

## 2016 TAX COURT NON-ATTORNEY ADMISSION EXAMINATION

### Instructions

Four hours will be allowed to answer all of the questions in the examination. Each question has been allocated a specific number of minutes (see the notation in parenthesis at the beginning of each question). Each question will be weighted according to the time allocated to the question.

Write your answers legibly in ink in the bound answer book/s furnished you for this purpose. Write your examination number on the cover of each answer book that you are given, as well as on your examination. Identify each answer by the same number as the question. Remove no pages from your bound answer book/s; you are being furnished loose sheets of paper for you to use as scratch paper. Do not write your name on any materials or answer books.

This examination is designed to test your overall knowledge of Rules of Practice and Procedure of the United States Tax Court, Federal taxation, the Federal Rules of Evidence, and American Bar Association Model Rules of Professional Conduct. The examination consists of four parts. Each part will be graded separately, and you must show your proficiency with respect to each part of the examination. The first part (60 minutes) deals with the Tax Court Rules of Practice and Procedure; it contains 25 questions and 5 pages. The second part (96 minutes) deals with substantive Federal income, gift, estate, and generation-skipping transfer taxation; it contains 30 questions and 7 pages. The third part (60 minutes) deals with the rules of evidence applicable in the Tax Court; it contains 10 questions and 3 pages. The fourth part (24 minutes) deals with legal ethics rules applicable to practice before the Tax Court; it contains 9 questions and 2 pages. Make sure that your examination is complete; you are responsible for any omissions from the examination.

**ANSWER THE QUESTIONS IN EACH OF THE FOUR PARTS OF THE EXAMINATION IN ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING ANSWERS TO THE OTHER THREE PARTS OF THE EXAMINATION. ONLY WHAT IS WRITTEN IN THE ANSWER BOOK/S WILL BE CONSIDERED WHEN GRADING THE EXAM. NO SCRAP (SCRATCH) PAPER WILL BE CONSIDERED.**

The only reference materials permitted to be with you during the examination (each of which is provided to you) are (1) a copy of the Internal Revenue Code, (2) a copy of the Rules of Practice and Procedure of the Court, and (3) the ABA Model Rules of Professional Conduct. You may refer to and apply these materials in taking the examination. You may also bring with you and use a calculator.

You may not have in your immediate possession, and you may not use, during the examination any device (including, but not limited to, computers, personal digital/data assistants, and telephones) capable of storing, accessing, or transmitting any information.

Clarity and conciseness of expression will be a significant factor in grading your examination. Answer only the questions that are asked.

Do not ask the proctor about any examination question. If you think a question contains an ambiguity, state the ambiguity, resolve the ambiguity by stating a reasonable assumption in your answer, and then answer the question based upon your assumption.

**UNLESS OTHERWISE INDICATED, ASSUME ALL TAXPAYERS USE THE CASH METHOD OF ACCOUNTING AND ARE CALENDAR YEAR TAXPAYERS. ALL STATUTORY REFERENCES ARE TO THE INTERNAL REVENUE CODE. UNLESS OTHERWISE STATED, ASSUME ALL EVENTS OCCUR DURING 2016 AND ANSWER ALL QUESTIONS AS TO THE 2016 TAXABLE YEAR. UNLESS DIRECTED TO THE CONTRARY, ANSWER EACH QUESTION INDEPENDENT OF THE FACTS OF THE OTHER QUESTIONS.**

The proctor will tell you when you may begin the test, and you will be given a warning 5 minutes before the examination is over. When time is called, put your pen down. Absolutely no extension of time is permissible. When the time for completion of your examination has elapsed, turn in to the proctor this examination, your answer books, and the materials furnished to you. If you complete the examination early, you may turn in the materials and leave.

**PART ONE**  
**PRACTICE AND PROCEDURE**  
(60 minutes)

**ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION IN  
ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING  
ANSWERS TO OTHER PARTS OF THE EXAMINATION**

**In this Part One of the Examination, the taxpayer is referred to as "TP," and the Internal Revenue Service is referred to as "IRS." Any reference to the Internal Revenue Code is "§ xxx." If TP is married, the spouse of TP is referred to as "Spouse." Unless otherwise directed, answer each Question independently of other Questions.**

**Question P-1. (7 minutes total, 1 minute for each subpart) Determine whether the Tax Court has jurisdiction in each of the following situations (assuming that TP, the petitioner, timely files an appropriate Petition with the Tax Court). State YES or NO as to each subpart of the Question.**

- (a) Does the Tax Court have jurisdiction to determine that TP overpaid income tax in the year properly before the Court in response to an IRS statutory notice of deficiency determining a deficiency of income tax?**
- (b) Does the Tax Court have jurisdiction to determine a deficiency that exceeds the amount of the deficiency of income tax determined in the IRS statutory notice of deficiency?**
- (c) The IRS issues to TP a statutory notice of deficiency with respect to one taxable year. The notice determines an income tax deficiency and also accuracy-related penalties pursuant to § 6662(a) and (b)(2). TP petitions the Tax Court to dispute the deficiency amount and the accuracy-related penalties. Does the Tax Court have jurisdiction as to the accuracy-related penalties?**
- (d) The IRS conducted a § 6330 hearing regarding TP, and subsequently the IRS sent to TP by certified mail a Notice of Determination denying relief to TP. The Notice was mailed to an incorrect address, which was not TP's last known address, and was returned to the IRS as undeliverable. Without changing the date listed on the Notice, the IRS remailed it to TP by regular mail to TP's correct address. TP received the Notice and petitioned the Tax Court within 30 days of (1) the date on which TP actually received the Notice and also (2) the date on which the Notice was remailed to TP. Does the Tax Court have jurisdiction?**
- (e) TP, who provides tax advice to other persons, received from the IRS a notice and demand for penalty pursuant to § 6694(a). TP petitioned the Tax Court to challenge the penalty. Does the Tax Court have jurisdiction if the petition is unrelated to a proceeding under §§ 6320 and 6330?**

(f) The IRS issued one statutory notice of deficiency asserting a deficiency of income tax in each of three taxable years of TP. Is such a notice for multiple years a proper notice for purposes of Tax Court jurisdiction as to each of the three years?

(g) TP receives a statutory notice of deficiency and then timely petitions the Tax Court. Before the Tax Court takes any action with respect to the case, the IRS assesses the tax to which the petition relates, and TP files a motion asking the Tax Court to enjoin the assessment and collection of such tax. Does the Tax Court have jurisdiction to grant such a motion?

Question P-2. (1 minute) TP dispatches to the Tax Court a petition that, in order to be timely, must be filed (or treated as filed) by the Court on Day 1. On Day 1, all Federal Government offices in the District of Columbia, including the Tax Court, were officially closed on account of a winter storm, and TP's petition could not be delivered to the Court on that day. TP's petition was delivered to the Court and filed on Day 2, when the Court reopened for business. Is this petition timely filed with the Tax Court? State YES or NO.

Question P-3. (1 minute) TP petitioned the Court under § 6015(e)(1) to review the IRS final determination denying TP relief from joint liability under § 6015. TP now moves the Court to allow TP to withdraw the petition and to dismiss the case. How should the Tax Court rule? State GRANT or DENY.

Question P-4. (2 minutes) To what extent does the Tax Court have jurisdiction with respect to the failure of the IRS to abate underpayment interest on an income tax deficiency of TP?

Question P-5. (2 minutes) After an extended IRS audit of a TP's income tax return and TP's submission to IRS Appeals of a protest against a proposed deficiency, TP receives a statutory notice of deficiency that incorrectly spells TP's name by transposing two letters in TP's first name (TP's correct name is "Leslie"; in the statutory notice of deficiency it is spelled "Leslei"). Explain whether this is a valid statutory notice of deficiency for purposes of Tax Court jurisdiction.

Question P-6. (2 minutes) Describe the circumstances under which the Tax Court has jurisdiction with respect to whether a worker constitutes an employee of TP for employment tax purposes.

Question P-7. (2 minutes) "Stamps.com" provides Internet-based postage services that permit a user (1) to buy and print U.S.-Postal-Service-approved postage directly from the user's computer, (2) to apply the Stamps.com postage label (which bears the date of printing of the Stamps.com postage) to the envelope (or other package), and (3) to deposit the envelope with the U.S. Postal Service for delivery to the addressee (without applying any U.S. Postal Service postage). Describe whether, for purposes of submitting a timely petition to the Tax Court under the timely-mailing-is-timely-filing rule of § 7502, TP may rely on the date of printing of the Stamps.com postage label as the date of mailing.

**Question P-8. (3 minutes)** Discuss whether any delivery service other than the U.S. mail qualifies within the § 7502(a) timely-mailing-is-timely-filing rule.

**Question P-9. (4 minutes)** TP is physically present in the United States at all relevant times. On June 6, 2016, the IRS mailed to TP, to an address in the United States, a notice of deficiency (bearing the date of June 6, 2016) regarding TP's 2014 income tax liability. The notice of deficiency states that the last day on which a Tax Court petition may be filed is September 7, 2016. TP received the notice on June 8, 2016. What is the last day on which TP timely can file a petition with the Tax Court? The following 2016 calendar may be of use to you:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
June				1	2	3	4
	5	6	7	8	9	10	11
	12	13	14	15	16	17	18
	19	20	21	22	23	24	25
	26	27	28	29	30		
July						1	2
	3	4	5	6	7	8	9
	10	11	12	13	14	15	16
	17	18	19	20	21	22	23
	24	25	26	27	28	29	30
	31						
August		1	2	3	4	5	6
	7	8	9	10	11	12	13
	14	15	16	17	18	19	20
	21	22	23	24	25	26	27
	28	29	30	31			
Sept.					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	

Holidays in the District of Columbia during the months in the table above are: (1) 4 July, Independence Day, and (2) 5 September, Labor Day.

**Question P-10. (6 minutes)** Describe the contents of the pleading that must be filed by or on behalf of an individual taxpayer to initiate a Tax Court proceeding in response to a statutory notice of income tax deficiency.

**Question P-11. (1 minute)** If a Tax Court petition is silent with respect to one or more issues raised in the deficiency notice, what is the effect?

**Question P-12. (2 minutes)** Describe how and under what circumstances TP may amend the petition initially filed by TP with the Tax Court.

**Question P-13. (1 minute)** Is the IRS required to file an Answer in response to a properly filed Petition that is subject to the Small Tax Case Rules? State YES or NO.

**Question P-14. (2 minutes)** Under what circumstances may the Tax Court grant summary judgment in response to a motion for such judgment?

**Question P-15. (2 minutes)** Briefly describe the meaning under the Tax Court Rules of “joinder of issue” and explain its significance.

**Question P-16. (2 minutes)** According to the Tax Court rules, what is the preferred manner of engaging in pre-trial discovery?

**Question P-17. (2 minutes)** As applied to Tax Court cases, distinguish the phrase “burden of proof” from the phrase “standard of proof.” Do not discuss in this answer which party has the “burden of proof.”

**Question P-18. (2 minutes)** Discuss which party has the burden of proof in a Tax Court proceeding.

**Question P-19. (2 minutes)** As part of a proceeding before the Tax Court, TP receives a proper IRS request for an admission. Describe the effect on TP of a failure to respond to the request for admission.

**Question P-20. (3 minutes)** Describe the electronic filing rules with respect to Tax Court cases in which the taxpayer is represented by counsel.

**Question P-21. (2 minutes)** Discuss whether the Tax Court permits “predictive coding” with respect to discovery of electronically stored information.

**Question P-22. (2 minutes)** Define and explain the phrase “collateral estoppel” as it applies to Tax Court litigation.

**Question P-23. (3 minutes)** Certain Tax Court cases qualify for special “small tax case” procedures under the Tax Court Rules. Briefly describe the most fundamental elements of these procedures.

**Question P-24. (2 minutes)** A Tax Court attorney/practitioner represents a taxpayer in a proceeding before the Tax Court. Under what circumstances might the Tax Court impose on the attorney/practitioner the obligation to pay excessive costs under § 6673(a)(2) and be subject to sanction under TCR 33?

**Question P-25. (2 minutes)** TP engaged in a transaction after consulting with, and receiving written communications from, a tax lawyer regarding the anticipated tax benefits related to the transaction. In a statutory notice of deficiency, the IRS asserts a § 6662 accuracy-related penalty against TP related to the transaction. If TP raises (as a defense to the § 6662 penalty) the § 6664(c) reasonable cause/good faith exception, explain whether the written communications between TP and the tax lawyer will be subject to discovery.

**PART TWO**  
**SUBSTANTIVE TAX LAW**  
(96 minutes)

**ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION IN  
ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING  
ANSWERS TO OTHER PARTS OF THE EXAMINATION**

In this Part Two of the Examination, the taxpayer is referred to as "TP," and the Internal Revenue Service is referred to as "IRS." If TP is married, the spouse of TP is referred to as "Spouse." Unless otherwise directed, assume the taxpayer is a calendar-year, cash-method taxpayer. Any reference to the Internal Revenue Code is "§ xxx." For purposes of Part Two, ignore all inflation adjustments prescribed by the Internal Revenue Code as to fixed-dollar amounts. Unless otherwise directed, answer each Question independently of other Questions.

Question S-1. (2 minutes) Compare and contrast the cash method of accounting and the accrual method of accounting.

Question S-2. (2 minutes) TP has elected the accrual method of accounting. During Year 1, TP entered into a contract with Client under which TP is to provide services to Client over a five-year period. Payments under the contract are due on December 31 of each of the five years. On December 15, Year 2, Client pays to TP the amount due on December 31, Year 2, plus the amount due on December 31, Year 3. As of December 31, Year 2, the payment for Year 3 has not been earned, but there exists no restriction on use by TP of the Year 3 amount paid. Discuss whether TP should report the prepayment of the Year 3 amount in TP's gross income for Year 2.

Question S-3. (6 minutes) On December 31, Year 1, TP owned unencumbered unimproved real property with an adjusted basis of \$200,000 and a fair market value of \$500,000. On December 31, Year 1, TP sold the property to Buyer according to the following terms:

1. Buyer paid TP \$100,000 cash at the closing.
2. Buyer executed a promissory note payable to TP in the total principal amount of \$400,000. A principal payment of \$100,000 was due on the anniversary date of the sale in each of the four years following the year of sale. The promissory note required the payment of interest at 3% compounded annually, and the note had a fair market value of \$400,000.

TP received the required \$100,000 payment of principal on the note in Year 2, and on January 1, Year 3, TP transferred the note (entitled to three additional principal payments of \$100,000 each) to TP's child as a gift. The fair market value of the note on January 1, Year 3, was \$300,000.

- (a) (3 minutes) Quantify and discuss the Year 1 tax consequences to TP according to § 453.
- (b) (2 minutes) Quantify and discuss the Year 2 tax consequences to TP according to § 453.

(c) (1 minute) Quantify and discuss the Year 3 tax consequences to TP according to § 453B.

Question S-4. (9 minutes; ½ minute for each subpart) State the amount that constitutes gross income to TP (without any further explanation) of each of the following items received during 2016 (answer each part below separately).

- a. \$6,000 payment by TP's employer to bank to satisfy TP's debt to a bank. The payment was made in consideration of TP's outstanding service to TP's employer.
- b. \$1,000,000 cash received as the winner of the Einstein Prize in Physics awarded by the Einstein Institute. Immediately upon receipt of the payment, TP made a gift of the \$1,000,000 to TP's child.
- c. \$100,000 lump-sum proceeds of life insurance policy on the life of TP's uncle. The policy was purchased and owned by TP, and the proceeds were payable to TP.
- d. \$60,000 as a partial payment of the proceeds of a life insurance policy in the face amount of \$500,000 on TP's father who died during the year. Pursuant to the terms of the policy, TP (as beneficiary of the policy) elected to receive a \$60,000 payment in each year for TP's life. TP's life expectancy is 10 years when the payments commence in 2016.
- e. \$5,000 cash found in 2016 in a desk purchased in 2014 at a garage sale.
- f. \$50,000 embezzled from TP's employer.
- g. \$3,000 of interest received on U.S. Treasury note.
- h. On January 1, 2016, TP was injured when the faulty air bags in TP's automobile deployed. TP suffered (1) physical injury to TP's body and (2) emotional distress associated with the physical injuries. TP is awarded a court judgment against the auto manufacturer, and the judgment is paid on December 1, 2016. The damages paid to TP pursuant to the judgment were as follows: (1) \$70,000 compensatory damages for physical injury to the body of TP, (2) \$250,000 punitive damages for physical injury to the body of TP, and (3) \$50,000 compensatory damages for the emotional distress incurred on account of the physical injuries sustained. State the amount of gross income with respect to the \$70,000 compensatory damages for the physical injury to the body.
- i. Same facts as in Question S-4.h. State the amount of gross income with respect to the \$250,000 punitive damages for the physical injury to the body.
- j. Same facts as in Question S-4.h. State the amount of gross income with respect to the \$50,000 compensatory damages for the emotional distress.
- k. \$4,000 of interest received on a State of Alaska bond the proceeds of which were used by the State of Alaska to finance the construction of new public schools.
- l. \$7,000 gain realized upon sale of State of Alaska bond the proceeds of which were used by the State of Alaska to finance the construction of new public schools.
- m. Publically traded securities received during the current taxable year as a bequest after the death of TP's best friend. The fair market value of the securities as of the (1) date of death of the friend is \$350,000 and (2) date of receipt of ownership by TP is \$325,000.
- n. Free coffee at work provided by TP's employer (value per year is \$300).
- o. TP had worked as a firefighter for the city in which TP lived. During TP's work career, (1) TP accrued vacation time and sick leave and (2) for a period of time, TP was on



- temporary disability leave (during which TP continued to accrue vacation time and sick leave). Upon TP's retirement during the current year, TP's unused vacation time and sick leave (with a value of \$3,000) was "cashed out" (converted into the sum of money of \$3,000 and paid to TP).
- p. TP received a payment of \$20,000 in exchange for undergoing procedures to donate her eggs to an infertile couple. Under TP's contracts, the sums received were designated as compensation for pain and suffering.
  - q. After consulting with an accounting firm, TP engaged in a transaction that TP eventually determined to be an abusive tax shelter, and the IRS disallowed all tax benefits associated with the transaction. TP initiated a lawsuit against the accounting firm seeking monetary damages (all of the damages that TP alleged in the complaint were damages that TP sought to compensate TP for the loss suffered because the accountants were negligent and breached their fiduciary duties). TP received a \$375,000 payment in settlement of the claims for the damages alleged in the complaint.
  - r. TP was a credit card customer at a retailer whose computer system was hacked/compromised by unauthorized persons, thereby possibly making personal and credit information about TP available to unauthorized persons. The retailer provided in kind, for the period of 18 months after restoration of the security of the retailer's computer system, to TP (and all other similarly situated credit customers of the retailer) credit and identity protection services provided by a third party, the value of which for the current year was \$300.

**Question S-5. (4 minutes)** TP, who has recurring losses from activities that involve elements of personal sport, hobby, or recreation, may be subject to limitations applicable to activities not engaged in for profit. Describe the limitations.

**Question S-6. (2 minutes)** Discuss briefly the substantiation requirements that TP, who operates a business activity as a sole proprietor, must satisfy in order to obtain deductions for business transportation expenses for a partial-day trip that involved only an air fare expense for transportation of TP from City One to City Two and then back to City One.

**Question S-7. (3 minutes)** TP owned real property, and on December 15, Year 1, granted (to an organization described in § 501(c)(3) that meets the requirements of § 509(a)(2)), by deed a conservation easement with respect to the real property. The December 15 deed stated that the consideration for the conservation easement was the mutual covenants in the deed. The conservation deed stated nothing about whether (1) the § 501(c)(3) organization had provided to TP goods or services in return for the conservation easement or (2) the conservation deed constituted the entire agreement between TP and the § 501(c)(3) organization. TP filed TP's federal income tax return for Year 1 on April 15, Year 2. In a letter to TP, dated October 1, Year 2, a representative of the § 501(c)(3) organization stated that "no goods or services were furnished in respect of your easement donation." Discuss whether TP qualifies for a deduction under § 170 with respect to the transfer of the conservation easement.

**Question S-8. (1 minute)** Under applicable Tax Court authority regarding a conservation easement transfer, must each outstanding mortgage on the underlying property be subordinated, at the time of the transfer, to the rights of the holder of the easement? State YES or NO.

**Question S-9. (2 minutes)** TP's salary as an employee is \$200,000 per year, and TP receives \$10,000 of interest income from investment property (a portfolio of corporate debt instruments). TP is a limited partner in Partnership 123 (interests in which are not traded on an established securities market and are not readily traded on a secondary market or the substantial equivalent thereof) that owns and leases tanker ships, and TP's distributive share of the partnership loss for the current taxable year is \$50,000. Discuss and quantify the amount of the distributive share of the Partnership 123 loss that TP will be allowed to deduct (assuming that TP has a sufficient amount of adjusted basis in the partnership interest).

**Question S-10. (2 minutes)** Two unmarried persons are co-owners of residential real property that serves as the principal residence of each person. Discuss whether the § 163(h)(3) limitations apply on a per-residence basis or a per-taxpayer basis.

**Question S-11. (1 minute)** TP and Spouse decide to divorce and initiate a divorce proceeding. During the pendency of the divorce proceeding, TP receives from Spouse monthly support amounts (1) in cash and (2) via electronic transfers from Spouse's bank account to TP's bank account. Discuss whether such support amounts qualify as § 71 alimony if all other § 71 requirements are satisfied.

**Question S-12. (3 minutes)** Describe how married persons, of the same sex, are treated for federal tax purposes.

**Question S-13. (2 minutes)** On January 1, 2016, TP purchased, for \$750,000 cash, and placed in service new machinery exclusively for use in TP's business activity. The equipment is purchased from the manufacturer, who is unrelated to TP. This is the only purchase of "Section 179 property" made by TP during 2016. The equipment has a § 168(i)(1) class life of six (6) years. TP expects to use the equipment for nine (9) years, and TP estimates that the equipment will have a salvage value of \$10,000 at the end of the period of use. Assume that the property qualifies under § 168(b)(1) and ignore § 168(b)(1)(B). State the maximum amount of the § 179 deduction allowable in 2016 ignoring § 179(b)(3).

**Question S-14. (2 minutes)** Same facts as Question S-13. State the amount of § 168(k)(1) depreciation allowable in 2016, assuming the maximum § 179 deduction in 2016 from your answer to Question S-13.

**Question S-15. (3 minutes)** Same facts as Question S-13. State the amount of § 168(a) depreciation allowable in 2016, (1) assuming the maximum § 179 deduction in 2016 from your answer to Question S-13 and (2) after application of § 168(k)(1).

**Question S-16. (2 minutes)** Same facts as Question S-13. State the amount of § 168(a) depreciation allowable in 2017, (1) assuming the maximum § 179 deduction in 2016 from your answer to Question S-13 and (2) after application of §§ 168(k)(1) and 168(a) in 2016.

**Question S-17. (4 minutes)** Describe the generally-applicable Internal Revenue Code rules regarding a net operating loss.

**Question S-18. (4 minutes)** In 2012, TP purchased unimproved real property. To acquire the property, TP (1) paid \$50,000 cash at the closing, (2) assumed a preexisting first mortgage debt secured by the property in the principal amount of \$600,000 (for which TP became personally liable), and (3) executed a second mortgage indebtedness (for which TP was personally liable) to the seller in the principal amount of \$100,000.

In 2016, TP received an offer from Buyer to purchase the real property, and TP accepted the offer. Buyer (1) paid \$500,000 cash, (2) took subject to the first mortgage debt in the principal amount of \$200,000 (TP had paid down the principal amount of the debt from \$600,000 to \$200,000), and (3) assumed the second mortgage debt in the principal amount of \$100,000.

- a. Quantify the amount of TP's adjusted basis in the property at the time of acquisition in 2012.
- b. Quantify TP's amount realized and any gain or loss realized upon the sale of the property to Buyer in 2016.

**Question S-19. (2 minutes)** TP is an inventor who holds all substantial rights to a patent, and TP's efforts solely created the property. TP is a 24% owner of the stock of C Corporation, and the remaining stock is owned by TP's sister and a friend of TP. TP effectively controls C Corporation through its officers, directors, and shareholders. TP transfers the patent to C Corporation in exchange for future royalty payments contingent on the productivity of the property transferred. Discuss whether the royalty payments qualify for capital gain treatment.

**Question S-20. (4 minutes)** Describe the alternative minimum tax as it applies to an individual taxpayer.

**Question S-21. (1 minute)** Is a transfer made "in the ordinary course of business" or "for a full and adequate consideration in money or money's worth" a taxable gift? State YES or NO.

**Question S-22. (2 minutes)** Describe the statute of limitation applicable to the gift tax with respect to a lifetime gift by TP.

**Question S-23. (4 minutes)** TP created an irrevocable inter vivos trust into which TP transferred certain insurance policies on TP's life. The trust instrument names as beneficiaries of the trust all of TP's descendants. At the time of the transfer in trust, TP has living children, grandchildren, and great grandchildren, some of whom are minors. The trust instrument provides that each beneficiary (or the beneficiary's legal guardian, if the beneficiary is not competent) may

withdraw from the trust with respect to every transfer made to the trust the lesser of (1) a formula-derived amount and (2) "the maximum federal gift tax exclusion under Internal Revenue Code section 2503(b) in effect at the time of the transfer." The trust instrument requires that the Trustee of the trust, TP, notify each beneficiary of any transfer to the trust as to which the beneficiary has a right to withdraw property, and the notice must be given within three days of the transfer into the trust. In addition, the trust instrument provides that each beneficiary (or each beneficiary's legal guardian, if the beneficiary is not competent) must have a period of not less than 30 days from receipt of the Trustee's notice within which to exercise the withdrawal rights. Discuss whether § 2503 will apply to transfers made to the trust.

Question S-24. (2 minutes) TP died on March 8, Year 2. On April 11, Year 2, the estate of TP filed a Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, with respect to TP's Federal income tax for Year 1. On May 1, Year 2, a Form 1040, U.S. Individual Income Tax Return, for Year 1 was filed for TP reflecting an overpayment of \$X.

On December 13, Year 2, the estate filed a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The Year 1 Federal income tax refund due TP was not included in the value of the gross estate. On April 15, Year 3, a Form 1040 for Year 2 was filed for TP reflecting an overpayment of \$Y.

Discuss whether amounts \$X and \$Y are properly includible in TP's gross estate for federal estate tax purposes.

Question S-25. (2 minutes) Explain whether, in calculating gain from the sale of property, an overstated § 1012 adjusted basis is an understatement of gross income for purposes of determining the applicable statute of limitation under § 6501(e).

Question S-26. (3 minutes). Describe the interest that is imposed on unpaid assessable penalties, additional amounts, or additions to tax.

Question S-27. (3 minutes) Define and describe "transferee liability" and explain how the liability is to be assessed, paid, and collected.

Question S-28. (4 minutes) Describe how a limited liability company (formed under the laws of a state of the United States) and its owners are subject to the federal income tax.

Question S-29. (12 minutes, as allocated below) The taxable year is 2016, during which Tippet Corporation, a calendar year taxpayer, has § 316 current earnings and profits from operations of \$150,000. As of December 31, 2015, Tippet Corporation had § 316 accumulated earnings and profits of \$500,000. The stock of Tippet Corporation is owned equally by A, Inc. ("A"), a corporation, and TP, an individual. TP's adjusted basis in TP's 2,000 shares of stock of Tippet Corporation is \$300,000. A's adjusted basis in its 2,000 shares of stock of Tippet Corporation is \$600,000.

On December 31, 2016, Tippet Corporation makes the following nonliquidating distributions that are characterized as dividends for state law purposes:

Distributee Shareholder	Property Received	Fair Market Value	Adjusted Basis to Tippet Corporation
TP	cash	\$500,000	\$500,000
TP	Grizzly Corporation stock*	\$300,000	\$50,000
A	cash	\$500,000	\$500,000
A	inventory	\$300,000	\$350,000

\* Stock of Grizzly Corporation, an unrelated corporation, acquired in 2005 by Tippet Corporation as an investment.

- a. (4 minutes) Discuss and quantify the gain and loss recognition consequences to Tippet Corporation that result from the 2016 distributions.
- b. (4 minutes) Determine the § 301 consequences to TP of the 2016 distributions from Tippet Corporation, and determine TP's adjusted basis in the stock of Grizzly Corporation.
- c. (4 minutes) Determine the § 301 consequences to A, Inc., of the 2016 distributions from Tippet Corporation, and determine A's adjusted basis in the inventory.

Question S-30. (3 minutes) TP consulted with tax professionals prior to entering into a transaction. In a deficiency notice, the IRS asserts a § 6662(a) and (b) penalty against TP based on the income tax return filed by TP that reported the transaction. TP petitions the Tax Court with respect to the deficiency notice. What proof must TP offer to the Tax Court to establish that the § 6662 penalty should not be imposed because TP had reasonable cause and acted in good faith with respect to the underpayment?

**PART THREE  
EVIDENCE  
(60 minutes)**

**ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION IN  
ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING  
ANSWERS TO OTHER PARTS OF THE EXAMINATION**

Assume the following facts for Questions E1-E10. Taxpayer ("TP") has filed a petition with the Tax Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends that TP improperly reported \$250,000 as a charitable contributions deduction on TP's 2012 individual tax return, and that a § 6662(b)(1) penalty applies. TP challenges these contentions, arguing that the \$250,000 charitable contributions deduction was proper, and that no § 6662(b)(1) penalty is warranted. Whenever a fact pattern states that TP asks a question of a witness, you should assume that the question is being asked by TP's attorney, and not by TP.

1. (6 minutes) In the case-in-chief, TP calls C as the first witness. C testifies that C is the President of Charity, Inc., a non-profit organization. C testified that, in November 2012, C approached TP's residence and rang the doorbell. C then testified that TP answered the door and that C and TP engaged in a conversation about Charity, Inc. After this testimony, TP asked C the following question: "Is it true that you, C, told TP that your organization, Charity, Inc., had been in existence since 2000, that the organization sought to improve the lives of the less affluent members of American society, that you were seeking donations to assist with this endeavor, and that all contributions were tax deductible?" The IRS objects, arguing that the form of the question (the phraseology of the question) is improper. TP disputes this contention. How should the Tax Court rule?

2. (6 minutes) Assume that C, the President of Charity, Inc., is still on the witness stand. During direct examination, TP asks C the following question: "After you requested a donation from TP, what, if anything, did TP say?" C then responded, "TP then started to cry hysterically and then rather loudly exclaimed, 'Yes! I would love to help out! I have so many close family members who are destitute and in desperate situations. This is such a great cause, and I am beyond thrilled to have been asked to be a part of such a fantastic charitable effort!'" The IRS objects to C's testimony on hearsay grounds. How should the Tax Court rule?

3. (6 minutes) Assume that C, the President of Charity, Inc., is still on the witness stand. During direct examination of C, TP shows C a two-page document comprised of (1) a photocopy of an IRS determination letter and (2) a cover letter. The photocopy is of a document on IRS letterhead that is signed by an appropriate official of the IRS and which states that Charity, Inc., is a tax-exempt charitable organization under § 501(c)(3). The cover letter was signed by an appropriate person at the IRS and certifies that the attached photocopy of the determination letter

is a true and accurate representation of the original determination letter (dated January 15, 1990) on file at the IRS. C testifies that C recognizes the determination letter, and that it is the document that C, on behalf of Charity, Inc., received in the mail from the IRS in 2000 and that C has kept in a secured file cabinet on the third floor of the organization's office complex. The IRS objects to the admission of the document. TP contests this contention. How should the Tax Court rule?

4. (6 minutes) Assume that C, the President of Charity, Inc., is still on the witness stand. Assume further that the document referenced in question 3 was admitted into evidence. During direct examination, TP asks C the following question: "After you received the document in the mail from the IRS, which recognized your entity as a tax exempt organization, what did you do next?" C responded, "I asked my secretary, 'Can you tell me where in our office we file our important correspondence?'" The IRS objects, arguing that C's question to the secretary is hearsay. TP responds that the IRS's objection is without merit. How should the court rule?

5. (6 minutes) Assume that TP takes the witness stand. On direct examination, TP's attorney asks TP the following: "You testified that you filed your return in early April 2013. And you further testified that, after you submitted your return, you called your brother. What did you say to him during that conversation?" TP responded, "I told him, 'I just filed my tax return, which included a \$250,000 charitable gift to that wonderful charitable organization, Charity, Inc.'" The IRS objects to TP's response arguing that it is hearsay. TP's counsel responds that the IRS's objection is without merit and that TP's response should be admissible for the truth of the matters asserted therein. How should the Court rule?

6. (6 minutes) Assume that TP is on the witness stand and assume the facts in Question 5. TP's attorney asks TP "What did you do after you talked with your brother on the telephone?" TP responded, "Well, before I answer your question, I must say this. I think the IRS should be abolished because it is crooked agency." The IRS objects to TP's testimony arguing that the statement is not pertinent to the case at bar. TP contests this claim. How should the court rule?

7. (6 minutes) Assume that TP is on the witness stand. On cross-examination, the IRS asks TP "Isn't it true that just last year in a letter you sent to the IRS you offered to concede that you underpaid your federal income tax and were subject to a § 6662(b)(1) penalty in exchange for a negotiated resolution to this matter?" TP objects to this question arguing that his tax liability cannot be proved with such evidence. The IRS submits that TP's objection is without merit. How should the court rule?

8. (6 minutes) Assume that TP calls TP's brother, B, to the witness stand. During direct examination, B testifies that B recalls having a telephone conversation with TP in early April 2013 regarding the filing of TP's 2012 tax return [the conversation in Question 5]. When asked by TP to testify to the precise contents of this conversation with TP, B testified that B could not remember the precise contents. TP wants to refresh B's memory of this conversation by showing B an IRS document that summarizes an earlier interview that an IRS agent had with TP that

includes details regarding TP's April 2013 conversation with B. The IRS objects arguing that this is an improper means to refresh B's memory. TP counters that this method of refreshing B's recollection is proper. How should the court rule?

9. (6 minutes) Assume that TP's brother, B, is on the witness stand and that during direct examination B provides testimony favorable to TP. On cross examination, the IRS seeks to admit into evidence a properly authenticated "Judgment and Conviction" order that reflects B's misdemeanor conviction for "bank fraud" in 2010. TP objects claiming that such evidence is inadmissible impeachment evidence. The IRS submits that such evidence is admissible. How should the court rule?

10. (6 minutes) Assume that TP's brother, B, is on the witness stand and that during direct examination B provides testimony favorable to TP. On cross examination, the IRS asks B whether B disclosed on an employment application to X Corporation two years ago that B had a prior felony conviction. B responds "Yes, I did." B had not disclosed this information, and the IRS seeks to admit extrinsic evidence to prove that B did not make this disclosure. TP objects to the introduction of this extrinsic evidence. The IRS submits that the introduction of such extrinsic evidence is proper. How should the court rule?



**PART FOUR  
LEGAL ETHICS  
(24 minutes)**

**ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION IN  
ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING  
ANSWERS TO OTHER PARTS OF THE EXAMINATION**

Question LE-1 (3 minutes). A is tax counsel to Work Helpers Inc., a C Corporation with one shareholder, Bob Jones. In 2013 the corporation made a distribution to Jones. The appropriate tax treatment will depend on whether the corporation had earnings and profits at the time of the distribution. A prepared the corporate tax returns and calculated that the corporation had no E&P at the time of distribution. The IRS has issued a deficiency notice to Jones challenging the tax treatment of the distribution on the grounds that the corporation did have E&P at the time of the distribution and that the distributions should have been taxed. Jones asks A to represent Jones in the Tax Court proceeding. If A believes that A might be called as a witness, can A ask Jones for a waiver in case of any conflict? Briefly explain your answer.

LE-2 (3 minutes) B, an attorney, represents W in a divorce proceeding. W and H, W's husband, have received a deficiency notice with respect to a return they filed jointly after they separated. As part of the divorce representation, W has told B about some income she received from an illegal activity that was under-reported on the tax return "as other income." H knows nothing regarding the illegal activity income. Can B represent both H and W in a Tax Court proceeding with respect to the deficiency notice? Briefly explain your answer.

LE-3 (3 minutes) C is a partner in the Ready, Willing and Able law firm, and regularly provides tax counsel to Kevin Woo, the chief executive of a successful business. C designed a tax strategy designed to save federal income taxes, which involved a transaction with foreign tax credits. C helped Woo carry out the transaction by preparing all the documentation for the transaction and by preparing the tax return on which Woo claimed the foreign tax credits. The IRS subsequently audited Woo and asserted that the transaction lacked economic substance and therefore Woo was not entitled to the credits. Woo received a notice of deficiency with respect to the transaction. Can C represent Woo in the Tax Court proceeding with respect to the deficiency, assuming that there would be no need to call C as a witness? Briefly explain your answer.

LE-4 (2 minutes) D is a litigation partner in the five-person law firm of Smith Baker. D represented Winslow, Inc., in a contract dispute with Manchester, Inc. That dispute was settled one year ago. Can E, another partner in Smith Baker, now represent Manchester in a Tax Court proceeding? Briefly explain your answer.

LE-5 (2 minutes) F provides tax advice to Maria Garcia about taking a medical deduction for

plastic surgery on Garcia's face. The surgery, which cost \$15,000, changed the shape of Garcia's chin and cheekbones. The only reason that Garcia undertook the surgery was to change her appearance, and the surgery did not ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease. F tells Garcia that she can take a medical deduction because Garcia now feels that she looks better and that improved her mental health. The IRS asserts a deficiency with respect to Garcia's medical deduction. If F represents Garcia in the Tax Court proceeding with respect to this deficiency, can F advance the position that the medical deduction was proper? Briefly explain your answer.

LE-6 (3 minutes) L represents Ted Anderson in a Tax Court proceeding involving deficiencies with respect to flow-through interest deductions from an S corporation that Anderson took on his return. As part of the pre-trial process, the government lawyer offers a settlement with respect to the interest deductions. L is surprised by the settlement offer and has never discussed with Anderson the possibility of settling. L believes the government's offer is quite generous and should be accepted. Can L agree to and sign the stipulation of this settled issue? Briefly explain your answer.

LE-7 (3 minutes) G represents Tanya Jenkins in Tax Court litigation in which the issue is the amount of allowable depreciation for a walk-in freezer that Tanya has claimed that she used in her bakery business. G calls Jenkins to testify about the purchase price of the freezer, the date the freezer was put into service, and the use of the freezer in the business. G has no reason to believe that Jenkins will not testify truthfully. The day after Jenkins testifies, she tells G that she never purchased a freezer for her business. What action, if any, should G take? May G reveal the false testimony to the court? Briefly explain your answer.

LE-8 (3 minutes) H represents Marcus Denton in a Tax Court proceeding. H has filed a petition and has undertaken discovery. The trial is scheduled to begin in one week. H has found it increasingly difficult to work with Marcus, who does not return calls and has failed to show up for meetings with H. H sends Denton a registered letter informing him that H will no longer represent him in the Tax Court proceeding and that H will not appear at the trial. Has H successfully withdrawn from the representation of Denton? If not, what other steps, if any, must H undertake?

LE-9 (2 minutes) J represents Diana Holmes, a resident of Seattle, Washington (which is within the jurisdiction of the Ninth Circuit Court of Appeals), in a Tax Court proceeding. After submitting a brief on behalf of Holmes, J discovers a decision by the Ninth Circuit Court of Appeals that is directly adverse to Holmes' position. The IRS brief does not mention the case. J tells Holmes about the discovery of the case and Holmes directs J not to inform the court about the case. May or must J reveal the Ninth Circuit opinion to the Tax Court? Briefly explain your answer.