

Recent Developments in Federal Income Taxation

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**Estate of Caan v. Commissioner,
161 T.C. No. 6 (10/18/23)
Outline: item D.1, page 2**

■ Facts

- The actor James Caan passed away in 2022.
- At the time of his death, he had two IRAs with UBS. One of the IRA's held a nontraditional asset, a partnership interest in a private hedge fund.
- Caan failed to notify UBS of the value of the hedge fund interest for 2014, as required by the IRA custodial agreement.
- UBS distributed the interest to him and issued Form 1099-R
- Caan established a rollover IRA with Merrill Lynch, which directed the hedge fund to liquidate Caan's interest and transfer the cash to the rollover IRA.

■ Issues:

1. Was the transfer of cash to Merrill Lynch a valid rollover?
2. If not, what was the value of the distribution from UBS to Caan?

■ Held:

1. No. The transfer was outside the 60-day rollover window and was not the same property in the UBS IRA.
2. \$1.548 million

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**Notice 2023-56
2023-38 I.R.B. 824 (8/30/23)
Outline: item B.1, page 4**

- This notice addresses the federal tax treatment of payments an individual receives from state or local governments.
- The notice addresses the general tax treatment of a state refund of tax.
 - If the payment is a refund of tax, then it is not included in a taxpayer's gross income except to the extent required by the tax benefit rule, i.e., to the extent the taxpayer deducted the payment and received a tax benefit from the deduction in a prior year.
- The notice also addresses payments received from states that are eligible for exclusion under the general welfare exclusion.
 - Example: payments to eligible residents under an "Energy Relief Payment Program" to help those low-income residents who may not otherwise be able to afford to pay their heating bills.

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Rev. Proc. 2023-26
2023-33 I.R.B. 486 (7/26/23)
Outline: item H.1, page 5

- IRS has made permanent its fast-track program for private letter rulings solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate).
 - Replaces, with minor changes, the pilot program established in Rev. Proc. 2022-10, 2022-6 I.R.B. 473
- If fast-track processing is available:
 - IRS will endeavor to complete the processing of the letter ruling request and, if appropriate, to issue the letter ruling within the time period specified by the branch representative or branch reviewer.
 - This period normally is 12 weeks.
- Pre-submission conference with IRS is required
- IRS strongly recommends that taxpayers submit fast-track requests as an encrypted e-mail attachment

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Keene-Stevens v. Commissioner,
72 F.4th 1015 (9th Cir. 7/3/23)
Outline: item F.1, page 5

- Facts
 - Taxpayers, a married couple, did not file tax returns for 2007 or 2012.
 - They filed late returns for 2009-2011 (as well as other years).
 - They held an interest in a TEFRA partnership and claimed partnership losses.
 - The IRS issued a notice of deficiency for all years regarding non-partnership items and taxpayers filed a petition in the Tax Court.
- Issues:
 1. Could the taxpayers use partnership losses in 2007 and 2012 to offset their non-partnership income?
 2. Did the Tax Court correctly conclude that taxpayers had no deficiency in tax regarding non-partnership items for 2009-2011?
- Held:
 1. No. Taxpayers did not file returns for 2007 and 2012, and partnership losses claimed on unsigned, unfilled returns cannot offset other income.
 2. No. Under the “oversheltered return” rules (former § 6234), NOL carryovers from partnership items are included in net losses from partnership items. ⁶

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**Farhy v. Commissioner,
160 T.C. No. 6 (4/3/23)
*Outline: item A.1, page 7***

- Section 6038(a) requires every United States person to provide information with respect to any foreign business entity the person controls
 - Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
- Section 6038(b)(1) imposes a penalty of \$10,000 for each annual accounting period for which a person fails to provide the required information.
 - In addition, § 6038(b)(2) imposes a continuation penalty of \$10,000 for each 30-day period that the failure continues up to a maximum continuation penalty of \$50,000 per annual accounting period.
- Issue: can the IRS levy to collect the penalties imposed by § 6038(b)?
- Held: No. There is no statutory authority for the IRS to assess these penalties. Because they cannot be assessed, the IRS cannot exercise its administrative collection powers to collect them.

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**Seaview Trading, LLC v. Commissioner,
62 F.4th 1131 (9th Cir. 3/10/23)
*Outline: item E.1, page 8***

- Facts
 - A TEFRA partnership mistakenly did not file its 2001 tax return on Form 1065 even though it was prepared and signed.
 - In September 2005, after an IRS agent had notified the partnership that no 2001 return had been filed, the partnership faxed the return to the agent.
 - In July 2007, during an audit of 2001, the partnership mailed the return to an IRS attorney.
 - Neither the agent nor the attorney forwarded the return to the appropriate IRS Service Center.
 - In October 2010, the IRS issued a notice of Final Partnership Administrative Adjustment disallowing the partnership's claimed loss of \$35.5 million.
- Issue: had the three-year limitations period on assessment of tax provided by former § 6229(a)(1) expired by October 2010, when the FPAA was issued?
- Held: Yes. The 2001 return was not "filed," and therefore the three-year limitations period, which run from filing the return, never began to run.
 - En banc opinion (10-1). Dissenting opinion by Judge Bumatay.

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**Franklin v. United States,
49 F.4th 429 (5th Cir. 9/15/22)**

Outline: item H.1, page 10

- The IRS assessed \$421,766 in penalties for the plaintiff's failure to file accurate tax returns and failure to report a foreign trust of which he was the beneficial owner.
- Pursuant to § 7345, the IRS issued a notice of certification of a "seriously delinquent tax debt" and notified the Secretary of State.
- The State Department revoked the plaintiff's passport.
- The plaintiff challenged the revocation in a U.S. District Court.
- Issues: (1) is the IRS's assessment invalid because the IRS failed to comply with the supervisory approval requirement of § 6751(b)? (2) is § 7345 unconstitutional because it violates the Due Process Clause of the Fifth Amendment?
- Held: (1) Taxpayer's claims under § 6751(b) are barred by the Anti-Injunction Act because each of the claims under § 6751(b) implicitly challenges the validity of the penalties; (2) No. International travel is not a "fundamental right," and therefore either a rational basis standard of review or intermediate scrutiny applies, which § 7345 meets.

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**Adams v. Commissioner,
160 T.C. 1 (1/24/23)**

Outline: item H.1.a, page 11

- The IRS assessed \$1.2 million in tax, penalties, and interest for eight years
- Pursuant to § 7345, the IRS issued a notice of certification of a "seriously delinquent tax debt" and notified the Secretary of State.
- The State Department refused to replace the taxpayer's lost passport.
- The plaintiff challenged the revocation in the U.S. Tax Court.
- Issues:
 1. Can a taxpayer challenge the underlying tax liabilities in a proceeding in the Tax Court under § 7345?
 2. Does the Tax Court have jurisdiction to determine whether § 7345 is unconstitutional?
- Held:
 1. No. The Tax Court lacks jurisdiction to review the underlying tax liabilities in a proceeding under § 7345.
 2. No. The Tax Court's jurisdiction is limited to determining whether the IRS's certification of a tax debt as seriously delinquent is erroneous.

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**Pugh v. Commissioner,
161 T.C. No. 2 (8/14/23)
*Outline: item H.1.b, page 12***

- Taxpayer filed a petition in the Tax Court challenging the IRS's certification of her tax debt as seriously delinquent.
- Taxpayer subsequently moved to dismiss her own petition.
- Issue: can a taxpayer in a proceeding in the Tax Court under § 7345 move to dismiss the taxpayer's own petition without prejudice?
- Held: Yes. The Federal Rules of Civil Procedure permit this unless the dismissal would inflict "clear legal prejudice" on the non-moving party.
 - There would be no prejudice to the IRS, as evidenced by the IRS's consent to the dismissal

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