

Tax Controversy Updates:

Temporary regulations define omission from gross income for purposes of statute of limitations

On September 23, 2009 the Internal Revenue Service released temporary and proposed regulations, Temp. Treas. Reg. Section 301.6501(e)-1T, TD 9466, that define an omission from gross income for purposes of the six-year minimum period for assessment of tax attributable to partnership items and the six-year period for assessing tax. The temporary regulations provide that outside the context of a trade or business, any basis overstatement that leads to an understatement of gross income under IRC Section 61(a) constitutes an omission from gross income for purposes of IRC Sections 6501(e)(1)(A) and 6229(c)(2). The effective date for this temporary regulation, September 24, 2009, is for any taxpayer's return that is open under the 6-year statute on the effective date.

The Internal Revenue Service is already testing the validity of this temporary regulation through the government's filing of a petition for a panel rehearing of an earlier adverse opinion on this issue in *Salman Ranch Ltd. v. United States*, 573 F.3d 1362 (Fed. Cir. Ct. of App. July 30, 2009). Similar motions have been filed by the government in two other pending cases in which the courts' opinions were contrary to the Internal Revenue Service's position with regard to a basis overstatement constituting an omission of gross income.

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