

## **2002 PRACTICE AND PROCEDURE (60 Minutes)**

Question P-1 (2 minute/s) Taxpayer has received an Internal Revenue Service ("IRS") notice of deficiency with respect to income tax for 2001. Taxpayer timely files a petition with the Tax Court to contest the asserted deficiency. After Taxpayer files the petition, Taxpayer becomes the subject of a jeopardy assessment and levy. Taxpayer files a timely petition with the Tax Court to challenge the jeopardy proceeding. Discuss whether the Tax Court may review the jeopardy assessment and levy.

Question P-2 (3 minute/s) Determine whether the Tax Court has jurisdiction in each of the following situations.

(a) The IRS mailed to Taxpayer a notice of deficiency that did not provide a date in the section entitled "Last Day to File a Petition with the United States Tax Court" as required by §3463(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206. Taxpayer received the notice of deficiency within several days of its mailing, but Taxpayer did not file a petition with the Tax Court until 56 days after expiration of the 90 day period prescribed by §6213(a). Briefly discuss whether the Tax Court has jurisdiction with respect to the petition.

(b) The IRS issues to Taxpayer a notice of deficiency asserting an income tax deficiency for 2000, and Taxpayer properly petitions the Tax Court and asserts that Taxpayer overpaid tax for 2000. If the Tax Court finds that, instead of an underpayment for 2000, Taxpayer has overpaid income tax for 2000, does the Tax Court have jurisdiction to determine an overpayment and order that it be refunded?

(c) Taxpayer was charged with the crime of tax evasion, and in 2001, Taxpayer executed a plea agreement in which Taxpayer agreed to file delinquent Federal income tax returns and report specific amounts of income. In 2002 the IRS received the delinquent returns, assessed the tax liabilities reported on the delinquent returns, and thereafter sent Taxpayer a notice of deficiency asserting additions to tax for fraudulent failure to file under §6651(f). Taxpayer petitioned the Tax Court in response to the deficiency notice. Discuss whether the Tax Court has jurisdiction with respect to the §6651(f) penalty.

Question P-3 (3 minute/s) Discuss whether a petitioner using a private delivery service can utilize the §7502 "timely-mailing-is-timely-filing" rule.

Question P-4 (1 minute/s) Taxpayer is physically present in the United States at all relevant times. During 2002, Taxpayer receives a deficiency notice that was properly addressed and mailed to Taxpayer at an address in a country other than the United States. Taxpayer prepares a petition that arrived in the Tax Court in a properly addressed envelope bearing a postmark indicating that it was mailed during 2002 from a country other than the United States. The foreign country postmark was dated prior to the last date on which the Petition could be timely filed, and the envelope was received

by the Tax Court after the last date on which the Petition could be timely filed. Can Taxpayer rely on the §7502 “timely-mailing-is-timely-filing” rule with respect to the Petition to establish jurisdiction in the Tax Court? State YES or NO and briefly explain.

Question P-5 (3 minute/s) Taxpayer is physically present in the United States at all relevant times. On March 11, 2002, the IRS mailed a notice of deficiency (bearing the date of March 11, 2002) to Taxpayer regarding Taxpayer's 2000 income tax liability. The notice states that the last day on which a petition may be filed is June 12, 2002. Taxpayer received the notice on March 15, 2002. What is the last day on which Taxpayer timely can file a petition with the Tax Court? The following 2002 calendar may be of use to you:

	SUN	MON	TUES	WED	THURS	FRI	SAT
<b>MARCH</b>						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						
<b>APRIL</b>		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				
<b>MAY</b>				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	
<b>JUNE</b>							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-6 (6 minute/s) Describe the pleading and the contents of the pleading that must be filed by or on behalf of a taxpayer to initiate a Tax Court proceeding. Also explain what must accompany the pleading.

Question P-7 (1 minute/s) What is the effect of a Tax Court petition that is silent with respect to an issue raised in the deficiency notice?

Question P-8 (2 minute/s) Describe the preferred pre-trial discovery process in the Tax Court.

Question P-9 (2 minute/s) Taxpayer received a deficiency notice and filed a petition with the Tax Court. Taxpayer attended (prior to the trial of the case) a stipulations of facts conference with counsel for the IRS in which Taxpayer stipulated to purchasing certain machinery on December 30, 1999.

(a) What is the effect of Taxpayer's stipulation?

(b) What may Taxpayer do if Taxpayer subsequently discovers that the machinery actually was purchased on January 30, 2000?

Question P-10 (2 minute/s) Prior to trial in the Tax Court, the IRS serves upon Taxpayer a request for admission.

(a) Describe the possible consequences to Taxpayer as to matters in controversy in the case if Taxpayer fails to respond to the request.

(b) Under the Tax Court Rules, what must be done to effect a timely response?

Question P-11 (4 minute/s) Describe the essential elements of §7491.

Question P-12 (4 minute/s) Describe the §7436 jurisdiction of the Tax Court.

Question P-13 (5 minute/s) Describe the essential elements of the §§6320 and 6330 "due process" rights of taxpayers.

Question P-14 (4 minute/s) With respect to §§6320 and 6330:

(a) Must an IRS officer sign and date the IRS Form 4340, Certificate of Assessments and Payments, in order to have a valid assessment of a taxpayer's liability for purposes of Tax Court §§6320/6330 jurisdiction? State YES or NO.

(b) The IRS mailed to Taxpayer-Husband a final notice of intent to levy as to Taxpayer-Husband's unpaid tax liabilities for specified years. On a later date, the IRS mailed to Taxpayer-Wife a final notice of intent to levy concerning Taxpayer-Wife's unpaid tax liabilities for specified years. Taxpayer-Husband and Taxpayer-Wife filed a joint request for an administrative hearing with the IRS Office of Appeals, but Taxpayer-Husband failed to file his request within the 30 day period prescribed in §6330. Despite Taxpayer-Husband's failure to file a timely request for an Appeals Office hearing, the IRS granted Taxpayer-Husband an "equivalent" hearing. Taxpayer-Wife was granted an administrative hearing pursuant to §6330. Thereafter the IRS issued (1) a "decision letter" to Taxpayer-Husband stating that the IRS would proceed with collection against him, and 2) a determination letter to Taxpayer-Wife stating that the IRS would proceed with

collection against her and informing her of her right to challenge the determination in Court. Taxpayer-Husband and Taxpayer-Wife filed a joint petition for review with the Tax Court. Does the Tax Court have jurisdiction with respect to Taxpayer-Husband? State YES or NO.

- (c) Does an individual have the right to subpoena witnesses and documents in a §6330(b) IRS collection due process hearing? State YES or NO.
- (d) Taxpayer filed income tax returns for three years and reported Taxpayer's wages as income. Taxpayer, contending that wages are not taxable, subsequently filed amended returns for those years reporting no income. The IRS assessed the §6702 frivolous return penalty for those years. After the IRS offered Taxpayer an opportunity to attend a prelevy hearing the IRS issued a notice of determination under §§6320 and/or 6330 that Taxpayer was responsible for the §6702 frivolous return penalty. Taxpayer filed a petition with the Tax Court to review the determination. The IRS contends that the Tax Court lacks jurisdiction under §6330(d)(1)(A). Does the Tax Court have jurisdiction? State YES or NO.
- (e) May the Tax Court impose the §6673 penalty in a Lien and Levy Action if it appears that the action has been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such is frivolous or groundless? State YES or NO.
- (f) Does the §6330 hearing proceeding suspend the applicable 10 year limitations period for collecting the taxpayer's federal income taxes? State YES or NO.
- (g) Does the Tax Court have jurisdiction under §6330(d)(1)(A) to review the IRS determination to proceed with collection from a taxpayer of the addition to tax under §6651(a)(2). State YES or NO.
- (h) Does the Tax Court have jurisdiction under §6330(d)(1)(A) to review the IRS determination to proceed with collection from a taxpayer of the §6672 amount? State YES or NO.

Question P-15 (7 minute/s) Discuss the requirements that must be satisfied to authorize the Tax Court to award to a petitioner attorneys fees and costs.

Question P-16 (3 minute/s) Section 6015 contains limitations applicable to a spouse's (or former spouse's) liability with respect to a joint return. Discuss the extent to which the Tax Court has jurisdiction with respect to these limitations.

Question P-17 (3 minute/s) Under §6015(c)(3)(C) an individual generally does not qualify for the §6015(c) election if the individual making the election had 'actual knowledge at the time such individual signed the return, of any item giving rise to a deficiency' that is not allocable to the individual under §6015 (but this rule does not apply if the individual with actual knowledge establishes that the individual signed the return under duress). Discuss the burden of proof with regard to whether the individual

seeking the relief had actual knowledge of the time giving rise to the deficiency.

Question P-18 (3 minute/s) Explain the certifications regarding the contents of a petition that are implicit in taxpayer's counsel's signature on the petition.

Question P-19 (2 minute/s) Counsel had undertaken representation of Taxpayer and had made an entry of appearance before the Tax Court. Counsel's client (Taxpayer) had been uncooperative and had not paid Counsel's fee in advance of trial, as Taxpayer previously had agreed. How may Counsel withdraw from the representation?

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

Question S-1 (2 minute/s) Compare and contrast the cash method of accounting and the accrual method of accounting.

Question S-2 (2 minute/s) Explain whether federal income tax accounting incorporates the concepts of (1) constructive receipt and (2) constructive payment.

Question S-3 (10 minute/s) State the amount (without any further explanation), if any, of the following items that constitutes gross income to Taxpayer

- (a) \$80,000 gross wages from employment (\$60,000 net of federal taxes).
- (b) \$900 cost to Taxpayer's employer of \$45,000 of life insurance on Taxpayer's life, which is provided under a group term policy of the employer.
- (c) \$25,000 embezzled from employer.
- (d) \$200,000 proceeds of a life insurance policy on Taxpayer's grandfather. The policy was purchased by the grandfather by payment of a single premium, and was owned by the grandfather until his death; taxpayer was the designated beneficiary of the proceeds.
- (e) \$275,000 received as winner of the Nobel Prize in literature; Taxpayer accepted the prize and used the proceeds to buy a vacation home.
- (f) \$4,000 of interest received on a State of Montana bond used to finance the construction of new public schools.
- (g) \$5,000 gain realized upon sale of State of Montana bond (used to finance the construction of new public schools).
- (h) \$50,000 paid to Taxpayer at maturity of loan Taxpayer made to a business association (\$47,000 principal repayment and \$3,000 of interest).
- (i) \$7,000 as partial payment of the proceeds of a life insurance policy in the face amount of \$50,000 on Taxpayer's spouse who died during the year. Pursuant to the terms of the policy, Taxpayer elected to receive a \$7,000 payment in each year for life. Taxpayer's life expectancy is 10 years when the payments commence.
- (j) \$3,000 fair market value of antique pocket knife Taxpayer found behind a sink on Taxpayer's house; Taxpayer retained and used the knife.

Question S-4 (2 minute/s) Taxpayer purchased a share of stock issued by a corporation. Taxpayer immediately thereafter assigned all future dividends from the

shares to Donee, while retaining to Taxpayer all other rights as owner of the share. Discuss which party should be taxed on the periodic dividends from the share.

Question S-5 (3 minute/s) Briefly discuss the scope of §183.

Question S-6 (2 minute/s) Discuss briefly the substantiation requirements that a taxpayer must satisfy in order to obtain deductions for business travel expenses.

Question S-7 (3 minute/s) Taxpayer incurs tuition and book costs for attending law school. Taxpayer is a certified public accountant who specializes in the area of taxation. Taxpayer attends law school (at night while continuing full-time practice as a certified public accountant) to improve Taxpayer's skills in taxation. Discuss whether Taxpayer's tuition and book costs for attending law school will be deductible for federal income tax purposes.

Question S-8 (2 minute/s) On January 1, 2002 the amount of the first mortgage debt secured by Taxpayer's principal residence was \$600,000 and the value of the residence was \$900,000. Taxpayer obtained a loan in the amount of \$200,000 that was secured by a second mortgage on the principal residence. The \$200,000 proceeds of the second mortgage loan were used by Taxpayer to add a wing to the principal residence. Discuss and quantify the principal amount of debt on which interest is deductible in 2002.

Question S-9 (3 minute/s) Sections 167 and 168 provide differing capital cost/depreciation rules. Discuss in general terms the essential differences between the two deduction rules.

Question S-10 (3 minute/s) Taxpayer's personal use lake house was built in the 1940's. Because of gradual corrosion, one of the hot water pipes burst and caused substantial damage to Taxpayer's lake house because the hot water leaked into the walls, the floors, and the basement. The cost to fix the hot water pipe was \$500, and the cost to repair the damage to the house was \$5,000. Discuss narratively whether Taxpayer will be allowed a casualty deduction for these two losses (you need not quantify your answer).

Question S-11 (4 minute/s) Taxpayer is a charitable person who likes to support needy persons and needy organizations. During 2002, Taxpayer's adjusted gross income is \$100,000 (and Taxpayer is not eligible for a net operating loss carryover to 2002 from another year). During 2002, Taxpayer is engaged in the following transactions:

1. Contribution of 5 hours of service as financial services consultant to the Boy Scouts of America. Taxpayer's trade or business is providing financial advisory services, and Taxpayer charges \$200 per hour for Taxpayer's services.
2. Parking fees of \$50 and transportation costs of \$150 as out-of-pocket expenses incurred a volunteer for the American Red Cross blood drive.
3. Cash gift of \$40,000 to Harvard University.
4. Cash gift of \$6,000 to A, the grandchild of a deceased friend of the taxpayer, to

enable A to attend college.

Assume that each of the Boy Scouts of America, the American Red Cross, and Harvard University (1) is a qualifying §170(c) organization and (2) is described within §170(b)(1)(A).

Determine:

- a. Which of the foregoing transactions qualify for deduction according to §170 and
- b. The combined total amount of the §170 deduction to which Taxpayer is entitled in 2002.

Question S-12 (4 minute/s) Taxpayer was driving an automobile on February 15, 2002 and was injured in a collision and was hospitalized. Taxpayer was hospitalized from February 15 to July 22, 2002, the date of Taxpayer's death. Substantial medical expenses were incurred in providing care to Taxpayer in 2002 before Taxpayer's death. Medical and hospital expenses of \$40,000 had been paid by Taxpayer in 2002 before death, but medical and hospitalization insurance reimbursed Taxpayer during 2002 the amount of \$29,000. Other medical expenses incurred during 2002 before Taxpayer's death were paid by the estate of Taxpayer during 2003 in the amount of \$30,000. Taxpayer's adjusted gross income for the period of January 1, 2002 to the date of death was \$100,000. Describe the tax consequences or options available with respect to the deduction of the medical expenses paid by Taxpayer and the estate of Taxpayer.

Question S-13 (5 minute/s) Will Taxpayer be entitled to a §151(c) dependent exemption-deduction in 2002 for the following persons? State YES or NO:

- a. A, Taxpayer's 20 year old unmarried child, who resides with Taxpayer for July and August of 2002 but for all other months is away at college. A has 2002 gross income of \$7,000 from summer employment. Taxpayer provides \$20,000 to support A, and A expends \$4,000 of A's own money for A's support.
- b. B, Taxpayer's eighteen year old unmarried child, who resides with Taxpayer for the entire year. B works full time and has gross income of \$20,000 in 2002, but all of B's support is provided by Taxpayer.
- c. C, Taxpayer's twenty year old unmarried child, who resides with Taxpayer for the entire year. C works full time and has gross income of \$30,000 in 2002, but all of C's support is provided by Taxpayer.
- d. D, a foster child who spends the whole year in the house of Taxpayer and for whom Taxpayer provides all support. D has no gross income for 2002.
- e. E, Taxpayer's dependent parent, who lives with Taxpayer and who has 2002 gross income of \$8,000. Taxpayer provides all support.

Question S-14 (2 minute/s) Taxpayer is §151 dependent of Parent for 2002. Taxpayer has 2002 earned income of \$4,000. State the amount of standard deduction to which Taxpayer is entitled.

Question S-15 (1 minute/s) Taxpayer is a married person filing a separate return, and



Taxpayer's spouse itemizes deductions on the spouse's separate return. State the amount of standard deduction to which Taxpayer is entitled.

Question S-16 (2 minute/s) May a divorced parent not having custody of a child be entitled to a §151(c) dependency exemption-deduction for the child. State YES or NO and briefly explain.

Question S-17 (4 minute/s) Describe the transfers that qualify as alimony for purposes of §§71 and 215.

Question S-18 (4 minute/s) Taxpayer owns real property, and on March 15, 2002, the property has a fair market value of \$100,000 and an adjusted basis to Taxpayer of \$120,000. Taxpayer and Spouse are divorced of March 15, 2002 and pursuant to the divorce decree, Taxpayer transfers title to the real property to Spouse on March 15, 2002. On December 15, 2002 Spouse sells the real property to an unrelated third party for \$90,000 cash. Briefly discuss the tax consequences to Spouse with respect to the March 15 transfer and the December 15 sale to the third party.

Question S-19 (6 minute/s) Taxpayer acquired unimproved real property in 1998. To acquire the property, Taxpayer (1) paid \$60,000, (2) took subject to a preexisting first mortgage debt secured by the property in the amount of \$40,000 (for which Taxpayer was not personally liable), and (3) executed a \$30,000 second mortgage indebtedness (for which Taxpayer was personally liable) to the seller. In 2000, Taxpayer borrowed \$50,000 from a bank, in return for which Taxpayer executed a nonrecourse note (no personal liability to Taxpayer) and a third mortgage on the real property to secure the \$50,000 debt. The \$50,000 proceeds of the loan were used to construct a storage building on the real property. In 2002 Taxpayer received an offer to buy the real property, which Taxpayer accepted. Buyer (1) paid \$150,000 cash, (2) took subject to the first mortgage debt of \$25,000 (it had been paid down from \$40,000 to \$25,000), (3) assumed the \$30,000 second mortgage debt, and (4) took subject to the third mortgage debt of \$10,000 (it had been paid down from \$50,000 to \$10,000).

a. What was the Taxpayer's basis in the property at the time of acquisition in 1998?

b. Describe the federal income tax consequences of the 2000 borrowing and third mortgage transaction.

c. Quantify Taxpayer's amount realized and any gain or loss realized upon the sale of the property to Buyer in 2002.

Question S-20 (8 minute/s) Taxpayer and B exchanged unimproved real properties that have been encumbered by mortgage debts. In the exchange transaction, Taxpayer's mortgage debts are assumed by B, and B's mortgage debts are assumed by Taxpayer. The gross fair market value of B's property is \$100,000, its adjusted basis is \$60,000, and it is encumbered by a \$20,000 mortgage leaving a net equity of \$80,000, and B receives from Taxpayer \$10,000 of cash. The gross fair market value of Taxpayer's property is \$120,000 its adjusted basis is \$40,000, and it is encumbered by a \$50,000 mortgage leaving a net equity of \$70,000. Discuss and quantify the §1031

consequences to Taxpayer (not B).

Question S-21 (3 minute/s) Taxpayer transferred encumbered real property to a corporation all of the stock of which was owned by Taxpayer (both before and after the transfer of the real property). The debt encumbering the real property was assumed by the corporation. The debt encumbering the real property was greater than Taxpayer's adjusted basis in the real property. Taxpayer also prepared, signed and contributed to the corporation a promissory note of the Taxpayer's payable to the corporation. Discuss the consequences under §357(c) of Taxpayer's promissory note payable to the corporation.

Question S-22 (6 minute/s) Taxpayer and Y formed TY Corporation on January 1, 1993. On January 1, 1993 Taxpayer acquired 60% of the stock of TY and Y acquired 40% of the stock of TY and those ownership percentages have not changed. TY has been a qualifying S corporation since its inception in 1993. As of January 1, 1993, Taxpayer's adjusted basis in the shares of TY was \$60,000 and Y's adjusted basis in the shares of TY was \$40,000. TY realized the following amounts of net nonseparately computed income (as defined in §1366(a)(1)(B)) and no items subject to §1366(a)(1)(A).

<b>YEAR</b>	<b>AMOUNT (\$)</b>
1993	5,000
1994	10,000
1995	12,000
1996	18,000
1997	75,000
1998	80,000

TY makes no distribution to a shareholder until December 31, 1998, when TY made a cash distribution of \$360,000; \$216,000 to Taxpayer and \$144,000 to Y. Describe and quantify the tax consequences of the distribution to both Taxpayer and Y.

Question S-23 (5 minute/s) discuss the "check the box" rules applicable in classifying a domestic entity as either a partnership or an association taxable as a corporation.

Question S-24 (4 minute/s) Taxpayer was in declining health and appointed A, Taxpayer's child, as Taxpayer's agent under a durable power of attorney for many years. Taxpayer had made cash gifts to Taxpayer's children during December. Pursuant to the power of attorney, A prepared gift checks drawn against Taxpayer's checking account payable to A and to each of A's siblings. The checks were prepared on December 15, 2001 and were delivered on December 20, 2001. Taxpayer died on December 20, 2001. All of the checks were deposited in the respective donee's checking account by the end of 2001, but none was accepted or paid by the drawee bank until after Taxpayer's death. Discuss whether these checks represent completed gifts of funds in Taxpayer's checking account that are not includible in Taxpayer's gross estate.

Question S-25 (2 minute/s) Taxpayer pleaded guilty to the criminal offense of tax evasion under §7201, and was sentenced to two years in prison, fined \$250,000, and required to pay restitution to the IRS. Following the §7201 conviction, the IRS determined and the Tax Court sustained deficiencies in tax and civil fraud penalties against Taxpayer. Taxpayer argues in a Tax Court Rule 155 proceeding that the \$250,000 fine should be credited against the civil fraud penalty, and the IRS argues that no credit should be allowed. How should the Tax Court rule? Briefly explain.

Question S-26 (4 minute/s) Explain the substantial authority exception to the §6662(b)(2) penalty for substantial understatement of income tax.

## **EVIDENCE (60 Minutes)**

Question E-1 (6 minute/s) John was Chief Executive Officer and majority shareholder of Small Bank, Inc. ("SBI"). A deficiency notice was issued to SBI alleging that part of John's salary was unreasonable and was a dividend, which was not deductible by SBI.

Karin, who was then a vice-president of SBI, was called as a witness by the Respondent and testified that she was present with two other bank officers during a conversation with John when John said, "Let's not pay out our income as dividends. Let's raise all of our salaries." The Petitioner objected that Karin's testimony concerning John's statement was hearsay. How should the court rule? Briefly explain.

Question E-2 (3 minute/s) Same facts as E-1. During cross-examination by Petitioner, Karin was asked whether she was presently unemployed because SBI had fired her six months earlier. Should the court permit the witness to answer if there is a timely objection? Briefly explain.

Question E-3 (3 minute/s) Same facts as E-1. The petitioner obtained copies of SBI's records that include John's salary for the years in question. In order to have these records admitted during the Tax Court's proceeding as SBI's business records, what foundation testimony must be introduced.

Question E-4 (3 minute/s) Same facts as E-1. During its case, Respondent called Cathy as a witness. Prior to the trial and during an interview with an IRS agent, she said that she was the CEO of a bank that was in the same city as SBI and that, in her opinion, John's salary was clearly excessive and unreasonable. She testified on direct examination that she was familiar with SBI and John's duties and responsibilities. She further testified that she believed that the salary John received was a reasonable amount for his responsibilities and the complexities of the SBI business. Respondent's counsel then attempted to question Cathy about the statement she made prior to trial concerning the salary being excessive. If Petitioner's counsel objected on the basis that the IRS is attempting to impeach its own witness, how should the Tax Court rule? Briefly explain.

Question E-5 (3 minute/s) Assume that in Question E-4 the court overruled the objection. Petitioner then objected on the ground that the question is an improper method of impeachment. How should the Court rule? Briefly explain.

Question E-6 (3 minute/s) The Tax Court proceeding concerns whether Paula, the petitioner, is allowed for federal income tax purposes to deduct certain travel and entertainment expenses. Paula's counsel, before calling any witnesses, address the court and stated, "Your honor, before we call our first witness we would like to introduce as Exhibits, all of the receipts for the expenditures in controversy." How should the court rule on Respondent's objection to the exhibits as being not authenticated? Briefly explain.

Question E-7 (5 minute/s) Same facts as in E-6. Rather than introducing the receipts, Paula called Carl, a CPA, who will testify that he had reviewed all of Paula's records and had prepared a chart with all of the travel and entertainment expenses listed by month on the chart. Respondent's counsel objected on the basis that the chart was not admissible as an exhibit unless the underlying documents were also admitted as exhibits. Should the chart be admitted? Explain briefly.

Question E-8 (6 minute/s) Same facts as in E-6. One month before the trial, Paula was at a cocktail party where she met a stranger, Sheila. After a brief conversation, Paula discovered that Sheila was a lawyer. Paula immediately said to her: "I just got a deficiency notice from the IRS. They caught me claiming bogus entertainment expenses." Will the conversation be protected by Paula's attorney-client privilege? Explain briefly.

Question E-9 (3 minute/s) Same facts as in E-8 and that Sheila is permitted to testify. During her cross-examination, Sheila was asked whether two years earlier she had been convicted of driving under the influence of alcoholic beverages, which was a misdemeanor with a maximum sentence of six months in jail. Is this proper cross-examination. Explain briefly.

Question E-10 (3 minute/s) The trial before the Tax Court concerns whether certain payments received by Juan should have been included for federal income tax purposes as gross income for 2001. At the outset of the trial, Petitioner's counsel moved the court to "prohibit all persons who will later testify as witnesses from being present in the courtroom." Should the judge grant the motion and exclude from the courtroom the IRS agent who investigated the case prior to the agent's testimony? Explain briefly.

Question E-11 (3 minute/s) Same facts as E-10. During the respondents' case, IRS Agent Alan testified as a witness. He testified that he had met with the Juan concerning the payment items. When Counsel for Respondent asked Alan whether Juan had made any statement during the meeting, Alan replied that he could not remember what Juan had said. Petitioner's counsel objected to Alan reviewing the report of the meeting he had written to refresh his memory because the report had not been admitted into evidence. How should the court rule? Explain briefly.

Question E-12 (4 minute/s) Assume that in Question E-11 Alan is permitted to review his report and will testify that, during the meeting, Juan said to him: "I know that I should have included it. Can't we settle this for half of what I owe? Is Alan's testimony regarding this statement admissible against Juan? Explain briefly.

Question E-13 (3 minute/s) The primary dispute in the Tax Court trial is the estate tax value of a painting included in the decedent's gross estate. Petitioner called the widow of decedent and asked her if she had an opinion concerning the painting's value. Respondent objected to her testimony on the basis that she was not an expert, and that she did not have any basis to express an opinion as a lay witness. Should the court permit the opinion to be given? Explain briefly.

Question E-14 (3 minute/s) Same facts as E-13. During widow's cross-examination, she was asked whether her husband had ever told her where he had obtained the painting. Petitioner objects to the question on the basis that the question is beyond the scope of proper cross examination. What is the test the court should apply in determining whether to sustain the objection?

Question E-15 (6 minute/s) Same facts as E-13. Petitioner offered into evidence a written appraisal of the painting by Art Appraisers Inc (AAI) that valued the painting at \$50,000. Respondent objects as hearsay to a sentence in the document which states: "I consulted with three reputable art gallery owners all of whom reported that they believed the painting was not authentic." For purposes of the question, assume that Tax Court Rule 143(f) regarding expert witness reports has been satisfied. How should the court rule on Respondent's hearsay objection? Explain briefly.

Question E-16 (3 minute/s) In a Tax Court proceeding, when may leading questions be asked on direct examination?

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

Question PR-1A (3 minute/s) A, a member of the Ready, Willing and Able law firm, represents Virtual Co in trademark dispute against Digital Co. Digital Co. has requested B, another member of the Ready, Willing firm to represent it in Tax Court litigation. Can B accept the representation? Briefly explain.

Question PR-1B (2 minute/s) Does the answer change if A's representation of Virtual Co in the trademark dispute ended two years ago?

Question PR-2 (3 minute/s) D represents Ellen Schmidt in a Tax Court proceeding that would be appealed to the Ninth Circuit. After submitting the brief to the Tax Court on behalf of Schmidt, D discovers a decision of the Ninth Circuit that is directly contrary to her client's position in this matter. The government's brief fails to mention the case. What action, if any, must D take and why?

Question PR-3A (3 minute/s) C devised a transaction designed to save federal income taxes and convinced James Martin to enter into the transaction. C prepared all the documentation for the transaction. Martin subsequently was audited and received a notice of deficiency, which he intends to contest in Tax Court. Can C represent Martin in this proceeding? Briefly explain.

Question PR-3B (2 minute/s) Does the answer change if Martin consents to C's representation? If so, why?

Question PR-3C (3 minute/s) Suppose instead that C represents the promoter P who devised and designed the transaction and sold it to several investors, including Martin. Can C represent Martin in the deficiency matter?

Question PR-3D (2 minute/s) C identified the properties that were used to carry out the transaction. If C is likely to be called as a potential witness in the deficiency litigation, can C represent Martin if he obtains a waiver from Martin?

Question PR-3E (3 minute/s) If P had previously revealed information to C in confidence about the transaction that would be helpful in representing Martin, may C reveal this information to Martin?

Question PR-4 (1 minute/s) E represents Nathan Goldberg in a Tax Court proceeding involving deficiency with respect to his sole proprietorship. As part of the pre-trial process, the government lawyer offers a settlement. E is surprised by the settlement offer and has never discussed with Goldberg the possibility of settling the case. E believes the government's offer should be accepted. Goldberg is out of the country. Can E agree to and sign the stipulation of settled issues? Briefly explain your answer.