Recent Developments in Federal Income Taxation

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Mylan, Inc. v. Commissioner, ___ F.4th ___ (3d Cir. 7/19/22)
Outline: item B.1.a, page 3

- The taxpayer was a manufacturer of brand-name and generic drugs.
- The taxpayer sought FDA approval of generic drugs by submitting Abbreviated New Drug Applications (ANDAs).
- As required by the ANDA process, the taxpayer:
  - Certified to the FDA that existing patents on the drugs were invalid or would not be infringed by the sale or use of the generic version of the drug, and
  - Sent notice letters to the holders of the patents informing them of the certification.
- Issue: were legal fees incurred to defend patent infringement suits brought in response to the notice letters capital expenditures?
- Held: No. The legal fees were not costs incurred as part of the FDA approval process and therefore were not costs incurred to facilitate the acquisition of an intangible asset (an FDA-approved ANDA).

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Proposed Regulations on RMDS (2/24/22) No More Stretch RMDs from Non-Spousal Inherited Retirement Accounts
Outline: item B.1, page 5

- A provision of the SECURE Act, Division O, Title IV, § 401 of the 2020 Further Consolidated Appropriations Act, amended Code § 401(a)(9)(E)
- Modifies the required minimum distribution (RMD) rules for inherited retirement accounts (defined contribution plans and IRAs).
- Requires all funds to be distributed by the end of the 10th calendar year following the year of death.
  - There appears to be no requirement to withdraw any minimum amount before that date.
- Current rules, which permit taking RMDs over many years, continue to apply to certain designated beneficiaries, including surviving spouses, children of the participant who have not reached the age of majority, and those not more than 10 years younger than the deceased individual.
- Applies to distributions with respect to those who die after 12/31/19.

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Proposed Regulations on RMDs (2/24/22)
87 F.R. 10504
Outline: item B.1, page 6

- These proposed regulations update existing regulations to address the changes made by the SECURE Act as well as several other statutory changes.
- The proposed regulations adopt an interpretation of the 10-year rule that appears to differ from the plain language of the statute and from the interpretation of the legislation by most advisors.
- "For example, if an employee died after the required beginning date with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have required minimum distributions calculated using the beneficiary's life expectancy as under the existing regulations for up to nine calendar years after the employee's death. In the tenth year following the calendar year of the employee's death, a full distribution of the employee's remaining interest would be required."

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Notice 2022-53
2022-45 I.R.B. 437 (10/7/2022)
Outline: item B.1.a, page 6

- Provides relief to those required to take RMDs under the interpretation of the 10-year rule in the February 2022 proposed regulations.
- Generally, relief applies to beneficiaries who:
  - Are not eligible designated beneficiaries (i.e., are subject to the 10-year rule)
  - Inherited the account from an employee/IRA owner who died:
    - in 2020 or 2021, and
    - after the required beginning date for distributions, and
  - Were required to take RMDs in 2021 or 2022 under the interpretation of the 10-year rule in the proposed regulations.
- The 50% (or 25%) excise tax of § 4974 for failure to take RMDs will not apply. Those who paid the excise tax can seek a refund.

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Notice 2023-54
2023-31 I.R.B. 382 (7/14/23)
Outline: item B.1.b, page 7

- Provides additional relief to those required to take RMDs under the interpretation of the 10-year rule in the February 2022 proposed regulations.
- Generally, relief applies to beneficiaries who:
  - Are not eligible designated beneficiaries (i.e., are subject to the 10-year rule)
  - Inherited the account from an employee/IRA owner who died:
    - in 2020, 2021, <u>or 2022</u> and
    - after the required beginning date for distributions, and
  - Were required to take RMDs in 2021, 2022, <u>or 2023</u> under the interpretation of the 10-year rule in the proposed regulations.
- The 50% (or 25%) excise tax of § 4974 for failure to take RMDs will not apply. Those who paid the excise tax can seek a refund.

Age at Which RMDs Must Begin
Outline: item B.1.b, page 7

- SECURE 2.0 Act of 2022:
  - <u>Increases the age at which RMDs must begin</u>. In 2022, individuals who attained age 72 were required to begin taking RMDs. SECURE 2.0 increases the RMD age to age 73 in 2023 and to age 75 in 2033.
- <u>Notice 2023-54</u>:
  - Automated payment systems must be updated to reflect the change in the age at which RMDs must begin and this may take time.
  - Therefore, those born in 1951 (who attain age 72 in 2023) might receive distributions in 2023 that are mischaracterized as RMDs (and therefore normally ineligible for rollover).
  - Individuals who receive such distributions from January 1 through July 31, 2023, <u>have until September 30, 2023</u>, to roll such mischaracterized distributions into an eligible retirement plan.
    - Applies to both employer-sponsored plans and IRAs.
    - The “one rollover every 12 months” rule for IRAs is not a bar.

Skolnick v. Commissioner,
62 F.4th 95 (3rd Cir. 3/8/23)
Outline: item C.1, page 8

- Held: the taxpayer's horse-breeding activity was not an activity engaged in for profit. Therefore, § 183 disallowed the taxpayer's loss deductions

Gregory v. Commissioner,
69 F.4th 762 (11th Cir. 5/30/23)
Outline: item C.2, page 9

- Held: deductions allowed by § 183 (up to the amount fo income from activities not engaged in for profit) are below-the-line deductions and are miscellaneous itemized deductions subject to the 2% floor of (or denial by) § 67.

Boechler, P.C. v. Commissioner
142 S. Ct. 143 (4/21/22)
[Not in outline]

- 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.
- <u>Issue</u>: is the 30-day period specified in 6330(d)(1) for filing a Tax Court petition to contest an IRS notice of determination jurisdictional and therefore <u>not</u> subject to equitable tolling?
- <u>Held</u>: No. This 30-day period is <u>not</u> jurisdictional and *is* subject to equitable tolling.

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Hallmark Research Collective v. Commissioner,
159 T.C. No. 6 (11/29/22)
Outline: item E.1, page 11

- A unanimous, reviewed decision of the U.S. Tax Court.
- <u>Issue</u>: is the 90-day period specified in § 6213(a) for filing a Tax Court petition in response to a notice of deficiency jurisdictional, and is it subject to equitable tolling?
- <u>Held</u>: Yes, the 90-day period <u>is</u> jurisdictional. The period is <u>not</u> subject to equitable tolling.
  - U.S. Supreme Court's decision in *Boechler, P.C. v. Commissioner*, __ U.S. __ (4/21/22), does not dictate a contrary result.

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Culp v. Commissioner,
___ F.4th ___ (3d Cir. 7/19/23)
Outline: item E.1.b, page 11

- Issue: is the 90-day period specified in § 6213(a) for filing a Tax Court petition in response to a notice of deficiency jurisdictional, and is it subject to equitable tolling?
- Held: No, the 90-day period is not jurisdictional. The period is subject to equitable tolling.
  - Section 6213(a): "Within 90 days … after the notice of deficiency authorized in section 6212 is mailed …, the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. … The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition."

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Crim v. Commissioner,
66 F.4th 999 (D.C. Cir. 5/2/2023).
Outline: item E.2, page 12

- Held: the three-year limitation period on assessment provided by § 6501 does not apply to assessment of penalties under § 6700 for promoting abusive tax shelters.
  - Rationale: the three-year limitations period of § 6501 runs from the time a return is filed. The penalties of § 6700 are not imposed based on filing a tax return, but rather based on the defendant's conduct.
  - "Section 6700 penalties are assessed against individuals who represent, with reason to know such representation is false, that there will be a tax benefit for participating in or purchasing an interest in an arrangement the individual assisted in organizing. … The conduct penalizable "do[es] not pertain to any particular tax return or tax year."

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Pond v. United States,
69 F.4th 155 (4th Cir. 5/26/23).
Outline: item E.3, page 13

- Held: regulations issued under § 7502 displace the common-law mailbox rule.
  - The taxpayer mailed a claim for refund (an amended return) for 2013 by regular, first-class mail.
  - Because he had not sent it by registered or certified mail, he was not entitled to the *presumption* of § 7502(c) that the document was delivered.
  - Nevertheless, the taxpayer had plausibly alleged that his claim was physically delivered to the IRS and had supported this claim with three specific factual allegations.
  - Therefore, it was inappropriate for the U.S. District Court to grant the government's motion to dismiss.

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Bittner v. United States,
142 S. Ct. 2833 (6/21/23)
Outline: item H.1, page 15

- A 5-4 decision.
- Issue: are penalties for non-willful failure to file an FBAR determined $10,000 per offending account or just $10,000?
- Held: Just $10,000. The penalty is not determined per account.

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