TAX in the News

Tax Information for Tax Practitioners

December 26, 2018

TAX NEWS

New Secure "Unmasked" Transcript Alternative Available for Tax Professionals—As a security measure, the IRS launched a heavily redacted individual tax transcript format last fall. Authorized tax professionals may now contact the Practitioner Priority Service to request an "unmasked" Wage and Income Transcript. The full transcript will be deposited in the requester's e-Services secure mailbox. The IRS plans to discontinue all transcript faxing services as of February 4, 2019. Page 2

W-4 for 2019 Now Available—The 2019 version of Form W-4, *Employee's Withholding Allowance Certificate*, is now available online. As the IRS previously advised, there are no substantive changes to the form or instructions aside from inflation adjustments. Major changes are planned for the 2020 Form W-4. Page 2

IRS Provides Guidance on New Excess Business Loss and NOL Rules—The TCJA introduced new §461 which limits the business loss deduction for noncorporate taxpayers. Generally, a current year operating loss exceeding $250,000 ($500,000 for joint filers) is not deductible and is instead carried forward as an NOL to the next taxable year. Also, with certain exceptions, taxpayers may no longer carry NOLs back but may carry them forward indefinitely. The IRS recently provided guidance on these two changes. Page 2

QUESTION OF THE WEEK

A divorced taxpayer with a young child would otherwise be eligible for the EIC but for $15,000 in forgiven credit card debt. She is insolvent and none of the cancelled debt will be taxable. The $15,000 would reduce or eliminate her EIC. Will the cancelled debt affect her EIC calculation? Page 3

ORIGINAL INSIGHTS

Back to basics: What small employers need to know when withholding taxes for an employee — A guide to payroll taxes and a helpful checklist for employers. Full insight. View all insights at www.thetaxinstitute.com/insights/.

NEW SECURE "UNMASKED" TRANSCRIPT ALTERNATIVE AVAILABLE FOR TAX PROFESSIONALS

Last September, as part of ongoing security efforts, the IRS launched a new individual tax transcript format. The new format heavily redacts personally identifiable information from Form 1040 tax transcripts. See TAX in the News August 29, 2018.

In news release IR-2018-256, the IRS announced it will halt the tax transcript faxing service as of February 4, 2019. This applies to both individual and business transcripts. Business transcripts are not redacted and authorized tax professionals may request a business transcript through the e-Services transcript delivery system.

Tax professionals who have proper authorization may contact the Practitioner Priority Service and request to have an "unmasked" Wage and Income Transcript deposited in their e-Services secure mailbox. Fact sheet FS-2018-20 explains the requirements and procedures for obtaining the transcript. A tax professional must have a valid Centralized Authorization File (CAF) number, an e-Services account, and access to "SOR," the e-Services secure mailbox. Those who do not have an e-Services account or SOR access may instead request that the unmasked transcript be mailed to the client's address of record.

W-4 FOR 2019 NOW AVAILABLE

The 2019 version of Form W-4, *Employee's Withholding Allowance Certificate*, is now available online. The form has been updated for 2019 inflation adjustments. Otherwise, as the IRS advised earlier, there are no substantive changes to the form. Employees are instructed to claim one allowance for themselves and additional allowances based on filing status, number of jobs, and eligibility for deductions and credits. Taxpayers meeting certain criteria may claim exemption from withholding.

Employees are generally required to submit a new Form W-4 to their employers within 10 days of experiencing a change in status that reduces withholding allowances. Earlier this year, the IRS issued Notice 2018-92 allowing employees to wait until May 10, 2019, to submit a new certificate if the change in allowances is due solely to the TCJA. See TAX in the News November 28, 2018 for details on the IRS's interim guidance.

The IRS has indicated that many changes are planned for the 2020 Form W-4.

IRS PROVIDES GUIDANCE ON NEW EXCESS BUSINESS LOSS AND NOL RULES

IRS news release IR-2018-254 provides basic guidance on the new excess business loss limitation and changes to net operating loss (NOL) rules made by the TCJA. Both provisions are effective for tax years ending after December 31, 2017 (for calendar year taxpayers, starting January 1, 2018).

Excess business loss limitation

The TCJA added new §461 which limits the business loss deduction that a noncorporate taxpayer may claim in the year the loss arises. An excess business loss is defined as the amount by which total deductions from all trades or businesses exceed total income and gains from all trades or businesses plus $250,000 ($500,000 for joint filers).

To illustrate, a single taxpayer has a $300,000 nonpassive business loss and $400,000 of non-business income. Before the TCJA, the taxpayer would be taxed on $100,000 less adjustments and deductions. Because of the new limitation, $50,000 ($300,000 - $250,000) is an excess business loss. The result is that in the current year the taxpayer is left with $150,000, rather than $100,000 of income that is subject to tax. The nondeductible $50,000 excess business loss is carried forward as an NOL to the next tax year.

(Continued on page 3)

(Continued from page 2)

The excess loss is calculated on new Form 461 (draft 8/31/18) *Limitation on Business Losses*. For this purpose, a trade or business may include sole proprietorships, farms, and passthrough businesses. Wage income, Form 4797 gains and losses, and farm rental income also figure into the calculation. Also, at-risk limits and passive activity limits are applied before calculating the excess loss. See the form instructions (draft 9/27/18) for more information.

Net operating losses

Before the TCJA, generally, taxpayers could carry an NOL back two years, then forward up to 20 years. Under the TCJA, most taxpayers no longer have the carryback option. Instead, NOLs may be carried forward indefinitely. Also, the NOL deduction in carryforward years is limited to 80% of the taxpayer's taxable income, without regard to the NOL itself. For example, a taxpayer with a $25,000 NOL carryforward from 2018 and $30,000 of taxable income in 2019 would be limited to a $24,000 ($30,000 × 80%) NOL deduction in 2019. The remaining $1,000 would then carry forward to 2020. Note that the NOL carryforward includes any nondeductible excess business loss, as explained above. Certain farming and insurance losses are not subject to the no-carryback rule. Form 1045, *Application for Tentative Refund,* and instructions have been revised to reflect the new rules.

QUESTION OF THE WEEK

Q. A client received Form 1099-C for cancellation of debt. The amount is about $15,000, mostly stemming from credit card debt incurred while she was going through a divorce. Although she is getting back on her feet, she is still insolvent and none of the forgiven debt will be taxable. She has a small child and is eligible for the EIC, but the $15,000 would reduce or eliminate her credit. Will the cancelled debt affect her EIC calculation?

A. Income qualifying for the discharge of indebtedness insolvency exclusion does not affect the earned income credit. Under §32(a)(2), the EIC phaseout is based on the greater of earned income or adjusted gross income, but *not* on modified adjusted gross income. In other words, there is no requirement in the current law to add back any type of non-taxable or excluded income or any adjustments to AGI. Note that taxpayers who claim the foreign earned income exclusion are ineligible for EIC.

If your client is able to exclude all of the cancelled debt, then her EIC calculation will not be affected, assuming she otherwise qualifies for the credit. If she can exclude only part of the debt, then the taxable part will figure into AGI and potentially reduce the credit. Be sure to complete Form 982 (draft 3/6/18), *Reduction of Tax Attributes Due to Discharge of Indebtedness*, and the Insolvency Worksheet, which can be found in IRS Pub. 4681, *Cancelled Debts, Foreclosures, Repossessions, and Abandonments*.