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## Supreme Court Rejects Affordable Care Act Challenge

*California v. Texas SCt, 2021-1 USTC ¶50,165*

The Supreme Court has reversed and remanded *California v. Texas*, holding that the Plaintiffs do not have standing to challenge the Patient Protection and Affordable Care Act's (ACA) minimum essential coverage provision.

In 2010, ACA, under the newly added Code Sec. 5000A, required most Americans to obtain minimum essential health insurance coverage, or pay a penalty. In 2017, under the Tax Cuts and Jobs Act, Congress effectively nullified the penalty by setting its amount at $0. The IRS issued guidance that the statute no longer required taxpayers to report whether they did or did not maintain coverage.

In 2018, Texas and 17 other states brought a lawsuit against the United States and federal officials. They were later joined by two individuals (Neill Hurley and John Nantz). The United States took the side of the plaintiffs. The plaintiffs claimed that without the penalty, the minimum essential coverage requirement was unconstitutional and that the minimum essential coverage requirement was not severable from the rest of ACA. Hence, they believed ACA as a whole was invalid. California, along with fifteen other states and the District of Columbia, intervened to defend ACA.

The District Court found that the individual plaintiffs had standing to challenge the constitutionality of the minimum essential coverage provision, Code Sec. 5000A(a). The court further held that the minimum essential coverage provision was unconstitutional and not severable from the rest of ACA. It granted relief in the form of a declaration stating just that. On appeal, a panel majority agreed with the District Court that the plaintiffs had standing and that the minimum essential coverage provision was unconstitutional. It found that the District Court's severability analysis, however, was "incomplete," and it remanded the case for further analysis.

The Supreme Court did not analyze whether the provision or ACA is unconstitutional, because it held that Texas and the other plaintiffs in the suit lack standing to bring the case. The plaintiffs do not have standing because they were not able to show a past or future injury, pocketbook or otherwise, fairly traceable to the government enforcing the minimum essential coverage requirement. The Court vacated the lower court's judgment and remanded the case with instructions to dismiss.

## Online Child Tax Credit Payment Tool

*IR-2021-129*

The IRS and Treasury have unveiled an online non-filer sign-up tool designed to help families who do not normally file tax returns and register for monthly Child Tax Credit (CTC) payments. The tool would be accessible from July 15 and is regarded as an update from last year. It helps individuals register for the third round of Economic Impact Payments (EIP) and claim recovery rebate credit for any amount of the first two rounds of EIPs missed.

In addition, the new tool has been created to provide a simple way for taxpayers who do not have an income tax return-filing obligation to provide the IRS with information required to process advance CTC payments. Taxpayers can provide information on qualifying children ages 17 and under, other dependents, and direct deposit bank information for payments sent to their checking or savings account directly.

No action is needed by most families as taxpayers who have already filed or plan to file 2019 or 2020 returns. They should not use this tool. Once the IRS has processed their returns, the information provided therein shall be used to determine eligibility to issue advance payments. Further, taxpayers need to be aware of scams related to both advance CTC payments and EIPs. The Service has emphasized that the only way to obtain either of these benefits is by filing a tax return or registering online.

Finally, the IRS noted that advance CTC payments are calculated based on the taxpayer's 2020 tax return or 2019 tax return if the former is unavailable to them. The payment will be up to $300 per month for each child under age 6 and up to $250 per month for each child ages 6 through 17. These payments will largely be made through direct deposit on July 15, August 13, September 15, October 15, November 15, and December 15.

# Individual Qualified as "Employee"

*Bell Capital Management, Inc., TC Memo. 2021-74, Dec. 61,884(M)*

An individual was legally qualified as an "employee" of a corporation (the taxpayer) and was held liable for unpaid employment taxes. The taxpayer was incorporated by the individual, who at all relevant times owned 100-percent of the stock and was its sole director. The taxpayer leased the individual's services through offshore employee leasing transactions and he remained at the helm of the taxpayer's operations as its chief executive officer, chief financial officer, and president. The IRS's determination to collaterally estop the taxpayer from denying that it was responsible for paying the employment taxes was upheld. Further, in a consolidated case, the Tax Court had held that the taxpayer was the individual's alter ego and he implemented the offshore employee leasing transactions to fraudulently underpay tax. The taxpayer was therefore precluded: (1) from denying that the offshore employee leasing transactions lacked economic substance; and (2) from denying that the individual arranged for the offshore employee leasing transactions so as to fraudulently underreport and underpay tax. Moreover, the taxpayer's tax returns, annual state filings and other documents all identified the individual as its president and the he indirectly received remuneration from the taxpayer, a fact which the taxpayer was collaterally estopped from challenging. Accordingly, the taxpayer was liable for the employment taxes and related withholding.

In addition, the taxpayer was held liable for fraud penalties under Code Sec. 6663 and failure to deposit taxes penalties under Code Sec. 6656. The taxpayer's withholding forms were false or fraudulent returns because its officers intentionally omitted payments made for the individual's benefit with the specific purpose to evade tax. The taxpayer alleged that it reasonably relied on its leasing agreements and that the individual's actions and his secondary contracts with the leasing companies could not be imputed to the corporation. However, the taxpayer provided no evidence to disprove that its officers entered into the leasing contracts with full awareness and design of the overall offshore employee leasing transactions. Moreover, the taxpayer supplied no information or affidavit in support of its claim that its officers' actions and leasing agreements were separate from the individual's fraudulent scheme. The IRS successfully established that the taxpayer intentionally understated its employment tax and withholding obligations with the specific purpose to evade the individual's taxes. Finally, the taxpayer's arguments that imposing fraud penalties would violate its Eighth Amendment rights and that the IRS had improperly computed the taxes were denied because it intentionally understated its employment tax and withholding obligations.

# Tax Relief for Louisiana Storm Victims

*Louisiana Disaster Relief Notice (LA-2021-03)*

The president has declared a federal disaster area in Louisiana. The disaster is due to severe storms and flooding that began on May 17, 2021. The disaster area includes:

- Ascension,
- Calcasieu,
- East Baton Rouge,
- Iberville, and
- Lafayette.

**REFERENCE KEY**

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

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

### Louisiana Filing Deadlines Extended

The IRS extended certain deadlines falling on or after May 17, and before August 16, to August 16, 2021. This extension includes filing for most returns, including:

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

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.

### Louisiana Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after May 17, and before August 16, 2021. Further, taxpayers have until August 16, to perform other time-sensitive actions due on or after May 17, and before August 16, 2021.

The IRS excused late penalties for employment and excise tax deposits due on or after May 17 and before June 1, 2021. But, the taxpayer must make the deposits by June 1, 2021.

### Casualty Losses

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

Taxpayers claiming a disaster loss on their 2020 or 2021 return should write the disaster designation "Louisiana - Severe Storms and Flooding" 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.

## IRS Collection and Enforcement Update

Due to the recent progress the U.S. has made in controlling the COVID-19 pandemic and returning to normal economic activity, the IRS plans to return to its normal casework processes later this summer. The IRS has kept its systematic and automatic lien and levy programs idle since April 2020, in response to the pandemic. The IRS will also begin to follow-up with taxpayers who failed to respond to prior balance due notices. Taxpayers will be notified that they have 30 days (45 days if the taxpayer is out of the country) to respond to the notice or pay the tax bill. Taxpayers who fail to respond could be subject to levies or Notices of Federal Tax Lien Filings, beginning August 15, 2021.

Additional tax collection process will resume as follows:

- revocation of passports of taxpayers with seriously delinquent tax debt, beginning July 15, 2021;
- coordination of Federal Payment Levy Program (FPLP), State Income Tax Levy Program (SITLP), and Municipal Tax Levy Program (MTLP), beginning July 15, 2021;
- Alaskan Permanent Fund Dividend Program (AKPFD), beginning August 15, 2021;
- mailing of balance due notices and final notices by Automated Collection System, beginning June 2021; and
- issuance of systemic levies and Notice of Final Tax Liens, beginning August 15, 2021, if taxpayers fail to pay, establish a payment plan, or reach an agreement with the IRS that the taxes are uncollectible.

More information regarding the IRS's operations during the COVID-19 pandemic can be found at https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue.

## GAO Reviews Taxpayer Advocate Service Reports

*GAO Report: Taxpayer Advocate Service—Opportunities Exist to Improve Reports to Congress*

The IRS's Taxpayer Advocate Service has generally complied with legal requirements for issuing reports to Congress, in which it discusses serious taxpayer problems and the Service's objectives; however, some improvements could be made, according to the Government Accountability Office (GAO). GAO's review of the Taxpayer Advocate Service's resources, workload to carry out management functions and reporting practices revealed that the Taxpayer Advocate Service could improve its manner of identification of important objectives in order to help Congress understand the goals of the Service.

The review found that the budget for the Taxpayer Advocate Service declined by about 14 percent from fiscal years 2011 to 2020, when adjusted for inflation. For fiscal year 2020, the Taxpayer Advocate Service used most of its resources to assist individual taxpayers through case advocacy. The percentage of resources for case advocacy has decreased during the past


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decade. For the same period, however, resources to address broader issues affecting groups of taxpayers, known as systemic advocacy, increased from 9 percent to 14 percent of the total budget. This shift is due in part to the reallocation of staff to better integrate systemic advocacy work; with the Taxpayer Advocate Service's overall attrition rate doubling to 15.9 percent between fiscal years 2011 and 2019.

Since 2011, the Taxpayer Advocate Service received more than two million taxpayer cases, of which almost half were referrals from other IRS offices. During this period, the Taxpayer Advocate Service closed more cases than it received, but its inventory has grown since fiscal year 2018, due in part to attrition in case advocacy staff and an increase in taxpayers seeking assistance. The Taxpayer Advocate Service therefore modified its two mandated reports to Congress by reducing their length and separately compiling legislative recommendations. It shortened its annual reports and reduced the required number of most serious taxpayer problems from "at least 20" to 10.

In order for the Taxpayer Advocate Service to improve its reporting, GAO recommended some additional actions. First, the Taxpayer Advocate Service could report outcome-oriented objectives and results achieved against those objectives. GAO suggests that improved performance reporting could help both the Taxpayer Advocate Service and Congress better understand which activities contribute towards achieving the Taxpayer Advocate Service's objectives and where actions may be needed to address unmet goals. Further recommendations were made for the Taxpayer Advocate Service to consult with Congress and other stakeholders in order to incorporate stakeholder perspectives in its reporting. Finally, GAO identified that the Taxpayer Advocate Service must publish recommendations on implementation status of solutions to address serious issues facing taxpayers. The Taxpayer Advocate Service agreed with all of GAO's recommendations.

## Current Plan Liability Rates for June 2021

For pension plan years beginning in June 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.

### Corporate Bond Rate

The three 24-month average corporate bond segment rates applicable for June 2021 (without adjustment for the 25-year average segment rate limits are as follows):

- 1.27 for the first segment rate,
- 2.77 for the second, and
- 3.45 for the third.

### June 2021 Adjusted Segment Rates

The June 2021 adjusted segment rates for plan years beginning in 2020 are:

- 4.75 for the first,
- 5.50 for the second, and
- 6.27 for the third.

The rates for plan years beginning in 2021 are:

- 4.75 for the first,
- 5.36 for the second, and
- 6.11 for the third.

### 30-Year Treasury Weighted Average

For plan years beginning in June 2021, the 30-year Treasury weighted average securities rate is 2.23, with a permissible range of 2.00 to 2.34.

The rate of interest on 30-year Treasury securities for May 2021 is 2.32 percent.

The minimum present value segment rates under Code Sec. 417(e)(3)(D) for May 2021 are:

- 0.61 for the first segment rate,
- 2.84 for the second, and
- 3.54 for the third.

*Notice 2021-37*

# Residential Rental Property Depreciation Procedures

*Rev. Proc. 2021-28*

The IRS has released a revenue procedure explaining how a taxpayer changes its method of computing depreciation for certain residential rental property. Automatic consent procedures for changing accounting method are available for taxpayers adopting the depreciation method changes.

## Residential Rental Property Allowed 30-Year ADS Depreciation

Tax Cuts and Jobs Act (P.L. 115-97) added residential rental property held by an electing real property trade or business to the list of property to which a 30 year recovery periods applies under the alternative depreciation system (ADS), thus changing the recovery period from 40 years to 30 years. The change applied to property placed in service after December 31, 2017, and therefore only to property newly placed in service.

The Taxpayer Certainty and Disaster Tax Relief Act (Taxpayer Certainly Act) (P.L. 116-260), enacted December

27, 2020, extended 30-year depreciation to apply to residential rental property placed in service before January 1, 2018 held by certain electing real property trade or businesses. To apply the 30-year recovery period to property already placed in service, taxpayers have to change their computation of depreciation for the property.

### Procedures Provided for Changing Depreciation Method

This revenue procedure permits taxpayers who are affected by the Taxpayer Certainly Act's retroactive effective date to file an amended federal income tax return or information return, administrative adjustment request (AAR), or a Form 3115, Application for Change in Accounting Method, to change their method of computing depreciation of certain residential rental property held by an electing real property trade or business to use a 30-year ADS recovery period. If the property is included in a general asset account, it permits taxpayers to change their general asset account treatment for the property to comply with Reg. §1.168(i)-1(h)(2).

The revenue procedure also provides automatic consent procedures for changing accounting method, and in certain cases simplified procedures, for taxpayers adopting the depreciation method changes.

## AFRs Issued For July 2021

*Rev. Rul. 2021-12*

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

**Applicable Federal Rates (AFR) for July 2021**

| Short-Term | Annual | Semiannual | Quarterly | Monthly |
|---|---|---|---|---|
| AFR | 0.12% | 0.12% | 0.12% | 0.12% |
| 110% AFR | 0.13% | 0.13% | 0.13% | 0.13% |
| 120% AFR | 0.14% | 0.14% | 0.14% | 0.14% |
| 130% AFR | 0.16% | 0.16% | 0.16% | 0.16% |
| **Mid-Term** | | | | |
| AFR | 1.00% | 1.00% | 1.00% | 1.00% |
| 110% AFR | 1.10% | 1.10% | 1.10% | 1.10% |
| 120% AFR | 1.20% | 1.20% | 1.20% | 1.20% |
| 130% AFR | 1.30% | 1.30% | 1.30% | 1.30% |
| 150% AFR | 1.51% | 1.50% | 1.50% | 1.50% |
| 175% AFR | 1.76% | 1.75% | 1.75% | 1.74% |
| **Long-Term** | | | | |
| AFR | 2.07% | 2.06% | 2.05% | 2.05% |
| 110% AFR | 2.28% | 2.27% | 2.26% | 2.26% |
| 120% AFR | 2.49% | 2.47% | 2.46% | 2.46% |
| 130% AFR | 2.70% | 2.68% | 2.67% | 2.67% |

**Adjusted AFRs for July 2021**

| | Annual | Semiannual | Quarterly | Monthly |
|---|---|---|---|---|
| Short-term adjusted AFR | 0.09% | 0.09% | 0.09% | 0.09% |
| Mid-term adjusted AFR | 0.76% | 0.76% | 0.76% | 0.76% |
| Long-term adjusted AFR | 1.57% | 1.56% | 1.56% | 1.55% |

The Code Sec. 382 adjusted federal long-term rate is 1.57%; 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%; 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%; and the Code Sec. 7872(e)(2) blended annual rate for 2021 is 0.13%.

## Eligible Partnerships May File Amended Returns

*Rev. Proc. 2021-29*

An eligible partnership may file amended partnership returns for tax years beginning in 2018, 2019, and 2020 by filing a Form 1065, U.S. Return of Partnership Income (Form 1065), with the "Amended Return" box checked. The partnership may also issue an amended Schedule K-1, Partner's Share of Income, Deductions, Credits, etc. (Schedule K-1), to each of its partners.

### Partnerships Eligible for Amended-Return Procedures

The amended-return procedures apply to "BBA partnerships," which include most partnerships that are subject to the centralized audit regime provided by the Bipartisan Budget Act of 2015 (BBA) (P.L. 114-74). The centralized audit regime replaced the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (P.L. 97–248) partnership procedures.

An eligible BBA partnership may use amended returns to:

- change its method of depreciation and/or general asset account treatment for its residential rental property, or


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- make a late election to be an electing real property trade or business under Code Sec. 163(j)(7) by filing an amended Form 1065 in accordance with Rev. Proc. 2020-22, 2020-18 IRB 745.

## Amended Partnership Returns in Special Situations

If the partnership is currently under examination for a tax year beginning in 2018, 2019, or 2020, it must send written notice to the revenue agent coordinating the before or at the same time it files its amended Form 1065.

If the partnership previously filed an administrative adjustment request (AAR) for a tax year covered by the amended return, it should use the items as adjusted in the AAR on the amended return.

If, under Notice 2019-46, 2019-37 I.R.B. 695, a partnership has applied the Global Intangible Low-Taxed Income (GILTI) rules of Proposed Reg. §1.951A-5 for tax years ending before June 22, 2019, the partnership may continue to apply those rules to those tax years. However, the partnership must also furnish amended Schedules K-1 and appropriate notifications to its partners.

# TAX BRIEFS

### *Awards*

The Tax Court granted an individual's motion to dismiss a petition for review with respect to the IRS's denial of an application for award of administrative costs. After the IRS filed an answer to the petition, the taxpayer moved to voluntarily dismiss the case, and the IRS did not object.

*R. Stein, 156 TC —, No. 11, Dec. 61,885*

### *Business Expenses*

The Tax Court's disallowance of business expenses and imposition of accuracy-related penalties related to the start-up company of a married couple was affirmed. The taxpayers had claimed business deduction on their joint income-tax returns but their company was still in the start-up phase and not yet an active trade or business. Further, the taxpayers did not establish that the business expenses were paid or incurred during the tax years at issue or that they were "ordinary or necessary." During the appeals trial, the taxpayers contended that the Tax Court erred in denying their pretrial summary-judgment motions. However, the denials of the taxpayers' pretrial summary-judgment motions were not reviewable on appeal and the Tax Court had entered the judgment on the merits after a full trial. Moreover, the taxpayers argued that the Tax Court erred by imposing a product sale requirement for a manufacturing business to exist beyond the start-up phase. However, the taxpayers' business was still engaged in the process of creating the manufacturable item and did not produce its first device during the tax years at issue. Therefore, whether viewed as a manufacturing business, a marketing or retail business, or both, the business had not begun to operate in the tax years at issue. While the husband undertook substantial activity to prepare for the business of manufacturing and selling the device during that time, such expenses were not ordinary business expenses but rather in the nature of capital expenditures, which might have been amortized once the active trade or business had begun.

*A.I. Provitola CA-11, 2021-1 USTC ¶50,163*

### *Cryptocurrency*

The IRS Chief Counsel issued a ruling regarding the applicability of Code Sec. 1031 to exchanges of cryptocurrency. The taxpayer requested for nontaxpayer specific advice on whether certain cryptocurrency exchanges completed prior to January 1, 2018, like Bitcoin (BTC) for Ether (ETH), Bitcoin for Litecoin (LTC) and Ether for Litecoin, could be classified as like-kind exchanges under Code Sec. 1031. The IRS Chief Counsel stated that exchanges of cryptocurrency prior to January 1, 2018, as described by the taxpayer, would not qualify as like-kind exchange under Code Sec. 1031. In coming to this conclusion, the IRS Chief Counsel analyzed the nature, character, role, and properties of the different cryptocurrencies. Finally, the Chief Counsel emphasized that this advice was limited to the exchanges involving Bitcoin, Ether or Litecoin.

*Chief Counsel Advice Memorandum 202124008*

### *Educational Grants*

Three 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 provided grants to faculty, staff, and/or undergraduate students at qualified educational institutions who demonstrate commitment to serve the community. The second foundation operated a grant program to individuals who excelled in entrepreneurship, which specific focus on women in the fields of Science, Technology, Engineering and Mathematics (STEM) fields. In the final case, the foundation operated a scholarship program for incoming and current full-time undergraduate students.

In the first and second cases, the foundations' procedures met the requirements under Code Sec. 4945(g)(3), as their scholarship grants were not taxable expenditures, and were subject to the limitations of Code Sec. 117(a). The third foundation's awards met the requirements under Code Sec. 4945(g)(1). The awards were not taxable expenditures if used for qualified tuition and other related expenses, and were subject to Code Sec. 117(b). Finally,

all the awards were made on a non-discriminatory basis.

*IRS Letter Ruling 202124014; IRS Letter Ruling 202124015; IRS Letter Ruling 202124016*

### Loss Deduction

The Court of Appeals affirmed that an individual was not entitled to a loss deduction on account of his Federal Employees Retirement System disability annuity (FERS annuity) benefits being reduced by the amount he received as Social Security Disability Insurance (SSDI) benefits. The Tax Court had also afforded the taxpayer a reasonable notice and a meaningful opportunity to be heard by allowing him to testify and submit supporting documentation. Consequently, there was no evidence of bias.

*Staples, CA-10, 2021-1 USTC ¶50,166*

### Normalization

An investor-owned "combination" regulated utility's cost of removal (COR)-related net deferred tax asset (DTA) was not protected by normalization rules. The taxpayer was engaged in the business of generation, purchase, transmission, distribution, and sale of electric energy. Further, the taxpayer had claimed accelerated depreciation on its public utility properties to the full extent and had normalized the federal income taxes deferred in accordance with the normalization rules. Consequently, the taxpayer had a substantial balance of Accumulated Deferred Federal Income Taxes (ADFIT) attributable to accelerated depreciation reflected on its regulated books of account. A commission had established Uniform Systems of Accounts (USOAs) which were applicable to the taxpayer and, specifically, the USOAs defined the COR as a component of establishing the applicable depreciation rate. The taxpayer had paid income tax at a rate of 35-percent on the receipt of the COR portion of book depreciation from its customers. However, as a result of the tax rate reduction, the taxpayer would receive a 21-percent benefit when the COR deduction is actually claimed. Thus, in the case of COR, the tax rate reduction produced a deferred tax shortfall, not an excess deferred tax reserve. Because the taxpayer would not recover the 14-percent excess tax it paid on its recovery of the COR component of book depreciation from the government when it claimed its COR deduction, it may recover this amount from its customers consistent with the normalization rules.

*IRS Letter Ruling 202124003*

### Penalties

The Court of Appeals for the Second Circuit affirmed a district court decision awarding the government unpaid penalties for an individual's failure to pay over withholding taxes to the IRS. The district court denied the taxpayer's motions to dismiss and for summary judgment and granted the government's motion for summary judgment. The district court held that the taxpayer was liable for penalties assessed under Code Sec. 6672 for wilfully failing to remit to the IRS taxes collected from the employees of an entity for a tax year at issue. The record supported the district court's decision that the taxpayer was the responsible person liable for the trust fund penalties assessed. Additionally, no genuine issue of fact existed as to the wilfulness element with respect to the taxpayer's obligation to pay withholding taxes. Appealing the district court's judgment, the taxpayer asserted several defences, none of which had merit. The taxpayer argued that he was not liable for failing to pay withholding taxes because an IRS account transcript for a tax quarter stated that the account balance and penalty was nil. However, the taxpayer was mistaken about the relevant tax period as the government did not seek to recover for unremitted taxes for the quarter that the taxpayer disputed. Moreover, the taxpayer's claim that the action was barred by the applicable statute of limitations also failed as the taxpayer incorrectly believe that the limitation period was five years, instead of 10 years. Nonetheless, the taxpayer correctly noted that the government failed to fully comply with the notice requirements of Local Rule 56.2. While the government's notice to the taxpayer as a pro se litigant opposing summary judgment stated that the full text of Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 56.1 were attached, the text of those rules was not in fact attached to the notice. However, this was construed as a harmless error. Finally, the taxpayer failed to show that the district court abuse its discretion by not affording him additional discovery. The taxpayer's statement that more discovery would have allowed him to find better support for his defenses was no sufficient to show that his substantial rights were violated.

*Rowe, CA-2, 2021-1 USTC ¶50,164*

### Regulated Investment Companies

In each of two cases, a fund was granted a reasonable extension of time to make an election under Code Secs. 851(b) (only first case), 855(a), and 1276(b)(2). An accounting firm prepared the taxpayer's Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies. The return included said elections. However, the taxpayer forgot to mail the return as a result of substantial disruptions caused by the Coronavirus Disease (Covid-19) emergency. The taxpayer acted in good faith and had satisfied the regulatory requirements.

*IRS Letter Ruling 202124006; IRS Letter Ruling 202124007*

### S Corporations

Three entities were each granted relief for the inadvertent termination of their S corporation status under Code Sec. 1362(f). In the first case, shares in the taxpayer were held by an ineligible shareholder (a partnership). In the second case, the taxpayer adopted an operating agreement containing terms causing it to have a second class of stock. In the third case, shares in the taxpayer were transferred to four separate trusts. The taxpayer represented that the trusts were qualified to be Electing Small Business Trusts (ESBTs), however, no election was made to the treat the trusts as ESBTs. In each case, the taxpayer was treated as an S corporation, provided that its S corporation election was otherwise valid and had not terminated under Code Sec. 1362(d).

*IRS Letter Ruling 202124001; IRS Letter Ruling 202124002; IRS Letter Ruling 202124004*

### Tax-exempt Organizations

Five organizations' requests for tax-exempt status were denied under Code Sec. 501. Three organizations' tax-exempt status were denied under Code Sec. 501(c)(3). All three organizations failed the operational test, as they did not operate exclusively for exempt purposes defined in Code Sec. 501(c)(3). In addition, two


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organizations' documents did not limit their purpose to those that are exempt, and were thus precluded from exemption. The fourth organization functioned as a homeowners' association, and did not qualify for exemption under Code Sec. 501(c)(4), because it operated primarily for the benefit of its members and not for social welfare, or common good of the community. Finally, in the fifth case, the organization was a mutual benefit corporation for the purpose of pleasure, recreation, and other similar nonprofit purposes. The organization's tax-exempt status was denied under Code Sec. 501(c)(7) as maintaining a private residential road did not further social or recreational purposes. Further, the organization did not conduct any comingling activities for its members.

*IRS Letter Ruling 202124009; IRS Letter Ruling 202124010; IRS Letter Ruling 202124011; IRS Letter Ruling 202124012; IRS Letter Ruling 202124013*

### *Transaction Costs*

A company was granted a 60-day extension to make a safe harbor election under Rev. Proc. 2011-29, I.R.B. 2011-18, 747, to deduct a portion of success-based fees it incurred as part of a transaction. The taxpayer incurred transaction costs including success-based fees related to the purchase of corporation. This fee was paid to an advisor for services performed in the process of investigating or otherwise pursuing the acquisition completed pursuant to the agreement. However, the taxpayer failed to attach the required election statement to its originally filed tax return to make the election to allocate said fees between facilitative and non-facilitative amounts. The taxpayer acted reasonably and in good faith; granting the relief did not prejudice the interests of the government.

*IRS Letter Ruling 202124005*

### *Supreme Court Docket*

A petition for review was denied in the following case:

*N. Fridman*, CA-2, 2020-2 USTC ¶50,173.—The Court of Appeals for the Second Circuit affirmed a district court's grant of the government's petition to enforce two separate summonses. The taxpayer controlled a number of trusts including at least one domestic trust that had a foreign financial account. The IRS sought to investigate the taxpayer for a tax year at issue as a part of an ongoing investigation regarding the use of offshore bank accounts to improperly conceal federally taxed income. Accordingly, the IRS issued two summonses—one sent to the taxpayer in her personal capacity and one sent to the taxpayer in his capacity as a trustee. However, the taxpayer asserted his Fifth Amendment act-of-production privilege and refused to produce the documents mentioned in the summonses. The court agreed with the district court that the government had shown with reasonable particularity the documents' existence, the taxpayer's control of the documents, and an independent means of authenticating the documents such that the foregone conclusion doctrine applied. Further, since a trust has a separate legal existence from the trustee, the court affirmed that a traditional trust was a collective entity subject to the collective entity doctrine.