



FEDERAL TAX WEEKLY

INSIDE THIS ISSUE

Senate Finance Committee Approves Werfel For IRS Commissioner.....	1
Copies of Exempt Organization Returns Now Available Online Instead of DVD	2
House Ways And Means Committee Outlines Oversight Agenda	2
IRS Provides Refund Claim Lookback Period Relief for Certain Due Dates Extended for COVID-19	3
IRS Begins Registration for 2023 IRS Nationwide Tax Forums	3
Supreme Court Rules FBAR Penalty Applies on Per-Report Basis.....	3
IRS Announces Acquiescence in Taxation of Exports Case	4
IRS Undertook Unnecessary Actions on PTINs; Vendor Fees and Portions of PTIN Fees Were Excessive	5
2023 Supplemental Grant Application Package Announced by IRS	5
AICPA Seeks Clarity On Reporting Digital Assets On Form 1040	6
GAO Offers Recommendations To Reduce The Tax Gap	6
IRS Announces Selection of Eight New Members to Serve on Taxpayer Advocacy Panel	7
IRS Warns Taxpayers of New Filing Season Scams Involving Form W-2 Wages.....	7
Washington Round-up	7
Tax Briefs	8

Senate Finance Committee Approves Werfel For IRS Commissioner

The Senate Finance Committee voted to approve the nomination of Daniel Werfel to serve as IRS Commissioner, advancing his nomination to the full Senate for its consideration.

Werfel advanced with a 17-9 vote on March 2, 2023. All committee Democrats voted in favor of the nominee, the committee announced. Three Republican senators – Chuck Grassley of Iowa, Bill Cassidy of Louisiana, and Todd Young of Indiana – voted with the majority in approving Werfel's nomination. If approved by the Senate, Werfel's term as commissioner would last until November 12, 2027.

"The fact that Mr. Werfel's nomination passed through committee with bipartisan support is a testament to his record as a fair-minded public servant who's able to work with both sides of Congress," Senate Finance Committee Chairman Ron Wyden (D-Ore.) said in a statement, adding that there is "no doubt that Mr. Werfel understands the challenge, and he's also going to ensure the IRS continues making progress improving customer service."

Sen. Tom Tillis (R-N.C.), the only GOP member to openly signal his support of Werfel during the February 16, 2023, confirmation hearing, did not vote. He reiterated that he would be supporting the nomination of Werfel during an open executive session on March 2 prior to the vote.

Werfel Answers Questions From Senators

Werfel, in his answers to written questions called the agency's whistleblower program as a "top priority." He also used the written answers to reiterate many of the same themes he testified to during the confirmation hearing, including rebuilding trust in the agency through transparency in how the IRS conducts its operations, as well as prioritizing the safeguarding of taxpayer data.

Werfel also reiterated a commitment to ensuring high earning individuals and corporations pay their fair share.

"It is essential that our tax system operates fairly and right now, there is significant evidence that high earners are paying far less than what they owe in taxes," Werfel wrote. "For example, an assessment from the National Bureau of Economic Research indicates that working people pay 99% of the taxes they owe, while 20% of the income from wealthy individuals and large corporations is shielded from IRS view. This outcome degrades public trust in our tax system because honest taxpayers should know that when they file an accurate return with the IRS that all other taxpayers, including the wealthiest Americans, are doing the same. Funding in the [Inflation Reduction Act] will address this disparity and focus on the highest-income earners. As you know, I have a long career working in government and in the private sector focused on data-driven solutions, and, if confirmed, I will focus my time on ensuring the IRS uses the IRA funds to improve tax compliance among wealthy and corporate tax evaders."

He also called the current average of 13 hours to file an individual return at an average cost of hundreds of dollars "unacceptable, in particular for working families and small

businesses,” and committed to work on strategies and devoting resources to make tax filing easier, simpler and less burdensome for taxpayers.

Werfel previously led the IRS in an acting commissioner role under President Obama from May 22, 2013, to December 23, 2013, taking over the agency after an Inspector General report highlighted alleged mismanagement and bias in determining the tax-exempt status for non-profit organizations. Werfel currently is a managing director and partner at Boston Consulting Group, where he runs the firm’s global public sector practice. He

Copies of Exempt Organization Returns Now Available Online Instead of DVD

The IRS has revised the instructions on obtaining the copies of exempt organization returns. Under the new revision, taxpayers will not be able to obtain the copies of returns on DVD. Instead, taxpayers will be able to access the exempt organization forms, free of cost, on Tax Exempt Organization Search (TEOS) at <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search>. For further information, taxpayers may visit [IRS.gov/Charities-Non-Profits/Copies-of-EO-Returns-Available](https://www.irs.gov/Charities-Non-Profits/Copies-of-EO-Returns-Available).

also served as controller of the Office of Management and Budget in 2009 for four

years under President Obama prior to taking over as acting commissioner.

House Ways And Means Committee Outlines Oversight Agenda

The Republican leadership of the House Ways and Means Committee announced its list of oversight hearings and other related activities it plans to conduct during the 118th Congress, including a number of tax and tax policy-related issues.

The list, published on the committee’s website February 28, 2023, prior to a hearing held to mark-up legislation, covers a range of issues. The committee signaled it will be looking for avenues of tax relief for families, individuals, farmers, and small businesses and it will consider “restricting the Internal Revenue Service (IRS) with a service-first focus to better align the tax administrator with a simpler, pro-growth tax code.”

On the IRS operations front, the committee stated it will be looking at IRS operations and administration of tax laws, as well as the agency’s audit selection procedures. The document stated

the committee will continue “oversight over major operating areas of the agency to ensure the nation’s tax laws are being administered in a fair and impartial manner, particularly given the recent infusion of \$80 billion in additional mandatory funding on top of the agency’s annual budget” as part of the Inflation Reduction Act.

That oversight is expected to include an evaluation of the tax filing season, including electronic filing and improper payment levels and fraud prevention efforts, as well as an examination of proposed staffing levels and other administrative issues.

With regards to auditing, the document said it would be focusing on evaluating “the impact of IRS audit selection procedures on taxpayers making \$400,000 or less, particularly in connection with the recent infusion of \$80

billion in additional mandatory funding for the agency.” The document makes no mention of ensuring that wealthy individuals and corporations are paying their fair share of taxes.

The document also mentions that the committee plans oversight of the Biden Administration’s multilateral tax negotiations, including the Organisation for Economic Co-Operation and Development/G20 Inclusive Framework on Base Erosion and Profit Shifting (the global corporate minimum tax rate).

Other topics planned for oversight during the coming Congress include a review of tax laws in the past two Congresses, tax exempt organizations, tax code and tax form simplification, tax scams and improper payments, federal excise taxes and related trust funds, pension and retirement security, and security of taxpayer information.

REFERENCE KEY

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

FEDERAL TAX WEEKLY, 2023 No. 10. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.
© 2023 CCH Incorporated and its affiliates. All rights reserved.

IRS Provides Refund Claim Lookback Period Relief for Certain Due Dates Extended for COVID-19

Notice 2023-21

The IRS has provided relief that permits taxpayers affected by the Coronavirus Disease 2019 (COVID-19) emergency who had a return filing due date postponed by Notice 2020-23, I.R.B. 2020-18, 742, or Notice 2021-21, I.R.B. 2021-15, 986, who did not receive an extension of time for filing such return, and who file timely credit or refund claims, to be credited or refunded amounts deemed paid on April 15 of each year.

Among other things, Notice 2020-23 postponed certain federal tax return filing and payment obligations that were due to be performed on or after April 1, 2020, and before July 15, 2020, to July 15, 2020. Notice 2021-21 postponed the due date for both filing Form 1040 series returns with an original due date of April 15, 2021, and making federal income tax payments in connection with one of these forms, to May 17, 2021.

Under Code Sec. 6511, a taxpayer must file a refund or credit claim within three years from the time the taxpayer's return was filed, or two years from the time the tax was paid, whichever period expires later. Under Code Sec. 6511(b)(2), the

IRS Begins Registration for 2023 IRS Nationwide Tax Forums

The IRS has started the registration for this summer's 2023 IRS Nationwide Tax Forums. The forums begin on July 11, 2023 in New Orleans, La. The IRS Nationwide Tax Forums are designed specifically for tax professionals. These include enrolled agents, certified public accountants, certified financial planners, Annual Filing Season Program participants and well uncredentialed tax professionals. Attendees may earn up to 18 continuing education credits. The forums return to an in-person format in five cities across the nation for the first time since 2019. The forums are at:

- July 11 – 13 in New Orleans, Louisiana
- July 25 – 27 in Atlanta, Georgia
- August 8 – 10 in National Harbor, Maryland. (Washington, D.C., area)
- August 22 – 24 in San Diego, California
- August 29 – 31 in Orlando, Florida

Each of the five IRS Nationwide Tax Forums is a three-day event. They would have more than 40 seminars and workshops on a wide variety of federal and state tax issues presented by experts from the IRS and partner organizations from the tax community.

[IR-2023-37](#)

credit or refund amount is limited to the amount of tax paid within a specified period immediately preceding the filing of the refund or credit claim (the "lookback period"). When a taxpayer files a claim within three years of filing the return, the lookback period is three years plus the period of any extension of time for filing the return. Otherwise, the lookback period is two years.

While Notice 2020-23 and Notice 2021-21 postponed certain return filing due dates, they did not extend the time for filing the returns because a postponement is not an extension. As a result, the postponements did not lengthen the lookback periods.

Relief for Determining Lookback Period

The relief applies for determining the credit or refund amount on the tax for which

the return filing or payment due date was postponed:

- For any person with a federal tax return filing or payment obligation that was postponed by Notice 2020-23 to July 15, 2020, the period beginning on April 15, 2020, and ending on July 15, 2020, will be disregarded in determining the beginning of the lookback period.
- For any person with a filing or payment obligation for a Form 1040 series federal income tax return that was postponed by Notice 2021-21 to May 17, 2021, the period beginning on April 15, 2021, and ending on May 17, 2021, will be disregarded in determining the beginning of the lookback period.

The relief is automatic, so affected taxpayers do not have to call the IRS, file any form, or send letters or other documents to receive the relief.

Supreme Court Rules FBAR Penalty Applies on Per-Report Basis

A. Bittner, SCt, 2023-1 ustc ¶50,127

The U.S. Supreme Court has ruled that the \$10,000 maximum penalty under the Bank

Secrecy Act (BSA) for the nonwillful failure to file a compliant Report of Foreign Bank and Financial Accounts (FBAR) accrues on a per-report, not a per-account, basis. This

ruling settles a split in authority between the Ninth Circuit (*J. Boyd*, CA-9, 2021-1 ustc ¶50,112) and the Fifth Circuit (*A. Bittner*, CA-5, 2021-2 ustc ¶50,242).

Background

U.S. citizens and residents must keep records and/or file reports when the person makes a transaction or maintains a relation for any person with a foreign financial agency (31 USC 5314). Each person with a financial interest in a financial account in a foreign country must report the relationship to the IRS for each year the relationship exists by providing specified information on and filing the FBAR. The FBAR generally must be filed by June 30 of each calendar year for foreign financial accounts over \$10,000 maintained during the previous calendar year (31 C.F.R. 1010.350, 1010.306). If the person fails to file the FBAR, the IRS can impose a penalty of up to \$10,000 for nonwillful violations, unless the violation was due to reasonable cause (31 USC 5321).

Here, the taxpayer nonwillfully failed to report his interests in multiple foreign bank accounts on annual FBAR forms for several years. The government assessed \$2.72 million in civil penalties against the taxpayer: \$10,000 for each unreported account each year for five years. The district court found the taxpayer liable and denied his reasonable cause defense, but reduced the assessment to \$50,000 because it determined that the \$10,000 maximum penalty attached to each failure to file an annual FBAR, not to each failure to report an account.

The Fifth Circuit ruled that the text, structure, history, and purpose of the relevant statutory and regulatory provisions showed that the “violation” of 31 USC 5314 contemplated by the 31 USC 5321 penalty was the failure to report a qualifying account, not the failure to file an FBAR. Therefore, the \$10,000 penalty cap applied on a per-account basis, not a per-report basis.

FBAR Penalty Per Report

In the majority opinion by Justice Gorsuch, the Court determined that 31

IRS Announces Acquiescence in Taxation of Exports Case

The IRS will acquiesce to an appeals court holding in *Trafigura Trading LLC v. United States*, CA-5, 2022-1 USTC ¶70,372. The appeals court had held that the Code Sec. 4611(b) tax imposed on exports violates the Constitution’s Export Clause, and therefore the U.S. may not enforce Code Sec. 4611(b) on crude oil exported from the U.S.

Acquiescence Announcement 2023-1

USC 5314, which delineates an individual’s legal duties under the BSA, does not mention accounts or their number, but instead addresses the legal duty to file reports which must include various kinds of information about an individual’s foreign transactions or relationships. Further, 31 USC 5321 authorizes the Treasury Secretary to impose a civil penalty of up to \$10,000 for “any violation” of section 5314. The nonwillful penalty provision in section 5321 does not speak in terms of accounts or their number, but instead pegs the quantity of nonwillful penalties to the quantity of violations. While multiple deficient reports may yield multiple \$10,000 penalties, and even a simple deficiency in a single report may expose an individual to a \$10,000 penalty, the Court ruled that the penalties for nonwillful violations accrue on a per-report basis, not a per-account basis. Also, while section 5321 does tailor penalties to accounts for certain cases that involve willful violations, Congress did not say in section 5321 that the government may impose nonwillful penalties on a per-account basis.

The Court found other contextual clues that cut against the government’s arguments. First, the government’s guidance to the public in various warnings, fact sheets, and instructions seemed to tell the public that the failure to file a report represented a single violation exposing a nonwillful violator to one \$10,000 penalty. Also, when Congress amended the law in 2004 to authorize penalties for nonwillful violations, it

did not apply language from previous amendments to willful penalties to authorize per-account penalties for nonwillful violations.

The Court also observed that other features of the BSA and its regulatory scheme suggested that the law aimed to provide the government with a report sufficient to tip it to the need for further investigation, not to ensure the presentation of every detail or maximize revenue for each mistake. Finally, the Court stated that the government’s per-account penalty reading of the statute invited anomalies, such as subjecting willful violators to lower penalties than nonwillful violators, that are avoided by reading the nonwillful penalty to apply on a per-report basis.

The Court concluded that, best read, the BSA treats the failure to file a legally compliant report as one violation carrying a maximum penalty of \$10,000, not a cascade of such penalties calculated on a per-account basis.

Dissenting Opinion

Justice Barrett’s dissent (joined by Justices Thomas, Sotomayor, and Kagan) stated that the most natural reading of the statute establishes that each failure to report a qualifying foreign account constitutes a separate reporting violation, so the government can levy penalties on a per-account basis.

Reversing and remanding a CA-5 opinion, 2021-2 ustr ¶50,242.

IRS Undertook Unnecessary Actions on PTINs; Vendor Fees and Portions of PTIN Fees Were Excessive

A. Steele, DC-DC, 2023-1 *ustc* ¶150,126

The district court ruled that vendor fees and portions of the taxpayers' Preparer Tax Identification Numbers (PTINs) fees for tax year (TY) 2011 through TY 2017 were excessive. The court would not defer to the IRS's determination of whether the activities used to justify the PTIN and vendor fees were sufficiently related to the provision of PTINs to return preparers. But it would defer to the IRS's estimation of how much it costs to carry out those activities.

Background

IRS regulations require tax return preparers, i.e., those who prepare returns for compensation, to obtain and renew annually a unique Preparer Tax Identification Number or PTIN. In 2010, the IRS began charging a fee to obtain and renew the PTIN. The Independent Offices Appropriation Act (IOAA) (31 U.S.C. §9701) was the authority under which the fee was charged. The fee was designed to recoup the IRS's costs of issuing the PTINs and maintaining a database.

A group of tax return preparers filed a class action lawsuit challenging the PTIN fee, claiming that the IRS lacked authority under the IOAA to charge the fee and that its decision to charge the fee was arbitrary and capricious. The district court ruled in favor of the preparers, granted an injunction barring the IRS from collecting the fee, and ordered a refund of collected fees.

On appeal, the Court of Appeals for the D.C. concluded that the IRS acted within its authority under the IOAA and that its

2023 Supplemental Grant Application Package Announced by IRS

The IRS has provided a supplemental grant opportunity for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching supplemental grant. The budget and the period of performance for the supplemental grant will be July 1, 2023 to December 31, 2023. The application period would run from March 7, 2023, through April 18, 2023. The maximum amount of an award an organization can receive for year 2023 has been increased from \$100,000 to \$200,000. Further, organizations currently receiving an LITC grant for 2023 are also eligible for an increase in funding up to \$200,000 (including any funds already awarded); however, those organizations do not need to apply and instead will be contacted directly by the LITC Program Office.

All supplemental applications must be filed electronically by 11:59 p.m. (EST) on April 18, 2023. All organizations must use the funding number of TREAS-GRANTS-052023-002, and the Catalog of Federal Domestic Assistance program number is 21.008. The LITC Program Office is scheduling a webinar for March 9, 2023, to cover the full application. The IRS has requested interested parties to visit www.irs.gov/advocate/low-income-taxpayer-clinics for complete details, including posting materials and any changes to the date and time.

[Low Income Taxpayer Clinic Grant Program; Availability of 2023 Supplemental Grant Application Package](#)

decision to charge the fee was not arbitrary and capricious. The Court of Appeals vacated the district court's judgment and remanded for further proceedings, including an assessment of whether the amount of the PTIN fee unreasonably exceeds the costs the IRS incurs with respect to the fees.

TY 2011 Through TY 2015 PTIN Fees

The Court observed that only the direct and indirect costs of (1) investigating ghost preparers; (2) handling complaints regarding improper use of a PTIN, use of a compromised PTIN, or use of a PTIN obtained through identity theft; and (3) composing the data to refer those specific types of complaints to other IRS business units were valid bases for the corresponding amount of the TY 2011 through TY 2015 PTIN fees. The IRS' Compliance Department undertook additional activities unrelated to the misuse or nonuse of PTINs.

Next, the IRS unlawfully included the cost of Program Compliance (Professional Designation Checks (PDCs)) in its calculation of TY 2011 through TY 2015 PTIN fees. The government provided no

explanation on why repeatedly verifying accurate credentials was reasonably related to protecting a preparer's identity. The Service also unlawfully included the cost of prisoner lists; suitability referrals and SDN checks in its calculation of the TY 2011 through TY 2015 PTIN fees. The IRS would have an opportunity to determine what portion of support costs laid out in the 2010 Cost Model meet that bar on remand.

TY 2016 and TY 2017 PTIN Fees

The TY 2016 and 2017 PTIN fees were determined based on the 2015 Cost Model. Thus, on remand to the IRS, that later cost model would measure which costs were actually allowable under the IOAA. The TY 2011 through TY 2017 vendor fees went beyond funding the portions of work related to the issuance, renewal, and maintenance of PTINs. It charged preparers to cover portions of that work that benefitted only the agency and the public. These fees were excessive under the IOAA.

The IRS unlawfully required return preparers to pay whatever portion of the

TY 2011 through TY 2017 vendor fees was attributable to activities unrelated to the issuance, renewal, and maintenance of PTINs and support for those activities. The IRS would have an opportunity on remand to estimate that portion.

Further, the court declined to rule on whether the IRS may claw back the forgone PTIN and vendor fees through some

other means, regarding the offset. The court remanded to the IRS to determine an appropriate refund for the class consistent with this opinion and the accompanying order. Specifically, the court ordered the IRS to determine reasonable estimates of the portions it lawfully could have charged of the TY 2011 through TY 2015 PTIN fees based on the 2010 Cost Model, the

TY 2016 and TY 2017 PTIN fees based on the 2015 Cost Model, and the TY 2011 through TY 2017 vendor fees based on the IRS-Accenture contracts. The court would retain jurisdiction. If a IOAA fee was excessive because of unallowable activities, the proper remedy would be to remand to the IRS to set a new fee within the bounds of what the law allows.

AICPA Seeks Clarity On Reporting Digital Assets On Form 1040

The American Institute of CPAs is suggesting a series of frequently asked questions for the Internal Revenue service to post and answer on its website regarding the new digital asset question that appears on the 2022 Form 1040.

The 2022 Form 1040 asks the following yes/no question: “At any time during 2022, did you (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?”

In a February 17, 2023, letter to the agency, AICPA identified 12 questions and offered recommended responses to those questions that the IRS could include on its website to guide taxpayers on how to

answer the digital asset question. Among the questions the organization is recommending the IRS answer are:

- What is a digital representation of value?
- What is a cryptographically secured distribution ledger as used in the Form 1040 question?
- How do I determine if my digital asset is recorded on a cryptographically secured distributed ledger?
- What is considered “similar technology” to a cryptographically distributed ledger?
- What are the “characteristics of a digital asset” as that term is used in the 2022 Form 1040 instructions?
- Does a “yes” answer to the 2022 Form 1040 digital asset question mean that I

have tax consequences from digital asset transactions that should be reported on my 2022 Form 1040?

AICPA sent the letter in hopes that “IRS will consider posting these or similar FAQs on the website for this 2022 tax return filing season and that the 2023 Form 1040 instructions will be modified for next year to provide greater certainty to taxpayers and their preparers in confidently and properly complying with the question and overall requirements for digital asset”.

A copy of this letter can be found with all of AICPA’s tax policy and comment letters at <https://us.aicpa.org/advocacy/tax/2023taxadvocacycommentletters.html>.

GAO Offers Recommendations To Reduce The Tax Gap

GAO Report: Tax Gap—Modest Reductions in the Gap Could Yield Large Fiscal Benefits (GAO-23-106448)

The U.S. Government Accountability Office is offering recommendations to close the tax gap, a move it says could yield large fiscal benefits even if there is only a modest narrowing of the gap between what is paid and what is owed.

In a “snapshot” report issued February 27, 2023, the GAO cited Internal Revenue Service-reported figures for the years 2014-2016 that show taxpayers owed \$3.3 trillion in taxes but paid only \$2.8 trillion. GAO analysis of IRS data attributes the gap to three key factors: underreporting (\$398 billion); underpayment (\$59 billion); and nonfiling (\$39 billion).

GAO reported a number of factors that have contributed to the tax gap, including limited third-party information reporting, declines in audit rates, worsening customer service and the complexities of the tax code. It also noted that abusive tax shelters also play a role in contributing to the tax gap. The report did not quantify how much these factors contributed to the tax gap.

“Our work shows there are no easy ways to reduce the tax gap,” the report states. “Multiple approaches are needed to address the many causes of tax noncompliance.”

The government watchdog recommends that the IRS re-establish quantitative goals to reduce the tax gap; expand third-party information reporting; digitize taxpayer returns to make them more

readily available to enforcement programs; and make it easier for individuals to report preparers and promoters involved in abusive tax schemes.

It also is recommending that Congress give the IRS explicit authority to establish professional requirements for paid preparers; expand third-party reporting requirements related to real estate; expand IRS authority to correct errors and discrepancies between taxpayer reported and other government collected information; and requiring paper returns include a scannable code to allow information to be processed digitally.

The GAO did not quantify how much benefit the federal government could get with even a modest reduction in the tax gap.

IRS Announces Selection of Eight New Members to Serve on Taxpayer Advocacy Panel

IR-2023-36

The IRS has announced the selection of eight new members to serve on the Taxpayer Advocacy Panel (TAP) for 2023. The IRS recommended and the Treasury Department approved the new members, who will join eight TAP alternates approved in a prior year, for a total of 16 new active members. When added to returning members, these new TAP members will round out the panel with 63 volunteers for 2023. Further, applications for the 2024 TAP year are now being accepted from civic-minded volunteers looking for ways to serve their communities. TAP members volunteer to serve a three-year term and are expected to devote 200 to 300 hours per year to panel activities. The IRS encouraged applicants from under-represented groups, including

Native Americans and non-tax professionals to apply. New TAP members will serve a three-year term starting in December 2023.

The TAP is currently seeking candidates in Alabama, Alaska, Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming. However, the IRS encouraged candidates residing in all locations to apply. All timely applications will be

considered. Applications must be submitted by March 31, 2023. More details about how to apply to become a TAP member are available at <https://www.usajobs.gov/Search/?k=Taxpayer%20Advocacy%20Panel>.

“Congratulations and welcome to all of our new Taxpayer Advocacy Panel members,” said National Taxpayer Advocate Erin M. Collins. “I am grateful for the time and talents the members bring to the panel and their devotion to making the American tax system work better for everyone. Their commitment to listen to taxpayers, understand the problems they are experiencing, and then bring that perspective to the table with our IRS partners is a great model for how we can improve the taxpayer experience with the IRS when we work together.”

IRS Warns Taxpayers of New Filing Season Scams Involving Form W-2 Wages

IR-2023-38

The IRS has issued a consumer alert to warn taxpayers of new scams that urge people to use wage information on a tax return to claim false credits in hopes of getting a big refund. A scheme circulating on social media encourages taxpayers to use tax software to manually fill out Form W-2, Wage and Tax Statement, and include false income information. In this scheme, scam artists suggest people make up large income and withholding figures as well as the employer it is coming from. Scam artists then instruct people to file the

bogus tax return electronically in hopes of getting a substantial refund due to the large amount of withholding.

Further, two variations of this scheme are also being seen by the IRS; both involve misusing Form W-2 wage information in hopes of generating a larger refund:

- One variation involves people using Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals, to claim a credit based on income earned as an employee and not as a self-employed individual.
- A similar variation involves people making up fictional employees employed in

their household and using Schedule H, Household Employment Taxes, to try claiming a refund based on false sick and family wages they never paid.

The IRS reminded taxpayers who try this that they may face a wide range of penalties. This may include a frivolous return penalty of \$5,000. Filers also run the risk of criminal prosecution for filing a false tax return. For anyone who has participated in one of these schemes, there are several options that the IRS recommended. Taxpayers can amend a previous tax return or consult with a trusted tax professional.

Washington Round-up

ABA seeks guidance on IRA's direct-pay election. The American Bar Association is calling on the Internal Revenue Service to issue guidance to clarify how the

“direct-pay election” provision in the Inflation Reduction Act will be implemented. A February 22, 2023, letter to the agency notes that the provision allows

certain taxpayers (including tax-exempt organizations, state governments and subdivisions thereof, and certain others) to elect to treat the amount of the tax credit

as a payment of income tax. ABA is asking for guidance on a series of topics, including eligibility; implications of transfer election; procedural and anti-abuse considerations; and clarifications relating to passthroughs.

ABA submits comments on real estate-related proposed regs. The American Bar Association on February 27, 2023, submitted comments on proposed regulations under Code Sec. 897 and Code Sec. 892 regarding issues affecting real estate. The Code Sec. 897 proposed regulations examine whether a qualified investment entity is domestically owned, while

the Code Sec. 892 proposed regulations provide exceptions to the rule that certain income received by a foreign government is excluded from gross income and is exempt from federal income tax. The comments on these proposed regulations can be found here.

AICPA seeks guidance on changes to Sec. 162(m) made by ARPA. The American Institute of CPAs is asking the Department of the Treasury and the Internal Revenue Service to issue guidance “clarifying that a covered employee under section 162(m)(3)(D) may be

included as one of the five highest paid employees under section 162(m)(3)(C) for a particular tax year. The organization also recommended guidance clarifying which employees are included American Rescue Plan Act of 2021 requirements to identify the five highest paid employees. The comments were submitted to the agencies on February 24, 2023. AICPA’s tax policy and advocacy comment letters can be found at <https://us.aicpa.org/advocacy/tax/2023taxadvocacycommentletters.html>.

TAX BRIEFS

American Depositary Receipt Program

The IRS Chief Counsel has issued advice on payments made by a depositary institution in the case of (1) payments by a U.S. depositary institution to a foreign corporation for expenses the corporation incurs to institute a sponsored American Depositary Receipts program having holders located both inside and outside the United States; or (2) payments by such depositary institution to the corporation pursuant to a revenue-sharing arrangement.

IRS Advice Memorandum AM 2023-001

Disaster Relief

A January 10, 2023, notice granting relief to victims of severe winter storms, flooding and mudslides that began on January 8, 2023, in parts of California was updated by the IRS on February 23, 2023, to change the filing and payment deadlines from May 15, 2023 to October 16, 2023.

California Disaster Relief Notice (CA-2023-01)

A January 24, 2023 notice granting relief to victims of severe winter storms, flooding, landslides and mudslides that began on December 27, 2022, in parts of California was updated by the IRS on February 23, 2023, to include Alpine county. Further, the notice was updated by the IRS on February 24, 2023, to change the filing and payment deadlines from May 15, 2023 to October 16, 2023.

California Disaster Relief Notice (CA-2023-02)

A January 19, 2023 notice granting relief to victims of severe storms, straight-line winds and tornadoes that began on January 12, 2023, in parts of Alabama was updated by the IRS on February 23, 2023, to change the filing and payment deadlines from May 15, 2023 to October 16, 2023.

Alabama Disaster Relief Notice (AL-2023-01)

A January 19, 2023 notice granting relief to victims of severe storms, straight-line winds and tornadoes that began on January 12, 2023, in parts of Georgia was updated by the IRS on February 24, 2023, to change the filing and payment deadlines from May 15, 2023 to October 16, 2023.

Georgia Disaster Relief Notice (GA-2023-01)

Estate Tax

An estate was not allowed a deduction for payments made to a decedent’s stepchildren pursuant to a prenuptial agreement. After several modifications to the prenuptial agreement, the property that the surviving spouse would receive upon the decedent’s death was identified as, in addition to an apartment and cash, the right to reside in a beach house for five years free of charge and \$1 million payments to each of her three children. The decedent was obligated to reflect the provisions in his will. During the last years of his life, the decedent made large payments to several women, including his daughter,

stepdaughter, and other women that he shared either social or romantic relationships. Because the decedent did not amend his will in accordance with the prenuptial agreement, the estate was subject to claims by his wife and stepchildren during probate, which were eventually settled.

Spizzirri, Est., TC, Dec. 62,171(M)

Gift Tax

The Tax Court redetermined the federal gift tax resulting from the 2010 transfers of closely-held stock by a married couple to a group consisting of their descendants. Each recipient timely filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, electing to treat the gifts as split gifts under Code Sec. 2513, and attaching an appraisal based on a weighted average of the subject shares, made using both an asset approach and an income approach and assigning differing weights to the two approaches in arriving at a total value. Discounts were also applied in ascertaining a final fair market value. Aside from the appraisal of certain artwork, there were three separate appraisals completed, all of which applied “tax affecting” to determine the fair market value of the S corporation stock. The Tax Court recognized that there is not a total bar against the use of tax affecting, and concluded the circumstances of these cases required its application.

Cecil, Sr. Est., TC, Dec. 62,170(M)

[Like-Kind Exchanges](#)

The IRS ruled that water rights were “real property” under Code Sec. 1031 and its regulation. Further, they were like kind to a fee simple interest in real property under Code Sec. 1031, provided that all properties were held for productive use in a trade or business or for investment. The taxpayer planned to sell a portion of the water rights and reinvest the proceeds in real property in a transaction that would qualify for nonrecognition under Code Sec. 1031.

[IRS Letter Ruling 202309007](#)

[LLCs](#)

The IRS Chief Counsel ruled that despite Code Sec. 741, Code Sec. 1221 applies to treat an entity’s gain on the sales of limited liability company (LLC) interests as ordinary income because the taxpayer held the LLC interests primarily for sale to customers in the ordinary course of a trade or business. Further, Code Secs. 741 and 751(d)(1) and (d)(3) do not collectively apply to treat the taxpayer’s gain on the sales of LLC interests as ordinary income because the taxpayer was not engaged in a trade or business of selling land.

[Chief Counsel Advice Memorandum 202309015](#)

[QTIP](#)

The value of the assets of a qualified terminable interest property (QTIP) trust

includible in a decedent’s gross estate was not reduced by an agreed-upon amount of undistributed income. The assets of the QTIP trust consisted of limited partnership interests in a family limited partnership (FLP) and a small amount of cash and marketable securities. As part of a settlement agreement, the QTIP trust agreed to pay to the decedent’s estate an amount that included undistributed income, trustee’s commissions, and legal and accounting fees.

[Kalikow, Est., TC, Dec. 62,167\(M\)](#)

[Tax-Exempt Organizations](#)

A company that sold annuity contracts to individuals for purchase payments did not qualify as an organization described in Code Sec. 501(c)(15) and therefore was not exempt from federal tax under Code Sec. 501(a). The taxpayer did not establish that its gross receipts did not exceed the threshold mentioned in Code Sec. 501(c)(15)(A).

[Commonwealth Underwriting & Annuity Services, Inc, TC, Dec. 62,172\(M\)](#)

[Unreported Income](#)

The advances on future income received by a married couple, from a Cambodian construction company, were taxable advances. Further, the taxpayers were liable for accuracy-related penalties under Code Sec. 6662.

[Nath, TC, Dec. 62,168\(M\)](#)

A married couple, who operated a grocery store, had unreported gross receipts for three tax years at issue. Further, the taxpayers were liable for Code Sec. 6662 accuracy-related penalties.

[Cheam, TC, Dec. 62,169\(M\)](#)

[Supreme Court Docket](#)

A petition for review was filed in the following case:

W. R. Tinnermann, CA-11. An individual’s claim for appeal against a tax assessment for the tax years at issue was dismissed by the Court of Appeals as it was no longer a live controversy. The IRS had already written off the assessment because the collection deadline of Code Sec. 6502(a) had expired. Further, regarding the second claim, there was no meaningful relief the Court could grant. The relief requested was for reversal of a certification that the State Department had already removed. Therefore, the relief had already been granted. Finally, the last two claims filed by the taxpayer were barred by sovereign immunity as the taxpayer had not paid the total tax liability.