

# **Recent Developments in Federal Income Taxation**

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To obtain today's outline:  
<https://tinyurl.com/outline-05-2022>

**Rev. Proc. 2022-17**  
**2022-13 I.R.B. 930 (3/16/22)**  
***Outline: item E.1, page 2***

**Section 280F depreciation limits for passenger automobiles**

2022 Passenger Automobiles with § 168(k) first year recovery:

1 <sup>st</sup> Tax Year	\$19,200
2 <sup>nd</sup> Tax Year	\$18,000
3rd Tax Year	\$10,800
Each Succeeding Year	\$6,460

2022 Passenger Automobiles (no § 168(k) first year recovery):

1st Tax Year	\$11,200
2nd Tax Year	\$18,000
3rd Tax Year	\$10,800
Each Succeeding Year	\$6,460

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**Milkovich v. United States,**  
**28 F.4<sup>th</sup> 1 (9th Cir. 3/2/22)**  
***Outline: item D.1, page 3***

- Taxpayers received a discharge in a chapter 7 bankruptcy proceeding.
- They sold their home in a short sale. The proceeds went to the mortgage lender, which applied \$115,000 towards accrued but unpaid interest.
- Held: the taxpayers are entitled to deduct the mortgage interest.
  - *Estate of Franklin* (lack of economic substance) does not preclude a deduction.
  - Section 265 does not preclude a deduction.
  - Dissenting opinion by Judge Stearns.

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**Aspro, Inc. v. Commissioner**  
**\_\_ F.4th \_\_ (8th Cir. 4/26/22).**  
***Outline: item B.1.a, page 5***

- Aspro was an Iowa C corporation for federal tax purposes engaged in the asphalt paving business.
- The company had three shareholders: Jackson Enterprises, Corp. (40%) (Jackson), Mannatt's Enterprises, Inc. (40%), and Mr. Dakovich, Aspro's president (20%).
- Each year relevant to this dispute, the shareholders received, among other forms of payment, substantial management fees that were deducted by Aspro.
- Issues:
  1. Whether the payments of "management fees" to its shareholders were in fact distributions of earnings, or
  2. Whether such fees were reasonable compensation for services rendered by Mr. Dakovich?
- Held: Aspro failed to show the management fees were paid wholly for services and agreed with the IRS that Aspro could not deduct management fees. Further, that Mr. Dakovich's compensation was unreasonably high. As such, the payments were considered to be constructive dividends.

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**Laidlaw's Harley Davidson Sales, Inc. v. Comm'r**  
**29 F.4th 1066 (9th Cir. 3/25/22)**  
***Outline Item A.1.a, page 7***

- An IRS revenue agent sent a 30-day letter informing the taxpayer that the IRS would assess a penalty under § 6707A for failure to report a listed transaction if the taxpayer did not respond.
- The revenue agent's supervisor did not approve the penalty until after the 30-day letter was sent and the taxpayer had filed a protest with IRS appeals.
- Issue: Whether the IRS complied with requirement of § 6751(b)(1) that the "initial determination" of the assessment of a penalty be "personally approved (in writing) by the immediate supervisor of the individual making such determination."
- Held: Yes. Contrary decision of U.S. Tax Court (154 T.C. 68 (1/16/20)) reversed.
  - When the IRS need not issue a notice of deficiency before assessing a penalty, the language of § 6751(b) contains no requirement that supervisory approval be obtained before the IRS formally communicates the penalty to the taxpayer.
  - Section 6751(b)(1) requires written supervisory approval before the assessment of the penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment.
    - The IRS complied with this requirement.

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## **Boechler, P.C. v. Commissioner**

**\_\_ U.S. \_\_ (4/21/22)**

***Outline: item F.1.a, page 9***

- Following a collection due process (CDP) hearing, the IRS issued a notice of determination upholding proposed collection action.
- Under § 6330(d)(1), the taxpayer had 30 days to contest the determination by filing a petition with the U.S. Tax Court.
- The 30-day period expired on August 28, 2017.
- Taxpayer:
  - Mailed his petition to the Tax Court on August 29, 2017 (one-day late).
  - Argued that the 30-day period should be equitably tolled.
- Issue: is the 30-day period for filing a Tax Court petition to contest an IRS notice of determination jurisdictional and therefore not subject to equitable tolling?
- Held: No. This 30-day period is not jurisdictional and is subject to equitable tolling.

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## **Vera v. Commissioner**

**157 T.C. 78 (8/23/21)**

***Outline: item G.1, page 10***

- The taxpayer filed joint returns with her then-husband for 2010 and 2013.
- She later submitted to the IRS a claim on Form 8857 seeking innocent spouse relief for 2013.
  - The IRS issued a final determination denying her request. The taxpayer missed the 90-day deadline to seek review in the Tax Court.
- She later submitted to the IRS on Form 8857 a request for innocent spouse relief for 2010, but she included with her request a number of documents related to 2013.
  - The IRS issued a final determination that referred to both 2010 and 2013.
- Issue: did the Tax Court have jurisdiction to review the IRS's determination denying the taxpayer's request for innocent spouse relief for 2013?
- Held:
  - Yes. Section 6015(e) provides that the Tax Court has jurisdiction to review a "final determination" as to innocent spouse relief. Here, the IRS issued a second final determination as to 2013.
  - The IRS could have avoided giving the taxpayer a second bite at the apple by issuing something other than a final determination as to 2013.

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**Ruesch v. Commissioner,  
129 A.F.T.R.2d 2022-509 (2d Cir. 1/27/22)  
*Outline: item H.1.a, page 12***

- Held: the Tax Court has jurisdiction under § 7435 to review the IRS's certification of a tax debt as a "seriously delinquent tax debt" that can result in the taxpayer's passport being revoked or suspended, but because the IRS reversed its certification, the case is moot.
- Also held: the Tax Court improperly dismissed taxpayer's challenge to her underlying tax liabilities for lack of subject matter jurisdiction.
  - Instead, the Tax Court should have dismissed taxpayer's challenge to her underlying tax liabilities as moot. Determinations of mootness precede determinations of subject matter jurisdiction.

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**Brown v. United States,  
22 F.4<sup>th</sup> 1008 (Fed. Cir. 1/5/22)  
*Outline: item H.2, page 12***

- Held: taxpayers did not duly file their amended returns claiming refunds because the taxpayers did not sign them. Their attorney signed them and did not submit a power of attorney.

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