

2004 Tax Court Non-Attorney Admission Examination

**2004 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.

This examination is designed to test your overall knowledge of Tax Court Rules of Practice and Procedure, Federal taxation, the law of evidence, and rules of professional responsibility. 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 22 questions and 4 pages. The second part (96 minutes) deals with substantive Federal income, gift, estate, and generation-skipping transfer taxation; it contains 24 questions and 6 pages. The third part (60 minutes) deals with the rules of evidence applicable in the Tax Court; it contains 11 questions and 3 pages. The fourth part (24 minutes) deals with legal ethics rules applicable to practice before the Tax Court; it contains 11 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.**

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 Model Rules of Professional Responsibility. You are to refer to and apply these materials in taking the examination. You also may bring with you and use a calculator.

Clarity and conciseness of expression will be a significant factor in grading your examination. Answer only the questions that are asked.

Do not inquire of the proctor regarding the examination questions. 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 2004 AND ANSWER ALL QUESTIONS AS TO THE 2004 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 of the Examination, the taxpayer is referred to as “TP,” and the Internal Revenue Service is referred to as “IRS.”**

**Question P-1. (9 minutes)**

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. Does the Tax Court have jurisdiction with respect to whether a service provider is an employee of a person?
- b. Does the Tax Court have jurisdiction with respect to the amount of Subtitle C employment taxes owed by person with respect to a service provider?
- c. Petitioner claims a §6512(b) overpayment for the years in issue before the Court attributable to §6611(a) overpayment interest. Does the Tax Court have jurisdiction as to the overpayment claim?
- d. TP receives a statutory notice of deficiency from the IRS and timely files a proper petition with the Tax Court. Thereafter, the IRS makes a jeopardy assessment against TP of the deficiency before the Tax Court. Does the Tax Court have jurisdiction to review the jeopardy assessment?
- e. The IRS issues to TP a statutory notice with respect to one taxable year. The notice determines an income tax deficiency and also additions to tax pursuant to § 6662(a) and (b)(2). TP petitioned the Tax Court to dispute the deficiency amount and the additions to tax. Does the Tax Court have jurisdiction as to the additions to tax?
- f. TP received from the IRS a timely notice of deficiency reflecting a determination that TP was liable for an addition to tax for one of TP's taxable years under § 665 1(a)(i). The IRS notice of deficiency did not assert that TP had a deficiency in TP's federal income tax for the year. TP timely petitioned the Tax Court with respect to the notice of deficiency, alleging in the petition that TP was not liable for the addition to tax. The petition did not allege, and TP does not otherwise assert, that TP overpaid its federal income tax for the taxable year to which the additions to tax relate. Does the Tax Court have jurisdiction as to the addition to tax?
- g. 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?
- h. Does the Tax Court have jurisdiction to determine that TP overpaid income tax in the year properly before the court pursuant to a statutory notice of deficiency and a TP petition?

- i. The IRS issued an income tax deficiency notice to TP with respect to a taxable year. TP received the deficiency notice but did not file a petition with the Tax Court, and the IRS thereafter properly assessed the deficiency. Thereafter, the IRS sent to TP a final notice of intent to levy and "Notice of Your Right to a Hearing." Although the notice provided information on appealing the levy, TP did not request a § 6330 collection due process hearing within 30 days of the issuance of the notice, and the IRS thereafter began a collection action against TP. TP then sent a collection appeal request to the IRS, and the IRS denied the request. TP then filed a petition with the Tax Court requesting review of the IRS action. Does the Tax Court have jurisdiction with respect to TP's petition?

**Question P-2. (4 minute/s)**

TP is physically present in the United States at all relevant times. On April 12, 2004, the IRS mailed a notice of deficiency (bearing the date of April 12, 2004) to TP regarding TP's 2002 income tax liability. The notice states that the last day on which a petition may be filed is July 9, 2004. TP received the notice on April 16, 2004. What is the last day on which TP timely can file a petition with the Tax Court?

**Question P-3. (2 minute/s)**

Briefly discuss whether a Tax Court petition must be physically received by the Tax Court by the date specified in §6213(a)?

**Question P-4. (6 minute/s)**

Describe the contents of the pleading that must be filed by or on behalf of a taxpayer to initiate a Tax Court proceeding?

**Question P-5. (2 minute/s)**

If TP's petition is incomplete and confusing to the extent that the IRS cannot reasonably prepare an answer to the petition?

- a. what remedies may the IRS pursue? and
- b. what might the Tax Court order as to the petition if the TP does not satisfy the Court as to such inadequacies in the petition?

**Question P-6. (3 minute/s)**

Briefly state:

- a. the responsibility of a party to a Tax Court case regarding stipulations,
- b. the extent to which a stipulation is binding on a party, and
- c. the relationship of the stipulation process to the formal discovery procedures under the Tax Court Rules.

**Question P-7. (2 minute/s)**

Briefly explain whether a party to a Tax Court proceeding may depose the other party's expert without the consent of the other party.

**Question P-8. (1 minute/s)**

Under what circumstances will the Tax Court grant a continuance as to a case that is scheduled for trial?

**Question P-9. (1 minute/s)**

Explain the purpose of the Tax Court's Standing Pretrial Order.

**Question P-10.**

- a. (1 minute/s) Discuss a request for "admission" under the Tax Court Rules.
- b. (1 minute/s) Explain the effect of an "admission" under the Tax Court Rules.
- c. (2 minute/s) Describe the relevant time periods applicable to (1) the commencement of a request for admission and (2) the response to the request.

**Question P-11. (1 minute/s)**

Discuss the extent to which documents constituting part of the record of a Tax Court case are available for public inspection.

**Question P-12. (3 minute/s)**

Describe briefly the "qualified offer" provision with respect to the possible recovery of reasonable litigation and administrative costs from the government if (1) the substantially prevailing Tax Court taxpayer establishes that the position of the government is not substantially justified and (2) the taxpayer properly exhausted all administrative remedies.

**Question P-13.**

With respect to the joint return spousal relief provision, §6015, describe:

- a. (4 minute/s) the relief available and
- b. (2 minute/s) Tax Court jurisdiction with respect to §6015 claims.

**Question P-14. (2 minute/s)**

Determine whether the Tax Court has jurisdiction in each of the following situations.

- a. Does the Tax Court have jurisdiction to review an IRS determination to grant relief from joint and several liability to a § 6015(f) relief-seeking spouse if the other spouse, against whom no deficiency notice was issued, files a petition with the Tax Court.

State YES or NO.

- b. IRS had assessed certain income taxes against TP with respect to a joint return previously filed by TP. TP requested relief from joint and several income tax liability pursuant to § 6015. IRS issued a notice of determination denying TP's request. Pursuant to § 6015(e), TP filed a timely Tax Court petition seeking review of the IRS determination, alleging that the statute of limitation bars assessment of the underlying income tax liabilities. Does the Tax Court have jurisdiction with respect to TP's petition?

State YES or NO.

**Question P-15. (1 minute/s)**

In a §6015 proceeding, may the Tax Court consider evidence introduced at trial that was not included in the administrative record preceding the Tax Court petition?

State YES or NO.

**Question P-16. (1 minute/s)**

Is the IRS application of the petitioner's overpayment, relating to year 5, as a credit against the petitioner's year 1 tax liability, a collection activity for purposes of § 6015(b)(1)(E) with respect to year?

State YES or NO.

**Question P-17. (1 minute/s)**

May an executor of a decedent's estate properly file and pursue a §6015 request for relief from joint and several liability on behalf of the decedent?

State YES or NO.

**Question P-18. (1 minute/s)**

Is §6015(c) relief available to the estate of a deceased individual because the deceased individual is no longer married to the surviving spouse and "was not a member of the same household as" the surviving spouse at the time the relief is sought?

State YES or NO.

**Question P-19. (4 minute/s)**

The Tax Court Rules prescribe special procedures for "small tax cases." Describe briefly the essential elements of these small tax case procedures.

**Question P-20. (3 minute/s)**

Briefly describe the requirements regarding a Tax Court brief if simultaneous briefs are ordered by the presiding judge, but do not discuss the requirements as to service of copies of the brief.

**Question P-21. (1 minute/s)**

May counsel who has entered an appearance in a Tax Court proceeding withdraw as counsel without action by the Court?

State YES or NO.

**Question P-22. (2 minute/s)**

Counsel offers frivolous "tax protester" arguments in a Tax Court proceeding. If counsel does so in bad faith, briefly explain whether counsel may be liable for excess costs incurred by the IRS.

**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 of the Examination, the taxpayer is referred to as "TP," and the Internal Revenue Service is referred to as "IRS." For purposes of Part Two, ignore all inflation adjustment adjustments prescribed by the Internal Revenue Code as to fixed dollar amounts.

**Question S-1. (2 minute/s)**

Define the accrual method of accounting for federal income tax purposes.

**Question S-2. (2 minute/s)**

Compare and contrast the following federal income tax accounting concepts:

- (a) cash equivalency and
- (b) constructive receipt.

**Question S-3. (10 minute/s)**

State the amount (without any further explanation), if any, of each of the following items that constitutes gross income to TP (unless a question asks for other information) (answer each part below separately)

- (a) \$15,000 end-of-the-year bonus from employer (\$12,000 net of federal taxes).
- (b) \$10,000 received as a winner of the door prize at the grand opening of a retail store.
- (c) \$300 extorted from a neighbor whose Internet preferences can be viewed by TP.
- (d) \$5,000 received as winner of Community Foundation award for good citizenship; TP accepted the prize and used the proceeds to buy a boat for recreational purposes.
- (e) \$3,000 of interest received on a State of North Dakota bond used to finance the construction of new state prisons.
- (f) Gain realized of \$500 upon sale of State of North Dakota bond used to finance the construction of new state prisons.
- (g) \$400 of interest received on U.S. Treasury note.

- (h) Receipt of \$6,500 at maturity of loan made by TP to X; TP receives \$6,000 repayment of principal and \$500 of interest.
- (i) Condominium apartment in Florida received as a devise when TP's grandparent died; fair market value as of date of (1) death of grandparent is \$200,000 (2) receipt is \$220,000.
- (j) \$900 cost to TP's employer of \$50,000 of life insurance on TP's life, which is provided under a group term policy of the employer.
- (k) \$80,000 lump-sum proceeds of life insurance policy on the life of TP's parent. The policy was purchased and owned by TP's parent and the proceeds were payable to TP.
- (l) \$12,000 as a partial payment of the proceeds of a life insurance policy in the face amount of \$100,000 on TP's spouse who died during the year. Pursuant to the terms of the policy, TP (as beneficiary of the policy) elected to receive a \$12,000 payment in each year for life. TP's life expectancy is 10 years when the payments commence in 2004.
- (m) Same facts as immediately above. What amount of gross income to TP in year 2020?
- (n) TP works for a retail electronics store. TP's employer has an employee discount program available to all employees. The employee discount is 30% of the retail sales price. During 2004, TP purchases under the employee discount plan a computer from the retail store with a retail price of \$2,000 by paying \$1,400. During the relevant period, the employer's sales were \$2,000,000 and its cost of goods sold was \$1,500,000.
- (o) In 2002, TP had purchased a roll-top desk at a garage sale in Midland, Texas, for \$400. In 2004, it was discovered that the desk was worth \$5,000 because it had been George W. Bush's desk as a youth. At the end of 2004, TP gave the desk to TP's child as a holiday gift. During 2004 while cleaning the desk, TP discovered an antique gold coin. The coin was appraised as having a fair market value of \$3,000. TP retained the coin for the rest of 2004. State the amount of gross income to TP in 2004 with respect to the desk.
- (p) Same facts as immediately above. State the amount of gross income to TP in 2004 with respect to the gold coin.
- (q) \$10,000 profit from weekend purchases and sales of illegal drugs.
- (r) While hiking in Utah in 2004, TP was injured by a motorcycle that was speeding recklessly on the hiking path. TP suffered physical injury to TP's body and also emotional distress associated with the physical injuries. To cope with the emotional distress, TP visited a psychiatrist during 2004 and incurred costs of \$8,000. TP takes a court judgment against the motorcycle operator, and the judgment is paid by the operator on December 30, 2004. The damages awarded were as follows: (1) \$200,000 compensatory damages for physical injury to the body of TP, (2) \$100,000 punitive damages for physical injury to the body of TP, and (3) \$50,000 compensatory damages for the emotional distress.

State the amount of gross income with respect to the \$200,000 compensatory damages for the physical injury to the body.

- (s) Same facts as immediately above. State the amount of gross income with respect to the \$100,000 punitive damages for the physical injury to the body.
- (t) Same facts as immediately above. State the amount of gross income with respect to the \$50,000 compensatory damages for the emotional distress.

**Question S-4. (5 minutes)**

To finance the acquisition of new equipment for use in business, TP borrowed \$150,000 from Bank and executed a recourse promissory note to Bank that was secured by a security interest in the equipment. TP eventually became insolvent, defaulted on the debt, and negotiated a settlement agreement with Bank. The settlement agreement transferred the equipment to Bank in complete satisfaction of the debt. After the transaction and satisfaction of the debt, TP still was insolvent. When the equipment was transferred to the bank, its fair market value was \$85,000, TP's adjusted basis was \$60,000, and the amount due on the debt was \$110,000.

Briefly discuss whether and to what extent TP recognizes gain with respect to the settlement agreement transactions.

**Question S-5. (2 minute/s)**

TP is a sole proprietor and reports the revenues and expenses related to the proprietorship on a Schedule C to TP's federal income tax return. TP's return is examined by the IRS, and the IRS proposes a tax deficiency and appropriate underpayment interest with respect to unreported business income that should have been reported on the Schedule C. TP pays such underpayment interest to the IRS.

Discuss briefly whether such interest is deductible under ~ 163.

**Question S-6. (2 minute/s)**

On January 1, 2003, TP purchases for \$50,000 cash new equipment exclusively for use in TP's business activity farm in Iowa. The equipment has a § 168(i)(1) class life of six years. TP expects to use the equipment for eight years and estimates that the equipment will have a salvage value of \$4,000 at the end of the eight-year period of use.

State the amount of the Section 168 deduction allowable in 2003 (ignoring § 168(k) and § 179 for purposes of this Question).

**Question S-7. (2 minute/s)**

Same facts as Question 6. State the amount of Section 168 deduction allowable in 2004 (ignoring §168(k) and § 179 for purposes of this Question).

**Question S-8. (5 minute/s)**

Explain the significant federal tax differences between an “accountable plan” and a “non-accountable plan” under § 62(a)(2)(A) with respect to § 162 employee business travel expense reimbursement.

**Question S-9. (5 minute/s)**

TP is a corporate executive who resides in New York, New York, and who owns and operates a ranch in Wyoming. During 2004, TP spends 10 days and nights at the ranch and employs a ranch manager who resides on the property at all times. During 2004, no other person uses the ranch as a residence, and the ranch is not rented for any purpose. TP has built a 5,000 square foot house on the ranch that TP uses extensively for social and business entertaining. TP also built a swimming pool, a lake to which TP added exotic imported waterfowl, a tennis court, and extensive stables for the horses that TP is breeding.

Discuss whether the expenses associated with the operation of the ranch are deductible for federal income tax purposes.

**Question S-10. (2 minute/s)**

TP’s salary as an employee is \$150,000 per year, and TP receives \$15,000 of dividends from investment property. TP is a limited partner in a Partnership X (interests in which are not traded on an established securities market and are not readily traded on a secondary market or the substantial equivalent thereof) that owns and leases aircraft, and TP’s distributive share of the partnership loss is \$40,000.

Discuss and quantify the amount of the distributive share of the Partnership X loss that TP will be allowed to deduct.

**Question S-11. (2 minute/s)**

Same facts as Question 10, except that in the same taxable year TP is a limited partner in another partnership, Partnership Y (interests in which are not traded on an established securities market and are not readily traded on a secondary market or the substantial equivalent thereof), that owns and operates an office building. TP’s distributive share of Partnership Y income is \$15,000.

Discuss and quantify the amount of the distributive share of the Partnership X (not Y) loss that TP will be allowed to deduct.

**Question S-12. (3 minute/s)**

Wife owns unencumbered real property having a fair market value of \$25,000 and an adjusted basis of \$10,000. Wife and Husband are divorced on August 31, and pursuant to the divorce decree, Wife transfers title to the property to Husband on August 31. In November, Husband sells the property to a third party for \$28,000 cash.

Briefly discuss the tax consequences to Husband with respect to the November sale to the third party.

**Question S-13. (3 minute/s)**

A and B have one child, X. A and B obtain a divorce and maintain separate households for all of 2004, and (pursuant to the terms of the court order) A has custody of X for three months of 2004 and B has custody of X for the remainder of the year. A can prove that A provided \$12,000 of support to X for 2004.

Describe the circumstances under which A would be eligible for a dependency exemption deduction under §151 for X for 2004.

**Question S-14.**

TP and TP's spouse (Spouse) separated in 2003 and are divorced in 2004. Pursuant to the terms of the divorce settlement agreement, which the divorce court approved and adopted as its order, TP is required to make the following transfers to Spouse:

1. Property settlement payments in 2004: (1) \$50,000 in cash and (2) real property (TP's separate property), which has a value of \$10,000 and an adjusted basis to TP of \$14,000.
2. Spousal support in cash: (1) \$80,000 in 2004, (2) \$70,000 in 2005, and (3) \$60,000 per year after 2005 until the death or remarriage of Spouse.
3. Child support payments in cash of ~\$ 12,000 per year until Junior, the child of TP and Spouse, attains the age of 21 years.

The divorce settlement agreement and the court order are silent as to the tax consequences of the various payments. TP makes all required payments.

- (a) (1 minute/s) State the amount of gross income to Spouse as to the 2004 cash payment of \$50,000 to Spouse as part of the property settlement.
- (b) (1 minute/s) State the amount of gross income to Spouse as to the 2004 transfer of the real property to Spouse as part of the property settlement.
- (c) (1 minute/s) State the amount of gross income to Spouse in 2004 attributable to the \$80,000 cash payment as spousal support.
- (d) (2 minute/s) Must TP report any amount of gross income in 2006 attributable to the spousal support payments made by TP in 2004-06. State Yes or No.
- (e) (1 minute/s) State the amount of gross income to Spouse with respect to the 2004 payments to Spouse of \$12,000 as child support.

**Question S-15.**

In 2000, TP acquired unimproved real property. To acquire the property, TP (1) paid \$50,000 cash, (2) took subject to a preexisting first mortgage debt secured by the property in the amount of \$25,000 (for which TP was not personally liable), and (3) executed a \$20,000 second mortgage indebtedness (for which TP was personally liable) to the seller. In 2001, TP borrowed \$40,000 from a bank, in return for which TP executed a nonrecourse note (no personal liability to TP) and a third mortgage on the real property to secure the \$40,000 debt. The \$40,000 proceeds of the loan were used to build a structure on other real property owned by TP. In 2004, TP received an offer for the real property, which TP accepted. Buyer (1) paid \$200,000 cash, (2) took subject to the first mortgage debt of \$23,000 (it had been paid down from \$25,000 to \$23,000), (3) assumed the \$20,000 second mortgage debt, and (4) took subject to the third mortgage debt of \$30,000 (it had been paid down from \$40,000 to \$30,000).

- (a) (2 minute/s) State the amount of TP's basis in the property at the date of acquisition.
- (b) (2 minute/s) Describe the federal income tax consequences of the 2001 borrowing and third mortgage transaction.
- (c) (2 minute/s) With respect to the sale of the property to Buyer in 2004, state the amount of TP's (1) amount realized and (2) any gain or loss realized.

**Question S-16. (3 minute/s)**

TP owns property with a fair market value of \$80,000. TP transfers the property to TP's child in consideration of TP's child paying \$65,000 to TP. TP has an adjusted basis of \$20,000 in the property. Describe the income tax consequences to TP and TP's child assuming that TP pays no gift tax with respect to the transfer.

**Question S-17. (3 minute/s)**

TP owns property with a fair market value of \$60,000. TP transfers the property to TP's child in consideration of TP's child paying \$35,000 to TP. TP has an adjusted basis of \$100,000 in the property. Describe the income tax consequences to TP and TP's child assuming that TP pays no gift tax with respect to the transfer.

**Question S-18. (6 minute/s)**

Describe the corporate dividends received by an individual shareholder that will qualify for taxation at the same rates that apply to net capital gain. Do not discuss in your answer the taxation of net capital gain or dividends from either a regulated investment company or a real estate investment trust.

**Question S-19. (6 minute/s)**

Describe the domestic business entity classification rules that apply for purposes of the federal income tax.

**Question S-20.**

On January 1, 2004, A and B formed a general partnership (G Pshp) to produce and sell widgets. A transferred to (G Pshp) machinery with an adjusted basis to A of \$45,000 and a fair market value of \$200,000 in exchange for a 40% partnership interest. B transferred to (G Pshp) real property with a building in which to house the widget factory. The real property had an adjusted basis to B of \$200,000, a fair market value of \$400,000, and was subject to a nonrecourse debt of \$100,000. B received a 60% partnership interest. In 2004, the partnership made no principal payments on the \$100,000 nonrecourse indebtedness secured by the real property, and its gross income equaled its deductions. The partnership made no transfers of cash or other property to the partners in 2004.

- (a) (2 minute/s) What is the amount of A's adjusted basis in A's partnership interest immediately after all of the transfers to the partnership?
- (b) (1 minute/s) What is the amount of A's capital account immediately after all of the transfers to the partnership?
- (c) (2 minute/s) What is the amount of B's adjusted basis in B's partnership interest immediately after all of the transfers to the partnership?
- (d) (1 minute/s) What is the amount of GPshp's adjusted basis in the machinery immediately after all of the transfers to the partnership?

**Question S-21. (8 minute/s)**

Describe the nature and quantity of transfers that a donor may make to or for the benefit of a child free of the gift tax.

**Question S-22. (3 minute/s)**

TP dies in 2004 with a taxable estate, and pursuant to TP's will, a trust is created for the benefit of TP's surviving spouse S during the life of S (upon S's death, the property remaining in the trust is to be distributed to TP's descendants). The trust provisions qualify the amounts transferred to the trust for an estate tax marital deduction under § 2056(b)(7), and the executor of TP's estate properly exercises the election under § 2056(b)(7)(B)(v).

Describe the estate tax consequences with respect to the estate of S as to the trust upon S's death.

**Question S-23.**

TP received wages and interest income in the relevant taxable year, but Ti' filed an income tax return with zeros on the relevant lines for computing tax liability. The IRS did not accept TP's return as valid because it contained no information upon which TP's tax liability could be determined. The IRS prepared a substitute for return for P for the taxable year. The IRS substitute for return consisted of the first two pages of a Form 1040 and contained zeros on the relevant lines for computing a tax liability, showed a tax liability of zero, and were not subscribed by Ti'. The IRS subsequently mailed to TP a notice proposing tax adjustments for the relevant year.

- (a) (1 minute/s) May TP properly be held liable for the addition to tax under § 6651(a)(1)?  
State Yes or No.
- (b) (1 minute/s) May TP properly be held liable for the addition to tax under § 6651(a)(2)?  
State Yes or No.

**Question S-24. (2 minute/s)**

TP was an employee who received wages during year 1. During year 1, TP provided extensive care to TP's chronically disabled and aged parent. When TP was not acting as an employee, TP provided ongoing and substantial care to TP's parent. With respect to year 1, TP's income tax liability was less than the amount of federal income tax withheld by TP's employer. In year 5, the IRS issued a statutory notice of deficiency to TP for taxable year 1. At the time the IRS issued the notice of deficiency, TP had not filed an income tax return for year 1. TP thereafter filed a timely and proper petition with the Tax Court regarding the notice of deficiency. In year 6, TP filed a federal income tax return showing an overpayment equal to the excess of (1) the federal income tax withheld by TP's employer over (2) TP's income tax liability.

Briefly discuss whether the suspension of the statute limitations for an individual during periods of financial disability applies with respect to TP's overpayment.

**PART THREE  
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**

For purposes of all evidence questions, assume the following facts. Taxpayer (T), a self-employed software 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. 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 on some issue in the case.

**E-1.** T offers into evidence a document (marked “T’s Exhibit 1”) that purports to be a credit card statement (MasterCard) from the bank that issued T’s credit card, Union National Bank, to prove that T was billed \$450.00 for a room at the Ritz Canton Hotel on a particular date, as shown on the statement.

- (a) (4 minute/s) As the entire foundation for the admission of the statement, T testifies that T received the statement in the mail; that it contains T’s correct name, address, and account number; and that T paid it. C objects to its admission on the ground that the statement has not been properly authenticated. How should the Tax Court rule and why?
- (b) (5 minute/s) Assume that there is a pre-trial stipulation between T and C that T’s Exhibit 1 is authentic. T now offers T’s Exhibit 1 into evidence to prove that T stayed at the Ritz Canton Hotel on the date shown on the statement. C objects to its admission on the ground of hearsay. How should the Tax Court rule and why?
- (c) (3 minute/s) T attempts to testify that T paid the credit card statement (T’s Exhibit 1). C objects that T’s testimony would violate the so-called “best evidence” (original writing) rule, because the best evidence of the payment would be T’s canceled check. How should the Tax Court rule and why?

**E-2. (5 minute/s)**

T calls T’s spouse S as a witness. S testifies that on July 7—10, 2004, S was with T on a business trip, and they were staying at the Hotel del Coronado in San Diego, California. C does not cross-examine S about this testimony. During C’s case-in-chief, C calls Jones, and asks Jones the following questions and receives the following answers:

Q. "On October 10, 2004, did 'you have a conversation with S?" A. "Yes."

Q. "Did S say anything about where S and T were in July, 2004?" A. "Yes."

Q. "What did S tell you?"

T objects on the grounds of hearsay and improper impeachment. (If permitted, Jones would testify that S told Jones that S and T were in Miami, Florida, during the entire month of July, 2004.)

How should the Tax Court rule and why?

**E-3. (4 minute/s)**

On direct examination in T's case, T testifies that, on July 7–10, 2004, T was on a business trip, staying at the Hotel del Coronado in San Diego, CA. C does not cross-examine T about this testimony. In C's case, C offers into evidence a properly-authenticated deposition of T, taken in another lawsuit in October 2004, in which T testified that T was in Miami, Florida, during the entire month of July 2004. T objects on the ground that this would be improper impeachment.

How should the Tax Court rule and why?

**E-4. (4 minute/s)**

What is a "leading question"? List and describe the exceptions to the rule that leading questions are not proper on direct examination.

**E-5.**

(a) (4 minute/s)

In C's case, C offers to call a witness, Smith, who will testify that, in Smith's opinion, T is a person who would do anything to avoid paying taxes (without regard to whether what T is doing is legal), and T would testify falsely to support a questionable entry on T's tax return. (Assume that Smith knows T well enough to form an opinion on these matters.)T objects.

How should the Tax Court rule and why?

(b) (3 minute/s)

Could Smith properly testify to specific instances of dishonest conduct by T?

Why or why not? (Assume that Smith has personal knowledge of such instances.)

**E-6. (3 minute/s)**

Assume that in T's case-in-chief, T testifies in support of various deductions. However, T does not testify concerning a deduction for a trip to Hawaii in 2003 that is one of the deductions disallowed by the IRS. When C cross-examines T, can C properly ask T questions about that trip?

Why or why not?

**E-7. (5 minute/s)**

T and S were limited partners in a limited partnership that owned certain depreciable property. C has proposed deficiencies to T and S with respect to their distributive shares of depreciation deductions of the limited partnership. C asserts that depreciation is not allowable for the taxable year in controversy because the property was not placed in service during the taxable year. T offers into evidence in T's Tax Court case the transcript of the testimony of Jones, who testified as a fact witness (as to when the property was placed in service by the partnership) for S in S's Tax Court case. Jones is on an extended vacation in Europe. Is the transcript of Jones' testimony admissible in T's Tax Court case? What foundation, if any, would make it admissible?

**E-8. (4 minute/s)**

To prove that T was in Miami, Florida, during the month of July 2004, C calls Barbara Brown, a friend of T and T's spouse S. Barbara will testify that in a conversation with W on June 15, 2004, S said, "T and I are going to spend the month of July at our condo in Miami. I'll call you when I get back." T objects on the ground of hearsay. How should the Tax Court rule and why?

**E-9. (4 minute/s)**

State the foundation required for the admission of a document under the public records exception to the hearsay rule.

**E-10.**

T is seeking to prove the date on which T received a telephone call from a person named Rodriguez. Direct examination of T proceeds with the following questions and answers:

Q. "What was the date on which you received the call from Mr. Rodriguez?" A. "I don't recall." Q. "I show you what has been marked as T's Exhibit 2. Do you recognize it?" A. "Yes, it's the telephone log from my office."

Q. "Does that refresh your memory?" A. "It says here August 2, 2004."

(a) (4 minute/s) C objects to A's last response~ How should the Tax Court rule and why?

(b) (4 minute/s) The examination continues as follows:

Q. "Did you record the date of the call in your log?" A. "No, it was recorded by my secretary, MJ, who keeps all the records."

Q. "How do you know if MJ recorded the date correctly?" A. "We follow a standard procedure for recording dates in the log, and MJ always follows that procedure. MJ never makes a mistake."

T then offers the telephone log, T's Exhibit 2, into evidence. C objects.

How should the Tax Court rule, and why?

**E- 11. (4 minute/s)**

C has asserted a § 6662(b)(1) penalty against T with respect to a deduction claimed by T. C calls Ching as a witness. C proposes to have Ching testify that Ching heard Lenzini, T's accountant, say to T, prior to the filing of the income tax return in question, "This deduction you are claiming is never going to hold up if it is challenged. It is totally without justification, and your position is contrary to a Treasury Department regulation." T objects to this testimony on the ground of hearsay.

How should the Tax Court rule 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 TILE EXAMINATION**

**Question LE-1. (1.5 minute/s)**

A, an attorney, represents N in connection with a deficiency notice in which the IRS asserts that N failed to pay federal income taxes on N's salary for a particular taxable year. N has directed A to argue that the federal income tax is voluntary and that N need not comply and that any attempt to force N to pay taxes is unconstitutional. May A at N's direction properly include this argument in the pleadings?

State YES or NO.

**Question LE-2. (2 minute/s)**

B, an attorney, represents the promoter P with respect to P's sale of investments in a partnership that was promoted as having significant tax benefits. The IRS has asserted that the investment is a tax shelter and has issued deficiency notices to the investors I and assessed promoter penalties on P. P has arranged for B to represent the investors i in the Tax Court.

Briefly explain whether B properly may do so.

**Question LE-3. (2.5 minute/s)**

C, an attorney with the ABCD law firm, represents International Record Co. against Downtown Music Co. in ongoing litigation involving copyright infringement. D, a tax attorney with the ABCD firm, is asked by Downtown Music Co. to represent it in Tax Court litigation. There is no connection between the two suits. Can D properly represent Downtown Music Co. in the Tax Court?

Briefly explain your answer.

**Question LE-4. (2 minute/s)**

E, an attorney, represents O, who is the CEO and a shareholder of a corporation from which O received \$50,000. The IRS has asserted that the payment was a taxable dividend, but O treated it as a loan. At trial, E entered into evidence documentation that purported to be a loan agreement between the corporation and O that was contemporaneous with the receipt of the \$50,000. Several days later, while the trial continued, E discovered that the loan agreement was executed several months after the receipt of the funds by O.

What action should E take to comply with E's professional responsibility obligations?

**Question LE-5. (2.5 minute/s)**

G created a partnership and sold a limited partnership interest to S among others. G represented to S that the transaction would save federal income taxes. G prepared all the documentation for the transaction. S was subsequently audited and received a notice of deficiency with respect to flow-through deductions from the partnership. Can G properly represent S in the Tax Court?

Briefly explain your answer.

**Question LE-6 (2.5 minute/s)**

J represents T in Tax Court litigation in which the issue is the validity of deductions for charitable contributions made to the private school that T's son attends. J plans to have T testify about the amount of the contribution and the fact that T received nothing in return. The day before T is scheduled to testify, T tells J in confidence that, in exchange for the contribution, T's son's tuition fees were waived but that T has no intention of saying that if asked by the government's counsel if T received anything from the school. May J properly disclose the information about the waived tuition fees to the court?

Briefly explain your answer.

**Question LE-7 (2.5 minute/s)**

Same facts as LE-6. If T insists on testifying on T's own behalf, can J properly call T as a witness? Briefly explain your answer.

**Question LE-8 (2.5 minute/s)**

K, an attorney, represents husband H in a divorce proceeding. H and W (H's wife) have received a deficiency notice with respect to a return they filed jointly after they separated. Although W 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 K properly represent H and W in a Tax Court proceeding with respect to the deficiency notice if H consents to the representation? Briefly explain your answer.

**Question LE-9 (1.5 minute/s)**

L represents U in a Tax Court proceeding involving (1) depreciation deductions on real estate owned by U and (2) flow-through deductions taken by U and attributable to U's wholly-owned S corporation. As part of the pre-trial process, the government lawyer offers a settlement with respect to such flow-through deductions. L is surprised by the settlement offer but believes that the government's settlement offer on this issue should be accepted. Briefly explain whether L properly may sign a stipulation of settled issues with respect to such flow-through deductions~

**Question LE-10 (2.5 minute/s)**

M is the general counsel for Solutions Software, 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 M as a witness with respect to the resolutions, can F, the associate general counsel of Software Solutions and a member of the Tax Court bar, represent the company in the Tax Court proceeding in his capacity as associate general counsel of the company? Briefly explain your answer.

**Question LE-11 (2 minute/s)**

X was an attorney in a three-person law firm, XYZ, that represented the promoter of an investment transaction in litigation brought by purchaser V whose investment became valueless and who claimed that V was defrauded by the promoter. That litigation ended last year. X left the XYZ law firm and joined the XQ firm. V has asked the XQ firm to represent V in Tax Court litigation with respect to an IRS deficiency notice asserting that deductions taken by V with respect to the investment transaction were impermissible. Can X properly represent V in this Tax Court litigation?

Briefly explain your answer.