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IRS Releases Information on CTC; Update Portal for Payments

FS-2021-11; IR-2021-171

The IRS stated that families should use the Child Tax Credit (CTC) Update Portal to confirm their eligibility for the payments. If eligible, the tool also indicates whether taxpayers are enrolled to receive their payments by direct deposit. More information can be found at https://www.irs.gov/credits-deductions/advance-child-tax-credit-payments-in-2021.

Direct Deposit

For taxpayers currently using direct deposit, the tool will list the full bank routing number and the last four digits of their account number. This account is where the IRS sent their payments so far and will continue to do so. If necessary, the account can now be changed starting with the September 15 payment.

Monthly Payments

Eligible families for monthly payments include those who (1) filed either a 2019 or 2020 federal income tax return; (2) used the Non-Filers tool on IRS.gov in 2020 to register for an Economic Impact Payment; and (3) registered for the advance CTC this year using the new Non-Filer Sign-Up Tool on IRS.gov. The new maximum credit is available to taxpayers with a modified adjusted gross income (AGI) of (1) $75,000 or less for singles; (2) $112,500 or less for heads of household; and (3) $150,000 or less for married couples filing a joint return and qualified widows and widowers.

The American Rescue Plan (ARP) (P.L. 117-2) raised the maximum Child Tax Credit in 2021 to $3,600 for children under the age of 6 and to $3,000 per child for children ages 6 through 17. Before 2021, the credit was worth up to $2,000 per eligible child.

Foreign Tax Credit Did Not Apply Against Net Investment Income Tax

C.S. Toulouse, 157 TC —, No. 4, Dec. 61,917

The foreign tax credit did not apply against the net investment income tax (NIIT). The structure of the Internal Revenue Code made the credit inapplicable to the NIIT, and tax treaties did not override that fact.

Under Code, Foreign Tax Credit Did Not Apply to NIIT

The foreign tax credit is in chapter 1, subtitle A of the Code, and it expressly applies only against taxes imposed by chapter 1. However, the NIIT is in chapter 2A. Thus, the credit does not apply against the NIIT. Although Reg. §1.1411-1(a) provides that all Code provisions that apply to the determination of taxable income under chapter 1 also apply to the NIIT, tax credits are not taken into account in determining taxable income. In fact, Reg. §1.1411-1(e) explicitly provides that credits against the tax imposed by chapter 1, including the foreign tax credit, are not allowed against the NIIT unless specifically provided by the Code.

Tax Treaties Did Not Override Code

Provisions in the U.S.-France and U.S.-Italy tax treaties that provided a foreign tax credit against U.S. income tax also did not provide an independent foreign tax credit against the NIIT. Although the treaties were intended to limit double taxation, they were expressly subject to the provisions and limitations of the Code. Thus, any allowable foreign tax credit had to be determined in accordance with the Code, and was limited by the Code's provision of a credit. Although the taxpayer claimed that the Code was silent as to whether there was a foreign tax credit against the NIIT, the placement of the NIIT in chapter 2A made the foreign tax credit inapplicable. The creation of a new chapter for the NIIT was not happenstance or a mere clerical choice; rather, it was a deliberate decision by Congress and part of the Code's fundamental structure.

No Summary Judgment on Penalty

Finally, issues of material fact precluded summary judgement as to the taxpayer's liability for the penalty for failing to pay tax shown due on a return. She reported zero tax due on her Form 1040, though she did show the correct amount of the NIIT on her attached Form 8060, Net Investment Income Tax. Even if her Form 8960 constituted a return, the taxpayer argued that she had reasonable cause for her failure to pay because when she filed her return, she included a disclosure that she was claiming the foreign tax credit against the NIIT.

IRS Warns Tax Professionals to be Aware of Identity Theft Signs

IR-2021-170

The IRS has encouraged tax professionals to learn the signs of data theft for quick reaction to protect clients. Tax professionals should have the highest security possible to secure their systems and protect client data during this pandemic and its aftermath. Taxpayers should contact the IRS immediately in the event of an identity theft issue while also contacting insurance or cybersecurity experts to help them ascertain the cause and extent of the loss. The IRS also highlighted the protections offered by multi-factor authentication and key security steps, the use of the Identity Protection PIN for clients, stealing unemployment benefits scams and the consequences of phishing email/text scams.

Tax professionals should look out for the following critical signs:

- client e-filed returns rejected due to client's Social Security Number already being used on another return;
- e-file acknowledgements received were more than returns the tax professional filed;
- clients responded to emails that were not sent by the tax professional; and
- slow or unexpected computer or network responsiveness.

Tax professionals should also be cautious of warning signs when clients report they have received:

- IRS Authentication letters (5071C, 4883C, 5747C) even when they haven't filed a return;
- a refund even though they haven't filed a return;
- a tax transcript they didn't request;
- emails or calls from the tax pro that they didn't initiate;
- a notice that someone created an IRS online account for the taxpayer without their consent; and
- a notice the taxpayer wasn't expecting claiming that someone accessed their IRS online account or the IRS disabled their online account.

Further, tax professionals should contact their local IRS Stakeholder Liaison or email the Federation of Tax Administrators at StateAlert@taxadmin.org if they face a threat.

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

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Individual's Claim for Whistleblower Award Denied

M. Lissack, 157 TC —, No. 5. Dec. 61,919

An individual's claim for a whistleblower award under Code Sec. 7623 was denied because the IRS did not collect any proceeds as a result of the individual's action. He had informed the IRS that a group of entities (target) had failed to include millions of dollars of membership fees in gross income. The IRS Whistleblower Office (office) processed his claim and referred it to a revenue agent (RA), who initiated an examination. The RA determined that the entities had properly treated the membership fees as nontaxable deposits, so the action resulted in no adjustments to income and no collected proceeds. However, the RA discovered an unrelated erroneous deduction, which resulted in a $60 million adjustment. The court held that the examination of the erroneous deduction issue constituted a separate administrative action that was not initiated on the basis of the individual's claim, so the individual was not entitled to a whistleblower award.

Interpretation Valid

The individual challenged the validity of the regulations, arguing that the Congress did not intend to limit awards to the issues on which the whistleblower provided information. The Tax Court applied the two-step test of *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.* to uphold the interpretation. The regulatory provisions at issue, taken together, were not arbitrary, capricious or manifestly contrary to the statute and the office reasonably concluded that the IRS would not proceed based on the individual's information unless that information substantially contributed to the administrative action that generated proceeds. Therefore, the individual's challenge to the regulation's validity was rejected. Lastly, the individual's contention that the portion of the examination pertaining to the bad debt issue constituted a "related action" was also rejected. The purported action was not an action against a person other than the persons identified in the information provided and the facts relating to the bad debt action and the membership deposits action were not substantially the same.

AFRs Issued For September 2021

Rev. Rul. 2021-16

The IRS has released the short-term, mid-term, and long-term applicable interest rates for September 2021

Applicable Federal Rates (AFR) for September 2021

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	0.17%	0.17%	0.17%	0.17%
110% AFR	0.19%	0.19%	0.19%	0.19%
120% AFR	0.20%	0.20%	0.20%	0.20%
130% AFR	0.22%	0.22%	0.22%	0.22%
Mid-Term				
AFR	0.86%	0.86%	0.86%	0.86%
110% AFR	0.95%	0.95%	0.95%	0.95%
120% AFR	1.03%	1.03%	1.03%	1.03%
130% AFR	1.12%	1.12%	1.12%	1.12%
150% AFR	1.29%	1.29%	1.29%	1.29%
175% AFR	1.52%	1.51%	1.51%	1.51%
Long-Term				
AFR	1.73%	1.72%	1.72%	1.71%
110% AFR	1.90%	1.89%	1.89%	1.88%
120% AFR	2.07%	2.06%	2.05%	2.05%
130% AFR	2.25%	2.24%	2.23%	2.23%

Adjusted AFRs for September 2021

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	0.13%	0.13%	0.13%	0.13%
Mid-term adjusted AFR	0.65%	0.65%	0.65%	0.65%
Long-term adjusted AFR	1.31%	1.31%	1.31%	1.31%

The Code Sec. 382 adjusted federal long-term rate is 1.31%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 1.57%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.30% and 3.13%, respectively, however, the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 1.0%.

Individual Entitled to Exclude Wages as Foreign Earned Income; Additions to Tax Not Imposed

D.C. Wood, TC Memo. 2021-103, Dec. 61,920(M)

An individual, who was employed as a contractor on a US military base in Afghanistan, was entitled to exclude wages from gross income which she earned as "foreign earned income" under Code Sec. 911(a)(1). The taxpayer contended that she was a bona fide resident of Afghanistan during the tax years at issue. Further, she testified that she intended to work as a contractor in Afghanistan even after her contract ended because she secured the promise of another job at Kandahar Airfield before returning to the US. Including her military service, she spent most of her adult life working in the Middle East, uniformly in war zones. The nature and duration of the taxpayer's employment also supported her foreign residency. The taxpayer spent fewer than 43 days in the US during the tax years at issue and the only wages she earned during these years were derived from her job in Afghanistan. Further, the taxpayer's ties to the US during the relevant period were much weaker than her ties to her community in Afghanistan. Thus, her tax home was in Afghanistan.

In addition, the taxpayer was not liable for addition to tax under Code Sec. 6651(a)(1). The taxpayer's extended filing deadline was 289 days but she did not file her tax return until later. However, she returned to Afghanistan, which remained a combat zone, before her tax return was due. Code Sec. 7508(a) thus entitled her to another extension of time to file while she remained in that combat zone. Therefore, her tax return was timely filed.

TAX BRIEFS

Fraud

The IRS' motion to dismiss a case for failure to prosecute after a taxpayer's death was granted. The taxpayer satisfied at least six badges of fraud and he underreported and understated taxes. Thus, the IRS satisfied its burden of production for the Code Sec. 6651(a)(1) addition to tax.

Catlett, Jr., TC, Dec. 61,918(M)

Innocent Spouse Relief

The Tax Court properly denied innocent spouse relief to an individual. The taxpayer and her husband underreported their tax obligations many times. The wife could not seek innocent spouse relief for a tax year in which she meaningfully participated in the tax deficiency trial. For other tax years, innocent spouse relief was denied because the wife knew or had reason to know of the tax understatements, based on a number of factors, including her high level of education.

Rogers, CA-7, 2021-2 USTC ¶50,206

Pensions

For pension plan years beginning in August 2021, the IRS has released the 30-year Treasury bond weighted average interest rate, the permissible range of interest rates used to calculate current plan liability and the current corporate bond yield curve and related segment rates for purposes of establishing a plan's funding target under Code Sec. 430(h)(2).

Notice 2021-50

Statute of Limitations

A district court denied the letter a motion for summary judgment. The court held that there existed a genuine material factual dispute as to whether the statute of limitations for assessment of taxes had expired. The record was ambiguous regarding the date of filing of the taxpayers' joint return. Further, the evidence introduced by the government, an uncertified transcript provided no independent support for the the government's position that the assessment was timely.

Davitian, DC D.C., 2021-2 USTC ¶50,205