents per mile for 2019 (from 25 cents in 2018).

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## **Qualified Transportation Fringes Disallowed**

### **2017 TCJA § 13304**

#### ***Outline: item D.2, page 3***

- No deduction for qualified transportation fringes (employee parking, transit passes, transportation in commuter highway vehicle)
  - Applies to amounts paid or incurred after 2017
  - Ability of employees to exclude transportation fringes not affected
  - Exception: qualified bicycle commuting reimbursements before 2026 are:
    - Deductible by employer
    - Included in income of the employee
- Note: UBTI of tax-exempt organizations is increased if they provide nondeductible qualified transportation fringes. [Outline page 20, item A.3.b].

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## **Notice 2018-99**

### **2018-52 I.R.B. 1067 (12/10/18)**

#### ***Outline: item D.2.a, page 4***

- Treasury and IRS will issue proposed regulations under § 274 that will include guidance on:
  - Determining nondeductible expenses for qualified transportation fringes
  - Calculation of increased unrelated business taxable income (UBTI) of tax-exempt organizations that provide qualified transportation fringes.
- Provides:
  - Section 274(a) does not disallow amounts an employer pays to third parties for employee parking in excess of the § 132(f)(2) monthly limitation on exclusion (\$260 for 2018 and \$265 for 2019), and employer must treat excess amount as compensation and wages to the employee.
  - If a taxpayer owns or leases parking facilities where employees park:
    - Nondeductible portion of the cost of providing parking can be calculated using any reasonable method.
    - The notice provides a four-step methodology that is deemed to be a

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**Estate of McKelvey v. Commissioner,  
148 T.C. No. 13 (4/19/17)  
Outline: item A.1, page 5**

- The decedent was the founder and CEO of Monster Worldwide, Inc. (known for the website monster.com).
- The decedent entered into variable prepaid forward contracts with two investment banks.
  - In exchange for up-front cash payments, the contracts required decedent to deliver on future settlement dates a number of Monster shares determined by a formula.
  - These contracts qualified for open-transaction reporting.
- The contracts were later modified to extend the settlement dates.
- Issue: did the modification result in either: (1) a taxable exchange of the original VPFCs for extended VPFCs, or (2) constructive sale of the underlying Monster shares under § 1259?
- Held: No. A taxable exchange requires the transfer of “property,” which these contracts were not.

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**Estate of McKelvey v. Commissioner,  
906 F.3d 26 (2d Cir. 9/26/18)  
Outline: item A.1.a, page 6**

- Reverses and remands to the Tax Court
- The extension of the original contracts could give rise to short-term capital gain as a “termination” under § 1234A.
  - The decedent was the founder and CEO of Monster Worldwide, Inc. (known for the website monster.com).
- Using probability analysis, held that a constructive sale of the underlying Monster shares occurred under § 1259?
  - Remands for determination of amount of long-term capital gain

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**Machacek v. Commissioner,**  
**906 F.3d 429 (6<sup>th</sup> Cir. 10/12/18)**  
***Outline: item C.1, page 7***

- Held: the economic benefit to an S corporation shareholder/employee of a compensatory split-dollar life insurance arrangement:
  - Is not includible in the income of the shareholder/employee, but instead
  - Is treated as a distribution of property to the shareholder

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**Summa Holdings, Inc. v. Commissioner,**  
**848 F.3d 779 (6<sup>th</sup> Cir. 2/16/17)**  
***Outline: item H.1, page 8***

- Members of the Benenson family owned C corporation stock.
  - Two family members established Roth IRAs, which (through a holding company) held the shares of a domestic international sales corporation (DISC).
  - The C corporation paid \$5.2 million in deductible commissions to the DISC, which excluded them from income. The DISC paid dividends to the Roth IRAs, triggering UBIT.
  - IRS asserted that the structure impermissibly avoided the contribution limits for Roth IRAs, and that the substance-over-form doctrine required recharacterization of the corporation's commission payments as nondeductible dividends.
- Held: IRS cannot use the substance-over-form doctrine to recharacterize the C corporation's commission payments.

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**Mazzei v. Commissioner,  
150 T.C. No. 7 (3/5/18)  
Outline: item H.1.b, page 9**

- Members of the Mazzei family owned S corporation stock.
  - Two family members established Roth IRAs, which bought shares in a newly-formed foreign sales corporation (FSC) for \$500. [FSCs since repealed.]
  - The S corporation paid over \$500k in deductible commissions to the FSC during years 1998 to 2002. Roth IRAs grew and paid no tax on dividends from FSC.
  - IRS asserted that the structure impermissibly avoided the contribution limits for Roth IRAs.
- Held: Roth IRAs not true owners of FSC stock, so IRS position sustained.
- Dissent: Should have followed 6<sup>th</sup> Circuit in *Summa Holdings*.

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**Benenson v. Commissioner,  
887 F.3d 511 (1st Cir. 4/6/18)  
910 F.3d 690 (2d Cir. 12/14/18)  
Outline: item H.1.c-d, pages 10-11**

- Shareholders in the *Summa Holdings* case appealed the Tax Court's decision to the First and Second Circuits.
  - The Sixth Circuit ruled on the tax consequences to the C corporation that operated the family business.
  - These shareholders resided in the First and Second Circuits.
- The First and Second Circuits followed the Sixth Circuit in rejecting application of the substance over form doctrine.
- Held: the shareholders are not treated as receiving a deemed distribution and as making an excess Roth IRA contribution.

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## Other Recent Developments

- **Partnerships**
  - Issuance of proposed regulations implementing legislative reversal of Tax Court's 2017 *Grecian Magnesite Mining* decision, which held that a foreign partner was not subject to U.S. tax on the sale of a U.S. partnership interest [p. 12, D.1., p. 13, D.1.a, and p. D.1.b., p. 14]
- **Tax Shelters**
  - *Tricarichi v. Commissioner* (9<sup>th</sup> Cir. 11/13/18) [p.15, A.1.b1]
- **Exempt Organizations**
  - Notice 2019-9 (12/31/18) [p.17, A.1.c]
  - Notice 2018-99 (12/10/18) [p.18, A.2.b]

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## Rev. Proc. 2018-57 2018-49 I.R.B. \_\_\_\_ (11/15/18) *Outline: item D.1, page 4*

	Before TCJA	2018	2019
Single	\$6,500	\$12,000	\$12,200
Married filing separately	\$6,500	\$12,000	\$12,200
Head of household	\$9,550	\$18,000	\$18,350
Married filing jointly	\$13,000	\$24,000	\$24,400

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**YA Global Investments v. Commissioner,  
151 T.C. No. 2 (8/8/18)  
*Outline: item F.1, page 4***

- Liability for withholding taxes under §§ 1446 and 1461 is a partnership item and therefore property before the Tax Court in a partnership-level proceeding

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**Slone v. Commissioner,  
896 F.3d 1083 (9th Cir. 7/24/18)  
*Outline: item A.1.a, page 5***

- In the Ninth Circuit's view, a midco the transaction constituted a constructive liquidation (not a stock sale) resulting in transferee liability being imposed upon the taxpayers.
- The court reversed and remanded for entry of judgment in favor of the IRS.

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**Notice 2018-67**  
**2018-36 I.R.B. 409 (8/21/18)**  
***Outline: item A.1.a, page 6***

- Provides guidance on new § 512(a)(6), which effectively requires that every exempt organization segregate its unrelated trade or business income and losses for purposes of determining its annual UBTI.

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**T.D. 9842**  
**83 Fed. Reg. 55632 (11/7/18)**  
***Outline: item A.1.a, page 8***

- Provides guidance on the 2017 Tax Cuts and Jobs Act amendment of Code § 6695(g) to extend the preparer due diligence requirements to returns or claims for refund that claim eligibility for head-of-household filing status effective for taxable years beginning after 2017.

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**Dynamo Holdings, L.P. v. Commissioner,  
150 T.C. No. 10 (5/7/18).  
*Outline: item A.2, page 9***

- The IRS does not bear the burden of proof with respect to penalties in a partnership-level proceeding.

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**Williams v. Commissioner,  
151 T.C. No. 1 (7/3/18)  
*Outline: item A.3, page 10***

- The Tax Court does not need the written approval of a supervisor before imposing penalties for delay or frivolous arguments under § 6673(a)(1).

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**REG-132434-17,  
83. Fed. Reg. 13206 (3/28/18)  
*Outline: item B.1, page 10***

- Treasury and the IRS have issued a notice of proposed rulemaking that would significantly narrow final regulations issued in 2016 that permit service providers with whom the IRS contracts to receive books and records provided in response to a summons and participate in a summons interview.

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**Toso v. Commissioner,  
151 T.C. No. 4 (9/4/18)  
*Outline: item E.1, page 11***

- Gains from the sale of PFIC stock allocated to years other than the year of disposition are not counted as gross income for purposes of the six-year limitations provision of § 6501(e)(1)(A)(i).

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**United States v. Hartman,  
896 F.3d 759 (6th Cir. 7/25/18)  
Outline: item A.1.a, page 13**

- Taxpayer held liable under section 6672 for unpaid withholding taxes because he did not have a reasonable basis to believe the company was meeting its payroll tax obligations.

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