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TAX in the News

Tax Information for Tax Practitioners

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TAX NEWS

Final Regulations Increase Enrolled Agent User Fees—Starting June 12, 2019, the EA user fee for new enrollments and for renewals will increase from $30 to $67. The final regulations follow the recommendations made in proposed regulations that were issued late last year. Page 2

Maximum Value of Employer-Provided Vehicles for 2019—The IRS released Notice 2019-34 giving the maximum value of employer-provided vehicles first made available in 2019 for personal use by employees. These values are used by employers to determine amounts includable in taxable income for employees' personal use of company vehicles. Page 2

Bankruptcy Court Follows a District Court Ruling; Holds ACA Shared Responsibility Payment Is a Tax, *Not* a Penalty—Although the individual shared responsibility payment no longer applies after 2018, we continue to see it litigated for various reasons. *Cousins v. U.S.* is another bankruptcy court case in which the debtor argued that the payment is a penalty. The court concluded it is a tax entitled to priority status and, consequently, collectible by the IRS. Page 2

QUESTION OF THE WEEK

When our clients married in 2018, one of the spouses sold a home she owned prior to the marriage and moved into the other spouse's home. They claimed a $250,000 exclusion on their joint return for 2018. They would now like to sell his home too and buy a new home together. If they sell the home they live in now in 2019, will they qualify for an exclusion and, if so, would it be $250,000 or $500,000? Page 3

FEATURED INSIGHTS

Share and share alike: When employees get part ownership in a company, they take the bad with the good—Owners don't always understand what happens when they make employees into partners. Full insight. View all insights at www.thetaxinstitute.com/insights/.

FINAL REGULATIONS INCREASE ENROLLED AGENT USER FEES

The Treasury Department and IRS have issued final regulations covering enrolled agent (EA) initial enrollment and renewal user fees. Effective June 12, 2019, the user fee for new enrollments and for renewals will increase from $30 to $67. This is the amount that was recommended in proposed regulations issued late last year. According to the final regulations, determination of the user fee was based on an analysis of direct costs, such as labor, and indirect costs, such as overhead.

The initial enrollment or application fee is in addition to any test fees for the Special Enrollment Exam (SEE). EAs passing the SEE must then renew their credential on a rolling three-year cycle.

MAXIMUM VALUE OF EMPLOYER-PROVIDED VEHICLES FOR 2019

The fair market value of an employee's *personal* use of an employer-provided vehicle must be included in the employee's wages as a taxable fringe benefit. If certain requirements are met, the employer can use special valuation rules to determine the FMV of the personal use, such as the vehicle cents-per-mile rule or the fleet-average value rule. However, these special rules cannot be used for a vehicle that, on the first day the vehicle is made available to the employee, has an FMV higher than the applicable maximum value, which is adjusted annually for inflation.

Earlier this year, Notice 2019-08 covered applicable maximum values for employer-provided vehicles for tax year 2018. As explained in that notice, higher depreciation limits and other TCJA changes resulted in a considerably higher base value, $50,000, than under previous law. This amount is adjusted annually for inflation. See TAX in the News January 9, 2019.

The IRS has now released Notice 2019-34 covering the maximum value of employer-provided vehicles first made available for personal use by employees in 2019.

Cents-per-mile valuation rule. Under the cents-per-mile valuation rule, the FMV of the vehicle use is determined by multiplying the number of personal use miles by the standard mileage rate (for 2019, 58¢ per mile). The cents-per-mile valuation rule may be used to determine the taxable fringe benefit only if the FMV of the vehicle on the first date it is made available to the employee does not exceed a specified dollar limit (for 2019, $50,400 for an employer-provided car, truck, or van).

Fleet-average valuation rule. Under the fleet-average valuation rule, an employer with a fleet of 20 or more vehicles (consisting of any combination of passenger automobiles, trucks, or vans) may determine the annual lease value of each vehicle in the fleet as if its FMV were equal to the *average* of the FMVs of all the vehicles in the fleet. The fleet-average valuation rule may only be used to determine the lease value if the FMV of the vehicle on the first date it is made available to the employee does not exceed a specified dollar limit (for 2019, $50,400 for an employer-provided car, truck, or van).

BANKRUPTCY COURT FOLLOWS A DISTRICT COURT RULING; HOLDS ACA SHARED RESPONSIBILITY PAYMENT IS A TAX, NOT A PENALTY

Court case: Cousins v. U.S. (Bankr. E.D. La., No. 18-10739 Section "A" Chapter 13, 4/10/19)

A U.S. Bankruptcy Court for the Eastern District of Louisiana ruled that a taxpayer's $2,085 shared responsibility payment under the ACA individual mandate was a tax rather than a penalty and not dischargeable in bankruptcy. This decision follows a recent U.S. District Court decision which, in turn, had reversed an earlier decision made by this same bankruptcy court. See *U.S. v. Chesteen* in the March 20, 2019 edition of TAX in the News.

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Background

In 2018, debtors John and Allison Cousins filed for relief under Chapter 13 of the U.S. Bankruptcy Code. The Cousins objected to the priority status classification for their $2,085 shared responsibility payment, arguing that the payment was not an IRS priority claim because it is a penalty, not a tax.

Discussion

Certain unsecured claims of the government are entitled to priority status under §507 of the Bankruptcy Code, meaning that the debt cannot be discharged in bankruptcy and remains collectible by the creditor. In this situation, a tax with priority status would be collectible by the IRS.

In *Chesteen*, the debtor argued similarly that the IRC §5000A shared responsibility payment is referred to as a penalty in the tax code and the Bankruptcy Court for the Eastern District of Louisiana agreed. However, a U.S. District Court for the Eastern District of Louisiana reversed the decision, noting that it is the purpose or function of a payment that controls for bankruptcy purposes.

This time, the Bankruptcy Court followed the District Court's reasoning as well as the landmark *National Federation of Independent Business v. Sebelius* case and other cases involving the shared responsibility payment. The Bankruptcy Court stressed that the important factor in characterizing a payment as a penalty is the "lawful-unlawful distinction." Although the word "penalty" appears in the tax code, an individual's decision to make the shared responsibility payment instead of purchasing health insurance is not an unlawful act. The Bankruptcy Court agreed with the findings in *Chesteen* and *National Federation* in that the payment has the characteristics of a tax.

Conclusion

The Bankruptcy Court acknowledged that the shared responsibility payment has characteristics of both an income tax and an excise tax. Although it does not fit "neatly" into either definition, it satisfies the criteria of §507(a)(8) of the Bankruptcy Code in that it is a tax eligible for priority status.

QUESTION OF THE WEEK

Q. Two single clients married in 2018. Each owned a home for several years before they married. After the marriage, one spouse sold her home and moved into the other's home. On their 2018 joint return, they claimed an exclusion, but it was only for $250,000 as he did not meet the ownership or residence requirements. Now they are planning to sell his home some time in 2019 and buy another home together. Will they qualify for an exclusion on their 2019 return for the sale of his home? If so, is the exclusion $250,000 or $500,000?

A. Your clients may claim the §121 exclusion for the residence sale in 2019. The maximum exclusion will be $250,000.

To qualify for the maximum $500,000 exclusion for married couples filing jointly, only one spouse must meet the ownership requirement. However, both spouses must meet the residence requirement. In this situation, while it appears that the ownership requirement has been met, the residence test is an issue because the spouse who moved into the home when the couple married in 2018 has not lived in it for two years. Another issue is that the spouse who moved into the home sold her own home during the two-year "look back" period, so she is not yet eligible for a second exclusion.

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Thus, the couple does not qualify for the $500,000 exclusion. The spouse who is now selling his home would qualify for the maximum $250,000 exclusion if he were single. That is, he meets the ownership, residence, and look-back requirements. See “Finding Your Exclusion Limit” on p. 7 of Pub. 523, *Selling Your Home*.

Your clients can claim a maximum exclusion of $250,000 on their joint return if they sell the home in 2019. If your clients decide to wait until the residence and look-back requirements are met for both of them, they potentially qualify for the full $500,000 exclusion at that time.

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