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PPC's Five-Minute Tax Briefing

2021

July 13, 2021—No. 2021-13

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PPC

**Five-Minute Tax Briefing<sup>®</sup>**  
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**Highlights**

**IRS Releases 2020 Data Book:** The IRS has released its 2020 Data Book that summarizes agency activity for fiscal-year 2020 (10/1/19-9/30/20). During fiscal-year 2020, the IRS collected nearly \$3.5 trillion in revenue and processed more than 240 million tax returns and other forms. Compared to fiscal-year 2019, C corporations filings decreased by 15.3% and partnership filings increased by 13.3%. There were approximately 1.6 billion visits to irs.gov with 505.6 million visits to the "Where's My Refund?" tool. To help taxpayers claim COVID-19-related relief payments and tax credits, the IRS released online tools and published new Coronavirus pages on irs.gov. Also, the IRS has shifted significant IRS resources to focus on high-income taxpayers, including those who have failed to file returns and engaged in certain types of abusive transactions. An electronic version of the Data Book can be found at <https://www.irs.gov/pub/irs-pdf/p55b.pdf> . News Release IR 2021-134 .

**Opting out of Receiving the Advance Child Tax Credit Payment:** In a letter currently being sent to taxpayers, the IRS has explained that taxpayers don't have to do anything to begin receiving the Advance Child Tax Credit (ACTC) payments (assuming they are otherwise eligible to receive the CTC) for 2021. The letter also states that taxpayers may choose to opt out of receiving the advance payments. The IRS has provided helpful tools at <https://www.irs.gov/credits-deductions/advance-child-tax-credit-payments-in-2021> . This website has two links, the first interactive link will allow taxpayers to unenroll from any potential advance payments. Using the

second link, the nonfiler sign-up link on the same website, non-filers who aren't required to file a tax return and haven't submitted information to prove their eligibility for the ACTC can provide their information. A new Child Tax Credit Eligibility Assistant and Child Tax Credit Update Portal also are available on [www.irs.gov](http://www.irs.gov). News Release IR 2021-130.

**Supreme Court Finds No Standing to Challenge Affordable Care Act's Minimum Essential Coverage Provision:**In a 7-2 decision, the Supreme Court has held that both the state and individual plaintiffs lacked standing to challenge the Affordable Care Act's (ACA) minimum essential coverage provision. The ACA, as enacted in 2010, required most Americans to obtain minimum essential health coverage and imposed a monetary penalty upon most individuals who failed to do so under IRC Sec. 5000A(a) . Amendments to the ACA in 2017 effectively nullified the penalty by setting its amount to \$0. Since the Court found the plaintiffs lacked standing, it did not address the validity of the Act. The Supreme Court's ruling reverses the Fifth Circuit's judgment, which had found that some of the plaintiffs had standing and that the provision was unconstitutional because it could no longer be justified as a tax. *California vs. Texas*, 127 AFTR 2d 2021-777.

**New Vehicles Added for Plug-in Vehicle Credit:**IRC Sec. 30D(a) provides a credit to the purchaser of a qualified plug-in electric drive motor vehicle, including passenger vehicles and light trucks. The credit allowed is limited to \$2,500 plus an additional amount, based on battery capacity, that cannot exceed \$5,000. The credit phases out over six calendar quarters beginning when a manufacturer has sold at least 200,000 qualifying vehicles in the U.S. Recently, the IRS added the following models to its list of vehicles eligible for the credit: the 2021 Mustang Mach-E GT, 2021 Hyundai Ioniq Plug-In Hybrid Electric Vehicle and Ioniq Electric Battery Vehicle, 2021 Cayenne E-Hybrid and E-Hybrid Coupe, Cayenne Turbo S E-Hybrid and E-Hybrid Coupe, Panamera 4 PHEV which includes the 4 E-Hybrid, 4 E-Hybrid Sport Turismo, 4 S E-Hybrid, 4 S E-Hybrid Sport Turismo, 4 E-Hybrid Executive, Turbo S E-Hybrid, and Turbo S E-Hybrid Sport Turismo. For a full list of vehicles, see [www.irs.gov/businesses/irc-30d-new-qualified-plug-in-electric-drive-motor-vehicle-credit](http://www.irs.gov/businesses/irc-30d-new-qualified-plug-in-electric-drive-motor-vehicle-credit) .

## Other Current Releases

**IRS—"Dirty Dozen" Tax Scams for 2021 Announced:** The agency has compiled this year's "Dirty Dozen" list into four separate categories with the first being schemes and scams. The IRS warns taxpayers to watch out for theft of their Economic Impact Payments (EIPs). The IRS also reminds taxpayers to be on the lookout for receiving a Form 1099-G reporting unemployment compensation that they didn't receive. To help taxpayers avoid identity theft, the IRS made its Identity Protection PIN (IP PIN) program available to all taxpayers this year. The IRS and its Security Summit partners have made changes to help reduce identity theft-related refund fraud. Also, to help reduce fraud, tax software products for 2021 will contain options for multi-factor authentication. Taxpayers are encouraged to review the "Dirty Dozen" list at <https://www.irs.gov/newsroom/dirty-dozen> . News Release IR 2021-135 .

### **Procedure—Appeals Employees Can Temporarily Use SecureZip to Send/Receive**

**Documents:**In a memo dated 6/9/21, the IRS Appeals Division has said that, as a result of the COVID-19 emergency and in accordance with IRC Sec. 7803(e)(7) which governs access to case files rules for specified taxpayers, Appeals Technical Employees (ATEs) are now authorized to receive and transmit documents by SecureZip or other established secured messaging systems (encrypted email) to taxpayers and their authorized representatives through 12/31/21. ATE is as an umbrella term used to refer to any Appeals employee who is assigned a case for settlement consideration. ATEs can use SecureZip to provide access to the redacted case file. This procedural change will expire on 12/31/21 and will not be incorporated into the Internal Revenue Manual. For more information, see <https://www.irs.gov/pub/foia/ig/appeals/ap-08-0621-0017.pdf> .

**IRS—Draft Instructions for Schedules K-2 and K-3:** The IRS released early draft instructions for Schedules K-2 and K-3 for Form 1065 , Form 1120-S, and Form 8865 for tax year 2021. The redesigned forms and instructions give useful guidance to on how to provide international tax information for persons filing Form 1065, Form 1120-S , or Form 8865, but only if the entity for which the form is being filed has items of international relevance (generally foreign activities or foreign partners). The final instructions respond to comments from draft instructions that (1) clarify when each part of the schedule is applicable, (2) clarify that the preparer must only complete applicable parts of the Schedules K-2 and K-3, and (3) provide instructions for requested new separate schedules regarding determination of the IRC Sec. 250 deduction and the allocation and apportionment of expenses. News Release IR 2021-140.

**Income Tax—IRS Extends Tax Relief for Employer Leave-based Donation Programs:**The IRS has extended the tax relief provided in Notice 2020-46 (issued on 6/11/20) for employers whose employees forgo sick, vacation, or personal leave for calendar-year 2021 because of the COVID-19 pandemic. The IRS provides that cash payments employers make to charitable organizations that provide relief to victims of the COVID-19 pandemic in exchange for sick, vacation, or personal leave that their employees forgo will not be treated as compensation. Similarly, the employees will not be treated as receiving the value of the leave as income and cannot claim a deduction for the leave that they donated to their employer. Employers may deduct these cash payments as a business expense or as a charitable contribution deduction if the employer otherwise meets the respective requirements of either section. News Release IR-2021-142 and Notice 2021-42.

**IRS—Extension of Temporary Relief from the Physical Presence Requirement:**The IRS has extended the temporary relief provided in Notice 2020-42 and extended by Notice 2021-3 . For the period from 7/1/21 through 6/30/22, the IRS has extended two types of relief from the physical presence requirement in IRC Sec. 1.401(a)-21(d)(6)(i) for participant elections required to be witnessed by a plan representative or a notary public. The two relief types are (1) temporary relief from the physical presence requirement for any participant election witnessed by a notary public in a state that permits remote notarization (either by law or through an executive order) and (2) temporary relief from the physical presence requirement for any participant election witnessed by a plan representative. The IRS also solicits comments on whether permanent guidance modifying

the physical presence requirement in IRC Sec. 1.401(a)-21(d)(6)(i) should be issued. For a copy of the notice, see <https://www.irs.gov/pub/irs-drop/n-21-40.pdf> . Notice 2021-40 .

**Employment Tax—IRS Nonacquiesces in Professional Employer Organization Case:** In a recent Action on Decision (AOD), the IRS has announced its nonacquiescence to the Eleventh Circuit's holding in *TriNet Group, Inc.* (126 AFTR 2d 2020-6783) that a Professional Employer Organization (PEO), rather than its clients, had "control over the payment of wages" and thus was entitled to the IRC Sec. 45B credit for employer FICA tax paid with respect to employee cash tips. The IRS stated that it will continue to take the position that an entity is not in control of the payment of wages if the payment of wages is contingent upon, or proximately related to, the entity having received funds from the common law employer. The IRS said that it will continue to assert its position in cases having different facts in the Eleventh Circuit, and in all cases in other circuits. AOD 2021-003.

**IRS—Paper Filed Forms 990-EZ and 8868 Are Subject to Erroneous IRS Notices:**The IRS has announced that it is having problems processing paper returns for Form 990-EZ (Short Form Return of Organization Exempt from Income Tax) and Form 8868 (Application for Automatic Extension of Time To File an Exempt Organization Return), which is resulting in the generation of erroneous notices of nonfiling. Paper filers of Form 990-EZ may receive a notice of nonfiling from the IRS, CP259A, which is entitled "You didn't file a required annual tax return." Paper filers of Form 8868 may experience a delay in receiving a CP211A notice confirming the approval of their extension request. Taxpayers who filed their return or extension request on paper do not need to take any further action. They should not file a second return or contact the IRS about the status of their filing. For more information see <https://www.irs.gov/charities-non-profits/current-edition-of-exempt-organizations-update> .

**Procedure—Special Election for Taxpayers with Farming Loss NOLs:**The Tax Cuts and Jobs Act (TCJA) amended IRC Sec. 172(a)(2) to provide that, the amount allowed as a net operating loss (NOL) deduction, cannot exceed 80% of the taxable income of the taxpayer computed without regard to any NOL deduction (80% limitation) and to generally eliminate NOL carrybacks. However, the TCJA provides a two-year carryback period for the portion of an NOL that is a farming loss. The IRS has released guidance on (1) how to make the election under Sec. 2303(e) (1) of the Coronavirus Aid, Relief and Economic Security (CARES) Act, (2) when a taxpayer is deemed to have made that election, (3) how to revoke the election to waive the two-year carryback period for the farming loss portion of an NOL incurred in a tax year beginning in 2018 or 2019, and (4) how consolidated group rules affect these actions. Rev. Proc. 2021-14.

**Procedure—Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates:**The IRS has provided updates on the corporate bond monthly yield curve, the corresponding spot segment rates for June 2021 used under IRC Sec. 417(e)(3)(D) , the 24-month average segment rates applicable for June 2021, as reflected by the application of IRC Sec. 430(h) (2), the 30-year Treasury rates under IRC Sec. 417(e)(3)(A)(ii)(II) as in effect for plan years

beginning before 2008, and the 30-year Treasury weighted average rate under IRC Sec. 431(c)(6)(E)(ii)(I) . In addition, the IRS has provided 24-month average segment rates for earlier periods for plan years beginning in 2020 and 2021, determined under IRC Sec. 430(h)(2)(C)(iv) reflecting the modifications made by Sec. 9706(a) of the American Rescue Plan Act of 2021 (ARPA). Notice 2021-37.

**Income Tax—IRS Provides Information on Treasury Grants for Eligible Transportation**

**Companies:**The Coronavirus Economic Relief for Transportation Services (CERTS) Act of the Consolidated Appropriations Act of 2021 authorizes the Department of the Treasury to provide grants to transportation service providers. This includes eligible motorcoach companies, school bus companies, and passenger vessel companies that experienced annual revenue losses of 25% or more as a result of COVID-19. The FAQs posted recently confirm that (1) the receipt of a CERTS Act grant is not excluded from the recipient's gross income and therefore is taxable and (2) the costs are deductible to the extent that they are otherwise deductible under the law. The tax law generally permits the payment of wages, salaries, and benefits to employees and other amounts paid to carry on a trade or business to be deducted as ordinary and necessary business expenses. News Release IR 2021-145 .

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