



# FEDERAL TAX WEEKLY

## INSIDE THIS ISSUE

FinCEN Commences Beneficial Ownership Reporting Under Bipartisan Corporate Transparency Act.....	1
IRS Encourages Taxpayers to Get Ready for 2024 Filing Season.....	1
IRA/CHIPS Registration Tool Available for Free from IRS .....	2
IRS Extends Deadline for Clean Vehicles Time-of-Sale Reports Submission.....	2
Proposed Regulations to be Issued on Product Identification Numbers and Energy Efficient Home Improvement Credit .....	2
IRS Releases Partial Original Issue Discount Tables for 2023 .....	3
IRS Launches Second Phase of Online Self-Service Tool to Expand Business Tax Account Access.....	3
Effective Date of Termination of U.S.-Hungary Tax Treaty Announced.....	3
Associate Chief Counsel Ruling Procedure Updated; New Schedule of User Fees Provided.....	4
2023 Tax Year-In-Review: Wolters Kluwer Tax Briefing Now Available .....	4
IRS Updates Technical Advice Memoranda Procedures.....	5
Associate Chief Counsel Nonissuance List Updated.....	5
Employee Plan and Exempt Organization Ruling Procedures Updated.....	6
Exempt Status Determination Letter Application and Issuance Procedures Updated .....	6
International Issues Where No Advance Rulings Will Be Provided Announced.....	6
Updated CPE Standards Include Options For Virtual Learning .....	7
Petition Filed by Date Specified in Incorrect Notice Timely Filed.....	7
Transactions Conducted Through Purported Microcaptive Insurance Arrangement Did Not Constitute Insurance .....	7
Butane and Gasoline Mixture Does Not Qualify for Alternative Fuel Mixture Credit .....	8
Tax Briefs .....	9

## FinCEN Commences Beneficial Ownership Reporting Under Bipartisan Corporate Transparency Act

*U.S. Beneficial Ownership Information Registry Now Accepting Reports*

The Department of Treasury's Financial Crimes Enforcement Network (FinCEN), has begun accepting beneficial ownership information report under the bipartisan Corporate Transparency Act, enacted in 2021. This effort requires companies doing business in the United States to report information about the individuals who ultimately own or control said companies. "Corporate anonymity enables money laundering, drug trafficking, terrorism, and corruption. It harms American citizens and puts law-abiding small businesses at a disadvantage. Having a centralized database of beneficial ownership information will eliminate critical vulnerabilities in our financial system and allow us to tackle the scourge of illicit finance enabled by opaque corporate structures," said Treasury Secretary Janet Yellen.

Existing companies who were created or registered prior to January 1, 2024, must file their reports by January 1, 2025. Meanwhile, companies which are newly created or registered in 2024 will have 90 calendar days to file the report after receipt of effective registration notice. FinCEN has provided the small entity compliance guide which walks the small businesses through the requirements in plain understandable language. For further information regarding the filing requirements and procedure, taxpayers may visit [FinCEN.gov](https://www.fincen.gov).

## IRS Encourages Taxpayers to Get Ready for 2024 Filing Season

*IR-2024-1*

The IRS has encouraged taxpayers to utilize tips, tools and other resources available on the IRS website to Get Ready for 2024 filing season. The agency is set to announce the start date for filing season later this month. Taxpayers can use their Individual Protection (IP) Pin or social security number to create/ access their online account in the IRS website. Having an online account in the IRS website will mitigate the process of tax filing. In addition, taxpayers can use "Where's my refund?" tool to check their tax refund status within 24 hours of filing.

The IRS reminded taxpayers to engage authorized IRS e-file providers, who are qualified to prepare, transmit and process e-filed returns; and to avoid unethical "ghost" return

preparers. Meanwhile, there are a few filing assistant tools on the IRS website as well. Some of them include:

- interactive tax assistant, a tool that can help taxpayers with tax law questions;
- earned income tax credit (EITC) assistant, a tool which can help determine their eligibility for Earned Income Tax Credit (EITC);
- IRS free file, a tool to e-file taxes;
- volunteer income tax assistance (VITA) provides free tax help for the elderly, disabled and working families;
- MilTax offers free tax return preparation for all military members and some veterans; and
- direct file pilot, a new tax filing service that permits taxpayers to directly file their returns online for free.

## IRA/CHIPS Registration Tool Available for Free from IRS

The IRS has made the IRA/CHIPS Pre-filing Registration Tool available for free for qualifying businesses, tax-exempt organizations or entities such as state, local and Indian tribal governments. The Inflation Reduction Act and the Creating Helpful Incentives to Produce Semiconductors act (CHIPS) allows taxpayers to take advantage of certain manufacturing investment, clean energy investment and production tax credits through elective payment or transfer. Taxpayers who intend to make an elective payment or credit transfer election must earn credit by making tax credit investment or undertaking tax credit production activities. Although registration is not possible prior to the beginning of the tax year in which the credit will be earned, taxpayers can complete the pre-file registration process to receive a registration number. The registration number so received must be included on the next annual return as part of making a valid election. The IRS has recommended interested taxpayers to submit pre-filing registration at least 120 days prior to when the organization plans to file its tax return on which it will make its election.

*IR-2023-249*

## IRS Extends Deadline for Clean Vehicles Time-of-Sale Reports Submission

*IR-2024-2*

The IRS extended the deadline for dealers and sellers of clean vehicles to submit time-of-sale reports to January 19, 2024. This extension is applicable to dealers and sellers for the vehicles sold from January 1, 2024, to January 16, 2024. However, the IRS encouraged sellers to use this extension only if they are unable to

submit a time-of-sale report, when the vehicle is for a customer who intends to claim the tax credit on their tax return.

This extension comes as the IRS launched the new online portal for seller reporting on January 1, 2024. Sellers and dealers are encouraged to submit their time-of-reports using the IRS Energy Credits Online (IRS ECO). The IRS is

committed to resolving any issues that manufacturers, dealers and sellers might face while navigating the new tool. As a means of assistance, the IRS will be hosting office hours beginning January 9, 2024 to answer any questions regarding the new ECO tool. For more information on submitting time-of-sale reports, see Clean vehicle time-of-sale reporting guide.

## Proposed Regulations to be Issued on Product Identification Numbers and Energy Efficient Home Improvement Credit

*Notice 2024-13; IR-2023-253*

The IRS and the Department of Treasury (the Treasury) have announced that they intend to propose regulations to

implement the product identification number (PIN) requirement with respect to the energy efficient home improvement credit under Code Sec. 25C, as amended by the Inflation Reduction

Act of 2022 (IRA) (P. L. 117-169). The IRS has also requested comments on the PIN requirement under Code Sec. 25C(h) (PIN requirement) by February 27, 2024.

### REFERENCE KEY

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

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## Energy Efficient Home Improvement Credit

Beginning January 1, 2023, the energy efficient home improvement credit allows for a credit, subject to certain limitations and caps, equal to 30-percent of the total amount paid by the taxpayer for certain qualified expenditures, including:

- Qualified energy efficiency improvements installed during the year,
- Residential energy property expenditures during the year, and
- Home energy audits during the year.

The credit is allowed for qualifying property placed in service on or after January 1, 2023, and before January 1, 2033. Beginning on January 1, 2025, taxpayers claiming the credit must also satisfy the PIN requirement for certain categories of products. Under this requirement, an item will only qualify for the energy efficient home improvement credit if the item is produced by a qualified manufacturer, and if the taxpayer includes the qualified PIN of the item on their tax return.

## IRS Releases Partial Original Issue Discount Tables for 2023

The IRS has released the Partial OID Tables which include information received January through October 2023. The following tables are included:

- Section I-A
- Section I-B
- Section I-C
- Section II (U.S. Treasury STRIP Table)
- Section III-A and Section III-B

*Advance release of 2023 Original Issue Discount (OID) tables*

## Request for Comments

The IRS has requested comments on a number of general and specific questions relating to this PIN requirement and has also outlined a PIN assignment system that the Service is considering. Any comments received will assist in the development of the proposed regulations to implement the PIN requirement. Written comments should be submitted by February 27, 2024. However, consideration will be given to any written comment received after February 27, 2024, if

the consideration will not delay the issuance of guidance.

Comments may be submitted in one of two ways:

- Electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (type IRS-2024-13 in the search field on the <https://www.regulations.gov> homepage to find this notice and submit comments); and
- by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2024-13), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044

## IRS Launches Second Phase of Online Self-Service Tool to Expand Business Tax Account Access

*IR-2023-243*

The IRS launched the second phase of a new online self service tool for businesses that expands the business tax account capabilities and eligible entity types. As the new transformation work is rolled out, individual partners and individual shareholders of S corporation businesses will be able to access Business Tax Account information once they have filed a business

return with the Schedule K-1 and it is processed by the IRS. However, new businesses will not have access until a business return is submitted, processed, and on file with the IRS.

“This next step in the evolution of the Business Tax Account will help these businesses download transcripts and other features. Ultimately, these new online options will help make interactions easier for businesses while reducing paper-based processes

and the need to call the IRS,” said IRS Commissioner Danny Werfel. This phase of business tax account also adds a couple of new features including the ability to download PDF of business tax transcripts and viewing certain notices. The business tax account will be a one-stop application that provides business taxpayers a suite of digital products and services. This project is part of a larger effort described in the Strategic Operating Plan by the IRS.

## Effective Date of Termination of U.S.-Hungary Tax Treaty Announced

*Announcement 2024-5*

The U.S. government provided a diplomatic notification to the Government of

the Republic of Hungary of its termination of the treaty between the U.S. and for the avoidance of double taxation and the prevention of fiscal evasion with respect

to taxes on income, in force since 1979 (the treaty). In accordance with Article 26 of the treaty, termination was effective on January 8, 2023 termination date). In

respect of tax withheld at source, Article 26 states that the treaty shall cease to have effect with respect to amounts paid or credited on or after the first day of the next January following the termination date. Accordingly, in respect of tax withheld at source, the treaty ceases to have effect with respect to amounts paid or credited on or after January 1, 2024. Further, in respect of other taxes, the treaty ceases to have effect with respect to taxable periods beginning on or after January 1, 2024.

## Associate Chief Counsel Ruling Procedure Updated; New Schedule of User Fees Provided

*Rev. Proc. 2024-1*

The IRS has revised the general procedures relating to the issuance of written guidance (including letter rulings and determination letters) to taxpayers on issues under the jurisdiction of the various offices of the Associate Chief Counsel. The procedures detail the manner in which advice is requested by taxpayers and provided by the IRS. Estate, gift, and generation-skipping transfer tax issues fall under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries). The Associate office generally issues letter rulings on proposed transactions affecting federal transfer taxes, and on completed transactions, if the letter ruling request is submitted before the return affected by the transaction is filed. However, the IRS will not issue letter rulings or determination letters on frivolous issues and will not issue comfort letter rulings. Moreover, the IRS will not issue letter rulings for prospective estates on the computation of tax, actuarial factors, or factual matters. A sample format for a letter ruling request is provided in Appendix B.

## 2023 Tax Year-In-Review: Wolters Kluwer Tax Briefing Now Available

For the first time in several years, 2023 ended without any significant tax legislation passed by Congress. However, the only thing quiet in the tax world during the year was the legislative branch. The IRS had a very busy year, with the release of the Inflation Reduction Act Strategic Operating Plan, a move towards direct return filing, and a crackdown on the tax gap and fraudulent Employee Retention Credit claims. Even the judicial branch got involved in taxation in 2023, hearing arguments in a potentially significant case that has the potential to upend more than 100 years of income taxation in the United States.

Since 1913, Wolters Kluwer has provided tax professionals with the most comprehensive, ongoing, practical and timely analysis of the federal tax law. In the spirit of this tradition, Wolters Kluwer is providing you with review of the tax-related events of 2023.

Wolters Kluwer's Award-Winning Briefing Now Available

Wolters Kluwer's Tax Briefing highlighting the events of 2023 is now available at: [https://engagetax.wolterskluwer.com/l/339101/2024-01-05/5q85lr/339101/1704486486lUv2JNwy/24\\_January\\_2023\\_Tax\\_Year\\_in\\_Review\\_final\\_locked.pdf](https://engagetax.wolterskluwer.com/l/339101/2024-01-05/5q85lr/339101/1704486486lUv2JNwy/24_January_2023_Tax_Year_in_Review_final_locked.pdf). This Wolters Kluwer Tax Briefing gives tax practitioners a look back at what happened in 2023.

The procedures may be modified throughout the year.

In addition to minor revisions, notable changes include:

- (1) Excise tax on repurchases of corporate stock under Code Sec. 4501 has been included as an issue under the jurisdiction of the Associate Chief Counsel.
- (2) The issuance of a comfort letter relating to certain issues under Code Secs. 332, 351, 355, 368, 1036 and related operative provisions has been permitted.
- (3) It has been clarified that, except for a Reg. § 301.9100 request described in section 5.03 of this revenue procedure or for a request that includes a closing agreement with respect to an issue under the jurisdiction of the Associate Chief Counsel (Corporate) or another Associate Office, expedited handling under this section is not available for a letter ruling request that is solely or primarily under the jurisdiction of the Associate Chief Counsel.
- (4) Request for determination letter under the jurisdiction of SB/SE or W&I may be submitted only by electronic facsimile.

- (5) It is clarified that a taxpayer submitting a fast-track processing of certain letter rulings that are solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate) must submit a proposed draft of the letter ruling at the time of the request pursuant to section 5.03(5) of Rev. Proc. 2023-26, I.R.B. 2023-33, 486.
- (6) Users have been informed that special rules and procedures apply to letter rulings requests that are primarily or solely under the jurisdiction of the Associate Chief Counsel.

### Effective Date

This revenue procedure is effective for all requests received on or after January 2, 2024. Rev. Proc. 2023-1, governs requests received prior to January 2, 2024.

### Effect on Other Documents

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

# IRS Updates Technical Advice Memoranda Procedures

Rev. Proc. 2024-2

The IRS has issued its annual revision of the general procedures relating to the issuance of technical advice to a director or an appeals area director by the various offices of the Associate Chief Counsel. The procedures also explain the rights a taxpayer

has when a field office requests technical advice. A technical advice memorandum (TAM) is normally requested when there is a lack of uniformity regarding the disposition of an issue or when an issue is unusual or complex enough to warrant consideration by an Associate office. No significant changes were made to these

procedures for 2024. Moreover, the procedures may be modified throughout the year.

The new procedures are effective January 2, 2024.

Rev. Proc. 2023-2, I.R.B. 2023-1, is superseded.

## Associate Chief Counsel Nonissuance List Updated

Rev. Proc. 2024-3

The IRS has revised the list of areas under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) (EEE) for which letter rulings or determination letters will not be issued. Lists of areas of nonissuance under the jurisdiction of the Associate Chief Counsel (International) and the Commissioner, Tax Exempt and Government Entities Division (relating to plans or plan amendments) are presented in separate revenue procedures.

The following have been added to the list of issues for which advance rulings will not be issued:

- *Alcohol, etc., Used as Fuel; Biodiesel and Renewable Diesel Used as Fuel; Sustainable Aviation Fuel; Imposition of Tax (§§ 4041 and 4081); Taxable Fuel; Credit for Alcohol Fuel, Biodiesel, and Alternative Fuel Mixtures.* Whether a particular fuel or fuel mixture is subject

to excise tax or whether a particular fuel or fuel mixture qualifies for an excise tax credit or payment, or a related income tax credit.

- *Low-Income Housing Credit.* Whether a casualty loss has been restored by reconstruction or replacement within a reasonable period of time.
- *Electricity Produced from Certain Renewable Resources, Etc.* Whether the taxpayer meets the requirements of Code Sec. 45 or Notice 2010-54, 2010-40 I.R.B. 403, for refined coal.
- *Credit for Carbon Oxide Sequestration.* Whether the allocation by a partnership of the Code Sec. 45Q credit, the validity of the partnership, or whether any partner is a valid partner in the partnership.
- *Certain Death Benefits.* Whether there has been a transfer for value for purposes of Code Sec. 101(a) in situations involving a grantor and a trust when: (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse; (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse; (iii) the trustee or any other person has a power to use the trust's assets

to make loans to the grantor's estate or to purchase assets from the grantor's estate; and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under Code Secs. 673 and 677.

The following issues have been modified:

*Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transfer or; Definitions Relating to Corporate Reorganizations; Stock for Stock of Same Corporation.* Whether a transaction would qualify under Code Secs. 332, 351, or 1036 for nonrecognition treatment or whether it constitutes a corporate reorganization within the meaning of Code Sec. 368, except a transaction intended to qualify under either Code Secs. 368(a)(1)(D) and 355 or Code Secs. 368(a)(1)(G) and 355, and whether various tax consequences (such as nonrecognition and basis) result from the application of that section. The IRS would instead rule only on significant issues presented in a transaction described in Code Secs. 332, 351, 368, or 1036.

The procedures are effective January 2, 2024. Rev. Proc. 2023-3, I.R.B. 2023-1, 144 and Rev. Proc. 2013-32, I.R.B. 2013-28, 5, are superseded. Rev. Proc. 2017-52, I.R.B. 2017-41, 283, is modified.

# Employee Plan and Exempt Organization Ruling Procedures Updated

*Rev. Proc. 2024-4*

The IRS has updated its procedures for employee plans (EP) to obtain guidance on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division (TE/GE) Employee Plans Rulings and Agreements Office. The procedure also details the types of advice available to taxpayers, and the manner in which such advice is requested and provided.

In addition to minor non-substantive changes, including changes to dates, cross references and citations to other revenue procedures, the following changes are made:

- (1) A reference added to Rev. Proc. 2023-37, I.R.B. 2023-51.
- (2) Forms 5300 (Application for Determination for Employee Benefit Plan), 5307 (Application for Determination for Adopters of

Modified Nonstandardized Pre-Approved Plans), 5310 (Application for Determination for Terminating Plan), and 5316 (Application for Group or Pooled Trust Ruling) are required to be filed with the Service through [www.pay.gov](http://www.pay.gov).

- (3) Appendix A increases certain user fees. Rev. Proc. 2024-4 is effective January 3, 2024. Rev. Proc. 2023-4, I.R.B. 2023-1, 162, is superseded.

# Exempt Status Determination Letter Application and Issuance Procedures Updated

*Rev. Proc. 2024-5*

The IRS has updated procedures for organizations applying for, and the issuing of determination letters on, exempt status under Code Secs. 501 and 521. These procedures apply to exempt organizations other than those relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans. The procedures also apply to revocation or modification of determination letters. In addition, the procedures provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under Code Sec. 7428. Finally, this revenue procedure provides guidance on applicable user fees for requesting determination letters.

The procedures are effective January 2, 2024.

## Notable Changes

Notable changes include:

- (1) Edits were made throughout to reflect modifications made by Rev. Proc. 2023-12, I.R.B. 2023-17, 768, which provided information and procedures on the electronic Form 8940, Request for Miscellaneous Determination.
- (2) Editorial changes were made throughout including minor non-substantive changes, dates and cross-references. Citations to other revenue procedures were changed to reflect the appropriate annual revenue procedures.

- (3) Section 3.01(1) of this revenue procedure was updated with a note to explain that EO Determinations will now issue a determination letter to an organization currently recognized as described in Code Sec. 501(c)(3) that seeks recognition as described in a different paragraph of Code Sec. 501(c). Concurrently, section 3.02 of this revenue procedure was revised to remove this determination request from being within the circumstances in which determination letters are not issued.

- (4) Section 16 of this revenue procedure was updated to explain that this revenue procedure supersedes Rev. Proc. 2023-12.

Rev. Proc. 2023-5, I.R.B. 2023-1, 265, and Rev. Proc. 2023-12, I.R.B. 2023-17, 768, are superseded.

# International Issues Where No Advance Rulings Will Be Provided Announced

*Rev. Proc. 2024-7*

The IRS has provided an updated list of subject areas under the jurisdiction of the

Associate Chief Counsel (International) for which it will not issue advance letter rulings or determination letters or will issue letters only if justified by unique and

compelling circumstances. The procedures are effective January 2, 2024. Rev. Proc. 2023-7, I.R.B. 2023-1 is superseded.

# Updated CPE Standards Include Options For Virtual Learning

The National Association of State Boards of Accountancy and the American Institute of CPAs approved revisions to the statement on Standards for Continuing Professional Education Programs.

Key among the changes for the 2024 standards is the addition of a virtual option under the Group Live instructional delivery method, assuming other additional requirements are met.

The standards also include clarifications to assist in the understanding of awarding CPE credits in appropriate increments, in awarding CPE credit when multiple presenters are actively involved in instructing one CPE program, and in communicating and documenting the required attendance monitoring mechanisms for Group Internet Based programs.

More current, relevant topics were added to the revision of the Fields of Study document.

“The standards revisions give us more flexibility in meeting CPAs’ educational needs and highlight the importance of virtual learning in building competencies and gaining expertise,” Michael Grant, AICPA senior director of learning innovation and assessment, said in a statement.

The revised standards went into effect on January 1, 2024.

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## Petition Filed by Date Specified in Incorrect Notice Timely Filed

*Dodson, TC, Dec. 62,401*

A married couple had timely filed a petition related to their notice of deficiency issued by the IRS because it was before the date stated in the notice of deficiency, in accordance with the last sentence of Code Sec. 6213(a), even though it was more than 90 days after the notice was mailed and was later corrected. The IRS had mailed a notice of deficiency (first notice) to the taxpayers specifying a deadline for filing a petition to redetermine the determined deficiency which was over one year from the date on which the IRS mailed the first notice. One day later, the IRS had mailed a second notice of deficiency (second notice) to the taxpayers that purported to correct the deadline for filing a petition. The taxpayers filed their petition

for review of the first notice before the petition filing deadline specified in the first notice, but after the petition filing deadline specified in the second notice and after the 90-day period for filing a petition provided by the first sentence of Code Sec. 6213(a).

### Timely Filed Petition

The taxpayers had filed their petition before the last day specified in the first notice for filing a petition in the Tax Court which was sufficient to comply with the last sentence of Code Sec. 6213(a), which provides that any petition filed on or before the date specified in a notice of deficiency is treated as timely filed. The IRS’ issuance of the second notice without

the taxpayers’ consent did not have the effect of rescinding the first notice, either in whole or in part. The Tax Court held that the last sentence of Code Sec. 6213(a) furthered the congressional purpose of enabling the taxpayers to rely on the IRS’ computation of the period for filing a petition and it was not the court’s role to question Congress’s choice of means in this regard. The Court also rejected the IRS’ claim that the petition’s filing date on the first notice as an obvious mistake. The petition filing date on the first notice had independent legal effect, and the taxpayers were permitted to rely on it regardless of whether they retained counsel and regardless of whether prejudice would result from applying another deadline. Therefore, the IRS’ motion to dismiss for lack of jurisdiction was also denied.

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## Transactions Conducted Through Purported Microcaptive Insurance Arrangement Did Not Constitute Insurance

*Keating, TC, Dec. 62,403(M)*

Transactions conducted through a purported microcaptive insurance arrangement among an S corporation, its affiliated captive insurance company (insurance company) and other entities did not constitute insurance. The S corporation’s shareholders (taxpayers) failed to show that the

microcaptive arrangement was insurance in the commonly accepted sense.

### Commonly Accepted Notions of Insurance

The taxpayers and the S corporation treated the insurance company as if it

were a tax-free savings account rather than a bona fide insurance company with which they were dealing at arm’s length. Further, the insurance policies were not valid and binding. The policies were designed only to resemble insurance policies superficially while giving the parties to the arrangement the option to proceed, or not to proceed, with funding

the policies until well into the coverage period.

Further, the premiums were not reasonable and the result of an arm's-length transaction. Additionally, the total annual premiums on the S corporation's captive coverages always hovered around the limit under Code Sec. 831(b), even when coverage types or limits varied or the S corporation's revenue or payroll changed. The premium determination process was not adequately supported by detailed underwriting. Accordingly, the taxpayers had not proven that the S corporation's payments that they sought to deduct as insurance expenses were for insurance in the commonly accepted sense.

## Effect on Taxpayers

The taxpayers did not establish that the captive premium payments were ordinary. The payments were not for insurance. Accordingly, the taxpayers were not entitled to deduct these expenses under

Code Sec. 162. The taxpayers alternatively argued that the Tax Court should characterize the microcaptive arrangement as a self-insurance reserve and permit deductions as "claims". The taxpayers' proposed characterization of the insurance company, a corporation and a separate taxpayer from both the S corporation and the taxpayers, as a mere reserve or account of the S corporation was not borne out by the record. The taxpayers failed to meet their burden of proving that the amounts paid by the insurance company as claims were losses incurred by the S corporation.

Further, regarding the tax characterization of the distributions that the insurance company made to the taxpayers, the taxpayers had conceded that the distributions were dividends for purposes of Code Secs. 301(c)(1) and 316(a). Accordingly, the taxpayers were not entitled to withdraw their previous concessions. Additionally, the insurance company did not qualify as an insurance company for the tax years at issue, and its elections under Code Sec.

953(d) were invalid. Consequently, the distributions made by the insurance company to the were to be taxed at ordinary income rates.

## Penalties

The taxpayers were liable for accuracy-related penalties under Code Sec. 6662. The taxpayers asserted that they had reasonable cause for, and acted in good faith with respect to, the underpayments. However, there was no credible evidence in the record to show that the taxpayers or the S corporation took any substantial steps to ascertain their proper tax liability. The taxpayers contended that they relied on an accountant's advice in reporting the captive insurance premiums paid as deductible business expenses. However, there was no written tax opinion or other contemporaneous documentary evidence concerning any advice the accountant may have given to the taxpayers.

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# Butane and Gasoline Mixture Does Not Qualify for Alternative Fuel Mixture Credit

*Philadelphia Energy Solutions, CA-FC, 2024-1 USTC ¶150,106*

In a case of first impression, the Federal Circuit Court of Appeals has held that a mixture of butane and gasoline does not qualify as an "alternative fuel mixture" and therefore is not entitled to the alternative fuel mixture credit. The taxpayer appealed a decision of the U.S. Court of Federal Claims that the taxpayer is not entitled to tax refunds for excise taxes it paid on fuel mixtures of butane and gasoline. Specifically, the Claims Court held that those fuel mixtures did not qualify

as "alternative fuel mixtures" to which the tax credit in Code Sec. 6426(e)(1) applied. The Court of Appeals noted that they were aligning with the Fifth and Seventh Circuits which had made similar holdings. The Court of Appeals affirmed and concluded that both gasoline and butane are "taxable fuels" as defined by Code Sec. 4083(a)(1), and a plain reading of Code Sec. 6426(e) suggests that a mixture of butane and gasoline would not be a "mixture of alternative fuel and taxable fuel," as required for the alternative fuel mixture credit. A mixture of taxable fuel and taxable fuel does not appear to qualify for the

sought-after credit. The Court of Appeals also rejected the taxpayer's argument that the taxable fuel/alternative fuel dichotomy present in the excise tax provisions of the IRC does not extend to its tax credit provisions. Because the Claims Court correctly concluded that butane is not an "alternative fuel" for purposes of Code Sec. 6426, the mixture of butane with gasoline does not qualify for the alternative fuel mixture credit.

Affirming a Court of Federal Claims decision, 2022-1 USTC ¶70,374



# TAX BRIEFS

## *Annuities*

The fees which a life insurance company deducted from an adviser contract's cash value and remitted to an adviser was not treated as an "amount received" by the owner of the adviser contract for purposes of Code Sec. 72(e). Based on the taxpayer's representations, the fees would only be used to pay for investment advisory services relating to the adviser contract. Because the adviser contract was designed to work with an adviser, the adviser contract was solely liable for the fees. The fees did not constitute compensation to the adviser for services related to any assets of the owner other than the adviser contract or any services other than investment advice services with respect to the adviser contract. Therefore, the fees was an expense of the adviser contract, not a distribution to the owner.

*IRS Letter Ruling 202401015*

## *Gross income*

A married couple was entitled to include in their used car business's cost of goods sold the purchase price of cars sold during the tax years at issue. The taxpayers provided credible records along with an estimate of the cost of goods sold during the tax years at issue for which the Tax Court could conservatively estimate an inventory cost. Consequently, the taxpayers were entitled to include in the cost of goods sold the purchase prices of any cars sold for which the taxpayers provided credible records along

with an estimate of the cost of other cars sold during the years in issue for which the Tax Court could conservatively estimate an inventory cost. Additionally, the taxpayer's submitted to the Tax Court a marked-up version of the IRS's goods purchase spreadsheets, adding purchase prices that the IRS did not include. Accordingly, the Tax Court accepted these additions to the cost of goods sold for the tax years at issue.

*Alvarado, TC, Dec. 62,402(M)*

## *Qualified Small Business Stock*

A company, which operated as a temporary interim staffing services business, was a qualified trade or business under Code Sec. 1202(e)(3). However, the taxpayer was not engaged in a trade or business involving the performance of services in the field of consulting or where the principal asset of the trade or business was the reputation or skill of one or more of its employees.

*IRS Letter Ruling 202352009*

## *REITs*

Income from registry's anticipated issuance of carbon emission offsets to a limited liability company was to be considered qualifying income under Code Sec. 856(c)(2) and (c)(3). The taxpayer intended to elect to be taxed as a real estate investment trust (REIT) for federal income tax purposes. The taxpayer represented that it would include the fair market value of the offsets upon issuance in gross income. Accordingly, unless Code Sec. 451(b)

(1)(A) requires earlier inclusion, income with respect to the issuance of the offsets will accrue under Code Sec. 451 upon the earliest of the following events to take place: the offsets are earned, the offsets are received or the offsets are due.

*IRS Letter Ruling 202401011*

## *Transfer Pricing*

The IRS Chief Counsel held that the arm's length rate of interest on an intragroup loan to a controlled borrower is generally the rate at which that borrower could realistically obtain alternative financing from an unrelated party. Thus, if an unrelated lender would consider group membership in establishing financing terms available to the borrower, and such third-party financing is realistically available, then the IRS may adjust the interest rate in a controlled lending transaction to reflect group membership. In this case, the foreign parent owned 100-percent of a U.S. subsidiary crucial to the group's financial performance. The subsidiary, planned to secure capital through an intragroup loan, received a BBB credit rating reflecting both its standalone and group credit profile. The foreign parent was likely to provide financial support in case of the subsidiary's financial strain. The subsidiary, considered independently, would have a credit rating of B. The foreign parent lent to the subsidiary at 10%, assuming bona fide debt without explicit guarantees.

*IRS Advice Memorandum AM 2023-008*