APPEALS COURT BREATHES NEW LIFE INTO OVERSTATED BASIS ISSUE

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On several occasions, we have written about cases where courts have held that the six-year extended statute of limitations for a 25% omission of gross income from an income tax return will not apply when the unreported income arises from the taxpayer overstating his basis in a sold asset. It now appears that the IRS' dogged persistence in fighting these cases has paid off, at least in one court.

In a decision of the Seventh Circuit Court of Appeals, the court has reversed the Tax Court in its decision and held that an overstatement of basis is an omission of gross income for this purpose.

This decision is contrary to holdings in the Nine Circuit and in the Court of Appeals for the Federal Circuit. Thus, the stage is set for a possible US Supreme Court resolution of this issue.

Beard v Comm., (CA 7, 1/26/2011)

Authored by Charles Rubin, Esq. Mr. Rubin is a Florida Bar Board Certified tax attorney with the firm of Gutter Chaves Josepher Rubin Forman Fleisher P.A. (www.floridatax.com) His practice focuses on protecting & enhancing individual, family & business wealth through: Planning to Minimize Taxes (U.S. & International) • Estate Planning, Charitable, Marital & Succession Planning • Business Structuring & Transactions • Trusts & Estates (Administration-Disputes-Drafting) • Creditor Protection. He can be reached at 561-998-7847 or at crubin@floridatax.com. This article was previously published at http://www.rubinontax.blogspot.com.