he rents to others. He now wants to transfer the home to his children through a Qualified Personal Residence Trust (QPRT).

Why: A QPRT lets one transfer a home to another in a future year, continue to use the home in the meantime, and greatly reduce gift tax on the transfer by obtaining a valuation discount on the home for gift tax purposes. But a QPRT can be used only with a personal residence—not an investment property.

IRS ruling: The owner makes personal use of the vacation home each year that exceeds the greater of 14 days or 10% of the number of days it is rented to others, so the home *does* qualify as a personal residence.

Letter Ruling 200117021.

■ **IRS's "presumption of correctness" is lost when it makes a mistake.** The IRS valued an estate at more than $100 million, but the estate's executor valued it at only $28 million. In Tax Court, the IRS's expert witness lowered its valuation by more than $30 million. The Court accepted this valuation—which was still triple the estate's—saying the estate had failed to meet its "burden of proof" in refuting the IRS valuation. The estate appealed.

Court of Appeals: IRS tax assessments normally are presumed correct—but the presumption is lost when the IRS makes a mistake. Here, the IRS's reduction of its own valuation by $30 million showed its initial valuation was arbitrary. The decision was thrown out, and the IRS had to assume the burden of disproving the estate's valuation.

Estate of Paul Mitchell, CA-9, No. 99-70421; 87 AFTR2d ¶2001-881.

■ **Partner under investigation can't bind others.** The IRS began a criminal investigation of the managers of a partnership that it suspected of being an illegal tax shelter. It obtained a waiver of the statute of limitations from the partnership's designated "tax matters partner" (TMP), which gave it extra time to conduct the investigation. Later, it assessed taxes against the partnership's other investors.

Court: When the TMP became the subject of a criminal investigation, a clear conflict of interest arose between him and the other partners—so he lost his authority to bind them with the tax waiver. Thus, the limitation period had expired for the other partners and they were safe from tax.

Alan L. Wechsler, DC SD NY, No. 99 Civ. 1578; 87 AFTR2d ¶2001-922.

■ **Late refund allowed when first request was never officially denied.** The IRS responded to a tax return requesting a refund by saying it contained math errors and asking for more information. The taxpayer didn't respond until after the refund deadline had passed.

IRS ruling: Since a math error notice is not a refund disallowance notice, the IRS never formally disallowed the refund request. The latter is sent by certified or registered mail, is clearly stated, and informs the taxpayer of the right to appeal. Since no such notice was sent to the taxpayer, the original, timely refund request remained in effect. The taxpayer would receive the refund.

IRS Service Center Advice 200111043.

■ **Husband not liable for tax on wife's distributions from IRA.** After a woman's father died, she received large distributions from his IRA. Her husband believed they were tax free on the basis of conversations he had with the estate's lawyer and an ex-IRS agent, so he didn't include them on their joint tax return. Later, the couple divorced, and the IRS tried to

PAYROLL Hotline

REPORTING CATCH-UP CONTRIBUTIONS

Starting in 2002, employees age 50 and older can make extra "catch-up contribution" elective deferrals to 401(k) plans and other retirement plans in excess of normal contribution limits.

IRS: For 2002, employers are required to report employees' elective pension deferrals on Form W-2 in box 12 using Codes D through H and Code S.

Also: Reporting for catch-up contributions will be addressed in the *2002 Instructions for Forms 1099-R and 5498.*

IRS Announcement 2001-93; IRB 2001-44, 416.