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THE ELITE QUARTERLY – Taxation

Published by **CP<u>Elite</u>**
The Leader in Continuing Professional Education Newsletters

Volume XXX • Number 4 • Winter 2020 Issue • 4 Hours of CPE Credit
CPE for Enrolled Agents • CPA's • Licensed Accountants
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Winter 2020

To simply suggest that another year has come and gone would be the king of all understatements. Each passing year brings untold challenges for practitioners with an ever evolving and complex tax code, increased professional demands, and deadlines galore. This year we've doubled down on each of these challenges. In spite of this, 2020 has also provided us with moments of deep reflection, renewed connection and a resetting of priorities. Our hope is that this issue of the *Elite Quarterly* finds you and your family well in both spirit and health, and poised to seize the year which lies ahead.

We truly thank you for your ongoing support of *The Elite Quarterly*…we appreciate your business!
** Happy Holidays **

What's Inside This Issue

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Instructions, Content Level, & Learning Objectives

Please read the course content and answer all review questions. Once you have completed reviewing all course material, please complete the enclosed final exam using the attached answer sheet or by completing the final exam online at www.cpelite.com. The location of all course materials including section content, review questions, final exam and course instructions is contained in the Table of Contents provided below.

The content level for this course material is "Update" and field of study classification is "Taxation." A general understanding of federal income taxation is the prerequisite for this course. No advance preparation is required. The Learning Objectives for this course are:

1. Recall current and expiring tax provisions contained in the Tax Cuts and Jobs Act.
2. Identify which "tax extenders" are set to expire at the end of tax year 2020.
3. Recall the tax treatment associated with "gig" work including payments received in cryptocurrency.
4. Identify regulatory and tax relief provisions contained in the CARES Act.
5. Recall key regulatory filings and due dates highlighted by Tax Court cases in 2020.
6. Recall inflation-adjusted items for tax year 2021 as expressed in Rev. Proc. 2020-45.
7. Identify individual and business tax relief strategies available to taxpayers resulting from passage of the CARES Act.

Key Terms in This Issue of *The Elite Quarterly*

[Item 1] Classes: Article I, section 3 of the Constitution requires the Senate to be divided into three classes for purposes of elections. Senators are elected to six-year terms, and every two years the members of one class—approximately one-third of the senators—face election or reelection.
[Item 1] Tax Extenders: Tax provisions, usually in the form of tax cuts, which are not permanent in nature. Commonly referred to as "expiring provisions," these temporary measures which typically expire upon end of the calendar year are collectively known as "tax extenders" because the expectation among lawmakers is that these provisions will be extended on an annual or every other year basis.
[Item 1] SECURE Act: The Setting Every Community Up for Retirement Enhancement Act is an Act designed primarily to incentivize Americans to save for retirement. It was signed into law by the President on December 20, 2019.
[Item 2] Gig Work: Activities individuals engage in to earn income typically associated with an app or website. Examples include driving a car for booked rides, selling goods online, and providing remote freelance work.
[Item 2] Chief Counsel Advice: Written legal advisories issued by the Chief Counsel's National Office to advise IRS personnel at all stages of case development. They convey legal interpretations or positions of the Office of Chief Counsel regarding existing or former revenue provisions.
[Item 2] Virtual Currency: A type of unregulated digital currency that is only available in electronic form. It is stored and transacted only through designated software, mobile or computer applications, or through dedicated digital wallets, and the transactions occur over the Internet through secure, dedicated networks.
[Item 3] 60-Day Letter: In the context of a Partnership, it represents an IRS letter sent to the Tax Matter Partner detailing proposed tax adjustments and providing advise as to the rights to appeal and filing of a protest.
[Item 3] US Tax Court Petition: Form submitted by a petitioner who seeks to challenge an IRS Notice of Deficiency or Notice of Determination. This form describes the reason and facts that justifies the petitioner's disagreements with the determination including any mistakes the IRS may have made in calculating a tax deficiency.
[Item 3] Summary Judgement: A judgment entered by a court for one party against another party summarily without a full trial. It may be issued on the merits of an entire case or on select issues specific to the case.
[Item 4] Lifetime Learning Credit: An individual taxpayer credit based on expenses incurred for tuition and related qualified education expenses to an eligible education institution. The genesis of this credit is to help pay for undergraduate, graduate, and professional degree courses.
[Item 4] Gift of Future Interest: A gift of value whereby the donee's right to the use, possession, and enjoyment of the property or income from the property will not begin until some future date.
[Item 4] Qualified Opportunity Funds: Any investment vehicle which is organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property, determined by the average of the percentage of qualified opportunity zone property held in the fund as measured—(A) on the last day of the first 6-month period of the taxable year of the fund, and (B) on the last day of the taxable year of the fund.

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Item 1 – Election, The Sequel

Overview

One might say it's difficult to talk about a sequel when the original is still being debated. Election lawsuits have been filed in multiple states and jurisdictions. The race for President clearly commands the most attention but as we'll note shortly, many state and local races may significantly alter the face of elected representation for the next decade. Our primary attention falls with the future of federal tax legislation. Currently we have a "split" in Washington. If the current results holds true then the Democrats will hold the White House and the House of Representatives with a slim margin, while the Senate remains with the Republicans. House and Senate majorities have become razor thin. With that said, the prospect of sweeping tax reform legislation for the foreseeable future becomes moot.

Our fall newsletter touched upon the impact to the TCJA:

- Sunsetting of the TCJA on Dec 31, 2025.
- Businesses will be required to deduct R&D costs over five years beginning in 2022.
- Full expensing for short-lived business investments will begin phasing out in 2023.

Georgia will be holding runoff elections for both Senate seats in January, and the prevailing consensus is that the Republicans would score at least one victory between the two contests which would provide them with a Senate majority; at least until 2022. The 2022 Senate Races along with Redistricting will have a material impact on the future (or demise) of the TCJA along with any other tax policy proposals. As the expression goes, if you thought 2020 was a barnburner, then "you ain't seen nothing yet."

Classes of United States Senators

Our elementary school civics class taught us that the Senate is made up of 100 Senators. From this collective group, three classes of United States senators are created made up of 33 or 34 Senate seats each. The purpose of the classes is to determine which Senate seats will be up for election in any given year. The three groups are staggered such that senators in only one of the classes are up for election in any two-year cycle, rather than having all 100 seats up for election at once. Thus, the 33 Senate seats of class 1 were up for election in 2018, the elections for the 33 seats of class 2 took place in 2020, and the elections for the 34 seats of class 3 will be held in 2022.

The origins of these three classes were established by Article I, Section 3, Clause 2 of the U.S. Constitution. The actual division was originally performed by the Senate in May 1789 by lot, with a rule being that a state's two seats had to be in different classes:

1) Whenever a new state subsequently joined the union, its two senate seats were permanently assigned to two different classes by coin toss, while keeping the three classes as close to the same size as possible.
2) A senator's description as junior or senior senator is not related to ones class. Rather, a state's senior U.S. senator is the one with the greater seniority in the Senate. This is mostly based on length of service.

With this staggered turnover, the Founding Fathers wanted to promote stability in the Senate, and encourage senators to deliberate measures over time, rather than risk a rapid turnover of the entire chamber every six years. At the same time, they wanted more frequent elections as opposed to waiting every six years, to prevent senators from permanently combining for "sinister purposes."

Class 3 consists of the 34 current senators whose seats are scheduled for re-election in November 2022, and whose terms end January 3, 2023. Which states are in play during 2022?

Alabama	Indiana	Ohio
Alaska	Iowa	Oklahoma
Arizona	Kansas	Oregon
Arkansas	Kentucky	Pennsylvania
California	Louisiana	South Carolina
Colorado	Maryland	South Dakota
Connecticut	Missouri	Utah
Florida	Nevada	Vermont
Georgia	New Hampshire	Washington
Hawaii	New York	Wisconsin
Idaho	North Carolina	
Illinois	North Dakota	

Of greater importance is the political makeup of incumbents. Of these 34 Senate seats, 22 are held by Republicans and 12 held by Democrats. Statistically, the Republicans are at a disadvantage since "they stand more to lose." Upon closer inspection we see that all but 6 of the Republican races are comfortable Republican strongholds. However, that still leaves the possibility that half a dozen races run the potential of flipping its seat blue. The Democrats have 3 potential seats that run this same risk. Given the slight majority currently in place in the Senate, one can only imagine the attention that this 2022 election will garner. If the Democrats succeed in flipping a few of these seats, then they stand poised to run the table with new legislation. Tax reform would certainly be a front burner issue.

One caveat to this analysis is the state of representation in the House. The 2020 election provided the Republicans with (currently) 9 additional seats from the Democrats. Mid-term elections typically bode well for the party not occupying the White House. We may very well see a scenario after the 2022 election where the House majority becomes Republican and the Senate flips to the Democrats. The result would simply be more of the same political gymnastics and the likelihood that the TCJA truly rides off into the sunset.

Redistricting & Census

One less publicized but equally important variable impacting the balance of power and future tax policies lies with redistricting and the 2020 Census. Redistricting simply stated is the redrawing of legislative districts. By federal law, redistricting must occur following a census for two reasons:

1) New districts must be drawn when a state gains or loses congressional districts as a result of the apportionment of congressional districts to the states.
2) Even if the number of districts does not change, governments must redraw districts so that the districts have equal populations.

The impact of COVID-19 is widespread and the Census count is no exception. The United State Supreme Court, on October 13, 2020, granted the Department of Commerce's application for a stay which blocks the Northern District Court's September 24 Order requiring the census count to continue until October 31. The Supreme Court's ruling stops the order and allows the Commerce Department to end the 2020 census pending the Ninth Circuit's ruling on the matter.

The Census Bureau has announced that the self-response and field data collection operations for the 2020 Census will end on October 15, 2020. The statutory deadline for reporting the tabulation of the total population to the President is December 31, 2020; however, it's still not clear when data for reapportionment and for redistricting will be released.

On April 13, 2020 , the U.S. Census Bureau had announced that both self-response and field data collection were delayed and would end by October 31 due to the COVID-19 pandemic. The April 13 announcement included a request to Congress for authority to delay the release of census data to be used for congressional apportionment by 120 days, to April 30, 2021, and census data to be used for redistricting by 120 days as well, to July 31, 2021.

The U.S. Census Bureau on April 13, 2020, delayed its field operations by about 90 days due to the COVID-19 pandemic, and at the same time asked Congress for authority to delay the release of census data by 120 days. If granted, the delay would be the first in at least 100 years. The requested delay in releasing data stems from the delay in field operations and relates to two federally mandated deadlines:

- Under current law, data to be used for reapportioning districts in the U.S. House of Representatives is to be delivered to the president by Dec. 31, 2020 (13 U.S.C. § 141). This data determines how many congressional seats each state will have for the following 10 years. The request would delay this deadline until April 30, 2021.
- Under current law, data to be used by the states for redistricting legislative and congressional seats is due to the states no later than March 31, 2021 (13 U.S.C. § 141). In previous decades, this data has been provided to the states on a rolling basis, starting at least six weeks prior to the deadline. The request would delay this deadline until July 31, 2021.

Congress will decide whether to grant the request for these delays. Its considerations may include:

- Whether the data release dates can be moved up without jeopardizing health and safety, or the quality and accuracy, of the data.
- Whether the rollout of state data will occur over the course of six weeks leading up to the July 31, 2021, deadline, or if it needs to be statutorily set.
- What impact these delays will have on the states.

In all states, a delay in the release of data will compress the timeline for redistricting. For some states, the requested delays would be uncomfortable; for others, the delays would mean deadlines that are established in state constitutions or statutes will be impossible to meet. States that will have the most difficulty with the requested delays include:

- Two states that have legislative elections scheduled in November 2021 (New Jersey and Virginia).
- Six states with constitutional redistricting deadlines in 2021 (California, Colorado, Ohio, Missouri, South Dakota and Maine).
- Four states with statutory redistricting deadlines in 2021 (Delaware, Iowa, Vermont and Washington).
- Fourteen states with constitutions calling for redistricting in the year after the census, effectively meaning in 2021 (Alabama, Arkansas, Connecticut, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Nevada, New Hampshire, North Dakota, Oklahoma, Oregon and Wisconsin).

Why is this talk of redistricting so terribly important? Entering the 2020 November election, the Democrats were optimistic in efforts to turn state legislatures in key Sun Belt and Rust Belt states from Republican to Democrat majorities. The result? As of this writing not one statehouse chamber majority flipped for either party. The consequence of this is that the parties holding the majority in their respective state houses will drive this redistricting process. It is anticipated that the Republicans will hold a 2 to 1 national advantage over the Democrats when redrawing the district maps. This may add to the momentum the Republicans have established in gaining House seats in 2020 and possible take-over of that body in 2022.

Federal Tax Policy?

Tax practitioners, along with most Americans, are eager to sort out the results of this election. Let's sift through and identify some of the major pieces of tax policy with an eye towards 2021.

Additional Relief & CARES Act

A possible Biden administration may have to work with a Republican Senate majority (pending the results of runoff elections in Georgia) and a Democrat-controlled House to navigate various tax policy issues in the coming year, including another round of pandemic-related economic relief and deciding what to do about upcoming tax increases built into current law.

One of the first priorities of a new Congress and a possible Biden administration is to revisit the economic relief currently being negotiated by the Trump administration and Speaker Nancy Pelosi (D-CA). While there is a chance that a relief package could come together over the next two months, it is more likely that the next Congress and administration will have to revisit this discussion and come to a compromise over core areas of disagreement. This includes the size and design of state and local aid, whether to extend more generous federal unemployment compensation benefits, and the potential size and scope of relief for businesses.

In addition, select provisions of the CARES Act such as the penalty waiver for early withdrawal from retirement accounts are also set to expire at the end of this calendar year. It's anyone's guess whether legislation will be passed extending these provisions; however, the following examples illustrate the positive impact select measures have had in lifting up several ailing industries:

- A one-year extension through 2020 of the reduced taxes on beer, wine and spirits producers saved the industry nearly $1 billion.
- Excise taxes on jet fuel and passenger tickets are paid semi-monthly. The CARES Act suspended those taxes through December, saving airlines $4.3 billion.

There is also Democratic interest in providing relief through an expanded Child Tax Credit (CTC) or Earned Income Tax Credit (EITC), proposals that the Biden camp embraced as part of their tax plan before the election. We may find relief provisions extending beyond direct dollar relief and incorporate, as part of a compromise package, elements of temporary or perhaps permanent tax legislation.

Tax Extenders

Several tax extenders—temporary tax provisions that Congress can decide to renew— are set to expire at the end of the 2020 tax year. Lawmakers have not renewed this collection of disparate "extenders" on time since the 1990s. These extenders expire after an agreement at the end of 2019 to push many of them to the end of 2020. Key individual tax extenders include:

> *<u>Exclusion from Gross Income for Discharged Residential Mortgage Indebtedness:</u>* From 2007 until 2017 debt forgiven due to a residential foreclosure was excludable from taxable income. The Extenders Act retroactively reinstated this provision for tax year 2018 and extends it to cover 2019 and 2020. The amount of discharged mortgage debt excluded from income is limited to $2 million for individual taxpayers. ($1 million if married-filing-separately).

Deductibility of Residential Mortgage Insurance Premiums: Prior to December 31, 2017, private mortgage insurance (PMI) payments were deductible for certain individual taxpayers with Adjusted Gross Income (AGI) under $110,000 ($55,000 for married filing separate). The Extenders Act retroactively reinstated this provision for tax year 2018 and extends it to cover 2019 and 2020.

Reduction in Medical Expense Deduction Floor: TCJA decreased the floor for deducting qualifying medical expenses to 7.5% of AGI for tax years 2017 and 2018. The floor was scheduled to increase to 10% for 2019 and later years. The Extenders Act applied the traditional 7.5% floor for the 2019 and 2020 tax years.

Credit for Health Insurance Costs of Eligible Individuals: The Health Coverage Tax Credit (HCTC) program was extended by one year to cover 2020. This program provides a tax credit for certain individuals and families who lost their jobs due to free trade and globalization (e.g., manufacturing jobs), along with people whose employer pensions were taken over by the Pension Benefit Guarantee Corporation (PBGC). The tax credit can be as much as 72.5% of premiums paid.

Deduction of Qualified Tuition and Related Expenses: The deduction for qualified tuition and related expenses expired after the 2017 tax year. The Extenders Act retroactively reinstated this provision for tax year 2018 and extends it to cover 2019 and 2020. The deduction is capped at $4,000 for taxpayers whose AGI does not exceed $65,000 ($130,000 for Married-Filing-Jointly) and $2,000 for taxpayers whose AGI does not exceed $80,000 ($160,000 Married-Filing-Jointly). Taxpayers whose AGI exceeds $80,000 ($160,000 Married-Filing-Jointly) are not eligible for this deduction.

Other credit and cost recovery extenders include:

Incentives

- Empowerment zone designations
- New markets tax credit
- Employer credit for paid family and medical leave
- Work opportunity tax credit
- Indian employment credit
- Credit - mine rescue training programs
- Volunteer firefighters and emergency medical responder's benefits

Energy

- Credit for nonbusiness energy property
- Energy efficient commercial building deduction
- Credit for constructing new energy efficient homes
- Credits for fuel cell motor vehicles and two-wheel plug-in electric vehicles
- Credit for alternative fuel vehicle refueling property
- Credit for second generation biofuel production
- Credit for production of Indian coal
- Credit for electricity production

Cost recovery

- Accelerated depreciation for property on an Indian reservation
- Accelerated depreciation for property on second generation biofuel plant property
- Accelerated depreciation for motorsports entertainment complexes
- Accelerated depreciation for horses older than two
- Expensing for certain film, television and live theatrical productions

TCJA

Federal policymakers will not just have pandemic relief and tax extenders to worry about next year. Starting at the end of 2021, we will see the beginning of many tax policy changes built into the Tax Cuts and Jobs Act (TCJA). These tax changes will likely dominate the tax policy discussion over the next half-decade, as there may be interest from both parties to reform or repeal the tax changes built into current law.

Starting In 2022, businesses will be required to amortize research & development costs over five years, rather than an immediate deduction currently in use. In addition, businesses using debt financing will face a tighter limitation on deducting interest expense, moving from the current limit of 30 percent of earnings before interest, taxes, depreciation, and amortization costs (EBITDA) to 30 percent of earnings before interest and taxes (EBIT). This will raise the effective tax rate on debt-financed investments.

These two business tax changes are followed by a phaseout of expensing for short-lived assets starting in 2023. At the end of 2025, the individual income tax provisions of the TCJA will also expire, ushering back a higher top individual income tax rate of 39.6 percent, a lower standard deduction, a return to the personal exemption, and a less generous child tax credit. Also expiring after 2025 will be the reduction in the alternative minimum tax along with the "newly" created section 199A deduction.

Ideally, policymakers would decide how to approach these upcoming tax changes in the years ahead and avoid temporary tax changes that kick the can down the road. This would help provide certainty for taxpayers and a better tax policy environment for business investment and economic growth. Preventing these built-in tax increases from undercutting the recovery should also be a priority.

Securing a Strong Retirement Act

Election season did not bring about a complete moratorium on tax legislation. On October 27th, the current Ways and Means Committee Chairman Richard E. Neal (D-MA) and Ranking Member Kevin Brady (R-TX) introduced the Securing a Strong Retirement Act of 2020. This legislation was crafted to help a greater number of Americans successfully save for a secure retirement. The bill builds on the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 to further improve workers' long-term financial wellbeing.

__Quotes__

"COVID-19 has only exacerbated our nation's existing retirement crisis, further compromising Americans' long-term financial security," said Chairman Neal. "In addition to meeting workers' and families' most pressing, immediate needs, we must also take steps to ensure their wellbeing further down the road. With the Securing a Strong Retirement Act, Ranking Member Brady and I build on the landmark provisions in the SECURE Act and enable more workers to begin saving earlier – and saving more – for their futures. This bill will help Americans approach old age with the confidence and dignity they deserve after decades of hard work and sacrifice."

"Ensuring Americans have the resources they need for a prosperous retirement is a bipartisan priority – and I'm glad that Chairman Neal and I were able to come together again to build on our work from the SECURE Act," Rep. Brady said. "Our legislation will make it easier for folks to save, protect Americans' retirement accounts, and give workers more peace of mind as they plan for the future."

And that future is fast approaching. This legislation along with the original passage of the SECURE Act comes as a forewarning of what's to come. The National Debt has surpassed $27 trillion dollars with a $400 billion annual interest payment on the horizon. The crush of retiree's lining up to receive Social

Security Payments will grow and crest at the end of this decade. An increasing number of state pension plans across the country are experiencing growing levels of underfunded liabilities. Topping it all off, COVID-19 and the economic hits resulting from reduced economic output and shrinking tax revenues. The season for building our financial fall-out shelters is upon us. The government is handing out the hammer and nails….

What's included in this proposed legislation? The Securing a Strong Retirement Act of 2020 would:

- Promote savings earlier for retirement by enrolling employees automatically in their company's 401(k) plan, when a new plan is created;
- Create a new financial incentive for small businesses to offer retirement plans;
- Increase and modernize the existing federal tax credit for contributions to a retirement plan or IRA (the Saver's Credit);
- Expand retirement savings options for non-profit employees by allowing groups of non-profits to join together to offer retirement plans to their employees;
- Offer individuals 60 and older more flexibility to set aside savings as they approach retirement;
- Allow individuals to save for retirement longer by increasing the required minimum distribution age to 75;
- Allow individuals to pay down a student loan instead of contributing to a 401(k) plan and still receive an employer match in their retirement plan;
- Make it easier for military spouses who change jobs frequently to save for retirement;
- Allow individuals more flexibility to make gifts to charity through their IRAs;
- Allow taxpayers to avoid harsh penalties for inadvertent errors managing an IRA that can lead to a loss of retirement savings;
- Protect retirees who unknowingly receive retirement plan overpayments; and make it easier for employees to find lost retirement accounts by creating an online, database of lost accounts.

Review Questions

1. Which of the following tax extenders is not set to expire at the end of 2020?
    a. Exclusion from gross income for discharged residential mortgage indebtedness.
    b. Credit for health insurance costs of eligible individuals.
    c. Deduction for qualified tuition and related expenses.
    d. Pease limitations for itemized deductions.

2. At the end of which year will the predominant number of tax provisions contained in the Tax Cuts and Jobs Act be set to expire?
    a. 2021
    b. 2022
    c. 2023
    d. 2025

3. The proposed Securing a Strong Retirement Act builds upon which of the following pieces of enacted legislation?
    a. The SECURE Act
    b. The CARES Act
    c. The Tax Cuts and Jobs Act
    d. The PPP Act

Item 2 – The New Employment

IRS Guidance

Elections, lawsuits, and referendums have recently shaped the nature and definition of work. On the front burner of this discussion are recent developments in California. Proposition 22 was passed by California voters in this past election which grants app-based transportation and delivery companies a special exception to California Assembly Bill 5 (AB5) by classifying their drivers as "independent contractors," exempting employers from providing benefits to certain drivers. This Proposition was clearly crafted to provide guidance for Uber and Lyft drivers throughout the state.

AB5, known as the "gig worker bill," is legislation signed into law by Governor Gavin Newsom in September 2019. It went into effect on Jan. 1, 2020, and requires companies that hire independent contractors to reclassify them as employees, with a few exceptions. The bill expands on a ruling made in a case that reached the California Supreme Court in 2018, Dynamex Operations West, Inc. vs. Superior Court of Los Angeles.

Given these outcomes expressed above, practitioners should stay aware of the fact that state views on gig work may not align with IRS guidelines. Practitioners are all familiar with the 20 factor test provided by the IRS to assist business owners to correctly determine whether individuals providing services are employees or independent contractors. Recently the IRS updated their website to provide guidance on managing taxes related to gig work:

https://www.irs.gov/businesses/gig-economy-tax-center

This link provides practitioners and those engaging in gig work with detailed information and resources to determine independent contractor versus employee status, recognizing filing and recordkeeping obligations, along with a discussion of activities that would be considered gig work.

For example, gig work is certain activity one performs to earn income, often through an app or website (digital platform), such as:

- Drive a car for booked rides or deliveries
- Rent out property or part of it
- Run errands or complete tasks
- Sell goods online
- Rent equipment
- Provide creative or professional services
- Provide other temporary, on-demand or freelance work

This IRS site provides guidance to manage taxes for gig work as an independent contractor, however it does not appear to be taking sides in this or any related argument concerning employment status. The effort is to provide outreach and guidance for gig workers to make sure that tax dollars are being remitted on earnings. Nevertheless, the message can seem confusing when compared to language from California.

Virtual Currency, Microtasking and SE tax

Further down the employment highway, we find ourselves at the intersection of work and payments received in the form of crypto currency. Recently, the IRS has been engaged in an ongoing campaign intended to address noncompliance related to the use of crypto currencies, including a virtual currency compliance campaign spearheaded by the Large Business and International Division. At the heart of this issue is the IRS' position that cryptocurrency is property and not currency. It is in this light that the IRS' recent memorandum on cryptocurrency issues should be viewed.

<u>Chief Counsel Advice #202035011</u>

The IRS recently outlined the government's position on the taxability of convertible virtual currency received in exchange for microtasking through crowdsourcing or other similar platforms.

<u>Crowdsourcing</u>

The practice of engaging a 'crowd' or group for a common goal — often innovation, problem solving, or efficiency. It is powered by new technologies, social media and web 2.0. Crowdsourcing can take place on many different levels and across various industries allowing individuals to collectively contribute — whether with ideas, time, expertise, or funds — to a project or cause.

As explained by the IRS, in a typical crowdsourcing platform, vendors develop a platform upon which firms can advertise their tasks and workers can respond to those requests and perform the tasks. Certain crowdsourcing platforms can further subdivide tasks into smaller tasks and distribute those tasks to various crowdwork platforms. These subdivided tasks, also known as "microtasks," are often simple, menial tasks that still require some form of human interaction beyond the current ability of artificial intelligence.

Examples of microtasking include processing data, image review, downloading apps and providing reviews, completing online surveys or quizzes, and registering accounts with various services. When a worker performs one or some of these microtasks, he or she may receive a "reward" in the form of convertible virtual currency.

Stepping back for a moment, the IRS has previously defined convertible virtual currency as any virtual currency that has an equivalent value in real currency or is a substitute for real currency (e.g., Bitcoin). Any transaction involving an exchange of convertible virtual currency for property or services is treated as a sale or exchange of property for Federal income tax purposes. Thus, the IRS has previously stated that an exchange of one cryptocurrency for another (e.g. Bitcoin for Ethereum) is considered a taxable transaction, as is an exchange of cryptocurrency for fiat currency or goods or services (Notice 2014-21).

More specifically related to the issue considered in this advisory, the IRS has indicated that a person paying cryptocurrency to an independent contractor for the performance of services is required to report such payment to the IRS and to the payee on Form 1099-MISC. Accordingly, in a recent memorandum, the IRS reasoned that while convertible virtual currency received in exchange for the performance of microtasks can be as little as $1 (or less), it is nevertheless considered compensation for services that must be reported on the worker's income tax return as ordinary income and may be subject to self-employment tax. The fact that a de minimis amount of convertible virtual currency may be awarded in exchange for the microtask does not appear to preclude reporting requirements.

On the one hand, this may be seen as merely a logical extension of principles that the IRS has previously espoused to a specific situation. In the larger sense, however, it may be viewed as a continuing reminder that widespread adoption of cryptocurrency as a new medium of exchange for ordinary business transactions may be here to stay.

PayPal and Venmo

The above advisory addresses what seems to be "small potatoes". However, momentum plays a critical role in turning small potatoes into larger Russets. PayPal, an online operator of online money transfers, recently announced it would begin supporting cryptocurrencies for the first time, allowing any PayPal account holders to store, buy, and sell popular virtual currencies starting later this year. The announcement makes PayPal arguably the most significant company in the financial tech sector to adopt support for virtual currencies.

PayPal's competitor, Square, launched support for bitcoin back in 2018 through its Cash app, but PayPal is going further in supporting bitcoin, Ethereum, Bitcoin Cash, and Litecoin. PayPal also plans to extend support to its money-sending subsidiary, Venmo, and international markets starting early next year.

The move makes PayPal a major digital wallet as well as a cryptocurrency exchange, and the result could substantially increase potential adoption of cryptocurrencies among everyday users and online merchants. According to Bloomberg, PayPal has more than 346 million active accounts, of which 26 million are merchants.

Quotes

"The shift to digital forms of currencies is inevitable, bringing with it clear advantages in terms of financial inclusion and access; efficiency, speed and resilience of the payments system; and the ability for governments to disburse funds to citizens quickly," PayPal CEO Dan Schulman said in a statement. "Our global reach, digital payments expertise, two-sided network, and rigorous security and compliance controls provide us with the opportunity, and the responsibility, to help facilitate the understanding, redemption and interoperability of these new instruments of exchange."

Schulman says PayPal is "eager to work with central banks and regulators around the world" in supporting cryptocurrency. Reuters reports transactions on PayPal's platform will be settled using traditional fiat currency, so merchants won't need to transfer digital coins into dollars following a transaction. But PayPal for now is restricting users to purchasing cryptocurrencies on its own platform, and existing digital coin owners can't transfer the contents of other digital wallets over to PayPal's.

The momentum for cryptocurrency is building and with it the need for federal tax policy to keep pace with the velocity of an evolving digital marketplace. The flexibility of cryptocurrencies to be split into manageable "denominations" proves vital in commerce. Currently Bitcoin is trading at a price of $18,585 per coin, with a YTD increase in value exceeding 150%.

Review Questions

1. According to the IRS, which of the following would be considered gig work?
   a. Selling goods online.
   b. Driving a car for booked rides.
   c. Providing temporary professional services.
   d. All of the above

2. The act of subdividing tasks from a crowdwork platform is known as:
   a. Mining
   b. Microtasking
   c. Crowdsourcing

d. Cryptomanagement

3. The receipt of cryptocurrency in exchange for providing professional services would be considered:
   a. Taxable as a capital gain.
   b. Taxable as ordinary income only.
   c. Taxable as ordinary income subject to self-employment tax.
   d. Not taxable.

Item 3 – 2020 Cases

Overview

Time is measured in many forms: as a continuum, as a moment, and as practitioners are keenly aware of, as a deadline. The current pandemic has shape shifted many filing deadlines for practitioners. Additionally, time in the form of scheduled trials also suffered setbacks. Tax courts across the country shut down sessions beginning on March 19, 2020. Administrative relief contained in IRS Notice 2020-18 provided taxpayers and practitioners with guidance on extended filing due dates and payment deadlines but also conveyed instructions for petitioners in tax court, specifically….

…affected Taxpayers also have until July 15, 2020, to perform all Specified Time Sensitive Actions, that are due to be performed on or after April 1, 2020, and before July 15, 2020. This relief includes the time for filing all petitions with the Tax Court, or for review of a decision rendered by the Tax Court, filing a claim for credit or refund of any tax, and bringing suit upon a claim for credit or refund of any tax. This notice does not provide relief for the time period for filing a petition with the Tax Court, or for filing a claim or bringing a suit for credit or refund if that period expired before April 1, 2020.

Courts have subsequently rebounded and are doing their best to work through a backlog of cases. Following on the theme of time and court cases, we bring you several cases from 2020 that drive home the importance of the age-old expression, "timing is everything".

United States v. Kohls

Synopsis

The executor of an estate argued that the IRS had failed to file its action timely. The IRS was looking to collect over $320,000 in unpaid estate taxes, penalties and interest due on an estate tax return. The issue turns on the date when the tax had been assessed, and whether the IRS was still within the time period imposed under IRC §6502(a)(1) to collect the tax following assessment.

The executor had originally signed Form 890, Waiver of Restriction on Assessment and Collection of Deficiency and Acceptance of Overassessment — Estate Gift and Generation Skipping Transfer Tax on or about May 27, 2005. The taxpayer claimed that the IRS received this signed form on June 2, 2005. The IRS recorded the assessment on July 4, 2005.

The taxpayer argued that the statute began running no later than June 2, 2005 (the date the IRS received the Form 890), so the IRS had to file its action to obtain a judgment no later than June 2, 2018. The IRS had filed the action thirty days after that date and, in the executor's view, had lost its right to pursue collection.

Code section

§ 6502. Collection after assessment
(a) Length of period. — Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun — (1) within 10 years after the assessment of the tax

Result

The IRS and the court disagreed. While the Form 890 may have given a consent to immediate assessment, the controlling date is when the IRS records the assessment in its records per IRC §6203. That date was July 4, 2005, and thus the statute continued to run beyond the date the IRS filed its action.

Belair Woods LLC et al. v. Commissioner

Synopsis

Case concerning the requirement under IRC §6751(b) that supervisory approval must be obtained before the "initial determination of a penalty assessment". In this case the IRS had sent the taxpayer a Letter 1807 in December of 2012, inviting the tax matters partner and other partners to a closing conference to discuss the IRS's proposed adjustments. The summary report enclosed with the letter proposed to deny a $4.778 million charitable deduction and proposed either a gross overvaluation penalty under §6662(h) or the penalties for negligence and substantial understatement of income tax under IRC §§6662(c) and (d).

The IRS sent the taxpayer a "TMP 60-Day Letter" (60-day letter). The letter indicated the IRS planned to assert penalties listed on the Civil Penalty Approval Form along with the tax assessment. The letter indicated the taxpayer could accept the adjustments or appeal them to the IRS Appeals Office.

The taxpayer argued that the initial determination of assessment of the penalty contemplated by the statute took place when a Letter 1807 was issued indicating the IRS was proposing penalties as their position entering the conference. At that time there had been no approval by a supervisor of the penalties and, thus, the penalties now could not be asserted by the IRS.

The IRS contended that no such approval was needed prior to the 60-day letter, as that should be held to be the initial determination of the assessment of the penalty. As the approval was received before that date, the IRS argued that they were not barred from asserting the penalties.

Code section

IRC §6751(b) reads as follows:

(b) Approval of assessment

> *(1) In general, no penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.*
>
> *(2) Exceptions Paragraph (1) shall not apply to—*
>
>> *(A) any addition to tax under section 6651, 6654, or 6655; or*
>>
>> *(B) any other penalty automatically calculated through electronic means.*

Result

The majority concluded that in this case the 60-day letter was the appropriate point at which to force the IRS to have met the supervisory approval standard.

Frost v. Commissioner

Synopsis

The IRS introduced a Civil Penalty Approval Form signed on May 20, 2014, for penalties proposed on the taxpayer's 2012 return. That date was over one year before the notice of deficiency was issued. That was the only document the IRS claimed to have sent that met the burden of being the formal communication of the penalty to the taxpayer.

The key question was whether this showing is sufficient for the IRS to carry its initial burden, or if the agency must also show that no other formal communication of the penalty to the taxpayer took place before the approval was obtained to carry its initial burden.

Code Section

IRC §6751(b) reads as follows:

(b) Approval of assessment

(1) In general, no penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

(2) Exceptions Paragraph (1) shall not apply to—

(A) any addition to tax under section 6651, 6654, or 6655; or

(B) any other penalty automatically calculated through electronic means.

Result

The Court determined that the IRS did not have the burden to prove the negative. The burden shifted to the taxpayer on this issue, requiring the taxpayer to show that he had received some communication that would rise to the level of the formal communication of the penalty prior to the date of the approval of the penalty by the supervisor.

Seely v. Commissioner

Synopsis

At issue was whether a reply to a letter of deficiency seeking a redetermination was timely mailed under IRC §7502(a). The Court received this petition on July 17, 2017, 111 days after the mailing of the notice of deficiency. The envelope in which the petition was mailed was properly addressed to the Tax Court. The envelope bears U.S. postage stamps and thus appears to have been delivered by the U.S. Postal Service (USPS). However, the envelope bears no discernable postmark and has no other markings affixed by the USPS.

Code Section

IRC §7502. Timely mailing treated as timely filing and paying

(a) General rule

(1) Date of delivery

If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

(2) Mailing requirements

This subsection shall apply only if-

(A) the postmark date falls within the prescribed period or on or before the prescribed date-

(i) for the filing (including any extension granted for such filing) of the return, claim, statement, or other document, or

(ii) for making the payment (including any extension granted for making such payment), and

(B) the return, claim, statement, or other document, or payment was, within the time prescribed in subparagraph (A), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return,

claim, statement, or other document is required to be filed, or to which such payment is required to be made.

<u>*Result*</u>

Provided the facts in this case, the Court found that it was more likely than not that the petition was mailed when the attorney stated it was mailed, and thus the filing was timely. Contributing factors in this decision include:

- The petition arrived at the Court only one business day late.
- The Fourth of July holiday fell between the date of the alleged mailing and the delivery date. In prior cases holiday conditions at the post office (e.g., holiday closures, unusually large volumes of mail, or inefficiencies attributable to temporary staff) have been found to be a possible explanation for short delays in delivery.

Thomas v. Commissioner

<u>*Synopsis*</u>

The last day for Sara and David Thomas to file their petition with the Tax Court to challenge an IRS's notice of deficiency was March 5, 2018. In response to the notice of deficiency petitioners decided to file a petition seeking redetermination of the deficiency. On March 5, 2018, in anticipation of the mailing of the petition, petitioner wife stamped an envelope using a private postage meter from her employer's office. On that same day she went home and delivered the stamped envelope to her husband. After petitioner husband finished preparing the petition, he placed it in the stamped envelope. Thereafter, on either March 5 or 6, 2018, at a time not confirmed, petitioner husband took the petition to a U.S. Postal Service (USPS) office in Fernley, Nevada, where he deposited the petition into a USPS mailbox. The last mail pickup time at that USPS mailbox was ordinarily 5 p.m.

The petition arrived at the Tax Court 98 days after the IRS issued the notice of deficiency. The envelope containing the petition bore two postmarks:

1) A private postage mark (postage meter) that was dated March 5, 2018, the last day for filing the petition and
2) A USPS postmark that was dated March 6, 2018 (the day after the deadline for filing the petition).

<u>*IRS Regulation*</u>

26 CFR § 301.7502-1 - Timely mailing of documents and payments treated as timely filing and paying.

(c) *Mailing requirements* -

(1) *In general.* Section 7502 does not apply unless the document or payment is mailed in accordance with the following requirements:

(i) Envelope and address. The document or payment must be contained in an envelope, properly addressed to the agency, officer, or office with which the document is required to be filed or to which the payment is required to be made.

(ii) Timely deposited in U.S. mail. The document or payment must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document or payment is deposited in the mail in the United States when it is deposited with the domestic mail service of the U.S. Postal Service. The domestic mail service of the U.S. Postal Service, as defined by the Domestic Mail Manual as incorporated by reference in the postal regulations, includes mail transmitted within, among, and between the United States of America, its territories and possessions, and Army post offices (APO), fleet post offices (FPO), and the United Nations, NY. (See Domestic Mail

Manual, section G011.2.1, as incorporated by reference in 39 CFR 111.1.) Section 7502 does not apply to any document or payment that is deposited with the mail service of any other country.

(iii) *Postmark* -

(A) *U.S. Postal Service postmark.* If the postmark on the envelope is made by the U.S. Postal Service, the postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment, the document or payment is considered not to be timely filed or paid, regardless of when the document or payment is deposited in the mail. Accordingly, the sender who relies upon the applicability of section 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment. See, however, paragraph (c)(2) of this section with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope is made by the U.S. Postal Service but is not legible, the person who is required to file the document or make the payment has the burden of proving the date that the postmark was made. Furthermore, if the envelope that contains a document or payment has a timely postmark made by the U.S. Postal Service, but it is received after the time when a document or payment postmarked and mailed at that time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(B) *Postmark made by other than U.S. Postal Service* -

(1) In general. If the postmark on the envelope is made other than by the U.S. Postal Service -

(i) The postmark so made must bear a legible date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment; and

(ii) The document or payment must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document or payment contained in an envelope that is properly addressed, mailed, and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document or making the payment.

(2) Document or payment received late. If a document or payment described in paragraph (c)(1)(iii)(B)(1) is received after the time when a document or payment so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, the document or payment is treated as having been received at the time when a document or payment so mailed and so postmarked would ordinarily be received if the person who is required to file the document or make the payment establishes -

(i) That it was actually deposited in the U.S. mail before the last collection of mail from the place of deposit that was postmarked (except for the metered mail) by the U.S. Postal Service on or before the last date, or the last day of the period, prescribed for filing the document or making the payment;

(ii) That the delay in receiving the document or payment was due to a delay in the transmission of the U.S. mail; and

(iii) The cause of the delay.

(3) U.S. and non-U.S. postmarks. If the envelope has a postmark made by the U.S. Postal Service in addition to a postmark not so made, the postmark that was not made by the U.S. Postal Service is disregarded, and whether the envelope was mailed in accordance with this paragraph (c)(1)(iii)(B) will be determined solely by applying the rule of paragraph (c)(1)(iii)(A) of this section.

Result

The Tax Court found that "…in this instance the regulations instruct that where the envelope containing the petition bears a legible USPS postmark, the postmark must bear a date on or before the last date prescribed for filing for it to be considered timely filed. [sec. 301.7502-1(c)(1)(iii)(A)]. Accordingly, even if we were to credit petitioners' assertions that they timely deposited the petition in the mail, the petition is still considered not timely filed because the USPS postmark on the envelope does not bear a date on or before March 5, 2018. Further, because petitioners mailed the petition using postage printed through a private postage meter with no request that a certified mail receipt be postmarked by a USPS employee, they are not entitled to any relief under section 301.7502-1(c)(2)."

Hunter Maintenance and Leasing Corp. Inc. v. United States

Synopsis

An S corporation argued that it had reasonable cause for late filing its Forms 1120S for multiple years due to both its CEO and CFO having serious illnesses that in both cases led to their deaths.

In 1996 George Tapling, a certified public accountant, was hired by Jos. Cacciatore & Co. According to plaintiff, Tapling "functioned as, possessed and exercised the responsibilities of Chief Financial Officer ("CFO")" for all the Cacciatore companies, including plaintiff, until his death in May 2016. Despite being called plaintiff's "de facto" CFO, Tapling was never an employee, officer, or director on the books and records of plaintiff, or any company other than Jos. Cacciatore & Co.

Victor Cacciatore had founded the company, along with a number of others, and was treated as CEO and Chairman of the Board of the Company, controlling and exercising final decision-making authority over all financial and tax matters. Sometime in 2008 or 2009 Victor was diagnosed with myelodysplastic syndrome ("MDS"), a cancer affecting the bone marrow. He became increasingly ill over the ensuing years, later being diagnosed with bladder cancer and an aggressive fast growing tumor that could not be treated through surgery because of the MDS. According to plaintiff, by 2010 through his death in 2013, Victor was incapacitated by his illness, which prevented him from exercising his responsibilities.

In 2010, Tapling himself became ill with melanoma skin cancer. He ultimately died from the disease in 2016 after it metastasized.

Unbeknownst to the companies, however, beginning in 2010 Tapling failed to file the income tax returns for plaintiff and some of the tax returns for some of the other companies. He did in fact prepare plaintiff's returns, and issued the Schedule K-1s, but failed to file the 1120S forms and other returns for 2010 through 2013.

After Tapling's death, unopened IRS notices were found in his desk. The companies hired an outside firm to review the income tax filing compliance for all of the companies. It found that Tapling had prepared plaintiff's tax returns but failed to file them. In March 2017 that firm filed the delinquent returns for plaintiff.

The corporation clearly faced significant late filing penalties under IRC §6699. The corporation argued that the penalties should be abated for reasonable cause, as the corporation was disabled due to the incapacity of its CEO and CFO.

Code Section

§6651. Failure to file tax return or to pay tax

(a) Addition to the tax

In case of failure-

> *(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), **unless it is shown that such failure is due to reasonable cause and not due to willful neglect,** there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;*
>
> *(2) to pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or*
>
> *(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.*

<u>Result</u>

The court grants defendant's motion (United States) for summary judgment and denied the plaintiff's motion for summary judgment. The Plaintiff relied on Tapling and regardless of whether Tapling was its agent or its employee, plaintiff cannot simply rely on his illness to demonstrate the corporation's inability to file. Additionally, the plaintiff didn't present any evidence of any ordinary business controls to ensure that it met its responsibility. It admitted that it ceded all responsibility to Tapling without any oversight.

Baer v. United States

<u>Synopsis</u>

An attorney argued that because he believed that his CPA had filed for an extension of time to file his personal income tax return, he should be granted reasonable cause relief from a failure to file penalty. The case involved a taxpayer who had engaged a CPA to prepare his tax return. Each year the taxpayer had not been ready to file by April 15, and therefore an extension of time to file the return was required to be requested.

The taxpayer argues that he had a reasonable basis for his late filing since he believed the CPA had filed the extension. However, the IRS disagreed, arguing a taxpayer could not delegate this duty to a third party since, as the Supreme Court had ruled in United States v. Boyle, 469 U.S. 241 (1985), it takes no special expertise in taxation to mail a document on or before April 15, or to be aware that action must be taken by that well-known date.

The plaintiff argued that based on industry practice and the prior course of dealings between the plaintiff and his CPA, it was the "plaintiff's return preparer who would be the appropriate and expected individual to file the 2011 request for extension."

Precedent – United States V. Boyle 469 US 241 (1985)

The IRS consistently takes the position that taxpayers have a nondelegable duty to file their tax returns. While taxpayers can rely upon tax professionals for substantive tax advice, taxpayers could not historically rely upon tax professionals to physically file tax returns.

In 1985, the Supreme Court adopted this principle when it issued United States v. Boyle. In Boyle, late-filing penalties were upheld against a taxpayer that relied upon a tax professional to mail that taxpayer's tax return. In 2011, the Department of the Treasury issued regulations that require tax return preparers who reasonably expect to prepare 11 or more returns in one calendar year to electronically file all tax returns (section 6011(e)(3)). These e-file regulations force taxpayers with sufficiently complex tax returns to rely upon tax professionals to electronically file their tax returns. In effect, taxpayers that engage tax professionals' assistance must now delegate their filing duty. Because many tax returns must now be electronically filed, the precedential weight of Boyle is somewhat in question.

In Boyle, the executor of an estate delegated the executor's tax-filing obligation to an attorney. The executor made numerous inquiries to the attorney regarding tax return preparation, and the attorney assured the executor that the return would be timely filed. Unfortunately, the attorney failed to do so because of an inadvertent clerical error. The estate argued its reliance on the attorney constituted reasonable cause, sufficient to abate all late-filing penalties. The Supreme Court upheld late-filing penalties and stated, "Although it is common practice for an executor to engage a professional to prepare and file an estate tax return, a person experienced in business matters can perform that task personally." Because the executor could have mailed the tax return himself, the late-filing penalties were upheld.

Result

The taxpayer's argument is summarized in two parts:

1. The plaintiff argues that his CPA's conduct — i.e., not submitting Extension Form 4868 under the belief that an estimated balance due for tax year 2011 had to be paid in conjunction with the submission in order to be granted an extension — constitutes advice. The CPA's action of sending the completed form to Mr. Baer without filing it first was, according to the plaintiff, advice itself. The complaint, however, does not allege that the plaintiff's CPA provided legal advice on this issue. In fact, the plaintiff acknowledges in his brief that when the exchange between his CPA and him occurred, the plaintiff "did not have any conversation on the subject with his return preparer."

2. The plaintiff argues that he relied on his CPA's erroneous legal "advice." The plaintiff cites a line of cases holding that when a taxpayer hires a competent tax expert and that tax expert provides mistaken advice, the taxpayer may have reasonable cause for a late filing due to reliance on the incorrect professional opinion. Here, Mr. Baer argues that the advice his CPA gave him in not filing Extension Form 4868 was erroneous; because, however, the plaintiff could reasonably rely on the advice as the professional opinion of a tax expert, he had reasonable cause for his late filing.

The Court found neither argument persuasive. First, it found that there never had been advice rendered to the taxpayer regarding the submission of the extension for:

> *"The Court rejects the plaintiff's first argument and agrees with the defendant's position that the CPA's failure to file the extension request due to a mistaken belief that payment must accompany the request did not constitute "advice." The plaintiff and his CPA did not discuss the submission of the extension form: the plaintiff asked no questions, and the CPA provided no instructions. Had the plaintiff alleged such communication regarding whether payment had to accompany the request for additional time to file, such communication could have constituted legal advice.*
>
> *The Court also rejects the plaintiff's second argument. Even if the CPA's act of sending to Mr. Baer a copy of a completed Extension Form 4868 could be construed as the provision of tax advice by the CPA, that advice would not have been based on a "[ ]reasonable factual or legal assumption[ ]," …and the plaintiff's reliance on it would not be reasonable."*

And we'll wrap up this section on a case involving a taxpayer and a recurring practitioner nightmare that played out in realtime…..

Padda v. Commissioner

Synopsis

Padda and Kane's 2012 federal individual income tax return was due October 15, 2013. On October 15, 2013, Padda and Kane signed IRS Form 8879, "IRS e-file Signature Authorization" to authorize Ehrenreich's accounting firm to electronically file their 2012 Form 1040, "U.S. Individual Income Tax Return". On October 15, 2013, Ehrenreich's accounting firm was electronically filing several tax returns just before midnight.

Ehrenreich's accounting firm created an electronic version of Padda and Kane's return on October 15, 2013, at 11:59 p.m. It transmitted the electronic version to the IRS on October 16, 2013, at 12 a.m. On October 16, 2013, the IRS rejected the return as a duplicate submission. Ehrenreich's accounting firm electronically resent the return on October 25, 2013, and it was received and accepted by the IRS the same day.

Result

The Tax Court rejected their defense for two principle reasons:

1. Ultimately they were attempting to delegate timely filing to a third party, and
2. Even if that was allowed it would have been unreasonable to have relied on the firm to file timely in this case based on their previous experience with this accounting firm. Specifically, the court stated….

> *"…..Even if sometimes it might be reasonable for a taxpayer to rely on his or her accountant to timely file his or her returns (contrary to the caselaw), it was not reasonable in this particular case for Padda and Kane to rely on Ehrenreich's firm to timely file their return. Padda and Kane have relied on Ehrenreich's firm to file their returns every year since at least 2006. And every year since then, except for 2011, their return was filed late. Yet they have continued to use Ehrenreich's firm to file their return year after year. Padda and Kane's failure to ensure that Ehrenreich's firm timely filed their 2012 return demonstrates a lack of ordinary business care, particularly in the light of the firm's history of delinquent filings."*

Review Questions

1. Which of the following statements accurately describes the IRS's position concerning postmarks?
    a. Envelopes with non-US postmarks will be rejected.
    b. Envelopes bearing a US and non-US postmark will be considered received on the earliest date expressed by the postmark.
    c. In cases where an envelope having a US and non US postmark are found on an envelope, the non US postmark date is disregarded.
    d. None of the above.

2. Which of the following cases addressed the topic of whether a reply to a letter of deficiency seeking a redetermination was mailed in a timely manner?
    a. Belair Woods LLC et al. v. Commissioner.
    b. Seely v. Commissioner.
    c. Hunter Maintenance and Leasing Corp. Inc. v. United States.
    d. Padda v. Commissioner.

3. The IRS consistently takes the position that ___________ have a __________ duty to file a taxpayer's tax returns.
    a. Taxpayers, nondelegable
    b. Taxpayers, delegable
    c. Tax practitioners, nondelegable
    d. Tax practitioners, delegable

ITEM 4 – Tax Updates and Planning

Overview

Heraclitus was a renowned Greek philosopher and has been credited with the timeless quote:

"change is the only constant in life"

I believe if Heraclitus were alive today, and struggled to make ends meet as a philosopher, then clearly he could moonlight as a tax practitioner. Change is constant in our profession and this year was no exception. We'll finish up this quarter's newsletter by touching upon the more prominent changes which will impact 2021. We'll also touch upon some year-end individual and business planning opportunities as we kiss *(or kick*) 2020 goodbye.

Updated Individual Amounts – 2021

Rev. Proc. 2020-45 was issued on October 26, 2020, providing taxpayers with the following inflation-adjusted items for tax year 2021.

Tax Rates

For taxable years beginning in 2021, the tax rate tables under § 1 are as follows:

Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is:	The Tax Is:
Not over $19,900	10% of the taxable income
Over $19,900 but not over $81,050	$1,990 plus 12% of the excess over $19,900
Over $81,050 but not over $172,750	$9,328 plus 22% of the excess over $81,050
Over $172,750 but not over $329,850	$29,502 plus 24% of the excess over $172,750
Over $329,850 but not over $418,850	$67,206 plus 32% of the excess over $329,850
Over $418,850 but not over $628,300	$95,686 plus 35% of the excess over $418,850
Over $628,300	$168,993.50 plus 37% of the excess over $628,300

Heads of Households

If Taxable Income Is:	The Tax Is:
Not over $14,200	10% of the taxable income
Over $14,200 but not over $54,200	$1,420 plus 12% of the excess over $14,200
Over $54,200 but not over $86,350	$6,220 plus 22% of the excess over $54,200
Over $86,350 but not over $164,900	$13,293 plus 24% of the excess over $86,350
Over $164,900 but not over $209,400	$32,145 plus 32% of the excess over $164,900
Over $209,400 but not over $523,600	$46,385 plus 35% of the excess over $209,400
Over $523,600	$156,355 plus 37% of the excess over $523,600

Unmarried Individuals (other than Surviving Spouses and Heads of Households)

If Taxable Income Is:	The Tax Is:
Not over $9,950	10% of the taxable income
Over $9,950 but not over $40,525	$995 plus 12% of the excess over $9,950
Over $40,525 but not over $86,375	$4,664 plus 22% of the excess over $40,525
Over $86,375 but not over $164,925	$14,751 plus 24% of the excess over $86,375
Over $164,925 but not over $209,425	$33,603 plus 32% of the excess over $164,925
Over $209,425 but not over $523,600	$47,843 plus 35% of the excess over $209,425
Over $523,600	$157,804.25 plus 37% of the excess over $523,600

Married Individuals Filing Separate Returns

If Taxable Income Is:	The Tax Is:
Not over $9,950	10% of the taxable income
Over $9,950 but not over $40,525	$995 plus 12% of the excess over $9,950
Over $40,525 but not over $86,375	$4,664 plus 22% of the excess over $40,525
Over $86,375 but not over $164,925	$14,751 plus 24% of the excess over $86,375
Over $164,925 but not over $209,425	$33,603 plus 32% of the excess over $164,925
Over $209,425 but not over $314,150	$47,843 plus 35% of the excess over $209,425
Over $314,150	$84,496.75 plus 37% of the excess over $314,150

Estates and Trusts

If Taxable Income Is:	The Tax Is:
Not over $2,650	10% of the taxable income
Over $2,650 but not over $9,550	$265 plus 24% of the excess over $2,650
Over $9,550 but not over $13,050	$1,921 plus 35% of the excess over $9,550
Over $13,050	$3,146 plus 37% of the excess over $13,050

Unearned Income of Minor Children (the "Kiddie Tax"): The amount which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is $1,100.

Maximum Capital Gains Rate. For tax year 2021…

Maximum Zero Rate Amount

$80,800 - joint return or surviving spouse
$40,400 - married individual filing a separate return
$54,100 - head of household
$40,400 - any other individual (other than an estate or trust), and
$ 2,700 - estate or trust.

Maximum 15% Rate Amount

$501,600 - joint return or surviving spouse
$250,800 - married individual filing a separate return
$473,750 - head of household

$445,850 - any other individual (other than an estate or trust), and
$ 13,250 - estate or trust.

Credits

Adoption Credit: The credit allowed for an adoption of a child with special needs is $14,440. The available adoption credit begins to phase out for taxpayers with modified adjusted gross income in excess of $216,660 and is completely phased out for taxpayers with modified adjusted gross income of $256,660 or more.

Child Tax Credit: The amount of credit under § 24 that may be refundable is $1,400.

Lifetime Learning Credit: For taxable years beginning in 2021, a taxpayer's modified adjusted gross income in excess of $59,000 ($119,000 for a joint return) is used to determine the reduction in the amount of the Lifetime Learning Credit. The Lifetime Learning Credit is completely phased out for taxpayers with modified adjusted gross income in excess of $69,000 ($139,000 for a joint return).

Earned Income Credit: The following amounts are used to determine the earned income credit for tax year 2020.

- "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed.
- "threshold phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) above which the maximum amount of the credit begins to phase out.
- "completed phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) at or above which no credit is allowed.
- The threshold phaseout amounts and the completed phaseout amounts shown in the table below for married taxpayers filing a joint return include the increase adjusted for inflation for taxable years beginning in 2021.

	Number of Qualifying Children			
Earned Income Credit	One	Two	Three or More	None
Earned Income Amount	$10,640	$14,950	$14,950	$7,100
Maximum Amount of Credit	$3,618	$5,980	$6,728	$543
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$19,520	$19,520	$19,520	$8,880
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$42,158	$47,915	$51,464	$15,980
Threshold Phaseout Amount (Married Filing Jointly)	$25,470	$25,470	$25,470	$14,820
Completed Phaseout Amount (Married Filing Jointly)	$48,108	$53,865	$57,414	$21,920

Note: The earned income tax credit is not allowed if the aggregate amount of certain investment income exceeds $3,650.

Refundable Credit for Coverage Under a Qualified Health Plan. For taxable years beginning in 2021, the limitation on tax imposed for excess advance credit payments is determined using the following table:

If the household income (expressed as a percent of poverty line) is	The limitation amount for unmarried individuals (other than surviving spouses and heads of house) is:	The limitation amount for all other taxpayers is:
Less than 200%	$325	$650
At least 200% but less than 300%	$800	$1,600
At least 300% but less than 400%	$1,350	$2,700

Alternative Minimum Tax

Exemption Amounts for Alternative Minimum Tax: For taxable years beginning in 2021:

Joint Returns or Surviving Spouses	$114,600
Unmarried Individuals (other than Surviving Spouses)	$ 73,600
Married Individuals Filing Separate Returns	$ 57,300
Estates and Trusts	$ 25,700

The excess taxable income above which the 28 percent tax rate applies is:

Married Individuals Filing Separate Returns	$ 99,950
Joint Returns, Unmarried Individuals (other than surviving spouses), and Estates and Trusts	$199,900

For taxable years beginning in 2021, the amounts used to determine the phaseout of the exemption amounts are:

	Threshold Phaseout amount	Complete Phaseout amount
Joint Returns or Surviving Spouses	$1,047,200	$1,505,600
Unmarried Individuals (other than Surviving Spouses)	$523,600	$818,000
Married Individuals Filing Separate Returns	$523,600	$752,800
Estates and Trusts	$85,650	$188,450

Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax.": For a child to whom the "kiddie tax" applies, the exemption amount for purposes of the alternative minimum tax may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) $7,950.

Other Inflation Adjusted Items

Certain Expenses of Elementary and Secondary School Teachers: The amount of the deduction allowed under §162 that consists of expenses paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom remains at $250.

Standard Deduction: In general, for taxable years beginning in 2021, amounts are:

Filing Status	Standard Deduction
Married Individuals Filing Joint Returns and Surviving Spouses	$25,100
Heads of Households	$18,800
Unmarried Individuals (other than Surviving Spouses and Heads of Households)	$12,550
Married Individuals Filing Separate Returns	$12,550

Dependent: The standard deduction amount for an individual who may be claimed as a dependent by another taxpayer cannot exceed the greater of (1) $1,100, or (2) the sum of $350 and the individual's earned income.

Aged or blind: The additional standard deduction amount for the aged or the blind is $1,350. The additional standard deduction amount is increased to $1,700 if the individual is also unmarried and not a surviving spouse.

Election to Expense Certain Depreciable Assets: The aggregate cost of any § 179 property that a taxpayer elects to treat as an expense cannot exceed $1,050,000. The cost of any sport utility vehicle that may be taken into account under § 179 cannot exceed $26,200. The $1,050,000 limitation under section 179(b)(1) is reduced (but not below zero) by the amount by which the cost of § 179 property placed in service during the 2021 taxable year exceeds $2,620,000.

Qualified Business Income: For taxable years beginning in 2021, the threshold amount under § 199A(e)(2) is $329,800 for married filing joint returns, $164,925 for married filing separate returns, and $164,900 for all other returns.

Medical Savings Accounts:

Self-only coverage: The term "high deductible health plan" means, for self-only coverage, a health plan that has an annual deductible that is not less than $2,400 and not more than $3,600, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $4,800.

Family coverage: The term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $4,800 and not more than $7,150, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $8,750.

Interest on Education Loans: For taxable years beginning in 2021, the $2,500 maximum deduction for interest paid on qualified education loans under § 221 begins to phase out under § 221(b)(2)(B) for taxpayers with modified adjusted gross income in excess of $70,000 ($140,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of $85,000 or more ($170,000 or more for joint returns).

Threshold for Excess Business Loss: In determining a taxpayer's excess business loss, the amount under § 461(l)(3)(A)(ii)(II) is $262,000 ($524,000 for joint returns).

Unified Credit Against Estate Tax: For an estate of any decedent dying in calendar year 2021, the basic exclusion amount is $11,700,000 for determining the amount of the unified credit against estate tax under § 2010.

Exempt Amount of Wages, Salary, or Other Income: For taxable years beginning in 2021, the dollar amount used to calculate the amount determined under § 6334(d)(4)(B) is $4,300.

Annual Exclusion for Gifts: The first $15,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

2020 Year End Planning

The pace of change is frantic and dizzying. Opportunities exist for extensive tax planning and utilization of amended tax returns to generate favorable tax outcomes for our clients. On the other hand, we should be mindful of those simple tips that have a wide audience. Let's take this moment to review some last minute low hanging fruit that should be harvested when talking with clients on possible recommendations before the end of the calendar year.

Individuals

Required Minimum Distributions: RMD's have been waived for individual retirement plans (IRAs) and certain defined contribution plans. Clients should be reviewed for instances where passing on this RMD in 2020 may prove advantageous.

Distributions from Retirement Accounts: For those individuals seeking additional funds, The CARES Act eliminated the 10% early distribution penalty for participants under age 59½ for certain coronavirus-related distributions. An individual may take an aggregate amount of up to $100,000 without being subject to the 10% tax penalty, if a person:

- Has been diagnosed with COVID-19
- Has a spouse or dependent diagnosed with COVID-19 or
- Experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to COVID-19, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual, or other factors as determined by the Secretary of the Treasury.

Distribution considerations

- The coronavirus-related distribution must be taken after January 1, 2020, and before December 31, 2020.
- The 20% default income-tax withholding will not apply to the coronavirus-related distribution.
- If an individual repays the coronavirus-related distribution within 3 years, income taxation is avoided entirely and the distribution is treated like a roll-over distribution.
- If the distribution is not repaid, the individual can elect to spread the income inclusion (and related tax) associated with the distribution over a 3-year period (including 2020).

Loans from Retirement Accounts: The CARES Act extends the time to pay back outstanding loans from retirement accounts by one year such that the due date for the loan falls between the March 27, 2020, and December 31, 2020.

Charitable Contributions: Under the CARES Act, individuals that claim the standard deduction may also take a deduction for up to $300 of *cash* contributions to 501(c)(3) organizations made in 2020. Additionally, the CARES Act also suspends the adjusted gross income limitation for charitable contributions made in 2020.

Businesses

Employer Refundable Credit and Payroll Tax Deferral: Under the CARES Act, certain businesses and non-profit organizations receive a refundable credit against employment taxes equal to 50% of "qualified wages" paid to their employees during the COVID-19 crisis. To qualify, the business or non-profit must have experienced at least a partial suspension of operations or significant decline in gross income during the crisis as a result of government limitations. This credit is claimed on Form 941. The maximum credit amount per employee is $5,000. As a reminder, employers who participate in the Payroll Protection Loan Program (PPP) cannot also receive the refundable employment tax credit.

Deferral and Payment

Employers can defer payment of:

- Payroll taxes owing for the "payroll tax deferral period" (between March 27, 2020, and January 1, 2021).
- 50% of such payroll taxes until December 31, 2021.
- The remaining 50% of payroll taxes until December 31, 2022.

Self-employed individuals can defer a corresponding 50% of self-employment taxes until December 31, 2021, and December 31, 2022, in the same proportions. Those employers whose Payroll Protection Loans are forgiven, however, cannot defer their payroll taxes.

Losses: The CARES Act temporarily reduced limitations on a company's use of losses. The Act provided that a net operating loss ("NOL") arising in a tax year beginning in 2018, 2019, or 2020 can be carried back for five years. In addition, taxpayers can offset historic net operating losses against income without limitation in those tax years. This provision may prove to be a substantial benefit for struggling clients seeking liquidity to keep the doors open.

IRS Notice 2020-32…a PPP trap?

A central feature of the CARES Act, the Paycheck Protection Program (PPP), provided a lifeline to a multitude of small businesses during the early days of the Coronavirus pandemic. PPP loans were used to cover payroll expenses and other enumerated operating costs (e.g., rent, utilities) that can be forgiven if the borrower meets certain payroll and employment retention criteria.

While a forgiven loan might otherwise be treated as income to the borrower, the CARES Act provides that for federal income tax purposes, any amount of the PPP loan that is forgiven will be excluded from gross income and therefore from income tax.

With the funds long since spent to keep their businesses afloat, borrowers need to be aware of a potential negative tax risk to seeking loan forgiveness under the PPP. According to IRS Notice 2020-32, business expenses that would normally be deductible in computing taxable income may not be deductible if the taxpayer uses funds from a forgiven loan to pay such expenses. In the Notice, the IRS takes the position that section 265 of the Internal Revenue Code, "disallows any otherwise allowable deduction under any provision of the (Internal Revenue) Code…for the amount of any … (business) expense to the extent" said expense was paid for using forgivable PPP loan proceeds, "because such payment is allocable to tax-exempt income." Section 265 of the Code provides that, "no deduction is allowed for any amount allocable to one or more classes of income… wholly exempt from the taxes imposed by this subtitle…"

In short, under the IRS' position, businesses would be able to exclude forgiven disbursements from gross income, but would not be allowed to deduct such expenses for federal income tax purposes. Since the issuance of the Notice, legislators in both the U.S. House of Representatives and the Senate have expressed their displeasure with the IRS guidance, indicating that the CARES Act meant to provide exactly such relief.

Because the Notice provided no opportunity for comment from taxpayers, it will be accorded limited deference in any legal proceeding. The Notice therefore provides taxpayers with a roadmap for the Service's position, but has little legal effect.

Lesson? Tax planning calculations should be carefully reviewed to consider the impact of PPP loans received and disbursements made.

Interest Expense: The Cares Act also increased the limitation on the business interest expense deduction. In general, for the 2019 and 2020 tax years this limitation was raised from 30% of adjusted taxable income to 50%.

Qualified Opportunity Funds: On June 4, 2020, the IRS issued Notice 2020-39 providing relief for taxpayers investing or considering investing in Qualified Opportunity Funds ("QOFs"). Under section 1400Z-2, taxpayers have 180 days to reinvest gains from the sale of property in a QOF and defer gains from income tax. Notice 2020-39 allows taxpayers who sold property and realized gains between October 1, 2019, and March 31, 2020, to reinvest such gains in a QOF by December 31, 2020, and benefit from the provision's tax deferral. The Notice also waives certain QOF requirements for the 2020 tax year.

From all of us at CPElite we wish you Happy Holidays, good health and best wishes in the New Year!

Review Questions

1. Which of the following statements is not true concerning tax credits starting for tax year 2021?
    a. The credit allowed for an adoption of a child with special needs can total up to $14,440.
    b. The Lifetime Learning Credit phases out completely for single taxpayers who earn $59,000 in modified adjusted gross income.
    c. The maximum earned income credit an individual with one qualifying child can receive is $3,618.
    d. The earned income tax credit is not allowed if the aggregate amount of certain investment income exceeds $3,650.

2. The annual exclusion for gifts to any person for tax year 2021 is _________ .
    a. $13,000
    b. $14,000
    c. $15,000

d. $16,000

3. In 2020 the CARES Act eliminated the 10% early distribution penalty for participants under age 59½ for certain coronavirus-related distributions. An individual may take an aggregate amount of up to _______ without being subject to the 10% tax penalty.
   a. $50,000
   b. $75,000
   c. $100,000
   d. $150,000

Review Question answers w/ Feedback

ITEM 1 Election, the sequel

1. Which of the following tax extenders is not set to expire at the end of 2020?
    a. Incorrect. From 2007 until 2017 debt forgiven due to a residential foreclosure was excludable from taxable income. The Extenders Act retroactively reinstated this provision for tax year 2018 and extends it to cover 2019 and 2020.
    b. Incorrect. The Health Coverage Tax Credit (HCTC) program was extended by one year to cover 2020. This program provides a tax credit for certain individuals and families who lost their jobs due to free trade and globalization (e.g., manufacturing jobs), along with people whose employer pensions were taken over by the Pension Benefit Guarantee Corporation (PBGC).
    c. Incorrect. The deduction for qualified tuition and related expenses expired after the 2017 tax year. The Extenders Act retroactively reinstated this provision for tax year 2018 and extends it to cover 2019 and 2020.
    d. Correct. The Pease limitation placed a cap on how much certain taxpayers could claim in the way of itemized deductions before it was repealed upon passage of the Tax Cuts and Jobs Act (TCJA).

2. In which year will the predominant number of tax provisions contained in the Tax Cuts and Jobs Act be set to expire?
    a. Incorrect. Select provisions of the TCJA will expire prior to the sunsetting of the law in 2025. At the end of 2021, businesses will be required to amortize research and development costs over five years.
    b. Incorrect. Select provisions of the TCJA will expire prior to the sunsetting of the law in 2025. Changes to expensing methods for short lived assets will begin in 2023.
    c. Incorrect. Select provisions of the TCJA will expire prior to the sunsetting of the law in 2025.
    d. Correct. At the end of 2025, the individual income tax provisions of the TCJA will expire, bringing back a higher top individual income tax rate of 39.6 percent, a lower standard deduction, and a return to the personal exemption.

3. The proposed Securing a Strong Retirement Act builds upon which of the following pieces of enacted legislation?
    a. Correct. The SECURE Act became law at the end of 2019.
    b. Incorrect. The CARES Act provided widespread financial relief for millions impacted by the pandemic.
    c. Incorrect. Provisions of the TCJA are set to expire for years leading up to the end of 2025.
    d. Incorrect. The Securing a Strong Retirement Act seeks, in part, to help small businesses establish or expand retirement savings accounts for their employees.

ITEM 2 The New Employment

1. According to the IRS, which of the following would be considered gig work?
    a. Incorrect. This answer is only partially correct. Renting equipment and providing freelance work would also be examples of gig work.
    b. Incorrect. This answer is only partially correct. Running errands or providing creative services would also be examples of gig work.
    c. Incorrect. This answer is only partially correct. Renting out property or making food deliveries would also be examples of gig work.

d. Correct. Gig work is defined as activity that one performs to earn income, often through an app or website.

2. The act of subdividing tasks from a crowdwork platform is known as:
    a. Incorrect. Certain crowdsourcing platforms can further subdivide tasks into smaller tasks and distribute those tasks to various crowdwork platforms. These subdivided tasks, also known as "microtasks," are often simple, menial tasks that still require some form of human interaction beyond the current ability of artificial intelligence.
    b. Correct. Examples of microtasking include processing data, image review, downloading apps and providing reviews, completing online surveys or quizzes, and registering accounts with various services.
    c. Incorrect. Certain crowdsourcing platforms can further subdivide tasks into smaller tasks and distribute those tasks to various crowdwork platforms. These subdivided tasks, also known as "microtasks," are often simple, menial tasks that still require some form of human interaction beyond the current ability of artificial intelligence.
    d. Incorrect. This act of subdividing tasks is known as microtasking. When a worker performs one or some of these microtasks, he or she may receive a "reward" in the form of convertible virtual currency.

3. The receipt of cryptocurrency in exchange for providing professional services would be considered?
    a. Incorrect. This transaction would be taxable as ordinary income subject to self-employment tax. The IRS has previously stated that an exchange of one cryptocurrency for another (e.g. Bitcoin for Ethereum) is considered a taxable transaction, as is an exchange of cryptocurrency for fiat currency or goods or services (Notice 2014-21).
    b. Incorrect. The IRS has indicated that a person paying cryptocurrency to an independent contractor for the performance of services is required to report such payment to the IRS and to the payee on Form 1099-MISC.
    c. Correct. The fact that a de minimis amount of convertible virtual currency may be awarded in exchange for completing a microtask does not appear to preclude reporting requirements.
    d. Incorrect. The IRS has stated that while convertible virtual currency received in exchange for the performance of microtasks can be as little as $1 (or less), it is nevertheless considered compensation for services that must be reported on the worker's income tax return as ordinary income and may be subject to self-employment tax.

ITEM 3 – 2020 Cases

1. Which of the following statements accurately describes the IRS's position concerning postmarks?
    a. Incorrect. In cases where an envelope having a US and non US postmark are found on an envelope, the non US postmark date is disregarded.
    b. Incorrect. In cases where an envelope where a US and non US postmark is found, the non US postmark date is disregarded. The sender who relies upon the applicability of section 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment.
    c. Correct. The domestic mail service of the U.S. Postal Service, as defined by the Domestic Mail Manual as incorporated by reference in the postal regulations, includes mail transmitted within, among, and between the United States of America, its territories and possessions, and Army post offices (APO), fleet post offices (FPO), and the United Nations, NY.
    d. Incorrect. In cases where an envelope having a US and non US postmark are found, the non US postmark date is disregarded.

2. Which of the following cases addressed the topic of whether a reply to a letter of deficiency seeking a redetermination was mailed in a timely manner?
    a. Incorrect. This case addressed the requirement under IRC §6751(b) that supervisory approval must be obtained before an "initial determination of a penalty assessment".
    b. Correct. Provided the facts in this case, the Court found that it was more likely than not that the petition was mailed when the attorney stated it was mailed, and thus the filing was timely.
    c. Incorrect. This case addressed the issue of whether an S corporation had reasonable cause for late filing its Forms 1120S for multiple years due to both its CEO and CFO having serious illnesses that in both cases led to their deaths.
    d. Incorrect. This case relates to culpability stemming from the late efiling of an individual tax return.

3. The IRS consistently takes the position that ___________ have a __________ duty to file a taxpayer's tax returns.
    a. Correct. While taxpayers can rely upon tax professionals for substantive tax advice, taxpayers could not historically rely upon tax professionals to physically file tax returns.
    b. Incorrect. While taxpayers can rely upon tax professionals for substantive tax advice, taxpayers could not historically rely upon tax professionals to physically file tax returns. Additionally, taxpayers cannot assign this duty to file to others.
    c. Incorrect. In 1985, the Supreme Court adopted the principle where taxpayers have ultimate non delegable responsibility when it issued United States v. Boyle. In Boyle, late-filing penalties were upheld against a taxpayer that relied upon a tax professional to mail that taxpayer's tax return.
    d. Incorrect. A taxpayer cannot delegate this duty to a third party since, as the Supreme Court had ruled in United States v. Boyle, 469 U.S. 241 (1985), it takes no special expertise in taxation to mail a document on or before April 15, or to be aware that action must be taken by that well-known date.

ITEM 4 Tax Updates and Planning

1. Which of the following statements is not true concerning tax credits starting for tax year 2021?
    a. Incorrect. The available adoption credit begins to phase out for taxpayers with modified adjusted gross income in excess of $216,660 and is completely phased out for taxpayers with modified adjusted gross income of $256,660 or more.
    b. Correct. The Lifetime Learning Credit is completely phased out for taxpayers with modified adjusted gross income in excess of $69,000 ($139,000 for a joint return).
    c. Incorrect. Note that the "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed.
    d. Incorrect. Amounts are indexed for inflation annually.
2. The annual exclusion for gifts to any person for tax year 2021 is __________ .
    a. Incorrect. The annual exclusion is the amount of money that one person may transfer to another as a gift without incurring a gift tax or affecting the unified credit.
    b. Incorrect. This annual gift exclusion can be transferred in the form of cash or other assets.
    c. Correct. This amount remains unchanged from the prior year.
    d. Incorrect. The 2021 amount remains at $15,000. Any gifts made to a single person in excess of $15,000 count toward one's combined estate and gift tax exclusion.

3. In 2020, the CARES Act eliminated the 10% early distribution penalty for participants under age 59½ for certain coronavirus-related distributions. An individual may take an aggregate amount of up to _______ without being subject to the 10% tax penalty.
    a. Incorrect. The limit for this provision is $100,000. The coronavirus-related distribution must be taken after January 1, 2020, and before December 31, 2020.
    b. Incorrect. The limit for this provision is $100,000. If an individual repays the coronavirus-related distribution within 3 years, income taxation is avoided entirely and the distribution is treated like a roll-over distribution.
    c. Correct. The 20% default income-tax withholding will not apply to the coronavirus-related distribution.
    d. Incorrect. The limit for this provision is $100,000. If the distribution is not repaid, the individual can elect to spread the income inclusion (and related tax) associated with the distribution over a 3-year period (including 2020).

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CE IRS-APPROVED CONTINUING EDUCATION PROVIDER

NATIONAL REGISTRY OF CPE SPONSORS QAS QUALITY ASSURANCE SERVICE

Final Exam

1. Which of the following statements best describes the impact that redistricting may have on future tax policy?
    a. Redistricting will impact the manner in which "classes" are determined in the Senate.
    b. Redistricting impacts the legislative districts for the House of Representatives during a ten year period in which the TCJA is poised to sunset.
    c. Redistricting materially impacts the nature of census taking which is used to develop tax policy.
    d. The upcoming Senate runoff elections will serve as a tipping point for redistricting and tax policy.

2. Under the current TCJA, full expensing for short-lived business investments will begin phasing out in tax year:
    a. 2021
    b. 2022
    c. 2023
    d. 2024

3. The floor for deducting qualifying medical expenses above 7.5% of Adjusted Gross Income applies for which of the following tax years?
    a. 2018
    b. 2019
    c. 2020
    d. All of the above

4. Research Inc. is planning to spend $50,000 during calendar year 2021 on research and development costs. They are interested in maximizing the tax deduction for these expenditures. According to current tax law, Research Inc. __________ .
    a. can fully expense the cost in 2021
    b. must amortize these costs over five years
    c. must limit the annual amortization expense to 30% of EBITDA
    d. must limit the annual amortization expense to 30% of EBIT

5. Several key tax extenders involving tax credits are set to expire at the end of tax year 2020. They include all of the following except for:
    a. New Markets Tax Credit.
    b. The American Opportunity Tax Credit.
    c. Credit for Production of Indian Coal.
    d. Credit for Nonbusiness Energy Property.

6. The expiration of the TCJA would represent a reinstatement of all of the following tax provisions except for:
    a. Reinstatement of a top individual income tax rate of 39.6%.

b. Revocation of lower tax rate for qualified dividends received.
c. Expiration of the Section 199A deduction.
d. Expiration of the reduction in the alternative minimum tax.

7. The Securing a Strong Retirement Act is proposed legislation crafted to aid Americans successfully save for a secure retirement. One proposal includes:
    a. Offering individuals over age 70 great flexibility to set aside savings for retirement.
    b. Rewarding military spouses that maintain a consistent work record with one company greater investment incentives.
    c. Increasing the required minimum distribution to age 75.
    d. Reallocating lost retirement accounts to individuals based on financial needs.

8. Richard currently moonlights as a computer consultant completing project work for various companies. Richard receives payment in the form of cryptocurrency. He is not an employee of any of these organizations. Income for services provided in this manner are:
    a. Subject to ordinary income tax only.
    b. Subject to ordinary income tax plus self-employment tax.
    c. Subject to capital gains tax on receipt.
    d. Subject to capital gains tax on conversion of cryptocurrency to fiat currency.

9. Which of the following statements is not true concerning “gig” work?
    a. Services are limited to services provided in person.
    b. Differences may exist between State law and Federal guidance regarding the treatment of employment status.
    c. Gig work by an independent contractor is subject to self-employment tax.
    d. Examples of gig work include driving a car for deliveries and selling goods online.

10. According to the IRS, which of the following events could be considered a taxable transaction?
    a. Exchanging a cryptocurrency for US dollars.
    b. Receiving cryptocurrency in exchange for services provided.
    c. Exchanging one form of cryptocurrency for another cryptocurrency.
    d. All of the above.

11. Regulatory relief providing taxpayers with extensions of time to file petitions in Tax Court were expressed in _______ .
    a. Notice 2014-21
    b. Notice 2020-18
    c. Notice 2020-32
    d. Notice 2020-39

12. Jeremy is in the process of mailing his extended tax return due Oct 15, 2020. He seals the envelope and prints out postage using his office postage meter on October 14th. He places the package in a mailbox on October 15th. The date of the postmark made by the US Postal Service is October 16th. The envelope containing the tax return is received by the IRS on October 20th. According to IRS regulations, which of the following dates would be considered the date that the tax return was filed?

a. Oct 14, 2020
b. Oct 15, 2020
c. Oct 16, 2020
d. Oct 20, 2020

13. The case of Baer v. United States serves as a reminder that ultimate responsibility for the timely filing of a tax return falls with ___________ .
    a. The paid tax practitioner
    b. The taxpayer
    c. Both the paid tax practitioner and the taxpayer equally
    d. None of the above

14. Which document would a taxpayer submit to challenge an IRS Notice of Determination?
    a. 60-Day Letter
    b. Summary Judgement Form
    c. US Tax Court Petition
    d. IRS Form 8879

15. The maximum capital gain tax rate for taxpayers filing as married filing jointly for the 2021 tax year is:
    a. 15%
    b. 20%
    c. 37%
    d. 39.6%

16. Which of the following statements is true concerning the earned income tax credit for 2021?
    a. This credit is not available to taxpayers that have no qualifying children.
    b. Investment income earned by a taxpayer may impact ones ability to qualify for the earned income credit.
    c. Phaseout limits for single filers begin when earned income exceeds $75,000.
    d. None of the above.

17. Reggie is 17 years old, a single filer who will also be claimed as a dependent on his parent's tax return for tax year 2021. Assuming Reggie will earn $3,000 in earned income during 2021, the maximum standard deduction he can claim for that year would total:
    a. $350
    b. $1,100
    c. $3,000
    d. $3,350

18. Delilah is the single mother of 3 children, all who would be considered qualifying children for the earned income credit. She has earned income of $75,000 in 2021. Delilah would be able to claim an earned income credit of __________ for that tax year.
    a. $0
    b. $543
    c. $3,618

d. $6,728

19. Clifford is your client and seeks your advice concerning last minute tax planning on his individual tax return for the 2020 filing season. Clifford plans to claim the standard deduction for the 2020 tax year. Additionally, Clifford fell ill with COVID-19 during the summer of 2020 and as a result of his illness and absence from work, he elected to take a $25,000 distribution from his IRA account to help with his expenses. Which of the following would not be considered an appropriate recommendation in his case?
    a. If financially feasible, he may wish to repay his IRA distribution received by the end of 2020 and avoid income taxation on this distribution.
    b. He may choose to spread the income inclusion associated with his IRA distribution over a three year period in order to minimize the tax impact he would realize in 2020.
    c. You recommend that Clifford donate $300 of personal items to a charity before the end of the year so he can take advantage of the recently enacted above the line deduction provided by the CARES Act.
    d. None of the above.

20. DineIn Café Inc. began operating their restaurant business in 2010. After many years of profitable operations, they suffered their first net operating loss (NOL) during 2020. According to the CARES Act, which of the following tax years is the earliest that this corporation may carry back this NOL to?
    a. 2019
    b. 2017
    c. 2015
    d. No carryback of NOL allowed

CPElite

Exam Instructions, Answer Sheet & Course Evaluation

WINTER 2020, VOLUME XXX, NUMBER 4, TAXATION
ON-LINE TESTERS: GO TO WWW.CPELITE.COM

There are 20 EXAM questions included in this course. Choose the best answer based on each question and record your answer below. Indicate your responses in the course for your personal records and **complete the "Course Evaluation" below.**

You must score 70% to receive continuing professional education credit for this course. After you successfully complete the exam, your exam results, and a certificate of completion will be emailed to you within 10 working days of our receipt of your answer sheet. If a score of less than 70% is achieved, you may retake the exam without additional cost. This course must be completed no later than NOV 30th, 2021. We appreciate your business and hope that you are satisfied with this quarter's newsletter.

ANSWER SHEET

4 HOURS OF CPE: FEDERAL TAX LAW UPDATE

DELIVERY METHOD – QAS SELF STUDY

Please record your answers below to the exam questions. **For non-online customers, please send your answer sheet by mail, fax, or email. CPElite, 4120 Douglas Blvd #306-232 Granite Bay CA 95746, Fax 1-877-796-0471, support@cpelite.com.** FOR NONSUBSCRIBERS, please be sure to include your check for $40 payable to CPElite or supply credit card information (below).

1. ________	5. ________	9. ________	13. ________	17. ________
2. ________	6. ________	10. ________	14. ________	18. ________
3. ________	7. ________	11. ________	15. ________	19. ________
4. ________	8. ________	12. ________	16. ________	20. ________

COMPLETE FOR COURSE CREDIT

NAME ____________________ ADDRESS ____________________

E-MAIL ADDRESS ____________________ PHONE NUMBER ____________________

PTIN (if applicable) ____________________ PURPOSE OF CPE ____________________

SIGNATURE ____________________ COMPLETION DATE ____________________

(Indicate whether credit is for Enrolled Agent, CPA, or other purpose. For CPAs and licensed accountants, please indicate the state where you are licensed. If you have a PTIN, please provide it for IRS reporting purposes).
(Note: We do not share or sell email addresses)

COURSE EVALUATION

(*Answer Yes, No, or N/A)*

1. After completing this CPE program, did you feel that the stated learning objectives were met? _______

2. Were the stated prerequisite requirements appropriate and sufficient for this CPE program?_________

3. Were the program materials, including the qualified assessment (final exam) relevant and did they contribute to the achievement of the learning objectives?____________________

4. Was the time allotted for this learning activity appropriate?____________________

5. Additional Comments?____________________

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****** All courses in 2021 (including Ethics and the Elite Quarterly) will be delivered electronically (pdf) only ******

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We will require an email address on file for you

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