

FEDERAL TAX WEEKLY

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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.

If you have any questions or concerns, please contact Customer Service at 1-800-344-3734.

Thank you for your support!

Biden Signs COVID-19 Relief Package

P.L. 117-2

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021. Some of the tax-related provisions include the following:

- 2021 Recovery Rebate Credits of \$1,400 for eligible individuals (\$2,800 for joint filers) plus \$1,400 for each eligible dependent. Credit begins to phase out at adjusted gross income of \$150,000 for joint filers, \$112,500 for a head of household, \$75,000 for other individuals. The IRS has already begun making advance refund payments of the credit to taxpayers.
- Exclusion of up to \$10,200 of unemployment compensation from income for tax year 2020 for households with adjusted gross income under \$150,000.
- Enhancements of many personal tax credits meant to benefit individuals with lower incomes and children.
- Exclusion of student loan debt from income, for loans discharged between December 31, 2020, and January 1, 2026.
- For tax years after December 31, 2026, the \$1,000,000 deduction limit on compensation of a publicly-held corporation's covered employees will expand to include the five highest paid employees after the CEO and CFO. The rule in current law applies to the CEO, the CFO, and the next three highest paid officers.
- For the payroll credits for paid sick and family leave: The credit amounts are increased by an employer's collectively bargained pension plan and apprenticeship program contributions that are allocable to paid leave wages. Also, paid leave wages do not include wages taken into account as payroll costs under certain Small Business Administration programs.

The president is conducting a nationwide tour to explain and promote the over 600-page, \$1.9 trillion legislation.

Stimulus Payments

Many of the 158.5 million American households eligible for the payments from the stimulus package can expect to receive them soon, White House Press Secretary Jen Psaki said the same afternoon Biden signed the legislation into law. Payments are coming by direct

deposit, checks, or a debit card to those eligible.

FTC: Beware of Scams

Scammers are right now crawling out from under their rocks to fleece businesses and consumers receiving the aid, the Federal Trade Commission warned on March 12.

It is important for business owners and consumers to know that the federal government will never ask them to pay anything up front to get this money, said the FTC:

“That’s a scam. Every time.” The regulatory agency also cautioned that the government will not call, text, email or direct mail aid recipients to ask for a Social Security, bank account, or credit card number.

Briefing Available

A Wolters Kluwer Tax Briefing on the American Rescue Plan Act of 2021 is available, and can be found at <https://engagetax.wolterskluwer.com/American-Rescue-Plan-Act-2021>.

Experts: IRS Guidance Needed on American Rescue Plan

The IRS needs to issue new rules and guidance to implement the American Rescue Plan, experts said on March 11 as President Joe Biden signed his COVID-19 relief measure.

“I hope Treasury will say something very soon: FAQs, press release, something. IRS undoubtedly will have to write new regs,” commented Urban-Brookings Tax Policy Center Senior Fellow Howard Gleckman. He stressed IRS certainly will have to figure out how to make the retroactive tax exemption for some 2020 unemployment benefits work. Gleckman also said he suspects the Child Tax Credit will require new guidance.

Gleckman claimed a new form this late in the tax season is unlikely. “Amended returns seems easiest,” said the veteran IRS observer.

To help implement the tax-related changes in the American Rescue Plan, a colleague at the Tax Policy Center, Janet Holtzblatt, said that she, as well, is looking for guidance from the IRS on what taxpayers would do if they received unemployment benefits in 2020. Holtzblatt noted the law would exclude \$10,200 of those benefits from adjusted gross income if the

taxpayers’ adjusted gross income is less than \$150,000.

What people will want to know, Holtzblatt stated, is:

- What to do if they already filed their tax return and paid income taxes on those benefits? Do they have to file an amended tax return just to get the tax refund for that reason, or will the IRS establish a simpler method to do so?
- And going forward, what about people who have not yet filed their tax return? If a new form is not released, what should they report on the existing return—the full amount or the partial amount? And how will the IRS know when the tax return is processed whether the taxpayer reported the full amount or the partial amount? (Eventually, the IRS could—when, after the filing season is over and tax returns are matched to 1099s from UI offices—but that could be months before taxpayers would be made whole.)

For the CARES Act, Holtzblatt said the IRS generally provided guidance through FAQs on their website which was insufficient for some tax professionals and later voided. “Some of their interpretations

raised questions—and in the case of the treatment of prisoners, was challenged in the courts and led to a reversal of the interpretation in the FAQ,” she explained.

National Association of Tax Professionals Director of Marketing, Communications & Business Development Nancy Kasten said new rules are musts and the agency will have to issue new FAQs, potentially on all of the key provisions in the legislation. The NATP executive asserted that old forms are going to need to be revised for Tax Year 2021. “Regarding 2020 retroactive items, we are waiting on IRS guidance,” said Kasten.

National Conference of CPA Practitioners National Tax Policy Committee Co-Chair Steve Mankowski said the primary rules that will need to be written ASAP relate to the changes in the 2020 unemployment, especially since it appears to be income based as well as the increased child tax credit with advanced payments being sent monthly unless a taxpayer opts out. He added there will most likely need to be a worksheet added to the 2020 tax returns to show the unemployment received and adjusting UE income down to the taxable amount.

REFERENCE KEY

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

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Mankowski, immediate past president of NCCCPAP said the primary items for new FAQs include the unemployment and the income limit on the non-taxability, changes in the child tax credit; and changes in the Employee Retention Credit.

In response to an email seeking what the agency plans to do to help implement the pandemic relief measure, an IRS spokesman forwarded the following statement released on March 10:

“The IRS is reviewing implementation plans for the American Rescue Plan Act of 2021 that was recently passed by Congress. Additional information about a new round of Economic Impact Payments and other details will be made available on IRS.gov, once the legislation has been signed by the President.”

Louisiana Victims of Winter Storms Granted Tax Relief

LA-2021-02

The president has declared a federal disaster area in Louisiana due to the severe winter storms that occurred February 11-19, 2021. The disaster area includes *all* 64 Louisiana parishes. 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.

2021 Calendar Year Resident Population Figures

The IRS has provided state and local housing credit agencies that allocate low-income housing tax credits, and states and other issuers of tax-exempt private activity bonds, with the proper resident population figures to use for calculating the following for 2021:

- the calendar-year population-based component of the state housing credit ceiling under Code Sec. 42(h)(3)(C)(ii);
- the calendar-year private activity bond volume cap under Code Sec. 146; and
- the exempt facility bond volume limit under Code Sec. 142(k)(5).

Notice 2021-19

List of Countries Requiring Participation in International Boycott Released

The Treasury Department has published a current list of countries that may require participation in, or cooperation with, an international boycott. The list is as follows: Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen.

Treasury Boycott Notice

This includes various 2020 business tax returns due on March 15, 2021, and 2020 individual and business returns due on April 15, 2021. It also includes the special March 1, 2021, filing and payment deadline for farmers and fishers who forgo making estimated tax payments. 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 “Louisiana – Severe Winter Storms” in bold letters at the top of the return, and include the disaster declaration number, FEMA 4590, 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.

Frivolous Returns

The IRS properly assessed Code Sec. 6702(a) frivolous return penalties with respect to three of an individual's income tax returns. The taxpayer and her husband were employed and received compensation for their services, but the returns reported zero gross income, taxable income, and tax, and claimed refunds of amounts withheld for Social Security tax, Medicare tax, and Federal income tax. A photocopy of an original purported return for which the IRS has no record and on which the taxpayer expects the IRS to act in making a refund purports to be a return of income tax under Code Sec. 6702(a), but a photocopy of a purported prior return on which no action is requested does not. The taxpayer's claims that wages are not income, that federal income tax applied to income from labor is a direct tax that must be apportioned, and that the IRS must prepare and sign a substitute for return before assessing a Code Sec. 6702(a) penalty, were frivolous.

Smith, TC, Dec. 61,836(M)

Insurance Companies

A captive insurance company failed to distribute risk and was not selling insurance in the commonly accepted sense. An individual and his son, entrepreneurs who built a thriving construction business, were in need of insurance. They had traditional insurance, but their entities increased their insurance bill by taking out policies from a related microcaptive insurer at a cost of \$1.2 million annually. At the same time, consulting payments between the individuals' entities grew by about \$1.2 million. Despite the attempts of the captive insurance company to make its transactions look like traditional insurance, the premiums paid to the captive insurance

company and deducted by the individual entities were not "insurance" for federal tax purposes.

Caylor Land & Development, Inc., TC, Dec. 61,837(M)

Notice of Deficiency

Notices of deficiency that were signed and issued by the IRS Program Manager, Return Integrity and Compliance Services, Integrity and Verification Operation, were valid. The individual taxpayer claimed that the notices were invalid because the signer's position at the IRS was not expressly listed among those to which Delegation Order 4-8 delegates authority to sign and issue notices of deficiency. However, there is no statutory requirement that evidence of delegated authority be embodied in Delegation Order 4-8 or any other particular document, and the tax regulations provide the Commissioner a wide range of administrative discretion to redelegate to officers or employees under his supervision and control the performance of functions such as issuing notices of deficiency. The mere fact that the signer's position was not expressly listed in Delegation Order 4-8 did not dislodge the presumption of official regularity.

Harriss, TC, Dec. 61,838(M)

Reinsurance

A contract between a reinsurance company and a retrocessionaire was reinsurance for federal income tax purposes under Code Sec. 816. The reinsurance company was organized, operated and regulated as an insurance company and was adequately capitalized. The contract was insurance in the commonly accepted sense of insurance, and was valid and binding. The payment formula and risk tranches used to calculate payments under the contract were

determined by both an actuarial analysis and a third-party transfer pricing analysis. Payments were made as provided in the contract. The annuity contracts covered typical insurance risks of annuity contracts, and there was a legitimate business purpose for acquiring insurance from the retrocessionaire.

IRS Letter Ruling 202109005

Self-Employment Tax

An individual did not receive self-employment income and was not liable for self-employment tax. The taxpayer testified that his tax preparer should not have filed a Schedule C, which reported a business loss and described the taxpayer's business/profession as "Minister." The taxpayer also provided a letter from the pastor of his church stating that the taxpayer did not receive a Form W-2 from the church because was not employed as a paid minister of the church. Additionally, the taxpayer could not deduct reported mileage for his commuting expenses, and he failed to provide evidence to support the business purpose or the amounts reported for expenses for meals and entertainment, repairs and maintenance, and other claimed employee business expenses.

Mathews, TC, Dec. 61,835(M)

Uniform Capitalization Rules

The IRS Large Business and International (LB&I) has issued a new Practice Unit, Producer's 263A Computation. 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 Unit