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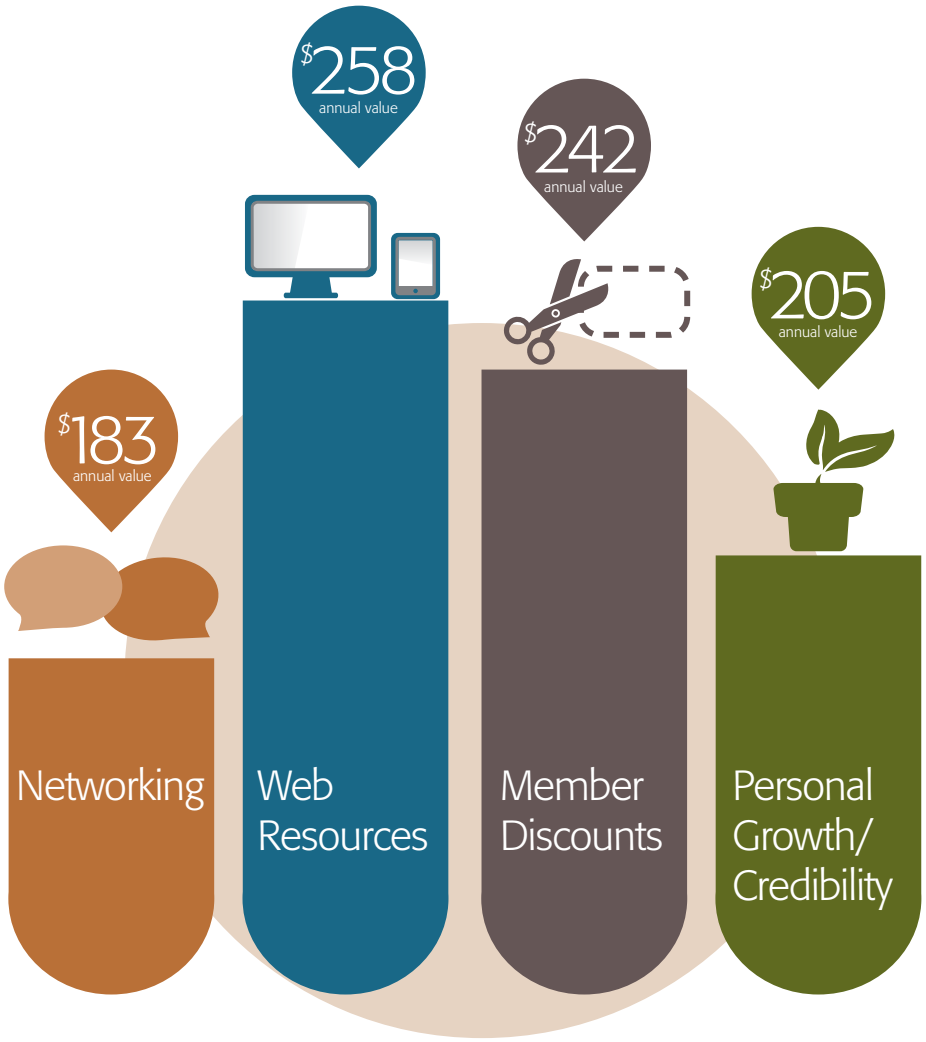

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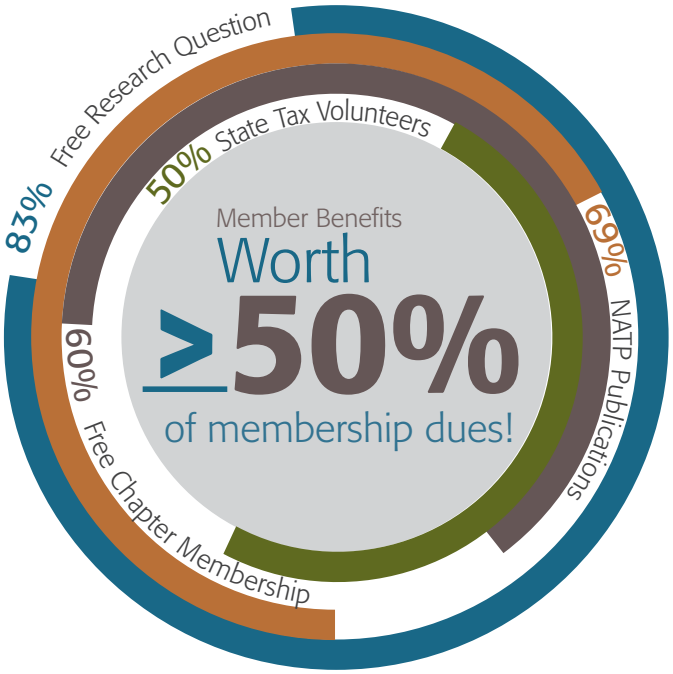

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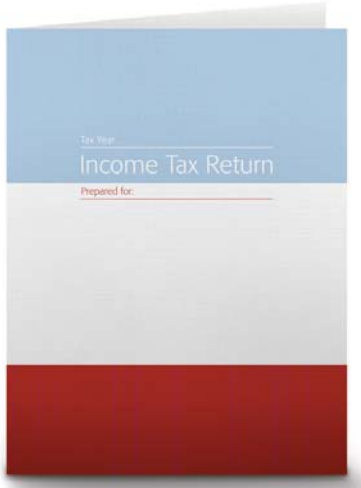

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TAXPRO MONTHLY

NATP

Sample

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Dependency Exemption

Not always a clear issue

By James M. Hopkins, CPA

Basil Oliver, Jr., claimed a dependency exemption for his nephew, the earned income credit and the child tax credit on his 2008 tax return. Basil Jr. lived with his father, Basil Sr., and paid him $250–$300 per month with no formal lease for living expenses.

Basil Jr. began helping his half brother, Trenton Freeman, in caring for one of Trenton's infant twin sons, TAH (child's initials). Basil Jr. and Trenton were half brothers, having the same mother, but not the same father, a key factor in this case.

Since Trenton had five children under age six, Basil Jr. started caring for TAH in April 2008 through about April 2009. Basil Jr. and Basil Sr. shared child care duties for TAH in their residence. Basil Jr. provided about $150 of monthly support for TAH. TAH's mother remained his legal guardian, responsible for healthcare, but could not determine the total amount of money she spent for TAH's support. TAH's mother did not claim an exemption and related benefits for TAH for 2008. Basil Sr. and Trenton didn't either.

The Tax Court first analyzed the qualifying relative conditions for TAH, concluding that Basil Jr. met the relationship and the gross income tests; however, he could not prove TAH's total support or that he provided more than half of TAH's support for the 2008 year. The Court held that Basil Jr. could not claim TAH as a qualifying relative.

In order to claim a dependency exemption as a qualifying child, the qualifying child must share the same abode as the claiming taxpayer for more than half the year. In this case, TAH's parents did not meet this test, since TAH resided with Basil Jr. and Basil Sr. for more than six months of 2008. The Court held that Basil Sr. could not claim TAH as a qualifying child, since he is not Trenton's father; thus Basil Sr. fails to meet the relationship test, as TAH is not a child, stepchild, or descendent thereof under §152(f)(1)(A). The Court also stated, "Basil Sr. filed his 2008 tax return as 'single' and therefore did not have any stepchildren for the 2008 tax year."

Dependency Exemption

This results in Basil, Jr. as the only individual who can claim TAH as a qualifying child. Basil Jr. meets all the qualifying child tests:

(1) Relationship (nephew);

(2) Same principal place of abode;

(3) TAH meets the age requirement (under 19);

(4) Dependent does not provide over half of his support; and

(5) No joint return.

Basil Jr. was allowed to claim a dependency exemption, earned income credit, and child tax credit.

If Basil, Sr. and Basil Jr. had satisfied the relationship test with Basil Jr. and Trenton having the same father and different mother, additional issues must be considered, since both Basil Sr. and Basil Jr. would qualify to claim TAH.

For purposes of a qualifying child exemption only, a dependent who lives with two or more potential claimants raises the issue of which one can claim the exemption. The tie-breaker rules resolve this issue, giving the parents priority in claiming the exemption. As neither parent could claim TAH, the tie-breaker rules limit the exemption to a non-parent claimant with the higher AGI.

Basil Oliver, Jr. v. Commissioner
TC Memo. 2013-117

Q & A

From the NATP Research Services Archives

Q Are wages paid to children who are under the age of 18 subject to FICA withholding?

A Generally, yes. Wages paid to all employees are subject to FICA withholding unless there is a specific exemption. The exemption that applies to children applies only to a sole proprietor who employs his own children who are under the age of 18. This exemption also applies to the children of the partners of a partnership but only if all of the partners are the children's parents. There is another exemption that applies to children who are not age 18 when wages are paid. If the wages paid are in relation to household activities and the activities are the child's main occupation, there is no requirement to withhold FICA tax.

Applicable Federal Rates for **December 2013**

		Annual	Semiannual	Quarterly	Monthly
Revenue Ruling 2013-26	Short-term (3 years or less)	.25	.25	.25	.25
	Mid-term	1.65	1.64	1.64	1.63
	Long-term (More than 9 years)	3.32	3.29	3.28	3.27

December §7520 rate = 2.0%; 2013 blended annual rate = .22%

TAXPRO JOURNAL

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HOME OFFICE

electing the Safe Harbor Method may not be the best Option

By D.J. Kilpatrick, Ph.D. and Kenneth F. Abramowicz, Ph.D.

Revenue Procedure 2013-13 may be good news for individual taxpayers who use a portion of their homes for certain business purposes, but some may want to evaluate the tradeoff costs before electing this new alternative for calculating home office deductions. Many small business owners take a deduction for the qualified business use of their home under IRC §280A. Before 2013, the determination of this deduction required eligible taxpayers to calculate, allocate, and substantiate actual home expenses related to a qualified business use. Recognizing that the determination of the allowable deduction can place considerable administrative, recordkeeping, and compliance burdens on small business owners, the IRS and Treasury Department issued Rev. Proc. 2013-13 to provide an optional safe harbor method for determining the home office deduction.

Effective for taxable years beginning on or after January 1, 2013, many individual taxpayers may elect annually to calculate deductible home office expenses by multiplying the allowable square footage of their homes used for a qualified business by a prescribed rate. Note that while Rev. Proc. 2013-13 simplifies the calculation of the home office deduction, it does not change the need for taxpayers to satisfy all regular §280A eligibility requirements.

This new alternative to calculating, allocating, and substantiating actual home expenses may greatly simplify the determination of home office tax deductions. In addition, the safe harbor method may reduce the audit risk for taxpayers consistently using this method for reporting home office deductions. However, electing the safe harbor method does have some potential drawbacks. Since it is an alternative to calculating actual expenses, some costs related to qualified business use of the home will no longer be deductible on Schedule C in a tax year for which this safe harbor method is used. In addition, carryovers of home office deductions from prior years are deferred to a taxable year when the safe harbor method is not used. Thus, taxpayers and tax preparers will need to evaluate these restrictions before making a decision to adopt the new safe harbor method. These practice considerations, and the potential related implementation costs, are discussed throughout this article.

Electing the **safe harbor method** does have some **drawbacks.**

General Home Office Deduction Rules

Under the general rule of §280A(a), individual taxpayers cannot deduct expenses related to their residences in determining their federal income taxes. However, §280A(c) allows deductions for the qualified business use (QBU) or rental use of a residence, subject to a cap. (See the sidebar on page 20 for a summary of the general rules of §280A.)

Most taxpayers eligible for home expense deductions for a QBU under §280A(c) are eligible for the optional safe harbor method of calculating these expenses under Rev. Proc. 2013-13. Specifically, this revenue procedure permits individual taxpayers who use their homes for qualified business use (including storage of inventory and day care services) to elect the safe harbor method, subject to the gross income limitation. Taxpayers who qualify for home expense deductions solely because of the rental use of their home under §280A(c)(3) may not use the safe harbor method to calculate their deductions.

Furthermore, Rev. Proc. 2013-13 limits eligibility for the safe harbor deduction to a home that meets all of the following criteria:

- A dwelling unit used by the taxpayer during the taxable year as a residence [as defined in §§280A(d) and (f)(1)], including a dwelling unit leased by a taxpayer;
- A dwelling unit that is §1250 property (generally depreciable real property); and
- A dwelling unit that is MACRS property (generally tangible, depreciable property subject to §168 that is placed in service after December 31, 1986).

The Optional Safe Harbor Method: How Does It Work?

In order to determine whether to elect the safe harbor method for calculating allowable home expenses, one may ask the following questions.

How is the deduction calculated? Rather than calculating, allocating, and substantiating actual expenses, the safe harbor method multiplies the average square footage of the home used for a qualified business during the year by a prescribed rate of $5.00 per square foot. While Rev. Proc. 2013-13 indicates that the IRS and Treasury may update this rate in the future, no specifics were delineated as to when the changes will be made or how the changes will be calculated. The allowable average square footage for a qualified business use is limited to 300 square feet, so the maximum deduction allowable for a QBU of a home under the safe harbor method is $1,500 (300 square feet x $5.00). For many taxpayers, the $1,500 maximum deduction may be less than the actual costs that may be deducted using the normal method of determining the home office deduction. This point may be especially relevant when the taxpayer incurs casualty losses related to the home, incurs higher than usual home repair costs, or lives in an area with higher than average utility costs or property taxes. Thus, while the traditional method may be more complex and

take more time, some taxpayers will benefit by continuing to use this method. Unfortunately, tax preparers may need to invest valuable time to analyze both the costs and benefits of the safe harbor election just to determine which method is more beneficial.

May employees who work from home and get reimbursements from their employers for QBU of their home elect the safe harbor method? Sometimes. While employees who have QBU of their home (i.e., the employee business use is for the convenience of their employer) may generally use the safe harbor method to calculate their home office deduction, employees who have a reimbursement or other expense allowance arrangement (defined in §1.62-2) with their employers for a QBU of their home are prohibited from using the safe harbor method.

If a taxpayer elects to use the safe harbor method in a taxable year, may the taxpayer choose to calculate, allocate, and substantiate actual expenses for the QBU of a home in subsequent taxable years? Yes. The decision to determine deductible home expenses for QBU by calculating, allocating, and substantiating actual expenses or by using the safe harbor method is made on a year-by-year basis. However, once the safe harbor method is elected by use on a federal income tax return, the election is irrevocable for that tax year (i.e., an amended return may not be filed to use the actual cost method for that year). Fortunately, elections to use a different method (i.e., actual cost or safe harbor method) in subsequent tax years are not considered a change of accounting method and, thus, do not require IRS approval.

How does electing the safe harbor method affect otherwise allowable home deductions? A taxpayer who elects to use the safe harbor method may still deduct home expenses that would be deductible even if the home were not used for business purposes (e.g., mortgage interest, property taxes, and casualty losses). Unfortunately, 100 percent of these expenses must generally be deducted as itemized deductions on Schedule A. If, however, the taxpayer also has §280A(c) rental use of the home, costs allocated to such rental use are deducted as usual (e.g., on Schedule E or page 2 of Form 4684) because the safe harbor method does not apply to rental use of a home.

There are important carryover effects that must be considered regarding otherwise allowable home deductions. While the taxpayer may deduct these expenses on Schedule A, he or she may not deduct these expenses from gross income on Schedule C to determine net income of the qualified business. Thus, these expenses may not be deducted when determining the gross income limitation. Since none of the otherwise allowable home deductions are deducted on Schedule C, the net self-employment income may also increase and cause more self-employment taxes to be paid. In addition, some taxpayers will be subject to partial phase-out of their itemized deductions, thereby reducing the value of the safe harbor election even further.

Use of the safe harbor method of determining home office deductions may also affect the amount of alternative minimum tax (AMT) paid by some taxpayers. Recall that AMT adjustments include property taxes paid on a residence and interest paid on home-equity indebtedness. When the safe harbor method is adopted, Schedule A may include more of these adjustment items, which will increase the amount of AMT adjustments for some taxpayers and possibly increase the related AMT.

It quickly becomes apparent that carryover effects of the rules implemented by Rev. Proc. 2013-13 will increase the difficulty of making the safe harbor election decision for some taxpayers. However, the carryover effects may be partially mitigated for taxpayers who have already paid off the mortgage on their home. It is questionable whether the IRS considered such related tax effects when writing this new safe harbor provision.

If the safe harbor method is elected, are trade or business expenses that are unrelated to the QBU of a home deductible? Yes. Normal trade or business expenses are deductible as usual (e.g., advertising, wages, and supplies are still deductible under §162).

Can a deduction for depreciation be taken if the safe harbor method is used to calculate home expenses for a QBU in a taxable year? No deduction is allowed for

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