Wolters Kluwer

JANUARY 6, 2022
ISSUE NUMBER 1

FEDERAL TAX WEEKLY

INSIDE THIS ISSUE

Schumer Plans Build Back Better Vote In 2022

Senate Majority Leader Charles Schumer said Build Back Better will be brought to the Senate floor for a vote in the new year despite not having the full support of the Democratic caucus.

In a December 20 "Dear Colleague" letter, Schumer (D-N.Y.) said 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."

The letter comes 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 the House of Representatives on November 19.

"We are going to vote on a revised version of the House-passed Build Back Better Act – and we will keep voting on it until we get something done," the letter continued.

Schumer did not outline a specific schedule for when the upper chamber of Congress will begin considering the reconciliation package.

Conservation Easement Extinguishment Proceeds Regulation Found Invalid

D.F. Hewitt, CA-11, 2022-1 USTC ¶50,102

The IRS's interpretation of Reg. §1.170A-14(g)(6)(ii), which disallows the subtraction of post-donation improvements to property on which a conservation easement exists in the event of a judicial extinguishment, was arbitrary and capricious because it violated the procedural requirements of the Administrative Procedures Act (APA). As a result, the Tax Court's denial of a married couple's carryforward charitable deduction for the donation of the charitable conservation easement was reversed and remanded.

Donation of the Easement

The couple donated the easement in 2012 and took a deduction on their 2012 income tax return. On their 2013 and 2014 income tax returns, the couple claimed a carryforward charitable deduction from the 2012 easement donation. The Tax Court denied the carryforward charitable deduction because the deed violated Reg. §1.170A-14(g)(6). The couple argued that the Commissioner's interpretation of the rule was arbitrary and capricious and violated the procedural requirements of the APA.

APA's Proposed Rulemaking Procedure

The APA sets forth three steps for proposed rulemaking. First, the general notice of proposed rulemaking is issued by an agency and is generally published in the Federal Register. Where notice is required, interested persons are permitted to submit written comments. "Significant comments" must be considered and responded to during the period for public comments. Third, in adopting the final rule, the agency must include a statement of the rule's basis and purpose within the text.

Extinguishment Rule

During the rulemaking process, the couple argued that significant comments were made and that the Treasury Department did not respond to those comments and did not address the comments in the final rule's basis and purpose statement, as it was required to do by the APA. The couple identified 13 comments on the extinguishment rule, with seven of those comments expressing various concerns about the regulation. In particular, the couple noted comments from the New York Landmarks Conservancy (NYLC), which recommended deleting the rule because "it contained pervasive problems of policy and practical applications." Because the NYLC's comments stated that the rule would block the purpose of the statute by deterring conservation easement donations, the comment was significant and required a response from the Treasury Department.

Reversing and remanding a Tax Court opinion, Dec. 61,701(M), T.C. Memo. 2020-89, 119 T.C.M. 1593.

IRS Announces Issuance of Information Letters to Advance Child Tax Credit Recipients

The IRS announced that it would issue information letters to Advance Child Tax Credit (APTC) recipients starting in December and to recipients of the third round of the Economic Impact Payments (EIPs) at the end of January. Using this information when preparing a tax return can reduce errors and delays in processing. The Service also urged taxpayers receiving these letters to make sure they hold onto them to assist them in preparing their 2021 federal tax returns in 2022. Taxpayers can use the CTC portal to check their payments.

The IRS will send Letter 6419, 2021 advance CTC, starting late December 2021 and continuing into January. The letter will include the total amount of ACTC payments taxpayers received in 2021 and the number of qualifying children used to calculate the advance payments. Taxpayers should keep this and any other IRS letters about ACTC payments with their tax records.

IR-2021-255

Final Regs Address Contract Modifications After LIBOR Ends

T.D. 9961

Final regulations are intended to provide special rules to help taxpayers adjust to the discontinuation of certain widely used interest rate benchmarks, including some special provisions that depart from the ordinary tax rules. Interbank offered rates, such as the London Interbank Offered Rate (LIBOR) and other IBORs, are being discontinued, with the publication of certain rates ceasing after December 31, 2021.

The regs are necessary to address the possibility that a modification of the terms of a contract to replace an IBOR with a new reference rate could result in the realization of income, deduction, gain, or loss for Federal income tax purposes or could have other tax consequences.

The final regs are generally effective on March 7, 2022, but some components have different effective dates.

Final Regs and Previous Guidance

The final regs are similar to proposed regs that were issued in 2019 (REG-118784-18), but they have been restructured to simply operative rules. For example:

- The proposed regs separately stated rules for debt and non-debt contracts, while the final regs provide a single set of rules for all contracts.
- The final regs streamline the list of rates that are eligible to be a qualified rate, including a non-exclusive list of examples. However, the IRS rejected a commentator's suggestion that any rate identified by the ARRC or ISDA should be a replacement for an IBOR.
- The proposed regs required that the fair market value of a modified contract be substantially equivalent before and after the modification, but the final regs replace this test with rules that describe specific

REFERENCE KEY

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

FEDERAL TAX WEEKLY, 2022 No. 1. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.

modifications (the excluded modifications) that are not covered modifications.

- The final regs clarify applicability dates.

TTB Hand Sanitizer Production Authorizations Expire

On October 13, 2021, the Food and Drug Administration (FDA) withdrew its temporary guidance related to the manufacture of hand sanitizer and denatured alcohol for use in hand sanitizer. The FDA announced that firms must stop:

- producing hand sanitizer products by December 31, 2021, and
- distributing hand sanitizer products by March 31, 2022.

Accordingly, the Alcohol and Tobacco Tax and Trade Bureau will not renew the authorizations provided in TTB G 2020-1D, which expire on December 31, 2021.

Therefore, as of December 31, 2021:

- beverage distilled spirits plants (DSPs) must remove any alcohol intended for industrial use from their bonded premises, and
- alcohol fuel plants (AFPs) must remove any alcohol intended for non-fuel use from their bonded premises.

TTB Newsletter, Alcohol and Tobacco Tax and Trade Bureau, December 23, 2021

Final Regs Modify, Supplement Definitions

Some definitions from the proposed regs are also modified in the final regs. The final regs define "contract" broadly to include not only debt instruments and derivative contracts but also insurance contracts, stock, leases, and other contractual relationships.

Similarly, the final regs use a broad definition of "covered modification" to unite several elements from the proposed regs, including modification of a contract, an IBOR-based rate, a qualified rate, associated modifications, and a one-time payment. Covered modifications generally include those that were identified in Rev. Proc. 2020-55, even if the modification occurs after the December 31, 2022, sunset date for Rev. Proc. 2020-55.

The definition of "associated modification" in the final regs includes an incidental cash payment intended to compensate a counterparty for small valuation differences resulting from a modification of the administrative terms of a contract, such as the valuation differences resulting from a change in observation period, even if the payment does not qualify as a qualified one-time payment.

The final regs also define "qualified one-time payment" separately, rather than as a type of associated modification, and limit it to the amount intended to compensate for the basis difference between the discontinued IBOR and the interest rate benchmark to which the qualified rate refers. For purposes of the arbitrage investment and private use restrictions for tax-advantaged bonds, taxpayers may continue to rely on the rule in Proposed Reg. §1.1001-6(d) to determine source and character of a qualified one-time payment under the Final Regulations.

New Elements in Final Regs

The final regs also contain some new elements. For instance, the final regs define a "discontinued IBOR" as an IBOR that will be discontinued, and provide that an IBOR ceases to be a discontinued IBOR a year after the IBOR's discontinuation. The final regs also provide new rules for determining whether a fallback rate or a collection of fallback rates meet the definition of a qualified rate.

With respect to hedges, the final regs provide a 90-day grace period during which a covered modification of a component of a transaction integrated under Reg. §§1.1275-6, 1.988-5(a), or 1.148-4(h) does not result in legging out of that integrated transaction, notwithstanding any mismatch in timing or amount of payments that results from the covered modification during the grace period.

With respect to "fast-pay" stock, the final regs provide that a covered modification of stock is not a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances for purposes of Reg. §1.7701(l)- 3(b)(2)(ii). However, the fast-pay regulations may apply if a covered modification and a noncovered modification are made at the same time or as part of the same plan and the noncovered modification is a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances.

Finally, to facilitate an orderly transition in connection with the discontinuation of IBORs and to treat changes from an IBOR-based discount rate in a consistent manner, the IRS will not treat a change from a discount rate that is based on a discontinued IBOR to a discount rate that is a qualified rate for the purpose of valuing securities under the mark-to-market rules in Code Sec. 475 as a change in method of accounting.

Effect on Other Documents

Rev. Proc. 2020-44, 2020-45 IRB 991, is amplified.

Illinois and Tennessee Victims of Tornadoes Granted Tax Relief

IR-2021-252

The IRS has granted tax relief to the victims of tornadoes in Illinois and Tennessee. Accordingly, the IRS has offered relief to Bond, Cass, Coles, Effingham, Fayette, Jersey, Macoupin, Madison, Montgomery, Morgan, Moultrie, Pike and Shelby counties in Illinois and Cheatham, Decatur, Dickson, Dyer, Gibson, Lake, Obion, Stewart and Weakley counties in Tennessee.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on December 10. 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. Additionally, the November 1, deadline also applies to quarterly estimated income tax payments due on January 18 and April 18, and the quarterly payroll and excise tax returns normally due on January 31 and May 2, 2022. In addition, penalties on payroll and excise tax deposits due on or after December 10 and before December 27 will be abated as long as the deposits were made by December 27, 2021.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayers who lives 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, or the return for the prior year. Therefore, taxpayers can claim these losses on the 2020 return they are filling out this tax season or the 2021 return to be filed next year.

Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number, i.e., 3577EM for Illinois or 3576EM for Tennessee, on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit disasterassistance.gov for information on disaster recovery.

IRS Reminds Taxpayers of 2020 Social Security Tax Obligation

The IRS reminded employers and self-employed taxpayers that chose to defer paying part of their 2020 Social Security tax obligation that a payment is due on January 3, 2022. As part of the COVID relief, employers and self-employed people could choose to put off paying the employer's share of their eligible Social Security tax liability, normally 6.2 percent of wages. Half of that deferral is now due on January 3, 2022, and the other half on January 3, 2023.

Most affected employers and self-employed individuals received reminder billing notices from the IRS. The agency noted, however, that those affected are still required to make the payment on time, even if they did not receive a bill. Finally, the payments can be made https://www.irs.gov/payment.

IR-2021-256

Victims of Hurricane Ida in Six States Granted Extended Tax Relief

IR-2021-254

The IRS has extended tax relief to the victims of Hurricane Ida in six states from until February 15, 2021 to file various individual and business tax returns and make tax payments. Accordingly, the updated relief covers the entire states of Louisiana and Mississippi, as well as parts of New York, New Jersey, Connecticut and Pennsylvania. The list of eligible localities is available at https://www.irs.gov/newsroom/around-the-nation.

The updated relief postpones various tax filing and payment deadlines that occurred starting on the following dates:

- August 26, 2021 for Louisiana;
- August 28, 2021 for Mississippi;
- August 31, 2021 for Pennsylvania; and
- September 1, 2021 for New York, New Jersey and Connecticut.

Filing and Payment Deadlines Extended

Further, individuals who had a valid extension to file their 2020 return that ran out on October 15, 2021, will now have until February 15, 2022, to file. However, the IRS notes that since tax payments related to these 2020 returns were due on May 17, 2021, those payments are not eligible for this relief. The revised deadline also applies to quarterly estimated income tax payments that were due on September 15, 2021, and January 18, 2022. This means that taxpayers in these areas can now skip making their estimated tax payments for both the third and fourth quarters of 2021 and instead include them when they file their 2021 return.

The new deadline also applies to the quarterly payroll and excise tax returns normally due on November 1, 2021, and January 31, 2022. Additionally, businesses with an original or extended due date also have the additional time including, among others, calendar-year partnerships and S corporations whose 2020 extensions ran out on September 15, and calendar-year corporations whose 2020 extensions ran out on October 15, 2021. It also applies to calendar-year tax-exempt organizations whose 2020 extensions ran out on November 15, 2021.

Affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayer who lives 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 for the new relief on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit disasterassistance.gov for information on disaster recovery.

Tax Court Announces Availability of Opinion Search in DAWSON System

The Tax Court announced that opinion search is now available in the DAWSON case management system. Taxpayers can search for opinions by keyword or phrase, by judge, by date range or by opinion type. "Today's Opinions" would continue to be available on the Tax Court website. More information can be found https://www.ustaxcourt.gov/resources/press/12282021.pdf.

Lenders of Certain Student Loans Should Not File Form 1099-C

Notice 2022-1

The IRS has announced that lenders or servicers of student loans should not file Form 1099-C, Cancellation of Debt, or furnish payee statements to report the discharge of student loans that are excluded from gross income under Code Sec. 108(f)(5).

Special Rule for Discharges of Certain Student Loan Debt

The American Rescue Plan Act, 2021 (ARP Act) (P.L. 117-2) provides an exclusion from gross income for the discharge of any part of a student loan in 2021 through 2025. A student loan for this purpose generally include loans provided for post-secondary educational expenses, whether the loan was provided through the educational institution or directly to the borrower. Such loans must have been made, insured, or guaranteed by the United States, or an instrumentality or agency thereof, a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or an eligible educational institution. Additionally, certain private education loans and loans made by certain educational organizations qualify for this special rule.

Reporting Requirement

Code Sec. 6050P requires an applicable entity that discharges at least $600 of a borrower's indebtedness to file a Form 1099-C with the IRS and to furnish a payee statement to the borrower. However, when all or a portion of a student loan described in Code Sec. 108(f)(5) is discharged in 2021 through 2025, an applicable entity is not required to, and should not, file a Form 1099-C information return with the IRS or furnish a payee statement to the borrower under Code Sec. 6050P as a result of the discharge. The filing of an information return with the IRS, although not required, could result in the issuance of an underreporter notice (IRS Letter CP2000) to the borrower through the IRS's Automated Underreporter program, and the furnishing of a payee statement to the borrower could cause confusion for a taxpayer with a tax-exempt discharge of debt.

IRS Issues Guidance on Calculating Qualifying Payment Amount

Rev. Proc. 2022-11

The IRS provided the combined percentage increase for calculating the qualifying payment amount for items and services furnished during 2022 under Code Sec. 9816 and Code Sec. 9817. For items and services provided on or after January 1, 2022, and before January 1, 2023, the combined percentage increase to adjust the median contracted rate is 1.0648523983. Group health plans and group and individual health insurance issuers would round any resulting qualifying payment amount to the nearest dollar.

Background

The No Surprises Act was enacted as Title I of Division BB of the Consolidated Appropriations Act, 2021. These provisions provide protections against surprise medical bills in certain circumstances. If parties are unable to reach an agreement through open negotiation, the No Surprises Act provides for the amount payable to be determined by a certified independent dispute resolution (IDR) entity through a federal IDR process.

Effective Date

The effective date of this revenue procedure is January 1, 2022.

Applicable Dollar Amount for Health Insurance Plan Fees Announced

Notice 2022-4, I.R.B. 2022-2

The IRS has announced that the applicable dollar amount used to calculate the fees imposed by Code Secs. 4375 and 4376 for policy and plan years that end on or after October 1, 2021, and before October 1, 2022, is $2.79. This figure is usually based on the percentage increase in the projected per capita amount of the National Health Expenditures published by HHS. However, because HHS did not publish updated National Health Expenditures tables for fiscal year 2021, this year's fee is calculated using last year's projections.

Calculation

The fees, used to fund the Patient-Centered Outcomes Research Trust Fund (PCORTF), are generally calculated by multiplying the average number of lives covered under the health insurance policy or self-insured health plan by the adjusted applicable dollar amount. The adjusted applicable dollar amount is the sum of:

- the applicable dollar amount for the policy year or plan year ending in the previous federal fiscal year; plus
- the amount equal to the product of the applicable dollar amount for the policy year or plan year ending in the previous federal fiscal year; and the percentage increase in the projected per capita amount of the National Health Expenditures most recently released by the Department of Health and Human Services (HHS) before the beginning of the federal fiscal year (see Reg. §46.4375-1(c)(4) and Reg. §46.4376-1(c)(3)).

The applicable dollar amount for the previous year was $2.66.

IRS Highlights Special Charitable Tax Benefit

IR-2021-247

The IRS has joined with several leading nonprofit groups to highlight a special tax provision that allows more people to deduct donations to qualifying charities on their 2021 income tax return. Accordingly, the Independent Sector and National Council of Nonprofits joined with the IRS to highlight this pandemic-related provision where married couples filing jointly can deduct up to $600 in cash donations and individual taxpayers can deduct up to $300 in donations.

Taxpayers do not need to itemize deductions on their tax returns, under the temporary law, to take advantage of the tax provision, which creates tax-favorable donation options not normally available to about 90 percent of tax filers. Ordinarily, people who choose to take the standard deduction cannot claim a deduction for their charitable contributions. But this special provision permits them to claim a limited deduction on their 2021 federal income tax returns for cash contributions made to qualifying charitable organizations by December 31, 2021.

Further, the IRS highlighted the new provision and urged people to make sure they donate to a qualifying charity. The special Tax Exempt Organization Search tool on the IRS website can help people make sure they donate to a qualified charity. Cash contributions to most charitable organizations qualify for a deduction. But contributions made either to supporting organizations or to establish or maintain a donor advised fund do not. Contributions carried forward from prior years do not qualify, nor do contributions to most private foundations and most cash contributions to charitable remainder trusts.

Nearly nine in ten taxpayers take the standard deduction and could potentially qualify. Under this provision, tax year 2021 individual tax filers, including married individuals filing separate returns, can claim a deduction of up to $300 for cash contributions made to qualifying charities during 2021. The maximum deduction is increased to $600 for married individuals filing joint returns. Moreover, cash contributions include those made by check, credit card or debit card as well as amounts incurred by an individual for unreimbursed out-of-pocket expenses in connection with their volunteer services to a qualifying charitable organization. However, cash contributions do not include the value of volunteer services, securities, household items or other property.

Finally, the IRS encouraged all donors to be wary of scams masked as charitable solicitations. Criminals create fake charities to take advantage of the public's generosity. Fake charities once again made the IRS's Dirty Dozen list of tax scams for 2021. In October, the IRS also joined international organizations and other regulators in highlighting the fight against charity fraud.

AICPA Recommends Changes To Section 1061 Reporting Guidance FAQs

The American Institute for CPAs is making a few recommendations to the Internal Revenue Service to improve the clarity of its Code Sec. 1061 reporting guidance frequently asked questions.

Code Sec. 1061, which went into effect for tax years beginning after December 31, 2017, "recharacterizes certain net long-term capital gains of a partner that holds one or more applicable partnership interests as short-term capital gains," according to the IRS webpage outlining the Section 1061 reporting guidance FAQs.

In a December 23 letter to the IRS, AICPA noted that "Passthrough Entities and Owner Taxpayers are required to apply the final regulations for tax years beginning after January 19, 2021. These taxpayers may, but are not required to, rely upon either the proposed or final regulations for the 2021 tax year. Due to the various options available to taxpayers for the 2021 tax year, the FAQs necessitate further refinement allowing taxpayers not choosing to apply the final regulations to effectively comply with the FAQs' requirements."

AICPA made the following recommendations:

- remove the requirement to furnish similar information as Worksheet A for taxpayers not applying the final regulations;
- allow passthrough entities to furnish Worksheet A to all partners; and
- acknowledge that taxpayers may be following different methodologies.

The organization also recommended clarifying the Worksheet A, Line 2 amount to properly reflect only those items included on Worksheet A, Line 1.

"Worksheet A, Line 1 requires a partnership to report the net long-term capital gain or loss from Schedule K-1, Line 9(a)," The letter further states. "Worksheet A, Line 2 then adjusts for gains or losses not subject to section 1061 under Reg. §1.1061-4(b)(7), including section 1231 gains/losses, section 1256 gains/losses, and qualified dividends which are not reported on Schedule K-1, Line 9(a). As a result, Worksheet A, Line 2 would adjust for items that are not included in Worksheet A, Line 1. Worksheet A should be clarified such that Line 2 should only include items included on Line 1."

U.S. and Malta Enter into Competent Authority Arrangement

IR-2021-253

The competent authorities of U.K. and the Malta have entered into a Competent Authority Arrangement confirming their understanding of the meaning of pension fund for purposes of the United States–Malta income tax treaty (Treaty). This agreement was entered into after authorities became aware that U.S. taxpayers with no connection to Malta were misconstruing the pension provisions of the Treaty to avoid income tax on the earnings of, and distributions from, personal retirement schemes established in Malta.

The agreement confirms the U.S. and Malta authorities' understanding that (except in the case of a qualified rollover from a pension fund in the same country) a fund, scheme or arrangement is not operated principally to provide pension or retirement benefits if it allows participants to contribute property other than cash, or does not limit contributions by reference to income earned from employment and self-employment activities. Since Maltese personal retirement schemes contain these features, they are not properly treated as a pension fund for Treaty purposes and distributions from these schemes are not pensions or other similar remuneration.

Background

The IRS announced earlier this year that it was reviewing the use of Maltese personal retirement schemes. The IRS is actively examining taxpayers who have set up these arrangements and recognizes that other taxpayers may have filed tax returns claiming Treaty benefits as a result of their participation in these arrangements. Accordingly, these taxpayers have been advised to consult independent tax advisors prior to filing their 2021 tax returns and take appropriate corrective actions on prior filings. The IRS also cautions taxpayers against entering into any substantially similar arrangements that would seek to misconstrue the provisions of a bilateral income tax treaty of the United States to avoid income tax.

TAX BRIEFS

Charitable Contributions

The IRS revoked its determination that certain organizations under Code Sec. 501(c)(3) and Code Sec. 170(c)(2) qualify as organizations for which deductions for charitable contributions are allowed. However, contributions made to the organization before December 18, 2021, will generally be deductible, unless made by a person who (1) knew of the revocation, (2) was aware that the revocation was imminent or (3) was responsible, in whole or in part, for the activities or deficiencies that gave rise to the loss of qualification.

Announcement 2021-17

Controlled Foreign Corporations

A domestic corporation and manufacturer and distributer of household appliance was required to include in income its subpart F foreign base company sale income (FBCSI), earned by its Luxembourg controlled foreign corporation (CFC) from appliances manufactured in the CFC's Mexican branch (maquiladora) and sold back to the taxpayer and its Mexican CFC for further sale. The Mexican branch was treated as a subsidiary of the Luxembourg CFC and the sales income of the Luxembourg CFC constituted FBCSI under the branch rule.

Whirlpool Financial Corporation, CA-6, 2022-1 USTC ¶50,101

Liens and Levies

The IRS Appeals office did not abuse its discretion in sustaining a levy on a married couple's state tax refund to collect a tax liability arising from a tax year at issue. Throughout the collection due process (CDP) proceedings, the taxpayers only sought to improperly challenge the underlying liability. Further, they did not request a collection alternative, and the record showed that they failed to submitted the financial information, Form 433-A, that was required for evaluation of their ability to pay the liabilities. The IRS settlement officer also requested that they submit their tax returns for subsequent years, however they failed to submit the outstanding tax returns by the deadline without explanation. As a result, the IRS properly determined that they were not entitled to a face-to-face hearing. Finally, the record showed that the settlement officer performed a balancing test based on the information she had and concluded that the levy on the taxpayers' State tax refund balanced the needs of collection with the concerns of petitioners.

Bunton, TC, Dec. 61,965(M)

An IRS settlement officer (SO) abused her discretion in sustaining the filing of the notice of federal tax lien (NFTL) with respect to an individual's unpaid income tax liabilities for nine tax years at issue. The taxpayer had failed to file his income tax returns for which the IRS had prepared substitutes for tax returns and assessed tax for all nine years. The record did not include notices of deficiency for any tax year at issue.

Pfetzer, TC, Dec. 61,969(M)

An individual who failed to file an income tax return was not allowed to dispute her underlying liability. The IRS filed a substitute return and issued a notice of deficiency. The taxpayer did not challenge the liability upon receiving the notice. Finally, it was not an abuse of discretion for the IRS Settlement Officer to sustain a collection action where the taxpayer has proposed no alternative or filed a delinquent tax return.

Starcher, TC, Dec. 61,968(M)

Loss Deductions

A married couple was allowed loss deductions. The taxpayers were found to have engaged in donkey breeding with an actual and honest objective of making a profit. Finally, the taxpayers were not liable for Code Sec. 6662(a) penalties.

Huff, TC, Dec. 61,964(M)

Self-Employment Income

An individual's net rental income was excluded from net earnings from self-employment (NESE) under Code Sec. 1402. The taxpayer was an individual who directly and solely owned and rented, in the course of trade and business, a fully furnished vacation property via an online rental marketplace. The taxpayer was not a real estate dealer within the meaning of Reg. §1.1402(a)-4(a). For the tax year at issue, the average period of customer use of the vacation property was seven days, and therefore the activity is not considered a rental activity for purposes of Code Sec. 469. Further, the taxpayer materially participated in activity within the meaning of Code Sec. 469(h)(1) and Reg. §1.469-5T and, therefore, the activity was not a passive activity within the meaning of Code Sec. 469(c). The IRS held that the individual did not provide substantial services beyond those required to maintain the space in the condition suitable for occupancy. The characterization of the activity as not a passive activity did not affect whether the activity was excluded from NESE under Code Sec. 1402(a)(1).

CCA Letter Ruling Chief Counsel Advice Memorandum 202151005

Trust Fund Recovery Penalty

An individual was liable for trust fund recovery penalties (TFRPs) in a collection review case. The taxpayer alleged that the liabilities at issue should not be deemed fully paid because his remittance should have been treated as a deposit rather than payment of tax. Moreover, he stated that this purported deposit does not extinguish his challenges to the validity of the IRS's assessment, respondent's calculation of interest, or the appropriateness of releasing the lien. Because the IRS released the lien and there was no outstanding tax liability, the only relief that could be sought was in the U.S. District Court or the U.S. Court of Federal Claims, rather than in the Tax Court.

Ahmed, TC, Dec. 61,966(M)

Whistleblower Awards

The IRS Whistleblower Office (WBO) did not abuse its discretion in rejecting an individual's claim for an informer's award due to lack of specific and credible information. The individual had provided information to the WBO attempting to show that a certain individual (target) was a dual citizen of the United States and another country and was subject to, but failed to pay, substantial amounts of various federal taxes. The administrative record showed that the WBO followed proper procedures and forwarded the individual's information to SB/SE for review. The SB/SE evaluated the information and recommended that the WBO reject the claim because the individual did not provide specific and credible information. The individual could find no public record that the target ever exercised any of the fundamental rights or privileges of a U.S. citizen, including obtaining a Social Security number or a passport.

Whistleblower 15977-18w, TC, Dec. 61,967(M)