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

**September 10, 2019**

**No. 2019-17**

### Highlights

**Extended Temporary Relief for Closed Defined Benefit Plans:** In a Notice, the IRS has given another year of relief to certain closed defined benefit pension plans (i.e., defined benefit plans providing ongoing accruals that have been amended to limit those accruals to some or all of the employees who participated in the plan on a specific date). Eligible employers that sponsor a closed defined benefit plan and a defined contribution plan can comply with the nondiscrimination requirements of IRC Sec. 401(a)(4) on the basis of equivalent benefits even if the combined plans don't satisfy the current conditions for testing on that basis. The temporary nondiscrimination relief provided in Notice 2014-5 has now been extended to plan years beginning before 2021. Notice 2019-49 .

**Interest Rates Remain the Same for Fourth Quarter 2019:** The interest rates for tax overpayments and underpayments for the quarter beginning on 10/1/19 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 fourth quarter of 2019. 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%. News Release IR 2019-146 and Rev. Rul. 2019-21 .

**IRS Can Require Form 945 Filers to Use Same EIN on Related Information Returns:** In a recent Program Manager Technical Advice (PMTA), the IRS noted that certain payors have been

reporting and remitting backup withholding on Form 945 (Annual Return of Withheld Federal Income Tax) using one Employer Identification Number (EIN), but filing related information returns (Form 1099 and Form W-2G under a different EIN (such as the EIN of a parent or related entity). According to the IRS's Office of Chief Counsel, the IRS has the statutory authority to require taxpayers to use the same EIN on Form 945 and related information returns. This authority is pursuant to IRC Secs. 6011(b) and 6109(a), which grant the IRS discretionary authority to require the use of whatever identifying number is deemed necessary or helpful for the proper identification of a taxpayer, employer, employee, or other person. PMTA 2019-10.

**IRS Provides GILTI Relief for Certain Partnerships and S Corporations:** In October 2018, the IRS issued proposed regulations on Global Intangible Low-taxed Income (GILTI) that provided a hybrid approach to the treatment of a domestic partnership that is a U.S. shareholder of a Controlled Foreign Corporation (CFC). The June 2019 final regulations, however, did not adopt the hybrid approach. Recognizing that many partnerships and S corporations filed returns consistent with the proposed regulations before the final rules were issued, the IRS is offering relief. Specifically, certain domestic partnerships and S corporations may apply the rules in the October 2018 proposed regulations for tax years ending before 6/22/19. In addition, certain penalties that might otherwise apply to domestic partnerships or S corporations that acted consistently with the proposed regulations prior to 6/22/19 do not apply. The IRS intends to formalize this relief in forthcoming regulations. Notice 2019-46.

## Other Current Releases

**Health Care—Annual Fee on Health Insurance Providers for 2020:** Section 9010 of the Affordable Care Act (ACA) imposes an annual fee on covered entities engaged in the business of providing health insurance for U.S. health risks. The fee, also known as the *applicable amount*, is a fixed amount allocated among all covered entities in proportion to their relative market share as determined by each entity's net premiums written for the data year. The fee, which was suspended by P.L. 115-120 for 2019, will resume in 2020 absent legislative action. According to the IRS, the applicable amount for 2020 is \$15,522,820,037. This was determined by multiplying the fee for the 2018 base year (\$14,300,000,000) by the premium adjustment percentage for 2020 (1.0855118907), rounded to the nearest dollar. Notice 2019-50.

**Income Tax—Inherited Partnership Interests Not Subject to Investment Interest Limit:** The taxpayer acquired interests in four partnerships by gift or bequest from his father. Prior to the transfers, the father received debt-financed distributions from the partnerships. After receiving the interests, the taxpayer treated his distributive shares of partnership interest expense as fully deductible against his allocations of partnership income. The IRS argued that the taxpayer should have stepped into the shoes of his father and reported the expense on Form 1040, Schedule A as investment interest subject to the Section 163(d) limit. The Tax Court disagreed, holding that the taxpayer made a debt-financed *acquisition* of the partnership interests he received from his father.

Because the taxpayer did not receive the proceeds of the partnerships' debts, interest expense passed through to him was not investment interest under IRC Sec. 163(d). *William and Dale Lipnick*, 153 TC No. 1 (Tax Ct.).

**Income Tax—IRS Issues Proposed Regulations on Advance Payments:**The IRS has issued proposed regulations (REG-104554-18) under IRC Sec. 451(c) , which allows accrual method taxpayers to elect to defer a portion of the income associated with certain advance payments. The proposed regulations, which reflect changes made by the Tax Cuts and Jobs Act (TCJA), provide separate deferral methods of accounting for taxpayers that have an Applicable Financial Statement (AFS) and those that don't. Under the AFS deferral method, taxpayers must include (1) the advance payment in income in the tax year of receipt (to the extent it's recognized as revenue in an AFS) and (2) the remaining amount of the advance payment in income in the next tax year. Under the non-AFS deferral method, taxpayers must include (1) the advance payment in income in the tax year of receipt (to the extent it's earned) and (2) the remaining amount of the advance payment in income in the next tax year. Prop. Reg. 1.451-8.

**Income Tax—IRS Issues Proposed Regulations on Income Inclusion:**The IRS has issued proposed regulations (REG-104870-18) under IRC Sec. 451(b) , which provides that the all events test for recognizing income under the accrual method of accounting is generally met no later than when it's recognized on the taxpayer's Applicable Financial Statement (AFS). The proposed regulations, which reflect changes made by the Tax Cuts and Jobs Act (TCJA), clarify that the AFS income inclusion rule generally applies to accrual method taxpayers with an AFS when the timing of income inclusion for one or more items of income is determined using the all events test. The proposed rules also clarify that the AFS income inclusion rule applies only to taxpayers that have one or more AFS covering the entire tax year. The regulations, however, don't include special rules regarding the applicability of the AFS income inclusion rule to foreign persons. Prop. Reg. 1.451-3.

**IRS Releases Draft Instructions for Simplified QBI Form:**The IRS has released draft instructions for Form 8995 (Qualified Business Income Deduction Simplified Computation). Individuals, estates, and trusts may use the form to calculate their Qualified Business Income (QBI) deduction under IRC Sec. 199A if (1) their 2019 taxable income before the QBI deduction is less than or equal to \$160,700 (\$160,725 if married filing separately; \$321,400 if married filing jointly) and (2) they aren't a patron in a specified agricultural or horticultural cooperative. (Taxpayers not meeting those criteria must use Form 8995-A to compute their QBI deduction.) The draft instructions clarify that QBI is comprised of all items that relate to a qualified trade or business, including charitable contributions, unreimbursed partnership expenses, business interest expense, the deductible part of self-employment tax, the self-employment health insurance deduction, and contributions to qualified retirement plans. The draft instructions can be accessed at <https://apps.irs.gov/app/picklist/list/draftTaxForms.html>.

**Penalties—Photocopies of Amended Return Not Subject to Frivolous Return Penalty:**In April 2015, the taxpayer timely filed a joint return that reported a tax liability arising principally from her

wages. In September 2015, she filed an amended return that claimed she had not received "privileged, taxable wages." The IRS concluded that the position was frivolous and imposed a \$5,000 penalty under IRC Sec. 6702(a). The taxpayer responded six separate times with a letter and a photocopy of the amended return. In response, the IRS took the position that the taxpayer had filed seven frivolous returns and imposed six additional penalties. The Tax Court held that the six photocopies did not purport to be tax returns and were not subject to the frivolous return penalty. However, the Court found that (1) the taxpayer had filed one frivolous return and (2) the IRS followed required procedures in imposing the penalty. *Gwendolyn Kestin*, 153 TC No. 2 (Tax Ct.).

### **Procedure—Cross-collateralization Clause Doesn't Invalidate Purchase Money**

**Mortgage:** IRC Sec. 6323 outlines the validity and priority of a federal tax lien against certain persons. In Rev. Rul. 68-57, the IRS concluded that a purchase money security interest or mortgage valid under local law is protected even though it may arise after a notice of federal tax lien has been filed. In a recent Chief Counsel Advice (CCA), the IRS was asked whether a cross-collateralization clause in a deed of trust prevents a security interest from being classified as a purchase money mortgage. A *cross-collateralization clause* is a provision wherein the mortgage secures not only a specifically described obligation, but also all other obligations between the mortgagor and the holder. The IRS concluded that such a clause wouldn't invalidate an otherwise valid purchase money mortgage. However, the extent of the purchase money security interest would be limited to the amount of the purchase money and associated interest. CCA 201933010 .

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