



Tax Week in Review

FOR THE WEEK ENDING DECEMBER 02, 2016

Opinions, Decisions & Rulings Released this Week

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.

MCDONALD V. COMMISSIONER

Relief under Section 6015(c)

In order for Section 6015(c) to apply, 3 conditions must be met. The requesting spouse must:

1. Have filed a joint return for the year.
2. Be divorced or legally separated from non-requesting spouse at time of request
3. Seek relief no later than 2 years after collection activities commence.

It was agreed that W met all 3 requirements.

MCDONALD V. COMMISSIONER

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.”

As noted in the case:

- 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.

MCDONALD V. COMMISSIONER

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?

MCDONALD V. COMMISSIONER

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](#)

Opinions, Decisions & Rulings Released this Week

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.”*

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](#)

In the News this Week

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).

In the News this Week

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.

In the News this Week

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:
 - 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.
 - 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](#)

In the News this Week

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:

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

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

In the News this Week

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](#)

In the News this Week

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](#)



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