



FEDERAL TAX WEEKLY

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AICPA Concerned with "Voluminous" Code Sec. 41 Research Credit Requirements

The American Institute of CPAs has identified a number of concerns the organization has with the Internal Revenue Service's new requirements to treat a refund claim for research credits as valid.

Those requirements were announced October 15, 2021, by the agency through a Field Attorney Advice memorandum. AICPA submitted its most recent comments on the subject in a September 21, 2022, letter to the IRS. All of the organization's correspondence can be found at <https://us.aicpa.org/advocacy/tax/2022taxadvocacycommentletters.html>.

The AICPA letter notes that the "FAA states that an amended return claiming a refund of research and development (R&D) credits will not be a valid claim for refund under section 6402 unless the taxpayer complies with new collection of information requirements that have never been set forth in regulations or other authoritative binding guidance."

AICPA made a number of recommendations that would address its concerns:

- the information requirements should not impose significant burden that the FAA requirements impose in order for a refund claim to be considered valid;
- the IRS should clarify what the essential pieces of information are to meet the FAA requirements for a refund to be treated as valid; and
- the Department of the Treasury and the IRS should evaluate and consider each item included in a refund claim independently and inform taxpayers regarding whether the claim is valid within 45 days.

AICPA said the information requested "is voluminous and has not historically been maintained by taxpayers in the specific format set forth in the FAA. Even sophisticated taxpayers with R&D budgets in the millions do not capture data contemporaneously in this format."

It added that to meet the information requirements, "a claim for additional refund credits would require extensive lists of the business components, research activities, and individuals who worked on the research activities. This could equate to many hundreds of pages of information that is overly burdensome for taxpayers to provide and for the IRS to review and will undermine the IRS's stated goal in making these changes for effective tax administration and risk mitigation."

AICPA said that many companies, particularly small and midsized business, likely do not have the information requested readily available and the resources required to gather that information.

"As a result, many taxpayers with legitimate R&D refund claims will be forced to forego the credit to which they are otherwise entitled simply because the cost in time and in resources far outweighs the credit to which they are entitled," AICPA contended.

Following release of the comments, the IRS has extended the transition period for taxpayers to perfect a research credit claim for refund. See story below.

IRS Extends Transition Period for Filing Research Credit Refund Claims

The IRS has extended the transition period for filing correct research claims for refunds until January 10, 2024. The IRS had earlier released the information to be included for a Code Sec. 41 research and experimentation credit claim for refund, to be considered valid. This was necessary for the IRS to determine whether, the credit claim for refund should be paid immediately or whether further review was needed. (See story above regarding AICPA comments on these requirements.) Taxpayers were required to provide the following

information when their refund claim was filed with the IRS:

- identify all the business components to which the credit claim relates for that year;
- for each business component, identify all research activities performed and name the individuals who performed each research activity, as well as the information each individual sought to discover; and
- provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract

research expenses for the claim year. This may be done using Form 6765, Credit for Increasing Research Activities.

The IRS had previously provided a transition period till January 10, 2022, before requiring the inclusion of the information along with timely filed credit claims for refund. The IRS has updated this transition period on September 30, 2022, to extend through January 10, 2024, during which taxpayers are provided 45 days to perfect their credit claim for refund, prior to IRS's final determination about the claim.

AICPA Comments on Code Sec. 2053 Proposed Regs

The American Society of CPAs (AICPA) revealed comments it submitted to the Internal Revenue Service in response to proposed regulations on Code Sec. 2053 regarding the deduction for interest expense and amounts paid under a personal guarantee, certain substantiation requirements, and applicability of present value concepts.

The IRS issued the proposed regulations (REG-130975-08), published June

28, 2022, in the Federal Register. The proposed regulations will affect estates of decedents dying on or after the date of issuance of the final regulations.

In a September 23, 2022, letter to the IRS, AICPA outlined its concerns across three areas. All AICPA correspondence can be found at <https://us.aicpa.org/advocacy/tax/2022taxadvocacycommentletters.html>.

First was regarding the application of present value principles to the amount

deductible under Code Sec. 2053. AICPA identified a number of concerns, starting with the application of present value principles to the amount deductible under Code Sec. 2053.

It also made comments regarding the interest expense incurred in administering the estate, and on the deduction of claims against the estate.

2022-2023 Special Per Diem Rates Released

Notice 2022-44

The IRS has released the 2022-2023 special per diem rates. Taxpayers use the per diem rates to substantiate certain expenses incurred while traveling away from home. These special per diem rates include:

- the special transportation industry meal and incidental expenses (M&IE) rates;
- the rate for the incidental expenses only deduction; and
- the rates and list of high-cost localities for purposes of the high-low substantiation method.

Transportation Industry Special Per Diem Rates

The special M&IE rates for taxpayers in the transportation industry are:

- \$69 for any locality of travel in the continental United States (CONUS); and

REFERENCE KEY

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

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- \$74 for any locality of travel outside the continental United States (OCONUS).

Incidental Expenses Only Rate

The rate is \$5 per day for any CONUS or OCONUS travel for the incidental expenses only deduction.

High-Low Substantiation Method

For purposes of the high-low substantiation method, the 2022-2023 special per diem rates are:

- \$297 for travel to any high-cost locality; and
- \$204 for travel to any other locality within CONUS.

The amount treated as paid for meals is:

- \$74 for travel to any high-cost locality, and
- \$64 for travel to any other locality within CONUS.

Instead of the meal and incidental expenses only substantiation method, taxpayers may use:

- \$74 for travel to any high-cost locality, and
- \$64 for travel to any other locality within CONUS.

Taxpayers using the high-low method must comply with Rev. Proc. 2019-48, I.R.B. 2019-51, 1392. That procedure provides the rules for using a per diem rate to substantiate the amount of ordinary and necessary business expenses paid or incurred while traveling away from home.

Notice 2021-52, I.R.B. 2021-38, 381 is superseded.

Deadline for Amending Eligible Retirement Plans Extended

The IRS has extended the deadline for amending eligible retirement plans and IRAs to permit Coronavirus related distributions and qualifying disaster distributions. The extended amendment deadline applicable to (1) a qualified retirement plan; (2) Code Sec. 403(b) plan that is not a governmental plan; or (3) an IRA is December 31, 2025. This notice reflects the provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021.

Both acts provided special tax treatment with respect to a coronavirus-related distribution or a qualified disaster distribution, respectively. Later deadlines would apply for governmental retirement plans under Code Sec. 457(b). Amendments to an eligible retirement plan (including an annuity contract) discussed in this notice would not cause the plan to fail to satisfy the anti-cutback requirements of Code Sec. 411(d)(6) or ERISA.

The deadline to amend a qualified plan that is not a governmental plan under Code Sec. 414(d) is December 31, 2025. The plan amendment deadline for a qualified governmental plan is 90 days after the close of the third regular legislative session that begins after December 31, 2023.

The deadline to amend a Code Sec. 403(b) plan that is not maintained by a public school is December 31, 2025. The plan amendment deadline for a Code Sec. 403(b) plan that is maintained by a public school is 90 days after the close of the third regular legislative session that begins after December 31, 2023.

The deadline to amend a governmental plan under Code Sec. 457(b) is the later of (1) 90 days after the close of the third regular legislative session that begins after December 31, 2023; or (2) if applicable, the first day of the first plan year beginning more than 180 days after the date of notification that the plan was administered in a manner that is inconsistent with Code Sec. 457(b). For an IRA, the deadline to amend is December 31, 2025.

For further information, taxpayers can contact Ms. Carrington at (202) 317-4148.

Notice 2022-45

FinCEN Issues Final Rule on Beneficial Ownership Reporting Under Corporate Transparency Act

FinCEN Final Rule RIN 1506-AB49

The Financial Crimes Enforcement Network (FinCEN) has issued a final rule implementing the beneficial ownership information reporting provisions under the Corporate Transparency Act (CTA), which was enacted as part of the National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283). The CTA amended the Bank Secrecy Act by adding a new provision on beneficial ownership reporting (31 USC §5336).

The rule is intended to (1) enhance the ability of FinCEN and other agencies to protect U.S. national security and the U.S. financial system from illicit use, and (2) provide essential information to national security, intelligence, and law enforcement agencies, state, local, and tribal officials, and financial institutions, to help prevent illicit actors from laundering or hiding money and other assets in the United States.

The rule requires reporting companies to file reports with FinCEN that identify

the beneficial owners of the entity and the entity's company applicants. The rule also describes who must file a report, what information must be reported, and when a report is due.

Reporting Companies

There are two types of reporting companies: domestic and foreign. A domestic reporting company is a corporation, limited liability company (LLC), or any entity

created by filing a document with a secretary of state or any similar office under state or tribal law. A foreign reporting company is an entity formed under the law of a foreign country that is registered to do business in a state or tribal jurisdiction by filing a document with a secretary of state or any similar office.

FinCEN expects limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships to be reporting companies. FinCEN also expects companies with simple management and ownership structures to be the majority of reporting companies.

Twenty-three types of entities are exempt from “reporting company” treatment, including certain governmental authorities, tax-exempt organizations, banks, broker or dealers, investment companies, insurance companies, accounting firms, and others.

An entity that is a “large operating company” is not a reporting company if it:

- employs more than 20 full time employees in the United States;
- has an operating presence at a physical office within the United States; and
- filed a federal income tax or information return in the United States for the previous year demonstrating over \$5,000,000 in gross receipts or sales (excluding gross receipts or sales from sources outside the United States).

Other legal entities, including certain trusts, are also excluded to the extent that they are not created by filing a document with a secretary of state or similar office.

Beneficial Owners

A beneficial owner includes any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company. The rule defines “substantial control” and “ownership interest.”

A beneficial owner does not include a minor child; an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual; a reporting company employee (but not a senior officer) whose substantial control over or economic benefits from the entity are derived solely from his or her employment

Publication Explaining Estate & Gift Tax Interrelated Computations Updated

The IRS has revised Publication 904, Estate & Gift Tax Interrelated Computations (Oct. 2022). Publication 904 illustrates how the charitable and marital deductions are calculated when an interrelated calculation is required. The publication was last revised in May 1985.

For estate tax purposes, an interrelated calculation is necessary if (1) a charitable and/or marital deduction is allowed, and (2) the property passing to the charity or surviving spouse bears the burden of payment of federal estate tax, federal generation-skipping transfer tax, penalties, state transfer taxes, or certain allowable administrative expenses.

For gift tax purposes, an interrelated calculation is required if a donee of a gift agrees to pay the gift tax on the transferred property. The amount of the gift to the donee is reduced by the payment of the gift tax and because the tax paid reduces the gift, the tax due on the gift is also lessened. This is known as a net gift.

Publication 904 illustrates and explains the Trial and Substitution method and the Algebraic method to compute the charitable or marital deductions when an interrelated calculation is done for estate tax purposes. In addition, the publication illustrates and explains how to compute the gift tax using the Trial and Substitution method and the Algebraic method.

status; an individual whose only interest in a reporting company is a future interest through right of inheritance; or a creditor of a reporting company.

Company Applicants

A company applicant is: (1) the individual who directly files the document that creates the entity (for a foreign reporting company, the document that first registers the entity to do business in the United States); and (2) the individual who is primarily responsible for directing or controlling the filing of the relevant document by another.

Reporting companies existing or registered on the effective date of the rule are not required to identify and report on their company applicants. Reporting companies formed or registered after the effective date must report company applicant information but do not need to update it.

Beneficial Ownership Information Reports

In the report filed with FinCEN, a reporting company must identify itself and report four pieces of information about each of its beneficial owners: name, birth date, address, and a unique identifying number and issuing jurisdiction from an acceptable

identification document (and the image of that document). Reporting companies created after January 1, 2024, must also provide this information and document image for company applicants.

An individual who provides his or her information to FinCEN directly can obtain a unique identifying number assigned by FinCEN (“FinCEN identifier”) which can then be provided to FinCEN on a report instead of the required information about the individual.

Effective Date and Reporting Deadlines

The rule is effective January 1, 2024. Reporting companies created or registered before the effective date have until January 1, 2025, to file their initial reports. Reporting companies created or registered after the effective date have 30 days after receiving notice of their creation or registration to file their initial reports.

A reporting company has 30 days to report changes to the information in its previously filed reports. It also must correct inaccurate information in previously filed reports within 30 days of when it becomes aware or has reason to know of the inaccuracy.

FinCEN has provided a fact sheet which summarizes the new rule.

Florida Victims of Hurricane Ian Granted Tax Relief

IR-2022-168

The IRS has extended tax relief to Florida victims of Hurricane Ian. Eligible taxpayers have until February 15, 2023, to file various individual and business tax returns and make tax payments. The relief applies to affected taxpayers anywhere in the state of Florida.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on September 23, 2022. As a result, the affected taxpayers will now have until February 15, 2023, 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.

The February 15, 2023, deadline does apply to estimated income tax payments due on January 17, 2023. In addition, the quarterly payroll and excise tax returns normally due on October 31, 2022, and

Dyed Diesel Fuel Penalty Relief for Florida

In response to disruptions caused by Hurricane Ian, the IRS will not impose a penalty when dyed diesel fuel with a sulfur content that does not exceed 15 parts-per-million is sold for use or used by emergency vehicles on the highway in the state of Florida. This penalty relief is available to any person that sells or uses dyed diesel fuel in an emergency vehicle for highway use. In the case of the operator of the emergency vehicle in which the dyed diesel fuel is used, the relief is available only if the operator or the person selling such fuel pays the tax of 24.4 cents per gallon that is normally applied to diesel fuel for highway use. Ordinarily, dyed diesel fuel is not taxed, because it is sold for uses exempt from excise tax, such as to farmers for farming purposes, for home heating use, and to local governments. The IRS will also not impose penalties for failure to make semimonthly deposits of tax for dyed diesel fuel sold for use or used in an emergency vehicle on the highway in the state of Florida during the relief period. This relief began on September 28, 2022, and will remain in effect through October 19, 2022.

IR-2022-169

January 31, 2023 are also now due on February 15, 2023. Penalties on payroll and excise tax deposits due on or after September 23 and before October 10, 2022, will be abated as long as the deposits were made by October 10, 2022.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayers who live 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-4673-FL”– on any return claiming a loss. Finally, the IRS requests that taxpayers see Publication 547 and visit disasterassistance.gov for information on disaster recovery.

Victims of Alaska Severe Storm, Flooding, and Landslides Granted Tax Relief

Alaska Disaster Relief Notice (AK-2022-04)

The president has declared a federal disaster area in Alaska. The disaster is due to severe storm, flooding and landslides that occurred between September 15 and September 20, 2022. The disaster area includes Regional Education Attendance Areas of Bering Strait, Kashunamiut, Lower Kuskokwim, and Lower Yukon.

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

Alaska Filing Deadlines Extended

The IRS extended certain deadlines falling on or after September 15, 2022, and before February 15, 2023, to February 15, 2023. 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.

Alaska Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after September 15, 2022, and before February 15, 2023. Further, taxpayers have until February 15, 2023, to perform other time-sensitive actions due on or after September 15, 2022, and before February 15, 2023.

The IRS excused late penalties for employment and excise tax deposits due on or after September 15, 2022, and before

September 30, 2022. But, the taxpayer must make the deposits by September 30, 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: "AK severe storm, flooding and landslides" at the top of the return. 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 Identifies Drought-Stricken Areas for Tax Relief After Involuntary Sale of Livestock

Notice 2022-43; IR-2022-166

The IRS identified drought-stricken areas where tax relief is available to taxpayers that sold or exchanged livestock because of drought. The relief extends the deadlines for taxpayers to replace the livestock and avoid reporting gain on the sales. These extensions apply until the drought-stricken area has a drought-free year.

When Sales of Livestock Are Involuntary Conversions

Sales of livestock due to drought are involuntary conversions of property. Taxpayers can postpone gain on involuntary conversions if they buy qualified replacement property during the replacement period. Qualified replacement property must be similar or related in service or use to the converted property.

Usually, the replacement period ends two years after the tax year in which the

involuntary conversion occurs. However, a longer replacement period applies in several situations, such as when sales occur in a drought-stricken area.

Livestock Sold Because of Weather

Taxpayers have four years to replace livestock they sold or exchanged solely because of drought, flood, or other weather condition. Three conditions apply.

First, the livestock cannot be poultry.

Second, the taxpayer must have held the converted livestock for draft, breeding, or dairy purposes.

Third, the weather condition must make the area eligible for federal assistance.

Persistent Drought

The IRS extends the four-year replacement period when a taxpayer sells or exchanges

livestock due to persistent drought. The extension continues until the taxpayer's region experiences a drought-free year.

The first drought-free year is the first 12-month period that (1) ends on August 31 in or after the last year of the four-year replacement period, and (2) does not include any weekly period of drought.

Areas Suffering From Drought

The National Drought Mitigation Center produces weekly Drought Monitor maps that report drought-stricken areas. Taxpayers can view these maps at

<https://droughtmonitor.unl.edu/>

However, the IRS also provided a list of areas where the year ending on August 31, 2022, was not a drought-free year. The replacement period in these areas will continue until the area has a drought-free year.

IRS Warns Taxpayers of Texting Scams Aimed at Stealing Sensitive Information

IR-2022-167

The IRS has warned taxpayers and tax professionals to be aware of texting scams

aimed at stealing sensitive personal and financial information. The IRS has witnessed an exponential increase in MMS/SMS/text scams, known as smishing, that

target mobile phone users. The scam messages appear to be from the IRS, while offering lures such as, fake COVID relief, tax credits or help setting up an IRS online

account. The scam texts often ask taxpayers to click links where phishing websites try to collect their information or potentially send malicious code onto their phones. The IRS has reiterated that these messages should all be red flags for taxpayers because it does not send emails or text messages asking for personal or financial information or account numbers.

The IRS has also emphasized the importance of diligent and accurate reporting of

such smishing messages to help its security professionals track and disrupt these scams. Such scams can be reported to phishing@irs.gov and additionally to Treasury Inspector General for Tax Administration using their IRS Impersonation Scam Reporting form and the Federal Trade Commission (FTC) through their Complaint Assistant to make the information available to investigators. Smishing scams involving other agencies and/or brands should not be reported to

the IRS. When reporting smishing, important details should be captured, such as, caller ID number (or email address) of the IRS-related scam text message, along with the exact contents of the SMS/text message. The report should also include the exact date, time, time zone, and telephone number that received the message if possible.

Washington Round-up for Week Ending September 30, 2022

Congressional GOP members call for extension of late filer relief deadline.

Republican members of the House Ways and Means Committee and the Senate Finance Committee are calling on the Internal Revenue Service to extend the current September 30, 2022, deadline for late filing penalty relief that covers tax years 2019 and 2020. The IRS announced earlier this year that it would automatically refund the late filing penalty provided the tax returns for those years were filed by end of September. In a September 26 letter to the agency

and the Department of the Treasury, the GOP members asked for “the application of this relief to be meaningfully extended, such as through mid-to-late November 2022.” The members echoed a similar call for an extension by the American Institute of CPAs, which noted that the current deadline is in the middle of other statutorily required deadlines and could cause people to miss out on the opportunity for relief.

Government shutdown avoided. Both chambers of Congress passed a continuing resolution (H.R. 6833) that will keep the

government funded through December 16, 2022. The measure passed in the Senate on September 29 by a 72-25 vote and in the House by a 230-201 vote a day later. It includes additional funding for the Federal Emergency Management Agency as well as funding to aid the Ukraine. A summary of the bill’s provisions can be found at https://www.appropriations.senate.gov/imo/media/doc/Continuing%20Resolution_Section%20by%20Section.pdf. The bill was signed into law by President Biden on September 30.

TAX BRIEFS

Charitable Remainder Annuity Trusts

A married couple was not entitled to non-cash charitable contribution deductions for portions of the crops they transferred to two charitable remainder annuity trusts (CRATs) due to lack of substantiation. Further, the annuity distributions received by the taxpayers from the CRATs were taxable to them as ordinary income.

Furrer, TC, Dec. 62,111(M)

Consolidated Group

In a case involving a parent of a consolidated group, the tax court held that when a subsidiary member of a consolidated group disposes of all of its assets, the member that owns the subsidiary stock

must include, in income for the year of disposition, any excess loss account (ELA) in the member’s stock in the subsidiary regardless of whether the subsidiary may be entitled to deductions for one or more subsequent years. The IRS had determined deficiencies related to indebtedness (deficiency notes) issued by seven members of the group (loss subsidiaries) against a consolidated group of which the taxpayer was the common parent. The deficiency notes required annual installment payments. The taxpayer took into account the cancellation of prior installment payments but did not report the deficiency notes’ full cancellation.

Belmont Interests Inc., TC, Dec. 62,109(M)

Coronavirus State and Local Fiscal Recovery Funds

The IRS has updated its frequently-asked-questions (FAQs) on Coronavirus State and Local Fiscal Recovery Funds (SLFR Funds). These funds give eligible state and local governments a substantial infusion of resources to meet pandemic response needs.

FS-2022-36; IR-2022-165

Employee Expenses

A married couple was not entitled to claim Schedule A and Schedule C deductions related to various expenses due to lack of substantiation. Further, they were liable

for accuracy related penalties for substantial understatements of income tax under Code Sec. 6662(a) and (b)(2).

Patitz, TC, Dec. 62,110(M)

Enrolled Agent Fees

The IRS finalized regulations increasing the enrollment and renewal user fees for enrolled agents from \$67 to \$140. The

regulations also increase the renewal user fees for enrolled retirement plan agents from \$67 to \$140.

T.D. 9966

Unreported Income

An individual, who had received wages from the Air Force and a certain amount from an individual retirement account

(IRA), had unreported income. The taxpayer relied on a Social Security Administration (SSA) statement which mentioned a concession by the IRS that he did not have self-employment income for one tax year. However, the taxpayer's argument conflicted with stipulated facts, so it had no merit.

Ashford, TC, Dec. 62,112(M)