

# FEDERAL TAX WEEKLY

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## Congress Clears Way for Congressional Action on COVID Relief Package

Congress cleared the way on February 2, 2021, for passage of President Joe Biden's \$1.9 trillion American Rescue Plan without bipartisan support. Both chambers approved a budget resolution, which will allow the use of budget reconciliation rules to overcome an expected GOP filibuster in the Senate. With the passage of the budget resolution, the House is expected to take up the legislation next week.

House Speaker Nancy Pelosi, D-Calif., has said she wants the House to pass the package by the end of this month with hopes of Senate approval before mid-March when expanded unemployment benefits are scheduled to end.

House and Senate tax committee leaders called the tax provisions in the American Rescue Plan vital to aiding the recovery.

In a statement after meeting with Biden, Vice President Kamala Harris and House Democratic leaders to discuss the urgency of delivering the next round of relief, House Ways and Means Committee Chairman Richard Neal, D-Mass., called expanding tax credits to combat child poverty in the plan key to making that recovery happen.

Earlier in the week, Senate Finance Committee Chairman Ron Wyden, D-Ore., said provisions in the proposal expanding the Child Tax Credit and the Earned Income Credit are long overdue. He said they would help to cut child poverty in half and give millions of families an opportunity to get ahead.

The passage of the budget resolution and the use of the reconciliation process is not strictly necessary to pass the next round of relief, as a bipartisan approach is still possible. However, a package presented by a group of ten GOP Senators on February 1 meant to attract support from both sides of the aisle was rejected by the Biden administration, as well as many Democrats in Congress, as insufficient.

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## Teachers Receive Safe Harbor for Certain COVID-related Expenses

*IR-2021-28; Rev. Proc. 2021-15*

The IRS is providing a safe harbor for eligible educators to deduct certain unreimbursed COVID-19-related expenses. The safe harbor applies to expenses for personal protective equipment, disinfectant, and other supplies used for the prevention of the spread of COVID-19 in the classroom, paid or incurred after March 12, 2020. All amounts remain subject to the \$250 educator expense deduction limitation.

### Deduction for Educator Classroom Expenses

Employees generally cannot deduct unreimbursed business expenses as miscellaneous itemized deductions in tax years 2018 through 2025. Despite this general rule, teachers

may be able to treat some of their unreimbursed classroom expenses as an “above the line” deduction and deduct them from gross income. An eligible educator can deduct up to \$250 each year for classroom expenses (Code Sec. 62(a)(2)(D)). Deductible expenses include those for books, supplies, and computer equipment used in the classroom.

An eligible educator is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

## COVID Act Expands Eligible Expenses

The COVID Tax Relief Act of 2020 (P.L. 116-260) requires the Secretary of the Treasury to clarify that COVID-19 protective items used for the prevention of the spread of COVID-19 paid or incurred after March 12, 2020 are eligible educator classroom expenses. As a result, the IRS has issued a safe harbor revenue procedure.

Under the revenue procedure, COVID-19 protective items include face masks; disinfectant for use against COVID-19; hand soap; hand sanitizer; disposable gloves; tape, paint, or chalk used to guide social distancing; physical barriers (such as clear plexiglass); air purifiers; and other items recommended by the Centers for Disease Control and Prevention (CDC) to be

## IRS Warns Taxpayers of “Ghost” Return Preparers

The IRS has reminded taxpayers to avoid “ghost” tax return preparers whose refusal to sign returns can cause an array of problems. Filing a valid and accurate tax return is important because the taxpayer is ultimately responsible for it. Ghost preparers get their name because they do not sign tax returns they prepare. Like a ghost, they try to be invisible to the fact that they have prepared the return and will print the return and get the taxpayer to sign and mail it. Similarly, for e-filed returns, the ghost preparer will prepare but refuse to digitally sign it as the paid preparer.

By law, anyone who is paid to prepare or assist in the preparation of a federal tax return must have a valid Preparer Tax Identification Number, or PTIN. Accordingly, paid preparers must sign and include their PTIN on the return. Not signing a return is a red flag that the paid preparer may be looking to make a fast buck by promising a big refund or charging fees based on the size of the refund.

Further, the IRS urged taxpayers to choose a tax return preparer wisely. The Choosing a Tax Professional page on the IRS website has information about tax preparer credentials and qualifications. Further, the IRS Directory of Federal Tax Return Preparers with Credentials and Select Qualifications can help identify many preparers by type of credential or qualification.

Taxpayers have also been urged to review their tax returns, notwithstanding who prepares it. Additionally, taxpayers should verify both their routing and bank account number on the completed tax return for any direct deposit refund. Moreover, taxpayers should watch out for preparers putting their bank account information onto the returns. Taxpayers can report preparer misconduct to the IRS using IRS Form 14157, Complaint: Tax Return Preparer. Finally, if a taxpayer suspects a tax preparer filed or changed their tax return without their consent, they should file Form 14157-A, Tax Return Preparer Fraud or Misconduct Affidavit.

IR-2021-30

used for the prevention of the spread of COVID-19.

The revenue procedure applies to such unreimbursed expenses paid or incurred

after March 12, 2020. All amounts remain subject to the \$250 educator expense deduction limitation.

## Lenders Notified to File Corrected Forms 1099-MISC to Exclude Subsidized Loan Payments

Announcement 2021-2

The IRS has announced that lenders who had filed or furnished Form 1099-MISC, Miscellaneous Information, to a borrower, reporting certain payments on

loans subsidized by the Administrator of the U.S. Small Business Administration (Administrator) as income of the borrower, must file and furnish corrected Forms 1099-MISC that exclude these subsidized loan payments.

On January 19, 2021, the Department of the Treasury and the IRS issued, Notice 2021-6, I.R.B. 2021-6, pursuant to section 279 of the COVID Relief Act, to waive the requirement for lenders to file with the IRS, or furnish to a borrower,

### REFERENCE KEY

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

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a Form 1099-MISC reporting the payment of principal, interest, and any associated fees subsidized by the Administrator under section 1112(c) of the CARES Act (P.L. 116-136). The filing of information returns that include these loan payments could result in IRS correspondence to borrowers regarding underreported income, and the furnishing of payee statements that include these loan payments to borrowers could cause confusion.

The Service further announced that if a lender has already furnished to borrowers

Forms 1099-MISC that report these loan payments, whether before, on, or after December 27, 2020, the lender must furnish to the borrowers corrected Forms 1099-MISC that exclude these loan payments. In addition, if a lender has already filed with the IRS Forms 1099-MISC that report these loan payments, whether before, on, or after December 27, 2020, the lender must file with the IRS corrected Forms 1099-MISC that exclude these loan payments. Directions for how to file corrected Forms 1099-MISC are

included in the 2020 Instructions for Forms 1099-MISC and 1099-NEC and the 2020 General Instructions for Certain Information Returns. If a lender described in this announcement furnishes corrected payee statements within 30 days of the furnishing deadline, it will have reasonable cause for any failure-to-furnish penalty imposed under Code Sec. 6722. A lender described in this announcement must file corrected information returns by the filing deadline in order to avoid Code Sec. 6721 failure-to-file penalties.

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## Heather C. Maloy Appointed as Director of Taxpayer First Act Office

*IR-2021-29*

The IRS has appointed Heather C. Maloy to the position of director, Taxpayer First Act Office. She will report directly to the IRS Commissioner in her new role. “Given Heather’s vast knowledge and leadership experience from both inside and outside the IRS, she will be an important asset to both the IRS and the nation’s taxpayers going forward as we strategically implement the Taxpayer First Act report’s recommendations,” IRS Commissioner Chuck Rettig remarked.

Maloy has replaced Lia Colbert, who will continue in her current role as Deputy Chief of the Independent Office

of Appeals. In her new position, Maloy will provide advice and assistance to the Commissioner in areas such as implementation strategy, management and organizational issues and equitable treatment of taxpayers. She will help set the strategic direction of IRS programs with a focus on a comprehensive taxpayer experience strategy, a holistic training strategy and a modernized IRS organizational structure.

In her previous roles at IRS, Maloy served as the Commissioner, Large Business and International Division (LB&I), where she led over 5,000 employees and oversaw tax compliance programs for corporations, subchapter

S corporations and partnerships with assets greater than \$10 million and incorporated international tax compliance operations into the division. Prior to her selection as the LB&I Commissioner, Maloy held several other prominent IRS positions, including Associate Chief Counsel for both the Income Tax & Accounting and Passthroughs & Special Industries Divisions and Assistant to the Commissioner. From 2006-2009, she was Counsel at Skadden, Arps, Slate, Meagher & Flom’s Tax Group. Maloy graduated from Emory University, received her law degree from Cornell Law School and an LL.M. in Taxation from the University of Florida School of Law.

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## IRS Spotlights Direct Deposit

As taxpayers prepare for the start of the 2021 filing season, the IRS reminded taxpayers that the best way to get a refund is to combine electronic filing with direct deposit. Direct deposit remains the fastest, easiest and most secure way for taxpayers to get refunds. Since refunds are electronically deposited, there is no risk of having paper check stolen or lost. This is the same electronic transfer system that deposits nearly 98 percent of all Social Security and Veterans Affairs benefits into millions of accounts. Further, taxpayers who file a paper return can also use direct deposit,

but it will take longer to process the return to get a refund.

### How to Use Direct Deposit

Taxpayers can simply follow the instructions when selecting direct deposit as a refund method and enter their account information as directed. However, care must be taken to enter the correct account and routing number when filing. Moreover, taxpayers have the option of splitting a refund into several financial accounts. These include checking,

savings, health, education and certain retirement accounts. Taxpayers can even purchase up to \$5,000 in Series I U.S. Savings Bonds with their tax refund. Further, the IRS advised taxpayers to avoid depositing refunds into accounts owned by others. Taxpayers should deposit refunds into U.S. bank accounts in their own name, their spouse’s name or both.

### Individuals Without a Bank Account

Those who do not have a bank account can visit the FDIC website for

information on where to find a bank that can open an account online and how to choose the right account. Additionally,

veterans can use the Veterans Benefits Banking Program for access to financial services at participating banks. Finally,

tax return preparers may also offer electronic payment options.

## IRS Procurement Working to Manage Risk, Embracing Innovation and Improving Internal Operations

The IRS has published the latest executive column, “A Closer Look”, featuring Chief Procurement Officer, Shanna Webbers, discussing procurement activities to transform IRS operations by creating a culture of innovation. “As a leader, you must be able to manage risk, lead your team in embracing innovation, and take a chance when the opportunity presents itself. Swing for the fences!” said Webber. During fiscal year (FY) 2020, the IRS awarded \$2.6 billion in contract obligations. Any improvement in procurement efficiencies would help the IRS in terms of increased competition in bidding and driving down prices, while providing

more innovative solutions for its internal customers who are carrying out the IRS’ mission.

Shanna Webbers gave a closer look into procurement activities earlier this year and informed that back on August 1, 2020, his procurement team was laser-focused on awarding contracts to maximize obligations. In addition, the team used the Product Service Code to identify 1,466 contracts that met Section 889 criteria of the Fiscal 2019 National Defense Authorization Act. In addition to reducing the administrative burden on Contract Officers and eliminating data errors, the total time savings went from

1 year (2,860 hours) to 3 days (72 hours). Another benefit was that it didn’t require additional funding or other resources to implement this effort. The procurement team used innovation to bring speed and agility to procurement operations. As with so many initiatives at the IRS and especially in procurement, the Chief Information Officer and Information Technology partners worked with the procurement team and provided outstanding support to enable their success, setting a great example of how driving innovation and managing risk can make processes more efficient and get the job done.

## TAX BRIEFS

### *Exempt Organizations*

Four organizations’ requests for tax-exempt status were denied under Code Sec. 501. The first organization was formed to promote networking and growing businesses. However, it provided networking, referral and economic benefits to its own members rather than to the overall community for social welfare purposes. Therefore, the organization failed the requirements for Code Sec. 501(c)(4). In the second case, the organization was a softball team. However, the organization was neither organized nor operated for exempt purposes described under Code Sec. 501(c)(3) because its recreational activities were a substantial non-exempt purpose. In the third case, the organization helped U.S. students pay student loan debts with the help of a lottery system. However, the organization did not exclusively operate for tax-exempt purposes

under Code Sec. 501(c)(3) and provided benefits to private persons who were not members of a charitable class. The fourth organization indulged in marijuana dispensary activities. However, the organization failed to establish that it operated exclusively for charitable purposes. Even though marijuana-related activities were considered legal where the organization operated but it was conducting substantial non-exempt activities as it was promoting an activity that was considered illegal by federal law.

*IRS Letter Ruling 202105008; IRS Letter Ruling 202105009; IRS Letter Ruling 202105010; IRS Letter Ruling 202105011*

### *Private Foundations*

Four private foundations’ procedures for awarding scholarships were approved. In all the cases, the organization’s procedures met the requirements under Code Sec.

4945(g). As an example, one organization operated an educational scholarship to a college-bound high school senior who demonstrates academic achievement, financial need and an interest in pursuing a degree in business or entrepreneurial business.

*IRS Letter Ruling 202105012; IRS Letter Ruling 202105013; IRS Letter Ruling 202105014; IRS Letter Ruling 202105015*

### *S Corporations*

An entity’s S corporation ineffective election and termination was considered inadvertent within the meaning of Code Sec. 1362(f). Because the ineffective election and termination were inadvertent, the taxpayer was treated as an S corporation, provided that its S corporation election was otherwise valid and had not terminated under Code Sec. 1362(d).

*IRS Letter Ruling 202105005*