



FEDERAL TAX WEEKLY

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President Biden Signs Inflation Reduction Act Into Law

President Biden, on August 16, 2022, signed the Inflation Reduction Act (P.L. 117-169) into law following its passage along party lines in both chambers of Congress.

The law is a slimmed down version of the Build Back Better Act that passed the House in 2021 but failed to even come up for a vote in the Senate due to opposition primarily from Sen. Joe Manchin (D-W.V.). The Inflation Reduction Act did manage to keep some of the failed Build Back Better Act's provisions in terms of generating revenues from corporations and wealthy taxpayers, as well as meeting some of the White House's goals in the energy and health care sectors.

The law includes a one percent excise tax on stock repurchases, which goes into effect beginning in 2023, as well as a new corporate alternative minimum tax, although that does not apply to companies owned by private equity funds or certain manufacturing.

On the individual side, the IRS received a boost in funding of \$80 billion across 10 years, part of which will be used to hire new agents who will help to the agency close the tax gap and get the wealthiest individuals to pay their fair share of taxes. Department of the Treasury Secretary Janet Yellen has directed the Internal Revenue Service to not use any of the new funding to increase the share of small businesses or households making \$400,000 or less that are exposed to audit.

To help meet the Biden Administration's environmental goals, the law includes tax credits for electric vehicle purchases, as well as new tax credits and extensions on expiring tax credits to produce electricity from renewable sources; making homes more energy efficient; and other activities aimed at reducing the carbon output of the nation.

IRS and Treasury Release Initial Information on Electric Vehicle Tax Credit Under Inflation Reduction Act

The Treasury Department and the IRS have published initial information on changes to the tax credit for electric vehicles strengthened by the Inflation Reduction Act (the Act). The Act includes tax incentives designed to lower costs for working families, grow the clean energy economy and strengthen the country's supply chains. Starting August 17, 2022, the Act's new requirement for qualifying electric vehicles that were assembled in North America goes into effect.

Additionally, the IRS and Treasury Department has released guidance and frequently asked questions (FAQs) information on how the North America final assembly requirement will work. Consumers can determine what vehicles are eligible and claim a credit of up to \$7,500 after their purchase. Starting January 1, consumers may be eligible for a tax credit for used or previously owned cars and businesses may be eligible for a new

commercial clean vehicle credit. Further, the Department of Transportation and Department of Energy published new resources to assist consumers identifying eligible vehicles. Consumers and auto dealers can enter the Vehicle Identification Number (VIN) of a specific vehicle into a website to determine its eligibility for the tax credit. The Department of Energy published a list of Model Year 2022 and early Model Year 2023 electric vehicles that likely meet the final assembly requirement.

Further, the final assembly requirement will not apply until after the Inflation Reduction Act's enactment on August 16, 2022. Individuals who entered into a written binding contract to purchase a new qualifying electric vehicle before August 16, 2022, but do not take possession of the vehicle until on or after that date can claim the credit based on the rules that were in effect before the Act's enactment. Finally, the Inflation Reduction Act made several additional changes to the electric vehicle tax credit that will take effect starting in 2023.

Fourth Quarter 2022 Interest Rates Increase

The over and underpayment interest rates for the fourth quarter of 2022 have increased. The fourth quarter begins on October 1, 2022. The rates will be:

- 6 percent for overpayments
- 5 percent for corporate overpayments
- 6 percent for underpayments, and
- 8 percent for large corporate underpayments

The interest rate for the part of a corporate overpayment exceeding \$10,000 is 3.5 percent.

Computation of Fourth Quarter 2022 Interest Rates

The IRS computes these interest rates quarterly.

For noncorporate taxpayers:

- the overpayment rate is the short-term rate plus 3 percent, and
- the underpayment rate is the short-term rate plus 3 percent.

For corporate taxpayers:

- the underpayment rate is the short-term rate plus 3 percent.
- the overpayment rate is the federal short-term rate plus 2 percent.
- the rate on the part of a corporate overpayment that exceeds \$10,000 for a tax period is the short-term rate plus 0.5 percent.
- the underpayment rate for large corporations is 5 percent.

Rev. Rul. 2022-15; IR-2022-150

Yellen Seeks Plan From IRS Regarding New Funds

Department of the Treasury Secretary Janet Yellen is seeking a detailed plan from the Internal Revenue Service on how it plans to spend to the \$80 billion in additional funds that the agency received as part of the Inflation Reduction Act that was signed by President Biden on August 16, 2022.

"I would like the IRS to work closely with the Deputy Secretary to identify specific operational initiatives and associated timelines that will improve taxpayer services, modernize technology, and increase equity in our system of tax administration by pursuing tax evasion by those at the top who today do not pay their tax bill," Secretary Yellen said in an August 17,

2022, memorandum to IRS Commissioner Charles Rettig.

In the memo, she directed the IRS to deliver an operational plan within six months, which "should include details on how resources will be spent over the ten-year horizon on technology, service equipment, and personnel. This operational plan is key to ensuring the public and Congress are able to hold the agency accountable as it pursues needed improvements."

Yellen added that she is "prepared to approve the near-term use of funds to improve services for next filing season, but we should treat this plan as a prerequisite for expending these resources more broadly, as I think there is value in thinking

carefully over the course of the next few months how work should be prioritized and sequenced to achieve our goals."

Replacing Those Who Will Be Retiring

Yellen's memo comes in the wake of GOP messaging that states the IRS is looking to hire 87,000 new agents that will be coming after the lower and middle class individuals.

Yellen reiterated in her memo that new funds from the Inflation Reduction Act "will not result in households earning \$400,000 per year or less or small

REFERENCE KEY

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

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businesses seeing an increase in the chances they are audited relative to historic levels. Instead, they will allow the IRS to work to end the two-tiered system, where most Americans pay what they owe, but those at the top of the distribution often do not.”

Much of the new hiring will go to simply maintaining employment levels as the funds will help “to replace the attrition that is on the horizon from the expected retirement of at least 50,000 employees over the next five years,” the memo states. At this time, the official was not able to provide a breakdown in the functions of the people expected to retire, but the official emphasized that these are simply not new employees that would be added to the agency.

A Treasury official noted that revenue agents will not be the main focus of the hiring, but rather the majority will be individuals who will help improve customer service through IT upgrades and serving as customer service representatives. The IRS will also seek out auditors with specialized experience who can enforce the tax laws against high income individuals and corporations who avoid paying their tax bill.

Kentucky Disaster Notice Updated

A August 1, 2022 notice granting relief to victims of severe storms, flooding, landslide and mudslide that began on July 26, 2022, in parts of Kentucky was updated by the IRS on August 15, 2022, to include Cumberland county.

Kentucky Disaster Relief Notice (KY-2022-06)

The official noted that the number of IRS auditors that can handle the complex returns of high income individuals and corporations is roughly the same number today as the agency had during World War II, which allows the IRS to exam about 7,500 returns of the nearly 4.5 million it receives in this category.

The Criminal Investigations unit is not expected to see a spike in its number of employed. The official points out that the CI unit accounts for less than three percent of the total IRS workforce (less than 2,000 employees).

Closing The Tax Gap

The aim of the hiring of specialized auditors and agents that target high earners

is to close the tax gap. The official noted that with the additional resources from the Inflation Reduction Act, the IRS could collect an additional \$400 billion over the next 10 years, although others, including former IRS Commissioner Charles Rossotti puts the collection amount at more than \$1 trillion during the additional funding time period, according to testimony he provided to the Senate Finance Committee’s Subcommittee on Taxation and IRS Oversight during a May 11, 2021 hearing.

The Treasury official said the IRS is unable to collect 15 percent of the taxes that are owed, and over the next ten years, the tax gap could reach as high as \$7.5 trillion.

Final Rule on Disclosure of Information to State Officials Regarding Tax-Exempt Organizations Issued

T.D. 9964

The IRS has provided guidance to states regarding the process by which they may obtain or inspect certain returns and return information, including information about final and proposed denials and revocations of tax-exempt status, for the purpose of administering State laws governing certain tax-exempt organizations and their activities. The guidance amends existing regulations to reflect changes to the Internal Revenue Code made by the Pension Protection Act of 2006 (PPA). Moreover, the guidance will affect the states choosing to obtain information from the IRS, as well as the organizations and taxable persons whose tax information is disclosed. The final regulations are applicable on and after August 16, 2022.

Background

Code Sec. 6104(c), as amended by the PPA, governs the circumstances under which the IRS may disclose to State officials certain information about organizations described in Code Sec. 501(c)(3), including private foundations (charitable organizations), that have applied for recognition as organizations described in Code Sec. 501(c)(3), certain other exempt organizations, and taxable persons. On March 15, 2011, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (NPRM) (REG-140108-08) in the Federal Register. This guidance adopts the NPRM with certain changes explained in the Summary of Comments and Explanation of Provisions.

Disclosure of Certain Information to State Officials

The following are some of the major revisions made by the IRS and the Treasury:

- The IRS may, under Code Sec. 6104(c) (1) and (2), disclose or make available to the appropriate State officer (ASO) (or to a person designated by the ASO) the returns and return information with respect to: (1) any organization described or formerly described in Code Sec. 501(c)(3) and exempt or formerly exempt from taxation under Code Sec. 501(a) (a charitable organization); or (2) any organization that has applied for recognition as an organization described in Code Sec. 501(c)(3);
- Upon written request by an ASO, the IRS may disclose or make available to

the ASO (or to a person designated by the ASO) returns and return information under Code Sec. 6104(c)(3) regarding any organization described or formerly described in Code Sec. 501(c) other than Code Sec. 501(c)(1) or (3).

- The IRS may require an ASO to execute a disclosure agreement or similar document specifying the procedures, terms, and conditions for the disclosure or inspection of information under Code Sec. 6104(c); and
- Upon a determination that an ASO has failed to comply with the requirements of Code Sec. 6103(p)(4), the IRS may take the actions it deems necessary to ensure compliance, including the

IRS Announces Access to Multilingual Tax Information to Expand Access

The IRS, in its attempt to expand access to different taxpayer communities, announced the addition of a translation of the Instructions for Form 8821, Tax Information Authorization (TIA), in traditional Chinese, while the instructions were already available in English and Spanish. The TIA is a taxpayer's written authorization designating one or more third parties, to receive and view the taxpayer's information. Further, information about IRS services available in languages other than English is available <https://www.irs.gov/help/languages>.

IR-2022-152

refusal to disclose any further returns or return information to the ASO until the IRS determines that the

requirements of Code Sec. 6103(p)(4) have been met.

IRS Announces New Sign-In Process for Form 990-N Filers

The IRS has announced that beginning August 2022, smaller charities that are eligible and choose to file Form 990-N, Electronic Notice for Tax-Exempt Organizations (e-Postcard), must sign into the IRS modernized authentication platform using either their active IRS username or create an account with ID.me, the current IRS credential service provider. Further, filers have three options when

accessing the Form 990-N submission page. They can sign in with their active IRS username, sign in with their existing ID.me account or create a new ID.me account if they don't have an active IRS username credential.

Additionally, the IRS informed filers that ID.me account creation requires an email address and multifactor authentication. Filers who have an existing IRS

username and register for an ID.me account must use the same email address. Further, filers can find filing instructions for Form 990-N here. Finally, the IRS informed filers that the filing process has not changed for organizations that file Form 990, Return of Organization Exempt from Income Tax, or Form 990-EZ, Short Form Return of Organization Exempt From Income Tax.

Victims of Missouri Severe Storms and Flooding Granted Tax Relief

Missouri Disaster Relief Notice (MO-2022-07)

The president has declared a federal disaster area in Missouri. The disaster is due to severe storms and flooding that began on July 25, 2022. The disaster area includes:

- Independent City of St. Louis;
- Montgomery;
- St. Charles; and
- St. Louis

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

Missouri Filing Deadlines Extended

The IRS extended certain deadlines falling on or after July 25, 2022, and before

November 15, 2022, to November 15, 2022. This extension includes filing for most returns, including:

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

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

Missouri Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after July 25, 2022, and before November 15, 2022. Further, taxpayers have until November 15, 2022, to perform other time-sensitive actions due on or after July 25, 2022 and before November 15, 2022.

The IRS excused late penalties for employment and excise tax deposits due on or after July 25, 2022, and before August 9, 2022. But, the taxpayer must make the deposits by August 9, 2022.

Casualty Losses

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

Taxpayers claiming a disaster loss on their 2021 or 2022 return should write disaster designation at the top of the return: "Missouri Severe Storms and Flooding".

This will allow the IRS to speed refund processing.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should:

- add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return; and
- submit it to the IRS.

IRS Appeals Seeks Public Comments to Formulate Policies for Video Conferencing

The IRS Independent Office of Appeals (Appeals) has invited public input on best practices for conducting video conferences with taxpayers and tax professionals who have cases pending before it. If a case qualified for an appeal, the office of Appeals would review the issues with a fresh, objective perspective and schedule a conference with the taxpayer. Appeals has offered conferences by telephone, video or in person and also resolved taxpayer's dispute through correspondence. To meet taxpayer needs during the COVID-19 pandemic, Appeals expanded access to video conferences, allowing taxpayers to be visually seen, heard and share documents without going to an Appeals office. Video Conferencing has remained an option in Appeals since it attracted positive feedback from taxpayers and tax professionals. Public comments can be sent to AP.Taxpayer.Experience@irs.gov by Wednesday, November 16, 2022.

IR-2022-154

Addition of "American Single Malt Whisky" to Federal Regulations Proposed

The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend the standards of identity regulations for distilled spirits to include "American single malt whisky" as a type of whisky that is a distinctive product of the United States. Comments may be submitted in writing or through the TTB Internet website. The due date for comments on this notice is September 27, 2022.

Notice, No. 213, Alcohol and Tobacco Tax and Trade Bureau, 87 FR 45727, July 29, 2022

Date for Applying Foreign Branch Transaction Rules Extended One Year

Notice 2022-34

A one-year extension has been granted for applying the Code Sec. 987 final regulations, and certain related final regulations covering foreign branch transactions of U.S. corporations. The applicability date in the regulations will be amended, but taxpayers can rely on the Notice until the regulations are amended.

The 2016 final regulations and related 2019 final regulations will now apply to tax years beginning on or after December 7, 2023. For a calendar year taxpayer, this means that the regulations apply to tax years beginning on January 1, 2024.

A taxpayer may choose to apply the 2016 final regulations, related temporary regulations (either revoked on May 13, 2019, or expired December 6, 2019, as applicable) and final 2019 regulations, to tax years beginning after December 7, 2016, and before the amended

applicability date. Taxpayer may also rely on certain of the proposed regulations.

When Did the Regulations Apply and What Do They Cover?

A foreign branch of a U.S. corporation records its operations in its foreign currency. The income or loss is then translated into U.S. dollars for purposes of calculating U.S. tax. A foreign branch that takes these steps is referred to as a qualified business unit (QBU). A QBU must compute its taxable income or loss separately in its functional currency and then translate the income or loss at the appropriate exchange rate.

Final and temporary regulations issued at the end of 2016 provided long-awaited

guidance on the Code Sec. 987 rules (T.D. 9794 and T.D. 9795). The regulations were to be applied to tax years beginning on or after one year after the first day of the first tax year following December 7, 2016. For a calendar year taxpayer, this was January 1, 2018. Subsequent final regulations were issued in 2019 (T.D. 9857).

Following five deferral notices (Notice 2017-57, Notice 2018-57, Notice 2019-65, Notice 2020-73 and Notice 2021-59), the regulations were to apply to tax years beginning on or after the first day of the first tax year following December 7, 2022, or January 1, 2023, for a calendar year taxpayer.

Comment: As a result of an Executive Order, a number of significant regulations that required additional review were identified, including the Code Sec. 987 regulations. Changes are being considered that would allow taxpayers to elect to apply

alternative rules for transitioning to the final regulations and for determining Code Sec. 987 gain or loss.

The final 2016 regulations cover:

- the determination of taxable income of a Code Sec. 987 QBU (section 987 QBU), and
- the timing, amount, character, and source of Code Sec. 987 gain or loss.

The regulations also amended existing regulations under Code Secs. 861, 985, 988, and 989.

The related 2016 temporary regulations added an annual deemed termination election, among other rules. The 2019 regulations finalized the temporary regulations dealing with combinations and separations of section 987 QBUs and the recognition and deferral of foreign currency gain or loss under Code Sec. 987 in connection with certain QBU terminations and certain other transactions.

Notice 2021-59, I.R.B. 2021-43, 664; Notice 2020-73, I.R.B. 2020-41, 886; Notice 2019-65, I.R.B. 2019-52, 1507; Notice 2018-57, I.R.B. 2018-26, 774; and Notice 2017-57, I.R.B. 2017-42, 325, are modified, and as modified are superseded.

CUT Method Allocation to Determine Arm's Length Royalty Rate Not Proper

Medtronic, Inc. and Consolidated Subsidiaries, TC Memo. 2022-84, Dec. 62,094(M)

A leading medical technology company did not meet its burden of showing that its allocation for determining the arm's-length royalty rate to be paid by a Puerto Rican subsidiary to its U.S. parent under the comparable uncontrolled transactions (CUT) method and its proposed unspecified method satisfied the arm's-length standard. Further, the IRS' modified comparable profits method (CPM) resulted in an abuse of discretion and that the wholesale royalty rate for devices and leads was

AFRs Issued For September 2022

Rev. Rul. 2022-17

The IRS has released the short-term, mid-term, and long-term applicable interest rates for September 2022.

Applicable Federal Rates (AFR) for September 2022

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	3.05%	3.03%	3.02%	3.01%
110% AFR	3.36%	3.33%	3.32%	3.31%
120% AFR	3.67%	3.64%	3.62%	3.61%
130% AFR	3.98%	3.94%	3.92%	3.92%
Mid-Term				
AFR	2.93%	2.91%	2.90%	2.89%
110% AFR	3.23%	3.20%	3.19%	3.18%
120% AFR	3.52%	3.49%	3.47%	3.46%
130% AFR	3.82%	3.78%	3.76%	3.75%
150% AFR	4.42%	4.37%	4.35%	4.33%
175% AFR	5.15%	5.09%	5.06%	5.04%
Long-Term				
AFR	3.14%	3.12%	3.11%	3.10%
110% AFR	3.46%	3.43%	3.42%	3.41%
120% AFR	3.77%	3.74%	3.72%	3.71%
130% AFR	4.10%	4.06%	4.04%	4.03%

Adjusted AFRs for September 2022

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	2.31%	2.30%	2.29%	2.29%
Mid-term adjusted AFR	2.22%	2.21%	2.20%	2.20%
Long-term adjusted AFR	2.38%	2.37%	2.36%	2.36%

The Code Sec. 382 adjusted federal long-term rate is 2.38%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 2.54%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.70% and 3.30%, respectively, however, under Code Sec. 42(b)(2), the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 3.60%.

48.8 percent. Accordingly, the wholesale royalty rate for devices covered by the Swiss supply agreement was 48.8 percent.

Taxpayer's Position

The taxpayer asserted that the Pacesetter agreement, which included two documents:

a patent license agreement and a settlement agreement, entered into by the taxpayer and another entity, could be reliably used to establish the royalty rate for the intangibles licensed to the Puerto Rican subsidiary. It also contended that the Pacesetter agreement was appropriate for use as a CUT.

IRS' Position

The IRS claimed that the CPM was the best method and that the Pacesetter agreement was not a CUT under the regulatory standards. Further, the IRS rejected the taxpayer's proposed unspecified method and argued that it was based upon the same flawed methodology used in the taxpayer's CUT method. Moreover, the IRS contended that the taxpayer proposed to correct deficiencies in its CUT by making adjustments once again to the Pacesetter agreement which had produced the deficiencies in the first place, referring to the Service's arguments in a previous related case that the Pacesetter agreement was not comparable to the Puerto Rican subsidiary's licenses.

Analysis of the Tax Court

The Tax Court agreed with the IRS that under the taxpayer's proposed unspecified

method the U.S. parent's royalty rate was not commensurate with income. However, the court relied upon the taxpayer's methodology as setting forth a framework for determining the royalty rate for devices and leads and made adjustments to account for the inadequacy of the CUT method. The taxpayer's unspecified method was used to address prices and profits and after taking into account both parties' experts' testimonies, the Tax Court concluded that neither party put forth the best method. The Tax Court further made an adjustment which increased the allocation of remaining profits to the U.S. parent as a way of accounting for the imperfections of the CUT method, and differences in profit potential, and imperfections of the CPM. Additionally, the above adjustment took into account the taxpayer's unsupported increase in asset intensity. Changing the allocation to

80–20 resulted in a wholesale royalty rate of 48.8 percent.

Swiss Supply Agreement

A European wholly owned subsidiary, which was the second-tier subsidiary of the U.S. parent, the Puerto Rican subsidiary, and the U.S. parent entered into a supply agreement in which the European subsidiary agreed to assist the Puerto Rican subsidiary by manufacturing and supplying the U.S. markets with devices necessary to meet customer demand. The Tax Court concluded that the issue should be resolved in the same manner as the Code Sec. 482 issue regarding devices; therefore, the wholesale royalty was 48.8 percent for devices covered by the Swiss supply agreement as well.

IRS Issues Audit Techniques Guides for Oil and Gas and Petroleum Industries

Oil & Gas Audit Technique Guide IRPO ¶215,500; Petroleum Refining Audit Technique Guide, IRPO ¶215,500

The IRS has posted an Audit Techniques Guide (ATG) to its website that provides information to enable examiners to effectively audit issues pertaining to the Oil and Gas industry. An ATG focuses on developing highly trained examiners for particular market segments by

presenting examination techniques, common and unique industry issues, business practices, industry terminology and other information. The ATG is available on the IRS website under the Businesses, Small Business/Self Employed category, at <https://www.irs.gov/pub/irs-pdf/p5652.pdf>.

The IRS also updated an Audit Techniques Guide (ATG) to its website that provides information to enable examiners

to effectively audit issues pertaining to petroleum refining. An ATG focuses on developing highly trained examiners for particular market segments by presenting examination techniques, common and unique industry issues, business practices, industry terminology and other information. The ATG is available on the IRS website under the Businesses, Small Business/Self Employed category, at <https://www.irs.gov/pub/irs-pdf/p5647.pdf>.

TAX BRIEFS

Annuities

In each of two cases, investment advisory fees from an annuity contract would not be treated as an amount 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 202233012; IRS Letter Ruling 202233013

Estate Tax

A decedent's estate was not entitled to an estate tax deduction under Code Sec. 2055 or 2056 for the portion of the unitrust interest that could be distributed either to charity or decedent's spouse at the discretion of a trustee. The decedent was survived by a spouse, leaving a portion of his estate to a testamentary trust. The trust was a charitable remainder unitrust (CRUT) under Code Sec. 664. The CRUT provided that the trustee must distribute 25 percent of the unitrust amount to the spouse.

Chief Counsel Advice Memorandum 202233014

Exclusions

A district court ruled that a Department of Defense (DOD) pension could not be excluded from income tax under Code Sec. 104(a)(4). The taxpayer did not prove that his DOD pension stemmed from a personal injury or sickness resulting from active service.

Sylvester, DC Ga., 2022-2 USTC ¶150,195

FICA Taxes

The government's indemnification obligation under Code Sec. 3102(b) included attorneys' fees and costs. The statute encompassed indemnity of both the settlement amount and the costs and fees

incurred in defending against the claims and demands asserted. The legislative history reflected that Congress sought to place a monetary cap on the government's indemnity obligation. The court agreed with *Dep't of Housing & Urban Dev. v. Rucker*, 535 U.S. 125, 132 (2002), in observing that where statute was unambiguous, it was well-established that reference to legislative history was inappropriate.

The New York and Presbyterian Hospital, FedCL., 2022-2 USTC ¶150,199

Insurance Companies

The Court of Federal Claims granted the government's cross-motion for partial summary judgement against a Blue Cross Blue Shield (BCBS) health insurance company and held that the BCBS company was not entitled to include host plan payments to their network providers in calculating the special deduction under Code Sec. 833(b).

Highmark, Inc., FedCL., 2022-2 USTC ¶150,204

IRS

The Treasury and IRS have released their fourth quarter update to the 2021-2022 Priority Guidance Plan. The 2021-2022 Priority Guidance Plan contained 193 guidance projects. Further, the fourth quarter update also includes 17 additional projects that were not on the initial plan.

The IRS intends to update the plan during the year to reflect additional items.

2021-2022 Priority Guidance Plan Fourth Quarter Update

Partnerships

A limited partnership's (D1) lien had first priority status over the government's lien and married individuals (D2's and D3's) lien. The lien was on a real property (P1) belonging D2 and D3. D1's judgment lien was properly perfected and choate in 2009. It had not lapsed since then.

Weathers, DC Ark., 2022-2 USTC ¶150,202

Trusts

A deceased individual's foundation qualified as a foreign trust. The foundation's organizing documents explain that its purpose was to support its beneficiaries and limited its transactions to pursuing and realizing its purpose which was characteristic of an ordinary trust. Moreover, the foundation failed the court test because any disputes related to the foundation were to proceed to arbitration under the Liechtenstein law. The foundation also failed the control test because the taxpayer, as a settlor, had waived any influence on the foundation and on any other rights whatsoever towards the foundation's board, and its beneficiaries.

Rost, CA-5, 2022-2 USTC ¶150,197