

# Recent Developments in Federal Income Taxation

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## **Vest v. Commissioner, 119 A.F.T.R.2d 2017-2043 (5th Cir. 6/2/17)**

***Outline: item C.1.a, page 6***

- The taxpayers owned an interest in Truebeginnings, LLC, an accrual basis partnership, which owned interests in two other partnerships, referred to as VAS and Metric.
- Truebeginnings:
  - Sold computer equipment and zero-basis intangibles to VAS and Metric in exchange for 10-year promissory notes
  - Used the installment method to report > \$3 million of gain
- Issue: did § 453(g)(1)-(2) disallow the installment method? Disallowance occurs for sales of depreciable property between related persons unless it is established that the disposition did not have tax avoidance as one of its principal purposes.
- Held: Yes. The substance of the transaction revealed a tax avoidance purpose.

2

**Wasco Real Properties I, LLC v. Commissioner,  
T.C. Memo. 2016-224 (12/13/16)  
*Outline: item B.1, page 7***

- Three tax partnerships purchased land, a portion of which they used to grow almond trees.
- The partnerships paid interest on loans incurred to finance the purchase, and paid property taxes on the land.
- Issue:
  - Are the interest and property taxes paid by the partnerships capital expenditures under the uniform capitalization rules of § 263A?
- Held: Yes, as to the interest and property taxes corresponding to the portion of the land on which almond trees were grown. Growing the almond trees is a production of those trees within the reach of section 263A.

3

**Employee Retention Credit  
2017 Disaster Relief Act (9/29/17)  
*Outline: item F.2, page 9***

- The Disaster Relief and Airport and Airway Extension Act of 2017, § 503, Pub. L. No. 115-63 (9/29/17) provides:
  - “Eligible employer” can include “Hurricane Harvey employee retention credit” among components of general business credit under § 38(b).
- Credit is 40 percent of “qualified wages” for each “eligible employee.”
  - Cap on qualified wages is \$6,000, so maximum credit is \$2,400/employee.
- Eligible employer: one that operated an active trade or business in a Harvey/Irma/Maria disaster zone if, because of damage from hurricane, it became inoperable after a specified date and before 1/1/18.
  - Specified dates: 8/23/17 (Harvey), 9/4/17 (Irma), 9/16/17 (Maria).
- Eligible employee: principal place of employment (PPE) was in the relevant disaster zone on the relevant specified date.
- Qualified wages: wages paid or incurred by eligible employer with respect to eligible employee from date the PPE became inoperable through date the business resumed significant operations at PPE.

4

**Employee Retention Credit  
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Outline: item F.2, page 9**

■ Issues:

1. Can an employer claim the employee retention credit and the work opportunity credit for the same employee?
  - No, not for the same period. The legislation addresses this.
  - See also IRS Q&A issued in response to 2007-2008 midwestern storms and guidance issued for 2005 Hurricanes Katrina/Rita.
2. Must the business be physically damaged to be considered inoperable?
  - No. A business can be inoperable if it is physically inaccessible to employees, raw materials, utilities, or customers.
  - See IRS Q&A issued in response to 2007-2008 midwestern storms and guidance issued for 2005 Hurricanes Katrina/Rita.
3. Can an employer deduct wages and take the credit?
  - No. Deduction is reduced by the amount of the credit (40% of wages).
  - See IRS Form 5884-A issued for prior storms.

5

**Estate of Bartell v. Commissioner,  
147 T.C. No. 5 (8/10/16)  
Outline: item E.1, page 14**

- Bartell Drug, an S corporation, wished to acquire Property 2 and sell Property 1.
  - Ultimately engaged in a reverse § 1031 exchange.
  - Prior to the § 1031 exchange:
    - Arranged for another party to acquire Property 2.
    - Guaranteed financing of renovations to Property 2 and occupied Property 2 as a tenant.
- Issue: Did the exchange of Property 1 for Property 2 qualify as a § 1031 like-kind exchange?
- Held: Yes. Court rejected IRS's argument that Bartell Drug was the owner of Property 2 before the exchange.
- Note: IRS has non-acquiesced. A.O.D. 2017-06, 2017-33 I.R.B. 194 (8/23/17).

6

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