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## Five-Minute Tax Briefing<sup>®</sup>

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### Highlights

**IRS Acquiesces in Result Only to Boston Bruins Case:** In *Jacobs* (148 TC No. 24), the owner of the Boston Bruins contracted with hotels to provide pregame meals to players and team personnel while away from home. The Tax Court held that the expenses were fully deductible as a *de minimis* fringe benefit because the meals were provided at employer-operated facilities. In a recent Action on Decision (AOD), the IRS published its acquiescence in result only with this decision. This means the IRS will follow the Tax Court's decision in cases with the same controlling facts. [**Editor's Note:** The IRS's acquiescence is not surprising since the Tax Cuts and Jobs Act (TCJA) eliminated former IRC Sec. 274(n)(2)(B). For tax years 2018 through 2025, employers can deduct only 50% of the cost of operating a qualified eating facility. After 2025, no deduction is allowed.] AOD 2019-01.

**IRS Issues Safe Harbor for Depreciation of Luxury Autos:** The IRS has issued a safe harbor for determining depreciation deductions for passenger autos that (1) qualify for 100% bonus depreciation and (2) are subject to the Section 280F luxury auto depreciation limits. Specifically, the safe harbor applies to passenger autos (other than leased vehicles) acquired and placed in service after 9/27/17 that qualify for bonus depreciation, have an unadjusted depreciable basis greater than the first-year Section 280F(a)(1)(A)(i) limit, and for which a Section 179 deduction hasn't been taken. Under the safe harbor method, the taxpayer deducts the first-year limit amount (\$18,000 for 2018) in the placed-in-service year. For each succeeding tax year in the recovery

period, the taxpayer multiplies the annual depreciation rate in the applicable optional depreciation table by the remaining adjusted depreciable basis. Any basis remaining after the recovery period is a deductible depreciation expense subject to the Section 280F(a)(1)(B)(ii) limit. Rev. Proc. 2019-13.

**IRS Releases Draft QBI Deduction Form for 2019 Tax Year:** The IRS has released a draft of Form 8995 (Qualified Business Income Deduction Simplified Computation) for the 2019 tax year. For 2018, taxpayers should complete and retain the "2018 Qualified Business Income Deduction—Simplified Worksheet" found on page 37 of the Form 1040 instructions (a separate form isn't attached to the return). Form 8995 roughly follows the simplified worksheet, but allows taxpayers to list up to five qualified trades or businesses. The form also contains separate lines for qualified REIT dividends and publicly traded partnership income or loss. However, the form doesn't help taxpayers calculate their qualified business income. The draft Form 8995 can be accessed at [www.irs.gov/pub/irs-dft/f8995--dft.pdf](http://www.irs.gov/pub/irs-dft/f8995--dft.pdf).

**IRS TE/GE Division Releases Fiscal Year 2019 Program Letter:** The IRS's Tax Exempt and Government Entities (TE/GE) division has released its Fiscal Year 2019 Program Letter, which summarizes the division's plans on executing compliance strategies. Specifically, TE/GE is focused on continually evaluating the following areas: (1) identifying priority compliance issues; (2) using a data-driven approach to select work; (3) referrals, claims, and other casework; (4) controls to address potential noncompliance; (5) determination letters; and (6) the Voluntary Correction Program (VCP). The program letter is available at [www.irs.gov/pub/irs-pdf/p5313.pdf](http://www.irs.gov/pub/irs-pdf/p5313.pdf). Publication 5313.

## Other Current Releases

**Applicable Federal Rates for March:** The Section 7520 rate for March 2019 is 3.2%, while the Applicable Federal Rates (AFRs) are as follows (Rev. Rul. 2019-7):

	Annual	Semiannual	Quarterly	Monthly
Short-term ( $\leq 3$ years)	2.55%	2.53%	2.52%	2.52%
Mid-term ( $> 3$ years but $\leq 9$ years)	2.59%	2.57%	2.56%	2.56%
Long-term ( $> 9$ years)	2.91%	2.89%	2.88%	2.87%

**Employee Benefits—Free Meals Not Furnished for the Convenience of the Employer:** In a recent Technical Advice Memorandum (TAM), the taxpayer provided free meals to all employees, contractors, and visitors. In addition, unlimited snacks and drinks were available in designated areas. According to the taxpayer, offering free meals promoted innovation and collaboration, protected confidential business information, and freed up employees to handle emergencies. The IRS concluded that the value of the meals couldn't be excluded from the employees' gross income under IRC Sec. 119. Meals weren't furnished for the convenience of the employer because (1) the company couldn't substantiate a link between the free meals and their intended purposes and (2)

there was insufficient documentation showing at least half of all employees were furnished meals. However, the IRS held that the value of snacks furnished to employees was excludable as a *de minimis* fringe benefit under IRC Sec. 132(e)(1). TAM 201903017.

**Income Tax—Partnership Entitled to Worthless Debt Deduction:** A real estate developer owned several business entities, two of which were involved in the construction of a mixed-use shopping center. In 2006, the entities obtained a \$2 million bridge loan from an unrelated party. When it appeared the entities would default on the loan, the lender transferred the note to another entity owned by the developer in exchange for a 15% interest in the entity. On its 2011 partnership return, the entity claimed a worthless debt deduction of \$2.9 million for the note. The IRS disallowed the deduction, claiming that the transaction was a capital contribution because the note wasn't a bona fide debt. The Tax Court disagreed, finding a genuine debtor-creditor relationship between the two entities. The Court noted that at the time of the note's transfer, the developer believed the project would succeed and the debt would be repaid. Therefore, the worthless debt deduction was justified. *2590 Associates, LLC*, TC Memo 2019-3 (Tax Ct.).

**IRS Issues Partnership Audit Push-out Election Forms:** Under the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015, a partnership may elect to "push out" final audit adjustments determined at the partnership level within 45 days of the date the Notice of Final Partnership Adjustment (FPA) is mailed by the IRS. If elected, the tax attributable to the adjustments is assessed and collected from the partnership's partners. The IRS has released Form 8988 (Election for Alternative to Payment of the Imputed Underpayment— IRC Section 6226 ) for making the election. Among the requirements, the partnership must indicate whether it is making the election for a general or a specific imputed underpayment, and it must furnish statements to partners (and file an IRS copy) within 60 days of the adjustments in the FPA becoming finally determined. The IRS also has issued Form 8989 (Request to Revoke the Election for Alternative to Payment of the Imputed Underpayment) to request IRS consent to revoke the election. The forms are available at [www.irs.gov/pub/irs-pdf/f8988.pdf](http://www.irs.gov/pub/irs-pdf/f8988.pdf) and [www.irs.gov/pub/irs-pdf/f8989.pdf](http://www.irs.gov/pub/irs-pdf/f8989.pdf) .

**Procedure—New Forms for Partnership Modifications to Imputed Underpayments:** Under the centralized partnership audit regime, adjustments to partnership-related items are determined at the partnership level. The tax attributable to those adjustments is assessed in the form of an imputed underpayment. According to IRC Sec. 6225(c), an imputed underpayment may be modified in certain situations. The IRS has released four new forms to facilitate the modification process. Form 8980 is used by a partnership to request modification of an imputed underpayment. Form 8982 is attached to Form 8980 by the partnership representative to affirm that a relevant partner has either filed amended returns or met alternative requirements. Form 8983 certifies that a relevant partner is either a domestic tax-exempt entity or a foreign partner exempt from tax under IRC Sec. 501(a). Lastly, Form 15028 is used by a publicly traded partnership to request a modification under IRC Sec. 6225(c)(5). The forms can be accessed at [www.irs.gov/forms-instructions](http://www.irs.gov/forms-instructions) .

**Procedure—Partnership Awarded Litigation Costs:** The IRS issued a Final Partnership Administrative Adjustment (FPAA) under the TEFRA regime to a partnership. The partnership challenged the adjustment, claiming that the three-year statute of limitations had passed. A trial court agreed and awarded the partnership over \$300,000 in litigation costs. The IRS appealed, arguing that the partnership wasn't a "prevailing party" because only individual partners can be parties to a TEFRA proceeding. The Federal Circuit disagreed, finding that nothing in the statutory language disqualified the partnership from being a party to the proceeding. The Court also held that the partnership (not the partners) was the real-party-in-interest because the partnership agreement and state law obligated it to pay all litigation costs. Therefore, the trial court's award was affirmed. **[Editor's Note:** For tax years beginning after 2017, the TEFRA rules are repealed and replaced by the centralized partnership audit regime.] *BASR Partnership*, 123 AFTR 2d 2019-691 (CA Fed. Cir.).

**Taxpayer Advocate Releases 2018 Annual Report to Congress:** In her 2018 annual report to Congress, National Taxpayer Advocate (NTA) Nina Olson describes challenges the IRS is facing because of the recent government shutdown. The report encourages Congress to amend the Anti-Deficiency Act to ensure taxpayer protections remain available when the IRS takes enforcement action during (or just prior to) a shutdown. In addition, the report recommends that Congress provide additional multiyear funding to replace the IRS's core information technology. The NTA also released the second edition of *The Purple Book*, which gives 58 legislative recommendations designed to strengthen taxpayer rights and improve tax administration. One recommendation involves requiring the IRS to provide each taxpayer with a "taxpayer receipt" that shows how federal dollars are spent and the taxpayer's own contributions in the forms of taxes paid and tax benefits claimed. The NTA's full report can be accessed at [www.taxpayeradvocate.irs.gov/2018AnnualReport](http://www.taxpayeradvocate.irs.gov/2018AnnualReport) . News Release IR 2019-11 .

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