



# FEDERAL TAX WEEKLY

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## IRS Releases Exceptions to Canceled Student Loan Debt In Income

The IRS has released a list of exceptions for the inclusion of a cancelled student loan debt in income. Generally, had a taxpayer's student loan been cancelled or repaid by someone else, the taxpayer was mandated to include the cancelled or repaid loan amount as part of their gross income, for tax purposes. However, the American Rescue Plan Act of 2021 has modified the treatment of student loan forgiveness for discharges in 2021 through 2025, wherein the taxpayer may be able to exclude the repaid or cancelled loan amount from his gross income, if the loan could be categorized as one of the following:

- A loan for post-secondary educational expenses.
- A private education loan.
- A loan from an educational organization described in Code Sec. 170(b)(1)(A)(ii).
- A loan from an organization exempt from tax under Code Sec. 501(a) to refinance a student loan.

Taxpayers can find more information about the list of exceptions to canceled student loan debt in income <https://www.irs.gov/forms-pubs/modified-treatment-of-student-loan-forgiveness-for-discharges-in-2021-through-2025>.

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## Pandemic Business Relief Delays Continue Amid Processing Delays

Businesses are still waiting for pandemic relief made available to them during the COVID-19 outbreak amid ongoing processing delays at the Internal Revenue Service, according to the Treasury Inspector General for Tax Administration.

According to an August 31, 2022, report posted to the TIGTA web site, the IRS “did not begin processing claims for qualified Sick and Family Leave Credits and the Employee Retention Credit for 12 months and claims for the Social Security Tax Deferral for 16 months after the pandemic relief legislation was enacted.”

TIGTA attributed this delay to a “lack of updated programming and procedural guidance,” as well as a “lack of training, erroneously suspended claims, and a lack of prioritization of claims” that contributed to the delays in processing claims.

Employers filing claims for these pandemic benefits would have filed a Form 941-X, which would have amended a previously filed Form 941 if they did not make the initial claim for these benefits on the Form 941 or if they needed to amend the amount of original claim on the already-filed Form 941.

“As of February 1, 2022, there were 447,435 Forms 941-X waiting to be processed,” the report states. “Over 90 percent (402,814) of these Forms 941-X were over-aged, i.e. have not been processed within 45 calendar days. In addition, 60,885 (13.6 percent of the Forms 941-X were not processed within 180 calendar days.”

TIGTA described the over-aged inventory as “an ongoing challenge for the IRS.”

Additionally, the IRS watchdog found claims that should have been reviewed but were not resulted “in \$45 million in potentially erroneous nonrefundable employer tax credits being allowed” when they otherwise might not have had proper reviews been conducted.

TIGTA recommends that IRS develop a plan to prioritize processing backlogged claims, update the examination referral process, and update training for IRS employees regarding referrals. IRS did not agree with the latter recommendations, but did all others stated in the report.

“Management stated they completed subsequent review of completed Form 941-X claims and determined no additional

## IRS Implements New E-file Application Fingerprinting

The IRS has planned to implement a new electronic fingerprinting process for e-file providers, which requires every new principal and responsible official listed on a new E-file application, or added to an existing application that needs fingerprints, to schedule appointments with an IRS-authorized vendor for fingerprinting, free of charge. Such appointments can be scheduled on accessing the link on the e-file application summary page and the link becomes visible upon successful submission of the application and the requirement for fingerprint arises. Additional information can be found on the Become an Authorized e-file Provider webpage.

training was needed,” the report states. “However, the IRS’s subsequent reviews do not address the concerns identified in our report. Accounts Management employees

cited unclear guidance and training as to why 73 percent of claims were not referred when required.”

## IRS Releases Guidance for Substitute and Telephonic Submissions of Forms W-4P and W-4R

The IRS has released the redesigned Form W-4P, Withholding Certificate for Periodic Pension or Annuity Payments and Form W-4R, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions and has addressed various concerns regarding electronic systems set up as substitutes and paper substitutes to the forms. The IRS has clarified the following information regarding Forms W-4R and W-4P:

- **Electronic Substitutes:** If a payer electronically stores payee personal information, including name, address, and social security number, and accepts withholding elections through an account specifically tied to the payee, then payer need not require the payee to submit this personal information again when completing an electronic substitute to Forms W-4P and W-4R as long as the account where the election is being made is directly or indirectly linked to the electronically stored personal information.

- **Referencing:** If substitutes to the paper form should provide a link to the references instead of making a reference to page numbers of the form, as practiced previously. Likewise, an electronic substitute to Form W-4R can provide a link to a web page with the Marginal Rate Tables, inclusive of all related text on the first page of the W-4R.

- **Paper Substitutes:** Paper substitute forms must include the applicable form’s instructions and worksheets rather than providing a web address where the payee can find the applicable. In all other respects, the taxpayers should generally follow the same guidelines applicable for electronic substitutes to Forms W-4P and W-4R.

- **Telephonic Submission:** The IRS has planned to issue guidance concerning the telephonic submission of Form W-4P and W-4R. However, payers who want to make programmatic changes concerning telephonic submissions of Form W-4P

before the guidance is issued should use a script that includes all portions of the first page of the paper Form W-4P.

Further, the IRS has also stipulated the default withholding rate for the following scenarios:

- for nonperiodic distributions to be made to payees within the United States and its possessions as 10 percent;
- for nonperiodic distributions to be made to payees outside the United States and its possessions as 10 percent; and
- for eligible rollover distributions as 20 percent.

Although the redesigned forms are already available, the IRS has postponed the requirement to begin using the forms until January 1, 2023 or 30 days after the IRS has released the final versions of the 2023 Form W-4P and 2023 Form W-4R. More information can be found <https://www.irs.gov/forms-pubs/additional-guidance-for-substitute-and-telephonic-submissions-of-forms-w-4p-and-w-4r>.

### REFERENCE KEY

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

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# AICPA Calls For Deadline Extension On 2019, 2020 Late Filer Penalty Relief

The American Institute of CPAs is asking the Internal Revenue Service to extend the deadline for its late filer relief program covering tax years 2019 and 2020 until the end of 2022.

In an August 30, 2022, letter to the IRS, AICPA said it is “pleased that the IRS has provided some measure of COVID-19-related penalty relief for taxpayers” with the waiving of late filing penalties for tax years 2019 and 2020 as long as individuals

## 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 September 6, 2022, to include Casey and Harlan counties.

*Kentucky Disaster Relief Notice (KY-2022-06)*

file their returns by September 30, 2022. However, the organization would like to see that deadline extended until December 31, 2022. IRS announced this policy on August 24, 2022.

“The business cycle of the tax profession is filled with upcoming deadlines (September 15 deadline for pass-throughs, September 30 for trusts, and October 15 for individuals and corporations), and inserting a September 30 deadline into this mix creates an insurmountable burden for most

practitioners and taxpayers,” the letter states. “Additionally, given the complex facts often associated with international information reporting and that many affected taxpayers live abroad, the September 30 deadline is unrealistic and will fail to prompt a critical mass of impacted taxpayers to avail themselves of the benefits of the program.”

AICPA also asked for clarification that rules under Code Sec. 7502 apply when determining whether a return is filed timely under this program.

## IRS Reminds Taxpayers of Third Quarter September 15 Deadline

*IR-2022-157*

The IRS has reminded taxpayers who pay estimated taxes that the deadline for their third quarter tax liability is September 15, 2022. The fourth and final estimated tax payment for tax year (TY) 2022 is due January 17, 2023. Taxpayers would need to make estimated tax payments if their tax liability were at least \$1,000 the tax year 2022, after subtracting their withholding and tax credits. Taxpayers not subject to withholding, such as those who are self-employed, investors or retirees, would need

to make quarterly estimated tax payments. Taxpayers with other income not subject to withholding, including interest, dividends, capital gains, alimony, cryptocurrency and rental income, would also normally make estimated tax payments.

Special rules would apply to some groups of taxpayers, such as farmers, fishermen, casualty and disaster victims, those who recently became disabled, recent retirees and those who receive income unevenly during the year. To figure estimated tax, individuals must figure their expected Adjusted Gross Income (AGI), taxable

income, taxes, deductions and credits for the year. While calculating their 2022 estimated tax, it would be helpful for the taxpayers to use their income, deductions and credits for 2021 as a starting point. Taxpayers could also avoid underpayment penalty by making payments of at least 90 percent of the tax expected on their TY 2022 return, or taxpayers who pay at least 100 percent of the tax shown on their return for TY 2021. The IRS might waive such a penalty for underpayment due to unusual circumstances, but not willful neglect.

## Victims of Mississippi Water Crisis Granted Tax Relief

*Mississippi Disaster Relief Notice (MS-2022-01)*

The president has declared a federal disaster area in Mississippi. The disaster is due to severe storms and flooding that began on August 30, 2022. The disaster area includes Hinds county.

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

### Mississippi Filing Deadlines Extended

The IRS extended certain deadlines falling on or after August 30, 2022, and before February 15, 2022, to February 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.

## Mississippi Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after August 30, 2022, and before February 15, 2022. Further, taxpayers have until November 15, 2022,

to perform other time-sensitive actions due on or after August 30, 2022 and before February 15, 2022.

The IRS excused late penalties for employment and excise tax deposits due on or after August 30, 2022, and before September 14, 2022. But, the taxpayer must make the deposits by September 14, 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 the disaster designation at the top of the return: “Mississippi Water Crisis”

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.

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## IRS Unintentionally Releases Form 990-T Data

The Internal Revenue Service announced that it has unintentionally made certain data collected from Form 990-T available for bulk download through its Tax Exempt Organization Search tool.

In a September 2, 2022, statement posted to its web site, the agency said it took steps to address the situation, including removing the data with the intent of replacing the data files with the correct versions that are supposed to be publicly available.

The IRS “will be working with groups that routinely use the files to remove the erroneous files and replace them with the correct versions as they become available,” the agency said in the posted statement, adding that it will “contact all impacted filers in the coming weeks.”

Form 990-T is the business tax return used by tax-exempt entities to report and pay income tax that is generated from certain investments as well as income generated from activities not related to their exempt

purpose. The agency is generally required to disclose the information for these 501(c)(3) organizations, but the data made available included information on a subset of non-501(c)(3) organizations which are not subject to a public disclosure requirement.

The IRS said the data included in the release does not include Social Security numbers, detailed account-holder information or individual tax returns, although in some cases there was a release of individual names and business contact information.

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## Washington Round-up

**AICPA requests guidance on ARPA changes to Sec. 162(m).** The American Institute of CPAs is asking the Internal Revenue Service to issue clarifying guidance related to the amount of compensation related to a covered employee that a publicly held corporation can deduct in a taxable year. In an August 29, 2022, letter to the IRS and the Department of the Treasury, AICPA requested guidance

on who is considered a covered employee, as it has become unclear since the passage of the American Rescue Plan Act and the changes it made to Code Sec. 162(m) with the addition of Code Sec. 162(m)(3)(C).

**ABA request guidance related to bankrupt and insolvent companies.** The American Bar Association, in an August 31, 2022, letter to the IRS,

expanded its recommendation for guidance under Reg. §1.7874-2(i)(2). The guidance would relate to bankruptcies involving foreign corporations that have acquired domestic companies with at least 80 percent ownership in the United States. ABA states the guidance is needed with the expected rise in bankruptcy filings from non-U.S. companies with their U.S. subsidiaries.

## *Annuities*

The fees that a life insurance company deducted from the adviser contract's cash value and remitted to the adviser was not treated as an "amount received" by the owner of the adviser contract for purposes of Code Sec. 72(e). The taxpayer represented that the fees would not serve as consideration for anything other than investment advice provided by the adviser in relation to the adviser contract. Further, the taxpayer represented that the fees would not exceed an annual rate of 1.5-percent of the adviser contract's cash value based on the period in which the fees related. Based on the taxpayer's representations, the fees would only be used to pay for investment advisory services relating to the adviser contract. Because the adviser contracts were designed to work with an adviser, the adviser contract was solely liable for the fees. The fees did not constitute compensation to the adviser for services related to any assets of the owner other than the adviser contract or any services other than investment advice services with respect to the adviser contract. Therefore, the fees were an expense of the adviser contract, not a distribution to the owner.

*IRS Letter Ruling 202235005*

## *Charitable Contribution Deductions*

The IRS has announced the names of organizations that no longer qualify under Code Sec. 170(c)(2) as an organization for which deductions for charitable contributions are allowed.

*Announcement 2022-18*

The IRS has announced the names of the organizations that have timely filed a declaratory judgment suit under Code Sec. 7428, challenging the revocation of its status as an eligible donee of deductible charitable contributions.

*Announcement 2022-19*

## *Civil Penalties*

An individual was liable for a frivolous tax return penalty for each Form 1040 that he filed as his submissions satisfied all three conditions specified in Code Sec. 6702(a) for a frivolous return. Additionally, there was no abuse of discretion found in any respect. Finally, the court did not impose a penalty under Code Sec. 6673(a)(1) as it did not have an occasion to warn the taxpayer about the risk of taking up a frivolous position.

*Clarkson, TC, Dec. 62,103(M)*

## *Conservation Easement*

The IRS Chief Counsel held that if the donor of a conservation easement owned both the surface estate and a qualified mineral interest that has never been separated from the surface estate, and the deed retains any possibility of surface mining to extract the subsurface minerals, the conservation easement does not satisfy the requirements of Code Sec. 170(h) even if the donee would have to approve the surface-mining method, because the contribution is not treated as made exclusively for conservation purposes under Code Sec. 170(h)(5).

*Chief Counsel Advice Memorandum 202236010*

## *Corporations*

The IRS has advised on the determination of Assessment Statute Expiration Date (ASED) for Form 952, Consent to Extend the Time To Assess Tax Under Section 332(b). The IRS was presented a question on the establishment of ASED, when the parent of a subsidiary, that is under a multi-year (1-4 years) liquidation plan, had not filed its return for the third tax year, beginning after the end of the tax year of the first liquidating distribution. The IRS recommended that the earliest possible date, be assumed as the

ASED, until receipt of Year 4 return, or adjust the ASED to a later date if it subsequently learned that the parent filed its Year 4 return later. If the parent had filed Form 952 for Years 1 and 2, the extended period of assessment applied to Years 1 and 2. The usual three-year statute of limitations on assessment remained for all of the parent's other tax years and for all of the subsidiary's tax years, as well as for all issues other than those relating to Code Sec. 332 in parent's Years 1 and 2. The IRS further confirmed that, the ASED would be the same for all tax years during which parent received a liquidating distribution from subsidiary and for which it had filed Form 952.

*IRS Advice Memorandum AM 2022-002*

## *Partnerships*

A partnership item was barred consideration for a refund action. An individual partner's refund claim could not be determined without reference to the government's asserted basis for extension under Code Sec. 6229. Taxpayer husband was not a party to the partnership proceedings in the Tax Court. The IRS assessed additional taxes against the taxpayers that were attributable to limited partnership interests. Taxpayer husband owned limited partnership interests in three AMCOR partnerships.

*Baxter, CA-5, 2022-2 USTC ¶150,223*

## *Transition Tax*

The IRS Chief Counsel ruled that the portion of tax liability that a domestic corporation did not report was a deficiency due to negligence or intentional disregard of Reg. §1.78-1. Thus, the taxpayer was not entitled to prorate the deficiency under Code Sec. 965(h)(4). The deficiency was due on notice and demand.

*Chief Counsel Advice Memorandum 202235009*