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Practitioners' Corner: Wolters Kluwer Interviews TCPI Symposium Experts on Current and Future State of Tax Policy

Tax reform legislation widely known as the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) was signed into law on December 22, 2017. The TCJA brought forth the most sweeping overhaul of the U.S. tax code in over 30 years. However, widespread efforts to implement the TCJA amidst ongoing tax-related global developments continue to this day. Now, two years following its enactment, Treasury, the IRS, and the tax community remain steadfast in working toward understanding and communicating congressional intent under the new law.

The Tax Council Policy Institute (TCPI), a nonprofit, non-partisan public policy research and educational organization, will devote its 21st Annual Tax Policy & Practice Symposium to reviewing the current state of U.S. tax law and how it may continue to evolve, when it presents "Hindsight is 2020: What the TCJA and Global Developments Tell us About the Future of Tax" (February 13-14, 2020).

Wolters Kluwer Tax & Accounting sat down recently with two principal organizers of this year's TCPI Symposium to preview some of the issues that will be discussed. Lynda K. Walker, Esq., is executive director and general counsel of TCPI. John Gimigliano is principal-in-charge of legislative and regulatory services in the Washington National Tax practice of KPMG LLP and former senior tax counsel for the House Ways and Means Committee. KPMG is program manager for the 2020 TCPI Symposium.

Wolters Kluwer: As the name of this year's symposium reflects, hindsight is 20/20. Are there any particular policy choices made two years ago under the TCJA that standout now as being either well-matched or less than ideal for the functionality of the current U.S. tax system as it relates to domestic as well as multinational business?

Lynda K. Walker: Tax law is constantly evolving, and it seems now more rapidly than ever. Congress and the business community worked for years to advance some of the concepts in the TCJA, particularly the necessity of lower rates for global competitiveness. Enactment of the major overhaul of the business tax system within that legislation was met with much enthusiasm, but it is not the end of the challenge. Promulgation of regulations—an ongoing process—as well as implementation of those rules and the administration of them are major areas of focus for tax executives and will be covered extensively at our upcoming conference. We have designed this symposium's program to examine how well the tax system is working to meet the goals that Congress was looking to achieve given the passage of time and the practical application of the law. The experts speaking at the symposium are from various fields and bring varying perspectives. We hope to provide our attendees with the gamut of expert thought on the issues of current interest. The program also strives to bring some new understanding to both external and internal pressures on our tax system(s) in the U.S. and globally, not only currently but prospectively.

John Gimigliano: In some ways it is almost too early to know, being only one complete tax filing season in, but that is part of what we are trying to explore by bringing together

the experts at the symposium. Although the TCJA was a partisan piece of legislation and there were people that claimed it did or did not do certain things, hopefully we can now put that aside and evaluate what the law does and does not do, and maybe we now have enough experience with it to make those determinations.

Wolters Kluwer: As you mentioned, internal and external pressures on the federal tax system will be examined during the symposium. What are some examples of internal and external forces that affect tax policy generally?

John Gimigliano: You can look at budgetary and political pressures as key internal forces that affect all tax policy. As I said, the TCJA was a Republican bill, and Democrats have made it pretty clear that they have issues with not only how it was enacted but also the substance of the bill. We saw these internal, political pressures manifest especially because we had an election since the enactment of the TCJA, and the House has gone from Republican to Democratic-controlled. That is not to suggest cause and effect, but it does change the potential for changes to the system that was enacted in December of 2017. And, of course there is another big election looming that could change that political calculus again. As for external pressures, the most notable one is the work being done at the Organisation for Economic Co-operation and Development (OECD) to address the digital economy and the opportunity to change international tax rules pretty dramatically in a way that was not envisioned when the TCJA was negotiated, drafted, and enacted. Additionally, there are external trade pressures at work on the tax system. There has always been a fine line between tax and trade policy, and if we have dramatic changes in trade policy, it could certainly trickle over to the tax side.

Lynda K. Walker: Currently, we are seeing a recognition of the correlation between tax and trade policy that is vastly different from a few years ago. Among our peers in the tax policy community, we now talk about tax and trade as related in a way that seems to have more common acceptance than in the past. There is a convergence of these other global issues on tax policy in a very distinguishable way that is a big potential external pressure.

Wolters Kluwer: Can you touch upon the importance of businesses staying informed of the direction the OECD will go with regard to reforms to international tax standards?

Lynda K. Walker: It is really important that businesses pay very close attention to what is going on in the OECD, the European Union (EU), and other economic blocks around the world, perhaps now more than ever. During the time we were debating tax reform in this country, other countries began to move in their efforts to broaden their tax bases. We were occupied with tax reform, and their tax proposals and efforts were moving forward. Moreover, tax executives need certainty—and the whole debate and movement toward multilateral agreements from bilateral and unilateral jurisdictional action could be a forbearer to another regime in global taxation. It is important that taxpayers be part of the dialogue and that business has a seat at the table with government as matters that could have a sweeping impact on where and how business is conducted are discussed and determined.

Wolters Kluwer: As TCPI materials noted, the symposium is expected to highlight the "real world" effects of the TCJA and how it has changed thinking about global investment. What might a preview of this discussion include?

John Gimigliano: Now stepping away from the theoretical of enactment and all the things the TCJA may or may not do, it is important to examine what it means now to be a tax professional. With two years of experience with the TCJA, what does it really do, and how does it change the decisions that tax directors have to make as to whether, when, or where to buy equipment or to develop intellectual property? Those are the kind of questions we are hoping to address with this real world application of our experience with the TCJA.

Wolters Kluwer: Generally, have the regulations promulgated since passage of the TCJA succeeded in clarifying complex provisions of the statute?

Lynda K. Walker: The TCJA is so broad and impacts so much of the tax code, it really does seem like we are relying heavily on regulations, which we always do in the tax world, but we still need a lot more explanation on some of the TCJA provisions. I am sure it has been a challenge for the IRS, and we are very happy that we will have Michael J. Desmond, IRS chief counsel, with us for this symposium to provide some insight into how the IRS has proceeded and plans to continue to move forward with guidance.

John Gimigliano: This is the challenge of being in the executive branch and getting a piece of legislation handed to you and trying to make it work. As a former tax writer, it is often easier to write these provisions in the abstract, but it is so much more challenging in various ways to make sure that it works for taxpayers and that it is administrable by the IRS. You do not want to put the IRS in a position to fail with a provision that ultimately is impossible to administer. These are the challenges that the IRS has, and so far, by all accounts, both Treasury and the IRS have done a pretty good job. But there's still so much left to do.

Wolters Kluwer: As for any particular provisions, especially those with final regulations, that may still carry uncertainty for taxpayers and practitioners, what might generally be the way to approach the conundrum?

John Gimigliano: I could point to many of the TCJA regulations that are

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

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finalized and still say that there are unanswered questions and that people are going to have to make judgment calls. That has always been the case with tax; there are always judgment calls to be made. There is no statute and no regulation that can ever anticipate every fact pattern. So, people will do their best to analyze the rules and examples provided but will ultimately have to make judgment calls.

Wolters Kluwer: How should U.S. businesses prepare for potential changes in tax policy after the elections?

Lynda K. Walker: Businesses should stay engaged in the process with policy makers and groups like TCPI. Tax executives should engage in the discussion, and never think tax law is static. Taxpayers should be prepared for government to revisit the tax code as fiscal and economic needs change, and be prepared to navigate those waters as they shift.

Wolters Kluwer: Can the current corporate tax rate really be considered "permanent" just because it was enacted as such under the TCJA, or is it a relatively impermanent feature of the tax code just like others, largely dependent upon which Party has the White House and majority in Congress?

Lynda K. Walker: It is definitely fair to say that there will be pressure put on the rate as well as the tax code in general, because both Parties have objectives that require money. I do not know that anyone believes anything in the tax code is absolutely written in stone. That is part of the challenge for business in that they need some level of certainty to make long-term business and investment decisions, and to have major changes on an ongoing basis does not provide that certainty.

John Gimigliano: Permanence is an illusion; nothing is permanent. And even temporary policy is somewhat misleading. Take for example the R&D tax credit that was finally made permanent after being considered temporary tax policy for over 30 years. These are all relative terms.

Wolters Kluwer: What are you hoping the symposium accomplishes?

Lynda K. Walker: We hope that this program accomplishes our mission, which is to bring about a stronger and better understanding of federal tax policies and how they impact business and the economy as a whole. We hope this brings some careful study to the forefront through active evaluation and open discussion so that people leave more engaged and perhaps more aware. In our programs, our goal is always to have as inclusive a dialogue as possible by engaging all the critical stakeholders, including government, business, and academia. We work diligently to elevate the discourse on issues where we all might not have exactly the same frame of reference but hopefully the same goal, which is a thriving economy where business can operate under fair and transparent tax laws.

John Gimigliano: I hope we can advance taxpayers' and practitioners' understanding of the TCJA. We have all had so many questions since its enactment in late 2017. Now with a little bit of time, hopefully by gathering these experts together and in keeping with TCPI's mission, it will advance everyone's understanding of the law—where it is working, where it is not, and what changes are likely to come.

For more information on the 2020 TCPI Symposium, go to https://www.tcpi.org/event/21st-annual-tax-policy-and-practice-symposium/.

Fleet-Average and Vehicle Cents-Per-Mile Base Valuation Amounts Updated

T.D. 9893

Final regulations increase a vehicle's maximum value for eligibility to use the fleet-average valuation rule or the vehicle cents-per-mile valuation rule. The regulations provide transition rules for certain employers. The final regulations are effective on February 5, 2020, the date of publication in the Federal Register.

TCJA Increased Maximum Vehicle Values

Before the Tax Cuts and Job Act (TCJA) (P.L. 115-97), the maximum base fair market value of a vehicle for use of the fleet-average valuation rule was $16,500, as adjusted annually for inflation (in 2017: $21,100 for a passenger automobile, and $23,300 for a truck or van). The pre-TCJA maximum base fair market value of a vehicle for use of the vehicle cents-per-mile valuation rule was $12,800, as adjusted annually for inflation (in 2017: $15,900 for a passenger automobile, and $17,800 for a truck or van). The TCJA increased these amounts to $50,000, adjusted for inflation.

To implement the changes, the IRS issued Notice 2019-8, I.R.B. 2019-3, 354, to provide interim guidance for 2018 on new procedures for calculating the price inflation adjustments to the maximum vehicle values for use with the fleet-average valuation rule in Reg. §1.61-21(d) and the vehicle cents-per-mile valuation rule in Reg. §1.61-21(e) using amended Code Sec. 280F(d)(7). In Notice 2019-34. I.R.B. 2019-22, 1257, the IRS provided (among other things) that the inflation-adjusted maximum value of an employer-provided vehicle (including cars, vans, and trucks) first made available to employees for personal use in calendar year 2019 for which the vehicle cents-per-mile valuation rule or the fleet-average valuation rule may be used is $50,400. This guidance also provided information about the manner in which the Treasury Department and the IRS intended to publish the maximum vehicle value in the future.

In August 2019, a notice of proposed rulemaking was published that was consistent with Notice 2019-8 and Notice 2019-34 and reflected changes made by TCJA to the depreciation limitations in Code Sec. 280F. The final regulations update the fleet-average and vehicle cents-per-mile

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valuation rules to conform to the changes made by the TCJA.

Trucks and Vans Not Separately Valued

Before the TCJA, inflation adjustments were determined using the Consumer Price Index (CPI), which contained both a new car and a new truck component. Accordingly, separate inflation adjustments were released for cars using the car component of the CPI, and for trucks and vans using the truck component of the CPI.

Under the TCJA, the price inflation amount for automobiles (including trucks and vans) is calculated using both the CPI automobile component and the Chained Consumer Price Index for All Urban Consumers (C-CPI-U) automobile component. There is no separate C-CPI-U component for trucks and vans. As a result, the IRS will publish only one maximum value of a vehicle for use with the fleet-average and vehicle cents-per-mile valuation rules.

Transition Rules

Consistent with Notice 2019-34 and the proposed regulations, the final regulations provide several transition rules.

For the Fleet-Average Valuation Rule: If an employer did not qualify to use the fleet-average valuation rule prior to January 1, 2018, because the automobile's fair market value exceeded the inflation-adjusted maximum value requirement for the year the automobile was first made available to the employee for personal use, the employer may adopt the fleet-average valuation rule for 2018 or 2019, provided the fair market value of the automobile does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019.

For the Vehicle Cents-Per-Mile Valuation Rule: An employer that did not qualify to adopt the vehicle cents-per-mile valuation rule for a vehicle first made available to an employee for personal use before calendar year 2018, may first adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 tax year for the vehicle if:

- the employer did not qualify to adopt the vehicle cents-per-mile valuation rule because the vehicle's fair market value exceeded the inflation-adjusted limitation for the year the vehicle was first used by the employee for personal use; and
- the vehicle's fair market value does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019.

Similarly, if the commuting valuation rule (Reg. §1.61-21(f)) was utilized when the vehicle was first used by an employee for personal use, the employer may adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 tax year if:

- the employer did not qualify to switch to the vehicle cents-per-mile valuation rule on the first day on which the commuting valuation rule was not used because the vehicle's fair market value exceeded the inflation-adjusted limitation for the year the commuting valuation rule was first not used; and
- the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019.

An employer that adopts the vehicle cents-per-mile valuation rule must continue to use the rule for all subsequent years in which the vehicle qualifies for use of the rule. However, the employer may use the commuting valuation rule for the vehicle for any year during which use of the vehicle qualifies for the commuting valuation rule.

House Ways and Means Committee to Hold Hearing on Corporate Tax Rate

The House Ways and Means Committee announced that it will hold a hearing to examine the corporate tax rate. The hearing, titled "The Disappearing Corporate Income Tax," was scheduled for February 11.

The corporate tax rate was lowered to 21 percent in 2017 by the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97). Since the TCJA's enactment, many Democratic tax writers have called for raising the corporate tax rate to help offset other tax-related priorities.

"The hearing will focus on federal income taxes that large corporations pay," Erin Hatch, a spokesperson for Chairman Richard Neal, D-Mass., told Wolters Kluwer on February 4. "It will review regulations implementing provisions in the Republican Tax Law (P.L. 115-97) affecting large corporations, and how those regulations might result in even lower taxes for large companies. It also will examine [IRS] audit rates of large corporations and compare them with enforcement rates on low-income taxpayers claiming refundable tax credits, such as the earned income tax credit (EITC)."

IRS Launches New "Identity Theft Central" Online Resource

IR-2020-27

The IRS has announced the launch of the "Identity Theft Central," a resource designed to improve online access to information on identity theft and data security protection for taxpayers, tax professionals, and businesses. This resource provides information on how to report identity theft, how taxpayers can protect themselves against phishing, online scams, and more. It is located on the IRS website (https://www.irs.gov/identity-theft-central) and is available 24/7.

The IRS, state tax agencies, and the nation's tax industry—all working in partnership under the Security Summit banner—have made substantial progress in the fight against tax-related identity theft since 2015. However, thieves are constantly looking for ways to steal the identities of individuals, tax professionals, and businesses in order to file fraudulent tax returns for refunds.

As a part of the effort to help educate and improve protections, the IRS has redesigned the information into a new, streamlined page. The following information is available to taxpayers:

- *Taxpayer Guide to Identity Theft*, which includes information on what to do if someone becomes a victim of identity theft.
- *Identity Theft Information for Tax Professionals*, which includes information on knowing responsibilities under the law.
- *Identity Theft Information for Businesses*, which includes information on how to recognize the signs of identity theft.

The IRS advises tax professionals and others to bookmark the Identity Theft Central webpage and check their specific guidance periodically for updates. The page also features videos on key topics that can be used by taxpayers or partner groups, including a video message from IRS Commissioner Chuck Rettig on warning signs for phishing email scams.

Married Individuals Denied Charitable Contribution Deductions; Supervisory Approval Not Met

N.A. Carter, TC Memo. 2020-21, Dec. 61,626(M)

Married individuals were not allowed charitable contribution deductions related to the conveyance of an easement over a tract of land to a qualified organization. The taxpayers were partners of a partnership that conveyed the easement to the qualified organization, but the easement restricted the use of the covered property and prohibited the construction or occupancy of any dwellings. However, gross valuation misstatement penalties were not sustained because written approval of the penalties by the revenue agent's immediate supervisor was not timely.

Charitable Contribution Deduction

The partnership reported a charitable contribution deduction equal to the easement's purported value, and the taxpayers claimed deductions on their individual returns equal to their shares of the partnership's deduction. However, the easement did not meet the perpetual restriction requirement of Code Sec. 170(h)(2). The restrictions provided in the easement that would remain applicable to any selected building areas would have not prevented the development of single-family homes by the taxpayers. Further, that usage of the building areas meant that they were not preserved as open spaces, and any natural habitats or similar ecosystems within them were also not protected. Since the allowed use within the building areas would be antithetical to the easement's conservation purposes, the residual restrictions applicable within the building areas were not sufficiently meaningful to be taken into account in applying Code Sec. 170(h)(2). Consequently, the easement was not described in Code Sec. 170(h)(2)(C), it was not a "qualified real property interest," and the conveyance of the easement to the organization was not a qualified conservation contribution.

Supervisory Approval

The IRS had determined that the taxpayers were subject to gross valuation misstatement penalties under Code Sec. 6662. However, the revenue agent (RA), who had initially determined those penalties, had sent examination reports that proposed the imposition of penalties before receiving the written approval from his immediate supervisor. Further, the RA's reports did not include "30-day letters" giving the taxpayers the right to challenge the adjustments and penalties so proposed. Since the approval of the RA's immediate supervisor came only after the RA sent reports to the taxpayers that advised them of his initial determination of the penalties, that approval was not timely for purposes of Code Sec. 6751(b)(1). Therefore the taxpayers were not subject to gross valuation misstatement penalties for the tax years at issue.

Claims for Unpaid Estate Tax Allowed to Proceed

C.L. Marin, DC N.Y., 2020-1 USTC ¶60,722

The government's action to collect unpaid estate tax from the executors of an estate, in their capacity as executors, individuals and beneficiaries, was allowed to proceed.

The estate's primary asset was real estate. At the time the estate tax return was filed, the estate elected to defer payment of the estate tax and made timely interest payments for five years. However, the estate then defaulted by failing to make additional payments and failing to provide the IRS a bond or special lien consent. The executor informed the IRS that the estate was in poor financial condition and did not have sufficient assets to pay its tax liability.

Upon the decedent's death, the beneficiaries received property that was held in certain "in trust for" accounts. In addition, the estate paid debts to other creditors.

Executor's Personal Liability

The government stated a claim against the executor under 31 USC §3713, because the government asserted that the estate

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was insolvent, based on the estate's own claims, and that the executor made payments to other creditors with knowledge of the government's priority claim for unpaid taxes. This claim was not barred by the doctrine of collateral estoppel, because the issue was not fairly or fully litigated in the probate court, as suggested by the executor.

Transferee Liability

An assessment against the transferees under Code Sec. 6901 was not required, because the government made a timely assessment against the estate. Code Sec. 6324 imposes liability on the transferees of an estate's property when the estate does not pay its taxes. Personal liability may be imposed under Code Sec. 6324(a)(2) against the transferees of the estate's property to the extent of its date-of-death value. Contrary to the claim of the beneficiaries, the government was not first required to make a claim directly against them under Code Sec. 6901 before bringing a Code Sec. 6324(a)(2) transferee liability claim.

Foreclosure of Tax Liens

The government's claim to foreclose its federal tax liens, for an order of judicial sale of the estate's properties, and to appoint a receiver to operate and liquidate the properties, were not dismissed. The estate argued that the probate exception to federal jurisdiction resulted in the court not having jurisdiction over the foreclosure claim. However, the probate court was not exercising custody or jurisdiction over any estate property. The issue of whether the estate owned the 29 properties at the time of assessment was a determination of fact. Based on the allegations of the compliant, the government stated a Code Sec. 7403 claim to foreclose upon its Code Sec. 6321 estate tax lien. In addition, the government may seek to foreclose upon a Code Sec. 6324 estate tax lien, which although not explicitly stated in the complaint, was determined to be an additional basis for the government's foreclosure claim.

Inflation Adjustment Factors and Reference Prices for Indian Coal Production Credit Provided

The IRS has provided the inflation adjustment factors and reference prices to be used in computing the Indian coal credit for calendar years 2018 and 2019. The inflation adjustment factor for Indian coal is 1.2330 for 2018 and 1.2627 for 2019. The credit for Indian coal production is $2.466 per ton of Indian coal sold in 2018, and $2.525 per ton of Indian coal sold in 2019.

Notice 2020-9

TAX BRIEFS

Choice of Entity

A limited liability company was granted a 120-day extension to make an election under Code Sec. 7701 to be classified as a disregarded entity and a partnership, for two separate time periods during the tax year at issue. The taxpayer failed to timely file Form 8832, Entity Classification Election, but satisfied the requirements of Reg. §§301.9100-3 and 301.7701-3 and acted reasonably and in good faith. Granting relief would not prejudice the government's interests.

IRS Letter Ruling 202006009

Conservation Easements

A limited liability company was not entitled to a charitable contribution deduction for a conservation easement. As a result of an extinguishment provision, the conservation purpose of the easement was not "protected in perpetuity" within the meaning of Code Sec. 170(h)(5)(A).

Railroad Holdings, LLC, TC, Dec. 61,627(M)

Partnerships

A limited partnership that was classified as a partnership for federal income tax purposes was granted a 120-day extension to file a basis election under Code Sec. 754. During the tax year at issue, interests in the taxpayer were transferred. The taxpayer timely filed its tax return for the tax year, but failed to file a timely election to adjust the basis of the partnership property. The taxpayer acted reasonably and in good faith and, therefore, granting relief would not prejudice the government's interests.

IRS Letter Ruling 202006007

Private Foundations

Two foundations' procedures for awarding scholarships were approved. In each case, the procedures met the requirements under Code Sec. 4945(g)(1). The first organization operated a scholarship program for students of two countries to provide for tuition, books and equipment required for educational purposes. The second organization provided a scholarship program to high school students interested in pursuing a college degree. In both cases, the scholarship grants were not taxable expenditures under Code Sec. 4945(d)(3). Moreover, the awards were not taxable to the recipients if used for qualified tuition and related expenses subject to the limitations of Code Sec. 117(b).

IRS Letter Rulings 202006013; 202006014

REITs

The reimbursement received by a state corporation that elected to be taxed as a real estate investment trust (REIT) constituted qualifying income under Code Sec. 856(c)(5)(J)(ii). The taxpayer was formed for the purpose of owning and operating real estate, and also owned a joint venture which was treated as a partnership for U.S. federal income tax purposes. The joint venture had acquired an interest in a mixed-use residential, retail, and office development in a city under an economic development agreement which required the city to reimburse the joint venture for amounts spent on public improvements. The taxpayer's income from the economic development would predominantly be qualifying income. Further, treating the income attributable to the reimbursement payments as qualifying income solely for purposes of Code Sec. 856(c)(2) did not interfere with or impede the objectives of Congress in enacting Code Sec. 856(c)(2). Accordingly, it was appropriate to determine that income from the reimbursement payments was treated as qualifying income for purposes of Code Sec. 856(c)(2) only.

IRS Letter Ruling 202006001

Rental Real Estate

In two cases, married individuals were granted an extension to elect to treat all interests in rental real estate as a single rental real estate activity under Code Sec. 469(c)(7). In each case, the taxpayers had inadvertently filed their joint return without the statement required under Reg. §1.469-9(g)(3). Each of the entities acted reasonably and in good faith, and granting relief did not prejudice the interests of the government.

IRS Letter Rulings 202006010; 202006012

Retirement Plans

Two retirement plans' use of substitute mortality tables were approved for computing the subpopulations specified in the plans for certain years. Determinants such as the development of substitute mortality rates and whether they would sufficiently reflect the mortality experience of the applicable plan populations were considered in granting the approval. Actuarial information was required to be attached to Schedule SB when filing Form 5500, Annual Return/Report of Employee Benefit Plan, for the plan years for which the substitute mortality tables would be used. The circumstances in which use of the substitute mortality tables would terminate before the end of the 10-year period were described under Code Sec. 430(h)(3)(C)(ii) and Section 303(h)(3) of the Employment Retirement Income Security Act.

IRS Letter Rulings 202006015; 202006016

S Corporations

An entity was granted relief for the inadvertent termination of its S corporation status under Code Sec. 1362. The taxpayer intended to be treated as an S corporation and filed its tax returns accordingly for the tax year at issue. However, the S corporation election terminated because the taxpayer failed to timely file Form 2553, Election by a Small Business Corporation. The IRS ruled that the taxpayer would continue to be treated as an S corporation, provided the election was otherwise valid and not otherwise terminated.

IRS Letter Ruling 202006008

Success-Based Fees

A parent corporation of an affiliated group of companies was granted a 60-day extension to make a safe harbor election under Rev. Proc. 2011-29, I.R.B. 2011-18, 747, to deduct a portion of success-based fees it incurred as part of a merger agreement with a consortium of investors. The taxpayer had engaged a tax return preparer who was responsible for filing all tax elections for the taxpayer. Due to an administrative oversight, the election statement was not included in the taxpayer's consolidated income tax return for the tax year at issue. The taxpayer satisfied the requirements of Reg. §§301.9100-1 and 301.9100-3 and acted reasonably and in good faith, so granting relief did not prejudice the government's interests.

IRS Letter Ruling 202006011

Tax Return Preparers

The Court of Appeals affirmed the permanent injunction of the individual owner of a tax preparation business from filing and preparing income tax returns. The individual and his firm had repeatedly caused significant losses by filing thousands of tax returns that understated tax liability in numerous ways, had committed fraudulent and criminal conduct in preparing tax returns, and took unreasonable tax positions to minimize customers' tax liabilities. The individual had also spearheaded numerous violations of the statutory law resulting in multimillion dollar losses to the government.

Hill, Jr., CA-4, 2020-1 USTC ¶50,117

Trusts

In each of five cases, a grantor would not be treated as the owner of a trust as long as the trust qualified as a domestic trust and a power of appointment committee remained in existence. Since none of the members of the committee had a power exercisable by himself to vest trust income or corpus in himself, none were treated as the owner of the trust. Furthermore, the circumstances attendant on the operation of the trust would determine whether the grantor would be treated as the owner of any portion of the trust under Code Sec. 675. In addition, in each case, a contribution of property to the trust by the grantor did not qualify as a completed gift subject to federal gift tax. The grantor retained its consent power over the income and principal of the trust. The retention of the grantor's consent power, sole power and testamentary power caused the transfer of property to the trust to be incomplete for federal gift tax purposes. Committee members possessed a unanimous member power over income. In each case, any distribution of property by the committee from the trust to the grantor would not be a completed gift, subject to federal gift tax, by any member of the committee. Also, any distribution of property by the committee from the trust to any beneficiary of the trust, other than the grantor, would not be a completed gift by any

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member of the committee, other than the grantor. Moreover, no member of the committee, upon his or her death, would include in his or her estate any property held in the trust because the member is deemed to have a general power of appointment over the property held in the trust. Finally, the basis of all community property in the trust on the date of death of the predeceased grantor would receive an adjustment in basis to the fair market value of such property at the date of death of the said grantor.

IRS Letter Rulings 202006002; 202006003; 202006004; 202006005; 202006006