



# FEDERAL TAX WEEKLY

## INSIDE THIS ISSUE

Simplified Return Procedures for Advance Child Credit Payments and EIPs.....	1
First Monthly Child Tax Credit Payment Coming in July.....	2
Guidance on COBRA Premium Assistance, Related Tax Credit.....	2
Groups Urged to Share Tax Information With Those Without Permanent Addresses.....	3
2021 Inflation Amounts for Renewable Energy Production Credit.....	3
Nonacquiescence in Split-Dollar Life Insurance Decision.....	4
Suit to Enjoin IRS Notice Did Not Trigger Anti-Injunction Act.....	4
District Court's Invalidation of Reg. §1.170A-9 Reversed.....	5
Treasury Report on Tax Compliance Measures.....	5
Summary of Office of Tax Policy Meetings.....	5
Entity Cannot Make Separate Election to Carryback Specified Liability Losses.....	6
AFRs Issued For June 2021.....	6
Late Filers Should File to Limit Penalties.....	7
Tax Briefs.....	7

## Simplified Return Procedures for Advance Child Credit Payments and EIPs

*Rev. Proc. 2021-24*

Individuals may use two special procedures to file returns for 2020 that allow them to receive advance payments of the 2021 child credit and the 2021 Recovery Rebate Credit. Under the procedures:

- individuals who are not required to file returns for 2020 can use a simplified federal income tax return filing procedure; and
- individuals with zero adjusted gross income (AGI) for 2020 can file electronic returns by entering "\$1" in several fields.

### Simplified Return Procedures

Individuals may file simplified 2020 returns electronically or on paper if they have not filed and are not required to file 2020 returns. The simplified procedures apply to Forms 1040, 1040-SR and 1040-NR.

The individual should write "Rev. Proc. 2021-24" at the top of a paper return. The procedure includes detailed instructions for providing identification, income and direct deposit information.

### Zero AGI

Many filing systems for electronic returns will not accept returns that report zero AGI. To file an electronic return, in addition to all other information required to be entered on Form 1040, Form 1040-SR, or Form 1040-NR, an individual with no AGI should report:

- \$1 as taxable interest on line 2b of the form;
- \$1 as total income on line 9 of the form; and
- \$1 as AGI on line 11 of the form.

Filers of Form 1040-NR with no AGI should also report \$1 as itemized deductions on lines 7 and 8 of Schedule A (Form 1040-NR) and line 12 of Form 1040-NR.

### Returns Must Be Accurate

Simplified returns and zero-AGI electronic returns are federal income tax returns for all purposes. Thus, the individual must properly sign the return under penalties of perjury. The returns must also provide accurate information. However, the IRS will not challenge the accuracy of income items reported by taxpayers using these special procedures.

## Individuals Who Filed 2020 Returns

Individuals who have already filed their 2020 returns do not have to do anything further to:

- receive advance child credit payments for an eligible child shown on that return;
- receive a third-round Economic Impact Payment (EIP) for the 2021 recovery rebate credit that is attributable to a dependent shown on that return; or
- claim a previously claimed 2020 recovery rebate credit and additional 2020 recovery rebate credit for themselves and for each eligible qualifying child.

Similarly, an individual who filed a federal income tax return for 2019, including by entering information in the “Non-Filers: Enter Information Here” tool on the IRS website, also do not need to file any additional forms or contact the IRS in order to receive advance child credit payments for a qualifying child shown on that return. An individual who did not receive EIPs for the full amount of the 2020 Recovery Rebate Credits may claim them by filing a 2020 federal income tax return.

## First Monthly Child Tax Credit Payment Coming in July

The IRS and the Treasury Department have announced that the first monthly payment of the new refundable Child Tax Credit (CTC) from the American Rescue Plan will be made on July 15. The increased CTC payments will be made on the 15th of each month unless the 15th falls on a weekend or holiday. Eligible families will receive a payment of up to \$300 per month for each child under age 6 and up to \$250 per month for each child age 6 and above.

The American Rescue Plan increased the maximum CTC in 2021 to \$3,600 for children under the age of 6 and to \$3,000 per child for children between ages 6 and 17. Households covering more than 65 million children will receive the monthly CTC payments through direct deposit, paper check, or debit cards. Additional information on accessing CTC will be available soon at [IRS.gov/childtaxcredit2021](https://www.irs.gov/childtaxcredit2021).

*IR-2021-113*

## U.S. Territory Residents

The simplified return and zero-AGI procedures do not apply to residents of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.

- Residents of Puerto Rico may be eligible to claim the child tax credit from the IRS under procedures to be announced

at a later date, but they are not eligible to receive advance child tax credit payments.

- Residents of other U.S. territories should contact their local territory tax agency for additional information about the child tax credit and advance child tax credit payments, third-round economic impact payments, the 2020 recovery rebate credit, and the additional 2020 recovery rebate credit.

## Guidance on COBRA Premium Assistance, Related Tax Credit

*Notice 2021-31; IR-2021-115*

The IRS has provided guidance for employers, plan administrators, and health insurers regarding the new credit available to them for providing continuation health coverage to certain individuals under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) during the COVID-19 (Coronavirus) emergency.

COBRA provides eligible former employees, retirees, spouses, former spouses, and dependent children with the

right to temporary continuation of health coverage at group rates. COBRA generally covers health plans maintained by private-sector employers with 20 or more full and part-time employees. It also covers employee organizations or federal, state or local governments. State mini-COBRA laws often provide similar benefits for insured small employers not subject to Federal COBRA.

The American Rescue Plan Act (P.L. 117-2) provided a temporary 100% reduction in the premium that individuals would have to pay when they elect

COBRA continuation health coverage following a reduction in hours or an involuntary termination of employment. The new law provides a corresponding tax credit for the entities that maintain group health plans, such as employers, multiemployer plans, and insurers. The 100% reduction in the premium and the credit are also available with respect to continuation coverage provided for those events under comparable state laws, sometimes referred to as “mini-COBRA.”

Under the new law, COBRA premium assistance is available to eligible individuals

### REFERENCE KEY

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

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as of the first period of coverage beginning on or after April 1, 2021, and will not be available for periods of coverage beginning after September 30, 2021. For each Assistance Eligible Individual, COBRA premium assistance does not extend beyond the period of COBRA continuation coverage in the event that the period ends prior to September 30, 2021. If an individual receiving premium assistance becomes eligible for coverage under any other group health plan or for Medicare, the premium assistance period ends.

**Example:** On April 1, 2021, the individual's employment is terminated, and the individual becomes a qualified beneficiary. The individual elects COBRA continuation coverage and becomes an Assistance Eligible Individual with COBRA continuation coverage beginning on April 1, 2021, the date the individual lost coverage. On July 1, 2021, the individual becomes eligible for coverage under a group health plan sponsored by the employer of the individual's spouse and ceases to be an Assistance Eligible Individual. The individual ceases COBRA continuation coverage as of July 1, 2021, and enrolls in coverage in the group health plan sponsored by the employer of the individual's spouse. On August 1, 2021, the individual's spouse has an involuntary termination of employment, and as a result

the individual and spouse lose coverage. The individual and spouse become qualified beneficiaries due to the loss of coverage and elect COBRA continuation coverage with the plan sponsored by the spouse's employer. The individual and spouse become Assistance Eligible Individuals with respect to COBRA continuation coverage as of August 1, 2021.

## Groups Urged to Share Tax Information With Those Without Permanent Addresses

In an ongoing effort to help those experiencing homelessness, the IRS has reminded people who do not have a permanent address or a bank account that they may still qualify for stimulus payments and other credits, including the advance child tax credit (ACTC) and the recovery rebate credit (RRC).

To help people experiencing homelessness, the rural poor, and other historically underserved groups, the IRS is also urging community groups, employers, and others to share information about Economic Impact Payments (EIPs), the upcoming ACTC, and other key programs to help more eligible people file a tax return and receive all of the benefits to which they are eligible.

Employers can help by making their employees aware of the third EIP, the 2020 RRC, the earned income tax credit (EITC) and the CTC, and by encouraging employees to file for these benefits based on tax year 2020 rules. The American Rescue Plan, enacted in March 2021, expanded EITC and the CTC benefits for the 2021 tax year.

The IRS also continues to work extensively with community groups across the country to get people to file tax returns and receive all the EIPs and credits they are entitled to. These efforts helped lead to more than 8 million people last year to submit tax returns who normally do not file.

*IR-2021-116*

In Notice 2021-31, the IRS has provided information regarding the calculation of the credit, the eligibility of individuals, the premium assistance period, and other information vital to employers, plan administrators, and insurers to understand the credit.

## 2021 Inflation Amounts for Renewable Energy Production Credit

*Notice 2021-32*

The IRS has published inflation adjustment factor and reference prices for determining the availability of the credit for renewable electricity production and refined coal production for calendar year 2021. The inflation adjustment factors and reference prices apply to calendar year 2021 sales of kilowatt hours of electricity produced in the United States or a U.S. possession from qualified energy resources, and to 2021 sales of refined coal produced in the U.S. or a possession.

The inflation adjustment factor for qualified energy resources and refined coal is 1.6878. The inflation adjustment

factor for calendar year 2021 for Indian coal is 1.2998. The reference price for facilities producing electricity from wind is 3.59 cents per kilowatt hour. The reference prices for fuel used as feedstock in connection with the statutory law governing refined coal production are \$31.90 per ton for calendar year 2002 and \$45.64 per ton for calendar year 2021. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy have not been determined for calendar year 2021.

### Phaseout Limits

The renewable electricity production credit is not subject to a phaseout under Code Sec. 45(b)(1) for electricity sold during calendar year 2021. This is because the 2021 reference price for electricity produced from wind, 3.59 cents per kilowatt hour, does not exceed 8 cents multiplied by the inflation adjustment factor (1.6878). Because the 2021 reference price of fuel used as feedstock for refined coal (\$45.64) does not exceed \$91.53 (which is the \$31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor (1.6878) and 1.7), the phaseout of the credit provided in Code Sec. 45(e)(8)(B) does not

apply to refined coal sold during calendar year 2021. For electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy, the phaseout of the credit provided in Code Sec. 45(b)(1) does not apply to such electricity sold during calendar year 2021.

## Credit Amount Adjustments

The 1.5 cent amount under Code Sec. 45(a)(1) and the \$4.375 amount in Code Sec. 45(e)(8)(A) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. However, if any amount as increased under the guideline prescribed above is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine

and hydrokinetic renewable energy facilities, Code Sec. 45(b)(4)(A) requires the amount in effect under Code Sec. 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half.

Under the calculation required by Code Sec. 45(b)(2), the credit for renewable electricity production for calendar year 2021 under Code Sec. 45(a) is 2.5 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, and geothermal energy, and 1.3 cents per kilowatt hour on the sale of electricity produced in open-loop biomass facilities,

small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities. Further, according to the calculation guidelines listed under Code Sec. 45(b)(2), the credit for refined coal production for calendar year 2021 under Code Sec. 45(e)(8)(A) is \$7.384 per ton on the sale of qualified refined coal. Finally, under the calculation required by Code Sec. 45(e)(10)(B)(ii), the credit for Indian coal production for calendar year 2021 under Code Sec. 45(e)(10)(B) is \$2.600 per ton on the sale of Indian coal.

## Nonacquiescence in Split-Dollar Life Insurance Decision

The IRS has announced that it does not acquiesce in *J.J. Machacek*, CA-6, 2018-2 USTC ¶50,447, *rev'g* TC Memo. 2016-55, Dec. 60,561(M). The IRS does not agree with the holding that the economic benefits of a compensatory split-dollar life insurance arrangement may be treated as a distribution with respect to stock under Code Sec. 301.

AOD 2021-2

## Suit to Enjoin IRS Notice Did Not Trigger Anti-Injunction Act

*CIC Services, LLC, SCt, 2021-1 USTC ¶150,150*

The U.S. Supreme Court has reversed and remanded the U.S. Court of Appeals for the Sixth Circuit's dismissal of a complaint to enjoin enforcement of Notice 2016-66, I.R.B. 2016-47. The high court held that a suit to enjoin Notice 2016-66 did not trigger the Anti-Injunction Act even though a violation of the Notice might result in a tax penalty.

The taxpayer had certain unreported micro-captive transactions for which civil tax and criminal penalties could be imposed. The taxpayer had filed a complaint, prior to the Notice's first reporting deadline, alleging that the Notice was invalid under the Administrative Procedure Act. Specifically, the taxpayer contended that the Notice: (1) was a legislative rule that required notice-and-comment rule-making; (2) was arbitrary and capricious, and therefore *ultra vires*; and (3) was a rule that required submission for congressional review before it could go into effect. The

district court had dismissed the action as barred by the Anti-Injunction Act and characterized the as a "suit for the purpose of restraining the assessment or collection of any tax" pursuant to Code Sec. 7421(a). The Sixth Circuit had affirmed the same.

### Anti-Injunction Act and Tax Penalty

The Anti-Injunction Act is not a hurdle if there is not a tax penalty involved. However, in the taxpayer's case, the addition of a tax penalty complicated the matter since the taxpayer's complaint sought to set aside the Notice itself, not the tax penalty that would have followed the Notice's breach. The Supreme Court gave three reasons to separate the suit to invalidate the Notice and one to preclude the tax penalty:

- Notice 2016-66 imposes affirmative reporting obligations, inflicting costs separate and apart from the statutory tax penalty;

- it was hard to characterize the taxpayer's suit as one to enjoin a tax when the taxpayer had yet incurred any tax liability; and
- to owe any tax, the taxpayer would have to first violate the Notice to initiate noncompliance, and then a tax penalty would have been levied.

These facts showed that the taxpayer's suit targeted the Notice, not the downstream tax penalty. Thus, the Court found that Anti-Injunction Act imposed no bar for the taxpayer to bring its complaint.

### Preenforcement Litigation

The Supreme Court emphasized that the Anti-Injunction Act would always bar pre-enforcement review and the analysis would remain the same for a challenge to a regulatory tax since the Anti-Injunction Act draws no distinction between regulatory and revenue-raising tax laws. Moreover, the taxpayer's suit neither targeted a

regulatory tax nor a revenue-raising tax law; rather, its action challenged a reporting mandate separate from any tax. Since the IRS chose to address its concern about micro-captive agreements by imposing a reporting requirement rather than a tax, suits to enjoin that requirement fell outside the Anti-Injunction Act's domain.

## District Court's Invalidation of Reg. §1.170A-9 Reversed

*Mayo Clinic, CA-8, 2021-1 USTC ¶150,145*

A federal appeals court reversed the district court's invalidation of Reg. §1.170A-9 to the extent it was not inconsistent with Code Sec. §170(b)(1)(A)(ii), and remanded for further proceedings.

This case involved a nonprofit corporation that oversaw healthcare system subsidiaries and operated a medical school. The IRS concluded that the organization owed unrelated business income tax (UBIT) on certain investment income it received from the investment pool it managed for its subsidiaries. At issue was whether the organization was a "qualified organization" exempted from paying UBIT on "unrelated debt-financed income" under Code Sec. 514(c)(9)(C)(i). Qualified organizations include an educational organization under Code Sec. 170(b)(1)(A)(ii). Code Sec. 170(b)(1)(A)(ii) describes "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the

## Treasury Report on Tax Compliance Measures

The Treasury Department has released a report on tax compliance measures to increase fairness in the tax system. These measures are part of President Biden's recent proposals in the American Families Plan. The initiatives seek to close the tax gap: The difference between taxes owed and actually paid.

The tax gap totaled nearly \$600 billion in 2019 and would rise to about \$7 trillion over the course of the next decade if left unaddressed, approximately 15 percent of taxes owed. While roughly 99 percent of taxes due on wages are paid to the IRS, compliance on less visible sources of income was estimated to be just 45 percent. The Treasury stated that to raise revenue, improve efficiency, and build a more equitable tax system, investments in tax compliance are of first order importance.

*The American Families Plan Tax Compliance Agenda*

place where its educational activities are regularly carried on."

The IRS denied the organization's exemption because it was not an "educational organization" as defined in Reg. §1.170A-9(c)(1), which requires an organization whose "primary function is the presentation of formal instruction" and whose noneducational activities "are merely incidental to the educational activities." The district court held the regulation was invalid because it adds requirements that Congress intended not to include in the statute.

The appeals court concluded that the district court had failed to give sufficient consideration to the origins of the statutory charitable exemption and the Treasury Regulation at issue, and the manner in which the current statutory provisions have been added to the Code and modified over more than a century. While agreeing that the regulation unreasonably limits "educational organizations" to those principally providing "formal instruction," the appeals court determined that the terms "primary

function" and "merely incidental" activities have a valid role in interpreting the statute.

The appeals court ruled that Code Sec. 170(b)(1)(A)(ii) is unambiguous in its requirement that the taxpayer be an educational organization: i.e. a tax-exempt organization under Code Sec. 501(c)(3) whose primary activity is education. However, it found that applying the statute here was not possible based on the case's summary judgment record. First, the parties disputed how to measure educational activity as opposed to noneducational activity, as well as the degree to which education must be the organization's primary purpose. Second, the organization's status as an academic medical center meant that its medical and educational purposes, and the operations supporting those functions, were inextricably intertwined. While observing that separating the educational from the non-educational activities was difficult but not impossible, the appeals court noted that district court had not reached these questions.

Rev'g and rem'g a DC Minn. decision, 2019-2 USTC ¶50,246.

## Summary of Office of Tax Policy Meetings

*Readout: U.S. Dept. of the Treasury's Office of Tax Policy Meetings*

A Treasury Department press release stated that leaders from its Office of Tax Policy participated in meetings with the Steering Group of the Inclusive Framework on

base erosion and profit shifting (BEPS) as part of the Organizations for Economic Cooperation and Development (OECD)/G20 international tax negotiations. The meetings included discussions on the global corporate minimum tax. The Treasury expressed its belief that the international

tax architecture must be stabilized, the global playing field must be fair, and that an environment must be created in which countries work together to maintain our tax bases and ensure the global tax system is equitable and equipped to meet the needs of for the 21st century global economy.



The Treasury stated that it is imperative to work multilaterally to end the pressures of corporate tax competition and corporate tax base erosion. Moreover, the Treasury reiterated that with the current global corporate minimum tax functionally set at zero, there has been a race to the bottom on corporate taxes, undermining the ability of the United States and other countries to raise the revenue needed to make critical investments. The Treasury made clear that a global corporate minimum tax rate would ensure that the global economy thrives based on a more level playing field in the taxation of multinational corporations, and would spur innovation, growth, and prosperity while improving fairness for middle class and working people.

The Treasury proposed that the global minimum tax rate should be at least 15 percent, and emphasized that this is a floor and that discussions should continue to be ambitious to push that rate higher. Finally, the Treasury stated that it was heartened by the positive reception to its proposals and the unprecedented progress being made towards establishing a global corporate minimum tax.

## Entity Cannot Make Separate Election to Carryback Specified Liability Losses

TAM 202120015

The IRS Office of Chief Counsel has determined that the parent of an affiliated group that filed a consolidated federal income tax return and elected to waive its right to carryback an entire net operating loss (NOL) under Code Sec. 172(b)(3) and Reg. §1.1502-21(b)(3)(i) could not make a separate election to carryback specified liability losses (SLLs) not composed of product liability losses (PLLs) 10 years under Code Sec. 172(b)(1)(C).

## AFRs Issued For June 2021

Rev. Rul. 2021-9

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

### Applicable Federal Rates (AFR) for June 2021

	Annual	Semiannual	Quarterly	Monthly
<b>Short-Term</b>				
AFR	0.13%	0.13%	0.13%	0.13%
110% AFR	0.14%	0.14%	0.14%	0.14%
120% AFR	0.16%	0.16%	0.16%	0.16%
130% AFR	0.17%	0.17%	0.17%	0.17%
<b>Mid-Term</b>				
AFR	1.02%	1.02%	1.02%	1.02%
110% AFR	1.12%	1.12%	1.12%	1.12%
120% AFR	1.22%	1.22%	1.22%	1.22%
130% AFR	1.33%	1.33%	1.33%	1.33%
150% AFR	1.54%	1.53%	1.53%	1.53%
175% AFR	1.80%	1.79%	1.79%	1.78%
<b>Long-Term</b>				
AFR	2.08%	2.07%	2.06%	2.06%
110% AFR	2.29%	2.28%	2.27%	2.27%
120% AFR	2.50%	2.48%	2.47%	2.47%
130% AFR	2.71%	2.69%	2.68%	2.68%

### Adjusted AFRs for June 2021

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	0.10%	0.10%	0.10%	0.10%
Mid-term adjusted AFR	0.77%	0.77%	0.77%	0.77%
Long-term adjusted AFR	1.58%	1.57%	1.57%	1.56%

The Code Sec. 382 adjusted federal long-term rate is 1.58%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 1.64%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.35% and 3.15%, respectively; however, under Code Sec. 42(b)(2), the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 1.2%.

When the taxpayer elected to relinquish the entire carryback period with respect to the NOL under Code Sec. 172(b)(3), the election by its terms applied to the entire NOL for the tax year at issue and included all carryback periods. Reg. §1.1502-21(b)(3)(i) does not require the taxpayer to specify which carryback period it is waiving, because Code Sec. 172(b)(3) states that

it is waiving the entire carryback period. Therefore, a taxpayer is not allowed to make the election for a portion of the NOL applicable to a specific carryback period for a tax year. In addition, no provision in the Code or Regulations suggests that there can be multiple NOLs in a tax year for purposes of the Code Sec. 172(b)(3) election.

# Late Filers Should File to Limit Penalties

IR-2021-117

The IRS reminded taxpayers who missed the recent tax-filing deadline but are due a refund that there is no penalty for filing late if a refund is due. Those who owe and missed the deadline without requesting an extension should file quickly to limit penalties and interest.

The IRS also reminded taxpayers that an extension to file taxes is not synonymous

with an extension to pay: penalties and interest will apply to taxes owed after May 17. The IRS urged taxpayers to file a tax return as soon as possible even if they are unable to afford to pay taxes owed, to reduce possible penalties.

Some taxpayers have additional time to file and pay taxes owed without accruing penalties and interest:

- Members of the military who served or are currently in a combat zone—They

may qualify for an additional extension of at least 180 days to file and pay taxes.

- Support personnel in combat zones or a contingency operation in support of the Armed Forces—They may also qualify for extensions of at least 180 days to file and pay taxes.
- Certain disaster victims—Those who qualify for special relief have more time to file and pay what they owe.

## TAX BRIEFS

### *Collection Due Process*

An IRS settlement officer (SO) abused her discretion by sustaining a proposed collection action of a married couple without first independently reviewing their offer in compromise (OIC). Not only were the Collection Due Process (CDP) proceedings close in time to when the taxpayers made their offer to the IRS Centralized Unit, but their offer was physically in front of the SO and was supported by financial information that was current by the IRS's own standards. The SO had the full offer packet submitted by the taxpayers just days before they requested a CDP hearing. The taxpayers explained to the SO what they considered special circumstances, but these did not make it into the SO's notices of determination or case records because the SO did not independently review the taxpayers' offer or their financial situation.

*Mason, TC, Dec. 61,874(M)*

### *Conservation Easements*

The Tax Court declined to certify a question relating to the judicial extinguishment of a conservation easement to a state (Alabama) supreme court. The IRS denied a partnership's charitable deduction for its donation of a conservation easement to a foundation. The partnership moved the Tax Court to certify the question of whether, under Alabama law, the partnership would be entitled to the full

proceeds of any sale if the easement were extinguished. Since Alabama law unambiguously treated conservation easements as real property interests, easement holders were necessarily entitled to compensation if the easement was extinguished. There were sufficient sources of state law to determine that Alabama law would entitle the foundation to receive compensation in the event of judicial extinguishment.

*Montgomery-Alabama River, LLC, TC, Dec. 61,872(M)*

### *Construction Industry*

The IRS has updated its Audit Technique Guide (ATG) that provides guidance for examiners conducting audits in the construction industry and information for taxpayers and practitioners associated with the construction industry. The Construction Industry ATG is available on the IRS website at <https://www.irs.gov/pub/irs-pdf/p5522.pdf>.

### *Excess Benefit Transactions*

An individual was found to be a disqualified person under Code Sec. 4958(f)(1)(A), and was liable for excise taxes under Code Sec. 4958(a)(1). The individual was already convicted on federal criminal charges, including mail and wire fraud. One of his victims was a Code Sec. 501(a) and (c) (3) organization. The individual explicitly admitted during his criminal trial that he

had substantial influence over said organization. He had made many decisions on important topics and was the chief fundraiser for the organization. The individual conceded that he had a proven conspiratorial relationship with the organization's executive director.

*Fumo, TC, Dec. 61,871(M)*

### *Kentucky Disaster Relief*

An April 29, 2021, notice granting relief to victims of severe storms, flooding, landslides and mudslides that began on February 27, 2021, in parts of Kentucky was updated by the IRS on May 17 to include Greenup county.

*KY-2021-01*

### *Liens and Levies*

An individual taxpayer was precluded from challenging on appeal the amount of her underlying tax liability during a collection due process (CDP) hearing. In a prior action seeking redetermination of tax deficiencies, the Tax Court dismissed the case for lack of jurisdiction because the taxpayer failed to file her petition within the required 90-day period. The Tax Court had concluded that the taxpayer had been notified of the deficiency when it was mailed to her last known address. The Tax Court further explained that the taxpayer could not avoid receiving the notice simply by refusing to pick up her mail. The taxpayer

was thus precluded from challenging on appeal whether and when she received statutory notice of the deficiency. Because the taxpayer could not now reopen the issue to dispute that she received statutory notice or that she otherwise did not have the opportunity to dispute the tax liability, she could not challenge the amount of her underlying tax liability during the CDP hearing.

*Kwolek, CA-9, 2021-1 USTC ¶50,149*

### **Passport Revocation or Denial**

A dual citizen of Israel and the United States filed a petition in Tax Court to contest an IRS certification that he was an individual with a seriously delinquent tax debt under Code Sec. 7345. During the pendency of the case, the IRS reversed the certification and notified the Secretary of State of that reversal. The government then moved to dismiss this case as moot with respect to the certification issue and for lack of jurisdiction with respect to the taxpayer's other challenges. The Tax Court lacked jurisdiction over the taxpayer's additional claims seeking a declaration that he was not liable for the underlying tax liability and a refund of tax overpayments. Further, the taxpayer had already been afforded all of the relief available to him under Code Sec. 7345, so the Tax Court was unable to provide

further relief at this juncture, and the case was therefore moot.

*Shitrit, TC, Dec. 61,873(M)*

### **Pensions**

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

*Notice 2021-33*

### **Refund Claims**

An estate, represented by its executor and trustee, failed to state a claim upon which relief for a refund claim could be granted. Due to the large amount of real property in the estate and the difficulties associated with converting that property to cash, the taxpayer's attorney advised him to file a Form 4768 to apply for an automatic six-month extension. The taxpayer authorized the attorney to file, but due to a computer calendaring error, the attorney failed to timely file a Form 4768. Upon examination of the estate's return, the IRS assessed a late-filing penalty, a late-payment penalty and an interest against the estate for the tax year at issue. Subsequently, the estate fully paid all the tax it owed, as well as all penalties and

interest assessed against it. The taxpayer filed a Form 843, Claim for Refund and Request for Abatement, with the IRS. The taxpayer retained a nondelegable duty to timely seek an extension of the estate's return and payment deadlines by filing a Form 4768, and hiring an attorney to assist with preparing the tax return did not relieve him of that duty. Based on the facts, the taxpayer's reliance on the attorney to file the Form 4768 prevented a finding of reasonable cause. The taxpayer also failed to establish that the estate's untimely filing payment was the result of reliance on erroneous advice, as opposed to his reliance on the attorney to file the Form 4768.

*Andrews, FedCl, 2021-1 USTC ¶50,146*

### **Reportable Transaction Penalty**

In a case involving two married couples and their S corporation that were liable for Code Sec. 6707A penalties for failure to disclose tax shelters, it was determined that the IRS was not required to provide public notice and an opportunity for comment before promulgating Notice 2007-83, 2007-2 CB 960. Congress authorized the IRS to promulgate Notice 2007-83 without notice and comment.

*Mann Construction, Inc., DC Mich., 2021-1 USTC ¶50,147*