



FEDERAL TAX WEEKLY

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Schumer, Manchin Find Agreement on Corporate Minimum Tax, IRS Funding

Senate Majority Leader Charles Schumer (D-N.Y.) and Sen. Joe Manchin (D-W.V.) reached agreement on a scaled back reconciliation bill that would, among other legislative actions, implement a corporate minimum tax of 15 percent and provide new funds to the Internal Revenue Service for compliance and enforcement activities.

Dubbed the Inflation Reduction Act of 2022 (H.R. 5376), Democratic leadership in the Senate state the bill would raise about \$450 billion to cover its spending provisions. The newly negotiated bill is missing key provisions from the Build Back Better Act, which failed to move due to objections by Manchin, such as a targeted income tax on the wealthiest Americans, adjustments to the state and local tax deduction, and a continuation of monthly child tax credit payments.

According to a summary document of the tax proposals, the bill would set a corporate alternative minimum tax rate of 15 percent “on adjusted financial statement income for corporations with profits in excess of \$1 billion.”

The bill would allow corporations “to claim net operating losses and tax credits against the AMT, and would be eligible to claim a tax credit against the regular corporate tax for AMT paid in prior years, to the extent the regular tax liability in any year exceeds 15 percent of the corporation’s adjust finance statement income.”

A separate overall bill summary document notes that the 15 percent corporate alternative minimum tax would raise \$313 billion, citing estimates from the Joint Committee on Taxation.

Money For IRS Enforcement

The reconciliation bill also provides long-requested funds to the IRS to improve taxpayer compliance through an \$80 billion investment over 10 years.

The breakdown of how the funds are to be allocated are \$45.6 billion for enforcement; \$25.3 billion for operations support; \$4.8 billion for business modernization; and \$3.2 billion for taxpayer services.

“By investing \$80 billion over the next ten years for tax enforcement and compliance, the Congressional Budget Office estimates the IRS will collect \$203 billion,” the tax summary document states.

Energy-Related Tax Credits

The Inflation Reduction Act also includes a number of tax credits related to energy policy.

According to the summary document of the energy policy provisions, the bill will provide 10 years of “consumer tax credits to make homes energy efficient and run on clean

energy, making heat pumps, rooftop solar, electric HVAC and water heaters more affordable.”

On the manufacturing side, there is a “\$10 billion investment tax credit to build clean technology manufacturing facilities, like facilities that make electric vehicles, wind turbines and solar panels,” the energy policy summary document states. The bill also allocates an estimated \$30 billion in production tax credits “to accelerate U.S. manufacturing of solar panels, wind turbines, batteries, and critical minerals processing.”

Consumers also will be eligible for tax credits to purchase electric vehicles. This is a means-tested tax credit of up to \$4,000 for the purchase of a used electric vehicle or up to \$7,500 for the purchase of a new electric vehicle. It is aimed at low- and middle-income purchasers of electric vehicles.

Reproduction/Substitute Information Return Requirements Issued

The IRS has provided the specifications for the private printing of red-ink substitutes for the 2022 revisions of information returns, preparing acceptable substitutes of the official forms, and using official or acceptable substitute forms to furnish information to recipients. The procedures cover Form W-2 (Copy A) and Form W-3. Further, the procedures outline the official specifications for a form or statement to be acceptable. These procedures will be reproduced as the next revision of IRS Publication 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.

Rev. Proc. 2021-46, I.R.B. 2021-47, 740, reprinted as Publication 1141, revised November 2021, is superseded.

Rev. Proc. 2022-30

Other tax credits will be available for clean sources of electricity and electricity storage, as well as tax credits for clean fuels and clean commercial vehicles; the reduction of emissions from industrial

manufacturing processes; and in support of domestic production of biofuels.

At press time, no date had been set on when the upper chamber of Congress will consider the Inflation Reduction Act.

Semiconductor Manufacturing Tax Credit Passes House

The CHIPS and Sciences Act of 2022 (H.R. 4346), tax credit for semiconductor manufacturers, passed in the House of Representatives by a 243-187 vote on July 28, 2022, after clearing the Senate a day earlier. No Democrats voted against the bill, although one did vote “present,” while 25 Republicans crossed the aisle to vote with the majority.

The bill includes what is being called the Advanced Manufacturing

Investment Tax Credit. According to a summary document, the ITC “provides a 25 percent investment tax credit for investments in semiconductor manufacturing. The credit covers both manufacturing equipment as well as the construction of semiconductor manufacturing facilities.”

Also covered under the ITC are “incentives for the manufacturing of the specialized tooling equipment required in the

semiconductor manufacturing process,” the summary states.

The document notes that when paired with the more than \$54 billion in grants to semiconductor chip manufacturers, the ITC “would completely erase the 40 percent cost difference for leading-edge semiconductor production.”

At press time, the tax credit for semiconductor manufacturers was on its way to the White House for President Biden’s signature.

IRS Updates Premium Tax Credit Table, Required Contribution Percentage

Rev. Proc. 2022-34

The IRS has updated the applicable percentage table used to calculate an

individual’s premium tax credit and required contribution percentage plan years beginning in calendar year 2023. The percentage table is used to (1) determine

whether an individual is eligible for affordable employer-sponsored minimum essential coverage, and (2) to determine whether an individual is eligible for an exemption

REFERENCE KEY

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

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from the individual shared responsibility payment because of a lack of affordable minimum essential coverage. For plan years beginning in 2023, the required contribution percentage under Code Sec. 36B is 9.12 percent.

The IRS and the Treasury Department have determined that the failsafe exception described in Code Sec. 36B(b)(3)(A)(ii)(III) applies for calendar year 2023 and no additional adjustment under Code Sec. 36B(b)(3)(A)(ii)(II) is required for calendar year 2023. The guidance is effective

Form 8806 Must Be Filed By Fax

The IRS has changed the filing procedures for Form 8806, Information Return for Acquisition of Control or Substantial Change in Capital Structure. Until further notice, submissions of Form 8806 must now be sent to the IRS via fax. The form can no longer be mailed.

Fax Form 8806 to: 844-249-6232.

for tax years and plan years beginning after December 31, 2022.

Rev. Proc. 2014-37, I.R.B. 2014-33, 363 is supplemented.

Alternative Fuel Credit Refund Denial Affirmed

Affordable Bio Feedstock, Inc., CA-11, 2022-1 USTC ¶70,377

The Eleventh Circuit Court of Appeals affirmed a district court summary judgment that taxpayers were not entitled to reimbursement of their protest payments made to the IRS after the IRS clawed back an alternative fuel tax credit it had previously given.

Background

The issue presented in this case was whether the IRS may assess and collect refunds of alternative fuel excise tax credits erroneously paid to taxpayers after it mistakenly issued activity letter registrations to them. The district court determined that because the taxpayers do not dispute their qualifications for the alternative fuel excise tax credit,

and because the IRS did not act improperly in assessing and collecting the erroneously paid refunds under the Appropriations Clause and the Internal Revenue Code, the taxpayers were not entitled to reimbursement of their protest payments.

Court of Appeals Decision

According to the Court of Appeals, the sole issue in this case was whether any court may order that funds be appropriated from the Federal Treasury based on equitable estoppel without specific authorization from Congress. The Supreme Court answered that question with a resounding “no” 32 years ago in *Office of Personnel Management v. Richmond*, 496 U.S. 414, 416, 110 S. Ct. 2465, 2467 (1990).

The court found that the taxpayers sought to recover the money they already

paid to the IRS, and whether or not it was paid “under protest” is irrelevant. The Court of Appeals determined that the only relevant fact is that this money is currently within the Federal Treasury, and so the IRS would have to withdraw money from the Federal Treasury to pay any adverse equitable judgment. Under *Richmond*, the Appropriation Clause’s “explicit rule of decision” for withdrawing funds from the Federal Treasury requires that “the payment of money from the Treasury must be authorized by a statute.” The taxpayers waived any argument that their activities qualified for the alternative fuel tax credit under Code Sec. 6426. The taxpayers did not contend that any other statute was a potential basis for recovery, therefore the taxpayers cannot recover monetary damages from the Federal Treasury.

Affirming DC Fl., 2021-2 USTC ¶70,365

Schedule C Deductions Denied

C.G. Kinney, TC Memo. 2022-81, Dec. 62,090(M)

An individual was not entitled to deduct car and truck expenses and other expenses on Schedule C because he failed to establish that said expenses were incurred during the tax year and that the expenses were ordinary and necessary to his business. The taxpayer was an attorney and had reported his principal business as providing consulting, teaching, and technical services.

Taxpayer’s Arguments

The taxpayer argued that he had paid all business expenses reported on his original Schedule C and also sought a deduction for additional expenses for the tax year at issue on the basis of a revised Schedule C offered at trial. Further, the taxpayer claimed that his expenses incurred were “ordinary and necessary” to protect his business from destruction by those taking advantage of void orders and/or improper rulings to the

detriment of the taxpayer’s ongoing business, goodwill and properties. The taxpayer argued that his vehicles were used for his business operations, because they were registered as commercial vehicles.

Schedule C Other Expenses

The taxpayer argued that the litigation expenses arose when he was engaged in a professional capacity as an attorney

representing his client's interests rather than his own. However, the taxpayer's expenses such as court filings fees and copying, printing, and mailing costs were personal and nondeductible because they were associated with the taxpayer's disbarment, vexatious litigant declaration, and prior property disputes with his neighbors. Moreover, the taxpayer failed to provide evidence that his lawsuits and appeals were filed to protect his Schedule C self-employment business from destruction; therefore, the associated expenses were not ordinary and necessary

expenses associated with his self-employment business. Further, the taxpayer was not entitled to deduct the cost of his life insurance policy since he did not provide proof that he was not directly or indirectly a beneficiary of the policy. Additionally, the taxpayer was not entitled to deduct the cost of his three turbo tax subscriptions or PTIN registration as ordinary and necessary business expenses for his Schedule C business because apart from his own self-serving trial testimony, there was no documentary evidence to substantiate these expenses.

Schedule C Car and Truck Expenses

The taxpayer incorrectly concluded that because his two vehicles were registered as commercial vehicles they were not classified as passenger automobiles. Further, the taxpayer failed to present a contemporaneous travel log or other sufficient evidence necessary to meet the strict substantiation requirements of Code Sec. 274(d).

Government Granted Summary Judgment in Tax Liability Case

Y. Schwartz, DC N.Y., 2022-2 USTC ¶150,181

There was no genuine dispute of material fact as to the amount a married couple owed, the notice which they received of their tax liabilities, or the government's compliance with any other statutory requirements. The Treasury had made income tax assessments against the taxpayers for each of the years at issue, gave notice to the taxpayers of the assessments, and made demand for payment.

Taxpayers' Burden to Prove Invalidity of Tax Assessment

The taxpayers failed to meet their burden to prove the invalidity of the

tax assessment because they offered only general objections to the forms of documentation which the government submitted, the different amounts it requested, and the level of detail it provided.

The taxpayers claimed that the government did not give them proper notice of their unpaid liabilities prior to the government's commencement of the action. However, the notice was issued within 60 days of the date the Treasury made the assessment and the taxpayers did not deny that they received any of the forms of notice.

The taxpayers also argued that the government was not entitled to summary

judgment because its conduct toward the taxpayers violated the Taxpayer Bill of Rights. However, this contention was without merit because the Taxpayer Bill of Rights does not grant new enforceable rights, nor does it confer any individual cause of action. Therefore, the taxpayers offered no evidence to defeat the government's motion for summary judgment. The government successfully demonstrated that there was no genuine dispute of material fact and it met the statutory requirements to have its assessments reduced to judgments.

IRS Customer Account Data Engine 2 Program Highlighted

CL-2022-11: Modernizing Tax Processing Systems

The IRS Chief Information Officer has provided a closer look at the Customer Account Data Engine 2 (CADE 2) program. CADE 2 is a database and multifaceted processing engine that enables faster refund processing, improved fraud detection and faster case resolution. It is at the heart of a complex tax processing environment consisting of hundreds of inter-related systems and impacting nearly every IRS function.

Importance of CADE 2 Program

Following are some basic facts about the CADE 2 program and why it's important:

- The legacy code conversion is the single biggest and most complicated component of this program, which includes 40 years of tax law changes. The Treasury Inspector General for Tax Administration has given the IRS high marks.
- The CADE 2 program has only a small cadre of experts who have specialized knowledge and experience with

Assembly Language Code. It has converted over 90 percent of the core legacy code for processing individual income tax returns to Java, with the goal of finishing this portion of the work in fiscal year 2023.

- When the conversion is complete and tested, the IRS will no longer be reliant on legacy code for core individual tax processing. This means that for future system changes, the updates will be done in Java programming language, which any trained developer can use. This achievement will also help the IRS

to recruit, hire, and train the people it needs to run its modernized tax systems more readily.

Changes in 2022

Following is a quick overview of what's new:

- **Go Paperless.** The CADE 2 Program had record high traffic this year; and now, taxpayers have the option to “go paperless” by choosing to receive more and more IRS notices digitally rather than by paper mail.
- **Customer Callback.** The IRS estimates callers have saved almost 3.9 million hours in hold time since the CADE 2 Program initiated the callback service in 2019.

Montana Disaster Notice Updated

Montana Disaster Relief Notice (MT-2022-01)

A July 5, 2022 notice granting relief to victims of severe storms and flooding that began on June 10, 2022, in parts of Montana was updated by the IRS on July 25, 2022, to include Flathead county.

- **Automated Voicebots.** CADE 2 Program now offers automated voicebots to help taxpayers get the information they need without waiting to speak with an IRS customer service representative.
- **Automated Chatbots on IRS.gov.** To help site visitors navigate IRS.gov to find information on how to make a payment,

CADE 2 Program now offers automated chatbots.

- **Modernized e-File System.** For the first time this tax filing season, the modernized e-File system was available to accept returns from transmitters 24/7, eliminating downtime previously required for planned maintenance.

Tax Professionals Warned of Evolving Identity Theft Scams

IR-2022-143

The IRS and the Security Summit partners have warned tax professionals to beware of evolving identity theft scams perpetrated through phishing emails and SMS-text that are designed to trick practitioners into opening embedded links or attachments that infect their computer systems with the potential to steal personal and client information such as passwords, bank account numbers, credit card numbers, or social security numbers. The IRS has urged tax professionals to work on strengthening their systems and protect client data by avoiding such scams and take necessary measures to protect themselves, such as:

- multi-factor authentication, wherein tax professionals using cloud-based platforms are urged to use multi-factor options like phone, text, or tokens. This

could avoid potential vulnerabilities with authentication done just through email, which may be accessible to identity thieves;

- automatic updating of anti-virus software to prevent scams that target software vulnerabilities; and
- drive encryption and regular backing up of files to help stop theft and ransomware attacks.

The IRS has also identified various kinds of scams that tax professionals should keep an eye out for, such as:

- spear phishing in which scammers take time to identify their victim and craft a more enticing phishing email known as a lure;
- identity thieves who pose as potential clients and exchange several emails with tax professionals before following up with an attachment that they claimed was their tax information. Once the tax

professional click on the embedded URL and/or opened the attachment, malware is secretly downloaded onto their computers, and gives thieves access to passwords to client accounts or remote access to the computers themselves. After the thieves take over the computer systems, they identify pending tax returns, complete them, and e-file them, changing only the bank account information to steal the refund; and

- ransomware attacks that make an unsuspecting tax professional open links or attachments, triggering malware to attack their computer system to encrypt files and the thieves hold the data for ransom.

The IRS has also reminded tax professionals that securing their network to protect taxpayer data is their responsibility as a tax preparer.

TAX BRIEFS

FBAR

The Third Circuit affirmed a District Court decision that an individual willfully filed an inaccurate Report of Foreign Bank and Financial Accounts (FBAR), omitting the larger of his two Swiss bank accounts. Further, the IRS's penalty was below the statutory maximum of 50 percent of the account balance.

Bedrosian, CA-3, 2022-2 usrc ¶50,184.
Affirming a DC Pa. decision, 2017-2 usrc ¶50,349

Foreign Tax Credit

The IRS issued corrections and correcting amendments to final regulations affecting taxpayers that claim credits or deductions for foreign income taxes or claim a deduction for foreign derived intangible income (FDII) (T.D. 9959). These corrections are effective on July 27, 2022 and applicable on or after January 4, 2022.

T.D. 9959, Correcting Amendment; T.D. 9959, Correction

IRS

The IRS has released e-mail advice prepared in less than two hours by attorneys in the IRS's Office of Chief Counsel. In *Tax Analysts*, CA-DC, 2007-2 usrc ¶50,553,

the Court of Appeals for the D.C. Circuit ruled that the IRS could not rely on its so-called "two-hour" rule to avoid disclosure of e-mail sent to IRS field personnel. The documents constituted Chief Counsel Advice, which the IRS is required to publicly disclose under Code Sec. 6110. The items listed below were released as a result.

Chief Counsel Advice Memorandum 202230008

Normalization

The IRS ruled that a commission's (C1's) method of including cost of removal (COR) in the average rate assumption method (ARAM) for the return of excess deferred federal income tax liabilities (EDFIT) to ratepayers was inconsistent with the normalization rules. The COR was not included in the excess tax reserve (ETR). Therefore, the COR should not be included in the ARAM calculations to return the ETR to ratepayers under the normalization rules. The taxpayer's method of excluding COR from the ARAM computation for return of the EDFIT to ratepayers was consistent with the normalization rules.

IRS Letter Ruling 202230005

Tax-Exempt Organizations

The IRS has announced that the following organizations no longer qualify as an organization exempt from income tax under Code Sec. 501(a) as an organization described in Code Sec. 501(c)(3): The Housing League Inc. of Florida, effective revocation date, January 1, 2016; and Legacee Charities Inc. of California, effective revocation date, January 1, 2017.

Announcement 2022-14; Announcement 2022-15

Unreported Income

The Tax Court did not err in sustaining the IRS's deficiency determination because it was supported by substantial evidence. Further, the Tax Court properly inferred fraud based on evidence.

Najle-Rahim, CA-9 (unpublished opinion), 2022-2 usrc ¶50,180, affirming the Tax Court, Dec. 61,563(M)

An individual was liable to pay additions to tax under Code Secs. 6651(a)(1) and 6654(a) due to her failure to report income for the tax years at issue.

Hall, TC, Dec. 62,091(M)