Tax News and Industry Updates

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Vehicle Depreciation Limits

Cross References

- Rev. Proc. 2021-31
- IRC §280F

When the actual expense method is used for deducting the business use of a vehicle, the cost of the vehicle is depreciated under MACRS using a 5-year recovery period. The Section 179 deduction is also allowed for business vehicles. The annual deduction for depreciation, including any Section 179 deduction or special depreciation allowance is limited to statutory amounts. The 50% and 100% special depreciation allowance does not apply to IRC section 280F property. Instead, these limits are increased by $8,000 for the first year.

The annual deduction is the lesser of:

- The vehicle's basis multiplied by the business use percentage multiplied by the applicable depreciation percentage, or
- The IRC section 280F limit multiplied by the business percentage.

The IRC section 280F limits are adjusted each year for inflation. The chart below reflects the new IRC section 280F limits for 2021 in comparison to 2020.

Vehicle Depreciation Limitations (IRC §280F)		
Tax year first placed in service:	**2021**	**2020**
Vehicle depreciation limitations based on 100% business or investment use:		
1st year if special depreciation is claimed	$18,200	$18,100
1st year depreciation	$10,200	$10,100
2nd year depreciation	$16,400	$16,100
3rd year depreciation	$9,800	$9,700
Each succeeding year	$5,860	$5,760

A Common Tax Protestor Argument

Cross References

- *Muhammad,* T.C. Memo. 2021-77, June 29, 2021

The Tax Court in a recent case explained the error of a common tax protestor argument. The taxpayer was employed at a University and received a W-2 that reflected wages paid along with various tax withholding amounts.

The taxpayer argued that she did not receive taxable wages because IRC section 3401(a) defines wages to mean "all remuneration…for services performed by an employee for his employer." IRC section 3401(c) provides that "for purposes of this chapter, the term 'employee' includes an officer, employee, or elected official of the United States…"

Because the taxpayer was not "exercising a federal privilege" when performing services for the University, she claimed that she was not an "employee" and thus earned no "wages" as defined by IRC section 3401(a).

The Tax Court stated this was a time-worn tax protestor argument that no court has ever accepted. IRC section 3401(c) provides that the term employee "includes" federal officers and employees. It does not state that the term employee "consists exclusively" of federal officers and employees. Anyone fluent in English knows that the word "includes" cannot be assumed to mean "includes only." By providing that wages "means all remuneration…for services performed by an employee," subject to 23 narrow exceptions listed in IRC section 3401(a), it is obvious that the term employee is not limited to government employees.

Self-Employed Deferred Social Security Taxes

Cross References

- irs.gov

The CARES Act allowed eligible employers and self-employed individuals to delay the deposit of the employer's share of Social Security taxes for the period beginning on March 27, 2020 and ending before January 1, 2021. 50% of the amount deferred is due by December 31, 2021, and the remaining 50% is due by December 31, 2022. Employers repay the deferred amounts by increasing their payroll tax deposits by the deferred amounts. Self-employed individuals repay the deferred amounts through their estimated tax payments.

For self-employed individuals, the amount potentially eligible for deferral is calculated in Part III of the 2020 Schedule SE (Form 1040). Line 26 of Schedule SE is then included on Schedule 3 (Form 1040), line 12e to calculate the actual amount of self-employment tax payments that is deferred.

The amount from line 26 of the 2020 Schedule SE is also used to figure the amount of deferred self-employment tax payments that must be repaid in 2021 and 2022. The repayment amounts are split equally between 2021 and 2022. However, the maximum deferral amounts are used to figure the equal repayment amounts, not the amount that was actually deferred.

Example: *Mark is self-employed and had a maximum deferral amount reported on line 26 of his 2020 Schedule SE equal to $6,000. However, the actual amount he deferred on Schedule 3 of his 2020 Form 1040 was $4,000. His first repayment amount due by December 31, 2021 is $1,000 and his second repayment amount due by December 31, 2022 is $3,000.*

Note: Note that the due dates are December 31 of each year, not the filing deadlines for the 2021 and 2022 tax returns. The repayments may be reconciled on the 2021 and 2022 tax returns, but the actual repayments must be timely paid through estimated tax payments.

Online payments. The IRS recently posted information on how self-employed taxpayers can repay the deferred taxes online. Individuals can repay the deferred amount any time on or before the due date by making payments through the Electronic Federal Tax Payment System (EFTPS), or by credit or debit card, money order, or with a check by going to https://www.irs.gov/payments

Payments should be separate from other tax payments to ensure they are applied to the deferred tax balance on the tax year 2020 Form 1040 since IRS systems won't recognize the payment for deferred tax if it is with other tax payments or paid with the current Form 1040. Designate the payments as "deferred Social Security Tax."

Individuals making deferred Social Security tax payments in EFTPS should select 1040 US Individual Income Tax Returns and deferred Social Security tax for the type of payment. They must apply the payment to the 2020 tax year where they deferred the payment. For details, go to https://www.eftps.com/eftps/

IRS Urges Taxpayers to Prepare for Natural Disasters

Cross References

- IR-2021-174, August 30, 2021

September is National Preparedness Month. With the height of hurricane season fast approaching and the ongoing threat of wildfires in some parts of the country, the Internal Revenue Service reminds everyone to develop an emergency preparedness plan.

All taxpayers, from individuals to organizations and businesses, should take time now to create or update their emergency plans.

Taxpayers can begin getting ready for a disaster with a preparedness plan that includes securing and duplicating essential tax and financial documents, creating lists of property and knowing where to find information once a disaster has occurred. Securing this information can help in the aftermath of a disaster, and it can help people more quickly take advantage of disaster relief available from the IRS.

Start secure. Taxpayers should keep critical original documents inside waterproof containers in a secure space. Documents such as tax returns, birth certificates, deeds, titles and insurance policies should also be

duplicated and kept with a trusted person outside the area a natural disaster may affect.

Make copies. If original documents are available only on paper, taxpayers can use a scanner and save them on a USB flash drive, CD or in the cloud, which provide security and easy portability.

Document valuables. After a disaster hits, photographs and videos of a home or business's contents can help support claims for insurance or tax benefits. All property, especially expensive and high-value items, should be recorded. The IRS disaster-loss workbooks can help individuals and businesses compile lists of belongings or business equipment.

Employer fiduciary bonds. Employers using payroll service providers should check if their provider has a fiduciary bond in place to protect the employer in the event of a default by provider. Employers are encouraged to create an Electronic Federal Tax Payment System account at EFTPS.gov to monitor their payroll tax deposits and receive email alerts.

Know where to go. Reconstructing records after a disaster may be required for tax purposes, getting federal assistance or insurance reimbursement. Find out if financial institutions provide statements and documents electronically. Taxpayers who have lost some or all of their records during a disaster should visit IRS' Reconstructing Records webpage at:
https://www.irs.gov/newsroom/reconstructing-records-after-a-natural-disaster-or-casualty-loss-irs-provides-tips-to-help-taxpayers

IRS is ready to help. Taxpayers living in a federally declared disaster can visit the IRS Tax Relief in Disaster Situations webpage or Around the Nation on IRS.gov and check for the available disaster tax relief. The IRS automatically identifies taxpayers located in the covered disaster area and applies filing and payment relief. Affected taxpayers can call 866-562-5227 to speak with an IRS specialist trained to handle disaster-related issues.

A taxpayer impacted by a disaster outside of a federally-declared disaster area may qualify for disaster relief. This includes taxpayers who are not physically located in a disaster area, but whose records necessary to meet a filing or payment deadline postponed during the relief period are located in a covered disaster area.

For more information about National Preparedness Month, visit: https://www.ready.gov/september

Related items:
Publication 2194, *Disaster Resource Guide for Individuals and Businesses*
https://www.irs.gov/pub/irs-pdf/p2194.pdf

Publication 547, *Casualties, Disasters, and Thefts*
https://www.irs.gov/pub/irs-pdf/p547.pdf

Reconstructing Records After a Natural Disaster or Casualty Loss
https://www.irs.gov/newsroom/reconstructing-records-after-a-natural-disaster-or-casualty-loss

Federal Emergency Management Agency
https://www.fema.gov/

DisasterAssistance.gov
https://www.disasterassistance.gov/

Ready.gov
https://www.ready.gov/

Federally Declared Disaster Final Regulations

Cross References

• T.D. 9950, May 25, 2021

The Further Consolidated Appropriations Act, 2020 (Public Law 116-94) amended IRC section 7508A to provide for a mandatory 60-day period that is to be disregarded for certain time-sensitive tax deadlines by reason of a federally declared disaster. The IRS recently released final regulations to clarify the definition of the term "federally declared disaster" and when the new mandatory 60-day postponement period applies.

Major disaster vs. emergency declaration. Emergency declarations are governed by a different set of rules than major disaster declarations. Emergency declarations do not need to be preceded by a governor's request for disaster relief, but may instead be declared directly by the President. Also, emergency declarations may only result in federal assistance to local governmental entities, as opposed to assistance to individuals, and may be issued before a disaster occurs.

The regulations clarify that for tax purposes, a federally declared disaster includes both a major disaster and an emergency declared under sections 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 100-707).

Note: The COVID-19 pandemic was declared by the President on March 13, 2020 to be an emergency under the Stafford Act, and was not authorized by Congress to serve as a disaster declaration. These final regulations clarify that for tax purposes, such emergency is treated the same as any other major disaster declaration.

Time-sensitive tax acts. The statute and legislative history is ambiguous on the issues of which time-sensitive tax acts, other than the pension-related tax acts described

in IRC section 7508A(d)(4), are to be postponed under the mandatory 60-day postponement period.

During 2017, for example, the IRS provided relief under IRC section 7508A for only 14 of the 59 major disaster declarations announced by FEMA for that year. If all major disaster declarations automatically entitled all taxpayers in disaster areas to timing relief, there would have been a dramatic increase in the number of disasters leading to postponements of time-sensitive tax acts.

The regulations clarify that the 60-day postponement period is not self-executing, but rather, requires a determination by the IRS to specify the acts to be postponed.

Note: In other words, if the IRS postpones a tax deadline for a "qualified taxpayer" due to a disaster, the postponement period must be at least the mandatory 60-day period required under IRC section 7508A(d). The IRS still has the authority to decide which tax acts are postponed under the mandatory 60-day postponement period rule.

Note: The mandatory 60-day postponement period is a minimum period for "qualified taxpayers," as defined under IRC section 7508A(d). IRC section 7508A(a) allows the IRS to postpone certain tax deadlines for up to one year for a federally declared disaster.

The regulations also clarify that in no event will the mandatory 60-day postponement period be calculated to exceed one year.

No Surprises Act

Cross References

- T.D. 9951, July 7, 2021

The IRS has issued interim final rules implementing certain provisions of the No Surprises Act, which was enacted as part of the Consolidated Appropriations Act, 2021.

Under the Affordable Care Act, enacted in 2010, if health insurance coverage provides benefits with respect to emergency services in an emergency department of a hospital, the plan must cover emergency services without the individual or the health care provider having to obtain prior authorization, including when the emergency services are provided out-of-network, and without regard to whether the health care provider furnishing the emergency services is an in-network provider with respect to the services.

Balance billing. Regulations implementing the provisions under the ACA did not prohibit balance billing. Balance billing refers to the practice of out-of-network providers billing patients for the difference between:

1) The provider's billed charges, and
2) The amount collected from the health plan or insurer plus the amount collected from the patient in the form of cost sharing, such as a copayment, coinsurance, or amounts paid toward a deductible.

The regulations state that a reasonable amount must be paid by a health plan or insurer before a patient becomes responsible for a balance billing. The regulations contain a set of rules that limited balance billing by providing a formula to create a minimum payment requirement for the health plan or insurer.

The No Surprise Act expanded the patient protections related to emergency services under the ACA by providing additional consumer protections related to balance billing.

Surprise billing. A surprise medical bill is an unexpected bill from a health care provider or facility that occurs when a covered person receives medical services from a provider or facility that, usually unknown to the participant, beneficiary, or enrollee, is a nonparticipating provider or facility with respect to the individual's coverage. Surprise billing occurs both for emergency and non-emergency care. In an emergency, a person usually goes (or is taken by emergency transport) to a nearby emergency department. Even if they go to a participating hospital or facility for emergency care, they may receive care from nonparticipating providers working at that facility. For non-emergency care, a person may choose a participating facility (and possibly even a participating provider), but not know that at least one provider involved in their care (for example, an anesthesiologist or radiologist) is a nonparticipating provider. In either circumstance, the person might not be in a position to choose the provider, or to ensure that the provider is a participating provider.

Therefore, in addition to a bill for their cost-sharing amount, which tends to be higher for out-of-network services, the person might receive a balance bill from the nonparticipating provider or facility. This scenario also plays out frequently for air ambulance services, where individuals generally do not have the ability to select a provider of air ambulance services, and, therefore, have little or no control over whether the provider is in-network with their plan or coverage.

When individuals are unable to avoid nonparticipating providers, it raises health care costs and exposes patients to financial risk. The evidence suggests that the ability to balance bill is used as leverage by some providers to obtain higher in-network payments, which results in higher premiums, higher cost sharing for individuals, and increased health care expenditures overall.

Studies have shown that surprise bills can be large. For example, a recent study found that physicians collected, on average, 65 percent of the total charged amount for emergency department visits that likely included surprise bills, compared to 52 percent of the total charged amount for emergency department visits that likely did not include surprise bills. The study also found that nine percent of the individuals who likely received surprise bills paid physicians an amount more than $400, which may cause financial hardship to many individuals. In addition, out-of-network cost sharing and payments for surprise bills usually do not count towards an individual's deductible and maximum out-of-pocket expenditure limits. Therefore, individuals with surprise bills may have difficulty reaching those limits, even after a significant health care event.

No Surprise Act. On December 27, 2020, the Consolidated Appropriations Act, 2021, which included the No Surprises Act, was signed into law. The No Surprises Act provides federal protections against surprise billing and limits out-of-network cost sharing under many of the circumstances in which surprise bills arise most frequently.

Section 102 of the No Surprises Act added IRC section 9816, which contains limitations on cost sharing, and requirements for initial payments for emergency services and for non-emergency services provided by nonparticipating providers at certain participating health care facilities.

The new law also establishes an independent dispute resolution process that allows plans and issuers and nonparticipating providers and nonparticipating emergency facilities to resolve disputes over out-of-network rates.

The new law also added IRC section 9817 which contains limitations on cost sharing and requirements for initial payments to nonparticipating providers of air ambulance services, and allow plans and issuers and such providers of air ambulance services to access the IDR process.

T.D. 9951. The IRS is issuing regulations in several phases implementing provisions of the No Surprises Act. T.D. 9951 describes the rules that protect participants, beneficiaries, and enrollees in group health plans and group and individual health insurance coverage from surprise medical bills when they receive emergency services, non-emergency services from nonparticipating providers at participating facilities, and air ambulance services from nonparticipating providers of air ambulance services, under certain circumstances. See T.D. 9951 for details.

New Update Address Feature on Child Tax Credit Portal

Cross References

- IR-2021-171

The IRS has launched a new feature allowing any family receiving monthly Child Tax Credit payments to quickly and easily update their mailing address using the Child Tax Credit Update Portal, found at:

https://www.irs.gov/credits-deductions/child-tax-credit-update-portal

This feature will help any family that chooses to receive their payment by paper check avoid mailing delays or even having a check returned as undeliverable.

Any family can easily have their September check and all future checks sent to their new address by using the portal to make an address change request. To have the change take effect in September, people need to complete the request before midnight Eastern Time on Monday, August 30. Families can still make changes after that date, but their request will not be effective until the next scheduled monthly payment.

If a taxpayer changes his or her mailing address using the Child Tax Credit Update Portal, the IRS will use this updated address for all future IRS correspondence so the address change feature can also be helpful to taxpayers that are receiving payments by direct deposit. For example, the IRS will mail a year-end summary statement (Letter 6419) to all taxpayers who have received advance Child Tax Credit payments during 2021 and having a current address on file with the IRS will ensure prompt delivery of this statement.

Families will need Letter 6419 to quickly and accurately fill out their 2021 federal income tax return next year. This is important because, for most families, the advance payments they are receiving during 2021 cover only half of the total credit. They will claim the remaining portion on their 2021 tax return.

The address change feature joins a growing set of services available through the Child Tax Credit Update Portal. Available only on IRS.gov, the portal already allows families to verify their eligibility for the payments and then, if they choose to:

- Switch from receiving a paper check to direct deposit,
- Change the account where their payment is direct deposited, or
- Stop monthly payments for the rest of 2021.

Any of these changes made before midnight ET on August 30, will apply to the September 15 payment and all subsequent monthly payments, scheduled for October 15, November 15, and December 15.

Future enhancements are planned for the Child Tax Credit Portal. Later this year, families will also be able to use the Update Portal tool to:

- Add or remove children in most situations,
- Report a change in marital status, or
- Report a significant change in income.

Latest information for the Child Tax Credit payments on IRS.gov. The IRS has created a special Advance Child Tax Credit 2021 page designed to provide the most up-to-date information about the credit and the advance payments. For more information, visit:

https://www.irs.gov/credits-deductions/advance-child-tax-credit-payments-in-2021

The web page now features an updated set of frequently asked questions and the new Publication 5549, *IRS User Guide: Child Tax Credit Update Portal.* It also provides direct links to the portal, as well as two other online tools—the Non-Filer Sign Up Tool and the Child Tax Credit Eligibility Assistant—and other useful resources.

SBA Announces Opening of Paycheck Protection Program Direct Forgiveness Portal

Cross References

- www.sba.gov/article/2021/jul/28/sba-announces-opening-paycheck-protection-program-direct-forgiveness-portal

The Small Business Administration (SBA) is launching a streamlined application portal to allow borrowers with Paycheck Protection Program (PPP) loans $150,000 or less through participating lenders to apply for forgiveness directly through the SBA.

"The SBA's new streamlined application portal will simplify forgiveness for millions of our smallest businesses—including many sole proprietors—who used funds from our Paycheck Protection Program loans to survive the pandemic," said Administrator Isabel Casillas Guzman. "The vast majority of businesses waiting for forgiveness have loans under $150,000. These entrepreneurs are busy running their businesses and are challenged by an overly complicated forgiveness process. We need to deliver forgiveness more efficiently so they can get back to enlivening our Main Streets, sustaining our neighborhoods and fueling our nation's economy."

This new change will help rush relief to over 6.5 million smallest of small businesses which has been the Administrator's priority since day one. The new forgiveness platform will begin accepting applications from borrowers on August 4th, 2021. Lenders are required to opt-in to this program through https://directforgiveness.sba.gov. In addition to the technology platform, the SBA is starting up a PPP customer service team to answer questions and directly assist borrowers with their forgiveness applications. Borrowers that need assistance or have questions should call (877) 552-2692, Monday–Friday, 8 a.m.–8 p.m. EST.

"This initiative will allow PPP borrowers to put their concerns of achieving full forgiveness behind them and focus on operating and growing their businesses again," said Patrick Kelley, Associate Administrator for SBA's Office of Capital Access. "We are pleased to be able to assist financial institutions across the U.S. in processing forgiveness applications for small business owners."

Paycheck Protection Program Summary:

- Overall, the SBA and lenders have worked to originate over 11.7 million loans totaling nearly $800 billion in relief to over 8.5 million small businesses.

In 2021:

- SBA approved over 6.5 million loans totaling over $275 billion.
- The average loan size was $42 thousand (compared to $101 thousand in 2020).
- 96% of loans went to businesses with fewer than 20 employees (compared to just 87% in 2020).
- 32% of loans went to businesses in LMI communities (compared to just 24% in 2020).

Direct Forgiveness Summary:

- Over 600 banks have opted in to direct forgiveness, enabling over 2.17 million borrowers to apply through the portal (this represents 30% of loans $150,000 or less that have not yet submitted for forgiveness).

Established by the CARES Act in 2020, the PPP was among the first COVID-19 small business economic aid programs and provided more than $798 billion in economic relief to small businesses and nonprofits across the nation, keeping employees working, and helping businesses come back stronger than ever.