2020 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 2020 National Income Tax Workbook. It includes new procedures, guidance, and legislation that were adopted in late 2020 and are important for filing 2020 tax returns. It also includes corrections and clarifications for material in the 2020 National Income Tax Workbook.

The *2021 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.

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

Agricultural and Natural Resource Issues

Notice 2020-74
I.R.C. § 1033

I.R.C. § 1033(e)(1) provides that a sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number that would be sold following the taxpayer's usual business practices is treated as an involuntary conversion if the livestock is sold or exchanged solely on account of drought, flood, or other weather-related conditions. Section 1033(a)(2)(A) generally provides that gain from an involuntary conversion is recognized only to the extent the amount realized on the conversion exceeds the cost of replacement property purchased during the replacement period.

If a sale or exchange of livestock is treated as an involuntary conversion under section 1033(e)(1) and is solely on account of drought, flood, or other weather-related conditions that result in the area being designated as eligible for assistance by the federal government, the replacement period ends 4 years after the close of the first tax year in which any part of the gain from the conversion is realized. Notice 2020-74 explains the circumstances under which the 4-year replacement period under section is extended for

livestock sold because of drought. The Appendix to the notice contains a list of counties that experienced exceptional, extreme, or severe drought conditions during the 12-month period ending August 31, 2020.

For a taxpayer who qualified for a 4-year replacement period for livestock sold or exchanged on account of drought and whose replacement period is scheduled to expire at the end of 2020 (or, for a fiscal year taxpayer, at the end of the tax year that includes August 31, 2020), the replacement period will be extended under section 1033(e)(2) and Notice 2006-82, 2006-2 C.B. 529, if the applicable region includes any county on this list. The extension will continue until the end of the taxpayer's first tax year ending after a drought-free year for the applicable region.
[Notice 2020-74, 2020-41 I.R.B. 887]

Business Entities

Corporations

US v. Lothringer

I.R.C. §§ 6321, 7403

The taxpayer corporation owed $1,777,047.98 in federal income tax, employment tax, penalties, and interest. The IRS sought to collect this amount from the sole officer, director, and shareholder of the corporation. The IRS argued that the taxpayer was he was the alter ego of the corporation, and personally liable for the taxes because he exercised dominion and control over the corporation, assumed its debt, loaned it money, used corporate funds for personal purposes, and failed to observe the corporate formalities. The court found that the taxpayer was liable for the taxes because there was such unity between the corporation and the individual that the separateness of the corporation ceased and holding only the corporation liable would result in injustice.
[*U.S. v. Lothringer*, 126 A.F.T.R. 2d (RIA) 2020-5663]

Partnerships

I.R. 2020-240

I.R.C. § 704

The IRS has issued draft instructions for the 2020 Form 1065, U.S. Return of Partnership Income, that include revised instructions for partnerships required to report capital accounts to partners on Schedule K-1 (Form 1065). The revised instructions indicate that partnerships filing Form 1065 for tax year 2020 are to calculate partner capital accounts using the transactional approach for the tax basis method. Under the tax basis method outlined in the instructions, partnerships report partner contributions, the partner's share of partnership net income or loss, withdrawals and distributions, and other increases or decreases using tax basis principles as opposed to reporting using other methods such as GAAP.

Partnerships that did not prepare Schedules K-1 under the tax capital method for 2019 or otherwise maintain tax basis capital accounts in their books and records (for example, for purposes of reporting negative capital accounts) may determine each partner's beginning tax basis capital account balance for 2020 using the Modified Outside Basis Method, the Modified Previously Taxed Capital Method, or the Section 704(b) Method, as described in the instructions. There are special rules for publicly traded partnerships.

To promote compliance with using the tax basis method described in the revised instructions, the Treasury Department and the IRS intend to issue a notice providing additional penalty relief for the

transition in tax year 2020. The notice will provide that solely for tax year 2020 (for partnership returns due in 2021), the IRS will not assess a partnership a penalty for any errors in reporting its partners' beginning capital account balances on Schedules K-1 if the partnership takes ordinary and prudent business care in following the form instructions to calculate and report the beginning capital account balances. This penalty relief will be in addition to the reasonable cause exception to penalties for any incorrect reporting of a beginning capital account balance.
[I.R. 2020-240]

Notice 2020-75

I.R.C. § 164

I.R.C. § 164(b)(6), which was added by the Tax Cuts and Jobs Act of 2017 (TCJA), limits an individual's deduction for state and local taxes (SALT) to $10,000 ($5,000 for a married individual filing a separate return). This SALT deduction limitation applies to tax years beginning after December 31, 2017, and before January 1, 2026, and does not apply to taxes described in section 164(a)(3) that are imposed by a foreign country or to any taxes described in section 164(a)(1) and (2) that are paid and incurred in carrying on a trade or business or an activity described in I.R.C. § 212.

Certain jurisdictions described in section 164(b)(2) have enacted, or are contemplating the enactment of, tax laws that impose either a mandatory or elective entity-level income tax on partnerships and S corporations that do business in the jurisdiction or have income derived from or connected with sources within the jurisdiction. In certain instances, the jurisdiction's tax law provides a corresponding or offsetting, owner-level tax benefit, such as a full or partial credit, deduction, or exclusion.

Notice 2020-75 announces that the Department of the Treasury and the IRS intend to issue proposed regulations to clarify that state and local income taxes imposed on and paid by a partnership or an S corporation on its income are allowed as a deduction by the partnership or S corporation in computing its non-separately stated taxable income or loss for the tax year of the payment. Thus, the specified income tax payments made by a partnership or an S corporation are not included when applying the SALT deduction limitation to an individual who is a partner in the partnership or a shareholder of the S corporation.
[Notice 2020-75, 2020-49 I.R.B. 1453]

S Corporations

Deckard v. Commissioner

I.R.C. § 1361

A charitable organization was organized as a Kentucky nonprofit corporation. The corporation filed an election for S corporation status. The president of the corporation reported pass through losses from the corporation on his individual income tax returns. The court held that the taxpayer was not a shareholder in the corporation, and he could not claim the passthrough losses.
[*Deckard v. Commissioner*, 155 T.C. No. 8 (2020)]

T.D. 9914

I.R.C. §§ 1371, 1377

Final regulations provide guidance on the definition of an eligible terminated S corporation and rules relating to distributions of money by such a corporation after the post-termination transition period. The final regulations also amend current regulations to extend the treatment of distributions of money during the post-termination transition period to all shareholders of the corporation and clarify the allocation of current earnings and profits to distributions of money and other property. The final regulations affect C corporations that were formerly S corporations and the shareholders of such corporations.

[T.D. 9914]

Tax-Exempt Organizations

Form 1024-A

The IRS is revising Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4), and its instructions to allow electronic filing. The IRS expects electronic filing to be available early in 2021, and at that time, applications for recognition of exemption on Form 1024-A must be submitted electronically online at www.pay.gov. The IRS will provide a grace period during which it will continue to accept paper versions of Form 1024-A.

T.D. 9933

I.R.C. § 512

The IRS has released final regulations that provide guidance on how an exempt organization subject to the unrelated business income tax determines if it has more than one unrelated trade or business and, if so, how the exempt organization calculates its unrelated business taxable income (UBTI). The final regulations provide for the use of NAICS 2-digit codes as a method of identifying separate unrelated trades or businesses for purposes of I.R.C. § 512(a)(6).

The final regulations also clarify that the definition of an *unrelated trade or business* applies to individual retirement accounts. Additionally, the final regulations provide that inclusions of subpart F income and global intangible low-taxed income are treated in the same manner as dividends for purposes of determining UBTI.
[T.D. 9933]

Business Issues

Credits

Sick Leave and Family Leave Credits

The IRS issued a draft Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals and instructions. Self-employed individuals should use Form 7202 to calculate the amount to claim for qualified sick and family leave equivalent credits under the Families First Coronavirus Relief Act on their 2020 tax return. These credits are available to eligible self-employed individuals if they were unable to work or telework or had to care for family members for reasons related to the coronavirus. The credits are refundable.

Deductions

McKenny v. U.S

I.R.C. § 162

The taxpayers sued their accounting firm, alleging that its negligent advice regarding their business structure caused them to pay over $2,000,000 in federal taxes. The firm, while denying liability, settled the

case and paid the taxpayers $800,000. The taxpayers deducted $419,490 in legal fees they allegedly paid to litigate the malpractice claim.

For an expense to be deductible under section I.R.C. § 162(a), it must be one that has a business origin. Whether litigation costs are deductible as a business expense depends on whether the litigation is business or personal and whether the claim arises in connection with the taxpayer's profit-seeking activities.

The court found that the litigation between the taxpayers and their accounting firm was personal in its character and origin. The firm was retained to help the taxpayers reduce their personal tax liability and the legal fees were not deductible.
[*McKenny v. U.S.*, 973 F.3d 1291 (2020)]

T.D. 9905

I.R.C. § 163

Final regulations provide guidance on the limitation on the deduction for business interest expense after the TCJA and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The regulations provide guidance to taxpayers on how to calculate the limitation, what constitutes interest for purposes of the limitation, which taxpayers and trades or businesses are subject to the limitation, and how the limitation applies in consolidated group, partnership, international, and other contexts.

Information Letter 2020-0010

I.R.C. §§ 164, 216

The IRS Office of Chief Counsel states that the limitation for an individual's deduction of state and local taxes under I.R.C. § 164 (the SALT limitation) applies to the deduction under I.R.C. § 216 for a tenant-stockholder's proportionate share of real estate taxes paid or incurred by a cooperative housing corporation.
[Information Letter 2020-0010 (September 25, 2020)]

REG-106808-19

I.R.C. § 168

The notice of proposed rulemaking published in the Federal Register on September 24, 2019 implementing the 100% additional first year depreciation deduction (bonus depreciation) included Prop. Treas. Reg. § 1.168(k)-2(b)(3)(iii)(B)(5), which addresses the extent to which a partner is deemed to have a depreciable interest in property held by a partnership. Treasury and the IRS withdraw this proposed regulation.
[REG-106808-19]

T.D. 9916

I.R.C. § 168

Final regulations provide guidance regarding the I.R.C. § 168(k) bonus depreciation. These final regulations reflect and further clarify the increased deduction and the expansion of qualified property, particularly to certain classes of used property. Specifically, these final regulations provide the following:

1. Rules relevant to the definition of *qualified property* (discussed later)
2. Rules for consolidated groups
3. Rules regarding components acquired or self-constructed after September 27, 2017, for larger self-constructed property for which manufacture, construction, or production began before September 28, 2017
4. Rules regarding the application of the mid-quarter convention, as determined under section 168(d)

5. Changes to the definitions in the 2019 final regulations for the terms *qualified improvement property*, *predecessor*, and *class of property* (discussed later)

Qualified Property

The regulations clarify that the 5 calendar years immediately prior to the current calendar year in which the property is placed in service by the taxpayer, and the portion of such current calendar year before the placed-in-service date of the property determined without considering the applicable convention, are used to determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition (the lookback period). The taxpayer and the predecessor are each subject to a separate lookback period. The final regulations also clarify that if the taxpayer or a predecessor, or both, have not been in existence during the entire lookback period, then only the portion of the lookback period during which the taxpayer or a predecessor, or both, have been in existence is used to determine if the taxpayer or the predecessor had a depreciable interest in the property.

Qualified Improvement Property

The final regulations provide that for qualified improvement property, the improvement must be made by the taxpayer. An improvement is made by the taxpayer if the taxpayer makes, manufactures, constructs, or produces the improvement for itself or if the improvement is made, manufactured, constructed, or produced for the taxpayer by another person under a written contract.

Predecessor and Class of Interest

The 2019 final regulations define a *predecessor* as including 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. The final regulations clarify that this definition was intended to apply only with respect to the specific property transferred. Similarly, the regulations define a *class of property* [regarding basis adjustments in partnership assets under I.R.C. § 743(b)] to be partner specific.

[T.D. 9916]

Rev. Proc. 2020-50
I.R.C. § 168

This revenue procedure provides guidance for taxpayers wishing to apply Treas. Reg. §§ 1.168(k)-2 and 1.1502-68 (the 2020 final regulations, discussed earlier), or to rely on the 2019 proposed regulations or the 2019 final regulations under I.R.C. § 168(k).
[Rev. Proc. 2020-50, 2020-48 I.R.B. 1122]

T.D. 9925
I.R.C. § 274

Final regulations provide guidance under I.R.C. § 274 regarding the elimination of the deduction for expenditures related to entertainment, amusement, or recreation activities. The final regulations also address the limitation on the deduction of food and beverage expenses under section 274(k). The final regulations adopt the proposed regulations (discussed in the *2020 National Income Tax Workbook* pages 235-240) with the following modifications:

Business Meals Provided at or during an Entertainment Activity

The final regulations clarify that the separately stated (and 50% deductible) cost of food and beverages provided at or during an entertainment activity must reflect the venue's usual selling cost for those items if they were to be purchased separately from the entertainment or must approximate the reasonable value of those items. The final regulations provide that if the food or beverages provided at or during an entertainment activity are not purchased separately from the entertainment, and if the cost of the food or beverages is not stated separately from the cost of the entertainment on one or more bills, invoices, or receipts, no allocation can be made, and the entire amount is a nondeductible entertainment expenditure.

Business Meal Expenses

To deduct 50% of an otherwise allowable food or beverage expense, the expense must not be lavish or extravagant under the circumstances, and the taxpayer, or an employee of the taxpayer, must be present at the furnishing of the food or beverages. The final regulations address the general requirement that the food and beverages be provided to a business associate and adopt the definition of *business associate* in Treas. Reg. § 1.274-12(b)(3). Thus, the final regulations provide that the food or beverages must be provided to a person with whom the taxpayer could reasonably expect to engage or deal in the active conduct of the taxpayer's trade or business such as the taxpayer's customer, client, supplier, employee, agent, partner, or professional adviser, whether established or prospective. The final regulations clarify that that the rules in § 1.274-12(a)(1) also apply to food or beverages provided to a taxpayer such as a sole proprietor or other business owner. Thus, the final regulations refer to food or beverages provided “to the taxpayer or a business associate.”

Travel Meal Expenses

The final regulations apply the general rules for meal expenses from the proposed regulations to travel meals. In addition, the final regulations incorporate the substantiation requirements in section 274(d) to travel meals. Finally, the final regulations apply the limitations in section 274(m)(3) to expenses for food or beverages paid or incurred for spouses, dependents or other individuals accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel.

Exceptions to the Limitations

Section 274(e) provides six exceptions to the limitations on the deduction of food or beverages in section 274(k)(1) and (n)(1). The final regulations explain how those exceptions apply. The preamble also explains that the exceptions in section 274(e)(1), (e)(5), and (e)(6) do not apply to food or beverages expenses. The final regulations provide that the deduction limitation rules generally apply to all food and beverages, whether characterized as meals, snacks, or other types of food or beverage items. In addition, unless one of six exceptions under section 274(e) applies, the deduction limitations apply regardless of whether the food or beverages are treated as de minimis fringe benefits under I.R.C. § 132(e).

Expenses Treated as Compensation

Pursuant to section 274(e)(2), the final regulations provide that the limitations in section 274(k)(1) and (n)(1) do not apply to expenditures for food or beverages provided to an employee of the taxpayer to the extent the taxpayer treats the expenses as compensation to the employee on the taxpayer's income tax return as originally filed, and as wages to the employee for purposes of withholding. Pursuant to section 274(e)(9), the final regulations provide that the limitations in section 274(k)(1) and (n)(1) do not apply to expenses for food or beverages provided to a person who is not an employee of the taxpayer to the extent the expenses

are includible in the gross income of the recipient of the food or beverages as compensation for services rendered or as a prize or award under I.R.C. § 74.

The proposed regulations provided that expenses for food or beverages for which the taxpayer calculates a value that is less than the amount required to be included in gross income, or for which the amount required to be included in gross income is zero, will not be considered as having been treated as compensation and as wages to the employee, or as includible in gross income by a recipient of the food or beverages who is not an employee of the taxpayer, for purposes of section 274(e)(2) and (e)(9). Commenters argued that the proposed rule was unduly harsh given the difficulty in determining the value of food or beverages and the possibility of good faith errors.

The final regulations revise the "all or nothing" rule included in the proposed regulations and allow a taxpayer to apply section 274(e)(2) and (e)(9) in cases where the taxpayer includes an improper amount in compensation and wages, or gross income, of the recipient. However, if a taxpayer includes less than the proper amount in compensation and wages or gross income, the final regulations provide that the taxpayer must apply the dollar-for-dollar methodology and the taxpayer may deduct meal expenses to the extent that the expenses do not exceed the amount of the expenses that are treated as compensation and wages, or gross income, and any amount the recipient reimburses the taxpayer.

Reimbursement Arrangements

The final regulations provide that the deduction limitations in section 274(k)(1) and (n)(1) apply to an independent contractor unless, under a reimbursement or other expense allowance arrangement, the contractor accounts to its client or customer with substantiation that satisfies the requirements of section 274(d).

Recreational Expenses for Employees

The exception in section 274(e)(4) applies to food or beverage expenses for company holiday parties, annual picnics, or summer outings that do not discriminate in favor of highly compensated employees. However, an example in the proposed regulations demonstrates that the section 274(e)(4) exception does not apply to free food or beverages available to all employees in a pantry, break room, or copy room because the mere provision or availability of food or beverages is not a recreational, social, or similar activity, despite the fact that employees may incidentally socialize while they are in the break room. The final regulations adopt the proposed regulations with respect to the application of section 274(e)(4) in this context.

In addition, the final regulations provide that the exception in section 274(e)(4) does not apply to food or beverage expenses that are excludable from employees' income under I.R.C. § 119 as meals provided for the convenience of the employer. Because these food or beverages are, by definition, furnished for the employer's convenience, they cannot also be primarily for the benefit of the employees, even if some social activity occurs during the provision of the food or beverages.

Items Available to the Public

Pursuant to section 274(e)(7), the final regulations provide that food or beverage expenses of a taxpayer are not subject to the deduction limitations in section 274(k)(1) and (n)(1) to the extent the food or beverages are made available to the general public. In addition, the final regulations provide that this exception applies to expenses for food or beverages provided to employees if similar food or beverages are provided by the employer to, and are primarily consumed by, the general public. For this purpose, *primarily consumed* means greater than 50% of actual or reasonably estimated consumption, and *general public* includes, but is not limited to, customers, clients, and visitors. The final regulations also provide that the general public

does not include employees, partners, 2% shareholders of S corporations, independent contractors of the taxpayer, or an exclusive list of guests.

Goods or Services Sold to Customers

Pursuant to section 274(e)(8), the final regulations provide that any expense for food or beverages that are sold to customers in a bona fide transaction for an adequate and full consideration in money or money's worth is not subject to the deduction limitations in section 274(k)(1) and (n)(1). The final regulations clarify that money or money's worth does not include payment through services provided. Finally, the final regulations provide that for purposes of this exception, the term *customer* includes anyone who is sold food or beverages in a bona fide transaction for an adequate and full consideration in money or money's worth and can include employees of the taxpayer.

Definitions

The final regulations define *food or beverage expenses* to mean the cost of food or beverages, including any delivery fees, tips, and sales tax. For employer-provided meals at an eating facility, food or beverage expenses do not include expenses for the operation of the eating facility such as salaries of employees preparing and serving meals and other overhead costs. Indirect expenses, including the cost of transportation to a meal, are not included in the definition.
[T.D. 9925]

T.D. 9939
I.R.C. § 274

Final regulations address the elimination of the deduction under section 274 for expenses related to certain transportation and commuting benefits provided by employers to their employees. The final regulations provide guidance to determine the amount of such expenses that is nondeductible and apply certain exceptions under section 274(e) that may allow such expenses to be deductible.

Section 274(l)(1), as added by the TCJA, provides that no deduction is allowed under chapter 1 for any expense incurred for providing any transportation, or any payment or reimbursement, to an employee of the taxpayer in connection with travel between the employee's residence and place of employment, except as necessary for ensuring the safety of the employee. The final regulations explain that travel between the employee's residence and place of employment is not affected by the use of different modes of transportation, or by whether the employer pays for all modes of transportation during the commute. The final regulations also state that the disallowance under section 274(l) does not apply to business expenses under section 162(a)(2) paid or incurred while traveling away from home. Under the final regulations, the term *employee* means an employee of the taxpayer as defined in I.R.C. § 3121(d)(1) and (2) (officers of a corporate taxpayer and employees of the taxpayer under the common law rules).

The final regulations clarify that a transportation or commuting expense is necessary for ensuring the safety of the employee if unsafe conditions, as described in Treas. Reg. § 1.61-21(k)(5), exist for the employee. Unsafe conditions exist if a reasonable person would, under the facts and circumstances, consider it unsafe for the employee to walk to or from home, or to walk to or use public transportation at the time of day the employee must commute. One of the factors indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or residence at the time of day the employee must commute.
[T.D. 9939]

Losses

Eger v. U.S.

I.R.C. § 469

The taxpayers had 3 vacation rental properties in Mexico, Colorado, and Hawaii. Third party management companies handled the marketing and rentals of the properties in exchange for a percentage of the rent. The taxpayers alleged that the management companies were the customers for purposes of calculating the days of use and did not assert that the renters used the properties for an average of more than 7 days.

Rental activity is defined as any activity where payments are principally for the use of tangible property [I.R.C. § 469(j)(8)]. An activity is generally rental activity when tangible property held in connection with the activity is used by customers or held for use by customers [Temp. Treas. Reg. § 1.469-1T(e)(3)(i)(A)]. The regulations, however, exclude from the definition of rental activity the use of tangible property when the average period of customer use for such property is 7 days or less during that tax year [section § 1.469-1T(e)(3)(ii)(A)].

The court found that a customer is the person paying to stay in the property and the management companies were the taxpayers' representatives, not customers. The taxpayers did not show that the average stay by renters was more than 7 days. Thus, the use of the properties was not a rental activity under section 469.

[*Eger v. U.S.*, 818 Fed. Appx. 751 (2020)]

Duffy v. Commissioner

I.R.C. § 165

The taxpayers sold real property that they used as a vacation home and then a rental. The taxpayers claimed a loss on the sale of the property. While losses from sales of personal residences are generally nondeductible under I.R.C. § 165(c), Treas. Reg. § 1.165-9(b)(1) provides that if property purchased or constructed by the taxpayer for use as a personal residence is, prior to its sale, rented or otherwise appropriated to income-producing purposes and is used for such purposes up to the time of its sale, a loss sustained on the sale of the property is allowed as a deduction.

The court did not decide whether the taxpayers' occasional rentals of the property to family and acquaintances established a trade or business. Instead, the court found that the taxpayers failed to establish that the adjusted basis of the property at the time of sale exceeded the amount realized on the sale and the taxpayers could not claim a loss.

[*Duffy v. Commissioner*, T.C. Memo. 2020-108]

Marijuana Businesses

IRS Marijuana Industry Frequently Asked Questions

The IRS has issued frequently asked questions (FAQs) for marijuana businesses. The questions address income and employment tax filing obligations, payment plans, penalties, deductions, and reporting cash payments over $10,000.

[IRS Marijuana Industry Frequently Asked Questions, www.irs.gov/businesses/small-businesses-self-employed/marijuana-industry-frequently-asked-questions]

Taxes

AM 2020-009

I.R.C. §§ 4401, 4411

The IRS Associate Chief Counsel has issued advice that a daily fantasy sports operator is liable for the excise tax on wagers under I.R.C. § 4401 and the occupational excise tax under I.R.C. § 4411.
[AM 2020-009 (July 23, 2020)]

Preimesberger v. Commissioner

I.R.C. § 6672

The taxpayer owned less than 10% of the stock in a corporation that owned skilled nursing home facilities. The corporation employed the taxpayer to operate its skilled nursing activities. The corporation had cash flow problems and the taxpayer caused the corporation to draw on its line of credit. The creditor had to approve the use of the funds, and while the corporation wanted to use the funds to pay wages and withholding taxes, the creditor authorized the corporation to pay only net wages. The IRS assessed the taxpayer with penalties for the unpaid withholding taxes.

I.R.C. § 6672 permits the IRS to assess trust fund tax penalties against a responsible person for an amount up to the delinquent trust fund taxes. Trust fund taxes can be assessed against a responsible person who willfully failed to pay the trust fund taxes. *Willful conduct* is conduct that is voluntary, conscious, and intentional.

The court found that the taxpayer attempted to obtain funds from the line of credit that would cover the withholding taxes, but the creditor refused to release funds for that purpose. He did not willfully fail to pay the trust fund taxes and was not responsible for the penalty.
[*Preimesberger v. Commissioner*, 126 A.F.T.R. 2d (RIA) 2020-5552]

Financial Distress

Hernandez, Jr. v. Commissioner

I.R.C. §§ 61, 6001

The taxpayers claimed business-related deductions on Schedule C. The IRS disallowed the deductions and increased the taxpayers' income by the amount of cancelled debt reported on Form 1099-C. The IRS procured a follow-up affidavit from the creditor that reported the cancelled debt. The affidavit attested to the veracity of the 1099-C, matched the debt to a credit card loan in the taxpayer's name, and the IRS produced an account statement verifying that the balance on the loan at the time the debt was allegedly cancelled was equal to or greater than the amount cancelled.

The court found that, the notice of deficiency was not a "naked assessment" with respect to the cancelled debt and the Tax Court did not err in denying the taxpayers' motion to shift the burden to the IRS. The court also found that the taxpayer clearly bears the burden of proof in substantiating claimed deductions. The taxpayers refused to provide any substantiation for their claimed Schedule C deductions and the court held that the Tax Court correctly found the taxpayers liable for taxes related to disallowed Schedule C deductions.
[*Hernandez, Jr. v. Commissioner,* 813 Fed. Appx. 964 (2020)]

Connell v. Commissioner

I.R.C. § 61

The taxpayer’s former employer cancelled over $3,000,000 debt that the taxpayer owed to the employer. The taxpayer argued that the payment was compensation for his book of business, which was a capital asset, and the cancellation of debt income should have been taxed as a capital gain. The court held that the loan cancellation was not compensation for a capital asset and was taxable as ordinary income.
[*Connell v. Commissioner*, 814 Fed. Appx. 701 (2020)]

Individual Issues

Capital Gains and Losses

Keefe v. Commissioner
I.R.C. § 1221

The taxpayers purchased and restored a historic mansion in Newport, Rhode Island. They sold the house and claimed an ordinary loss deduction that offset other income. The Tax Court held that the house was a capital asset that generated a capital loss deduction because the taxpayers did not rent the property or meaningfully commence any rental activity, and they were not already engaged in any kind of rental trade or business.

I.R.C. § 1221(a) defines a *capital asset* as property held by the taxpayer (whether or not connected with his trade or business). That section enumerates certain exceptions to its definition of capital asset, which include real property used in the taxpayer's trade or business. Thus, real property must be used in a trade or business to qualify as an exception from capital asset status. Property held for the production of income, but not used in a trade or business of the taxpayer, is not excluded from the term *capital asset*. Real estate rental is considered a trade or business if the taxpayer-lessor engages in regular and continuous activity in relation to renting the property.

The court found that the taxpayers did not engage in regular and continuous rental activity. The court held that the house was a capital asset.
[*Keefe v. Commissioner*, 966 F.3d 107 (2020)]

Credits

T.D. 9913
I.R.C. § 24, 152

Final regulations clarify the definition of a *qualifying relative* for purposes of various provisions of the Internal Revenue Code for tax years 2018 through 2025. The provisions of the proposed regulations are adopted without substantive change to provide that the exemption amount, for purposes other than a deduction for a personal or dependency exemption under section 151, is $4,150 for tax year 2018, and for tax years 2019 through 2025, the exemption amount, as adjusted for inflation, is the section 152(d)(1)(B) exemption amount.

The regulations also provide that a payment to a spouse of alimony or separate maintenance is not treated as a payment by the payer spouse for the support of any dependent. Similarly, the distribution of income of an estate or trust to a divorced or legally separated payee spouse is not treated as a payment by the payer spouse for the support of any dependent. These rules do not apply, however, to the extent that the distribution is in satisfaction of the amount or portion of income that, by the terms of a divorce decree, a written separation agreement, or the trust instrument is fixed as payable for the support of the minor children of the payer spouse.
[T.D. 9913]

Notice 2020-66
I.R.C. § 36B

The Treasury Department and the IRS have determined that Medicaid coverage limited to COVID-19 testing and diagnostic services under section 6004(a)(3) of the Families First Act is not minimum essential coverage under a government-sponsored program. Thus, an individual’s eligibility for this coverage for one or more months does not prevent those months from qualifying as coverage months for purposes of determining eligibility for the premium tax credit under I.R.C. § 36B.
[Notice 2020-66, 2020-40 I.R.B. 785]

T.D. 9912
I.R.C. § 36B

Final regulations clarify that the reduction of the personal exemption deduction to zero for tax years beginning after December 31, 2017, and before January 1, 2026, does not affect an individual taxpayer's ability to claim the premium tax credit. The final regulations adopt the proposed regulations, which clarified that the term *family* means the taxpayer, including both spouses who file a joint return (except for individuals who qualify as a dependent of another taxpayer under section 152), and any other individual for whom the taxpayer is allowed a personal exemption deduction and who the taxpayer properly reports on the taxpayer's income tax return for the tax year. An individual is reported on the taxpayer's income tax return if the individual's name and taxpayer identification number are listed on the taxpayer's Form 1040 series return.
[T.D. 9912]

Deductions

T.D. 9907
I.R.C. §§ 162, 164, 170

Final regulations update the regulations under I.R.C. § 162 to reflect current law regarding the application of section 162 to taxpayers that make payments or transfers for business purposes to entities described in I.R.C. § 170(c). The final regulations provide safe harbors under section 162 to provide certainty with respect to the treatment of payments made by business entities to entities described in section 170(c) and provide a safe harbor under section 164 for payments made to an entity described in section 170(c) by individuals who itemize deductions and receive or expect to receive a state or local tax credit in return. The final regulations also update the application of the quid pro quo principle under section 170 to a donor who receives or expects to receive benefits from a third party.

Payments by Business Entities

The regulations retain the clarifications to Treas. Reg. § 1.162-15(a)(1) and (a)(2) regarding section 162 deductions for business payments to section 170(c) entities, and examples illustrating the rule. Generally, if the taxpayer's payment or transfer bears a direct relationship to its trade or business, and the payment is made with a reasonable expectation of financial return that is equal to the amount of the payment or transfer, the payment or transfer may constitute an allowable deduction as a trade or business expense under section 162, rather than a charitable contribution under section 170.

162 Safe Harbor

Treas. Reg. § 1.162-15(a)(3) provides safe harbor relief for taxpayers that receive a state or local tax credit in return for a cash or cash equivalent payment to charity. If a C corporation makes a payment to or for the use of an entity described in section 170(c) and receives or expects to receive in return a state or local tax credit that reduces a state or local tax imposed on the C corporation, the C corporation may treat the payment as meeting the requirements of an ordinary and necessary business expense for purposes of section 162(a) to the extent of the amount of the credit received or expected to be received. If a specified passthrough entity makes a payment to or for the use of an entity described in section 170(c) and receives or expects to receive in return a state or local tax credit the specified passthrough entity may treat such payment as an ordinary and necessary business expense for purposes of section 162(a) to the extent of the amount of credit received or expected to be received. The safe harbor for specified passthrough entities does not apply if the credit received or expected to be received reduces a state or local income tax.
[T.D. 9907]

164 Safe Harbor

An individual who itemizes deductions and who makes a cash or cash equivalent payment to or for the use of an entity described in section 170(c) in consideration for a state or local tax credit may treat such payment as a payment of state or local tax for purposes of section 164 the portion to the extent that a charitable contribution deduction for the payment is disallowed under Treas. Reg. § 1.170A-1(h)(3). This treatment as payment of a state or local tax is allowed in the tax year in which the payment is made to the extent that the resulting credit is applied, consistent with applicable state or local law, to offset the individual's state or local tax liability for that tax year or the preceding tax year. The payment is still subject to the limitation on the SALT deduction.

Quid Pro Quo Provided by Third Party

The final regulations state that the quid pro quo principle applies regardless of whether the donor expects to receive a benefit from the donee or from a third party. Thus, the source of the consideration is immaterial in determining whether a donor has received or expects to receive a return benefit that reduces its charitable contribution deduction.

[T.D. 9907]

C.C.A. 2020042015
I.R.C. § 165

The IRS Chief Counsel advised that the amount paid by a daily fantasy sports player to participate in a daily fantasy sports contest constitutes an amount paid for a wagering transaction under I.R.C. § 165(d). Section 165(d) allows a deduction for losses from wagering transactions only to the extent of wagering gains.
[C.C.A. 2020042015 (September 14, 2020]

Lucero v. Commissioner
I.R.C. §§ 280A, 469

The taxpayers owned a short-term-rental property that was several hours from their home in California. They rented the property to tenants for 146 nonconsecutive days in 2014 and 152 nonconsecutive days in 2015. They paid a property management company to manage the day-to-day rental operations. They did

not keep any contemporaneous logs, calendars, or other documentation stating the number of hours they spent on rental activities.

The IRS argued that the taxpayers used the property as a residence and a vacation rental for purposes of I.R.C. § 280A and could not deduct their rental real estate losses. Generally, no deduction is allowed for a dwelling unit used by the taxpayer as a residence during the tax year. A dwelling unit is considered to be a taxpayer's residence if its use for personal purposes exceeds the greater of 14 days or 10% of the days the unit is rented at a fair rental value in the tax year. Days spent primarily repairing and maintaining the unit will not count toward personal use merely because other individuals on the premises are engaged in some other activity.

The court concluded that section 280A did not limit the real estate loss deductions because of the days of rental use. However, the court found that the taxpayers did not materially participate in the rental activities. Thus, the court held that the real estate losses were passive activity losses for purposes of I.R.C. § 469.

[*Lucero v. Commissioner*, T.C. Memo. 2020-136]

Like-Kind Exchanges

T.D. 9935
I.R.C. § 1031

Final regulations under I.R.C. § 1031 add a definition of *real property* to implement statutory changes limiting section 1031 treatment to like-kind exchanges of real property. The final regulations also provide a rule addressing a taxpayer's receipt of personal property that is incidental to real property the taxpayer receives in an otherwise qualifying like-kind exchange of real property.

Definition of Real Property

The final regulations revise the definition of *real property* in the proposed regulations to provide that property is classified as real property for section 1031 purposes if, on the date it is transferred in an exchange, the property is real property under the law of the state or local jurisdiction in which that property is located. The final regulations also revise the proposed definition of real property to eliminate, for both tangible and intangible properties, any consideration of whether the property contributes to the production of income unrelated to the use or occupancy of space (the "purpose or use test").

Real property that was eligible for like-kind exchange treatment under the law in effect prior to enactment of the TCJA is still eligible for like-kind exchange treatment and property that was ineligible for like-kind exchange treatment prior to enactment of the TCJA remains ineligible. A determination that property is personal property under state law does not preclude a determination that property is real property based on all the facts and circumstances under the various factors provided in the final regulations or if the property is specifically listed in the final regulations.

If tangible property is permanently affixed to real property and will ordinarily remain affixed for an indefinite period of time, the property is generally an inherently permanent structure and thus real property for section 1031 purposes. A structural component is characterized as real property under the final regulations if it is integrated into an inherently permanent structure. Thus, under the final regulations, machinery and equipment are characterized as real property if they comprise an inherently permanent structure, a structural component, or are real property under the state or local law test.

Stock in a cooperative housing corporation and land development rights are listed as real property. A license, permit, or other similar right that is solely for the use, enjoyment, or occupation of land or an

inherently permanent structure and that is in the nature of a leasehold, an easement, or a similar right generally is an interest in real property and thus is real property under section 1031.

Incidental Property Rule

The incidental property rule in the proposed regulations provides that for exchanges involving a qualified intermediary, personal property that is incidental to replacement real property (incidental personal property) is disregarded in determining whether a taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or non-like-kind property held by the qualified intermediary are expressly limited. However, as personal property, incidental personal property is non-like-kind property that generally results in gain recognition under section 1031(b) on the exchange.

Personal property is incidental to real property acquired in an exchange if (i) in standard commercial transactions, the personal property is typically transferred together with the real property, and (ii) the aggregate FMV of the incidental personal property transferred with the real property does not exceed 15% of the aggregate FMV of the replacement real property (15-percent limitation). The final regulations clarify that the 15% limit is calculated by comparing the value of all of the incidental properties to the value of all the replacement real properties acquired in the same exchange.

[T.D. 9935]

Qualified Opportunity Funds

IR-2020-274
I.R.C. §§ 1400Z-1 and 1400Z-2

The IRS started sending letters to taxpayers that may need to take additional actions related to qualified opportunity funds (QOF). Taxpayers who attached or indicated they filed a Form 8996, Qualified Opportunity Fund may receive Letter 6250, Self-certifying as Qualified Opportunity Fund (QOF). This letter lets them know that if they intended to self-certify as a QOF they may need to take additional action to meet the annual self-certification requirement. Additionally, taxpayers may receive Letter 6251, Reporting Qualified Opportunity Fund (QOF) Investments, notifying them they may not have properly followed the instructions for Form 8949, Sales and other Dispositions of Capital Assets or do not appear to have an eligible gain that would enable them to make a valid deferral election for gains invested in a QOF. [IR-2020-274, December 9, 2020]

International Tax Issues

Cutting v. Commissioner
I.R.C. § 911

The taxpayer was a US citizen who resided in Thailand. He worked as a pilot for a company headquartered in Oklahoma. I.R.C. § 911(a) allows a qualified individual to exclude foreign earned income from gross income. Foreign earned income is the amount received by such individual from sources within a foreign country that constitutes earned income attributable to services performed by the individual. A qualified individual is defined, in part, as an individual whose tax home is in a foreign country. An individual's tax home means the individual's tax home for purposes of section 162(a)(2) (relating to traveling expenses while away from home).

The court reasoned that if the taxpayer had no regular or principal place of business because of the nature of his business, then his regular place of abode was his base station. The taxpayer's base station was California, and the court found that he was not a qualified individual and not entitled to the foreign earned income exclusion.
[*Cutting v. Commissioner*, T.C. Memo. 2020-158]

IRS Issues

Cybersecurity

I.R. 2020-178

A text scam tricks people into disclosing bank account information under the guise of receiving the $1,200 economic impact payment. The scam text message states: "You have received a direct deposit of $1,200 from COVID-19 TREAS FUND. Further action is required to accept this payment into your account." This fake text message directs recipients to a fraudulent website that impersonates the IRS.gov Get My Payment website. The website then requests personal and financial account information.
[I.R. 2020-178]

Bankruptcy

Feshbach v. Dept. of Treasury

The taxpayers sought to discharge their tax debt in bankruptcy. The court found that the taxpayers earned $13,056,518 from 2002 to 2010 and had the capacity to pay their 2001 tax debt in full. Instead, they chose to spend more than $8,500,000 on personal expenses and charitable contributions rather than paying their tax liability. A tax debt is not dischargeable if the government proves, by a preponderance of the evidence, that the debtor attempted in any manner to evade or defeat a tax, and that the attempt was done willfully. The court found that the taxpayers had the capacity to pay their debt but did not do so. The taxes were not dischargeable in bankruptcy.
[*Feshbach v. Dept. of Treasury*, 974 F.3d 1320 (2020)]

Virtual Currency

C.C.A. 202003501

I.R.C. § 61

The IRS chief counsel advises that a taxpayer who receives convertible virtual currency in exchange for performing a microtask through a crowdsourcing platform has received consideration in exchange for performing a service, and the convertible virtual currency received is taxable as ordinary income. Virtual currency that has an equivalent value in real currency, or acts as a substitute for real currency, such as Bitcoin, is referred to as convertible virtual currency and is considered property for federal income tax purposes. Accordingly, general tax principles applicable to property transactions apply to transactions involving convertible virtual currency. A taxpayer who performs a task through a crowdsourcing platform, including a microtask, has performed a service for the party that requested the task with the expectation that he or she will receive compensation. If the taxpayer receives convertible virtual currency for performing the task, regardless of the value and the manner in which it is received, then the taxpayer has been

compensated with property. The convertible virtual currency received must be reported on the taxpayer's income tax return as ordinary income and may be subject to self-employment tax.
[C.C.A. 202035011 (June 29, 2020)]

Whistleblower Claims

Bemmelen v. Commissioner
I.R.C. § 7623

The IRS whistleblower's office rejected the petitioner's claim for an award because "the information provided was speculative and/or did not provide specific or credible information regarding tax underpayments or violations of internal revenue laws." The court concluded that the rejection of the claim was supported by the administrative record, and was not arbitrary, capricious, or an abuse of discretion.
[*Bemmelen v. Commissioner*, 155 T.C. No. 4]

New Legislation

Paycheck Protection Program

Announcement 2020-12
I.R.C. § 6050P, CARES Act § 1106

Lenders who make Paycheck Protection Program (PPP) loans that are later forgiven under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136 as amended by Pub. L. No. 116-142, should not file information returns or furnish payee statements to report the forgiveness.
[Announcement 2020-12, 2020-41 I.R.B. 893]

Rev. Proc. 2020-51 (superseded by COVIDTRA § 276 – discussed later)
CARES Act § 1106

This revenue procedure provides a safe harbor allowing a taxpayer to claim a deduction in the taxpayer's tax year beginning or ending in 2020 (the 2020 tax year) for certain otherwise deductible eligible expenses if

1. the eligible expenses are paid or incurred in the taxpayer's 2020 tax year,
2. the taxpayer receives a loan guaranteed under the PPP,
3. at the end of the 2020 tax year the taxpayer expects that the loan will be forgiven in a year after the 2020 tax year (the subsequent year), and
4. the request for forgiveness in the subsequent year is denied or partially denied, or the taxpayer does not request forgiveness of the loan.

Under the safe harbor, the taxpayer can deduct eligible expenses on a timely filed (including extensions) return for the 2020 tax year, an amended return, or an administrative adjustment request, or a timely filed (including extensions) return for the subsequent year.
[Rev. Proc. 2020-51, 2020-50 I.R.B 1599]

Rev. Rul. 2020-27 (superseded by COVIDTRA § 276 – discussed later)
CARES Act § 1106

Rev. Rul. 2020-27 provides guidance on a whether a taxpayer that received a loan guaranteed under the PPP can deduct certain otherwise deductible expenses in the tax year in which the expenses were paid or incurred if, at the end of the tax year, the taxpayer reasonably expects to receive forgiveness of the covered loan. In fact scenario one, the taxpayer pays eligible expenses during the year, applies for forgiveness during the year, and does not receive a determination before the end of the year. Fact scenario two is the same except that the taxpayer expects to apply for forgiveness in 2021.

The IRS rules that a taxpayer that received a covered loan guaranteed under the PPP and paid or incurred certain otherwise deductible expenses listed in section 1106(b) of the CARES Act may not deduct those expenses in the tax year in which the expenses were paid or incurred if, at the end of such tax year, the taxpayer reasonably expects to receive forgiveness of the covered loan on the basis of the expenses it paid or accrued during the covered period, even if the taxpayer has not submitted an application for forgiveness of the covered loan by the end of the tax year.
[Rev. Rul. 2020-27, 2020-50 I.R.B. 1552]

Consolidated Appropriations Act, 2021

The Consolidated Appropriations Act, 2021 (CAA) contains Division N Subtitle B, which is the COVID-Related Tax Relief Act of 2020 (COVIDTRA) and Division EE, which is the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTRA). This section discusses some of the important tax provisions of the CAA.

Additional Recovery Rebates

COVIDTRA § 272

Additional recovery rebates will be issued to eligible individuals. The amount is a refundable tax credit of $600 for each eligible taxpayer ($1,200 for MFJ) and $600 for each qualifying child, as defined by section 24(c). For taxpayers filing MFJ and surviving spouses, the credit will start phasing out if the taxpayer has $150,000 or more AGI. The phaseout threshold is $112,500 for HoH and $75,000 for single and MFS taxpayers. The credit phases out at a rate of $5 per $100 additional income.

Nonresident alien individuals, individuals who could be claimed as a dependent on another taxpayer's return, and trusts and estates are not eligible. Treasury is directed to issue the rebates "as rapidly as possible" based on 2019 return information. Treasury can use other information for specified individuals who do not file a tax return for 2019. Generally, the individual must have a valid SSN (or ATIN for a child) to receive the payment, but spouses filing MFJ can claim a $600 credit if only one spouse has a valid SSN, and for a spouse in the military, only one SSN is necessary.

Taxpayers receiving an advance payment that exceeds the amount of their eligible credit will not be required to repay any amount of the payment. If the amount of the credit determined on the taxpayer's 2020 tax return exceeds the amount of the advance payment, taxpayers will receive the difference as a refundable tax credit.

CARES Act Amendments

COVIDTRA § 273

The CARES Act is amended to apply the $150,000 start of the phaseout for economic impact payments under the CARES Act to surviving spouses. It also imposes a requirement that the recipient have a valid SSN (or ATIN for a child). If one spouse is in the military, only one SSN is required.

Extension of Deferred Payroll Taxes

COVIDTRA § 274

This provision extends the time to pay deferred payroll taxes (as set forth in Notice 2020-65, discussed later) through December 31, 2021.

Educator Expense Deduction

COVIDTRA § 275; I.R.C. § 62

Treasury is directed to issue guidance to clarify that expenses for personal protective equipment (PPE), disinfectant, and other supplies to prevent the spread of COVID-19 that were paid or incurred after March 12, 2020, are eligible for the I.R.C. § 62(a)(2)(D)(ii) educator expense deduction.

PPP Loan Forgiveness

COVIDTRA § 276

COVIDTRA states that taxpayers whose PPP loans are forgiven do not have to include the forgiven amount in income. The taxpayer can deduct otherwise deductible expenses paid with the proceeds of a PPP loan, and the forgiveness will not preclude a basis increase or reduce other tax attributes.

Emergency Financial Aid Grants

COVIDTRA § 277

Students who receive a qualified emergency financial aid grant after March 26, 2020 do not have to include the grant in gross income and the grant does not reduce the amount of qualified tuition and related expenses for purposes of the American opportunity tax credit and the lifetime learning credit.

Business Financial Assistance

COVIDTRA § 278

Gross income does not include forgiveness of indebtedness described in section 1109(d)(2)(D) of the CARES Act and the exclusion from gross income will not preclude any deduction or basis increase or reduce other tax attributes. Also, gross income does not include any Economic Injury Disaster Loan (EIDL), the EIDL advance, and the exclusion from gross income will not preclude any deduction or basis increase or reduce other tax attributes. Similar rules apply to loan assistance payments described in section 1112(c) of the CARES Act. Generally, the rules apply after March 26, 2020.

Farming Losses

COVIDTRA § 281; I.R.C. § 172

Taxpayers with a farming loss for any tax year beginning in 2018, 2019, or 2020 can elect to retain the 2-year NOL carryback (elected prior to the CARES Act) instead of the 5-year carryback in the CARES Act. Farmers can also revoke an election to waive the NOL carryback.

Sick and Family Leave Credits

COVIDTRA § 286

The provisions of the Families First Coronavirus Response Act granting employer (and self-employed) payroll credits for paid sick and family leave are extended through March 31, 2021.

Use of Prior-Year Self Employment Earnings

COVIDTRA § 287

For purposes of calculating the credits for paid sick and family leave, the taxpayer can elect to use prior-year net earnings from self-employment.

Tax Extensions Made Permanent

The following tax extensions are made permanent:

TCDTRA § 101; I.R.C. § 213

The reduction in the medical expense deduction floor to 7.5% is made permanent.

TCDTRA § 102; I.R.C. § 179D

The TCDTRA makes permanent the deduction for energy efficiency improvements to building envelope, lighting, heating, cooling, ventilation, and hot water systems of commercial buildings. It updates the ASHRAE Reference Standard 90.1 from the 2007 standard to the most recent standard as of 2 years before the start of construction, and it also indexes the $1.80-per-square-foot limitation for inflation.

TCDTRA §103; I.R.C. § 139B

The TCDTRA makes permanent the exclusions for qualified state or local tax benefits and qualified reimbursement payments provided to members of qualified volunteer emergency response organizations and increases the exclusion for qualified reimbursement payments to $50 for each month during which a volunteer performs services.

TCDTRA § 104; I.R.C. § 25A

After 2020, the qualified tuition deduction is repealed and replaced by increasing the phaseout limits on the lifetime learning credit and American opportunity tax credit to $80,000 ($160,000 MFJ).

TCDTRA § 105; I.R.C. § 45G

The railroad track maintenance credit is made permanent and reduces the credit rate to 40%.

TCDTRA § 106; I.R.C. §§ 5001, 5041, 5051

The reduction of excise taxes for beer, wine, and distilled spirits is made permanent.

Tax Extensions through 2025

TCDTRA § 111; I.R.C. § 954

The TCDTRA extends, through 2025, look through treatment for payments of dividends, interest, rents, and royalties between related controlled foreign corporations.

TCDTRA § 112; I.R.C. § 45D

The new markets tax credit is extended through 2025 and the carryover period is extended through 2030.

TCDTRA § 113; I.R.C. § 51

The work opportunity tax credit is extended through 2025.

TCDTRA § 114; I.R.C. § 108

The exclusion from gross income for discharge of qualified principal residence indebtedness is extended through 2025 and the maximum amount that may be excluded is reduced to $375,000 ($750,000 MFJ).

TCDTRA § 115; I.R.C. § 168

The 7-year recovery period for motorsports entertainment complexes is extended through 2025.

TCDTRA § 116; I.R.C. § 1811

The expensing rules for certain qualified film, television, and theatrical productions is extended through 2025.

TCDTRA § 117; I.R.C. § 4611

The oil spill liability trust fund excise tax is extended through 2025.

TCDTRA § 118; I.R.C. §§ 1391, 1397A, 1397B

The TCDTRA extends, through 2025, tax benefits for certain businesses and employers operating in empowerment zones. The provision modifies the tax incentives available by terminating the increased expensing on qualifying equipment under section 179 and the deferral of capital gains tax on the sale of certain qualified assets.

TCDTRA § 119; I.R.C. § 45S

The employer credit for paid family and medical leave is extended through 2025.

TCDTRA § 120; I.R.C. § 127

The exclusion for certain employer payments of student loans is extended through 2025.

TCDTRA § 121; I.R.C. § 45Q

The carbon oxide sequestration credit is extended through 2025.

Other Extenders

TCDTRA § 131; I.R.C. § 45

The credit for electricity produced from certain renewable resources is extended through 2021.

TCDTRA § 132; I.R.C. § 48

The TCDTRA extends the current 26% investment tax credit for solar energy property, fiber-optic solar equipment, fuel cell property, and small wind energy property that begin construction by the end of 2022, and at a 22% rate for property that begin construction by the end of 2023, after which the credit is reduced

to 10% or 0%. It extends the 10% investment credit for microturbine property, geothermal heat pumps, and combined heat and power property that begins construction through 2023.

TCDTRA § 133; I.R.C. § 163

The treatment of mortgage insurance premiums as qualified residence interest is extended through 2021.

TCDTRA § 134; I.R.C. § 35

The credit for health insurance costs of eligible individuals is extended through 2021.

The following provisions are also extended through 2021:

TCDTRA § 135; I.R.C. § 45A Indian employment credit
TCDTRA § 136; I.R.C. § 45N mine rescue team training credit
TCDTRA § 137; I.R.C. § 168 classification of certain racehorses as 3-year property
TCDTRA § 138; I.R.C. § 168 accelerated depreciation for business property on Indian reservations
TCDTRA § 139 American Samoa economic development credit
TCDTRA § 140; I.R.C. § 40 second generation biofuel producer credit
TCDTRA § 141; I.R.C. § 25C nonbusiness energy property credit
TCDTRA § 142; I.R.C. § 30B credit for qualified fuel cell motor vehicles
TCDTRA § 143; I.R.C. § 30C alternative fuel refueling property credit
TCDTRA § 144; I.R.C. § 30D 2-wheeled plug-in electric vehicle credit
TCDTRA § 145; I.R.C. § 45 production credit for Indian coal facilities
TCDTRA § 146; I.R.C. § 45L energy efficient homes credit
TCDTRA § 147; I.R.C. §§ 6426, 6427 extension of excise tax credits relating to alternative fuels
TCDTRA § 148; I.R.C. § 25D, extension of residential energy-efficient property credit and inclusion of biomass fuel property expenditures (the phase down of the credit is extended for 2 years and the provision adds biomass fuel property to the list of qualifying expenditures)
TCDTRA § 149; I.R.C. § 4121 black lung disability trust fund excise tax

Depreciation of Residential Property

TCDTRA § 202; I.R.C. § 168

The recovery period for residential rental property placed in service before January 1, 2018 and held by an electing real property trade or business [as defined in I.R.C. § 163(j)(7)(B)] is 30 years. This provision applies only if the alternative depreciation system did not apply to such property prior to January 1, 2018.

Employee Retention credit

TCDTRA § 206, 207; CARES Act § 2301

Beginning on January 1, 2021 and through June 30, 2021, the following changes apply to the employee retention credit:

1. The credit rate increases from 50% to 70% of qualified wages.
2. Eligibility for the credit expands by reducing the required year-over-year gross receipts decline from 50% to 20% and provides a safe harbor allowing employers to use prior-quarter gross receipts to determine eligibility.
3. The limit on per-employee creditable wages increase from $10,000 for the year to $10,000 for each quarter.

4. The 100-employee threshold for determining the relevant qualified wage base increases to employers with 500 or fewer employees.
5. Certain public instrumentalities can claim the credit.
6. The 30-day wage limitation is removed, allowing employers to, for example, claim the credit for bonus pay to essential workers.
7. Businesses with 500 or fewer employees can advance the credit at any time in the quarter based on wages paid in the same quarter in a previous year.
8. New employers who were not in existence for all or part of 2019 can claim the credit.
9. A small business public awareness campaign will publicize availability of the credit.
10. The determination of gross receipts for certain tax-exempt organizations is clarified.
11. Group health plan expenses can be considered qualified wages even when no other wages are paid to the employee, consistent with IRS guidance.
12. Employers who receive PPP loans may still qualify for the credit based on wages that are not paid for with forgiven PPP proceeds.

Minimum age for Distributions

TCDTRA § 208; I.R.C. § 401

Employees in the building and construction industry who have attained age 55 and are not separated from employment may take distributions from certain tax-exempt multiemployer pension plans if they were participants in such plan on or before April 30, 2013.

100% Deduction for Business Meals

TCDTRA § 210; I.R.C. § 274

There is a 100% deduction for business meal food and beverage expenses, including any carry-out or delivery meals, provided by a restaurant that are paid or incurred in 2021 and 2022.

Prior-Year Income

TCDTRA § 211; I.R.C. § § 24, 32

Taxpayers can use earned income (if higher) from the immediately preceding year for purposes of determining the earned income tax credit (EIC) and the additional child tax credit (ACTC) in tax year 2020.

Charitable Contribution Deductions

TCDTRA §§ 212, 213; I.R.C. § 170; CARES Act § 2205

In 2021, taxpayers who do not itemize deductions can take a $300 ($600 MFJ) above-the-line deduction for cash contributions to qualified charities (not a supporting organization or a donor advised fund). The CARES Act increased charitable contribution limits are extended through 2021.

Temporary FSA Rule

TCDTRA § 214; I.R.C. §§ 105, 106

The temporary flexible spending account (FSA) rule does the following:

- Allows plans to permit health and dependent care flexible spending arrangements (FSAs) to carryover unused benefits up to the full annual amount from 2020 to 2021 and 2021 to 2022
- Allows plans to permit a 12-month grace period for unused benefits or contributions in health and dependent care FSAs for plan years ending in 2020 or 2021
- Allows plans to extend the maximum age of eligible dependents from 12 to 13 for dependent care FSAs for the 2020 plan year and unused amounts from the 2020 plan year carried over into the 2021 plan year
- Allows plans to permit a prospective change in election amounts for health and dependent care FSAs for plan years ending in 2021.

Disaster Relief

TCDTRA §§ 301-305; various code provisions

The TCDTRA provides tax relief for individuals and businesses in presidentially declared disaster areas for major disasters declared on or after January 1, 2020, through 60 days after the date of enactment of the Act (December 27, 2020). The incident period of the disaster with respect to which such declaration is made must begin on or after December 28, 2019, and on or before the date of the enactment of the Act. It does not apply to areas in which a major disaster was declared only because of COVID-19.

The 10% early retirement plan withdrawal penalty does not apply to qualified disaster relief distributions (made before the date that is 180 days after enactment and not to exceed $100,000 in qualified disaster distributions cumulatively). Amounts withdrawn are included in income ratably over 3 years and qualified distributions (distributed to purchase or construct a home in a disaster area) can be recontributed to a retirement plan.

The Act increases plan loan limits. It provides an employee retention credit for employers affected by qualified disasters. It temporarily suspends the corporate limitations on the charitable deduction for charitable contributions made for qualified disaster relief. The Act eliminates the 10% of AGI requirement for net disaster losses. The Act changes the $100 per-casualty to $500 and allows taxpayers to add the deduction to the standard deduction. It also makes changes to the low-income housing tax credit.

Retirement, Savings, and Investing

ABLE Accounts

T.D. 9923

I.R.C. § 529A

Final regulations provide guidance on the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act). These final regulations provide guidance on the requirements a program established and maintained by a state, or agency or instrumentality thereof, must satisfy to be considered a qualified ABLE program under section 529A. They also address the requirements for establishing an ABLE account, for qualifying as an eligible individual and thus a qualified designated beneficiary of an ABLE account, and for contributions to an ABLE account, including the limitations on the amount and investment of such contributions.

The final regulations also provide rules regarding changes in the designated beneficiary of an ABLE account, and rollovers and program-to-program transfers from one ABLE account to another. In addition, the final regulations provide guidance on the gift and GST tax consequences of contributions to an ABLE account, as well as on the federal income, gift, and estate tax consequences of distributions from, and

changes in the designated beneficiary of, an ABLE account (discussed later). Finally, these final regulations provide guidance on the recordkeeping and reporting requirements of a qualified ABLE program.

Gift and GST Taxes

The final regulations provide that the designated beneficiary is the owner of the entire account and the gift and GST tax properly applies to the entire account when there is a change of designated beneficiary. However, those taxes are inapplicable if the new designated beneficiary is an eligible individual and a sibling of the former designated beneficiary. The final regulations allow a qualified ABLE program to permit a successor designated beneficiary to be named during the lifetime of the designated beneficiary that will take effect upon the death of the designated beneficiary. The designation must be made before the designated beneficiary's death. If no successor designated beneficiary is named, the assets in the ABLE account are payable to the estate of the deceased designated beneficiary.
[T.D. 9923]

IRAs

IRS Retirement Plans FAQs regarding Loans

I.R.C. §§ 72, 408

In a series of frequently asked questions (FAQs) regarding IRA loans, the IRS reminds taxpayers that loans are not permitted from IRAs or from IRA-based plans such as SEPs, SARSEPs and SIMPLE IRA plans. Loans are only allowed from qualified plans that satisfy the requirements of I.R.C. § 401(a), from annuity plans that satisfy the requirements of I.R.C. § 403(a) or 403(b), and from governmental plans [I.R.C. § 72(p)(4)]. If the owner of an IRA borrows from the IRA, the IRA is no longer an IRA, and the value of the entire IRA is included in the owner's income [I.R.C. § 408(e)(2) and (3)]. If the owner of an IRA pledges part of the IRA as collateral, the part of the IRA that is pledged is treated as distributed [I.R.C. § 408(e)(4)].
[IRS Retirement Plans FAQs regarding Loans, www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-loans#:~:text=A]

Ball v. Commissioner

I.R.C. §§ 72, 408

The taxpayer directed two distributions of funds from his SEP-IRA to a single-member LLC that he controlled. The LLC loaned the funds and when the loan was repaid, the LLC later repaid the funds to the SEP-IRA with interest. The taxpayer argued that the distribution was not includible in his gross income because the LLC was acting as an agent or conduit on behalf of the IRA's custodian to carry out an investment. However, the taxpayer had unfettered access over the distributed funds, and the IRA custodian had no knowledge of the disposition of the funds. The court found that the distributions were includible in gross income and subject to the I.R.C. § 72(t) additional tax because the taxpayer was not yet age 59½ at the time of the distribution.
[*Ball v. Commissioner*, T.C. Memo 2020-152]

Notice 2020-68

SECURE Act

This notice provides questions and answers on certain provisions of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, known as the Setting Every Community Up for Retirement

Enhancement Act of 2019 (the SECURE Act), and on § 104 of Division M of the Further Consolidated Appropriations Act, 2020, known as the Bipartisan American Miners Act of 2019 (Miners Act). Specifically, this notice addresses issues under the following sections of the SECURE Act: § 105 (small employer automatic enrollment credit), § 107 (repeal of maximum age for traditional IRA contributions, discussed later), § 112 [participation of long-term, part-time employees in section 401(k) plans], § 113 (qualified birth or adoption distributions), and § 116 (allowing excluded difficulty of care payments to be taken into account as compensation for purposes of determining certain retirement contribution limitations). This notice also addresses § 104 of the Miners Act (reduction in minimum age for in-service distributions) and provides guidance on deadlines for plan amendments.

Repeal of Maximum Age for IRA Contributions

The SECURE Act repeals the maximum age for contributions to an IRA and provides that the excludable amount of qualified charitable distributions for a tax year is reduced by the aggregate amount of IRA contributions deducted for the tax year and any earlier tax years in which the individual was age 70½ or older by the last day of the year (post-age 70½ contributions). The excludable amount of qualified charitable distributions for a tax year is not reduced by the amount of post-age 70½ contributions that caused a reduction in the excludable amount of qualified charitable distributions for earlier tax years. FAQ B-5 provides the following example:

Example 1.1 Limit on Excludable Qualified Charitable Distributions

Corey Hall turned age 70½ in 2019. He deducted $5,000 for IRA contributions in 2020, $5,000 in 2021, and makes no contribution for 2022. Corey made no qualified charitable distributions for 2020 and made qualified charitable distributions of $6,000 for 2021 and $6,500 for 2022. The excludable amount of qualified charitable distributions for 2021 is the $6,000 qualified charitable distributions reduced by the $10,000 aggregate amount of post-age 70½ contributions for 2021 and earlier tax years. Corey cannot exclude any qualified charitable distributions for 2021 [$6,000 − $10,000 = ($4,000)].

The excludable amount of the qualified charitable distributions for 2022 is the $6,500 of qualified charitable distributions reduced by the portion of the $10,000 aggregate amount of post-age 70½ contributions deducted that did not reduce the excludable portion of the qualified charitable distributions for earlier taxable years. Thus, $6,000 of the aggregate amount of post-age 70½ contributions deducted does not apply for 2022 because that amount has reduced the excludable amount of qualified charitable distributions for 2021. The remaining $4,000 of the aggregate amount of post-age 70½ contributions deducted reduces the excludable amount of any qualified charitable distributions for subsequent tax years. Thus, Corey's excludable amount of the qualified charitable distributions for 2022 is $2,500 ($6,500 − $4,000). Because the $4,000 amount reduced the excludable amount of qualified charitable distributions for 2022, that $4,000 amount does not apply again in later years, and no amount of post-age 70½ contributions remains to reduce the excludable amount of qualified charitable distributions for subsequent tax years.

[Notice 2020-68, 2020-38 I.R.B. 567]

Required Minimum Distributions

Notice 2020-51
I.R.C. §§ 401, 408

Notice 2020-51 provides guidance on the waiver of 2020 required minimum distributions (RMDs). the notice allows rollovers of waived RMDs and certain related payments and includes an extension of the 60-day rollover period for certain distributions to August 31, 2020. The notice answers questions on the waiver of 2020 RMDs and provides a sample plan amendment that provides participants the option to receive waived RMDs and certain related payments. The notice clarifies that repayment of a previously distributed RMD from an IRA will not be treated as a rollover for purposes of the one rollover per 12-month period limitation in I.R.C. § 408(d)(3)(B) and the restriction on rollovers for nonspousal beneficiaries in I.R.C. § 408(d)(3)(C).
[Notice 2020-51]

Rollovers

Rev. Proc. 2020-46

I.R.C. §§ 402, 408

This revenue procedure modifies and updates Rev. Proc. 2016-47, 2016-37 I.R.B. 346, which provides a list of reasons for a taxpayer to self-certify eligibility for a waiver of the 60-day rollover requirement under certain eligible retirement plans. This revenue procedure adds a distribution to a state unclaimed property fund to the list of reasons.
[Rev. Proc. 2020-46, 2020-45 I.R.B. 995]

Tax Accounting

T.D. 9942

I.R.C. §§ 263A, 448, 460, 471

Final regulations implement changes that apply the TCJA's simplified tax accounting provisions for certain businesses having average annual gross receipts that do not exceed $26,000,000 (in 2020, adjusted for inflation).
[T.D. 9942]

Tax Practice

United States Tax Court Press Release

To accommodate remote operations during the COVID-19 pandemic, the Tax Court announced procedural changes, including acceptance of electronically filed stipulated decisions with digital image signatures, and limited entries of appearance.
[United States Tax Court Press Release (August 6, 2020)]

Electronic Filing of Forms 2848 and 8821

In January 2021, the IRS plans to launch a new IRS.gov secure submission platform and a new page, "Submit Forms 2848 and 8821 Online," that will allow tax professionals to upload third-party authorization forms electronically. Tax professionals will enter their Secure Access username and password or complete a Secure Access registration to authenticate their identities. Taxpayers and tax professionals can sign the forms electronically or with ink, and then upload the image of the form to the IRS.
[www.irs.gov/about-irs/electronic-signature-options-will-simplify-third-party-authorizations]

Electronic Filing of Form 1040-X

Taxpayers can now submit Form 1040-X, Amended U.S. Individual Income Tax Return, electronically with commercial tax-filing software.
[IR-2020-182]

Digital Signatures and Emailed Documents

The IRS has extended (through June 30, 2021) acceptance of images of signatures (scanned or photographed) and digital signatures on documents related to the determination or collection of tax liability, and electronic transmission of certain documents.
[www.irs.gov/pub/irs-utl/approval-to-accept-images-of-signatures-and-digital-signatures.pdf]

Trusts and Estates

Deductions

T.D. 9918

I.R.C. §§ 67, 142

Final regulations clarify that the following deductions allowed to an estate or nongrantor trust are not miscellaneous itemized deductions:

- Costs paid or incurred in connection with the administration of an estate or nongrantor trust that would not have been incurred if the property were not held in the estate or trust
- The personal exemption of an estate or nongrantor trust
- The distribution deduction for trusts distributing current income
- The distribution deduction for estates and trusts accumulating income

Therefore, these deductions are not affected by the suspension of the deductibility of miscellaneous itemized deductions for tax years beginning after December 31, 2017, and before January 1, 2026.

The final regulations also provide guidance on determining the character, amount, and allocation of deductions in excess of gross income succeeded to by a beneficiary on the termination of an estate or nongrantor trust.
[T.D. 9918]

Estate Tax

US vs. Estate of Kelley

I.R.C. § 6324

The taxpayer was co-executor of his sister's estate. He distributed the estate assets to himself and failed to pay the estate taxes. I.R.C. § 6324(a)(2) imposes liability on the transferees of the decedent's estate when the estate itself fails to pay its federal taxes. A transferee who receives property from a decedent's estate is personally liable for any unpaid estate tax based on the value of the property received. The co-executor's estate was liable for the estate tax.
[*US vs. Estate of Kelley*, 126 A.F.T.R. 2d (RIA), 2020-6605]

Gifts

C.C.A. 202045011
I.R.C. §§ 2501, 2518

A foundation was dissolved, and the taxpayer who was the sole beneficiary of the foundation directed transfer of the foundation assets to a bank account over which the taxpayer had no control or access. The IRS Chief Counsel advised that the taxpayer is treated as having received foundation assets and then transferred the assets by gift. The Chief Counsel also advised that the transfer of the foundation's assets to an account in which the taxpayer had no ownership interest under applicable local law is not a qualified disclaimer under I.R.C. § 2518 because the taxpayer directed the transfer to the account.
[C.C.A. 202045011 (June 10, 2020)]

Withholding and Estimated Taxes

Notice 2020-65
I.R.C. § 3102

Notice 2020-65 provides guidance implementing the Presidential Memorandum issued on August 8, 2020, allowing employers to defer withholding and payment of the employee’s portion of the social security tax if the employee’s wages are below a certain amount. The Notice states that an affected taxpayer must withhold and pay the total applicable taxes that he or she deferred under the Notice by April 30, 2021 or interest, penalties, and additions to tax will begin to accrue on May 1, 2021. COVIDTRA § 274 (discussed earlier) extends this date to December 31, 2021. IRS guidance directs employers to report only the social security tax actually withheld from 2020 wages on Form W-2. Employers must file a Form W-2c when the 2020 social security tax is withheld in 2021.
[Notice 2020-65, 2020-38 I.R.B. 567]

T.D. 9924
I.R.C. § 3402

Final regulations provide guidance for employers concerning income tax withholding from employees' wages. These final regulations concern the amount of federal income tax employers withhold from employees' wages, implement changes made by the TCJA, and reflect the redesigned Form W-4.
[T.D. 9924]

2020 NATIONAL INCOME TAX WORKBOOK UPDATES, CLARIFICATIONS, CORRECTIONS

Qualified Business Income Deduction Issues, P. 75	Example 3.3. The partnership allocates **$275,000** ($550,000 × 50%) of QBI to each partner. Dan and Dave each have a **$275,000** share of QBI and their share of QBI without a guaranteed payment is $**125,000 ($275,000 −** $150,00) higher.
Business Entities, P. 211	Generally, churches and church affiliates do not have to file Form 990-N.

Agricultural and Natural Resource Issues, P. 244	Payment for the services of a child **under age 18** is not subject to social security, Medicare, or FUTA taxes (header correction).
Retirement and Investment Issue, P. 272	If Arnold had not held the ROTH account for 5 years, he would be subject to the 10% penalty, but not income tax, on **any rollover or conversion** distribution.
Individual Issues: Part 2, P. 354	The final draft of the SECURE Act did not include homeschool expenses as a qualified educational expense.
Business Tax Issues, PP. 397 to 398	The proposed regulations (REG-109755-19) are proposed to apply for tax years that begin on or after the date of publication of a Treasury decision adopting the rules as final regulations in the Federal Register.
New Legislation: 1, p. 476	The SECURE Act does not change the age for qualified charitable **distributions**.
Trusts and Estates, P. 402	Gifting Strategy – the 3-year rule in section 2035 applies only to assets that would otherwise be included under sections 2036, 2037, 2038, and 2042.