

# Where There's a Will, There's a Delay: Do Recent Legislative Changes to the CDP Rules Solve the Perceived Problems?

*By Hale E. Sheppard*

Hale E. Sheppard examines three recent legislative changes aimed at halting CDP abuses.

## Introduction

Fueled largely by the severe misconduct of certain IRS personnel, Congress enacted the IRS Restructuring and Reform Act of 1998.<sup>1</sup> This legislation introduced many new protections for taxpayers. Among them were the so-called collection due process (CDP) hearings, which essentially afford taxpayers the right to have the IRS Appeals Office conduct an impartial review of a revenue officer's decision to file a federal tax lien and/or levy on taxpayers' property. Then, if they are dissatisfied with the determination by the Appeals Office, taxpayers may seek judicial review. From the taxpayers' perspectives, one of the best aspects is that the IRS generally must cease its collection activities during the administrative and judicial proceedings. This reprieve gives taxpayers some breathing room, a chance to get their financial affairs in order. The CDP procedures were effectively designed to ensure that taxpayers receive "due process" in situations where the IRS seeks to deprive them of their private property in order to replenish the public fisc.<sup>2</sup>

After nearly a decade of existence, there are grumblings that the abused (*i.e.*, the taxpayers) have become the abusers. More to the point, the IRS has

discovered that, while some people are utilizing the CDP procedures in accordance with their intended purpose, many others are simply exploiting the system. This exploitation usually comes in the form of prolonged delay. In short, many taxpayers facing large tax liabilities with no conceivable means of immediate payment employ the CDP procedures to delay or otherwise obstruct the IRS's collection actions. Congress, aware of this reality, recently made three legislative changes aimed at halting CDP abuses. This article examines how these new legal measures may impact the mootness doctrine, an obscure tool on which both taxpayers and the IRS have often relied in the collections arena.

## Brief Overview of the CDP Process

To grasp the CDP process, it is helpful to understand the basic forms, notices and jargon. Within five days of filing a lien, the IRS must provide the affected taxpayer a Notice of Federal Tax Lien informing her of the amount of the unpaid tax and her right to request a CDP hearing within a limited period.<sup>3</sup> Likewise, the IRS is required to send the relevant taxpayer a Notice of Intent to Levy at least 30 days before it seizes her property to satisfy tax debts.<sup>4</sup> To request a CDP hearing under either scenario, the taxpayer must file a timely Form 12153 (Request for a Collection Due Process Hearing) with the IRS. The taxpayer is entitled to raise "any relevant issue

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relating to the unpaid tax or the proposed levy" at the CDP hearing.<sup>5</sup> This includes challenges to the appropriateness of the IRS's collection activities, applicable spousal defenses, and payment alternatives such as offers-in-compromise and installment agreements.<sup>6</sup> In cases where the taxpayer did not receive a Notice of Deficiency or otherwise have a chance to dispute the existence or the amount of the alleged tax liability, she can dispute these issues at the CDP hearing, too.<sup>7</sup>

After the hearing, the Appeals Officer is charged with deciding whether the IRS's proposed levy "balances the need for efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary."<sup>8</sup> It should come as no surprise to tax practitioners that the Appeals Officer usually concludes that the need for swift tax collection prevails. Accordingly, the Appeals Officer issues a so-called Notice of Determination upholding the levy.

Down but not altogether out, the taxpayer still has the right to seek further review, this time from the judiciary. If the taxpayer is dissatisfied with the holdings in the Notice of Determination, she can file a petition with the U.S. Tax Court.<sup>9</sup>

It is important to note that IRS collections actions are generally suspended from the time a taxpayer requests a CDP hearing until the Appeals Office issues its Notice of Determination.<sup>10</sup> This halt on IRS collection efforts also tends to continue throughout the Tax Court litigation.<sup>11</sup> At a time when the Appeals Office is inundated with work and the Tax Court's docket is consistently full, this collection suspension could last many, many months. According to a recent report by the U.S. Government Accountability Office (GAO), "the delay in collection activity until Appeals issues its final determination may be an incentive to request an Appeal, even though penalties and interest continue to accrue during the time the case is with Appeals."<sup>12</sup>

## **Problems Under the Old Law— Delay, Delay, Delay**

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Each year nearly everyone owes taxes, but many cannot pay them, at least not at the moment. Faced with this reality, many taxpayers are willing to try any and all methods of avoiding, or at least postponing, the inevitable. This often includes requesting CDP hearings and, after losing at the administrative level, filing petitions for judicial review with the Tax Court. As a result, CDP issues have held the dubious distinction over the last few years of being the most litigated issue in the federal courts.<sup>13</sup>

This issue has not gone unnoticed by the IRS, the GAO and the Bush Administration, all of which have identified taxpayer delay as the most pressing problem. The delay comes in various forms. First, some taxpayers submit requests for CDP hearings when they have no intention of genuinely participating in the process. They file the Form 12153 requesting the CDP hearing and simply fail to respond to the Appeals Officer thereafter.<sup>14</sup> Second, a significant number of taxpayers do nothing more during the CDP process than raise frivolous arguments or try to defend return positions that are "patently incorrect."<sup>15</sup> Such techniques are particularly irksome to the government because they monopolize limited resources. Indeed, they "consume a disproportionately large amount of time because Appeals personnel must often read lengthy frivolous submissions in search of any substantive issue that might be contained within the case file."<sup>16</sup> Third, some taxpayers use CDP hearings as nothing more than a forum to vent their general frustrations about the U.S. tax system and to otherwise harass Appeals Officers.<sup>17</sup> Finally, some taxpayers with procedural savvy intentionally filed for judicial review of the Notice of Determination in the wrong court so that the petition would eventually be rejected and they would thus be granted additional time to re-file their petition in the proper court.<sup>18</sup> In other words, the government found indications that "some taxpayers [were] using the CDP venue provisions to delay collection activity by deliberately filing the case with the wrong court."<sup>19</sup>

Aware of these tactics and their drain on government resources, the GAO made a broad recommendation. It suggested that the relevant provisions of the Internal Revenue Code be changed to deprive of CDP protections those categories of taxpayers or types of cases that Congress believes are inconsistent with the IRS Restructuring and Reform Act's goal of ensuring due process.<sup>20</sup> Former IRS Commissioner Mark W. Everson put it more directly, stating that "Congress should enact legislation to curb frivolous submissions and [CDP] filings made to impede or delay tax administration by increasing the fines for such actions and giving the IRS the authority to disregard such submissions and filings."<sup>21</sup> In its 2006 revenue proposals, the Bush Administration also suggested allowing the IRS to assert larger penalties and to summarily dismiss frivolous CDP requests in order to deter "egregious taxpayer behavior."<sup>22</sup> In addition, it recommended making the Tax Court the sole jurisdiction for judicial review of Notices of Determination.<sup>23</sup>

## Changes by the New Law

Ask and you shall receive, so sayeth Congress! Three legislative modifications were recently made in an attempt to lessen the abuse of the CDP process. First, as part of the Tax Relief and Health Care Act of 2006, Congress expanded Code Sec. 6702.<sup>24</sup> Now, this provision generally states that any person who submits a request for a CDP hearing that is either based on a position that the IRS has identified as frivolous or reflects a desire to delay or impede the administration of federal tax laws is subject to a penalty of \$5,000.<sup>25</sup> However, if the IRS notifies the person that the CDP hearing request is frivolous and such person withdraws the request within 30 days of receiving the notice, then the IRS will not impose the penalty.<sup>26</sup> Presumably to promote consistency, the expanded version of Code Sec. 6702 requires the IRS to produce and periodically revise a list of positions that it considers "frivolous."<sup>27</sup> In April 2007, the IRS issued its initial list of "frivolous" tax positions.<sup>28</sup> Ever thorough when it comes to identifying that which it deems abusive, the IRS cited 40 items, many of which had multiple subparts. Moreover, exhibiting an I-know-pornography-when-I-see-it mentality, the IRS took steps not to restrict itself to the 40 listed positions. It included a disclaimer stating that:

... [r]eturns or submissions that contain positions not listed above, which on their face have no basis for validity in existing law, or which have been deemed frivolous in a published opinion of the United States Tax Court or other court of competent jurisdiction, may be determined to reflect a desire to delay or impede the administration of Federal tax laws and thereby subject to the \$5,000 penalty.<sup>29</sup>

Second, again as part of the Tax Relief and Health Care Act of 2006,<sup>30</sup> Congress introduced Code Sec. 6330(g). Under this new provision, if the IRS determines that any portion of a CDP hearing request is either frivolous or designed to delay or impede tax administration, then the IRS may treat such portion as if it had never been submitted and such portion will not be entitled to any further administrative review (*i.e.*, by the IRS) or judicial review (*i.e.*, by the Tax Court). Put differently, if the IRS deems a CDP hearing request to be frivolous or dilatory, it now has the discretion to simply disregard it.<sup>31</sup> It could theoretically decide under the new Code Sec. 6330(g) that the

amount of "process" that many payment-challenged taxpayers are "due" is precisely none.

Third, Congress used the Pension Protection Act of 2006<sup>32</sup> to modify Code Sec. 6330(d) such that the Tax Court became the court of exclusive jurisdiction for purposes of reviewing Notices of Determination rendered by Appeals Officers after CDP hearings. Thus, all Notices of Determination issued on or after October 17, 2006, could only be appealed to the Tax Court, and any appeals filed with an incorrect court (*i.e.*, a federal district court) could not be remedied by re-filing in the Tax Court.<sup>33</sup>

## Do the Recent Legislative Changes Solve the Perceived Problems?

In light of the IRS's longstanding frustration with taxpayers who misuse the CDP process and the toll that such practices take on the agency's limited resources, it is logical to assume that the IRS will liberally utilize its latest powers derived from Code Secs. 6702(b), 6330(g) and 6330(d). One may conjecture, for instance, that the IRS will determine (perhaps correctly) that many CDP hearing requests are either frivolous, designed to hinder tax collection or both. Consequently, the IRS may end up disregarding a great number of CDP requests, pressuring taxpayers or their representatives to withdraw other requests, and penalizing those that insist on advancing questionable positions. These IRS actions should dissuade the submission of baseless CDP hearing requests, thereby allowing the Appeals Office to devote more time and attention to legitimate collection-related issues. It is also likely that they will reduce the burden on the Tax Court because fewer CDP hearings logically mean fewer Notices of Determination in need of judicial scrutiny.

With that said, an interesting question remains: What impact, if any, will the recent legislative changes have on a method that is sometimes (though not always) used to delay tax collection? That is, will the recent congressional tweaks affect the dismissal-without-prejudice-due-to-mootness doctrine?

## Normal Rule—The Taxpayer Is Stuck with the Forum of Her Choosing

To understand this issue, it is first necessary to examine the normal rules regarding the proper forum in a tax deficiency case. These rules are placed into context nicely by

two seminal cases, *E.R. Dorl*<sup>34</sup> and *W.R. Ming, Jr. Est.*<sup>35</sup>

In *Dorl*, the IRS issued the taxpayer a Notice of Deficiency with respect to a particular tax period. The taxpayer then filed a timely petition with the Tax Court requesting a redetermination of the proposed deficiency. Approximately two months later, the taxpayer filed a "Motion for Removal of Case to U.S. District Court." The Tax Court rejected this motion, explaining that where a taxpayer receives a Notice of Deficiency and files a petition with the Tax Court, she effectively gives the Tax Court exclusive jurisdiction. This is due to the interplay between Code Sec. 6512(a) and Code Sec. 7459(d). The former provides that if the IRS issues a Notice of Deficiency to a taxpayer and she files a timely Tax Court petition, then no tax refund or credit will be allowed or made, and the taxpayer may not commence any other suit to recover any part of the tax. The latter states that once a taxpayer has filed a petition for redetermination of a deficiency with the Tax Court, a decision by the Tax Court to dismiss the case for any reason (other than for lack of jurisdiction) constitutes a determination that the Notice of Deficiency was correct.<sup>36</sup> As the Tax Court explained in *Dorl*, "[i]t is now a settled principle that a taxpayer may not unilaterally oust the Tax Court from jurisdiction which, once invoked, remains unimpaired until it decides the controversy."<sup>37</sup> On appeal, the Second Circuit came to the identical conclusion, explaining that "[i]t is elementary, although unfortunately not well known to the layman, that the filing of a timely petition with the United States Tax Court gives that court exclusive jurisdiction, thereafter barring a refund suit in the district court."<sup>38</sup>

The Tax Court issued a similar ruling in *Ming Est.*, which was distinct in that it involved a motion to withdraw without prejudice (so that the taxpayer could pay the alleged deficiency and then sue for a refund in federal district court) as opposed to a motion to remove the case to a federal district court. Many are the cases that have followed the precedent set in *Dorl* and *Ming Est.* over the years.<sup>39</sup>

## Unique Rule in CDP Cases

Unbeknownst to many taxpayers and tax practitioners, the general jurisdictional rule for deficiency cases established by *Dorl* and *Ming Est.* does not apply in the context of CDP cases. This unique situation evolved from *R.T. Wagner*.<sup>40</sup>

In *Wagner*, the IRS sent a Notice of Federal Tax Lien to the taxpayers, who properly requested a CDP hearing. The Appeals Office eventually issued a Notice of Determination to the taxpayers upholding the validity of the lien. Dissatisfied with this decision, the taxpayers

filed a timely petition with the Tax Court seeking judicial review of the Notice of Determination. In response, the IRS filed an Answer, and then attempted to dispense with the case by filing a motion for summary judgment. The taxpayers subsequently filed a motion to dismiss the case without prejudice so that they could file a suit in federal district court to determine if certain net operating losses could be carried back to the year of the alleged tax deficiency. To the IRS's surprise, the Tax Court granted the taxpayers' motion. In doing so, the Tax Court distinguished earlier cases such as *Dorl* and *Ming Est.* involving motions to dismiss or remove tax deficiency cases. The Tax Court described a number of reasons for distinguishing the taxpayers in *Wagner* from those in previous cases. First, Code Sec. 7459(d), which provides that a decision by the Tax Court to dismiss a case ordinarily constitutes a legal determination that the proposed deficiency was correct, applies expressly to petitions for redetermination of a Notice of Deficiency. This provision does not mention petitions to review Notices of Determination and the appropriateness of collection actions.<sup>41</sup> Second, the Tax Court pointed out that Code Sec. 6320, which grants taxpayers the right to request a CDP hearing after receiving a Notice of Federal Tax Lien, was added to the Internal Revenue Code ("the Code") in 1998 as part of the IRS Restructuring and Reform Act, yet Congress made no corresponding change to Code Sec. 7459(d).<sup>42</sup> The logic here is that if Congress wanted to expand Code Sec. 7459(d) to apply not only to cases involving Notices of Deficiency but also those addressing Notices of Determination, it could have made the necessary legislative modifications. Third, there is no separate provision in the Code requiring the Tax Court, upon dismissal of a CDP action, to enter a decision that the IRS's ruling in the Notice of Determination was correct.<sup>43</sup> The Tax Court also noted that the relevant legislative history does not mandate such a requirement either.<sup>44</sup>

In *Wagner*, it was the taxpayers who sought to have the case dismissed without prejudice. Since then, many of the motions to dismiss based on *Wagner* have been presented by the IRS, thus supporting the notion that what's good for the goose is good for the gander. The pertinent cases are discussed below.

In *W.P. Chocallo*,<sup>45</sup> the taxpayer filed a petition with the Tax Court to contest a Notice of Determination. The IRS later determined that the tax liability it was trying to collect by levy had been improperly assessed, refunded certain amounts previously collected, represented that it would not pursue any further levy action against the taxpayer, and moved to dismiss the case as moot. The

Tax Court explained that its jurisdiction under Code Sec. 6330 was limited to reviewing the appropriateness of the proposed levy action. Since the IRS agreed that there was no longer a deficiency on which a levy could be based, the Tax Court dismissed the case for mootness.

In *G.N. Gerakios*,<sup>46</sup> the taxpayer filed a Tax Court petition to dispute a Notice of Determination. At some point during the litigation, the taxpayer voluntarily paid the full liability, and the IRS indicated that it no longer intended to pursue the levy action. Citing *Chocallo*, the IRS then moved to dismiss the case as moot, a request that was granted by the Tax Court.

The taxpayer in *L. Greene-Thapedi*,<sup>47</sup> also filed a petition contesting a Notice of Determination. Later, the IRS applied the taxpayer's overpayment in a subsequent year to offset her liability for the year at issue. In other words, the taxpayer involuntarily paid the full liability. Thus satisfied, the IRS informed the Tax Court that it had no intention of taking further collection actions and requested that the case be dismissed for mootness. The Tax Court approved the dismissal.

In *J. Bullock*,<sup>48</sup> the IRS initiated collection actions, and the taxpayer ultimately filed a petition for judicial review with the Tax Court. During the administrative portion, the Appeals Office allowed the taxpayer to file amended income tax returns for 1993 through 1996. These returns revealed that the taxpayer had ample tax withholding in 1993, 1994 and 1995 to cover the proposed deficiency. The taxpayer still had a deficiency for 1996, but this was later satisfied when the IRS offset an overpayment from a subsequent year. The IRS indicated that it would not be taking any additional collection actions, and the Tax Court granted the IRS's request to dismiss the case for mootness.

Finally, in *Demos*,<sup>49</sup> the IRS took collection actions and the taxpayer sought protection from the Tax Court. Subsequently, the proposed deficiency was satisfied through a combination of voluntary and involuntary payments, *i.e.*, offsets. The IRS suggested that the case was moot because all the liabilities had been paid and the federal tax liens had been released. The Tax Court thus dismissed the case as moot.

Lest there be any doubt on this point, the IRS's own CDP Handbook contains two important portions.<sup>50</sup> Citing *Chocallo*, *Gerakios* and *Greene-Thapedi*, it summarizes the relevant Tax Court precedent in the following manner:

If subsequent to the Appeals hearing [*i.e.*, the CDP hearing] the tax, including all interest and penalty accruals, is fully paid and the assessment

abated, generally the case should be dismissed as moot. There is no tax liability to collect, the NFTL [Notice of Federal Tax Lien] will be or has been released, the proposed levy will be abandoned, and there is therefore no case or controversy for the Tax Court to adjudicate.

After recapping the legal state of affairs, the CDP Handbook goes on to provide clear guidance to IRS attorneys in such situations.

[I]f a taxpayer wishes to withdraw her CDP petition and have the case dismissed without prejudice, counsel attorneys should file a Notice of No Objection indicating that if the case is dismissed, the Service will take any appropriate collection action as provided by law. Upon dismissal of the case, counsel attorneys should make sure the case is immediately closed and returned to Collection to proceed with collection.

## Conclusion

We cannot go back in time and ascertain the true motives of the taxpayers in *Wagner* for participating in a CDP hearing, balking at the Notice of Determination issued by the Appeals Office, seeking judicial review by the Tax Court, exchanging a number of pleadings with IRS attorneys, and eventually asking permission from the Tax Court to have their dispute resolved instead by a federal district court. Likewise, we can never be sure of the genuine motivations of the taxpayers in *Chocallo*, *Gerakios*, *Greene-Thapedi*, *Bullock* and *Demos*, all of whom engaged in similar behavior. One could speculate, though, that at least some of those taxpayers chose this path for purposes of gaining some much-needed breathing room, an extended respite from the pressures of IRS collection actions. They may have never had a sincere beef with the tax liability or the IRS's efforts to collect it; they could have merely exercised their CDP rights to buy some time.

Since the introduction of various taxpayer protections in the IRS Restructuring and Reform Act of 1998, the IRS has had little recourse in these situations. It was obligated to grant taxpayers a certain degree of "process," whether or not the IRS believed that it was actually "due." Now, thanks to the significant changes by Code Secs. 6702(b), 6330(g) and 6330(d), the IRS appears to have the discretion to spurn, disregard or penalize CDP requests that it considers intentional obstructions, unwarranted delays, or frivolousness personified. This triggers the question of

whether the IRS will use its newfound powers liberally such that the taxpayer (delay?) tactics in *Wagner* and its progeny will become obsolete. In other words, will the IRS's future actions render the mootness doctrine moot?

ENDNOTES

- <sup>1</sup> IRS Restructuring and Reform Act of 1998 (P.L. 105-206).
- <sup>2</sup> CONF. REP. 105-599, 105th CONG., 2d Sess., June 24, 1998, at 263.
- <sup>3</sup> Code Sec. 6320(a).
- <sup>4</sup> *Id.*
- <sup>5</sup> Code Sec. 6330(c)(2)(A).
- <sup>6</sup> *Id.*
- <sup>7</sup> Code Sec. 6330(c)(3)
- <sup>8</sup> CONF. REP. 105-599, *supra* note 1, at 263; Code Sec. 6330(c)(3)(C).
- <sup>9</sup> Code Sec. 6330(d); U.S. Tax Court Rule 331(b). This petition is called a *Petition for Lien or Levy Action Under Section 6320(c) or 6330(d)*, as applicable.
- <sup>10</sup> Code Sec. 6330(e)(1).
- <sup>11</sup> Code Sec. 6330(e)(2).
- <sup>12</sup> U.S. Government Accountability Office, *Little Evidence of Procedural Errors in Collection Due Process Appeal Cases, but Opportunities Exist to Improve the Program*, GAO-07-112 (Oct. 2006), at 33 [hereinafter referred to as the "GAO Report"]
- <sup>13</sup> National Taxpayer Advocate—2006 Annual Report, at 553–56.
- <sup>14</sup> GAO report at 33.
- <sup>15</sup> GAO Report at 17, 26, 33 and 47; U.S. Treasury Department, *General Explanations of the Administration's Fiscal Year 2006 Revenue Proposals* (Feb. 2005), at 125 [hereinafter referred to as "2006 Revenue Proposals"]
- <sup>16</sup> GAO Report at 17.
- <sup>17</sup> *Id.*
- <sup>18</sup> 2006 Revenue Proposals at 127; IRS Chief Counsel Notice 2007-001 (Oct. 13, 2006).
- <sup>19</sup> 2006 Revenue Proposals at 127. Under former Code Sec. 6330(d)(1)(B), the venue of the case depended on which court (*i.e.*, the Tax Court or a federal district court) would have jurisdiction over the underlying tax at issue. Thus, the Tax Court heard CDP cases involving deficiency-type taxes, such as income and estate taxes, whereas the district courts handled non-deficiency-type cases, such as employment and excise taxes.
- <sup>20</sup> GAO Report at 34.
- <sup>21</sup> GAO Report at 47.
- <sup>22</sup> 2006 Revenue Proposals at 125.
- <sup>23</sup> 2006 Revenue Proposals at 127.
- <sup>24</sup> Tax Relief and Health Care Act of 2006 (P.L. 109-432) (Dec. 20, 2006); U.S. Joint Committee on Taxation. Technical Explanation of H.R. 6408, the "Tax Relief and Health Care Act of 2006," as amended in the House on Dec. 7, 2006. JCX-50-06 (Dec. 7, 2006), at 89–90.
- <sup>25</sup> Code Sec. 6702(b)(1), (2).
- <sup>26</sup> Code Sec. 6702(b)(3).
- <sup>27</sup> Code Sec. 6702(c).
- <sup>28</sup> Notice 2007-30, IRB 2007-14, 883 (Apr. 2, 2007).
- <sup>29</sup> *Id.*
- <sup>30</sup> Tax Relief and Health Care Act of 2006 (P.L. 109-432).
- <sup>31</sup> U.S. Joint Committee on Taxation. Technical Explanation of H.R. 6408, the "Tax Relief and Health Care Act of 2006," as amended in the House on Dec. 7, 2006. JCX-50-06 (Dec. 7, 2006), at 90.
- <sup>32</sup> Pension Protection Act of 2006 (P.L. 109-280).
- <sup>33</sup> Chief Counsel Notice 2007-001 (Oct. 13, 2006).
- <sup>34</sup> *E.R. Dori*, 57 TC 720, 722, Dec. 31,284 (1972).
- <sup>35</sup> *W.R. Ming, Jr. Est.*, 62 TC 519, Dec. 32,686 (1974).
- <sup>36</sup> U.S. Tax Court Rule 123(d) provides that a "decision rendered upon a default or in consequence of a dismissal, other than a dismissal for lack of jurisdiction, shall operate as an adjudication on the merits."
- <sup>37</sup> *Dori*, *supra* note 34 (citations omitted).
- <sup>38</sup> *E.R. Dori*, 74-2 USTC ¶9826; 507 F2d 406, at 407.
- <sup>39</sup> *See, e.g., P.S. Johnson*, 37 TCM 189, Dec. 34,939(M), TC Memo. 1978-32; *W.M. Gardiner*, 39 TCM 87, Dec. 36,302(M), TC Memo. 1979-364; *F.S. Wolfe*, DC-CO, 81-1 USTC ¶9451, 513 FSupp 912, at 915; *R.M. Graham*, 76 TC 853, 858, Dec. 37,928 (1981); *M.J. Fiorito*, 42 TCM 1328, Dec. 38,320(M), TC Memo. 1981-576; *M. DeNicola*, 48 TCM 1065, Dec. 41,474(M), TC Memo. 1984-479; *J.M. Fox*, 48 TCM 1256, Dec. 41,523(M), TC Memo. 1984-519.  
*F.A. Wright*, 49TCM906, Dec. 41,928(M), TC Memo. 1985-103; *R.M. Hartman*, 50 TCM 1058, Dec. 42,381(M), TC Memo. 1985-482; *B.R. Frisbie*, 54 TCM 271, Dec. 44,144(M), TC Memo. 1987-423.  
*H.S. Long*, 54 TCM 703, Dec. 44,229(M), TC Memo. 1987-493; *P.T. Tate, Jr.*, 55 TCM 1394, Dec. 44,936(M), TC Memo. 1988-335; *J.J. Fitzsimons*, 59 TCM 183, Dec. 46,477(M), TC Memo. 1990-151; *M.E. Brock*, 59 TCM 433, Dec. 46,531(M), TC Memo. 1990-197; *J.D. Greenwood*, 60 TCM 149, Dec. 46,726(M), TC Memo. 1990-362; *F. Kowalik, Jr.*, 60 TCM 151, Dec. 46,727(M), TC Memo. 1990-363; *B.I. Mueller Est.* 101 TC 551, 557-558, Dec. 49,461 (1993); *M.J. Houston*, 69 TCM 2360, Dec. 50,580(M), TC Memo. 1995-159; *S.V. Talmage*, 71 TCM 2370, Dec. 51,221(M), TC Memo. 1996-114.  
*S.S. Hirsh*, 73 TCM 2601, Dec. 51,997(M), TC Memo. 1997-184; *Hallmark Cards, Inc.*, 111 TC 266, 271-272, Dec. 52,935 (1998); *W.T. Kees*, 77 TCM 1374, Dec. 53,245(M), TC Memo. 1999-41; *P.K. Hanashiro*, 77 TCM 1539, Dec. 53,287(M), TC Memo. 1999-78; *D.T. Madge*, 80 TCM 804, Dec. 54,144(M), TC Memo. 2000-370; *S.L. Johnson*, 116 TC 111, 117, Dec. 54,254 (2001); *M.A. McCann*, 81 TCM 1819, Dec. 54,382(M), TC Memo. 2001-153; *N.T. Norbrock*, 83 TCM 1604, Dec. 54,735(M), TC Memo. 2002-112; *Sunoco, Inc.*, 122 TC 88, Dec. 55,530 (2004); *A. Doxtator*, 89 TCM 1270, Dec. 56,028(M), TC Memo. 2005-113; *P.C. Hickey*, 90 TCM 122, Dec. 56,112(M), TC Memo. 2005-189.  
<sup>40</sup> *R.T. Wagner*, 118 TC 330, Dec. 54,717 (2002).  
<sup>41</sup> *Id.*, at 332.  
<sup>42</sup> *Id.*  
<sup>43</sup> *Id.*  
<sup>44</sup> *Id.*,  
<sup>45</sup> *W.P. Chocallo*, 87 TCM 1432, Dec. 55,675(M), TC Memo. 2004-152.  
<sup>46</sup> *G.N. Gerakios*, 88TCM218, Dec. 55,740(M), TC Memo. 2004-203.  
<sup>47</sup> *L. Greene-Thapedi*, 126 TC 1, Dec. 56,401 (2006).  
<sup>48</sup> *J. Bullock*, 91 TCM 658, Dec. 56,409(M), TC Memo. 2006-6.  
<sup>49</sup> *Demos*, TC Summ. Op. 2006-15.  
<sup>50</sup> CC-2006-019 (Aug. 18, 2006).

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