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IRS Reminds Taxpayers of Late Filing Penalty Relief For 2019 and 2020 Tax Returns Filed Before September 30

IR-2022-163

The IRS reminds individual taxpayers and businesses impacted by the pandemic that they may qualify for a late filing penalty relief, provided their tax returns for the years 2019 and 2020 are filed on or before the filing deadline on September 30, 2022. This relief applies to Form 1040, US Individual Income Tax Return and Form 1120, US Corporation Income Tax Return series, as well as others listed in the Notice 2022-36, issued by the IRS. Further, taxpayers who file during the first few months after the filing deadline, would qualify for partial penalty relief, because the penalty for eligible returns would start accruing from October. 1, 2022, instead of the return's original due date. However, the failure to pay penalty and interest stands applicable to unpaid taxes, based on the return's original due date.

Penalty relief is not available under the following circumstances:

- for applicable international information returns when the penalty is part of an examination;
- for filing of returns for the year 2021; and
- in situations where, a fraudulent return was filed, or where the penalties were part of an accepted offer in compromise or a closing agreement, or where the penalties were finally determined by a court.

However, for ineligible penalties, such as the failure-to-pay penalty, taxpayers could use existing penalty relief procedures, such as applying for relief under the reasonable cause criteria or the First-Time Abate program. The IRS has also announced that, eligible taxpayers who have already filed their return do not need to apply for it, and those filing presently, do not need to attach a statement or other documents to their return. Further, those who have already paid the penalty are eligible for refunds, which will be processed by end of September, 2022.

IRS Issues Guidance on Pre-Screening And Certification Process for WOTC

IR-2022-159

The IRS has released information regarding the pre-screening and certification process for employers taking advantage of the Work Opportunity Tax Credit (WOTC). The information relates to hiring designated categories of workers who face significant barriers to employment, including:

- Qualified IV-A Temporary Assistance for Needy Families (TANF) recipients;
- Certain veterans, including unemployed or disabled veterans;

- Qualified long-term unemployment recipients; and
- Long-term family assistance recipients

The WOTC, which succeeded the Targeted Jobs Tax Credit (TJTC), included the requirement for employers to pre-screen job applicants. To pre-screen a job applicant, on or before the day a job offer is made, a pre-screening notice (Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit) must be completed by the job applicant and the employer. After pre-screening a job applicant, the IRS requires the employers to make a request for certification by submitting Form 8850 to the appropriate state workforce agency, no later than 28 days after the employee begins work.

The Service also notified that, tax-exempt organizations can claim the WOTC against the employer's share of social security tax for hiring qualified veterans, by filing Form 5884-C, Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans. Further information can be found in the Form 8850 instructions or on the WOTC page on IRS.gov.

IRS Advises Taxpayers On Compliance For Improperly Forgiven Paycheck Protection Program Loans

IR-2022-162

The IRS has issued guidance to taxpayers, who have inappropriately received forgiveness of their Paycheck Protection Program ('PPP') loan, and has encouraged them to take steps towards compliance, such as filing amended returns that include the forgiven loan amounts, as income. The PPP loan program was established by the Coronavirus Aid, Relief and Economic Security Act (CARES Act) to assist small US businesses that were adversely affected by the COVID-19 pandemic in paying certain expenses and was further extended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act. The IRS has discovered that, some recipients received forgiveness of their PPP loan through misrepresentation or omission and either did not qualify to receive a PPP loan or misused the loan proceeds. Under the terms of the PPP loan program, lenders could forgive the full amount of the loan, if the loan recipient meets three conditions, namely:

- **Eligible Recipient:** The loan recipient was eligible to receive the PPP loan if they were a small business concern, independent contractor, eligible self-employed individual, sole proprietor, business concern, or a certain type of tax-exempt entity, and was in business on or before February 15, 2020, and had employees or independent contractors who were paid for their services, or was a self-employed individual, sole proprietor or independent contractor.
- **Eligible Expenses:** The loan proceeds had to be used to pay eligible expenses, such as payroll costs, rent, interest on the business' mortgage, and utilities.
- **Application for loan forgiveness:** The loan recipient had to apply for loan forgiveness, which requires a loan recipient to attest to eligibility, verify certain financial information, and meet other legal qualifications.

The IRS has stipulated that, if the above conditions are not met, then the amount of the loan proceeds that were forgiven, must be included in income and any additional income tax must be paid. The IRS has also informed that, reporting tax-related illegal activities relating to PPP loans, may be done through submission of Form 3949-A, Information Referral.

Victims of Puerto Rico Hurricane Fiona Granted Tax Relief

Puerto Rico Disaster Relief Notice (PR-2022-10); IR-2022-161

The president has declared a federal disaster area in Puerto Rico. The disaster is due to Hurricane Fiona that began on September 17, 2022. The disaster area includes all 78 municipalities in Puerto Rico.

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

Puerto Rico Filing Deadlines Extended

The IRS extended certain deadlines falling on or after September 17, 2022, and before February 15, 2023, to February 15, 2023.

REFERENCE KEY

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

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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.

Puerto Rico Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after September 17, 2022, and before February 15, 2023. Further, taxpayers have until February 15, 2023, to perform other time-sensitive actions due on or after September 17, 2022, and before February 15, 2023.

The IRS excused late penalties for employment and excise tax deposits due on or after September 17, 2022, and before October 3, 2022. But, the taxpayer must make the deposits by October 3, 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: "Puerto Rico Hurricane Fiona"

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.

Current Plan Liability Rates Set for September 2022

For pension plan years beginning in September 2022, the IRS has released:

- the 30-year Treasury bond weighted average interest rate,
- the unadjusted segment rates,
- the adjusted rates, and
- the minimum present value segment rates.

Corporate Bond Rate

The three 24-month average corporate bond segment rates applicable for September 2022 (without adjustment for the 25-year average segment rate limits are as follows):

- 1.41 for the first segment rate,
- 3.09 for the second, and
- 3.58 for the third.

September 2022 Adjusted Segment Rates

The September 2022 adjusted segment rates for plan years beginning in 2021 are:

- 4.75 for the first,
- 5.36 for the second, and
- 6.11 for the third.

The rates for plan years beginning in 2022 are:

- 4.75 for the first,
- 5.18 for the second, and
- 5.92 for the third.

The rates for plan years beginning in 2023 are:

- 4.75 for the first,
- 5.00 for the second, and
- 5.74 for the third.

September 2022 Pre-ARP Adjusted Segment Rates

The September 2022 Pre-ARP adjusted segment rates for plan years beginning in 2021 are:

- 3.32 for the first
- 4.79 for the second, and
- 5.47 for the third.

30-Year Treasury Weighted Average

For plan years beginning in September 2022, the 30-year Treasury weighted average securities rate is 2.22, with a permissible range of 2.00 to 2.33.

The rate of interest on 30-year Treasury securities for August 2022 is 3.13 percent.

The minimum present value segment rates under Code Sec. 417(e)(3)(D) for August 2022 are:

- 3.79 for the first segment rate,
- 4.62 for the second, and
- 4.69 for the third.

Notice 2022-40

Challenge to Penalty Assessments Dismissed for Lack of Jurisdiction; FAST Act's Passport-Revocation Scheme Was Constitutional

List of Countries with U.S. Exchange of Information Agreements Updated

The IRS has supplemented the list of countries with which the U.S. has an agreement relating to the exchange of tax information. Turkey has been to the list of jurisdictions with which the Treasury and IRS have determined that it is appropriate to have an automatic exchange relationship. Under these agreements the U.S. consents to provide, as well as receive, information and appoints the Treasury Secretary or his delegate as the competent authority. The regulations under Code Sec. 6049 require the reporting of certain deposit interest paid to nonresident alien individuals on or after January 1, 2013. Rev. Proc. 2021-32, I.R.B. 2021-42, 465, is superseded.

Rev. Proc. 2022-35

Franklin, CA-5, 2022-2 USTC ¶50,228

A taxpayer who failed to file returns and report that he was the beneficiary of a foreign trust could not challenge the tax penalties assessed against him based on the IRS's failure to follow Code Sec. 6751(b) procedures. The district court lacked jurisdiction over the claims because the claims were a challenge to the assessment or collection of tax. The district court also properly rejected the taxpayer's claim that the revocation of his passport under the FAST Act's passport-revocation scheme was unconstitutional. Finally, the district court did not abuse it discretion in denying attorneys' fees under FOIA because there was no public benefit in the information.

Code Sec. 6751(b) Procedural Requirements

Each of the taxpayer's claims was a prohibited attempt to collaterally attack on the existence or validity of the taxpayer's tax liability for which the United States had not waived sovereign immunity. Absent certain exceptions, no suit for restraining the assessment or collection of tax can be brought. Taxpayers must pay the tax first and then litigate it under the Ant-Injunction Act and Code Sec. 7421(b). It did not matter that an alleged procedural deficiency could technically be construed as occurring in a separate examination phase. Nor could it be characterized as occurring pre-assessment. The taxpayer's claims were all based on the alleged procedural deficiency that made the assessment void from the start. Thus, the claims were a challenge to the validity of the assessment over which the court did not have jurisdiction.

Passport-Revocation Scheme

The taxpayer challenged the constitutionality of the FAST Act's passport revocation scheme underCode Sec. 7345 based on substantive due process rights under the Fifth Amendment. The district court correctly defined the right as the right to international travel. Based on the U.S. Supreme Court's guidance on restrictions to international travel, the court did not find that the right was a fundamental right that required strict scrutiny of any restrictions. The government's interest in collecting taxes was an important one and the passport-revocation scheme was clearly connected to the goal. The scheme focused on those with serious tax debts and provided procedural safeguards. Even under intermediate scrutiny, the passport-revocation scheme was constitutional.

Attorneys' Fees

The taxpayer's request for an award of attorneys' fees was properly denied. To received attorneys' fees under FOIA, the taxpayer must be (1) eligible for the fees, and (2) entitled to the fees. To be entitled to the fees, a number of factors are considered and cases are generally disfavored if there is no public benefit in the information. The taxpayer sought the information to help overturn his tax penalties and the public gained no benefit from the information.

Affirming a DC Tex. Opinion, 2021-2 USTC ¶50,223.

IRS Appoints New Members To Electronic Tax Administration Advisory Committee

IR-2022-160

The IRS has selected eight new members to join the Electronic Tax Administration Advisory Committee (ETAAC) which is a public forum for the discussing issues in electronic tax administration. With the committee's primary goal being the promotion of paperless filing of tax and information returns, it works closely with the various stakeholders in the tax industry to fight identity theft and refund fraud.

Committee members include state tax officials, consumer advocates, cybersecurity and information security specialists, tax preparers, tax software developers and representatives of the payroll and financial communities.

The following individuals have been appointed to serve three-year terms on the committee beginning in September 2022:

- Austin Emeagwai, CPA, Ph.D., Collierville, Tennessee
- Jerry Gaddis, EA, MBA, Winter Haven, Florida
- Nikia Gainey, Orlando, Florida
- Robert Gettemy, Marion, Iowa
- Argi O'Leary, Voorheesville, New York
- Hallie Parchman, Austin, Texas
- RaeAnn Pilarski, Tuscon, Arizona
- Keith Richardson, Philadephia, Pennsylvania

Further, the IRS has appointed Jared Ballew to serve as chair of the ETAAC and Vernon Barnett and Timur Taluy to serve as co-vice chair.

Audit Technique Guide Issued for Advanced Coal and Gasification Project Credits

The IRS has posted an Audit Techniques Guide (ATG) to its website that addresses Code Secs. 48A and 48B—Advanced Coal and Gasification Project Credits. 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 https://www.irs.gov/pub/irs-pdf/p5615.pdf.

IRC Section 48A and 48B Audit Technique Guide, IRPO ¶217,915

TAX BRIEFS

Bankruptcy

A trustee was entitled to administer a portion of tax year (TY) 2021 tax refunds for the benefit of two taxpayers' (debtors') bankruptcy estate. The trustee was directed to return the debtors' share of the refunds. The court agreed with trustee's manner of allocating the refunds between the bankruptcy estate and taxpayers.

In re: M.R. Lewis, BC-DC Okla., 2022-2 USTC ¶50,233

Business Expenses

In consolidated cases, taxpayers were not entitled to deduct the payment of property taxes and utility expenses on behalf of an S Corporation as deductible expenses on their personal returns. Further, a general partnership owned by the taxpayers (T1, T3, T4 and T5) was not entitled to a deduction for the full amount of the truck expenses under Code Sec. 179.

Vorreyer, TC, Dec. 62,108(M)

Carbon Dioxide Sequestration

The IRS has released the inflation adjustment factor for the credit for carbon dioxide (CO2) sequestration under Code Sec. 45Q for 2022. The inflation adjustment factor is 1.2534, and the credit is $25.07 per metric ton of qualified CO2 under Code Sec. 45Q(a)(1), and $12.53 per metric ton of qualified CO2 under Code Sec. 45Q(a)(2).

Notice 2022-38

Collections

A law firm and its former partner had received prior opportunity to dispute underlying tax liabilities, denying the tax court the jurisdiction to review the same for the pre-American Jobs Creation Act (AJCA) Code Sec. 6707 penalty assessments. The IRS satisfied the written supervisory approval requirement. Raising issues as to the period of limitations and whether the pre-AJCA penalty was repealed were impermissible challenges by the taxpayer to the underlying tax liabilities.

Goddard, TC, Dec. 62,107(M)

The 10-year statute of limitations applied in the collection of an individual's unpaid tax. An installment agreement was accepted and resulted in payments in tax year (TY) 2009, rather than TY 2010. There was genuine issue of material fact that the government timely filed this action.

Crenshaw, DC Fla., 2022-2 USTC ¶50,229

An individual failed to state a claim under Code Sec. 7433 and failed to explain how the IRS engaged in unlawful collections activity. The government did not waive sovereign immunity. The taxpayer also failed to exhaust his administrative remedies as required under Code Sec. 7433.

Rotte, DC Fla., 2022-2 USTC ¶50,231

Conservation Easement

A married couple's conservation easement satisfied the perpetuity requirement. Further, the IRS did not violate the Code Sec. 6751(b) supervisory approval requirement.

Carter, CA-11, 2022-2 USTC ¶50,232

Liens and Levies

The government was entitled to reduce tax assessments to judgments and to foreclose federal tax liens against real property owned by an individual. Accordingly, the joint motion filed by the parties for entry of order enforcing tax liens and order of sale was granted.

Kwitny, DC Fla., 2022-2 USTC ¶50,230

Unreported Income

An individual, who was a licensed cosmetologist and an experienced tax return preparer, had unreported income and was not entitled to earned income tax credit (EITC). The taxpayer had attached two Schedules C to her federal income tax return and reported gross receipts for two of her businesses, both offset by several business deductions. No records were produced to substantiate these expenses.

Degourville, TC, Dec. 62,104(M)

An individual, who had a Swiss bank account, and used that account to hide money from the IRS, had multiple income tax liabilities for which he was subject to penalties and additions to tax. The taxpayer had funneled income that he did not report on his Forms 1040, U.S. Individual Income Tax Return, into numbered foreign accounts. The taxpayer challenged the IRS' income determinations and affirmatively asserted that he was entitled to various deductions. However, the IRS established by clear and convincing evidence that the taxpayer had fraudulently underreported his income.

Clemons, Sr., Est., TC, Dec. 62,106(M)