

2010 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. Do not write your name on any materials or answer books.

This examination is designed to test your overall knowledge of Rules of Practice and Procedure of the United States Tax Court, Federal taxation, the Federal Rules of Evidence, and American Bar Association Model Rules of Professional Conduct. 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 20 questions and 4 pages. The second part (96 minutes) deals with substantive Federal income, gift, estate, and generation-skipping transfer taxation; it contains 38 questions and 6 pages. The third part (60 minutes) deals with the rules of evidence applicable in the Tax Court; it contains 5 questions and 3 pages. The fourth part (24 minutes) deals with legal ethics rules applicable to practice before the Tax Court; it contains 9 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 may refer to and apply these materials in taking the examination. You may also 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 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 ask the proctor about any examination question. 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 2010 AND ANSWER ALL QUESTIONS AS TO THE 2010 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." If, for purposes of any question, TP is married, the spouse of TP is referred to as "Spouse." Unless otherwise directed, answer each Question independently of other Questions.

Question P-1. (14 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 to determine a deficiency that is less than the amount of the deficiency determined in the IRS statutory notice of deficiency?
- (b) 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?
- (c) Does the Tax Court have jurisdiction to determine that TP overpaid income tax in a year properly before the Tax Court?
- (d) 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 with respect to the refund claim?
- (e) TP engages a person to provide services to TP. The IRS determines that the person is an employee of TP (for purposes of the employment tax provisions in subtitle C of the Internal Revenue Code) and so notifies TP by certified or registered mail. Does the Tax Court have jurisdiction to determine whether the IRS determination is correct and the proper amount of employment tax under such determination?
- (f) TP and Spouse were separated and in the process of divorcing. The IRS issued a joint notice of deficiency to them as husband and wife. TP filed a petition with the Tax Court, forging Spouse's signature. Spouse did not know about the Tax Court Petition. Does the Tax Court have jurisdiction with respect to Spouse?

(g) TP is properly before the Tax Court as a petitioner in response to an IRS statutory notice of deficiency. The IRS then issues a jeopardy assessment against the taxpayer as to a tax for a year properly before the Court pursuant to TP's petition. Does the Tax Court have jurisdiction as to the jeopardy assessment?

(h) TP employs many people in TP's trade or business. Pursuant to § 3402, TP withholds a tax from the wages paid to TP's employees. The IRS asserts that additional § 3402 withholding tax is due and is seeking collection of that tax from TP. Does the Tax Court have jurisdiction with respect to the § 3402 tax?

(i) TP files a petition with the Tax Court to contest a proposed estate tax deficiency based on the IRS valuation of a closely held business interest included in the deceased taxpayer's gross estate. Does the Tax Court have jurisdiction with respect to the proposed estate tax deficiency?

(j) The executor of an estate of a decedent who died in 2007, seeks a Tax Court determination of the estate's eligibility to elect to pay estate taxes in installments under § 6166. Assuming the petitioner has exhausted all available administrative remedies as to § 6166, does the Tax Court have jurisdiction with respect to the § 6166 determination?

(k) TP files a petition with the Tax Court, and the Court determines that TP made an overpayment of tax with respect to the relevant taxable year. The IRS has not refunded the overpayment even though more than 150 days have elapsed since the Tax Court's decision became final. TP seeks a Tax Court order that the IRS refund the overpayment. Does the Tax Court have jurisdiction?

(l) TP received from the IRS a timely notice of deficiency reflecting a determination that TP is 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 that year. TP alleges in the Tax Court petition that TP is not liable for the addition to tax. The petition does not allege, and TP does not otherwise assert, that TP overpaid TP's federal income tax for the taxable year to which the addition to tax relates. Does the Tax Court have jurisdiction as to the addition to tax?

(m) 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?

(n) TP engaged in "listed transactions," as defined in Reg. § 1.6011-4, but did not file the disclosure statement required by Reg. § 1.6011-4(d). Pursuant to § 6707A, the IRS assessed a \$100,000 penalty for the failure to file the disclosure statement. The IRS also issued a deficiency notice with respect to that year, but the notice did not refer to the § 6707A penalties. TP petitioned the Tax Court to challenge the deficiency and the § 6707A penalty. Does the Tax Court have jurisdiction with respect to the § 6707A penalty?

Question P-2. (1 minute/s) If the IRS fails to mail a valid final notice of intent to levy and notice of the right to a hearing to the taxpayer because the notice was not sent to the last known address of the taxpayer, and eventually a notice of determination is issued and the taxpayer petitions the Tax Court, may the Court, on its own motion, dismiss the case for lack of jurisdiction? State YES or NO.

Question P-3. (4 minutes) TP is physically present in the United States at all relevant times. On June 7, 2010, the IRS mailed to TP at an address in the United States a notice of deficiency (bearing the date of June 7, 2010) regarding TP's 2008 income tax liability. The notice states that the last day on which a petition may be filed is September 2, 2010. TP received the notice on June 10, 2010. What is the last day on which TP timely can file a petition with the Tax Court? The following 2010 calendar may be of use to you:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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-4. (2 minutes) Describe the delivery methods by which a Tax Court petition may be filed to satisfy the § 6213(a) time requirements.

Question P-5. (3 minutes) Describe the 2010 changes regarding electronic filing with respect to Tax Court cases.

Question P-6. (2 minutes) Under what circumstances, if any, is electronic service of papers permitted under the Tax Court Rules?

Question P-7. (6 minutes) Describe the contents of the pleading that must be filed by or on behalf of a taxpayer to initiate a Tax Court deficiency or liability action.

Question P-8. (1 minute) Describe the effect of a petition not asserting error as to an issue raised

by the IRS in the deficiency notice.

Question P-9. (1 minute) Define the principal meaning of the phrase “joinder of issue” as used in the Tax Court Rules, and explain the significance of “joinder of issue” under those Rules.

Question P-10. (2 minutes) According to the Tax Court Rules, what is expected of the parties before they engage in formal discovery?

Question P-11. (2 minutes) Describe the time period during which discovery may be undertaken in a Tax Court proceeding.

Question P-12. (2 minutes) What limits, if any, do the Tax Court Rules prescribe regarding the number of interrogatories that may be served by a party?

Question P-13. (3 minutes) Under what circumstances may a party depose another party without the consent of that other party?

Question P-14. (1 minutes) Does the Court permit any charges and fees to be paid to the Court by use of a credit card? State YES or NO.

Question P-15. (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-16. (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-17. (1 minute) At a Tax Court trial regarding relief pursuant to § 6015(f), may the petitioner introduce evidence that was not presented to, or included in, the administrative process before the IRS? State YES or NO.

Question P-18. (2 minutes) Define and describe the “stipulation” requirement under the Tax Court Rules.

Question P-19. (3 minutes) Describe what protections to taxpayer privacy are provided under the Tax Court Rules.

Question P-20. (1 minute) What obligation, if any, does a person admitted to practice before the Tax Court have if the person is (1) convicted of any felony, (2) disciplined by any other court, or (3) disbarred or suspended from practice before an agency of the United States Government exercising professional disciplinary jurisdiction?

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." If, for purposes of any question, TP is married, 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. Any "§" reference is to the Internal Revenue Code unless otherwise indicated. Use the Internal Revenue Code provided you for purposes of the Examination, ignoring any subsequent revision to any provision of the Internal Revenue Code.

Question S-1. (4 minutes) Describe, compare, and contrast (1) "constructive receipt" and (2) "cash equivalence" (or "economic benefit").

Question S-2. (4 minutes) On June 15, 2010, TP owned Blackacre, unimproved real property. Blackacre is encumbered by a first mortgage debt in the amount of \$400,000. On June 15, 2010, TP sold Blackacre to Buyer (an unrelated person). Buyer (1) pays \$600,000 cash to TP, (2) assumes the \$400,000 first mortgage indebtedness, and (3) issues to TP a promissory obligation. The obligation is a nonnegotiable promissory note of Buyer in the principal amount of \$2,000,000. The principal of Buyer's note is due in the amount of \$400,000 (plus interest) on December 31 of each of years 2010 through and including 2014. All payments are made when due. TP's adjusted basis in Blackacre on June 15, 2010, was \$300,000. State the amount of TP's gross profit pursuant to § 453 with respect to the sale on June 15, 2010.

Question S-3. (1 minute) Same facts as Question 2. State the amount of TP's total contract price pursuant to § 453.

Question S-4. (1 minute) Same facts as Question 2. State the amount of payments to TP in the year of sale pursuant to § 453.

Question S-5. (1 minute) Same facts as Question 2. State the amount of TP's § 453B(b) adjusted basis in the installment obligation as of January 1, 2011.

Question S-6. (4 minutes) TP is a cash method taxpayer, Lessor is an accrual method taxpayer, and each uses the calendar year taxable year. TP is engaged in a trade or business activity in

space rented from Lessor. On December 1, 2010, TP and Lessor execute a new lease agreement, effective December 1, 2010, for the space used by TP. Pursuant to the terms of the lease agreement, TP pays to Lessor on December 1, 2010, the amount of \$48,000, which represents the \$4,000 monthly rent due for the period of December 1, 2010, through November 30, 2011. Analyze and describe the federal income tax consequences to (1) TP and (2) Landlord.

Question S-7. (5 minutes) State the amount that constitutes gross income to TP (without any further explanation) of each of the following items received during 2010 (answer each part below separately). A is TP's employer.

- a. A pays \$10,000 to the XYZ Finance Company in satisfaction of a debt owed by TP to XYZ.
- b. A provided, at no cost to TP, health insurance coverage for TP and Spouse. The cost for the year attributable to TP is \$6,000 and for Spouse is \$5,000.
- c. Reimbursement payment from A to TP for § 213 medical care expenses incurred by TP during the current year with respect to TP of \$1,000 and with respect to Spouse of \$700.
- d. TP takes, without authorization but with the intent to return when times get better, \$7,000 from A's cash drawer. TP's taking of the cash is not discovered during 2010. During 2011, TP's taking of the cash is discovered, and TP pays \$7,000 to A.
- e. TP is the Chief Executive Officer of A. A provides TP with free coffee during the day at A's business premises. The fair market value of the coffee for 2010 is \$500.

Question S-8. (1 minute) TP grows and harvests apples from TP's backyard orchard. During the current taxable year, TP consumes one-third of the apples (with a fair market value of \$100). Is there any gross income to TP as to the consumed apples? State YES or NO.

Question S-9. (1 minute) Same facts as in Question 8. TP exchanges the other two-thirds of the apples for pears (grown by X) with a fair market value of \$200. Is there any gross income to TP as to this exchange? State YES or NO.

Question S-10. (1 minute) TP received as a gift from TP's grandmother real property with a fair market value of \$150,000 and an adjusted basis to the grandmother of \$100,000. The grandmother paid a federal gift tax of \$12,000 with respect to the transfer to TP. State the amount of gross income to TP.

Question S-11. (1 minute) Same facts as Question 10. State the amount of TP's adjusted basis in the real property.

Question S-12. (1 minute) Describe what constitutes a § 102 gift for federal income tax purposes.

Question S-13. (1 minute) TP was injured by equipment on January 2 of the current year. Defendant manufactured the equipment. TP suffered extensive physical injury to TP's body and also emotional distress associated with the physical injuries. TP takes a court judgment against

Defendant, and the judgment is paid by Defendant on December 1 of the current year. The damages awarded were as follows: (1) \$300,000 compensatory damages for physical injury to the body of TP, (2) \$2,000,000 punitive damages for physical injury to the body of TP, and (3) \$100,000 compensatory damages for the emotional distress incurred as a result of the injury. State the amount of gross income to TP with respect to the \$300,000 compensatory damages for the physical injury to the body.

Question S-14. (1 minute) Same facts as Question 13. State the amount of gross income to TP with respect to the \$2,000,000 punitive damages for physical injury to the body.

Question S-15. (1 minute) Same facts as Question 13. State the amount of gross income to TP with respect to the \$100,000 compensatory damages for the emotional distress associated with the physical injuries.

Question S-16. (3 minutes) Discuss the extent to which interest expense related to an indebtedness secured by one or more residences of a taxpayer may be deductible for federal income tax purposes.

Question S-17. (2 minutes) On January 12, 2010, TP purchased, for \$850,000 cash, and placed in service new equipment exclusively for use in TP's business activity. The equipment is purchased from the manufacturer, who is unrelated to TP. This is the only purchase of "Section 179 property" made by TP during 2010. The equipment has a § 168(i)(1) class life of nine (9) years. TP expects to use the equipment for thirteen (13) years, and TP estimates that the equipment will have a salvage value of \$25,000 at the end of the period of use. Assume that the property qualifies under § 168(b)(1) and ignore § 168(b)(1)(B). State the maximum amount of the § 179 deduction allowable in 2010 ignoring § 179(b)(3). **Apply § 179 as it is in the Internal Revenue Code provided you for purposes of the Examination, ignoring any subsequent revision to § 179.**

Question S-18. (3 minutes) Same facts as Question 17. State the amount of § 168 depreciation allowable in 2010 assuming the maximum § 179 deduction in 2010 from your answer to Question 17. **Apply § 168 as it is in the Internal Revenue Code provided you for purposes of the Examination, ignoring any subsequent revision to § 168.**

Question S-19. (2 minutes) Same facts as Question 17. State the amount of § 168 depreciation allowable in 2011 assuming the maximum § 179 deduction in 2010 from your answer to Question 17. **Apply § 168 as it is in the Internal Revenue Code provided you for purposes of the Examination, ignoring any subsequent revision to § 168.**

Question S-20. (2 minutes) TP, born a male, is diagnosed with Gender Identity Disorder and incurs expenses for hormone replacement therapy, sex reassignment surgery, and breast augmentation. Which, if any of those expenses qualify as § 213 medical expenses?

Question S-21. (2 minutes) TP is owner of Whiteacre, unimproved real property, which TP has owned since 2005. When TP acquired the property, TP paid cash of \$200,000 and assumed a pre-existing first mortgage lien debt in the principal amount of \$100,000. TP sold the property on January 9, 2010, to Buyer. Buyer paid TP \$600,000 cash, assumed the first mortgage indebtedness, which at the time of closing was \$75,000, and took the real property subject to a second mortgage debt, which at the time of closing was \$200,000. The second mortgage was placed in the property by TP in 2008 to secure a \$350,000 debt to a commercial lending institution. At the time of the 2008 loan, the gross fair market value of the real property was \$500,000 and the first mortgage encumbrance principal amount was \$80,000. TP used the \$350,000 proceeds of the loan to purchase investment securities. State the amount of TP's adjusted basis in the real property at the time of acquisition in 2005.

Question S-22. (1 minute) Same facts as Question 21. State the amount of gross income to TP due to the 2008 loan secured by the property.

Question S-23. (1 minute) Same facts as Question 21. State the amount of TP's adjusted basis in the real property at the end of 2008.

Question S-24. (2 minutes) Same facts as Question 21. State TP's amount realized upon disposition of the real property in 2010.

Question S-25. (2 minutes) TP owes Lender \$20,000. During the current taxable year, TP transfers a share of corporate stock to Lender, and Lender accepts the share in complete discharge of the debt. At the time of the transfer to Lender, the share had a fair market value of \$18,000 and an adjusted basis to TP of \$6,000. TP is solvent. State the amount of gross income to TP with respect to the transfer in satisfaction of the debt.

Question S-26. (2 minutes) Explain generally (without discussing the technical operation of any particular Internal Revenue Code provision/s) (1) what the nonrecognition provisions of the Internal Revenue Code are designed to accomplish and (2) how they operate.

Question S-27. (4 minutes) TP graduates from high school in May and then commences undergraduate studies at a university as a full-time student during the fall semester of the current year. During the current year, TP pays \$15,000 in § 25A qualified tuition and related expenses. During the current year, TP is unmarried, drug conviction-free, and has adjusted gross income (with no exclusions from gross income under §§ 911, 931, and 933) of \$44,000. State the maximum amount of § 25A credit allowable to TP with respect to the tuition and fees if TP claims no deduction under § 222 with respect to the expenditures.

Question S-28. (2 minutes) Same facts as Question 27 except that TP's adjusted gross income (with no exclusions from gross income under §§ 911, 931, and 933) is \$84,000. What is the amount of the § 25A Hope credit?

Question S-29. (2 minutes) Describe how TP may elect to treat, for federal income tax purposes, qualified dividend income that is investment income under § 163(d) if TP also incurs investment interest expense during the same taxable year.

Question S-30. (12 minutes, as allocated below) The taxable year is 2010, during which River Corporation has § 316 current earnings and profits from operations of \$100,000. As of December 31, 2009, River Corporation had § 316 accumulated earnings and profits of \$200,000. The stock of River Corporation is owned equally by TP, an individual, and A, Inc. ("A"), a corporation. TP's adjusted basis in TP's 1,000 shares of stock of River Corporation is \$100,000. A's adjusted basis in its 1,000 shares of stock of River Corporation is \$500,000.

On December 31, 2010, River Corporation makes the following nonliquidating distributions that are characterized as dividends for state law purposes:

Distributee Shareholder	Property Received	Fair Market Value	Adjusted Basis to River Corporation
TP	cash	\$100,000	\$100,000
A	cash	\$100,000	\$100,000
TP	Lake stock*	\$300,000	\$100,000
A	inventory	\$300,000	\$350,000

* Stock of Lake Corporation, an unrelated corporation, acquired in 2000 by River Corporation as an investment.

With respect to the foregoing distributions:

- (4 minutes) Discuss and quantify the gain and loss recognition consequences to River Corporation that result from the distribution.
- (4 minutes) Determine the § 301 consequences to TP of the 2010 distributions from River Corporation, and determine TP's adjusted basis in the stock of Lake Corporation.
- (4 minutes) Determine the § 301 consequences to A, Inc., of the 2010 distributions from River Corporation, and determine A's adjusted basis in the inventory.

Question S-31. (3 minutes) Briefly identify the significant federal income tax consequences to the shareholders and the corporation of the corporation properly electing Subchapter S status.

Question S-32. (3 minutes) Describe the federal income tax treatment of a limited liability company formed under the law of one of the fifty states of the United States.

Question S-33. (5 minutes) Discuss the nature and amount of gifts that a taxpayer may make

free of federal gift tax during 2010 assuming that the taxpayer made no gift transfers prior to 2010.

Question S-34. (2 minutes) TP received, but failed to provide to TP's accountant, a Form 1099-DIV and Form 1099-Int, each with respect to the taxable year for which the accountant was preparing the taxpayer's federal income tax return. The accountant gave TP a summary of income before filing the federal income tax return, and TP failed to notice that these two items of income were missing. With respect to the two income items not reported on the return, the IRS asserts an accuracy-related penalty under § 6662(a), but TP argues that § 6664(c)(1) protects TP from the § 6662(a) penalty. Discuss whether § 6664(c)(1) protects TP.

Question S-35. (2 minutes) Describe the penalty the Tax Court may impose if a taxpayer's proceeding before the Court has been instituted or maintained by the taxpayer primarily for delay, if the taxpayer's position in the proceeding is frivolous or groundless, or the taxpayer unreasonably failed to pursue available administrative remedies.

Question S-36. (8 minutes) If a taxpayer is married and files a joint return with taxpayer's spouse, what relief may be available to the taxpayer pursuant to § 6015. Describe and discuss.

Question S-37. (2 minutes) TP argues for § 6015(f) relief from liability with respect to a previously filed joint income tax return. The IRS argues that, because TP did not request relief within 2 years of the first IRS collection action, as required by Regulation § 1.6015-5(b)(1), TP is barred from relief. How will the Tax Court rule?

Question S-38. (1 minute) If a taxpayer seeks relief from joint and several liability under §§ 6015(b) and (c), is actual receipt by the taxpayer of the IRS notice of intent to levy required for the two-year limitations period to request relief under § 6015(b) or (c) to run? Answer YES or NO.

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**

Under the Tax Court's Standing Pretrial Order, "All documentary and written evidence shall be marked and stipulated in accordance with Rule 91(b), unless the evidence is to be used solely to impeach the credibility of a witness. Objections may be preserved in the stipulation." Tax Court Rule 91 requires the parties to stipulate to all matters not privileged which are relevant to the pending case to the fullest extent to which complete or qualified agreement can or fairly should be reached. Therefore, as to all documents and written evidence referenced in the Evidence questions in this exam, you should assume that there is no stipulation or that the parties reserved all objections in the stipulation.

For purposes of Evidence Questions 1-4, 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 as to some issue in the case.

E-1. T keeps her business travel records in a computer database program called TravelHelper. The program is an off-the-shelf software program available in computer stores. The TravelHelper database has fields to record all pertinent details of her travel, including dates, locations, persons, itemized expenses, and all other information that would be necessary to justify a travel expense deduction. To substantiate her deductions for a business trip to Chicago on January 13-17, 2010, T offers into evidence a printout of data from TravelHelper for the relevant time period.

(a) (2 minutes) You represent T. What objection or objections would you anticipate C might make to this printout if you fail to lay an adequate foundation for its admission? In other words, what rules of evidence are implicated by the offer of this evidence?

(b) (10 minutes) What foundation(s) do you have to lay to meet any possible objection or objections to this evidence? Include the elements of each foundation and describe, in general, how T would lay that foundation.

(c) (10 minutes) Suppose the evidence shows that although the trip was in January, the data was not entered into the database until March 15, when it was entered as part of the process of preparing her tax returns. T's secretary, S, entered the data into the computer based on notes that T made in her pocket diary during the trip, and receipts T kept in her files. How does this affect the admissibility of the printout? Discuss.

(d) (6 minutes) As part of the foundation for this printout, does T need to call any witness other than herself to testify? Could any part of the foundation be done by affidavit? Explain.

E-2. (6 minutes) Suppose T calls her secretary, S, to testify to certain conversations. Before S can answer, the Tax Court sustains C's objection to the question. T disagrees with that ruling. At the conclusion of the trial, the Tax Court decides the case in favor of C, and T appeals. To preserve for appeal the Tax Court's alleged error in rejecting T's evidence, what must T have done at the time the objection was sustained? Describe specifically what T must have done.

E-3. (5 minutes) To prove the dates, location, and program of the Chicago meeting, T asks the Tax Court to take judicial notice of certain web pages available on the sponsoring organization's web site. The web site archives this information for meetings going back five years. C objects. What would be the proper ruling of the Tax Court, and why?

E-4. (6 minutes) T asked her accountant, A, to prepare a report in which A summarized and categorized the expenses claimed by T associated with the meeting. T submitted the report during settlement negotiations with the IRS. When no settlement could be reached, T stated that she would use the report during trial of the case. C indicated that he would object to the introduction of the report on the grounds that the report was submitted to C during settlement negotiations and, accordingly, was evidence of conduct or statements made in compromise of negotiations and barred under Federal Rule of Evidence 408. T filed a motion *in limine*, requesting a ruling on the admissibility of the report. What would be the proper ruling of the Tax Court, and why? (Assume that, if necessary, the requirements of Tax Court Rule 143(g) have been satisfied.)

E-5. T2, a different taxpayer, has filed a petition with the Tax Court to redetermine a deficiency as set forth in a notice of deficiency. C's notice of deficiency states that T2 understated his taxable income for the years 2003, 2004, and 2005. The statute of limitations has run for those years unless the underpayments for those years were due to fraud, and C has alleged that the underpayments were fraudulent. The case is on trial in the Tax Court.

(a) (5 minutes) Assume that T2 has not yet testified at the trial. T2 seeks to call his mother-in-law, M, as a character witness to testify that T2 has an excellent reputation for honesty and truthfulness. C objects to M's testimony. What would be the proper ruling of the Tax Court, and why?

(b) (6 minutes) Assume that T2 has testified as a witness on his own behalf. In rebuttal, C calls

F, T2's father-in-law, who testifies that in his opinion, T2 is a habitual liar. In his rebuttal, T2 seeks to call his mother-in-law, M, as a character witness to testify that T2 has an excellent reputation for honesty and truthfulness. C's objection is overruled, and M testifies that T2 has an excellent reputation for honesty and truthfulness. On cross-examination, C asks: "Q. Have you ever heard anything adverse with regard to his honesty and truthfulness?" M answers, "A. No, sir." C then asks M, "Q. Are you aware that in 2007, T2 pleaded guilty in state court to willfully and knowingly attempting to evade state income tax by filing false and fraudulent state income tax returns?" T2 objects and moves to strike the question as improper under the law of evidence. What would be the proper ruling of the Tax Court, and why?

(c) (4 minutes) Assume that T2's objection is overruled, and M answers, "No, sir, I have never heard that and I think you must be mistaken. It's not true." C then offers to introduce into evidence a certified copy of the conviction. T2 objects. 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 represents Arthur Peterson in a Tax Court proceeding involving deficiencies with respect to several deductions he took on his return. As part of the pre-trial process, the lawyer representing the IRS offers a settlement. A is surprised by the offer and has never discussed with Peterson the possibility of settling the case. A believes the government's offer should be accepted but Peterson is out of the country on vacation and cannot be reached. Can A agree to and sign the stipulation of settled issues? Briefly explain your answer.

Question LE-2. (2 minutes) B, a member of the Ready, Willing, and Able law firm, represented Rock Co. in an intellectual property dispute against Paper Co. That litigation terminated a year ago. Paper Co. has requested C, another member of the Ready, Willing and Able firm, to represent it in Tax Court litigation. Can C accept the representation? Briefly explain your answer.

Question LE-3 (3 minutes) D designed and promoted a transaction designed to save federal income taxes. For a fee, D explained the transaction to Kevin Zhang and prepared all the documentation for the transaction. The IRS subsequently audited Zhang, and he received a notice of deficiency with respect to this transaction. Zhang intends to contest the deficiency in Tax Court and asks D to represent him. Can D do so? Briefly explain your answer.

Question LE-4. (3 minutes) Assume the facts in Question LE-3, except that D currently represents the promoter Young, who designed the transaction and sold it to several investors, including Zhang. Young would prefer that D not represent anyone else with respect to the transaction, but since D has represented Zhang previously on tax matters, D would like to represent Zhang in Tax Court with respect to the deficiency arising from the transaction. Can D represent Zhang in Tax Court with respect to the deficiency matter? Briefly explain your answer.

LE-5 (3 minutes) E is an attorney and is the general counsel for Digital Solutions Inc. and in that capacity serves as Secretary of the Board of Directors. The IRS has issued a deficiency notice challenging the tax treatment of certain corporate distributions and the appropriate taxation will depend in part on when the corporation took certain action by resolution of the Board of Directors. If it will be necessary to call E as a witness with respect to the resolutions, can E represent Digital Solutions in the Tax Court proceeding if the Board of Directors consents? Briefly explain your answer.

LE-6 (3 minutes) F, an attorney, represents the husband H in a divorce proceeding. H and W have received a deficiency notice with respect to a federal income tax return they filed jointly after they separated. Although W, the wife, signed the return, she claims to have no knowledge of, and obtained no benefit from, several of the deductions that H took and that the IRS has contested. Can F represent both H and W in a Tax Court proceeding with respect to the deficiency notice if H consents to the representation? Briefly explain your answer.

LE-7 (3 minutes) G represents Janna Wilkins in Tax Court litigation in which the issue is the characterization of a \$20,000 payment made by a corporation in which Wilkins is the sole shareholder. The IRS has asserted that the payment received by Wilkins is a taxable dividend, and Wilkins asserts that it is a loan. G plans to have Wilkins testify about the details of the transactions, including the fact that she paid the corporation interest on the loan. The day before Wilkins is scheduled to testify, she tells G in confidence that, although she did pay the corporation interest, she immediately wrote a corporate check to herself for an identical amount and she cashed the check. May G disclose to the court the information about the corporate check for an amount identical to the interest? Briefly explain your answer.

LE-8 (2 minutes) Assume the facts in Question LE-7. If Wilkins insists on testifying in her own behalf, must G call her as a witness? Briefly explain your answer.

LE-9 (3 minutes) Assume the facts in Question LE-7, and further assume that G calls Wilkins to testify and has no reason to believe that her testimony will not be accurate. The day after Wilkins testifies, she tells G that her testimony was false. What action, if any, should G take?