

ONPOINT PUBLICATIONS – TALKING POINTS GUIDE

TAX WEEK IN REVIEW – DECEMBER 02, 2016

U.S. Tax Court Cases in Review:

McDonald v. Commissioner

PLR's\CCA's in Review:

PLR 201649017 – Exempt Organizations

IRS Announcements & News Releases:

Notice 2016-72 – Discharge of Certain Qualified Principal Residence Debt

T.D. 9797 - Transition Rules Finalized for Consistent Basis Reporting

T.D. 9798 - IRS Maintains Increased Fee for Installment Agreements

T.D. 9799 - Due Diligence Penalties to Include Other Tax Credits

IR 2016-155: New Online Access Available

TALKING POINTS FOR TAX WEEK IN  
REVIEW DECEMBER 02, 2016

**Slide 1. Title Page – Tax Week in Review for Week Ending 12/02/2016**

**Opinions, Decisions and Rulings Released This Week**

**Slide 2.**

MCDONALD V. COMMISSIONER – T.C. Summary Opinion 2016-79

*Issue: After conceding to the assessment of liability, was the wife eligible for relief from joint and several liability on portions of the assessment?*

Taxpayers (H) and (W) were assessed additional taxes and penalties after 2009 to 2011 joint returns were audited and adjusted as follows:

- Unreported wages for W.
- Rental losses limited to \$25,000 as H spent significant time on rental activities, but was not a “real estate professional” under Section 469(c)(7)(B).
- Net operating losses generated by losses from rental activities were removed after the limitation of \$25,000 was imposed.
- Unreported state tax refunds.

**Slide 3.**

**Relief under Section 6015(c)**

- In order for Section 6015(c) to apply, 3 conditions must be met. The requesting spouse must:
  - Have filed a joint return for the year.
  - Be divorced or legally separated from non-requesting spouse at time of request
  - Seek relief no later than 2 years after collection activities commence.
- It was agreed that W met all 3 requirements.

# TALKING POINTS FOR TAX WEEK IN REVIEW DECEMBER 02, 2016

## Slide 4.

### Exception to Section 6015( c ) - Actual Knowledge

- Relief can be denied if the requesting spouse has actual knowledge of the item giving rise to the deficiency. Per the regulations:

*If the Secretary demonstrates that the requesting spouse had actual knowledge of an erroneous item that is allocable to the non-requesting spouse, the election to allocate the deficiency attributable to that item is invalid, and the requesting spouse remains liable for the portion of the deficiency attributable to that item.*

- H maintained all accounting records regarding the rental activities.
- Though W was aware of the real estate losses, representations made by their CPA lead her to believe that they were entitled to the losses. She signed the returns without review with the CPA.

## Slide 5.

### Actual Knowledge – or Not

- Actual Knowledge means “an actual and clear awareness (as opposed to reason to know)” about the item giving rise to the deficiency.
- A taxpayer lacks “actual knowledge” if she is “unaware of the circumstances that’s give rise to error on the tax return.”
- Did she in fact have knowledge as to why the losses were not deductible at the time she signed the returns?

## Slide 6:

### The Court’s Decision

- The Court concluded that W lacked “an actual and clear awareness” that her husband failed to qualify as a real estate professional.
  - Although she knew H spent substantial time with management and record keeping for the rental activities, she lacked knowledge of the tax law that would have limited the losses.
- Final Advice:
  - Having knowledge of the activities reported on a joint return is not the same as understanding the tax laws that apply. Filing for spousal relief may help your client if they were not aware of the underlying tax law.

The full text can be read here: [T.C. Summary Opinion 2016-79](#)

TALKING POINTS FOR TAX WEEK IN  
REVIEW DECEMBER 02, 2016

**Slide 7.**

PLR 201649017 – Exempt Organization

*Issue: Organization seeking exemption as a business league is denied – does not promote the industry as a whole.*

- Organization (O) was formed to provide educational and support services to franchisees of a specific business chain – Company N.
- Membership was limited to the business franchisees of N.
- The Service made reference to several revenue rulings in determining their adverse decision, claiming that O was not a business league. Per the letter:
  - *“You are similar to the organization described in Rev. Rul. 58-394. You promote the “product” of N businesses. Membership is only open to those who own a specified “product” – an N store. You are engaging in activities that further the interests of the N franchise owners rather than store owners in general. Like that organization, your activities only benefit and promote the interests of your members and not the industry as a whole.”*

**Slide 8.**

PLR 201649017 – Exempt Organization

*Oh - Did we say Franchisee Members Only?*

- Upon receiving the first determination, Business N filed a protest and submitted a second Form 1024 application. Per the revised request:
  - Organization O was now part of another organization, a coalition of franchisee owners.
  - Claimed they were accepting members who were not N franchisees.
  - Majority of members were still from original N franchisees.
  - O still maintained a relationship with N through its website, bylaws, enrollment forms and membership listing.

The Service was not convinced by the amended information and denied the application.

The full text can be read here: [PLR 201649017](#)

TALKING POINTS FOR TAX WEEK IN  
REVIEW DECEMBER 02, 2016

---

*The Service's Comments*

*After receiving the protest and revised Form 1024, the IRS responded that the organization was still not a qualified organization. O lacked the broad inclusion that would convince the IRS that its mission was to educate and benefit an industry group.*

*The IRS further commented on the organization:*

- *Joining with other area businesses and local law enforcement to discuss crime prevention in their neighborhoods did not override the true purpose of the organization.*
  - *No proven policies benefiting the convenience store industry beyond Business N's franchisees.*
  - *No demonstrated communication or problem resolution with other convenience store owners outside of their own franchisees.*
  - *No evidence that the organization represents the interests of convenience store franchisees owners industry wide, other than their own franchisees of Business N.*
- 

*In the News This Week*

**Slide 9:**

**Notice 2016-72: Discharge of Certain Qualified Principal Residence Debt**

For purposes of applying Section 108(a)(1)(E)(ii), the requirement that the discharge of indebtedness be “subject to an arrangement that is entered into and evidenced in writing before January 1, 2017” will apply if:

1. A mortgage servicer sends a borrower-homeowner a notice in conjunction with a written Trial Period Plan (TPP) or a separate in a written opt-out letter outlining the terms & conditions of the permanent loan modification following completion of the active TPP.
2. The borrower-homeowner satisfies all of the TPP and Principal Reduction Modification Program (PRMP) conditions, and
3. The borrower-homeowner and mortgage servicer enter into a permanent modification of the mortgage loan on or after January 1, 2017.

A similar conclusion applies to a TPP under Home Affordable Modification Program (HAMP).

The full text can be read here: [Notice 2016-72](#)

---

TALKING POINTS FOR TAX WEEK IN  
REVIEW DECEMBER 02, 2016

---

*The Principal Reduction Modification Program*

*To help homeowners with distressed mortgages, the Federal Housing Finance Agency implemented the Principal Reduction Modification Program (PRMP) and instructed the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to implement PRMP.*

*PRMP offers mortgage loan modification to certain borrower-homeowners who are still struggling in the wake of the financial crisis of 2008. The program is a one-time offer to homeowners whose loans are guaranteed by Fannie Mae or Freddie Mac and meet eligibility criteria.*

*Congress extended the relief under Section 108(a)(1)(E) to arrangements entered into before January 1, 2017 in the Protecting Americans from Tax Hikes Act of 2015 (PATH).*

*The maximum amount of discharge of indebtedness income that a borrower can exclude is \$2,000,000 (\$1,000,000 for MFS taxpayers).*

---

**Slide 10:**

**T.D. 9797 – Transition Rules Finalized for Consistent Basis Reporting**

Transition rules allowing executors and others, required to file or furnish a statement under Sec. 6035(a)(1) or (2), can do so by June 30, 2016.

Section 6035 imposes reporting requirements with regard to the value of property included in a decedent's estate for federal estate tax purposes.

TALKING POINTS FOR TAX WEEK IN  
REVIEW DECEMBER 02, 2016

**Slide 11:**

**T.D. 9797 – Transition Rules Finalized for Consistent Basis Reporting**

Executors and others, required to file estate tax returns under Section 6018 after July 31, 2015, must provide a statement identifying the value of each interest in such property as reported on the estate tax return to the Secretary and:

1. For returns filed under Section 6018(a), information is to be provided to anyone who acquires any interest in property included in the decedent's estate.
2. For returns filed under Section 6018(b), information is to be provided to anyone who holds a legal or beneficial interest in the property to which such return relates.

The full text can be read here: [T.D. 9797](#)

**Slide 12:**

**T.D. 9798 – IRS Maintains Increased Fee for Installment Agreements**

Effective January 1, 2017, the IRS will increase user fees for establishing installment agreements from \$120 to \$225. Other fees will also be affected:

<i>Fee</i>	<i>Previous Amt</i>	<i>New Amount</i>
<i>Entering into a direct debit installment agreement</i>	\$52	\$107
<i>Restructuring or reinstating an installment agreement that is in default</i>	\$50	\$89
<i>Agreements for low income taxpayers</i>	\$43	Same
<i>Online payment agreement user fee</i>	New	\$149
<i>Online direct debit agreement user fee</i>	New	\$31

The full text can be read here: [T.D. 9798](#)

TALKING POINTS FOR TAX WEEK IN  
REVIEW DECEMBER 02, 2016

**Slide 13:**

**T.D. 9799 – Due Diligence Penalties to Include Other Tax Credits**

Section 6695(g) imposes a penalty on tax return preparers who fail to comply with due diligence with respect to determining the eligibility for, or the amount of, the earned income credit (EIC).

The Protecting Americans from Tax Hikes Act (PATH) expanded the penalties to apply to the child tax credit, the additional child tax credit and the American Opportunity Tax Credit.

Applies to tax years after December 31, 2015. The Form 8867 has been revised for the 2016 tax year and is a single checklist to be used for all applicable credits (EIC, CTC/ACTC, and/or AOTC) on the return or claim for refund subject to the section 6695(g) due diligence requirements.

The full text can be read here: [T.D. 9799](#)

**Slide 14:**

**IR 2016-155 – New Online Access for Taxpayers**

IRS has announced the introduction of a new online application that will allow taxpayers to make balance inquiries, including tax, penalties and interest amounts. Coupled with the online payment options, the IRS is providing a safe and secure method for taxpayers to handle their tax obligations online.

To use the new application, taxpayers will need to authenticate their identity. This will require taxpayers to have an email address, a mobile phone and certain financial information available. You can read more about the access process here: [Secure Access](#).

The full text can be read here: [IR 2016-155](#)