From the desk of Jeanne M. Kerkstra, Esq., CPA

Viewpoint
State of Flux

1. The United States Court of Appeals for the District of Columbia Circuit has ***vacated*** its August 22, 2006 decision on December 22, 2006 in its controversial ruling in *Murphy v. IRS* (D.C. Cir., No. 05-5139) in which the Court held that IRC § 104(a)(2)[1] was unconstitutional as it applies to an award of damages for emotional distress or mental anguish and loss of reputation due to compensation for nonphysical personal injury. Most likely, they would like to revisit its conclusion and redact its startling finding of unconstitutionality.

2. The IRS is seeking clarity on what may be considered a "transaction of interest" to be added to the ever-expanding circle of tax shelter regulations. It's humorous that as Treasury Tax Legislative Counsel Michael Desmond said, "We want to hear from people who are not going to comment when you put out a notice asking for comment." It will be interesting to note who comments.

3. As are most of us, the IRS is grappling with the issue of whether tax strategies should be able to be patented. The IRS just wants to go after "bad" patents (otherwise known as abusive transactions). However, they are concerned that they would receive information on all patented tax strategies resulting in a mountain of paperwork for the IRS to go through.

4. Treasury Assistant Secretary for Tax Policy, Eric Solomon, has stated that with regards to the developing "economic substance" arguments, it could go one of two ways: codification or 40% penalty if a transaction was found to be void of substance.

As noted above, there may be a lot of talk, but not a lot of actual firm guidance. Stay tuned.

[1] Internal Revenue Code of 1986, as amended.

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