

# FEDERAL TAX WEEKLY

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## Corporate Tax Reform Centerpiece of Funding Biden's Infrastructure Plan

The Made in America Tax Plan, providing corporate tax reform, is the centerpiece of funding the \$2 trillion-plus American Jobs Plan President Joe Biden announced on March 31, 2021. The spending will be done during eight years paid for by business tax increases over 15. If enacted, it would be the largest tax increase at the federal level since 1942.

"No one making under \$400,000 will see their taxes go up—period," Biden said in a speech unveiling the package in Pittsburgh.

The Biden administration has not set a goal in public for when it would like to see the legislation enacted. "It's going to take some time," White House Principal Deputy Press Secretary Karine Jean-Pierre told a press conference.

The American Family Plan, a second plan aimed at aiding employment which would include tax elements has been promised in a couple of weeks.

The package unveiled on March 31, 2021, raises the corporate tax rate to 28 percent which the White House said would be lower than at any time since World War II other than the 21 percent set in place by the 2017 Tax Cuts and Jobs Act (P.L. 115-97).

### Corporate Tax Increase

The tax reform proposal would increase the minimum tax to 21 percent on U.S. corporations and calculate it on a country-by-country basis so it hits profits in tax havens. In the wake of the 2017 law, the average tax rate for U.S. multinationals has fallen to 8 percent from 16 percent.

The Made in America Tax Plan would eliminate the rule that allows U.S. companies to pay zero taxes on the first 10 percent of return when they locate investments in foreign countries.

The package denies deductions to foreign corporations on payments that could allow them to strip profits out of the United States if they are based in a country that does not adopt a strong minimum tax.

It further replaces a provision in the 2017 tax law that tried to stop foreign corporations from stripping profits out of the United States.

"The United States is now seeking a global agreement on a strong minimum tax through multilateral negotiations. This provision makes our commitment to a global minimum tax clear. The time has come to level the playing field and no longer allow countries to gain a competitive edge by slashing corporate tax rates," the White House said in a fact sheet accompanying the unveiling of the program.

### 15 Percent Minimum Tax On Profits Companies Report To Investors

A 15 percent minimum tax on the income corporations use to report their profits to investors—known as "book income"—would be established.

## Corporate Tax Inversions Prohibited

If enacted, the package would prevent U.S. corporations from inverting or claiming tax havens as their residence.

Currently, U.S. corporations can acquire or merge with a foreign company to avoid U.S. taxes by claiming to be a foreign company, even though their place of management and operations are in the United States.

On tax incentives, Biden is proposing a 10-year extension and phase down of an expanded direct-pay investment tax credit and production tax credit for clean energy generation and storage.

## Tax Credit To Onshore Jobs Would Be Created

The plan creates a tax credit to spur the onshoring of jobs. The tax incentives in the Tax Cuts and Jobs Act for Foreign Derived Intangible Income (FDII) would be eliminated.

The Advanced Manufacturing Tax Credit program would be extended.

## Targeted Tax Credits To Promote Affordable Housing Included

The tax package establishes targeted tax credits to produce, preserve, and retrofit more than a million affordable, resilient, accessible, energy efficient, and electrified housing units.

On the housing front, as well, President Biden is asking Congress to pass the Neighborhood Homes Investment Act (NHIA) which would offer \$20 billion worth of NHIA tax credits over the next five years. The measure would bring forth approximately 500,000 newly built or rehabilitated homes.

## IRS Issues FAQs on Reporting of COVID-19 Emergency Financial Aid Grants by Students and Higher Education Institutions

The IRS has issued FAQs on how students and higher education institutions should report pandemic-related emergency financial aid grants. Emergency financial aid grants made by a federal agency, state, Indian tribe, higher education institution or scholarship-granting organization (including a tribal organization) to a student because of an event related to the COVID-19 pandemic are not included in the student's gross income. Further, higher education institutions are not required to file or furnish Forms 1099-MISC, Miscellaneous Information, reporting the grants made available by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136) or the COVID-related Tax Relief Act (COVID Relief Act) and do not need to report the grants in Box 5 of Form 1098-T, Tuition Statement, because students don't have to include emergency financial aid grants in their gross income. However, any amounts that qualify for the tuition and fees deduction or the American Opportunity Credit or Lifetime Learning Credit are considered "qualified tuition and related expenses" and trigger the reporting requirements of Code Sec. 6050S. Therefore, higher education institutions must include qualified tuition and related expenses paid by emergency financial aid grants awarded to students in Box 1 of Form 1098-T.

In addition, if students used any portion of the grants to pay for qualified tuition and related expenses on or before December 31, 2020, they may be eligible to claim a tuition and fees deduction or the American Opportunity Credit or Lifetime Learning Credit on their 2020 tax return. However, the tuition and fees deduction is not available for tax years beginning after December 31, 2020.

IR-2021-70

Another incentive in the package is an expanded tax credit to encourage businesses to build childcare facilities at places of work.

say is vital. Additionally, the capital gains rate is untouched in the package.

Senator Elizabeth Warren's proposed wealth tax is also not included.

## Notable Progressive Proposals Absent from Package

The Made in America Tax Plan and other legislation referred to in the tax elements of the package does not contain an elimination of the cap on state and local tax (SALT) deductions which progressive Democrats in Congress, particularly those in high-tax states such as New York and New Jersey,

## Next Steps

"The opportunity is to reform the corporate tax system in a way that would maintain our competitiveness and actually encourage domestic production in the United States, which the Trump tax cuts did not do," an administration official said in a press briefing on the plan.

The Biden team member added the American Jobs Plan will create millions

### REFERENCE KEY

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

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of good-paying jobs, rebuild the nation's infrastructure, and position the country to outcompete China.

Senate Finance Committee Chair Ron Wyden (D-Ore) announced his framework to overhaul international taxation on April 5, 2021, including reforms to GILTI, FDII, and BEAT.

## IRS Extends Federal Tax Filing and Payment Deadlines for Certain Taxpayers Affected by COVID-19

*Notice 2021-21; IR-2021-67*

The IRS has postponed the federal tax filing and payment deadlines, and associated interest, penalties, and additions to tax, for certain taxpayers who have been adversely affected by the Coronavirus Disease 2019 (COVID-19) pandemic. For individual taxpayers, the notice postpones to May 17, 2021, certain deadlines that would normally fall on April 15, 2021, such as the time for making IRA contributions and for filing federal income tax refund claims. The notice also extends the time for return preparers to participate in the Annual Filing Season Program for the 2021 calendar year.

The IRS has released this notice as a follow-up to a previous announcement on March 17 that the federal income tax filing due date for individuals for the 2020 tax year was extended from April 15, 2021, to May 17, 2021. This notice provides details on the additional tax deadlines which have been postponed until May 17.

### Federal Tax Returns and Tax Payments

For an affected taxpayer, the due date for filing federal income tax returns in the

## FinCEN Issues ANPRM on Beneficial Ownership Reporting Provisions; Requests Comments

The FinCEN has issued an Advance Notice of Proposed Rulemaking (ANPRM), <https://public-inspection.federalregister.gov/2021-06922.pdf>, to solicit public comment on the implementation of the beneficial ownership information reporting provisions of the Corporate Transparency Act (CTA). This ANPRM is the first in a series of regulatory actions that FinCEN will undertake to implement the CTA. Comments should be submitted by May 5, 2021.

The new reporting requirement will enhance the national security of the United States by making it more difficult to exploit opaque legal structures, including (1) laundering money; (2) finance terrorism; and (3) tax fraud. The CTA requires FinCEN to maintain the reported beneficial ownership information in a confidential, secure and non-public database. Further, the CTA authorizes FinCEN to disclose beneficial ownership information subject to appropriate protocols and for specific purposes to several categories of recipients, such as federal law enforcement.

The CTA is included within the Anti-Money Laundering Act of 2020 (AML Act). The AML Act is part of the FY 2021 National Defense Authorization Act, which became law on January 1, 2021. More information can be found at <https://www.fincen.gov/news/news-releases/fincen-launches-regulatory-process-new-beneficial-ownership-reporting>.

Form 1040 series having an original due date of April 15, 2021, and for making federal income tax payments in connection with one of these forms, is automatically postponed to May 17, 2021. Affected taxpayers do not have to file any form, including Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, to obtain this relief.

This relief includes the filing of all schedules, returns, and other forms that are filed as attachments to the Form 1040 series, or are required to be filed by the due date of the Form 1040 series, including, for example, Schedule H, Household Employment Taxes, and Schedule SE, Self-Employment Tax, as well as:

- Form 965-A (Individual Report of Net 965 Tax Liability);
- Form 3520 (Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts);
- Form 5329 (Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts);
- Form 5471 (Information Return of U.S. Persons With Respect to Certain Foreign Corporations);
- Form 8621 (Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund);

- Form 8858 (Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs));
- Form 8865 (Return of U.S. Persons With Respect to Certain Foreign Partnerships);
- Form 8915-E (Qualified 2020 Disaster Retirement Plan Distributions and Repayments); and
- Form 8938 (Statement of Specified Foreign Financial Assets).

Additionally, elections that are made or required to be made on a timely filed Form 1040 series (or attachment to such form) will be timely made if filed on such form or attachment, as appropriate, on or before May 17, 2021.

### Claims for Refund

Individuals with a period of limitations to file a claim for credit or refund of federal income tax expiring on or after April 15, 2021, and before May 17, 2021, have until May 17, 2021, to file those claims for credit or refund. This postponement is limited to claims for credit or refund properly filed on the Form 1040 series or on a Form 1040-X. As a result of this postponement, the period beginning on

April 15, 2021, and ending on May 17, 2021, will be disregarded in determining whether the filing of those claims is timely.

## IRA and HSA Contributions

The postponement also automatically postpones to May 17, 2021, the time for affected taxpayers to make 2020 contributions to their individual retirement arrangements (IRAs and Roth IRAs), health savings accounts (HSAs), Archer Medical Savings Accounts (Archer MSAs), and Coverdell education savings accounts (Coverdell ESAs). It also automatically

postpones to May 17, 2021, the time for reporting and payment of the 10-percent additional tax on amounts includible in gross income from 2020 distributions from IRAs or workplace-based retirement plans.

For affected taxpayers that must file forms in the Form 5498 series, the due date for filing and furnishing the Form 5498 series is postponed to June 30, 2021. The period beginning on the original due date of those forms and ending on June 30, 2021, will be disregarded in the calculation of any penalty for failure to file those forms.

## Estimated Tax Payments, Other Items Not Extended

The postponement also automatically postpones to May 17, 2021, the time for affected taxpayers to make 2020 contributions to their individual retirement arrangements (IRAs and Roth IRAs), health savings accounts (HSAs), Archer Medical Savings Accounts (Archer MSAs), and Coverdell education savings accounts (Coverdell ESAs). It also automatically postpones to May 17, 2021, the time for reporting and payment of the 10-percent additional tax on amounts includible in gross income from 2020 distributions from IRAs or workplace-based retirement plans.

# Guidance for Claiming Employee Retention Credit for First and Second Quarters in 2021

*Notice 2021-23; IR-2021-74*

The IRS has issued guidance for employers claiming the employee retention credit under Act Sec. 2301 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), as modified by Act Secs. 206 and 207 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act) (Division EE of P.L. 116-260), for the first and second calendar quarters in 2021. The guidance amplifies previous guidance which addressed amendments made by section 206 of the Relief Act for calendar quarters in 2020.

In general, eligible employers can claim a refundable employee retention credit against the employer share of Social Security tax equal to 70 percent of the qualified wages they pay to employees after December 31, 2020, through June 30, 2021. Qualified wages are limited to \$10,000 per employee per calendar quarter in 2021. Thus, the maximum employee retention credit available is \$7,000 per employee per calendar quarter, for a total of \$14,000 for the first two calendar quarters of 2021.

For calendar quarters beginning after 2020, an employer is generally eligible for the credit if it was carrying on a trade or business during the calendar quarter

for which the credit is determined, and either (1) had operations that were fully or partially suspended during the calendar quarter due to governmental orders limiting commerce, travel, or group meetings due to COVID-19, or (2) experienced a decline in gross receipts for the calendar quarter when compared to the same quarter in 2019.

The guidance explains changes made to the employee retention credit for the first two calendar quarters of 2021, including:

- the increase in the maximum credit amount,
- the expansion of the types of employers that may be eligible to claim the credit,
- modifications to the gross receipts test,
- revisions to the definition of qualified wages, and
- new restrictions on the ability of eligible employers to request an advance payment of the credit.

The guidance does not address the employee retention credit provided by Code Sec. 3134, enacted by the American Rescue Plan Act of 2021 (P.L. 117-2), for wages paid after June 30, 2021, and before January 1, 2022. The IRS will address Code Sec. 3134 in future guidance.

Highlights of some of the items addressed in the guidance are summarized below.

## Eligible Employers

While the employee retention credit is not available to most governmental employers, it is available to tax-exempt organizations described in Code Sec. 501(c)(1), and to any governmental entity that is a college or university or whose principal purpose is providing medical or hospital care. For this purpose, a college or university means an educational organization as defined in Code Sec. 170(b)(1)(A)(ii) and Reg. §1.170A-9(c)(1). An entity that has the principal purpose or function of providing medical or hospital care means an entity that has the principal purpose or function of providing medical or hospital care within the meaning of Code Sec. 170(b)(1)(A)(iii) and Reg. §1.170A-9(d)(1).

## Decline in Gross Receipts

One way an employer can be eligible for the credit is if it experienced a decline in gross receipts. Whether an employer is an eligible employer based on a decline in gross receipts is determined separately for each calendar quarter, and is based on an 80 percent threshold compared to the same calendar quarter in 2019.



If an employer did not exist as of the beginning of the first calendar quarter of 2019, the employer generally determines whether the decline in gross receipts test is met in the first calendar quarter of 2021 by comparing its gross receipts in that quarter of 2021 to its gross receipts in the first calendar quarter of 2020. If an employer did not exist as of the beginning of the second calendar quarter of 2019, the employer generally determines whether the test is met in the second calendar quarter of 2021 by comparing its gross receipts in that quarter of 2021 to its gross receipts in the second calendar quarter of 2020. An employer may also elect to use an alternative quarter to calculate gross receipts.

Eligible employers must maintain documentation to support the determination of the decline in gross receipts, including which calendar quarter an eligible employer elects to use in measuring the decline.

## Qualified Wages

Whether wage payments by an eligible employer will be considered qualified wages depend, in part, on the average number of full-time employees an eligible employer employed during 2019. For the first and second calendar quarters of 2021, large eligible employers are those whose average number of full-time employees during 2019 was greater than 500. For these employers, qualified wages are wages paid to an employee for time that the employee

## IRS Updates Audit Techniques Guide on Retail Industry Examinations

The IRS has updated an Audit Techniques Guide (ATG) on its website that addresses conducting income tax examinations in the retail industry. An ATG focuses on developing highly trained examiners for particular market segments by presenting examination techniques, common and unique industry issues, business practices, industry terminology and other information. The ATG is available on the IRS website under the Businesses, Small Business/Self Employed category, at <https://www.irs.gov/pub/irs-pdf/p5495.pdf>.

is not working for the reasons the credit is allowed.

Small eligible employers are those whose average number of full-time employees during 2019 was 500 or less. For these employers, qualified wages are the wages paid an employee whether the employee is working or not working for the reasons the credit is allowed.

An employer may not claim a credit under Code Secs. 41, 45A, 45P, 45S, 51, or 1396 with qualified wages for which it claims the employee retention credit, but it may be able to take a credit under these provisions for wages for which it did not claim an employee retention credit if the particular credit's requirements are met.

## Claiming the Credit

Eligible employers may continue to access the employee retention credit for the first and second calendar quarters of 2021 prior

to filing their employment tax returns by reducing employment tax deposits in anticipation of the credit. However, advance payment of the employee retention credit is available only to small eligible employers, who can may elect to receive an advance payment of not more than 70 percent of the average quarterly wages paid in calendar year 2019.

For this purpose, average quarterly wages generally means the average of wages or compensation determined without regard to the social security wage base, paid in each calendar quarter in 2019. The guidance provides details for calculating average quarterly wages. Small eligible employers that come into existence in 2021 are ineligible to receive advance payment.

## Effect on Other Documents

Notice 2021-20, I.R.B. 2021-11, 922, is amplified.

# IRS Announces Issuance of Refunds and Recalculation of Taxes

*IR-2021-71*

The IRS has announced steps to automatically refund money this spring and summer to taxpayers who filed their tax returns reporting unemployment compensation before the recent changes made by the American Rescue Plan (ARP) (P.L. 117-2). For those who have already filed, the IRS will do these recalculations in two phases.

First, it will start with those taxpayers eligible for up to \$10,200 exclusion. The

IRS will then adjust returns for those married filing jointly taxpayers who are eligible for up to \$20,400 exclusion and others with more complex returns. Moreover, taxpayers need not file an amended return unless the calculations make taxpayers newly eligible for additional federal credits and deductions not already included on the original tax return.

For example, the IRS can adjust returns for taxpayers who claimed the Earned Income Tax Credit (EITC). Because the exclusion changed the income level,

taxpayers may now be eligible for an increase in the EITC amount which may result in a larger refund. However, taxpayers would have to file an amended return if they did not originally claim the EITC or other credits but now are eligible because the exclusion changed their income. More information can be found at <https://www.irs.gov/forms-pubs/new-exclusion-of-up-to-10200-of-unemployment-compensation>.

The ARP allows taxpayers who earned less than \$150,000 in modified adjusted

gross income to exclude unemployment compensation up to \$20,400 if married

filing jointly and \$10,200 for all other eligible taxpayers. The legislation excludes

only 2020 unemployment benefits from taxes.

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## IRS and Treasury Announce Disbursement of More Economic Impact Payments

*IR-2021-72*

The IRS, Treasury and Bureau of the Fiscal Service announced they will disburse several million more payments in the third batch of Economic Impact Payments from the American Rescue Plan. The third batch of payments began processing on Friday, March 26, with an official payment date of March 31, with some people receiving direct payments in their accounts earlier as provisional or pending deposits. Further, this third batch includes more than 4 million payments, with a total value of more than \$10 billion. This will bring the total disbursed payments so far to more than 130 million, worth approximately \$335 billion.

This batch of EIPs includes the first of ongoing supplemental payments for people who received payments based on their 2019 tax returns but are eligible for new or larger payments based on their recently processed 2020 tax returns. Accordingly, these “plus-up” payments would include situations where the individual’s income may have dropped in 2020 compared to 2019, or a new child or dependant who was added to the individual’s 2020 tax return. Additionally, these payments

would include payments for individuals whom the IRS previously did not have information to issue a payment but who recently filed a tax return and qualify for an EIP. No action is needed by most individuals to obtain this round of EIP. Further, individuals can check the Get My Payment tool on the IRS website at <https://www.irs.gov/coronavirus/get-my-payment> to see if their payment has been scheduled.

### Non-filers

Moreover, starting April 2, 2021, a large set of payments will go to Social Security and other federal beneficiaries who did not file a 2020 or 2019 tax return and did not use the Non-Filers tool last year. Accordingly, these payments will go to Social Security retirement, survivor or disability (SSDI), Supplemental Security Income (SSI), and Railroad Retirement Board (RRB) beneficiaries. However, some federal benefits recipients may need to file a 2020 tax return, even if they don’t usually file, to provide information the IRS needs to send payments for any qualified dependent. Eligible individuals in this group should file a 2020 tax return to be considered for

an additional payment for their qualified dependent as quickly as possible.

Further, individuals who do not normally file a tax return and do not receive federal benefits, including those experience homelessness, the rural poor and others, may qualify for these EIPs. Those eligible individuals who did not get a first or second EIP or got less than the full amount, may be eligible for the 2020 Recovery Rebate Credit.

### Income Levels for Third Round of EIPs

Finally, the IRS reminded individuals that the income levels in this round of EIPs has changed. Payments will begin to be reduced for individuals making \$75,000 or above in Adjusted Gross Income (\$150,000 for married filing jointly). The payments end at \$80,000 for individuals (\$160,000 for married filing jointly); individuals with Adjusted Gross Incomes above these levels are ineligible for a payment. Therefore, some people may not be eligible for the third payment even if they received the first or second EIP or claimed 2020 Recovery Rebate Credit.

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## IRS Did Not Err in Certifying Individual With “Seriously Delinquent Tax Debt”

*R. Rowen, 156 TC —, No. 8, Dec. 61,847*

The IRS did not err in certifying that an individual had a “seriously delinquent tax debt” with respect to his tax liabilities for eight tax years at issue. Further, the taxpayer’s motion for summary judgment was denied and the IRS’s cross-motion for summary judgment was granted. The

taxpayer failed to pay the assessed tax liabilities as required by law for more than two decades. Following the IRS’s unsuccessful attempts to collect the outstanding tax liability from the taxpayer through its usual means, i.e. sending demands, filing liens and attempting to levy on asset, the IRS sought to obtain a certification that the taxpayer had a “seriously delinquent tax

debt.” The Commissioner of the IRS made the necessary certification and it was sent to the Secretary of State. However, according to the record, the Secretary of State had not undertaken any action to revoke the taxpayer’s passport. Subsequently, the taxpayer petitioned the Tax Court to determine that the IRS’s certification was erroneous under Code Sec. 7345(e)(1).

## Summary Judgment

The taxpayer moved for summary judgment on the basis that Code Sec. 7345 violated the Due Process Clause of the Fifth Amendment to the Constitution because it infringed the right to international travel. Further, the taxpayer alleged that Code Sec. 7345 violated his human rights as expressed in the Universal Declaration of Human Rights (UDHR). To this, the IRS filed a cross-motion for summary judgment

stating that: (1) Code Sec. 7345 was constitutional; (2) the UDHR did not create actionable claims in federal courts; (3) the taxpayer's debt remained enforceable; and (4) the IRS did not err in certifying the taxpayer's tax liabilities as a seriously delinquent tax debt. The court held that Code Sec. 7345 merely provided for the certification of certain tax-related facts and did not restrict the right to international travel in any manner so it could not run afoul of the Due Process Clause of the

Fifth Amendment. Moreover, for the same reason, Code Sec. 7345 could not violate the UDHR. The taxpayer abandoned his claim that Code Sec. 7345 deprived him of an opportunity for a meaningful hearing within the meaning of the Due Process Clause of the Fifth Amendment. Finally, the IRS established that it was entitled to judgment as a matter of law that no portion of the taxpayer's seriously delinquent tax debt was unenforceable by operation of the period of limitations on collection.

# Annual Report on Advance Pricing and Mutual Agreement Program Released

*Announcement 2021-6*

The IRS has released its annual report on Advance Pricing Agreements (APAs) and the Advance Pricing and Mutual Agreement (APMA) program. The report, which is required by the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170), describes the experience, structure, and activities of the APMA Program during calendar year 2020. Part I of this report includes information on the structure, composition, and operation of the APMA Program; Part II presents statistical data; and Part III includes general descriptions of various elements of the APAs executed in 2020, including types of transactions covered, transfer pricing methods used, and completion time.

In 2020, a total of 121 APA applications were filed and 127 were executed. As of December 31, 2020, over half of the pending bilateral APA requests involved either Japan, India, or Canada.

## Transactions and Transfer Pricing Methods Used

Most APAs executed in 2020 involved the sale of tangible goods or the provision of services. Approximately 25 percent of the transactions did involve the transfer of intangible property, which are among the most challenging in the APMA's inventory.

In 2020, the most commonly used transfer pricing method (TPM) for both the sale of tangible property and the use of intangible property continued to be the comparable profits method/transactional net margin method (CPM/TNMM). The CPM/TNMM was used for 84 percent of transfers of tangible and intangible property.

## Term Lengths of 2020 APAs

Under Rev. Proc. 2015-41, although APA terms are decided on a case-by-case basis, taxpayers should request an APA term that would cover at least five prospective years and may also request that the APA be "rolled back" to cover one or more earlier tax years. Of the APAs executed in 2020, 11 percent included rollback years. A substantial number of those APAs with terms of greater than five years were submitted as a request for a five-year term, and the additional years were agreed to between the taxpayer and the IRS (or, in the case of a bilateral APA, between the IRS and the foreign government upon the taxpayer's request) to ensure a reasonable amount of prospectivity in the APA term.

## Time to Complete 2020 APAs

The median time to complete an APA continued to decline in 2020 to 32.7 months.

The time to complete an APA in 2019 was 38.8 months and the time to complete an APA in 2018 was 40.2 months.

## Annual Reports

Taxpayers are required to file timely and complete annual reports describing their operations and demonstrating compliance with the APA's terms and conditions. Some of the items that may be included in the annual report are:

- a statement regarding all material differences between the taxpayer's business operations during the APA year and a description of the taxpayer's business operations contained in taxpayer's APA request (or a statement that there are no differences);
- a statement concerning all material changes in the taxpayer's accounting methods and classifications, and methods of estimation, from those described or used in the taxpayer's request for the APA (or a statement that there are no changes);
- a change to the taxpayer notice information;
- a description of any failure to meet critical assumptions (or a statement that there has been no failure); and
- a statement identifying whether any material information submitted while the APA request was pending is discovered to be false, incorrect, or incomplete.

## Collection Due Process

The Court of Appeals for the Seventh Circuit affirmed the tax court's grant of summary judgment in a collection due process (CDP) case arising out of an individual's underlying tax liability. Moreover, there was no abuse of discretion on the part of the settlement officer in sustaining the levy and the taxpayer's contention that his refund claims were a suitable collection alternative was also properly rejected.

*Jeffers, CA-7, 2021-1 USTC ¶50,115*

## Closing Agreements

A closing agreement entered into by the IRS and a married couple precluded the determined deficiency for a tax year at issue. Further, the taxpayers were not subject to the accuracy-related penalty determined by the IRS.

*Crandall, TC, Dec. 61,846(M)*

## Corporations

As part of a proposed transaction, a distributing entity and one or more investment banks, brokers, or other financial institutions entered into an agreement pursuant to which the distributing entity agreed to pay an aggregate repurchase amount to purchase the distributing entity's common stock from the financial institutions. The distributing entity represented that the proposed transaction would be consummated for a corporate business purpose and was not motivated to any extent by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders. Further, the distributing entity would not know with certainty the identity of any shareholder from which stock was borrowed or purchased by any financial institution that participated in the proposed transaction. The aggregate amount of stock purchased or acquired through the proposed transaction and the

open market repurchases would not equal or exceed 20 percent of the outstanding stock of the distributing entity. It was held that for purposes of Code Sec. 355(a)(1)(B) and Reg. §1.355-2(d), the proposed transaction would be subject to the same analysis as an otherwise similar repurchase by the distributing of its stock on the open market.

*IRS Letter Ruling 202113007*

## Foreign Travel Per Diems

The U.S. State Department has released a listing of maximum travel *per diem* allowances for travel in foreign areas. The rates apply to all government employees and contractors, and are effective as of April 1, 2021.

*April Maximum Travel Per Diem Allowances for Foreign Areas*

## Penalties

An individual who failed to include her nonemployee compensation for the tax year at issue was not qualified for a reasonable cause exemption. The omission was detected by the IRS's automated underreporter (AUR) program. Further, the taxpayer was liable for an accuracy-related penalty for the substantial understatement.

*Walton, TC, Dec. 61,848(M)*

## Private Foundations

A private foundation's procedures for awarding scholarships were approved. The scholarships were awarded to deserving, high school students intending to pursue an education at a qualified educational institute including a private or vocational school as long as a curriculum can be established. Finally, the scholarship grants were not taxable expenditures under Code Sec. 4945(d)(3).

*IRS Letter Ruling 202113010*

*IRS Letter Ruling 202113010*

## Research Credit

An individual was denied a research credit as his activities did not constitute qualified research for the tax years at issue. The taxpayer was involved in designing clothes and started a company. The firm failed many of the court's parameters or tests for analyzing research expenses.

*Max, TC, Dec. 61,844(M)*

## Reconstruction of Income

A C Corporation which was a medical cannabis retail dispensary was entitled to offset gross receipts with any cost of goods sold (COGS) for two out of three tax years at issue. In addition, the taxpayer had underreported its income because it failed to provide any evidence to rebut the IRS's presumption for the same. Moreover, the taxpayer was held liable for accuracy-related penalty for the remainder of each underpayment because those portions of the underpayments were attributable to the taxpayer's negligence.

*Purple Heart Patient Center, Inc., TC, Dec. 61,845(M)*

## Sham Partnerships

An investment partnership was a sham. In a consolidated appeal, the taxpayers argued that the Tax Court's determination that the investment partnership was a "sham" partnership was flawed because it applied the incorrect legal standard and misunderstood the facts as they related to the correct standard. However, since the Tax Court applied the correct legal standard and because, viewing the record as a whole, the court came to no "definite and firm conviction that a mistake has been committed" in its findings, the court affirmed the sham determination.

*BCP Trading and Investments, LLC, CA-D.C., 2021-1 USTC ¶50,113*