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Important IRS Reminders Before 2020 Filing Season

IR-2021-23

The IRS has shared several important reminders for taxpayers who are about to file their federal tax returns for 2020, which was an unpredictable year with many changes and challenges.

Direct Deposit

The IRS reminds taxpayers that the safest, most accurate, and fastest way to get a refund is to file electronically and choose direct deposit. Direct deposit is the same electronic transfer system that is used to deposit nearly 98 percent of all Social Security and Veterans Affairs benefits into millions of accounts.

The IRS points out that, with direct deposit, any tax refund is electronically deposited for free into a taxpayer's financial account. According to the IRS, eight out of 10 taxpayers get their refunds using direct deposit.

Earned Income Tax Credit

The earned income tax credit (EITC) can give qualifying workers with low-to-moderate income a substantial financial boost. The EITC reduces the amount of tax that a taxpayer owes, and may give them a refund even if they do not owe any taxes or are not required to file a return. To receive the EITC, individuals must file a federal tax return and meet certain basic requirements:

- show proof of earned income;
- have investment income below $3,650 in the tax year they claim the credit;
- have a valid Social Security number;
- claim a certain filing status; and
- be a U.S. citizen or a resident alien all year.

There are other special qualifying rules for military members, clergy members, and taxpayers and their relatives with disabilities.

To help individuals determine if they qualify for the credit, the IRS provides the EITC Assistant calculator on its website (https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/use-the-eitc-assistant).

Taxpayers can elect to use their 2019 earned income to figure the EITC if their 2019 earned income is more than their 2020 earned income.

Unemployment Compensation

Millions of Americans received unemployment compensation in 2020, and many of them received unemployment for the first time. The IRS reminds taxpayers that unemployment compensation is taxable, and must be included as gross income on their tax return.

Taxpayers can elect to have federal taxes withheld from their unemployment benefits or make estimated tax payments. If taxpayers do not take these payment steps, taxes on those benefits must be paid when the 2020 tax return is filed.

Interest on 2019 Refunds

Many individuals who receive a refund on their 2019 tax returns have also received interest from the IRS. These interest payments were largely as a result of the postponed filing deadline of July 15 for 2019 returns because of the COVID-19 pandemic. The IRS reminds taxpayers that 2019 refund interest payments are taxable, and they must report the interest on their 2020 federal income tax return.

The IRS will send a Form 1099-INT, Interest Income, to anyone who receives interest totaling at least $10. According to the IRS, the average refund interest amount is $18, but the amount for each taxpayer varies based on the tax refund that the taxpayer received.

Home Office Deduction

The home office deduction is available to qualifying self-employed taxpayers, independent contractors, and those working in the gig economy. However, the IRS reminds *employees* that the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) suspended the business-use-of-home deduction from 2018 through 2025 for employees. Employees who receive a paycheck or a W-2 exclusively from an employer are not eligible for the deduction, even if they are currently working from home.

Gig Economy Workers

Many taxpayers found jobs in the gig economy in 2020, and thus they must report income earned in the gig economy on their tax return. Gig workers are independent contractors, so they generally do not have taxes withheld from their pay as salaried workers normally do.

To stay current with their federal tax obligations, the IRS encourages taxpayers who earn income in the gig economy to consider making quarterly estimated tax payments.

Charitable Donations

Generally, individuals who take the standard deduction cannot claim a deduction for their charitable contributions. However, under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), nonitemizers can claim a limited deduction of up to $300 ($150 for married individuals filing separately) on their 2020 federal income tax returns for cash contributions made to certain qualifying charitable organizations and still claim the standard deduction. This special deduction does not apply to donated property.

Before making a donation, the IRS reminds taxpayers that they can check the special Tax Exempt Organization Search (TEOS) tool on IRS.gov to make sure an organization is eligible for tax-deductible donations (go to https://www.irs.gov/charities-non-profits/tax-exempt-organization-search).

Major Disaster Areas

Special tax law provisions may help taxpayers and businesses recover financially from the impact of a disaster, especially when the federal government declares their location to be a major disaster area. The IRS points out that some 2020 tax deadlines in certain counties have been extended into 2021 due to recent wildfires, hurricanes or flooding.

For information on tax relief in disaster situations, go to https://www.irs.gov/businesses/small-businesses-self-employed/disaster-assistance-and-emergency-relief-for-individuals-and-businesses.

IRS Urges Employers to Claim Employee Retention Credit

IR-2021-21

The IRS is urging employers to take advantage of the newly-extended employee retention credit (ERC), which makes it easier for businesses that have chosen to keep their employees on the payroll despite challenges posed by COVID-19. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of P.L. 116-260), which was enacted December 27, 2020, made a number of changes to the ERC previously made available under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), including modifying and extending the ERC, for six months through June 30, 2021.

REFERENCE KEY

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

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Eligible employers can now claim a refundable tax credit against the employer share of Social Security tax equal to 70-percent of the qualified wages they pay to employees after December 31, 2020, through June 30, 2021. Qualified wages are limited to $10,000 per employee per calendar quarter in 2021. Thus, the maximum ERC amount available is $7,000 per employee per calendar quarter, for a total of $14,000 in 2021.

Effective January 1, 2021, employers are eligible if they operate a trade or business during January 1, 2021, through June 30, 2021, and experience either:

- a full or partial suspension of the operation of their trade or business during this period because of governmental orders limiting commerce, travel or group meetings due to COVID-19; or
- a decline in gross receipts in a calendar quarter in 2021 where the gross receipts for that calendar quarter are less than 80% of the gross receipts in the same calendar quarter in 2019 (to be eligible based on a decline in gross receipts in 2020, the gross receipts were required to be less than 50-percent of those in the same 2019 calendar quarter).

In addition, effective January 1, 2021, the definition of "qualified wages" for the ERC has been changed:

- For an employer that averaged more than 500 full-time employees in 2019, qualified wages are generally those wages paid to employees that are not providing services because operations were fully or partially suspended or due to the decline in gross receipts.
- For an employer that averaged 500 or fewer full-time employees in 2019, qualified wages are generally those wages paid to all employees during a period that operations were fully or partially suspended or during the quarter that the employer had a decline in gross receipts, regardless of whether the employees are providing services.

The IRS points out that, retroactive to the enactment of the CARES Act on March 27, 2020, the law now allows employers who received Paycheck Protection Program (PPP) loans to claim the ERC for qualified wages that are not treated as payroll costs in obtaining forgiveness of the PPP loan.

Senate Confirms Yellen as Treasury Secretary

The Senate approved President Biden's nomination of Janet Yellen as Treasury Secretary on January 25, 2021, by a vote of 84 to 15. The Senate Finance Committee unanimously approved Yellen's nomination on January 22. Yellen was sworn in by Vice President Kamala Harris on January 26. Yellen is the first woman to serve as Treasury Secretary.

Yellen was previously the chair of the Federal Reserve from 2014 to 2018. On the Senate floor in support of the nomination, Senate Finance Committee Ranking Member Ron Wyden, D-Ore. stated, "Chair Yellen is an exceptional economist who has a rare gift – she can take complicated economic theories and put them into understandable language, all while showing real heart for the millions of Americans who are hurting…Nobody deserves more credit than Chair Yellen for the longest economic expansion in our history, which lasted until the pandemic hit."

PPP Loan Forgivemness

In a recent posting on its webpage (see "Didn't Get Requested PPP Loan Forgiveness? You Can Claim the Employee Retention Credit for 2020 on the 4th Quarter Form 941"), the IRS has clarified that, under section 206(c) of the 2020 Taxpayer Certainty Act, an employer that is eligible for the ERC can claim the credit even if the employer received a Small Business Interruption Loan under the PPP. Accordingly, eligible employers can claim ERS on any qualified wages that are not counted as payroll costs in obtaining PPP loan forgiveness. Note, however, that any wages that could count toward eligibility for ERC or PPP loan forgiveness can be applied to either program, but not to both programs.

If an employer received a PPP loan and included wages paid in the 2nd and/or 3rd quarter of 2020 as payroll costs in support of an application to obtain forgiveness of the loan (rather than claiming ERC for those wages), and the employer's request for forgiveness was denied, the employer an claim the ERC related to those qualified wages on its 4th quarter 2020 Form 941, Employer's Quarterly Federal Tax Return. An employer can could report on its 4th quarter Form 941 any ERC attributable to health expenses that are qualified wages that it did not include in its 2nd and/or 3rd quarter Form 941.

Employers that choose to use this limited 4th quarter procedure must:

- Add the ERC attributable to these 2nd and/or 3rd quarter qualified wages and health expenses on line 11c or line 13d (as relevant) of their original 4th quarter Form 941 (along with any other ERC for qualified wages paid in the 4th quarter).
- Include the amount of these qualified wages paid during the 2nd and/or 3rd quarter (excluding health plan expenses) on line 21 of its original 4th quarter Form 941 (along with any qualified wages paid in the 4th quarter).
- Enter the same amount on Worksheet 1, Step 3, line 3a (in the 941 Instructions).
- Include the amount of these health plan expenses from the 2nd and/or 3rd quarter on line 22 of the 4th quarter Form 941 (along with any health expenses for the 4th quarter).
- Enter the same amount on Worksheet 1, Step 3, line 3b.

The IRS recognized that it might be difficult to implement these special procedures so late in the timeframe to file 4th quarter returns. Therefore, employers can instead choose the regular process of filing an adjusted return or claim for refund for the appropriate quarter to which the additional ERC relates using Form 941-X.

More Information

For more information on the employee retention credit, the IRS urges taxpayers to visit its "COVID-19-Related Employee Retention Credits: How to Claim the Employee Retention Credit FAQs" webpage (at https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-how-to-claim-the-employee-retention-credit-faqs).

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IRS Updates FAQs on Required Paid Leave Credits

IR-2021-26

The IRS has updated the COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs on its website for recent amendments that extended and amended tax relief to certain small- and mid-sized employers under the Families First Coronavirus Response Act (FFCRA) (P.L. 116-127). The COVID-Related Tax Relief Act of 2020 (Division N of P.L. 116-260) extended the availability of the required paid leave tax credits created by the FFCRA, and also made certain "technical improvements" to the credits.

The paid sick and family leave credits, which previously were available only until the end of 2020, have been extended for periods of leave taken through March 31, 2021.

The paid sick leave credit allows qualified businesses—those with fewer than 500 employees and that pay "qualified sick leave wages"—to get a credit for wages or compensation paid to an employee who is unable to work (including telework) because of coronavirus quarantine or self-quarantine, or has coronavirus symptoms and is seeking a medical diagnosis. Eligible employers can claim the credit for paid sick leave provided to an employee for up to two weeks (up to 80 hours) at the employee's regular rate of pay up to $511 per day ($5,110 in total).

An eligible employer can also receive the paid sick leave credit for employees who are unable to work due to caring for someone with coronavirus or caring for a child because the child's school or place of care is closed, or the paid childcare provider is unavailable due to the coronavirus. Eligible employers can claim the credit for paid sick leave provided to an employee for up to two weeks (up to 80 hours) at 2/3 the employee's regular rate of pay, or up to $200 per day ($2,000 in total).

Eligible employers—those with fewer than 500 employees and that pay "qualified family leave wages"—are also entitled to a paid family leave credit for paid family leave provided to an employee equal to 2/3 of the employee's regular pay, up to $200 per day and $10,000 in total. Up to 10 weeks of qualifying leave can be counted towards the family leave credit.

Eligible employers are entitled to immediately receive a credit in the full amount of the paid sick leave and family leave plus related health plan expenses and the employer's share of Medicare tax on the leave provided through March 31, 2021. The refundable credit is applied against certain employment taxes on wages paid to all employees.

Developments on Economic Impact Payments

The IRS has updated its FAQs on the second Economic Impact Payment (EIP) to explain why some taxpayers have received a Notice CP21C. Taxpayers received this notice if the IRS was unable to process their 2019 tax return in time to issue their EIP.

In some cases, the notice contained the following incorrect information: "We applied a credit to your 2007 tax account due to new legislation. We used (offset) all or part of your economic stimulus payment to pay your federal tax as the law allows." The IRS states that this notice was not accurate for anyone who received it. Since no payment was issued, no offsets occurred. The IRS has apologized for the confusion this might have caused and asked taxpayers to disregard the notice.

In other EIP news, the Treasury Department has announced that it will work to stand up an effort to help households who have not yet been able to access their stimulus payments get much-needed relief, in response to President Biden's COVID-19 Economic Relief Executive Order launching an all-of-government effort to provide economic relief. As many as 8 million households may be eligible for but have not yet received payments from the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) signed in March. Many of these households could be legally entitled to as much as $1,200 per adult.

In particular, the Treasury will (1) establish online tools for claiming their payments; (2) work to reach households who were issued, but did not cash, payments; and (3) analyze unserved households.

New IRS Tool to Upload Authorization Forms With Digital Signatures

IR-2021-20; FS-2021-1

The IRS has announced that tax professionals can use a new online tool to upload authorization forms with either electronic or handwritten signatures. The new Submit Forms 2848 and 8821 Online tool is now available at the IRS.gov/TaxPros page. The new tool is part of the IRS's efforts to develop remote transaction options that help tax practitioners and their individual and business clients reduce face-to-face contact.

Here are a few highlights related to the new online tool:

- The Submit Forms 2848 and 8821 Online has "friendly" web addresses that can be bookmarked: IRS.gov/submit2848 and IRS.gov/submit8821.
- Authorization forms uploaded through this tool will be worked on a first-in, first-out basis along with mailed or faxed forms.
- To access the tool, tax professionals must have a Secure Access username and

password from an IRS account such as e-Services. Tax professionals without a Secure Access username and password should see IRS.gov/SecureAccess for information they need to successfully authenticate their identity and create an account.

- Forms 2848 and 8821 and the instructions are being revised. Versions dated January 2021 are available. The prior version of both forms will be accepted for a period of time.
- Tax professionals may use handwritten or any form of an electronic signature for the client or themselves on authorization forms submitted through the new online tool. Authorization forms that are mailed or faxed must still have handwritten signatures.
- Tax professionals must authenticate the identities of unknown clients who signed the authorization form with an electronic signature in a remote transaction. IRS Frequently Asked Questions (at https://www.irs.gov/tax-professionals/submit-forms-2848-and-8821-online#2848-8821-faqs) provide authentication options for individual and business clients.
- For business clients, in addition to authenticating the taxpayer, tax professionals must also verify that the individual has a covered relationship with the business.
- Tax professionals entering the tool for the first time must accept the terms of service. This is a one-time entry.
- The tool will ask a series of questions that a user must answer to correctly route the forms to the proper Centralized Authorization File (CAF) unit.
- The client's taxpayer identification number must be entered before the tax professional selects the authorization file for upload.
- Once the uploaded file is visible, the tax professional selects "submit" to send the file to the CAF.
- Tax professionals can use various file formats, including PDF or image files such as JPG or PNG. Only one file may be uploaded at a time.
- The word "success" will appear if the submission goes through. The tool then gives tax professionals the option to upload another file without the need to go through secure access again.
- Tax professionals can also view an "Uploading Forms 2848 and 8821 with Electronic Signatures" webinar, at https://www.irsvideos.gov/Webinars/UploadingForms2848And8821WithElectronicSignatures.

The tool is intended to be a bridge until an all-digital option launches in the summer of 2021. The IRS has plans to launch the Tax Pro Account in 2021 which will allow tax professionals to digitally sign third-party authorizations and send them to the client's IRS online account for digital signature.

Increased Deduction Limit for Disaster Relief Cash Contributions by Corporations

IR-2021-27

The IRS has highlighted how corporations may qualify for the new 100-percent limit for disaster relief contributions, and has offered a temporary waiver of the recordkeeping requirement for corporations otherwise qualifying for the increased limit. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (P.L. 116-260) temporarily increased the limit, to up to 100 percent of a corporation's taxable income, for contributions paid in cash for relief efforts in qualified disaster areas.

Qualified Disaster Areas

Under the new law, qualified disaster areas are those in which a major disaster has been declared under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This does not include any disaster declaration related to COVID-19. Otherwise, it includes any major disaster declaration made by the President during the period beginning on January 1, 2020, and ending on February 25, 2021, as long as it is for an occurrence specified by the Federal Emergency Management Agency as beginning after December 27, 2019, and no later than December 27, 2020. See FEMA.gov for a list of disaster declarations.

The corporation must pay qualified contribution during the period beginning on January 1, 2020, and ending on February 25, 2021. Cash contributions to most charitable organizations qualify for this increased limit, but contributions made to a supporting organization or to establish or maintain a donor advised fund do not qualify. A corporation elects the increased limit by computing its deductible amount of qualified contributions using the increased limi,t and by claiming the amount on its return for the tax year in which the contribution was made.

Substantiation

The 2020 Taxpayer Certainty Act, which was enacted December 27, 2020, added an additional substantiation requirement for qualified contributions. For corporations electing the increased limit, a corporation's contemporaneous written acknowledgment (CWA) from the charity must include a disaster relief statement, stating that the contribution was used, or is to be used, by the eligible charity for relief efforts in one or more qualified disaster areas.

Because of the timing of the new law, the IRS recognizes that some corporations may have obtained a CWA that lacks the disaster relief statement. Accordingly, the IRS will not challenge a corporation's deduction of any qualified contribution made before February 1, 2021, solely on the grounds that the corporation's CWA does not include the disaster relief statement.

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Written Supervisory Approval Not Required for Early Distribution Tax

K.I. Grajales, 156 TC No. 3, Dec. 61,811

The written supervisory approval requirement of Code Sec. 6751(b)(1) did not apply to the Code Sec. 72(t) exaction on an early distribution from an individual's qualified retirement plan. The taxpayer was liable for the 10-percent exaction with respect to her taxable early distributions. The dispute centered on $90.86 of additional tax under Code Sec. 72(t).

During the tax year at issue, the taxpayer took loans in connection with her qualified retirement plan. However, the taxpayer failed to report any retirement plan distributions as income in her tax return for the tax year at issue. The IRS issued a notice of deficiency, determining that the retirement plan distribution reported on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, should have been included in her income, and that the distributions were subject to a 10-percent additional tax on early distribution.

Not Penalty or Additional Amount

The taxpayer argued that she was not liable for the exaction because the IRS's initial determination lacked supervisor approval. She contended that the written supervisory approval was required, since the exaction was either a "penalty" or an "additional amount" within the meaning of Code Sec. 6751(c).

However, the Tax Court determined that the exaction was considered a "tax" rather than a "penalty", "addition to tax" or "additional amount." The court stated that the text of Code Sec. 72(t), as well as the larger statutory structure, supported the conclusion that the exaction was a tax.

IRS Guidance on Identity Theft Involving Unemployment Benefits

IR-2021-24

The IRS urges taxpayers who receive Forms 1099-G, Certain Government Payments, for unemployment benefits they did not actually get because of identity theft to contact their appropriate state agency for a corrected form.

Some taxpayers who faced unemployment or reduced work hours due to COVID-19 pandemic applied for and received unemployment compensation from their state. These benefits are taxable income under federal law. However, scammers also took advantage of the pandemic by filing fraudulent claims for unemployment compensation using stolen personal information of individuals who had not filed claims. Payments made as a result of these fraudulent claims went to the identity thieves, and the individuals whose names and personal information were taken did not receive any of the payments.

The IRS previously issued guidance requested by states on identity theft guidance regarding unemployment compensation reporting. Taxpayers do not need to file a Form 14039, Identity Theft Affidavit, with the IRS regarding an incorrect Form 1099-G. The IRS points taxpayers to the Identity Theft Central webpage at IRS.gov for more information about the signs of identity theft and general steps that should be taken.

If taxpayers are concerned that their personal information has been stolen and they want to protect their identity when filing their federal tax return, they can request an Identity Protection Pin from the IRS.

GAO: IRS, Education Dept. Can Better Address College Conversion Risks

GAO-21-89

The IRS and the U.S. Department of Education (ED) can better address risks associated with some for-profit college conversions, according to a report released by the Government Accountability Office (GAO). A for-profit college may convert to nonprofit status for a variety of reasons, such as wanting to align its status and mission.

Sale to Exempt Orgs

The GAO identified 59 for-profit college conversions from January 2011 through August 2020. Almost all involved the college's sale to a tax exempt organization. In about one-third of the conversions, former owners or other officials were insiders to the conversion. This included creating the tax-exempt organization that purchased the college or retaining the presidency of the college after its sale. In two of 11 planned

or final conversions involving insiders disclosed in an application, the IRS approved the application without certain information, such as the college's planned purchase price or an appraisal report estimating the college's value. The ED had strengthened its reviews of for-profit college applications for nonprofit status, but failed monitoring newly converted colleges to assess the ongoing risk of improper benefit.

Recommendations

The GAO made three recommendations, including that IRS assess and improve conversion application reviews, and that ED develop and implement procedures to monitor newly converted colleges. The IRS said it would assess its review process and will evaluate GAO's other recommendation. The ED agreed with the GAO's recommendation.

Sustaining Collection Action Not Abuse of Discretion

D.R. Reynolds, TC Memo. 2021-10, Dec. 61,813(M)

An IRS settlement officer (SO) did not abuse his discretion in sustaining a proposed collection action, rejecting a proposed partial payment installment agreement (PPIA), rejecting an individual's request for currently not collectible (CNC) status, and failing to consider the individual's request that a notice of federal tax lien (NFTL) be withdrawn with respect to the individual's unpaid tax liabilities for four tax years at issue. Further, the IRS proposed collection action was sustained by the court.

The taxpayer developed strategies to help corporations conceal assets and evade tax. The taxpayer admitted that he received unreported income and was liable for civil fraud penalty for each of the tax years at issue. Subsequently, the taxpayer served prison time and was required to pay restitution under a District Court order. The IRS sustained the filing of a notice of lien and proposed levy. By those collection actions, the IRS sought to collect restitution-based assessment (RBA's) arising from the District Court order requiring the taxpayer to pay criminal restitution.

At trial, the taxpayer challenged the IRS's collection authority under Code Sec. 6201(a)(4) as well as its exercise of discretion. The taxpayer contended that the IRS lacked legal authority to take administrative collection action to collect RBAs. Further, the taxpayer invited the tax court to reconsider its holding in *Carpenter v. Commissioner*, 152 TC 202, Dec. 61,450. aff'd, CA-4 (unpub. op.), 2020-1 USTC ¶50,103. The court rejected the taxpayer's contention and declined the invitation to reconsider its holding in *Carpenter*.

Further, the taxpayer erroneously contended that even if the IRS had authority to pursue administrative collection, it was barred from collection of the taxpayer's RBA because the taxpayer already had a payment plan in place with the Department of Justice (DOJ) with respect to the restitution. However, this argument was without merit, and the taxpayer failed to provide evidence of any formal payment plan with the DOJ.

The taxpayer also argued that the SO failed the verification requirement of Code Sec. 6330(c)(1) by failing to ensure that the IRS collection efforts were properly coordinated with the DOJ. However, the record did not support the taxpayer's contention. The SO took the necessary steps to coordinate collection efforts with the DOJ. The court did not believe that remanding the case to Appeals for further consideration in this matter would have served any meaningful purpose.

Finally, to further ensure against double collection of restitution, the court ordered that taxpayer's RBAs be credited with any restitution payments he had made to the DOJ previously.

TAX BRIEFS

Advisory Fees

The IRS determined that certain investment advisory fees from an annuity contract would not be treated as an amount received by the owner of the contract for purposes of Code Sec. 72(e). A life insurance company offered three types of non-qualified deferred annuity contracts/adviser contracts. The IRS observed that the fees were integral to the operation of the contracts. The fees did not constitute compensation to the adviser for services related to any assets of the owner other than the contracts or any services other than investment advice services with respect to the contracts. Therefore, the fees were an expense of the contract, not a distribution to the owner.

IRS Letter Ruling 202104001

Charitable Contributions

In consolidated cases, individuals were denied a deduction for a conservation easement to a land trust. The taxpayers formed a limited liability company (LLC) to buy property at a distress sale and then donate a conservation easement on it to the trust. The easement was not a contract right but an interest in property whose holder was to be compensated for its condemnation or destruction or other conversion. Additionally, the taxpayers were not entitled to deductions for donating standing timber for one of the tax years at issue.

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The cutting of timber and its conversion into lumber and other wood products was not a conservation purpose. This made the LLC's donation of the timber either a nondeductible gift of a partial interest in real estate other than a conservation easement, or a future interest in tangible personal property. A married couple's timber donation deduction was negligent, and they were liable for an accuracy-related penalty. The couple should have been aware that if the LLC donated a conservation easement, it could not simultaneously donate timber whose value was based on chopping trees down in violation of the conservation deed.

Sells, TC, Dec. 61,815(M)

Foreign Travel

The U.S. State Department has released a listing of maximum travel *per diem* allowances for travel in foreign areas. The rates apply to all government employees and contractors, and are effective as of February 1, 2021.

February Maximum Travel Per Diem Allowances for Foreign Areas

Loss Deductions

A married couple that engaged in farming activities was not allowed loss deductions, because the losses were startup expenses under Code Sec. 195(a). The wife's farming activities never moved beyond initial experimentation and investigation into an operating business. Further, the taxpayers did not itemize their costs, commence any active business on their property, or provide any basis to estimate any deductible loss. The taxpayers were also denied an operating loss deduction for rental real estate activity. They failed to prove that the property in question was used for rental purposes; it had been flooded, was in no condition to rent, and had not been advertised for rental during the tax years at issue.

Costello, TC, Dec. 61,812(M)

Nuclear Decommissioning Costs

In three cases, the IRS approved revised schedules of ruling amounts for a nuclear plant decommissioning fund of an electric utility. The taxpayers demonstrated that the proposed schedules of ruling amounts were consistent with the principles of the Code and regulations and were based on reasonable assumptions. Further the taxpayers had qualifying interests in the plants and were eligible taxpayers under Reg. §1.468A-1(b)(1). The taxpayers, as the owners of the plants, calculated their share of the total decommissioning costs under Reg. §1.468A-3(d)(1). The proposed schedules of ruling amounts were based on reasonable assumptions. The maximum amounts of cash payments made to the funds during any tax year were restricted to the ruling amounts applicable to the funds.

IRS Letter Rulings 202104003, 202104004, 202104005

Refund Claims

A corporation had a reasonable basis for its contention that the change in treatment from mineral lease to sale was not a change in accounting method. A change in accounting method includes a change in the overall plan of accounting for gross income or deductions or a change in the treatment of a material item used in such overall plan. A material item is any item that involves the proper time for the inclusion of the item in income or the taking of a deduction. Therefore, the corporation's return position satisfied the reasonable basis standard. The corporation's sale vs. mineral lease position was reasonably based on one or more of the authorities set forth in Reg. §1.6662-4(d)(3)(iii). The government's motion regarding penalty for impermissible change in accounting method was denied.

Exxon Mobil Corp., DC Tex., 2021-1 USTC ¶50,106

Tax Court Petitions

The Tax Court properly dismissed an individual's petition for lack of jurisdiction. The taxpayer initially challenged his tax liabilities for the tax years at issue and the IRS collection efforts with respect to those liabilities. The Tax Court lacked jurisdiction because no valid notices of deficiency or determination were issued to the taxpayer, and he had failed to timely file a petition.

Benham, CA-6, 2021-1 USTC ¶50,105

Trade or Business

An individual's tree or cattle farm was not considered a trade or business during five tax years at issue, and the taxpayer was not allowed to deduct any interest paid on the farm property with respect to its mortgage. The taxpayer, an entrepreneur who made most of his income from banking, bought some rural property, and later added two dozen more acres of land. He formed a limited liability company (LLC) to report his use of the property on his tax returns for the tax years at issue. The taxpayer reported large losses for what he described as a cattle farm, but the farm was without cattle until at least the final tax year at issue. Following an audit of the LLC, the IRS made adjustments to the taxpayer's returns. At trial, the court examined nine factors to determine whether the taxpayer engaged in an activity for profit at his property, and most factors weighed against the taxpayer.

Whatley, TC, Dec. 61,814(M)

Supreme Court Docket

A petition for review was filed in the following case: The Tax Court appropriately dismissed petitions for redetermination of tax deficiencies for lack of jurisdiction because the petitions were untimely. Entities that operated marijuana dispensaries sought to file petitions for redetermination by the last day to file such petitions. However, the Tax Court did not get the notices until two days after they were dropped off at the office of a delivery service. The taxpayers presented no evidence to show that the Tax Court Clerk's Office could not be accessed during the substantial remaining portion of the day after the delivery service unsuccessfully attempted delivery of the petitions earlier in the day on the filing deadline date. Further, the petitions could not be deemed timely under the mailbox rule in Code Sec. 7502, because the particular delivery service used was not on the IRS's formal list of designated delivery services to which the mailbox rule applies.

Organic Cannabis Foundation, LLC, CA-9, 2020-1 USTC ¶50,140