Thank you for your ongoing support of The Elite Quarterly. Many of you have renewed your newsletter subscriptions for 2020—we thank you very much! Please refer to pages 22 and 23 for details of all of our subscription packages for 2020. Thank you for being a customer—we appreciate your business!

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Instructions, Content Level, & Learning Objectives

Please read the content on pages 1-17, the exam questions on pages 18-20, and the exam instructions on page 21. Select the best answer for each exam question and record the answers either on the answer sheet on page 21 or online at www.cpelite.com.

The content level for this course material is “Update” and field of study classification is “Taxation.” A general understanding of federal income taxation is the prerequisite for this course. No advance preparation is required. The Learning Objectives for this course are:

1. Identify key elements contained in H.R. 6201, the Families First Coronavirus Response Act.
2. Recall changes to IRA’s and qualified retirement plans resulting from passage of the Secure Act.
3. Recall resources provided by the recently established Gig Economy Tax Center.
4. Recall final regulations issued by the IRS in connection with Offers in Compromise.
5. Identify details in connection with Notice 2020-15 pertaining to High Deductible Health Plans.

Key Terms in This Issue of THE ELITE QUARTERLY

[Item 1] Eligible individual: Within the context of H.R. 6201 it includes someone who was working in the thirty days before they were impacted by COVID-19.
[Item 4] Start Up Costs: Concerning pension plans, these relate to ordinary and necessary costs incurred to set up and administer a pension plan and also costs incurred to educate employees about the plan.
[Item 5] Prepaid Tuition Plans: Allow a saver or account holder to purchase units or credits at participating colleges and universities (usually public and in-state) for future tuition and mandatory fees at current prices for the beneficiary.
[Item 6] Stretch IRA: A wealth transfer method that involves an IRA—specifically, any non-spouse beneficiary you designate to inherit your IRA. With this estate planning strategy, you had the potential to “stretch” your IRA’s distributions (and tax benefits) over several generations.
[Item 7] Kiddie Tax: A child’s unearned income taxed at the tax rates of the child’s parents.
[Item 10] Gig Economy: A free market system in which temporary positions are common and organizations contract with independent workers for short-term engagements.
[Item 11] Private Letter Ruling: A written statement issued by the IRS Chief Counsel to a taxpayer that interprets and applies tax laws to the taxpayer’s represented set of facts.
How quickly things change. Words that ring true with each passing day. Our lead topic this spring was scheduled to be the impact of the recent passage of the Secure Act. We will delve into that topic in some detail given the significance of changes reflected in this important legislation. However, all eyes and ears are tuned into the ever-present coronavirus. We are devoted to providing you with current information which impacts practitioners including relevant topics from this worldwide crisis. The US House of Representatives has passed the Families First Coronavirus Response Act (H.R. 6201). The US Senate approved the bill with a 90-8 vote on March 18th. President Trump signed the measure into law a few hours later.

H.R. 6201 covers a range of interrelated topics including in part appropriations for preparedness response, nutrition waivers for student meals, and protections for health care workers. We have provided excerpts of this House bill we consider most relevant for practitioners:

- **DIVISION D – Emergency Paid Leave Act of 2020**
- **DIVISION E – Emergency Unemployment Insurance Stabilization and Access Act of 2020**

**Section 102. Emergency Paid Leave Benefits.** Amends the Social Security Act by inserting after title V the following: Title VI-Emergency Paid Leave Benefits. This section creates a new federal emergency paid leave benefit program. Eligible workers will receive a benefit for a month (up to three months) in which they must take 14 or more days of leave from their work due to the qualifying COVID-19-related reasons. Days when an individual receives pay from their employer (regular wages, sick pay, or other paid time off) or unemployment compensation do not count as leave days for purposes of this benefit.

The program will be administered by the Social Security Administration (SSA). Specifications include the following:

- Two-thirds of the individual’s average monthly earnings (based on the most recent year of wages or self-employment income for which records are readily available), up to a cap of $4,000.
- The benefits will be available for leave that occurs from January 19, 2020 (the date of the first U.S. COVID-19 diagnosis) through one year after the bill’s enactment.
- Benefits can be paid retroactively, and applications can be filed up to 6 months after enactment.
- Applications will be taken online, by phone, or by mail. Individuals will not visit SSA field offices to apply. Payments will in most cases be issued electronically.
- Applicants must attest that they meet the criteria for eligibility and existing penalties for fraud or misrepresentation with regard to Social Security benefits are applied to the federal emergency paid leave benefits program.

The program will operate in coordination with other relevant benefits and leave programs, including:

- Existing benefit rights are protected, including any rights to State or local paid leave benefits, and greater benefits are allowed including under a contract, collective bargaining agreement, or other employment benefit program.
- Benefit amounts are offset (reduced) dollar-for-dollar by the amount of any state or private paid leave benefit the individual also receives.
- States will be reimbursed for the total amount of these offsets that are due to state-run or state-mandated paid leave programs.
- Benefits paid under this program do not count as income or resources for the Supplemental Security Income (SSI) program.

**Section 603. Funding and Expedited Implementation Authority.** SSA will receive additional direct (mandatory) funding for both the cost of the benefits and the cost of administering the program. Treasury will receive additional
direct (mandatory) funding for reimbursement of states.

Section 604. Protection of Social Security Trust Funds. Social Security’s Trust Funds and regular administrative budget will be kept separate from this new program and cannot be used to administer or fund it.

Section 605. Taxation of Emergency Leave Benefits. Benefits paid under this program are not subject to federal income taxes.

**DIVISION E – Emergency Unemployment Insurance Stabilization and Access Act of 2020**

**Section 102. Emergency Transfers for Unemployment Compensation Administration.** This section provides $1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance (UI) benefits, under certain conditions. $500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs, so long as they met basic requirements about ensuring access to earned benefits for eligible workers. Those requirements are:

- Require employers to provide notification of potential UI eligibility to laid-off workers
- Ensure that workers have at least two ways (for example, online and phone) to apply for benefits
- Notify applicants when an application is received and being processed and if the application cannot be processed, provide information to the applicant about how to ensure successful processing.

States would be required to report on the share of eligible individuals who received UI benefits and the state’s efforts to ensure access within one year of receiving the funding. The funding would be distributed in the same proportions as regular UI administrative funding provided through annual appropriations.

$500 million would be reserved for emergency grants to states which experienced at least a 10 percent increase in unemployment. Those states would be eligible to receive an additional grant, in the same amount as the initial grant, to assist with costs related to the unemployment spike, and would also be required to take steps to temporarily ease eligibility requirements that might be limiting access to UI during the COVID-19 outbreak, like work search requirements, required waiting periods, and requirements to increase employer UI taxes if they have high layoff rates. Depending on the state, those actions might require changes in state law, or might just require changes in state policy. This section also provides temporary federal flexibility regarding those UI restrictions which are also in federal law.

**Section 103. Temporary Assistance for States with Advances.** This section provides states with access to interest-free loans to help pay regular UI benefits through December 31, 2020, if needed.

**Section 104. Technical Assistance and Guidance for Short-Time Compensation Programs.** This section requires the Secretary of Labor to provide technical assistance to states that want to set up work-sharing programs, in which employers reduce hours instead of laying employees off, and then employees receive partial unemployment benefits to offset the wage loss.

**Section 105. Full Federal Funding of Extended Unemployment Compensation for a Limited Period.** For states that experience an increase of 10 percent or more in their unemployment rate (over the previous year) and comply with all the beneficiary access provisions in section 102, this section provides 100 percent federal funding for Extended Benefits, which normally require 50 percent of funding to come from states. Extended Benefits are triggered when unemployment is high in a state and provide up to an additional 26 weeks after regular UI benefits (usually 26 weeks) are exhausted.

The emergency paid sick days legislation:

- Requires all employers to allow employees to gradually accrue seven days of paid sick leave and to provide an additional 14 days available immediately in the event of any public health emergency, including the current coronavirus crisis.
- Requires all employers to provide an additional 14 days of paid sick leave, available immediately at the beginning of a public health emergency, including the current coronavirus crisis.
- Ensures paid sick leave covers days when your child’s school is closed due to a public health emergency, when your employer is closed due to public health emergency, or if you or a family member is quarantined or isolated due to a public health emergency.
- Reimburses small businesses—defined as businesses with 50 or fewer employees—for the costs of providing the 14 days of additional paid sick leave used by employees during a public health emergency.
- Enables construction employees to receive sick pay based on hours they work for multiple contractors.
- Makes the bill effective immediately so that employees in areas covered under a qualifying Public Health Emergency, upon the date of enactment, can take 14 days of paid sick leave in order to address COVID-19.

**ITEM 2] Tax Relief & Stimulus**

**Tax Relief**

On March 11th, the American Institute of CPAs (AICPA) called for the Treasury Department and the IRS to provide relief to all taxpayers in light of the uncertainty and challenges caused by
the spread of the coronavirus (COVID-19) pandemic. Specifically, the Treasury and the IRS were asked to consider the following recommendations, “designed to provide extensive relief to millions of individuals and businesses”:

Individuals

Broad Relief: Extend certain deadlines falling on or after March 15, 2020, and before October 15, 2020, to give individuals additional time to file and make payments through October 15, 2020.

Automatic Extension: Provide an automatic extension to October 15, 2020, without the need to file any forms or request an extension.

Penalties & Interest: Waive late payment penalties if at least 70% of an individual’s current tax due is paid by April 15, 2020. Waive interest through October 15, 2020.

Other Relief: Waive underpayment penalties for 2020 estimated tax payments if paid by September 15, 2020.

Extend the IRA contribution deadline.

Businesses

Broad Relief: Extend certain deadlines falling on or after March 15, 2020, and before October 15, 2020, to give businesses additional time to file and make payments through October 15, 2020.

Automatic Extension: Provide an automatic extension without the need to file any forms or request an extension.

Penalties & Interest: Waive late payment penalties and interest through October 15, 2020.

Other Relief: Provide appropriate relief for all businesses and tax-exempt organizations regarding elections and filings (including payroll, excise tax, etc.).

“We are hearing from our members that they and their clients are experiencing great uncertainty about this year’s tax filing season. Our recommendations will help give taxpayers, large and small, much needed relief in the midst of this fast-moving emergency situation,” said Edward Karl, AICPA Vice President of Taxation. “We continue to closely monitor the Coronavirus pandemic and thank the Treasury Department and IRS for their commitment to the welfare of all taxpayers.”

“Update”

On Friday March 20th, the IRS officially announced that, because of the ongoing coronavirus pandemic, tax returns due April 15 will not have to be filed until July 15 this year. IRS Notice 2020-18 was released hours after Treasury Secretary Steven Mnuchin had made the announcement. The AICPA expressed its thanks to Treasury and the IRS for the filing extension and to its members and the state CPA societies for their outreach to federal legislators and administrators on the issue.

The postponement applies to any “individual, a trust, estate, partnership, association, company or corporation” with a federal income tax return or income tax payment due on April 15 (affected taxpayer). Any affected taxpayer receives an automatic postponement of that deadline until July 15. They do not have to file Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, or Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.

Stimulus

On March 18th, the White House along with the Treasury Department penned a proposal to Congress requesting a $1 trillion coronavirus relief and economic stimulus plan that would include industry-specific bailouts and payments to individual taxpayers. Highlights of the proposed plan include:

I. Appropriation to the Exchange Stabilization Fund (ESF) for Specified Uses

Airline Industry Secured Lending Facility ($50 billion):
- This provision would appropriate an additional $50 billion to the ESF and authorize use of those funds for secured lending to U.S. passenger and cargo air carriers.
- The Treasury Department is to determine appropriate interest rates and other terms and conditions.
- Funds are to be secured by collateral specified by the Treasury Department.
- Requirements on borrowers would include:
  1. Specified continuation of service requirements
  2. Limits on increases in executive compensation until repayment of the loans

Other Severely Distressed Sectors of the U.S. Economy ($150 billion)
- This provision would appropriate an additional $150 billion and authorize use of those funds for secured lending or loan guarantees to assist other critical sectors of the U.S. economy experiencing severe financial distress due to the COVID-19 outbreak.

II. Temporarily Permit Use of the Exchange Stabilization Fund to Guarantee Money Market Mutual Funds

- Temporarily suspend the statutory limitation on the use of the Exchange Stabilization Fund (Section 131 of the Emergency Economic Stabilization Act of 2008) for guarantee programs for the United States money market mutual fund industry.

Sunset date: Terminate authority to establish any new MMMF guarantee program upon the conclusion of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Outbreak declared by the President on March 13, 2020.

III. Economic Impact Payments

- This provision would authorize and appropriate funds for two rounds of direct payments to individual taxpayers, to be administered by the IRS and Bureau of the Fiscal Service.
  1. $250 billion to be issued beginning April 6
  2. $250 billion to be issued beginning May 18
- Payment amounts would be fixed and tiered based on income level and family size. The Treasury Department is
• modeling specific options.
• Each round of payments would be identical in amount.

IV. Small Business Interruption Loans
• To provide continuity of employment through business interruptions, this provision would authorize the creation of a small business interruption loan program and appropriate $300 billion for the program.
• The U.S. government would provide a 100% guarantee on any qualifying small business interruption loan.
• Qualifying loan terms:
  1. Eligible borrowers: Employers with 500 employees or less (phased out)
  2. Loan amounts: 100% of 6 weeks of payroll, capped at $1,540 per week per employee (approx. $80,000 annualized)

3. Borrower requirement: Employee compensation must be sustained for all employees for 8 weeks from the date the loan is disbursed.
4. Lender: U.S. financial institutions
5. Streamlined underwriting process: Lender verifies the previous 6-week payroll amount and later verifies that the borrower has paid 8 weeks of payroll from date of disbursement.
6. Authority for the Treasury Department to issue regulations establishing appropriate interest rate, loan maturity, and other relevant terms and conditions

ITEM 3 Secure Act – Origins and Overview

The Setting Every Community Up for Retirement Enhancement Act ("Secure Act") represents the most significant piece of legislation impacting retirement accounts in well over a decade. This Secure Act drew from several bipartisan bills drafted to effectively make it easier for employers to offer retirement plans with the intent of easing the burden for individuals to save for retirement. On December 19, 2019, the Senate passed two spending bills to fund the government through September 30, 2020, one of which (H.R. 1865, the “Further Consolidated Appropriations Act of 2020” or the “Act”) contained provisions from the Setting Every Community Up for Retirement Enhancement Act of 2019 (H.R. 1994). The SECURE Act includes almost thirty provisions aimed at encouraging the adoption of employer-sponsored plans and lifetime income options, altering plan distribution rules, easing administrative requirements, improving certain types of defined benefit plans, and more. Notably, a number of the provisions are effective starting in 2020.

The Act also includes a number of other retirement and health and welfare provisions of interest to employers and service providers. Among other things, it repeals three tax provisions from the Affordable Care Act ("ACA") – the “Cadillac tax,” health insurer tax, and medical device tax – and includes a series of tax and disaster-related provisions, including provisions affecting employee benefits.

The SECURE Act had its origins in the Retirement Enhancement and Savings Act ("RESA," H.R. 1007), which was unanimously passed by the Senate Finance Committee in 2016. RESA’s key provisions, which were included in the SECURE Act, included permitting “open” multiple employer plans and creating a fiduciary safe harbor for in-plan lifetime income options. Despite bipartisan support, RESA never received a vote in the full Senate. In 2018, as part of GOP leadership’s second round of tax reform bills, many of RESA’s key provisions were included in the Family Savings Act ("FSA," H.R. 6757), which passed the House but did not advance in the Senate.

Trying once during the spring of 2019, the Ways and Means Committee Chairman Richard Neal (D-MA) negotiated a new version of RESA – renamed the SECURE Act – by adding a few provisions from the FSA, including an expansion of permitted 529 plan distributions. The House passed the SECURE Act on a vote of 417-3 on May 23, 2019, but the bill languished in the Senate throughout the summer and fall. Senate leadership attempted several times to pass the SECURE Act by unanimous consent, but those efforts were repeatedly blocked by a small group of senators. After months of uncertainty and speculation, the SECURE Act was included in the agreement to fund government through September 30, 2020. The SECURE Act was finally passed by the House on December 17, 2019 by a vote of 297-120 and by the Senate on December 19, 2019 by a vote of 71–23. It was signed into law by President Trump on December 20, 2019.

Key provisions included in the Secure Act
• Ease the process for small business owners to set up “safe harbor” retirement plans that are less expensive and easier to administer.
• Allow part-time workers to be eligible to participate in an employer retirement plan.
• Push back the age at which retirement plan participants need to take required minimum distributions (RMDs), from 70½ to 72, and allow traditional IRA owners to keep making contributions indefinitely.
• Require that most non-spouses inheriting IRAs take distributions that end up emptying the account in 10 years.
• Allow 401(k) plans to offer annuities.
• Make it easier for small businesses to set up 401(k)s by increasing the cap under which they can automatically enroll workers in “safe harbor” retirement plans, from 10% of wages to 15%.
• Provide a maximum tax credit of $500 per year to employers who create a 401(k) or SIMPLE IRA plan with automatic enrollment.
Enable businesses to sign up part-time employees who work either 1,000 hours throughout the year or have three consecutive years with 500 hours of service.

Encourage plan sponsors to include annuities as an option in workplace plans by reducing their liability if the insurer cannot meet its financial obligations.

Allow the use of tax-advantaged 529 accounts for qualified student loan repayments (up to $10,000 annually).

Permit penalty-free withdrawals of $5,000 from 401(k) accounts to defray the costs of having or adopting a child.

Any one of these key provisions could serve as a stand-alone course. We’ll take this opportunity to present details in connection with select provisions of this legislation. What follows are excerpts by Title and Section highlighting prior law before passage of the Act along with the corresponding “update” for that section.

**ITEM 4** Title I: Expanding and Preserving Retirement Savings

Section 103. Increase Credit Limitation for Small Employer Pension Plan Start-Up Costs

Eligible small employers use Form 8881 to claim the credit for qualified start-up costs incurred in establishing or administering an eligible employer plan. This credit is allowed under section 45E, and is part of the general business credit. Taxpayers may elect to have section 45E not apply for the tax year the credit is available by not claiming it on their tax return for that year. Taxpayers, other than partnerships and S corporations, whose only source of this credit is from a partnership or S corporation, are not required to complete or file Form 8881. Instead, they can report this credit directly on Form 3800.

Calculating the Credit for plan years before 2020

For an eligible small employer, the credit is 50% of the qualified start-up costs paid or incurred during the tax year. The credit is limited to $500 per year for the first credit year and each of the following two tax years. No credit is allowed for any other tax year. To be an eligible small employer, entities must have had no more than 100 employees during the tax year preceding the first credit year who received at least $5,000 of compensation during that tax year. However, entities are not an eligible small employer if, during the three tax years preceding the first credit year, they established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the new qualified employer plan.

**Update**

The existing income tax credit limit for small employer pension plan start-up costs was increased. Effective for employer tax years beginning after Dec. 31, 2019, the flat dollar income tax credit available for employers with 100 or fewer employees in connection with the costs incurred to establish a retirement plan has been increased to the greater of:

- $500, or
- the lesser of a) $250 multiplied by the number of non-highly compensated employees eligible for the plan, or b) $5,000.

The credit continues to be available for up to three years.

Also, under Section 104, a new income tax credit for small employer automatic enrollment retirement plans has been enacted. Effective for employer tax years beginning after Dec. 31, 2019, a new $500-per-year income tax credit is now available (for up to three years) for employers with fewer than 100 employees that adopt an automatic enrollment retirement plan or amend their existing retirement plan to become an automatic enrollment plan.

Section 106. Repeal of Maximum Age for Traditional IRA

For 2020, total contributions to one’s traditional or Roth IRAs cannot be more than:

- $6,000 ($7,000 if you're age 50 or older), or
- taxable compensation for the year, if compensation was less than this dollar limit.

For 2019, the limits are the same as 2020.

For 2018, 2017, 2016 and 2015, one’s total contributions to all of traditional and Roth IRAs cannot be more than:

- $5,500 ($6,500 if you’re age 50 or older), or
- taxable compensation for the year, if compensation was less than this dollar limit.

The IRA contribution limit does not apply to rollover contributions, qualified reservist repayments, or claiming a tax deduction for an IRA contribution.

Prior to passage of the Secure Act, an individual could not make regular contributions to a traditional IRA in the year they reach 70½ and older. However, an individual could still contribute to a Roth IRA and make rollover contributions to a Roth or traditional IRA regardless of age.

**Update**

No maximum age for making tax-deductible traditional IRA contributions. Effective for 2020, the current law setting 70½ as the maximum age for making tax-deductible contributions to a traditional IRA no longer applies. (Prior to 2020, deductions were not available for contributions made by an individual for any year in which the individual had attained age 70½.)

Section 108. Portability of Lifetime Income Options**

Effective for plan years beginning after 2019, participants of tax-qualified defined contribution plans, Section 403(b) plans, and governmental Section 457(b) plans are now able to make a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or IRA of lifetime income investments or contracts if they become unavailable as options.
under the plan, without regard to in-service restrictions otherwise in place under the plan.

Section 112. Penalty-free Withdrawals from Retirement Plans for Individuals in Case of Birth or Adoption

**Update**

No 10% early distribution penalty on up to $5,000 of early distributions from IRAs and tax-qualified retirement plans to meet expenses of a qualified birth or adoption. Effective for distributions made after 2019, up to $5,000 of distributions may be made within one year of the birth of the IRA owner's/plan participant's child or his or her legal adoption of a child who is younger than age 18 or who "is physically or mentally incapable of self-support," without being subject to the otherwise applicable 10% penalty on early distributions.

Section 113. Increase in Age for Required Beginning Date for Mandatory Distributions

Required Minimum Distributions (RMDs) generally are minimum amounts that a retirement plan account owner must withdraw annually starting with the year that he or she reaches 70 1/2 years of age or, if later, the year in which he or she retires. However, if the retirement plan account is an IRA or the account owner is a 5% owner of the business sponsoring the retirement plan, the RMDs must begin once the account holder is age 70 1/2, regardless of whether he or she is retired.

Retirement plan participants and IRA owners, including owners of SEP IRAs and SIMPLE IRAs, are responsible for taking the correct amount of RMDs on time every year from their accounts, and they face stiff penalties for failure to take RMDs.

When a retirement plan account owner or IRA owner dies before RMDs have begun, different RMD rules apply to the beneficiary of the account or IRA. Generally, the entire amount of the owner's benefit must be distributed to the beneficiary who is an individual either:

1) within 5 years of the owner's death, or
2) over the life of the beneficiary starting no later than one year following the owner's death.

The RMD rules apply to all employer sponsored retirement plans, including profit-sharing plans, 401(k) plans, 403(b) plans, and 457(b) plans. The RMD rules also apply to traditional IRAs and IRA-based plans such as SEPs, SARSEPs, and SIMPLE IRAs. The RMD rules also apply to Roth 401(k) accounts. However, the RMD rules do not apply to Roth IRAs while the owner is alive.

Taxpayers must take their first required minimum distribution for the year in which they turn age 70½. However, the first payment can be delayed until April 1 of the year following the year in which they turn 70½. For all subsequent years, including the year in which taxpayers were paid the first RMD by April 1, they must take the RMD by December 31 of the year.

Generally, an RMD is calculated for each account by dividing the prior December 31 balance of that IRA or retirement plan account by a life expectancy factor that IRS publishes in Tables in Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs).

- Joint and Last Survivor Table – used if the sole beneficiary of the account is the spouse and the spouse is more than 10 years younger than the taxpayer.
- Uniform Lifetime Table – used if the spouse is not the sole beneficiary or spouse is not more than 10 years younger
- Single Life Expectancy Table – used if an individual is the beneficiary of an account (an inherited IRA)

**Update**

Effective for individuals who attain age 70½ after 2019, required minimum distributions from tax-qualified retirement plans and IRAs is to be based upon the attainment of age 72, rather than age 70½.

[ITEM 5] Title III: Other Benefits

Section 302. Expansion of Section 529 Plans

A 529 plan is a tax-advantaged savings plan designed to encourage saving for future education costs. 529 plans, legally known as “qualified tuition plans,” are sponsored by states, state agencies, or educational institutions and are authorized by Section 529 of the Internal Revenue Code.

There are two types of 529 plans: prepaid tuition plans and education savings plans. All fifty states and the District of Columbia sponsor at least one type of 529 plan. In addition, a group of private colleges and universities sponsor a prepaid tuition plan.

**Prepaid Tuition Plans vs. Education Savings Plans**

**Prepaid Tuition Plans.** Prepaid tuition plans allow a saver or account holder to purchase units or credits at participating colleges and universities (usually public and in-state) for future tuition and mandatory fees at current prices for the beneficiary. Prepaid tuition plans usually cannot be used to pay for future room and board at colleges and universities and does not allow an individual to prepay for tuition for elementary and secondary schools.

Most prepaid tuition plans are sponsored by state governments and have residency requirements for the saver and/or beneficiary. Prepaid plans are not guaranteed by the federal government. Some state governments guarantee the money paid into the prepaid tuition plans that they sponsor, but some do not. If prepaid tuition payments are not guaranteed, then investors run the risk of losing money in the plan if the plan’s sponsor has a financial shortfall. In addition, if a beneficiary doesn’t attend a participating college or university, the prepaid tuition plan may pay less than if the beneficiary attended a participating college or university. It may only pay a small return on the original investment.

**Education Savings Plans.** Education savings plans let a saver open an investment account to save for the beneficiary’s future qualified higher education expenses – tuition, mandatory fees and room and board. Withdrawals from education savings plan accounts can generally be used at any college or university, including sometimes at non-U.S. colleges and universities. Education savings plans can also be used to pay up to $10,000 per year per beneficiary for tuition at any public, private or religious elementary or secondary school. A saver may typically choose among a range of investment
portfolio options, which often include various mutual fund and exchange-traded fund (ETF) portfolios and a principal-protected bank product. These portfolios also may include static fund portfolios and age-based portfolios (sometimes called target-date portfolios). Typically, age-based portfolios automatically shift toward more conservative investments as the beneficiary gets closer to college age. Individuals can use a 529 account to pay for elementary or secondary school tuition, however, they have a shorter time horizon for money to grow.

All education savings plans are sponsored by state governments, but only a few have residency requirements for the saver and/or beneficiary. State governments do not guarantee investments in education savings plans. Education savings plan investments in mutual funds and ETFs are not federally guaranteed, but investments in some principal-protected bank products may be insured by the FDIC. As with most investments, investments in education savings plans may not make any money and could lose some or all of the money invested.

Qualified Higher Education Expenses

For purposes of Section 529, the expenses can be either qualified higher education expenses or qualified elementary and secondary education expenses. To be qualified, some of the expenses must be required by the school and some must be incurred by students who are enrolled at least half-time.

The following expenses must be required for enrollment or attendance of a designated beneficiary at an eligible postsecondary school:

- Tuition and fees
- Books, supplies, and equipment

Expenses for special needs services needed by a special need’s beneficiary must be incurred in connection with enrollment or attendance at an eligible postsecondary school.

Expenses for room and board must be incurred by students who are enrolled at least half-time. A student is enrolled “at least half-time” if he or she is enrolled for at least half the full-time academic work load for the course of study the student is pursuing, as determined under the standards of the school where the student is enrolled. The expense for room and board qualifies only to the extent that it isn’t more than the greater of

**Update**

Section 401 Modifications to Required Minimum Distribution Rules

Individuals generally have to start taking withdrawals from their IRA, SIMPLE IRA, SEP IRA, or retirement plan account when they reach age 70 1/2. Roth IRAs do not require withdrawals until after the death of the owner.

Your required minimum distribution is the minimum amount you must withdraw from your account each year.

You can withdraw more than the minimum required amount. Your withdrawals will be included in your taxable income except for any part that was taxed before (your basis) or that can be received tax-free (such as qualified distributions from designated Roth accounts).

**Update**

The SECURE Act allows families to take tax-free 529 plan distributions for student loan repayment. Principal and interest payments toward a qualified education loan will be considered qualified 529 plan expenses. However, the portion of student loan interest that is paid for with tax-free 529 plan earnings is not eligible for the student loan interest deduction.

The law includes an aggregate lifetime limit of $10,000 in qualified student loan repayments per 529 plan beneficiary and $10,000 per each of the beneficiary’s siblings. Siblings may include a brother, sister, stepbrother or stepsister. A 529 plan account owner may change the 529 plan beneficiary at any time without tax consequences.

The SECURE Act allows 529 plans to be used to pay for apprenticeship programs. To be considered a qualified 529 plan expense, the apprenticeship program must be registered and certified with the Secretary of Labor under section 1 of the National Apprenticeship Act. The Department of Labor provides a search tool to find out if a particular apprenticeship program is eligible.

Apprenticeship programs are offered by employers and provide on-the-job training and instruction to prepare workers for a particular career. Apprenticeships are used in many industries, such as construction, manufacturing, health care, information technology, energy and logistics.

Costs of apprenticeships vary by the employer and type of job training. In some cases, the employer covers all or a portion of the instruction. Under the SECURE Act, tax-free distributions from 529 plans can be used to pay for the following expenses associated with apprenticeship programs:

- Fees
- Textbooks
- Supplies
- Equipment, including tools required for trades


The legislation modifies the required minimum distribution rules with respect to defined contribution plan and IRA balances upon the death of the account owner. Under the legislation, distributions to individuals other than the surviving spouse of the employee (or IRA owner), disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee (or IRA owner), or child of the employee (or IRA owner) who has not reached the age of majority are generally required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner’s death.

"Stretch IRAs"

Prior to 2020, beneficiaries of IRA and tax-qualified defined contribution retirement plans had the ability to “stretch” their distributions over their life expectancies, resulting in greater income deferral. Under the SECURE Act, generally effective
for distributions from the IRA or plan account of an individual who dies after 2019, distributions must be made to the beneficiary by the end of the tenth calendar year following the year of the individual’s death for:
- any beneficiary other than the individual’s spouse;
- the individual’s child who has not attained majority age;
- an individual who is disabled or chronically ill; or
- an individual who is not more than 10 years younger than the deceased.

A Stretch IRA is a wealth transfer method that involves an IRA—specifically, any non-spouse beneficiary you designate to inherit your IRA. With this estate planning strategy, you had the potential to "stretch" your IRA’s distributions (and tax benefits) over several generations. The stretch IRA was an estate planning strategy that let you extend IRA distributions over future generations—while that IRA continued to grow tax-free.

Starting in 2020, the ability to use this strategy effectively ends. The strategy worked because IRA beneficiaries could take required minimum distributions based on their own age, a particular benefit to grandchildren and great-grandchildren. The younger they were, the smaller the RMD, and the longer the account could grow tax-free.

Required Minimum Distributions
Previously, the amount of the Required Minimum Distribution (RMD) depended on how much is in the account and on the person’s age, based on IRS life-expectancy tables. In figuring the RMD, beneficiaries could opt to use the original account holder’s age/life expectancy figure, or their own age.

Now the heir must withdraw the entire IRA inheritance within 10 years of the death of the original account holder, regardless of their age. If the money is being distributed from a traditional IRA, it will be taxable at their current income tax rate. If it’s from a Roth IRA, it won’t be taxable, but the recipient will lose the right to have that money continue to grow tax-free in the Roth account.

Typically, most IRA owners name their spouse as the primary IRA beneficiary and their children as the contingent beneficiaries. This strategy typically resulted in larger distributions and tax due.

If a spouse or child does not have a need for that extra income, then the option exists to skip a generation (or two) and name grandchildren or great-grandchildren as the beneficiaries. This will still spare older family members from the tax burden of receiving the IRA, but the whole account must now be distributed within 10 years of the death of the original account holder.

The previous stretch IRA rules allowed non-spouse recipients to stretch the value of the IRA over a longer period of time and reduces the amount of the taxable withdrawal. At the core of the strategy was the fact that RMDs were based on IRS life-expectancy tables. Since grandchildren are younger, the amount they would have had to withdraw would be much less than the spouse or children would be required to take.

The beneficiary of an inherited IRA has until the end of the tax year following the year of the original account holder’s death to start taking distributions.

**Example**
The following example is based on the rules in place for account owners who passed away before December 31, 2019.

Assume we have a traditional IRA worth $500,000 on Dec. 31, 2019. The original account owner passed away on Dec. 1, 2019.

Let’s look at the RMD based on various beneficiaries. Each beneficiary has to continue to take the RMD each year thereafter—until the money runs out. This is based on their then-current life expectancy from IRS Publication 590-B.

<table>
<thead>
<tr>
<th>BENEFICIARY</th>
<th>AGE</th>
<th>LIFE EXPECTANCY</th>
<th>RMD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse</td>
<td>75</td>
<td>13.4</td>
<td>$37,313</td>
</tr>
<tr>
<td>Child</td>
<td>52</td>
<td>32.3</td>
<td>$15,480</td>
</tr>
<tr>
<td>Grandchild</td>
<td>30</td>
<td>53.3</td>
<td>$9,381</td>
</tr>
<tr>
<td>Great-grandchild</td>
<td>6</td>
<td>76.7</td>
<td>$6,519</td>
</tr>
</tbody>
</table>

In our example, if the original account holder named the great-grandson as the beneficiary, the RMD will be very small, as will be the tax due on it (assuming the six-year-old doesn’t have much other income). Withdrawing less allows the IRA balance to continue to grow tax-deferred, thus allowing it to stretch over several generations.

**Pros**
- A stretch IRA potentially provided a lifetime of income to a young beneficiary.
- The total tax paid may be lower due to smaller distributions over an extended period of time rather than a lump-sum.
- Stretching gave more time for the assets to grow tax-free—which increased the amount beneficiaries received.

**Cons**
- A beneficiary might not live a normal life expectancy.
- Changes in laws or regulations could have detrimental effects on the owner or beneficiaries—exactly what happened with passage and signing of the SECURE Act.
- If a beneficiary is a minor, you might have to set up a custodial account or guardianship.

Given the same example above, but assuming a date of death of Jan 1, 2020, the lowest RMD given this scenario would be $50,000 ($500,000 divided by 10 years).

### [ITEM 7] Title V: Tax Relief for Certain Children

**Section 501. Modification of rules relating to the taxation of unearned income of certain children.**
The Tax Cuts and Jobs Act of 2017 modified what is commonly known as the "Kiddie Tax", which taxed a child’s unearned income at the tax rates of the child’s parents.

Starting in 2018, however, the Kiddie Tax was based on the much higher tax rates for Estates and Trusts. This table compares the 2018 income thresholds at which each tax rate applies for parents and for estates and trusts. It demonstrates that the higher tax rates for the Kiddie Tax
started at much lower income levels.

<table>
<thead>
<tr>
<th>Tax Rate</th>
<th>Parents (MFJ)</th>
<th>Estates and Trusts</th>
</tr>
</thead>
<tbody>
<tr>
<td>24%</td>
<td>$165,000</td>
<td>$2,550</td>
</tr>
<tr>
<td>32%</td>
<td>$315,000</td>
<td>N/A</td>
</tr>
<tr>
<td>35%</td>
<td>$400,000</td>
<td>$9,150</td>
</tr>
<tr>
<td>37%</td>
<td>$600,000</td>
<td>$12,500</td>
</tr>
</tbody>
</table>

**Update**

[ITEM 8] SECURE Act Analysis

The Setting Every Community Up for Retirement Act, in all measures, represents the most significant bill impacting retirement accounts since the Pension Protection Act (PPA). Key changes abound in the new law:

- Assistance for small employers to establish retirement plans for employees.
- Easing of access to lifetime income options related to retirement accounts.
- Changes in the required minimum distribution rules including change in law relating to contributions to deductible IRA accounts.

Estate planning in 2020 will be front and center. Existing plans should be revisited and new plans will need to be drafted in the wake of this new law. Let’s cover some of the key points practitioners should consider.

Ten-year rule for RMD

Legislators were well aware of the tax generating prospects that result from passage of the Act. Prior to 2020, a non-spousal beneficiary of an IRA or qualified plan could minimize the annual required minimum distributions because amounts were calculated over their life expectancy. As we covered above, the “Stretch” IRA was a valuable tool in minimizing taxes in the short term, and growing monies in a tax deferred account. Unless specifically exempted, the requirement under the new law will result in higher taxes and a shorter distribution period for inherited retirement accounts. Practitioners and planners should work with their clients to review beneficiary designations based on these rule changes. For example, if the goal of the original retirement account owner was to provide a stream of income over a beneficiary’s lifetime, then the possibility of establishing a trust on behalf of the beneficiary may be a better alternative going forward.

Additionally, existing “pass-through” or “look-through” trusts must be reviewed. These forms of trusts include the naming of the trust as the beneficiary of an individual’s IRA. The trust inherits the IRA upon the individual’s death and beneficiaries of the trust would have access to the funds. Trusts of this nature are typically created to provide asset protection and provide originators of the trust with control by dictating how distributions are made to beneficiaries. Beneficiaries in this instance are typically children, grandchildren, or other heirs. If a trust is structured in such a manner that the beneficiary only has access to the required minimum distribution each year, then you may have an instance where the required minimum distribution does not occur until year ten under the new law. The result would be monies accumulating in the trust for ten years with a large taxable distribution at the end of year ten. Practitioners and advisors should be reaching out to clients and scheduling time to review these retirement accounts and also trust accounts if applicable to review these designations and re-examine the trust language to avoid future tax calamity.

Deductible IRAs past age 70.5

In an age where individuals seem less apt to choose “full retirement”, this particular provision of the law is a clear win. Lifting this age limit restriction can provide quite a tax savings. $7,000 for an individual, and $14,000 per married filing joint couple could be available if certain requirements are met. That can result in a tidy tax savings each year of eligibility.

Required Minimum Distribution Date now 72

For those individuals who turn 70.5 after 2019, the new law does provide some relief on the requirement to take a minimum distribution. The date has been pushed out to the age of 72. Granted, this relief seems in some way a small measure of good news, but taxpayers should always welcome changes that benefit them. As addressed above, beneficiary and related trusts should be reviewed during 2020. We also would like to stress the importance of a thorough tax review during this upcoming year. Income tax considerations are bound to change related to passage of the ACT.

Planning in 2020 is key to minimizing current tax impacts and working with our clients to ensure that their goal of passing their assets to heirs is done with optimal efficiency and execution. For example, Roth conversions may prove particularly attractive given the ten-year distribution rule now in effect, particularly when considering the lower income tax rates in place from the TCJA.

**REVIEW QUESTIONS AND SOLUTIONS**

1. H.R. 6201 was signed into law on March 18, 2020. Which of the following provisions was not included in this recently passed legislation?
   a. The guarantee of direct stimulus payments to individual taxpayers.
   b. The emergency transfer of funds to unemployment compensation administrations.
c. The enactment of a new federal emergency paid leave benefit program.

2. Effective for employer tax years beginning after Dec. 31, 2019, a new ______ per-year income tax credit is now available (for up to three years) for employers with _____ or fewer employees that adopt an automatic enrollment retirement plan or amend their existing retirement plan to become an automatic enrollment plan.
   a. $500, 100
   b. $100, 500
   c. $500, 500

3. A required minimum distribution is typically calculated for each IRA retirement account by dividing the prior December 31 balance of that IRA or retirement plan account by a life expectancy factor that is contained in ___________.
   a. IRS Circular 230
   b. TIGTA Semi-annual reports
   c. IRS Publication 590-B

4. Which of the following statements would generally be considered an advantage in connection with IRA required minimum distributions.
   a. Delaying the distribution of funds from a tax deferred account like an IRA is generally prudent since tax payments due upon distribution erode the value of the underlying asset.
   b. The decision to accelerate the distribution of funds from a traditional IRA would not impact the account owner/recipient’s tax in any given year.
   c. The age of IRA beneficiaries selected for an IRA account has no impact on the timing and flexibility of future distributions.

5. Randall is seeking your advice. He is 73 years old, and would like to contribute to a tax-deductible traditional IRA starting in 2020. You correctly advise him that ___________.
   a. he is prohibited from contributing to his IRA because of his age
   b. the maximum amount he can contribute as an individual would be $6,000
   c. the maximum amount he can contribute as an individual would be $7,000

6. Which of the following statements is true in connection with the Secure Act and its impact on Section 529 plans?
   a. Distributions from a 529 plan for student loan repayments would still not be considered a tax-free distribution.
   b. Distributions from 529 plans can now be used to pay for apprenticeship programs.
   c. Student fees are not considered a qualifying expense in connection with a section 529 plan distribution.

Solutions

1. [a] Correct, This proposal has been currently made to Congress by the White House and the Department of Treasury, but it was not included in the Families First Coronavirus Response Act (H.R. 6201).
   [b] Incorrect, This provision provides $1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance (UI) benefits, under certain conditions.
   [c] Incorrect, Eligible workers will receive a benefit for a month (up to three months) in which they must take 14 or more days of leave from their work due to the qualifying COVID-19-related reasons.

2. [a] Correct, Additionally, a credit is also available for smaller employers based on start-up costs associated with their pension plan.
   [b] Incorrect, The tax credit associated with this provision is $500.
   [c] Incorrect, The number of employees relative to this provision is 100 or fewer.

3. [a] Incorrect, This publication establishes the rules governing those who practice before the U.S. Internal Revenue Service (IRS), including attorneys, certified public accountants (CPAs) and enrolled agents (EAs).
   [b] Incorrect, The Treasury Inspector General for Tax Administration (TIGTA) was established under the IRS Restructuring and Reform Act of 1998 to provide independent oversight of IRS activities.
   [c] Correct, Publication 590-B, Distributions from Individual Retirement Arrangements, contains several tables used to calculate the RMD including the Joint and Last Survivor Table, Uniform Lifetime Table, and the Single Life Expectancy Table.

4. [a] Correct, Growing monies in a tax deferred vehicle for as long as possible is a clear advantage to account holders.
   [b] Incorrect, Distributions from a traditional IRA, in which the account owner received tax deductions for years in which the contributions were made, would result in an increase in taxes resulting from the distribution.
5. **[a] Incorrect**, Starting in 2020, the age restriction for making deductible contributions into a traditional IRA have been lifted.
[**[b]** Incorrect**, Since Randall is older than 49 years of age, he could make a contribution totaling $7,000 for the year.
[**[c]** Correct**, Individuals who have not reached the age of 50 would be capped at a contribution of $6,000 for tax year 2020.]

6. **[a] Incorrect**, Principal and interest payments toward a qualified education loan will be considered qualified 529 plan expenses. However, the portion of student loan interest that is paid for with tax-free 529 plan earnings is not eligible for the student loan interest deduction.

[**[b]** Correct**, To be considered a qualified 529 plan expense, the apprenticeship program must be registered and certified with the Secretary of Labor under section 1 of the National Apprenticeship Act.
[**[c]** Incorrect**, The cost of student fees, textbooks, and supplies would all be considered qualifying expenses. Distributions from a 529 plan used to pay for these costs would be made on a tax-free basis.]

[ITEM 9] Form W-4

The IRS proposed new regulations (REG-132741-17) for withholding on individuals’ wages to reflect the statutory changes reflected in the TCJA, including the elimination of the personal exemption. The proposed rules and the new Form W-4, Employee’s Withholding Certificate (formerly titled Employee’s Withholding Allowance Certificate) no longer use an employee’s marital status and withholding allowances, which were tied to the value of the personal exemption. According to the IRS, income tax withholding using the redesigned Form W-4 will generally be based on the employee’s expected filing status (married, single, or head of household) and standard deduction for the year.

The proposed rules do not require existing employees to complete a new Form W-4 solely due to the changes to Form W-4. However, employees continue to be required to provide a new W-4 for certain changes in their circumstances, and the proposed regulations provide rules on when employees must furnish a new Form W-4 for changed circumstances.

The new Form W-4 also streamlines the procedures for employees who work multiple jobs and for employees with working spouses. The regulations provide detailed rules on when an employee can select “married filing jointly” on a Form W-4 and disallow that status for individuals who are legally separated from their spouse.

The proposed regulations also address a variety of other income tax withholding issues. For example, the proposed regulations provide flexibility regarding how employers who fail to furnish Forms W-4 should be treated. Starting in 2020, employers must treat new employees who fail to furnish a properly completed Form W-4 as single and withhold using the standard deduction and no other adjustments.

The new regulations provide for either a percentage method of withholding or a wage bracket method of withholding, and tables for both of these methods are contained in IRS Publication 15-T, Federal Income Tax Withholding Methods, which was released Dec. 24, 2019. They also update the regulations for the lock-in letter program and eliminate the combined income tax and Federal Insurance Contributions Act withholding tables.

[ITEM 10] Gig Economy Workers

Recently, the IRS launched the Gig Economy Tax Center aimed at helping gig economy participants understand and meet their tax obligations. This center is a step forward for helping gig economy workers comply with a federal tax code that remains complex and difficult to navigate for independent contractors.

Gig economy workers operating in fields ranging from ridesharing to renting out a spare room must comply with the same tax rules governing small businesses. Unlike a traditional employment arrangement, gig economy workers must withhold their own income and self-employment taxes, make quarterly estimated payments, and apportion expenses between business and personal use to determine taxable income.

All of these steps require knowledge of the federal tax system that many workers lack, which contributes to a large gap between taxes these workers owe and taxes they remit. This tax compliance challenge can be resolved through two levers: policy change to streamline the tax compliance process and educational efforts aimed at improving taxpayer awareness of their responsibilities.

The Gig Economy Tax Center helps fill the latter problem by centralizing IRS resources in a single location for taxpayers. The Gig Economy Tax Center will help improve taxpayer education on what their obligations are and answer common questions related to gig economy work. This ranges from locating which tax forms to file to how to deduct expenses to how to file and pay for federal income and self-employment taxes.

For example, a gig economy worker may have separate questions about how to use the qualified business income deduction and how to deduct a car expense from income tax. The answers to these two questions are contained in separate publications, which are now located in one place for taxpayers to find more easily: [https://www.irs.gov/businesses/gig-economy-tax](https://www.irs.gov/businesses/gig-economy-tax)
Educational efforts like the Gig Economy Tax Center should be paired with policy changes that help simplify the process of complying with the tax code. For example, properly tracking and deducting expenses is a recurring challenge in gig economy work, and this aspect may be improved through a simplified expense deduction that would deduct a flat expense amount from gross income in lieu of itemized expenses.

Additionally, policymakers should consider ways that gig economy platforms can help simplify the tax filing experience for their contractors. Simplifying measures like voluntary withholding arrangements, where contractors would no longer be required to remit quarterly estimated tax payments, are not permitted under current tax and labor law. Giving gig economy platforms more room to support their contractors will be an important part of the solution, in addition to taxpayer education and policy reforms that simplify the tax code.

The IRS Gig Economy Tax Center is a step forward for encouraging greater gig economy tax compliance and should be paired with efforts by policymakers to simplify the federal tax code for those workers. Policy reform and educational efforts are tools that reinforce one another, helping taxpayers fulfill their tax obligations while encouraging greater trust in the tax system.

New Form 1099-NEC
Additionally, there is a new Form 1099-NEC to report nonemployee compensation paid in 2020. The 2020 Form 1099-NEC will be due February 1, 2021. For nonemployee compensation paid in 2019, continue to use Form 1099-MISC, which is due January 31, 2020.

[ITEM 11] Potpourri

We’ll take this opportunity to highlight recent court cases, tax rulings, and various guidance impacting individual filers.

Sec. 121: Exclusion of gain from sale of principal residence
In IRS Letter Ruling 201944006, the IRS found that Sec. 121 applied to the disposition of vacant land on which a fire-destroyed principal residence was once located and that Secs. 121 and 1031 may be applied to the same transfer of property.

A taxpayer purchased property as a principal residence and, after getting married, the couple used the property as their principal residence. Following their move to a new residence, the taxpayers rented the property to full-time tenants and/or as a short-term rental until the home was destroyed in a fire.

As a result of the destruction of the dwelling unit, the taxpayers received insurance proceeds in the year of the fire. The taxpayers sold the land on which the dwelling unit was located and acquired a new property.

Although the taxpayers’ sale of land was not a sale of vacant land as described in Regs. Sec. 1.121-1(b)(3), the IRS found that it was reasonable to apply those same requirements to a sale of vacant land on which the dwelling unit was once located. While considering Regs. Sec. 1.121-1(b)(3)(ii)(A), which provides that gain on the sale of the land is then excluded only to the extent of the maximum limitation amount applicable to the taxpayer, minus the gain excluded on the sale of the dwelling unit, the IRS concluded that the gain excluded under Sec. 121 on the sale of the land is the difference between the maximum limitation amount applicable to taxpayers and the gain excluded under Sec. 121 from the sale of the dwelling unit. Finally, citing Rev. Proc. 2005-14, the IRS ruled that the fact that the taxpayers excluded gain under Sec. 121 on the sale or exchange of property did not preclude them from deferring all or a portion of the remainder of the gain, if any, under Sec. 1031.

Sec. 163: Interest
A U.S. district court addressed whether taxpayers were entitled to a mortgage interest deduction in a short-sale situation. As part of their joint Chapter 7 bankruptcy filing in 2010, the married taxpayers were discharged of their mortgage debt on their personal residence, which was sold in a short sale in 2011. Because the mortgage was "nonrecourse," the taxpayers were not personally liable for the outstanding mortgage of $744,993. The holder of the mortgage, Citibank, received $522,015 from the short sale. Unpaid interest associated with the mortgage amounted to $114,688. Within its own accounting records, Citibank allocated a portion of the short-sale proceeds against the outstanding interest amount and, in turn, issued a 2011 Form 1098, Mortgage Interest Statement, to the taxpayer, showing mortgage interest paid of $114,688.

The taxpayers reported and deducted this Form 1098 amount on Schedule A of their 2011 Form 1040, U.S. Individual Income Tax Return. The taxpayers claimed that because a Form 1098 was issued by Citibank, they were entitled to the mortgage interest deduction. However, no case law was presented to support that the IRS was "bound by a third party's Form 1098." The court ruled that since the outstanding mortgage debt exceeded the FMV of the property, no interest deduction is allowed due to the lack of "economic substance," citing -Estate of Franklin, 544 F.2d 1045 (9th Cir. 1976), as there was "no bona fide debt obligation."

Sec. 183: Activities not engaged in for profit
The Tax Court held in Sarkin (T.C. memo 2019-131) that a professional architect did not engage in architecture activities for profit, where his only project was to remodel his mother-in-law's home. Although he had once co-founded a South African architecture firm, he gave up the architecture profession when he immigrated to the United States in 2004. He moved back to South Africa in 2011 to resume his former architecture activity, but during 2012 and 2013 had only one architectural project, a renovation for his mother-in-law, before he returned to New York.

During 2012 and 2013, the taxpayer filed a Schedule C associated with the architecture activity, reporting net losses of $24,749 and $14,132, respectively. In applying the nine factors listed in Regs. Sec. 1.183-2(b), the court found that the taxpayer's Schedule C business activity was not a for-profit venture due to the following:
- Lack of a formal business plan, a business bank account, and separate financial books and records;
- Lack of support to show how much time was spent on the architecture activity while in South Africa;
- Lack of expected appreciation in assets used within the
activity (a previously owned apartment used as an office was the only asset associated with the activity):

- Lack of success in carrying out similar activities that have displayed a profit motive, along with a consistent history of losses associated with the activity — even though the taxpayer had a similar business in South Africa from 1997 to 2003, no records were presented to show that this prior business activity was successful; and
- Lastly, because the taxpayer’s spouse had “significant income,” the taxpayer was unable to prove a lack of substantial income from other sources.

Sec. 195: Start-up expenditures
As detailed in Smith, T.C. Summ 2019-12, this case addressed whether a taxpayer who started a vegan food export business had improperly deducted expenses on Schedule C that were Sec. 195 start-up expenditures. The Tax Court explained that, in determining whether an activity has become an active trade or business, it relies on cases addressing whether a taxpayer is engaged in a trade or business under Sec. 162. Here, the taxpayer had completed his business plan in the previous tax year and had obtained suppliers of vegan products and entered into a license agreement for distribution exclusivity with one supplier. The taxpayer was actively marketing these products in various foreign countries. The court ruled that the taxpayer’s activities were not mere research into a potential business and were not subject to Sec. 195 limitations.

Secs. 1401-1403: Self-employment tax
One of the more interesting cases of 2019 involved crime fiction writer Karin Slaughter (Slaughter, T.C. Memo 2019-65). [Spoiler Alert] the Tax Court denied this popular author’s attempt to classify part of her earnings as not subject to self-employment tax. Her longtime tax preparer came to believe that the author’s earned income was solely the amount she was paid for writing and that any income from use of her name and likeness (or her “brand,” which provided prestige to the publishing house) was “investment income.” After finding no definitive authority regarding a so-called brand author, the preparer decided to report on Schedule E all the advances and royalties the author received and subtract the portion relating to the trade or business of writing and report that portion on Schedule C. The preparer did not have a copy of the taxpayer’s contracts and instead used a calendar-based approach to split the income, relying on the taxpayer’s estimate of how many months it generally took her to write a manuscript.

At trial, the taxpayer cited Rev. Rul. 68-499 to support her position that payments for her brand are separate and distinct from payments for her writing. Rev. Rul. 68-499 discusses a company paying royalties to certain individuals who are also employed by the company. Because the licensing contracts and the employment contracts are separate and distinct, the revenue ruling states that the royalties are not payments for employment and are therefore not subject to payroll tax. The taxpayer also relied on testimony from an expert in the publishing industry that the writing of a manuscript is a small percentage of what a publisher seeks from an author, even though the manuscript and the author’s brand appeal are often valued together. The taxpayer analogized that her writing a manuscript is akin to providing services to the publishing house, and those earnings are subject to self-employment tax; however, payments beyond the writing of the manuscript are payments for something other than a service, and citing Jones, T.C. Memo 1998-354 the separate and distinct payments for her brand are not subject to self-employment tax.

The court disagreed with this argument. Stating that the taxpayer’s reliance on Rev. Rul. 68-499 was misplaced, the court emphasized that self-employment tax is due on net earnings from any trade or business. Also citing Jones, the court concluded that the taxpayer’s brand is part of her trade or business because she was engaged in developing it with regularity and continuity with the primary purpose of income and profit. Due to her reliance on her preparer, though, the court ruled that she was not liable for negligence penalties.

[ITEM 12] Final regs. offer-in-compromise

On Thursday March 12th, the IRS raised its user fee for offers in compromise (OIC) from $186 to $205, but also expanded its definition of low-income taxpayers who are exempt from the fee (T.D. 9894). The increased fee is lower than the $300 fee the IRS had proposed in 2016 (REG-108934-16).

An OIC is an agreement between a taxpayer and the IRS to settle a tax debt for less than the full amount owed. An OIC may be an option for taxpayers who cannot pay their full tax debt or for whom doing so would create a financial hardship. It is an additional relief provision from an installment agreement, which allows taxpayers who cannot pay their full tax debt by the due date to pay over time.

The IRS received four comments on the proposed regulations and a request for a public hearing, which it held on Dec. 16, 2016. It was in response to the comments received that it lowered the proposed fee increase. In the preamble to T.D. 9894, the IRS addressed each of the comments received in detail. The comments ran the gamut from an accusation of conflicts of interest to complaints that most taxpayers are so short of cash they cannot come up with small amounts to pay for emergencies.

Sec. 7122(c)(3), as amended by the Taxpayer First Act, P.L. 116-25, exempts certain low-income taxpayers from the OIC fee. It defines low-income taxpayers as those with adjusted gross income (AGI) that “does not exceed 250% of the applicable poverty level (as determined by the Secretary).” Normally, the IRS determines if taxpayers fall at or below 250% of the poverty level by looking at their household’s size and gross monthly income. Consistent with Sec. 7122(c)(3), under the final regulations the IRS will now also look at a taxpayer’s AGI from the most recent tax return to determine whether it is at or below 250% of the poverty level. The increased fee applies to OICs submitted after April 27, 2020.

[ITEM 13] High-deductible health plans & coronavirus

To respond to the public health emergency posed by COVID-19, the IRS announced that a high-deductible health plan
Hall pass, and to avoid those who may make tax-favored contributions to a health savings account merely because of the provision of those health benefits for testing and treatment of COVID-19.

An HDHP is a health plan that satisfies certain requirements for minimum deductibles and maximum out-of-pocket expenses. Generally, under Sec. 223(c)(2)(A), an HDHP may not provide benefits for any year until the minimum deductible for that year is satisfied.

Part of the government’s response to COVID-19 involves removing barriers to testing for and treating the virus. Because

[ITEM 13] Time versus Timing

As of this writing, the DJIA has dropped below 20,000 points. Panic and fear has set in causing investors to flee equities in search of cash positions. History has a terrible habit of repeating itself, however, it does provide us with valuable lessons for those willing to listen.

And lessons of this magnitude aren’t too far in the rear-view mirror:

- 1973 Energy Crisis
- 1980 Recession
- 1987 Black Monday
- 2001 Dot Com Crash
- 2008 Real estate meltdown and recession

What do all of these events have in common? We rebounded from all of them and became a larger, more robust economy as a result. Historical growth charts documenting stock market growth marches upward and to the right, however that growth is far from linear. Discipline and calm typically win over panic and market timing. Consider the following table representative of the S&P 500 since 1970 when compared to 30-day T-Bills (cash).

<table>
<thead>
<tr>
<th>Cumulative Returns following bottoming out of market</th>
<th>1-year return</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stayed Fully invested through bear market</td>
<td>46%</td>
</tr>
<tr>
<td>Moved investments into cash for 1 month</td>
<td>29%</td>
</tr>
<tr>
<td>Moved investments into cash for 3 months</td>
<td>20%</td>
</tr>
<tr>
<td>Moved investments into cash for 6 months</td>
<td>13%</td>
</tr>
</tbody>
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Individually we all have a stake in the market in some form or another and have differing individual situations. We must be sure that we are reaching out to our clients at this time with this same approach. Who may have just triggered substantial gains because the underlying basis of assets sold are still well below recent market levels if positions are sold? Who potentially may be running up substantial carryover losses as a result of the selloff? We are part of a team, and we need to be sure that we are reaching out to our clients to help them make informed choices and to understand the consequence of these choices.

Most important, we are viewed as the voice of reason, the voice of reassurance. We must remain strong in our beliefs and actions. These are trying times, but as we well know…this too shall pass.

**REVIEW QUESTIONS AND SOLUTIONS**

7. In connection with Form W-4, any employee who does not provide a properly completed Form W-4 to their employer must be treated as ______ and have withholdings using _________ and no other adjustments starting in 2020.
   a. Single, no standard deduction
   b. Single, the standard deduction
   c. Married, no standard deduction

8. Which of the following forms will replace the Form 1099-MISC for non-employee compensation beginning in 2020?
   a. Form 1099-INC
   b. Form 1096MISC
   c. Form 1099-NEC

9. The court case involving Karin Slaughter (T.C. Memo 2019-65) confirmed that _______.
   a. royalty income can be calculated on a “calendar-based” approach
   b. the taxpayer’s brand is part of her trade or business
   c. reliance on Revenue Ruling 68-499 was justified in this case
10. An agreement between a taxpayer and the IRS to settle a tax debt for less than the full amount owed is better known as a(n) _____________.
   a. Offer in Compromise
   b. Installment Agreement
   c. Periodic Payment Offer

11. Which of the following is not true in connection with high-deductible health plans and the government’s response to COVID-19?
   a. A high-deductible health plan (HDHP) will still qualify as an HDHP even if it provides payment for medical care services and items purchased related to testing for and treatment of COVID-19 before satisfying the applicable minimum deductible that normally applies to an HDHP.
   b. Part of the government’s response to COVID-19 involves removing barriers to testing for and treating the virus.
   c. The IRS stated that vaccinations will no longer be considered preventive care under Sec. 223(c)(2)(C) in determining whether a health plan is an HDHP.

12. When examining the cumulative return of stocks one year following a bottoming out (bear market), what can one conclude?
   a. Individuals investing for the long term would be wise to stay fully invested through a bear market.
   b. Cumulative returns are greater the longer one delays when taking liquid positions and reinvesting them into the stock market.
   c. The sudden and dramatic drop in the DJIA is an isolated event in the context of historical investment returns.

Solutions

7. **[a] Incorrect** - Starting in 2020, employers must treat new employees who fail to furnish a properly completed Form W-4 as single and withhold using the standard deduction and no other adjustments.
   **[b] Correct** - The proposed regulations also address a variety of other income tax withholding issues. For example, the proposed regulations provide flexibility regarding how employees who fail to furnish Forms W-4 should be treated.
   **[c] Incorrect** - The new Form W-4 also streamlines the procedures for employees who work multiple jobs and for employees with working spouses.

8. **[a] Incorrect** – This form is non-existent.
   **[b] Incorrect** – Form 1096 is the transmittal form for various Form 1099’s.
   **[c] Correct** – This new form should contribute to higher levels of compliance as we see an increase in gig economy work going forward.

9. **[a] Incorrect** - The preparer in this case did not have a copy of the taxpayer’s contracts. Instead the preparer split the income, relying on the taxpayer’s estimate of how many months it generally took her to write a manuscript.
   **[b] Correct** - The court concluded that the taxpayer’s brand is part of her trade or business because she was engaged in developing it with regularity and continuity with the primary purpose of income and profit.
   **[c] Incorrect** – The court emphasized that self-employment tax is due on net earnings from any trade or business.

10. **[a] Correct** - An OIC may be an option for taxpayers who cannot pay their full tax debt or for whom doing so would create a financial hardship.
    **[b] Incorrect** – An Installment Agreement with the IRS allows taxpayers to make smaller periodic payments over time if the entire tax due cannot be paid at once.
    **[c] Incorrect** – According to the IRS, an offer is called a “periodic payment offer” under the tax law if it’s payable in 6 or more monthly installments and within 24 months after the offer is accepted.

11. **[a] Incorrect** – An HDHP is a health plan that satisfies certain requirements for minimum deductibles and maximum out-of-pocket expenses.
    **[b] Incorrect** – Because of the nature of the public health emergency, and to avoid administrative delays or financial disincentives that might otherwise impede testing for and treating COVID-19 for HDHP participants, Notice 2020-15 provides that all medical care services received and items purchased associated with testing for and treating COVID-19 that are provided by a health plan without a deductible, or with a deductible below the minimum annual deductible otherwise required under Sec. 223(c)(2)(A) for an HDHP, will be disregarded for purposes of determining the status of the plan as an HDHP.
    **[c] Correct** – The notice does not otherwise modify the requirements to be an HDHP in any other manner. The IRS noted specifically that vaccinations continue to be considered preventive care under Sec. 223(c)(2)(C) in determining whether a health plan is an HDHP.
12.  [a] Correct – Time in the market and not timing of the market has been a proven and prudent investment strategy.  
[b] Incorrect – The opposite actually holds true. Historical returns have been less the longer individual investors wait before reinvesting after a bear market.  
[c] Incorrect – Recessions and downward drops in the stock market have occurred at least five times since the early 1970's.

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1. H.R. 6201, Families First Coronavirus Response Act became law on March 18th, 2020. Which of the following provisions is not included within this legislation?
   a) Creation of a new federal emergency paid leave benefits program.
   b) Providing temporary assistance to states to pay regular UI benefits in the form of interest free loans.
   c) Authorize a small business loan program designed to provide continuity of employment during times of business interruption.
   d) None of the above

2. Under H.R. 6201, a new emergency paid leave benefit program will be created providing eligible workers with a benefit based on a leave of work because of COVID-19 reasons. This program will be administered by _________.
   a) The IRS
   b) The Department of Treasury
   c) State Unemployment administrations
   d) The Social Security Administration

3. The Emergency Paid Leave Act of 2020 defines an “emergency leave day” as a day in which the individual is unable to work due to one of four qualifying reasons related to COVID-19. “Eligible individuals” in the context of this section would include someone who was working in the _________ days before they were impacted by COVID-19.
   a) 30
   b) 45
   c) 60
   d) 90

4. Tax relief has been proposed by the AICPA in the wake of the current pandemic. Identify the item not included in the AICPA’s March 11th request to the Treasury Department.
   a) Provide taxpayers with an automatic extension to October 15, 2020, without the need to file any forms or request an extension.
   b) Waive individual late payment penalties if at least 70% of an individual’s current tax due is paid by April 15, 2020.
   c) Waive individual underpayment penalties for 2020 estimated tax payments if paid by June 15, 2020
   d) Provide appropriate relief for all businesses and tax-exempt organizations regarding elections and filings.

5. Which of the following provisions would not be considered a benefit to taxpayers resulting from passage of the Secure Act.
   a) Pushes back the age at which retirement plan participants need to take required minimum distributions (RMDs), from 70½ to 72.
   b) Requires that most non-spouses inheriting IRAs take distributions that end up emptying the account in 10 years.
   c) Allow the use of tax-advantaged 529 accounts for qualified student loan repayments (up to $10,000 annually).
   d) Permit penalty-free withdrawals of $5,000 from 401(k) accounts to defray the costs of having or adopting a child.

6. The Act will allow small employers to take a credit related to start-up costs related to establishing a pension plan. For an eligible small employer, the credit is 50% of the qualified start-up costs paid or incurred during the tax year. The credit is limited to ______ per year for the first credit year and each of the following _____ tax years.
   a) $1,000, 3
   b) $1,000, 2
   c) $500, 3
   d) $500, 2

7. Jack and Jill are aged 71 on Jan 1, 2020. What is the maximum combined dollar amount they may be able to contribute during 2020 to a deductible IRA?
   a) 6,000
   b) 7,000
   c) 12,000
   d) 14,000
8. The maximum age for making a tax-deductible contribution to a traditional IRA, beginning in 2020 is __________.
   a) 70 1/2
   b) 72
   c) 59 1/2
   d) No maximum age limit

9. The Secure Act states that for tax years beginning in 2020, individuals who attain age __________ after 2019 are required to take minimum distributions from an IRA once they attain the age of __________.
   a) 70 1/2, 72
   b) 72, 72
   c) 59 1/2, 70
   d) None of the above

10. Jane is interested in taking a $4,000 distribution from her IRA in January of 2020 to pay for costs related to adopting an infant child. You correctly advise her that __________.
   a) Jane may owe income tax on a portion of the $4,000 received, and will also be subject to a 10% early distribution penalty on that amount.
   b) Jane may owe income tax on a portion of the $4,000 received, however she will not be subject to the 10% early distribution penalty on that amount.
   c) Jane would be subject to the 10% early distribution penalty because she waited until 2020 to request and receive these funds.
   d) The use of funds by Jane (in this case, used to pay for adoption costs), have no bearing on whether the 10% early distribution penalty would apply.

11. Jeremy is interested in using his 529 account to pay for apprenticeship training in 2020. You correctly advise him that __________.
   a) These costs are not considered a qualified expense for purposes of Section 529.
   b) To be considered a qualified 529 plan expense, the apprenticeship program must be registered and certified with the Secretary of Labor under section 1 of the National Apprenticeship Act.
   c) The ability to pay for apprenticeship training and deem it a qualified expense under Section 529 expired on 12/31/19.
   d) Tax-free distributions from 529 plans are limited only to fee expenses associated with apprenticeship programs.

12. The SECURE Act allows families to take tax-free 529 plan distributions for student loan repayment. Principal and interest payments toward a qualified education loan will be considered qualified 529 plan expenses. However, the portion of __________ that is paid for with tax-free 529 plan earnings __________ for the student loan interest deduction.
   a) Student loan principal, is eligible
   b) Student loan principal, is not eligible
   c) Student loan interest, is eligible
   d) Student loan interest, is not eligible

13. Which statement is true in connection with the “Secure” Act?
   a) Rules in connection with the Kiddie Tax, revert back to those in effect before 2019
   b) Rules in connection with the Kiddie Tax, revert back to those in effect before 2018.
   c) Taxpayers may choose to file amended federal income tax returns to claim a refund of the excess tax based on passage of the “Secure” Act.
   d) Both b & c

14. Practitioners and advisors should meet with clients during 2020 to discuss the implications of the Secure Act. Which of the following key points should be covered during these discussions?
   a) Review beneficiary designations for all applicable accounts.
   b) Review language of any “look-through” trust to be sure that there are no unintended tax consequences in 2020 and beyond.
   c) Discuss the possibility for making deductible IRA contributions for taxpayers who are older than 70.5 years.
   d) All of the above

15. According to proposed new regulations pertaining to Form W-4, withholdings will be based on the employee’s __________ and standard deduction for the year.
   a) Withholding allowance
b) Expected filing status

c) Number of dependents

d) Prior year withholding

16. The website resource known as the “Gig Economy Tax Center” primarily is designed to?
a) Provide information on the newly released Form 1099-NEC.
b) Improve taxpayer education on taxpayer obligations and answer common questions.
c) Assist taxpayers with changes resulting from revised W-4 requirements.
d) Provide related parties with details on the “lock-in letter” program.

17. The primary issue addressed in Smith, T.C. Summ 2019-12 relates to the determination of whether expenses incurred were deductible on Schedule C or should alternatively be treated as Section 195 start-up expenditures. Which of the following factors were expressed in the opinion that contributed to the court’s ruling in the taxpayer’s favor?
a) The taxpayer was actively marketing these products in various foreign countries

b) The taxpayer had completed his business plan in the previous tax year

c) The taxpayer had entered into a license agreement with a supplier

d) All of the above

18. Which recent court case/ruling addressed the issues of activities not engaged in for profit and a subsequent denial of Schedule C losses?
a) Sarkin T.C. memo 2019-131

b) IRS Letter Ruling 201944006

c) Slaughter, T.C. Memo 2019-65

d) Smith, T.C. Summ 2019-12

19. Under final regulations issued, the IRS will be looking at a taxpayer’s ________ to determine whether it _______ of the poverty level when considering an offer in compromise.

a) AGI, exceeds 250%

b) AGI, is at or below 250%

c) Taxable income, exceeds 250%

d) Taxable income, is at or below 250%

20. According to Notice 2020-15 issued by the IRS, what impact will high deductible health plans incur if they provide payment for medical care services and items purchased related to testing for and treatment of COVID-19 before satisfying the applicable minimum deductible that normally applies to an HDHP?

a) HDHP’s will incur a penalty

b) HDHP’s will be sanctioned

c) HDHP’s will become disregarded as a HDHP

d) HDHP’s will still qualify as a HDHP
There are 20 EXAM questions which are on pages 18-20 of the newsletter. Choose the best answer based on the limited facts of each question and record your answer below. Indicate your responses in the newsletter for your personal records and complete the “Newsletter Evaluation” below.

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