July 2021 Update Memorandum for

Miller & Maine's

The Fundamentals of Federal Taxation: Problems and Materials

(5th ed. 2018)

By

John A. Miller and Jeffrey A. Maine

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
E-mail: cap@cap-press.com
www.cap-press.com

Introductory Note

In March 2020, Congress passed and the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The $2.2 trillion act, which was the most expensive legislation ever passed by Congress, was an effort to support and stabilize the economy during the COVID-19 pandemic. While much of the CARES Act did not have a tax impact, the Act did make numerous changes to the income tax in the form of tax relief and tax incentives for individuals and businesses impacted by the pandemic.

In December 2020, Congress passed and the President signed into law the Consolidated Appropriations Act, 2021, which contained several smaller Acts within that provided relief for the ongoing pandemic and various tax changes. The tax provisions in the omnibus legislation are mostly found in the COVID-19-Related Tax Relief Act and the Taxpayer Certainty and Tax Relief Act of 2020.

In March 2021, Congress passed and the President signed into law the American Rescue Plan Act of 2021. The tax provisions therein expanded and enhanced several tax benefits.

This update memorandum provides a brief summary of those changes, as well as other recent tax developments, relevant to the contents of our casebook, THE FUNDAMENTALS OF FEDERAL TAXATION: PROBLEMS AND MATERIALS (5th ed. 2018).

Chapter 2: Gross Income

Page 22: ***3. Long-Standing Administrative Practices***

The CARES Act provided cash payments to many Americans (i.e., up to $1,200 for an eligible individual plus $500 for a qualifying child) to provide much needed liquidity for a struggling economy. Later, Congress provided for additional cash payments modeled after the first round of cash payments. *See, e.g.,* American Rescue Plan Act of 2021, P.L. 117-2 (providing most recently an additional $1,400 payment to certain individuals). Many recipients questioned whether the cash payments would be taxable (i.e., included in gross income). The answer is "no" because these economic impact payments were really advanced refunds of a fully refundable tax credit (with eligibility and credit amounts based on information from prior tax returns). These tax credits—the Recovery Rebate Credit and Additional Recovery Rebate Credit—are discussed more fully in the chapter dealing with credits.

Pages 26-27: D. Impact of Obligations to Repay

The CARES Act authorized the Treasury Department to make up to $500 billion in loans to provide liquidity to eligible businesses for losses incurred as a result of the COVID-19 (coronavirus) crisis. P.L. 116-136, § 4003(a). Eligible borrowers had to agree to certain terms and conditions, such as retaining a certain percent of their workforce at full compensation for a certain period of time. These Treasury loans, which cannot be forgiven under any circumstances, are treated as debt for tax purposes and, thus, are not income to the borrower.

Page 43: In the last paragraph of "*1. General Framework,*" 39.6% should read as 37%:

As will be explained in Chapter 14, the Tax Cuts and Jobs Act of 2017 (TCJA) temporarily capped the top rate bracket at 37%. IRC § 1(j)(2). In the illustration, the annual depreciation deductions of approximately $36,000 would produce an annual tax savings of $13,320 assuming the taxpayer was in the 37% tax rate bracket.

Chapter 3: Gains and Losses from Dealings in Property

Page 53: Add to Related Matters:

- **Sports Teams' Player Contracts**. Professional sports teams often trade players. These "sales or other dispositions" of personnel contracts would seem to produce gain or loss based on the difference between the value of the contract received and the adjusted basis of the contract exchanged. In Rev. Proc. 2019-18, 2019-18 I.R.B. 1077 (Apr. 11, 2019), however, the IRS provided a safe harbor for a professional sports team to treat certain personnel contracts as having a *zero value* for purposes of determining gain or loss from such trades. Thus, unless cash is thrown in the deal, a team making a trade does not realize gain or loss from the trade. The IRS provided the safe harbor because valuation of professional sports personnel contracts fluctuates and is highly subjective and was the source of disputes between sports teams and the IRS.

Chapter 4: Gifts and Inheritances

Page 57: In *"1. Exclusion for Inter Vivos Gifts,"* note the following:

For recent cases involving payments from members of a congregation to a pastor, see Brown v. Commissioner, T.C. Memo 2019-69; Felton v. Commissioner, T.C. Memo 2018-168. Do these cases help answer Problem 1(e) at the beginning of the chapter?

Pages 60-61: In *"2. Property Acquired by Inheritance,"* note the following:

The section 1014 basis step up rule requires heirs to determine the value of inherited property. Valuation is not always easy. *See* Estate of Michael J. Jackson, T.C. Memo 2021-48 (holding Jackson's assets were worth $111 million, even though the estate reported a value of $7.2 million and the IRS suggested a value of $1.125 billion).

Page 69: At end of Related Matters, add the following new bullet:

- **Income in Respect of Decedent (IRD) Exceptions to Sections 102 and 1014.** Sometimes, income is earned by a decedent prior to death, but not collected until after death. The earned but uncollected income would not be reported on the decedent's final income tax return. Instead the income is treated as "income in respect of a decedent" (IRD), which is taxed to the actual recipient (the decedent's beneficiaries) in the year of receipt. IRC § 691. A traditional retirement account, for example, is IRD. As a result, a designated beneficiary who inherits a retirement account will not receive a basis step up under section 1014. *See* § 1014(c). Instead the beneficiary will step into the employee/decedent's shoes for tax purposes, which means that any distributions will be taxable to the beneficiary. Retirement accounts are addressed in Chapter 36.

Chapter 5: Discharge of Indebtedness

Pages 71 & 72: References to section 61(a)(12) should be to section 61(a)(11):

The Tax Cuts and Jobs Act of 2017 (TCJA) prospectively repealed section 61(a)(8), which included alimony in gross income, for divorces after 2018. As a result, section 61(a)(12) was redesignated section 61(a)(11) starting in 2019. Moving forward, income from discharge of indebtedness in included under section 61(a)(11).

Pages 73-74: In "B. Bankruptcy and Insolvency Exceptions," note the following:

In determining insolvency, asset ownership is not always defined based on formal title. *See* Hamilton v. Commissioner, 955 F.3d 1169 (10th Cir. 2020) (holding funds deposited into son's account were included in computing parents' insolvency under section 108; because parents retained effective control over these funds, they were included in parents assets, and, thus, parents were not insolvent).

Other Exceptions: The American Rescue Plan Act of 2021 added an expanded exclusion of forgiven student loans that applies to loans discharged after 2020 and before 2026. IRC § 108(f). Covered debt is not limited to federal student loans.

Pages 75-76: Add the following at the end of the section D. Discharge of Recourse Debt in Property Transactions:

For a recent illustration of the difference between recourse debt and nonrecourse debt in the determination of "amount realized," see Breland v. Commissioner, T.C. Memo 2019-59 (holding that the amount realized in a foreclosure sale was the $7.2 million bid price, not the full $10.7 million outstanding loan balance).

Page 84: Add the following to the second bullet on Section 108(a)(1)(E):

The exclusion for discharge of qualified principal residence indebtedness has been extended five years to debt discharged before 2026. Note, however, that the amount excludable from gross income is limited to $750,000 ($375,000 for married individuals filing separately) for debt discharged after 2020. Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 114, P.L. 116-260 (amending IRC § 108(a)(1)(E)).

Page 84: Add to Related Matters:

- **Discharged SBA Loans.** The Small Business Administration (SBA) has a loan program for providing financial assistance to small businesses. The CARES Act expanded this SBA loan program to include forgivable loans made (from February 15 through June 30 of 2020) to help small businesses pay up to eight weeks of payroll costs, mortgage or rent obligations, and utilities. Under the CARES Act, the amount forgiven is excluded from gross income. P.L. 116-136, § 1106(i). (Note that the CARES Act simply excludes this special loan forgiveness from gross income; it does not create any special exclusion or exception in section 108.). *See also* COVID-Related Tax Relief Act of 2020, § 276(a), P.L. 116-260.

Chapter 7: Business Expenses

Page 108: in "4. Trade or Business," add the following in connection with discussion of the *Groetzinger* test:

For 2018 through 2025, deductible gambling losses include any deduction otherwise allowed for federal income tax purposes, not just the actual cost of wagers. I.R.C. § 165(d), as amended by the TCJA.

Pages 111-112: At the end of "G. Section 163(j)—Business Interest," add the following:

The CARES Act increased the business interest deduction limit under section 163(j) from 30 percent to 50 percent of the taxpayer's adjusted taxable income (ATI) for the 2019 and 2020 tax years. IRC § 163(j)(10)(A)(i), as added by CARES Act. [The deduction remains limited by the taxpayer's business interest income and floor plan financing interest discussed in the Overview.] As with so many other provisions in the CARES Act, this temporary change was designed to help businesses who need additional liquidity.

Page 112: H. Section 280E—The Curious Case of Legalized Marijuana

The Tax Court recently held that section 280E is not a penalty provision and therefore does not violate the Eighth Amendment's prohibition on excessive fines. Northern California Small Business Assistants, Inc. v. Commissioner, 253 T.C. No. 4 (Oct. 23, 2019). The court also rejected the taxpayer's arguments that section 280E (1) does not apply to items deductible under sections other than section 162, and (2) does not apply to marijuana businesses that operate legally under state law.

Page 112: I. Entertainment, Meal and Transportation Expenses

Although expenses for *entertainment* are not deductible, *meals (i.e., food and beverage items)* provided in connection with an entertainment activity are deductible so long as the meals meet certain requirements and are purchased separately (or the cost is separately stated on a bill or receipt). IRC § 274(k)(2); Treas. Reg. § 1.274-12(a); IRS Notice 2018-76, 2018-42 I.R.B. 599 (noting conditions that must be satisfied for deductibility). The amount of the meals deduction is generally limited to 50% of the cost, unless an exception applies. IRC § 274(n). Note that the 50% limit does not apply to business meals provided by restaurants in 2021 or 2022. IRC § 274(n)(2)(D), as added by the Taxpayer Certainty and Disaster Tax Relief Act of 2020. See IRS Notice 2021-25, 2021-17 I.R.B. 1118 (clarifying what qualifies as a "restaurant"). This temporary provision was designed to help the restaurant industry, which suffered during the COVID-19 pandemic. Thus, business meals furnished by restaurants in 2021 and 2022 are fully deductible provided usual requirements are met (e.g., the expense is ordinary and necessary, is not lavish or extravagant, the taxpayer and current or potential business associate are present, and the meal is separately stated if provided in conjunction with entertainment).

Page 125: Add to the last bullet on Confidential Sexual Harassment Settlements:

The IRS has stated on its website (without issuing an official ruling) that the provision does not apply to plaintiffs. *See* Section 162(q) FAQ, available at https://www.irs.gov/newsroom/section-162q-faq. *See also* Tax Notes, Mar. 11, 2019, at 1255.

Page 125: Add the following new bullet in Related Matters:

- **Double Dipping**. Many small businesses have received forgivable SBA loans under the CARES Act. These forgiven loans are excluded from the borrower's gross income and not considered cancellation of debt for income tax purposes. A question that has arisen is whether business expenses remain deductible under section 162 to the extent they were funded by such forgivable loans. The IRS took the position that expenses funded by forgivable SBA loans are not deductible. *See* IRS Notice 2020-32. But recent legislation overrides the result in the IRS Notice. Specifically, a taxpayer may deduct payment of business expenses even if the expenses were paid for with proceeds from forgiven loans. In your opinion, does it make sense to take away a deduction (e.g., for reasonable salaries) because it was funded by a tax exempt source (e.g., a forgivable SBA loan)? Consider a sole proprietor using municipal bond interest, which is excluded from gross income under section 103, to pay salary to a worker.

Chapter 9: Depreciation and Amortization

Page 148: Applicable Recovery Period

The Tax Cuts and Jobs Act of 2017 (TCJA) *intended* to assign a 15-year recovery period to "qualified improvement property." But under a technical error (failure to make a statutory change in section 168), qualified improvement property placed in service after 2017 did not get the short recovery period, but instead had to be depreciated as 39-year nonresidential real property. (Because the 15-year recovery period failed to take effect, qualified improvement property placed in service after 2017 also failed to qualify for certain bonus depreciation rules discussed later in this chapter.) Under the CARES Act, however, the technical glitch is fixed and 15-year recovery period is retroactively assigned to qualified improvement property. IRC § 168(e)(3)(E)(vii), as added by CARES Act. As a result, qualified improvement property placed in service after 2017 is depreciated over 15 years. (Alternatively, the property qualifies for 100 percent bonus depreciation if additional requirements are met.)

Pages 151-153: B. Bonus Depreciation

In 2021, the aggregate cost of any section 179 property that a taxpayer elects to treat as an expense cannot exceed $1,050,000. This limit is reduced (but not below zero) by the amount by which the cost of section 179 property placed in service in 2021 exceeds $2,620,000.

As noted above, the CARES Act made a retroactive technical "fix" so that a 15-year recovery is assigned to "qualified improvement property." IRC § 168(e)(3)(E)(vii), as added by CARES Act. As a result, such property qualifies for 100 percent bonus depreciation if all bonus requirements are met. For the definition of qualified improvement property, see IRC § 168(e); Treas. Reg. § 1.168(b)-1(a)(5).

Chapter 10: Deductible Personal Expenses

Pages 170-172: F. Restrictions on the Deduction

Special rules temporarily apply for disaster losses in qualified disaster areas. Specifically, a "net disaster loss" is deductible to the extent it exceeds $500 (not $100) and is deductible without regard to the normal 10% of AGI threshold limitation. Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 304(b), P.L. 116-260.

Chapter 11: Other Deductible Personal Expenses

Page 188: E. Medical Expenses:

Earlier acts had temporarily reduced the threshold for deducting medical expenses from 10% to 7.5% of the taxpayer's adjusted gross income (AGI). IRC § 213(a). The 7.5 percent AGI threshold has now been made permanent. Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 101, P.L. 116-260. In short, for tax years beginning after 2020, the deduction may be claimed to the extent that the expenses exceed 7.5% (not 10%) of AGI.

Chapter 12: The Deduction Hierarchy

Page 197: III. Overview

A general comment: The CARES Act created an above-the-line deduction for certain charitable contributions in 2020. More specifically, an individual who did not itemize deductions could deduct up to $300 in cash contributions made to public charities (e.g., churches, nonprofit schools, nonprofit medical institutions, etc.) as an above-the-line deduction in arriving at adjusted gross income (AGI). IRC § 62(a)(22), (f)(1), as added by the CARES Act. Thus, an individual could claim a limited charitable deduction even though she did not itemize. For 2021, an individual who does not itemize can similarly deduct up to $300 in cash contributions. Note however, that the 2021 deduction can be claimed in calculating taxable income (not adjusted gross income (AGI)). Thus, technically, the 2021 deduction is not an above the line deduction. Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 212, P.L. 116-260. Regarding 2021, note the repeal of I.R.C. § 62(a)(22) and note new I.R.C. § 170(p).

Page 198: In "A. Itemized Deductions versus the Standard Deduction," note the following:

In 2021, the standard deduction is $25,100 for married individuals filing joint returns and surviving spouses, and $12,550 for unmarried individuals (other than surviving spouses and heads of households). It is $18,800 for heads of households, and $12,550 for married individuals filing separate returns. Rev. Proc. 2020-45, I.R.B. 2020-46. The additional standard deduction amount for the aged or the blind is $1,350. *Id*.

Page 203: Regarding "IV. Materials," note the following:

Family law practitioners should note that Form 8332 is important for the noncustodial parent to receive both child credits and dependency deductions for children. For illustration, see Bethune v. Commissioner, TC Memo 2020-96 (holding against the taxpayer who could not show that a district court order conformed to the substance of the Form 8332; the regulations require that a taxpayer file Form 8332 or an alternative statement conforming to the form's substance when the tax return is filed).

Page 205: In "V. Related Matters," add the following new bullet:

- **Teacher's Classroom Expense Deduction**. Eligible teachers may claim an above-the-line deduction of up to $250 for certain unreimbursed expenses. IRC § 62(a)(2)(D), (d). Eligible expenses include those paid to purchase books, supplies, computer equipment, and supplementary materials used in the classroom. Note that the Treasury Department was recently directed to issue regulations or other guidance that would include personal protective equipment, disinfectant, and other supplies used for the prevention of spread of COVID-19. COVID-Related Tax Relief Act of 2020, § 275, P.L. 116-260.

Chapter 14: Ordinary Tax Rates and Taxpayer Classification

Page 234: In "D. Alternative Minimum Tax," note the following:

In 2021, the inflation-adjusted AMT exemption amounts are $114,600 for joint filers, $73,600 for unmarried individuals, and $57,300 for married individuals filing separate returns. Rev. Proc. 2020-45, I.R.B. 2020-46.

Pages 235-236: In "IV. Materials," note the following:

The inflation-adjusted tax rate tables for 2021 can be found in Rev. Proc. 2020-45, I.R.B. 2020-46.

Page 237: Add the following to the bullet on The Kiddie Tax:

Congress has now repealed section 1(j)(4) (added by the TCJA), which temporarily modified the *Kiddie Tax* by apply applying the rates of tax applicable to trusts to the unearned income of children. This means that the law prior to the TCJA is now back in effect. *See* 2020 Further Consolidated Appropriations Act, § 501.

Chapter 15: Tax Credits

Page 241: In "1. The Dependent Care Credit," note the following:

The American Rescue Plan Act of 2021, P.L. 117-2 (enacted in March 2021) increased the dependent care credit for 2021 only. The top credit percentage increased from 35% to 50%. Plus, eligible taxpayers can claim dependent care expenses of up to $8,000 for one qualifying child (up from $3,000 before 2021) or $16,000 for two or more qualifying individuals (up from $6,000 before 2021). Most importantly, the adjusted gross income (AGI) level at which the credit percentage is reduced is raised substantially from $15,000 to $125,000, allowing more people to qualify for the new maximum 50% credit rate. Beyond $125,000, the 50% credit percentage is reduced as income rises. Note that in 2021, for the first time, the credit is fully refundable, which means families can claim it even if they don't owe any taxes.

Pages 241-242: In "2. The Child Tax Credit and the Partial Credit for Other Dependents," note the following:

The American Rescue Plan Act of 2021 expanded the child tax credit for 2021 only. It increased the amount of the credit (from $2,000 per child to $3,000 per child for dependents ages 6 through 17 and $3,600 for dependents ages 5 and under), made it available for 17-year old dependents, made it fully refundable (before only $1,400 was refundable), and made it possible for families to get 50% of it in advance during the last half of 2021 (estimated from the 2020 tax return). The maximum credit is available to taxpayers with a modified adjusted gross income (AGI) of $75,000 or less for singles and $150,000 or less for joint filers). Above these income thresholds, the extra amount above the original $2,000 credit (either $1,000 or $1,600) is reduced by $50 for every $1,000 of modified AGI. The IRS has issued guidance related to the enhanced and refundable child and dependent care credits for 2021. See "Child and Dependent Care Tax Credit FAQs," June 11, 2021, https://www.irs.gov/newsroom/child-and-dependent-care-tax-credit-faqs.

Pages 242-243: In "*3. The Hope Scholarship Credit and the Lifetime Learning Credit*," please note the following:

The Hope Scholarship Credit is now called the American Opportunity Tax Credit. The credit is partially refundable. IRC § 25A(i). In addition, the references to IRC § 25A(d), (i)(4) should be to IRC § 25A(d)(1)-(2), and the reference to IRC § 25A(h)(2) should just be to IRC § 25A(h).

Beginning in 2021, the income threshold for claiming the Lifetime Learning Credit is increased to be the same as for the American Opportunity Tax Credit. IRC § 25A(d)(1), as added by the Taxpayer Certainty and Disaster Tax Relief Act of 2020. Therefore, beginning in 2021, the credit amount of both credits phases out ratably for taxpayers with modified AGI between $80,000 and $90,000 ($160,000 and $180,000 for joint filers). These amounts are *not* adjusted for inflation.

Page 244: In *"2. The Earned Income Credit,"* please note the following:

As part of COVID-19 relief, a taxpayer could elect to use 2019 earned income to calculate the earned income credit in 2020 (if the taxpayer's 2020 earned income was less than 2019 earned income). Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 211, P.L. 116-260. In addition, eligible taxpayers may use their 2019 earned income when figuring the credit on their 2021 tax return. American Rescue Plan Act of 2021.

The earned income tax credit was recently expanded for 2021 and future years. IRC § 32, as amended by the American Rescue Plan of 2021. Several of the changes are permanent. For example, taxpayers who have investment income can claim the credit (the limit on investment income is increased from $3,650 to $10,000). The $10,000 limit is indexed for inflation. For

2021 only, the earned income credit was expanded by decreasing the minimum age for taxpayers without children (from 25 to 19) and eliminating the maximum age. The amount of income at which the credit is maximized is increased and the phase-out amount is increased as well.

Page 245: Add at the end of IV. Related Matters, the following new bullets:

- **Recovery Rebate Credits (Economic Impact Payments) for Individuals**. In response to the COVID-19 crisis, Congress enacted the "Recovery Rebate Credit." IRC § 6428, as added by the CARES Act. The maximum credit was $1,200 for each eligible individual, plus $500 for each qualifying child. IRC § 6428(a), (d). Soon after enactment, in 2020, the IRS made advanced refunds of the credit via economic impact payments to eligible taxpayers, with eligibility and credit amounts based on tax information from 2018 or 2019. While the economic impact payments were based on earlier tax returns, the credit actually applied to the 2020 tax year, and the advance refund reduced the amount of the credit for the 2020 tax year. The Recovery Rebate Credit was a fully refundable personal credit. IRC § 6428(b). However, it was phased out if a taxpayer's adjusted gross income (AGI) exceeded a threshold amount. IRC § 6428(c).
- **Additional Recovery Rebate Credits**. Congress passed "Additional Recovery Rebate Credits" distributed via economic impact payments. These Additional Recovery Rebate Credits were modeled after the original Recovery Rebate Credits discussed above, with some exceptions. *See* IRC § 6428A, as added by the COVID-19-Related Tax Relief Act of 2020. *See also* American Rescue Plan Act of 2021, P.L. 117-2 (providing the third round of economic impact payments of up to $1,400).
- **Employer Tax Credits and Self-Employment Tax Credits for Paid Sick and Family Leave**. Under the Families First Coronavirus Response Act (different from the CARES Act), eligible employers could receive a refundable payroll credit for required paid sick leave or family leave paid to an employee who could not work due to COVID-19. P.L. 116-127, §§ 7001, 7003. In addition, self-employed individuals could claim a refundable credit for a qualified sick leave or family leave equivalent amount if they could not work due COVID-19. P.L. 116-127, §§ 7002, 7004. The credits were "equivalent" to those available to an eligible employer who paid required paid sick or family leave to an employee who could not work due to COVID-19. These business credits, which had unique rules and limitations, are beyond the scope of this course. [The credits for paid sick and family leave were recently extended to September 30, 2021. American Rescue Plan Act of 2021.] For information on a new refundable payroll tax credit for retaining employees during the COVID-19 crisis, see P.L. 116-136, § 2301, which too is beyond the scope of this course.
- **Residential Energy Efficient Property Credit**. Individuals may claim a tax credit for certain residential energy efficient property placed in service before 2024, in connection with their residences. IRC § 25D, as amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (P.L. 116-260). The credit is 26% of the cost of the eligible property placed in service in 2020, 2021, and 2022, but only 22% for eligible property placed in service in 2023.

Chapter 17: Capital Gains and Losses

Page 260: In "5. Determining the Appropriate Capital Gains Rate on "Net Capital Gain," note the following:

For 2021, the taxable income breakpoint between the 0% and 15% rate is $40,400 for unmarried individuals ($80,800 for joint filers). The breakpoint between the 15% and 20% rates is $445,850 for unmarried individuals ($501,600 for joint filers). Rev. Proc. 2020-45, I.R.B. 2020-46.

Chapter 18: Quasi-Capital Assets

Page 274: In "A. Transactions to Which Section 1231 Applies," note the following:

For a recent case holding that a sale of real property produced a capital loss (capital asset that did not involve an ongoing trade or business) and not ordinary loss (real property used in a trade or business), see Keefe v. Commissioner, 966 F.3d 107 (2d Cir. 2020).

Chapter 20: The Charitable Contribution Deduction

Page 295: 3. Sections 170(b)(1)(A) & (B). Add the following at the end of the section:

As noted in the text, the Tax Cuts and Jobs Act of 2017 (TCJA) increased the AGI limitation for charitable contributions of cash made by individuals to public charities to 60% (up from 50%). IRC § 170(b)(1)(G). The CARES Act, however, suspended the 60% limitation and raised it to 100% for qualified charitable contributions in 2020 in response to the COVID-19 (coronavirus) crisis. And, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 extended the suspension for an additional year (2021). *See* Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 213, P.L. 116-260. Thus, for 2020 and 2021, an individual may deduct charitable contributions in cash to public charities as long as the contributions do not exceed the individual's contribution base (100%). Consistent with other carry forward rules in section 170, an individual may carry forward for five years any qualified cash contributions that exceeds her contribution base. P.L. 116-136, § 2205; P.L. 116-260, 213.

Page 298: In "E. Substantiation," note the following:

It is very important to comply with applicable regulations in substantiating charitable contributions. For illustration, see Loube v. Commissioner, TC Memo 2020-3 (holding taxpayers failed to comply with applicable Treas. Reg. § 1.170A-13 by failing to provide the cost or adjusted basis of donated property; although the taxpayers attached a Form 8283, "Noncash Charitable Contributions, and their appraisal, the form left out information on the form, such as cost of the property, appraiser's signature, and identity of the donee).

Page 312: At the end of Related Matters, add the following new bullet:

Deduction Hierarchy. Recall from Chapter 12 that the deduction under section 170 (relating to charitable contributions) is an itemized deduction. IRC § 67(b)(4). For tax years beginning in 2020 only, however, an eligible individual may claim an above-the-line deduction in computing AGI of up to $300 for any qualified charitable contribution. IRC § 62(a)(22), as added by CARES Act. For this purpose, an eligible individual is someone who does not claim any itemized deductions, and a qualified charitable contribution is a cash contribution to a public charity described in section 170(b)(1)(A) (i.e., church, nonprofit educational institution, nonprofit medical institution, etc.). IRC § 62(f).

Chapter 24: Like Kind Exchanges

Page 360: At the end of Related Matters, add the following new bullet:

- **Qualified Opportunity Zones.** The TCJA added Code sections 1400Z-1 and 1400Z-2. These provisions provide tax benefits to taxpayers who realize capital gains and invest them in certain funds (‘qualified opportunity funds”) that invest in businesses and real estate located in economically distressed communities. *See* IRS Notice 2019-42, 2019-29 I.R.B. 352 (June 25, 2019) (providing list of “qualified opportunity zones” by state). More specifically, a taxpayer can defer capital gains to the extent they ae invested in a qualified opportunity fund within 180 days. If that investment is held for at least five years, the taxpayer can exclude from gross income 10% of the *original deferred gain*. If held for at least seven years, the taxpayer can exclude an additional 5% (for a total of 15% of the *original deferred gain*). Any remaining deferred capital gain is taxed on the earlier of (1) the date the investment in the fund is sold or (2) December 31, 2026. For investments in a qualified opportunity fund held for at least 10 years, the taxpayer may elect to exclude from gross income any gain from *post-acquisition appreciation*. In 2020, the Treasury and IRS issued regulations.

Chapter 27: Limitations on Deductions

Pages 389-390: In “E. Limitation on Excess Business Losses,” add the following at the end of the section:

It should be noted that the CARES Act deferred the effective date of section 461(l) for three years (specifically, the limitation on excess business losses is postponed for tax years beginning in 2018, 2019, and 2020). The limitation, which is discussed in the main text, applies for tax years beginning after 2020. IRC § 461(l), as amended by CARES Act. The CARES Act also made some technical corrections that will become effective when the limitation on excess business losses once again becomes applicable. *See, e.g.*, IRC § 461(l)(3)(A)-(B), as either added or amended by CARES Act.

As noted in the main text, the Tax Cuts and Jobs Act (TCJA) made significant changes to the net operating loss (NOL) rules of section 172. Specifically, under the TCJA, NOLs arising in 2018 and later are carried forward indefinitely; in addition NOLs may only reduce 80 percent of a taxpayer's taxable income in a carryforward year. The CARES Act changed these rules temporarily in response to the COVID-19 crisis. First, the CARES Act created a five-year carryback rule. In other words, any NOL arising in 2018, 2019, or 2020 may be carried back five years. IRC § 172(b)(1)(D), as added by CARES Act. The carryforward period for NOLs remains unlimited. Second, the CARES Act suspended the 80 percent taxable income limitation for NOLs for 2018, 2019, and 2020. IRC § 172(a)(1), as amended by CARES Act. Again, these changes are temporary. The normal NOL rules are reinstated in tax years beginning after 2020 (e.g., NOLs arising in 2021 may not be carried back).

Chapter 28: Intellectual Property Development and Acquisitions

Page 398: In "b. Section 263A Override," note the following:

The section 181 election to claim an expense deduction for qualified film, television, or live theatrical production costs was recently extended five years and applies to productions commencing before 2026. Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 116, P.L. 116-260.

Chapter 33: Education Benefits and Costs

Page 484: In "B. Scholarships and Fellowships," add the following at the end of the section:

Higher education institutions are allowed to use certain funds federally allocated to them to award emergency financial aid grants to support students impacted by the COVID-19 pandemic. These emergency financial aid grants are excluded from the student's gross income. COVID-Related Tax Relief Act of 2020, § 277(a), P.L. 116-260. The gross income exclusion does not apply to any part of the grant received for services (e.g., teaching or research). *Id*. § 277(c). The grants will not reduce the amount of qualified tuition expenses for purposes of calculating the American Opportunity and Lifetime Learning Credits.

Page 485: *2. Educational Assistance Programs*

General comment: The CARES Act expanded the type of educational assistance an employee can exclude from gross income under section 127. Specifically, payments by an employer to either an employee or a lender to be applied toward an employee's student loans can be excluded from gross income. IRC § 127(c)(1)(B), as added the CARES Act. The payments can be of principal or interest on any qualified education loan incurred by the employee for his or her education (not for education of a child). The exclusion applies to payments made before 2026. Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 120, P.L. 116-260. The $5,250 cap still applies, and it applies to both the new student loan repayment benefit, as well as other educational assistance (e.g., tuition, fees, books) provided. IRC § 127(a)(2).

Pages 485-486: *1. Deductibility of Interest*

For 2021, the $2,500 maximum deduction for interest paid on qualified education loans under section 221 begins to phase out for taxpayers with modified adjusted gross income in excess of $70,000 ($140,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of $85,000 or more ($170,000 or more for joint returns). Rev. Proc. 2020-45, I.R.B. 2020-46.

Page 487: In "E. Special Credits and Deduction for Qualified Tuition and Related Expenses," please note the following corrections:

The references to IRC § 25(h)(2) and (i)(4) and (i)(5) are obsolete. Section 25A(h) was recently stricken. Section 25A(i) deals with the portion of the credit that is refundable.

Beginning in 2021, the income threshold for claiming the Lifetime Learning Credit is increased to be the same as for the American Opportunity Tax Credit. IRC § 25A(d)(1), as added by the Taxpayer Certainty and Disaster Tax Relief Act of 2020. Therefore, beginning in 2021, the credit amount for both credits phases out ratably for taxpayers with modified AGI between $80,000 and $90,000 ($160,000 and $180,000 for joint filers). These amounts are *not* adjusted for inflation.

Also, beginning in 2021, the section 222 above-the-line deduction for qualified tuition and related expenses is repealed. IRC §§ 62(a)(18) and 222, stricken by the 2020 Taxpayer Certainty Act. (The Taxpayer Certainty and Disaster Tax Relief Act of 2019 had retroactively extended through December 31, 2020 the section 222 above-the-line deduction of qualified tuition and related expenses for higher education of the taxpayer (or taxpayer's spouse or dependents)). Again, repeal of the qualified tuition deduction was replaced by increased phase out limits for the Lifetime Learning Credit discussed above.

Page 488: 2. Section 529: Qualified Tuition Programs

Section 529 was recently amended to permit tax-free distributions from section 529 accounts to pay expenses of apprenticeship programs. IRC § 529(c)(8), as added by the SECURE Act. The provision was also amended to permit up to $10,000 of tax-free distributions to repay qualified education loans of the beneficiary or a sibling. IRC § 529(c)(9), as added by the SECURE Act.

Page 489-490: At the end of "H. Coordination Rules," add the following:

As noted above, certain employer student loan payments are excluded from income under the CARES Act. Note, however, that no deduction is allowed under section 221 for student loan interest payments paid by the employer that are excluded from the employee's income. IRC § 221(e)(1), as amended by CARES Act.

Chapter 34: Personal Injury Recoveries and Punitive Damages

Page 496: Add the following cite in the last paragraph:

See Doyle v. Commissioner, T.C. Memo 2019-8 (Feb. 6, 2019) (holding damages received by a taxpayer who was terminated from his job were for emotional distress and therefore included in gross income). The court rejected the taxpayer's argument that "one can't' really distinguish symptoms of emotional distress from symptoms of other physical injuries or sicknesses because '[p]hysical relates to both the body and mind which are inseparable in a person.'" The court concluded that the taxpayer "may well be right ontologically, but not legally."

See also Priv. Ltr. Rul. 201950004 (ruling settlement received by a donor egg recipient from a fertility clinic was excludible from gross income; taxpayer's infant suffered from physical, cognitive, and behavioral disabilities stemming from a genetic condition, and the clinic failed to test for the gene that caused the genetic disorder).

Page 535: In Related Matters, add to the bullet on Confidential Sexual Harassment Settlements, the following:

The IRS has stated on its website (without issuing an official ruling) that the provision does not apply to plaintiffs. *See* Section 162(q) FAQ, available at https://www.irs.gov/newsroom/section-162q-faq. *See also* Tax Notes, Mar. 11, 2019, at 1255.

Chapter 36: Retirement Resources and Deferred Compensation

Page 551: At the end of Related Matters, add the following new bullet:

CARES Act Changes. The CARES Act made numerous changes affecting retirement plans:

- The 10% early-withdrawal penalty under section 72(t) is waived for any qualified coronavirus-related distribution from a retirement plan. P.L. 116-136, § 2202(a)(1). (Note that this type of relief is often granted by Congress in response to major disasters, such as hurricanes.) To qualify as a "coronavirus-related distribution," it must be made from an eligible retirement plan between March 27 – December 31, 2020, to an individual who has been diagnosed (or who has a spouse or dependent diagnosed) with coronavirus, or who experiences adverse financial consequences as a result of the coronavirus. *Id*. § 2202(a)(4). The portion of a distribution that is includible in income is reported over a three-year period (unless elected otherwise). *Id*. § 2202(a)(5). However, under a three-year rollover provision, a person who receives a coronavirus-related distribution may recontribute the amount to an eligible retirement plan within three years with the result that the original distribution is not subject to tax. *Id*. § 2202(a)(3).
- Generally, a loan from a qualified retirement plan to a participant is treated as a distribution and included in gross income unless the loan does not exceed $50,000 or 50 percent of the value of the participant's vested benefits under the plan (whichever is less). IRC § 72(p). The CARES Act increased the threshold limit on loans to $100,000 or

100% of the value of the participant's benefits. P.L. 116-136, § 2202(b)(1). The loan, however, must be made between March 27 – December 31, 2020, to an individual who is diagnosed with coronavirus (or whose spouse or dependent is diagnosed) or who experiences adverse financial consequences as a result of the coronavirus. P.L. 116-136, § 2202(a)(4).

- Retirement plans and IRAs must meet required minimum distribution (RMD) requirements to qualify for tax-favored status. IRC § 401(a)(9). For 2020 only, the required minimum distribution (RMD) requirements are suspended with respect to deferred contribution plans, including IRAs. IRC § 401(a)(9), as added by CARES Act. Note the Act waives all RMDs for 2020 regardless of whether the taxpayer has been impacted by the pandemic.

Chapter 37: Overview of Entity Taxation

Pages 563-565: D. The Deduction for Qualified Business Income—Section 199A

In 2019, the Treasury Department and the IRS finalized regulations under section 199A, which was enacted by the Tax Cuts and Jobs Act of 2017 (TCJA). These regulations provide various rules for determining the deduction, including extensive guidance on the meaning of the term "specified service trade or business." Also in 2019, the IRS issued Rev. Proc. 2019-38, which provides a safe harbor under which a rental real estate enterprise will be treated as a "trade or business" solely for purposes of section 199A and the new regulations thereunder. 2019-42 I.R.B. 942 (Sept. 24, 2019).

For 2021, the threshold amount under section 199A(e)(2) is $329,800 for joint filers, $164,925 for married filing separate returns, and $164,900 for all other returns. Rev. Proc. 2020-45, I.R.B. 2020-46.

Chapter 41: Overview of Estate and Gift Taxation

Page 613: 4. *The Unified Credit*

For 2021, the basic exclusion amount is $11,700,000 for determining the amount of the unified credit against estate tax under section 2010. Rev. Proc. 2020-45, I.R.B. 2020-46.

Page 614: *1. The Annual Exclusion*

For 2021, the annual exclusion amount is $15,000. Rev. Proc. 2020-45, I.R.B. 2020-46.

Page 621: Add the following bullet to V. Related Matters:

- **Use It or Lose It**. The TCJA only increased the basic exclusion amount to $10,000,000 temporarily. The increase is scheduled to sunset on January 1, 2026, and fall back to $5,000,000. IRC § 2010(c)(3)(C). This introduces an additional level of complexity into the planning process since the unified credit can be used during life as well as at death. Thus, the question naturally arises, what if the credit was used during life to shelter more gifts than the credit amount that is permitted by the law on the date of death. The regulations provide that there will be no clawback of the credit on the date of death. Treas. Reg. § 20.2010-1(c). Nor will there be any credit remaining to shelter any bequests from tax. *See* Treas. Reg. § 20.2010-1(c)(2)(i) ex.1. This is a use-it-or-lose it situation. This creates some incentive to make inter vivos gifts in advance of 2026 when the credit is slated to fall back. There is a downside. If those gifts are of appreciated property, the donee will take a carryover basis rather than a stepped up basis. The deceased spousal unused exclusion amount also provides an interesting wrinkle. If the taxpayer's spouse dies before 2026, the regulations provide that the DSUE amount will be fixed on that date and will not decline even if the taxpayer dies after 2026. *See* Treas. Reg. § 20.2010-1(c)(2)(iii) ex.3. The taxpayer's basic exclusion amount, on the other hand, will fall to the post 2026 level. *Id*.

Chapter 42: Tax Practice and Procedure

Page 624: A. Tax Returns

As a result of the COVID-19 emergency, the Treasury Department and IRS have extended the due dates for filing individual federal income tax returns. For 2019, the government extended the due date for filing (and for making federal income tax payments otherwise due) from April 15, 2020 to July 15, 2020. Penalties, interest, or additions to tax for failure to file the returns or pay the taxes did not accrue until July 16, 2020. A taxpayer did not have to be impacted by COVID-19 to qualify for the extension; any person with a return or payment due on April 15, 2020, was eligible for the automatic relief. The payment extension was unprecedented, and amounted to a 90-day interest-free loan from the government! For 2020, the filing deadline was also extended—until May 17, 2021.