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Certified Public Accountants & Consultants

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Highlights

IRS Provides Relief for Reporting Required Minimum Distributions: Enacted on 12/20/19, the Setting Every Community Up for Retirement Enhancement (SECURE) Act changed the start date for Required Minimum Distributions (RMDs) from age 70 1/2 to age 72. Recently, the IRS announced that it is providing relief to financial institutions that were expected to provide RMD statements to IRA owners by 1/31/20. If an RMD statement is provided for 2020 to an IRA owner who will turn age 70 1/2 in 2020, the IRS will not consider the statement to be incorrect, but only if the financial institution notifies the IRA owner no later than 4/15/20 that no RMD is due for 2020. The IRS also encourages all financial institutions, in communicating these RMD changes, to remind IRA owners who reached age 70 1/2 in 2019, and have not yet taken their 2019 RMDs, that they are still required to take those distributions by 4/1/20. Notice 2020-6.

IRS Won't Allow Additional or Replacement QOZ Designations: Under IRC Sec. 1400Z-1, a state's governor (or the mayor of Washington, D.C.) may nominate certain low-income communities for designation as Qualified Opportunity Zones (QOZs). The nomination process was completed in 2018, and all designated QOZs can be found in Notices 2018-48 and 2019-42. In a recent Information Letter, the IRS was asked whether a particular census tract could either be designated as an additional QOZ or replace an existing QOZ. The IRS declined the request, noting that IRC Sec. 1400Z-1 doesn't allow for any additional or revised QOZ determinations after the maximum allowed number of zones in a state or territory have been designated. Information Letter 2019-0025.

Penalty Relief for Certain Small Partnerships Still Available: Rev. Proc. 84-35 provides relief to certain *small partnerships* (generally partnerships with 10 or fewer partners at all times during the year) from the penalty under IRC Sec. 6698(a) for failure to file a partnership return. The Revenue Procedure references the small partnership exception in IRC Sec. 6231(a)(1)(B), which was repealed by the Bipartisan Budget Act of 2015. In a recent Program Manager Technical Advice (PMTA), the IRS concluded that despite the repeal of IRC Sec. 6231(a)(1)(B) , Rev. Proc. 84-35 continues to apply. According to the IRS, it's irrelevant that IRC Sec. 6231(a)(1)(B) doesn't exist anymore. The legislative history of IRC Sec. 6698 , which expressed an intent to grant penalty relief to smaller partnerships, is still relevant. Therefore, Rev. Proc. 84-35 isn't obsolete, and the IRS may implement procedures requiring partnerships claiming relief under the Revenue Procedure to demonstrate they're entitled to such relief. PMTA 2020-001.

Results of the 2019 Filing Season: The Treasury Inspector General for Tax Administration (TIGTA) released an audit report detailing the results of the 2019 income tax filing season. TIGTA made 15 recommendations to the IRS, including the need to establish processes to identify potential false moving expense deduction and casualty and theft loss deduction claims at the time tax returns are filed. IRS management agreed with all but two of the recommendations and has taken (or plans to take) corrective actions. (Management partially agreed with the other two recommendations.) Highlights of the report can be found at www.treasury.gov/tigta/auditreports/2020reports/202044007_oa_highlights.html.

Other Current Releases

Income Tax—IRS Issues Final Regulations on Personal Use of Employer-provided Vehicles: The IRS has issued final regulations (TD 9893) on the fleet-average and vehicle cents-per-mile valuation rules for employer-provided vehicles. The final rules reflect changes made by the Tax Cuts and Jobs Act (TCJA) to the depreciation limits in IRC Sec. 280F and formalize guidance found in Notices 2019-8 and 2019-34. Effective for the 2018 calendar year, the final regulations increase 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). 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. The final regulations, which adopt without substantive change regulations proposed in August 2019, apply to tax years beginning on or after 2/5/20. However, taxpayers may choose to apply the regulations beginning on or after 1/1/18. Reg. 1.61-21.

Income Tax—Upcoming Deadline for Disaster Area Charitable Gift Rule: IRC Sec. 170(b)(1) limits an individual's charitable contribution deduction based on AGI, while IRC Sec. 170(b)(2) limits charitable deductions for corporations based on their taxable income. The Taxpayer Certainty and Disaster Tax Relief Act of 2019 suspended these limitations for contributions made for relief efforts in 2018–2019 qualified disaster areas (meaning such contributions are allowed up to 100% of the taxpayer's contribution base). To qualify as a *2018–2019 qualified disaster contribution*, four requirements must be met: (1) the contribution is paid during the period beginning 1/1/18 through 2/18/20 in cash to a 50% charity; (2) the contribution is made for relief efforts in a qualified disaster area; (3) the taxpayer obtains from the donee organization a contemporaneous written acknowledgment that the contribution was used for relief efforts in the qualified disaster area; and (4) the taxpayer elects to treat the contribution as a 2018–2019 qualified disaster contribution. Therefore, taxpayers have until 2/18/20 to take advantage of this provision. P.L. 116-94.

IRS Launches New Identity Theft Website: The IRS has launched "Identity Theft Central," a new website devoted to identity theft and data security for taxpayers, tax professionals, and businesses. Available 24/7, the site provides resources on reporting identity theft and guarding against phishing, online scams, and more. Specifically, the site (1) lists steps to take if you become a victim of identity theft; (2) summarizes the responsibilities of tax professionals under the law; and (3) instructs businesses on how to recognize the signs of identity theft. Also, the page features videos on key topics that can be used by taxpayers or partner groups. The IRS encourages tax professionals to bookmark the site and periodically check the guidance for updates. Identity Theft Central can be accessed at www.irs.gov/identity-theft-central. News Release IR 2020-27 .

Procedure—Postmark Rule Did Not Apply to Late-filed Tax Return Requesting a Refund: A tax return is generally deemed to have been filed when the IRS receives the return. However, under the postmark rule, a tax return is deemed to have been filed on the date of mailing, but only if the postmark date is before the due date of the return [IRC Sec. 7502(a)(2)]. In addition, a refund cannot exceed the portion of the tax paid within the previous three years plus any extension period (*lookback period*) [IRC Sec. 6511(b)(2)(A)]. The Harrisons filed their 2012 return late and were denied a refund because the IRS calculated the lookback period based on the received date of the late return, not the postmarked date. The IRS claimed that no taxes were paid during the lookback period since the taxpayers mailed their return and it was received two days after the lookback period ended. A Wisconsin District Court agreed, holding that the claim fell outside of the statute of limitations. However, after reviewing the Harrisons' motion for reconsideration, the Court reversed its decision. The IRS failed to address a Second Circuit decision and a revised regulation that justified application of the mailbox rule. *Mark W. Harrison*, 125 AFTR 2d 2020-442 (DC WI).

Tax-exempt Organizations—Application for Tax-exempt Status Must Be Filed Electronically: Effective 1/31/20, organizations must electronically file Form 1023 [Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code] via www.pay.gov . The IRS, however, will provide a 90-day grace period (until 4/30/20) during which it will continue to accept paper versions of Form 1023. (The filing must be postmarked on or before 4/30/20.) According to the IRS, the new electronic filing requirement will reduce errors and provide a smoother application process for charitable organizations. In addition, the IRS expects the electronic Form 1023 benefits to mirror those realized when Form 1023-EZ [Streamlined Application for Recognition of Exemption

Under Section 501(c)(3) of the Internal Revenue Code] went online in 2014. Applicants filing Form 1023 will need to submit the required user fee, which is $600 for 2020. News Release IR 2020-25 and Rev. Proc. 2020-8 .

Tax Shelters—Acceptance of Settlements for Abusive Microcaptive Insurance Transactions: The IRS announced the overwhelming acceptance of a time-limited settlement offer made to certain taxpayers under audit who participated in abusive microcaptive insurance transactions. Nearly 80% of taxpayers who received offer letters elected to accept the settlement terms. In addition, the IRS is establishing 12 new examination teams that are expected to open audits related to thousands of taxpayers in coming months. "The overwhelming acceptance rate of the private settlement offer is a reflection of the success of the government's work to stop this abuse," IRS Commissioner Chuck Rettig said. "Taxpayers who elected to accept the IRS' terms have done the right thing by coming into compliance with their federal tax obligations and putting this behind them. Putting an end to abusive schemes is a high priority for the IRS." Taxpayers and advisors are reminded that disclosure of participation in microcaptive insurance transactions is required with the IRS Office of Tax Shelter Analysis under Notice 2016-66. News Release IR 2020-26 .

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