Wolters Kluwer

MAY 20, 2021
ISSUE NUMBER 21

FEDERAL TAX WEEKLY

INSIDE THIS ISSUE

Automatic Accounting Method Change Procedures Expanded for CFCs ... 1

Dependent Care Carryover, Extended Claims Period Treatment Clarified ... 2

2022 HSA Amounts Released ... 3

QOZ Boundaries Established at Time Designated ... 3

Tennessee Victims of Storms, Tornadoes and Flooding Get Relief ... 3

Dyed Diesel Fuel Penalty Relief ... 4

Split-Dollar Insurance Rights Valued for Estate Tax ... 4

Form 7200 Under Revision ... 5

Refunds Coming for Excluded 2020 Unemployment Pay ... 5

TAP Volunteer Application Deadline Extended ... 5

Options for Taxpayers Who Can't Pay in Full ... 6

Ninth Batch of EIPs Announced ... 6

Tax Briefs ... 7

Automatic Accounting Method Change Procedures Expanded for CFCs

Rev. Proc. 2021-26

The IRS has modified its automatic consent procedures in Rev. Proc. 2019-43, I.R.B. 2019-48, 107, to allow certain foreign corporations to change their method of accounting for deprecation to the alternative depreciation system under Code Sec. 168(g) (ADS). Additionally, terms and conditions in Rev. Proc. 2015-13, I.R.B. 2015-5, 419 (related to the source, separate limitation classification, and character of Code Sec. 481(a) adjustments) are revised, and the audit protection rules are clarified. The changes are made to take into account the global intangible low-taxed income (GILTI) provisions in Code Sec. 951A.

GILTI and ADS

A U.S. shareholder of a controlled foreign corporation (CFC) may be required to include in income its GILTI for the tax year. In determining the GILTI inclusion, CFC tested income is reduced by the net deemed tangible income return or 10 percent of qualified business asset investment (QBAI).

For purposes of determining QBAI, the adjusted basis in specified tangible property is determined by using ADS under Code Sec. 168(g), and by allocating the depreciation deduction with respect to such property for the CFC inclusion year ratably to each day during the period in the tax year to which the depreciation relates.

In addition, for purposes of determining income and earnings and profits (E&P), a CFC is generally required to use ADS for depreciable property predominately used outside the United States under Code Sec. 168(g)(1)(A). A CFC may instead use a depreciation method used for its books of account regularly maintained for accounting to shareholders or a method conforming to U.S. generally accepted accounting principles (a "non-ADS depreciation method") if the differences between ADS and the non-ADS depreciation method are immaterial.

CFCs that are not otherwise required to use ADS for computing their income and earnings and profits may want to change to ADS with respect to such property to conform their income, earnings and profits, and QBAI computations.

Automatic Consent Expansion

Under Rev. Proc. 2015-13 and Rev. Proc. 2019-43, a CFC on an impermissible non-ADS method of accounting for depreciation for purposes of computing its income and earnings and profits may request to change its method to the straight-line method, the applicable

convention, and the applicable recovery period under ADS using automatic change procedures. However, a CFC on a permissible non-ADS method of accounting is ineligible for an automatic change to use ADS.

Rev. Proc. 2019-43 is modified to provide procedures for a limited period for a CFC on an impermissible non-ADS method, as well as a CFC on a permissible non-ADS method, to obtain automatic consent to change its method of accounting for depreciation of property to ADS in determining the CFC's gross and taxable income under Reg. §1.952-2, and E&P under Code Secs. 964 and 986(b). Certain eligibility restrictions in Rev. Proc. 2015-13 are temporarily waived. The procedures ease the burden on all CFCs conforming their income and E&P computations with QBAI computations.

481(a) Adjustments

If there is a change in a CFC's method of accounting, the difference between the CFC's income and E&P under the old and new methods must generally be taken into account as a Code Sec. 481(a) adjustment, The terms and conditions of Rev. Proc. 2015-13 are updated to take into account the GILTI rules in Code Sec. 951A, as well as the repeal of foreign base company oil related income, as a category of foreign base company income. A CFC's Code Sec. 481(a) adjustment must be taken into account in determining the CFC's tested income or tested loss.

Audit Protection

Under Rev. Proc. 2015-13, with certain exceptions, a taxpayer generally will receive audit protection with respect to an item that is subject to an accounting method change when it timely files a Form 3115, Application for Change in Accounting Method. Audit protection is not provided for an accounting method made on behalf of a CFC or 10/50 corporation for the tax year before the requested year of change in which one or more of the corporation's domestic shareholders compute deemed paid foreign taxes under Code Sec. 902 or Code Sec. 960 that exceeds 150 percent of the of the average amount of foreign taxes deemed paid in the shareholder's three prior tax years.

The audit protection exception is not changed, but it is clarified that the 150-percent threshold is computed with respect to the amount of the foreign corporation's foreign taxes deemed paid, regardless of the extent to which a foreign tax credit is allowed.

Effective Dates

The automatic accounting method change procedures are effective for a Form 3115 filed on or after May 11, 2021, for a tax year of a CFC ending before January 1, 2024. The revised terms and conditions for change and the audit protection clarification are effective for a Form 3115 filed on or after May 11, 2021.

Dependent Care Carryover, Extended Claims Period Treatment Clarified

Notice 2021-26; IR-2021-105

Dependent care assistance benefits carryovers and extended claims period amounts that would have been excluded from income if used during the preceding tax year will remain excludable in tax years ending in 2021 and 2022. In addition, these benefits will not be taken into account in determining the dependent care benefits exclusion limit for the tax years ending in 2021 and 2022.

Dependent Care Assistance Exclusion

Employees may exclude amounts their employer pays or incurs for dependent care assistance benefits if furnished pursuant to a dependent care assistance program. For 2020, the exclusion could not exceed $5,000, $2,500 if married filing separately (for 2021 only, increased to $10,500, $5,250 if married filing separately). Unused benefits may be used during a 2 1/2 month grace period following the plan year's end. However, if the sum of the benefits used in the tax year (including unused benefits used during a grace period that falls in the tax year) exceeds the limitation, the excess is taxable.

Carryovers and Extensions

Beyond the grace period, carryovers of unused dependent care assistance program

REFERENCE KEY

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

FEDERAL TAX WEEKLY, 2021 No. 21. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.
© 2021 CCH Incorporated and its affiliates. All rights reserved.

amounts generally are not permitted. However, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (P.L. 116-260) allowed employers to amend their plans to permit carryovers to plan years ending in 2021 and 2022, or to extend the permissible period for incurring claims to plan years over the same period.

Under Notice 2021-15, I.R.B. 2021-10, 898, if an employer adopts the carryover or the extended period, the annual limits apply to amounts contributed for a year, and not to amounts reimbursed or otherwise available for reimbursement.

Notice 2021-26 clarifies that dependent care assistance program benefits that would have been excluded from income if used during the tax year ending in 2020 or 2021, remain eligible for exclusion from the participant's gross income, and are disregarded in applying the limits for the employee's subsequent tax years when they are carried over from a plan year ending in 2020 or 2021 or permitted to be used pursuant to an extended claims period.

Notice 2021-26 also provides examples illustrating the possible tax consequences of electing $10,500 in benefits for a plan year beginning in 2021 but ending in 2022.

2022 HSA Amounts Released

The IRS has released the 2022 inflation-adjusted amounts for health savings accounts (HSAs) under Code Sec. 223. For calendar year 2022, the annual limitation on deductions under Code Sec. 223(b)(2) for an individual with self-only coverage under a high-deductible plan is $3,650 ($7,300 for an individual with family coverage).

A "high-deductible health plan" is defined in Code Sec. 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,400 for self-only coverage, $2,800 for family coverage, and annual out-of-pocket expense limits (deductibles, copayments and other amounts, but not premiums) that do not exceed $7,050 for self-only coverage, $14,100 for family coverage.

Rev. Proc. 2021-25

QOZ Boundaries Established at Time Designated

Announcement 2021-10

The IRS has announced that the boundaries of designated qualified opportunity zones (QOZs) were established at the time they were designated and are not subject to change. This announcement was in response to questions on the effect, if any, of the 2020 decennial census, recently released by the U.S. Census Bureau, on boundaries of QOZs listed in Notice 2018-48, I.R.B. 2018-28, 9, or Notice 2019-42, I.R.B. 2019-29, 352.

Those notices set forth lists of the designated QOZs based on census tract numbers and census tract boundaries that existed as of the notices' respective 2018 and 2019 publication dates. The census tract numbers and boundaries were based on the 2010 decennial census.

If the 2020 decennial census results in a change to a 2010 census tract number listed in Notice 2018-48 and Notice 2019-42 and associated with a designated QOZ, the 2010 census tract number continues to apply for purposes of identifying the designated QOZ.

Tennessee Victims of Storms, Tornadoes and Flooding Get Relief

TN-2021-01; IR-2021-112

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

The disaster area includes Campbell, Cannon, Cheatham, Claiborne, Clay, Davidson, Decatur, Fentress, Grainger, Hardeman, Henderson, Hickman, Jackson, Madison, Maury, McNairy, Moore, Overton, Scott, Smith, Wayne, Williamson, and Wilson counties.

Tennessee 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 includes the May 17, 2021, deadline for filing 2020 individual income tax returns and paying any tax due. Taxpayers also have until August 2, 2021, to make 2020 IRA contributions.

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.

© 2021 CCH Incorporated and its affiliates. All rights reserved.

Tennessee 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, as well as the May 17, 2021, deadline for paying any individual income tax due. 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.

Taxpayers claiming a disaster loss on their 2020 or 2021 return should write the disaster designation "Tennessee Severe Storms, Straight-line Winds, Tornadoes, and Flooding" in bold letters at the top of the form, and should include the disaster declaration number, FEMA 4601-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.

Dyed Diesel Fuel Penalty Relief

The IRS has announced that, in response to disruptions of the Colonial Pipeline fuel supply chain, it will not impose a penalty when dyed diesel fuel is sold for use or used on the highway in Alabama, Delaware, Georgia, Florida, Louisiana, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, or the District of Columbia. This relief is retroactive to May 7, 2021, and will remain in effect through May 21, 2021.

This penalty relief is available to any person that sells or uses dyed diesel fuel for highway use. In the case of the operator of the vehicle in which the dyed diesel fuel is used, the relief is available only if the operator or the person selling such fuel pays the tax of 24.4 cents per gallon that is normally applied to diesel fuel for highway use.

The IRS will not impose penalties for failure to make semimonthly deposits of this tax.

IR-2021-108

Split-Dollar Insurance Rights Valued for Estate Tax

C.M. Morrissette, Est., TC Memo. 2021-060, Dec. 61,870(M)

Premiums paid on split-dollar life insurance policies or the policies' cash surrender values were not includible in a decedent's gross estate because the transfers were bona fide sales for full and adequate consideration. Instead, the split-dollar rights includible in the estate were valued.

Bona Fide Sale Exception

The government argued that under the split-dollar life insurance agreements, the decedent's trust retained rights under Code Secs. 2036 and 2038, and thus, the cash surrender values of the policies were includible in the gross estate. Because the bona fide sale exception applied, the premiums or cash surrender value were not included.

The split-dollar agreements served at least two legitimate nontax reasons. First, they ensured that the family business would remain in family control after the decedent's death. In addition, the agreements allowed for a smooth transition in the company's management to the younger generation. The agreements were also part of an estate tax saving strategy, but this was not the primary motivation. The adequacy of the consideration received was not the same as fair market value for these purposes. The split-dollar plans provided incentives for the younger generation to stay with the family business and overall protected against risks to the business. The decedent's trust received full and adequate consideration on the basis of the agreements repayment terms.

Special Valuation Rule

Code Sec. 2703(a) would apply to disregard the mutual termination restriction unless the restriction is a bona fide business arrangement. The split-dollar arrangements were entered into for a valid business purpose and the mutual termination restriction was added so that a son could not jeopardize the valid business purpose of the arrangements. In addition, the restriction was not a testamentary device to transfer property for less than full and adequate consideration. The split-dollar agreements included repayments terms that would have been accepted by a reasonable investor. Finally, the restriction would have been part of an arm's-length negotiation between unrelated parties. As a result, the exception applied and mutual terminator restriction was not disregarded for valuation purposes.

Fair Market Value

After examining the experts' methods, the court directed the parties to determine

the annual probability-adjusted expected value for each policy based on the estate's expert's expected cash surrender values and the government's expert's probabilities of mortality where those value were more favorable to the estate than those used by the government's expert and the IRS mortality tables. The court further instructed the parties which discount rates to apply.

Accuracy-Related Penalties

The court's determination of the value of the split-dollar rates resulted in a gross valuation misstatement. Written supervisory approval of the penalties was established because a revenue agent determined the penalties after conversation with his supervisor, who then approved the penalties in an email the following day. The expert's valuation of the split dollar rights was not reasonable and the estate should have known that.

Form 7200 Under Revision

The IRS has announced on its webpage that Form 7200, Advance Payment of Employer Credits Due to COVID-19, is currently under revision, to cover the new COBRA premium assistance credit, modified employee retention credit and modified credit for qualified sick and family leave wages added by the American Rescue Plan Act of 2021 (P.L. 117-2).

Employers *should not* file the January 2021 revision or any other prior version of this form for the second, third or fourth quarters of 2021. Instead, they should wait to file Form 7200 for the second quarter until the newest revision is available.

The IRS cautions that use of prior versions of Form 7200 for the second, third, or fourth quarter will result in the advance payment request being rejected.

Refunds Coming for Excluded 2020 Unemployment Pay

IR-2021-111

The IRS announced that it had started issuing refunds to eligible taxpayers who paid taxes on 2020 unemployment compensation that was excluded from taxable income by the recently enacted American Rescue Plan (ARP) (P.L. 117-2).

Unemployment compensation is taxable income, but the ARP excludes $10,200 in unemployment compensation from the income used to calculate the amount of taxes owed. The $10,200 per person exclusion applies to taxpayers who are single or married filing jointly, with modified adjusted gross income of less than $150,000. The $10,200 is the amount of income exclusion, not the amount of the refund itself.

The IRS has identified over 10 million taxpayers who filed their tax returns prior to the ARP becoming law in March, and is reviewing past returns to determine the correct taxable amount of unemployment compensation and tax. This could potentially result in a refund, reduced balance due, or with no refund being owed.

The first phase of adjustments is being made for single taxpayers who had the simplest tax returns, such as those filed by taxpayers who did not claim children or any refundable tax credits. Notices explaining the corrections will be sent to taxpayers, and are expected to reach them within 30 days of the correction being made.

The IRS stated that it will issue refunds by direct deposit to taxpayers who provided their bank account information on their returns. Alternatively, refunds will be mailed as a paper check to the taxpayer's address of record.

These refunds will be subject to normal offset rules, such as past-due federal tax, state income tax, state unemployment compensation debts, child support, spousal support or certain federal nontax debts, such as student loans. The IRS will send separate notices to those taxpayers whose refunds could be offset to settle unpaid debts.

Further, corrections to any Earned Income Tax Credit (EITC) without qualifying children and the recovery rebate credit are being made automatically as part of this process. However, some taxpayers may be eligible for certain income-based tax credits that were not claimed on their original return. The IRS also reminded taxpayers to file an amended tax return if the revised adjusted gross income amount makes them eligible for additional benefits.

TAP Volunteer Application Deadline Extended

IR-2021-109

The IRS has extended the deadline for civic-minded U.S. citizens to apply for membership to volunteer on the Taxpayer Advocacy Panel (TAP) for 2022. Taxpayers may submit an online TAP application at https://www.improveirs.org/ through June 1, 2021.

The TAP is seeking members for: Arkansas, California, Connecticut, Delaware, Georgia, Idaho, International, Kentucky, Massachusetts, Michigan, Missouri, Minnesota, Montana, North Dakota, Nebraska, New Mexico, New York, Oklahoma, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Wisconsin and West Virginia.

The panel is also seeking alternates for: Alabama, California, Connecticut, District of Columbia, Florida, Hawaii, Idaho,

© 2021 CCH Incorporated and its affiliates. All rights reserved.

Kentucky, Massachusetts, Michigan, Missouri, North Dakota, Nebraska, New Hampshire, New Mexico, Nevada, Ohio, Oregon, Rhode Island, Texas, Vermont, Wisconsin, West Virginia and Wyoming.

The TAP is a federal advisory committee that identifies major taxpayer concerns and makes recommendations for improving IRS service. More information can be found by calling 888-912-1227 or emailing taxpayeradvocacypanel@irs.gov.

New TAP members will serve a three-year term starting in December 2021.

Options for Taxpayers Who Can't Pay in Full

IR-2021-110

The IRS has reminded taxpayers who owe 2020 taxes that there are different ways to pay their taxes online, including payment options for many people who cannot pay in full.

The IRS stated that the most important thing that taxpayers with a tax bill should do is file a return by the May 17 due date, even if they cannot pay in full, or request a six-month extension to avoid higher penalties for failing to file on time. The IRS emphasized that even though automatic tax filing extensions are available, these extensions do not change the payment deadline.

Further, interest, plus the much smaller late-payment penalty, will apply to any payments made after May 17. Normally, the late-payment penalty is one-half-of-one percent (0.5%) per month. The interest rate, adjusted quarterly, is currently 3% per year, compounded daily.

The IRS urges taxpayers to use Direct Pay, which is the fastest and easiest way to pay a personal tax bill. In addition, the IRS has noted that online payment plans are processed more quickly than requests submitted with electronically-filed tax returns.

There are two main types of online payment plans:

- Short-term payment plan: The payment period is 120 days or less and the total amount owed is less than $100,000 in combined tax, penalties and interest. A 180-day payment plan is also possible, but is only available by calling or writing the IRS.
- Long-term payment plan ("installment agreement"): Payments are made monthly, and the amount owed must be less than $50,000 in combined tax, penalties and interest. If the IRS approves an installment agreement, a setup fee normally applies, but low-income taxpayers may qualify to have the fee waived or reimbursed. In addition, for anyone who filed their return on time, the late-payment penalty rate is cut in half while an installment agreement is in effect. This means that the penalty accrues at the rate of one-quarter-of-one percent (0.25%) per month, instead of the usual one-half-of-one percent (0.5%) per month.

Taxpayers who do not qualify for an online payment agreement may still be able to arrange to pay in installments. If the IRS determines a taxpayer is unable to pay, it may delay collection until their financial condition improves. Taxpayers can request a delay by calling the phone number on their IRS notice or 800-829-1040.

Some taxpayers can qualify to settle their tax bill for less than the full amount due through an offer in compromise. Though there is typically a $205 nonrefundable application fee, it is generally waived for low-income taxpayers, and for offers based on doubt as to liability. The Offer in Compromise Pre-Qualifier tool can help determine eligibility for anyone interested in applying.

Ninth Batch of EIPs Announced

IR-2021-107

The IRS, the U.S. Department of the Treasury and the Bureau of the Fiscal Service announced that they have disbursed nearly 1 million payments in the ninth batch of Economic Impact Payments (EIPs) from the American Rescue Plan. As of May 12, this put the total disbursed to approximately 165 million, valuing approximately $388 billion. The ninth batch of payments began processing on Friday, May 7, with an official payment date of May 12.

Additional information on this batch of payments:

- The ninth batch includes more than 960,000 payments with a value of more than $1.8 billion.
- More than 500,000 payments, with a value of over $1 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 includes additional ongoing supplemental payments for people who earlier this year received payments based on their 2019 tax returns but are eligible for a new or larger payment based on their recently processed 2020 tax returns.
- This batch included more than 460,000 of these "plus-up" payments, with a value of more than $800 million. In all, the IRS has made more than 6 million of these supplemental payments this year.
- This batch contains nearly 500,000 direct deposit payments (with a total value of $946 million) with the remainder as paper payments.

TAX BRIEFS

American Rescue Plan

The IRS provided an overview of some of the key tax provisions in the American Rescue Plan Act (P.L. 117-2), including retroactive changes for tax year 2020.

IR-2021-106

Bankruptcy

A Chapter 13 bankruptcy debtor's earned income tax credit (EIC) exemption for bankruptcy purposes was limited to the portion of her federal refund attributable to her federal EIC. Since that amount was the maximum EIC to which she was entitled under Code Sec. 32, the taxpayer was not entitled to exempt any of her state (Kansas) tax refund attributable to state Kansas EIC.

Stackley, BC-DC Kan., 2021-1 USTC ¶50,142

A bankruptcy debtor received a tax refund comprised of taxes withheld, a recovery rebate credit (RRC), an additional child tax credit (ACTC), and an earned income tax credit (EITC). The ACTC and the EITC were protected from bankruptcy administration under state (Washington) law. The debtor's entire tax refund was either not property of the bankruptcy estate, in the case of the RRC, or was exempt from administration in bankruptcy, in the case of the portions accounting for taxes withheld, the ACTC, and the EITC.

Moreno, BC-DC Wash., 2021-1 USTC ¶50,141

Business Expenses

An individual who was a consultant for a digital entertainment company was not entitled to deduct business expenses for the tax years at issue. For the first year at issue, the taxpayer filed for deductions under Schedule C, Profit or Loss From Business, for certain expenses including that of travel, but was unable to substantiate these expenses. Some expenses related to personal travel, so they were not deductible as ordinary and necessary business expenses.

Adler, TC, Dec. 61,866(M)

Corporate Liquidations

In each of two cases, an S corporation target, its shareholder/s and purchaser of the S corporation stock were granted a 75-day extension to file an election statement with respect to a stock disposition. The shareholder/s had sold all their stock in the S corporation target to a purchaser. The parties intended but, for various reasons, a timely election (first case) and election statement (second case) were not made. The parties represented that they were not seeking to alter a return position for which an accuracy-related penalty had been or could be imposed. Further, the parties acted reasonably and in good faith, the requirements of Reg. §§301.9100-1 and 301.9100-3 were satisfied, and granting relief would not prejudice the government's interests.

IRS Letter Ruling 202119006; 202119008

Discharge of Debt

Two entities were granted a 45-day extension to file an amended return to make an election under Code Sec. 108(b)(5) and Reg. §1.108-4(b), and the taxpayers (owners of said entities) would reduce basis in their depreciable real property on their tax returns for one of the tax years at issue to the extent that would have been required if the election had been timely made on the original return. A firm employed by the taxpayers discovered that the relevant Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment), was inadvertently omitted from the previous year's tax return. The taxpayers had communicated their intention to make the election, and the firm was ultimately responsible for making the election. The taxpayers acted reasonably and in good faith and, therefore, granting relief would not prejudice the government's interests.

IRS Letter Ruling 202119004

Drilling Costs

In consolidated cases, an partnership's reported estimated drilling costs were not costs of goods sold (COGS) for the tax years at issue. The entity had acquired hundreds of thousands of acres of minerals and lease interests, and had planned to explore for, mine, and produce natural gas for sale. However, the entity did not drill, receive drilling services from third parties, or receive drilling property during the tax years in issue. Because the entity had no gross receipts from the sale of natural gas for the years in issue, estimated drilling costs reported as "cost of goods sold" were not allowable as a cost of goods sold offset to gross receipts.

BRC Operating Company LLC, TC, Dec. 61,869(M)

Enrolled Agents

The IRS has begun sending letters to enrolled agents (EAs) whose enrollment status was terminated or inactivated because of failure to renew. EAs with SSNs ending in 7, 8, 9, or no SSN, who have not renewed for the 2018 and 2021 cycles will have their enrollment placed in terminated status. Anyone in terminated status must retake the Special Enrollment Examination (SEE) to apply for re-enrollment. EAs with SSNs ending in 7, 8, 9, or no SSN, who did not renew for the 2021 cycle will have their enrollment placed in inactive status. Anyone in inactive status can still submit a late renewal for approval, with proof of continuing education.

Enrolled Agent News

Joint Committee on Taxation

The Joint Committee on Taxation (JCT) prepared a document titled "Present Law and Background on the Taxation of High Income and High Wealth Taxpayers," related to a public hearing before the Subcommittee on Select Revenue Measures of the House Committee on Ways and Means on May 12, 2021. The document presents and discusses the available data on sources of income and composition of wealth, provides a detailed description of relevant present law tax provisions that relate to income taxation and wealth transfer taxation, and discusses proposals that

© 2021 CCH Incorporated and its affiliates. All rights reserved.

share an aim to increase the progressivity of the federal tax system.

JCX-24-21

Liens and Levies

A married couple's petition for review of IRS's determination of levy was not filed within the time prescribed by Code Sec. 6330(d)(1). The taxpayers provided no credible evidence, so they failed to meet the requirements of Code Sec. 7502 and did not carry their burden of proving that the petition was timely mailed; therefore, the IRS's motion to dismiss the case for lack of jurisdiction was granted.

Spain, TC, Dec. 61,868(M)

MACRS Exempt Use Property

A C corporation that was a tax-exempt controlled entity was treated as if it made a timely election to not be treated as a tax-exempt entity under Code Sec. 168(h)(6)(F)(ii). The taxpayer was a co-managing member of a partnership formed to acquire, rehabilitate, own, lease and manage an affordable housing project so that its owners would qualify for the low-income housing credit. Under a paragraph of the operating agreement, the taxpayer had agreed to make the election described in Code Sec. 168(h)(6)(F)(ii). However, due to an oversight and lack of communication, the taxpayer inadvertently failed to make a timely election. The taxpayer requested relief before the failure to make the election was discovered by the IRS. The taxpayer acted reasonably and in good faith, and the interests of the government would not be prejudiced by the granting of relief.

IRS Letter Ruling 202119005

Micro-Captive Insurance Transactions

The variant of micro-captive insurance transactions promoted by an entity were the same as, or substantially similar to, the transaction of interest in Notice 2016-66, I.R.B. 2016-47, 745. The micro-captive transactions involved captives formed by business owners to purportedly insure risks of their business entities, and satisfied either a 70 percent loss ratio test or a circular flow of funds test.

Field Attorney Advice 20211701F

Qualified Opportunity Funds

A limited liability company (LLC) was given an extension of time to file Form 8996, Qualified Opportunity Fund (QOF) to make an election under Code Sec. 1400Z-2. The taxpayer was organized as a partnership for the purpose of investing in qualified opportunity zone property. The chief financial officer (CFO) of the taxpayer, who also served as its tax advisor, was not involved in the discussions of qualifying the taxpayer as a QOF, nor was the CFO involved with the investor communications. Therefore, the CFO was unaware of the need to file a Form 8996 with the taxpayer's tax return for the tax year at issue. The taxpayer acted reasonably and in good faith, therefore granting relief did not prejudice the interests of the government.

IRS Letter Ruling 202119003

Section 197 Intangibles

Payment of the initial contribution by a commissioned corporation entitled it to receive an amortizable Code Sec. 197 intangible from a state within the meaning of Code Sec. 197(d)(1)(D). Each annual contribution was treated as an additional payment to retain the rights obtained under the fund that was subject to capitalization and the additional basis was subject to amortization under Code Sec. 197 over the remaining amortization period of the amortizable Code Sec. 197 intangible created by the initial contribution.

IRS Letter Ruling 202119007

Stipulation of Issues

A married couple's stipulation of settled issues regarding Schedule E income from a limited liability company (LLC) was binding, and the taxpayers failed to show grounds for withdrawing the stipulation. They offered no explanation as to why the stipulation they signed did not supersede the claims in their amended returns from several weeks earlier, why they signed the stipulation if they disagreed with it, or why justice required relief from the stipulation. The taxpayers also did not establish that the computations of the LLC's income and their distributive shares set forth in the stipulation were incorrect.

Bailey, TC, Dec. 61,865(M)

Tax Penalties

A married couple's motion for partial summary judgment relating to the initial determination of penalties was granted. The taxpayers had received a revenue agent report (RAR), with a Letter 4121, Agreed Examination Report Transmittal, from an IRS examining agent (EA) which was an initial determination to impose accuracy-related penalties on the taxpayers. However, the RAR did not include the supervisory approval for the initial determination of the penalty assessment by the EA's immediate senior, so the penalty did not meet the Code Sec. 6751(b) requirements.

Battat, TC, Dec. 61,867(M)

Unreported Income

Two individuals, both shareholders in various corporations involved in tax evasion, had unreported income from these entities. The IRS successfully proved that the individuals committed tax fraud.

Jenkins, TC, Dec. 61,864(M)