



Current Federal Tax Developments

Nichols Patrick CPE a Division of the Loscalzo Institute

October 31, 2016

SECTION: CRIMINAL FORMER TAX COURT JUDGE PLEADS GUILTY TO CONSPIRING TO DEFRAUD THE IRS 3

Citation: "Former United States Tax Court Judge Pleads Guilty to Conspiring to Defraud the IRS of \$450,000 in Taxes", Department of Justice Press Release, 10/21/16 3

SECTION: 1 INFLATION ADJUSTED NUMBERS ISSUED BY IRS FOR 2017 INCLUDING NEW INDEXED ITEMS ADDED IN 2015 BY CONGRESS..... 4

Citation: Revenue Procedure 2016-55, 10/25/16..... 4

SECTION: 61 LOVE OFFERINGS REPRESENTED TAXABLE COMPENSATION FOR SERVICES TO PASTOR 16

Citation: Jackson v. Commissioner, TC Summary Opinion 2016-69, 10/24/16 16

SECTION: 170 PROHIBITED MODIFICATIONS FOR CONSERVATION EASEMENT NOT LIMITED TO ITEMS LISTED IN "INCLUDING" CLAUSE IN THE IRC 17

Citation: Partita Partners LLC et al. v. United States, US DC SD NY, Case No. 1:15-cv-02561, 10/25/16 17

SECTION: 3121 SOCIAL SECURITY WAGE BASE AND OTHER RELATED ITEMS FOR 2017 19

Citation: Social Security Administration News Release, 10/19/16 19

SECTION: 3121 DOMESTIC WORKER THRESHOLD AMOUNTS ISSUED FOR 2017 19

Citation: Social Security Administration Website, 10/19/16 19

SECTION: 4980D EDUCATIONAL INSTITUTIONS GIVEN TEMPORARY RELIEF FROM APPLICATION OF MARKET REFORM RULES TO CERTAIN STUDENT HEALTH PREMIUM REDUCTION PROGRAMS, RELIEF LATER EXTENDED INDEFINITELY 19

Citation: Notice 2016-17, 2/5/16, FAQs About Affordable Care Act Implementation Part 33, DOL ESBA Website, 10/21/16..... 19

SECTION: CRIMINAL
FORMER TAX COURT JUDGE PLEADS GUILTY TO CONSPIRING TO DEFRAUD THE IRS

Citation: "Former United States Tax Court Judge Pleads Guilty to Conspiring to Defraud the IRS of \$450,000 in Taxes", Department of Justice Press Release, 10/21/16

The United States Department of Justice announced in a press release on October 21 that former Tax Court judge Diane L. Kroupa had pled guilty to a charge of conspiring to defraud the United States.

The news release details the actions in question that lead to this guilty plea as follows:

According to the plea agreement and KROUPA's testimony at the plea hearing, KROUPA was a former judge who was appointed to the United States Tax Court on June 13, 2003 for a term of 15 years. During the same period, KROUPA was married to Robert E. Fackler, a self-employed lobbyist and political consultant who owned and operated a business known as Grassroots Consulting. From 2004 to 2013, KROUPA and Fackler owned a home in Plymouth, Minnesota. From 2007 to 2013, they also leased a second residence in Easton, Maryland, where KROUPA lived while fulfilling her duties as a Tax Court Judge in Washington DC.

According to the plea agreement and KROUPA's testimony at the plea hearing, between 2002 and 2012, KROUPA and Fackler conspired to obstruct the Internal Revenue Service (IRS) from accurately determining their joint income taxes. As part of the conspiracy, KROUPA and Fackler worked together each year to compile numerous personal expenses for inclusion as supposed "business expenses" for Grassroots Consulting in their joint tax return. Those expenses included: rent and utilities for the Maryland home; utilities, upkeep and renovation expenses of the Minnesota home; pilates classes; spa and massage fees; jewelry and personal clothing; wine club fees; Chinese language tutoring; music lessons; personal computers; and expenses for vacations to Alaska, Australia, the Bahamas, China, England, Greece, Hawaii, Mexico and Thailand. In total, from 2004 through 2010, the defendants fraudulently deducted at least \$500,000 of personal expenses as purported Schedule C business expenses. At times, KROUPA prepared and provided to Fackler summaries of personal expenses falsely described according to business expense categories. On other occasions, KROUPA herself compiled and provided to their tax preparer the fraudulent personal expenses.

According to the plea agreement and KROUPA's testimony at the plea hearing, KROUPA made a series of other false claims on their tax returns, including failing to report approximately \$44,520 that she received from a 2010 land sale in South Dakota. KROUPA also falsely claimed financial insolvency to avoid paying tax on \$33,031 on cancellation of indebtedness income that she and her husband received.

According to the plea agreement and KROUPA's testimony at the plea hearing, KROUPA and Fackler purposely concealed documents from their tax preparer and an IRS Tax Compliance Officer during an audit for their 2004 and 2005 tax returns.

According to the plea agreement and KROUPA's testimony at the plea hearing, during a second audit in 2012, KROUPA and Fackler caused false and misleading documents to be delivered to an IRS employee in order to convince the IRS employee that certain personal expenses were actually business expenses of Grassroots Consulting. After the IRS requested documents pertaining to their tax returns, KROUPA and Fackler removed certain items from their personal tax files before giving them to their tax preparer because the documents could reveal they had illegally deducted numerous personal expenses. During the audit, KROUPA also falsely denied receiving money from the 2010 land sale. Later, when they learned the 2012 audit might progress into a criminal investigation, KROUPA instructed Fackler to lie to the IRS about her involvement in preparing the portion of their tax returns related to Grassroots Consulting.

According to the plea agreement and KROUPA's testimony at the plea hearing, between 2004 and 2010, KROUPA and Fackler purposely understated their taxable income by approximately \$1,000,000 and purposely understated the amount of tax they owed by at least \$450,000.

**SECTION: 1
INFLATION ADJUSTED NUMBERS ISSUED BY IRS FOR 2017 INCLUDING NEW INDEXED ITEMS ADDED IN 2015 BY CONGRESS**

Citation: Revenue Procedure 2016-55, 10/25/16

The IRS released inflation adjusted amounts for a number of tax related items for 2017 in [Revenue Procedure 2016-55](#). This year's information includes a number of additional entries, including §179 adjustments and revisions of the amounts for various penalties, that Congress added in the various tax bills that were passed in 2015.

The tax tables for 2017 will be:

Married Couples Filing a Joint Return

If Taxable Income Is:	The Tax Is:
Not over \$18,650	10% of the taxable income
Over \$18,650 but not over \$75,900	\$1,865 plus 15% of the excess over \$18,650
Over \$75,900 but not over \$153,100	\$10,452.50 plus 25% of the excess over \$75,900
Over \$153,100 but not over \$233,350	\$29,752.50 plus 28% of the excess over \$153,100

Over \$233,350 but not over \$416,700	\$52,222.50 plus 33% of the excess over \$233,350
Over \$416,700 but not over \$470,700	\$112,728 plus 35% of the excess over \$416,700
Over \$470,700	\$131,628 plus 39.6% of the excess over \$470,700

Heads of Household

If Taxable Income Is:	The Tax Is:
Not over \$13,350	10% of the taxable income
Over \$13,350 but not over \$50,800	\$1,335 plus 15% of the excess over \$13,350
Over \$50,800 but not over \$131,200	\$6,952.50 plus 25% of the excess over \$50,800
Over \$131,200 but not over \$212,500	\$27,052.50 plus 28% of the excess over \$131,200
Over \$212,500 but not over \$416,700	\$49,816.50 plus 33% of the excess over \$212,500
Over \$416,700 not over \$444,550	\$117,202.50 plus 35% of the excess over \$416,700
Over \$444,550	\$126,950 plus 39.6% of the excess over \$444,050

Single

If Taxable Income Is:	The Tax Is:
Not over \$9,325	10% of the taxable income
Over \$9,325 but not over \$37,950	\$932.50 plus 15% of the excess over \$9,325
Over \$37,950 but not over \$91,900	\$5,226.25 plus 25% of the excess over \$37,950
Over \$91,900 but not over \$191,650	\$18,713.75 plus 28% of the excess over \$91,900

Over \$191,650 but not over \$416,700	\$46,643.75 plus 33% of the excess over \$191,650
Over \$416,700 not over \$418,400	\$120,910.25 plus 35% of the excess over \$416,700
Over \$418,400	\$121,505.25 plus 39.6% of the excess over \$418,400

Married Filing Separate Returns

If Taxable Income Is:	The Tax Is:
Not over \$9,325	10% of the taxable income
Over \$9,325 but not over \$37,950	\$932.50 plus 15% of the excess over \$9,325
Over \$37,950 but not over \$76,550	\$5,226.25 plus 25% of the excess over \$37,950
Over \$76,550 but not over \$116,675	\$14,876.50 plus 28% of the excess over \$76,550
Over \$116,675 but not over \$208,350	\$26,111.25 plus 33% of the excess over \$116,675
Over \$208,350 but not over \$235,350	\$56,364 plus 35% of the excess over \$208,350
Over \$235,350	\$65,814 plus 39.6% of the excess over \$235,350

Estates and Trusts

If Taxable Income Is:	The Tax Is:
Not over \$2,550	15% of the taxable income
Over \$2,550 but not over \$6,000	\$382.50 plus 25% of the excess over \$2,550
Over \$6,000 but not over \$9,150	\$1,245 plus 28% of the excess over \$6,000
Over \$9,150 but not over \$12,500	\$2,127 plus 33% of the excess over \$9,150
Over \$12,500	\$3,232.50 plus 39.6% of the excess over \$12,500

Other inflation-adjusted items in the notice are:

Unearned Income Taxed As if Parent's Income ("Kiddie Tax")	Unearned income in excess of \$1,050
Adoption Credit	Maximum credit for both special needs adoptions and other adoptions is \$13,570. The credit begins to phase out at adjusted gross income of \$203,540 and is fully phased out at \$243,500
Lifetime Learning Credit	Modified adjusted gross income in excess of \$56,000 (\$112,000 for a joint return) is used to determine the reduction in the credit

Earned Income Credit

The threshold phase-out amounts and completed phase-out amounts for 2016 for married couples filing a joint return:

Item	Number of Qualifying Children			
	One	Two	Three or More	None
Earned Income Amount	\$10,000	\$14,040	\$14,040	\$6,670
Maximum Amount of Credit	3,400	5,616	6,318	510
Threshold Phaseout Amount (Single, Surviving Spouse or Head of Household)	18,340	18,340	18,340	8,340
Completed Phaseout Amount (Single, Surviving Spouse or Head of Household)	39,617	45,007	48,340	15,010
Threshold Phaseout	23,930	23,930	23,930	13,930

Amount (Married Filing Jointly)				
Completed Phaseout (Married Filing Jointly)	45,207	50,597	53,930	20,600

Excess Investment Income for Earned Income Credit	EITC not allowed if investment income exceeds \$3,450
---	---

Refundable Credit for Coverage Under a Qualified Health Plan. For taxable years beginning in 2017, the limitation on tax imposed under § 36B(f)(2)(B) for excess advance credit payments is determined using the following table:

If the household income (expressed as a percent of poverty line) is:	The limitation amount for unmarried individuals (other than surviving spouses and heads of household) is:	The limitation amount for all other taxpayers is:
Less than 200%	\$300	\$600
At least 200% but less than 300%	\$750	\$1,500
At least 300% but less than 400%	\$1,275	\$2,550

Rehabilitation Expenditures Treated as Separate New Building	For calendar year 2015, the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) is \$6,700.
Low-Income Housing Credit	The amount used to calculate the State housing ceiling is the greater of (1) \$2.35 multiplied by the State population or (2) \$2,710,000
Employee Health Insurance Credit under §45R	The average wage phase-out begins at \$26,200

Exemption Amounts for Alternative Minimum Tax	Joint Returns or Surviving Spouses \$84,500
	Single and Head of Household \$54,300
	Married Individuals Filing a Separate Return \$42,250
	Estates and Trusts \$24,100
AMTI Level at Which the 28% Rate Applies	Married Individuals Filing Separate Returns \$93,900
	Other Taxpayers \$187,800
AMT Phaseout of Exemption Amounts Begin at	Joint Returns or Surviving Spouses \$160,900
	Single and Head of Household \$120,700
	Married Individuals Filing Separate Returns \$80,450
AMT Exemption for Child Subject to the "Kiddie Tax"	The child's earned income plus \$7,500
Certain expenses of elementary and secondary school teachers	\$250
Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees under Accountable Plans	Up to \$17 an hour for rig related expenses if the employer does not reimburse fuel. Up to \$11 an hour if the employer does reimburse fuel [Rev Proc 2002-41]
Standard Deduction	Married Individuals Filing a Joint Return and Surviving Spouses \$12,700
	Heads of Household \$9,350
	Single \$6,350
	Married Individuals Filing Separate Returns \$6,350
Standard Deduction for Person Who May be Claimed as a Dependent	Greater of \$1,050 or the sum of \$350 and the individual's earned income

Aged or Blind Additional Standard Deduction	The additional standard deduction is \$1,250. The amount is increased to \$1,550 if the individual is unmarried and not a surviving spouse
Overall Limit on Itemized Deductions (“Pease” Limitation) Begins to Apply	Joint return or Surviving Spouse \$318,300
	Head of Household \$287,650
	Single \$261,500
	Married Individual Filing a Separate Return \$156,900
Cafeteria Plan Medical FSA Deferrals	Maximum of \$2,600
Qualified Transportation Fringe Benefit	Monthly limitation for transportation in a commuter highway vehicle and any transit pass is \$255. Monthly maximum exclusion for qualified parking is \$255
United State Savings Bonds Higher Education Expenses	Exclusion begins to phase out for modified gross income above \$117,250 for joint returns and \$78,150 for other returns. The exclusion completely phases out for modified adjusted gross income of \$147,250 or more for joint returns and \$93,150 or more for other returns
Adoption Assistance Programs	The limits and phase outs are the same as for the adoption credit
Personal Exemption	\$4,050
Personal Exemption Phase-Out	Married filing joint and surviving spouse begins at \$311,800 and is completely phased out at \$436,300
	Heads of household begins at \$287,650 and is completely phased out at \$410,150
	Single begins at \$261,500 and is completely phased out at \$384,000

	Married individuals filing separate returns begins at \$156,900 and is completely phased out at \$218,150
Section 179 Expensing	For 2017 the maximum amount that can be expensed is \$510,000 and the amount begins to be reduced when property placed in service exceeds \$2,030,000
Eligible Long-Term Care Premiums Limit Based on Age Attained at Close of Taxable Year	40 or less \$410
	More than 40 but not more than 50 \$770
	More than 50 but not more than 60 \$1,530
	More than 60 but not more than 70 \$4,090
	More than 70 \$5,110
Medical Savings Account High Deductible Health Plan	Self-only coverage: annual deductible not less than \$2,250 and not more than \$3,350, with a maximum out of pocket of no more than \$4,500
	Family coverage: annual deductible not less than \$4,500 and not more than \$6,750, with a maximum out of pocket of no more than \$8,250
Interest on Education Loans	Begins to phase out at modified adjusted gross income of \$65,000 (\$135,000 for joint returns) and is completely phased out at MAGI of \$80,000 or more (\$165,000 or more for joint returns)
Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund Raising Campaigns	For purposes of defining the term “unrelated trade or business” for certain exempt organizations under § 513(h)(2), “low cost articles” are articles costing \$10.70 or less.
	Under § 170, the \$5, \$25, and \$50 guidelines in section 3 of Rev. Proc. 90-12, 1990-1 C.B. 471 (as amplified by Rev. Proc. 92-49, 1992-1 C.B. 987, and modified by Rev. Proc. 92-102,

	1992-2 C.B. 579), for the value of insubstantial benefits that may be received by a donor in return for a contribution, without causing the contribution to fail to be fully deductible, are \$10.70, \$53.50, and \$107, respectively.
Covered Expatriate	An individual generally is a covered expatriate if the individual's "average annual net income tax" under §877(a)(2)(A) for the five taxable years ending before the expatriation date is more than \$162,000.
Tax Responsibilities for Expatriation	The amount that would be includible in the gross income of a covered expatriate by reason of § 877A(a)(1) is reduced (but not below zero) by \$699,000.
Foreign Earned Income Exclusion	\$102,100
Unified Credit Against Estate Tax	Basic exclusion amount for 2016 is \$5,490,000
Valuation of Qualified Real Property in Decedent's Gross Estate	If the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax cannot exceed \$1,120,000.
Annual Exclusion for Gifts	Present interest gifts \$14,000
	Gifts to spouse who is not a citizen of the United States \$149,000
Requirement to Maintain Minimum Essential Coverage	The amount used to determine the penalty under §5000A(c) is \$695
Notice of Large Gifts Received from Foreign Persons	\$15,797
Interest on a Certain Portion of an Estate Tax Payable in Installments	The dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is \$1,490,000.

<p>Minimum penalty for failing to file a tax return</p>	<p>For tax years beginning in 2017, the amount of the additional tax under § 6651(a) for failure to file a tax return within 60 days of the due date of such return (determined with regard to any extensions of time for filing) shall not be less than the lesser of \$210 or 100 percent of the amount required to shown as tax on such returns.</p>
<p>Penalty for failure to file certain information returns</p>	<p>Organization (§ 6652(c)(1)(A)) – per return daily penalty \$20, maximum penalty: lesser of \$10,000 or 5% of gross receipts of the organization for the year</p>
	<p>Organization with gross receipts exceeding \$1,028,500 (§ 6652(c)(1)(A)) – per day penalty of \$100, maximum penalty of \$51,000</p>
	<p>Managers (§ 6652(c)(1)(B)) – per day penalty of \$10, maximum penalty of \$5,000</p>
	<p>Public inspection of annual returns and reports (§ 6652(c)(1)(C)) – per day penalty \$20, maximum penalty \$10,000</p>
	<p>Public inspection of applications for exemption and notice of status (§ 6652(c)(1)(D)), per day penalty of 20, no maximum limits</p>
<p>Failure to file a return required under § 6034 (relating to returns by certain trust) or § 6043(b) (relating to terminations, etc., of exempt organizations)</p>	<p>Organization or trust (§ 6652(c)(2)(A)) – per day penalty \$10, maximum penalty \$5,000</p>
	<p>Managers (§ 6652(c)(2)(B)) – per day penalty \$10, maximum penalty \$5,000</p>
	<p>Split-Interest Trust (§6652(c)(2)(C)(ii)) – per day penalty \$20, maximum penalty \$10,000</p>
	<p>Any trust with gross receipts exceeding \$257,000 (§ 6652(c)(2)(C)(ii)) – per day penalty \$100, maximum penalty \$51,000</p>

Failure to file a disclosure required under § 6033(a)(2):	Tax-exempt entity (§ 6652(c)(3)(A)) – per day penalty \$100, maximum penalty \$51,000
	Failure to comply with written demand (§ 6652(c)(3)(B)(ii)) – per day penalty \$100, maximum penalty \$10,000
Failure to furnish a copy of the return to the taxpayer (§ 6695(a))	\$50 per return, maximum penalty \$25,500
Failure to sign the return (§ 6695(b))	\$50 per return, maximum penalty \$25,500
Failure to furnish identifying number (§ 6695(c))	\$50 per return, maximum penalty \$25,500
Failure to retain copy or list of returns (§ 6695(d))	\$50 per return, maximum penalty \$25,500
Failure to file correct information returns (§ 6695(e))	\$50 per return and item in return, maximum penalty \$25,500
Negotiation of check by preparer (§ 6695(f))	\$510 per check with no limit
Failure to be diligent in determining eligibility for child tax credit, American opportunity tax credit, and earned income credit (§ 6695(g))	\$510 per return with no limits
Failure to file partnership return (§ 6698(b)(1))	\$200
Failure to file S corporation return (§ 6699(b)(1))	\$200
Failure to file correct information return and/or payee statements – average gross receipts for last three years of more than \$5,000,000	General rule - \$260 per return, maximum \$3,218,500
	Corrected on or before 30 days after required filing date - \$50 per return, maximum \$536,000
	Corrected after 30 th day but on or before August 1 st - \$100 per return, maximum penalty \$1,609,000

Failure to file correct information return and/or payee statements – average gross receipts for last three years of \$5,000,000 or less	General rule - \$260 per return, maximum penalty \$1,072,500
	Corrected on or before 30 days after required filing date - \$50 per return, maximum \$187,500
	Corrected after 30 th day but on or before August 1 st - \$100 per return, maximum penalty \$536,000
Failure to file correct information returns and/or payee statements due to an intentional disregard of the filing requirement (or correct information reporting requirement)	Return other than a return required to be filed under §§ 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, or 6050L (§ 6721(e)(2)(A)) - Greater of (i) \$530 or (ii) 10% of aggregate amount of items required to be reported correctly
	Return required to be filed under §§ 6045(a), 6050K, or 6050L (§ 6721(e)(2)(B)) - Greater of (i) \$530 or (ii) 5% of aggregate amount of items required to be reported correctly
	Return required to be filed under § 6050I(a) (§ 6721(e)(2)(C)) - Greater of (i) \$26,820 or (ii) amount of cash received up to \$107,000
	Return required to be filed under § 6050V (§ 6721(e)(2)(D)) - Greater of (i) \$530 or (ii) 10% of the value of the benefit of any contract with respect to which information is required to be included on the return
Revocation or denial of passport in case of certain tax delinquencies	Amount of a delinquent tax debt for 2017 is \$50,000
Periodic Payments Received under Qualified Long-Term Care Insurance Contracts or under Certain Life Insurance Contracts	The stated dollar amount of the per diem limitation under § 7702B(d)(4), regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual, is \$360.

SECTION: 61

LOVE OFFERINGS REPRESENTED TAXABLE COMPENSATION FOR SERVICES TO PASTOR

Citation: Jackson v. Commissioner, TC Summary Opinion 2016-69, 10/24/16

Pastor Joseph Jackson receive \$4,815 from his congregation in 2012, amounts he claimed represented nontaxable gifts to him as “love offerings” from his congregation. The IRS contended that these payments represented taxable compensation for services, thus leading to the matter to be decided by the Tax Court in the case of [Jackson v. Commissioner](#), TC Summary Opinion 2016-69.

The pastor’s relationship with the church is described by the Tax Court as follows:

In 2012 Mr. Jackson was the pastor, a director, and the registered agent for Triumph Church of God (church). Mrs. Jackson was also a church director. The church had approximately 25 to 30 active members and as many as seven ministers and offered services three days each week. Mr. Jackson had informed the church’s board of directors that he did not want to be paid a salary for his pastoral services but that he would not be opposed to receiving “love offerings”, gifts, or loans from the church.

Mr. Jackson in 2012 signed various checks from the church during 2012 that were made payable to himself, with various handwritten notations such as “Love Offering” or “Love Gift” on the memo line.

The church’s bookkeeper from 1992 to 2015 issued Mr. Jackson a Form 1099 for 2012 showing the \$4,815 of such payments as non-employee compensation. Mr. Jackson did not report these amounts as income on his return, instead taking the position they were nontaxable gifts.

IRC §102 does provide that gifts are not subject to income tax, providing at IRC §102(a) that “[g]ross income does not include the value of property acquired by gift, bequest, devise, or inheritance.” The key question, of course, is what exactly represents a gift.

The Tax Court noted that this is not a simple question, stating:

In *Commissioner v. Duberstein*, 363 U.S. at 284-285, the Supreme Court stated that the problem of distinguishing gifts from taxable income “does not lend itself to any more definitive statement that would produce a talisman for the solution of concrete cases.” The Supreme Court concluded that, in cases such as this one, the transferor’s intention is the most critical consideration, and there must be an objective inquiry into the transferor’s intent. *Id.* at 285-286. In other words, rather than relying on a taxpayer’s subjective characterization of the transfers, a court must focus on the objective facts and circumstances. *Id.* at 286.

The Court then begins to make such an objective inquiry into the taxpayer's contention that the amounts represented nontaxable gifts rather than compensation for services. The Court found:

Mr. Jackson candidly explained at trial, he had informed the board of directors that he would accept "love offerings" and gifts as substitutes for a salary. Ms. Simmons, the church's bookkeeper at the time, considered the payments to be compensation as is reflected in the Form 1099-MISC that she issued to Mr. Jackson. In the light of these facts, petitioners' subjective characterization of the transfers as nontaxable "love offerings" and "love gifts" is misguided.

Petitioners did not offer the testimony of any members of the congregation (including the other directors) or Ms. Simmons that would allow the Court to conclude that the transfers were anything other than compensation for services. The frequency of the transfers and the fact that they purport to have been made on behalf of the entire congregation is further objective evidence that the transfers represented a form of compensation. See *Goodwin v. United States*, 67 F.3d 149, 152-153 (8th Cir. 1995) (holding that substantial, ongoing cash payments collected from church congregation and transferred to pastor as "special occasion gifts" constitute taxable income).

This appears to be a case where the taxpayer believed that calling the payments something other than compensation for services would be enough to make the amounts nontaxable. However, as the Supreme Court pointed out, the real issue is not what the recipient decides the item is, but rather what was the transferor's motivation in making the payment.

In this case the payments were being made because Mr. Jackson was serving as pastor of the church. The payment to make sure the congregation had a pastor was a payment for services—and simply calling the payments "love offerings" did not change that fact in the view of the law.

**SECTION: 170
PROHIBITED MODIFICATIONS FOR CONSERVATION EASEMENT NOT LIMITED TO
ITEMS LISTED IN "INCLUDING" CLAUSE IN THE IRC**

Citation: Partita Partners LLC et al. v. United States, US DC SD NY, Case No. 1:15-cv-02561, 10/25/16

The word "including" in the Internal Revenue Code creates a potential trap that taxpayers fall into from time to time. IRC §7701(c) tells us that when we see that word in the code we need to understand that the list presented is not every item that could apply to the situation.

Specifically, that provision states:

The terms “includes” and “including” when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

The case of *Partita Partners LLC et al. v. United States*, US DC SD NY, Case No. 1:15-cv-02561 involves just such a misreading of the statute—and the loss of an over \$4 million deduction due to that error.

For donations of a qualified conservation easement for a building in a registered historic district, IRC §170(h)(4)(B) provides that to qualify for the deduction:

(i) such interest—

(I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and

(II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,

In this case the Court noted:

...the Deed of Easement contained provisions that permitted Partita to undertake additional construction on the property, conditioned on the TAE's approval. Judson testified in his deposition that the development rights were reserved to add "a couple of floors, two or three floors on the roof" and to potentially extend the ground floor of the structure. (Def. 56.1 ¶¶ 12-14; Pl. 56.1 Resp. ¶¶ 12-14.)

The IRS noted that this permitted changes to the exterior of the building and denied the entire deduction.

The taxpayer protested that the law allowed for such a change—but the Court disagreed. The Court initially notes:

Unambiguously, section 170(h)(4)(B)(i)(I) requires that for a contribution to be “exclusively for conservation purposes,” it must “include[] a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building). . . .” This language is unqualified. It does not, as Partita urges, allow for a restriction that could permit “construction above the roof” or for new construction that “does not extend vertically beyond the highest point of the building.” (Opp. Mem. at 10.) The statute expressly states that any contribution must be accompanied by “a restriction which preserves **the entire exterior of the building**. . . .” 26 U.S.C. § 170(h)(4)(B)(i)(I) (emphasis added).

But the taxpayer argued that none of those changes affected front, sides, rear, and height of the building and, therefore, are not covered by the provision noted. Citing the definition found in IRC §7701(c), the Court notes:

The statute describes the exterior as "including the front, sides, rear, and height of the building," but the use of the word "including" does not, as Partita argues, limit the exterior solely to those features.

SECTION: 3121

SOCIAL SECURITY WAGE BASE AND OTHER RELATED ITEMS FOR 2017

Citation: Social Security Administration News Release, 10/19/16

The Social Security Administration announced in an October 19, 2016 [news release](#) that the maximum amount of earnings subject to Social Security tax in 2017 will rise to \$127,200 from the maximum \$118,500 that applied for 2016.

The retirement earnings test exemption amounts will also rise in 2017. For a worker under full retirement age the dollar amount of earnings at which benefits will be reduced is \$16,920 (\$1,410/month) in 2017 except for the year in which the worker obtains full retirement age for which the reduction will begin at annual earnings of \$44,880 (\$3,740/month). The 2016 amounts were \$15,720 (\$1,310/month) and \$41,880 (\$3,490/month).

The amount of earnings to obtain one quarter of coverage will rise from 2016's \$1,260 to \$1,300 in 2017. A worker may earn a maximum of four quarters of coverage in a single year with earnings of \$5,200 in 2017.

SECTION: 3121

DOMESTIC WORKER THRESHOLD AMOUNTS ISSUED FOR 2017

Citation: Social Security Administration Website, 10/19/16

The Social Security Administration has provided on the [Employment Coverage Threshold](#) page on their website, information on the coverage threshold levels for domestic workers in 2017. The threshold will remain at \$2,000 in 2017, the same level as it was set at for 2016.

SECTION: 4980D

EDUCATIONAL INSTITUTIONS GIVEN TEMPORARY RELIEF FROM APPLICATION OF MARKET REFORM RULES TO CERTAIN STUDENT HEALTH PREMIUM REDUCTION PROGRAMS, RELIEF LATER EXTENDED INDEFINITELY

Citation: Notice 2016-17, 2/5/16, FAQs About Affordable Care Act Implementation Part 33, DOL ESBA Website, 10/21/16

Another unexpected consequence of the IRS's interpretation of the interaction of the market reform rules and reimbursement of individual policies in [Notice 2013-54](#), leading to a new temporary relief provision for premium reduction arrangements related to student health plans in [Notice 2016-17](#). The Department of Labor later extended this relief until further guidance is issued in [FAQs About Affordable Care Act Implementation Part 33](#) posted on the ESBA's website.

The IRS describes the issue as follows:

Many colleges and universities provide students (typically graduate students) with student health coverage at greatly reduced or no cost as part of their student package, which often includes tuition assistance and a stipend for living expenses. The student health coverage can be provided either through individual health insurance or through coverage that is self-insured by the college or university. For these students, the bill they receive from the school for the health coverage premium may take into account a premium reduction arrangement. Because some of these students also perform services for the school (such as teaching or research), the question has been raised whether such premium reduction arrangements might be employer-sponsored group health plans, and, as a result, might be viewed as EPPs that violate market reform provisions of the Affordable Care Act. Whether a particular arrangement constitutes a group health plan will depend on all of the facts and circumstances.

Such an arrangement for a student that performs services for the institution would violate the market reform provisions of the Affordable Care Act as interpreted in Notice 2013-54. As such, the institution would be facing a \$100 per day per participant penalty under IRC §4980D for having an employer sponsored plan in violation of the provisions of the Public Health Service Act (PHSA).

The original notice provided that no penalty will be asserted against such programs or a plan or policy year beginning before January 1, 2017. The relief is intended to give the institutions time to revise their programs to come into compliance with the requirements under the Affordable Care Act.

However, in October of 2016 the Department of Labor announced that this relief would be extended beyond the January 1, 2017 date until further guidance is issued. The Department explained the reason for this extension as follows:

Colleges and universities have premium reduction arrangements for graduate student health coverage that are often part of a large and complex admission offer and acceptance process. Additionally, Congress evidenced an intent in the Affordable Care Act to preserve the ability of institutions of higher education to continue offering student health insurance plans otherwise permitted under applicable Federal, State, or local law.