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IMPORTANT NOTICE to Our Valued Subscribers

Wolters Kluwer is pleased to announce some exciting changes to our federal tax newsletters.

Starting on **April 1, 2021**, the print version of *Federal Tax Weekly* will be discontinued. Instead, current print subscribers will receive an email with a printable PDF version of the newsletter.

Federal Tax Weekly will continue to be available on CCH® IntelliConnect and CCH® AnswerConnect.

Please Note: We need to verify your e-mail address, so you won't miss a single issue. At your earliest convenience, please go to https://engagetax.wolterskluwer.com/FederalTaxWeekly and follow the directions for providing your information.

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Biden COVID-19 Relief Package in Senate

Early on February 26, 2021, the U.S. House of Representatives approved President Joe Biden's COVID-19 relief package, the American Rescue Plan Act of 2021. The bill passed by a vote of 219 to 212, largely along party lines, and includes tax provisions in much the same form that the House Ways and Means Committee had approved earlier in February.

The legislative package is now under consideration in the U.S. Senate, where an even slimmer margin of votes is expected to approve the bill and send it to the President's desk for signing.

One change to the tax items in the House bill was the addition of a provision to remove tax breaks from or impose an additional tax on large corporations that do not pay employees a specified hourly wage. That possibility came up after the Senate parliamentarian had ruled that an increase in the minimum wage to $15 per hour could not appear in the legislation and comply with budget reconciliation rules. The new tax provision was being reviewed by Senate Majority Leader Chuck Schumer (D-NY), but as this Issue went to press, the provision appeared to be losing support.

A hard and fast deadline for Congressional Democrats to get the bill to Biden's desk is March 14, when expanded pandemic unemployment insurance benefits expire. Tax provisions in the package include:

- A $1,400 direct stimulus payment to taxpayers, subject to income limitations;
- Expanding the Earned Income Tax Credit for workers without children by nearly tripling the maximum credit and extending eligibility (last year, more than 25 million filers received the credit with the average amount pocketed being over $2,400);
- Raising the Child Tax Credit to $3,000 per child ($3,600 for children under age 6) and making it fully refundable and advanceable (the text of the bill provides that half

of the credit amount could be paid out monthly beginning in July 2021);

- Expanding the Child and Dependent Tax Credit to allow families to claim up to one-half of their childcare expenses;
- Increasing the Affordable Care Act's (ACA) premium tax credits for 2021 and 2022; and
- Extending business tax credits for paid sick and family leave through September 30, 2021, and the Employee Retention Tax Credit through December 31, 2021.

White House Announces PPP Changes

The Paycheck Protection Program (PPP) is being altered, according to a fact sheet released by the White House.

During an exclusive 14-day period starting on February 24, 2021, new applications are being accepted only for businesses with fewer than 20 employees.

The loan calculation formula will be revised for applicants who are sole proprietors, independent contractors, or self-employed individuals, and $1 billion will be set aside for businesses in this category without employees located in low- and moderate-income (LMI) areas.

The prohibition against small business owners receiving a loan who have had a non-fraud-related felony arrest or conviction in the last year is eliminated, unless the applicant or owner is incarcerated at the time of the application. Also eliminated is a prohibition against a business receiving PPP funds which has at least 20-percent ownership by an individual who is currently delinquent or has defaulted within the last seven years on a federal debt, including a student loan

Rules are being clarified to ensure noncitizen small business owners who are lawful U.S. residents may apply for relief by using Individual Taxpayer Identification Numbers (ITINs).

White House Fact Sheet

IRS Unopened Mail Backlog is Gone, Says Rettig

IRS Commissioner Charles "Chuck" Rettig told Congress on February 23 that the backlog of 20 million unopened pieces of mail is gone.

"There were trailers in June filled (with unopened paper returns). There are none today," Rettig said in an appearance before the House Appropriations Committee Financial Services Subcommittee.

When there was a delay in getting to a return, Rettig said that a taxpayer was credited on the date the mail was received, not the day the payment was processed.

The IRS leader stated that virtual currency, which is designed to be anonymous, has probably significantly increased the amount of money taxpayers owed but have not paid since the last formal figure of $381 billion was estimated in 2013.

To close the gap between money owed and money paid, Rettig said there has to be an increase in guidance as well as enforcement. "The two go together," said Rettig, who pointed out that the IRS must support the people who are working to get their tax payments right as well as working against those who are trying to thwart the agency's efforts.

Rettig cited high-income/high-wealth taxpayers, including high-income non-filers, as high enforcement priorities. "We have not pulled back enforcement efforts for higher income individuals during the pandemic. We can be impactful," said Rettig. He added that the IRS is using artificial intelligence and other information technology (IT) advances to catch wealthy tax law and tax rule breakers. "Our advanced data and analytic strategies allow us to catch instances of tax evasion that would not have been possible just a few years ago," said the IRS leader.

Rettig contended that the agency's IT improvement efforts are being hampered by a shortage of funding. According to Rettig, three years into a six-year business modernization plan, the IRS has received half of the money it requested from Congress for the initiative.

One of the impacts of the pandemic on the IRS and the taxpayers and tax professionals it serves, said Rettig, is the average length of phone calls has risen to 17 minutes from 12 minutes because the issues have been more complex.

On another issue related to COVID-19, Rettig said the IRS has been diligently working to alert taxpayers and tax professionals to scams related to COVID-19, especially calls and email phishing attempts tied to the Economic Impact Payments (EIPs). He said people can reduce the chances of missing their EIP payments through lost, stolen or thrown-away debit cards by filing their tax returns electronically.

The Commissioner told the panel that the delay in starting the tax filing season this year will not add to any additional delays to refunds on returns claiming the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC).

Rettig also noted that taxpayers who interact with an IRS representative now have access to over-the-phone interpreter services in more than 350 languages.

REFERENCE KEY

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

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Cash Rewards for Money Order, Debit Card Purchases Included in Income

K. Anikeev, TC Memo. 2021-23, Dec. 61,827(M)

The Tax Court ruled that rewards dollars that a married couple acquired for using their American Express credit cards to purchase debit cards and money orders—but not to purchase gift cards—were included in the taxpayers' income. The court stated that its holdings were based on the unique circumstances of the case.

Background

During the tax years at issue, each taxpayer had an American Express credit card that was part of a rewards program that paid reward dollars for eligible purchases made on their cards. Card users could redeem reward dollars as credits on their card balances (statement credits). To generate as many reward dollars as possible, the taxpayers used their American Express credit cards to buy as many Visa gift cards as they could from local grocery stores and pharmacies. They used the gift cards to purchase money orders, and deposited the money orders into their bank accounts. The husband occasionally purchased money orders with one of the American Express cards.

The taxpayers also occasionally paid their American Express bills through a money transfer company. Using this method, they paid the American Express bill with a reloadable debit card, and the money transfer company would transmit the payment to American Express electronically. The taxpayers used their American Express cards to purchase reloadable debit cards that they used to pay their American Express bills, and the purchase of debit cards and reloads also generated reward dollars.

2021 Foreign Housing Expense Amounts

The IRS has provided the foreign housing expense exclusion/deduction amounts for tax year 2021. Generally, a qualified individual whose entire tax year is within the applicable period is limited to maximum housing expenses of $32,610 for 2021. Similarly, the computation of the base housing amount is also tied to the maximum foreign earned income exclusion. The base housing amount is 16 percent of the maximum exclusion amount (computed on a daily basis), multiplied by the number of days in the applicable period that fall within the tax year. The notice also provides a table containing information on adjusted limitations on housing expenses for 2021, in lieu of the otherwise applicable limitation of $32,610.

Notice 2006-87, 2006-2 CB 766; Notice 2007-25, 2007-1 CB 760; Notice 2007-77, 2007-2 CB 735; Notice 2008-107, 2008-2 CB 1265; Notice 2010-27, I.R.B. 2010-15, 531; Notice 2011-8, I.R.B. 2011-8, 503; Notice 2012-19, I.R.B. 2012-10, 440; Notice 2013-31, I.R.B. 2013-21, 1099; Notice 2014-29, I.R.B. 2014-18, 991; Notice 2015-33, I.R.B. 2015-18, 934; Notice 2016-21, I.R.B. 2016-12, 465; Notice 2017-21, I.R.B. 2017-13, 1026; Notice 2018-44, I.R.B. 2018-21, 611; Notice 2019-24, I.R.B. 2019-14, 932; and Notice 2020-13, I.R.B. 2020-11, 502, are superseded.

Notice 2021-18

All of the taxpayers' charges of more than $400 in single transactions with the American Express cards were for gift cards, reloadable debit cards, or money orders. On their joint tax returns, the taxpayers did not report any income from the rewards program.

The IRS determined that the reward dollars generated ordinary income to the taxpayers. When a payment is made by a seller to a customer as an inducement to purchase property, the payment generally does not constitute income but instead is treated as a purchase price adjustment to the basis of the property (*Pittsburgh Milk Co.*, 26 TC 707, Dec. 21,816; Rev. Rul. 76-96, 1976-1 CB 23). The IRS argued that the taxpayers did not purchase goods or property, but instead purchased cash equivalents—gift cards, reloads for debit cards, and money orders—to which no basis adjustment could apply. As a result, the reward dollars paid as statement credits for the charges relating to cash equivalents were an accession to wealth.

Rebate Policy; Cash Equivalency Doctrine

The Tax Court observed that the taxpayers' aggressive efforts to generate reward dollars created a dilemma for the IRS which was largely the result of the vagueness of IRS credit card reward policy. Under the rebate rule, a purchase incentive such as credit card rewards or points is not treated as income but as a reduction of the purchase price of what is purchased with the rewards or points (Rev. Rul. 76-96; IRS Pub. 17). The court observed that the gift cards were quickly converted to assets that could be deposited into the taxpayers' bank accounts to pay their American Express bills. According to the court, to avoid offending its long-standing policy that card rewards are not taxable, the IRS sought to apply the cash equivalence concept, but that concept was not a good fit in this case.

The court stated that a debt obligation is a cash equivalent where it is a promise to pay of a solvent obligor and the obligation is unconditional and assignable, not subject to set-offs, and is of a kind that is frequently transferred to lenders or investors at a discount not substantially greater than the generally prevailing premium for the use of money (*F. Cowden*, CA-5, 61-1 USTC ¶9382, 289 F2d 202). The court found that the three types of transactions in this case failed to fit this definition.

The court ruled that the reward dollars associated with the gift card purchases were not properly included in income. The reward dollars taxpayers received were not notes, but instead were commitments by

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American Express to allow taxpayers credits against their card balances. The court found that American Express offered the rewards program as an inducement for card holders to use their American Express cards.

However, the court upheld the inclusion in income of the related reward dollars for the direct purchases of money orders and the cash infusions to the reloadable debit cards. The court observed that the money orders purchased with the American Express cards, and the infusion of cash into the reloadable debit cards, were difficult to reconcile with the IRS credit card reward policy. Unlike the gift cards, which had product characteristics, the court stated that no product or service was obtained in these uses of the American Express cards other than cash transfers.

As the court noted, the money orders were not properly treated as a product subject to a price adjustment because they were eligible for deposit into taxpayers' bank account from acquisition. The court similarly found that the cash infusions to the reloadable debit cards also were not product purchases. The reloadable debit cards were used for transfers by the money transfer company, which the court stated were arguably a service, but the reward dollars were issued for the cash infusions, not the transfer fees.

Finally, the court stated that its holdings were not based on the application of the cash equivalence doctrine, but instead on the incompatibility of the direct money order purchases and the debit card reloads with the IRS policy excluding credit card rewards for product and service purchases from income.

Alert on Improper DPAD Refund Claims

The IRS has issued an alert concerning amended returns and claims for the domestic production activities deduction (DPAD) under Code Sec. 199, which was repealed as part of the Tax Cuts and Jobs Act for tax years after December 31, 2017. After the repeal, the IRS received many questionable amended returns and claims for tax benefits in the billions of dollars. A large majority of the filings involved taxpayers claiming DPAD for the first time based on studies conducted after the fact, which contained unreasonable assumptions of facts and law.

In July 2020, the IRS issued a General Legal Advice Memorandum addressing examples of meritless Code Sec. 199 online software activity. In many examination cases, once taxpayers were challenged, they conceded 100 percent of the claim. The IRS continues to litigate Code Sec. 199 issues.

Examiners have been advised to consider penalties for erroneous claim for refund or credit under Code Sec. 6676, as well as other applicable penalties, and referrals to the Office of Professional Responsibility (OPR) when appropriate. Taxpayers and their advisors should ensure they have documentation to support their position, and should expect that the IRS may impose appropriate penalties unless taxpayers establish that they have reasonable cause. The IRS states that a study does not necessarily provide reasonable cause.

IR-2021-45

Individual Not Entitled to Innocent Spouse Relief

V.L. Rogers, TC Memo. 2021-20, Dec. 61,824(M)

An individual who owned a limited liability company (LLC) with her former spouse was not entitled to relief from joint and several liability under Code Sec. 6015(b). The taxpayer argued that she did not know or have reason to know of the understated tax when she signed and filed the joint return for the tax year at issue. Further, she claimed to be an unsophisticated taxpayer who could not have understood the extent to which receipts, expenses, depreciation, capital items, earnings and profits, deemed or actual dividend distributions, and the proper treatment of the LLC resulted in tax deficiencies. The taxpayer also asserted that she did not meaningfully participate in the functioning of the LLC other than to provide some bookkeeping and office work.

However, the taxpayer, a high school graduate, testified that she had “a little bit of banking education,” indicating that she had some familiarity with bookkeeping. Her ex-spouse added during trial that the taxpayer had worked at a bank for a few years. Regarding her role in the LLC, the taxpayer maintained the business' books and records, prepared and signed sales tax returns and unemployment tax contribution forms on its behalf, and worked with an accountant to prepare its tax returns. Nothing in the record indicated that her ex-spouse tried to deceive or hide anything from her.

Further, the taxpayer’s joint ownership of the LLC, her involvement in maintaining its books and records, her role in preparing and signing tax-related documents on behalf of the business, and her cooperation with an accountant to prepare the LLC’s tax returns, showed that she had actual knowledge of the factual circumstances that made the deductions unallowable. Thus, she also was not entitled to relief under Code Sec. 6015(c).

The taxpayer was not eligible for streamlined determination under Rev. Proc. 2013-34, 2013-43 I.R.B. 397, because no evidence corroborated her testimony that her former spouse had abused her in any sense to which the tax law or common experience would accord any recognition. The history of acrimony between the taxpayer and her ex-spouse called into question the weight to be given to her claims of spousal abuse. Finally, the taxpayer was unable to persuade the court that she was entitled to equitable relief under Code Sec. 6015(f). She was intimately involved with

the LLC, knew or had reason to know of the items giving rise to the understatement, and failed to make a good-faith effort to comply with her income tax return filing obligations.

Large Cash Transaction Reporting Reminder

The IRS has reminded businesses of their responsibility to file Form 8300, Report of Cash Payments Over $10,000. Generally, any person in a trade or business who receives more than $10,000 in cash in a single transaction or in related transactions must file a Form 8300. By law, a "person" is an individual, company, corporation, partnership, association, trust or estate.

According to the IRS, those who typically need to file Form 8300 include, for example, dealers in jewelry, furniture, boats, aircraft or automobiles; pawnbrokers; attorneys; real estate brokers; insurance companies; and travel agencies.

To file Form 8300 electronically, a business must set up an account with the Financial Crimes Enforcement Network's BSA E-Filing System. For more information, interested businesses can call the Bank Secrecy Act E-Filing Help Desk at 866-346-9478, or email them at BSAEFilingHelp@fincen.gov.

FS-2021-3; IR-2021-47

Texas Victims of Severe Winter Storms Granted Tax Relief

TX-2021-02; IR-2021-43

The president has declared a federal disaster area in Texas due to the severe winter storms that began February 11, 2021. The disaster area includes *all* 254 Texas counties. Taxpayers who live or have a business in the disaster area may qualify for tax relief.

Filing Deadlines Extended

The IRS has extended certain deadlines falling on or after February 11, 2021, and before June 15, 2021, to June 15, 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 generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations; and
- employment and certain excise tax returns.

This includes various 2020 business tax returns due on March 15, 2021, and 2020 individual and business returns due on April 15, 2021. Taxpayers also have until June 15, 2021, to make 2020 IRA contributions.

Taxpayers also have until June 15, 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 February 11, 2021, and before June 15, 2021. However, unless an act is specifically listed in Rev. Proc. 2018-58, 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 February 11, 2021, and before June 15, 2021, are postponed through June 15, 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 June 15, 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 February 11, 2021, and before February 26, 2021, as long as the tax deposits were made by February 26, 2021.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers claiming a disaster loss on a 2020 return should write the disaster designation "Texas – Severe Winter Storms" in bold letters at the top of the return, and include the disaster declaration number, FEMA 4586, 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 in bold letters 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.

TE/GE Reviews 2020 Accomplishments, 2021 Priorities

The Commissioners for the Tax Exempt and Government Entities (TE/GE) division of the IRS have issued a summary document (Pub. 5329) and list of the division's accomplishments for fiscal year 2020. The TE/GE Fiscal Year 2021 Program Letter (Pub. 5313) lists priorities and goals for fiscal year 2021.

Compliance Strategies

Since 2017, TE/GE has been engaged in a "compliance strategy process" designed

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to help address both noncompliance issues and resource shortages through the strategic use of resources, training and tools. Since its inception, IRS employees have submitted over 450 compliance strategy suggestions to the TE/GE Compliance Governance Board (TE/GE CGB), of which 69 have been adopted. Two-thirds of these begin as either examinations or compliance checks with taxpayers.

During 2020, the TE/GE CGB focused on suggestions designed to identify, prioritize and allocate resources to the greatest benefit. A data-driven approach was adopted for identifying areas of significant noncompliance and issues with the greatest impact on the TE/GE filing population. New educational letters have been developed in an effort to reduce potential noncompliance, thereby reducing costs and taxpayer burdens.

Improved information technology (IT) systems allowed for the implementation of a new TE/GE Exam Process/Handbook, and related system improvements beginning in September allowed for the elimination of paper processes associated with the use of Forms 895 and 895-EP.

In addition, the Exempt Organizations subdivision transitioned the following to mandatory electronic forms in order to reduce errors and make the process more efficient for taxpayers: Form 990, Return of Organization Exempt from Income Tax; Form 990-PF, Return of Private Foundation; Form 1023, Application for Recognition of Exemption; Form 8872, Political Organization Report of Contributions and Expenditures; and Form 8873, Extraterritorial Income Exclusion

TE/GE also began working with IT to improve taxpayer digital communications (TDC) in general, and for the Tax-Exempt Bonds (TEB) sector in particular. The goal of this pilot program is to create the ability to have secure exchanges of messages and documents between the IRS, taxpayers, and their representatives in a cloud environment specifically certified for the exchange of taxpayer data.

For 2021, the priorities for compliance strategies will largely continue those from 2020. Of particular emphasis across all subdivisions and sections of TE/GE will be a focus on reviewing worker classifications to ensure taxpayers are not inappropriately reducing their tax burden by incorrectly treating workers as independent contractors instead of employees. Such worker misclassification results in the underreporting and underpaying of federal income taxes and Federal Insurance Contributions Act (FICA). It can also result in workers being wrongly excluded from employer retirement plans.

Dyed Fuel Penalty Relief for Texas

The IRS has announced that, in order to minimize or prevent disruptions to the supply of fuel for diesel-powered highway vehicles because of severe winter weather impacting Texas, it will not impose a penalty when dyed diesel fuel is sold for use or used on the highway in Texas. This relief is retroactive to February 12, 2021, and will remain in effect through February 26, 2021. This penalty relief is available to any person that sells or uses dyed fuel for highway use. In the case of the operator of the vehicle in which the dyed fuel is used, the relief is available only if the operator or the person selling the fuel pays the tax of 24.4 cents per gallon that is normally applied to diesel fuel for highway use.

The IRS will not impose penalties for failure to make semimonthly deposits of this tax. Ordinarily, dyed diesel fuel is not taxed, because it is sold for uses exempt from excise tax, such as to farmers for farming purposes, for home heating use and to local governments for buses.

TX-2021-01

Exempt Organizations

A significant focus for enforcement during 2020 was on fraud and abusive transactions related to syndicated conservation easements. Agents of the Exempt Organizations (EO) subdivision worked to strengthen their investigative partnerships with agents from the Small Business/Self-Employed (SB/SE), Large Business and International (LB&I) and Criminal Investigation (CI) divisions.

The EO subdivision also initiated compliance strategies focused on (1) hospital organizations with unrelated business income; (2) investment and nonmember income of social clubs exempt from tax under Code Sec. 501(c)(7)); (3) non-exempt charitable trusts that either under-reported income or overreported charitable contributions; and (4) organizations that provided prohibited inurement or private benefit to disqualified persons via private foundation loans.

EO reviewed approximately 3,000 tax-exempt hospitals in 2020 (conducted on a rolling three-year basis) for adherence to Code Sec. 501(r) requirements for community health needs assessments (CHNA), financial assistance policies, limitations on amounts charged for emergency or other medically necessary care, and extraordinary collection actions.

For 2021, EO will focus on reviewing the reporting of excess compensation. Code Sec. 4960 imposes a 21 percent excise tax on tax-exempt organizations that pay over $1 million in compensation to any "covered employee." To date, the filing data indicates there are a high volume of exempt organizations that paid compensation of over $1 million to at least one "covered employee" but failed to report and pay the excise tax on Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.

Employee Plans

In 2020, the Employee Plans (EP) subdivision of TE/GE focused their examinations on participation and coverage issues, allocation errors due to misinterpretation of the definition of compensation, failures to timely amend plan documents, and lack of an adequate fidelity bond. The EP subdivision also initiated compliance strategies focused on:

- whether employee stock in an Employee Stock Ownership Plan (ESOP) was properly valued, and whether annual allocations of employee stock met non-discrimination requirements;
- whether there was compliance with the 25-participant and the 50 percent participation rules in Salary Reduction Simplified Employee Pension (SARSEP) plans;
- the universal availability of, and excessive contributions to, Code Sec. 403(b) plans, as well as excessive contributions and the proper use of the special three-year catch-up contribution rule with Code Sec. 457 plans; and
- whether third-party loans were properly valued for funding purposes and timely paid according to loan terms, and whether such plan loans constituted prohibited transactions under Code Sec. 4975.

In 2021, EP will focus on strategies to ensure that:

- retirement plan sponsors comply with the Code Sec. 401(a)(9) requirement to begin distribution of benefits by April 1 following the calendar year an employee turns 70-1/2;
- participant loans comply with the Code Sec. 72(p) rules on maximum loan balances, as well as the Code Sec. 72(t) re-payment rules for early distributions before age 59-1/2; and
- businesses that have employee retirement plans and file Schedule C, Profit or Loss From Business (Sole Proprietorship), along with a Form 5500-series return, correctly take the self-employed deduction on the Form 1040, Schedule 1, Additional Income and Adjustments, rather than on Schedule C, properly calculate the owner-employee's earned income, and make correct allocations to plan participants.

Government Entities

Within the Government Entities (GE) subdivision, the section on Federal, State and Local/Employment Tax (FSL-ET) focused on issues of on unreported compensation, employee classification, backup withholding and taxable fringe benefits.

The section on Indian Tribal Governments (ITG) focused on FICA tax issues, backup withholding, employee classification, unreported compensation, tip compliance and the understatement of income tax. ITG also assisted CI on investigations involving falsified nontaxable income and fraud.

The section on Tax Exempt Bonds (TEB) focused on compliance strategies, including determining whether: (1) the tax-exempt status of public safety bonds was adversely affected by excessive use of management contracts that the federal government entered into with private businesses; (2) overfunding a sinking fund will cause bonds to become arbitrage bonds, and thereby negatively impact their qualification as Tax Credit Bonds; and (3) variable rate bonds were issued in compliance with the rebate and yield restriction rules under Code Sec. 148.

In 2021, TEB will focus on potential arbitrage violations under Code Sec. 148 caused by the investment of bond proceeds in higher yielding investments after expiration of the allowable 3-year (or sometimes 5-year) period specified Reg. §1.148-2(e). The failure to observe the temporary period limitations by continuing to invest in higher yielding investments may cause the bonds to become arbitrage bonds as defined in Code Sec. 148(e).

Staffing

TE/GE conducted a hiring initiative in 2020 that increased their staff by 3.5 percent, and included 149 revenue agents, 4 tax compliance officers, 5 tax examiners and 30 other positions. Due to the pandemic, TE/GE shifting nearly their entire workforce to remote locations (mostly home) for over nine months. Additionally, they expanded the use of digital signatures and the electronic transmission of documents between examination agents and taxpayers.

TAX BRIEFS

Liens and Levies

A corporation that failed to timely file Forms 941, Employer's Quarterly Federal Tax Return, for the tax year quarters at issue was liable for employment tax liabilities, related Code Sec. 6651(a)(1) additions to tax, and Code Sec. 6656 penalties. The IRS settlement officer (SO) did not abuse her discretion in sustaining a proposed levy. The SO afforded the taxpayer ample time to provide requested documents and comply with all filing, payment, and deposit requirements, but the taxpayer failed to do so.

Friendship Creative Printers Inc., TC, Dec. 61,823(M)

An IRS settlement officer (SO) properly sustained the filing of a Notice of Federal Tax Lien (NFTL) to collect an individual's outstanding tax liabilities. The individual contended that the requirements of Code Sec. 6751(b) with respect to the Code Sec. 6702 penalties were not met. Letters 3176C, which invite petitioner to avoid the penalty by correcting the frivolous returns, are not initial determinations of penalty liability for purposes of Code Sec. 6751(b). However, approval of the penalties was obtained before the assessment of the penalties. so the IRS met the requirements of Code Sec. 6751(b).

Llanos, TC, Dec. 61,825(M)

The IRS properly determined to uphold an individual's notice of federal tax lien

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(NFTL) filing. The taxpayer's income tax withholding for the tax year at issue did not fully cover his reported tax obligation. The taxpayer raised an offer-in-compromise (OIC) issue in an administrative proceeding before the Office of Appeals in which he meaningfully participated, so he was precluded from raising that issue in his Collection Due Process (CDP) proceeding. Also, there was no abuse of discretion by the IRS settlement officer (SO). The SO expressly concluded in the notice of determination that the filing of the NFTL balanced the need for efficient tax collection, and the taxpayer did not provide a valid justification to withdraw the lien.

Galloway, TC, Dec. 61,828(M)

LIFO Records

The IRS Large Business and International (LB&I) has issued a new Practice Unit, Last In-First Out (LIFO) Records. Practice Units provide IRS staff with explanations of general tax concepts, as well as information on specific types of transactions. They are not official pronouncements of law or directives and cannot be used, relied upon, or cited as such.

IRS Practice Units

Marijuana Business

A corporation that sold marijuana—a business that was legal under state (California) law but illegal under federal law—had a business that consisted of trafficking controlled substances, even though it also sold a few non-marijuana items. Therefore, the corporation had only one trade or business when so little money came in from anything other than sales of marijuana. Consequently, the IRS was correct in holding the corporation liable for certain deficiencies during the three tax years at issue.

Desert Organic Solutions, TC, Dec. 61,826(M)

Self-Constructed Assets

The IRS Large Business and International (LB&I) has issued a new Practice Unit, Interest Capitalization for Self-Constructed Assets. Practice Units provide IRS staff with explanations of general tax concepts, as well as information on specific types of transactions. Practice Units are not official pronouncements of law or directives and cannot be used, relied upon or cited as such.

IRS Practice Units