Presenters

- **Jim Gadwood**, Miller & Chevalier Chartered
- **Shamik Trivedi**, Washington National Tax Office, Grant Thornton
- **Kathy Zuba**, Office of Chief Counsel, Internal Revenue Service
- **Elizabeth Smith**, Ropes & Gray LLP (Moderator)
Regulations and IRB Guidance
1. Final 6707A regulations (T.D. 9853)
2. Proposed 6050Y regulations (REG-103083-18)
4. Negative partnership tax capital accounts (Notice 2019-20)
5. Policy Statement on the Tax Regulatory Process

Cases
6. Third Party Contacts: J.B.
7. PTINs: Montrois
8. Penalties: Walquist; Palmolive Bldg. Investors, LLC; ATL & Sons; Clay

Other Updates
9. Appeals Memo re: Partnership Audit Procedures
10. Update to Form 1065 Instructions
11. Miscellaneous
Regulations and IRB Guidance
1. Final 6707A Regulations (T.D. 9853)
84 Fed. Reg. 11217

- Effective March 26, 2019. Adopt, with changes, proposed regs. issued in August 2015.

- Clarify the penalty and penalty base under Section 6707A for failing to include information required to be disclosed under section 6011 about a reportable transaction.
  - Penalties equal to 75% of the derived benefit (decrease in tax), including unpaid excise taxes.

<table>
<thead>
<tr>
<th>Taxpayer</th>
<th>Minimum Penalty</th>
<th>Max Penalty (Listed Transaction)</th>
<th>Max Penalty (Other Reportable Transaction)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business</td>
<td>$10,000</td>
<td>$200,000</td>
<td>$50,000</td>
</tr>
<tr>
<td>Individual</td>
<td>$5,000</td>
<td>$100,000</td>
<td>$10,000</td>
</tr>
</tbody>
</table>
2. Proposed 6050Y Regulations (REG-103083-18)

- Issued March 22, 2019; comment period closed on May 9, 2019.

- Provide guidance on information reporting under Section 6050Y with respect to reportable policy sales of life insurance contracts and payments of reportable death benefits.
  - Every person acquiring a life insurance contract in a reportable policy sale must file a return with the IRS.
  - IRS released Forms and Instructions for 1099-LS and 1099-SB that provide more specific instructions.
  - Proposed regulations contain transitional guidance delaying reporting until final regulations are issued.

- Also provide guidance on how to calculate amount of death benefit excluded from gross income under Section 101.
3. Underpayment Penalty Relief  (Notice 2019-25)

- March 22, 2019: Taxpayers who paid at least 80% of their tax liability through withholding or quarterly estimated tax payments will not be subject to underpayment penalties.
  - Typical threshold is 90%.
  - Threshold was first lowered to 85% in January 2019 in response to concerns that provisions in TCJA caught taxpayers by surprise.
4. Negative Partnership Tax Capital Accounts
(Notice 2019-20)

- Updated 2018 instructions to item L on Form 1065 require a partnership that does not report tax basis capital accounts to its partners to report a partner’s tax basis capital account at the beginning and end of the year if either amount is negative.

  - Requires a supplemental schedule containing the required information to be filed within one year of the original due date.

- Instructions for Form 1065 have been updated as a result of Notice 2019-20.
5. Policy Statement on the Tax Regulatory Process

- Issued March 5, 2019.
- Signals commitment to notice-and-comment rulemaking.
- Commits to include “good cause” statement when issuing future temporary regulations, except in certain exceptional circumstances.
- Clarifies scope of sub-regulatory guidance (i.e. revenue rulings, revenue procedures, notices, and announcements).
  - Will not take position inconsistent with sub-regulatory guidance.
  - Will not (i) argue sub-regulatory guidance has the force and effect of law, or (ii) seek judicial deference under *Auer* or *Chevron* in Tax Court.
- Imposes limits on notices announcing intent to propose regulations when no proposed regulations or other guidance is released within 18 months after the date of the notice’s publication.
Cases
6. Third-Party Contacts: *J.B.*

- **J.B. v. United States**, 916 F.3d 1161 (9th Cir. Feb. 26, 2019)
  - **Holding**: Summons appropriately quashed where the IRS did not provide “reasonable notice in advance” to the taxpayers under Section 7602(c)(1).
  - **Reasoning**: Publication 1 (The Taxpayer Bill of Rights), which provides generalized information about the audit process including that the IRS may contact third parties, is inadequate under the circumstances.
    - Does not allow taxpayers a “meaningful opportunity to resolve issues and volunteer information before third-party contacts are made.”
7. PTINs: *Montrois*

  - **Holding**: The IRS has authority to charge a fee for issuing or renewing a preparer tax identification number (PTIN).
  - **Reasoning**: Agencies are authorized to charge fees for a “service or thing of value provided by the agency.”
    - Benefit of PTIN is protecting the confidentiality of the individual holder’s social security number.
  - **Procedural Posture**:
    - Reverses 2017 district court injunction prohibiting the charging of fees and order requiring the issuing of refunds.
    - Case remanded to district court to determine reasonableness of fee.
8. Penalties: *Walquist; Palmolive Bldg. Investors; ATL & Sons*

- **Walquist v. Commissioner**, 152 T.C. No. 3 (Feb. 25, 2019): A computer-determined substantial understatement penalty under Section 6662(d) is excluded from supervisory approval requirement.


- **ATL & Sons v. Commissioner**, 152 T.C. No. 8 (March 13, 2019): An S corporation was liable for Section 6699 penalty even though shareholders obtained extensions for their returns and despite not having written supervisory approval.

- **Clay v. Commissioner**, 152 T.C. No. 13 (April 24, 2019): The IRS failed to comply with the penalty approval rules under 6571(b), which are triggered “the first time an IRS official introduced the penalty into the conversation.”
Other Updates
March 25, 2019 Memo to Appeals Employees re: Bipartisan Budget Act of 2015 (BBA)

- Provides interim guidance to Appeals employees on the new partnership audit procedures until IRM section 8.19 is revised.

- Same Appeals employees who handled partnership audits under previous TEFRA regime will handle BBA appeals.

- BBA appeals will be treated as a coordinated issue.

- Generally, all non-docketed BBA cases received by Appeals must have at least 365 days remaining on the statute of limitations.
10. Update to Form 1065 Instructions

- The IRS updated the 2018 instructions for Form 1065 to clarify whether taxpayers must show the full taxpayer identification numbers (TINs) of the partnership representative and designated individual on Forms 1065 and 1066.
  - The taxpayer may enter all 0s for the TIN of the partnership representative and designated individual.
  - A PTIN or centralized authorization file (CAF) number may not be used as a TIN to designate a partnership representative or designated individual.
11. Miscellaneous

- **Transfer Pricing Teams’ Consultation with APMA (LB&I-04-0219-001, Feb. 19, 2019):** Requires transfer pricing issue exam teams to consult with the Advance Pricing and Mutual Agreement (APMA) office on transfer pricing transactions between U.S. taxpayers and related parties in U.S. treaty partner countries that may result in adjustments for which the taxpayer may request competent authority assistance.

- **Large Corporate Compliance Program (Publication 5319):** LCC is replacing the Coordinated Industry Case (CIC) Program and will employ data analytics to classify returns as high, medium, or low risk.

- **March 7, 2019 Memo re: Freedom of Information Act Obligations and Transparency** describes responsibility to promote transparency, encourages prioritizing FOIA requests, and identifies categories of records that ought to be disclosed proactively.

- **Delinquent Withholding Tax Returns (LB&I-04-0219-002, Feb. 27, 2019):** Explains procedures and limits for accepting delinquent withholding tax returns in connection with withholding agent disclosures on Forms 1042, 8804, and/or 8288 and related information returns.