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IRS Commissioner Highlights Enforcement Gains Following IRA Funding

The additional funding provided to the Internal Revenue Service under the Inflation Reduction Act is already paying dividends when it comes to increased enforcement, agency Commissioner Daniel Werfel said.

"We are now taking swift and aggressive action to close the gap" after years of underfunding prevented the IRS from adequately auditing and enforcing the tax laws on the wealthiest taxpayers, Commissioner Werfel said during a July 13, 2023, teleconference with reporters.

"In just the last few months, we closed about 175 delinquent tax cases for millionaires, generating $38 million in recovery," he said. "This is just the start. We're going to continue to go after the delinquent millionaires as we ramp up enforcement capabilities through the Inflation Reduction Act."

He also highlighted that Criminal Investigations also closed cases with an assist from the additional funding.

"These evaders spent money owed to the government on gambling and casinos, vacations, and purchases of luxury goods," Werfel noted. "For example, in one case alone, the person was ordered to pay more than $6 million in restitution."

The agency commissioner added that efforts are ongoing in terms of the IRS meeting its hiring goals to help improve its enforcement capabilities against the top earners and there is "progress," although he expects this to be a years-long campaign to boost the agency's employment levels to adequately handle the special needs of enforcing the tax code on the wealthiest taxpayers.

Werfel also highlighted how the IRA funds are being used to help taxpayers, pointing out that 35 Taxpayer Assistance Centers have reopened since the agency started receiving the supplemental funding provided by the Inflation Reduction Act. He also said that the funding has allowed temporary assistance centers to be utilized as another path for taxpayers to get in-person help from the agency.

The program is called "Community Assistance Visits," and the first event was held in June in Paris, Texas, in partnership with the United Way.

"Currently, seven additional locations have been determined for these special visits," he said. The locations are:

- Alpena, Mich.
- Hastings, Neb.
- Twin Falls, Idaho
- Juneau, Alaska
- Lihue, Hawaii
- Baker City, Ore.
- Gallup, N.M

The agency in a separate statement issued July 14, 2023, also highlighted some other examples of where progress is being made on the Strategic Operating Plan that was issued earlier this year to detail how the IRA funds would be spent.

For example, the statement noted that the agency is deploying "enhanced capabilities for the Tax Professional Online Account, including account authorization management and payment viewing by the end of September, and live chat and secure two-way messaging in FY 2024."

It also updated the agency's progress on modernizing technology, including progress on replacing mail sorting machines and scanners. The IRS "is currently testing a mobile application prototype, Inform Me, built with the capability to scan a paper IRS form, notice, or document," according to the statement. "The app will recognize the document and pull up related information and guidance on IRS.gov to help taxpayers get their questions answered and get it right. The app is currently undergoing user testing with IRS' industry partners and at this summer's Nationwide Tax Forums."

Deployment decisions will be made following the user tests, IRS said.

California Viticultural Area Established; Other AVAs Modified

Effective August 4, 2023, the, "Long Valley-Lake County" viticultural area located in Lake County, California is established by the Alcohol and Tobacco Tax and Trade Bureau. Additionally, TTB is expanding the boundary of the established High Valley viticultural area to create a contiguous border with the Long Valley-Lake County viticultural area. Also, TTB is modifying the boundary of the North Coast viticultural area to eliminate a partial overlap with the Long Valley-Lake County viticultural area.

Viticultural area names are used to describe the origin of wine for labeling and advertising.

Treasury Decision, TTB-188, Alcohol and Tobacco Tax and Trade Bureau, 88 FR 42878, July 5, 2023

House Passes FAA Reauthorization Bill, Extends Aviation-Related Taxes

A bill reauthorizing the Federal Aviation Administration, which includes a few aviation-related taxes that were extended, passed the House of Representatives.

The Securing Growth and Robust Leadership In American Aviation Act (H.R. 3935) easily passed with a bipartisan majority vote of 351-69 on July 20, 2023.

As part of Sec. 1202 of the reauthorization bill, "Extension of Taxes Funding Airport and Airway Trust Fund," a few tax provisions received five-year extensions. Those taxes cover fuel and ticket taxes as well as an exemption from ticket taxes related to noncommercial aviation. In each instance, the September 30, 2023, expiration date of the tax provisions was extended to September 30, 2028.

No date has been set as to when the Senate will take up the bill.

Legislative Changes Needed For IRS Handling Of Disaster Declarations – NTA

Action is needed at the legislative level to address issues the Internal Revenue Service has with disaster relief, National Taxpayer Advocate Erin Collins said.

In a pair of recent blog posts, Collins highlighted that taxpayers in recently declared disaster areas have been receiving "notice and demand" collection letters from the agency, contrary to other public information about when payments are due and when interest on and penalties will accrue.

"Disaster area taxpayers can ignore the CP14 collection notice when the original due dates fall within the postponement period," Collins wrote in part one of the blog. "The payment due date on the collection notice is wrong. The correct payment due date is stated on the disaster declaration. Taxpayers can verify the correct payment date by checking irs.gov."

REFERENCE KEY

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

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Collins stated that the collections notices are being automatically generated based on normal conditions and do not necessarily account for disaster declarations. In the blog she recommended that "IRS reprogram its systems to delay the issuance of the notice, including Notice CP14, pro provide the correct due date on page one of the notice" when deadlines for payment are affected by disaster declarations.

She also encouraged those who receive notices to read all pages and inserts and not just the due date on page one of the notice, as correct dates may be found on subsequent pages or inserts of the mailing.

Collins also called for legislative changes to help address this issue.

In part two of the blog post, Collins wrote that, "I strongly recommend that Congress amend Code Sec. 7508A and treat a disaster relief postponement in the same manner as prescribing tax-related deadlines for all purposed of the Code. We need to resolve this issue across the board rather than one disaster at a time."

If Congress doesn't make that change, it "should consider amending Code Sec. 6303(b) to provide that when the Secretary postpones a filing deadline pursuant to Code Sec. 7508A, the deadline for issuing a notice and demand includes any periods of postponement," she added.

IRS Encourages Extension Filing Taxpayers to File Soon

The IRS has encouraged taxpayers who missed the April 18 deadline or have requested an extension to October 16 to prepare and e-file their tax returns as soon as possible using the IRS Free File. The IRS website is the most convenient way to get tax-related information and help and it accepts electronically filed returns 24/7. Taxpayers were further reminded of the various services offered by the IRS website.

IR-2023-130

Deadline for Income Tax Filing and Payment for Victims in Four Storm Affected States Issued

IR-2023-128

The IRS has reminded individuals and businesses in parts of four states that their 2022 federal income tax returns and tax payments are due on Monday, July 31, 2023. The deadline is applicable to taxpayers who were affected by four specific disaster declarations which occurred during late March and early April of this year, which include the following:

- in Arkansas - Cross, Lonoke and Pulaski counties;
- in Indiana - llen, Benton, Brown, Clinton, Grant, Howard, Johnson, Lake, Monroe, Morgan, Owen, Sullivan and White counties;
- in Mississippi - Carroll, Humphreys, Monroe, Montgomery, Panola, Sharkey and Washington counties; and
- in Tennessee - Cannon, Giles, Hardeman, Hardin, Haywood, Johnson, Lewis, Macon, McNairy, Morgan, Rutherford, Tipton and Wayne counties.

The IRS provides relief, such as automatic postponement of various tax filing and payment deadlines, for any area designated by the Federal Emergency Management Agency (FEMA), if such address of record is in a disaster-area locality. However, if an affected taxpayer has received a late filing or late payment penalty notice from the IRS with an original or extended filing, payment or deposit due date falling within the postponement period, the taxpayer must call the number on the notice to have the penalty abated. Further, affected individual taxpayers who need more time to file beyond the July 31 deadline must file their extension requests on paper using Form 4868, as e-file options for requesting an extension are unavailable after April 18; by filing this form, disaster-area taxpayers will have until Oct. 16 to file, though tax payments deadline will remain July 31. For further information on extension of time to file tax return, visit the IRS website.

In addition, the IRS will work with any taxpayer who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227. This also includes workers assisting with relief activities who are affiliated with a recognized government or philanthropic organization.

Temporary Relief Provided for Determining Foreign Tax Eligibility for Foreign Tax Credit

Notice 2023-55

The Treasury Department and the IRS have announced temporary relief for determining whether a foreign tax is eligible for a foreign tax credit under Code Sec. 901 and Code Sec. 903, for taxes paid during tax years 2022 and 2023. This temporary relief applies to the definition of a foreign income tax, the net gain requirement, jurisdiction to tax excluded income, and the source-based attribution requirement.

Background

In 2022, the Treasury and the IRS issued final regulations under Code Secs. 901 and 903 (the 2022 FTC final regulations), as well as correcting amendments to the 2022 FTC final regulations, and proposed regulations that included rules on the cost recovery requirement and the substitution requirement for covered withholding taxes (T.D. 9959; NPRM REG-112096-22). In April 2023, the Treasury and the IRS issued Notice 2023-31 [I.R.B. 2023-16, 661] regarding the single-country exception in Proposed Reg. §1.903-1(c)(2)(iii)(B).

In response to subsequent questions on applying the 2022 FTC final regulations and requests to modify those regulations, the Treasury and the IRS continue to analyze issues related to the final regulations. As that analysis is ongoing, taxpayers may apply the temporary relief.

Temporary Relief

To determine whether foreign taxes paid in the relief period are foreign income taxes, taxpayers can apply former Reg. §1.901-2(a) (definition of foreign income tax) and former Reg. §1.901-2(b) (net gain requirement) before they were amended by T.D. 9959, but with the nonconfiscatory gross basis tax rule in former Reg. §1.901-2(b)(4)(i) replaced with a modified rule set forth in the temporary relief. Taxpayers also can apply existing Reg. §1.903-1, but without applying the rules on jurisdiction to tax excluded income and the source-based attribution requirement.

Under the temporary relief, a gross basis tax imposed on the gross receipts or gross income arising from the provision of digital services (DST) does not satisfy the net income requirement of former Reg. §1.901-2(b)(4)(i), because the base of the tax is gross receipts or gross income and does not consist solely of investment income that is not derived from a trade or business, or wage income. Also, under existing Reg. §1.903-1 (but without taking into account the provision on jurisdiction to tax excluded income and the source-based attribution requirement), a foreign country's DST that applies by its terms to any income subject to that foreign country's net income tax remains not creditable as a tax in lieu of an income tax.

The temporary relief applies to tax years beginning on or after December 28, 2021, and ending on or before December 31, 2023. Taxpayers can apply the temporary relief to foreign taxes paid in any tax year within the relief period, as long as they satisfy certain requirements set forth in the relief.

Future Guidance?

The Treasury and the IRS are considering amendments to the 2022 FTC final regulations, as well as whether and under what conditions to provide additional temporary relief beyond the relief period.

2023 Marginal Production Percentage Depletion Rates Announced

Notice 2023-50

The IRS has announced the applicable percentage under Code Sec. 613A to be used in determining percentage depletion for marginal properties for the 2023 calendar year. Code Sec. 613A(c)(6)(C) defines the term "applicable percentage" for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which $20 exceeds the reference price (determined under Code Sec. 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the tax year begins. The applicable percentage is 15 percent and the reference price determined under Code Sec. 45K(d)(2)(C) for the 2022 calendar year is $93.97. The table contains the applicable percentages for marginal production for tax years beginning in calendar years 1991 through 2023.

Inflation Adjustment and Reference Prices for Renewable Energy Production Credit Released

Notice 2023-51

For calendar year 2023, the renewable electricity production credit is not phased out. The inflation adjustment factor for calendar year 2023 for qualified energy resources is 1.8909. The reference prices for the renewable electricity production credit for calendar year 2023 is 3.74 cents per kilowatt hour for facilities producing electricity from wind. The reference price for other sources has not yet been determined. Under the calculation required by Code Sec. 45(b)(2), the credit for renewable electricity production for calendar year 2023 under Code Sec. 45(a) is 2.8 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, and geothermal energy, and 1.4 cents per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic energy facilities.

Checks Written Before Death Were Includible in Gross Estate

W.E. Demuth Jr., Est., CA-3, 2023-2 USTC *¶60,738*

Checks written before a decedent's death were includible in his gross estate because they were not completed gifts under applicable state (Pennsylvania) law. The decedent's son, acting as his power of attorney, wrote 11 checks to family members following the decedent's end-stage medical condition diagnosis. Four of the checks were either cashed before death or the IRS agreed to exclude them from the gross estate. Seven checks were paid from the decedent's account after his death.

Under Pennsylvania law, a gift is complete if the donor intended to make the gift and there has been "actual or contructive delivery at the same time, of a nature sufficient to divest the giver of all dominion." A check is revocable by the donor until it is deposited or cashed. The seven checks were revocable at the time of the decedent's death because they were not deposited and paid until after the date of death. Therefore, the gifts were not complete and the value of the checks was includible in the decedent's gross estate. The estate did not prove that the checks were gifts *causa mortis* because it did not establish that the decedent contemplated death when the checks were written on his behalf.

Tax Professionals Encouraged to Utilize Security Plan Template in Nationwide Tax Forums

IR-2023-129

The Security summit and IRS has encouraged tax professionals to take advantage of its security plan template designed to make data security planning easier. As part of the five part "Protect your clients , Protect yourself" summer series, the summit members will highlight the security template at each of the five Nationwide tax forums to be held this summer throughout the U.S. The Written Information Security Plan (WISP) is a 28-page, easy-to-understand document developed by and for tax and industry professionals to keep customer and business information safe and secure. The WISP walks users through getting started on a plan, including understanding security compliance requirements and professional responsibilities. It continues with an outline for a basic WISP and a sample template. The sample is not intended to be the final word in written security plans, but it is intended to give tax professionals a place to start in understanding and attempting to draft a plan for their business.

With the booming threat data security, the federal law requires all professional tax preparers to create and implement a data security plan. The Gramm-Leach-Bliley Act (GLBA) required financial institutions to protect customer data. Under this law, tax and accounting professionals are considered financial institutions, regardless of size. In its implementation of this law, the Federal Trade Commission (FTC) issued measures required to keep customer data safe. One requirement is implementing a WISP. Further, the IRS has strongly encouraged tax professionals to consult with technical experts to help with security issues and safeguard their systems. In addition, the IRS also recommended tax professionals to create a data theft response plan, which includes contacting their IRS Stakeholder Liaison to report a theft. Tax professionals should also understand the FTC data breach requirements as part of their overall information and data security plan.

IRS Cautions Taxpayers of Summer Email, Text Scams Involving EIPs, Tax Refunds

IR-2023-131

The IRS has cautioned taxpayers to be aware of a surge of tax scams as identity thieves continue pounding out a barrage of email and text messages promising tax refunds or offers to help 'fix' tax problems. The special Summer news release series is aimed at raising awareness among tax professionals on ways to protect themselves – and their clients – against identity theft. The IRS has highlighted some of the most recent wave of activity involving tax scammers; they are:

- the Economic Impact Payment (EIP) scheme : these promise a third round of economic impact payment;
- false Employee Retention Credit (ERC) claims : urge people to improperly claim their ERC with fake offers;
- claim your tax refund scam : these proclaim people should claim their tax refund online;
- the "Help You Fix-It" text scheme : identity thieves send messages offering to resolve the taxpayer's problem if they click a link; and
- the "delivery service"scam: involves a mailing that arrives from a delivery service claiming to be from the IRS.

The IRS has reminded taxpayers to look for telltale signs such as obvious grammatical errors, misspellings and factual inaccuracies. Further, the IRS cautioned taxpayers to be wary of clicking on anonymous links and sharing valuable personal information and financial information. However, if taxpayers are victims of any such tax scams then they should report the email to phishing@irs.gov. In addition, they should also file a complaint with Treasury Inspector General for Tax Administration and visit the IRS website.

AFRs Issued For August 2023

Rev. Rul. 2023-13

The IRS has released the short-term, mid-term, and long-term applicable interest rates for August 2023.

Applicable Federal Rates (AFR) for August 2023

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	5.07%	5.01%	4.98%	4.96%
110% AFR	5.59%	5.51%	5.47%	5.45%
120% AFR	6.10%	6.01%	5.97%	5.94%
130% AFR	6.62%	6.51%	6.46%	6.42%
Mid-Term				
AFR	4.09%	4.05%	4.03%	4.02%
110% AFR	4.51%	4.46%	4.44%	4.42%
120% AFR	4.92%	4.86%	4.83%	4.81%
130% AFR	5.34%	5.27%	5.24%	5.21%
150% AFR	6.17%	6.08%	6.03%	6.00%
175% AFR	7.22%	7.09%	7.03%	6.99%
Long-Term				
AFR	4.03%	3.99%	3.97%	3.96%
110% AFR	4.44%	4.39%	4.37%	4.35%
120% AFR	4.85%	4.79%	4.76%	4.74%
130% AFR	5.26%	5.19%	5.16%	5.13%

Adjusted AFRs for August 2023

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	3.84%	3.80%	3.78%	3.77%
Mid-term adjusted AFR	3.10%	3.08%	3.07%	3.06%
Long-term adjusted AFR	3.05%	3.03%	3.02%	3.01%

The Code Sec. 382 adjusted federal long-term rate is 3.05%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 3.05%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.94% and 3.40%, respectively, however, under Code Sec. 42(b)(2), the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 5.00%.

Washington Round-up

AICPA calls for some changes to the IRS SOP. While generally applauding the Strategic Operating Plan issued by the Internal Revenue Service that details how the additional funding providing by the Inflation Reduction Act will be spent, the American Institute of CPAs would like to see some changes. "The SOP appears to delay improvements aimed at mid-sized and large businesses for later years covered by the funding, while increased enforcement activities appear to be squarely focused on these entities in the early years," a July 14, 2023, letter to the agency stated. "The AICPA asks that the plan prioritize better service for all, including mid-sized and large businesses in the early years. To that end, we ask that deployment of taxpayer online accounts for mid-sized and large businesses not be unnecessarily delayed." AICPA also asked for the emphasis on training to extend beyond enforcement activities and would prioritize customer-focused topics. AICPA's 2023 tax policy and advocacy comment letters can be found at https://us.aicpa.org/advocacy/tax/2023taxadvocacycommentletters.html.

AICPA supports the Casualty Loss Deduction Restoration Act. The American Institute of CPAs is voicing its support for the Casualty Loss Deduction Restoration Act (H.R. 4539), which repeals the suspension in the Tax Cuts and Jobs Act of the deduction from years 2018-2025 of the personal casualty loss deduction not attributed to a federally declared disaster. The proposed bill also extends the period of limitation of filing a claim for credit or refund of tax as a result of a deductible personal casualty loss for the years covered by the suspension in the TCJA. In a July 12, 2023, letter, the organization also suggested "a carryforward of net casualty loss amounts in excess over the $50,000 [maximum allowable deduction], and that the $50,000 amount be indexed for inflation." AICPA's 2023 tax policy and advocacy comment letters can be found at https://us.aicpa.org/advocacy/tax/2023taxadvocacycommentletters.html.

FinCEN beneficial ownership regulations need work. Pete Selenke, vice president and Anti-Money Laundering/Bank Secrecy Act Officer at Central Bank of Jefferson City, Mo., told members of the of the House Financial Services Committee that rules promulgated by the Financial Crimes Enforcement Network (FinCEN) need work. Testifying on behalf of the American Bankers Association during a July 18, 2023, hearing, Selenke said that "there are three areas where FinCEN must focus when creating a meaningful beneficial ownership regime: use, accuracy, and education." He described FinCEN's limitations on banks' use of beneficial ownership information to be burdensome to bankers. For the beneficial ownership registry, it "must be a reliable and authoritative source of information," he said. "The federal government must make sure the information in the registry is accurate. This responsibility should not be imposed on those seeking to access the database." He also emphasized that the federal government needs to educate the public on new legal obligations and reporting requirements, "especially when there are serious penalties for noncompliance."

TAX BRIEFS

Bank Deposit Analysis

A married couple, who operated an electronic book publishing business, failed to prove that the IRS' bank deposit analysis to determine their unreported business income had errors.

Ninke, TC, Dec. 62,245(M)

Business Deductions

A married couple was not entitled to deduct Schedule C expenses related to supplies, advertising and utilities. Further, the taxpayers were not entitled to deduct cost of goods sold (COGS) due to lack of substantiation. Additionally, the taxpayers were not entitled to a Schedule A deduction for cash charitable gifts in an amount greater than the IRS had already allowed.

Tucker, TC, Dec. 62,244(M)

Capital Gains

The IRS was not estopped from collecting tax attributable to short and long-term capital gains an individual realized in virtual currency transactions.

Kim, TC, Dec. 62,248(M)

Charitable Contribution Deductions

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

Announcement 2023-20; Announcement 2023-19

Individual Retirement Accounts

Married taxpayers (T1 and T2) requested and received multiple individual retirement account (IRA) distributions. Therefore, they were the payees or distributees under Code Sec. 408(d)(1). Further, the taxpayers were not entitled to deduct the funds as ordinary and necessary business expenses under Code Sec. 162(a). Regardless of how the taxpayers believed the funds would be used, none of the money given to the daughter was used to pay any actual business expenses.

Dennis, DC Fla., 2023-2 USTC ¶50,206

Liens and Levies

The Tax Court correctly sustained the IRS's lien and levy on a married couple's property to collect the outstanding tax liabilities.

Goldberg, CA-7, 2023-2 USTC ¶50,204

An IRS settlement officer (SO) did not abuse his discretion in upholding a notice of Federal tax lien filing and a notice of intent to levy against a corporation. The taxpayer contended that the SO abused his discretion by failing to verify compliance with Code Sec. 6751(b) and the Administrative Procedure Act (APA) notice-and-comment requirements for Notice 2007-83, 2007-2 C.B. 960.

Laidlaws Harley Davidson Sales, Inc, TC, Dec. 62,247(M)

Procedure

A district court properly adjourned a case due to the judge's exposure to Coronavirus 2019 (COVID-19). The adjournment was not (1) an abuse of discretion; and (2) a violation of Double Jeopardy under the Fifth Amendment. The taxpayer's objection that an adjournment was not feasible precluded the taxpayer from arguing that the district court should not have accepted multiple jurors' excuses and should have resumed the trial after an adjournment.

Thrush, CA-6, 2023-2 USTC ¶50,205

Rental Real Estate

An individual was not entitled to numerous real estate-related deductions due to lack of substantiation. Further, the taxpayer was liable for an accuracy-related penalty under Code Sec. 6662(a).

Cardulla, TC, Dec. 62,246(M)