Current Federal Tax Developments

Week of September 21, 2020

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ACCOUNTING
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CURRENT FEDERAL TAX DEVELOPMENTS
WEEK OF SEPTEMBER 21, 2020

Published in 2020 by Kaplan Financial Education.

Printed in the United States of America.

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Kaplan Financial Education

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SECTION: 201
TAXPAYERS REMINDED OF EXPEDITED LETTER RULING OPTION FOR COVID-19 ISSUES AND ELECTRONIC SUBMISSION OF SUCH REQUESTS

Citation: IR-2020-212, 9/16/20

In News Release IR-2020-212[1] the IRS reminded taxpayers of the option to request an expedited letter ruling request, and that COVID-19 issues can justify asking for such expedited processing.

The news release notes that normally letter ruling requests are processed in the order received, but there is a procedure in place for requesting expedited processing:

> As set forth in Rev. Proc. 2020-1, the IRS ordinarily processes requests for letter rulings in the order that they were received. A taxpayer with a compelling need to have a request processed more quickly may request expedited handling.[2]

The news release continues to explain the procedure for making the request.

> The request for expedited handling must be made in writing, preferably in a separate letter submitted with the letter ruling request. Requests for expedited handling are granted at the discretion of the IRS and typically involve a factor outside of the taxpayer's control that creates a real business need to obtain a letter ruling before a certain date in order to avoid serious business consequences. Requests for expedited handling should be submitted as promptly as possible after the taxpayer has become aware of the deadline or compelling business need.[3]

Section 7.02(4) of Revenue Procedure 2020-1 has the detailed information on expedited processing. That section provides the following additional information on the request:

> A taxpayer with a compelling need to have a request processed ahead of requests received before it may request expedited handling. This request must explain in detail the need for expedited handling. The request for expedited handling must be made in writing, preferably in a separate letter included with the request for the letter ruling or determination letter or provided soon after its filing. If the request for

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[1] "IRS reminds taxpayers and practitioners of expedited letter ruling procedures," IR-2020-212, September 16, 2020, https://www.irs.gov/newsroom/irs-reminds-taxpayers-and-practitioners-of-expedited-letter-ruling-procedures (retrieved September 16, 2020)

[2] "IRS reminds taxpayers and practitioners of expedited letter ruling procedures," IR-2020-212, September 16, 2020

[3] "IRS reminds taxpayers and practitioners of expedited letter ruling procedures," IR-2020-212, September 16, 2020

> expedited handling is contained in the letter requesting the letter ruling or determination letter, the letter should state at the top of the first page "**Expedited Handling Is Requested. See page ___ of this letter.**"[4]

The request for expedited handling will not be forwarded to a branch for action until the user fee is paid.[5] For this reason, it is advisable to discuss the matter informally with the IRS employee who has been authoring rulings in the area before proceeding down this path if the ruling will only be useful if issued under the expedited program. Of course, that's advisable generally when a ruling request is being considered even if expedited processing is not being requested—it's best to know before the fee is paid if there is no chance of a favorable ruling.

The criteria the Service uses to make the decision on whether to expedite the ruling is described in Notice 2020-1:

> Whether a request for expedited handling will be granted is within the Service's discretion. The Service may grant the request when a factor outside a taxpayer's control creates a real business need to obtain a letter ruling or determination letter before a certain date to avoid serious business consequences. Examples include situations in which a court or governmental agency has imposed a specific deadline for the completion of a transaction, or where a transaction must be completed expeditiously to avoid an imminent business emergency (such as the hostile takeover of a corporate taxpayer), provided that the taxpayer can demonstrate that the deadline or business emergency, and the need for expedited handling, resulted from circumstances that could not reasonably have been anticipated or controlled by the taxpayer. To qualify for expedited handling in such situations, the taxpayer must also demonstrate that the taxpayer submitted the request as promptly as possible after becoming aware of the deadline or emergency. The extent to which the letter ruling or determination letter request complies with all of the applicable requirements of this revenue procedure, and fully and clearly presents the issues, is a factor in determining whether expedited treatment will be granted. When the Service agrees to process a request out of order, it cannot give assurance that any letter ruling or determination letter will be processed by the date requested.[6]

The news release makes clear that the COVID-19 pandemic will qualify as an event out of the taxpayer's control:

> The COVID-19 pandemic is a factor outside of the taxpayer's control that can support a request for expedited handling under Rev. Proc. 2020-1. As a result, and consistent with Executive Order 13924 of May 19, 2020, taxpayers are encouraged to seek expedited handling if they

[4] Revenue Procedure 2020-1, Section 7.02(4)

[5] Revenue Procedure 2020-1, Section 7.02(4)

[6] Revenue Procedure 2020-1, Section 7.02(4)

> face a compelling need related to COVID-19. Such requests will be handled as provided in Rev. Proc. 2020-1.[7]

Notice 2020-1 does caution about issues that will *not* generally be found to justify expedited processing of the request:

> The scheduling of a closing date for a transaction or a meeting of the board of directors or shareholders of a corporation, without regard for the time it may take to obtain a letter ruling or determination letter, will not be considered a sufficient reason to process a request ahead of its regular order. Also, the possible effect of fluctuation in the market price of stocks on a transaction will not be considered a sufficient reason to process a request out of order.[8]

Advisers will not want to list either of those as reasons justifying expedited processing, and may expect IRS inquiries if the information suggests these may be the real reason why the taxpayer is seeking expedited treatment.

The Revenue Procedure concludes reminding taxpayers of the fact that even a request that does meet the criteria for expedited processing needs to fully comply with the other requirements for a ruling request in order for the letter to be issued most rapidly:

> Because most requests for letter rulings and determination letters cannot be processed out of order, the Service urges all taxpayers to submit their requests well in advance of the contemplated transaction. In addition, to facilitate prompt action on letter ruling requests, taxpayers are encouraged to ensure that their initial submissions comply with all of the requirements of this revenue procedure (including the requirements of other applicable guidelines set forth in Appendix G of this revenue procedure), to prepare "two-part" requests described in section 7.02(3) of this revenue procedure when possible, and to promptly provide any additional information requested by the Service.[9]

The ruling concludes by noting that letter ruling requests, including those asking for expedited treatment, can be submitted electronically under special procedures the IRS put in place in response to the COVID-19 pandemic:

> In addition, Rev. Proc. 2020-29, 2020-21 I.R.B. 859 (May 18, 2020)[10], sets forth procedures for the electronic submission of letter ruling requests.

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[7] "IRS reminds taxpayers and practitioners of expedited letter ruling procedures," IR-2020-212, September 16, 2020

[8] Revenue Procedure 2020-1, Section 7.02(4)

[9] Revenue Procedure 2020-1, Section 7.02(4)

[10] Revenue Procedure 2020-29, https://www.irs.gov/irb/2020-21_IRB#REV-PROC-2020-29 (retrieved September 16, 2020)

SECTION: 280E
IRS PUBLISHES WEB PAGE AND FAQ WITH INFORMATION FOR MARIJUANA INDUSTRY

Citation: "Marijuana Industry," IRS website, 9/11/20

The IRS has published a web page that contains tax information for the marijuana industry.[11] The page describes its purpose as follows:

> A key component in promoting the highest degree of voluntary compliance on the part of taxpayers is helping them understand and meet their tax responsibilities while also enforcing the law with integrity and fairness to all. This article provides general guidance including frequently asked questions for taxpayers in the marijuana industry.

The page contains sections on:

- IRC §280E and the Marijuana Industry
- Income Reporting
- Cash Payment Options
- Large Cash Amounts
- Estimated Payments
- Records

The page ends with a section titled "More Information" which begins with a link to a frequently asked questions page for the marijuana industry.[12]

The FAQ has the following questions on the page:

- My business is a marijuana dispensary that I operate in compliance with my state's laws. The federal government considers this an illegal activity. Do I have the same income and employment tax filing obligations as any other business?
- If I can't fully pay the amount I owe, are payment plans available that I can afford?
- What penalties or additions to tax could a participant in the marijuana industry be subject to if adjustments are made during an income tax audit?

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[11] "Marijuana Industry," IRS website, September 11, 2020, https://www.irs.gov/businesses/small-businesses-self-employed/marijuana-industry (retrieved September 15, 2020)

[12] "Marijuana Industry Frequently Asked Questions," IRS website, September 12, 2020, https://www.irs.gov/businesses/small-businesses-self-employed/marijuana-industry-frequently-asked-questions (retrieved September 15, 2020)

- Will penalties under section 6662 be proposed if an audit ends with the IRS proposing adjustments for a participant in the marijuana industry?
- I operate a business that consists of selling marijuana. Can I claim deductions to determine my taxable income?
- What do I need to do for cash payments over $10,000 concerning information returns?

SECTION: 1361
NONPROFIT CORPORATION COULD NOT ISSUE STOCK, THUS NO S ELECTION WAS POSSIBLE

Citation: Deckard v. Commissioner, 155 TC No. 8, 9/17/20

The Tax Court determined that Clinton Deckard did not own shares in Waterfront Fashion Week, Inc., and, as such, the corporation could not make a late S election. Mr Decker was barred from claiming losses from that corporation on his personal return.[13]

The taxpayer had formed Waterfront Fashion Week, Inc. as a nonprofit corporation under Kentucky law in May of 2012. The purpose of the corporation was explained in the opinion as follows:

> Waterfront produced an event called Waterfront Fashion Week that was held at the Louisville Waterfront Park from October 17 to 19, 2012. This event was marketed as benefiting Waterfront Development Corp., a nonprofit organization that maintains the Louisville Waterfront Park. The event failed, however, to break even. Consequently, Waterfront made no cash charitable contribution to Waterfront Development Corp. The record does not reflect that Waterfront engaged in any other activity at any relevant time.[14]

Not only did Waterfront not generate earnings to be donated to Waterfront Development Corp., Mr. Deckard made significant transfers to the entity while trying to make a go of the event. As it became clear that Waterfront was never going to be able to have a successful event and recoup those losses, Mr. Deckard took the following actions:

> On October 28, 2014, Waterfront mailed to the IRS Form 2553, Election by a Small Business Corporation. The Form 2553 indicated that Waterfront was electing to be an S corporation retroactively as of the date of its incorporation, May 8, 2012.4 Petitioner signed the Form 2553 in his capacity as Waterfront's president. Petitioner also signed

[13] *Deckard v. Commissioner*, 155 TC No. 8, September 17, 2020, https://www.ustaxcourt.gov/UstcInOp2/OpinionViewer.aspx?ID=12322 (retrieved September 18, 2020)

[14] *Deckard v. Commissioner*, 155 TC No. 8, p. 6

> the Form 2553 shareholder's consent statement, indicating that he held a 100% ownership interest acquired on May 8, 2012.
>
> On January 13, 2015, Waterfront filed untimely Forms 1120S, U.S. Income Tax Return for an S Corporation, for its taxable years 2012 and 2013, reporting operating losses of $277,967 and $3,239 for 2012 and 2013, respectively. Attached to the Forms 1120S were Schedules K-1, Shareholder's Share of Income, Deductions, Credits, etc., reporting that petitioner had 100% stock ownership of Waterfront during 2012 and 2013.
>
> On May 12, 2015, petitioner filed untimely Forms 1040, U.S. Individual Income Tax Return, for his taxable years 2012 and 2013. On the Schedules E, Supplemental Income and Loss, attached to these returns, petitioner reported passthrough, nonpassive losses from Waterfront of $277,967 and $3,239 for taxable years 2012 and 2013, respectively.[15]

While the IRS argued both that the corporation hadn't made a valid S election and that Mr. Deckard was not a shareholder, the Tax Court disposed of the case by looking solely at the issue of whether Mr. Deckard was a shareholder, finding he was not a shareholder.

A Kentucky Nonprofit Corporation Cannot Have a Shareholder for S Corporation Purposes

The taxpayer claimed that the facts of the case indicate that even though Kentucky law may not allow for shareholders in a nonprofit corporation, he would be a shareholder for federal tax purposes due to the beneficial interest he had in the corporation:

> Petitioner's declaration in support of his cross-motion for partial summary judgment asserts, among other things: that on or about July 22, 2011, he hired Extraordinary Events, an unrelated event-planning business, to coordinate Waterfront Fashion Week; that on May 3, 2012, he hired Attorney D. Kevin Ryan to advise him on the creation of a legal entity to conduct Waterfront Fashion Week because Extraordinary Events had advised petitioner that a tax-exempt entity would encourage sponsors to make tax-deductible contributions to the legal entity; that Attorney Ryan never advised petitioner that sponsors might be able to deduct sponsorships as trade or business expenses even if the legal entity lacked tax-exempt status; that on May 8, 2012, Attorney Ryan formed Waterfront under the Act; that during 2012 and 2013 petitioner was president of Waterfront and its "sole decision maker"; that on or about August 10, 2012, he terminated the agreement with Extraordinary Events because it had failed to recruit enough sponsors or raise enough contributions to fund Waterfront Fashion Week; that he then assumed "complete control" over planning Waterfront Fashion Week, "abandoned plans" for Waterfront to obtain Federal tax-exempt status, and began treating

[15] *Deckard v. Commissioner*, 155 TC No. 8, pp. 7-8

> Waterfront as a "for-profit business that I owned entirely"; and that in August 2012 he made over $275,000 of contributions to Waterfront representing over 85% of the total cost of Waterfront Fashion Week.[16]

As the IRS did not specifically dispute these facts, the Tax Court assumed they were true—but, even so, it found Mr. Deckard was not a beneficial shareholder.

The Court found that, in determining if the shareholder had a beneficial interest that made him a shareholder for Subchapter S purposes, the Court would need to look at the following:

> The subchapter S regulations provide: "Ordinarily, the person who would have to include in gross income dividends distributed with respect to the stock of the corporation (if the corporation were a C corporation) is considered to be the shareholder of the corporation." Sec. 1.1361-1(e)(1), Income Tax Regs. Citing this regulation, one court has observed that "the question whether a person was a shareholder on the date of the election to be taxed under Subchapter S is equivalent to the question whether, had there been a valid election, he would have been required to report as personal income profits earned by the corporation on that date." *Cabintaxi Corp. v. Commissioner*, 63 F.3d 614, 616 (7th Cir. 1995), *aff'g in part, rev'g in part on other grounds* T.C. Memo. 1994-316. The resolution of this question depends on whether the person "would have been deemed a beneficial owner of shares in the corporation, entitled therefore to demand from the nominal owner the dividends or any other distributions of earnings on those shares." *Id.*[17]

The opinion notes that nonprofit corporations are generally prohibited from distributing profits to insiders who exercise control—such as Mr. Deckard. And, specifically, the Kentucky law under which the corporation was formed contains just such a prohibition:

> The prohibition on the distribution of profits is clearly embodied in the Act, which governs the formation, operation, and dissolution of nonstock, nonprofit corporations in Kentucky. A corporation subject to the provisions of the Act must possess two important characteristics. First, the corporation must be "nonprofit". Ky. Rev. Stat. Ann. sec. 273.161(1). A "[n]onprofit corporation" is defined as a corporation no part of the income or profit of which is distributable to its members, directors, and officers. *Id.* sec. 273.161(3). Consistent with this definition, the Act expressly prohibits a nonprofit corporation from paying a dividend or distributing any part of its income or profits to its members, directors, or officers. *Id.* sec. 273.237. Second, the corporation "shall not have or issue shares of stock." *Id.*[18]

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[16] *Deckard v. Commissioner*, 155 TC No. 8, pp. 10-11

[17] *Deckard v. Commissioner*, 155 TC No. 8, pp. 11-12

[18] *Deckard v. Commissioner*, 155 TC No. 8, pp. 16-17

The Court found that:

- Under Kentucky law, the corporation had no stock and could issue no stock;
- Mr. Deckard, being unable under the law to have any of the profit of the corporation distributed to him or inure to his benefit, did not possess a beneficial interest equivalent to the holding of stock; and
- Due to similar restrictions, Mr. Deckard could not receive any assets on liquidation of the corporation.[19]

The Court found that his assertion that he took full control of the entity did not change the issue—it was still organized as a Kentucky nonprofit corporation and had articles of incorporation in accordance with that law that continued to bar Mr. Deckman from receiving distributions:

> Petitioner asserts that in August 2012 he "assumed complete control over the planning of the fashion week event" and began "treating * * * [it] as a for-profit business". Even assuming that this is true, any such actions would not give rise to ownership rights in Waterfront greater than those afforded by the Act and Waterfront's articles of incorporation. Control over Waterfront was vested in its three directors, as fiduciaries entrusted with the duties and powers imposed upon them by the Act and the articles of incorporation. See Ky. Rev. Stat. Ann. sec. 273.215(1); *Ballard v. 1400 Willow Council of Co-Owners, Inc.*, 430 S.W.3d 229, 241 (Ky. 2013).[20]

Substance Over Form

As we have noted previously in prior articles, the party that establishes the form of a transaction will generally be barred from arguing that the chosen form doesn't comport with reality. Nevertheless, Mr. Deckard attempted to argue substance over form—that even if the form would bar him from being a beneficial shareholder, the substance of the transactions meant he was a shareholder for federal tax purposes.

> Invoking the doctrine of substance over form, petitioner urges that we should disregard Waterfront's form as a nonprofit corporation and instead should regard it, in substance, as a for-profit entity. He asserts that he intended Waterfront to be a for-profit entity and "objectively operated" it "consistently with it being a for-profit entity that he owned entirely." He urges that "the only fact inconsistent with Waterfront * * * being a for-profit entity is that an attorney formed * * * [it] as a nonprofit corporation prior to when the economic realities of the project came to light." He states that although he "should have sought to change Waterfront['s] * * * corporate documents to reflect" these changed plans, he was "mistakenly unaware of these formalities

[19] *Deckard v. Commissioner*, 155 TC No. 8, pp. 18-19

[20] *Deckard v. Commissioner*, 155 TC No. 8, p. 20

> of corporate law" and so treated Waterfront "like he was the sole owner in every practical sense."[21]

The Court notes that taxpayers are almost always bound by the form for the transaction they selected, but that even if that wasn't the case the substance of this transaction was in line with its form:

> Nothing in the record suggests that Waterfront's form did not respect its substance. To the contrary, the record shows that in May 2012 Waterfront was purposefully organized as a nonprofit corporation, upon an attorney's advice, with the expectation that it would seek tax-exempt status so as to facilitate tax-deductible gifts. Its corporate existence as a nonprofit corporation began when its articles of incorporation were filed on May 8, 2012. See Ky. Rev. Stat. Ann. sec. 273.2531. It was not until several months later that petitioner changed course, abandoned plans to obtain Federal tax-exempt status for Waterfront, and "assumed control". Any such actions after Waterfront's organization had no effect upon its status as a nonprofit corporation under the Act. Indeed, the parties have stipulated that at all relevant times Waterfront existed under the provisions of the Act.[22]

Lack of Federal Tax-Exempt Status

Finally, Mr. Deckard argued that since the corporation never sought tax-exempt status under the IRC, it should be treated as a for-profit corporation. But the Court finds that Mr. Deckard is confusing federal and state law—whether a corporation is nonprofit under state law, and thus bound by the state's rules for such an entity, does not depend on the corporation obtaining federal tax-exempt status:

> Petitioner's argument confuses Federal tax-exempt status with status as a nonprofit corporation under State law. As noted, at all relevant times Waterfront was subject to the provisions of the Act. The decision not to seek Federal tax-exempt status for Waterfront has no bearing on its status as a nonprofit corporation under the Act or on the ownership constraints imposed thereunder.[23]

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[21] *Deckard v. Commissioner*, 155 TC No. 8, pp. 20-21

[22] *Deckard v. Commissioner*, 155 TC No. 8, p. 22

[23] *Deckard v. Commissioner*, 155 TC No. 8, p. 23

SECTION: 1401
DRAFT OF FORM TO BE USED BY SELF-EMPLOYED INDIVIDUALS TO COMPUTE FFCRA LEAVE CREDITS RELEASED

Citation: Draft Form 7202, 9/2/20

The IRS has released a draft of the form that will be used by self-employed individuals to claim a credit for family and sick leave that was enacted as part of the Families First Coronavirus Relief Act (FFCRA). Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*[24] is to be used by taxpayers qualifying for this credit.

Part I of the form will be used to claim the basic sick leave credit, the equivalent of the credit available to employers who provide covered sick leave mandated by the FFCRA. The same six criteria apply as applied for employees (See our March 19, 2020 article

[24] Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*, September 2, 2020, https://www.irs.gov/pub/irs-dft/f7202--dft.pdf (retrieved September 15, 2020)

Congress Enacts Small Employer Mandatory Paid Sick Time Rules and Related Refundable Payroll Tax Credit[25] for details of those requirements.)

Form **7202** Department of the Treasury Internal Revenue Service	**Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals** ▶ Attach to Form 1040 or 1040-SR. ▶ Go to *www.irs.gov/Form7202* for instructions and the latest information.	OMB No. 1545-0074 **2020** Attachment Sequence No. **202**

Name of person with self-employment income (as shown on Form 1040 or 1040-SR) | **Social security number of person with self-employment income**

Part I Credit for Sick Leave for Certain Self-Employed Individuals

1	Number of days you were unable to perform services as a self-employed individual because of certain coronavirus-related care you required. See instructions	**1**	
2	Number of days you were unable to perform services as a self-employed individual because of certain coronavirus-related care you provided to another. (Do not include days you included in line 1.) See instructions	**2**	
3	If you are filing a fiscal year return, see instructions; otherwise enter 10	**3**	
4	Enter the smaller of line 1 or line 3	**4**	
5	Subtract line 4 from line 3	**5**	
6	Enter the smaller of line 2 or line 5	**6**	
7	Net earnings from self-employment (see instructions)	**7**	
8	Divide line 7 by 260 (round to nearest whole number)	**8**	
9	Enter the smaller of line 8 or $511	**9**	
10	Multiply line 4 by line 9	**10**	
11	Multiply line 8 by 67% (0.67)	**11**	
12	Enter the smaller of line 11 or $200	**12**	
13	Multiply line 6 by line 12	**13**	
14	Add lines 10 and 13	**14**	
15	Amount of emergency paid sick leave subject to the $511 per day limit you received from an employer (see instructions)	**15**	
16	Amount of emergency paid sick leave subject to the $200 per day limit you received from an employer (see instructions)	**16**	
	If line 15 and line 16 are both zero, skip to line 24 and enter the amount from line 14.		
17	Add line 13 and line 16	**17**	
18	Enter the smaller of line 17 or $2,000	**18**	
19	Subtract line 18 from line 17	**19**	
20	Add lines 10, 15, and 18	**20**	
21	Enter the smaller of line 20 or $5,110	**21**	
22	Subtract line 21 from line 20	**22**	
23	Add line 19 and line 22	**23**	
24	Subtract line 23 from line 14. If zero or less, enter -0-. Enter here and include on Schedule 3 (Form 1040), line 12b	**24**	

[25] Ed Zollars, CPA, "Congress Enacts Small Employer Mandatory Paid Sick Time Rules and Related Refundable Payroll Tax Credit," *Current Federal Tax Developments* website, March 19, 2020 (retrieved September 15, 2020)

The additional credit for up to of 8 weeks of family leave, generally related to children being unable to attend school or preschool, is computed in Part II.

Part II	Credit for Family Leave for Certain Self-Employed Individuals		
25	Number of days you were unable to perform services as a self-employed individual because of certain coronavirus-related care you provided to a son or daughter under the age of 18. (Do not enter more than 50 days.) See instructions	25	
26	Net earnings from self-employment (see instructions)	26	
27	Divide line 26 by 260 (round to nearest whole number)	27	
28	Multiply line 27 by 67% (0.67)	28	
29	Enter the smaller of line 28 or $200	29	
30	Multiply line 25 by line 29	30	
31	Amount of emergency family leave wages you received from an employer (see instructions)	31	
	If line 31 is zero, skip to line 35 and enter the amount from line 30.		
32	Add line 30 and line 31	32	
33	Enter the smaller of line 32 or $10,000	33	
34	Subtract line 33 from line 32	34	
35	Subtract line 34 from line 30. If zero or less, enter -0-. Enter here and include on Schedule 3 (Form 1040), line 12b	35	

For Privacy Act and Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 56395K Form **7202** (2020)

Note that in both cases the self-employed person must consider amounts received from an employer under the same program when computing the self-employed person's maximum credit.

The self-employed person must have been unable to perform services for the days in question in order to qualify for this credit—so it's not enough just to fall into one of the six categories, but the taxpayer must also have been unable to perform services during that period. It would not be surprising on exam for the IRS to ask for the specific time period being claimed and examine records of the business, including income and billing records, to determine if, in fact, the self-employed person performed services during the days for which a credit is being claimed.

SECTION: 3201
IRS RELEASES VERSION OF FORM 941-X NEEDED FOR EMPLOYERS LOOKING TO REVISE SECOND QUARTER FORMS 941

Citation: Form 941-X (Rev. July 2020), 9/11/20

The IRS has released the revised Form 941-X[26] that will allow revising Forms 941 that are impacted by provisions found in the Families First Coronavirus Relief Act and/or the CARES Act that impacted second quarter payroll. The related revised instructions to the form were also issued at the same time.[27]

[26] Form 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*, (Rev. July 2020), September 11, 2020 https://www.irs.gov/pub/irs-pdf/f941x.pdf (retrieved September 14, 2020)

[27] *Instructions for Form 941-X*, (Rev. July 2020), September 11, 2020 https://www.irs.gov/pub/irs-pdf/i941x.pdf (retrieved September 14, 2020)

On August 17 the IRS had asked employers not to use the prior version of Form 941-X to attempt to amend a second quarter 2020 Form 941 and to wait for this form, which existed in draft form on that date, to be finalized sometime in "late September."[28]

Congress had enacted various payroll tax credits as part of the Families First Coronavirus Relief Act and CARES Act, as well as providing for the deferral of the employer portion of the old age, survivors and disability insurance (OADSI) portion of the employer FICA tax.

Employers who had been delaying filing revised Forms 941 for the second quarter awaiting the finalization of this form should now file those revisions.

[28] Ed Zollars, CPA, "IRS Warns Employers Not to File Form 941-X to Change Second Quarter Forms 941 Until Revised Version Issued in Late September," *Current Federal Tax Developments* website, August 21, 2020