I. A Special Issue (Included Here on the Assumption That “Sales, Exchanges, and Basis” Includes Everything): Presidential Power to Impose Tariffs

President Trump has used, and proposed to use, tariffs as a method of punishing countries the trade policies of which, he believes, hurt the United States. Since the taxing power is, under the Constitution, a congressional power, the American Institute for International Steel challenged the presidential imposition of tariffs on some steel (and other) imports, questioning whether Congress could delegate that power to the president or, even if delegation is permitted in some circumstances, whether this particular delegation was valid. (The nondelegation doctrine hit its high point in the “sick chicken” case, *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), when the Supreme Court invalidated regulations promulgated under the National Industrial Recovery Act of 1933. But the Court shortly reversed its anti-New Deal direction—the “switch in time that saved nine” and all that—and it’s unusual for a nondelegation claim to be successful. It’s one thing if the executive seeks, on its own, to exercise congressional powers. It’s another thing if Congress gives permission to the executive.)

In *American Institute for International Steel v. Judges United States*, 2019 Ct. Intl. Trade LEXIS 36, a three-judge panel of the Court of International Trade, in an incredibly underreported decision (not noted, so far as I can tell, in the *Wall Street Journal*, *New York Times*, or *Washington Post*, and not even noted on the Tax Analysts website, although this is a tax case), held that the power delegated to the president under section 232 of the Trade Expansion Act of 1962 to impose tariffs, so that imports “will not threaten to impair the national security,” did not violate the nondelegation doctrine. Section 232 sets out an extended process that the executive department must follow before a tariff can be implemented, commencing with the Secretary of Commerce and requiring input from the Department of Defense before the Commerce Secretary makes his recommendations to the president. Following precedent that had permitted the delegation of congressional powers so long as the legislation sets out “intelligible principles” that the executive must follow, the Court of International Trade upheld this delegation—although the connection between the tariffs and national security was, in the minds of some, tenuous.

In form, the decision was unanimous, although one of the judges filed an opinion *dubitante*. (No, I didn’t know what that means either. *Dubitante* should be distinguished from debutante; there are no *dubitante* balls. The judge was doubtful about the merits of the controlling opinion, but not so doubtful as to dissent.)
To say that delegation is permissible if “intelligible principles” are provided is not to say that any delegation of congressional power is permissible. Presumably Congress could not simply say to the president that he can use the taxing power in any way he sees fit.

I’m informed by Jonathan L. Entin, author of “The Constitutional Challenge to the New Tariffs on Steel and Aluminum Imports,” 36(2) Journal of Taxation of Investments 45 (Winter 2019), that there are serious questions about the court to which an appeal would lie—whether direct appeal to the Supreme Court would be possible (which would be the case if CIT were a three-judge district court, but it’s not) or whether an appeal must be heard by the Federal Circuit. That issue is too complicated for a tax lawyer.

II. Nonrecognition Provisions

A. Section 104(a)(2): Exclusion for Awards for Personal Physical Injuries

Language in a settlement agreement matters. In Doyle v. Comm’r, T.C. Memo. 2019-8, the court held that a settlement recovery for emotional distress and lost wages attributable to Doyle’s having been fired by his employer, a high-tech enterprise, wasn’t excludable from Doyle’s gross income under section 104(a)(2). (Section 104(a)(2) provides for the exclusion of recoveries for “personal physical injuries.”) Doyle, a whistleblower, was fired after complaining to the company’s CEO about what he thought was an anticompetitive scheme. Doyle testified that he developed physical problems as a result of being fired—including not being able to sleep or to digest food properly, headaches, and neck, shoulder, and back pain. But the settlement agreement with the company referred only to payments for alleged unpaid wages and alleged emotional distress, and Doyle’s own testimony about physical problems was the only evidence that contradicted the agreement language. Section 104(a) specifically provides that emotional distress by itself is not a personal physical injury, and authority (including the conference report for the 1996 legislation that amended section 104(a)(2)) is fairly clear that the problems Doyle described aren’t treated as physical injuries for purposes of section 104(a)(2) when they arise from emotional distress.

The court also decided that Doyle was entitled to treat legal fees paid in 2010, the year of termination, as ordinary and necessary business expenses, but, because the expenses were associated with Doyle’s trade or business of being an employee, they were miscellaneous itemized deductions (MIDs), limited, at the time, by the two percent of adjusted gross income threshold. (The so-called Tax Cuts and Jobs Act (TCJA) suspended the deductibility of all MIDs for taxable years 2018 through 2025.) Claimed legal expense deductions in 2011 were denied, but not because they were MIDs. Doyle might have had a consulting business (i.e., a non-employee trade or business) at that time, but he did not show any connection between the legal expenses and that business.

B. Section 1041: Transfers of Property Incident to Divorce

In PLR 201901003 (Sept. 4, 2018), the Service held that the sale of a half interest in a property that had been held by divorced spouses as tenants in common from one of the former spouses to the other would be treated as a nontaxable transfer between former spouses “incident to divorce,” even though the sale occurred more than six years after the cessation of the marriage. See I.R.C. §
1041(c)(2); Temp. Treas. Reg. § 1.1041-1TQ&A-7 (noting that any transfer occurring more than six years after cessation of marriage, and not made pursuant to the divorce or separation instrument, is presumed not to be incident to the divorce). The sale occurred because of disputes between the former spouses after the property was heavily damaged by a fire at an adjoining home. Under a stipulation and order that had been entered into seven months after the divorce, consent of both parties was required to undertake repairs to the property. When agreement wasn’t reached on a timely basis, the former spouse with the resources to cover the unforeseen expenses made disproportionate contributions to cover those costs, and the parties then negotiated a buyout of the other former spouse’s interest. Wanting to make sure that the buyout didn’t violate the stipulation and order, the parties petitioned a court to reopen the divorce case so that an amended stipulation could be adopted. Given that the sale occurred pursuant to the amended stipulation, the transfers (the half-interest in the property going in one direction, cash in the other) were held to be governed by section 1041.

III. Realization and Related Issues

A. Income

1. Taxability of state and local tax (SALT) refunds

The taxability of refunds of state and local taxes is governed by the tax benefit rule: to the extent that the SALT, when paid, generated a tax benefit, the refund should be taxable. If not, not. See I.R.C. § 111. The application of the rule under prior law was fairly well understood, but changes made by the TCJA—in particular, increasing the standard deduction dramatically (generally to $12,000) and capping the deduction for non-business state and local taxes at $10,000 per year—complicated matters.

The Service has lessened the uncertainty in Rev. Rul. 2019-11, 2019-16 IRB __. Point one (which was never controversial): if a taxpayer doesn’t itemize deductions (and thus takes no deduction for SALT), a refund of all or part of those taxes isn’t includable in gross income.

The ruling also discusses four other situations, in all of which it is assumed that the taxpayer itemized deductions in 2018, wasn’t subject to the alternative minimum tax in that year, and wasn’t entitled to any income tax credit. The controlling principles are consistent with prior understanding:

1. “The taxpayer . . . must determine the amount of itemized deductions that the taxpayer would have deducted in the prior year had the taxpayer paid only the proper amount of tax.”

2. “The taxpayer must then compare this amount to the total itemized deductions actually taken on the return, or the standard deduction that could have been taken on the return, and include the difference as income on the current year return if the taxpayer received a tax benefit in the prior taxable year from that itemized deduction.”

The examples:
**Situation 1:**

2018: Taxpayer had SALT of only $9,000 (including income taxes of $5,000), so the SALT cap didn’t come into play. The itemized deductions totaled $14,000.

2019: Taxpayer receives a refund of $1,500 of state income taxes.

If the proper amount of state income taxes had been paid in 2018, SALT would have totaled only $7,500, and itemized deductions would have been $12,500, still above the standard deduction. That extra $1500 deduction in 2018—above and beyond what would have been deductible if the right amount of SALT had been paid—thus gave rise to a tax benefit, and all of the refund is includable in gross income.

**Situation 2:**

2018: Property taxes of $5,000 and state income taxes of $7,000 were paid. The SALT cap did matter; $2,000 of the SALT was not deductible. Itemized deductions totaled $15,000.

2019: Refund of $750 of state income taxes.

If taxpayer had paid the proper amount of SALT in 2018, there would have been no change in the amount of itemized deductions. The refund is therefore not taxable.

**Situation 3:**

2018: Property taxes of $5,000 and state income taxes of $6,000 were paid; $1,000 of SALT was not deductible. Itemized deductions totaled $15,000.

2019: Refund of $1,500 of state income taxes.

If taxpayer had paid the right amount of state income taxes in 2018, the SALT deduction would have been reduced to $9,500, and itemized deductions would have been reduced by $500. $500 of the refund is therefore taxable.

**Situation 4:**

2018: Property taxes of $4,250 and state income taxes of $6,000 were paid; $250 of the SALT exceeded the cap. Itemized deductions totaled $12,500.

2019: Refund of $1,000 of state income taxes.

If the right amount of state income taxes had been paid in 2018, the SALT deduction would have been reduced by $750, and itemized deductions would have been reduced to $11,750. As a result, the taxpayer wouldn’t have itemized deductions. The portion of the refund equal to the excess of the $12,500 in itemized deductions actually taken over the standard deduction of $12,000 (i.e., $500) is therefore taxable.
2. Safe harbor for determining value of professional sports contracts

As this report was going to press, so to speak, the Service on April 11 issued Rev. Proc. 2019-18, providing a safe harbor in which professional sports contracts can be treated as having a zero value for purposes of determining gain or loss on trades of personnel contracts and draft picks. For the safe harbor to apply, all parties to a trade must use the safe harbor; a trade may involve no consideration other than personnel contracts, draft picks, and cash; no contract involved in the trade can be an amortizable section 197 intangible; and financial statements of the participating teams must not show assets or liabilities from the trade other than cash. If the safe harbor requirements are satisfied, no gain will be recognized on trades that involve only player contracts and draft picks, and a section 1231 loss will be recognized if a contract with unrecovered basis is traded. See Kristin A. Parillo, “IRS Offers Safe Harbor on Valuing Pro Sports Trades, TNT (Apr. 12, 2019) (quoting both David Shechtman and Alan Lederman), https://www.taxnotes.com/tax-notes-today/kind-ex-changes/irs-offers-safe-harbor-valuing-pro-sports-trades/2019/04/12/29cd6.

3. Grants to corporation under state economic development program: nontaxable contributions to capital

In Brokertec Holdings Inc. v. Comm’r, T.C. Memo. 2019-32, the Tax Court concluded that grants from a state economic development program to affiliates of a financial services company were nontaxable contributions to the capital of the company under section 118. The court found that the grants were intended to induce establishment of offices in particular areas so as to help revitalize the state’s economy—a finding that clinched the result in the case.

4. Cert petition in Estate of McKelvey v. Comm’r

The Estate of McKelvey has filed a petition for certiorari in a case that has been a subject of discussion at prior meetings of this committee. See Estate of McKelvey v. Comm’r, 906 F.3d 26 (2018) (holding that an extension of the expiration date of prepaid variable forward contracts (PPVFs) was a taxable event, at least in some circumstances), rev’g 148 T.C. 312 (2017). See also Mark Fichtenbaum & Robert Gordon, “Estate of McKelvey vs. Commissioner: The Trap Has Been Sprung,” 36(1) J. Tax’n Invs. 41 (Winter 2019); Mark Fichtenbaum & Robert Gordon, “Estate of McKelvey v. Commissioner—Tax Planning Opportunity or a Trap for the Unwary?,” 34(4) J. Tax’n Invs. 25 (Summer 2017). The primary claim in the cert petition is that courts should not be able to, in effect, issue “phantom” regulations to fill holes in published regulations. Given the technical nature of the underlying facts in this dispute—and tax facts at that—grant of the petition is doubtful.

B. Deductions

1. Safe harbor for treating rental real estate enterprise as trade or business for section 199A purposes

In Notice 2019-7, 2019-09 I.R.B. 740, the Service issued a proposed revenue procedure that would create a safe harbor setting out when a rental real estate enterprise will be treated as a trade or
business for purposes of section 199A, the passthrough entity deduction. The safe harbor would generally apply if separate books and record are kept for each rental real estate enterprise; 250 or more hours of rental services are performed annually; and contemporaneous records of relevant information (time reports, descriptions of services performed, etc.) are maintained. The proposed revenue procedure, if adopted, will probably apply to taxable years ending after 2017. Before finalization, however, taxpayers may use the safe harbor set out in the proposal.

2. **Bad debt case: Roll Tide!**

In *2590 Associates, LLC v. Comm’r*, T.C. Memo. 2019-3, the court determined that 2590 Associates had properly taken a bad debt deduction associated with a loan that Nick Saban (you may have heard of him) made to a development company. (Saban didn’t get his quarters back.) The fundamental issue was factual: whether a real loan had been made to begin with. Answer: yes. Repayment was expected, the loan was negotiated, and it was reflected by promissory notes with fixed payment schedules. Further issues: when Saban transferred the note to 2590 Associates as a capital contribution (2590 Associates was created, in part, to hide the fact that Saban, then coach at Alabama, had made the loan because of a friendship developed while coaching at LSU), that transfer didn’t change the legitimacy of the note. Saban’s receipt of the interest in the LLC didn’t satisfy the debt, and the debt remained a real debt in 2590 Associates’ institutional hands.

3. **Gambling losses aren’t casualty losses**

In *Mancini v. Comm’r*, T.C. Memo. 2019-16, the court held that Mancini couldn’t deduct net gambling losses attributable, he said, to side effects from a drug taken to treat Parkinson’s disease. Mancini had argued that the drug caused him to lose control when it came to gambling, and the net losses from compulsive gambling were personal casualty losses, deductible under section 165, subject to the limitations of section 165(h) as applicable in the relevant years. (The usual rule applicable to gambling losses is that they may be deducted only to the extent of gambling winnings. See I.R.C. § 165(d). And for the period from 2018 through 2025, as a result of changes made by the TCJA, limiting potentially deductible personal casualty losses to those incurred in a federally declared disaster area, there would be no plausible claim for a deductible personal casualty loss on facts like these.) The claim may have been worth a gamble, but the deck was stacked against Mancini. Judge Holmes concluded that, in general, a deductible personal casualty loss is available only if there was physical damage to property, which wasn’t the case here. Besides, Mancini hadn’t substantiated the amount of his losses, enough by itself to preclude any deduction.

4. **Limits on deductibility of expenses of marijuana business that is legal under state law**

In *Feinberg v. Comm’r*, 2019-1 USTC ¶ 50,161 (10th Cir. 2019), the Tenth Circuit affirmed the Tax Court’s holding that a medical marijuana company, formed as an S corporation, was not entitled to the cost of goods sold (COGS) figure it claimed to reduce the income passed through to its shareholders. But the Tenth Circuit used a rationale different from the Tax Court’s to get to that result. The Tax Court had concluded that the taxpayers, shareholders in the S corporation, had failed to substantiate the claimed business deductions. The Tenth Circuit held that the Tax Court erred on that point, however, because the notice of deficiency had referred only to the application of section 280E, which disallows deductions for trafficking in controlled substances, and not to any failure to
substantiate. As a result, failure to substantiate would have been a new matter at the Tax Court level, and the Commissioner would have had the burden to show such a failure. None of that ultimately mattered, however, because the Tenth Circuit concluded that section 280E controlled anyway. Marijuana may be legal under Colorado law, but it remains illegal under federal law. (Whether COGS is really a deduction for section 280E purposes, rather than a figure taken into account in determining gross income, remains a controversial issue.)

5. **Deductible alimony in years prior to 2019**

   In *Siegel v. Comm’r*, T.C. Memo. 2019-11, the court held that a lump sum payment of $225,000 made by former husband to former wife was an alimony payment, not a court money judgment, and was therefore deductible to the ex-husband under section 215, as in effect before amendment by the TCJA. Although the amount paid was pursuant to a court decision, the amount represented amounts the husband owed under the divorce agreement. Husband had fallen behind in his payments, but the court held that the character of the payments did not change just because they were made late.

6. **Donated conservation easements**

   In *Pine Mountain Preserve, LLLP v. Comm’r*, 151 T.C. No. 14 (2018), the Tax Court concluded that the purported donation of two conservation easements to a charitable institution didn’t give rise to a charitable contribution deduction because the land could be taken back and used for development purposes. The perpetuity requirement was thus not satisfied. For a third donated easement, however, the perpetuity requirement was satisfied and that easement had been donated exclusively for conservation purposes.

   The value of that third donated easement was the subject of a separate opinion, in *Pine Mt. Pres., LLLP v. Comm’r*, T.C. Memo. 2018-214. Valuation should have been governed by Treasury Regulation section 1.170A-14(h)(3)(i), but the court concluded that neither the expert for the tax matters partner of the LLLP nor the expert for the Commissioner had followed the regulation correctly. In a Solomonic decision, the court held that the controlling valuation figure was the sum of half the figure advanced by taxpayer’s expert and half the figure determined by the government’s expert. The overestimation of value by one expert was offset by the underestimate of the other.

7. **Conversion of personal residence to business property**

   In *Langston v. Comm’r*, T.C. Memo. 2019-19, the Tax Court held that the Langstons had not successfully converted what at one time had been their personal residence into a business property and that a loss on the sale of the property was therefore not deductible. The Langstons bought the house in 1997 and began remodeling it in 2001. In 2005 they moved to a nearby apartment, but left a lot of belongings in the house. Eventually they bought another house in 2008 and moved in. In 2011, the Langstons’ insurance company told them that, if the first house remained vacant, they would lose their homeowners’ insurance, so a friend agreed to rent the house for five days a month. In 2012 the Langstons sold the house at a substantial loss (largely because of the remodeling costs). The court held that the property hadn’t been converted into business property because the rental had been motivated not by a profit motive, but by a desire to keep homeowners’ insurance. And the
court rejected the argument that the Langstons held on to the house to benefit from appreciation (which, because of the economic downturn, didn’t happen anyway). They had made no effort to market the property for several years, suggesting that they weren’t motivated by profit.

8. Economic substance case

In Tucker v. Comm’r, 2019 U.S. App. LEXIS 9852 (5th Cir. 2019), an unpublished per curiam decision, the Fifth Circuit affirmed the Tax Court’s disallowance of deductions claimed from offsetting foreign currency options. The Tax Court had held that the underlying transactions lacked economic substance—in particular, they failed the objective economic prong of the tests because there was no reasonable possibility of profit from the transactions—and the Fifth Circuit determined that the Tax Court had properly applied economic substance doctrine.

IV. Character of Gain or Loss: Cancellation of Debt and the Origin of the Claim Doctrine

In Connell v. Comm’r, T.C. Memo. 2018-213, the court held that the cancelled amount of a loan was ordinary income, not capital gain. Connell is a financial advisor who signed an employment contract with Merrill Lynch. Under the deal, Connell was to be compensated for his book of business, including monthly transition compensation payments. Connell took a loan from Merrill Lynch as well, with his monthly payments equal to the transition payments—effectively making it possible to receive the amount of the transition package upfront, while recognizing income when each monthly payment became due. Connell was terminated, however, and, as a result of a decision made by the Financial Industry Regulatory Authority (FINRA) Dispute Resolution Panel, the remaining amount of his obligation was extinguished. Connell argued that the amount of the forgiven obligation was attributable to the acquisition of his book of business, and therefore should be capital gain. The court concluded, however, that the record was unclear about the FINRA panel’s reason for extinguishing the remaining part of the loan. In short, Connell had not met the burden of proving that the answer to the question “in lieu of what were the damages awarded?” was scheduled payments for disposition of a capital asset. Connell was stuck with application of the good, old-fashioned cancellation-of-debt doctrine, which resulted in ordinary income.

V. Hobby Losses

A. Failure to Demonstrate Profit Intention

In Kurdziel v. Comm’r, T.C. Memo. 2019-20, taxpayer, a pilot for Delta Airlines, failed to convinced the Tax Court that his purchase, restoration, and flying of a World War II vintage fighter plane—one of the last of the Fireflys—constituted an activity engaged in for profit. Although Kurdziel did make some money flying the plane at airshows, the claimed expenses for the relevant years far exceeded the revenue. (A large part of the claimed deductions represented depreciation, but the annual out-of-pocket expenditures also exceeded revenue.) Kurdziel had claimed that he had two types of business in mind. Initially he had hoped to make money by selling rides, but that would have been contrary to FAA rules. He also claimed to have had plans to lease the plane, but no leasing occurred, making it difficult to take that claim seriously. As an alternative to the business
arguments, Kurdziel argued that he had bought and restored the plane with the intention of profiting from appreciation in the plane’s value. A key problem with that argument was that, for property tax purposes, he had claimed, in public filings, an exemption because “he was neither using the Firefly for commercial purposes nor holding it for sale.” Kurdziel couldn’t get away with making inconsistent contentions in two different legal proceedings.

In *Steiner v. Comm’r*, T.C. Memo. 2019-25, the Tax Court denied a couple’s deductions for a purported yacht charter business on the ground that the activity wasn’t for profit. Instead, the claimed deductions were intended to make the fixed costs of maintaining the yacht, the Triumphant Lady, more palatable. The couple’s goal was to sell the yacht after they stopped using it for personal purposes. The Lady was acquired in 2001 and was used exclusively for personal purposes until 2009, when a yacht broker approached the couple about making the Lady available for charter. She was in fact chartered for a nine-day period in 2009, but for the years in issue, 2011 and 2012, was chartered only once, for a week in 2011. Otherwise, during the relevant period, the yacht rarely left the dock, but required a full-time crew to keep her seaworthy. The Steiners claimed net losses of over $700,000 in 2011 and $122,420 in 2012. The Lady was sold in January 2012 for $4.45 million, although the asking price was almost $16 million. Applying the facts and circumstances test required by the regulations under section 183, the court noted that, although parts of the activity were conducted in a businesslike matter, the Steiners had no business plan and, for the most part, paid expenses out of personal accounts. They had no expertise in the charter business, they did not expect the yacht to appreciate in value, the losses were substantial, and the couple was aware that economic conditions at the time were not conducive to making a profit from chartering. And so on.

B. Unsurprising Denial of Cert in Hobby Loss Case

The Supreme Court denied cert in *Hylton v. Comm’r*, T.C. Memo. 2016-234, *aff’d per curiam in unpublished opinion*, 2018 U.S. App. LEXIS 35001 (4th Cir. 2018), *cert. denied*, 2019 U.S. LEXIS 966, in which taxpayer had been denied deductions for her horse breeding activity because, it was held, she wasn’t engaged in the activity for profit. Getting Supreme Court review of such a fact-dependent conclusion was hopeless to begin with (as was noted in the outline for the January meeting), and the persuasive power of taxpayer’s *cert* petition was apparently not enhanced by throwing in the argument that she was denied due process because she had not been told whether she would be permitted to make an oral argument before the Fourth Circuit.

VI. Basis and Depreciation

A. Withdrawal of Proposed Stock Basis Rules Associated with Stock Redemptions

In late March, the government withdrew proposed regulations, promulgated in 2009, *see REG-143686-07, 74 Fed. Reg. 3509 (Jan. 21, 2009)*, that were intended to clarify the basis rules in connection with redemptions of stock governed either by section 302(a) (providing for sale or exchange treatment) or 302(d) (providing for treatment of the distribution in redemption under section 301). *See “The Allocation of Consideration and Allocation and Recovery of Basis in Transactions Involving Corporate Stock or Securities: Withdrawal,” 84 Fed. Reg. 11686 (Mar. 28, 2019)*. Apparently government officials could not reach agreement about the proper treatment of
cases in which full basis recovery is not permitted on a redemption (because section 302(d) applies), and the unrecovered basis may be shifted to other shares—even, because of the constructive ownership rules of section 318, to shares held by another, related taxpayer. The proposals were intended to provide greater certainty in that situation, but hardly anyone thought that was the case. The withdrawal notice provides that Treasury and the IRS concluded that it “unlikely that the approach of the 2009 Proposed Regulations can be implemented in comprehensive final regulations without significant modifications.” But the notice also emphasizes that unrecovered basis “may be shifted to other stock only if such an adjustment is a proper adjustment within the meaning of [regulations section] 1.302-2(c),” and “[n]ot all shifts of a redeemed shareholder’s unrecovered basis result in proper adjustments, and certain basis adjustments can lead to inappropriate results. See, e.g., Notice 2001-45, 2001-33 I.R.B. 129” (suggesting that basis shifts from tax-indifferent parties to taxable parties are inappropriate).

B. Safe Harbor for Bonus Depreciation on Passenger Automobiles

In Revenue Procedure 2019-13, 2019-09 I.R.B. 744, the Service provided a safe harbor for reporting depreciation allowances on passenger automobiles that would seem to be eligible for 100 percent bonus depreciation under section 168(k), but that are subject to section 280F, restricting depreciation deductions on “luxury” automobiles during the placed-in-service year and each succeeding year during the recovery period.

C. Amortizable Basis Attributable to Section 743(b) Basis Increases

In PLR 201906002 (Oct. 26, 2018), the Service ruled that basis increases to a section 197(f)(9) asset attributable to the effects of a section 754 election, on the conversion of a partnership to a corporation, will be amortizable to the corporation as a section 197(a) intangible.