



FEDERAL TAX WEEKLY

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Deal Reached On Several Bipartisan Tax Goals; Bill Advances to House

A bipartisan, bicameral deal between the House Ways and Means Committee and the Senate Finance Committee that unites a number of bipartisan tax bills, including extending the child tax credit, research and development expense deductions, and disaster relief, was announced January 16, 2024.

The Tax Relief for American Families and Workers Act of 2024 (H.R. 7024) advanced to the House floor on January 19, 2024, following passage in the House Way and Means Committee by a 40-3 vote, with three Democratic representatives voting against the bill. Democratic members of the House Ways and Means Committee were unable to alter the Child Tax Credit provisions of a bipartisan, bicameral tax bill that advanced to the House floor.

The Tax Relief for American Families and Workers Act of 2024, does not take any more supplemental funding given to the Internal Revenue Service under the Inflation Reduction Act and has no other new taxes, but it does significantly move forward the deadline forward for filing the Employee Retention Tax Credit and altered some of its provisions amidst the current heightened scrutiny over suspected fraud and abuse of the tax credit.

The bill provides for increases in the child tax credit, delays the requirement to deduct research and experimentation expenditures over a five-year period, extends 100-percent bonus depreciation through 2025, and increases the Code Sec. 179 deduction limitation, among other business-friendly provisions. The bill would also extend tax treaty-like benefits to Taiwan, and extend some disaster-related tax relief. The provisions are paid for by changes to the COVID-era employee retention tax credit, including an acceleration of the termination of the period for making new claims, and increasing penalties on erroneous or fraudulent credit claims. A summary of the bill's provisions can be found here.

The Child Tax Credit

The framework addresses the expansion of the Child Tax Credit, a popular credit that was a part of the American Rescue Plan and expired in 2021.

This bill would phase in an increase to the refundable portion of the child tax credit for 2023, 2024, and 2025. For tax year 2023, the maximum refundable portion of the child tax credit would increase from the current \$1,600 per child to \$1,800. In 2024, it would increase to \$1,900, and then \$2,000 in 2025.

The bill also changes the calculation of the refundable credit on a per-child basis from the current computation of multiplying a taxpayer's earned income in excess of \$2,500 by 15 percent to multiplying of earned income in excess of \$2,500 by 15 percent and then taking that amount and multiplying it by number of qualifying children. This change would be in effect for tax years 2023, 2024, and 2025.

Additionally, the Child Tax Credit will be adjusted for inflation in 2024 and 2025 and there will be adjustments in the rules for determining earned income.

Business Provisions

Another popular provision that could finally get its extension is the that of the 100 percent bonus depreciation. The bonus depreciation expired at the end of 2022 (or the following year for longer production period property and certain aircraft) and entered a phase-down of 20 percent per calendar year. The framework will extend the bonus depreciation until the end of 2025.

The bill also changes the period for when companies must start the five-year period for the deduction for research and experimental expenditures from beginning in 2023 to beginning in 2026.

Also extended is the allowance for depreciation, amortization, or depletion in determining the limitation on business interest and an increase in limitations on expensing depreciable business assets.

Changes To The Employee Retention Tax Credit

In an ongoing effort to combat the potential fraud perpetuated by so-called “ERC mills,” Congress would be taking a number of actions if this bill becomes law. First, it is moving the deadline up for filing an employee retention credit claim from April 15, 2025 to January 31, 2024.

Second, it is increasing the penalty for a person who, according to the bill “knows or has reason to know that an understatement of the tax liability of another person would result from the use of his aid, assistance, or advice” from the current \$1,000 to, for fraudulent COVID-ERTC promoters, “the greater of \$200,000 (\$10,000 in the case of a natural person) or 75 percent of the gross income of the ERTC promoter derived (or to be derived) from providing aid, assistance, or advice with respect to a return or claim for the credit refund or a document relating to the return or claim.”

ERTC promoters would also face a \$1,000 penalty in each instance for failing to do the proper due diligence to make sure the taxpayer the promoter is providing services to is actually eligible for the credit. Promoters would also be required to identify their clients upon request of the IRS.

All of the updates would be effective as of March 12, 2020, except for the requirement for promoters to file disclosures or maintain lists, which would go into effect 90 days after the law is enacted.

Other Provisions

The framework also looks to help create more affordable housing as well as update rules for communities affected by disasters, including an extension of rules for

the treatment of certain disaster-related personal casualty losses and the exclusion from gross income for compensation for losses or damages resulting from certain wildfires. The framework would also exclude from gross income compensation payments made as a result of the train derailment in East Palestine, Ohio.

It also would pass the tax treaty between the United States and Taiwan.

Both Senate Finance Committee Chairman Ron Wyden (D-Ore.) and House Ways and Means Committee Chairman Jason Smith (R-Mo.) expressed interest in getting this legislation passed, with Wyden stating that it is his goal is to “get this passed in time for families and businesses to benefit in this this upcoming tax filing season, and I’m going to pull out all the stops to get that done.”

At press time, the Senate Finance Committee has not set a time to consider the bill.

The bill begins its movement towards final passage as Congress passed a continuing resolution to keep the government funded through early March, avoiding a partial shutdown that was scheduled to begin January 19, 2024. Whether this tax bill will be included in the overall budget bill that still needs to be finalized or moves as a standalone piece of legislation remains to be seen.

IRS Describes Forthcoming Proposed Regulations for Alternative Fuel Vehicle Refueling Property Credit

Notice 2024-20; IR-2024-16

Taxpayers may rely on an IRS notice that describes forthcoming regulations for the alternative fuel vehicle refueling property credit. The notice focuses

on the census tract requirement added by the Inflation Reduction Act of 2022 (P.L. 117-169). This requirement limits the credit to qualified property that is installed in an eligible census tract. An eligible census tract is a population

census tract in the United States or in a U.S. territory that is:

- a low-income community as described for purposes of the new markets tax credit, or
- not an urban area.

REFERENCE KEY

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

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When Property is Placed in Service

The proposed regulations will provide that qualified depreciable property is placed in service in the tax year in which the property's depreciation period begins under the taxpayer's depreciation practice; or, if earlier, the tax year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function in a trade or for the production of income.

Non-depreciable property is placed in service when it is installed at the taxpayer's principal residence and is operational.

Low-Income Communities

For purposes of the new markets tax credit (NMTC), the Community Development Financial Institutions Fund (CDFI Fund) uses five-year estimates to identify Low-income communities. For qualified alternative fuel vehicle refueling property that is placed in service after December 31, 2022, and before January 1, 2025, the IRS intends to allow taxpayers to use either the 2011-2015 NMTC tracts or the 2016-2020 NMTC tracts to determine if property is placed in service in a low-income community.

For property placed in service after 2024, taxpayers would have to use the 2016-2020 NMTC tracts. The IRS expects the 2016-2020 NMTC tracts to remain eligible locations through 2029. Updated NMTC updated census tracts would then provide the determination of low-income community census tracts, and the IRS would issue additional guidance to reflect the updates.

Low-income communities based on the 2011-2015 NMTC tracts are listed in Appendix A of the notice, available at <https://www.irs.gov/pub/irs-drop/appendix-a-list-of-2015-census-tract-boundary-30c-eligible-tracts-v2-1-4-2024.pdf>.

Low-income communities based on the 2016-2020 NMTC tracts are listed in Appendix B of the notice, available at <https://www.irs.gov/pub/irs-drop/>

TAB Proposes New and Amended American Viticultural Areas

The following proposals have been made by petitions filed with the Alcohol and Tobacco Tax and Trade Bureau:

- to rename the established Mendocino Ridge American viticultural area (AVA) in Mendocino County, California, as Mendocino Coast Ridge (Notice No. 227);
- to establish the Conneaut Creek American viticultural area in Ashtabula County, Ohio (Notice No. 228);
- to establish the Tryon Foothills American viticultural area in Polk County, North Carolina (Notice No. 229); and
- to establish the Nashoba Valley American viticultural area in Worcester County, Massachusetts (Notice No. 230).

Comments may be submitted in writing or through the TAB Internet website. The due date for comments on Notices 227 through 230 is March 5, 2024.

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

Notice, No. 227, Alcohol and Tobacco Tax and Trade Bureau, 89 FR 730, January 5, 2024;

Notice, No. 228, Alcohol and Tobacco Tax and Trade Bureau, 89 FR 726, January 5, 2024;

Notice, No. 229, Alcohol and Tobacco Tax and Trade Bureau, 89 FR 716, January 5, 2024;

Notice, No. 230, Alcohol and Tobacco Tax and Trade Bureau, 89 FR 721, January 5, 2024

[appendix-b-list-of-2020-census-tract-boundary-30c-eligible-tracts-v2-1-4-2024.pdf](#).

Not Urban Areas

As for census tracts that are not urban areas, the IRS intends to propose regulations that rely on census blocks, which are the smallest geographic area for which the Census Bureau collects and tabulates decennial data. The regulations are expected to provide that any population census tract (using the 2020 Census boundaries) in which at least 10 percent of the census blocks are not designated as urban areas would be a "non-urban census tract."

Taxpayers can find census blocks identified as urban at <https://www.federalregister.gov/documents/2022/12/29/2022-28286/2020-census-qualifying-urban-areas-and-final-criteria-clarifications>.

Since the non-urban determinations based on the 2020 Census were released in 2023, the IRS expects that determinations based on the 2030 Census will be released in 2033. The IRS will provide additional guidance to reflect the 2030 determinations. Until then, taxpayers may rely on the 2020 determinations.

Where Property is Placed in Service

The regulations will determine whether property is placed in service in a eligible census tract based on the 11-digit census tract GEOID for the population census tract. An 11-digit census tract GEOID is a numeric identifier associated with a geographic area, comprising a two-digit state GEOID, three-digit county GEOID, and six-digit census tract GEOID. Thus, the 11-digit census tract GEOID provides a unique identifier for each population census tract. The 11-digit census tract GEOIDs may vary for any individual latitude/longitude point based on different census tract boundary delineation dates over time.

Qualified alternative fuel refueling property placed in service after December 31, 2022, and before January 1, 2025, will be considered placed in service in an eligible census tract if the 11-digit census tract GEOID for the population census tract in which it is placed in service is listed in Appendix A or Appendix B. However, for property placed in service on or after January 1, 2025, and before January 1, 2030, taxpayers must use Appendix B because it is based on the 2020 census tract boundaries.

Similarly, for property placed in service after December 31, 2022, and before January 1, 2025, both the 2015 census tract boundaries and the 2020 census tract boundaries are relevant. For property placed in service on or after January 1, 2025, and before January 1, 2030, only the 2020 census tract boundaries are relevant.

Taxpayers can determine the 11-digit census tract GEOID of a location under the 2015 census tract boundaries by using the CDFI mapping tool available via <https://www.cdfifund.gov/cims>.

Taxpayers can determine the 11-digit census tract GEOID of a location under the 2020 census tract boundaries using the Census Geocoder, available via <https://geocoding.geo.census.gov/geocoder/geographies/address?form>, or the latitude and longitude point at <https://geocoding.geo.census.gov/geocoder/geographies/coordinates?form>.

Tax Relief for American Families and Workers Act of 2024: Wolters Kluwer Tax Briefing Now Available

On January 19, 2024, the House Ways and Means Committee approved a broad tax bill that provides relief for businesses and individuals alike. The Tax Relief for American Families and Workers Act of 2024 includes an expansion of the child tax credit, an increase in the Code Sec. 179 deduction, extension of 100 percent bonus depreciation, creation of tax treaty-like benefits to residents of Taiwan, and disaster tax relief. All of this is paid for with an early end to the COVID-era employee retention tax credit and increases in penalties on fraudulent claims of the credit. The bill now goes to the House for consideration. Many of the provisions in the bill apply retroactively, and lawmakers are hoping to pass it in time to minimize the impact on the forthcoming filing season.

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 highlights of the Tax Relief for American Families and Workers Act of 2024.

Wolters Kluwer's Award-Winning Briefing Now Available

Wolters Kluwer's Tax Briefing highlighting the significant tax changes in the Tax Relief for American Families and Workers Act of 2024 is now available here. This Wolters Kluwer Tax Briefing highlights the most important provisions of the bill.

Transitional Guidance on Reporting of Information on Receipt of Digital Assets Announced

Announcement 2024-4; IR-2024-12

The IRS has provided transitional guidance under Code Sec. 6050I with respect to reporting transactions involving receipt of digital assets. The Service has further clarified that at this time, digital assets are not required to be included when determining whether cash received in a single transaction (or two or more related transactions) meets the reporting threshold. However, the Department of the Treasury (Treasury) and the IRS intend to prescribe regulations, to provide additional information and procedures for reporting the receipt of digital assets under Code Sec. 6050I.

Reporting Digital Assets

The IRS intends to implement section 80603(b)(3) of the Infrastructure Act by publishing regulations specifically addressing the application of Code Sec. 6050I to digital assets and by providing forms and instructions for reporting that address the inclusion of digital assets. Accordingly, until the IRS publish the regulations, persons engaged in a trade or business who, in the course of that trade or business, receive digital assets or digital assets and other cash in one transaction (or two or more related transactions) will not be required to include those digital assets

when determining whether cash received has a value in excess of the \$10,000 reporting threshold for purposes of determining if reporting is required under Code Sec. 6050I with respect to those transactions. Moreover, persons engaged in a trade or business who, in the course of that trade or business, receive cash (other than digital assets) in excess of \$10,000 in one transaction (or two or more related transactions) must continue to file an information return under Code Sec. 6050I with respect to that cash received.

IRS Finalizes Rules on Minimum Present Value of Benefits Under Defined Benefit Plans

T.D. 9987

The IRS finalized requirements for determining the minimum present value of an

accrued benefit under a defined benefit pension plan. The final regulations reflect changes made by the Pension Protection Act of 2006, P.L. 109-280 (PPA) and

provide additional guidance, such as the treatment of preretirement mortality discounts and Social Security level income options. The final regulations, which

generally adopt regulations proposed in 2016, apply to distributions with annuity starting dates on or after October 1, 2024. The IRS also provided relief from anti-cutback rules for certain plan amendments adopted on or after January 19, 2024.

The PPA made changes under Code Sec. 417(e)(3) to the interest rates and mortality tables that must be used to determine present value. The final regulations reflect these statutory changes, including the exception from the valuation rules for statutory hybrid plans. In addition, the final regulations eliminate obsolete provisions and transition rules.

The final regulations adopt proposed rules regarding the treatment of preretirement mortality discounts in determining the minimum present value of accrued benefits. In addition, the final rules allow certain plan designs under which the probability of death is not taken into account in determining the amount of a single-sum distribution because the plan provides a death benefit equal in value to the present value of the accrued benefit. Similarly, the final regulations adopt the proposed rules applying the present value requirements to a benefit that provides a Social Security level income option, but include a new implicit bifurcation rule to assist plans in satisfying the rules.

The final regulations also expand relief under Code Sec. 411(d)(6) for a plan amendment that changes the time for determining an interest rate or mortality table that is used for any purpose. Under this provision, an amendment to a defined benefit plan may be adopted on or after January 19, 2024, to change the stability period or the lookback month, including an indirect change to the stability period or lookback month as a result of a change in plan year.

AFRs Issued For February 2024

Rev. Rul. 2024-3

The IRS has released the short-term, mid-term, and long-term applicable interest rates for February 2024.

Applicable Federal Rates (AFR) for February 2024

	Annual	Semiannual	Quarterly	Monthly
Short-Term				
AFR	4.68%	4.63%	4.60%	4.59%
110% AFR	5.15%	5.09%	5.06%	5.04%
120% AFR	5.64%	5.56%	5.52%	5.50%
130% AFR	6.11%	6.02%	5.98%	5.95%
Mid-Term				
AFR	3.98%	3.94%	3.92%	3.91%
110% AFR	4.38%	4.33%	4.31%	4.29%
120% AFR	4.79%	4.73%	4.70%	4.68%
130% AFR	5.19%	5.12%	5.09%	5.07%
150% AFR	6.00%	5.91%	5.87%	5.84%
175% AFR	7.02%	6.90%	6.84%	6.80%
Long-Term				
AFR	4.18%	4.14%	4.12%	4.10%
110% AFR	4.60%	4.55%	4.52%	4.51%
120% AFR	5.03%	4.97%	4.94%	4.92%
130% AFR	5.45%	5.38%	5.34%	5.32%

Adjusted AFRs for February 2024

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	3.55%	3.52%	3.50%	3.49%
Mid-term adjusted AFR	3.01%	2.99%	2.98%	2.97%
Long-term adjusted AFR	3.16%	3.14%	3.13%	3.12%

The Code Sec. 382 adjusted federal long-term rate is 3.16%; 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 3.81%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.95% and 3.41%, 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 4.80%.

E-file Option Unavailable for Form 990-T and Form 1120-POL Filers Until March 17, 2024

IR-2024-15

The IRS alerted tax exempted organizations that the e-filing facility will be unavailable for Form 990-T and Form 1120-POL

until March 17, 2024. The disadvantage is the result of system upgrades by the IRS; and it is estimated that this will affect a small number of taxpayers with due dates from January 15, 2024 to March 15, 2024.

However, the agency provides alternatives and solutions to this issue.

Entities needing to file Form 990-T in this time-frame, such as Unrelated Business Income Tax (UBIT) who are

required to file electronically can request a six-month extension of time by submitting Form 8868, by the due date of the return. However, if an affected organization fails to submit a timely extension or if the extended due date falls within this time-frame, the late e-filed Form must

include the request for waiving off penalties. Meanwhile, entities filing a Form 1120-POL during this time-frame may file on paper. Although, these organizations can also choose to request an extension of time by submitting Form 7004. Further, it is to be noted that this delay in e-filing will

not affect the ability of government entities and Indian tribal governments – that are not subject to UBIT – to timely file Form 990-T to make an Elective Payment Election (EPE) for Clean vehicle and energy credits.

More Than 1,000 Projects Registered Through IRS ECO Tool

IR-2024-14

The Internal Revenue Service said that more than 1,000 projects have been registered through the agency's Energy Credits Online tool.

The tool was created to help taxpayers who are taking advantage of clean energy tax credits through one of two delivery mechanisms created by the Inflation Reduction Act – elective pay (also known as direct pay) and transferability. Credits made available by the CHIPS Act can also be registered through the ECO tool.

Taxpayers can use the tool to complete the pre-file registration process, which generates a registration number that is used on the taxpayer's annual return when making a direct payment or choosing the transfer election for a clean energy credit.

"This new tool helps key groups with these clean energy credits as well as improves communication and reduces compliance issues," IRS Commissioner Daniel Werfel said in a January 18, 2024, statement. "This effort is part of our larger transformation effort underway

across the IRS as our efforts continue to accelerate."

The agency reported that as of this week, about 145 entities have requested registration numbers for nearly 1,300 projects across 40 states and territories. More than 1,170 of these projects involve the transfer of clean energy credits while more than 1,110 will involve direct pay.

"The value of the tax credits for these projects will be determined when the credit recipient files their taxes," the agency said in the statement.

IRS Announces Appointment of Twelve New IRSAC Members

IR-2024-13

The IRS has announced the appointment of twelve new members to the Internal Revenue Service Advisory Council (IRSAC). The Council, established in 1953 is an organized public forum with members who are representatives of the

taxpaying public, the tax professional community, small and large businesses, tax exempt and government entities and information reporting interests. The Council submits its annual report with relevant feedback and recommendations.

For the year 2024, Annette Nellen, a CPA and attorney has been appointed

as the IRSAC Chair. The twelve new members appointed to the Council to serve three year terms are: Robert Barr, Andrew Bloom, Elizabeth Boonin, Beatriz Castaneda, Steven Grieb, Lawrence Sannicandro, Peter Smith, Cory Steinmetz, Hussein Tariff, Lucent Wiggle, Thomas Wheaten and Nicholas Alliance.

IRS Not Focused On Number Of Users In Direct File Pilot

As the Internal Revenue Service moves forward in the upcoming tax filing season with its pilot to test the Direct File option, one metric in determining the success of the program the agency is not using is the number of taxpayers who chose to try it out.

"We are not focusing on number of users," Bridge Roberts, chief of Direct File at the IRS, said January 10, 2024, during a panel discussion at the 2024 DC Bar Tax Conference, noting that the agency

is "starting small" and is not opening the pilot to all taxpayers this year. That being said, she said that the agency is anticipating that "several 100,000 taxpayers could use it, but we still don't know" what the uptake rate will be.

However, Roberts did provide a number of metric the agency will be looking at, including understanding the overall experience; gathering information on what could be done differently or better; what the fallout rate ends up being, did the chat

function work to help taxpayers who are using Direct File; what was the IRS's ability to identify fraudulent returns; what the rejection rate is and what the audit rate is.

Speaking specifically on the rejection rate, Roberts noted that a large reason that returns are rejected is because the previous year's adjusted gross income didn't match with the number on the current return.

"When you're at that screen, there is a button that says if you don't know last year's AGE, click here, and you're taken

directly to your on-line account, and that number is in front of you,” she said. “So, there’s also a potential for us to bring down some of those errors, which reduces burden on the IRS and burden on taxpayers and sort of gets them through the process quicker.”

Roberts also noted that for the program to be successful, it is going to require the IRS to build trust and transparency in the software. One way the agency hopes to do that is through the level of details it provides.

“We have screens built in after every section that show our math,” she

said. “Basically, we’re not just telling you, ‘Here’s the refund amount you’re getting,’ we’re showing you step-by-step how we got to that number.”

In addition to building trust through transparency, Roberts also hopes this helps educate taxpayers so they know “what did and didn’t go into that bottom line number and what decisions you made or didn’t make had an impact.”

During the discussion, a point was raised about the potential for Direct File and the IRS to give tax advice to users, but Bridge said the software is designed to provide clarifying information and not advice.

Roberts said the information provided would be akin to the same kinds of clarifying information provided from a customer service representative.

Roberts also reiterated the point that the IRS is not looking to take away other filing options with the Direct File option.

“Direct File is not the right option for everyone because there are tax situations that it could never support because of the complexity,” she said. “There are tax situations that are best dealt with a professional [providing] planning advice and that you need that Direct File would not support.”

TAX BRIEFS

Form 1040

The Form 1040 submitted by an individual was a “return” for purposes of allowing a summary assessment by the IRS under Code Sec. 6201(a).

Cortez, DC Calif., 2024-1 USTC ¶150,110

Gross Income

A state nonprofit corporation’s income was excludable from gross income under Code Sec. 115(1) because the taxpayer’s income was derived from its exercise of an essential governmental function and such income accrued to a state or any political subdivision. By providing reinsurance to political subdivisions, the taxpayer performed an essential governmental function. Because the taxpayer’s net assets were distributable to an authority upon its dissolution,

the taxpayer’s income accrued to political subdivisions. Additionally, private interests did not benefit from the taxpayer’s activities.

IRS Letter Ruling 202403004

Individual Retirement Accounts

The exaction imposed by Code Sec. 4973 on the excess contribution made by an individual to his individual retirement account (IRA) was held to be a “tax” and not a “penalty” to which Code Sec. 6751(b) could apply.

Couturier, Jr, TC, Dec. 62,407(M)

IRS Employees

An individual was correctly removed from her Tax Compliance Officer position with the Treasury Department following the

agency’s determination that she had willfully understated her tax liability. The taxpayer argued that the Merit Systems Protection Board (the Board) did not apply the proper legal standards under Section 1203(b)(9) of the IRS Restructuring and Reform Act.

Brooks, CA-FC, 2024-1 USTC ¶150,109

Listed Transactions

The IRS correctly assessed tax penalties under Code Sec. 6707A against a corporation and its owners after determining that they had failed to disclose their participation in a “listed transaction” described in Notice 2007-83.

Govig & Associates, Inc., DC Ariz., 2024-1 USTC ¶150,111