
QUARTERLY TAX UPDATE: FOLLOW-UP Q&A

Thank you for joining us for another Quarterly Tax Update. As usual, here is our follow-up to the questions and answers for the benefit of all those in attendance. The next Quarterly Tax Update webinar will be on April 21, 2020, at noon. See you then!

Question: *For IRA contributions over age 70 1/2 the IRA to charity limits change. But does it impact how the contributions/charitable donations are treated below those limits?*

Answer: No, only to the extent the deduction would affect their AGI, which would control their charitable contribution deduction limits.

Question: *What is the upper age limit for contributing to SIMPLE IRA for 2019?*

Answer: There is no upper limit, so long as the taxpayer has self-employment income.

Question: *Speaker said unlimited age started 1/1/2020.*

Answer: That's correct. The SECURE Act removed the age limitation for contributions to traditional IRAs starting with the 2020 tax year.

Question: *Are the lifetime caps for the nonbusiness energy property credit per taxpayer or per property?*

Answer: Per taxpayer.

Question: *What kind of property would qualify for the IRC §179 Deduction?*

Answer: That question is too broad to provide a quick answer. You should start by reviewing IRC §179 and the regulations thereunder.

Question: *Where can I see a list of property that qualifies under IRC §179*

Answer: In addition to IRC §179 directly, try IRS Publication 946.

Question: *Page 6 of the outline shows 7.5% applicable to 2019 for medical expense deduction*

Answer: Yes, that is correct. The Further Consolidated Appropriations Act of 2020 reduced the medical expense threshold back down to 7.5%.

Question: *What reporting information is provided regarding cryptocurrency, and who is providing it?*

Answer: There is no mandatory information reporting taxpayers will receive. We must look at the account statements for each of the platforms and probe our clients about their actual transactions to determine whether, and how, those transactions should be reported.

Question: Please repeat the cite for the 2014 cryptocurrency notice

Answer: IRS Notice 2014-21 and Rev. Rul. 2019-24

Question: Does a gift of the property eliminate the solar credit?

Answer: For a business, once you dispose (by gift or otherwise) within five years, you must recapture the credit.

Question: I have a client who was leasing her solar for the past three years. In 2019 she sold her home and she had to buy out the lease as the new owner did not want the lease. Is this considered a purchase for the credit?

Answer: No, it would have to be new property to qualify

Question: Is a solar project considered complete if the solar equipment is installed, but not in use waiting for the city to issue a building permit?

Answer: No, it has to be hooked up to the grid

Question: This is a classic car (appraisal at 350K). Does this change anything? I've heard someone else say it gets limited to 30% -- not sure where this comes into play, but want to make certain I advise my client appropriately since I've never dealt with this type of contribution before and it's a substantial amount.

Answer: It would be 30% if the gift is to a private foundation.

Question: If an individual donates \$5,000 or more of property throughout a year to one or more charities is an appraisal still required?

Answer: Only if it is the same type of property

Question: Are firms issuing 1099's for the IRA distribution required to reduce the distribution amount for the amounts sent to a charity?

Answer: No, the 1099-R shows full distribution, there is no special code for QCDs. You must coordinate with your client and their financial advisor to know which distributions were sent directly to charity.

Question: IRA-to-charity: IRS has consistently audited client who does this each year. There needs to be a form issued or a box on 1099-R that verifies this. Any progress in this area?

Answer: Put "QCD" next to the taxable distribution line to tell IRS that is what is causing the mismatch. You are likely not preparing the 1040 correctly and are triggering CP2000 notices. And no, we don't believe the IRS has any plans to change the 1099-R reporting requirements.

Question: *Can a QCD be made from an inherited IRA?*

Answer: No.

Question: *Do you have a citation for the recapture of the credit if gifted? Also if the credit occurs during the year of the gift is there an ordering? The gift done in June and credit claimed on return for the year?*

Answer: IRC §50.

Question: *Can a taxpayer who is currently paying on a student loan contribute currently to a 529 plan and then later use that 529 account to pay the student loan?*

Answer: Yes.

Question: *Can a QCD distribution check be in the charity's name (fbo "Charity") but personally received by taxpayer for handing to the charity*

Answer: I have heard from several practitioners who have this happen. It does not seem to follow the letter of the law, but I know it does happen. I think the saving grace is that the check is in the name of the charity.

Question: *Does the RMD requirement of 10 year payout apply to inherited Roth IRAs?*

Answer: Yes.

Question: *I can imagine people forgetting to take distributions from inherited IRA by the end of the 10th year. What is the penalty for not taking distribution?*

Answer: 50% of the amount that should have been distributed.

Question: *If a person dies in the 10th year after inheriting what happens to the IRA balance? Can it be inherited?*

Answer: It would be inherited by the second decedent's beneficiaries.

Question: *What if the taxpayer is in the highest bracket and expected to be for all years. Should they defer the IRA distributions until year 10?*

Answer: That would be up to them. But they could.

Question: *Can the 72 year old worker still put money into the spouse IRA if enough wages?*

Answer: Yes.

Question: *The SECURE Act only applies to IRA's and not 401(k), 403(b) or 457 plans?*

Answer: For which provisions

Question: *The 10 year rule of distributions?*

Answer: I think your question is if they must be distributed in 10 years when inherited. If so, the answer is yes.

Question: *IRA funds used to purchase a QLAC are removed from the taxpayer's RMD calculation.*

Answer: Yes.

Question: *What if the client pays the fee in one year to hold his spot but doesn't move in until a year or two later? Deduct in year paid based on letter from community?*

Answer: Does that deposit guarantee them lifetime medical care? If not, then it wouldn't be deductible.

Question: *Does CA treat this life lime gift exclusions the same as FEDS?*

Answer: California does not have an estate or gift tax.

Question: *The truckers have won their case as of today*

Answer: There is an injunction in place until the case is decided. The win last week extended the emergency injunction until the case is fully decided.

Question: *What are the risks/potential penalties a tax preparer may face relating to classification of workers? We are not advising the client re classification but helping with preparation of 1099s and payroll tax returns, and income tax returns based on what they tell us.*

Answer: I would include a statement in your engagement letter that says "I do not give legal advice on the classification of workers. If you have questions on these issues seek the advice of a labor law attorney." The EDD has not answer the question of whether practitioner will be penalized for preparing returns if they know workers are misclassified.

Question: *So if an independent contractor for Federal purposes is a W-2 for California, then how do you account for the difference between the 1099 and the W-2 on the tax return?*

Answer: The W-2 shows only state wages. The 1099 reports the income for federal purposes.

Question: *Have musicians filed a lawsuit yet?*

Answer: No.

Question: *AB5 California income tax adjustments on schedule CA will be applicable for 2020 tax year or 2019?*

Answer: 2020

Question: *It was my understanding this does not apply until 2020.*

Answer: That is correct

Question: *Do stage managers and production designers for nonprofit theatres qualify for arts exclusion from AB5?*

Answer: We don't have definitive guidance on this. I don't know if they meet the definition of fine arts. I would recommend contacting a labor law attorney.

Question: *Would disclosing partner's basis that was done incorrectly require reporting on 8082 or would amending be appropriate?*

Answer: You would file the 8082.

Question: *When using Schedule CA to adjust for state W-2 issued to gig worker: would we not use net Schedule C income? That is, all related expenses accounted for in net?*

Answer: You would back out the net Sch C income reported on the 1040. You add in all of the earnings as wages, and then take deductions as Sch A deductions.

Question: *Employers that already have 401(k) plans in place, is there any benefit for them?*

Answer: We haven't done analysis on that yet.

Question: *Related to centralized partnership audit regime, is a partnership not eligible to elect out of the partnership regime if it has a partner that is itself a partnership, a disregarded entity, or a grantor trust?*

Answer: Yes, that is correct.

Question: *As far as you know, has the IRS come out with any guidance re electronic signatures on POAs? in the Dec. Spidell training, it was mentioned that they were expected to come out with guidance by 1/1?*

Answer: We have not received any additional guidance.

Question: *To be clear, the net Schedule C income would be backed out on Schedule CA, and add total W-2 wages-- assume this is same as Federal 1099?*

Answer: Yes.

Question: *Under the new IRA contributions changes, Can a person contribute to IRA until before death?*

Answer: Yes, as long as they have earned income.

Question: *Former CA residents move out of the country to a home they own in Central America.. They rent their CA former primary residence under a year-term lease subject to renewals. They also have a rental property in CA (has been a rental for over 5 years). Since they've left CA, they won't be subjected to the CA health insurance mandate in 2020, correct? They will still have to file a CA non-resident return for 2020.*

Answer: Correct, no health insurance required because they are out of country. They will be required to file a 540NR to report the CA income.

Question: *Assuming it is a multi-partner LLC, when the solar credit for business reduces the asset, what is the off-setting debit account? Is it the equity account?*

Answer: Yes, I believe it would be the equity account. In your case, each member's account based on their ownership percentage.

Question: *What are the risks/potential penalties a tax preparer may face relating to classification of workers? We are not advising the client re classification but helping with preparation of 1099's and payroll tax returns, and income tax returns based on info they give us (payments made to these independent contractors/wages paid to these employees as determined by the client).*

Answer: The penalties are \$5,000 to \$15,000 for each violation. California law provides that any advisor, including a CPA, EA, or other tax professional, who advises a client to treat workers as independent contractors can be held liable for the same penalties as the employer.

Question: *For a client who has made a section 754 adjustment outside of the partnership because the partnership would not make the adjustment....the individual now tells the partnership what to use as basis and provides annual depreciation reductions?*

Answer: The section 754 election must be made by the partnership. It's a partnership election.

Question: *Any thoughts about partnership responsibility to secure basis adjustment information in the event the partnership interest was inherited?*

Answer: If the partnership makes the 754 election, then it must calculate any basis adjustments. The burden is on the partnership.

Question: *RE: IRS preparer due diligence audits - is the 25 returns, 25 with the 8867 required or any 25 returns. Asked another way: if I prepare 10 returns with the 8867 am I subject to these audits?*

Answer: If you only prepare 10 returns with 8867s, then we don't believe the IRS will bother with you.

Question: *Do the inherited "IRA" rules apply to the deceased's INHERITED 401(K) distribution?*

Answer: Yes, they will.

Question: *Regarding AB5 and professional musicians - Does a band that has one member receive payment from the venues and then disburses the agreed upon amount to the other musicians become an employer, or is there a way to still be considered independent contractors. All musicians have been receiving 1099s and file a Schedule C.*

Answer: I think you need to look at the substance of the transaction. Based on your description, I don't believe the other band members become employees of the one band member receiving payment from the venue.

Question: *If an employee (W2) also receives a 1099 from the same employer in 2019 and has been for more than 5 years and filed Schedule C will that employee lose the ability to file a state Schedule C but can file a federal Schedule C. It seems that the unreimbursed Schedule C expenses can be a State employee Schedule A expense rather or am I just confused.*

Answer: If an employer is giving their employee both a W-2 and a 1099, then it's possible they are trying to fudge the rules to begin with.

Question: *I was hoping to hear more about the Office of Tax Appeals decision In the Matter of the Appeal of Blair S. Bindley and the work product doctrine. As you can see, we are a CPA firm in Utah but do prepare several business and individual returns for people in California. All services are performed in Utah and we have not physical connections to California. We were wondering if the FTB may at some point, try to come after out-of-state CPA firms preparing tax returns for California residents and non-residents. Also thinking of several Utah residents who have K-1s with income apportioned to California. Seems like California would try to argue part of our income from these returns is California source.*

Answer: We don't believe the FTB is looking to apportion your firm income to California.