



FEDERAL TAX WEEKLY

INSIDE THIS ISSUE

Proposed Rules Amend Definition of Short Term and Limited-Duration Insurance and More	1
IRS Issues Final Reminder to Taxpayers to Claim Tax Refunds from Unfiled 2019 Tax Returns before July 17	2
IRS Provides Information on Qualifying Advanced Energy Project Credit Allocation Program.....	2
AICPA Calls For Clarifying Guidance On NFTs.....	2
IRS Warns Taxpayers Against New Mailing Scam.....	3
Government Entitled to Enforce Summons Against Digital Cryptocurrency Exchange.....	3
Washington Round-up	4
Tax Briefs	4

Proposed Rules Amend Definition of Short Term and Limited-Duration Insurance and More

Proposed Regulations, NPRM REG-120730-21

The IRS, in connection with other agencies, issued proposed rules that would amend the definition of short term, limited duration insurance (STLDI), to more clearly distinguish STLDI and fixed indemnity excepted benefits coverage from comprehensive coverage. STLDI is a type of health insurance coverage sold by health insurance issuers that is primarily designed to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another, and is excluded from the definition of individual health insurance coverage under the Public Health Service Act. The agencies also added (1) proposed amendments to the requirements for hospital indemnity or other fixed indemnity insurance to be considered an excepted benefit in the group; and (2) individual health insurance markets. Specifically, the IRS has proposed amendments to clarify the tax treatments of amounts received by a taxpayer through employment based accident or health insurance that are paid without regard to the amount of incurred medical expenses and where the premiums or contributions are paid on a pre-tax basis.

Tax Treatment of Benefits

Hospital indemnity or other fixed indemnity insurance and coverage only for a specified disease or illness are treated as “accident or health insurance” whether or not they are excepted benefits. Premiums paid by an employer (including by salary reduction) for accident or health insurance are excluded from an employee’s gross income. Amounts received from accident or health insurance are excluded from a taxpayer’s gross income if the premiums are paid for on an after-tax basis. Amounts received by an employee through accident or health insurance for personal injuries or sickness are included in gross income, except gross income amounts paid by the employer to reimburse an employee’s expenses for medical care.

The IRS is attempting to clarify the language which has led to confusion among taxpayers about the circumstances under which benefits from accident or health insurance may be excluded from an individual’s gross income when the premiums for the coverage were paid on a pre-tax basis and the benefits are not directly related to a medical expense incurred by an employee. In particular, some have interpreted the current rule to mean that benefits provided to a taxpayer through an accident or health insurance policy that provides benefits without regard to the amount of medical expenses incurred, such as fixed indemnity excepted benefits coverage or specified disease excepted benefits coverage, are nonetheless excluded from the taxpayer’s gross income because they are paid upon the occurrence of a health-related event. Others have interpreted the current rule to mean that benefits can be excluded from gross income so long as the amount received does not exceed the amount of the medical expense arising from the occurrence of a health-related event.

The IRS interprets Code Sec. 105 to not apply to benefits paid without regard to the actual amount of incurred and otherwise unreimbursed medical expenses. Because payment of these amounts is not a reimbursement of medical expenses, the amount of reimbursement is immaterial, with the result that the payment is not excluded from gross income under Code Sec. 105. Thus, the IRS proposes to amend the regulations to clarify that the exclusion from gross income does not apply to amounts received from accident or health insurance that pays an amount or distributes a benefit if the benefit is paid without regard to the actual amount of Code Sec. 213(d) medical expenses incurred by the employee. This interpretation would apply, for example, to benefit payments under fixed indemnity excepted benefits coverage and to benefit payments under specified disease excepted benefits coverage that pays benefits without regard to the amount of medical expenses incurred. The IRS also proposes that for amounts to be excluded, the payment or reimbursement must be substantiated.

IRS Issues Final Reminder to Taxpayers to Claim Tax Refunds from Unfiled 2019 Tax Returns before July 17

The IRS has issued a final reminder to taxpayers across the country who may have overlooked filing their tax returns during the pandemic to act quickly and claim their refunds for the tax year 2019 before the July 17, 2023 deadline. The IRS informed taxpayers that the actual refund amount will vary based on a household's tax situation. Further, taxpayers were reminded that the refund will be applied to any amount owed to the IRS or the state tax agency and may be used to offset unpaid child support or past due federal debts or unfiled tax returns for 2020 and 2021. Notice 2023-21 provides legal guidance on claims made by the postponed deadline. Taxpayers are advised to refer the following resources available on the IRS website to gather the information they require to file this return.

- current and prior tax year;
- IRS Forms, Instructions and Publications page or call toll-free 800-TAX-FORM (800-829-3676);
- get transcript online; and
- request for transcript of tax return.

IR-2023-122

Comment Request

Comments must be received by September 4, 2023 physically or electronically. In

commenting, taxpayers should refer to file code CMS-9904-P.

IRS Provides Information on Qualifying Advanced Energy Project Credit Allocation Program

FS-2023-16

The IRS has issued information on Qualifying Advanced Energy Project Credit. The Inflation Reduction Act (IRA) has provided \$10 billion in funding for the Qualifying Advanced Energy Project Credit Allocation Program under Code Sec. 48C(e). The IRS had issued Notice

2023-18, I.R.B. 2023-10, 508 to establish the program and to provide initial guidance. Additional guidance for the program is provided in Notice 2023-44, I.R.B. 2023-25. The program provides incentives for clean energy property manufacturing and recycling, industrial decarbonization, and critical materials processing, refining and recycling. Appendix A, as modified

in Notice 2023-44, provides examples of eligible projects for which applicants can apply for an award of an investment tax credit. The base credit rate is 6-percent of the taxpayer's qualified investment, which increases to 30-percent if the project satisfies the prevailing wage and apprenticeship requirements

AICPA Calls For Clarifying Guidance On NFTs

The American Institute of CPAs has offered the Internal Revenue Service a

series of recommendations on how the agency could handle non-fungible tokens.

In a June 16, 2023, letter to the agency, AIPCA provided comments on Notice

REFERENCE KEY

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

FEDERAL TAX WEEKLY, 2023 No. 28. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.
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2023-27, which outlines the treatment of certain NFTs. The organization said that it hopes “that IRS will provide additional guidance to clarify how digital asset transactions are treated and handled in various scenarios,” adding that such guidance “will provide greater certainty to taxpayers and their preparers in confidently and properly complying with their overall reporting requirements for digital assets, and better ensure consistent application of the tax law among taxpayers.”

AICPA made four recommendations, asking the IRS and Treasury to:

- Clarify and provide a single definition of virtual currency and digital assets;

- Review and consider the administrative burden the look-through analysis will impose on many taxpayers;
- Consider the administrative burden the look-through analysis would impose on NFTs that represent more than one associated right or asset such as bifurcating the valuation of each associated right or asset the NFT represents; and
- Clarify whether the legislative intent of the collectible tax rate applies to NFTs.

The lack of a common definition to NFTs has been a running topic of conversation. AICPA in the letter noted that “NFTs should be subject to general federal income tax principles applied to financial

contracts rather than an NFT-specific set of rules.”

AICPA noted that the definition of an NFT in Notice 2023-27 “implies that not all NFTs are digital assets” and added that clarification “is needed for many reasons beyond NFTs to provide a single definition of virtual currency and digital assets. A single definition will provide certainty and simplification to taxpayers.”

Tax policy and advocacy comment letters issued by the AICPA can be found at <https://us.aicpa.org/advocacy/tax/2023taxadvocacycommentletters.html>.

IRS Warns Taxpayers Against New Mailing Scam

IR-2023-123

The IRS has warned taxpayers against a new mailing scam trying to mislead them into believing they are owed a tax refund. The new scam can come in through email, text or mailing coming in a cardboard envelope from a delivery service including a letter with the IRS masthead and wording claiming that the notice is in relation to the taxpayer’s unclaimed refund. Taxpayers have been warned to look out for signs such as fake contact information of the IRS, seeking sensitive taxpayer information including detailed pictures of driver’s licenses, cellphone number, bank routing information, social security number and bank account type, a poorly worded message, including odd punctuation and

a mixture of fonts as well as inaccuracies. The IRS has further reminded taxpayers that sensitive personal information from taxpayers can be used by identity thieves to try to obtain a tax refund and other sensitive financial information while reassuring that the IRS never initiates contact with taxpayers by email, text or social media regarding a bill or tax refund.

In addition, the IRS and Security Summit partners reiterated the regular warning to taxpayers about common scams, including the annual IRS Dirty Dozen list. As an additional reminder, the IRS has alerted taxpayers to avoid clicking on unsolicited communication claiming to be the IRS as it may be surreptitiously load malware or it may also be a way for malicious hackers to load ransom-ware which

may keep the legitimate user from accessing their system and files. Finally, scams should be reported by sending the email or a copy of the text/SMS as an attachment to phishing@irs.gov and should include the caller ID (email or phone number), date, time and time zone and the number that received the message. Taxpayers can also report scams to the Treasury Inspector General for Tax Administration or the Internet Crime Complaint Center. The Report Phishing and Online Scams page in the IRS website provides complete details. The Federal Communications Commission’s Smartphone security checker is a useful tool against mobile security threats.

Government Entitled to Enforce Summons Against Digital Cryptocurrency Exchange

Payward Ventures, Inc., DC Calif, 2023-2 USTC ¶150,198

The government was entitled to partly enforce the summons pursuant to Code Secs. 7402(b) and 7604(a) issued by the IRS against a corporation and its subsidiaries (the corporation). The government sought information regarding unknown taxpayers who directly or indirectly held or had control over

any combination of user accounts with the corporation with value transactions above a certain threshold in cryptocurrency during the tax years at issue. However, the corporation refused to comply with the summons.

Legitimate Purpose

The Government had a legitimate purpose under Code Sec. 7602(a) for seeking the

materials described in the summons. The summons was issued in connection with an investigation by the IRS to determine the identity and correct tax liability of persons who conducted transactions in cryptocurrency. Further, an IRS agent attested that the information sought in the summons may have been relevant to the IRS’s investigation into the identities and federal tax liabilities of cryptocurrency users who

had failed to comply with their federal tax obligations.

Government's Narrowed Summons

The district court found that to the extent the government's first three requests were aimed at establishing the identities of the corporation's account holders

who fell within the John Doe definition, the information sought in these requests was much broader than what was necessary to achieve that purpose for most users who fell within the John Doe class. Accordingly, the government was only entitled to information related to the name, date of birth, taxpayer identification number, physical address, telephone number and email address of the corporation's users. However, the government's

evidence was sufficient to demonstrate its need for "transaction hash (ID)" and "blockchain addresses." Regarding the government's fifth request, the district court concluded this request was overbroad to the extent it sought records that went beyond the corporation's transactional ledgers. Accordingly, the government was only entitled to transactional ledgers responsive to its fifth request.

Washington Round-up

AICPA endorses Tax Deadline Simplification Act. The American Institute of CPAs in a June 20, 2023, letter to Rep. Debra Lesko (R-Ariz.) and Rep. Bradley Schneider (D-Ill.) expressed their support for the Tax Deadline Simplification Act (H.R. 3708). "Specifically, we support changing the dues dates for the second and third quarter estimated federal income tax payments to have all quarterly payments due 15 days after the end of the quarter," the letter states. The current dates for quarterly payments are April 15, June 15, September 15, and January 15. "Changing the June 15 date to July 15 and the September date to October 15 would

consistently schedule the dates to three months apart and tie to the normal quarter date {15 days after the quarter end} making it easier for taxpayers to meet their tax obligations in a timely manner," the letter states. Tax policy and advocacy comment letters issued by the AICPA in 2023 can be found at <https://us.aicpa.org/advocacy/tax/2023taxadvocacycommentletters.html>.

ABA recommends updates to Revenue Procedures 2015-40 and 2015-41. The American Bar Association is making recommendations to update Revenue Procedures 2015-40 and 2015-41, which provide a basis for resolving complex and long-standing transfer pricing disputes.

In a June 20, 2023 letter to the Internal Revenue Service, ABA notes the "transfer pricing and tax certainty landscapes have changed significantly" and offered recommendations "we hope will streamline the assessment of an applicant's candidacy for an APA [advanced pricing agreement] and the APA process, strengthen governance over APA implications and enhance taxpayer access to and the effectiveness of the mutual agreement procedure process." A copy of the letter with the recommendations can be found at <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2023/062023comments.pdf>.

TAX BRIEFS

Cooperatives

An entity's consolidated subsidiaries were used for the purpose of securing cellular service for the taxpayer's patrons. Thus, income from these investments satisfied the directly related test under Code Sec. 1382. The taxpayer's subsidiaries' distributive shares of partnership income from the partnership's sale of substantially all its assets resulting from three separate divestiture transactions, constituted patronage-sourced income. Therefore, after being properly allocated to the taxpayer's patrons, the patronage-sourced income was excludable from the taxpayer's

consolidated gross income in the tax year of the sale.

IRS Letter Ruling 202326010

Exclusions

Amounts distributed from a trust for individual retiree medical, dental and vision insurance coverage were excluded from the gross income of a plan's participants under Code Sec. 105. Further, the contributions made to the trust by an association were excluded from the gross income of the plan's participants under Code Sec. 106. The trust was established to fund health and welfare

benefits for eligible retirees of an association. The trust's income accrued to the benefit of the association whose functions were essential government functions and its income was excluded from gross income under Code Sec. 115(1). The trust had enabled the association to set aside funds to provide health and welfare benefits for its retirees. The trust represented that its beneficiaries could not share in the discharge of the trustees' responsibility for the protection and conservation of property and, therefore, were not associates in a joint enterprise for the conduct of business for profit.

Because the trust's income was excludable from gross income, and Code Sec. 6012(a)(4) does not require a trust without taxable income to file a return when gross income is less than \$600, the trust was not required to file an annual income tax return.

IRS Letter Ruling 202326003

Federal Credit Unions

The IRS Chief Counsel Ruled that federal credit unions could not claim the tax credits for paid sick and expanded family and medical leave under the Families First Coronavirus Response Act (FFCRA). These were instrumentalities of the government. However, for periods of leave beginning April 1, 2021, through September 30, 2021, federal credit unions may claim the tax credits for paid sick and expanded family and medical leave under the American Rescue Plan Act (ARP). Although they are instrumentalities of the government, they are also organizations under Code Sec. 501(c)(1) and are exempt from tax under Code Sec. 501(a).

*Chief Counsel Advice Memorandum
202326018*

Research Credit

In consolidated cases, multiple sole shareholders in an S corporation were not entitled to a flowthrough of the research credit under Code Sec. 41 claimed by the S corporation in connection with 19 projects. Further, the taxpayers were liable for accuracy-related penalties under Code Sec. 6662(a).

Betz, TC, Dec. 62,241(M)

Tax Evasion

An individual submitted a fraudulent Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals. This was sufficient to convict for tax evasion under Code Sec. 7201. Additionally, a credit application prepared by the taxpayer stated his monthly as roughly double to what was claimed on the Form 433-A. The taxpayer could not seek relief through his reliance on a tax services provider (T1).

Crandell, CA-5, 2023-1 ustrc ¶50,199

Tax-Exempt Bonds

The IRS Chief Counsel ruled that the conversion of Treasury securities into special 90-day certificates of indebtedness (Special 90-day C of I) did not cause the issuer to fail to meet the continuous investment requirement of the safe harbor for longer-term working capital financings. Moreover, the conversion did not cause the issuer's investment to lose its status as a tax-exempt bond. In one situation, the Special 90-day C of I as Demand Deposit securities (Demand Deposit SLGS) for the period during which the issuance of Demand Deposit SLGS was suspended. In the second situation, after the conversion of an issuer's Demand Deposit SLGS into the Special 90-day C of I, the issuer's replacement proceeds were no longer invested in tax-exempt bonds. Nonetheless, the application of Reg. §1.148-10(g) was appropriate. Therefore, the Special 90-day C of I as Demand Deposit SLGS for the period during which the issuance of Demand Deposit SLGS was suspended.

*Chief Counsel Advice Memorandum
202326019*

Withholding

The IRS Chief Counsel ruled under Code Sec. 3401(a) the term "wages" meant all remuneration for services performed by an employee for his employer, including remuneration for personal services performed by a citizen or resident of the U.S. as an employee of a foreign corporation. The full amount of the Restricted Stock Unit (RSU) income was subject to federal income tax withholding, reporting and payment by the employer. Further, because the employer was a common law employer, it was responsible for income tax withholding, reporting and payment associated with the RSU income paid to a worker for services performed within the U.S. Additionally, the employer, under Code Sec. 3401(d)(2), was responsible for federal income tax withholding, reporting and payment for the RSU income paid to a worker for personal services performed outside the U.S. as an employee of the controlled foreign corporation (CFC). Moreover, for FICA tax purposes, under Code Sec. 3121(a), the term "wages" meant all remuneration for employment, with certain exceptions that were not relevant in this case. Further, the employer was required to use the principles of Code Secs. 861 and 862 for determining the source of services income to determine the total RSU income subject to FICA taxes. Finally, the existence of a totalization agreement could have had an impact whether FICA taxes were owed on the portion of the RSU income attributable to services performed for the employer in the U.S.

*Chief Counsel Advice Memorandum
202327014*