

# **July 2025 PowerPoint (student version)**

**Federal Tax ... page 1**

**Legal Ethics ... page 110**

**Court Cases ... page 138**

**Find Jeff Thompson's lunch presentation "Studying for the Tax Court Exam" in the Questions Handout ... p 98**

**Intentionally does not match the presentation**



## WELCOME!

FEDERAL TAX, COURT CASES, LEGAL ETHICS

JULY 2025

2025 EXAM CYCLE

LAS VEGAS and LIVE STREAM



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**Sherrill L Trovato EA USTCP (CA) – 2000  
Program Founder**



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**Tom Gorczynski EA USTCP (AZ) (2014)  
Lead Instructor**



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**Beth Lougen, EA USTCP (VA) (2014)**  
**Instructor/Mentor**



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**Linda Bossard, EA USTCP (CA) (2010)**  
**Lead Mentor**



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**Mike Chambers, EA CPA USTCP (CA) (2016)**  
**Mentor**



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**Tyler Warner, EA USTCP (CO) (2014)**  
**Virtual Facilitator/Mentor**



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**Cathy Clow, EA (CA)**  
**Registration/Zoom team**



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**Geri Bowman, EA CPA USTCP (OH) (2012)**  
**Mentor**



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**Jeff Thompson, EA USTCP (CA) (2023)**  
**Mentor**



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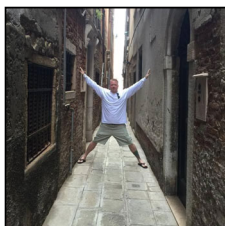
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**Joel Schiele**



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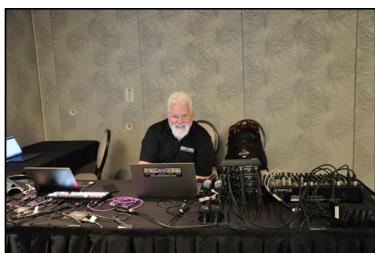
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**Joe (Producer)**  
**Ultraviolet Events**



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### LIVE - CE Requirements

Attendance sign in sheets for each hour of CPE/CE (morning and afternoon)

Self-certify your hours on CE sheets you turn in on Wednesday; Sherrill signs both, returns yellow, keeps white

CE/CPE certificates distributed on site



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### Virtual - CE Requirements

4 unannounced poll questions per CE hour; must respond to 3 per 50-minute CE hour. If you have problems with any poll, must note in the Q&A area for every poll question.

CE/CPE certificates sent within the next 2 weeks



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### Anticipated Schedule in July

(actual live presentation is flexible based on timing)

#### Monday

Federal Tax

#### Tuesday

Legal Ethics

Federal Tax

#### Optional Lunch

Session – Studying for the Tax Court Exam

#### Wednesday

Court Cases

Federal Tax

Computations

General Review as time permits



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**For July, these texts**  
(distributed in May to Traditional students)



Preparing to  
Practice before the  
US Tax Court

Legal Ethics  
2025 Exam Cycle



Preparing to  
Practice before the  
US Tax Court

Federal Taxation  
2025 Exam Cycle



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**For July, 2 handouts**  
(Questions available now)



Preparing to  
Practice before the  
US Tax Court

JULY 2025 HANDOUT  
COURT CASES  
QUESTIONS  
2025 Exam Cycle



Preparing to  
Practice before the  
US Tax Court

JULY 2025 HANDOUT  
ANSWERS  
2025 Exam Cycle



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July 2025 Class

Access Content

Download your materials  
[taxcourtexam.com](https://taxcourtexam.com)  
Requires login for student login for student  
content area



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### Tax Court Exam

- No new Tax Court guidance as of 6/30/25
- Anticipate you'll be tested on 2025 law

Follow instructions precisely! **Tax Court**

- **Apply to take exam electronically 7/14/25-9/19/25 (Starts today!)**
- **Request medical accommodation (with appropriate documentation) by 8/15/25**
- **No extensions of any deadline!**



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### Tax Court Exam

Follow instructions precisely! **ExamSoft**

- **Register with ExamSoft as instructed after receiving confirmation and your exam ID#**
- **Email due from ExamSoft on 10/6/25**
- **Registration closes 10/20/25**
- **Must complete required mock exam(s) by close of registration**
- **Eligible examinees receive instructions for downloading the exam**
- **Email 11/5/25 with password to take the exam**



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### Our Review August-November

#### **Timed weekly quizzes**

(approximately 8/13 – 10/29)

#### **Zoom Sessions (see Forum for registration links)**

Saturday 7/19 10 am PDT, Kaelyn Romey – Evidence

Saturday 8/2 10 am PDT, Tom – Entities

Saturday 9/6 10 am PDT, Sherrill Test Taking/Q&A

Saturday 10/4 10 am PDT, Sherrill Instructor's Hours and Wrap-Up

#### **In Person Review**

Monday/Tuesday 10/20-10/21, Costa Mesa, CA



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## October Review

**Zoom Practice Exam 10/15/25 12:30 pm ET**

Register in Advance (this is also on the Forum):

- Register in advance for this meeting:
- [https://us02web.zoom.us/join/H-\\_dYXidRjOYW5rsvsWbOVg](https://us02web.zoom.us/join/H-_dYXidRjOYW5rsvsWbOVg)

**In person review 10/20-10/21/25**

**NO live stream and not recorded (in person only)**

**Review practice exam answers**

**Review all tested subject areas**



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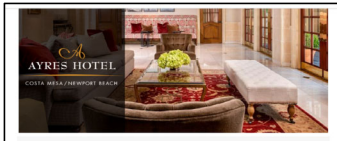
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**Limited number of rooms available**  
**Block 10/18-10/22 (closes 9/28/25)**



**USTCPS Group Name – Group Code CM-15847**

**Complimentary shuttle to/from SNA**

**Room rate \$169 plus tax (single occupancy)**

**714-549-0300 or Toll Free 800.322.9992**



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## Student Content Area of Website

General Info/Court Cases Access Content	Webinars/Videos Access Content	May 2025 Class Access Content
July 2025 Class Access Content	Review 2025 Class Access Content	All Assignments Access Content



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## Federal Taxation Review

40% of Exam – 96 minutes (88 in 2021)  
2<sup>nd</sup> most difficult exam section (in my opinion), but now students are passing Evidence and not passing Tax  
Covers a lot of tax law  
Apparently no IRC available during 2025 exam  
This class isn't a comprehensive look at IRC – it is geared towards the exam, not your practice  
Topic-related webinars available in the portal for our Traditional students



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## Study Tips

Some repetition in exam questions in this area exists but you're more likely to see concepts tested over and over:  
gross income, real estate, cash vs accrual, corporations, estates and so forth

We'll introduce you to some of these over the next several days



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## Study Tips

Work the calculations as they are presented in class so they become second nature to you  
Don't get stuck – if you need help, ask!  
Webinars are available in the student portal for many calculations so you can watch them again (Traditional students access)  
These sessions are recorded and available on demand after editing (Traditional students access)



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## Your Review August-November

### Handout page 3

Think about How You'll use this Time – it is better to be consistent than try to cram for this exam

### Handout page 4-6

See "One Timers' 12 week Study Plan" – Adapted

A successful student makes suggestions on how to study on your own or to work with your study group between now and the exam



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## Your Review August-November

### Handout page 7-11

See Sherrill's Test Taking Strategies and How to Frame Exam Answers for more guidance



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## Sherrill's Test Taking Strategies (H.O. p 6)

1. Save Time – Abbreviations, Lists, Bullet Points
2. Be Concise
3. Show your Work
4. Don't get Stuck
5. Keep Track of Timing
6. Scan Ahead for Big Point Answers
7. Decide Order of Exam in Advance
8. No Bonus Points Available!
9. Answer the Question Asked!
10. Eliminate Unnecessary Stress on Exam Day



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## How to Frame Exam Answers (H.O. p 7)

Sample 2021 exam questions with multiple suggested answers illustrates how to frame exam answers

We provided a few specific questions with the 2021 Suggested Answers. Use these for guidance on how best to answer your exam questions



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**CALL OF THE QUESTION:** What is the meaning of the phrase "last known address" for a notice of deficiency?

**P-2(a) (2 minutes)** Discuss the meaning of the phrase "last known address" with respect to a §6212 statutory notice of deficiency.

**FULL POINT ANSWER:** Last known address is the address of record with the IRS. A Statutory Notice of Deficiency must be mailed to the last known address unless the TP submits a proper change of address either via a filed tax return or change of address form. (4/4)



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**CALL OF THE QUESTION:** What is the meaning of the phrase "last known address" for a notice of deficiency?

**ALTERNATE FULL POINT ANSWER:** If notice of deficiency was not mailed to the last known address of the TP and TP did not receive it within 30 days of the petition filing deadline it will not be considered valid. If the NOD was mailed to the last known address of TP even if not received by TP it is considered valid NOD for the 90 day/150 day deadline for the Tax Court petition. Last known address is the address filed with IRS (both spouses can have separate addresses through this form) or clear notification of the IRS of the new address made by the TP. (4/4)

**NOTE:** longer answers aren't necessarily better – they both received full points. The alternate full point answer provided unneeded extra information.



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**CALL OF THE QUESTION:** What does it mean if the petition is missing something from the NOD?

(2 minutes) Describe the effect of a Tax Court petition that does not address an issue raised in the §6212 notice of deficiency.

**FULL POINT ANSWER:** Deemed admitted or conceded. (4/4)

**ALTERNATE FULL POINT ANSWER:** The tax court petition may only raise issues pertinent to the NOD. The petition is not a free for all for TP to address all sorts of issues they feel need to be addressed. They must stick with the errors they feel are in the NOD and the law with which they base these facts



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#### For Traditional Students

You can use the Points Awarded Analysis and Suggested Answers to start thinking about how to frame your answers

**Links:**

[Get Started with the 2025 Tax Court Exam Cycle](#)  
[2023 Suggested Answers](#)  
[2023 Points Awarded](#)  
[Topics by Exam](#)  
[Outlining Handout - Tom Gorczynski](#)  
[Memorizing Lists - John Perry](#)



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#### Slido App Access (H.O. p 12)

**Method #1: QR Code**

Scan the QR code below with your phone, and you'll be taken to the webpage with the polls and quizzes!



**Method #2: Website**

Go to [www.slido.com](https://www.slido.com). Look for the "Joining as a participant?" area, enter 3717342, and click the arrow.

CPAs should identify themselves  
NASBA requires hourly content-driven engagement



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**Tom's The Easy Way Calculations**

**Handout pages 13-16**

§351

§721

§1031

§453



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**QUIZ #1 – PRACTICE & PROCEDURE  
REVIEW**

**HANDOUT PAGE 19**



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**FEDERAL TAX CONCEPTS**

**Text page 4**



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### Cash Basis

Cash basis is most common method – income is reported when actually or constructively received and expenses are deducted when paid.

Accrual matches income and expense related to the same year. Income is reportable when earned – TP's right to income is fixed, can be determined



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### Accrual Basis (p 5)

Under the "all events test" expenses are deductible in year in which all events occur that fix the liability and the liability can be determined with reasonable accuracy

Deductions are allowed in the taxable year when all the events occur that establishes a liability giving rise to such deduction, and economic performance occurred.

Expenses must be prorated between tax years if covers > 1 taxable year.



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### Corporations: Incorporation (p 76)

Essential elements for tax-deferred §351 exchange:

- Money or property in exchange for stock
- Immediately after the exchange, shareholders are in control of the corporation (80% total voting power and at least 80% all non-voting stock; attribution applies)
- Not a §351(e) investment company



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## Corporations: Incorporation

If there is a §351 exchange:

- TP and the corporation recognize neither gain nor loss in the exchange
- TP recognizes gain only to the extent of FMV boot received; same character as property contributed
- TP's stock basis is the adjusted basis of property transferred to the corporation PLUS gain recognized LESS FMV boot received LESS liabilities assumed by corporation
- If liabilities transferred to corporation exceed TP's adjusted basis in property or money contributed, TP recognizes gain equal to the excess amount



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## §351 – Tom's Easy Way (H.O. p 13)

### 1. Is §351 applicable?

Transfer of money and/or property for at least 80% control of the voting shares AND total shares of all other classes of stock.

### 2. Consequences to Transferor due to Exchange of Property

Gain is recognized only to the extent of boot received  
If property is transferred subject to indebtedness, then gain is recognized only to the extent that debt relief exceeds basis  
Character of gain is the same as if the property transferred was disposed of in a taxable transaction  
Loss is not recognized

### 3. Basis of Stock Received by Transferor

Adjusted basis of property contributed  
PLUS gain recognized by transferor upon transfer  
LESS FMV of boot received  
LESS liabilities assumed by corporation [treated as cash payment for basis purposes]

### 4. Basis of Property Received by Corporation

Adjusted basis of property contributed  
PLUS gain recognized by corporation upon transfer [allocated by FMV of the properties]

NOTE: Basis of built-in loss property cannot exceed the FMV of the property



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## Corporations: Distributions (p 77-78)

E&P distributions are taxable dividends to S/H.

Distributions > E&P are considered a return of capital and not taxable up to the S/H's basis in the stock.

Distributions > stock basis are capital gain to the S/H.



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### Corporations: Distributions

A corporation recognizes gain/loss when property is distributed to the S/H if the property's FMV > its adjusted basis.

The property is considered to be sold at its FMV to the S/H.



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### Corporations: Redemption (p 81-82)

Corp buys stock back from a S/H using corporate funds. Redemption can be used to buy out an existing S/H - unlike a complete liquidation, corp continues to exist after a stock redemption.

A stock redemption is classified as a fully taxable dividend if certain factors are present - a stock redemption is treated as a sale of stock by the S/H with gains eligible for the favorable capital gain tax rates.



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### Corporations: Redemption

The types of transactions that qualify as stock redemptions and capital gains treatment at the S/H level include:

The distribution is not essentially equivalent to a dividend: the transaction creates a meaningful reduction in the S/H's interest in the corporation.

Substantially disproportionate redemption of stock: The S/H must (after the distribution) hold < 50% of voting stock and < 80% of the interest S/H held before the redemption.



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### Corporations: Redemption (p 82)

The types of transactions that qualify as stock redemptions and capital gains treatment at the S/H level include:

Termination of a S/H's interest: complete termination of the interest is treated as a stock redemption.

Partial liquidation: if the distribution is in redemption of stock held by a noncorporate S/H and in partial liquidation of the distributing corporation. The distribution is generally pursuant to a plan of liquidation.



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### 2021/S-11: Corporations (H.O. p 26-27)

In 2000, Corporation was created with a capitalization of 1,000 shares of voting common stock, 1,000 shares of nonvoting common, and 1,000 shares of voting preferred. Each share of stock has equal value and each share of voting stock has an equal voting right. The preferred stock was issued at the time of creation of Corporation, and the preferred stock is not §306 stock. The stock has been owned since the 2000 creation of Corporation as described in the attached table. In 2020, Corporation redeems all of the shares owned by B. Assume that at all times after the redemption, B serves as an officer of Corporation. A is unrelated to B and C. C is B's mother.



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### 2021/S-11: Corporations

Attachment:

Shareholder	Voting Common	Nonvoting Common	Voting Preferred
A	200	600	700
B	300	100	300
C	500	300	0
Total	1000	1000	1000



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### 2021/S-11: Corporations

(a)(3 minutes) Explain whether the redemption of all of B's shares qualifies for exchange treatment under §302(b)(3).

**§302(b)(3) Termination of shareholder's interest**  
Subsection (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.



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### 2021/S-11: Corporations

Analysis step by step:

1. §302(c)(1) - §318 attribution applies to §302
2. §302(c)(2) – provides exceptions to attribution for §302(b)(3) – but B is an officer, so attribution applies under §302(c)(2)(A)(i)
3. B's mother is C, who is a shareholder; he is attributed her shares under §318(a)(1)(A)(ii)



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### 2021/S-11: Corporations

(a)(3 minutes) Explain whether the redemption of all of B's shares qualifies for exchange treatment under §302(b)(3).



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### 2021/S-11: Corporations

(b) (4 minutes) Explain whether the redemption of all of B's shares qualifies for exchange treatment under §302(b)(2).

§302(b)(2)(A) *In general*

Subsection (a) shall apply if the distribution is substantially disproportionate with respect to the shareholder.



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### 2021/S-11: Corporations

§302(b)(2)(C) defines substantially disproportionate:

Ratio of shareholder's voting stock to total voting stock after redemption is less than 80% of the ratio of shareholder's voting stock to total voting stock after redemption



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### 2021/S-11: Corporations

After redemption:

500 sh. (all from C) / 1,400 sh. = 35.7% of sh.

Before redemption:

1,100 sh. (500 sh. from C) / 2,000 sh. = 55% of sh.

Since 35.7% is less than 80% of 55%, the redemption *may* qualify for exchange treatment under §302(b)(2).



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### 2021/S-11: Corporations

§302(b)(2)(C) flush language states the same test must also be met with respect to common stock.

After redemption:  
800 sh. (all from C) / 1,600 sh. = 50% of sh.

Before redemption:  
1,200 sh. (500 sh. from C) / 2,000 sh. = 60% of sh.

Since 50% is NOT less than 80% of 60%, the redemption DOES NOT qualify for exchange treatment under §302(b)(2).



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### 2021/S-11: Corporations



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### 2021/S-11: Corporations



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### Partnerships: Contributions (p 87-88)

a contribution of money or other property into a partnership in exchange for an interest in the partnership usually does not result in a gain or loss

... except ...



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### Partnerships: Contributions

transfers into an investment company, as defined in §351, are not tax-free, and

disguised sales transactions are not tax-free. A disguised sale is deemed to occur if a TP transfers appreciated property into a partnership or LLC and within a short period of time, usually 2 years or less, receives a distribution of money or other property. Facts and circumstances determine if the transaction is a disguised sale rather than a tax-free contribution of property.



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### Partnerships: Contributions

As with a corporation, transfers of encumbered property to a partnership or LLC results in recognized gain on the difference between the TP's basis and the amount of debt relief



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## **§721 – Tom’s The Easy Way (H.O. p 14)**

Is §721 applicable?

Transfer of property or money in exchange for a partnership interest.

2. Consequences to Partner

Gain or loss is not recognized  
Capital account, in general, is FMV (book) or adjusted basis (tax) of contribution property

3. Basis of Partnership Interest

Adjusted basis of property  
PLUS money contributed  
LESS cash received (including indebtedness assumed by partners with transfer of property)  
PLUS share of partnership liabilities

4. Consequences to Partnership

Gain or loss is not recognized  
Basis of contributed property is the partner's adjusted basis

5. Built-In Gain Property



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## **Interest (p 148-149)**

Interest on an underpayment is generally paid from the last day prescribed for payment through the payment date

TP can make a deposit under §6603 to suspend interest accruals



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## **Interest**

Interest rates on underpayments...

Federal short-term rate plus 3%

Federal short-term rate plus 5% if corp. and >\$100k

Interest is compounded daily



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## Interest

The IRS must pay interest on delayed tax overpayments...

The rate is federal short-term rate plus 3%, but 2% for corporations (0.5% for corp. refund >\$10k), compounded daily

IRS generally has 45 days from unextended due date or claim filing date, whichever is later, to issue payment...



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## Penalties (p 149-150)

Civil penalties for violation of the tax law... used to encourage compliance

A TP can generally be relieved of a penalty if they show reasonable cause for the noncompliance and a good faith attempt to comply with the tax law...



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## Not all Penalties = TC Jurisdiction

If not subject to deficiency provisions, they are not jurisdictional

May come in as CDP hearing



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### Penalties (p 150-151)

Reliance on a tax professional as reasonable cause  
(*Neonatology Assoc.*, 111 TC 42, (2000)):

1. The advisor was competent, with sufficient expertise to justify reliance.
2. The taxpayer provided necessary and accurate information to the advisor.
3. The taxpayer actually relied in good faith on the advisor's judgment.

**This is frequently tested! Know this!**



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### MEMORY TOOL

**Reasonable reliance on a tax professional for penalty relief:**

**C – Competent** professional

**A – All** information (accurate and relevant) provided

**R – Relied** in good faith on adviser's judgment

**CAR**



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### Penalties

Reliance on a tax professional...

§6662 – for positions taken on a tax return

§6651(a)(1) – for failure to file?

*Boyle* – TP has nondelegable duty to file tax returns or extensions

What if a tax pro gave advice as to a filing requirement or the timing of a filing requirement?



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### Penalties (p 158)

§6751(b) – supervisory approval of penalties...

No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.



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### Penalties

§6751(b) does not apply to...

§6651

§6654

§6655

Any penalty calculated through electronic means



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### Penalties

§6751(b) is an evolving area of law since *Chai* and then *Graev* back in 2018...

The Tax Court has laid out its position over many TC Opinion cases... and some circuits have disagreed with interpretation

The IRS recently issued final regulations to standardize §6751(b) implementation nationwide...



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## DEPRECIATION

Text page 14



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### TCJA Depreciation (p 14)

TCJA expanded §179 to \$1 million (phased out beginning at \$2.5 million in purchases), increased bonus depreciation (to 100% but can elect out entirely for all classes of property), removed computers from the 'listed property' definition, classified farm equipment as 5-year property and applied it to certain tangible personal property used in connection with furnished lodging.



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## Depreciation

... periodic expensing over the asset's theoretical economic life.

Matches income and the related expenses



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## EXAM ALERT!

They really test on this!

(See MACRS chart page 16)

**Most commonly tested:**

	<u>5 YR</u>	<u>7 YR</u>
Year 1	20%	14.29%
Year 2	32%	24.49%



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## Class Life (p 16)

Sometimes this isn't given to you directly ...

3 year property = 4 year class life or less

5 year property = more than 4, less than 10

7 year property = 10 or more but less than 16

10 year property = 16 or more but less than 20

Residential rental = 27.5 years

Nonresidential rental = 39 years



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## §179 Expense (p 16)

2025 limit \$1,250,000

SUVs \$25,000

Now includes depreciable tangible to furnish lodging (beds, refrigerators, etc)

Nonresidential improvements after it is placed in service – roofs, HVAC, security

New or used property

Determine at partnership & partner level

Can't create a loss (carried forward)

Timely made election



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### Depreciation Code Sections

**(NOT IN TEXT) (H.O. p 18)**

- §168(i)(1) – class life
- §168(b)(1) – applicable depreciation method
- §168(b)(1)(B) – which switches to straight line
- §168(k)(1) – special allowance for certain property (bonus depreciation)
- §179 – election to expense certain depreciable assets
- §179(b)(3) – limitation based on business income



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### QUESTIONS HANDOUT

**H.O. PAGE 27**



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### Question 1 (H.O. p 27)

(2 minutes) On January 1, 2025, TP purchased, for \$1,800,000 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 2025. 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 2023 ignoring §179(b)(3). Assume current year law applies.

**SUGGESTED ANSWER: \$1,250,000 (4/4)**



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**Question 2 (H.O. p 27)**

(2 minutes) Same facts as 1. State the amount of §168(k)(1) depreciation allowable in 2025, assuming the maximum §179 deduction in 2023 from your answer to 1.



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**Question 3 (H.O. p 27)**

(3 minutes) Same facts as 1. State the amount of §168(a) depreciation allowable in 2025, (1) assuming the maximum §179 deduction in 2025 from your answer to 2. Assume the taxpayer elected 0% for purposes of §168(k)(1).



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**Question 4 (H.O. p 27)**

(2 minutes) Same facts as 1. State the amount of §168(a) depreciation allowable in 2026, (1) assuming the maximum §179 deduction in 2025 from your answer to 2. Assume the taxpayer elected 0% for purposes of §168(k)(1).



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**Question 5 (H.O. p 27)**

(2 minutes) On February 15, 2025, TP purchases for \$900,000 cash a new machine exclusively for use in TP's business activity. The equipment has a §168(i)(1) class life of ten years. TP expects to use the equipment for sixteen years and estimates that the equipment will have a salvage value of \$11,000 at the end of the fifteen-year period of use. State the amount of the §168 deduction allowable in 2025 (ignoring §168(f), (g), (j), (k), (l), (m), (n), and §179 for purposes of this Question).



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**Question 6 (H.O. p 28)**

(2 minutes) On February 15, 2025, TP purchases for \$700,000 cash a new widget making machine exclusively for use in TP's business activity of making widgets. The equipment has a §168(i)(1) class life of five years. TP expects to use the equipment for six years and estimates that the equipment will have a salvage value of \$10,000 at the end of the six-year period of use. State the amount of the §168 deduction allowable in 2025 (ignoring §168(f), (g), (j), (k), and (l) and §179 for purposes of this Question)



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**QUESTIONS AND ANSWERS**



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## GIFTS AND GIFT TAX

Text page 25



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### Gift Tax (p 25)

Gift tax is imposed on transfer of property by money or gift

Federal gift tax integrated with estate tax in a unified rate schedule/exemption

Gift tax imposed on the transfer, not the property - applies to gifts of tangible or intangible, real or personal property, as long as donor relinquishes all control to the gift



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### Gift Tax Return

Donor pays gift tax and is responsible to file the returns

Form 709 is due on calendar year basis – 4/15 usually, but can be extended

No return due if shielded by annual exclusion amount

Gift splitting requires Form 709



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### Gift Holding Period

Donee holding period tacks onto donor's holding period

But what about basis?

General rule is you take donor's basis



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### Gains on Gift Property (p 26)

If the FMV of the gift property on the date of the gift  $\geq$  the donor's basis, the donee retains the donor's basis.

Example: stock with a basis of \$4,000 is given to Les at a time when its FMV is \$5,000. Les subsequently sells the stock for \$7,500. He realizes a gain of \$3,500 (\$7,500 - \$4,000).



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### Gain on Gift – Use Donor Basis

Donor's basis	FMV	
\$4,000	\$5,000	
_____		
		Sale Price
		\$7,500

$\$7,500 - \$4,000 = \$3,500$ , the largest gain



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### Losses on Gift Property

If the FMV of the gift property on the date of the gift is < than the donor's basis, the donee uses the FMV for purposes of computing losses.

Example: stock with a basis of \$4,000 is given to the Andy at a time when its FMV is \$3,000. Andy subsequently sells the stock for \$2,500. He realizes a loss of \$500 (\$3,000-\$2,500). For determining a loss, the basis may not exceed the FMV of the property at the time of the gift.



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### Loss on Gift – Use FMV

FMV date of gift	Donor's Basis
\$3,000	\$4,000
_____	
Sale Price	
\$2,500	
$\$2,500 - \$3,000 = (\$500)$ , the smallest loss	



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### No Gain or Loss (p 27)

occurs if the gift is sold for > than its FMV on the date of the gift, but < than the donor's basis.



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### No Gain or Loss

Example: stock with a basis of \$4,000 is given to Jennifer at a time the FMV is \$3,000. She subsequently sells the stock for \$3,300.

If she uses the gain rules, the sale results in a \$700 loss (\$3,300-\$4,000). If she uses the loss rules, the sale results in a \$300 gain (\$3,300-\$3,000).

To counteract these strange results, under the basis rules no gain or loss results for a sale of property with a lower than cost FMV at date of the gift, which is sold for a higher amount that is still less than the TP's basis.




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### No Gain or Loss

FMV date of gift	Donor's Basis
\$3,000	\$4,000

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Sale Price
\$3,300

LOSS RULE:  $\$3,300 - \$3,000 = \$300$

GAIN RULE:  $\$3,300 - \$4,000 = (\$700)$




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### Gift Tax (p 28)

paid by a donor increases the property's basis in an amount that bears the same ratio to the amount of tax paid as the net appreciation in the value of the gift bears to the amount of the gift after taking into account the annual gift exclusion. This can also be expressed as:

\_\_\_\_\_ Appreciation \_\_\_\_\_ x Gift tax paid  
(Gift - Current Annual Exclusion)




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### Gift Tax

Example: TP receives a gift for which the property's FMV is \$160,000 and the donor's basis is \$75,000. Gift tax of \$18,000 is paid.

**Example: TP receives a gift for which the property's FMV is \$160,000 and the donor's basis is \$75,000. Gift tax of \$18,000 is paid.**

$$(160,000 - 75,000) = 85,000 \times 18,000 = \$10,800$$

$$(160,000 - 19,000) = 141,000$$

TP's basis is \$85,800 (\$75,000 basis + \$10,800 gift tax)




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### Gift Tax Calculation Disparity

**Be aware: Full points were given when the exclusion amount was not used in the calculation in 2021**

2021/5-22 (2 minutes) TP receives as a gift from TP's uncle an artwork with a fair market value of \$20,000 and an adjusted basis to the uncle of \$5,000. Uncle paid a gift tax of \$2,000 with respect to the transfer to TP. The amount of TP's adjusted basis in the artwork is

SUGGESTED ANSWER: \$6,500. (4/4)

$$\frac{15,000}{20,000} \times 2,000 = \$1,500$$

TP's basis is \$6,500 (\$5,000 basis + \$1,500 gift tax)




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### Tax Court Jurisdiction

For declaratory judgment relating to the value of gifts made after 8/5/97.

The donor is the only one to bring petition and must first exhaust all administrative remedies within the IRS.




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### Exclusions for 2025 (p 28)

Annual Exclusion \$19,000  
H/W Gift Split \$38,000  
Current Lifetime Exclusion is \$13,990,000  
Unlimited for gifts paid for donee's medical or tuition  
(not room, board, books or fees)  
Unlimited gift tax marital deduction (US)  
Non US Citizen Spouse is \$190,000



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### Gift Tax SOL

For gifts made after 8/5/97 there is a true 3 year SOL  
(can't bring up valuation issues on the subsequent  
estate tax audit)

6 year if omission > 25%

No SOL if gift is inadequately disclosed



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### Completed Gift (p 29)

Valued as of the date the transfer is complete (when  
donor parts with dominion & control).

Transfer to a revocable trust is incomplete - grantor  
retains controls right to change trust.

A transfer to an irrevocable trust can also be  
incomplete if the donor reserves power over the  
property's disposition.



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### Completed Gift

**Depending upon state law:**

When a check is written, the gift is considered complete on check date even if the check is not cashed until the following year – unless check is not given.

It is possible the state considers the gift incomplete because a stop payment can be issued on the check, as happened in *William Demuth, Deceased* (TC Memo 2022-72 (7/12/22) in PA



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### Transfers Subject to Gift Tax

sales with inadequate consideration: gift = property given up – consideration rec'd.

bargain sales (not normal business, like clearance sale) – the amount of gift is the bargain element (FMV - sales price).

completed gift, which assumes all ownership rights are transferred.



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### QUESTIONS HANDOUT

H.O. PAGE 28



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**Question 1 (H.O. p 28)**

(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.



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**Question 2 (H.O. p 28)**

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



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**Question 3 (H.O. p 28)**

(1 minute) During year 1, TP receives as a gift from a dear friend non-depreciable real property. On the date of the gift, the property has a fair market value of \$100,000 and an adjusted basis to the friend of \$130,000. The friend paid a gift tax of \$1,000 with respect to the transfer to TP. State the amount of gross income to TP in year 1 with respect to the gift of the real property.



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**Question 4 (H.O. p 28)**

(2 minutes) Same facts as 3. State the amount of TP's adjusted basis in the real property if TP sells the property in year 4 for \$135,000.



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**Question 5 (H.O. p 29)**

(1 minute) TP received as a gift from TP's grandmother real property with a fair market value of \$175,000 and an adjusted basis to the grandmother of \$100,000. The grandmother paid a federal gift tax of \$20,000 with respect to the transfer to TP. State the amount of gross income to TP



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**Question 6 (H.O. p 29)**

(1 minute) Same facts as Question 5. State the amount of TP's adjusted basis in the real property.



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**Question 7 (H.O. p 29)**

(1 minute) Describe what constitutes a §102 gift for federal income tax purposes.



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**Question 8 (H.O. p 29)**

(5 minutes) Discuss the nature and amount of gifts that a taxpayer may make free of federal gift tax during 20A0 assuming that the taxpayer made no gift transfers prior to 20A0 (use current year law).



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**Question 8 (H.O. p 29)**



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## QUESTIONS AND ANSWERS



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## MARRIAGE & DIVORCE INNOCENT SPOUSE REVIEW Text page 60



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## TCJA Alimony

TCJA made significant changes to the tax treatment of alimony payments. For any divorce or separation agreements entered into before 1/1/2019, the traditional alimony rules as outlined below, including alimony recapture, continue to apply. For agreements entered into after 12/31/2018, the alimony payment is no longer deductible to the payor and no longer included in the income of the recipient.

No more deductions under misc 2% for legal on alimony settlements



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## Marriage & Divorce

Alimony recapture and other marriage/divorce topics are often tested

Alimony recapture won't apply for 2025; we won't cover that calculation



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## Incident to a Divorce (§1041)

Generally transfers between spouses and transfers incident to divorce are treated as tax-free exchanges.

It's 'incident to a divorce' if it occurs w/in 1 year after the date the marriage ends, or is related to the end of the marriage (divorce or separation instrument and it occurs not more than six years after the date the marriage ends).



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## Incident to a Divorce (§1041)

Later transfers are presumed to not be related to marriage, but may still qualify if hampered by legal or business disputes.

No tax-free transfers to a nonresident alien spouse or former spouse.



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### **Sole Proprietorship/Spouse Sale**

Tax-free exchange rules may apply to a sale of business property by a sole proprietor to a spouse.

The buyer spouse takes a carryover basis, even if paying FMV for the property.



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### **Alimony Deductible? (p 61)**

Could be still allowed in pre-2019 agreements, if it meets requirements under §71

And ... if includible by recipient (parties can agree to make it non-taxable and non-deductible in their divorce decree)

Deduction is permitted even if not itemizing



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### **To Deduct, Alimony Must be Paid**

... under a decree of divorce/legal separation agreement/decree of support – no voluntary payments (generally – court case allowed them)

In \$\$ but can be made to 3<sup>rd</sup> parties (mortgage payments, tuition, property taxes, and medical bills).  
The payee spouse may deduct interest and taxes if the alimony payments received are includible in gross income.



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### To Deduct, Alimony Must be Paid

- not child support or tied to child's life or age.
- not paid between parties in the same household (exception: until divorce or legal separation is final, spouses can be members of the same household, but payments must be made under a divorce or separation instrument).



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### To Deduct, Alimony Must be Paid

- scheduled to end on the death of the payee spouse.

The agreement does not need to state this if the applicable state law provides for it.

Not alimony if agreement fixes part of any payment for child's support in dollar amounts or by percentage.



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### §6015 Innocent Spouse (p 63-67)

Review – also in Practice & Procedure

MFJ = each jointly/severally liable for the ENTIRE amount of tax due ... even if one spouse ... is unaware of what is or is not on the return ... the other spouse earned all of the money

For tax on the filed return and all later deficiencies ...



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## Tax Court Jurisdiction

Remember ...

Tax Court petition must generally be filed:

- within 90 days of IRS denying relief, or
- anytime after 6 months passes and IRS fails to act on request.

(Subject to other time limitations)



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## Taxpayer First Act of 2019

New time limits on §6015(f) requests: if a refund is sought, then the claim must be filed prior to the expiration of the refund statute of limitations (RSOL). If a refund is not sought, then the claim must be filed prior to the expiration of the collection statute of limitations (CSOL).



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**QUESTIONS HANDOUT**

**H.O. PAGE 30**



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**Question 1 (H.O. p 30)**

1 (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.



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**Question 2 (H.O. p 30)**

2 (6 minutes) TP and Spouse were married in 20A5. They separated in 20B1 and were divorced in early 20B2. Pursuant to the terms of the divorce settlement agreement, which the divorce court approved and adopted as its order, TP is required to:



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**Question 2 (H.O. p 30)**

Transfer real property to Spouse. TP makes the transfer during 20B2 and, on the date of the transfer, the real property has a fair market value of \$670,000 and an adjusted basis to TP of \$485,000.

Make the following spousal support payments in cash to Spouse:

- (1) \$120,000 in 20B2
- (2) \$130,000 in 20B3
- (3) \$90,000 per year after 20B3 until the death or remarriage of Spouse.



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**Question 2 (H.O. p 30)**

The divorce settlement agreement and the court order are silent as to the tax consequences of the various payments. TP makes all required payments. (Assume this is pre-TCJA change)

(2 minutes) Describe the tax consequences in 20B2 to TP and Spouse associated with the transfer of the real property.



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**Question 3 (H.O. p 31)**

(2 minutes) TP owns unencumbered real property with an adjusted basis of \$25,000. TP sells the property to Spouse on 9/15 of the current year when the FMV of the property is \$21,000. Spouse pays cash of \$21,000. On 12/18 of the current year, Spouse sells the real property to a third party for its then FMV of \$23,000 (in cash). Briefly discuss the tax consequences to Spouse with respect to the December sale to the third party.



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**Question 3 WHAT MATTERS? (H.O. p 31)**

(2 minutes) TP owns unencumbered real property with an adjusted basis of \$25,000. TP sells the property to Spouse on 9/15 of the current year when the FMV of the property is \$21,000. Spouse pays cash of \$21,000. On 12/18 of the current year, Spouse sells the real property to a third party for its then FMV of \$23,000 (in cash). Briefly discuss the tax consequences to Spouse with respect to the December sale to the third party.



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**Question 4 (H.O. p 31)**

(8 minutes) TP and Spouse filed a joint return, but they did not pay the tax shown as due on the return. Discuss the types of, and requirements for, the relief potentially available to TP pursuant to §6015.



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**Question 4 (H.O. p 31)**



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**Question 4 (H.O. p 31)**



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**Question 4 (H.O. p 31)**



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**QUESTIONS AND ANSWERS**



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**REAL ESTATE AND  
MORTGAGE INTEREST**  
Text page 104



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## Real Estate

Relevant IRC sections relating to property

§1231 business property includes LAND

§1245 is PERSONAL property

§1250 is depreciable REAL property



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## Adjusted Basis

Sum of: cash acquisition cost, debt assumed, improvements, acquisition expenses, less depreciation allowed or allowable and less insurance amounts received.

**Cash Paid + Improvements + Debt Assumed**  
**+ New Debt Executed – Depreciation**  
**– Insurance Proceeds Received**



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## Amount Realized (AKA Selling Price)

For purposes of the Tax Court exam, the amount realized (AKA selling price) is equal to the sum of all cash received from the buyer plus any mortgages assumed or debt taken subject to.

**\$\$ received + Mortgage Assumed**  
**+ Mortgage Subject to**



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### Gain Realized

Amount realized (net selling price) is reduced by the adjusted basis to equal gain realized. This amount may or may not be equal to the taxable gain.

**Amount Realized - Adjusted Basis**



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### Gain Recognized

Taxable portion of the gain realized (same calculation as gain realized)

Nothing tax deferred (§1031)

**Taxable portion:**  
**Amount Realized - Adjusted Basis**



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### Components of Exam Questions

**BASIS:** To acquire the property, TP (1) paid \$300,000 cash at the closing, (2) assumed a preexisting first mortgage debt secured by the property in the principal amount of \$800,000 (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 \$200,000.



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## Components of Exam Questions

**AMOUNT REALIZED:** TP received an offer from Buyer to buy the real property, and TP accepted the offer. Buyer (1) paid \$700,000 cash, (2) took subject to the first mortgage debt in the principal amount of \$500,000 (TP had paid down the principal amount of the debt from \$800,000 to \$500,000), and (3) assumed the second mortgage debt in the principal amount of \$200,000.



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## Tax Effect of Mortgage

Not taxable to receive borrowed funds

Watch how mortgage funds are used! If added to basis, that may impact your later calculations



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## §1031 Exchange

Investment property (TCJA now ONLY real property) may be traded for other RE held for investment in a §1031 exchange that recognizes continuation of the investment.

Tax is deferred only until the exchanged property is sold, at which time all the gain becomes taxable.



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### Related Parties (p 108)

Advantages lost if either related party disposes of the property received within 2 years after the date of the last transfer of that exchange.

Gain previously not recognized on the exchange becomes taxable as of the last date the original like-kind property is disposed of within 2 years.



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### §1031 – Tom's The Easy Way (H.O. p 15)

1. Compute the amount realized in the exchange.

FMV of property received	\$475,000
PLUS debt relief	\$100,000
PLUS cash/boot received	\$75,000
LESS debt assumed	(\$50,000)
LESS cash/boot paid	\$0

Amount realized \$600,000

2. Compute the adjusted basis.

Adjusted basis \$325,000

3. Compute the gain realized.

Amount realized	\$600,000
LESS adjusted basis	(\$325,000)

Gain realized \$275,000

4. Compute the gain recognized.

Gain is recognized to the extent of boot received.

Cash received	\$75,000
Unlike property received	\$0
Net debt relief	\$50,000

Gain recognized \$125,000

5. Compute the basis of the new property received.

FMV of property received	\$475,000
PLUS unrecognized loss	\$0
LESS unrecognized gain	(\$125,000)

Basis \$325,000



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### §1031 – Tom's The Easy Way (H.O. p 15)

#### STEP 1. COMPUTE THE AMOUNT REALIZED

FMV of property received	\$475,000
PLUS debt relief	\$100,000
PLUS cash/boot received	\$75,000
LESS debt assumed	(\$50,000)
LESS cash/boot paid	\$0

Amount realized \$600,000



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### §1031 – Tom’s The Easy Way (H.O. p 15)

#### STEP 2. COMPUTE THE ADJUSTED BASIS

Adjusted basis	\$325,000
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### §1031 – Tom’s The Easy Way (H.O. p 15)

#### STEP 3. COMPUTE THE GAIN REALIZED

Amount realized	\$600,000
LESS adjusted basis	<u>(\$325,000)</u>
Gain realized	\$275,000



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### §1031 – Tom’s The Easy Way (H.O. p 15)

#### STEP 4. COMPUTE THE GAIN RECOGNIZED

Gain is recognized to the extent of boot received.

Cash received	\$75,000
Unlike property received	\$0
Net debt relief	<u>\$50,000</u>
Gain recognized	\$125,000



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### **§1031 – Tom’s The Easy Way (H.O. p 15)**

#### **STEP 5. COMPUTE THE BASIS IN THE NEW PROPERTY RECEIVED**

FMV of property received	\$475,000
PLUS unrecognized loss	\$0
LESS unrecognized gain	<u>(\$150,000)</u>

Basis	\$325,000
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Traditional calculation:

\$325,000 adjusted basis in relinquished property plus \$125,000 gain recognized less \$125,000 boot received = \$325,000



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### **Rental Property**

Generally reportable on Schedule E.

Report on Schedule C:  
if landlord provides substantial additional services  
(like maid service) - includes hotels, motels,  
boarding houses, tourist homes or trailer courts.



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### **Rent Income (p 110)**

any payment received for the use or occupation of property.

Cash basis: income in the year in which it is actually or constructively received.

Accrual basis TP generally treats the rent as income in the year in which he or she is entitled to receive it.



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### Advance Rent Income

Both the cash and accrual basis TP count advance rentals in the year received

Example: The tenant signs a 10 year lease to rent the property and pays the Landlord \$10K, \$5,000 for the first year's rent and \$5,000 for the last year's rent. The Landlord must include the \$10,000 rent in the year it is received.



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### Below Market Rent

if charged to a friend or relative, the property use is considered personal by the TP and cannot show a tax loss. The TP may deduct expenses and depreciation only to the extent of the rental income.



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### Current Deduction

Most property taxes  
Legal services to evict  
Management fees  
Maintenance  
Salaries  
Mortgage interest



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### No Current Deduction

Property insurance paid > 1 year  
Commission to obtain long term tenant  
New financing cost  
Long term fee legal services  
Improvements



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### Personal/Rental Use

Allocate between rental and personal use

(bed & breakfast can't deduct depreciation for  
common areas, only exclusive use rental area)



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### Passive Activity Loss (p 117)

Rental activity income and losses are automatically  
treated as passive and subject to the §469 rules  
... unless they are incurred by a real estate  
professional, or they are considered by law to be a  
business activity.



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### Passive Activity Loss

Individual taxpayers may be able to deduct up to \$25,000 in real estate losses if they actively participate in the management role, and their MAGI for the year is less than \$100,000 (a phase out between \$100,000 and \$150,000). Certain rules must be met:

- it can only be rental real estate
- taxpayer must have at least 10% ownership
- taxpayer must actively participate
- taxpayer must be an individual (not a corporation).



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### Real Estate Pro

Not limited to \$25,000 in losses IF:

> 50% of the individual's personal services during the tax year are performed in real property trades or businesses in which the TP materially participates, and

TP performs > 750 hours of service in those trades or business.



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### Real Estate Pro

Don't have to prove participation at each rental –

can aggregate rental real estate activities by making an election to treat all interests in rental real estate as a single rental real estate activity



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## Real Estate Pro

Must maintain records

No “guesstimate” allowed after the fact

Hours on call don’t count

Very difficult (perhaps impossible) to prove if TP is an employee



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## Installment Sale (p 118)

TP receives at least 1 payment after year of sale  
Gain must be reported on the installment sale basis if it qualifies unless TP elects out of installment sale treatment & reports all gain in year of sale

Each payment includes interest income & gain on sale

Recapture of depreciation reported in year of sale even if no installment payments received

Mostly commonly tested on the exam as a real estate transaction



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## Components of Installment Sale Exam Question

On December 31, Year 1, TP owned unimproved real property with an adjusted basis of \$200,000 and a fair market value of \$700,000 encumbered by a mortgage of \$100,000 that was originally incurred to buy the property. 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 \$500,000. A principal payment of \$100,000 was due on the anniversary date of the sale in each of the five 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 \$500,000.
3. Buyer assumed the \$100,000 mortgage.

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 four 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 \$400,000.



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### Components of IS Exam Terms

Amount Realized  
Adjusted Basis  
Contract Price  
Gross Profit Percentage  
Annual payment  
Annual Gain  
Basis in Installment Obligation Under §453B



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### Amount Received (Selling Price)

Includes:  
\$\$ the seller will receive,  
FMV of property seller will receive,  
any existing debt the buyer pays, assumes or takes, and  
seller's expenses paid by buyer.



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### Adjusted Basis

Includes:

- cost less accumulated depreciation,
- selling expenses paid by seller,
- - and -
- depreciation recaptured in year of sale.



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### Gross Profit

total gain reported on the installment method:

**Amounts Received – Adjusted Basis**



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### Contract Price

Sum of all principal payments due the seller:

**Amount Received –  
Debt Relief to Extent of Basis**



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### Gross Profit Percentage

is % of each \$\$ of principal collected by seller, taxed as gain:

**Gross Profit/Contract Price**

If mortgage relief > basis,  
gross profit percentage = 100%



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### Annual Payment

Installment sale income amount reported as taxable in each year

**Cash + Note Payment (or other payments)  
received during the year**

Mortgage relief in excess of basis is included as a payment received in the year of the sale.



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### Annual Gain

**Annual payment X Gross Profit Percentage**



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### Basis in Contract

A portion of the remaining contract represents a nontaxable recovery of basis:

**100% – Gross Profit Percentage = Basis Percentage**



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**Basis in Installment Obligation  
Under §453B**

**Remaining Total Payments – Unrecognized Gain**



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**Basis in Contract**

Contract price - payments received = remaining amount  
due seller

That amount x basis % = remaining basis in contract



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**Basis in Contract**

When GP% = 100%,  
basis in contract = zero



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## Components of IS Exam Question

On December 31, Year 1, TP owned unimproved real property with an adjusted basis of \$200,000 and a fair market value of \$700,000 encumbered by a mortgage of \$100,000 that was originally incurred to buy the property. 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 \$500,000. A principal payment of \$100,000 was due on the anniversary date of the sale in each of the five 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 \$500,000.
3. Buyer assumed the \$100,000 mortgage.

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 four 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 \$400,000.



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## \$453 – Tom's The Easy Way (H.O. p 16)

1. Compute gross profit.

Total amount received  
LESS adjusted basis  
LESS selling expenses  
LESS depreciation recapture  
LESS §121 exclusion

2. Compute contract price.

Total amount received  
LESS liabilities assumed up to the extent of basis

3. Compute gross profit percentage.

Gross profit  
OVER contract price

4. Compute the annual payment for each year of the installment sale.

Amount received  
PLUS liabilities assumed in excess of basis

5. Compute the annual gain.

Annual payment  
TIMES gross profit percentage

6. Compute basis in installment obligation under §453B.

Remaining total payments  
LESS unrecognized gain



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## Components of IS Exam Question

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



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**§453B Solution Step #1**  
"Tom's The Easy Way"

1. Compute *gross profit*.

Total amount received

LESS adjusted basis LESS selling expenses LESS depreciation  
recapture LESS §121 exclusion



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**§453B Solution Step #2**  
"Tom's The Easy Way"

2. Compute *contract price*.

Total amount received

LESS liabilities assumed up to the extent of basis

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 \$500,000.  
3. Buyer assumed the \$100,000 mortgage



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**§453B Solution Step #3**  
"Tom's The Easy Way"

3. Compute *gross profit percentage*.

Gross profit

OVER contract price



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### §453B Solution Step #4

#### "Tom's The Easy Way"

4. Compute the *annual payment* for each year of the installment sale.

Amount received

PLUS liabilities assumed in excess of basis

A principal payment of \$100,000 was due on the anniversary date of the sale in each of the five 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 \$500,000.



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### §453B Solution Step #5

#### "Tom's The Easy Way"

5. Compute the *annual gain*.

Annual payment

TIMES gross profit percentage

A principal payment of \$100,000 was due on the anniversary date of the sale in each of the five 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 \$500,000.



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### Components of IS Exam Question

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

A principal payment of \$100,000 was due on the anniversary date of the sale in each of the five 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 \$500,000.



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### Components of IS Exam Question

(b) Quantify and discuss the Year 2 tax consequences to TP according to §453.

A principal payment of \$100,000 was due on the anniversary date of the sale in each of the five 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 \$500,000.



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### Components of IS Exam Question

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

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 four 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 \$400,000.



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### §453B Solution Step #6

"Tom's The Easy Way"

6. Compute *basis* in installment obligation under §453B.

Remaining total payments  
LESS unrecognized gain



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### Components of IS Exam Question

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



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### Mortgage Interest (p 121-122)

TCJA reduced the limit on acquisition indebtedness to \$750,000 for mortgages taken out after 12/15/2017; prior mortgages are grandfathered and continue to have a \$1 million limit.

Home equity debt is no longer deductible after 12/31/2017.

Both changes expire after 12/31/2025.



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### Mortgage Interest

Any interest paid on a loan secured by a TP's main or 2<sup>nd</sup> home.

Deductible if TP is legally liable for the loan or is equitable or legal owner of the property

Loans secured by a TP's 3<sup>rd</sup> home are personal, not deductible, unless the third home is used exclusively for business or investment purposes.



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**QUESTIONS HANDOUT**  
**H.O. PAGE 32**



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**Question 1 (H.O. p 32)**

(4 minutes) TP is a full-time employee of Employer as a sales representative for Employer's paper products. TP also owns an apartment building, the apartment units of which TP rents as residences to tenants. During the time TP is not acting as an employee of Employer, TP serves as the manager of the apartment building by being responsible for renting, accounting, maintenance, repairs, etc. TP does not employ any other person to assist in the management of the apartment building. Describe how §469 might apply to TP regarding any loss realized with respect to TP's apartment building.



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**Question 1 (H.O. p 32)**



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**Question 2 (H.O. p 32-33)**

(6 minutes) In 20A8, TP purchased unimproved real property. To acquire the property, TP (1) paid \$300,000 cash at the closing, (2) took the property subject to a preexisting first mortgage debt secured by the property in the principal amount of \$800,000 (for which TP was not 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.

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**Question 2 (H.O. p 32-33)**

In 20B2, TP received an offer from Buyer to buy the real property, and TP accepted the offer. Buyer (1) paid \$750,000 cash, (2) took subject to the first mortgage debt in the principal amount of \$650,000 (it had been paid down from \$800,000 to \$650,000), and (3) assumed the second mortgage debt in the principal amount of \$50,000.

What was TP's adjusted basis in the property at the time of acquisition in 20A8?

Quantify TP's amount realized and any gain or loss realized upon the sale of the property to Buyer in 20B2.



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**Question 2 (H.O. p 32-33)**

What was TP's adjusted basis in the property at the time of acquisition in 20A8?



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**Question 2 (H.O. p 32-33)**

Quantify TP's amount realized and any gain or loss realized upon the sale of the property to Buyer in 20B2.



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**Question 3 (H.O. p 33)**

(6 minutes) In 20A5, TP purchased unimproved real property. To acquire the property, TP (1) paid \$500,000 cash at the closing, (2) took the property subject to a preexisting first mortgage debt secured by the property in the principal amount of \$400,000 (for which TP was not 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 20A6, TP borrowed \$200,000 from a bank, in return for which TP executed a nonrecourse note (no personal liability to TP) in the principal amount of \$200,000 and a third mortgage on the real property to secure the \$200,000 debt. The \$200,000 proceeds of the loan were used to build a structure on this property. In 20A8, TP received an offer from Buyer to buy the real property, and TP accepted the offer. Buyer (1) paid \$1,000,000 cash, (2) took subject to the first mortgage debt in the principal amount of \$300,000 (it had been paid down from \$400,000 to \$300,000), (3) assumed the second mortgage debt in the principal amount of \$90,000, and (4) took subject to the third mortgage debt in the principal amount of \$150,000 (it had been paid down from \$200,000 to \$150,000).



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**Question 3 (H.O. p 33)**

(a) What was TP's adjusted basis in the property at the time of acquisition in 20A5?



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**Question 3 (H.O. p 33)**

(b) Describe the federal income tax consequences of the 20A6 borrowing and third mortgage transaction.



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**Question 3 (H.O. p 33)**

(c) Quantify TP's amount realized and any gain or loss realized upon the sale of the property to Buyer in 20A8.



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**Question 4 (H.O. p 34)**

(6 minutes) TP purchased unimproved real property in year 1 with a fair market value of \$260,000 by paying cash of \$100,000 and assuming a pre-existing liability of the seller to a bank (secured by a mortgage on the real property) in the principal amount of \$160,000. On December 31, year 8, when TP's basis in the property was \$260,000 and its fair market value was \$400,000, TP sold the property to Buyer according to the following terms: 1. Buyer paid TP \$75,000 cash at the closing, 2. Buyer assumed the mortgage indebtedness on the property, the principal amount of which at the time of TP's sale was \$50,000, and 3. Buyer executed a promissory note payable to TP in the total principal amount of \$275,000. A principal payment of \$55,000 was due on the anniversary date of the sale in each of the five years following the year of sale. The promissory note required the payment of interest at 5% compounded annually, and the note had a fair market value of \$275,000. TP received the required \$55,000 payment of principal on the note in year 9, and on January 1, year 10, TP transferred the note (entitled to four additional principal payments of \$55,000) to TP's child as a gift. The fair market value of the note on January 1, year 10, was \$220,000.



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**Question 4 (H.O. p 34)**  
(a) (3 minutes) Quantify and discuss the year 8 tax consequences to TP according to §453.



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**Question 4 (H.O. p 34)**  
(b) (2 minutes) Quantify and discuss the year 9 tax consequences to TP according to § 453.



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**Question 4 (H.O. p 34)**  
(c) (1 minute) Quantify and discuss the year 10 tax consequences to TP according to § 453B.



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### Question 5 (H.O. p 34-35)

(6 minutes) On December 31, year 1, TP owned unencumbered unimproved real property with an adjusted basis of \$150,000 and a fair market value of \$400,000. On December 31, year 1, TP sold the property to Buyer according to the following terms:

Buyer paid TP \$200,000 cash at the closing.

Buyer executed a promissory note payable to TP in the total principal amount of \$200,000. A principal payment of \$40,000 was due on the anniversary date of the sale in each of the five years following the year of sale. The promissory note required the payment of interest at 5% compounded annually, and the note had a fair market value of \$200,000.

TP received the required \$40,000 payment of principal on the note in year 2, and on January 1, year 3, TP transferred the note (entitled to four additional principal payments of \$40,000 each) to TP's child as a gift. FMV of the note on January 1, year 3, was \$160,000.



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### Question 5 (H.O. p 34-35)

SP: \$200,000 (cash) + \$200,000 (note) = \$400,000

Contract Price: \$400,000

Gross Profit \$400,000 - \$150,000 = \$250,000

GPP = \$250,000/\$400,000 = 62.5%

(a) (3 minutes) Quantify and discuss the year 1 tax consequences to TP according to §453.



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### Question 5 (H.O. p 34-35)

SP: \$200,000 (cash) + \$200,000 (note) = \$400K

Contract Price: \$400,000

Gross Profit \$400,000 - \$150,000 = \$250,000

GPP = \$250,000/\$400,000 = 62.5%

(b) (2 minutes) Quantify and discuss the year 2 tax consequences to TP according to §453.



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**Question 5 (H.O. p 34-35)**

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



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**Question 6 (H.O. p 35-36)**

(6 minutes) On 12/31, Year 1, TP owned unencumbered unimproved real property with an adjusted basis of \$300,000 and a FMV of \$750K. On December 31, Year 1, TP sold the property to Buyer according to the following terms:

1. Buyer paid TP \$430,000 cash at the closing.
2. Buyer executed a promissory note payable to TP in the total principal amount of \$320K. A principal payment of \$80,000 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 6% compounded annually, and the note had a FMV of \$320K.



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**Question 6 (H.O. p 35-36)**

TP received the required \$80,000 payment of principal on the note in Year 2, and on 1/1 Year 3, TP transferred the note (entitled to three additional principal payments of \$80,000 each) to TP's child as a gift. The FMV of the note on January 1, Year 3, was \$240,000.



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**Question 6 (H.O. p 35-36)**

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



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**Question 6 (H.O. p 35-36)**

(2 minutes) Quantify and discuss the Year 2 tax consequences to TP according to §453.



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**Question 6 (H.O. p 35-36)**

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



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**Question 7 (H.O. p 36-37)**

(4 minutes) On June 15, 2080, TP owned Blackacre, unimproved real property. Blackacre is encumbered by a first mortgage debt in the amount of \$550,000. On June 15, 2080, TP sold Blackacre to Buyer (an unrelated person). Buyer (1) pays \$300,000 cash to TP, (2) assumes the \$550,000 first mortgage indebtedness, and (3) issues to TP a promissory obligation. The obligation is a nonnegotiable promissory note of Buyer in the principal amount of \$150,000. The principal of Buyer's note is due in the amount of \$30,000 (plus interest) on December 31 of each of years 2080 through and including 2084. All payments are made when due. TP's adjusted basis in Blackacre on June 15, 2080, was \$325,000. State the amount of TP's gross profit pursuant to §453 with respect to the sale on June 15, 2080.



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**Question 7 (H.O. p 36-37)**



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**Question 8 (H.O. p 37)**

(1 minute) Same facts as Question 7. State the amount of TP's total contract price pursuant to §453.



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**Question 9 (H.O. p 37)**

(1 minute) Same facts as Question 8. State the amount of payments to TP in the year of sale pursuant to §453.



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**Question 10 (H.O. p 37)**

(1 minute) Same facts as Question 9. State the amount of TP's §453B(b) adjusted basis in the installment obligation as of January 1, 20C1.



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**Question 11 (H.O. p 37-38)**

(3 minutes) TP purchased a principal residence on January 1 of the current year at a cost of \$1,800,000. TP paid \$200,000 down and obtained a purchase money first mortgage loan (secured by the residence) from a bank in the principal amount of \$1,600,000. As of January 1, state the total principal amount of the first mortgage indebtedness as to which interest is deductible, assuming that TP is married, files a joint return with Spouse, and neither TP nor Spouse owns another residence). On June 1 of the current year, TP has reduced the principal amount of the first mortgage debt on the residence to \$1,500,000. The fair market value of the residence on June 1 is \$2,100,000. On June 1, TP borrows \$500,000 from a bank, and the debt is secured by a second mortgage on the residence. TP expends \$300,000 of the second mortgage loan proceeds to add a game room to the residence, and the other \$200,000 to purchase a boat used for recreation. Discuss the amount, if any, as of June 1, of the principal amount of the second mortgage loan as to which interest is deductible.)



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**Question 11 (H.O. p 37-38)**



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**Question 12 (H.O. p 38)**

(2 minutes) Explain generally (without discussing the technical operation of any particular Internal Revenue Code provision/s) (1) what the nonrecognition provisions of the Internal Revenue Code are designed to accomplish and (2) how they operate.



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**Question 13 (H.O. p 38)**

(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).



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### Question 14 (H.O. p 38)

(3 minutes) In 2010, TP and Spouse purchased for \$400,000 (paid in cash) a residence as TP's and Spouse's principal residence. TP and Spouse own and occupy the property as their principal residence until they sell the property on October 1, 2020, for \$950,000. Neither TP nor Spouse has ever owned another residence. Explain the amount of the gain recognized with respect to the sale of the residence in 2020 if TP and Spouse file a joint return for 2020.



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### Question 15 (H.O. p 38)

TP owns Blackacre (unimproved property). TP held Blackacre as an investment for over five years. On June 1, 2022, TP sold Blackacre to his sister, B, for \$100,000. At the time of the sale, the gross fair market value of Blackacre was \$100,000 and TP's adjusted basis in Blackacre was \$120,000. Blackacre was not encumbered. On December 1, 2022, B sold Blackacre to an unrelated party for \$150,000 which was its gross fair market value on the date of that sale.



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### Question 15 (H.O. p 39)

(1 minute) a. Quantify the amount of gain or loss recognized by B on the December 1 sale.

(1 minute) b. Same facts except that B sold Blackacre for \$60,000 (which was its gross fair market value for purposes of this question). Quantify the gain or loss recognized by B on the December 1 sale.



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### Question 16 (H.O. p 39-40)

(16 minutes) TP and B agree to exchange unimproved real properties that are encumbered by mortgage debts. Both properties were held for investment. In the exchange transaction, TP's mortgage debts are assumed by B, and B's mortgage debts are assumed by TP. B will also pay TP \$10,000 cash as part of the exchange. The gross fair market value of B's property is \$300,000. B's adjusted basis is \$90,000. The property is encumbered by a \$90,000 mortgage debt leaving net equity in the property of \$210,000. The gross fair market value of TP's property is \$240,000. TP's adjusted basis in the property is \$140,000. The property is encumbered by a \$20,000 mortgage debt leaving net equity in the property of \$220,000. Provide the following tax consequences of the exchange.



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### Question 16 (H.O. p 39-40)

Gain or loss recognized by TP. TP's basis in TP's acquired property.



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### Question 16 (H.O. p 39-40)

Gain or loss recognized by B. B's basis in B's acquired property.



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## QUESTIONS AND ANSWERS



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### Estates and Estate Tax (p 122)

measures the wealth being transferred not income earned – prepared on fully accrued balance sheet (all taxable gifts + all items owned or controlled by the decedent)

Excise tax levied on the privilege of transferred property at death (no accumulation of wealth)



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### Estates and Estate Tax

Because a death transfer tax can be avoided by making gifts while the TP is alive, the federal transfer tax is imposed on gifts made during the lifetime as well as upon the TP's death.



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### **Estates and Estate Tax**

The estate tax return is due 9 months after the date of death, unless a 6 month extension is obtained.

12 month extension to pay possible with reasonable cause - generally allowed if cash shortage in the estate, or if the estate's largest asset is a lawsuit award in progress and the amount is not yet known.



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### **Fiduciary**

The fiduciary of an estate is called the executor.

If the decedent died intestate (without a will) the fiduciary is called an administrator or personal representative, depending upon applicable state law.



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### **Estates Statute of Limitations**

IRS generally has 3 years to audit. Executor can make a request for early determination, which forces the IRS to audit within 9 mos of the filing date - releases the executor from liability - beneficiaries remain on the hook for taxes due that are related to the estate.

No SOL if no return is filed.



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### Property Valuation (p 123)

property includible valued at FMV on the death of date, or if appropriately elected, the alternate valuation date.



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### Alternate Valuation Date

6 months after the DOD

Can be irrevocably elected under §2032 **only** if the estate is a taxable one that will actually pay estate tax, **AND** use of the alternate valuation date both:

- reduces the actual tax due, and
- reduces the value of the estate.



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### Alternate Valuation Date

When this election, assets are valued at DOD and 6 months later. If assets sold w/in 6 months after death, they are valued at date sold.

The alternate date CANNOT be used:

- to increase basis of assets in non-taxable estates
- Or to lower valuation of assets that are 'merely affected by elapsed time' such as notes, mortgages, patents or copyrights.



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### Overvaluation Penalties (p 123)

most often for overvaluation of assets.

The tendency of heirs is to overvalue a tax-free estate to increase the resulting depreciation deductions, or to decrease capital gains tax when the affected property is sold.



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### Overvaluation Penalties

Under §6662(b)(5) **20% penalty** applies if the claimed value is 65% or less than actual value

Example: \$100,000 assets of actual value, 20% applies if claimed value was \$65,000 or less (to \$40K)

A **penalty of 40%** applies when the claimed value is 40% or less of actual value

Example: \$100,000 assets of actual value, 40% if claimed value was \$40,000 or less



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### Estate Tax Computation

**Taxable estate =**  
gross estate – deductions allowed

**Estate tax =**  
taxable estate x applicable tax rate



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### Gross Estate (§2031)

- all world-wide property decedent owned or controlled
- transfers made during decedent's life w/o full and adequate consideration,
- assets whether or not subject to probate,
- life insurance proceeds if the decedent retained the incidents of ownership,
- life insurance proceeds, if decedent transferred the policy or an incident of ownership w/in 3 years of death,
- property over which decedent had a general power of appointment,



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### Gross Estate (§2031)

- property over which decedent retained an interest,
- the entire value of jointly held property, except the portion of the property for which the joint surviving tenant provided consideration,
- 50% value of community property is generally includible in the gross estate of the first spouse to die,
- assets over which surviving spouse has Dower rights or Curtsey interests under (§2034), AND
- the value of QTIP trust assets.



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### Gross Estate (§2031)

Generally, if the decedent had the right to control the passing of the asset at death, it is includible in the gross estate.

Determining whether a gross estate exceeds the filing requirement is done without consideration to the decedent's debts or expenses (deducted to determine the amount of tax the estate pays, not whether the estate is required to file a tax return).



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### Deductions from Gross Estate

Some deductions are reportable only on the estate's Form 706, or the estate's Form 1041, or the heir's Form 1040, or the Decedent's final Form 1040. The executor can choose to make some deductions on one form or another. Some deductions can be taken on two forms.

More info in the text ...



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### Portability (p 127)

Permanent provides for max estate tax rate of 40% with inflation adjusted exclusion that is \$13,990,000 in 2025

Also permanent is deceased spouse's unused exclusion (DSUE) – now 'portable'



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### DSUE: Deceased Spouse Unused Exclusion

is the lesser of:

The basic exclusion amount, OR

The deceased spouse's applicable exclusion amount, minus any amount of that exclusion that was used to avoid estate or gift tax.



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### DSUE Example (updated limits)

Example: In 20A9 Mary made a taxable gift valued at \$1 million that was timely reported on Form 709. Mary died in 2025 and is survived by her husband Bill. They were married for 30 years, had no previous marriages, and had a combined estate of \$14 million at the time of Mary's death. **Her total estate is \$2 million, which she leaves to her children.** The executor of Mary's estate computes the DSUE:



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### DSUE Example – Left to Kids (p 127)

#### Lesser of 2025 basic exclusion (\$13,990,000) OR

Applicable exclusion amount	\$13,990,000
Minus total estate	(2,000,000)
Minus taxable gift exclusion	<u>(1,000,000)</u>
DSUE	\$10,990,000



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### Unlimited Marital Deduction

Effectively spouses are treated as a single unit for transfer tax purpose, which postpones tax until the surviving spouse dies (not for non-US citizen spouse and certain terminable interests).

Assets that pass to a surviving spouse are included in the surviving spouse's estate and taxed upon his or her death



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### DSUE Example (p 128) updated limits

Example: In 20A9 Mary made a taxable gift valued at \$1 million that was timely reported on Form 709. Mary died in 2025 and is survived by her husband Bill. They were married for 30 years, had no previously marriages, and had a combined estate of \$14 million at the time of Mary's death. **She left her all of her estate to her husband Bill.** The executor of Mary's estate computes the DSUE:




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### DSUE Example – Left to Spouse

**Lesser of 2025 basic exclusion (\$13,990,000) OR**

Applicable exclusion amount	\$13,990,000
Minus taxable gift exclusion	<u>(1,000,000)</u>
DSUE	\$12,990,000




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### Disclaimer (p 132)

Property passing through a will or trust can be disclaimed under §2518 (in full or part). A qualified disclaimer is irrevocable and must be made in writing no later than 9 months after the transfer is made (or the disclaimer/transferee turns 21, if a minor at the time the transfer is made). The disclaimer cannot accept any property interest or any benefits, and the property must then pass to someone other than the disclaimer.




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### Trusts (p 133)

Trusts and decedent's estates are taxable entities for income tax purposes and are separate during estate administration. Generally the deductions and credits allowed to individuals are also allowed to estates and trusts subject to special rules for some deductions and for the allocation of credits and deductions between the estate or trust and its beneficiaries.

"Trust" as used by IRC generally refers to an arrangement created either by will or by an inter vivos declaration.



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### Trust Fiduciary

occupies a position of special confidence towards another - responsible for filing the Form 1041 and for paying tax on the taxable income of the estate or trust.

Filing requirement: \$600 or more in gross income and all income is required to be distributed at least annually, or \$100 or more if the trust may distribute corpus or accumulate income, or if there is at least \$1 in taxable income or any non-resident alien beneficiary.



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### Trust Deductions

Generally same credits/deductions as for individuals including ordinary and necessary for trade or business or for managing or conserving income-producing property

Plus reasonable administrative fiduciary fees (except on tax-exempt income)



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### Distributable Net Income

amount that sets limit on deduction of a domestic estate or trust for distribution to beneficiaries.

Generally DNI includes the same items of gross income and deductions that make up the taxable income of the estate or trust:

- no deduction allowed for distributions to beneficiaries,
- no deduction for the personal exemption is allowed,
- tax exempt interest for state/local bonds is included,



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### QUESTIONS HANDOUT

#### H.O. PAGE 40



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### Question 1 (H.O. p 40)

(3 minutes) Explain the concept of "portability" with respect to the federal estate tax "unified" or "applicable" credit of a married decedent.



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### Question 2 (H.O. p 40)

(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.



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### QUIZ #2 – FEDERAL TAX REVIEW

#### HANDOUT PAGE 23



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### FEDERAL TAX COMPUTATIONS REVIEW

#### HANDOUT PAGE 41



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### Depreciation Problem

(H.O. p 41)

On January 1, 2025, TP purchased, for \$2,000,000 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 2025. 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 \$550,000 at the end of the period of use. Assume the property qualifies under §168(b)(1) and ignore §168(b)(1)(B).



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### Depreciation: questions a-d

- (a) State the maximum amount of the §179 deduction allowable in 2025, ignoring §179(b)(3).
- (b) State the amount of §168(k) depreciation allowable in 2025.
- (c) State the amount of §168(a) depreciation allowable in 2025, assuming the maximum §179 deduction in 2025 from (a) and ignoring §168(k).
- (d) State the amount of §168(a) depreciation allowable in 2026, assuming the maximum §179 deduction in 2025 from (a) and ignoring §168(k).



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### Depreciation: Key Points

Only §179 property placed in service

§168(i)(1) class life of 6 years = 5 year property

Expected period of use, salvage period = not relevant



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### Depreciation: Part (a)

State the maximum amount of the §179 deduction allowable in 2025, ignoring §179(b)(3) and §179(b)(6).

§179(b)(3): income limitation

§179(b)(6): inflation adjustment



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### Depreciation: Part (a)

State the maximum amount of the §179 deduction allowable in 2025, ignoring §179(b)(3) and §179(b)(6).

§179(b)(3): income limitation

§179(b)(6): inflation adjustment



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### Depreciation: Part (b)

State the amount of §168(k) depreciation allowable in 2025.



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### Depreciation: Part (c)

State the amount of §168(a) depreciation allowable in 2025 assuming the maximum §179 deduction in 2025 from (a) and ignoring §168(k).



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### Depreciation: Part (d)

State the amount of §168(a) depreciation allowable in 2026, assuming the maximum §179 deduction in 2025 from (a) and ignoring §168(k).



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### Corporation Distribution Problem

(H.O. p 42)

The taxable year is 2025, during which Ponderosa Corp., a calendar year taxpayer, has \$316 current earnings and profits from operations of \$300,000. As of December 31, 2024, Ponderosa Corp. had \$316 accumulated earnings and profits of \$300,000. The stock of Ponderosa Corp. is owned equally by B, Inc. ("B"), a corporation, and TP, an individual. TP's adjusted basis in TP's 2,000 shares of stock of Ponderosa Corp. is \$100,000. B's adjusted basis in its 2,000 shares of stock of Ponderosa Corp. is \$350,000.

(continued)



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## Corporation Distribution Problem

On December 31, 2025, Ponderosa Corp. makes the following non-liquidating distributions that are characterized as dividends for state law purposes:

(continued)

Distributee Shareholder	Property Received	Fair Market Value	Adjusted Basis to Ponderosa Corp.
TP	Cash	\$300,000	\$300,000
TP	Inventory	\$300,000	\$350,000
B	Cash	\$400,000	\$400,000
B	Wagon Corp. Stock	\$200,000	\$50,000




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## Corporation Distribution: questions a-c

- (a) Discuss and quantify the gain and loss recognition consequences to Ponderosa Corp. that result from the 2025 distributions.
- (b) Determine the §301 consequences to TP of the 2025 distributions from Ponderosa Corp. and determine TP's adjusted basis in the inventory and Wagon Corp. stock
- (c) Determine the §301 consequences to B of the 2025 distributions from Ponderosa Corp. and determine B's adjusted basis in the stock of Wagon Corp and Ponderosa Corp.




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## Corporation Distribution: Key Points

§301 is KEY here:

Dividend to the extent of E&P

Once E&P gone, return of capital to extent of stock basis

Once basis is \$0, capital gain

Distribution of gain property = deemed sale on distribution = gain to corporation = increase in E&P

Don't forget to answer basis questions!




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**Corporation Distribution: Part (a)**

Discuss and quantify the gain and loss recognition consequences to Ponderosa Corp. that result from the 2025 distributions.



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**Corporation Distribution: Part (b)**

Determine the §301 consequences to TP of the 2025 distributions from Ponderosa Corp. and determine TP's adjusted basis in the inventory and Wagon Corp. stock.

Step 1: E&P Calculation



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**Corporation Distribution: Part (b)**

Determine the §301 consequences to TP of the 2025 distributions from Ponderosa Corp. and determine TP's adjusted basis in the inventory and Wagon Corp. stock.

Step 2: Distribution Calculation



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### Corporation Distribution: Part (b)

Determine the §301 consequences to TP of the 2025 distributions from Ponderosa Corp. and determine TP's adjusted basis in the inventory and Wagon Corp. stock.

Step 3: Basis Calculation



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### Corporation Distribution: Part (c)

Determine the §301 consequences to B of the 2025 distributions from Ponderosa Corp. and determine B's adjusted basis in the stock of Wagon Corp. and Ponderosa Corp.

Step 1: E&P Calculation



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### Corporation Distribution: Part (c)

Determine the §301 consequences to B of the 2025 distributions from Ponderosa Corp. and determine TP's adjusted basis in the stock of Wagon Corp. and Ponderosa Corp.

Step 2: Distribution Calculation



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### Corporation Distribution: Part (c)

Determine the §301 consequences to B of the 2025 distributions from Ponderosa Corp. and determine TP's adjusted basis in the stock of Wagon Corp. and Ponderosa Corp.

Step 3: Basis Calculation



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### Corporation Formation

(H.O. p 43)

On January 1, 2025, D, E, and F organize DEF Corporation (which is not and will not be an "investment company" under §351(e)). The following transfers were made to the corporation:

Transferor	Property	FMV	Adjusted Basis to Transferor
D	Cash	\$100,000	\$200,000
E	Equipment	\$110,000	\$0
F	Unimproved real property	\$120,000	\$80,000



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### Corporation Formation

E's equipment had been purchased in 2021 for use in E's trade or business at a cost of \$300,000, and because of depreciation, the adjusted basis had been reduced to \$0 on January 1, 2025. The unimproved real property had been held by F as an investment since F's acquisition of the property in 2014.



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### Corporation Formation

In exchange for the contributions of D, E, and F, the corporation issues common stock: 100 shares to D, 100 to E, and 100 shares to F. The fair market value of the stock is \$1,000 per share; the common stock is the only class of stock authorized and outstanding. In addition to the 100 shares of stock, E receives \$10,000 in cash and F receives from DEF Corporation \$10,000 of cash and a 1-year note of DEF Corporation in the amount of \$10,000 at 6% interest. The DEF note has a fair market value equal to the face amount of the note.



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### Corporation Formation: parts a-f

- (a) Determine E's gain realized, E's gain recognized, and the character of any gain recognized by E.
- (b) Determine F's gain realized, F's gain recognized, and the character of any gain recognized by F.
- (c) Determine F's adjusted basis in the DEF Corporation stock received.
- (a) Determine the amount of gain recognized by DEF Corporation.
- (b) Determine the adjusted basis of DEF Corporation in the real property received from F.
- (f) Determine the adjusted basis of DEF Corporation in the equipment received from E.



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### Corporation Formation: Key Issues

These scenarios are §351 exchanges:

Property in exchange for stock

Control group collectively own 80% of stock after exchange

The key tax consequences of a §351 exchange are:

Gain upon transfer only recognized to extent of boot

AB property exchanged = AB stock received

Corporation receives transferred basis in property

AB stock = AB property + gain rec. - FMV boot



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**Corporation Formation: Part (a)**

Determine E's gain realized, E's gain recognized,  
and the character of any gain recognized by E.



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**Corporation Formation: Part (b)**

Determine F's gain realized, F's gain recognized,  
and the character of any gain recognized by F.



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**Corporation Formation: Part (c)**

Determine F's adjusted basis in the DEF  
Corporation stock received.



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**Corporation Formation: Part (d)**

Determine the amount of gain recognized by DEF Corporation.



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**Corporation Formation: Part (e)**

Determine the adjusted basis of DEF Corporation in the real property received from F.



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**Corporation Formation: Part (f)**

Determine the adjusted basis of DEF Corporation in the equipment received from E.



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### Installment Sale

(H.O. p 45)

On December 31, Year 1, TP owned unimproved real property with an adjusted basis of \$400,000 and a fair market value of \$800,000 encumbered by a mortgage of \$200,000 that was originally incurred to buy the property. On December 31, Year 1, TP sold the property to Buyer according to the following terms:



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### Installment Sale

1. Buyer paid TP \$200,000 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.
3. Buyer assumed the \$200,000 mortgage.



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### Installment Sale

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.



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### Installment Sale: questions a-c

(a) Quantify and discuss the Year 1 tax consequences to TP according to §453.

(b) Quantify and discuss the Year 2 tax consequences to TP according to §453.

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



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### Installment Sale: Key Issues

An installment sale occurs when payments for the sale of an item occur over more than 1 tax year.

You calculate the gross profit percentage (realized gain over contract price) and multiply that by each payment to determine the amount of gain/basis recovery allocated to each payment.

§453B requires immediate recognition of all remaining gain when an installment obligation is gifted.



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### Installment Sale: Part (a)

Quantify and discuss the Year 1 tax consequences to TP according to §453.



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**Installment Sale: Part (b)**

Quantify and discuss the Year 2 tax consequences to TP according to §453.



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**Installment Sale: Part (c)**

Quantify and discuss the Year 3 tax consequences to TP according to §453B.



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**Installment Sale: Part (d)**

If TP is a C corporation, quantify the effect on TP's earnings and profits in year 1 on account of the sale of Blackacre.



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### Property Sale

(H.O. p 46)

In 2016, TP, who is unmarried, purchased a principal residence. To acquire the property, TP (1) paid \$200,000 cash at the closing (2) assumed a preexisting first mortgage debt secured by the property in the principal amount of \$100,000 (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 \$400,000.



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### Property Sale

In 2025, TP received an offer from Buyer to buy the principal residence, and TP accepted the offer. Buyer (1) paid \$500,000 cash, (2) took subject to the first mortgage debt in the principal amount of \$75,000 (TP had paid down the principal amount from \$100,000 to \$75,000), and (3) assumed the second mortgage debt in the principal amount of \$350,000 (TP had paid down the principal amount from \$400,000 to \$350,000).



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### Property Sale

(a) Quantify TP's adjusted basis in the residence at the time of acquisition in 2016.

(b) Quantify TP's amount realized and any gain or loss recognized upon the sale of the property to Buyer in 2025.



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### Property Sale: Key Issues

Assumption of debt upon purchase increases basis

Execution of new debt to pay for property increases basis

Debt relief upon sale via debt assumption by buyer increases amount realized

Principal residence generally qualifies for a §121 exclusion of \$250,000 (or \$500,000 on certain MFJ returns).



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### Property Sale

(a) Quantify TP's adjusted basis in the residence at the time of acquisition in 2016.



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### Property Sale

(b) Quantify TP's amount realized and any gain or loss recognized upon the sale of the property to Buyer in 2025.



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### §1031 Exchange

(H.O. p 47)

TP and B exchange unimproved real properties that are encumbered by mortgage debts. In the exchange transaction, TP's mortgage debts are assumed by B, and B's mortgage debts are assumed by TP. The gross fair market value of B's property is \$200,000, its adjusted basis is \$140,000, and it is encumbered by a \$60,000 mortgage debt leaving a net equity of \$140,000. The gross fair market value of TP's property is \$210,000, its adjusted basis is \$150,000, and it is encumbered by a \$70,000 mortgage debt leaving a net equity of \$140,000. Discuss and quantify the §1031 consequences to TP (not B).



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### §1031 Exchange: Key Issues

Exchanges of real property for real properties are generally tax-deferred if not personal use.

Gain is only recognized to the extent of boot (non-like-kind property) received, including net mortgage relief.

Basis in replacement property is adjusted basis of relinquished property plus gain recognized less FMV boot received

- Also equals FMV replacement property less gain deferred in the exchange



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### §1031 Exchange

Discuss and quantify the § 1031 consequences to TP (not B).



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**QUESTIONS AND ANSWERS**



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**Working together for success on  
the Tax Court exam**

**You CAN do this!!  
And we can help ...**



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# LEGAL ETHICS

## 2025 EXAM CYCLE

### LAS VEGAS and LIVE STREAM



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Text



### Preparing to Practice before the US Tax Court

#### Legal Ethics

#### 2025 Exam Cycle



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For July, 2 handouts  
(Questions available now)



### Preparing to Practice before the US Tax Court

#### JULY 2025 HANDOUT COURT CASES QUESTIONS


#### 2025 Exam Cycle



### Preparing to Practice before the US Tax Court

#### JULY 2025 HANDOUT ANSWERS

#### 2025 Exam Cycle



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### Exam Information

- Smallest section of exam
- 10%, 24 minutes in 2023 (was 22 minutes in 2021)
- Still must pass 70% (many did not pass 2023 or 2021 LE)
- **Consider strategy of taking LE first in 2025 (as quickly as possible)**
- Focus on the commonly tested areas during your studies
- Highly repetitive questions
  - Conflict of interest – planned/promoted or witness
  - Conflict of interest - spouses
  - Counsel withdrawal
  - Settlement offers
  - Witness false testimony (before and after testifying)




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### Exam Information

- Today we concentrate on what you need for exam (what is commonly tested), not an in depth look at Model Rules
- This is NOT C230 Ethics!
- **You do not receive Ethics CE for this class (you must still earn that on your own)**




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### Competence 1.1 (p 4)

**Tested in '23, '21**

Practitioner must represent clients completely

Must have legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation

Maybe disciplined for neglecting a legal matter or failing to prepare, or for taking on a matter the practitioner knows he or she is not competent to handle




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**Question 2023 LE-6 (H.O. p 51)**

(2 points/2 minutes). G, a sole practitioner, has volunteered to attend a Tax Court calendar call program sponsored by a local bar association. G is asked to speak with Kathy Niketas, who filed a Tax Court petition pro se. G quickly determines that Kathy's issues are substantially beyond her capacity to take on in her small practice, but G is willing to give Kathy general advice about the case, share some thoughts on how and where to search for counsel, and stand up before the Judge in requesting a continuance. Can G limit the scope of her representation as described? Briefly explain your answer.




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**Scope of Representation 1.2**

**Tested in '21, '18, '16, '14, '10, '06**

- Attorney is the agent of a client ...
- Client makes key decisions affecting his or her substantial legal rights ...
- Must communicate all settlement offers with the client ...UNLESS




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**Question 2021 LE-8 (H.O. p 51)**

(2 minutes) H and Cora Nelson are lifelong friends, so it was only natural that Nelson asked H to represent her when the IRS disallowed expenses claimed on Nelson's tax return for the costs of mountain climbing equipment. Nelson trusts H's judgment and leaves H to handle Nelson's Tax Court case while Nelson fulfills her dream of climbing Mount Kilimanjaro. Anticipating that Nelson might be unreachable for some period of time, H asks Nelson for authorization to settle her case. Nelson says that she would agree without further discussion to a deficiency of no more than \$3,000. After Nelson flies to Tanzania, where she is "off the grid" for several weeks, H receives an offer from IRS counsel to settle the case for substantially less than Nelson's number. Can H agree to settle and sign the stipulation of settled issues? Briefly explain your answer.




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### Scope of Representation 1.2

- Attorney (after consultation) decides technical legal strategy and procedure issues
- Criminal or fraudulent conduct
  - can't counsel or assist client in activity
  - may discuss the legal consequences
  - can make a good faith effort to determine the validity, scope, meaning or application of the law




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### 1.4 Communication

- Promptly comply w/reasonable requests
- Explain so client makes informed decision
- How much information is adequate?  
Depends ... what does the client need?  
Always act in the client's best interest – know the client!




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### 1.4 Communication (p 4)

One definition of informed consent  
(ABA's Center for Professional Responsibility website):

**Informed consent** denotes the agreement by a person to a proposed course of conduct after the lawyer has **communicated adequate information and explanation about the material risks of and reasonable available alternatives** to the proposed course of conduct.




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### 1.4 Communication

"Confirmed in writing"

... given in writing by the person or a writing a lawyer promptly transmits to confirm an oral informed consent

If not feasible to obtain/transmit when informed consent given, lawyer must obtain/transmit within reasonable time




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### 1.6 Confidentiality of Info (p 7)

**Tested '12, '10, '08, '06**

Without consent cannot disclose info relating to the client's representation

Must take reasonable steps to protect client's info from an unauthorized use or disclosure

Two components of maintaining confidence:

- privilege
- the duty of confidentiality




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### Question 2012 LE-6 (H.O. p 51)

(3 minutes) Same facts as LE-5 except that, as E is prepping Ludders for her testimony, Ludders reveals to E that she did not actually purchase a computer and that her receipt for a purchase of a computer was fraudulently prepared by a friend who works at the computer store. Ludders indicates that she intends to testify that she purchased the computer. May E disclose to the court that Ludders did not purchase the computer? Briefly explain your answer.




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**Rule 1.7 Conflict: Current Clients (p 10-11)****KNOW THIS - Multiple Questions Every Cycle**

Cannot represent if a concurrent conflict of interest exists, IF

- representation of one client will be directly adverse to another, or
- significant risk exists that the representation of  $\geq 1$  will be materially limited by duties to another client (current or former)




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**Conflict of Interest**

If counsel of record was 1) involved in planning/promoting a transaction, or  
2) represents  $>1$  person with differing interests, counsel must

- 1) either withdraw, or
- 2) obtain informed client consent, or
- 3) take any other steps necessary to obviate a conflict of interest

If counsel of record is a potential witness, counsel must withdraw from the representation. Informed client consent cannot waive this requirement!

**Sound familiar?**




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**MEMORY TOOL**

**Withdrawal of counsel required by Tax Court Rules**

- P – Plan/promote** transaction – informed consent waives
- C – Conflict** of interest – informed consent waives
- W – Witness** – conflict cannot be waived by informed consent

**PCW**




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### Rule 1.7 Conflict: Current Clients

Even if it exists, may represent if:

- practitioner believes can provide competent/diligent representation to each affected client;
- representation is not prohibited by law;
- does not involve assertion or claim of one client against another client represented, and
- each **affected client gives informed consent, confirmed in writing.**




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### Question 2023 LE-1 (H.O. p 51-52)

(3 points/3 minutes). A prepared Kelly Hansen's Form 1040, including related forms and schedules, for 2019. Kelly thought she had provided A with all of the tax documents that she had received or collected. Correspondence from the IRS, however, indicated that Kelly's return omitted a substantial distribution from her retirement account. A notice of deficiency was issued reflecting a deficiency resulting from the missing amount and a section 6662 accuracy-related penalty. Kelly promptly paid the tax deficiency, and A prepared a Tax Court petition asserting that Kelly's reliance on A to prepare her return satisfied the reasonable cause and good faith defense to the penalty. Can A represent Kelly in the Tax Court proceeding? Briefly explain your answer.




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### Question 2018 LE-4 (H.O. p 51-52)

(3 minutes) The IRS issued a notice of deficiency to Arin Kerr based on unreported income from illegal distribution of drugs and asserted a fraud penalty. The IRS alleges that Kerr utilized trusts as nominees to hold title to assets derived from his unreported income and that he failed to maintain complete and accurate records of his income-producing activities. D, an attorney, prepared Kerr's income tax returns for the year at issue as well as for several other years. In addition, for several years, D has been counsel to various trusts in which Kerr holds an interest. D prepares a Tax Court petition and enters an appearance in the case. Government counsel objects because D might be called as a witness. Can D continue in the representation? Briefly explain your answer.




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**Question 2018 LE-7 (H.O. p 52)**

(3 minutes) F's firm regularly provides tax counsel to Celia Ross, the chief executive of a successful company that Ross founded several years ago. F designed a tax strategy meant to generate liquidity for Ross without triggering a taxable event. The strategy involved using stock as collateral for a nonrecourse loan. F's firm prepared the documentation for the transaction and also prepared Ross's tax returns for years affected by the transaction. The IRS subsequently audited Ross and asserted that the loan was actually a sale, resulting in the realization of gain and disallowance of interest expense deductions. Ross received a notice of deficiency. Can F represent Ross in the Tax Court proceeding with respect to the deficiency, assuming that there would be no need to call F as a witness? Briefly explain your answer.




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**1.9 Duties to Former Clients (p 12)**

Tested in '10, '08, '06

Former clients have nearly same protections

- Attorney-client privilege survives client's death
- Cannot represent other clients in same or substantially related matter if new client's interests are materially adverse ... unless former client gives informed, written consent
- May not reveal former client info unless info becomes generally known or the rules otherwise permit




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**Rule 1.10 Imputation of Conflicts of Interest**

Last Tested in '08, '06

While attorneys are associated in a firm, none can knowingly represent a client if any one practicing alone would be prohibited.

Ok to represent if prohibition based on lawyer's personal interest




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### Rule 1.10 Imputation of Conflicts of Interest

Generally if that practitioner leaves, the firm is no longer prohibited from representing a person with interests materially adverse to that practitioner's clients, unless:

- the matter is the same or substantially related,
- and any lawyer remaining in the firm has protected, material information

**Disqualification under these rules may be waived by informed, written consent**




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### Rule 1.10 Imputation of Conflicts of Interest

**Figure 1 (p 13)**

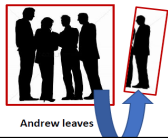
FIRM 1

Andrew is a partner, representing March Inc.



FIGURE 1: While Andrew is a partner in Firm 1, no one in the firm is permitted to represent a client whose interest is directly adverse to March Inc.

When Andrew leaves Firm 1, the remaining members of Firm 1 are permitted to represent a client with a directly adverse position to March Inc. in a substantially related matter, as long as no remaining lawyer in the firm has obtained material protected information. If they have materially protected information, they cannot represent a client adverse to March Inc.



Andrew leaves




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### Rule 1.10 Imputation of Conflicts of Interest (p 14)

**Tested in '23, '21**

Model Rules allow for attorney withdrawal ...

Remember Tax Court Rule 24

- Counsel files motion for leave to withdraw (prior notice given to parties)
- If **not** calendared for trial/hearing, generally ok to withdraw with new counsel substituted
- Conflict of interest may require withdrawal




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### Rule 1.16 Declining/Terminating Representation

Tested in '16, '14, '12

May be unable to represent and must withdraw (violation of rules, lawyer's physical/mental condition, client fires attorney) ... the lawyer must obtain court's permission to terminate representation.

When ordered by a tribunal, the lawyer may be required to continue representing client even if good cause exists to terminate.




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### Question 2021 LE-3 (H.O. p 53)

(2 minutes) C, a sole practitioner, has represented Ruben Emmy since the commencement of Emmy's Tax Court proceeding, through trial. Emmy has failed to pay C's bills on a timely basis; by the time the trial ended, Emmy owed C \$40,000 for work C had already completed and billed. Anticipating that preparing a post-trial brief would entail a substantial amount of C's time for which C might not be compensated, C notified Emmy in a letter sent by certified mail that C quit and would neither prepare the brief nor continue to represent Emmy. C's letter, which was respectful in tone and explained C's position in some detail, requested that Emmy indicate his consent to the withdrawal by signing and returning the letter to C. Has C's representation of Emmy ended? Briefly explain your answer. What additional action, if any, must C take to withdraw?




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### Rule 1.18 Duties: Prospective Client

Conflict of interest and imputation rules apply to the prospective client even if no client-lawyer relationship exists




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### 3.1 Meritorious Claims/Contentions (p 16)

Tested in '23, '21, '18, '16, '14, '12, '08

Must not bring/defend a frivolous action

Frivolous = cannot be supported by a good faith argument under existing law, and cannot be supported by a good faith argument to modify existing law

It's frivolous if primarily for purpose of harassing or maliciously injuring a person

Not frivolous if it just hasn't been developed




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### 3.1 Meritorious Claims/Contentions

Federal Rules of Civil Procedure – Rule 11

- Attorneys must sign every pleading
- Attorney's signature certifies "to all the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances" not frivolous or for improper purpose

Sound familiar?




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### MEMORY TOOL

Certifications of counsel's signature:

R – Read the pleading

I – No improper purpose

B – Belief it is well grounded

A – Authorized to represent

RIBA




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### 3.1 Meritorious Claims/Contentions

Tested in '23, '21, '14, '12

Under **Tax Court Rule 33**: Signature certifies:

- the signer has **read** the pleading, **and**
- to the best of knowledge/information/**belief** ... reasonable inquiry ... well grounded ... **and**
- Not for **improper** purpose (delay, needless costs)
- **and** counsel is **authorized** to represent the party or parties on whose behalf the pleading is filed




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### Question 2021 LE-7 (H.O. p 53)

(2 minutes) On April 25, 2020, when Randal Austin filed his federal income tax return for 2019, Austin's Social Security card contained the following legend: "Not Valid for Employment." A Social Security card without the legend was issued to him in November 2020. Austin subsequently received a notice of deficiency disallowing the earned income credit (EIC) claimed on his 2019 return. G, an attorney, explained that Internal Revenue Code §32(m) requires a Social Security Number valid for employment to be issued on or before the due date for filing a return in order to receive the EIC and because Austin did not have such a number when his 2019 return was due, his credit was denied. Both G and Austin believe that the law is unfair. G, however, believes that the IRS applied the law correctly in Austin's case. Can G file a petition in Tax Court challenging the deficiency on the basis that the law is unfair?




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### 3.3 Candor Toward the Tribunal (p 18)

Tested Every Cycle Since '06

Cannot

- knowingly misrepresent the law
- knowingly make a false statement of law/fact, or fail to correct a previous false statement
- fail to disclose adverse legal authority
- offer evidence lawyer knows to be false

Must make reasonable remedial measure if attorney comes to know client or witness offered false material evidence




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**Question 2023 LE-8 (H.O. p 53-54)**

(2 points/2 minutes). After filing a Collection Due Process Tax Court petition two days after the deadline, Patrick Murtaza hired K to represent him in the proceeding. Patrick told K that he had mailed the petition before the filing deadline, but the discovery of white powder in his local post office had forced an immediate closure of the building for several days and Patrick's petition was stuck inside. K explained these facts in a Response to Respondent's Motion to Dismiss for Lack of Jurisdiction, which was denied. Celebrating together, Patrick told K that his story was a lie; he had filed the petition late because he had forgotten about the deadline. May K reveal that her Response contained and relied upon misstatements of fact? What action, if any, should K take? Briefly explain your answer.




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**3.3 Candor Toward the Tribunal**

*Golsen* rule applies

*Golsen v Comm'r*, 54 T.C. 742 (1970), the Tax Court must “... follow a Court of Appeals decision which is squarely on point where appeal from our decision lies to that Court of Appeals.”




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**Question 2023 LE-2 (H.O. p 54)**

(3 points/3 minutes). Sharon Wisniewski has asked B to represent her in a Tax Court proceeding involving a charitable contribution deduction for a conservation easement donation. B understands that the notice of deficiency is based on Sharon's failure to comply with certain requirements set forth in regulations under I.R.C. § 170. B plans to argue that the regulations are invalid, as was decided by the Eleventh Circuit Court of Appeals, which is the Circuit Court to which Sharon's Tax Court case would be appealable. Can B rely solely on the Eleventh Circuit case, or must B's submission also discuss precedent from the Sixth Circuit Court of Appeals, which has taken a position at odds with the Eleventh Circuit? Briefly explain your answer.




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**Question 2021 LE-9 (H.O. p 54)**

(3 minutes) J represents Ruth Freeman, a resident of New York City, in a Tax Court proceeding. The Second Circuit Court of Appeals, which has jurisdiction with respect to Tax Court cases appealed by New York residents, has not ruled on the issue in Freeman's case. Other Circuit Courts of Appeals have weighed in on the issue, however. Their opinions directly support Freeman's arguments. Two months after J submits a post-trial brief in Freeman's case, the Second Circuit Court of Appeals issues a decision that is not directly on point but arguably is adverse to the other Circuit Courts' views and to a position taken in the brief. Is J required to notify the Tax Court of the decision? Briefly explain your answer. Does your answer depend on whether Freeman's proceeding is a small ("S") case, which is not appealable?




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**3.4 Fairness to Opposing Party and Counsel (p 19)**

Attorneys must not:

- unlawfully block, alter, destroy or conceal evidence
- falsify evidence, or assist or counsel another to testify falsely
- knowingly disobey a Court obligation
- make frivolous discovery requests
- allude to matters during trial not believed to be relevant or supported by admissible evidence
- request others to not provide relevant info




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**4.1 Truthfulness: Statements to Others (p 19)**

Affirmative duty to avoid making false statements

Cannot assist a client in fraudulent or illegal conduct

Once attorney decides to speak ... all statements must be truthful/complete to avoid misleading the hearer

If attorney must breach confidentiality to speak the whole truth, attorney should not tell partial truth

Exception when legal compulsion to speak exists




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#### 4.1 Truthfulness: Statements to Others

If opposing party believes something that is not true ... did attorney create it by incorporating/affirming a statement known to be false, or by failure to act? Did client create it?

- No duty to speak if attorney didn't create it
- If client created it, same attorney duty as if client committed fraud or crime

Attorneys cannot knowingly misrepresent facts or offer evidence known to be false

An attorney who offers material evidence and later comes to know it is false ... must make reasonable remedial measures




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#### 4.1 Truthfulness in Statements to Others

Attorneys must avoid counseling client to undertake illegal acts

... can help the client understand the application of any law and discuss consequences of proposed course of conduct




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#### 4.1 Truthfulness in Statements to Others

Ex parte communications occur without presence of the opposing counsel.

Generally an attorney is prohibited from meeting with the judge alone.

If an ex parte proceeding must occur all material facts must be presented to Court even if adverse.




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### Rule 4.4 Respect for Rights of Third Parties

Can't use methods to embarrass, delay, or burden a 3<sup>rd</sup> person

Cannot obtain evidence w/illegal methods

If attorney receives document known to be inadvertently sent (or should know), must promptly notify sender




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### Conflicts of Interest (p 21)

**Tested Every Cycle Except '08**

Conflicts exist whenever there is tension between the attorney's need to protect client confidences and/or secrets and the attorney's duty of client loyalty and zealous representation.

Duty to protect confidentiality may be in direct conflict with that same attorney's duty of loyalty to another client




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### Conflicts of Interest

Whenever an attorney with possible conflict represents interested parties, attorney has burden of proof to establish:

- 1) either no conflict existed, or
- 2) the voluntary, informed consent of affected parties was obtained, or
- 3) any action where attorney had a personal interest was fair and the client gave informed consent




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### General Conflict of Interest

- Attorney is fiduciary
- Personal interests or other clients should not interfere with duty of loyalty
- If conflict apparent at start, attorney cannot undertake representation
- If conflict becomes clear later, lawyer must withdraw




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### Current Clients Conflict

May not represent a client  
if the representation is either **directly adverse** to another client,  
or is **materially limited** by representation of another client.




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### Current Clients Conflict (p 22)

#### Example

Husband and Wife are divorcing.  
Attorney cannot represent W in the divorce at the same time he is representing H in another matter, even if it is a completely unrelated matter.

Example: H/W may be represented on MFJ tax return.

Can file joint petition even if no longer married

Caution: If they are now divorced or separated they could have differing issues. S6015 claims clearly result in parties with potentially differing interests even if they initially appeared to be aligned.




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### Former Client Conflicts (p 24)

Duty continues after representation ends.

May not represent a new client in a matter adverse to a former client if it results in a breach of loyalty/confidence to the former client.

Attorney cannot accept a representation that is **materially adverse** to the interests of a former client in a matter that was the same or **substantially related** as the earlier representation **without the former client's informed consent**.




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### Former Client Conflicts

'Substantially related' representation test designed to avoid situations where the unauthorized use or disclosure of a client's confidence is most likely.

Example: An attorney who drafts a landlord's contract cannot represent a tenant who seeks to rescind the contract.

An attorney can't be permitted to 'switch sides' on the same matter.




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### Former Client Conflicts (p 25)

Duty to a former client lasts

- No specific time period
- Prohibition ends when the information becomes generally known, or when the former client consents to use or disclosure of confidential information




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**Question 2023 LE-5 (H.O. p 54-55)**

(3 points/3 minutes). E is a partner in the law firm of Moe, Larry & Curly. Several years ago, E represented Homescape, Inc. in an employment dispute with Adam Juniper. The matter was settled by the parties, and Adam then started his own unrelated business. Homescape is no longer a client of E or his firm. Adam recently asked E's law partner, F, to represent Adam in a Tax Court proceeding pertaining to expenses reported on the Schedule C for Adam's business. Can F accept the representation? Explain your answer.




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**Prohibited By Conflicts of Interest**

Generally prohibited from accepting or continuing representation that is materially limited by attorney's own interests

Client can give informed consent BUT attorney must also reasonably believe representation is not adversely affected by attorney's interest




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**Prohibited By Conflicts of Interest**

Generally an attorney cannot provide financial assistance to a client ...

- Can advance court costs/expenses with repayment contingent on outcome
- May pay court costs and expenses of litigation on behalf of indigent clients
- Can contract for a reasonable contingent fee in a case where such compensation arrangement is permissible




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### Miscellaneous Duties (H.O. p 55)

2023/LE-4 (3 points/3 minutes). Divorced couple Denis and Ilana Karina have chosen to be represented by separate counsel in a Tax Court proceeding involving their (pre-divorce) joint income tax return. D represents Ilana, who insists that D seek information about the couple's expenses directly from Denis, who paid all of the couple's bills during their marriage. Denis calls D at Ilana's request to discuss the case. Is it proper for D to accept Denis's phone call? What advice would you give to D? Briefly explain your answer.




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### Miscellaneous Duties (H.O. p 55)

2023/LE-9 (3 points/3 minutes). L agreed to represent Sandra Rumena in a Tax Court proceeding. L drafted and filed Sandra's petition. Sandra, however, did not pay even the first installment of L's fees, which she had agreed to pay L for L's services, did not return L's emails and phone calls, and failed to respond to a certified letter that L sent to her. L therefore assumed that Sandra was no longer interested in representation and did not respond to communications from IRS Counsel and the Court. Is it proper for the Court to reprimand L? Briefly explain your answer.




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### Imputation Rules—Law Firms & Associates

The imputation rules determine when the disqualification of one attorney prevents another associated practitioner from accepting or continuing a representation.

To 'impute' means to "attribute vicariously the knowledge or actions of one person to another, simply by virtue of their relationship."

**Think Typhoid Mary:** Is the first attorney disqualified from representation?

If yes, is another attorney 'infected' by that association?

If the first attorney is not disqualified, imputation rules do not apply.

May affect current or former law firm members, and entire law firms within private firms or an organization's legal department or in a legal services organization




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### Imputation Rules – Law Firms & Associates

Example: Co-counsel representing the same party, who are not members of the same firm, may be treated as part of the same firm for purposes of the imputation rules **if they exchanged confidential information**.




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### Current Law Firm Associates

While attorneys are associated in a firm, **no member of a firm** can knowingly represent a client **when any other member in the firm is precluded** under any of these:

Rule 1.7 - **general conflict of interest** prohibits representation if it is directly adverse to another client - applies to every member of the firm.

Rule 1.8 - **former client conflict of interest**: if a representation is materially adverse to a former client, all members of the firm are disqualified.




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### Current Law Firm Associates

**Example** Figure 2 (p 28)

FIRM 2



Can Jamie represent Field in any other legal matter?

FIGURE 2: Jamie and Sandra are partners in Firm 2. Sandra represents Taylor in litigation against Field. Jamie, her partner, cannot represent Field in any other legal matter.




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### Switching Firms - Arriving Associate

If a practitioner switches from one firm to another, the **new firm** cannot knowingly represent a person in the **same or a substantially related matter** in which the switching practitioner, **or prior firm**, previously represented a client whose interests are **materially adverse** to that person, **and** the switching practitioner **acquired confidential info material** to the matter.

However, if the **arriving associate did not personally represent** the client **and did not acquire any material** secrets or **confidences** from the client, then neither the arriving associate nor the new firm is disqualified.




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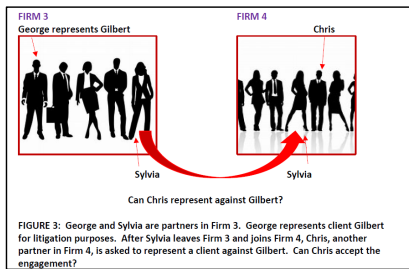
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### Switching Firms - Arriving Associate Example **Figure 3** (p 29)




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### Switching Firms - Arriving Associate Example **Figure 3** (p 29)

That depends upon whether:

- 1) the new client's interests are materially adverse to Gilbert, and
- 2) if Sylvia acquired any confidential information that would be material to the litigation.

If both conditions are met, no one in Firm 4 may represent the new client.

However, if the arriving associate did not personally represent the client **AND** she did not acquire any material secrets or confidences from the client, then neither the arriving associate nor the new firm is disqualified.




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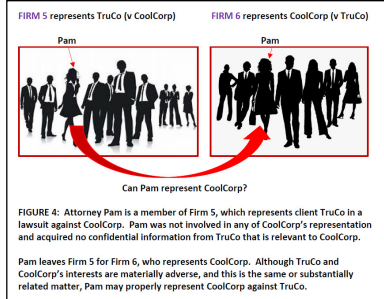
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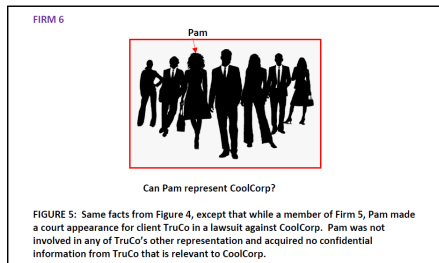
## Switching Firms - Arriving Associate

### Example Figure 4 (p 30)



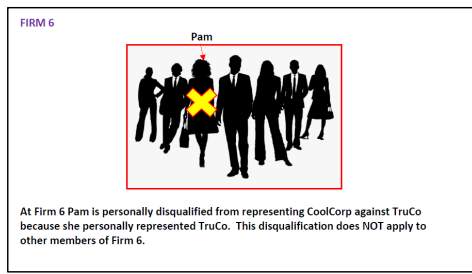
## Switching Firms - Arriving Associate

### Example Figure 5 (p 31)



## Switching Firms - Arriving Associate

### Example Figure 5 (p 31) - Continued



### Switching Firms - Departing Associate

An attorney cannot knowingly accept a representation materially adverse to a client of a firm from which the attorney departed if he or she acquired information relating to that client's representation that is material to the new representation.




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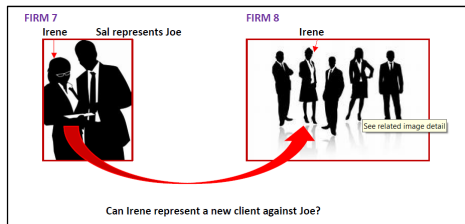
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### Switching Firms – Departing Associate Example **Figure 6** (p 32)




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### Switching Firms – Departing Associate Example **Figure 6** (p 32)

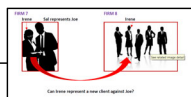


FIGURE 6: Sal and Irene are partners in Firm 7. Sal represents client Joe in civil litigation. After Irene joins Firm 8, she is asked to represent a new client against Joe.

Can Irene accept the engagement?

That depends upon whether she acquired any confidential information that would be material to the litigation.

If she did, she may not represent the new client.




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### Remaining Firm of Departing Associate

A member of a firm from which another attorney left **is not prohibited** from accepting a representation materially adverse to a client of the departed lawyer **unless**:

- the subject matter of the new representation is substantially related to what the departed lawyer handled, and
- any lawyer remaining in the firm has info relating to representation of the departing lawyer's client that would be material to the new matter.




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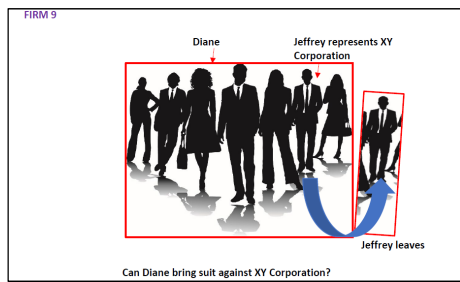
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### Remaining Firm of Departing Associate Example **Figure 7** (p 33)




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### Remaining Firm of Departing Associate Example **Figure 7** (p 33)

FIGURE 7: Jeffrey and Diane are partners in a large law practice, Firm 9. Jeffrey handles various business matters for the XY Corporation. After Jeffrey leaves Firm 9, Diane is asked to bring suit against XY Corporation on a matter based on one of the business matters Jeffrey handled while a member of the firm. Diane has no knowledge relating to the representation.

Can Diane accept the representation?

Only if no other member of the firm has information relating to Jeffrey's representation that is material to the new matter.




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### Witness-Advocate Conflict (p 31)

Example: Melissa, a USTCP in a private firm, designed a tax transaction utilized by Sandra. Upon audit, the IRS disallowed the deduction, and Sandra filed a timely petition to the Tax Court as a result of the NOD. Melissa, as a potential witness, cannot represent Sandra before the Tax Court under Rule 24(g).

What about other members of her firm?

**This is not imputed – others could represent**




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### QUESTIONS HANDOUT HANDOUT PAGE 59




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### Question 1A (H.O. p 59)

1A (2 minute/s) Adam devised a transaction designed to save federal income taxes and convinced Nora Lester to enter into the transaction. Adam also prepared all the documentation for the transaction. Lester subsequently was audited and received a notice of deficiency in tax with respect to this transaction, which she intends to contest in Tax Court. Can Adam represent Lester in this proceeding? Briefly explain your answer.

Answers for class review:

- a) Yes, as promoter, Adam can represent with Lester's informed consent.
- b) No, Adam cannot represent because he is going to be a witness.
- c) No, as promoter, Adam is forever barred from representing Lester.
- d) Yes, as promoter Adam can represent if Adam believes he is capable of the representation.




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**Question 1B (H.O. p 59-60)**

(2 minute/s) Adam located the properties that were used to carry out the transaction. If Adam is likely to be called as a potential witness in the deficiency litigation, can Adam represent Lester if he obtains a waiver from Lester? Briefly explain your answer.

Answers for class review:

- a) Yes, as a witness, Adam can represent with Lester's informed consent.
- b) No, Adam cannot represent because he is going to be a witness.
- c) No, as promoter, Adam is forever barred from representing Lester.
- d) Yes, as a witness Adam can represent if Adam believes he is capable of the representation.




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**Question 2 (H.O. p 59-60)**

(2 minute/s) Betty represents Tran Nguyen in a Tax Court proceeding that would be appealed to the Ninth Circuit. After submitting the brief on behalf of Nguyen, Betty discovers a decision of the Fifth Circuit that is directly contrary to her client's position in this matter. The government's brief fails to mention the case. What action, if any, must Betty take and why?

Answers for class review:

- a) Betty must tell opposing counsel about the case in the Fifth Circuit.
- b) Betty is obligated to tell opposing counsel only about cases adjacent to the Ninth Circuit.
- c) Betty can tell opposing counsel about the case if she wants to be nice about it.
- d) Betty is under no obligation to reveal case because it is in a different circuit.




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**Question 3 (H.O. p 60)**

(2 minute/s) Doug represents Marvin Sears in a Tax Court proceeding involving deficiencies with respect to his sole proprietorship. As part of the pre-trial process, the government lawyer offers a settlement. Doug is surprised by the settlement offer and has never discussed with Sears the possibility of settling the case. Doug believes the government's offer should be accepted but Sears is out of the country on vacation. Can Doug agree to and sign the stipulation of settled issues? Briefly explain your answer.

Answers for class review:

- a) Yes, if Doug feels as if the amount represents a good settlement.
- b) No, Marvin hasn't agreed to any settlement parameters so Doug must talk with Marvin before agreeing to the settlement.
- c) Yes, Marvin trusts his counsel to do the right thing.
- d) No, settlements are never encouraged before trial.




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### Question 4 (H.O. p 60)

(2 minute/s) Edward represents George Johnson in a Tax Court proceeding involving deficiencies with respect to his sole proprietorship. Among the items at issue are depreciation and interest deductions for Johnson's new Mercedes S Class. Edward drafted the petition, which stated the Mercedes had been used 100% for business. During a pretrial conversation Edward learns that the Mercedes is actually used by Johnson's wife, who does not work in the business. Johnson drives an old Toyota Corolla about 25% for the business. What action, if any, should Edward take? Briefly explain your answer.

Answers for class review:

- a) Edward must immediately inform the Court.
- b) Edward should inform Johnson that he can no longer represent him in this matter.
- c) Edward should inform Johnson that he must correct the false statement, or else Edward will have to inform the Court that there are false statements in the petition.
- d) Edward's duty is to his client and he must vigorously represent Edward.




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### QUESTIONS AND ANSWERS




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**You CAN do this!!  
And we can help ...**

**Working together for success on the Tax  
Court exam**




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## SELECTED TAX CASES

2025 EXAM CYCLE  
LAS VEGAS and LIVE STREAM




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For July, 2 handouts  
Court Cases are in the Questions Handout



Preparing to  
Practice before the  
US Tax Court

JULY 2025 HANDOUT  
COURT CASES  
QUESTIONS  
2025 Exam Cycle




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## Tax Court Cases

Published each day on website 3:00 Eastern  
(ustaxcourt.gov)

Regularly reading TC Opinion and TC Memo cases help  
you understand the language of the court, its  
procedures – and law!

Our focus now is on selected Supreme Court cases  
and selected TC Opinion cases we consider are most  
likely to be tested in November




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## Tax Court Cases

Welcome to DAWSON


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Today's Opinions

July 1, 2025

Any online sourced citations in these opinions can be viewed directly from the associated docket record.

Docket No.	Case Title	Opinion Type	Pages	Date	Judge
1	<a href="#">5583-24L</a>	<a href="#">Memorandum Opinion</a>	16	07/01/25	Jenkins



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## Tax Court Cases

Welcome to DAWSON

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Search

Case Order Opinion Practitioner

Anyone can search for a case in our system for cases filed on or after May 1, 2016.

- \* Cases aren't affiliated with a case, you will only see limited information about that case.
- \* Sited cases and affiliated documents will not display in search results.

Search by Name

Petitioner name (required)

Advanced syntax search ("\*", "AND", "OR" is not supported at this time)

Country

☒ All ☐ United States ☐ International


Date filed start date

MAILED DATE

Search by Docket Number

Docket number (required)

Example of docket number format: 123-45



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## Cases as Test Questions (Reminder)

They generally test on their own cases ...

There is no need to cite the case ...

There is no need (or time) to do formal IRAC analysis ...

You may recognize specific fact pattern and know how to answer the question because you're familiar with the case

You may need to look further at the cases presented now and in the July handout to fully understand the issues



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### Supreme Court

**Supreme Court tax cases are highly likely to be tested.**

In *Zuch*, the petitioner had a pending collection due process (CDP) hearing case in which they challenged their liability for the amount. The IRS offset a refund from a different year and fully paid the year at issue in the CDP case.

The Supreme Court held that the CDP hearing was now moot since the liability had been fully paid and was not subject to levy action; the taxpayers could not continue challenging the liability.




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### Supreme Court

In *Moore*, the Supreme Court held that the \$965 mandatory repatriation tax was constitutional, holding that Congress can tax either the entity or its owners on the undistributed income realized by that entity.

Since the foreign corporation realized the income taxed by \$965, the majority said the realization question did not have to be answered, and it did not get to the realization question.




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### Supreme Court

In *Connelly*, the Supreme Court unanimously held that a corporation's obligation to redeem a deceased shareholder's shares, funded by life insurance proceeds, does not reduce the corporation's value for estate tax purposes.

This means the life insurance proceeds are included in the company's value, potentially increasing the estate tax owed.




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### Supreme Court

In *Boechler*, the 30-day petition filing deadline for a CDP hearing is subject to equitable tolling 'in appropriate cases'; it is not jurisdictional.

**While this case occurred in 2022, its effects still reverberate through the Tax Court, so it is essential to know it.**




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### §6015

In *LaRosa*, the Tax Court held that an amount owed to the IRS due to an erroneous refund suit is not an unpaid tax or deficiency; therefore, §6015(f) relief was not available to the taxpayer.




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### §6751(b)

In *Kraske*, the Tax Court followed 9<sup>th</sup> Circuit precedent and held that a supervisory approval was timely because it was made seven days before the issuance of the notice of deficiency.

Tax Court precedent holds that the approval must come earlier in the process, typically the issuance of a revenue agent report; however, the final §6751(b) regulations issued in 2024 generally hold it must be issued before the notice of deficiency.

The final regulations apply to penalties assessed on or after December 23, 2024.




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**§6751(b)**

In *Piper Trucking and Leasing*, the Tax Court held that the §6721(e) penalty for failing to file Form W-2 was not subject to the supervisory approval requirement because the assessment was automatically calculated through electronic means.

The final regulations that apply to penalties assessed on or after December 23, 2024 do not materially change the Tax Court's holdings on this issue.




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**Charitable Contributions**

In *Ranch Springs, LLC, Ranch Springs Investors LLC*, the Tax Court held that a hypothetical limestone business could not be included in the "highest and best use" valuation because the property was zoned agricultural.

The petitioners were subject to a 40% gross valuation penalty, a "painfully familiar" fact pattern in the syndicated conservation easement cases.




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**Collection Due Process**

In *Organic Cannabis Foundation*, the Tax Court held that the deadline to request a CDP hearing under §6320 with the IRS Independent Office of Appeals is not jurisdictional and is subject to equitable tolling.

While a taxpayer can request a CDP equivalent hearing within one year of the required notice, an equivalent hearing does not give the taxpayer Tax Court appeal rights or a statutory bar on IRS collection.




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### Collection Due Process

In *Jenner*, the Tax Court held that a taxpayer had no right to a CDP hearing when the Treasury attempted to collect a Title 31 FBAR penalty by offsetting the taxpayer's Social Security benefits.

The Tax Court held that the FBAR penalties are not taxes imposed by Title 26 and thus are not subject to §6320 and §6330 requirements.




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### Declaratory Judgment

In *Students and Academics for Free Expression, Speech and Political Action in Campus Education*, the Tax Court held that a petitioner can voluntarily dismiss a case under §7428 with respect to exempt organizations, and the Tax Court does not have to sustain the IRS's determination.

In *Joseph E Abe, DDS*, the Tax Court held that a petitioner can voluntarily dismiss a case under §7476 with respect to employment plan determinations, and the Tax Court does not have to sustain the IRS's determination.




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### Deadlines for Filing Petitions

The Tax Court has consistently held that the §6212 notice of deficiency deadline is jurisdictional and not subject to equitable tolling.

However, the Third Circuit in *Culp* held that the notice of deficiency deadline is not jurisdictional and subject to equitable tolling.

Therefore, in cases appealable to the Third Circuit, the Tax Court will apply equitable tolling; for example, see *Stokey*.




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### Deadlines for Filing Petitions

In *Belagio Fine Jewelry* (2024), the Tax Court held that the \$7436 deadline is not jurisdictional, but reserved the determination of whether equitable tolling could or should apply.

In *Fruitiger*, the Tax Court held that the \$6015 deadline is jurisdictional, and, therefore, equitable tolling does not apply.




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### Deadlines for Filing Petitions

In *Belagio Fine Jewelry* (2025), the Tax Court used the following three-step analysis with respect to late filed petitions:

1. Is the deadline *jurisdictional*?
  - If it is **jurisdictional**, no relief is possible
2. Is equitable tolling applicable to the nonjurisdictional deadline?
  - Nonjurisdictional deadlines are presumptively subject to equitable tolling, a presumption that can be rebutted if inconsistent with the text or statutory scheme. Factors include:
    - Expressly prohibited? Highly detailed/technical provision with multiple exceptions? Administrative burden?




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### Deadlines for Filing Petitions

In *Belagio Fine Jewelry*, the Tax Court used the following three-step analysis with respect to late filed petitions:

3. Do the facts and circumstances support the equitable tolling of the deadline?
  - If yes, relief will be granted, and the case will not be dismissed
  - If no, the case will be dismissed
  - A taxpayer must demonstrate (1) that it pursued its rights diligently and (2) that extraordinary circumstances outside of its control prevented it from filing on time.
  - The attorney used a non-designated PDS; if they had, the petition would have been timely. The Tax Court held that the taxpayer did not meet either prong, as the attorney's negligence was not an "extraordinary circumstance." The Tax Court granted the respondent's motion to dismiss the case.




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### Deadlines for Filing Petitions

In *Abdo and Farah*, the Tax Court held that the mandatory §7508A 60-day disaster postponement was self-executing and that the Treasury regulation that attempted to narrow its scope was invalid.

Therefore, because of the March 2020 COVID disaster declaration, they had until March 20, 2020, to timely file their Tax Court petition, which was 60 days after January 20, 2020, the earliest incident date in the disaster declaration. Since the petition was mailed on March 17, 2020, it was timely, the Tax Court had jurisdiction, the respondent's Motion to Dismiss was denied, and the case will be litigated.




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### Deadlines for Filing Petitions

In *Sall*, the issue was the interpretation of §7451(b)(1), which provides an extension of time to file a Tax Court when a filing location is inaccessible.

The deadline to file a petition was November 25, 2022, the day after Thanksgiving, and the Tax Court clerk's office in Washington, D.C. was closed. The Tax Court ruled that closing the clerk's office rendered a filing location inaccessible, thus triggering a 14-day extension.

The extended deadline for the petition was December 12, 2022, including the additional day for the initial inaccessibility and the subsequent weekend deadline. Since Mr. Sall's petition was received on December 1, 2022, within this extended deadline, the Court denied the IRS's motion to dismiss.




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### Gross Income

In *CF Headquarters Corporation*, the Tax Court ruled that a financial services firm must include in gross income state grant proceeds it received following the September 11, 2001, terrorist attacks.

First, the proceeds were not excludable under §118, which allows for the exclusion of capital contributions, because the taxpayer failed to prove that the funds became a permanent part of its working capital.

Second, the funds did not qualify as non-taxable gifts under §102, as amounts transferred from a government to one of its constituents are not considered gifts for tax purposes.

Finally, the court found that §139, which allows individuals to exclude qualified disaster relief payments, does not apply to corporations, but only to individuals.




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## Passport

In *Garcia*, the Tax Court denied the IRS's motion for summary judgment in a passport revocation case, ruling that unresolved factual issues prevented a determination that a taxpayer's liabilities were "legally enforceable" under §7345.

Garcia argued he was never served in the district court action, making the judgment void and the liabilities unenforceable due to the expiration of the standard 10-year collection statute of limitations period. The Tax Court agreed that whether Garcia was served is a material fact and found that if the default judgment is invalid, the liabilities may be unenforceable, making the certification invalid.

Notably, the court held that the review of IRS certifications under §7345 should be de novo (not limited to the administrative record), allowing for a fresh review of all relevant legal and factual matters, including evidence introduced at trial.




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## Penalties

The saga of Form 5471 penalties continues...

In *Farhy*, the Tax Court held that the IRS does not have statutory authority to assess penalties for Form 5471 under §6038(b).

The D.C. Circuit Court of Appeals reversed the Tax Court in *Farhy* and held the IRS has the statutory authority to assess Form 5471 penalties.

In *Mukhi*, the Tax Court reiterated its position that the IRS does not have statutory authority to assess penalties for Form 5471; this case is appealable to the 5<sup>th</sup> Circuit Court of Appeals.




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## QUESTIONS AND ANSWERS




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