

Recent Developments in Federal Income Taxation

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To obtain today's outline:

<https://tinyurl.com/outline05-2021>

CLE Number for Today's Webcast:

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Notice 2021-2
2021-3 I.R.B. 478 (12/22/20)
Outline: item D.1, page 2

- Standard mileage rate for business miles in 2021 goes down to 56 cents per mile (from 57.5 cents in 2020).
- Medical/moving rate for 2021 goes down to 16 cents per mile (from 17 cents in 2020).
- Charitable mileage rate remains fixed by § 170(i) at 14 cents.
- The portion of the business standard mileage rate treated as depreciation goes down to 26 cents per mile for 2021 (from 27 cents in 2020).
- Reminders:
 - Unreimbursed employee business expenses are miscellaneous itemized deductions and therefore not deductible through 2025.
 - Moving expenses are not deductible through 2025 except for members of the military on active duty who move pursuant to military orders incident to a permanent change of station.

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American Rescue Plan 2021 (Mar. 2021)
Employer-Provided Dependent Care Assistance
Outline: items A.1, page 3

- Section 9632 of the American Rescue Plan of 2021 amends Code § 129(a)(2) to provide that the limit on the exclusion for dependent care assistance provided by an employer to an employee is increased from \$5,000 to \$10,500.
- New § 129(a)(2) applies to taxable years beginning after December 31, 2020 and before January 1, 2022 (i.e., generally to the 2021 tax year).

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A.O.D. 2021-1
2021-15 I.R.B. 985 (4/12/21)
Outline: item B.1.a, page 3

- The IRS has *nonacquiesced* in *Schieber v. Commissioner*, T.C. Memo. 2017-32
- The taxpayer, a retired police officer, received monthly payments from the California Public Employees' Retirement System (CalPERS) defined benefit pension plan.
 - During 2009, a creditor cancelled \$418,596 of debt.
 - On the 2009 joint return the taxpayer filed with his wife, the couple excluded some of the COD income on the basis that they were insolvent (liabilities exceeded assets).
- Issue: is taxpayer's interest in the defined benefit pension plan an asset to be taken into account in determining insolvency?
- Held: No. The taxpayer had only a right to monthly payments that could not be transferred or borrowed against. An item is an asset for this purpose if it provides the ability to pay an immediate tax from the COD income, which this does not.
- IRS: "the Service will not follow *Schieber* in excluding assets from the definition of asset under section 108(d)(3) on the grounds that they cannot be converted into a lump-sum cash amount, sold, assigned or borrowed against."

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American Rescue Plan 2021 (Mar. 2021)
Unemployment Compensation
Outline: items B.2, page 4

- Section 9042 of the American Rescue Plan of 2021 amends Code § 85(c) to provide that \$10,200 of unemployment compensation received during 2020 is excluded from gross income.
- The rule applies to unemployment compensation received by an individual whose AGI is below \$150,000.
- The \$10,200 exclusion applies to each spouse in the case of a married couple filing a joint return.
- The statute is not clear whether the \$150,000 AGI ceiling applies to a married couple filing jointly.
 - The better reading is that the \$150,000 AGI ceiling applies to both single filers and those married filing jointly.
- State conformity varies, so it is important to check state rules.

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American Rescue Plan 2021 (Mar. 2021)

Cancellation of Student Loans

Outline: items B.3, page 4

- Section 9675 of the American Rescue Plan of 2021 amends Code § 108(f)(5) to provide that the cancellation of student loans is excluded from gross income.
- The definition of qualifying loans is broad enough to cover the vast majority of postsecondary educational loans.
- The exclusion does not apply if the lender is an educational organization or a private lender and the cancellation is on account of services performed for the lender.
- New § 108(f)(5) applies to discharges of loans that occur after December 31, 2020 and before January 1, 2026.

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American Rescue Plan 2021 (Mar. 2021)

Child Tax Credit of § 24

Outline: item D.1, page 4

- The 2021 American Rescue Plan:
 - For taxable years beginning in 2021:
 - Increases the child tax credit amount to \$3,600 in the case of a qualifying child younger than 6 at the end of 2021, and to \$3,000 in the case of other qualifying children.
 - Enlarges the definition of a qualifying child to include children who have not attained the age of 18 by the end of 2021 (rather than 17, as under the usual child tax credit rules).
 - Reduces the phase-out thresholds for the increased (\$3,600/\$3,000) CTC and preserves the existing \$2,000 CTC for those with higher incomes.
 - Provides for advance, monthly payment of 50 percent of a taxpayer's expected 2021 CTC with reconciliation on 2021 returns.

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American Rescue Plan 2021 (Mar. 2021)

Premium Tax Credit of § 36B

Outline: item D.2, page 6

- The 2021 American Rescue Plan:
 - For taxable years beginning in 2021 or 2022:
 - Increases the amount of the credit at every income level, and
 - Makes the credit available to those whose household income is 400 percent or higher of the federal poverty line.
 - For taxable years beginning in 2020:
 - Suspends the rule of § 36B(f)(2)(B), which requires repayment of excess premium tax credits.
 - For taxable years beginning in 2021:
 - Caps household income of those receiving unemployment compensation at 133% of federal poverty line.
 - This makes such persons eligible for the maximum amount of premium tax credit.

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American Rescue Plan 2021 (Mar. 2021)

Earned Income Tax Credit of § 32

Outline: item D.3, page 6

- The 2021 American Rescue Plan:
 - For those *without* qualifying children, for 2021 only:
 - Eliminates the maximum age (65) for EIC eligibility
 - Lowers the minimum age from 25 to 19 (24 for students and 18 for certain homeless youth)
 - Significantly increases the credit amount and the phaseout threshold.
 - Effective in 2021:
 - Makes taxpayers with a qualifying child who do not claim the EIC with respect to the child because the child does not have a Social Security Number eligible for the childless earned income credit.
 - Makes the EIC available to married taxpayers who reside with a qualifying child, are separated, and who live apart from their spouses.
 - Increases permissible investment income to \$10,000.
 - Allows use of 2019 earned income in 2021.

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American Rescue Plan 2021 (Mar. 2021)

Recovery Rebate Credit of § 6428B

Outline: item D.4, page 7

- Recovery rebate credits of \$1,400 per taxpayer and \$1,400 per dependent (not per qualifying child), phased out for taxpayers with AGI over \$75,000 (single/MFS), \$112,500 (HOH), \$150,000 (MFJ). Code § 6428B/Bill § 9601

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Grajales v. Commissioner,

156 T.C. No. 3 (01/25/21)

Outline: item A.1, page 8

- Taxpayer, who was in her 40s, withdrew funds from her employer-sponsored retirement plan.
- She did not report the withdrawn funds as income.
- IRS audited and required her to include the funds in income and also imposed the 10% penalty of § 72(t) for early withdrawal.
- Section 6751(b) requires that the “initial determination of ... the assessment” of a penalty be “personally approved (in writing) by the immediate supervisor ... or such higher level official as the Secretary may designate.”
- Issue: is the 10-percent extraction of § 72(t) a “penalty” for purposes of the § 6751(b) supervisory approval requirement?
- Held: No. Section 6751(c) defines “penalty” to include “any addition to tax or any additional amount.” The § 72(t) extraction is a “tax” and not subject to the § 6751(b) supervisory approval requirement.

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Gregory v. Commissioner,
839 Fed. Appx. 745 (3d Cir. 12/30/20)
Outline: item D.1.a, page 9

- Taxpayers moved.
- After the move, their CPA filed a tax return that incorrectly used their old address.
- Their CPA subsequently:
 - Filed automatic extension request on Form 4868 using new address
 - Filed power of attorney on Form 2848 using new address
 - Informed IRS examining agent that taxpayers had moved
- IRS then mailed notice of deficiency to their old address.
 - Taxpayers did not receive it until after 90-day deadline for filing petition in Tax Court had passed.
- Issue: had IRS mailed NOD to their last known address, as required by § 6212(b)(1)?
- Held: No. IRS knew or should have known of the new address. 13

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In re Quezada,
982 F.3d 931 (5th Cir. 12/11/20)
Outline: item E.1, page 10

- Taxpayer was a stone mason who hired subcontractors.
- For 2005 through 2008, he filed Forms 1099 to report payments to the contractors.
- Because many contractors did not furnish him with taxpayer identification numbers (TINs), taxpayer filed many 1099s without TINs
- The failure to obtain TINs triggered an obligation to withhold (backup withholding) under § 3406(a) and to file returns on Form 945.
- Taxpayer did not withhold or file Form 945.
- Taxpayer filed a petition in bankruptcy. In that proceeding, IRS filed proof of claim for \$1.2 million taxpayer should have withheld.
- Issue: did the Forms 1099 and Forms 1040 taxpayer filed constitute “returns” that triggered the running of the § 6501(a) three-year limitations period on assessment?
- Held: Yes. IRS was barred from assessing the \$1.2 million. 14

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