



# FEDERAL TAX WEEKLY

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## Michael Jackson Estate Assets Valued

*M.J. Jackson Est., Dec. 61,858(M)*

Michael Jackson's image and likeness, as well as his interests in two trusts—one trust (NHT II) that held his interest in the Sony/ATV Music Publishing, LLC, and one trust (NHT III) that held Mijac Music—were valued for estate tax purposes.

### Image and Likeness

The estate claimed that the decedent's image and likeness was valued at about \$2,000. However, at trial, the estate brought in additional experts and increased the value to about \$3 million. This amount was based on a 10-year revenue projection, which examined pre-death revenue, post-death rights, and growth and decline rates using pre-death marketability and a potential post-death boom. An estimate of expenses incurred in administering the image and likeness and expenses related to rehabilitation of the decedent's image reduced the revenue stream. As a result, the Tax Court determined that the date-of-death value of the decedent's image was \$4.1 million.

### Interest in Sony/ATV

In the years prior to his death, the decedent had borrowed against his interest in the Sony/ATV company. The company was valued using the discounted cash flow method. After finding the value of the company as a whole, a discount for lack of control was applied to one-half of that amount to reflect the decedent's 50-percent interest. Because of the debt secured by the interest, however, the Tax Court determined that the date-of-death value of NHT II was zero.

### Interest in Mijac Music

The major asset of NHT III was Mijac Music, which owned compositions from many artists, including the decedent. The decedent also assigned the income he earned from his writer's share of certain performance revenue to NHT III. The discounted cashflow analysis was used again and the court determined the revenue streams of Mijac Music and the writer's share of revenue. After subtracting the trust's liabilities from the revenue, the Tax Court determined the value of NHT III was \$107 million.

### No Penalties

Although the values differed widely, the estate was not liable for accuracy-related penalties. Its reliance on the appraisal values was reasonable.

# IRS Reminds Exempt Organizations of Filing Deadline

IR-2021-104

The IRS has reminded tax-exempt organizations that operate on a calendar-year (CY) basis that certain annual information and tax returns must be filed by May 17, 2021. These include:

- Form 990-series annual information returns (Forms 990, 990-EZ, 990-PF, 990-BL);
- Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ;
- Form 990-T, Exempt Organization Business Income Tax Return (other than certain trusts); and,
- Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.

Organizations filing a Form 990, 990-PF or 990-N for CY2020 must file

their returns electronically. However, organizations filing Form 990-EZ for CY2020 received transitional relief and may file electronically or in paper.

The IRS has provided a series of pre-recorded online workshops to help exempt organizations comply with their filing requirements.

Tax-exempt organizations can request for an automatic extension beyond May 17 by filing Form 8868, Application for Extension of Time To File an Exempt Organization Return. Organizations that file a Form 8868 will be allowed a six-month extension beyond the original due date. In situations where tax is due, extending the time for filing a return does not extend the time for paying tax. The IRS encourages organizations requesting an extension to electronically file Form 8868.

## Auto-Revocation

Organizations that fail to file their Form 990 series for three consecutive years automatically lose their exempt status (auto-revocation). Since it is experiencing delays in processing paper returns in their service centers, the IRS encourages organizations to electronically file their Form 990-EZ. This is especially important for organizations that did not file their information returns for CY2018 and CY2019 to avoid auto-revocation.

The law prohibits the IRS from undoing a proper automatic revocation, but the IRS has procedures in place to assist organizations that believe they have been erroneously listed as auto-revoked. This includes situations where an organization has documentation that it met its filing requirement for one or more years during the three-consecutive-year period.

# LITC Matching Grant Application Period Announced

IR-2021-100

The IRS has announced that the application period for Low Income Taxpayer Clinic (LITC) matching grants for calendar year 2022, will run from May 3, 2021 to June, 18 2021.

The LITC program is a federal grant program administered by the Office of the Taxpayer Advocate (OTA), which is led by National Taxpayer Advocate (NTA), Erin M. Collins. Awards up to \$100,000 per year are given to qualifying organizations to develop, expand or maintain an LITC. An LITC must provide services for free, or for no more than a nominal fee.

Qualified organizations that are awarded grants ensure the fairness of the

tax system for those who are low-income or speak English as a second language (ESL), by providing pro bono representation on their behalf in tax disputes with the IRS. These organizations also help educate taxpayers about their rights and responsibilities and advocate on issues affecting them.

The IRS prioritizes representation for taxpayers under the LITC program. In its initiative to award LITC grants, the IRS continues to work toward providing necessary coverage to all territories and states. Although all applications are encouraged, the IRS urges applications from the following undeserved areas in need of LITC services:

- Arizona - Gila County.
- Florida - Brevard, Citrus, Flagler, Hernando, Lake, Orange, Putnam, Seminole and Sumter Counties.
- Idaho - Ada, Adams, Bannock, Bear Lake, Bingham, Boise, Bonneville, Butte, Canyon, Caribou, Clark, Clearwater, Custer, Franklin, Fremont, Gem, Idaho, Jefferson, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Owyhee, Payette, Power, Teton, Washington and Valley Counties.
- Nevada - Entire state.
- North Dakota - Entire state.
- Pennsylvania - Bradford, Clinton, Lycoming, Monroe, Northumberland, Pike, Snyder, Sullivan, Susquehanna, Tioga and Wyoming Counties.

## REFERENCE KEY

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

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- Puerto Rico - Entire territory.
- West Virginia - Entire state.
- Wyoming - Entire state.

LITCs are funded by federal appropriations. The clinics, their employees, and their volunteers operate independently of the IRS.

The IRS urges organizations that are not currently receiving a grant for 2021, or that received a single-year grant for 2021, or whose multi-year grant ends in 2021, to submit a full grant application electronically. An organization that is currently receiving a grant for 2021 that is requesting funding for the second or third year of a multi-year grant must submit a request for continued funding electronically. All organizations are urged to use the funding number of TREAS-GRANTS-052022-001.

## IRS Issues 2020 Nonconventional Source Fuel Reference Price

The IRS has published the reference price under Code Sec. 45K(d)(2)(C). The credit period for the nonconventional source production credit under Code Sec. 45K ended on December 31, 2013, for facilities producing coke or coke gas (other than from petroleum based products). However, the reference price continues to apply in determining the amount of the enhanced oil recovery credit under Code Sec. 43, the marginal well production credit for qualified crude oil production under Code Sec. 45I, and the percentage depletion in case of oil and natural gas produced from marginal properties under Code Sec. 613A. The reference price for calendar year 2020 is \$37.07.

*Notice 2021-29*

The IRS reminds organizations to submit both types of requests by 11:59 p.m. Eastern time on June 18, 2021.

Finally, the IRS recommends that interested applicants refer to IRS Pub. 5066, LITC 2020 Program Report, for more information about LITCs.

## Taxpayers Urged to Create Emergency Preparedness Plans

*IR-2021-101*

The IRS reminds taxpayers that May includes National Hurricane Preparedness Week and National Wildfire Awareness Month. It urges taxpayers to create or review emergency preparedness plans for surviving natural disasters.

The IRS advises taxpayers to do the following:

- Secure key documents such as tax returns, birth certificates, deeds, titles and insurance policies inside waterproof

containers in a secure space. Keep duplicates of these documents with a trusted person outside the area of the taxpayer. Scan these documents for backup storage on electronic media such as a flash drive.

- Take current photos or videos of a home or business's contents, especially expensive and high value items. The IRS disaster-loss workbooks in IRS Pub. 584-B can help individuals and businesses compile lists of belongings or business equipment.

- Employers who use payroll service providers should ask the provider if it has a fiduciary bond in place. The bond could protect the employer in the event of default by the payroll service provider.
- Reconstructing records after a disaster may be required for tax purposes, getting federal assistance or insurance reimbursement. Taxpayers who have lost some or all their records during a disaster can visit IRS's Reconstructing Records webpage as one of their first steps.

## Victims of Alabama Severe Storms Granted Tax Relief

*AL-2021-01*

The president has declared a federal disaster area in Alabama. The disaster is due to severe storms, straight-line winds, and tornadoes that began on March 25, 2021. Taxpayers who live or have a business in the disaster area may qualify for tax relief.

The disaster area includes Bibb, Calhoun, Clay, Hale, Jefferson, Perry, Randolph, and Shelby counties.

### Alabama Filing Deadlines Extended

The IRS extended certain deadlines falling on or after March 25, 2021, and before August 2, 2021, to August 2, 2021. This extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;
- partnership and S corporation income tax returns;

- estate, gift and generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations, and
- employment and certain excise tax returns.

The extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098, or 1099 series, or Forms 1042-S, 3921, 3922 or 8027.

## Alabama Payment Deadlines Extended

The relief also includes extra time to make certain tax payments. This includes estimated tax payments due on or after March 25, 2021, and before August 2, 2021. Taxpayers also have until August 2, 2021, to perform other time-sensitive actions due on or after March 25, 2021, and before August 2, 2021.

The postponement of time to pay generally does not apply to employment and excise tax deposits. However, penalties on deposits due on or after March 25, 2021, and before April 9, 2021, will be abated as long as the tax deposits were made by April 9, 2021.

## Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may get relief by claiming their losses on their 2020 or 2021 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

## 2021 Marginal Production Percentage Depletion Rates Announced

The IRS has announced the applicable percentage under Code Sec. 613A to be used in determining percentage depletion for marginal properties for the 2021 calendar year. Code Sec. 613A(c)(6)(C) defines “applicable percentage” for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which \$20 exceeds the reference price (determined under Code Sec. 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the tax year begins. The applicable percentage for the 2021 calendar year is 15 percent. The reference price determined under Code Sec. 45K(d)(2)(C) for the 2020 calendar year is \$37.07. A table contains the applicable percentages for marginal production for tax years beginning in calendar years 1991 through 2021.

*Notice 2021-30*

Taxpayers claiming a disaster loss on their 2020 or 2021 return should write the disaster designation “Alabama - Severe Storms, Straight-line Winds and Tornadoes” in bold letters at the top of the form, and should include the disaster declaration number, FEMA 4596-DR, on any return.

The IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, and submit it to the IRS.

## Victims of Kentucky Severe Storms, Flooding, Etc., Granted Tax Relief

*KY-2021-01*

The president has declared a federal disaster area in Kentucky. The disaster is due to severe storms, flooding, landslides and mudslides that began on February 27, 2021. Taxpayers who live or have a business in the disaster area may qualify for tax relief.

The disaster area includes Bell, Boyd, Breathitt, Calloway, Carter, Casey, Clark, Clay, Cumberland, Edmonson, Elliott, Estill, Floyd, Franklin, Graves, Harlan, Jackson, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lincoln, Magoffin, Marion, Martin, Mason, Menifee, Morgan, Ohio, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Union, Whitley, and Wolfe counties.

## Kentucky Filing Deadlines Extended

The IRS extended certain deadlines falling on or after February 27, 2021, and before June

30, 2021, to June 30, 2021. This extension includes filing for most returns, including:

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

The extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098, or 1099 series or Forms 1042-S, 3921, 3922 or 8027.

## Kentucky Payment Deadlines Extended

The relief also includes extra time to make certain tax payments. This includes

estimated tax payments due on or after February 27, 2021, and before June 30, 2021. Taxpayers also have until June 30, 2021, to perform other time-sensitive actions due on or after February 27, 2021, and before June 30, 2021.

The postponement of time to pay generally does not apply to employment and excise tax deposits. However, penalties on deposits due on or after February 27, 2021, and before March 15, 2021, will be abated as long as the tax deposits were made by March 15, 2021.

## Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may get relief by claiming their losses on their 2020 or 2021 return. Individuals may deduct

personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2020 or 2021 return should write the disaster designation “Kentucky - Severe Storms, Flooding, Landslides, and

Mudslides” in bold letters at the top of the form, and should include the disaster declaration number, FEMA 4595-DR, on any return.

The IRS will provide affected taxpayers with copies of prior year returns without

charge. To get this expedited service, taxpayers should add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, and submit it to the IRS.

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## Court Analyzes Alleged IRS Breach of Contract in Whistleblower Case

*J. Doe, FedCl, 2021-1 USTC ¶150,136*

An individual whistleblower claimed that the IRS breached an implied-in-fact contract and a “Preliminary Award Recommendation Under Section 7623(a)” (PARL) under which the IRS allegedly promised to pay him an award in the amount of a certain percentage of taxes recovered from targeted individuals.

The whistleblower claimed that certain unnamed IRS agents “promised” or informed him that he would receive 15 percent of taxes collected relating to information he provided to the IRS about his then-employer as a whistleblower or confidential informant for the IRS. The IRS

contended that no implied-in-fact agreement existed.

The court first observed that the alleged implied-in-fact agreement and the PARL were undoubtedly related. The PARL stated that the whistleblower’s award of 15 percent was based on the whistleblower’s Form 211, Application for Award for Original Information. Both the agreement and the PARL promised the same award. Therefore, the existence of the alleged implied-in-fact contract was precluded by PARL.

Next, the PARL supported a non-rivoltous allegation that the parties had agreed to a fixed and specific amount as the reward. The whistleblower’s claims relating to post-decision proceeds were

not barred by the PARL’s waiver provisions. The court also noted that multiple statements made by the IRS plausibly constituted an anticipatory repudiation, making it favorable for judicial review. The whistleblower did not need to wait for payment to become due to vindicate its rights under the contract.

Further, the whistleblower stated a plausible claim that the IRS had violated its implied duty of good faith and fair dealing as it related to post-decision proceeds. The PARL made no guarantee that the IRS would collect any post-decision proceeds.

Finally, the IRS did not breach covenants of good faith. Allegations therein that related to post-decision proceeds already collected remained open.

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## GAO Reviews IRS Financial Reporting, Information System Controls

*GAO-21-401R*

The Government Accountability Officer (GAO) reviewed the IRS’s financial reporting and information system controls, and has recommended that these need improvement. While auditing the IRS’s financial statements for FY 2020, the GAO found that corrective actions were not complete for 114 recommendations they had made to address previously reported deficiencies in the IRS’s financial reporting and related information systems. Further, the GAO identified new deficiencies related to system access controls, security management and tax credits.

### Information System Control Deficiencies

During its audit of the IRS FY 2020 and 2019 financial statements, GAO identified new information system control deficiencies related to access controls and security management that contributed to IRS’s continuing significant deficiency in its internal control over financial reporting systems. These new deficiencies, along with unresolved information system control deficiencies from prior audits, have increased the risk of unauthorized access to, modification of, or disclosure of financial reporting and taxpayer data and disruption of critical operations. GAO also

identified a new control deficiency related to tax credits. Although not considered a material weakness or significant deficiency, it warranted IRS management’s attention in order to help reduce the risk of erroneous and fraudulent refund disbursements. In addition, GAO found that IRS had completed corrective actions to close 48 of 162 recommendations from GAO’s prior audits related to control deficiencies that remained open as of September 30, 2019.

### Recommendations

The GAO made one recommendation to address the new control deficiency in

security management. In a separately issued limited official use only report, GAO made an additional five recommendations to address control deficiencies in access controls and tax credits. In commenting on a draft of this report and

the limited official use only report, IRS agreed with all of GAO's recommendations, and stated that it is committed to implementing improvements dedicated to promoting the highest standard of financial management, internal controls, and

information technology security. GAO will evaluate the effectiveness of IRS's efforts to address these deficiencies during its audit of IRS's fiscal year 2021 financial statements.

## Eighth Batch of EIPs Disbursed

IR-2021-103

The IRS, the Treasury Department, and the Bureau of the Fiscal Service have disbursed more than 1.1 million payments in the eighth batch of Economic Impact Payments (EIPs) from the American Rescue Plan. This made the total disbursed so far to approximately 164 million payments, with a total value of approximately \$386 billion. The eighth batch of payments began processing on Friday, April 30, 2021, with some people receiving direct payments in their accounts earlier as provisional or pending deposits.

Here are a few details on this batch of payments:

- The eighth batch included more than 1.1 million payments with a value of more than \$2 billion.
  - More than 585,000 payments, with a value of over \$1.2 billion, went to eligible individuals for whom the IRS previously did not have information to issue an EIP but who recently filed a tax return.
  - This batch also included additional ongoing supplemental payments for people who earlier this year received payments based on their 2019 tax returns but were eligible for a new or larger payment based on their recently processed 2020 tax returns.
  - This batch included more than 570,000 of these "plus-up" payments, with a value of nearly \$1 billion.
- Overall, the eighth batch of payments contained about 600,000 direct deposit payments (with a total value of \$1.1 billion) with the remainder on paper payments.
- The IRS also reminded taxpayers that the income levels in this third round of EIPs have changed, meaning that some will not be eligible for the third payment even if they received a first or second EIP or claimed a 2020 Recovery Rebate Credit. 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). People with adjusted gross incomes above these levels are ineligible for a payment.

## TAX BRIEFS

### *Annuities*

An annuity contract held by a trust was held for one of the children of a settlor, so Code Sec. 72(u)(1) would not apply. Because the contract would not be issued in an employment context, the arrangement would not provide the sort of tax-favored benefit that Code Sec. 72(u) was intended to limit. The trust was a not a grantor trust, and one of the children was the sole beneficiary of the trust.

[IRS Letter Ruling 202118002](#)

### *Broker Reporting*

An entity was a broker that provided services for its customers with respect to certain property. The entity entered forward contracts under which the customer paid it for the right to acquire the property in the

future. Accordingly, the entity was faced with three scenarios that could happen under the proposed transaction: (1) at the contract's closing transaction, the customer could take the delivery of the property that the taxpayer set aside; (2) prior to the contract's closing transaction, the entity could substitute the property that was set aside for the customer with a different property; and (3) at the contract's closing transaction, the customer could receive compensation equal to the value of the property. The IRS determined that the entity would not be required to file Form 1099-B to report customers' sales under the first and second scenarios, but would be required to file Form 1099-B to report its customers' sales under the third scenario.

[IRS Letter Ruling 202118005](#)

### *Business Income and Deductions*

Notices of deficiency issued to a married couple were held to be valid. The notice for the first tax year at issue was based on adjustments for the taxpayers' S corporation items unrelated to the S corporation, which was a construction and remodeling business. The taxpayers contended that the husband's race car winnings should be included in the S corporation's gross receipts, but the evidence did not show that car racing was part of the S corporation's business. The taxpayers also failed to show the connection between the S corporation's business and reported race car expenses, and did not provide evidence identifying which expenses in the S corporation's records were related to race cars. In addition, the taxpayers were not permitted

to claim depreciation deductions for expenses on Schedule C for the tax year at issue. They failed to establish the property's depreciable basis by showing the cost of the property, its useful life, or the previously allowable depreciation, and they did not demonstrate that the equipment was used for a business purpose.

*Berry, TC, Dec. 61,862(M)*

### Cash Transactions

An entity was not required to report sales of liquor for cash over \$10,000 pursuant to Code Sec. 6050I. An entity had a monopoly over liquor sales and operated state owned liquor stores through a second entity. The taxpayer represented that the second entity was an integral part of the first entity. Pursuant to standing instructions issued by the second entity, only an office manager was allowed to complete cash transactions that exceeded \$10,000 involving the purchase of liquor. In the case of such a transaction, the store manager was required to sign a Form 8300 on behalf of the second entity as the recipient of the case, and the second entity filed a suspicious activity report of the transaction with the IRS. The IRS determined that any Form 8300 filings made on behalf of the second entity by store managers were voluntary.

*IRS Letter Ruling 202118003*

### Corporate Distributions

The IRS issued rulings on federal income tax consequences of a series of proposed transactions. An entity was a publicly traded foreign eligible entity classified as a corporation for income tax purposes. The foreign parent was the parent of a worldwide group of entities engaged in several businesses and owned the outstanding stock of several foreign subsidiaries. One of these subsidiaries was the common parent (domestic corporation) of an affiliated group of corporations that filed a consolidated return; the domestic parent owned several domestic subsidiaries. There were 15 distributions made as part of the transaction. The IRS determined that one of the business's contribution and the first distribution would be a reorganization under Code Sec. 368(a)(1)(D). Moreover, one of the domestic subsidiaries would not recognize gain or loss on said business's

contribution. Another ruling stated that another domestic subsidiary's basis in each asset received in another business's contribution would be the same as the basis of such asset in the hands of the parent immediately before said contribution.

*IRS Letter Ruling 202118004*

### Debt Instruments

An entity was granted an extension of time to satisfy its requirements under Reg. §1.1275-6(c)(1)(i) relating to the identification requirements of Reg. §1.1275-6(e) for integration of a qualifying debt instrument. In order to finance certain exigent business activity and avoid economic dilution, the taxpayer intended to issue convertible notes and execute a hedging transaction. As part of the hedging transaction, the taxpayer intended to purchase call options with respect to its stock and issue and sell warrants at a higher strike price. The taxpayer sought to use the transaction to hedge the conversion feature on the convertible notes by synthetically raising their conversion price to the strike price under the warrants. The taxpayer believed that the convertible notes and call options could be integrated for tax purposes. The taxpayer did not take any affirmative action to make the identification on or before the dates that the call options were executed. However, the taxpayer was unaware of the specific identification requirements for integrated transactions under Code Sec. 1275. The taxpayer's accounting firm reviewed the transaction and discovered the taxpayer's failure to comply with the identification requirement. The accounting firm informed the taxpayer of such failure. The taxpayer acted reasonably and in good faith; granting the relief did not prejudice the interests of the government.

*IRS Letter Ruling 202118006*

### Exempt Organizations

A nonprofit corporation that presented and organized expositions and promoted African artifacts did not operate exclusively for one or more exempt purposes under Code Sec. 501(c)(3). The entity did not prove that it owned the artifacts or a collection of artifacts that were owned by one of the entity's directors. Further, all of its activities with respect to those artifacts primarily benefitted the private interest of

that director, the director's foundation, or both. The entity also failed to prove that its activities were in furtherance of a charitable or educational exempt purpose.

*Tikar, Inc., TC, Dec. 61,863(M)*

Two organizations' requests for tax-exempt status were denied under Code Sec. 501(c)(3). The first organization was a nonprofit corporation whose purpose was to revitalize and redevelop the central business district of the municipality. The second organization was organized to provide therapy for veterans, members of military services public safety responders and civilians. These organizations did not operate exclusively for exempt purposes. In addition, the second organization provided benefits to private persons who were not members of a charitable class, and failed to establish that no part of its earnings inured to the benefit of private shareholders or individuals.

*IRS Letter Ruling 202118021; 202118022*

### Foreign Travel

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 May 1, 2021.

*May Maximum Travel Per Diem Allowances for Foreign Areas*

### Gift Tax

The commutation of a trust was a disposition of a surviving spouse's qualifying income interest within the meaning of Code Sec. 2519(a), and thus, the surviving spouse would be treated as making a gift of all of the interests in the trust other than the qualifying income interest. Further, the distribution of all of the trust property to the surviving spouse constituted a transfer of the remainder interest and a gift by the remainder beneficiaries under Code Sec. 2511. The commutation and the distribution of all of the trust property to the surviving spouse were separate gift transfers by separate donors, the surviving spouse and the remainder beneficiaries, that did not offset each other. The value of the surviving spouse's Code Sec. 2519 gift to the remainder beneficiaries was the fair market value of all of the interests in the

trust less the present value of the qualifying income interest on the date of disposition. The value of the remainder beneficiaries' gifts under Code Sec. 2511 to the surviving spouse was the value of their remainder interest in the trust. In the absence of the trustee's computation of this amount, the IRS would make its own determination under the valuation rules in Code Sec. 7520.

*CCA Memorandum 202118008*

### *Liens and Levies*

The Tax Court upheld a notice of federal tax lien (NFTL) regarding a married couple's tax deficiencies for a tax year at issue. During subsequent bankruptcy proceedings, the taxpayers filed a proof of claim for tax deficiencies, but it did not include the tax year at issue which was being litigated. While the taxpayers' reorganization plan did not include their tax liability for the year at issue, the Tax Court had sustained the IRS's determination of the taxpayers' liabilities for the tax year at issue in a previous opinion. A few years later, the IRS sent the taxpayers an NFTL to collect their tax liabilities for the tax year at issue and other tax years that were simultaneously being assessed. The taxpayer contended that the bankruptcy reorganization plan had included a broad injunction releasing them from all tax obligations. However, the bankruptcy court was prohibited from discharging a debt that was nondischargeable under 11 U.S.C. §1141(d)(2). The fact that the IRS had failed to amend its proof of claim to include the tax year at issue and the associated liability was irrelevant.

*Barnes, TC, Dec. 61,859(M)*

### *Litigation Costs*

The Tax Court denied an individual's claim for reasonable administrative and litigation costs. The taxpayer provided evidence that he did in fact incur the expenses that he claimed as deductions, but he failed to establish that the expenses were ordinary and necessary expenses incurred in carrying on a trade or business. Also, the taxpayer's characterization of his activities and the associated expenses were vague

and insufficient. Therefore, it was reasonable for the IRS to question the taxpayer and request additional information on the cursory description of his expenses. Further, the government had "substantially justified" its position within the meaning of Code Sec. 7430(c)(4)(B). After the taxpayer had filed his petition, the IRS filed an answer and promptly returned the case to IRS Appeals to allow the taxpayer to defend his deductions in person. As soon as IRS Appeals returned the case, the IRS conceded it without delay.

*Jacobs, TC, Dec. 61,861(M)*

### *Net Investment Income Tax*

The dividend income received by an individual shareholder from a C corporation, in which the shareholder was an employee, was subject to the net investment income tax (NIIT) under Code Sec. 1411, and this would be so even if the C corporation were a closely-held corporation within the meaning of Code Sec. 469(h)(1) as described in Code Sec. 465(a)(1)(B). The taxpayer did not show that the dividends were received in the ordinary course of the taxpayer's trade or business, but instead argued that participating in the C corporation's business as an employee was sufficient to meet the exception in Code Sec. 1411(c)(1)(A)(i). The taxpayer's involvement in the C corporation's trade or business was not relevant. Further, Reg. §1.469-2T(c)(3)(ii) contains two exceptions that treat dividend income from C corporations as income from a trade or business, and neither of these two exceptions were applicable.

*CCA Memorandum 202118009*

### *Overpayments*

The district court had correctly determined that it lacked jurisdiction over a married couple's overpayment interest claim, and properly dismissed their amended complaint. The government failed to refund the overpayment within 45 days of the taxpayers' claim for overpayment of tax. The statutory language of 28 U.S.C. §1346(a)(1) does not confer jurisdiction, concurrent with the U.S. Court of Federal Claims, over a taxpayer's civil action against the

government solely for overpayment interest owed to the taxpayer. Further, under the Tucker Act, the Court of Federal Claims has exclusive jurisdiction over such stand-alone claims exceeding \$10,000.

*Paresky, CA-11, 2021-1 ustc ¶150,137*

### *Tax Credit Bonds*

A constituted authority that was authorized to issue bonds on behalf of a city was granted an extension of the expenditure period for the available project proceeds of the bonds. The failure to spend all the available project proceeds by the expiration of the original expenditure period was caused by events that were not reasonably expected at the time the bonds were issued and were outside of the city's control of the authority or the city. Therefore, the authority's failure to expend all the available project proceeds of the bonds was due to reasonable cause. Further, the authority ensured that the continued expenditure of the proceeds for qualified purposes would be with due diligence.

*IRS Letter Ruling 202118007*

### *Supreme Court Docket*

A petition for review was denied in the following case: The Tax Court appropriately dismissed petitions for redetermination of tax deficiencies for lack of jurisdiction because the petitions were untimely; further, the mailbox rule did not apply. Entities that operated marijuana dispensaries sought to file their petitions for redetermination by the last day to file such petitions, but the Tax Court did not get the notices until two days after they were dropped off at the office of a delivery service. In preparing two Tax Court petitions for filing, the attorneys in this case delegated the task of arranging delivery to a secretary who selected an overnight delivery service that was not listed at the time on the IRS's published list. The taxpayers advanced no evidence showing that the Tax Court clerk's office remained inaccessible for the several hours that followed after the delivery service's unsuccessful attempt to deliver the package.

*Organic Cannabis Foundation, LLC, CA-9, 2020-1 ustc ¶150,140*