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Deposit Penalty Relief Extended for COVID-19 Employer Credits

Notice 2021-24

The IRS has extended the penalty relief provided in Notice 2020-22, I.R.B. 2020-17, 664, for failure to deposit employment taxes, to eligible employers that reduce their required deposits in anticipation of the following credits:

- the paid sick and family leave credits under the Families First Coronavirus Response Act (Families First Act) (P.L. 116-127), as amended by the COVID-related Tax Relief Act of 2020 (Tax Relief Act) (Division N of P.L. 116-260), for qualified leave wages paid with respect to the period beginning January 1, 2021, and ending March 31, 2021;
- the paid sick and family leave credits under Code Secs. 3131, 3132, and 3133, added by the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2), for qualified leave wages paid with respect to the period beginning April 1, 2021, and ending September 30, 2021;
- the employee retention credit under section 2301 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), as amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act) (Division EE of P.L. 116-260), for qualified wages paid with respect to the period beginning January 1, 2021, and ending June 30, 2021;
- the employee retention credit under Code Sec. 3134, added by ARP, for qualified wages paid with respect to the period beginning July 1, 2021, and ending December 31, 2021; and
- the COBRA Continuation Coverage Premium Assistance credit under Code Sec. 6432, added by ARP, for continuation coverage premiums not paid by assistance eligible individuals under section 9501(a)(1) of the ARP, during the period beginning April 1, 2021, and ending September 30, 2021.

Background

Eligible employers claim the paid sick and family leave credits under the Families First Act, and the employee retention credit under the CARES Act, against the employer's share of the Old Age, Survivors, and Disability Insurance (Social Security) portion of FICA tax under Code Sec. 3111(a). Employers that are eligible for the paid sick and family leave credits under Code Secs. 3131, 3132, and 3133, the employee retention credit under Code Sec. 3134, or the COBRA Continuation Coverage credit under Code Sec. 6432, can claim the credit(s) against the employer's share of the Hospital Insurance (Medicare) portion of FICA tax under Code Sec. 3111(b). The credits are also available to eligible railroad employers for the attributable Railroad Retirement Tax Act (RRTA) taxes under Code Sec. 3221(a).

These refundable tax credits are reported on the employer's employment tax return for reporting its FICA tax liability, which for most employers is the quarterly Form 941. Certain employers may claim an advance payment of the refundable credits by filing Form

7200, Advance Payment of Employer Credits Due to COVID-19.

Code Sec. 6656 imposes a penalty for failure to timely deposit required tax amounts, unless the failure is due to reasonable cause and not willful neglect. Failure to deposit employment taxes required under Code Sec. 6302 generally subjects an employer to the penalty. The various legislative acts and provisions implementing the refundable employment tax credits described above either instruct the IRS to waive the penalty or authorize guidance that provides penalty relief.

Child Tax Credit Advance Payments to Begin in July

Speaking before the Senate Finance Committee at an April 13 hearing on the 2021 Filing Season and the 21st Century IRS, IRS Commissioner Charles "Chuck" Rettig said that the IRS fully anticipates the launch of the advance payments of the child tax credit on July 1, the statutory date. This advance payment program was enacted as part of the American Rescue Plan Act of 2021 (P.L. 117-2).

Under Code Sec. 7527A, as added by P.L. 117-2, taxpayers with a principal place of abode in the United States may receive an annual advance amount of the Code Sec. 24 child tax credit in periodic installments during the credit year. The annual advance amount is one-half of the credit amount the IRS estimates for the taxpayer based on the taxpayer's reference tax year.

The advance payments may be made only between July 1 and December 31, 2021. Taxpayers may elect out and instead claim the full amount of their child credits on their 2021 tax returns.

Paid Leave Credit Penalty Relief

An employer can reduce an employment tax deposit for a calendar quarter without a penalty, by the amount of the applicable paid sick or family leave credit anticipated for the calendar quarter prior to the required deposit, as long as:

- the employer paid qualified leave wages, qualified health plan expenses, or qualified collectively bargained contributions, for the period beginning on April 1, 2021, and ending on September 30, 2021, to its employees in the calendar quarter prior to the time of the required deposit,
- the amount of employment taxes that the employer does not timely deposit is less than or equal to its anticipated applicable paid leave credits claimed for the calendar quarter as of the time of the required deposit, and
- the employer did not seek payment of an advance credit by filing Form 7200 for the anticipated credits it relied upon to reduce its deposits.

The total amount of the deposit reduction cannot be more than the total amount of the employer's anticipated paid leave credits as of the time of the required deposit, minus any amount of those anticipated credits that had previously been used (1) to reduce a prior required deposit in the calendar quarter and obtain this relief or (2) to seek payment of an advance credit.

Employee Retention Credit Penalty Relief

After a reduction, if any, of an employment tax deposit by the amount of the anticipated paid sick or family leave credits, an employer may further reduce an employment tax deposit for a calendar quarter without a penalty, by the amount of its applicable employee retention credit anticipated for the calendar quarter prior to the required deposit, as long as:

- the employer paid qualified retention wages for the period beginning January 1, 2021 and ending December 31, 2021, to its employees in the calendar quarter prior to the time of the required deposit,
- the amount of employment taxes that the employer does not timely deposit—*reduced* by the amount of employment taxes not deposited in anticipation of the paid leave credits claimed—is less than or equal to the amount of the employer's anticipated applicable employee retention credits for the calendar quarter as of the time of the required deposit, and
- the employer did not seek payment of an advance credit by filing Form 7200 for the anticipated credits it relied upon to reduce its deposits.

The total amount of any deposit reduction cannot be more than the total amount of the employer's anticipated employee retention credit as of the time of the required deposit, minus any amount of the anticipated credit that had previously been used (1) to reduce a prior required deposit in the calendar quarter and obtain this relief or (2) to seek payment of an advance credit.

COBRA Credit Penalty Relief

After a reduction, if any, of an employment tax deposit by the amount of the anticipated paid sick or family leave credits and the anticipated employee retention credit, an employer may further reduce an employment tax deposit for a calendar quarter without a penalty, by the amount of the employer's COBRA continuation

REFERENCE KEY

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

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coverage credit anticipated for the calendar quarter prior to the required deposit, as long as:

- the employer is a "person to whom premiums are payable,"
- the amount of employment taxes that the employer does not timely deposit—*reduced* by the amount of employment taxes not deposited in anticipation of the paid leave credits and the employee retention credits claimed—is less than or equal to the amount of the employer's anticipated credits under Code Sec. 6432 for the calendar quarter as of the time of the required deposit, and
- the employer did not seek payment of an advance credit by filing Form 7200 for the anticipated credits it relied upon to reduce its deposits.

The total amount of any deposit reduction cannot be more than the total amount of the employer's anticipated COBRA continuation coverage credit as of the time of the required deposit, minus any amount of the anticipated credit that had previously been used (1) to reduce a prior required deposit in the calendar quarter and obtain this relief or (2) to seek payment of an advance credit.

Effect on Other Documents

Notice 2020-22, I.R.B. 2020-17, 664, is amplified.

Proposed Regs Coordinate QOFs with Foreign Withholding

NPRM REG-121095-19

Proposed regulations would coordinate the deferral of gain on qualified opportunity funds (QOFs) with the withholding requirements that apply to foreign persons and partnerships. The regulations would also provide flexibility for disaster extensions of the working capital safe harbor for federal disasters. Comments on the proposed regulations are requested.

Eligibility Certificates for Foreign Persons and Partnerships

The proposed regulations provide that security-required persons (certain foreign persons and foreign-owned partnerships) investing gain that is a security-required gain (generally, gain from a transfer subject to withholding under Code Secs. 1445, 1446(a), or 1446(f)) may not make a deferral election under Code Sec. 1400Z–2(a) unless an eligibility certificate is obtained with respect to that gain.

The proposed regulations will apply to any covered transfer that occurs after the date that these regulations are published as final regulations in the Federal Register. The IRS will not process any applications for eligibility certificates submitted before that date.

Disaster Extensions for Working Capital Safe Harbor

The proposed regulations would also add three new sentences proposed at the end of Reg. §1.1400Z2(d)-1(d)(3)(v)(D) regarding the operation of the 24-month extension for the working capital safe harbor for federally declared disasters. These sentences would provide flexibility for qualified opportunity zone businesses to revise or replace the original written designation and written plan provided that the remaining working capital assets are expended within the original regulatory 31-month period, increased by the 24 additional months provided in response to the disaster.

Taxpayers may rely on these three new sentences for tax years beginning after December 31, 2019.

Comments Requested

Comments on the proposed regulations must be received by June 11, 2021. They may be submitted electronically at www.regulations.gov (indicate IRS and REG-121095-19), or by mail.

Split-Dollar Insurance Benefits Were Compensation, Not Distribution

R. De Los Santos, 156 TC No. 9, Dec. 61,851

Death benefits that an S corporation provided to its sole shareholder under a split-dollar life insurance arrangement were employee compensation rather than a corporate distribution. In reaching this decision, the Tax Court firmly rejected the contrary conclusion reached by the Sixth Circuit Court of Appeals in *J.J. Machacek,* CA-6, 2018-2 U.S.T.C. 50,447.

Background

The taxpayers were a medical doctor and his wife. The doctor was the sole owner of his practice, which was organized as an S corporation that employed him and his wife. The taxpayers received wages from the S corporation, as well as fringe benefits from an employee welfare benefit plan.

The fringe benefits included death benefits that the Tax Court had previously concluded were provided under a compensatory split-dollar life insurance program (*R. De Los Santos,* Dec. 61.270). However. the taxpayers responded by seeking summary judgment that the economic benefits

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provided by the program actually constituted a corporate distribution.

Tax Court Rejects Machacek

In *Machacek*, the Sixth Circuit had relied on Reg. §1.301-1(q), which states that economic benefits that a corporation provides to a shareholder under a split-dollar life insurance policy are treated as distributions of property. The Sixth Circuit emphasized that the regulation's cross reference to Reg. §1.61-22(b) meant that it applied to both compensatory and noncompensatory split-dollar arrangements.

The Tax Court rejected this analysis. Instead, it determined that Code Sec. 301 clearly requires distributions to be made to a shareholder in the shareholder's capacity as a shareholder. Because the compensatory split-dollar life insurance arrangement afforded benefits to the doctor in his capacity as an employee of the S corporation, the Tax Court concluded that the economic benefits he received under the arrangement could not be characterized as "distributions" under Code Sec. 301.

S Corporation Fringe Benefits

The benefits also were fringe benefits paid by an S corporation under Code Sec. 1372. As such, they were treated as guaranteed partnership payments that were ordinary income, and not a corporate distribution.

IRS Disburses Fifth Batch of EIPs

IR-2021-86

The IRS, the Treasury Department, and the Bureau of the Fiscal Service have disbursed over 25 million payments in the fifth batch of Economic Impact Payments (EIPs) from the American Rescue Plan, bringing the total disbursed payments from the American Rescue Plan to over 159 million.

Similar to the previous batches of payments, the fifth batch includes direct deposits, as well as paper checks and debit cards being sent through the mail. These payments began processing on April 9, with an official payment date of April 14.

Key details on the fifth batch of payments include the following:

- The fifth batch includes nearly 2 million payments with a value of more than $3.4 billion.
- More than 320,000 payments, with a total value of $450 million, went to Veterans Affairs (VA) beneficiaries who receive Compensation and Pension (C&P) benefit payments.
- Nearly 850,000 payments, with a total value of nearly $1.6 billion, went to eligible individuals who recently filed a return and for whom the IRS previously did not have information to issue an Economic Impact Payment.
- This batch includes additional supplemental payments for people who received payments based on their 2019 tax returns, and are eligible for a new or larger payment based on their recently processed 2020 tax returns.
- Another 72,000 payments went to Social Security beneficiaries who did not file a 2020 or 2019 tax return and also did not use the Non-Filers tool last year.

The IRS reminded federal benefits recipients that they may need to file a 2020 tax return, even if they do not usually, to avail the benefits they are entitled to under the law. This includes the recovery rebate credit and the earned income tax credit. Individuals who do not receive federal benefits may qualify for the fifth batch of EIPs, including those experiencing homelessness, the rural poor, and others.

The IRS also reminded taxpayers that the income levels in this batch of payments have changed, meaning that some people will not be eligible for this payment despite having received the first or second EIP. Payments will be reduced for individuals making $75,000 or above in adjusted gross income. Individuals with adjusted gross income above $80,000 are ineligible for a payment. The IRS urged taxpayers to check the Get My Payment tool to see the payment status of these payments.

Treasury Calls for LIBOR Transition Legislation

In written testimony prepared for an April 15 hearing before a subcommittee of the House Financial Services Committee, Brian Smith, Deputy Assistant Secretary for Federal Finance, U.S. Department of the Treasury, said that the widespread use of the London Interbank Offered Rate (LIBOR) in the financial system, along with its short remaining lifespan, underscores the urgency of a timely and effective transition. Highlighting the tax aspects of the transition, Smith stated that although Treasury has taken initial steps to address the potential tax consequences of modifying contracts that reference LIBOR, some of the relevant tax statutes lack a grant of regulatory authority, which limits the tax relief that Treasury can provide.

Background

LIBOR measures the average interest rate at which large banks can borrow in wholesale funding markets for different periods of time, ranging from overnight to one month, three months, and beyond. LIBOR has been a benchmark rate used to set interest rates for commercial loans, mortgages, derivatives, and many other products. However, it has been announced that LIBOR will be discontinued. LIBOR's regulator in the United Kingdom announced that the one-week and two-month U.S. dollar LIBOR term rates will cease to be published at

the end of 2021, while overnight and other LIBOR term rates will cease to be published on a representative basis in mid-2023.

The Federal Reserve and other groups have been working on the transition to the use of alternative reference rates, both in existing and new contracts. Mark Van Der Weide, General Counsel, Board of Governors of the Federal Reserve System, said in written testimony that a key question is whether existing LIBOR-based contracts (legacy contracts) can seamlessly transition to alternative reference rates when LIBOR ends.

Federal Legislation Needed

According to Smith, federal legislation could ensure that Treasury has sufficient authority to address the tax consequences of the LIBOR transition. Van Der Weide, stated that federal legislation addressing the LIBOR transition should be targeted narrowly to address legacy contracts that have no fallback language, should not affect legacy contracts with fallbacks to another floating rate, and should not dictate that market participants must use any particular benchmark rate in future contracts. Finally, to avoid conflict of laws problems, federal legislation should preempt any outstanding state legislation on legacy LIBOR contracts.

New Treasury Office of Recovery Programs

Treasury Department Press Release

On April 14, the Treasury Department announced the establishment of the Office of Recovery Programs, to lead the implementation of economic relief and recovery programs, including nearly $420 billion in programs from the American Rescue Plan Act of 2021 (P.L. 117-2). The Office, led by the Chief Recovery Officer, will report to the Treasury's Deputy Secretary.

The Office's inaugural Chief Recovery Officer is Jacob Leibenluft, who will serve as the lead administrator of recovery programs, and will work closely with Gene Sperling, the White House American Rescue Plan Coordinator and Senior Advisor to President Biden.

The primary functions of the Office will include:

- overseeing programs authorized through the CARES Act (P.L. 116-136), the Consolidated Appropriations Act of 2021 (P.L. 116-260), and the American Rescue Plan Act, as well as other legislation (programs include the State and Local Fiscal Recovery Fund, Emergency Rental Assistance, the Homeowner Assistance Fund, the State Small Business Credit Initiative, the Capital Projects Fund, the Coronavirus Economic Relief for Transportation Services (CERTS) Program, the Payroll Support Program, the Coronavirus Relief Fund and the Airline and National Security Loan Program);
- establishing a sustainable model for efficiently and effectively implementing these programs that will make it easier for communities, businesses and households to access relief; and
- efficiently establishing and administering these programs to support an equitable and swift recovery from the economic challenges precipitated by the COVID-19 pandemic.

The implementation of the recovery programs disbursed through the Tax Code—including Economic Impact Payments and the enhanced Child Tax Credit—will continue to be led by the Office of Tax Policy, the Internal Revenue Service, and the Bureau of Fiscal Service, in coordination with the Office of Recovery Programs. Potential stakeholders can reach out to OfficeOfRecoveryPrograms@treasury.gov while the Office of Recovery Programs is established.

Individuals Experiencing Homelessness Can Receive EIPs

IR-2021-87

Continuing an ongoing effort to help those experiencing homelessness during the pandemic, the IRS has reminded people who do not have a permanent address or a bank account that may still qualify for Economic Impact Payments (EIP) and other tax benefits.

While EIPs are made automatically to most people, payments cannot be issued to eligible Americans when there is no information available in the tax agency's systems. For this reason, the IRS urges employers and others to share information about EIPs and encourage the rural poor and other historically under-served groups to file returns so they can receive the benefits they are entitled to.

Individuals who do not normally file tax returns should nevertheless file a basic 2020 tax return with the IRS. Returns can be filed for free using the Free File tool available on IRS.gov. Once the return is processed, the IRS can send stimulus payments to an address that is selected by the eligible individual. Importantly, people do not need a permanent address, bank account, or a job. Payments are issued to eligible individuals even if the person has not filed returns in years.

Individuals in this category can still qualify for the first two EIPs when they file their 2020 return by claiming recovery rebate credit. For the current round of payments, individuals who are experiencing homelessness may qualify to receive $1,400 for themselves. If they are married or have dependents, they can get an additional $1,400 for each of their family members.

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In addition, some eligible workers experiencing homelessness may qualify for Earned Income Tax Credit (EITC). To be eligible, the worker must have lived in the U.S. for more than half of the year and meet other requirements. For 2020, the income limit is $15,820 for individuals with no children, and $21,710 for couples with no children.

If individuals want to receive their payments through direct deposit, many financial institutions are helping them open a low-cost or no-cost bank account. Those that open accounts will then have an account and routing number available when they claim a direct deposit of their EIP. Those with a prepaid debit card may be able to have their refund applied to the card.

AFRs Issued For May 2021

Rev. Rul. 2021-8

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

Applicable Federal Rates (AFR) for May 2021

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	0.13%	0.13%	0.13%	0.13%
110% AFR	0.14%	0.14%	0.14%	0.14%
120% AFR	0.16%	0.16%	0.16%	0.16%
130% AFR	0.17%	0.17%	0.17%	0.17%
Mid-Term				
AFR	1.07%	1.07%	1.07%	1.07%
110% AFR	1.18%	1.18%	1.18%	1.18%
120% AFR	1.28%	1.28%	1.28%	1.28%
130% AFR	1.39%	1.39%	1.39%	1.39%
150% AFR	1.62%	1.61%	1.61%	1.60%
175% AFR	1.88%	1.87%	1.87%	1.86%
Long-Term				
AFR	2.16%	2.15%	2.14%	2.14%
110% AFR	2.38%	2.37%	2.36%	2.36%
120% AFR	2.60%	2.58%	2.57%	2.57%
130% AFR	2.82%	2.80%	2.79%	2.78%

Adjusted AFRs for May 2021

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	0.10%	0.10%	0.10%	0.10%
Mid-term adjusted AFR	0.81%	0.81%	0.81%	0.81%
Long-term adjusted AFR	1.64%	1.63%	1.63%	1.62%

The Code Sec. 382 adjusted federal long-term rate is 1.64%; 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 1.64%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.37% and 3.16%, 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 1.2%.

Taxpayers Urged to Use Free File Tool

IR-2021-85

The IRS has urged low and moderate-income individuals and families—especially those who do not normally file returns—to use IRS Free File to prepare their federal tax returns. The IRS reminds these taxpayers that the federal tax filing deadline for taxpayers has been postponed to May 17 from April 15.

Free File has become especially important during the current filing season, as the tool makes Economic Impact Payments (EIP) accessible to eligible individuals. The first EIP was up to $1,200 per person and $500 per qualifying child. The second payment was up to $600 per eligible person and $600 per qualifying child. Those who did not receive the full amount of the first or second payments can claim the additional amount they are due as the Recovery Rebate Credit when they file their 2020 tax return.

Free File offers access to tax software to taxpayers who make $72,000 or less. But the IRS urges everyone to consider taking advantage of the speed and convenience of Free File, including:

- people experiencing homelessness, who can still qualify for the Recovery Rebate Credit even if they have little or no income, as long as they are not someone's dependent;
- individuals who were claimed as a dependent on someone else's tax return in 2018 or 2019 but who can no longer be claimed as a dependent in 2020, may be eligible to claim Recovery Rebate Credit, provided they file a 2020 tax return;
- married couples filing a joint return when only one spouse has a Social Security number valid for employment; they may be eligible for a partial credit; and
- families who had a baby or adopted a child during 2020 and did not receive the first or second EIP for that qualifying child.

The IRS has also recommended using the Free File tool to take advantage of two other tax benefits that help workers and families: Earned Income Tax Credit (EITC) and Additional Child Tax Credit (ACTC). For further information on availing tax benefits, taxpayers are recommended to visit IRS.gov/closerlook.

TAX BRIEFS

Advisory Fees

In each of two cases, the investment advisory fees from an annuity contract were not treated as an amount received by the owner of the annuity contract for purposes of Code Sec. 72(e). The taxpayers were insurance companies each offering non-qualified deferred annuity contracts. The fees were integral to the operation of the contracts. Further, the fees did not constitute compensation to the adviser for services related to any assets of the owner other than the contracts, or any services other than investment advice services with respect to the contracts. Therefore, the fees were an expense of the contract, not a distribution to the owner.

IRS Letter Rulings 202115005; 202115006

Estate Tax Exclusion

A decedent's estate was granted a 120-day extension to elect portability under Code Sec. 2010(c)(5) to allow the surviving spouse to take into account the decedent's deceased spousal unused exclusion (DSUE) amount. In this case, due to the value of the decedent's gross estate and taking into account any taxable gifts, the decedent's estate was not required under Code Sec. 6018(a) to file an estate tax return. Based solely on the information submitted and the representations made, the estate met the requirements under Reg. §§301.9100-1 and 301.9100-3 and acted reasonably and in good faith. Granting relief would not prejudice the government's interests. The election was to be made by filing complete and properly prepared Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, with a copy of the letter ruling at the listed address.

IRS Letter Ruling 202115001

Failure to File

An individual's failure to file tax returns for three tax years at issue was fraudulent. The taxpayer had organized an entity which he operated and promoted as an investment business. During the last tax year at issue, the government initiated a criminal investigation into the investment business, and a grand jury ultimately convicted the taxpayer and seven others with mail fraud, conspiracy to commit mail fraud, money laundering, conspiracy to commit money laundering, and conspiracy to defraud the government. The record contained extensive banking records, cancelled checks and loan applications records showing that the taxpayer received payments that he did not recognize as income for the tax years at issue. Further, while the taxpayer submitted purported tax returns for each of the years at issue as evidence in the previous criminal trial, he failed to provide evidence that any of those documents were valid and timely returns. The taxpayer's failure to file a valid return for each year was deliberate and intended to conceal the fact that he had income subject to tax. The IRS proved fraudulent intent by showing that the taxpayer committed affirmative acts of concealment or misrepresentation with respect to each year. The taxpayer was liable for additions to tax under Code Secs. 6651(f) and 6654(e).

Flynn, TC, Dec. 61,852(M)

IRS Summonses

The Court of Appeals for the Sixth Circuit affirmed a district court's decision to dismiss a married couple's action to quash a summons. The taxpayers owned several cannabis dispensary businesses. The IRS began an investigation of the taxpayers to determine whether they owned federal taxes. During the investigation, the IRS issued a summons to a point-of-sale systems provider seeking records related to the taxpayers' cannabis business. The taxpayers alleged that the summons was issued in bad faith, and brought an action to quash under Code Sec. 7609. The district court dismissed the action for lack of subject-matter jurisdiction, because the taxpayers lacked standing. On appeal, the government argued that Code Sec. 7609 only waived the government's sovereign immunity to allow taxpayers to bring an action to quash certain third-party summonses. The court concluded that the immunity waiver in Code Sec. 7609 was subject to the statute's exceptions. The exception under Code Sec. 7609(c)(2)(E) applied in this case because the summons was issued by the IRS criminal investigator "in connection" with an IRS criminal investigation and the summoned party was not a third-party recordkeeper. Subject matter jurisdiction could not be obtained without a statutory waiver of the government's sovereign immunity. Because the exception in Code Sec. 7609(c)(2)(E) applied, the bar of sovereign immunity remained, and subject-matter jurisdiction did not exist.

Gaetano, CA-6, 2021-1 USTC ¶50,119

Pensions

For pension plan years beginning in April 2021, the IRS has released the 30-year Treasury bond weighted average interest rate, the unadjusted segment rates, the adjusted rates and the minimum present value segment rates.

Notice 2021-27

QTIP Election

A decedent's' spouse, as the personal representative of the decedent's estate, was granted an extension of 120 days to make

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a qualified terminable interest property (QTIP) election under Code Sec. 2056(b)(7) with respect to a marital trust. The trust became irrevocable upon the decedent's death. The articles of the trust provided that upon the death of the decedent, the entire trust estate was to be held as a marital trust and all the income was to be paid to the surviving spouse for life. The spouse, in her capacity as a trustee of the trust, retained the services of an accounting firm and an estate tax attorney. However, the spouse was not advised to file a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for the decedent's estate. The firm subsequently prepared and filed a Form 706, but after filing the firm discovered that it had made a mistake on the Form 706. The spouse met the requirements of Reg. §301.9100-3 and, therefore, granting relief would not prejudice the government's interests.

IRS Letter Ruling 202115002