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INSIDE THIS ISSUE

House Democrats Unveil $3 Trillion "CARES 2" Economic Relief Package; Likely DOA in Senate 1

Proposed Regulations Address Deductibility of Fines and Penalties 2

New Guidance on Cafeteria Plans...... 3

Charitable Deduction Denied for Conservation Easement; Validity of Regulation Upheld............ 4

Final Section 385 Distribution Regulations Issued 5

EIP Amounts Could Vary 6

AFRs Issued For June 2020 6

Tax Briefs 7

House Democrats Unveil $3 Trillion "CARES 2" Economic Relief Package; Likely DOA in Senate

HR 6800; HEROES Act, Title-By-Title Summary

House Democrats on May 12 unveiled a 1,815-page, $3 trillion "CARES 2" phase four economic relief package. Senate Republicans have criticized the measure as a "partisan wish list," saying that it will be "DOA" in the upper chamber.

HEROES Act

The Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (HR 6800) passed the House on May 15. On Capitol Hill, however, the measure is largely considered as a platform to convey Democratic priorities, as well as an opening bid to kick-start more official bipartisan, bicameral phase four discussions.

"Families are feeling the pain of a terrible one-two punch – a national public health emergency coupled with a historic economic downturn," House Ways and Means Committee Chairman Richard Neal, D-Mass., said in a May 12 press release. "The gravity of our new reality demands substantial solutions, and that's what Ways and Means Democrats offer in this latest response package."

Republican lawmakers are calling the bill as currently drafted a nonstarter. Notably, David Popp, communications director for Senate Majority Leader Mitch McConnell, R-Ky., said on May 12 that "it's never becoming law."

According to a House Democratic summary, HR 6800 provisions are outlined as follows:

- **State and local aid:** Nearly $916 billion in direct aid would be provided to make up for lost revenues suffered by states and local governments from the economic shutdown.
- **Food assistance:** Close to $10 billion would be used to cover increased participation in the food stamps program and to expand benefit levels by 15 percent.
- **Housing:** $75 billion to help homeowners unable to make mortgage payments or pay property taxes and utilities, and $100 billion in rental assistance for low-income tenants.
- **Broadband:** About $5.5 billion would go to emergency home internet connections and the creation of Wi-Fi hot spots for broadband service.
- **Postal Service:** $25 billion would be available to make up for lost U.S. Postal Service revenue from the pandemic.
- **Education:** Over $100 billion would be used for education, mostly for a State Fiscal Stabilization Fund to help states deal with the strain from shuttered schools.
- **Public health fund:** $100 billion for hospitals and other health care providers for pandemic-related costs, and $75 billion for virus testing.
- **Medicaid:** States would get a boost in federal Medicaid funding, with the federal matching share increased by 14 percentage points.
- **Health insurance:** Workers who are laid off or furloughed could maintain their employer's health coverage through the COBRA program with full premium subsidies for about nine months.

- **Unemployment insurance:** An expanded benefit of $600 per week, set to expire in August, would be extended through January 31, 2021.
- **Hazard pay:** A $200 billion "Heroes Fund" would give grants to employers to provide premium pay for "essential" workers.
- **Rebate checks:** Taxpayers would receive another round of direct payments of up to $1,200 per adult and $1,200 per dependent for up to three dependents. The credit begins phasing out after $75,000 of adjusted gross income, as in the previous payment round.
- **Tax relief:** The $10,000 limit on deductions for state and local taxes would be lifted for the 2020 and 2021 tax years. The employee retention tax credit would be made more generous by covering the reimbursement costs of 80 percent of wages instead of 50 percent.
- **Election security:** $3.6 billion in state grants to prepare for elections during the pandemic.

Proposed Regulations Address Deductibility of Fines and Penalties

NPRM REG-104591-18; IR-2020-94

The IRS has released proposed regulations that address changes made to Code Sec. 162(f) by the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97). The proposed regulations provide operational and definitional guidance on the deductibility of fines and penalties paid to governmental entities.

TCJA Changes

Under amended Code Sec. 162(f), businesses may not deduct fines and penalties that are paid or incurred after December 21, 2017, due to the violation of a law or the investigation of a violation of law, if a government or similar entity is a complainant or investigator. Exceptions are available in certain cases where the payment was made for restitution, remediation, taxes due, or to come into compliance with a law.

In order for the exceptions to apply, the taxpayer must identify the payment as restitution or compliance in a court order or settlement agreement. In addition, Code Sec. 6050X requires that the officer or employee that has control over the suit or agreement, or the individual designated by the government or entity, must file a return with the IRS.

Establishing Restitution or Remediation

Under the proposed regulations, a taxpayer can establish that a payment was made for restitution or remediation by providing documentary evidence showing:

- the taxpayer was legally obligated to pay the amount of the order or agreement identified as restitution, remediation, or to come into compliance with a law;
- the amount paid or incurred; and
- the date on which the amount was paid or incurred.

The proposed regulations provide a list of documents that taxpayers can use to satisfy the establishment requirement. The regulations also clarify that reporting of the amount by a government or governmental entity under Code Sec. 6050X alone does not satisfy the establishment requirement.

Identification Requirement

According to Code Sec. 162(f)(2)(A), an order or agreement must identify the amount paid or incurred as restitution, remediation, or to come into compliance with a law. The proposed regulations state that an order or agreement should identify a payment by stating both (1) the nature of, or purpose for, each payment, and (2) the amount of each payment identified. Reporting of the amount by a government or governmental entity under Code Sec. 6050X does not satisfy the identification requirement.

Taxes and Interest

Under Code Sec. 162(f)(4), taxpayers may still deduct any taxes due, including any related interest on the taxes. However, the proposed regulations clarify that taxpayers may not deduct interest related to penalties.

Reporting Requirements

The proposed regulations provide appropriate officials with operational, administrative, and definitional rules for complying with statutory information reporting requirements with respect to Code Sec. 162(f). If the aggregate amount a payor is required to pay equals or exceeds the threshold amount under Proposed Reg. §1.6050X-1(g)(5), the appropriate official must file an information return with the IRS with respect to the amounts or incurred paid and any additional information required.

According to the proposed regulations, they must provide this information

REFERENCE KEY

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

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by filing Form 1098-F, Fines, Penalties, and Other Amounts, with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, on or before the annual due date. However, the proposed regulations do not require an appropriate official to file information returns for each tax year in which a payor makes a payment pursuant to a single order or agreement. Instead, the appropriate official must file only one information return for the aggregate amount identified in the order or agreement.

The proposed regulations also require that the appropriate official furnish a written statement to each payor with respect to which it is required to file an information return. The written statement must include the information that was reported on the information return, and a legend that identifies the statement as important tax information that is being furnished to the IRS. They can satisfy this requirement by providing a copy of Form 1098-F to the payor.

Material Change

According to the TCJA, the amendments to Code Sec. 162(f) apply to agreements entered into on or after December 22, 2017. The proposed regulations clarify that if the parties to an agreement that was binding prior to December 22, 2017, make a material change to that agreement on or after the date that the proposed regulations become final, the regulations will apply to the agreement.

If there is a material change to the agreement, the proposed regulations require the appropriate official to update the IRS by filing a corrected Form 1098-F on or before January 31 of the year following the calendar year. The proposed rules also require the appropriate official to furnish an amended written statement to the payor.

Definitions

The proposed regulations also define key terms and phrases for purposes of Code Sec. 162(f) and Code Sec. 6050X. These include "government," "governmental entity," "nongovernmental entity treated as a governmental entity," "restitution," "remediation of property," "amounts paid to come into compliance with a law," "appropriate official," "payor," and "threshold amount."

Effective Date

Proposed Reg. §1.162-21 is proposed to apply to tax years beginning on or after the date the proposed regulations are published as final regulations, but those rules do not apply to amounts paid or incurred under any order or agreement which became binding under applicable law before such date. Prior to the effective date, taxpayers may rely on Proposed Reg. §1.162-21, but only if they apply the rules in their entirety and in a consistent manner.

Proposed Reg. §1.6050X-1 is proposed to apply to orders and agreements that become binding under applicable law on or after January 1, 2022.

Comments

Taxpayers may submit comments via the Federal eRulemaking Portal at www.regulations.gov by following the online instructions for submitting comments and indicating IRS and REG-104591-18. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. Hard copy submissions must be addressed to: CC:PA:LPD:PR (REG-104591-18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Until further notice, any comments submitted on paper will be considered only to the extent practicable.

New Guidance on Cafeteria Plans

Notice 2020-29; Notice 2020-33; IR-2020-95

Due to the 2019 Novel Coronavirus outbreak (COVID-19), the IRS has provided increased flexibility with respect to:

- 2020 mid-year elections under a Code Sec. 125 cafeteria plan related to employer-sponsored health coverage, health Flexible Spending Arrangements (health FSAs), and dependent care assistance programs; and
- grace periods to apply unused amounts in health FSAs to medical care expenses incurred through December 31, 2020, and unused amounts in dependent care assistance programs to dependent care expenses incurred through December 31, 2020.

This relief is retroactive to January 1, 2020.

An employer that decides to amend one or more of its Code Sec. 125 cafeteria plans to provide for mid-year election changes for employer-sponsored health coverage, health FSAs, or dependent care assistance programs, or to provide for an extended period to apply unused amounts remaining in a health FSA or a dependent care assistance program to pay or reimburse medical care expenses or dependent care expenses in a manner consistent with this relief, must adopt a plan amendment on or before December 31, 2021, which may be effective retroactively to January 1, 2020.

Cafeteria Plan Elections

Qualified benefits provided under a cafeteria plan include employer-provided accident and health plans excludable under Code Secs. 105(b) and 106, health FSAs excludable under Code Secs. 105(b) and 106, and dependent care assistance programs excludable under Code Sec. 129. Elections regarding these benefits are generally irrevocable, and must be made prior to the first day of the plan year. However, a cafeteria plan may permit an employee to revoke an election during a period of coverage and make a new election under certain circumstances, such as if the employee experiences a change in status or there are significant changes in the cost of coverage.

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During 2020, a cafeteria plan may also permit eligible employees to:

- with respect to employer-sponsored health coverage: (a) make a new election on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage; (b) revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer on a prospective basis; and (c) revoke an existing election on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer;
- revoke an election, make a new election, or decrease or increase an existing election applicable to a health FSA on a prospective basis; and
- revoke an election, make a new election, or decrease or increase an existing election regarding a dependent care assistance program on a prospective basis.

To accept an employee's revocation of an existing election for employer-sponsored health coverage, the employer must receive from the employee an attestation in writing that the employee is enrolled, or immediately will enroll, in other comprehensive health coverage not sponsored by the employer. The employer may rely on the written attestation provided by the employee, unless the employer has actual knowledge that the employee is not, or will not be, enrolled in other comprehensive health coverage not sponsored by the employer.

This relief may be applied retroactively to periods on or after January 1, 2020.

Health FSAs, Dependent Care Assistance

A cafeteria plan may permit the carryover of unused amounts remaining in a health FSA at the end of a plan year, subject to the carryover limit (currently $550). Additionally, cafeteria plan may permit a grace period to apply unused amounts (including amounts remaining in a health FSA or dependent care assistance program) at the end of a plan year to pay expenses incurred for those same qualified benefits during the period of up to two months and 15 days immediately following the end of the plan year. For a health FSA, a cafeteria plan may adopt a carryover or a grace period (or neither), but may not adopt both.

For unused amounts remaining in a health FSA or a dependent care assistance program at the end of a grace period or plan year ending in 2020, a cafeteria plan may permit employees to apply those unused amounts to pay or reimburse medical care expenses or dependent care expenses incurred through December 31, 2020. For example, if an employer sponsors cafeteria plan with a health FSA that has a calendar year plan year and provides for a grace period ending on March 15 immediately following the end of each plan year, the employer may amend the plan to permit employees to apply unused amounts remaining in an employee's health FSA as of March 15, 2020, to reimburse the employee for medical care expenses incurred through December 31, 2020.

This relief may be applied on or after January 1, 2020 and on or before December 31, 2020.

Impact of Health FSA Reimbursements

Code Sec. 223 permits eligible individuals to establish and contribute to health savings accounts (HSAs). With respect to any month, an eligible individual is any individual who:

- is covered under a high deductible health plan (HDHP) as of the first day of such month; and
- is not, while covered under an HDHP, covered under any health plan (a) which is not an HDHP, and (b) which provides coverage for any benefit which is covered under the HDHP.

An HDHP is a health plan that satisfies the minimum annual deductible requirement and maximum out-of-pocket expenses requirement under Code Sec. 223(c)(2)(A).

Coverage by a general purpose health FSA is coverage by a health plan that disqualifies an otherwise eligible individual from contributing to an HSA. Similarly, a telemedicine arrangement would generally disqualify an otherwise eligible individual from contributing to an HSA.

The government has previously provided relief for these issues. Notice 2020-15, I.R.B. 2020-14, 559, provides that a health plan that otherwise satisfies the requirements to be an HDHP will not fail to be an HDHP merely because the health plan provides medical care services and items purchased related to testing for and treatment of COVID-19. Likewise, Section 3701 of the CARES Act amends Code Sec. 223(c) to provide a temporary safe harbor for providing coverage for telehealth and other remote care services.

The new relief clarifies that Notice 2020-15 may be applied retroactively to January 1, 2020. For example, an otherwise eligible individual with coverage under an HDHP who also received coverage beginning February 15, 2020, for telehealth and other remote care services under an arrangement that is not an HDHP will not be disqualified from contributing to an HSA during 2020.

Charitable Deduction Denied for Conservation Easement; Validity of Regulation Upheld

Oakbrook Land Holdings, LLC, 154 TC No. 10, Dec. 61,663; Oakbrook Land Holdings, LLC, TC Memo. 2020-54, Dec. 61,664(M)

A partnership was denied a charitable contribution deduction because it had entered in an conservation easement that violated the perpetuity requirement of Code Sec. 170(h)(5) and its regulations. The Tax Court held that if there is a judicial extinguishment of an easement the donee receives a proportionate value of any proceeds.

Easement Deed

The taxpayer had donated a conservation easement to a land trust and claimed a charitable contribution deduction. The easement deed provided that if the

conservation restriction were extinguished at some future date, the donee would receive a share of the proceeds equal to the fair market value (FMV) of the easement on the date the contribution was made. The deed further provided that the donee's share as thus determined would be reduced by the value of any improvements made by the donor after granting the easement.

The taxpayer argued that Reg. §1.170A-14(g)(6) does not say that the donee is entitled to a proportionate "share" of any proceeds upon extinguishment of the easement but proportionate "value." It argued this means fixed value, and because the regulation requires that the value be fixed as of the donation date, the donee was not entitled to any proceeds attributable to the value of post-donation improvements.

Windfall for Donees?

The IRS disallowed the deduction, contending that the extinguishment clause violated the requirements of Reg. §1.170A-14(g)(6). The Tax Court concurred with the IRS's reasoning and held that the easement deed violated the "protected in perpetuity" requirement of Code Sec. 170(h)(5), as interpreted in Reg. §1.170A-14(g)(6).

The court held that the donee's share of the "proportionate value" as used in the regulation means a fraction of the proceeds from a judicial extinguishment, and not a fixed value.

The taxpayer argued that it was unfair for a donee to receive extinguishment proceeds attributable to the value of improvements made solely by the donor, because it would amount to an unintended charitable contribution for which it received no deduction. However, the Tax Court found that the purpose of the regulation is to avoid any windfalls to donors, not donees, if an easement was extinguished. The easement deed violated the regulation because the donee must be entitled to any proceeds from extinguishment or condemnation that were at least equal to the total proceeds multiplied by a fraction defined by the ratio of the FMV of the easement to the FMV of the unencumbered property determined as of the date of the easement deed.

The taxpayer was not liable for accuracy-related penalties, because it acted reasonably and in good faith. The partner was unfamiliar with the nuances of setting up a conservation easement and had relied on private letter rulings.

Regulation Valid

The taxpayer challenged the validity of Reg. §1.170A-14(g)(6), which the Tax Court addressed in a concurrent opinion. The taxpayer contended the "proportionate value" approach to division of proceeds from a judicial extinguishment of the easement does not take into account the possibility of donor improvements. The Tax Court held that the regulation was properly promulgated, as it substantially revised the text regarding the proportionate value in response to comments and had only received one comment on the possibility of improvements. The court therefore found that the regulation was valid under the Administrative Procedure Act, 5 U.S.C. Section 553.

The Tax Court further relied on the two-part test given in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), and held that the construction of Code Sec. 170(h)(5) as set forth in Reg. §1.170A-14(g)(6) was valid. The Treasury exercised reasoned judgment by adhering to a simple rule that split sale proceeds in a direct proportional manner on the basis of a fraction determined as of the date the gift was made. Because the regulation as drafted ensures satisfaction of the statutory mandate that the conservation purpose be "protected in perpetuity," the regulation was not arbitrary, capricious, or manifestly contrary to the Code.

Final Section 385 Distribution Regulations Issued

T.D. 9897

The Treasury and IRS have issued final regulations under Code Sec. 385 that address the classification of certain related-party debt as indebtedness or stock (or as in part stock or in part indebtedness). The regulations generally affect corporations that issue purported debt to related corporations and partnerships.

Distribution Regulations

Under the general rule in Reg. §1.385-3, the issuance of a debt instrument by a member of an expanded group to another member of the same expanded group in a distribution, or an economically similar acquisition transaction, may result in the treatment of the debt instrument as stock. A funding rule treats as stock a debt instrument that is issued as part of a series of transactions that achieves a result similar to a general rule transaction.Temporary Reg. §1.385-3T provides rules for certain qualified short-term debt instruments excluded from the funding rule and transactions involving controlled partnerships. Temporary Reg. §1.385-4T provides rules for consolidated groups. Collectively the regulations are referred to as the Distribution Regulations.

Although the temporary regulations expired on October 13, 2019, taxpayers could rely on the 2016 proposed regulations (NPRM REG-130314-16, October 21, 2016) that cross referenced the temporary regulations, if the rules were consistently applied in their entirety, according to Advance NPRM REG-123112-19 (ANPRM).

The proposed regulations are finalized without any substantive change.

Modified Regulations Coming

The Treasury and IRS will continue to study the appropriate approach to revising the Distribution Regulations, as discussed in the ANPRM. Pursuant to Executive Order 13789 and the ANPRM, proposed

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regulations will be issued to make the Distribution Regulations more streamlined and targeted. In particular, the *per se* rule will be withdrawn. The *per se* rule treats a debt instrument as funding a distribution to an expanded group member or other acquisition transaction with a similar economic effect if it was issued in exchange for property during the period beginning 36 months before, and ending 36 months after the issuer of the debt instrument made the distribution or undertook an acquisition transaction with a similar economic effect.

Applicability Dates

The amendments to Reg. §1.385-3, apply to tax years ending after January 19, 2017. The rules applicable to consolidated groups in Reg. §1.385-3(f)(4)(iii) and Reg. §1.385-4 apply to tax years for which the U.S. federal income tax is due, without extensions, after the date of publication of the regulations in the Federal Register. The substantially identical temporary regulations that correspond to the 2020 final regulations apply to tax years ending on or after January 19, 2017, and for which the U.S. federal income tax return was due, without extensions, on or before the date of publication of the regulations in the Federal Register. A taxpayer can choose to apply the 2020 final regulations to any period for which neither the temporary regulations nor the 2020 final regulations apply.

AFRs Issued For June 2020

Rev. Rul. 2020-12

The IRS has released the short-term, mid-term, and long-term applicable interest rates for June 2020.

Applicable Federal Rates (AFR) for June 2020

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	0.18%	0.18%	0.18%	0.18%
110% AFR	0.20%	0.20%	0.20%	0.20%
120% AFR	0.22%	0.22%	0.22%	0.22%
130% AFR	0.23%	0.23%	0.23%	0.23%
Mid-Term				
AFR	0.43%	0.43%	0.43%	0.43%
110% AFR	0.47%	0.47%	0.47%	0.47%
120% AFR	0.52%	0.52%	0.52%	0.52%
130% AFR	0.56%	0.56%	0.56%	0.56%
150% AFR	0.65%	0.65%	0.65%	0.65%
175% AFR	0.75%	0.75%	0.75%	0.75%
Long-Term				
AFR	1.01%	1.01%	1.01%	1.01%
110% AFR	1.11%	1.11%	1.11%	1.11%
120% AFR	1.21%	1.21%	1.21%	1.21%
130% AFR	1.31%	1.31%	1.31%	1.31%

Adjusted AFRs for June 2020

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	0.14%	0.14%	0.14%	0.14%
Mid-term adjusted AFR	0.33%	0.33%	0.33%	0.33%
Long-term adjusted AFR	0.77%	0.77%	0.77%	0.77%

The Code Sec. 382 adjusted federal long-term rate is 0.77%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 1.09%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.16% and 3.07%, respectively, however, under Code Sec. 42(b)(2), the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 0.6%.

EIP Amounts Could Vary

IR-2020-93

The IRS is reminding taxpayers that the Economic Impact Payment (EIP) amounts could be different than anticipated. Some Americans could have received a payment amount different than what they expected. EIPs vary based on income, filing status and family size.

Scenarios

The IRS described several common scenarios that may explain why the amount of the payment received might be different.

- *Taxpayer has not filed 2019 tax return, or IRS has not finished processing 2019 return.* The IRS typically uses information from the 2019 tax return to calculate the EIP, but will use the 2018 return if the taxpayer has not yet filed for 2019. If a taxpayer has already filed for 2019, the IRS will still use the 2018 return if it has not finished processing the 2019 return. If the IRS used the 2018 return, various life changes in 2019 would not be reflected in the payment, such as higher or lower income, or the birth or adoption of a child.

- *Claimed dependent is not eligible for additional $500 payment.* Only children eligible for the Child Tax Credit qualify for the additional payment of up to $500 per child. A qualifying child must have a valid Social Security number (SSN) or an Adoption Taxpayer Identification Number (ATIN). Further, parents who are not married to each other and do not file a joint return cannot both claim their qualifying child as a dependent. The parent who claimed their child on their 2019 return may have received an additional EIP for their qualifying child.
- *Dependents are college students.* Dependent college students do not qualify for an EIP. Also, even though their parents may claim them as dependents, college students normally do not qualify for the additional $500 payment. However, if a student cannot be claimed as a dependent by his or her parent(s) or anyone else for 2020, that student may be eligible to claim a $1,200 credit on their 2020 tax return next year.
- *Claimed dependents are parents or relatives, age 17 or older.* If a dependent is 17 or older, they do not qualify the additional $500. If a taxpayer claimed a parent or any other relative age 17 or older on their tax return, that dependent will not receive a $1,200 payment, and the taxpayer will not receive an additional $500 payment because the parent or other relative is not a qualifying child under age 17. However, a parent or other relative who cannot be claimed as a dependent on the taxpayer's or anyone else's return for 2020 may be eligible to individually claim a $1,200 credit on their 2020 tax return filed next year.
- *Past-due child support deducted.* The EIP is offset only by past-due child support. The Bureau of the Fiscal Service will send the taxpayer a notice if an offset occurs. Further, the IRS is working with the Bureau of Fiscal Service and the U.S. Department of Health and Human Services, Office of Child Support Enforcement, to resolve the situation where a portion of the EIP sent to a spouse who filed an injured spouse claim with his or her 2019 tax return (or 2018 tax return if no 2019 tax return has been filed) may have been offset by the injured spouse's past-due child support.
- *Garnishments.* Under federal law, the EIP is not protected from garnishment by creditors once the proceeds are deposited into a taxpayer's bank account.

Other Information

The IRS asks taxpayers to review the eligibility requirements for their family. In many instances, eligible taxpayers who received a smaller-than-expected EIP may qualify to receive an additional amount early next year when they file their 2020 federal income tax return. EIPs are technically an advance payment of a new temporary tax credit that eligible taxpayers can claim on their 2020 return. Taxpayers should keep for their records the letter they receive by mail within a few weeks after their payment is issued. The EIP will not reduce a taxpayer's refund or increase the amount owed when the taxpayer files a tax return early next year. Also, the EIP is *not* taxable, and should not be included in income on a 2020 return.

More information can be found at the IRS's Economic Impact Payment Information Center webpage (https://www.irs.gov/coronavirus/economic-impact-payment-information-center).

TAX BRIEFS

Conservation Easements

The conservation purpose underlying a conservation easement was not "protected in perpetuity," as required by Code Sec. 170(h)(5)(A). Accordingly, the IRS's motion for partial summary judgment was granted.

Woodland Property Holdings, LLC, TC, Dec. 61,665(M)

A Tax Court decision denying a deduction for qualified conservation contribution to a limited liability company (LLC) was vacated and remanded. The conservation easements across golf course qualified for a deduction because they met the otherwise-applicable standards. In addition, the land still met the "rare, endangered, or threatened, or species" requirement because the land contained 61 species of birds on protected lists, as testified by the taxpayer's and IRS's experts. Finally, the easement did preserve the scenic enjoyment of the public because the 10-foot river banks only blocked the view of the golf course, not the trees and wetlands.

Champions Retreat Golf Founders, LLC, CA-11, 2020-1 USTC ¶50,134

The IRS Chief Counsel has released a synopsis of 121 cases on selected issues related to charitable contributions for conservation easements.

CCA Memorandum 202002002

Indian Coal Credit

The inflation adjustment factors and reference prices to be used in computing the Indian coal credit for calendar year 2020 have been provided by the IRS. The inflation adjustment factor for calendar year 2020 for Indian coal is 1.2851. The credit for Indian coal production is $2.570 per ton of Indian coal sold in 2020.

Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2020

IRS Practice Units

The IRS Large Business and International (LB&I) has recently issued several new Practice Units: (1) "IRC 481(a) Adjustments for IRC 263A Accounting Method Changes," (2) "Foreign Earned Income Exclusion Adjustment," (3) "Overview of IRC 986(c) Gain or Loss Prior to Tax Cuts and Jobs Act of 2017," and (4) "Official Versus Free Market

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Exchange Rate." Practice Units provide IRS staff with explanations of general tax concepts, as well as information on specific types of transactions. They are not official pronouncements of law or directives, and cannot be used, relied upon, or cited as such.

IRS Practice Units

Liens and Levies

An IRS settlement officer (SO) abused her discretion in rejecting a married couple's proposed installment agreement and determining that the taxpayers were required to liquidate all of their property, including their residence, as a condition for acceptance of an installment agreement. The taxpayers had timely requested a collection due process (CDP) hearing in response to their receipt of the lien notice for two tax years at issue. The case activity record provided no insight as to why the SO concluded that IRM 5.14.1.4(5) and 5.14.2.1.2(3), (4), (5), and (6) provided her with no discretion. Further, the record did not show that the SO balanced the need to collect tax with the legitimate concern that the collection action be no more intrusive than necessary.

Kirkley, TC, Dec. 61,667(M)

Marginal Well Production Credit

The applicable reference price for tax years beginning in 2019 is $2.55 per 1,000 cubic feet (mcf). The credit amount for tax years beginning in calendar year 2019 is $0.08 per mcf.

Notice 2020-34

Partnership Interests

The Tax Court accepted an allocation of payment in exchange of capital assets in a settlement agreement between two parties. The taxpayer, a real estate development and investment firm, entered into multiple joint ventures (JVs) with a realty firm. The taxpayer and the realty firm each formed additional entities to carry out the JVs' responsibilities. The JVs were later disavowed by said firm. The two parties subsequently agreed to a lump sum payment in exchange for the taxpayer's relinquishment of rights in the JVs. The income was from the sale of capital assets (i.e., the JV interests). The court respected the parties' allocation of all of the payment to the exchange of the capital assets, because the payment was made by adversarial parties negotiating at arm's length, and was within the reasonable range of value of the JV interests.

NCA Argyle LP, TC, Dec. 61,666(M)

Pensions

For pension plan years beginning in May 2020, the IRS has released the 30-year Treasury bond weighted average interest rate, the permissible range of interest rates used to calculate current plan liability and the current corporate bond yield curve and related segment rates for the purpose of establishing a plan's funding target.

Notice 2020-37

Tax Shelters

An individual was liable for penalties under Code Sec. 6700 for two tax years at issue for promoting abusive tax shelters. The individual, a certified public accountant and lawyer, advised his colleague on "tool plans," which generally were attempts to operate to bifurcate an employee's wages into a taxable labor portion and a nontaxable portion relating to tool expense reimbursement. The individual and his colleague agreed to aggressively market the existing tool plan, despite their understanding that this plan carried a risk of penalties and was an aggressive tax planning tactic.

Davison, TC, Dec. 61,668(M)

In consolidated cases, a promoter of a tax shelter was subject to penalties under Code Sec. 6700. The individual, with the help of his legal and tax planning adviser, organized a multistep benefit plan through which employers and employees could avoid paying taxes. The individual was a primary and indispensable figure in the plan's organization and sale.

Lemay, TC, Dec. 61,669(M)