Current Federal Tax Developments

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SECTION: 61
IRS ANNOUNCES DISAGREEMENT WITH CASE THAT ALLOWED EXCLUSION OF TAX ADVICE DAMAGE AWARD THAT CAUSED TAXPAYER TO DEVIATE FROM LIFETIME PLAN

Citation: Cosentino v. Commissioner, TC Memo 2014-186, 9/11/14, Action on Decision 2016-01, 4/4/16

The issue of the taxable status of awards received by a taxpayer from his tax adviser was addressed in the case of *Cosentino v. Commissioner*, TC Memo 2014-186. While the Tax Court granted the taxpayer a victory, the IRS has announced nonacquiesence with regard to this case (AOD 2016-01).

A key issue when a taxpayer receives a damage award related to negligent tax advice is whether the amounts received will be taxable income to the taxpayer or not. Generally when a taxpayer receives questionable tax advice, the taxpayer will file a claim against the adviser and argue for damages for taxes, interest and penalties. The argument for the tax payment generally is based on the claim that if the taxpayer had known the action the adviser was suggesting would not have led to the claimed tax savings, the taxpayer would have taken other actions to reduce his taxes.

The question of whether or not the payment is taxable is important to the tax adviser against whom damages are sought since the client, to be made whole, will likely seek a higher damage payment in order to cover the tax likely to be due on the settlement, in effect "grossing up" the damages so that after taxes the client is "made whole" in the situation.

That also can pose risk to the parties advising the aggrieved taxpayer in arriving at a settlement of the issue if the potential taxable nature of the settlement isn't considered.

Cosentino Case

The fact pattern in this case involved a claim of "bad advice" that caused the taxpayer to pay income taxes which the taxpayer now believes should not have been paid. The taxpayer had entered into a variant of a basis inflation shelter to offset a gain the taxpayer would be incurring from the sale of real estate. When the taxpayer discovered that the IRS had listed this type of arrangement as a potentially abusive one, the taxpayer filed immediate amended tax returns and paid the tax due.

The taxpayer asked for damages from the adviser who suggested the basis inflation shelter arguing that if the taxpayer had not entered into a basis inflation shelter the taxpayer would have entered into a §1031 exchange.

In CCA 201307005 the IRS had considered a similar "I would have done something differently" claim related to receipt of a damage award from a tax adviser and decided the taxpayer would not be able to exclude the amount from income. The IRS distinguished that situation from the holding in the case of *Clark v. Commissioner*, 40 BTA 333 (1939), *acq*.

In the *Clark* case the taxpayer received damages when the adviser gave bad advice causing the taxpayer to file a joint return. Later the error was uncovered and it was found that had the taxpayers filed separate returns there would have been significantly less tax paid. Since the taxpayer's election to file a joint return could not corrected after the fact, the adviser paid an amount equal to the excess tax. In that case, the Court found that the payment was clearly for taxes that never needed to be paid, thus simply restoring the taxpayer to the state they should have been in—thus, the award was not taxable.

However, in the case in the CCA the IRS pointed out that there was no evidence the taxpayer had abandoned an alternative that would have had the same effect nor any evidence any such arrangement was under consideration. While it was clear in *Clark* that the taxpayer had relied on the adviser for a simple binary choice (file joint or separate), there was no such binary issue here.

Not surprisingly, the IRS argued the same thing in this case.

But this case had a few unique facts. While the case in the CCA involved a taxpayer who was suggesting they certainly could have found something they could have done, the taxpayer here had previously entered into §1031 exchanges multiple times in the past to avoid taxes.

The IRS objected that this was all fine, but §1031 is simply a deferral mechanism, not ultimately a mechanism that would remove the tax. So the taxpayers were in a better position having avoided ever having to pay this tax.

However, the taxpayer had a clearly outlined plan to continue to enter into §1031 exchanges until the real property passed through an estate, at which point the basis would be stepped up. As the Court noted, this would mean that, if the plan was executed, no tax would ever be paid on the appreciation.

Thus, in this case the Court found the amount of damages related to the tax paid was not includable in the taxpayers' income.

The IRS Warns It Will Not Follow This Case

In April of 2016 the IRS announced that it was issuing a formal notice of nonacquiesence in the result arrived at in the *Cosentino* case (AOD 2016-01).

In justifying its position with regard to this decision the IRS noted:

> …[T]he taxpayers in this case paid the correct amount of Federal income tax based on the transaction they entered into. In this transaction, the taxpayers received taxable boot as part of their consideration upon the disposition of the rental property. When the artificially inflated basis was disregarded, the boot resulted in gain recognition from the exchange and the imposition of tax on that gain. Once this transaction was completed, no choices were available to the taxpayers to reduce this taxable gain. It was the facts of the transaction, and not a failure to make an election or a failure to timely file an appeal, that caused the taxpayers to incur additional tax.
>
> In light of the underlying gain recognition transaction, the amount of tax imposed was not more than what they properly owed on that transaction and, consequently, the taxpayers did not sustain a loss. To the contrary, because the taxpayers received the boot, and because they continued to receive the benefit of both the boot and the basis in the newly acquired real property even after the abusive tax shelter transaction was disregarded, taxpayers financially were in a better (not merely restored) position after the settlement than they were in before entering the transaction.

The above analysis did not look at the "lifetime plan" theory, but in a footnote the IRS dismissed reliance on that:

> In reaching its holding, the court considered the taxpayers' plan to use a lifetime series of tax-free exchanges, followed by a step up in basis at death, to permanently avoid paying taxes on the gain from these transactions. We disagree with the court's reliance on these facts. The taxpayers' ability to execute that tax planning strategy was purely speculative, and a change in the taxpayers circumstances, or even a change to the provisions of the Internal Revenue Code, could have altered the strategy at any time.

This can be viewed of a form "burying the lead" by the IRS in this case since this very factor (the lifetime plan) was the key fact the Court relied upon. It's also important to note that this footnote analysis never actually cites to any supporting authorities justifying this view, rather representing the IRS's commentary on this way of viewing the situation—a method of viewing the situation the Court clearly accepted.

Nevertheless, the publication of this document puts taxpayers and their advisers on notice that the IRS has announced it is not going to accept the *Cosentino* case as representing valid authority. Advisers should expect agents to balk at accepting a "lifetime plan" defense to exclusion of negligent tax advice damages based on a supposed alternative that would have been undertaken.

SECTION: 223
LETTER TO BANKERS STATES THAT ERRONEOUS EMPLOYER HSA CONTRIBUTIONS MAY BE REFUNDED IN MORE SITUATIONS THAN JUST THE TWO MENTIONED IN NOTICE 2008-59

Citation: IRS Letter to UMB and American Bankers Association, Tax Notes Today, 4/8/16

Tax Analysts published a copy of the letter from the IRS to officials at UMB Bank and the American Bankers Association in Tax Notes Today on April 8 that explained that Notice 2008-59's list of conditions under which an employer may take back a contribution to an employee's HSA is not an exclusive list of such situations. (2016 TNT 68-9)

If an employer has provided for contributions to be made to eligible employee's HSAs under Section 223, a problem arises if the contribution is, in fact, in error and excessive. IRC Section 223(d)(1)(E) provides that a taxpayer's balance in an HSA is nonforfeitable. Notice 2008-59 provided two conditions under which an employer could recover an erroneous payment.

Question and Answer 23 provided that if an employer had contributed more than the maximum contribution to an HSA allowed for an employee then the amount could be recovered. However so long as the contribution was less than the maximum under the IRC the amount could not be recovered even if the employer claimed the contribution was in error.

Under Question and Answer 24 of the Notice the employer could recover a contribution if the employee was never an "eligible individual" under Section 223(c) (that is, either was not covered by a high deductible health plan as of the first day of the month or had ineligible coverage) since the HSA itself could not be established.

But Question and Answer 25 provided that if the employee ceased to be an eligible individual during the year the employer could not recover any overcontribution to the HSA.

The letter appears to have written to address the concern that those could be interpreted as the only occasions under which an employer could receive a repayment of a contribution made to an HSA. While the letter is not authority of any sort, it does provide commentary on whether the notice truly contains the exclusive list of conditions under which repayment may be made.

The letter, authored by Harry Beker, Chief, Health and Welfare Branch,Office of Associate Chief Counsel of the IRS, states that "was not intended to provide an exclusive set of circumstances in which an employer may request the return of contributed amounts."

Rather Mr. Beker goes on to state:

> ..[I]f there is clear documentary evidence demonstrating that there was an administrative or process error, an employer may request that the financial institution return the amounts to the employer, with any correction putting the parties in the same position that they would have been in had the error not occurred. Employers should maintain documentation to support their assertion that a mistaken contribution occurred.

Mr. Beker then goes on to note specific examples of the types of errors he was referring to:

- An amount withheld and deposited in an employee's HSA for a pay period that is greater than the amount shown on the employee's HSA salary reduction election.
- An amount that an employee receives as an employer contribution that the employer did not intend to contribute but was transmitted because an incorrect spreadsheet is accessed or because employees with similar names are confused with each other.

- An amount that an employee receives as an HSA contribution because it is incorrectly entered by a payroll administrator (whether in-house or third-party) causing the incorrect amount to be withheld and contributed.
- An amount that an employee receives as a second HSA contribution because duplicate payroll files are transmitted.
- An amount that an employee receives as an HSA contribution because a change in employee payroll elections is not processed timely so that amounts withheld and contributed are greater than (or less than) the employee elected.
- An amount that an employee receives because an HSA contribution amount is calculated incorrectly, such as a case in which an employee elects a total amount for the year that is allocated by the system over an incorrect number of pay periods.
- An amount that an employee receives as an HSA contribution because the decimal position is set incorrectly resulting in a contribution greater than intended.

This guidance may prove useful both to organizations who are custodians of HSA accounts that receive requests for the return of funds from employers, and for employers who face resistance to such requests from custodial institutions.

While not truly authoritative, presumably the IRS was aware that a letter to the American Bankers Association on the matter would be an important document that was likely to be relied upon by custodians. Now that the letter has been made public (probably something the IRS anticipated) it will be interesting to see if the IRS decides to issue more formal guidance on the matter.

A truly "belts and suspenders" approach would still be to seek a private letter ruling on the matter, but the reality is that doing so is rather expensive. But due to the nasty rules for making contributions that don't meet the comparable contributions rules of §4980G (a penalty equal to 35% of the total contributions made on behalf of all employees), an employer that was unable to retrieve funds erroneously deposited in one employee's HSA could be faced with, in the alternative, a need to replicate the error in all other eligible employee's accounts.

SECTION: 280F
IRS ANNOUNCES DEPRECIATION AND LEASE INCLUSION AMOUNTS ON VEHICLES FOR 2016

Citation: Revenue Procedure 2016-23, 4/1/16

In Revenue Procedure 2016-23 the IRS released the limits on depreciation for vehicles subject to the limitations of §280F(d)(7)(B)(i) for items placed in service in 2016, as well as the revised limits for 2014 for autos qualifying for bonus depreciation under IRC §168(k). The latter revisions were needed since Congress retroactively extended the bonus depreciation in the Protecting Americans from Tax Hikes Act, signed into law on December 18, 2015.

The 2016 limits are as follows:

REV. PROC. 2016-23 TABLE 1 DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) PLACED IN SERVICE IN CALENDAR YEAR 2016 FOR WHICH THE §168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES:	
Tax Year	Amount
1st Year	$11,160
2nd Year	$5,100
3rd Year	$3,050
Each Succeeding Year	$1,875

REV. PROC. 2016-23 TABLE 2 DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE IN CALENDAR YEAR 2016 FOR WHICH THE §168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES:	
Tax Year	Amount
1st Year	$11,560
2nd Year	$5,700
3rd Year	$3,350
Each Succeeding Year	$2,075

REV. PROC. 2016-23 TABLE 3 DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES PLACED IN SERVICE IN CALENDAR YEAR 2016 FOR WHICH THE §168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION DOES NOT APPLY:	
Tax Year	Amount
1st Year	$3,160
2nd Year	$5,100
3rd Year	$3,050
Each Succeeding Year	$1,875

REV. PROC. 2016-23 TABLE 4 DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE IN CALENDAR YEAR 2016 FOR WHICH THE §168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION DOES NOT APPLY:	
Tax Year	Amount
1st Year	$3,560
2nd Year	$5,700
3rd Year	$3,350
Each Succeeding Year	$2,075

The revised limits for vehicles placed in service before December 31, 2015 that are eligible for bonus depreciation are:

REV. PROC. 2016-23 TABLE 7 DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) PLACED IN SERVICE IN CALENDAR YEAR 2015 FOR WHICH THE §168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES:	
Tax Year	Amount
1st Year	$11,160
2nd Year	$5,100
3rd Year	$3,050
Each Succeeding Year	$1,875

REV. PROC. 2016-23 TABLE 8 DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE IN CALENDAR YEAR 2015 FOR WHICH THE §168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES:	
Tax Year	Amount
1st Year	$11,460
2nd Year	$5,600
3rd Year	$3,350
Each Succeeding Year	$2,075

The procedure also contains updated tables to be used for the lease inclusion amount under Reg. §1.280F for lease terms beginning in calendar year 2016, as well as modifying the lease inclusion amount tables for 2015 previously published in Revenue Procedure 2015-19 by striking the first line lease inclusion amount in each of those tables. The 2015 lease inclusion tables now apply to passenger automobiles that are first leased by the taxpayer in calendar year 2015 with a fair market value over $19,000, and to trucks and vans that are first leased by the taxpayer in calendar year 2015 with a fair market value over $19,500.

SECTION: 1361
AGREEMENT ON APPLICATION OF TRUST TERMS FOUND TO ALLOW TRUST TO BE TREATED AS QSST

Citation: PLRs 201614002 and 201614003, 4/1/16

Qualified Subchapter S Trusts (QSSTs) are one of the limited set of trusts that are eligible S corporation shareholders upon the election of the beneficiary to treat the trust in this manner. However, such trusts must have terms that conform to requirements imposed by the law in order for the trust to be eligible, upon the beneficiary's election, to be treated as such a trust.

In PLRs 201614002 and 201614003 the taxpayers were asking the IRS whether a binding, nonjudicial settlement under state law regarding the trust's language could be used to solve what otherwise appeared to be problems with the terms of trusts for which an S election was desired.

As the PLRs note:

> Section 1361(d)(3) defines the term "qualified subchapter S trust" as a trust all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States. In addition, the terms of the trust must require that during the life of the current income beneficiary there shall be only one income beneficiary of the trust; any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary; the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust; and upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary.

In the trust that lead to this ruling the trust had a number of provisions that appeared to potentially run afoul of these restrictions. Specifically, the following provision, which references the beneficiary's (the child) descendants appeared to raise concerns:

> Article Seventh, Section 3 of the trust agreement further provides that "[t]he trustee may also pay to the child such sums from the principal of [Trust] as the trustee deems necessary or advisable from time to time for the health, maintenance in reasonable comfort, education (including postgraduate) and best interests of the child and his descendants, individually and as a group, considering the income of each of them from all sources known to the trustee. No payment made for a descendant of the child shall be charged against the share hereinafter provided for the descendant or his ancestor or descendants."

The concern appeared to be that this paragraph might violate the "one beneficiary" requirement, assuring that during that beneficiary's lifetime the only distributions that would be made would be to that beneficiary. Since the trustee has to consider the needs of the descendants of the beneficiary in invading corpus, it could be argued that such distributions would, while paid to the child, be indirect distributions to the grandchild.

The governing law of the state in question allowed for all of the interested parties (trustee, beneficiaries, etc.) to enter into a "binding, non-judicial agreement" that deals with the validity, interpretation or construction of terms of the trust. Under the terms of the agreement the following items were agreed to:

> 1. That the power of the trustees to distribute the principal of Trust pursuant to Article Seventh, Section 3 of the trust agreement is limited to a distribution to B, and is not for the benefit of any other person during the life of B.
>
> 2. That the terms of the trust agreement governing Trust do not authorize or permit distributions of principal to any descendant of B, directly or indirectly, during the life of B, and that principal distributions from Trust may only be made for B's benefit.
>
> 3. That the provisions of Trust do not create, nor did A intend to create, any right, claim or cause of action in any such descendant, as against B or the trustees, to compel or require B or the trustees to pay over any part or all of a principal distribution to such descendants, or any of them, whether or not the trustees took into account the health, maintenance in reasonable comfort, education and best interests of those descendants in determining the amount of the principal distribution.

The trust now looked for the IRS's blessing that the provisions of the trust, as agreed upon by this agreement that was binding under state law, would qualify it for QSST status.

The IRS held that the trust, when considering the agreement, did qualify for election to be treated as a Qualified Subchapter S Trust.

SECTION: 6501
OMISSION OF GIFT FROM A YEAR DOES NOT HOLD STATUTE OPEN FOR ALL INTERVENING YEARS WHERE GIFT TAX MAY BE UNDERSTATED

Citation: Chief Counsel Email Advice 201614036, 4/1/16

Under IRC §6501(c)(9) the IRS has an unlimited statute of limitation to assess gift taxes on a gift that is not reported on a gift tax return absent adequate disclosure, even if a Form 709 was filed for the year in question to report other gifts.

However, what happens if the omitted gift does not create gift taxes in the year in question but the omission of that gift from the prior gifts on later returns causes the taxes for that year to be understated? Does the IRS get an unlimited statute on those later returns to collect the tax that would have been due if the omitted gift had been included in the "prior gifts" portion of the gift tax calculation for those later years?

An example may help understand the issue. Let us assume the unified credit for Year X (8 years ago) allowed for lifetime gifting of up to $1,000,000 in value at that time. In Year X the taxpayer made his first taxable gifts. He made two taxable gifts after the annual exclusion of $500,000 each to two individuals. However by accident only one of the gifts was actually reported on the Form 709 for year 8.

Two year later in year Z (6 years ago) when the lifetime gifting limit remained at $1,000,000 the taxpayer considered again making gifts. The CPA and attorney had not been involved in the prior gifts and, relying the Form 709 prepared for Year 8, advised the taxpayer to make a $500,000 gift to fully utilize his lifetime gifting.

In the current year an IRS agent opens an exam on the gifts of the taxpayer and uncovers the $500,000 additional gift that was not reported in Year X. Including that gift on Year Z's return still results in no gift taxes being due—but year Z's $500,000 should have generated a gift tax. The question now becomes—can the IRS collect the tax due on the six year old gift based on the omission of the gift eight years ago?

In Emailed Advice 201614036 the National Office concluded the answer is no—Section 6501(c)(9) only holds open the year the gift was omitted from, not any intervening years which may have had an underpayment of gift tax due to the omitted gift. Rather, for those years the IRS must assess the additional tax within the standard

three year statute of limitations absent some other provision that would allow the statute to remain open (such as fraud for the year in which the IRS seeks to assess tax).

The memo holds:

> For the gift tax returns for subsequent years when the taxpayer understated the amounts of his prior year gifts, the national office view is that the language in § 6501(c)(9) "any tax imposed by chapter 12 on such gift may be assessed … at any time" refers to the tax imposed on the omitted gift that is subject to tax on that return (i.e., the current year gift amounts), and it does not refer to omissions or understatements of the prior year gift amount on that return. Accordingly, § 6501(c)(9) does not extend the ASED for gift tax returns for subsequent years just because the prior year gift amounts on those returns were understated, even if that resulted in underreported gift tax for those subsequent years.

The substantial omission extension of the statute to six years under IRC §6501(e)(2) also would not apply as it also is limited to current year gifts omitted from the return:

> The six-year ASED for substantial omission in § 6501(e)(2) will not extend the ASED for gift tax returns whose only defect is underreported prior year gifts, because the language "if the taxpayer omits from … the total amount of the gifts made during the period for which the return was filed" also refers to the current-year gifts; gift tax returns are annual returns, even if the taxpayer is required to report prior year gifts and to properly use those when calculating the tax on the current year gifts.

SECTION: 7201
TAX COURT'S STATEMENTS IN PRIOR CASE THAT A GUILTY PLEA TO TAX EVASION MANDATES A DEFICIENCY FINDING HELD TO BE "MERE DICTA" WHEN COURT CONFRONTED WITH EVIDENCE THAT DID NOT SUPPORT SUCH A FINDING

Citation: Senyszyn v. Commissioner, 146 TC No 9, 3/31/16

Tax advisers who look over tax cases and read opinions need to be careful about the level of reliance they place on statements made by the court in the case that do not directly impact the ultimate decision. *Merriam Webster's* online dictionary defines dicta as "a judge's expression of opinion on a point other than the precise issue involved in determining a case."

In the case of *Senyszyn v. Commissioner,* 146 TC No 9, the Tax Court ended up ultimately ruling in the opposite manner to a rather clear statement the Court had made in the case of *Anderson v. Commissioner*, T.C. Memo. 2009-44.

The question before the Court was whether a taxpayer who had plead guilty to tax evasion and, specifically, having omitted income when engaging in the same, could nevertheless be found to have no deficiency for the year in question when IRS took civil action to collect the tax.

In the case before the Court the taxpayer had plead guilty to a criminal charge of tax evasion. As the Court notes:

> Contemporaneous with the U.S. attorney's filing of charges against him, Mr. Senyszyn signed an agreement to plead guilty to all four of the counts with which he was charged. Mr. Senyszyn agreed to stipulate at sentencing: "BOHDAN SENYSZYN knowingly and willfully did not include about $252,726.00 in additional taxable income that he acquired in 2003." In exchange for Mr. Senyszyn's agreement to plead guilty, the U.S. attorney dropped charges against Mrs. Senyszyn.

However the Tax Court found that the evidence presented to it showed that while he may have omitted the gross income, he had made offsetting repayments of the funds that would have served to eliminate any tax liability for that year.

Nevertheless he had plead guilty to tax evasion and, as the Court notes, an understatement of tax is one of the conditions required for a person to be guilty of that crime.

In the *Anderson* case noted above, the Tax Court had mused about whether it was theoretically possible for an individual who had pled guilty to tax evasion to be found to have no tax liability. As the Court in this case notes:

> In *Anderson v. Commissioner*, 2009 WL 454182, at *19, we rejected the taxpayer's argument that determining the existence of a fraud penalty before determining its amount was premature. We denied the possibility that the taxpayer's underpayment, and thus fraud penalty, might ultimately be determined to be zero. In other words, we surmised that, if presented with the issue we face today, we would find some underpayment, "however small", by reason of collateral estoppel. Id. Obviously, our prior speculation on the question was dictum.

The Court specifically notes before making that admission that it had not actually ever previously ruled on the issue—rather, as noted above, its musings in that case were pure dicta.

Now that the Court was faced with a situation where the evidence before it did not support the finding of any deficiency, it rejected the idea that it was mandated to find some sort of underpayment, noting:

> Now confronted with a record that puts squarely before us the question that was merely hypothetical in Anderson, we conclude that the purposes of the doctrine would not be served by upholding a deficiency unsupported by the evidence presented. Upholding a minimum deficiency would not promote judicial economy: Even after Mr. Senyszyn's conviction under section 7201, we were required to hear this case to determine the amount of petitioners' deficiency. And any inconsistency between Mr. Senyszyn's prior criminal conviction and a decision that petitioners are not liable for any deficiency would not undermine "reliance on judicial action", cf. Montana, 440 U.S. at 154, because the inconsistency would result not from conflicting findings by different courts but instead from Mr. Senyszyn's entry of a guilty plea to a charge that the evidence -- at least as presented to us -- would not support. Therefore, we decline to apply the doctrine of collateral estoppel to uphold whatever minimum deficiency would be consistent with Mr. Senyszyn's conviction under section 7201.

Unfortunately, as this case makes clear, advisers reading cases must carefully consider which portions of the opinion are actually involved in coming to the decision in question and which represent, as the court in this this case, musings on a hypothetical situation that was never actually found to exist.