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INSIDE THIS ISSUE

BEAT QDP Reporting Requirement Deferred....1

Child Tax Credit Letters Being Sent....2

Redetermination of Excise Tax Deficiency Reversed....2

West Virginia Storm Victim Relief....3

Applicable Terminal Charge and SIFL Rates for First Half of 2021....3

Additional Economic Impact Payments Disbursed....4

Welfare Benefit Plan Case Nonacquiescence....4

Final Disaster Deadline Postponement Regulations....4

Nonacquiescence in Professional Employer Organization Case....5

American Rescue Plan Tax Credit FAQs....5

Tax Briefs....6

BEAT QDP Reporting Requirement Deferred

Notice 2021-36

The Treasury Department and the IRS have announced that they intend to amend the base erosion and anti-abuse tax (BEAT) regulations under Code Sec. 59A and Code Sec. 6038A to defer the information reporting requirements for qualified derivative payments (QDPs) until tax years beginning on or after January 1, 2023. The current regulations provide that the QDP reporting requirements apply to tax years beginning on or after June 7, 2021.

Background

Under the BEAT rules, a base erosion minimum tax is imposed on certain corporations with annual average annual gross receipts of at least $500 million over the previous three tax years. The tax applies to base erosion payments paid or accrued in tax years beginning after December 31, 2017. Generally speaking, base erosion payments are certain types of payments made by a taxpayer to foreign related parties or foreign persons.

QDPs are not base erosion payments. A QDP is any payment made by a taxpayer to a foreign related party pursuant to a derivative for which:

- the taxpayer recognizes gain or loss on the derivative on a mark-to-market basis (treats the derivative as sold on the last business day of the tax year);
- the gain or loss is ordinary; and
- any gain, loss, income or deduction on a payment made pursuant to the derivative is also treated as ordinary.

This QDP exception applies only if the taxpayer satisfies certain reporting requirements. Reg. §1.6038A-2(b)(7)(ix) requires a taxpayer subject to the BEAT to report on Form 8991, Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts, the aggregate amount of QDPs for the tax year, and make a representation that all payments satisfy the reporting requirements of Reg. §1.59A-6(b)(2).

Reg. §1.6038A-2(b)(7)(ix) applies to tax years beginning on or after June 7, 2021. During the “transition period” before that date, a taxpayer is treated as satisfying the reporting requirements to the extent that it reports the aggregate amount of QDPs on Schedule A of Form 8991, provided the taxpayer reports this amount in good faith (Reg. §§1.59A-6(b)(2)(iv); 1.6038A-2(g)).

QDP Reporting Deferred

The preamble to 2020 final regulations relating to Code Sec. 59A included a comment which recommended that Treasury and the IRS address the interaction of the QDP exception, the BEAT netting rule in Reg. §1.59A-2(e)(3)(vi), and the QDP reporting requirements in Reg. §1.59A-6 and Reg. §1.6038A-2(b)(7)(ix). While studying this matter, Treasury and the

IRS have determined that it is appropriate to extend the transition period.

Accordingly, Treasury and the IRS intend to amend Reg. §1.6038A-2(g) to provide that Reg. §1.6038A-2(b)(7)(ix) will apply to tax years beginning on or after January 1, 2023. Until that reporting requirement applies, the transition period rules described above continue to apply.

Taxpayer Reliance

Taxpayers may rely on this Notice before the amendments to the final regulations are issued.

Child Tax Credit Letters Being Sent

IR-2021-124

The IRS has started sending letters to over 36 million families who, based on tax returns filed, may be eligible to receive monthly child tax credit payments starting July. Eligibility of these families are being evaluated based on information provided by taxpayers in their 2019 or 2020 tax returns, or through the Non-Filers tool while registering for an Economic Impact Payment. In addition, taxpayers who are eligible for advance child tax credit payments will receive a second, personalized letter listing an estimate of their monthly payment, starting July 15.

The IRS further announced that eligible families will begin receiving advance payments, either by direct deposit or check. Importantly, this payment will be up to $300 per month for each qualifying child under six years of age, and up to $250 per month, for each qualifying child from ages six to 17. Moreover, advance child tax credit payments will be issued on July 15, August 13, September 15, October 15, November 15 and December 15, 2021.

To avail themselves of these credits, taxpayers who have not yet filed their 2020 or 2019 return should do so as soon as possible, to receive advance payments. The IRS reminded taxpayers who do not normally file returns, such as families experiencing homelessness, that filing soon will ensure that their most current banking information would be applicable. Similarly, community groups, non-profits, associations, education organizations and others with connections to people with children to share this critical information about the child tax credit and other important benefits.

Finally, the IRS reminded taxpayers of the changes to child tax credit by the American Rescue Plan Act (ARP) (P.L. 117-2). The entire credit is fully refundable for 2021; meaning eligible families can avail themselves of the credit, even if they owe no federal income tax. The IRS also recommends that taxpayers visit the Advance Child Tax Credit Payments in 2021 page to learn more about these changes.

Redetermination of Excise Tax Deficiency Reversed

C. Mazzei, CA-9, 2021-1 USTC ¶50,162

The Court of Appeals for the Ninth Circuit reversed a Tax Court decision on a petition for redetermination of excise tax deficiency. The case involved the use of a foreign sales corporation (FSC) to reduce the tax paid on income that was then distributed as dividends to Roth Individual Retirement Accounts (IRAs). The taxpayers established an FSC under Code Secs. 921-927 (repealed).

Subsequently, the taxpayers made their Roth IRAs formal shareholders of their FSC. The taxpayers' export corporation paid commissions into the FSC and the FSC's after-tax income was returned as dividends and distributions to the taxpayers' IRAs rather than to their export corporation. Therefore, no tax was paid when the money was received into the Roth IRA's and no tax would be paid on qualified withdrawals from the Roth IRAs.

Background: Repealed FSC Statute

Under the repealed FSC statute, a corporation with foreign trade income could establish a related FSC as a shell corporation and then effectively cycle a portion of that income through the FSC where it would be taxed at lower rates. As a result, the FSC's taxable income was generated through related third-party transactions that lacked meaningful economic substance. The repealed FSC taxation rules reflected a departure from the normal principle that taxation is based on economic substance rather than legal form.

Tax Court Opinion and Reversal

The IRS challenged this scheme by asking the Tax Court to recharacterize the entire

REFERENCE KEY

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

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scheme under the doctrine of substance over form. The Tax Court held that, under the substance-over-form principles, the taxpayers were the real owners of the FSC, not the Roth IRAs. Consequently, this mean that the taxpayers were deemed to have received the dividends, Further, the taxpayers' contributions to the Roth IRAs exceeded the statutory limits for such contributions and as a result, they were liable for excise taxes on the excess contributions. Upon review of the Tax Court's decision, the Court of Appeals concluded that the Tax Court erred by invoking substance-over-form principles to effectively reverse congressional judgment and to disallow what the statute plainly allowed.

Reversing the Tax Court, Dec. 61,130, 150 TC —, No. 7.

Applicable Terminal Charge and SIFL Rates for First Half of 2021

The IRS has released the applicable terminal charge and the Standard Industry Fare Level (SIFL) mileage rates for determining the value of noncommercial flights on employer-provided aircraft in effect for the first half of 2021 for purposes of the taxation of fringe benefits. Further, in March 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) was enacted, directing the Treasury Department to allot up to $25 billion for domestic carriers to cover payroll expenses via grants and promissory notes, known as the Payroll Support Program (PSP). Therefore, the IRS has provided three SIFL rates: (1) the Unadjusted SIFL Rate; (2) the SIFL Rate Adjusted for PSP Grants; and (3) the SIFL Rate Adjusted for PSP Grants and Promissory Notes. The value of a flight is determined under the base aircraft valuation formula by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in Reg. §1.61-21(g)(7) and then adding the applicable terminal charge.

For flights taken during the period from January 1, 2021, through June 30, 2021, the terminal charge is $61.88, and the SIFL rates are: $.3385 per mile for the first 500 miles, $.2581 per mile 501 through 1,500 miles, and $.2481 per mile over 1,500 miles. Moreover, for flights taken during the period from January 1, 2021, through June 30, 2021, the terminal charge is $44.35, and SIFL rate adjusted for PSP grants are: $.2426 per mile for the first 500 miles, $.1850 per mile 501 through 1,500 miles, and $.1778 per mile over 1,500 miles. Finally, for flights taken during the period from January 1, 2021, through June 30, 2021, the terminal charge is $38.03, and SIFL Rate Adjusted for PSP Grants and Promissory Notes are: $.2080 per mile for the first 500 miles, $.1586 per mile 501 through 1,500 miles, and $.1525 per mile over 1,500 miles.

Rev. Rul. 2021-11

West Virginia Storm Victim Relief

West Virginia Disaster Relief Notice (WV-2021-01)

The president has declared a federal disaster area in West Virginia. The disaster is due to severe storms and flooding that began February 27, 2021. The disaster area includes:

- Boone,
- Cabell,
- Kanawha,
- Lincoln,
- Logan,
- Mingo, and
- Wayne

Taxpayers who live or have a business in the disaster area may qualify for tax relief.

West Virginia Filing Deadlines Extended

The IRS extended certain deadlines falling on or after February 27, 2021, and before June 30, 2021 to June 30, 2021. The 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.

However, 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.

West Virginia Payment Deadlines Extended

The relief includes extra time to make tax payments. This includes estimated tax payments due on or after February 27, 2021, and before June 30, 2021. Further, taxpayers have until June 30, to perform other time-sensitive actions due on or after February 27, 2021 and before June 30, 2021.

The IRS excused late penalties for employment and excise tax deposits due on or after February 27, 2021 and before March 15, 2021. But, the taxpayer must make the deposits by March 15, 2021.

Casualty Losses

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

Taxpayers claiming a disaster loss on their 2020 returns should write the disaster designation:

"West Virginia Severe Storms and Flooding"

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at the top of the return. This will allow the IRS to speed refund processing.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should:

1. 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
2. submit it to the IRS.

Welfare Benefit Plan Case Nonacquiescence

The IRS will not acquiesce to the Tax Court holding in *Machacek v. Commissioner*, 111 TCM. 1248, Dec. 60,561(M). The Service did not agree with the holding of the Tax Court and would not follow the decision in disposing of cases involving other taxpayers.

The Tax Court held, and the United States Court of Appeals for the Sixth Circuit accepted, that the split-dollar life insurance arrangement was entered into in connection with the employee's performance of services. The Sixth Circuit however held that, under Reg. §1.301-1(q), the economic benefits of the arrangement must be treated as annual distributions under Code Sec. 301. The IRS further clarified that in cases appealable to the Sixth Circuit, taxpayers must adopt consistent reporting positions in light of the opinion in *Machacek*, which may result in unfavorable consequences for some taxpayers. For example, if the economic benefits of a split-dollar life insurance arrangement are treated as distributions, the costs of the arrangement will never be deductible as compensation under Reg. §1.83-6(a)(5) or otherwise. In addition, the Service's position is that adoption of a split-dollar life insurance arrangement by a corporation would terminate the corporation's S election (or invalidate a subsequent S election) if the arrangement provides some shareholders with superior rights to distribution proceeds.

AOD-2021-2

Additional Economic Impact Payments Disbursed

IR-2021-127

The IRS has disbursed more than 2.3 million additional Economic Impact Payments (EIPs) under the American Rescue Plan Act (P.L. 117-2), bringing the total to more than 169 million payments. Following is additional information on the last two weeks of payments, which includes those with official payment dates through June 9:

- this includes more than 2.3 million payments with a value of more than $4.2 billion;
- more than 900,000 payments 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 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;
- in the last two weeks, there were more than 1.1 million of these "plus-up" payments, with a value of more than $2.5 billion. In all, the IRS has made more than 8 million of these supplemental payments this year; and
- overall, the last two weeks of payments contain more than 1.2 million direct deposit payments (with a total value over $2.2 billion) with the remainder as paper check payments.

The IRS has urged people who don't normally file a tax return and haven't received EIPs to file a 2020 tax return to get all the benefits they're entitled to under the law, including tax credits such as the 2020 Recovery Rebate Credit, the Child Tax Credit, and the Earned Income Tax Credit. People experiencing homelessness and those who don't normally have an obligation to file a tax return may qualify for these EIPs. The Service has further reminded taxpayers that the income levels in this third round of EIPs have changed, meaning that some people won't be eligible for the third payment even if they received a first or second EIP or claimed a 2020 Recovery Rebate Credit. Payments will begin to be reduced for individuals making $75,000 or above in adjusted gross income ($150,000 for married filing jointly). The payments end at $80,000 for individuals ($160,000 for married filing jointly); people with adjusted gross incomes above these levels are ineligible for a payment.

Final Disaster Deadline Postponement Regulations

T.D. 9950

The IRS has finalized regulations relating to the mandatory 60-day postponement of certain time-sensitive tax-related deadlines by reason of a federally declared disaster. Further, the regulations clarify the definition of "federally declared disaster." The regulations affect individuals who reside in or were killed or injured in a disaster area, businesses that have a principal place of business in a disaster area, relief workers who provide assistance in a disaster area, or any taxpayer whose tax records necessary to meet a tax deadline are located in a disaster area.

Background

Section 205 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as

Division Q of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), amended Code Sec. 7508A relating to the discretionary authority of the Secretary of the Treasury or her delegate to postpone certain time-sensitive tax deadlines by reason of a federally declared disaster, by adding Code Sec. 7508A(d). This provision provides qualified taxpayers a mandatory 60-day period that is disregarded "in the same manner as a period specified" under Code Sec. 7508A(a).

On January 13, 2021, the IRS published in the Federal Register a notice of proposed rulemaking (NPRM REG-115057-20) to interpret and implement Code Secs. 165(i)(5) and 7508A(d). As described in the proposed regulations, Code Sec. 7508A(d) was ambiguous in at least two important respects—the time-sensitive acts to be postponed (beyond the pension-related actions described in Code Sec. 7508A(d)(4)) were not specified and it was unclear how the mandatory 60-day postponement period was to be calculated when the disaster declaration specified in Code Sec. 7508A(d) did not contain an incident date. The legislative history was also insufficient to explain these areas of ambiguity.

Final Regulations

The final regulations adopt the proposed rules including providing that the definition of a federally declared disaster includes both a major disaster and emergencies declared under sections 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (P.L. 100-707). Also, one minor modification has been made to an example in the proposed rules to better illustrate the calculation of the mandatory 60-day postponement period in the event of multiple declarations and shifting "latest" incident dates.

Applicable Date

The final regulations under Code Sec. 7508A for a mandatory 60-day postponement period apply to disasters declared on or after December 21, 2019. The final regulations under Code Sec. 165 for the definition of a federally declared disaster apply June 11, 2021.

Nonacquiescence in Professional Employer Organization Case

AOD 2021-3

The IRS will not acquiesce to an appeals court holding in *Trinet Group, Inc. v. United States*, CA-11, 2020-2 U.S.T.C. ¶50,179. The taxpayer was the successor-in-interest of a professional employer organization (P1). The Service noted that nonacquiescence to the holdings that P1, rather than its clients, had "control of the payment of wages." Moreover, P1 was the statutory employer under Code Sec. 3401(d). The appeals court further ruled that P1 was the statutory employer entitled to claim Federal Insurance Contributions Act (FICA) tip credit as a result of the aforementioned. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

American Rescue Plan Tax Credit FAQs

IR-2021-128

The IRS issued two new, separate sets of frequently-asked-questions (FAQs) to assist families and small and mid-sized employers) in claiming credits under the American Rescue Plan (ARP). These FAQs provide information on eligibility, computing the credit amounts and how to claim these important tax benefits. Enacted in March to assist families and small businesses with the fallout of the COVID-19 pandemic and recovery underway, the ARP enhanced the child and dependent care credit and the paid sick and family leave credit.

Child and Dependent Care Credit

For 2021, the ARP increased the maximum amount of work-related expenses for qualifying care that may be taken into account in calculating the credit, increased the maximum percentage of those expenses for which the credit may be taken, modified how the credit is reduced for higher earners, and made it refundable. Additionally, eligible taxpayers can claim qualifying work-related expenses up to:

- $8,000 for one qualifying person, up from $3,000 in prior years; or
- $16,000 for two or more qualifying persons, up from $6,000 in prior years.

Further, the taxpayers are required to have earnings, and the amount of qualifying work-related expenses claimed cannot exceed the taxpayer's earnings. Combined with the increase to 50-percent in the maximum credit rate, taxpayers with the maximum amount of qualifying work-related expenses would receive a credit of $4,000 for one qualifying person, or $8,000 for two or more qualifying persons.

A dependent under the age of 13 or a dependent of any age or spouse who is incapable of self-care and who lives with the taxpayer for more than half of the year is considered a qualifying person for this credit. Under the new ARP, more taxpayers will qualify for the new maximum

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50-percent credit rate. However, the 50-percent credit rate goes down as income rises above $125,000. Taxpayers with adjusted gross income over $438,000 are not eligible for the credit.

The credit is fully refundable for the first time in 2021. This means eligible taxpayers can receive the credit even if they owe no federal income tax. To be eligible for the refundable credit, a taxpayer must reside in the U.S. for more than half of the year. However, special rules apply to military personnel stationed outside the U.S. To claim the credit for 2021, taxpayers need to complete Form 2441, Child and Dependent Care Expenses, and include the form when filing their tax returns in 2022.

Paid Sick and Family Leave Credit

The paid sick and family leave credits reimburse eligible employers for the cost of providing paid sick and family leave to their employees for reasons related to COVID-19, including leave taken by employees to receive or recover from COVID-19 vaccinations. Self-employed individuals are eligible for similar tax credits. Additionally, under the ARP, eligible employers may now claim the credit for paid family leave wages for the same reasons that they can claim the credit for paid sick leave wages.

Under the ARP, eligible employers, including businesses and tax-exempt organizations with fewer than 500 employees and certain governmental employers, may claim tax credits for qualified leave wages and certain other wage-related expenses (such as health plan expenses and certain collectively bargained benefits) paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021. The ARP kept the daily wage thresholds that previously existed for these credits under the Families First Coronavirus Response Act (FFCRA) (P.L. 116-127). The aggregate cap on qualified sick leave wages remains at two weeks (up to a maximum of 80 hours), and this aggregate cap reset with respect to leave taken by employees beginning on April 1, 2021. The aggregate cap on qualified family leave wages increases to $12,000 from $10,000, and this aggregate cap reset with respect to leave taken by employees beginning on April 1, 2021.

The paid leave credits under the ARP are tax credits against the employer's share of Medicare tax. This credit is refundable, which means that the employer is entitled to payment of the full amount of he credit to the extent it exceeds the employer's share of Medicare tax. Self-employed individuals may claim comparable credits on the Form 1040, U.S. Individual Income Tax Return.

TAX BRIEFS

Abatements

The IRS Office of Appeals (Appeals) did not abuse its discretion in denying abatement of interest claimed by a married couple under Code Secs. 6404(a) and (e). The married couple held investments in partnerships that reported fraudulent charitable contributions on their partnership tax return and they were subject to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (P.L. 97-248).

Verghese, TC, Dec. 61,880(M)

Business Interest Limitation

The IRS Chief Counsel ruled that to determine the amount allowed as a deduction under Code Sec. 163(j) for the tax year at issue, the adjusted taxable income (ATI) under Code Sec. 163(j)(8) includes those adjustments that are required under Code Sec. 481(a) by a change in method of accounting for depreciation.

Chief Counsel Advice Memorandum 202123007

Collections

Two IRS settlement officers (SO) did not abuse their discretion in sustaining the proposed collection action with respect to a married couple's tax liability for a tax year at issue. Further, the court stated that the notice of determination correctly determined that the taxpayers should be allowed an additional FTC, thereby reducing their tax liability for the tax year at issue.

Garcia, TC, Dec.61,882(M)

Controlled Corporations

The IRS issued a supplemental ruling on federal income tax consequences of a series of proposed transactions (transaction). The taxpayer was a distributing parent that had formed an external controlled entity and received some formation shares. The taxpayer would sell the formation shares to the public on a stock exchange as soon as practically possible after the external distribution, but in no event later than a number of fixed days after the external distribution. Moreover, the formation shares made up a *de minimis* percentage of the total issued and outstanding shares of external controlled entity. The Service ruled that the supplemental facts submitted would not adversely affect any of the rulings in the prior ruling, and those rulings would remain in full force and effect. In addition, the distributing parent's continuing ownership of the formation shares until their disposal would not be in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax for purposes of Code Sec. 355(a)(1)(D)(ii).

IRS Letter Ruling 202123006

Entity Classification Election

A foreign entity was not granted a 120-day extension to make an entity classification election under Code Sec. 7701. The taxpayer was a foreign eligible entity that, by default, was taxed as a corporation. Following which, another entity, through

a domestic, wholly owned subsidiary taxed as a disregarded entity, acquired a portion of the taxpayer's corporation. Later, the taxpayer sought relief to make an election to be treated as an association taxable as a corporation, post its acquisition. However, the taxpayer failed to satisfy the requirements of Reg. §§301.9100-1 and 301.9100-3, therefore granting relief had potential to prejudice the government's interests.

IRS Letter Ruling 202123001

Employment Taxes

An individual was liable for unpaid employment and unemployment taxes (plus interest and penalties) during the tax years at issue. The government further sought to enforce its tax liens against a real property belonging to the taxpayer. The taxpayer was the sole owner of a single-member LLC which elected not to be taxed as a corporation. The taxpayer filed the instant motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b)(4).

J. Lamberd, DC Kan., 2021-1 USTC ¶50,161

Grants and Scholarships

Four private foundations' procedures for awarding scholarships were approved. In all the cases, the foundation's procedures met the requirements under Code Sec. 4945(g). The first foundation operated an educational grant program that provided youth with an opportunity to improve their skills with steers. The second foundation operated a grant program to address the shortage of medical personnel, by paying a reasonable cost of professional schooling for both medical and healthcare professionals. In the third case, the foundation operated an individual grantmaking program, which included both scholarship and fellowship grants, to be used for study at an educational organization, under Code Sec. 4945(g)(1). The fourth foundation operated an educational grant program to foster development of the arts. In all cases, the foundations' procedures met the requirements under Code Sec. 4945(g)(3), as their awards were not taxable expenditures. Further, the awards were made on a nondiscriminatory basis and were not taxable to the recipients if used for qualified tuition and related expenses; with all foundations' awards subject to the limitations of Code Sec. 117(a), and the third foundation further subject to Code Sec. 117(b).

IRS Letter Ruling 202123010; IRS Letter Ruling 202123011; IRS Letter Ruling 202123012; IRS Letter Ruling 202123013

Lawsuit Settlement Proceeds

An individual's settlement proceeds related to a malpractice lawsuit were includable in her gross income for the tax year at issue. The taxpayer was involved in two lawsuits, a divorce proceeding and a malpractice lawsuit against her divorce attorney.

C.E. Holliday, TC Memo. 2021-69, Dec. 61,879(M)

Liens and Levies

A settlement officer's (SO's) determination to sustain the proposed collection action against an individual was not abuse of discretion. Moreover, the taxpayer was unable satisfy his burden of proof.

D.A. Lufkin, Sr., TC, Dec. 61,881(M)

Nuclear Decommissioning Costs

The IRS privately ruled on the tax consequences of a proposed transaction related to qualified fund transfers. The taxpayer was an LLC treated as an association taxable as a corporation for federal income tax purposes. The taxpayer was a subsidiary of a parent company and a member of its consolidated group. The taxpayer through its wholly-owned disregarded subsidiary was the sole owner of two plants which were nuclear-powered electric generating plants. The taxpayer represented that its ownership of each facility was a qualifying interest. The IRS observed that the plants' qualified funds would not be disqualified under Code Sec. 468A by the transfer associated with the proposed transaction. Moreover, the qualified funds would each continue to be treated as satisfying requirements of Code Sec. 468A and Reg. §1.468A-5 following the qualified fund transfers. The transfer would not constitute a payment or a contribution of assets by the transferee to its fund. The transferee's fund would have a basis in the assets received from the transferor's fund that is the same as the basis of those assets in the transferor's fund immediately before the disposition. Further, the tax basis that the qualified funds had in their respective assets would not change by reason of the said transfers. The amount realized by taxpayer would include the amount of the nuclear decommissioning liability (NDL) associated with the plants. However, it would not include the portion of the NDL funded by said funds, respectively, on the date of the transfer. The amount of NDL for each facility assumed by the transferee in excess of the fair market value of property in each facility's fund. Finally, the taxpayer would be entitled to treat the NDLs to the extent the NDLs are included in amount realized, as satisfying economic performance under Reg. §1.461-4(d)(5).

IRS Letter Ruling 202123003

Private Foundations

A foundation's (non stock corporation) (taxpayer) loan agreement loan to a grantee was a program-related investment under Code Sec. 4944. The taxpayer was a tax-exempt organization under Code Sec. 501(c)(3) and classified as a Code Sec. 509(a) private foundation. The taxpayer proposed to make a loan to the grantee in the form of an unsecured line of credit not exceeding the loan amount, subject to a written agreement by and between foundation and grantee. The IRS noted the agreement terms to significantly further the accomplishment of taxpayer's exempt purposes. The taxpayer also demonstrated the investment would not have been made but for the relationship between the investment and accomplishment of its exempt purposes. Additionally, the interest rates associated with the agreement were capped below commercial market rates. The agreement was consistent with Treas. Reg. §53.4944-3(b). The investors solely engaged in investing for profit would not be likely to make this investment on the same terms as the taxpayer. Next, the loan was a qualifying distribution under Code Sec. 4942. The grantee was not an organization controlled by the taxpayer under Treas. Reg. §53.4942(a)-3(a)(3) and not a disqualified person (or controlled by a disqualified person). The agreement restricted the grantee's use of funds exempt purposes.

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The agreement also provided the taxpayer a position on the grantee's advisory committee created to receive reporting regarding the use of funds. Finally, the taxpayer and its disqualified persons were given no formal decision-making authority or other interest in grantee aside from the taxpayer's ability to enforce the terms of its agreement.

IRS Letter Ruling 202123004

Qualified Opportunity Funds

An LLC was granted relief for its failure to timely file a Form 8996, Qualified Opportunity Fund (QOF) to make an election under Code Sec. 1400Z-2. The taxpayer was formed as a QOF for the purpose of investing in qualified opportunity zone properties. The taxpayer appointed a manager under the LLC's agreement. The manager's responsibilities included ensuring all tax returns for the taxpayer were prepared and timely filed, including annually certifying the taxpayer's status as a QOF. Consistent with his past practices, the manager enlisted the services of accountants to prepare the taxpayer's return and Form 8996 for the tax year at issue. However, the manager was mistaken regarding the original due date for filing the tax return. Upon realizing his error, the manager contacted the counsel for advice and filed the taxpayer's return along with a completed Form 8996. The taxpayer acted reasonably and in good faith, therefore granting relief did not prejudice the interests of the government.

IRS Letter Ruling 202123005

Real Estate Investment Trusts

An entity and its subsidiary were granted a 90-day extension to make an election to be treated as a taxable real estate investment trust (REIT) subsidiary (TRS). The taxpayer was organized as a state LLC, but elected to be treated as a REIT for federal tax purposes. The taxpayer acquired an indirect ownership interest in a state corporation (subsidiary). The taxpayer did not own any stock directly or indirectly in the subsidiary. Further, the taxpayer intended for the subsidiary to be treated as a TRS. The taxpayer's legal counsel filed the tax returns and Form 8875, Taxable REIT Subsidiary Election, on behalf of the taxpayer and its subsidiary for the tax year at issue. However, due to inadvertence, the law firm mentioned the incorrect date of election on the Form 8875. Upon discovering this error, the taxpayer's accounting firm reported it and requested for a ruling. Finally, the taxpayer acted reasonably and in good faith and, therefore, granting relief would not prejudice the government's interests.

IRS Letter Ruling 202123002

Tax Exempt Organizations

An organization's request for tax-exempt status was denied under Code Sec. 501(c)(7). The organization operated an indoor and outdoor shooting range and provided training in firearm safety and handling procedures. However, the organization failed to establish that it operated substantially for pleasure, recreation of its members or other nonprofitable purposes. Moreover, the organization's nonmember income consistently exceeded the income test under Code Sec. 501(c)(7).

IRS Letter Ruling 202123009

Whistleblower Award

The IRS's Whistleblower Office (WBO) properly denied a whistleblower award. The whistleblower provided information about a target to an attorney with the IRS's Office of Chief Counsel and delivered the information by hand to an IRS special agent. The information related to the target's amortization of customer lists and deferral of tax on income earned on money market deposit accounts (MMDA).

Whistleblower 10084-16w, TC Memo. 2021-73, Dec. 61,883(M)