

Recent Developments in Federal Income Taxation

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First Wednesday Tax Update

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CLE Number for Today's Webcast:
174208028

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Tax Section Meeting and CLE Ethics Presentation:

- Date: Thursday, September 14, 2023
- Location: Norton Rose Fulbright, 1301 McKinney St. #5100, Houston
- Time: 3 p.m.
- Topic: malpractice claims and grievances
- Presenter: Allison Standish Miller of Beck Redden
- CLE: 1 hour, all of which is ethics credit
- Cost: free for Tax Section members
- Afterward: Cocktail reception follows at 4 p.m.
- How to register: look for the e-blast from SBOT Tax Section or contact Anne Schwartz (annehschwartz@gmail.com)

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Catch-Up Contributions to Employer-Sponsored Plans Outline: item B.1, page 2

- Selected provisions of SECURE 2.0 Act:
 - Change to employer plan catch-up contributions. Individuals age 50 and older can contribute an additional \$7,500 (2023) to an employer-sponsored retirement plan. SECURE 2.0:
 - Increased catch-up contributions for those ages 60-63. Effective in 2025, provides a special catch-up contribution for participants ages 60 to 63 equal to the greater of \$10,000 (adjusted annually for inflation) or 150 percent of the regular catch-up contribution amount for 2024.
 - Catch-up contributions must be invested in Roth accounts for those with wages over \$145,000. Provides that, beginning in 2024, if a participant has wages over \$145,000 during the previous year, all catch-up contributions must be deposited into a Roth account. The \$145,000 wage threshold will be adjusted annually for inflation.

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Catch-Up Contributions to Employer-Sponsored Plans

Outline: item B.1.a, page 2

- Notice 2023-62, 2023-37 I.R.B. __ (8/25/23):
 - IRS has announced a two-year “administrative transition period.”
 - Specifically, until taxable years beginning after December 31, 2025:
 1. catch-up contributions will be treated as satisfying the requirements of section 414(v)(7)(A), even if the contributions are not designated as Roth contributions, and
 2. a plan that does not provide for designated Roth contributions will be treated as satisfying the requirements of section 414(v)(7)(B).
 - Notice 2023-62 also provides that future guidance will:
 - Provide that those who do not have wages are not subject to the Roth-only rule
 - Plan administrators and employers can treat employees who are subject to the Roth-only rule as having elected to make Roth contributions
 - Provide guidance on employer plans maintained by more than one employer

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Hoops, LP v. Commissioner,

__ F.4th __ (7th Cir. 8/9/23)

Outline: item C.1.a, page 5

- In 2012, an accrual method partnership, Hoops, LP, which owned the NBA’s Memphis Grizzlies, sold substantially all the assets to a buyer.
 - The buyer assumed substantially all the liabilities of Hoops, including the obligation to pay approximately \$10.7 million in nonqualified deferred compensation to two players (Zach Randolph and Michael Conley).
- Hoops included the assumed liabilities in its amount realized from the sale.
- Hoops filed an amended partnership return for 2012 claiming a deduction for the deferred compensation.
- Issues:
 1. Could the partnership deduct the deferred compensation in 2012?
 2. [Did Hoops have to include the assumed liabilities in its amount realized?]
- Held:
 1. No. Section 404(a)(5) defers Hoops’ deduction until the year in which the players include the compensation in gross income.
 2. [Yes, under the definition of amount realized in § 1001(b) and Reg. § 1.1001-2(a)(1).—argument not raised in 7th Circuit]

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**Gomas v. United States,
132 A.F.T.R.2d 2023-5165 (M.D. Fla. 7/1723)**

Outline: item D.1, page 6

- The taxpayers' daughter/stepdaughter defrauded the taxpayers of nearly \$2 million.
- In 2017, the taxpayers withdrew nearly \$1.2 million from an IRA and pension plan to pay her.
- Issue:
 1. Did the taxpayers have to include the \$1.2 million in gross income?
 2. Could the taxpayers deduct the amount they paid as a business expense?
- Held:
 1. Yes. The taxpayers were the distributees.
 2. No. At the time the transfers were made, the taxpayers were retired and were no longer carrying on the trade or business.
- Query: could the taxpayers take a theft loss deduction in 2019 (the year they discovered the theft) under Rev. Rul. 2009-9 (Bernie Madoff Ponzi scheme)?

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**Thomas v. Commissioner,
160 T.C. No. 4 (2/13/23)**

Outline: item G.1, page 8

- Held: the taxpayers' blog posts were admissible as evidence in her trial seeking innocent spouse relief.
- Section 6015(e)(7), enacted in 2019:
 - Any review of a determination made under this section shall be reviewed de novo by the Tax Court and shall be based upon—
 - A. the administrative record established at the time of the determination, and
 - B. any additional newly discovered or previously unavailable evidence.

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**Smith v. Commissioner,
159 T.C. No. 3 (8/25/22)
*Outline: item I.1, page 15***

- Taxpayer was U.S. citizen working in Australia, received a notice of deficiency.
- The taxpayer signed a closing agreement with the IRS waiving the right to claim the foreign earned income exclusion of section 911 for 2016-2018.
- The taxpayer later filed original or amended returns claiming the section 911 exclusion and the IRS issued refunds.
- Issues: was the closing agreement binding?
 1. Had it been signed by an appropriate IRS official?
 2. Had the IRS committed malfeasance by disclosing confidential taxpayer information under § 6103 and misrepresented material facts in the terms of the closing agreement.
- Held: The agreement is binding. Both arguments rejected.

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**Bittner v. United States,
142 S. Ct. 2833 (6/21/23)
*Outline: item H.1, page 9***

- 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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**Doherty v. Turner Broadcasting Systems, Inc.,
72 F.4th 324 (D.C. Cir. 6/30/2023)
*Outline: item H.2, page 10***

- Held: TBS is potentially liable for damages under § 7434 for issuing a false W-2 statement that classified amounts paid under a short-term disability plan as taxable.

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**Soni v. Commissioner
___ F.4th ___ (2d Cir. 7/27/23)
*Outline: item H.3, page 11***

- Held: A return was a joint return despite the fact that one spouse did not personally sign it

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Gerhardt v. Commissioner
160 T.C. No. 9 (4/20/23)
Outline: item D.1, page 12

- Held: Distributions from a CRAT were taxable and were ordinary income.

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