



United States Tax Court

Washington, DC 20217

2025 Nonattorney Exam

Session One

Federal Taxation and Legal Ethics

Question #: 1

Question S-1 (2 points). Under the “all events test,” what are the three requirements that must be met in order for an accrual method taxpayer to be able to deduct an expense?

Question #: 2

Question S-2 (3 points). TP, an Informational Technology (IT) specialist, is an employee of Corporation Inc. In order to ensure that TP remains in the building during her lunch hour in case of IT network emergencies, Corporation Inc. provides the following choice to TP: (1) Corporation Inc. will provide lunch to TP in her office each day that she works, or (2) if TP prefers to bring her own lunch to work, Corporation Inc. will pay TP an additional \$500 in salary each month as long as she eats her lunch in her office. TP elected the first option (receiving the meals). Does TP have to report the value of the received meals as income? Explain your answer.

Question #: 3

Question S-3 (2 points). State the “willing buyer/willing seller” test and explain its significance.

Question #: 4

Question S-4 (2 points). Describe the difference between an interpretative Treasury tax regulation and a legislative or substantive Treasury tax regulation.

Question #: 5

Question S-5 (3 points). Assume that, in a 2010 case, the Tax Court held for the IRS. The Court decided the case on the basis of the approach set out in the Supreme Court’s *Chevron* decision, concluding that the Code section at issue was ambiguous and that the IRS’s interpretation of the statute was within the zone of permissibility. Assume further that the Tax Court now has before it a case involving

an issue identical to the issue in the 2010 case. What role, if any, should the Supreme Court's 2024 *Loper Bright* decision play in the resolution of the case now before the Tax Court?

Question #: 6

Question S-6 (3 points). TP had several loans canceled for no consideration by her bank. TP is determining whether she meets the insolvency exception of §108. TP had entered into a three-year lease with Landlord Inc. The lease included an acceleration clause stating that, if rent was late for more than two months, the full amount on the remaining lease would be immediately due in full. TP has breached that lease agreement and has not yet paid any amount that is due under the acceleration clause. Landlord Inc. has not yet sued TP or otherwise taken action to collect the amount due on the lease. Explain whether TP can count the amount owed under the lease when determining whether TP is insolvent under §108?

Question #: 7

Question S-7 (½ point). Select the *amount* that constitutes income to TP if received by TP in 2024.

\$2000 payment by TP's employer to the State of New York to satisfy TP's state income tax liability. The payment was in consideration of the importance of TP's services to the employer.

- A. \$2000
 - B. Zero
 - C. None of the above
-

Question #: 8

Question S-8 (½ point). Select the *amount* that constitutes income to TP if received by TP in 2024.

\$1000 of interest received on a City of Fargo, North Dakota bond, the proceeds of which were used by the city to finance the construction of a new municipal hospital.

- A. \$1000
 - B. Zero
 - C. None of the above
-

Question #: 9

Question S-9 (½ point). Select the *amount* that constitutes income to TP if received by TP in 2024.

Blackacre (unimproved land) received as a gift from TP's aunt. The aunt's adjusted basis in Blackacre as of the date of the gift was \$200,000, and the fair market value of Blackacre as of the date of the gift was \$100,000.

- A. \$200,000
 - B. \$100,000
 - C. Zero
 - D. None of the above
-

Question #: 10

Question S-10 (½ point). The following took place in 2024.

TP received Blackacre (unimproved land) as a gift from TP's aunt. The aunt's adjusted basis in Blackacre as of the date of the gift was \$200,000, and the fair market value of Blackacre as of the date of the gift was \$100,000. Later in the year, TP sold Blackacre for \$120,000.

Select the amount of gain or loss that TP recognized on account of TP's sale of Blackacre.

- A. \$120,000 Gain
 - B. \$20,000 Gain
 - C. (\$80,000) Loss
 - D. No gain or loss
 - E. None of the above
-

Question #: 11

Question S-11 (½ point). Select the *amount* that constitutes income to TP if received by TP in 2024.

\$1000 cash discovered in a leather briefcase that TP had bought at a garage sale.

- A. \$1000
 - B. Zero
 - C. None of the above
-

Question #: 12

Question S-12 (½ point). Select the *amount* that constitutes income to TP if received by TP in 2024.

\$3000 winnings from bets made at a racetrack.

- A. \$3000
 - B. Zero
 - C. None of the above
-

Question #: 13

Question S-13 (½ point). Select the *amount* that constitutes income to TP if received by TP in 2024.

\$8000 alimony payments as set out in a divorce and separation agreement. TP's divorce was finalized in 2024.

- A. \$8000
 - B. Zero
 - C. None of the above
-

Question #: 14

Question S-14 (½ point). Select the *amount* that constitutes income to TP if received by TP in 2024.

\$10,000 in child support payments as set out in a divorce and separation agreement. TP's divorce was finalized in 2024.

- A. \$10,000
 - B. Zero
 - C. None of the above
-

Question #: 15

Question S-15 (½ point). Select the *amount* that constitutes income to TP if received by TP in 2024.

\$10,000 lump-sum proceeds of life insurance policy on the life of TP's brother. TP purchased and owned the policy at all times. Under the policy, the proceeds were payable to TP.

- A. \$10,000
 - B. Zero
 - C. None of the above
-

Question #: 16

Question S-16 (½ point). Select the *amount* that constitutes income to TP if received by TP in 2024.

\$250 payment from Biolife Services Inc. for donating TP's plasma.

- A. \$250
 - B. Zero
 - C. None of the above
-

Question #: 17

Question S-17 (½ point). TP is a self-employed attorney. Select the *amount* that is deductible by TP of the following putative business expenses during 2024.

\$500 for ties that TP wears only when appearing in court.

- A. \$500
 - B. Zero
 - C. None of the above
-

Question #: 18

Question S-18 (½ point). TP is a self-employed attorney. Select the *amount* that is deductible by TP of the following putative business expenses during 2024.
\$2000 to repair the air conditioning system for TP's office.

- A. \$2000
 - B. Zero
 - C. None of the above
-

Question #: 19

Question S-19 (½ point). TP is a self-employed attorney. Select the *amount* that is deductible by TP of the following putative business expenses during 2024.
\$500 to pay a speeding ticket while driving to the courthouse in order to make it on time for a trial.

- A. \$500
 - B. Zero
 - C. None of the above
-

Question #: 20

Question S-20 (½ point). TP is a self-employed attorney. Select the *amount* that is deductible by TP of the following putative business expenses during 2024.
\$300 fee paid to a public notary to certify several work documents and forms.

- A. \$300
 - B. Zero
 - C. None of the above
-

Question #: 21

Question S-21 (3 points). TP sued D for intentional infliction of emotional distress. After a trial, TP was awarded \$30,000 for the emotional harm caused by D and \$10,000 in punitive damages. D paid those amounts. TP did not require any medical treatment on account of D's actions. Explain whether TP can exclude those two payments from gross income.

Question #: 22

Question S-22 (1 point). In 2024, TP purchased Blackacre (unimproved property). Select the amount of TP's adjusted basis in Blackacre at the time of the acquisition in 2024. To acquire the property, TP (1) paid \$100,000 cash at the closing and (2) assumed a preexisting first recourse mortgage debt secured by Blackacre in the principal amount of \$900,000 (for which TP became personally liable).

- A. \$1,000,000
 - B. \$900,000
 - C. \$100,000
 - D. Zero
 - E. None of the above
-

Question #: 23

Question S-23 (1 point). In 2024, TP purchased Blackacre (unimproved property). Select the amount of TP's adjusted basis in Blackacre at the time of the acquisition in 2024. To acquire the property, TP (1) paid \$100,000 cash at the closing and (2) took the property subject to a preexisting first nonrecourse mortgage debt secured by Blackacre in the principal amount of \$900,000 (for which TP was not personally liable).

- A. \$1,000,000
 - B. \$900,000
 - C. \$100,000
 - D. Zero
 - E. None of the above
-

Question #: 24

Question S-24 (2 points). Explain the "before-and-after method" in the context of charitable tax deductions for conservation easements?

Question #: 25

Question S-25 (4 points). In 2024, TP had adjusted gross income ("AGI") of \$100,000. That year, an unknown thief stole TP's car and RV and neither asset has

ever been recovered. TP held both assets for personal use only. At the time of the theft, the fair market value of the car was \$15,000 and the fair market value of the RV was \$60,000. TP had an adjusted basis of \$40,000 in the car and an adjusted basis of \$45,000 in the RV. TP had insurance coverage for the RV, and the insurance company paid TP \$60,000 compensation for the theft of the RV. TP decided not to buy another RV to replace the one stolen. TP did not have any insurance coverage on the car. Quantify the amount of loss that TP may deduct for 2024 for the theft of the car and explain your answer.

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Question #: 26

Question S-26 (2 points). TP owns and operates a hardware store business. On January 1, 2024, TP purchased a fire insurance protection plan from Insurance Inc. to insure her business assets. The policy was for a one-year term, and the premium of \$10,000 was payable on December 1, 2024. TP failed to pay the premium on time. On January 10, 2025, Insurance Inc. agreed to accept \$4000 in satisfaction of the 2024 premium and thereby forgave \$6000 of TP's debt to the insurance company. TP paid the \$4000 and TP was solvent at all times. As a result of the forgiveness of TP's debt, explain whether TP is required to recognize income.

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Question #: 27

Question S-27 (15 points; 3 points for each part). TP and B agree to exchange unimproved real properties. Both properties were held for investment. B will also pay TP 100 shares of Corporation Inc. common stock as part of the exchange. The fair market value of B's real estate property is \$300,000. B's adjusted basis in the real estate is \$230,000. The fair market value of B's 100 shares of stock is \$50,000. B's adjusted basis in the stock is \$20,000. The fair market value of TP's property is \$350,000. TP's adjusted basis in the property is \$100,000. Both TP and B will hold their newly acquired properties as investments. Provide the following tax consequences of the exchange:

1. Gain or loss recognized by TP.
2. TP's basis in TP's acquired real estate property.
3. TP's basis in TP's acquired 100 shares of Corporation Inc. common stock.
4. Gain or loss recognized by B.

5. B's basis in B's acquired real estate property.

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Question #: 28

Questions S-28 through S-30 involve the same fact pattern. Each question will be 1 point. The following fact pattern will apply to each question (and will be repeated for each question).

TP owned unimproved land which she purchased 10 years ago. TP's adjusted basis in the land was \$20,000. On April 1, Year 1, TP donated the land to a qualified charitable organization. At the time of the donation, the fair market value of the land was \$70,000. In Year 1, TP's adjusted gross income is \$100,000.

You will be asked the following multiple-choice questions for this fact pattern:

S-28 How much gain or loss does TP recognize for donating the land?

S-29 How much of a charitable deduction will TP be able to use in Year 1 for donating the land?

S-30 How much, if any, of the charitable donation will carryforward?

Question S-28 (1 point). How much gain or loss does TP recognize for donating the land?

- A. \$70,000 Gain
- B. \$50,000 Gain
- C. (\$20,000) Loss
- D. No gain or loss
- E. None of the above

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Question #: 29

Question S-29 (1 point).

TP owned unimproved land which she purchased 10 years ago. TP's adjusted basis in the land was \$20,000. On April 1, Year 1, TP donated the land to a qualified charitable organization. At the time of the donation, the fair market value of the land was \$70,000. In Year 1, TP's adjusted gross income is \$100,000.

What is the amount of charitable deduction that TP will be able to use in Year 1 for donating the land?

- A. \$70,000
- B. \$30,000
- C. \$20,000
- D. Zero
- E. None of the above

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Question #: 30

Question S-30 (1 point).

TP owned unimproved land which she purchased 10 years ago. TP's adjusted basis in the land was \$20,000. On April 1, Year 1, TP donated the land to a qualified charitable organization. At the time of the donation, the fair market value of the land was \$70,000. In Year 1, TP's adjusted gross income is \$100,000.

What is the amount of charitable donation that will carryforward?

- A. \$70,000
- B. \$40,000
- C. \$20,000
- D. Zero
- E. None of the above

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Question #: 31

Questions S-31 through S-32 involve the same fact pattern. Question S-31 is 1 point and S-32 is 2 points. The following fact pattern will apply to each question (and will be repeated for each question).

TP owned unimproved land. TP's adjusted basis in the land was \$120,000. On September 21, 2024, the fair market value of the land was \$200,000. TP sold the land to her niece for \$80,000. TP purposely sold the land for less than its fair market value because she wanted to make a partial gift to the niece. TP paid no federal gift tax. On December 21, 2024, the niece sold the land to an unrelated party for \$140,000.

You will be asked the following multiple-choice questions for this fact pattern:

S-31 Quantify the gain or loss recognized by TP for federal income tax purposes on account of the transaction with the niece.

S-32 Quantify the gain or loss recognized by the niece on her December 21 sale.

Question S-31 (1 point). What is the gain or loss recognized by TP for federal income tax purposes on account of the transaction with the niece?

- A. \$80,000 Gain
- B. (\$40,000) Loss
- C. No gain or loss
- D. None of the above

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Question #: 32

Question S-32 (2 points).

TP owned unimproved land. TP's adjusted basis in the land was \$120,000. On September 21, 2024, the fair market value of the land was \$200,000. TP sold the land to her niece for \$80,000. TP purposely sold the land for less than its fair market value because she wanted to make a partial gift to the niece. TP paid no federal gift tax. On December 21, 2024, the niece sold the land to an unrelated party for \$140,000.

What is the gain or loss recognized by the niece on her December 21 sale of the unimproved land?

- A. \$140,000 Gain
- B. \$60,000 Gain
- C. \$20,000 Gain
- D. (\$60,000) Loss
- E. None of the above

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Question #: 33

Question S-33 (2 points). What is the “sleep or rest rule” and when is it used?

Question #: 34

Question S-34 (14 points; 2 points for each part). In 2024, Corporation was created with a capitalization of 400 shares of common voting stock. In the initial capitalization, A exchanged unimproved land (which A held as an investment and A was not a dealer in real estate at any time) for 250 shares of Corporation common voting stock. A's adjusted basis in the land was \$120,000, and the fair market value of the land was \$250,000. A had owned the land for two years. B exchanged \$100,000 cash for 100 shares of Corporation common voting stock. C exchanged services for 50 shares of Corporation common voting stock. The fair market value of C's services was \$50,000.

1. Describe the tax results to A (gain or loss recognized on the exchange, A's basis and holding period in the Corporation stock) assuming that the transaction **does** qualify for nonrecognition under § 351.
 2. Describe the tax results to A (gain or loss recognized on the exchange, A's basis and holding period in the Corporation stock) assuming that the transaction **does not** qualify for nonrecognition under § 351.
 3. Describe the tax results to B (gain or loss recognized on the exchange, B's basis and holding period in the Corporation stock) assuming that the transaction **does** qualify for nonrecognition under § 351.
 4. Describe the tax results to B (gain or loss recognized on the exchange, B's basis and holding period in the Corporation stock) assuming that the transaction **does not** qualify for nonrecognition under § 351.
 5. Describe the tax results to C (gain or loss recognized on the exchange, C's basis and holding period in the Corporation stock) assuming that the transaction **does** qualify for nonrecognition under § 351.
 6. Describe the tax results to C (gain or loss recognized on the exchange, C's basis and holding period in the Corporation stock) assuming that the transaction **does not** qualify for nonrecognition under § 351.
 7. Does Corporation's tax result depend on whether the capitalization qualifies for nonrecognition under § 351? Explain why or why not.
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Question #: 35

Question S-35 (10 points; 2 points for each part). TP, Spouse, and B are equal shareholders of Corporation Inc. Each person owns 200 shares of Corporation Inc. voting common stock and that is Corporation Inc.'s only outstanding stock. TP and Spouse are married. On September 1, Year 1, Corporation Inc. distributed Blackacre (unimproved land) to TP in redemption of 50 shares of TP's voting common stock. The fair market value of Blackacre was \$100,000, and Corporation Inc.'s adjusted basis in Blackacre at the time of the redemption was \$60,000. Corporation Inc. has well over \$5,000,000 in accumulated earnings and profits. TP's adjusted basis in the 50 shares of redeemed stock was \$30,000. After the redemption, TP had 150 shares of Corporation Inc. voting common stock.

1. Does the September 1st redemption qualify as an exchange? Explain your answer.
2. Assuming the redemption qualifies as an exchange, what are the tax consequences to TP?
3. Assuming the redemption does not qualify as an exchange, what are the tax consequences to TP?
4. Assuming the redemption qualifies as an exchange, what are the tax consequences to Corporation Inc.?
5. Assuming the redemption does not qualify as an exchange, what are the tax consequences to Corporation Inc.?

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Question #: 36

Question S-36 (4 points). Golden Partners is a partnership, one of whose partners is Melanie Mason. Golden Partners contributed a parcel of real property to a proper donee, in a transfer that qualifies for a charitable contribution deduction. Golden Partners received the parcel, two years previously, from Melanie. Golden Partners is not a dealer in real property; Melanie is a dealer in real property. At the time Golden Partners contributed the parcel to the donee, the parcel had a fair market value of \$1,000,000 and Golden Partners had an adjusted basis in the parcel of \$700,000. What is the amount of the charitable contribution that may be properly reported on Golden Partners' Form 1065 for the year of the contribution on account of the contribution of this parcel? Explain your answer.

Question #: 37

Question S-37 (2 points; 1 point for each part). In which of the following situations does the “reasonable cause and good faith” penalty defense potentially apply?

1. When the deficiency is attributable to a gross valuation overstatement;
 2. When the deficiency is attributable to a transaction lacking economic substance.
-

Question #: 38

Question S-38 (3 points). TP is a 40% shareholder in Small Corporation Inc. Small Corporation Inc. has elected to be taxed as an S Corporation. Deborah is the only other shareholder in Small Corporation Inc. (thus, she is a 60% shareholder in the corporation). Unbeknownst to TP, for several years, Deborah was making unauthorized distributions to herself and, when she did, she did not distribute anything to TP. TP would like to argue that those unauthorized distributions terminated Small Corporation Inc.’s S Corporation status. What is TP’s best argument for this contention and will it work?

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Question #: 39

Question S-39 (5 points; 3 points for part (a) and 2 points for part (b)). Flora, a citizen and resident of the United States, died in Year 6. Flora’s taxable estate is large enough that there will be federal estate tax liability. Explain the federal gift tax and estate tax significance, if any, of the following events:

1. On February 1 of Year 5, Flora made a gift to her son Roger of \$9000 in cash. On March 1 of Year 5, Roger transferred \$8000 cash to Flora in return for which Flora executed and provided to Roger a non-interest-bearing, unsecured promissory note evidencing her commitment to repay the \$8000 to Roger on January 2 of Year 7. No payment on the note had been made as of the date of Flora’s death.
2. On July 1 of Year 5, Flora wrote a letter to her church (a long established and recognized church) stating Flora’s commitment to make a \$10,000 gift to the church on or before March 1 of Year 7. The church gave no consideration for Flora’s commitment. As of the date of her death, Flora had paid no part of the \$10,000 to the church.

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Question #: 40

Question LE-1 (3 points). Immediately prior to this morning's Calendar Call, A, a practitioner admitted to practice before the Tax Court, filed a Limited Entry of Appearance with the Court on behalf of Carmelita Milton. A's agreement with Carmelita is limited to standing up with Carmelita to move for a continuance and discussing with IRS counsel and Carmelita how Carmelita B might substantiate the deductions that are at issue in the proceeding. At the end of the day, A filed a Notice of Completion. Can the IRS counsel attorney assigned to Carmelita's case communicate directly with Carmelita going forward?

Question #: 41

Question LE-2 (3 points). A notice of deficiency was issued to Adrian Iuno with respect to Adrian's tax return for 2022. Adrian timely filed a Tax Court petition and then asked B, who had prepared Adiran's return, to represent Adrian in the case. Can B represent Adrian?

Question #: 42

Question LE-3 (2 points). Beverly and Isiah are currently undergoing an amicable divorce. An audit of their joint tax return for 2022 has resulted in a substantial deficiency. Can lawyer C represent both Beverly and Isiah in Tax Court?

Question #: 43

Question LE-4 (3 points). D is a partner in the Chicago office of BigLaw, a law firm with approximately 2000 attorneys in multiple offices. D's law partner, E, with whom D has no professional or personal relationship, lives and works in Dallas. In the past, E provided tax planning services to Sawyer and Sawyer's wholly owned company; E has not spoken to Sawyer for several years. Sawyer's ex-wife, Patty, now lives in Chicago and has asked D to represent her in a Tax Court proceeding involving Sawyer and Patty's (pre-divorce) joint income tax return. Sawyer will have separate counsel. Can D accept the representation? Explain your answer.

Question #: 44

Question LE-5 (3 points). F represents Edith Marge, the majority shareholder of a Hats, Inc., a family-owned corporation, in a Tax Court proceeding. The IRS has asserted that a large payment from Hats to Edith was taxable as a dividend. F's position that the payment was a nontaxable loan. Edith plans to testify that she regularly paid interest to Hats on the "loan." After a sleepless night on the eve of trial, Edith tells F that, in fact, the corporation had regularly reimbursed her, in cash, for her interest payments so that Edith was never out of pocket for "interest" payments. What are F's obligations to the Court? Can F continue to represent Edith in the proceeding?

Question #: 45

Question LE-6 (2 points). Smith of New York, Inc. has asked G to represent it on a contingent fee basis in a Tax Court proceeding in which the asserted deficiency is \$1,000,000 (\$1 million dollars). On behalf of Smith, CEO John Truesdale and G would agree in writing that G's fee would be 30% of Smith's savings. Thus, if G were able to resolve the matter with no (zero) deficiency, her fee would be \$300,000. Is such a fee arrangement permitted by the Tax Court?

Question #: 46

Question LE-7 (2 points). H has a very busy tax controversy practice. To save time, H asks his clients to "give him a number" on which they would agree to settle their Tax Court cases so that H need not spend time calling each client to discuss any settlement offers H might receive. H receives an offer from IRS counsel to settle Olivia Haroldson's case for less than Olivia's number. Can H agree to settle and sign the stipulation of settled issues for the lesser amount without contacting Olivia? Would your answer change if IRS counsel offered more than Olivia's number?

Question #: 47

Question LE-8 (3 points). I represents QRS Partnership in a Tax Court proceeding in which the issue is whether limited partners who were actively involved in the partnership's business were subject to self-employment tax. I's argument in the case is contrary to the Tax Court's opinion in a similar case that was recently decided by the Court. At the time I files a post-trial brief, there is no direct authority in any appellate court. Three months later, however, the Court of Appeals for the First Circuit issues a decision affirming the Tax Court's

holding. QRS's case is appealable to the Fifth Circuit Court of Appeals. What are I's obligations, if any, with respect to the Tax Court?

Question #: 48

Question LE-9 (3 points). J, a solo practitioner, is very busy and has lost patience with his client, Damian Martelli, who rarely returns phone calls, misses meetings, and invariably pays his legal bills only if he is nudged by J. J has therefore decided that another lawyer, who has a lighter caseload and more patience than J, should take over Damian's Tax Court case. With Damian's agreement, J contacted K, who agreed to take over the case on the same financial terms. J kept IRS counsel informed throughout his discussions with Damian and K, and K contacted IRS counsel directly to begin working with them. Is J relieved from his duties in Damian's case? Why or why not?

Session Two

Practice & Procedure and Evidence

Question #: 1

Question P-1 (3 points). In Year 1, TP submitted a request to the IRS to issue a private letter ruling (“PLR”) favorable to TP’s intended tax reporting of a contemplated transaction. Nearly ten months later, the IRS notified TP that it intended to issue an adverse, not favorable, PLR. Three weeks later still, the IRS issued the adverse PLR, after redacting TP identifying material and other confidential information. Forty days after issuance of the adverse PLR, TP filed a petition with the Tax Court, asking the Court to (1) prohibit the IRS from disclosing the redacted PLR to any IRS employees not involved in consideration of the PLR request and (2) prohibit the IRS from releasing the redacted PLR to any private organization. The IRS moved for summary judgment against the TP as to the issue whether the Court should order withholding from publication of the entire PLR. How should the Tax Court rule on the IRS’s motion? Why?

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Question #: 2

Question P-2 (4 points, 2 points for each part). The IRS issued a notice of deficiency to Adam, determining a deficiency of \$35,000 for the sole year involved. Adam filed a timely Tax Court petition. The petition did not designate the case as an S Case. The Chief Judge assigned the case to a Special Trial Judge. After trial, the Special Trial Judge was satisfied that both the facts of the case and the governing law are clear. Accordingly, immediately after trial, the Special Trial Judge orally stated findings of fact and an opinion resolving the case in favor of the IRS. In due time, decision was entered and became final. Thereafter, the following events occurred:

(a) Adam failed to pay the resulting deficiency. The IRS notified Adam of its intent to levy on Adam’s assets. Adams sought Collection Due Process (“CDP”) relief, arguing in part that the oral opinion did not constitute a binding decision. Should Adam’s argument prevail? Why or why not?

(b) A Tax Court case also arose between Eve and the IRS. Eve and Adam are unrelated. The issue in Eve’s case was essentially identical to the issue in Adam’s case. In its post-trial brief in Eve’s case, the IRS cited the Court’s decision in Adam’s case as a precedent adverse to Eve. Did the IRS do so properly? Why or why not?

Question #: 3

Question P-3 (4 points, 2 points for each part). In Year 1, the IRS issued to TP a notice of filing of a tax lien with respect to TP's substantial unpaid federal tax liabilities. TP timely requested a Collection Due Process ("CDP") hearing with the IRS Independent Office of Appeals. At the outset of the hearing, TP submitted an offer-in-compromise ("OIC") to the assigned Settlement Officer ("SO"). The SO forwarded the offer to an IRS Collection Division collection specialist. Nine months after TP submitted the offer, the collection specialist informed TP by letter that the specialist's file on the matter had been closed and that the offer was being returned to TP as non-processable. TP urged the Appeals Office to overturn the collection specialist's action. Thirty months after TP submitted the offer, the Appeals Office issued a notice of determination upholding the collection specialist's decision and the IRS's tax lien notice. TP timely petitioned the Court for review of the notice of determination. TP argued that, as a matter of law, TP's OIC should be held to have been accepted.

(a) Cite and explain the statute that TP may use to argue that the OIC should be held to have been accepted.

(b) State whether the Court will agree with TP's argument and why or why not.

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Question #: 4

Question P-4 (3 points). Explain the differences between the following types of Tax Court opinions: (a) division opinions, (b) memorandum opinions, and (c) summary opinions.

Question #: 5

Question P-5 (5 points). At all relevant times, A and B were and remain married to each other. The IRS received a Form 1040 for Year 1 bearing the signatures of both A and B. The IRS examined the return, concluded that the return understated tax owed for the year (all of the understatement resulting from return items attributable to A), and issued a notice of deficiency to A and B jointly.

A and B filed separate petitions with the Court. One of the allegations in B's petition was that she is entitled to relief under §6015(b) from any deficiency for the year in question. B's petition did not deny that A and B had filed a joint return for the year.

At trial, B testified that A coerced her to sign the Form 1040, that she was unable to resist this coercion, and that, but for this coercion, she would not have signed the

Form 1040. Counsel for the IRS cross examined B with respect to this testimony and did not object to the admissibility of any portion of B's testimony. After B's testimony concluded, B's attorney moved to amend B's petition to raise the issue that B is not liable for the deficiency because the Form 1040 filed for the year did not constitute a joint return. Counsel for the IRS objected to this motion. Discuss the principles that the Court should consider in ruling on this motion and state how the Court should rule on this motion.

Question #: 6

Question P-6 (3 points, 1.5 points for each part).

- (a) Describe the doctrine of judicial estoppel.
 - (b) State when the doctrine of judicial estoppel may be applied by the Court and when it may not be applied.
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Question #: 7

Question P-7 (4 points, one point for each part). State which party —TP or the IRS— in a §6015(c) case bears the burden of proof as to the following issues: (a) whether the §6015(c) election was timely made, (b) whether the electing person had actual knowledge of the item giving rise to the tax deficiency, (c) whether assets were transferred between the spouses as part of a fraudulent scheme, and (d) proving the portions of the total deficiency allocable to each spouse or former spouse.

Question #: 8

Question P-8 (2 points). The notice of deficiency determined that TP is liable for a deficiency and a §6662 penalty for the tax year at issue. TP filed a timely petition with the Court. The petition assigned error to the deficiency determination but did not separately assign error to the penalty determination. What burdens of production or burdens of proof must the IRS bear at trial as to the penalty?

Question #: 9

Question P-9 (2 points). The IRS issued a notice of deficiency to TP as to federal income tax for Year 1. The notice of deficiency determined three adjustments, all involving disallowance of deductions claimed on TP's income tax return for Year 1. The notice did not calculate interest due on the putative deficiency. The IRS did not assess the putative Year 1 deficiency or interest with respect to it.

TP filed a timely petition with the Court. TP's petition (1) conceded two of the three adjustments set out in the notice of deficiency, (2) assigned error to the third adjustment, and (3) contested TP's liability for interest as to any Year 1 deficiency. Does the Court have jurisdiction to consider the issue as to liability for interest raised in TP's petition? Why or why not?

Question #: 10

Question P-10 (3 points). Acting pro se, TP timely filed a petition with the Court challenging determinations in a notice of deficiency. Later, TP hired an attorney to handle the case. The attorney advised TP that the Court of Federal Claims and Federal Circuit have more taxpayer-favorable precedents on the sole issue in the case than does the Tax Court. Accordingly, well before the Court calendared the case for trial, TP paid the full amount at issue in the case. TP then filed a motion to dismiss his Tax Court case. How should the Court rule on TP's motion? Why?

Question #: 11

Question P-11 (4 points, 2 points for each part). TP filed her federal income tax return for Year 1 on March 1 of Year 2. On July 1 of Year 3, the IRS issued a notice of deficiency to TP, mailing it to TP's last known address. This notice of deficiency disallowed Year 1 business deductions claimed by TP. It did not assert any penalties. TP did not timely file a Tax Court petition challenging the July 1 notice of deficiency.

On October 20 of Year 3, the IRS issued a second notice of deficiency to TP with respect to TP's Year 1 income taxes. The October 20 notice disallowed charitable contribution deductions claimed on TP's Year 1 return. On November 15 of Year 3, TP filed a Tax Court petition.

(a) Was the IRS permitted to issue the October 20 notice of deficiency? Why or why not?

(b) In the case resulting from TP's November 15 petition, will TP be able to contest only the IRS's disallowance of the charitable contribution deductions? Or may TP contest the IRS's disallowance of both the business expense deductions *and* the charitable contribution deductions?

Question #: 12

Question P-12 (2 points). State whether the following statement is accurate. "In general, if TP is eligible for Collection Due Process ("CDP") review in the Tax Court and timely elects such review, the IRS may not levy on TP's assets during the pendency of such review. However, levy may be made if the underlying tax liability is not at issue and the Court determines that the IRS has shown good cause to

proceed with levy.” If the statement is inaccurate in whole or in part, describe the inaccuracy.

Question #: 13

Question P-13 (1 point). State whether a Tax Court decision entered on the basis of a stipulated agreement (rather than a decision entered after trial and briefing) has res judicata effect for the tax years in the stipulated agreement.

Question #: 14

Question P-14 (2 points). The IRS issued a notice of deficiency to TP. Among the adjustments determined in the notice was disallowance of an income tax deduction claimed on TP’s return on account of payments TP allegedly made to Robert Roy, an unrelated party. TP timely filed a petition with the Court challenging all determinations in the notice of deficiency. The IRS filed an answer to TP’s petition.

If the case goes to trial, TP intends to call Robert Roy as a witness to describe the nature of the services Robert provided to TP. However, Robert frequently engages in sky diving and scuba diving. TP fears that Robert may perish or be seriously injured in high-risk activities before TP’s case comes to trial in the Court, rendering Robert’s potential testimony unavailable.

Accordingly, TP filed an application with the Court to authorize TP to take Robert’s deposition, not for discovery but to perpetuate Robert’s testimony should he become unavailable to testify at trial. Discuss principal rules and requirements the Court should consider in ruling on this application.

Question #: 15

Question P-15 (4 points). Describe the legal principles that apply to determine whether TP filed a valid federal income tax return when (1) TP’s name has been signed on the signature line of the alleged return but (2) TP maintains that neither she nor a representative authorized by her signed her name on the signature line.

Question #: 16

Question P-16 (2 points). Describe the powers, if any, of the Court to punish conduct constituting contempt of its authority.

Question #: 17

Question P-17 (1 point). Describe the precedential or influential significance for the Court of decisions rendered by the Board of Tax Appeals.

Question #: 18

Question P-18 (3 points, 1 point for part (a) and 2 points for part (b)).

(a) When properly transmitted to the Secretary of the Treasury and then to the Secretary of State, what is the significance of a certification by the IRS Commissioner that an individual has a seriously delinquent tax debt?

(b) In a proceeding properly before the Court, what principles will the Court use in determining whether an IRS certification that an individual has a seriously delinquent tax debt is erroneous?

Question #: 19

Question P-19 (3 points, 1 point for each part). Capital Partners (“CP”) is a partnership. Audit of and litigation as to items on CP’s Forms 1065 occur under the procedures established by the Bipartisan Budget Act of 2015. The IRS issued a notice of final partnership adjustment as to CP’s Year 1 Form 1065. A timely petition challenging the determinations in the notice was timely filed with the Court. The Court has jurisdiction to determine which of the following?

(a) all partnership-related items for CP’s Year 1,

(b) the proper allocation of CP’s Year 1 partnership-related items to the partners in CP, and

(c) the applicability of penalties for which the partners may be liable with respect to Year 1.

Question #: 20

Question P-20 (2 points). The Court will uphold use of the net worth method in order to reconstruct a TP’s income as long as certain safeguards are present. Describe some of those safeguards.

Question #: 21

Question P-21 (3 points, 1 point for part (a) and 2 points for part (b)). Which, if either, of the following may suffice to establish the applicability of §6663 penalties determined in a notice of deficiency?

- (a) Affirmative allegations in the IRS's answer deemed to have been admitted pursuant to Tax Court Rule 37 when the IRS filed a timely Rule 37(c) motion and TP did not file a reply within the time directed by the Court.
 - (b) Matters deemed to have been admitted by TP pursuant to Tax Court Rule 90.
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Question #: 22

In the Questions in this Part, the specific grounds for the evidentiary objections made sometimes are stated. When the specific grounds are not stated, consider and discuss all grounds for the objection that may plausibly apply. Grounds which patently do not apply need not be discussed.

Question E-1 (5 points). Paragon Corporation is a C corporation. Rayna Rutter is Paragon's sole shareholder and also is the key person directing Paragon's business operations. The IRS issued a notice of deficiency disallowing some of the deductions claimed on Paragon's federal income tax return for a particular year. Paragon timely filed a petition with the Court challenging all determinations in the notice of deficiency.

One of the deductions disallowed by the IRS was a § 162 deduction on account of \$4000 purportedly spent on advertising Paragon's products. At trial, Rayna testified that Paragon had paid the \$4000 in the year at issue to Big Splash Advertising Agency for work on Paragon ads to be placed in various trade publications. Paragon offered no invoices, checks, or other documentary proof of the alleged payment to Big Splash, and no one associated with Big Splash testified.

On cross examination, counsel for the IRS asked Rayna why no such documentary proof had been offered. Rayna replied, "Well, I know we have the invoice and our check somewhere in our company's records and files, but I don't have them here today. Nonetheless, I have a very clear recollection of that transaction, and I know we spent \$4000 for that advertising." Discuss the principles the Court should consider in determining whether TP has provided sufficient evidence in support of the claimed advertising expense deduction.

Question #: 23

Question E-2 (5 points). This Question concerns a hypothetical election (the "Election") that the applicable Treasury Regulations require that a TP make on an attachment to TP's income tax return for the year. An issue in a case before the Court is whether TP properly made the Election. The IRS maintains that it never

received any return from TP for the tax year in question, thus that the Election was not properly made. At trial, TP seeks to introduce as an exhibit (the Exhibit”) an unsigned copy of a return for the year, including an attachment purporting to make the Election. TP testifies that he prepared, signed, and duly filed with the IRS the return for the year with the attached Election. She further testifies that she photocopied the return and the election before she signed the return. The IRS objects to introduction into evidence of the Exhibit on the grounds that it is not relevant and that is neither the original nor an exact duplicate of the purported return and Election. How should the Court rule on the IRS’s objection?

Question #: 24

Question E-3 (3 points). On direct examination by his lawyer, TP gave a number of answers that were unclear, confusing, and potentially contradictory. Counsel for the IRS waived cross examination. The Court’s Special Trial Judge presiding over the trial began to ask TP questions following up on the unclear or confusing answers. TP’s counsel objected that the judge’s questioning of TP was unfair, was prejudicial to TP’s statutory and constitutional rights, and exceeded the judge’s proper role. Discuss the relevant law governing whether the objection should be upheld or overruled.

Question #: 25

Question E-4 (4 points). The principal issue in a trial before the Court is whether TP’s income tax return failed to report substantial items of taxable income. Counsel for the IRS calls as a witness the Revenue Agent conducting the audit in order to explain the indirect method of proof she used to determine the deficiency. TP’s counsel objects to the testimony on the ground that the Revenue Agent had not been qualified as an expert on tax law. How should the Court rule on this objection? Why?

Question #: 26

Question E-5 (3 points). The value of Property X as of a given date was among the issues in TP’s case in the Court. Mr. Smith and Ms. Jones are both highly regarded experts as to the value of assets such as Property X. TP retained Mr. Smith to render an opinion as to the value of Property X. Smith’s written report was served on the IRS and submitted to the Court 40 days before the calendar call of the case, and Smith’s report was admitted into evidence. The IRS retained Ms. Jones, but she prepared no written report. Nonetheless, the IRS called Jones to testify at trial as to purported errors in Smith’s report. TP objected to the calling of Jones as a witness. How should the Court rule on the objection? Why?

Question #: 27

Question E-6 (5 points). The notice of deficiency determined that TP had substantial unreported taxable income. TP filed a petition with the Court challenging the determinations in the notice of deficiency. Among other contentions, TP maintained that the IRS's determination that TP had substantial unreported taxable income was arbitrary and capricious. The case went to trial.

As part of its case, the IRS offered evidence consisting of an out-of-court statement by a third party which tended to suggest that, in the tax year at issue, TP had \$20,000 of business receipts not appearing on TP's income tax return. TP objected to admission of the evidence. Counsel for the IRS responded to the objection by arguing that the evidence was offered only to show that a reasonable basis existed for the IRS's determination. How should the Court rule on TP's objection?

Question #: 28

Question E-7 (4 points, 2 points for each part). Assume that the value of a parcel of real property is germane in a particular Tax Court case. At trial, TP's counsel calls James, the owner of the parcel as of the relevant date, to elicit James' testimony as to the fair market value of the parcel as of that date. On voir dire, James testifies that he is not a professional appraiser, has taken no training or courses in valuation, and has never before testified as to the value of his parcel or any other item of property. Accordingly, counsel for the IRS objects to James being allowed to testify as to the value of the parcel.

(a) How should the Court rule on this objection?

(b) Regardless of how you answered part (a), assume that the Court sustained the objection. If TP's counsel considers James' testimony as to the value of the property to be important, what action should TP's counsel take next?

Question #: 29

Question E-8 (4 points). The IRS issued a notice of deficiency to Kwame Jones with respect to his Year 1 federal income tax return. Kwame timely filed a Tax Court petition, and the case went to trial. The issues include the allowability of various business expense deductions claimed on the return. The claimed deductions did not include expenses as to travel, gifts, or listed property. Kwame maintained only fragmentary books and records. He offered his testimony at trial in defense of the claimed deductions.

During his testimony, Kwame acknowledged that, before the trial, he met at least three times with an experienced, well regarded professional hypnotist in order to sharpen his recollection of events to which he would testify. He was placed under

hypnosis each time. The meetings were not recorded nor were transcripts or notes of them made and retained.

The IRS moved to strike Kwame's testimony. Discuss the legal principles the Court should consider with respect to this objection.

Question #: 30

Question E-9 (6 points, 3 points each part). At the start of trial, counsel for the IRS requested the Court to exclude witnesses from the courtroom until they testified. TP's counsel did not object, and the Court ordered such exclusion.

(a) After witnesses had left the courtroom pursuant to the Court's direction, TP's counsel noticed that IRS Revenue Agent Brown had not departed. The IRS had listed Brown as a witness to be called. TP's counsel asked the Court to direct Brown to leave until she was called to testify. How should IRS counsel respond so that Brown could remain in the courtroom as other witnesses testified without imperiling Brown's ability to testify?

(b) Another witness the IRS intended to call to testify is Dr. Cutler. Cutler left the courtroom when the Court ordered exclusion of the witnesses. Thereafter, as trial progressed, TP called Professor Hill as a witness. Hill had prepared an exhibit to clarify his testimony. This exhibit was admitted into evidence by the Court as Exhibit 12. During lunch recess, IRS counsel showed Exhibit 12 to Dr. Cutler. Cutler testified later that day. Did the IRS violate the Court's exclusion order? Why or why not?

Question #: 31

Questions E-10 and E-11 are based on the following facts (they will be repeated for Question E-11):

The value of certain stock warrants is at issue in a Tax Court case. TP and the IRS filed a Stipulation for Trial pursuant to Tax Court Rule 91. The Stipulation included passages from several books and articles written by Ada Holtz describing best practices for valuation of stock warrants. TP stipulated to the authenticity of the passages but reserved the right to object to admission of the passages into evidence on the ground that they were hearsay. At trial, the IRS offered the passages into evidence. TP objected that the passages were hearsay. No testimony was taken as to the matter.

Question E-10 (4 points). One of the grounds on which the IRS opposed TP's objection was that the books and articles constitute learned treatises. Evaluate the adequacy of this ground.

Question #: 32

The value of certain stock warrants is at issue in a Tax Court case. TP and the IRS filed a Stipulation for Trial pursuant to Tax Court Rule 91. The Stipulation included passages from several books and articles written by Ada Holtz describing best practices for valuation of stock warrants. TP stipulated to the authenticity of the passages but reserved the right to object to admission of the passages into evidence on the ground that they were hearsay. At trial, the IRS offered the passages into evidence. TP objected that the passages were hearsay. No testimony was taken as to the matter.

Question E-11 (4 points). The IRS also opposed TP's objection by requesting the Court to judicially notice the passages quoted from the books and articles. Should the Court grant this request? Why or why not?

Question #: 33

Question E-12 (5 points). Jim, Charles, and Robert (unrelated individuals) were equal partners in JCR Partners ("JCR"), a limited partnership engaged in developing and selling real estate. Jim was the sole general partner of JCR. Jim prepared all of JCR's books and records. The IRS issued a notice of deficiency to Jim in his personal capacity, not as a representative of JCR. The notice determined that Jim had unreported taxable income for the year at issue. Jim filed a timely petition with the Court. At trial, the IRS sought to introduce into evidence some of JCR's books and records that the IRS obtained from JCR's business premises pursuant to a search warrant. Jim objected on the ground that admission of the books and records into evidence would violate his Fifth Amendment right against self-incrimination. How should the Court rule on this objection? Why?

Question #: 34

Question E-13 (4 points). The IRS issued a gift tax notice of deficiency to Janis with respect to Year 1. Janis filed a timely petition with the Court. The key issue in the case was the fair market value of a membership interest in a limited liability company ("LLC"). Janis gave the membership interest to her niece on July 1 of Year 1. As part of her case, Janis sought to introduce into evidence an unaudited financial statement of the LLC for Year 2. The IRS objected. How should the Court rule on the objection? Why?

Question #: 35

Question E-14 (4 points). Whether the decedent had written an unsigned, handwritten document is at issue in an estate tax case before the Court. All words on the document were written in black ink. All numbers on the document were written in blue ink. The IRS called as a witness Todd Resnick. On direct examination by IRS counsel, Todd testified that the decedent always wrote words in black ink and numbers in blue ink. On cross examination by TP's counsel, Todd acknowledged that he barely knew the decedent and never had seen the decedent write anything. "But," Todd continued, "I was a close friend of decedent's spouse for decades, and she told me that the decedent always wrote words in black ink and numbers in blue ink." TP moved to strike Todd's testimony and objected to admission of the document into evidence on the ground that the IRS had failed to establish the authenticity of the document. Describe the principles the Court should consider in ruling on the motion and the objection.

Attachments

§ 165. Losses

(h) Treatment of casualty gains and losses.--

(1) Dollar limitation per casualty.-- Any loss of an individual described in subsection (c)(3) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds \$500 (\$100 for taxable years beginning after December 31, 2009).

(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income.--

(A) In general.-- If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum of--

- (i)** the amount of the personal casualty gains for the taxable year, plus
- (ii)** so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

(B) Special rule where personal casualty gains exceed personal casualty losses.-- If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year--

- (i)** all such gains shall be treated as gains from sales or exchanges of capital assets, and
- (ii)** all such losses shall be treated as losses from sales or exchanges of capital assets.

(3) Definitions of personal casualty gain and personal casualty loss.--For purposes of this subsection--

(A) Personal casualty gain.-- The term “personal casualty gain” means the recognized gain from any involuntary conversion of property which is described in subsection (c)(3) arising from fire, storm, shipwreck, or other casualty, or from theft.

(B) Personal casualty loss.-- The term “personal casualty loss” means any loss described in subsection (c)(3). For purposes of paragraph (2), the amount of any personal casualty loss shall be determined after the application of paragraph (1).

(4) Special rules.--

(A) Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains.-- In any case to which paragraph (2)(A) applies, the deduction for personal casualty losses for any taxable year shall be treated as a deduction allowable in computing adjusted gross income to the extent such losses do not exceed the personal casualty gains for the taxable year.

(B) Joint returns.-- For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as 1 individual.

(C) Determination of adjusted gross income in case of estates and trusts.-- For purposes of paragraph (2), the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

(D) Coordination with estate tax.-- No loss described in subsection (c)(3) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

(E) Claim required to be filed in certain cases.-- Any loss of an individual described in subsection (c)(3) to the extent covered by insurance shall be taken into account under this section only if the individual files a timely insurance claim with respect to such loss.

(5) Limitation for taxable years 2018 through 2025.--

(A) In general.-- In the case of an individual, except as provided in subparagraph (B), any personal casualty loss which (but for this paragraph) would be deductible in a taxable year beginning after December 31, 2017, and before January 1, 2026, shall be allowed as a deduction under subsection (a) only to the extent it is attributable to a Federally declared disaster (as defined in subsection (i)(5)).

(B) Exception related to personal casualty gains.-- If a taxpayer has personal casualty gains for any taxable year to which subparagraph (A) applies--

(i) subparagraph (A) shall not apply to the portion of the personal casualty loss not attributable to a Federally declared disaster (as so defined) to the extent such loss does not exceed such gains, and

(ii) in applying paragraph (2) for purposes of subparagraph (A) to the portion of personal casualty loss which is so attributable to such a disaster, the

amount of personal casualty gains taken into account under paragraph (2)(A) shall be reduced by the portion of such gains taken into account under clause (i).

§ 108. Income from discharge of indebtedness

(a) Exclusion from gross income.--

(1) In general.-- Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if--

- (A)** the discharge occurs in a title 11 case,
- (B)** the discharge occurs when the taxpayer is insolvent,
- (C)** the indebtedness discharged is qualified farm indebtedness,
- (D)** in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or
- (E)** the indebtedness discharged is qualified principal residence indebtedness which is discharged--

(i) before January 1, 2026, or

(ii) subject to an arrangement that is entered into and evidenced in writing before January 1, 2026....

(3) Insolvency exclusion limited to amount of insolvency.-- In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent....

(d) Meaning of terms; special rules relating to certain provisions.--

(1) Indebtedness of taxpayer.-- For purposes of this section, the term “indebtedness of the taxpayer” means any indebtedness--

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) Title 11 case.-- For purposes of this section, the term “title 11 case” means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) Insolvent.-- For purposes of this section, the term “insolvent” means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is

insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge...

(e) General rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency).-- For purposes of this title--

(1) No other insolvency exception.-- Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) Income not realized to extent of lost deductions.-- No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) Adjustments for unamortized premium and discount.-- The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) Acquisition of indebtedness by person related to debtor.--

(A) Treated as acquisition by debtor.-- For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) Members of family.-- For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) Entities under common control treated as related.-- For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) Purchase-money debt reduction for solvent debtor treated as price reduction.-- If--

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur--

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

(6) Indebtedness contributed to capital.-- Except as provided in regulations, for purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital--

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

§ 170. Charitable, etc., contributions and gifts

(a) Allowance of deduction.--

(1) General rule.-- There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis.-- In the case of a corporation reporting its taxable income on the accrual basis, if--

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the fourth month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property.-- For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations.--

(1) Individuals.-- In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule.-- Any charitable contribution to--

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection

(c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (F),

(viii) an organization described in section 509(a)(2) or (3),

(ix) an agricultural research organization directly engaged in the continuous active conduct of agricultural research (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977) in conjunction with a land-grant college or university (as defined in such section) or a non-land grant college of agriculture (as defined in such section), and during the calendar year in which the contribution is made such organization is committed to spend such contribution for such research before January 1 of the fifth calendar year which begins after the date such contribution is made, or

(x) an organization described in section 501(c)(19) that is a federally chartered corporation,

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions.-- Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of--

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property.--

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset....

(d) Carryovers of excess contributions.--

(1) Individuals.--

(A) In general.-- In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the “contribution year”) exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers.-- In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

§ 170. Charitable, etc., contributions and gifts

(a) Allowance of deduction.--

(1) General rule.-- There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis.-- In the case of a corporation reporting its taxable income on the accrual basis, if--

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the fourth month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property.-- For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations.--

(1) Individuals.-- In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule.-- Any charitable contribution to--

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection

(c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (F),

(viii) an organization described in section 509(a)(2) or (3),

(ix) an agricultural research organization directly engaged in the continuous active conduct of agricultural research (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977) in conjunction with a land-grant college or university (as defined in such section) or a non-land grant college of agriculture (as defined in such section), and during the calendar year in which the contribution is made such organization is committed to spend such contribution for such research before January 1 of the fifth calendar year which begins after the date such contribution is made, or

(x) an organization described in section 501(c)(19) that is a federally chartered corporation,

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions.-- Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of--

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property.--

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset....

(d) Carryovers of excess contributions.--

(1) Individuals.--

(A) In general.-- In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the “contribution year”) exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers.-- In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

§ 170. Charitable, etc., contributions and gifts

(a) Allowance of deduction.--

(1) General rule.-- There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis.-- In the case of a corporation reporting its taxable income on the accrual basis, if--

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the fourth month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property.-- For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations.--

(1) Individuals.-- In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule.-- Any charitable contribution to--

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection

(c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (F),

(viii) an organization described in section 509(a)(2) or (3),

(ix) an agricultural research organization directly engaged in the continuous active conduct of agricultural research (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977) in conjunction with a land-grant college or university (as defined in such section) or a non-land grant college of agriculture (as defined in such section), and during the calendar year in which the contribution is made such organization is committed to spend such contribution for such research before January 1 of the fifth calendar year which begins after the date such contribution is made, or

(x) an organization described in section 501(c)(19) that is a federally chartered corporation,

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions.-- Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of--

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property.--

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset....

(d) Carryovers of excess contributions.--

(1) Individuals.--

(A) In general.-- In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the “contribution year”) exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers.-- In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

§ 1.1001-1 Computation of gain or loss.

(a) General rule. Except as otherwise provided in subtitle A of the Code, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained. The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value of any property (other than money) received. The fair market value of property is a question of fact, but only in rare and extraordinary cases will property be considered to have no fair market value. The general method of computing such gain or loss is prescribed by section 1001(a) through (d) which contemplates that from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by section 1011 and the regulations thereunder (*i.e.*, the cost or other basis adjusted for receipts, expenditures, losses, allowances, and other items chargeable against and applicable to such cost or other basis). The amount which remains after the adjusted basis has been restored to the taxpayer constitutes the realized gain. If the amount realized upon the sale or exchange is insufficient to restore to the taxpayer the adjusted basis of the property, a loss is sustained to the extent of the difference between such adjusted basis and the amount realized. The basis may be different depending upon whether gain or loss is being computed. For example, see section 1015(a) and the regulations thereunder. Section 1001(e) and paragraph (f) of this section prescribe the method of computing gain or loss upon the sale or other disposition of a term interest in property the adjusted basis (or a portion) of which is determined pursuant, or by reference, to section 1014 (relating to the basis of property acquired from a decedent), section 1015 (relating to the basis of property acquired by gift or by a transfer in trust), or section 1022 (relating to the basis of property acquired from certain decedents who died in 2010).....

(e) Transfers in part a sale and in part a gift.

(1) Where a transfer of property is in part a sale and in part a gift, the transferor has a gain to the extent that the amount realized by him exceeds his adjusted basis in the property. However, no loss is sustained on such a transfer if the amount realized is less than the adjusted basis. For the determination of basis of property in the hands of the transferee, see § 1.1015-4. For the allocation of the adjusted basis of property in the case of a bargain sale to a charitable organization, see § 1.1011-2.

(2) Examples. The provisions of subparagraph (1) may be illustrated by the following examples:

Example 1. A transfers property to his son for \$60,000. Such property in the hands of A has an adjusted basis of \$30,000 (and a fair market value of \$90,000). A's gain is \$30,000, the excess of \$60,000, the amount realized, over the adjusted basis, \$30,000. He has made a gift of \$30,000, the excess of \$90,000, the fair market value, over the amount realized, \$60,000.

Example 2. A transfers property to his son for \$30,000. Such property in the hands of A has an adjusted basis of \$60,000 (and a fair market value of \$90,000). A has no gain or loss, and has made a gift of \$60,000, the excess of \$90,000, the fair market value, over the amount realized, \$30,000.

Example 3. A transfers property to his son for \$30,000. Such property in A's hands has an adjusted basis of \$30,000 (and a fair market value of \$60,000). A has no gain and has made a gift of \$30,000, the excess of \$60,000, the fair market value, over the amount realized, \$30,000.

Example 4. A transfers property to his son for \$30,000. Such property in A's hands has an adjusted basis of \$90,000 (and a fair market value of \$60,000). A has sustained no loss, and has made a gift of \$30,000, the excess of \$60,000, the fair market value, over the amount realized, \$30,000.

§ 1.1015-4 Transfers in part a gift and in part a sale.

(a) General rule. Where a transfer of property is in part a sale and in part a gift, the unadjusted basis of the property in the hands of the transferee is the sum of—

(1) Whichever of the following is the greater:

(i) The amount paid by the transferee for the property, or

(ii) The transferor's adjusted basis for the property at the time of the transfer, and

(2) The amount of increase, if any, in basis authorized by section 1015(d) for gift tax paid (see § 1.1015-5).

For determining loss, the unadjusted basis of the property in the hands of the transferee shall not be greater than the fair market value of the property at the time of such transfer. For determination of gain or loss of the transferor, see § 1.1001-1(e) and § 1.1011-2. For special rule where there has been a charitable contribution of less than a taxpayer's entire interest in property, see section 170(e)(2) and § 1.170A-4(c).

(b) Examples. The rule of paragraph (a) of this section is illustrated by the following examples:

Example 1. If A transfers property to his son for \$30,000, and such property at the time of the transfer has an adjusted basis of \$30,000 in A's hands (and a fair market value of \$60,000), the unadjusted basis of the property in the hands of the son is \$30,000.

Example 2. If A transfers property to his son for \$60,000, and such property at the time of transfer has an adjusted basis of \$30,000 in A's hands (and a fair market value of \$90,000), the unadjusted basis of such property in the hands of the son is \$60,000.

Example 3. If A transfers property to his son for \$30,000, and such property at the time of transfer has an adjusted basis in A's hands of \$60,000 (and a fair market value of \$90,000), the unadjusted basis of such property in the hands of the son is \$60,000.

Example 4. If A transfers property to his son for \$30,000 and such property at the time of transfer has an adjusted basis of \$90,000 in A's hands (and a fair market value of \$60,000), the unadjusted basis of the property in the hands of the son is \$90,000. However, since the adjusted basis of the property in A's hands at the time of the transfer was greater than the fair market value at that time, for the purpose of determining any loss on a later sale or other disposition of the property by the son its unadjusted basis in his hands is \$60,000.

§ 1.1001-1 Computation of gain or loss.

(a) General rule. Except as otherwise provided in subtitle A of the Code, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained. The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value of any property (other than money) received. The fair market value of property is a question of fact, but only in rare and extraordinary cases will property be considered to have no fair market value. The general method of computing such gain or loss is prescribed by section 1001(a) through (d) which contemplates that from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by section 1011 and the regulations thereunder (*i.e.*, the cost or other basis adjusted for receipts, expenditures, losses, allowances, and other items chargeable against and applicable to such cost or other basis). The amount which remains after the adjusted basis has been restored to the taxpayer constitutes the realized gain. If the amount realized upon the sale or exchange is insufficient to restore to the taxpayer the adjusted basis of the property, a loss is sustained to the extent of the difference between such adjusted basis and the amount realized. The basis may be different depending upon whether gain or loss is being computed. For example, see section 1015(a) and the regulations thereunder. Section 1001(e) and paragraph (f) of this section prescribe the method of computing gain or loss upon the sale or other disposition of a term interest in property the adjusted basis (or a portion) of which is determined pursuant, or by reference, to section 1014 (relating to the basis of property acquired from a decedent), section 1015 (relating to the basis of property acquired by gift or by a transfer in trust), or section 1022 (relating to the basis of property acquired from certain decedents who died in 2010).....

(e) Transfers in part a sale and in part a gift.

(1) Where a transfer of property is in part a sale and in part a gift, the transferor has a gain to the extent that the amount realized by him exceeds his adjusted basis in the property. However, no loss is sustained on such a transfer if the amount realized is less than the adjusted basis. For the determination of basis of property in the hands of the transferee, see § 1.1015-4. For the allocation of the adjusted basis of property in the case of a bargain sale to a charitable organization, see § 1.1011-2.

(2) Examples. The provisions of subparagraph (1) may be illustrated by the following examples:

Example 1. A transfers property to his son for \$60,000. Such property in the hands of A has an adjusted basis of \$30,000 (and a fair market value of \$90,000). A's gain is \$30,000, the excess of \$60,000, the amount realized, over the adjusted basis, \$30,000. He has made a gift of \$30,000, the excess of \$90,000, the fair market value, over the amount realized, \$60,000.

Example 2. A transfers property to his son for \$30,000. Such property in the hands of A has an adjusted basis of \$60,000 (and a fair market value of \$90,000). A has no gain or loss, and has made a gift of \$60,000, the excess of \$90,000, the fair market value, over the amount realized, \$30,000.

Example 3. A transfers property to his son for \$30,000. Such property in A's hands has an adjusted basis of \$30,000 (and a fair market value of \$60,000). A has no gain and has made a gift of \$30,000, the excess of \$60,000, the fair market value, over the amount realized, \$30,000.

Example 4. A transfers property to his son for \$30,000. Such property in A's hands has an adjusted basis of \$90,000 (and a fair market value of \$60,000). A has sustained no loss, and has made a gift of \$30,000, the excess of \$60,000, the fair market value, over the amount realized, \$30,000.

§ 1.1015-4 Transfers in part a gift and in part a sale.

(a) General rule. Where a transfer of property is in part a sale and in part a gift, the unadjusted basis of the property in the hands of the transferee is the sum of—

(1) Whichever of the following is the greater:

(i) The amount paid by the transferee for the property, or

(ii) The transferor's adjusted basis for the property at the time of the transfer, and

(2) The amount of increase, if any, in basis authorized by section 1015(d) for gift tax paid (see § 1.1015-5).

For determining loss, the unadjusted basis of the property in the hands of the transferee shall not be greater than the fair market value of the property at the time of such transfer. For determination of gain or loss of the transferor, see § 1.1001-1(e) and § 1.1011-2. For special rule where there has been a charitable contribution of less than a taxpayer's entire interest in property, see section 170(e)(2) and § 1.170A-4(c).

(b) Examples. The rule of paragraph (a) of this section is illustrated by the following examples:

Example 1. If A transfers property to his son for \$30,000, and such property at the time of the transfer has an adjusted basis of \$30,000 in A's hands (and a fair market value of \$60,000), the unadjusted basis of the property in the hands of the son is \$30,000.

Example 2. If A transfers property to his son for \$60,000, and such property at the time of transfer has an adjusted basis of \$30,000 in A's hands (and a fair market value of \$90,000), the unadjusted basis of such property in the hands of the son is \$60,000.

Example 3. If A transfers property to his son for \$30,000, and such property at the time of transfer has an adjusted basis in A's hands of \$60,000 (and a fair market value of \$90,000), the unadjusted basis of such property in the hands of the son is \$60,000.

Example 4. If A transfers property to his son for \$30,000 and such property at the time of transfer has an adjusted basis of \$90,000 in A's hands (and a fair market value of \$60,000), the unadjusted basis of the property in the hands of the son is \$90,000. However, since the adjusted basis of the property in A's hands at the time of the transfer was greater than the fair market value at that time, for the purpose of determining any loss on a later sale or other disposition of the property by the son its unadjusted basis in his hands is \$60,000.

§ 302. Distributions in redemption of stock

(a) General rule.-- If a corporation redeems its stock (within the meaning of section 317(b)), and if paragraph (1), (2), (3), (4), or (5) of subsection (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.

(b) Redemptions treated as exchanges.--

(1) Redemptions not equivalent to dividends.-- Subsection (a) shall apply if the redemption is not essentially equivalent to a dividend.

(2) Substantially disproportionate redemption of stock.--

(A) In general.-- Subsection (a) shall apply if the distribution is substantially disproportionate with respect to the shareholder.

(B) Limitation.-- This paragraph shall not apply unless immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock entitled to vote.

(C) Definitions.-- For purposes of this paragraph, the distribution is substantially disproportionate if--

(i) the ratio which the voting stock of the corporation owned by the shareholder immediately after the redemption bears to all of the voting stock of the corporation at such time,

is less than 80 percent of--

(ii) the ratio which the voting stock of the corporation owned by the shareholder immediately before the redemption bears to all of the voting stock of the corporation at such time.

For purposes of this paragraph, no distribution shall be treated as substantially disproportionate unless the shareholder's ownership of the common stock of the corporation (whether voting or nonvoting) after and before redemption also meets the 80 percent requirement of the preceding sentence. For purposes of the preceding sentence, if there is more than one class of common stock, the determinations shall be made by reference to fair market value.

(D) Series of redemptions.-- This paragraph shall not apply to any redemption made pursuant to a plan the purpose or effect of which is a

series of redemptions resulting in a distribution which (in the aggregate) is not substantially disproportionate with respect to the shareholder.

(3) Termination of shareholder's interest.-- Subsection (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.

(4) Redemption from noncorporate shareholder in partial liquidation.-- Subsection (a) shall apply to a distribution if such distribution is--

(A) in redemption of stock held by a shareholder who is not a corporation, and

(B) in partial liquidation of the distributing corporation....

(c) Constructive ownership of stock.--

(1) In general.-- Except as provided in paragraph (2) of this subsection, section 318(a) shall apply in determining the ownership of stock for purposes of this section.

(2) For determining termination of interest.--

(A) In the case of a distribution described in subsection (b)(3), section 318(a)(1) shall not apply if--

(i) immediately after the distribution the distributee has no interest in the corporation (including an interest as officer, director, or employee), other than an interest as a creditor,

(ii) the distributee does not acquire any such interest (other than stock acquired by bequest or inheritance) within 10 years from the date of such distribution, and

(iii) the distributee, at such time and in such manner as the Secretary by regulations prescribes, files an agreement to notify the Secretary of any acquisition described in clause (ii) and to retain such records as may be necessary for the application of this paragraph.

If the distributee acquires such an interest in the corporation (other than by bequest or inheritance) within 10 years from the date of the distribution, then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax)

resulting from such acquisition, include one year immediately following the date on which the distributee (in accordance with regulations prescribed by the Secretary) notifies the Secretary of such acquisition; and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

(B) Subparagraph (A) of this paragraph shall not apply if--

(i) any portion of the stock redeemed was acquired, directly or indirectly, within the 10-year period ending on the date of the distribution by the distributee from a person the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 318(a), or

(ii) any person owns (at the time of the distribution) stock the ownership of which is attributable to the distributee under section 318(a) and such person acquired any stock in the corporation, directly or indirectly, from the distributee within the 10-year period ending on the date of the distribution, unless such stock so acquired from the distributee is redeemed in the same transaction.

The preceding sentence shall not apply if the acquisition (or, in the case of clause (ii), the disposition) by the distributee did not have as one of its principal purposes the avoidance of Federal income tax.

(d) Redemptions treated as distributions of property.-- Except as otherwise provided in this subchapter, if a corporation redeems its stock (within the meaning of section 317(b)), and if subsection (a) of this section does not apply, such redemption shall be treated as a distribution of property to which section 301 applies.

(e) Partial liquidation defined.--

(1) In general.-- For purposes of subsection (b)(4), a distribution shall be treated as in partial liquidation of a corporation if--

(A) the distribution is not essentially equivalent to a dividend (determined at the corporate level rather than at the shareholder level), and

(B) the distribution is pursuant to a plan and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year.

(2) Termination of business.-- The distributions which meet the requirements of paragraph (1)(A) shall include (but shall not be limited to) a distribution which meets the requirements of subparagraphs (A) and (B) of this paragraph:

(A) The distribution is attributable to the distributing corporation's ceasing to conduct, or consists of the assets of, a qualified trade or business.

(B) Immediately after the distribution, the distributing corporation is actively engaged in the conduct of a qualified trade or business.

(3) Qualified trade or business.-- For purposes of paragraph (2), the term "qualified trade or business" means any trade or business which--

(A) was actively conducted throughout the 5-year period ending on the date of the redemption, and

(B) was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(4) Redemption may be pro rata.-- Whether or not a redemption meets the requirements of subparagraphs (A) and (B) of paragraph (2) shall be determined without regard to whether or not the redemption is pro rata with respect to all of the shareholders of the corporation.

(5) Treatment of certain pass-thru entities.-- For purposes of determining under subsection (b)(4) whether any stock is held by a shareholder who is not a corporation, any stock held by a partnership, estate, or trust shall be treated as if it were actually held proportionately by its partners or beneficiaries.

§ 1361. S corporation defined

(a) S corporation defined.--

(1) In general.--For purposes of this title, the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

(2) C corporation.--For purposes of this title, the term “C corporation” means, with respect to any taxable year, a corporation which is not an S corporation for such year.

(b) Small business corporation.--

(1) In general.--For purposes of this subchapter, the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not--

(A) have more than 100 shareholders,

(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual,

(C) have a nonresident alien as a shareholder, and

(D) have more than 1 class of stock.

(2) Ineligible corporation defined.--For purposes of paragraph (1), the term “ineligible corporation” means any corporation which is--

(A) a financial institution which uses the reserve method of accounting for bad debts described in section 585,

(B) an insurance company subject to tax under subchapter L, or

(C) a DISC or former DISC.

(3) Treatment of certain wholly owned subsidiaries.--

(A) In general.--Except as provided in regulations prescribed by the Secretary, for purposes of this title--

(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

(B) Qualified subchapter S subsidiary.--For purposes of this paragraph, the term “qualified subchapter S subsidiary” means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if--

(i) 100 percent of the stock of such corporation is held by the S corporation, and

(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

(C) Treatment of terminations of qualified subchapter S subsidiary status.--

(i) In general.--For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.

(ii) Termination by reason of sale of stock.--If the failure to meet the requirements of subparagraph (B) is by reason of the sale of stock of a corporation which is a qualified subchapter S subsidiary, the sale of such stock shall be treated as if--

(I) the sale were a sale of an undivided interest in the assets of such corporation (based on the percentage of the corporation's stock sold), and

(II) the sale were followed by an acquisition by such corporation of all of its assets (and the assumption by such corporation of all of its liabilities) in a transaction to which section 351 applies.

(D) Election after termination.--If a corporation's status as a qualified subchapter S subsidiary terminates, such corporation (and any successor corporation) shall not be eligible to make--

(i) an election under subparagraph (B)(ii) to be treated as a qualified subchapter S subsidiary, or

(ii) an election under section 1362(a) to be treated as an S corporation,

before its 5th taxable year which begins after the 1st taxable year for which such termination was effective, unless the Secretary consents to such election.

(E) Information returns.--Except to the extent provided by the Secretary, this paragraph shall not apply to part III of subchapter A of chapter 61 (relating to information returns).

(c) Special rules for applying subsection (b).--

(1) Members of a family treated as 1 shareholder.--

(A) In general.--For purposes of subsection (b)(1)(A), there shall be treated as one shareholder--

(i) a husband and wife (and their estates), and

(ii) all members of a family (and their estates).

(B) Members of a family.--For purposes of this paragraph--

(i) In general.--The term "members of a family" means a common ancestor, any lineal descendant of such common ancestor, and any spouse or former spouse of such common ancestor or any such lineal descendant.

(ii) Common ancestor.--An individual shall not be considered to be a common ancestor if, on the applicable date, the individual is more than 6 generations removed from the youngest generation of shareholders who would (but for this subparagraph) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to whom such spouse is (or was) married.

(iii) Applicable date.--The term "applicable date" means the latest of--

(I) the date the election under section 1362(a) is made,

(II) the earliest date that an individual described in clause (i) holds stock in the S corporation, or

(III) October 22, 2004.

(C) Effect of adoption, etc.--Any legally adopted child of an individual, any child who is lawfully placed with an individual for legal adoption by the individual, and any eligible foster child of an individual (within the meaning of section 152(f)(1)(C)), shall be treated as a child of such individual by blood.

(2) Certain trusts permitted as shareholders.--

(A) In general.--For purposes of subsection (b)(1)(B), the following trusts may be shareholders:

(i) A trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States.

(ii) A trust which was described in clause (i) immediately before the death of the deemed owner and which continues in existence after such death, but only for the 2-year period beginning on the day of the deemed owner's death.

(iii) A trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 2-year period beginning on the day on which such stock is transferred to it.

(iv) A trust created primarily to exercise the voting power of stock transferred to it.

(v) An electing small business trust.

(vi) In the case of a corporation which is a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank or company as of the date of the enactment of this clause.

This subparagraph shall not apply to any foreign trust.

(B) Treatment as shareholders.--For purposes of subsection (b)(1)--

(i) In the case of a trust described in clause (i) of subparagraph (A), the deemed owner shall be treated as the shareholder.

(ii) In the case of a trust described in clause (ii) of subparagraph (A), the estate of the deemed owner shall be treated as the shareholder.

(iii) In the case of a trust described in clause (iii) of subparagraph (A), the estate of the testator shall be treated as the shareholder.

(iv) In the case of a trust described in clause (iv) of subparagraph (A), each beneficiary of the trust shall be treated as a shareholder.

(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period. This clause shall not apply for purposes of subsection (b)(1)(C).

(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as the shareholder.

(3) Estate of individual in bankruptcy may be shareholder.--For purposes of subsection (b)(1)(B), the term "estate" includes the estate of an individual in a case under title 11 of the United States Code.

(4) Differences in common stock voting rights disregarded.--For purposes of subsection (b)(1)(D), a corporation shall not be treated as having more than 1 class of stock solely because there are differences in voting rights among the shares of common stock.

(5) Straight debt safe harbor.--

(A) In general.--For purposes of subsection (b)(1)(D), straight debt shall not be treated as a second class of stock.

(B) Straight debt defined.--For purposes of this paragraph, the term “straight debt” means any written unconditional promise to pay on demand or on a specified date a sum certain in money if--

(i) the interest rate (and interest payment dates) are not contingent on profits, the borrower’s discretion, or similar factors,

(ii) there is no convertibility (directly or indirectly) into stock, and

(iii) the creditor is an individual (other than a nonresident alien), an estate, a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money.

(C) Regulations.--The Secretary shall prescribe such regulations as may be necessary or appropriate to provide for the proper treatment of straight debt under this subchapter and for the coordination of such treatment with other provisions of this title.

(6) Certain exempt organizations permitted as shareholders.--For purposes of subsection (b)(1)(B), an organization which is--

(A) described in section 401(a) or 501(c)(3), and

(B) exempt from taxation under section 501(a),

may be a shareholder in an S corporation.

§ 2053. Expenses, indebtedness, and taxes

(a) General rule.-- For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts--

(1) for funeral expenses,

(2) for administration expenses,

(3) for claims against the estate, and

(4) for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate,

as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

(b) Other administration expenses.-- Subject to the limitations in paragraph (1) of subsection (c), there shall be deducted in determining the taxable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (a) if such property were subject to claims, and such amounts are paid before the expiration of the period of limitation for assessment provided in section 6501.

(c) Limitations.--

(1) Limitations applicable to subsections (a) and (b).--

(A) Consideration for claims.-- The deduction allowed by this section in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 2055 for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 2055 if such promise or agreement constituted a bequest.

(B) Certain taxes.-- Any income taxes on income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes, shall not be deductible under this section.

(C) Certain claims by remaindermen.-- No deduction shall be allowed under this section for a claim against the estate by a remainderman relating to any property described in section 2044.

(D) Section 6166 interest.-- No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

(2) Limitations applicable only to subsection (a).-- In the case of the amounts described in subsection (a), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the estate tax return. For purposes of this section, the term "property subject to claims" means property includible in the gross estate of the decedent which, or the avails of which, would under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the estate, except that the value of the property shall be reduced by the amount of the deduction under section 2054 attributable to such property.

(d) Certain foreign death taxes.--

(1) In general.-- Notwithstanding the provisions of subsection (c)(1)(B), for purposes of the tax imposed by section 2001, the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary) of any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055. The determination under this paragraph of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether

property is situated within or without the United States. Any election under this paragraph shall be exercised in accordance with regulations prescribed by the Secretary.

(2) Condition for allowance of deduction.-- No deduction shall be allowed under paragraph (1) for a foreign death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106(a)(2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106(a)(2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106(a)(2) are required to pay.

(3) Effect on credit for foreign death taxes of deduction under this subsection.--

(A) Election.-- An election under this subsection shall be deemed a waiver of the right to claim a credit, against the Federal estate tax, under a death tax convention with any foreign country for any tax or portion thereof in respect of which a deduction is taken under this subsection.

(B) Cross reference.--

See section 2014(f) for the effect of a deduction taken under this paragraph on the credit for foreign death taxes.

(e) Marital rights.--

For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2).

§ 1031. Exchange of real property held for productive use or investment

(a) Nonrecognition of gain or loss from exchanges solely in kind.--

(1) In general.--No gain or loss shall be recognized on the exchange of real property held for productive use in a trade or business or for investment if such real property is exchanged solely for real property of like kind which is to be held either for productive use in a trade or business or for investment.

(2) Exception for real property held for sale.--This subsection shall not apply to any exchange of real property held primarily for sale.

(3) Requirement that property be identified and that exchange be completed not more than 180 days after transfer of exchanged property.--For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if--

(A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(B) such property is received after the earlier of--

(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

(b) Gain from exchanges not solely in kind.--If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) Loss from exchanges not solely in kind.--If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) Basis.--If property was acquired on an exchange described in this section, section 1035(a), section 1036(a), or section 1037(a), then the basis shall be the same as that of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035(a), section 1036(a), or section 1037(a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035(a), and section 1036(a), where as part of the consideration to the taxpayer another party to the exchange assumed (as determined under section 357(d)) a liability of the taxpayer, such assumption shall be considered as money received by the taxpayer on the exchange.

§ 1.1031(d)-1 Property acquired upon a tax-free exchange.

(a) If, in an exchange of property solely of the type described in section 1031, section 1035(a), section 1036(a), or section 1037(a), no part of the gain or loss was recognized under the law applicable to the year in which the exchange was made, the basis of the property acquired is the same as the basis of the property transferred by the taxpayer with proper adjustments to the date of the exchange. If additional consideration is given by the taxpayer in the exchange, the basis of the property acquired shall be the same as the property transferred increased by the amount of additional consideration given (see section 1016 and the regulations thereunder).

(b) If, in an exchange of properties of the type indicated in section 1031, section 1035(a), section 1036(a), or section 1037(a), gain to the taxpayer was recognized under the provisions of section 1031(b) or a similar provision of a prior revenue law, on account of the receipt of money in the transaction, the basis of the property acquired is the basis of the property transferred (adjusted to the date of the exchange), decreased by the amount of money received and increased by the amount of gain recognized on the exchange. The application of this paragraph may be illustrated by the following example:

Example: A, an individual in the moving and storage business, in 1954 transfers one of his moving trucks with an adjusted basis in his hands of \$2,500 to B in exchange for a truck (to be used in A's business) with a fair market value of \$2,400 and \$200 in cash. A realizes a gain of \$100 upon the exchange, all of which is recognized under section 1031(b). The basis of the truck acquired by A is determined as follows:

Adjusted basis of A's former truck.....	\$2,500
Less: Amount of money received.....	200
	2,300
Difference.....	2,300
Plus: Amount of gain recognized.....	100
	2,400
Basis of truck acquired by A.....	2,400

(c) If, upon an exchange of properties of the type described in section 1031, section 1035(a), section 1036(a), or section 1037(a), the taxpayer received other property (not permitted to be received without the recognition of gain) and gain from the transaction was recognized as required under section 1031(b), or a similar provision of a prior revenue law, the basis (adjusted to the date of the exchange) of the property transferred by the taxpayer, decreased by the amount of any money received and increased by the amount of gain recognized, must be allocated to and is the basis of the properties (other than money) received on the exchange. For the purpose of the allocation of the basis of the properties received, there must be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. The application of this paragraph may be illustrated by the following example:

Example: A, who is not a dealer in real estate, in 1954 transfers real estate held for investment which he purchased in 1940 for \$10,000 in exchange for other real estate (to be held for investment) which has a fair market value of \$9,000, an automobile which has a fair market value of \$2,000, and \$1,500 in cash. A realizes a gain of \$2,500, all of which is recognized under section 1031(b). The basis of the property received in exchange is the basis of the real estate A transfers

(\$10,000) decreased by the amount of money received (\$1,500) and increased in the amount of gain that was recognized (\$2,500), which results in a basis for the property received of \$11,000. This basis of \$11,000 is allocated between the automobile and the real estate received by A, the basis of the automobile being its fair market value at the date of the exchange, \$2,000, and the basis of the real estate received being the remainder, \$9,000.

(d) Section 1031(c) and, with respect to section 1031 and section 1036(a), similar provisions of prior revenue laws provide that no loss may be recognized on an exchange of properties of a type described in section 1031, section 1035(a), section 1036(a), or section 1037(a), although the taxpayer receives other property or money from the transaction. However, the basis of the property or properties (other than money) received by the taxpayer is the basis (adjusted to the date of the exchange) of the property transferred, decreased by the amount of money received. This basis must be allocated to the properties received, and for this purpose there must be allocated to such other property an amount of such basis equivalent to its fair market value at the date of the exchange.

(e) If, upon an exchange of properties of the type described in section 1031, section 1035(a), section 1036(a), or section 1037(a), the taxpayer also exchanged other property (not permitted to be transferred without the recognition of gain or loss) and gain or loss from the transaction is recognized under section 1002 or a similar provision of a prior revenue law, the basis of the property acquired is the total basis of the properties transferred (adjusted to the date of the exchange) increased by the amount of gain and decreased by the amount of loss recognized on the other property. For purposes of this rule, the taxpayer is deemed to have received in exchange for such other property an amount equal to its fair market value on the date of the exchange. The application of this paragraph may be illustrated by the following example:

Example: A exchanges real estate held for investment plus stock for real estate to be held for investment. The real estate transferred has an adjusted basis of \$10,000 and a fair market value of \$11,000. The stock transferred has an adjusted basis of \$4,000 and a fair market value of \$2,000. The real estate acquired has a fair market value of \$13,000. A is deemed to have received a \$2,000 portion of the acquired real estate in exchange for the stock, since \$2,000 is the fair market value of the stock at the time of the exchange. A \$2,000 loss is recognized under section 1002 on the exchange of the stock for real estate. No gain or loss is recognized on the exchange of the real estate since the property received is of the type permitted to be received without recognition of gain or loss. The basis of the real estate acquired by A is determined as follows:

Adjusted basis of real estate transferred.....	\$10,000
Adjusted basis of stock transferred	4,000
	14,000
Less: Loss recognized on transfer of stock	2,000
	12,000