



Five-Minute Tax Briefing[®]

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Highlights

IRS Explains Effect of Government Shutdown on Operations: The IRS has released a series of frequently asked questions addressing the recent government shutdown's effect on audits, collections, and Tax Court proceedings. The agency has officially reopened following the end of the shutdown and is working hard to resume normal operations. For taxpayers under audit, it may take several business days before IRS auditors are able to make contact. Also, the IRS reminds taxpayers that the lapse in appropriations during the shutdown did not affect federal tax law—failure to file and pay penalties will not be abated for periods during the shutdown. For taxpayers who filed with the Tax Court, the Court is working through its backlog of petitions. As a result, the IRS will only make assessments when the statute of limitation is near expiration. For more information, see www.irs.gov/newsroom/irs-activities-following-the-shutdown.

IRS Postpones End of Tax Transcript Faxing Service: In News Release IR 2018-256, the IRS announced that it intended to stop its tax transcript faxing service on 2/4/19. Instead, tax professionals who contact the Practitioner Priority Service number may, with proper authorization, have an unmasked Wage and Income Transcript deposited into their e-Services secure mailbox. Also, tax professionals may request that an unmasked Wage and Income Transcript be sent to the client's address of record. Concerned that the recent government shutdown may have impeded implementation of the new procedures, the Senate Finance Committee sent the IRS a letter requesting a delay. In response, the IRS released a statement that it will postpone ending the tax

transcript faxing service and "is reviewing options for a new timeframe." The IRS will inform practitioners in advance of the new deadline. e-News for Tax Professionals 2019-1.

IRS Releases Corrected Final Regulations on Qualified Business Income Deduction: The IRS has released corrected final regulations on the new Qualified Business Income (QBI) deduction under IRC Sec. 199A. Included are corrections to the definition and computation of excess Section 743(b) basis adjustments, a correction to the description of a disregarded entity for purposes of IRC Sec. 199A, and other minor edits. The final regulations are effective when published in the Federal Register. However, for tax years ending in calendar year 2018, taxpayers may rely on the final regulations (in their entirety) or the August 2018 proposed regulations (in their entirety). The additional proposed regulations issued in January 2019 (REG-134652-18) would apply to tax years ending after the date they are adopted as final. However, taxpayers may rely on the rules pending their finalization. Regs. 1.199A-1 through -6 and 1.643-1. See NTA-1052 in this issue for more information on the final QBI regulations.

Other Current Releases

Applicable Federal Rates for February: The Section 7520 rate for February 2019 is 3.2%, while the Applicable Federal Rates (AFRs) are as follows (Rev. Rul. 2019-4):

	Annual	Semiannual	Quarterly	Monthly
Short-term (≤ 3 years)	2.57%	2.55%	2.54%	2.54%
Mid-term (> 3 years but ≤ 9 years)	2.63%	2.61%	2.60%	2.60%
Long-term (> 9 years)	2.91%	2.89%	2.88%	2.87%

Income Tax—Automatic Consent Procedures for Section 451(b) Accounting Method

Change: Under IRC Sec. 451(b), as amended by the Tax Cuts and Jobs Act, the all events test for recognizing income is generally met no later than when it's recognized on the taxpayer's applicable financial statement. In Rev. Proc. 2018-60, the IRS provided automatic consent procedures for taxpayers changing their accounting method to comply with IRC Sec. 451(b). In a recent Legal Memorandum, the IRS advised that an accrual-method taxpayer whose present accounting method is impermissible under IRC Sec. 451(b)(1)(C), is eligible to use Rev. Proc. 2018-60 to obtain automatic consent to change its accounting method to comply with IRC Sec. 451(b)(1)(A), if the taxpayer otherwise satisfies the terms and conditions of the Revenue Procedure. The operative rule in IRC Sec. 451(b)(1)(A) includes the requirements of the all events test under IRC Sec. 451(b)(1)(C), so to satisfy IRC Sec. 451(b)(1)(A), a taxpayer also must comply with IRC Sec. 451(b)(1)(C). CCA 201852019.

Income Tax—Payments for Emotional Distress Nondeductible: The taxpayer sued his former employer for breach of contract, antitrust violations, civil conspiracy, failure to pay wages, and wrongful discharge. The parties eventually settled, and the taxpayer received payments for "alleged unpaid wages" and "alleged emotional distress." The taxpayer reported these payments

on his income tax returns, but claimed deductions for legal services, personal injury, and pain and suffering to zero out the emotional distress payments. According to the taxpayer, the emotional distress payments were subject to IRC Sec. 104(a)(2), which excludes from income any damages received because of personal physical injuries or physical sickness. The Tax Court disagreed, holding that emotional distress is not treated as a physical injury or sickness under the statute. The Court also found that the taxpayer's symptoms (insomnia, poor digestion, chronic headaches, etc.) were attributable to emotional distress. Therefore, the settlement payments were fully taxable. *Daniel and Lynn Doyle*, TC Memo 2019-8 (Tax Ct.).

Income Tax—Research Tax Credits Denied: The solely-owned S corporation taxpayer engaged with a tax services provider to perform a tax credit study for the research credit under IRC Sec. 41. The taxpayer filed amended returns, which resulted in refunds issued by the IRS for 2009 and 2010. The IRS filed suit to recover the refunds as erroneous. The taxpayer used the alternative "start-up" base period to calculate the research credit instead of using 1984–1988 as the base period. The IRS argued the taxpayer was not eligible to use the "start-up" base period because its subsidiaries were performing research activities during 1984–1988. The taxpayer countered that there was no evidence that the 1980s base period should apply or that qualified research activities occurred in the 1980s. In granting the IRS summary judgment, the court found that since there was no evidence from which a factfinder might infer that the taxpayer did not engage in qualifying research activities in the 1980s, the taxpayer was not entitled to the tax credit. *Dennis F. Quebe*, 123 AFTR 2d 2019-475 (DC OH).

Income Tax—Transfer of Patent Rights Qualified for Capital Gain Treatment: The taxpayer worked as a broker on behalf of a lead generation services company. In 2006, the taxpayer's broker commissions contract was amended to reflect the assignment of his rights in a patent. The agreement provided that if the company terminated its relationship with the taxpayer, it would pay the equivalent of one month's commission for each year of service provided. In 2007, the relationship was terminated, and the taxpayer reported the severance payments as long-term capital gain under IRC Sec. 1235. The IRS disagreed, claiming that the payments were for some purpose other than transfer of the patent rights. The Tax Court sided with the taxpayer, noting that the payments were intended to compensate the taxpayer for the intellectual property. Therefore, the payments met the requirements for long-term capital gain treatment under IRC Sec. 1235. *Anthony and Beth Meggs*, TC Memo 2019-5 (Tax Ct.).

IRS LB&I Division Releases FY 2019 Focus Guide: The IRS's Large Business and International (LB&I) division has released its *FY 2019 Focus Guide*. In addition to summarizing the IRS's six strategic goals for fiscal years 2018 through 2022, the Guide outlines LB&I's strategic goals for fiscal year 2019. They are (1) improved compliance activities; (2) implementation of major program priorities; (3) workforce hiring and training; (4) improved division operations; and (5) improved internal and external communications. The Guide also notes LB&I's 50 campaigns, which focus on specific issues during the audit process. LB&I is working closely with the IRS's Small Business/Self-employed division on several areas of significant compliance risk, including

syndicated conservation easements and micro captive insurance. The Guide can be accessed at www.irs.gov/pub/irs-utl/FY19_LBI_Focus_Guide.pdf . Publication 5319 (Rev. 2-2019).

IRS Releases Form 8996 for Qualified Opportunity Funds: Added by the Tax Cuts and Jobs Act (TCJA), Qualified Opportunity Funds (QOFs) are entities that invest in certain low-income communities. Recently, the IRS released Form 8996 (Qualified Opportunity Fund), which is filed annually by corporations or partnerships that are organized and operated as a QOF. Part I of the form is used by the entity to certify that it's organized to invest in qualified opportunity zone property. In Part II, the entity reports information regarding the 90% investment standard of IRC Sec. 1400Z-2 . Part III is used to determine if the entity fails to meet the investment standard, and Part IV is used to determine the penalty amount. Form 8996 can be accessed at www.irs.gov/pub/irs-pdf/f8996.pdf .

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