

FEDERAL TAX WEEKLY

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IRS Loses More Than a Quarter of IRA Funding in Debt Ceiling Compromise

House Republicans were able to strip away more than 25 percent of the funds allocated to the Internal Revenue Service in the Inflation Reduction Act as part of the compromise to help get the debt ceiling bill passed and signed into law.

President Biden signed The Fiscal Responsibility Act (H.R. 3746) into law on June 3, 2023, after the bill passed with bipartisan majorities in both chambers of Congress (314-177 in the House and 63-36 in the Senate). The language of H.R. 3746 immediately rescinds \$1.39 billion of the nearly \$80 billion in IRA funding. Additionally, there is an agreement in place to reallocate \$20 billion of the funding equally across the 2024 and 2025 budgets, although the language of the bill does not reflect this agreement.

Prior to negotiations, House GOP members were targeting the entire supplemental funding the IRS received in the Inflation Reduction Act.

John Whiten, communications director at the Institute on Taxation and Economic Policy, said in a June 1, 2023, blog post that “cutting these critical funds to enforce our tax laws erodes the fairness and integrity of our entire tax system while reducing the revenue lawmakers will have available to invest in the American people.”

H.R. 3746 includes provisions that could trigger more budget cuts to the IRS and other agencies. In the law is a provision requiring Congress to pass the 12 individual budget bills by the end of the fiscal year (September 30, 2023) or face the prospect of triggering an automatic continuing resolution that keeps the government funded but with an automatic one percent decrease across the board.

The bill introduces no new taxes and claws back billions in unused COVID-19 funds issued to states. One area of the IRA that House Republican lawmakers targeted but were unable to rescind were the numerous environment-related tax credits that encourage clean energy usage as well as the purchase of electric vehicles.

Tax Code Simplification Among AICPA Priority Guidance Recommendations

The American Institute of CPAs is encouraging the Department of the Treasury and the Internal Revenue Service to simplify the tax code as part of its recommendations for what guidance should be given priority in the coming year.

In a May 9, 2023, letter to the IRS, the organization said that it “again encourages the Department of the Treasury and the Internal Revenue Service to continue pursuing tax simplification,” and offered a series of recommendations to help achieve that, including:

- using the simplest approach to accomplish a policy goal;
- providing safe harbor alternatives;

- offering clear and consistent definitions;
- using horizontal drafting (a rule placed in one Internal Revenue Code section should apply in all other Code sections) to the greatest extent possible;
- building on existing business and industry-standard record-keeping practices;
- providing a balance between simple general rules and more complex detailed rules; and
- matching a rule's complexity to the sophistication of the targeted taxpayers.

In addition to the guidelines for tax code simplification, AICPA offered recommendations across a range of topics. The letter containing the recommendations, along with other tax policy and advocacy

Reference Price Provided for Marginal Well Production Credit

The IRS has provided the applicable reference price for qualified natural gas production from qualified marginal wells during tax years beginning in 2022 for determining the marginal well production credit (MWC). The applicable reference price for tax years beginning in 2022 is \$3.43 per 1,000 cubic feet (mcf). Also provided is the credit amount used for determining the MWC for tax years beginning in calendar year 2022. The credit amount is determined using the 2022 inflation adjustment factor of 1.3950 and the applicable reference price of \$3.43 per mcf. Therefore, the credit amount for tax years beginning in calendar year 2023 is \$0.00 per mcf.

Notice 2023-41

comment letters issued by the organization, can be found at <https://us.aicpa.org/>

[advocacy/tax/2023taxadvocacycommentletters.html](https://www.irs.gov/advocacy/tax/2023taxadvocacycommentletters.html).

Rules Proposed for Low-Income Communities Bonus Energy Investment Credit Program

Proposed Regulations, NPRM REG-110412-23; IR-2023-107

The IRS has released proposed rules concerning the Low-Income Communities Bonus Energy Investment Credit Program.

Background

The Inflation Reduction Act of 2022 (P.L. 117-169) added new Code Sec. 48(e) to increase the amount of the energy investment credit for eligible property that is part of a qualified solar and wind facility that is awarded an allocation of environmental justice solar and wind capacity limitation.

The amount of the energy investment credit for a tax year is generally calculated by multiplying the basis of each energy property placed in service during that tax year by the energy percentage. Section 48(e) increases the Section 48 credit by increasing the energy percentage used to

calculate the amount of the Section 48 credit (Section 48(e) Increase) for qualified solar and wind facilities that receive an allocation of Capacity Limitation. The term "qualified solar and wind facility" is defined to mean any facility that generates electricity solely from a wind facility, solar energy property, or small wind energy property; has a maximum net output of less than five megawatts (as measured in alternating current); and is described in at least one of four categories.

Depending on the category of the facility, an allocation of Capacity Limitation may result in a Section 48(e) increase equal to either 10 percentage points or 20 percentage points.

The IRS released Notice 2023-17, I.R.B. 2023-10, 505 on February 13, 2023, to establish the Low-Income Communities Bonus Credit Program. Notice 2023-17, provided initial guidance for potential applicants seeking allocations of calendar

year 2023 environmental justice solar and wind capacity limitation.

Proposed Rules

The newly released proposed rules provide clarifications for the definition of a number of terms, including solar wind facility, energy storage technology, financial benefit, and energy acquired at below market rate. The proposed rules also outline the proposed application process, additional selection criteria, and compliance requirements and recapture rules after receiving an allocation.

The Treasury Department and the IRS request written or electronic comments on all aspects of the proposed rules by June 30, 2023.

Later this year, the Treasury Department and the IRS expect to issue details for the program applicable to the calendar year 2023 Capacity Limitation, covering a

REFERENCE KEY

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

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comprehensive set of procedures and rules for applicants.

Applicability Date

These proposed rules are proposed to apply to tax years ending on or after the date that final rules adopting these proposed rules are published in the Federal Register.

Additional Guidance Provided for the Qualifying Advanced Energy Project Credit Allocation Program

Notice 2023-44; IR-2023-108

The IRS has released additional guidance for the Qualifying Advanced Energy Project Credit Allocation Program. The new guidance clarifies and modifies Notice 2023-18, I.R.B. 2023-10, 508.

Background

The Inflation Reduction Act (P.L. 117-169) added Code Sec. 48C(e) to extend the Code Sec. 48C Qualifying Advanced Energy Project Credit and to provide an additional credit allocation of \$10 billion. The Act also modified the definition of a “qualifying advanced energy project.” Notice 2023-18 established the program

Non-Resident Taxpayers Reminded to File 2022 Tax Returns by June 15

The IRS has alerted U.S. Citizens and resident aliens abroad to file their 2022 federal income tax returns by Thursday, June 15; additionally, expatriates of the US must file a dual status alien tax return. Instructions for filing dual-status are available in Notice 2009-85. Individual taxpayers unable to meet the June 15 due date can request an automatic six-month extension by filing Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return. Businesses that need more time must file Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns.

Members of the military stationed abroad or in a combat zone during tax filing season and their spouses may qualify for special tax situations and benefits.

U.S. citizens and resident aliens must report any worldwide income, including income from foreign trusts, foreign bank and securities accounts or any income received or deductible expenses paid in foreign currency in US dollars. The IRS has urged taxpayers with foreign assets to check if this filing requirement applies to them by visiting the FinCEN’s website.

Taxpayers and expatriates are encouraged to consider paying their tax obligation electronically through their IRS Online Account to ensure that tax payments are credited promptly.

IR-2023-106

to allocate the \$10 billion of credits for qualified investments in eligible qualifying advanced energy projects. Four billion dollars of this program must be allocated to projects located in Section 48C(e) Energy Communities Census Tracts.

Notice 2023-44

Notice 2023-44 provides additional and updated definitions, explains the interaction between Code Sec. 48C and the Advance Manufacturing Production Credit of Code Sec. 45X, and provides updated examples. It also includes requirements for eligible property to be considered placed in service, and that property placed in service before being awarded an

allocation of Section 48C credits is ineligible for the Section 48C(e) program. The Notice provides application requirements, decision, notification, and certification procedures, and selection and review criteria.

An online application portal is available at <https://48C-exchange.energy.gov/>.

In addition, the Notice provides a list of Energy Communities Census Tracts. A map of Section 48C(e) Energy Communities Census Tracts is available at www.energy.gov/infrastructure/48C.

Effect on Other Documents

Notice 2023-18, I.R.B. 2023-10, 508 is clarified and modified.

Interim Guidance Provided on SECURE 2.0 EPCRS Expansion

Notice 2023-43

The IRS provided guidance in advance of an update to the Employee Plans Compliance Resolution System (EPCRS). The SECURE 2.0 Act of 2022 (P.L. 117-328, Sec. 305) allows more

types of errors to be corrected under EPCRS (including plan loan errors) and allows custodians of individual retirement accounts or individual retirement annuities (IRAs) to self-correct inadvertent errors, effective December 29, 2022. The SECURE 2.0 Act directs the IRS to

update the current version of EPCRS in Rev. Proc. 2021-30 within two years. Under the interim guidance, plan sponsors may self-correct eligible inadvertent failures. However, IRA custodians may not self-correct before Rev. Proc. 2021-30 is updated.

Plan sponsors may rely on the interim guidance immediately, until the date that Rev. Proc. 2021-30 is updated. Self-corrections made after December 29, 2022, and prior to this guidance may apply a good faith interpretation of the SECURE 2.0 Act. The IRS requests comments on this guidance and other aspects of the SECURE 2.0 Act's changes to EPCRS.

SECURE 2.0 Changes to EPCRS

Prior to the SECURE 2.0 Act changes, EPCRS allowed plan sponsors to self-correct insignificant operational failures at any time, but significant operational failures and plan document failures had to be corrected within three years of the failure. The SECURE 2.0 Act expanded self-correction to cover any failure to comply with the qualification rules unless the IRS identified the failure or the correction was not completed within a reasonable time after the failure was identified. Specifically, the SECURE 2.0 Act allows participant loan failures to be self-corrected using corrections that were available only under IRS-supervised programs.

The SECURE 2.0 Act also directs the IRS to allow IRA custodians to use EPCRS to self-correct IRA failures, including the failure to make a required minimum distribution and failed rollovers from inherited IRAs. The IRS must revise the EPCRS guidance in Rev. Proc. 2021-30 within two years of the date of enactment.

Guidance for Plan Sponsors

The interim guidance generally allows a plan sponsor to self-correct an eligible inadvertent failure before the EPCRS program as outlined in Rev. Proc. 2021-30 is updated if the failure is not identified by the IRS and the self-correction is completed within a reasonable period after the failure is identified. The failure may not be egregious, related to an abusive tax avoidance transaction, or related to the diversion of plan assets.

The IRS identified several provisions of Rev. Proc. 2021-30 that no longer apply

IRS Releases Seminar Lineup for 2023 Nationwide Tax Forum

The largest and longest-running event dedicated exclusively to the needs of tax professionals- the 2023 IRS Nationwide Tax forum will be held in person for the first time since 2019. The three day sessions will be conducted in five cities from July 11, 2023 to August 31, 2023. The forum offers attendees more than 40 seminars that encompass changes to tax law and IRS transformation efforts. Attendance will provide eligible attendees up to 18 continuing education (CE) credits. The attendees eligible to earn CE credits are enrolled agents, certified public accountants, certified financial planners, Annual Filing Season Program (AFSP) participants, and other tax professionals. Standard pricing registration to the forum begins on July 15 and ends two weeks before the start of the forum in each city. However, attendees can avail themselves of early bird rates by registering by the June 15 deadline. Members of certain participating associations can save an additional amount off the early bird rate if they register by June 15 directly through their association. The forums also feature a two day expo with tax, finance, and business experts and a case resolution program wherein tax professionals can resolve client cases by meeting in person with IRS representatives. There are four special events offered to the attendees this year.

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to self-corrections under the SECURE 2.0 Act, including the requirements that the plan have a favorable determination letter, the correction must be completed before the plan is under examination, and significant failures must be completed within three years. In addition, plans may now self-correct demographic and employer eligibility failures, SEPs and SIMPLE IRA plans may correct significant failures, and certain loan failures can be self-corrected using methods that previously required IRS approval.

The IRS also set out a list errors that may not be corrected under the interim guidance. Even if the failure otherwise qualifies as an eligible inadvertent failure under the SECURE 2.0 Act, listed failures may not be corrected before Rev. Proc. 2021-30 is revised. These failures include a failure to initially adopt a written plan and significant failures in terminated plans.

"Reasonable Period" Clarified

The IRS identified how to determine whether a self-correction has been made within a "reasonable period" after it is identified by the plan sponsor. Generally, a failure that has been corrected by the last day of the 18th month following

the date the failure is identified by the plan sponsor will be treated as having been completed within a reasonable period after it is identified. However, an employer eligibility failure is deemed to be corrected within a reasonable period only if the plan sponsor ceases all contributions to the plan as soon as reasonably practicable after the failure is identified and no later than the last day of the 6th month following the date the failure is identified.

When a plan or plan sponsor comes under examination, the eligible inadvertent failure is treated as having been identified by the IRS and thus is not eligible for self-correction unless the plan sponsor has demonstrated a specific commitment to implement a self-correction before coming under examination. However, if the failure is "insignificant" as defined in Rev. Proc. 2021-30, the failure may be self-corrected even if the plan or plan sponsor is under examination.

Guidance for IRA Custodians

IRA custodians may not use the interim guidance to correct eligible inadvertent failures. Self-correction of IRA failures must wait until Rev. Proc. 2021-30 is revised.

Regulations Containing Revised Actuarial Tables Adopted

T.D. 9974

Final regulations have been issued that contain revisions to actuarial tables used in valuing:

- annuities;
- interests for life or terms of years; and
- remainder or reversionary interests.

These regulations will affect the valuation of lifetime and testamentary transfers of interests that are dependent on one or more measuring lives and will be effective, generally, for valuations occurring after June 1, 2023. However, transitional rules will apply in certain limited circumstances.

Valuation of Annuities and Term Interests

The regulatory actuarial tables included in these regulations are used for the valuation of annuities, interests for life or terms of years, and remainder or reversionary interests in property. Pursuant to Code Sec. 7520(c)(3), the IRS is required to revise the tables at least once in each 10-year period. On May 5, 2022, the IRS published proposed regulations (NPRM REG-122770-18) that updated the actuarial tables based on data compiled from the 2010 census as

set forth in Life Table 2010CM. Tables S (Single Life Remainder Factors) and U(1) (Unitrust Single Life Remainder Factors), effective for transfers for which the valuation date is after June 1, 2023, are based on that data. Conforming amendments were made to various provisions to reflect the revised tables.

Comments Addressed

Decimal Places and Calculations. The IRS received comments that noted a lack of consistency in the number of decimal places used in the calculation of different types of factors. An example was corrected to remove the inconsistency in the examples.

In addition, comments were received regarding the number of decimal places used by software programs and the use of alternate methods of deriving certain factors. The final regulations allow taxpayers to use actuarial formulas or more exact methods in place of the approximation methods. In doing so, taxpayers should use at least as many decimal places as are provided in the final regulations.

Transition Period. The transition period is extended to apply to transactions that

occurred on or after May 1, 2019, and before June 2, 2023. For transactions occurring during that period, the taxpayer may choose to use actuarial factors based on Table 2000CM or Table 2010CM. The taxpayer must be consistent in using the same mortality basis for each interest in the same property and with respect to all transfers occurring on that valuation date.

Amended Returns. For transactions occurring after May 1, 2019, that apply the new valuation factors, amended or supplemental returns should include the caption “AMENDED PURSUANT TO TD 9974” or “SUPPLEMENTED PURSUANT TO TD 9974.”

Election to Use Table 2010CM. As noted, an amended or supplemented return should use the caption above. However, no other affirmative statement is required by the regulations to make the election to use Table 2010CM.

Applicability Date

The regulations are applicable in the case of annuities, interests for life or term of years, and remainder or reversionary interests valued as of a date on or after June 1, 2023.

IRS Summons Did Not Violate Fourth and Fifth Amendments

J. Harper, DC-N.H., 2023-1 USTC ¶150,182

An individual was not entitled to either an injunction requiring the IRS to expunge, destroy, or return his records or an order declaring Code Sec. 7609(f) unconstitutional. The individual challenged the IRS’s utilization of its “John Doe” summons (summons) procedure to obtain the taxpayer’s account information from a virtual currency exchange. The taxpayer alleged that the IRS’s actions constituted a seizure and search that violated the Fourth Amendment of the U.S. Constitution as well as his procedural due process rights under the Fifth Amendment. Additionally, the taxpayer

claimed that the IRS violated Code Sec. 7609(f) in obtaining his records.

Protectable Fourth Amendment Interest

The taxpayer did not have a protectable Fourth Amendment interest in the account records and information produced by the virtual currency exchange in response to the IRS summons. The district court noted that the records provided information that the individual used a particular exchange and information about his virtual currency transactions. Further, the currency exchange, in its privacy policy, had

warned the individual that it may share the individual’s data with law enforcement or third parties when compelled to do so by subpoena, court order, or similar legal procedure, further reducing any privacy interest the individual may have held in the records.

Additionally, the taxpayer argued that he had a property interest in the records because those records constituted his personal or private papers. However, the IRS did not seize or search anything over which the individual could assert ownership or control. Moreover, even if IRS’s summons implicated the individual’s Fourth Amendment rights, the IRS’s seizure and search of the records were

reasonable and thus did not violate the Fourth Amendment.

Fifth Amendment Procedural Due Process Claim

The taxpayer argued that the Due Process Clause of the Fifth Amendment afforded him notice and an opportunity to be heard before the IRS attempted to deprive him of those interests. However, he failed

to identify a protected liberty or property interest. Further, even if he had a protected liberty or property interest in the records, the IRS used a constitutionally-adequate process to deprive him of those interests.

Statutory Claim

The taxpayer's complaint failed to state a claim for violation of Code Sec. 7609(f)

because the statute provided him no private right to sue. Additionally, assuming that the taxpayer had an implied right of action under Code Sec. 7609(f), he had failed to show that prior district court orders issuing and enforcing summonses were subject to subsequent collateral challenges in a different district court. Finally, the IRS made the required showing under Code Sec. 7609(f) and followed the required procedures. Accordingly, the IRS's motion to dismiss was granted.

Hobby Losses Were Miscellaneous Itemized Deductions; Taxpayers' Review Petition Denied

C.L. Gregory, CA-11, 2023-1 USTC ¶150,183

A married couple's hobby losses under Code Sec. 183(b)(2) were below-the-line miscellaneous itemized deductions and the taxpayers were not entitled to appellate review. The taxpayers argued that hobby expenses related to their yacht under Code Sec. 183(b)(2) were not miscellaneous itemized deductions subject to the two-percent floor imposed by Code Sec. 67(a). However, the Tax Court correctly disagreed with the taxpayers and disallowed almost all their deductions attributable to the yacht.

The taxpayers argued that Code Sec. 183(b)(2) created an above-the-line

deduction that was not subject to the two-percent floor. Further, the taxpayers asserted that deduction framework under Code Sec. 183(b)(2) required the court to treat these expenses the same as business expenses in all respects. The taxpayers concluded that their expenses attributable to the yacht were deductible above the line just as if they were trade or business expenses. However, the text of Code Sec. 183(b)(2) did not support their argument. Additionally, the Tax Court correctly concluded that the reference to "gross income" under Code Sec. 183(b)(2) merely concerned the maximum allowable deduction amount under Code Sec. 183(b)(2). This reference to "gross income" was not a

command to apply hobby loss deductions against the taxpayers' total gross income.

Further, the Court of Appeals, after analyzing Code Secs. 62, 63, and 67, noted that these hobby expenses were "miscellaneous itemized deductions" under Code Sec. 67. Several lower courts had reached the same conclusion. The taxpayers made five additional arguments against the court's plain-text analysis. However, none of those arguments were persuasive. Finally, the Court of Appeals affirmed the Tax Court's decision and denied the taxpayers' review petition.

Affirming the Tax Court, 122 TCM 227, Dec. 61,933 (M), T.C. Memo. 2021-115.

Guam Victims of Typhoon Mawar Granted Tax Relief

Guam Disaster Relief Notice (GU-2023-01)

The president has declared a federal disaster area in Guam. The disaster is due to Typhoon Mawar that began on May 22, 2023. The disaster area includes the territory of Guam.

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

Guam Filing Deadlines Extended

The IRS extended certain deadlines falling on or after May 22, 2023, and on or before October 2, 2023, to October 2, 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.

Guam Payment Deadlines Extended

The relief includes extra time to make tax payments. This includes estimated tax payments due on or after May 22, 2023, and before October 2, 2023. Further, taxpayers have until October 2, 2023, to perform other time-sensitive actions due on or after May 22, 2023 and before October 2, 2023.

The IRS excused late penalties for employment and excise tax deposits due on or after May 22, 2023, and before June 6, 2023. But, the taxpayer must make the deposits by June 6, 2023.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal

income tax returns. Taxpayers may get relief by claiming their losses on their 2022 or 2023 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2022 or 2023 return should write the disaster designation: “Guam, Typhoon Mawar” at the top of the return.

This will allow the IRS to speed refund processing.

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.

Northern Mariana Islands Typhoon Mawar Victims Granted Tax Relief

Northern Mariana Islands Disaster Relief Notice (NMI-2023-01)

The president has declared a federal disaster area in Commonwealth of the Northern Mariana Islands. The disaster is due to Typhoon Mawar that began on May 22, 2023. The disaster area includes the islands of:

- Agrihan;
- Alamagan;
- Pagan;
- Rota;
- Saipan; and
- Tinian.

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

Commonwealth of the Northern Mariana Islands Filing Deadlines Extended

The IRS extended certain deadlines falling on or after May 22, 2023, and before October 2, 2023, to October 2, 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.

Commonwealth of the Northern Mariana Islands Payment Deadlines Extended

The relief includes extra time to make tax payments. This includes estimated tax payments due on or after May 22, 2023, and before October 2, 2023. Further, taxpayers have until October 2, 2023, to perform other time-sensitive actions due on or after May 22, 2023 and before October 2, 2023.

The IRS excused late penalties for employment and excise tax deposits due

on or after May 22, 2023, and before June 6, 2023. But, the taxpayer must make the deposits by June 6, 2023.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax returns. Taxpayers may get relief by claiming their losses on their 2022 or 2023 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2022 or 2023 return should write the disaster designation “Commonwealth of the Northern Mariana Islands, Typhoon Mawar” at the top of the return. This will allow the IRS to speed refund processing.

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.

Businesses Again Warned About Employee Retention Credit Scams

IR-2023-105

The IRS has renewed an alert to warn businesses about misleading employee

retention credit scams. The Employee Retention Credit (ERC) is a refundable tax credit designed for businesses that continued paying employees while shut

down due to the COVID-19 pandemic or that had a significant decline in gross receipts during the eligibility periods. The IRS has been issuing warnings about

aggressive ERC scams since last year. In light of the rise in these misleading claims, the IRS has increased compliance work and the IRS Criminal Investigation division is working to identify fraud and promoters of fraudulent claims; hence those who improperly claim the credit will face follow-up action from the IRS and they

will have to pay it back with penalties and interest.

Taxpayers must watch out for warning signs of aggressive ERC marketing and promoters who lure businesses, tax-exempt groups, and others into applying for the credit. Further, the IRS reminded qualified taxpayers to implement steps to protect themselves from

claiming an improper Employee Retention Credit, such as working with a trusted tax professional and most importantly to report ERC abuse by mailing or faxing Form 14242, Report Suspected Abusive Tax Promotions or Preparers to the IRS Lead Development Center in the Office of Promoter Investigations.

TAX BRIEFS

Collections

An IRS Settlement Officer (SO) did not abuse her discretion in sustaining the proposed collection action against an individual. The SO explained that the taxpayer was prohibited from challenging his underlying liabilities for the tax years at issue because he had received statutory notices of deficiency at his last known address but failed to petition the Tax Court for redetermination of the deficiencies.

Kovach, TC, Dec. 62,222(M)

Disaster Relief

A May 4, 2023 notice granting relief to victims of severe winter storms, straight-line winds, flooding, landslides, and mudslides that began on February 21, 2023, in parts of California was updated by the IRS on May 26, 2023, to include Shasta County.

California Disaster Relief Notice (CA-2023-04)

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 May 30, 2023, to clarify that the relief provided to Humboldt County also includes the Hoopa Valley Tribal Nation.

California Disaster Relief Notice (CA-2023-02)

Penalties

The IRS complied with the requirements of Code Sec. 6751(b)(1) by securing timely supervisory approval of all penalties determined against a limited liability company (LLC).

Salacoa Stone Quarry, LLC, TC, Dec. 62,223(M)

Trust Fund Recovery Penalty

An individual was a responsible person who willfully failed to pay over taxes. The taxpayer was liable for trust fund recovery penalties (TFRPs). By authorizing checks for the payment of vendors

and employees' wages, the taxpayer willfully failed to pay the trust fund taxes. Therefore, the reasonable cause defense did not apply to her.

Cashaw, CA-5, 2023-1 ustc ¶150,185

Whistleblower

A whistleblower was not eligible for a mandatory award. The whistleblower did not provide any information on relevant matters.

Lissack, CA-D.C., 2023-1 ustc ¶150,181

A whistleblower's submission did not explicitly reference relevant tax issues that led to adjustments. The IRS made adjustments and recovered proceeds based on the RA's independent information gathering, not based on information that the whistleblower supplied. The IRS is not required to reward every whistleblower who identifies a delinquent taxpayer.

Villa-Arce, CA-D.C., 2023-1 ustc ¶150,184