



Five-Minute Tax Briefing[®]

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Highlights

District Court Invalidates IRS's Elimination of Donor Information Reporting: In Rev. Proc. 2018-38, the IRS announced that tax-exempt organizations, other than those described in IRC Sec. 501(c)(3), no longer have to report donor information on Schedule B (Schedule of Contributors) of Form 990, Form 990-EZ, and Form 990-PF. Recently, a Montana District Court held that Rev. Proc. 2018-38 was unlawful because the IRS failed to follow the notice-and-comment procedures under the Administrative Procedure Act (APA). The IRS argued that the Revenue Procedure simply involved a rule of IRS procedure or practice, which is exempt from the APA's rule-making procedures. The Court disagreed, finding that the Revenue Procedure was a legislative rule that effectively amended established donor reporting requirements under Reg. 1.6033-2(a)(2)(ii)(f). As such, the Court set aside Rev. Proc. 2018-38 and directed the IRS to follow proper notice-and-comment procedures. *Stephen C. Bullock, et. al.*, 124 AFTR 2d 2019-XXXX (DC MT). See NTA-1071 in this issue for more information.

IRS Has Begun Sending Letters to Virtual Currency Owners: The IRS has begun sending letters (Letters 6173, 6174, and 6174-A) to taxpayers who (1) potentially failed to report income and pay the resulting tax from virtual currency transactions or (2) did not properly report such transactions. The letters are for educational purposes only and direct taxpayers to review their tax filings; amend returns where appropriate; and pay any back taxes, interest, and penalties. According to the IRS, more than 10,000 taxpayers will receive these letters by the end of August.

The letters are part of the IRS's Virtual Currency Compliance campaign, which seeks to boost compliance in this area through taxpayer education, audits, and criminal investigations. The IRS anticipates issuing additional legal guidance on virtual currency in the near future. News Release IR 2019-132.

IRS Issues Guidance on Making or Revoking Bonus Depreciation Elections:The IRS has issued guidance that allows taxpayers to make a late bonus depreciation election, or to revoke an election, for certain property acquired after 9/27/17 and placed in service during the tax year that includes 9/28/17. Under the Tax Cuts and Jobs Act (TCJA), taxpayers can (1) elect out of 100% bonus depreciation, (2) elect to take 50% bonus depreciation (instead of 100%) for qualified property acquired after 9/27/17 and placed in service during the tax year that includes 9/28/17, or (3) elect to deduct bonus depreciation for any specified plant that is planted or grafted after 9/27/17 and before 2027. Taxpayers that failed to make these elections for the tax year that includes 9/28/17 can make late elections by filing an amended return or a Form 3115 for a limited period of time. If elections were made, taxpayers can revoke the elections by filing an amended return or a Form 3115 for a limited period of time. Rev. Proc. 2019-33.

Other Current Releases

Income Tax—EITC Subject to Two-year Ban If Partially Disallowed in Previous Year:If a taxpayer's Earned Income Tax Credit (EITC) claim is denied because of reckless or intentional disregard of rules and regulations, he or she cannot claim the credit for a period of two years [IRC Sec. 32(k)(1)(B)(ii)]. In a recent Chief Counsel Advice (CCA), the taxpayer claimed the EITC based on three children. However, the IRS disallowed the credit for one of the children. Despite that, the taxpayer continued to claim the child for consecutive years. The IRS concluded that the two-year ban applied in this case even though the taxpayer was otherwise entitled to the EITC for her other two children. According to the agency, IRC Sec. 32(k)(1)(B)(ii) does not prohibit imposition of the ban for partial disallowances, assuming a final determination is made that the taxpayer's claim was due to reckless or intentional disregard of rules and regulations. CCA 201931008 .

Income Tax—Film Producer Unable to Deduct Son's Tuition for Filmmaking Courses:The taxpayer owned 95% of an LLC that produced movies. In 2002, he secured financing for, produced, and engaged in the preliminary development of a film. Hoping to get his son involved, the taxpayer paid \$28,377 for his son to take college courses related to filmmaking. The taxpayer deducted this amount as a training expense, arguing that the courses were necessary to provide his son a technical foundation in filmmaking. The Tax Court disallowed the deduction, finding there was no evidence that the courses transformed the son's promise in filmmaking into an established trade or business. The Ninth Circuit affirmed, holding that the Tax Court did not clearly err in its decision. The Court also concluded that the Tax Court was not required to shift the burden of proof to the IRS. *Constantine G. Cristo*, 124 AFTR 2d 2019-5293 (CA 9).

Income Tax—Performer Failed to Report Constructive Dividends from Corporation: During the years at issue, the taxpayer performed in one-person comedy shows and had various speaking engagements. Compensation for these performances was generally paid to the taxpayer's wholly-owned C corporation. The taxpayer then used corporate funds, as well as the corporation's credit card, to pay for personal expenses, including airfare, groceries, meals, and other miscellaneous expenses. The IRS argued that these payments were constructive dividends to the taxpayer. The taxpayer maintained that the expenditures were legitimate business expenses of the corporation. The Tax Court sided with the IRS, holding that the taxpayer received and failed to report constructive dividends. The Court found that the taxpayer participated in a tax-avoidance strategy under which his personal living expenses would be deducted by the corporation as business expenses. On top of that, the Court sustained penalties for negligence and advancing frivolous or groundless positions. *Patrick Combs*, TC Memo 2019-96 (Tax Ct.).

IRS Releases 2019 Draft Form 1040 and Accompanying Schedules: The IRS has released a draft of the 2019 Form 1040 and its accompanying schedules. The form is slightly longer than last year's version because Schedules 1–6 have been condensed into three schedules. In addition, the draft form (1) asks for additional information for heads of household, qualifying widows/widowers, and those using a married filing separately status; (2) removes the checkbox for health care coverage; and (3) moves several common tax credits to page 2 of the return. The draft Schedule A has been updated to reflect that medical expenses are deductible only if they exceed 10% of AGI (as opposed to 7.5% for 2018). There are no substantive changes to the draft Schedule B or its instructions. The draft forms can be accessed at <https://apps.irs.gov/app/picklist/list/draftTaxForms.html>. Practitioners can submit comments to the IRS on the draft Form 1040 by 8/15/19.

IRS Unveils New Tax Withholding Estimator: The IRS has unveiled its latest online tool, the "Tax Withholding Estimator." The estimator, which replaces the "Withholding Calculator," assists workers, retirees, self-employed individuals, and other taxpayers in determining how much income tax should be withheld from wages and pension payments. Among other things, the estimator features (1) plain language to improve user comprehension; (2) a mobile-friendly design; (3) enhanced tips and links on various tax credits and deductions; and (4) an automatic calculation of the taxable portion of any Social Security benefits. In addition, the tool makes it easier to enter wages and withholding for each job held by the taxpayer and his or her spouse. The IRS encourages all taxpayers to use the tool to do a "Paycheck Checkup" and review their withholding for 2019. The new estimator is available at www.irs.gov/individuals/irs-tax-withholding-estimator. News Release IR 2019-139.

Retirement Plans—Temporary Form 5500 Relief for Multiple Employer Plans: Under Section 103(g) of ERISA, Multiple Employer Plans (MEPs) are required to file complete and accurate lists of participating employers with their Form 5500. Recognizing that a substantial number of MEPs weren't in full compliance with this requirement, the Employee Benefits Security Administration (EBSA) is providing temporary relief. Specifically, the EBSA won't reject a Form 5500 or Form

5500-SF filed on behalf of a MEP for the 2017 (or prior) plan year, or seek to assess civil penalties against the plan administrator, solely based on incomplete or inaccurate participating employer information, provided that annual reports filed for the 2018 and following plan years comply with ERISA requirements. In addition, the EBSA is granting MEPs a special extension of up to 2 1/2 months to file their 2018 annual report. They should check the "special extension" box under Part I, Line D of the 2018 Form 5500 /5500-SF and enter "FAB 2019-01" as the description. MEPs using this special extension don't need to file a Form 5558 with the IRS. Field Assistance Bulletin No. 2019-01.

Tax-exempt Organizations—Educational Organization Regulation Held Invalid by Minnesota

District Court: The taxpayer was the parent organization of several hospitals, clinics, and the Mayo Clinic College of Medicine and Science. After conducting an audit, the IRS concluded that the taxpayer owed tax on certain income received from partnerships because it was not an *educational organization*. According to Reg. 1.170A-9(c)(1), an organization cannot qualify as an educational organization unless education is its primary function and noneducational activities are merely incidental to its educational activities. The IRS argued that the taxpayer's primary function was health care, not education. The taxpayer maintained that its educational and patient care activities were essential to each other and inextricable. A Minnesota District Court sided with the taxpayer, holding that Reg. 1.170A-9(c)(1) was invalid. By adding the primary-function and merely-incidental tests, the regulation unlawfully contained requirements Congress did not intend to include in the statute. *Mayo Clinic*, 124 AFTR 2d 2019-XXXX (DC MN).

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