

2008 TAX COURT NON-ATTORNEY ADMISSION EXAMINATION

Instructions

Four hours will be allowed to answer all of the questions in the examination. Each question has been allocated a specific number of minutes (see the notation in parenthesis at the beginning of each question). Each question will be weighted according to the time allocated to the question.

Write your answers legibly in ink in the bound answer book/s furnished you for this purpose. Write your examination number on the cover of each answer book that you are given, as well as on your examination. Identify each answer by the same number as the question. Remove no pages from your bound answer book/s; you are being furnished loose sheets of paper for you to use as scratch paper.

This examination is designed to test your overall knowledge of Tax Court Rules of Practice and Procedure, Federal taxation, the law of evidence, and rules of professional responsibility. The examination consists of four parts. Each part will be graded separately, and you must show your proficiency with respect to each part of the examination. The first part (60 minutes) deals with the Tax Court Rules of Practice and Procedure; it contains 23 questions and 5 pages. The second part (96 minutes) deals with substantive Federal income, gift, estate, and generation-skipping transfer taxation; it contains 29 questions and 7 pages. The third part (60 minutes) deals with the rules of evidence applicable in the Tax Court; it contains 6 questions and 2 pages. The fourth part (24 minutes) deals with legal ethics rules applicable to practice before the Tax Court; it contains 10 questions and 2 pages. Make sure that your examination is complete; you are responsible for any omissions from the examination.

ANSWER THE QUESTIONS IN EACH OF THE FOUR PARTS OF THE EXAMINATION IN ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING ANSWERS TO THE OTHER THREE PARTS OF THE EXAMINATION. ONLY WHAT IS WRITTEN IN THE ANSWER BOOK/S WILL BE CONSIDERED WHEN GRADING THE EXAM. NO SCRAP (SCRATCH) PAPER WILL BE CONSIDERED.

The only reference materials permitted to be with you during the examination (each of which is provided to you) are (1) a copy of the Internal Revenue Code, (2) a copy of the Rules of Practice and Procedure of the Court, and (3) the ABA Model Rules of Professional Conduct. You are to refer to and apply these materials in taking the examination. You also may bring with you and use a calculator.

YOU ARE NOT PERMITTED TO ACCESS OTHER DOCUMENTS, OUTLINES, NOTES, FILES, ETC. STORED ON HARD DRIVES OR ANY OTHER ELECTRONIC MEDIUM. YOU ARE NOT PERMITTED TO ACCESS THE INTERNET. PALM PILOTS AND OTHER ELECTRONIC DEVICES THAT STORE INFORMATION MAY NOT BE USED IN THE EXAM ROOM.

YOU MAY NOT CONSULT ONE ANOTHER OR ANY OTHER PERSON DURING THE EXAM, INCLUDING BUT NOT LIMITED TO, BY COMPUTER OR OTHER ELECTRONIC DEVICES.

YOU ARE NOT PERMITTED TO ACCESS THE INTERNET OR USE A LAPTOP OR OTHER DIGITAL DEVICE TO CONTACT ANYONE. PERSONAL DIGITAL ASSISTANTS (PDA) AND OTHER ELECTRONIC DEVICES THAT STORE INFORMATION, INCLUDING CELL PHONES, CANNOT BE USED IN THE EXAM ROOM.

Clarity and conciseness of expression will be a significant factor in grading your examination. Answer only the questions that are asked.

Do not inquire of the proctor regarding the examination questions. If you think a question contains an ambiguity, state the ambiguity, resolve the ambiguity by stating a reasonable assumption in your answer, and then answer the question based upon your assumption.

UNLESS OTHERWISE INDICATED, ASSUME ALL TAXPAYERS USE THE CASH METHOD OF ACCOUNTING AND ARE CALENDAR YEAR TAXPAYERS. ALL STATUTORY REFERENCES ARE TO THE INTERNAL REVENUE CODE. UNLESS OTHERWISE STATED, ASSUME ALL EVENTS OCCUR DURING 2008 AND ANSWER ALL QUESTIONS AS TO THE 2008 TAXABLE YEAR. UNLESS DIRECTED TO THE CONTRARY, ANSWER EACH QUESTION INDEPENDENT OF THE FACTS OF THE OTHER QUESTIONS.

The proctor will tell you when you may begin the test, and you will be given a warning 5 minutes before the examination is over. When time is called, put your pen down. Absolutely no extension of time is permissible. When the time for completion of your examination has elapsed, turn in to the proctor this examination, your answer books, and the materials furnished to you. If you complete the examination early, you may turn in the materials and leave.

PART ONE
PRACTICE AND PROCEDURE
(60 minutes)

**ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION IN
ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING
ANSWERS TO OTHER PARTS OF THE EXAMINATION**

In this Part One of the Examination, the taxpayer is referred to as “TP,” and the Internal Revenue Service is referred to as “IRS.” The spouse of TP is referred to as “Spouse.” Unless otherwise directed, answer each Question independently of other Questions.

Question P-1. (11 minutes) Determine whether the Tax Court has jurisdiction in each of the following situations (assuming that the petitioner timely files an appropriate Petition with the Tax Court). State YES or NO as to each subpart of the Question.

- (a) Does the Tax Court have jurisdiction with respect to whether a service provider is an employee of a person?
- (b) The IRS issues to TP a statutory notice with respect to one taxable year. The notice determines an income tax deficiency and also additions to tax pursuant to § 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?
- (c) TP received from the IRS a timely notice of deficiency reflecting a determination that TP was liable for a § 6651(a)(1) addition to tax for one of TP’s taxable years. The IRS notice of deficiency did not assert that TP had a deficiency in TP’s 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 addition to tax. The petition did not allege, and TP does not otherwise assert, that TP overpaid TP’s federal income tax for the taxable year to which the additions to tax relate. Does the Tax Court have jurisdiction as to the addition to tax?
- (d) 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?
- (e) Does the Tax Court have jurisdiction to determine that TP overpaid income tax in the year properly before the court pursuant to a statutory notice of deficiency and a TP petition?
- (f) 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?
- (g) 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 § 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. TP filed a Tax Court petition pursuant to § 6330(d). Does the Tax Court have jurisdiction with respect to the petition?

- (h) TP, who provides tax advice to other persons, received from the IRS a notice and demand for penalty pursuant to § 6694(a). TP petitioned the Tax Court to challenge the penalty. Does the Tax Court have jurisdiction?
- (i) TP files a petition with the Tax Court asserting a refund claim against the United States for overpaid income taxes. The IRS has not issued a statutory notice of deficiency to TP with respect to the taxable period as to which the refund claim is asserted. Does the Tax Court have jurisdiction?
- (j) Does the Tax Court have jurisdiction as to a petition seeking review of a § 6330 notice of determination if the underlying tax liability consists solely of a frivolous return penalty under § 6702?
- (k) Does the Tax Court have exclusive jurisdiction to review IRS denials of interest abatement claims under § 6404?

Question P-2. (4 minutes) TP is physically present in the United States at all relevant times. On April 14, 2008, the IRS mailed to TP at an address in the United States a notice of deficiency (bearing the date of April 14, 2008) regarding TP's 2006 income tax liability. The notice states that the last day on which a petition may be filed is July 12, 2007. TP received the notice on April 16, 2008. What is the last day on which TP timely can file a petition with the Tax Court? The following 2008 calendar may be of use to you:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
April			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			
May					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
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	29					
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		

Question P-3. (2 minutes) TP received a statutory notice of deficiency from the IRS, and the last day on which a petition from the TP could be timely filed with the Tax Court was May 5, 2008. TP was traveling away from home in early May 2008, and TP dispatched the petition by delivering, to the front desk clerk of the motel in which TP was staying, on the morning of May

5, 2008, for pickup later that day by FedEx, the envelope containing the petition and containing a properly completed FedEx Express USA Airbill. The petition was received and filed by the Court on Wednesday, May 7, 2008. The envelope in which the petition was received bore a FedEx Express USA Airbill with TP handwritten entries dated May 5, 2008. The TP handwritten label specifies "FedEx Priority Overnight--Next business morning" as the requested delivery service. Affixed to the envelope is an electronically-generated FedEx Priority Overnight service label dated May 6, 2008. The FedEx electronically-generated label specifies Wednesday, May 7, 2008, as the "Deliver By" date. Tracking information furnished by FedEx shows that the envelope in question was picked up on Tuesday, May 6, 2008, and delivered on Wednesday, May 7, 2008. Explain whether the petition was timely filed with the Tax Court.

Question P-4. (2 minutes)

- (a) Define and describe the concept of "equitable recoupment."
- (b) Does the Tax Court have jurisdiction to apply the doctrine of equitable recoupment in cases before the Tax Court? State YES or NO.

Question P-5. (1 minute) TP and Spouse did not report as income on their year 1 joint return amounts that Spouse had embezzled from Spouse's employer. After the embezzlement was discovered, TP and Spouse filed an amended tax return for year 1 that reported the embezzlement income. TP then applied to the IRS for relief from joint and several liability under § 6015(f). The IRS issued a notice of determination denying TP's request, and TP filed a petition with the Tax Court under § 6015(e) to review the IRS determination. TP and the IRS stipulated that no relief is available to TP under §§ 6015(b) and (c). TP's petition was a "nondeficiency stand-alone" petition; "nondeficiency" because the IRS accepted the amended return as filed and asserted no deficiency against TP, and "stand-alone" because TP's claim for innocent spouse relief was made under § 6015 and not as part of a deficiency action or in response to an IRS decision to begin collecting TP's tax debt through liens or levies. Does the Tax Court have jurisdiction with respect to TP's petition? State YES or NO.

Question P-6. (2 minutes) Under what circumstances does the Tax Court have declaratory judgment jurisdiction with respect to the gift tax valuation of property?

Question P-7. (2 minutes) TP and Spouse filed a joint 1997 federal income tax return on which they reported, but did not fully pay, their tax liability arising from the sale of real property owned by Spouse. TP and Spouse divorced in 1998. Thereafter, TP filed with the IRS Form 8857, Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief), dated November 24, 2000, seeking equitable relief from joint and several liability with respect to the 1997 underpayment. On Sept. 13, 2001, the IRS issued a final notice of determination, denying the requested relief. On Mar. 7, 2007, TP filed a second request for equitable relief with respect to the same 1997 underpayment, providing more detailed (but not different) factual allegations. By letter dated May 1, 2007, the IRS declined to reconsider the original denial of relief. On July 22, 2007, TP filed a petition with the Tax Court, and the IRS filed a motion to dismiss for lack of jurisdiction. Briefly discuss whether the Tax Court should grant the motion.

Question P-8. (1 minute) In 2000, X Corporation was incorporated under state law. In 2007, X Corporation was dissolved under applicable state law for failure to pay state franchise taxes. In 2008, the IRS sent X Corporation a deficiency notice, and thereafter X Corporation timely filed a petition with the Tax Court. May X Corporation properly maintain the suit in the Tax Court if the IRS moves to dismiss for lack of jurisdiction because X Corporation lacks the capacity to maintain the case? State YES or NO.

Question P-9. (6 minutes) Describe the contents of the pleading that must be filed by or on behalf of a taxpayer to initiate a Tax Court proceeding.

Question P-10. (1 minute) Discuss what document or documents must be submitted to the Tax Court to effect an amendment to a pleading after issue has been joined.

Question P-11. (1 minute) 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-12. (2 minutes) According to the Tax Court rules, what is the preferred manner of engaging in pre-trial discovery?

Question P-13. (2 minutes) Describe the time period during which discovery may be undertaken in a Tax Court proceeding.

Question P-14. (2 minutes) Briefly state:

- (a) The responsibility of a party to a Tax Court case regarding stipulations.
- (b) Whether and to what extent a stipulation is binding on a party.

Question P-15. (2 minutes) Under what circumstances may a witness be excluded from the Tax Court courtroom during the trial testimony of other witnesses, and what sanctions are available to the Court for noncompliance by the witness?

Question P-16. (2 minutes) Prior to trial, TP refused to confer informally with the IRS, and the IRS properly submitted to TP a request for admission for the purpose of establishing the identity of TP's employer. TP does not respond to the request. What is the effect of this failure to respond?

Question P-17. (3 minutes) Certain Tax Court cases qualify for special "small tax case" procedures under the Tax Court Rules. Briefly describe the most fundamental elements of these procedures.

Question P-18. (1 minute) TP properly files a Tax Court petition pursuant to § 6015(e) seeking relief from the IRS determination to deny spousal relief from unpaid joint tax liabilities for multiple taxable years. TP requests that the case be conducted under the small tax case procedures authorized by § 7463(f)(1). On the date the petition was filed, the amount of unpaid

tax, interest, and penalties for which TP sought relief did not exceed \$50,000 for any single year, but the total of those amounts for all years exceeded \$50,000. For purposes of § 7463(f)(1), is the total relief sought in excess of the \$50,000 limit so as to preclude the small tax case procedures? State YES or NO.

Question P-19. (6 minutes) Sections 6320 and 6330 prescribe certain “due process” hearing rights of taxpayers with the IRS Appeals Office. Describe and discuss these hearing rights.

Question P-20. (1 minute) TP petitioned the Tax Court for relief pursuant to § 6015(f). May TP properly introduce at the Tax Court trial evidence that was not presented to, or included in, the collection due process administrative process before the IRS? State YES or NO.

Question P-21. (3 minutes) Describe in general terms how taxpayer privacy is protected under the amendments to the Tax Court Rules that were adopted in 2008 and generally effective as of March 1, 2008.

Question P-22. (1 minute) TP retains Counsel, a person properly admitted to practice before the Tax Court, to represent TP in filing a petition with the Tax Court and in trial of the case. Counsel receives a payment as a retainer for services, and Counsel submits to the Court a petition that Counsel subscribes as counsel for TP. TP thereafter refuses to pay Counsel for additional services. Under these circumstances, if Counsel submits a motion to the Tax Court to withdraw as counsel, explain whether the Court must grant the motion.

Question P-23. (2 minutes) Discuss who may appear in Tax Court proceedings on behalf of the petitioner.

PART TWO
SUBSTANTIVE TAX LAW
(96 minutes)

**ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION IN
ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING
ANSWERS TO OTHER PARTS OF THE EXAMINATION**

In this Part Two of the Examination, the taxpayer is referred to as “TP,” and the Internal Revenue Service is referred to as “IRS.” The spouse of TP is referred to as “Spouse.” For purposes of Part Two, ignore all inflation adjustments prescribed by the Internal Revenue Code as to fixed-dollar amounts. Unless otherwise directed, answer each Question independently of other Questions.

Question S-1. On December 15, year 1, A provided professional services to B. The terms of the engagement between A and B provided that payment was due from B within 15 days of receipt of A’s bill, which A delivered to B on December 20, year 1. A and B are cash method, calendar year taxpayers. The following are alternative situations.

- (a) (2 minutes) On December 31, year 1, B came to A’s place of business and offered to pay A in cash in satisfaction of A’s bill, but A declined the payment and requested payment in January year 2. B makes payment to A in January year 2. Briefly explain in which taxable year A properly would include the gross income from the professional services.
- (b) (2 minutes) On December 27, year 1, A received as payment from B a check from B that was dated December 23, year 1. A cashed the check on January 4, year 2. Briefly explain in which taxable year A properly would report the gross income from the professional services.
- (c) (2 minutes) On December 27, year 1, A received from B a promissory note of B in the amount of B’s indebtedness to A. The note was executed because B had no cash and was in severe financial difficulty. The note was nonnegotiable, bore no interest, and was due in 180 days. During the succeeding four months, A attempted to negotiate the promissory note, but no one would accept the note. On June 15, year 2, B made full payment on the note. Briefly explain in which taxable year A properly would report the gross income from the professional services.

Question S-2. TP purchased unimproved real property in year 1 with a fair market value of \$200,000 by paying cash of \$140,000 and assuming a pre-existing liability of the seller to a bank (secured by a mortgage on the real property) in the principal amount of \$60,000. On December 31, year 8, when TP’s basis in the property was \$200,000 and its fair market value was \$300,000, TP sold the property to Buyer according to the following terms:

1. Buyer paid TP \$60,000 cash at the closing,
2. Buyer assumed the mortgage indebtedness on the property, the principal amount of which at the time of TP's sale was \$40,000, and
3. Buyer executed a promissory note payable to TP in the total principal amount of \$200,000. A principal payment of \$50,000 was due on the anniversary date of the sale in each of the four years following the year of sale. The promissory note required the payment of interest at 6% compounded annually, and the note had a fair market value of \$200,000.

TP received the required \$50,000 payment of principal on the note in year 9, and on January 1, year 10, TP transferred the note (entitled to three additional principal payments of \$50,000) to TP's child as a gift. The fair market value of the note on January 1, year 10, was \$150,000.

- (a) (3 minutes) Quantify and discuss the year 8 tax consequences to TP according to § 453.
- (b) (2 minutes) Quantify and discuss the year 9 tax consequences to TP according to § 453.
- (c) (1 minute) Quantify and discuss the year 10 tax consequences to TP according to § 453B.

Question S-3. (8 minutes) State the amount that constitutes gross income to TP (without any further explanation) of each of the following items received during 2008 (answer each part below separately).

- (a) End-of-year bonus from employer in the gross amount of \$30,000 (\$25,000 net to TP after federal income tax withholding).
- (b) \$5,000 payment by employer to bank in satisfaction of TP's debt to bank of \$5,000.
- (c) \$1,200 paid by TP's employer to TP as a commuting cost allowance for TP's driving an automobile to work (with only TP in the vehicle).
- (d) Pursuant to employer's Employee Discount Program, TP purchased property from employer at a discount. The retail price for the property was \$3,000, and TP paid \$1,900. For the relevant period (employer's prior taxable year), employer's sales were \$6,000,000, and employer's cost of goods sold was \$4,000,000.
- (e) \$7,000 received as a winner of the door prize at the grand opening of a retail store.
- (f) \$400 of interest received on U.S. Treasury note.
- (g) Receipt of \$4,000 at maturity of loan made by TP to X; TP receives \$3,600 as repayment of principal and \$400 as interest.
- (h) Montana cabin received as a devise when TP's uncle died; fair market value as of (1) date of death of uncle is \$150,000 and (2) date of receipt is \$160,000.

- (i) \$500 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.
- (j) \$20,000 lump-sum proceeds of life insurance policy on the life of TP's aunt. The policy was purchased and owned by TP's aunt, and the proceeds were payable to TP.
- (k) \$10,000 as a partial payment of the proceeds of a life insurance policy in the face amount of \$150,000 on TP's spouse who died during the year. Pursuant to the terms of the policy, TP (as beneficiary of the policy) elected to receive a \$10,000 payment in each year for life. TP's life expectancy is 20 years when the payments commence in 2008.
- (l) \$4,000 profit from purchases and sales of illegal firearms.
- (m) TP was struck by an automobile, the operator of which was driving recklessly. TP suffered (1) physical injury to TP's body and (2) emotional distress associated with the physical injuries. Because of the emotional distress, TP visited a psychotherapist during 2008 and incurred costs of \$12,000. TP takes a court judgment against the automobile operator, and the judgment is paid by the operator on November 23, 2008. The damages paid to TP pursuant to the judgment were as follows: (1) \$400,000 compensatory damages for physical injury to the body of TP, (2) \$150,000 punitive damages for physical injury to the body of TP, and (3) \$30,000 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.
- (n) Same facts as in Question S-3(m). State the amount of gross income with respect to the \$150,000 punitive damages for the physical injury to the body.
- (o) Same facts as in Question S-3(m). State the amount of gross income with respect to the \$30,000 compensatory damages for the emotional distress.
- (p) \$100,000 embezzled from employer.

Question S-4. (3 minutes) Briefly describe the essential elements of the so-called "kiddie tax" of § 1(g).

Question S-5. (3 minutes) In 2005, TP and Spouse purchased for \$300,000 (paid in cash) a residence as TP's and Spouse's principal residence. TP and Spouse own and occupy the property as their principal residence until they sell the property on November 12, 2008, for \$900,000. Neither TP nor Spouse has ever owned another residence. Explain the amount of the gain recognized with respect to the sale of the residence in 2008 if TP and Spouse file a joint return for 2008.

Question S-6. (1 minute) TP receives as a gift from TP's grandmother a share of corporate stock

with a fair market value of \$25,000 and an adjusted basis to the grandmother of \$10,000. Grandmother paid a gift tax of \$1,000 with respect to the transfer to TP. State the amount of gross income to TP.

Question S-7. (2 minutes) Same facts as Question S-6. State the amount of TP's adjusted basis in the share of stock.

Question S-8. (2 minutes) TP purchased a principal residence on January 1 of the current year at a cost of \$1,000,000. TP paid \$100,000 down and obtained a purchase money first mortgage loan (secured by the residence) from a bank in the principal amount of \$900,000. As of January 1, state the total principal amount of the first mortgage indebtedness as to which interest is deductible, assuming that TP is unmarried and owns no other residence.

Question S-9. (3 minutes) Same facts as Question S-8. On June 1 of the current year TP has reduced the principal amount of the first mortgage debt on the residence to \$800,000. The fair market value of the residence on June 1 is \$1,200,000. On June 1, TP borrows \$400,000 from a bank, and the debt is secured by a second mortgage on the residence. TP expends the \$400,000 of the second mortgage loan proceeds to add a wing to the residence. Discuss the amount, if any, as of June 1, of the principal amount of the second mortgage loan as to which interest is deductible.

Question S-10. (2 minutes) During the current year, TP realized the following gains and losses: (1) long-term capital losses of \$8,000, (2) short-term capital losses of \$14,000, (3) long-term capital gains of \$4,000, and (4) short-term capital gains of \$12,000. State the total amount of capital losses to be allowed to TP for the current year by § 1211.

Question S-11. (2 minutes) Same facts as Question 10. State the amount, if any, of:

- (a) the long-term capital loss carryover.
- (b) the short-term capital loss carryover.

Question S-12. (3 minutes) Will TP be entitled to a § 151(c) dependent exemption-deduction in 2008 for the following persons (each of whom is not disabled as defined in § 22(e)(3))? For purposes of this question, ignore § 151(d)(3). State YES or NO.

- (a) A, TP's seventeen year old unmarried child, resides with TP for the entire year. A works full time and has gross income of \$20,000 in 2008, but all of A's support is provided by TP.
- (b) B, TP's twenty year old unmarried child, resides with TP for the three summer months of 2008 but for all other months is temporarily away at college. B has 2008 gross income of \$10,000 from summer employment. TP provides \$30,000 to support B, and B expends \$10,000 of B's own money for B's support.
- (c) C, TP's twenty-five year old unmarried child, resides with TP for the three summer months of 2008 but for all other months is temporarily away at college. C has 2008 gross income of \$15,000 from summer employment. TP provides \$30,000 to support C, and C expends \$15,000 of C's own money for C's support.

Question S-13. (2 minutes) Briefly discuss whether a testamentary trust is subject to the § 67 limitation on miscellaneous itemized deductions with respect to investment advisor fees paid by the trustee.

Question S-14. (2 minutes) On February 15, 2008, TP purchases for \$100,000 cash a new widget making machine exclusively for use in TP's business activity of making widgets. The equipment has a § 168(i)(1) class life of five years. TP expects to use the equipment for six years and estimates that the equipment will have a salvage value of \$9,000 at the end of the six-year period of use. State the amount of the § 168 deduction allowable in 2008 (ignoring § 168(f), (g), (j), (k), and (l) and § 179 for purposes of this Question).

Question S-15. (2 minutes) TP owns unencumbered real property with an adjusted basis of \$15,000. TP sells the property to Spouse on September 15 of the current year when the fair market value of the property is \$11,000. Spouse pays cash of \$11,000. On December 18 of the current year, Spouse sells the real property to a third party for its then fair market value of \$13,000 (in cash). Briefly discuss the tax consequences to Spouse with respect to the December sale to the third party.

Question S-16. TP and Spouse separated in 2005 and are divorced in 2006. Pursuant to the terms of the divorce settlement agreement, which the divorce court approved and adopted as its order, TP is required to make the following spousal support payments in cash to Spouse:

- (1) \$120,000 in 2006
- (2) \$120,000 in 2007
- (3) \$110,000 per year after 2007 until the death or remarriage of Spouse.

The divorce settlement agreement and the court order are silent as to the tax consequences of the various payments. TP makes all required payments.

- (a) (1 minute) State the amount of gross income to Spouse (not TP) in 2006 attributable to the \$120,000 cash payment as spousal support.
- (b) (1 minute) Is there any gross income to TP (not Spouse) in 2008 attributable to the spousal support payments made by TP in 2006-08? State YES or NO.

Question S-17. (6 minutes) In 2005, TP purchased unimproved real property. To acquire the property, TP (1) paid \$200,000 cash at the closing, (2) took the property subject to a preexisting first mortgage debt secured by the property in the principal amount of \$300,000 (for which TP was not personally liable), and (3) executed a second mortgage indebtedness (for which TP was personally liable) to the seller in the principal amount of \$500,000. In 2006, TP borrowed \$100,000 from a bank, in return for which TP executed a nonrecourse note (no personal liability to TP) in the principal amount of \$100,000 and a third mortgage on the real property to secure the \$100,000 debt. The \$100,000 proceeds of the loan were used to purchase other real property. In 2008, TP received an offer from Buyer to buy the real property, and TP accepted the offer. Buyer (1) paid \$600,000 cash, (2) took subject to the first mortgage debt in the principal amount

of \$200,000 (it had been paid down from \$300,000 to \$200,000), (3) assumed the second mortgage debt in the principal amount of \$500,000, and (4) took subject to the third mortgage debt in the principal amount of \$90,000 (it had been paid down from \$100,000 to \$90,000).

- (a) What was TP's adjusted basis in the property at the time of acquisition in 2005?
- (b) Describe the federal income tax consequences of the 2006 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 2008.

Question S-18. (5 minutes) A limited liability company is properly formed under state law. Describe the rules that would apply in characterizing the company as a taxable entity or not for federal income tax purposes.

Question S-19. X Corporation will issue a stock dividend (preferred stock of X Corporation) as a pro rata stock dividend on its outstanding common stock (which is the only class of stock outstanding prior to the preferred stock dividend).

- (a) (2 minutes) Briefly discuss whether such a stock dividend generates gross income to the X Corporation shareholders who receive the preferred shares.
- (b) (2 minutes) Discuss the manner of determining the adjusted basis of the X Corporation preferred shares received by the shareholders.
- (c) (2 minutes) Discuss the consequences to the X Corporation shareholders (who received the preferred stock as a stock dividend) if X Corporation three years after issuance redeems the preferred shares.

Question S-20. (3 minutes) TP is sole shareholder of the stock of an S corporation. S Corporation wants to borrow money from a bank for corporate business purposes. The bank is willing to lend the money if the corporation pledges various properties as security for the loan. To further secure the loan, TP is required to guarantee the loan. TP never paid, and never was called upon to pay, any amount with respect to the loan. Explain whether and to what extent TP's adjusted basis in the stock of the S Corporation is increased because of TP's guaranteeing the loan to the corporation.

Question S-21. On January 1, 2008, TP and A formed the TPA general partnership ("TPA"). TPA was formed for the purpose of engaging in business activities. A transferred to TPA unimproved real property. The real property had an adjusted basis to A of \$150,000, a gross fair market value of \$300,000, and was subject to a nonrecourse debt in the principal amount of \$100,000. A received a 66 and 2/3 % partnership interest. TP transferred to TPA equipment with an adjusted basis to TP of \$30,000 and a fair market value of \$100,000 in exchange for a 33 and 1/3 % partnership interest. In 2008, TPA made no principal payments on the nonrecourse indebtedness secured by the real property, and TPA's gross income equaled its deductions. TPA made no transfers of cash or other property to the partners in 2008.

- (a) (2 minutes) What is the amount of TP's adjusted basis in TP's partnership interest

immediately after all of the transfers to TPA?

- (b) (1 minute) What is the amount of TP's capital account immediately after all of the transfers to TPA?
- (c) (2 minutes) What is the amount of A's adjusted basis in A's partnership interest immediately after all of the transfers to TPA?
- (d) (1 minute) What is the amount of TPA's adjusted basis in the equipment (received from TP) immediately after all of the transfers to TPA?

Question S-22. (3 minutes) Briefly describe the federal income tax consequences associated with a transfer of partnership property (the fair market value of which exceeds the partnership's adjusted basis in the property) to a partner in satisfaction of the partner's § 707(c) "guaranteed payment" right.

Question S-23. (2 minutes) Section 6166 permits deferred payment of estate tax attributable to the value of an interest in a closely-held business. Discuss whether the IRS may require under § 6166(k) a surety bond or an extended estate tax lien (under § 6324A) with respect to all § 6166(a)(1) cases.

Question S-24. (1 minute) For purposes of the liquidity test of § 2057(b)(1)(C), is a decedent's loan to a family-owned corporation treated as an "interest" in the corporation? State YES or NO.

Question S-25. (1 minute) Are "qualified dividends" (as defined under § 1(h)(11)(B)) included within alternative minimum taxable income? State YES or NO.

Question S-26. (2 minutes) Discuss briefly whether the § 6501(c)(1) period of limitations applies to TP's federal income tax return that was:

- (a) False and fraudulent due to the fraudulent intent of TP to evade taxes.
- (b) False and fraudulent due to the fraudulent intent of TP's return preparer to evade taxes, but TP did not have fraudulent intent to evade taxes.

Question S-27. (1 minute) TP files a federal income tax return that reflects an overstatement of the adjusted basis of property sold by TP. Is such an overstatement of basis an omission of gross income for purposes of § 6501(e)(1)(A)? State YES or NO.

Question S-28. (3 minutes) TP reported gross income of \$80,000 and claimed various deductions on TP's federal income tax return for year 1. The IRS contends that the proper amount of gross income is \$92,000. What is the applicable period of limitation on assessment of a deficiency if TP inadvertently failed to report \$12,000 of gross income (so that the correct gross income was \$92,000, rather than the \$80,000 that was reported).

Question S-29. (8 minutes) Discuss the types of, and requirements for, the relief potentially available to a spouse pursuant to § 6015.

PART THREE
FEDERAL RULES OF EVIDENCE
(60 minutes)

**ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION IN
ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING
ANSWERS TO OTHER PARTS OF THE EXAMINATION**

For purposes of all evidence questions, assume the following facts. Taxpayer (T), a self-employed web-site designer, has filed a petition with the Tax Court to redetermine a deficiency as set forth in a notice of deficiency. The alleged deficiency arises from the disallowance of certain claimed business expense deductions. T works out of her home office. The Commissioner (C) has answered, both parties have followed all proper pre-trial procedures, and the case is now at trial. Unless otherwise stated, assume that each question calls for relevant evidence - that is, evidence that is material and probative on some issue in the case.

E-1. T claims that she was in Chicago for a business meeting on July 24-26, 2008, for which she claimed business expense deductions. C's position is that the trip was for personal reasons.

(a) (6 minutes) T offers into evidence a letter purporting to be from X, dated June 15, 2008, asking to meet with her in Chicago on July 25, 2008, to discuss employing T to design X's web site. Can T authenticate this letter by testifying that she recognizes X's signature from prior business correspondence she had with X? Discuss.

(b) (6 minutes) Is X's letter admissible as some evidence that T was in Chicago on business on July 25, if offered together with a letter from T to X, dated June 18, 2008, in which T states that she will be in Chicago on July 25, as X requested, to discuss the proposed web site? Assume that C will object to both letters on the ground that the letters are hearsay. Discuss.

(c) (6 minutes) T calls Y as a witness. T claims that Y, an associate of X, was present at meetings between T and X on July 25. When questioned, Y cannot remember the date or details of the meetings. However, Y has notes that he claims he took at the meetings. The notes include the date (July 25) and details of the meetings. Can Y's notes be admitted or read into evidence as proof of the date and content of the meeting? If so, what foundation would be required for admission of this evidence, and in what form would it come?

E-2. (6 minutes) T calls her brother-in-law, B, as a character witness. She proffers B to testify that, in his opinion, T is a truthful, honest person. Assume that T has already testified. C objects to B's testimony. What would be the proper ruling of the Tax Court, and why?

E-3. Assume that T's state of mind is relevant to an issue, such as avoidance of certain penalties. T

offers to read into evidence three paragraphs of an authoritative accounting textbook. Assume she offers it to support her argument that she had a good-faith belief in the deductibility of a particular business expense, having testified that she read and relied on the text.

(a) (6 minutes) C objects, arguing that the text is hearsay. What would be the proper ruling of the Tax Court, and why?

(b) (6 minutes) Assume the Court overrules C's hearsay objection and the proffered text is admitted and read to the Court. C then requests that T be required to read the next five paragraphs in the text. What additional showing, if any, does C have to make to cause the Tax Court to order T to admit and read the additional five paragraphs?

E-4. (6 minutes) T testifies at the hearing. During C's case, C offers to prove that in 2007, T was convicted of shoplifting (a misdemeanor) in state court in her home state, and sentenced to six months probation and community service. T objects. What would be the proper ruling of the Tax Court, and why?

E-5. Assume that T has testified. C offers into evidence the original of T's DayTimer diary for the month of July 2008, which contains entries made by T that are in some respects apparently inconsistent with her testimony as to her activities when she was in Chicago that month. Assume that the parties have stipulated that the diary is authentic and the entries are in T's handwriting.

(a) (5 minutes) T objects that the entries are hearsay and improper impeachment. C responds that C is only offering it to impeach T. What would be the proper ruling of the Tax Court, and why?

(b) (8 minutes) Assume the Court overrules T's objections and admits the diary. T then offers into evidence a memo she claims she placed in her files in which she amplified and explained these diary entries. The memo does in fact corroborate her testimony as to her activities in Chicago on July 24-26, 2008. T offers to testify that she wrote the memo on the date stated on its face (July 31, 2008), and that it is true and accurate. C objects. What would be the proper ruling of the Tax Court, and why?

E-6. (5 minutes) At the trial before the Tax Court, the value of certain real property is in controversy. T calls A, a real estate appraiser with excellent credentials and extensive experience appraising property in the area of the real property the value of which is in controversy. T offers into evidence A's written report, dated January 15, 2008, which contains A's opinion as to the value of the property. T offers A's report as evidence of the value of the property. The report was submitted to the Tax Court 60 days prior to the call of the trial calendar on which T's case appears. C objects to the admission of A's report on the grounds that (1) the appraisal is hearsay and (2) A did not furnish C with a copy of the report until 29 days prior to the call of the trial calendar on which T's case appears. What would be the proper ruling of the Tax Court, and why?

PART FOUR
LEGAL ETHICS
(24 minutes)

**ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION IN
ANSWER BOOK/S SEPARATE FROM THE ANSWER BOOK/S CONTAINING
ANSWERS TO OTHER PARTS OF THE EXAMINATION**

Question LE-1. (2 minutes) A, a practitioner admitted to practice before the Tax Court, has entered an appearance on behalf of petitioner Ruler Co. in the Tax Court. A learns that counsel for the IRS has contacted the CEO of Ruler Co., who has information relevant to the litigation, without notifying A. Explain whether such contact by the IRS counsel with the CEO is proper.

Question LE-2. (2 minutes) B is a partner in the Ready, Willing & Able law firm. She currently represents John Smith in an intellectual property dispute against Johnson Publishing Co. Johnson Publishing Co. has requested C, another partner in the Ready, Willing & Able firm, to represent it in Tax Court litigation. Can C accept the representation? Briefly explain.

Question LE-3. (2 minutes) Does the answer to Question LE-2 change if B's representation of John Smith in the intellectual property dispute with Johnson Publishing Co. ended three years ago? Briefly explain.

Question LE-4. (2 minutes) D, a practitioner admitted to practice before the Tax Court, represents Mark Person in connection with a deficiency notice in which the IRS asserts that Person failed to pay federal income taxes on his salary for a particular taxable year. Person has directed D to argue that the federal income tax is voluntary and that he need not comply and that any attempt to force Person to pay taxes is unconstitutional. Briefly explain whether, at Person's direction, D may include this argument in the petition.

Question LE-5. (5 minutes) E, a practitioner admitted to practice before the Tax Court, designed and promoted a transaction designed to save federal income taxes. For a fee, he explained the transaction to Pablo Martinez and E prepared all the documentation for the transaction. The IRS subsequently audited Martinez, and he received a notice of deficiency with respect to this transaction. Martinez intends to contest the deficiency in Tax Court and asks E to represent him. Can E do so assuming that E will not be called as a witness at the trial? Briefly explain your answer.

Question LE-6. (3 minutes) As an alternative to Question LE-5, suppose that E currently represents the promoter Peterson, who designed the transaction and sold it to several investors, including Martinez. Can E represent Martinez in the Tax Court with respect to the deficiency matter assuming that E will not be called as a witness at the trial? Briefly explain your answer.

Question LE-7. (2 minutes) Suppose in Question LE-5 that Martinez is likely to raise § 6664(c) as a defense to any penalty, asserting that he reasonably relied on E's advice and that E is likely to be called as a witness in the deficiency litigation to establish the advice that he gave to Martinez. Can E represent Martinez if he obtains a waiver from Martinez? Briefly explain your answer.

Question LE-8. (2 minutes) F, a practitioner admitted to practice before the Tax Court, has entered an appearance on behalf of petitioner Joseph Kwan in Tax Court in which the issue is the validity of a deduction for a charitable contribution made to the private school that Kwan's son attends. At trial, F entered into evidence a letter prepared by the school that acknowledged the contribution and stated that "no goods or services were received in return." Several days later while the trial continued, Kwan says the following to F: "Well, we sure put one over on the IRS. I actually wrote the letter on a piece of school letterhead my son swiped." What action should F take and why?

Question LE-9. (2 minutes) Suppose in the alternative that in Question LE-8 that the letter was actually written by the school and F plans to have Kwan testify about the amount of the contribution and the fact that he received nothing in return. The day before Kwan is scheduled to testify, he tells F in confidence that, in exchange for the contribution, his son's tuition fees were waived, but that he has no intention of saying that if asked by the government's counsel whether he received anything from the school in exchange for the contribution. May F disclose the information about the waived tuition fees to the court? Briefly explain your answer.

Question LE-10. (2 minutes) Assume the same facts as Question LE-9. If Kwan insists on testifying in his own behalf, must F call him as a witness? Briefly explain your answer.