2019 NEW DEVELOPMENTS

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INTRODUCTION

This publication is produced by the Land Grant University Tax Education Foundation. The Land Grant University Tax Education Foundation is pleased to provide the *National Income Tax Workbook* to approximately 29,000 tax practitioners in tax schools taught in 32 states. This publication supplements the 2019 National Income Tax Workbook. It includes new procedures, guidance, and legislation that were adopted in late 2019 and are important for filing 2019 tax returns. It also includes an overview of the Further Consolidated Appropriations Act, 2020 (H.R. 1865, P.L. 116-94), which was enacted on December 20, 2019 and contains the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) and the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (the Disaster Act).

The *2020 National Income Tax Workbook* and supplemental publications and courses will provide a comprehensive discussion of these changes. Please visit our website at taxworkbook.com for more information about online courses and tax workshops near you.

These summaries have been edited and appear in a condensed form. Tax practitioners should read the entire text of the new legislation before relying on it.

Business Entities

C Corporations

REG-125710-18

I.R.C. § 382

The IRS has issued proposed regulations on the items of income and deduction that are included when calculating built-in gains and losses under I.R.C. § 382. Section 382(h) provides rules relating to the determination of a loss corporation's built-in gains and losses as of the date of the ownership change (the change date). In general, built-in gains recognized during the 5-year period beginning on the change date (the recognition period) allow a loss corporation to increase its section 382 limitation, whereas built-in losses recognized during the recognition period are subject to the loss corporation's section 382 limitation.

To compute net unrealized built-in gain (NUBIG) and net unrealized built-in loss (NUBIL), the proposed regulations adopt as mandatory the safe harbor computation provided in Notice 2003-65, 2003-2

C.B. 747 based on the principles of I.R.C. § 1374. The proposed regulations modify the section 1374 approach, particularly for cancellation of debt income and deductions for the payment of contingent liabilities.

REG-123112-19
I.R.C. § 385

This advance notice of proposed rulemaking announces that the Treasury and the IRS intend to issue proposed regulations regarding the treatment of certain interests in corporations as stock or indebtedness. Under the general distribution rule, the issuance of a debt instrument by a member of an expanded group to another member of the same expanded group in a distribution, or an economically similar transaction, may result in the treatment of the debt instrument as stock. A funding rule treats as stock a debt instrument that is issued as part of a series of transactions that achieves a result that is like a distribution of a debt instrument.

The proposed regulations withdraw the funding rule and apply the funding rule to a debt instrument only if its issuance has a sufficient factual connection to a distribution to a member of the taxpayer's expanded group or an economically similar transaction (for example, when the funding transaction and distribution or economically similar transaction are pursuant to an integrated plan). Thus, under the proposed regulations, a debt instrument issued without such a connection to a distribution or similar transaction is not treated as stock.

REG-131071-18
I.R.C. §§ 481, 1371, 1377

Generally, a distribution by a C corporation to its shareholders with respect to their stock ownership is treated as a taxable dividend to the extent of the corporation's earnings and profits. However, following the termination of an S corporation, shareholders of the resulting C corporation can benefit from the corporation's former status as an S corporation with regard to distributions of money during the corporation's post-termination transition period (PTTP), which is generally the 1-year period after the S election terminates.

Specifically, during the PTTP, a distribution of money by the C corporation is characterized as a distribution from the corporation's accumulated adjustments account (AAA). The receipt of the distribution is tax-free to the extent of the recipient's basis in its stock with respect to which it received the distribution and is taxed as gain from the sale of property to the extent the distribution exceeds the recipient's basis in that stock. If the corporation exhausts its AAA during the PTTP, then subsequent distributions are subject to treatment under I.R.C. § 301.

The proposed regulations provide rules regarding the definition of an eligible terminated S corporation (ETSC). In addition, the proposed regulations provide rules relating to distributions of money by an ETSC after the PTTP. Finally, the proposed regulations revise current regulations to extend the treatment of distributions of money during the PTTP to all shareholders of the corporation and to update and clarify the allocation of current earnings and profits to distributions of money and other property.

Partnerships

Rev. Proc. 2019-32, 2019-33 I.R.B. 659
I.R.C. § 6031

In general, I.R.C. § 6031(b) prohibits partnerships that are subject to the centralized audit regime from amending the information required to be furnished to their partners after the due date of the return. This revenue procedure grants eligible partnerships an extension of time to file a superseding Form 1065, U.S.

Return of Partnership Income, and furnish a corresponding Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., to each of its partners.

This relief applies only to partnerships that, for the applicable tax year have not elected the application of I.R.C. § 6221(b), have timely filed Form 1065, and have timely furnished all Schedules K-1 required to be furnished (without regard to the extensions of time provided by this revenue procedure). The filing and furnishing extensions provided in this revenue procedure apply only to partnership tax years that ended prior to the issuance of the revenue procedure (August 12, 2019) and for which the extended due date for such partnership tax year is after July 25, 2019.

T.D. 9877
I.R.C. §§ 704, 752

These final regulations provide guidance for a partnership to allocate its liabilities among its partners. The final regulations address when certain obligations to restore a deficit balance in a partner's capital account are disregarded under I.R.C. § 704, when partnership liabilities are treated as recourse liabilities under I.R.C. § 752, and how bottom dollar payment obligations are treated under section 752.

T.D. 9876
I.R.C. § 707

I.R.C. § 707 generally provides that related transfers of money or other property to and by a partnership that, when viewed together, are more properly characterized as a sale or exchange of property, will be treated either as a transaction between the partnership and one who is not a partner or between two or more partners acting other than in their capacity as partners (disguised sales). The final regulations address how partnership recourse and nonrecourse liabilities are allocated for disguised sale purposes. The regulations replace existing temporary regulations with final regulations that were in effect prior to the temporary regulations.

Draft Form 8978, Partner's Audit Liability Under Section 6226 and Draft Form 8978, Schedule A, Partner's Imputed Underpayment (Supplemental)
I.R.C. § 6226

The IRS has released a draft of new Form 8978, Partner's Audit Liability Under Section 6226, and Schedule A, Partner's Imputed Underpayment (Supplemental). Partners (other than pass-through partners such as partnerships or S corporations) use Form 8978 and Schedule A (Form 8978) to report adjustments shown on Forms 8986, Partner's Share of Adjustment(s) to Partnership-Related Item(s), received from partnerships that have been audited or filed an administrative adjustment request (AAR) and have elected to push out an imputed underpayment to their partners.

The Schedule A (Form 8978) lists all the adjustments a partner receives on Form 8986. Schedule A also reports any related amounts and adjustments not reported on Form 8986 that may result from changes to partner-level tax attributes as a result of adjustments from Form 8986.

Notice 2019-66, 2019-52 I.R.B 1509

This notice provides that the requirement to report partners' shares of partnership capital on the tax basis method will not be effective for 2019 (for partnership tax years beginning in 2019) but will be effective beginning in 2020 (for partnership tax years that begin on or after January 1, 2020). For 2019, partnerships and other persons must report partner capital accounts using any method available in 2018 [tax basis, section 704(b), GAAP, or any other method].

For 2019, the partnership must report negative tax basis capital accounts on a partner-by-partner basis and report a partner's share of *net unrecognized section 704(c) gain or loss*. The notice defines a partner's share of net unrecognized section 704(c) gain or loss as the partner's share of the net (net means aggregate or sum) of all unrecognized gains or losses under section 704(c) in partnership property, including section 704(c) gains and losses arising from revaluations of partnership property.

Additionally, the notice exempts publicly traded partnerships from the requirement to report their partners' shares of net unrecognized section 704(c) gain or loss until further notice. This notice also provides that the requirement to report to partners information about separate section 465 at-risk activities will not be effective until 2020. Finally, the notice provides relief from certain reporting penalties.

T.D. 9869

I.R.C. § 7701

The owner of a disregarded entity who is treated as a sole proprietor for income tax purposes is subject to self-employment taxes. The final regulations clarify that partners in a partnership that owns a disregarded entity are not employees of the disregarded entity for employment tax purposes and are subject to self-employment tax.

Tax-Exempt Organizations

T.D. 9886

I.R.C. § 512

Final regulations providing guidance on how voluntary employees' beneficiary associations (VEBAs) and supplemental unemployment benefit trusts (SUBs) that provide employee benefits must calculate unrelated business taxable income (UBTI).

Repeal of UBTI for Qualified Transportation Fringe Benefits

I.R.C. § 512

The Disaster Act repeals the requirement that tax-exempt organizations increase UBTI by expenses related to qualified transportation fringe benefits.

Business Issues

Deductions

Rev. Proc. 2019-46, 2019-49 I.R.B. 1301

I.R.C. §§ 67, 217, 274

This revenue procedure provides rules for using optional standard mileage rates in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. The Tax Cuts and Jobs Act of 2017 (TCJA) temporarily suspends all miscellaneous itemized deductions that are subject to the 2%-of-AGI floor for any tax year beginning after December 31, 2017, and before January 1, 2026 (the suspension period). The TCJA also suspends the deduction for moving expenses during the suspension period (except for certain moves pursuant to a military order).

I.R.C. § 62(a)(1) allows an individual taxpayer to deduct expenses paid or incurred by the taxpayer in carrying on a trade or business if the trade or business does not consist of services by the taxpayer as an employee. I.R.C. § 62(a)(2)(A) allows an employee to deduct business expenses the employee pays or incurs in performing services as an employee under a reimbursement or other expense allowance arrangement with the employer. The expenses paid or incurred by the taxpayer that are deductible under section 62(a)(1) and (2) are not miscellaneous itemized deductions.

The revenue procedure provides that a taxpayer may not use the business standard mileage rate to claim a miscellaneous itemized deduction during the suspension period. In addition, a taxpayer may not use the business standard mileage rate to claim a miscellaneous itemized deduction during the suspension period for unreimbursed travel expenses.

However, if the taxpayer pays or incurs unreimbursed employee travel expenses during the suspension period that are deductible by the taxpayer in computing adjusted gross income, the taxpayer can use the business standard mileage rate to compute an adjustment to gross income. Thus, regardless of the suspension of miscellaneous itemized deductions, a taxpayer may use the standard business mileage rate in computing adjusted gross income under section 62(a)(1) or (2).

The revenue procedure provides that a member of the armed forces may still use the moving standard mileage rate to calculate the deduction for a qualified move. A taxpayer can use the charitable standard mileage rate to calculate the charitable contribution deduction for use of an automobile in rendering gratuitous services to a charitable organization, and can use the medical standard mileage rate to calculate the deduction for use of an automobile as medical care described in I.R.C. § 213.

This revenue procedure also provides rules for substantiating, under I.R.C. § 274(d) and Treas. Reg. § 1.274-5 the amount of an employee's ordinary and necessary expenses for local travel or transportation away from home that a payer (an employer, its agent, or a third party) reimburses using a mileage allowance. Taxpayers are not required to use the substantiation methods described in the revenue procedure and can substantiate actual allowable expense amounts if the taxpayers maintain adequate records or other sufficient evidence.

Rev. Proc. 2019-33, 2019-34 I.R.B. 662
I.R.C. § 168

This revenue procedure provides guidance allowing a taxpayer to make a late election, or to revoke an election, under I.R.C. § 168(k)(5), (7), or (10) for certain property acquired by the taxpayer after September 27, 2017, and placed in service or planted or grafted, as applicable, by the taxpayer during its tax year that includes September 28, 2017.

T.D. 9874
I.R.C. §§ 168, 179

Final regulations provide guidance regarding the additional first year depreciation deduction under I.R.C. § 168(k) (bonus depreciation). The final regulations clarify the statutory requirements that must be met for depreciable property to qualify for bonus depreciation and provide guidance to taxpayers to determine the amount of the bonus depreciation deduction.

The final regulations provide that the acquisition of used property is eligible for bonus depreciation if it meets the following three requirements:

1. The property was not used by the taxpayer or a predecessor at any time prior to the acquisition.
2. The acquisition of the property meets certain related party and carryover basis requirements.
3. The acquisition of the property meets the cost requirements of I.R.C. § 179(d)(3) and Treas. Reg. § 1.179-4(d).

The final regulations provide that a *predecessor* includes (i) a transferor of an asset to a transferee in a transaction to which I.R.C. § 381(a) applies; (ii) a transferor of an asset to a transferee in a transaction in which the transferee's basis in the asset is determined, in whole or in part, by reference to the basis of the asset in the hands of the transferor; (iii) a partnership that is considered as continuing under I.R.C. § 708(b)(2); (iv) the decedent in the case of an asset acquired by an estate; or (v) a transferor of an asset to a trust.

The final regulations provide that to determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition, only the 5 calendar years immediately prior to the taxpayer's current placed-in-service year of the property are considered. If the taxpayer and a predecessor have not been in existence for this entire 5-year period, only the calendar years the taxpayer and the predecessor have been in existence are considered.

The final regulations provide that remedial allocations under I.R.C. § 704(c) do not qualify for bonus depreciation. I.R.C. § 734(b) basis adjustments are also not eligible for bonus depreciation deduction. In determining whether an I.R.C. § 743(b) basis adjustment meets the used property acquisition requirements, each partner is treated as having owned and used the partner's proportionate share of partnership property.

The final regulations provide that the property must be acquired by the taxpayer after September 27, 2017, or, acquired by the taxpayer pursuant to a written binding contract entered into by the taxpayer after September 27, 2017. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is not acquired pursuant to a written binding contract but is self-constructed property. The acquisition rules are treated as met if the taxpayer begins manufacturing, constructing, or producing the property after September 27, 2017.

The acquisition date of property that the taxpayer acquired pursuant to a written binding contract is the later of the date that the contract was entered into; the date that the contract is enforceable under state law; if the contract has one or more cancellation periods, the date that all cancellation periods end; or if the contract has one or more contingency clauses, the date that all conditions subject to such clauses are satisfied.

In addition, the final regulations provide that the allowable bonus depreciation deduction for qualified property is equal to the applicable percentage of the unadjusted depreciable basis of the property. The deduction is allowed for both regular tax and alternative minimum tax (AMT) purposes.

REG-106808-19

I.R.C. § 168

Proposed regulations amend the final section 168(k) regulations to provide taxpayers with guidance that is not addressed in the final regulations. Specifically, the proposed regulations provide rules for the definition of qualified property for purposes of bonus depreciation and add special rules for consolidated groups. Additionally, the proposed regulations add transition rules for self-constructed property and add rules regarding the application of the mid-quarter convention, as determined under section 168(d).

C.C.A. 201928014

I.R.C. §§ 170, 172

The IRS has provided guidance regarding use of charitable contribution and net operating loss (NOL) carryovers from multiple tax years. I.R.C. § 170(d)(2)(B) requires a reduction in a taxpayer's charitable contribution carryover to the extent an excess charitable contribution reduces modified taxable income [as computed under section 172(b)(2)] and increases an NOL carryover. Section 172(b)(2) requires the taxpayer to use a year-by-year NOL absorption computation to determine the charitable contribution carryover adjustment.

If the taxpayer has a charitable contribution carryover that is set to expire in the year at issue and section 170(d)(2)(B) requires a reduction in the taxpayer's charitable contribution carryover the taxpayer must reduce its current year charitable contributions first. The taxpayer cannot choose to reduce a prior year's charitable contribution carryover to prevent its expiration.

Rev. Proc. 2019-48, 2019-51 I.R.B. 1392

I.R.C. § 274

The TCJA amended I.R.C. § 274 to generally disallow a deduction for entertainment, amusement, or recreation expenses incurred or paid after December 31, 2017. This revenue procedure provides rules for using a per diem rate to substantiate the amount of an employee's expenses for lodging, meal, and incidental expenses, or for meal and incidental expenses only, that a payer (an employer, its agent, or a third party) reimburses. Certain specified employees and self-employed individuals that deduct unreimbursed expenses for travel away from home may use a per diem rate for meals and incidental expenses, or incidental expenses only, under this revenue procedure. This revenue procedure does not provide rules for using a per diem rate to substantiate the amount of lodging expenses only

Specifically, the revenue procedure updates the definition of incidental expenses to reflect the definition of this term in the current federal travel regulations. It provides that unreimbursed employee travel expenses that are miscellaneous itemized deductions subject to the 2%-of-AGI floor are not allowed during the suspension period, and a deduction for entertainment, amusement, or recreation expenses is generally disallowed.

However, I.R.C. § 62(a)(2)(A) allows an employee to deduct business expenses the employee pays or incurs in performing services under a reimbursement or other expense allowance arrangement with a payer, and employees described in section 62(a)(2)(B)-(E), and self-employed individuals may substantiate the amount of deductible meal expenses by using an amount computed at the federal per diem meal and incidental expenses (M&IE) rate. This amount is deemed substantiated if the employee or self-employed individual substantiates the elements of time, place, and business purpose of the travel.

Health Plans

REG-136401-18

I.R.C. § 105

The IRS has issued proposed regs to clarify the application of the employer shared responsibility provisions and certain nondiscrimination rules to health reimbursement arrangements and other account-based group health plans (HRAs) and individual coverage HRAs. The proposed regulations also provide safe harbors for the application of those provisions to individual coverage HRAs.

Notice 2019-45

I.R.C. § 223

This notice expands the list of preventive care benefits that a high deductible health plan (HDHP) can provide under I.R.C. § 223(c)(2) without a deductible, or with a deductible below the applicable minimum deductible (self-only or family) for an HDHP. Generally, under section 223(c)(2)(A), an HDHP may not provide benefits for any year until the minimum deductible for that year is satisfied. However, section 223(c)(2)(C) provides a safe harbor that allows no deductible (or a lower deductible) for preventive care.

The notice provides that certain specified medical care services received, and items purchased, including prescription drugs, for certain chronic conditions should be classified as preventive care for someone with that chronic condition. The specified services and items are treated as preventive care only when prescribed to prevent the exacerbation of the chronic condition or to prevent the development of a secondary condition. See Appendix A of the notice for a list of specified services.

Individual Issues

Modification of Rules for Taxation of Unearned Income of Children

I.R.C. § 1

The SECURE Act repeals the TCJA provisions that taxed unearned income of children at the trust and estate rates. The repeal is effective for tax years beginning after December 31, 2019 but taxpayers can elect to apply the amendment for tax years beginning in 2018 or 2019 (or both)

REG-101378-19

I.R.C. § 61

The IRS has issued proposed regulations that provide special valuation rules for employers and employees to use in determining the amount to include in an employee's gross income for personal use of an employer-provided vehicle. These proposed regulations update the fleet-average and vehicle cents-per-mile valuation rules described in Treas. Reg. § 1.61-21(d) and (e) to align the limitations on the maximum vehicle fair market values for use of these special valuation rules with the changes made by the TJCA to the depreciation limitations in section 280F.

Specifically, consistent with the substantial increase in the dollar limitations on depreciation deductions under section 280F(a), the proposed regulations increase, effective for the 2018 calendar year, the maximum base fair market value of a vehicle for use of the fleet-average or vehicle cents-per-mile valuation rule to $50,000 ($50,400 for 2019). Transition rules allow certain employers to adopt the fleet-average or vehicle cents-per-mile rule in 2018 or 2019.

REG-107431-19

I.R.C. §§ 162, 164, 170

Proposed regulations address contributions to a charity in return for state and local credit. Under the proposed regulations, if the taxpayer entity’s payment or transfer bears a direct relationship to its trade or business, and the payment is made with a reasonable expectation of commensurate financial return, the payment or transfer to the section 170(c) entity may constitute an allowable deduction as a trade or business expense under section 162, rather than a charitable contribution under section 170.

The proposed regulations provide a safe harbor for individuals who make a payment to or for the use of an entity described in section 170(c) in return for a state or local tax credit. If the individual itemizes deductions, he or she may treat the payment as a payment of state or local tax for purposes of section 164 (subject to the limit on that deduction) to the extent that a charitable contribution deduction under section 170 is or will be disallowed. Thus, a taxpayer with local tax liabilities that are less than the limit ($5,000 MFS and $10,000 all other returns) can take a section 164 deduction for a payment to a charity in return for state and local tax credit.

The charitable contribution deduction may not exceed the amount of cash paid and the fair market value of property transferred to an organization described in section 170(c) over the fair market value of goods or services the organization provides in return. The proposed regulations clarify that the state or local tax credit (or other goods and services received in exchange for the contribution) does not have to be provided by the donee organization, and consideration includes all benefits that a taxpayer receives or expects to receive, regardless of whether they are provided by the donee.

P.M.T.A. 2019-008

I.R.C. § 165

For tax years 2018 through 2025, I.R.C. § 165(h)(5), as amended by the TCJA, limits personal casualty losses to losses attributable to a federally declared disaster. The amendment applies to losses incurred in tax years beginning after December 31, 2017. The IRS has issued guidance stating that a personal non-federally declared disaster loss that occurred prior to December 31, 2017, but was not sustained until after December 31, 2017, is not deductible. Also, the personal casualty loss does not have to occur in a disaster area to be deductible, but it must occur in the state receiving the federal disaster declaration.

T.D. 9878

I.R.C. § 165

Final regulations address the election to deduct a loss attributable to a federally declared disaster for the tax year prior to the year in which the disaster occurred. The regulations provide rules and procedures for making and revoking the election.

An election under section 165(i) to deduct a disaster loss for the preceding year is made either on an original federal income tax return for the preceding year or an amended federal income tax return for the preceding year. The due date for making the election is 6 months after the due date for filing the taxpayer's federal income tax return for the disaster year (determined without regard to any extension of time to file). The election may be revoked on or before the date that is 90 days after the due date for making the election.

The Disaster Act

Exclusion from Gross Income of Discharge of Qualified Principal Residence Indebtedness

I.R.C. § 108

The Disaster Act extends the exclusion for discharge of qualified principal residence indebtedness. The exclusion is effective for discharges after December 31, 2017 and before January 1, 2021.

Treatment of Mortgage Insurance Premiums as Qualified Residence Interest

I.R.C. § 163

The Disaster Act extends the treatment of mortgage insurance premiums as qualified residence interest through December 30, 2020. The exclusion is effective for amounts paid or accrued after December 31, 2017.

Reduction in Medical Expense Deduction Floor

I.R.C. § 213

The Disaster Act extends the 7.5% medical expense deduction floor for tax years beginning before January 1, 2021. The extension applies to tax years ending after December 31, 2018.

Deduction of Qualified Tuition and Related Expenses

I.R.C. § 222

The Disaster Act extends the deduction for qualified tuition and related expenses to December 31, 2020. The extension applies to tax years beginning after December 31, 2017.

Other Extensions

Various Code Provisions

The Disaster Act extends the Indian employment credit, railroad track maintenance credit, mine rescue team training credit, classification of certain race horses as 3-year property, 7-year recovery period for motorsports entertainment complexes, accelerated depreciation for business property on Indian reservations, expensing rules for certain productions, empowerment zone tax incentives, American Samoa economic development credit, biodiesel and renewable diesel credit, second generation biofuel producer credit, nonbusiness energy property credit, qualified fuel cell motor vehicles credit, alternative fuel refueling property credit, 2-wheeled plug-in electric vehicle credit, credit for electricity produced from certain renewable resources, production credit for Indian coal facilities, energy efficient homes credit, special allowance for second generation biofuel plant property, energy efficient commercial buildings deduction, special rule for sales or dispositions to implement FERC or state electric restructuring policy for qualified electric utilities, excise tax credits for alternative fuels, and the oil spill trust fund liability rate, new markets tax credit, employer credit for paid family and medical leave, work opportunity credit, certain provisions related to beer, wine, and distilled spirits, and the look-through rule for related controlled foreign corporations.

Disaster Relief

I.R.C. §§ 38, 72t, 7508A

The Disaster Act extends the term *qualified disaster area* to include areas in which a major disaster was declared between January 1, 2018 and 60 days after the enactment of the Act (December 20, 2019). It allows penalty-free qualified disaster relief distributions (up to $100,000) from a retirement plan, and it allows the taxpayer to re-contribute certain distributions. The Disaster Act provides for plan loans, and it provides an employee retention credit for employers affected by qualified disasters. It also increases the limit for qualified disaster contributions to a charitable organization and provides special rules for qualified disaster-related personal casualty losses. The Act provides an automatic 60-day extension of filing deadlines for certain taxpayers affected by federally declared disasters.

Qualified Business Income Deduction

Form 8995, Qualified Business Income Deduction Simplified Computation and Form 8995-A Qualified Business Income Deduction

I.R.C. § 199A

The IRS has issued a draft Form 8995 and draft instructions for Form 8995. The IRS has also released a draft Form 8995-A, Qualified Business Income Deduction, and draft instructions for Form 8995-A.

Rev. Proc. 2019-38, 2019-42 I.R.B. 942

I.R.C. § 199A

This revenue procedure finalizes a safe harbor for treating a rental real estate enterprise as a trade or business for purposes of section 199A. The determination to use this safe harbor must be made annually.

For purposes of this safe harbor, a *rental real estate enterprise* is defined as an interest in real property held to produce rent and may consist of an interest in a single property or interests in multiple properties.

The taxpayer or relevant pass-through entity (RPE) relying on this revenue procedure must hold each interest directly or through an entity disregarded as an entity separate from its owner.

For purposes of applying this revenue procedure, properties held to produce rent are similar and can be combined into a single real estate rental enterprise if they are part of the same rental real estate category. The two types of rental real estate categories are residential and commercial. Thus, commercial real estate held to produce rent may only be part of the same enterprise with other commercial real estate, and residential properties may only be part of the same enterprise with other residential properties.

The revenue procedure discusses rules for combining and separating properties. It also provides special rules for mixed-use property.

Under the safe harbor, a rental real estate enterprise will be treated as a trade or business for the section 199A deduction if it meets the following requirements:

1. The taxpayer keeps separate books and records that show income and expenses for each rental real estate enterprise.
2. For rental real estate enterprises that have been in existence less than 4 years, 250 or more hours of rental services are performed per year for the rental real estate enterprise. For rental real estate enterprises that have been in existence for at least 4 years, in any 3 of the 5 consecutive tax years that end with the tax year, 250 or more hours of rental services are performed per year for the rental real estate enterprise.
3. The taxpayer maintains contemporaneous records, including time reports, logs, or similar documents.
4. The taxpayer or RPE attaches a statement to a timely filed original return (or an amended return for the 2018 tax year only) for each tax year in which the taxpayer or RPE relies on the safe harbor.

For purposes of determining the hours of service, *rental services* include, but are not limited to

- advertising to rent or lease the real estate;
- negotiating and executing leases;
- verifying information contained in prospective tenant applications;
- collection of rent;
- daily operation, maintenance, and repair of the property, including the purchase of materials and supplies;
- management of the real estate; and
- supervision of employees and independent contractors.

The term *rental services* does not include financial or investment management activities, such as arranging financing; procuring property; studying and reviewing financial statements or reports on operations; improving property under Treas. Reg. § 1.263(a)-3(d); or hours spent traveling to and from the real estate.

The following types of property may not be included in a rental real estate enterprise and are therefore not eligible for the safe harbor:

- Real estate used by the taxpayer (including an owner or beneficiary of an RPE) as a residence under I.R.C. § 280A(d)
- Real estate rented or leased under a triple net lease. For purposes of this revenue procedure, a triple net lease includes a lease agreement that requires the tenant or lessee to pay taxes, fees, and insurance, and to pay for maintenance activities for a property in addition to rent and utilities
- Real estate rented to a trade or business conducted by a taxpayer or an RPE that is commonly controlled under Treas. Reg. § 1.199A-4(b)(1)(i)

- The entire rental real estate interest if any portion of the interest is treated as a specified service trade or business (SSTB) under Treas. Reg. § 1.199A-5(c)(2) (which provides special rules where property or services are provided to an SSTB)

Tax Cuts and Jobs Act, Provision 11011 Section 199A - Qualified Business Income Deduction FAQs

I.R.C. § 199A

The IRS has added several FAQs regarding the section 199A deduction for rental real estate, including the record keeping requirements, the application to mixed-use property, and reporting [www.irs.gov/newsroom/tax-cuts-and-jobs-act-provision-11011-section-199a-qualified-business-income-deduction-faqs].

Retirement, Savings, and Investing

ABLE Accounts

REG-128246-18

I.R.C. § 529A

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ABLE Act) added section 529A to the Internal Revenue Code. Section 529A allows a state (or its agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an ABLE account to pay for the qualified disability expenses of the designated beneficiary of the account. Proposed regulations confirm that the employed designated beneficiary, or the person acting on his or her behalf, is solely responsible for ensuring that the requirements in section 529A are met and for maintaining adequate records for that purpose.

In addition, to minimize burdens for the designated beneficiary and the qualified ABLE program, the proposed regulations provide that ABLE programs may allow a designated beneficiary or the person acting on his or her behalf to certify, under penalties of perjury, that he or she is a designated beneficiary and that his or her contributions of compensation do not exceed the section 529A limit.

The proposed regulations provide that a qualified ABLE program must return to the designated beneficiary any contributions of the designated beneficiary's compensation in excess of the limit. However, it is the sole responsibility of the designated beneficiary (or the person acting on the designated beneficiary's behalf) to identify and request the return of any excess contribution of such compensation income. Such returns of excess compensation contributions must be received by the employed designated beneficiary on or before the due date (including extensions) of the designated beneficiary's income tax return for the year in which the excess compensation contributions were made. A failure to return excess contributions within this time period will result in an excise tax on the designated beneficiary. The tax is 6% of the excess compensation contributions.

Distributions

T.D. 9875

I.R.C. § 401

Final regulations amend the rules for hardship distributions from section 401(k) plans. The final regulations, like the proposed regulations, modify the safe harbor list of expenses in Treas. Reg. § 1.401(k)–1(d)(3)(iii)(B) for which distributions are deemed to be made on account of an immediate and heavy financial need by

1. adding ‘‘primary beneficiary under the plan’’ as an individual for whom qualifying medical, educational, and funeral expenses may be incurred;
2. modifying the expenses for damage to a principal to provide that for this purpose the limitations in section 165(h)(5) (which require that a personal casualty loss be attributable to a federally declared disaster) do not apply; and
3. adding a new type of expense to the list, relating to expenses incurred as a result of certain disasters.

The final regulations modify the rules for determining whether a distribution is necessary to satisfy an immediate and heavy financial need by eliminating any requirement that an employee be prohibited from making elective contributions and employee contributions after receipt of a hardship distribution and any requirement to take plan loans prior to obtaining a hardship distribution.

Reg REG-132210-18

I.R.C. § 401

Proposed regulations update the tables used to determine required minimum distributions.

SECURE Act

Payments Treated as Compensation for IRA Purposes

I.R.C. § 219

Under the SECURE Act, for purposes of determining eligibility for IRA contributions, compensation includes any amount that is included in the individual’s gross income and paid to the individual to aid the individual in the pursuit of graduate or postdoctoral study. This amendment applies to tax years beginning after December 31, 2019.

Repeal of Maximum Age for Traditional IRA Contributions

I.R.C. § 219

The SECURE Act repeals the maximum age for traditional IRA contributions, effective for tax years beginning after December 31, 2019. The repeal does not change the age for qualified charitable contributions, which can only be made on or after the date the taxpayer attains age 70 ½. However, the amount excluded as a qualified charitable contribution is reduced by IRA deductions for all tax years ending on or after the date the taxpayer attains age 70 ½, over the aggregate amount of such reductions for all tax years preceding the current tax year.

Penalty-Free Withdrawals for Birth or Adoption of Child

I.R.C. § 72t

The SECURE Act adds a penalty-free withdrawal from a retirement plan for a qualified birth or adoption distribution made after December 31, 2019. The distribution to an individual for any birth or adoption cannot exceed $5,000. A *qualified birth or adoption distribution* means any distribution from an applicable eligible retirement plan to an individual if made during the 1-year period beginning on the date on which a child of the individual is born or on which the individual finalizes the legal adoption of an eligible adoptee. An *eligible adoptee* means any individual (other than a child of the taxpayer’s spouse) who has not attained age 18 or is physically or mentally incapable of self-support. The individual may be able to re-contribute the distribution to the plan.

Increase in Age for Required Beginning Date

I.R.C. § 401

The SECURE Act increases the required beginning date from 70 ½ to 72. With some exceptions, the *required beginning date* means April 1 of the calendar year following the later of the calendar year in which the employee attains age 72, or the calendar year in which the employee retires. If the account owner dies before the required beginning date, distributions to a spouse beneficiary will not begin before the date the employee would have attained age 72. The amendments apply to distributions required to be made after December 31, 2019, to individuals who attain age 70 ½ after that date.

Modification of Required Distribution Rules

I.R.C. § 401

Under the SECURE Act, if an employee (or IRA owner) dies before the distribution of the account owner's entire interest in a defined contribution plan (which includes IRAs), the account must be distributed to the designated beneficiaries within 10 years of the date of death, regardless of whether the employee (or IRA owner) died before the required beginning date. The Committee Report states that amounts are generally required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner's death [House Committee on Ways and Means Report].

An exception to the 10-year rule applies if the beneficiary is an eligible designated beneficiary. However, if that eligible designated beneficiary dies before the account is fully distributed, the beneficiary of the eligible designated beneficiary is again subject to the 10-year rule, and the account must be distributed within 10 years of the date of death of the eligible designated beneficiary.

An *eligible designated beneficiary* is a designated beneficiary who is

1. the surviving spouse of the employee or IRA owner;
2. a child of the employee or IRA owner who has not reached majority;
3. disabled within the meaning of I.R.C. § 72(m)(7);
4. a chronically ill individual within the meaning of I.R.C. § 7702B(c)(2), and the period of inability is an indefinite one that is reasonably expected to be lengthy in nature); or
5. any other individual who is not more than 10 years younger than the employee or IRA owner.

The determination of whether a designated beneficiary is an eligible designated beneficiary is made as of the date of death of the employee or IRA owner. A child of the employee or IRA owner who is an eligible designated beneficiary because he or she has not reached the age of majority as of the employee's or IRA owner's date of death is no longer an eligible designated beneficiary when the child reaches the age of majority. The account must be distributed within 10 years after that date.

In general, the amendments apply to distributions with respect to employees and IRA owners who die after December 31, 2019. Certain special effective dates apply to a plan maintained pursuant to a collective bargaining agreement and governmental plans. The amendments do not apply to a qualified annuity that is a binding annuity contract on December 20, 2019 and thereafter.

If an employee or IRA owner dies before the effective date, and the employee or IRA owner's designated beneficiary dies after the effective date, the designated beneficiary is treated as an eligible designated beneficiary and the amendments apply to any beneficiary of the designated beneficiary.

Expansion of Section 529 Plans

I.R.C. § 529

The SECURE Act expands the term *qualified higher education expenses* to include expenses for fees, books, supplies, and equipment required for the participation of a designated beneficiary in an apprenticeship program registered and certified with the Secretary of Labor. Higher education expenses also include principal or interest on any qualified education loan to the designated beneficiary or a sibling of the designated beneficiary, up to a maximum $10,000. The beneficiary cannot claim the student loan interests deduction for distributions treated as qualified higher education expenses.

Opportunity Zones

Qualified Opportunity Fund Frequently Asked Questions

I.R.C. § 1400Z

Taxpayers may defer tax on eligible capital gains by making an appropriate investment in a Qualified Opportunity Fund (QOF) and meeting other requirements. Investors can defer tax on any prior gains invested in QOF until the earlier of the date on which the investment in a QOF is sold or exchanged, or December 31, 2026. If the investor holds the QOF investment for longer than 5 years, there is a 10% exclusion of the deferred gain. If held for more than 7 years, the 10% becomes 15%. If the investor holds the investment in the QOF for at least 10 years, the investor is eligible for an increase in basis of the QOF investment equal to its fair market value on the date that the QOF investment is sold or exchanged. The IRS has released more Qualified Opportunity Fund FAQs regarding the tax deferral and capital gain exclusions for investing in a QOF [www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions].

T.D. 9889

I.R.C. § 1400Z

Final regulations govern the extent to which taxpayers may elect the federal income tax benefits for certain equity interests in a QOF. The final regulations provide additional guidance for taxpayers eligible to elect to temporarily defer the inclusion in gross income of certain gains if corresponding amounts are invested in certain equity interests in QOFs, and guidance on the ability of such taxpayers to exclude from gross income additional gain recognized after holding those equity interests for at least 10 years. The final regulations also address various requirements that must be met for an entity to qualify as a QOF.

Virtual Currency

Virtual Currency Transactions Frequently Asked Questions

In 2014, the IRS issued Notice 2014-21, 2014-16 I.R.B. 938, which explains that virtual currency is treated as property for federal income tax purposes and provide examples of how general tax principles applicable to transactions involving property apply to virtual currency. The IRS has issued frequently asked questions to expand on the examples provided in Notice 2014-21 and apply those same tax principles to additional situations [www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions].

Rev. Rul. 2019-24, 2019-44 I.R.B. 1004

A hard fork is unique to distributed ledger technology and occurs when virtual currency on a distributed ledger undergoes a protocol change resulting in a permanent diversion from the legacy or existing distributed ledger. A hard fork may result in the creation of a new virtual currency on a new distributed ledger in addition to the legacy virtual currency on the legacy distributed ledger. Following a hard fork, transactions involving the new virtual currency are recorded on the new distributed ledger and transactions involving the legacy virtual currency continue to be recorded on the legacy distributed ledger.

An airdrop is a means of distributing units of virtual currency to the distributed ledger addresses of multiple taxpayers. A hard fork followed by an airdrop results in the distribution of units of the new virtual currency to addresses containing the legacy virtual currency. However, a hard fork is not always followed by an airdrop.

Rev. Rul. 2019-24 considers whether a taxpayer has gross income under I.R.C. § 61 as a result of a hard fork of virtual currency the taxpayer owns if the taxpayer does not receive units of a new virtual currency. It also addresses whether a taxpayer has gross income as a result of an airdrop of a new virtual currency following a hard fork if the taxpayer receives units of new virtual currency.

The ruling concludes that a taxpayer does not have gross income under section 61 as a result of a hard fork of a virtual currency the taxpayer owns if the taxpayer does not receive units of a new virtual currency. However, a taxpayer has ordinary income if there is an airdrop of a new virtual currency following a hard fork and the taxpayer receives units of new virtual currency.

Information Release 2019-132

The IRS has begun sending letters to taxpayers with virtual currency transactions that potentially failed to report income and pay the resulting tax from virtual currency transactions or did not report their transactions properly. For taxpayers receiving an educational letter, there are three variations: Letter 6173, Letter 6174 or Letter 6174-A, all three versions are intended to help taxpayers understand their tax and filing obligations and how to correct past errors.

Tax Accounting

T.D. 9870

I.R.C. § 451

The IRS has issued final regulations that remove Treas. Reg. § 1.451-5, which generally allowed accrual method taxpayers to defer the inclusion of income for advance payment of goods until the tax year in which they were properly included in income under the taxpayer's method of accounting for federal income tax purposes if that method resulted in the advance payments being included in gross income no later than when the advance payments were recognized in gross receipts under the taxpayer's method of accounting for financial reporting purposes.

The TCJA added I.R.C. § 451(c), which generally requires an accrual method taxpayer that receives any advance payment described in section 451(c)(4) during the tax year to include the advance payment in income in the tax year of receipt or make an election to include any portion of the advance payment in income in the tax year of receipt to the extent required under new section 451(b); and include the remaining portion of the advance payment in income in the following tax year. New section 451(c) and its election to defer advance payments override the deferral method provided by section 1.451-5.

REG-104870-18

I.R.C. § 451

Under Treas. Reg. § 1.451-1, accrual method taxpayers generally include items of income in gross income in the tax year when all the events occur that fix the right to receive the income and the amount of the income can be determined with reasonable accuracy (the all events test). All the events that fix the right to receive income occur when (1) the required performance takes place; (2) payment is due; or (3) payment is made, whichever happens first.

The TCJA amended I.R.C. § 451(b) to provide that, for a taxpayer using an accrual method of accounting, the all events test with respect to any item of gross income (or portion thereof) is not treated as met any later than when the item (or portion thereof) is included in revenue for financial accounting purposes on an applicable financial statement (AFS) or other financial statement specified by the Secretary. The proposed regulations reflect this amendment.

REG-104554-18
I.R.C. § 451

Section 451(c) requires an accrual method taxpayer who receives an advance payment to include the payment in income in the tax year of receipt. Section 451(c) also generally codifies the current deferral method of accounting for certain advance payments for goods, services, and other specified items by allowing accrual method taxpayers to elect to defer the inclusion of income associated with certain advance payments to the tax year following the tax year of receipt if such income also is deferred for AFS purposes.

The proposed regulations describe and clarify the statutory requirements of section 451(c) by adding Prop. Treas. Reg. § 1.451-8. The proposed regulations explain the deferral method for a taxpayer with an AFS. The proposed regulations also provide a deferral method of accounting for taxpayers that do not have an AFS.

Tax Practice

T.D. 9861
I.R.C. §§ 6051, 6052

To aid employers' efforts to protect employees from identity theft, these regulations allow employers to voluntarily truncate employees' social security numbers (SSNs) on copies of Forms W-2, Wage and Tax Statement, that are furnished to employees.

Draft 2019 Form 1040-SR
The IRS has released a draft of the new Form 1040-SR, which taxpayers 65 and over can use starting in the 2019 tax year 2019.

Withholding and Estimated Taxes

I.R. 2019-139
The IRS has replaced its Withholding Calculator with a Tax Withholding Estimator, which is an expanded online tool. The new Tax Withholding Estimator offers workers, retirees, self-employed individuals, and other taxpayers, a step-by-step tool to determine the amount of income tax they have withheld from wages and pension payments.

I.R. 2019-144
The IRS is automatically waiving the estimated tax penalty for the more than 400,000 eligible taxpayers who already filed their 2018 federal income tax returns but did not claim the waiver. The IRS will apply

this waiver to tax accounts of all eligible taxpayers, so there is no need to contact the IRS to apply for or request the waiver.

In 2019, the IRS lowered the usual 90% penalty threshold to 80% to help taxpayers whose withholding and estimated tax payments were less than their total 2018 tax liability. The IRS also removed the requirement that estimated tax payments be made in four equal installments, if they were all made by January 15, 2019. The 90% threshold was further lowered to 80%.

The automatic waiver applies to any individual taxpayer who paid at least 80% of their total tax liability through federal income tax withholding or quarterly estimated tax payments but did not claim the special waiver available when the taxpayer filed his or her 2018 return.

Trusts and Estates

T.D. 9884
I.R.C. § 2010

Final regulations ensure that the estate of a decedent is not inappropriately taxed on gifts that were sheltered from gift tax by the increased basic exclusion amount when the gifts were made. The final regulations are effective on and after November 26, 2019.