

**2000 PRACTICE AND PROCEDURE**  
**(60 Minutes)**

Question P-1 (10 minute/s) Determine whether the Tax Court has jurisdiction in each of the situations below. State YES or NO as to each subpart of the Question.

(a) The Internal Revenue Service ("IRS") issues to Taxpayer ("TP") a statutory notice with respect to one taxable year. The notice determines an income tax deficiency and also additions to tax pursuant to Section 6662(a) and (b)(2). TP petitioned the Tax Court to dispute the deficiency amount and the additions to tax. Does the Tax Court have jurisdiction as to the additions to tax?

(b) TP received from the IRS a timely notice of deficiency reflecting a determination that TP was liable for three additions to tax for one of TP's taxable years: one each under sections 6651(a)(1), 6651 (a)(2), and 6655. The IRS did not determine, and the notice of deficiency did not assert, that TP had a deficiency in its Federal income tax for the year. TP timely petitioned the Tax Court with respect to the notice of deficiency, alleging in the petition that TP was not liable for the additions to tax. The petition did not allege, and TP does not otherwise assert, that it overpaid its federal income tax for the taxable year to which the additions to tax relate.

(c) Does the Tax Court have jurisdiction to determine a deficiency that exceeds the amount of the deficiency determined in the IRS statutory notice of deficiency?

(d) The Tax Court determines that TP made an overpayment of tax with respect to the taxable year that was the subject of the statutory notice of deficiency. More than 150 days have elapsed since the Tax Court's decision became final, but the IRS has not refunded the overpayment. TP seeks a Tax Court order that the IRS refund the overpayment. Does the Tax Court have jurisdiction with respect to such an order?

(e) Does the Tax Court have jurisdiction to order a refund of any amount collected within the period during which the IRS is prohibited by statute from collecting by levy or through a proceeding in court?

(f) The IRS audited TP's Federal Insurance Contribution Act and income tax withholding returns for 1994-95 and its Federal Unemployment Tax Act tax return for 1995. The IRS then issued a determination notice concerning worker classification under section 7436, asserting that certain of TP's workers were "employees" and that TP was not entitled to relief from that classification under section 530 of the Revenue Act of 1978. TP filed a Tax Court petition. Does the Tax Court have subject matter jurisdiction as to TP's employment tax liability under section 7436?

(g) TP paid \$38,000 toward TP's 1993 federal income tax liability through withholding and an additional payment with TP's request for a filing extension. TP eventually filed the 1993 federal income tax return in 1997, and the return reported a total tax liability of only \$28,900. TP requested that the \$10,100 overpayment be applied to assessed tax liabilities for 1990 and 1991, and the IRS applied all of the overpayment to those

assessed tax liabilities for 1990 and 1991. Later in 1997, the IRS issued a deficiency notice for 1993, determining a \$5,900 deficiency, and TP filed a petition with the Tax Court in response to the deficiency notice. TP eventually conceded the deficiency for 1993, but TP argued that the IRS improperly determined TP's 1990-91 tax liabilities so that a portion of the 1993 overpayment would be available to offset the agreed 1993 deficiency. Does the Tax Court have jurisdiction to decide whether the IRS properly assessed interest and penalties for 1990-91?

(h) In 1997, the IRS issued a deficiency notice to TP for years 1994-96. TP returned the notice to the IRS with an attached statement indicating that TP was not liable for federal income taxes (based on frivolous constitutional arguments). TP did not file a petition with the Tax Court with respect to the notice. In 2000, the IRS issued a final notice of intent to levy, which stated that TP could request a "Collection Due Process Hearing" with the IRS Appeals Office, and TP returned the final notice with the same statement of no liability. The IRS then issued a notice of determination informing TP that TP could not challenge the underlying liability because TP previously had received a deficiency notice. TP timely filed with the Tax Court a petition for review of respondent's determination letter. Does the Tax Court have jurisdiction to review such a determination pursuant to section 6330?

(i) In 1997, the IRS issued a deficiency notice to TP with respect to 1994 and 1995. TP received the notices but did not file a petition with the Tax Court, and then the IRS assessed the deficiencies. On February 1, 1999, a final notice of intent to levy and "Notice of Your Right to a Hearing" was sent to TP for the 1994-95 taxes. Although the notice provided information on appealing the levy, TP did not request a collection due process hearing within 30 days of the issuance of the notice. Afterwards, the IRS began a collection action under section 6330. On June 3, 1999, TP sent a collection appeal request to the IRS, and the IRS denied the request on September 30, 1999. TP then filed a petition with the Tax Court requesting review of the IRS action. Does the Tax Court have jurisdiction with respect to TP's petition?

(j) TP was an officer of a corporation that failed to pay FICA and employee income tax withholdings to the government. The IRS determined that TP was liable for the "trust fund" amounts as a responsible person under section 6672 and initiated a collection action against TP. An IRS appeals office issued a determination notice rejecting TP's settlement offer, which had proposed monthly installment payments by TP, and the IRS notified TP that TP could file for a redetermination in federal district court. TP filed a Tax Court petition. Does the Tax Court have jurisdiction with respect to the petition regarding liability under section 6672?

Question P-2 (2 minute/s) TP is a United States citizen residing in (and physically present in) the United States at all relevant times. On June 12, 2000, the IRS mailed a notice of deficiency bearing the date of June 12, 2000 to TP regarding TP's 1998 income tax liability. The Notice states that the last day on which a petition may be filed is September 12. TP received the notice on June 16, 2000. What is the last day on which TP timely can file a petition with the Tax Court? The following 2000 calendar may be of use to you:

	S	M	T	W	Th	F	S
June					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	
July							1
	2	3	4	5	6	7	8
	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					
August			1	2	3	4	5
	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		
September						1	2
	3	4	5	6	7	8	9
	10	11	12	13	14	15	16
	17	18	19	20	21	22	23
	24	25	26	27	28	29	30

Question P-3 (2 minute/s) Same facts as Question 2, except that the notice of deficiency does not state the last date on which the Petition may be filed.

- (a) Is the notice of deficiency valid?
- (b) Assuming that the notice is valid, what is the last day on which TP timely can file a petition with the Tax Court?

Question P-4 (8 minute/s) Explain the required contents of a Tax Court petition filed with respect to a taxpayer who is a natural person.

Question P-5 (1 minute/s) If a Tax Court petition is silent with respect to one or more issues raised in the deficiency notice, what is the effect?

Question P-6 (2 minute/s) With respect to papers filed with the Tax Court:

(a) Each document signed by taxpayer's counsel must contain the counsel's Tax Court bar number. State TRUE or FALSE.

(b) Counsel for taxpayer is a professional corporation. Describe the proper name (and signature) to be used on documents submitted to the Court by the professional corporation.

Question P-7 (4 minute/s) Section 6212(b) requires that the IRS statutory notice of deficiency be mailed to the last known address of the taxpayer. What is required of the IRS with respect to addressing the statutory notice of deficiency if the taxpayer has changed addresses between the time of filing the relevant return and the mailing of the notice of deficiency.

Question P-8 (2 minute/s) Under what circumstances may the statute of limitations be tolled/suspended as to a refund claim of a taxpayer?

Question P-9 (3 minute/s) Describe the situations, if any, under which a joint petition is permitted under the Tax Court Rules.

Question P-10 (1 minute/s) Describe the preferred pre-trial discovery process in the Tax Court.

Question P-11 (3 minute/s)

(a) Tax Court discovery may not be commenced before what date?

(b) Tax Court discovery must be completed by what date?

(c) If the completion date in (b) falls on a Saturday, Sunday, or legal holiday, by what date must discovery be completed?

Question P-12 (2 minute/s) Discuss whether the Tax Court may limit the extent to which a party may obtain discovery.

Question P-13 (2 minute/s) The Tax Court Rules authorize the use of written interrogatories.

(a) May written interrogatories be used to elicit information from a nonparty witnesses in a Tax Court proceeding?

(b) Describe alternative methods of eliciting information from a nonparty witness.

Question P-14 (3 minute/s) Discuss whether a Tax Court petitioner may take depositions as a method of discovery in the Tax Court.

Question P-15 (2 minute/s) Prior to trial in the Tax Court, the IRS submits to TP a request for admission.

- (a) Describe TP's duties of response to the request.
- (b) Describe the various consequences and sanctions that may result from failing to comply with the request and failing otherwise to participate in pretrial discovery proceedings (including Court orders to comply).

Question P-16 (3 minute/s) The Tax Court Rules prescribe special procedures for "small tax cases." Describe briefly the essential elements of these small tax case procedures.

Question P-17 (3 minute/s) TP receives a notice of deficiency concerning an income tax return. TP wants a person admitted to practice in the Tax Court to represent TP in the Tax Court proceeding.

- (a) How may the person representing TP, "Counsel," indicate to the Tax Court that Counsel will represent TP before the Court?
- (b) If TP initially decides to represent TP and files a petition, but later has a change of mind and asks Counsel to represent TP, how must Counsel notify the Court?

Question P-18 (7 minute/s) Discuss the requirements that must be satisfied to authorize the Tax Court to award to a petitioner attorneys fees and costs.

## **SUBSTANTITVE TAX (96 Minutes)**

Question S-1 (2 minute/s) Define the cash method of accounting for federal income tax purposes.

Question S-2 (2 minute/s) Define the accrual method of accounting for federal income tax purposes.

Question S-3 (2 minute/s) TP, who operates a dry cleaner, has elected the cash method of accounting for federal income tax purposes. On December 31, 2000, a customer comes to TP's place of business and gets out a checkbook in order to satisfy the customer's account with TP for cleaning services rendered. TP asks that the customer wait until after the first of the following year to mail the check, and the customer complies with TP's suggestion by mailing TP a check during January of 2001. For what year should the customer's check be included in TP's gross income and why?

Question S-4 (2 minute/s) TP operates a trucking business and uses the accrual method of accounting for federal income tax purposes. Under state and local laws, trucking businesses are required to pay for various licenses, permits, and fees. In 1999, TP expended \$4.3 million for licenses, some of which had an effective period extending into 2000. Also in 1999, TP paid \$1 million for liability and property insurance, the coverage of which extended into 2000. A greater percentage of the license and insurance costs is allocable to 1999 than to 2000. For purposes of book accounting and financial reporting, TP allocated the license and insurance expenses ratably over 1999-2000. Discuss whether TP may deduct the entire amounts of the license and insurance expenses on TP's 1999 federal income tax return.

Question S-5 (2 minute/s) TP works for a company that manufactures widgets. TP's employer has an employee discount program available to all employees. The employee discount is thirty per cent (30%) of the retail sales price of any widget. During 2000, TP purchases, under the employee discount plan, a widget with a retail price of \$500 by paying \$350. During 1999, the employer's sales were \$800,000 and its cost of goods sold was \$600,000. For all of 2000, the employer's sales were \$1,000,000 and its cost of goods sold was \$800,000. State the amount of gross income to TP as to the purchase under the employee discount plan.

Question S-6 (2 minute/s) In January 2000, TP attended a silent auction benefiting a charitable organization and purchased a very old wooden chair for \$10. While stripping the old paint off of the chair, TP discovered a plate identifying the maker of the chair. Suspecting that the chair was valuable, TP took (in February 2000) the chair to an appraiser, who advised TP that the chair was a valuable antique (worth \$20,000). TP retained the chair and used it in TP's residence for all of 2000. State the amount of gross income to TP in 2000 with respect to the desk (probably s/b chair).

Question S-7 (10 minute/s) State the amount (without any further explanation), if any, of the following items that constitutes gross income to TP:

- (a) \$700 cost to TP's employer of \$40,000 of life insurance on TP's life, which is provided under a group term policy of the employer.
- (b) \$10,000 extorted from business acquaintance.
- (c) \$500 value of a chair won at the grand opening of a new furniture store.
- (d) \$1,000 of interest received on U.S. Treasury Bill.
- (e) \$4,000 of interest received on a State of Washington bond used to finance the construction of new public schools.
- (f) \$32,000 paid to TP at maturity of loan TP made to a business associate (\$30,000 principal repayment and \$2,000 of interest).
- (g) \$2,500 as a partial payment of the proceeds of a life insurance policy in the face amount of \$30,000 on TP's spouse who died during the year. TP elected pursuant to the terms of the policy to receive a \$2,500 payment in each year for life. TP's life expectancy is 15 years when the payments commence.
- (h) \$3,000 cash found on sidewalk in front of TP's house that TP spent on a vacation in New Zealand.
- (i) \$1,000,000 cash prize for winning the Nobel Prize in physics; TP accepted the award and used all of the money for research activities.
- (j) \$20,000 received on December 31, 2000, from a testamentary trust created according to the terms of the will of TP's spouse who died during the year. The spouse's will provided that all income of the trust was to be distributed to TP for TP's life and that, after the death of TP, the trust was to terminate by distribution to the spouse's then living lineal descendants. The distribution to TP was equal to the income of the trust for 2000 (and was equal to the distributable net income of the trust for 2000).

Question S-8 (5 minute/s) In 1995, TP buys industrial equipment for use in TP's trade or business from Seller for \$400,000; TP paid \$100,000 in cash and executed a promissory note to Bank for \$300,000 with interest payable on the unpaid balance of the loan at the rate of 9% compounded annually. TP experiences economic difficulties and is unable to make total payments on the debts incurred in the business. On December 31, 2000, prior to the debt discharge described below, the fair market value of all of TP's trade or business assets (the only property owned by TP) is \$275,000, TP's adjusted basis in those assets is \$265,000, and the total amount of TP's debts is \$300,000. On December 31, 2000, Bank forgives \$40,000 of the amount owed by TP to Bank under the terms of the promissory note. As of December 31, 2000, TP has (1) no net operating loss carryover amounts, (2) no §38 tax credit carryover amounts, (3) no §53(b) credit amounts, and (4) no capital loss carryover amounts. Discuss the tax consequences to TP that are associated with the forgiveness by Bank of \$40,000 of the amount owed by TP under the terms of the promissory note.

Question S-9 (4 minute/s) Describe the significant features of the Roth IRA.

Question S-10 (2 minute/s) TP creates a trust on January 1, 2000. Under the terms of the trust, TP is to receive all of the income of the trust until TP's death, and upon TP's death the remainder is to go as appointed under TP's will. The trust is to distribute its income to TP on December 31 of each year. On December 15, 2000, TP directs the trustee to distribute the current year's income to TP's children (all of the age of majority). Discuss whether the income should be taxed to TP or to TP's children.

Question S-11 (1 minute/s) While skiing in Colorado, TP was injured on February 2, 2000, by skiing off a cliff. TP suffered physical injury to TP's body and also emotional distress associated with the physical injuries. To cope with the emotional distress, TP visited a psychiatrist during 2000 and incurred costs of \$5,000. TP takes a court judgment against the ski area operator, and the judgment is paid by the operator on December 30, 2000. The damages awarded were as follows: (1) \$400,000 compensatory damages for physical injury to the body of TP, (2) \$50,000 punitive damages for physical injury to the body of TP, and (3) \$100,000 compensatory damages for the emotional distress. State the amount of gross income with respect to the \$400,000 compensatory damages for the physical injury to the body.

Question S-12 (1 minute/s) Same facts as Question 11. State the amount of gross income with respect to the \$50,000 punitive damages for physical injury to the body.

Question S-13 (1 minute/s) Same facts as Question 11. State the amount of gross income with respect to the \$100,000 compensatory damages for the emotional distress.

Question S-14 (1 minute/s) Same facts as Question 11. For taxable year 2000, may TP deduct under §213 the \$5,000 of psychiatric care?



Question S-15 (3 minute/s) TP retains counsel pursuant to a contingent fee agreement and initiates a lawsuit seeking money damages based on alleged wrongful termination of employment by TP's former employer. The court awards TP damages for (1) lost past earnings, (2) lost future earnings, and (3) lost fringes and lost pension benefits. The judgment was paid by the former employer to TP during 2000. Also during 2000, TP paid legal fees to the counsel that represented TP in the litigation. Briefly explain whether TP must report (1) all of the damages received or (2) the damages received net of the fees paid to the attorney.

Question S-16 (4 minute/s) Discuss the rules applicable in determining whether expenses associated with a "home office" are deductible.

Question S-17 (3 minute/s) Describe the rules as to the deductibility of unreimbursed business travel expenses incurred by an employee posted, on a nonpermanent basis, to a work location several hundred miles away from the employee's permanent place of work.

Question S-18 (4 minute/s) Under what circumstances are daily transportation expenses incurred by a taxpayer in going between the taxpayer's residence and a work location deductible under §162(a) of the Internal Revenue Code?

Question S-19 (4 minute/s) TP and Spouse were married and owned all of the stock of X Corporation (X). TP and Spouse divorced, and the final judgment dissolving their marriage ordered (1) that Spouse sell and convey to TP, or at TP's election to X, all of Spouse's X stock, (2) that TP, or at TP's election X, pay a stated amount of cash to Spouse simultaneously with the sale and conveyance of such stock, and (3) that as additional consideration TP, or at TP's election X, deliver to Spouse an interest-bearing promissory note for the balance of the purchase price of that stock. Pursuant to the divorce judgment, TP elected that the sale and conveyance of all of Spouse's X stock be made to X (instead of to TP), (2) that X (instead of TP) pay the stated amount of cash to Spouse simultaneously with that sale and conveyance, and (3) that X (instead of TP) issue the required promissory note to Spouse for the balance of the purchase price. Pursuant to TP's election under the divorce judgment, Spouse sold and transferred to X, instead of to TP, all of the X stock that she owned. Discuss whether §1041 applies to this transaction.

Question S-20 (5 minutes – see allocation below) A joint federal income tax return generally involves joint and several liability. The Internal Revenue Code now provides limitations to a spouse's (or former spouse's) liability.

(a) (3 minute/s) Describe and discuss these limitations.

(b) (2 minute/s) Discuss the extent to which the Tax Court has jurisdiction with respect to these limitations.

Question S-21 (6 minute/s) In 1994, Taxpayer acquired unimproved real property. To acquire the property, TP (1) paid \$100,000 cash, (2) took subject to a preexisting first mortgage debt secured by the property in the amount of \$75,000 (for which TP was not personally liable), and (3) executed a \$40,000 second mortgage indebtedness (for which TP was personally liable) to the seller. In 1996, TP borrowed \$30,000 from a bank, in return for which TP executed a nonrecourse note (no personal liability to TP) and a third mortgage on the real property to secure the \$30,000 debt. The \$30,000 proceeds of the loan were used to purchase a speedboat. In 2000, TP received an offer to buy the real property, which TP accepted. Buyer (1) paid \$200,000 cash, (2) took subject to the first mortgage debt of \$60,000 (it had been paid down from \$75,000 to \$60,000), (3) assumed the \$40,000 second mortgage debt, and (4) took subject to the third mortgage debt of \$20,000 (it had been paid down from \$30,000 to \$20,000).

- (a) What was TP's basis in the property at the time of acquisition in 1994?
- (b) Describe the federal income tax consequences of the 1996 borrowing and third mortgage transaction.
- (c) Quantify TP's amount realized and any gain or loss realized upon the sale of the property to Buyer in 2000.

Question S-22 (3 minute/s) On January 1, 2000, TP transfers several properties to a corporation in exchange for all of the issued and outstanding stock of the corporation. Two of the transferred properties are real property interests (Property #1 and Property #2), and each is encumbered by a mortgage securing a loan to TP. TP is personally liable on the debt encumbering Property #1. The debt encumbering Property #2 is nonrecourse. The corporation assumes the debt encumbering Property #1, and the corporation takes Property #2 subject to the encumbering debt and does not assume the debt encumbering Property #2. Discuss the federal income tax consequences to TP (only) associated with the transfers by TP to the corporation.

Question S-23 (3 minute/s) TP owned all the shares of an insolvent S corporation. The corporation owed money, in 2000 was forgiven the debt, and then liquidated during 2000. Pursuant to §108(a), the corporation excluded the debt forgiveness amount from its 2000 gross income. Discuss whether the debt forgiveness amount flows through to TP and increases TP's basis in the S corporation stock.

Question S-24 (3 minute/s) In 2000, a partner contributes appreciated property (its fair market value exceeds its adjusted basis at the time of the contribution) to a partnership, and the partnership thereafter (and within 6 years of the contribution) distributes the property to another partner. Describe the federal tax consequences that apply to the contributing partner.

Question S-25 (3 minute/s) TP and Spouse owned as community property 5 million shares of the common stock of Corporation. The shares were held in a revocable inter vivos family trust that had been created by TP and Spouse. Spouse died and left Spouse's community property interest of 2.5 million shares of stock to an irrevocable marital trust (a qualified terminable interest property trust under § 2056(b)(7)) (the "marital trust") for the benefit of TP during the life of TP. Upon the death of TP, the property in the marital trust was to pass to others. Spouse's estate claimed a federal estate tax marital deduction in connection with that property. After Spouse died, TP removed TP's 2.5 million shares from the family trust and contributed them to another revocable trust (the "TP trust"), the income of which was payable to TP for TP's life. TP then died.

Describe the following federal estate tax consequences with respect to the stock of Corporation:

(a) (2 minute/s) Identify which shares, if any, are to be included in the gross estate of TP.

(b) (1 minute/s) Discuss the valuation principles that apply to any such included shares of stock.

Question S-26 (3 minute/s) TP's father was in declining health and appointed TP as his agent under a durable power of attorney. For many years, TP's father had made gifts to his children during December. Pursuant to the power of attorney, TP prepared gift checks drawn against the father's checking account. TP prepared one check for TP and for each of TP's siblings; each of the checks was in the same dollar amount. The checks were prepared on December 15, 2000, and were delivered on December 20, 2000. All of the checks were deposited in the respective donee's checking account by the end of 2000, but one of the checks had not cleared against the father's checking account until January 2, 2001. The father died on January 31, 2001. The father's checking account had sufficient funds to honor each of the checks. Explain whether TP's father has made a completed gift in 2000 as to the check that did not clear against his account until 2001.

Question S-27 (4 minute/s) (a) Discuss briefly the major requirements of the statutory provision that permits a transferee to refuse property for purposes of the federal estate and gift taxes. (b) Discuss whether such a refusal is effective with respect to a preexisting federal tax lien against all of the property of the disclaiming heir of a decedent.

Question S-28 (2 minute/s) Interest and penalties (a penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues to exist) generally accrue with respect to due but unpaid federal income tax. Under what circumstances will the accrual of interest and penalties be suspended?

Question S-29 (5 minute/s) Describe the essential elements of the substantial understatement of income tax penalty as to an individual taxpayer.

Question S-30 (4 minute/s) Describe the alternative minimum tax as it applies to an individual taxpayer.

## **EVIDENCE (60 Minutes)**

Question E-1 (2 minute/s) The following facts apply to questions E-1 through E-4. The IRS asserted a deficiency against Ted Taxpayer with respect to his 1999 tax return due to unreported income and disallowed deductions. A Tax Court trial resulted. Both Ted as well as the government moved to have trial witnesses excluded until they gave their testimony in open court. The court issued its standard ruling in such situations, a general exclusionary order prohibiting witness presence until the time that the person testifies. Does this order apply to Ted, who will be a witness in the trial? Answer "yes" or "no," then explain briefly.

Question E-2 (2 minute/s) After Ted's case was completed, the IRS presented rebuttal evidence. This was on the second day of the trial. Called first in rebuttal was the case's chief investigative agent for the IRS, a person whom the IRS counsel earlier referred to as "our agency representative in this matter." The agent had been sitting with the government attorney during the entirety of the case to that point. Just before she was sworn, Ted's counsel objected that allowing her to testify would violate the court's ban on witnesses being in the courtroom until they testified. Can the agent testify? Answer "yes" or "no," then explain briefly.

Question E-3 (4 minute/s) Another witness was called by the government, one Thaddeus Jones, who testified that Ted had collected substantial fees from Jones, which fees were never incorporated in Ted's reported gross income. On cross-examination by Ted's counsel, Jones admitted that he came into the courtroom the prior day and heard a good deal of the testimony. He explained that there were a number of people in the spectator section, and he felt he would not be noticed. He enjoyed hearing some of the earlier evidence, he said, and it was helpful to him. When Ted's lawyer asked Jones if government counsel had warned him not to attend court proceedings until he testified, Jones replied: "Not that I can recall." At that point, Ted's attorney asked that Jones' entire testimony be stricken from the record. Should the testimony be stricken? Answer "yes" or "no," then explain briefly.

Question E-4 (4 minute/s) In addition to attempting to strike evidence from the record, what other sanctions might an attorney request when a witness is shown to have attended court proceedings prior to the time of his testimony, contrary to the court's instructions? List the remedies which a party might request when an opposing witness improperly attends court in cases where the judge has entered a general order excluding witnesses so they cannot hear the testimony of other witnesses.

Question E-5 (3 minute/s) The following facts apply to questions E-5 through E-19. The IRS asserts that Sam Taxpayer underreported his gross income and overstated his expenses on his federal income tax return for 1999. Sam operates a small business, "Sam's Speedy Pizza Service," as a proprietorship. He employs 20 people. A trial in the United States Tax Court raised several evidence issues.

Counsel for Sam called Sam to the witness stand. He testified regarding his income and deductions during the year in issue, 1999. The IRS cross-examined him by asking: "Earlier this year didn't the IRS assert a claim against you for unpaid federal income tax for 1999, which you attempted to settle by offering partial payment?" Sam's counsel objected. Is this a permissible cross-examination question? Answer "yes" or "no," then explain briefly.

Question E-6 (4 minute/s) The next cross-examination question asked Sam to relate what he told attorney Lee Baker about his (Sam's) income and deductions for 2000. Lee Baker is a prominent tax attorney in the local area. He is not representing Sam in this current tax case, nor has he ever represented Sam. After hearing Sam out, attorney Baker declined the case. At trial, when the IRS attorney asked Sam "What did you tell Mr. Baker about your income and deductions for 2000?" there was an objection. Is this a permissible cross-examination question? Answer "yes" or "no," then explain briefly.

Question E-7 (3 minute/s) The cross-examination continued. Sam admitted that two years ago he committed the offense of misdemeanor bank fraud, and received a suspended sentence. Then the IRS attorney asked: "And didn't your theft of bank assets involved in that conviction result in numerous widows and children being deprived of their funds?" There was an objection by the defense. Is this a permissible cross-examination question? Answer "yes" or "no," then explain briefly.

Question E-8 (2 minute/s) Question E-7 reflects the last cross-examination question by the IRS counsel. Sam then answered a few questions on redirect. His attorney asked him to briefly explain the circumstances of his prior banking conviction. If allowed to testify, Sam would say that there was a bank employee's mistake that resulted in a computation error and ultimately caused Sam's conviction, which conviction was not really attributable to any fraud on Sam's part. However, before Sam could make his explanation, there was an objection by the government: "Objection, improper redirect." Is this a permissible redirect examination question? Answer "yes" or "no," then explain briefly.

Question E-9 (4 minute/s) Sam stepped down. As the next witness for Sam, Sam's lawyer called an experienced small business consultant to testify as an expert witness on the propriety and reasonableness of several expense items claimed by Sam. After establishing that the expert looked at Sam's records and that the expenses appeared customary and reasonable, Sam's lawyer asked if the expert had talked about the case with other pizza business owners. The expert replied: "Yes. Their comments provided part of the basis for my opinion here." When Sam's attorney asked: "Will you tell us what they said?" there was a hearsay objection. Is this a permissible question? Answer "yes" or "no," then explain briefly.

Question E-10 (3 minute/s) The expert was then asked on direct if he prepared a summary of comparative expenses, comparing Sam's claimed expenses to those of other, similar companies. He replied, "Yes, based upon their business records. First, I secured the regularly prepared business records from four other pizza business companies. Then I prepared a chart which shows that Sam's expenses compare favorably to the expenses incurred by the other similar businesses." The chart was offered in evidence as defense exhibit number one. There was an objection to the exhibit on the following ground: "Objection, the underlying records have not been made available to us." When the judge inquired about this, Sam's lawyer said that they had not disclosed the records of other businesses to the IRS because "we have no legal obligation to do so." Will the exhibit (the chart) be received as part of Sam's trial proof? Answer "yes" or "no," then explain briefly.

Question E-11 (3 minute/s) When the direct ended, the IRS attorney asked this question on cross-examination: "Have you testified at the request of Sam Taxpayer's attorney in other tax cases involving other taxpayers?" The expert answered yes, on two occasions. He was then asked: "What were your fees in those two cases?" An objection was lodged on the ground of improper cross-examination. Is this a permissible cross-examination question? Answer "yes" or "no," then explain briefly.

Question E-12 (3 minute/s) During the case presented by the IRS, Billy Driver testified. Up until a month ago, Billy delivered pizzas for Sam, and ran other errands for the pizza company as well. Before trial Billy stated that he was present at a conversation in the summer of 2000 between Sam and Walt Supplier wherein Sam said: "I know my bill with you is \$10,000, that's what I owe you and that's what you will get. But make out your statement to me like you are charging me \$20,000, that way I can claim more for expenses." Walt declined to inflate the bill. Billy took the stand, seeking to tell about Sam's request to Walt. Before Billy got much of this testimony out, there was a hearsay objection by counsel for Sam. On the issue of whether the statement by Sam is inadmissible hearsay, should the objection be sustained? Answer "yes" or "no," then explain briefly.

Question E-13 (3 minute/s) Billy stated to the IRS before trial that a couple of weeks after the incident described in question E-12, he picked up the telephone at work and inadvertently overheard an ongoing conversation. He recognized the voices. Sam was talking to Walt, and Walt said to Sam: "You know you have been hiding some of your income for the last year or so." There was a long moment of silence when Sam did not speak, but when he finally said something he changed the subject, asking: "Walt, when are you going to send me some of that whole wheat pizza dough that the health buffs like for their crust?" At trial, the government asked Billy to tell what he overheard Walt say to Sam on the telephone, but there was a hearsay objection. On the issue of whether the testimony by Billy relates improper hearsay, should the objection be sustained? Answer "yes" or "no," then explain whether Walt's statement constitutes improper hearsay, or not.

Question E-14 (4 minute/s) Billy also reported prior to trial that another driver for Sam's Pizza, a driver named Clyde, made a damaging request to Walt. The two drivers picked up some pizza supplies from Walt, and Walt was in the process of making out a bill for Clyde to take back to Sam. Clyde told Walt: "Make it out plenty high. The boss will be glad to pay you half of whatever you put down, but he likes the paperwork to show plenty of expenses." In court when Billy is asked by the IRS to repeat what Clyde said, there was a hearsay objection. Should the objection be sustained? Answer "yes" or "no," then explain briefly.

Question E-15 (3 minute/s) After the direct examination of Billy was completed, he was cross-examined by counsel for Sam. The counsel asked: "Are you the same Billy Driver who was convicted of felony drunk driving in 1989, but did not serve any jail time because you were sentenced to three years probation?" There was an objection by the IRS on the ground of improper cross-examination. Should the objection be sustained? Answer "yes" or "no," then explain briefly.

Question E-16 (3 minute/s) The cross-examination continued. Counsel for Sam asked Billy if just last year, in 1999, he made out a false claim for worker's compensation benefits. The cross-examiner asserted that Billy claimed he had been injured, when in fact there was no injury. The cross-examiner had a factual basis for this question, but the government objected. Is this a permissible question? Answer "yes" or "no," then explain briefly.

Question E-17 (3 minute/s) Sam's counsel took a confrontational tone when asking Billy: "Are you what we call a rat?" When Billy asked what that meant, counsel said: "That's somebody who squeals on his boss. I ask again, are you a rat?" There was an objection. Is this a permissible question? Answer "yes" or "no," then explain briefly.

Question E-18 (2 minute/s) Finally, counsel for Sam asked Billy, when he swore to tell the truth at the trial, whether he also believed in God. There was an objection to the question on the ground of improper cross-examination. Is this a permissible question? Answer "yes" or "no," then explain briefly.



Question E-19 (5 minute/s) Sam's lawyer recalled Sam as a witness and asked him whether he ever received a note from Billy Driver. Sam said yes, that he got a note wherein the writer said that if he could keep his job with the company, the writer would not cooperate with the IRS, which was investigating Sam. The note was unsigned, but Sam asserted that he felt it came from Billy. Sam's lawyer offered it into evidence "to impeach the credibility of witness Driver." The IRS objected. Is the note admissible in evidence? Answer "yes" or "no" then explain briefly.

## **PROFESSIONAL RESPONSIBILITY (24 Minutes)**

Question PR-1 (4 minute/s) Husband and Wife jointly filed a tax return for 1997. In 1999, after they have divorced, they received a notice of deficiency with respect to a failure to report a significant item of income on the 1997 return. H and W ask A to represent them. W claims she has no knowledge of the item that the IRS asserts that H received and failed to report.

- (a) Can A represent H and W in a Tax Court proceeding with respect to this return?
- (b) Does the answer to (a) change if W consents to the joint representation?

Question PR-2 (2 minute/s) B represents Y in Tax Court litigation that would be appealed to the Fourth Circuit. After submitting the brief on behalf of Y, B discovers a decision of the Fourth Circuit that is directly contrary to her client's position in this matter. The government's brief does not mention the case. What action if any must B take and why?

Question PR-3 (2 minute/s) C represents Smith in a Tax Court proceeding involving deficiencies with respect to flow-through interest deductions from a partnership as well as improper depreciation deductions on real estate owned by Smith. As part of the pre-trial process, the government lawyer offers a settlement with respect to the partnership interest deductions. C is surprised by the settlement offer and has never discussed with Smith the possibility of settling this issue. C, however, believes that the government's settlement offer on this issue should be accepted.

Can C sign the stipulation of settled issues without Smith's consent? Briefly explain your answer.

Question PR-4 (4 minute/s) D is the in-house general counsel for Design, Inc. In a Tax Court proceeding involving deductions for certain payments to a shareholder, it will be necessary to call D as a witness to testify about corporate resolutions that D prepared with respect to the payments.

- (a) Can D represent Design, Inc. in this proceeding if Design, Inc., consents? Briefly explain your answer.
- (b) Could the associate general counsel represent Design, Inc., in this proceeding? Briefly explain your answer.

Question PR-5 (4 minute/s) E devised a transaction designed to save federal income taxes. He sold this transaction to XYZ Corporation for a fee. In addition, E prepared all the documentation for the transaction. XYZ Corporation subsequently was audited and received a notice of deficiency, which it intends to contest in Tax Court. Under what conditions could E represent XYZ Corporation in the Tax Court proceeding, and what action must E take to do so? Briefly explain.

Question PR-6 (4 minute/s) F represents Computer Co. in Tax Court litigation. F learns that the government has contacted employees of Computer Co. who have information relevant to the litigation without notifying F.

(a) On what grounds could F object?

(b) Does the answer to (a) change if the government contacts former employees?

Question PR-7 (2 minute/s) Taylor has been assessed a deficiency for failing to file a 1997 return. Taylor wishes to assert that the federal income tax is unconstitutional. Could O, as counsel for Taylor, ethically sign a pleading to that effect? Briefly explain your answer.

Question PR-8 (2 minute/s) As part of the discovery process in Tax Court litigation, the government requests production of an employment contract between the petitioner and an employee of the petitioner, which is relevant in determining the petitioner's deduction for salary paid to the employee. The petitioner asserts that the contract is lost. H represents the petitioner and was shown the contract one week before the discovery request. May H inform the government that the contract does not exist? Briefly explain your answer.