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This newsletter is prepared and published by the Tax Section of The Florida Bar.

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IN THIS ISSUE:

Cover Photo: (David Steiner). Overlooking the dock at The Shore Restaurant (Longboat Key). Visual artist David Steiner resides in Sarasota, Florida. For the past 16 years, David and his wife, Tre, have built and developed the State of the Arts Gallery (www.sarasotafineart.com). David's primary focus has been contemporary painting but he has recently expanded into the world of photography.

The Shore Restaurant is locally owned and operated by John Mays and Tom Leonard. Check out this local favorite with locations on Longboat Key and St. Armands Circle on Lido Key, or at www.dineshore.com.

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Chair's Message

By D. Michael O'Leary

Chair, Florida Bar Tax Section 2020-2021

Dear Tax Section Members:

I am extremely pleased and honored to serve as your Chair for the 2020-2021 year. When I review the names of past Chairs, I am truly humbled to be included in the group that has served as Chair of the Florida Bar Tax Section.

My earliest recollection of attending a Tax Section meeting is in 1996 when my former partner Albert C. O'Neill, Jr. (a truly brilliant tax lawyer and Chair of the Tax Section in 1975-76) was honored as the Gerald T. Hart Outstanding Tax Attorney of the Year. I became involved in the Tax Moot Court program, first as a judge, then as Assistant Chair and finally as the Chair of the Tax Moot Court program. I later became a Director of Section Administration and still later as a Director of the Federal Tax Division. Despite my involvement, I never was "all in" with the Tax Section. Finally, due to conflicts with family matters (I am the father of four children who participated in various activities including baseball, swimming and music), I took a break from the Tax Section in 2008.

At that point, I had to decide whether my Tax Section involvement was at an end or whether I would come back to the Tax Section when I had more time. I decided in 2010 that I would come back and be "all in" so I took advantage of volunteer opportunities and did whatever I could to make myself useful to the leaders of the Tax Section. This was one of the best decisions of my life! I no longer thought about whether or not to attend Tax Section meetings or volunteer – I just did it!

Several former Chairs were instrumental in helping my rising to the position of Chair and I am grateful for their help. Speaking of being grateful, I am grateful for the assistance of our Florida Bar Program Administrator, Leslie Reithmiller, who does an awesome job helping with the details that keep the Section organized and on track.

The Tax Section will continue to provide numerous opportunities to tax lawyers, including speaking opportunities (in-person and ZOOM CLE programs), writing opportunities (including comments to proposed regulations and writing articles for the Tax Section Bulletin and The Florida Bar Journal), programs that help practitioners keep up with new tax developments, networking, fellowship and more.

For the 2020-21 year, we had planned to start with the Organizational Meeting at the Omni Amelia Island Plantation but COVID-19 prevented an in-person meeting. I have so many great memories from past Organizational meetings at Amelia Island so having to cancel this meeting was particularly painful. However, as they say "it is what it is." So from July 1-3, 2020 we had our Organizational Meeting via Zoom. Division and Committee meetings were held on July 1 and 2 and the Directors' meeting was held on July 2. The Ullman Tax Year in Review was held on July 3 in the morning. Harris Bonnette did a super job organizing the Ullman Tax Year in Review and the speakers where great. Particularly memorable was Nate Wadlinger's technology update. One advantage of holding these meetings by Zoom is that attendance was excellent, including 125 attendees out of 178 registrants for the Ullman Tax Year in Review.

This year we presented the Marvin C. Gutter Outstanding Public Service Award to Maria Johnson, Director of the General Tax Administration Program of the Florida Department of Revenue. Maria is a career Department of Revenue employee, working her way up from the field audit staff to become an integral and invaluable member of the Department's leadership team. Maria has been, for many years, a regular supporter of and speaker at tax programs sponsored by the Tax Section, including the State Tax Conference and the National Multistate Tax Symposium.

In addition, I had the great pleasure and honor of announcing that Michael A. Lampert is the recipient of the 2020-2021 Gerald T. Hart Outstanding Tax Attorney. Michael served as Chair of the Tax Section in 2012-13 and has continued to be heavily involved, including speaking most years at the Ullman Tax Year in Review (which he did again this year with a virtual BINGO game as part of his presentation). Michael is a very deserving recipient of this award and is scheduled to be honored at the Fall, 2021 Tax Section meeting in Palm Beach.

Due to the pandemic, this year's Fall meeting will be held virtually from Tuesday, September 22 to Thursday, September 24, 2020. There will also be a virtual CLE program on Friday, September 25, which is being organized by Cristin Keane and Mark Brown. The

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CHAIR'S MESSAGE . . .
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CLE program is entitled Practical Estate Planning in Uncertain Times and will be focused on practical estate planning techniques that you can utilize to help your estate planning clients.

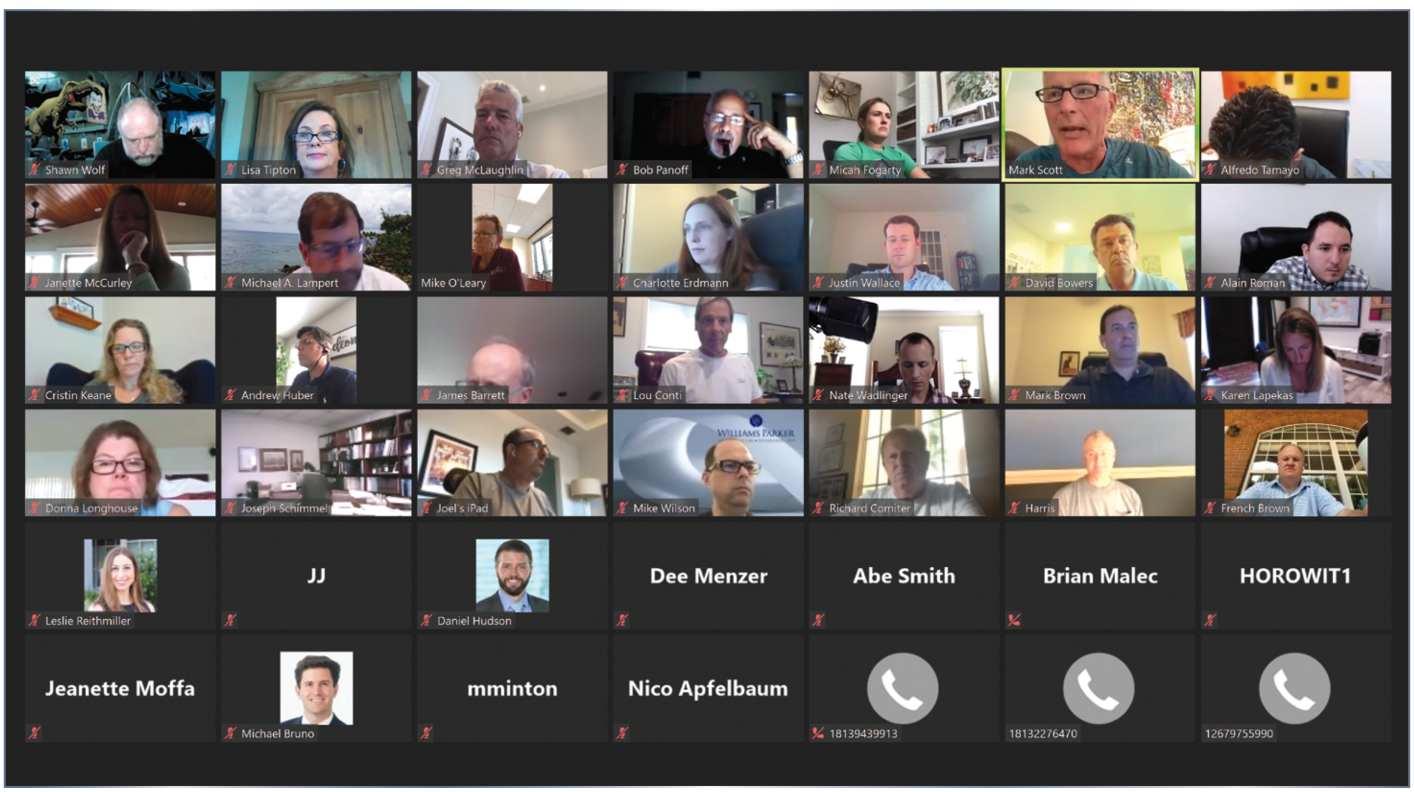
In 2018 the Tax Section developed a long range plan to try to make sure the Tax Section maintains its relevancy and provides maximum value to its members. We will continue to refine the long range plan during this fiscal year.

Our Annual Meeting was originally scheduled to held in Miami, but the location has been changed to Tampa at the Westin Tampa Waterside, and is scheduled from Thursday, April 29- Saturday, May 1, 2021. There will also be a CLE program scheduled for Friday, April 30, which is being organized by Christopher Callahan and Abrahm Smith. The CLE program will be focused on real estate taxation. We will honor Cristin C. Keane as the 2019-2020 Gerald T. Hart Outstanding Tax Attorney of the Year on the evening of Saturday, May 1.

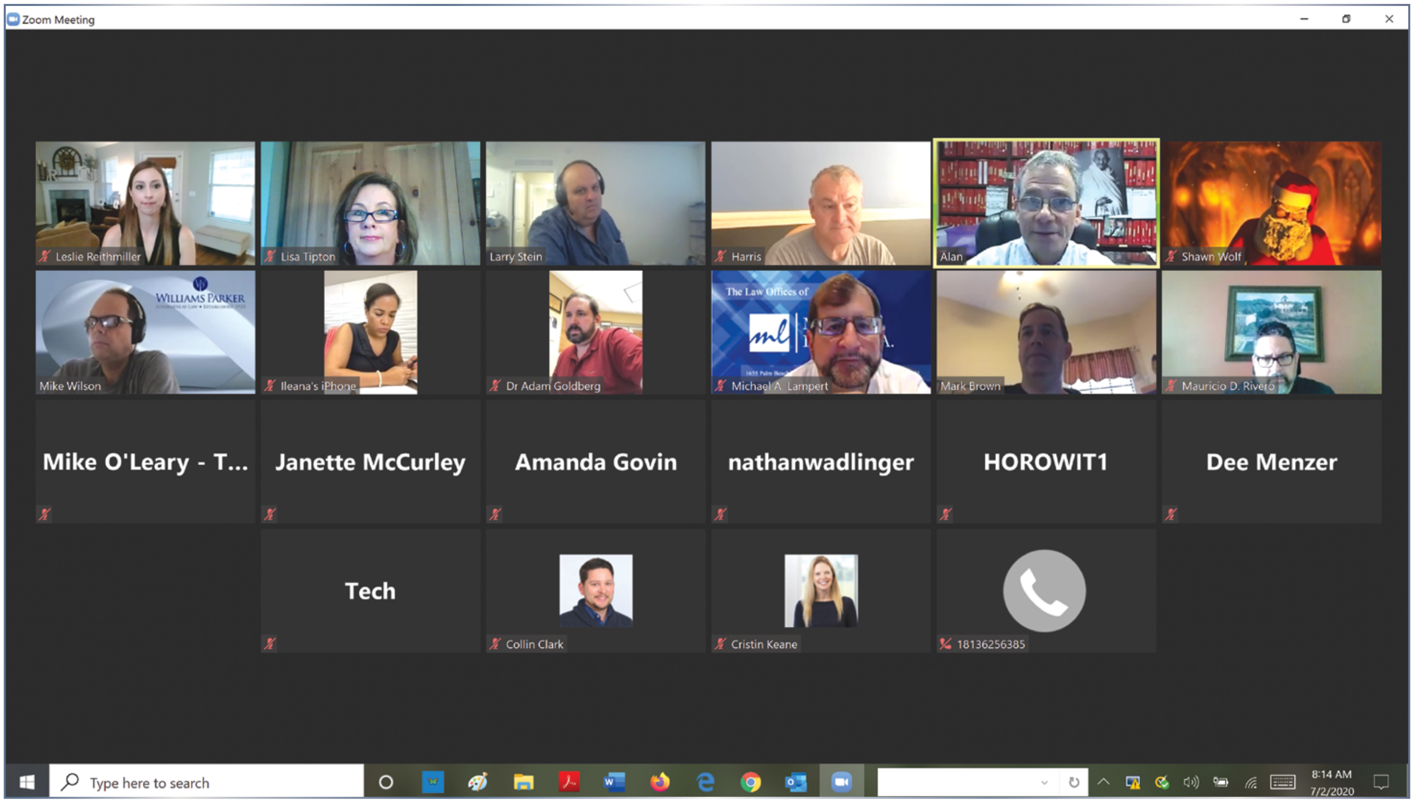
I want to thank all of our sponsors who contribute to the success of the Tax Section and its members. Our sponsors not only provide financial support to the Tax Section, which enables us to provide additional value to our members, but also are available to help our members with services that are needed by clients of Section members. This year's sponsors include our Platinum Sponsor, MPI (Roy Meyers), and Silver Sponsors, Business Valuation Analysts LLC (Tim Bronza), Coral Cables Trust (John Harris), Jones Lowry (Mac Lowry), Kaufman Rossin (Mark Scott), MRW Consulting Group (Luis Rivera), and Alliance Bernstein (Craig Storch).

As you can see, we plan to continue the substantive and important work of the Tax Section while having some fun! If you have any ideas that would benefit our members or would like to become more involved the Tax Section, please let me know. I look forward to seeing you at a meeting or otherwise speaking with you.

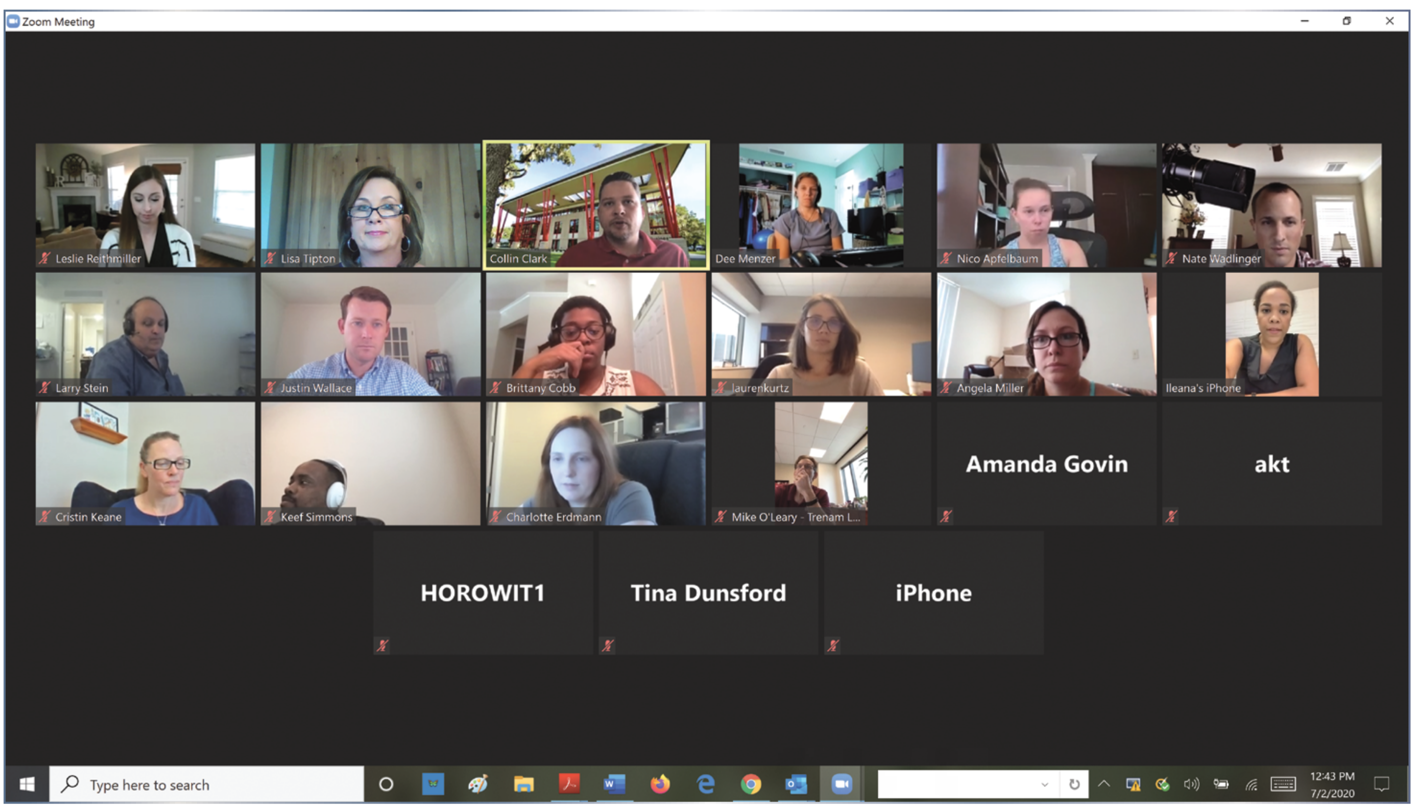
D. Michael O'Leary, Chair



The Tax Section Directors and Assistant Directors met on Thursday, July 2.



Member of the Section's Education Division met to discuss the 20-21 CLE calendar and contingency options for virtual programming amid pandemic concerns.



The New Tax Layers Committee announced the Section's two new Fellows and discussed ways to increase new member engagement.

Chair-Elect's Message

By Harris L. Bonnette, Jr., Jacksonville, Florida
Chair-Elect, Tax Section of the Florida Bar 2020-2021

As I write this message, we are in the middle of a pandemic with plans which seem to change by the minute depending on the changing number of cases of the COVID-19 virus and our Federal and Florida governments' responses to these changes. It is quite a tumultuous time. There are new words in our vocabulary, including "zoom meetings," "social distancing," and "virtual happy hours." During this pandemic Janette McCurley adapted to the change and did a great job in completing her year. Now, Mike O'Leary is likewise having to adapt to these changes. Our Ameilia Island Organizational meeting went very smoothly. Now, it seems we are all trying to come up with interesting backgrounds for our zoom meetings. Alas, I sure do hope this pandemic will end in the not-too-distant future and our lives can somehow get back to the way life was before.

Planning for the 2021 – 2022 year has caused me to reflect on the substantial activities the Tax Section offers to its members. Everything from regularly occurring lunchtime telephone CLEs, opportunities to publish both in the Tax Section Bulletin and the Florida Bar Journal, judging moot court competitions, having a voice in influencing legislation both at the Florida and Federal level, and a platform to provide written comments to the promulgators of regulations that interpret our laws. Not to mention, of course, the opportunities to meet new friends, to spend time with existing friends, to network with colleagues from other parts of Florida and beyond, to become a part of the leadership of the Tax Section, and to just have some fun. Yes, this truly is a great section for which I am proud to be a part.

In keeping with my hope to get back to the way life was before, here is the plan for the 2021 – 2022 year. We will be returning to Amelia Island for our Organizational meeting, complete with family activities, fireworks and the all-important hospitality suites for both the kids and adults. Our meeting will be from Thursday, July 1, 2021, and end with a farewell breakfast on Monday, July 5, 2021. In 2021 the July 4^{th} holiday is observed on Monday, July 5, 2021, so a great long weekend with the time to have a leisurely return home.

Our Fall Meeting will be at The Breakers beginning on Thursday, October 14, 2021, through Saturday, October 16, 2021, and we will use this time together to honor Michael Lampert as the 2019-2020 recipient of the Gerald T. Hart Outstanding Tax Attorney of the Year award. Plans are underway for a CLE that is sure to please with our free time to enjoy the beach, golfing, and, at last count, five swimming pools. Our Annual meeting will be at the Hyatt Regency Coconut Point Resort and Spa in Bonita Springs from Thursday, May 19, 2022, through Saturday, May 21, 2022, where we will again recognize and honor the Gerald T. Hart Outstanding Tax Attorney of the Year. We may not have belly dancers, but it will be a lot of fun nevertheless.

As I continue with the plans for the 2021 – 2022 year, we will have our traditional Ullman Year in Review to keep us up to date on the latest development in many areas of tax law. We will continue with a delegation to Washington, D.C. to maintain our relationships with members of Congress, the Department of Treasury, Internal Revenue Service, and U.S. Department of Justice. The Domestic Tax Conference ("DTC") is having its inaugural year during Mike O'Leary's year and I plan to continue what I hope will develop into a smash hit just like the International Tax Conference.

This upcoming year would not be complete without an advanced CLE on tax procedure. For this CLE, will be wading into the unusual areas of tax procedure. It is sure to be a thoughtprovoking session. I promise it will include a starstudded cast of presenters both from the Federal and state governments and private practitioners.

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To 1099 or Not to 1099: That is the Question (For Insurance Companies)

By: Steven M. Hogan, Grant M. Haas

For most businesses, the question of whether to issue a Form 1099 to a given payee is an easy enough inquiry. Is the payee a contractor? File the Form. Is the payee a law firm? File the form. Is the payee a corporation? *Don't* file the form. (And so on…)

For insurance companies, the question can get more complicated due to the sheer volume of checks that are written to various payees in various circumstances. Additional complications arise when an insurance company is issuing a check to multiple payees, including attorneys for the insured. This article is an overview of how an insurance company can address its information return filing obligations under the Internal Revenue Code and Treasury Regulations.

A. <u>Payments Made to an Insured's Attorney</u>

Payments made to an insured's attorney must be reported to the IRS. This is true whether the payment is made on a joint check listing the attorney and other payees, or through a separate check to the attorney.

IRC 6045(f) requires "[a]ny person engaged in a trade or business and making a payment . . . to an attorney in connection with legal services" to file an information return. IRC § 6045(f)(1)-(2)(A). This return must be filed whether or not the legal services were performed for the payor. IRC § 6045(f)(2)(A). The return must report the full amount paid to the attorney, even if the attorney may not retain the entire payment as compensation for legal services rendered. Treas. Reg. § 1.6045-5(a)(1)(i).

If the payment is made to an attorney through a check made out jointly to the attorney and the insured or other additional payees, the entire amount is reportable as to the attorney. This is true regardless of whether separate reporting obligations exist as to the other payees, such as a public adjuster or a vendor. *See* Treas. Reg. § 1.6045-5(f), Ex. 1 (payment via joint check to attorney and claimant; full amount of the check is reportable as to the attorney via IRC 6045; reporting obligations as to the claimant is governed by other rules).

If the payment is made to an attorney through a check made out solely to the attorney, while other checks are made out to other payees, then only the amount paid to the attorney is reportable under IRC 6045. Treas. Reg. § 1.6045-5(f), Ex. 3. Reporting obligations as to the other payees will be governed by the rules applicable to them.

Therefore, payments made by an insurance company to an attorney for the insured must be reported to the IRS on Form 1099-MISC. *See* Instructions for Form 1099-MISC (2020), p. 2, *Payments to Attorneys*. The full amount paid to the attorney must be reported.

B. <u>Payments Made to a Public Adjuster</u>

Public adjusters sometimes help insureds to navigate the claims process. For their services, a public adjuster may be named as a joint payee on a check or may receive a separate payment from an insurance company for the work performed for an insured.

The insurance company must report payments to a public adjuster if: (1) the public adjuster is not a corporation; and (2) the insurance company can ascertain the specific amount that the public adjuster will receive from a given payment.

The insurance company has no reporting obligation if the public adjuster is operating as a corporation, or if the insurance company cannot ascertain the specific amount that the public adjuster will receive.

1. <u>Is the Public Adjuster a Corporation?</u>

If the public adjuster is an entity operating as a "corporation" under the Internal Revenue Code, then the insurance company has no obligation to report the amount paid to the public adjuster. Treas. Reg. § 1.6041-3(p)(1) (no information return is necessary for payments made to a corporation).

Section 1.6041-3(p)(1) defines "corporations" that are exempt from the payment reporting requirement as those "described in § 1.6049-4(c)(1)(ii)(A)." *Id*. Section 1.6049-4(c)(1)(ii)(A) provides that, in the absence of actual knowledge of the corporate status of a payee, a payor "may treat a payee as a corporation (and, therefore, as an exempt recipient)" if: (1) "[t]he name of the payee contains an unambiguous expression of corporate status;" (2) "[t]he payor has on file a corporate resolution or similar document clearly indicating the corporate status [of the payee]"; (3) the payor receives a Form W-9 from the payee that includes an EIN and a statement from the payee that it is a domestic corporation; or (4) the payor receives a withholding certificate certifying that the person named on the certificate is a foreign corporation.

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Treas. Reg. § 1.6049-4(c)(1)(ii)(A)1.-4.

The insurance company can confirm the corporate status of a payee by requiring a Form W-9 to be on file for the payee that meets the requirements of section 1.6049-4(c)(1)(ii)(A)3. This would allow the insurance company to place the burden of determining the reportable status of a payee on the payee itself rather than requiring the insurance company to investigate the status of each one. If the public adjuster is a corporation under the rules, then the insurance company has no obligation to report amounts paid to the public adjuster.

2. Can the Specific Payment Amount be Ascertained?

IRC 6041 only requires information returns to be filed when a payor (like an insurance company) makes a payment in the course of its trade or business that constitutes a "fixed or determinable" gain or income to the payee. IRC § 6041(a); Treas. Reg. § 1.6041-1(a)(1)(i).

A payment constitutes fixed and determinable income "whenever there is a basis of calculation by which the amount to be paid may be ascertained." Treas. Reg. § 1.6041-1(c).

If there is no basis to make this calculation, then the payor has no obligation to report the payment. *See* Rev. Rul. 80-22, 1980-1 C.B. 286 (where the payor of crop insurance proceeds has no way to know how much of a payment will be income to the payee, the payor is not required to report the payment); Rev. Rul. 82-93, 1982-1 C.B. 196 (same).[1]

If the insurance company has a basis to know how much of a payment to a public adjuster is "fixed or determinable" income to the public adjuster, then the insurance company will have an obligation to report the payment amount to the IRS. The insurance company would always have a duty to report a payment to a public adjuster that is not a corporation if the insurance company issues a check solely to the public adjuster.

However, if the insurance company has no basis to know how much of a payment to a public adjuster is fixed or determinable income to the public adjuster, then the insurance company will not have an obligation to report the payment. This may occur when the insurance company issues a joint check to the insured and the public adjuster and has no way to know how much of the payment is attributable to the public adjuster's fee.

C. Payments Made to a Vendor

An insurance company will sometimes make payments to a vendor performing services for an insured through an assignment of benefits. The vendor may be named as a joint payee on a check or may receive a separate payment from the insurance company for the work performed for an insured.

As explained above, the insurance company has no reporting obligation if the payment is made to a vendor that is operating as a "corporation." However, the insurance company will have a reporting obligation if the insurance company has a basis to calculate the amount of the payment that constitutes fixed or determinable income to a vendor when the vendor is not a corporation.

If the vendor is paid on a joint check made out to the vendor and the insured, and the check is for the amount due to the vendor for its services, then the insurance company would have a reporting obligation as to the vendor. *See* Treas. Reg. § 1.6041-1(c) ("A payment made jointly to two or more payees may be fixed and determinable income to one payee even though the payment is not fixed and determinable income to another payee. For example, property insurance proceeds paid jointly to the owner of damaged property and to a contractor that repairs the property may be fixed and determinable income to the contractor but not fixed and determinable income to the owner, and should be reported to the contractor.").

The specific circumstances of a payment to a vendor will determine whether an insurance company has the ability to calculate the amount of the payment that is "fixed and determinable" as to the vendor. If this calculation can be made, then the insurance company will have a reporting obligation unless the vendor is operating as a corporation.

D. Can Form W-9 Be Required?

Because the question of information reporting revolves so closely around whether the payee is a corporation or not, the question arises of whether the insurance company can require payees to submit Form W-9 in order to have the payees attest to whether or not they were operating as corporations under the Internal Revenue Code. A related question is whether a payee that failed to submit a Form W-9 would be subject to backup withholding.

The brief answer to this question is that an insurance company has the authority to require a payee to submit a Form W-9. If a payee does not submit a Form W-9 in response to the insurance company's request, the insurance company may apply backup withholding to payments made to the payee. An analysis of these issues follows below.

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1. Payees Must Supply TINs to Payors

When an insurance company pays an attorney for an insured, the attorney is required to supply the insurance company with its Tax Identification Number ("TIN"). Treas. Reg. § 1.6045-5(e). Other payees that receive reportable payments must also furnish their TINs to the insurance company. IRC § 6109(a)(2).

When a payee is the recipient of a reportable payment, such as a payment to an attorney under IRC 6045 or nonemployee compensation under IRC 6041, the payee must furnish its TIN to the payor to avoid being subject to backup withholding. IRC § 3406(a)(1)(A), (b)(1)(B), (b)(3)(A)-(C) (payee that receives "any reportable payment" must supply TIN to avoid backup withholding; "any reportable payment" includes any "other reportable payment"; "other reportable payment" includes payments reportable under IRC 6045 or 6041). The backup withholding rate is 24 percent. IRS Publication 1281, p. 3 (Rev. 8-2018).

2. The Payor Can Require TIN Submissions on Form W-9

The payee must supply its TIN "in the manner required." IRC § 3406(a)(1)(A). The "manner required" to supply the TIN for payments reportable under IRC 6045 or 6041 is "either orally or in writing." Treas. Reg. § 31.3406(d)-1(d).

The payor can require the payee to use Form W-9 both to submit the TIN and to certify that the payee is exempt from backup withholding. The Form W-9 submission requirement also allows the payor to determine whether the payee is a corporation.

To this end, the Treasury Regulations state that "[a] payor, even if permitted to treat a person as exempt [from backup withholding] without requiring a [penalty of perjury] certificate under the provisions of section 6049, may require a payee, otherwise not required to file a certificate regarding its exempt status, to file a [Form W-9] certificate and may treat a payee who fails to file the certificate as a person who is not an exempt recipient." Treas. Reg. § 31.3406(g)-1(b) (emphasis added).[2]

For example, a payee that is a not-for-profit corporation qualified for tax-exempt treatment under IRC 501(a) is specifically exempt from backup withholding pursuant to Treasury Regulation 31.3406(g)-1(a)(1)(i). However, a payor can still require this type of payee to submit a Form W-9 to attest to its exemption. Treas. Reg. § 31.3406(g)-1(b).

Therefore, the Treasury Regulations permit payors like an insurance company to require a payee to submit Form W-9 even if the payee is not otherwise required to submit the form to certify that the payee is exempt from backup withholding. *Id*.

3. Backup Withholding When Payee Does Not Submit Form W-9

If the payee does not submit a Form W-9 at the insurance company's request, the insurance company may treat the payee as if the payee is subject to backup withholding. Treas. Reg. § 31.3406(g)-1(b). The insurance company is required to file an information return as to such payments. Treas. Reg. § 1.6049-4(c) ("if the payor backup withholds under section 3406 on [a] payment (because, for example, the payee has failed to furnish a Form W-9 on request), then the payor is required to make [an information] return under this section, unless the payor refunds the amount withheld in accordance with [Treas. Reg.] § 31.6413(a)-3 [Repayment by payor of tax erroneously collected from payee]." (emphasis added)).

4. Reasonable Reliance on Form W-9 and Avoidance of Liability

As explained above, Treasury Regulation 31.3406(g)-1(b) provides that a payor may require a payee to submit a Form W-9 to claim an exemption from backup withholding. The regulation refers to Treasury Regulation 31.3406(h)-3 as the section governing the use of Form W-9. *Id*.

Treasury Regulation 31.3406(h)-3(e)(1) provides that "[a] payor is not liable for the tax imposed under section 3406 if the payor's failure to deduct and withhold the tax is due to reasonable reliance, as defined in paragraph (e)(2) of this section, on a Form W-9 . . . required by this section." *Id*. (emphasis added).[3]

Under subsection (e)(2) of the regulation, a payor can "reasonably rely" on a Form W-9 to determine a payee's backup withholding status unless one of the following circumstances exists:

> (i) The form does not contain the name and taxpayer identification number of the payee (or does not state, in lieu of a taxpayer identification number, that the payee is awaiting receipt of a taxpayer identification number (i.e., an awaiting-TIN certificate));
>
> (ii) The form is not signed and dated by the payee;
>
> (iii) The form does not contain the statement, when required, that the payee is not subject to withholding due to notified payee underreporting;
>
> (iv) The payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form; or

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(v) For purposes of section 3406(a)(1)(C), the payor is required to subject the account to which the form relates to withholding under section 3406(a)(1)(C) under the circumstances described in § 31.3406(c)–1(c)(3)(iii).[4]

Treas. Reg. § 31.3406(h)-3(e)(2).

Therefore, an insurance company can reasonably rely on the statements made in a Form W-9 submitted by a payee as long as the form does not contain any of the anomalies listed in Treasury Regulation 31.3406(h)-3(e)(2), above. Such reasonable reliance will insulate the insurance company from liability for incorrectly failing to apply backup withholding to payments where it should have been applied.[5]

Conclusion

Insurance companies face complicated information return filing obligations due to the volume of checks that they write and the parties that they write them to. This article provides a roadmap for insurance companies to follow when deciding when an information return might be required.

About the authors:

Steven M. Hogan is a shareholder with the Ausley McMullen law firm in Tallahassee, Florida. His tax practice focuses on state and federal tax controversy and planning.

Grant M. Haas is a third-year law student at the Florida State University College of Law where he is on the executive board for both Law Review and Moot Court. He is pursuing specialties in tax and corporate law practices. His expected graduation date is May, 2021

(Endnotes)

1. *See also* IRS Chief Counsel Advisory 201533012 (May 4, 2015) (a payor is not required to file an information return "if the payor does not have a basis to determine the amount of a payment that is required to be included in the recipient's gross income."); IRS Non-Docketed Service Advice Review 4402F (Aug. 9, 2012) (where the payor settling claims does not know how much of a joint payment to an attorney and customer would constitute income to the claimant, the payment is not "fixed and determinable income" to the customer and the payor has no obligation to file a 1099 for the customer); IRS Priv. Ltr. Rul. 110076-06 (PLR 200704004) (Jan. 26, 2007) ("Because section 6041(a) is conditioned on a payor knowing that a payment to a payee is in the nature of income and the amount of income, if a payor cannot determine either that a payment is in the nature of income or in what amount, then the payor is not required to file an information return under the section." (citing Rev. Rul. 80-22)); IRS Chief Counsel Advice 199919020 (Feb. 10, 1999) (where the payor of a grant cannot determine how much of the grant will constitute gross income to the recipient, the payment is not "fixed and determinable" under IRC 6041 and no reporting requirement exists (citing Rev. Rul. 80-22)).

2. The regulation refers to IRC 6049 because that section and the regulations issued thereunder are used to determine what types of payee entities are exempt from backup withholding. Treas. Reg. § 31.3406(g)-1(b).

3. The "liability" here is due to IRC 3403, which generally provides that the "employer" is liable for all taxes that should be withheld under IRC sections 3401 through 3406. Though IRC 3403 uses the term "employer" rather than a payor required to make an information return (as the insurance company is in this case), the Internal Revenue Manual, published by the IRS for its internal use, refers to the liability for backup withholding in terms of the "payor." I.R.M. 4.23.8.13, § 5 ("Payors will be held liable for the payment of any backup withholding required to be deducted and withheld under IRC 3406 per IRC 3403.").

4. Treasury Regulation 31.3406(h)-3(e)(2)(v) applies to payments of interest and dividends where the IRS has notified the payee of underreported interest or dividends. Please advise if additional information on this issue is needed.

5. The insurance company will be required to retain the Forms W-9 submitted by payees for a period of three years. Treas. Reg. § 31.3406(h)-3(g)(1). However, the three-year retention rule is not a statute of limitations on potential liability. *See* IRS Chief Counsel Advisory 201037027 (May 20, 2010) (three-year retention rule does not impact the backup withholding obligation; if the Taxpayer has not retained Forms W-9 beyond the three-year window, the Taxpayer can only avoid backup withholding liability where it can show that Form W-9 "was in fact received."). A better practice may be to retain the Forms W-9 received from payees until the applicable statute of limitations has expired. .

Submit an Article

The Tax Bulletin is published three times a year, Fall, Spring, and Summer. Each publication accepts up to six articles of approximately 500 to 1,000 words each. The Tax Section would like to thank Mitchell Goldberg of Berger Singerman (Fort Lauderdale) and Guy Whitesman of Henderson Franklin (Fort Myers) for serving as the Tax Bulletin's Content Editors. Lisa Gallagher of Fergeson Skipper, P.A. (Sarasota) currently serves as the Publishing Editor.
If you have an article you would like to be considered for publication, or questions regarding deadlines, please reach out to Lisa via email: LGallagher@FergesonSkipper.com

Foreign Branches under the TCJA

By: Javier Chipi

As part of the Tax Cuts and Jobs Act that was passed in December of 2017 (the "Act"), comprehensive changes were made to U.S. tax laws. This article is a brief comparison of the tax consequences that stem from a taxpayer's choice of entity when doing business abroad (post Act). Under the Act, foreign branch income is not eligible for reduced tax rates that are otherwise afforded to certain other foreign-derived income (e.g., IRC Section 250 provides a deduction to eligible C corporations for a percentage of their foreign-derived intangible income ("FDII")). Instead, income earned through a foreign branch will generally be taxed as ordinary income, while other types of foreign-source income (e.g., global intangible low-taxed income ("GILTI") or FDII) are eligible for reduced effective tax rates (e.g., 10.5%-13.125%).

The following chart is an overview of the post-Act U.S. effective tax rates for a U.S. C corporation's outbound activity (either through a controlled-foreign subsidiary, earning FDII by exporting goods or services, or through a foreign branch):

A foreign *branch* generally refers to a "qualified business unit" or division of a corporation that operates outside of the U.S. and maintains a separate set of books and records.[10] Taxpayers often form "foreign branches" by starting operations (e.g., sending employees abroad or leasing an office and hiring personnel) in a foreign country with no legal entity formed in the foreign country. Alternatively, a foreign branch may be formed by establishing a legal entity in a foreign country and making an entity classification election (using Form 8832) to treat the entity as a "disregarded entity" for U.S. federal income tax purposes (or through a legal entity that is considered a "branch" under foreign law).[11]

While an entity classification can be made to convert a foreign branch into a foreign subsidiary corporation it should be noted that the Act repealed the prior exception to gain recognition that existed when appreciated property was transferred to a foreign corporation if the assets were used in the active conduct of a trade or business conducted outside of the U.S.[12] Currently all gain on

	U.S. Parent Corporation, Income from Controlled Foreign Corporations			U.S. Parent Corporation, Income Earned Directly or through Branch		
IRC	Participation Exemption	GILTI	Subpart F	FDII	Foreign Branch	Other Income
Rate	0%[1]	10.5%[2] (13.125% post 2025)	21% (but, see HTKO exception)[3]	13.125% (16.406% post 2025)	21%	21%
Foreign-Tax Credits	No FTCs[4]	Yes, FTCs(haircut), separate FTC basket, no carryforwards or carryback allowed[5]	Yes, FTCs[6]	Yes, FTCs[7]	Yes, FTCs, but separate FTC basket[8]	Yes, FTCs

Unchanged by the Act, a foreign branch's income, losses, deductions, and credits are reported by the U.S. consolidated group. The income of a foreign branch is subject to the 21% corporate tax rate. Unfortunately, dual consolidated loss rules limit a U.S. taxpayer's ability to use foreign branch losses to offset income where the losses can also be used by the foreign branch to reduce its income under foreign law.[9]

the transfer of assets to a foreign subsidiary is taxable. Moreover, due to a provision eliminated in the repeal of the active trade or business exception of IRC 367(a)(3), the Act resulted in a new foreign branch loss recapture rule which requires the recapture of losses of a foreign branch (when substantially all of the foreign branch's

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assets are transferred to a 10% owned foreign corporation) to the extent that aggregate prior losses from the branch exceed prior income earned from the branch.[13]

Based on the foregoing there appears to be a bias in the IRC against foreign branches (versus corporate form). This bias may be justified for public policy purposes. However, the choice in how a foreign business operates (foreign branch vs. corporate form) materially affects the amount and timing of foreign tax credits as well as the effective tax rate on the income earned.

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(Endnotes)

1. IRC 245A(a) provides that in the case of any dividend received from a specified 10% owned foreign corporation by a domestic corporation, there shall be allowed as a deduction an amount equal to the foreign-source portion of such dividend. Subsequently, a dividend distribution from the U.S. C Corporation to the shareholder will be subject to preferential tax rates (Section 1(h)(11)).

2. Effective tax rate resulting from deduction (10.5% = 21% x 50% deduction).

3. Due to the reduction in the C corporate income tax rate, the high-tax kick-out (HTKO) now applies whenever a foreign effective income tax rate is more than 18.9%. Noteworthy modifications to the definition of Subpart F caused resulting from the Act include: (i) modification of stock attribution rules to permit downward attribution from a foreign person to a U.S. person (repeal of IRC 958(b)(4)), (ii) modification of U.S. shareholder definition to include a U.S. person who owns at least 10% of the value of the shares of the foreign corporation (IRC 951(b)), and (iii) elimination of the 30-day requirement previously in existence for a foreign corporation to constitute a controlled-foreign-corporation (i.e., an uninterrupted period of at least 30 days of CFC status in order for a U.S. shareholder to have subpart F income inclusion).

4. IRC 245A(d).

5. IRC 904(d)(1)(A); IRC 960(d). Foreign tax credit of up to 80% of the amount of foreign taxes deemed paid.

6. IRC 904(d)(1)(C); IRC 960(a).

7. Note that foreign source income earned through a foreign branch does not receive the dividends received deduction that eligible shareholders may receive under IRC 245A. But distributions from foreign branches are not subject to U.S. tax (however, foreign currency gains or losses may result where a foreign branch maintains its income in a currency other than the U.S. dollar).

8. IRC 904(d)(1)(B). Note that excess foreign tax credits in the foreign branch basket can be carried-forward 10 years or carried back 1 year.

9. But losses are carried forward indefinitely.

10. See IRC 989.

11. This assumes the foreign entity is an entity that is eligible to make an entity classification election and is not a "per se" corporation listed in Treas. Reg. 301.7701-2(b).

12. IRC 367(a)(3) (repealed). Also note that the Act expanded the definition of "intangible property" to expressly include "goodwill" and "going concern value" under IRC 367(d).

13. IRC 91. However, the amount of income inclusion under this provision is reduced by gain recognized on the transfer (except IRC 367(a)(3)(C) gains).

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Ethical Challenges in Tax Practice

By: Shanthy Balachanthiran

Whether representing paying or pro bono clients, failing to know and/or apply ethical standards of practice in the legal profession can undoubtedly lead to malpractice claims and possible disbarment. Most recently, the ABA Tax Section 2020 Midyear Meeting focused a number of panel presentations on ethical matters attorneys should consider when engaging in tax controversy matters. The need for tax attorneys to be cognizant of these concerns in their daily practice is paramount. Fortunately, the Model Rules of Professional Conduct ("Model Rules") provide extensive guidance to tax practitioners to avoid some of the perils associated with representation of taxpayer clients.

Ethical dilemmas may arise when attorneys represent tax clients at settlement days, calendar calls, and via direct representation outside of the courtroom. Particularly, when contemplating representation of a client, tax attorneys should be knowledgeable on when conflicts of interest may exist per Circular 230 §10.29 and ABA Model Rule 1.7. Furthermore, when participating in Calendar Calls or Settlement Day engagements, tax attorneys should be able to distinguish between permissible and impressible practitioner conduct in conformity with United States Tax Court ("Court") Rule 24(g). As well, when faced with an ethical dilemma of taking on a new case adverse to that of a former client's, tax attorneys should be able to identify whether it is "substantially related" enough to disqualify the attorney from the case in accordance with Model Rule 1.9.

Circular 230 contains the regulations governing practice before the IRS. Circular 230 §10.29 applies the same rules as ABA Model Rule 1.7 with regards to conflict of interest. Namely, "a conflict of interest exists when the representation of one client will be adverse to another client or if there is a significant risk that representation of one client will be materially limited by the practitioner's responsibilities to another client, former client, third person, or his or her personal interest." Thus, attorneys must be cognizant of divergent interests of family members, spouses, business partners, etc., who may seek representation by the same firm or attorney.

The Court also offers guidance on conflict of interest matters. In fact, Rule 24(g) lists three circumstances where an attorney cannot appear due to a conflict. Specifically, when an attorney is:

(1): Involved in planning a transaction or operating an entity connected with an issue in the case.

(2): Represents multiple parties with divergent interests with respect to any issue in a case.

(3): Is a potential witness in a case.

Although conflict surrounding the first two scenarios above is waivable with the client's informed consent, conflict in the third scenario is not waivable.

What does that mean, then, in terms of disqualification as far as representation? When taking on a new case adverse to a former client's, you must identify whether it is "substantially related" enough to disqualify you from the case in accordance with Model Rule 1.9. A lawyer is disqualified from taking on a new case adverse to a former client's in instances such as:

- Same client and matters are relatively interconnected
- Attorney interviewed a witness key in both cases
- Attorney's knowledge of a former client's negotiation strategies is relevant to the new case
- Commonality of witnesses, legal theories and significance of business practices of client and location of client
- Common subject matter, issues and causes of action
- Information existed on former client's ability to satisfy debts and possible defense and negotiation strategies

With that said, how seriously should conflicts then be considered for indigent or pro bono clients in federal tax controversy matters? After all, the primary adversary in tax disputes is the IRS. And, isn't one of the tenets of engaging in pro bono and legal aid work to help as many indigent citizens access legal services as possible? So how do you then factor in positional or personal conflicts? Model Rule 6.5 speaks to conflict matters in relation to nonprofit & court-annexed limited legal services programs. However, there's really no clear answer here, and, so, we must weigh utilitarian concerns in light of the ethical rules.

To address some of the aforementioned concerns, in May of 2019, the Court issued Administrative Order No. 2019-01 ("Order") regarding Limited Entry of Appearance, in accordance with Rule 201(a), Tax Court Rules of Practice and Procedure and Model Rule 1.2(c). That is, the Court created a program that allows volunteer practitioners to appear on a limited basis on behalf of pro se litigants at calendar calls and settlement days. The mission of the Court, in issuing the Order, was "to provide a national forum to expeditiously resolve disputes between taxpayers and the IRS while carefully considering the

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merits of each case and ensuring the uniform interpretation of the Internal Revenue Code." Nonetheless, it has been found that personal conflicts are likely to arise in this context, since often petitioners, who may be family members, spouses and/or business partners, may consult together with the same attorney or firm at calendar call prior to their scheduled hearing or trial. As a result, conflict of interest is the most common ethics concerns in tax court. Thus, practitioners assisting taxpayers even in a limited appearance capacity have to keep in mind that the best interests of the client must be their paramount consideration.

In regulating limited appearance engagements of pro bono clients at calendar calls, the Court imposes the following requirements of tax attorneys:

- Must be a member of the bar of the court,
- Arrive an hour early and inform clerk of availability to assist self-represented petitioners, and
- Cannot solicit or receive any fee from a petitioner while volunteering self-represented petitioners.

With regards to services that can be provided, the Court advises that attorneys may:

- Provide procedural advice to petitioners who decide to proceed to trial,
- Consult with petitioners regarding the merits of their cases and evaluate any settlement proposals from the IRS,
- Act as a communicator between the parties in an effort to assist in resolving the case, and/or
- Enter an appearance with the Court on the petitioner's behalf.

Additionally, tax attorneys serving in this capacity must abide by all applicable rules of professional conduct and the Court, in its discretion, can terminate the ability of a firm or attorney to appear at calendar calls.

The IRS, too, requires that an attorney formally make an appearance, or a petitioner will be deemed appearing on their own behalf. Formal appearance is completed when the practitioner files an executed Limited Entry of Appearance form with the Court. However, the IRS makes a point of encouraging IRS counsel to work with representatives even if no formal entry of appearance has been made before the Court. As well, IRS counsel are encouraged to interact with Form 2848 Power of Attorney and Declaration of Representative (POA) representatives to resolve cases.

About the author:

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The Fusion of Food and Fun – IRS Provides Proposed Regulations on Meals and Entertainment Deductions

By Nate Wadlinger, EA, CPA, JD, LLM

Whether it is cheering on your favorite sports team from a skybox suite or driving a golf ball as far as you can at Topgolf many of our favorite activities combine both food/beverage and entertainment. With the Tax Cuts and Jobs Act of 2017 (TCJA) amending Section 274 to disallow all entertainment expenses, many questions have arisen whether certain activities qualify as meals or entertainment. And it has been quite the wait for official guidance on this issue given that this is a much lower priority item than other items resulting from the TCJA like Section 199A, GILTI, and Section 163(j). The IRS finally issued proposed regulations in February 21, 2020, on this issue, specifically Proposed Regulations 1.274-11 and 1.274-12. This article focuses on that guidance while also providing some additional insight when considering meals and entertainment.

TCJA changes to Section 274

The general rule under Section 274 is clear. No deduction is allowed with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation or with respect to a facility used in connection with an activity which is of a type generally considered to constitute entertainment, amusement, or recreation.[1] However, business meals may be allowed as a deduction, subject to various limitations.[2] Before the TCJA, Section 274 allowed taxpayers to deduct 50% of entertainment, amusement, or recreation expenses, when the taxpayer established that the item was directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion, that such item was associated with, the active conduct of the taxpayer's trade or business. Further, it allowed business meals to be deductible. When looking at before vs. after the TCJA it is this retention of Section 274(k) that has caused taxpayers to argue that business meal expenses remain deductible despite the elimination of the deduction for "entertainment expenses." However, an issue arises when looking at the statutory history of Section 274 as we learn that business meals have been viewed as a form of entertainment. This makes more sense when you think of the most common forms of business entertainment when it comes to networking and client development. Just take a second and think what is most common activity that you have done over your career to network and grow your business when it comes to client development. It almost certainly involves going out to lunch or dinner at a restaurant.

Statutory history

The original disallowance rule of Section 274 was enacted in 1962.[3] Before that time entertainment and meals were fully deductible if considered ordinary and necessary business expenses.[4] The Senate Finance Committee report accompanying the Revenue Act of 1962 made clear that meal expenses are entertainment expenses specifically stating ", 'entertainment' includes any business expense incurred in the furnishing of food and beverages."[5] This view was further continued as part of the Tax Reform Act of 1986 when Congress amended Section 274 to tighten the deduction rules for business meals. In its explanation of the Tax Reform Act of 1986, the Joint Committee on Taxation indicated that business meals are entertainment. This can be illustrated by considering the following excerpt from the Joint Committee of Taxation Report in 1986:

> Under prior law, expenses for food and beverages were deductible, without regard to the "directly related" or "associated with" requirement generally applicable to entertainment expenses, if the meal or drinks took place in an atmosphere conducive to business discussion. There was no requirement under prior law that business actually be discussed before, during, or after the meal.[6]

So are business meals considered entertainment for purposes of the TCJA entertainment disallowance?

After understanding the historical progression of Section 274 that business meals have been viewed as entertainment, the TCJA's disallowance of entertainment expenses and continued allowance for business meals could be viewed as confusing. Further many taxpayers have tried to argue that these "entertainment expenses" have become so ingrained in clients' day to day marketing and advertising activities, that many business owners do not consider these business entertainment expenses as entertainment at all. Rather they view them as "marketing" or "advertising" which should be deductible under the general Section 162 trade or business expense deduction rules.[7] There have been two pronouncements by the IRS to clarify these issues along with many other issues. The first action came in October 2018 through Notice 2018-76. The second, and

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more formal act, came on February 21, 2020 when the IRS issued Proposed Regulations 1.274-11 and 1.274-12. Because the proposed regulations adopted almost all of the same rules in Notice 2018-76 this discussion will focus on the proposed regulations. Proposed Regulation 1.274-11 focuses on entertainment and Proposed Regulation 1.274-12 focuses on meals.

Preamble to the Proposed Regulations

The preamble to the proposed regulations addresses multiple issues, but the most important dealt with the historical similarity of entertainment and business meals. In the preamble to these proposed regulations the IRS made clear that prior to the TCJA it was not really important to decide whether meals were or were not different from entertainment because of the similarity in treatment where they both got the 50% disallowance rule.[8] And while there were some differences between meals and entertainment, these are very specific items, and the IRS did not really worry about where they were different.[9] So the preamble is clear that meals were not something that were considered entertainment for the purposes of removal in the TCJA.

Proposed Regulation 1.274-11 – Entertainment Expenses

The regulations start off by identifying four categories of deductions that are disallowed:

1. entertainment expenses,
2. facility used in connection with an entertainment activity,
3. dues or fees to any social, athletic, or sporting club or organization, and
4. membership in any business, pleasure, recreation, or other social club.[10]

Entertainment is then defined as any activity which is of a type generally considered to constitute entertainment, amusement, or recreation, such as entertaining at bars, theaters, country clubs, golf and athletic clubs, sporting events, and on hunting, fishing, vacation and similar trips, including such activity relating solely to the taxpayer or the taxpayer's family.[11] In determining whether an activity is considered entertainment the regulations require the use of an objective test.[12] However, the regulations make clear that context should be considered.[13] So it actually seems more like a subjective test. The regulations provide the following examples of using context to make a difference.

- While attending a theatrical performance generally would be considered entertainment, it would not be so considered in the case of a professional theater critic, attending in a professional capacity.[14]
- If a manufacturer of dresses conducts a fashion show to introduce its products to a group of store buyers, the show generally would not be considered entertainment. However, if an appliance distributor sponsors a fashion show, the fashion show generally would be considered to be entertainment.[15]

Proposed Regulation 1.274-11 also addresses the argument by taxpayers that "entertainment expenses" have become so ingrained in clients' day to day marketing and advertising activities, that many business owners do not consider these business entertainment expenses as entertainment at all. Instead they try to deduct these under the general Section 162 trade or business expenses like "marketing" or "advertising." The regulations remind us that Section 274 is an additional disallowance rule that comes into play after the Section 162 general trade or business expense rules are met. [16] Further, the regulation again stresses that whether a respective expense is entertainment is through an objective test.[17]

The last major element of Proposed Regulation 1.274-11 deals with activities that combine entertainment and food/beverage. The regulations borrow explicitly the "separately stated food and beverage rule" from Notice 2018-76 in the definition of food and beverage.[18] Food and beverages purchased during an entertainment event, if they are stated separate from the entertainment on a bill, invoice, or receipt, are deductible if they meet Section 162 requirements (trade or business and reasonableness).[19] They are subject to the 50% business meals limitation.[20]

The four examples provided in Proposed Regulation 1.274-11 directly address this issue. The regulations put the issue in the context of baseball and basketball. If you take a client to a Miami Marlins or Tampa Bay Rays game to discuss a proposed business deal all while sitting right behind home plate the cost of the tickets is not deductible.[21] If while at the game you buy hotdogs and beer, the cost of the food/beverage is deductible as business meals subject to the 50% disallowance rule.[22]

If instead of buying tickets behind home plate you take a group of clients to the baseball game and attend the game in a suite. During the game you and the clients discuss a proposed business deal. The cost of the suite tickets includes food and beverage, however, the invoice does not specifically break out the cost of the tickets and the food/beverage. The entire cost is not deductible.[23] If the invoice does separately break out the ticket cost and the food/beverage, the cost of the food/beverage is deductible as business meals subject to the 50% disal-

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lowance rule.[24] So the next time you purchase seats to a skybox or suite, make sure to have the food/beverage cost broken out! Note that the amount charged for food/beverage on an invoice must reflect the venue's usual selling cost for those items if they were to be purchased separately from the entertainment, or must approximate the reasonable value of those items.

Proposed Regulation 1.274-12 – Food and Beverage Expenses

The proposed regulations allow a deduction for food and beverages if:

- The expense is an ordinary and necessary expense paid or incurred during the tax year in carrying on a trade or business;
- The expense is not lavish or extravagant under the circumstances;
- The taxpayer, or an employee of the taxpayer, is present at the furnishing of such food or beverages; and
- The food or beverages are provided to a business associate.[25]

Note that through this discussion anytime the term "meals" is used, it is referring to food and beverages. There are some key definitions that are important to understand the provisions in these regulations. First, "food or beverages" means all food and beverage items, regardless of whether characterized as meals, snacks, or other types of food and beverages, and regardless of whether the food and beverages are treated as de minimis fringes under Section 132(e).[26] "Food or beverage expenses" includes delivery fees, tips, and sales tax.[27] A "business associate" is defined as a person with whom the taxpayer could reasonably expect to engage or deal in the active conduct of the taxpayer's trade or business such as the taxpayer's customer, client, supplier, employee, agent, partner, or professional adviser, whether established or prospective.[28] Note that this definition expands upon the much narrower requirements for deducting business meals outlined in Notice 2018-76. "Primarily consumed" means greater than 50% consumption.[29] "General pubic" includes customers, clients, and visitors; it does not include employees, partners, or independent contractors.[30]

Just like before the TCJA, there is a 50% limitation on most business meals.[31] Also, there are some business meals that are 100% deductible. However, after the TCJA there are far less categories of business meals that are fully deductible. For purposes of this discussion the business meal deduction is subject to the normal 50% limitation, unless otherwise specified. We will now look at some of the special rules dealing with business meals, including reference when meals can be 100% fully deductible.

Employers can deduct meals without limitation (100% deduction) if the food and beverage expense is treated:

- As compensation paid to the employee on the taxpayer's income tax return; and
- As wages to the employee for purposes of withholding.[32]

Where food and beverage expenses are incurred by one person performing services for another, the deduction limitations apply either to the person who makes the expenditure or to the person who actually bears the expense, but not to both.[33] This is true regardless of whether there is an employer–employee relationship. For example, this could apply to independent contractors.[34] Further, it is possible by written agreement to designate which party will get the benefit of the deduction.[35]

Food and beverages provided at a holiday party, annual picnic, or other similar outings are 100% fully deductible, if the event is not limited to certain employees.[36] If it is limited to certain types of employees, the food and beverage may be limited to 50% deductible.[37] The regulations clarify that food and beverages provided in a breakroom available to all employees, such as snacks, are subject to the 50% deduction limitation because a breakroom is not considered a recreational or social activity for the benefit of employees.[38] If food and beverage is made available to and primarily consumed by the general public the amount is 100% deductible.[39] An example would be an area at a car dealership where customers wait to have their car serviced. If this food and beverage offered to the general public is consumed primarily by employees or others that are not the general public, then the portion consumed by the general public is 100% deductible and the portion not by the general public is 50% disallowed.[40] Finally, food and beverage can be 100% fully deducted if it directly relates to the business involved such as a restaurant.[41]

Looking to the Future for Final Regulations

As mentioned these proposed regulations were issued on February 21, 2020. Comments to the proposed regulations were accepted by the IRS until April 13, 2020. And while the public hearing for April 29, 2020, was cancelled due to no request to speak at the public hearing,[42] many comments have been issued.[43] We will have to wait and see if the final regulations make many changes, but given the minimal change between Notice 2018-76 and the proposed regulations, it is likely there will not be many changes in this area of the tax law.

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(Endnotes)

1. I.R.C. § 274(a) (2020).
2. I.R.C. § 274(k) (2020).
3. The Revenue Act of 1962, P.L. 87-834, §4, added Section 274 for tax years ending after Dec. 31, 1962.
4. S. Rep't No. 1881, 87th Cong., 2d Sess. 25 (1962).
5. S. Rep't No. 1881, 87th Cong., 2d Sess. 27 (1962).
6. Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1986* (JCS-10-87), at 58 (May 15, 1987).
7. For a more in depth discussion of this issue see Christopher Dingman, *ARE YOU NOT ENTERTAINED? The Fight for Clarity After Changes to Section 274*, 35 The Florida Bar Tax Section Bulletin, Issue Number 1, 15-16 (2018).

By: Christopher R. Dingman

8. Prop. Treas. Reg. §1.274-11, 85 Fed. Reg. 11020, 11021-5 (Feb. 26, 2020).
9. *Id*.
10. Prop. Treas. Reg. § 1.274-11(a) (2020).
11. Prop. Treas. Reg. § 1.274-11(b)(1)(i) (2020).
12. Prop. Treas. Reg. § 1.274-11(b)(1)(iii) (2020).
13. *Id*.
14. *Id*.
15. *Id*.
16. Prop. Treas. Reg. § 1.274-11(b)(1)(i) (2020).
17. *Id*.
18. Prop. Treas. Reg. § 1.274-11(b)(1)(ii) (2020).
19. *Id*.
20. Prop. Treas. Reg. §1.274-11(d)(2), Example 2 (2020).
21. Prop. Treas. Reg. §1.274-11(d)(1), Example 1 (2020).
22. Prop. Treas. Reg. §1.274-11(d)(2), Example 2 (2020).
23. Prop. Treas. Reg. §1.274-11(d)(3), Example 3 (2020).
24. Prop. Treas. Reg. §1.274-11(d)(4), Example 4 (2020).
25. Prop. Treas. Reg. § 1.274-12(a) (2020).
26. Prop. Treas. Reg. § 1.274-12(b)(1) (2020).
27. Prop. Treas. Reg. § 1.274-12(b)(2) (2020).
28. Prop. Treas. Reg. § 1.274-12(b)(3) (2020).
29. Prop. Treas. Reg. § 1.274-12(b)(8) (2020).
30. Prop. Treas. Reg. § 1.274-12(b)(9) (2020).
31. I.R.C. § 274(n) (2020).
32. Prop. Treas. Reg. §1.274-12(c)(2)(i) (2020).
33. Prop. Treas. Reg. §1.274-12(c)(2)(ii) (2020).
34. Prop. Treas. Reg. §1.274-12(c)(2)(ii)(C) (2020).
35. Prop. Treas. Reg. §1.274-12(c)(2)(ii)(E)(1),(2) (2020).
36. Prop. Treas. Reg. §1.274-12(c)(2)(iii) (2020).
37. Prop. Treas. Reg. §1.274-12(c)(2)(ii)(C)(2), Example 2 (2020).
38. Prop. Treas. Reg. §1.274-12(c)(2)(iii)(A), Example 3 (2020).
39. Prop. Treas. Reg. §1.274-12(c)(2)(iv) (2020).
40. Prop. Treas. Reg. §1.274-12(c)(2)(iv)(B)(1), Example 1 (2020).
41. Prop. Treas. Reg. §1.274-12(c)(2)(v) (2020).
42. Prop. Treas. Reg. §1.274-11, 85 Fed. Reg. 22049, 22049 (Apr. 21, 2020) (2020).
43. For some examples of comment please see the National Business Aviation Association's comment letter at https://nbaa.org/wp-content/uploads/flight-department-administration/tax-issues/federal-taxes/202004-nbaa-comments-irs-reg-100814-19.pdf, and a group of tax law professors comment letter at https://medium.com/whatever-source-derived/comments-on-proposed-business-meal-regulations-8b78ba284a76

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