So Close, Yet So Far, from the Desired Tax Result: Three Recent Cases Showing the Pivotal Role of Closing Agreements

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I. Introduction

Studies have shown that the majority of car wrecks occur very close to a person's home. Among the theories for this phenomenon is that drivers, feeling comfortable when a trip is almost complete, let down their guard, get sloppy, and ignore dangers. This happens in the context of tax disputes, too. After engaging in a lengthy fight with the Internal Revenue Service ("IRS") and resolving complex issues, many taxpayers and their advisors relax. All that remains is memorializing the terms with the IRS in a so-called Closing Agreement.[1] They believe, mistakenly, that this should be easy.

Cases abound in which the use of imprecise language, failure to address all pertinent items, ignorance of obscure tax issues, and other shortfalls trigger disastrous results. This article explains the main rules related to Closing Agreements and analyzes three recent cases highlighting what can go wrong, for the taxpayers and the IRS, when they fail to conclude cases properly.

II. Overview of Closing Agreements

The IRS generally can enter into a Closing Agreement with any taxpayer, with respect to any tax, for any period.[2] The rationales for the IRS to conclude a matter *via* a Closing Agreement are expansive. Indeed, the IRS can utilize a Closing Agreement where there appears to be a benefit in having a case "permanently and conclusively closed," or if the taxpayer presents "good and sufficient reasons" and the IRS will not sustain any disadvantage.[3] The IRS, in its sole discretion, decides whether the requisite criteria have been satisfied in a particular situation.[4]

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With respect to decisiveness, a Closing Agreement ordinarily is "final and conclusive," the matters covered shall not be reopened by the IRS, and the Closing Agreement shall not be annulled, modified, set aside, or disregarded in any subsequent lawsuit, action, or proceeding.[5] There are exceptions, of course. The general rules become inapplicable where the taxpayer engaged in fraud, malfeasance, or misrepresentation of material fact.[6]

The IRS warns its personnel about the permanence of Closing Agreements, explaining that "[b]ecause of the finality with which [Closing Agreements] are imbued, it is extremely important that they be carefully drafted."[7] The IRS further admonishes that, in the case of a dispute with a taxpayer, the courts might consider extrinsic evidence, but the focus will be on the specific language of the Closing Agreement itself.[8] The IRS also emphasizes to its troops that they should prepare Closing Agreements "with great caution" because any ambiguities will be resolved against the drafter, the IRS.[9]

Tax disputes are often high-stakes affairs. Consequently, those wrangling with the IRS would be prudent to have a strong team on their side, including tax counsel possessing serious experience with tax disputes and successfully ending them with comprehensive Closing Agreements.

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A recent Tax Court decision featured a primer on contractual principles as they apply to Closing Agreements. It offered the following guidance:

- Closing Agreements generally are final, conclusive, and binding on the parties;
- Closing Agreements may not be annulled, voided, modified, disregarded, or rescinded, unless there is a showing of fraud, malfeasance, or misrepresentation of material fact;
- Closing Agreements are strictly construed to cover only the issues addressed therein;
- Recitals in a Closing Agreement are explanatory and provide insight regarding the intent of the parties, but they are not substantive provisions;
- Closing Agreements are contracts and subject to the normal rules of contract interpretation;
- Closing Agreements must be read as a whole, taking into account the context; and
- Courts cannot consider extrinsic evidence (*i.e.*, anything beyond the express words of the Closing Agreement) to determine intent, except when a Closing Agreement is ambiguous.[10]

III. Three Recent Cases Involving Closing Agreements

Several recent cases have underscored tricky issues associated with Closing Agreements. This article addresses three of them below.

A. First Case

The first case was *Crandall v. Commissioner*.[11]

1. Main Facts

The taxpayers in *Crandall* were a married couple, with the wife being a dual citizen of the United States and Italy. The taxpayers split their time between the two countries. At some point, the wife worked for the Italian government and became eligible for a government pension.

The years relevant to the case were 2003 through 2011. During this period, the taxpayers received pension payments, annuities, interest, and dividends from Italian sources ("Italian Passive Income"). They paid income tax in Italy on such amounts.

The taxpayers filed joint Forms 1040 (*U.S. Individual Income Tax Returns*) for 2003 through 2010. They did *not* report the Italian Passive Income on such Forms 1040, and they did *not* claim foreign tax credits ("FTCs") for the taxes that they paid to the Italian government either.

In 2011, the taxpayers realized that they had misunderstood their duties, and they hired attorneys to help them pro-actively rectify matters with the IRS. They applied for the Offshore Voluntary Disclosure Program ("OVDP"). As they were working on the materials for their OVDP application, the deadline for 2011 arrived, and the taxpayers wanted to start doing things correctly. Therefore, they filed a timely joint Form 1040 for 2011, reporting Italian Passive Income, along with an FTC of $14,156 for the taxes that they had already paid abroad.

The taxpayers filed their application packet for the OVDP one month later. Among other things, it contained Forms 1040X (*Amended U.S. Individual Income Tax Returns*) for 2003 through 2011, reporting all Italian Passive Income received each year and claiming the corresponding FTCs.

The figures for 2011 are key to the dispute in *Crandall*. On their original Form 1040 for 2011, the taxpayers reported $63,902 of Italian Passive Income and an FTC of $14,156. Later, on their Form 1040X, the taxpayers increased the Italian Passive Income by $496 (bringing it to $64,398) and increased the FTC by $123 (bringing it to $14,279). Importantly, aside from the FTC, the taxpayers did *not* claim any other credits for 2011, such as an alternative minimum tax ("AMT") credit.

The IRS audited the OVDP application and rejected all the Forms 1040X. The taxpayers and IRS squabbled over the issues for approximately two years. Then, in May 2015, the Revenue Agent sent an Examination Report, proposing additional tax liabilities ("Examination Report"). Such liabilities did *not* result from *increases* of Italian Passive Income received by the taxpayers, but rather from *decreases* in the FTCs allowed by the IRS.

With respect to 2011, the Examination Report indicated that the appropriate FTC was $2,165, instead of the $14,156 that the taxpayers claimed on their Form 1040, or the $14,279 that they subsequently claimed on their Form 1040X. Critically, the Revenue Agent "inadvertently allowed" the taxpayers an AMT credit of $6,661 in the Examination Report. To be clear, the Revenue Agent was the sole cause of the AMT credit situation; the taxpayers never claimed an AMT credit.

The taxpayers, with hopes of concluding matters after nearly three years of dealing with the OVDP process, sent the Revenue Agent a check in June 2015 satisfying all liabilities asserted in the Examination Report, including the one for 2011.

Soon thereafter, the Revenue Agent sent the taxpayers a Closing Agreement. The taxpayers dutifully executed it and returned it to the Revenue Agent that same month. The Closing Agreement ended the way they all do, stating that it "contains the complete agreement between the parties" and "is final and conclusive," unless the IRS later discovers that the taxpayers engaged in fraud, malfeasance, or misrepresentation of material fact. The Closing Agreement never mentioned the earlier Examination Report or the amount of the FTC for 2011.

2. Actions After Execution of the Closing Agreement

The taxpayers likely were relieved to have the Closing Agreement after participating in a multi-year ordeal with the IRS. This comfort was brief, though, as the IRS proposed additional income taxes and penalties for 2011 just two months later. Focus on the numbers. The Notice of Deficiency showed an alleged tax liability of $6,661, *i.e.*, the same amount as the AMT credit that the Revenue Agent "accidentally allowed" the taxpayers in the Examination Report.

The taxpayers filed a Petition with the Tax Court disputing the Notice of Deficiency.

3. Analysis by the Tax Court

a) Main Positions of the Parties. The taxpayers made several arguments, the primary of which was that the Closing Agreement already covered the FTC issue for all years contemplated by the OVDP, 2003 through 2011, and it prevented the IRS from later issuing the Notice of Deficiency for 2011.

The IRS saw it differently, of course. It acknowledged that the Closing Agreement applied to 2003 through 2011, it covered FTC matters for all such years, and it stated that the taxpayers were entitled to an FTC for 2011. However, the IRS contended that the absence of a *specific amount* of the FTC in the Closing Agreement means that the taxpayers and IRS never agreed on that score, such that the IRS was free to challenge the FTC *via* a Notice of Deficiency.

b) Conclusiveness of Closing Agreements. The Tax Court explained that Paragraph 4 of the Closing Agreement was the only segment that addressed the eligibility of the taxpayers to claim an FTC for 2011. It said that "[d]uring tax years 2003 through 2011, Taxpayer was entitled to a foreign tax credit … for foreign income taxes paid or accrued to a foreign country or U.S. possession." Paragraph 4 confirmed that the taxpayers should get an FTC for 2011, but it does *not* set a *specific amount*.

The amount of the FTC was covered in Paragraph 3. It stated that the taxpayers "paid or accrued foreign income taxes to Italy and various other countries eligible for foreign tax credit." The corresponding chart showed the exact FTC amounts allowed for 2003 through 2010, but it was silent about 2011.

The Tax Court observed that, when one reads Paragraph 4 and Paragraph 3 together, they show an agreement that the taxpayers should get an FTC of an *unstated amount*.

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The Tax Court then turned to Paragraph 8 for more guidance. It expressly stated that the Closing Agreement did not prevent the IRS from later auditing the taxpayers and proposing adjustments "*unrelated* to offshore financial arrangements." It also permitted the IRS to propose changes "*related* to offshore financial arrangements [but] not included in Taxpayer's voluntary disclosure referred to in Paragraph 1" of the Closing Agreement.

Next, the Tax Court looked to the end of the Closing Agreement, which said that it was "final and conclusive," unless the taxpayers engaged in fraud, malfeasance, or misrepresentation of material fact.

The Tax Court concluded that, when Paragraph 8 and the end of the Closing Agreement are jointly considered, they reflect an intent by the parties to grant finality to the tax consequences stemming from the OVDP. Therefore, the Closing Agreement precluded the IRS from issuing the Notice of Deficiency, unless the FTC for 2011 constituted either (i) an item "*unrelated* to offshore financial arrangements" or (ii) "*related* to offshore financial arrangements [but] not included in Taxpayer's voluntary disclosure referred to in paragraph 1" of the Closing Agreement.

c) Applicability of Exceptions. The IRS argued that the FTC for 2011 was an item "*unrelated* to offshore financial arrangements." The Tax Court rebuffed this argument. It explained that the FTC for 2011 clearly related to the offshore arrangements of the taxpayers because their FTC arose from the payment of foreign income taxes on the Italian Passive Income.

Alternatively, the IRS tried to convince the Tax Court that the FTC for 2011 was "*related* to offshore financial arrangements [but was] not included in Taxpayer's voluntary disclosure referred to in paragraph 1" of the Closing Agreement. The Tax Court rejected this contention, too, for the following reasons.

Paragraph 1 of the Closing Agreement stated that the taxpayers "had additional unreported income and overstated deductions for tax years 2003 through 2011 relating to the voluntary disclosure." Applying pure textualism, the IRS claimed that FTCs were not included in Paragraph 1, as it only expressly covered foreign income and deductions, not credits. The Tax Court acknowledged the limiting language of Paragraph 1, but emphasized that it is inconsistent with other aspects of the Closing Agreement. For instance, the Recitals state that the taxpayers desired to resolve, for 2003 through 2011, the proper amount of income taxes, penalties, and interest. The Tax Court concluded that the FTCs related to the "offshore financial arrangements" of the taxpayers, they were addressed in the Closing Agreement, they affected the calculation of the total liabilities under the OVDP, and they, along with the Italian Passive Income to which they correspond, constituted "the heart of the Closing Agreement."[12]

The Tax Court explained that, even if the Closing Agreement were ambiguous, extrinsic evidence supported the Tax Court's decision. The taxpayers filed Forms 1040X for 2003 through 2011 as part of the OVDP, reporting additional Italian Passive Income, along with the matching FTCs. The FTCs were the principal area of dispute because the IRS rejected the Forms 1040X and issued an Examination Report significantly decreasing them. Thus, reasoned the Tax Court, the FTCs for all years, including 2011, were an "integral part" of the OVDP negotiations, and thus they were items the parties intended to finalize through the Closing Agreement.[13]

The IRS then took another approach. It suggested that, even if the FTCs were within the scope of the Closing Agreement, the IRS nevertheless was allowed to later adjust the FTC for 2011 because the failure to specify *the amount* of the FTC in the Closing Agreement means that the parties never agreed on it. The Tax Court pointed to Paragraph 4, which stated that the taxpayers were entitled to an FTC for 2011, and then concluded as follows: "If [the taxpayers] were entitled to an FTC for 2011, they must have been entitled to an FTC of some amount. The parties' failure to specify that amount does not mean there was no agreement concerning the 2011 FTC."[14]

The Tax Court recognized that the amount was ambiguous, so it looked to extrinsic evidence for clarity about the intent of the parties. The Tax Court outlined three possible sources for determining the proper amount of FTCs for 2011: (i) The FTC of $14,156 that the taxpayers claimed on their Form 1040; (ii) The FTC of $14,279 that the taxpayers claimed on the Form 1040X they filed as part of the OVDP; or (iii) The FTC of $2,165 that the Revenue Agent suggested in the Examination Report.

The Tax Court started in reverse order, beginning with the third option. The Tax Court pointed out that because the taxpayers paid the IRS the figures set forth in the Examination Report, the taxpayers "seemingly agreed" with the FTC calculation for all relevant years, including 2011. However, since the IRS attorneys failed to raise this argument as part of the litigation, the Tax Court considered it waived. The Tax Court then analyzed the second option. The Tax Court explained that the IRS rejected the Forms 1040X filed by the taxpayers, which shows that the parties never agreed on the FTC of $14,279 claimed on the Form 1040X for 2011. By process of elimination, the Tax Court concluded that the parties must have agreed to

an FTC of $14,156, which was the figure shown on the Form 1040 for 2011.

The Tax Court ultimately ruled that the Closing Agreement was final as to all issues it covered, including the FTCs in 2011. The IRS, therefore, could not collect additional tax revenue for 2011 by issuing the Notice of Deficiency.

B. Second Case

We now turn to *Mattson v. United States*, a case involving U.S. citizens working overseas, special tax benefits for expatriates, the effect of Closing Agreements, novel interpretations of treaties, refund actions, and procedural twists.[15]

1. Background on Pine Gap

The Pine Gap Joint Defense Facility is a satellite-surveillance base operated by the U.S. and Australian governments. In 1966, the two governments executed an agreement regarding various aspects of Pine Gap, including how U.S. individuals working there would be taxed ("Pine Gap Agreement").[16]

The IRS and Australian tax authorities later developed procedures designed to alleviate tax complexity and compliance burdens for U.S. individuals working at Pine Gap. Such procedures allow U.S. individuals to avoid being subject to income taxes in Australia and filing tax returns in Australia. To obtain these benefits, taxpayers must sign a Closing Agreement with the IRS, which mandates that the U.S. individuals will report on their annual Forms 1040 all income made at Pine Gap, will not claim the foreign earned income exclusion ("FEIE") with respect to such income, and will enclose a copy of the Closing Agreement with their Forms 1040.

The IRS emphasizes that entering into a Closing Agreement with the IRS is optional, neither the IRS nor the taxpayer can revoke a Closing Agreement once it takes effect, and if a taxpayer signs a Closing Agreement (to avoid Australian taxes) and also claims the FEIE (to avoid U.S. taxes), then any refund issued by the IRS constitutes an "erroneous refund," must be repaid, and will trigger penalties.[17]

2. Main Facts of the Case

The taxpayers in *Mattson*, a married couple, lived in Australia and worked for the Raytheon Company at Pine Gap. In connection with their employment, the taxpayers executed a Closing Agreement with the IRS in 2015, which specifically prohibited them from claiming the FEIE in connection with their work at Pine Gap.

The taxpayers filed their Form 1040 for 2016 and did *not* attempt to benefit from the FEIE. That was consistent with the Closing Agreement. Later, the taxpayers hired a U.S. law firm ("Law Firm"), which prepared a Claim for Refund, a Form 1040X, this time seeking tax relief under the FEIE. According to Form 1040X and various enclosures, the taxpayers were entitled to claim the FEIE on the following grounds: (i) The Pine Gap Agreement, enacted in 1966, was later superseded by the income tax treaty between the United States and Australia ("Treaty"); (ii) Employees of private defense-contracting companies, like the Raytheon Company, are exempt from tax in Australia under the Treaty; and (iii) The Closing Agreement that the taxpayers signed with the IRS is invalid because it was signed under duress and it contains material misrepresentations about tax duties.[18]

The taxpayers did not personally sign the Claim for Refund; only one attorney at the Law Firm did so. Moreover, the attorney did not enclose a Form 2848 (*Power of Attorney and Declaration of Representative*) with the Claim for Refund authorizing the attorney, or anyone else at the Law Firm, to sign and file the Claim for Refund for the taxpayers.

In November 2018, the Law Firm sent the IRS a Form 2848 indicating that three of its attorneys could represent the taxpayers generally. The Form 2428 had a few problems, though. The taxpayers never signed it; rather, one of the attorneys initialed it for them, thereby authorizing herself to act for the taxpayers. Additionally, the Form 2848 failed to check the specific box on Line 5a indicating that the attorneys at the Law Firm had the power to "sign a return," including as a Claim for Refund, for the taxpayers.

In early 2019, the IRS sent two letters to the taxpayers, indicating that the IRS "proposed to disallow" the Claim for Refund because its records showed that the taxpayers were employees of the Raytheon Company in Australia, they might have entered into a Closing Agreement with the IRS waiving their right to claim the FEIE, the waiver covers income paid by the Raytheon Company, and the Pine Gap Agreement liberates taxpayers from Australian income taxes and filing duties in exchange for not claiming the FEIE. Soon thereafter, in July 2019, the Law Firm started a Suit for Refund by filing a Complaint with a federal court on behalf of the taxpayers. At some point *after* the commencement of the Suit for Refund, the IRS issued the taxpayers a formal Notice of Disallowance of their Claim for Refund.

The U.S. Department of Justice ("DOJ"), which handles tax refund litigation, filed a Motion with the court asking it to dismiss the case because the court supposedly lacked jurisdiction to consider it in the first place.

3. Main Positions by the Parties

The DOJ argued that the court lacked authority to hear the case because the taxpayers neither personally signed the Claim for Refund nor enclosed an appropriate Form 2848 with it.

The taxpayers did not dispute those facts. Instead, they argued that the Claim for Refund was valid nonetheless because the IRS supposedly waived the technical problems when it examined the substance of the Claim for Refund. The taxpayers contended, alternatively, that they first filed an "informal" Claim for Refund and later perfected it.

4. Analysis by the Court

The court held in favor of the DOJ. In doing so, it explained that, when it comes to Claims for Refund, they "must be verified by a written declaration that is made under the penalty of perjury" and they must enclose a valid Form 2848 reflecting a "clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representatives."[19] The court further indicated that several other courts have previously examined the question of whether the IRS can waive the signature-verification requirement for Claims for Refund and determined that, no, it cannot because such an obligation is statutory (*i.e.*, derived from legislation enacted by Congress), not regulatory (*i.e.*, derived from regulations or other administrative guidance issued by the IRS). Finally, the court was unpersuaded that the "informal" doctrine applied because the taxpayers never filed an amended Claim for Refund to correct the deficiencies in the original one before filing the Suit for Refund.

Because the court dismissed the case for lack of jurisdiction, it never had the chance to address the substantive legal issues centered on the Closing Agreement and the Treaty.

C. Third Case

The most recent case was *Chesapeake Energy Corporation v. United States*.[20]

1. Main Facts

The taxpayer disagreed with the IRS regarding its tax liability for 2010 through 2013. The taxpayer apparently stood its ground during an audit, and then elevated the dispute to the Appeals Office. It also looks like the parties agreed to participate in Post-Appeals Mediation ("PAM"), creating a PAM Statement as part of the process.[21] Ultimately, the parties stipulated that the taxpayer had a tax deficiency of approximately $7.5 million for 2012, but owed no taxes for the other years. Based on the scant details provided in the court's opinion, it appears that the taxpayer had liabilities of $0 in all years except 2012, and a reduced liability in 2012, thanks to certain loss carryovers from 2009 and/or loss carrybacks from 2013. To memorialize the accord, the parties executed a Closing Agreement, which reflected "their agreed-upon computation methods."

The taxpayer then paid the $7.5 million, plus about $1.4 million in interest. The taxpayer calculated the interest pursuant to the general rule in Code Sec. 6601(a), which states the following:

> If any amount of tax imposed by [the Internal Revenue Code] is not paid or on before the last date prescribed for payment, interest on such amount at the underpayment rate established under Code Sec. 6621 shall be paid for the period from such last date to the dated paid.

Later, the IRS assessed approximately $12.6 million *more* in interest, citing a special rule in Code Sec. 6601(d)(1). That provision, addressing situations in which net operating loss or capital loss carrybacks reduce income taxes, creates the following rule:

> If the amount of any [income] tax … is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax *shall not affect* the computation of interest … for the period ending with the filing date for the taxable year in which the net operating loss or net capital loss arises.

The relevant regulations offer additional clarity, explaining that if the carryback of certain losses or credits to another year "eliminates or reduces a deficiency of income tax for that period, the full amount of the deficiency *will nevertheless bear interest* … from the last date prescribed for payment of such tax until the last day of the taxable year in which the loss or credit arose."[22]

The case does not provide details, but it appears that the taxpayer begrudgingly paid the additional $12.6 million, filed a Claim a Refund, and, after getting rejected or ignored by the IRS, filed a Suit for Refund in federal court. Later, before trial, the parties filed Cross-Motions for Summary Judgment on the two issues summarized below.

2. Analysis by the Court

The court first addressed whether the Closing Agreement prohibited the IRS from assessing $12.6 million more in interest under Code Sec. 6601(d)(1). As one would expect, the court began by summarizing the rules about the IRS' ability to enter into Closing Agreements and

how to resolve subsequent quarrels with taxpayers. The court then turned to the case at hand. The court noted that the Closing Agreement did not specifically explain how interest on the tax deficiency for 2012 was to be calculated. Citing to an earlier case by the Court of Appeals, the court explained that such omission did *not* mean that the Closing Agreement was ambiguous, because relevant law already provides for interest calculation. Since the Closing Agreement was not ambiguous, the court could not consider extrinsic evidence from either party. Viewing solely the language in the Closing Agreement, the court held that the IRS was not prevented from assessing millions more in interest under Code Sec. 6601(d)(1) because the IRS "did not specifically waive its right to collect the same." To dispel any doubt, the court, again referring to an earlier case in the Court of Appeals wrangling with a similar issue, concluded as follows: "The Closing Agreement does not address Code Sec. 6601(d)(1), or indeed the subject of interest at all, and as a matter of law, the [Closing] Agreement does not prohibit the IRS from assessing interest under Code Sec. 6601(d)(1)."

Having decided that the Closing Agreement did not stop the IRS from charging extra interest, the court next turned to the issue of whether the "negotiated calculations" by the parties blocked the application of Code Sec. 6601(d)(1). The taxpayer advanced a few arguments, starting with the notion that it never agreed to the pre-carryback calculations that the IRS utilized. The court rejected this position for several reasons. For instance, because the parties "did not include the pre-carryback taxable income figures in their Closing Agreement, [it] did not bind the IRS to a designated set of figures." The court also underscored that a couple of the supporting documents offered by the taxpayer ended up backfiring. Specifically, the court explained that the Form 870-AD (*Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment*) addressed only the tax deficiency, not the pre-carryback taxable income. Moreover, the court admonished that the PAM Statement showed the pre-carryback figure on which the interest would be calculated, a number that was "readily identifiable" to the taxpayer.

IV. Conclusion

Does a Revenue Agent yearn to tell his manager that the IRS cannot assess more taxes against a taxpayer because of inconsistencies or ambiguities in a Closing Agreement? No. Does an attorney desire to reveal to a client that failure to file a proper Claim for Refund in the first place prevented the court from later addressing Closing Agreement issues? Again, no. Does an attorney want to inform a client that it owes $12.5 million in additional interest because of an omission from, or misunderstanding about, a Closing Agreement? Of course not. Tax disputes are often high-stakes affairs. Consequently, those wrangling with the IRS would be prudent to have a strong team on their side, including tax counsel possessing serious experience with tax disputes and successfully ending them with comprehensive Closing Agreements.

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ENDNOTES

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1 The IRS uses different types of Closing Agreements depending on the circumstances, with the main ones being Form 906 (*Closing Agreement as to Final Determination Covering Specific Matters*) and Form 866 (*Agreement as to Final Determination of Tax Liability*). *See* Reg. §601.202(b); Rev. Proc. 68-16, Sections 6.01 and 6.02, 1968-1 CB 770; IRM 8.13.1.2.1(10) (May 25, 2018).

2 Code Sec. 7121(a); Reg. §301.7121-1(a); Reg. §601.202(a).

3 Reg. §301.7121-1(a); Reg. §601.202(a)(2).

4 Rev. Proc. 68-16, Section 3.01, 1968-1 CB 770.

5 Code Sec. 7121(b); Reg. §301.7121-1(c).

6 Code Sec. 7121(b).

7 Rev. Proc. 68-16, Section 7.01, 1968-1 CB 770.

8 Rev. Proc. 68-16, Section 7.02, 1968-1 CB 770.

9 IRM 8.13.1.2.1(1) (May 25, 2018).

10 *J.K. Crandall*, 121 TCM 1272, Dec. 61,846(M), TC Memo. 2021-39.

11 *Id.*

12 *Id.*, pg. 25.

13 *Id.*, pgs. 25 and 26.

14 *Id.*, pg. 26.

15 *Mattson*, FedCl, 2021-1 USTC ¶50,124, 127 AFTR 2d 2021-1539 (2021). The author reviewed various documents in preparing the article, including the exhibits to the Complaint filed July 31, 2019, Answer and Additional Defense filed October 30, 2019, Reply in Further Support of the Motion to Dismiss the Complaint filed April 24, 2020; Supplemental Reply Brief in Support of the Motion to Dismiss the Complaint filed November 4, 2020, and Response to Supplemental Reply Brief filed November 23, 2020.

16 Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America relating to the Establishment of a Joint Defense Space Research Facility, Australian Treaty Series 1966 No. 17 (Dec. 9, 1966).

17 *www.irs.gov/individuals/international-taxpayers/foreign-earned-income-exclusion-and-the-pine-gap-facility*.

18 *Allen et al v. Northrop Grumman, AECOM General Dynamics, and Raytheon Company*, U.S. District Court, Northern District of TX, Case 3:19-CV-00491-K, Class Action Original Complaint (Feb. 26, 2019) (suit filed by the Law Firm involving allegation of improper disclosure by the IRS of confidential data related to employment and tax issues of various U.S. individuals working at Pine Gap).

19 Reg. §301.6402-2(b)(1); Reg. §301.6402-2(e); Reg. §601.503(a)(6).

20 *Chesapeake Energy Corporation*, DC-OK, 130 AFTR 2d 2022-5933 (2022).

21 Rev. Proc. 2014-63, IRB 2014-53, 1014; Code Sec. 7123(b)(1).

22 Reg. §301.6601-1(e)(1) (emphasis added).

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