

# Representative Legal Matters

## A. Duane Webber

In addition to numerous non-docketed matters, his principal docketed cases include:

- *Altera Corp. & Subsidiaries v. Commissioner*, 145 T.C. 3 (2015) (challenge to section 482 cost-sharing regulations based on Administrative Procedure Act)
- *America Online Inc. v. United States*, 64 Fed. Cl. 571 (Ct. Fed. Cl. 2005), on appeal at Docket No. 05-5138 (Fed. Cir.) (overpayment of Federal excise tax for services provided by telecommunications providers)
- *Apple Computer Inc. v. Commissioner*, US Tax Court Docket No. 17759-95 (whether assembly of personal computers CFC in Ireland constituted “manufacturing” for purposes of subpart F of the Code and other issues)
- *Apple Computer Inc. v. Commissioner*, US Tax Court Docket No. 5496-93 (disallowance of entire research tax credit and other issues)
- *Aristrain Int’l Inc. v. Commissioner*, US Tax Court Docket No. 20134-91 (allocations of income from non-U.S. corporation to its U.S. subsidiary relating to distribution activities)
- *Astra USA Inc. v. Commissioner*, US Tax Court Docket Nos. 5565-97 & 10962-98 (issues relating to capitalization of marketing and distributing costs, valuation of intangible property, research tax credits, transfer pricing, and other matters)
- *Bausch & Lomb Incorporated v. Commissioner*, 71 T.C.M. (CCH) 2031 (1996) (whether assembly of sunglasses by CFCs in Ireland and Hong Kong constituted “manufacturing” for purposes of subpart F of the Code and other issues)
- *Bausch & Lomb Incorporated v. Commissioner*, 92 T.C. 525, 594 (1989), aff’d, 933 F.2d 1084 (2d Cir. 1991) (arm’s length nature of prices paid to Irish subsidiary for contact lenses and royalties received for the use of intangible property)
- *Borden Inc. v. United States*, US Court of Fed. Claims No. 93-779T (qualification of property for energy tax credit)
- *CGG Americas Inc. v. Commissioner*, US Tax Court Docket No. 25097-10 (application of section 167(h) to geophysical expenses relating to the exploration for oil and gas)
- *CIGNA Corporation v. Commissioner*, 177 F.3d 136 (3d Cir. 1999), affg. 109 T.C. 100 (1997) (treatment of pre-acquisition net operating losses under I.R.C. §1503(c)(1) following acquisition of non-life insurance company by a life insurance company)

- *Cincinnati Milacron Inc. v. Commissioner*, US Tax Court Docket No. 13152-91 (all events test issue relating to timing of income and deductions, LIFO inventory issues, change in accounting method issues, and other issues)
- *Compaq Computer Corporation v. Commissioner*, 78 T.C.M. (CCH) 20 (1999) (rejection of IRS allocations of income under section 482 of USD232 million relating to purchases from Singapore subsidiary and allowance of USD21 million taxpayer affirmative claim)
- *Compaq Computer Corporation v. Commissioner*, 277 F.3d 778 (5th Cir. 2001), rev'g, 113 T.C. 214 (1999) (application of economic substance doctrine to disallow foreign tax credits)
- *Convergent Technologies v. Commissioner*, 70 T.C.M. (CCH) 87 (1995) (manufacturer entitled to deduction for value of stock issued upon exercise of stock warrants issued to original equipment manufacturer as inducement for large-quantity purchases)
- *Dorothy R. Diebold v. Commissioner*, T.C.M. (CCH) 370 (2010) (substance over form issues relating to a sale of stock and related transferee liability)
- *Electronic Arts Inc. v. Commissioner*, 118 T.C. No. 13 (Mar. 22, 2002) (application of active trade or business test and significant business presence test under I.R.C. §936(h)(5)(B) with respect to operations in Puerto Rico)
- *Epsolon Limited by and through Sligo (2000) Company Inc.*, Docket No. 05-999T (Ct. Fed. Cl.) (investment strategy challenged by Internal Revenue Service)
- *Equator Bank Ltd. v. Commissioner*, US Tax Court Docket No. 20148-91 (treatment of income from foreign transactions as effectively connected income with non-US corporations US trade or business)
- *First American Media Inc. as Successor in Interest to John H. Phipps Inc. v. Commissioner*, US Tax Court Docket Nos. 9695-00 & 9696-00 (proposed recharacterization of stock sale as asset sale due to intermediary, based on IRS Notice 2001-16, and related issues)
- *Flight Options LLC v. United States*, Docket No. 1-11.c.v.-01531, N.D. Ohio (claims for refund of Federal air transportation excise taxes under I.R.C section 4261) *Flight Options, LLC v. United States*, Docket No. 1-11.c.v.-01531, N.D. Ohio (claims for refund of Federal air transportation excise taxes under I.R.C section 4261)
- *Guardian Industries Corp. v. Commissioner*, 143 T.C. 1 (2014) (issues relating to application of section 162(f) and to provisions under Subpart F of the Code addressing foreign base company services income)
- *Guardian Industries Corp. v. United States*, 65 Fed. Cl. 50 (Ct. Fed. Cl. 2005), on appeal at Docket No. 06-50-58 (Fed. Cir.) (foreign tax credit under §901 with respect to foreign taxes of a consolidated group of CFCs)

- *Hechler v. Commissioner*, Docket Nos. 16571-04 and 16572-04 (Tax Court) (investment strategy challenged by Internal Revenue Service)
- *Hewlett-Packard Company and Consolidated Subsidiaries v. Commissioner*, US Tax Court, Docket No. 21976-07 (various transfer pricing issues and other international tax issues)
- *John Doe 1 and John Doe 2 v. KPMG LLP*, Docket No. 03-2036 (N.D. Tex. filed on 9 September 2003) (whether a tax adviser owes a duty to assert a taxpayer's good faith defense to the disclosure of the taxpayer's identity pursuant to a summons)
- *Linear Technology Corporation v. Commissioner*, US Tax Court, Docket No. 25690-07 (ETI qualification and quantification issues, and other domestic issues)
- *Marsh & McLennan Companies Inc. v. United States*, 50 Fed. Cl. 140 (Ct. Fed. Cl. 2001) aff'd 302 F.3d 1369 (Fed. Cir. 2002), reh'g denied 2002 U.S. App. LEXIS 24499, cert. denied 538 US 925 (2003) (computing allowable interest on overpayments pursuant to §6611)
- *McDonnell Douglas Corporation v. United States of America*, US Court of Federal Claims, No. 07-617T (computation of overpayment interest)
- *Nenkin Shikin Unyo Kikin a.k.a. Government Pension Investment Fund v. Commissioner*, US Tax Court Docket No. 10356-00 (entitlement of arm of Government of Japan to exemption from tax under I.R.C. §892 with respect to US source investment income and related commercial activity issues)
- *RadioShack Corporation on behalf of itself and others similarly situated v. the United States of America*, US Court of Federal Claims, Docket No. 06-28 T (class action relating to erroneously collected communications excise tax)
- *RadioShack Corporation v. United States of America*, US Court of Appeals for the Federal Circuit, Docket No. 2008-5106 (appeal regarding period of limitations for communications excise taxes wrongfully collected)
- *Salus Mundi Foundation, Transferee, et al. v. Commissioner*, 101 T.C.M. (CCH) 1289 (2012), pending before Tax Court on remand from the Second Circuit (Docket No. 12-3225) and the Ninth Circuit (Docket No. 12-72527) (substance over form issues relating to a sale of stock and related transferee liability issues)
- *SunAmerica Inc. and Subsidiaries c/o AIG Retirement Services Inc. f.k.a. AIG SunAmerica Inc. and American International Group Inc. v. Commissioner*, US Tax Court, Docket No. 10438-06 (treatment of certain insurance reserves and other liabilities, and related issues)
- *Sun Microsystems v. Commissioner*, 66 TCM (CCH) 997 (1993) (manufacturer entitled to deduction for value of stock issued upon exercise of stock warrants issued to original equipment manufacturer as inducement for large-quantity purchases)

- *Tucker v. Commissioner*, Docket No. 12874-05 (Tax Court 7 February 2006) (granting motion to dismiss for lack of jurisdiction based on TEFRA partnership issues)
- *Tucker v. Commissioner*, Docket No. 12307-04 (Tax Court) (investment strategy challenged by Internal Revenue Service; motion to stay proceedings successfully defeated)
- *United States v. Bausch & Lomb Inc.*, US District Court for the Western District of NY, No. 00-MC-6011 CJS (summons enforcement action denied - taxpayer fully complied)
- *Yamaha Motor Corp. (USA) v. Commissioner*, US Tax Court Nos. 2674-88 & 26319-88 (transfer pricing issues relating to purchases from parent company in Japan)
- *Zurich Insurance Company v. Commissioner*, US Tax Court Docket No. 1021-95 (inclusion of retrospective rate debits in unearned premiums, application of IRC §842(b) to formulary investment income provisions to US branch of Swiss corporation and related Tax Treaty issues)
- *Zurich Insurance Company v. Commissioner*, US Tax Court No. 27200-96 (proper treatment of salvage and subrogation costs of a property and casualty insurance company)
- *Zurich Holding Company v. Commissioner*, TC No. 5323-97 (deductibility of asbestos removal costs, research tax credit issues, and other issues)