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White House Proposes $1.8 Trillion American Families Plan

Fact Sheet: The American Families Plan

On April 28, 2021, the White House released details on President Biden's new $1.8 trillion American Families Plan. The proposal follows the already passed $1.9 trillion American Rescue Plan Act and the recently proposed $2.3 trillion infrastructure-focused American Jobs Plan. The details were released in advance of President Biden's address to a joint session of Congress.

The plan includes many provisions that would make good on the President's campaign promises. The proposal would provide universal preschool to three and four year-olds, two free years of community college, and free tuition for certain universities specializing in serving underrepresented students. The plan would also invest in teacher and child care education, provide free or lower cost child care to lower income families, expand paid leave programs, and improve the quality of student lunch programs. It would also establish automatic adjustments to unemployment insurance, depending upon economic conditions.

Personal Tax Breaks Extended

The proposal would also extend tax benefits already signed into law under the American Rescue Plan Act. This includes:

- extending enhanced premium tax credits and making premium reductions permanent;
- extending the enhanced child tax credit through 2025 (currently a fully refundable $3,000 per child ($3,600 for a child under age six) for 2021 only);
- permanently extending the enhancements of the child and dependent care tax credit, which increase the amount of the credit as well as the incomes at which the credit is phased out;
- permanently extending the increased earned income tax credit for taxpayers without children.

Tax Changes, TCJA Rollback

On the campaign trail, President Biden promised to increase taxes on both corporations and higher-income individuals. While the provisions of the American Jobs Plan are largely funded through a proposed increase in the corporate tax rate from 21% to 28%, the provisions of his American Families Plan are funded by the promised increases to individual taxes.

The proposal would increase the top tax rate on individuals to 39.6 percent from the current rate of 37 percent. This would return the tax rate on the highest bracket of income to where it was before the Tax Cuts and Jobs Act took effect in 2018.

The proposal would also increase the tax rate on capital gains and dividends for households making over $1 million, to match the 39.6 percent rate on income. For 2021, capital gains and certain qualified dividends are taxed at 20 percent for joint filers with taxable income of $496,000 or more.

The plan proposes to eliminate the tax-free step-up in basis on inherited property where the gain would be in excess of $1 million (up to $2.5 million in the case of a couple using existing real estate exemptions. The plan also eliminates the carried interest loophole that allows hedge fund partners to pay tax on income at capital gains rates. The plan would also limit a provision allowing for tax deferral on property exchanges, permanently extend the limitation on excess business losses, and ensure that higher income taxpayers cannot avoid the 3.8 percent Medicare tax.

The plan also provides increased funding for the IRS to improve enforcement, specifically to ensure that higher income taxpayers are unable to avoid proper payment of taxes. While the White House estimates that this will produce an additional $700 billion in revenue over 10 years, many believe this to be a vast overestimate.

Notably absent from the plan is an increase to the cap on the deduction of state and local taxes. The Tax Cuts and Jobs Act set a $10,000 limit for the deduction, but many lawmakers, particularly those representing higher tax states like New York and California, have been pressing to increase the limit or completely eliminate it.

Next Steps?

It is uncertain when Congress may take up the process of proposing legislation carrying out the American Families Plan. President Biden has indicated his willingness to negotiate on any proposals he makes. However, the chilly reception to his American Jobs Plan does not indicate a smooth process to get a vote on a legislative package for the infrastructure proposal, let alone passage with razor-thin majorities in both chambers of Congress. With many lawmakers indicated that they want to work on infrastructure before moving on to other proposals, the process from proposal to law could stretch out for months.

IRS Updates Plug-In Credit for 2022 Vehicles

The IRS has added new 2022 models to the list of vehicles for which the plug-in vehicle credit would be available. The vehicles added include BMW and Mini vehicles. The BMW 745e XDrive has a credit amount of $5,836. The MINI Cooper S E Countryman ALL4 has a credit of $5,002.

The plug-in vehicle credit is allowed for qualified vehicles under Code Sec. 30D. The credit begins to phase out for a manufacturer's vehicles when at least 200,000 qualifying vehicles manufactured by that manufacturer have been sold for use in the United States (determined on a cumulative basis for sales after December 31, 2009).

For the current IRS list of eligible vehicles, see https://www.irs.gov/businesses/irc-30d-new-qualified-plug-in-electric-drive-motor-vehicle-credit.

Treasury: Invest in IRS, Improve Compliance

Treasury Press Release, April 28, 2021

The Treasury Department has released a statement discussing investment in the IRS and improving tax compliance. While roughly 99 percent of the taxes due on wages are remitted to the IRS, compliance across other forms of income is substantially less, because the IRS has had difficulty verifying whether income from unverified sources is properly reported. The Treasury states that noncompliance is concentrated at the top of the distribution: according to a recent study, the top one percent failed to report 20 percent of their income, and failed to pay nearly $175 billion in taxes owed annually.

The Treasury states that lower levels of compliance not only negatively impact tax progressivity, but also lower tax revenue and deteriorate the country's fiscal position. If left unaddressed, the difference between taxes owed to the government and taxes actually paid will total approximately $7 trillion in the next 10 years. This massive gap in revenue would mean that policymakers must choose between higher taxes elsewhere in the tax system, lower spending on fiscal priorities, or rising budget deficits. This tax gap has many underlying causes, with insufficient resources being at the forefront. In addition, budget cuts over the past decade have resulted in an IRS that lacks the capacity to address sophisticated tax evasion efforts. Over this period, audit rates for taxpayers making over $1 million in income have fallen by almost 80 percent.

To ensure a fair and effective tax system, the Treasury says that a robust and sustained investment in the IRS is necessary. The IRS requires access to 21st century

REFERENCE KEY

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

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technology and to better information, so that it can target its efforts at offenders while helping compliant taxpayers avoid unnecessary and costly audits. Importantly, this investment will also put the IRS in a position to provide taxpayers with timely answers to questions.

The Treasury has listed some considerations that provide the basis for a series of proposals in the American Families Plan (AFP). The AFP intends to overhaul tax administration and provide the IRS with the resources and information it needs to address tax evasion. These reforms are expected to generate an additional $700 billion in tax revenue over the course of a decade. The reforms are expected to:

- Provide the IRS with necessary resources to stop sophisticated tax evasion. A key component of this initiative is the provision of a sustained, multi-year stream of funds to help the IRS tackle costly tax evasion.
- Provide the IRS with more complete information on third parties. When the IRS has information from third parties, income is accurately reported, and taxes are fully paid. Importantly, this proposal intends to provide additional information to the IRS without an increased burden on taxpayers. It leverages the information that financial institutions have about account holders, requiring that they add to their regular, annual reports information about aggregate account outflows and inflows.
- Overhaul outdated technology to help IRS identify tax evasion, by providing the IRS with resources to modernize its technological infrastructure.
- Improve taxpayer service and deliver tax credits. Service enhancement will improve the ability of the IRS to communicate with taxpayers securely and promptly. The proposal would also include the necessary resources to ensure that the IRS efficiently delivers credits to families and workers, including newly expanded child tax credits and child and dependent care tax credits.
- Regulate paid tax preparers by providing the IRS with legal authority to implement safeguards in the tax preparation industry. This includes stiffer penalties for unscrupulous or "ghost preparers" who fail to identify themselves on tax returns and defraud taxpayers.

Reminders on Automatic Filing Extensions

The IRS reminds taxpayers that they can apply for automatic tax-filing extensions. Due to the ongoing pandemic, the IRS has postponed the usual April 15 deadline for filing individual tax returns to May 17, 2021. Beyond this date, taxpayers can still submit a request for an extension should they need it. Taxpayers can file Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, or make an electronic payment.

Some taxpayers are eligible for extensions without having to submit a request for automatic extension. Disaster victims of the February winter storms in Texas, Oklahoma, and Louisiana qualify for automatic extensions without needing to apply. Taxpayers in this situation have until June 15 to file their 2020 returns and pay any taxes due. Relief is also available to individuals living outside the disaster area if, for example, they have a business located in the disaster area, have tax records located in the disaster area, or are assisting in disaster relief.

Military service members and eligible support personnel serving in a combat zone qualify for automatic extensions without application. They have at least 180 days after they leave the combat zone to file their tax returns and pay any taxes due. This includes those serving in Iraq, Afghanistan and other combat zones.

Finally, U.S. citizens and resident aliens who live and work outside the U.S. and Puerto Rico are also eligible for automatic extensions without submitting such a request. They have until June 15 to file their 2020 tax returns and pay any taxes due.

IR-2021-96

Adjustments for CTC, EITC, PTC Table

Rev. Proc. 2021-23

The IRS has modified inflation-adjusted amounts for the child tax credit (CTC), the earned income tax credit (EITC/EIC), and the applicable percentage table for Code Sec. 36B for calculating a taxpayer's premium tax credit (PTC). The changes reflect amendments made by the American Rescue Plan Act of 2021 (P.L. 117-2). The changes include the following:

- Solely for tax years beginning in 2021, an increase in the refundable portion of the CTC under Code Sec. 24 to $3,000 for qualifying children who have attained age six but not 18 by the end of the tax year, and $3,600 for qualifying children who have not attained age six. The partial refundability provisions under Code Sec. 24(d) do not apply.
- Solely for tax years beginning in 2021, temporary modification of the EITC under Code Sec. 32 to provide special rules, including, for example, special rules for eligible individuals with no qualifying children and applicable phaseout amounts.
- For tax years beginning in or after 2021, modification of Code Sec. 32(i) to provide that the EITC is not available for taxpayers whose aggregate amount of disqualified income exceeds $10,000. This amount will be adjusted for inflation for taxable years beginning after December 31, 2021.
- For tax years beginning in 2021 and 2022. temporary changes to the Applicable Percentage Table in Code Sec. 36B(b)(3)(A). Taxpayers use these applicable percentages to determine the amount of the PTC they may claim for a tax year.

Rev. Proc. 2020-36, I.R.B. 2020-32, 243, and Rev. Proc. 2020-45, I.R.B. 2020-46, 1016, are modified and superseded.

Pharma Company Must Capitalize Legal Expenses for FDA Approval

Mylan, Inc. & Subsidiaries, 156 TC No. 10, Dec. 61,855

A pharmaceutical company could not deduct its legal expenses for gaining FDA approval of its generic version of brand name medications. Instead, the Tax Court held that it must capitalize the expenses. However, the company could deduct its legal expenses related to its patent infringement litigation.

FDA Approval

The legal fees that the company incurred gaining FDA approval were "paid to facilitate the acquisition or creation of an intangible." The Tax Court noted that intangibles include "certain rights obtained from a governmental agency." Thus, the fees must be capitalized as required by Reg. §1.263(a)-4(b)(i)(v).

Section 197 Intangibles

The legal expenses incurred by the company to gain FDA approval were Code Sec. 197 intangibles. Thus, the company was required to amortize the expenses over a 15-year period.

Patent Litigation

The legal fees that the company incurred defending patent infringement suits against the patent holders of the brand name medications were ordinary and necessary business expenses. As part of the FDA approval process, the company had to notify the patent holders of the brand name medications that it was claiming that its generic medication did not infringe upon the brand name medication's patent. Typically, these notifications result in litigation. The IRS argued that because the FDA approval process required these notifications, the litigation expenses were directly tied to the approval process and had to be capitalized. The Tax Court disagreed. It found that the litigation and the FDA approval process were separate. The outcome of one had no impact on the outcome of the other. Accordingly, the legal fees related to the patent litigation were deductible.

Likewise, the court found that under the origin of the claim doctrine, the legal fees related to the litigation were ordinary and necessary expenses. The IRS argued that the expenses were related to the acquisition of the company's right to manufacturer the generic medication, and thus, the expenses should be capitalized. The Tax Court instead found that the litigation was an opportunity for the patent holder of the brand name medication to protect its intellectual property.

National Virtual Settlement Month Recap

IR-2021-93

The IRS Office of Chief Counsel hosted its first National Virtual Settlement Month in March 2021. Settlement Days events are coordinated efforts to resolve cases in the U.S. Tax Court by providing taxpayers who are not represented by counsel the opportunity to receive free tax advice from Low Income Taxpayer Clinics (LITCs), American Bar Association (ABA) volunteer attorneys and other pro bono organizations.

Virtual Settlement Days events were held in all 50 states and the District of Columbia. Nearly 240 taxpayers met with Chief Counsel employees and pro bono organizations, leading to settlements in 148 Tax Court cases. Taxpayers whose cases were not resolved had the opportunity to obtain free legal advice, better understand their cases, and learn the process of litigating in the Tax Court. At many events, some taxpayers were able to discuss payment options with IRS collection employees. Taxpayers were also able to consult Taxpayer Advocate Service (TAS) employees about unrelated tax matters.

Before March 2021, more than 260 taxpayers resolved their Tax Court cases during a Virtual Settlement Days event, avoiding the need for over 260 trials. The Chief Counsel's Office plans to continue these events alongside face-to-face options when circumstances permit. In the meantime, the IRS encourages taxpayers with cases before the Tax Court to contact the assigned Chief Counsel attorney or paralegal to inquire about participating in a Virtual Settlement Days event.

IRS Urges Electronic Filing

IR-2021-94

The IRS has urged taxpayers and tax professionals to continue using electronic options to speed the processing of tax returns, refunds and payments. The IRS website has many task-based tools and features that are available 24/7 to help people navigate their taxes. Timely processing of tax returns and refund issuance is especially important during the pandemic. Accordingly, taxpayers can speed refunds and avoid delays in processing by filing electronically with direct deposit as soon as they have the information they need. Taxpayers can follow simple options to make filing easier:

- Check the IRS website for the latest tax information, including the latest on Economic Impact Payments (EIPs) and tax refund status.
- Consider IRS Free File. Taxpayers who want to prepare and file their tax returns electronically for free can use this program, which offers brand-name tax software for taxpayers with income of $72,000 or less in 2020. Those who earned more can use Free File Fillable Forms, the electronic version of IRS paper forms. Some people will need to file a return to get a third EIP, and Free File gives people the ability to do that for free.
- Check electronic payment options available on the IRS website. Taxpayers can view an account and learn about other ways to pay such as an online installment agreement.
- Use the Interactive Tax Assistant (ITA). The ITA is a tool that provides answers to several tax law questions specific to an individual's circumstances.
- Online tools for tax professionals. e-Services is a suite of web-based tools that allow tax professionals, reporting agents, mortgage industry, payers and others to complete transactions online with the IRS.

Useful Online Tools

Taxpayers can also use the following use tools and features to file electronically:

- Get My Payment: People can find out when their third EIP is scheduled to be sent, or when and how IRS sent it with the Get My Payment application.
- Filing options: Find complete tax filing information for individuals, business and self-employed taxpayers, charities and non-profits, international taxpayers and government entities.
- Get an Identity Protection (IP) PIN: IP PINs are available to all taxpayers. An IP PIN is a six-digit number that prevents someone else from filing a tax return using another taxpayer's Social Security number. The IP PIN is known only to the taxpayer and the IRS, and helps the IRS verify the identity of a taxpayer when filing an electronic or paper tax return.
- View an account: Online Account is a system that allows people to securely access their individual account information. Taxpayers can view taxes owed, balance details, information on a most recent tax return, payment plan details and more.
- Get a tax record: The Get Transcript Service is for individual taxpayers to retrieve their own transcripts for their own purposes.
- Tax Withholding Estimator: Taxpayers can use of this tool can help people bring their taxes paid closer to what is owed. The IRS encourages everyone to perform a "paycheck checkup" to be sure the right amount of tax is withheld based on their personal situation.

Filing Deadline

While the tax filing deadline has been extended to May 17, 2021, the IRS continues to process electronic tax returns, issue direct deposit refunds and accept electronic payments. As of April 16, the IRS received over 110 million tax returns and issued over $210 billion in refunds. The IRS anticipates that nine out of 10 taxpayers will receive their refund within 21 days of when they file electronically with direct deposit if there are no issues with their tax return.

Temporary Use of Digital Signatures Extended

The IRS has extended the list of federal tax forms that cannot be filed electronically for which it is temporarily allowing digital signatures. The IRS has also extended filing period for which digital signatures on these forms will be accepted.

These forms can be sent to the IRS with digital signatures if they are postmarked from August 28, 2020, through December 31, 2021.

For the current list of the IRS forms for which digital signatures are temporarily allowed, see https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue#digitalsignature.

Details on Seventh Batch of EIPs

IR-2021-95

Nearly two million payments have been disbursed in the seventh batch of Economic Impact Payments (EIPs) from the American Rescue Plan (P.L. 117-2). This brought the total disbursed payments from the American Rescue Plan to approximately 163 million, with a total value of approximately $384 billion. Similar to the previous batches, the seventh batch of EIPs includes direct deposits, paper checks and debit cards being sent through the mail. These payments began processing on April 23, with an official payment date of April 28.

Here is additional information on the seventh batch of payments:

- This batch includes nearly 2 million payments with a value of over $4.3 billion.
- Nearly 1.2 million payments, with a value of over $3 billion, went to eligible individuals who recently filed a return, for whom the IRS did not have information to issue an EIP previously.
- The seventh batch includes more than 730,000 additional or supplemental payments for taxpayers who received payments based on their 2019 tax returns, and are eligible for a new or larger payment based on their recently processed 2020 tax returns.

The IRS reminds federal benefits recipients to file a 2020 tax return, even if they do not usually file, to get all the benefits they are entitled to. This includes the recovery rebate credit, child tax credit, and earned income tax credit. The IRS also urges these individuals to file a 2020 tax return in order to provide the IRS information needed to send payments for a qualifying dependent. Filing a 2020 tax return would also assist the IRS in determining whether the taxpayer is eligible for an advance payment of the 2021 child tax credit, which will begin to be disbursed during summer. Those who do not normally receive federal benefits may qualify for the seventh batch of EIPs, including those experiencing homelessness and the rural poor.

The IRS also reminds taxpayers that the income levels in this third round of EIPs have changed. Therefore, some may not be eligible for the third payment despite having received the first or second EIP. Payments will be reduced for individuals making $75,000 or above in adjusted gross income. Taxpayers with adjusted gross income above $80,000 are ineligible for a payment. Individuals can use the Get My Payment tool to check the payment status of these payments.

QI/WP/WT Certification, Waiver Due Dates Extended

The IRS has automatically extended the periodic certification due dates for Qualified Intermediaries (QI), Withholding Foreign Partnerships (WP) and Withholding Foreign Trusts (WT). The extensions are automatic and require no further action by the QI/WP/WT.

For QI/WP/WTs that select 2018 or 2019 as their periodic review year or request a waiver of the periodic review requirement, the due date for periodic certifications is extended until December 1, 2021.

For QI/WP/WTs that selected 2020 as their periodic review year, the due date for periodic certifications extended until March 1, 2022.

See FAQ number 10 on the IRS's QI/WP/WT FAQs page under the section, Certifications and Periodic Reviews for more details.

Tax Reminder for Gig Workers, Unemployment Recipients

IR-2021-97

The IRS has reminded gig economy workers and those who claimed unemployment compensation in 2020 of their options and where to find information to meet their tax obligations.

The IRS urges gig economy workers to visit the Gig Economy Tax Center to learn more about withholding and estimated tax requirements for these types of earned income and paid services. Further, the IRS reminds taxpayers to collect and keep records and receipts during the year as recordkeeping can help track income, deduct expenses and complete tax returns.

Since a record number of Americans applied for unemployment compensation in 2020 due to the pandemic, anyone who received unemployment benefits is required to report it on their tax returns. However, the American Rescue Plan, enacted on March 11, 2021, excludes up to $10,200 ($20,400 if married filing jointly) from income of unemployment compensation received in 2020 for taxpayers with modified adjusted gross income under qualifying thresholds. The IRS emphasizes that any amount over $10,200 is still taxable for each person, and urges taxpayers to use the Interactive Tax Assistant to determine if payments received for being unemployed are taxable.

Taxpayers who have already filed their 2020 tax return and paid taxes on the full amount of unemployment compensation before the law was passed should not file an amended return. The IRS will automatically refund money to taxpayers who already filed their tax return reporting unemployment compensation and will recompute any credits and deductions claimed on the original return. However, if the reduction of income now qualifies a taxpayer for a new credit not claimed on the original return, like the Earned Income Tax Credit (EITC), those taxpayers will need to file an amended tax return, Form 1040-X, to claim the new credit. Taxpayers can see if they qualify for the EITC at IRS.gov.

Unemployment benefit recipients should have received a Form 1099-G from the agency paying the benefits. The form will show the amount of unemployment compensation they received in 2020 in Box 1, and any federal income tax withheld in Box 4. If a taxpayer did not report income from gig work or unemployment compensation on a return, a corrected return can be filed using Form 1040-X, which can be filed electronically.

Drafts of New Schedules K-2 and K-3 Released

IR-2021-98

The IRS and Treasury have released updated early drafts of new Schedule K-2 and Schedule K-3 for Form 1065, U.S. Return of Partnership Income, Form 1120-S, U.S. Income Tax Return for an S Corporation, and Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, for the 2022 filing season. These new schedules are designed to provide greater clarity for partners and shareholders on how to compute their income tax liability for items of international tax relevance, including claiming deductions and credits. The early release drafts are intended to give a preview of the changes before the final versions are released. The IRS plans to release the early draft of the instructions for the schedules this summer.

The redesigned forms and instructions will also give useful guidance to partnerships, S corporations and U.S. persons who are required to file Form 8865 with respect to controlled foreign partnerships on how to provide international tax information. The changes reflected in these schedules do not affect partnerships and S corporations with no items of international tax relevance.

The IRS and Treasury also announced that they intend to provide certain penalty relief for the 2021 tax year in future guidance, in order to promote compliance with adoption of Schedules K-2 and K-3 by affected pass-through entities and their partners and shareholders.

IRS Accepting TCE, VITA Grant Applications

IR-2021-99

Eligible organizations can now submit applications for the IRS's Tax Counseling for the Elderly (TCE) and Volunteer Income Tax Assistance (VITA) grant programs, allowing some organizations to apply for up to three years of annual funding. These programs prepare millions of tax returns each year.

Interested organizations can apply for a grant on Grants.gov. The deadline for submitting the grant applications is June 4, 2021.

The TCE program provides tax counseling and return preparation to persons age 60 or older, and to assist volunteers who provide free federal income tax assistance within elderly communities across the nation. See the Tax Counseling for the Elderly website for more information.

The VITA grant program was established in 2007, and provides underserved communities with free tax filing assistance. See the IRS VITA Grant Program website for more information.

TAX BRIEFS

Fair Market Rent

The Tax Court determined the fair market rent for a building, which was rented by a pharmacy, that was situated in a state that had a nondisclosure policy for real estate data, and in a town that has a limited number of potentially comparable buildings. The nearby U.S. post office building was the property that more likely than not would most accurately represent the fair market value of large retail space in the town during the years at issue.

Plentywood Drug, Inc., TC, Dec. 61,854(M)

FBAR

A district court's decision enforcing the IRS's penalty for a taxpayer's willful violation of failing to file a Report of Foreign Bank and Financial Accounts (FBAR) was affirmed. Willfulness in 31 USC §5321 includes reckless disregard of a known or obvious risk. The taxpayer's signature on his returns was one among many facts that constituted overwhelming evidence that he had acted in a manner that at least rose to the level of the recklessness standard. The taxpayer had repeatedly taken steps to conceal the accounts and not report his income to the government.

Rum, CA-11, 2021-1 USTC ¶50,132

Fraud Penalty

An individual's appeal related to a civil fraud penalties was dismissed due to lack of appellate jurisdiction. The Tax Court had issued a "Memorandum Findings of Fact and Opinion" concluding that the taxpayer was not liable for the fraud penalty, but had not issued a decision. The Tax Court's opinion was not a "decision" and thus had no jurisdictional impact. Without a finding by the Tax Court that its partial grant of summary judgment in the IRS's favor was final and that there was no just reason to delay, the partial grant of summary judgment and denial of reconsideration were not immediately appealable.

Minemyer, CA-10, 2021-1 USTC ¶50,129

The Tax Court did not abuse its discretion by denying an individual's motion for reconsideration of a fraud penalty. The taxpayer's motion was inconsistent with Tax Court Rule 161 because it raised a new legal theory—that the civil penalty approval form did not satisfy the written supervisory approval requirement because it was signed after the thirty-day letter was sent to the taxpayer—that reasonably could have been asserted earlier in the litigation.

Boulware, CA-9, 2021-1 USTC ¶50,134

Marijuana Business

The Tax Court's decision on a petition for redetermination of tax deficiencies of a nonprofit cannabis collective that operated a retail cannabis dispensary was affirmed. The Tax Court did not err in concluding that the taxpayer's inventory cost was determined by Reg. §1.471-3(b), which applies to a purchaser and reseller of the products it sells. The appeals court declined to consider the taxpayer's claim that Code Sec. 280E violates the Sixteenth Amendment, because that claim had not been raised in the Tax Court.

Patient's Mutual Assistance Collective Corporation, CA-9, 2021-1 USTC ¶50,130

Micro-Captive Insurance Transactions

In each of six cases, the IRS Office of Chief Counsel determined that the variant of the micro-captive insurance transaction being promoted was the same as or substantially similar to the transaction of interest described in Notice 2016-66, I.R.B. 2016-47, 745.

Field Attorney Advice 20211601F; 20211602F; 20211603F; 20211604F; 20211605F; 20211606F

Practice Before IRS

The IRS Office of Professional Responsibility has published the names of attorneys, certified public accountants (CPAs), enrolled agents, enrolled actuaries, enrolled retirement plan agents and appraisers who recently have been disbarred from practice before the IRS, have consented to suspensions from practice, have been placed under suspension from practice under the expedited proceeding provisions, or have consented to the issuance of a censure.

Announcement 2021-8

Substantiation

The Tax Court did not err in finding that an individual who started an entertainment company partnership had failed to substantiate his claimed net operating loss (NOL) deduction for the tax year at issue. The taxpayer provided a patchwork of documents showing that the partnership had incurred expenses, but did not prove that all were deductible trade or business expenses. Further, the taxpayer did not put certain annual general ledgers into evidence, which were the only documentation of credit card and cash expenses. Bank statements provided by the taxpayer did not detail the amounts of the partnership's expenses paid by cash or credit cards, and did not describe the business purpose of each expenditure. Witnesses' testimony did not fill in these gaps.

Barker, CA-11, 2021-1 USTC ¶50,135

A married couple was disallowed various deductions that were claimed on their tax returns for tax years at issue. The taxpayers filed Schedule C for both their businesses and claimed various deductions, including meals and entertainment expenses, office expenses and car and truck expenses, but failed to provide any evidence to support the deductions that they claimed. Regarding a claimed theft loss deduction, the taxpayers failed to provide specific evidence that certain third-party representations that they relied on were made with the intent to defraud.

Baum, TC, Dec. 61,856(M)

Trust Fund Recovery Penalty

A district court's judgment that the president and sole shareholder of a company was personally liable for trust fund recovery penalties (TFRP) under Code Sec. 6672 was affirmed. By paying other creditors of the company before paying the unpaid trust-fund taxes, with knowledge of the tax liability, the taxpayer acted "willfully" as a matter of law, even if he was merely paying the other creditors in order to keep the company going.

Edwards, CA-11, 2021-1USTC ¶50,128

Unreported Income

A married couple had unreported taxable income for two tax years at issue. The taxpayers did not produce books or records reflecting the full amount of deposits made to their several bank accounts during the tax years at issue, and did not prove that the deposits represented nontaxable income. The husband failed to present evidence substantiating his claim that certain deposits in their bank accounts were nontaxable.

Haghnazarzadeh, TC, Dec. 61,857(M)

Supreme Court Docket

A petition for review was denied in the following case: The Tax Court had subject matter jurisdiction to sustain the IRS's disallowance of a short-term capital loss declared by a partnership in its Form 1065 for the tax year at issue, and the final partnership administrative adjustment (FPAA) was properly issued to the partnership. The short-term capital loss was a partnership item of the redeeming entity, i.e. the partnership, and not a different entity which was 90-percent owned by the partnership.

West Ventures, L.P., CA-9, 2021-1 USTC ¶50,125

A petition for review was filed in the following case: The Tax Court's dismissal of an individual's petition for review of an IRS notice of determination was affirmed. The petition was untimely because the taxpayer had filed it one day after the filing deadline had passed. Code Sec. 6330(d)(1) makes timely filing of the petition a condition of the Tax Court's jurisdiction.

Boechler, P.C., CA-8, 2020-2 USTC ¶50,153