

2019 Federal Tax Guide Updates and Changes

Schedules & Tables

19. Guide to Information Returns

The due date for furnishing to individuals the 2018 Form 1095-B, *Health Coverage*, and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, is extended from January 31, 2019, to March 4, 2019 [Notice 2018-94].

25. State Tax – Tax Reform Legislative Roadmap

For updates, see <http://src.bna.com/EMG>.

Chapter 100. Gross Income

100.B.6. Tax Benefit Rule And Recoveries

If a taxpayer received a tax benefit from deducting state and local taxes under §164 in a prior tax year, and the taxpayer recovers all or a portion of those taxes in the current tax year, the IRS provides guidance on the portion of the recovery that the taxpayer must include in gross income (Rev. Rul. 2019-11).

100.C.4.d. Valuation of Personal Use of Employer-Provided Vehicles

Vehicle Cents-Per-Mile Valuation Method. For 2018, the vehicle cents-per-mile rate is 54.5 cents per-mile and the maximum value for use with this valuation under Reg. § 1.61-21(e) is \$50,000 [Notice 2019-08].

Automobile Lease Valuation Rule. The 2018 maximum value for use with the fleet-average valuation rule, which is an optional component of the automobile lease valuation rule under Reg. § 1.61-21(d), is \$50,000. Notice 2019-02, Notice 2019-08.

Chapter 200. Exclusions from Gross Income

200.E. Life Insurance Excluded from Income

Proposed regulations under § 101(a)(3) and § 6050Y were issued on March 25th, 2019 [REG-103083-18]. Reportable policy sales will be reported on Form 1099-LS, *Reportable Life Insurance Sale* [REG-103083-18], though taxpayers are not required to file until after final regulations are published.

200.N.12. Income Of Native Americans

For per capita payments from proceeds of settlement of tribal trust cases excluded from gross income, see Notice 2019-23 *modifying and superseding* Notice 2013-1(Appendix).

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200.N.15. Other Nonstatutory Exclusions

Certain non-statutory items are also excluded from gross income, including, but not limited to, the following:

- the value of leave donated by employees in exchange for cash payments that the employer makes to charitable organizations for victims of Hurricane Michael, Hurricane Maria, Hurricane Irma, Hurricane Harvey, Hurricane Matthew, 2017 California wildfires, and 2016 Louisiana storms [Notice 2018 -89, Notice 2017-70, Notice 2017-62, Notice 2017-52, Notice 2017-48, Notice 2016-69, Notice 2016-55];

Chapter 400. Trade or Business Deductions

400.A.11.c.(2) Standard Mileage Rate

The standard mileage rate for all miles of business use is 54.5 cents per mile in 2018 (58 cents for 2019) [Notice 2019-02].

400.A.13. Interest

In the case of a C corporation, all interest paid or received will be treated as business interest or business interest income [Prop. Reg. §1.163(j)-4(b)]. Proposed regulations, REG-106089-18, supersedes Notice 2018-18.

Chapter 700. Nonbusiness Deductions

700.B.9.C. Computing The Self-Employed Health Insurance Deduction

Generally, a self-employed taxpayer can use the Self-Employed Health Insurance Deduction Worksheet (Source: 2018 Form 1040 Draft Instructions) to determine the amount of the deduction. However, a taxpayer may not use that Worksheet if any of the following apply:

- *****
- taxpayer files Form 2555, Foreign Earned Income. Form 2555-EZ, *Foreign Earned Income Exclusion*, has been discontinued for tax years beginning after 2018; or
- *****

700.D.1.b. Medical Transportation Expenses

The deduction using the standard mileage rate is 18 cents per mile for 2018 (20 cents for 2019) [Notice 2018-03, Notice 2019-02].

Chapter 800. Losses and Limitations on Losses and Deductions

800.C.3. Special Loss and Deduction Limitation Rules Applicable to Related Parties

Earnings Stripping. Amounts carried forward under pre-2018 §163(j) as disallowed disqualified interest are included as disallowed business interest expense carryforwards of a taxpayer to the extent that the amounts otherwise qualify as business interest expense of the taxpayer [Prop. Reg. §1. 163(j)-10; Proposed regulations, REG-106089-18, supersede Notice 2018-28].

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Chapter 900. Credits

900.A.10. Enhanced Oil Recovery Credit

For 2018, the reference price for crude oil was \$48.05 (determined for calendar year 2017) and there was a 1.069% phaseout [Notice 2018-49]. Due to a higher reference price (\$61.41), the credit is fully phased out for 2019 [Notice 2019-36].

900.A.23. Marginal Oil and Gas Well Production Credit

Amount of the Credit. The marginal well production credit was fully phased out from 2005 through 2015, but the 2016 reference price production credit was fully phased out from 2005 through 2015, but the 2016 reference price for qualified natural gas was low enough that the marginal well production credit for qualified natural gas was low enough that the marginal well production credit for qualified natural gas is \$0.14 per mcf (1,000 cubic feet [Notice 2017-51]. The 2017 inflation qualified natural gas is \$0.14 per mcf (1,000 cubic feet [Notice 2017-51]. The 2017 inflation adjustment factor is 1.2518 and the 2017 natural gas reference price is \$2.17 per mcf, making adjustment factor is 1.2518 and the 2017 natural gas reference price is \$2.17 per mcf, making the credit amount \$0.51 per mcf [Notice 2018-52]. In 2018 the adjustment factor is 1.2739 and the credit amount \$0.51 per mcf [Notice 2018-52]. In 2018 the adjustment factor is 1.2739 and the applicable reference price is \$2.68 per mcf thus, the credit fully phased out again [Notice 2019-37].

900.A.31. Carbon Oxide Sequestration Credit

Amount of Credit: Announcement 2018-09 corrects a typographical error in Notice 2018-40.

900.B.1. Household And Dependent Care Credit

Claiming the Credit. Taxpayers whose filing status is married filing separately may claim a reduced credit if they meet all of the requirements to be treated as unmarried and some additional special requirements that are listed on the Form instructions.

900.B.4. Child Tax Credit And Credit For Other Dependents

Claiming the Credit. Form 14815 lists supporting documents required to claim the credit.

Chapter 1000. Computation of Tax

1000.A.1.A. Computation Of The Regular Income Tax

Reporting Regular Income Tax.

- Individual taxpayers who claimed the foreign income exclusion, housing exclusion, or housing deduction (see 2000.C.1.) on Form 2555, *Foreign Earned Income*, must compute their regular income tax using the Foreign Earned Income Tax Worksheet. Form 2555-EZ, *Foreign Earned Income Exclusion*, may not be filed after tax years beginning after 2018.

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Chapter 1200. Individuals

1200.F.1. Liability for Estimated Tax

Due to the significant tax law changes made by the 2017 tax act [Pub. L. No. 115-97], for 2018 returns the IRS will waive the penalty for underpayment of estimated tax for an individual whose total withholding and estimated tax payments made on or before January 15, 2019 equal or exceed 85% of the tax shown on the return for the 2018 tax year. The individual must file a Form 2210, *Underpayment of Estimated Tax by Individuals, Estates, and Trusts*, with his or her tax return. [Notice 2019-25, *modifying and superseding* Notice 2019-11].

Chapter 1300. C Corporations

1300.F.4.a. Eligibility for Cooperative Tax Rules

To apply for exemption, farmers' cooperatives must use Form 1028, *Application for Recognition of Exemption under Section 521 of the Internal Revenue Code*, and pay a \$600 user fee [Rev. Proc. 2019-5].

Chapter 1400. Partnerships

1400.D.1.a. Computation of Partnership Taxable Income

For tax years beginning after 2017, Reg. §1.199A-6(b)(3) requires that qualified business income (QBI) deduction items be a separately stated item.

Chapter 1500. S Corporations

1500.B.1.a. Separately Stated S Corporation Items

For tax years beginning after 2017, Reg. §1.199A-6(b)(3) requires that qualified business income (QBI) deduction items be a separately stated item.

Chapter 1700. Retirement Plans and Benefit Arrangements

1700.A.2.b. Plan Document and Operational Requirements

For IRS procedures and user fees for employee plan determination requests, see Rev. Proc. 2019-4.

For IRS procedures for correction of employee plan qualification failures under the Employee Plans Compliance Resolution System, see Rev. Proc. 2019-19, which modifies and supersedes Rev. Proc. 2018-52.

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1700.A.2.e.(2) Distributions Other than In-Service Distributions

Form of Distributions. The IRS initially allowed, in a series of private letter rulings, plan amendments implementing these arrangements, then announced its intent to no longer permit retirees who are past their required beginning dates (for minimum distribution purposes) to convert annuities to lump sums. The IRS retracted this position to continue studying the issue. Until further guidance is issued, the IRS will not assert that a plan containing such lump sum risk-transferring program violates the required minimum distribution regulations by impermissibly accelerating annuity payments. Nonetheless, the IRS will not issue private letter rulings with regard to the programs [Reg. § 1.401(a)(9)-6, Q&A-13, A-14(a)(4); Notice 2019-18].

1700.A.2.F. Employer Deductions

“Compensation” for deduction purposes is all of the compensation paid or accrued, including certain salary reduction amounts, except compensation that is deductible as a contribution to a qualified plan. Hence, except for an employee's pre-tax contributions to certain plans, an employer's contributions under a profit-sharing or stock bonus plan and under any other qualified plan on behalf of the employees covered by the profit-sharing or stock bonus plan are not counted [§404(a)(12); §415(c)(3)(D)].

1700.B.5. Tax-Exempt Organization Executive Compensation

Notice 2019-09 provides interim guidance regarding the application of §4960.

1700.F.1. Individual Responsibilities and Penalties

For the 2019 filing season, the IRS does not accept electronically filed tax returns unless the taxpayer reports coverage, qualifies for an exemption, or pays for months without coverage [<https://www.irs.gov/affordable-care-act/individuals-and-families/individual-shared-responsibility-provision>].

1700.F.2.C. Definitions Applicable To Health Insurance Premium Tax Credit

Household Income. The calculation of MAGI for this purpose includes all Social Security benefits received during the year, without regard to any §86(e) election (see 100.K.) [§36B(d)(2)(B); Johnson v. Commissioner, 152 T.C. No.6 (Mar. 11, 2019)].

Chapter 1900. Tax-Exempt Organization

1900.A.8. Excise Tax on Executive Compensation

Notice 2019-09 provides interim guidance regarding the application of §4960.

1900.A.10.a. Applying for Exempt Status

An additional user fee of \$2,000 must be paid for a group exemption letter [Rev. Proc. 2019-5]. A ruling or determination letter may be revoked or modified by: (i) notice to the organization, presumably after

August 1, 2019

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audit; (ii) enactment of legislation or ratification of a tax treaty; (iii) a Supreme Court decision; (iv) issuance of temporary or final regulations; (v) publication of a revenue ruling, revenue procedure, or other statement in the Internal Revenue Bulletin; or (vi) automatically, pursuant to 6033(j), for failure to file a required annual return or notice for three consecutive years [Rev. Proc. 2019-5, 12].

In filing its appeal, the organization must also indicate whether it is requesting an Appeals Office conference [Rev. Proc. 2019-5, 9.04].

Other organizations seeking a determination letter must submit a letter application (rather than Form 1024), along with Form 8718 [Rev. Proc. 2019-5, Rev. Proc. 2018-10].

1900.D.6. Computing UBIT

Compliance. The addition to tax for failure to make estimated income tax payments otherwise required to be made on or before December 17, 2018, is waived for certain tax-exempt organizations that pay or incur expenses for qualified transportation fringes (as defined in §132(f)) or any parking facility used in connection with qualified parking (as defined in §132(f)(5)(C)) [§274(a)(4), §512(a)(7); Notice 2018-99, Notice 2018-100].

Chapter 2000. U.S. International Taxation

2000.C.3.c.(1). Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income

New §250(a) allows a domestic corporation (that is not a regulated investment company, a real estate investment trust, or an "S" corporation) to deduct an amount equal to the sum of 37.5% of the corporation's "foreign-derived intangible income" (FDII), if any, plus 50% of the corporation's GILTI inclusion and the §78 gross-up attributable to the GILTI. For taxable years beginning after 2025, the deduction reduces to 21.875% and 37.5%, respectively. Although the language of the statute itself limits the deduction to domestic corporations, proposed regulations permit individuals making a §962 election to claim a §250 deduction with respect to their GILTI inclusion and GILTI-attributable §78 gross-up [§250(a)(1), §250(a)(3); Prop. Reg. §1.250(a)-1(c)(1), §1.962-1(b)(1)(i)(B)(3)].

The §250 deduction is subject to limitation based on taxable income. If the sum of a domestic corporation's FDII and GILTI amounts exceeds its taxable income (determined without taking the deduction allowed under §250 into account), then the excess, called the "§250(a)(2) amount," is allocated pro rata to reduce the amount of FDII and GILTI taken into account in computing the deduction [§250(a)(2); Prop. Reg. §1.250(a)-1(b)(2), §1.250(a)-1(c)(4)].

For purposes of the §250 deduction, GILTI means the sum of a domestic corporation's GILTI inclusion amount under Prop. Reg. §1.250(a)-1(c) and its distributive share of any U.S. shareholder partnership's GILTI inclusion amount under Prop. Reg. §1.250(a)-5(b)(2) [Prop. Reg. §1.250(a)-1(c)(3)].

For purposes of the §250 deduction, FDII is the portion of a domestic corporation's intangible income determined on a formulaic basis that is derived from serving foreign markets. This tax-benefitted income is income of the domestic corporation's derived in connection with: (1) property that is sold by the taxpayer to a foreign person for a foreign use; or (2) services that are provided by the taxpayer with respect to any person, or with respect to any property, located outside the United States. A domestic corporation's FDII is calculated as its deemed intangible income multiplied by its foreign-derived ratio, i.e., the ratio of its foreign-derived deduction eligible income to deduction eligible income. Deemed

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intangible income is the excess of the U.S. corporation's deduction eligible income over its deemed tangible income return, which is an amount equal to 10% of the U.S. corporation's QBAI, discussed above in connection with GILTI. Deduction eligible income is the excess of the U.S. corporation's gross income (determined without regard to certain excepted categories of income) over deductions (including taxes) properly allocable to such gross income. FDDEI means DEI derived in connection with the corporation's FDDEI transactions, i.e., the corporation's FDDEI sales and FDDEI services. The proposed regulations provide detailed rules, including documentation requirements, that must be satisfied for the sale of property to qualify as a FDDEI sale or for the provision of a service to qualify as a FDDEI service. Additional rules apply to related party transactions [§250(b); Prop. Reg. §1.250(b)-1–§1.250(b)-6].

Proposed FDII regulations issued by Treasury and the IRS were published in the Federal Register on March 6, 2019 [REG-104464-18].

The FDII deduction is reported on new Form 8993, *Section 250 Deduction For Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI)*.

2000.C.6.d. Translation of Foreign Income and Taxes Paid

Final regulations issued in 2019 finalize, with minor revisions, several temporary regulations promulgated in 2016 relating to certain combinations and separations of §987 QBUs and the recognition and deferral of §987 gain or loss in connection with certain QBU transactions, and withdrawing temporary regulations promulgated in 2016 addressing the allocation of assets and liabilities of certain partnerships for §987 purposes [T.D. 9857].

2000.F.2. FATCA Withholding

A withholdable payment generally includes any payment of U.S.-source FDAP income and any gross proceeds from the sale or other disposition of any property that can produce U.S.-source income in the form of interest or dividends [Reg. §1.1473-1(a)]. However, the withholding requirement on gross proceeds was deferred until 2019 and, under proposed regulations issued in December 2018, such requirement was eliminated entirely [Prop. Reg. §1.1473-1(a)(1)].

As enacted, FATCA's effective date was January 1, 2013. However, the IRS and Treasury have been implementing the law gradually: FATCA withholding on U.S.-source FDAP payments became effective July 1, 2014, whereas withholding on gross proceeds was (prior to its elimination under proposed regulations) set to become active on January 1, 2019 [Prop. Reg. §1.1473-1(a)(1); Reg. §1.1471-2(a)(1), §1.1472-1(b)(1), §1.1473-1(a)(1)(ii); Notice 2015-66]. Also phased in are the dates by which FFIs have to enter into FFI agreements, complete account due diligence, implement "passthru" payment withholding, and report to the IRS. In addition, grandfathering rules exempt from FATCA withholding payments on certain obligations outstanding on July 1, 2014 [Reg. §1.1471-2(b)(2)(i)(A)(1)].

2000.G.1. Foreign Bank and Financial Accounts

FinCEN granted an extension of time to April 15, 2020, for certain individuals to file Form 114. The extension applies to individuals with signature authority over, but no financial interest in, one or more foreign financial accounts for 2010 through 2018 [FinCEN Notice 2018-1 (Dec. 4, 2018)].

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Chapter 2200. Withholding and Employment Taxes

2200.B.1.e. Railroad Retirement Tax Act (RTTA)

A separate wage base applies to second tier taxes (e.g., \$98,700 in 2019, \$95,400 in 2018) [RRB Program Letter 2019-01].

2200.C.1.A. Reporting Requirements

Generally, the guidance in Rev. Proc. 2017 -14 was incorporated into the final regulations. The IRS, however, indicated that it would update Rev. Proc. 2017 -14 periodically to provide intermittent enhancements to the CPEO program [T.D. 9860].

A CPEO that enters into a service contract with a customer regarding a work site employee is treated as a successor employer and the customer is treated as a predecessor employer during the term of that contract. Once that service contract is terminated, the customer is treated as the successor employer and the CPEO is treated as the predecessor employer. Therefore, where there is successor employer status, the annual wage base for purposes of determining amounts subject to employment tax withholding (e.g., the annual wage limitation, contribution base, and withholding threshold) is not applied separately to successor and predecessor employers. On the other hand, if a covered employee receives remuneration from a CPEO for services they performed for more than one customer of the CPEO, the annual wage base and withholding thresholds apply separately to the remuneration received by the covered employee from the CPEO with respect to services performed for each customer [Reg. §31.3511-1(e)].

Chapter 2300. Procedure & Administration

2300.C.1.c. Consents Extending Period Of Limitations For Assessment Of Tax

Types of Consent Forms. The Coordinated Industry Case (CIC) program was renamed the Large Corporate Compliance (LCC) program [IR-2019-95].

2300.A.1.d.(6) Federally Declared Disasters

Rev. Proc. 2018-58 contains a list of postponements due to federally declared disaster areas.

2300.A.1.d.(7) Terroristic and Military Actions

Rev. Proc. 2018-58 contains a list of postponements due to terroristic and military actions.

2300.A.1.d.(8) Service in a Combat Zone

Rev. Proc. 2018-58 contains a list of postponements due to combat zones.

2300.A.4.b.(2) Adequate Disclosure To Avoid Preparer Penalty

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Rev. Proc. 2019-09 identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under §6662(d) (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under §6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure applies to any income tax return filed on 2018 tax forms for a taxable year beginning in 2018, and to any income tax return filed in 2019 on 2018 tax forms for short taxable years beginning in 2019.

2300.A.4.c. Other Assessable Penalties Against Return Preparers

Failing to Exercise Due Diligence in Determining Eligibility for Earned Income Credit, Child Tax Credit (including Additional Child Tax Credit and Credit for Other Dependents), American Opportunity Tax Credit, Head of Household Status. T.D. 9842 removed Reg. 1.6695-2T.

2300.C.2.a.(1) Traditional Audit Rules Available for Partnerships Electing Out of BBA Partnership Audit Rules

Certain partnerships with 100 or fewer partners may elect out of the application of the BBA audit rules for a tax year on Schedule 1065 B-2 (Form 1065) a timely filed return.

Form 8982, *Affidavit for Partner Modification Amended Return Under IRC §6225(c)(2)(A) or Partner Alternative Procedure Under IRC §6225(c)(2)(B)*, is a supporting form that the partnership representative attaches to Form 8980, *Partnership Request for Modification of the Imputed Underpayment(s) Under Section 6225(c)*, in order to affirm that a relevant partner has either:

- Filed modification amended return(s) that meet the requirements under section 6225(c)(2)(A) (Use Form 8982, Section A); or
- In lieu of filing modification amended return(s), has met the requirements under the alternative procedure in section 6225(c)(2)(B) (Use Form 8982, Section B).

Form 8982 must be completed and signed by a relevant partner after the partner files the appropriate modification amended returns or meets the requirements under the alternative procedure. The relevant partner must then provide Form 8982 to the partnership representative.

2300.C.2.a.(2) Audit and Adjustment at Partnership Level

Partnership-Related Item. The IRS released final regulations regarding the scope of partnership audits, the consistent treatment requirement, determination and modification of an imputed underpayment, the push out election, administrative adjustment requests, notices, assessment, collection, and payment of imputed underpayments, interest and penalties, judicial review, and other special rules [T.D. 9844, 84 Fed. Reg. 6468 (Feb. 27, 2019)].

Designation of Partnership Representative. Form 8979, *Partnership Representative Revocation, Designation, and Resignation Form*, is used to revoke a partnership representative or designated individual, resign as a partnership representative or designated individual, or designate a partnership representative where no partnership representative is in effect.

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2300.D.1.k. Disclosure Of Reportable Transactions

Penalty for Tax Shelter Participants Who Fail to Disclose.

Example: Taxpayer (X) timely files its 2019 income tax return in 2020, reflecting participation in a transaction that was not identified as a reportable transaction when X filed participation in a transaction that was not identified as a reportable transaction when X filed the return, the only year X participated in the transaction. In early 2021, the IRS identifies the the return, the only year X participated in the transaction. In early 2021, the IRS identifies the transaction as a listed transaction. X fails to disclose the listed transaction as required. In late transaction as a listed transaction. X fails to disclose the listed transaction as required. In late 2021, X files an amended 2019 return to claim deductions that had been omitted from X's originally filed 2019 return. X's amended 2019 return reflects X's participation in the listed originally filed 2019 return. X's amended 2019 return reflects X's participation in the listed transaction. X does not disclose the listed transaction when filing the amended 2019 return. X transaction. X does not disclose the listed transaction when filing the amended 2019 return. X is subject to two penalties under § 6707A—one for the failure to disclose participation in a is subject to two penalties under § 6707A—one for the failure to disclose participation in a listed transaction reflected on X's original 2019 return within 90 calendar days of the date the listed transaction reflected on X's original 2019 return within 90 calendar days of the date the transaction became a listed transaction and another for the failure to disclose participation in transaction became a listed transaction and another for the failure to disclose participation in the same listed transaction on X's amended 2019 return [§6707A(d); Reg. § 301.6707A-1(e)].