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INSIDE THIS ISSUE

Congress/White House/IRS Shine Spotlight On Need To Increase Participation In Retirement Plans

SFC Hearing, White House Fact Sheet

Recent actions by Congress, the White House and the IRS have focused on the need for government to promote policies that will increase access, participation and coverage in retirement savings plans. The White House announced that President Obama will introduce proposals in his upcoming Fiscal Year (FY) 2017 budget to ensure that both part-time and full-time workers have near universal access to workplace retirement savings plans. The Senate Finance Committee heard testimony from the private sector and the Joint Committee on Taxation on the growing problems of low access, low contributions, and lack of lifetime payout options that contribute to the problem of taxpayers with inadequate retirement income. And, during the same week, the IRS issued two sets of regs under Code Sec. 401(a) designed to broaden the usefulness of qualified pension plans.

- ***Take Away.*** Members of both parties generally agree on the problem and on potential solutions, such as open multiple-employer plans (open MEPs). Senate Finance Committee Chair Orrin Hatch, R-Utah, and Ranking Member Ron Wyden, D-Ore., both expressed an eagerness to develop and enact measures on a bipartisan basis.

Senate hearing

A representative of the Center for Retirement Research at Boston College testified that half of American households are at risk for not maintaining their current standard of living after retirement. Causes include longer life expectancies, low interest rates and earnings on investments, and high health costs. Furthermore, there is consensus that the private pension system, both on the defined benefit and defined contribution sides, is not working well.

Several speakers touted the work of the Senate Finance Committee's working group on savings and investment. The group's July 2015 report on causes and solutions is a step in the right direction; but the problem requires bold changes, they emphasized.

White House

In addition to measures to increase access to qualified retirement plans (such as open MEPs auto-enrollment), the White House touted the need to increase the portability of retirement savings, so that employees can more easily move retirement benefits as they change jobs and can consolidate both workplace plan benefits and private IRA accounts. The current system can be burdensome and complicates the ability of individuals to track and to manage

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IRS Issues Proposed Regs To Modify Nondiscrimination Requirements For Closed Pension Plans

NPRM REG-125761-14

The IRS has released proposed regs to provide nondiscrimination relief for certain closed pension plans and formulas. The proposed regs include other changes that are not limited to closed plans and formulas.

- ***Take Away.*** Generally, the proposed regs would be effective when finalized, but generally allows plans the option to apply provisions beginning on or after January 1, 2014. This reliance-option, however, specifically does not apply with respect to the modification of testing options defined contribution/defined benefit plans, including those that do not include a closed plan.

Background

Under Code Sec. 401(a)(4), a plan is a qualified plan only if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees. Regs generally provide that a plan may demonstrate that either the contributions or the benefits provided under the plan are nondiscriminatory in amount, regardless of whether the plan is a defined benefit (DB) or defined contribution (DC) plan. Since 2001, many employers have moved away from DB plans.

Employers may change the type of benefit formula provided under the plan (such as in the case of a conversion to a cash balance plan), or prohibit new employees from entering the plan. These DB plans, the IRS explained, are sometimes referred to as "closed plans," and the employees who continue to earn pension benefits under the closed plan are often known as a "grandfathered group of employees." Where new employees continue to earn benefits under the defined benefit plan, but are under a new formula, any formula that continues to apply to a grandfathered group of employees is sometimes referred to as a "closed formula."

In Notice 2014-5, the IRS provided temporary nondiscrimination relief for certain closed plans. A plan sponsor may test a plan that includes a closed plan (closed before December 13, 2013), on a benefits basis for plan years beginning before January 1, 2016, without complying with the minimum aggregate allocation gateway, even if that would otherwise be required. The IRS extended the relief to plan years beginning before 2017 in Notice 2015-28.

Proposed regs

The modifications in the proposed regs are intended to allow more allocations to fit within the defined benefit replacement allocation (DBRA) rules, the IRS explained. Under existing regs, a DBRA must be reasonably designed to replace the benefits that would have been provided under the closed defined benefit plan. The proposed regs, the IRS explained, allow the allocations to be reasonably designed to replace some or all of the benefits that would have been provided under the closed plan, subject to certain requirements.

The proposed regs also expand the list of permitted amendments to a closed plan that do not prevent allocations under a plan from being DBRAs. The proposed regs permit an amendment to a closed plan during the five-year period before it was closed, provided that the amendment does not increase the accrued benefit or future accruals for any employee, does not expand coverage, and does not reduce the ratio-percentage under any applicable nondiscrimination test.

The proposed regs also provide a special nondiscrimination testing rule. The rule provides relief in certain circumstances from certain nondiscrimination testing for a benefit, right, or feature provided under the closed plan, or for a rate of matching contributions provided to a grandfathered group under a defined contribution plan, the IRS explained.

References: FED ¶49,679;
TRC RETIRE: 39,208.

Retirement Savings

Continued from page 1

their retirement accounts. One proposal, for example, would encourage employers to accept rollovers from other employers' 401(k) plans, or other plans, by allaying concerns that rollovers might jeopardize the qualified status of the recipient plan.

IRS

The IRS, in the meantime, is taking more immediate action. This past week it issued proposed reliance regs for determining normal retirement age (NRA) under a governmental plan (NPRM REG-147310-12). The proposed regs would give governmental plans more flexibility to start paying benefits at different retirement ages for different groups of public employees. The IRS also issued proposed regs that would provide nondiscrimination relief for certain closed pension plans (NPRM REG-125761-14). The rules would broaden the ability of plans to allocate benefits using different methods.

REFERENCE KEY

FED references are to ***Standard Federal Tax Reporter***
USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***
TRC references are to ***Tax Research Consultant***

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IRS Describes Permissible Mid-Year Changes For Safe Harbor Plans

Notice 2016-16

The IRS has provided guidance on permissible mid-year changes to safe harbor plans. A midyear change to a safe harbor plan (or to a plan's safe harbor notice) would not violate the safe harbor rules merely because it is a mid-year change, provided that notice and election conditions are met and the change is not prohibited.

- ***Take Away.*** "This long-awaited relief for safe harbor plans is exactly what the doctor ordered – a reasonable method (using updated participant notices and opportunity to change their deferral elections) for plan sponsors to make favorable mid-year changes to safe harbor 401(k) and 403(b) plans (plus an offer of additional relief for EACAs and M & A issues)," Elizabeth Thomas Dold, principal, The Groom Law Group, Washington, D.C. told Wolters Kluwer.
- ***Comment.*** Notice 2016-16 is effective for mid-year changes made on and after January 29, 2016. Notice 2016-16 revokes Ann. 2007-59.

Background

Employers with safe harbor plans generally do not have to perform certain annual nondiscrimination tests that apply to traditional plans. Generally, plan sponsors may choose one of two safe harbor plan designs. Certain notice requirements also apply to safe harbor plans.

Notice 2016-16

Generally, a change made to a safe harbor plan or to a plan's required safe harbor notice content would not violate the safe harbor requirements merely because the change is a mid-year change, provided that if it is a mid-year change to a plan's required safe harbor notice content, the notice and election opportunity conditions in Notice 2016-16 are satisfied, and the mid-year change is not a prohibited mid-year change. Prohibited mid-year changes for purposes of Notice 2016-16 include (among others) a mid-year change to reduce the number or otherwise narrow the group of employees eligible to receive safe harbor contributions, subject to certain exceptions.

Employees, the IRS added, generally must be given a reasonable opportunity before the effective date of the mid-year change to change his or her cash or deferred election. The IRS explained that a 30-day election period would be treated as a reasonable period to make or change a cash or deferred election.

- ***Example.*** ABC Co. sponsors a traditional Code Sec. 401(k) safe harbor plan. ABC makes a mid-year plan amendment to increase future safe harbor non-elective contributions from three percent to four percent for all eligible employees. Employees otherwise required to be provided a safe harbor notice are provided both an updated notice that describes the increased contribution percentage and an additional election opportunity as required by Notice 2016-16. The IRS explained that the mid-year change would not violate the provisions of Reg. §1.401(k)-3 and Reg. §1.401(m)-3.

References: FED ¶46,249; TRC RETIRE: 3,210.

IRS Issues Proposed Reliance Regs On Normal Retirement Age For Government Plans

NPRM REG-147310-12

The IRS has issued proposed reliance regs for governmental plans to determine normal retirement age (NRA) under Code Sections 401 and 411. The regs address the requirement that a plan pay definitely determinable benefits at NRA.

- ***Take Away.*** Many qualified plan requirements do not apply to governmental plans, such as most of the vesting requirements under Code Sec. 411. Instead, pre-ERISA vesting rules apply. Under Code Sec. 411(e)(2), the application of the rules for NRA must satisfy the pre-ERISA rules. The proposed regs would provide guidance for determining whether the NRA under a governmental plan satisfies Code Sec. 401(a), by amending existing regs.

Background

Several requirements for qualified plans under Code Sec. 401(a) are based on a plan's NRA, including the requirement to provide definitely determinable benefits (generally after retirement). The IRS issued final regs in 2007 (TD 9325) on this subject, but postponed their application to governmental plans, while indicating it would modify the regs for governmental plans.

The 2007 regs generally require payment of benefits after retirement. The regs also allow benefits to start after NRA or after an employee becomes 62. However, the definition of NRA for a non-governmental plan does not apply to governmental plans. NRA must be an age that is reasonably representative of the typical retirement age for the industry in which the employee works.

Proposed regs

Under a general safe harbor in the 2007 regs, an NRA for a governmental plan of age 62 is deemed to satisfy the reasonably representative requirement. A governmental plan satisfies this safe harbor if NRA under the plan is age 62 or is the later of age 62 or another specified date, such as the fifth anniversary of plan participation.

The proposed regs provide additional safe harbors for governmental plans to satisfy the reasonably representative requirement:

- An NRA that is the later of age 60 or at least five years of service;
- An NRA that is the later of age 55 or at least 10 years of service;
- An NRA that is the participant's age where that age plus the number of years

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IRS Provides Transition Relief To 529 Plans For PATH Act Changes

Notice 2016-13

Transition relief is available to Code Sec. 529 plans that timely file Form 1099-Q, Payments from Qualified Education Programs (Under Sections 529 and 530), the IRS has announced. The transition relief reflects changes to Code Sec. 529 plans made by the *Protecting Americans from Tax Hikes Act of 2015* (PATH Act).

- ***Take Away.*** Some Code Sec. 529 plans have raised concerns about being able to reprogram their systems for the PATH Act and still satisfy their reporting requirement for the 2015 calendar year.

Background

The PATH Act repealed the rules providing that section 529 accounts must be aggregated for purposes of calculating the amount of a distribution that is included in a taxpayer's income. The provision removing the aggregation requirement in the case of multiple distributions is effective for distributions made after December 31, 2014.

The PATH Act also allows qualified higher education expenses to include the purchase of computer equipment, computer software or Internet access and related services if the equipment, software, or services are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled at an eligible education institution. Additionally, the PATH Act provides that in the case of a designated beneficiary who receives a refund of any higher education expenses, any distribution that was used to pay the refunded expenses is not subject to tax if the designated beneficiary recontributes the refunded amount to the qualified tuition program within 60 days of receiving the refund, but only to the extent that the recontribution is not in excess of the refund.

Transition relief

Under the transition relief in Notice 2016-13, the IRS will not impose any penalty under Code Sec. 6693 for Forms 1099-Q timely filed for the 2015 calendar year if, due solely to the aggregation rule change in the PATH Act, the earnings are incorrectly reported in Box 2 or basis is incorrectly reported in Box 3 of the 2015 Form 1099-Q. If a distributee with multiple accounts that were aggregated for purposes of calculating earnings for 2015 would prefer to have earnings computed for 2015 without aggregation, the distributee may request a corrected 2015 Form 1099-Q that computes earnings for 2015 without aggregation. The 529 program must furnish to the distributee, and file with the IRS, a corrected 2015 Form 1099-Q, if so requested, as soon as possible.

References: FED ¶46,251; TRC INDIV: 60,204.15.

Government Plans

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of service equals 80 or more (for example, age 55 and 25 years of service); and

- An NRA that combines 25 years of service with a safe harbor that includes an age, provided the service component does not unreasonably delay full vesting (for example, requiring 25 years of service for a new hire age 63).

Public safety employees

The proposed regs provide different safe harbors (with an earlier age or fewer years of service) for public safety employees, such as police, fire fighters, or providers of emergency medical services. A plan cannot use these safe harbors for other categories of participants. These safe harbors include:

- An NRA of age 50 or later, without requiring that substantially all of the plan participants be public safety employees;
- An NRA of the participant's age when age and years of service equal 70 or more; and
- Any age with 20 years of service or more.

Effective date

The regs are proposed to apply to employees hired during plan years beginning on or after the later of January 1, 2017 or the close of the first legislative session (of a body that can amend the plan) that begins three or more month after publication of the final regs. In addition, governmental plan sponsors can rely on the proposed regs for earlier periods. Any final regs that are more restrictive will not be applied retroactively.

References: FED ¶49,678; TRC RETIRE: 15,056.

IRS Excludes Expatriate Health Plans From Excise Tax Imposed On U.S. Health Insurers

The IRS has issued guidance that excludes expatriate health insurance policies from the annual fee imposed on insurers of U.S. health insurance risks. The fee is imposed by Section 9010 of the *Affordable Care Act,* however, the *Expatriate Health Coverage Clarification Act of 2014* excludes expatriate health plans from the fee, beginning in 2016.

- ***Comment.*** An expatriate policy is a group health insurance policy that provides coverage to employees, including those working outside their country of citizenship; those outside their country of citizenship and the employer's country of domicile; or non-U.S. citizens working in their home country.

Notice 2016-14 applies solely for the 2016 fee year. For 2016, the definition of an expatriate health plan is the same as the definition provided in the medical loss ratio final rule. No inference is intended from the notice regarding the definition of an expatriate health plan for later years. The government is developing proposed regs to define an expatriate health plan.

Notice 2016-14; TRC EXCISE: 13,110.

Ninth Circuit Finds Breach Of Closing Agreement With Partnership Did Not Void Assessment

Davis, CA-9, January 25, 2016

Reversing a federal district court, the Ninth Circuit Court of Appeals has held that despite the IRS's breaching of a closing agreement with a partnership, the assessment of taxes on a partner was proper. The IRS acknowledged that it breached the closing agreement but argued that the breach of contract did not invalidate the assessments.

- ***Take Away.*** Congress overhauled the partnership audit rules in the *Bipartisan Budget Act of 2015*. The Budget Act repealed TEFRA, effective for partnership tax years beginning after December 31, 2017.

Background

The taxpayer was the former owner of a professional sports team. The business was structured as a partnership and the taxpayer was the tax matters partner (TMP). The partnership and the IRS were involved in lengthy litigation in the Tax Court, which culminated in a closing agreement, signed by the IRS and the taxpayer as the partnership's TMP. The IRS agreed to make "computational adjustments" to determine the effect of the settlement on each partner's tax liability. These calculations were required to be made within certain time frames and offered the taxpayer the opportunity to review the calculations.

The IRS did not distribute its calculations of each partner's computational adjustments until June 2007. The taxpayer responded a few weeks later, but by the time the IRS sent revised calculations in August 2007, it did not have adequate time to wait 60 days for the taxpayer to review the calculations, because the statute of limitations to make assessments was about to expire. On September 4, 2007, the IRS issued assessments.

The taxpayer argued that the September 2007 assessments were invalid because the IRS had breached the closing agreement. A federal district court agreed, finding that the breach invalidated the closing agreement.

Appellate Court's analysis

The Ninth Circuit first observed that closing agreements are contracts and, as such, are governed by contract law. Damages, the court noted, are the default remedy for breach of contract. However, the taxpayer did not seek damages. The taxpayer also did not seek rescission of the closing agreement.

The taxpayer argued that *Philadelphia & Reading Corp., 944 F.2d 1063 (CA-3, 1991),* establishes that the remedy for the breach of a closing agreement is invalidation of subsequent assessments. The Ninth Circuit was not persuaded. In *Philadelphia & Reading Corp.,* the taxpayer's contractual waiver of its statutory right to receive a notice of deficiency never came into effect, the court found. Therefore, the assessments were not authorized by statute.

The Ninth Circuit found that the taxpayer's obligation to pay taxes validly and accurately arose from the Tax Code and not the closing agreement. The closing agreement, the court found, only specified the treatment of certain partnership income. Further, the closing agreement did not render invalid any assessments based on the IRS's failure to comply with the closing agreement. The court concluded that although the breach denied the taxpayer the opportunity to comment on the amounts of the assessments before they were made, the breach did not prevent the taxpayer from challenging the assessed amounts.

Limitations period

The court found that under the plain language of Code Sec. 6231(b)(1)(C), the IRS does not "enter into a settlement agreement with the partner" when it enters into a settlement agreement with the TMP and the individual partner is bound merely by operation of the Tax Court's decision to which the partner is a party. Nothing in TEFRA, the court held, indicated that Congress meant the word partner in Code Sec. 6231(b) to mean tax matters partner.

The court also found that when the IRS "enters into a settlement agreement with the partner" under Code Sec. 6231(b)(1)(c), the partner's partnership items convert to nonpartnership items, which triggers a one-year statute of limitations. The assessments were not untimely, the court concluded.

References: 2016-1 USTC ¶50,157; TRC IRS: 39,050.

IRS Reminds Taxpayers To Be Vigilant For Identity Theft; Implements New Security Requirements

As the filing season moves forward, the IRS has reminded taxpayers that tax-related identity theft remains a serious and pervasive problem. In response, the IRS has put in place new identity security changes in return filing and processing.

New security requirements. Taxpayers will experience new security requirements while preparing their taxes online, especially when signing into their tax software account, the IRS explained. Some states may require taxpayers to provide additional information, such as their driver's license number, to prove their identity.

Refunds. At the same time, the IRS reported that it expects to process nine out of 10 refunds within 21 days. The IRS recommended that taxpayers use the online tool, "Where's my Refund?" to check on the status of their pending refund.

FS-2016-4; FED ¶46,246; TRC IRS: 66,304.

IRS Updates Guidance On Return Disclosures To Avoid Penalties; Rules Streamlined For Certain Schedule M-3 Filers

Rev. Proc. 2016-13

The IRS has released its annual update to procedures that identify circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is deemed adequate to avoid the accuracy-related penalty under Code Sec. 6662(d) for the substantial understatement of tax or the return preparer penalty under Code Sec. 6694(a) for understatements due to unreasonable positions. New for this year, the updated procedures reduce additional disclosure requirements for certain taxpayers that file Schedule M-3, Net Income (Loss) Reconciliation.

- ***Take Away.*** The updated revenue procedure applies to any income tax return filed on 2015 tax forms for a tax year beginning in 2015, and to any income tax return filed in 2016 on 2015 tax forms for short taxable years beginning in 2016. Most provisions are carried over from the prior annual update, Rev. Proc. 2015-16, with only non-substantive, editorial changes made. However, the disclosure requirements for certain taxpayers filing Schedule M-3 are new.

Background

Form 8275, Disclosure Statement, is used by taxpayers and preparers to disclose items or positions, except those taken contrary to a reg, that are not otherwise adequately disclosed on a return. Form 8275 is filed to avoid the portions of the accuracy-related penalty due to disregard of rules or to a substantial understatement of tax for a non-tax shelter item if the return position has a reasonable basis. Form 8275 is also used for disclosures relating to preparer penalties for understatements due to unreasonable positions or disregard of rules. Form 8275, however, is generally not required if an item reported on a return is considered adequate disclosure under the IRS's annual disclosure revenue procedure.

Schedule M-3 reporting

The substantive update to this year's guidance removes, for certain corporations and partnerships, the requirement to provide additional information that might be considered redundant when Schedule M-3 is filed. Specifically, the following reduced disclosure requirements are now in place for tax years ending on or after December 31, 2014:

- Filers are not required to file Schedule B (Form 1120) if those filers are (a) required to file Schedule M-3 (Form 1120), and have less than $50 million in total assets at the end of the tax year, or (b) are not required to file Schedule M-3 but do so voluntarily; and
- Partnerships are not required to file Schedule C (Form 1065) if those partnerships are (a) required to file Schedule M-3 (Form 1065), and have less than $50 million in total assets at the end of the tax year, or (b) are not required to file Schedule M-3 but do so voluntarily.
- ***Comment.*** Disclosure, with respect to Schedule M-3 information or otherwise, will have no effect for purposes of the Code Sec. 6662 penalty if the item or return position lacks a reasonable basis, is attributable to a tax shelter item, or is not properly substantiated. Disclosure will have no effect for purposes of the Code Sec. 6694 penalty if the position is with respect to a tax shelter or a reportable transaction to which the Code Sec. 6662A penalty applies.

References: FED ¶46,244;
TRC PENALTY: 3,108.15.

IRS Proposes Significant Hike In EA Special Enrollment Exam Fee

NPRM REG-134122-15

Recently-released proposed regs would increase the fee for taking the three-part enrolled agent (EA) special enrollment examination (SEE) from $11 per part to $99 per part. The increase, the IRS explained, is due to fewer individuals taking the EA-SEE and higher overall costs associated with the exam.

- ***Take Away.*** New rules for 2016 and beyond apply to the rights of non-credentialed tax preparers to represent their clients before the IRS. Non-credentialed preparers without an Annual Filing Season Program (AFSP) – Record of Completion – may only prepare tax returns. AFSP participants can represent clients in limited situations. Certified public accountants (CPAs), attorneys and EAs can represent any client before the IRS in any situation.
- ***Comment.*** The IRS reported that approximately 56,000 individuals have the designation EA. A number of these individuals may also have earned other designations in addition to the EA designation.

Background

Individuals who successfully complete the SEE are awarded the designation EA. The SEE is a three-part exam. Applicants must successfully pass all three parts of the exam. The current SEE-EA fee is $11 per part. The IRS has worked with a third-party contractor to develop and administer the exam. This third-party contractor also charges individuals an additional fee for its services. For the May 2015 to February 2016 testing period, the contractor's fee is $98 per part of the exam.

The $11 per part fee, the IRS explained was determined with the expectation that individuals would take 34,000 parts of the EA-SEE each year. However, that num-

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TAX BRIEFS

Internal Revenue Service

The IRS has scheduled a hearing on proposed amendments to regulations related to disguised payments for services under Code Sec. 707(a)(2)(A) (NPRM REG-115452-14, I.R.B. 2015-32, 158). The hearing will be held on Friday, February 26, 2016, at 10:00 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

Notice of Hearing (REG-115452-14), FED ¶46,247; TRC PART: 27,050

International

The Treasury Department has published a current list of countries that may require participation in, or cooperation with, an international boycott. The list is as follows: Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen.

Boycott Notice, FED ¶46,438; TRC INTL: 21,050

Jurisdiction

A lawsuit filed by an individual against the IRS seeking an order that the taxpayer was entitled to the Earned Income Credit (EIC) was dismissed for lack of jurisdiction. The IRS had assessed a deficiency and levied on the bank account of the taxpayer after determining that he was not entitled to the EIC for the two years at issue. The taxpayer sought a refund of the taxes previously collected for those years. In the absence of the taxpayer filing a petition in Tax Court and successfully challenging the deficiency and assessment, the district court could not consider a claim for overpayment interest on taxes and lacked jurisdiction over the taxpayer's claim.

Pazourek, DC Md., 2016-1 USTC ¶50,161; TRC LITIG: 9,050

Liens and Levies

The government was entitled to disputed funds held by the court in a case involving taxes owed by the taxpayer, a transportation authority. The IRS had levied on the taxpayer for amounts owed to it, but a battery company claimed that the taxpayer owed it funds before the IRS levy was filed. The battery company won a judgment in state (Texas) court, but the taxpayer filed an interpleader action naming the battery company and the IRS as parties. The government removed the case to federal district court and clarified that it, and not the IRS, was the proper party to the action. The government provided evidence that the battery company owed the IRS amounts for income and employment taxes, and filed liens against the company. The court found that the levies against the battery company far exceeded the amount of the disputed interpleaded funds, and granted the government summary judgment with regard to those funds.

Metropolitan Transit Authority of Harris County, Texas, DC Tex., 2016-1 USTC ¶50,163; TRC LITIG: 9,254.10

An IRS settlement officer (SO) did not abuse her discretion by sustaining a Notice of Intent to Levy to collect a married couple's outstanding tax liabilities or by determining that the couple was not entitled to a collection alternative. The taxpayers raised no genuine dispute as to any material fact. The taxpayers did not submit any financial information or a Form 433-A, Collection Information Statement, even after the SO warned the taxpayers of the necessity of the information for an adequate consideration of a collection alternative and followed up with them twice regarding the missing information.

McLeod, Jr., TC, CCH Dec. 60,516(M), FED ¶47,932(M); TRC IRS: 51,056.20

Refund Claims

The district court denied a *pro se* individual relief on his claim that the IRS wrongfully appropriated a refund due to him in order to satisfy a 17-year-old educational debt. There is no statute of limitations applicable to federal student loans, pursuant to action taken by Congress in 1991. Therefore, the taxpayer's cause of action lacked an adequate basis, and the case was dismissed.

McQueen, DC Ohio, 2016-1 USTC ¶50,160; TRC IRS: 45,114

The IRS's application of a corporation's estimated tax payment to an individual's restitution liability was improper. The corporation and the individual were not jointly and severally liable for the restitution and associated interest and, therefore, it was improper for the IRS to use the corporation's overpayments to pay the individual's restitution liability.

Del'Andrae, DC Utah, 2016-1 USTC ¶50,153; TRC IRS: 27,206.70

Tax Shelters

An individual was liable for taxes and penalties for a number of tax years, despite purportedly transferring assets to 49 corporation soles that he had formed, which were determined to constitute an abusive tax shelter. The IRS filed a lawsuit against the individual for failure to file returns and filed several tax liens. The individual raised a number of frivolous challenges. Based on

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IRS Observes EITC Awareness Day

The IRS observed the tenth anniversary of Earned Income Tax Credit (EITC) Awareness Day on January 29. The IRS reported that one-third of the population eligible for EITC changes each year as their personal circumstances change.

EITC. Qualified taxpayers may claim a refundable EITC. The amount of EITC varies based on income, filing status and family size. Taxpayers also must have earned income to qualify for the EITC. Other types of income, such as retirement pensions and unemployment benefits, do not count as earned income, the IRS reminded taxpayers.

- ***Comment.*** The *Protecting Americans from Tax Hikes Act of 2015* (PATH Act) made permanent certain temporary enhancements to the EITC. The tax identification number (Social Security number) requirement has also been revised by the PATH Act for the EITC.

IR-2016-11, FS-2016-6; FED ¶46,250; TRC INDIV: 57,252.

Tax Briefs

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the individual's admissions regarding formation of the corporation soles and the asset transfers, the timing of these acts in comparison with the accrual of the individual's tax debts, and an uncontested imposition of a civil penalty for abusive tax shelters, the court granted the IRS summary judgment and set aside the sham property transfers.

Kegley, DC Wash., 2016-1 USTC ¶50,164; TRC IRS: 48,100

Penalties

A married couple was liable for the accuracy-related penalty based on substantial understatement of tax. The taxpayers failed to declare as income a settlement received by the husband in a wrongful discharge action. To forestall imposition of a lien, the taxpayers paid the additional tax and penalty, and then sought a refund of the penalty. The husband claimed that he relied on professional advice from his attorney and his accountant in omitting that amount from the return. However, his attorney was not a competent professional in tax law, and his accountant was not given complete, accurate information.

Blanco, DC Colo., 2016-1 USTC ¶50,159; TRC PENALTY: 3,108.15

Tax Crimes

A 24-month sentence imposed on an individual following her guilty plea to tax evasion was properly calculated. The defendant received a two-level enhancement based on her being a tax return preparer, and a three-level reduction based on acceptance of responsibility. Neither party objected to the sentence, which was within the guidelines. Moreover, the sentence was procedurally and substantively reasonable. Finally, the court reviewed the entire record of the case and found no meritorious issues for appeal.

Ordonez, CA-4, 2016-1 USTC ¶50,162; TRC IRS: 66,100

Part of a tax protestor's sentence for tax evasion was vacated and remanded for the sentencing court to remove an employment restriction as a condition of supervised release, reconsider whether restitution should be imposed and to reconsider its sentence without the two-level enhancement. The employment restriction was not reasonably related to his conviction for tax evasion, restitution can only be imposed as a condition of supervised release and the two-level upward adjustment for failing to report income from a criminal activity was not supported by the record.

Thody, CA-5, 2016-1 USTC ¶50,152; TRC IRS: 66,462.15

Anti-Injunction Act

An individual's action to compel the IRS to provide evidence of the tax liability supporting a levy on his wages was dismissed for lack of jurisdiction. The claim was barred by the Anti-Injunction Act, which expressly prohibits suits filed for the purpose of restraining the assessment or collection of any tax.

Brown v. Unknown Party, DC Ariz., 2016-1 USTC ¶50,156; TRC IRS: 45,152

Bankruptcy

The IRS violated the bankruptcy automatic stay when it offset a debtor's tax refund against a nontax debt owed to another government agency. Contrary to the IRS's argument, the debtor's interest in his overpayment was property of the bankruptcy estate and, therefore, protected by the automatic stay.

In re Addison, DC Va., 2016-1 USTC ¶50,158; TRC IRS: 57,054.10

A debtor who failed to timely file Forms 1040 for the two tax years at issue was not entitled to discharge his tax liability for those years. The returns he ultimately filed were excluded from the definition of return under section 523 of the Bankruptcy Code.

In re Selbst, BC-DC N.Y., 2016-1 USTC ¶50,155; TRC IRS: 57,158

A married couple was entitled to damages for emotional distress resulting from the IRS's violation of the automatic stay under section 362(a) of the Bankruptcy Code. The government admitted that its collection notices violated the automatic stay and its contention that it was immune from damages claims for emotional distress was rejected.

In re Hunsaker, BC-DC Ore., 2016-1 USTC ¶50,154; TRC IRS: 45,118

EA Exam

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ber of parts has not been reached. In the testing periods beginning in 2012, 2013, and 2014, approximately 18,900, 19,500, and 22,400 parts of the EA-SEE were administered. The IRS estimated that during the testing period beginning May 2016, individuals taking the EA-SEE will take 20,000 parts.

Higher fee proposed

The IRS reported that it has incurred increased costs related to the EA-SEE. These expenses stem from costs for background checks for individuals working at testing centers who are employed by the third-party contractor. The agency also has incurred higher costs in verifying the contractor's compliance with protecting applicant confidentiality and other cybersecurity aspects. Additionally, the IRS has spent additional dollars on reviewing and approving various materials developed by the contractor related to the exam. The $11 per part user fee does not cover these additional costs, the IRS explained.

In response to the increased costs, the IRS has proposed to raise the user fee to $99 per part of the EA-SEE. The proposed increase does not include any fees charged by the third-party administrator of the exam.

Comments/hearing

The IRS has requested comments and has scheduled a hearing on the proposed increase in EA-SEE exam user fees for February 25, 2016, in Washington, D.C.

References: FED ¶46,677; TRC IRS 3,200.