



# FEDERAL TAX WEEKLY

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## White House Nominates Marjorie Rollinson for IRS Chief Counsel

The White House announced it has nominated Marjorie Rollinson to serve as chief counsel for the Internal Revenue Service.

Rollinson spent more than five years working in the IRS Office of the Chief Counsel. In October 2013, she joined the office as technical deputy association chief counsel in the Office of the Associate Chief Counsel International and in April 2016, she was named associate chief counsel international, a position she held until February 2019. In this role, she managed 100 tax lawyers who were responsible for issuing guidance and providing agency leadership with the technical expertise on international tax rules.

After leaving the IRS, Rollinson moved on to Ernst & Young, where she served as deputy director of the National Tax Department, a role she recently retired from. She also began her career there in 1987 and was named partner in 1997. In 2003, Rollinson was named director of the International Tax Services' National Tax Group and stayed in that role until she left to join the IRS.

## IRA Funding Reduction Will Have Minimal Near-Term Effects – IRS Official

Despite losing more than a quarter of the supplemental funding provided by the Inflation Reduction Act of 2022, the Internal Revenue Service does not expect the loss to have much of a near-term effect on the plans the agency has for the remaining funds.

A little more than \$21 billion of the near \$80 billion allocated to the IRS was either rescinded or will be repurposed as part of the deal cut between President Biden and Speaker of the House Kevin McCarthy (R-Calif.) to get the Fiscal Responsibility Act (H.R. 3746) passed by Congress and signed into law.

“There’s still \$60 billion remaining,” IRS Deputy Commissioner of Services and Enforcement Douglas O’Donnell said June 8, 2023, at the NYU Tax Controversy Forum. “There’s still \$60 billion remaining. That’s \$60 billion we did not have a year ago. So, we still have the opportunity to truly transform the agency.”

O’Donnell said that agency officials are “working now to sort out what this \$20 billion cut means. We are going through a number of scenarios. We don’t know exactly what it’s going to look like.”

He added that any changes will affect the latter years of the 10-year Strategic Operating Plan the agency issued that provided a framework on how the IRS planned to use the nearly \$80 billion in funding.

“We think that our original plan for the first five years will hold and it’s going to be the further out years where we’re going to have more of a challenge to deal with the reduction,” O’Donnell said.

## Meeting The \$400,000 Pledge

O'Donnell also teased forthcoming information regarding what the IRS will be doing to honor its pledge to not increase audit rates above those the agency recorded in 2018 for those individuals and businesses making less than \$400,000.

He noted that the selected year was a year “where the coverage is really low. So, the good thing is we’re not going to be spending a lot of time with those individuals.”

O'Donnell said that means employees are going to have to “shift pretty quickly

## Indiana Disaster Relief Notice Updated

An April 17, 2023 notice granting relief to victims of severe storms, straight-line winds and tornadoes that occurred between March 31 to April 1, 2023, in parts of Indiana was updated by the IRS on June 2, 2023, to include Brown county.

*Indiana Disaster Relief Notice (IN-2023-02)*

to other work,” and they are examining historical practices such as how to deal with the Earned Income Tax Credit, which has in the past triggered correspondence examinations.

“We’ve got to think about how to balance the need to have compliance in

that space with a pledge that was made,” he said. “And that’s going to require us to train up people to do different types of work than they may have historically done in the past. So, expect to hear more about that in the coming weeks and days.”

## IRS Waives Additions to Tax for Underpayment of Estimated Tax Related to Corporate Alternative Minimum Tax

*Notice 2023-42*

The IRS has released a notice providing relief from the addition to tax under Code Sec. 6655 for underpayments of estimated income tax related to application of the new corporate alternative minimum tax (CAMT), as added by the Inflation Reduction Act (P.L. 117-169).

The new corporate AMT under Code Sec. 55, which became effective after December 31, 2022, is based on a corporation’s adjusted financial statement income. Code Sec. 6655 generally requires corporations to pay estimated income taxes quarterly, with an addition to tax for failure to make sufficient and timely payments. While the quarterly estimated tax payments must add up to 100 percent of the income tax due, a safe harbor is provided for some corporations by basing the estimated payments on the prior year’s tax liability. In providing this relief, the IRS

recognizes that the safe harbor rule may be inadequate, by itself, to ensure fairness in the first year the new CAMT is applicable.

### Estimated Taxes

The IRS waived the addition to tax under Code Sec. 6655 with respect to a corporation’s CAMT liability under Code Sec. 55 for any tax year that begins after December 31, 2022, and before January 1, 2024 (the “covered CAMT year”). Accordingly, for a corporation’s covered CAMT year, the corporation’s required installments of estimated tax need not include amounts attributable to its CAMT liability to prevent the imposition of an addition to tax under Code Sec. 6655. However, if a corporation fails to pay its CAMT liability, other Code sections may apply. For instance, additions to tax under Code Sec. 6651 could be imposed.

### Instructions to Form 2220

The Instructions to Form 2220, Underpayment of Estimated Tax by Corporations, will be modified to clarify that no addition to tax will be imposed under Code Sec. 6655 based on a corporation’s failure to make estimated tax payments of its CAMT liability for any covered CAMT year. Taxpayers may exclude such amounts when calculating the amount of its required annual payment on Form 2220.

### Instructions to Avoid Penalty Notice

Affected taxpayers must still file Form 2220 with their income tax return, even if they owe no estimated tax penalty. Further, Form 2220 must be completed without including the CAMT liability from Schedule J of Form 1120. Additionally,

#### REFERENCE KEY

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

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affected taxpayers must include an amount of estimated tax penalty on Line 34 of their Form 1120, even if that amount is zero. Failure to follow these instructions could result in taxpayers receiving a penalty notice that will require an abatement request to apply the relief provided by this notice.

## Applicability Date

The waiver of the addition to tax imposed by Code Sec. 6655 applies for any tax year

that begins after December 31, 2022, and before January 1, 2024.

## IRS Statement on California Balance Due Mailing Letters

The IRS has apologized for the confusion and reassured California taxpayers that although the current mailings received by taxpayers says that they need to pay their taxes within 21 days, taxpayers continue to have an automatic extension until later this year to file and pay as they are covered by the disaster declaration. Further, the IRS has clarified that the mailings have been sent out as a legal requirement and they include a special insert note applicable to those covered by a disaster declaration.

## Treasury Announces Principles for Promoting Fair and Effective Compliance

The U.S. Department of the Treasury has announced core principles and guidelines for ensuring fairness and transparency in compliance and enforcement efforts, across all programs, including tax. The Department is responsible for collecting payments and debts due to federal government and some state governments, as well as processing most payments made by the federal government, including tax refunds.

“Treasury is responsible for delivering key services, payments, and benefits to millions of Americans. And we are also responsible for enforcing rules and procedures to safeguard against waste, fraud, and abuse – and to make sure that obligations are being met,” said Department of the Treasury Secretary Janet Yellen. “This

initiative is part of our larger commitment to providing fair and impartial service that promotes public confidence in the critical work that we do.”

The framework details four core principles to guide the Department’s efforts. Specifically, to ensure fair and effective compliance, the Department must:

- Make it easier for individuals and entities who want to comply with the law to fulfill their obligations.
- Prioritize enforcement efforts based on an appropriate consideration of relevant factors.
- Invest in the personnel, technology, and other resources to investigate and resolve noncompliance efficiently.
- Promote fairness, trust, and accountability in program administration and

enforcement efforts, and maintain appropriate mechanisms to regularly evaluate compliance strategies, systems, and selection tools.

The effort announced also includes several recommendations for implementation, including:

- reviewing existing communication, compliance monitoring, and enforcement policies and procedures;
- consulting with key stakeholders to identify ways to strengthen the fair and impartial enforcement and compliance actions;
- developing methods to regularly test compliance and enforcement systems to detect disparate impacts; and
- regular reporting to the Deputy Secretary.

## Litigation Costs Denied in Case Dismissed for Lack of Jurisdiction Before Supreme Court Decision Allowed Jurisdiction

*J. Castillo, 160 T.C. —, No. 15, Dec. 62,224*

An individual was not entitled to an award of litigation costs against the IRS. The taxpayer late filed a petition for review of a collection due process determination in the Tax Court, and the case was dismissed

for lack of jurisdiction. While the taxpayer was appealing, the U.S. Supreme Court held, in *Boechler, P.C.*, 2022-1 USTC ¶50,142, that the 30-day filing requirement was nonjurisdictional. The Court of Appeals remanded the case to the Tax Court, and the IRS conceded the case in

full. The taxpayer filed a motion for reasonable litigation or administrative costs. The IRS conceded that the taxpayer had satisfied three of the four requirements under Code Sec. 7430—the taxpayer did not unreasonably protract the proceedings, the amount of the costs requested

was reasonable and the taxpayer exhausted the administrative remedies available. The parties disagreed as to whether the taxpayer should have been treated as the prevailing party. The IRS argued that the exception provided in Code Sec. 7430(c)(4)(B) was

applicable here since the Service's position was substantially justified.

The IRS's litigation position was that the Tax Court lacked jurisdiction because the taxpayer's petition was not timely filed. The Tax Court held that this position was

substantially justified at the time the petition was filed. Until the U.S. Supreme Court's decision, it was well established that the 30-day period to file a petition for review of a collection due process determination was jurisdictional.

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## Proposed Regulations Issued Identifying Malta Personal Retirement Schemes as Listed Transactions

*Proposed Regulations, NPRM REG-106228-22*

The Treasury Department and IRS have issued proposed regulations identifying certain Malta personal retirement scheme transactions, and substantially similar transactions, as listed transactions under Reg. §1.6011-4, as well as Code Secs. 6011 and 6012. As a result, participants and material advisors in such reportable transactions are required to disclose them on Form 8886 or otherwise be subject to penalties.

A Malta personal retirement scheme transaction is a transaction where a U.S. citizen or resident alien transfers cash or property, or receives a distribution from, a personal retirement scheme established

under Malta's Retirement Pension Act of 2011. On a U.S. federal income tax return, the taxpayer then excludes from gross income any built-in-gain of appreciated property transferred to the personal retirement schemes established in Malta, income earned by and accumulated in such schemes, and/or distributions from such schemes. Taxpayers have based the exclusion on the tax treaty between the United States and Malta which provides U.S. citizens and residents an exemption from U.S. tax for pensions arising in Malta and income earned by a pension fund established in Malta.

However, the Competent Authority Arrangement (CAA) between the United States and Malta published in December

2021 provides that personal retirement schemes established in Malta are not pension funds within the meaning of the treaty. The exemption from tax only applies to income and distributions from pensions in consideration of past employment. The Malta personal retirement scheme is an individual retirement arrangement and U.S. individuals who participate in these transactions generally lack any connection to Malta other than their participation in these arrangements.

A U.S. taxpayer who participated in such a scheme on a U.S. federal income tax return filed before the proposed regulations were issued will not be treated as participating in a listed transaction provided certain requirements are met.

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## IRS Provides Helpful Tax Information for Military Personnel

*FS-2023-14*

The IRS encouraged members of the military and their families to learn more about the special tax benefits available to them. MilTax, a Department of Defense program generally offers free return preparation and e-filing software for all military members and some veterans, with no income limit. This includes federal tax returns and up to three state income tax returns for each qualified user. Additionally, many military bases offer free tax preparation and filing assistance during the tax filing season. Some also offer free tax help after the April tax filing deadline.

Further, the IRS provided a list of several of the key benefits mentioned in IRS Publication 3, Armed Forces' Tax Guide. This includes Combat Pay, which is partially or fully tax-free. Additionally, members of the military, such as those who serve in a combat zone or are serving in contingency operations outside the U.S., can postpone most tax deadlines. Low and moderate income service members who receive nontaxable combat pay can use a special computation method that may boost the Earned Income Tax Credit (EITC), meaning they may owe less tax or get a larger refund. Moreover, dependent care assistance programs

for military personnel are excludable benefits and not included in the military member's income. Members of the armed forces on active duty may also be eligible to deduct unreimbursed moving expenses if their move was due to a military order and permanent change of station.

Additionally, both spouses normally must sign a joint income tax return, but if one spouse is absent due to certain military duties or conditions, the other spouse may be able to sign for him or her. As a reminder, the IRS has a special page on IRS.gov with Tax Information for Members of the U.S. Armed Forces.

# IRS Highlights Payment Plan Options and Online Payment Agreement

FS-2023-15

The IRS has highlighted numerous payment plan options for taxpayers who cannot pay taxes in one go. Further, the IRS has advised taxpayers to use the Online Payment Agreement (OPA) to set it up to pay off an outstanding balance over time. Once taxpayers complete the online application, they would receive immediate notification of whether the IRS has approved their payment plan. Qualified taxpayers with existing payment plans could also use the OPA to make changes to their plans that include revising payment dates, payment amounts or bank information for direct debit payments.

Moreover, individual taxpayers' online payment plan options include:

- Short-term payment plans: For taxpayers who have a total balance less than \$100,000 in combined tax, penalties and

interest. This plan gives them an extra 180 days to pay the balance in full.

- Long-term payment plan: For taxpayers who have a total balance less than \$50,000 in combined tax, penalties and interest. They can make monthly payments for up to 72 months. Taxpayers are encouraged to set up plan payments using direct debit (automatic bank withdraw), which eliminates the need to send a payment each month, saves postage costs, and reduces the chance of default. The IRS requires direct debit for balances between \$25,000 and \$50,000.

Business taxpayers' online payment plan options include:

- Long-term payment plan: For business taxpayers who have a total balance less than \$25,000 in combined tax, penalties and interest from the current and preceding tax year. They can

make monthly payments for up to 24 months. Taxpayers can choose to set up payments using direct debit (automatic bank withdraw) and requires it on balances between \$10,000 and \$25,000.

Taxpayers already working with the IRS:

- Individuals and out-of-business sole proprietors who are already working with the IRS to resolve a tax issue, and who owe \$250,000 or less, have the option to propose a monthly payment that will pay the balance over the length of the collection statute – usually 10 years. These payment plans don't require a financial statement, but a determination for the filing of a notice of federal tax lien still applies.

For more information, the IRS has requested taxpayers to visit Additional Information on Payment Plans.

## Washington Round-up

**House Ways and Means' GOP leadership introduces tax bill.** House Ways and Means Committee Chairman Jason Smith (R-Mo.) on June 9, 2023, introduced the American Families and Jobs Act, a package of three individual bills aimed at helping families and businesses and building a stronger economy. The Tax Cuts for Working Families Act (H.R. 3936) would increase the standard deduction to \$4,000 for the next two years. The Small Business Jobs Act (H.R. 3937) includes a number of provisions, including increasing the dollar amount that triggers tax forms for contractors; repealing changes to reporting requirements for gig workers; expanding tax incentives to investors in startups organized S corporations; and increasing the immediate expensing limit for new equipment and production. The Build It In America Act (H.R. 3938), among other

provisions, restores the expensing of R&D costs, a provision that expired in 2022; extends expensing of 100 percent of the cost of equipment, machinery, and vehicles; repeals the superfund tax on petroleum; and repeals green vehicle credits in the Inflation Reduction Act.

**Small businesses push House, Senate tax committees on R&D.** A subcommittee of the House Small Business Committee held a June 6, 2023, hearing in which representatives from small businesses testified in favor of reinstating the expensing of R&D cost, a provision that expired in 2022. The amortization of such expenses is giving small businesses a significant financial burden. Similar requests were made at a roundtable hosted by the Senate Finance Committee one day later.

**AICPA supports Senate bill to raise reporting threshold for third party**

**settlement organizations.** The American Institute of CPAs, in a June 6, 2023, letter to Sen. Sherrod Brown (D-Ohio) and Sen. Bill Cassidy (R-La.) expressed support for the Red Tape Reduction Act (S. 1761). The bill "modifies requirements for third party settlement organizations to modify the \$600 reporting requirement with respect to transactions of their participating payees. We believe the \$10,000 threshold in your legislation balances the taxpayer's need to effectively manage reporting requirements with the goal of improving tax enforcement efforts." The organization said that the reduction of the previous threshold (\$20,000 and 200 transactions) "has created a significantly large reporting burden." A catalog of AICPA's tax policy and advocacy comment letters can be found at <https://us.aicpa.org/advocacy/tax/2023/taxadvocacycommentletters.html>.

## *Estate Tax*

A stock purchase agreement was disregarded because it did not establish a “fixed or determinable price” to value the decedent’s shares. The decedent and his brother, as co-owners, and the corporation never used either pricing mechanism to set the stock’s value. The life insurance proceeds received by the corporation after the decedent’s death were a nonoperating asset, as explained in Reg. §20.2031-2(f)(2), that increased the company’s value. Applying the hypothetical willing buyer willing seller standard, the redemption obligation would not be a factor in determining the fair market value because the buyer would be purchasing all of the shares that would be redeemed. The buyer could then end the stock purchase agreement or redeem the shares from himself. The price a buyer would pay for the corporation would include the life insurance proceeds.

*Connelly, CA-8, 2023-1 ustr ¶60,373*

## *FICA*

A U.S. company was eligible to receive a refund for an overpayment of tax imposed by the Federal Insurance Contributions Act (FICA) paid on behalf of an employee on a foreign assignment, in a year after the calendar year when wages were paid, if the company first (1) repaid or reimbursed to the employee the employee’s portion of FICA tax, or (2) secured the employee’s consent to the allowance of the refund claim.

*Chief Counsel Advice Memorandum 202323005*

## *Gross Income*

The IRS Chief Counsel ruled that wellness indemnity payments under an employer-funded, fixed-indemnity insurance policy were includible in the gross income of the employee, if the employee has no unreimbursed medical expenses related to the payment. This includes scenarios where the premium for the coverage is paid by employee salary reduction through a cafeteria plan under Code Sec. 125. The exclusion under Code Sec. 105(b) was limited to amounts paid solely to reimburse expenses incurred for medical care. It would not apply to amounts which the taxpayer would be entitled to receive irrespective of whether expenses for medical care were incurred. Moreover, the exclusion from income under Code Sec. 105(b) did not apply to payments when the employee had no unreimbursed medical expense.

*Chief Counsel Advice Memorandum 202323006*

## *Partnerships*

A partnership was granted an extension of 60 days to make the election not to deduct the additional first year depreciation under Code Sec. 168(k) for all classes of qualified property placed in service by the taxpayer during the tax year at issue. The taxpayer had engaged a firm to prepare its income tax returns. However, the firm inadvertently failed to advise the taxpayer to make the election. The taxpayer fulfilled the requirements of Reg. §§301.9100-1 and 301.9100-3, acted reasonably and in good faith. Therefore, granting relief did not prejudice the government’s interests.

*IRS Letter Ruling 202323001*

## *S Corporations*

An entity that elected to be treated as an S corporation was granted relief for its inadvertent S Corporation Termination. Two shareholders of the taxpayer, both trusts, failed to file Electing Small Business Trusts (ESBT) elections under Code Sec. 1361(e)(3). The taxpayer represented that there was no tax avoidance or retroactive tax planning involved in the termination. In addition, the circumstances resulting in the taxpayer’s ineffective S corporation election were inadvertent under Code Sec. 1362(f). Consequently, the taxpayer was treated as an S corporation, provided its S corporation election was otherwise valid and not otherwise terminated under Code Sec. 1362(d).

*IRS Letter Ruling 202323008*

## *Supreme Court Docket*

A petition for review was filed in the following case:

*Puri v. U.S., CA-9* - An individual’s claim seeking to appeal the dismissal of a petition to quash an administrative third-party summons was dismissed. The summons was issued to a bank at the instance of the Indian tax authorities, by the IRS for the taxpayer’s bank account information. The taxpayer could not present any evidence that the foreign government was seeking such information to harass the taxpayer’s family and was acting in bad faith. Due to lack of any evidence presented by the taxpayer, the Indian authorities’ stated purpose was to identify the taxpayer’s assets held in the United States in order to assess the taxpayer’s income tax and therefore, had not acted in bad faith.