



United States Tax Court

Washington, DC 20217

2023 Nonattorney Exam

Session One: Federal Taxation and Legal Ethics

Question #: 1

Question S-1 (1 point). On December 28, year 1, TP performed services for A. Immediately after TP performed the work, A offered to write a check to TP to compensate TP for the services. TP refused to accept the check and requested that A pay instead on January 3, year 2, which A did. In what year should TP report the income?

Question #: 2

Question S-2 (2 points). TP, a doctor, was offered a job by Medical, Inc. As a requirement to accept the job, TP must live in a home that Medical owns one street block away from the hospital building where TP will work. Medical required this arrangement so that TP could get to the hospital quickly for emergencies. TP is not expected to do any work in the provided home. TP accepted the position and moved into the home. State whether TP is required to report as income the value of the lodging. Explain why or why not.

Question #: 3

Question S-3 (2 points). TP had several loans canceled for no consideration by her bank. TP is determining whether she meets the insolvency exception of § 108. TP is the signed guarantor of \$900,000 in loans that her brother took out in 2021. What, if anything, will TP need to show in order to include the \$900,000 guarantee as part of TP's insolvency calculation?

Question #: 4

Question S-4 (8 points). State the amount that constitutes gross income to TP (without any further explanation) of each of the following items received during 2022 (answer each part below separately).

1. \$5,000 payment by TP's employer to the IRS to satisfy TP's federal income tax liability. The payment was in consideration of the importance of TP's services to the employer.
2. \$2,000 of interest received on U.S. Treasury note purchased for \$60,000.
3. \$3,000 of interest received on a City of Sacramento (California) bond the proceeds of which were used by the city to finance the construction of a new airport.
4. \$1,000 cash received for winning a contest for the article of the year about chemistry. TP had entered the article into the contest. Immediately upon receipt of the payment, TP transferred the amount to a tax-exempt qualified charity.
5. 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 \$300,000, and the fair market value of Blackacre as of the date of the gift was \$200,000.
6. Same facts as 4.e. Later in the year, TP sold Blackacre for \$350,000.

7. On February 1, 2022, TP was injured when D carelessly crashed into TP while walking on the sidewalk. TP was awarded a court judgment against D, and the judgment was paid. The damages paid to TP pursuant to the judgment were as follows: (1) \$75,000 pain and suffering damages for TP's physical injury, (2) \$100,000 lost earnings damages to compensate TP for missing work while injured, (3) \$40,000 in emotional harm damages incurred on account of the physical injury, and (4) \$35,000 punitive damages for the physical injury to TP. State the amount of gross income with respect to the \$75,000 received for pain and suffering damages for TP's physical injury.
8. Same facts as 4.g. State the amount of gross income with respect to the \$100,000 received for lost earnings damages to compensate TP for missing work.
9. Same facts as 4.g. State the amount of gross income with respect to the \$40,000 received for emotional harm damages incurred on account of TP's physical injury.
10. Same facts as 4.g. State the amount of gross income with respect to the \$35,000 received for punitive damages for the physical injury to TP.
11. \$10,000 cash discovered in a used piano that TP had bought at a garage sale.
12. \$5,000 winnings from playing roulette in a casino.
13. \$1,000 alimony payments as set out in a divorce and separation agreement. TP's divorce was finalized in 2022.
14. \$1,500 in child support payments as set out in a divorce and separation agreement. TP's divorce was finalized in 2022.
15. \$20,000 lump-sum proceeds of life insurance policy on the life of TP's sister. TP purchased and owned the policy at all times. Under the policy, the proceeds were payable to TP.
16. TP owns 100 shares of Corporation common voting stock. Corporation declares a 1 for 1 stock dividend for all common voting stock shareholders and therefore TP received another 100 shares of Corporation common voting stock. After the stock dividend, the gross fair market value of 100 shares of common voting stock was \$9,000.

Question #: 5

Question S-5 (2 points). TP is a self-employed attorney. State the amount that is deductible by TP (without any further explanation) of each of the following putative business expenses during 2023 (answer each part below separately).

1. \$1,000 in commuting expenses for driving from TP's home to her office.
2. \$3,000 in meal expenses during lunches where TP was meeting with clients while

away from home on a seven-day business trip.

3. \$5,000 in advertising expenses.
4. \$1,000 in pro football tickets which TP used to entertain clients.

Question #: 6

Question S-6 (1 point). In 2020, TP purchased Blackacre (unimproved property). To acquire the property, TP (1) paid \$400,000 cash at the closing and (2) assumed a preexisting first mortgage debt secured by Blackacre in the principal amount of \$200,000 (for which TP became personally liable).

In 2021, TP took out a second mortgage debt of \$300,000. The debt was secured by Blackacre. TP used the loan proceeds to purchase inventory for her business.

1. Quantify the amount of TP's adjusted basis in Blackacre at the time of the acquisition in 2020.
2. Explain the effect on TP's adjusted basis in Blackacre after TP took out the second mortgage debt in 2021.

Question #: 7

Question S-7 (4 points). Without regard to the floor on deducting medical expenses, state Yes or No whether the following expenses qualify as deductible medical expenses. TP paid the expenses out of pocket and was not reimbursed for any of them.

1. \$10,000 for an in-patient hospital bill for heart surgery.
2. \$1,000 for prescription drugs.
3. \$700 for over-the-counter painkilling medicine (such as aspirin or ibuprofen).
4. \$200 for transportation expenses to travel to medical appointments.
5. \$3,000 for a cruise vacation that was recommended by TP's doctor to help TP relax and lessen stress.
6. \$1,500 for medicinal marijuana that is not illegal under TP's state law and that was prescribed by a doctor.
7. \$1,300 in premiums paid for medical care insurance.
8. \$1,200 in premiums paid for disability insurance which provides payments to the insured in the event that the insured becomes disabled.

Question #: 8

Question S-8 (3 points). In 2022, TP had Adjusted Gross Income (AGI) of \$100,000. That

year, a hurricane completely destroyed TP's boat and car. TP held both assets for personal use only. At the time of the destruction, the fair market value of the boat was \$40,000, and TP's adjusted basis was \$20,000. TP had insurance coverage for the boat, and the insurance company paid TP \$40,000 compensation for the destruction of the boat. TP decided not to buy another boat to replace the one destroyed by the hurricane. At the time of the destruction, the fair market value of the car was \$20,000, and TP's adjusted basis was \$25,000. TP did not have any insurance coverage on the car. The hurricane was declared a federal disaster. Quantify the amount of loss that TP may deduct for 2022 for the destruction of the car.

Question #: 9

Question S-9 (1 point). TP is the president of Company, Inc. Company offers TP a choice of either (1) a parking spot in a garage across the street from TP's office or (2) \$100 in cash. If TP chooses option (1), TP will pay the monthly garage parking fee and Company will reimburse TP for the expense. The monthly cost of a parking spot in the garage is \$100. TP is the only employee offered this benefit. State whether TP has income in the following alternatives:

- a. TP chooses option 1.
- b. TP chooses option 2.

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Question #: 10

Question S-10 (2 points). TP agreed to purchase a painting from Seller. The agreement stated that TP would pay \$10,000 cash and provide Seller a \$40,000 debt note that is payable over five years. Before the first payment was due, TP notified Seller that TP believed Seller misrepresented something about the painting. After some negotiation, Seller agreed to reduce TP's debt note to \$20,000. TP was not insolvent or in a bankruptcy case. State the tax consequences to TP on account of the debt reduction.

Question #: 11

Question S-11 (16 points). TP and B agree to exchange unimproved real properties that are encumbered by mortgage debts. Both properties were held for investment. In the exchange transaction, TP's mortgage debts are assumed by B, and B's mortgage debts are assumed by TP. B will also pay TP \$10,000 cash as part of the exchange. The gross fair market value of B's property is \$300,000. B's adjusted basis is \$90,000. The property is encumbered by a \$90,000 mortgage debt leaving net equity in the property of \$210,000. The gross fair market value of TP's property is \$240,000. TP's adjusted basis in the property is \$140,000. The property is encumbered by a \$20,000 mortgage debt leaving net equity in the property of \$220,000. Provide the following tax consequences of the exchange:

1. Gain or loss recognized by TP.

2. TP's basis in TP's acquired property.
3. Gain or loss recognized by B.
4. B's basis in B's acquired property.

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Question #: 12

Question S-12 (2 points). TP owned unimproved land. TP's adjusted basis in the land was \$100,000, and the land was subject to mortgage debt of \$40,000. On February 1, year 1, TP donated the land to a qualified charitable organization. At the time of the donation, the gross fair market value of the land was \$160,000. The charity accepted the land and assumed the mortgage debt of \$40,000. The charity became personally liable for that debt. Quantify the amount of gain, if any, recognized by TP on account of the donation.

Question #: 13

Question S-13 (2 points). TP owned unimproved land. TP's adjusted basis in the land was \$80,000. On March 1, 2022, the gross fair market value of the land was \$50,000. TP sold the land to her niece for \$10,000. 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.

1. Quantify the gain or loss recognized by TP for federal income tax purposes on account of the transaction with the niece.
2. On December 1, 2022, the niece sold the land to an unrelated party for \$70,000. Quantify the gain or loss recognized by the niece on that sale.

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Question #: 14

Question S-14 (2 points). List the three factors used by the Court to determine whether TP may deduct clothing expenses as business expenses.

Question #: 15

Question S-15 (10 points). In 2022, Corporation was created with a capitalization of 200 shares of common voting stock and 50 shares of preferred non-voting stock. The preferred stock is not §306 stock. In the initial capitalization, A exchanged unimproved land for 120 shares of Corporation common voting stock. A's adjusted basis in the land was \$30,000 and the gross fair market value of the land was \$120,000. B exchanged \$80,000 cash for 80

shares of Corporation common voting stock. C exchanged services for 50 shares of preferred non-voting stock. The fair market value of C's services was \$20,000.

1. Does this capitalization qualify for nonrecognition under §351.
2. Does A's tax result depend on whether the capitalization qualifies for nonrecognition under §351? Explain why or why not.
3. Does B's tax result depend on whether the capitalization qualifies for nonrecognition under §351? Explain why or why not.
4. Does C's tax result depend on whether the capitalization qualifies for nonrecognition under §351? Explain why or why not.
5. Does Corporation's tax result depend on whether the capitalization qualifies for nonrecognition under §351? Explain why or why not.

Question #: 16

Question S-16 (2 points). TP is a shareholder of Corporation, Inc. On June 1, year 1, Corporation distributed Blackacre (unimproved land) to TP. The distribution qualified as a dividend under § 316. The gross fair market value of Blackacre was \$100,000 and Blackacre was subject to a mortgage debt of \$10,000. TP accepted Blackacre subject to the \$10,000 mortgage. At the time of the distribution, Corporation's adjusted basis in Blackacre was \$40,000.

1. Quantify the amount of dividend income that TP has on account of the distribution.
2. Quantify TP's basis in Blackacre after the distribution.
3. Quantify Corporation's gain or loss recognized on account of the distribution.

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Question #: 17

Question S-17 (2 points). Describe the "Substance over Form" doctrine.

Question #: 18

Question S-18 (8 points). In 2021, individuals TP1 and TP2 formed a general partnership (which would not have been treated as an investment company under §351 if incorporated). Under the partnership agreement, TP1 and TP2 share everything (interest in partner capital, profits, and losses) equally. To form the partnership, TP1 contributed unimproved land. The gross fair market value of the land was \$200,000. The land was encumbered by a mortgage debt of \$100,000. The partnership received the land subject to the \$100,000

mortgage debt and the partnership became personally liable for the debt. TP1 purchased the land in 2012 as an investment. TP1's adjusted basis in the land was \$30,000. TP2 contributed \$100,000 cash.

1. Discuss, quantify, and characterize any gain or loss recognized by TP1 upon formation of the partnership.
2. Discuss, quantify, and characterize any gain or loss recognized by TP2 upon formation of the partnership.
3. Discuss and quantify TP1's adjusted basis in TP1's partnership interest upon formation of the partnership.
4. Discuss and quantify TP2's adjusted basis in TP2's partnership interest upon formation of the partnership.

Question #: 19

Question S-19 (2 points). Explain whether it is possible for an S Corporation to have more than 100 shareholders.

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Question #: 20

Question S-20 (4 points). TP is a C Corporation. In year 1, TP sells Blackacre (unimproved land) to Buyer, an unrelated party. The terms of the sale provide that Buyer will pay \$100,000 cash at closing and Buyer will execute a promissory note payable to TP of \$900,000 payable over a nine-year period beginning in the taxable year after the sale and bearing an adequate rate of interest. At the time of the sale, TP's adjusted basis in Blackacre was \$500,000.

1. Quantify how much taxable gain TP recognizes in year 1 according to §453 on account of the sale of Blackacre.
2. Quantify the effect on TP's earnings and profits in year 1 on account of the sale of Blackacre.

Question #: 21

Question S-21 (2 points). The IRS issued a notice of deficiency to an estate, based on disallowance of the charitable contribution deduction claimed on the federal estate tax return filed by the estate. The notice of deficiency also determined a §6662 penalty based on the estate's alleged negligence in claiming the deduction. The estate's petition filed with the Court defended against the penalty by alleging that the estate had relied on the advice of its return preparer that the claimed deduction was appropriate. Identify the elements the

estate must establish to succeed as to this defense.

Question #: 22

Question S-22 (3 points). In each of the following situations, the IRS issued a notice to the TP, the notice determined a penalty (not a penalty automatically calculated through electronic means), TP filed a petition with the Court in which TP challenged the penalty, and the case was tried and briefed. In each of the situations, state whether the IRS would bear, as part of its initial burden of production, the burden to show that the immediate supervisor (or higher level official) of the IRS individual who made the initial penalty determination personally approved that determination in writing. State “yes” or “no” to each subpart.

1. TP was an individual, the notice issued by the IRS was a notice of deficiency, and the penalty determined by the notice was a delinquency penalty for late filing of a required tax return.
2. TP was an individual, the notice issued by the IRS was a notice of deficiency, and the penalty determined by the notice was a § 6662 penalty.
3. TP was a partnership, the notice issued by the IRS was a notice of final partnership administrative adjustment, and the penalty determined by the notice was a § 6662 penalty.

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Question #: 23

Question S-23 (1 point). The notice of deficiency issued to the TP (1) disallowed two deductions claimed on TP’s return, (2) determined that TP had failed to report taxable income from TP’s business, and (3) asserted the §6663 penalty as to the entire deficiency. TP’s petition conceded that he had fraudulently underreported his business income but maintained that his overstatement of his deductions was negligent, not fraudulent. State which party –TP or the IRS –will bear the burden of proof as to applicability of the §6663 penalty to the portion of the deficiency attributable to the overstated deductions.

Question #: 24

Question S-24 (2 points). TP established an irrevocable trust in favor of his grandson. She transferred to the trust corporate stock worth \$13,000. Under the terms of the trust instrument, (1) the First National Bank was established as trustee and (2) the trustee had sole and absolute discretion either to distribute the corpus or income of the trust to the grandson or to withhold such distributions. State whether TP may claim the annual exclusion from federal gift tax on account of this transfer. Explain why or why not.

Question #: 25

Question S-25 (2 points). TP created an irrevocable trust in favor of his daughter. TP was the sole trustee up until the time of his death, at which time a bank became the successor trustee. Under the trust instrument, the trustee had the authority (1) to retain or invest the assets of the trust in property not permitted for investment under state law and (2) to determine what constituted income of the trust and what constituted principal. State whether the assets of the trust are includible in TP's gross estate for estate tax purposes. Explain why or why not.

Question #: 26

Question S-26 (4 points). TP works full-time as an employee of Corporation, Inc. In 2021, TP worked 2000 hours in her employment position at Corporation. TP also owns four rental properties. In 2021, TP worked 1400 hours managing the rental properties. In 2021, TP had a net loss of \$50,000 from the rental properties. Based on these facts, state whether the TP will be able to use the \$50,000 loss to offset her income from her employment. Explain why or why not.

Question #: 27

Question S-27 (2 points). In 2021, TP settled a criminal complaint with the Securities Exchange Commission (SEC) that involved TP's business selling securities to investors. As part of the settlement, TP disgorged \$400,000 of profits that were attributable to TP's securities business. Based on these facts, can TP deduct that disgorgement payment as a valid business expense? Explain why or why not.

Question #: 28

Question S-28 (2 points). Describe the test used to determine whether an expenditure is an expense or a capital expenditure.

Question #: 29

Question S-29 (2 points). TP owns Blackacre (unimproved property). TP held Blackacre as an investment for over five years. On June 1, 2022, TP sold Blackacre to his sister, B, for \$100,000. At the time of the sale, the gross fair market value of Blackacre was \$100,000 and TP's adjusted basis in Blackacre was \$120,000. Blackacre was not encumbered. On December 1, 2022, B sold Blackacre to an unrelated party for \$150,000 which was its gross fair market value on the date of that sale.

1. Quantify the amount of gain or loss recognized by B on the December 1 sale.
2. Same facts except that B sold Blackacre for \$60,000 (which was its gross fair market value for purposes of this question). Quantify the gain or loss recognized by B on the December 1 sale.

Question #: 30

Question LE-1. (3 points). A prepared Kelly Hansen's Form 1040, including related forms and schedules, for 2019. Kelly thought she had provided A with all of the tax documents that she had received or collected. Correspondence from the IRS, however, indicated that Kelly's return omitted a substantial distribution from her retirement account. A notice of deficiency was issued reflecting a deficiency resulting from the missing amount and a section 6662 accuracy-related penalty. Kelly promptly paid the tax deficiency, and A prepared a Tax Court petition asserting that Kelly's reliance on A to prepare her return satisfied the reasonable cause and good faith defense to the penalty. Can A represent Kelly in the Tax Court proceeding? Briefly explain your answer.

Question #: 31

Question LE-2. (3 points). Sharon Wisniewski has asked B to represent her in a Tax Court proceeding involving a charitable contribution deduction for a conservation easement donation. B understands that the notice of deficiency is based on Sharon's failure to comply with certain requirements set forth in regulations under I.R.C. §170. B plans to argue that the regulations are invalid, as was decided by the Eleventh Circuit Court of Appeals, which is the Circuit Court to which Sharon's Tax Court case would be appealable. Can B rely solely on the Eleventh Circuit case, or must B's submission also discuss precedent from the Sixth Circuit Court of Appeals, which has taken a position at odds with the Eleventh Circuit? Briefly explain your answer.

Question #: 32

Question LE-3. (3 points). C represented business owner Jerome Bacchus for many years. C has had no relationship with Jerome's ex-wife, Patricia, who has never been involved in Jerome's business and who earned no income during the marriage. When Jerome and Patricia got divorced, C assisted Jerome in gathering legal documents pertaining to the business for Jerome to provide to his divorce lawyer. At the time, Jerome confided in C that he had a substantial amount of cash in a safe deposit box. C, therefore, suspected that some of the couple's joint income tax returns may not have been accurate, but C never discussed these concerns with Jerome. Jerome and Patricia recently received a notice of deficiency for a joint return that they had filed prior to their divorce. Can C represent the couple in a Tax Court proceeding? Briefly explain your answer.

Question #: 33

Question LE-4. (3 points). Divorced couple Denis and Ilana Karina have chosen to be represented by separate counsel in a Tax Court proceeding involving their (pre-divorce) joint income tax return. D represents Ilana, who insists that D seek information about the couple's expenses directly from Denis, who paid all of the couple's bills during their marriage. Denis calls D at Ilana's request to discuss the case. Is it proper for D to accept Denis's phone call? What advice would you give to D? Briefly explain your answer.

Question #: 34

Question LE-5. (3 points). E is a partner in the law firm of Moe, Larry &Curly. Several years ago, E represented Homescape, Inc. in an employment dispute with Adam Juniper. The matter was settled by the parties, and Adam then started his own unrelated business. Homescape is no longer a client of E or his firm. Adam recently asked E's law partner, F, to represent Adam in a Tax Court proceeding pertaining to expenses reported on the Schedule C for Adam's business. Can F accept the representation? Explain your answer.

Question #: 35

Question LE-6. (2 points). G, a sole practitioner, has volunteered to attend a Tax Court calendar call program sponsored by a local bar association. G is asked to speak with Kathy Niketas, who filed a Tax Court petition pro se. G quickly determines that Kathy's issues are substantially beyond her capacity to take on in her small practice, but G is willing to give Kathy general advice about the case, share some thoughts on how and where to search for counsel, and stand up before the Judge in requesting a continuance. Can G limit the scope of her representation as described? Briefly explain your answer.

Question #: 36

Question LE-7. (2 points). Fashionistas, Inc. has asked H to represent the company in a Tax Court proceeding involving issues related to Fashionistas' inventory method. Fashionistas' accountant tells H that he is reasonably confident that he complied with IRS regulations and guidance. H has no experience with, or knowledge concerning, the tax law as it pertains to inventory accounting. Can H represent Fashionistas in the Tax Court case? Briefly explain your answer.

Question #: 37

Question LE-8. (2 points). After filing a Collection Due Process Tax Court petition two days after the deadline, Patrick Murtaza hired K to represent him in the proceeding. Patrick told K that he had mailed the petition before the filing deadline, but the discovery of white powder in his local post office had forced an immediate closure of the building for several days and Patrick's petition was stuck inside. K explained these facts in a Response to Respondent's Motion to Dismiss for Lack of Jurisdiction, which was denied. Celebrating together, Patrick told K that his story was a lie; he had filed the petition late because he had forgotten about the deadline. May K reveal that her Response contained and relied upon misstatements of fact? What action, if any, should K take? Briefly explain your answer.

Question #: 38

Question LE-9. (3 points). L agreed to represent Sandra Rumena in a Tax Court proceeding. L drafted and filed Sandra's petition. Sandra, however, did not pay even the first installment of L's fees, which she had agreed to pay L for L's services, did not return L's

emails and phone calls, and failed to respond to a certified letter that L sent to her. L therefore assumed that Sandra was no longer interested in representation and did not respond to communications from IRS Counsel and the Court. Is it proper for the Court to reprimand L? Briefly explain your answer.

Session One Attachments

§ 132. Certain fringe benefits

(a) Exclusion from gross income.--Gross income shall not include any fringe benefit which qualifies as a--

- (1) no-additional-cost service,
- (2) qualified employee discount,
- (3) working condition fringe,
- (4) de minimis fringe,
- (5) qualified transportation fringe,
- (6) qualified moving expense reimbursement,
- (7) qualified retirement planning services, or
- (8) qualified military base realignment and closure fringe.....

(f) Qualified transportation fringe.--

(1) In general.--For purposes of this section, the term “qualified transportation fringe” means any of the following provided by an employer to an employee:

- (A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee’s residence and place of employment.
- (B) Any transit pass.
- (C) Qualified parking.
- (D) Any qualified bicycle commuting reimbursement.

(2) Limitation on exclusion.--The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed--

- (A) \$175 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1),
- (B) \$175 per month in the case of qualified parking, and
- (C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.

(3) Cash reimbursements.--For purposes of this subsection, the term “qualified transportation fringe” includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1). The preceding sentence shall apply to a cash reimbursement for any transit pass only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

(4) No constructive receipt.--No amount shall be included in the gross income of an employee solely because the employee may choose between any qualified transportation fringe (other than a qualified bicycle commuting reimbursement) and compensation which would otherwise be includible in gross income of such employee.

(5) Definitions.--For purposes of this subsection--

- (A) **Transit pass.**--The term “transit pass” means any pass, token, farecard, voucher, or similar item entitling a person to

transportation (or transportation at a reduced price) if such transportation is--

(i) on mass transit facilities (whether or not publicly owned), or

(ii) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle meeting the requirements of subparagraph (B)(i).

(B) Commuter highway vehicle.--The term "commuter highway vehicle" means any highway vehicle--

(i) the seating capacity of which is at least 6 adults (not including the driver), and

(ii) at least 80 percent of the mileage use of which can reasonably be expected to be--

(I) for purposes of transporting employees in connection with travel between their residences and their place of employment, and

(II) on trips during which the number of employees transported for such purposes is at least ½ of the adult seating capacity of such vehicle (not including the driver).

(C) Qualified parking.--The term "qualified parking" means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool. Such term shall not include any parking on or near property used by the employee for residential purposes.

(D) Transportation provided by employer.--Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicle operated by or for the employer.

(E) Employee.--For purposes of this subsection, the term "employee" does not include an individual who is an employee within the meaning of section 401(c)(1).

(F) Definitions related to bicycle commuting reimbursement.--

(i) **Qualified bicycle commuting reimbursement.**--The term "qualified bicycle commuting reimbursement" means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

(ii) **Applicable annual limitation.**--The term "applicable annual limitation" means, with respect to any employee for any calendar year, the product of \$20 multiplied by the number of qualified bicycle commuting months during such year.

(iii) **Qualified bicycle commuting month.**--The term "qualified bicycle commuting month" means, with respect to any employee, any month during which such employee--

(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).

(6) Inflation adjustment.--

(A) In general.--In the case of any taxable year beginning in a calendar year after 1999, the dollar amounts contained in subparagraphs (A) and (B) of paragraph (2) shall be increased by an amount equal to--

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting “calendar year 1998” for “calendar year 2016” in subparagraph (A)(ii) thereof.

(B) Rounding.--If any increase determined under subparagraph (A) is not a multiple of \$5, such increase shall be rounded to the next lowest multiple of \$5.

(7) Coordination with other provisions.--For purposes of this section, the terms “working condition fringe” and “de minimis fringe” shall not include any qualified transportation fringe (determined without regard to paragraph (2)).

(8) Suspension of qualified bicycle commuting reimbursement exclusion.--Paragraph (1)(D) shall not apply to any taxable year beginning after December 31, 2017, and before January 1, 2026.

§ 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

§ 1.1031(d)-2 Treatment of assumption of liabilities.

For the purposes of section 1031(d), the amount of any liabilities of the taxpayer assumed by the other party to the exchange (or of any liabilities to which the property exchanged by the taxpayer is subject) is to be treated as money received by the taxpayer upon the exchange, whether or not the assumption resulted in a recognition of gain or loss to the taxpayer under the law applicable to the year in which the exchange was made. The application of this section may be illustrated by the following examples:

Example 1. B, an individual, owns an apartment house which has an adjusted basis in his hands of \$500,000, but which is subject to a mortgage of \$150,000. On September 1, 1954, he transfers the apartment house to C, receiving in exchange therefor \$50,000 in cash and another apartment house with a fair market value on that date of \$600,000. The transfer to C is made subject to the \$150,000 mortgage. B realizes a gain of \$300,000 on the exchange, computed as follows:

Value of property received	\$600,000
Cash	50,000
Liabilities subject to which old property was transferred	150,000
	<hr/>
Total consideration received	800,000
Less: Adjusted basis of property transferred	500,000
	<hr/>
Gain realized.....	300,000
	<hr/>

[Regulation continues on next page]

Under section 1031(b), \$200,000 of the \$300,000 gain is recognized. The basis of the apartment house acquired by B upon the exchange is \$500,000, computed as follows: Adjusted basis of property transferred..... 500,000

Less: Amount of money received:

Cash \$50,000

Amount of liabilities subject to which property was transferred..... 150,000

..... 200,000

Difference..... 300,000

Plus: Amount of gain recognized upon the exchange 200,000

Basis of property acquired upon the exchange..... 500,000

[Regulation continues on next page]

Example 2. (a) D, an individual, owns an apartment house. On December 1, 1955, the apartment house owned by D has an adjusted basis in his hands of \$100,000, a fair market value of \$220,000, but is subject to a mortgage of \$80,000. E, an individual, also owns an apartment house. On December 1, 1955, the apartment house owned by E has an adjusted basis of \$175,000, a fair market value of \$250,000, but is subject to a mortgage of \$150,000. On December 1, 1955, D transfers his apartment house to E, receiving in exchange therefore \$40,000 in cash and the apartment house owned by E. Each apartment house is transferred subject to the mortgage on it.

(b) D realizes a gain of \$120,000 on the exchange, computed as follows:

Value of property received	\$250,000
Cash	40,000
Liabilities subject to which old property was transferred	80,000
	<hr/>
Total consideration received	370,000

Less:

Adjusted basis of property transferred.....	\$100,000
Liabilities to which new property is subject.....	150,000
	<hr/>
.....	250,000
	<hr/>
Gain realized.....	120,000

[Regulation continues on next page]

For purposes of section 1031(b), the amount of other property or money received by D is \$40,000. (Consideration received by D in the form of a transfer subject to a liability of \$80,000 is offset by consideration given in the form of a receipt of property subject to a \$150,000 liability. Thus, only the consideration received in the form of cash, \$40,000, is treated as other property or money for purposes of section 1031(b).) Accordingly, under section 1031(b), \$40,000 of the \$120,000 gain is recognized. The basis of the apartment house acquired by D is \$170,000, computed as follows:

Adjusted basis of property transferred.....		\$100,000
Liabilities to which new property is subject.....		150,000
		<hr/>
Total		250,000
Less: Amount of money received: Cash	\$40,000	
Amount of liabilities subject to which property was transferred.....	80,000	
		<hr/>
.....		120,000
		<hr/>
Difference.....		130,000
Plus: Amount of gain recognized upon the exchange		40,000
		<hr/>
Basis of property acquired upon the exchange.....		170,000

[Regulation continues on next page]

(c) E realizes a gain of \$75,000 on the exchange, computed as follows:

Value of property received	\$220,000
Liabilities subject to which old property was transferred	150,000
	<hr/>
Total consideration received	370,000

Less:

Adjusted basis of property transferred.....	\$175,000
Cash.....	40,000
Liabilities to which new property is subject.....	80,000
	<hr/>
.....	295,000
	<hr/>
Gain realized.....	75,000

[Regulation continues on next page]

For purposes of section 1031(b), the amount of other property or money received by E is \$30,000. (Consideration received by E in the form of a transfer subject to a liability of \$150,000 is offset by consideration given in the form of a receipt of property subject to an \$80,000 liability and by the \$40,000 cash paid by E. Although consideration received in the form of cash or other property is not offset by consideration given in the form of an assumption of liabilities or a receipt of property subject to a liability, consideration given in the form of cash or other property is offset against consideration received in the form of an assumption of liabilities or a transfer of property subject to a liability.) Accordingly, under section 1031(b), \$30,000 of the \$75,000 gain is recognized. The basis of the apartment house acquired by E is \$175,000, computed as follows:

Adjusted basis of property transferred.....		\$175,000
Cash		40,000
Liabilities to which new property is subject		80,000
		<hr/>
Total		295,000
Less: Amount of money received: Amount of liabilities subject to which property was transferred	\$150,000	
		<hr/>
.....		150,000
		<hr/>
Difference.....		145,000
Plus: Amount of gain recognized upon the exchange		30,000
		<hr/>
Basis of property acquired upon the exchange		175,000

§ 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.

§ 312. Effect on earnings and profits

(a) General rule.--Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of--

- (1) the amount of money,
- (2) the principal amount of the obligations of such corporation (or, in the case of obligations having original issue discount, the aggregate issue price of such obligations), and
- (3) the adjusted basis of the other property, so distributed.

(b) Distributions of appreciated property.--On the distribution by a corporation, with respect to its stock, of any property (other than an obligation of such corporation) the fair market value of which exceeds the adjusted basis thereof--

- (1) the earnings and profits of the corporation shall be increased by the amount of such excess, and
- (2) subsection (a)(3) shall be applied by substituting "fair market value" for "adjusted basis".

For purposes of this subsection and subsection (a), the adjusted basis of any property is its adjusted basis as determined for purposes of computing earnings and profits.

(c) Adjustments for liabilities.--In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for--

- (1) the amount of any liability to which the property distributed is subject, and
- (2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution.

§ 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.

§ 6751. Procedural requirements

(a) Computation of penalty included in notice.--The Secretary shall include with each notice of penalty under this title information with respect to the name of the penalty, the section of this title under which the penalty is imposed, and a computation of the penalty.

(b) Approval of assessment.--

(1) In general.--No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

(2) Exceptions.--Paragraph (1) shall not apply to--

(A) any addition to tax under section 6651, 6654, 6655, or 6662 (but only with respect to an addition to tax by reason of paragraph (9) or (10) of subsection (b) thereof); or

(B) any other penalty automatically calculated through electronic means.

(c) Penalties.--For purposes of this section, the term "penalty" includes any addition to tax or any additional amount.

Session Two: Practice & Procedure and Evidence

Question #: 1

Question P-1 (3 points). On March 1, year 2, TP mailed to the IRS her federal income tax return for Year 1. The IRS received TP's year 1 return on March 5, year 2. The return (1) reported total income tax liability of \$45,000, (2) claimed \$48,000 of credits for income tax withheld from TP's wages, and (3) directed the IRS to refund to TP the \$3000 overpayment. Instead of receiving such a refund, on June 4, year 2 TP received a notice from the IRS, which the IRS had mailed on June 1, year 2. The notice (1) stated that the IRS had determined that only \$41,000 of income tax had been withheld from TP's wages, (2) stated that the IRS had assessed the \$45,000 per the return, and (3) directed TP to pay \$4000, the difference between the \$45,000 of liability and the \$41,000 of credits for withholding. On August 30, year 2, TP filed a petition with the Court. The petition asked the Court to determine that \$48,000 of income tax had been withheld from TP's wages, thus that TP was not liable for an income tax deficiency for year 1. State whether the Court has jurisdiction to hear this case and explain why or why not.

Question #: 2

Question P-2 (4 points).

- a. Describe the doctrine of equitable recoupment, including the principal requirements for its application. Also state whether the Court has authority to apply the doctrine of equitable recoupment.
- b. TP filed a petition challenging a notice of determination in a collection due process ("CDP") case more than 30 days after the IRS issued the notice. TP contended that extraordinary circumstances prevented her from filing earlier and that the Court should apply the doctrine of equitable tolling. Does the Court have authority to consider TP's equitable tolling contention?

Question #: 3

Question P-3 (1 point). On March 1, year 4, the IRS sent to TP a notice of deficiency determining a deficiency of \$9000 as to TP's taxable year 1. TP received the notice on March 5, year 4. On March 25, year 4, TP paid the IRS \$9000 on account of the determined year 1 liability. On May 15, year 4, TP filed with the Court a petition assigning error to all determinations in the notice of deficiency as to year 1 and seeking refund of the \$9000. State whether the Court has jurisdiction. Briefly explain why or why not.

Question #: 4

Question P-4 (4 points). In each of the situations below, the IRS issued to TP a notice of deficiency and TP filed with the Court a petition challenging the notice. As to each of the situations, state whether the Tax Court has jurisdiction to hear the case and briefly explain why or why not.

- a. The last day for filing the petition was September 1. On September 1, TP deposited the envelope containing TP's petition in the "outgoing mail" slot at a post office of the U.S. Postal Service. The U.S. Postal Service affixed a legible postmark of September

2 on the envelope. The Court received the envelope containing the petition on September 4.

- b. The last day for filing the petition was November 10. On November 10, TP delivered to the U.S. Postal Service post office the envelope containing TP's petition. The return address on the envelope was TP's address. The postmark stamped on the envelope by the U.S. Postal Service was November 10. Through a postal error, the envelope was returned to TP instead of being delivered to the Court. The next business day, TP again mailed the petition to the Court. The Court received the petition on November 25.

Question #: 5

Question P-5 (4 points). The IRS issued a notice of deficiency to TP. The notice was issued more than three years after both the date on which TP's return for the tax year in question was due to be filed and the date on which the return actually was filed. TP filed a timely petition with the Court challenging the notice.

Among other allegations, the petition asserted that the IRS issued the notice after expiration of the statute of limitations on assessment. The IRS disagrees because it maintains that an exception to the usual three-year limitations period applies.

- a. Describe what burdens of production (also known as burdens of going forward) the parties bear on the statute-of-limitations issue at the pleadings stages of the case.
- b. State which party will bear the burden of persuasion (also known as the ultimate burden of proof) on the statute-of-limitation issue if the issue goes to trial.

Question #: 6

Question P-6 (4 points). Assume the sole issue in a case before the Court is whether a certain type of expenditure is, as a matter of law, deductible for federal income tax purposes. TP argues that it is; the IRS argues that it is not. TP is an individual who resides in California, a state in the geographical jurisdiction of U.S. Court of Appeals for the Ninth Circuit. The issue at hand has been litigated in various prior cases. The Court is among the courts that have held that the type of expenditure at issue is deductible. The Ninth Circuit is among the courts that have held that the type of expenditure at issue is not deductible. In deciding the instant case, the Court must choose whether to adhere to its own precedent on the issue or to follow the contrary view in the Ninth Circuit precedents. State the general rule that the Court will apply in making this choice and identify any principal exceptions to this general rule.

Question #: 7

Question P-7 (4 points). TP's petition assigned error to every determination in the notice of deficiency. In a portion of its answer, the IRS alleged that TP was collaterally estopped from asserting one matter raised in the petition. TP did not file a reply.

- a. State which party – TP or the IRS – will bear the burden of proof as to the collateral estoppel issue.
- b. State whether, based on the pleadings described above, TP will be deemed to have admitted or will be deemed to have denied the IRS's collateral estoppel allegation.

Question #: 8

Question P-8 (3 points). Describe the nature and the significance of the *Branerton* procedure.

Question #: 9

Question P-9 (3 points).

- a. Describe the circumstances under which the Court has jurisdiction to review a jeopardy assessment made by the IRS.
- b. Describe the procedure a TP is to use in commencing review by the Court of a jeopardy assessment.

Question #: 10

Question P-10 (2 points). The notice of deficiency contained two determinations: (1) the notice disallowed a very large deduction claimed by TP on her return and (2) the notice asserted the §6663 fraud penalty. TP filed a petition challenging both of these determinations. TP refused to enter into discussions with IRS Counsel as to developing a stipulation of facts, despite being directed by the Court to do so. State what relief the IRS could request as a result of this conduct.

Question #: 11

Question P-11 (2 points). The IRS issued to TP a notice of transferee liability. The notice determined that (1) TP's brother had substantial unpaid federal income tax liabilities and (2) TP's brother transferred nearly all his assets to TP for no consideration, rendering TP liable as a transferee for TP's brother's unpaid tax liabilities. TP filed with the Court a petition which contested both of the determinations in the notice. Describe the allocation between the TP and the IRS of the burden of proof as to the two issues.

Question #: 12

Question P-12 (5 points).

- a. Describe the point in time at which a decision by the Court becomes final if no notice of appeal of the decision is filed.
- b. Briefly explain the significance and consequences of a decision by the Court becoming final.
- c. State whether, in the absence of fraud upon the Court, the Court may correct a final decision when a clerical error in the decision is discovered after the decision has become final.

Question #: 13

Question P-13 (2 points). TP filed a petition with the Court challenging the determinations

in a notice of deficiency issued to TP. TP elected that the case be handled under the small tax case procedure. Subsequently, a motion was filed with the Court for discontinuance of use of the small tax case procedure.

- a. Which party or parties may make such a motion?
- b. Within what period of time may such a motion be made?

Question #: 14

Question P-14 (3 points). The IRS issued a notice of deficiency to an estate, asserting a deficiency as to federal estate tax. On behalf of the estate, the executor filed a petition with the Court. The petition assigned error to each of the determinations in the notice of deficiency. The petition also asserted, based on a deduction not claimed on the estate tax return, that the estate had overpaid estate tax. The Court held for the estate on all issues and decided that estate tax had been overpaid to the extent of \$50,000. The IRS did not appeal. However, the IRS did not refund the determined overpayment. Describe how, if at all, the estate may proceed in the Court to enforce the overpayment.

Question #: 15

Question P-15 (2 points). In each of the following situations, TP requested an administrative collection due process (“CDP”) hearing, received an unfavorable decision in that hearing, and timely petitioned the Court to review that decision. State the standard of review the Court will apply in each of the situations.

- a. The issue in the case involves TP’s challenge to the underlying liability.
- b. The issue in the case is whether the IRS improperly rejected TP’s offer in compromise.

Question #: 16

Question P-16 (2 points). Acme, Inc. was duly organized as a corporation under the laws of one of the states (hereinafter the “State”) of the United States. The IRS examined Acme’s federal income tax return for year 5. On June 1, year 8, the State suspended Acme’s corporate capacity. On August 1, year 8, Acme filed a petition with the Court challenging the notice of deficiency. On September 1, year 8, the IRS moved to dismiss Acme’s petition. On September 10, year 8 –before the Court acted on the IRS’s motion –the State reinstated Acme’s corporate capacity. Describe the applicable principle of law under which the Court should decide the motion.

Question #: 17

Question P-17 (3 points).

- a. Properly computed, the last day for filing TP’s petition with the Court was November 1, year 1. However, the notice of deficiency incorrectly stated that the last day for filing was October 28, year 1. TP filed her petition on October 29, year 1. State whether the petition was timely filed.
- b. Properly computed, the last day for filing TP’s petition with the Court was May 1, year 2. However, the notice of deficiency incorrectly stated that the last day for filing

was May 5, year 2. TP filed her petition on May 3, year 2. State whether the petition was timely filed.

- c. Properly computed, the last day for filing the petition with the Court was February 1, year 3. The notice of deficiency contained no reference to the last day for the filing of a petition. TP filed her petition on February 3, year 3. State whether the notice of deficiency was valid.

Question #: 18

Question P-18 (2 points). Describe and state the significance of a “qualified settlement offer.”

Question #: 19

Question P-19 (2 points).

- a. TP filed a petition with the Court. In the petition, TP requested that the proceedings in the case be conducted as a “Small Case.” The IRS believes that the case should not be conducted as a Small Case. State how, if at all, the IRS may oppose TP’s requested “Small Case” designation.
- b. In her petition to the Court, TP did not designate the proceeding for conduct under the Small Case rules. State the circumstances, if any, under which TP may request Small Case designation after the filing of the petition.

Question #: 20

Question P-20 (1 point). State when joinder of issue will be considered to have occurred in a deficiency action brought in the Court.

Question #: 21

Question P-21 (2 points). Describe the requirements for being a “partnership representative” (“PR”) for purposes of litigation in the Court pursuant to the Bipartisan Budget Act of 2015.

Question #: 22

Question P-22 (2 points). Esther and Ronald were married to each other at the time they filed a joint federal income tax return. Later, Esther and Ronald separated but remained married. After audit, the IRS sent notices of deficiency as to the return to Esther and to Ronald at their last known addresses. Ronald did not file a petition with the Court challenging the notice he received. Esther filed a petition on her behalf only. Esther’s petition assigned error to the IRS’s determination of a deficiency. Her petition also claimed relief from any liability under the §6015 spousal relief rules. Describe the rights, if any, that Ronald has in the ensuing case.

Question #: 23

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-1 (5 points). TP calls W1 (Witness 1) to the witness stand. Based upon his lifelong friendship with W1 as well as TP's pretrial interviews with W1, TP anticipated that W1 would testify to facts that would help TP present credible evidence regarding a material fact in dispute. However, W1's testimony actually undermined TP's position and bolstered the IRS's case. TP then sought to impeach W1's credibility by asking W1 a question pertaining to bias. The IRS objects, arguing that it is improper for a direct examiner to impeach the direct examiner's own witness. How should the Court rule? Why?

Question #: 24

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-2 (6 points). TP calls W2 to the witness stand. W2 testifies to facts favorable to TP. On cross-examination, the IRS seeks to introduce extrinsic evidence that W2 has a prior attempted homicide conviction. TP objects. How should the Court rule? Why?

Question #: 25

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-3 (6 points). TP calls W2 to the witness stand. W2 testifies to facts favorable to TP. On cross-examination, the IRS seeks to introduce extrinsic evidence that W2 has a prior attempted homicide conviction. TP objects. Assume for purposes of this question that the

Court allows the IRS to introduce extrinsic evidence that W2 has a prior attempted homicide conviction. TP then seeks to call W3 as a witness. If allowed to testify, W3 is prepared to testify that, in W3's opinion, W2 is a non-violent person. The IRS objects. How should the Court rule? Why?

Question #: 26

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-4 (6 points). TP takes the witness stand. On direct examination, TP testifies that TP visited with TP's tax preparer on March 1, 2019, to discuss issues relevant to TP's charitable contribution deductions. The IRS does not cross-examine TP. After TP is excused from the witness stand, TP seeks to call W4, W5, W6, W7, and W8 as TP's next five witnesses. If permitted to testify, W4, W5, W6, W7, and W8 will buttress TP's claim that TP met with TP's tax return preparer on March 1, 2019. Specifically, W4, W5, W6, W7, and W8 will testify to only one principal matter; namely, that they were in the preparer's office on March 1, 2019, that they observed TP in the preparer's office on that day, and that they observed TP engage in conversation with the preparer. The IRS objects to this testimony on the grounds of irrelevance and insufficient probative value. How is the Court likely to rule on this objection? Why?

Question #: 27

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-5 (8 points). TP takes the witness stand and testifies that TP visited with TP's tax return preparer on March 1, 2019. TP then seeks to testify that TP's preparer said to TP, "What you seek to deduct are valid charitable contribution deductions and there is nothing improper about them." The IRS objects to this testimony. TP insists that the statements should be admitted for the truth of the matters asserted therein. How should the Court rule? Why?

Question #: 28

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-6 (6 points). TP takes the witness stand. TP's attorney asks TP whether TP is certain that TP met with a tax professional prior to filing TP's 2018 federal tax return. In response, TP testified that TP was certain that the meeting occurred. TP's attorney then asked TP, "Can you please tell us the date and time of your meeting?" TP responded that TP recalled neither the exact date nor the exact time. But TP added that TP was certain that a meeting occurred because TP has been filing tax returns for 40 years, that TP has claimed itemized deductions for each of those 40 years, and that it was TP's ritual to meet in the month of March with a tax professional to discuss TP's tax return, including TP's itemized deductions, prior to filing TP's return. The IRS objects. How should the Court rule? Why?

Question #: 29

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-7 (6 points). W9 is employed as an Appeals Officer by the IRS Independent Office of Appeals. TP had filed a protest after IRS examination of his 2018 return and before the IRS issued the notice of deficiency as to TP's 2018 tax year. W9 is the Appeals Officer with whom TP met. If allowed to testify, W9 will testify that TP said the following to him, "I hope the IRS might be interested in settling my case. You see, I claimed some charitable deductions that I admit are of questionable validity and it has gotten me into some trouble. I am hoping that we can sit down and negotiate a settlement." TP objects to this proposed testimony. How should the Court rule? Why?

Question #: 30

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that

no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-8 (6 points). TP calls W10, TP's tax return preparer, to the witness stand. TP asks W10 whether W10 recalls the precise date that W10 met with TP to discuss the preparation of TP's 2018 tax return. W10 responded that W10 did not recall the exact date. TP then inquired whether there was anything that TP could show W10 that might enable W10 to recall the exact date. W10 responded, "Yes. I know that my assistant was at our meeting and that my assistant took meticulous notes. The assistant's notes would likely enable me to recall the exact date." TP then requests the Court's permission to show W10 the notes prepared by the assistant. The IRS objects. How should the Court rule? Why?

Question #: 31

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-9 (7 points). The IRS calls EW, an expert witness, to the witness stand. For purposes of this question, you should assume that TP's itemized deductions included an automobile donation, that the charitable entity to which the vehicle was donated provided TP with an acknowledgment certifying its intent to make a significant intervening use of the car, and that TP claimed a deduction of \$3750.00. You should further assume that EW has been qualified as an expert witness to testify regarding the fair market value of automobiles and that there are no issues regarding EW's qualifications. In response to a question posed by the IRS, EW testifies, "Given the extensive physical damage to the vehicle, it is my opinion that the fair market value of the automobile listed in the subject 2018 tax return was substantially—and quite obviously—less than the amount claimed in that return." TP objects to EW's testimony. How should the Court rule? Why?

Question #: 32

Taxpayer (TP) has filed a petition with the Court contesting an alleged income tax deficiency and a § 6662(b)(1) penalty. The IRS contends, in part, that (1) TP, on TP's 2018 individual federal income tax return, improperly claimed charitable contribution deductions and (2) a § 6662(b)(1) penalty applies with respect to the improperly claimed charitable contribution deductions. TP maintains that the deductions were proper and that no § 6662(b)(1) penalty applies because TP reasonably and in good faith relied on the advice of TP's tax return preparer. TP did not elect to have the case tried under the small tax case procedure. Trial of the case commenced in June 2023.

Question E-10 (4 points). TP calls W11 as a witness. W11 testifies that W11 saw TP in TP's tax return preparer's office. W11 further testifies that prior to TP's meeting with the preparer TP was seated in the waiting room, that TP frequently looked at TP's cell phone, and that TP ate a candy bar. On cross-examination, the IRS asks W11 whether W11 was certain that TP was eating a candy bar. After TP rested TP's case, the IRS informed the Court that it wished to call W22 as a witness for the sole purpose of impeaching the credibility of W11. The IRS's attorney added that, if allowed, W22 would testify that W22 also was in the waiting room on the day in question, that W22 observed TP, but that TP was eating a celery stick, not a candy bar. TP objects to W22's proposed testimony. How should the Court rule? Why?