Wolters Kluwer

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## INSIDE THIS ISSUE



# Wolters Kluwer Interview: A Two-Part Q&A Series on the Section 199A Deduction (Part 2)

*Republicans' 2017 overhaul of the tax code created a new 20-percent deduction of qualified business income (QBI), subject to certain limitations, for pass-through entities (sole proprietorships, partnerships, limited liability companies, or S corporations). The controversial QBI deduction—also called the "pass-through" deduction—has remained an ongoing topic of debate among lawmakers, tax policy experts, and stakeholders.*

*The Tax Cuts and Jobs Act (TCJA) (P.L. 115-97), enacted at the end of 2017, created the new Section 199A QBI deduction for noncorporate taxpayers, effective for tax years beginning after December 31, 2017. However, under current law the QBI deduction will sunset after 2025. In addition to the QBI deduction's impermanence, its complexity and ambiguous statutory language have created many questions for taxpayers and practitioners.*

*The IRS first released much-anticipated proposed regulations for the new QBI deduction, REG-107892-18, on August 8, 2018. The proposed regulations were published in the Federal Register on August 16, 2018. The IRS released the final regulations and notice of additional proposed rulemaking on January 18, 2019, followed by a revised version of the final regulations on February 1, 2019. Additionally, Rev. Proc. 2019-11, I.R.B. 2019-9, 742, was issued concurrently to provide further guidance on the definition of wages. Also, a proposed Revenue Procedure, Notice 2019-7, I.R.B. 2019-9, 740, was issued, concurrently providing a safe harbor under which certain rental real estate enterprises may be treated as a trade or business for purposes of Section 199A.*

*Wolters Kluwer recently interviewed Tom West, a principal in the passthroughs group of the Washington National Tax practice of KPMG LLP, about the Section 199A QBI deduction regulations. Notably, West formerly served as tax legislative counsel at the U.S. Department of the Treasury's Office of Tax Policy. This article represents the views of the author only and does not necessarily represent the views or professional advice of KPMG LLP.*

*Part 1 of the interview was featured in the previous Issue of the newsletter.*

**Wolters Kluwer:** Neither the proposed nor final regulations for Section 199A give guidance as to when rental real estate activity constitutes a Section 162 trade or business. How might the application of the safe harbor provided for in IRS Notice 2019-7 offer taxpayers clarity? And how might failure to qualify for the safe harbor impact the determination of whether the rental activity is a trade or business under Section 199A?

**Tom West:** The safe harbor is helpful but it appears to be intended for relatively smaller taxpayers who may have had questions about their activities rising to the level of a trade or business. I don't think falling outside of the safe harbor is dispositive—especially in light of the recent policy statement from Treasury regarding sub-regulatory guidance.

**Wolters Kluwer:** Can you speak to the some of the complexity that may be involved in tax planning with respect to achieving the right balance between adequate W-2 wages and QBI?

**Tom West:** Other than for small taxpayers, there is only a benefit under Section 199A if the limitations are met. It does not do any good to have QBI but then have insufficient W-2 wages and qualified property to meet the limitations. So when taxpayers are evaluating what constitutes a qualified trade or business (or whether to aggregate qualified trades or businesses) they

will need to determine the amount of W-2 wages with respect to each QTB. Aligning the W-2 wages with the QTB will be important—but the salary expense will also result in a reduction in the amount of QBI and therefore the amount of any Section 199A benefit—so modeling becomes critical. Consideration should also be given to any collateral consequences—for instance the impact of the alignment on allocation and apportionment for state taxes.

**Wolters Kluwer:** According to a March 18, 2019, Treasury Inspector General for Tax Administration (TIGTA) report, Reference Number: 2019-44-022, IRS management indicated that the timeline related to the issuance of Section 199A guidance did not provide enough time for the IRS to develop a QBI deduction tax form. Although the IRS did create a worksheet, do you have a prediction on what key elements may be included on the new form once released?

**Tom West:** I do think that worksheets could be developed that would facilitate the reporting of Section 199A information—particularly through tiered structures—so as to ease the reporting burden and enhance compliance.

**Wolters Kluwer:** The IRS has estimated that nearly 23.7 million taxpayers may be eligible to claim the Section 199A deduction and that more than 22.2 million (94 percent) of those eligible taxpayers will not require a complex calculation for the deduction. What notable differences do you expect there are between "complex" and the majority of calculations?

**Tom West:** For taxpayers under the Section 199A income thresholds ($157.5K single, $315K joint), the deduction is very easy to calculate and claim. Those taxpayers don't need to worry about being in an SSTB, how much wages they paid, or the basis of their property. Once those taxpayers hit those income thresholds though, even in the phase-out range, things very quickly get complex—and that's as a consequence of the statute; it is not something that the regulators can change.

**Wolters Kluwer:** Do you anticipate the IRS will issue further guidance on the Section 199A deduction?

**Tom West:** I do. As I said at the top, I think part of the government's motivation in finalizing these regulations so quickly was providing guidance to taxpayers ahead of the tax-filing season. And while for the majority of taxpayers who are below the 199A cap there is probably now sufficient guidance, I think there are still a lot of questions for those with more complex situations. Given the number of taxpayers who are eligible for this deduction, and the importance of Section 199A as the big benefit to non-corporate businesses in what the Administration views as a signature legislative achievement, I have to believe that the government will be responsive to taxpayers' requests for additional help on this provision. However, given that the provision is due to sunset, it will be important that any guidance is forthcoming in fairly short order to be of any usefulness to taxpayers.

**Wolters Kluwer:** At this time, do you have any recommendations for taxpayers and practitioners moving forward?

**Tom West:** As people are going through their tax filings this year, I'd keep a list of issues, questions, and areas where additional guidance would be helpful. It often happens that problems with new legislation or regulations don't reveal themselves until taxpayers have to put pencil to paper and track their real-world numbers through returns. We'll all have that experience this year and, with those lists of issues and questions in hand, there may be an opportunity to approach the IRS and Treasury in the hopes of getting resolution going forward. Keeping that list could also help identify areas for tax planning and perhaps ease the complexity of filing for 2019.

# House Approves Bipartisan IRS Reform Bill

*HR 1957*

The House on April 9 approved by voice vote a bipartisan, bicameral IRS reform bill. The IRS bill, which now heads to the Senate, would redesign the IRS for the first time in over 20 years.

## IRS Reform

The Taxpayer First Act of 2019 (HR 1957), as amended, cleared the House Ways and Means Committee by voice on April 2. The House and Senate both introduced the bicameral, bipartisan measure on March 28. If enacted, the bill would make numerous reforms to the IRS, some of which include modernizing antiquated information technology systems and enhancing taxpayer services and identity protections.

"With a new tax code, it is time for a new tax administrator," House Ways and Means Committee ranking member Kevin Brady, R-Tex., said in an April 9 statement. "I applaud the House for passing the Taxpayer First Act—a bold step to redesign the IRS to be an agency with one singular mission: putting taxpayers first."

The IRS Reform bill has been "years in the making," Brady said on April 9, echoing a joint statement that he and Ways and Means Chairman Richard Neal, D-Mass., along with other bipartisan tax writers recently issued. "The House Ways and Means Committee and the Senate Finance Committee have carefully and

**REFERENCE KEY**

**USTC** references are to ***U.S. Tax Cases***
**Dec** references are to ***Tax Court Reports***

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thoughtfully developed this legislation over several years, after numerous hearings and roundtables, in a bipartisan, bicameral manner," the lawmakers said.

## AICPA Applauds Taxpayer First Act

The American Institute of CPAs (AICPA) issued an April 9 statement commending the House for passing HR 1957. "The AICPA appreciates the bipartisan recognition by members of the U.S. House of Representatives for bringing the Internal Revenue Service into the 21st Century," Edward S. Karl, vice president of taxation, said in a statement on behalf of the AICPA. "The AICPA has long been interested in and active in working to find ways to modernize the IRS so that it can better serve the needs of taxpayers and tax practitioners."

## Free File Alliance

However, the bipartisan, bicameral bill has not advanced without its share of criticism. Several Democratic lawmakers have criticized a provision within the bill that would codify the Free File Alliance, which is an agreement between the IRS and certain tax preparation companies that includes the IRS being unable to directly assist in tax return preparation.

"Again and again in my service in the Senate I have battled the tax-preparation software industry to simplify filing taxes for the typical American," Senate Finance Committee (SFC) ranking member Ron Wyden, D-Ore., said in an April 9 statement. "During the debate on the tax administration bill, my staff pushed back on a prohibition on the agency competing with private tax preparation services, and I will continue to push for my proposal for the pre-filed 'simple' return and the principle that a taxpayer should not have to use a private company to pay their taxes online," he added.

## Looking Ahead

It remains unclear when the Senate will take up the Taxpayer First Act bill. However, the bill is presently expected on Capitol Hill to easily be approved in the Senate.

## IRS, Security Summit Partners Show Major Progress Against Identity Theft

The IRS and the Security Summit partners showed major progress in the fight against tax-related identity theft. Further, they also added protection for thousands of taxpayers and billions of dollars, according to their 2018 results.

"The IRS and the Security Summit continue to make tremendous inroads in the battle against identity theft," said IRS Commissioner Charles Rettig. "In 2018, our partnership protected more taxpayers and more tax dollars from tax-related identity theft. At a time when many in the private sector continue to struggle with these issues, the tax community has made major progress working together to stop identity theft and refund fraud," he added.

The key annual indicators of the overall results found that reported and confirmed cases of identity-theft victims dropped by 71 and 54 percent respectively, between 2015 and 2018. Further, the IRS protected a combined $24 billion in fraudulent refunds by stopping the confirmed identity theft returns, whereas financial industry partners recovered an additional $1.4 billion in fraudulent refunds, between the aforementioned period. However, identity thieves continued to change their targets and tactics, targeting businesses and tax professionals. For instance, businesses reporting that they were victims of tax-related identity theft increased by 10 percent for 2018, compared to 2017. More information on identity theft and its prevention could be found at the dedicated identity theft page on the IRS website.

*IR-2019-66*

# Rettig Testifies Before SFC on 2019 Tax Filing Season, IRS Administration

IRS Commissioner Charles "Chuck" P. Rettig told lawmakers that the record-breaking 2019 tax filing season continues to go well, and that modernizing the IRS is one of his top priorities. The Senate Finance Committee (SFC) held an April 10 hearing during which Rettig provided details to lawmakers on this year's filing season as well as intended improvements to IRS administration.

However, Rettig stressed the importance of the IRS working toward enhancing taxpayers' experience by improving and modernizing the IRS's online tools. Additionally, Rettig noted the importance of enhancing the taxpayer and practitioner experience for those who prefer in-person or telephone interaction.

## 2019 Filing Season

"The filing season continues to go well in terms of tax return processing and the operation of our information technology systems," Rettig told lawmakers. Additionally, IRS systems set a new one-hour record on January 28, the first day of this year's filing season, when taxpayers e-filed more than 1.9 million returns, according to Rettig. Notably, IRS returns that day were filed at a rate of 536 submissions per second, he added.

## Modernizing the IRS

"One of my highest priorities as Commissioner is putting the agency's information technology (IT) infrastructure on a path toward modernization," Rettig

told lawmakers. "Modernization is vital to all of our core functions: successfully delivering the annual tax filing season, ensuring the health of the nation's tax system and supporting the federal government's financial strength," he added.

## IRS Reform

To that end, Congress, too, is focused on modernizing the IRS. SFC Chairman Chuck Grassley, R-Iowa, praised the legislative efforts of bipartisan House and Senate tax writers on the House-approved Taxpayer First Act of 2019 (HR 1957). As Grassley pointed out, the bill contains over 45 provisions, which aim to:

- increase taxpayer protections;
- improve customer service;
- address identity theft and cybersecurity;
- update IRS information technology; and
- modernize the IRS.

Meanwhile, SFC ranking member Ron Wyden, D-Ore., a co-sponsor of the Senate's Taxpayer First Act of 2019 (Sen. 240), continues to criticize a provision of the bill that would codify an agreement between the IRS and certain tax preparation companies. The agreement, known as the Free File Alliance, essentially prohibits the IRS's directly involvement in taxpayers' return preparation. "During the debate on the tax administration bill, my staff pushed back on a longstanding policy that blocks the IRS from competing with private tax preparation companies," Wyden said at the SFC hearing." I'm going to continue fighting for a "simple return" system and the right to file directly with the IRS online."

Despite certain Democratic criticism of the Free File Alliance provision in the bill, the measure is expected on Capitol Hill to move successfully through the Senate. "I am pleased that the House passed the bill yesterday after several years of work in both chambers," Grassley said during the April 10 SFC hearing. "We're working with our Leadership now to try to clear it in the Senate so the President can sign this bill into law."

## IRS Information Letters Released

The IRS National Office has released information letters in response to a request for general information by taxpayers or by government officials on behalf of constituents or on their own behalf. An information letter provides general statements of well-defined law without applying them to a specific set of facts. Information letters are for informational purposes only. They are not rulings and may not be relied on as such.

- INFO 2019-0001 addresses designations of opportunity zones under the new Code Sec. 1400Z-1.
- INFO 2019-0002 addresses the treatment of transportation benefits when an employee is fired.
- INFO 2019-0003 addresses the taxation of *per diem* reimbursements for employees and contractors.
- INFO 2019-0004 addresses obtaining a hardship loan from a Code Sec. 401(k) plan.
- INFO 2019-0005 addresses categorizing costs for menstrual care products as qualified medical expenses under health savings accounts (HSAs), flexible spending accounts (FSAs), and other tax-preferred accounts.
- INFO 2019-0006 addresses permitting the beneficiary of a decedent's estate to receive required minimum distributions from a Code Sec. 401(k) plan in accordance with Code Sec. 401(a)(9).

*INFO 2019-0001; INFO 2019-0002; INFO 2019-0003; INFO 2019-0004; INFO 2019-0005; INFO 2019-0006*

# Opportunity Zones Guidance Nearly Finished, Trump's Top Economic Advisor Says

The much anticipated second round of regulatory guidance on tax reform's Opportunity Zones program is "pretty much finished," Trump's top economic advisor has said.

## Opportunity Zones Regulations

Larry Kudlow, assistant to the president and director of the National Economic Council, discussed the Opportunity Zones program created under the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) at an April 11 event in Washington, D.C. "The final product will be out very soon," Kudlow said.

The second round of proposed regulations for the TCJA's Opportunity Zones incentive, now technically considered delayed on Capitol Hill, is expected to be released this month. After nearly one month, the proposed rules are still listed as under review at the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs (OIRA).

The IRS released the first round of proposed regulations, NPRM REG-115420-18, last October. Although stakeholder feedback has been largely positive, stakeholders and practitioners have noted several areas where additional IRS guidance is needed. Particularly, uncertainties surrounding the application of the Qualified Opportunity Fund (QOF) penalty, tax treatment of the sale of a QOF asset, and clarity on the definition of qualified opportunity zone business property are all reportedly stand-out items needing further guidance.

## Qualified Opportunity Funds

The TCJA's Opportunity Zone program generally established the following investor tax benefits:

- a temporary tax deferral for capital gains realized on the sale of appreciated assets and reinvested within 180 days in a QOF;
- the elimination of up to 10 or 15 percent of the tax on the capital gain that is invested in the QOF and held between five and seven years; and
- the permanent exclusion of tax when exiting a QOF investment held for at least 10 years.

## Applicable Terminal Charge and SIFL Rates Issued

The IRS has released the applicable terminal charge and the Standard Industry Fare Level (SIFL) mileage rates for determining the value of noncommercial flights on employer-provided aircraft in effect for the first half of 2019, for purposes of the taxation of fringe benefits. The value of a flight is determined under the base aircraft valuation formula by multiplying the SIFL cents-per-mile rates for the period during which the flight was taken by the appropriate aircraft multiple provided in Reg. §1.61-21(g)(7), and then adding the applicable terminal charge.

For flights taken during the period from January 1, 2019, through June 30, 2019, the terminal charge is $43.53, and the SIFL rates are: $.2381 per mile for the first 500 miles, $.1816 per mile 501 through 1,500 miles, and $.1745 per mile over 1,500 miles.

*Rev. Rul. 2019-10*

# Safe Harbor Provided for Basis of Professional Sports Contracts for Players Traded Between Teams

*Rev. Proc. 2019-18; IR-2019-70*

The IRS has provided a safe harbor for professional sports teams to avoid the recognition of gain or loss when trading players and/or draft picks. Under the safe harbor provision, the traded player's contract or the traded draft pick would have a zero basis.

## Value of Professional Sports Contracts

Professional sports teams enter into contracts with their personnel (e.g., managers, coaches, players, etc.). Typical personnel contracts provide an agreed-upon amount of compensation for a certain duration of service. The value of such a contract may fluctuate based on a variety of factors, including:

- player performance;
- the changing needs of the team and of other teams;
- a player's effect on fan attendance; and
- the number of years until a player becomes a free agent and is able to sign a contract to play for any team in a league.

Other considerations affecting the value of a player contract include:

- the size of the team's market (i.e., whether a smaller city or a major urban population);
- the cost of player development; and
- the impact of injuries and slumps on player performance.

In most cases, teams do not trade personnel contracts or draft picks unless the team thinks that it is receiving contracts of an equal or greater value. Because each party believes that they are receiving personnel contracts or draft picks of an equal or greater value, it is difficult to assign a monetary value to them. Accordingly, the IRS developed a safe harbor whereby each team is able to treat the traded contracts or draft picks as having a basis of zero, thus avoiding the recognition of gain or loss on the trade.

## Safe Harbor Requirements

In order to use the safe harbor, professional sports teams must meet the following requirements:

- all teams involved in the trade must use the safe harbor;
- teams may only trade personnel contracts, draft picks, and/or cash;
- personnel contracts and/or draft picks cannot be Code Sec. 197 intangibles; and
- the financial statements of all teams involved in the trade must not reflect assets or liabilities resulting from the trade other than cash.

## Application

Sports teams using the safe harbor will not recognize any gain or loss if they only trade personnel contracts or draft picks. However, teams that receive cash in a trade will recognize the amount of cash received as gain. In addition, the team providing cash to another team in the trade will receive basis in the personnel contract or draft pick equal to the amount of cash that it provided. A team providing cash to another team in a trade for two or more draft picks or personnel contracts must allocate its basis to each personnel contract or draft pick received from the other team by dividing the basis by the number of personnel contracts or draft picks received.

In certain cases, a team may have unrecovered basis in a draft pick or personnel contract under Code Sec. 167(c). In those instances, the team may recognize gain or loss based on the difference between the unrecovered basis and any cash received.

## Effective Date

Teams may use the safe harbor for any trades involving personnel contracts or draft picks entered into after April 10, 2019. However, teams may choose to apply these rules in any open tax year.

# Notices of Levy Did Not Attach to Future Royalties

*Gold Forever Music, CA-6, 2019-1 USTC ¶50,207*

Royalties sent by two music licensing companies to the IRS in a subsequent tax year were not fixed and determinable in the earlier year when the IRS served notices of levy on the companies. Therefore, a wrongful levy action by a music publishing company that was owed the royalties was not barred by the statute of limitations.

The individual who owned the publishing company owed millions of dollars in taxes, interest, and penalties to the IRS. To collect, the IRS served a notice of levy on the licensing companies to remit to the IRS property and rights to property that they had or were obligated to pay to the publishing company. About four years later, the licensing companies sent funds to the IRS. The district court dismissed the publishing company's wrongful levy suit as having been filed after the statute of limitations had run.

## Future Royalties

The notices of levy did not reach royalties generated after the notices were served, based on the publishing company's agreements with the licensing companies in place when the notices were served. The only property or obligation to which the levy could potentially attach when the notices were issued was the agreements with the licensing companies to remit future royalties to the publishing company. However, there was insufficient information to determine whether the publishing company's right to receive future royalties was attached by the levies. The royalties appeared to be indefinite, and the lower court should have construed the agreements as "an obligation to attempt to sell some as yet undetermined amount of property for an as yet undetermined price to as yet undetermined buyers," which is not fixed and determinable.

Reversing and remanding a DC Mich. decision, 2018-2 USTC ¶50,330.

# Final Exempt Bonds Regulations Clarify Definition of "Investment Property"

*T.D. 9854*

The IRS released final regulations regarding the arbitrage investment restrictions under Code Sec. 148 for tax-exempt bonds issued by state and local governments. The final regulations provide an exception for investment in capital projects that are used in furtherance of the public purposes of the bonds, such as land, buildings, and equipment. For example, investment-type property does not include:

- a courthouse financed with governmental bonds; or
- an eligible exempt facility under Code Sec. 142, such as a public road, that is financed with private activity bonds.

The final regulations affect state and local governmental issuers of these bonds and potential investors in capital projects financed with these bonds.

## Effective Date

The final regulations are effective on April 9, 2019. They finalize an exception that was first proposed in NPRM REG-106977-18.

# Captive Insurance Arrangement Not Insurance; Premiums Not Deductible

*Syzygy Insurance Co., Inc., TC Memo. 2019-34, Dec. 61,443(M)*

A microcaptive insurance arrangement did not meet the definition of insurance; therefore, the payments received by a corporation and its fronting carriers through the arrangement were not deductible as insurance premiums. The corporation's carriers did not qualify as bona fide insurance companies. The carriers engaged in a circular flow of funds, the contracts were not arm's-length contracts but were aimed at increasing deductions, and the premiums were not actuarially determined. Since the carriers did not qualify as bona fide insurance companies, they did not issue insurance policies. Consequently, the corporation's reinsurance of those policies did not distribute risk. Further, the transactions also did not qualify as insurance in the commonly accepted sense. The corporation's Code Sec. 831(b) election was invalid, and it was required to recognize the premiums it received as income.

In addition, individuals connected to the arrangement were not allowed to deduct the purported premium payments or any fees as payments for insurance, because the payments were not made for the purposes of insurance. The individuals' argument that the payments qualified as payments for indemnification that were deductible as ordinary and necessary business expenses was rejected. At a minimum,

the intent to seek indemnification for covered losses should have been present, but was not present here.

Finally, the individuals and the corporation were not liable for accuracy-related penalties. They relied in good faith on the advice of a competent professional.

## IRS Provides Fact Sheet on QBI Deduction

*FS-2019-8*

The IRS has issued a fact sheet on the qualified business income (QBI) deduction under Code Sec. 199A. The deduction allows individuals, including owners of businesses operated through sole proprietorships, partnerships, S corporations, trusts and estates, to deduct up to 20 percent of their QBI, plus 20 percent of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income. Eligible taxpayers can claim the QBI deduction for the first time on their 2018 federal income tax returns filed in 2019.

The IRS elaborated on the two components of the QBI deduction: (1) QBI component; and (2) REIT/PTP component. The QBI component equals 20 percent of QBI from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust or estate, subject to limitations based on:

- the type of trade or business;
- the amount of W-2 wages paid by the qualified trade or business; and
- the unadjusted basis immediately after acquisition (UBIA) of qualified property held by the trade or business.

The REIT/PTP component equals 20 percent of qualified REIT dividends and qualified PTP income, and is not limited by W-2 wages or the UBIA of qualified property. Solely for the purposes of Code Sec. 199A, a safe harbor is available to individuals and owners of passthrough entities under which a rental real estate enterprise would be treated as a trade or business for purposes of the QBI deduction.

Specified agricultural or horticultural cooperatives are allowed a deduction for income attributable to domestic production activities that is similar to the domestic production activities deduction under prior law.

The Instructions for Form 1040, and IRS Publication 535, Business Expenses, provide worksheets to compute the deduction.

# TAX BRIEFS

### *Contributions to Capital*

A corporation's affiliates were allowed to treat disbursements they received from a state (New Jersey) employment incentive program as nontaxable contributions to capital. The donor (the state) intended to induce the affiliates to establish their offices in a targeted area (i.e., an urban-aid municipality) not only to bring in new jobs, but also to revitalize the area. Therefore, the donor's intent and motivation in extending the payments was to provide a nontaxable contribution to capital.

*Brokertec Holdings, Inc., TC, Dec. 61,441(M)*

### *Corporate Status*

In consolidated cases, two related corporations' petitions for redetermination were dismissed for lack of jurisdiction. The corporations' corporate powers, rights, and privileges were suspended under state (California) law when the petitions were filed; therefore, the corporations lacked capacity to engage in litigation in the Tax Court.

*Timbron International Corporation, TC, Dec. 61,440(M)*

### *Direct Deposit*

The IRS has highlighted the advantages of using the Direct Deposit option for obtaining faster tax refunds. The Direct Deposit is a secure option for receiving tax refunds and avoids the possibility of lost, stolen or undeliverable refund checks. E-filers can typically see their refund in fewer than 21 days. Taxpayers or their tax preparers can simply select Direct Deposit as the refund method in their tax software when filing electronically.

*IR-2019-69*

### *False Return Preparation*

An individual was properly convicted of assisting in preparing false tax documents, and the Tax Court did not err in applying a two-level sentencing enhancement for obstruction of justice. There was sufficient evidence that the individual willfully and knowingly aided or assisted in preparing federal income tax returns containing material statements that she knew were false. Further, sentence enhancement was applied because of the individual's false statement to law enforcement that she did not engage in tax preparation, her production of a false record indicating that two individuals had attended a tax training workshop, and her attempt to convince one witness to submit fraudulent documents to the IRS.

*McConico, CA-11, 2019-1 USTC ¶50,204*

### *Filing Extensions*

The IRS has issued guidance on requesting automatic tax-filing extension, and reminded taxpayers that there are situations in which they can get extra time without even asking for it. Taxpayers getting special relief includes disaster victims,

individuals serving in a combat zone, and Americans living abroad.

*IR-2019-73*

### *Foreign Income*

The IRS has issued corrections to final regulations on transition tax that determine the inclusion under Code Sec. 965 of a U.S. shareholder of a foreign corporation with post-1986 accumulated deferred foreign income. The corrections are effective April 10, 2019.

*T.D. 9846, Correcting Amendment*

The IRS has issued corrections to proposed regulations on the Code Sec. 250 deduction, which allows U.S. corporate shareholders a deduction for foreign-derived intangible income (FDII), global intangible low-taxed income (GILTI), and the section 78 gross-up attributable to GILTI.

*NPRM REG-104464-18, Correction (filed 4-10-19); NPRM REG-104464-18, Correction (filed 4-11-19)*

### *Health Insurance*

An individual who was a two-percent shareholder of an S corporation pursuant to the attribution of ownership rules under Code Sec. 318 was entitled to deduct amounts paid by the S corporation under a group health plan for all employees. Further, the amounts were includible in the individual's gross income because he met the requirements under Code Sec. 162(l). Since the plan was established by the S corporation, it also duly followed the guidelines mentioned in Notice 2008-1, I.R.B. 2008-2, 251.

*CCA 201912001*

### *Innocent Spouse*

A medical practitioner's request for innocent spouse relief from unpaid liabilities for four tax years at issue was denied. The individual had raised the claim for innocent-spouse relief at a collection-due process hearing. The individual was not entitled to Code Sec. 6015(b) relief because he failed to meet two out of the five requirements under the statute. He was not entitled to relief from joint liability under Code Sec. 6015(c) because the deficiencies for the years at issue were allocable to him. The individual was the sole shareholder of the medical practice, an S corporation. Therefore, the unreported cash fees, which were includable in the S corporation's income, were allocable to the individual. Finally, relief could not be granted under Code Sec. 6015(f) because the IRS applied the threshold conditions and found that it was not inequitable to hold the individual liable for the joint liabilities.

*Francel, TC, Dec. 61,444(M)*

### *Liens and Levies*

An IRS motion seeking summary judgment was granted because there was no abuse of discretion by an IRS settlement officer (SO) in rejecting a collection alternative. The taxpayer provided an illegible income and expense statement to the SO, as part of Form 433-B, Collection Information Statement for Businesses, and never provided a revised version of the same.

*Gardinier Associates, Inc. , TC, Dec. 61,438(M)*

The IRS Appeals Office did not abuse its discretion in sustaining the proposed levy action regarding the unpaid tax liability of an individual. The taxpayer's argument that blatant errors were made in evaluating his offer-in-compromise (OIC) failed. The offer specialist had made a harmless calculation mistake which, even if taken into consideration, would not have absolved the taxpayer of his liability as his reasonable collection potential still well exceeded his OIC.

*Ragsdale, TC, Dec. 61,442(M)*

### *Payroll Tax*

The IRS has highlighted the significance of payroll tax compliance by announcing the results of a national two-week education and enforcement campaign. Payroll taxes withheld by employers account for nearly 72 percent of all revenue collected by the IRS. The campaign featured visits to nearly 100 businesses showing signs of potential serious noncompliance for the purposes of combating employment tax crimes. The campaign also resulted in several dozen legal actions against suspected criminals.

*IR-2019-71*

### *Place of Business*

A married couple was denied deductions for traveling expenses and was liable for accuracy-related penalties. The taxpayers failed to provide any authority that the court was required to look at the husband's business history as a whole to determine whether he had a regular or principal place of business. Moreover, the taxpayers failed to prove that the husband's weekly trips from his workplace to his residence were in the pursuit of a trade or business.

*Brown, TC, Dec. 61,439(M)*

### *Whistleblowers*

The Tax Court appropriately remanded a whistleblower case to the IRS Whistleblower Office (WO) because the administrative record on which the WO based its determination was incomplete. Remanding the case would conserve the Tax Court's and the parties' time and resources, and would not unduly prejudice the informant.

*Whistleblower 769-16W, TC, Dec. 61,445*