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Treasury Details on Tax Portion of American Jobs Act

Made in America Tax Plan

Details of the Made in America Tax Plan—a component of the American Jobs Act proposed by President Joe Biden—were released by the Treasury Department on April 7. The taxes and tax breaks are aimed at fully paying for the eight years of investments in the legislation over 15 years. The tax features would continue indefinitely.

The package contains several major components, including:

- Raising the corporate income tax rate to 28 percent from the current 21 percent.
- Strengthening the global minimum tax for U.S. multinational corporations, through changes to the Global Intangible Low-Taxed Income (GILTI) regime. The tax exemption for the first 10-percent return on foreign assets would be ended. The plan would also calculate the GILTI minimum tax on a per-country basis. The GILTI minimum tax would be increased to 21 percent (up to three-quarters of the proposed new 28 percent corporate tax rate, as opposed to the current one-half ratio).
- Reducing incentives for foreign jurisdictions to maintain low corporate tax rates by encouraging global adoption of minimum multinational business taxes.
- Enacting a 15-percent minimum tax on book income of large companies that report high profits but have little taxable income.
- Extending the clean energy production tax credit and investment tax credit for clean energy generation and storage by 10 years, and making those credits direct pay.
- Creating new tax incentives for long-distance transmission lines, carbon capture and sequestration projects, electric vehicles, and energy efficient electric appliances.
- Foreclosing profit-shifting incentives.
- Replacing the Base Erosion and Anti-Abuse Tax (BEAT) with the SHIELD (Stopping Harmful Inversions and Ending Low-tax Developments). The low effective rate of the tax would be defined by reference to the rate agreed upon in the multilateral agreement. However, if the SHIELD is in effect before such an agreement has been reached, the default rate trigger would be the tax rate on the GILTI income, as modified by the Made in America Tax Plan.
- Modifying the anti-inversion rules by generally treating a foreign acquiring corporation as a U.S. company based on a reduced 50-percent continuing ownership threshold or if a foreign acquiring corporation is managed and controlled in the United States.
- Ending the Foreign Derived Intangible Income (FDII) regime.

Biden Asks for Increased IRS Funding

Treasury Press Release

On April 9, President Biden submitted to Congress his discretionary funding request for Fiscal Year (FY) 2022. Through this discretionary request, the President aims to ensure that all Americans are treated fairly by our tax system, and that the wealthy and corporations comply with existing laws.

The 2022 discretion request provides $13.2 billion for the IRS, which is $1.2 billion (10.4 percent) above the 2021 enacted level. With this funding, the IRS will

- increase oversight of high-income and corporate tax returns to ensure compliance;
- provide new and improved online tools for taxpayers to communicate with the IRS easily and quickly; and
- improve telephone and in-person taxpayer customer service, including outreach and assistance to underserved communities.

Further, the 2022 discretionary request provides an additional increase of $417 million in funding for tax enforcement as part of a multiyear tax initiative that will increase tax compliance and increase revenues. Altogether, the 2022 discretionary request will increase resources for tax enforcement by $0.9 billion.

The 2022 discretionary request also provides $191 million for the Financial Crimes Enforcement Network, $64 million above the 2021 enacted level, to create a database that tracks the ownership and control of certain companies and organizations and helps combat the use of complex corporate structures to shield illegal activity. Loopholes in financial reporting requirements undermine corporate accountability and allow illicit actors to evade scrutiny and mask their dealings.

For more information regarding the 2022 discretionary requests, see *The President's FY 2022 Discretionary Request* (https://www.whitehouse.gov/omb/FY-2022-Discretionary-Request/), and Press Release: *Office of Management and Budget Releases the President's Fiscal Year 2022 Discretionary Funding Request* (https://www.whitehouse.gov/wp-content/uploads/2021/04/FY2022-Discretionary-Request-Press-Release.pdf).

Some Taxpayers Still Have April 15 Q1 Tax Deadline

The IRS has reminded self-employed individuals, corporations and others paying taxes quarterly, of the first quarter payment of 2021 due on Thursday, April 15, 2021. The extension to May 17 for individuals to file their 2020 income taxes does not apply to estimated tax payments.

Taxpayers can visit IRS.gov/payments to pay electronically, or use IRS Direct Pay, the IRS2Go app or the Treasury's Electronic Federal Tax Payment System (EFTPS).

Exceptions to tax penalties and special rules apply to some groups of taxpayers, including farmers, recently disabled taxpayers, and those who receive income unevenly during the year.

IR-2021-78

Excess Deferral Distribution Deadline Not Extended

The IRS has clarified that the due date to remove excess salary deferrals from various retirement plans (including 401(k), 403(b), SARSEP and SIMPLE IRA plans) remains April 15, 2021, and has not been extended to May 17, 2017.

Accordingly, for taxpayers deferring more than applicable limits for tax year 2020, the excess deferral amount plus earnings must be distributed by April 15, 2021. Excess salary deferrals not withdrawn by April 15 are taxable in tax year 2020 and again when withdrawn.

IRS Employee Plans News

Guidance on Temporary Full Deduction for Business Meals

Notice 2021-25; IR-2021-79

The IRS has provided guidance related to the temporary 100-percent deduction for business meals provided by a restaurant. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (P.L. 116-260) temporarily increased the deduction from 50 percent to 100 percent for a business's restaurant food and beverage expenses for 2021 and 2022. All other food and beverage expenses are still subject to the 50 percent deduction limitation unless some other exception applies.

Restaurants Defined

According to the IRS's guidance, a restaurant is a business that prepares and sells food or beverages to retail customers for immediate consumption. Note that the food and beverages do

REFERENCE KEY

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

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not need to be consumed on the premises for the 100-percent deduction to apply.

Restaurants are not businesses that predominantly sell pre-packaged food or beverages that are intended for later consumption. Food or beverages purchased from such businesses are still subject to the 50-percent deduction limitation. Examples of businesses that are *not* restaurants include grocery stores, specialty food stores, liquor stores, drug stores, convenience stores, newsstands, vending machines, or kiosks.

Restaurants are also not eating facilities located at an employer's business that provide meals that are excluded from the employees' gross income under Code Sec. 119, or that are considered a *de minimis* fringe under Code Sec. 132(e)(2). This also applies to eating facilities on the employer's premises that are operated by a third party with regards to Reg. §1.132-7(a)(3).

Effective Date

This IRS guidance is effective for food and beverages purchases made after December 31, 2020, and before January 1, 2023.

Window Closing on Nonfilers' 2017 Refunds

The IRS announced that unclaimed income tax refunds worth more than $1.3 billion await an estimated 1.3 million taxpayers who did not file a 2017 Form 1040. Most of these taxpayers must file by May 17, 2021, to claim a refund.

"The IRS wants to help taxpayers who are due refunds but haven't filed their 2017 tax returns yet," said IRS Commissioner Chuck Rettig. "Time is quickly running out for these taxpayers. There's only a three-year window to claim these refunds, and the window closes on May 17. We want to help people get these refunds, but they will need to quickly file a 2017 tax return," he added.

The IRS also reminded taxpayers seeking a 2017 tax refund that their refund checks might be held if they have not filed tax returns for 2018 and 2019. Further, the refund will be applied to any amounts still owed to the IRS/state tax agency, and might be used to offset unpaid child support or past due federal debts.

Taxpayers unable to get missing forms from their employer or other payer can order a free wage and income transcript using the Get Transcript Online tool. Current and prior year tax forms (TY 2017 Form 1040) and instructions are available on the IRS website (https://www.irs.gov/forms-instructions) or by calling 800-829-3676.

IR-2021-75

IRS Answers FAQs on RRCs

The IRS has been mailing letters to some taxpayers who claimed the 2020 recovery rebate credit (RRC) and may be getting a different amount than they expected.

The IRS reminders taxpayers that the first and second Economic Impact Payments (EIP) were advance payments of the 2020 credit. Most eligible people already received the first and second payments and should not or do not need to include this information on their 2020 tax return. People who did not receive a first or second EIP or received less than the full amounts may be eligible for the 2020 RRC. They must file a 2020 tax return to claim the credit, even if they do not usually file a tax return.

When it processes a 2020 tax return claiming the credit, the IRS determines the eligibility and amount of the taxpayer's credit based on the 2020 tax return information and the amounts of any EIP previously issued. If a taxpayer is eligible, it will be reduced by the amount of any EIPs already issued to them. If there is a mistake with the credit amount on Line 30 of the 1040 or 1040-SR, the IRS will calculate the correct amount, make the correction and continue processing the return. If a correction is needed, there may be a slight delay in processing the return, and the IRS will send the taxpayer a letter or notice explaining any change.

On the IRS website, there is a special section called "Correcting Recovery Rebate Credit issues after the 2020 tax return is filed" (see https://www.irs.gov/newsroom/2020-recovery-rebate-credit-topic-g-correcting-issues-after-the-2020-tax-return-is-filed) that provides additional information to explain what errors may have occurred. Taxpayers who disagree with the IRS calculation should review their letter, as well as the questions and answers for what information they should have available when contacting the IRS.

IR-2021-76; FS-2021-6

IRS Disburses Latest Batch of Economic Impact Payments

IR-2021-77

The IRS, the Treasury Department, and the Bureau of the Fiscal Service have disbursed over 25 million payments in the fourth batch of Economic Impact Payments (EIPs) from the American Rescue Plan, bringing the total disbursed payments from the American Rescue Plan to over 156 million payments.

Similar to the previous batches of payments, the fourth batch includes direct deposits, as well as paper checks and debit cards being sent through the mail. These payments began processing on April 2, with an official payment date of April 7.

Key points regarding this batch of payments include the following:

- A large block of these payments was sent to Social Security beneficiaries who did not file a 2020 or 2019 tax return and did not use the Non-Filers tool last year.

- Over 3 billion payments were made to Supplemental Security Income (SSI) beneficiaries and approximately 85,000 payments went to Railroad Retirement Board beneficiaries.
- This batch of payments included over 1 million additional ongoing supplemental payments for people who received payments in March based on their 2019 returns, but are eligible for a larger payment based on their 2020 returns.
- This batch also included over 1 million payments that went to people for whom the IRS did not have prior information to issue a payment, but who recently filed a tax return and qualified for an EIP.

The IRS is continuing to review data received from Veterans Affairs (VA), which covers veterans and their beneficiaries who receive compensation and pension benefit payments. Further, the IRS reminded federal benefits recipients that they may need to file a 2020 tax return, even if they do not usually file, in order to provide information needed to process payments for qualified dependents. Individuals who do not receive federal benefits may also qualify for the fourth batch of EIPs, including those experiencing homelessness, the rural poor and some others.

Individuals who did not receive the first or second batch of payments may be eligible for recovery rebate credit, provided they file a 2020 tax return. 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 the third payment despite having received the first or second EIP. Payments will begin to 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 urges taxpayers to check the Get My Payment tool to see the payment status of these payments.

Nonacquiescence in Debt Cancellation Case

The IRS does not acquiesce in the Tax Court's holding in *D.W. Schieber*, 113 TCM 1144, Dec. 60,836(M), that an interest in a defined benefit pension plan is not an asset for purposes of applying the insolvency exclusion in Code Sec. 108.

The Tax Court had allowed the taxpayers to exclude cancelled debt from gross income to the extent they were insolvent. The husband's public employees' defined benefit pension from the state (California) was not an asset for purposes of determining whether the taxpayers were insolvent or the amount of their insolvency. Other than the monthly payments, the taxpayers could not access the value in the plan. They could not convert their interest into a lump-sum cash amount, sell their interest, assign their interest, borrow against their interest or borrow from the plan. Since the taxpayers could not use their interest in the pension plan to immediately pay a tax liability, the pension was not an asset.

AOD-2021-1

U.S. Territory Residents Reminded of Unemployment Pay Tax Rules

IR-2021-81

The IRS has reminded eligible residents of U.S. territories who receive unemployment compensation payments that are otherwise subject to U.S. income tax, that they may be able to exclude up to $10,200 from the payment amount. For income tax purposes, this exclusion applies to the new types of pandemic-related unemployment compensation that formed part of legislation passed in response to the pandemic:

- Pandemic Unemployment Assistance (PUA); and
- Federal Pandemic Unemployment Compensation (FPUC).

Taxpayers with modified income of less than $150,000 may exclude the first $10,200 of unemployment compensation from their 2020 federal income tax return. Taxpayers that are married and filing jointly, can exclude $10,200 for each spouse. Taxpayers who filed before the law was passed should not file an amended return.

The IRS reminds taxpayers to see Publication 570, Tax Guide for Individuals with Income from U.S. Possessions, for further guidance.

COBRA Premium Assistance Guidance

U.S. Department of Labor News Release

The U.S. Department of Labor has published a new webpage—https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy—with guidance implementing the Continuation of Health Coverage premium assistance provisions of the American Rescue Plan (ARP), to provide full COBRA premium assistance to certain individuals who experienced a reduction in hours or involuntary termination of employment. This guidance, from the Labor Department's Employee Benefits Security Administration, includes documents to implement these provisions, such as FAQs about COBRA premium assistance, FAQs on COBRA continuation

health coverage for workers, and model notices.

COBRA Premium Subsidy

COBRA allows employees and their families who would otherwise lose their group health coverage due to certain life events to continue their group health coverage, known as COBRA continuation coverage. The ARP provides a 100 percent premium subsidy between April 1, 2021 and Sept. 30, 2021, for individuals whose reduction in hours or involuntary termination of employment makes them eligible for COBRA continuation coverage during this period. The ARP also requires group health plans to provide notices to individuals losing health coverage to inform them about premium assistance that may be available to them.

Reminder on FBAR Filing Deadline

IR-2021-83; FS-2021-7

The IRS has reminded U.S. citizens, residing aliens, and any domestic legal entity that the deadline to file their annual Report of Foreign Bank and Financial Accounts (FBAR) is April 15, 2021. The extension of the federal income tax filing due date and other tax deadlines for individuals does not apply to the FBAR filing requirements. Accordingly, taxpayers must file their 2021 FBAR electronically with the Financial Crimes Enforcement Network (FinCEN) through the BSA E-Filing System website.

Persons Required to File FBAR

The Bank Secrecy Act requires U.S. persons to file a FBAR if:

- they have a financial interest in, signature authority or other authority over one or more accounts, such as a bank account, brokerage account, mutual fund or other financial account in a foreign country, and
- the aggregate value of all foreign financial accounts exceeds $10,000 at any time during the calendar year.

For these purposes, a U.S. person is a citizen or resident of the United States or any domestic legal entity such as a partnership, corporation, limited liability company, estate or trust. Due to the dollar threshold, the IRS urges U.S. persons or entities with foreign accounts—even relatively small ones—to check if this filing requirement applies to them. Those who fail to file an FBAR when required may be subject to significant civil and criminal penalties that can result in a fine and/or prison.

Suspension of Excess Advance Premium Tax Credit Repayment

IR-2021-84; FS-2021-8

The IRS has announced that, under the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2), the requirement that taxpayers increase their tax liability by all or a portion of their excess advance payments of the Premium Tax Credit (excess APTC) is suspended for tax year (TY) 2020. A taxpayer's excess APTC is the amount by which the taxpayer's advance payments of the Premium Tax Credit (APTC) exceed his or her Premium Tax Credit (PTC). Eligible taxpayers with excess APTC for 2020 are not required to file Form 8962, Premium Tax Credit, or report an excess advance Premium Tax Credit repayment on their 2020 Form 1040 or Form 1040-SR when they file. Taxpayers claiming a net PTC must file Form 8962 when they file their TY 2020 return.

Taxpayers who have already filed their TY 2020 return and who have excess APTC do not need to file an amended tax return or contact the IRS. Taxpayers who enrolled, or enrolled a family member, in health insurance coverage for TY 2020 through the marketplace should have received Form 1095-A, Health Insurance Marketplace Statement, from the marketplace. Taxpayers can check with their tax professional or use tax software to figure the amount of allowable PTC and reconcile it with their APTC received using the information from Form 1095-A.

The Premium Tax Credit helps pay for health insurance coverage bought from the health insurance marketplace. If the taxpayer's PTC computed on the return is more than the APTC paid on the taxpayer's behalf during the year, the difference is a net PTC.

Exit from Abusive Micro-Captive Arrangements Urged

IR-2021-82

The IRS has urged participants in abusive micro-captive insurance arrangements to exit these transactions as soon as possible. On March 10, 2021, the U.S. Tax Court held in *Caylor Land & Dev.* (121 TCM 1205, T.C. Memo. 2021-30, Dec. 61,837(M)) that yet another micro-captive arrangement failed to qualify as insurance for federal tax purposes. This decision follows several earlier Tax Court decisions

that also confirmed the IRS's determinations that certain micro-captive arrangements are not eligible for the claimed federal tax benefits. In *Caylor*, the Tax Court also sustained the IRS's determination of accuracy-related penalties and rejected the taxpayer's claim of reliance on tax advice.

The IRS encourages taxpayers who have engaged in abusive micro-captive transactions to consult an independent tax advisor prior to filing their 2020 tax returns. In 2020, the IRS deployed 12 newly formed micro-captive examination teams to substantially increase the examinations of ongoing abusive micro-captive insurance transactions. The IRS will continue to assert penalties, as appropriate, including the strict liability penalty that applies to transactions that lack economic substance. Further, in Notice 2016-66, I.R.B. 2016-47, 745, the IRS advised that micro-captive insurance transactions have the potential for tax avoidance or evasion. The notice established reporting requirements for those entering into such transactions on or after November 2, 2006 and created disclosure and list maintenance obligations for material advisors.

In March and July 2020, IRS issued letters to taxpayers who participated in a Notice 2016-66 transaction alerting them that IRS enforcement activity in this area will be expanding significantly, and providing them with the opportunity to tell the IRS if they have discontinued their participation in this transaction before the IRS initiates examinations.

IRS Announces Key Leadership Appointments

IR-2021-80

The IRS has announced several key leadership appointments as the agency works to implement major provisions of the Taxpayer First Act. These changes are part of a larger effort to restructure the agency's tax administration and improve taxpayer service and enforcement.

"As we emerge from the pandemic, our strong leadership team is making some changes to take on the important challenges ahead," said IRS Commissioner Chuck Rettig. He also noted that these developments will help the IRS provide the highest possible service and tax compliance.

The IRS announced that Douglas O'Donnell will serve as the new IRS Deputy Commissioner, Services and Enforcement. O'Donnell has been the Commissioner of the Large Business and International Division (LB&I) since 2015, where he also served as the U.S. Competent Authority. Nikole Flax will take over as Commissioner of LB&I, and Holly Paz replaces Flax as Deputy Commissioner of LB&I.

Sunita Lough, who has worked for the IRS for 27 years, will be returning to serve as the IRS Commissioner of the Tax Exempt and Government Entities Division (TEGE). She also served as the Executive Project Lead for the Tax Reform Implementation Office, effectively spearheading the successful delivery and implementation of the Tax Cuts and Jobs Act.

Edward Killen, who has been serving as Acting Commissioner of TEGE, will return to the role of Deputy Commissioner of the department. Prior to this appointment, Killen has held several positions, including that of the IRS Chief Privacy Officer.

Individual Liable for Unpaid Trust Fund Recovery Penalties

R.E. Witkemper, DC Ind., 2021-1 USTC ¶50,116

An individual was liable for unpaid trust fund recovery penalties (TFRPs) plus interest and other statutory additions for five tax periods at issue. The government also had a valid and subsistent federal tax lien on all property and rights to property belonging to the taxpayer for the unpaid TFRP liabilities assessed against him. Accordingly, the government was allowed to enforce the federal tax lien that was attached to the taxpayer's residential property. The taxpayer's wife also was liable to pay the net proceeds of the sale of a commercial property to the government.

Background

The taxpayer was the sole shareholder and president of a corporation that had employees over a period of three years. The taxpayer created a for-profit entity whose sole business activity was to lease commercial properties to commercial tenants. As the sole shareholder of the corporation, the taxpayer was responsible for collecting, truthfully accounting for, and paying over to the government any withheld employment taxes. However, the taxpayer failed to pay employment taxes for the three tax years at issue and was notified of his tax delinquencies by the IRS. Federal tax liens arose against the taxpayer's assets when his TFRP liabilities for the unpaid employment taxes were assessed. The government brought an action to reduce to judgment certain unpaid tax liabilities of the taxpayer and to enforce the federal tax lien on the taxpayer's interest in certain real property.

The government also sought to obtain a money judgment against the taxpayer's wife, whom the government alleges received the proceeds of the sale of certain real property to which federal tax liens were attached and that the taxpayer had caused to be fraudulently conveyed to her.

At trial, the taxpayers procedurally attacked the assessment of their tax deficiencies as invalid because the IRS did

not respond to their protest. However, the taxpayers failed to cite relevant authority to support this claim. Further, the record did not reflect that the IRS had received any protest from the taxpayers pursuant to established IRS procedures for filing such a protest. The IRS did not err by failing to give the taxpayers a preassessment administrative determination of proposed liability before issuing an assessment for trust fund tax liability.

With respect to the unpaid employment taxes, the court found that the taxpayer was a responsible person within the meaning of Code Sec. 6672. The taxpayer also testified that he became aware of the unpaid employment taxes and subsequently paid the other creditors while the unpaid tax liabilities continued to accrue. Accordingly, the court found that the taxpayer acted wilfully by failing to withhold trust fund taxes owed to the government from the wages of the employees. The taxpayer failed to meet his burdens or production and persuasions to disprove his status as a responsible person who willfully failed to collect, account for, or pay over the taxes.

Residential Property

The taxpayer exercised control over his residential property since he acquired it with his wife. Accordingly, the taxpayer was responsible for all maintenance, upkeep, property taxes, liability insurance and other expenses associated with the property. The court found that the IRS had duly filed and re-filed notices of federal tax lien against the residential property for the assessed tax liabilities. Through the purported transfers associated with the residential property, the federal tax liens followed the taxpayer's interest in the property and those tax liens attached to the present one-half interest in the property held in joint tenancy with the right of survivorship with his wife. Therefore, government was authorized to sell the residential property, and was entitled to 50-percent of the proceeds from the sale.

Commercial Property

In addition to the residential property, the taxpayer's commercial properties were also encumbered with liens. For a period of two years, the taxpayer engaged in a pattern of behavior to get assets out of his name and make himself judgment proof against creditors, including the government. While the taxpayer testified that he had no intention of defrauding the IRS, he later testified that he transferred the commercial property to his wife to get it out of his hands. Accordingly, the court found that the transfer of the commercial property was voidable, because the transfer was both constructively and actually fraudulent.

S Corporation Had Underreported Gross Receipts

A.M. Berry, TC Memo. 2021-42, Dec. 61,850(M)

The Tax Court, consolidating two cases involving four individuals, ruled that an S corporation that built houses and developed real estate had underreported its gross receipts. The S corporation was owned and operated by two taxpayers, and had received money from one of its principal clients to work on a project. The taxpayers claimed that the money was not income because the bank account into which the money was deposited was a trust account established and maintained for the client.

The taxpayers did not meet their burden of proving that a trust relationship existed. The taxpayers drew from the account to pay expenses clearly unrelated to the project, thus demonstrating that the S corporation could and did use the funds purportedly held in trust for its own benefit and/or for the benefit of its shareholders.

Additionally, the S corporation was not entitled to deduct certain car racing expenses, rent expenses, or car and truck expenses. For the racing and rent expenses, the taxpayers failed to demonstrate that the expenses were either ordinary or necessary. On the car and truck expenses, the taxpayers failed to satisfy Code Sec. 274(d) substantiation requirements for using their passenger vehicles. The taxpayers' testimony lacked credible evidence regarding construction equipment.

One of the taxpayers was also denied Schedule C deductions. The taxpayer did not show how the service he rendered as a consultant was different from that provided as an officer-employee to the S corporation.

The taxpayers were not liable for accuracy related penalties, however. The penalties were initially determined and communicated to the taxpayers in writing by 30-day letters and revenue agent reports sent by the IRS on a particular date, but the IRS conceded in the stipulation of facts that the penalties were not in fact approved by the revenue agent's supervisor until the supervisor had signed the civil penalty approval forms nearly a month later. The managerial approval did not occur until after the penalties were initially determined and communicated to the taxpayers, so the IRS therefore could not meet its burden of production.

TAX BRIEFS

Advisory Fees

In each of two cases, the investment advisory fees from an annuity contract was not treated as an amount received by the owner of that annuity contract for purposes of Code Sec. 72(e). The taxpayers were life insurance companies each offering a nonqualified deferred annuity contract. The fees were integral to the operation of the contracts. 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 202114005; 202114006

Bitcoin

Taxpayers who received Bitcoin cash as a result of the August 1, 2017, Bitcoin hard fork have gross income, because the taxpayers had an accession to wealth under Code Sec. 61. The date of receipt and fair market value to be included in income depended on when the taxpayer obtained dominion and control over the Bitcoin cash.

Chief Counsel Memorandum 202114020

Foreign Eligible Entity

A foreign eligible entity, the classification of which had never been relevant, had a federal tax classification pursuant to Reg. §301.7701-3(b)(2) ("the default classification provision") during the period in which its classification was not relevant. This determination was made when the classification of the entity first became relevant, but the classification also applied during the non-relevant period. Further, the 60-month limitation rule would not apply if the election to change the classification was effective on the first date the classification was relevant. Solely for purposes of Reg. §301.7701-3(c)(1)(iv), the entity's classification election was treated as if it were effective on the date that it was formed and, therefore, would not preclude the entity from making an election to change its classification within 60 months.

IRS Advice Memorandum AM 2021-002

Foreign Tax Credit

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

IRS Practice Unit

In Vitro Fertilization

A married couple was not allowed to deduct medical costs and fees arising from *in vitro* fertilization (IVF) procedures, gestational surrogacy and related items. The taxpayers wished to have a child who had as much representative DNA from the couple as possible, so they opted for IVF and used a gestational surrogate to carry the child to term. Costs and fees relating to egg donation, IVF procedures, and gestational surrogacy did not qualify as deductible medical expenses under Code Sec. 213. However, medical costs and fees directly attributable to the taxpayers were deductible within the limitations of Code Sec. 213, including sperm donation and sperm freezing.

IRS Letter Ruling 202114001

Partnership Distributions

The IRS Large Business and International (LB&I) has issued a new Practice Unit, Liquidating Distributions of a Partner's Interest in a Partnership. Practice Units provide IRS staff with explanations of general tax concepts, as well as information on specific types of transactions. They are not official pronouncements of law or directives and cannot be used, relied upon or cited as such.

IRS Practice Unit

Passive Activities

A married couple, who had invested in a solar power tax shelter scheme, was not entitled to their claimed depreciation deductions reported on Schedules C, Profit or Loss From Business, and energy tax credits reported on Forms 3800, General Business Credit. The husband lacked the skills, education or experience to conduct a solar energy business. The husband's primary purpose in purchasing solar lenses was to benefit from tax savings, not to derive profit from the conduct of a genuine business enterprise.

Olsen, TC, Dec. 61,849(M)

Penalty Relief

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

IRS Practice Unit