2024 Federal Tax Update

Bruce A. McGovern
Professor of Law and Director, Tax Clinic
South Texas College of Law Houston
Houston, Texas

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Current Legislative Outlook

- The likelihood of 2024 year-end tax legislation is very low.
  - The more likely scenario is that Congress will enact tax legislation sometime in 2025.
  - The year-end appropriations process has often been the vehicle for tax legislation, but this process is at a standstill.
    - In the year-end appropriations process, 12 bills are developed by subcommittees of the Appropriations Committee.
    - Each of the 12 bills provides funding for certain federal agencies.
    - The current federal fiscal year is October 1, 2024-September 30, 2025.
  - The current continuing resolution (CR) for fiscal year (FY) 2025 expires on December 20, 2024.
    - Lawmakers have until midnight on the final day of the CR to avert a government shutdown.
    - Congress returned to session on November 12, 2024.
  - The most likely scenario is that Congress will pass another CR funding the government on a temporary basis, perhaps until March 2025.

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Current Tax Legislative Outlook

- When tax legislation is enacted in 2025, likely legislative priorities include:
  - Increasing the refundable portion of the **child tax credit** (currently $1,700 for 2024), perhaps retroactively
  - Restoring the deduction for domestic **research and experimental expenditures** (§ 174), perhaps retroactively to 2022.
  - Restoring 100% **bonus depreciation**, perhaps retroactively to 2023
  - Increasing the **§ 179 deduction** limit (currently $1.22 million for 2024)
  - Increasing the $600 **Form 1099-NEC reporting threshold**
  - For purposes of **§ 163(j) limit on deducting business interest**, using EBITDA (rather than EBIT) to determine adjusted taxable income, and perhaps allowing elective use of EBITDA retroactively to 2022.
  - Early termination of the period for making **employee retention credit** claims (currently 4/15/25 for 2021)
  - Reducing the **corporate tax rate** from the current 21%
  - Rolling back **Inflation Reduction Act energy credits**, like the EV credit
  - Extending **expiring TCJA provisions**

Current Tax Legislative Outlook

- Key provisions of the TCJA that expire after 2025:
  - Reduction of individual income tax rates
  - Elimination of the personal exemption deduction
  - Increase in the standard deduction
  - Itemized deduction changes:
    - Limitation of the SALT deduction to $10,000
    - Mortgage interest:
      - Reduction of acquisition indebtedness cap from $1 million to $750k
      - Elimination of deduction for interest on home equity indebtedness
    - Increased charitable contribution deduction limit from 50% to 60% AGI
    - Disallowance of miscellaneous itemized deductions
    - Elimination of overall limit on itemized deductions (Pease limitation)

Current Tax Legislative Outlook

- Key provisions of the TCJA that expire after 2025 (cont'd):
  - Increase of the child tax credit from $1,000 to $2,000
  - AMT:
    - Increase in AMT exemption amounts
    - Increase in thresholds for phase-out of AMT exemption amounts
  - Deduction of 20% of qualified business income (§ 199A)
  - Increased estate and gift tax exemption

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II. Business Income and Deductions

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Hyatt Hotels Corp. v. Commissioner
T.C. Memo. 2023-122 (10/2/23)
Outline: item A.1, page 4

- Hyatt hotels were owned approximately 25% by Hyatt and 75% by third parties
- When a hotel guest earned rewards points by staying at a Hyatt-branded hotel, Hyatt required the hotel owner to pay a specified amount into an operating fund held by a Hyatt subsidiary.
- When a hotel guest used points to pay for a room at a Hyatt-branded hotel, Hyatt would make a compensating payment from the fund to the hotel owner.
- Hyatt also used the assets of the fund to pay administrative and advertising expenses that it determined were related to the rewards program.
- Held:
  1. Hyatt was required to include the fund's revenue in gross income. The trust fund doctrine did not apply because Hyatt benefitted from the fund.
  2. Hyatt did not experience a change of accounting method with a positive § 481 adjustment because Hyatt's exclusion of the revenue did not involve timing.
  3. The trading stamp method did not apply and therefore Hyatt could not reduce gross revenue from the fund by the estimated cost of future compensation payments to hotel owners.

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Notice 2024-8
2024-2 I.R.B. 356 (12/14/23)
Outline: item D.1, page 9

- Standard mileage rate for business miles in 2024 goes up to 67 cents per mile (from 65.5 cents in 2023).
- Medical/moving rate for 2024 is 21 cents per mile (*down* from 22 cents in 2023).
- Charitable mileage rate for 2024 remains fixed by § 170(i) at 14 cents.
- The portion of the business standard mileage rate treated as depreciation goes up to 30 cents per mile for 2024 (up from 28 cents in 2023).
- Reminders:
  - Unreimbursed employee business expenses are miscellaneous itemized deductions and therefore not deductible through 2025.
  - Moving expenses are not deductible through 2025 except for members of the military on active duty who move pursuant to military orders incident to a permanent change of station.

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Notice 2024-8
2024-2 I.R.B. 356 (12/14/23)
Outline: item D.1, page 9

- Standard mileage rates for 2024 and the preceding two years:

Category	2022		2023	2024
	Jan.-Jun.	Jul.-Dec.		
Business mileage	58.5 cents	62.5 cents	65.5 cents	67 cents
Medical/ moving	18 cents	22 cents	22 cents	21 cents
Charitable mileage	14 cents	14 cents	14 cents	14 cents

Anderson v. Commissioner
133 A.F.T.R.2d 2024-1551 (10th Cir. 5/17/24)
Outline: item D.2, page 9

- The taxpayer, a doctor who researched gene therapy, had his own business.
- He was convicted of sexually abusing the minor daughter of his research assistant.
- He paid legal fees in 2013 ($292,175) and 2014 ($68,120) and deducted them as business expenses.
  - The taxpayer asserted that he had paid the legal fees for an investigation of his former colleague, who allegedly had filed false accusations of molestation against the doctor in an effort to steal his intellectual property.
- Under *United States v. Gilmore*, 372 U.S. 39, 48-49 (1963):
  - the deductibility of legal fees depends on the origin and character of the claim for which the expenses were incurred and whether the claim has a sufficient connection to the taxpayer's business or income-producing activities.
- Issue: are the legal fees deductible as business expenses under § 162?
- Held: No. As the Tax Court held, only $3,000 of the 2014 fees were paid for an investigation related to the business. The remaining fees were personal.
  - The expenses the taxpayer attempted to deduct were primarily related to his ineffective assistance of counsel claim in his criminal case and a later proceeding in which he filed a state habeas corpus petition seeking his release from prison.

III. Investment Gain and Income

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Section 1014(f)/Final Regulations
Outline: item A.1, page 11

- Generally, under § 1014(a), an individual who inherits property takes a basis in the property equal to FMV on date of death.
- The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, § 2004(a) (7/31/15):
  - Enacted new § 1014(f)
    - Requires that heir's § 1014 basis in property not exceed value as finally determined for estate tax purposes.
    - Applies only if estate tax return is required to be filed.
    - Does not apply if a return is filed solely to enable surviving spouse to claim the deceased spouse's unused credit under portability rules.
  - Enacted new § 6035, which requires executor to report to IRS and heir the value of the property.
    - IRS issued final Form 8971 on 1/29/16.
- Final regulations issued 9/17/24: 89 F.R. 76356
  - Eliminate the "zero basis" rule for property omitted from the return.

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Kim v. Commissioner
T.C. Memo. 2023-91 (7/20/23)
Outline: item A.2, page 13

- For 2013-2017, IRS received information reports from Coinbase, a virtual currency exchange, reporting taxpayer's transactions in virtual currencies.
  - These included Bitcoin, Litecoin, and Etherium.
- The taxpayer timely filed federal income tax returns for 2013-2016 but reported no gains or losses from the virtual currency transactions.
  - On his timely-filed 2017 income tax return, the taxpayer reported on Schedule D a net gain from virtual currency transactions of $42,069.
- Following an audit of 2013-2017, the IRS determined that the taxpayer had short-term capital gain of $75,400 for 2013, short-term capital gain of just over $4 million for 2017, and long-term capital gain of $74,565 for 2017.
- Taxpayer argued that his virtual currency assets had been wiped out with large losses in 2020 due to actions or inactions of the federal government.
- Issue: Is the government estopped from collecting tax on his 2013-2017 gains under the "clean hands" doctrine?
- Held: No. The clean hands principle is inapplicable because the government is not seeking equitable relief. The annual accounting principle makes taxpayer's 2020 losses irrelevant.

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IV. Compensation Issues

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Age at Which RMDs Must Begin
Outline: item B.1, page 16

- SECURE 2.0 Act of 2022:
  - Increases the age at which RMDs must begin. In 2022, individuals who attained age 72 were required to begin taking RMDs. SECURE 2.0 increases the RMD age to age 73 in 2023 and to age 75 in 2033.
- Notice 2023-54 (7/14/23):
  - Automated payment systems must be updated to reflect the change in the age at which RMDs must begin and this may take time.
  - Therefore, those born in 1951 (who attain age 72 in 2023) might receive distributions in 2023 that are mischaracterized as RMDs (and therefore normally ineligible for rollover).
  - Individuals who receive such distributions from January 1 through July 31, 2023, had until September 30, 2023, to roll such mischaracterized distributions into an eligible retirement plan.
    - Applies to both employer-sponsored plans and IRAs.
    - The "one rollover every 12 months" rule for IRAs is not a bar.

Age at Which RMDs Must Begin
Outline: item B.1.b, page 17

- SECURE 2.0 Act of 2022:
  - Increases the age at which RMDs must begin. In 2022, individuals who attained age 72 were required to begin taking RMDs. SECURE 2.0 increases the RMD age to age 73 in 2023 and to age 75 in 2033.
- Proposed Regulations (7/19/24):
  - Issue: at what age must those born in 1959 begin taking RMDs?
  - Because of an error in the statutory language Congress enacted in SECURE 2.0, the statute appears to provide that those born in 1959 must begin taking RMDs both at age 73 and at age 75.
  - The final regulations clarify that those born in 1959 must begin taking RMDs at age 73. Prop. Reg. § 1.401(a)(9)-2(b)(2)(v).

Age at Which RMDs Must Begin
Outline: item B.1.b, page 17

- The following table summarizes the age at which individuals born in specific years must begin taking RMDs:

Year of birth	Age at which RMDs must begin
Before July 1, 1949	70-1/2
July 1, 1949, through Dec. 31, 1950	72
1951-1959	73
1960 and later	75

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No RMDs for Roth Accounts in Employer Plans
Outline: item B.3, page 17

- SECURE 2.0 Act § 325:
  - No RMDs for Roth accounts in employer retirement plans. Effective in 2024, Roth accounts in employer retirement plans are exempt from RMD requirements.
  - Effect:
    - Those already taking RMDs from Roth accounts in employer sponsored plans prior to 2023, and those who turned age 73 in 2023, had to take an RMD for 2023 (no later than April 1, 2024).
    - For 2024 and later years, no RMDs are required from Roth accounts in employer sponsored plans.

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Surviving Spouses Can Defer RMDs
Outline: item B.4, page 18

- SECURE 2.0 Act § 327:
  - Deferral of RMDs for surviving spouses. If a participant dies before reaching the age at which RMDs must begin and has designated a spouse as the sole beneficiary, then the spouse may make an irrevocable election to be treated as the participant for purposes of receiving RMDs.
  - This will allow the surviving spouse to defer RMDs until the deceased spouse would have reached the RMD age.
  - This change is effective in 2024.
  - Example: H is age 62 and W is age 68. H passes away and W is sole beneficiary of his retirement account. W can elect to be treated as H to determine when RMDs must begin. W need not take RMDs until H would have turned 73.

Surviving Spouses Can Defer RMDs
Outline: item B.4.a, page 18

- Proposed regulations (7/19/24):
  - Surviving spouse is automatically treated as having made the election If the account owner dies *before* the owner's required beginning date for RMDs. Prop. Reg. § 1.401(a)(9)–5(g)(3)(ii)(A).
    - Surviving spouse is *not* automatically treated as having made the election if the account owner dies *on or after* the owner's required beginning date for RMDs (but plan terms can make this the default election). Prop. Reg. § 1.401(a)(9)–5(g)(3)(ii)(B).
  - Surviving spouse's RMDs are calculated using the Uniform Life Table for the *surviving spouse's* age (reduces deferral benefit of the election). Prop. Reg. § 1.401(a)(9)–5(g)(3)(ii)(C).
  - If election is in effect and the surviving spouse has begun receiving RMDs, surviving spouse's beneficiary must continue taking RMDs over surviving spouse's remaining life expectancy and withdraw any remaining funds by the end of the 10th calendar year following year of surviving spouse's death. Prop. Reg. § 1.401(a)(9)–5(g)(3)(ii)(D)

Surviving Spouses Can Defer RMDs
Outline: item B.4.a, page 18

- Proposed regulations (7/19/24):
  - Effective date. The spousal election is available only if the first year for which annual RMDs to the surviving spouse must be made is 2024 or later. Prop. Reg. § 1.401(a)(9)–5(g)(3)(ii)(E).
  - Example 1: account owner died in 2017 and before the owner's required beginning date for RMDs. Assume owner would have reached the age at which RMDs must begin in 2024 or later.
    - The first year for which an annual RMD is due would be 2024 or later, and the spousal election could apply.
  - Example 2: account owner died in 2023 after the owner's required beginning date for RMDs. The first year for which an annual RMD is due to the surviving spouse would be 2024, and the spousal election could apply.

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Expanded Penalty-Free Retirement Withdrawals
Outline: item B.8, page 21

- SECURE 2.0 Act:
  - Expanded penalty-free withdrawals. SECURE 2.0 modifies certain existing exceptions and adds additional exceptions to the normal 10% penalty on early withdrawals from qualified retirement plans, including exceptions for:
    - Emergency withdrawals: beginning in 2024, individuals can withdraw up to $1,000 without a penalty for "unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses." [S2.0 § 115]
      - See Notice 2024-55 (6/21/24) (Q&A A1-A15)
        - Whether a distribution qualifies is determined by the relevant facts and circumstances for each individual.
        - Factors to be considered include whether the individual or family members have expenses related to, among others, medical care, foreclosure or eviction, burial or funeral expenses, auto repairs, or any other necessary emergency personal expenses.
      - Plans need not permit emergency distributions, but if plan does not, an individual can still treat as such by completing Form 5329.

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Expanded Penalty-Free Retirement Withdrawals
Outline: items B.9, page 21

- SECURE 2.0 Act:
  - Expanded penalty-free withdrawals. SECURE 2.0 modifies certain existing exceptions and adds additional exceptions to the normal 10% penalty on early withdrawals from qualified retirement plans, including exceptions for:
    - Survivors of domestic abuse: beginning in 2024, no penalty applies to distributions up to $10,000 (or 50% of the account value, if less) that are "made to an individual during the 1-year period beginning on any date on which the individual is a victim of domestic abuse [as defined] by a spouse or domestic partner." [S2.0 § 314]
      - See Notice 2024-55 (6/21/24) (Q&A B1-B14)
        - "Domestic abuse" means physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household
      - Plans need not permit DAVDs, but if plan does not, an individual can still treat as such by completing Form 5329.

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Expanded Penalty-Free Retirement Withdrawals
Outline: items B.10, page 22

- SECURE 2.0 Act:
  - Expanded penalty-free withdrawals. SECURE 2.0 modifies certain existing exceptions and adds additional exceptions to the normal 10% penalty on early withdrawals from qualified retirement plans, including exceptions for:
    - Those with a terminal illness: beginning in 2023, distributions are penalty-free if made to "an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 84 months or less after the date of the certification." [S2.0 § 326]
      - See Notice 2024-2 (12/20/23) section F (Q&A F1-F15)
        - Requirements for physician's certification
        - Employee must provide certification to plan administrator
        - Physician's certification must be obtained before distribution
        - Plans need not permit terminally ill individual distributions, but if plan does not, an individual can still treat as such by completing Form 5329

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Notice 2024-80
2024-47 I.R.B. 1120 (11/1/24)
Outline: item B.12, page 23

- Sets forth inflation-adjusted figures for benefits and contributions under qualified retirement plans for 2025.
- Among other figures:

Category	2023	2024	2025
Elective deferrals- 401(k) plans	22,500	23,000	23,500
Catch-up contributions to employer-sponsored plans (age 50+)	7,500	7,500	7,500*
IRA contribution limit	6,500	7,000	7,000
Catch-up contributions to IRAs (age 50+)	1,000	1,000	1,000

* $11,250 if ages 60-63.

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Final Regulations on RMDS (7/19/24)
No More Stretch RMDs from Non-Spousal Inherited Retirement Accounts
Outline: item B.14, page 28

- A provision of the SECURE Act, Division O, Title IV, § 401 of the 2020 Further Consolidated Appropriations Act, amended Code § 401(a)(9)(E)
- Modifies the required minimum distribution (RMD) rules for inherited retirement accounts (defined contribution plans and IRAs).
- Requires all funds to be distributed by the end of the 10th calendar year following the year of death.
  - Amended statute does not appear to require the beneficiary to withdraw any minimum amount before that date.
- Current rules, which permit taking RMDs over many years, continue to apply to certain designated beneficiaries, including surviving spouses, children of the participant who have not reached the age of majority, and those not more than 10 years younger than the deceased individual.
- Applies to distributions with respect to those who die after 12/31/19.

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Final Regulations on RMDs (7/19/24)
89 F.R. 58,886
Outline: item B.14, page 28

- These final regulations update existing regulations to address the changes made by the SECURE Act as well as several other statutory changes.
- The final regulations (like the proposed) adopt an interpretation of the 10-year rule that appears to differ from the plain language of the statute and from the interpretation of the legislation by most advisors.
- They require RMDs to begin in the year after death when:
  - The account owner died after the required beginning date for RMDs,
  - The designated beneficiary is not an eligible designated beneficiary
- In this situation, the beneficiary must take RMDs over the beneficiary's life expectancy for years 1 through 9 after death and must take any remaining funds in year 10.

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Final Regulations on RMDs (7/19/24)
89 F.R. 58,886
Outline: item B.14, page 28

- Example:
  - Owner passed away in 2020
  - At the time of his death, Owner was the owner of a traditional IRA
  - Owner's death occurred after the required beginning date for distributions from the IRA.
  - Beneficiary is the sole beneficiary of the IRA and is not an eligible designated beneficiary (therefore is subject to the 10-year rule)
  - Under the final regulations, Beneficiary must take RMDs for 2021 through 2029, and any remaining funds in the account must be distributed by the end of 2030.

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Final Regulations on RMDs (7/19/24)
89 F.R. 58,886
Outline: item B.14, page 28

- Missed RMDS:
  - Those who inherited retirement accounts subject to the 10-year rule from a decedent who died in 2020 or later might have missed RMDs they were supposed to take for years 1 through 9 after death.
  - In a series of notices, the IRS provided relief.
    - Notice 2024-35, 2024-19 I.R.B. 1051 (4/16/24).
    - Notice 2023-54, 2023-31 I.R.B. 382 (7/14/23).
    - Notice 2022-53, 2022-45 I.R.B. 437 (10/7/22).
  - Relief:
    - The 50% (or 25%) excise tax of § 4974 for failure to take RMDs will not apply.
    - Applies to those required to take RMDs in 2021, 2022, 2023 or 2024 under the interpretation of the 10-year rule in the proposed (and now final) regulations.

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Final Regulations on RMDs (7/19/24)
89 F.R. 58,886
Outline: item B.14, page 28

- Missed RMDS:
  - Issue: if the IRS effectively waived penalties on missed RMDs for 2021 through 2024 for beneficiaries subject to the 10-year rule, how much must the beneficiary withdraw in 2025?
- Example:
  - Owner passed away in 2020
  - At the time of his death, Owner was the owner of a traditional IRA
  - Owner's death occurred after the required beginning date for distributions from the IRA.
  - Beneficiary is the sole beneficiary of the IRA and is not an eligible designated beneficiary (therefore is subject to the 10-year rule)
  - Under the final regulations Beneficiary must take RMDs for 2021-2029.
  - What if Beneficiary fails to take RMDs for 2021-2024?
  - In 2025, must Beneficiary take the missed RMDs for 2021-2024?

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Final Regulations on RMDs (7/19/24)
89 F.R. 58,886
Outline: item B.14, page 28

- Missed RMDS (cont'd):
  - Final regulations clarify that beneficiaries subject to the 10-year rule need not make up missed RMDs in 2025.
  - Thus, a beneficiary subject to the 10-year rule required to take RMDs for 2021-2024 need not worry about making those up in 2025.
    - This beneficiary would take RMDs for 2025-2029 and withdraw any remaining funds in 2030.
- Effective date: the regulations are generally effective on September 17, 2024, but the rules apply for purposes of determining RMDs for calendar years beginning after 2024.

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Balint v. Commissioner
T.C. Memo. 2023-118 (9/25/23)
Outline: item D.3, page 30

- While the taxpayer was incarcerated, he signed a broadly worded power of attorney.
  - It specifically authorized her to make gifts of his property and to engage in acts that otherwise would constitute prohibited self-dealing.
- Pursuant to the POA, his wife withdrew more than $150,000 from the taxpayer's IRAs and pension and annuity accounts.
  - She used the funds to move from Florida to Kentucky, renovate a house there, and to care for her ailing mother.
  - She filed for divorce. He later filed his own divorce action.
- Issues:
  1. Was the IRS bound by a state court order that his wife was liable for tax?
  2. Did the taxpayer have to include in income the amounts his wife withdrew?
- Held:
  1. No. The government was not a party to the divorce action.
  2. No. The taxpayer neither authorized nor benefitted from the withdrawals and therefore was not the "payee or distributee" under § 408(d)(1).

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V. Personal Income and Deductions

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Bell v. United States
169 Fed. Cl. 466 (1/25/24)
Outline: item D.1, page 32

- The taxpayer, a citizen of Jamaica, was a nonresident alien for U.S. tax purposes.
- He filed an amended U.S. income tax return for 2018 claiming a personal exemption deduction and a refund of $415.
- Although § 151(a)-(b) authorize a deduction equal to the "exemption amount," the 2017 TCJA added § 151(d)(5) to reduce the exemption amount to zero (2018-2025).
- Section 151(d)(5)(B) provides:
  - "For purposes of any other provision of this title, the reduction of the exemption amount to zero shall not be taken into account in determining whether a deduction is allowed or allowable, or whether a taxpayer is entitled to a deduction, under this section."
- Section 873(a) generally allows a nonresident alien to take only deductions connected with income effectively connected with the conduct of a trade or business (ECI), but § 873(b) allows certain deductions not connected with ECI, including "the deduction for personal exemptions allowed by section 151 …".
- Issue: is a nonresident alien entitled to a personal exemption deduction in 2018-2025 greater than zero?
- Held: No. The exemption amount is zero for both U.S. citizens and NRAs.

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Rollovers from 529 Plans to Roth IRAs
Outline: item F.1, page 34

- SECURE 2.0 Act § 126:
  - Rollovers from 529 plans to Roth IRAs. Beginning in 2024, beneficiaries of 529 college savings plans that have been open for more than 15 years can roll over up to $35,000 from the 529 plan to a Roth IRA during their lifetime (subject to annual Roth IRA contribution rules).
  - Requirements:
    - The § 529 account must have been maintained for the 15-year period ending on the date of the distribution,
    - The distribution does not exceed amount contributed to the § 529 plan (plus earnings) before the 5-year period ending on date of distribution,
    - The distribution is paid by direct trustee-to-trustee transfer to a Roth IRA maintained for benefit of designated beneficiary of the § 529 account,
    - Amount rolled over in current year cannot exceed annual limit on Roth IRA contributions ($7,000 for 2024) reduced by aggregate IRA contributions made during year for benefit of designated beneficiary,
    - Lifetime limit of $35,000.

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VI. Corporations

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Maggard v. Commissioner, T.C. Memo. 2024-77 (8/7/24)

Outline: item D.1, page 36

- Taxpayer owned all the stock of an S corporation that operated an engineering business and transferred 60% of the stock to two other individuals.
- The two individuals effectively looted the corporation and made disproportionate distributions to themselves.
- They cut the taxpayer off from the corporation and failed to provide him with Schedules K-1.
  - When the taxpayer requested information to prepare his 2014 to 2016 tax returns, he received a cocktail napkin with a single figure, $300,000 for 2014 and $50,000 for 2015, which allegedly was his share of losses.
- The S corporation later issued Schedules K-1 showing income for each year.
- Issue: did the corporation's S election terminate because it had more than one class of stock by virtue of the disproportionate distributions?
- Held: No. Under relevant regulations, whether shares of stock provide for identical distribution rights is determined under the governing documents.
  - The fact that disproportionate distributions are actually made does not change this result. See Rev. Proc. 2022-19, § 3.02.

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VII. Partnerships

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Basis Shifting Transactions Between Partnerships and Related Parties
Outline: item E.1, page 43

- The IRS has issued several sources of guidance regarding certain basis-shifting transactions involving partnerships and related parties:
  - IRS News Release 2024-166 (6/17/24)
  - IRS Fact Sheet 2024-21 (6/17/24)
  - Notice 2024-54, 2024-28 I.R.B. 24 (6/17/24)
  - Rev. Rul. 2024-14, 2024-28 I.R.B. 18 (6/17/24)
  - REG-124593-23, Certain Partnership Related-Party Basis Adjustment Transactions as Transactions of Interest, 89 F.R. 51476 (6/17/24).
- IRS Commissioner Werfel: “This announcement signals the IRS is accelerating our work in the partnership arena, which has been overlooked for more than a decade and allowed tax abuse to go on for far too long. We are building teams and adding expertise inside the agency so we can reverse long-term compliance declines that have allowed high-income taxpayers and corporations to hide behind complexity to avoid paying taxes. Billions are at stake here.”

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Basis Shifting Transactions Between Partnerships and Related Parties
Outline: item E.1, page 43

- Notice 2024-54: Treasury and IRS will issue two sets of proposed regulations-
  - Proposed regulations on “Related-Party Basis Adjustments” or “RPBA”
    - To be issued under the authority of §§ 482, 732, 734(b), 743(b), 755, and 7805
    - Will create special rules concerning cost recovery deductions attributable to “covered transactions.”
  - Proposed regulations on partnership interests held by members of a consolidated group
    - To be issued under the authority of the consolidated return provisions of §§ 1501 and 1502
    - Will apply a “single-entity approach” to interests in a partnership held by members of a consolidated group.
    - This “single-entity approach” will be designed to prevent direct or indirect basis shifts from “covered transactions” among the partner members of the consolidated group.

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Basis Shifting Transactions Between Partnerships and Related Parties

Outline: item E.1, page 43

- REG-124593-23, Certain Partnership Related-Party Basis Adjustment Transactions as Transactions of Interest, 89 F.R. 51476 (6/17/24).
  - Treasury has proposed regulations, to be contained in new Reg. § 1.6011-18.
  - The proposed regulations would identify partnership related-party basis adjustment transactions, and substantially similar transactions, as "transactions of interest," a type of "reportable transaction" (as such terms are defined in Reg. § 1.6011-4).

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Basis Shifting Transactions Between Partnerships and Related Parties

Outline: item E.1, page 43

- Example 2 in the preamble to REG-124593-23 96/17/24): DEF Partnership is owned by partners D, E and F. The partners are related to each other within the meaning of proposed § 1.6011-18(b)(8) and (b)(9)(i).
  - D's outside basis is $7 million. E and F each have an outside basis of $1 million.
  - DEF Partnership owns only two properties, Property 1 and Property 2, both of which it uses in its trade or business.
    - For Federal income tax purposes, Property 1 is depreciable property and Property 2 is nondepreciable property.
    - DEF Partnership has an adjusted basis in Property 1 of zero, and an adjusted basis in Property 2 is $9 million.
  - DEF Partnership distributes Property 1 to D in liquidation of D's partnership interest.
  - Under section 732(b), D's basis in distributed Property 1 is equal to $7 million. As a result, D claims depreciation deductions based on a $7 million basis in Property 1.

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IX. Exempt Organizations and Charitable Giving

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Valley Park Ranch, LLC v. Commissioner
162 T.C. No. 6 (3/28/24)
Outline: item B.2, page 55

- IRS has made a series of attacks on charitable contribution deductions for conservation easements
- Most successful IRS strategy: easement does not protect the property in perpetuity, as required by § 170(h)(2)(C) and (h)(5)(A).
  - IRS has argued that conservation easements failed to protect the property in perpetuity because extinguishment language in the easement deed dictating what would happen if the easement were extinguished:
    - Failed to preserve donee's proportionate benefit, as required by Reg. § 1.170A-14(g)(6)(ii).
    - Required that charitable-donee's benefit upon destruction or condemnation of the property be reduced by value of improvements to the property made by the taxpayer-donor after the contribution, contrary to Reg. § 1.170A-14(g)(6)(ii).

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Valley Park Ranch, LLC v. Commissioner
162 T.C. No. 6 (3/28/24)
Outline: item B.2, page 55

- Issue: did Treasury comply with the Administrative Procedure Act (APA) in issuing Reg. § 1.170A-14(g)(6)(ii)?
  - IRS interprets the regulation as requiring that, if the easement is extinguished, charitable-donee share in post-donation increases in value of the property attributable to improvements made by taxpayer-donor after the contribution.
- Prior Decisions:
  - Hewitt v. Commissioner, 21 F.4th 1336 (11th Cir. 2021) (*rev'g* T.C. Memo. 2020-89)) (holding that Reg. § 1.170A-14(g)(6)(ii) is arbitrary and capricious under the APA for failing to comply with procedural requirements and therefore is invalid).
  - Oakbrook Land Holdings, LLC v. Commissioner, 28 F.4th 700 (6th Cir. 2022) (*aff'g* 154 T.C. 180 (2020)) (holding that Treasury complied with the APA in issuing Reg. § 1.170A-14(g)(6)(ii) and that the regulation is valid).
- Valley Park Ranch, LLC v. Commissioner, 162 T.C. No. 6 (3/28/24):
  - Tax Court reverses position it took in *Oakbrook Land Holdings*
  - Holds that IRS failed to comply with APA and Reg. § 1.170A-14(g)(6)(ii) is invalid

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X. Tax Procedure

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Dodson v. Commissioner, 162 T.C. No. 1 (1/3/24)
Outline: item D.1, page 70

- IRS sent a notice of deficiency ("first notice of deficiency") dated October 7, 2021, and specifying that December 5, 2022 (424 days later) was the last day to file a petition in the Tax Court.
- IRS sent a corrected notice of deficiency ("second notice of deficiency") dated October 8, 2021, and specifying that January 6, 2022, was the last day to file a petition in the Tax Court.
  - The taxpayers asserted they never received the second notice of deficiency.
- Taxpayers filed a petition in the Tax Court on March 3, 2022, 147 days after the first notice of deficiency.
- Issue: was their petition timely filed?
- Held: Yes. The first notice of deficiency was never rescinded.
  - Section 6213(a): "Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed."

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Couturier v. Commissioner 162 T.C. No. 4 (2/28/24)
Outline: item E.4, page 75

- Taxpayer, a corp. executive, participated in several deferred comp arrangements.
  - These included shares in an ESOP (a qualified retirement plan) and several compensatory plans, none of which was a qualified plan.
- In 2004, taxpayer accepted a $26 million buyout from his company. The company paid $12 million cash and a $14 million promissory note to his IRA.
- On his 2004 return, he characterized the $26 million as a tax-free rollover.
  - On his 2004-2008 and 2009-2014 returns, he left blank line 59, "Additional tax on IRAs, other qualified retirement plans, etc."
  - He also did not attach to any of his returns Form 5329, "Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts."
- IRS determined that:
  - $25.1 million was attributable to relinquishment of his rights in the non-ESOP deferred compensation plans and not eligible for a tax-free rollover, and therefore
  - $25.1 million was subject to the 6% excise tax of § 4973 on excess contributions.
  - In the aggregate, taxpayer owed an excise tax of $8.5 million.
- Issue: had the limitations period on assessment of tax expired for 2004-2008 when the IRS issued the notice of deficiency for those years on June 16, 2026?

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Couturier v. Commissioner
162 T.C. No. 4 (2/28/24)
Outline: item E.4, page 75

- Held: no, the limitations period on assessment of tax had not expired.
- Section 6501(a): subject to various exceptions, any tax imposed must be assessed within three years after the return was filed.
  - Section 6501(c)(3): if taxpayer does not file a return, then the tax may be assessed at any time, i.e., there is no limitations period on assessment.
- Prior Tax Court decisions: taxpayer's filing of Form 1040 does not start the running of the limitations period for assessment of the § 4973(a) excise tax unless taxpayer files Form 5329 or provides the information elsewhere on Form 1040.
- In 2022, Congress enacted § 6501(*l*)(4), which provides that a 3-year limitations period applies if taxpayer files Form 5329, but a six-year limitations period applies if taxpayer files a return on Form 1040 but fails to attach Form 5329.
  - The amendment "shall take effect on the date of the enactment of this Act," which was December 29, 2022.
- In a reviewed opinion (7-5-2) by Judge Lauber, the Tax Court held that § 6501(*l*)(4) applies only to returns filed on or after December 29, 2022, and therefore did not bar IRS's assessment of the § 4973(a) excise tax for the taxpayer's 2004-2008 taxable years.

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Abdo v. Commissioner
162 T.C. No. 7 (4/2/24)
Outline: item E.5, page 78

- The IRS issued a notice of deficiency to the taxpayers, who resided in Ohio. The last day to file a petition in the Tax Court was March 2, 2020.
- The taxpayers filed their petition on March 17, 2020.
- On March 31, 2020, the President issued a major disaster declaration with respect to Ohio as a result of the COVID-19 pandemic. The disaster conditions began on January 20, 2020.
- The IRS moved to dismiss on the basis that the petition was untimely.
- Section 7508A(a) allows the IRS discretion to extend deadlines for up to one year.
- Section 7508A(d) provides for a mandatory 60-day extension of certain tax-related deadlines by reason of a federally declared disaster.
- Regulations under § 7508A provide that the § 7508A (d) 60-day extension applies only if the IRS has exercised its discretionary authority under § 7508A(a)..
- Issue: are the regulations entitled to deference under *Chevron*?
- Held: No. Section 7508A(d) is unambiguous and provides for a mandatory 60-day extension. Taxpayers' petition was timely filed.

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XI. Withholding and Excise Taxes

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Soroban Capital Partners v. Commissioner, 161 T.C. No. 12 (11/28/23)

Outline: item B.1, page 90

- Facts
  - The petitioner, Soroban Capital Partners LP (Soroban), is a limited partnership subject to the former TEFRA unified audit and litigation procedures.
  - Soroban had one general partner (a limited liability company) and three individual limited partners.
  - On its partnership tax returns for 2016 and 2017, Soroban included in net earnings from self-employment the guaranteed payments received by the three limited partners and the general partner's distributive share of the partnership's ordinary business income.
  - Soroban excluded from net earnings from self-employment the limited partners' distributive shares of the partnership's ordinary business income.
- Issue: were the limited partners' shares of the partnership's ordinary business income automatically excluded from net earnings from self-employment?
- Held: No. Although § 1402(a)(13) excludes from net earnings from self-employment "the distributive share of any item of income or loss of a limited partner, as such …," an analysis of the limited partners' functions and roles is required.

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XIII. Trusts, Gifts, and Estates

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Connelly v. United States
144 S. Ct. 1406 (6/6/24)
Outline: item A.1.a, page 94

- Two brothers owned all the shares of stock of a corporation.
- Under a stock purchase agreement, upon the death of either brother:
  - The surviving brother had the right to purchase the deceased brother's shares and,
  - If the surviving brother declined to purchase the shares, the corporation was obligated to redeem the shares.
- Value of stock was established either by brothers' agreement or by appraisal.
- The corporation owned life insurance with a death benefit of $3.5 million on each brother's life to allow the corporation to redeem shares.
- One brother passed away and the corporation redeemed the shares for $3 million. Value established by agreement of surviving brother and decedent's son.
- Issue: in determining the value of the deceased brother's shares for estate tax purposes, is the value increased by the $3.5 million of life insurance proceeds?
- Held: Yes. The corporation's obligation to redeem the shares is not a liability that offsets this $3.5 million.
  - Connelly (8th Cir.) affirmed; Estate of Blount (11th Cir. 2005) rejected.

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