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TAX in the News

Tax Information for Tax Practitioners

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TAX NEWS

IRS Provides "Safe Harbor" to Help Partnerships Determine Negative Tax Capital Account Reporting Obligations—The 2018 instructions for Form 1065, *U.S. Return of Partnership Income*, require partnerships to report on partners' negative tax capital accounts. Notice 2019-20 released last March provides penalty relief for partnerships that fail to report the new information (covered in *TITN* March 20, 2019). The IRS has now released a set of FAQs to help partnerships determine whether any partners have tax capital accounts with negative balances which, under the new rules, would trigger reporting obligations. The FAQs explain how a partner could have a negative tax capital account, even if the partner has positive outside basis, and provides a safe harbor for calculating tax capital accounts. Page 2

IRS Technical Advice Addresses Religious Objectors to Social Security Numbers for Child Tax Credit Purposes—A program manager technical advice memo provides guidance on the subject of taxpayers who wish to claim the CTC but who do not have SSNs for their children because of religious- or conscience-based objections to public benefits. The IRS does provide administrative relief to taxpayers without SSNs or ITINs with respect to the dependent exemption and other dependent-connected tax benefits. However, such relief is not provided for the EIC and, for similar reasons, will not be provided for the CTC. The PMTA concludes that the new SSN requirement is a "rule of general applicability" with no discriminatory intent. Page 3

QUESTION OF THE WEEK

A 58-year old client is covered under her employer's high-deductible health plan and has an HSA. The plan also covers her husband, who is 58-years old as well. Can she contribute $1,000 catch-up contributions for both of them to her HSA? Page 3

FEATURED INSIGHTS

Health savings accounts win the triple crown of tax benefits— Some investment experts say an HSA can help supplement retirement income, too. Full insight. View all insights at www.thetaxinstitute.com/insights/.

IRS PROVIDES "SAFE HARBOR" TO HELP PARTNERSHIPS DETERMINE NEGATIVE TAX CAPITAL ACCOUNT REPORTING OBLIGATIONS

The IRS released FAQs that give information about the new negative tax capital account reporting rules found in the 2018 Form 1065 instructions. Under the new rules, partnerships must calculate whether any of its partners' capital accounts have a negative balance, which can be a complicated process if the partnership is not already keeping track of the partners' accounts. Notice 2019-20 provided penalty relief for partnerships that fail to report the new information (see TAX in the News March 20, 2019).

The FAQs provide examples and lay out a "safe harbor" for partnerships to help them calculate partners' capital account balances in order to determine whether the partnership has an obligation to report tax basis information under the new reporting rules.

How can a partner have a negative tax capital account if they have a positive outside basis?

Many tax preparers and/or bookkeepers understand that each partner has both a separate tax capital account and outside basis, but there is confusion about how a partner can have a positive outside basis and a negative tax capital account. The FAQs explain that the difference between a partner's outside basis and tax capital account is that the partner's share of partnership liabilities is added to his or her outside basis under §752, whereas the liabilities are excluded from the tax capital account.

Example:

- Partner A's outside basis is $5,000, consisting of
    - $15,000, A's share of the partnership's liabilities, and
    - -$10,000, A's share of partnership losses.
- A's tax capital account is -$10,000.

Thus, if the partnership carries a lot of debt, a partner could have a negative tax capital account and, at the same time, have a positive outside basis due to the addition of partnership liabilities to the outside basis. This is important to understand because the new safe harbor method is based on this distinction.

What is the safe harbor for calculating a partner's tax capital account?

Under the safe harbor approach, partnerships may calculate a partner's tax capital account by subtracting the partner's share of partnership liabilities under §752 from the partner's outside basis. If a partnership elects to use the safe harbor approach, the partnership must report the negative tax capital account information as equal to the excess, if any, of the partner's share of partnership liabilities under §752 over the partner's outside basis.

Continuing with the example, a partnership electing to use the safe harbor method would report a tax capital account of -$10,000, the excess of Partner A's share of partnership liabilities $15,000 over A's outside basis of $5,000.

How is the reporting determination affected by other provisions?

In this example, the liabilities added to Partner A's outside basis consist only of A's share of partnership obligations. Calculations are more complex if a partner contributes property with attached liabilities (§704 adjustments) or elections are made when a new partner acquires a partnership interest from a previous partner (§754 elections). The FAQs explain how outside basis and tax capital accounts are affected by these provisions. These adjustments can be quite complex, but in order to maintain accurate capital account balances, tax preparers and bookkeepers should have some understanding of them.

IRS TECHNICAL ADVICE ADDRESSES RELIGIOUS OBJECTORS TO SOCIAL SECURITY NUMBERS FOR CHILD TAX CREDIT PURPOSES

A program manager technical advice memo (PMTA 2019-002) provides guidance on the subject of taxpayers who wish to claim the child tax credit (CTC) but who object to obtaining SSNs for their children for religious or other conscience-based reasons.

In general, §151(e) requires taxpayers to have taxpayer identification numbers (TINs) for their dependents in order to claim the dependent exemption and other dependent-connected tax benefits, including the dependent care credit, the child tax credit (CTC), and education tax benefits. Prior to the TCJA, the CTC required either type of TIN (ITIN or SSN). The TCJA added §24(h)(7) requiring the taxpayer to provide an eligible SSN for each qualifying child in order to receive the CTC, including the ACTC. An SSN may be issued only by the Social Security Administration to U.S. citizens and U.S. aliens authorized to work in the U.S.

At issue is whether the IRS is required to provide administrative relief to taxpayers who are conscientiously opposed to accepting public benefits such as social security benefits. The IRS does apply an administrative exception to §151(e) to taxpayers who object to obtaining SSNs for religious or conscience-based reasons. Under the exception, the IRS will allow the taxpayer to claim personal and dependent exemptions and other dependent-connected benefits without providing *any* TIN. The taxpayer may write "Amish," for example, wherever dependent TINs are required on tax forms.

Notably though, such administrative relief has not been available for the earned income credit (EIC). The IRS does not permit taxpayers who object to obtaining SSNs to claim the EIC without them. The PMTA cites a 1986 Supreme Court case (*Bowen v. Roy*) in which the court held that the Department of Health and Human Services did not violate the Free Exercise clause of the First Amendment by requiring an individual to provide a dependent's SSN in order to obtain welfare benefits.

Similarly, the PMTA concludes that the new SSN requirement of §24(h)(7) is a "rule of general applicability" and reflects no animus or discriminatory intent toward taxpayers with religious or conscientious objections to obtaining SSNs. Accordingly, taxpayers may not claim the CTC or ACTC for children who do not have SSNs.

The new credit for other dependents of §24(h)(4) does not have an explicit SSN requirement. Therefore, the IRS could presumably apply the administrative exception to the ODC as it did to the dependent exemption prior to the TCJA.

QUESTION OF THE WEEK

Q. My client and her husband are both 58 years old. She was covered under her employer's high deductible plan for all of 2018. She also has a family HSA. Her husband does not work and is covered under her plan. Can she make a catch-up contribution for her husband in addition to her own for 2018?

A. Your client's husband can make a catch-up contribution, but it must be to his own HSA.

Although the term "family HSA" is frequently used, an HSA, much like an IRA, is an individual account. The amount that can be contributed to the HSA depends, in turn, on the owner's high deductible health plan (HDHP) coverage. If the owner has family HDHP coverage all year, which appears to be the case with your client, she can make the maximum contribution, which is $6,900 for 2018. In addition, since she is at least age 55, she can make a catch-up contribution of up to $1,000.

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Under the HSA rules, if one spouse has family-HDHP coverage, both spouses are considered to have it. This is so even if the other spouse actually has family coverage, or self-only coverage, or is not covered under a separate health plan. Assuming he does not have any disqualifying coverage, your client's husband is an eligible individual because he is covered under her HDHP.

In order to make a catch-up contribution, he must set up his own HSA. Their maximum contribution for 2018 is $8,900 ($6,900 + $1,000 + $1,000) since they're both eligible individuals. They may divide the family contribution (up to $6,900) equally between the two HSAs or split it any way they like. However, the additional contribution for age may only be made to each respective spouse's account. For example, they could put a total of $7,900 in her HSA and only the $1,000 catch-up contribution in his HSA. See "Rules for Married People" on page 6 of IRS Pub. 969, *Health Savings Accounts and Other Tax-Advantaged Health Plans*.

Even if your client's husband was not an eligible individual, or even if your client had self-only coverage instead of family coverage, she may still use her HSA funds to pay qualifying medical expenses for both of them.

