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U.S. Tax Court: Excise tax for excess contributions to Roth IRAs from FSC

The U.S. Tax Court today in a “reviewed opinion” upheld an IRS determination that payments made from a foreign sales corporation (FSC) to Roth IRAs were, in substance, contributions made by the taxpayers to their Roth IRAs.

The court majority concluded that the taxpayers owed excise taxes under section 4973 for the resulting excess contributions made to their Roth IRAs.

The case is: *Mazzei v. Commissioner*, 150 T.C. No. 7 (March 5, 2018). Read the Tax Court’s 104-page [opinion](#) [PDF 377 KB] that includes both concurring and dissenting opinions.

Summary

The taxpayers (members of a family) entered into a pre-packaged plan to save taxes by routing funds from their family business through a Bermuda-based foreign sales corporation (FSC) and then into Roth IRAs created for this purpose. Under this plan, in 1998 each of the taxpayers directly contributed \$2,000 (the applicable contribution limit) to his or her newly created Roth IRA, which then paid a nominal amount for stock in the FSC.

From 1998 to 2002, the taxpayers indirectly transferred over \$533,000 from their business to their Roth IRAs by routing these funds through the FSC.

The IRS found that the payments from the FSC to the Roth IRAs were, in substance, contributions by the taxpayers to their Roth IRAs and, as such, the taxpayers owed excise taxes for the amount of excess contributions to their Roth IRAs (under section 4973).

The taxpayers countered that the IRS erred in recharacterizing the transfers as something other than dividends from the FSC directly to the Roth IRAs and that, as a result, they were not liable for the excess contribution excise taxes.

The Tax Court majority today held that the taxpayers—and not their Roth IRAs—were the owners of the FSC stock and that, in substance, the FSC dividends were income to the taxpayers who then contributed the funds to their Roth IRAs. The court distinguished today's findings from those and the decision in *Summa Holdings, Inc. v. Commissioner*, 848 F.3d 779 (6th Cir. 2017), *rev'g* T.C. Memo. 2015-119.

In concluding, the Tax Court found the taxpayers were liable for the excise taxes on the excess contributions to their Roth IRAs. The court, however, did not sustain the imposition of timely filing / timely paying penalties under section 6651(a)(1) and (2).

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