Individual and Business Federal Tax Update
(including procedural developments)
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I. Individuals

Public Law 112-240, the American Taxpayer Relief Act of 2012:

- Continued the current rate brackets except recreated a 39.6 percent bracket effective 2013 for taxable income in excess of $450,000 (married filing jointly), $425,000 (heads of household) and $400,000 (unmarried) indexed in 2014 and succeeding years.

- Continued the current 15 percent rate on qualified dividends and most long term capital gain except recreated a 20 percent rate for those who would have been taxed if ordinary income at 39.6 percent.

- Restored the phaseout of personal exemptions at 2 percent for each $2,500 or fraction over a threshold and restored the phaseout of up to 80 percent of itemized deductions effective 2013 at 3 percent over a threshold, creating a common threshold for both at $300,000 (married filing jointly), $275,000 (head of household) and $250,000 (unmarried) indexed in 2014 and succeeding years.

- Extended permanently in current form the larger standard deduction, 15 percent tax bracket and earned income credit for married taxpayers filing jointly.

- Extended permanently in current form the exclusion for certain employer provided educational assistance, the student loan interest deduction and the exclusion from income of earnings on Coverdell Education Savings Accounts.

- Extended permanently in current form the dependent care credit as well as the adoption tax credit and related exclusion in the case of employer assisted adoption.

- Extended through 2013 the current exclusions for relief from indebtedness on a qualified principal residence, transit and parking benefits and IRA distributions for charitable purposes.

- Extended through 2013 the current deductions for qualified tuition expenses, certain teacher expenses, mortgage insurance premiums and sales taxes (as an alternative to state income taxes).

- Extended the child tax credit, the American Opportunity (Educational) Tax Credit and the earned income tax credit in their present forms through 2017.

- Extended the individual credit for purchasing energy efficient property with other energy tax extenders through 2013.

- Made “permanent” the indexing of the alternative minimum tax exemption and the ability of nonrefundable credits to offset AMT.

- Would allow employer 401(k), 403(b) and 457 (b) plans to permit any employee to convert pretax accounts to Roth accounts irrespective of age.

Proposed Regulations under Code Section 1411 indicate that the Medicare tax on investment income does not apply to interest, dividends, annuities, royalties and rents derived in the ordinary course of a business but applies to gain related to working capital; gain from the disposition of a partnership or S corporation interest is net investment income subject to Medicare only to the extent that would have been the case if the entity had sold its property for fair market value.

Final Regulations under Code Section 5000A provide guidance on the individual mandate of the "shared responsibility payment" effective in 2014; they provide that the penalty does not apply for a "short coverage gap" of less than three full calendar months.

In <u>Armstrong v. Commissioner</u>, 139 TC No. 18, a divided Tax Court dealt with conflicting prior decisions including five others in the preceding year and stated that the dependency allowance remains with the custodial parent unless the noncustodial parent either attaches a Form 8332 signed by the noncustodial parent or a signed court order / separation agreement that has all of the information on the Form and unconditionally passes the allowance; the Court denied transfers of the dependency allowance when transfer was conditioned on up to date child support even when the condition had been met as this could not be apparent to IRS without extrinsic information.

In George v. Commissioner, 139 TC No. 19, a taxpayer was not allowed to revoke her signing of IRS Form 8332 on the purported ground that a state court made an error and that she signed the form under compulsion.

In Shenk v. Commissioner, 140 TC No. 10, the Tax Court held that a release of the dependency allowance by the parent with primary custody executed after IRS could no longer adjust her return was invalid to give the dependency exemption to the noncustodial parent.

In Golit v. Commissioner, TC Memo 2013-191, the Tax Court agreed with IRS that a taxpayer did not prove that an individual born two years later than her was an adopted son or otherwise qualified as a dependent.

In Harris v. Commissioner, TC Memo 2012-333, the Tax Court agreed with IRS that a beekeeper who received in excess of $500,000 for negligent destruction by fire could not exclude any of the proceeds as on account of physical injury where a taxpayer’s unsubstantiated sole physical medical complaint was that he developed breathing problems and a rash from inhaling the dust and ash but where the complaint did not allege medical expenses.

In Vancouver Clinic, Inc. v. United States, 111 AFTR2d 2013-1571, a Washington Federal District Court concluded that advances paid by a clinic to new physicians constituted compensation rather than loans at the time of payment despite the requirement of repayment with interest if they did not remain at the clinic for five years; the Court concluded that the parties did not intend repayment and that the requirement functioned essentially as a liquidated damage provision.

In McAllister v. Commissioner, TC Memo 2013-96, the Tax Court determined that an employer's cancellation of a debt to the company does not constitute constructive wages but represents cancellation of debt income subject to the insolvency exception.

In Garcia v. Commissioner, 140 TC No. 6, the Tax Court found that 35 percent of payments under an endorsement agreement to a Swiss citizen professional golfer was personal service compensation subject to tax in the United States; the taxpayer had claimed that only 15 percent was subject to tax and that the balance constituted nontaxable royalties pursuant to the US-Switzerland tax treaty.

In Rogers v. Commissioner, TC Memo 2013-77, the Tax Court required a US citizen who was a flight attendant and bona fide resident of Hong Kong to consider flight time over international waters as US source income; vacation and sick pay was required to be apportioned with the same percentages as pay for hours worked.

In Daly v. Commissioner, TC Memo 2013-147, a civilian worker in Afghanistan and Iraq failed to convince the Tax Court that he was a bona fide foreign resident; aside from the fact that he spent time during the years in question in other countries and back in the United States, he was not even allowed to leave the military bases in Afghanistan and Iraq.

In Faylor v. Commissioner, TC Memo 2013-143, the Tax Court refused to accept an argument that negotiations between attorneys for a husband and wife constituted a "meeting of the minds" to permit deductible alimony despite the absence of a written agreement (the Court did not impose the accuracy penalty though).

In DeLong v. Commissioner, TC Memo 2013-70, pendente lite family support not broken out between alimony and child support was found to constitute deductible alimony to the payor in part as it would terminate under California law upon death of the payor.

In Nye v. Commissioner, TC Memo 2013-166, the Tax Court denied an alimony deduction where the Agreement was silent as to whether payments would cease if the recipient died before payment and applicable state law (Florida) would not terminate the obligation.

In Smoker v. Commissioner, TC Memo 2013-56, and in Hargreaves v. Commissioner, TC Summary Opinion 2013-37, the Tax Court determined that unpaid interest which was added to principal is not deductible by a cash basis taxpayer.

In Norman v. Commissioner, TC Memo 2012-360, the Tax Court would not allow a couple with a house on a seven acre property who testified that they intended to subdivide and develop four of the acres to allocate any of the carrying costs to investment interest where the purchase agreement did not allocate between the parcels, the financing was by a single credit line and no expert testified at trial as to the allocation.

In Graev v. Commissioner, 140 TC No. 17, the Tax Court determined that a taxpayer was not entitled to a charitable deduction where his contribution was contingent through a side letter on IRS allowing the deduction and providing that the property be returned if the deduction were not allowed.

In Estate of Evenchik v. Commissioner, TC Memo 2013-34, the Tax Court denied an income tax deduction for a donation of stock in a corporation where the material assets were two apartment buildings and the tax return attached only appraisals of the buildings but failed to incorporate them into the fair market value of the underlying shares.

In Villareale v. Commissioner, TC Memo 2013-74, the Tax Court disallowed a deduction of over $10,000 from 44 donations to an animal rescue organization founded by the contributor for failure to provide documentation of a contemporaneous written acknowledgement; the taxpayer attempted to argue that she would have been issuing statements to herself and that the bank statements should be sufficient.

In Crimi v. Commissioner, TC Memo 2013-51, the Tax Court allowed a charitable deduction for donated real estate in a part-sale and part-gift transaction despite certain deficiencies in the written acknowledgment and appraisal; IRS had challenged such things as a typographical error in the lot of the contributed property, the lack of a proper signature and a statement that the appraisal was at "fair value" instead of "fair market value."

In Scheidelman v. Commissioner, TC Memo 2013-18, the Tax Court determined that a facade easement running with the land in perpetuity lacks value and denied a charitable deduction to a taxpayer who consented permanently to leaving the front of his Brooklyn home with a certain facade as requested by a neighborhood architectural trust.

In Humphrey v. Commissioner, TC Memo 2013-198, the Tax Court permitted an individual with prostate cancer to deduct supplements and health foods as alleviating the disease but did not permit him to deduct gym membership as he could not show that the costs exceeded what he otherwise would have spent.

In Longino v. Commissioner, TC Memo 2013-80, the Tax Court denied a medical expense deduction for an unmarried man seeking to claim in vitro expenses in an attempt to cause a pregnancy with his fiancee; the Court denied the expenses as, with two children, he could not prove his infertility (her infertility could not be considered as they were not married).

In Alioto v. Commissioner, 110 AFTR2d 2012-5431, the Sixth Circuit Court of Appeals agreed with the Tax Court that a taxpayer cannot deduct unreimbursed business expenses where he still maintains a claim for reimbursement against the employer.

In Alphonso v. Commissioner, 111 AFTR2d 2013-756, the Second Circuit Court of Appeals reversed the Tax Court and determined that an assessment by a cooperative for damage to the common grounds could constitute a casualty loss to the owner of the coop.

In Urtis v. Commissioner, TC Memo 2013-66, a homeowner was permitted to claim a theft loss of $188,070 for payments to a contractor who did little work prior to his death, let his insurance lapse and held funds scheduled for subcontractors; the Court agreed with the taxpayer that a theft occurred under state law from the "home repair fraud" which is defined as "knowingly entering into a contract for home repair and knowingly misrepresenting material facts relating to the terms of the agreement", allowing the deduction in the year following discovery when the lapse in insurance became known and a de minimis settlement with the carrier occurred.

In Goeller v. United States, 111 AFTR2d 2013-541, the US Court of Federal Claims deviated from the weight of authority and indicated that a theft loss (involving an investment in this case) does not depend on satisfying the definition under state law but is based on "plain meaning" – when there was a taking of property without consent with criminal intent.

- In Merino v. Commissioner, TC Memo 2013-167, the owner of a mortgage application processing business was unable to prove that he was a "real estate professional" within the definition of the law, failing both to prove that he spent more time in handling his seven rental properties than he did in his business and also failing to prove that the rental properties constituted at least 750 hours of time where a management company and paid assistant did much of the work.

In Hessing v. Commissioner, TC Memo 2013-179, the Tax Court determined that a father was the equitable owner of property that was sold notwithstanding title in the son's name for credit and other reasons, and he and not the taxpayer son had to report gain on the disposition of the property.

In Cung v. Commissioner, TC Memo 2013-81, an attorney who received a settlement from an auto dealership for reneging on an advertised price was found to have received ordinary income rather than capital gain (no sale or exchange) or nontaxability (no lost value as there was no ownership).

In Ramig v. Commissioner, 110 AFTR2d 2012-5396, the Ninth Circuit Court of Appeals agreed with the Tax Court that amounts lent to a struggling corporation were not business bad debts despite the lender's salary and expense package of $200,000 but were to be considered as capital contributions where the expectation of repayment was dependent upon unlikely improvement in the financial condition of the corporation and the funds could not have been borrowed from an outside investor; the Court emphasized that timely repayment was not demanded and that the taxpayer treated his claim as if it were subordinate to other creditors.

In Adams v. Commissioner, TC Memo 2013-7, the Tax Court found that a like-kind exchange was not barred where the owner's son moved into the replacement property and paid less than fair market rent, the Court finding that the son was doing extensive renovations as a trade off for rent.

In VIP's Industries v. Commissioner, TC Memo 2013-157, IRS denied like kind treatment in the exchange of a leasehold with 21 1/3 years remaining for two properties in fee simple; Regulations require a 30-year lease period for like kind treatment.

In <u>Kutney v. Commissioner</u>, TC Summary Opinion 2012-120, the Tax Court found that a consultant did not qualify as a real estate professional as he did not track hours and could not show that his time managing two apartment complexes for which he contracted out the maintenance and repair work exceeded his time as a consultant; the Court determined that his time "on-call" did not count toward the required number of hours.

In Hassanipour v. Commissioner, TC Memo 2013-88, the Tax Court determined that a fulltime research associate whose timesheets for the year totaled 1,936 hours could not prove that he spent more time managing his 28 apartment units and a single family residence; his calendar documented 1,183 hours on the apartments but he did not have a record on the single family home and on other tasks not requiring his presence.

In Hoskins v. Commissioner, TC Memo 2013-36, the Tax Court declined to accept a "ballpark guesstimate" from a taxpayer lacking any substantiation as to the number of hours that he worked in a rental real estate activity.

In Daley v. Mostoller, 112 AFTR2d 2013-5018, the Sixth Circuit Court of Appeals reversed a Tennessee Federal District Court and determined that the typical cross-collateralization agreement of a financial institution does not cause an IRA thereunder to lose its protective status in a bankruptcy proceeding and that only a prohibited extension of credit as a result might disqualify the IRA.

In Ahmed v. Michael A. Stevenson, 110 AFTR2d 2012-5348, a Michigan Federal District Court determined that a monetary award put in the debtor's IRA from funds transferred by her former husband's 401(k) account was not exempt in bankruptcy.

In In re: Clark, 111 AFTR2d 2013-2482, the Seventh Circuit Court of Appeals disagreed with all prior Court decisions including one from the Fifth Circuit and reversed a Wisconsin Federal District Court to determine that inherited IRAs are not exempt from creditor claims in bankruptcy.

In Revenue Ruling 2013-17, as a result of the Windsor decision,IRS indicated that it would recognize same sex marriages lawfully entered into (but not same sex or opposite sex civil unions) irrespective of any subsequent change in residence; same sex couples must file as married effective with 2013 returns and may choose to file or amend to be unmarried or married for prior open years.

In Notice 2012-69, IRS indicated that it will not take the position that employee donations of vacation, sick or personal leave for the benefit of Hurricane Sandy victims are taxable; IRS also indicated that an employer will be able to deduct the cash payments made to a charity for the foregone leave as "ordinary and necessary" business expenses rather than as charitable contributions.

IRS Form 8960, issued in draft, was released to allow individuals with net investment income to compute the Medicare tax effective 2013.

In Chief Counsel Advice 201238027, IRS indicated that state law property classifications are not conclusive of whether exchanged property is or is not “like kind” for purpose of a tax-free exchange and that federal tax law is determinative.

In Letter Ruling 201243019, IRS declined to waive the 60-day rule on an IRA rollover when funds were taken by the accountholder’s son under a durable Power of Attorney for a needed payment at a care facility and could not be replaced until the home was sold.

In Chief Counsel Advice 201306018, without addressing the proper measure of loss, IRS stated that additional tax, interest and penalty paid to IRS as the result of an abusive tax shelter is not the measure for determining a possible theft loss by a duped client; IRS also indicated that the partial recovery from the promoter constituted taxable income because the error was not in preparation (which would have been tax free) but in improper advice.

In Letter Ruling 201309020, IRS found that a bank error causing a missed annual payment which was corrected in the following year did not jeopardize the "substantial equal periodic payment" requirement when IRA distributions start before age 59½.

In Letter Ruling 201317003, IRS determined that a payment by a franchisee to the franchisor terminating the arrangement created a new intangible asset which is properly written off over 15 years unless the life of the benefit could be determined with reasonable accuracy.

In Field Attorney Advice 20131901F, IRS indicated that ordinary income rather than capital gain arises on the sale of merchant contracts which are mere rights to receive income for the performance of personal services.

In Letter Ruling 201320022, IRS permitted an individual to rescind his conversion of a traditional IRA to a Roth IRA after the deadline for recharacterization pursuant to regulations under Code Section 9100 when the attorney confused the cost basis of securities held in the IRA with the individual’s basis in the IRA itself.

II. Business

Public Law 112-240, the American Taxpayer Relief Act of 2012:

- Extended the current expensing limitation of $500,000 with a phaseout at $2 million of capital expenditures, 50 percent bonus depreciation, $8,000 additional first year depreciation for vehicles and with the 15-year writeoff on qualified leasehold, restaurant and retail improvements through 2013.

- Extended the 100 percent exclusion on disposition of “small business” stock through 2013.

- Extended the work opportunity tax credit and research credit (with modifications) through 2013.

- Extended the maximum 5-year application of the built-in gain rule on C to S conversions through 2013 and provided that the applicable time period for installment sales after 2011 is determined by the year of the sale.

Proposed Regulations under Code Section 469 provide that an interest in a limited liability company or limited liability partnership will be treated as an interest of a limited partner in a limited partnership where the entity is classified as a partnership for federal income tax purposes and the holder of the interest does not have rights to manage the entity at all times during the applicable year under law or under the governing documents including the power to bind the entity; the effect is to make the right to participate in management rather than limited liability as the determinant in whether a partner or member can seek to show material participation based on the number of hours of involvement in the activity.

Proposed Regulations under Code Section 3604, if finalized, would create joint liability for a company and the agency providing it with employees in the case of unpaid payroll taxes properly reportable by the provider of workers.

Proposed Regulations under Code Section 4980H explain the employer Shared Responsibility Penalty under the Affordable Care Act taking effect in 2014, covering non-profit and government entity employers as well as profit-making entities with more than 50 full-time equivalent employees (applying related entity rules), and indicate that the penalty will not be computed on the tax return but will be assessed after contact by IRS following the filing of employer and employee tax returns for a particular year.

In Wells Fargo & Company v. United States, 111 AFTR2d 2013-2198, a Minnesota Federal District Court disagreed with an earlier decision by the First Circuit Court of Appeals and found that tax accrual work papers are partially protected from subpoena as work product and subject to attorney-client privilege.

In Welle v. Commissioner, 140 TC No. 19, the Tax Court stated that foregone profit on work done at cost by a corporation for its owner does not give rise to a constructive dividend.

In Cavanaugh v. Commissioner, TC Memo 2012-324, the Tax Court denied a deduction to a corporation for its contribution to a wrongful death settlement when its founder and sole shareholder vacationed with an employee who had a heart attack after ingesting cocaine; the Court reasoned that the conduct did not arise from any profit making activity.

In Ash Grove Cement Company v. United States, 111 AFTR2d 2013-767, a Kansas Federal District Court denied a deduction in excess of $15 million for amounts paid in settlement of a dispute as the expenditure was found to be capital in nature as it related to payments to minority shareholders who objected to an acquisition.

In Reynoso v. Commissioner, TC Memo 2013-25, the Tax Court allowed a contractor who kept no records to deduct 30 percent of his total gross receipts as business expenses while he sought to deduct 60 percent of his gross receipts.

In Striefel v. Commissioner, TC Memo 2013-102, IRS denied virtually all claimed business deductions of an independent contractor engineer who destroyed substantially all of his business records upon being told he was terminally ill; the Court indicated that it accepts collateral evidence when records are destroyed through no fault of the taxpayer but will not when there is unjustifiable destruction of records.

In Heinbockel v. Commissioner, TC Memo 2013-125, a successful video game creator and his designer clothing reseller wife were not allowed to offset income by losses from a purported piloting business (not entered into for profit), a lending business (personal loans) and grape farming (start-up expenses); the Court also rejected portions of the wife's business expenses including huge mileage writeoffs while questioning her statement that she did up to 50 percent of her business at the gym.

In Posluns v. Commissioner, TC Memo 2012-332, the Tax Court disallowed most expenses of an online associate professor at two universities who claimed a loss in excess of $45,000 while identifying his business as "development of online educational programs and instruction."

In Humphrey, Farrington & McClain PC v. Commissioner, TC Memo 2013-23, the Tax Court backed up the IRS position that costs advanced to contingent clients by a law firm were nondeductible loans subject to a bad debt deduction in the event a case is closed without reimbursement.

In Johnson v. Commissioner, TC Memo 2013-90, a tax preparer was denied office in home deductions as he failed to prove exclusivity of any area of his home and was denied a deduction for the cost of the trip to Jamaica that he allegedly awarded to a client who referred him the most business (as it appeared from receipts that it was the preparer who took the trip).

In Union Carbide Corporation and Subsidiaries v. Commissioner, 110 AFTR2d 2012-5837, the Second Circuit Court of Appeals agreed with the Tax Court that the research credit should be given a narrow definition tied to direct costs in performing the research and not to items that would have been purchased and used in any event.

In Fitch v. Commissioner, TC Memo 2012-358, the Tax Court treated a sale of a practice by a sole proprietor CPA following a brain aneurysm and a buy back at the same price five months later when the purchaser started having seizures as two separate transactions and not as a rescission under the facts, allowing the original seller an amortization deduction for purchased goodwill; IRS also attempted to argue that the transactions were not bona fide due to the brevity of the contract.

In H&M, Inc. v. Commissioner, TC Memo 2012-290, the Tax Court determined that amounts allocated to an employment agreement between a seller and purchaser of an insurance business were bona fide and were not disguised institutional goodwill which would have caused double taxation to the seller and a 15 year write off to the purchaser; the Court found the employment relationship to be genuine and institutional goodwill to be negligible.

In Peco Foods v. Commissioner, 112 AFTR2d 2013-5036, the Eleventh Circuit Court of Appeals agreed with the Tax Court that a taxpayer cannot unilaterally change the purchase price allocation agreed by the parties as the result of a subsequent study (but the IRS could force a change if the allocation lacked substance).

In Deseret Management Corporation v. United States, 112 AFTR2d 2013-5530, the Court of Federal Claims allowed a tax free swap of radio stations, indicating that the intangible value in both situations was generally in the licenses and that significant goodwill apart from the licenses did not exist due to lack of customer loyalty.

In Aries Communications v. Commissioner, TC Memo 2013-97, the Tax Court determined that the owner of several California radio stations paid $6.9 million in compensation following sale received a constructive dividend to the extent of the excess over $2.66 million; IRS had allowed only $635,000 but the Court considered the under compensation in the several years prior to sale.

In <u>ACM Environmental Services, Inc. v. Commissioner</u>, TC Memo 2012-335, the Tax Court found that transfers in excess of $200,000 by an individual to his controlled corporation were capital contributions rather than loans which precluded corporate payments of personal expenses from constituting loan repayments; the Court believed that the parties did not intend to create a debtor-creditor relationship where financial statements did not reflect shareholder loans and no interest was paid.

In Shaw v. Commissioner, TC Memo 2013-170, a Chief Financial Officer of a family owned company holding real estate properties was not allowed to claim a bad debt deduction for $800,000 advanced to the Company when the values of the properties declined; the Court noted that a bona fide loan does not exist if an outside lender would not have loaned funds to the business and, accordingly, loss on a capital contribution was premature (the corporation did not claim relief from indebtedness income).

In Mingo v. Commissioner, TC Memo 2013-149, the Tax Court determined that a disposition of a partnership interest may not be reported on an installment sale to the extent of proceeds attributable to "unrealized receivables."

In K&K Veterinary Supply v. Commissioner, TC Memo 2013-84, the Tax Court found varying percentages of compensation paid to a C-corporation owner, spouse, daughter and brother as employees to be unreasonable; compensation ranged from about $200,000 in the case of the wife and just under $1 million in the case of the owner who received a $30,000 dividend each year.

In Thousand Oaks Residential Care Home I, Inc. v. Commissioner, TC Memo 2013-10, the Tax Court found that wages and contributions to a defined benefit plan for several owners in the three years following sale of a business were unreasonable as to a portion of the $800,000-$900,000 paid to and on behalf of each during the three-year period; the Court did allow a portion of the payments to be treated as compensation in light of low salary in prior years, adopting a six-prong test in which it looked at the role of the individuals in the company, a comparison with other companies, the character and condition of the company, the extent of a conflict of interest, the consistency in compensation and an independent investor perspective.

In Barnes v. United States, 111 AFTR2d 2013-611, the District of Columbia Circuit Court of Appeals agreed with the Tax Court that S corporation losses that were allowable but not taken constitute a reduction in basis.

In Kumar v. Commissioner, TC Memo 2013-184, the Tax Court determined that a 40 percent S corporation shareholder needed to report the flow through income from a Form K-1 notwithstanding his argument that he was no longer a beneficial owner of the stock because he had been kept from participation in its affairs.

In Glass Blocks Unlimited v. Commissioner, TC Memo 2013-180, the Tax Court agreed with IRS that a tradesperson who took no compensation from his 100% owned S Corporation but took dividends of approximately $30,000 each year should have treated the entire distributions as wages.

In Sean McAlary LTD, Inc., TC Summary Opinion 2013-62, the Tax Court determined that annual base pay for a realtor who owned his own business and was the sole worker was unreasonably low at $24,000 (with increased compensation if he recruited additional agents) and adjusted the compensation upward to $83,200 (which still left $157,800 of flow through income exempt from payroll taxes).

In In Re: Majestic Star Casino, LLC, 111 AFTR2d 2013-742, the Third Circuit Court of Appeals disagreed with a Delaware Bankruptcy Court and determined that Subchapter S status is not an asset of the bankruptcy estate (unlike a net operating loss), overruling the lower Court's Order that the sole shareholder and IRS reinstate the S corporation status which had been revoked.

In Elick v. Commissioner, TC Memo 2013-139, the Tax Court denied a sole proprietor dental practice a deduction for a management fee paid to a controlled corporation where there was no indication that the corporation had actually performed any services for the fees.

In Dunford v. Commissioner, TC Memo 2013-189, the Tax Court denied an office in home deduction for a motor home used in a consulting business noting “it is implausible to suggest that, in the cramped quarters of a motor home, an unclosed area like the countertop would somehow be exclusively reserved to business activity.”

In Bagley v. United States, 112 AFTR2d 2013-5166, a California Federal District Court determined that an individual's conduct in prosecuting a qui tam ("whistleblower") action against his former employer where he was involved in the prosecution over a ten-year period constituted a "business activity", allowing attorney fees to be deducted in reaching adjusted gross income.

In Bogue v. Commissioner, 111 AFTR2d 2013-779, the Third Circuit Court of Appeals agreed with the Tax Court that an independent contractor renovator could not claim deductions for automobile expenses between his residence and various worksites because he did not fall within any of the three exceptions of temporary work location outside of the metropolitan area, one or more regular work locations away from the residence or an office in home that is used exclusively and regularly.

In Bartlett v. United States, TC Memo 2013-182, the Tax Court found that a bull breeding activity evidenced after the fact by a log did not involve the material participation of the owner when ranch hands were on the subject property daily and the taxpayer only periodically; his attempt to establish 500 hours in the activity was weakened by his log which was inconsistent with credit card statements and showed on one day he spent 28 hours in the activity.

In Specks v. Commissioner, TC Memo 2012-343, the Tax Court determined that a police officer working as a security guard in off hours, wearing departmental uniform and carrying his firearm, was an independent contractor and could not avoid the self employment tax.

In Western Management, Inc. v. United States, 110 AFTR2d 2012-6893, the Federal Circuit Court of Appeals agreed with the Court of Federal Claims that an individual under normal circumstances cannot be an independent contractor working for a corporation where he owns 100 percent of the stock and serves as President.

In Kurek v. Commissioner, TC Memo 2013-64, the Tax Court determined that tradespeople working on up to 30 residences who used their own tools, received no benefits and earned flat fees for each job were employees as they received weekly checks and could be replaced for unsatisfactory work.

In Kadimah Chapter Kiryat Ungvar v. Commissioner, TC Memo 2013-161, a worker engaged by a synagogue to maintain the rabbi's residence was determined to be an independent contractor rather than an employee; the Court noted that the IRS was "trying to fit a square peg into a round hole…."

In Rodriguez v. Commissioner, TC Memo 2012-286, the Tax Court determined that a temporary contract attorney placed by a legal staffing agency is an employee of the agency.

In Rosenfeld v. Commissioner, 112 AFTR2d 2013-5638, the Ninth Circuit Court of Appeals agreed with the Tax Court that a trade officer working for a foreign government is a common law employee despite having no withholding and was not entitled to make a contribution to a retirement plan.

In Erwin v. United States, 111 AFTR2d 2013-426, a North Carolina Federal District Court found co-owners of an accounting firm each liable for the trust fund recovery penalty as they had authority to disburse checks and make payments electronically yet they paid employees and other bills without full remission of withheld taxes.

In Romano-Murphy v. Commissioner, TC Memo 2012-330, the Tax Court found the Chief Operating Officer, a 25 percent owner, liable for failure to pay over payroll taxes, rejecting arguments that a minority owner could not direct the payment of bills and that most checks were by signature facsimile; she also argued unsuccessfully that she believed that she made reasonable efforts to pay the liability through seeking a merger partner which transaction never occurred.

In Comeaux v. United States, 111 AFTR2d 2013-496, a Louisiana Federal District Court found a Chief Financial Officer/Comptroller not responsible for unpaid payroll taxes even though he signed occasional payroll checks when he followed the instructions of the sole owner who controlled every detail of operations.

In Perrenod v. United States, 112 AFTR2d 2013-5046, a California Federal District Court went against the weight of authority and determined that a company Chief Executive Officer who became a responsible person after payroll taxes accrued is not necessarily personally liable for the unpaid taxes at that time as his conduct may not have been willful since he immediately investigated the financial problems without adequate records; the Court indicated that an evidentiary hearing would be necessary to determine whether or not the conduct was willful.

In Gerstenbluth v. Credit Suisse Securities, LLC, 112 AFTR2d 2013-_________, the Second Circuit Court of Appeals agreed with a New York Federal District Court and followed the weight of authority and determined that an age discrimination award is subject to FICA withholding.

In In Re: Quality Stores, Inc., 110 AFTR2d 2012-5827, the Sixth Circuit Court of Appeals agreed with a Michigan Federal District Court and disagreed with the weight of authority that severance payments are not subject to payroll taxes (the Government has asked the U.S. Supreme Court to hear the case).

In Sernett v. Commissioner, TC Memo 2012-334, the Tax Court, reviewing the eight factors used to determine whether or not an activity is a hobby, found that a sales person who raced cars with eight year receipts of $200,000 and expenses of $771,000 was engaging in an expensive hobby; the Court rejected an additional contention that the racing activity affected the taxpayer's results as a sales person.

In Dodds v. Commissioner, TC Memo 2013-76, an accountant who worked 80 hours per week during tax season but no more than 20 hours a week the balance of the year was found to have engaged in horse breeding as a hobby despite over 1,500 hours per year associated with the activity where he lost in excess of $1.4 million over 17 years with gross income under $100,000; the Court made particular note of his lack of a separate bank account, budget or written business plan.

In <u>Romanowski v. Commissioner</u>, TC Memo 2013-55, a former NFL player who invested millions in a horse breeding operation was found not to have engaged in the activity for profit but was determined to have been looking for a tax shelter.

In McMillan v. Commissioner, TC Memo 2013-40, an accomplished horse woman was found no longer to be engaged in an activity for profit as it had been eight years since her horses had last engaged in competition or in breeding.

In Cozen O'Connor PC v. Tobits, 112 AFTR2d 2013-5597, a Pennsylvania Federal District Court directed a plan administrator to pay benefits to a same sex spouse of a decedent employee who was married in Canada but domiciled in Illinois which had a civil union statute and recognized out of jurisdiction same sex marriages (in an unnumbered FAQ Dated August 29, 2013, IRS indicated that qualified retirement plans must treat same sex couples legally married as married for all purposes under the retirement plan laws).

In Revenue Ruling 2012-25, IRS reiterated that tool reimbursements and similar are taxfree to the employee and not subject to withholding or payroll taxes only if made under an accountable plan with the reimbursed expense a permissible deduction accounted for within a reasonable period of time and with advances of excess amounts returned within a reasonable period of time.

In Revenue Procedure 2013-13, IRS announced an optional safe harbor method for claiming the office in home deduction under which an eligible individual would claim $5 per foot utilized not to exceed 300 square feet in lieu of deducting utilities and depreciation; the depreciation that would have been claimed will be considered "allowable depreciation" only if the individual uses actual expenses in a succeeding year.

In Revenue Procedure 2013-30, IRS consolidated its procedures to request "simplified" relief for a late S corporation election, allowing the procedure to be used for three years and 75 days after the date for which the election was intended to be effective but requiring that reasonable cause be shown as well as diligence in correcting the mistake on discovery.

In Revenue Procedure 2013-32, IRS indicated that it will no longer provide advance rulings on corporate reorganizations due to limited resources and will rule only if there are one or more significant issues related to the proposed transaction.

In Notice 2013-45, IRS acknowledged the one year postponement until 2015 in the employer "shared responsibility penalty" for failure to provide health insurance coverage to employees in the case of businesses with more than 50 full time equivalent workers.

In Announcements 2012-45 and 2012-46, IRS expanded the indefinite amnesty on reclassifying independent contractors as employees by permitting taxpayers under audit, other than employment tax audits, to participate and dropped the requirement that taxpayers agree to extend the statute of limitations as a condition; through June 30, 2013, the amnesty has been expanded to include workers who were not provided Forms 1099 but with a "toll charge" of about 2.5 percent (instead of about 1 percent) of compensation paid the reclassified workers during the prior year (three years of Forms 1099 must then be provided).

In Fact Sheet 2013-9, IRS reminded employers that they remain legally responsible for payroll taxes if they outsource this function and the third-party payor misappropriates funds.

In Field Attorney Advice 2013-3101F, IRS indicated that an abandonment loss could not be claimed by a corporation exploring two alternative reorganizations until such time as both were abandoned; if either was chosen, total cost of both would be required to be capitalized.

IRS Form CP283, newly released by IRS, has eliminated the opportunity to explain and late file a complete IRS Form 5500 in order to avoid penalty; the new notice will assess the liability and any explanation will be for purpose of abating the penalty.

In Letter Ruling 201240007, IRS determined that restitution payments made by a doctor to an insurance company as part of an agreement to cause dismissal of insurance fraud charges were deductible in his capacity as an LLC member.

In Chief Counsel Memorandum 20124103F, IRS determined that an advance from a State to a business that was completely or partially cancelable depending on the extent of jobs that were created was a bona fide loan at the time of receipt of payment.

In Chief Counsel Notice 201246029, IRS elaborated on an earlier pronouncement permitting accrual basis taxpayers to accrue employee bonuses where the total payment was known but the individual recipients were not, and stated that an accrual is not permitted where employment into the following tax year is required or a potential bonus reverts to the employer.

In Chief Counsel Advice 201308027, IRS determined that a taxpayer's settlement to make payment to the State for possible deceptive and illegal practices constituted deductible restitution or damages rather than a penalty, especially in light of the fact that the taxpayer made no admission of guilt.

In Chief Counsel Advice 201310028, IRS determined that heating, ventilation and air conditioning units installed outside of a building are not qualified leasehold improvement property and cannot be depreciated over 15 years and are not eligible for the temporary bonus depreciation; interior units would have qualified.

In Chief Counsel Advice 201311023, IRS stated that a taxpayer cannot recast a transaction through use of the "substance over form doctrine" as can the IRS in the absence of "strong proof" that the transaction does not tie to economic realities.

In Chief Counsel Advice 20132022, IRS stated that a trust fund recovery penalty can be imposed against a responsible person where no employment taxes were withheld from a worker's wages if there is a willful failure to collect taxes; IRS concluded that willfulness would be extremely difficult to establish where a closing agreement exists to apply the lower calculation of employment taxes which is available when reasonable causes exists.

III. Procedure

Public Law 112-267 clarifies that federal thrift savings plans are within the levy power of IRS.

Proposed Regulations under Code Section 6015 allow the seeking of equitable innocent spouse relief during the entire period of collection but clarify that receipt of a refund or credit depends on whether that time period remained open as of the filing date of innocent spouse relief.

Proposed Regulations under Code Section 6042 et seq. would, if adopted, allow truncated taxpayer identification numbers on certain information returns and payee statements to reduce identity theft.

Proposed Regulations under Code Section 6159, if finalized, would increase the user fee for installment agreements from $105 to $120 except low income taxpayers would remain at $43 (with reinstatements from $45 to $50) and the fee for Offers in Compromise from $150 to $186.

Final Regulations under Code Section 6045 implement broker reporting of debt instruments and options in two tiers, requiring reporting of basis and whether gain or loss is short or long term on most instruments acquired after 2013 but delaying reporting on more complex instruments to acquisitions after 2015.

Proposed Regulations under Circular 230, if finalized, would streamline the rules for written tax advice and eliminate the use of Circular 230 disclaimers in documents including emails.

In Loving v. Internal Revenue Service, 111 AFTR2d 2013-589, a District of Columbia Federal District Court issued an injunction against IRS, finding that the examination and continuing education requirements for non-attorney and non-CPA preparers fell outside of the power of IRS (the decision was immediately appealed).

In Estate of Brourman v. Commissioner, TC Memo 2013-99, the Tax Court determined that IRS could not use mathematical correction procedures but had to go the route of a notice of deficiency when a return was filed showing the tax due as “unknown” due to certain entries being marked as “tentative.”

In Cox v. Commissioner, TC Memo 2013-75, the Tax Court imposed the late filing and late payment penalties on a pro se litigant who worked as a carpenter and subsequently as a general contractor and sought to argue that he did not file tax returns for ten years because he could not understand the tax law and could not afford a tax preparer.

In Shafmaster v. United States, 111 AFTR2d 1013-788, the First Circuit Court of Appeals agreed with a New Hampshire Federal District Court that a verbal agreement with IRS during negotiations on a docketed Tax Court case not to impose the failure to pay penalty did not bar IRS for imposing the penalty when the liability was subsequently paid through an installment agreement; the Court indicated that the taxpayers "did not come close to satisfying equitable principles."

In Mills v. Commissioner, TC Memo 2013-4, the Tax Court found an accuracy penalty appropriate where a couple relied on the advice of a former enrolled agent that they could amortize their contribution to three LLCs of "life, time and expertise" which they valued at $5.25 million in the aggregate; the taxpayer argued unsuccessfully that they reasonably relied on a tax advisor that they thought was competent because he had a "boat and a busy office" (by the time of trial, he was in a federal penitentiary for stealing from Individual Retirement Accounts).

In Bartlett v. Commissioner, TC Memo 2012-254, the Tax Court agreed with IRS that an accuracy-related penalty was appropriate where the taxpayer blamed the TurboTax program, noting that the software was only as good as the information entered into it or, simply put, “garbage in, garbage out.”

In Brooks v. Commissioner, TC Memo 2013-141, the Tax Court sustained an accuracy penalty on an IRS revenue agent who improperly claimed an adult son and grandchild as a dependent and was unable to substantiate over $8,600 of charitable contributions over a two year period as well as a casualty loss deduction for alleged smoke damage caused by a fire.

In Thomas v. Commissioner, TC Memo 2013-60, an individual who formed an investment company and a property management company and relied on an outside CPA with a Masters in Accounting degree to serve as Chief Financial Officer of one entity and Managing Partner of another entity was determined to have reasonably relied on the advice of a seemingly competent professional and was found not liable for the accuracy penalty for failure to include all income.

In Hatling v. Commissioner, TC Memo 2012-293, an attorney, already convicted of willful failure to pay state income taxes, was unable to avoid a civil fraud penalty on his federal return when he backed out all of his income pursuant to a "claim of right deduction for white citizens."

In City Wide Transit, Inc. v. Commissioner, 111 AFTR2d 2013-491, the Second Circuit Court of Appeals reversed the Tax Court and determined that an outside accountant's fraud under a power of attorney caused an unlimited statute of limitations rather than a three-year statute to apply.

In Nagy v. United States, 111 AFTR2d 2013-1444, the Fourth Circuit Court of Appeals reversed a South Carolina Federal District Court and found that admitting the personal tax return of a CPA on trial for civil penalties related to a tax shelter constituted inadmissible character evidence.

In Scaggs v. Commissioner, TC Memo 2012-258, the Tax Court determined that a petition sent by Federal Express third business day delivery on the 90th day following the Notice of Deficiency and received on that third business day thereafter (five days later) was not timely filed as the date of sending can only be used for designated private delivery services which in the case of Federal Express include Priority Overnight, Standard Overnight, Fed Ex 2 Day but not Express Saver Third Business Day.

In John C. Hom & Associates, Inc. v. Commissioner, 140 TC No. 11, the Tax Court reiterated a 2000 decision that a Tax Court Petition will be dismissed on motion of IRS if the business entity petitioning the Court is not in good standing under State law.

In Galluzzo v. Commissioner, TC Memo 2013-136, the Tax Court determined that a taxpayer can challenge in a petition filed after its due date as to whether a Notice of Deficiency was properly issued and sent to the last known address; here IRS could not produce the actual Notice of Deficiency and the Court refused to accept secondary evidence where the administrative file was lost by the IRS.

In Guaquinto v. Commissioner, TC Memo 2013-150, a taxpayer charged with the Trust Fund Recovery Penalty was not allowed to raise substantive issues in a CDP hearing because he was treated as having "actually received" the notice of intent to assess but he deliberately did not claim the certified mail.

In <u>Schoppe v. Commissioner</u>, 111 AFTR2d 2013-1398, the Tenth Circuit Court of Appeals agreed with the Tax Court that a Tax Court proceeding is not stayed upon filing of a bankruptcy petition; the First, Third, Fifth and Eleventh Circuits are in accord while the Ninth Circuit disagrees.

In Berkshire Bank v. Ludlow, 111 AFTR2d 2013-498, the First Circuit Court of Appeals agreed with a Massachusetts Federal District Court that a single owner LLC was a "nominee" of the individual and that IRS could reach proceeds from the sale of real estate owned by the LLC for delinquent personal taxes of the individual; the Court noted that the LLC never had its own bank account and that mortgage payments were made from a personal account into which income was deposited (the Court cited other factors in its decision that are basic tenets of an LLC).

In Frank Sawyer Trust of May 1992 v. Commissioner, 111 AFTR2d 2013-1434, the First Circuit Court of Appeals determined that the owner of four corporations which sold stock prior to the maturation of corporate tax liability for the year of sale could be liable for the unpaid taxes on a transferee liability theory even if it did not know of the tax avoidance asset-stripping scheme of the new shareholders where the assets of the acquisition companies were unreasonably small in light of their liabilities and the acquisition companies did not receive "reasonably equivalent" value in exchange for the purchase price.

In <u>Wilson v. Commissioner</u>, 111 AFTR2d 2013-522, the Ninth Circuit Court of Appeals in accord with the Eleventh Circuit determined that the Tax Court could review innocent spouse claims by accepting new evidence not in the administrative record from IRS Appeals and awarded innocent spouse status to the taxpayer for unreported income from a Ponzi scheme despite failing to provide information at the administrative proceeding.

In Van Camp v. Commissioner, TC Memo 2012-336, the Tax Court indicated that it was limited to reviewing the IRS determination at a CDP hearing and could not consider a material change in financial circumstance thereafter or remand the matter to IRS for such consideration, notwithstanding that the taxpayer had lost his law license through disbarment during the pendency of the CDP appeal (in Chief Counsel Advice 2013-2, IRS set forth its position that the Tax Court should remand a CDP appeal to IRS Appeals before rendering a decision if there has been any change in the taxpayer's financial circumstances since the appeals conference provided the taxpayer cooperated at the conference and submitted all required financial information). [IN JUNE 2013, IRS CONCEDED THAT THE TAX COURT COULD DO DE NOVO REVIEW OF A CDP HEARING.]

In Tompkins v. Commissioner, TC Memo 2013-24, the Tax Court determined that a separated individual was entitled to innocent spouse relief as he had no knowledge of his wife's income from a second job and a small bank account.

In Santa v. Commissioner, TC Memo 2013-178, the Tax Court granted innocent spouse relief to a former husband as IRS was unable to show that he had actual knowledge of a taxable withdrawal of his former wife from a retirement plan although it was deposited in a joint bank account.

In Kellam v. Commissioner, TC Memo 2013-186, a former husband was granted innocent spouse relief for a year in which he did not review a tax return with overstated deductions as the former wife worked directly with the preparer who engaged in electronic filing such that he had no actual knowledge of the overstatement; innocent spouse relief was denied for the prior year in which he had an opportunity to review the return.

In Cutler v. Commissioner, TC Memo 2013-119, a mother of eight children, five of them minors, was given innocent spouse status through equitable relief; IRS had argued that the taxpayer had received benefits from the nonpayment as she had been awarded the marital home and other assets in divorce but the Court found that this fell outside the definition of “significant benefit” from the unpaid taxes.

In Ramdas v. Commissioner, TC Memo 2013-104, the Tax Court determined that IRS did not abuse its discretion in rejecting an offer in compromise of $1,500 against a $64,000 liability where equity in assets exceeded the amount owed; the Court rejected the taxpayer's contention that selling rental properties would create a hardship.

In Hudgins v. Commissioner, TC Memo 2012-260, the Tax Court denied equitable innocent spouse relief to a widow on liability shown on a joint return where she did not look at the tax return, could not show economic hardship and was unable to prove abuse through the deceased spouse's alcohol and drug addiction which caused his death.

In Karam v. Commissioner, 110 AFTR2d 2012-6540, the Sixth Circuit Court of Appeals agreed with the Tax Court that a wife was not entitled to equitable innocent spouse relief, balancing the equities and noting that she derived a significant benefit from the underpayment of taxes on earnings mostly from her husband's dental practice in the form of tuition for her doctorate and that no hardship to her was created in that she received a large settlement in a malpractice action against the accountant for having her participate in joint returns.

In Haggerty v. Commissioner, 111 AFTR2d 2013-411, the Fifth Circuit Court of Appeals agreed with the Tax Court that equitable innocent spouse relief should be denied to a widow who signed a joint tax return and did not pay full remaining liability resulting largely from an IRA withdrawal by her late husband of which she was aware and received a benefit from the payoff of a second trust on the home; the taxpayer argued that her husband was a "big, intimidating man" but the Court noted that he was dead at the time she signed the joint return.

In O’Neil v. Commissioner, TC Memo 2012-339, a divorced wife was denied equitable relief from joint liability despite having paid over one-half of the original tax liability from her funds because most of the various factors in determining the availability of relief including knowing the unlikelihood that her husband would pay the tax liability balanced against her.

In Williamson v. Commissioner, TC Memo 2013-78, equitable innocent spouse relief was denied to an ex-wife who was involved in the husband's sole proprietorship which failed to pay estimated taxes; the Court noted that she signed the tax return with an expectation that the liability could not be paid and that she could not prove economic hardship.

In United States v. Lindros, 110 AFTR2d 2012-6927, a Florida District Court agreed with a Bankruptcy Court that IRS failed to show willful evasion which would have denied discharge of tax debts in bankruptcy where the taxpayer had a mistaken belief that he could offset tax liability with capital losses and lost his savings by bad investments prior to filing the tax return.

In Pearson v. United States, 112 AFTR2d 2013-5212, a Texas Federal District Court, declining to follow contrary precedent from the Tenth Circuit, required a taxpayer to refile when he sued prematurely for a refund before denial of his claim by IRS or the passing of six months.

In Syring v. United States, 112 AFTR 2d 2013-5174, a Wisconsin Federal District Court determined that an estate's payment to IRS was not a deposit which would not have been subject to the statute of limitations on refunds, determining that the accompanying letter caused IRS to treat it as a payment against the ultimate liability.

In Revenue Procedure 2012-43, IRS announced a reduced penalty from $5,000 to $500 for filing a frivolous tax return where the taxpayer has come into full compliance with filing and payment requirements for six years prior to the date of the request for reduction.

In Notice 2013-24, IRS announced that taxpayers who request extensions to file 2012 returns that include a schedule which was delayed by IRS and who make a good faith effort to properly estimate their tax liability with their extension application will not be assessed the late payment penalty where any difference is fully paid by the extended due date.

In <u>Action on Decision 2013-5</u>, IRS indicated that it disagreed with a decision of the Tax Court in <u>Patel v. Commissioner</u>, 138 TC No. 23, in which the Court determined that a finding of uncertainty in the tax law in and of itself prohibits a taxpayer from being penalized; the IRS's position is that the taxpayer must show that he investigated the law and obtained professional advice.

In Action on Decision 2013-007, IRS announced its acquiescence in Wilson v. Commissioner, TC Memo 2010-134, in which the Tax Court sustained by the Ninth Circuit Court of Appeals determined that it may review an equitable relief innocent spouse case independently, without an "abuse of discretion" standard and without being limited to the administrative record.

In Memorandum SBSE-05-0313-024, IRS indicated that it was raising the dollar threshold for an expedited installment agreement without financial statements on payroll taxes from $10,000 to $25,000; direct debit is required unless under $10,000 (file Form 9465 or telephone – online is not currently available).

In IRS Memorandum SBSE-05-0613-0052, IRS set forth interim guidance on processing requests for withdrawal of notices of federal tax liens after the lien has been released, indicating the withdrawal should be granted if requested in writing, payment has been made in full and the taxpayer is in compliance with all filing requirements.

Internal Revenue Service Manual 5.1.27 has been revised to create relief for taxpayers who have been the victim of preparer fraud and have filed Form 14157-A setting forth the misconduct.

In Chief Counsel Notice 2013-5, IRS indicated that it may bypass a Power of Attorney and communicate directly with the taxpayer in a docketed Tax Court case where no attorney has entered an appearance.

In Chief Counsel Advice 201238026, IRS determined that filing a fraudulent S corporation return does not extend the statute of limitations for personal liability of a shareholder not participating in the fraud.

In Letter Ruling 201317010, IRS concluded that only the activities of a trustee performed in a fiduciary capacity and not those performed as a company officer count toward the hours test in determining whether a trust materially participated in the company's activities.

In <u>Chief Counsel Advice 201333008</u>, IRS determined that the six-year statute of limitations on understatement of gross income on a tax return is determined by utilizing gross income shown on the originally filed return and not any amended return.

The End

About the Speaker

David S. De Jong, LLM, CPA, practices law with the Rockville, Maryland, firm of Stein Sperling Bennett De Jong Driscoll PC, concentrating his practice in tax planning and controversy, estate planning, business transactions and valuations. An adjunct professor for over 25 years at five universities, he currently teaches part-time at the Washington and Lee University School of Law. For 16 years he coauthored J. K. Lasser's annual tax planning book. Mr. De Jong has litigated cases in each federal tax forum and has testified as an expert witness over 45 times in court, arbitrations and before disciplinary panels. Active in many professional groups, Mr. De Jong is a Past President of the American Association of Attorney-Certified Public Accountants. In 2006, he was listed as one of the Top 100 Attorneys in the United States by *Worth* magazine; he has received additional accolades from *Washington Magazine*, *Washington Smart CEO*, *Super Lawyers* and *CPA Magazine*. Mr. De Jong received his BA from the University of Maryland in 1972, his JD from Washington and Lee University in 1975, and his LLM in Taxation from Georgetown University in 1979.