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# IRS Unveils Integrated Modernization Business Plan

*IR-2019-77; FS-2019-9*

The IRS on April 18 unveiled its Integrated Modernization Business Plan. The six-year plan would provide a strategy to modernize IRS information technology (IT) systems, and build critical infrastructure needed for the future of the tax system.

The plan is built around four "modernization pillars" that are intended to help drive innovation and support the future of the IRS and its mission—

- the taxpayer experience;
- core taxpayer services and enforcement;
- modernized IRS operations; and
- cybersecurity and data protection.

The plan would include dozens of initiatives aimed at improving interactions with taxpayers and the tax community, and continuing to strengthen cybersecurity protections and information technology systems.

The IRS has faced needs to continuously add systems to its IT environment, due to complex tax laws and constraints. These systems resulted in a complex technical ecosystem that has made costs grow on an unsustainable trajectory. Therefore, modernizing the IRS systems would create opportunities to potentially reinvest savings to keep the technology current and on pace with evolving taxpayer expectations.

The IRS estimated costs of approximately $2.3 billion to $2.7 billion over six years to fully implement the modernization initiatives. The speed at which new capabilities could be delivered would depend partly on the agency's annual funding levels. The IRS would provide regular reporting to Congress and oversight organizations. Finally, the IRS would also work with partners in the tax community towards implementing and updating the plan.

## Rettig: Modernization is Key

IRS Commissioner Charles "Chuck" P. Rettig highlighted in an April 18 statement the particular importance of modernizing IRS systems. "Modernized systems are the key component to delivering quality service to taxpayers, providing efficient and robust enforcement activities and keeping taxpayer data secure," Rettig said.

"Our modernization plan includes multiple milestones and levels of accountability to ensure it is implemented efficiently and effectively," Rettig added. "The integrity of our nation's tax system depends on modernizing IRS operations and the supporting technical pieces. We look forward to working with Congress to implement this plan."

## Mnuchin: Innovation is Vital

"The IRS supports one of the largest and most complex business operations in the world, proudly serving millions of individual filers, small businesses, tax exempt organizations and large corporations," Treasury Secretary Steven Mnuchin said in an April 18 statement. "Technological innovation is vital to the IRS successfully executing its mission, including protecting taxpayer data, enhancing services to taxpayers, and ensuring the health of the nation's tax system," Mnuchin added.

## IRS Reform Bill

Additionally, bipartisan House and Senate tax writers are currently supporting the major overhaul and modernization of the IRS. The unanimously House-approved bipartisan Taxpayer First Act (HR 1957) would reform the IRS for the first time in over 20 years.

Further, top bipartisan Senate tax writers have also introduced a companion measure (Sen. 928). At this time, it is unclear when the Senate will take up the House-approved bill. Congress returns from its two-week recess on April 29.

# Proposed Reliance Regs Address Qualified Opportunity Funds, Zones and Businesses

*NPRM REG-120186-18; IR-2019-75*

Proposed regulations address gains that may be deferred when taxpayers invest in a qualified opportunity fund (QOF). Taxpayers may generally rely on these new proposed regulations. The IRS has also requested comments.

The proposed regulations also withdraw and replace placeholder provisions in an earlier set of proposed regulations (REG-115420-18). These concern:

- the definition of "substantially all" regulations
- transactions that can trigger includible gain;
- the timing and amount of deferred gain that is included;
- treatment of leased property used in the qualified opportunity zone (QOZ) business;
- use of QOZ business property in the QOZ;
- sourcing of income to the QOZ business; and
- the reasonable period for a QOF to reinvest proceeds from the sale of qualifying assets.

In addition, within a few months the IRS expects to address administrative rules for a QOF that fails to maintain the required 90-percent investment standard, as well as information reporting requirements.

Finally, the IRS expects to revise Form 8996, Qualified Opportunity Fund, for 2019 and subsequent tax years. These revisions may require additional information, including the employer identification number (EIN) for the QOF business, and the amounts invested by QOFs and QOZ businesses located in particular QOZs.

## "Substantially All" for QOZ Business

The 2018 regulations provided that a trade or business satisfies the "substantially all" test for a QOZ business if at least 70 percent of its tangible property is qualified opportunity zone business property. The new proposed regulations generally extend this 70-percent threshold to the "substantially all" tests for use. However, in the holding period context, the "substantially all" threshold is 90 percent.

## Original Use of Purchased Tangible Property

The proposed regulations generally provide that the "original use" of tangible property acquired by purchase by any person starts on the date when that person or a prior person:

- first places the property in service in the qualified opportunity zone for purposes of depreciation or amortization; or
- first uses the property in the qualified opportunity zone in a manner that would allow depreciation or amortization if that person were the property's owner.

Used tangible property will satisfy the original use requirement with respect to a QOZ so long as the property has not been previously used (that is, has not previously been used within that QOZ in a manner that would have allowed it to depreciated or amortized) by any taxpayer.

In addition, a building or other structure that has been vacant for at least five years before being purchased by a QOF or QOZ business satisfies the original use requirement. Improvements made by a lessee to leased property satisfy the original use requirement and are considered purchased property for the amount of the unadjusted cost basis of the improvements.

Land can be treated as QOZ business property only if it is used in a trade or business of a QOF or QOZ business. The holding of land for investment does not give rise to a trade or business, and the land cannot be QOZ business property. Anti-abuse rules determine whether unimproved land

**REFERENCE KEY**

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

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can be qualifying property. However, other purchased real property generally must be substantially improved, determined on an asset-by-asset basis.

## Leased Tangible Property in QOZ

Leased tangible property may be QOZ property if:

- the lease is entered into after 2017; and
- substantially all of the property's use is in a QOZ during substantially all of the lease period.

However, the first-use requirement does not apply to leased tangible property. The leased property can generally also be acquired from a related person, though several conditions apply. The proposed regulations also provide methods for valuing the leased property.

## QOZ Businesses

The proposed regulations:

- provide that in determining whether a substantial portion of intangible property of a QOZ is used in the active conduct of a trade or business, a substantial portion is at least 40 percent;
- address real property that straddles a QOZ;
- provide three safe harbors and a facts-and-circumstances test for determining whether a corporation or partnership derives at least 50 percent of its gross income from the active conduct of a qualified business;
- define "trade or business" by reference to Code Sec. 162, except that the ownership and operation (including leasing) of real property used in a trade or business can also be the active conduct of a trade or business; and
- provide a safe harbor for working capital.

## Other Business Rules

The proposed regulations also address:

- Section 1231 gains;
- relief regarding the 90 percent asset test, including relief for newly contributed assets and QOF reinvestments;
- the amount of an investment for purposes of the deferral election;
- inclusion events, the timing on basis adjustments, includible amounts, and special rules for partnerships and S corporations;
- gifts and bequests;
- exceptions for disregarded transfers and some nonrecognition transactions;
- distributions and contributions;
- consolidated return provisions;
- holding periods and tacking rules;
- anti-abuse rules;
- special rules for Indian tribes and tribally leased property.

## Comments Requested; Public Hearing Scheduled

A public hearing on the proposed regulations is scheduled for 10 am on July 9, 2019, at the New Carrollton Federal Building in Latnham, MD. Public comments may be mailed or hand-delivered to the IRS, or submitted via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-120186-18).

# Latest Proposed Opportunity Zone Rules Receive Warm Welcome on Capitol Hill

The IRS's second round of proposed rules for tax reform's Opportunity Zone program has largely received a warm welcome on Capitol Hill. The much anticipated proposed regulations for investing in qualified opportunity funds (QOFs) (NPRM REG-120186-18) were released by the IRS on April 17.

## Hill Reaction

Several lawmakers are praising the release of the proposed regulations for the bipartisan Opportunity Zone program enacted in 2017 under Republicans' Tax Cuts and Jobs Act (TCJA) (P.L. 115-97). Notably, Sen. Tim Scott, R-S.C., who championed the Opportunity Zone program along with Sen. Cory Booker, D-N.J., emphasized the importance of the proposed regulations' comment period.

"Overall, the Treasury Department took some good steps forward today with the issuance of the second round of regulations governing Opportunity Zones," Scott said in a statement. "As we now enter the comment period, it is critical that we make certain the regulations will work for operating businesses and job creators, and I look forward to hearing from these folks during that process," he added.

## Reporting Requirements

Moreover, Scott and Booker are expected to soon release a bipartisan bill that would implement certain reporting requirements for recipients of the QOF tax incentive. The requirements would aim to measure how investments are impacting each particular opportunity zone. The bipartisan bill is reportedly expected to require the IRS to collect certain information from recipients of the tax break, including but not limited to evidence of economic impact and job creation.

Additionally, House Ways and Means Committee ranking member Kevin Brady, R-Tex., who spearheaded the TCJA, praised the Opportunity Zone program after the IRS released its second round of guidance. "Opportunity Zones, one of the many pro-growth provisions of our new tax code that are bringing increased investment and optimism to communities that need it most, will continue to lift this economy—especially for low- and middle-income workers who, today, are experiencing the fastest level of wage gains," Brady said in a statement. "This provision will help private dollars gravitate toward long-term investments to these areas, creating more jobs while stimulating higher growth and local innovation."

### White House Opportunity Zone Conference

President Donald Trump and Treasury Secretary Steven Mnuchin also praised the TCJA's Opportunity Zone program at a White House event held the same day the QOF proposed regulations were released. "We're providing massive tax incentives for private investment in these areas to create jobs and opportunities where they are needed the most," Trump said.

Mnuchin highlighted the flexibility with which Treasury and the IRS aimed to provide taxpayers in the proposed regulations. "Treasury and the IRS, working together, have tried to create as much flexibility for communities and investors so that we are positioning this economic development incentive for success," Mnuchin said at the White House event.

Additionally, Mnuchin encouraged stakeholders and practitioners to submit comments on the QOF proposed regulations. "Yes, we really do read them all," Mnuchin said.

### Payments from CPEOs to Self-Employed Individuals Clarified

The IRS Chief Counsel has clarified language in the preamble to proposed regulations on certified professional employer organizations (CPEOs) that addresses how payments from CPEOs to self-employed individuals should be treated for employment tax purposes.

In general, the CPEO rules provide that a CPEO is not treated as an employer of a self-employed individual, and a self-employed individual is not a "work site employee" regarding any remuneration paid by a CPEO to the self-employed individual (Code Sec. 3511(c), (f)). Further, the proposed CPEO regulations define "self-employed individual" as an individual with net earnings from self-employment derived from providing services covered by a CPEO contract, whether the net earnings are derived from providing services as a non-employee to a customer of a CPEO, from the individual's own trade or business as a sole proprietor customer of the CPEO, or as a partner in a partnership that is a customer of the CPEO, but only with regard to such net earnings (Proposed Reg. §301.7705-1(b)(14)). Accordingly, any remuneration paid by the CPEO to self-employed individuals in these capacities is not wages and must not be treated as wages for reporting purposes. CPEOs must therefore report remuneration they pay to self-employed individuals under the information reporting rules of Code Sec. 6041.

While discussing the definition of "work site employee" set forth in Proposed Reg. §301.7705-1(b)(17), however, the preamble to the proposed regulations stated that in the limited case in which a self-employed individual is also paid wages by a CPEO under a CPEO contract with the customer, the individual may nevertheless be a work site employee with respect to those wages.

The Chief Counsel clarified that the preamble language was addressing the very uncommon situation in which one individual receives payments from a CPEO in two separate capacities. For example, an individual could be both an employee of a marketing firm who receives wages from a CPEO for services performed for the firm under the firm's contract with the CPEO, and also the sole proprietor of a part-time cleaning business that contracts with the marketing firm to clean its offices, where payments to the cleaning business are also managed by the CPEO under its contract with the marketing firm.

The Chief Counsel noted, however, that under the proposed regulations, any payment made by a CPEO to a partner in a partnership under a contract between the partnership and the CPEO must always be treated as a payment to a self-employed individual, and must be reported as such under Code Sec. 6041.

*Chief Counsel Advice Memorandum 201916004*

## Proposed Regs: Nonresident Alien ESBT Beneficiaries Are Subject to U.S. Income Tax

*NPRM REG-117062-18*

The IRS has proposed regulations to ensure that a nonresident alien potential current beneficiary of an electing small business trust (ESBT) does not escape U.S. income taxation. The proposed regulations would apply to all ESBTs after December 31, 2017.

### Nonresident Aliens Formerly Barred from ESBT Ownership

All shareholders of an S corporation must be individuals, estates, certain specified trusts, or certain tax-exempt organizations. An ESBT may be a shareholder of an S corporation.

A nonresident alien individual may not be a shareholder of an S corporation without causing disqualification of the S corporation election. Before enactment of the Tax Cuts and Jobs Act (TCJA) a nonresident alien could be not be a potential current beneficiary of an ESBT without causing disqualification of the S corporation election. The TCJA lifted the ban on nonresident alien potential current beneficiaries of ESBTs. However, the TCJA does not allow a nonresidential alien to be an S corporation shareholder.

An ESBT that owns stock of an S corporation, as well as other property, is treated as two separate trusts for federal income tax purposes:

- an S portion, which consists solely of S corporation stock, that is treated as a separate trust and taxed in accordance with Code Sec. 641(c)(2); and

- a non-S portion that remains subject to the normal trust income taxation rules. If a trust is a grantor trust, then:
- the deemed owner is treated as the owner of the assets;
- the trust is disregarded as a separate entity for federal income tax purposes; and
- all items of income, deduction, and credit are taxed to the deemed owner.

Wholly or partially owned grantor trusts can make an ESBT election, but the grantor trust tax rules override the ESBT provisions. Therefore, an ESBT pays tax directly at the trust level on its S corporation income, and that income is not passed through to the beneficiaries (except for the amount that is taxed to the owner of the grantor trust).

Without these proposed regulations, the TCJA's expansion of an ESBT's permissible potential current beneficiaries to include nonresident aliens would allow S corporation income attributed to the grantor portion of an ESBT that is received by a nonresident alien deemed owner of that portion to escape federal income taxation. For example:

- if a nonresident alien were a deemed owner of a grantor trust that elected to be an ESBT, and thus were to be allocated foreign source income of the S corporation or income not effectively connected with the conduct of a U.S. trade or business, the nonresident alien would not be required to include such S corporation items in income under Code Sec. 671 because the nonresident alien would not be liable for federal income tax on such income under Code Sec. 871(a) or (b); and
- if the nonresident alien is a resident of a country with which the United States has an income tax treaty, U.S. source income of the S corporation also might be exempt from tax or subject to a lower rate of federal income tax in the hands of the nonresident alien.

## Scope of Proposed Regulations

The proposed regulations would modify the allocation rules under Reg. §1.641(c)-1 to require that the S corporation income of an ESBT be included in the S portion of the ESBT if that income otherwise would have been allocated to a nonresident alien deemed owner under the grantor trust rules. Accordingly, such income would be taxed to the domestic ESBT by providing that, if the deemed owner is a nonresident alien, the grantor portion of net income must be reallocated from the grantor portion of the ESBT to the ESBT's S portion.

The proposed regulations would also make conforming revisions to Reg. §1.1361-1(m), reflecting the ability of nonresident aliens to be potential current beneficiaries of ESBTs.

# Regulation Providing Exclusive Means for Determining Timely Filing Valid, Supersedes Mailbox Rule

*H. L. Baldwin, CA-9, 2019-1* *USTC ¶50,210*

Married taxpayers failed to timely file a claim for refund under Treasury regulations, the Ninth Circuit Court of Appeals has ruled, reversing and remanding a federal district court. Reg. §301.7502-1(e)(2) provides the exclusive means for determining if a return, refund claim, or statement is timely filed is valid under *Chevron* analysis.

## Refund Claim

The taxpayers sought to file a claim for refund in the 2005 tax year from the carryback of a net operating loss (NOL). They asserted that they filed an amended return in June 2011, well before the October 2011 deadline. An amended return was not received by the IRS until July 2013, so the refund claim was denied.

The taxpayers filed suit in district court, relying on the common law mailbox rule and the testimony of two employees to establish that the amended return was presumptively delivered to the IRS in June 2011. The district court ruled for the taxpayers that the claim for refund had been filed, and rejected the government's argument that Code Sec. 7502 and its regulations barred application of the mailbox rule.

## Timely Filed as Timely Mailed

Code Sec. 7502 allows documents to be deemed timely filed only if they are actually delivered to the IRS and postmarked on or before the deadline. For documents sent by registered mail, Code Sec. 7502 provides a presumption that the document was delivered even if the IRS claims not to have received it, so long as the taxpayer produces the registration as proof.

Circuit Courts have been split whether Code Sec. 7502 supplements or overrides the common-law mailbox rule that proof of mailing such as by testimony provides a rebuttable presumption that the document was physically delivered. In response to the split, Reg. §301.7502-1(e)(2) was amended to provide that unless a taxpayer has direct proof that a document was actually delivered, Code Sec. 7502 provides the exclusive means to prove delivery. In other words, the common-law mailbox rule is no longer available.

## *Chevron* Analysis

The Ninth Circuit ruled that Reg. §301.75021(e)(2) is valid and a reasonable interpretation of the statute under *Chevron* analysis. Thus, the taxpayer's amended return was not timely filed.

The court applied the two-step analysis under *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.,* 467 U.S. 837 (1984). At step one, the court found that Code Sec. 7502 is silent as to whether the statute displaces the common-law mailbox rule. In particular, with respect to the question relevant in this instance, the statute does not address whether a taxpayer who sends a document by regular mail can rely on the common-law mailbox rule to establish a presumption of delivery when the IRS claims not to have received the document. The statute does afford a presumption of delivery when a taxpayer sends a document by registered mail, under Code Sec. 7502(c)(1)(A), and it authorizes the creation of similar rules for certified mail, electronic filing, and private delivery services. However, as to documents sent by regular mail, the statute is conspicuously silent.

At step two, the court concluded that Reg. §301.7502-1(e)(2) is based on a permissible construction of the statute. Congress' enactment of Code Sec. 7502 could reasonably be construed in one of two ways: to merely supplement the common-law mailbox rule, or to supplant it altogether. The Treasury Department chose the latter construction by interpreting Code Sec. 7502 to provide the sole means by which taxpayers may prove timely delivery in the absence of direct proof of actual delivery.

Reversing and remanding an unreported DC Calif. decision.

## IRS Issues 2018 Nonconventional Source Fuel Reference Price

The IRS has published the nonconventional source fuel reference price for calendar year 2018. The credit period for the nonconventional source production credit under Code Sec. 45K ended on December 31, 2013, for facilities producing coke or coke gas (other than from petroleum based products). However, the reference price continues to apply in determining the amount of the enhanced oil recovery credit under Code Sec. 43, the marginal well production credit under Code Sec. 45I, and the percentage depletion in case of oil and natural gas produced from marginal properties under Code Sec. 613A. The reference price for calendar year 2018 is $61.41.

*Nonconventional Source Production Credit Reference Price for Calendar Year 2018*

# Tax Court Rejects Challenge Under Taxpayer's Bill of Rights

*M.I. Moya, 152 TC —, No. 11, Dec. 61,449*

The Tax Court sustained an individual's tax deficiencies resulting principally from disallowed business deductions, and rejected the individual's argument that the notice of deficiency was invalid because the individual had been deprived of her rights under the IRS's Taxpayer's Bill of Rights (TBOR). The individual failed to show that the IRS's adjustments disallowing the deductions were erroneous. In fact, the individual was afforded a trial previously before the Tax Court and, despite the court's recommendation, had declined to introduce any evidence to substantiate the disallowed deductions.

## TBOR Challenge

Neither party presented a rigorous argument either way as to whether the TBOR accorded the individual with rights the violation of which would give the court reason to ignore the principle articulated in *Greenberg's Express, Inc.*, 62 TC 324, Dec. 32,640, and look behind the notice in order to remediate any violation. In fact, even if the court credited the individual's claims that in examining her returns the IRS violated the individual's TBOR-related rights, the court would not invalidate the notice because the TBOR did not create or confer rights not otherwise provided in the Internal Revenue Code. Moreover, a proceeding to redetermine a deficiency in tax involves a trial de novo, and the individual failed to persuade the court to deviate from the *Greenberg's Express, Inc.* principle.

## Remedy

Further, whatever missteps the IRS may have taken in examining the individual's returns, the IRS did not deprive the individual the right to challenge his deficiency determinations before the court. In fact, the remedy available to the individual was not to be excused from liabilities imposed by the Internal Revenue Code, but to take the opportunity afforded by the Code to prove the correct liabilities before the court.

# IRS Has Independent Authority to Collect Administratively Assessed Criminal Restitution Amounts

*R.A. Carpenter, 150 TC —, No. 12, Dec. 61,450*

In a case of first impression, Code Sec. 6201(a)(4) granted the IRS independent authority to collect administratively amounts of criminal restitution assessed under Code Sec. 6201. An individual, who pled guilty to willfully filing false tax returns, was ordered by the district court at sentencing to pay restitution to the IRS. The individual did not pay the full restitution amount, and the IRS initiated collection actions to recover the unpaid amount. The individual argued that Code Sec. 6201 did not authorize the IRS to file a lien independently or to levy on property to collect amounts of restitution ordered by a sentencing court and subsequently assessed under that section.

## Collection Authority

Amendments in the Firearms Excise Tax Improvement Act of 2010 (FETIA) expanded the IRS's authority to collect actively on criminal restitution orders following summary assessment. Specifically, Congress exempted assessment of criminal restitution from the Code's time provisions, and limited the taxpayer's ability to challenge the restitution order itself. In fact, provisions in FETIA amend Code Sec. 6501 to exclude specifically criminal restitution from the usual three-year limitation period. With this amendment, Congress ensured that any delays that may accompany criminal prosecution and any later appeals would not hinder the IRS's ability to assess and collect criminal restitution.

Further, the individual's argument that the payment schedule included in the restitution order limited the amounts the IRS could collect was rejected. The parties agreed that the restitution in this case was an "amount of restitution under an order pursuant to section 3556 of title 18" within the meaning of Code Sec. 6201(a)(4). Where a case involves violations of the Internal Revenue Code, 18 U.S.C. sec. 3556 grants the district court discretionary authority to order restitution in accordance with 18 U.S.C. sec. 3663. Nothing in the text or the legislative history of Code Sec. 6201(a)(4) indicates that Congress intended to limit or otherwise subordinate the IRS's authority to assess and collect criminal restitution when it is due to the provisions of title 18. Code Sec. 6201(a)(4) refers to 18 U.S.C. sec. 3556 as a means to direct the IRS to the amount of criminal restitution that must be assessed and collected. When a district court includes a payment schedule in a judgment that also orders restitution immediately payable, the payment schedule does not limit the amounts the government may collect from the defendant.

Finally, IRS Appeals did not abuse its discretion in sustaining the levy or the lien. The individual was precluded from raising the issue of his underlying tax liability because he failed to challenge the amount of his criminal restitution liability when he was sentenced.

## AFRs Issued For May 2019

*Rev. Rul. 2019-12*

The IRS has released the short-term, mid-term, and long-term applicable interest rates for May 2019.

### Applicable Federal Rates (AFR) for May 2019

| Short-Term | Annual | Semiannual | Quarterly | Monthly |
|---|---|---|---|---|
| AFR | 2.39% | 2.38% | 2.37% | 2.37% |
| 110% AFR | 2.64% | 2.62% | 2.61% | 2.61% |
| 120% AFR | 2.88% | 2.86% | 2.85% | 2.84% |
| 130% AFR | 3.11% | 3.09% | 3.08% | 3.07% |
| **Mid-Term** | | | | |
| AFR | 2.37% | 2.36% | 2.35% | 2.35% |
| 110% AFR | 2.62% | 2.60% | 2.59% | 2.59% |
| 120% AFR | 2.85% | 2.83% | 2.82% | 2.81% |
| 130% AFR | 3.09% | 3.07% | 3.06% | 3.05% |
| 150% AFR | 3.57% | 3.54% | 3.52% | 3.51% |
| 175% AFR | 4.17% | 4.13% | 4.11% | 4.09% |
| **Long-Term** | | | | |
| AFR | 2.74% | 2.72% | 2.71% | 2.70% |
| 110% AFR | 3.01% | 2.99% | 2.98% | 2.97% |
| 120% AFR | 3.29% | 3.26% | 3.25% | 3.24% |
| 130% AFR | 3.57% | 3.54% | 3.52% | 3.51% |

### Adjusted AFRs for May 2019

| | Annual | Semiannual | Quarterly | Monthly |
|---|---|---|---|---|
| Short-term adjusted AFR | 1.82% | 1.81% | 1.81% | 1.80% |
| Mid-term adjusted AFR | 1.80% | 1.79% | 1.79% | 1.78% |
| Long-term adjusted AFR | 2.08% | 2.07% | 2.06% | 2.06% |

The Code Sec. 382 adjusted federal long-term rate is 2.08%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 2.20%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.59% and 3.25%, respectively, however, under Code Sec. 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30,2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 2.8%.

# Employee Plans Compliance Resolution System Updated

*Rev. Proc. 2019-19*

The IRS has updated its Employee Plans Compliance Resolution System (EPCRS) for retirement plan sponsors that want to correct plan failures. EPCRS includes the Self-Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (Audit CAP). Rev. Proc. 2018-52, I.R.B. 2018-42, 611, is modified and superseded.

## Self-Correction Program Expanded

Under SCP, a plan sponsor that had established compliance practices and procedures may self-correct certain plan failures without submitting the correction to the IRS for approval and without paying any fee or sanction to the IRS. The updated procedure expands the use of the SCP to permit correction of certain plan document failures and plan loan failures, including:

- the ability to correct defaulted plan loans;
- the failure to obtain spousal consent on a plan loan; and
- the failure of permitting plan loans that exceed the number of plan loans permitted under the terms of the plan.

The revisions also provide an additional method of correcting operational failures by plan amendments under SCP.

## VCP Must be Submitted Electronically

Beginning April 1, 2019, all Voluntary Compliance Program submissions electronically using Pay.gov. Any paper VCP submissions postmarked after March 31, 2019, will be returned to the applicant.

## Plans Correctable Under EPCRS

Sponsors of retirement plans use EPCRS to satisfy the requirements of Code Secs. 401(a), 403(a), 403(b), 408(k) or 408(p) if they have not met these requirements for a period of time.

# TAX BRIEFS

*Cost of Goods Sold*

A personal representative of a deceased individual's estate was entitled to deduct cost of goods sold in an amount as determined by the Tax Court with regard to the individual's limited liability company (LLC). The individual, a real-estate developer, operated his business through the LLC and through one or more partnerships. The LLC's Schedule C reported a specific amount of cost of goods sold; however, a notice of deficiency determined that cost of goods sold was zero. Before trial, the IRS conceded and the Tax Court determined another amount as cost of goods sold.

*Ronning, Est., TC, Dec. 61,448(M)*

*Legal Expenses*

An individual was not entitled to deduct legal expenses attributable to damages and fund management losses. Further, the taxpayer was held liable for an accuracy-related penalty because his underpayment of tax was attributable to both negligence and substantial understatement.

*Ray, TC, Dec. 61,446(M)*

*Nationwide Tax Forum*

The IRS announced the schedule of the Nationwide Tax Forums offering seminars and workshops on cybersecurity, changes to the tax law, ethics and other topics. Tax professionals can earn up to 19 continuing education credits at the forums this summer. The five upcoming forums will take place in National Harbor, Md. (outside of Washington, D.C.), Chicago, New Orleans, Orlando and San Diego. Tax professionals who pre-register by June 15 can receive an early bird rate of $235 per person. The $255 standard rate starts on June 16, and ends two weeks prior to the start of each forum. Attendees registering on-site or after the deadlines will pay $370. Additional information on registration can be obtained at https://www.irstaxforum.com/index.

*IR-2019-76*

*Pensions*

For pension plan years beginning in April 2019, the IRS has released the 30-year Treasury bond weighted average interest rate, the unadjusted segment rates, the adjusted rates and the minimum present value segment rates.

*Notice 2019-29, FED ¶46,273*

*QBI Deduction*

The IRS has issued corrections to final regulations related to qualified business income deduction, (T.D. 9847). The corrections are effective April 17, 2019, and are applicable on or after February 8, 2019.

*T.D. 9847, Correction*

*Research Expenses*

Certain expenses incurred during the increase of research activities by a milling company were found not to be qualifying research expenses. The taxpayer ran various projects over the course of several years.

*Siemer Milling Company, TC, Dec. 61,447(M)*

*Tax Litigation*

The district court appropriately excluded impeachment evidence because excluding the evidence was harmless. An individual, who assisted in preparation and presentation of fraudulent tax returns and engaged in witness tampering, contended that the district court erred by not permitting him to call an IRS agent to impeach the testimony given by the individual's colleague. The individual's colleague had testified that the individual had the opportunity to commit tax fraud. However, excluding the impeachment evidence would not have changed the outcome. An overwhelming amount of evidence showed that the individual was, in fact, guilty of tax fraud.

*Steele, CA-11, 2019-1 USTC ¶50,212*

*Supreme Court Docket*

A petition for review was denied in the following case: A married couple's petition for panel rehearing was denied. The Tax Court properly held the taxpayers liable for the civil fraud penalty for three tax years.

*Langer, CA-8, 2018-2 USTC ¶50,503*