

Recent Developments in Federal Income Taxation

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First Wednesday Tax Update

July 3, 2024

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CLE Number for Today's Webcast:

174239225

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**Moore v. United States,
144 S. Ct. 1680 (6/20/24)**

Outline: item A.1, page 2

- In the TCJA of 2017, Congress added a Mandatory Repatriation Tax (MRT) to Subpart F of the Code. See IRC § 965(a)(1), (c), (d).
 - The MRT imposed on United States shareholders a one-time pass-through tax on the accumulated but undistributed income of certain foreign corporations, including controlled foreign corporations (CFCs).
- The taxpayers, a married couple, owned 13% of the stock of a non-U.S. corporation.
 - The MRT required the taxpayers to report \$132,512 of undistributed income of the corporation and to pay tax on that income of \$14,279.
- Issue: is the MRT constitutional?
- Held: Yes.
 1. The MRT is not a direct tax (one imposed on persons or property) that must be apportioned among the states, but rather is an indirect tax (one imposed on activities or transactions) that need not be apportioned. It is a tax on realized income of the corporation. Analogous to Subpart F, Subchapters K & S.
 2. Court does not reach the question whether realization is a constitutional requirement.

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**Proposed Regulations on RMDS (2/24/22)
No More Stretch RMDs from Non-Spousal
Inherited Retirement Accounts**

Outline: item B.1, page 6

- A provision of the SECURE Act, Division O, Title IV, § 401 of the 2020 Further Consolidated Appropriations Act, amended Code § 401(a)(9)(E)
- Modifies the required minimum distribution (RMD) rules for inherited retirement accounts (defined contribution plans and IRAs).
- Requires all funds to be distributed by the end of the 10th calendar year following the year of death.
 - There appears to be no requirement to withdraw any minimum amount before that date.
- Current rules, which permit taking RMDs over many years, continue to apply to certain designated beneficiaries, including surviving spouses, children of the participant who have not reached the age of majority, and those not more than 10 years younger than the deceased individual.
- Applies to distributions with respect to those who die after 12/31/19.⁴

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Proposed Regulations on RMDs (2/24/22)

87 F.R. 10504

Outline: item B.1, page 6

- These proposed regulations update existing regulations to address the changes made by the SECURE Act as well as several other statutory changes.
- The proposed regulations adopt an interpretation of the 10-year rule that appears to differ from the plain language of the statute and from the interpretation of the legislation by most advisors.
- “For example, if an employee died after the required beginning date with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have required minimum distributions calculated using the beneficiary’s life expectancy as under the existing regulations for up to nine calendar years after the employee’s death. In the tenth year following the calendar year of the employee’s death, a full distribution of the employee’s remaining interest would be required.”

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Notice 2022-53

2022-45 I.R.B. 437 (10/7/2022)

Outline: item B.1.a, page 7

- Provides relief to those required to take RMDs under the interpretation of the 10-year rule in the February 2022 proposed regulations.
- Generally, relief applies to beneficiaries who:
 - Are not eligible designated beneficiaries (i.e., are subject to the 10-year rule)
 - Inherited the account from an employee/IRA owner who died:
 - in 2020 or 2021, and
 - after the required beginning date for distributions, and
 - Were required to take RMDs in 2021 or 2022 under the interpretation of the 10-year rule in the proposed regulations.
- The 50% (or 25%) excise tax of § 4974 for failure to take RMDs will not apply. Those who paid the excise tax can seek a refund.

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Notice 2023-54
2023-31 I.R.B. 382 (7/14/23)
Outline: item B.1.b, page 8

- Provides additional relief to those required to take RMDs under the interpretation of the 10-year rule in the February 2022 proposed regulations.
- Generally, relief applies to beneficiaries who:
 - Are not eligible designated beneficiaries (i.e., are subject to the 10-year rule)
 - Inherited the account from an employee/IRA owner who died:
 - in 2020, 2021, or 2022 and
 - after the required beginning date for distributions, and
 - Were required to take RMDs in 2021, 2022, or 2023 under the interpretation of the 10-year rule in the proposed regulations.
- The 50% (or 25%) excise tax of § 4974 for failure to take RMDs will not apply. Those who paid the excise tax can seek a refund.

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Notice 2024-35
2024-19 I.R.B. 1051 (4/16/24)
Outline: item B.1.c, page 9

- Provides additional relief to those required to take RMDs under the interpretation of the 10-year rule in the February 2022 proposed regulations.
- Generally, relief applies to beneficiaries who:
 - Are not eligible designated beneficiaries (i.e., are subject to the 10-year rule)
 - Inherited the account from an employee/IRA owner who died:
 - in 2020, 2021, 2022 or 2023, and
 - after the required beginning date for distributions, and
 - Were required to take RMDs in 2021, 2022, 2023 or 2024 under the interpretation of the 10-year rule in the proposed regulations.
- The 50% (or 25%) excise tax of § 4974 for failure to take RMDs will not apply. Those who paid the excise tax can seek a refund.

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Notice 2024-35
2024-19 I.R.B. 1051 (4/16/24)
Outline: item B.1.c, page 9

- Example:
 - Owner passed away in 2020
 - At the time of his death, Owner was the owner of a traditional IRA
 - Owner's death occurred after the required beginning date for distributions from the IRA.
 - Beneficiary is the sole beneficiary of the IRA and is not an eligible designated beneficiary (therefore is subject to the 10-year rule)
 - Under the proposed regulations, Beneficiary must take RMDs for 2020 through 2029, and any remaining funds in the account must be distributed by the end of 2030
 - Pursuant to Notices 2022-53, 2023-54, and 2024-35, no excise tax will be imposed for the missed RMDs in 2021, 2022, 2023, or 2024.
 - Query: how much must Beneficiary withdraw in 2025?

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Bell v. United States
169 Fed. Cl. 466 (1/25/24)
Outline: item D.1, page 9

- The taxpayer, a citizen of Jamaica, was a nonresident alien for U.S. tax purposes.
- He filed an amended U.S. income tax return for 2018 claiming a personal exemption deduction and a refund of \$415.
- Although § 151(a)-(b) authorize a deduction equal to the "exemption amount," the 2017 TCJA added § 151(d)(5) to reduce the exemption amount to zero (2018-2025).
- Section 151(d)(5)(B) provides:
 - "For purposes of any other provision of this title, the reduction of the exemption amount to zero shall not be taken into account in determining whether a deduction is allowed or allowable, or whether a taxpayer is entitled to a deduction, under this section."
- Section 873(a) generally allows a nonresident alien to take only deductions connected with income effectively connected with the conduct of a trade or business (ECI), but § 873(b) allows certain deductions not connected with ECI, including "the deduction for personal exemptions allowed by section 151 ...".
- Issue: is a nonresident alien entitled to a personal exemption deduction in 2018-2025 greater than zero?
- Held: No. The exemption amount is zero for both U.S. citizens and NRAs.

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**Farhy v. Commissioner,
100 F.4th 223 (D.C. Cir. 5/3/24)
*Outline: item A.1.a, page 12***

- Section 6038(a) requires every United States person to provide information with respect to any foreign business entity the person controls
 - Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
- Section 6038(b)(1) imposes a penalty of \$10,000 for each annual accounting period for which a person fails to provide the required information.
 - In addition, § 6038(b)(2) imposes a continuation penalty of \$10,000 for each 30-day period that the failure continues up to a maximum continuation penalty of \$50,000 per annual accounting period.
- Issue: can the IRS levy to collect the penalties imposed by § 6038(b)?
- Held: Yes. There is statutory authority for the IRS to assess these penalties. Because they can be assessed, the IRS can exercise its administrative collection powers to collect them.
- Note: case reverses the U.S. Tax Court on this issue.

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**Abdo v. Commissioner
162 T.C. No. 7 (4/2/24)
*Outline: item E.1, page 13***

- The IRS issued a notice of deficiency to the taxpayers, who resided in Ohio. The last day to file a petition in the Tax Court was March 2, 2020.
- The taxpayers filed their petition on March 17, 2020.
- On March 31, 2020, the President issued a major disaster declaration with respect to Ohio as a result of the COVID-19 pandemic. The disaster conditions began on January 20, 2020.
- The IRS moved to dismiss on the basis that the petition was untimely.
- Section 7508A(a) allows the IRS discretion to extend deadlines for up to one year.
- Section 7508A(d) provides for a mandatory 60-day extension of certain tax-related deadlines by reason of a federally declared disaster.
- Regulations under § 7508A provide that the § 7508A (d) 60-day extension applies only if the IRS has exercised its discretionary authority under § 7508A(a)..
- Issue: are the regulations entitled to deference under *Chevron*?
- Held: No. Section 7508A(d) is unambiguous and provides for a mandatory 60-day extension. Taxpayers' petition was timely filed.

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Connelly v. United States
144 S. Ct. 1406 (6/6/24)
Outline: item A.1.a, page 17

- Two brothers owned all the shares of stock of a corporation.
- Under a stock purchase agreement, upon the death of either brother:
 - The surviving brother had the right to purchase the deceased brother's shares and,
 - If the surviving brother declined to purchase the shares, the corporation was obligated to redeem the shares.
- Value of stock was established either by brothers' agreement or by appraisal.
- The corporation owned life insurance with a death benefit of \$3.5 million on each brother's life to allow the corporation to redeem shares.
- One brother passed away and the corporation redeemed the shares for \$3 million. Value established by agreement of surviving brother and decedent's son.
- Issue: in determining the value of the deceased brother's shares for estate tax purposes, is the value increased by the \$3.5 million of life insurance proceeds?
- Held: Yes. The corporation's obligation to redeem the shares is not a liability that offsets this \$3.5 million.
 - Connelly (8th Cir.) affirmed; Estate of Blount (11th Cir. 2005) rejected.

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