



FEDERAL TAX WEEKLY

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Inflation Reduction Act Advances to the White House

The House of Representatives voted August 12, 2022, to pass the Inflation Reduction Act and move it to the White House for signature.

The budget reconciliation bill (H.R. 5376) passed by a 220-207 vote along party lines, just as it did when it passed the Senate on August 7.

The bill is a slimmed down version of the Build Back Better Act that was passed in the House in 2021, but that bill never made it to the Senate for consideration due to objections by Sen. Joe Manchin (D-W.V.). A compromise was reached in July, although key tax provisions that would have targeted the wealthiest Americans, among other provisions, were cut from the final product.

Revenue Provisions

A key tax provision changed from the point of the introduction of the Inflation Reduction Act to its final form for passage, that being the original version's provision to close the so-called carried interest loophole that was originally estimated to generate \$14 billion in revenue, according to a one-page summary of the budget reconciliation bill released when it was introduced on July 27, 2022.

Replacing that provision is a one percent excise tax on corporate stock repurchases. The tax also applies to the purchase of the stock of a specified affiliate corporation, which is a corporation more than 50 percent owned (by vote or value) by the purchasing corporation, or a partnership in which the purchasing corporation holds more than 50 percent of the capital or profits interest. The excise tax would go into effect beginning in 2023, assuming the bill is passed in the lower chamber of Congress and signed into law by President Biden.

Another change involved the corporate alternative minimum tax. The new tax, proposed to be effective for tax years beginning after 2022, would equal 15 percent of the corporation's adjusted financial statement income for the tax year, reduced by a corporate AMT foreign tax credit. The tax would only apply to corporations with average annual adjusted financial statement income in excess of \$1 billion for the three prior tax years. This threshold is reduced to \$100 million in the case of certain foreign-parented corporations.

However, in order to get Sen. Sinema on board, an exception to the corporate AMT was added, protecting companies that are owned by private equity firms from being exposed to the new tax. A second carve out was added for certain manufacturing companies.

IRS Funding

The passed bill maintains an increase in funding for the Internal Revenue Service of \$80 billion across 10 years, with more than half of that going to improve enforcement activities.

This provision has put the Biden Administration on the defensive to fend off assertions that it will increase audits among the lower earning individuals, prompting a

commitment by the IRS commissioner that individuals under the \$400,000 earnings threshold will not see an increase in their audit rates, followed by a directive from Department of the Treasury Secretary Janet Yellen.

In an August 10, 2022, letter to IRS Commissioner Charles Rettig, Yellen said she is directing “that any additional resources—including any new personnel or auditors that are hired—shall not be used to increase the share of small businesses or households below the \$400,000 threshold that are audited relative to historic levels.”

It is estimated that \$80 billion investment in the IRS will generate \$124 billion, according to the Congressional Budget Office.

Green Energy

The Inflation Reduction Act also features a number of provisions aimed at meeting the White House’s environmental agenda.

Included in the provisions are tax credits related to the purchase of electric vehicles. The bill provides a means-tested tax credit of up to \$7,500 for the purchase

IRS Releases New Data Security Plan to Help Tax Professionals

The IRS, along with other Security Summit partners, has released a new sample security plan designed to help tax professionals protect their data and information. A Written Information Security Plan (WISP), is outlined in a 29-page document that has been worked on by members of the Security Summit.

A security plan should be appropriate to the company’s size, scope of activities, complexity, and the sensitivity of the customer data it handles. There is no one-size-fits-all WISP. For example, a sole practitioner can use a more abbreviated and simplified plan than a 10-partner accounting firm, which is reflected in the new sample WISP from the Security Summit group. Once completed, tax professionals should keep their WISP in a format that others can easily read.

Additionally, the IRS encouraged tax preparers to make the WISP available to employees for training purposes. The IRS recommended tax preparers to store a copy offsite or in the cloud in the event of a natural disaster. Further, the IRS Identity Theft Central pages for tax professionals, individuals and businesses have important details related to security recommendations. Finally, the IRS also recommended tax professionals to create a data theft response plan, which includes contacting the IRS Stakeholder Liaisons to report a theft.

FS-2022-34; IR-2022-147

of new electric vehicle and a means-tested tax credit of up to \$4,000 for a previously owned electric vehicle.

The bill includes new tax credits as well as extensions on expiring credits to produce

electricity from renewable sources; making homes more energy efficient; and other activities aimed at reducing the carbon output of the nation.

CHIPS and Science Act Becomes Law

President Biden signed the CHIPS and Science Act into law after it received bipartisan support in both the House of Representatives and the Senate.

The law (H.R. 4346) “will boost American semiconductor research, development, and production, ensuring U.S.

leadership in the technology that forms the foundation of everything from automobiles to household appliances to defense systems,” the White House said in a fact sheet released August 9, 2022, the day of the signing.

To help with that, the bill contains a 25 percent investment tax credit for the

manufacture of semiconductors as well and the manufacture of the tools to do so in addition to the grants that it provides the semiconductor industry.

REFERENCE KEY

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

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National Tax Advocate Appeals to IRS Commish on Scanning Paper Returns

National Taxpayer Advocate Erin Collins has taken an “unusual step” to appeal an Internal Revenue Service Deputy Commissioners’ decision directly to Commissioner Charles Rettig for reconsideration regarding the use of scanning technology for paper tax returns.

In March, Collins issued a Taxpayer Advocate Directive calling on the agency to work with tax software companies to implement a 2-D barcode on all returns prepared using the software. The barcodes would be printed on the paper returns and, when scanned, would transfer all the information from a paper-filed return without the need for manual entry, which is currently required for all paper returns.

For handwritten returns or returns where the barcode was not readable, the directive called for the agency to use optical scanning technology to automate the processing of those returns.

“If the IRS had implemented scanning technology, it is unlikely the current processing backlog would exist,” Collins said

Kentucky Disaster Notice Updated

An August 1, 2022 notice granting relief to victims of severe storms, flooding, landslide, and mudslides that began on July 26, 2022, in parts of Kentucky was updated by the IRS on August 8, 2022, to include Whitley county.

Kentucky Disaster Relief Notice (KY-2022-06)

in a March 29, 2022, letter outlining the directive.

Collins noted in an August 4 blog post that the IRS Deputy Commissioner for Services and Enforcement Douglas O’Donnell and Deputy Commissioner for Operations Support Jeffrey Tribiano would not be following the directive.

In a July 18, 2022, memorandum for Collins, the deputy commissioners said the agency was exploring various barcoding technologies, but it would not follow the directive related to the scanning of handwritten forms or forms where the barcode could not be read.

Collins stated in the blog that “due to the magnitude of this issue and the unprecedented backlog of paper returns, I took the unusual step of appealing the Deputy Commissioners’ decision to the Commissioner for reconsideration.”

In an August 2, 2022, memorandum to Commissioner Rettig, Collins noted that deputy commissioners’ response “declined to make a commitment to implement

scanning technology to machine read v-coded returns, and it expressly rejected implementing scanning technology to machine read handwritten returns.” She again called for the implementation of the use of some form of barcoding technology by the start of the 2023 filing season and the use of technology to machine read handwritten returns by the start of the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season.

To frame the need, Collins noted in her blog post that the IRS “will have to process an average of about 525,000 paper-filed Forms 1040 per week during the second half of 2022 to eliminate the backlog” that came about as a result of the COVID-19 pandemic. “As of July 15, however, it had processed a weekly average of paper-filed Forms 1040 over the prior four weeks of just 295,000.”

She added: “While we all hope the IRS can work through the backlog this year, I often say that hope is not a business plan.”

AICPA Concerned Over IRS Practitioner Priority Service Line Problems

The American Institute of CPAs highlighted several challenges that tax practitioners are experiencing with the use of the Internal Revenue Service’s Practitioner Priority Service (PPS) line.

In an August 9, 2022, letter to the agency, the AICPA called the “plummeting” PPS line level of service “an area of continuing concern.”

“Anecdotally, we are hearing from tax practitioners everyday regarding their significant PPS line challenges and the impact those challenges have on their interactions with IRS on behalf of taxpayers,” the letter states.

The letter highlights issues with the handling of power of attorney (POA), transcripts, and account management versus automated collections, as well as providing some general recommendations.

In the area of power of attorney, the AICPA offered several recommendations, including having customer service representatives provide a fax number at the start of the call if a practitioner states that the POA likely is not on file and where “a delegated POA is presented and appears in order, do not require the first POA be posted to the Central Authorization File

(CAF) before recognizing the delegated POA.”

The AICPA also noted that customer service representatives “are often inconsistent on what is required to be completed on a POA for it to be valid,” and called for better training of the representatives. The organization noted that the agency “should allow use of POAs that are signed by the taxpayer and the representative calling in—even if it is not yet signed by other listed representatives. While the Internal Revenue Manual (IRM) provides that IRS staff are to accept the POAs, the

IRM is not universally followed in this regard.”

In the area of transcripts, the AICPA asked the IRS to restore customer service representatives’ ability to provide internal screen-print type transactions as well as the IRS message line that existed solely to provide internal and other types of transcripts to practitioners as they waited.

“PPS CSRs have indicated lately that they will not provide internal screen-print type transcripts by fax or secure mailbox; they are only willing to use U.S. mail, which takes 4 to 6 weeks for receipt,” the AICPA stated, adding that the delay makes it more difficult to resolve issues in a timely manner.

The AICPA also called for the elimination of the so-called “law line.”

“Practitioners should not need to consult with IRS staff on interpretations of

law—the practitioners should be competent in those areas. Moreover, the breadth of knowledge of the ‘law line’ staff is often not high or incorrect information is given,” the letter states

The organization suggested the law line staff be utilized in other areas of the PPS line to help alleviate long wait times.

Another suggestion forwarded by the AICPA was that the IRS restore the ability of accounts management (AM) staff to grant cycle holds for accounts not in collection.

“Recently, AM has been unwilling to grant cycle holds, referring such requests to ACS [automated collection system],” the letter states. “Restoring authority to grant cycle holds with AM before an account goes to Collection will return more speed and efficiency in resolving issues, will

eliminate needless Collection Due Process cases, and will keep more cases out of the Taxpayer Advocate Service as well.”

That being said, the AICPA suggested that automated collection system be empowered to resolve more account issues, such as penalty abatement and other account-related issues and authorize PPS CSRs to grant 180-day holds where correspondence was sent in.

Other general recommendations included staffing the PPS line with “highly trained, highly empowered personnel;” discontinuing the practice of asking practitioners for their social security number and date of birth; enhancing the new automatic return call system; providing more supervisor availability; and enabling PPS CSRs to handle international issues.

Trump’s Tax Returns Can Be Disclosed to Ways and Means Committee

Committee on Ways and Means, CA-D.C., 2022-2 USTC ¶150,189

The D.C. Circuit, affirming the District Court, held that President Trump’s tax returns could be disclosed to the House Ways and Means Committee. The court concluded that the Committee’s request for documents was made in furtherance of valid legislative purpose. The request did not violate separation of powers principles under any of the potentially applicable tests. The burden on the executive branch and one of the parties was relatively minor. Code Sec. 6103(f)(1) was not facially unconstitutional because many circumstances existed under which it could be validly applied. The committee chairman

could request returns and return information to inform legislation concerning the tax code or the laws provisioning the Treasury. The Treasury’s decision to comply with the request did not violate the former president and his related parties’ First Amendment rights. The former president and related parties failed to state a claim for the reason to not show that Treasury’s decision to comply with the request would not have happened absent a retaliatory motive.

Code Sec. 6103(f) Is Not Unconstitutional

Code Sec. 6103(f)(1) authorizes the Secretary of the Treasury to provide the

Ways and Means Committee with any return or return information on request. In objecting to disclosure in this case, Trump and the related parties whose returns would be disclosed argued that this provision is facially unconstitutional because it fails to state a valid rule. They argued that the statute had to include a requirement that the request have a legitimate legislative purpose. However, the court found that the correct test was whether any circumstances exist in which the law would be valid. As this statute can be properly applied in numerous circumstances, the court concluded it is constitutional.

Affirming an unreported DC D.C. opinion.

ExxonMobil’s Foreign Oil Agreements Were Mineral Leases, Not Sales

Exxon Mobil Corporation, CA-5, 2022-2 USTC ¶150,188

The Fifth Circuit Court of Appeals has rejected ExxonMobil’s billion dollar refund

claim, holding that ExxonMobil’s oil and gas agreements with Qatar and Malaysia were mineral leases, rather than mineral sales.

In its tax return filings for years 2006-2009, Exxon treated its mineral

transactions with Qatar and Malaysia as leases. However, Exxon amended its returns and filed a billion dollar refund claim, treating the mineral transactions as sales and claiming foreign-tax credits on the money

now included in its U.S. taxable income. The IRS rejected Exxon's refund claim and imposed a \$200 million penalty for a filing an excessive refund without a reasonable basis. The district court ruled for the government, finding that the mineral agreements were leases and not sales. The district court also rejected the penalty and ordered a refund. Both parties appealed.

The Court of Appeals ruled that Qatar and Malaysia retained an economic interest in the mineral deposits that Exxon extracts. In exchange for giving Exxon rights to drill and extract offshore minerals, the court ruled that Qatar and Malaysia hold a right to share in the minerals produced. Specifically, Qatar receives a percentage of petroleum sale proceeds, as well as an additional amount based on gas delivery to Qatari facilities. Malaysia receives a set percentage of oil extracted, plus

additional payments based on oil and gas production. These uncapped and unlimited royalties were found by the court to be a "textbook example" of an economic interest, which was not lessened by any value Exxon was deemed to have added through transportation and processing.

The court also rejected Exxon's argument that its extraction rights were satisfied by a production payment, rather than traditional royalties, noting that Qatar and Malaysia received no guaranteed price based on Exxon's mineral extraction. Relying on well-established case law, the court held that Qatar's and Malaysia's right to income through royalties depended solely on minerals and their entitlement to supplemental income did not eliminate their economic interest.

Additionally, Exxon Mobil was found to have a reasonable basis for requesting

an excessive refund. Affirming the district court's rejection of the government's penalty for filing an excessive refund claim without a reasonable basis, the court noted that the lease/sales issue is notoriously complex and that case law supporting Exxon Mobil's claims could be broadly interpreted.

The court also determined that Exxon could only deduct the excise tax it actually paid after claiming a renewable fuel credit. Likening credits to coupons, the court affirmed the district court's holding that credits reduces the amount otherwise owed. As such, Exxon's credit reduced its excise tax liability such that it can only deduct the excise tax it paid out of pocket.

Exxon Mobil Corporation, CA-5, affirming a DC Tex. opinion, 2021-1 ustc ¶50,106.

Missouri Victims of Storm and Flooding Granted Tax Relief

IR-2022-149

The IRS has extended tax relief to the victims of a storm in parts of Missouri until November 15, 2022 to file various individual and business tax returns and make tax payments. The relief applies to affected taxpayers in the Independent City of St. Louis, as well as St. Charles, Montgomery, and St. Louis counties.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on July 25, 2022. As a result, the affected taxpayers will now have until November 15, 2022, to file returns and pay any taxes that

were originally due during this period. This includes individuals who had a valid extension to file their 2021 income tax return that was due on October 17, 2022. In addition, the quarterly payroll and excise tax returns normally due on August 1 and October 31, 2022, are also now due on November 15, 2022. Penalties on payroll and excise tax deposits due on or after July 25 and before August 9, 2022, will be abated as long as the deposits were made by August 9, 2022.

The November 15, 2022 deadline does apply to estimated income tax payments due on September 15, 2022.

Affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayers who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the

affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227.

Casualty Losses

Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred (2022), or the return for the prior year (2021). Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number –"DR-4665-MO"– on any return claiming a loss. Finally, the IRS has requested that taxpayers see Publication 547 and visit [disasterassistance.gov](https://www.irs.gov/disasterassistance) for information on disaster recovery.

Charitable Contribution Deductions No Longer Allowed for Organizations

Announcement 2022-16

The IRS has announced that the following organizations no longer qualify under Code Sec. 501(c)(3) and Code

Sec. 170(c)(2) as organizations for which deductions for charitable contributions are allowed.

■ Sasi, Inc., of New York. Effective revocation date: January 1, 2017.

■ American Friends of The Jonathan Institute, of New York. Effective revocation date: March 1, 2017.

■ United Lao Council for Peace Freedom and Reconstruction, of California.

- Effective revocation date: January 1, 2017.
- Yale Club of Princeton, Inc., of New Jersey. Effective revocation date: April 1, 2017.
 - Sherman Oaks Health System, of California. Effective revocation date: February 1, 2017.
 - Missouri Athletic Club Foundation for the Arts, of Missouri. Effective revocation date: September 1, 2016.
 - Crystal Lake Country Club, of Illinois. Effective revocation date: June 23, 2021.
 - Mercy Foundation Group, Inc., of Florida. Effective revocation date: January 1, 2015.
 - Community Link Foundation, Inc., of Michigan. Effective revocation date: January 1, 2018.
 - Service Dogs by Warren Retrievers, Inc., of Virginia. Effective revocation date: January 1, 2017.
 - Creating A New Outlook, Inc., of Wisconsin. Effective revocation date: January 1, 2018.
 - West Coast Charity For The Children, of Oregon. Effective revocation date: January 1, 2017.
 - Cancer Support Services, of Tennessee. Effective revocation date: January 1, 2014.
 - Maritime Pilots Institute, of Louisiana. Effective revocation date: January 1, 2018.
 - Sisterhood on the Move Inc., of Massachusetts. Effective revocation date: January 1, 2017.
 - Marilyn Jane Foundation, of Michigan. Effective revocation date: June 4, 2014.
 - Batchu Foundation, of Illinois. Effective revocation date: February 6, 2017.
 - Giles County Partnership for Excellence, of Virginia. Effective revocation date: July 1, 2016.
 - High Rising Equine Rescue, Inc., of New Jersey. Effective revocation date: January 1, 2016.
 - Miyb California, of California. Effective revocation date: January 1, 2016.
 - Save Our Children USA, Inc., of Florida. Effective revocation date: January 1, 2017.

However, contributions made to the organization before August 15, 2022, will generally be deductible, unless made by a person who (1) knew of the revocation, (2) was aware that the revocation was imminent, or (3) was responsible, in whole or in part, for the activities or deficiencies that gave rise to the loss of qualification.

If the organization files suit, in a timely manner, for declaratory judgment under Code Sec. 7428, challenging the revocation of its status as an eligible donee of deductible charitable contributions, Code Sec. 170 contributions will continue to be deductible. Protection under Code Sec. 7428(c) would begin on August 15, 2022. The maximum amount of individual contributions protected would be \$1,000, with a husband and wife treated as one taxpayer. This protection is not afforded to anyone who was responsible, in whole or in part, for the acts or omissions of the organization that resulted in revocation of qualification.

IRS Reminds Taxpayers Using Heavy Vehicles of August 31 Deadline

IR-2022-146

The IRS reminded taxpayers who registered, or are required to register, large trucks and buses to file Tax Year 2022 Form 2290, Heavy Highway Vehicle Use Tax Return. The deadline to file and pay is August 31, 2022, for vehicles used on the road during July 2022. The filing deadline is not tied to the vehicle registration date. Regardless of the vehicle's registration renewal date, taxpayers must file Form

2290 by the last day of the month following the month in which the taxpayer first used the vehicle on a public highway during the taxable period. Taxpayers, who first used the vehicles on a public highway during the month of July 2022, must file Form 2290 and pay the appropriate tax between July 1 and August 31, 2022. For any additional taxable vehicles placed on the road during any month other than July, tax payable should be prorated for the months during which it was in service.

The highway use tax applies to highway motor vehicles with a taxable gross weight of 55,000 pounds or more. Taxpayers who are unsure if they must file can use the IRS online tool. The "Understanding Form 2290 – Heavy Highway Vehicle Use Tax" recorded webinar is also available. More information can be found at <https://www.irs.gov/businesses/small-businesses-self-employed/trucking-tax-center>.

Educators Reminded About 2022 Educator Expense Deduction Rise

IR-2022-148

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 (or, if married filing jointly with another educator, \$500, but not more than \$250 for each

spouse). The limit will rise in \$50 increments in future years based on inflation adjustments.

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, counsellor, 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 home schooling or non-athletic supplies for courses in health or

physical education. The IRS urged taxpayers to file electronically and choose direct deposit for any refund. IRS also urged the taxpayers to make use of its electronic payment platforms such as IRS Direct Pay for speed and convenience in making tax payments. Finally, the IRS reminded taxpayers who had requested more time to file their returns that the deadline is October 17, 2022, and has urged them to file it at the earliest and electronically to avoid delay in processing the returns.

TAX BRIEFS

Alimony Deduction

The Court of Appeals affirmed the decision of the Tax Court denying the taxpayer alimony-related deductions under Code Sec. 215 because these payments did not qualify as spousal maintenance or alimony under Code Sec. 71. The payments did not meet the survival criterion under Code Sec. 71(b)(1)(D) which was the primary basis for the Tax Court's decision in this case.

A.J. Redleaf, CA-8, 2022-2 USTC ¶150,191

Annuities

In each of four cases, the investment advisory fees from an annuity contract were not treated as amounts received by the owner of that annuity contract under Code Sec. 72(e). The fees were an expense of the adviser contract, not a distribution to the owner. The fees did not constitute

compensation for services related to any assets of the owner other than said contract or any services other than investment advice services. The taxpayer was a life insurance company and offered certain non-qualified deferred annuity contracts. The fees were integral to the operation of the adviser contract.

IRS Letter Ruling 202232004; IRS Letter Ruling 202232005; IRS Letter Ruling 202232012; IRS Letter Ruling 202232013

IRS

The IRS has released email advice prepared in less than two hours by attorneys in the IRS's Office of Chief Counsel. In *Tax Analysts*, CA-DC, 2007-2 USTC ¶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 email sent to IRS field personnel. The documents constituted Chief Counsel Advice, which the IRS is required to publicly disclose under Code Sec. 6110. The item listed below was released as a result.

Chief Counsel Advice Memorandum 202232015

Refined Coal Tax Credit

A limited liability partnership (LLC), that produced refined coal and was formed to claim a tax credit enacted by the Congress, was held to be a bona fide partnership. Further, the Court of Appeals affirmed that partnerships formed to conduct activities that have been made profitable by tax credits engaged in a legitimate business activity for tax purposes.

Cross Refined Coal, LLC, CA-D.C., 2022-2 USTC ¶150,190