



Five-Minute Tax Briefing[®]

August 27, 2019

No. 2019-16

Highlights

Automatic Waiver of Estimated Tax Penalty for Eligible 2018 Filers: Earlier this year, the IRS expanded the Section 6654 penalty waiver to individuals whose total withholding and estimated tax payments equaled or exceeded 80% of the tax shown on their 2018 returns. (The usual percentage threshold is 90%.) Recently, the IRS announced that it will automatically apply this waiver to the more than 400,000 eligible taxpayers who already filed their 2018 returns but failed to claim the waiver. Relief is automatic, so there is no need to contact the agency to request the waiver. Over the next few months, the IRS will mail copies of CP 21 notices granting relief to affected taxpayers. In addition, eligible taxpayers who already paid the penalty will receive a refund check about three weeks after receiving their notice, regardless if they requested penalty relief. News Release IR 2019-144 .

GSA Releases Domestic Per Diem Rates for Fiscal Year 2020: The General Services Administration (GSA) has released the federal domestic per diem rates for fiscal year 2020. The IRS permits taxpayers to use these rates to substantiate business expenses under IRC Sec. 274(d) for lodging, meals, and incidental expenses incurred while traveling away from home. The maximum standard per diem rate has increased from \$149 to \$151 (\$96 for lodging and \$55 for meals and incidental expenses). Per diem rates for localities without standard rates range from \$151 to \$472 (with Telluride, Colorado having the highest rate). The updated rates are effective

from 10/1/19 through 9/30/20 and may be downloaded in Excel format via www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-files-archived .

IRS Issues Proposed Regulations on Cloud and Digital Content Transactions:The IRS has issued proposed regulations (REG-130700-14) regarding the classification of cloud and digital content transactions for certain international provisions of the Code. The proposed regulations would apply the guidelines found in Reg. 1.861-18 (regarding computer programs) to all transfers of digital content. In addition, the proposed regulations would provide rules for classifying cloud transactions as either leases or provisions of services. Various factors would be used to classify a transaction, including physical possession and control of the property. The proposed rules would generally apply to transactions occurring pursuant to contracts entered into in tax years beginning on or after the date the regulations are finalized. Prop. Regs. 1.861-7, 1.861-18, and 1.861-19. See NTA-1072 in this issue for more information.

IRS Releases Draft of New Partnership Audit Liability Form:Under the centralized partnership audit regime, the IRS can generally determine, assess, and collect tax at the partnership level [IRC Sec. 6221(a)]. However, under IRC Sec. 6226(a)(1) , a partnership may elect to "push out" any audit adjustments made by the IRS to those who were partners during the reviewed year. Recently, the IRS released a draft of new Form 8978 (Partner's Audit Liability Under Section 6226), which is used by electing partnerships to provide a statement of audit adjustments to reviewed-year partners and the IRS. In addition, the IRS released a draft of Form 8978, Schedule A , which is used to report to the IRS each partner's name, tax identification number, and share of the partnership's adjustments. The draft forms can be accessed at <https://apps.irs.gov/app/picklist/list/draftTaxForms.html> .

Other Current Releases

Applicable Federal Rates for September:The Section 7520 rate for September 2019 is 2.2%, while the Applicable Federal Rates (AFRs) are as follows (Rev. Rul. 2019-20):

	Annual	Semiannual	Quarterly	Monthly
Short-term (≤ 3 years)	1.85%	1.84%	1.84%	1.83%
Mid-term (> 3 years but ≤ 9 years)	1.78%	1.77%	1.77%	1.76%
Long-term (> 9 years)	2.21%	2.20%	2.19%	2.19%

Foreign Reporting—Taxpayer Didn't Have Reasonable Cause for Failing to File

FBARs:During the years at issue, the taxpayer and her spouse jointly owned two financial accounts with a Canadian entity. The accounts' annual high balances ranged from approximately \$400,000 to over \$1 million. Because the taxpayer failed to file Reports of Foreign Bank and Financial Account (FBARs) for the two accounts, the IRS assessed failure-to-file penalties, plus late payment penalties and interest. The taxpayer argued she had reasonable cause for failing to file the FBARs because she relied on an advisor to complete her tax returns. The District Court for

the Eastern District of Michigan disagreed, finding that the taxpayer didn't take any steps to learn whether she was required to report her foreign accounts. In fact, there was no evidence that she informed her tax advisor about the accounts. Therefore, the Court upheld all penalties and interest. *Dennis and Tracey Ott*, 124 AFTR 2d 2019-5460 (DC MI).

Income Tax—IRS Issues Proposed Regulations on Personal Use of Employer-provided

Vehicles:The IRS has issued proposed regulations (REG-101378-19) on the fleet-average and vehicle cents-per-mile valuation rules for employer-provided vehicles. The proposed rules reflect changes made by the Tax Cuts and Jobs Act (TCJA) to the depreciation limits in IRC Sec. 280F and would generally formalize guidance found in Notices 2019-8 and 2019-34. Specifically, the proposed regulations would increase, effective for the 2018 calendar year, a vehicle's maximum base fair market value under the fleet-average or vehicle cents-per-mile valuation rule to \$50,000 (adjusted annually for inflation). The IRS expects that inflation-adjusted amounts will be included in the annual notice providing standard mileage rates and the maximum standard automobile cost for purposes of an allowance under a fixed and variable rate plan. Until amendments to the final regulations are published, taxpayers may rely on the guidance found in the proposed regulations. Prop. Reg. 1.61-21.

Income Tax—LLC Inadvertently Terminated Its S Corporation Election:The taxpayer was an LLC that elected to be treated as an S corporation for federal income tax purposes. Originally, its operating agreement provided that all distributions would be made in proportion to the members' respective membership interests. However, the agreement was amended to provide that upon liquidation, distributions would be paid to members with positive capital accounts in accordance with their respective capital account balances under IRC Sec. 704 . Realizing this created a second class of stock, the members amended the agreement a second time to correct the liquidating distribution language. The IRS privately held that although the first amendment terminated the LLC's S corporation election, such termination was inadvertent within the meaning of IRC Sec. 1362(f). Therefore, the taxpayer's S corporation status remained intact. Ltr. Rul. 201930023.

Income Tax—Portion of Genetic Testing Is Medical Care:The taxpayer wanted to use a health care Flexible Spending Account (FSA) to purchase genetic testing services and resultant reports. The reports would include information on the taxpayer's ancestry and health. In addition to giving the taxpayer a deeper understanding of health risks, the reports could be delivered to a health care provider for additional testing, diagnosis, or treatment. The IRS privately ruled that the health portion of the testing service, such as the genotyping, qualified as medical care under IRC Sec. 213(d) . However, the ancestry portion didn't qualify. Therefore, the taxpayer would be required to allocate the price of the DNA collection kit between ancestry and health services using a percentage. In addition, the taxpayer could use a reasonable method to value and allocate the cost of the health services between medical care and nonmedical services or items. Ltr. Rul. 201933005.

IRS Releases Second Draft of the 2020 Form W-4: The IRS has released a second draft of the 2020 Form W-4 (Employee's Withholding Certificate). The form retains the withholding computation used in the first draft, which was released in May 2019. Thanks to the Tax Cuts and Jobs Act (TCJA), the revised form no longer uses the concept of withholding allowances tied to the personal exemption. Instead, there are separate sections for (1) taxpayers with multiple jobs or an employed spouse; (2) claiming dependents (based on the new child tax credit and credit for other dependents); and (3) other adjustments. According to the IRS, the final version of the form, which should be issued in the late fall, will not contain substantive changes. The second draft of the form was released now so the programming of payroll systems can begin. The draft form can be accessed at www.irs.gov/pub/irs-dft/fw4--dft.pdf .

Retirement Plans—Uncashed Retirement Plan Distribution Check Still Taxable: In a recent Revenue Ruling, the taxpayer's employer made a required distribution of \$900 to the taxpayer from a qualified retirement plan under IRC Sec. 401(a) . The employer withheld tax as required by IRC Sec. 3405(d)(2) and mailed a check for the remainder to the taxpayer. Although she received the check in 2019, the taxpayer decided not to cash it. The IRS held that (1) the taxpayer's failure to cash the check she received in 2019 did not permit her to exclude the amount from gross income in that year; (2) her failure to cash the check did not alter her employer's withholding obligations under IRC Sec. 3405 ; and (3) her failure to cash the check did not alter her employer's obligation to report the distribution on Form 1099-R under IRC Sec. 6047(d). Rev. Rul. 2019-19 .

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