



FEDERAL TAX WEEKLY

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IRS Ends Most Unannounced Home Visits

The Internal Revenue Service will end, except in very limited circumstances, the practice of making unannounced visits to taxpayers' homes and businesses. "This change is effective immediately," IRS Commissioner Daniel Werfel said during a July 24, 2023, teleconference with reporters. Werfel said the change is being made in reaction to an increase in scam activity as well as for IRS employee safety. "With a growth in scam artists, taxpayers are increasingly uncertain who was knocking on their doors," Werfel said. "For IRS employees, there were fears about their own personal safety on these visits. I also learned that these concerns were shared by our partners as the National Treasury Employees Union."

Unannounced visits will be replaced with scheduled visits. If the IRS needs to meet with a taxpayer, that taxpayer will receive an appointment letter, known as a 725-B letter, to schedule a time for a revenue officer to meet with the taxpayer. "This will help taxpayers feel more prepared when it is time to meet," Werfel said. "Taxpayers whose cases are assigned to a revenue officer will now be able to schedule face-to-face meetings at a set place and time. They will have the necessary information and documents in hand to reach a resolution of their cases more quickly."

In addressing what the IRS will do if a taxpayer is not reachable by mail or is not responding to a meeting scheduling letter, Werfel stated that there are other actions that the agency can take to help drive compliance, such as imposing a lien or a levy, which can be done remotely. He also stressed that in past cases where revenue officers made unannounced visits, they were in situations where the revenue officer was attempting to collect a sizable debt with a median in these cases of \$110,000. "These home visits were not occurring for small tax debt," Werfel said. "These are for big tax debts." Werfel outlined what he described as "rare instances" when unannounced visits will continue to occur, including service of a summons and subpoena as well as in the conduct of sensitive enforcement activities such as the seizure of assets. "These activities are just a drop in the bucket compared to the number of visits that have taken place in the past," Werfel said, noting that there were a few hundred each year compared to the tens of thousands of other visits that occurred each year under the decades-old policy.

Werfel said that this policy will not impact activities conducted by the Criminal Investigations division, which operates under its own rules and protocols. "Today's decision is part of a broader plan that will help us work smarter and be more efficient," he said, noting this action is part of the larger IRS transformation effort taking place with the help of the supplemental funding provided by the Inflation Reduction Act.

Final Regulations Address Excess COVID-19 Employment Tax Credit Recapture

T.D. 9978

The IRS has issued final regulations under authority granted by COVID-19 legislation to authorize assessment of any erroneous refund of the following refundable COVID-19 employment tax credits:

- The employee retention credit (ERC) against the employer's portion of Social Security tax under Code Sec. 3111(a), for qualified wages paid after March 12, 2020, and before July 1, 2021 (Act Sec. 2301 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), as amended by Act Secs. 206 and Sec. 207 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (P.L. 116-260);
- The modified ERC against the employer's portion of Medicare tax under Code Sec. 3111(b), for qualified wages paid after June 30, 2021, and before October 1, 2021 (before January 1, 2022 for a recovery startup business) (Code Sec. 3134, as added by the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2));
- The qualified paid sick leave credit and qualified paid family leave credit against the employer's portion of Social Security tax, for qualified leave wages paid for the period that begins on April 1, 2020, and ends on March 31, 2021 (Act Secs. 7001, 7003, 7003, and 7005 of the Families First Coronavirus Response Act (P.L. 116-127), as amended by Act Sec. 3606 of P.L. 116-136, and by Act Secs. 286 and 288 of the COVID-related Tax Relief Act of 2020 (P.L. 116-260); and
- The modified qualified paid sick leave and paid family leave credits against the employer's portion of Medicare tax, for qualified leave wages paid for the period

that begins on April 1, 2021, and ends on September 30, 2021 (Code Secs. 3131, 3132, and 3133, as added by ARP).

Similar refundable credits were also allowed for the attributable Railroad Retirement Tax Act (RRTA) tax (Code Sec. 3221).

Temporary and Proposed Regulations

In July 2020, the IRS issued temporary and proposed regulations to provide for the recapture of erroneous refunds of the paid sick and family leave credits under the Families First Act and the ERC under the CARES Act (T.D. 9904, I.R.B. 2020-34, 413; NPRM REG-111879-20, 7/29/2020). Under the temporary regulations, erroneous refunds were treated as underpayments of the taxes imposed under Code Sec. 3111(a), and the IRS was authorized to assess any portion of the credits erroneously credited, paid, or refunded in excess of the amount allowed as if those amounts were tax liabilities subject to assessment and administrative collection procedures. The temporary regulations also provided that employers against whom an erroneous refund of credits could be assessed as an underpayment included persons treated as the employer under Code Secs. 3401(d), 3504, and 3511, consistent with their liability for the employment taxes against which the credit applied.

In September 2021, the IRS issued similar temporary and proposed regulations to provide for the recapture of erroneous refunds of the paid sick and family leave credits and ERC under the ARP, for taxes imposed under Code Sec. 3111(b)

(T.D. 9953, I.R.B. 2021-39, 430; NPRM REG-109077-21, 9/10/2021).

In both instances, the text of the temporary regulations served as the text of the proposed regulations.

Final Regulations

The final regulations adopt the proposed regulations with minor modifications regarding third-party payors, and remove the corresponding temporary regulations.

Under the final regulations, the IRS is authorized to assess, reconcile, and recapture any portion of the credits erroneously credited, paid, or refunded in excess of the actual amount allowed as if the amounts were taxes imposed under Code Sec. 3111(a) or (b), as applicable, subject to assessment and administrative collection procedures. This authorization also applies to taxes imposed under Code Sec. 3221(a) that are attributable to the rate in effect under Code Sec. 3111(a) or (b).

In certain circumstances, third-party payors claim tax credits on behalf of their common law employer clients. The final regulations clarify that employers against which an erroneous refund of credits may be assessed as an underpayment include persons treated as the employer under Code Secs. 3401(d), 3504, and 3511, consistent with their liability for the employment taxes against which the credits applied. The final regulations also expressly state that the common law employer clients of these third-party payors that remain subject to all provisions of law applicable to employers with respect to the payment of wages or compensation, as applicable, may also be assessed for an erroneous refund of credits.

REFERENCE KEY

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

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This is intended to make clear what had been implicit in the proposed regulations, that the existing rules in Code Sec. 3504 and Code Sec. 3511(c) on the liability of common law employer clients of third-party payors still apply in this situation.

Further, Code Sec. 3511(c) and Reg. §31.3511-1(a)(3) provide that, for third-party payors that are Certified Professional Employer Organizations (CPEO), an employer client of a CPEO is treated as an employer (and therefore subject to all applicable provisions of law) for purposes of federal employment taxes imposed on remuneration paid by the CPEO to non-worksite employees. While Code Secs. 3504 and 3511 applied in the same manner as a matter of law under the proposed regulations, the final regulations expressly state these rules to avoid any confusion and help employers better understand their legal responsibilities stemming from Code Secs. 3504 and 3511.

IRS Invites Input on Alternate Dispute Resolution Programs

The IRS has invited suggestions from the public on ways to improve certain post-filing alternative dispute resolution (ADR) programs. Currently, in its effort to reduce time, costs, and administrative burden for taxpayers and the government in resolving tax disputes, IRS has offered four principal post-filing ADR programs: Fast Track Settlement (FTS), Fast Track Mediation-Collection (FTMC), Rapid Appeals Process (RAP), and Post Appeals Mediation (PAM). The IRS announced that it is welcoming comments on all aspects of ADR practices to help form IRS policies for improving taxpayer service and resolving issues and cases fairly and expeditiously. Public comments can be sent to ap.adr.programs@irs.gov by August 25, 2023.

IR-2023-136

Effective Date

The final regulations are effective on July 24, 2023. Consistent with the authority provided by Code Sec. 7805(b)(1)(B), the final regulations apply to credits paid

on or after the date on which the related proposed and temporary regulations were filed with the Federal Register. Each final regulation provides its own specific applicability date.

Tax Professionals Highlight Employee Retention Tax Credit Issues

Problems with the Internal Revenue Service's handling of the Employee Retention Tax Credit took center stage before a House committee hearing, with tax professionals airing issues they have experienced and ongoing concerns they have.

Testifying at a July 28, 2023, hearing of the House Ways and Means Subcommittee on Oversight, Larry Gray, partner at AGC CPA, said that as the pandemic started and he started to make educational YouTube videos to help other practitioners navigate the tax law, he found issues with the ERTC, including the growing industry of ERTC mills and the potential for fraud that comes with them.

He noted that many of these mills are simply taking their fee for providing essentially clerical assistance. However, Gray noted that in these ERTC mills, the agreements stated that "they don't do audit," but they might be able to help find someone of a business does get audited because of the ERTC filing. And unfortunately, as was discussed throughout the hearing, people are falling for these ERTC mills and putting their businesses at risk.

And Gray put the problems that have arisen squarely on the IRS.

"We are getting no guidance," Gray said. "There should have been an ERTC implementation team to coordinate from the top down. We need education. We need guidance."

To that end, the IRS did issue a legal advice memorandum on July 20, 2023, that shows the application of the statutory requirements of the ERTC across five different scenarios.

Gray also took a subtle dig at Congress, acknowledging in his testimony that part of the issues could be related to an IRS that was "understaffed, and they were underfunded" when the COVID-19 pandemic began three years ago.

Roger Harris, President of accounting and tax firm Padgett Advisors, also highlighted issues, starting with the first which was "how we submitted claims to the IRS," which was exclusively on paper at a time when no one was present to handle the processing of paper correspondence because of the pandemic, creating a significant backlog.

"And it's still ongoing," he continued, causing a "delay in getting the money out to the people who need it."

And with all the moving parts related to potential people who need to amend returns depending on how the business is structured, a mistake in any of these forms could be generating penalties and interest, a problem that is magnified when combined with Gray's observation of the lack of available guidance to help taxpayers who are trying to do the right thing and collect money they are legitimately owed.

Ahead of the subcommittee hearing, the IRS announced in a July 26, 2023, statement that it received more than 2.5 million claims since the ERTC program began and it has "made substantial progress on these claims this year, with 99 percent of claims approximately three-months old as of mid-July."

However, throughout the hearing, witnesses and committee members questioned the integrity of that figure, noting that IRS has changed numbers on its website as to how many claims remain in the backlog.

There also were question on how the figure itself is determined.

Harris also pointed out the problems the ERTC mills are causing with his business and for other tax professionals looking to do the right thing by their clients.

“We have had clients that we have dealt with for many years who have trusted our advice,” Harris testified. “But all of a sudden when someone is telling them, ‘Your advisor doesn’t know what they are doing, and if you listen to me, I can give you a half million dollars,’ it’s very hard for as the people who are working with these small businesses to win that argument, in many instances, just because of the sheer amount of money that is being dangled in front of them.”

Harris continued: “And as we have heard, the IRS has no choice but to begin enforcement actions to try and correct this.”

He said he is asking the IRS “for some help [with] a real-world solution to give us the ability to try to bring these people back into compliance. ... [It] is going to take a concerted effort by our industry, the tax practitioner community, to help solve this problem,” especially when

Reproduction/Substitute Information Return Requirements Issued

The IRS has provided the specifications for the private printing of red-ink substitutes for the 2023 revisions of information returns, preparing acceptable substitutes of the official forms, and using official or acceptable substitute forms to furnish information to recipients. The procedures cover Form W-2 (Copy A) and Form W-3. The procedures outline the official specifications for a form or statement to be acceptable. This procedure will be reproduced as the next revision of IRS Publication 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.

Rev. Proc. 2022-30, I.R.B. 2022-31, 112, reprinted as Publication 1141, revised August 2022, is superseded.

Rev. Proc. 2023-25

people may have already spent the money because they were unaware that they weren’t entitled to under the ERTC program and fell for the fraud being perpetrated by the ERTC mills. And that does not even account for the fees that were paid to the ERTC mills that will never be recovered.

He did note that IRS Commissioner Daniel Werfel, at last week’s IRS-sponsored tax forum in Atlanta did ask tax practitioners what they needed in regard to the ERTC.

In its July 26 statement, the IRS offered a series of recommendations on how to avoid ERTC scams. At the tax forum, Werfel said that the “amount of misleading marketing around this credit is staggering, and it is creating an array of problems for tax professionals and the IRS while adding risk for businesses improperly claiming the credit. A terrible scenario is unfolding that hurts everyone involved – except the promoters” of the misleading ERTC marketing.

IRS Announces Progress Against Dubious ERC Claims; Updates ERC FAQs

IR-2023-135

The IRS announced substantial progress in the ongoing effort related to the dubious Employee Retention Credit (ERC) claims. The IRS successfully cleared the backlog of valid ERCs. The period of eligibility for the credit for affected businesses is very limited, covering only between March 13, 2020, and December 31, 2021. Under the current law, businesses can typically continue to file claims for the credit until April 15, 2025.

“The further we get from the pandemic, we believe the percentage of legitimate claims coming in is declining,” IRS Commissioner Danny Werfel told attendees at the IRS Nationwide Tax Forum in Atlanta. “Instead, we continue to see more and more questionable claims coming in following the

onslaught of misleading marketing from promoters pushing businesses to apply. To address this, the IRS continues to intensify our compliance work in this area,” he added.

Taxpayers should be wary of certain signs including (1) unsolicited calls or advertisements mentioning an easy application process; (2) statements that the promoter or company can determine ERC eligibility within minutes; and (3) large upfront fees to claim the credit. Eligible employers who need help claiming the credit should work with a trusted tax professional. Finally, taxpayers can report ERC abuse by submitting Form 14242, Report Suspected Abusive Tax Promotions or Preparers and any supporting materials to the IRS Lead Development Center in the Office of Promoter Investigations.

FAQs Updated

As part of a continuing effort to address concerns with Employee Retention Credit claims, the IRS announced today the agency has started to update frequently asked questions on IRS.gov to help businesses and tax professionals navigate the complex credit. The IRS added 13 frequently asked questions to a special page about the Employee Retention Credit, or ERC. More information will be added in coming days.

The changes follow a series of concerns raised by tax professionals and others, including feedback IRS Commissioner Danny Werfel received at a special ERC roundtable at the Atlanta Tax Forum earlier this week. Tax professionals raised concerns about a number of unanswered questions that they are receiving from business clients regarding the credit.

Fast-Track Letter Ruling Processing Program Established

Rev. Proc. 2023-26

The IRS has established a new program that provides an opportunity for fast-track processing of certain requests for letter rulings solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate). This new program replaces the pilot program established by Rev. Proc. 2022-10.

Requirements that the requesting taxpayer must satisfy include (among other things):

- Requesting a pre-submission conference for the letter ruling request;
- Providing the information required by section 10.07(3) of Rev. Proc. 2023-1;
- Submitting a letter ruling request that satisfies all applicable requirements of Rev. Proc. 2023-1 and any other applicable revenue procedures;
- Including in the letter ruling request a required statement, a draft letter ruling, information on the taxpayer's reasons for requesting fast-track processing, and other required information, as well as a statement that the taxpayer agrees to provide any additional information requested within the seven business days that begin on the next business day after the day the request for information is made; and
- Satisfying each of the requirements described in sections 5.02 through 5.04 of this revenue procedure and agree to satisfy the requirement described in section 5.07 of this revenue procedure;

By or before seven business days after the letter ruling request is received, the branch representative or branch reviewer will contact the taxpayer to acknowledge receipt of the request, provide contact information for the branch representative and branch reviewer, and notify the taxpayer that the request is granted, denied, or still pending.

If a request is granted, the IRS will try to complete processing of the letter ruling request and, if appropriate, to issue the letter ruling within 12 weeks, unless a shorter or longer period is requested and granted under the revenue procedure.

Fast-track processing is not available for requests for extension of time to make elections or other applications for relief under Reg. §301.9100 (\$9100 relief). However, expedited handling under section 7.02(4) of Rev. Proc. 2023-1 is available for \$9100 relief requests.

Notable Changes to Rev. Proc. 2022-10

The new program reflects two notable changes to the Rev. Proc. 2022-10 pilot program:

- Fast-track processing will not be granted if the letter ruling includes a closing agreement with respect to an issue under the jurisdiction of the Associate Chief Counsel (Corporate) or another Associate office. If the inclusion of a closing agreement arises during the

fast-track processing of a letter ruling request, the fast-track processing will be terminated, and the IRS will continue to process the letter ruling request under the procedures of section 7 of Rev. Proc. 2023-1; and

- While a statement providing one or more of the taxpayer's reasons for requesting fast-track processing is required, the taxpayer is not required to demonstrate a business need unless the taxpayer is requesting a ruling in less than 12 weeks. The stated reasons will be used as one factor to be considered in making the determination of whether a request for fast-track processing is granted, and, if so, the length of the specified period.

Applicability Dates

The fast-track ruling program established by this revenue procedure applies to all letter ruling requests described in section 4.01 of this revenue procedure postmarked or, if not mailed, received by the IRS after July 26, 2023.

Effect on other documents

Rev. Proc. 2022-10, I.R.B. 2022-6, 473, is superseded.

Rev. Proc. 2023-1, I.R.B. 2023-1, 1, is modified.

Transition Electronic Filing Relief Available for Certain Non-U.S. Taxpayers

Taxpayers who obtained a Filing Information Returns Electronically (FIRE) Transmitter Control Code (TCC) before September 26, 2021 were required complete an Information Returns (IR) Application for TCC by August 1, 2023, to ensure their TCC(s) remain active. The Information Returns application for Transmitter Control Code (IR TCC)

application requires a Social Security number (SSN) or individual tax identification number (ITIN) for system access and individual authentication. The IRS is aware that foreign individuals who are acting on behalf of their foreign employer (such as foreign entities, foreign financial institutions, and qualified intermediaries) may not be able to obtain an ITIN

or SSN to complete the IR TCC application and continues to explore other ways for taxpayers to authenticate their identities, including a government-sponsored option. While the solution is being developed, existing non-U.S. entities with an existing Form 1042-S TCC will remain active and available. No additional actions are required at this time.

During this transition period, the non-U.S. entities with an existing Form 1042-S TCC will not be able to update the

established TCC information. This will not prohibit them from filing; however, they will need to continue accessing the

FIRE System using the EIN, TCC, and legal business name as it currently appears on the FIRE System.

OECD Releases New Pillar Two Guidance As Treasury Official Defends Framework Participation

The Organization for Economic Co-operation and Development issued its latest guidance on Pillar Two of the OECD/G20 Inclusive Framework that will be the basis for setting a global minimum corporate tax rate of 15 percent.

The guidance comes as participation by the United States continues to receive critical oversight from Congress, with Michael Plowgian, deputy assistant secretary for International Tax Affairs at the Department of the Treasury, recently appearing before the House Ways and Means Committee to defend participation in the framework.

OECD's most recent guidance features an update to Pillar Two Global Anti-Base Erosion (GloBE) Rules.

"Many countries are looking to adopt the GloBE Rules through a qualified domestic minimum top-up tax (QDMTT) which gives that country the first right to collect top-up taxes due under the minimum tax on a MNE's [multinational enterprises] local branches and subsidiaries," the guidance notes. "The Inclusive Framework is developing further guidance on the application of the QDMTT for those countries which includes the development of an agreed safe harbor."

Some of the topics covered by the new administrative guidance include currency conversion rule and the application of tax credits, in addition to the new QDMTT safe harbor test. Information on the updated Pillar Two guidance

can be found at oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm.

Senate Finance Committee Chairmen Ron Wyden (D-Ore.) called the updated guidance "concrete wins for American taxpayers and businesses." However, committee Ranking Member Mike Crapo (R-Idaho) and House Ways and Means Committee Chairman Jason Smith (R-Mo.) had a different perspective, calling the latest guidance proof that the framework is "is unworkable and unlawful."

Treasury Official Defends Participation

During a July 19, 2023, Ways and Means Committee hearing Deputy Assistant Secretary Plowgian testified that participation in the framework "will ensure the United States can tax multinationals at reasonable levels without being undercut by other countries using their tax systems to induce our multinationals to shift their profits, operations, or residency offshore."

He did emphasize that final participation does ultimately need the approval of Congress to fully implement the OECD Inclusive Framework that is currently being negotiated and developed.

Plowgian highlighted specific provisions in the July guidance that will be beneficial to U.S. taxpayers.

"Credits through tax equity partnerships, structures that are commonly used in the Low Income Housing Tax Credit context, as well as for certain green energy credits, have also been protected under Administrative guidance," he testified, adding that the July guidance also protects "the value of transferable credits, like those enacted under the Inflation Reduction Act, by treating them appropriately as refundable tax credits."

In saying why these provisions are favorable, Plowgian said that they addressed two main issues.

"For the originators of these credits, the taxpayers who engage in projects that give rise to the credits, it treats the credits as refundable, meaning that they are treated as income rather than as a reduction in tax expense, which helps predict the value of the credits with respect to the purchasers. They treat just the net amount. So, the difference between the value of the credit and the amount paid for the credit as a benefit."

He said these inclusions in the most recent guidance demonstrate "that the U.S. should remain at the table as the world moves forward and implements Pillar Two."

Plowgian also reiterated that analysis by the Congress Joint Committee on Taxation shows that adoption of Pillar Two would increase U.S. tax receipts.

Current Plan Liability Rates Set for July 2023

Notice 2023-53

For pension plan years beginning in July 2023, the IRS has released:

- The 30-year Treasury bond weighted average interest rate,
- The unadjusted segment rates,

- The unadjusted segment rates, and
- The minimum present value segment rates.

Corporate Bond Rate

The three 24-month average corporate bond segment rates applicable for

July 2023 (without adjustment for the 25-year average segment rate limits are as follows):

- 3.22 for the first segment rate,
- 4.22 for the second and
- 4.34 for the third.

July 2023 Adjustment Segment Rate

The July 2023 adjusted segment rates for plan years beginning in 2022 are:

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

The rates for plan years beginning in 2023 are:

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

30-Year Treasury Weighted Average

For plan years beginning in July 2023, the 30-year Treasury weighted average securities rate is 2.72, with a permissible

range of 2.45 to 2.85 under Code Sec. 431(c)(6)(E)(ii)(I).

The rate of interest on 30-year Treasury securities for June 2023 is 3.86 percent.

The minimum present value segment rates under Code Sec. 417(e)(3)(D) for June 2023 are:

- 5.26 for the first segment rate,
- 5.23 for the second, and
- 5.16 for the third.

David Padrino Named IRS Chief Transformation and Strategy Officer

IR-2023-137

The IRS has announced the selection of David Padrino to serve as the Chief Transformation and Strategy Officer, a recently created role at the agency to spearhead improvement efforts under Inflation Reduction Act funding. “He will work closely with our IRS leadership teams to focus on making short-term and

long-term improvements called for under our new Strategic Operating Plan,” IRS Commissioner Danny Werfel said. Padrino served as the Chief Transformation Officer at the federal Office of Personnel Management (OPM) before joining the IRS. He has spent more than two decades working in a variety of other leadership roles across local, state and federal governments as well as on

transformation efforts in the private sector. Padrino graduated from the Wharton School at the University of Pennsylvania with a Master of Business Administration and received a Bachelor of Arts degree from Vassar College. “I am excited to join the IRS during this critical period of transformation and work alongside so many dedicated public servants,” Padrino said.

Charitable Contribution Deductions No Longer Allowed for Organizations

Announcement 2023-21

The IRS has announced that the following organizations no longer qualify under Code Sec. 170(c)(2) as organizations for which deductions for charitable contributions are allowed:

- Taxes for a Cause Inc, of New York. Effective revocation date: January 1, 2020;
- United Way of New York, of New York. Effective revocation date: April 2, 2018;
- Step Up Youth Corp, of Colorado. Effective revocation date: February 6, 2019;

- National Waterfowl Alliances, of Illinois. Effective revocation date: February 1, 2021; and
- Hockey Hall Inc, of Oklahoma. Effective revocation date: January 1, 2019.

However, contributions made to the organization before July 31, 2023, will generally be deductible, unless made by a person who (1) knew of the revocation, (2) was aware that the revocation was imminent or (3) was responsible, in whole or in part, for the activities or deficiencies that gave rise to the loss of qualification.

If the organization files suit, in a timely manner, for declaratory judgment under

Code Sec. 7428, challenging the revocation of its status as an eligible donee of deductible charitable contributions, Code Sec. 170 contributions will continue to be deductible with protection under Code Sec. 7428(c) beginning on July 31, 2023. The maximum amount of individual contributions protected would be \$1,000, with a husband and wife treated as one taxpayer. This protection is not afforded to anyone who was responsible, in whole or in part, for the acts or omissions of the organization that resulted in revocation of qualification.

Taxpayers Reminded of Identity Protection PINs’ Importance

IR-2023-134

The IRS has reminded taxpayers about the IRS Identity Protection PIN opt in program

to help protect people against tax-related identity theft. “The Identity Protection (IP) PIN is the number one security tool currently available to taxpayers from the

IRS,” the independent IRS advisory group said in its annual report to Congress. “This tool is the key to making it more difficult for criminals to file false tax returns in the

name of the taxpayer. In our view, the benefits of increased IP PIN use are many.” The IRS has urged taxpayers to protect themselves through the IP PIN program as, IP PINs provide an extra layer of security for taxpayers filing their tax returns by serving as a critical defense against identity thieves. More than eight million taxpayers have already taken the steps to obtain an IP

PIN. Taxpayers can get an IP PIN through the IRS online tool.

Tax professionals who experience a data theft can assist clients by urging them to quickly obtain an IP PIN. Even if a thief already had filed a fraudulent return, an IP PIN would still offer protections for later years and prevent taxpayers from being repeat victims of tax-related identity theft.

Tax professionals are urged to let their clients know that IP PINs are now available to anyone who can verify their identity. A step by step walk-through on how to register for certain online self help tools is available on the IRS website. For further assistance taxpayers can call the IRS to make an appointment at a Taxpayer Assistance Center.

TAX BRIEFS

Business Disruptions

The IRS ruled on whether multiple scenarios involving supply chain disruptions fully or partially suspended operation of an employer’s trade or business. These disruptions were based on orders limiting commerce, travel, or group meetings due to COVID-19. In two scenarios, the employer did not meet the definition of eligible employer under Notice 2021-20, I.R.B. 2021-11, 922. In a third scenario, the employer was an eligible employer in the second calendar quarter of 2020. Its business operations were fully or partially suspended due to a governmental order. In a fourth scenario, the employer D was not an eligible employer under Notice 2021-20 because it could continue to operate its trade or business. In the final scenario, the employer could not demonstrate that a governmental order applicable to a supplier of critical goods or materials caused the supplier to suspend operations. At all points during calendar year 2021, the employer was able to operate its retail business.

Frivolous Position

A married couple failed to report wages which the husband had earned as a radiologist for the tax year at issue. The taxpayers had excluded all wages paid to the husband and contended that wages of US

citizens did not constitute taxable income. However, the taxpayers’ contention was identified as a “frivolous position” in Notice 2010-33, 2010-17 I.R.B. 609.

Hatfield, III, TC, Dec. 62,250(M)

An individual, who was employed by the New York City Transit Authority, had unreported wages and retirement distribution which he received during the tax year at issue. The taxpayer had not filed his tax return following which the IRS issued a notice of deficiency.

Harvey, TC, Dec. 62,252(M)

The IRS had correctly determined tax deficiencies against an individual related to unreported rental income, gain from the sale of real property, taxable Social Security benefits, and certain other income. The taxpayer was liable for additions to tax for failure to file and pay taxes. Additionally, the taxpayer was liable for a penalty for maintaining a frivolous position during trial.

Saccato, TC, Dec. 62,253(M)

IRS

The IRS has issued a correction to Rev. Proc. 2023-3, 2023-1 IRB 144. The document incorrectly stated that Rev. Proc. 2022-19, 2022-42 I.R.B. 282, is superseded. However, Rev. Proc. 2022-19,

2022-42 I.R.B. 282 remains in effect and is not superseded. Section 7 of Rev. Proc. 2023-3 is corrected to read, “Rev. Proc. 2022-3, 2022-1 I.R.B. 144, is superseded. Rev. Proc. 2022-28, 2022-27 I.R.B. 65, is superseded.”

Announcement 2023-17

Liens and Levies

An IRS settlement officer (SO) did not abuse her discretion in upholding notices of intent to levy issued against a married couple.

Stevens, TC, Dec. 62,251(M)

Penalties

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

Dorchester Farms Property, LLC, TC, Dec. 62,249(M)

Wrongful Termination Award

Damages received by an individual for being wrongfully terminated from his job on the basis of age discrimination were taxable to him. Additionally, the taxpayer was liable for additions to tax under Code Secs. 6651(a)(1) and (2).

McGhee, TC, Dec. 62,254(M)