A court looks at three requirements to determine whether an activity is a trade or business: (1) the taxpayer undertook the activity intending to earn profit; (2) the taxpayer is regularly and actively involved in the activity; and (3) the activity has actually commenced.[7] Failing to meet any one of these three requirements is dispositive that the taxpayer was not engaged in a trade or business.

For regular and active involvement to give rise to a trade or business, (item (2) above) the taxpayer must show extensive business activity over a substantial period. Sporadic activities, hobbies, and amusement diversions are not enough to establish a trade or business. When determining whether a taxpayer's involvement is regular and active, the courts consider whether the taxpayer devoted time to another job.[8]

In *Wegener*,[9] the court found that the taxpayer did not regularly and actively participate in the cocoa farming operations but merely invested in the farms in exchange for a portion of the farmers' assets and profits. Thus, the court found that the taxpayer's involvement was limited to providing funding for the farms.

In addition, the court noted that the taxpayer claimed that most of the funding was provided as loans to the farmers. The court held that loans are not a deductible business expense, even if the taxpayer had established that the taxpayer regularly and actively participated in the farming operations.[10]

Production of Income

Under I.R.C. § 212(1), a deduction is allowed for ordinary and necessary expenses incurred in the production of income. The cases agree that a taxpayer must establish that the activity is engaged in with the intent to make a profit. The determination of intent to make a profit is made under I.R.C. § 183 and the nine elements provided in the regulations:[11] (1) the manner in which the taxpayer carried on the activity, (2) the taxpayer's expertise, (3) the time and effort that the taxpayer expended in carrying on the activity, (4) the expectation that assets used in the activity may appreciate in value, (5) the taxpayer's success in carrying on other similar or dissimilar activities, (6) the activity's history of income or loss, (7) the amount of profit, if any, (8) the taxpayer's financial status, and (9) any elements of personal pleasure or recreation involved.

In *Wegener*,[12] the court held that the taxpayer's involvement in the cocoa farms was not for the purpose of making a profit because (1) the activity was carried on primarily through e-mails and online chats and the taxpayer did not provide any written substantiation for the expenses; (2) the taxpayer had no expertise in cocoa farming; (3) the taxpayer spent a limited amount of time on the activity, given the taxpayer's full time employment; (4) the taxpayer provided no evidence that the property of the farms would appreciate in value; (5) the activity did not produce any profits; (6) the activity produced only losses; (7) the losses from the activity offset the taxpayer's income from other sources; and (8) the taxpayer received personal pleasure from working with the Ghanaian farmers.

Conclusion

Although the *Wegener* case involved participation with farmers in another country, the same rules apply to similar participation in farms in this country in that mere investors in farms will find it difficult to deduct the costs of such investments without active and regular participation in the farming operation.

ENDNOTES

[1] I.R.C. § 162(a).

[2] I.R.C. § 212(1).

[3] Commissioner v. Tellier, 383 U.S. 687 (1996); Deputy v. du Pont, 308 U.S. 488 (1940).

[4] T.C. Memo. 2019-98.

[5] Commissioner v. Groetzinger, 480 U.S. 23 (1987).

[6] See Whipple v. Comm'r, 373 U.S. 193 (1963); Hatcher v. Comm'r, T.C. Memo. 2016-188.

[7] Jafarpour v. Comm'r, T.C. Memo. 2012-165.

[8] Jafarpour v. Comm'r, T.C. Memo. 2012-165.

[9] T.C. Memo. 2019-98.

[10] *See, e.g.*, Herrick v. Comm'r, 63 T.C. 562 (1975); Canelo v. Comm'r, 53 T.C. 217 (1969), *aff'd per curiam*, 447 F.2d 484 (9th Cir. 1971).

[11] Treas. Reg. § 1.183(a). See Harl and Achenbach, *Agricultural Law*, § 30.06 (2019).

[12] T.C. Memo. 2019-98.

CASES, RULINGS, REGULATIONS AND STATUTES

BANKRUPTCY

GENERAL

EXEMPTIONS

IRA. The debtor filed for Chapter 7 and one of the unsecured claims was for an unpaid loan. The debtor's estate included three IRAs, a I.R.C. § 401(k) pension and a distribution from an IRA. The debtor claimed an exemption under O.C.G.A. § 44-13-100(a)(2)(E) for the first three IRAs, a contributory IRA, a Roth conversion IRA and a contributory Roth IRA. The debtor claimed an exemption under O.C.G.A. § 44-13-100(a)(2.1) for the pension plan and IRA distribution. O.C.G.A. § 44-13-100(a)(2.1) allows a debtor to exempt the aggregate interest in any funds or property held on behalf of the debtor, but not yet distributed to the debtor, under an "individual retirement account within the meaning of Title 26 U.S.C. [§] 408." The court held that the contributory IRA and the pension plan were eligible for the

exemption under the Georgia exemption. The court found, however, that the funds in the Roth IRAs and the distribution from the IRA were subject to the restriction in the Georgia exemption that the funds be necessary for the support of the debtor. The court found that the debtor had more than enough income for the debtor's and spouse's support; therefore, the Roth IRAs and IRA distribution were not eligible for the exemption. ***In re*** **Hoffman, 2019 Bankr. LEXIS 2308 (Bankr. N.D. Ga. 2019)**.

FEDERAL ESTATE AND GIFT TAXATION

IRA. The decedent had established an IRA and at the time of the decedent's death, the IRA did not have a designated beneficiary. The decedent died intestate. The custodian of the IRA provided that if no beneficiary was designated for the IRA, the account balance of the IRA remaining at the decedent's death is payable to the decedent's estate. As provided for under the relevant state law, the surviving spouse of the decedent, is the sole heir to the decedent's estate. The surviving spouse is also the sole administrator of the estate and intends to distribute the IRA to the estate. As administrator of the decedent's estate, the spouse will pay the proceeds of the IRA to the spouse. Within 60 days of receipt, the spouse will roll over the proceeds of the IRA into one or more IRAs in the spouse's own name. I.R.C. § 408(d)(1) provides that, except as otherwise provided in I.R.C. § 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under I.R.C. § 72. I.R.C. § 408(d)(3)(A) provides that I.R.C. § 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if: (1) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or (2) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to I.R.C. § 408(d)(3)). I.R.C. § 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Treas. Reg. § 1.408-8, Q&A-5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. The IRS ruled that, because the decedent's interest in the IRA passed to the estate, the surviving spouse would not generally be permitted to treat the IRA as the spouse's own, because the spouse was not named the beneficiary of the decedent's IRA. However, because the spouse is the administrator and sole heir to the decedent's estate, for purposes of applying I.R.C. § 408(d)(3)(A) to the IRA, the spouse is effectively the individual for whose benefit the account is maintained. Therefore, if the spouse receives a distribution of the proceeds of the IRA, the spouse may roll over the distribution into the spouse's own IRA. **Ltr. Rul. 201931006, May 7, 2019**.

TRUSTS. The IRS has issued a draft of Form 1041, *U.S. Income Tax Return for Estates and Trusts*, for 2019.

FEDERAL FARM PROGRAMS

COWS. The APHIS has announced that it has added Scotland to the list of regions classified as having "controlled risk" of bovine spongiform encephalopathy (BSE) and have removed Scotland from the list of regions considered negligible risk for BSE. This change occurred because of the confirmation of classical C-type BSE in an indigenous cow in Scotland. **84 Fed. Reg. 38589 (Aug. 7, 2019)**.

TRADE MITIGATION PROGRAM. The CCC has adopted as final regulations revising the regulations to implement the Trade Mitigation Program (TMP) for producers of 2019 agricultural commodities that have been significantly impacted by trade actions of foreign governments resulting in the loss of exports. As part of TMP, the Market Facilitation Program (MFP) regulation specifies the eligibility requirements, payment calculations, and application procedures. The details for specific commodities and the relevant application start dates will be announced in applicable notices of funds availability. As part of TMP, the Expanded Domestic Commodity Donation Program regulation specifies disposition of surplus commodities through outlets not currently used in existing Food and Nutrition Service programs, the application process, eligibility, and use of grants or cooperative agreements. The details for specific commodities and conditions will be announced in applicable notices of commodity availability. This rule adds new subparts to the TMP regulation to address the 2019 agricultural commodities. **84 Fed. Reg. 36456 (July 29, 2019)**.

FEDERAL INCOME TAXATION

DISASTER LOSSES. On June 14, 2019, the President determined that certain areas in Vermont were eligible for assistance from the government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe storm and flooding which began on April

15, 2019. **FEMA-4445-DR**. On June 18, 2019, the President determined that certain areas in Ohio were eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on May 27, 2019. **FEMA-4447-DR**. On June 20, 2019, the President determined that certain areas in Kansas were eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on April 28, 2019. **FEMA-4449-DR**. On June 20, 2019, the President determined that certain areas in Mississippi were eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on April 13, 2019. **FEMA-4450-DR**. On July 9, 2019, the President determined that certain areas in Missouri were eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on April 29, 2019. **FEMA-4451-DR**. On July 9, 2019, the President determined that certain areas in Oregon were eligible for assistance from the government under the Act as a result of severe storms, landslides and flooding which began on April 21, 2019. **FEMA-4452-DR**. On July 12, 2019, the President determined that certain areas in Oklahoma were eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on April 30, 2019. **FEMA-4453-DR**. Accordingly, taxpayers in these areas may deduct the losses on their 2018 or 2019 federal income tax returns. See I.R.C. § 165(i).

ESTIMATED TAXES. The IRS has announced that it is automatically waiving the estimated tax penalty for the more than 400,000 eligible taxpayers who already filed their 2018 federal income tax returns but did not claim the waiver. The IRS will apply this waiver to tax accounts of all eligible taxpayers, so there is no need to contact the IRS to apply for or request the waiver. Earlier this year, the IRS lowered the usual 90 percent penalty threshold to 80 percent to help taxpayers whose withholding and estimated tax payments fell short of their total 2018 tax liability. The agency also removed the requirement that estimated tax payments be made in four equal installments, as long as they were all made by Jan. 15, 2019. The 90 percent threshold was initially lowered to 85 percent on Jan 16 and further lowered to 80 percent on March 22. The automatic waiver applies to any individual taxpayer who paid at least 80 percent of their total tax liability through federal income tax withholding or quarterly estimated tax payments but did not claim the special waiver available to them when they filed their 2018 return earlier this year. Over the next few months, the IRS will mail copies of Notices CP 21 granting this relief to affected taxpayers. Any eligible taxpayer who already paid the penalty will also receive a refund check about three weeks after their CP21 notice regardless if they requested penalty relief. The agency emphasized that eligible taxpayers who have already filed a 2018 return do not need to request penalty relief, contact the IRS or take any other action to receive this relief. For those yet to file, the IRS urges every eligible taxpayer to claim the waiver on their return. This includes those with tax-filing extensions due to run out on Oct. 15, 2019. The quickest and easiest way is to file electronically and take advantage of the waiver computation built into their tax software package. Those who choose to file on paper can fill out Form 2210 and attach it to their 2018 return. **IR-2019-144**.

The IRS has published information for small business owners and self-employed people, who are usually required to make quarterly estimated tax payments. Taxpayers generally must make estimated tax payments if they expect to owe $1,000 or more when they file their 2019 tax return. Whether or not they expect to owe taxes for 2019, taxpayers may have to pay estimated tax for 2019 if their tax was more than zero in 2018. Wage earners who also have business income can often avoid having to pay estimated tax by asking their employer to withhold more tax from their paychecks. The IRS urges anyone in this situation to do a Paycheck Checkup using the Tax Withholding Estimator on IRS.gov. If the estimator suggests a change, the taxpayer can submit a new Form W-4 to their employer. Aside from business owners and self-employed individuals, people who need to make estimated payments also includes sole proprietors, partners and S corporation shareholders. It also often includes people involved in the sharing economy. Estimated tax requirements are different for farmers and fishermen. Corporations generally must make these payments if they expect to owe $500 or more on their 2019 tax return. Aside from income tax, taxpayers can pay other taxes through estimated tax payments, including self-employment tax and the alternative minimum tax. The final two deadlines for paying 2019 estimated payments are Sept. 16, 2019 and Jan. 15, 2020. Taxpayers can check out these forms for details on how to figure their payments: Form 1040-ES, *Estimated Tax for Individuals*; Form 1120-W, *Estimated Tax for Corporations*. Taxpayers can visit IRS.gov to find options for paying estimated taxes, including Direct Pay from a bank account; paying by credit or debit card or the Electronic Federal Tax Payment System; mailing a check or money order to the IRS; paying cash at a retail partner. Anyone who pays too little tax through withholding, estimated tax payments, or a combination of the two may owe a penalty. In some cases, the penalty may apply if their estimated tax payments are late. The penalty may apply even if the taxpayer is due a refund. For tax year 2019, the penalty generally applies to anyone who pays less than 90 percent of the tax reported on their 2019 tax return. **Tax Reform Tax Tip 2019-109**.

FOREIGN ACCOUNTS. The taxpayer owned two financial accounts in Canada in 2007 through 2009 for which the taxpayer failed to report to the Treasury Department. The IRS assessed $10,000 for each account for each year no report was filed, plus late payment penalties and interest. The IRS sought summary judgment to enforce the assessments. The taxpayer argued that summary judgment was improper because there remained issues of fact as to whether the affirmative defense of reasonable cause excused the reporting violations. 31 U.S.C. § 5314(a) requires United States citizens to keep records, file reports, or both, when they maintain a relation with a foreign financial agency. 31 C.F.R. § 103.24 requires any United States citizen having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country to report certain details about the account to

the Treasury Department using the Report of Foreign Bank and Financial Account (FBAR). The report must be made by filing a form with the Treasury Department no later than June 30 of each calendar year with respect to any foreign financial accounts that exceeded $10,000 during the previous calendar year. See 31 C.F.R. § 103.27(c). When a violation for failure to report is non-willful, 31 U.S.C. § 5321 provides that the Secretary may impose a penalty of up to $10,000 per account per year. However, the Secretary may not impose a penalty if "(I) such violation was due to reasonable cause, and (II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported." 31 U.S.C. § 5321(a)(5)(B)(ii). The courts have held that a person can establish reasonable cause by showing they exercised ordinary business care and prudence. The court here found that the taxpayer failed to fully the taxpayer's tax return preparer about the foreign accounts and made no effort to learn about reporting such accounts; thus, the court held that the taxpayer did not exercise ordinary business care and prudence and the penalties were properly assessed. .

HOME OFFICE. The IRS has published information on the the home office deduction and whether they can claim it. The home office deduction is available to both homeowners and renters. There are certain expenses taxpayers can deduct, including mortgage interest, insurance, utilities, repairs, maintenance, depreciation and rent. Taxpayers must meet specific requirements to claim home expenses as a deduction. Even then, the deductible amount of these types of expenses may be limited. The term "home" for purposes of this deduction includes a house, apartment, condominium, mobile home, boat or similar property and includes structures on the property such as an unattached garage, studio, barn or greenhouse. The term "home" does not include any part of the taxpayer's property used exclusively as a hotel, motel, inn or similar business. There are two basic requirements for the taxpayer's home to qualify as a deduction: (1) There must be exclusive use of a portion of the home for conducting business on a regularly basis. For example, a taxpayer who uses an extra room to run a business can take a home office deduction only for that extra room so long as it is used both regularly and exclusively in the business. (2) The home must be the taxpayer's principal place of business. A taxpayer can also meet this requirement if administrative or management activities are conducted at the home and there is no other location to perform these duties. Therefore, someone who conducts business outside of their home, but also uses their home to conduct business may still qualify for a home office deduction. Expenses that relate to a separate structure not attached to the home will qualify for a home office deduction only if the structure is used exclusively and regularly for business. Taxpayers who qualify may choose one of two methods to calculate their home office expense deduction: (1) The simplified option has a rate of $5 a square foot for business use of the home. The maximum size for this option is 300 square feet. The maximum deduction under this method is $1,500. (2) When using the regular method, deductions for a home office are based on the percentage of the home devoted to business use. Taxpayers who use a whole room or part of a room for conducting their business need to figure out the percentage of the home used for business activities to deduct indirect expenses. Direct expenses are deducted in full. **Tax Tip 2019-104**.

INFORMATION RETURNS. The IRS has issued a revenue procedure providing the requirements of the IRS and the Social Security Administration regarding the preparation and use of substitute forms for Form W-2, *Wage and Tax Statement*, and Form W-3, *Transmittal of Wage and Tax Statements*, for wages paid during the 2019 calendar year. For purposes of the revenue procedure, substitute Form W-2 (Copy A) and substitute Form W-3 are forms that are not printed by the IRS. Copy A or any other copies of a substitute Form W-2 or a substitute Form W-3 must conform to the specifications in this revenue procedure to be acceptable to the IRS and the SSA. No IRS office is authorized to allow deviations from this revenue procedure. Preparers also should refer to the 2019 General Instructions for Forms W-2 and W-3 for details on how to complete these forms. **Rev. Proc. 2019-28, I.R.B. 2019-32, 596**.

IRS has posted a second draft of 2020 Form W-4, *Employee's Withholding Certificate*. IRS has also announced that the new form does not change the computation of withholding contained in the first draft and that there will be no substantive changes when the final version of the form is published. IRS has also provided information regarding Publication 15-T, *Federal Income Tax Withholding Methods*. **RIA Checkpoint, Aug. 15, 2019**.

LATE-FILING PENALTY. The taxpayers, husband and wife, hired a professional tax return preparer to file their 2014 return but were out of the country at the filing deadline. The taxpayers instructed the return preparer to file for the automatic extension. The preparer testified that the electronic filing of Form 4868 was intended to be sent on April 15, 2015 but the preparer failed to hit "send" to complete the filing. The error was not discovered until October 15, 2015. The IRS assessed a late-filing penalty and rejected the taxpayers' request for abatement of the penalty. Under *United States v. Boyle, 469 U.S. 241 (1985)*, a taxpayer's reliance on a professional third party for tax filing is not reasonable cause for abatement of late penalties should the third party fail to file timely. The taxpayers argued that *Boyle* is insufficient in a time when returns are filed electronically. The court noted that the *Boyle* decision was based upon the finding that a taxpayer is ultimately capable and therefore responsible for filing a return. Even though some tax return preparers are now required to file only e-file returns, the taxpayer still has the ability to file e-file or paper returns; therefore, the basic reasoning behind *Boyle* remains valid today. In addition, the court found that the taxpayers did not exercise reasonable prudence in failing to check with the return preparer for evidence that the extension was actually filed. The court held that the late-filing penalty was properly assessed. **Intress v. United States, 2019 U.S. Dist. LEXIS 130504 (M.D. Tenn. 2019)**.

PENSION PLANS. For plans beginning in August 2019 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 2.57 percent. The 30-year Treasury weighted

average is 2.92 percent, and the 90 percent to 105 percent permissible range is 2.63 percent to 3.06 percent. The 24-month average corporate bond segment rates for August 2019, *without adjustment* by the 25-year average segment rates are: 2.78 percent for the first segment; 3.94 percent for the second segment; and 4.41 percent for the third segment. The 24-month average corporate bond segment rates for August 2019, taking into account the 25-year average segment rates, are: 3.74 percent for the first segment; 5.35 percent for the second segment; and 6.11 percent for the third segment. **Notice 2019-48, I.R.B. 2019-36**.

An employer was the plan administrator of Plan, a qualified retirement plan under I.R.C. § 401(a) that does not include a qualified Roth contribution program under I.R.C. § 402A(b). A distribution of $900 is required to be made from the Plan to an individual in 2019. The individual has no investment in the contract within the meaning of I.R.C. § 72 with respect to a Plan benefit, has a calendar year taxable year, and has never made a withholding election with respect to the Plan benefit. The employer makes the required $900 distribution, a designated distribution within the meaning of I.R.C. § 3405(e)(1), by withholding tax as required under I.R.C. § 3405(d)(2) and mailing a check for the remainder to the individual. Although the individual receives the check and could cash it in 2019, the individual does not do so. Also, the individual does not make a rollover contribution with respect to any portion of the designated distribution, and no other exception to income inclusion under I.R.C. § 402(a) applies. I.R.C. § 402(a) provides that, except as otherwise provided in I.R.C. § 402 (for example, a rollover under I.R.C. § 402(c)(1)), any amount actually distributed to a distributee by an employees' trust described in I.R.C. § 401(a) which is exempt from tax under I.R.C. § 501(a) is taxable to the distributee, in the taxable year of the distributee in which distributed, under I.R.C. § 72. Under I.R.C. § 402(a), the amount of the designated distribution is actually distributed from the Plan to the individual in 2019. The IRS ruled that, because the individual has no investment in the contract within the meaning of Section 72 and no exception to Section 402(a) applies, the amount of the designated distribution is includible in the individual's gross income in 2019. The IRS also ruled that the individual's failure to cash in 2019 the distribution check received in 2019 does not permit the individual to exclude the amount of the designated distribution from gross income in that year under Section 402(a). I.R.C. § 3405 provides federal income tax withholding rules with respect to designated distributions as defined under I.R.C. § 3405(e)(1). With respect to specified plans, including a plan described in I.R.C. § 401(a), I.R.C. § 3405(d)(2) provides that the plan administrator shall withhold and be liable for payment of the tax required to be withheld under I.R.C. § 3405 unless the plan administrator directs the payor to withhold the tax and provides the payor with such information as the Secretary may require by regulations. The employer, as the plan administrator of Plan X, withheld tax as required under Section 3405(d)(2) from the individual's designated distribution. Thus, the IRS ruled, the individual's failure to cash the distribution check does not alter the employer's obligations with respect to withholding of tax, and liability for payment of that tax, under Section 3405. I.R.C. § 6047(d) provides that an employer maintaining a plan from which designated distributions (as defined in I.R.C. § 3405(e)(1)) may be made, or the plan administrator of that plan, to make returns and reports regarding the plan. However, no such return or report may be required with respect to distributions to any person during any year unless the distributions aggregate $10 or more. Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc*., is used to satisfy the reporting obligations under I.R.C. § 6047(d). Under the 2019 instructions to Form 1099 R, a Form 1099-R must be filed for each person to whom a designated distribution of $10 or more has been made, and the total amount of the distribution (before income tax or other withholding) must be reported in Box 1. In addition, under those instructions, the taxable amount of the distribution (including income tax withheld) must be reported in Box 2a, and the federal income tax withheld must be reported in Box 4. The IRS ruled that the Plan distribution to the individual, including both the amount of the check and the amount withheld, is a designated distribution under I.R.C. § 3405(e)(1) that exceeds the reporting threshold. Accordingly, the employer is required to report that designated distribution in Box 1 of a Form 1099-R for 2019. Because the individual has no investment in the contract within the meaning of Section 72 and no exception to income inclusion under Section 402(a) applies, the employer must report the same amount in Box 2a as in Box 1 and must report the federal income tax withheld in Box 4. The individual's failure to cash the distribution check does not alter the employer's obligations with respect to reporting under I.R.C. § 6047(d). **Rev. Rul. 2019-19, I.R.B. 2019-36**.

REFUNDS. In September 2010, the taxpayer filed for bankruptcy and the case was completed in July 2016. On April 13, 2015, the taxpayer filed an amended return for 2012 seeking a refund. The IRS denied the taxpayer's request. In June 2016, the taxpayer filed a second but identical amended return for 2012, which was also denied. The taxpayer filed suit to recover the refund and the IRS sought dismissal of the suit as untimely under the statute of limitations for refunds. The taxpayer argued that the bankruptcy case tolled the statute of limitations. The taxpayer cited I.R.C. § 65039(h); however, the court held that Section 6503(h) applies only to the period of time in which the United States can collect a tax against a taxpayer/debtor; therefore, the taxpayer's bankruptcy case did not toll a taxpayer refund request limitation period. I.R.C. § 6532(a)(1) provides that a suit for the recovery of any internal revenue tax, penalty, or other sum must be commenced before the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates. The court noted that Section 6532 does not contain any provision for tolling the refund limitations period; therefore the court held that the taxpayer's bankruptcy case did not extend the limitations period for filing a refund suirt. The IRS argued that only the initial amended return and its denial applies to determine the start of the limitations period. The court agreed, noting that the second amended return did not restart the limitations period because the return was nearly identical to the first amended return. In addition, under I.R.C. § 6511(a) any "[c]laim for credit or refund of an overpayment of

any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed." The court noted that, even if the limitations period restarted after the second amended return and denial, the taxpayer filed the present suit more than three years after the amended return. **Dixon v. United States, 2019 U.S. Dist. LEXIS 124113 (N.D. Ind. 2019)**.

RETURNS. The IRS has announced that it has issued drafts of Schedules A and B (Form 1040) and their instructions. The 2019 draft Schedule A has been updated to reflect that medical expenses are deductible only if they are greater than 10 percent of adjusted gross income. The draft instructions for Schedule A reflect the charitable deduction limitation that applies if a taxpayer received a state or local tax credit in return for a charitable contribution. **See IRS.gov**.

The IRS reminds taxpayers with expiring individual taxpayer identification numbers (ITINs) that they should renew their number now. There are nearly 2 million ITINs set to expire at the end of 2019. Taxpayers with an expiring number should renew before the end of this year to help avoid unnecessary delays related to their tax refunds next year. ITINs are used by taxpayers required to file or pay taxes, but who aren't eligible for a Social Security number. These ITINs expire on Dec. 31, 2019: (1) those not used on a federal tax return at least once in the last three consecutive years; (2) ITINs with the middle digits 83, 84, 85 or 86, 87 need to be renewed, even if it was used it in the last three years. Taxpayers whose ITIN is expiring and who expect to have a filing requirement in 2020 must renew their number. Others do not need to take any action. The IRS is sending notices to affected taxpayers. This is a CP48 Notice. Taxpayers who receive the notice after renewing their ITIN do not need to take further action unless another family member is affected. ITINs with middle digits of 70 through 82 have previously expired. Taxpayers with these ITINs can still renew at any time. Those who receive a renewal letter from the IRS can renew the family's ITINs together. They can do so even if family members have an ITIN with middle digits that are not expiring. Family members include the tax filer, spouse and any dependents. To renew an ITIN, a taxpayer must complete a Form W-7 and submit all required documentation. They do not need to attach a tax return. However, taxpayers must note why they need an ITIN on the W-7. There are three ways taxpayers submit the renewal application: mail the form to the IRS address listed on the Form W-7 instructions; work with a Certified Acceptance Agent authorized by the IRS to help taxpayers; or make an appointment at an IRS Taxpayer Assistance Center to have each applicant's identity authenticated in person. **IRS Tax Tip 2019-110**.

TRAVEL EXPENSES. The IRS has published information about deductions for automobile expenses. *Business owners and self-employed individuals*. Individuals who own a business or are self-employed and use their vehicle for business may deduct car expenses on their tax return. If a taxpayer uses the car for both business and personal purposes, the expenses must be allocated to each purpose. The deduction is based on the portion of mileage used for business. There are two methods for figuring car expenses: (1) *Using actual expenses*, including depreciation, lease payments, gas and oil, tires, repairs and tune-ups, insurance, and registration fees. (2) *Using the standard mileage rate*: Taxpayers who want to use the standard mileage rate for a car they own must choose to use this method in the first year the car is available for use in their business. Taxpayers who want to use the standard mileage rate for a car they lease must use it for the entire lease period. The standard mileage rate for 2018 is 54.5 cents per mile. For 2019, it's 58 cents. There are some strict recordkeeping requirements for both methods. *Employees*. Employees who use their car for work can no longer take an employee business expense deduction as part of their miscellaneous itemized deductions reported on Schedule A. Employees cannot deduct this cost even if their employer does not reimburse the employee for using their own car. This is for tax years after December 2017. The Tax Cuts and Jobs Act suspended miscellaneous itemized deductions subject to the 2% floor. However, certain taxpayers may still deduct unreimbursed employee travel expenses, this includes Armed Forces reservists, qualified performing artists, and fee-basis state or local government officials. **Tax Reform Tax Tip 2019-100**.

SAFE HARBOR INTEREST RATES
SEPTEMBER 2019

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	1.85	1.84	1.84	1.83
110 percent AFR	2.03	2.02	2.01	2.01
120 percent AFR	2.22	2.21	2.20	2.20
		Mid-term		
AFR	1.78	1.77	1.77	1.76
110 percent AFR	1.96	1.95	1.95	1.94
120 percent AFR	2.13	2.12	2.11	2.11
		Long-term		
AFR	2.21	2.20	2.19	2.19
110 percent AFR	2.43	2.42	2.41	2.41
120 percent AFR	2.66	2.64	2.63	2.63

Rev. Rul. 2019-20, I.R.B. 2019-36.

VIRTUAL CURRENCY. The IRS has published information about the Virtual Currency Compliance under which the IRS has begun sending letters to taxpayers with virtual currency transactions that potentially failed to report income and pay the resulting tax from virtual currency transactions or did not report their transactions properly. The IRS started sending the educational letters to taxpayers in July. By the end of August, more than 10,000 taxpayers will receive these letters. The names of these taxpayers were obtained through various ongoing IRS compliance efforts. For taxpayers receiving an educational letter, there are three variations: Letter 6173, Letter 6174 or Letter 6174-A, all three versions strive to help taxpayers understand their tax and filing obligations and how to correct past errors. Taxpayers are pointed to appropriate information on IRS.gov, including which forms and schedules to use and where to send them. The IRS will remain actively engaged in addressing non-compliance related to virtual currency transactions through a variety of efforts, ranging from taxpayer education to audits to criminal investigations. *Notice 2014-21, I.R.B. 2014-16, 938* states that virtual currency is property for federal tax purposes and provides guidance on how general federal tax principles apply to virtual currency transactions. **IR-2019-132**.

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