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

**March 26, 2019**

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### Highlights

**IRS Eliminates TIN Disclosure Requirement for Partnership Representatives:** Originally, the 2018 Form 1065 instructions required partnerships to disclose the full Taxpayer Identification Number (TIN) of the Partnership Representative (PR) and designated individual (if applicable). In a recent supplement to the instructions, the IRS has eliminated this requirement. When designating a PR (and designated individual, if applicable) in Schedule B of Form 1065, partnerships may enter all zeros (i.e., 00-0000000 or 000-00-0000) for the TIN. Also, a Preparer Tax Identification Number (PTIN) or Centralized Authorization File (CAF) number may not be used as a TIN to designate a PR or designated individual. These changes will be incorporated into the next revision of the Form 1065 instructions. For more information, see [www.irs.gov/pub/irs-pdf/i1065.pdf](http://www.irs.gov/pub/irs-pdf/i1065.pdf).

**IRS Eliminates Unnecessary Tax Regulations:** The IRS has issued final regulations, based on proposed regulations issued in February 2018 (REG-132197-17), that remove 296 unnecessary tax regulations and amend 79 other regulations to reflect these removals. The proposed regulations were issued pursuant to President Trump's Executive Order (EO) 13777 directing government agencies to establish a Regulatory Reform Task Force to identify existing regulations for repeal or modification, and EO 13789 instructing the Treasury Secretary to review all significant tax regulations issued on or after 1/1/16 to alleviate regulatory tax burdens. The final regulations are effective 3/14/19. TD 9849.

**Tax Relief for Victims of Alabama Storms:** The IRS has provided tax relief for victims of recent tornadoes and severe storms in Alabama. The relief postpones various tax filing and payment deadlines that occur starting on 3/3/19. Affected individuals and businesses now have until 7/31/19 to file returns and pay any taxes that are originally due during the relief period. This includes quarterly estimated income tax payments, returns for calendar-year tax-exempt organizations, and quarterly payroll and excise tax returns. In addition, penalties on payroll and excise tax deposits due on or after 3/3/19 and before 3/18/19 will be abated as long as the deposits are made by 3/18/19. The relief is automatically available to any taxpayer with an IRS address of record located in an area designated by FEMA as qualifying for individual assistance. News Release IR 2019-31.

**TIGTA Assesses IRS's Implementation of the QBI Deduction:** According to the IRS, approximately 23.7 million taxpayers may be eligible for the Qualified Business Income (QBI) deduction. In a recent report, the Treasury Inspector General for Tax Administration (TIGTA) assessed the IRS's implementation of the deduction. TIGTA found that the IRS took proactive steps in this area, including establishing an implementation team, creating an action plan, and developing a communication strategy. However, the agency was unable to develop a tax form for the QBI deduction for the 2018 tax year. Near the completion of TIGTA's fieldwork, the IRS prepared a computer programming request to identify and/or reject returns when the deduction exceeds 20% of taxable income. TIGTA made certain recommendations to improve implementation of the QBI deduction, and IRS management has agreed to take corrective action. The full report can be accessed at [www.treasury.gov/tigta/auditreports/2019reports/201944022fr.pdf](http://www.treasury.gov/tigta/auditreports/2019reports/201944022fr.pdf).

## Other Current Releases

**Applicable Federal Rates for April:** The Section 7520 rate for April 2019 is 3%, while the Applicable Federal Rates (AFRs) are as follows (Rev. Rul. 2019-8):

	Annual	Semiannual	Quarterly	Monthly
Short-term ( $\leq 3$ years)	2.52%	2.50%	2.49%	2.49%
Mid-term ( $> 3$ years but $\leq 9$ years)	2.55%	2.53%	2.52%	2.52%
Long-term ( $> 9$ years)	2.89%	2.87%	2.86%	2.85%

**Employee Benefits—Covered Compensation Tables Published for 2019 Plan Year:** The IRS has published tables of covered compensation for the 2019 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 2019 taxable wage base for purposes of determining covered compensation is \$132,900. Rev. Rul. 2019-6.

**Estate Tax—Estate's Charitable Deduction Reduced to Postdeath Value:** In *Estate of Dieringer* (146 TC 117), shares of a decedent's stock in a closely-held corporation, valued at the date of death at \$14.2 million, would pass to a charitable foundation. However, following decedent's death, the corporation elected S corporation status and redeemed most of the shares for notes totaling approximately \$5.2 million. The foundation subsequently received the notes and the remaining shares. The Tax Court held that the charitable deduction should be based on what the foundation actually received, at the discounted value. The Ninth Circuit affirmed, noting that while Reg. 20.2055-1(a) provides a deduction for the value of property included in a decedent's gross estate transferred to certain charitable or government organizations, the executor, who was also the trustee of the foundation, manipulated the deduction so that the foundation only received a fraction of the deduction claimed by the estate. *Dieringer*, 123 AFTR 2d 2019-XXXX (CA 9).

**Health Care—All Social Security Benefits Are Considered for Premium Tax Credit:** In 2014, the taxpayer enrolled in an ACA health insurance marketplace plan and received monthly advanced Premium Tax Credit (PTC) payments under IRC Sec. 36B to cover a portion of the cost. Also in 2014, the taxpayer received Social Security benefits in a lump sum, relating to both 2013 and 2014. The IRS assessed a deficiency of excess advanced PTC payments, determining the Social Security benefits put the taxpayer over the income limit under IRC Sec. 36B(c)(1). The taxpayer then amended the 2014 tax return to make a Section 86(e) election. This election limits the amount of prior-year Social Security benefits included in gross income in a subsequent year to not exceed the increase in gross income that would have resulted if the amount had been received in the prior year. The amended return reported a reduced deficiency amount from the election. However, the Tax Court ruled that, for purposes of the PTC, the total amount of Social Security benefits received in a tax year is included in gross income to determine PTC eligibility, regardless of a Section 86(e) election. *Levon Johnson*, 152 TC No. 6 (Tax Ct.).

**Income Tax—IRS Suspends Two Spin-off Rulings Pending Study:** In Rev. Rul. 57-464, the IRS held that ownership of a storage building and certain rental activities didn't meet the Section 355 Active Trade or Business (ATB) requirement for a tax-free spin-off. Similarly, in Rev. Rul. 57-492, the IRS held that an oil exploration and production operation failed to qualify as an ATB. These rulings imply that income generation is needed for a business to meet the ATB requirement. In a recent Revenue Ruling, the IRS suspended Rev. Ruls. 57-464 and 57-492 pending completion of a special study. The purpose of the study is to determine whether a business can qualify as an ATB if entrepreneurial activities, as opposed to investment or other nonbusiness activities, take place with the purpose of earning income in the future, but no income has yet been collected. Rev. Rul. 2019-9 .

**Income Tax—Struggling Sole Proprietor Able to Deduct Mortgage Interest:** The taxpayer was the sole proprietor of a software development company. In 2005 and 2006, he took out a mortgage to purchase two vacant lots that would serve as the business's headquarters. However, after losing a major customer, the business sold some of the undeveloped properties. On his 2010 and 2011 income tax returns, the taxpayer deducted mortgage interest on a Schedule C. The IRS disallowed

the deductions, claiming that (1) the deduction was limited to investment income (which was zero) or (2) the expense was nondeductible personal interest. The Tax Court disagreed with the IRS, holding that the properties were allocable to the taxpayer's trade or business. Therefore, the mortgage interest deduction was properly taken into account in computing the taxpayer's adjusted gross income. *Thad Pugh*, TC Summ. Op. 2019-2 (Tax Ct.).

**IRS Dirty Dozen List Includes Abusive Tax Shelters:** In a recent News Release, the IRS has announced that using abusive tax shelters and structures to avoid taxes remains on the "Dirty Dozen" list of tax scams to avoid for 2019. The agency is focusing on three schemes that distort legitimate tax planning tools to produce benefits that are too good to be true. The first scheme uses multiple layers of trusts and offshore shell companies to hide the true ownership of assets and income or to disguise the substance of transactions. The second scheme relies on abusive micro captive insurance companies. The last scheme involves using syndicated conservation easements to obtain charitable contribution deductions and corresponding tax savings that significantly exceed the amount a taxpayer invested. The IRS reminds taxpayers who participate in these schemes that they may face prosecution, civil litigation, and stiff penalties. News Release IR 2019-47.

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