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Biden Releases COVID Relief Proposal

American Rescue Plan Fact Sheet

On January 15, 2021, President-Elect Joe Biden released details of the American Rescue Plan, his proposal to help the country recover from the ongoing COVID-19 pandemic. The $1.9 trillion dollar plan includes billions of dollars in funding for vaccination efforts, unemployment relief, school district safety, and paid leave, among many other proposals. On the tax side of things, the plan includes:

- $1,400 direct stimulus payment to augment the $600 payment provided as part of the Consolidated Appropriations Act, 2021 (P.L. 116-260);
- funding for the Treasury Department to ensure that all individuals receive the $1,200 stimulus payment that should have been received under the Coronavirus Aid, Relief, and Economic Security (CARES) Act;
- child and dependent care credit limit increased to $4,000 for families with one child, $8,000 for families with two or more children, as well as an increase in the income limitation on families who can claim the credit;
- child tax credit increased to $3,000 per child ($3,600 for a child under six), and the age of a child for whom the credit can be claimed is increased to 17; and
- earned income tax credit increased (for example, an adult without children would receive a nearly $1,500 credit, up from the current $530 credit); the proposal would also increase the income limitation on the credit, and expand the age range of people eligible for the credit.

It is unclear how soon Congress will act on the proposal. The plan is very similar to one released by the Democrats on the House Ways and Means Committee on January 11, 2021 (see "A Bold Vision for a Legislative Pathway Toward Health and Economic Equity" available at https://waysandmeans.house.gov/), so the House could act quickly. However, the Senate has a large agenda for the next few weeks, with the need to approve President-Elect Biden's Cabinet appointees, as well as the impeachment trial of President Trump.

Final Regs Address QBI Deduction for Agricultural Cooperatives

T.D. 9947

Final regulations govern the qualified business income (QBI) deduction under Code Sec. 199A for Specified Agricultural Cooperatives and their patrons. The final regs largely adopt proposed regs issued in 2019 (NPRM REG-118425-18). The final regs are effective on January 14, 2021.

Co-op Patrons

Cooperative patrons who are individuals are eligible for the Code Sec. 199A(a) deduction. However, Code Sec. 199A(b)(7) requires patrons who receive certain payments from the co-op to reduce the 199A(a) deduction.

The final regs generally adopt Proposed Reg. §1.199A-7, and in particular the following items:

- the requirements that a cooperative determines qualified items from specified service trades and businesses (SSTBs) and non-SSTBs;
- the zero-presumption rule, under which the amount of distributions from the cooperative that may be included in the patron's QBI is presumed to be zero if the cooperative fails to timely report qualified items and SSTB items; and
- the safe harbor providing a reasonable method for patrons with income under the threshold amount to allocate deductions and W-2 wages between income or gain related to qualified payments and other income or gain.

The final regs also:

- simplify the co-op's required reporting of qualified items from non-SSTBs and qualified items from SSTBs;
- resolve an asymmetry that can arise when a co-op's SSTB provides services to patrons, by allowing the patron to allocate expenses between its qualified trade or business income and the SSTB income up to the amount of the patronage dividend; and
- clarify some aspects of the patron's reduced deduction, particularly how it operates with the Reg. §1.199A-4 aggregation rules and how it is affected by negative QBI.

Filing Season Begins February 12

The IRS will begin accepting and processing 2020 tax year returns for individual filers on Friday, February 12, 2021. This start date will allow the IRS time to do additional programming and testing of its systems following the December 27 tax law changes that provided a second round of Economic Impact Payments and other benefits.

To speed refunds during the pandemic, the IRS urges taxpayers to file electronically with direct deposit. The IRS expects more than 150 million tax returns to be filed this year, with the vast majority before the Thursday, April 15 deadline.

Also, the IRS anticipates a first week of March refund for many Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC) taxpayers if they file electronically with direct deposit. To avoid processing delays, the IRS urges taxpayers to avoid filing paper returns wherever possible, and check IRS.gov for the latest tax information. Finally, the IRS wants taxpayers to remember that advance stimulus payments received separately are not taxable and do not reduce the taxpayer's refund when they file in 2021.

IR-2021-16

Income Attributable to DPGR

The Code Sec. 199A(g) deduction for Specified Cooperatives and their patrons is similar in many respects to the former Code Sec 199 domestic production activities deduction (DPAD) and the related regulations.

The final regs generally maintain the proposed definitions of "taxable income" and "agricultural or horticultural products," but with slight modifications. In particular, the final regs continue to exclude intangible property from agricultural or horticultural products.

The final regs maintain the four-step process for nonexempt cooperatives to calculate the deduction, but revise the rule for applicable gross receipts to allow a co-op to include all nonpatronage gross receipts in non-domestic production gross receipts (non-DPGR) for purposes of the *de minimis* rules in Reg. §1.199A-9(c)(3), while also increasing the *de minimis* percentage from five percent to ten percent.

The final regs replace some examples regarding net operating losses (NOLs) to make them more realistic, and revise other examples to clarify that NOLs are not used against taxable income that is the result of not taking into account Code Sec. 1382 deductions when calculating the 199A(g) deduction.

The final regs also revise the rules allowing a co-op to pass-through to patrons some, all or none of its own 199A deduction, as well as the rules for a co-op that is a partner in a partnership.

Other Matters

The final regs generally adopt Proposed Reg. §1.199A-9 governing a co-op's DPGR; Reg. §1.199A-10, governing costs allocable to DPGR; Reg. §1.199A-11, governing the W-2 wage limitation on the deduction; and Reg. §1.199A-12, governing expanded affiliated groups (EAGs). The final regs also generally adopt the Proposed Reg. §1.1388-1 definitions and special rules applicable to co-ops, including the definitions of "patronage and nonpatronage," but remove the definition of "income from sources other than patronage."

The final regs also make some modifications to proposed applicability dates and transition rules. Finally, the final regs removed Regs. 1.199-0 through 1.199-9 for the repealed DPAD.

REFERENCE KEY

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

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Applicability Dates

The final regs generally apply to tax years beginning after January 19, 2021. However, taxpayers may choose to apply them to tax years beginning on or before that date, provided, in each case, the taxpayers follow the rules in their entirety and in a consistent manner. Alternatively, taxpayers may rely on Proposed Reg. §1.199A-7 through Proposed Reg. §1.199A-12 and Proposed Reg. §1.1388-1(f) issued on June 19, 2019, for tax years beginning on or before January 19, 2021, provided that, in each case, taxpayers follow the proposed regulations in their entirety and in a consistent manner.

QBI Rules Modified on Short Tax Years, Agricultural Co-ops

Rev. Proc. 2021-11

For determining W-2 wages under the Code Sec. 199A qualified business income (QBI) deduction, the IRS has provided guidance that modifies the rule for all taxpayers with short tax years, as well as three methods for most agricultural cooperatives to use. The rules under this guidance apply to tax years ending after 2017. Rev. Proc. 2019-11, 2019-09 I.R.B. 742, is modified.

W-2 Wages

The 199A deduction generally allows owners to deduct up to 20 percent of their income from sole proprietorships and pass-through entities. However, the deduction is limited to 50 percent of the qualified W-2 wages paid by the taxpayer during the tax year. Taxpayers may generally choose one of three methods to calculate W-2 wages: (1) the Unmodified Box 1 method, (2) the Modified Box 1 method, or (3) the Tracking Wages method.

Short Tax Year

Rev. Proc. 2019-11 requires taxpayers to use the Tracking Wages method to calculate W-2 wages for a short tax year. Under the Tracking Wages method, W-2 wages are equal to all reported wages paid by the taxpayer for the calendar year, plus certain amounts reported in Box 12 of Forms W-2. Rev. Proc. 2019-11 also limits reported wages for a short tax year to wages that were actually or constructively paid to employees during the short tax year and reported on Form W-2 for the calendar year ending with or within that short tax year.

Under the modified rules in the new guidance, a taxpayer's W-2 wages for a short tax year containing, but not ending on, December 31 include *all* wages actually or constructively paid during the short tax year.

Co-op Calculations

Most exempt co-ops are Specified Agricultural Cooperatives if they manufacture, produce, grow, extract or market agricultural or horticultural products. A Specified Cooperative's 199A deduction is generally equal to nine percent of the lesser of taxable income or qualified production activities income (QPAI), up to 50 percent of W-2 wages.

A Specified Cooperative may choose among the same three methods other taxpayers may use to calculate W-2 wages (that is, the Unmodified Box, Modified Box or Tracking Wages methods).

Under the Unmodified Box 1 method, W-2 wages are equal to the lesser of the total entries in Box 1 or in Box 5 of all W-2's filed by the co-op. The Modified Box 1 method starts with the total entries from Box 1, and subtracts amounts that are not wages for income tax withholding purposes. Under the Tracking Wages method, the co-op starts with total wages reported on its W-2's and adds certain amounts reported in Box 12.

Final Regs Clarify HRAs Integrated with Individual Coverage

T.D. 9949

The IRS has released final regulations that clarify the application of the employer shared responsibility provisions and certain nondiscrimination rules to health reimbursement arrangements (HRAs) integrated with individual health insurance coverage or Medicare. The final regulations also provide certain safe harbors for the application of those provisions to individual coverage HRAs, to facilitate the adoption of such HRAs by employers.

Shared Responsibility Affordability

An employer-sponsored plan is affordable for an employee if the amount the employee must pay for self-only coverage for a plan does not exceed a percentage of the employee's household income. An eligible employer-sponsored plan also provides minimum value (MV) if the plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of the costs, and the plan provides substantial coverage of inpatient hospitalization and physician services.

As with other types of employer-sponsored coverage, employers that offer individual coverage HRAs will not know employees' household incomes. Therefore, the final regulations provide that an employer offering an individual coverage HRA to a class of employees may use safe harbors to determine whether the cost of the HRA is affordable.

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Location Safe Harbor

Under existing premium tax credit (PTC) regulations, an individual coverage HRA is considered affordable for a month if the employee's required HRA contribution for the month does not exceed 1/12 of the product of the employee's household income for the tax year and the required contribution percentage. The Treasury Department and the IRS have concluded that the cost of the affordability plan at an employee's primary site of employment is a reasonable proxy for the cost of the affordability plan at the employee's residence, while avoiding the burdens that may arise for some employers in keeping records of their employees' current residences.

Thus, for determining whether an offer of an individual coverage HRA to a full-time employee is affordable, the final regulations provide that the an employer may use the lowest cost silver plan for the employee for self-only coverage offered through the Exchange where the employee's primary site of employment is located. Further, the location safe harbor may be used in combination with the other safe harbors provided in the regulations.

Age Safe Harbor

Under existing premium tax credit regulations, affordability for any given employee is based on the particular employee's relevant circumstances, including the particular employee's age. The final regulations do not provide a safe harbor for the age used to determine the premium of an employee's affordability plan. Rather, affordability of the offer of an individual coverage HRA is determined, in part, based on each employee's age.

Look Back Month Safe Harbor

Under existing PTC regulations, affordability of an individual coverage HRA for a month is determined, in part, based on the cost of the premium tax credit affordability plan for that month. For example, an employee's required contribution for January 2020 for an individual coverage HRA would be based on the cost of the PTC affordability plan for January 2020.

Under the final regulations, an employer offering an individual coverage HRA with a calendar-year plan year may use the look-back month safe harbor. However, the regulations provide additional specificity, to take into account that even within a calendar year, from calendar month to calendar month, the lowest cost silver plan in an employee's applicable location may change due to plan termination, or because the plan that was the lowest cost silver plan closes to enrollment (sometimes referred to as plan suppression). Therefore, the final regulations provide that in determining an employee's required contribution for any calendar month, an employer offering an individual coverage HRA with a calendar-year plan year may use the monthly premium for the lowest cost silver plan for January of the prior calendar year.

Final Regulations on Exempt Organization Excess Remuneration

T.D. 9938

The IRS has released final regulations relating to the excise taxes imposed on remuneration in excess of $1,000,000 and any excess parachute payment paid by an applicable tax-exempt organization (ATEO) to any covered employee. The regulations apply to certain tax-exempt organizations and certain other entities treated as related organizations. The final regulations adopt proposed regulations issued in June, 2020, with modifications.

Code Sec. 4960 generally imposes an excise tax on an ATEO that pays a covered employee either remuneration exceeding $1 million for a tax year or any excess parachute payment, at the Code Sec. 11 tax rate imposed on corporations (currently 21 percent). A "covered employee" is any employee or former employee of an ATEO that was one of the five highest-compensated employees of the organization during the current or immediately preceding tax year. A parachute payment is any payment to a covered employee that is: (1) in the nature of compensation, (2) contingent on the employee's separation from employment with the employer, and (3) has an aggregate present value that exceeds triple a specified base amount.

Proposed Regulations

The proposed regulations clarified that, when a person performs services as an employee of an ATEO and also for one or more of its related organizations, liability for the year's excise taxes is allocated between the employers according to their proportional share. If an organization is liable for excise tax on an employee both directly (as the organization's employee) and through a related organization, the proposed regulations provided that the organization is liable only for whichever amount is greater.

The proposed regulations also clarified that an ATEO is only liable for the excise tax on excess parachute payments that were actually paid by that organization. This is true despite the fact that the covered employee's base remuneration calculation includes the income from the applicable tax-exempt organization and all the related organizations.

Each employer liable for excise tax under Code Sec. 4960 is separately responsible for reporting and paying the tax using Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code. An employer may prepay the excise tax for excess parachute payments in the year of separation, or in any tax year prior to the year in which the parachute payment is actually made.

Final Regulations

The final regulations clarify that, for purposes of identifying an ATEO's five

highest-compensated employees for a tax year, remuneration paid during the applicable year for medical services is not taken into account. The final regulations also define various terms set forth in Code Sec. 4960.

Further, the final regulations also provide rules for determining: (1) the amount of remuneration paid for a tax year for purposes of identifying covered employees and calculating the excise tax; (2) whether excess remuneration has been paid and in what amount; (3) whether a parachute payment has been paid and in what amount; (4) allocation of liability for the excise tax among related organizations; and (5) the applicability date the final regulations.

All Taxpayers Now Eligible for IP PINs

The IRS has expanded the Identity Protection PIN Opt-In Program to all taxpayers who can verify their identities. The Identity Protection PIN (IP PIN) is a six-digit code known only to the taxpayer and to the IRS. It helps prevent identity thieves from filing fraudulent tax returns using a taxpayers' personally identifiable information.

Taxpayers who want an IP PIN for 2021 should go https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin and use the Get an IP PIN tool. This online process requires taxpayers to verify their identities using the Secure Access authentication process if they do not already have an IRS account. Taxpayers can visit IRS.gov/SecureAccess for information requirements. There is no need to file Form 14039, Identity Theft Affidavit, to opt into the program.

IR-2021-9

LIHC Deadlines Extended Due to COVID-19

Notice 2021-12

The IRS has extended several deadlines related to the low-income housing credit (LIHC) in response to the COVID-19 pandemic. Notice 2020-23, Notice 2020-53, Rev. Proc. 2004-39, Rev. Proc. 2014-49, and Rev. Proc. 2014-50 are amplified.

Extensions

For Code Sec. 42(h)(1)(E)(ii), if the last day for an owner of a building with a carryover allocation to meet the 10-percent test is on or after April 1, 2020, and before September 30, 2021, the last day is postponed to the earlier of one year from the original due date or September 30, 2021.

For Code Sec. 42(e)(3)(A)(ii), if the 24-month minimum rehabilitation expenditure period for a building originally ends on or after April 1, 2020, and before September 30, 2021, the last day for the owner to incur the minimum rehabilitation expenditures with respect to the building is postponed to the earlier of one year from the original end date or September 30, 2021.

For Code Sec. 42(h)(1)(E)(i), if the deadline for a low-income building to be placed in service is the close of calendar year 2020, the last day for the owner of the building to place the building in service is postponed to December 31, 2021.

For Code Sec. 42(j)(4)(E) in the case of a casualty loss not due to a pre-COVID-19-pandemic major disaster, and for §8.02 of Rev. Proc. 2014-49 in the case of a casualty loss due to a pre-COVID-19-pandemic major disaster, if a low-income building's qualified basis is reduced due to the casualty loss and the reasonable period to restore the loss by reconstruction or replacement ends on or after April 1, 2020, the last day of the reasonable restoration period is postponed by a period of one year from the original end date but not beyond December 31, 2021. However, the governmental housing credit agency may require a shorter extension, or no extension at all.

For determining the credit amount allowable under Code Sec. 42(a) in the case of a credit year that ends on or after April 1, 2020, and not later than the end of the reasonable restoration period (taking into account any extension under the preceding paragraph), if the owner restores the building by the end of that extended reasonable restoration period, the owner must use the building's qualified basis at the end of the tax year immediately preceding the first day of the casualty as the building's qualified basis for that credit year.

For Code Sec. 42(f), if the close of the first year of the credit period with respect to a building is on or after April 1, 2020, and on or before June 30, 2021, the qualified basis for the building for the first year of the credit period is calculated by taking into account any increase in the number of low-income units by the close of the six-month period following the close of that first year.

For Reg. §1.42-5, a correction period set by the agency that ends on or after April 1, 2020, and before September 30, 2021, is extended by a year, but not beyond December 31, 2021. However, the agency may require a shorter extension, or no extension at all.

Operational Provisions

An owner of a low-income building is not required to perform income recertifications under Reg. §1.42-5(c)(1)(iii) in the period beginning on April 1, 2020, and ending on September 30, 2021. The owner must resume the income recertifications by October 1, 2021.

For purposes of Reg. §1.42-5, an agency is not required to conduct compliance-monitoring inspections or reviews in the period beginning on April 1, 2020, and ending on September 30, 2021. The agency must resume compliance-monitoring inspections or reviews by October 1, 2021.

If an amenity or common area in a low-income building or project is temporarily unavailable or closed during some or all of the period from April 1, 2020, to September 30, 2021, in response to the

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COVID-19 pandemic and not because of other noncompliance, the temporary unavailability or closure does not result in a reduction of the eligible basis of the building.

Other Matters

For the purposes of an agency's qualified allocation plan (QAP) meeting the requirements of Code Sec. 42(m)(1)(A), a hearing on or after April 1, 2020, and before September 30, 2021, may be held by teleconference that is accessible to the residents of the locality where the agency has jurisdiction by calling a toll-free telephone number.

Agencies, issuers, owners, and operators of low-income housing projects may provide emergency housing from April 1, 2020, to September 30, 2021, to medical personnel or other essential workers that provide services during the COVID-19 pandemic.

For purposes of §5.02 of Rev. Proc. 2004-39, the last day of a 12-month transition period for a qualified residential rental project that ends on or after April 1, 2020, and before September 30, 2021, is postponed to September 30, 2021.

If the Code Sec. 147(d) two-year rehabilitation expenditure period for a bond that is used to provide a qualified residential rental project ends on or after April 1, 2020, and before September 30, 2021, the last day of that period is postponed to the earlier of one year from the original due date or September 30, 2021.

2021 Covered Compensation Tables Released

The IRS has provided tables of covered compensation under Code Sec. 401(l)(5)(E) for the 2021 plan year. Covered compensation with respect to an employee is defined as the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains Social Security retirement age. The tables are developed by rounding the actual amounts of covered compensation for different years of birth. For the 2021 plan year, the taxable wage base is $142,800.

Rev. Rul. 2021-3

Proposed Regs Clarify Disaster Deadline Postponement Rules

NPRM REG-115057-20

The IRS has released proposed regulations in connection with the mandatory 60-day postponement of certain time-sensitive tax-related deadlines by reason of a Federally declared disaster. The proposed regulations affect individuals who reside in or were killed or injured in a disaster area, businesses that have a principal place of business in a disaster area, relief workers who provide assistance in a disaster area, or any taxpayer whose tax records necessary to meet a tax deadline are located in a disaster area.

The proposed regulations seek to resolve ambiguities in the text of Code Sec. 7508A regarding the Treasury Secretary's discretionary authority to postpone certain time-sensitive tax deadlines by reason of a Federally declared disaster. The proposed regulations also amend the regulations under Code Sec. 165 to clarify the definition of "Federally declared disaster."

Comment Request

Written or electronic comments and requests for a public hearing must be received by March 15, 2021. Electronic submissions must be made via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-115057-20) by following the online instructions for submitting comments. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Paper submissions can be sent to: CC:PA:LPD:PR (REG-115057-20), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

IRS Seeks ETAAC Applications

IR-2021-8

The IRS is seeking qualified applicants for nomination to the Electronic Tax Administration Advisory Committee (ETAAC). Applicants willing to serve three-year terms beginning in September 2021, and with experience in areas such as state tax administration, cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement and implementation of customer service initiatives, are encouraged to apply. The IRS has stated that it is also interested in applications from representatives of consumer groups with an interest in tax issues.

The ETAAC provides an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft and refund fraud, in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members work closely with the Security Summit, a joint

effort of the IRS, state tax administrators and tax industry to fight electronic fraud.

Applications will be accepted through March 1, 2021. Questions about the ETAAC and the application process can be e-mailed to publicliaison@irs.gov.

NTA Releases Annual Report to Congress

IR-2021-11

National Taxpayer Advocate (NTA) Erin M. Collins has released her 2020 Annual Report to Congress focusing on the unprecedented challenges taxpayers faced in filing their tax returns and receiving refunds and stimulus payments during a year consumed by the COVID-19 pandemic. The report states that the roughly 20-percent inflation-adjusted reduction in the IRS's budget since fiscal year 2010 has left the agency with antiquated technology and inadequate staffing levels to meet taxpayers' needs. The report also includes the fourth edition of the National Taxpayers Advocate's Purple Book, a compilation of 66 legislative recommendations designed to strengthen taxpayer rights and improve tax administration.

Filing Season, EIPs

As of November 20, 2020, the IRS received about 169 million individual income tax returns, including about 8.4 million that were filed solely to claim stimulus payments. About 90 percent of the returns were e-filed. Regarding Economic Impact Payments (EIPs), the report says that the IRS effectively handled whatever it could automate, and that most taxpayer were well served as a result. An overwhelming majority of EIPs were issued by direct deposit or automated mailings and were timely transmitted. However, the report also discusses the major problems that taxpayers faced with refund delays, fraud detection, EIP underpayments, late notices, lack of information about backlogs, notices and other problems.

Inadequate Funding

The NTA is required to identify the 10 most serious problems encountered by taxpayers in their dealings with the IRS. The NTA highlighted one overriding theme that emerged in the list of "Most Serious Problems": To improve taxpayer service, the IRS needs more resources to hire employees and more resources to modernize its information technology (IT) systems. "The IRS is the accounts receivable department of the federal government," Collins wrote. "In FY 2020, it collected about $3.5 trillion on a budget of about $11.51 billion, producing a remarkable return on investment of more than 300:1. For this reason, it is economically irrational to underfund the IRS."

Other "Most Serious Problems" mentioned include: insufficient employee hiring and retention; inadequate telephone and in-person taxpayer service; limited functionality of online taxpayer accounts; antiquated information technology; inadequate digital communication options; and limitations on the ability of some taxpayers to e-file their tax returns

Extended Filing Season

The report contains a final assessment of the extended 2020 filing season, a taxpayer rights assessment that presents performance measures and other relevant data, a summary of key TAS systemic advocacy accomplishments, a discussion of the ten federal tax issues most frequently litigated during the preceding year, and a description of TAS's case advocacy operations during fiscal year 2020. The report also includes a research study that finds the IRS Collection function can implement an algorithm to identify taxpayers at high risk of economic hardship and spare them from entering into installment agreements they cannot afford.

TAX BRIEFS

Charitable Donations

A district court's decision to affirm the IRS's disallowance of a married couple's charitable deduction was upheld. The taxpayers donated a house in its entirety to an organization, but not the underlying land and claimed a deduction. The taxpayers did not convey their entire interest in the house, as required under Code Sec. 170(f)(3), and failed to provide an accurate appraisal of what they donated.

Mann, CA-4, 2021-1 USTC ¶50,101

Collection Due Process

A married couple's collection due process (CDP) case was remanded to the Office of Appeals for a supplemental CDP hearing. The record before the court was insufficient to decide whether the settlement officer failed to properly consider the installment agreement requested by the taxpayers.

Boettcher, TC, Dec. 61,805(M)

Discharge of Debt

In consolidated cases, two individuals received income from the discharge of a partnership's indebtedness. The taxpayers

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were partners in a partnership, along with another individual partner, from which they reported guaranteed payments. Funds provided by the other individual partner were loans to the partnership, and the partnership's liability was allocated among the partners, so cancellation of those loans resulted in income to the partners.

Hohl, TC, Dec. 61,806(M)

Free File

The IRS has launched IRS Free File to give taxpayers an early opportunity to claim credits like the Recovery Rebate Credit and other deductions. There are nine online products in English and two in Spanish. The IRS Free File online products are available to any taxpayer or family who earned $72,000 or less in 2020. For the military, MilTax online software will be available on January 19, 2021.

IR-2021-15

Information Returns

The Government Accountability Office (GAO) has reviewed IRS's use of information returns. GAO made nine recommendations, including that IRS revise its modernization plans for its information returns processing systems and incorporate it into broader IT modernization efforts, and develop a collaborative mechanism to improve coordination among IRS groups that use information returns.

GAO-21-102

Innocent Spouse Relief

An individual was not entitled to Code Sec. 6015(e)(1) innocent spouse relief regarding a tax refund. The taxpayer and her ex-husband were not married in the tax year at issue, so their purportedly joint tax return was not valid because it was not filed by a husband and a wife.

James, TC, Dec. 61,808(M)

IRSAC

The IRS has announced the appointment of 13 new members to the Internal Revenue Service Advisory Council (IRSAC), who will serve three-year appointments beginning in January 2021. The IRSAC is an organized public forum for IRS officials and representatives of the public to discuss various issues in tax administration. It provides the IRS commissioner with relevant feedback, observations and recommendations.

IR-2021-12

Liens and Levies

The IRS's mailing of a notice of intent to levy to an individual's actual and last known address by certified mail, return receipt requested, started the running of the 30-day period under Code Sec. 6330(a)(2) and (3), even though the taxpayer's address was shared by multiple businesses and the U.S. Postal Service left the notice at that address with a person who was neither the taxpayer's employee nor authorized to receive mail on the taxpayer's behalf.

Ramey, TC, Dec. 61,801

Patent Transfer

A doctor's income, which he had received from a corporation that he had formed to license a patented technology, was taxable as ordinary income instead of long-term capital gain. The corporation was a related person under Code Sec. 267(b)(2), as modified by Code Sec. 1235(d), so capital gain treatment of the income was unavailable. The taxpayer also failed to prove that he had a sale or exchange because initially he had not acquired a sufficient interest in the patent. Further, the taxpayer did not receive the income in connection with a sale or exchange of property held for more than one year. so he failed to achieve capital gain treatment under Code Sec. 1231.

Filler, TC, Dec. 61,807(M)

PPP Loans

The U.S. Small Business Administration reopened the Paycheck Protection Program (PPP) loan portal to PPP-eligible lenders with $1 billion or less in assets for First and Second Draw applications on January 15, 2021. The portal fully opened on January 19, 2021, to all participating PPP lenders to submit First and Second Draw loan applications to SBA. See www.sba.gov/ppp.

Research Credits

In consolidated cases, research credits under Code Sec. 41 claimed by an S corporation engineering firm were disallowed. The S corporation's research was entirely funded by the power generation firm that hired it to develop a new enclosure for turbine power generation; under the parties' agreement, the S corporation retained no "substantial rights" in the research it performed.

Tangel, TC, Dec. 61,802(M)

Social Security Benefits

An individual's due process and equal protection rights were not violated by the treatment under Code Sec. 86(c) of the portion of Social Security benefits includable in gross income. The taxpayer elected the "married filing separately filing" status on his timely filed Form 1040. Congress had a valid and rational basis for establishing a separate classification for a taxpayer who lived with a spouse for any part of the tax year and filed a separate return.

Kelley, TC, Dec. 61,803(M)

Taxpayer First Act

The IRS has sent the Taxpayer First Act Report to Congress. The report highlights recommendations designed to reimagine the taxpayer experience, enhance employee training and restructure the organization to increase collaboration and innovation. The report can be found in IRS Pub. 5426.

IR-2021-7

Whistleblower Awards

The Whistleblower Office (WBO) did not abuse its discretion in denying an individual's three claims for award. WBO denied two of the claims because the IRS operating divisions took no action as a result of the information that the individual provided, and so collected no proceeds. The third claim was denied because there was no change as a result of the examination of the third taxpayer's return and likewise no collected proceeds.

Kennedy, TC, Dec. 61,804(M)