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

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### Highlights

**Foreign Housing Cost Exclusions for 2020:** A U.S. citizen (or U.S. resident alien) living abroad can elect to exclude the foreign earned income and housing cost amount from gross income (subject to certain limitations) (IRC Sec. 911). The Section 911 housing cost exclusion is calculated based on the number of days physically present in the foreign location. In addition, the IRS allows a higher housing cost ceiling for taxpayers living in certain high-cost geographic locations (relative to the U.S.). The IRS has released the table of adjusted limitations on housing expenses for 2020 and has indicated that some taxpayers may elect to apply the 2020 limitations to tax years beginning in 2019. Notice 2020-13.

**Interest Rates to Remain the Same for Second Quarter 2020:** The interest rates for tax overpayments and underpayments for the quarter beginning on 4/1/20 will be the same as the prior quarter. For noncorporate taxpayers, the rate for both underpayments and overpayments will be 5%. The 5% rate also applies to estimated tax underpayments for the second quarter of 2020. For corporations, the overpayment rate will be 4%, with a 2.5% rate applicable to overpayments exceeding \$10,000. The underpayment rate for corporations will be 5%, except for large corporate underpayments, which will be 7%. Rev. Rul. 2020-7 and News Release IR 2020-46 .

**IRS Issues Proposed Regulations on Meal and Entertainment Expenses:** The IRS has issued proposed regulations on the business expense deduction for meals and entertainment. The regulations, which generally follow Notice 2018-76 , incorporate the existing definition of

*entertainment* in Reg. 1.274-2(b)(1), with minor modifications to remove outdated language. The regulations also confirm that the nine exceptions in IRC Sec. 274(e) continue to apply to entertainment expenditures under IRC Sec. 274(a). Finally, the proposed rules provide that the term *entertainment* does not include food or beverages unless they are provided at or during an entertainment activity and the costs of the food or beverages are not separately stated from the entertainment costs. The regulations are proposed to apply to tax years that begin on or after the date they are adopted as final. However, taxpayers may rely on the proposed regulations (or the guidance in Notice 2018-76) for expenditures paid or incurred after 12/31/17 until the regulations are finalized. REG-100814-19 and News Release IR 2020-39 .

**U.S. Supreme Court Rules on Allocation of Consolidated Return Refunds:** If a consolidated group is entitled to a tax refund, the IRS will issue the refund as a single payment to the group's designated agent, who then distributes the refund among corporate members. If there's a dispute, and the members don't have a tax allocation agreement in place, some courts use a federal common law rule (known as the *Bob Richards* rule) to resolve the dispute. The rule generally provides that, in the absence of an agreement, a refund belongs to the group member responsible for the losses that produced it. In a unanimous opinion, the U.S. Supreme Court struck down the *Bob Richards* rule, finding that the rule isn't necessary to protect uniquely federal interests. According to the Court, state law is well-equipped to handle disputes involving corporate property rights. *Rodriguez v. Federal Deposit Insurance Corporation* , 125 AFTR 2d 2020-1027 (S. Ct.).

## Other Current Releases

**Employment Tax—Deferred Compensation Payments Subject to Self-employment Tax:** The taxpayer was an independent contractor with Mary Kay. When she turned age 65, the taxpayer began participating in the company's Family Security Program (FSP), which provided 15 years of payments based on her high average tiered sales activity. According to plan documents, the FSP was intended to be a nonqualified deferred compensation arrangement. The IRS argued that payments received by the taxpayer under the FSP were subject to self-employment tax. The taxpayer claimed the FSP payments were for the sale of a capital asset because she had sold her business or goodwill to Mary Kay. The Tax Court sided with the IRS, finding that the FSP payments clearly fit within the statutory framework of the self-employment tax because they were calculated and derived on the basis of the taxpayer's prior work and income activity with Mary Kay. *James and Eileen Dunlap* , TC Summ. Op. 2020-10 (Tax Ct.).

**Health Care—No Statute of Limitations for Employer Shared Responsibility Payment:** Under IRC Sec. 4980H, Applicable Large Employers (ALEs) may be subject to a penalty if they don't offer their full-time employees (and their dependents) the opportunity to enroll in a health plan that provides Minimum Essential Coverage (MEC), or they offer MEC that isn't affordable for the employee or doesn't provide minimum value. A penalty is triggered if any full-time employee obtains a premium tax credit. This is generally known as the *Employer Shared Responsibility*

*Payment (ESRP)*. In a recent Chief Counsel Memorandum (CCM), the IRS concluded that there is no statute of limitations for the ESRP because there is no tax return filed to report an ALE's liability for the ESRP. The filing of Form 1094-C and Form 1095-C is insufficient to begin the running of the statute of limitations because they don't contain sufficient data to calculate the amount of the ESRP that would be owed. CCM 20200801F.

**Income Tax—Guidance on Uniform Capitalization Rules for Farmers:**The IRS issued guidance providing procedures for farmers who have elected out of capitalization rules related to certain plants and want to apply the small business taxpayer exemption in the same tax year. The Tax Cuts and Jobs Act (TCJA) added a provision exempting small business taxpayers from the capitalization rules under IRC Sec. 263A. Unlike the Section 263A(d)(3) election, the small business taxpayer exemption (\$26 million in 2019) does not require the use of the Alternative Depreciation System (ADS) or characterization of certain property as Section 1245 property. Guidance provides procedures for farmers to revoke their election under IRC Sec. 263A(d)(3) and apply the small business taxpayer exemption under IRC Sec. 263A(i) in the same tax year. It also provides procedures for eligible farmers who want to make an election under IRC Sec. 263A(d)(3) in the same tax year that they no longer qualify as small business taxpayers. Rev. Proc. 2020-13 and News Release IR 2020-38 .

**Information Reporting—Certain Foreign Trusts Exempt from Information Reporting:**The IRS has released a Revenue Procedure that exempts certain tax-favored foreign trusts from the Section 6048 reporting requirements. Specifically, the exemption covers certain U.S. individuals' transactions with, and ownership of, foreign trusts that are established and operated exclusively (or almost exclusively) to provide pension or retirement benefits, or to provide medical, disability, or educational benefits. The Revenue Procedure also provides guidance on requesting (1) abatement of penalties that have been assessed or (2) refunds of penalties that have been paid for a failure to comply with the information reporting requirements. The exemption does not affect any reporting obligations under IRC Sec. 6038D (regarding foreign financial assets) or any other provision of U.S. law, including the requirement to file FinCEN Form 114 [Report of Foreign Bank and Financial Accounts (FBAR)]. The Revenue Procedure is effective 3/16/20 and applies to all prior open tax years (subject to the limitation of IRC Sec. 6511). Rev. Proc. 2020-17.

**Tax-exempt Organizations—IRS Audit Guidance on Homeowners' Associations:**The IRS has issued guidance for its auditors summarizing what they should be looking for when conducting an examination of a homeowners' association. For a homeowners' association to be exempt from tax, it must operate exclusively for the promotion of social welfare [ IRC Sec. 501(c)(4) ]. The IRS stated that an essential step in determining whether a homeowners' association qualifies for tax-exempt status is by identifying the community served by the association and assessing whether the community meets the Code's definition. This determination must be based on facts and circumstances. When a homeowners' association (1) serves a community, (2) doesn't provide for exterior maintenance of residences, (3) owns and maintains common areas or facilities for the use and enjoyment of the general public, and (4) offers benefits that tilt in favor of the general public,

the organization will generally qualify as a tax-exempt social welfare organization. The IRS audit tip guidance and be found at [www.irs.gov/government-entities/irc-section-501c4-homeowners-associations](http://www.irs.gov/government-entities/irc-section-501c4-homeowners-associations) .

**Tax-exempt Organizations—IRS Issues Audit Guidance on Private Foundation Self-dealing**

**Excise Tax:** The IRS has released audit guidance to its agents on the private foundation self-dealing excise tax. This guidance discusses transactions such as furnishing goods, services, or facilities between a private foundation and a disqualified person, and how such transactions may, or may not, result in self-dealing that is subject to the excise tax under IRC Sec. 4941(a). The guidance also recommends that IRS employees examining self-dealing issues look at other Code sections because multiple excise taxes can sometimes be applied to the same transaction. The “audit tips” section of the guidance advises IRS employees to consider: (1) touring the foundation's facilities; (2) reviewing pertinent contracts such as lease agreements; (3) examining purchase invoices; (4) interviewing relevant persons, including officers and directors of the foundation; and (5) looking for and questioning transactions that seem like they are out of place or unusual. For more information, see [www.irs.gov/government-entities/private-foundations-self-dealing-irc-4941d1c](http://www.irs.gov/government-entities/private-foundations-self-dealing-irc-4941d1c) .

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