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IRS Proposes Regs on Centralized Partnership Audit Regime

NPRM REG-123652-18

The IRS has issued proposed regulations for the centralized partnership audit regime that:

- clarify that a partnership with a QSub partner is not eligible to elect out of the centralized audit regime;
- add three new types of "special enforcement matters" and modify existing rules;
- modify existing guidance and regulations on push out elections and imputed adjustments; and
- clarify rules on partnerships that cease to exist.

The regulations are generally proposed to apply to partnership tax years ending after November 20, 2020, and to examinations and investigations beginning after the date the regs are finalized. However, the new special enforcement matters category for partnership-related items underlying non-partnership-related items is proposed to apply to partnership tax years beginning after December 20, 2018. In addition, the IRS and a partner could agree to apply any part of the proposed regulations governing special enforcement matters to any tax year of the partner that corresponds to a partnership tax year that is subject to the centralized partnership audit regime.

Centralized Audit Regime

The Bipartisan Budget Act of 2015 (P.L. 114-74) replaced the Tax Equity and Fiscal Responsibility Act (TEFRA) (P.L. 97-248) partnership procedures with a centralized partnership audit regime for making partnership adjustments and tax determinations, assessments and collections at the partnership level. These changes were further amended by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) (P.L. 114-113), and the Tax Technical Corrections Act of 2018 (TTCA) (P.L. 115-141). The centralized audit regime, as amended, generally applies to returns filed for partnership tax years beginning after December 31, 2017.

Election Out

A partnership with no more than 100 partners may generally elect out of the centralized audit regime if all of the partners are eligible partners. As predicted in Notice 2019-06, I.R.B. 2019-03, 353, the proposed regulations would provide that a qualified subchapter S subsidiary (QSub) is not an eligible partner; thus, a partnership with a QSub partner could not elect out of the centralized audit regime.

Special Enforcement Matters

The IRS may exempt "special enforcement matters" from the centralized audit regime. There are currently six categories of special enforcement matters:

- failures to comply with the requirements for a partnership-partner or S corporation partner to furnish statements or compute and pay an imputed underpayment;
- assessments relating to termination assessments of income tax or jeopardy assessments of income, estate, gift, and certain excise taxes;
- criminal investigations;
- indirect methods of proof of income;
- foreign partners or partnerships;
- other matters identified in IRS regulations.

The proposed regs would add three new types of special enforcement matters:

- partnership-related items underlying non-partnership-related items;
- controlled partnerships and extensions of the partner's period of limitations; and
- penalties and taxes imposed on the partnership under chapter 1.

The proposed regs would also require the IRS to provide written notice of most special enforcement matters to taxpayers to whom the adjustments are being made.

The proposed regs would clarify that the IRS could adjust partnership-level items for a partner or indirect partner without regard to the centralized audit regime if the adjustment relates to termination and jeopardy assessments, if the partner is under criminal investigation, or if the adjustment is based on an indirect method of proof of income.

However, the proposed regs would also provide that the special enforcement matter rules would not apply to the extent the partner could demonstrate that adjustments to partnership-related items in the deficiency or an adjustment by the IRS were:

- previously taken into account under the centralized audit regime by the person being examined; or
- included in an imputed underpayment paid by a partnership (or pass-through partner) for any tax year in which the partner was a reviewed year partner or indirect partner, but only if the amount included in the deficiency or adjustment exceeds the amount reported by the partnership to the partner that was either reported by the partner or indirect partner or is otherwise included in the deficiency or adjustment determined by the IRS.

IRS Criminal Investigation Releases FY 2020 Annual Report

The IRS has released the Criminal Investigation Division's annual report, highlighting the agency's successes and criminal enforcement actions taken in fiscal year 2020, the majority of which occurred during COVID-19. A key achievement was the identification of over $10 billion in tax fraud and other financial crimes.

In fiscal year 2020, CI initiated 1,598 cases, applying 73 percent of its time to tax related investigations. The number of CI special agents increased by one percent, following special agent hiring to offset planned retirements. CI continued increasing its usage of data analytics and strengthening its international partnerships to assist in finding the most impactful cases. The Joint Chiefs of Global Tax Enforcement (J5) remained an important partnership. This is a transnational committee comprised of tax organizations from five countries.

In FY 2020 alone, more information was shared regarding cryptocurrency, tax crimes, and related enforcement, than in the previous 10 years combined. CI also saw the first guilty pleas for a case under the J5 umbrella.

IR-2020-255

Push Out Election, Imputed Underpayments

The partnership adjustment rules generally do not apply to a partnership that makes a "push out" election to push the adjustment out to the partners. However, the partnership must pay any chapter 1 taxes, penalties, additions to tax, and additional amounts or the amount of any adjustment to an imputed underpayment. Thus, there must be a mechanism for including these amounts in the imputed underpayment and accounting for these amounts.

In calculating an imputed underpayment, the proposed regs would generally include any adjustments to the partnership's chapter 1 liabilities in the credit grouping and treat them similarly to credit adjustments. Adjustments that do not result in an imputed underpayment generally could increase or decrease non-separately stated income or loss, as appropriate, depending on whether the adjustment is to an item of income or loss. The proposed regs would also treat a decrease in a chapter 1 liability as a negative adjustment that normally does not result in an imputed underpayment if: (1) the net negative adjustment is to a credit, unless the IRS determines to have it offset the imputed underpayment; or (2) the imputed underpayment is zero or less than zero.

Under existing regs for calculating an imputed underpayment, an adjustment to a non-income item that is related to, or results from, an adjustment to an item

REFERENCE KEY

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

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of income, gain, loss, deduction, or credit is generally treated as zero, unless the IRS determines that the adjustment should be included in the imputed underpayment. The proposed regs would clarify this rule and extend it to persons other than the IRS. Thus, a partnership that files an administrative adjustment request (AAR) could treat an adjustment to a non-income item as zero if the adjustment is related to, and the effect is reflected in, an adjustment to an item of income, gain, loss, deduction, or credit (unless the IRS subsequently determines in an AAR examination that both adjustments should be included in the calculation of the imputed underpayment).

A partnership would take into account adjustments to non-income items in the adjustment year by adjusting the item on its adjustment year return to be consistent with the adjustment. This would apply only to the extent the item would appear on the adjustment year return without regard to the adjustment. If the item already appeared on the partnership's adjustment year return as a non-income item, or appeared as a non-income item on any return of the partnership for a tax year between the reviewed year and the adjustment year, the partnership does not create a new item on the partnership's adjustment year return.

A passthrough partner that is paying an amount as part of an amended return submitted as part of a request to modify an imputed underpayment would take into account any adjustments that do not result in an imputed underpayment in the partners' tax year that includes the date the payment is made. This provision, however, would not apply if no payment is made by the partnership because no payment is required.

IRS Releases Priority Guidance Plan 2020-2021

The Treasury and IRS have released their 2020-2021 Priority Guidance Plan. The 2020-2021 plan contains 191 guidance projects, 57 of which have been released as of September 30, 2020. Further, the 2020-2021 plan contains guidance projects that will be the focus of efforts during the 12-month period from July 1, 2020, through June 30, 2021. The IRS intends to update the plan during the year to reflect additional items.

2020-2021 Priority Guidance Plan

Partnership Ceases to Exist

If a partnership ceases to exist before the partnership adjustments take effect, the adjustments are taken into account by the former partners of the partnership. The IRS may assess a former partner for that partner's proportionate share of any amounts owed by the partnership under the centralized partnership audit regime. The proposed regs would clarify that a partnership adjustment takes effect when the adjustments become finally determined; that is, when the partnership and IRS enter into a settlement agreement regarding the adjustment; or, for adjustments reflected in an AAR, when the AAR is filed. The proposed regs would also make conforming changes to existing regs:

- A partnership ceases to exist if the IRS determines that the partnership does not have the ability to pay in full any amount that the partnership may become liable for under the centralized partnership audit regime.
- Existing regs that describe when the IRS will not determine that a partnership ceases to exist would be removed.
- Statements must be furnished to the former partners and filed with the IRS no later than 60 days after the later of the date the IRS notifies the partnership that it has ceased to exist or the date the adjustments take effect.

The proposed regs would also modify the definition of "former partners" to be partners of the partnership during the last tax year for which a partnership return or AAR was filed, or the most recent persons determined to be the partners in a final determination, such as a final court decision, defaulted notice of final partnership adjustment (FPA), or settlement agreement.

Comments Requested

Comments are requested on all aspects of the proposed regulations by January 22, 2021. The IRS strongly encourages commenters to submit comments electronically via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-123652-18). Comments submitted on paper will be considered to the extent practicable.

PPP Deduction Safe Harbor if Loan Not Forgiven

Rev. Proc. 2020-51; Rev. Rul. 2020-27

The IRS has released rulings concerning deductions for eligible Paycheck Protection Program (PPP) loan expenses. The rulings:

- deny a deduction if the taxpayer has not yet applied for PPP loan forgiveness, but expects the loan to be forgiven; and
- provide a safe harbor for deducting expenses if PPP loan forgiveness is denied or the taxpayer does not apply for forgiveness.

Background

In response to the COVID-19 (coronavirus) crisis, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) expanded Section 7(a) of the Small Business Act for certain loans made from February 15, 2020, through August 8, 2020 (PPP loans). An eligible PPP loan recipient may have the debt on a covered loan forgiven, and the cancelled debt will be excluded from gross income. To prevent double tax benefits, under Reg. §1.265-1, taxpayers cannot deduct expenses allocable to income that is either wholly excluded from gross income or wholly exempt from tax.

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The IRS previously determined that businesses whose PPP loans are forgiven cannot deduct business expenses paid for by the loan (Notice 2020-32, I.R.B. 2020-21, 837). The new guidance expands on the previous guidance, but provides a safe harbor for taxpayers whose loans are not forgiven.

No Business Deduction

In Rev. Rul. 2020-27, the IRS amplifies guidance in Notice 2020-32. A taxpayer that received a covered PPP loan and paid or incurred certain otherwise deductible expenses may not deduct those expenses in the tax year in which the expenses were paid or incurred if, at the end of the tax year, the taxpayer reasonably expects to receive forgiveness of the covered loan on the basis of the expenses it paid or accrued during the covered period. This is the case even if the taxpayer has not applied for forgiveness by the end of the tax year.

Safe Harbor

In Rev. Proc. 2020-51, the IRS provides a safe harbor allowing taxpayers to claim a deduction in the tax year beginning or ending in 2020 for certain otherwise deductible eligible expenses if:

- the eligible expenses are paid or incurred during the taxpayer's 2020 tax year;
- the taxpayer receives a PPP covered loan that, at the end of the taxpayer's 2020 tax year, the taxpayer expects to be forgiven in a subsequent tax year; and
- in a subsequent tax year, the taxpayer's request for forgiveness of the covered loan is denied, in whole or in part, or the taxpayer decides never to request forgiveness of the covered loan.

A taxpayer may be able to deduct some or all of the eligible expenses on, as applicable:

- a timely (including extensions) original income tax return or information return for the 2020 tax year;
- an amended return or an administrative adjustment request (AAR) under Code Sec. 6227 for the 2020 tax year; or
- a timely (including extensions) original income tax return or information return for the subsequent tax year.

Applying Safe Harbor

To apply the safe harbor, a taxpayer attaches a statement titled "Revenue Procedure 2020-51 Statement" to the return on which the taxpayer deducts the expenses. The statement must include:

- the taxpayer's name, address, and social security number or employer identification number;
- a statement specifying whether the taxpayer is an eligible taxpayer under either section 3.01 or section 3.02 of Revenue Procedure 2020-51;
- a statement that the taxpayer is applying section 4.01 or section 4.02 of Revenue Procedure 2020-51;
- the amount and date of disbursement of the taxpayer's covered PPP loan;
- the total amount of covered loan forgiveness that the taxpayer was denied or decided to no longer seek;
- the date the taxpayer was denied or decided to no longer seek covered loan forgiveness; and
- the total amount of eligible expenses and non-deducted eligible expenses that are reported on the return.

Louisiana Disaster Notice Updated

An October 20, 2020 notice granting relief to victims of Hurricane Delta that began on October 6, in parts of Louisiana was updated by the IRS on November 16 to add Beauregard, Lafayette, Rapides, St. Landry, and St. Martin parishes.

LA-2020-05

Final Regs on Silo Rules for Calculating UBTI

T.D. 9933

The IRS has issued final regulations with guidance on how a tax-exempt organization can determine whether it has more than one unrelated trade or business, how it should identify its separate trades and businesses, and how to separately calculate unrelated business taxable income (UBTI) for each trade or business – often referred to as "silo" rules. Since 2018, under provisions of the Tax Cuts and Jobs Act (TCJA), the loss from one unrelated trade or business may not offset the income from another, separate trade or business. Congress did not provide detailed methods of determining when unrelated businesses are "separate" for purposes of calculating UBTI.

On April 24, 2020, the IRS published a notice of proposed rulemaking (REG-106864-18) that proposed guidance on how an exempt organization determines if it has more than one unrelated trade or business and, if so, how the exempt organization calculates UBTI under Code Sec. 512(a)(6). The final regulations substantially adopt the proposed regulations issued earlier this year, with modifications.

Separate Trades or Businesses

The proposed regulations suggested using the North American Industry Classification System (NAICS) six-digit codes for determining what constitutes separate trades or businesses. Notice 2018-67, I.R.B. 2018-36, 409, permitted tax-exempt organizations to rely on these codes. The first two digits of the code designate the economic sector of the business. The proposed guidance provided that organizations could make that determination using just the first two digits of the code, which divides businesses into 20 categories, for this purpose.

The proposed regulations provided that, once an organization has identified a separate unrelated trade or business using a particular NAICS two-digit code, the it could only change the two-digit code describing that separate unrelated trade or business if two specific requirements were met. The final regulations remove the restriction on changing NAICS two-digit codes, and instead require an exempt organization that changes the identification of a separate unrelated trade or business to report the change in the tax year of the change in accordance with forms and instructions.

QPIs

For exempt organizations, the activities of a partnership are generally considered the activities of the exempt organization partners. Code Sec. 512(c) provides that if a trade or business regularly carried on by a partnership of which an exempt organization is a member is an unrelated trade or business with respect to such organization, that organization must include its share of the gross income of the partnership in UBTI.

The proposed regulations provided that an exempt organization's partnership interest is a "qualifying partnership interest" (QPI) if it meets the requirements of the *de minimis* test by directly or indirectly holding no more than two percent of the profits interest and no more than two percent of the capital interest. For administrative convenience, the *de minimis* test allows certain partnership investments to be treated as an investment activity and aggregated with other investment activities. Additionally, the proposed regulations permitted the aggregation of any QPI with all other QPIs, resulting in an aggregate group of QPIs.

Once an organization designates a partnership interest as a QPI (in accordance with forms and instructions), it cannot thereafter identify the trades or businesses conducted by the partnership that are unrelated trades or businesses with respect to the exempt organization using NAICS two-digit codes unless and until the partnership interest is no longer a QPI.

A change in an exempt organization's percentage interest in a partnership that is due entirely to the actions of other partners may present significant difficulties for the exempt organization. Requiring the interest to be removed from the exempt organization's investment activities in one year but potentially included as a QPI in the next would create further administrative difficulty. Therefore, the final regulations adopt a grace period that permits a partnership interest to be treated as meeting the requirements of the *de minimis* test or the participation test, respectively, in the exempt organization's prior tax year if certain requirements are met. This grace period will allow an exempt organization to treat such interest as a QPI in the tax year that such change occurs, but the organization will need to reduce its percentage interest before the end of the following tax year to meet the requirements of either the *de minimis* test or the participation test in that succeeding tax year for the partnership interest to remain a QPI.

CPM Method to Reallocate Beverage Company's Income Was Reasonable

The Coca-Cola Company and Subsidiaries, 155 TC No. 10, Dec. 61,779

The IRS did not abuse its discretion under Code Sec. 482 by reallocating compensation paid to a domestic beverage corporation by its foreign manufacturing affiliates for the use of intellectual property (IP) using the comparable profits method (CPM). The foreign manufacturing affiliates (supply points) used the IP to produce concentrate sold to unrelated bottlers.

Threshold Considerations

The taxpayer argued that the IRS acted arbitrarily when it deviated from a "10-50-50 method" agreed to in a closing agreement for determining product royalties. However, the agreement was one to settle a dispute and not necessarily representative of an arm's-length price. Additionally, the agreement covered only certain years, and there was no evidence that it was binding on future years.

Although the supply points were controlled taxpayers, the Tax Court rejected the argument that the activities of their foreign business units should be taken into account because the business units were not taxpayers or legal entities.

Transfer Pricing Methodology

Under the best method rule, a controlled taxpayer's true taxable income is the income that would have resulted if the controlled taxpayer dealt with other members of the group under the arm's length standard. For controlled transfers of intangible property, the arm's-length result can be determined under one of four methods: (1) the comparable uncontrolled transaction (CUT) method; (2) the comparable profits method (CPM); (3) the profits split method; and (4) an unspecified method.

The CPM evaluates whether the amount charged in a controlled transaction is arm's length, based on objective measures of profitability (profit level indicators or PLIs) derived from uncontrolled taxpayers that engage in similar business activities under similar circumstances. Under the CPM used by the IRS, the supply points were used as the tested parties and the unrelated bottlers were used as the comparable parties. The IRS considered the bottlers as comparable to the supply points because they operated in the same industry, had similar economic risks, had similar contracts, used many of the same intangible assets, and shared the income stream from the domestic corporation's beverages.

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The Tax Court determined that the IRS did not abuse its discretion by using the bottler's return on operating assets (ROA) to allocate the income between the domestic corporation and the supply points. The method was reasonable, given (1) the hard-to-value unique nature of the intangible assets and the activities performed by the controlled parties; (2) the selection of appropriate comparable parties; and (3) the IRS's computation and application of ROA using reliable data, assumptions, and adjustments.

Collateral Adjustments

The Tax Court addressed collateral adjustments resulting from the reallocation. The IRS properly recomputed Code Sec. 987 losses after the CPM changed the income allocable to a supply point. Additionally, because the taxpayer timely elected to employ dividend offset treatment with respect to dividends paid by the supply points to satisfy their royalty obligations, the IRS's reallocations were required to be reduced by the dividends.

AFRs Issued For December 2020

Rev. Rul. 2020-26

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

Applicable Federal Rates (AFR) for December 2020

Short-Term	**Annual**	**Semiannual**	**Quarterly**	**Monthly**
AFR	0.15%	0.15%	0.15%	0.15%
110% AFR	0.17%	0.17%	0.17%	0.17%
120% AFR	0.18%	0.18%	0.18%	0.18%
130% AFR	0.20%	0.20%	0.20%	0.20%
Mid-Term				
AFR	0.48%	0.48%	0.48%	0.48%
110% AFR	0.53%	0.53%	0.53%	0.53%
120% AFR	0.58%	0.58%	0.58%	0.58%
130% AFR	0.62%	0.62%	0.62%	0.62%
150% AFR	0.72%	0.72%	0.72%	0.72%
175% AFR	0.84%	0.84%	0.84%	0.84%
Long-Term				
AFR	1.31%	1.31%	1.31%	1.31%
110% AFR	1.45%	1.44%	1.44%	1.44%
120% AFR	1.58%	1.57%	1.57%	1.56%
130% AFR	1.71%	1.70%	1.70%	1.69%

Adjusted AFRs for December 2020

	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term adjusted AFR	0.11%	0.11%	0.11%	0.11%
Mid-term adjusted AFR	0.36%	0.36%	0.36%	0.36%
Long-term adjusted AFR	0.99%	0.99%	0.99%	0.99%

The Code Sec. 382 adjusted federal long-term rate is .99%; 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 .99%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.20% and 3.09%, 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 .6%.

CARES Act Defined Benefit Plan Contributions Date Extended

Notice 2020-82

The IRS has clarified that it will treat a contribution to a single-employer defined benefit pension plan with an extended due date of January 1, 2021, pursuant to (Act Sec. 3608(a)(1) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), as timely if it is made no later than January 4, 2021. This is the first business day after January 1, 2021. Notice 2020-61, I.R.B. 2020-35, 468, is modified.

The January 1, 2021, extended due date for contributions is intended to allow employers sponsoring these plans to defer these payment obligations until calendar year 2021. However, financial institutions cannot transfer funds on the January 1, 2021, due date.

Note that for a contribution that is made by January 4, 2021, the amount of the minimum required contribution that is satisfied by the contribution (and the amount that may be added to the plan's prefunding balance on account of any excess contribution) is determined by computing the applicable interest adjustment using the actual contribution date.

If the plan year is one for which the extended due date applies, the deadline for a plan sponsor's election to add to a prefunding balance or use a prefunding balance or a funding standard carryover balance to offset the minimum required contribution for that plan year is extended to January 4, 2021.

2020 Required Amendments List for Qualified Plans

Notice 2020-83

The IRS has issued its 2020 Required Amendments List (2020 RA List) for individually designed employee retirement plans. RA Lists apply to both Code Sec. 401(a) and Code Sec. 403(b) individually designed plans. There are two required amendments for 2020:

- Plans that are maintained by employers that have provided difficulty of care payments during plan years beginning after December 31, 2015, and before January 1, 2021, must be amended by December 31, 2022, or, if later, the Act Sec. 601 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) (P.L. 116-94) date applicable to the plan, as set forth in section G of Notice 2020-68, I.R.B. 2020-38, 567. If an employer changes its practice and begins to make difficulty of care payments to its employees in future years, the plan must be amended to include difficulty of care payments in the definition of Code Sec. 415(c)(1) compensation by the end of the second calendar year following the calendar year in which the employer begins to make difficulty of care payments.
- Under Code Sec. 414(y)(1)(D), as added by Act Sec. 3609 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), the definition of a cooperative and small employer charity pension plan (CSEC plan) includes a defined benefit plan that, as of January 1, 2000, was maintained by a tax-exempt employer that met specific characteristics. A CSEC plan is not permitted to include the benefit restrictions of Code Sec. 436.

TAX BRIEFS

Accuracy-Related Penalty

The Tax Court supplemented a prior decision (*Fakiris*, TC, Dec. 60,951(M)) in which it held that the disallowance of charitable contribution deductions gave rise to gross valuation misstatements for which the taxpayer was liable for the 40-percent accuracy-related penalty under Code Sec. 6662(h). Since the donation of the underlying property was not a completed gift because the donor had not relinquished dominion and control over it, the correct value of the property actually contributed was zero for accuracy-related penalty purposes because no property had been transferred. This triggered the gross valuation misstatement penalty in accordance with the reasoning in *United States v. Woods*, SCt, 2013-2 USTC ¶50,604, 571 US 31.

Fakiris, TC, Dec. 61,780(M)

Conservation Easements

Four individuals (two married couples) were allowed full charitable deductions for conservation easement contributions. Several members of a limited liability company (LLC), including the husbands who were members, bought parcels of land (later subdivided). The LLC contributed a conservation easement to a trust which was stipulated to be a qualified charitable organization. Both the taxpayers and the IRS brought in experts on the value of the donated property, who were qualified, thoughtful, and generally credible. The easement ensured that remaining plots' long-range views were preserved in perpetuity, and the development plan made them of slightly larger size. The easement also would significantly increase the cost per lot of building on the unencumbered property, which would decrease the value of said lots. These factors made the taxpayers' claims reasonable.

Rajagopalan, TC, Dec. 61,782(M)

Foreign Income Exclusion

A U.S. citizen residing in Thailand was not entitled to exclude any of his income as a pilot under the foreign earned income exclusion for three tax years at issue, because he was not a bona fide resident of Thailand. The taxpayer argued that since he was a pilot flying international routes, he had no regular or principal place of business, so his tax home should be determined by reference to his regular place of abode, i.e. Thailand. However, the taxpayer selected San Jose, California to be his home base and designated its airport as his gateway travel airport.

Cutting, TC, Dec. 61,781(M)

IRSAC

The Internal Revenue Service Advisory Council (IRSAC) issued its annual report for 2020, including recommendations to the IRS on new and continuing issues in tax administration. The IRSAC is a federal advisory committee that provides an organized public forum for discussion of relevant tax administration issues between IRS officials and representatives of the public.

IR-2020-258; IRS Pub. 5316

National Tax Security Awareness Week

The IRS, state tax agencies and the nation's tax industry announced that the fifth-annual National Tax Security Awareness Week would take place between November 30 and December 4, featuring a week-long series of educational materials to help protect individuals, businesses and tax pros from identity theft. The IRS recognized the heightened need for security as fraudsters seek to use COVID-19 to scam taxpayers and tax preparers, and warned that there are thousands of variations of COVID-related scams, including many related to the economic stimulus payment.

IR-2020-259

Passive Activities

A medical doctor satisfied the material-participation requirements of Code Sec. 469 for

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the activities of five restaurants and a brewery. The time spent by the taxpayer on each of the six activities exceeded 100 hours for each year without grouping any of the activities together. He used the telephone and face-to-face meetings, and exercised tight control of many aspects of the restaurants and the brewery. He paid close attention to the quality and ingredients of the food and beverages, and rigorously controlled the decor and appearance of the establishments. His employees confirmed his heavy involvement.

Padda, TC, Dec. 61,776(M)

Pensions

For pension plan years beginning in November 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 2020-81

Tax Filing

The IRS encouraged taxpayers to take necessary actions this fall to help them file their federal tax returns timely and accurately in 2021, including special steps related to Economic Impact Payments. A special page on the IRS website (https://www.irs.gov/individuals/steps-to-take-now-to-get-a-jump-on-next-years-taxes) outlines steps taxpayers can take now to prepare for the 2021 tax return filing season ahead.

IR-2020-256

Theft Loss

An individual was denied theft loss deductions because she failed to establish that she sustained a theft loss in the tax years at issue. The taxpayer contended that the theft loss resulted from her ex-husband's refusal to transfer marital property awarded to her by order of a state [Connecticut] divorce court. However, she pointed to no case laws or other state authority to establish that an ex-spouse has committed embezzlement for failing to pay a marital property debt. Further, the taxpayer was herself held in contempt by the divorce court for her refusal to place in escrow her ex-husband's share of the proceeds from sale of his property.

Bruno, TC, Dec. 61,778(M)

Whistleblower Awards

The IRS Whistleblower Office (WBO) did not abuse its discretion in denying an individual's claim for an award, where the individual failed to timely file a petition. Code Sec. 7623(b)(4) permits the Tax Court to review a WBO award determination if a petition is filed within 30 days of the determination. The date that was postmark stamped on the envelope of his mailed petition was three weeks after the deadline.

Aghadjanian, TC, Dec. 61,777(M)

Supreme Court Docket

A petition for certiorari was denied in the following case: An IRS settlement officer (SO) did not abuse her discretion when she declared that an offer-in-compromise (OIC) had been violated and imposed a levy to collect unpaid taxes. A couple entered into an OIC for two tax years; as part of the agreement, the taxpayers were required to remain current on their filing and payment obligations for the next five years.

Sadjadi, CA-5, 2020-2 USTC 50,147