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2021 Budget Outlines Administration Priorities for Extending Tax Cuts, Increased IRS Funding

Budget of the U.S. Government, Fiscal Year 2021; Text of "Blocking New Corporate Tax Giveaways Act" Bill

On February 11, the White House released President Donald Trump's fiscal year (FY) 2021 budget proposal, which outlines his administration's priorities for extending certain tax cuts and increasing IRS funding. Treasury Secretary Steven Mnuchin testified before the Senate Finance Committee (SFC) on February 12 regarding the FY 2021 budget proposal.

Extension of TCJA's Individual Tax Cuts

Trump's FY 2021 budget proposal indicates that tax cuts for individuals and passthrough entities under the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97), which are set to expire at the end of 2025, would be extended. This extension is estimated to cost $1.4 trillion over 10 years, and is reportedly being used as a "placeholder" in the budget for Trump's forthcoming "Tax Cuts 2.0" plan.

Infrastructure

Trump's budget proposal also calls for a $1 trillion infrastructure package, although funding details remain scarce at this time. In January, House Democrats unveiled their infrastructure proposal, which also lacked funding details.

IRS Funding

Additionally, Trump's budget proposes $12 billion in base funding for the IRS "to modernize the taxpayer experience and ensure that the IRS can fulfill its core tax filing season responsibilities." The budget proposal would boost IRS funding from currently enacted levels of $11.5 billion.

Further, the budget would provide $300 million to continue the IRS's modernization efforts. Specifically, the budget proposal states that IRS funding would help to:

- digitize more IRS communications to taxpayers, so they can respond quickly and accurately to IRS questions;
- create a call-back function for certain IRS telephone lines, so taxpayers do not need to wait on hold to speak with an IRS representative; and
- make it easier for taxpayers to make and schedule payments online.

Hill Reaction

"The Trump Economy stands firm on the proven pro-growth pillars of tax cuts, deregulation, energy independence, and better trade deals," the budget proposal states. However, Democratic lawmakers, while highlighting criticisms of the TCJA, are all but promising Trump's budget request will not become law.

"Repealing incentives to reduce carbon emissions will hinder our fight against climate change and deter the kind of innovation our planet needs. And extending misguided tax cuts for the richest Americans will only deepen the deficit and further concentrate wealth at the top," House Ways and Means Committee Chairman Richard Neal, D-Mass., said in a statement after the budget proposal was released.

"It [Trump's budget proposal] doubles down on the failed 2017 GOP tax law, extending expiring provisions and adding $1.5 trillion more to debt over the last six years of the budget window. Most of this extension's tax breaks go to the richest one-fifth of households," House Budget Committee Democrats said in a committee report during the week of February 10.

However, it is worth noting that Trump's budget proposal is merely an annual starting point for budget negotiations as Congress has the "power of the purse." Additionally, many of Trump's requests, particularly those that include extending TCJA tax cuts, would have little chance of successfully clearing the currently Democratic-controlled House.

SFC Hearing; Wyden Bill

Secretary Mnuchin spent much of the SFC hearing praising and defending the TCJA and Treasury's implementation of the GOP law. "Tax cuts, regulatory reform, and better trade deals are improving the lives of hardworking Americans," Mnuchin told lawmakers. "Unemployment remains historically low at 3.6 percent and is at or near all-time lows for African Americans, Hispanic Americans, and veterans. The unemployment rate for women recently reached its lowest point in nearly 70 years," he added.

Likewise, SFC Chairman Chuck Grassley, R-Iowa praised the TCJA and pointed to the same statistics mentioned by Mnuchin as evidence of its success. "Statistics like these show the tax reform is a success. The Treasury Department's work to implement the new tax law has been an important part of that success," Grassley said.

However, SFC ranking member Ron Wyden, D-Ore., did not mince words when criticizing Mnuchin's leadership of Treasury, the TCJA, and related regulations. "It sure looks like corporate special interests are going to make off with new loopholes worth $100 billion in addition to their outlandish share of the original $2 trillion Trump tax law," Wyden said during his opening statement. "When people say the tax code is rigged and the Trump administration has made it worse, what I've described is a textbook case of what they are talking about."

In that vein, Wyden introduced a bill on February 12 which would block Treasury's "exception to the new tax on foreign earnings that allows multinationals to essentially choose the lowest available tax rate," as noted in Wyden's press release. During the hearing, Wyden accused Treasury of creating a new "corporate tax loophole." Generally, Wyden's bill would amend the tax code to clarify that high-taxed amounts are excluded from tested income for purposes of determining global intangible low-taxed income (GILTI) only if such amounts would be foreign base company income or insurance income.

Recently, Democrats have been criticizing Treasury for proposing related GILTI

Professionals, Taxpayers Urged to Use Multi-Factor Authentication

The IRS has urged tax professionals and taxpayers to use the multi-factor authentication feature offered on tax preparation software products for preventing data thefts. Multi-factor authentication requires returning users to enter their username/password credentials plus another data point, such as a security code sent to their mobile phone.

The IRS advised taxpayers to always opt for multi-factor authentication with tax software products because of the sensitive data held in the software or online accounts. Moreover, the IRS reminded tax professionals to beware of phishing scams that thieves commonly use to gain control of computers. Data thieves generally claim to be a potential client, a cloud storage provider, a tax software provider, or even the IRS in their effort to trick tax professionals to download attachments or open links.

In addition, the IRS reminded tax professionals that they can track the number of returns filed with their Electronic Filing Identification Number (EFIN) on a weekly basis to ensure EFINS are not being misused. Finally, the Service noted that taxpayers can visit Identity Theft Central to learn more about identity theft. Tax professionals should also visit Identity Theft Information for Tax Professionals and as well as read Publication 4557, Safeguarding Taxpayer Data to learn more about protecting data, signs of theft, or reporting data thefts.

IR-2020-32

REFERENCE KEY

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

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regulations based on corporate interests, but Mnuchin vehemently denied that claim. "Our job is to implement the legislation, not to make the legislation," he told lawmakers during the hearing. "Our job has been to implement that part of the tax code consistent with the intent and as prescribed by the law and that is what we have done."

Energy Tax Policy

Meanwhile, on the other side of the Capitol, in a February 11 letter to Senator Grassley, nearly 30 Democratic senators called for prompt committee action on energy tax policy. "Despite numerous opportunities, including in the recent tax extenders package, the Finance Committee has failed to take action on the dozens of energy tax proposals pending before it," the senators wrote in the letter led by Wyden. "Energy tax incentives have played a key part in shaping U.S. energy policy for more than 100 years, and members have shown clear interest in re-examining that ongoing role."

TAP Seeks New Members

The IRS is inviting individuals to help improve the nation's tax agency by applying to be members of the Taxpayer Advocacy Panel (TAP), the federal advisory committee that provides a forum for taxpayer concerns and makes recommendations for improving service and customer satisfaction. The TAP serves as an advisory body to the Treasury Secretary, the IRS Commissioner, and the National Taxpayer Advocate. TAP members participate in subcommittees that channel their feedback to the IRS through the Panel's parent committee.

As a federal advisory committee, TAP must have a fairly balanced membership in terms of the points of view represented. Thus, TAP membership represents a cross-section of the taxpaying public with at least one member from each state, the District of Columbia and Puerto Rico, in addition to one member representing international taxpayers. New TAP members will serve a three-year term starting in December 2020.

The IRS is seeking members or alternates in the following locations: Alabama, Alaska, Arizona, California, DC, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

The opening date for submitting applications is February 18, 2020, and the deadline for submitting applications is March 30, 2020. Interested applicants should visit the TAP website at www.improveirs.org for more information. Applications may be submitted online at www.usajobs.gov. Individuals with questions about TAP membership can call the TAP toll-free number, 1-888-912-1227 and select prompt 5. Callers outside of the U.S. should call 214-413-6523.

TAP Recruitment Notice

House Writers Debate Effects of Corporate Income Tax Cut

JCX-4-20

House Democratic and Republican tax writers debated the effects of tax reform's corporate income tax cut during a February 11 hearing convened by Democrats. Democratic lawmakers have consistently called for an increase in the corporate tax rate since it was lowered from 35 percent to 21 percent in 2017 by the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97).

During the House Ways and Means Committee hearing, Democrats largely criticized low federal income tax receipts from corporations following the TCJA's corporate tax rate cut, while Republicans focused on highlighting the resulting economic growth and global competitiveness.

Corporate Tax Revenue

House Ways and Means Committee Chairman Richard Neal, D-Mass., opened the hearing by criticizing corporate tax revenues for being at their lowest level in history. "Some large corporations pay zero year after year. It is therefore not surprising that we collect less corporate tax revenue than all but one of the other OECD nations," Neal said during opening statements.

Similarly, Jason Furman, an economic policy professor in the Harvard Kennedy School and Department of Economics at Harvard University, told lawmakers during the hearing that the low levels of corporate tax revenue are a major reason why overall federal revenue is also low. Additionally, Furman told lawmakers that there is no evidence that the TCJA has made a "substantial contribution to investment or longer-term economic growth."

Inversions

However, Douglas Holtz-Eakin, president of the American Action Forum, testified that corporate tax receipts were falling before the TCJA ever took effect. He credited the TCJA's corporate tax cut for essentially ceasing corporate inversions. A corporate inversion, in very general terms, is a process in which U.S.-based companies relocate operations outside of the country to reduce their tax burden.

"After years of having five to six prominent companies annually depart the United States, inversions have simply stopped," Holtz-Eakin testified. "Multinationals are bringing operations back to the United States, and many acquisitions of U.S. businesses now are made by U.S. firms, rather than foreign buyers," he added.

Further, Holtz-Eakin issued a reminder that "everyone bears the burden" of corporate income taxes. "Corporations are not walled off from the broader economy, and neither are the taxes imposed on corporate income. Taxes on corporations fall on stockholders, employees, and consumers alike."

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JCT

The Joint Committee on Taxation (JCT), Congress's nonpartisan scorekeeper, detailed in its February 10 report several contributing variables in understanding the corporate income tax equation and its relation to federal revenue. Generally, a corporation's income tax liability is determined by applying a 21-percent rate to its taxable income.

As the JCT notes in its report, prior to the TCJA, the corporate income tax involved a four-step graduated tax rate schedule, with a top corporate tax rate of 35 percent on taxable income in excess of $10 million. The corporate income tax also included "an alternative minimum tax (AMT) that was payable (in addition to all other tax liabilities) to the extent that it exceeded the corporation's regular income tax liability." However, the TCJA eliminated the graduated corporate rate structure and repealed the corporate AMT, effective in 2018.

More Hearings Expected

While this particular hearing convened by Democrats was generally seen on Capitol Hill to serve more of a messaging purpose rather than legislative purpose, more TCJA-related hearings are expected this year. "We're going to be doing a series of hearings on the [GOP] tax bill," Neal told the press after the hearing. "People frequently pay a lot of attention to the spending side, and we are saying that there is also a revenue question here."

Proposed Regulations Reflect Changes to Wage Withholding, Redesigned W-4

NPRM REG-132741-17; IR-2020-28

The IRS has proposed regulations with guidance for employers on withholding federal income tax from employee's wages. The proposed regulations:

- implement recent changes made to Code Secs. 3401 and 3402 by the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97); and
- reflect the redesigned 2020 Form W-4, Employee's Withholding Certificate, and the related wage withholding tables and computational procedures published in IRS Pub. 15-T, Federal Income Tax Withholding Methods.

TCJA Changes

The TCJA made many Code amendments affecting income tax withholding on wages. Among other things, the TCJA:

- repealed the rule that, for purposes collecting income tax at source on wages, the "number of withholding exemptions claimed" meant the number of withholding exemptions claimed in a withholding exemption certificate in effect, except that if no such certificate was in effect, the number of withholding exemptions claimed was considered zero;
- permanently modified the wage withholding rules and replaced "withholding exemptions" with a "withholding allowance" prorated to the payroll period, to reflect the reductions in the personal exemption amount to zero due to the temporarily repeal of the personal and dependency exemption deduction for tax years 2018–2025;
- changed the list of factors on which the withholding allowance is based, and entitled an employee to take into account the number of individuals for which the employee expects to take an income tax credit for other dependents, instead of the number of individuals for whom the employee reasonably expects to claim an personal and dependency exemption deduction;
- changed an employee's entitlement to take into account the standard deduction from an amount generally equal to one withholding exemption to the standard deduction allowable to the employee (one-half of the standard deduction for a married employee whose spouse is an employee receiving wages subject to withholding);
- added a provision that the employee's withholding allowance also takes into account whether the employee has withholding allowance certificates in effect for more than one employer;
- added the Code Sec. 199A qualified business income deduction to the list of deductions that an employee may take into account in determining the additional withholding allowance that the employee is entitled to claim on Form W-4;
- struck references to payments made under certain divorce or separation instruments; and
- changed the rules for withholding from periodic payments under Code Sec. 3405(a) when no withholding allowance certificate has been furnished.

IRS Guidance

After the TCJA was enacted, the IRS issued guidance for 2018 and 2019 to implement the changes (e.g., Notice 2018-14, I.R.B. 2018-7, 353; Notice 2018-92, I.R.B. 2018-51, 1038; Notice 2020-3, I.R.B. 2020-3, I.R.B. 2020–3, 330). The IRS also released a draft 2019 Form W-4 and instructions, which made significant changes intended to improve the accuracy of income tax withholding and to make the withholding system more transparent for employees. In response to comments received, Treasury and the IRS postponed implementing the redesigned form until 2020. The final redesigned 2020 Form W-4 was released on December 4, 2019, and was then rereleased on December 31, 2019, to reflect the amendment to the medical expense deduction threshold for 2020 made by the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).

In 2019, the IRS also released drafts of IRS Pub. 15-T, which provided percentage method tables, wage bracket withholding

tables, and other computational procedures for employers to use to compute withholding for the 2020 calendar year. IRS Pub. 15-T was finalized and released on December 24, 2019. Withholding tables previously published in IRS Pub. 15, (Circular E), Employer's Tax Guide, IRS Pub. 15-A, Employer's Supplemental Tax Guide, and IRS Pub. 51, Agricultural Employer's Tax Guide, are now published in IRS Pub. 15-T. The IRS also discontinued publishing several other withholding tables in 2020.

Puerto Rico Disaster Notice Updated

A January 17, 2020, notice granting relief to victims of earthquakes that began on December 28, 2019, in parts of Puerto Rico was updated by the IRS on February 6, 2020, to add the municipalities of Arecibo, Ciales, Hormigueros, Juana Díaz, Las Marías, Mayagüez, Morovis, Orocovis and Sabana Grande.

Puerto Rico Disaster Relief Notice (PR-2020-01)

Proposed Regulations

The proposed regulations incorporate the TCJA changes to Code Secs. 3401 and 3402, and provide flexible and administrable rules for wage withholding that work with both the 2020 Form W-4 and the related tables and computational procedures described in IRS Pub. 15-T, as well as Forms W-4 and related tables and computational procedures provided in 2019 and earlier years. The proposed regulations are generally compatible with the income tax withholding system in effect for 2019, as well as the system in effect for 2020, and may be relied on by employers for withholding until final regulations are published.

W-4 Issues

An employee is *not* required to furnish a new Form W-4 solely because of the form's redesign, regardless of when the employee's Form W-4 currently in effect was furnished. Similarly, an employer must generally continue to compute the amount of tax to be withheld from an employee's wages based on a valid Form W-4 furnished by the employee regardless of when the employee furnished the Form W-4.

The 2020 IRS Pub. 15-T provides guidance on how employers will withhold income tax using Forms W-4 furnished and in effect on or before December 31, 2019. An employer can ask all employees who were first paid wages before 2020 to furnish a 2020 Form W-4, but if it does, the employer should explain that:

- employees are not required to furnish a new Form W-4; and
- if the employee does not furnish a 2020 Form W-4, the tax to be withheld from the employee's wages will continue to be based on the last valid Form W-4 previously furnished.

Similar to the current regulations, the proposed regulations generally provide that Forms W-4 that took effect under prior law generally remain in effect until another Form W-4 is furnished. There are special rules regarding when a Form W-4 furnished by an employee subject to a "lock-in letter" stops being effective.

Periodic Payments

The proposed regulations *do not* address withholding under Code Sec. 3405(a) on periodic payments from pensions, annuities, or certain other deferred income. Instead, Notice 2020-3 describes the withholding rules for the 2020 calendar year.

Proposed Applicability Date

The proposed regulations are generally proposed to apply on the date that a Treasury Decision adopting them as final regulations is published in the Federal Register. Taxpayers may rely on the rules set forth in the notice of proposed rulemaking until that date. However, Proposed Reg. §31.3402(f)(2)-1(g) is proposed to apply on February 13, 2020 (i.e., the date the notice of proposed rulemaking was published in the Federal Register), Proposed Reg. §31.3402(f)(5)-1(a)(3) is proposed to apply on March 16, 2020 (i.e., 30 days after the date the notice of proposed rulemaking was published in the Federal Register), and a proposed removal of Reg. §31.3402(h)(4)-1(b) relating to the combined income tax withholding and employee FICA tax withholding tables is proposed to apply on and after January 1, 2020. Except for the removal of Reg. §31.3402(h)(4)-1(b), taxpayers may choose to apply the rules on or after January 1, 2020.

Comments and Requests for Hearing

Before the proposed regulations are adopted as final regulations, the IRS will consider any electronic and written comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at http://www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of its date, time, and place will be published in the Federal Register.

Electronic submissions are made via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-132741-17) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking portal, comments cannot be edited or withdrawn. The Treasury Department and the IRS will publish for public availability any comment received to their public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG-132741-17), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

All comments and requests for a public hearing must be received by April 13, 2020.

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Life Insurance Policy Sale Income Recognition Rulings Clarified

Rev. Rul. 2020-5

The IRS has modified Situation 2 and 3 in Rev. Rul. 2009-13, I.R.B. 2009-21, 1029, and Situation 2 in Rev. Rul. 2009-14, I.R.B. 2009-21, 1031, to reflect the changes made to Code Sec. 1016 by the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97).

The TCJA amended Code Sec. 1016(a)(1) to state that when determining the basis of a life insurance or annuity contract, no adjustment is made for mortality, expense, or other reasonable charges incurred under the contract.

Modifications to Revenue Rules

Rev. Rul. 2009-13 and Rev. Rul. 2009-14 present several fact situations and apply Code Sec. 1016 (prior to its amendment by the TCJA) to determine the adjusted basis of life insurance contracts. These situations have been modified to clarify that the taxpayer is not required to reduce his or her basis in the contract by the cost of insurance.

Effective Date

The modifications to Situation 2 and 3 in Rev. Rul. 2009-13, and to Situation 2 in Rev. Rul. 2009-14, are effective for transactions entered into after August 25, 2009.

Donor Failed to Provide Appraisal Summary for Conservation Easement, But Facts Disputed on Reasonable Cause

Oakhill Woods, LLC, TC Memo. 2020-24, Dec. 61,629(M)

A limited liability company (LLC) did not comply strictly or substantially with the Reg. §1.170A-13(c) substantiation requirements for its charitable donation of a conservation easement. The LLC had failed to report its cost basis as required by Form 8283, Noncash Charitable Contributions. However, disputes of material fact existed on whether the LLC had reasonable cause for its failure to supply a fully completed appraisal summary.

The LLC had contacted a consulting firm specializing in structuring conservation easements to maximize tax benefits about preparing the Form 8283, specifically with reference to reporting its "cost or adjusted basis." Allegedly in reliance on the firm's advice, the LLC did not report its cost or adjusted basis, asserting in an attachment to its Form 8283 that this information was unnecessary because "basis … is not taken into consideration when computing the amount of the deduction." This was a conscious election not to supply the required information, and the attachment did not show that the LLC was unable to provide the cost basis information.

The LLC's tax matters partner (TMP) argued that the LLC had effectively disclosed its cost basis elsewhere on its Form 1065, U.S. Return of Partnership Income, for the tax year in question. However, the regulation requires that "an appraisal summary shall include" information concerning basis.

The TMP also contended that the regulation was invalid under *Chevron, U.S.A, Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), because it did not give effect to the unambiguous language of the statute. The court rejected this argument for several reasons. A taxpayer's "return" for a particular year includes all IRS forms and schedules required to be filed as part of the return, and the Form 8283, comprising the appraisal summary, was an essential component of the TMP's return. Even if Congress had intended "appraisal summary" and "return" to be mutually exclusive terms, the Deficit Reduction Act of 1984 (DEFRA) (P.L. 98-369)—which enacted the qualified appraisal requirements for contributions of property valued over $5,000—did not prohibit the IRS from requiring that information on cost basis and the acquisition date be included both on the appraisal summary and elsewhere on the return. Also, Congress gave the IRS discretion to require Form 8283 to include whatever information it reasonably deemed relevant.

Finally, the TMP contended that the LLC had reasonably relied on advice from the CPA who prepared its return and from the consulting firm, which allegedly relayed advice from an outside law firm. The court concluded that resolving that issue would require it to address several questions for which genuine disputes of material fact appeared to exist: whether the consulting firm was a "tax professional"; whether it was "a competent and independent advisor unburdened with a conflict of interest"; whether the LLC could reasonably rely on legal advice relayed to it indirectly; whether the TMP's CPA was a competent tax professional who provided tax advice independent of the advice supplied by the consulting firm; and whether the LLC actually relied in good faith on whatever advice it received.

Supreme Court Docket: Petition for Certiorari Filed in *Altera* Case

A petition for review by the U.S. Supreme Court was filed in *Altera Corporation and Subsidiaries*, CA-9, 2019-2 USTC ¶50,276. There, the Court of Appeals for the Ninth Circuit denied a petition for rehearing *en banc* in a case in which it had ruled that a transfer pricing regulation under Code Sec. 482 was valid (*Altera Corporation and Subsidiaries*, CA-9, 2019-1 USTC ¶50,231). Under Reg. §1.482-7(d)(2), related business entities are required to share employee stock-based compensation costs under a qualified cost sharing arrangement (QCSA).

In its original opinion, the Ninth Circuit had reversed the Tax Court's ruling that the regulation was arbitrary and capricious (*Altera Corporation and Subsidiaries*, 145 TC 91, Dec. 60,354).

Tax Court Decision

The Tax Court had found unreasonable the Treasury's conclusion that the regulation was consistent with the arm's-length standard, which looks at whether the results of a transaction between related entities are consistent with the results of a comparable transaction between entities operating at arm's length. Treasury had failed to provide evidence supporting its belief that unrelated parties would share stock-based compensation costs, had not articulated why all QCSAs should be treated identically, and had failed to respond to significant comments. Thus, the regulation did not satisfy the reasoned decision-making standard.

Court of Appeals' Reversal

In reversing the Tax Court, the Ninth Circuit ruled that the regulation did not require use of a specific comparability method and comparable transactions between unrelated business entities. Instead, the regulation applied a purely internal method of allocation, distributing costs of employee stock options in proportion to the income of each related taxpayer. The Ninth Circuit determined that the regulation was entitled to deference under *Chevron, U.S.A, Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), was not arbitrary and capricious, and met the requirements of the Administrative Procedure Act under *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983).

Dissenting Opinion

Three Circuit Judges joined a dissenting opinion to the denial of the petition for rehearing *en banc*, because they felt that the Tax Court had correctly invalidated the regulation. According to the dissenters, the majority's decision invited a circuit split, ignored businesses' reasonable reliance on the arm's length standard, subjected businesses to double taxation, and made uncertain the fate of billions of dollars.

Hill Happenings

Text of "ALIGN Act" Bill

White House

President Donald Trump is expected this fall to release a tax plan that will include a 10-percent middle class tax cut, according to Trump's top economic advisor. National Economic Council Director Larry Kudlow said on February 14 that Trump's "Tax Cuts 2.0" will be released in September. Additionally, the plan is expected to include provisions that would make permanent several provisions enacted temporarily under the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97).

IRS Chief Counsel

IRS Chief Counsel Michael Desmond spoke on February 13 at the Tax Council Policy Institute's (TCPI) 21st annual tax policy symposium in Washington, D.C. Desmond highlighted to attendees that the IRS remains focused on implementing the TCJA but is also significantly focused on implementing the Taxpayer First Act (P.L. 116-25), and noted how the two laws go hand-in-hand.

Under the Taxpayer First Act, Congress enacted the first major administrative reform of the IRS in over 20 years. In order for the IRS to efficiently implement the tax code's modernization under the TCJA, it needs to modernize its administration and systems per the Taxpayer First Act, Desmond said. To that end, the IRS is currently taking steps to modernize the agency to meet the reforms of the tax code, according to Desmond.

Additionally, Desmond acknowledged practitioners' and taxpayers' frustrations surrounding unresolved questions pertaining to the TCJA. The IRS continues to work on promulgating regulations for the TCJA. "We do try to get all questions answered through our published guidance, but of course that never happens," Desmond said.

To that end, Desmond reiterated the importance of taxpayer and practitioner comments on regulations. There are "synergies" between taxpayers' interests and the interests of the IRS as a tax administrator, and numerous areas where the IRS and taxpayers can work together in creating regulations under the TCJA.

Full Expensing, Retail Glitch

In other news, Sen. Pat Toomey, R-Pa., introduced the ALIGN Bill on February 13, which would make permanent full and

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immediate expensing under the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97). The TCJA's 100 percent bonus depreciation provision allows businesses to immediately write-off capital expenditures, but is currently set to begin phasing out at the end of 2022 and would be fully eliminated by 2026.

Additionally, Toomey's bill would fix the TCJA's so-called "retail glitch," a drafting error that inadvertently prevents restaurants and retailers, among others, from immediately deducting the cost of certain renovations. This technical error in the TCJA accidentally excluded the category of qualified improvement property (QIP) investment from 100 percent bonus depreciation.

TAX BRIEFS

Exempt Organizations

Three organizations' requests for tax-exempt status were revoked or denied under Code Sec. 501. The first organization's exempt status was revoked because it failed to establish that it was organized and operated for an exempt purpose. The second organization was denied exempt because it failed to establish that it was organized and operated for an exempt purpose, and its activities were similar to those of an ordinary commercial enterprise. The third organization was denied exempt status because it served the private interests of its members.

IRS Letter Rulings 202007018; 202007019; 202007021

FPAAs

The IRS Chief Counsel has stated that multiple final partnership administrative adjustments (FPAAs) are generally not possible. In making adjustments in an examination of the partnership, only one FPAA may be issued for a particular tax year, absent fraud, malfeasance or misrepresentation of material fact. However, if a TEFRA partnership (TP2) is a partner in another TEFRA partnership (TP1), and partner-level factual determinations are needed at the TP2 level in order to apply the results of the final determination in the TP1 TEFRA proceeding, an FPAA may be issued to TP2 to make those factual determinations.

Chief Counsel Advice Memorandum 202007017

IRA Distributions

An individuals's individual retirement account distributions were taxable income for two tax years at issue. Regarding the first tax year, although the IRS mistakenly conducted two examinations of the taxpayer's return concurrently, the examinations were not considered unnecessary or in violation of Code Sec. 7605. Further, the taxpayer was liable for an accuracy related penalty as he did not have reasonable cause for his underpayment.

Essner, TC, Dec. 61,628(M)

Refund Claims

The Court of Federal Claims properly dismissed an individual's claim of impropriety on garnishment of social security for lack of subject-matter jurisdiction. The taxpayer's complaint did not come within the court's jurisdiction over tax refund claims, because the taxpayer did not (1) pay the disputed taxes in full, or (2) seek a refund from the IRS before suing in the Court of Federal Claims.

Pekrul, CA-FC, 2020-1 USTC ¶50,118

Retirement Plans

A retirement plan's use of substitute mortality tables was approved for computing the subpopulations specified in the plan for five years beginning with the plan year commencing January 1. 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.

IRS Letter Ruling 202007022

Self-Constructed Assets

The IRS Large Business and International (LB&I) has issued a new Practice Unit, "Interest Capitalization for Self-Constructed Assets." Practice Units provide IRS staff with explanations of general tax concepts, as well as information on specific types of transactions. Practice Units are not official pronouncements of law or directives, and cannot be used, relied upon, or cited as such.

IRS Practice Units

State Tax Deduction

In an answer to a particular example in the IRS Tax Compliance Officer (TCO) training materials, an individual was entitled to deduct prepaid state income taxes in her 2018 return, because 2018 was the tax year when the state actually imposed the tax. The taxpayer prepaid state taxes in 2017 for state taxes that would be assessed in 2018. This scenario was incorrectly discussed in the training materials and was now being clarified. Under Code Sec. 164(b)(6)(B), an amount paid in a tax year beginning before January 1, 2018, with respect to a state or local income tax for a tax year beginning after December 31, 2017, shall be treated as paid on the last day of the tax year for which such tax is imposed (in this case, 2018).The IRS issued an advisory opinion on December 27, 2017 (IR-2017-210), which explained that whether a taxpayer may deduct for the prepayment of state or local real property taxes in 2017 depends on the date that real property taxes are assessed. Prepayment of anticipated real property taxes in 2017 that will not be assessed until 2018 are not deductible in 2017. However, these prepaid taxes would still be deductible in the year of assessment.

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