

FEDERAL TAX WEEKLY

INSIDE THIS ISSUE

Uncertain Future For Build Back Better	1
Final Regulations Address Foreign Tax Credit Issues.....	1
State And Local Fiscal Recovery Funds Program Final Rule Issued.....	3
Associate Chief Counsel Ruling Procedure Updated; New User Fee Schedule Provided	3
Associate Chief Counsel Nonissuance List Updated.....	4
Technical Advice Memoranda Procedures Updated	4
International No Advance Ruling Issues Announced.....	5
Exempt Status Determination Letter Application and Issuance Procedures Updated	5
Employee Plan and Exempt Organization Ruling Procedures Updated.....	5
Covered Compensation Tables for 2022 Plan Year Released.....	6
Submission Procedures for Form 1024-A Updated.....	6
Colorado Wildfire Victims Granted Tax Relief	6
Taxpayers Urged to Make Final 2021 Quarterly Tax Payment by January 18	7
Tax Briefs	7

Uncertain Future For Build Back Better

Despite previously telling his Democratic Colleagues to expect a vote on Build Back Better “very early” in 2022, it appears that Senate Majority Leader Charles Schumer (D-N.Y.) is holding off on taking action on the \$1.75 trillion social spending bill.

In his first “Dear Colleague” letter of 2022, Schumer made no mention of the stalled bill, instead letting his colleagues know that voting rights will be taking center stage to start the new year.

Schumer said in a December 20, 2021, “Dear Colleague” letter that senators “should be aware that the Senate will, in fact, consider the Build Back Better Act, very early in the new year so that every Member of this body has the opportunity to make their position known on the Senate floor, not just on television.”

That call for a vote came in the wake of Sen. Joe Manchin (D-W. Va.) announcing on Fox News that he will not be supporting the Build Back Better Act (H.R. 5376), which passed in the House of Representatives on November 19, 2021.

With a 50-50 split between the Republican and Democratic caucuses in the Senate, Democrats can’t afford even one dissenting vote among their ranks as it is expected that no Republicans will vote in favor of the bill.

Schumer promised that the upper chamber of Congress would “keep voting on it until we get something done,” in the December 20 letter.

Following the return from a recess for the holiday season, Manchin has said that there have been no further negotiations regarding Build Back Better and he is holding firm on a number of positions, including maintaining that certain provisions, such as the recently expired expanded child tax credit that would have been renewed for one year under the House version of H.R. 5376, not have an artificial sunset for budget calculation reasons when they are likely to be continually extended. Such a change would threaten the ability for the bill to be considered fully paid for by the tax provisions.

No further timetable has been put forth as to when, or if, a vote on Build Back Better may occur.

Final Regulations Address Foreign Tax Credit Issues

T.D. 9959

The Treasury and IRS have issued final regulations affecting taxpayers that claim credits or deductions for foreign income taxes or claim a deduction for foreign derived intangible income (FDII). The regulations finalize 2020 proposed regulations (REG-101657-20) and address:

- the disallowance of a foreign tax credit or deduction for foreign income taxes under Code Sec. 245A(d);
- the determination of oil and gas extraction income from domestic and foreign sources and of electronically supplied services under the Code Sec. 250 regulations;
- the impact of the repeal of Code Sec. 902 on certain regulations issued under Code Sec. 367(b);
- the sourcing of inclusions under Code Secs. 951, 951A, and 1293; the allocation and apportionment of interest deductions of certain regulated utilities;
- a revision to the controlled foreign corporation (CFC) netting rule;
- the allocation and apportionment of Code Sec. 818(f)(1) items of life insurance companies that are members of consolidated groups;
- the allocation and apportionment of foreign income taxes, including taxes imposed with respect to disregarded payments;
- the definitions of a foreign income tax and a tax in lieu of an income tax;
- the allocation of the liability for foreign income taxes in connection with certain mid-year transfers or reorganizations;
- the foreign branch category rules in Reg. §1.904-4(f); and
- the time at which credits for foreign income taxes can be claimed pursuant to Code Secs. 901(a) and 905(a).

The regulations are effective on March 7, 2022, and contain a number of specific applicability dates.

Foreign Tax Credit

The final regulations address a number of issues with respect to the foreign tax credit, including the definition of a foreign tax credit for purposes of the creditability of foreign income taxes under Code Sec. 901 and Code Sec. 903. These issues include the

jurisdictional nexus requirement, the net gain requirement, tax in lieu of income tax, separate levy determination, and the amount of tax that is considered paid. The final regulations also address when the foreign tax credit may be claimed, including the treatment of contested foreign income taxes.

The jurisdictional nexus requirement in the proposed regulations is adopted and renamed the attribution requirement. The foreign tax law must require a sufficient nexus between the foreign country and the taxpayer's activities or investment of capital or other assets that give rise to the income being taxed. The foreign tax imposed on a nonresident must be based on the nonresident's activities located in the foreign country (including its functions, assets, and risks located in the foreign country) without taking into account as a significant factor the location of customers, users, or similar destination-based criteria.

Under the final regulations, a tax in lieu of an income under Code Sec. 903 must also meet the jurisdictional nexus requirements.

To be creditable under current regulations, a foreign tax must reach net gain (i.e., meet realization, gross receipts, and net income tests). Under these regulations, a gross basis tax may be creditable if it is shown that the tax as applied does not result in taxing more than the taxpayer's profit. The IRS may request country-level or other aggregate data to analyze whether the tax reaches net gain. The tax is creditable or not creditable based on its application to all taxpayers rather than on a taxpayer-by-taxpayer basis.

Under the final regulations, in applying the net gain requirements, the terms of the foreign tax law are relied upon. For a foreign tax to be creditable, the tax must generally be levied upon realized gross receipts (and certain deemed gross receipts) net of deductions for expenses. The use of data to demonstrate that an alternative base upon which the tax is levied is in practice a gross receipts equivalent cannot be used to

satisfy the gross receipts portion of the net gain requirement. Data-driven conclusions are used only for portions of the realization or cost recovery requirement.

The separate levy determination under the current and final regulations provides that whether a foreign levy is an income tax is determined independently for each separate levy. Rules are provided under the final regulations for determining whether one foreign levy is separate from another.

Explicit rules are also provided for determining the effect of foreign law tax credits on the amount of tax a taxpayer is considered to pay or accrue.

The final regulations provide that contested taxes do not accrue until the contest is resolved. A taxpayer may, however, claim a provisional credit for the portion of taxes already remitted to the foreign government. The taxpayer must agree to notify the IRS when the contest concludes and not to assert the statute of limitations as a defense to assessment of U.S. tax if the IRS determines that the taxpayer failed to take appropriate action to get a refund.

FDII

Reg. §1.250(b)-5 provides rules for determining whether services are provided outside of the United States and give rise to foreign derived deduction eligible income (FDDEI service). Special rules apply to electronically supplied services. An electronically supplied service is a general service, other than advertising, delivered primarily over the internet or an electronic network. These services include cloud computing and digital streaming services. The proposed regulations revised the definition of electronically supplied service to clarify that value of the service to the end user must be derived primarily from the service's automation and electronic delivery. The final regulations also clarify that the services must not primarily depend on human effort.

REFERENCE KEY

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

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State And Local Fiscal Recovery Funds Program Final Rule Issued

2022ARD 006-2, Treasury Issues Final Rule for State and Local Fiscal Recovery Funds Program to Support the Ongoing COVID Response

The U.S. Department of the Treasury issued the final rule implementing the State and Local Fiscal Recovery Funds (SLFRF) Program.

The program, created as part of the American Rescue Plan, provides \$350 billion to state, local, and tribal governments to support their response to the COVID-19 pandemic, ensuring they have resources to provide for health and vaccine services, funding to support families and business who might be struggling with the economic impacts of the pandemic, and maintaining vital public services.

The final rule, announced January 6, includes some changes from the interim final rule that was issued and went into effect in May 2021. According to a summary document issued by the Treasury Department, the final rule “delivers broader flexibility and greater simplicity in the program.”

Among the changes, the final rule includes:

- an expansion of the non-exhaustive list of uses that recipients can use to respond to COVID-19 and its economic impacts, including clarifying that funds can be used for certain capital expenditures to respond to the pandemic;
- an expansion of support for public sector hiring and capacity;
- a streamlined option to provide premium pay for essential workers;

- a broadening of eligible water, sewer, and broadband infrastructure projects; and

- a simplified program for small localities.

The Treasury Department said it has distributed more than \$245 billion in funds under this program in 2021.

The full text of the final rule, goes into effect on April 1, 2022. Until then, the interim final rule remains in effect. However, the summary document notes that “recipients can choose to take advantage of the final rule’s flexibilities and simplifications now, even ahead of the effective date. Treasury will not take action to enforce the interim final rule to the extent that a use of funds is consistent with the terms of the final rule, regardless of when the SLFRF funds were used.”

Associate Chief Counsel Ruling Procedure Updated; New User Fee Schedule Provided

Rev. Proc. 2022-1

The IRS has revised the general procedures for the issuance of written guidance (including letter rulings and determination letters) to taxpayers on issues under the jurisdiction of the various offices of the Associate Chief Counsel. The procedures detail the manner in which advice is requested by taxpayers and provided by the IRS. Estate, gift, and generation-skipping transfer tax issues fall under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries). The Associate office generally issues letter rulings on proposed transactions affecting federal transfer taxes, and on completed transactions, if the letter ruling request is submitted before the return affected by the transaction is filed. However, the IRS will not issue letter rulings or determination letters on frivolous issues and will not issue comfort letter rulings. Moreover, the IRS will not issue letter rulings for prospective estates on the computation of tax, actuarial factors, or factual

matters. A sample format for a letter ruling request is provided in Appendix B of the revenue procedure. The procedures may be modified throughout the year.

In addition to minor revisions, notable changes include:

- Ruling requests must include taxpayer identification numbers and additional contact information as appropriate for all interested parties. In particular, taxpayers or other parties requesting to communicate with the Service by fax, electronic facsimile, or email must provide the necessary contact information to facilitate such communication.
- A Form 2848 may be signed electronically (or in another manner consistent with section 7.01(13) of this revenue procedure).
- Requests for determination letters under the jurisdiction of Small Business/Self-employed Division regarding income taxes (including requests from international taxpayers) may be submitted only by electronic facsimile. The number to

which such requests must be transmitted is provided in section 7.04(2).

- Requests for determination letters under the jurisdiction of the Small Business/Self-employed Division regarding estate and gift taxes, employment taxes, and excise taxes, and requests for determination letters under the jurisdiction of Wage & Investment Division, which may be submitted only on paper, should be mailed to the address provided by the IRS in this revenue procedure.
- A Form 3115 and a Consent Agreement copy of a change in method of accounting letter ruling may be signed electronically (or in another manner consistent with section 7.01(13) of this revenue procedure).
- Appendix A, Schedule of User Fees, has been amended to reflect that requests under Code Sec. 1362(b)(5) for an extension of time for making an S corporation election would now be subject to the same user fee as requests for relief under Reg. §301.9100-3.

Effective Date

This revenue procedure is effective for all requests received on or after January 3, 2022. Rev. Proc. 2021-1, governs requests received prior to January 3, 2022.

Effect on Other Documents

Rev. Proc. 2021-1, I.R.B. 2021-1, 1, is superseded.

Associate Chief Counsel Nonissuance List Updated

Rev. Proc. 2022-3

The IRS has revised the list of areas under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) (EEE) for which letter rulings or determination letters will not be issued. Lists of areas of nonissuance under the jurisdiction of the Associate Chief Counsel (International) and the Commissioner, Tax Exempt and Government Entities Division (relating to plans or plan amendments) are presented in separate revenue procedures.

The following have been added to the list of issues for which advance rulings will not be issued:

- *Determination of Amount of and Recognition of Gain or Loss; Transfers of Securities Under Certain Agreements.* Whether a taxpayer recognizes gain or loss on the transfer of virtual currency in exchange for a contractual obligation that requires the return of identical virtual currency to the taxpayer or on the transfer of identical virtual currency to

Technical Advice Memoranda Procedures Updated

The IRS has issued its annual revision of the general procedures relating to the issuance of technical advice to a director or an appeals area director by the various offices of the Associate Chief Counsel. The procedures also explain the rights a taxpayer has when a field office requests technical advice. A technical advice memorandum (TAM) is normally requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by an Associate office. A number of editorial changes were made to the procedures along with one significant change of incorporating the electronic signature and submission procedures of Rev. Proc. 2022-1. Moreover, the procedures may be modified throughout the year.

The new procedures are effective January 3, 2022.

Rev. Proc. 2021-2, I.R.B. 2021-1, is superseded.

Rev. Proc. 2022-2

the taxpayer in satisfaction of the contractual obligation.

- *Qualified Business Income.* Whether a taxpayer or relevant passthrough entity is engaged in a specified service trade or business.
- *Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners.* Whether the grantor will be considered the owner of any portion of a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust.
- *Person Other than Grantor Treated as Substantial Owner.* Whether a person will be treated as the owner of any portion of a trust over which that person has a power to withdraw the trust property (or had such power prior to a release or modification, but retains other powers which would cause that person to be the owner of the trust under Code Sec. 671 if the person were the grantor), other than a power which would constitute a general power of appointment within the meaning of Code Sec. 2041, if the trust purchases the property from that person with a note and the value of

the assets with which the trust was funded by the grantor is nominal compared to the value of the property purchased.

- *Powers of Appointment.* Whether the beneficiaries of a trust hold general powers of appointment over any portion of a transfer to a trust when (A) two or more of such beneficiaries have the power to distribute income or principal to themselves by unanimous consent and without the consent of the donor and either (B) such beneficiaries must be replaced upon the lapse of their powers as the result of death or otherwise or (C) all of such beneficiaries' powers described by (A) lapse upon the death of any one of the beneficiaries.

The following issues have been modified:

Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transferor; Definitions Relating to Corporate Reorganizations; Stock for Stock of Same Corporation. Whether a transaction would qualify under Code Secs. 332, 351, or 1036 for nonrecognition treatment or whether it constitutes a corporate reorganization within the meaning of Code Sec. 368, except a transaction intended to qualify under either Code Secs. 368(a)(1)(D) and 355 or Code Secs. 368(a)(1)(G) and 355, and whether various tax consequences (such as nonrecognition and basis) result from the application of that section. The IRS would instead rule only on significant issues presented in a transaction described in Code Secs. 332, 351, 368, or 1036.

The procedures are effective January 3, 2022. Rev. Proc. 2021-3, I.R.B. 2021-1, 140 and Rev. Proc. 2021-40, I.R.B. 2021-38, 426 are superseded.

International No Advance Ruling Issues Announced

Rev. Proc. 2022-7

The IRS has provided an updated list of subject areas under the jurisdiction of the

Associate Chief Counsel (International) for which it will not issue advance letter rulings or determination letters or will issue letters only if justified by unique

and compelling circumstances. The procedures are effective January 3, 2022. Rev. Proc. 2021-7, I.R.B. 2021-1, 290, is superseded.

Exempt Status Determination Letter Application and Issuance Procedures Updated

Rev. Proc. 2022-5

The IRS has updated procedures for organizations applying for, and the issuing of determination letters on, exempt status under Code Secs. 501 and 521. These procedures apply to exempt organizations other than those relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans. The procedures also apply to revocation or modification of determination letters. In addition, the procedures provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under Code Sec. 7428. Finally, this revenue procedure provides guidance on applicable user fees for requesting determination letters. The procedures are effective January 3, 2022.

Notable Changes

Notable changes include:

- Edits were made throughout to reflect Rev. Proc. 2021-8, I.R.B. 2021-4, 502, which provided information and procedures on the electronic Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code.
- Section 2.04 of this revenue procedure was updated to announce that an electronic version of Form 1024 is expected to be released in 2022.
- Section 3.02 was amended to include that the Service will not issue a determination letter when the request concerns an organization seeking to qualify under Code Sec. 501(c)(5) whose purpose is directed to the betterment of conditions of those engaged in the pursuits of labor, agriculture, or horticulture; the improvement of the grade

of their products; and the development of a higher degree of efficiency in their respective occupations relating to an activity involving controlled substances (within the meaning of schedule I and II of the Controlled Substances Act, 21 USC § 801 et seq.) which is prohibited by federal law regardless of its legality under the law of the state in which such activity is conducted.

- Section 16 of this revenue procedure was updated to explain that this revenue procedure supersedes Rev. Proc. 2021-8.
- The OMB control numbers in Section 18 of this revenue procedure were updated.
- Editorial changes were made throughout including minor non-substantive changes, dates, and cross-references. Citations to other revenue procedures were changed to reflect the appropriate annual revenue procedures. Rev. Proc. 2021-5, I.R.B. 2021-1, 250, is superseded.

Employee Plan and Exempt Organization Ruling Procedures Updated

Rev. Proc. 2022-4

The IRS has updated its procedures for employee plans (EP) to obtain guidance on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division (TE/GE) Employee Plans Rulings and Agreements Office. The procedure also details the types of advice available to taxpayers, and the manner in which such advice is requested and provided.

In addition to minor non-substantive changes, including changes to dates, cross references and citations to other revenue procedures, the following changes are made:

- The procedures for obtaining an opinion letter with respect to a Code Sec. 403(b) pre-approved plan's second six-year remedial amendment cycle beginning July 1, 2020 (and subsequent cycles) are set forth in Rev. Proc. 2021-37, I.R.B. 2021-38, 385.

- Form 5300, Application for Determination for Employee Benefit Plan, may be submitted electronically beginning June 1, 2022, and must be submitted electronically beginning July 1, 2022, and to update the procedures for submitting Form 5300 and Form 5310, Application for Determination for Terminating Plan, including payment of the user fee.
- Modifications have been made to delete "Trust Document" from the list

of required documents that must be included as part of a determination letter submission.

- A Form 5307, Application for Determination for Adopters of Modified Volume Submitter Plans, should be used in the case of a determination letter request for a standardized plan that is not a multiple employer plan if the employer requests a determination solely on overriding plan language added to satisfy Code Secs. 415 or 416.
- A plan sponsor of a dual-qualified plan must submit a restatement showing compliance with the Code and applicable lists when submitting a determination letter application.
- An adopting employer of a standardized plan does not file a Form 5300 to request a determination related to overriding language necessary to coordinate the

Covered Compensation Tables for 2022 Plan Year Released

The IRS has provided tables of covered compensation under Code Sec. 401(l)(5)(E) for the 2022 plan year. Covered compensation with respect to an employee is defined as the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains Social Security retirement age. The tables are developed by rounding the actual amounts of covered compensation for different years of birth. For purposes of determining covered compensation for the 2022 plan year, the taxable wage base is \$147,000.

Rev. Rul. 2022-2

- application of the limitations of Code Sec. 415 or the requirements of Code Sec. 416 because the employer maintains multiple plans.
- Clarifications have been made to the scope of reliance for a determination letter issued for a multiple employer plan.
- The user fees relating to letter ruling requests and opinion letters on pre-approved plans have been updated. Rev. Proc. 2022-4 is effective January 3, 2022. Rev. Proc. 2021-4, I.R.B. 2021-1, 157, is superseded.

Submission Procedures for Form 1024-A Updated

Rev. Proc. 2022-8; IR-2022-2

The IRS has updated the procedures for exempt organization determination letters with respect to the electronically submitted Form 1024, Application for Recognition of Exemption Under Section 501(a) or Section 521 of the Internal Revenue Code. Electronic submission is now the exclusive means of submitting a completed Form 1024-A, except for submissions eligible for 90-day transition relief.

Changes to Submission Process

The IRS has revised and updated Form 1024-A and provided for it to be electronically submitted. The electronic submission process for Form 1024-A replaces the paper submission process for Form 1024-A after January 3, 2022, subject to transition relief. The Service will process a completed paper Form 1024-A accompanied by the correct user fee, without applying the

modifications of this revenue procedure, if the submission of the Form 1024-A is postmarked on or before the date that is 90 days after the effective date of this revenue procedure. The required user fee for Form 1024 will remain \$600 for 2022. Taxpayers must pay the fee through www.pay.gov when submitting the form. Payment can be made directly from a bank account or by credit or debit card.

Rev. Proc. 2022-5, I.R.B. 2022-1, 258, is modified.

Colorado Wildfire Victims Granted Tax Relief

IR-2022-1

The IRS has extended tax relief to certain Colorado wildfire victims, giving them until May 16, 2022 to file various individual and business tax returns and make tax payments. The relief applies to affected taxpayers in Boulder county.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred

starting on December 30, 2021. As a result, the affected taxpayers will now have until May 16, 2022, to file returns and pay any taxes that were originally due during this period. This includes individuals who had a valid extension to file their 2021 income tax return that was due on April 18, 2021.

The May 16, 2022, deadline applies to estimated income tax payments due on January 18 and April 18. In addition, the quarterly payroll and excise tax returns normally due on January 31 and May 2, 2022, are also now due on May 16. Penalties on

payroll and excise tax deposits due on or after December 30 and before January 14 will be abated as long as the deposits are made by January 14, 2022.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayers who live outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227.

Casualty Losses

Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related

losses can choose to claim them on either the return for the year the loss occurred (2021), or the return for the prior year (2020). Taxpayers claiming a disaster loss on their tax return should write the appropriate

FEMA declaration number – “DR-4634” – on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit [disasterassistance.gov](https://www.irs.gov/disasterassistance) for information on disaster recovery.

Taxpayers Urged to Make Final 2021 Quarterly Tax Payment by January 18

IR-2022-3

The IRS has urged taxpayers who paid too little tax during 2021 to avoid a surprise tax-time bill and possible penalty by making a quarterly estimated tax payment. The deadline for making a payment for the fourth quarter of 2021 is Tuesday, January 18, 2022.

Income taxes are pay-as-you-go and taxpayers have two ways to do this:

- withholding from paychecks, pension payments, and some government payments, such as Social Security benefits or unemployment compensation; or

- making quarterly estimated tax payments throughout the year to the IRS. Self-employed people and investors, among others, often pay tax this way.

In addition, families who received advance payments of the Child Tax Credit during 2021 but don't expect to qualify for the credit when they file their 2021 return, may need to make an estimated tax payment. The IRS Tax Withholding Estimator can often help taxpayers determine if they need to make an estimated tax payment. Alternatively, taxpayers can use the worksheet included with

estimated tax form 1040-ES. Publication 505, Tax Withholding and Estimated Tax, has additional details, including worksheets, and examples that can be especially helpful to those who have dividend or capital gain income, owe alternative minimum tax or self-employment tax, or have other special situations. The Service further reminded the taxpayers that the fastest and easiest way to make an estimated tax payment is to do so electronically using IRS Direct Pay or through their IRS Online Account. For information on other payment options, taxpayers may visit [IRS.gov/payments](https://www.irs.gov/payments).

TAX BRIEFS

Controlled Corporations

The IRS issued rulings on the tax consequences of a series of proposed transactions. There were multiple entities involved, the main being a distributing entity (D1) and a controlled entity (C1). The rulings included that (1) D1 and C1 would qualify as “a party to a reorganization” under Code Sec. 368(b); (2) no gain or loss be recognized by D1 or C1 on the contribution; and (3) each D1 shareholder's aggregate basis in its stock after the distribution will equal such shareholder's aggregate basis in its distributing stock immediately prior to the distribution. Finally, earnings and profits of D1 would be allocated between D1 and C1.

[IRS Letter Ruling 202152010](#)

The IRS issued rulings on the tax consequences of a series of proposed transactions. There were multiple entities

involved, the main being a distributing firm (D1). The rulings included, but were not limited to, the following: (1) the proposed distributions would cause a termination of the taxpayer's controlled companies' QSub elections because the controlled companies would cease to be wholly owned subsidiaries of an S corporation; (2) the contributions followed by the distributions to each controlled company would each qualify as a reorganization under Code Sec. 368(a)(1)(D); (3) no gain or loss would be recognized by the distributing on the contribution to the controlled companies; and (4) the distributing's momentary ownership of the stock of one of the controlled companies, would not cause the controlled company to have an ineligible shareholder for any portion of its first taxable year under Code Sec. 1361(b)(1)(B).

[IRS Letter Ruling 202201005](#)

Criminal Investigations

The IRS Criminal Investigation (IRS-CI) counted down the top 10 cases for calendar year 2021 on its Twitter account on January 3. These cases include the agency's most prominent and high-profile investigations of 2021 with issues involving embezzlement of funds from a nonprofit, a family fraud ring that stole millions in COVID-relief funds, and a \$1 billion Ponzi scheme used to buy sports teams and luxury vehicles.

IR-2022-4

Foreign Currency Transactions

The IRS issued multiple rulings on hedges of a subsidiary's foreign currency exposure with respect to the anticipated acquisition of a target entity's shares. The subsidiary was wholly and indirectly owned by a parent company and both used the accrual method of accounting.

The subsidiary was formed to acquire the target entity.

The IRS ruled that the anticipated target share acquisition was an executory contract. Moreover, the hedges were treated as such. The subsidiary would not engage in speculative trading with respect to any foreign currency. Next, if the acquisition was not completed within one year, the subsidiary would treat the hedges as sold for fair market value and the resulting gain or loss is recognized on such date as Code Sec. 988 gain or loss.

[IRS Letter Ruling 202152012](#)

IRS

The IRS has released email advice prepared in less than two hours by attorneys in the IRS's Office of Chief Counsel. In *Tax Analysts*, CA-DC, 2007-2 USTC ¶50,553, the Court of Appeals for the D.C. Circuit ruled that the IRS could not rely on its so-called "two-hour" rule to avoid disclosure of email sent to IRS field personnel. The documents constituted Chief Counsel Advice, which the IRS is required to

publicly disclose under Code Sec. 6110. The items listed below were released as a result.

[Chief Counsel Advice Memorandum 202152004](#)

Per Diem Rates

The U.S. State Department has released a listing of maximum travel *per diem* allowances for travel in foreign areas. The rates apply to all government employees and contractors, and are effective as of January 1, 2022.

[January Maximum Travel Per Diem Allowances for Foreign Areas](#)

Trusts

A spouse did not have or release, a general power of appointment over the property of multiple marital trusts following the modification of a trust (T1). Therefore, the grantor's executor's "reverse" qualified terminable interest property (QTIP) election for the generation-skipping transfer GST exempt marital trust was valid. The grantor intended T1 to preserve

the limitation on the spouse's successor trustee appointment power with respect to marital trusts. Further, the retroactive modifications were consistent with the grantor's probable intention. The successor trustee would not be related or subordinate under Code Sec. 672(c) to the entity with the power to remove the trustee.

[IRS Letter Ruling 202152006](#)

Unemployment Exclusion

The IRS has updated its frequently asked questions (FAQs) on 2020 Unemployment Compensation Exclusion. The updated FAQ has added a question: Question 10, Topic G: Receiving a Refund, Letter, or Notice. These FAQs are being issued to provide general information to taxpayers and tax professionals as expeditiously as possible. Taxpayers can find more information at <https://www.irs.gov/newsroom/general-overview-of-taxpayer-reliance-on-guidance-published-in-the-internal-revenue-bulletin-and-faqs>.

[FS-2022-1; IR-2022-5](#)