

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
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To obtain today's outline and slides:

<https://tinyurl.com/outline0920>

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CLE Number for Today's Webcast:

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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 not affected
 - Exception: qualified bicycle commuting reimbursements before 2026 are:
 - Deductible by employer
 - Included in income of the employee

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Notice 2018-99

2018-52 I.R.B. 1067 (12/10/18)

Outline: item D.3.a, page 3

- Treasury and IRS will issue proposed regulations under § 274 that will include guidance on:
 - Determining nondeductible expenses for qualified transportation fringes
 - Calculation of increased unrelated business taxable income (UBTI) of tax-exempt organizations that provide qualified transportation fringes.
- Provides:
 - 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 (\$260 for 2018 and \$265 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:
 - Nondeductible portion of the cost of providing parking can be calculated using any reasonable method.
 - The notice provides a four-step methodology that is deemed to be a reasonable method.

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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.

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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 2020), 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

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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.

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Deduction of State and Local Taxes

Outline: item D.1.d, page 8

- Final regulations: 84 Fed. Reg. 27,513 (6/13/19).
 - Apply to contributions *after* 8/27/18.
- The regulations:
 - Generally require taxpayers to reduce the amount of any federal income tax *charitable contribution deduction* by the amount of any corresponding state or local tax *credit*.
 - Provide an exception: a taxpayer's federal charitable contribution deduction is *not* reduced if the corresponding state or local credit does not exceed 15 percent of the taxpayer's federal deduction.
 - Example: T contributes \$1,000 to state charity and gets 10% state tax credit.
 - Provide that a *state or local tax deduction* normally will *not* reduce a taxpayer's federal *deduction* (provided the state and local deduction does not exceed the taxpayer's federal deduction).

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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.

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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).

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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)

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Negative Tax Capital Accounts of Partners

Outline: item G.1, page 11

- Notice 2020-43, 2020-27 I.R.B. 1 (6/5/20) (item d, page 17)
 - Proposes a requirement that partnerships use only one of two exclusive methods for reporting a partner's tax capital account that would apply to partnership taxable years that end on or after December 31, 2020.
 - Comments were due August 4, 2020
 - Rejects a "transactional approach" to determining tax capital accounts
 - Two proposed methods for determining tax capital accounts:
 - Modified Outside Basis Method
 - Outside basis less partner's share of liabilities.
 - Modified Previously Taxed Capital Method (hypothetical liquidation)
 - Based on method in Reg. § 1.743-1(d) for determining partner's share of previously taxed capital when a partner purchases a partnership interest and basis of partnership assets is adjusted under § 743(b) because partnership has a § 754 election in effect.

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**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 being 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.

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