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AICPA Pushes For More Action On Schedules K-2 And K-3 Reporting

The American Institute of CPAs reiterated its call for the Internal Revenue Service to delay the implementation of the Schedules K-2 and K-3 reporting until 2023 and suspend any penalties against partnerships and S corporations for failing to file Schedules K-2 and K-3 for the 2021 tax year.

The call, outlined in a February 24 letter to Lily Batchelder, assistant secretary of tax policy at the Department of the Treasury, and IRS Commissioner Charles Rettig, acknowledges recent revisions the IRS made to the Schedules' filing instructions, but said they "raise additional questions, perpetuating futility in filing a complete and accurate return and the goal of standardized international reporting."

The IRS in its revision outlined criteria for partnerships and S corporations to qualify for an exemption from filing the Schedules. However, AICPA contends there is still confusion.

"The 2022 filing season has commenced and the IRS as well as taxpayers are unclear as to who is required to file the Schedules, nor can taxpayers properly file and the IRS process these Schedules," the letter states. "These threshold issues nearly preclude complete and accurate returns for the 2022 filing season."

AICPA also said the lack of the ability to electronically file the schedules is another reason for the implementation of the Schedules to be delayed.

"Delay is essential until e-filings can be accepted and uncertainty regarding taxpayer obligation is resolved," noting that the agency is currently "unable to accept electronically filed returns containing the Schedules K-2 and K-3 via the Modernized e-File (MeF) system for partnership returns until March 20, 2022, and for S corporation returns until mid-June. The lack of a timely available MeF filing option for these forms in electronic format will cause unnecessary harm to all affected parties."

2021 Earned Income Tax Credit FAQs Issued

FS-2022-14; IR-2022-46

The IRS has issued frequently asked questions (FAQs) for the 2021 Earned Income Tax Credit (EITC) to educate eligible taxpayers on how to properly claim the EITC when they prepare their 2021 tax returns. The EITC helps low-to-moderate-income workers and families as a credit to either reduce the taxes owed or an added payment to increase a tax refund. The amount of the EITC may change if the taxpayers have children, dependents, are disabled, or meet other criteria. The FAQs provide several details regarding the EITC. The new FAQs are:

- What Is the Earned Income Tax Credit?
- What is earned income?

- What are the earned income limits for taxpayers without qualifying children?
- How old must I be to claim the Earned Income Tax Credit if I do not have qualifying children?
- Do I need to have a Social Security number (SSN) to be eligible to claim the Earned Income Tax Credit?
- Do my qualifying children need to have SSNs in order for me to claim the Earned Income Tax Credit?
- What are the age requirements for claiming the Earned Income Tax Credit if I have a qualifying child?
- What are the earned income limits for individuals with a qualifying child?
- Will any refund that I receive because I claimed the Earned Income Tax Credit affect my government benefits?
- What is the maximum amount of the Earned Income Tax Credit for 2021 for eligible taxpayers without qualifying children?
- Is there a limit on the amount of investment income I can earn and remain eligible for the Earned Income Tax Credit?
- If I am not filing a joint return with my spouse, can I claim the Earned Income Tax Credit?
- Who is considered a qualified homeless youth for purposes of the Earned Income Tax Credit?
- Who is considered a qualified former foster youth for purposes of the Earned Income Tax Credit?
- Can I elect to use my 2019 earned income to figure my Earned Income Tax Credit for 2021?
- Can a student claim the Earned Income Tax Credit for 2021?
- What is a specified student for purposes of the Earned Income Tax Credit?

Additionally, the IRS reminded taxpayers with income of $73,000 or less that they can file their tax returns electronically for free through IRS Free File. The fastest way to receive a tax refund is to file electronically and have it direct deposited into a financial account. Refunds can be directly deposited into bank accounts, prepaid debit cards, or mobile apps if a routing and account number is provided.

Treasury Updates SLFRF Guidance

The Department of the Treasury on February 28 issued updated compliance and reporting guidance for those who are participating in the agency's Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program.

The guidance reflects the final rules issued by Treasury in January, which take effect for the next Project and Expenditure Report that all state, local, and Tribal governments need to submit by April 30, 2022.

More information about the SLFRF program and related updates can be found at https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities.

Rule Conflicted With No Surprises Act—Taxpayer's Summary Judgment Motion Granted

Texas Medical Association, DC Tex., 2022-1 USTC ¶50,118

An interim final rule issued pursuant to the No Surprises Act (Act) conflicted with the Act. Therefore, it was set aside under the Administrative Procedure Act (APA). The rule governed the arbitration process for resolving payment disputes between certain out-of-network providers and group health plans and health insurance issuers.

The Health Department and others were not exempted from the APA's notice-and-comment requirement. In *National Women v. Food & Nutrition Services*, the court held that it was unnecessary for Congress to expressly exempt the agency from notice and comment because the APA did not require it for the provisions at issue. Further, the Departments failed to justify why they could not have provided notice and comment within a year. They also failed to explain why they could not have issued the substance of the Rule as a proposed rule instead of an interim final rule, provided notice and comment, and integrated feedback into the eventual final rule. Even if the Departments had good cause to allow time for arbitrators, good cause would not exist to rush the provisions of the Rule at issue here. In *United States v. Garner*, the court would not allow a regulation to piggyback on

REFERENCE KEY

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

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properly-issued regulations. Therefore, the Departments lacked good cause to bypass notice and comment.

The Departments' failure to comply with the notice-and-comment requirement provided a second and independent basis to hold unlawful and set aside the Rule under the APA. This meant there was nothing the Departments could do on remand to rehabilitate or justify the challenged portions of the Rule as written. Next, the court found that vacatur and remand was the proper remedy. The seriousness of the deficiency weighed heavily in favor of the vacatur. The Rule conflicted with the unambiguous terms of the Act in several key respects. Finally, the taxpayers could challenge the Departments' interim final rule implementing the Act.

Form 7203 Filing Challenges Addressed

The IRS has informed taxpayers that the agency is aware of a third-party software issue affecting qualifying farmers and fishermen attempting to file Form 7203, S Corporation Shareholder Stock and Debt Basis Limitations. Qualifying farmers and fishermen are not subject to an addition to tax for failing to pay the required estimated tax installment payment by January 15, 2022, if they file their returns and pay the full amount of tax reported on the return as payable by March 1, 2022.

The IRS noted that it has been working closely with software providers to ease the impact caused by these electronic filing challenges on qualifying farmers and fishermen. Due to these challenges, the Treasury Department and the IRS intend to issue a notice providing penalty relief for qualifying farmers and fishermen filing Form 7203 if they electronically file their 2021 tax return and pay in full any due tax by April 18, 2022. The deadline for qualifying farmers and fishermen who live in Maine or Massachusetts is April 19, 2022. Finally, the IRS noted that farmers and fishermen who filed their returns by the March 1 deadline are unaffected by this news release.

IR-2022-49

Compensation Exceeded Reasonable Compensation, Deduction Denied

C. Hood, TC Memo. 2022-15, Dec. 62,016(M)

A corporation was not allowed to deduct the full amount of compensation paid to an individual. Further, it was subject to accuracy-related penalties for substantial understatement for a tax year at issue. The taxpayer was a subchapter C corporation that dealt with construction. The corporation was formed by a married couple that served as the corporation's sole shareholders and members of the board of directors. Even after its tremendous success, the corporation never declared or paid a cash dividend to its shareholders, i.e. the owners, at any time during the review period. An executive that worked at the corporation believed the owner (husband) was undercompensated in prior years and brought this issue to the board. Having performed preliminary computations to determine the amount the corporation undercompensated the owner during the review period, the executive reached a figure of $5 million. Accordingly, following a board resolution, the owner was paid the compensation amount for two consecutive years each. Upon auditing the corporation's returns, the IRS timely issued a notice of deficiency determining that portions of the owner's purported compensation for the years at issue exceeded reasonable compensation under Code Sec. 162(a)(1) and disallowed these portions. The notice also included accuracy-related penalties under Code Sec. 6662 for underpayments due to substantial understatements of tax. In response to the notice of deficiency, the corporation timely filed a petition disputing the disallowed amounts and the penalties.

Multifactor Approach vs. Independent Investor Test

At trial, the IRS challenged, from a tax perspective, whether the dramatic increase in the owner's purported compensation during the tax years at issue constituted deductible compensation or a means of draining corporate profits through a disguised dividend. The corporation contended that the court should follow the independent investor test in determining whether the purported compensation paid to the owner was reasonable. Traditionally, the U.S. Court of Appeals for the Fourth Circuit (to which this case would be appealable to) required consideration of multiple factors in determining reasonable compensation (multifactor approach) that included: the employee's qualifications; the nature, extent, and scope of the employee's work; the size and complexities of the business; a comparison of salaries paid with gross income and net income; the prevailing general economic conditions; comparison of salaries with distributions to stockholders; the prevailing rates of compensation for comparable positions in comparable concerns; and the salary policy of the taxpayer as to all employees. While at least one Court of Appeals has found value in this approach, the U.S. Court of Appeals for the Fourth Circuit had not adopted any iteration of the independent investor test. Moreover, the Tax Court generally applied the multifactor approach unless a case was appealable to a Court of Appeals which has expressly applied the independent investor test. Accordingly, the court applied the multifactor approach to determine the reasonableness of the corporation's purported compensation paid to the owner on the basis of the precedent of the Tax Court and, more importantly, of the Court of Appeals for the Fourth Circuit. Here, the factors addressing comparable pay by comparable concerns, the corporation's shareholder distribution history, the setting of the owner's compensation in the years at issue, and the owner's involvement in the taxpayer's business were the most relevant and persuasive factors. Nonetheless, the court held that the corporation was not entitled to deduct the full amount of the purported compensation paid to the owner because it failed to adequately establish how the entire amount was both reasonable and paid solely as compensation for services to the corporation during the review period. In determining the appropriate dollar amount, the court used expert testimony.

Penalties

With respect to the penalties, the corporation sought advice on the owner's potential compensation and the applicable tax consequences from an accounting firm for both the tax years at issue. For the first tax year at issue, the corporation satisfied the requirements and demonstrated reasonable reliance in good faith on the accounting firm's advice. The record did not show evidence of foul play. However, for the second tax year, the corporation failed to substantiate its belief in the accounting firm's advice for repeating the compensation payment to the owner.

Cash Surrender Values of Split-Dollar Life Insurance Not Included in Estate

M. Levine, Est., 158 TC —, No. 2, Dec. 62,014

A decedent's estate did not include the cash surrender values of split-dollar life insurance arrangements because the decedent did not have the right to terminate the policies. As part of her estate plan, the decedent, through her attorneys-in-fact and trustees of her revocable trust, executed the split-dollar life insurance arrangement. An irrevocable trust (the Insurance Trust) was created to own the policies on the lives of the decedent's daughter and son-in-law. The revocable trust paid the premiums on the policies, funded through several loans. The Insurance Trust assigned the insurance policies as collateral. The Insurance Trust agreed to pay the revocable trust the greater of the amount loaned to pay the premiums and either (1) the current cash-surrender value of the policies upon the death of the last surviving insured or (2) the cash surrender values of the policies on the date they were terminated.

Property Includible in the Gross Estate

At the outset, for purposes of the gift to the Insurance Trust, Reg. §1.61-22 governed. To determine the value of the split-dollar arrangements, Code Secs. 2036 and 2038 were considered. The estate argued that the asset includible in the gross estate was the value of the split-dollar receivable and not the policies because the policies were owned by the Insurance Trust. The decedent made a transfer within the meaning of Code Secs. 2036 and 2038 of cash that she sent to the Insurance Trust to pay for the policies. In exchange for the cash, the decedent received the split-dollar receivable, which gave her the right to the greater of the amount loaned or the cash-surrender values of the policies. Unlike *R. Cahill Est.*, 115 TCM 1463, Dec. 61,194(M), TC Memo. 2018-84, and *C. Morrissette Est.*, 121 TCM 1447, Dec. 61,870(M), TC Memo. 2021-60, only the Insurance Trust had the right to terminate the policies. The decedent had no right to change, amend, or modify the irrevocable Insurance Trust. In addition, the lone member of the Insurance Trust's investment committee, owed fiduciary duties to all of the trust beneficiaries and could be have been in breach had he terminated the policies early. As a result, the cash-surrender values of the life insurance policies were not includible in the decedent's gross estate under Code Sec. 2036(a)(2) or 2038(a)(1).

Code Sec. 2703 Inapplicable

The property includible in the decedent's estate was the split-dollar receivable, which was not restricted. Therefore, because she had unrestricted control of the receivable, Code Sec. 2703 did not apply. The value of the split-dollar receivable was included in the gross estate and was stipulated by the parties.

Taxpayer Denied Reasonable Litigation Costs; Offer Was Not a Qualified Offer

G.C. Lewis, 158 TC —, No. 3, Dec. 62,017

An individual was not entitled to reasonable litigation costs under Code Sec. 7430(g). The taxpayer's offer to concede taxes and penalties, which reserved the right to claim relief from joint and several liability under Code Sec. 6015, was not a qualified offer.

The Offer

The taxpayer and her former spouse had filed joint federal income tax returns for three tax years at issue which were audited by the IRS. The Service proposed adjustments to those returns, following which the taxpayer submitted a letter to the IRS that purported to be a qualified offer under Code Sec. 7430(g). In the letter, the taxpayer offered to concede 100% of the tax and penalties set forth in the IRS's proposed adjustment but reserved the right to claim relief from joint and several liability under Code Sec. 6015. However, Code Sec. 6015 provides relief from joint and several liability, not just collection. Since, the offer reserved the right to claim relief from joint and several liability, it was not a qualified offer because it failed to specify the offered amount of the taxpayer's liability. Therefore, she did not make a qualified offer under Code Sec. 7430(g).

Concession of Join and Several Liability

The IRS conceded that the taxpayer was entitled to relief from liability under Code Sec. 6015(c) for the years in issue and moved for entry of decision reflecting no liabilities. The taxpayer contended that it was an attempt to prevent her claim for litigation costs and then moved for litigation costs under Code Sec. 7430.

Award of Reasonable Litigation Costs

The taxpayer was not entitled to litigation costs under Code Sec. 7430 because the IRS' position was substantially justified. The IRS position was substantially justified because the taxpayer did not present all relevant information under her control, and the IRS position had a reasonable basis both in law and fact.

Taxpayers Reminded to Report Gig Economy Income, Virtual Currency Transactions, and Foreign Source Income and Assets

IR-2022-45

The IRS has reminded taxpayers of reporting and potential tax obligations from working in the gig economy, making virtual currency transactions, earning foreign-source income, or holding certain foreign assets. The information available on IRS.gov and instructions on Form 1040 can help taxpayers in understanding and meeting these requirements. Generally, income earned from the gig economy is taxable and must be reported to the IRS. The gig economy is the activity where people earn income providing on-demand work, services or goods. Taxpayers must report income from the gig economy on a tax return even if the income is:

- from part-time, temporary or side work;
- not reported on an information return form; or
- paid in any form, including cash, property, goods or virtual currency.

The IRS reminded taxpayers that there is a question at the top of Form 1040 and Form 1040-SR asking about virtual currency transactions. All taxpayers must check the box indicating either"yes" or "no". The IRS provided a list of some of the transactions involving virtual currency. If an individual disposed of any virtual currency that was held as a capital asset through a sale, exchange, or transfer, they should check"yes". They should use Form 8949, Sales and Other Dispositions of Capital Assets, to determine their capital gain or loss and report it. If they received any virtual currency as compensation for services or disposed of any virtual currency they held for sale to customers in a trade or business, they must report the income as they would report other income of the same type. Further, the IRS reminded U.S. citizens and resident aliens to report unearned income from sources outside the U.S. unless exempt by law or a tax treaty. They must also report earned income from foreign sources. An income tax filing requirement generally applies even if a taxpayer qualifies for tax benefits, including the Foreign Earned Income Exclusion or the Foreign Tax Credit, which substantially reduce or eliminate U.S. tax liability. A taxpayer is allowed an automatic two-month extension to June 15 if both their home and abode are outside the U.S. and Puerto Rico. Even if allowed an extension, a taxpayer will have to pay interest on any tax not paid by the regular due date of April 18, 2022. Those serving in the military outside the U.S. and Puerto Rico on the regular due date of their tax return also qualify for the extension to June 15.

Additionally, the IRS reminded taxpayers that federal law requires U.S. citizens and resident aliens to report their worldwide income, including income from foreign trusts and foreign bank and other financial accounts. In most cases, affected taxpayers need to complete and attach Schedule B, Form 1040, to their tax returns. Part III of Schedule B requires citizens to report the country in which each foreign account is located. In addition, certain taxpayers may also have to complete and attach to their return Form 8938, Statement of Foreign Financial Assets. Generally, U.S. citizens, resident aliens and certain nonresident aliens must report specified foreign financial assets on this form if the aggregate value of those assets exceeds certain thresholds. Finally, taxpayers with an interest in, or signature or other authority over foreign financial accounts whose aggregate value exceeded $10,000 at any time during 2020, must file electronically with the Treasury Department a Financial Crimes Enforcement Network (FinCEN) Form 114, Report of Foreign Bank and Financial Accounts (FBAR). The IRS encouraged taxpayers with foreign assets to check if this filing requirement applies to them. The deadline for filing the annual FBAR is the same as that of Form 1040. FinCEN grants filers who missed the original deadline an automatic extension until October 15, 2022, to file the FBAR. There is no need to request this extension.

Taxpayer Experience Office Established

IR-2022-50

The IRS has established the first Taxpayer Experience Office (Office). The IRS will soon begin taking additional steps to expand its effort to improve taxpayer service. The Office will focus on all aspects of taxpayer transactions with the IRS and will work in conjunction with all IRS business units. It will coordinate closely with the Taxpayer Advocate Service.

"As the IRS continues taking immediate steps this filing season including adding more employees to address the significant challenges facing a resource-constrained IRS, it's critical that we work going forward to equip the IRS to be a 21st century resource for Americans," said IRS Commissioner Chuck Rettig. "The formal establishment of this office will help unify and expand efforts across the IRS to improve service to taxpayers," he added.

The Office is a part of the effort envisioned in the Taxpayer First Act Report to Congress last year. This included input and feedback from the tax community that helped develop the Taxpayer Experience strategy. The Office has identified key activities the Service would be focusing on over the next five years to drive the IRS' strategic direction. This includes the commitments outlined in the President's Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.

IRS Announces Face-to-Face Help in Over 30 Cities on Saturday, March 12

IR-2022-51

The IRS has announced that many Taxpayer Assistance Centers (TACs) will offer face-to-face help without an appointment from 9 a.m. to 4 p.m. on Saturday, March 12. IRS Wage and Investment Division Commissioner and Taxpayer Experience Officer Ken Corbin stated that many taxpayers find it difficult to take care of their taxes during routine business hours. He further stated that being open on select Saturdays is offered for people to get the help they need when they need it. The IRS informed taxpayers that they can ask about reconciling advance Child Tax Credit payments, receive help resolving a tax problem, a tax bill or an IRS audit. Further, if assistance from IRS employees specializing in these services is not available, individuals will receive a referral for these services. IRS staff will schedule appointments for a later date for Deaf or Hard of Hearing individuals who need sign language interpreter services. Foreign language interpreters will be available. The IRS informed taxpayers that the agency follows Centers for Disease Control social distancing guidelines for COVID-19, and availability may change without notice. Individuals are required to wear face masks and social distance at these events. The IRS urged individuals to come prepared with the following information:

- current government-issued photo identification;
- Social Security cards and/or ITINs for members of their household, including spouse and dependents (if applicable); and
- any IRS letters or notices received and related documents.

Additionally, during the visit, the IRS staff may also request a current mailing address and bank account information, to receive payments or refunds by Direct Deposit. No tax return preparation will be available at any IRS TAC. However, any individual or family earning $73,000 or less in 2021 can use tax software from providers who make their online products available through IRS Free File for free. Free help preparing tax returns is available at Volunteer Income Tax Assistance Center (VITA) or Tax Counseling for the Elderly location (TCE) sites. The income limit for VITA assistance is $58,000. To find the closest free tax return preparation help, taxpayers can use the VITA Locator Tool. To find a TCE AARP Tax-Aide site, taxpayers can use the AARP Site Locator Tool.

TAX BRIEFS

Charitable Contributions

The IRS' motion for partial summary judgment was denied in a case involving a charitable contribution deduction claimed by a limited liability company for a conservation easement. The IRS contended that the phrase mentioned in the conservation deed meant "the values used by the IRS or a court to calculate the deduction ultimately allowed to the taxpayer." The tax court interpreted this phrase to mean "the values used by the taxpayer to calculate the deduction claimed on its return." Moreover, the taxpayer's deed specified that the donee's percentage interest would be determined as the fair market value of the easement, divided by the fair market value of the property as a whole. This formula was fully consistent with the regulation. The deed made clear that these values were fixed as of the recording date and would remain constant. These values were not contingent on an IRS audit or other future event. Finally, the deed did not define the numerator, but simply specified the deduction that the taxpayer would claim on its tax return using the values determined as of the recording date—namely, the deduction allowable to taxpayers generally under Code Sec. 170(h).

Corning Place Ohio, LLC, TC, Dec. 62,013(M)

Collection Due Process

An individual was able to challenge his tax liability. An IRS settlement officer (SO1) appears to have given the taxpayer incorrect information. SO2 perpetuated that error by reiterating SO1's conclusion and leaving unfinished the portion of his letter explaining why an underlying liability challenge was not possible. The liability would be considered when any taxpayer were to be incorrectly advised.

Shaddix, TC, Dec. 62,012(M)

An individual was not entitled to challenge his underlying liabilities. The taxpayer was employed by a corporation as a part-time hourly bookkeeper. The court observed that a properly mailed and received Letter 1153 constituted a prior opportunity. The taxpayer failed to challenge the Letter 1153. This precluded him from challenging his underlying liabilities in the collection due process (CDP) hearing.

Kazmi, TC, Dec. 62,014(M)

Controlled Corporations

The IRS issued rulings on the tax consequences of a series of proposed transactions involving two distributions. A foreign parent entity owned all the stock of a common parent entity (P1) of an affiliated group of corporations that filed a consolidated federal income tax return. P1 wholly owned a distributing entity (D2), an LLC classified as a disregarded entity for federal income tax purposes. D2 wholly owned a subsidiary (S1) and D1. D1 owned a controlling entity (C1). Also, no gain or loss would be recognized by D2 upon its receipt of C1 stock in the first distribution.

First, no gain or loss would be recognized by D1 on both distributions under Code Secs. 355(a) and 355(c). Further, D2's holding period in the C1 stock received would include the holding period of the D1 common stock to which the distribution of the C1 stock was made. The earnings and profits of D1 and C1 would be determined under Code Sec. 312(h). Finally, the aggregate basis of the D2 and C1 stock in the hands of P1 after the second distribution would equal the aggregate adjusted basis of the D2 stock held by P1 immediately before the second distribution.

IRS Letter Ruling 202209002

Distilled Spirits and Malt Beverages

The labeling and advertising regulations regarding distilled spirits and malt beverages are reorganized and amended by the Alcohol and Tobacco Tax and Trade Bureau. These amendments will allow additional flexibility for making certain changes going forward. They do not require industry members to make changes to alcohol beverage labels or advertisements.

Treasury Decision, TTB-176, Alcohol and Tobacco Tax and Trade Bureau, 87 FR 7526, effective March 11, 2022; 27 CFR Parts 5 (§5.0 - §5.241) and 7 (§7.0 - §7.241)

Foreign Housing Exclusion

The IRS has provided the foreign housing expense exclusion/deduction amounts for tax year 2022. Generally, a qualified individual whose entire tax year is within the applicable period is limited to maximum housing expenses of $33,600 for 2022. Similarly, the computation of the base housing amount is also tied to the maximum foreign earned income exclusion. The base housing amount is 16 percent of the maximum exclusion amount (computed on a daily basis), multiplied by the number of days in the applicable period that fall within the tax year. The notice also provides a table containing information on adjusted limitations on housing expenses in lieu of the otherwise applicable limitation of $33,600, for 2022.

Notice 2022-10

Fraud Penalties

The Court of Appeals for the Ninth Circuit affirmed the Tax Court's opinion that an individual failed to report legal fees as income on his tax return with fraudulent intent for the tax year at issue. The IRS's notice of deficiency concluded that the taxpayer failed to report legal fees on his tax return. Accordingly, the IRS determined a tax deficiency and a 75-percent fraud penalty. The Tax Court concluded that the deficiency and penalty were appropriate. However, the taxpayer contended that the Tax Court erred because he purportedly held the funds resulting from the settlement of an action for the benefit of his clients and was not required to report it in his legal fees because of an ongoing fee dispute. From the time the settlement funds were wired into the taxpayer's investment account, he treated the funds as his own. The court held that the Tax Court did not err in concluding that the taxpayer's conduct demonstrated his dominion and control over the funds or abuse its discretion by judicially estopping the taxpayer from arguing that a fee dispute existed between him and his clients as the argument was inconsistent with the taxpayer's representations. Finally, the court concluded that there was no error in the Tax Court's imposition of the penalty.

Isaacson, CA-9, 2022-1 USTC ¶50,119

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 item listed below was released as a result.

Chief Counsel Advice Memorandum 202209012

Medical Marijuana Business

A married couple was not allowed to use depreciation method for inventory production assets for two entities they owned. The taxpayers timely filed their joint tax returns for the tax year at issue and reported passthrough income attributable to two businesses in which the taxpayer husband held ownership interests. The businesses did not have audited financial statements for the tax year at issue and for nontax purposes were not required to maintain books and records of financial reports in accordance with U.S. Generally Accepted Accounting Principles (GAAP). However, during the tax year at issue the businesses maintained their books and records and financial reports on a tax basis. Further the businesses computed their depreciation included in cost of goods sold using the accelerated cost recovery method and also claimed bonus depreciation. These methods did not confirm with GAAP, but the recovery periods that they used conformed with GAAP. The IRS issued a notice of determination against the taxpayers making adjustments to the passthrough income received from two businesses. After concessions, the sole issue for consideration was whether the tax depreciation methods for inventory production assets could be used under either Code Secs. 263A or 471 when Code Sec. 280E applied. The Tax Court held that the taxpayers were not allowed to use Code Sec. 168 depreciation method since the businesses were ones that trafficked in controlled substances, i.e. Code Sec. 280E-affected taxpayers.

Lord, TC, Dec. 62,015(M)

Paid Leave Tax Credits

The IRS has updated its frequently asked questions (FAQs) on Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021 for leave after March 31, 2021. The FAQs revisions add Question 98a and Question 116a. The IRS has issued these FAQs to provide general information to taxpayers and tax professionals as expeditiously as possible.

FS-2022-15; IR-2022-47

The IRS has updated its frequently asked questions (FAQs) on tax credits for paid leave under the Families First Coronavirus Response Act for leave prior to April 1, 2021. The FAQs revisions add Question 54g and Question 65c. The IRS has issued these FAQs to provide general information to taxpayers and tax professionals as expeditiously as possible.

IR-2022-48; FS-2022-16

Tax Protesters

A married couple's tax deficiency, penalties, and an addition to tax were upheld. The taxpayers failed to show by a preponderance of the evidence that the deficiency was arbitrary or erroneous. Further, the Tax Court did not abuse its discretion by imposing a penalty under Code Sec. 6673 because the taxpayers maintained frivolous positions despite the Tax Court's warnings. The taxpayers' contentions regarding the constitutionality of income taxes, that income tax was an excise tax not applying on money received by the taxpayers, and that the Tax Court mischaracterized or changed the stipulated facts, was rejected. Finally, the appeals court refused to consider if the Tax Court erred in sustaining the addition for failure to file a timely return. The taxpayers did not address this issue in their opening brief.

Smith, CA-9, 2022-1 USTC ¶50,120