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IRS Provides Relief for Financial Institutions Incorrectly Reporting IRA RMDs

The IRS issued Notice 2020-6, 2020-7 IRB (<https://www.irs.gov/pub/irs-drop/n-20-06.pdf>), in which it provided relief for financial institutions that send a statement to an Individual Retirement Account (IRA) owner, e.g., on Form 5498 (IRA Contribution Information), stating that the owner who turns 70½ in 2020 has a 2020 required minimum distribution (RMD) requirement. The relief reflects the fact that the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) changed the rules on RMDs and financial institutions have had only a short time to change their systems. The SECURE Act changed the required beginning date for an IRA owner to April 1 of the calendar year following the calendar year in which the individual attains age 72. Previously, it was April 1 of the calendar year following the calendar year in which the individual attains age 70½.

IRS Issues Information Letter on QOZs Prohibiting Additional, Replacement QOZ Designations

The IRS issued Information Letter 2019-0025, in which the IRS clarified that a state cannot nominate an additional census tract as a designated qualified opportunity zone (QOZ) or replace a census tract already designated as a QOZ with a new tract.

IRS Finalizes Regulations on Due Dates of Returns

The IRS has finalized (T.D. 9892 (<https://www.federalregister.gov/documents/2020/01/30/2020-00467/return-due-date-and-extended-due-date-changes>)), without substantive changes, temporary regulations released in 2017 regarding the due dates and the rules for extensions of time to file for certain tax returns and information returns. The regulations reflect the statutory requirements set by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (PL 114-41) and the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) (PL 114-113). The Surface Transportation Act included a significant restructuring of entity tax return due dates, effective generally for returns for tax years beginning after Dec. 31, 2015. For example, it changed the due dates of partnership and corporation income tax returns. It also changed the extension period for several returns, including partnership, trust and exempt organization returns. The PATH Act accelerated the due dates for returns and statements relating to employee wage information and nonemployee compensation. In 2017, the IRS issued final, temporary and proposed regulations that updated the due dates and extensions of time to file certain tax returns and information returns to reflect changes made by the Surface Transportation Act and the PATH Act. The text of the temporary regulations served as the text of contemporaneously issued proposed regulations. The IRS has now removed the temporary regulations and adopted the proposed regulations as final regulations with only nonsubstantive revisions. The final regulations are effective for returns filed on or after Jan. 30 and the temporary regulations are effective for returns filed before that date.

Privilege Arguments by Microsoft Fail to Protect Documents and Communications With Outside Accountants From Disclosure

The Federal District Court for the district of Washington held in *Microsoft Corporation et al.* (DC WA, Jan. 17, 2020) (https://media.noticel.com/o2com-noti-media-us-east-1/document_dev/2020/01/27/Orden%20del%20Tribunal%20Federal%20para%20que%20Microsoft%20entregue%20documentos%20al%20IRS%2017%20de%20enero%202020_1580179394299_39800088_ver1.0.pdf) that neither the work product nor the federally-authorized tax practitioner (FATP) privilege doctrines prevented the IRS from obtaining documents and correspondence between Microsoft and its outside accountants. The FATP privilege argument failed because the court held that the tax shelter exception to that privilege applied.

The court said that Microsoft anticipated litigation because it was electing to take an aggressive tax strategy that it knew was likely to be challenged by the government. The court noted that there is a significant difference between planning to act in a legally defensible manner and planning to defend against an existing legal dispute. The mere fact that the taxpayer is taking an aggressive position and that the IRS might, therefore, litigate the issue is not enough to establish a work product. Microsoft's documents were not created in anticipation of litigation. Rather, Microsoft anticipated litigation because of the documents it created. The court then ruled against Microsoft on the FATP privilege issue because it found that the tax shelter exception applied. The court said that a significant purpose, if not the sole purpose, of Microsoft's transactions was to avoid or evade federal income tax.

IRS Clarifies Procedure Providing Relief for Small Partnerships Is Still Applicable

The IRS released Program Manager Technical Advice 2020-001 (<https://www.irs.gov/pub/irsoia/pmta-2020-01.pdf>), providing relief for small partnerships from the timely-filed partnership return penalty. The IRS stated that the relief is not obsolete and still applies to partnerships with tax years beginning after Dec. 31, 2017, even though Section 6231(a)(1)(B), referenced in the Revenue Procedure that provided the relief and which provided a definition of small partnerships, has been repealed. (Section references are to the Internal Revenue Code of 1986, as amended.)

A partnership that fails to timely file a partnership return is subject to a penalty under Section 6698, unless the failure to timely file is due to reasonable cause. In the legislative history to the 1978 adoption of Section 6698, Congress indicated that it intended for the reasonable cause exception to Section 6698 penalty to apply automatically to small partnerships that meet certain criteria. Congress said that smaller partnerships (those with 10 or fewer partners) will not be subject to the penalty under the reasonable cause test so long as each partner fully reports that partner's share of the income, deductions and credits of the partnership.

New Jersey Updates Information on S Corporation Elections

The New Jersey Division of Taxation has updated its information regarding S corporation elections (<https://www.state.nj.us/treasury/taxation/br3.shtml>). A corporation electing to register as a New Jersey S Corporation must complete and file a New Jersey



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S Corporation Election, Form CBT-2553. The filing due date for Form CBT-2553 is one month later than the time to file a federal election. For the election to be valid, every shareholder of the corporation must consent to the election and other requirements of New Jersey. The corporation will be notified within 30 days after filing Form CBT-2553 whether or not the election is accepted. Once an election is made and accepted, a corporation remains a New Jersey S corporation as long as it is a federal S corporation. To revoke an election, a letter of revocation must be filed. The letter must be signed by all shareholders holding more than 50% of the outstanding shares of stock on the day of the revocation, and a copy of the original election form must be enclosed. The filing deadline for a letter of revocation is on or before the last day of the first tax year of the election. (Electing S Corporation Status, 1/28/2020.)

IRS Reminds Exempt Organizations of Repeal of Parking Tax and Other Recent Changes

The IRS has issued an Information Release (IR 2020-23) (<https://www.irs.gov/newsroom/irs-outlines-new-tax-law-effect-on-tax-exempt-organizations>) reminding tax-exempt organizations of law changes in the Taxpayer Certainty and Disaster Tax Relief Act that could affect an organization's current and previous tax years, including repeal of the parking lot tax on exempt employers, reduction of 2% excise tax on net investment income of private foundations to 1.39%, repeal of the 1% special rate that applied if a private foundation met certain distribution requirements, and the exclusion of certain government grants by exempt utility co-ops.