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GOP Senators Stall House-Approved Bipartisan Retirement Savings, Kiddie Tax Bill

Several GOP senators have stalled a House-approved bipartisan retirement savings bill, which includes changes to the so-called "kiddie tax."

Retirement Savings

The bipartisan Setting Every Community Up for Retirement Enhancement (SECURE) Bill of 2019 (HR 1994) cleared the House on May 23 by a 417-to-3 vote. The overwhelmingly bipartisan House-approved package, which proposes sweeping tax-related changes to retirement savings policy, was originally expected to quickly clear the Senate. Indeed, Senate Finance Committee (SFC) Republican and Democratic leadership issued statements praising the bill's passage in the House while calling for its swift approval in the Senate.

However, it soon became clear on Capitol Hill that lawmakers' hopes of achieving unanimous consent before Memorial Day—a move required procedurally in the Senate to fast-track the measure—would abruptly fall flat.

529 Education Savings Plans

Under the original House Ways and Means Committee-approved version of HR 1994, certain benefits under tax-advantaged Section 529 education savings plans would have been expanded to include homeschooling and certain elementary and secondary expenses. However, the particular expansion provision was reportedly removed by Ways and Means Chairman Richard Neal, D-Mass., because of certain stakeholders' opposition.

Sen. Ted Cruz, R-Tex., was the first GOP senator to publicly express his disapproval of the House Democratic-led move to withdraw the homeschooling-related 529 education savings plan expansion from the bill. Additionally, Sens. Marco Rubio, R-Fl., Mike Lee, R-Utah, and Pat Toomey, R-Penn., have reportedly signaled to Senate leadership that they, too, hold issue with various provisions of HR 1994.

House-approved HR 1994, as currently written, would implement some of the following reforms:

- a repeal of the maximum age for traditional IRA contributions;
- an increase to the minimum age for taking required minimum distributions from 70-1/2 to 72;
- allowing certain part-time workers to participate in 401(k) plans;
- allowing up to a $5,000 penalty-free withdraw from retirement accounts within a year of birth or adoption for qualified expenses; and
- allowing up to a $10,000 withdrawal from certain 529 plans to repay student loans.

Kiddie Tax

In addition to addressing retirement savings, HR 1994 would repeal an unintended controversial hike on the so-called "kiddie tax," enacted under the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97). The tax hike largely impacts Gold Star families, among others.

Generally, children's unearned income over $2,100 prior to the TCJA was taxed at their parents' marginal rates. However, because of a drafting error in the TCJA, children's unearned income above that threshold is now inadvertently taxed as a trust, thus essentially significantly raising taxes on certain benefits received by children of deceased members of the military, among others. The Senate on May 21 unanimously approved the bipartisan Gold Star Family Tax Relief Bill (Sen. 1370), which aims to retroactively fix the TCJA-related tax hike.

IRS Finalizes Regulations Addressing Property Transfers to REITs Following Section 355 Distributions

T.D. 9862

The IRS has finalized prior proposed regulations addressing transactions in which property of a C corporation becomes the property of a real estate investment trust (REIT)—a "conversion transaction"—following a Section 355 distribution of controlled C corporation stock.

2016 Proposed, Temporary Regulations

In 2016, the IRS issued proposed regulations (NPRM REG-126452-15, June 8, 2016) under Code Sec. 337(d) concerning conversion transactions involving regulated investment companies (RICs) and REITs. The 2016 proposed regulations were published contemporaneously with temporary regulations (T.D. 9770, I.R.B. 2016-26, 1041) and the text of the temporary regulations served as part of the text of the proposed regulations. A portion of the proposed regulations was later adopted as final regulations with T.D. 9810, I.R.B. 2017-6, 775.

Executive Order 13789

In an interim report, the Treasury Department identified the temporary regulations adopted with T.D. 9770 as significant tax regulations that impose an undue financial burden on U.S. taxpayers and/or add undue complexity to the federal tax laws, pursuant to Executive Order 13789 (issued April 21, 2017). Commenters expressed concern that the REIT spin-off rules in the temporary regulations could result in over-inclusion of gain in some cases, particularly where a large corporation acquires a small corporation that engaged in a Section 355 spin-off and the large corporation subsequently makes a REIT election (Notice 2017-38, I.R.B. 2017-30, 147).

In a later report, the Treasury Department and IRS agreed that the temporary regulations may produce inappropriate results in some cases. They stated that they intended to replace the temporary regulations with revised regulations that would narrow their application (TDNR SM-0172, October 4, 2017; U.S. Department of the Treasury, Second Report to the President on Identifying and Reducing Tax Regulatory Burdens (Executive Order 13789), October 2, 2017).

2019 Proposed Regulations

To address the potential over-inclusion of gain, the IRS issued revised proposed regulations (NPRM REG-113943-17) on March 26, 2019 (2019 proposed regulations) and partially withdrew the 2016 proposed regulations. The 2019 proposed regulations:

- limited the potential taxable gain recognized in certain situations;
- defined "distribution property"; and
- expanded the application of the predecessor and successor rules.

Final Regulations

The final regulations adopt, without substantive changes, the 2016 proposed regulations addressing the application of the automatic deemed sale rule and the 2019 proposed regulations addressing gain limitation. The corresponding temporary regulations are removed.

The final regulation modify the definition of "converted property" in Proposed Reg. §1.337(d)-7(a)(2)(vii) to clarify that the phrase "any other property" refers only to property of a RIC or a REIT. The final regulations do not extend the 2016 proposed rules to regulated investment companies.

Effective/Applicability Date

The final regulations apply generally to conversion transactions occurring on

REFERENCE KEY

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

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or after June 7, 2019, and to conversion transactions and related Section 355 distributions for which the conversion transaction occurs before, and the related Section 355 distribution occurs on or after, June 7, 2019.

The 2019 proposed regulations had included a proposal to issue the final rule with a 30-day delayed effective date. The IRS has concluded, however, that a 30-day delay in the effective date of the final regulations would be unnecessary and contrary to public interest. Specifically, any duration between the expiration of the temporary regulations and the effective date of the final regulations could cause significant confusion regarding the current state of the law. In addition, the IRS has concluded that the benefit of public notice ordinarily provided by such 30-day delay is significantly reduced in this particular instance, because the final regulations adopt the proposed regulations without substantive change. In addition, the final regulations adopt the distribution property limitation under Proposed Reg. §1.337(d)-7(c)(6)(ii), which provides an exception to the general automatic deemed sale rule.

Proposed Regulations Clarify Tax Rules on USRPI Sales by Foreign Pension Funds

NPRM REG-109826-17

Proposed regulations address the exception from federal tax for gain or loss of a qualified foreign pension fund attributable to sales of certain U.S. real property interests (USRPIs). The proposed rules provide guidance on:

- the scope of the exception for USRPI dispositions by qualified foreign pension funds;
- applying the requirements that an eligible fund must satisfy to be a qualified foreign pension fund; and
- the rules for exemptions from tax withholding under Code Sec. 1445 and Code Sec. 1446.

Disposition of USRPI

The Foreign Investment in Real Property Tax Act (FIRPTA) enacted Code Sec. 897 to impose U.S. income tax on the gain from the sale, exchange, or other disposition of a USRPI by a nonresident alien or a foreign corporation. Gain or loss from the disposition is generally treated as effectively connected with the conduct of a U.S. trade or business.

These rules do not apply to USRPIs held by qualified foreign pension funds (or by an entity that has all of its interests held by a qualified pension fund). A qualified foreign pension plan is a trust, corporation, or other organization or arrangement that meets specific requirements set forth in Code Sec. 897(l)(2).

Withholding on USRPI Dispositions

When a foreign person disposes of a USRPI, the transferee is generally required to withhold and deduct a 15-percent tax on the amount realized, under Code Sec. 1445. Withholding does not apply if the transferor furnishes to the transferee a certification stating, among other things, that the transferor is not a foreign person. Unless the regulations provide otherwise, a qualified foreign pension plan is not considered a foreign person and thus is not subject to withholding.

Under Code Sec. 1446, a partnership generally must pay a withholding tax under on effectively connected taxable income allocable to a foreign partner. A domestic partnership required to withhold under both Code Secs. 1445 and 1446 on such income under Code Sec. 897 is deemed to satisfy the withholding requirements of Code Sec. 1445 if it complies with the Code Sec. 1446 requirements.

Proposed Regulations

The proposed regulations clarify and modify the conditions under which foreign pension funds are exempt from taxation under Code Sec. 897, by addressing:

- the entities and organizational structures that are eligible for the foreign pension fund exemption;
- the nature of the benefits, beneficiaries, and foreign taxation of eligible funds; and
- the documentation rules that apply to exemptions from withholding taxes otherwise required by Code Secs. 1445 and 1446.

For example, under the proposed rules, Code Sec. 897 does not apply to a "qualified segregated account." This is an identifiable pool of assets maintained solely to fund retirement, pension, and certain ancillary benefits to plan participants and beneficiaries. The proposed regulations provide separate standards for determining whether an identifiable pool of assets is a qualified segregated account, depending on whether the pool of assets is maintained by an eligible fund or a qualified controlled entity.

The proposed regulations also provide rules to prevent the inappropriate avoidance of FIRPTA by imposing conditions on the sale of certain investment vehicles that are wholly owned by a foreign pension fund.

Applicability

The proposed regulations are proposed to apply to dispositions of USRPIs and distributions described in Code Sec. 897(h) occurring on or after the date the regulations are published as final regulations in the Federal Register. However, several proposed provisions apply to dispositions and distributions occurring on or after June 6, 2019. Those provisions contain definitions that prevent a person that would otherwise be a qualified foreign pension fund or a qualified controlled entity from claiming

the tax exemption where the exemption may benefit a person other than a qualified recipient.

Taxpayers that consistently and accurately comply with the proposed regulations can rely on them for dispositions or distributions occurring on or after December 18, 2015, and before the applicability date.

Comments, Public Hearing

The Treasury Department and the IRS request timely comments on all aspects of the proposed rules. A public hearing will be scheduled if requested in writing by any person that timely submits written comments.

Written or electronic comments and requests for a public hearing must be received by September 5, 2019. Send submissions to: CC:PA:LPD:PR (REG-109826-17), Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG-109826-17), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at http://www.regulations.gov (IRS REG-109826-17).

Directive Withdrawn on Reasonably Anticipated Benefits in Cost Sharing Arrangements

The IRS Large Business and International Division (LB&I) has withdrawn its directive to examiners in transfer pricing cases to stop developing adjustments to cost sharing arrangements (CSAs) based solely on changing a taxpayer's multiple reasonably anticipated benefits (RAB) shares to a single RAB share when subsequent platform contribution transactions (PCTs) are added to an existing CSA. The directive was to apply until a servicewide position was finalized.

On June 26, 2018, a servicewide position was finalized in AM 2018-003. The advice memorandum concluded that it may be appropriate to determine and apply different RAB shares with respect to separate cost pools under a single CSA. The memorandum also concluded that it may be appropriate to determine and apply a RAB share solely to calculate PCT payments with respect to a particular subsequent PCT that was different from the RAB used by the taxpayer to calculate payments before the subsequent PCT was entered into.

Withdrawal of Directive LB&I-04-0118-004

IRS Discontinues Certain Faxing and Third-Party Mailing Service

IR-2019-101

The IRS will be ceasing its tax transcript faxing service, and will also amend the Form 4506, Request for Copy or Transcript of Tax Form, series to end third-party mailing of tax returns and transcripts. The IRS has taken these steps to better protect taxpayers from identity theft.

Faxing Service Ends June 28, 2019

Starting June 28, 2019, the IRS will stop faxing tax transcripts to both taxpayers and third parties, including tax professionals. Individual taxpayers have several options to obtain a tax transcript, such as:

- Using the IRS website or the IRS2Go app to access the transcript online;
- Using the IRS website or the IRS2Go app to access the transcript via mail;
- Calling 800-908-9946 for an automated Get Transcript by Mail feature; or
- Submitting Form 4506-T or 4506T-EZ to have a transcript mailed to the address of record.

Tax professionals can also use several options to obtain tax transcripts, such as:

- Requesting that the IRS mail a transcript to the taxpayer's address of record;
- Using e-Services' Transcript Delivery System; or
- Obtaining a masked individual transcript or a business transcript by calling the IRS, faxing authorization to the IRS assistor, and the IRS assistor will place the document in the tax practitioner's e-Services secure mailbox.

Tax professionals can also obtain an unmasked wage and income transcript for tax preparation purposes.

Certain Third-Party Mailings End July 1, 2019

Effective July 1, 2019, the IRS will no longer provide transcripts requested on Form 4506, Form 4506-T, and Form 4506T-EZ to third parties. These forms will be amended to remove the option for mailing to a third-party. Taxpayers may, however, continue to use these forms to obtain a copy of their tax return or obtain a copy of their tax transcripts. This change will not affect use of the IRS Data Retrieval Tool through the Free Application for Federal Student Aid (FAFSA) process.

Third parties who use these forms for income verification have access to other alternatives. The IRS offers an Income Verification Express Service (IVES) which has several hundred participants, who, with proper authorization, order transcripts. Lenders or higher education institutions can either contract with existing

IVES participants or become IVES participants themselves. The tax transcript is an official IRS record. Taxpayers may choose to provide transcripts to requestors instead of authorizing the third party to request these transcripts from the IRS on their behalf. For more details on IVES, go to https://www.irs.gov/individuals/international-taxpayers/income-verification-express-service

Customer File Number

Since a taxpayer's name and Social Security number are now partially masked, the IRS has also created a Customer File Number space that can be used to help third parties match transcripts to taxpayers. Third parties can assign a Customer File Number, such as a loan application number or a student identification number. The number will populate on the transcript and help match it to the client/student.

Additional information about the Customer File Number can be found on the IRS webpage at https://www.irs.gov/individuals/about-the-new-tax-transcript-faqs.

New Actuarial Tables Delayed, IRS Tells Wolters Kluwer

The new actuarial tables are delayed, the IRS told Wolters Kluwer on May 30. "We are currently working on new actuarial tables, but we cannot predict when they will be published."

Generally, the IRS releases actuarial tables used for the valuation of annuities, interests for life or terms of years, and remainder or reversionary interests in property. Under Code Sec. 7520(c)(3), the IRS is required to revise the tables at least once in each 10-year period. The latest actuarial tables were published by the IRS in May 2009 (T.D. 9448; T.D. 9540).

Notably, taxpayers may rely on the existing tables published in May 2009 until the new tables are released, the IRS told Wolters Kluwer. "When the new tables are published, there will likely be a transition rule to provide ample time for implementation of the new actuarial tables."

Inflation Adjustment and Reference Prices for Renewable Energy Production Credit Released

Credit for Renewable Electricity Production and Refined Coal Production; Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2019

The IRS has published inflation adjustment factor and reference prices for the purposes of determining the availability of the credit for renewable electricity production and refined coal production for calendar year 2019. The inflation adjustment factors and reference prices apply to calendar year 2019 sales of kilowatt hours of electricity produced in the U.S. or a possession thereof from qualified energy resources, and 2019 sales of refined coal produced in the U.S. or a possession thereof:

- The inflation adjustment factor for qualified energy resources and refined coal is 1.6396.
- The reference price for facilities producing electricity from wind is 5.18 cents per kilowatt hour.
- The reference prices for fuel used as feedstock in connection with the statutory law governing refined coal production are $31.90 per ton for calendar year 2002, and $49.23 per ton for calendar year 2019.

Note that the reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy have not been determined for calendar year 2019.

Phaseout Limits

The renewable electricity production credit is not subject to a phaseout under Code Sec. 45(b)(1) for electricity sold during calendar year 2019. This is because the 2019 reference price for electricity produced from wind, 5.18 cents per kilowatt hour, does not exceed 8 cents multiplied by the inflation adjustment factor (1.6396). Because the 2019 reference price of fuel used as feedstock for refined coal ($49.23) does not exceed $88.92 (which is the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor (1.6396) and 1.7), the phaseout of the credit provided in Code Sec. 45(e)(8)(B) does not apply to refined coal sold during calendar year 2019. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy, the phaseout of the credit provided in Code Sec. 45(b)(1) does not apply to such electricity sold during calendar year 2019.

Credit Amount Adjustments

The 1.5 cent amount under Code Sec. 45(a)(1) and the $4.375 amount in Code Sec. 45(e)(8)(A) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. However, if any amount as increased under the guideline prescribed above is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open loop biomass facilities, small irrigation power facilities,

landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, Code Sec. 45(b)(4)(A) requires the amount in effect under Code Sec. 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half.

Further, under the calculation mandated under the requirements listed in Code Sec. 45(b)(2), the credit for renewable electricity production for calendar year 2019 under Code Sec. 45(a) is 2.5 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and 1.2 cents per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities. According to the calculation guidelines listed under Code Sec. 45(b)(2), the credit for refined coal production for calendar year 2019 under Code Sec. 45(e)(8)(A) is $7.173 per ton on the sale of qualified refined coal.

Oklahoma Victims of Severe Storms, Tornadoes, Straight-Line Winds and Flooding Granted Tax Relief

OK-2019-01

Victims of the severe storms, tornadoes, straight-line winds, and flooding that took place in Oklahoma on May 7, 2019, may qualify for tax relief from the IRS. The president has declared that a major disaster exists in Oklahoma.

The covered disaster area is Muskogee, Tulsa and Wagoner counties.

Certain Deadlines Extended

The IRS has postponed certain deadlines for taxpayers who reside or have a business in the disaster area. For instance, certain deadlines falling on or after May 7, 2019, and before September 16, 2019, have been postponed to September 16, 2019. This includes deadlines for filing most tax returns (including individual, corporate, estate and trust income tax returns; partnership and S corporation returns; estate, gift and generation-skipping transfer tax returns; annual information returns of tax-exempt organizations; and employment and certain excise tax returns).

Affected taxpayers that have an estimated income tax payment originally due on or after May 7, 2019. and before September 16, 2019, will not be subject to penalties for failure to pay estimated tax installments as long as such payments are paid on or before September 16, 2019.

The relief also includes the filing of Form 5500 series returns, that were required to be filed on or after May 7, 2019, and before September 16, 2019, in the manner described in section 8 of Rev. Proc. 2018-58, I.R.B. 2018-50, 990. The relief described in section 17 of Rev. Proc. 2018-58, pertaining to like-kind exchanges of property, also applies to certain taxpayers who are not otherwise affected taxpayers and may include acts required to be performed before or after the period described above.

Unless an act is specifically listed in Rev. Proc. 2018-58, the postponement of time to file and pay does not apply to information returns in the W-2, 1094, 1095, 1097, 1098, or 1099 series; Forms 1042-S, 3921, 3922 or 8027; or employment and excise tax deposits. However, penalties on deposits due on or after May 7, 2019, and before May 22, 2019, will be abated as long as the tax deposits were made by May 22, 2019.

Casualty Losses

Taxpayers in the covered disaster area can claim disaster-related casualty losses on their federal income tax return for either 2018 or 2019. Individuals may deduct personal property losses that are not covered by insurance or other reimbursements. Taxpayers claiming the disaster loss on their 2018 or 2019 return should write the disaster designation "Oklahoma, Severe Storms, Straight-line Winds, Tornadoes and Flooding" at the top of their return so that the IRS can expedite processing of the refund. Taxpayers also should include the disaster declaration number, FEMA 4438, on any return.

Other Relief

The IRS will waive the usual fees and expedite requests for copies of previously filed tax returns for affected taxpayers. Taxpayers should add the assigned disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, as appropriate, and submit it to the IRS.

Individual Treated as Designated Beneficiary of Roth IRA

IRS Letter Ruling 201923016

An individual was treated as a designated beneficiary of her deceased spouse's Roth Individual Retirement Account (IRA). The taxpayer along with her spouse had established a living revocable trust. Upon the decedent's death, the trust became irrevocable and was divided into a marital deduction subtrust, a subtrust for the benefit of the daughter and a third subtrust. Pursuant to the beneficiary designation form for Roth IRA, the marital trust was the named beneficiary of Roth IRA. Because the election to treat the marital

trust as an accumulation trust was not timely made, the taxpayer was treated as the sole designated beneficiary of Roth IRA for purposes of the required minimum distribution (RMD) rules of Code Sec. 401(a)(9).

Further, since the taxpayer was treated as the sole designated beneficiary, RMDs were determined under Reg. §1.401(a)(9)-5. Nevertheless, distributions from Roth IRA that satisfy the rule of Reg. §1.401(a)(9)-5, with the first-year distribution determined based on the taxpayer's corresponding life expectancy factor in the year of the first distribution under the Single Life Table and, for succeeding years, the initial factor reduced by one each year, met the minimum distribution requirements because this method produced distributions that were greater than or equal to the applicable RMDs.

IRS Nationwide Tax Forum Early Bird Registration Deadline Approaching

IR-2019-100

The IRS has reminded tax professionals that reduced cost "early bird" registration for all five 2019 IRS Nationwide Tax Forums ends June 15 at 5 p.m. Eastern time. Tax professionals who register before the June 15 deadline would qualify for the early bird rate of $235. After that, the standard rate of $255 is in effect until two weeks before each location's event. Tax professionals registering less than two weeks before a forum or on-site will pay $370.

The 2019 IRS Nationwide Tax Forum will be held on the following dates at the following locations:

- July 9-11, National Harbor, MD (Washington, D.C.);
- July 23-25, Chicago, IL;
- August 6-8, New Orleans, LA;
- August 13-15, Orlando, FL; and
- September 17-19, San Diego, CA.

In addition, up to 19 continuing education credits are available for enrolled agents, certified public accountants, Annual Filing Season Program participants, certified financial planners and other tax professionals. The agenda includes six cybersecurity seminars and 11 involving tax reform topics, such as the Qualified Business Income deduction. The Nationwide Tax Forums also offer tax professionals with unresolved client cases the opportunity to meet face-to-face with IRS representatives in the Case Resolution Program. The program is for client cases only.

Tax professionals should visit: https://www.irstaxforum.com to register or to find out more about the 2019 IRS Nationwide Tax Forum.

TAX BRIEFS

Assignment of Income

An individual was not entitled to deduct as business expenses on his personal returns amounts he allegedly paid for services performed by his solely owned but defunct corporation, because the amounts represented an invalid assignment of income. The individual and his spouse claimed that the individual, in his capacity as the owner of a securities firm, had made a deal with himself as a sole proprietor to provide management or accounting services to the sole proprietorship equal in amount to what the individual earned as a stockbroker. However, the taxpayers presented no evidence of the actual management or accounting services performed, and there was no evidence that funds were actually transferred to the corporation. The individual at all times controlled the earning of the income.

Frey, TC, Dec. 61,478(M)

Capital Construction Fund

An S corporation's revocation of its S election and the conversion of its subsidiaries into limited liability companies was not a withdrawal under Code Sec. 7518. The taxpayer maintained a merchant marine capital construction fund (CCF) under a CCF agreement entered into with an administrator. Further, each of the converted entities were deemed to be the same entity that existed prior to the conversion, and the title to all of the assets would remain vested in the taxpayer's subsidiaries that currently owned them, so neither the conversion nor the revocation would be deemed to constitute a withdrawal from the CCF or a disposition of any of the vessels.

IRS Letter Ruling 201923005

Corporate Divisions

The IRS addressed a complex series of transactions undertaken in connection with a foreign parent that decided to separate one of its businesses into a standalone publicly traded corporation. The IRS evaluated the specific elements of the series of transactions, including the treatment of various internal mergers, internal asset contributions, distributions, redemptions and spin-offs. With regards to the proposed reorganization, no gain or loss was recognized on certain transactions involving (1) a U.S. controlled contribution and

a U.S. controlled split-off; (2) foreign distributions; or (3) an external contribution and an external spin-off.

IRS Letter Ruling 201923003

Expert Appraisals

An IRS motion in limine seeking to exclude an expert witness report from evidence was granted. The taxpayers had engaged the expert to prepare a report on their horse-breeding activity to effectively prove that their activity was not engaged in for profit under Code Sec. 183. However, the expert's report did not satisfy the requirements of Tax Court Rule 143 and the Federal Rules of Evidence, because it did not set forth any facts or data on which he relied. Further, the expert's testimony, as embodied in his written report, did not rest on a reliable foundation because it did not set forth the methodology he employed or the manner in which he applied the valuation factors he deemed relevant for horse appraisal. The taxpayers' argument that they had supplied to the IRS, four days before trial, a thumb drive containing the expert's in-house database on which his report was based, was rejected. Further, the expert could not cite his experience as the sole basis for putting a dollar value on a horse. In addition, the expert's voir dire testimony that he regularly used spreadsheets resembling those attached to his expert report to supply information was unreliable, even though it would hold ground commercially.

Skolnick, TC, 61,480(M)

Interest Rates

The IRS has announced that the interest rates for the calendar quarter beginning July 1, 2019, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments and 7 percent for large corporate underpayments. The interest rate for the portion of a corporate overpayment exceeding $10,000 is 2.5 percent. The interest rates are computed by using the federal short-term rate based on daily compounding determined during April 2019.

Rev. Rul. 2019-15; IR-2019-103

Recordkeeping

The IRS's motion for summary judgment against a corporation was granted. On its Form 1120 for the tax year at issue, the taxpayer reported an offset against gross receipts for claimed "returns and allowances," but the IRS disallowed the offset, all claimed deductions, and certain capital losses, due to lack of substantiation. Through informal and formal discovery, the IRS repeatedly requested production of documents substantiating these items, but the taxpayer repeatedly failed to comply with these requests and the court's orders.

Amnesty National, TC, Dec. 61,479(M)

Retirement Distributions

An IRS settlement officer (SO) did not abuse his discretion in sustaining a proposed levy regarding an early distribution received by an individual from her retirement amount. The taxpayer presented no evidence showing that she transferred any portion of her Employee Retirement System (ERS) distribution to another eligible retirement plan within 60 days of its receipt. Therefore, the "rollover" exception did not apply and the IRS properly included it in the taxpayer's gross income. Moreover, the taxpayer admitted in her petition and at trial that she deposited her ERS distribution in her savings account, a nonqualified account.

McCree, TC, Dec. 61,483(M)

Self-Employment Tax

An author's royalty income which she received from her publishing contracts was subject to self-employment tax because it was derived from her trade or business as an author. The taxpayer argued that a portion of her royalty payments was derived solely from her name and likeness and personal attributes, which were not part of any trade or business. The taxpayer also offered expert testimony that her publishers' intent was to pay one amount for her writing and another separate and distinct amount for her brand. However, the taxpayer's brand was part of her trade or business, because she was engaged in developing her brand with continuity and regularity for the primary purpose of income and profit. Further, the taxpayer used business strategies, like working with a media coach and publishers to develop a successful brand, and spending time meeting with publishers, agents, media contacts and others to protect and further her status as a brand author. The taxpayer also misapplied the nexus test, because she herself worked on developing her brand, and the royalties earned were not solely a result of her publishers' actions. The taxpayer's brand and her writing combined were monetized first by the selling of books, and then by providing the taxpayer with the leverage to negotiate for higher advances and royalty rates.

Slaughter, TC, Dec. 61,481(M)

Timely Mailing

The IRS's motion to dismiss an individual's petition seeking redetermination of tax deficiencies was granted for lack of jurisdiction, because the individual did not carry his burden of proof that his petition was timely mailed. The mailed petition was properly addressed to the Tax Court but the postmark was missing, and the taxpayer did not use certified mail. The taxpayer contended that he deposited the envelope containing the petition in the U.S. mail in the origin city. However, according to the United States Postal Service (USPS) website, an item sent from the taxpayer's origin city would have normally arrived in the destination city within seven days. Here, the petition arrived almost a month later than expected, and the envelope was not damaged and had no marking of any kind suggesting that it was misdirected or misplaced. The taxpayer's argument that the period from Thanksgiving to New Year's Eve was the U.S. Post office's busiest time of the year was unpersuasive, because it did not explain a 28-day delay in delivery.

Williams, TC, Dec. 61,482(M)

Supreme Court Docket

A petition for review was filed in the following case: The Tax Court properly held that a transferee's liability for prenotice interest was not determined under state (Ohio) law. Moreover, the government could recover the full amount of this liability from a transferee, but its recovery was capped at the value of the assets the transferee received from the transferor. Therefore, when the transferee received assets with a value exceeding the transferor's total federal tax liability, the government's claim could be satisfied in full from the transferred assets; there was no need to consult state law.

Tricarichi, CA-9, 2018-2 USTC ¶50,485