



# FEDERAL TAX WEEKLY

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## Treasury and IRS Announce Aggressive Plan to End Pandemic Inventory Backlog

The Treasury Department and the IRS announced an aggressive plan to end the pandemic inventory backlog this year. Deputy Secretary of the Treasury Wally Adeyemo and IRS Commissioner Charles P. Rettig traveled to the IRS Campus in Philadelphia where they outlined an aggressive plan to end the backlog. This year, millions of taxpayers are awaiting the processing of their tax returns and receipt of their refunds. The backlog has created one of the most challenging tax filing seasons in U.S. history. The IRS's backlog challenges today stem from two key sources. First, the agency has been chronically underfunded for more than a decade, with its budget cut by nearly 20% since 2010. The IRS workforce is the same size it was in 1970. However, the U.S. population has grown by 60 percent and the complexity of the economy has increased exponentially. Second, the pandemic created a unique set of new operational challenges for the IRS. The agency was called upon to support emergency relief for taxpayers. This included distributing an unprecedented three rounds of Economic Impact Payments, totaling over \$830 billion, to 85 percent of American households. Including individual refunds, the IRS has distributed over \$1.5 trillion to Americans since the pandemic began. To tackle the backlog, the IRS has laid out the following approach.

### Hiring and Surging Thousands of Employees

- **Hiring 10,000 new employees:** The IRS has announced plans to hold job fairs across the country in March in Kansas City, Austin and Ogden to fill 5,000 open positions in the coming months. Working with Treasury, the Office of Personnel Management and the National Treasury Employees Union, the IRS recently secured direct hiring authority for these employees and an additional 5,000 new hires to be made over the next year.
- **Creating a new 700-person surge team to process new returns:** The IRS is in the process of shifting approximately 700 employees at the Austin, Ogden, and Kansas City campuses to process original returns. At full capacity, this surge will close millions of cases each month.
- **Maintaining initial surge team to process amended returns and taxpayer correspondence:** Earlier, the IRS moved hundreds of existing employees with previous experience to address the backlog and currently has approximately 800 people on this team, which started in February .
- **Paying overtime to IRS employees:** The IRS has required mandatory overtime for the over 6,000 employees processing original returns. Overtime is also available for approximately 10,000 employees processing amended returns and taxpayer correspondence.
- **Supporting additional contractor support for inventory:** The IRS is quickly pursuing additional contracting options to help with original return processing, including mail-room operations, transcription, and input of paper returns into IRS systems.

## Increased Taxpayer Assistance to Reduce Processing Delays

By helping taxpayers file accurately, the IRS can ensure that refunds are issued quickly. An error-free tax return is processed within 21 days. Accurate individual filings also proactively reduce inventory by decreasing the share of returns that require time-intensive manual attention by employees. Efforts to help taxpayers file accurately include:

- Sending taxpayers more information than ever to prevent processing delays: The IRS has sent more than 100 million letters to taxpayers to prevent delays in processing. In the letters, the IRS proactively calculates the amounts received by taxpayers in third Economic Impact Payments and the advance Child Tax Credit to ensure more accurate returns.
- Providing online help: The IRS created and expanded self-service portals for taxpayers, including for online payment agreements, requesting payment transcripts, requesting Identity Protection PINs and updating personal information.
- Providing in-person help: The IRS has increased the availability of in-person support for taxpayers through extra

hours at Taxpayer Assistance Centers throughout the filing season. It also awarded \$41 million of support to over 330 organizations across the U.S.

- Providing help on the phones: The IRS has expanded customer callbacks to 70% of its toll-free lines. This fiscal year, a callback option has been offered to over three million taxpayers, saving those preparing their taxes almost one million hours of wait time. Additionally, the IRS has deployed 2,000 contractors to respond to taxpayer questions about Economic Impact Payments and the advance Child Tax Credit.

## Developing and Deploying Updated Technology to Automate Functions

- New automated tool to correct return errors: For this filing season, the IRS developed an automated tool that dramatically expands efficiencies and has helped the IRS close 1.5 million error resolution cases in a single week.
- Suspension of dozens of common notices to prevent inventory increases: the IRS reconfigured its systems to temporarily halt sending approximately 40 form

notices to taxpayers. This includes mailing automated collection notices that are normally issued when a taxpayer owes additional tax and the IRS has no record of a taxpayer filing a return. This action provides important relief for taxpayers who otherwise could have received a notice for taxes already paid but not processed due to the backlog. This also results in less inventory since taxpayers won't contact the IRS to inquire about the notices received.

- Improving automated tools for taxpayer assistance: The IRS developed new automated support technology to help taxpayers, including online live assistance and new voice and chat bots to quickly answer taxpayer queries. This has allowed the IRS to move many phone service representatives to work inventory given the exigencies of this filing season.

The IRS and Treasury have worked closely with legislators to highlight the need for resources and this year's House-passed omnibus represents the largest funding increase for the IRS in the last two decades. However, Treasury stated that the IRS needs stable, long-term funding to be able to modernize outdated technological infrastructure and transition much of its manual work into automated processes.

# Notice on Reporting Cash-Value Life Insurance Policies of Employee-Benefit Plans Did Not Meet Notice-and-Comment Procedures

*Mann Construction, Inc., CA-6, 2022-1 USTC ¶150,122*

The Court of Appeals reversed a district court's decision in a case which required taxpayers to report transactions involving cash-value life insurance policies connected to employee-benefit plans. The

taxpayers claimed that the IRS failed to meet a reporting requirement of its own by skipping the notice-and-comment process before promulgating this legislative rule.

The government argued that Notice 2007-83, I.R.B. 2007-45, merely interprets the term "tax avoidance transaction" in Code Sec. 6707A. But the Notice is

legislative because it creates new substantive duties, the violations of which prompt exposure to financial penalties and criminal sanctions. The government's argument also overlooked the reality that the relevant statutory terms are not self-defining, which explains why Congress delegated to the IRS authority to determine and identify which

### REFERENCE KEY

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

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transactions need to be reported. It was held that Notice 2007-83 is a legislative rule because the determination that a certain transaction was one which taxpayers must report on pain of penalty, retains the essential qualities of a legislative rule subject to notice-and-comment procedures.

In addition, the government argued that at the time Congress enacted Code Sec. 6707A, one such regulation provided that the IRS could identify reportable and listed transactions by “notice, regulation, or other form of published guidance.” Since a “notice” is the type of IRS action at issue, the government claimed that the statute contains an express exception from the APA’s notice-and-comment process. However, the IRS’ reference to its apparent rules of process, without more, does not show that the Congress exempted Notice 2007-83 from notice-and-comment rulemaking.

Lastly, the government invoked legislative history and stated that tax shelters are a rampant problem that the IRS needs to address promptly, all without the procedural burdens that the APA imposes, and the legislative history shows as much. Because the IRS’s process for issuing Notice 2007-83 did not satisfy the notice-and-comment procedures for promulgating legislative rules under the APA, the Court of Appeals set it aside.

Reversing a DC Mich. opinion, 2021-1 USTC ¶50,147.

## IRS Unveils Voice and Chat Bots to Assist Taxpayers

IR-2022-56

The IRS has announced that it has begun using voice and chat bots on two of its specialized toll-free telephone assistance lines and IRS.gov. These features will assist taxpayers with simple payment or collection notice questions quickly and avoid waiting. Taxpayers can still speak with an IRS telephone representative if needed. IRS Commissioner Chuck Rettig stated that this step is a part of a larger effort to help taxpayers get the assistance they need this tax season. In recent weeks, the IRS has

## IRS Updates FAQs on 2021 Child Tax Credit and Advance Child Tax Credit Payments

The IRS has updated its frequently asked questions (FAQs) on the 2021 Child Tax Credit and Advance Child Tax Credit Payments. The IRS has issued these updates to help eligible families properly claim the credit when they prepare and file their 2021 tax returns. These changes reflect that Publication 972, Child Tax Credit, has become obsolete. Taxpayers should refer to Schedule 8812, Form 1040. Schedule 8812, Form 1040, is now used to calculate child tax credits, to report advance child tax credit payments received in 2021 and to determine any additional tax owed if excess advance child tax credit payments were received during 2021. The FAQs revisions and additions are as follows:

- 2021 Child Tax Credit and Advance Child Tax Credit Payments — Topic B: Eligibility for Advance Child Tax Credit Payments and the 2021 Child Tax Credit: Q3
- 2021 Child Tax Credit and Advance Child Tax Credit Payments — Topic C: Calculation of the 2021 Child Tax Credit: Q1
- 2021 Child Tax Credit and Advance Child Tax Credit Payments — Topic D: Calculation of Advance Child Tax Credit Payments: Q1

The IRS has issued these FAQs to provide general information to taxpayers and tax professionals as expeditiously as possible.

FS-2022-17; IR-2022-53

## List Published of Parties Disbarred or Suspended from Practice Before IRS

The IRS’s Office of Professional Responsibility has published the names of attorneys, certified public accountants (CPAs), enrolled agents, enrolled actuaries, enrolled retirement plan agents and appraisers who have been disbarred from practice before the IRS, have consented to suspensions from practice, have been placed under suspension from practice under the expedited proceeding provisions, or have consented to the issuance of a censure. Attorneys, CPAs, enrolled agents, enrolled actuaries and enrolled retirement plan agents are barred from accepting assistance from, or assisting, any disbarred or suspended practitioner if the assistance relates to a matter constituting practice before the IRS; further, they cannot knowingly aid or abet another person to practice before the IRS during the period of that person’s suspension, disbarment or ineligibility.

Announcement 2022-5

deployed voice and chat bots in English and Spanish for phone lines that assist taxpayers with tax payment issues or understanding an IRS notice. Taxpayers with general tax season questions will generally not encounter these features at this time. The bots are now available to help taxpayers with:

- How to make One-Time Payments
- Answers to Frequently Asked Questions
- Collection Notice Clarification

The IRS informed taxpayers that voice bots are software powered by artificial

intelligence (AI) that allow a caller to navigate an interactive voice response (IVR) system with their voice. Chat bots simulate human conversation through web-based text interaction, also using AI-powered software to respond to natural language prompts. Taxpayers who request to speak with a customer service representative will be placed in a queue for English or Spanish ACS telephone assistance. The IRS voice and chat bots currently cannot provide assistance with a taxpayer’s protected account information. Later in 2022, IRS voice bots

will enable taxpayers to authenticate their identity to establish payment plans, request a transcript and obtain information about their accounts. The IRS plans to roll out more voice and chat bots later in 2022 to assist taxpayers with more complex issues.

Further, freeing up IRS phone assistants for taxpayers with complex collection issues who need to speak with someone is a major benefit of voice and chat bots. Additionally, voice bots also helped taxpayers calling the Economic Impact Payment (EIP) toll-free line, providing general procedural responses to frequently asked questions. The IRS also added voice bots for the Advanced Child Tax Credit toll-free line this month to provide similar assistance to callers who need help reconciling the credits on their 2021 tax return.

## Canceled Cashier's Check Not Includible in Gross Estate

*D.R. Allison, DC Calif., 2022-1 USTC ¶160,733*

The value of a cashier's check that was intended as a gift to a decedent's son to cover his unpaid child support was includible in the decedent's gross estate. The cashier's check was drawn on the decedent's account about two weeks before his death and was made payable to the California Department of Child Support Services (DCCS). The payment was refused by the DCCS and canceled about four months after it was presented. That same day, the estate issued another check to the DCCS and the son to "effectuate the gift." The trustees also asserted that a settlement payment to a different child of the decedent was a deductible expense.

### Inclusion of Cashier's Check in the Gross Estate

The issue of whether the decedent still had an interest in the check on his date of death was determined under applicable state (California) law. If the cashier's check constituted a gift, then the decedent would have no interest in the check. To be a completed

## IRS Looking to Hire Collection Contact Representatives in Mississippi

The IRS has announced looking for applicants to staff a new call site in Mississippi starting this spring. The IRS will hire approximately 10 Collection Contact Representatives in Clarksdale, Mississippi, to staff an IRS Automated Collection System site. These new hires will answer calls from taxpayers to help them resolve their tax-related issues.

IRS Commissioner Chuck Rettig stated that this effort in Mississippi is designed to help taxpayers needing help related to collection issues. This special initiative is part of a larger IRS project to reach under-served communities. It will provide meaningful career opportunities while increasing service, raising awareness and compliance with tax laws in underrepresented communities.

Further, these positions deal with a full range of responsibilities in resolving issues and obtaining information relative to the tax administration process. Contact Representatives provide authoritative tax law assistance and take action where needed to resolve a taxpayer's tax issues. This might include analyzing the taxpayer's ability to pay, initiating liens and negotiating installment payment agreements. These positions have a beginning salary range of \$36,118 to \$46,953 with the potential for annual increases and promotions. Both English and bilingual Spanish positions are available. Qualified applicants will receive extensive training on IRS procedures to apply the tax laws and regulations with fairness, along with access and use of all necessary automated systems. Specialized or prior federal work experience is not required. Applications are being accepted through March 16. Interested individuals should apply as soon as possible via the Collection Contact Representative announcement on USAJOBS.

Additionally, the IRS Small Business/Self Employed Division will be providing virtual information sessions for individuals who would like more information about the Collection Contact Representative positions. During these virtual sessions, Collection Contact Representatives will provide a better understanding of the work they do day-to-day. Human Resource Representatives will also attend the session. Interested individuals can register for the sessions on March 14 at 4 p.m. Eastern Time and March 16 at 3 p.m. Eastern Time.

*IR-2022-57*

gift, California law requires donative intent, which was stipulated by the parties, delivery, and acceptance. Under California law, the decedent retained a property interest in the cashier's check before delivery. The DCCS's refusal of the check and the estate's related cancellation and reissuance of the check supported the conclusion that the physical delivery of the check did not occur before the decedent's death. The trustees presented no evidence to support a contrary conclusion. Thus, the decedent retained a property interest in the check and it was includible in his gross estate.

### Settlement Payment Not a Claim Against the Estate

The decedent's daughter and her mother challenged the trust's ownership of real and personal property of the decedent's that they

alleged belonged to them. In settlement of that claim, the daughter received a cash payment from the decedent's trust and certain other property. Because the payment was made in settlement of a claim to the decedent's estate and did not represent a personal obligation owed by the decedent at his death, the settlement payment was not deductible. The state court action by the daughter was to recover an inheritance to which she was entitled not an amount that the decedent owed her before his death. The daughter's status as a trust beneficiary and the decedent's heir also supported the conclusion that the estate was giving her a portion of its property.

### Liability of the Executors/Trustees

The trustees of the decedent's revocable trust, which was included in his



gross estate, were personally liable for unpaid estate tax up to the value of the trust property under Code Sec.

6324(a)(2). However, the trustees were not personally liable under 31 U.S.C §3713(b) because the government did

not prove that the trustees depleted the estate with knowledge of the tax assessment.

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## IRS Issues Child and Dependent Care Credit Reminder

IR-2022-54

The IRS has reminded taxpayers that those who pay expenses for the care of a qualifying person while working or looking for work may qualify for the Child and Dependent Care Credit. The credit has been expanded for tax year 2021. Taxpayers with an adjusted gross income of more than \$438,000 are not eligible for this credit. IRS Commissioner Chuck Rettig encouraged qualifying families and others to carefully review the criteria to make sure they receive the maximum amount they're entitled to. Taxpayers can get a credit worth 50 percent of their qualifying child-care expenses depending on their income.

For tax year 2021, the maximum eligible expense for this credit is \$8,000 for one qualifying person and \$16,000 for two or more. For the purposes of this credit, the IRS defines a qualifying person as:

- A taxpayer's dependent who is 12 or younger when the care is provided. There is no age limit if the taxpayer's dependent is incapacitated.
- A taxpayer's spouse who is physically or mentally unable to care for themselves and lived with the taxpayer for more than half the year.
- Someone who is physically or mentally unable to take care of themselves and lived with the taxpayer for six months and is either the taxpayer's

dependent or would have been the taxpayer's dependent except for one of the following:

- The qualifying person received a gross income of \$4,300 or more.
- The qualifying person filed a joint return.
- The taxpayer or spouse, if filing jointly, could be claimed as a dependent on someone else's return.

Lastly, taxpayers can use the Interactive Tax Assistant or see the Frequently Asked Questions on IRS.gov to determine if they can claim this credit. The IRS has been highlighting this credit in several ways including IRS social media and outreach channels.

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## Washington Round-up

**President Biden signs omnibus spending package.** After passing the House of Representatives earlier in day, the Senate passed the \$1.5 trillion spending package on March 10, 2022, by a 68-31 vote. The bill contained no specific tax section and had only one tax-related provision – an extension of a telehealth-related provision introduced in the CARES Act to the end of 2022 that allows those in high-deductible health plans (HDHP) to use telehealth services from non-HDHP providers without being disqualified from health savings account participation. It also boosted Internal Revenue Service funds to \$12.6 billion and passed the Adjustable Interest Rate (LIBOR) Act. The bill was signed by President Biden on March 11, 2022.

**President Biden signs executive order on digital assets.** A fact sheet on the

executive order, signed March 9, calls for the Financial Stability Oversight Council to make policy recommendations on any regulatory gaps that would need to be filled in order to protect those using digital assets as well as mitigate the illicit finance and national security risks associated with digital assets.

**IRS establishes the Taxpayer Experience Office.** Earlier this month, the Internal Revenue Service launched the Taxpayer Experience Office, which is designed to improve services that help taxpayers. The launch comes as the agency continues to address problems associated with a significant backlog of unprocessed tax returns as a result of the COVID-19 pandemic, record high call volumes from taxpayers needing assistance, a refund tracking app that needs to provide better

information, and other customer service-related issues. According to a statement issued by the agency, the office “will identify changing taxpayer expectations and industry trends, focus on customer service best practices, and promote a consistent voice and experience across all taxpayer segments by developing agency-wide taxpayer experience guidelines and expectations. The office will be adding staff in the coming months to help support the effort.” Additionally, the agency separately announced the hiring of more than 5,000 employees at three processing centers, voice and chat bots to help with simple questions and tasks, and the beginning of staffing for a new automated collection system site in Mississippi to help answer calls from taxpayers.

## *Business Deductions*

A commercial painting contractor could deduct expenses for office equipment, supplies and promotional expenses where a business purpose for the expenses was established. Tuition paid for coding classes of a non-employee was a non-deductible personal expense because there was no expectation of a return and no business purpose. The disallowed deductions did not result in constructive dividends to the sole shareholder and her husband. There was no indication that the couple received an economic benefit from the disallowed deductions.

*Sherwin Community Painters Inc, TC, Dec. 62,021(M)*

## *Claim of Right Doctrine*

An individual was denied a tax refund under the claim of right doctrine. The tax refund related to funds illegally obtained and paid under a guilty plea and the difference between the taxes on the amounts. The taxpayer did not have an unrestricted right to the funds and did not identify another statutory source for the deduction.

*Gross, DC Tex., 2022-1 USTC ¶150,124*

## *For-Profit Activities*

A partnership was engaged in for-profit activities with respect to its eco-friendly construction and consulting business. After consideration of the nonexclusive list of objective factors in determining whether the activity engaged in was for profit, the partnership's actions overall fell

in favor of the conclusion that it sought a profit.

*Walters, TC, Dec. 62,019(M)*

## *Gross Income*

A married couple and sole shareholders of a daycare corporation received imputed wage income from the corporation. Although they did not receive wages, they directly or indirectly, received substantial economic benefit from the corporation in the form of money, property and other remuneration. Further, the taxpayers were liable for (1) an addition to tax; (2) fraud; and (3) accuracy related penalties.

*Hacker, TC, Dec. 62,018(M)*

## *Liens and Levies*

The Tax Court affirmed the IRS Office if Appeal's determination to sustain the proposed collection action against an individual with respect to his unpaid federal tax liabilities for a tax year at issue. Further, the IRS Appeals officer did not abuse her discretion in denying the taxpayer's request for collection alternatives.

*Cosio, TC, Dec. 62,020(M)*

The levy action on a married couple was sustained. The taxpayers were not entitled to challenge the existence and amounts of their underlying tax liabilities for the tax years at issue during their collection due process (CDP) proceeding. Finally, the taxpayers were not liable for accuracy related penalties. The IRS conceded the

penalties were not approved by a supervisor as required under Code Sec. 6751(b).

*Bunton, TC, Dec. 62,022(M)*

## *Mortgage Interest Deduction*

A married couple was entitled to a deduction for mortgage interest that was credited by a lender to accumulated unpaid interest on the short sale of the home. Through bankruptcy the debt was converted from recourse to nonrecourse. This provided no basis for declining the deduction and applying the settled rules for a short sale and extinguishment of nonrecourse debt, as in *Commissioner v. Tufts*, CA-5, 83-2 USTC ¶9674.

*L. Milkovich, CA-9, 2022-1 USTC ¶150,121*

## *Refund Claims*

A taxpayer's refund claim was not timely and there was no implied equitable exception. This deprived the Court of Federal Claims of jurisdiction. Further, the taxpayer did not allege how he would amend his complaint.

*Peretz, FedCl, 2022-1 USTC ¶150,123*

A tax refund claimed by a married couple was time-barred. The claim was filed well past the six-month period that is allowed for an extension. Another refund claim was limited to travel expense deductions because the taxpayers did not detail grounds for claiming any other deductions and did not identify in its claim the essential requirements for each refund demand. The travel expense were not incurred while away from home and were not ordinary and necessary expenses.

*Deeb, DC Ga., 2022-1 USTC ¶150,125*