# Recent Developments in Federal Income Taxation

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## Mainstay Business Solutions v. Commissioner
## 156 T.C. 98 (3/4/21)
## Outline: item A.1, page 3

- The taxpayer, Mainstay, filed Form 843, Claim for Refund and Request for Abatement, for numerous quarterly tax periods ending in 2009, 2010, and 2011.
- Mainstay then petitioned the court pursuant to § 6404(h) to review the IRS's failure to abate interest.
- After filing its petition in the Tax Court, Mainstay moved to withdraw the petition and dismiss the action.
- Issue: can petitions seeking review of the IRS's failure to abate interest be withdrawn?
- Held: Yes.
  - In deficiency cases, under § 7459(d), the Tax Court's decision to dismiss a proceeding is a binding decision that the deficiency is as IRS determined.
    - Therefore, in deficiency cases, taxpayers may not withdraw a petition in order to avoid a decision by the Tax Court.
  - In non-deficiency cases such as this, because there is no applicable Tax Court Rule, the court applies the Federal Rules of Civil Procedure, which permit voluntary dismissal in specified circumstances, and there is no prejudice here to the IRS.

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## Stein v. Commissioner
## 156 T.C. 167 (6/17/21)
## Outline: item A.2, page 3

- The taxpayers, the Steins, filed with the IRS an application for an award of administrative costs.
- They then petitioned the court pursuant to § 7430(f)(2) to review the IRS's denial of their application.
- After filing their petition in the Tax Court, the Steins moved to withdraw the petition and dismiss the action.
- Issue: can petitions seeking review of the IRS's denial of administrative costs be withdrawn?
- Held: Yes.
  - In deficiency cases, under § 7459(d), the Tax Court's decision to dismiss a proceeding is a binding decision that the deficiency is as IRS determined.
    - Therefore, in deficiency cases, taxpayers may not withdraw a petition in order to avoid a decision by the Tax Court.
  - In non-deficiency cases such as this, because there is no applicable Tax Court Rule, the court applies the Federal Rules of Civil Procedure, which permit voluntary dismissal in specified circumstances, and there is no prejudice here to the IRS.

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## Ruhaak v. Commissioner
## 157 T.C. No. 9 (11/16/21).
## Outline: item F.1, page 4

- The IRS issued a final notice of intent to levy for 2013 and 2014.
- The taxpayer filed Form 12153, the form used to request a collection due process (CDP) hearing before an IRS Appeals Officer.
  - The taxpayer submitted Form 12153 within the 30-day period required by § 6330(a)(2), (a)(3), and (b)(1) to request a CDP hearing.
  - On Form 12153, the taxpayer checked a box indicating that he would like an equivalent hearing if his request did not meet the requirements for a timely CDP hearing.
- <u>Issue</u>: had the taxpayer requested an equivalent hearing rather than a CDP hearing?
- <u>Held</u>: no, the taxpayer requested a CDP hearing.
  - Only those taxpayers who fail to timely request a CDP hearing are eligible to request an equivalent hearing.
  - This was the third CDP case the taxpayer had filed in the Tax Court. Most recently, the court had imposed penalties under § 6673 (up to $25,000) for asserting a frivolous position but declined to do so in this case.



## Coggin v. Commissioner
## 157 T.C. No. 12 (12/8/21)
## Outline: item G.1, page 5

- Following her husband's death, the taxpayer learned for the first time of joint returns he had filed late for 2001-2009 and the tax liabilities arising from them.
  - She filed returns for all years in question with the filing status of married filing separately seeking refunds for 2001 through 2007.
- The taxpayer later filed a refund action in federal district court.
  - The government counterclaimed to reduce her tax liabilities to judgment.
  - The federal district court ordered her refund claims dismissed and proceeded on the counterclaims but did not enter a final judgment.
- The taxpayer filed Form 8857 seeking innocent spouse relief for 2001-2009.
  - She later filed a petition in the Tax Court seeking innocent spouse relief.
- <u>Issue</u>: did the Tax Court have jurisdiction to hear her request for innocent spouse relief?
- <u>Held</u>:
  - No as to 2001 through 2007 because § 6015(e)(3) provides the Tax Court loses jurisdiction to extent the district court acquired jurisdiction over refund claims.
  - Yes as to 2008 and 2009.

## FBAR Penalties
## Outline: item H.1, page 6

- Under 31 U.S.C. § 5321(a)(5)(A), the Secretary of the Treasury "may impose" a penalty for FBAR violations.
  - Pursuant to administrative orders, the authority to impose FBAR penalties has been delegated by the Secretary to the IRS.
- Maximum penalties:
  - Before the American Jobs Creation Act of 2004 ("AJCA"), 31 U.S.C. § 5321(a)(5) provided that the penalty for *willful* FBAR violations was the greater of $25,000 or the balance of the unreported account up to $100,000.
  - After the AJCA of 2004, the *normal* penalty for an FBAR violation is $10,000 per offending account, but the penalty for a *willful* FBAR violation "*shall be increased to the greater of*" $100,000 or 50 percent of the balance in the offending account at the time of the violation.
- The relevant regulation, 31 C.F.R. § 1010.820(g), reflects pre-ACJA law and caps the penalty for willful FBAR violations to $100,000 per account.
- Issue: can the government impose the higher, current statutory penalty?
  - Yes. Norman v. United States, 942 F.3d 1111 (Fed. Cir. 11/8/19)
  - Yes. United States v. Horowitz, 978 F.3d 80 (4th Cir. 10/10/20).
  - Yes. United States v. Kahn, 5 F.4th 167 (2d Cir. 7/13/21).

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## McCrory v. Commissioner
## 156 T.C. 90 (3/2/21)
## Outline: item H.2, page 9

- The petitioner filed numerous Forms 211, Application for Award for Original Information, with the IRS's Whistleblower Office (WBO).
  - These forms asserted various taxpayers had underreported tax obligations.
- The WBO initially sent a letter to Ms. McCrory, which contained a preliminary award recommendation of $962.92 and requested her response.
  - Ms. McCrory did not indicate on the form whether she agreed or disagreed. Instead, she created a third option (neither agree nor disagree).
  - She returned the form and indicated she wished to review the administrative file, which the IRS declined to permit. She then filed a petition in the Tax Court.
- <u>Issue</u>: does the Tax Court have jurisdiction to review a preliminary award recommendation by the IRS WBO?
- <u>Held</u>: No.
  - Pursuant to § 7623(b)(4), the Tax Court has jurisdiction to review only a "determination" by the IRS in a whistleblower case.
  - The preliminary award recommendation is not a determination.

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## Li v. Commissioner
## 22 F.4th 1014
## Outline: item H.3, page 9

- The petitioner Form 211, Application for Award for Original Information, with the IRS's Whistleblower Office (WBO).
  - These forms asserted that a third party had underreported tax obligations.
- The WBO concluded that Ms. Li's allegations were "speculative and/or did not provide specific or credible information regarding tax underpayments or violations of internal revenue laws," and that she therefore was not eligible for an award.
- Issue: does the Tax Court have jurisdiction to review a ejection of a whistleblower claim for failure to satisfy the threshold criteria?
- Held: No.
  - Pursuant to § 7623(b)(4), the Tax Court has jurisdiction to review only a "determination" by the IRS in a whistleblower case.
  - Rejects contrary decisions in Cooper v. Commissioner, 135 T.C. 70 (2010), and Lacey v. Commissioner, 153 T.C. 146 (2019).

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## Topics

1. Overview of the current federal income tax system
2. Recent legislative changes and administrative developments that affect 2021 tax returns of individuals

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## Overview - How Did We Get Here?

- Internal Revenue Code of 1986
  - Enacted as part of the Tax Reform Act of 1986, Pub. L. No. 99-514
  - Bipartisan effort (President Reagan, Democratic House, Republican Senate)
  - Extensive hearings
  - Objectives:
    - Simplify the federal income tax
    - Broaden the tax base (what is taxed)
    - Reduce rates (only two individual rates - 15% and 28%)
- Significant recent amendments to the Internal Revenue Code of 1986
  - The Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97 (Dec. 22, 2017)
  - The Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 ("CARES Act") (Mar. 27, 2020)
  - Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (Dec. 27, 2020)
  - American Rescue Plan Act of 2021, Pub. L. No. 117-2 (Mar. 11, 2021)



## Overview - The Big Picture

- Determination of an individual's federal income tax liability:

Gross Income

("Above-the-line" deductions)

Adjusted Gross Income

(Standard deduction or itemized deductions)

Deduction for personal exemptions eliminated by TCJA of 2017 → (~~Personal exemptions~~)

Taxable Income

x Tax rate

Federal income tax liability

(Tax credits)

Payment to IRS or refund to taxpayer

## Overview - 2021 Individual Tax Rates

| | 2017 Rates | 2021 Rates |
|---|---|---|
| Individual rate brackets | 7 | 7 |
| Lowest individual rate (ordinary income) | 10% | 10% |
| Highest individual rate (ordinary income) | 39.6% | 37% |
| Rates on long-term capital gain | 0%, 15%, 20% | 0%, 15%, 20% |
| Tax on net investment income | 3.8% | 3.8% |

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## Overview - 2021 Standard Deduction

| | 2017 Standard Deduction | 2021 Standard Deduction |
|---|---|---|
| Single | $6,350 | $12,550 |
| Married filing separately | $6,350 | $12,550 |
| Head of household | $9,350 | $18,800 |
| Married filing jointly | $12,700 | $25,100 |

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## Overview - Personal Exemption Deduction

- Before TCJA of 2017: $4,050 per person (taxpayer and each dependent)
- TCJA of 2017:
  - Eliminated the personal exemption deduction for 2018-2025
  - Still need to determine who is a dependent
    - Filing status, earned income credit etc.

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## Overview - Itemized Deductions

- Taxpayers take the larger of:
  - Standard deduction, or
  - Itemized deductions (Schedule A)
- Most common itemized deductions:
  - State taxes (property taxes, income or sales taxes)
  - Home mortgage interest
  - Charitable contributions
- Less common:
  - "Miscellaneous" itemized deductions
  - Casualty losses

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## Overview -Itemized Deductions for State Taxes

- An individual's itemized deductions on Schedule A for state taxes cannot exceed $10,000.
  - Applies to aggregate of property taxes, and sales or income taxes.
  - Limit applies both to single individuals and married individuals filing jointly
  - Applies 2018 through 2025
- Example: married taxpayers filing jointly can deduct only $10,000 if they pay:
  - Property taxes of $7,000
  - General state sales tax of $3,000
  - State sales tax on new car of $2,000

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## Overview - Itemized Deductions Miscellaneous Itemized Deductions

- For taxable years beginning after 2017 and before 2026, miscellaneous itemized deductions are not deductible.
- Includes:
  - Investment-related expenses
  - Unreimbursed employee business expenses
    - There is no home office deduction for employees
  - Tax preparation fees

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## Overview - Child Tax Credit

- TCJA of 2017:
  - Increased from $1,000 to $2,000 per child
  - Refundable portion of credit increased from $1,000 to $1,400 per child
- Phase-out of the credit begins at AGI of:
  - MFJ: $400,000 (increased from $110,000)
  - All others: $200,000 (increased from $75,000 for single filers)
- New $500 nonrefundable credit for dependents other than a qualifying child.
- All provisions apply for tax years beginning after 2017 and before 2026.

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## Overview – Effects of TCJA of 2017 for Individuals

- Lower tax rates
- Fewer available deductions and larger standard deduction means more likely to take standard deduction rather than itemize deductions
- No personal exemption deduction
- More people likely to benefit from child tax credit

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## Example

- Married couple filing jointly
- Two small children
- Both parents work and earn a total of $140,000
- Itemized deductions of $15,000 (mortgage interest, property taxes, charitable contributions)

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## Overview - Example

| | 2017 | 2021 |
|---|---|---|
| Gross Income | $140,000 | $140,000 |
| Standard Deduction | | ($25,100) |
| Itemized Deductions | ($15,000) | |
| Personal Exemptions | ($16,200) | 0 |
| Taxable Income | $108,800 | $114,900 |
| Tax | $18,678 | $16,775 |
| Child Tax Credit | 0 | ($4,000) |
| Tax Due to IRS | $18,678 | $12,775 |

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## Recent Legislative Changes Affecting 2021 Returns

- Stimulus payments
  - Also known as "economic impact payments"
  - The third stimulus payment:
    - Was $1,400 per taxpayer and per dependent
    - Was issued in March/April 2021
  - On 2021 tax returns:
    - Individuals should determine how much (if any) they received for the third stimulus payment
    - If those filing did not receive all of the stimulus payment to which they are entitled, they can claim the amount not received as a credit.
      - This credit is the "Recovery Rebate Credit"
  - Example: married couple with two small children eligible to receive $5,600, but received only $4,200
    - They will claim a recovery rebate credit of $1,400 on their 2021 return

Not available to those with AGI of :
- $160k or more (MFJ)
- $80k or more (single)

Individuals do <u>not</u> have to repay if they received too much stimulus money

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## Recent Legislative Changes Affecting 2021 Returns

- Child Tax Credit (2021 American Rescue Plan – Mar. 2021)
  - For taxable years beginning in 2021:
    - Increases the child tax credit amount to $3,600 in the case of a qualifying child younger than 6 at the end of 2021, and to $3,000 in the case of other qualifying children.
    - Enlarges the definition of a qualifying child to include children who have not attained the age of 18 by the end of 2021 (rather than 17, as under the usual child tax credit rules).
    - Reduces the phase-out thresholds for the increased ($3,600/$3,000) CTC and preserves the existing $2,000 CTC for those with higher incomes.
    - Provides for advance, monthly payment of 50 percent of a taxpayer's expected 2021 CTC with reconciliation on 2021 returns.
      - Individuals should receive IRS Letter 6419 indicating how much they received in advance
      - Each spouse will receive a letter with one-half of the total.

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## Recent Legislative Changes Affecting 2021 Returns

- Child Tax Credit (2021 American Rescue Plan – Mar. 2021)
  - Potential issues for 2021:
    - If individuals received too much in advance child tax credit payments, they must repay the excess
      - An exception exists for those with lower incomes
    - Divorced parents:
      - Often trade who claims the child each year
      - Example:
        - Husband claimed the child in 2020 and received $1,500 in advance child tax credit payments
        - Wife claims the child in 2021
        - Wife is entitled to claim the child tax credit for 2021, and husband is not.
        - Husband will have to repay the $1,500 in advance child tax credit payments

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## Recent Legislative Changes Affecting 2021 Returns

- Charitable contributions
  - Historically have been an itemized deduction
    - Those taking the standard deduction did not benefit from the deduction for charitable contributions
  - For 2021
    - Those taking the standard deduction can also deduct up to $300 for contributions of money to public charities
    - A married couple filing jointly can deduct up to $600

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## Notice 2021-61
## 2021-47 I.R.B. 738 (11/4/21)

- Sets forth inflation-adjusted figures for benefits and contributions under qualified retirement plans for 2022.
- Among other figures:
  - Elective deferrals to 401(k) plans: increased to $20,500 (from $19,500).
    - Catch-up provision for employees age 50 and older of $6,500 (unchanged).
  - IRA contributions: $6,000 (unchanged)
- Note: can make contributions to an IRA (traditional or Roth) for 2021 until the filing deadline for 2021 returns

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## American Rescue Plan 2021 (Mar. 2021)
## Cancellation of Student Loans

- Section 9675 of the American Rescue Plan of 2021 amends Code § 108(f)(5) to provide that the cancellation of student loans is excluded from gross income.
- The definition of qualifying loans is broad enough to cover the vast majority of postsecondary educational loans.
- The exclusion does not apply if the lender is an educational organization or a private lender and the cancellation is on account of services performed for the lender.
- New § 108(f)(5) applies to discharges of loans that occur after December 31, 2020 and before January 1, 2026.
- Notice 2022-1 (12/21/21): instructs lenders that cancel student loans described in § 108(f)(5) not to issue Form 1099-C through 2025.

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## Filing Deadline for 2021 Returns

- The filing deadline for 2021 individual tax returns is April 18, 2022.

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