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CHAPTER 100: GROSS INCOME

100.C.4.D. Valuation Of Personal Use Of Employer-Provided Vehicles

Vehicle Cents-Per-Mile Valuation Method. Under the vehicle cents-per-mile valuation method, the value of the personal use of an employer-provided vehicle is determined by multiplying the standard mileage rate ((58 cents per mile for 2019; 57.5 cents per mile for 2020) by the number of miles the employee drives the vehicle for personal purposes during the year. This method generally may be used if the vehicle is reasonably expected to be used regularly in the employer's business, is used primarily by an employee, and is actually driven at least 10,000 miles during the calendar year. However, this method may not be used if the fair market value of the vehicle on the date it is made available to the employee exceeds an applicable dollar amount. For vehicles first made available to employees for personal use in 2019, the applicable dollar amount is $50,400 for passenger automobiles (including trucks and vans) (same amount for 2020) [Reg. §1.61-21(e); Reg. §1.61-21(e)(5)(vi) (transition rule); Notice 2020-5, Notice 2019-34].

Automobile Lease Valuation Rule.

• In a case in which an employer has a fleet of 20 or more vehicles, the fleet-average value (the average of the fair market values of all vehicles in the fleet) may be used for purposes of determining the annual lease values for all vehicles in the fleet. However, the fleet-average value may not be used for any vehicle unless the employer reasonably expects that the vehicle will regularly be used in the employer's trade or business and the fair market value of the vehicle is less than or equal to the maximum value. For vehicles first made available to employees for personal use in 2019 and 2020, the maximum value is $50,400 for passenger automobiles (including trucks and vans) [Reg. §1.61-21(d)(5)(v), Reg. §1.61-21(d)(5)(v)(G) (transition rule); Notice 2020-5, Notice 2019-34].

100.C.4.E. Valuation Of Personal Flights On Employer-Provided Aircraft

The SIFL cents-per-mile rate and terminal charge are revised semi-annually and issued by the Department of Transportation. The rates for 2020 are as follows [Rev. Rul. 2020-10]:

Period of Flight	1/1/20–6/30/29	7/1/20–12/31/20
SIFL rate, up to 500 miles	$0.2344	n/a
SIFL rate, 501-1,500 miles	$0.1787	n/a
SIFL rate, over 1,500 miles	$0.1718	n/a
Terminal Charge	$42.84	n/a

CHAPTER 200. EXCLUSIONS FROM GROSS INCOME

200.A.1. Discharge Of Indebtedness In General

Generally, income from the discharge of indebtedness (DOI) is included in gross income (see 100.L.). For example, where a taxpayer and his or her bank modify a mortgage loan to reduce the principal balance of the loan, or where a credit card company settles a debt for less than the full amount the taxpayer

owed, the taxpayer will typically realize income in an amount equal to the difference between the original amount owed and the modified amount owed after the discharge. However, certain DOI amounts are excluded from gross income, including:
• discharges occurring in a bankruptcy case under title 11 [§108(a)(1)(A)];
• discharges occurring when the taxpayer is insolvent [§108(a)(1)(B)];
• discharges of qualified farm indebtedness [§108(a)(1)(C)];
• discharges of qualified real property business indebtedness for certain taxpayers [§108(a)(1)(D)]; and
• discharges of qualified principal residence indebtedness before January 1, 2021, or subject to an arrangement that is entered into and evidenced in writing before January 1, 2021, regardless of the taxpayer's solvency [§108(a)(1)(E)].

200.A.6. Qualified Principal Residence Indebtedness Exclusion

Qualified principal residence indebtedness discharged before January 1, 2021 (or discharged subject to an arrangement that was entered into and evidenced in writing before January 1, 2021) is excluded from gross income, regardless of the taxpayer's solvency [§108(a)(1)(E)].

200.A.9. Student Loan Exclusion

Taxpayers who took out Federal student loans that are discharged under settlement discharge actions, the Department of Education's Closed School discharge process, or the Defense to Repayment discharge process do not have to recognize gross income from discharge of indebtedness [Rev. Proc. 2015-57, modified by Rev. Proc. 2017-24, amplified by Rev. Proc. 2018-39, amplified by Rev. Proc. 2020-11].

200.H. Scholarships, Fellowships, And Tuition Reductions

Qualified Scholarship. A qualified scholarship is excluded from gross income if the taxpayer is a candidate for a degree at a qualified educational organization (as defined in §170(b)(1)(A)(ii)). A qualified scholarship is any amount received by the taxpayer as a scholarship or fellowship grant to aid the taxpayer in the pursuit of study or research, and that is used for (i) tuition and fees required for enrollment or attendance, and for (ii) course-related expenses, such as fees, books, supplies, and equipment required of all students in the particular course of instruction. Incidental expenses, including room and board, travel, research, clerical help, or equipment and other expenses not required for enrollment or attendance, do not qualify [§117(b); Prop. Reg. §1.117-6(c)]. Amounts not qualifying as a qualified scholarship are includible in income and may be subject to the kiddie tax as unearned income [§1(g), §1(j)(2)].

200.L.2. Qualified Tuition Programs (529 Plans)

Qualified Higher Education Expenses. Qualified higher education expenses include [§529(e)(3), §529(c)(7), §529(c)(8), §529(c)(9), §529(e)(3)(A) (flush language)]:
• expenses for tuition, fees, books, supplies, and equipment required for a designated beneficiary's enrollment or attendance at an eligible educational institution;

• expenses for special needs services incurred in connection with enrollment or attendance of a special needs beneficiary;
• expenses for room and board incurred by a student who is enrolled at least half-time, limited to the greater of either the student's allowance for room and board or the actual amount charged if the student is residing in housing owned or operated by the school;
• the purchase of computer or peripheral expenses, computer software, or internet access and related services if the equipment, software, or services are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled in an eligible education institution;
• up to $10,000 for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school;
• for distributions made after December 31, 2018, expenses for fees, books, supplies, and equipment required for the participation of a designated beneficiary in an apprenticeship program registered and certified with the Secretary of Labor; and
• for distributions made after December 31, 2018, amounts paid as principal or interest on any qualified education loan (as defined in §221(d)) of the designated beneficiary or a sibling of the designated beneficiary, subject to a $10,000 limitation (reduced by the amount of distributions so treated for all prior tax years).

CHAPTER 300: PROPERTY TRANSACTIONS

300.C.8. Qualified Opportunity Zones

An ‘‘eligible taxpayer’’ may elect to defer one or more ‘‘eligible gains’’ from the sale or exchange of any property, if the gain is invested in ‘‘eligible interests’’ in a ‘‘qualified opportunity fund’’ (QOF) during the 180-day period beginning on the date of the sale or exchange. The deferred gain generally is recognized upon disposition of the investment in the QOF or on December 31, 2026, whichever is sooner. However, tax on all or part of the gain may be avoided by holding the QOF investment long enough. Eligible taxpayers are those that may recognize gains for income tax accounting purposes. Eligible gain is gain that is treated as capital gain, would be recognized before January 1, 2027, but for the recognition deferral, and does not arise from a sale or exchange with a related person. An eligible interest in an QOF is an equity interest issued by a QOF. A QOF is an investment vehicle that self-certifies to the IRS that it is a QOF, is organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property, and whose assets are comprised at least 90% of property the QOF uses in a qualified business within a qualified opportunity zone or in equity interests in entities that operate in a qualified opportunity zone. The 180-day period begins on the day on which the gain would be recognized for income tax purposes, but for the election to defer the gain. Some limitations exist on the capital gains eligible for these special rules. For example, these special rules generally only allow taxpayers to defer capital gain net income from 1256 contracts.

Note: For purposes of Notice 2020-23, which provides COVID-19 (coronavirus) related postponements, the 180-day period under §1400Z-2(a)(1) is a “specified time-sensitive action” potentially eligible for postponement.

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CHAPTER 400: TRADE OR BUSINESS EXPENSE

400.A.11.B. Local Transportation And Commuting

Employer Deduction for Commuting Expenses. Employers are generally not allowed a deduction for providing qualified transportation fringe benefits to employees but for certain expenditures excepted under §274(e) [§274(a)(4)]. Qualified transportation fringe benefits include (i) transportation in employer-provided commuter highway vehicles, (ii) transit passes, (iii) qualified parking, and (iv) qualified bicycle commuting reimbursements (for tax years before 2018 and after 2025) [§132(f)(1)]. Proposed regulations issued in July 2020 provide guidance on determining the nondeductible amount of employers' expenses of providing transportation and commuting benefits to their employees [See Prop. Reg. §1.274-13].

Note that qualified transportation fringe benefits are excludible from the gross income of the employees. See 1700.D.5. for a detailed discussion of qualified transportation fringe benefits. Employers generally are not allowed a deduction for providing any transportation (or any payment or reimbursement) to an employee in connection with travel between the employee's residence and place of employment, except as necessary to ensure the safety of the employee [§274(l)(1); Prop. Reg. §1.274-14(a)]. However, under an exception, employers are allowed a deduction for the expense of qualified bicycle commuting reimbursements made to employees for amounts paid or incurred in 2018 through 2025 [§274(l)(2); Prop. Reg. §1.274-14(b)].

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

Rather than keeping track of actual expenses, a taxpayer may use the standard mileage rate set by the IRS. The standard mileage rate for all miles of business use is 58 cents in 2019 and 57.5 cents per mile in 2020 [Notice 2019-2, Notice 2020-5].

The deduction computed using the standard mileage rate for business miles is in lieu of deducting operating and fixed costs (e.g., depreciation, maintenance and repairs, tires, gas, oil, insurance, and registration fees) of the automobile. Not included in the standard mileage rate, and thus deductible as a separate item, are parking fees, tolls, interest relating to the purchase of the automobile, and state and local taxes to the extent they are allowable deductions [Rev. Proc. 2019-46]. Because depreciation is considered a component of the standard mileage rate, the taxpayer's basis in the automobile must be reduced by the depreciation allowed. The portion of the standard mileage rate treated as depreciation is 26 cents per mile for 2019 and 27 cents per mile for 2020 [Notice 2019-2, Notice 2020-5].

400.A.11.C.(4) Fixed and Variable Rate (FAVR) Allowances

FAVR Allowance Amounts. For purposes of computing the allowance under a FAVR plan for 2020, for passenger automobiles (including trucks and vans) placed in service in 2020, the maximum standard automobile cost may not exceed $50,400 [Notice 2020-5].

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400.A.13. Interest

Note: For tax years beginning in 2019 and 2020, the deduction for business interest expense is limited to the sum of (i) business interest income, (ii) 50% of ATI, and (iii) floorplan financing interest expense. Taxpayers may elect not to use the increased limitation and may elect to substitute 2019 ATI for 2020 ATI. Special rules apply for short tax years. In the case of partnerships, the increase to the ATI portion of the limitation applies only to tax years beginning in 2020. Any election not to use the increased limitation must be made at the partnership level. Like other taxpayers, partnerships may elect to substitute 2019 ATI for 2020 ATI. A special rule allows partners to treat 50% of any excess business interest expense allocated to the partner in a tax year beginning in 2019 as paid or accrued in the partner's first tax year beginning in 2020, with the remaining 50% subject to the default limitation based on allocated excess taxable income (or excess interest income under Prop. Reg. §1.163(j)-6(g)(2)(i)). Partners may elect out of this provision [§163(j)(10), Pub. L. No. 116-136, §2306; see Rev. Proc. 2020-22].

400.A.16. Corporate Charitable Contributions

Receiving State or Local Tax Credit in Return for Contribution.
Based on the rationale that to the extent a C corporation receives or expects to receive a state or local tax credit in return for a charitable contribution, it is reasonable to conclude that there is a direct benefit to the C corporation's business in the form of the reduction of state and local taxes and a reason-able expectation of financial return to the corporation commensurate with the amount of the transfer, sub-regulatory guidance and proposed regulations provide a safe harbor allowing the deduction of such payments under § 162 as ordinary and necessary business expenses to the extent of the credit received or expected to be received [Prop. Reg. § 1.162-15(a)(3); Rev.Proc. 2019-12].

400.F.5.A. Energy-Efficient Commercial Buildings

The deduction for the cost of energy efficient commercial building property is a temporary tax provision that expires for property placed in service after 2020 [§179D(h)].

400.F.5.f. Certain Qualified Film, Television, And Theatrical Productions

Taxpayers generally can elect to deduct the cost of a qualified film or television productions and the cost of a qualified live theatrical productions. However, the election to take this deduction expires for productions commencing after 2020 [§181(g)].

CHAPTER 500: CAPITALIZATION, DEPRECIATION, AND AMORTIZATION

500.B.4.a. Recovery Classes of MACRS Property

Three-Year Property. The applicable recovery period for three-year property is three years. Three-year property consists of property with a class life of four years or less. Three-year property includes the following [§168(c), §168(e)(3)(A); Rev. Proc. 87-56]:

• tractor units for over-the-road use;
• breeding hogs;
• any race horse over two years old when placed in service (all race horses placed in service in 2009 through 2020 are deemed to be three-year property, regardless of age);
• any other horse (other than a race horse) over 12 years old when placed in service; and
• qualified rent-to-own property.

Seven-Year Property. The applicable recovery period for seven-year property is seven years. Seven-year property consists of property with a class life of between 10 and 15 years. Seven-year property includes the following [§168(c), §168(e)(3)(C); §168(i)(15), Rev. Proc. 87-56]:
• railroad tracks;
• office furniture and fixtures (e.g., desks, files, safes, etc.);
• motorsports entertainment complex property placed after October 22, 2004, but before 2021;
• natural gas gathering lines, the original use of which begin with the taxpayer after April 11, 2005;
• Alaska natural gas pipelines; and
• property that does not have a class life and has not been designated by law as being in any other class.

Special Rule for Qualified Indian Reservation Property. MACRS property that is qualified Indian reservation property placed in service before 2021 was assigned a shorter recovery period than the one to which it otherwise would have been assigned [§168(j)]. However, a taxpayer was permitted to elect to use the regular MACRS recovery periods for any Indian reservation property placed in service during the [pre-2018] tax year [§168(j)(8)].

500.B.7.d. Annual Depreciation Limits For Passenger Automobiles (Including Vans And Trucks)

The annual depreciation deduction (including the §179 deduction and §168(k) bonus depreciation allowance) that may be claimed for passenger automobiles (as defined in 500.B.7.a.) is limited. The inflation-adjusted maximum deduction amounts for most passenger automobiles are provided in the following table. The first column represents the placed-in-service year. For automobiles placed in service in 2018 and later, the inflation-adjusted maximum deduction amounts for trucks and vans are the same as the amounts for other passenger automobiles.

Year	First	Second	Third	Succeeding Years
2020	$10,100/$18,100*	$16,100	$9,700	$5,760
2019	$10,100/$14,900/$18,100*	$16,100	$9,700	$5,760
2018	$10,000/$16,400/$18,000*	$16,000	$9,600	$5,760
2017	$3,160/$11,160*	$5,100	$3,050	$1,875
2016	$3,160/$11,160*	$5,100	$3,050	$1,875
* For passenger automobiles that are qualified property for purposes of bonus depreciation, the limit on the amount of the first-year depreciation deduction is increased. The amount of the increase depends on when the property was acquired [§168(k)(2)(F); Reg. *§1.168(k)-2(g)(8)*; Rev. Proc. 2020-37].				

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CHAPTER 700: NONBUSINESS DEDUCTIONS

700.B.6. Moving Expenses

An active duty U.S. Armed Forces member who uses his or her own automobile to travel from the old home to the new home may elect either of two methods to calculate the transportation costs. The taxpayer may deduct actual out-of-pocket costs, including oil and gas, but not depreciation, insurance, or repair and maintenance. Alternatively, the taxpayer may deduct a standard mileage rate of 20 cents per mile for 2019 and 17 cents per mile for 2020. Parking fees and tolls can also be deducted under either method [Rev. Proc. 2019-46; Notice 2019-2, Notice 2020 -5].

700.B.13.B. Taxpayer Eligibility For Deduction

A taxpayer cannot take a student loan interest deduction for any amount that is allowable as a deduction under another provision of the tax law (i.e., no double tax benefit is allowed) [§221(e)(1)]. Thus, for example, a taxpayer who pays qualified education expenses with a home equity loan and takes a mortgage interest deduction for the interest attributable to those expenses cannot also claim a student loan interest deduction for the interest. Additionally, a taxpayer cannot take a student loan interest deduction for any amount that is allowable as an exclusion from income by reason of the payment by the taxpayer's employer of any indebtedness on a qualified education loan of the taxpayer [§127; §221(e)(1)].

A taxpayer must reduce his or her deduction for student loan interest by the amount of tax-free distributions for qualified loan repayments. This prevents the taxpayer from escaping tax on the distribution used to pay interest while also taking a deduction for the interest paid [§221(e)(1)].

700.B.13.C. Determining Amount Of Deduction

Taxpayers who took out Federal student loans that are discharged under settlement discharge actions, the Department of Education's Closed School discharge process, or the Defense to Repayment discharge process and who claimed a deduction for student loan interest attributable to interest paid on the discharged loan in a prior year do not have to recognize gross income under the tax benefit rule (see 100.B.6.) [Rev. Proc. 2015-57; Rev. Proc. 2017-24; Rev. Proc. 2018-39; Rev. Proc. 2020-11].

700.D.1.b. Medical Transportation Expenses

In the case of a personal vehicle used for medical reasons, the deduction can be based on either the taxpayer's actual out-of-pocket costs or the standard mileage rate for use of an automobile for medical care. The deduction for actual costs can include oil and gas costs, but not depreciation, insurance, or repair and maintenance costs. The deduction using the standard mileage rate is 20 cents per mile for 2019 and 17 cents per mile for 2020 [Notice 2019-2, Notice 2020 -5]. Parking fees and tolls can be deducted under either method [Rev. Proc. 2019-46].

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700.E.1. State and Local Income Taxes

Payments Resulting in State or Local Tax Benefits. If a taxpayer makes a payment to a charitable organization in exchange for state or local tax credits the taxpayer receives or expects to receive, then the taxpayer's charitable contribution deduction is reduced by the amount of the state or local credits received or expected to be received [Reg.§ 1.170A-1(h)(3)]. An IRS safe harbor provides that an individual who itemizes deductions and makes a payment to a § 170(c) entity in return for a state or local tax credit may treat the portion of such payment that is or will be disallowed as a charitable contribution deduction under § 170 as a payment of state or local tax for purposes of §164 [Prop.Reg. §1.170A-1(h)(3); Notice 2019-12].

700.G.3.b. Benefits Received as a Result of Charitable Contributions

Payments Resulting in State or Local Tax Benefits. If a taxpayer makes a payment to a charitable organization in exchange for state or local tax credits the taxpayer receivesor expects to receive, then the taxpayer's charitable contri-bution deduction is reduced by the amount of the state orlocal credits received or expected to be received [Reg.§ 1.170A-1(h)(3)]. An IRS safe harbor provides that anindividual who itemizes deductions and makes a payment toa § 170(c) entity in return for a state or local tax credit maytreat the portion of such payment that is or will be disal-lowed as a charitable contribution deduction under § 170 asa payment of state or local tax for purposes of § 164 [Prop.Reg. § 1.170A-1(h)(3); Notice 2019-12].

CHAPTER 900. CREDITS

900.A.1. List Of Credits

The general business credit includes the following credits [§38(b)]:

• the §45T retirement savings auto-enrollment credit (see 900.A.35.).

900.A.5.B. Energy Credit

Taxpayers are allowed a credit for a portion (the "energy percentage") of the basis of energy property placed in service during the tax year. The energy percentage is phased down for certain energy property the construction of which begins after 2016 or after 2019 (depending on the type of energy property) [§48(a)(1), §48(a)(2), §48(a)(3), §48(a)(5), §48(a)(6), §48(a)(7)].

Amount of Credit. The energy credit amount is the product of the energy percentage and the basis of the energy property placed in service during the tax year. The energy percentage is 30% for [§48(a)(2)(A)(i), §48(a)(5)(A)(ii)]:

• qualified fuel cell property, the construction of which begins before 2022;

• equipment, the construction of which begins before 2022, which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat (other than for heating a swimming pool);

• equipment that uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight, but only for property the construction of which begins before 2022;

• qualified small wind energy property;

• qualified investment credit facility property.

The energy percentage is 10% for [§48(a)(2)(A)(ii)]:

• geothermal energy equipment;

• qualified microturbine property;

• combined heat and power system property; and

• qualified geothermal heat pump system property, the construction of which begins before 2022.

The energy credit for qualified fuel cell property is limited to $1,500 for each 0.5 kilowatts of capacity. The credit for microturbine property is limited to $200 for each kilowatt of capacity [§48(c)].

Phaseout. The energy percentage for 30% property decreases if the property's construction begins after 2019. The energy percentage is 30% for solar energy property, the construction of which begins before 2020, 26% for solar energy property, the construction of which begins in 2020, and 22% for solar energy property, the construction of which begins in 2021. If solar energy property is placed in service after December 31, 2023, the energy percentage is 10% [§48(a)(6)]. For qualified fuel cell property, qualified small wind energy property, and fiber-optic solar property, the energy percentage is 30% for property if construction begins before 2020, 26% for property if construction begins in 2020, and 22% for property if construction begins in 2021. If qualified fuel cell property, qualified small wind energy property, or fiber-optic solar property is placed in service after December 31, 2023, the energy percentage is 0%, so no credit is available [§48(a)(7)].

Investment Credit Facility Property. For property the construction of which begins before 2021, taxpayers otherwise entitled to the §45 renewable electricity production credit ("production credit") (see 900.A.12.) may irrevocably elect to take the energy credit in lieu of the production credit. The energy percentage is generally 30% for such property, but is decreased for wind facilities placed in service after 2016 [§48(a)(5)]. If the taxpayer makes the election, no production credit for any year is allowed for any qualified investment credit facility. The election is made by attaching a statement to Form 3468, Investment Credit [Notice 2009-52]. Because eligibility to claim the credit for investment credit facility property depends on the construction start date, the credit may be claimed in the year the facility is placed in service (which may be in 2021 or later) or if the progress expenditure rule applies (see 900.A.5.c.), if construction started by December 31, 2020. The rules for determining the construction start date for property used to claim the energy credit in lieu of the production credit are discussed in 900.A.12.a.

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900.A.6. Work Opportunity Credit

Employers may claim a credit for a portion of wages paid to certain new employees who are members of targeted groups [§51(a)]. The work opportunity credit is a component of the general business credit. The employer must reduce the deduction for wages paid by the amount of the work opportunity credit, even if some or all of the credit is unused in the year it is generated [§280C(a)]. The work opportunity credit does not apply to wages paid to an individual who starts employment after December 31, 2020 [§51(c)(4)].

Amount of Credit. The work opportunity tax credit amount is 40% of the qualified first-year wages for that tax year [§51(a)]. The percentage is reduced to 25% for individuals who perform at least 120 hours but less than 400 hours of service for the employer during the one-year period beginning on the day the employee begins work for the employer. No credit applies to individuals performing less than 120 hours of service during the one-year period [§51(i)(3)]. The credit also includes 50% of qualified second-year wages that are paid to long-term family assistance recipients [§51(e)(1)(B)].
Qualified first-year wages are limited to $6,000 ($3,000 for a summer youth employee) for any one employee. For long-term family assistance recipients, the $6,000 limitation is increased to $10,000 [§51(e)(1)(B)].

Qualified Veterans. The wage limitation is $6,000 for qualified veterans who are either a member of a family receiving food stamps for at least a three-month period during the one-year period before the date of hire, or who have been unemployed for at least four weeks but less than six months during the one-year period before the date of hire. The limitation is $12,000 for qualified veterans with a service-connected disability hired within one year of discharge from active duty, $14,000 for qualified veterans unemployed a total of six months or more during the one year period before the date of hire, and $24,000 for qualified veterans with a service-connected disability who have been unemployed a total of six months or more during the one year period before the date of hire [§51(b)(3), §51(d)(3)(A)].

Targeted Group. An individual is a member of a targeted group if the individual is [§51(d)(1)]:
• a qualified IV-A recipient (receiving assistance under certain state programs),
• a qualified veteran,
• a qualified ex-felon,
• a designated community resident,
• a vocational rehabilitation referral,
• a qualified summer youth employee,
• a qualified supplemental nutrition assistance program recipient,
• a qualified SSI (supplemental security income benefits) recipient,
• a long-term family assistance recipient, or
• a qualified long-term unemployment recipient.

Additionally, on or before the day on which the individual begins work for the employer, the employer must receive a certification from a designated local agency that the individual is a member of a targeted group. To meet this requirement, the employer may submit a completed pre-screening notice and request (Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit) to the designated local agency and to obtain certification no later than the 28th day after the individual begins work for the employer [§51(d)(13)].

A disqualified individual is an individual who is a related individual, a nonqualifying rehire (an individual who was previously employed by the employer at any time), or a minimum employment individual (an individual who performs less than 120 hours of service for the employer) [§51(i)].
Claiming the Credit. The credit is claimed on Form 5884, Work Opportunity Credit. The credit amount is added to Form 3800, General Business Credit, except for partnerships and S corporations, which must complete Form 5884 and attach it to their returns and report the amount on Schedule K. If the taxpayer's only source of this credit is from partnerships or S corporations, Form 5884 need not be completed, and this credit is claimed directly on Form 3800.
A taxpayer may elect to forgo the work opportunity credit for a tax year by not claiming the credit on the return or amended return. The election may be made or revoked at any time before the expiration of the three-year period beginning on the due date for filing the income tax return for that tax year, without regard to extensions [§51(j)].

Tax-Exempt Organizations. While the work opportunity credit is generally not available to tax-exempt organizations (except §521 farmers' cooperatives), a qualified tax-exempt organization may claim the credit against the employer's share of FICA tax for hiring qualified individuals [§3111(e)(3)]. Qualified tax-exempt organizations may claim the credit on Form 5884-C, Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans, which is filed after the employment tax return has been filed.

900.A.7. Second Generation Biofuel Producer Credit

For biofuel produced before January 1, 2021, taxpayers may claim a credit for qualified second generation biofuel production [§40(a)(4), §40(b)(6), §40(b)(6)(J)(i)]. The second generation biofuel producer credit is a component of the alcohol fuels credit [§40], which is a component of the general business credit. The other components of the alcohol fuels income tax credit (alcohol mixture (gasohol), alcohol, and small ethanol producer credits) expired December 31, 2011 [§40(e)(1), §40(e)(3)].
Amount of Credit. The second generation biofuel producer credit equals the second generation biofuel rate multiplied by the number of gallons of qualified second generation biofuel production [§40(b)(6)(A)]. The second generation biofuel rate is $1.01 per gallon [§40(b)(6)(B)].

Claiming the Credit. The second generation biofuel producer credit is claimed on Form 6478, Biofuel Producer Credit. The credit amount is added to Form 3800, General Business Credit, except for partnerships and S corporations, which must attach Form 6478 to their returns and report the amount on Schedule K. If the taxpayer's only source of this credit is from partnerships or S corporations, Form 6478 need not be completed, and this credit is claimed directly on Form 3800.

The second generation biofuel producer credit may not be claimed if the alternative fuel mixture excise tax credit is claimed for the same gallon of production [§40(c), §6426(h)].

A taxpayer may elect to forgo the credit for a tax year. The election may be made or revoked at any time before the expiration of the three-year period beginning on the due date, without regard to extensions, for filing the income tax return for that tax year [§40(f)].

Recapture of Credit. If the taxpayer uses the biofuel for which a credit has been taken for any purpose other than as qualified second generation biofuel, the credit amount applicable to the amount of biofuel

is recaptured as a tax [§40(d)(3)(D)]. Recapture of the alcohol fuels credit is reported on Form 720, Quarterly Federal Excise Tax Return.

If the second generation biofuel producer credit ceases to apply because of the termination of the credit, any general business credit attributable to the second generation biofuel producer credit arising before the termination may not be carried to any tax year beginning after the three-tax-year period beginning with the tax year in which occurs the first day of the termination of the credit [§40(e)(2), §40(b)(6)(J)(ii)]. If the credit expires, any unused second generation biofuel producer credit is deductible in the first tax year after the end of the three-year period for claiming the credit [§196(a), §196(c)(3)].

900.A.10 Enhanced Oil Recovery Credit

If not phased out, taxpayers are allowed a credit for a portion of their enhanced oil recovery costs. The enhanced oil recovery credit is a component of the general business credit. The credit amount is 15% of the taxpayer's qualified enhanced oil recovery costs for the tax year [§43(a)], reduced by a phaseout amount, equal to the amount otherwise allowable multiplied by a fraction, the numerator of which is the excess of the reference price of oil per barrel over $28, and the denominator of which is $6 [§43(b)]. Due to the reference price of $61.41, the credit is fully phased out for 2019 [Notice 2019-36]. The credit is also fully phased out for 2020 due to the reference price of $55.55 [Notice 2020-31].

900.A.12. Renewable Electricity Production Credit

Taxpayers may claim a credit for producing and selling renewable electricity (see 900.A.12.a. and 900.A.12.b.), refined coal (see 900.A.12.c.), and Indian coal (see 900.A.12.d.). The credit generally applies to electricity or coal produced in the 10-year period after the facility is placed in service (see 900.A.12.a., 900.A.12.d.). The renewable electricity production credit is a component of the general business credit.

The renewable electricity production credit does not apply to facilities for which construction begins after 2020. Because the credit can be claimed in the 10-year period after the facility is placed in service, it can be claimed for electricity or coal produced in facilities placed in service before the cut-off date. The refined coal credit expired December 31, 2011, but may continue to apply to facilities placed in service before 2012. [§45(d)].

900.A.12.A. Eligibility For The Renewable Electricity Production Credit

Qualified Facility. A qualified facility is any wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy (credit period expired), small irrigation power (credit period expired), marine and hydrokinetic renewable energy, landfill gas, trash, or qualified hydropower facility. The credit applies to renewable electricity production facilities the construction of which begins before January 1, 2021. A qualified facility does not include any facility that produces electricity from gas derived from the biodegradation of municipal solid waste if that biodegradation occurs in a facility the production from which the expired §45K credit was allowed for the tax year or any prior tax year [§45(d)].

900.A.12.D. Indian Coal Credit

Indian coal is coal produced from coal reserves that, on June 14, 2005, were either owned by an Indian tribe, or held in trust by the United States for the benefit of an Indian tribe or its members [§45(c)(9)(A)]. The credit for producers of Indian coal equals the applicable dollar amount per ton of Indian coal that: (i) is produced by the taxpayer at an Indian coal production facility during the 15-year period beginning on January 1, 2006; (ii) is sold by the taxpayer to an unrelated person (either directly by the taxpayer or after sale or transfer to one or more related persons); and (iii) is sold during that 15-year period and that tax year [§45(e)(10)]. The applicable dollar amount is $2.00 per ton, adjusted for inflation every year [§45(e)(10)(B)]. The Indian coal credit expires December 31, 2020 [§45(e)(10)(A)].

900.A.13. Empowerment Zone Employment Credit

Employers can claim an empowerment zone employment credit for qualified zone wages paid to qualified zone employees. The empowerment zone employment credit is a component of the general business credit. The employer's deduction otherwise allowed for wages paid for a tax year is reduced by the amount of the empowerment zone employment credit claimed for that year [§280C(a)]. The empowerment zone employment credit is set to expire December 31, 2020 [§1391(d)(1)(A)(i)]. Any nomination for an empowerment zone with a December 31, 2017 termination date (which was the previous credit expiration date before the most recent legislative extension) can be extended if the nominating entity amends the nomination to provide a new termination date [§1391(d), §1396(d)(1)(A); Pub. L. No. 116-94, Div. Q, §118].

Amount of Credit. The empowerment zone employment credit amount for any tax year equals the applicable percentage multiplied by the qualified zone wages paid or incurred during the calendar year ending with or within the tax year [§1396(a)]. For the originally designated empowerment zones, the applicable percentage is 20% [§1396(b)].

Limitation. Only the first $15,000 of qualified zone wages for each employee each year is taken into account in computing the credit (so that the maximum credit per employee is $3,000). The $15,000 limitation is reduced by the amount of wages paid or incurred during that year which are taken into account in determining the work opportunity credit under §51 [§1396(c)].

Claiming the Credit. The credit is claimed on Form 8844, Empowerment Zone Employment Credit. The credit amount is added to Form 3800, General Business Credit, except for partnerships and S corporations, which must attach Form 8844 to their returns and report the amount on Schedule K. If the taxpayer's only source of this credit is from partnerships or S corporations, Form 8844 need not be completed, and the credit is claimed directly on Form 3800. The instructions to Form 8844 contain a list of empowerment zone designations.

900.A.14. Indian Employment Credit

Employers of certain members of Indian tribes or their spouses may claim a credit for their qualified wages and employee health insurance costs. The Indian employment credit is a component of the general business credit. An employer's deduction otherwise allowed for wages paid for a tax year is reduced by the Indian employment credit claimed for that tax year [§280C(a)]. The credit does not apply to tax years beginning after December 31, 2020 [§45A(f)].

Eligibility. The employer must be engaged in a trade or business. The credit may not be claimed by tax-exempt organizations, except for §521 farmers' cooperatives [§45A(c)(4), §45A(e)(3)].

Amount of Credit. The amount of the Indian employment credit amount is 20% of the net incremental Indian employment wages. Net incremental Indian employment wages equals the excess of combined qualified wages and qualified employee health insurance costs paid or incurred during a tax year, over the sum of qualified wages and qualified employee health insurance costs paid or incurred by the employer (or predecessor employer) during calendar year 1993 [§45A(a)]. The aggregate amount of qualified wages and qualified health insurance costs taken into account for any employee for any tax year is limited to $20,000 [§45A(b)(3)].

Claiming the Credit. The credit is claimed on Form 8845, Indian Employment Credit. The credit amount is added to Form 3800, General Business Credit, except for partnerships and S corporations, which attach Form 8845 to their returns and report the amount on Schedule K. If the taxpayer's only source of this credit is from partnerships or S corporations, Form 8845 need not be completed, and this credit is claimed directly on Form 3800.

900.A.17. New Markets Tax Credit

A taxpayer who holds a qualified equity investment on a credit allowance date that occurs during the tax year is allowed to claim a new markets tax credit for that year [§45D]. There is an annual national designated investment limitation on the total amount of new markets credits. The limitation is $3.5 billion for 2019 and $5 billion for 2020 [§45D(f)(1)].

900.A.20. Railroad Track Maintenance Credit

For expenses incurred in tax years beginning before 2023, eligible taxpayers may claim a credit for qualified railroad track maintenance expenditures paid or incurred during the tax year [§45G(a), §45G(f)]. The railroad track maintenance credit is a component of the general business credit. Eligibility. Eligible taxpayers include Class II (mid-size) and Class III (small) railroads, and any person that transports property using the rail facilities of a Class II or Class III railroad or that furnishes railroad-related property or services to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to that person by that Class II or Class III railroad for purposes of the limitation on the credit [§45G(c)]. There are special rules for controlled groups [§45G(e)(2)].

Amount of Credit. The credit amount is 50% of qualified maintenance expenditures made during the tax year, up to the maximum credit amount, which equals $3,500 multiplied by the sum of: (i) the number of miles of eligible railroad track owned or leased by the eligible taxpayer as of the close of the tax year, and (ii) the number of miles of eligible railroad track assigned for purposes of the limitation to the eligible taxpayer by a Class II or Class III railroad that owns or leases that railroad track as of the close of the tax year. For eligible taxpayers other than Class II and Class III railroads, the maximum credit amount is $3,500 multiplied by the number of miles of eligible railroad track assigned by a Class II or Class III railroad to the eligible taxpayer for the tax year [§45G(b)(1)]. Any amount of the otherwise computed credit that exceeds these amounts may not be carried to another tax year [Reg. §1.45G-1(c)(2)(iii)].

Claiming the Credit. The credit is claimed by filing Form 8900, Qualified Railroad Track Maintenance Credit. The credit amount is added to Form 3800, General Business Credit, except for partnerships and S corporations, which must attach Form 8900 to their returns and report the amount on Schedule K [Reg. §1.45G-1(a)]. Form 8900 must be filed if the taxpayer assigns any mile of railroad track, even if the taxpayer is not claiming the credit for that tax year [Reg. §1.45G-1(d)(4)]. If the taxpayer's only source of this credit is from partnerships or S corporations, Form 8900 need not be completed, and the credit is claimed directly on Form 3800.

900.A.21. Biodiesel And Renewable Diesel Fuel Credit

For fuel sold or used before 2023, taxpayers may claim a credit for biodiesel fuels [§40A(g)]. The credit amount is the sum of [§40A(a)]:
- the biodiesel mixture credit;
- the biodiesel credit; and
- the small agri-biodiesel credit.

900.A.26. New Energy Efficient Home Credit

Eligible contractors may claim a credit for building and selling eligible energy efficient homes. [§45L.] The new energy efficient home credit is a component of the general business credit. The credit does not apply to any home acquired from an eligible contractor after December 31, 2020. [§45L(g).]

Eligible homes are: (i) certified qualified new energy efficient homes; (ii) constructed by the eligible contractor; and (iii) acquired by another person from the eligible contractor for use as a residence during the tax year [§45L(a)(1)]. Construction includes substantial reconstruction and rehabilitation [§45L(b)(3)]. The credit is not available to homebuyers and eligible homes may not be used by the contractor as a personal residence.

Amount of Credit. For certified new homes and certified manufactured homes, the credit amount is $2,000 per qualified home. For alternatively certified (under less stringent requirements) manufactured homes and Energy Star manufactured homes, the applicable amount is $1,000 [§45L(a)(2)].
Claiming the Credit. The credit is claimed on Form 8908, Energy Efficient Home Credit. The credit amount is added to Form 3800, General Business Credit, except for partnerships and S corporations, which must attach Form 8908 to their returns and report the amount on Schedule K. If the taxpayer's only source of this credit is from partnerships or S corporations, Form 8908 need not be completed, and the credit is claimed directly on Form 3800.

900.A.27. Alternative Motor Vehicle Credit

Taxpayers may claim a credit for placing in service alternative motor vehicles. The business portion of the alternative motor vehicle credit is a component of the general business credit. The alternative motor vehicle credit originally included credits for fuel cell, advanced lean burn technology, hybrid, and alternative fuel motor vehicles, as well as a plug-in conversion credit [§30B(a)]. However, all components of the alternative motor vehicle credit, except for the qualified fuel cell motor vehicle credit, are expired. The qualified fuel cell motor vehicle credit applies to qualified vehicles purchased before 2021 [§30B(k)(1)]. The credit is discussed in 900.D.1.

Claiming the Credit. The credit is claimed on Form 8910, Alternative Motor Vehicle Credit. The business portion is added to Form 3800, General Business Credit, except for partnerships and S corporations, which must attach Form 8910 to their returns and report the amount on Schedule K. If the taxpayer's only source of this credit is from partnerships or S corporations, Form 8910 need not be completed, and this credit is claimed directly on Form 3800.

900.A.28. Alternative Fuel Vehicle Refueling Property Credit

Taxpayers may claim a credit for placing in service qualified alternative-fuel vehicle refueling property before 2021 [§30C(g)]. The business portion of the alternative fuel vehicle refueling property credit is a component of the general business credit. The credit is discussed in 900.D.2.
Claiming the Credit. The credit is claimed on Form 8911, Alternative Fuel Vehicle Refueling Property Credit. The business portion is added to Form 3800, General Business Credit, except for partnerships and S corporations, which must attach Form 8911 to their returns and report the amount on Schedule K. If the taxpayer's only source of this credit is from partnerships or S corporations, Form 8911 need not be completed, and this credit is claimed directly on Form 3800.

900.A.31. Carbon Oxide Sequestration Credit

Amount of Credit. The credit is the sum of four amounts [§45Q(a); Notice 2020-40]:

• $20 per metric ton (adjusted for inflation to $23.82 for 2020) of qualified carbon oxide that is captured by a taxpayer using carbon capture equipment originally placed in service at a qualified facility before February 9, 2018, and disposed of by the taxpayer in secure geological storage;
• $10 per metric ton (adjusted for inflation to $11.91 for 2020) of qualified carbon oxide that is captured by the taxpayer using carbon capture equipment originally placed in service at a qualified facility before February 9, 2018, and is used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and disposed in secure geological storage;
• the applicable dollar amount (determined under §45Q(b)(1)) per metric ton of qualified carbon oxide that is captured by the taxpayer using carbon capture equipment originally placed in service at a qualified facility on or after February 9, 2018 (during a 12-year period beginning on the date the equipment was originally placed in service), and disposed of in secure geological storage; and
• the applicable dollar amount (determined under §45Q(b)(1)) per metric ton of qualified carbon oxide that is captured by the taxpayer using carbon capture equipment originally placed in service at a qualified facility on or after the February 9, 2018 (during a 12-year period beginning on the date the equipment was originally placed in service) and used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage, or for any other purpose for which a commercial market exists (except for use as a tertiary injectant in a qualified enhanced oil or natural gas recovery project).

900.A.34. Paid Family And Medical Leave Credit

Note: For the purposes of determining the Paid Family and Medical Leave Credit, eligible wages may not include “qualified sick leave wages” and “qualified family leave wages” used to determine tax credits against social security taxes as provided by the Families First Coronavirus Response Act (Families First Act or FFCRA) [Pub. L. No. 116-127, §7001(e), §7003(e)].

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900.A.35. Retirement Savings Auto-Enrollment Credit

For tax years beginning after December 31, 2019, a credit is available to "eligible employers" during the credit period, which is the three-tax-year period beginning with the first tax year for which the employer includes an "eligible automatic contribution arrangement" in a qualified employer plan sponsored by the employer. No tax year is treated as occurring within the credit period unless the automatic contribution arrangement is included in the plan for that year [§45T(a), §45T(b)(1), §45T(b)(2)].

Amount of Credit. The amount of the retirement savings auto-enrollment credit is $500 per tax year during the credit period and $0 for any other tax year [§45T(a)(1), §45T(a)(2)].

Eligibility. An eligible employer is an employer that had 100 or fewer employees who received at least $5,000 of compensation from the employer for the preceding year. An eligible employer who establishes and maintains a qualified employer plan for one or more years but who fails to be an eligible employer for any later year is treated as an eligible employer for the two years following the last year the employer was an eligible employer, unless the failure is due to any acquisition, disposition, or similar transaction involving an eligible employer [§45T(c) (reference to §408(p)(2)(C)(i))].

An eligible automatic contribution arrangement is an arrangement under an applicable employer plan:
• under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,
• under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and
• which meets the notice requirement in §414(w)(4). [§414(w)(3) (definition of eligible automatic contribution arrangement), §4972(d) (definition of qualified employer plan)].

Claiming the Credit. The IRS has not yet issued a form for claiming the retirement savings auto-enrollment credit. If the taxpayer is not a partnership or an S corporation and the taxpayer's only source of this credit is from partnerships or S corporations, then the credit is claimed directly on Form 3800.
900.B. Personal Credits

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

Qualifying Relative.

Note. Despite the personal exemption deduction being zero for tax years 2018 through 2025, that amount does not apply to the gross income limitation in the qualifying relative definition [§ 151(d)(5)]. Thus, for purposes of the gross income test in§ 152(d)(1)(B), taxpayers should use the exemption amount in§ 151(d)(1) to determine whether an individual is a qualifying relative in 2018–2025 [Prop. Reg. § 1.152-3(c)(3)(i)]. Pro-posed regulations are proposed to apply to tax years ending after August 28, 2018, but pending the issuance of the final regulations, taxpayers may rely on these regulations on any open taxable year.

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900.B.5.E. Recapture Of Education Tax Credit

The credit amount must be recaptured when there is in a subsequent year a refund of any amount taken into account in determining the amount of the credit. This is reported on Form 1040 and included on the "Tax" line. Taxpayers must write "ECR" to the left of the amount on the Tax line. Refunds received in the same tax year in which the qualified tuition and related expenses are paid are subtracted from the gross payment [§25A(j); Reg. §1.25A-5(f)(3)]. Taxpayers who took out Federal student loans that are discharged under settlement discharge actions, the Department of Education's Closed School discharge process, or the Defense to Repayment discharge process and who claimed the education tax credit in prior years do not have to recapture that credit [Rev. Proc. 2015-57; Rev. Proc. 2017-24; Rev. Proc. 2018-39; Rev. Proc. 2020-11].

900.B.11. Nonbusiness Energy Property Credit

Taxpayers can claim the nonbusiness energy property credit for expenditures for certain qualified energy efficient improvements and residential energy property expenditures placed in service or installed during the tax year in the taxpayer's principal residence. The credit does not apply to property placed in service after December 31, 2020 [§25C(g)(2)].

900.D.1. Alternative Motor Vehicle Credit

Taxpayers may claim a credit for placing in service alternative motor vehicles. The business portion of the alternative motor vehicle credit is a component of the general business credit (see 900.A.27.). The alternative motor vehicle credit originally included credits for fuel cell, advanced lean burn technology, hybrid, and alternative fuel motor vehicles, as well as a plug-in conversion credit [§30B(a)]. However, all components of the alternative motor vehicle credit, except for the qualified fuel cell motor vehicle credit, have expired. The qualified fuel cell motor vehicle credit does not apply to property purchased after December 31, 2020 [§30B(k)(1)].

Amount of the credit. The new qualified fuel cell motor vehicle credit is [§30B(b)(1)]:

- $4,000 for a qualifying vehicle with a gross vehicle weight up to 8,500 pounds;
- $10,000 for a vehicle with a gross vehicle weight of more than 8,500 pounds but not more than 14,000 pounds;
- $20,000 for a vehicle with a gross vehicle weight of more than 14,000 pounds but not more than 26,000 pounds; and
- $40,000 for a vehicle with a gross vehicle weight of more than 26,000 pounds.

The credit may increase by amounts ranging from $1,000 to $4,000 if the vehicle achieves increases in fuel economy ranging from 150% to 300% of the 2002 model year city fuel economy [§30B(b)(2)(A)].

Claiming the Credit. The credit is claimed on Form 8910, Alternative Motor Vehicle Credit. The nonbusiness credit is nonrefundable, i.e., it may be claimed against the taxpayer's regular tax (as defined by §26(a)) reduced by the foreign tax credit, plus any alternative minimum tax [§30B(g)(2)].

Unused credit may not be carried forward. For limitations applicable to the business credit, see 900.A.2. A taxpayer may elect to forgo the credit for any vehicle [§30B(h)(9)].

Recapture of Credit. Recapture applies if the property ceases to be eligible for the credit, including if there is a lease period of less than the vehicle's economic life, unless the cessation is by reason of conversion to a qualified plug-in electric drive motor vehicle [§30B(h)(8)].

Tax-Exempt Use Vehicles. Under certain circumstances, the person who sells qualified alternative motor vehicles may claim the credit if the seller clearly discloses to the user the amount of any allowable credit. The property (i) must be used by a tax-exempt organization other than a §521 cooperative, or by a government, foreign person, or foreign entity; (ii) must not be used predominantly in an unrelated trade or business subject to the §511 unrelated business income tax; and (iii) must not be leased by the organization [§30B(h)(6)].

900.D.2. Alternative Fuel Vehicle Refueling Property Credit

Taxpayers may claim a credit for placing in service qualified alternative-fuel vehicle refueling property. The business portion of the alternative fuel vehicle refueling property credit is a component of the general business credit (see 900.A.28.). The credit does not apply to property placed in service after December 31, 2020 [§30C(g)].

Amount of Credit. The alternative-fuel vehicle refueling property credit equals 30% of the cost of the qualified alternative-fuel vehicle refueling property placed in service by the taxpayer during the tax year [§30C(a)]. The credit for all qualified property placed in service by the taxpayer during the tax year at a location is limited to $30,000 for depreciable (business) property, and $1,000 for nondepreciable (nonbusiness) property [§30C(b)].

The cost of dual-use property used to store or dispense both alternative fuel and conventional fuel is included in the cost of qualified alternative-fuel vehicle refueling property only to the extent it exceeds the cost of equivalent conventional refueling property. Special rules apply to qualified alternative-fuel vehicle refueling property that is converted from previously nonqualified property [Notice 2007-43].

Claiming the Credit. The credit is claimed on Form 8911, Alternative Fuel Vehicle Refueling Property Credit. The nonbusiness portion is nonrefundable, i.e., it is limited to the excess, if any, of the taxpayer's modified §26(b) regular tax liability limitation over the taxpayer's tentative minimum tax [§30C(e)(2)]. Unused credit may not be carried forward. For limitations applicable to the business credit, see 900.A.2. A taxpayer may elect to forgo the credit for any property [§30C(e)(4)].

Recapture of Credit. The alternative-fuel vehicle refueling property credit is subject to recapture rules when the property ceases to be alternative-fuel vehicle refueling property before the end of its recovery period [§30C(e)(5)].

Tax-Exempt Use Property. Under certain circumstances, the person who sells qualified alternative fuel vehicle refueling property may claim the credit if the seller clearly discloses to the user the amount of any allowable credit. The property (i) must be used by a tax-exempt organization other than a §521 cooperative, or by a government, foreign person, or foreign entity; (ii) must not be used predominantly in an unrelated trade or business subject to the §511 unrelated business income tax; and (iii) must not be leased by the organization [§30C(e)(2)].

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900.D.3. Qualified Plug-In Electric Drive Motor Vehicle Credit

Taxpayers may claim a credit for placing in service new qualified plug-in motor vehicles for the tax year in which the vehicle is placed in service. The portion of the qualified plug-in electric drive motor vehicle credit attributable to depreciable property (i.e., business vehicles) is a component of the general business credit (see 900.A.32.). The current version of the credit applies to four-wheeled vehicles acquired after 2009 and to two-wheeled vehicles acquired during 2015 through 2020. (A credit for three-wheeled vehicles applied to vehicles acquired in 2012 and 2013 only) [§30D(g)(3)(E)].

Amount of Credit. The credit amount per four-wheeled vehicle equals the sum of [§30D(b)]:
1. the base amount ($2,500), plus
2. for a vehicle that draws its propulsion energy from a battery with not less than five kilowatt-hours (kwh) of capacity, $417 plus $417 for each kwh in excess of five kwh (not to exceed $5,000).
Thus, the total amount of the credit per four-wheeled vehicle is limited to a maximum of $7,500 per vehicle (i.e., $2,500 + $5,000).
The credit amount per two-wheeled vehicle is the lesser of $2,500 or 10% of the cost of the vehicle [§30D(g)(2)].

The full amount of the credit may be claimed for the first 200,000 new qualified plug-in electric-drive motor vehicles sold for use in the United States after December 31, 2009, after which taxpayers placing in service such a vehicle must claim a reduced credit amount [§30D(e)].

Per-vehicle credit amounts acknowledged by the IRS are available at http://www.irs.gov/Businesses/Qualified-Vehicles-Acquired-after-12-31-2009.

Claiming the Credit. The credit is claimed on Form 8936, Qualified Plug-in Electric Drive Motor Vehicle Credit. The nonbusiness credit is nonrefundable, i.e., it may be claimed against the taxpayer's regular tax (as defined in §26(b)) reduced by the foreign tax credit, plus any alternative minimum tax [§30D(c)(2)]. Unused credit may not be carried forward. For limitations applicable to the business credit, see 900.A.3. A taxpayer may elect not to apply §30D to a given qualifying vehicle [§30D(f)(6)].

Recapture of Credit. Recapture applies for any vehicle that ceases to be eligible for the credit [§30D(f)(5)].

900.E. Minimum Tax Credit

Limitation on Credit and Carryover. The minimum tax credit is limited to the excess of the taxpayer's regular tax liability for the tax year, reduced by nonrefundable credits and the general business credit, over the taxpayer's tentative minimum tax for the tax year [§53(c)]. Unused minimum tax credits are carried forward and may be used to offset regular tax liability indefinitely until exhausted. Excess credits may not be carried back. However, the minimum tax credit is refundable for tax years 2018 and 2019 in an amount equal to 50% (100% for a tax year beginning in 2019) of the excess of the minimum tax credit for the tax year over the amount of the credit allowable against regular income tax liability for the tax year. The AMT refundable credit is reduced proportionately in short tax years [§53(e), Pub. L. No. 116-136, §2305].

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CHAPTER 1000. COMPUTATION OF TAX

1000.A.2.B. Alternative Minimum Taxable Income: AMT Adjustments

(25) Cooperative Patron's Adjustment
For regular tax purposes, taxpayers who are patrons of a cooperative may be required to include distributions received from the cooperative in gross income (see 1300.F.4.). For AMT purposes, certain adjustments must be made to the amounts included in income for regular tax purposes.

1000.B.2. Corporate Alternative Minimum Tax (Repealed For Tax Years Beginning After 2017)

The corporate AMT is repealed for tax years beginning after 2017 [2017 TCJA, Pub. L. No. 115-97, §12001]. For tax years beginning before 2018, the AMT for corporations is similar to the AMT for individuals (see 1000.A.2.) with some differences. AMT for corporations was computed and reported on Form 4626, Alternative Minimum Tax — Corporations. For a discussion of the corporate AMT, see prior editions of the Bloomberg Tax Federal Tax Guide.

Any AMT credit (minimum tax credit) from tax years beginning before 2018 is allowed to offset a corporation's income tax liability for tax years beginning after 2017 (see 900.E.). In addition, for tax years 2018 and 2019, the minimum tax credit is refundable in an amount equal to 50% (100% for a tax year beginning in 2019) of the excess of the minimum tax credit for the tax year over the amount of the credit allowable against regular income tax liability for the tax year. Corporations may elect to take the entire refundable credit amount in 2018. The AMT refundable credit is reduced proportionately in short tax years [§53(e), Pub. L. No. 116-136, §2305].

CHAPTER 1200. INDIVIDUALS

1200.C.5.C. Qualifying Person

Note: Despite the personal exemption deduction being zero for tax years 2018 through 2025, that amount does not apply to the gross income limitation in §2(b)(1)(B). Thus, for purposes of the gross income test, taxpayers should use the exemption amount in §151(d)(1) to determine whether an individual is a qualifying relative in 2018–2025 [Prop. Reg. §1.152-3(c)(3)(i)]. Proposed regulations are proposed to apply to tax years ending after August 28, 2018, but pending the issuance of the final regulations, taxpayers may rely on these proposed regulations in any open taxable year.

1200.F.2. Due Dates For Estimated Tax Payments

For an individual serving in the U.S. Armed Forces (or in support of the Armed Forces) in an area designated as a combat zone or participating in a qualifying deployment in a contingency operation, the time for payment of estimated tax may be postponed [§7508(a)]. The due date for making estimated tax payments is automatically postponed by 60 days for qualified taxpayers affected by a federally declared disaster [§7508A(d)]. The IRS also may postpone by up to one year the due date for making estimated tax payments for individuals affected by a federally declared disaster or a terroristic or military action

[§7508A(a)]. Estimated tax payments are potentially eligible for COVID-19 (coronavirus) postponements. [§7508A; Notice 2020-23].

CHAPTER 1400. PARTNERSHIPS

1400.C.1.A. Nonrecognition Rule For Contributions Of Property To Partnership

Contributions of Appreciated Property to Partnership with Foreign Partners. The IRS has exercised its authority under §721(c) to override the application of the nonrecognition rule to gain realized on the transfer of property to a partnership if such gain, when recognized, ultimately would be includible in the gross income of a foreign person. Under temporary regulations (for tax years prior to 2020) and final regulations (for tax years beginning in 2020), when a U.S. person transfers certain property to a partnership that has foreign partners related to the U.S. person, income or gain attributable to the appreciation in the property at the time of the contribution must be taken into account immediately, unless certain requirements intended to protect the U.S. tax base (known as the "gain deferral method") are satisfied. [§721(c); Reg. §1.721(c)-1T through §1.721(c)-7T; Reg. §1.721(c)-1 through §1.721(c)-7].

CHAPTER 1600. CHOICE OF ENTITY

1600.D.2.C. Limitations On Use Of Losses

Sole Proprietorship. The losses generated by a sole proprietorship are reported directly on its owner's individual income tax return. However, three limitations may apply to the deductibility of losses by the sole proprietor. First, a net loss from an activity not engaged in for profit may be totally nondeductible under the hobby-loss rules (see 800.H.) [§183]. Second, the deductibility of a loss generated by a sole proprietorship may be limited under the at-risk rules (see 800.E.). Third, if the business enterprise constitutes a passive activity with respect to the owner, any losses from the activity may be disallowed under the passive activity loss rules (see 800.F.). Note that a fourth limitation will apply after 2020 — "excess business losses" will be disallowed and treated as part of the NOL carryover to the following year (see 800.J.) [§461(l)].

Partnership. The losses of a partnership are passed through to its partners. Losses passed through to a partner from a partnership are potentially subject to three limitations on their deductibility: (i) the general basis limitation, (ii) the at-risk limitation, and (iii) the passive activity loss rules. All three limitations are applied at the partner level. Note that, for purposes of the general basis limitation, a partner's outside basis is increased by the amount of partnership level debt allocated to it. Partnership losses are nondeductible if the partnership is not engaged in an activity undertaken to make a profit. A fourth limitation, disallowing excess business losses, will apply after 2020.

C Corporation. A C corporation is not a pass-through entity. If a C corporation generates a net operating loss for a year, that loss generates a tax benefit to the corporation only to the extent the loss can be carried back or forward to a year in which the corporation has taxable income. Net operating losses arising in tax years beginning after 2017 and before 2021 generally can be carried back five years and can be carried forward indefinitely, while net operating losses arising in tax years beginning before 2018 generally can be carried back two years and carried forward 20 years. Note that the following rules will apply for NOLs arising after 2020: (i) NOLs cannot be carried back but can be carried forward

indefinitely, and (ii) the deduction for NOLs will be limited to 80% of taxable income (applicable to NOLs arising after 2017) (see 800.G.3.) [§172]. Note that C corporations will not be subject to the excess business loss limitation that applies to sole proprietorships, partnerships and S corporations.

The inability of shareholders of a C corporation to offset their own income with losses of the corporation is an important consideration in selecting a form of business entity, particularly if the business is expected to generate losses in its early stages. If the corporation is operated as a C corporation, no tax benefit is obtained from the losses until the corporation generates a taxable income.

In addition to the overall limitation on the use of losses by a C corporation, two special limitations apply on an activity basis to limit the deductibility of losses incurred by certain C corporations:

1. Closely held C corporations are subject to both the at-risk rules and the passive activity loss rules (although in a modified form) [§465(a)(1)(B), §469(a)(2)(B)].

2. Personal service corporations (PSCs) are fully subject to the passive activity loss rules, whether closely held or not [§469(a)(2)(C)].

S Corporation. Losses of an S corporation are passed through to its shareholders. Like losses passed through from a partnership, losses passed through to a shareholder from an S corporation are subject to three limitations on their deductibility: (i) the general basis limitation, (ii) the at-risk limitation, and (iii) the passive activity loss rules. All three limitations are applied at the shareholder level. Unlike partnerships and partners, the outside basis of S corporation shareholders is not increased by their share of S corporation level debt for purposes of the general basis limitation. A fourth limitation, disallowing excess business losses, will apply after 2020.

CHAPTER 1700. RETIREMENT PLANS AND BENEFIT ARRANGEMENTS

1700.A.2.Qualified Retirement Plans

For IRS procedures and user fees for employee plan determination requests, see Rev. Proc. 2020-4.

1700.A.4.E. Loans And Hardship Withdrawals

Loans to employees may be made from a TSA annuity contract within certain limits. Failure to comply with these limits causes the loan to be considered a taxable distribution. The rules applicable to TSA loans are the same as those that apply to loans from qualified plans (see 1700.A.2.e.(3)). Distributions of salary reduction contributions from custodial accounts and annuity contracts may also be made before age 59 ½ on account of "financial hardship." The rules for a hardship withdrawal are the same as those that apply to hardship withdrawals from §401(k) plans (see 1700.A.2.e.(3)) [§403(b)(7)(A)(i)(V), §403(b)(11); Reg. §1.403(b)-6(d)(1)(i)].

1700.B.1.E.(7) Reporting, Withholding And Employment Taxes

Amounts Included in Income. An employer is required to include in total wages any amounts includible in an employee's gross income as a result of the application of §409A. Such amounts are reported as wages paid on line 2 of Form 941 and in box 1 of Form W-2 and in box 12 of Form W-2 using code Z.

Amounts includible in gross income in the applicable calendar year that are neither actually nor constructively received by an employee during that calendar year are treated as wages on December 31 of that year. Until the IRS provides further guidance, a payer is required to report in box 7 of Form 1099-MISC and in box 15b of Form 1099-MISC (after 2019, in box 1 of Form 1099-NEC and box 14 of Form 1099-MISC) amounts includible in the gross income of a nonemployee that were not treated as wages as nonemployee compensation [Notice 2010-6, §III.B].

1700.C.1.E. Health Savings Accounts (HSAs)

A health plan that otherwise meets the requirements of a high-deductible health plan may provide benefits associated with the testing for and treatment of the 2019 Novel Coronavirus (COVID-19) with no deductible, or one lower than the annual deductible [Notice 2020 -15].

1700.F.3.B. Health Insurance Coverage Information Reporting

The information returns must be filed with the IRS by February 28 (March 31 if filed electronically) of the year following the calendar year to which the return relates. An automatic 30-day filing extension is available, and an additional 30-day extension may be requested [Reg. §1.6055-1(f)(1), §301.6056-1(e), §1.6081-8(a)]. The due date for filing 2019 Form 1095-B, *Health Coverage*, and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, with the IRS is February 28, 2020 (March 31, 2020, if filed electronically). Information statements must be furnished to the individuals by January 31 of the year following the calendar year for which the return was required to be made, but the IRS extended this due date to March 2, 2020 for 2019 statements [Reg. §1.6055-1(g)(4), §301.6056-1(g); Notice 2019-63].

CHAPTER 1800. INCOME TAXATION OF ESTATES AND TRUSTS

1800.B.11. Grantor Trust Return Requirements

A foreign trust with a U.S. owner must file Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner, in order for the U.S. owner to satisfy its annual information reporting requirements under §6048(b). A U.S. person who, during the tax year, is treated as the owner of any part of the assets of a foreign trust under the grantor trust rules must file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. Certain U.S. individuals compliant with their income tax obligations related to certain tax-favored foreign retirement and tax-favored foreign nonretirement savings trusts may be exempt from these information filing requirement with respect to such trusts [Rev. Proc. 2020-17]. Form 3520 is generally due on the date that the U.S. person's income tax return is due, including extensions. A penalty applies if Form 3520 is not timely filed or if the information is incomplete or incorrect. The initial penalty is equal to the greater of $10,000 or (i) 35% of the gross value of any property transferred to a foreign trust for failure by a U.S. transferor to report the creation of or transfer to a foreign trust, or (ii) 35% of the gross value of the distributions received from a foreign trust for failure by a U.S. person to report receipt of the distribution, or (iii) 5% of the gross value of the portion of the trust's assets treated as owned by a U.S. person for failure by the U.S. person to report the U.S. owner information.

1800.C.5. Unused Losses And Deductions On Trust Or Estate Termination

Excess Deductions. The personal exemption of the estate or trust and the charitable deduction, if any, are not taken into account for purposes of computing the excess deductions [§642(h)]. In addition, deductions that result in an NOL (and any gross income offset by such deductions) are not taken into account for purposes of computing the excess deductions [Reg. §1.642(h)-2(b)]. The NOL passes through to the succeeding beneficiaries separately and is subject to the carryover rules (see 1800.A.4.b.(4)). Thus, the NOL cannot be taken into account a second time for purposes of computing the excess deductions. The excess deductions only can be used in the beneficiary's tax year in which or with which the trust or estate terminates. Further, these deductions can only be used as itemized deductions and not in computing the beneficiary's adjusted gross income, and may be subject to the 2% threshold and other limitations applicable to an individual's deductions [Reg. §1.642(h)-2(a)]. Proposed regulations would provide that each deduction will retain its separate character as a miscellaneous itemized deduction, non-miscellaneous itemized deduction, or as part of adjusted gross income. [Prop. Reg. §1.642(h)-2(b), REG-113295-18, 85 Fed. Reg. 27,693 (May 11, 2020)].

CHAPTER 1900. WITHHOLDING AND EMPLOYMENT TAXES

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

An organization that wishes to be tax exempt as a charitable organization must electronically file either Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, or Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code [Reg. §1.508-1(a)(2)(i); Rev. Proc. 2020-8]. Generally, an organization can use Form 1023-EZ if it has gross receipts of $50,000 or less and assets of $250,000 or less, unless it is specifically designated ineligible [Rev. Proc. 2020-5].

The organization must electronically file Form 1023 or Form 1023-EZ at http://www.pay.gov, within 15 months (or 27 months if filed pursuant to the automatic 12-month extension) from the end of the month of its organization. If the organization does not file or files late, it will not be treated as exempt under §501(c)(3) for any period before the filing of the notice, unless it submits, and the IRS approves, Form 1023, Schedule E [Reg. §1.508-1(a)(2)(i), §301.9100-2; Rev. Proc. 2020-8, Rev. Proc. 2020-5]. The IRS generally will not require domestic business entities to file a new exemption application when they change their form or state of organization [Rev. Proc. 2018-15].
Churches, conventions or associations of churches, and integrated auxiliaries of churches are not required to file Form 1023 (and are ineligible to file Form 1023-EZ). Also, any organization other than a private foundation with gross receipts that are normally not more than $5,000 does not need to file either Form 1023 or Form 1023-EZ. Further, any subordinate organization other than a private foundation covered by a group exemption or a parent and certain nonexempt charitable trusts does not need to file an application for exempt status.

Hospitals must meet additional requirements to obtain or maintain exempt status. Failure to meet certain requirements can result in a $50,000 excise tax [§501(r), §4959; Reg. §1.501(r)-1 through §1.501(r)-6; Rev. Proc. 2015-21].

The user fee for Form 1023-EZ is $275, and the application must be filed and the user fee paid through http://www.pay.gov [Rev. Proc. 2016-32, Rev. Proc. 2020-5]. There is a $600 user fee for all other initial applications under §501 or §521 for exempt status (other than pension, profit-sharing, and stock bonus plans). An additional user fee of $2,000 must be paid for a group exemption letter postmarked prior to July 1, 2020 or $2,500 if postmarked on or after July 1, 2020. [Rev. Proc. 2020-5]. Unlike Form 1024 (discussed at 1900.B.2.), organizations applying for exemption under §501(c)(3) need not file Form 8718 when paying the user fee.

If the IRS Exempt Organizations (EO) Determinations Office (part of EO Rulings and Agreements) reaches the conclusion that an organization claiming exemption under §501(c)(3) does not satisfy the requirements for exempt status, the IRS generally will issue a proposed adverse determination letter. Proposed adverse determinations may be appealed to the IRS Independent Office of Appeals [§7123; Rev. Proc. 2020-5, §9.04, §9.07]. If the IRS denies an application for tax-exempt status or fails to act on an application, the organization may seek declaratory judgment in the Tax Court, the U.S. District Court for the District of Columbia, or the Court of Federal Claims. Under the declaratory judgment procedure, an organization must exhaust all administrative remedies with the IRS. An organization is deemed to have exhausted its administrative remedies at the expiration of 270 days after it has requested a determination. If the IRS makes an adverse determination during the 270-day period or the 270-day period has expired, an organization may immediately seek declaratory relief [§7428].

1900.A.10.B. Annual Information Return

Most exempt organizations are required to electronically file an annual return, even if they did not file an application for exemption, on or before the 15th day of the fifth calendar month following the close of the organization's tax year [§6033(a)(1), §6033(n); Reg. §1.6033-2(e), Reg. §1.6033-2T(e)]. An automatic six-month extension is available using Form 8868, Application for Extension of Time To File an Exempt Organization Return [Reg. §1.6081-9(a), Reg. §1.6081-9T(a)]. The annual return must be filed even if the organization has not yet been recognized as being exempt [Reg. §1.6033-2(c)].

Coronavirus (COVID-19) Filing Extension for 2020: Due to the coronavirus pandemic (COVID-19), certain filings and payments due on or after April 1, 2020, and before July 15, 2020, have been automatically postponed to July 15, 2020. The filings and payments postponed include, but are not limited to, the Form 990 Series along with related schedules, attachments, and elections. Interest, penalties, and additions to tax on postponed filings and payments will be disregarded for the period between April 1, 2020 and July 15, 2020, but will begin to accrue on July 16, 2020. No forms need to be filed for this automatic extension to apply. However, if any additional extension is required beyond the July 15, 2020 date, then the appropriate form may be filed by July 15, 2020, but the additional extension may not go beyond the original statutory or regulatory extension date [Notice 2020-23, amplified by, Notice 2020-35].

1900.B.2. Compliance For Noncharitable Tax-Exempt Organizations

Most organizations choose to seek a determination letter from the IRS recognizing exemption under §501, but are not required to do so except in certain cases. Organizations that seek to operate under §501(c)(9) or §501(c)(17) must apply for recognition of tax-exempt status. An organization seeking a determination letter recognizing exemption under §501(c)(2), (5), (6), (7), (8). (9), (10), (12), (13), (15), (17), (19), or (25) must submit a completed Form 1024, Application for Recognition of Exemption Under Section 501(a), along with Form 8718, User Fee for Exempt Organization Determination Letter Request.

Other organizations seeking a determination letter must submit a letter application (rather than Form 1024), along with Form 8718 [Rev. Proc. 2020-5].

A $600 user fee must be included with the initial exemption application under §501(a). The user fee for group exemption letters is $2,000 if postmarked prior to July 1, 2020 or $2,500 if postmarked on or after July 1, 2020. [Rev. Proc. 2020-5]. For organizations that qualify to file Form 1023-EZ, the user fee is $275 and the application must be filed and the user fee paid through http://www.pay.gov [Rev. Proc. 2016-32; Rev. Proc. 2020 -5].

Farmers' Cooperatives. 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. 2020-5]. An organization that is recognized as exempt under §521 must file an annual return on Form 1120-C, U.S. Income Tax Return for Cooperative Associations (see 1300.F.4.).

Social Welfare Organizations (§501(c)(4)): Social welfare organizations may choose to seek a determination letter from the IRS, but generally are not required to do so. An organization seeking a 501(c)(4) determination letter must submit a completed Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code, along with Form 8718. Section 501(c)(4) organizations organized after July 8, 2016, must notify the IRS within 60 days of the organization's establishment that it is operating as such by submitting a completed Form 8976, Notice of Intent to Operate Under Section 501(c)(4). Form 8976 must be submitted online and not on paper. Form 8976 is subject to a $50 user fee. See https://www.irs.gov/charities-non-profits/electronically-submit-your-form-8976-notice-of-intent-to-operate-under-section-501c4 for more information. However, organizations that on or before July 8, 2016, filed either a Form 990 (or, if eligible, Form 990-EZ or Form 990-N (e-postcard) or a Form 1024 seeking a determination letter recognizing exemption under §501(c)(4) are not required to submit Form 8976. Existing organizations that did not meet either exception had until September 6, 2016, to submit Form 8976. Failure to file the initial notice may subject the organization and its managers to penalties. Additionally, the first annual return by an affected organization must include information required by the IRS in support of treatment as a §501(c)(4) organization [§506, §6033(f)(2), §6652; Reg. §1.506-1T; Rev. Proc. 2016-41; Rev. Proc. 2020-5].

IRS Procedures and Appeal Rights. If the IRS Office of EO Determinations (part of EO Rulings and Agreements) reaches the conclusion that an organization claiming exemption under §501(c) does not satisfy the requirements for exempt status, the IRS generally will issue a proposed adverse determination letter. Proposed adverse determinations may be appealed to the IRS Independent Office of Appeals. In filing its appeal, the organization must also indicate whether it is requesting an Independent Office of Appeals conference. These procedures also apply to revocations or modifications of determination letters [§7123; Rev. Proc. 2020-5, §9].

CHAPTER 2000. U.S. INTERNATIONAL TAXATION

2000.C.3.D Base Erosion And Anti-Abuse Tax (BEAT)

A U.S. corporation or U.S. branch of a foreign corporation making base erosion payments to related foreign parties may be subject to the BEAT minimum tax [§59A]. The BEAT tax is equal to the excess of 10% (5% for 2018) of the taxpayer's modified taxable income (MTI) for the tax year over its regular tax liability (reduced by certain credits) for that year. A U.S. corporation is subject to BEAT if it is a

corporation that is not a pass-through entity (i.e., not an S corporation, REIT, or RIC), its average annual gross receipts for the three-tax-year period ending with the preceding tax year are at least $500 million (gross receipts test), and its base erosion percentage is at least 3% (2% in the case of certain banks and securities dealers) (base erosion percentage test). Detailed aggregation rules apply for purposes of these tests. Generally, the corporation's MTI is equal to the taxpayer's taxable income computed for the tax year determined without regard to: (1) any base erosion tax benefit with respect to any base erosion payment or (2) the base erosion percentage of any net operating loss (NOL) deduction allowed under §172 for the tax year. A base erosion payment means: (1) any amount paid or accrued by the taxpayer to a foreign person that is a related party with respect to the taxpayer and with respect to which a deduction is allowable under chapter 1 of the Code; (2) amounts paid or accrued by the taxpayer to a foreign person that is a related party with respect to the taxpayer in connection with the acquisition by the taxpayer from the related party of property subject to the allowance of depreciation (or amortization in lieu of depreciation); (3) certain reinsurance premiums paid to foreign related parties; and (4) any payment to a related expatriated entity or its expanded affiliated group that is a reduction in gross receipts of the taxpayer. A foreign related party is any 25% foreign owner of the taxpayer, persons related (under §267 or §707) to the taxpayer or owner or any person related to the taxpayer under §482. Base erosion payments do not include payments that are reductions in gross receipts such as payments for cost of goods sold, except in the case of certain expatriated corporations. Amounts paid for services that qualify for use of the services cost method under §482 (determined without markup) and certain qualified derivative payments are also excepted. Base erosion payments are subject to BEAT only when they give rise to a base erosion tax benefit (i.e., in the year they give rise to an allowable deduction, a depreciation or amortization deduction, a premium reduction or a reduction in gross income of the taxpayer related to an expatriated entity). The regulations provide several other exceptions from the definition of a base erosion payment. The base erosion percentage for any tax year is determined by dividing the aggregate amount of the base erosion tax benefits of the taxpayer for that year by the aggregate amount of deductions allowable to the taxpayer under chapter 1 of the Code for the tax year, including base erosion tax benefits for that year and excluding certain deductions and deductions for excepted payments. Proposed regulations released in December 2019 provide additional rules with respect to the BEAT [§59A; Reg. §1.59A-1 through §1.59A-10; REG-112607-19].

BEAT information is reported on Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business, and on Form 8991, Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts [Reg. §1.6038A-2].

2000.G.1. Foreign Bank And Financial Accounts

Additionally, FinCEN granted an extension of time to April 15, 2021, 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 2019 [FinCEN Notice 2019-1].

CHAPTER 2100. ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAX

2100.B.4.A. Deduction For Estate Expenses, Indebtedness, And Taxes

Although the deduction for miscellaneous itemized deductions is suspended through 2025, §67(e) removes the deductions for costs which are paid or incurred in connection with the administration of an estate and which would not have been incurred if the property were not held in such from the category

of itemized deductions (and thus necessarily also from the subset of miscellaneous itemized deductions) and instead treats them as above-the-line deductions allowable in determining adjusted gross income. Therefore, the suspension of the deductibility of miscellaneous itemized deductions under §67(a) does not affect the deductibility of these payments [§67(e); §67(g); Prop. Reg. §1.67-4(a) (May 11, 2020)].

CHAPTER 2200. WITHHOLDING AND EMPLOYMENT TAXES

2200.A.6.A. Withholding On Deferred Compensation Distributions

The amount that is withheld from any deferred compensation payment depends on whether the distribution is a periodic payment, non-periodic payment, or an eligible rollover distribution. In the case of a periodic payment, the payor is required to withhold from such payment the amount that would be required if the payment were a payment of wages paid to an employee. Thus, the amount to withhold varies according to the withholding certificate filed by the recipient with the payor. If no certificate is filed, the amount to withhold is the same as if the recipient were married and claiming three withholding allowances [§3405(a)(1), §3405(a)(4); Notice 2020 -3 (2020), Notice 2018-92 (2019)]. In the case of a non-periodic payment, the amount to withhold generally is equal to 10% of the amount distributed [§3405(b)(1)].

2200.B.1.E. Railroad Retirement Tax Act (RRTA)

Railroad employers are subject to employment taxes that are separate from the FICA and FUTA systems covering most other employers. As such, payments subject to railroad retirement taxes are exempt from FICA, FUTA, and the Self-Employment Contributions Act (SECA). Instead, railroad employers are subject to the RRTA in determining railroad worker retirement benefits and the Railroad Unemployment Insurance Act in determining unemployment and sickness insurance benefits. The taxes under the railroad retirement system are included in two tiers. The first tier is based on combined railroad retirement and Social Security credits, using Social Security benefit formulas. The employee's and employer's share of first tier taxes are based on the same rates and taxable wage base (if any) used to determine old-age, survivor and disability insurance (OASDI) and hospital insurance (HI or Medicare) taxes. For 2019, the taxable wage base is $132,900 ($137,700 for 2020). The second tier is based on railroad service only and funds a private pension benefit. A separate wage base applies to second tier taxes (e.g., $98,700 in 2019, $102,300 in 2020). The tier II tax rates are 4.9% for employees and 13.1% for employers. “Compensation” for computation of RRTA taxes has the same meaning as the term “wages” under §3121(a), except as specifically limited by the RRTA or regulations. Stock options are not compensation for purposes of the RRTA [§3201–§3233; Reg. § 31.3231(e)-1(a)(1); SSA Notice, 83 Fed. Reg. 53,702 (Oct. 24, 2018), SSA Notice, 84 Fed. Reg. 56,515 (Oct. 22, 2019); IRS Notice, 84 Fed. Reg. 64,964 (Nov. 25, 2019) (2020 rates); RRB Program Letter 2020-01; Wis. Cent. Ltd. v. United States, 138 S. Ct. 2067 (2018)].

2020 Federal Tax Guide Updates and Changes

Chapter 2300: Procedure & Administration

2300.A.1.a.(3) Partnerships

[701 T.M., I.B.1.b., 634 T.M., II.D.1.; TPS ¶3820.05.A.]

Although partnerships are not subject to federal income tax, they are required to file information returns on Form 1065, U.S. Return of Partnership Income, for each tax year in which they are engaged in a U.S. trade or business or have income from U.S. sources. They must report the names, identifying numbers, and addresses of all partners and each partner's distributive share of the items of income, gain, loss, deductions, and credits. The Form 1065 must be signed by a partner, and must cover the partnership's tax year, regardless of the tax years of its partners [§6031].

Every partnership required to file a return must furnish its partners with a copy of Schedule K-1 , Partner's Share of Income, Deductions, Credits, etc. The copy must be furnished to each person who was a partner (or who held an interest as nominee for another person) at any time during the tax year (see 2300.A.1.c.(1)). For calendar year taxpayers, the due date for providing K-1s to partners is the 15th day of the third month following the close of the tax year (e.g., March 15 for calendar year taxpayers) unless an extension is obtained [§6072(b); Reg. §1.6031(b)-1T(b)].

2300.A.1.D. Extensions Of Time To File

2300.A.1.D.(1) Individual Returns

Taxpayer Out of the United States. U.S. citizens or residents whose tax homes and abodes are outside the United States and Puerto Rico and U.S. citizens or residents who are in the Armed Forces on duty outside the United States and Puerto Rico are granted an automatic extension of time to file (and to pay) until the 15th day of the sixth month following the close of the tax year without requesting an extension.

If a U.S. citizen or resident whose tax home and abode are within the United States but is “out of the country” on the regular due date of the return, the taxpayer is allowed two extra months to file and pay any amount due without requesting an extension. If additional time beyond the two months is needed, the taxpayer must file Form 4868 (and check the box on line 8) and will be allowed an additional four months to file the return [Reg. §1.6081-4(a), §1.6081-5]. If an extension beyond six months is desired, the taxpayer must submit a letter to the IRS explaining the need for the extension. [Reg. §1.6081-1(b)]. Where the taxpayer first obtains an extension under these provisions, and then seeks an additional four-month extension on Form 4868, the automatic six-month extension runs concurrently [Reg. §1.6081-4(c)].

Example: T is a U.S. citizen whose tax home is in France. T is a calendar year taxpayer and therefore has until June 15, Year 2, to file his Year 1 return without requesting an extension. If T should file Form 4868 to obtain an automatic six-month extension, the time by which he must file the return is extended to October 15, Year 2.

2020 Federal Tax Guide Updates and Changes

2300.A.1.D.(2) Partnerships

A partnership which is required to file returns on the fifteenth day of the third month following the close of the partnership tax year that keeps its books and records outside the United States and Puerto Rico can receive an automatic extension of time to file to the 15th day of the sixth month after the end of its tax year (e.g., to June 15, for calendar year returns) without filing Form 7004 by attaching a statement to its return stating that it qualifies for this special extension. If the partnership needs additional time, it can then file Form 7004 to request an additional three-month extension, for a total extension of six months [Reg. §1.6081-5].

2300.A.1.D.(3) C Corporations

The maximum automatic extension of time is six months (seven months for corporations with a tax year ending June 30). Although §6081(b) provides a five-month automatic extension period for calendar year C corporations, the IRS exercised its authority under §6081(a) to grant a six-month automatic extension for calendar year corporations [§6081; Reg. §1.6081-3].

2300.A.1.D.(5) Estates and Trusts

Estates and trusts that are required to file Form 1041, U.S. Income Tax Return for Estates and Trusts, are allowed an automatic 512-month extension of time to file the return by submitting Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns [Reg. §1.6081-6] (see 1800.D.1.).

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

In the case of a federally declared disaster, the IRS has the authority to postpone tax-related deadlines for affected taxpayers, including filing and paying tax, for a period of up to one year. The IRS also has the authority to suspend interest, penalties, additional amounts, and additions to tax that normally would accrue during the time the tax-related act is postponed [§ 7508A(a); Rev. Proc. 2018-58 (listing of postponements due to combat zone service or federally declared disaster area)]. Aside from discretionary extensions by the IRS, tax-related deadlines are statutorily postponed for a 60-day period for qualified taxpayers [§ 7508A(d)].

* * * * *

In March 2020, the Secretary of the Treasury determined that any person with a federal income tax return or a federal income tax payment due April 15, 2020, is adversely affected by the COVID-19 emergency, and Treasury and the IRS determined that the due date for affected taxpayers for filing federal income tax returns and making federal income tax payments due April 15, 2020, is postponed to July 15, 2020. This relief is limited to income tax returns and income tax payments, including self-employment income tax payments, due on April 15, 2020, in respect of:

1) An affected taxpayer's 2019 year; and

2) Estimated tax payments for an affected taxpayer's 2020 tax year [§7508A(a); Notice 2020-18].

August 20, 2020

The IRS extended this relief to gift tax and generation-skipping transfer tax payments and filings in Notice 2020-20.

In Notice 2020-23, the Secretary of the Treasury issued guidance providing relief under §7508A for taxpayers adversely affected by the COVID-19 (coronavirus) emergency. The guidance provides postponements for certain payment and filing obligations, time-sensitive taxpayer and IRS actions, and participation in the Annual Filing Season Program. [Notice 2020-23, amplifying Notice 2020-18 and Notice 2020-20, modifying Rev. Proc. 2014-42].

2300.A.1.F. Electronic Filing

Refunds. An e-file preparer should advise the taxpayer of the option to receive a refund by paper check or direct deposit, and must accept any direct deposit election to any eligible financial institution designated by the taxpayer. A separate fee may not be charged for a direct deposit. The IRS has stated that neither it nor Treasury's Financial Management Service is responsible for the misapplication of a direct deposit that is caused by error, negligence, or malfeasance on the part of the taxpayer, electronic filer, financial institution, or any of their agents. However, the IRS maintains procedures for misdirected direct deposit refunds [§6402(n); *Prop. Reg. §301.6402-2(g)*; IRM 21.4.1 (10-01-19), IRM 21.4.2 (10-01-19), IRM 21.4.3 (10-01-19)].

2300.A.2.E. Other Information Returns

Fines, Penalties, and Restitution Amounts. Government agencies (or entities treated as government agencies) must report to the IRS and to each payor the amount of any settlement agreement or order entered into if the total amount required to be paid to or at the direction of the government is at least $50,000. The report must separately identify any amounts that are for restitution or remediation of property, or correction of noncompliance [§6050X; Prop. Reg. §1.6050X-1].

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

For a signing preparer, a position may be disclosed in one of three ways [Reg. §1.6694-2(d)(3)(i)]:
1. The position may be disclosed on a properly completed and filed Form 8275, *Disclosure Statement*, or Form 8275-R, *Regulation Disclosure Statement*, as appropriate, or on the tax return in accordance with IRS guidance (e.g., Rev. Proc. 2019 -42 for 2019 returns or short tax years beginning in 2020 that are filed in 2020 on a 2019 form).

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For a non-signing preparer, the position may be disclosed in one of three ways [Reg. §1.6694-2(d)(3)(ii)]:
1. The position may be disclosed on a properly completed and filed Form 8275 or Form 8275-R, or in accordance with the IRS guidance (e.g., Rev. Proc. 2019 -42 for 2019 returns or short tax years beginning in 2020 that are filed in 2020 on a 2019 form).

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

Failure to Furnish Identification Number. A preparer must provide his or her tax identification number and that of his or her employer (if applicable) on the return or refund claim that is filed with the IRS [§6109(a)(4)]. This number generally is a preparer tax identification number (PTIN). The preparer may request a PTIN on Form W-12 or electronically from the IRS [Reg. §1.6109-2(a)]. A preparer who fails to furnish the identifying number is subject to a penalty of $50 for each failure, up to a maximum of $26,500 per calendar year for returns required to be filed in 2020 ($27,000 for returns required to be filed in 2021), unless the failure is due to reasonable cause [§6695(c), §6695(h); Rev. Proc. 2018-57, Rev. Proc. 2019-44]. For applications for or renewal of PTINs on or after August 16, 2020, the fee is $21 per year, plus a $14.95 processing fee ($35.95 total). Previously there was no fee. [Reg. §300.12(b), T.D. 9903, 85 Fed. Reg. __ (July 17, 2020)].

2300.C.1.B.(1) Audit Procedures

Third Party Contact. In the course of an examination, the IRS may seek to obtain information from parties other than the taxpayer being examined. During an examination, however, no IRS officer or employee may contact any person other than the taxpayer concerning the determination or collection of the tax liability of the taxpayer without providing notice to the taxpayer at least 45 days in advance of the contact period, which may be no greater than one year. Further, the IRS periodically must provide the taxpayer with a record of persons it contacted concerning the determination or collection of the taxpayer's tax liability. The notice and record requirements do not apply (i) to pending criminal tax matters; (ii) if the collection of the tax liability is in jeopardy; (iii) if the IRS determines for good cause shown that disclosure may involve reprisal against any person; or (iv) if the taxpayer authorized the contact [§7602(c)]. The IRS cannot use §6103(n) as authority in order to provide books and records that it acquired under its summons power unless the contractor requires such information in order to serve as an expert witness. Similarly, only IRS employees or the Office of Chief Counsel (and not hired outside counsel) may question a witness under oath if the witness's testimony was obtained pursuant to the IRS's summons power [§7602(f); Prop. Reg. §301.7602-1(b)(3)].

2300.D.1.d. Penalty for Failure to Deposit Taxes

COVID-19 (Coronavirus) Waivers. The Secretary of Treasury has authority to waive §6656 penalties if the failure was due to anticipation of the employee retention credit for employers subject to closure due to COVID-19 [Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, §2301, applicable to wages paid after March 12, 2020, and before January 1, 2021.], the credit for required paid sick leave [Pub. L. No. 116-136, §3606(a) (reference to Families First Coronavirus Response Act, Pub. L. No. 116-127, Div. G, §7001)], or the credit for required paid family leave [Pub. L. No. 116-136, §3606(c) (reference to Pub. L. No. 116-127, Div. G, §7003)]. Notice 2020-22 provides guidance on these waivers. For employment taxes related to required paid sick and family leave (qualified leave wages), the §6656 penalty does not apply to a calendar quarter if:

- The employer paid qualified leave wages to its employees in the calendar quarter prior to the time of the required deposit,
- The amount of employment taxes that the employer does not timely deposit is less than or equal to the amount of the employer's anticipated credits under Pub. L. No. 116-127, Div. G, §7001 (required

paid sick leave) and Pub. L. No. 116-127, Div. G, §7003 (required paid family leave) for the calendar quarter as of the time of the required deposit, and

• The employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits it relied upon to reduce its deposits. [Notice 2020-22, §3.a].

For employment taxes related to wages paid under the employee retention credit for employers subject to closure due to COVID-19 (qualified retention wages), the §6656 penalty does not apply to a calendar quarter if:

• The employer paid qualified retention wages to its employees in the calendar quarter prior to the time of the required deposit,

• The amount of employment taxes that the employer does not timely deposit, reduced by the amount of employment taxes not deposited in anticipation of the credits claimed for qualified leave wages, qualified health plan expenses, and the employer's share of Medicare tax on the qualified leave wages is less than or equal to the amount of the employer's anticipated credits under Pub. L. No. 116-136, §2301 (employee retention credit) for the calendar quarter as of the time of the required deposit, and

• The employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits it relied upon to reduce its deposits. [Notice 2020-22, §3.b].