# Recent Developments in Federal Income Taxation

Bruce A. McGovern Professor of Law and Director, Tax Clinic South Texas College of Law Houston Houston, Texas

> State Bar of Texas Tax Section First Wednesday Tax Update September 2, 2020

To obtain today's outline and slides: <u>https://tinyurl.com/outline0920</u>

https://tinyurl.com/slides0920

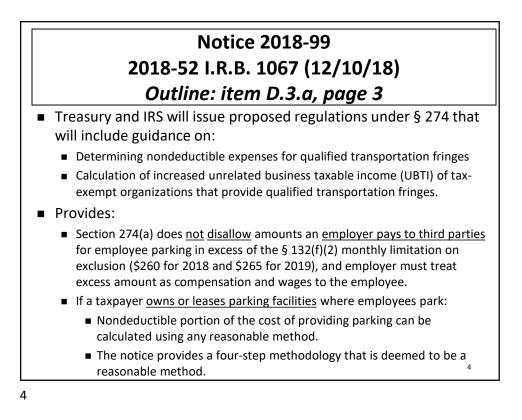
CLE Number for Today's Webcast: 174095428

## Qualified Transportation Fringes Disallowed 2017 TCJA § 13304 Outline: item D.1, page 2

- No deduction for qualified transportation fringes (employee parking, transit passes, transportation in commuter highway vehicle)
  - Applies to amounts paid or incurred after 2017
  - Ability of employees to exclude transportation fringes <u>not</u> affected
  - Exception: qualified bicycle commuting reimbursements before 2026 are:

3

- Deductible by employer
- Included in income of the employee



## Proposed Regs.-Qualified Transportation Fringes 85 F.R. 37599 (6/23/20) Outline: item D.1.b, page 4

- Prop. Reg. § 1.274-13 implements the § 274(a)(4) disallowance of deductions for qualified transportation fringes.
- Refines and expands the guidance in Notice 2018-99.
- Will apply to taxable years that begin on or after the date on which the final regulations are published in the Federal Register.
  - Until final regulations are issued, taxpayers can rely on the proposed regulations or, alternatively, can rely on the guidance in Notice 2018-99.

1

## Proposed Regs.-Qualified Transportation Fringes 85 F.R. 37599 (6/23/20) Outline: item D.1.b, page 4

Taxpayer who pays third parties for employee parking:

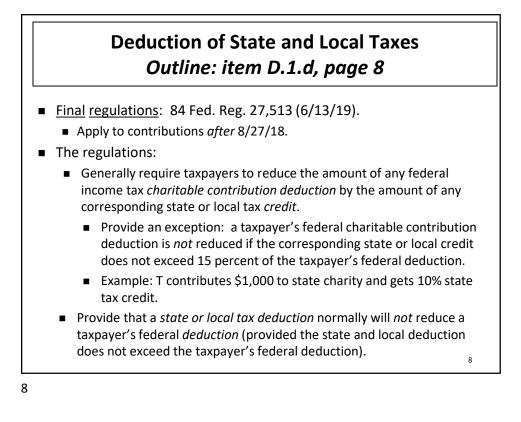
 Section 274(a) does not disallow amounts an employer pays to third parties for employee parking in excess of the § 132(f)(2) monthly limitation on exclusion (\$265 for 2019 and \$270 for 2019), and employer must treat excess amount as compensation and wages to the employee.

- If a taxpayer owns or leases parking facilities where employees park, the nondeductible portion of the cost of providing parking can be calculated using:
  - General rule (based on a reasonable interpretation of section 274(a)(4))
  - Qualified parking limit methodology
    - § 132(f)(2) monthly limitation on the employee's exclusion \* number of spaces used by employees during peak demand period \* number of months in tax year (e.g., 10 employees \* \$270 \*12 = \$32,400 disallowed
  - Cost per space methodology

### Deduction of State and Local Taxes Outline: item D.1, page 6

- TCJA: An individual's itemized deductions on Schedule A for state taxes cannot exceed \$10,000.
  - Applies to aggregate of property taxes, and sales or income taxes.
  - Limit applies both to single individuals and married individuals filing jointly
  - Applies 2018 through 2025
- Some states have adopted workarounds, e.g., New Jersey gives a credit against property taxes for contributions to certain charitable funds designated by the state.

7



#### T.D. 9907: Final Regulations Under § 170 and 162 85 F.R. 48467 (8/11/20) Outline: item D.1.f, page 10

- Amend Reg. § 1.162-15(a) to:
  - Clarify when payments to a charitable organization qualify as a business expense.
  - Provide a safe harbor for C corporations and "specified pass-through entities" that receive state tax credits for payments to charitable organizations to treat the payments as business expenses under § 162.
- Amend § 1.164-3(j) to provide a safe harbor for individuals who itemize deductions and make a payment to or for the use of an entity described in § 170(c) in return for a state or local tax credit.
  - Under this safe harbor, an individual who itemizes deductions and who makes a payment to a section 170(c) entity in return for a state or local tax credit may treat as a payment of state or local tax for purposes of section 164 the portion of such payment for which a charitable contribution deduction under section 170 is or will be disallowed under final regulations.
- Amend Reg. § 1.170A-1(h)(4)(i) to clarify the effect of benefits provided to a donor that are not provided by the § 170(c) entity.
- 9

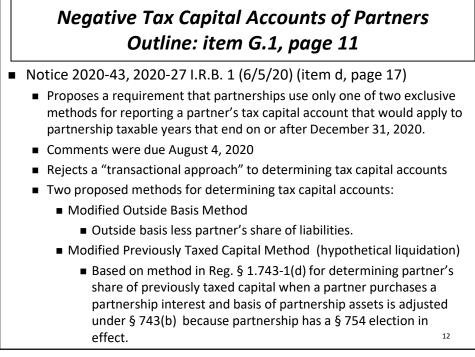
## Proposed Regulations Defining Dependent 85 FR 35233 (6/9/20)

## Outline: item D.2, page 11

- The 2017 Tax Cuts and Jobs Act added § 151(d)(5), which reduces the exemption amount to zero for TY beginning after 2017 and before 2026.
  - Eliminates the deduction for personal exemptions authorized by § 151(a).
- However, it is still necessary to determine for various purposes whether an individual is a "dependent" within the meaning of § 152.
  - Qualifying child
  - Qualifying relative:
    - To be a qualifying relative, § 152(d)(1)(B) requires the individual's gross income for the calendar year be less than the exemption amount as defined in § 151(d).
    - Notice 2018-70: "because it would be highly unusual for an individual to have gross income less than zero, virtually no individuals would be eligible as qualifying relatives."
- Proposed Regulations:
  - In determining eligibility for head-of-household filing status and for the new \$500 credit (§ 24(h)(4)) for dependents other than a qualifying child, an individual must have gross income not exceeding \$4,150 (to be adjusted for inflation after 2018).

## Negative Tax Capital Accounts of Partners Outline: item G.1, page 11

- The 2018 Instructions for Form 1065 and accompanying Schedule K-1 required a partnership that does not report tax basis capital accounts to its partners to report, on line 20 of Schedule K-1 (Form 1065) using code AH, the amount of a partner's *tax basis capital* both at the beginning of the year and at the end of the year if either amount is negative.
- Notice 2019-20 2019-14 I.R.B. 927 (3/7/19), and FAQ on IRS website provide guidance on tax capital accounts.
- Draft 2019 Form 1065 and Schedule K-1 *required* partnerships to report *tax capital accounts* on Schedule K-1 (item b, page 15)
  Several other significant changes
- Notice 2019-66, 2019-52 I.R.B. 1509 (12/9/19): defers requirement of tax basis capital accounts to partnership tax years beginning after 2019 (item c, page 16)



## Ruesch v. Commissioner, 154 T.C. No. 13 (6/25/20) *Outline: item H.1, page 19*

- Held: the Tax Court has jurisdiction under § 7435 to review the IRS's certification of a tax debt as a "seriously delinquent tax debt" that can result in the taxpayer's passport beig revoked or suspended, but because the IRS reversed its certification, the case is moot.
  - Also held: the Tax Court does not have jurisdiction to review the taxpayer's underlying tax liabilities.

13