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The President Signs the Consolidated Appropriations Act, 2021

Late on December 27, 2020, President Trump signed the Consolidated Appropriations Act, 2021. The House approved the measure on December 21, by a vote of 327 to 85, with the Senate also passing the bill on December 21, by a vote of 92-6.

The omnibus package, coming in at more than 5,500 pages, is comprised of dozens of smaller named acts. From a tax standpoint, it includes the COVID-19-Related Tax Relief Act of 2020, which extends and modifies many of the provisions first included in the Families First Coronavirus Response Act (P.L. 116-127) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). Notably, it also includes a second round of direct stimulus payments for taxpayers, this time reduced from $1,200 to $600.

The package also includes the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, which provides modifications of the popular Paycheck Protection Program (PPP), including a provision of additional loans. The legislation also contains the extension or expansion of several other provisions contained in the earlier legislation, including a $300 supplemental federal unemployment benefit and additional funding for testing, tracing, and vaccine development and distribution. In addition, it includes the No Surprises Act, which provides several programs aimed at alleviating the costs of medical care.

Also included is the Taxpayer Certainty and Disaster Tax Relief Act of 2020, which extends dozens of provisions that were set to expire after the 2020 tax year. The extensions vary in length from one year, to five years, as well as many permanent extensions.

The package includes funding legislation for the 2021 fiscal year, which must be enacted to avoid a government shutdown. While negotiations were ongoing for the content of the major legislation, several short-term resolutions were passed to keep the federal government open for business. This included a final one-week extension passed by Congress late on December 21, while the business of the larger appropriations bill was being finalized. The short-term extension expired on December 28. President Trump signed the Consolidated Appropriations Act just in time to avoid a shutdown.

The text of the Consolidated Appropriations Act, 2021 can be found at https://www.congress.gov/bill/116th-congress/house-bill/133/text.

Final Regs Address the Deduction Limit for Compensation in Excess of $1,000,000

T.D. 9932

Final regulations provide guidance related to the limitation on the deduction for employee compensation in excess of $1 million. Specifically, the regulations address:

- what constitutes a publicly held corporation for purposes of Code Sec. 162(m)(2);
- the definition of a covered employee for purposes of Code Sec. 162(m)(3);
- the definition of compensation for purposes of Code Sec. 162(m)(4);
- the application of Code Sec. 162(m) to a taxpayer's deduction for compensation for a tax year ending on or after a privately held corporation becomes public; and
- what constitutes a binding contract and material modification for purposes of the grandfather rule in Code Sec. 162(m)(4)(B).

The IRS has adopted the proposed regulations with a small number of modifications.

Background

The Tax Cuts and Jobs Act (P.L. 115-97) (TCJA) modified the definitions of "covered employee," "compensation," and "publicly held corporation" for purposes of the limitation on the deduction for excessive employee compensation paid by publicly held corporations.

Publicly Held Corporations

The TCJA expanded the definition of publicly held corporation to include: (1) corporations with any class of securities and (2) corporations that are required to file reports under section 15(d) of the Exchange Act. The final regulations adopt the prosed regulation's stance that a corporation is publicly held if, as of the last day of its tax year, its securities are required to be registered under section 12 of the Exchange Act or is required to file reports under section 15(d). A foreign private issuer (FPI) is also a publicly held corporation if it meets the same requirements.

Under the regulations, a publicly held corporation includes an affiliated group of corporations (affiliated group) that contains one or more publicly held corporations. In addition a subsidiary corporation that meets the definition of publicly held corporation is separately subject to Code Sec. 162(m) compensation limitations. Furthermore, an affiliated group includes a parent corporation that is privately held if one or more of its subsidiary corporations is a publicly held corporation. The regulations provide further clarification for affiliated groups where certain members are not publicly held. In the case where a covered employee of two or more members of an affiliated groups is paid by a member of the affiliated group that is not a publicly held, the compensation is prorated for purposes of determining the deduction.

In instances where a privately held corporation becomes public, Code Sec. 162(m) applies to the deduction for any compensation that is otherwise deductible for the tax year ending on or after the date that the corporation becomes a publicly held corporation. The regulations provide that a corporation is considered to become publicly held on the date that its registration statement becomes effective either under the Securities Act or the Exchange Act.

Covered Employees

Under the TCJA, a covered employee is the principal executive officer (PEO), the principal financial officer (PFO), or one of the three other highest compensated executives. The final regulations adopt the proposed regulation's stance that there is no requirement that an employee must an executive officer at the end of the tax year to be a covered employee. Covered employees may include employees who have left the corporation. Furthermore, the definition applies regardless of whether the executive officer's compensation is subject to disclosure for the last completed fiscal year under the applicable SEC rules.

The term "covered employee" also includes any employee who was a covered employee of any predecessor of the publicly held corporation for any preceding taxable year beginning after December 31, 2016. The regulations provide rules for determining the predecessor of a publicly held corporation for various corporate transactions. With respect to asset acquisitions, the regulations provide that, if an acquiror corporation acquires at least 80% of the net operating assets (determined by fair market value on the date of acquisition) of a publicly held target corporation, then the target corporation is a predecessor of the acquiror corporation for purposes of covered employees.

Applicable Employee Compensation

The final regulations define compensation as the aggregate amount allowable as a deduction for services performed by a covered employee, without regard for Code Sec. 162(m). Compensation includes payment for services performed by a covered employee in any capacity, including as a common law employee, a director, or an independent contractor. The regulations clarify that compensation also includes an amount that is includible in the income of, or paid to, a person other than the covered employee, including after the death of the covered employee.

In cases where a publicly held corporation holds a partnership, it must:

REFERENCE KEY

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

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- take into account its distributive share of the partnership's deduction for compensation paid to the publicly held corporation's covered employee and
- aggregate that distributive share with the corporation's otherwise allowable deduction for compensation paid directly to that employee in applying the Code Sec. 162(m) deduction limitation.

Physical Presence Relief Extended for Participant Elections

The IRS has extended the temporary relief provided in Notice 2020-42, I.R.B. 2020-26, 986, from the physical presence requirement in Treas. Reg. §1.401(a)-21(d)(6) for participant elections required to be witnessed by a plan representative or a notary public, including spousal consent required under Code Sec. 417 and solicits comments with respect to the relief. The extension is from January 1, 2021, through June 30, 2021.

Notice 2020-42, I.R.B. 2020-26, 986 is modified.

Notice 2021-3

Grandfather Rules

The amendments made by the TCJA to Code Sec. 162(m) do not apply to any compensation paid under a written binding contract that is effect on November 2, 2017, and is not materially modified after that date. A contract is binding if it obligates a publicly held company to pay the compensation if the employee performs services or satisfies requirements in the contract. Under the final regulations:

- The TCJA amendments apply to any amount of compensation that exceeds the amount that applicable law obligates the corporation to pay under a written binding contract that was in effect on November 2, 2017.
- A provision in a compensation agreement that purports to give the employer discretion to reduce or eliminate a compensation payment (negative discretion) is taken into account only to the extent the corporation has the right to exercise that discretion under applicable law, such as state contract law.
- Under an ordering rule, the grandfathered amount is allocated to the first otherwise deductible payment paid under the arrangement, then to the next otherwise deductible payment, etc. For tax years ending before December 20, 2019, the final regulations allow the grandfathered amount to be allocated to the last otherwise deductible payment or to each payment on a pro rata basis.
- A material modification occurs when a contract is amended to increase the amount of compensation payable to the employee. However, a modification that defers compensation is not a material modification if any compensation that exceeds the original amount based on a reasonable rate of interest or a predetermined actual investment.

The final regulations depart from the proposed regulations with respect to the recovery of compensation. Under the proposed regulations, a corporation's right to recover compensation is disregarded in determining the grandfathered amount only if the corporation recovery right or obligation depends on a future condition that is objectively outside of the corporation's control. However, the final regulations recognize that a recovery right is a contractual right that is separate from the corporation's binding obligation to pay the compensation. Accordingly, the final regulations provide that the corporation's right to recover compensation does not affect the determination of the amount of compensation the corporation has a written binding contract to pay under applicable law as of November 2, 2017.

The final regulations also clarify the application of the grandfather rule to compensation payable under nonqualified deferred compensation (NQDC) plans. Specifically, the grandfathered amount under an is the amount that the corporation is obligated to pay under the terms of the plan as of November 2, 2017. The regulations also provide rules for calculating the grandfather amount for account balance plans, and analogous rules for nonaccount balance plans when:

- the corporation is obligated to pay the employee the account balance that is credited with earnings and losses and has no right to terminate or materially amend the contract;
- the terms of a plan that is a written binding contract as of November 2, 2017, provide that the corporation may terminate the plan and distribute the account balance to the employee; or
- the plan provides that the corporation may not terminate the contract, but may discontinue future contributions and distribute the account balance.

However, the corporation may instead elect to treat the account balance as of the termination or freeze date as the grandfathered amount regardless of when the amount is paid and regardless of whether it has been credited with earnings or losses prior to payment.

In addition, the final regulations provide that all compensation attributable to the exercise of a non-statutory stock option or a stock appreciation right (SAR) is grandfathered if the option or SAR is grandfathered and the extension satisfies Reg. §1.409A-1(b)(5)(v)(C)(1).

Effective Dates

Generally, these final regulations apply to taxable years beginning on or after the date that they are published as final in the federal register. However, taxpayers may choose to apply these final regulations to a taxable year beginning after December 31, 2017. Taxpayers that elect to apply the final regulations before the effective date must apply the final regulations consistently and in their entirety to that taxable year and all subsequent taxable years.

In addition, the final regulations include special applicability dates for certain aspects of the definition of:

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- a covered employee,
- a predecessor of a publicly held corporation,
- compensation, and
- a written binding contract and material modification.

The regulations also include a special applicability date for the application of the Code Sec. 162(m) deduction limitations deductible for a taxable year ending on or after a privately held corporation becomes a publicly held corporation.

IRS Announces Year-End Delay for Advanced Payments of Employer Credits

The IRS has announced a delay in receiving payments associated with Forms 7200, Advance Payment of Employer Credits Due to COVID-19, processed between late-December and mid-January. The delay, experienced by employers, is due to the standard end-of-year close out. The Service would continue accepting and processing valid Forms 7200 during this time. However, the processing of payments of valid requests will begin January 21, 2021. Employers will also still receive Letter 6312, Form 7200 Response, if their Form 7200 cannot be processed.

IRS Releases Final Regulations on Recovery of Misdirected Direct Deposit Refund

T.D. 9940

The IRS has released final regulations with the procedures under Code Sec. 6402(n) for identification and recovery of a misdirected direct deposit refund. This guidance reflects modifications to the law made by the Taxpayer First Act (P.L. 116-25). The final regulations affect taxpayers who have made a claim for refund, requested the refund be issued as a direct deposit, but did not receive a refund in the account designated on the refund claim.

Background

On December 23, 2019, the Treasury Department and the IRS published proposed regulations (NPRM-REG-116163-19) providing the procedures under Code Sec. 6402(n) for reporting, identification, and recovery of a misdirected direct deposit refund. One comment on the proposed regulations was received. After consideration of the comments, the IRS adopts the proposed regulations as final regulations with minor modifications.

The final regulations clarify that the offset or setoff of an overpayment occurs prior to the issuance of a direct deposit. The IRS will determine if a reported missing refund is set-off or offset as part of the procedure for the identification of the account that received the misdirected direct deposit refund.

Applicability Date

These regulations are effective on December 22, 2020, the date they are to be published in the Federal Register. The regulations apply to reports to the IRS made after December 22, 2020, that a taxpayer never received a direct deposit refund.

2021 Standard Mileage Rates Released

Notice 2021-2; IR-2020-279

The IRS released the optional standard mileage rates for 2021. Most taxpayers may use these rates to compute deductible costs of operating vehicles for:

- business,
- medical, and
- charitable purposes.

Some members of the military may also use these rates to compute their moving expense deductions.

2021 Standard Mileage Rates

The standard mileage rates for 2021 are:

- 56 cents per mile for business uses;
- 16 cents per mile for medical uses; and
- 14 cents per mile for charitable uses.

Taxpayers may use these rates, instead of their actual expenses, to calculate their deductions for business, medical or charitable use of their own vehicles.

FAVR Allowance for 2021

For purposes of the fixed and variable rate (FAVR) allowance, the maximum standard automobile cost for vehicles places in service after 2020 is:

- $51,100 for passenger automobiles, and
- $51,100 for trucks and vans.

Employers can use a FAVR allowance to reimburse employees who use their own vehicles for the employer's business.

2021 Mileage Rate for Moving Expenses

The standard mileage rate for the moving expense deduction is 16 cents per mile. To claim this deduction, the taxpayer must be:

- a member of the Armed Forces of the United States,
- on active military duty, and
- moving under an military order and incident to a permanent change of station.

The Tax Cuts and Jobs Act of 2017 suspended the moving expense deduction for all other taxpayers until 2026.

Unreimbursed Employee Travel Expenses

For most taxpayers, the Tax Cuts and Jobs Act suspended the miscellaneous itemized deduction for unreimbursed employee travel expenses. However, certain taxpayers may still claim an above-the-line deduction for these expenses. These taxpayers include:

- members of a reserve component of the U.S. Armed Forces,
- state or local government officials paid on a fee basis, and
- performing artists with relatively low incomes.

Notice 2020-5, I.R.B. 2020-4, 380 is superseded.

IRS Advices Small Businesses to Use the Right Form When Filing Employment Tax Returns

The IRS has advised small business owners to review the rules for filing Form 941, Employer's Quarterly Federal Tax Return and Form 944, Employer's Annual Federal Tax Return. These two forms are not interchangeable and a small business are required to file only one of them.

Form 941, Employer's Quarterly Federal Tax Return

Employers use Form 941 to:

- report income taxes, Social Security tax, Medicare tax and additional Medicare tax withheld from employee's wages, tips and other compensation;
- claim employment tax credits and adjustments; and
- report the amount of employment taxes owed or claim an overpayment of employment taxes.

If an employer has been advised by the IRS to file Form 941 quarterly, they must do so.

Form 944, Employer's Annual Federal Tax Return

Employers who owe $1,000 or less file this form. It allows them to report employment tax liabilities only once a year, instead of quarterly. However, this form can't be used unless an employer receives official IRS notification that they are eligible to use this form. Moreover, employers must continue to file Form 944, regardless of the tax they owe, unless the Service notifies them differently. Finally, the IRS has informed taxpayers that if they're not sure which form they should file, they can call 800-829-4933 or 267-941-1000 for more information.

Final Regulations Released on Small Business Simplified Accounting Rules

T.D. 9942

The IRS has released final regulations addressing the post-2017 simplified accounting rules for small businesses. The final regulations adopt and modify proposed regulations released in August 2020.

Implementation of the Rules

The Tax Cuts and Jobs Act (P.L. 115-97) put in place a single $25 million gross receipts test for determining whether certain taxpayers qualify as small taxpayers that can use the cash method of accounting, are not required to use inventories, are not required to apply the Uniform Capitalization (UNICAP rules), and are not required to use the percentage of completion method for a small construction contract.

Highlights of Changes in the Final Regulations

Annual syndicate election. The proposed regulations permit a taxpayer to elect to use the allocated taxable income or loss of the immediately preceding tax year to determine whether the taxpayer is a syndicate under Code Sec. 448(d)(3) for the current tax year. Under the proposed regulations, a taxpayer that makes this election must apply the rule to all subsequent tax years, unless it receives IRS permission to revoke the election.

The final regulations provide additional relief by making the election an annual election. The election is valid only for the tax year for which it is made, and once made, cannot be revoked. The IRS intends to issue procedural guidance to address the revocation of an election made under the proposed regulations as a result of the application of the final regulations.

Five-year written consent requirement relaxed. The proposed regulations require a taxpayer that meets the gross receipts test in the current tax year to obtain the written consent of the Commissioner before changing to the cash method if the taxpayer had previously changed its overall method from the cash method during any of the five tax years ending with the current tax year. The final regulations remove the 5-year restriction on making automatic accounting method changes for certain situations.

Other changes. Additional changes include the following:

- To reduce confusion about the nature of property treated as non-incidental materials and supplies under Code Sec. 471(c)(1)(B)(i), the final regulations refer to the method under that provision as the "section 471(c) NIMS inventory method."

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- The final regulations provide that inventory costs includible in the section 471(c) NIMS inventory method are direct material costs of the property produced or the costs of property acquired for resale.
- Examples are added to clarify the principle that a taxpayer may not ignore its regular accounting procedures or portions of its books and records under the non-AFS section 471(c) inventory method.
- The final regulations clarify how a taxpayer treats costs to acquire or produce tangible property that the taxpayer does not capitalize in its books and records.

Applicability Date

The final regulations are applicable for tax years beginning on or after the date of publication in the Federal Register. However, a taxpayer may apply the final regulations under a particular Code provision for a tax year beginning after December 31, 2017, if the taxpayer follows all the applicable rules contained in the regulations that relate to that Code provision for the tax year and all subsequent tax years, and follows the administrative procedures for filing a change in method of accounting.

AFRs Issued For January 2021

Rev. Rul. 2021-1

The IRS has released the short-term, mid-term, and long-term applicable interest rates for January 2021.

Applicable Federal Rates (AFR) for January 2021

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	0.14%	0.14%	0.14%	0.14%
110% AFR	0.15%	0.15%	0.15%	0.15%
120% AFR	0.17%	0.17%	0.17%	0.17%
130% AFR	0.18%	0.18%	0.18%	0.18%
Mid-Term				
AFR	0.52%	0.52%	0.52%	0.52%
110% AFR	0.57%	0.57%	0.57%	0.57%
120% AFR	0.62%	0.62%	0.62%	0.62%
130% AFR	0.68%	0.68%	0.68%	0.68%
150% AFR	0.78%	0.78%	0.78%	0.78%
175% AFR	0.91%	0.91%	0.91%	0.91%
Long-Term				
AFR	1.35%	1.35%	1.35%	1.35%
110% AFR	1.50%	1.49%	1.49%	1.49%
120% AFR	1.63%	1.62%	1.62%	1.61%
130% AFR	1.77%	1.76%	1.76%	1.75%

Adjusted AFRs for January 2021

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	0.11%	0.11%	0.11%	0.11%
Mid-term adjusted AFR	0.39%	0.39%	0.39%	0.39%
Long-term adjusted AFR	1.03%	1.03%	1.03%	1.03%

The Code Sec. 382 adjusted federal long-term rate 1.03%; 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 1.03%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.21% 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, and before December 31, 2013, 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%. Finally, during 2021, the deemed rate of return for transfers to pooled income funds under Code Sec. 642(c)(5) that have been in existence for less than 3 taxable years is 2.2%.

Final Advance Payment Regulations Released

T.D. 9941

The IRS has released final regulations on the timing of income inclusion under an accrual method of accounting, including the treatment of advance payments for goods, services, and certain other items. The final regulations adopt and modify proposed regulations released in September 2019. The proposed and final regulations reflect changes made by the Tax Cuts and Jobs Act (P.L. 115-97) that revised the rules governing when income is recognized for federal tax purposes.

Highlights of Changes in Final Regulations

Among changes contained in the final regulations are:

- a change to the applicable financial statement (AFS) inclusion rule that would reduce AFS revenue by amounts the taxpayer does not have an enforceable right to recover if the customer were to terminate the contract on the last day of the tax year;
- a simpler alternative method to the revised AFS inclusion rule, above;

- additional adjustments in determining whether an item of gross income is treated as "taken into account as AFS revenue";
- a "cost of goods in progress" offset against advance payments for certain inventory items;
- additions to the non-exhaustive list of special methods of accounting to which the AFS income inclusion rule generally does not apply;
- clarification of multiple performance obligation, multi-year contract, and consolidated AFS rules;
- clarification of the term "transaction price";
- clarification that commission income is an advance payment; and
- a change in the definition of "specified fee" for certain debt instruments.

Applicability Date

In general, the final regulations apply for tax years beginning on or after the later of January 1, 2021, or the date of filing for public inspection. Generally, taxpayers may apply the rules in their entirety and consistently to a tax year beginning after December 31, 2017. However, special delayed applicability dates apply to final regulations related to certain specified fees.

Taxpayers that choose to apply the final regulations to a tax year beginning before the later of January 1, 2021, or the date of filing for public inspection must follow the rules for changes in method of accounting under Code Sec. 446 and the applicable procedural guidance.

Proposed FinCEN Regulations on Transactions Involving Convertible Virtual Currency or Digital Assets

Proposed Regulations, NPRM RIN1506AB47

The Financial Crimes Enforcement Network (FinCEN) has issued proposed regulations that would require banks and money service businesses to submit reports, keep records, and verify the identity of customers for transactions involving convertible virtual currency (CVC) or digital assets with legal tender status (legal tender digital assets, or LTDA) held in unhosted wallets, or in wallets hosted in a jurisdiction identified by FinCEN.

CVCs and Illicit Finance Threat

CVC is a medium of exchange, such as a cryptocurrency, that either has an equivalent value as currency or acts as a substitute for currency, but lacks legal tender status. Blockchain-based types of CVC (such as Bitcoin) are peer-to-peer systems that allow any two parties to transfer value directly with each other without the need for a centralized intermediary, such as a bank or a money service business.

Some persons use a financial institution to acquire or transact in CVC. Certain financial institutions provide custody services for their customers' CVC in "hosted wallets," in which the financial institution may execute transactions on a blockchain on behalf of a customer using a private key controlled by the financial institution.

Others do not use a financial institution's services, but instead use the private key controlling the CVC to transact directly on a blockchain. These persons may store the private key in a software program or written record, often referred to as an "unhosted wallet."

FinCEN seeks to address the illicit finance threat created by one segment of the CVC market, and the anticipated growth in LTDAs based on similar technological principles, by:

- establishing a new reporting requirement for certain transactions in CVC or LTDA, that is similar to the existing currency transaction reporting requirement; and
- establishing a new recordkeeping requirement for certain CVC/LTDA transactions, that is similar to the recordkeeping and travel rule regulations pertaining to funds transfers and transmittals of funds.

According to FinCEN, U.S. authorities have found that malign actors are increasingly using CVC to facilitate international terrorist financing, weapons proliferation, sanctions evasion, and transnational money laundering, as well as to buy and sell controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals.

Further, ransomware attacks and associated demands for payment, which are almost exclusively denominated in CVC, are increasing in severity. The G7 is specifically concerned about ransomware attacks because of malicious actors targeting critical sectors during the COVID-19 pandemic.

The proposal seeks to establish appropriate controls to protect United States national security from a variety of threats from foreign nations and foreign actors, including state-sponsored ransomware and cybersecurity attacks, sanctions evasion, and financing of global terrorism, among others.

Comments

Written comments on the proposed regulations may be submitted on or before January 4, 2021. Comments may be submitted by (1) the Federal E-rulemaking Portal: http://www.regulations.gov; or (2) mail to Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Commenters should refer to Docket Number FINCEN-2020-0020 and the specific RIN number 1506-AB47.

Finally, the Tresury Department issued a press release and FAQs on these proposed regulations.

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IRS Highlights Temporary Tax Changes Designed to Help Individuals and Businesses Who Give to Charity

IR-2020-278

The IRS has highlighted four temporary tax changes which are a part of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) (P.L. 116-136). These tax changes have been designed to help individuals and businesses who give to charity before the end of this year.

Individuals Who Don't Itemize

Individuals who elect to take the standard deduction generally cannot claim a deduction for their charitable contributions. However, the CARES Act permits these individuals to claim a limited deduction on their 2020 federal income tax returns for cash contributions made to certain qualifying charitable organizations and still claim the standard deduction. Under this change, these individuals can claim an "above-the-line" deduction of up to $300 for cash contributions made to qualifying charities during 2020. The maximum above-the-line deduction is $150 for married individuals filing separate returns.

Individuals Who Itemize

Subject to certain limits, individuals who itemize may claim a deduction for charitable contributions they make to qualifying charitable organizations. These limits generally range from 20-percent to 60-percent of an individual's adjusted gross income (AGI) and vary by the type of contribution and type of charitable organization. The CARES Act permits electing individuals to apply an increased limit, up to 100-percent of their AGI, for qualified contributions (Increased Individual Limit). The election is made on a contribution-by-contribution basis. Qualified contributions are limited to those made in cash during calendar year 2020 to qualifying charitable organizations. Individuals who would like to take advantage of the Increased Individual Limit must make their elections with their Form 1040, U.S. Individual Income Tax Return, or Form 1040-SR, U.S. Tax Return for Seniors.

Increased Corporate Limit for Charitable Contributions

The CARES Act has permitted C Corporations to apply an increased limit of 25-percent of taxable income (Increased Corporate Limit) for charitable contributions of cash they make to eligible charities during the 2020 calendar year. The maximum allowable deduction is usually limited to 10-percent of a corporation's taxable income. C Corporations must elect application of the Increased Corporate Limit on a contribution-by-contribution basis.

Businesses Donating Food Inventory

Businesses donating food inventory that is eligible for the enhanced deduction (for contributions for the care of the ill, needy, and infants) are eligible for increased deduction limits. For contributions made in 2020, the limit for these contribution deductions is increased from 15-percent to 25-percent. For C Corporations, the 25-percent limit is based on their taxable income. For other businesses, including sole proprietorships, partnerships, and S corporations, the limit is based on their aggregate net income for the year from all trades or businesses from which the contributions were made. A special method for computing the enhanced deduction continues to apply, as do food quality standards and other requirements.

In addition, the IRS has reminded both individuals and businesses that special recordkeeping rules apply to any taxpayer claiming a charitable contribution deduction. For donations of property, additional recordkeeping rules may apply, including filing a Form 8283, Noncash Charitable Contributions, and obtaining a qualified appraisal. The Service has requested taxpayers to see Publication 526, Charitable Contributions, for additional details on how to apply the percentage limits described above and a description of the recordkeeping rules for substantiating gifts to charity.

TAX BRIEFS

Church Plans

Two plans belonging to a university were church plans under Code Sec. 414(e). The defined benefit and defined contribution plans were both amended and restated from time to time and catered to the employees of the university. Both plans had different definitions of an eligible employee. The university was controlled by or associated with a church. The employees of the university were deemed to be employees of a church or a convention or association of churches by virtue of being employees of a Code Sec. 501 organization. Further, a committee that administered the benefits of said plans was controlled by or associated with the church. The committee was also found to be an organization under Code Sec. 414(e)(3)(A). Finally, the committee maintained the plans' qualified status within the correction period.

IRS Letter Ruling 202051003