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IMPORTANT NOTICE to Our Valued Subscribers

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

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ACA Certification Rule, Provider Fee Withstand Challenge

State of Texas v. Rettig, CA-5, 2021-1 USTC ¶70,363

The Fifth Circuit Court of Appeals has held that both Section 9010 of the Affordable Care Act (ACA) and a U.S. Department of Health and Human Services (HHS) administrative rule (the Certification Rule) are constitutional and lawful. Texas, Kansas, Louisiana, Indiana, Wisconsin, and Nebraska (the States) sued the United States and its relevant agencies and officials, claiming that the Certification Rule and Section 9010 were unlawful. The Court of Appeals withdrew the July 31, 2020 opinion (previously reported) and issued a substitute opinion.

States have two options for providing care to Medicaid beneficiaries: a "fee-for-service" model and a managed-care model. Under the fee-for-service model, a doctor who treats a Medicaid beneficiary submits a reimbursement request to the state Medicaid agency. The state pays the bill after confirming the individual's eligibility and need for service, then seeks reimbursement from the federal government for a percentage of the cost. Under the more widely used managed-care model, the state pays a third-party health insurer (managed-care organization or MCO) a monthly premium (the capitation rate) for each Medicaid beneficiary the MCO covers, and the MCO provides care to the beneficiary. States may receive reimbursement from the federal government for some percentage of the capitation rate, so long as the underlying MCO contract is "actuarially sound."

The ACA made two changes to the regulatory scheme requiring states that requested Medicaid reimbursements for their MCO contracts to provide actuarially sound capitation rates: (1) it imposed a new cost on certain MCOs: a federal health-insurance provider tax (the Sec. 9010 Provider Fee), and (2) it amended the Medicaid Act to expressly require that capitation rates included in state-MCO contracts be actuarially sound. What remained unchanged was that actuarially sound capitation rates required accounting for

all reasonable, appropriate, and attainable costs. Thus, when the IRS began collecting the Provider Fee from covered entities in 2014, states with MCO contracts were required to account for the Provider Fee to meet the actuarial soundness requirement of the Medicaid Act.

Certification Rule

In this case, the States claimed that the Certification Rule violated the nondelegation doctrine from Article I, section 1, of the U.S. Constitution, and that HHS violated the States' Administrative Procedure Act (APA) on multiple grounds. While the Court of Appeals agreed that the States had standing for their Certification Rule claims, it held the States' APA claims were time-barred. The States did not identify an action that occurred after 2009 (when the six-year statute of limitations expired) to trigger a new statute of limitations. The Court of Appeals reversed the district court's judgment on the States' APA claims and dismissed those claims.

The States argued that the Certification Rule impermissibly gave the Actuarial Standards Board and its actuaries a discretionary veto over HHS's approval of States' Medicaid contracts, as well as the power to define the content of a federal law as it applies to someone else. The district court held that the Certification Rule unlawfully vested in the Board and its actuaries the legislative power to set rules on actuarial soundness and to veto executive action that did not comply with such rules. The Court of Appeals disagreed.

The primary inquiry here whether HHS's requirements—that state-MCO contracts be certified by a qualified actuary, and that the Board's practice standards be followed—were reasonable conditions for approving the contracts. The Court of Appeals determined that the Certification Rule's conditions for actuarial soundness were reasonable and held that the Certification Rule's actuarial certification requirement and incorporation of the Board's practice standards were reasonable conditions, not subdelegations of authority. The court also noted that even if there were subdelegations of certain actuarial soundness requirements to third parties, they would not be unlawful. HHS's subdelegation of certain actuarial soundness requirements to the Board did not divest HHS of its final reviewing authority. HHS had the ultimate authority to approve a state's contract with MCOs; certification was a small part of the approval process.

Provider Fee

Regarding Section 9010 of the ACA, the States claimed that the statute violated the Spending Clause of the U.S. Constitution and the doctrine of intergovernmental tax immunity under the Tenth Amendment. The district court held that Section 9010 did not violate either constitutional provision, and the Court of Appeals agreed. The Court of Appeals held that the Section 9010 Provider Fee was a constitutional tax that did not violate the Spending Clause.

Although a constitutional tax properly enacted through Congress's taxing power is generally not subject to other constitutional provisions, the Tenth Amendment doctrine of intergovernmental tax immunity imposes two limitations when the federal government imposes an indirect tax, like Section 9010, on states. First, the tax must not discriminate against states or those with whom they deal. Second, the "legal incidence" of the tax may not fall on states. The Court of Appeals determined that Section 9010 satisfied both requirements. The Provider Fee is nondiscriminatory because it is imposed on "any entity which provides health insurance," subject to certain non-state-based exclusions. The Provider Fee is similarly imposed at the same rate for all entities, so there is no unfair economic burden. Also, the legal incidence of the Provider Fee does not fall on the states because Congress expressly excluded states from paying the fee.

Affirming in part, reversing in part and dismissing in part an unpublished DC Tex. decision.

Corporate Transparency Act Requires Beneficial Ownership Reporting

HR 6395: William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021

The Corporate Transparency Act (CTA), which became law on January 1, 2021, as part of the National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283), requires certain U.S. entities and foreign entities doing business in the United States to report their beneficial owners to the Treasury Department's Financial Crimes Enforcement Network (FinCEN).

The CTA is generally intended to increase transparency—and thus discourage the use—of shell companies, which is an important step in the fight against

REFERENCE KEY

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

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money laundering, terrorist finance, corruption, and other criminal behavior.

The Secretary of the Treasury is required to issue regulations implementing these reporting requirements no later than one year from the date of enactment of the CTA. It is expected that the regulations will provide more detailed guidance on the beneficial ownership reporting.

The information reported under the CTA will not be available to the general public, and may only be used for law enforcement, national security, or intelligence purposes.

Entities Subject to Reporting

All corporations, limited liability companies, or other similar entities created under the law of a state or Indian tribe, or formed under foreign law and registered to do business in the United States (reporting companies) must disclose information regarding their beneficial owners to FinCEN.

Exemptions

Certain entities do not have to report beneficial ownership under the CTA. These are generally heavily regulated entities that already report such information to other federal agencies, or companies with real business activities that are not perceived to be a high risk for money laundering. Exempt entities include, among others:

- Companies that employ more than 20 people, report more than $5 million of revenues on their tax returns, and have a physical presence in the United States;
- Public companies;
- Financial institutions, such as banks, bank holding companies, and credit unions;
- Insurance companies;
- Investment companies;
- Broker-dealers;
- Pooled investments;
- Tax-exempt organizations.

Information Required

Reporting companies must disclose the identity of each beneficial owner of the company, and of each applicant with respect to the company. The reported information must include:

- Full legal name;
- Date of birth;
- Current residential or business street address; and
- A unique identifying number from an acceptable identity document (such as a driver's license or passport), or a unique identity number generated by FinCEN.

Beneficial Owner and Applicant

A beneficial owner is as an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise:

- exercises substantial control over the entity; or
- owns or controls not less than 25 percent of the ownership interests of the entity.

The following individuals are not beneficial owners for this purpose:

- an individual acting as a nominee, intermediary, custodian, or agent of another individual;
- an individual acting solely as an employee of the entity;
- an individual whose only interest in the entity is through a right of inheritance;
- a creditor of the entity, unless the creditor is also a beneficial owner; and

CP59 Notices Issued in Error

The IRS has stated that it issued CP59 notices to approximately 260,000 taxpayers stating that these taxpayers have not filed their 2019 federal tax return. Due to pandemic related shutdowns, however, the IRS has not completed processing all 2019 returns at this time. Therefore, the CP59 notices should *not* have been sent, because some portion of the recipients may actually have filed a return that is still being processed.

People who filed their 2019 return but nevertheless received the CP59 notice can disregard the letter and do not need to take any action. There is no need to call or respond to the CP59 notice because the IRS continues to process 2019 tax returns as quickly as possible. The IRS encourages those who have yet to file their 2019 return to promptly do so.

CP59 notices are issued yearly to identified taxpayers who have failed to file a tax return that was due the prior calendar year.

IRS Statement About CP59 Notices

New TAP Members Selected for 2021

The IRS has selected 24 new members to serve on the Taxpayer Advocacy Panel (TAP) for 2021. The new TAP members will join returning members to round out the panel of 67 volunteers for 2021. The new members were selected from a pool of approximately 300 interested individuals who applied during an open recruitment period last spring and from alternate members who applied in prior years.

TAP members are U.S. citizens who volunteer to serve a three-year appointment, and are expected to devote 200 to 300 hours per year to panel activities.

TAP is a federal advisory committee charged with listening to taxpayers, identifying issues, and making suggestions to improve IRS service and customer satisfaction. Oversight and program support for the TAP are provided by the Taxpayer Advocate Service, an independent organization within the IRS that helps resolve taxpayer account problems and makes administrative and legislative recommendations to mitigate systemic problems.

IR-2021-39

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- a minor child if the parent or guardian's information is reported.

An applicant with respect to a company is an individual who files an application to form an entity in United States or to register a foreign entity to do business in the United States.

Effective Date

The CTA reporting requirements take effect as of the effective date of the regulations issued by the Secretary of the Treasury to implement these requirements. The regulations must be promulgated not later than one year after January 1, 2021, the date of enactment of the CTA.

Entities formed or registered after the effective date of the regulations must report beneficial ownership to FinCEN at the time of formation or registration. Existing entities must file a report within two years from the effective date of the regulations. In addition, a reporting company must file an updated report within one year of any change to its beneficial ownership information.

Penalties

Failure to report or update beneficial ownership information, or providing false information, may result in civil penalties of up to $500 per day, and criminal penalties of up to $10,000 and/or imprisonment of up to two years. An exemption may apply if an individual acting in good faith corrects any inaccurate information within 90 days of submitting the inaccurate report.

The unauthorized disclosure of reported information may also lead to a $500-per-day civil penalty, and a criminal penalty of up to $250,000 and/or imprisonment of up to five years.

More Flexibility for Health FSAs, Dependent Care Assistance Programs

Notice 2021-15; IR-2021-40

The IRS has released guidance that highlights the application of recently enacted §214 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of P.L. 116-260), which provides temporary special rules for health flexible spending arrangements (FSAs) and dependent care assistance programs under Code Sec. 125 cafeteria plans. Specifically, §214 of the Act:

- provides flexibility with respect to carryovers of unused amounts from the 2020 and 2021 plan years;
- extends the permissible grace period for plan years ending in 2020 and 2021;
- provides a special rule regarding post-termination reimbursements from health FSAs;
- provides a special carryover rule for dependent care assistance programs when a dependent "ages out" during the public health emergency posed by COVID-19; and
- allows certain mid-year election changes for health FSAs and dependent care assistance programs for plan years ending in 2021.

Salary Reduction Contributions

In addition, the guidance provides that a Code Sec. 125 cafeteria plan may permit employees who are eligible to make salary reduction contributions under the plan to, with respect to employer-sponsored health coverage:

- make a new election on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage;
- revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer on a prospective basis; and
- revoke an existing election on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer.

The guidance also provides relief with respect to the effective date of amendments to Code Sec. 125 cafeteria plans to implement the expansion under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136) of allowed expenses for health FSAs and health reimbursement arrangements to include over-the-counter drugs without prescriptions and menstrual care products.

Medical Marijuana Dispensary's Deductions Disallowed

San Jose Wellness, 156 TC No. 4, Dec. 61,820

A California-based medical marijuana dispensary corporation's claimed deductions for depreciation and charitable contributions were disallowed. Further, the dispensary was liable for an accuracy-related penalty with respect to the underpayment of taxes.

Depreciation Deductions

The Tax Court denied the dispensary's depreciation deductions. Although the dispensary claimed that Code Sec. 280E only applies to applicable business deductions under Code Sec. 162, the Tax Court found that Code Sec. 280E's application is much more broad and applies to depreciation deductions claimed under Code Sec. 167(a)(1).

Furthermore, the court determined that Code Sec. 280E precluded the dispensary from taking depreciation deductions for other non-cannabis related items and services that the dispensary sold, such as T-shirts and acupuncture. According to the court, Code Sec. 280E prevents a dispensary from taking any deductions, even if it engages in other activities.

The dispensary also claimed that the Code Sec. 167(a)(1) depreciation deduction falls outside the scope of Code Sec. 280E because depreciation is not "paid or incurred during the taxable year." The court rejected that argument. It determined that the day to day costs incurred by the dispensary that were subject to depreciation were incurred during the taxable year.

Charitable Contributions

The Tax Court also denied the dispensary's claimed charitable deductions. The dispensary claimed that the charitable contributions were not paid in carrying on a trade or business as required under Code Sec. 280E. However, the court noted that charitable contributions provided by corporations often have a business purpose. The court found that any charitable contributions made by the dispensary were made through the course of the dispensary's business. Thus, Code Sec. 280E applies to the Code Sec. 170 charitable contributions.

LITC Annual Report Highlights

The IRS's Low Income Taxpayer Clinic (LITC) Program office announced highlights from its 2020 annual report. This featured successful taxpayer outreach to thousands of taxpayers. The report described how LITCs provide representation, education, and advocacy for taxpayers who are low income or speak English as a second language (ESL).

The program also announced its 2021 LITC grant recipient list. Through the LITC Program, the IRS awards matching grants of up to $100,000 per year to qualifying organizations. IRS Publication 4134, Low Income Taxpayer Clinic List, provides a list of the 2021 LITC grant recipients by geographic area, including contact information and details about the languages, in addition to English, in which each LITC offers services.

"I applaud the Low Income Taxpayer Clinic Program for another successful year filling a crucial role in helping low-income taxpayers resolve their tax problems with the IRS," said National Taxpayer Advocate Erin M. Collins. "The services LITCs provide are critical, and I encourage organizations to consider applying for an LITC grant to open a clinic, especially in areas currently lacking an LITC," she added.

The LITC program is a federal grant program administered by the Taxpayer Advocate Service. LITCs represent individuals whose incomes are below a certain level (generally within 250 percent of the federal poverty guideline), and who need to resolve tax problems with the IRS, such as audits. During 2019, LITCs represented 20,259 taxpayers dealing with an IRS tax controversy.

IR-2021-41

Accuracy Related Penalty

Finally, the court found that the dispensary was subject to an accuracy related penalty. The court determined that the dispensary did not act reasonably and in good faith with respect to its underpayment. It noted that the dispensary had not claimed that it relied in good faith on the advice of a tax professional. Further, the dispensary did not attempt to make the separate business argument. The court noted that when the dispensary filed its return in 2016, the separate business claim was the only argument made by a dispensary to avoid Code Sec. 280E that had been successful in Tax Court or in any other jurisdiction.

Estate, Gift Tax Values of Leased Fee Interests Determined

M.M. Warne, Est., TC Memo. 2021-17, Dec. 61,821(M)

The estate and gift tax values of limited liability companies (LLCs) that held ground leases in several properties were determined. The decedent and her predeceased husband created a family trust that became the majority interest holder of five LLCs. In 2012, the decedent gave interests in each of the LLCs to her two sons and three grandddaughters. At her death, the decedent transferred 75 percent of her interest in one of the LLCs (LLC 5) to a family charitable foundation, and the remaining 25 percent to a church. On the estate tax return, the estate deducted the full value of the 100 percent interest in LLC 5 that was shown on the return.

Estate and Gift Tax Valuations

Both parties presented valuations of three disputed leased fee interests as of the date of the gift and the date of death. The experts' computations were based on the fair market value of the land with an appropriate discount rate applied to that figure. Discounts for lack of control and marketability for the family trust's majority interests in the LLCs on the date of death were also applied. After evaluating the values and methods used by the experts, the court settled on values based on comparable properties and accepted the estate's discount rate. Because the LLC's operating agreements granted considerable power to the majority interest holder, the discount for lack of control was low. The evidence presented showed that family members owning minority interests were unlikely to pursue litigation of the LLCs were dissolved. Thus, the estate's discount for lack of control was rejected, and the court

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concluded that four percent was appropriate. The estate's discount of lack of marketability was supported by the expert's report, but the low-end of the range, five percent, was adopted.

Charitable Contributions

The government argued that discounts for lack of control and marketability should be applied to the charitable contributions to reflect the value of the property received by the charities. Pursuant to *Ahmanson Foundation*, CA-9, 81-2 USTC ¶13,438, the estate was required to include 100 percent of the value of LLC 5 in the gross estate but could only deduct the 25 percent and 75 percent interests given to the charities. A discount, which was stipulated by the parties, was applied to the charitable contribution deduction.

Failure to File Penalty

The decedent's gift tax return was filed late and the government imposed a penalty under Code Sec. 6651(a)(1). Although the estate claimed that the decedent had reasonable cause for the failure to file, it produced no evidence to support the claim. If the Rule 155 computation showed that gift tax was due, the Code Sec. 6651(a)(1) addition to tax applied.

AFRs Issued For March 2021

Rev. Rul. 2021-5

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

Applicable Federal Rates (AFR) for March 2021

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	0.11%	0.11%	0.11%	0.11%
110% AFR	0.12%	0.12%	0.12%	0.12%
120% AFR	0.13%	0.13%	0.13%	0.13%
130% AFR	0.14%	0.14%	0.14%	0.14%
Mid-Term				
AFR	0.62%	0.62%	0.62%	0.62%
110% AFR	0.68%	0.68%	0.68%	0.68%
120% AFR	0.74%	0.74%	0.74%	0.74%
130% AFR	0.81%	0.81%	0.81%	0.81%
150% AFR	0.93%	0.93%	0.93%	0.93%
175% AFR	1.09%	1.09%	1.09%	1.09%
Long-Term				
AFR	1.62%	1.61%	1.61%	1.60%
110% AFR	1.78%	1.77%	1.77%	1.76%
120% AFR	1.94%	1.93%	1.93%	1.92%
130% AFR	2.10%	2.09%	2.08%	2.08%

Adjusted AFRs for March 2021

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	0.08%	0.08%	0.08%	0.08%
Mid-term adjusted AFR	0.47%	0.47%	0.47%	0.47%
Long-term adjusted AFR	1.22%	1.22%	1.22%	1.22%

The Code Sec. 382 adjusted federal long-term rate is 1.22%; 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 1.22%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.26% and 3.11%, 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 0.8%.

Louisiana Victims of Hurricane Zeta Granted Tax Relief

LA-2021-01

The president has declared a federal disaster area in Louisiana due to Hurricane Zeta, which began on October 26, 2020. The disaster area includes the following parishes:

- Acadia,
- Allen,
- Ascension,
- Assumption,
- Beauregard,
- Calcasieu,
- Cameron,
- East Baton Rouge,
- East Feliciana,
- Evangeline,
- Iberia,
- Iberville,
- Jefferson,
- Jefferson Davis,
- Lafayette,
- Lafourche,
- Livingston,
- Orleans,
- Plaquemines,
- Pointe Coupee,
- St. Bernard,
- St. Charles,
- St. Helena,
- St. James,
- St. John the Baptist,
- St. Landry,

- St. Martin,
- St. Mary,
- St. Tammany,
- Tangipahoa,
- Terrebonne,
- Vermilion,
- Washington,
- West Baton Rouge, and
- West Feliciana.

Taxpayers who live or have a business in the disaster area may qualify for tax relief. Taxpayers in localities added later to the disaster area will automatically receive the same filing and payment relief.

Filing Deadlines Extended

The IRS has extended certain deadlines falling on or after October 26, 2020, and before March 1, 2021, to March 1, 2021. The extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift and generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations; and
- employment and certain excise tax returns.

Taxpayers also have until March 1, 2021, to perform certain time-sensitive actions described in Reg. §301.7508A-1(c)(1) and Rev. Proc. 2018-58, I.R.B. 2018-50, 990, that are due to be performed on or after October 26, 2020, and before March 1, 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 October 26, 2020, and before March 1, 2021, are postponed through March 1, 2021, and will not be subject to penalties for failure to pay estimated tax installments as long as such payments are paid on or before March 1, 2021.

The extension does not apply to employment and excise tax deposits. However, IRS will abate penalties on payroll and excise tax deposits due on or after October 26, 2020, and before November 10, 2020, will be abated as long as the tax deposits were made by November 10, 2020.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers claiming a disaster loss on a 2019 or 2020 return should write the disaster designation "Louisiana - Hurricane Zeta" in bold letters at the top of the return, and include the disaster declaration number, FEMA 4577, 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.

First and Second Round of EIPs Issued

IR-2021-38

The IRS has announced that all legally permitted first and second round of Economic Impact Payments (EIPs) have been issued. Since Congress enacted the COVID-related Tax Relief Act of 2020 (Division N of P.L. 116-260), the IRS has delivered more than 147 million EIPs in the second-round totaling over $142 billion.

Most people who are eligible for the Recovery Rebate Credit have already received it, in advance, in these two rounds of EIPs. If individuals did not receive a payment, or did not receive the full amounts, they may be eligible to claim the Recovery Rebate Credit and must file a 2020 tax return. Eligibility for and the amount of the Recovery Rebate Credit are based on 2020 tax year information, while EIPs were based on 2019 tax year information. For the first EIP, a 2018 return may have been used if the 2019 return was not filed or processed.

Individuals will need to know the amounts of any EIPs they received to claim the Recovery Rebate Credit. Those who do not have their EIP notices can view the amounts of their first and second EIPs through their individual online account. For married filing joint individuals, each spouse will need to log into their own account.

Additional Information

Taxpayers can review IRS Publication 5486, Claiming the Recovery Rebate Credit on a 2020 Tax Return, for details on the credit. The IRS has also published Recovery Rebate Credit Frequently Asked Questions on its webpage, at https://www.irs.gov/newsroom/recovery-rebate-credit-frequently-asked-questions.

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TAX BRIEFS

Corporate Divisions

A proposed transaction was treated as if a distributing entity transferred 100 percent of stock of a subsidiary to another subsidiary in exchange for stock of a new subsidiary. In addition to transfers and distributions, an "external spin" qualified as a tax-free reorganization and distribution pursuant to Code Secs. 368(a)(1)(D) and Code Sec. 355. A foreign controlled entity and the distributing entity each would be a "party to a reorganization" within the meaning of Code Sec. 368(b). The distributing entity proposed to separate one business from the other, such that following the separation, the distributing entity would conduct one of its businesses, and a newly formed entity would conduct the other business.

IRS Letter Ruling 202107009

Corporate Reorganizations

A conversion was treated as a transfer by a subsidiary of substantially all of its assets to another subsidiary in exchange for the first subsidiary's voting stock and the first subsidiary's assumption of the second subsidiary's liabilities followed by a distribution. In addition, certain asset contributions did not prevent the conversion from qualifying as a reorganization under Code Sec. 368(a)(1)(C). Moreover, the asset contributions did not prevent the reorganization from qualifying as a reorganization under Code Sec. 368(a)(1)(F). In a completed transaction, a parent worldwide group relocated substantially all of its intangible properties related to a business, including all of the second subsidiary's intangibles and the second subsidiary's Code Sec. 367(d) intangible property, to a foreign country and consolidated the ownership of its foreign subsidiaries under two foreign holding companies.

IRS Letter Ruling 202107011

Default Judgment

A married couple was found in default under Tax Court Rule 123(a) in cases seeking a redetermination of adjustments in two notices of deficiency. The Tax Court Rules required the taxpayers to cooperate with the IRS's counsel to prepare stipulations of facts but they failed to do so. Additionally, the taxpayers did not appear for trial, despite being warned by the trial notice, standing pretrial order, and reminder notice that failure to appear could result in dismissal of these cases and entry of decisions against them. The taxpayers also failed to cooperate with the IRS's counsel to prepare for trial or otherwise resolve these cases as directed in the standing pretrial order. The IRS carried its burden of production and proof as to all deficiencies, additions to tax, and penalties determined in the notices of deficiency.

Kramer, TC, Dec. 61,819(M)

Exempt Status

An organization's request for tax-exempt status under Code Sec. 501(c)(3) was denied. The organization's articles stated that its purpose was to promote a model of car by planning road trips, social gatherings, supporting charity events and giving back to the community. The majority of the organization's activities were social and recreational. The organization failed the operational and organizational tests. Its recreational and social events represented substantial, non-exempt activities. The organization's social and recreational events were a substantial part of its overall activities; only an insubstantial amount of its time and resources was devoted to charity.

IRS Letter Ruling 202107012

Farmers and Fishers

The IRS reminded those with income from a farming or fishing business that they can avoid making estimated tax payments by filing and paying their entire tax due on or before March 1. This rule generally applies if farming or fishing income was at least two-thirds of the taxpayer's total gross income in either the current or the preceding tax year. Those who choose not to file by March 1 should have made an estimated tax payment by January 15 to avoid an estimated tax penalty.

IR-2021-42

Pensions

For pension plan years beginning in February 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 2021-16

Personal Injury Settlement

An individual was not entitled to exclude from gross income a settlement payment from a legal malpractice lawsuit she had filed against lawyers who had previously represented her in an unsuccessful personal injury lawsuit against a hospital. The payment did not qualify as damages received on account of personal physical injuries or physical sickness under Code Sec. 104(a)(2). The parties' settlement agreement expressly identified the suit as a "malpractice claim" and specified that they entered into the agreement "for the purpose of compromising and settling the disputes." The agreement emphasized that the settlement did not compensate for any personal injuries, and provided that the taxpayer had maintained that she did not sustain any physical injuries as a result of the alleged negligence of either of her former attorneys.

Blum, TC, Dec. 61,822(M)

Practice Before IRS

The IRS's Office of Professional Responsibility has published the names of attorneys, certified public accountants (CPAs), enrolled agents, enrolled actuaries, enrolled retirement plan agents and appraisers who have been disbarred from practice before the IRS, have consented to suspensions from practice, have been placed under suspension from practice under the expedited proceeding provisions, or have consented to the issuance of a censure.

Announcement 2021-3