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Final Regulations Address Deductibility of Fines and Penalties

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The IRS has released final regulations that address the changes made to Code Sec. 162(f) by the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97), concerning the deduction of certain fines, penalties, and other amounts. The final regulations also provide guidance relating to the information reporting requirements for fines and penalties under Code Sec. 6050X.

The final regulations adopt proposed regulations released last May (NPRM REG-104591-18), with modifications.

TCJA Changes

Under changes made to Code Sec. 162(f) by the TCJA, businesses may not deduct fines and penalties paid or incurred after December 21, 2017, due to the violation of a law (or the investigation of a violation) if a government (or similar entity) is a complainant or investigator. Exceptions to this rule are available if the payment was for restitution, remediation, taxes due, or paid or incurred to come into compliance with a law. For the exceptions to apply, the taxpayer must identify the payment as restitution, remediation, or compliance in a court order or settlement agreement. In addition, Code Sec. 6050X now requires the officer or employee that has control over the suit or agreement to file a return with the IRS.

The final regulations establish that a taxpayer generally may not take a deduction for any amount that was paid or incurred:

- by suit, agreement, or otherwise;
- to, or at the direction of, a government or governmental entity; *and*
- in relation to the violation, or investigation or inquiry by the government or governmental entity into the potential violation, of any civil or criminal law.

This rule applies regardless of whether the taxpayer admits guilt or liability, or pays the amount imposed for any other reason. This includes instances where the taxpayer pays to avoid the expense or uncertain outcome of an investigation or litigation.

The final regulations also clarify that a suit or agreement is treated as binding under applicable law even if all appeals have not been exhausted.

Governmental Entities

Under the final regulations, governmental entities include nongovernmental entities that exercise self-regulatory powers, including imposing sanctions.

The regulations also clarify that, for purposes of the information reporting requirements in Code Sec. 6050X, a nongovernmental entity treated as a governmental entity does not include a nongovernmental entity of a territory of the United States, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands, a foreign country, or a Native American tribe.

Violations of Law

Under the final regulations, violations of the law do not include any order or agreement in a suit in which a government or governmental entity enforces rights as a private party.

Investigations

The final regulations also make clear that amounts paid or incurred for required routine investigations or inquiries continue to be deductible. I general, that amounts paid or incurred for routine investigations or inquiries, such as audits or inspections, required to ensure compliance with rules and regulations applicable to the business or industry, which are not related to any evidence of wrongdoing or suspected wrongdoing, are not amounts paid or incurred relating to the potential violation of any law.

Establishing Payment

Under the final regulations, a taxpayer can establish that a payment was made for restitution or remediation by providing documentary evidence of the following:

- the taxpayer was legally obligated to pay the amount that the order or agreement identified as restitution, remediation, or to come into compliance with a law;
- the amount paid or incurred for the nature and purpose identified; and
- the date on which the amount was paid or incurred.

The final regulations expand the list of documentary evidence that may be used to meet the establishment requirement. According to the regulations, taxpayers may be able to use documentary evidence in a foreign language to satisfy the establishment requirement if the taxpayer provides a complete and accurate certified English translation of the documentary evidence.

Reporting of the amount by a government or governmental entity under Code Sec. 6050X alone does not satisfy the establishment requirement.

Disgorgement, Forfeiture of Profits

Under the final regulations, a taxpayer's claim for a deduction for amounts paid or incurred through disgorgement or forfeiture of profits will be permitted if:

- the amount is otherwise deductible;
- the order or agreement identifies the payment, not in excess of net profits, as restitution, remediation, or an amount paid to come into compliance with a law;
- the taxpayer establishes that the amount was paid as restitution, remediation, or an amount paid to come into compliance with a law; and
- the origin of the taxpayer's liability is restitution, remediation, or an amount paid to come into compliance with a law.

However, amounts paid or incurred through disgorgement will be disallowed if the amounts are disbursed to the general account of the government or governmental entity for general enforcement efforts or other discretionary purposes.

Restitution, Remediation

Final Reg. §1.162-21(e)(4)(i) clarifies that restitution and remediation do not include amounts paid to a general account or for discretionary purposes. In addition, the final regulations provide that if amounts paid by the taxpayer pursuant to an order or an agreement is returned, the taxpayer must include the amount in its income under the tax benefit rule.

Reg. §1.162-21(e)(4)(i)(A) also provides special restitution and remediation rules to address amounts paid or incurred for irreparable harm to the environment, natural resources, or wildlife.

Coming into Compliance

The final regulations list certain payments that will not be treated as "paid or incurred to come into compliance with a law." In addition, the taxpayer must perform any required services or take any required action in order to come into compliance with the law.

The final regulations also modify an example to clarify that when a taxpayer upgrades equipment or property to a higher standard than what is required to come into compliance with the law, the taxpayer will be able to deduct the difference between what the taxpayer paid and the amount required to come into compliance.

Identification

Under Code Sec. 162(f)(2)(A), an order or agreement must identify the amount paid or incurred as restitution, remediation, or to come into compliance with a law. The final regulations modify the proposed rule for payment amounts not identified. Under this rule, the identification requirement may be met even if the order or agreement does not allocate the total lump-sum payment amount among restitution, remediation, or to come into compliance with the law. The rule also applies when the order or agreement fails to allocate the total payment among multiple taxpayers. In addition, the final regulations clarify that the identification requirement may be met even in cases where the order or agreement does not provide an estimated payment amount.

Consistent with Code Sec. 162(f)(2)(A)(ii), the final regulations provide that the

REFERENCE KEY

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

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order or agreement, not the taxpayer, must meet the identification requirement with language specifically stating or describing that the amount will be paid or incurred as restitution, remediation, or to come into compliance with a law.

The final regulations eliminated the rebuttable presumption for the identification requirement. Instead, the identification requirement is met when the order or agreement specifically states that the payment constitutes restitution, remediation, or an amount paid to come into compliance with a law, or when it uses a different form of the required words. For orders or agreements in a foreign language, in order to meet the identification requirement the taxpayer must provide a complete and accurate certified English translation that describes the nature and purpose of the payment using the foreign language equivalent of restitution, remediation, or coming into compliance with the law.

According to the final regulations, an order or agreement will also meet the identification requirement if it describes the damage done, harm suffered, or manner of noncompliance with a law, and describes the action required of the taxpayer to (1) restore the party, property, or environment harmed or (2) perform services, take action, or provide property to come into compliance with that law.

Taxes and Interest

Under Code Sec. 162(f)(4), taxpayers may still deduct any taxes due, including any related interest on the taxes. However, the final regulations clarify that if penalties are imposed with respect to otherwise deductible taxes, a taxpayer may not deduct the penalties or the interest paid with respect to such penalties.

Multiple Payors

The final regulations address situations where there are multiple payors and the aggregate amount they are required to pay, or the costs to provide the property or the service, meets or exceeds the threshold amount. In those instances, the appropriate official should file an information return and furnish a written statement for the separate amount that each individually liable payor is required to pay, even if a payor's payment liability is less than the threshold amount.

Material Change

According to the TCJA, the amendments to Code Sec. 162(f) apply to agreements entered into on or after December 22, 2017. However, the proposed regulations clarified that if the parties to an agreement that was binding prior to December 22, 2017, make a material change to that agreement on or after the date that the proposed regulations become final, the regulations will apply to the agreement. The final regulations have eliminated that requirement.

Reporting Requirements

The final regulations provide that if the aggregate amount a payor is required to pay equals or exceeds the threshold amount of $50,000 under Reg. §1.6050X-1(f)(6), the appropriate official of a government or governmental entity must file an information return with the IRS with respect to the amounts or incurred paid and any additional information required. That information includes:

- the amounts paid or incurred pursuant to the order or agreement;
- the payor's taxpayer identification number (TIN); and
- other information required by the information return and the related instructions.

The official must provide this information by filing Form 1098-F, Fines, Penalties, and Other Amounts, with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, on or before the annual due date. However, the regulations do not require an appropriate official to file information returns for each tax year in which a payor makes a payment pursuant to a single order or agreement. Instead, the appropriate official should only one information return for the aggregate amount identified in the order or agreement.

In instances where the final amount is unknown but is expected to meet or exceed the $50,000 threshold amount, the appropriate official should report the threshold amount on Form 1098-F.

The appropriate official must also furnish a written statement with the same information to the payor. They can satisfy this requirement by providing a copy of Form 1098-F. This statement must be provided by January 31 of such year.

Effective Date

The final regulations apply to tax years beginning on or after the date of publication in the Federal Register. The final regulations under Reg. §1.6050X-1 apply only to orders and agreements, pursuant to suits and agreements, that become binding under applicable law on or after January 1, 2022.

COVID-19 Safe Harbors Extended for REMICs, Investment Trusts

The IRS has extended safe harbors related to the COVID-19 emergency that protect the federal income tax status of (1) real estate mortgage investment conduits (REMICs) and investment trusts that provide certain forbearances of mortgage loans they hold or acquire mortgage loans that have received certain forbearances, and (2) certain investment trusts whose trustees request or agree to certain forbearances of mortgage loans, make certain modifications of real property leases, or accept certain cash contributions. The expiration dates relevant to the safe harbors have been extended through September 30, 2021.

Rev. Proc. 2020-26, I.R.B. 2020-18, 753, and Rev. Proc. 2020-34, I.R.B. 2020-26, 990, are amplified.

Rev. Proc. 2021-12

Relief for Certain Excess Business Loss-Related Underpayments

Notice 2021-8

Estimated tax underpayment penalties under Code Sec. 6654 are waived for certain excess business loss-related payments for tax years beginning in 2019. The relief is available to individuals, as well as trusts and estates that are treated as individuals for estimated tax payment penalty purposes.

Rules Delayed

Certain business losses were limited in tax years beginning in 2017 through 2025 by the excess business loss rules of Code Sec. 461(l). Under these rules, any disallowed excess business losses are carried forward as net operating losses (NOLs). The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) postponed application of the excess business loss rules to tax years beginning after December 31, 2020.

Relief for 2019

The relief is available only for estimated tax income tax installments due on or before July 15 2020 for a tax year that began in 2019.

An individual taxpayer may have underpaid one or more installments for the tax year that began in 2019, if the individual anticipated having a lower required annual payment after using an NOL carried forward from a prior-year excess business loss that, before the enactment of the CARES Act, would have been available to reduce taxable income in the tax year that began in 2019.

Waiver Request

To qualify for the relief, the taxpayer must:

- have filed a timely 2019 federal income tax return;
- complete the 2019 version of Form 2210, Underpayment of Estimated Taxes, or Form 2210-F, Underpayment of Tax for Farmers and Fishermen; and
- include certain required attachments and calculations.

U.S. and Italy Enter Competent Authority Arrangement

The competent authorities of Italy and the United States have entered into a Competent Authority Arrangement clarifying the application of subparagraph 1(b) of Article 19 (Government Services) of the income tax treaty with Italy, with respect to remuneration paid by the United States to its citizens or dual nationals who are residents of Italy and who are rendering services to the United States in U.S. embassies and consulates in Italy. The competent authorities entered into the arrangement under paragraph 3 of Article 25 (Mutual Agreement Procedure) of the treaty.

Announcement 2021-1

Information Reporting Waived for Nontaxable COVID Assistance

Notice 2021-6

The IRS has waived the requirement to file Form 1099 series information returns or furnish payee statements for certain COVID-related relief that is excluded from gross income.

Reporting Affected

The IRS waives the requirement to file Form 1099 series information returns, or furnish payee statements, for the following:

- forgiveness of covered loans under the original Paycheck Protection Program (PPP);
- forgiveness of covered loans under the Paycheck Protection Program Second Draw (PPP II);
- Treasury Program loan forgiveness under section 1109 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136);
- certain loan subsidies authorized under section 1112(c) of the CARES Act;
- certain COVID-related student emergency financial aid grants under section 3504, 18004, or 18008 of the CARES Act or section 277(b)(3) of the COVID-related Tax Relief Act of 2020 (COVID Relief Act) (Division N, P.L. 116-260);
- Economic Injury Disaster Loan (EIDL) grants under section 1110(e) of the CARES Act or section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) (Division N, P.L. 116-260); and
- shuttered venue operator grants under section 324(b) of the Economic Aid Act.

Other Reporting

The waivers do not affect requirements to file and furnish other forms, such as forms in the 1098 series. For example, the waiver does not apply to the requirement to file and furnish Form 1098-T, Tuition Statement, for qualified tuition and related expense payments, including qualified tuition and related expenses paid with COVID-related student emergency financial aid grants. Also, because borrowers may deduct mortgage interest that the Small Business Administration paid to lenders, lenders may include those mortgage interest payments in Box 1 of Form 1098, Mortgage Interest Statement. Lenders who are unable to furnish with this information by February 1, 2021, are encouraged to furnish a corrected Form 1098 as promptly as possible.

Wolters Kluwer Tax Briefing: 2020 Tax Year-In-Review

History will no doubt look back on 2020 as one of the most eventful years in history. The United States witnessed political upheaval and social unrest all while dealing with a worldwide pandemic. And the world of federal tax was no exception, with the passage of three major tax bills and the large quantities of guidance in an effort to ease the economic impact of the pandemic.

Since 1913, Wolters Kluwer has provided tax professionals with the most comprehensive, ongoing, practical and timely analysis of the federal tax law. In the spirit of this tradition, Wolters Kluwer is providing you with review of the tax-related events of 2020.

Wolters Kluwer's Tax Briefing highlighting the events of 2020 is now available at: https://engagetax.wolterskluwer.com/2020-Tax-Year-in-Review.pdf. This Wolters Kluwer Tax Briefing gives tax practitioners a look back at what happened in 2020.

Period for Paying Deferred Employee Payroll Tax Extended

Notice 2021-11; IR-2021-17

The IRS has extended the time period during which employers must withhold and pay the employee portion of Social Security tax that employers elected to defer on wages paid from September 1, 2020, through December 31, 2020. Specifically:

- the end date of the period for withholding and paying the deferred tax is postponed from April 30, 2021, to December 31, 2021; and
- any interest, penalties, and additions to tax for late payment of any unpaid deferred tax will begin to accrue on January 1, 2022, rather than on May 1, 2021.

Notice 2020-65, I.R.B. 2020-38, 567, is modified.

Employee Tax Deferral

In response to the coronavirus (COVID-19) disaster, President Trump issued a memorandum on August 8, 2020, directing the Treasury Secretary to use his Code Sec. 7508A authority to defer the withholding, deposit, and payment of the employee portion of the 6.2-percent old-age, survivors and disability insurance (OASDI) tax (Social Security tax) under Code Sec. 3101(a), and the Railroad Retirement Tax Act (RRTA) Tier 1 tax that is attributable to the 6.2-percent Social Security tax under Code Sec. 3201. The deferral was available only for tax on wages paid from September 1, 2020, through December 31, 2020, and only for employees whose biweekly, pre-tax pay was less than $4,000, or a similar amount where a different pay period applied.

The Treasury Secretary and the IRS then issued Notice 2020-65, directing employers that elected to apply the deferral to withhold and pay the deferred taxes ratably from wages and compensation paid between January 1, 2021, and April 30, 2021. Interest, penalties, and additions to tax would begin to accrue on May 1, 2021, on any unpaid applicable taxes.

Payment Period Extended

The recent COVID-related Tax Relief Act of 2020 (Division N, P.L. 116-260) extended the payment period, and required the Treasury Secretary to apply Notice 2020-65 by substituting "December 31, 2021" for "April 30, 2021" and substituting "January 1, 2022" for "May 1, 2021."

Employers that elected to defer employees' payroll taxes can now withhold and pay the deferred tax throughout 2021, instead of just during the first four months of the year.

Deadlines Extended for QOFs and Investors

Notice 2021-10

The IRS has announced various extensions of deadlines for qualified opportunity funds and their investors due to the Coronavirus pandemic. This new guidance increases deadline extensions previously announced on June 4, 2020, in Notice 2020-39, I.R.B. 2020-26, 984. Notice 2020-23, I.R.B. 2020-18, 742, is modified, and Notice 2020-39 is amplified.

Reinvestment Period

Generally, taxpayers must reinvestment capital gain in a qualified opportunity fund (QOF) within 180 days after the gain is realized from a sale or exchange. Under the new guidance, if the last day of the 180-day investment period falls on or after April 1, 2020, and before March 31, 2021, the last day of the investment period is automatically postponed to March 31, 2021. The last day of the reinvestment period was December 31, 2020, under the earlier relief.

Investment Standard

The new guidance provides that a QOF's failure to hold 90 percent of its assets in qualified opportunity zone property on any semiannual testing date that falls on or after April 1, 2020, and ends on or before June 30, 2021, is due to reasonable cause on account of the COVID-19 pandemic. Therefore, the failure to satisfy the 90-percent test does not affect an entity's status as a QOF or prevent an investment in the entity from being a qualified investment. Penalties due to failure to satisfy the 90-percent investment standard during this period are waived. The ending date was December 31, 2020, under the prior relief.

AFRs Issued For February 2021

Rev. Rul. 2021-4

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

Applicable Federal Rates (AFR) for February 2021

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	0.12%	0.12%	0.12%	0.12%
110% AFR	0.13%	0.13%	0.13%	0.13%
120% AFR	0.14%	0.14%	0.14%	0.14%
130% AFR	0.16%	0.16%	0.16%	0.16%
Mid-Term				
AFR	0.56%	0.56%	0.56%	0.56%
110% AFR	0.62%	0.62%	0.62%	0.62%
120% AFR	0.67%	0.67%	0.67%	0.67%
130% AFR	0.73%	0.73%	0.73%	0.73%
150% AFR	0.84%	0.84%	0.84%	0.84%
175% AFR	0.98%	0.98%	0.98%	0.98%
Long-Term				
AFR	1.46%	1.45%	1.45%	1.45%
110% AFR	1.61%	1.60%	1.60%	1.59%
120% AFR	1.75%	1.74%	1.74%	1.73%
130% AFR	1.90%	1.89%	1.89%	1.88%

Adjusted AFRs for February 2021

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	0.09%	0.09%	0.09%	0.09%
Mid-term adjusted AFR	0.43%	0.43%	0.43%	0.43%
Long-term adjusted AFR	1.10%	1.10%	1.10%	1.10%

The Code Sec. 382 adjusted federal long-term rate is 1.10%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 1.10%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.23% and 3.10%, respectively, however, under Code Sec. 42(b)(2), the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 0.6%.

Substantial Improvement Period

Under the new guidance, the 30-month period during which property held by a QOF or qualified opportunity zone business must be substantially improved is tolled during the period beginning on April 1, 2020, and ending on March 31, 2021. The tolling period ended on December 31, 2020 under the prior relief.

Working Capital Safe Harbor

The new guidance provides that qualified opportunity zone businesses holding working capital intended to be covered by the 31-month working capital safe harbor before June 20, 2021, receive up to an additional 24 months to spend the working on qualifying property. The maximum safe harbor period (including periods under the prior extension) may not exceed more than 55 months (86 months for start-up businesses). The previous extension applied to working capital intended to be covered by the safe harbor before December 31, 2020.

Return of Capital Reinvestment Period

Finally, the new guidance states that if any part of the 12-month period during which a QOF may reinvest returns of capital and proceeds from the sale of qualified opportunity property in other qualified opportunity zone property includes June 30, 2020, the reinvestment period is extended up to an additional 12 months. Thus, a maximum reinvestment period of 24 months is allowed, including any additional months granted under the prior relief. The previous 12-month extension applied to the 12-month period that includes January 20, 2020.

Reporting Penalty Relief for Partnerships

Notice 2021-13

The IRS has issued guidance that provides partnerships with relief from certain penalties for the inclusion of incorrect information in reporting their partners' beginning capital account balances on the 2020 Schedules K-1 (Forms 1065 and 8865). The IRS has also provided relief from accuracy-related penalties for any tax year for the portion of an imputed underpayment attributable to the inclusion of incorrect information in a partner's beginning capital account balance reported by a partnership for the 2020 tax year.

Penalty Relief

A partnership will not be subject to a penalty under Code Secs. 6698, 6721, or 6722 for the inclusion of incorrect information in reporting its partners' *beginning* capital account balances on the 2020 Schedules K-1 if the partnership can show that it took ordinary and prudent business care in following the 2020 Form 1065 Instructions. Under those instructions, a partnership can report its partners' beginning capital account balances using any one of the following methods: tax basis method, modified outside basis method, modified previously taxed capital method, or section 704(b) method.

In addition, a partnership will not be subject to a penalty under Code Secs. 6698, 6721, or 6722 for the inclusion of incorrect information in reporting its partners' *ending* capital account balances on Schedules K-1 in tax year 2020, or its partners' *beginning* or *ending* capital account balances on Schedules K-1 in tax years after 2020, to the extent the incorrect information is attributable solely to the incorrect information reported as the beginning capital account balance on the 2020 Schedule K-1 for which relief is provided by this guidance.

Finally, on certain conditions, the IRS will waive any accuracy-related penalty under Code Sec. 6662 for any tax year with respect to any portion of an imputed underpayment that is attributable to an adjustment to a partner's beginning capital account balance reported by the partnership for the 2020 tax year. However, this waiver will be granted only to the extent the adjustment arises from the inclusion of incorrect information for which the partnership qualifies for relief under section 3 of this guidance.

Denial of Motion to Vacate Order Appointing Receiver Affirmed

P.L. Harold, CA-6, 2021-1 USTC ¶50,103

In an action to enforce a tax lien, a district court's grant of summary judgment and its denial of a motion to vacate an order appointing a receiver was affirmed. The taxpayer had failed to fully pay her taxes for nine tax years at issue. The IRS placed liens on her property and then sued to enforce its liens against a house in which she had a certain amount in equity. However, before the district court granted summary judgment against the taxpayer, the taxpayer sold the house to a real estate company. The district court promptly joined the real estate company as a party and appointed a receiver to sell the property on the IRS's behalf.

The taxpayer and the real estate company argued that the liens did not remain with the taxpayer's property interest after she sold it to the real estate company. However, since the taxpayer's property was subject to a lien, no matter into whose hands it went, the property passed encumbered by the lien. Moreover, the IRS had filed its lien notices, so the real estate company had constructive notice, which sufficed for the property to remain encumbered by the lien. The real estate company also had actual notice, because it had noted the liens in its land-sale contract. Thus, it purchased the house subject to the liens.

In addition, the taxpayer argued that the district court's order joining the real estate company was both substantively and procedurally improper. The taxpayer's substantive argument failed, however, because if a party to litigation over property could sell the property without the purchaser being bound, this would enable unscrupulous litigants to pass the property from hand to hand to ensure that a final decree bearing fruit could never be reached. The taxpayer's procedural argument also failed because declining to dismiss the real estate company, re-serve the real estate company, then re-join it was a proper application of the requirement under the Federal Rules of Civil Procedure that at every stage of the proceeding, all errors and defects that do not affect any party's substantial rights must be disregarded.

Unpublished opinion affirming an unpublished DC Mich. decision.

TAX BRIEFS

Bad Debt

The Court of Federal Claims dismissed an individual's complaint for lack of jurisdiction, because the individual's refund claims were untimely. The individual sought a business bad debt deduction for his asserted 2008 net operating loss (NOL) attributable to the advances he made to a project and to elect to carry back his loss to tax years 2003-2007. Since the individual did not have a bona fide debt, he failed to establish entitlement to a deduction under Code Sec. 166. Therefore, the individual did not qualify for the extended statute of limitations under Code Sec. 6511(d) or under section 211 of the American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5). As a result, only the time limit of Code Sec. 6511(a) applied to the individual's refund claims for tax years 2003, 2004, and 2005. Since these claims were filed outside the window allowed under Code Sec. 6511(a), they were untimely.

Devine, FedCl, 2021-1 USTC ¶50,104

FBAR

A federal district court ruled that the statutory cap for civil monetary penalties for non-willful Report of Foreign Bank and Financial Accounts (FBAR) violations is determined on a per form basis, not per account basis. When Congress amended the Bank Secrecy Act to impose penalties for non-willful violations, it wrote a penalty provision that imposes a strict $10,000 cap with full awareness of the penalty provision for willful violations, which expressly uses the balance of the account as a benchmark for assessing the statutory cap. Thus, Congress did not intend for the statutory cap for non-willful violations to be determined on a per account basis.

Kaufman, DC Conn., 2021-1 USTC ¶50,102

Filing Season

The IRS reminded taxpayers to organize tax records for getting ready to prepare and file their 2020 tax return. It recommends e-filing for a complete and accurate return. Taxpayers with income less than $56,844 in 2020 may be eligible to claim the Earned Income Tax Credit (EITC). The EITC Assistant can be used to determine eligibility.

IR-2021-18

The IRS reminded taxpayers that the fastest way to get their tax refund is by filing electronically and choosing direct deposit. Eight out of ten taxpayers get their refunds by using direct deposit. The IRS uses the same electronic transfer system to deposit tax refunds that is used by other federal agencies to deposit nearly 98% of all Social Security and Veterans Affairs benefits into millions of accounts. Taxpayers can select direct deposit as the refund method when using tax software or working with a tax preparer, and either they or their tax preparer type in their account and routing number. The IRS also reminded taxpayers that they should only deposit refunds directly into U.S.-affiliated accounts that are in their name, their spouse's name, or both for a joint account.

IR-2021-19

Foreign Corporations

A British private limited liability company was denied deductions or credits under Code Sec. 882(c)(2) because it did not submit federal income tax returns for the tax years at issue until after the IRS had prepared and subscribed returns for it. This interpretation of Code Sec. 882(c)(2) did not violate either the business profits article or the nondiscrimination article of the bilateral United States-United Kingdom income tax treaty.

Adams Challenge (UK) Ltd., TC Dec. 61,809

Management Fees

A corporation was not entitled to deductions for management fees paid to three shareholders for the tax years at issue, because the fees were not paid purely for services. The evidence mostly indicated that the taxpayer paid the management fees to its three shareholders as disguised distributions. The taxpayer made no distributions to its three shareholders but paid management fees each year, and no evidence indicated that the taxpayer ever made distributions to its shareholders during its entire corporate history. Although the fees were not exactly pro rata among the three shareholders, the two large shareholders always got equal amounts, and the percentages of fees all three shareholders received roughly corresponded to their respective ownership interests. Also, the taxpayer paid management fees as lump sums at the end of the tax year, rather than throughout the year as the services were performed. The taxpayer also had relatively little taxable income after deducting the management fees, and its process of setting management fees was unstructured and had little if any relation to the services performed.

Aspro, Inc., TC, Dec. 61,810(M)

Pensions

For pension plan years beginning in January 2021, the IRS has released the 30-year Treasury bond weighted average interest rate, the permissible range of interest rates used to calculate current plan liability and the current corporate bond yield curve and related segment rates for the purpose of establishing a plan's funding target under Code Sec. 430(h)(2).

Notice 2021-9