CHAPTER 14
NEW & EXPIRING LEGISLATION: PART I

MERRILL FROMER

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EXACTED LEGISLATION – LATE 2019 & 2020

- Further Consolidated Appropriations Act
- Pub. L. No. 116-94
- Taxpayer Certainty and Disaster Tax Relief Act of 2019
- Setting Every Community Up for Retirement Act (Secure Act)
- Other Notices and Procedures
- Expiring legislation and other tax provisions
- Part II of this chapter coves COVID-19 legislation
• Former law allowed farmers to elect out of IRC 263A(d)(3)

• New IRC 263(i) – IRC 263A does not apply to a qualifying small business (QSB)

• (QSB)Gross receipts tests is up to $25,000,000

• Taxpayers may revoke prior election and apply small business exemption

• If the taxpayer no longer qualifies as a small business the taxpayer can still make the election under IRC 263A(d)(3)
• Proposed Regs. Issued for calculating BIG & BIL – grants transition relief for eligible taxpayers with pending transactions
  • IRC 382 – deals with loss corporations (with NOL’s)
  • BIG – has a 5-year look-back period
• This does not apply to certain ownership changes that were pending prior to the delayed application date
• Final Regs. provide guidance on allocations of its liabilities to partners when certain obligations restores a deficit balance in a partner's capital account are disregarded under IRC 704 and treated as recourse liabilities under IRC 752 and how bottom dollar payment obligations are treated
• Termination of S-Corporation (to a C-Corp) – Generally distributions of a C-Corp. are
treated as dividends to extent of earnings and profits from “AAA”

• During the post-termination transition period (1 yr.) distributions of the C-Corp. is tax
  free to extent of basis of recipient

• Proposed Regs. Define an eligible terminated S Corp. and distribution of money

• Proposed Regs. Extend treatment of distribution of money to all shareholders and clarify
  the allocation of current E&P to distributions of money and other property
• Partnership – Partners in a partnership that owns a disregarded entity are not employees of that entity and are therefore subject to Self-Employment taxes.
• Notice 2019-66 – reporting of partners’ shares of partnership capital on the tax basis method is now effective for 2020 not 2019

• For 2019 the partnership may use any method available (under GAAP)

• For 2019 and forward partnerships must report **negative tax basis** capital account on a partner-by-partner basis and report a partner’s share of net unrecognized 704(c) gains or losses

• Publicly Traded Partnership’s - Exempt from reporting net **unrecognized** gains and losses until further notice

• Notice provides relief from certain reporting penalties
Notice proposes to require a partnership to report, for each partner:

1. Partner’s basis in its partnership interest, reduced by the partner’s allocable share of partnership liabilities, as determined under I.R.C. § 752 (Modified Outside Basis Method); or

2. The partner’s share of previously taxed capital, as calculated under a modified version of Treas. Reg. § 1.743-1(d) (Modified Previously Taxed Capital Method)
• Disaster Act repeals requirement that tax-exempt organizations increase UBTI by expenses related to qualified transportation fringe benefits
Notice 2020-36 – Proposed revenue procedure

- Updated procedures allows tax exempt organizations to request similar status for there sister organizations
Draft instructions of 2020 1040

• For taxpayers who do not itemize – “above the line” deduction allowed for charitable contributions up to $300
POLLING QUESTION #1

Should a Disregarded Entity filing as a Schedule C individual proprietor issue a Form W-2 to its owner?

1. Yes
2. No
3. It depends on how he/she was paid
Employer provided vehicles – Effective 2/5/2020

• Value of personal use must be included in W-2
• General rule – determined based on FMV of vehicle
• Election – Special valuation rule:
  • Fleet option or,
  • Cents per-mile valuation rule
• Both options are subject to limitations including vehicle value limitations
• Fleet option - Based on average FMV of all vehicles in fleet
• Cents-per-mile – based on applicable standard milage rate \( \times \) personal use miles
• 2020 maximum base FMV amount is $50,400
• 2020 standard milage rate .575
Effective after December 31, 2017 – 2025

- Miscellaneous deductions subject to 2% of AGI
- Moving expenses (except military, under orders)
• TCJA temporary suspended miscellaneous itemized deductions subject to 2% of AGI through 2025

• TCJA suspended moving expenses (except military)

• TCJA updated mileage rates: Medical & Moving is $0.17

• Charitable is $0.14
ALLOWABLE ITEMIZED DEDUCTIONS  PG. 461

Specified businesses expenses - unreimbursed (as an employee)

• Under a reimbursement or other expense allowance arrangement
• Qualified performing artist
• Fee-based state or local government official
• Eligible education
• Armed forces reservist
Fines and penalties are not deductible..... But under TCJA

- Settlement agreements, remediation, restitution or costs to come into compliance with the law are deductible

Restitution & remediation

- Restores in whole or in part property harmed by violation or potential violation of law or
- Amounts paid to come in compliance with the law
BONUS DEDUCTION (FINAL REGS.)  

- Finalize qualifications for bonus depreciation
- Provides guidance to determine amount of the bonus depreciation
- Allowance of used property under all three requirements:
  1. Not used by the TP or a predecessor at any time prior to the acquisition
  2. The acquisition of the property meets certain related party and carryover basis requirements
  3. The acquisition of the property meets the cost requirements of IRC 179(d)(3)
• Requirement to reduce charitable contribution carryover by the amount it increases an NOL carryover

• Requirement to use a year-by-year NOL absorption computation to determine the charitable contribution carryover adjustment
Effective after December 31, 2017 (not temporary)

• Revenue procedure updates the definition of incidental expenses
• Provides that unreimbursed employee travel expenses that are miscellaneous itemized deductions subject to the 2% AGI floor are not allowed after 12/31/2017.
• Deduction for entertainment, amusement or recreation expense is generally disallowed
EMPLOYER PROVIDED TRANSPORTATION & COMMUTING FRINGE BENEFITS

• IRC 132 generally excludes value of transportation fringe benefits from income (QTF)
• Exclusion from income is limited to a monthly dollar amount
• For 2020 the excludable amount is $270
• Qualified bicycle commuting exclusion is suspended after 12/31/2017
• IRC 274 – no deduction is allowed for the expense of any QTF to employees after 12/31/2020
QUALIFIED BICYCLE COMMUTING EXPENSE    PG. 465

( TCJA) Effective after December 31, 2017

IRC 274(a)(4) – No deduction allowed for the expense of any QTF to employees

The deduction disallowance for commuting and transportation expense is also suspended

Three possible exceptions to the deduction disallowance under IRC 274(e)(2), 9(e)7 and (e)(8) next slide
Three Exceptions to IRC 274(a)(4)
Employer Deduction allowed

1. Inclusion of income as compensation to the employee
2. Available to the public
3. Adequate consideration paid
POLLING QUESTION # 2

If my employer does reimburse me for riding my bike to me is it taxable to me? (after 2017)

1. Yes
2. No
• Final Regs allows integration of health reimbursement arrangement (HRA’s) with individual health insurance or Medicare

• Notice 2019-45 – Expands preventive benefits that a high deductible health plan can provide
  • With a deductible or
  • No deductible (if below minimum deductible)

• HDHP may not provide benefits for any year until minimum deductible is met (except for preventable care)
NONRECOGNITION (LIKE-KIND EXCHANGES)  PG. 467

- TCJA limits IRC 1031 like-kind exchanges to real property
- Real Property: Land and improvements (*inherently permanent)
  - Unsevered crops
  - Natural products of land and water
  - Airspace superjacent to land
• Includes structures and their structural components
  • Any building or other structure that is permanently affixed to real property
  • Ordinarily remain affixed for an indefinite period

• Regs provide a list of structures that qualify

• If the property is not on the list, Regs provides factors to determine if the property in an inherently permanent for IRC 1031 (next slide)

  (now matches the repair Regs component rules)
1. The manner, time and expense of installing and removing the component
2. Whether the component is designed to be moved
3. Damage that the removal would cause (item and structure)
4. Whether the component is installed during construction of the inherently permanent structure
• Deferral on eligible capital gains by investing in a qualified opportunity zone fund (QOF) or qualified opportunity zone business (QOZ)

• Deferral on prior gains

Deferral amount depends on holding period in QOF or QOZ

>5 years – 10% exclusion on the deferred gain

>7 years – 15% exclusion on the deferred gain

>10 years – basis is increased to FMV at time of sale or exchange
• FinalRegs address contributions to a charity in return for a State and Local tax credit – Taxpayer must reduce its charitable contribution deduction if it receives or expects to receive state and local tax deductions in excess of the taxpayer's payment
• Regs, clarify that the state or local tax credit reduces the contribution deduction to the extent the credit exceeds 15% of the taxpayer’s payment
• The Disaster Act extends the treatment of mortgage insurance as qualified residence interest through 12/31/2020
• The Disaster Act extends:
• The 7.5% medical expenses deduction (2019 -2020)
• The deduction for qualified tuition and related expenses to 12/31/2020
• Extends income exclusion for discharge of indebtedness related to a principal residence
• Extends Various Code Provisions (list on pg. 471)
• Effective for 2020 - Secure Act repeals taxing children's unearned income at the trust and estate rates (allows election to apply to 2018 and or 2019)

• Disaster Act:
  • Allows penalty free qualified disaster relief distributions up to $100,000 from a retirement plan
  • Allows re-contribution of certain distributions
  • Provides for plan loans
  • Employee retention credit
• TCJA limits personal casualty losses attributable to federally declared disasters (after 12/32/2017) but does not have to be actually in the area, only in the state

• Final Regs. provide procedures allowing individuals to deduct losses attributable to a disaster in the prior year
VIRTUAL CURRENCY (VC)

- VC is defined as property for federal income tax purposes
- Hard fork – occurs when VC on a distributed ledger undergoes a protocol change
- Airdrop – a means of distributing units of virtual currency
POLLING QUESTION # 3

Under proposed Regs. for Like-Kind Exchanges, machinery and equipment is generally not considered inherently permanent?

1. Yes
2. No
• Rev. Proc 2019-38 (safe harbor) – Allows treating rental real estate as a trade or business (annual election)

• Suspended Losses – are generally taken into account for purposes of computing QBI (losses from 1/1/2018 forward)
EXAMPLE 14.2

- Andrew – single & 50% owner of a LLC (partnership)
- 2018 – Andrew’s allocable share of loss was $100,000
- $80,000 (80%) was negative QBI $60,000 was allowed in determining his taxable income
- Andrew has no other previously disallowed losses.
- \((\$60,000) \times 80\% = \$(48,000)\) is included in determining his 2018 IRC 199A deduction
- $80,000 - $48,000 = $32,000 is treated as negative QBI from a separate trade or business
EXAMPLE 14.2 SUSPENDED LOSS FROM SSTB
PG. 474

• Bettina – 50% owner of an LLC classified as an SSTB partnership
• Her taxable income for 2018 was $177,500
• Allocated loss from LLC was $100,000 (all suspended)
• Allocated share of negative QBI was $100,000 (100% - Applicable %)
• $177,500 – 157,500 / $50,000 = 40% (% by which her TI exceeds her threshold amount)
• 100% - 40% = 60% applicable percent
• Repeals the maximum age for traditional IRA contributions

• Penalty-free withdrawal from a retirement plan for a qualified birth or adoption distribution after 12/31/2019 (up to $5,000)
  • If made during the 1-year period from birth or finalized adoption

• Final Reg. modify safe harbor list of qualified expenses for an immediate and heavy financial need (no 10% penalty)
1. Adding “primary beneficiary under the plan” as an individual for whom qualifying medical, educational, and funeral expenses may be incurred; 

2. Modifying the expenses for damage to a principal residence to provide that for this purpose the limitations in section 165(h)(5) (which require that a personal casualty loss be attributable to a federally declared disaster) do not apply; and 

3. Adding a new type of expense to the list, relating to expenses incurred as a result of certain disasters
• Expanded to include expenses for fees, books, supplies loan interest & principle (up to $100,000) and equipment required for a beneficiary in an apprenticeship program

  • **Apprenticeship program must be certified by the department of labor**

  • **The beneficiary cannot claim the student loan**

• Form 1099-NEC and accelerated the due date for filing Form 1099 from February 28 to January 31 eliminated the auto 30-day extension
• Withholding exemptions have become withholding allowances “WOW!!!”

• If a taxpayer uses the “percent method”
  • New “percent method” is based on filing and marital status and other entries on W-4 using the new tables

• Similar rules for employers using the “wage bracket” withholding method

• Failure to furnish a valid W-4 will result in being treated as single
Requirements for MFJ (W-4)

• Employee reasonably expects to file MFJ
• Lawfully married on date W-4 is furnished
• Not legally separated
• Not a nonresident alien

• There is a list of 7 requirements to claim a withholding allowance
Expanding December 31, 2020

- Alternative motor vehicle credit for qualified fuel cell motor vehicles
- Alternative fuel vehicle refueling property credit
- Qualified plug-in electric drive motor vehicle credit for two-wheeled vehicles
- Health coverage tax credit
- Credit for constructing new energy-efficient homes
- Employer credit for paid family and medical leave
- Work opportunity tax credit
• Energy-efficient commercial buildings deduction (2020)
• Geothermal heat pump, heat and power property, and small wind property credit (2021)
• Credit for hybrid solar lighting system property (2021)
• 7.5%-of-adjusted-gross-income (AGI) floor for individuals age 65 and older for medical expenses (2020)
• Deduction for qualified tuition and related expenses (2020)
POLLING QUESTION #4

What is the maximum age an individual can make a contribution to an IRA?

1. Age 70 ½
2. Age 72
3. No age limit
• Draft instructions for the 1040SR has been posted on IRS.Gov
• Annual inflation adjustments covering over 60 items for 2021
  • Increases to various deductions and credits & tax rates
  • Failure to file a return within 60 days due date - not less than $435 or 100% of tax due (was $335)
  • Standard deduction goes up $300 for MJF & $150 for all others
  • Annual exclusion for gifts remains at $15,000
• Retirement contribution limits (unchanged from 2020)
• $19,500 for individuals
• $6,500 catch-up (age 50 and older)
Questions ❓❓❓❓