



# Current Federal Tax Developments

March 6, 2023

Kaplan Financial Education



Copyright 2023, Kaplan Inc.

## This Week We Look At:

Deposit and use by sheriff of jail meal money not found to be a mere misunderstanding

Amounts taxpayer expected to repay with future earnings found not to be loans, taxable upon receipt

SCOTUS rules non-willful FBAR failure is a per-form not per-account penalty

CPA fails to provide substantiation for deductions for practice

2

<https://www.currentfederaltaxdevelopments.com>



Deposit and use by sheriff of jail meal money not found to be a mere misunderstanding

Amounts taxpayer expected to repay with future earnings found not to be loans, taxable upon receipt

SCOTUS rules non-willful FBAR failure is a per-form not per-account penalty

CPA fails to provide substantiation for deductions for practice



## Tax Court Decides Sheriff's Transfer of Meal Money to Personal Account Not Mere Misunderstanding



- *Franklin v. Commissioner*, Tax Court Order, Docket Nos. 15054-21, 4970-22, 2/24/23
  - Sheriff took funds given to her to feed inmates and moved it into a personal account
  - The transfer was in violation of a Federal District Court order
  - She argued was mere misunderstanding
  - Court found it was an obvious factual dispute

3

<https://www.currentfederaltaxdevelopments.com>



<https://casetext.com/case/franklin-v-commr-of-internal-revenue-61>



## Advances on Future Earnings Are Taxable When Paid



- *Nath v. Commissioner*, TC Memo 2023-22, 2/27/23
  - Received income from a Cambodian company
  - Also received amounts from company claimed were loans, used to pay family expenses \$1.5 million and \$450,000
  - Did have loan agreements, but not clear when they were executed

4

<https://www.currentfederaltaxdevelopments.com>



<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/advances-on-future-earnings-are-taxable-when-received/7g00k>



## Advances on Future Earnings Are Taxable When Paid



- *Nath v. Commissioner*, TC Memo 2023-22, 2/27/23
  - No meaningful oversight of advances
  - No collateral
  - Taxpayer approved the loans to himself
  - Basically, no evidence of intent to repay these amounts
  - Intended to satisfy advances through future services

5

<https://www.currentfederaltaxdevelopments.com>



<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/advances-on-future-earnings-are-taxable-when-received/7g00k>



## Advances on Future Earnings Are Taxable When Paid



- *Nath v. Commissioner*, TC Memo 2023-22, 2/27/23
  - Court found the amounts represented income to the taxpayer when paid
  - Courts regularly look to:
    - Would loan have been made without the relationship?
    - Is there any evidence of intent to pay the amounts?

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/advances-on-future-earnings-are-taxable-when-received/7g00k>



## SCOTUS Rules FBAR Penalties are Per-Form, Not Per-Account



- *Bittner v. United States*, US Supreme Court Docket No. 21-1195, 2/28/23
  - 5th and 9th Circuits disagreed on how the non-willful FBAR penalty applies
  - Taxpayer had been hit with \$10,000 per account per year penalties on 272 accounts
  - 5-4 Majority finds the proper penalty is on a per-form basis (Ninth Circuit ruling)

7

<https://www.currentfederaltaxdevelopments.com>



<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/supreme-court-holds-non-willful-fbar-penalties-apply-per-form/7g022>



## SCOTUS Rules FBAR Penalties are Per-Form, Not Per-Account



- *Bittner v. United States*, US Supreme Court Docket No. 21-1195, 2/28/23
  - Majority looked at the history of the BSA its purpose
  - Prior IRS guidance indicated a per-form penalty
  - Argued rule of lenity requires leaning towards the taxpayer
  - Dissent argued the plain reading of the law requires a per-account penalty

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/supreme-court-holds-non-willful-fbar-penalties-apply-per-form/7g022>





## CPA Failed to Provide Substantiation for Deductions



- *Amundsen v. Commissioner*, TC Memo 2023-26, 3/1/23
  - CPA had Schedule C on Form 1040 with accounting practice
  - All expenses combined in cost of sales
  - Provided 200 pages of documents, but no receipts or details for expenses
  - Noted that §274(d) bars many of the expenses based on lack of records

9

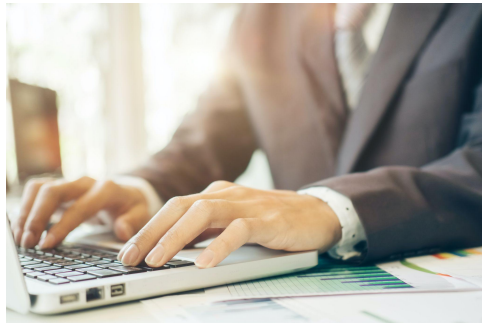
<https://www.currentfederaltaxdevelopments.com>



<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/cpa-failed-to-substantiate-deductions%2c-liable-for-penalty/7g07f>



## CPA Failed to Provide Substantiation for Deductions



- *Amundsen v. Commissioner*, TC Memo 2023-26, 3/1/23
  - Court declined to attempt to slog through the disorganized information
  - Did not provide evidence to support home office deduction for large portion of the residence (40%)
  - Court found CPA liable for accuracy related penalty

10

<https://www.currentfederaltaxdevelopments.com>



<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/cpa-failed-to-substantiate-deductions%2c-liable-for-penalty/7g07f>

**KAPLAN**