



PREVIEW ISSUE - No. 2020-12

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Item for Thursday, June 18, 2020

IRS FAQs Address NOL Carrybacks of Certain Exempt Organizations: The IRS has published a list of Frequently Asked Questions (FAQs) that addresses the carryback of NOLs by certain tax-exempt organizations under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The FAQs provide that in determining the Unrelated Business Taxable Income (UBTI) of an exempt organization with more than one unrelated trade or business in a tax year beginning after 12/31/17, CARES Act NOLs (i.e., those arising in tax years 2018-2020) must be siloed so that each unrelated trade or business calculates its NOL separately. However, an exempt organization with CARES Act NOLs may carry back and deduct those NOLs against aggregate UBTI in a tax year beginning before 1/1/18. If any CARES Act NOLs remain after being carried back to tax years beginning before 1/1/18, they may not be deducted against aggregate UBTI in tax years beginning after 12/31/17. For more information, see www.irs.gov/newsroom/faqs-carryback-of-nols-by-certain-exempt-organizations .

Item for Wednesday, June 17, 2020

Economic Impact Payments Don't Belong to Nursing Homes or Care Facilities: The IRS has alerted nursing homes and other care facilities that Economic Impact Payments (EIPs) generally

belong to the recipients, not the organizations providing the care. This is the case even if a nursing home or other facility or provider receives the individual's payment, either directly or indirectly by direct deposit or check. EIPs don't count as a resource for purposes of determining eligibility for Medicaid and other federal programs for a period of 12 months from receipt. Also, the IRS has noted that EIPs don't count as resources that must be turned over by benefit recipients, such as residents of nursing homes whose care is provided for by Medicaid. EIPs are considered a tax refund for benefits purposes because they're an advance refund for 2020 taxes. The IRS's announcement reflects concerns that people and businesses may be taking advantage of vulnerable populations that received EIPs. News Release IR 2020-121.

Item for Tuesday, June 16, 2020

Applicable Federal Rates for July: The Section 7520 rate for July 2020 is 0.6%, while the Applicable Federal Rates (AFRs) are as follows (Rev. Rul. 2020-14):

	Annual	Semiannual	Quarterly	Monthly
Short-term (≤ 3 years)	0.18%	0.18%	0.18%	0.18%
Mid-term (> 3 years but ≤ 9 years)	0.45%	0.45%	0.45%	0.45%
Long-term (> 9 years)	1.17%	1.17%	1.17%	1.17%

Item for Monday, June 15, 2020

Installment Agreement Denied Due to Cryptocurrency Holdings: The taxpayers, the Strashnys, timely filed their 2017 tax return without paying the tax due. In June 2018, the IRS assessed the approximately \$1.1 million amount due (including a failure to pay penalty). In July 2018, the Strashnys sent the Form 9465 (Installment Agreement Request), requesting to pay the 2017 balance due over a six-year period. In requesting a Collection Due Process (CDP) hearing in response to IRS Notice CP90, the Strashnys expressed their continued interest in an Installment Agreement (IA) and claimed a levy notice should not have been sent before the IA was addressed. During the CDP hearing, the settlement officer noted that no actual levy could occur until the IA was rejected and the Strashnys had more than \$200,000 in annual wages and were drawing \$19,000 a month from their \$7 million cryptocurrency holdings. The Tax Court ruled that the Strashnys could pay in full immediately and had not shown any hardship or special circumstances to warrant an installment agreement. *Alexander Strashny, et ux.*, TC Memo 2020-82 (Tax Ct.).

Item for Friday, June 12, 2020

Employer Leave-based Donation Programs for COVID-19 Victims: In response to the need to provide relief to victims of the COVID-19 pandemic, many employers are considering leave-based donation programs. Under these programs, employees may elect to forgo vacation, sick, or personal leave in exchange for employer contributions to charitable organizations. In a recent Notice, the IRS announced that cash payments made by an employer under a leave-based

donation program will not constitute employee wages if they are paid before 1/1/21 to Section 170(c) organizations for the relief of COVID-19 victims. In addition, the IRS will not assert that the opportunity to participate in a leave-based donation program results in constructive receipt of gross income or employee wages. Leave-sharing donations don't need to be included in Box 1, 3, or 5 of Form W-2, and employers may deduct the payments as a Section 162 business expense or as a charitable contribution under IRC Sec. 170. Notice 2020-46.

Item for Thursday, June 11, 2020

IRS Issues Proposed Regulations on Like-kind Exchanges: Thanks to the Tax Cuts and Jobs Act (TCJA), the Section 1031 like-kind exchange rules are limited (subject to a transition rule) to exchanges of real property completed after 12/31/17. Recently, the IRS released proposed regulations that reflect this change. Specifically, the proposed rules would amend existing regulations to add a definition of *real property*. According to the IRS, this definition is consistent with legislative intent and includes (1) real property eligible for like-kind exchange treatment under pre-TCJA law and (2) shares in a mutual ditch, reservoir, or irrigation company described in IRC Sec. 501(c)(12)(A) if the state in which the company is organized views the shares as real property. In addition, the proposed regulations would provide a rule addressing a taxpayer's receipt of personal property that is incidental to real property received in the exchange. Taxpayers may rely on the proposed regulations, if followed consistently and in their entirety, for exchanges of real property beginning after 12/31/17 and before the final regulations are published. REG-117589-18 .

Item for Wednesday, June 10, 2020

IRS Issues Proposed Regulations on Certain Medical Care Arrangements: The IRS has issued proposed regulations (REG-109755-19) on the treatment of amounts paid for certain medical care arrangements, including Direct Primary Care (DPC) arrangements, Health Care Sharing Ministry (HCSM) memberships, and certain government-sponsored health care programs. Specifically, the proposed regulations would treat payments for DPC arrangements as expenses for medical care under IRC Sec. 213. Because of this, a Health Reimbursement Arrangement (HRA) provided by an employer would generally be able to reimburse an employee for DPC arrangement payments. Similarly, payments for membership in an HCSM would be treated as Section 213 medical care expenses. Therefore, an HRA provided by an employer would generally be able to reimburse an employee for HCSM membership payments. The regulations are proposed to apply to tax years that begin on or after the date they are adopted as final. Prop. Reg. 1.213-1 and News Release IR 2020-116 .

Items for Tuesday, June 9, 2020

President Trump Signs Paycheck Protection Program Flexibility Act: On 6/5/20, President Trump signed the Paycheck Protection Program Flexibility Act (PPPFA) of 2020 (H.R. 7010), which

modifies provisions related to the forgiveness of loans made to small businesses under the PPP. The PPPFA (1) eliminates a CARES Act provision that prevented certain PPP participants from deferring the payment of payroll taxes; (2) requires borrowers to use at least 60% (rather than the original 75%) of PPP funds on payroll costs; (3) gives borrowers 24 weeks (rather than the original eight weeks) to spend PPP funds; (4) pushes back the original 6/30/20 deadline to rehire workers to 12/31/20; (5) provides additional exceptions if a borrower is unable to rehire the required number of employees; and (6) extends the minimum maturity date of the loan (for proceeds that are not forgiven) to five years. The full legislative text of the bill is available at www.congress.gov/bill/116th-congress/house-bill/7010/text .

IRS Proposes Two Methods to Report Partner Tax Basis Capital: The IRS is seeking public comments on a proposed requirement for partnerships to use only one of two alternative methods to report partner tax basis capital accounts for partnership tax years ending on or after 12/31/20. The first method, known as the *modified outside basis method*, requires a partnership to report each partner's basis in his or her partnership interest, reduced by the partner's allocable share of partnership liabilities (as determined under IRC Sec. 752). The second method, known as the *modified previously taxed capital method*, requires a partnership to report each partner's share of previously taxed capital, as calculated under a modified version of Reg. 1.743-1(d) . Partner capital accounts would not be permitted to be reported using any other method, including IRC Sec. 704(b) , GAAP, or a transactional approach. Written or electronic comments on the proposed methods must be received by 8/4/20. Notice 2020-43.

Item for Monday, June 8, 2020

Interest Rates to Decrease for Third Quarter 2020: The interest rates for tax overpayments and underpayments for the quarter beginning on 7/1/20 will decrease from the prior quarter. For noncorporate taxpayers, the rate for both underpayments and overpayments will be 3%. The 3% rate also applies to estimated tax underpayments for the third quarter of 2020. For corporations, the overpayment rate will be 2%, with a 0.5% rate applicable to overpayments exceeding \$10,000. The underpayment rate for corporations will be 3%, except for large corporate underpayments, which will be 5%. Rev. Rul. 2020-13 and News Release IR 2020-113 .

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