



FEDERAL TAX WEEKLY

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White House Fiscal Year 2023 Budget Raises \$2.5 Trillion Over 10 Years

The White House’s proposed budget for fiscal year 2023 includes a number of revenue proposals, including targeted taxes at billionaires and corporations, that would raise more than \$2.5 trillion over the next 10 years.

“The Budget includes proposals that reform corporate taxation, encourage housing and urban development, strengthen the taxation of high-income taxpayers, support families and students, close loopholes, and improve tax administration and compliance,” the Biden Administration stated in the “Greenbook” that outlines and describes all the revenue proposals that are a part of the fiscal year 2023 budget. The Greenbook was released on March 27, 2023, as a supporting document to the overall budget proposal issued the same day.

High-Income Individuals

The White House will be targeting high-income individuals by raising the top marginal tax rate to 39.6 percent, which would be applicable to taxable income over \$450,000 for married couples filing a joint return, \$400,000 for unmarried individuals (not including surviving spouses), \$425,000 for head of household filers, and \$225,000 for married individuals filing a separate return. The thresholds would be indexed for inflation following 2023.

Long-term capital gains also would undergo a change.

“Preferential tax rates on long-term capital gains and qualified dividends disproportionately benefit high-income taxpayers and provide many high-income taxpayers with a lower tax rate than many low- and middle-income taxpayers,” the Greenbook states. “The rate disparity between taxes on capital gains and qualified dividends on the one hand, and taxes on labor income on the other, also encourages economically wasteful efforts to convert labor income into capital income as a tax avoidance strategy.”

Under the White House budget, long-term capital gains and qualified dividends of taxpayers with taxable income of more than \$1 million (\$500,000 for married filing separately) would be taxed at ordinary rates. Transfers of appreciated property by gift or death would be considered a realization event, with certain exclusions.

For those with wealth greater than \$100 million, the White House is looking to impose a minimum tax of 20 percent on total income, generally inclusive of unrealized capital gains.

“A taxpayer’s minimum tax liability would equal the minimum tax rate (that is, 20 percent) times the sum of taxable income and unrealized gains (including on ordinary assets) of the taxpayer, less the sum of the taxpayer’s unrefunded, uncredited prepayments and regular tax,” the Greenbook states. “Payments of the minimum tax would be treated as a prepayment available to be credited against subsequent taxes on realized capital gains to avoid taxing the same amount of gain more than once. The amount of a taxpayer’s

‘uncredited prepayments’ would equal the cumulative minimum tax liability assessed (including installment payments not yet due) for prior years, less any amount credited against realized capital gains in prior years.”

Corporate Tax Changes

Under the White House proposal, the corporate income tax rate would change to 28 percent, up from the current 21 percent.

“Raising the corporate income tax rate is an administratively simple way to raise revenue to pay for the Administration’s infrastructure proposals and other long-standing fiscal priorities,” the Greenbook states. “A corporate tax rate increase can expand the progressivity of the tax system and help reduce income inequality.”

The Executive Branch is also calling for the adoption of the undertaxed profits rule, which would repeal the Base Erosion Anti-Tax liability and replace it with an Undertaxed Profits Rule, setting a minimum corporate tax rate of 15 percent for foreign-parented multinational corporations.

The Biden Administration is looking to spur job growth in the United States by providing tax incentives for jobs and business activities in the U.S. while removing tax deductions for corporations that ship jobs overseas. Businesses would gain a 10 percent tax credit on eligible expenses for onshoring jobs and business activities.

Housing and Urban Development Support

The Greenbook includes two proposals in this area. The first is making permanent the New Markets Tax Credit, which the administration stated helps generate investment in low-income communities

and would provide greater certainty for investment planning purposes.

The second in this area would allow for selective basis boosts for bond-financed low-income housing credit projects.

“Geographically grounded basis boosts have proved effective in significantly increasing the supply of affordable rental housing, which is in increasingly short supply across the nation,” the Greenbook states.

Support for Energy Policy

The White House proposes to eliminate fossil fuel tax preferences that encourage oil, gas, and coal production. The proposal would repeal a number of provisions, including the enhanced oil recovery credit, the expensing of intangible drilling costs, capital gains treatment for royalties.

The Biden Administration also is proposing to modify oil spill liability trust fund financing and Superfund excise taxes.

Support for Families and Students

To help lower the cost of adoption, the White House is proposing to make the adoption credit fully refundable, allowing taxpayers to claim the full amount of any eligible credit in the year the expense was first eligible regardless of tax liability. Additionally, taxpayers with unused carryforward amounts from eligible expenses from earlier adoptions would be able to claim the full amount of any unused carryforward on their 2023 tax return.

Under this proposal, certain guardianship arrangements would also be eligible for a refundable credit for expenses related to that guardianship.

For students, the administration is proposing to make permanent the exclusion of certain forgiven or discharged student loan

debt from gross income, making it not subject to taxation.

Other Changes

The Greenbook identifies a few other changes. In the area of changes to estate and gift taxation, it proposes modification to the Income, Estate, and Gift Tax rules for certain grantor trusts; creates a requirement for consistent valuation for promissory notes; improves tax administration for trusts and decedents’ estates; and limits the duration of the generation skipping transfer tax exemption.

It also proposes to close a range of loopholes, such as those related to tax carried interests as ordinary income; a repeal of the deferral of gain from like-kind exchanges; the extension of the period for assessment of tax for certain qualified opportunity fund investors; and the establishment of an untaxed income account regime for certain small insurance companies.

The White House proposal to improve administration and compliance contains recommendations for modernizing certain rules, including digital assets, as well as improving benefits tax administration.

A 20 Percent Increase for Treasury

The White House is asking for a 20 percent increase in the discretionary funding for the Department of the Treasury. The \$16.2 billion request represents a \$2.7 billion increase from the 2021 enacted level. Of those funds, \$14.1 billion would go to the Internal Revenue Service.

“This includes an increase of \$798 million to improve the taxpayer experience and expand customer service outreach to underserved communities and the taxpaying public at large,” the budget document

REFERENCE KEY

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

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states. “The Budget also provides \$310 million for IRS Business Systems Modernization, which is 39 percent above the 2021 enacted level, to accelerate the development of new digital tools to enable

better communication between taxpayers and the IRS.”

The White House budget documents states that the increase in funding will also “facilitate more effective oversight of

high-income and corporate tax returns,” but it did not offer specifics on how the funds would be spent on improving that oversight.

Near Unanimous Support in House for Retirement Financing Reform

The Securing A Strong Retirement Act (SECURE 2.0), designed to help more Americans save for retirement, passed the House of Representatives on March 29.

The bill (H.R. 2954), which passed by a 414-5 vote, contains a number of revenue provisions, according to a section-by-section summary describing the bill.

First, the summary states that the bill would allow simple IRAs to accept Roth contributions.

Second, the bill allows for hardship distribution for 403(b) plans to match hardship distribution rules so that participants in 403(b) plans will have access to all funds instead of current law that limits it in some cases to only employee contributions without earnings.

Third, SECURE 2.0 adjusts elective deferrals rules. “Under current law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis (if permitted by the plan sponsor),” the summary states. The bill “provides

all catch-up contributions to qualified retirement plans are subject to Roth tax treatment.”

Finally, the bill would allow for participants in 401(k), 403(b), and governmental 457(b) plans the option of receiving matching contributions from their employer on a Roth basis.

Other tax provisions in the bill include a reduction in the excise tax on certain accumulations in qualified retirement plans, including a reduction in the penalty for failure to take the required minimum distribution from 50 percent to 25 percent. If that failure is corrected in a timely manner, the excise tax is further reduced to 10 percent.

Increasing Retirement Savings

In terms of helping improve retirement savings, SECURE 2.0 does a number of

things, according to a fact sheet about the bill, including:

- expanding automatic enrollment in 401(k) and 403(b) retirement plans;
- creating new financial incentives for small businesses to offer retirement plans;
- increasing and modernizing the existing tax credit for contributions to a retirement plan or IRA;
- increasing the required minimum distribution age to 75; and
- creating new opportunities for military spouses to save for retirement.

The bill also includes other flexibility options, including allowing groups of nonprofit organizations to join together to offer retirement plans to their employees and allowing individuals to pay down student loans instead of contributing to a 401(k) while still getting the benefit of the employer match to their retirement plan.

Fifth Circuit Holds Domestic Crude Oil Export Tax Unconstitutional

Trafigura Trading LLC, CA-5, 2022-1 USTC ¶170,372

The Fifth Circuit Court of Appeals has held that the Code Sec. 4611(b) tax imposed on exports violates the Constitution’s Export Clause, and therefore the U.S. may not enforce Code Sec. 4611(b) on crude oil exported from the U.S. The provision imposes a “tax”—at a rate of 8 or 9 cents per barrel, depending on the year—on domestic crude oil “used in or exported from the United States.” Proceeds from

Code Sec. 4611(b) go to the Oil Spill Liability Trust Fund.

The Export Clause appears in Article I, Section 9 of the U.S. Constitution and states that “No Tax or Duty shall be laid on Articles exported from any State.”

The Court of Appeals looked at whether Code Sec. 4611(b) imposed a tax or a user fee. User fees arise in the context of value-for-value transactions: you pay the fee, and in return, you get access to something of value. Oil exporters subject to Code Sec. 4611(b) are

forced to pay for, among other things, reimbursements to federal, state, and Indian tribe trustees for assessing natural resource damage; research and development for oil pollution technology; studies into the effects of oil pollution; marine simulation research; and research grants to universities. None of these things can plausibly be conceived as “services” provided to exporters in exchange for their payment. Also, the amount of the Code Sec. 4611(b) charge is based on the volume of oil transported.

The Code Sec. 4611(b) tax saddles exporters with the cost of anti-pollution measures that generally benefit society at large, and not specifically the exporter who pays the charge. If the Constitution forbids export taxes designed to further trade policy—and it plainly does in the Export Clause—then there’s no principled basis to allow export taxes designed to further environmental policy.

House Passes MORE Act to Decriminalize, Deschedule Cannabis

Cannabis would be decriminalized and would no longer be considered a scheduled substance under the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, which was passed by the House of Representatives on April 1.

Average Residence Purchase Prices for Qualified Mortgage Bonds and Mortgage Credit Certificates Published

The IRS has provided issuers of qualified mortgage bonds and issuers of mortgage credit certificates with (1) nationwide average purchase prices for residences located in the United States, and (2) average area purchase price safe harbors for residences located in statistical areas in each state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, the Virgin Islands, and Guam. The nationwide average purchase price (for use in the housing cost/income ratio for new and existing residences) is \$368,500. Issuers may rely on this revenue procedure to determine average area purchase price safe harbors for commitments to provide financing or issue mortgage credit certificates that are made, or (if the purchase precedes the commitment) for residences that are purchased, in the period that begins on March 30, 2022, and ends on the date as of which the safe harbors contained in section 4.01 of this revenue procedure are rendered obsolete by a new revenue procedure.

Rev. Proc. 2021-17, I.R.B. 2021-15, is obsolete except as provided in section 6 of this revenue procedure.

Rev. Proc. 2022-21

The bill (H.R. 3617) passed by a 220-204 vote and contains two revenue provisions: an excise tax on cannabis products produced or imported into the United States and an occupational tax on cannabis production facilities and export warehouses.

The overall fate of the bill is uncertain at this point as the Senate is working on its own legislation and with only three GOP members in the lower chamber voting in favor of the bill, reaching the 60-vote threshold for passage in the upper chamber will be a challenge.

Taxpayer Advocate Calls for Barcode Scanning of Printed Software-Prepared Returns

National Taxpayer Advocate Erin Collins is calling on the Internal Revenue Service to work with tax preparation software companies to implement a 2-D barcode that can be scanned when a tax return is printed in order to expedite processing.

In a March 29 directive to the IRS, Collins is directing the agency to work with software companies “over the next 45 days to develop a plan for the companies to voluntarily place 2-D barcodes on returns prepared with their software products during the 2023 filing season and beyond.”

Collins highlighted the need for the barcode process in a March 30 blog post, noting that the current significant backlog of unprocessed returns caused by the pandemic is magnifying the need to have a

process that can expedite the processing of paper returns.

“The delays in processing these returns result from the IRS’s archaic data intake process,” Collins wrote. “The IRS’s submission processing function today evokes images of what data transcription looked like in the 1960s – prior to the information age. Employees manually transcribe all paper tax returns. Transcription consists of keystroking each digit and each letter on the return. For a moderately complex return, several hundred digits may need to be transcribed. For longer returns with more forms and schedules, the number of digits may approach or exceed 1,000 digits.”

The Taxpayer Advocate Service estimates, based on its analysis, that 50

percent to 60 percent of individual income tax returns submitted on paper were prepared using tax return software and those returns would not need to be transcribed if there was 2-D barcoding on the returns.

“Implementing 2-D barcoding for paper returns filed beginning in January 2023 will serve as an insurance policy against a continuing backlog next year by reducing the influx of new paper returns that require transcription,” Collins stated. “Even if the IRS does manage to work through its backlog this year, 2-D barcoding will reduce processing time and costs in future years, which will allow the IRS to reassign submission processing employees to perform other work.”

However, this may be a challenge from a legal perspective.

“The IRS Office of Chief Counsel recently advised that the IRS lacks the authority to require tax return software developers to place barcodes on paper-filed returns,” the directive stated, citing a December 17, 2021, memorandum. “However, the advice said the IRS may request that tax return software developers incorporate scannable barcodes on paper-filed returns created with their software. ... If the software companies decline to incorporate scannable codes, which seems unlikely considering the collaborative relationship they have with the IRS, the advice said the IRS has the authority to design

forms with scannable barcodes and make them available directly to taxpayers on IRS.gov.”

The directive noted that in 2002, 17 states were using 2-D barcoding for returns prepared with tax return software but filed on paper. Furthermore, the IRS has implemented 2-D barcoding for certain forms, such as the Schedule K-1.

The blog noted that the IRS in 2014 requested the legal authority from Congress to require 2-D barcodes. However, changed its position in 2018 to allow for the flexibility to adopt other alternative scanning technologies such as optical character

recognition (OCR), which has the advantage of allowing for machine-reading of all paper returns but is less accurate.

To that end, Collins directs the agency to “develop a plan to implement OCR technology that machine reads handwritten returns and returns without readable barcodes by the start of the 2023 filing season or, if not feasible, by the start of the 2024 filing season.”

The IRS has until May 13 to alert the Taxpayer Advocate Service as to whether it will implement this directive, take alternative action to achieve the same objective or decline to take the directed action.

New Taxpayer Advocacy Panel Members Selected; Volunteers Urged to Apply

IR-2022-74

The IRS recommended and the Treasury approved the selection of 25 new Taxpayer Advocacy Panel (TAP) members. When added to returning members, these new TAP members will round out the panel with 69 volunteers for 2022. In 2021, the TAP made 193 recommendations to the IRS, many of which have already been implemented.

National Taxpayer Advocate Erin M. Collins said, “These members volunteer hundreds of hours to help ensure that our tax system works for all Americans. The past few years have been extremely challenging for taxpayers and the IRS. The dedicated work of our TAP volunteers is more important than ever to help identify and prioritize initiatives to modernize the IRS, improve service and protect taxpayer rights.” The IRS also provided a list of the new TAP members by location.

TAP members volunteer to serve a three-year appointment and are expected to devote 200 to 300 hours per year to panel activities. Those interested in serving on the 2023 panel beginning December 1, 2022, may apply during the TAP’s current recruitment period open through April 8. Taxpayers can also write to the TAP at Taxpayer Advocacy Panel, TA: TAP, Room 1509, 1111 Constitution Avenue, N.W., Washington, District of Columbia 20224.

What to Do About Missing Economic Impact Payments and Corrections

IR-2022-72

The IRS reminded taxpayers to accurately claim any remaining third-round stimulus payment on their 2021 tax returns as the 2021 Recovery Rebate Credit (RRC). The IRS announced the completion of special mailings of all Letters 6475, Economic Impact Payment (EIP) to recipients of third-round of Economic Impact Payments. As required by law, the IRS is no longer issuing first-, second- or third-round EIPs. Individuals who are missing a stimulus payment or received less than the full amount may be eligible to claim an RRC on their 2020 or 2021 federal tax return. Most eligible individuals already

received the full amount of their credit in advance and don’t need to include any information about this payment when they file their 2021 tax return. Individuals may securely access their IRS Online Account to view the total amount of the third-round Economic Impact Payment issued to them. Married individuals filing a joint return will each need to log into their own Online Account or check their Letter 6475.

The IRS encouraged individuals to double-check their bank accounts to determine if they received a third-round payment in advance last year. Taxpayers should not request a payment trace to determine if they were eligible for a payment or to confirm the amount of payment they should

have received. Individuals do not need to wait until their trace is complete to file their 2021 tax return. When completing the Recovery Rebate Credit Worksheet or answering EIP questions in the tax software, taxpayers can use the amount on the Letter 6475 or use the amount of EIP they believe they received to calculate the RRC amount on line 30. In both cases, once the EIP trace is complete, if the trace indicates the taxpayer received the EIP amount, no further action is necessary. However, if EIP amount was not received by the taxpayer, the IRS will adjust the RRC amount on the tax return and issue any refund.

Individuals who made a mistake calculating the RRC and claimed an amount

on line 30 for the 2021 Recovery Rebate Credit should not file an amended return. The IRS will correct the amount and send a notice identifying the changes made. Taxpayer who disagree with the changes can call the toll-free number listed on the

top right corner of their notice. Eligible individuals who didn't claim an RRC on their 2021 tax return and whose IRS records do not show the issuance of an EIP will need to file a Form 1040-X to claim the remaining amount of stimulus money

for which they are eligible. Taxpayers who need to file an amended return to claim the 2021 RRC should use the worksheet in the 2021 instructions for Form 1040 and 1040-SR to determine the amount of the credit.

Taxpayers Reminded About Automatic Filing Extensions

IR-2022-71

The IRS reminded taxpayers that if they're unable to file their tax return by the deadline, they can request an automatic six-month extension to file. Taxpayers must file their extension by the regular due date of the return. The deadline to submit 2021 tax returns or an extension to file and pay the tax owed this year is generally April 18. For taxpayers in Maine or Massachusetts, the deadline is April 19. Individuals can use IRS Free File to electronically request an automatic tax-filing extension. They can also request an extension on Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return. Filing this

form gives taxpayers until October 17 to file their tax returns. Other ways to get an extension include using IRS Direct Pay, the Electronic Federal Tax Payment System or by paying with a credit or debit card or digital wallet.

Despite the grant of an extension to file, tax payments are still due by the original deadline. Taxpayers should file even if they can't pay the full amount. Taxpayers who pay as much as they can by the due date reduce the overall amount subject to penalty and interest charges. The IRS will work with taxpayers who cannot pay the full amount of tax they owe.

Certain eligible taxpayers receive automatic extensions. These include U.S. citizens and resident aliens who live and work

outside of the United States and Puerto Rico. They get an automatic two-month extension to file their tax returns. They have until June 15 to file. Members of the military on duty outside the United States and Puerto Rico also receive an automatic two-month extension to file. Those serving in combat zones have up to 180 days after they leave the combat zone to file returns and pay any taxes due. Finally, when the President makes a disaster area declaration, the IRS can postpone certain taxpayer deadlines for residents and businesses in the affected area. Taxpayers can find information on the most recent tax relief for disaster situations at <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations..>

FBAR Deadline Is April 15

FS-2022-24; IR-2022-73

The IRS reminded U.S. citizens, resident aliens, and domestic legal entities that the deadline to file their annual Report of Foreign Bank and Financial Accounts (FBAR) is April 15. Filers missing the April deadline will receive an automatic extension until October 15, 2022 to file the FBAR. They do not need to request the extension.

The FBAR must be filed electronically with the Financial Crimes Enforcement

Network (FinCEN) and is only available through the BSA E-Filing System website. Taxpayers who are unable to e-file their FBAR must contact FinCEN at 800-949-2732 or FRC@fincen.gov. Those who do not file an FBAR when required may be subject to significant civil and criminal penalties. The IRS will not penalize those who properly reported a foreign account on a late-filed FBAR if the IRS determines there was reasonable cause for late filing.

The Bank Secrecy Act (BSA) requires U.S. persons to file an FBAR if they have financial interest in, or signature authority or other authority over one or more accounts in a foreign country; and the aggregate value of all foreign financial accounts exceeds \$10,000 at any time during the calendar year. The IRS encouraged U.S. individuals or entities with foreign accounts to check if this filing requirement applies to them.

IRS Provides Information About 2022 Educator Deduction Increase

IR-2022-70

The IRS reminded educators that they will be able to deduct up to \$300 of

out-of-pocket classroom expenses when they file their federal income tax return for tax year 2022. This is the first time the annual limit has increased since 2002. For

tax years 2002 through 2021, the limit was \$250 per year. The limit will rise in \$50 increments in future years based on inflation adjustments. For 2022, if an eligible

educator is married and files a joint return with another eligible educator, the limit rises to \$600 but not more than \$300 for each spouse.

Educators can claim this deduction even if they take the standard deduction. Eligible educators include anyone who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during the school year. Both public- and

private-school educators qualify. Educators can deduct the unreimbursed cost of:

- books, supplies, and other materials used in the classroom;
- equipment, including computer equipment, software, and services;
- COVID-19 protective items to stop the spread of the disease in the classroom; and
- professional development courses related to the curriculum they teach or the students they teach.

Qualified expenses do not include expenses for homeschooling or nonathletic supplies for courses in health or physical education. The IRS also reminded educators that for tax year 2021, the deduction limit is \$250. If they are married and file a joint return with another eligible educator, the limit rises to \$500 but not more than \$250 for each spouse.

TAX BRIEFS

Abatements

The IRS did not abuse its discretion by denying an individual's claim for abatement of interest on his federal income tax deficiencies. The taxpayer and his wife had delayed the examination by failing to provide the records the examiner requested and did not provide any such records in the letter they claimed to have sent the IRS. Therefore, the taxpayer failed to establish that the IRS abused the discretion granted by Code Sec. 6404.

Porter, TC, Dec. 62,028(M)

Advance Pricing Agreements

The IRS has released its annual report on Advance Pricing Agreements (APAs) and the Advance Pricing and Mutual Agreement (APMA) program. In 2021, a total of 145 APA applications were filed and 124 were executed. As of December 31, 2021, almost half of the pending bilateral APA requests involved either Japan or India.

Announcement 2022-7

Alcohol and Tobacco Tax

Taxpayers who are having trouble paying the taxes owed, or who are not able to pay by the deadline, may voluntarily contact the Alcohol and Tobacco Tax and Trade Bureau to make payment arrangements for the tax due.

News, Alcohol and Tobacco Tax and Trade Bureau, Office of Communications, March 25, 2022

The Alcohol and Tobacco Tax and Trade Bureau has updated frequently asked questions to reflect President Biden's March 11, 2022 Executive Order prohibiting the importation of alcohol beverages of Russian Federation origin. The Executive Order also bans the exportation of certain alcohol beverages to Russia or Belarus, or to Russian or Belarusian individuals on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

FAQs, Alcohol and Tobacco Tax and Trade Bureau, March 16, 2022

Conservation Easements

The IRS disallowed a deduction because an easement's conservation purpose was not protected in perpetuity. Additionally, an IRS revenue agent secured timely supervisory approval for imposing a penalty against the taxpayer.

Pickens Decorative Stone, TC, Dec. 62,026(M)

Domestic Production Activities Deduction

For purposes of the Code Sec. 199 domestic production activities deduction for tax years beginning before 2018, a corporation that operated national securities exchanges did not realize domestic production gross receipts from transaction fees, routing fees, and logical port fees. The fees were not derived from providing customers access to computer software for their direct use. In addition, the third-party software the taxpayer offered as comparable software was

not substantially identical to the taxpayer's software.

Bats Global Markets Holdings, Inc. and Subsidiaries, TC, Dec. 62,030

Hemp Business

The IRS clarified that Code Sec. 280E does not apply to a business legally growing and selling hemp that contains 0.3 percent or less of THC. After passage of the 2018 Farm Bill, hemp with 0.3 percent or less THC is no longer considered to be a Schedule I substance. A business's growing and selling of hemp containing 0.3 percent or less THC is not considered to be trafficking in a Schedule I substance. Accordingly, the business is not subject to Code Sec. 280E and can deduct expenses.

Marijuana Industry Frequently Asked Questions, Updated on March 25, 2022

IRS

The IRS is suspending the issuance of several delinquent return notices for tax-exempt or governmental entities. The IRS has not yet processed several million returns due to the pandemic. The suspension of these notices will help avoid confusion when a filing is still in process.

The IRS has issued an updated version of the Chief Counsel telephone directory, April 1, 2022. The directory lists Chief Counsel contacts by code section and subject area.

Chief Counsel Code and Subject Matter Directory

Liens and Levies

The Tax Court held, granting summary judgment, that an IRS settlement officer (SO) did not abuse her discretion in sustaining the proposed collection action. It also imposed a frivolous position penalty on the taxpayer, finding that the action was pursued primarily for delay.

Golditch, TC, Dec. 62,029(M)

Net Operating Loss

An individual was not entitled to net operating loss (NOL) deduction for a tax year at issue. The taxpayer reported a loss from the disposition of a condo. However, a mortgage lender had foreclosed on the condo and the taxpayer lost possession of the condo on that date. The taxpayer attempted to rent to condo using the services of rental companies to facilitate the rental and to collect payment. Upon examining the taxpayer's

return, the IRS disallowed the deduction in full.

Villanueva, TC, Dec. 62,031(M)

Normalization

The IRS ruled privately on the application of the depreciation normalization requirements to an electric utility's computation of accumulated deferred income taxes in its calculation of rate base.

IRS Letter Ruling 202213001

Penalties

The Court of Appeals for the Ninth Circuit reversed a Tax Court decision and found an IRS supervisor gave written approval of a penalty determination. The Tax Court had found the written approval requirement required by Code Sec. 6751(b) was not satisfied.

Laidlaw's Harley Davidson Sales, INC., CA-9, 2022-1 USTC ¶150,131

An IRS settlement officer did not abuse his discretion in sustaining a proposed levy regarding a Code Sec. 6702 penalty against an individual for asserting frivolous positions throughout the case. During the collection due process (CDP) hearing under Code Sec. 6330, the taxpayer was given multiple opportunities by the settlement officer to disclaim these arguments, but did not do so.

Addis, TC, Dec. 62,027(M)

Tax Returns

The IRS announced on its website that tax year 2021 electronically filed tax returns will be rejected if the taxpayer is required to reconcile advance payments of the premium tax credit on Form 8962, Premium Tax Credit, but does not attach the form to the tax return. The IRS also provided information on how to correct an electronically filed return rejected for a missing Form 8962.