

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.” Unless otherwise stated, “Court” refers to the U.S. Tax Court. Any reference to the Internal Revenue Code is “§ xxx.” If TP is married, the spouse of TP may be referred to as “Spouse.” Unless otherwise directed, answer each Question independently of other Questions.

Question P-1. (7 minutes total, 1 minute for each subpart) Determine whether the Tax Court has jurisdiction in each of the following situations. State YES or NO as to each subpart of the Question.

- (a) The last day for TP to timely file a petition with the Court was April 22, 2015. The Court received the petition via certified mail on April 29, 2015. The envelope containing the petition was properly addressed and had been deposited at a U.S. post office with sufficient postage prepaid through Stamps.com. Affixed to the envelope containing the petition was a Stamps.com postage label bearing the date April 21, 2015, the date on which the postage was paid and the label printed. The envelope did not bear a USPS postmark.
- (b) The IRS mailed to TP, pursuant to § 6330, a collection due process notice of determination to an address that was not TP’s last known address. That notice, dated April 30, 2014, was returned to the IRS as undeliverable. Several months later, on August 4, 2014, the IRS re-mailed the notice to TP’s last known address by regular mail. TP received the notice at that address and petitioned the Court within 18 days of the mailing date of the notice mailed to TP’s last known address.
- (c) The IRS mailed to TP a notice of the filing of a Federal tax lien (NFTL) and a levy notice with respect to two periods of time at issue. TP timely requested and received a § 6320/6330 hearing with the IRS Appeals Office. The Appeals Office subsequently issued a notice of determination sustaining the NFTL filing and the proposed levy for one of the periods at issue (Period 1), but no notice was issued as to the second period (Period 2). TP filed a petition with the Court disputing the Appeals Office determinations as to Period 1. The Court remanded this case on the motion of the Commissioner, and the IRS Appeals Office issued a supplemental notice of determination. The supplemental notice of determination sustained the NFTL filing and the proposed levy for both of Periods 1 and 2. Does the Court have jurisdiction with respect to

Period 2?

(d) Is the time limitation of § 6015(e)(1)(A)(ii) jurisdictional with respect to the Court?

(e) TP prepared tax returns for other persons, and TP received from the IRS a notice and demand for penalty pursuant to § 6695(b) for failing to sign the tax returns of some of TP's customers. In response to the notice and demand, TP petitioned the Court to challenge the penalty. Does the Court have jurisdiction?

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

(g) Does the Court have jurisdiction to determine that TP overpaid income tax in the year properly before the Court in response to an IRS statutory notice of deficiency determining a deficiency of income tax?

Question P-2. (2 minutes) With respect to the issue of whether the Court has jurisdiction, describe (1) by whom may the issue be raised and (2) when the issue may be raised.

Question P-3. (3 minutes) TP's return for the taxable year 2012 was originally due on April 15, 2013. TP timely requested and received from the IRS a six-month extension of time to file the 2012 return, and that extended the due date for filing that return to October 15, 2013. As of January 17, 2013, TP had made toward TP's expected 2012 tax liability several estimated tax payments aggregating \$72,000. TP enclosed an additional payment of \$40,000 with the extension request. Accordingly, as of April 15, 2013, TP had made tax payments for 2012 of \$112,000. TP did not file a return for 2012 by October 15, 2013, or prior to August 29, 2015. On June 19, 2015, the IRS issued TP a notice of deficiency for 2012. On August 29, 2015, shortly before filing a petition with the Court, TP submitted to the IRS a delinquent return for 2012 that reported a tax liability of \$79,559. In the case before the Court, the IRS agrees that TP's 2012 tax liability is \$79,559. Discuss whether the Tax Court may determine that TP made an overpayment of \$32,441 (\$112,000 minus \$79,559) for 2012.

Question P-4. (2 minutes) Explain whether an individual Court petitioner may successfully challenge under § 6751(b), in a pre-assessment deficiency proceeding, a § 6662 penalty.

Question P-5. (3 minutes) Discuss whether any delivery service other than the U.S. mail qualifies within the § 7502(a) timely-mailing-is-timely-filing rule.

Question P-6. (4 minutes) TP is physically present in the United States at all relevant times. On March 5, 2018, the IRS mailed to TP, to an address in the United States, a notice of deficiency (bearing the date of March 5, 2018) regarding TP's 2016 income tax liability. The notice of deficiency states that the last day on which a Tax Court petition may be filed is June 1, 2018. TP received the notice on March 7, 2018. What is the last day on which TP timely can file a petition

with the Court? The following 2018 calendar may be of use to you:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
March					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
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	30

Holidays in the District of Columbia during the months in the table above are: (1) April 16 and (2) May 3.

Question P-7. (6 minutes) Describe the contents of the pleading that must be filed by, or on behalf of, an individual taxpayer to initiate a Court proceeding in response to a statutory notice of income tax deficiency if the Court Small Tax Case rules do not apply.

Question P-8. (2 minutes) Under what circumstances may a Court petitioner use the Simplified Form Petition?

Question P-9. (3 minutes) The IRS sent a letter to TP advising that the IRS proposed to assess against TP a § 6707A assessable penalty. The letter stated that, if TP did not agree with that proposed assessment, TP could “request a conference with our Appeals Office” by “forward [ing] a written protest.” TP then submitted to the IRS Appeals Office a timely protest challenging assessment of the § 6707A penalty. The IRS subsequently notified TP that the Appeals Office had upheld the proposed penalties and would proceed with assessment. The IRS assessed the § 6707A penalties and sent TP a Notice of Intent to Levy and Your Right to a Hearing (under §

6330). TP requested the § 6330 hearing and submitted a letter stating that TP “wishes to administratively contest the § 6707A penalties through this Collection Due Process Hearing.” The Appeals Officer concluded that TP could not challenge the liability for the penalties because TP had a prior opportunity to do so, an opportunity of which TP had taken advantage by filing the protest with the IRS Appeals Office. The Appeals Officer confirmed that the penalty had been properly assessed and that all other requirements of applicable law and administrative procedure had been met. Eventually, the IRS issued TP a notice of determination sustaining the proposed collection action, and TP timely sought review in the Court. Discuss whether TP may challenge the liability for a § 6707A penalty in the Court proceeding.

Question P-10. (1 minute) Explain whether the IRS is required to file an Answer in response to a properly filed Court petition that is subject to the Small Tax Case Rules.

Question P-11. (2 minutes) What are the consequences, if any, of a Court petitioner not filing a Reply to the respondent’s Answer?

Question P-12. (2 minutes) Explain the proper method/s of amending a petition that previously was filed with the Court.

Question P-13. (2 minutes) The IRS Office of Appeals sustained the filing of a notice of Federal tax lien, with a view toward collection of penalties that the IRS assessed against TP pursuant to § 6702(a). The case before the Court is a collection due process appeal pursuant to § 6330(d). After the petition was filed, the Commissioner abated the penalties and released the lien, but did not concede TP’s liability for the penalties, and the Commissioner reserved the right to reassess at a later date the § 6702 penalties. The Commissioner moved to dismiss the case on grounds of mootness. Discuss whether the Court should grant the motion.

Question P-14. (2 minutes) TP conducted business activities that exposed TP to various risks. TP formed a 100% owned “captive” insurance company and, in the years in issue, TP paid to the “captive” insurance company premiums for coverage of specified risks of TP. TP deducted the premiums. After an audit, the IRS disallowed the deductions and stated in the notice of deficiency that TP did not establish that the amount shown was (a) insurance expense and (b) paid. TP filed an appropriate petition in the Court, and the Commissioner filed an answer that did not make any affirmative allegations as to the disallowed insurance expense deductions. Before a trial date had been calendared in the case, the Commissioner moved the Court for leave to amend the answer to assert that TP’s use of the captive insurance company arrangement lacked economic substance. TP opposes granting of the motion for leave to amend. Discuss how the Court should rule on the motion.

Question P-15. (3 minutes) Under what circumstances, if any, will the Court issue a protective order regarding nondisclosure of information that constitutes part of the record of the case?

Question P-16. (2 minutes) Briefly describe the meaning under the Tax Court Rules of “joinder

of issue” and explain its significance.

Question P-17. (2 minutes) According to the Tax Court Rules, what is the preferred manner of engaging in pre-trial discovery?

Question P-18. (2 minutes) As part of a proceeding before the Court, TP receives a proper IRS request for an admission. Describe the effect on TP of a failure to respond to the request for admission.

Question P-19. (1 minute) The IRS sent to TP a notice of deficiency asserting that TP is liable (for TP's taxable year subject to the Notice) for the accuracy-related penalty under § 6662(a). TP alleged no error in the petition with respect to the § 6662 determination. The Commissioner filed with the Court a motion to dismiss for failure to state a claim upon which relief can be granted. Even though TP did not assert error as to the § 6662 amount, must the IRS produce, for purposes of the motion to dismiss, evidence with respect to the § 6662(a) amount? State YES or NO.

Question P-20. (2 minutes) Discuss which party bears the burden of proof in a Court proceeding.

Question P-21. (2 minutes) In a § 6330 collection due process case before the Court, the Court reviews the IRS determination of whether the taxpayer qualifies for relief. Explain the standard of review applied by the Court of the IRS determination.

Question P-22. (3 minutes) Certain 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-23. (2 minutes) Describe the electronic filing and service rules applicable to a practitioner representing a petitioner with respect to a Court case.

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 TP is married, the spouse of TP may be referred to as “Spouse.” Unless otherwise directed, assume the taxpayer is a calendar-year, cash-method taxpayer. Any reference to the Internal Revenue Code is “§ ~~xxx~~.” 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. The U.S. Tax Court is referred to as the “Court.”

Question S-1. (3 minutes) Describe which taxpayers are not permitted for federal income tax purposes to use the cash method of accounting.

Question S-2. (3 minutes) Describe and explain the federal income tax accrual method of accounting “all events test” with respect to a taxable year beginning before January 1, 2018.

Question S-3. (2 minutes) TP operates a landfill and uses the cash method of accounting for federal income tax purposes. TP is legally required to pay reclamation and closing costs if and when it closes the landfill. TP made a proper § 468 election to currently deduct estimated reclamation, closure, and post-closure costs before the costs are paid, and TP currently deducted the amount prescribed by § 468(a)(1). The IRS contends that § 468 applies only to accrual method taxpayers. How should the Court rule on the issue of whether § 468 applies only to accrual method taxpayers?

Question S-4. (4 minutes) A was married to B. B was a sole proprietor farmer who purchased certain farm inputs (seed, fertilizer, herbicides, and fuel) in 2010 intending to use them to cultivate crops the following year. B was a cash-method taxpayer who properly deducted the farm input expenditures on B’s Schedule F of the 2010 calendar-year taxable year joint return of A and B. B died in March 2011 not having used any of the purchased farm inputs. The farm inputs were listed in the inventory of B’s assets prepared by B’s estate, with the inputs’ stated fair market value being equal to their purchase price. The farm input items were transferred to A, who began operating a farming business as a sole proprietor upon B’s death. A used all the farm inputs in 2011 to grow crops that were sold in 2011 and 2012. A joint return properly was filed as to 2011, and deductions for tax year 2011 were claimed on A’s Schedule F for an amount equal to the value of the farm inputs inherited from Spouse. The IRS conceded in the Tax Court

case that A's and B's Schedule F farming businesses were separate. Discuss the possible application of the "tax benefit rule" to require the recapture upon B's death in 2011 of the deductions claimed in 2010 for the farm input expenditures.

Question S-5. (5 minutes; ½ minute for each subpart) State the amount that constitutes gross income to TP (without any further explanation) of each of the following items received during 2018 (answer each part below separately).

- a. \$2,000 payment by TP's employer to X to satisfy TP's gambling debts payable to X. The payment was made in consideration of the importance of TP's services to TP's employer.
- b. \$30,000 embezzled from a not-for-profit organization as to which TP served as the treasurer.
- c. \$50,000 lump-sum proceeds of life insurance policy on the life of TP's aunt. The policy was purchased and owned by TP's brother, and the proceeds were payable to TP.
- d. \$3,000 cash found by TP in a coffee can in TP's garden.
- e. \$2,000 of interest received on U.S. Treasury note purchased for \$70,000.
- f. \$3,000 of interest received on a State of Kentucky bond the proceeds of which were used by the State of Kentucky to finance the construction of highways and purchased for \$65,000.
- g. Same facts as Question 5.f. TP sells the Kentucky bond for \$67,000.
- h. Publicly traded securities received during the current taxable year as a bequest after the death of TP's parent. The fair market value of the securities as of the (1) date of death of the parent is \$400,000 and (2) date of receipt of ownership by TP is \$375,000.
- i. Same facts as Question 5.h. Later in the taxable year, TP sold the publicly traded securities for \$425,000.
- j. Free donuts every Friday at work provided by TP's employer (value per year is \$250).

Question S-6. (4 minutes) TP sued TP's former employer for workplace physical injury, discrimination, and retaliation. TP alleged (1) a physical injury inflicted by the former employer and (2) that TP had "suffered severe emotional distress and anxiety, with physical manifestations, including high blood pressure." TP also sought punitive damages. The decision of the court awarded:

1. \$50,000 to the physical injury.
2. \$100,000 to punitive damages.

Discuss whether TP may exclude from gross income any part of the amounts received.

Question S-7. (4 minutes) Describe generally the federal income tax treatment of the payment of alimony and child support from TP1 to TP2 assuming that the payments are made pursuant to a divorce or separation instrument executed prior to January 1, 2019.

Question S-8. (3 minutes) TP contributed an interest in property (not cash and not publicly traded securities) to an entity qualifying within § 170(c)(2). TP claimed a § 170 deduction in excess of \$5,000 with respect to the transfer. The deduction claimed was very significantly greater than

TP's acquisition cost of the interest in the property (which was acquired in TP's preceding taxable year). TP included with TP's federal income tax return for the year of the claimed deduction a Form 8283, Noncash Charitable Contributions. TP's Form 8283 provided the date and manner of acquisition of the contributed property, but the Form left blank the space for the "Donor's cost or other adjusted basis." Discuss whether the Court should hold that TP's Form 8283 satisfied the substantiation requirement of Reg. § 1.170A-13(c)(2).

Question S-9. (4 minutes) Summarize the essential conditions required for a § 170 deduction with respect to a contribution of a conservation easement to a § 170 qualifying charitable organization.

Question S-10. (2 minutes) Discuss the meaning of the phrase "other casualty" in § 165(c)(3) as construed by the Court.

Question S-11. (3 minutes) TP fails to adequately substantiate business-related expenses that, if properly substantiated, would be deductible (because § 274 is inapplicable). Discuss whether TP successfully can assert in the Court that at least some approximated portion of the inadequately substantiated business-related expenses should be deductible.

Question S-12. (3 minutes) TP owns a professional sports team based in City. The game schedule for the sports team requires the players and other staff personnel to travel to locations away from City. When the teams travels away from City for games, TP incurs lodging and meal expenses at hotels for team personnel. TP contracts with the hotels for the provision, in a hotel banquet or conference room, of pre-game meals and snacks exclusively to players and team personnel. TP provided such food to all the traveling employees in nondiscriminatory manner as required by § 132(e)(2). Discuss whether, as to a expenses incurred prior to December 31, 2017, § 274(n) limits TP's deductions as to the meal expenses incurred while the team travels away from City.

Question S-13. (3 minutes) TP owns real property used in TP's business within the meaning of § 1221(a)(2). The real property constitutes "property used in a trade or business," as defined by § 1231(b)(1). On January 1, 2018, TP entered into a contract for sale of the property to X, and upon execution of the contract by TP and X, TP received from X \$10,000,000 as a deposit against the purchase price of \$25,000,000. The transaction was to close and ownership to transfer from TP to X on July 1, 2018, but X defaulted, and the closing and transfer of ownership did not occur. Under the terms of the contract, TP was permitted to retain the \$10,000,000 deposit. Discuss whether § 1234 applies to TP with respect to this transaction.

Question S-14. (3 minutes) On January 1, 2018, TP purchased, for \$1,500,000 cash, and placed in service new machinery exclusively for use in TP's trade or business activity. The equipment is purchased from the manufacturer, who is unrelated to TP. This is the only purchase of "Section 179 property" (as defined by § 179(d)(1)) made by TP during TP's taxable year beginning on January 1, 2018. State the maximum amount of the § 179 deduction allowable to TP for the taxable year beginning on January 1, 2018, assuming that TP's taxable income for 2018 that is

derived from the active conduct by TP of any trade or business during 2018 is \$900,000.

Question S-15. (4 minutes) In 2012, TP purchased unimproved real property. To acquire the property, TP (1) paid \$100,000 cash at the closing, (2) assumed a preexisting first mortgage debt secured by the property in the principal amount of \$75,000 (for which TP became personally liable), and (3) executed a second mortgage indebtedness (for which TP was personally liable) to the seller in the principal amount of \$600,000.

In 2018, TP received an offer from Buyer to buy the real property, and TP accepted the offer. Buyer (1) paid \$500,000 cash, (2) took subject to the first mortgage debt in the principal amount of \$50,000 (TP had paid down the principal amount of the debt from \$75,000 to \$50,000), and (3) assumed the second mortgage debt in the principal amount of \$600,000.

- a. Quantify the amount of TP's adjusted basis in the property at the time of acquisition in 2012.
- b. Quantify TP's amount realized and any gain or loss realized upon the sale of the property to Buyer in 2018.

Question S-16. (3 minutes) TP1 and TP2 were married at all relevant times. TP1 erroneously claimed single/unmarried filing status on TP1's 2012 individual income tax return. TP2 did not file a 2012 individual income tax return. In a notice of deficiency to TP1, the IRS changed TP1's 2012 filing status to married filing separately. After petitioning the Court, TP1 and TP2 filed a joint 2012 income tax return. The IRS contends that TP1's original 2012 single return was a separate return such that the limitations of § 6013(b)(2) apply to make § 6013(b)(1) inapplicable to TP1 and TP2. Discuss how the Court should rule regarding the applicability of § 6013(b)(2) to TP1 and TP2.

Question S-17. (5 minutes) Briefly describe the circumstances under which a transfer or transfers to a corporation in exchange for stock of such corporation will be entitled to nonrecognition treatment. Also describe relevant adjusted basis rules.

Question S-18. (3 minutes) TP1 and TP2 form the 1-2 Partnership, in which TP1 and TP2 are equal partners for all purposes. TP1 is to serve as the manager of the partnership business activities and is to receive a salary of \$200,000 per year regardless of the partnership income. During the year, the partnership has profit from operations (exclusive of TP1's salary expense) of \$350,000 (\$150,000 net of TP1's salary expense). Discuss the amount of income from the partnership that TP1 and TP2 must report.

Question S-19. (6 minutes) TP is a partner in a partnership. If TP were to sell TP's partnership interest, describe the characterization rules that will or may apply to determine the character of the gain or loss resulting from TP's sale of the partnership interest.

Question S-20. (3 minutes) TP1 and TP2 discussed in great detail a prospective business opportunity in which they would be participants. TP1 decided to loan money to TP2, but only if TP2 gave TP1 an interest in the business. TP1 sent \$30,000 to TP2, and together they formed a

corporation under the laws of the nation of Belize (Corporation) in which TP1 and TP2 were equal shareholders. Over a 16-year period, TP1 made advances to Corporation totaling in excess of \$11,000,000. Each time TP1 advanced money, TP1 did so without setting a time for repayment and without prescribing a rate of interest on the advance. At the time of the Tax Court trial, TP1 had received no repayment of any advance and had received no interest. When Corporation obtained loans from independent lenders over the years, it signed formal written loan documents and repaid the lenders. TP1 did not obtain formal loan documents for any of these advances. TP1 claimed bad debt deductions in 2010 and 2011 with respect to the advances to Corporation. Discuss whether TP1's advances should be characterized for income tax purposes as debt owned by Corporation to TP1 or as contributions to the capital of Corporation by TP1.

Question S-21. (3 minutes) At the time of death on January 31, 2008, Decedent owned an investment account with Xco, a securities business. Decedent's executor on or before November 28, 2008, withdrew \$11,500,000 from the investment account to pay the estate's taxes and administrative expenses. On December 11, 2008, the chairman of Xco was arrested, and the Securities and Exchange Commission issued a press release to alert the public that it had charged the chairman with securities fraud relating to a multibillion-dollar "Ponzi" scheme. On March 12, 2009, the chairman admitted to perpetrating a Ponzi scheme through Xco and pleaded guilty to various Federal crimes, including securities fraud, investment adviser fraud, money laundering, and perjury. As a result of the Ponzi scheme, the estate's interest in Xco became worthless. The estate of Decedent on April 1, 2009, timely filed a federal estate tax return on which the estate (1) reported a gross estate that included the January 31, 2008, value of Decedent's interest in the Xco investment account (undiminished by the effects of events occurring after that date) and (2) claimed a § 2054 theft loss deduction relating to the Ponzi scheme, the amount of which loss reflected the difference between (a) the value of the estate's interest in Xco reported on the estate tax return and (b) the \$11,500,000 withdrawn by the estate from the Xco account. Discuss whether the estate qualifies for a § 2054 loss deduction.

Question S-22. (3 minutes) H died in 2012, and H's estate reported a deceased spousal unused exclusion (DSUE) and, pursuant to § 2010(c)(5)(A), elected portability of the DSUE. In 2013 the IRS sent H's estate a letter reporting that the return had been accepted as filed. W died in 2013. Pursuant to § 2010(c)(2)(B), W's estate claimed the DSUE reported by H's estate. As a part of an examination of the estate tax return filed by W's estate, the IRS also examined the estate tax return filed by H's estate. The IRS reduced the amount of the DSUE but did not determine or assess a deficiency against H's estate. The IRS determined an estate tax deficiency against W's estate. W's estate filed a petition with the Court alleging that the IRS should not be allowed to examine the estate tax return filed by H's estate to determine the proper DSUE amount allowable to W's estate. Discuss whether the estate of W may successfully challenge whether an examination of the estate tax return of H's estate is an improper second examination within the meaning of § 7605(b).

Question S-23. (3 minutes) TP made gifts in Year 1 for which no Form 709 was filed. TP also made a gift in Year 2 for which a Form 709 was filed, but the Form 709 did not describe the

transferred property, nor did it provide a description of the method used to determine the value of the transferred property. Discuss the applicable period of limitations under § 6501 for each year.

Question S-24. (2 minutes) TP timely filed a fraudulent tax return with the intent to evade tax. On a date after the due date for that return, TP filed a non-fraudulent amended return for that same year. Discuss the applicable statute of limitation with respect to the taxable year for which the returns were filed.

Question S-25. (3 minutes) Discuss the applicable period of limitations as to TP whose tax return was fraudulently prepared by a tax return preparer.

Question S-26. (3 minutes). Describe the interest that is imposed on unpaid assessable penalties, additional amounts, or additions to tax.

Question S-27. (1 minute) Under § 6343(a)(1)(D), the Commissioner may release a levy if “the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer.” Reg. § 301.6343-1(b)(4)(i) limits this economic hardship relief to individual taxpayers and excludes corporate taxpayers. Is the Regulation a valid regulation under applicable Court authority? State YES or NO.

Question S-28. (2 minutes) TP received an IRS notice of deficiency after filing a federal income tax return that reported zero taxable income and claimed a refund for withholding taxes paid on the substantial amounts of income TP received. TP filed a petition with the Tax Court asserting that none of the income TP received was taxable and that the notice of deficiency was invalid because the Commissioner had no firsthand knowledge of the income giving rise to the deficiency. At trial, TP continued to assert the arguments alleged in the petition. TP requested an opportunity to submit written briefs following the trial, which the Court allowed. The Court directed TP to two cases that rejected the tax-protester arguments advanced by TP and encouraged TP to abandon those arguments that had been repeatedly rejected by the Court and other courts. TP agreed to review both cases and assured the Court that the brief would be no more than 15 pages. The brief TP submitted to the Court was over 70 pages, and TP again asserted the tax-protester arguments that the Court has rejected many times. Discuss whether the Court should impose a § 6673 penalty on TP.

Question S-29. (2 minutes) Describe in general terms the holdings of the Tax Court decisions interpreting the “reasonable cause” exceptions found in § 6651(a)(1) and § 6664(c)(1) with respect to taxpayer reliance on the advice of a tax professional.

Question S-30. (2 minutes) TP is not a resident of the U.S. for federal income tax purposes. Because TP engaged in a transaction that possibly had U.S. income tax consequences, TP retained X to prepare the relevant U.S. federal income tax return. X has a bachelor of arts degree from Columbia College, a master of business administration degree from Columbia University Graduate School of Business, and a juris doctorate from St. Johns University School of Law. X is

a certified public accountant licensed in the State of New York. X did not specialize in international tax law, and X had no advanced degree specializing in taxation. At the time TP hired X, X had been preparing U.S. income tax returns for 40 years. X spent 30% to 40% of X's time preparing income tax returns. Both TP and X believed that X was qualified to prepare the tax return of TP. Discuss whether TP can avoid liability for a penalty under § 6662 on the basis of TP's reliance on the advice of X.

Question S-31. (2 minutes) Petitioner, an attorney, had represented, pursuant to a power of attorney, a taxpayer in an administrative proceeding with the IRS. Petitioner sent a letter to the IRS applying for administrative costs under § 7430 on behalf of the client taxpayer. Petitioner seeks Court review of the IRS decision to deny Petitioner's application for an award of administrative costs under § 7430. Petitioner asserts in the petition the § 7430 claim as it related to Petitioner's rights under § 7430 and not on behalf of the taxpayer. The Commissioner has submitted a motion to dismiss for lack of jurisdiction on the basis that Petitioner is not the proper party to file a claim under § 7430(f)(2). How should the Court rule on the motion?

Evidence Questions

Assume the following facts for Questions E1-E10. Taxpayer ("TP") has filed a petition with the Tax Court contesting an alleged income tax deficiency and a section 6662(b)(1) penalty. The IRS contends that TP failed to report income totaling \$100,000.00 from 2011-2013. The IRS further contends that this unreported income was generated by TP when working a side job with a lawn care business. TP challenges this contention, arguing that all or virtually of all the alleged income deficiency was incorrectly attributed to TP, and that no section 6662(b)(1) penalty is warranted. Whenever a fact pattern states that TP asks a question of a witness, you should assume that the question is being asked by TP's attorney, and not by TP.

1. (6 points) In his case-in-chief, TP seeks to admit a document (Exhibit 1) into evidence. The document contains an IRS certification cover sheet and the document bears an IRS seal. The following words appear at the top of document in bold print: "1040 Instructions 2013." At the bottom left of the document appears "IRS" as well as language that provides, "Department of the Treasury Internal Revenue Service IRS.gov." TP represents to the court that he "would like to admit Exhibit 1 into evidence for the truth of its contents." If the IRS does not challenge the authenticity of the document, but instead urges its exclusion on hearsay grounds how should the court rule and why?
2. (6 points) In his case-in-chief, TP calls his employer Ed (E) to the witness stand. E testifies that he (E) is the owner of "E's Barbershop," that the business originated in 2009, that E has employed five individuals since the birth of the business, that TP was hired in 2010 as a barber and is a current employee of the barbershop, that TP is a salaried employee, that E personally hires and pays his employees, and that E prepares and retains all records relevant to his company's payroll. When asked by TP, "How much money did TP earn between 2011 and 2013?" E testified, "TP earned a total of \$90,000.00. Thirty-thousand dollars in 2011, and the same amount in 2012 and 2013." The IRS objects to E's testimony regarding TP's earnings, arguing that it is barred by the best evidence rule. How should the court rule and why?
3. (6 points) Assume that Ed (E) is still on the witness stand. TP's attorney approaches E and shows him a document titled "Exhibit 2." When asked by TP if he recognizes the document, E responds, "Yes I do. It is a document—a yearly earnings statement—that I routinely and contemporaneously prepare and maintain in our company's files. It is a document that reflects the annual earnings in a particular year for our employees. This particular document, Exhibit 2, reflects TP's yearly earnings for the June 2011." Based upon this testimony TP seeks to admit the yearly earnings document into evidence. If the IRS objects how should the court rule and why?
4. (6 points) In his case-in-chief, TP calls Fred (F) to the witness stand. F testifies that he (F) owns a lawn care business that has been in existence since 2009. F further testifies that "on occasion from 2011-2013 TP assisted me in various aspects of my business, including mowing lawns and bill collection." When asked by TP whether F ever compensated TP for his assistance during 2011-2013, F testified, "Absolutely not. I remember TP telling me, 'I want my work for you to be

on a volunteer basis. I just don't want any issues with the IRS.'" The IRS objects only to that portion of F's testimony regarding what TP told him ("I want my work for you to be on a volunteer basis. I just don't want any issues with the IRS"), arguing that it is hearsay. TP insists that the statement should be admissible for its truth. How should the court rule and why?

5. (6 points) Assume that Fred (F), referenced in question 4, is still on the witness stand. On cross-examination, the IRS attorney asks F, "In 2014, did you apply for a job with Corporation X?" F replies, "Yes I did." The IRS attorney then asked F, "On that job application, did you misrepresent the extent of your education? Specifically, did you falsely state that you had a bachelors degree from State University?" TP objects to this question. How should the court rule?
6. (6 points) Assume that Fred (F), referenced in questions 4 and 5, is still on the witness stand. Assume further that the court overruled the objection in question 5 and allowed F to answer the question ("On that job application, did you misrepresent the extent of your education? Specifically, did you falsely state that you had a bachelors degree from State University?"). F then replied, "I have absolutely no recollection of making any misstatements regarding that fact or any other fact on that application." The IRS attorney then asks F, "If I showed you a copy of your application to Corporation X might that refresh your memory?" TP objects, arguing that the IRS should not be allowed to show F that document. How should the court rule and why?
7. Assume that Fred (F), referenced in questions 4, 5, and 6 is still on the witness stand. Assume further that the court overruled the objection in question 6 and allowed the IRS to show F a copy of F's application to Corporation X. After reviewing the document, F testified, "Well, after reviewing it I stand by my earlier testimony; namely, that I did not make any misrepresentations on my application to Corporation X, including anything regarding my prior education." Convinced that F is lying on the witness stand, the IRS then seeks to admit into evidence F's application to Corporation X. TP objects. How should the court rule and why?
8. (6 points) It has been established through other evidence that the deadline for the filing of federal income taxes in 2011 was April 15th. TP then requests that the court take judicial notice "that April 15, 2011 fell on a Friday." If the IRS attorney objects, arguing that there has been no proof offered that April 15, 2011 fell on a Friday, how should the court rule and why?
9. (6 points) After TP rests his case, the court asks the IRS whether it wished to present any evidence. The IRS responded, "Yes. My first witness is Jane (J)." After J is called to the witness stand and sworn, J testifies on direct examination that from 2010 to 2016 she was employed at "E's Barbershop," and that twice—once in 2012 and again in 2013—she observed Ed (E), the owner of the business, and TP "in a backroom of the business, and I saw E hand TP a large sum of cash." When asked by the IRS whether she ever confronted TP about what she observed, J responded, "Yes. On two occasions—once in 2012 and again in 2013—I approached TP and inquired of him about my observations. Each time TP was evasive, very nervous, acted really

strange and hurriedly left my presence after a few seconds." TP objects to J's answer, arguing that J's testimony contained improper opinions. How should the court rule and why?

10. (6 points) Assume that Jane (J) in question 9 was allowed to testify to her opinion regarding TP's behavior (that "TP was evasive, very nervous, acted really strange and hurriedly left my presence after a few seconds"). Assume further that J completed her direct examination testimony and was not asked any questions by TP on cross-examination. The IRS then called Sandy (S) as its next witness. The IRS asks S whether she ever had any conversations with J about TP. S responds, "Yes I did. I remember that she called me on her cell phone in 2012." When asked about the substance of that conversation, S testified, "J told me that she had observed Ed (E) hand TP a large sum of money and when she approached TP to talk about it TP appeared evasive, very nervous, was acting really strange and had hurriedly left her presence after a few seconds." TP objects, arguing that S's testimony is hearsay. The IRS contends that the objection should be overruled since S' testimony constitutes a prior consistent statement. How should the court rule and why?

**PART FOUR
LEGAL ETHICS
(24 minutes)**

ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION IN ANSWER BOOK/S <u>SEPARATE FROM THE ANSWER BOOK/S CONTAINING</u> ANSWERS TO OTHER PARTS OF THE EXAMINATION
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Question LE-1. (2 minutes). Gilbert Dunn has received a notice of deficiency with respect to his 2015 federal income tax return on which he claimed to have no gross income and no income tax liability. Dunn is a self-employed van driver, who advertises his hauling services on various websites and apps. He received several Forms 1099-MISC from corporate customers who used his services on multiple occasions during 2015. Dunn would like to engage A, a lawyer, to represent him in a Tax Court proceeding with respect to the deficiency. Dunn claims that the Internal Revenue Code is not binding law outside the District of Columbia, that he is not a "United States person" or an "individual" or "taxpayer" subject to income tax liability, and that he is a citizen of California rather than the United States. Can A file a petition in Tax Court challenging the deficiency on the basis of Dunn's claims? Briefly explain your answer.

Question LE-2. (3 minutes). B, an attorney, represents Brendan Henderson in Tax Court litigation. Henderson had supplied B with factual information, which B used in preparing stipulated facts. Henderson saw the stipulated facts before they were submitted to the court. During a discussion of other matters in which B represents Henderson, at a time when the Tax Court proceeding is ongoing, Henderson confesses to B that some of the information and some of the stipulated facts are false. What action, if any, should B take? May B reveal the true facts to the court? Briefly explain your answer.

Question LE-3. (2 minutes). C, an attorney, is preparing her client, Lucy Wilkerson, to testify at her Tax Court trial. Wilkerson states that she intends to lie. If Wilkerson insists on testifying, must C call her as a witness? Briefly explain your answer.

Question LE-4. (3 minutes). The IRS issued a notice of deficiency to Arin Kerr based on unreported income from illegal distribution of drugs and asserted a fraud penalty. The IRS alleges that Kerr utilized trusts as nominees to hold title to assets derived from his unreported income and that he failed to maintain complete and accurate records of his income-producing activities. D, an attorney, prepared Kerr's income tax returns for the year at issue as well as for several other years. In addition, for several years, D has been counsel to various trusts in which Kerr holds an interest. D prepares a Tax Court petition and enters an appearance in the case. Government counsel objects because D might be called as a witness. Can D continue in the representation? Briefly explain your answer.

Question LE-5. (3 minutes). E recently attended a Tax Court calendar call as a volunteer (pro bono) attorney and met with a married couple, Rafael and Doris Sandoval. During a brief consultation, E learned that Rafael was, and for several years had been, unemployed and that Doris worked as a public school teacher. The couple has no assets. Based on his assessment of

the issues in the case and the couple's financial status, E determined that Rafael should concede the deficiency in full and pursue collection alternatives, while Doris should raise an innocent spouse defense. If Rafael and Doris agree to pursue the approach suggested by E, can E represent both Rafael and Doris – Rafael in conceding the deficiency in Tax Court and then pursuing collection alternatives, and Doris in amending her petition to raise an innocent spouse defense? Briefly explain your answer.

Question LE-6. (3 minutes). Same facts as LE-5 except that Rafael decides not to take E's advice and instead to contest the deficiency. Can E enter an appearance only for Doris with respect to her innocent spouse claim? Briefly explain your answer.

Question LE-7. (3 minutes). F's firm regularly provides tax counsel to Celia Ross, the chief executive of a successful company that Ross founded several years ago. F designed a tax strategy meant to generate liquidity for Ross without triggering a taxable event. The strategy involved using stock as collateral for a nonrecourse loan. F's firm prepared the documentation for the transaction and also prepared Ross's tax returns for years affected by the transaction. The IRS subsequently audited Ross and asserted that the loan was actually a sale, resulting in the realization of gain and disallowance of interest expense deductions. Ross received a notice of deficiency. Can F represent Ross in the Tax Court proceeding with respect to the deficiency, assuming that there would be no need to call F as a witness? Briefly explain your answer.

Question LE-8. (3 minutes). G, a lawyer, is representing Alpha and Beta, the two shareholders of an S corporation, in two separate cases raising the same questions about the S corporation's income, which is allocated equally between the two. Both cases are now before the Tax Court but Alpha's case is moving forward more quickly than Beta's case. Since Alpha lives in Missouri and Beta lives in Kansas, Alpha's case would be appealable to the Eighth Circuit Court of Appeals while Beta's case would be appealable to the Tenth Circuit. After submitting a brief on behalf of Alpha (but not Beta), G discovers a decision by the Tenth Circuit that is directly adverse to Alpha's position. The IRS brief does not mention the case. G tells Alpha about the discovery and Alpha directs G not to inform the court about the case. Must Alpha reveal the Tenth Circuit opinion to the Tax Court? Briefly explain your answer.

Question LE-9. (2 minutes). H, a lawyer, represents Eugene Mathis in a Tax Court proceeding involving deficiencies with respect to Mathis' sales of used cell phones on eBay. Mathis has no records to substantiate what he paid for the cell phones. H and Mathis have not discussed the possibility of settling the case primarily because H was pessimistic that IRS counsel would agree to anything more than a miniscule estimate of the cost of goods sold. H is surprised to receive a favorable settlement offer from IRS counsel. H believes the government's offer is quite generous and should be accepted but Mathis cannot be easily reached, at least for the next 18 months. Can H agree to and sign the stipulation of this settled issue? Briefly explain your answer.