S. Davis & Associates, P.A.
Certified Public Accountants & Consultants

Five-Minute Tax Briefing ®

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Highlights

Credit for Plug-in Electric Vehicles Phased out for General Motors Models: Under IRC Sec. 30D(e)(2), the credit for new qualified plug-in electric drive motor vehicles is phased out over a period of four calendar quarters once the total number of qualifying vehicles sold by a manufacturer after 2009 reaches 200,000. In a recent Notice, the IRS announced that General Motors, LLC reached this limit during the calendar quarter ending 12/31/18. Therefore, qualifying General Motors vehicles are eligible for the full $7,500 credit if they are purchased before 4/1/19. A reduced credit of $3,750 applies to vehicles purchased from 4/1/19 through 9/30/19. From 10/1/19 through 3/31/20, the credit will be reduced to $1,875. After 3/31/20, no credit will be available. Notice 2019-22 and News Release IR 2019-57.

IRS Expands Penalty Waiver for Underpayment of Estimated Income Tax: The IRS has announced that the Section 6654 penalty waiver for certain individuals who were otherwise required to make estimated payments on or before 1/15/19 is being expanded to include individuals whose total withholding and estimated tax payments equal or exceed 80% of the tax shown on their 2018 returns. The usual percentage threshold of 90% was reduced to 85% by Notice 2019-11 in January. Taxpayers should complete Part I of Form 2210 (Underpayment of Estimated Tax by Individuals, Estates, and Trusts) to determine if the waiver applies. If it applies, taxpayers should check the waiver box (Part II, Box A) and include the statement "80% Waiver" with the return. Taxpayers who qualify for the waiver and have already paid additions to tax should file Form 843 (Claim for Refund and Request for Abatement) and include the statement "80% Waiver of estimated tax penalty" on Line 7. Notice 2019-25 and News Release IR 2019-55 .

IRS Provides Guidance on State and Local Tax Refunds: In a recent Revenue Ruling, the IRS clarified the tax treatment of State and Local Tax (SALT) refunds arising from any year in which the new $10,000 ($5,000 for married filing separately) SALT deduction limit is in effect. After presenting four fact patterns in which the taxpayer received a SALT refund, the ruling concludes that the taxpayer must include in income the lesser of (1) the difference between the taxpayer's total itemized deductions taken in the prior year and the amount of itemized deductions that would have been taken had the taxpayer paid the proper amount of SALT or (2) the difference between the taxpayer's itemized deductions taken in the prior year and the standard deduction amount. This ruling has no effect on SALT refunds received in 2018 for returns currently being filed. Rev. Rul. 2019-11 and News Release IR 2019-59.

IRS Revises EIN Application Process: The IRS has announced that starting 5/13/19, only individuals with tax identification numbers can request an Employer Identification Number (EIN) as the responsible party on the application. (The *responsible party* is generally the person who ultimately owns or controls the entity.) Individuals designated as the responsible party must have either a Social Security number or an Individual Taxpayer Identification Number (ITIN). According to the IRS, this change will prevent entities from using their own EINs to obtain additional EINs and will bring greater security to the EIN process. The IRS has decided to make this announcement now to give entities and their representatives plenty of time to identify the proper responsible party and comply with the new policy. News Release IR 2019-58.

Other Current Releases

Income Tax—Child Tax Credit Administration for Objectors to Social Security Numbers: For tax years 2018 through 2025, all taxpayers claiming the Child Tax Credit (CTC) must provide their children's Social Security Numbers (SSNs) on their returns [IRC Sec. 24(h)(7)]. In a recent Program Manager Technical Assistance (PMTA), the IRS concluded that it's not required to administratively accommodate taxpayers who object to obtaining SSNs for religious or other conscience-based reasons. There are compelling governmental interests to ensure uniform and orderly tax administration and to prevent improper CTC claims. According to the IRS, the least restrictive (and only) means to further those interests is to require a qualifying child's SSN. PMTA 2019-002.

Income Tax—Divorce Decree Properly Transferred Ownership of S Corporation Shares: The taxpayer was married to a professional baseball player who owned an S corporation. The corporation held various investments, including a 69.51% ownership in a partnership. In 2009, the couple divorced, and the taxpayer was granted ownership of the S corporation. For the years at issue, the taxpayer didn't file returns for the corporation, nor did she include her share of the entity's income on her personal returns. She argued that the divorce proceedings resulted in an unenforceable "agreement to agree." In other words, the court proceeding didn't transfer legal ownership of the corporation to her—it merely ordered the parties to divide the property within 30 days. A Connecticut district court disagreed, holding that the divorce decree created a legally enforceable right to ownership in the S corporation. Therefore, the taxpayer was obligated to pay taxes on her share of the corporation's income. *Migdalia Bonilla*, 123 AFTR 2d 2019-XXXX (DC CT).

Income Tax—Foreign Housing Cost Exclusions for 2019: A U.S. citizen (or U.S. resident alien) living abroad can elect to exclude the foreign earned income and housing cost amount from gross income (subject to certain limitations) (IRC Sec. 911). The Section 911 housing cost exclusion is calculated based on the number of days physically present in the foreign location. In addition, the IRS allows a higher housing cost ceiling for taxpayers living in certain high-cost geographic locations (relative to the U.S.). The IRS has released the table of adjusted limitations on housing expenses for 2019 and has indicated that some taxpayers may elect to apply the 2019 limitations to tax years beginning in 2018. Notice 2019-24.

Income Tax—IRS Provides Guidance on Qualified Residential Rental Projects: In a recent Revenue Procedure, the IRS has provided guidance on the general public use requirements for qualified residential rental projects financed with tax-exempt bonds under IRC Sec. 142(d). Specifically, the guidance coordinates the general public use requirements with provisions applicable to the low-income housing credit under IRC Sec. 42. As such, a qualified residential rental project will not fail to meet the general public use requirements applicable to exempt facilities solely because of occupancy restrictions or preferences that favor certain tenants (like military veterans). The IRS has determined this rule is necessary because low-income housing credits and exempt facility bonds are often used together to finance residential rental projects. However, the guidance doesn't affect the rules applicable to bonds that finance other exempt facilities. The Revenue Procedure applies to bonds sold before, on, or after 4/3/19. Rev. Proc. 2019-17.

Income Tax—IRS Withdraws Proposed Corporate Basis Recovery Regulations: In 2009, the IRS released proposed regulations on the recovery of stock basis in certain corporate transactions. Specifically, the proposed regulations would have adopted a single model for Section 301 (dividend equivalent) distributions and a single model for Section 302(a) (sale or exchange) transactions. The proposed rules also would have provided a methodology for determining gain under IRC Sec. 356 and stock basis under IRC Sec. 358 . After receiving numerous comments, the IRS has determined that the approach in the proposed regulations can't be implemented in comprehensive final regulations without significant modifications. Therefore, the proposed regulations have been withdrawn. REG-143686-07 .

Income Tax—Legal Fees in Employee's Drug-related Death Not Deductible: The CEO and sole shareholder of an S corporation took his girlfriend, who also was an employee of the company, on a vacation to St. Maarten. They were accompanied by other employees of the corporation. During the trip, the taxpayer's girlfriend died from an apparent cocaine overdose. The deceased's mother sued the taxpayer and the company for wrongful death, and the case was settled for $2.3 million. The Tax Court held that the S corporation couldn't deduct the settlement costs and related legal fees because none of the employees were involved in profit-seeking activities during the trip. The Fifth Circuit affirmed, finding that (1) simply being named in the suit was insufficient to prove the company's expenses were deductible and (2) providing cocaine to the employee didn't arise from, further, or use property directly employed in the company's business. *James Cavanaugh, Jr.*, 123 AFTR 2d 2019-XXXX (CA 5).

Penalties—Abusive Tax Shelter Penalties Upheld for Timeshare Donation Facilitator/Appraiser: The taxpayer facilitated the donation of timeshares through a nonprofit organization, promising tax savings from the donation. The taxpayer, his sister, and other individuals employed by the taxpayer performed the required appraisals on the properties. The taxpayer and other individuals were permanently enjoined from performing appraisals, and the IRS assessed penalties under IRC Sec. 6700 for promoting abusive tax shelters. In upholding the penalties, the District Court ruled that the taxpayer was not a qualified appraiser because of his control of the nonprofit, and by presenting himself as a qualified appraiser, he made false statements, and caused other people to make false statements. *James Tarpey*, 123 AFTR 2d 2019-1138 (DC MT).

Penalties—IRS Issues Final Regulations on Reportable Transaction Penalty: The IRS has released final regulations (TD 9853) on calculating the Section 6707A penalty for failing to disclose a reportable transaction. The penalty is generally 75% of the decrease in tax shown on the return due to the transaction, with a minimum and maximum penalty amount. The final regulations clarify that if a transaction becomes a listed transaction or a transaction of interest after the taxpayer files the return, but while the statute of limitations remains open, a single disclosure statement must be filed with the Office of Tax Shelter Analysis (OTSA) within 90 calendar days. In addition, the final rules state that if a taxpayer fails to file a disclosure statement, the penalty will not take into account decreases in tax shown on returns for closed years. The final regulations are effective 3/26/19. Reg. 301.6707A-1 .

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