

FEDERAL TAX WEEKLY

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IRS' Rettig Reiterates Backlog, Hiring Progress Before Senate Finance Committee

Internal Revenue Service Commissioner Charles Rettig remained positive that the agency will be able to return to a normal backlog of unprocessed returns and other mail correspondence by the end of the year and noted progress on hiring more people to help clear the backlog.

“With respect to our current 2022 filing season, we are off to a healthy start in terms of tax processing and the operation of our IT systems,” Rettig told members of the Senate Finance Committee during an April 7 hearing to discuss the White House budget request and update the panel on the current tax filing season. “Through April 1, we have processed more than 89 million returns and issued more than 63 million refunds totaling more than \$204 billion.”

Getting that backlog cleared has been bolstered in part by a direct hiring authority given to the agency in the recent passage of the fiscal year 2022 omnibus budget, Rettig told the committee.

The effectiveness of that hiring authority was highlighted in his written testimony submitted prior to the hearing, where Rettig stated that in-person and virtual job fairs near processing facilities in Austin, Kansas City, and Ogden, Utah, attracted eligible applicants for more than 5,000 vacancies and “we have been able to make more than 2,500 conditional offers at the conclusion of the interviews.”

Rettig said the direct hiring authority is only related to those lower paygrade processing/customer service positions and the agency is going to ask Congress to expand that authority, although he did not specify what types of positions would be hired as part of that expansion.

More Funding Needed

Clearing the backlog is just one issue. Rettig also said that the agency is still working on improving telephone response rates. He said while the overall goal is to be able to answer every incoming call, the response rate that would be considered a target is 85 percent of all incoming calls, something that will be well above the current approximately 20 percent response rate that the agency is able to field.

“The president’s budget proposal for fiscal 2023 requests \$389 million with a target level of service of 85 percent, so answering 8.5 out of 10 calls,” he said, noting at the height of the pandemic that calls were coming in at a rate of 1,500 calls per second. “That build up such an inventory and a backlog and we have never recovered from that.”

Rettig noted that many who would normally be answering the phones have been diverted to help clear the paper backlog, adding that once that backlog is cleared, those hired to fill the vacancies can move over to a customer response role.

In terms of technology’s role in addressing future backlogs, he acknowledged the recent directive from the National Taxpayer Advocate to begin implementing 2-D barcoding

technology on paper returns generated from tax software and said the agency will be responding shortly.

Rettig also continued to advocate for more funding to modernize the IT systems of the agency.

Another area that was touched upon in the hearing was addressing the tax gap, although the data on the actual scope of the problem was not readily available. Retting said that this summer, the tax gap numbers for 2014-2016 would be released, along with a projection for what the tax gap was in 2019. He did not provide any indication on what the forthcoming data would reveal.

Proposed Regulations Issued on Eligibility for Premium Tax Credit

NPRM REG-114339-21

The IRS has released proposed regulations that would amend the existing regulations regarding eligibility for the premium tax credit (PTC). The existing regulations would be amended to provide that affordability of employer-sponsored minimum essential coverage (employer coverage) for family members of an employee is determined based on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee. A minimum value rule would be added for family members of employees based on the benefits provided to the family members. Further, the proposed regulations would affect taxpayers

IRS Announces Temporary Change to Procedures for Form 8802

The IRS announced a temporary change in policy with respect to Form 8802, Application for United States Residency Certification, for a two-year period. Effective April 4, 2022, if taxpayers received a request from the IRS for a signed copy of their most recent return to support an application for a U.S. residency certification because their return had not yet been posted by the IRS by the time they filed their Form 8802, they will only need to submit a signed copy of the current year base income tax return rather than a copy of their entire return. This means the tax return without any accompanying forms, schedules or attachment. If, at the time of filing Form 8802, taxpayers are unsure if their most recent tax return has yet to be posted by the IRS, it may take less time to process their application if they include a signed copy of the base income tax return with their Form 8802. Further, by filing a signed copy of the base return with their Form 8802, taxpayers are attesting that they have previously filed the income tax return with the IRS as shown on the signed copy. Additionally, the IRS will monitor compliance during this time to determine whether to extend this policy after the two-year pilot period. Finally, more information can be found at <https://www.irs.gov/forms-pubs/temporary-change-in-policy-with-respect-to-applications-for-us-residency-certifications-for-a-two-year-period>.

who enroll, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange and who may be allowed a PTC for the coverage.

Background

On September 1, 2015, the Treasury Department and the IRS issued proposed regulations under Code Sec. 36B (REG-143800-14) incorporating the substance of the minimum value rule in the Health and Human Services final regulations. The rule in the 2015 proposed regulations relating to substantial coverage of inpatient hospital services and physician services was not finalized.

On January 28, 2021, President Biden issued Executive Order (EO) 14009, Strengthening Medicaid and the Affordable Care Act (ACA) (P.L. 111-148). Consequently, the Treasury Department and the IRS reviewed the regulations

under Code Sec. 36B, including Reg. §1.36B-2(c)(3)(v)(A)(2), which provides that the affordability of employer coverage for related individuals is based on the employee's share of the annual premium for self-only coverage, not the cost of family coverage. The Treasury and the IRS have tentatively determined that the rule in Reg. §1.36B-2(c)(3)(v)(A)(2) is not required by the relevant statutes and is inconsistent with the overall purpose of the ACA to expand access to affordable health care coverage.

Major Amendments

Following are some of the major amendments proposed by the IRS:

- the proposed changes to the affordability rule for related individuals would create greater consistency between the affordability rules in Code Sec. 36B(c)(2)(C)(i) and the affordability rules in Code Sec. 5000A(e)(1);

REFERENCE KEY

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

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- the proposed changes would also promote consistency between the affordability rules in these provisions and 42 U.S.C. 18081(b)(4)(C), which requires Exchange applicants to separately provide the required contributions of employees and of related individuals in order to determine PTC eligibility;
- changes would be made only to the affordability rule for related individuals; no changes would be made to the affordability rule for employees; and
- employees would continue to have an offer of affordable employer coverage if the employee's required contribution for self-only coverage of the employee does not exceed the required contribution percentage of household income. Accordingly, under the proposed regulations, a spouse or dependent of an employee may have an offer of employer coverage that is unaffordable even though the employee has an affordable offer of self-only coverage.

In addition, the proposed regulations also address situations in which an individual has offers of coverage from multiple employers. Under the proposed regulations, an individual with offers of coverage from multiple employers, either as an employee or a related individual, has an offer of affordable coverage if at least one of the offers is affordable. The proposed regulations would amend Reg. §1.36B-2(c)(3)(v)(B) to provide a part-year period rule for employees that is based on the employee's required contribution for self-only coverage and a part-year period rule for related individuals that is based on the employee's required contribution for family coverage.

Minimum Value Cost of Benefits Rule for Related Individuals

These proposed regulations provide in Reg. §1.36B-6(a)(2)(i) that an eligible employer-sponsored plan satisfies the minimum value requirement only if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60 percent, similar to the existing rule in Reg. §1.36B-6(a)(1) for employees. Further, to be considered to provide

Proposed Regulations Issued on Unified Plan Rule for Multiple Employer Plans

The IRS has released proposed regulations relating to certain multiple employer plans (MEPs). The proposed regulations provide an exception, if certain requirements are met, to the "unified plan rule" for MEPs in the event of a failure by one or more employers participating in the plan to take actions required of them to satisfy the applicable requirements. Written or electronic comments must be received by Friday, May 27, 2022. A public hearing on these proposed regulations has been scheduled for Wednesday, June 22, 2022 at 10 a.m. EST. These regulations are proposed to apply beginning on the date of publication of the Treasury decision adopting these rules in the Federal Register.

NPRM REG-121508-18

minimum value under Reg. §1.36B-6(a)(2)(ii) of these proposed regulations, an eligible-employer sponsored plan would have to include substantial coverage of in patient hospital services and physician services.

Minimum Value Rule Regarding Inpatient Hospitalization and Physician Services

The Treasury and the IRS have expanded the minimum value rule in Reg. §1.36B-6(a)(2) of the 2015 proposed regulations to apply to related individuals. Thus, Reg. §1.36B-6(a)(2)(ii) of the proposed regulations would provide that an eligible employer-sponsored plan provides minimum value to a related individual only if, in addition to covering at least 60 percent of the total allowed costs of benefits provided to the related individual, the plan benefits include substantial coverage of inpatient hospital services and physician services.

Premium Refunds Affecting the PTC Computation

The proposed regulations would clarify that, in computing the premium assistance amount for a coverage month, a taxpayer's enrollment premiums for the month are the premiums for the month, reduced by any amounts that were refunded in the same tax year the taxpayer incurred the premium liability.

Proposed Applicability Dates

The proposed regulations under Reg. §§1.36B-2, 1.36B-3, and 1.36B-6(a)(2) are proposed to apply for tax years beginning after the date these regulations are published as final regulations in the Federal Register. As of the publication date of these proposed regulations, the proposed regulations are expected to be finalized no later than the end of this year. The proposed regulations under Reg. §1.36B-6(a)(1)(i) are proposed to apply for tax years ending after December 31, 2013. The proposed regulations under Reg. §1.36B-6(a)(1)(ii) are proposed to apply for plan years beginning after November 3, 2014.

Request for Comments and Public Hearing

The IRS has requested comments on all aspects of the proposed regulations, including the economic impact of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request. The IRS has also scheduled a public hearing for June 27, 2022, beginning at 10:00 a.m. EDT. Individuals who wish to testify (by telephone) at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-114339-21) for the hearing and the word TESTIFY. The email

requesting to speak must be received by June 13, 2022. Further, individuals who want to attend the public hearing by telephone must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-114339-21) and the word ATTEND. Email requests to attend the public hearing must be received by 5:00 p.m. EDT on June 23, 2022. To request special assistance during the telephonic hearing, taxpayers must contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-5177 (not a toll-free number) by June 22, 2022. Any questions regarding speaking at or attending the public hearing may also be emailed to publichearings@irs.gov.

Information Letters Released by IRS

IRS information letters have been released by the IRS National Office in response to a request for general information by taxpayers or by government officials on behalf of constituents or on their own behalf. An information letter provides general statements of well-defined law without applying them to a specific set of facts. Information letters are for informational purposes only. Information letters are not a ruling and may not be relied on as such.

- INFO 2022-0001 addresses general information regarding the application of rules regarding related individuals to the employee retention credit.
- INFO 2022-0002 addresses qualified transportation fringe benefits under Code Sec. 132(f) and qualified benefits under a Code Sec. 125 cafeteria plan.
- INFO 2022-0003 addresses tax consequences of certain supplemental benefits to individuals dually enrolled in Medicare Advantage and Medicaid.
- INFO 2022-0004 addresses distributions from pension, the portion of the lump-sum distribution that may be rolled over to an IRA and private letter rulings.
- INFO 2022-0005 addresses general information regarding the application of Code Sec. 213.

[IRS Information Letter INFO 2022-0001](#); [IRS Information Letter INFO 2022-0002](#); [IRS Information Letter INFO 2022-0003](#); [IRS Information Letter INFO 2022-0004](#); [IRS Information Letter INFO 2022-0005](#)

Temporary Regulations on Code Sec. 245A Dividends-Received Deduction Invalid

Liberty Global, Inc., DC Colo., 2022-1 USTR ¶150,134

Temporary regulations issued under the Code Sec. 245A participation exemption dividend-received deduction were invalid for failure to comply with the Administrative Procedures Act (APA) notice and comment requirements. The temporary regulations were issued with retroactive effect and addressed a mismatch in the effective dates of the global intangible low-taxed income (GILTI) tax under Code Sec. 951A and the participation exemption dividend-received deduction. The taxpayer, a domestic corporation, was denied a full dividends-received deduction, with respect to income it received in a transaction, based on the retroactive application of the regulations.

Temporary Regulations

The Tax Cuts and Jobs Act (P.L. 115-97) enacted the Code Sec. 245A participation exemption dividends-received deduction

to transition the U.S. tax system to the participation-exemption system. The TCJA also enacted the global intangible low-taxed income tax under Code Sec. 951A to act in concert with the dividends-received deduction. The GILTI tax was applied to a fixed percentage of a CFC's income deemed earned in the United States. The dividends-received deduction exempted the remainder of the CFC income from U.S. residual tax when repatriated through the deduction.

Due to a mismatch between the effective dates of these provisions, corporations with non-calendar years, could receive a dividend from a CFC and deduct it beginning January 1, 2018, but the GILTI rules were not effective until the CFC's first tax year beginning after January 1, 2018. Temporary regulations were issued to stop transactions, such as the taxpayer's, that allowed a CFC's earnings that would have been subject to the GILTI tax, if it was effective, to be paid as a dividend and deducted. The result was that the foreign-source income was not subject to taxation. The temporary

regulations were issued within 18 months of the underlying statute, as required under Code Sec. 7805 for regulations to be retroactive.

Notice and Comment Required

The Treasury was required to comply with notice and comment procedures in issuing the temporary regulations. Temporary regulations are legislative rules and normally subject to the APA's notice and comment requirements. Procedures under Code Sec. 7805(e) that required temporary regulations to be issued as proposed regulations that would expire within three years were not inconsistent with the notice and comment requirements.

The Treasury Department also did not have good cause for failing to comply with the notice and comment requirements. The government failed to raise taxpayer abuse as a grounds for issuing the temporary regulations, but argued that abuse was a sufficient ground for retroactivity.

There appeared to be sufficient time to issue the temporary regulations after a notice and comment period that would have notified taxpayers of the government's position and that the temporary regulations would apply retroactively. The potential cost and inconvenience of taxpayers having to file amended returns did not override the public's interest on commenting on proposed regulations.

If notice had been provided, taxpayers would have been on notice that transactions might be contrary to proposed regulations. The opportunity to comment on the final regulations was not sufficient for the good cause exception, but rather the government's attempt to justify its failure to provide pre-promulgation notice and comment. The government also failed to show that the notice and comment

period would have precluded it from issuing the temporary regulations within the 18-month period.

Finally, the Treasury Department's failure to comply with the notice and comment requirements was not harmless error. Although taxpayers had a choice to apply the temporary regulations or final regulations, both applied retroactively to transactions during the period.

Victims of Puerto Rico Severe Storms, Flooding and Landslides Granted Tax Relief

Puerto Rico Disaster Relief Notice (PR-2022-02)

The president has declared a federal disaster area in Puerto Rico. The disaster is due to severe storms, flooding and landslides that began on February 4, 2022. The disaster area includes:

- Cataño,
- Dorado,
- Toa Baja,
- Vega Alta, and
- Vega Baja

Taxpayers who live or have a business in the disaster area may qualify for tax relief.

Puerto Rico Filing Deadlines Extended

The IRS extended certain deadlines falling on or after February 4, 2022, and before June 15, 2022, to June 15, 2022. This extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;

- partnership and S corporation income tax returns;
- estate, gift and generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations, and
- employment and certain excise tax returns.

However, the extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098, or 1099 series or Forms 1042-S, 3921, 3922 or 8027.

Puerto Rico Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after February 4, and before June 15, 2022. Further, taxpayers have until June 15, 2022, to perform other time-sensitive actions due on or after February 4 and before June 15, 2022.

The IRS excused late penalties for employment and excise tax deposits due on

or after February 4, and before February 22, 2022. But, the taxpayer must make the deposits by February 22, 2022.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may get relief by claiming their losses on their 2021 or 2022 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2021 or 2022 return should write the disaster designation: "Puerto Rico severe storm, flooding and landslides at the top of the return". This will allow the IRS to speed refund processing.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, and submit it to the IRS.

IRS Reminds Taxpayers about First Quarter Deadline to Make Estimated Tax Payments

IR-2022-77

The IRS reminded taxpayers who make estimated federal tax payments that the

payment for the first quarter of 2022 is due Monday, April 18. The 2022 Form 1040-ES, Estimated Tax for Individuals, can help taxpayers estimate their first quarterly tax

payment. Most often, those who are self-employed or in the gig economy need to make estimated tax payments. Similarly, investors, retirees and others often need to

make these payments because a substantial portion of their income is not subject to withholding. Other income generally not subject to withholding includes interest, dividends, capital gains, alimony and rental income. Paying quarterly estimated taxes will usually lessen and may even eliminate any penalties.

Further, the IRS informed taxpayers that Form 1040-ES includes instructions to help taxpayers figure their estimated taxes. They can also visit the IRS website to

pay electronically. The best way to make a payment is through IRS Online Account. Taxpayers can make an estimated tax payment by using IRS Direct Pay; Debit Card, Credit Card or Digital Wallet; or the Treasury Department's Electronic Federal Tax Payment System (EFTPS). Additionally, if paying by check, taxpayers should be sure to make the check payable to the "United States Treasury."

Finally, the IRS reminded taxpayers that tax help is always available at IRS.

gov. The IRS website offers a variety of online tools to help taxpayers answer common tax questions. Taxpayers can search the Interactive Tax Assistant, Tax Topics and Frequently Asked Questions to get answers to common questions. Lastly, the IRS has posted translated tax resources in 20 other languages on IRS.gov to expand ways to communicate to taxpayers who prefer to get information in other languages.

IRS Recommends Nonacquiescence in Railroad Corporation Case

AOD-2022-2

The IRS will not acquiesce to an appeals court holding in *CSX Corp. v. United States*, CA-11, 2021-2 USTC ¶50,240. The corporation and its subsidiaries sought to recover both the employer and employee portions of the Railroad Retirement Taxation Act (RRTA) taxes paid on certain relocation benefits to its employees. The taxpayer paid some relocation benefits directly to employees and provided other benefits through third party service providers. On its tax return, the taxpayer treated some

of the relocation benefits as excludable from the RRTA taxation under Code Sec. 3231(e)(5). Additionally, the taxpayer filed a refund claim asserting that additional relocation and relocation-related benefits were also excludable from the RRTA taxation as traveling or other bona fide and necessary expenses incurred in its business under Code Sec. 3231(e)(1)(iii).

The Court of Appeals for the Eleventh Circuit's affirmed that the relocation expenses were exempt under Code Sec. 3231(e)(1)(iii) by reasoning that the expenses were incurred by employees

in the business of the employer because the expenses were (1) incurred by the employee at the direction of the employer and (2) incurring such expenses was required in order for the employee to perform services for the employer. However, the IRS disagrees that meeting one or both of these conditions causes a payment to an employee that would otherwise be compensation to be treated as a payment for a bona fide and necessary expense that the employee incurred or was reasonably expected to incur in the business of the employer for purposes of Code Sec. 3231(e)(1)(iii).

IRS Informs Applicants about 2023 Low Income Taxpayer Clinic Grant Application Period

IR-2022-75

The IRS announced that the application period for Low Income Taxpayer Clinic (LITC) matching grants for calendar year 2023 will open on or around May 2, 2022. The LITC Program is a federal grants program administered by the Taxpayer Advocate Service, led by National Taxpayer Advocate Erin M. Collins. "LITCs play an important role in ensuring the voices of low-income and English as a second language-taxpayers are heard," Collins said. "The work they do is strengthened and enhanced by the many volunteers who give

their time to help. I strongly encourage interested organizations and volunteers to join the LITC program to assist those in need," she added.

Further, under Code Sec. 7526, the IRS awards matching grants of up to \$100,000 per year to qualifying organizations to develop, expand or maintain an LITC. When the application period opens, the IRS will consider applicants from all areas. However, the IRS is particularly interested in receiving applications from organizations that will provide coverage in unserved areas. Presently, there are no LITCs operating in Montana, Nevada,

North Dakota and the territory of Puerto Rico. Additionally, the IRS provided a list of underserved counties in need of LITC services in Arizona, Florida, Idaho, North Carolina and Pennsylvania.

Additionally, to be eligible for an LITC grant the applicant must be an organization. The applicant must provide representation to low-income taxpayers and education to who speak English as a second language (ESL) taxpayers. Further, the applicant must not charge more than a nominal fee for services. The applicant must have an approved IRS Employer Identification Number. Finally, the applicant must be an

organization registered in the System for Award Management (SAM). A complete overview of the requirements to be an LITC

can be found in Publication 3319, LITC Grant Application Package and Guidelines. For answers to question and additional

information about the LITC Program, individuals or organizations can contact Karen Tober at Karen.Tober@irs.gov.

Washington Round-up

IRS provides more details on fiscal year 2023 budget request. The Internal Revenue Service released a pair of documents that provide more depth on the agency's budget request for FY 2023. The first document provides a fiscal breakdown of where the agency is looking to spend the \$14.1 billion that has been requested. The second document offers the budget justification and annual performance report and plan. "An appropriate level of funding will allow the IRS to continue enhancing the taxpayer experience, narrowing the tax gap to ensure equitable administration of the tax code, protecting IRS systems and taxpayer data, and modernizing our information technology systems," the second document states.

White House's promotion of tech neutrality with digital assets will help combat tax evasion. Treasury Secretary Janet Yellen, in remarks given at American University on April 7, touted White House

efforts to remain technology neutral when dealing with digital assets as a means of helping to combat tax evasion and other criminal activity. "The principle of tech neutrality is also applicable to concerns related to tax evasion, illicit finance, and national security – topics that are particularly pertinent in the world today," Yellen said, according to prepared remarks. "It's illegal to evade taxes, launder money, or avoid sanctions. It doesn't matter whether you're using checks, wires, or cryptocurrency." She noted that the Department of the Treasury has been monitoring innovations in digital assets and updating agency rules and guidance "to clarify the application of our Anti-Money Laundering and Countering of Financing of Terrorism framework to the digital asset ecosystem." She noted that under the recent executive order, the U.S. Government will build upon the recently published National Risk Assessments, "which identify key

illicit financing risks associated with digital assets. We'll also work with our allies and partners to help ensure international frameworks, capabilities, standards, and partnerships are aligned and adequately responsive to risks."

House votes to approve replenishment of small business grant program. The House of Representatives voted April 7 to approve the Relief for Restaurants and Other Hard Hit Small Businesses Act of 2022 (H.R. 3807). The bill, which passed by a 223-203 vote, provides \$42 billion to replenish the Restaurant Revitalization Fund to award grants to eligible entities that previously applied to the program but did not secure funding. It also funds the Hard Hit Industries Award Program with \$13 billion for small businesses across all industries that were hardest hit by the pandemic but were not eligible for the Restaurant Revitalization Fund or the Shuttered Venue Operators Grant.

TAX BRIEFS

Accounting Methods

A limited liability company (LLC), which provided housing and care to seniors, was allowed to use its own method of accounting for deferred fees because it was in compliance with Code Sec. 446. The taxpayer argued that it had consistently applied generally accepted accounting principles (GAAP), as mentioned in its residence agreement. The taxpayer's method matched its income and expenses better than the accelerated treatment that the IRS proposed.

Continuing Life Communities Thousand Oaks LLC, TC, Dec. 62,035(M)

IRS Practice Unit

The IRS Large Business and International (LB&I) has issued a new Practice Unit, Deferred Compensation Received by Nonresident Alien Individuals. Practice Units provide IRS staff with explanations of general tax concepts, as well as information on specific types of transactions. Practice Units are not official pronouncements of law or directives and cannot be used, relied upon or cited as such.

Itemized Deductions

An individual was not entitled to claim itemized deduction because he failed to file his return and thus did not make the

necessary election as required by Code Sec. 63(e). Further, the taxpayer did not qualify for the medical expense exception to the 10 percent addition to tax with respect to an early distribution from his retirement plan.

Salter, TC, Dec. 62,033(M)

Liens and Levies

A settlement officer (SO) did not abuse his discretion in upholding a proposed levy collection action for trust fund recovery penalties (TFRPs) for employment tax liabilities against an individual who was the responsible managing officer for a road-way striping and signage company. The

taxpayer failed to provide the requested documents or file the tax returns. The SO had also extended the initial deadline for the taxpayer to provide the documents. Therefore, it was not an abuse of discretion on the part of the SO to uphold a proposed levy collection action after giving the taxpayer an adequate timeframe to submit the requested items.

Middleton, TC, Dec. 62,032(M)

The IRS did not abuse its discretion in denying a married couple's request for currently not collectible (CNC) status. The taxpayers contended that they were entitled to have their account placed in CNC status because their cost of living exceeded their income. The taxpayers made this argument based on the expenses reported on their Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, without reference to prevailing local standards in the county where they resided. The

taxpayers failed to meet that burden. Consequently, there was no abuse of discretion that would prevent the proposed collection action.

Norberg, TC, Dec. 62,034(M)

Sale of Residence

The Tax Court granted summary judgment in part on the issue of the use of a married couple's property under Code Sec. 121(a). The IRS showed that there was no genuine dispute as to the fact that the taxpayers did not use the house as their principal residence for the statutory period. A dispute of fact existed on whether the reduced exclusion for a sale due to a change in health applied.

Webert, TC, Dec. 62,036(M)

Tax Protestor

An individual, who was the managing member and employee of a limited liability company (LLC) and had the signatory authority over the LLC's business checking

accounts, had underreported wage income. The taxpayer was also held liable for civil fraud penalties and additions to tax due to lack of reasonable cause for multiple tax years at issue.

Metz, TC, Dec. 62,037(M)

Viticultural Areas

Effective April 8, 2022, the Alcohol and Tobacco Tax and Trade Bureau has established the San Luis Obispo Coast viticultural area located in San Luis Obispo County, California (T.D. TTB-177). The TTB is also recognizing "SLO Coast" as the name of the AVA. This viticultural area is located entirely within the existing Central Coast viticultural area and encompasses the established Edna Valley and Arroyo Grande Valley AVAs.

Treasury Decisions, Alcohol and Tobacco Tax and Trade Bureau, TTB-177, 87 FR 13160, March 9, 2022; TTB-178 87 FR 13157, March 9, 2022; and Notice, No. 209, Alcohol and Tobacco Tax and Trade Bureau, 87 FR 13238, March 9, 2022