

**TAXATION OF  
INDIVIDUAL INCOME**

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**TAXATION OF  
INDIVIDUAL INCOME**

**REVISED NINTH EDITION**

**2011 Supplement**

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## Chapter 1

### INTRODUCTION TO FEDERAL INCOME TAXATION

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#### Page 10:

In the last full paragraph, note that the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the “Tax Relief Act of 2010”) extended the favorable tax treatment of dividends through 2012.

#### Page 12:

Footnote 1: The basic standard deduction for 2011 on a joint return is \$11,600 for calendar year 2011. [Rev. Proc. 2010-40](#), 2010-2 C.B. 663.

#### Page 15:

Footnote 2: The option to elect to deduct either state and local income taxes or state and local general sales taxes has been extended through 2011 by the Tax Relief Act of 2010.

#### Page 16:

Footnote 3: For 2011, the inflation-adjusted personal exemption is \$3,700. [Rev. Proc. 2010-40](#), *supra*.

#### Page 17:

Footnote 5: The tax rate tables for 2011 are in [Rev. Proc. 2010-40](#), *supra*.

## Chapter 4

### **GAINS DERIVED FROM DEALINGS IN PROPERTY**

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#### **Page 83:**

In some copies of the Ninth Edition, the discussion of the Denise/Henri exchange in the first full paragraph is confusing. The paragraph should read as follows:

Consider Denise's situation. Her amount realized is \$10,000, the value of the wine received. Her adjusted basis in the desk was \$12,500. Therefore, her § 1001(a) loss on the exchange is \$2,500. If, as suggested, her basis in the \$10,000 of newly acquired wine is \$9,000, the fair market value of the desk she gave to Henri in the exchange, she will have a potential gain of \$1,000. Were she to sell the wine the next day for \$10,000, Denise would recognize this \$1,000 gain. Combining the exchange and sale, Denise's net loss would only be \$1,500. Again, if one were to eliminate the exchange and assume that Denise merely sold the desk for \$10,000 cash, her loss would be \$2,500. Thus, to treat Denise's basis in the wine received from Henri as equaling the value of the desk she gave to Henri is to understate her loss. Again, we reach a nonsensical result.

## **Chapter 5**

### **GIFTS, BEQUESTS AND INHERITANCE**

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#### **Page 88:**

Delete the assignments to § 1022.

#### **Pages 96 and 98:**

As anticipated in the text, § 1022 did indeed sunset December 31, 2010, and § 1014 again became the governing rule for the basis of property acquired from a decedent. The Tax Relief Act of 2010 also provided for the reinstatement of the federal estate tax as of January 1, 2011 with modifications to pre-2001 rates and exemptions. The modifications expire at the end of 2012, and absent further congressional action, the estate tax will continue with pre-2001 rates and exemptions. (Executors of estates of decedents dying during 2010 were given an election by the Tax Relief Act of 2010 between (1) no estate tax and § 1022 basis rules and (2) an estate tax with the 2011 modifications and § 1014 basis rules.)

## Chapter 6

### SALE OF A PRINCIPAL RESIDENCE

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Replace the problems in the casebook with the following problems.

#### **Problem 1:**

Evan, a professor of nuclear physics, purchased a home in Seattle on January 5, 2009. He lived in the Seattle home throughout 2009. In 2010, when Evan was invited to serve as a visiting professor at a university located in Chicago, he rented a condominium on Chicago's Michigan Avenue. Because of ongoing work with nuclear physicists in Chicago, Evan has continued to rent the Michigan Avenue condominium. In 2010, Evan divided his time equally between Seattle and Chicago, living in his Seattle home for exactly six months and his Chicago condominium for six months. In 2011, Evan lived in his home in Seattle for five months, in his Chicago condominium for five and one-half months and lived a month and one-half in Europe where he was working on a grant project with a team of European nuclear physicists. Evan sold the Seattle home at a significant gain in January 2012 when he accepted a permanent position in Chicago.

(a) For purposes of determining the applicability of Section 121, which residence — the Seattle home or the Michigan Avenue condominium — constitutes Evan's principal residence in 2010? In 2011? (Assume Evan never previously took advantage of Section 121.)

(b) Assume Evan's Seattle home consists of two lots on one of which Evan's house and garage are located. Evan has used the other lot for his vegetable and flower gardens. Assume for purposes of this question that the Seattle home constituted Evan's principal residence in at least two of the three years he owned that home. Instead of selling the two lots together, Evan sold the lots separately in January 2012 and realized a gain of \$100,000 on each lot. Explain whether Evan may take advantage of Section 121 with respect to each of the lot sales.

**Problem 2:** Same as current Problem 1 in the casebook.

#### **Problem 3:**

On August 1, 2010, Tom and Chris married and moved into a new home they purchased in Miami. Prior to their marriage, Tom owned his own home in Fort Lauderdale and Chris owned her home in Miami. They sold their separate homes in 2010. Tom sold his Fort Lauderdale home on June 1, 2010 for \$550,000. Tom had owned and used that home as his principal residence since 2005. He had an adjusted basis in the home of \$400,000. Chris had never lived in Tom's Fort Lauderdale home. Chris sold her Miami home in December 2010. She had owned and used the Miami home as her principal residence since 2002. She had a \$300,000 adjusted basis in the home and sold it for \$800,000. Tom had lived with Chris in her Miami

home for two months between the sale of his Fort Lauderdale home and his marriage to Chris. Neither Tom nor Chris had ever taken advantage of Section 121. Assume Tom and Chris file a joint return for 2010, how much gain, if any, must they report as gross income on their joint return for 2010 assuming they take full advantage of the Section 121 exclusion.

**Problem 4:**

Andrew, who is not married, purchased a new home in Minneapolis on May 1, 2010. After using the new home as his principal residence for exactly twelve months, Andrew received a job promotion that required him to relocate to Washington, D.C. Andrew sold the Minneapolis home and realized \$150,000 of gain on the sale. Assume Andrew eighteen months previously had used Section 121 to exclude gain from the sale of his prior home in Ann Arbor.

(a) How much of the realized gain, if any, on the Minneapolis home may Andrew exclude under Section 121?

(b) Assume that, instead of Andrew receiving a promotion that required relocation to Washington, D.C., it was Andrew's domestic partner, Tim, who received the promotion requiring him to move from Minneapolis to Washington, D.C. Assume that Andrew's Minneapolis home was also Tim's principal residence but that Tim had no ownership interest in that residence. Andrew sold the Minneapolis home and moved to Washington, D.C. with Tim. How much of the realized gain, if any, on the Minneapolis home may Andrew exclude under Section 121?

**Problem 5:**

Abby, who is not married, worked in New York City where until her retirement in August 2011 she lived in a rented apartment. On January 1, 2006, Abby purchased a home in East Hampton which prior to her retirement she used only on weekends. On January 1, 2012, Abby gave up her New York City apartment and made the East Hampton home her principal residence until January 1, 2015 when she moved out and put the East Hampton home on the market. She sold the East Hampton home on January 1, 2016 and realized \$300,000 of gain on the sale. How much of the \$300,000 of realized gain may Abby exclude under Section 121 assuming she has never previously taken advantage of Section 121?

## Chapter 10

### COMPENSATION FOR INJURY AND SICKNESS

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#### Page 187:

In *Parkinson v. Commissioner*, T.C. Memo, 2010-142, the Tax Court held that a heart attack that resulted from infliction of emotion distress constituted a physical injury. (“It would seem self-evident that a heart attack and its physical aftereffects constitute physical injury or sickness rather than mere subjective sensations or symptoms of emotional distress.”)

*Stadnyk v. Commissioner* was affirmed by the Sixth Circuit. An excerpt from the Sixth Circuit decision is included below.

#### Page 195:

**STADNYK v. COMMISSIONER**  
United States Court of Appeals, Sixth Circuit  
[2010 U.S. App. Lexis 4209](#) (2010)

#### OPINION

#### BACKGROUND

On December 11, 1996, Petitioners purchased a used 1990 Geo Storm from Nicholasville Road Auto Sales, Inc. (“Nicholasville Auto”) for \$3,430.00. Brenda Stadnyk tendered two checks to Nicholasville Auto as partial payment, check number 1080 for \$100 and check number 1087 for \$1,100, from a checking account with Bank One, Kentucky, N.A. (“Bank One”). After Petitioners drove approximately seven miles from the dealership, the car broke down. Petitioners spent \$479.78 to repair the car. They attempted to call Nicholasville Auto about the Geo Storm, but their calls were ignored, placed on hold for long periods of time, and not returned.

Because of their dissatisfaction with the car, Mrs. Stadnyk contacted Bank One to place a stop payment order on check number 1087 for \$1,100. Bank One's record of the stop payment order indicates “dissatisfied purchase” as the reason for the stop payment. However, Bank One incorrectly stamped the check “NSF” for insufficient funds and returned it to Nicholasville Auto. On February 4, 1997, Nicholasville Auto filed a criminal complaint against Mrs. Stadnyk for issuing and passing a worthless check in the amount of \$1,100.

At approximately 6:00 p.m. on February 23, 1997, officers of the Fayette County Sheriff's Department arrested Mrs. Stadnyk at her home in the presence of her husband, her daughter, and a family friend, and transported her to the Fayette County Detention Center. She arrived at the detention center at approximately 6:30 p.m., and she was handcuffed, photographed, and confined to a holding area. At approximately 11:00 p.m., Mrs. Stadnyk was

transferred to Jessamine County Jail, where she was searched via pat-down and use of an electric wand. Mrs. Stadnyk was required to undress to her undergarments, remove her brassiere in the presence of officers, and put on an orange jumpsuit. She was released on bail at approximately 2:00 a.m. on February 24, 1997. On April 23, 1997, Mrs. Stadnyk was indicted for “theft by deception over \$300.00” based on the returned check marked for insufficient funds. These charges were later dropped.

Mrs. Stadnyk testified that she did not suffer any physical injury as a result of her arrest and detention. According to Mrs. Stadnyk, nobody put their hands on her, grabbed her, jerked her around, bruised her, or hurt her. As a result of the incident, Mrs. Stadnyk visited a psychologist every 1.5 to two weeks for approximately eight sessions. The cost of these sessions was covered by Mrs. Stadnyk's insurance and employer. Mrs. Stadnyk did not pay any out-of-pocket medical expenses for physical injury or mental distress as a result of the arrest and detention.

On August 25, 1999, Mrs. Stadnyk filed a Complaint against J.R. Maze, the owner of Nicholasville Auto, Nicholasville Auto, and Bank One. On July 5, 2000, she filed a First Amended Complaint, alleging that Bank One breached its fiduciary duty of care by improperly and negligently marking her check “NSF” for insufficient funds. Mrs. Stadnyk’s First Amended Complaint also included the following claims against J.R. Maze and Nicholasville Auto: malicious prosecution, abuse of process, false imprisonment, defamation, and outrageous conduct. The First Amended Complaint repeated and incorporated by reference these allegations against Bank One.

On March 7, 2002, Mrs. Stadnyk entered into a mediation agreement with Bank One, under which Bank One agreed to pay Mrs. Stadnyk \$49,000 to settle her claims and provide her with a letter of apology. In return, Mrs. Stadnyk agreed to dismiss her complaint against Bank One. The mediation agreement form stated that “Bank One shall pay the total sum of \$49,000, by 3/15/02, by official check” and that “[t]he suit shall be dismissed with prejudice with each party to pay their own costs & fees.” It contained no language indicating the purpose for which the settlement was paid. On March 14, 2002, Bank One issued a check to Mrs. Stadnyk for \$49,000, and on May 3, 2002, Mrs. Stadnyk's complaint against Bank One was dismissed with prejudice.

During the trial before the Tax Court, Mrs. Stadnyk testified that her attorney, the attorney for Bank One, and the mediator all advised her that the settlement proceeds would not be subject to income tax. Based on this advice, the Stadnyks did not report the \$49,000 settlement on their 2002 Form 1040 income tax return, although Bank One issued Mrs. Stadnyk a Form 1099-MISC reporting the payment of the \$49,000 settlement. On March 14, 2005, Respondent issued a notice of deficiency to Petitioners, after determining that Petitioners were liable for a tax deficiency of \$13,119.00 and an accuracy-related penalty of \$2,624.00 under Internal Revenue Code (“I.R.C.”) § 6662(a). Petitioners timely appealed to the Tax Court. On January 12, 2009, the Tax Court ruled in favor of Respondent with respect to the deficiency and in favor of Petitioners with respect to the penalty. On April 15, 2009, Petitioners filed a timely notice of appeal.

A. Prong One: Tort or Tort Type Right

**[Authors' Note:** As indicated in the Overview on page 185, Treasury has proposed regulations that would eliminate the “tort or tort type requirement” of the current regulations. The proposed regulations have yet to be finalized.]

Under the first prong, the question is whether Mrs. Stadnyk's claims against Bank One giving rise to her recovery are based upon tort or tort type rights. The mediation agreement between Mrs. Stadnyk and Bank One did not state what claims provided the basis for the settlement award, nor does the remainder of the record surrounding the settlement provide any insight. Thus, we must look to the complaint to shed light on what claims gave rise to the award. In Mrs. Stadnyk's First Amended Complaint, she alleged a number of tort claims against J.R. Maze and Nicholasville Auto, including malicious prosecution, abuse of process, false imprisonment, defamation, and outrageous conduct, and she repeated, realleged, and incorporated these claims by reference against Bank One. By incorporating these claims by reference, Mrs. Stadnyk raised these tort claims against Bank One.

....

Based on these Kentucky banking laws and the circumstances of this case, the Tax Court found that Mrs. Stadnyk's independent claims against Bank One sounded in tort:

It is incorrect to characterize [Mrs. Stadnyk's] complaint against Bank One as a contract claim or merely a dispute over the wrongful dishonor of a check. Rather, [Mrs. Stadnyk] decided to sue Bank One because of the ordeal she suffered as a result of her arrest and detention. [Mrs. Stadnyk] did not suffer an economic loss from Bank One's alleged mishandling of her check. She did not sue Bank One to recover on economic rights arising from a contract with Bank One. [Mrs. Stadnyk] sought damages against Bank One that resulted from her arrest, detention, and indictment.

We agree with the Tax Court's analysis. Based on the finding that Mrs. Stadnyk alleged tort claims against Bank One in her complaint, we conclude that Mrs. Stadnyk's settlement with Bank One was based on tort or tort type rights.

#### B. Prong Two: “On Account of Personal Physical Injuries”

Having satisfied the first prong, to obtain an exclusion under § 104(a)(2), Mrs. Stadnyk must show that she sustained the damages on account of personal physical injuries or sickness. Under the 1996 Amendment, [I.R.C. § 104\(a\)\(2\)](#) expressly limits the type of damages excludable from income to personal *physical* injuries or *physical* sickness and expressly states that emotional distress does not constitute a physical injury or sickness. Kentucky courts have defined false imprisonment as “any deprivation of the liberty of one person by another or detention for however short a time without such person's consent and against his will, whether done by actual violence, threats or otherwise.”... The tort of false imprisonment protects personal interest in freedom from physical restraint; the interest is “in a sense a mental one” and the injury is “in large part a mental one.” ...

During her deposition, Mrs. Stadnyk testified that she did not suffer any physical injury as a result of her arrest and detention. According to Mrs. Stadnyk, nobody carrying out her arrest or detention put their hands on her, grabbed her, jerked her around, bruised her, or hurt her. Petitioners' brief concedes that the actions of the police were proper and that Mrs. Stadnyk presumes that she was treated in the same manner as anyone else arrested for passing a bad check. Nothing in the record suggests that Mrs. Stadnyk suffered physical, as opposed to emotional, injuries as a result of Bank One's actions.

The Tax Court correctly noted that “[t]he damages sought by [Mrs. Stadnyk] against Bank One are stated in terms of recovery for nonphysical personal injuries: [e]motional distress, mortification, humiliation, mental anguish, and damage to reputation.” These are all emotional injuries, and are thus not excludable under § 104(a)(2). *See Sanford v. Comm'r*, [T.C. Memo 2008-158](#) (2008) (settlement award for emotional distress relating to sexual harassment and discrimination claims is not excludable); *Polone v. Comm'r*, [T.C. Memo 2003-339](#), 86 T.C.M. (CCH) 698 (2003) (settlement award for defamation claim is not excludable), *aff'd* [505 F.3d 966](#) (9th Cir. 2007); *Venable v. Comm'r*, [T.C. Memo 2003-240](#), 86 T.C.M. (CCH) 254 (2003) (settlement payment for mental anguish and loss of reputation relating to malicious prosecution claim is not excludable), *aff'd* [110 Fed. App'x 421](#) (5th Cir. 2004).

However, despite Mrs. Stadnyk's testimony, Petitioners argue that Mrs. Stadnyk suffered a physical injury because “[p]hysical restraint and detention and the resulting deprivation of [Mrs. Stadnyk's] personal liberty is [itself] a physical injury . . . that Mrs. Stadnyk endured for an eight hour period.” Petitioners further argue that Mrs. Stadnyk suffered physical damages in addition to emotional damages because “to be falsely imprisoned, the person must first be physically restrained or held against their will” and “[t]hus the damages received from false imprisonment arise from the person's physical loss of their freedom and the mental suffering and humiliation that accompany this deprivation.”

In other words, Petitioners are asking the Court to create a *per se* rule that every false imprisonment claim necessarily involves a physical injury, even though physical injury is not a required element of false imprisonment under Kentucky law. To be sure, a false imprisonment claim may cause a physical injury, such as an injured wrist as a result of being handcuffed. But the mere fact that false imprisonment involves a physical act—restraining the victim's freedom—does not mean that the victim is *necessarily* physically injured *as a result* of that physical act. In the instant case, Mrs. Stadnyk unequivocally testified that she suffered no physical injuries as a result of her physical restraint. Thus, Petitioners have failed to establish that Mrs. Stadnyk suffered from personal physical injuries or physical sickness.

In addition, the Supreme Court has construed the “on account of” phrase to require a direct causal link between the physical injury and the damages recovery in order to qualify for the income exclusion. *See Schleier*, [515 U.S. at 329-31](#). This direct causal connection must be more than a “but for” link, because a “but for” analysis would “bring virtually all personal injury lawsuit damages within the scope of the provision, since: but for the personal injury, there would be no lawsuit, and but for the lawsuit, there would be no damages.” *O'Gilvie v. United States*, [519 U.S. 79, 82](#), 117 S. Ct. 452, 136 L. Ed. 2d 454 (1996) (internal quotation marks omitted).

Rather, the “on account of” phrase requires that the damages be awarded by reason of, or because of, a personal physical injury. Petitioners bear the burden of “present[ing] concrete evidence demonstrating the precise causal connection” between the personal physical injuries and the settlement payment....

The settlement agreement does not include any express language of purpose. It only provides that “Bank One shall pay the total sum of \$49,000” and that the “suit shall be dismissed with prejudice.” Petitioners' only evidence arguably supporting the purpose necessary for exclusion under § 104(a)(2) is Mrs. Stadnyk's testimony that her attorney, the attorney for Bank One, and the mediator all advised her that the settlement proceeds would not be subject to income tax. However, even assuming the attorneys did give her this advice, there is no evidence concerning the basis for the advice. The attorneys may have advised Mrs. Stadnyk based on any number of incorrect beliefs, such as the belief that all personal injury awards are excludable from income, as Petitioner argues here, or the belief that a physical injury was unnecessary. Given that the settlement agreement included no indication that Bank One paid the settlement on account of any physical injury and that all of Mrs. Stadnyk's damages were stated in terms of emotional distress, Petitioners have failed to offer any concrete evidence demonstrating a causal connection between any physical injury and the settlement award.

Thus, Petitioner's settlement award may not be excluded from taxation under § 104(a)(2).

## **Chapter 11**

### **FRINGE BENEFITS**

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#### **Page 205:**

In the first full paragraph, add to the § 132(a) list of excludable fringe benefits an eighth category: qualified military base realignment and closure fringe.

## Chapter 12

### **BUSINESS AND PROFIT SEEKING EXPENSES**

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#### **Page 250:**

In the last full paragraph, note that 2010 tax legislation increased the currently deductible amount of start-up expenditures from \$5,000 to \$10,000, and changed the phase-out range for current deductibility from \$50,000-\$55,000 to \$50,000-\$60,000. Thus, in the example given in this paragraph, where the start-up expenditures are \$52,000, the currently deductible amount is now \$10,000 minus \$2,000 (the amount in excess of \$50,000), or \$8,000. The remaining \$44,000 of start-up expenditures is amortizable over 180 months.

## Chapter 14

### DEPRECIATION

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**Page 299:**

Substitute the following for Problem 2:

**Problem 2:**

Liz owns an engineering business. She consults you regarding the deductibility of a sophisticated piece of new equipment she purchased for use in her business on January 19, 2010. The purchase price for the equipment was \$1,000,000. Liz used \$200,000 of her own money and borrowed the other \$800,000 for a local bank to purchase the equipment. The equipment, which is 5-year property under § 168, is the only depreciable property she placed in service during the year. Liz's taxable income from her engineering business in Year 1 was \$1,500,000, computed without regard to any deductions allowable with respect to the new equipment.

- (a) Disregarding any application of § 179 and assuming Liz elects out of § 168(k), how much depreciation may Liz claim with respect to the piece of new equipment in 2010? How much depreciation may she claim in 2011? What is the equipment's adjusted basis at the beginning of 2012? What will the equipment's adjusted basis be at the beginning of Year 7 assuming Liz continues to own and use the piece of equipment in her engineering business?
- (b) How much depreciation may Liz claim with respect to the equipment in 2012 if she sells it on December 31 of that year? What will her adjusted basis be in the equipment for purposes of computing the gain or loss on the sale of the equipment?
- (c) How would your answer to part (a) change if Liz purchased the equipment in December of 2010?
- (d) How would your answer to part (a) change if Liz elects under § 179 to deduct the maximum allowable under that provision?
- (e) What is the total amount Liz may deduct with respect to the equipment in 2010 if she elects to deduct the maximum allowable under § 179 and also takes advantage of § 168(k)?
- (f) Assume that Liz purchased the equipment in 2011 instead of 2010. How much depreciation may Liz claim with respect to the piece of new equipment in 2011 if she takes advantage of § 168(k)?

**Page 300:**

Add [I.R.C. § 168](#)(k)(1), (2)(A), (2)(D)(iii), and (5) to assigned reading in the Internal Revenue Code.

**Page 312:**

In the Tax Relief Act of 2010, Congress not only further extended the additional allowance of § 168(k)(1) through 2012, it also provided a special rule ([I.R.C. § 168](#)(k)(5)) for qualified property acquired by the taxpayer after September 8, 2010, and before January 1, 2012 and which is placed in service by the taxpayer before January 1, 2012. This special rule allows a 100% deduction for the qualified property. Thus, for example, a taxpayer who, in 2011, purchased and placed in service qualified property could deduct the entire cost of that property on her 2011 tax return and would not have to worry about depreciating the property over a number of years.

**Page 313:**

In 2010 tax legislation Congress increased the § 179 deduction amount to \$500,000 for tax years beginning in 2010 or 2011 and also provided that the reduction under § 179(b) in the § 179 amount would not be triggered unless the aggregate cost of § 179 placed in service in 2010 or 2011 exceeded \$2,000,000. For 2012, the Tax Relief Act of 2010 provided a dollar limitation under § 179 of \$125,000, subject to reduction beginning at a \$500,000 threshold. For years after 2012, the deduction limitation is scheduled to revert to \$25,000, subject to reduction beginning at a \$200,000 threshold.

**Page 314:**

If the taxpayer elects to use § 179, that provision is applied before the taxpayer applies § 168 (including § 168(k)).

## Chapter 16

### TRAVEL EXPENSES

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Page 392:

#### **BOGUE v. COMMISSIONER**

United States Tax Court

[T.C. Memo 2011-164](#)

After concessions, the issues we must decide are: (1) Whether petitioner is entitled to deduct certain transportation expenses for travel between his residence and worksites during the years in issue...

#### FINDINGS OF FACT

Petitioner is an independent contractor based in Cherry Hill, New Jersey. During the years in issue, petitioner lived in a house owned by his fiancé, Janis Pannepacker (Ms. Pannepacker) (we sometimes also refer to Ms. Pannepacker's house as petitioner's residence). During the years in issue, petitioner was building an addition to Ms. Pannepacker's house in his spare time.

During the years in issue, petitioner worked with Raymond J. Mancino (Mr. Mancino) to renovate residential properties. During his 2005 tax year, petitioner worked on properties at the following locations: East Upsal Street, Philadelphia, Pennsylvania; Wissahickon Avenue, Philadelphia, Pennsylvania; and Seminole Avenue, Melrose Park, Pennsylvania. During his 2006 tax year, petitioner worked on properties at the following locations: Seminole Avenue, Melrose Park, Pennsylvania; Albright Avenue, Elkins Parks, Pennsylvania; and Coles Mills Road, Haddonfield, New Jersey. Those five work locations (hereinafter sometimes referred to as worksites) were 20.1, 15.7, 15.0, 14.7, and 4.0 miles, respectively, from petitioner's residence. He worked at each of the worksites for a number of months and then, when the project at that worksite was finished, he moved to another worksite. Petitioner also received some income from his work as a track team coach....

On his returns for the years in issue, petitioner claimed deductions for a variety of expenses related to his transportation between his residence and the worksites. He claimed deductions for car and truck expenses of \$9,232 and \$9,657.50 on Schedules C, Profit or Loss from Business, attached to his tax returns for 2005 and 2006, respectively. In addition to car and truck expenses, petitioner deducted as part of his "Other Expenses" on his Schedules C amounts for tolls that he paid on the way to worksites. He claimed deductions of \$660 and \$400 for those tolls during 2005 and 2006, respectively. As part of the insurance expenses he reported on his Schedules C, petitioner deducted auto insurance expenses of \$2,028 and \$1,866 for 2005 and 2006, respectively. Petitioner also deducted \$650 in car rental expenses for the period during 2005 when he was renting a car after the 1991 Ford Explorer became inoperable....

## OPINION

...

### II. Whether Petitioner Is Entitled to the Claimed Deductions

Deductions are a matter of legislative grace, and taxpayers generally bear the burden of proving their entitlement to the deductions claimed. Sec. 6001; *INDOPCO, Inc. v. Commissioner*, [503 U.S. 79, 84](#) (1992). Section 162(a) permits “as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business”. To be deductible, ordinary and necessary expenses must be “directly connected with or pertaining to the taxpayer's trade or business”. Sec. 1.162-1(a), Income Tax Regs. Additionally, section 212 generally allows the deduction of ordinary and necessary expenses paid or incurred during the tax year for the production or collection of income. Sec. 1.212-1(d), Income Tax Regs. Such expenses must be reasonable in amount and bear a reasonable and proximate relationship to the production or collection of taxable income. *Id.* However, a taxpayer may not deduct personal expenses. Sec. 262(a)....

#### A. Commuting Expenses

Respondent contends that many of petitioner's expenses, including the amounts petitioner claimed for car and truck expenses, tolls, auto insurance, and car rental expenses, are not deductible because they are commuting expenses. As a general rule, expenses for traveling between one's home and one's place of business or employment constitute commuting expenses and, consequently, are nondeductible personal expenses. See sec. 262(a); *Fausner v. Commissioner*, [413 U.S. 838](#), 93 S. Ct. 2820, 37 L. Ed. 2d 996 (1973); *Commissioner v. Flowers*, [326 U.S. 465](#), 66 S. Ct. 250, 90 L. Ed. 203 (1946); *Feistman v. Commissioner*, [63 T.C. 129, 134](#) (1974).

As the Supreme Court explained in *Commissioner v. Flowers*, the core reason commuting expenses are not deductible is that the taxpayer makes a personal choice about where to live. In *Flowers*, the taxpayer was a longtime resident of Jackson, Mississippi, who accepted a job that required him to spend most of his time in Mobile, Alabama. For personal reasons, the taxpayer decided to continue to maintain a home in Jackson and made repeated trips between Jackson and Mobile. The Supreme Court held that the taxpayer was not entitled to deduct the costs of traveling from Jackson to Mobile, despite the substantial distance, because those costs were incurred for personal reasons and not in the pursuit of the business of his employer. The Supreme Court explained:

The facts demonstrate clearly that the expenses were not incurred in the pursuit of the business of the taxpayer's employer, the railroad. Jackson was his regular home. Had his post of duty been in that city the cost of maintaining his home there and of commuting or driving to work concededly would be non-deductible living and personal expenses lacking the necessary direct relation to the prosecution of the business. The character of such expenses is unaltered by the circumstance that the taxpayer's post of

duty was in Mobile, thereby increasing the costs of transportation, food and lodging. Whether he maintained one abode or two, whether he traveled three blocks or three hundred miles to work, the nature of these expenditures remained the same.

The added costs in issue, moreover, were as unnecessary and inappropriate to the development of the railroad's business as were his personal and living costs in Jackson. They were incurred solely as the result of the taxpayer's desire to maintain a home in Jackson while working in Mobile, a factor irrelevant to the maintenance and prosecution of the railroad's legal business. \* \* \* The fact that he traveled frequently between the two cities and incurred extra living expenses in Mobile, while doing much of his work in Jackson, was occasioned solely by his personal propensities. \* \* \*

By holding that commuting expenses are personal, the Supreme Court placed those expenses in the category of nondeductible expenses now governed by section 262(a). Such personal expenses contrast with trade or business expenses, which are deductible provided they satisfy the requirements of section 162. Section 162(a) provides that a deduction is allowed for “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business”.

Three exceptions to the general rule that commuting expenses are nondeductible have evolved since the Supreme Court decided *Flowers*. The first exception is that expenses incurred traveling between a taxpayer's residence and a place of business are deductible if the residence is the taxpayer's principal place of business (home office exception). The second exception is that travel expenses between a taxpayer's residence and temporary work locations outside of the metropolitan area where the taxpayer lives and normally works are deductible (temporary distant worksite exception). The third exception is that travel expenses between a taxpayer's residence and temporary work locations, regardless of the distance, are deductible if the taxpayer also has one or more regular work locations away from the taxpayer's residence (regular work location exception). Petitioner contends that his transportation expenses driving between his residence and worksites qualify under all three exceptions; we will consider each exception in turn.

#### 1. The Home Office Exception

[**Authors' note:** The court found that taxpayer did not come within this exception. See Chapter 21 for a discussion of the home office rules of [I.R.C. § 280A.](#)]

#### 2. The Temporary Distant Worksite Exception

The temporary distant worksite exception is also rooted in caselaw. In *Schurer v. Commissioner*, [3 T.C. 544](#) (1944), we held that the taxpayer was entitled to deduct travel and lodging expenses stemming from a series of temporary worksites at which the taxpayer worked during the year, all of which were distant from the taxpayer's residence. Our decision in that case was based, in part, on the fact that the taxpayer had no principal place of business during the tax year. The IRS acquiesced to our decision in *Schurer* and later issued Rev. Rul. 190, [1953-2 C.B. 303](#), which stated that when an employee “is employed for a strictly temporary (as distinguished from an indefinite) period on a construction project situated at a distance from the metropolitan

area in which he is regularly employed, he may deduct \* \* \* his actual expenses incurred for daily transportation between his principal or regular place of employment and such job”.

Originally, when courts decided whether transportation expenses were nondeductible commuting expenses, they focused only on the nature of the job: whether it was of temporary or indefinite duration. In *Peurifoy v. Commissioner*, [358 U.S. 59, 60](#), 79 S. Ct. 104, 3 L. Ed. 2d 30, 1958-2 C.B. 916 (1958), the Supreme Court summarized the law as follows:

Generally, a taxpayer is entitled to deduct unreimbursed travel expenses under this subsection only when they are required by “the exigencies of business.” \* \* \*

To this rule, however, the Tax Court has engrafted an exception which allows a deduction for expenditures of the type made in this case when the taxpayer's employment is “temporary” as contrasted with “indefinite” or “indeterminate.” \* \* \*

However, over the years, a number of courts added an additional requirement that the temporary worksite had to be distant from the area where the taxpayer lives and normally works. See *Dahood v. United States*, [747 F.2d 46, 48](#) (1st Cir. 1984); *Kasun v. United States*, [671 F.2d 1059, 1061](#) (7th Cir. 1982); *Epperson v. Commissioner*, [T.C. Memo. 1985-382](#). The Court of Appeals for the First Circuit explained the reasoning underlying the temporary distant worksite exception as follows:

A judicial exception has been carved out of this general rule [that commuting expenses are nondeductible] to cover instances when people commute long distances to their workplaces for business, rather than personal, reasons. This exception permits taxpayers to deduct commuting expenses to a job that is temporary, as opposed to indefinite, in duration. The exception has been deemed necessary because “it is not reasonable to expect people to move to a distant location when a job is foreseeably of limited duration.” Implicit in this exception is the requirement that the taxpayer commute to a worksite distant from his or her residence. Without such a requirement, the absurd result would obtain of permitting a taxpayer, who commuted to a succession of temporary jobs, to deduct commuting expenses, no matter how close these jobs were to his residence.

[Dahood v. United States, supra at 48.](#)

Consistent with the holdings of similar cases, the IRS has memorialized the temporary distant worksite exception in [Rev. Rul. 99-7](#), 1999-1 C.B. at 361, which states: “A taxpayer \* \* \* may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location outside the metropolitan area where the taxpayer lives and normally works.” The revenue ruling defines a temporary work location as one that “is realistically expected to last (and does in fact last) for 1 year or less”. Neither [Rev. Rul. 99-7, supra](#), nor any of its predecessors<sup>7</sup> defines the term “metropolitan area”. The revenue ruling does not explain the rationale for the temporary distant worksite exception. However, as we read the revenue ruling, on the basis of the caselaw cited above, the revenue ruling recognizes that taxpayers whose work consists of many temporary worksites might not always have a choice about the location of those

worksites. Although the taxpayer's choices about where to live and where to “normally work” are personal and it is assumed the taxpayer will live near the place of employment, it is unreasonable to expect that a taxpayer will move to a distant location for a temporary job. The taxpayer's choice to take a temporary job at a remote location is therefore dictated by business needs more than personal preference.

Petitioner contends that because he lived in Cherry Hill, New Jersey, and most of his worksites were across the State line in Pennsylvania, those worksites were temporary work locations not within his “metropolitan area”. Because “metropolitan area” is not defined in any revenue ruling, petitioner argues that we should refer to the Office of Management and Budget (OMB) for a definition of “metropolitan”, which petitioner contends is an urban area with more than 50,000 people. However, petitioner is mistaken about how the OMB defines “metropolitan area”. The OMB defines a “metropolitan statistical area” or a “micropolitan statistical area” as “an area containing a recognized population nucleus and adjacent communities that have a high degree of integration with that nucleus.” Standards for Defining Metropolitan and Micropolitan Statistical Areas, [65 Fed. Reg. 82,228](#) (Dec. 27, 2000). A metropolitan statistical area is distinguished from a micropolitan statistical area by having a population core of at least 50,000. However, petitioner's reference to the definitions used by the OMB does not support his contention because, as defined by the OMB, petitioner's residence in Cherry Hill, New Jersey, and all of his temporary worksites are part of the Philadelphia-Camden-Wilmington Metropolitan Statistical Area. See Office of Mgmt. & Budget, Exec. Office of the President, OMB Bull. No. 06-01, Update of Statistical Area Definitions and Guidance on Their Uses (2005).

Nonetheless, we decline to adopt any such rigid definition for deciding when a taxpayer's temporary worksites take him “outside the metropolitan area where the taxpayer lives and normally works.” Adopting such a rigid definition would inevitably lead to some absurd results. In some situations, a rigid definition would disallow the deduction of travel expenses that should be permitted. The metropolitan statistical areas (MSAs) defined by the OMB are often quite large, such as the Philadelphia-Camden-Wilmington MSA. A taxpayer who lives and normally works near the outskirts of one MSA may normally drive only 5 miles to and from worksites. However, if that taxpayer accepts work at a temporary worksite on the opposite end of the MSA, but still within the MSA, the taxpayer could end up driving as much as 100 miles each way yet not be able to deduct such transportation expenses because the worksite is still within the MSA.

In other situations, such a rigid definition would allow commuting expense deductions that should not be permitted. For instance, a taxpayer may live on the border of two MSAs. If that taxpayer normally has worksites in one MSA and only occasionally has worksites in the other MSA, the taxpayer would be permitted to deduct the expenses incurred in traveling to the worksites in the second MSA even if the distance traveled were no greater than that normally traveled when working at worksites in the first MSA. Accordingly, employing rigid definitions would frustrate the intent of the primary principle that commuting expenses are nondeductible.

Indeed, we conclude that respondent's use of the term “metropolitan area” is not helpful for answering the question of whether petitioner's travel expenses are deductible under the temporary distant worksite exception. Instead, we will evaluate the facts and circumstances to

decide whether the travel expenses in question were incurred in traveling to a worksite unusually distant from the area where petitioner lives and normally works. Such an approach is consistent with the approach historically taken by a number of other courts. See *Ellwein v. United States*, [778 F.2d 506, 511](#) (8th Cir. 1985) (holding that it was necessary to consider whether the taxpayer's temporary worksites were within the “work area” of the city that was the taxpayer's tax home); *Dahood v. United States*, [747 F.2d at 48](#) (for commuting expenses to a temporary worksite to be deductible, that temporary worksite must be “distant from \* \* \* [the taxpayer's] residence”); *Frederick v. United States*, [603 F.2d 1292, 1295](#) (8th Cir. 1979) (commuting expenses to a temporary worksite “a considerable distance” from the taxpayer's residence were deductible).

As the maps introduced by respondent at trial show, petitioner's residence in Cherry Hill, New Jersey, is approximately 10 miles east of Philadelphia. Most of petitioner's worksites during the years in issue were in Philadelphia or its suburbs to the north. Petitioner had five worksites that were 20.1, 15.7, 15.0, 14.7, and 4.0 miles from his residence. Consequently, it was petitioner's normal practice during the years in issue to travel about 15 miles from his residence to a worksite. There was nothing unusual about those trips. Even the worksite that was farthest from petitioner's residence was still within the city limits of Philadelphia. Given that four out of five of petitioner's worksites during the years in issue were in either Philadelphia or its suburbs to the north, we conclude that those areas are the areas where petitioner normally worked. Accordingly, we hold that he was not entitled to deduct travel expenses incurred in driving between his residence and those worksites. See *Aldea v. Commissioner*, [T.C. Memo. 2000-136](#) (holding that, because it was the taxpayer's personal choice to live outside the area where most of her temporary worksites were located, she was not entitled to deduct her commuting expenses). Consequently, we conclude that petitioner is not eligible to deduct his commuting expenses under the temporary distant worksite exception.

### 3. The Regular Work Location Exception

Unlike the first two exceptions, the regular work location exception is not rooted in caselaw. Rather, the regular work location exception was originally articulated by the Commissioner in [Rev. Rul. 90-23](#), *supra*. The current version of the regular work location exception is found in [Rev. Rul. 99-7](#), 1999-1 C.B. at 362, which states: “If a taxpayer has one or more regular work locations away from the taxpayer's residence, the taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location in the same trade or business, regardless of the distance.” [Rev. Rul. 99-7](#), *supra*, does not define “regular work location”. However, [Rev. Rul. 90-23](#), 1990-1 C.B. at 28, defines “regular place of business” as “any location at which the taxpayer works or performs services on a regular basis.” We infer that the same definition should apply to “regular work location” under [Rev. Rul. 99-7](#), *supra*, except that a “regular work location” may not include the taxpayer's residence. We also infer that, because “regular work location” is contrasted with “temporary work location”, the two are mutually exclusive.

[Rev. Rul. 90-23](#), 1990-1 C.B. at 29, explains the rationale for the regular work location

exception by analogy to [Rev. Rul. 190, supra](#):

A taxpayer who pays or incurs daily transportation expenses on trips between the taxpayer's residence and one or more regular places of business is like the taxpayer described in Rev. Rul. 190 who pays or incurs daily transportation expenses on trips between the taxpayer's residence and temporary work sites within the metropolitan area that is considered the taxpayer's regular place of business. Such daily transportation expenses are nondeductible commuting expenses. On the other hand, a taxpayer who has one or more regular places of business and who pays or incurs daily transportation expenses for trips between the taxpayer's residence and temporary work locations is like the taxpayer described in Rev. Rul. 190 who pays or incurs deductible daily transportation expenses for trips between the taxpayer's residence and temporary work sites outside the metropolitan area that is considered the taxpayer's regular place of business. Thus, for a taxpayer who has one or more regular places of business, daily transportation expenses paid or incurred in going between the taxpayer's residence and temporary work locations are deductible business expenses under section 162(a) of the Code regardless of the distance.

We do not follow the Commissioner's reasoning. It is unclear why the Commissioner considers analogous the situation where a taxpayer travels between the taxpayer's residence and a distant temporary work location and the situation where the taxpayer has one or more regular work locations and travels between the taxpayer's residence and a nearby temporary work location. The exception would be logical if it were limited to distant temporary work locations. However, as it stands, the regular work location exception reaches a result similar to what the Court of Appeals for the First Circuit labeled "absurd" when it held that there was an implicit requirement that, in order for travel expenses between a taxpayer's residence and a temporary work location to be deductible, the temporary work location must be distant from the taxpayer's residence. [See Dahood v. United States, supra](#) at 48. Nonetheless, we will treat the regular work location exception as a concession by the Commissioner.

In the instant case, petitioner's only work locations during the years in issue were worksites where he performed renovations. All of those worksites were temporary as defined in [Rev. Rul. 99-7, supra](#), and petitioner has not shown that he had other, regular work locations. Accordingly, petitioner has not established facts that would qualify him for respondent's concession. Consequently, we conclude that petitioner is not entitled to deduct his commuting expenses under the regular work location exception.

Because petitioner has failed to qualify under any of the three exceptions, we hold that his expenses in traveling between his worksites and his residence were nondeductible commuting expenses.

## Chapter 18

### EDUCATION EXPENSES

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**Page 445:**

Congress has extended the availability of the American Opportunity Tax Credit (the Hope Scholarship Credit) through 2012. [I.R.C. § 25A\(i\)](#).

**Page 446:**

Congress has extended the § 222 deduction through taxable years beginning in 2011.

## **Chapter 21**

### **HOME OFFICES, VACATION HOMES AND OTHER DUAL USE PROPERTY**

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#### **Page 492:**

Footnote 11: The application of § 168(k) was further extended through 2011 by the Tax Relief Act of 2010.

## Chapter 22

### THE INTEREST DEDUCTION

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Page 508:

#### REVENUE RULING 2010-25

2010-2 C.B. 571

#### ISSUE

Whether indebtedness that is incurred by a taxpayer to acquire, construct, or substantially improve a qualified residence can constitute “home equity indebtedness” (within the meaning of § 163(h)(3)(C) of the Internal Revenue Code) to the extent it exceeds \$1 million.

#### FACTS

In 2009, an unmarried individual (Taxpayer) purchased a principal residence for its fair market value of \$1,500,000. Taxpayer paid \$300,000 and financed the remainder by borrowing \$1,200,000 through a loan that is secured by the residence. In 2009, Taxpayer paid interest that accrued on the indebtedness during that year. Taxpayer has no other debt secured by the residence.

#### LAW

Section 163 (a) allows as a deduction all interest paid or accrued within the taxable year on indebtedness. However, for individuals § 163(h)(1) disallows a deduction for personal interest. Under § 163(h)(2)(D), qualified residence interest is not personal interest. Section 163(h)(3)(A) defines qualified residence interest as interest paid or accrued during the taxable year on acquisition indebtedness or home equity indebtedness secured by any qualified residence of the taxpayer. Under § 163(h)(4)(A), “qualified residence” means a taxpayer's principal residence, within the meaning of § 121, and one other residence selected and used by the taxpayer as a residence.

Section 163(h)(3)(B)(i) provides that acquisition indebtedness is any indebtedness that is incurred in acquiring, constructing, or substantially improving a qualified residence and is secured by the residence. However, § 163(h)(3)(B)(ii) limits the amount of indebtedness treated as acquisition indebtedness to \$1,000,000 (\$500,000 for a married individual filing separately). Accordingly, any indebtedness described in § 163(h)(3)(B)(i) in excess of \$1,000,000 is, by definition, not acquisition indebtedness for purposes of § 163(h)(3).

Section 163(h)(3)(C)(i) provides that home equity indebtedness is any indebtedness secured by a qualified residence other than acquisition indebtedness, to the extent the fair market value of the qualified residence exceeds the amount of acquisition indebtedness on the residence. However, § 163(h)(3)(C)(ii) limits the amount of indebtedness treated as home equity indebtedness to \$100,000 (\$50,000 for a married individual filing separately). Accordingly, any indebtedness

described in § 163(h)(3)(C)(i) in excess of \$100,000 is, by definition, not home equity indebtedness for purposes of § 163(h)(3).

In *Pau v. Commissioner*, [T.C. Memo. 1997-43](#), the Tax Court limited the taxpayers' deduction for qualified residence interest to the interest paid on \$1 million of the \$1.33 million indebtedness incurred to purchase their residence. The court stated that § 163(h) restricts home mortgage interest deductions to interest paid on \$1 million of acquisition indebtedness and \$100,000 of home equity indebtedness. Citing § 163(h)(3)(B), the court stated that acquisition indebtedness is defined as indebtedness that is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and is secured by the residence. Citing § 163(h)(3)(C), the court further stated that home equity indebtedness is defined as any indebtedness (other than acquisition indebtedness) secured by a qualified residence. The court concluded that the taxpayers failed to demonstrate that any of their debt was not incurred in acquiring, constructing, or substantially improving their residence and thus was not acquisition indebtedness. However, the court did not address the effect of the \$1 million limitation in § 163(h)(3)(B)(ii) on the definition of acquisition indebtedness for purposes of § 163(h)(3). The Tax Court followed *Pau* in *Catalano v. Commissioner*, [T.C. Memo. 2000-82](#).

## ANALYSIS

Taxpayer may deduct, as interest on acquisition indebtedness under § 163(h)(3)(B), interest paid in 2009 on \$1,000,000 of the \$1,200,000 indebtedness used to acquire the principal residence. The \$1,200,000 indebtedness was incurred in acquiring a qualified residence of Taxpayer and was secured by the residence. Thus, indebtedness of \$1,000,000 is treated as acquisition indebtedness under § 163(h)(3)(B).

Taxpayer also may deduct, as interest on home equity indebtedness under § 163(h)(3)(C), interest paid in 2009 on \$100,000 of the remaining indebtedness of \$200,000. The \$200,000 is secured by the qualified residence, is not acquisition indebtedness under § 163(h)(3)(B), and does not exceed the fair market value of the residence reduced by the acquisition indebtedness secured by the residence. Thus, \$100,000 of the \$200,000 is treated as home equity indebtedness under § 163(h)(3)(C).

Under § 163(h)(3)(A), the interest on both acquisition indebtedness and home equity indebtedness is qualified residence interest. Therefore, for 2009 Taxpayer may deduct interest paid on indebtedness of \$1,100,000 as qualified residence interest. Any interest Taxpayer paid on the remaining indebtedness of \$100,000 is nondeductible personal interest under § 163(h).

The Internal Revenue Service will not follow the decisions in *Pau v. Commissioner* and *Catalano v. Commissioner*. The holding in *Pau* was based on the incorrect assertion that taxpayers must demonstrate that debt treated as home equity indebtedness “was not incurred in acquiring, constructing or substantially improving their residence.” The definition of home equity indebtedness in § 163(h)(3)(C) contains no such restrictions, and accordingly the Service will determine home equity indebtedness consistent with the provisions of this revenue ruling, notwithstanding the decisions in *Pau* and *Catalano*.

## HOLDING

Indebtedness incurred by a taxpayer to acquire, construct, or substantially improve a qualified residence can constitute home equity indebtedness to the extent it exceeds \$1 million (subject to the applicable dollar and fair market value limitations imposed on home equity indebtedness by § 163(h)(3)(C)).

## Chapter 23

### THE DEDUCTION FOR TAXES

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#### Page 517:

Footnote 1: The election provision of § 168(b)(5) was further extended through 2011 by the Tax Relief Act of 2010.

#### Page 518:

The taxpayer was allowed to deduct real estate taxes which were paid by her mother directly to the taxing authority (but for which the taxpayer alone was liable) on the finding that the payment should be treated as a gift from the mother to the taxpayer, followed by a payment by the taxpayer to the taxing authority. *Lang v. Commissioner*, [T.C. Memo. 2010-286](#).

## Chapter 24

### CASUALTY LOSSES

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**Page 534:**

Under “Section D. Insurance Coverage,” there is a typo: “Section 165(h)(4)(E)” should read “Section 165(h)(5)(E).”

## Chapter 25

### MEDICAL EXPENSES

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**Page 549:**

In *Lang v. Commissioner*, [T.C. Memo. 2010-286](#), taxpayer's mother paid medical expenses of the taxpayer directly to the medical providers. Taxpayer was not a minor and her mother was not legally obligated to pay the expenses. The Tax Court held that, notwithstanding the direct payment by the mother to the medical providers, the taxpayer was entitled to deduct the medical expenses: "Applying substance over form, we treat [taxpayer] as having received from her mother a gift of \$24,559 with which [taxpayer] paid her own medical expenses."

Footnote 1: 2010 tax legislation increased the nondeductible floor to 10% of adjusted gross income for regular tax purposes as well, effective in 2013, but the new nondeductible floor will not apply to years 2013-2016 if the taxpayer or the taxpayer's spouse reaches age 65 by the end of the year.

## Chapter 26

### CHARITABLE DEDUCTIONS

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**Page 561:**

Add § 170(f)(8)(B) and § 170(j) to the Internal Revenue Code assignment.

**Page 568:**

In *Van Dusen v. Commissioner*, [136 T.C. No. 25](#) (June 2, 2011), the Tax Court held the most of the unreimbursed expenses incurred by a taxpayer in providing foster care for feral cats were deductible. The Tax Court found that, in taking care of the feral cats, the taxpayer was providing a service to a § 501(c)(3) organization that specializes in neutering wild cats.

## Chapter 29

### ACCRUAL METHOD ACCOUNTING

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**Page 661:**

Add Example 11 to the assigned reading in [Treasury Regulation § 1.263\(a\)-4\(f\)\(8\)](#).

**Page 670:**

In the second full paragraph, delete the third and fourth sentences referring to Laura and the legal fee payable to her.

**Page 674:**

In subparagraph (a) on this page, delete the second sentence referring to Laura's providing legal services to XYZ.

## **Chapter 31**

### **CAPITAL GAINS AND LOSSES**

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#### **Page 732:**

Delete footnote 5. The carryover basis rules of § 1022 were limited to the year 2010. See the notes in this Supplement for pages 96 and 98.

#### **Page 736:**

In the last full paragraph and in footnotes 9 and 10, note that the Tax Relief Act of 2010 extended the 15 % and 0 % rates through 2012, thereby deferring again the restoration of the 20% and 10 % rates.

#### **Page 738:**

In the first full paragraph, note that the favorable treatment of dividend income as 15 % or 0 % adjusted net capital gain was extended through 2012 by the Tax Relief Act of 2010.

## **Chapter 40**

### **INVOLUNTARY CONVERSIONS**

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#### **Page 950:**

Instead of “Presidentially declared disasters,” § 1033(h) now refers to “federally declared disasters.”

## Chapter 43

### ORIGINAL ISSUE DISCOUNT

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#### Page 1043:

Footnote 20: For 2011, the inflation-adjusted limit is \$3,715,200. [Rev. Rul. 2010-30](#), I.R.B. 2010-50.

#### Page 1044:

Footnote 21: For 2011, the inflation-adjusted limit is \$5,201,300. [Rev. Rul. 2010-30](#), I.R.B. 2010-50.

## Chapter 44

### LIMITATIONS ON TAX SHELTERS

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#### Page 1062:

Courts have held that members of limited liability companies do not hold interests that are equivalent to those of limited partners and therefore § 469(h)(2) is inapplicable to their interests. *See, e.g., Thompson v. U.S.*, [87 Fed. Cl. 728](#) (2009); *Garnett v. Commissioner*, [132 T.C. 368](#) (2009).

## **Chapter 45**

### **THE ALTERNATIVE MINIMUM TAX**

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#### **Page 1071-72:**

For 2011, the minimum tax exemption amounts are \$74,450 for joint returns and surviving spouses, \$48,450 for unmarried individuals and \$37,225 for married individuals filing separately.

The pre-2001 exemption amounts noted in footnote 1 on page 1072 are scheduled to take effect after 2011, but Congress has consistently forestalled this in the past.