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Highlights

2020 Standard Mileage Rates: Beginning 1/1/20, the standard mileage rates for cars, vans, pickups, and panel trucks will be 57.5 cents per mile for business purposes, 17 cents per mile for medical or moving purposes, and 14 cents per mile for charitable purposes. However, the rates cannot be used to claim an itemized deduction for unreimbursed employee travel expenses or for moving expenses (except for certain members of the U.S. Armed Forces). The portion of the business standard mileage rate treated as depreciation is 24 cents per mile for 2016, 25 cents per mile for 2017 and 2018, 26 cents per mile for 2019, and 27 cents per mile for 2020. When computing the allowance under a Fixed and Variable Rate (FAVR) plan, the standard vehicle cost cannot exceed $50,400 for autos, trucks, or vans. The same value is used for purposes of the fleet-average and vehicle cents-per-mile valuation rules. Notice 2020-5.

Congress Passes the SECURE Act: Congress has passed the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act) as part of the Further Consolidated Appropriations Act, 2020. The Act, which contains only minor changes from the version passed by the House in 2019, affords individuals more opportunities to increase their savings and makes the retirement system administratively simpler. Among other things, the SECURE Act (1) modifies the requirements for multiple employer plans by allowing otherwise completely unrelated employers to join in the same plan; (2) increases the age after which Required Minimum Distributions (RMD) from certain retirement accounts must begin to 72; (3) makes it easier for long-term, part-time employees to participate in elective deferrals; (4) allows consolidated filings of Form 5500 for similar plans; and (5) allows penalty-free distributions from qualified retirement plans and IRAs for births and adoptions. H.R. 1865. For more information, see NTA-1091 in this issue.

Congress Passes the Taxpayer Certainty and Disaster Tax Relief Act of 2019: Congress has passed the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (the Disaster Act) as part of the Further Consolidated Appropriations Act, 2020. The Disaster Act retroactively extends over 30 Code provisions (including the mortgage insurance premium deduction), generally through 2020. In addition, the Disaster Act provides relief for taxpayers affected by disasters occurring between 1/1/18 and 1/19/20. The Act also repeals the Affordable Care Act's (ACA's) medical device excise tax for sales occurring after 12/31/19, health insurance provider's fee for years beginning after 12/31/20, and high-cost employer-sponsored health coverage tax (commonly referred to as the *Cadillac tax*) for years beginning after 12/31/19. H.R. 1865. See NTA-1091 in this issue for more information.

Tax Filing Season for Individuals Starts January 27: The IRS has announced it will begin accepting and processing individual income tax returns for the 2019 tax year on Monday, 1/27/20. According to the agency, that date was chosen to ensure the security and readiness of key tax processing systems and to address the potential impact of recent tax legislation on 2019 tax returns. Taxpayers are encouraged to e-file their returns so common errors can be flagged and missing information can be avoided. Taxpayers can get free help preparing and filing taxes through IRS Free File online or free tax help from trained volunteers at community sites around the country. News Release IR 2020-2.

Other Current Releases

Applicable Federal Rates for January: The Section 7520 rate for January 2020 is 2%, while the Applicable Federal Rates (AFRs) are as follows (Rev. Rul. 2020-1):

	Annual	**Semiannual**	**Quarterly**	**Monthly**
Short-term (≤ 3 years)	1.60%	1.59%	1.59%	1.58%
Mid-term (> 3 years but ≤ 9 years)	1.69%	1.68%	1.68%	1.67%
Long-term (> 9 years)	2.07%	2.06%	2.05%	2.05%

Employee Benefits—Covered Compensation Tables Published for the 2020 Plan Year: The IRS has published tables of covered compensation for the 2020 plan year. These tables are used in calculating contributions to defined benefit plans and permitted disparity under IRC Sec. 401(l)(5)(E). The permitted disparity rules allow employees to receive a larger allocation of contributions to the extent their compensation exceeds the taxable Social Security wage base without violating the nondiscrimination rules. The 2020 taxable wage base for purposes of determining covered compensation is $137,700. Rev. Rul. 2020-2.

Health Care—Fifth Circuit Agrees That ACA's Individual Mandate Is Unconstitutional: The Fifth Circuit has affirmed a Texas District Court's ruling that the individual mandate of the Affordable Care Act (ACA) is unconstitutional. After finding that the parties had standing to challenge the ACA, the Court held that the individual mandate is unconstitutional because it can no longer be read as a tax, and there is no other constitutional provision that justifies this exercise of congressional power. [For months beginning after 2018, the Tax Cuts and Jobs Act (TCJA) reduced the amount of the individual shared responsibility payment to zero.] The Court, however, remanded the case to the District Court for further analysis of what provisions of the ACA are inseverable from the individual mandate. *Texas, et al.*, 124 AFTR 2d 2019-7031 (CA 5).

Income Tax—Donor Egg Recipient Could Exclude Damages from Gross Income: The taxpayer contracted with a clinic to perform in vitro fertilization with a suitable anonymous donor egg. After giving birth, the taxpayer discovered that the child suffered from a certain genetic condition. This led to a lawsuit that claimed the clinic failed to test the donor egg or embryo for the gene that caused the child's condition. Eventually, the taxpayer accepted a lump-sum payment in settlement of her claims. The IRS privately held that the settlement received for personal physical injuries suffered by the child, including the taxpayer's emotional distress attributable to those injuries, was excluded from the taxpayer's gross income under IRC Sec. 104(a)(2) . However, amounts that reimbursed the taxpayer for medical expenses that were incurred and previously deducted were not eligible for the exclusion. Ltr. Rul. 201950004.

Income Tax—IRS Finalizes Qualified Opportunity Zone Regulations: The IRS has released final regulations on investing in Qualified Opportunity Zones (QOZs). The final rules retain the general approach of regulations proposed on 10/28/18 and 5/1/19, but introduce certain modifications. Among other things, the final regulations (1) provide additional guidance on the election to temporarily defer the inclusion of certain eligible gain; (2) address the ability to increase the basis of a qualifying investment to fair market value after 10 years; (3) provide a list of income inclusion events and how to compute the income inclusion amount at the time of the event; (4) clarify how an entity becomes a Qualified Opportunity Fund (QOF) or QOZ business; and (5) provide additional guidance on the QOZ business property rules. According to the IRS, related forms, instructions, and other information needed to take advantage of the final regulations will be made available in January 2020. TD 9889 and News Release IR 2019-212.

Income Tax—IRS Issues Final Regulations on Corporate Spin-offs: The IRS has released final regulations (TD 9888) on tax-free corporate spin-offs under IRC Sec. 355. Specifically, the regulations provide guidance on whether a corporation is a predecessor or successor of a distributing or controlled corporation under IRC Sec. 355(e) , which provides an exception to nonrecognition treatment. In addition, the regulations provide limitations on the recognition of gain in certain cases involving a predecessor of a distributing corporation. The final rules also address when IRC Sec. 355(f) causes a distributing corporation (and its shareholders, in certain cases) to recognize income or gain on the distribution of stock or securities of a controlled corporation. The final regulations, which largely adopt regulations proposed in 2016, apply to distributions occurring after 12/15/19. Reg. 1.355-8.

Income Tax—IRS Issues Proposed Regulations on Executive Compensation Deduction Limit: An employer's compensation deduction may be limited by IRC Sec. 162(m) , which generally provides a deduction limit of $1 million for compensation paid by a publicly held corporation during any tax year to a covered employee. Recently, the IRS issued proposed regulations (REG-122180-18) that would implement amendments made to IRC Sec. 162(m) by the Tax Cuts and Jobs Act (TCJA). The proposed rules, which expand upon prior guidance issued by the IRS in Notice 2018-68 , would clarify the definition of a *publicly held corporation*, *publicly traded partnership*, and *affiliated group*. Also, in light of comments received on Notice 2018-68, the IRS has included numerous examples in the proposed regulations that would illustrate the updated rules. The proposed regulations would generally apply to tax years beginning on or after the date they are published as final in the Federal Register. Prop. Regs. 1.162-27, 1.162-33 , and 1.338-1.

Income Tax—IRS Releases Proposed Regulations on Payments to Charitable Entities: The IRS has issued proposed regulations that would amend current regulations under IRC Secs. 162, 164 , and 170. Specifically, the proposed regulations would update existing regulations to reflect current law regarding the application of IRC Sec. 162 to a taxpayer who makes a payment or transfer to a Section 170(c) entity for a business purpose. In addition, the proposed regulations would provide safe harbors under (1) IRC Sec. 162 for payments made by business entities to a Section 170(c) entity and (2) IRC Sec. 164 for payments made to a Section 170(c) entity by individuals who itemize deductions and receive (or expect to receive) a state or local tax credit in return. Lastly, the proposed regulations would update the Section 170 regulations to reflect past guidance and case law regarding the application of the *quid pro quo* principle to benefits received (or expected to be received) by a donor from a third party. REG-107431-19.

Income Tax—Partnership to Deduct a Worthless Interest in Family-owned Business: The taxpayer, MCM Investment Management, LLC (MCMIM), was owned by four family members (Class A members). MCMIM was a managing member in McMillin Companies, LLC (Companies), a real estate development and sales business, and held a 20% share. The other 80% was owned by the Class A members. MCMIM acquired a preferred equity interest in Companies with subordinated debt. When Companies became a going concern, MCMIM's interest had no liquidation value. Although Companies' balance sheet indicated solvency, MCMIM's interest was subordinate to a senior debt obligation and preferred partnership interests. The Tax Court held that MCMIM was entitled to claim a loss deduction under IRC Sec. 165(a) because its interest in Companies (1) ceased to have liquidating value and (2) lacked potential future value. *MCM Investment Management, LLC*, TC Memo 2019-158 (Tax Ct.).

Income Tax—QBI Deduction Not Allowed on Substitute Returns: Under IRC Sec. 6020(b), the IRS is authorized to independently prepare a substitute return for a taxpayer who has failed to file a tax return. Recently, the IRS's Small Business/Self-employed (SB/SE) division issued an internal memorandum concluding that the IRS will not allow the Qualified Business Income (QBI) deduction under IRC Sec. 199A on a substitute return. This is because the deduction is subject to multiple limitations, including those based on the taxpayer's trade or business, its W-2 wages, and the unadjusted basis immediately after acquisition of qualified property. However, if the taxpayer subsequently files a delinquent tax return that includes the QBI deduction, the IRS will consider the deduction following the same policies for other items included on the filed return. More information is available at www.irs.gov/pub/foia/ig/sbse/sbse-04-1219-0054.pdf. SBSE-04-1219-0054.

IRS Issues Proposed Regulations on Misdirected Direct Deposit Refunds: Enacted on 7/1/19, the Taxpayer First Act of 2019 (TFA) requires the IRS to propose regulations (no later than 1/1/20) that establish procedures to allow for (1) taxpayers to report instances in which a refund was not electronically transferred to their account; (2) coordination with financial institutions to identify and recover the transferred amounts; and (3) the delivery of the refund to the correct account [IRC Sec. 6402(n)]. Recently, the IRS fulfilled its obligation under the TFA by releasing proposed regulations (REG-116163-19) under IRC Sec. 6402(n) . The proposed rules adopt current IRS procedures for the reporting, identification, recovery, and delivery of misdirected direct deposit refunds. The regulations are proposed to apply to claims for refund filed after the date the regulations are published as final in the Federal Register. Prop. Reg. 301.6402-2.

IRS Launches Income Tax Withholding Assistant for Employers: The IRS has unveiled the "Income Tax Withholding Assistant for Employers," a spreadsheet-based tool designed to help employers easily transition to the redesigned withholding system. The tool helps facilitate withholding requests from employees who fill out the redesigned Form W-4 for 2020, but it also works for employees whose withholding is based on a prior version of the form. To use the tool, the employer indicates its pay period frequency (weekly, biweekly, monthly, etc.) and enters key information from the employee's Form W-4. After saving a customized copy of the file, the employer can input the employee's gross wage or salary amount for the pay period and the tool will automatically display the correct amount of federal income tax to withhold. The tool can be accessed at www.irs.gov/businesses/small-businesses-self-employed/income-tax-withholding-assistant-for-employers. News Release IR 2019-209 .

IRS Revises Publication 15 and 15-A for 2020: The IRS has issued the 2020 versions of Publication 15 [(Circular E) Employer's Tax Guide] and Publication 15-A [Employer's Supplemental Tax Guide (Supplement to Publication 15, Employer's Tax Guide)]. Publication 15 addresses the redesign of Form W-4 (Employee's Withholding Certificate), which must be used by all new employees in 2020 and all employees who make withholding changes beginning in 2020. Publication 15 no longer includes the percentage method and wage bracket method withholding tables. This information is now found in new Publication 15-T (Federal Income Tax Withholding Methods). Publication 15-T will allow employers to figure withholding based on a Form W-4 for an earlier year, as well as the redesigned 2020 W-4. Both publications address the new 2020 Form 1099-NEC (Nonemployee Compensation), which will be used to report nonemployee compensation paid in 2020. The publications also note that the 2020 Social Security and Medicare tax rates for employers and employees will remain at 6.2% and 1.45%, respectively.

IRS Updates List of "No Rule" Areas: The IRS has updated the list of domestic areas on which it will not issue letter rulings or determination letters. Among other things, the following additions were made to the list: (1) application of the beginning of construction requirement and allocation by a partnership for the Section 45Q carbon oxide sequestration credit; (2) whether gain or loss must be recognized in a transaction involving Voluntary Employees' Beneficiary Associations (VEBAs); and (3) the application of taxes to certain nonexempt trusts under IRC Sec. 4947 . The IRS also has updated its international "no rule" areas. Added to the "will not ordinarily be issued" list is whether an oil or gas working interest is transferred from the U.S. for use in the active conduct of a trade or business for purposes of IRC Sec. 367(a)(3) . Rev. Procs. 2020-3 and 2020-7.

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