



Five-Minute Tax Briefing[®]

March 12, 2019

No. 2019-05

Highlights

Estimated Tax Penalty Relief for Farmers and Fishermen: Under IRC Sec. 6654(i)(1)(D), qualifying farmers and fishermen who didn't pay 2018 estimated tax by 1/15/19 avoid underpayment penalties if they filed Form 1040 and paid any tax due by 3/1/19. Because of certain tax law changes that affect farmers and fishermen, the IRS has decided to waive estimated tax penalties for qualifying individuals who file their 2018 returns and pay any tax due by 4/15/19 (4/17/19 for residents of Maine and Massachusetts). To request this relief, farmers and fishermen must attach Form 2210-F (Underpayment of Estimated Tax by Farmers and Fishermen) to their returns. In addition, the taxpayer's name and identifying number should be entered at the top of the form, and the waiver box (Part I, Box A) should be checked. The rest of the form should be left blank. Notice 2019-17 and News Release IR 2019-24 .

Interest Rates to Remain the Same for Second Quarter 2019: The interest rates for tax overpayments and underpayments for the quarter beginning on 4/1/19 will be the same as the prior quarter. For noncorporate taxpayers, the rate for both underpayments and overpayments will be 6%. The 6% rate also applies to estimated tax underpayments for the second quarter of 2019. For corporations, the overpayment rate will be 5%, with a 3.5% rate applicable to overpayments exceeding \$10,000. The underpayment rate for corporations will be 6%, except for large corporate underpayments, which will be 8%. Rev. Rul. 2019-5 and News Release IR 2019-21 .

IRS May Charge PTIN Fees: In *Steele* (119 AFTR 2d 2017-2065), the D.C. District Court held that the IRS may not charge fees for Preparer Tax Identification Numbers (PTINs) because they're not considered a service or thing of value. In *Adam Steele* (120 AFTR 2d 2017-6898), the Court enjoined the IRS from charging PTIN fees pending appeal. The Court of Appeals for the D.C. Circuit has now ruled that the IRS may charge PTIN fees, vacating the prior ruling, and remanding the case back to the District Court to determine whether the fee amount unreasonably exceeds the IRS costs to issue and maintain PTINs. The Independent Offices Appropriations Act provides statutory authority for the fee, and the IRS's decision to assess a fee wasn't arbitrary and capricious. *Montrouis*, 123 AFTR 2d 2019-XXXX (CA Dist. Col.).

Treasury Department Releases Policy Statement on Tax Regulatory Process: The Department of the Treasury has released a statement that describes its policy on tax regulations. The statement reaffirms the department's commitment to the notice-and-comment process established by the Administrative Procedure Act (APA). Therefore, going forward, the Treasury will limit its use of temporary regulations. When temporary regulations are warranted, the department will articulate its reasons for the rules in a statement of good cause. In addition, the Treasury will limit its use of notices announcing an intent to propose regulations. When notices are issued, they will include a statement that the IRS won't assert a position adverse to the taxpayer based on the notice if proposed regulations aren't released within 18 months of the notice's publication. Lastly, the Treasury and the IRS won't argue that subregulatory guidance (revenue rulings, revenue procedures, etc.) has the force and effect of law. The policy statement can be accessed at home.treasury.gov/system/files/131/Policy-Statement-on-the-Tax-Regulatory-Process-3-4-19.pdf .

Other Current Releases

Income Tax—IRS Clarifies New Sexual Harassment Provision: The Tax Cuts and Jobs Act (TCJA) added IRC Sec. 162(q), which disallows a deduction for (1) any settlement or payment related to sexual harassment or sexual abuse (if subject to a nondisclosure agreement) and (2) attorney's fees related to the settlement or payment. Recently, the IRS released a Frequently Asked Question (FAQ) that clarifies that *recipients* of settlements or payments related to sexual harassment or sexual abuse (subject to a nondisclosure agreement) are not prevented by IRC Sec. 162(q) from deducting attorney's fees, if otherwise deductible. The FAQ can be accessed at www.irs.gov/newsroom/section-162q-faq .

Income Tax—IRS Issues Final Regulations for Low-income Housing Credit Compliance Monitoring: The IRS has issued final regulations (TD 9848) that amend the temporary and proposed regulations for compliance monitoring for the low-income housing credit. Under IRC Sec. 42(m)(1) , housing credit agencies must allocate housing credit dollar amounts according to a Qualified Allocation Plan (QAP), and the QAP must provide a procedure the agency will follow in monitoring for compliance and notifying the IRS of any noncompliance. Under the final regulations, agencies must inspect no fewer units than the number specified for relevant-sized projects

provided in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart, and agencies may give an owner reasonable notice of an inspection of a building or of low-income certification of no more than 15 days. Rev. Proc. 2016-15 is obsolete with respect to an agency as of the date the agency's QAP is amended to reflect the final regulations, but QAPs must be amended no later than 12/31/20. Reg 1.42-5 .

IRS Nationwide Tax Forums Are Now Open for Registration: The IRS has announced that registration is now open for the 2019 IRS Nationwide Tax Forums. Each forum features three days of the latest tax law information, hands-on workshops, and exhibits of new products and services. Practitioners can receive up to 18 CPE credits, network with peers, and learn from IRS subject matter experts, as well as from national association partners. The sessions will be held in National Harbor, Maryland (near Washington, D.C.); Chicago; New Orleans; Orlando; and San Diego. Practitioners who register by June 15 can take advantage of the Early Bird Rate of \$235. For more information or to register, visit the IRS Nationwide Tax Forum website at www.irstaxforum.com . e-News for Tax Professionals 2019-5.

IRS Warns Delinquent Taxpayers about Passport Revocation/Denial: In a recent News Release, the IRS warns taxpayers with seriously delinquent tax debts that they may be unable to obtain or renew a passport. A *seriously delinquent tax debt* is one that exceeds \$52,000 and for which a notice of lien has been filed. To avoid delays in travel plans, taxpayers who receive Notice CP508C should take prompt action to resolve their tax issues. (Powers of attorney will not receive a copy of the notice.) The IRS has clarified that, among other reasons, it will not certify a taxpayer as owing a seriously delinquent tax debt (or will reverse the certification) if he or she (1) is in bankruptcy; (2) is a victim of tax-related identity theft; (3) has an account that is not collectible due to hardship; (4) is located in a federally declared disaster area; or (5) has a pending installment agreement or offer in compromise. News Release IR 2019-23.

Penalties—Penalty Generated by IRS System Didn't Require Supervisor's Approval: Under IRC Sec. 6751(b)(1), penalties can't be assessed by the IRS unless they're approved in writing by an immediate supervisor. However, this rule doesn't apply to penalties automatically calculated through "electronic means." In a recent Tax Court case, the IRS's Automated Correspondence Exam (ACE) system assessed a substantial understatement penalty against the taxpayers and issued a 30-day letter. The taxpayers failed to respond to the letter; instead, they petitioned the Tax Court, arguing that U.S. currency isn't "lawful money" and that the Court should garnish the wages of the Secretary of the Treasury. The IRS moved to dismiss the case, claiming that it complied with Section 6751(b) procedures. The Court agreed, holding that the penalty generated by the ACE system was automatically calculated through electronic means. Therefore, the Court upheld the penalty and imposed an additional penalty for repeatedly taking frivolous positions. *Craig and Maria Walquist* , 152 TC No. 3 (Tax Ct.).

Penalties—Penalty Relief for Failing to Report Negative Tax Basis Capital

Accounts: According to the instructions to the 2018 Form 1065 (U.S. Return of Partnership

Income), certain partnerships must provide negative tax basis capital account information on line 20 of Schedule K-1 using code AH. Because partnerships may be unable to comply timely with this new requirement, the IRS will waive penalties under IRC Secs. 6722 and 6698 for 2018 if the following conditions are met: (1) Schedules K-1 are timely filed (including extensions) with the IRS, furnished to partners, and contain all other required information and (2) no later than 3/15/20, the partnership files with the IRS a schedule containing the required information. The IRS will post instructions and additional information about this relief in the coming weeks on www.irs.gov . Notice 2019-20 .

Retirement Plans—IRS Won't Amend Regulations to Ban Lump-sum Payment Option: In Notice 2015-49, the IRS stated that it intended to amend the Required Minimum Distribution (RMD) rules under IRC Sec. 401(a)(9) to prohibit qualified defined benefit plans from replacing annuities (joint and survivor, single life, or other type) with lump-sum payments or other accelerated distributions if the annuities are currently being paid. In a recent Notice, the IRS announced that it no longer plans to do that. Therefore, until further guidance is issued, the IRS won't assert that a plan amendment providing for a retiree lump-sum window program causes the plan to violate the RMD rules. However, the agency will continue to evaluate whether the plan, as amended, satisfies all other qualification requirements. Notice 2015-49 is superseded. Notice 2019-18.

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