Recent Developments in Federal Income Taxation

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State Bar of Texas Tax Section
First Wednesday Tax Update
May 1, 2024

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CLE Number for Today's Webcast:

174236284

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Growmark, Inc. v. Commissioner
160 T.C. No. 11 (5/16/23)
Outline: item F.1, page 2

- Taxpayer, a Delaware corporation, is an agricultural cooperative that sells gasoline and diesel fuel, renewable fuels, alcohol fuel mixtures, and biodiesel mixtures.
- In connection with these activities, taxpayer paid a fuel excise tax under § 4081.
- The taxpayer was eligible for certain credits against its fuel excise tax liability.
- Issue: in determining its cost of goods sold (COGS), could the taxpayer take into account its gross fuel excise tax liability, or was it limited to taking into account its net fuel excise tax liability (gross fuel excise tax liability less available credits)?
- Held: the taxpayer's COGS includes its net fuel excise tax liability, not its gross fuel excise tax liability.

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Kim v. Commissioner
T.C. Memo. 2023-91 (7/20/23)
Outline: item A.1, page 3

- For 2013-2017, IRS received information reports from Coinbase, a virtual currency exchange, reporting taxpayer's transactions in virtual currencies.
  - These included Bitcoin, Litecoin, and Etherium.
- The taxpayer timely filed federal income tax returns for 2013-2016 but reported no gains or losses from the virtual currency transactions.
  - On his timely-filed 2017 income tax return, the taxpayer reported on Schedule D a net gain from virtual currency transactions of $42,069.
- Following an audit of 2013-2017, the IRS determined that the taxpayer had short-term capital gain of $75,400 for 2013, short-term capital gain of just over $4 million for 2017, and long-term capital gain of $74,565 for 2017.
- Taxpayer argued that his virtual currency assets had been wiped out with large losses in 2020 due to actions or inactions of the federal government.
- Issue: Is the government estopped from collecting tax on his 2013-2017 gains under the "clean hands" doctrine?
- Held: No. The clean hand principle is inapplicable because the government is not seeking equitable relief. The annual accounting principle makes taxpayer's 2020 losses irrelevant.

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Notice 2024-19
2024-5 I.R.B. 627 (1/11/24)
Outline: item G.1, page 4

- This notice provides penalty relief under § 6722 (failure to furnish correct payee statements).
- The relief applies to partnerships that missed the January 31, 2024, deadline for providing a copy of the recently revised IRS Form 8308 (Report of a Sale or Exchange of Certain Partnership Interests) to the transferor and transferee of a "751(a) exchange" occurring during calendar year 2023.
- Section 751 exchange: "a sale or exchange of an interest in the partnership (or portion thereof) in which any money or other property received by a transferor from a transferee in exchange for all or part of the transferor's interest in the partnership is attributable to § 751 property."
  - Section 751 property: unrealized receivables and inventory.
- Form 8308 was revised in October of 2023.
  - New Part IV of Form 8308 requires a partnership to report, among other items, the partnership's and the transferor partner's share of § 751 gain and loss, collectibles gain under § 1(h)(5), and unrecaptured § 1250 gain under § 1(h)(6).

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Conservation Easements
Outline: item B.1, page 5

- <u>New legislation</u>:
  - Consolidated Appropriations Act, 2023, Pub. L. No. 117-328
    - Signed by the President on December 29, 2022.
  - Section 605 of the legislation provides rules regarding conservation easements, including:
    - Disallows charitable deductions for qualified conservation contributions by partnerships (and S corporations and other pass-through entities) if the claimed deduction exceeds 2.5 times the sum of a partner's "relevant basis" in the partnership making the contribution.
      - Relevant basis is the partner's "modified basis" allocable to the real property in question. Modified basis is essentially outside basis determined without regard to partnership liabilities.
  - Applies to <u>contributions</u> <u>made</u> after December 29, 2022.

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Conservation Easements
Outline: item B.1, page 5

- New legislation (cont'd):
  - Exceptions to disallowance of charitable deductions for qualified conservation contributions by partnerships (and S corporations and other pass-through entities):
    1. Partnerships making conservation easement contributions after a three-year holding period applicable at both the partnership- and partner-level
    2. "Family partnerships" (as defined) making conservation easement contributions; and
    3. Partnerships making conservation easement contributions relating to historic structures.
       - Requires certain reporting of conservation easement contributions made by partnerships.

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Conservation Easements
Outline: item B.1, page 5

- New legislation (cont'd):
  - Consolidated Appropriations Act, 2023, Pub. L. No. 117-328
    - Signed by the President on December 29, 2022.
  - An uncodified provision, § 605(d), directs Treasury to publish "safe harbor deed language for extinguishment clauses and boundary line adjustments" relating to qualified conservation contributions.
  - Purpose:
    - To allow donors of conservation easements granted with language that does not conform to Treasury Regulations to make corrections
  - Example:
    - Land is worth $100,000. Landowner donates conservation easement to local land trust. The easement is valued at $20,000 (20% of land value).
    - Five years later, when the land has risen in value to $200,000, the state takes the land by eminent domain and pays $200,000 for the taking.
    - How much does the land trust receive? $20,000 or $40,000?

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Conservation Easements
Outline: item B.1.a, page 6

- Notice 2023-30, 2023-17 I.R.B. 766 (4/10/23):
  - Provides safe harbor deed language regarding boundary line adjustments and extinguishment of conservation easements
  - Sets forth process and timeline for amending existing, non-conforming deeds:
    - Corrective, amended deeds must:
      - Be properly executed by the donor and the donee
      - Be recorded by July 24, 2023, and
      - Relate back to the effective date of the original deed.

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Conservation Easements
Outline: item B.1.b, page 7

- Proposed regulations issued, 88 F.R. 80910 (11/20/23).
  - Provide further guidance regarding the statutory disallowance rule of § 170(h)(7), including definitions, appropriate methods to calculate the "relevant basis" of a partner or an S corporation shareholder, the three statutory exceptions, and related reporting requirements.

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Couturier v. Commissioner
T.C. Memo. 2024-6 (1/17/24)
Outline: item A.1, page 8

- Taxpayer, a corp. executive, participated in several deferred comp arrangements.
  - These included shares in an ESOP (a qualified retirement plan) and several compensatory plans, none of which was a qualified plan.
- In 2004, taxpayer accepted a $26 million buyout from his company. The company paid $12 million cash and a $14 million promissory note to his IRA.
- On his 2004 return, he characterized the $26 million as a tax-free rollover.
  - On his 2004 and his 2005-2014 returns, he left blank line 59, "Additional tax on IRAs, other qualified retirement plans, etc."
  - He also did not attach to any of his returns Form 5329, "Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts."
- IRS determined that:
  - $25.1 million was attributable to relinquishment of his rights in the non-ESOP deferred compensation plans and not eligible for a tax-free rollover, and therefore
  - $25.1 million was subject to the 6% excise tax of § 4973 on excess contributions.
- Issue: is the 6% excise tax of § 4973 a penalty subject to the supervisory approval requirement of § 6751(b)(1)?
- Held: No, the 6% excise tax is a "tax" and not a "penalty."

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Couturier v. Commissioner
162 T.C. No. 4 (2/28/24)
Outline: item E.1, page 9

- Taxpayer, a corp. executive, participated in several deferred comp arrangements.
  - These included shares in an ESOP (a qualified retirement plan) and several compensatory plans, none of which was a qualified plan.
- In 2004, taxpayer accepted a $26 million buyout from his company. The company paid $12 million cash and a $14 million promissory note to his IRA.
- On his 2004 return, he characterized the $26 million as a tax-free rollover.
  - On his 2004-2008 and 2009-2014 returns, he left blank line 59, "Additional tax on IRAs, other qualified retirement plans, etc."
  - He also did not attach to any of his returns Form 5329, "Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts."
- IRS determined that:
  - $25.1 million was attributable to relinquishment of his rights in the non-ESOP deferred compensation plans and not eligible for a tax-free rollover, and therefore
  - $25.1 million was subject to the 6% excise tax of § 4973 on excess contributions.
  - In the aggregate, taxpayer owed an excise tax of $8.5 million.
- Issue: had the limitations period on assessment of tax expired for 2004-2008 when the IRS issued the notice of deficiency for those years on June 16, 2026?

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Couturier v. Commissioner
162 T.C. No. 4 (2/28/24)
Outline: item E.1, page 9

- Held: no, the limitations period on assessment of tax had not expired.
- Section 6501(a): subject to various exceptions, any tax imposed must be assessed within three years after the return was filed.
  - Section 6501(c)(3): if taxpayer does not file a return, then the tax may be assessed at any time, i.e., there is no limitations period on assessment.
- Prior Tax Court decisions: taxpayer's filing of Form 1040 does not start the running of the limitations period for assessment of the § 4973(a) excise tax unless taxpayer files Form 5329 or provides the information elsewhere on Form 1040.
- In 2022, Congress enacted § 6501(*l*)(4), which provides that a 3-year limitations period applies if taxpayer files Form 5329, but a six-year limitations period applies if taxpayer files a return on Form 1040 but fails to attach Form 5329.
  - The amendment "shall take effect on the date of the enactment of this Act," which was December 29, 2022.
- In a reviewed opinion (7-5-2) by Judge Lauber, the Tax Court held that § 6501(*l*)(4) applies only to returns filed on or after December 29, 2022, and therefore did not bar IRS's assessment of the § 4973(a) excise tax for the taxpayer's 2004-2008 taxable years.

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Announcement 2023-11
2023-17 I.R.B. 798 (4/10/23)
Outline: item H.1, page 12

- Announces the issuance of proposed regulations identifying certain microcaptive insurance arrangements as listed transactions.
- In a series of cases, the courts have held that certain notices issued by the IRS identifying transactions as listed transactions were invalid because they were legislative rulemaking and the IRS had not complied with the notice-and-comment requirements of the Administrative Procedure Act.
  - *Mann Construction, Inc. v. United States*, 27 F.4th 1138 (6th Cir. 3/3/22) (holding invalid Notice 2007-83, which identified certain lief insurance trust arrangements as listed transactions)
  - *Green Valley Investors, LLC. v. Commissioner*, 159 T.C. No. 5 (11/9/22) (holding invalid Notice 2017-10, which identified syndicated conservation easement transactions as listed transactions)
- In *CIC Services, LLC v. IRS*, 592 F.Supp.3d 677 (E.D. Tenn 3/21/22), the court invalidated Notice 2016-66, 2016-47 I.R.B. 745, which identified certain micro-captive insurance arrangements as "listed transactions."
- Treasury and the IRS issued proposed regulations for notice and comment identifying certain micro-captive insurance arrangements as "listed transactions."

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GSS Holdings (Liberty) Inc. v. United States
81 F.4th 1378 (Fed. Cir. 9/21/23)
Outline: item E.2, page 12

- Taxpayer was a member of an LLC classified for federal tax purposes as a partnership
- The LLC was compelled for financial and regulatory reasons to dispose of certain assets, including a promissory note and cash paid to the buyer.
- The LLC realized a loss of $22.5 million, all of which was allocated to the taxpayer.
- The IRS viewed the loss as arising from the sale or exchange of a capital asset ad as a loss in a transaction with a related party that was disallowed by § 707(b)(1).
- The taxpayer viewed the loss as an ordinary loss arising from its payment of cash.
- Issue: did the Claims Court correctly hold for the IRS on the basis of the economic substance and step transaction doctrines?
- Held: No. The Claims Court conflated the economic substance and step transaction doctrines.
- Dissenting opinion by Judge Newman.

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