EXECUTIVE SUMMARY OF ARTICLES FROM AMERICAN JOURNAL OF TAX POLICY RECEIVED.

JUL. 2, 1990

========== SUMMARY ==========

ABSTRACT: Treasury has received an executive summary of some articles in The American Journal of Tax Policy from Samuel P. Guyton of the American College of Tax Counsel.

SUMMARY: Samuel P. Guyton of the American College of Tax Counsel, Nashville, Tenn., has sent Treasury an executive summary of the articles in The American Journal of Tax Policy. The Report of the New York State Bar Association Special Committee on Pension Simplification, chaired by Alvin D. Lurie, says that rules governing retirement plans have grown too complex. According to Guyton, the committee says that the rules cannot be administered by employers or enforced by the Service. In addition to the complexity, says the committee, the rules are burdensome because of their continual fluctuation. The report makes recommendations on how to solve the problems.

Professor Schaffer and Dr. Fox have written an article on the history of section 125, according to Guyton. They point out that some of the policies underlying the statute were conflicting and that cafeteria plans have become more important than the drafters originally intended and will continue to grow in importance.

Professor Crane, according to Guyton, argues that the prepayment of a debt for less than face value should be treated as a sale.

Mr. Schinner, a student author, suggests that all students be allowed to deduct some of their educational expenses. He points out that student athletes are not currently taxed on their athletic scholarships, even though these expenses represent compensation. Schinner says that, to equalize the treatment of student athletes and other students, all should be allowed to deduct some educational expenses.

========== FULL TEXT ==========

July 2, 1990

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Mr. Kenneth Gideon

Asst. Sec. For Tax Policy

U.S. Treasury Dept.

15th & Penn Ave. N.W.

Washington, D.C. 20220

Dear Ken:

Under separate cover you will be receiving Volume 8, Number 1, of The American Journal of Tax Policy. An Executive Summary of the articles appearing in this issue of the Journal is enclosed.

The Report of the New York State Bar Association Special Committee on Pension Simplification concludes that the tax rules pertaining to retirement plans have become too complex and makes specific recommendations to address this problem.

Professor Schafer and Dr. Fox provide a helpful description of the conflicting policies underlying Section 125 of the Internal Revenue Code concerning cafeteria plans and describe the issues surrounding the income tax treatment of health care provided by employers to employees.

In an article on the treatment of discharge of business indebtedness on the prepayment of debt for less than face value, Professor Crane contends that such prepayment should be viewed as a closing of the transaction (i.e., a sale) rather than a reverse loan.

The winner of the 8th annual student writing contest proposes a modification of Section 117 of the Internal Revenue Code to allow all students and not just athletes to receive tax benefits for their educational expenses.

Sincerely,

Samuel P. Guyton

Chairman

American College of Tax Counsel

Nashville, Tennessee 37205

THE AMERICAN JOURNAL OF TAX POLICY

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EXECUTIVE SUMMARY

The articles in Volume 8, Number 1, of the Journal discuss a variety of issues that have been addressed in these pages before.

Alvin D. Lurie of the New York Bar (and a former Assistant Commissioner for Employee Plans and Exempt Organizations) responds to the recommendations of Professors Altman and Marmor in Volume 7, Number 1, that stricter rules be imposed on eligibility, coverage, vesting, and integration in qualified retirement plans to assure that more employees receive benefits. His view is that the key to benefits for more employees is incentives for employers to cover the employees.

That brief response serves as an introduction to the Report of the New York State Bar Association Special Committee on Pension Simplification, of which Mr. Lurie was Chair. The Report finds that the rules governing qualified retirement plans have grown so complex that they can hardly be administered by employers or enforced by the Internal Revenue Service. Even worse than complexity is the constant change in the rules by legislation, regulation, and litigation that makes it impossible to know from day to day what the law is or to predict what it will be tomorrow. The Report makes specific recommendations to solve the problems and to make the system workable until the problems are solved.

Professor Schaffer and Dr. Fox analyze the history of section 125 of the Code governing cafeteria plans. Their focus is the role of the Treasury in making health policy through the tax law. The article contains a useful description of the conflicting policies underlying section 125, e.g., the article points out that the drafters of section 125 never resolved the question whether the discrimination test should be based on eligibility or on actual participation. Cafeteria plans have become vastly more important than was envisioned in 1978 and it is likely that their evolution will continue. This historical study of section 125 adds significantly to understanding the issues in the income tax treatment of health care provided to employees by employers.

Professor Crane responds to an Article in Volume 6, Number 1, of the Journal in which Mr. Kotlarsky argued that the discharge of business indebtedness on the prepayment of debt for less than face value should be treated as a reverse loan, i.e., a loan from the borrower back to the lender, with difference between the amount paid and the face amount of the original debt

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accounted for under the original issue discount rules. Professor Crane argues instead that the treatment of the prepayment should be viewed as the closing of the transaction, i.e., a sale rather than a loan. She further points out that often the lender can achieve a better after-tax result by selling the original debt to a third party just as the borrower can achieve a better after-tax result by buying third party debt. That leads her to conclude that the transactions will not often occur in the form described by Mr. Kotlarsky.

Finally, the winner of the Eighth Annual Student Writing Contest, Mr. Schinner, points out that student-athletes are more like employees than students and that athletic scholarships could be taxed as compensation. That result, he concludes, is unlikely to be adopted and would be unfair to student-athletes in any event. He therefore proposes a modification of section 117 that would allow all students, not just athletes, to deduct some of their educational expenses. This would equalize the position of students and student-athletes without penalizing the latter.

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