



# FEDERAL TAX WEEKLY

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## Adequate Disclosure Guidance Updated

*Rev. Proc. 2020-54*

The IRS has updated its guidance on how to make an adequate disclosure on an income tax return. Generally, an adequate disclosure may reduce a substantial understatement and/or an unreasonable position return preparer penalty. The guidance makes editorial changes to Rev. Proc. 2019-42, I.R.B. 2019-49, 1298, and updates the tax years and forms to which the procedure applies. The IRS did not make additional substantive changes.

### Application

This guidance applies to tax years beginning in 2020 and returns filed on 2020 tax forms. In addition, the guidance applies to returns filed on 2020 forms for short tax years beginning in 2021.

The guidance does not apply with respect to any other penalty provisions, including (but not limited to) the disregard provisions of the Code Sec. 6662(b)(1) accuracy-related penalty, the Code Sec. 6662(i) increased accuracy-related penalty in the case of nondisclosed noneconomic substance transactions, and the Code Sec. 6662(b)(7) and (j) increased accuracy-related penalty in the case of undisclosed foreign financial asset understatements.

The guidance does not take into account the effect of tax law changes effective for tax years beginning after December 31, 2020. If the procedure refers to a tax return line affected by such a change and requires additional reporting, the taxpayer may need to file Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement.

Further, the IRS will treat a corporation's complete and adequate disclosure of a tax position on the appropriate year's Schedule UTP (Form 1120), Uncertain Tax Positions Statement, as if the corporation filed Form 8275 or Form 8275-R. However, the IRS will not treat filing a Form 8275 or Form 8275-R as a substitute for Schedule UTP.

### Adequate Disclosure

Generally, a taxpayer must furnish all information required by the applicable forms and instructions, and the amounts entered on the forms must be verifiable. Unless otherwise provided, the IRS does not require disclosure of additional facts if the forms and attachments are clear and completed according to their instructions. Moreover, an amount is verifiable if, on audit, the taxpayer can prove the amount's origin and can show they entered the amount on the form in good faith. If an entry may present a legal issue or controversy because of a related-party transaction, then that transaction and the relationship must be disclosed on Form 8275 or Form 8275-R.

## No Penalty Relief

A taxpayer meeting the disclosure requirements will not be entitled to a reduced accuracy-related penalty if the item or position on the return:

- does not have a reasonable basis as defined in Reg. §1.6662-3(b)(3);
- is attributable to a tax shelter item as defined in Code Sec. 6662(d)(2)(C)(ii); or
- is not properly substantiated, or the taxpayer failed to keep adequate books and records with respect to the item or position.

## Safe Harbor for Electing Real Property Trade or Business

Rev. Proc. 2021-9

The IRS has provided a safe harbor allowing a trade or business that manages or operates a qualified residential living facility to be treated as a “real property trade or business” solely for purposes of qualifying to make the Code Sec. 163(j)(7)(B) election. This guidance formalizes the proposed safe harbor

## Final Extension of Temporary Fuel Tax Relief

The IRS has provided a final extension of the temporary dyed fuel relief provided in section 3.02 of Notice 2017-30, I.R.B. 2017-21, 1248, which was published in response to energy emergencies in Wisconsin resulting from the permanent shutdown of the segment of the West Shore Pipeline between Milwaukee and Green Bay. The rules originally applied to removals of dyed diesel fuel and kerosene from Green Bay terminals on or after October 31, 2017, and before May 4, 2018. An extension to the time period had been provided by Notice 2018-39, I.R.B. 2018-20, 582, through December 31, 2018. Another extension had been provided by Notice 2019-4, I.R.B. 2019-02, 282, through December 31, 2019. Still another extension had been provided by Notice 2020-4, I.R.B. 2020-04, 380, through December 31, 2020. The final extension to the time period has been provided, and extended relief will be available beginning January 1, 2021, and ending December 31, 2021.

Notice 2021-4

issued in Notice 2020-59, I.R.B. 2020-34, 782. Taxpayers may apply the rules to tax years beginning after December 31, 2017.

## Qualified Residential Living Facilities

A facility is deemed to be a “qualified residential living facility” if it:

- consists of multiple rental dwelling units within one or more buildings or structures that generally serve as primary residences on a permanent or semi-permanent basis to individual customers or patients;

- provides supplemental assistive, nursing, or other routine medical services;
- has an average period of customer or patient use of individual rental dwelling units of 30 days or more; *and*
- retains books and records to substantiate requirements.

Further, taxpayers must use the Code Sec. 168(g) alternative depreciation system to depreciate the property under Code Sec. 168(g)(8).

Taxpayers satisfying the requirements of the safe harbor after a deemed cessation of the electing trade or business will have their initial election under Code Sec. 163(j)(7)(B) automatically reinstated.

## Mandatory E-filing of Form 4720 by Private Foundations Delayed

Notice 2021-1

The IRS has delayed the application of Code Sec. 6033(n) with respect to the requirement for organizations recognized as tax exempt under Code Sec. 501(c)(3)

and classified as private foundations under Code Sec. 509(a) to electronically file Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code. Accordingly, the IRS expects a modified paper version of

Form 4720 to be available for use at the beginning of 2021. Further, the IRS and Treasury announced that they intended to remove Reg. §53.6011-1(c) because amendments made to Code Secs. 6104 and 6033 by the Taxpayer First Act of

### REFERENCE KEY

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

FEDERAL TAX WEEKLY, 2021 No. 2. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.  
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2019 (TFA) (P.L. 116-25) rendered the ability for a private foundation and other persons to jointly file the same Form 4720 electronically unfeasible.

## Background

Code Sec. 6033(a)(1) requires every organization exempt from taxation under Code Sec. 501(a) (tax-exempt organization) to file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws. Section 3101(a) of the TFA amended Code Sec. 6033(n) to provide that any exempt organization required to file a return under Code Sec. 6033 must file such return in electronic form. However, section 3101(d)(2) of the TFA gives the Treasury Secretary authority to delay the application of these amendments if it would cause undue burden without a delay. The delayed applicability date must not be later than tax years beginning on or after July 1, 2021. Section 3101 of the TFA is effective for tax years beginning on or after July 2, 2019.

The IRS and Treasury noted that Reg. §1.6033-2(a)(2)(ii)(J) clarified that Form 4720 (relating to certain excise tax liabilities under chapter 42), when filed by a private foundation, would be part of the information return required under Code Sec. 6033 as well as a tax return required under Code Sec. 6011. Accordingly, Form 4720 filed by a private foundation would be information required by Code Sec. 6033 and the regulations thereunder and

## Updated Guidelines for Substitute Tax Forms Issued

The IRS has issued guidelines and general requirements for the development, printing and approval of the 2020 substitute tax forms. The IRS accepts quality substitute tax forms that are consistent with the official forms and that do not have an adverse impact on processing. The IRS Substitute Forms Unit administers the formal acceptance and processing of these forms nationwide. While the unit deals primarily with paper documents, it also reviews for approval other processing and filing forms, such as electronic filing. Only substitute forms conforming with these requirements will be accepted.

This revenue procedure will be reproduced as the next revision of IRS Publication 1167, General Rules and Specifications for Substitute Forms and Schedules. Rev. Proc. 2019-35, I.R.B. 2019-41, 871, is superseded.

*Rev. Proc. 2020-55*

## IRS Extends Acceptance of Signature Images, Digital Signatures

The IRS has announced that it is extending its temporary acceptance of certain images of signatures (scanned or photographed) and digital signatures on documents related to the determination or collection of tax liability until June 30, 2021. Further, a temporary deviation has been implemented that allows IRS employees to accept documents via email and to transmit documents to taxpayers using some secured messaging system. This announcement is a part of the IRS's response to the Coronavirus pandemic situation and its efforts to protect employees while still delivering mission-critical functions.

For more information, see the memorandum from the Deputy Commissioner of Services and Enforcement, at <https://www.irs.gov/pub/irs-utl/approval-to-accept-images-of-signatures-and-digital-signatures.pdf>.

thus would be disclosable under Code Sec. 6104. The IRS is modifying Form 4720 so that private foundations can electronically file the form in accordance with the TFA's electronic filing mandate.

### Effective Date

This notice is effective on January 11, 2021.

## New User Fee Proposed for Estate Tax Closing Letters

*NPRM REG-114615-16*

The Treasury and IRS have issued proposed regulations establishing a new user fee for persons requesting an estate tax closing letter. The IRS will issue Letter 627 to a person properly authorized under Code Sec. 6103 to receive (and therefore to request) an estate tax closing letter with respect to the estate. An estate tax closing letter

informs an authorized person of the acceptance of the estate tax return and related return information, including the amount of the net estate tax, the state death tax credit or deduction, and any generation-skipping transfer tax for which the estate is liable.

Before June, 2015, the IRS generally issued an estate tax closing letter for every estate tax return filed. However, for estate

tax returns filed on or after June 1, 2015, the IRS offers an estate tax closing letter only upon the request of an authorized person. Prior to the ongoing coronavirus (COVID-19) pandemic, an authorized person could request an estate tax closing letter either by telephone or fax. However, due to pandemic-related restrictions, currently an authorized person may only request an estate tax closing letter by fax.

The practice of issuing estate tax closing letters to authorized persons is not mandated by any Code or other statutory provision. Instead, the practice is fundamentally a customer service convenience.

The Treasury Department and the IRS propose establishing the new user fee for estate tax closing letter requests at \$67 initially. However, the current proposed regulations do not include guidance on the procedure for requesting an estate tax closing letter and paying the associated user fee. The IRS intends to establish a “one-stop” online method for requesting and paying for an estate tax closing letter.

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## Alabama Victims of Hurricane Zeta Granted Tax Relief

AL-2020-03

The president has declared a federal disaster area in Alabama due to Hurricane Zeta, which began on October 28, 2020. The disaster area includes Clarke, Dallas, Marengo, Mobile, Perry, Washington, and Wilcox counties. Taxpayers who live or have a business in the disaster area may qualify for tax relief. Taxpayers in localities added later to the disaster area will automatically receive the same filing and payment relief.

### Filing Deadlines Extended

The IRS has extended certain deadlines falling on or after October 28, 2020, and before March 1, 2021, to March 1, 2021. The extension includes filing for most returns, including: individual, corporate, estate and trust income tax returns; partnership and S corporation income tax returns; estate, gift and

## Approval Period to Deviate from Standard Follow-Up IDR, Enforcement Timelines Extended

The IRS has extended the approval period to deviate from standard follow-up information document request (IDR) and IDR Enforcement timelines until June 30, 2021. A memorandum announcing the extension also included guidance regarding resumption of the Tax Exempt and Government Entities (TE/GE) exam activities post-July 15, 2020, which would also be effective until June 30, 2021. The IRS would generally not start new field, office and correspondence examinations. The IRS will work refund claims where possible, without in-person contact. However, new examinations could be started where deemed necessary to protect the government's interest in preserving the applicable statute of limitations.

On March 13, 2020, the President declared a national state of emergency due to the COVID-19 pandemic. The IRS People First Initiative provided relief on a variety of issues, including the suspension of all in-person contacts and some compliance actions through July 15, 2020.

For more information, see the memorandum from the Acting Commissioner, Tax Exempt/Government Entities, at <https://www.irs.gov/pub/foia/ig/tege/tege-04-1220-0031.pdf>.

generation-skipping transfer tax returns; Form 5500 series returns; annual information returns of tax-exempt organizations; and employment and certain excise tax returns.

Taxpayers also have until March 1, 2021, to perform certain time-sensitive actions described in Reg. §301.7508A-1(c) (1) and Rev. Proc. 2018-58, I.R.B. 2018-50, 990, that are due to be performed on or after October 28, 2020, and before March 1, 2021. However, the extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098 or 1099 series, or Forms 1042-S, 3921, 3922 or 8027.

### Payment Deadlines Extended

The relief also includes extra time to make tax payments. An affected taxpayer's estimated income tax payments originally due on or after October 28, 2020, and before March 1, 2021, are postponed through March 1, 2021, and will not be subject to penalties for failure to pay estimated tax installments as long as such payments are paid on or before March 1, 2021.

The extension does not apply to employment and excise tax deposits. However, IRS will abate penalties on payroll and excise tax deposits due on or after October 28, 2020, and before November 12, 2020, will be abated as long as the tax deposits were made by November 12, 2020.

### Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers claiming a disaster loss on their 2019 or 2020 return should write the disaster designation “Alabama - Hurricane Zeta” in bold letters at the top of the return, and include the disaster declaration number, FEMA 4573, on the return.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, and submit it to the IRS.

# Second Round of EIPs Announced

IR-2020-280

The Treasury Department and the IRS announced that they were beginning to deliver a second round of Economic Impact Payments (EIPs) to millions of Americans as part of the implementation of the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CARES Act) (P.L. 116-136).

The initial direct deposit payments were expected to begin arriving for some as early as the evening of December 29, and were to continue the following week. Most recipients were to receive their EIPs by direct deposit. Paper checks were to begin to be mailed on December 30. Persons who received the first round of payments earlier in 2020 but did not receive a payment via direct deposit would generally receive a check or, in some instances, a debit card.

For Social Security and other beneficiaries who received the first round of payments via Direct Express, they will receive the second payment the same way.

## EIP Impact

This second round of payments will provide critical economic support to those who, through no fault of their own, have been adversely impacted by the COVID-19 pandemic. This second round of payments will be distributed automatically, with no action required for eligible individuals.

Eligible individuals who did not receive an EIP in 2020—either the first or the second payment—will be able to claim it when they file their 2020 taxes in 2021. The IRS urges such individuals to review the eligibility criteria when they file their

2020 taxes; many people, including recent college graduates, may be eligible to claim it. People will see the EIP referred to as the “Recovery Rebate Credit (RRC)” on Form 1040 or Form 1040-SR, because EIPs are an advance payment of the RRC.

## Payment Status

The swift issuance of this second round of payments follows the successful delivery of more than \$270 billion in CARES Act Economic Impact Payments earlier this year, providing crucial economic support to nearly 160 million Americans. Taxpayers can check the status of their payment at <https://www.irs.gov/coronavirus/get-my-payment>.

Additional information regarding EIPs can be obtained at <https://www.irs.gov/coronavirus/economic-impact-payments>.

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# Deductibility of Tax Insurance Premiums Discussed

CCA Memorandum 202053010

The IRS Chief Counsel has provided guidance (in a redacted memorandum) on the deductibility of certain policy premiums under Code Secs. 162(a) and 212 regarding a policy in connection with the donation of a conservation easement. In this instance, the premium paid toward the policy was not directly or proximately connected to any trade, business, or income producing activity of the taxpayer (which was apparently a partnership that was going to own certain real property). As a result, the premium was not deductible under Code Secs. 162(a) and 212. Further, the

premium, as part of a contractual arrangement to pay non-deductible tax, was not deductible under Code Sec. 212(3).

The reimbursable claims under the policy were unrelated to any purported trade or business activities of the taxpayer. Under the terms, as long as the taxpayer fulfilled its obligations under the policy, it was entitled to payment for amounts calculated with reference to a disallowed conservation easement deduction. Moreover, as any reimbursement under the policy would pass through to the taxpayer's members, the policy's terms were necessarily unrelated to any trade or business activities at the partnership level. Neither the deduction itself,

nor any insurance payout for its disallowance, arose as a result of any purported investment activity, or was correlated to the success or failure of such activity. As a result, the premium paid toward the policy was not deductible under Code Sec. 212. Further, since the insurer was under no obligation to perform any services related to a tax proceeding, no portion of the premium could be regarded as consideration for such services. Thus, the contract explicitly contemplated the reimbursement of nondeductible tax and penalty amounts. Consequently, the premium paid toward the policy was not deductible under Code Sec. 212(3).

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# Senate Vote on CASH Act Blocked

On December 29, 2020, Senate Majority Leader Mitch McConnell, R-Ky. blocked a vote in the U.S. Senate on the Caring for Americans with Supplemental Help (CASH) Act of 2020 (H.R. 9051). The

CASH Act would have increased the amount of the stimulus payment in the Consolidated Appropriations Act, 2021 from \$600 to \$2,000. It had been approved in the House on December 28

under a suspension of the rules (necessitating a 2/3 majority for passage) by a vote of 275 to 134.

The proposed legislation had been brought to a vote in the Senate by Senate

Minority Leader Chuck Schumer, D-NY, under Senate rules allowing for any member of the chamber to bring a bill to the floor for a vote. However, the rules allowed the vote to be blocked by any single member, in this case, McConnell.

The bill would have required 60 votes in the Senate for passage. It had wide support from many Senate Democrats, and several GOP Senators voiced approval for the increase in the stimulus payment amount. President Trump

demanded that the amount of the payment be increased, and he presumably would signed the bill into law had it reached his desk.

## TAX BRIEFS

### *Annuity Contracts*

In each of three cases, investment advisory fees that a life insurance company deducted from three nonqualified deferred annuity contracts' cash value and remitted to an investment adviser would not be treated as "amount received" by the owners of the contract under Code Sec. 72(e). In each case, the fees qualified as an integral part of the contract. Further, the fees did not constitute compensation to the investment advisor for services related to any assets of the owners of the contract other than the contract or any services other than investment advice services with respect to the contract. Therefore, the fees qualified as an expense of the contract, and not a distribution to the owner.

*IRS Letter Rulings 202052004; 202052005; 202052006*

### *Depletion*

A calendar year, accrual basis entity, was allowed to aggregate separate nonoperating mineral interests located at certain distinct areas such that the nonoperating mineral interests located at those areas were separately treated as a single property for U.S. federal income tax purposes. The requirements of Reg. §1.614-5 were satisfied.

*IRS Letter Ruling 202052009*

### *Depreciation*

The IRS Chief Counsel issued guidance on the recovery period for solar energy systems. If the solar energy system at issue came under Code Sec. 48(a)(3)(A), it would have a five year recovery period under Code Sec. 168(c). Moreover, it would meet the requirement under Code Sec. 168(k)(2)(A)(i)(I) that the property

must have a recovery period of 20 years or less.

*CCA Memorandum 202053011*

### *Indian Fishing Rights*

Seafood Trade Relief Program (STRP) payments received by certain tribal fisherman were income derived from a fishing rights-related activity of the tribe, as described under Code Sec. 7873(a). The STRP payments were intended to offset the loss of income from fish exports due to retaliatory tariffs imposed by foreign governments. The STRP payments were not available to anyone affected by retaliatory tariffs in general, but were offered only to commercial fisherman who lost income on the export of particular fish. The payments were calculated based on the expected trade damage for each affected species of fish. In effect, the payments were substitutes for income lost on the harvesting, processing, and transporting fish subject due to the tariffs. If the income being replaced by the STRP payments qualified as "income derived from a fishing rights-related activity of the tribe," then the STRP payments received by a tribal member or qualified Indian entity (as described in Code Sec. 7873(b)(3)) would also meet the requirements for exclusion under Code Sec. 7873.

*CCA Memorandum 202053014*

### *Like-Kind Exchanges*

A corporation was not disqualified from deferring gain under Code Sec. 1031 for the exchange of properties. The taxpayer entered into a deferred exchange agreement with a qualified intermediary to engage in a Code Sec. 1031 like-kind exchange, and exchanged one property for two, both of which were owned by a related person,

using a qualified intermediary to facilitate the exchange. Consequently, Code Sec. 1031(f)(1) would not apply because the qualified intermediary was not related to the taxpayer.

*IRS Letter Ruling 202053007*

### *Minimum Funding Standards*

A proposed amendment to a multiemployer defined benefit plan was reasonable and *de minimis* because it met the requirements for the exception in Code Sec. 412(c)(7)(B)(i). Further, the proposed amendment did not interfere with the amortization extension approval of the plan. The proposed amendment was reasonable because it would eliminate administrative expenses and was projected to improve the plan's funding status. The proposed amendment was *de minimis* because it would also increase the plan's actuarial accrued liability. Consequently, the plan was allowed to retain the Code Sec. 431(d)(1) amortization extensions.

*IRS Letter Ruling 202052014*

The IRS approved an entity's request for waiver of the minimum funding standard for a plan. The waiver was granted in accordance with Code Sec. 412(c) and section 302 of the Employee Retirement Income Security Act of 1974 (ERISA). The taxpayer met the legal standard for a "temporary substantial business hardship" because of issues arising from certain projects it was involved in, as well as the effects from the COVID-19 pandemic. The waiver was approved for the remaining unpaid minimum required contribution for the plan year. Further, all waiver amortization payments attributable to the waiver and all outstanding waivers were required to be

paid as stated in Code Sec. 412(c)(1)(C). Accordingly, the taxpayer was required to timely satisfy payment of the amortized portion of the waiver for the plan year because this was a condition of the waiver that was previously granted.

[IRS Letter Ruling 202053002](#)

### **Premium Tax Credits**

The IRS recently released a statement that people who are automatically re-enrolled in their Federal Health Insurance Exchange plan through HealthCare.gov will continue to have Advance Payments of the Premium Tax Credits (APTC) made on their behalf into 2021. Contrary to recent reports, the IRS reminded taxpayers that the processing status of their 2019 tax return does not have any effect on their ability to re-enroll and have APTC made on their behalf for calendar year 2021.

### **Private Foundations**

Two private foundations' procedures for awarding scholarships were approved, and the procedures met the requirements under Code Sec. 4945(g). The first organization intended to operate an educational grant program to fund research and solutions connected to a specific purpose to benefit the residents of a specific area. The second organization operated a scholarship program to encourage young people living in certain states to pursue their education by assisting them financially in their endeavor. In both cases, the scholarship grants were not taxable expenditures under Code Sec. 4945(g)(3). Moreover, in the second case, the awards were made on a nondiscriminatory basis, and were subject to Code Sec. 117(b). Finally, the scholarship grants were not taxable expenditures under Code Sec. 4945(d)(3).

[IRS Letter Rulings 202053016, 202053018](#)

### **REITs**

A state corporation was considered a publicly offered real estate investment trust (REIT) under Code Sec. 562(c)(2). Therefore, a distribution made by the taxpayer was not a preferential dividend under Code Sec. 562(c)(1). The taxpayer's parent REIT indirectly owned interest in the taxpayer through operating partnerships. In turn, the operating partnership directly owned interest in the taxpayer and

indirectly owned interest in the taxpayer through other partnerships. However, the taxpayer represented that the parent REIT had a controlling interest in taxpayer. The taxpayer made a distribution on its common stock. The distribution was intended to be pro rata, but an overdistribution was paid to two of the partnerships due to the rounding of the ownership percentages shown in the organizational charts maintained by the operating partnership. When the taxpayer realized its error, the overdistribution was returned to the taxpayer.

[IRS Letter Ruling 202051005](#)

Three entities were granted extensions to elect under Code Sec. 856(l) to treat another entity as a taxable real estate investment trust (REIT) subsidiary (TRS). In the first case, the taxpayer hired a firm to assist with certain income tax compliance matters, but the firm failed to remind the taxpayer to file the TRS election and the taxpayer inadvertently failed to file Form 8875, Taxable REIT Subsidiary Election, on behalf of the taxpayer and subsidiary. In the second case, the taxpayer realized that its subsidiary would not qualify for the dual income inclusion exception to the anti-hybrid rules because of the issuance of minority interests to unrelated parties. In the third case, the taxpayer and its subsidiary intended to file Form 8875, but closures related to COVID-19 caused delays in obtaining an EIN number for the subsidiary and obtaining the necessary signatures of officers of the subsidiary.

[IRS Letter Rulings 202051004; 202051006; 202051008](#)

A successor-in-interest to a trust was granted a 90-day extension to make elections to treat each of its subsidiary corporations as a TRS under Code Sec. 856(l). The taxpayer had hired a law firm to assist with certain income tax compliance matters, but the law firm failed to file Form 8875, Taxable REIT Subsidiary Election, on behalf of the taxpayer and the subsidiaries. The taxpayer and the corporations satisfied the requirements for granting a reasonable extension of time to elect under Code Sec. 856(l) to treat each corporation as a TRS of the taxpayer.

[IRS Letter Ruling 202053008](#)

### **Reorganizations**

In one case, as a part of a proposed transaction, certain post-closing payments were treated as occurring immediately prior to a distribution and, in the case of any post-closing cash proceeds received by a distributing entity from a controlled entity, would constitute "other property or money" described in Code Sec. 361(b). In another case, as part of a proposed transaction, contribution and a distribution qualified as a "reorganization" within the meaning of Code Secs. 368(a)(1)(D) and 355. Each pension plan would be treated as a creditor of distributing entity to the extent of the pension plan amount with respect to that pension plan for purposes of Code Sec. 361(b)(3). In the first case, the distributing entity did not undertake either of the first initial public offering (IPO) or the second IPO described in a prior ruling letter; certain previous rulings were modified. In the second case, the proposed transaction distributing proposed to carry out the proposed transaction to separate one business from the other; the IRS made several other determinations.

[IRS Letter Rulings 202051009; 202051011](#)

### **S Corporations**

A entity was granted an extension to elect to be an S corporation. The taxpayer intended to elect to be treated as an association taxable as a corporation, and intended to elect to be treated as an S corporation for federal tax purposes. However, the taxpayer inadvertently failed to timely file a Form 2553, Election by a Small Business Corporation. The taxpayer established reasonable cause for its failure.

[IRS Letter Ruling 202051010](#)

Two limited liability companies (LLCs) were granted relief for the inadvertent termination of their S corporation statuses under Code Sec. 1362(f). In the first case, the taxpayer realized that two trusts belonging to income beneficiaries were ineligible to be qualified subchapter S trusts (QSSTs) though they were eligible to be electing small business trusts (ESBTs). This made them ineligible shareholders. In the second case, the taxpayer had more than one class of stock outstanding at the time that it filed its S corporation election. In both the cases, the taxpayers would continue to be

treated as an S corporations, provided their elections were otherwise valid and not otherwise terminated.

*IRS Letter Rulings 202053004; 202053005*

### **Tax-Exempt Organizations**

Two limited liability companies, wholly owned by exempt organizations, were granted extensions to make an election to not be treated as tax-exempt entities under Code Sec. 168(h)(6)(F)(ii) from their inception. In each case, the taxpayer relied on a tax preparer to timely file the election, but the tax preparer inadvertently failed to attach the required election statement to the taxpayer's return. The taxpayers satisfied the requirements of Reg. §§301.9100-1 and 301.9100-3 and acted reasonably, in good faith. Granting relief did not prejudice the government's interests.

*IRS Letter Rulings 202051001; 202051002*

The Office of Chief Counsel determined that self-declaring organizations, like non Code Sec. 510(c)(3) self-declarers, are not eligible for Reg. §301.9100-3 relief because they did not fail to make a required regulatory election. Further, organizations failing

to file the necessary information returns holding themselves out as exempt organizations are not eligible for relief because they would not otherwise be exempt for the period for which they are requesting relief. The IRS was justified under the applicable standard of review to deny such relief as the organizations did not act in reasonable good faith. Additionally, organizations having filed the necessary information returns would be ineligible for relief beyond the date of which the statute of limitations on assessment of tax has expired, typically three years after the due date of the return. Further, denial of said relief by IRS Exempt Organizations, Determinations (EOD) did not separately provide a right to petition the Tax Court. However, Code Sec. 7428 jurisdiction over the denial of exempt status for periods prior to the postmark date of the application appeared to be a matter of first impression.

*Field Attorney Advice 20205201F*

Two organizations' requests for tax-exempt status were denied. The first organization was a nationwide religious

organization that failed the operational test because its primary purpose furthered a substantial nonexempt purpose relating to the possession, distribution and use of controlled substances in violation of federal law and public policy. The second organization was incorporated to obtain funding for films and oversee the production and distribution of those films, but its articles did not limit its purposes to one or more exempt purposes and its assets were not dedicated to an exempt purpose. Further, the second organization's operations did not further an exempt purpose because it served the private interests of its members.

*IRS Letter Rulings 202053019; 202053020*

The IRS approved a tax-exempt organization's set-aside and granted a 60-month extension to pay out the set-aside amount. The organization was exempt from federal income tax under Code Sec. 501(c)(3) and was classified as a private foundation under Code Sec. 509(a). The organization wished to set aside funds for property renovations and upgrades.

*IRS Letter Ruling 202053017*