



# FEDERAL TAX WEEKLY

## INSIDE THIS ISSUE

No Further Funding Cuts For IRS In FY24 .....	1
Final Rules Amend Definition of Short-Term Limited Duration Insurance .....	1
IRS Details Application Process for 2024 Bonus Energy Investment Credits in Low-Income Communities ...	2
IRS Reminds of May 17 Deadline for Filing 2020 Returns.....	3
Tax Court Holds Regulation Invalid; Allows Conservation Easement Deduction.....	4
IRS Clarifies Certain Requirements for Tax-Exempt Bond Financing for Student Loan Programs.....	4
Mileage Award Agreements Subject to Tax.....	5
Proposed Amendments Relating to Disclosure of Specified Return Information Issued; No Action Required by Taxpayers.....	5
Hawaii Victims of Wildfires Granted Tax Relief .....	6
Alaska Victims of Severe Storms, Landslides, and Mudslides Granted Tax Relief .....	6
IRS Criminal Investigation Releases COVID Fraud Conviction Statistics .....	7
IRS Commences Annual Dirty Dozen 2024 .....	7
IRS Announced 25th Annual Advance Pricing and Mutual Agreement Report for Calendar Year 2023 .....	8
Washington Round-up .....	8
Tax Briefs .....	9

## No Further Funding Cuts For IRS In FY24

Other than a planned repurposing of Inflation Reduction Act supplemental funding, the Internal Revenue Service saw no other cuts as the President signed off on the resolution to keep the federal government funded through the remainder of fiscal year 2024.

According to a deal struck between Congressional Republicans and the White House in 2023 as part of the agreement to raise the debt ceiling, the Congress was to rescind more than \$21 billion of the agency's more than \$80 billion in supplemental funding earmarked for improved enforcement, operations and upgrades to the information technology infrastructure. More than \$1 billion was repurposed when the debt ceiling was raised, with the remaining \$20 billion to be spread evenly across the FY 2024 and FY 2025 budgets for the agency.

However, the entire \$20 billion was rescinded in the FY 2024 funding bill that was signed into law on March 23, 2024, preventing a government shutdown. The rest of the IRS budget remains flat for the remainder of 2024.

President Biden is looking to reverse that \$20 billion rescission of supplemental funding in his FY 2025 budget proposal, which also asks for no increases to the IRS's regular budget.

---

## Final Rules Amend Definition of Short-Term Limited Duration Insurance

*T.D. 9990*

The IRS, in connection with other agencies, have issued final rules amending the definition of "short term, limited duration insurance" (STLTDI), and adding a notice requirement to fixed indemnity excepted benefits coverage, in an effort to better distinguish the two from comprehensive coverage.

Comprehensive coverage is health insurance which is subject to certain federal consumer protections. Both STLTDI and fixed indemnity excepted benefits coverage generally provide limited benefits at lower premiums than comprehensive coverage, and enrollment is typically available at any time rather than being restricted to open and special enrollment periods. However, the government is concerned about the financial and health risks that consumers face if they use either form of coverage as a substitute for comprehensive coverage, particularly as a long-term substitute. Consumers who do not understand key differences between STLTDI, fixed indemnity excepted benefits coverage, and comprehensive coverage may unknowingly take on significant financial and health risks if they purchase STLTDI or fixed indemnity excepted benefits coverage under the misunderstanding that such products provide comprehensive coverage.

## The Definition of STLDI

STLDI is a type of health insurance coverage sold by health insurance issuers that is primarily designed to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another (for example, due to application of a waiting period for employer coverage). Because STLDI falls outside of “individual health insurance coverage,” it is generally exempt from the Federal individual market consumer protections and requirements for comprehensive coverage. This can be an issue because individuals who enroll in STLDI are often not aware that they will not be guaranteed these key consumer protections.

Under the definition in the final rules, STLDI is health insurance coverage provided pursuant to a policy, certificate, or contract of insurance that has an expiration date specified in the policy, certificate, or contract of insurance that is no more than three months after the original effective date of the policy, certificate, or contract of insurance, and taking into account any renewals or extensions, has a duration no longer than four months in total. For purposes of this definition, a renewal or extension includes the term of a new STLDI policy, certificate, or contract of insurance issued by the same issuer to the

same policyholder within the 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance.

STLDI issuers must display a notice on the first page (in either paper or electronic form, including on a website) of the policy, certificate, or contract of insurance, and in any marketing, application, and enrollment materials (including reenrollment materials) provided to individuals at or before the time an individual has the opportunity to enroll or reenroll in the coverage, in at least 14-point font. A sample notice has been provided by the agencies.

## Fixed Indemnity Insurance

Federal consumer protections and requirements for comprehensive coverage do not apply to any individual coverage or any group health plan in relation to its provision of certain types of benefits, known as “excepted benefits.” Like other forms of excepted benefits, fixed indemnity excepted benefits coverage does not provide comprehensive coverage. Rather, its primary purpose is to provide income replacement benefits. Benefits under this type of coverage are paid in a fixed cash amount following the occurrence of a health-related event, such as a period of hospitalization or illness. In

addition, benefits are provided at a pre-determined level regardless of any health care costs incurred by a covered individual with respect to the health-related event. Although a benefit payment may equal all or a portion of the cost of care related to an event, it is not necessarily designed to do so, and the benefit payment is made without regard to the amount of health care costs incurred.

In an effort to give consumers an informed choice, the final rules adopt the requirement of a consumer notice that must be provided when offering fixed indemnity excepted benefits coverage in the group market and update the existing notice for such coverage offered in the individual market. The final rule does not address any other provision of the 2023 proposed rules (NPRM REG-120730-21) relating to fixed indemnity excepted benefits coverage.

## Effective Date

The final rules apply to new STLDI policies sold or issued on or after September 1, 2024. For fixed indemnity coverage, plans and issuers will be required to comply with the notice provisions for plan years (in the individual market, coverage periods) beginning on or after January 1, 2025.

NPRM REG-120730-21 is modified.

# IRS Details Application Process for 2024 Bonus Energy Investment Credits in Low-Income Communities

IR-2024-86; Rev. Proc. 2024-19

For purposes of the energy investment credit, the IRS released 2024 application and allocation procedures for the environmental justice solar and wind capacity limitation under the low-income

communities bonus credit program. Many of the procedures reiterate the rules in Reg. §1.48(e)-1 and Rev. Proc. 2023-27, but some special rules are also provided.

The guidance superseded Rev. Proc. 2023-27 for the 2024 program year only.

## Submitting an Application

The IRS will publicly announce the opening and closing dates for the 2024 Program year application period on the Department of Energy (DOE) landing page for the Program (Program Homepage) at <https://>

### REFERENCE KEY

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

FEDERAL TAX WEEKLY, 2024 No. 14. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.  
© 2024 CCH Incorporated and its affiliates. All rights reserved.

[www.energy.gov/justice/low-income-communities-bonus-credit-program](https://www.energy.gov/justice/low-income-communities-bonus-credit-program). DOE will not accept new application submissions for the 2024 Program year after 11:59 PM ET on the date the application period closes. The owner of the solar or wind facility is the person who must apply for an allocation and is the recipient of any awarded allocation.

An applicant must apply for an allocation of Capacity Limitation through DOE online Program portal system (Portal) at <https://eco.energy.gov/ejbonus/s/>. Applicants must register in the Portal before they can begin the application process; and they must create a login.gov account before accessing the Portal. The Program Homepage includes an Applicant User Guide.

## Identifying Category and Sub-Reservation

In addition to the other information detailed below, the application must identify the relevant facility category:

- Category 1: Project Located in a Low-Income Community (and the application must also specify whether the facility is a behind the meter (BTM) or front of the meter (FTM) facility),
- Category 2: Project Located on Indian Land,
- Category 3: Qualified Low-Income Residential Building Project, or
- Category 4: Qualified Low-Income Economic Benefit Project.

An applicant may submit only one application for the 2024 program year. Thus, if an applicant wishes to change its chosen category (or its Category 1 sub-reservation), it must withdraw its first application and submit a second one. Otherwise, any application submitted after the first application is treated as a duplicate application.

## Application Contents

The application must contain all required information, documentation, and attestations submitted under penalties of perjury by a person who has personal knowledge of the relevant facts. That person must also

## IRS Reminds of May 17 Deadline for Filing 2020 Returns

The IRS reminded taxpayers to submit their 2020 tax returns by May 17, 2024 to claim refunds. The agency estimated more than \$1 billion remain unclaimed in refunds due to noon filing of tax returns. “We want taxpayers to claim these refunds, but time is running out for people who may have overlooked or forgotten about these refunds. There’s a May 17 deadline to file these returns so taxpayers should start soon to make sure they don’t miss out,” said IRS Commissioner Danny Werfel. Taxpayers seeking a tax refund for the tax year 2020 may have their funds withheld if they have not filed their 2021 and 2022 returns. Any refund amount owed to them, may be applied to amounts owed to the IRS or a state tax agency and may be used to set off unpaid child support or other past due federal debts.

Taxpayers usually have three years to file and claim tax refunds, and if they fail to do so, the money becomes the property of the U.S Treasury. However, owing to the Covid 19 pandemic, taxpayers have a little more time to file and claim their refunds for 2020. The normal filing deadline to claim past refunds which falls around April tax deadline, has been postponed to May 17, 2024. Legal guidance on claims required by the postponed deadline was addressed in the Notice 2023-21 issued by the IRS in February, 2023.

IR-2024-80

be legally authorized to bind the applicant entity for federal income tax purposes, to communicate with DOE about the application, and to receive notifications, letters, and other communications from DOE and the IRS.

The guidance details the required information regarding the applicant and the facility, as well as the required documentation. The guidance also describes the information that must be submitted if an applicant wants to be considered under the additional ownership criteria or the additional geographic criteria. The DOE may require additional information in its publicly available written procedures.

## DOE Review and Selection

DOE will review applications and provide a recommendation to the IRS. If the DOE identifies an error in the application, such as missing or incorrect information or documentation, it will notify the applicant through the Portal. The applicant will have 12 business days to correct the information; otherwise, DOE will treat the application as withdrawn.

Once the application period opens for the 2024 Program year, all applications submitted during the first 30 days

are treated as submitted at the same time. DOE will publicly announce on the Program Homepage the opening and closing dates of this 30-day period. If applications during this period exhaust the available allocation for a category, DOE will conduct an allocation lottery. After the 30-day period, DOE will review applications in the order they are submitted until the available capacity in the identified category is allocated.

## Receiving an Allocation and Claiming the Bonus Credit

After the IRS receives the DOE recommendation, it will award an allocation or reject the application. The IRS will send final decision letters through the Portal, which will identify the amount of any allocation awarded. However, an allocation is not a final determination that the facility is eligible for the bonus credit.

The owner of a facility that receives an allocation must use the Portal to report the date the facility is placed in service. The guidance details the additional information the owner must provide with the notification. After the facility is placed in service, and the owner submits the additional documentation and attestations,

the owner is notified that it may claim the bonus credit.

After the IRS awards all the Capacity Limitation within each facility category, or the 2024 Program year is closed, DOE will stop reviewing applications. At the

end of the 2024 Program year, no further action will be taken on applications that were not awarded an allocation. DOE will publicly announce on the Program Homepage when the 2024 Program year closes.

## Effect on Other Documents

Rev. Proc. 2023-27, I.R.B. 2023-35, 655, is superseded solely with respect to the 2024 program year.

---

# Tax Court Holds Regulation Invalid; Allows Conservation Easement Deduction

*Valley Park Ranch, LLC, TC, Dec. 62,442*

The Tax Court has ruled against the IRS's denial of a conservation easement deduction by declaring a Treasury regulation to be invalid under the enactment requirements of the Administrative Procedure Act (APA).

An LLC conveyed a conservation easement of land to a foundation that was properly registered with the county clerk. The deed conveyed the easement in perpetuity, allowing for extinguishment only in cases where the conservation purposes became impossible to accomplish or if the property were to be condemned by the local government through eminent domain. The LLC then timely filed Form 1065, *U.S. Return of Partnership Income*, claiming a \$14.8 million deduction

under Code Sec. 170(h) for conveyance of the easement, and included with the return Form 8283, *Noncash Charitable Contributions*.

The IRS disallowed the deduction stating the conservation purpose of the easement was not "protected in perpetuity" as required by Code Sec. 170(h)(5)(A) and, specifically, by operation of Reg. § 1.170A-14(g)(6)(ii). The LLC contended that Reg. § 1.170A-14(g)(6)(ii) is procedurally invalid under the APA and that the deed therefore need not comply with its requirements.

The Tax Court decided to reverse its prior position regarding the validity of this regulation in *Oakbrook Land Holdings, LLC*, (154 TC 180, Dec. 61,663; *aff'd*, CA-6, 2022-1 USTC ¶50,128). Despite the fact the Sixth Circuit affirmed this earlier

opinion, the Eleventh Circuit had reversed the Tax Court on the same issue. This case is situated in the Tenth Circuit, which has not ruled on this issue.

The Tax Court agreed with the LLC's argument that Reg. § 1.170A-14(g)(6)(ii) is invalid because the concerns expressed in significant comments filed during the rulemaking process were inadequately responded to by the Treasury Department in the final regulation's "basis and purpose" statement, in violation of the APA's procedural requirements.

Four judges dissented, arguing there is no substantial basis for reversing their opinion of only four years prior, and that invalidating a regulation for failing to include a statement of basis and purpose should not occur when the basis and purpose are "obvious."

---

# IRS Clarifies Certain Requirements for Tax-Exempt Bond Financing for Student Loan Programs

*Notice 2024-32*

The IRS issued guidance on qualified student loan bonds under Code Sec. 144(b). This notice clarified certain requirements for (1) eligibility of borrowers of loans through state supplemental loan programs; and (2) the loan size limitation for state supplemental loans. Additionally, it covered whether proceeds from issue of state or local bonds used to finance or refinance qualified student loans was a refunding issue.

## Eligible Borrowers and Loans

Eligible borrowers for refinancing include (1) student or parent borrower of the original loan; and (2) child of a parent who borrowed an original or refinancing loan on the child's behalf. The original loan should have been made under a student loan program that applied the same loan size under Code Sec. 144(b)(1)(B), or a stricter one during the period when the original loan was made.

To establish that the original loan to be refinanced met the loan size limitation

under Code Sec. 144(b)(1)(B), an issuer may rely on the amount of the original loan as stated on the promissory note for the original loan or as otherwise provided by the previous lender, other holder, or loan servicer of the original loan.

## Refunding Bonds

In addition, for purposes of determining whether an issue is a refunding issue, "proceeds" generally means any sales proceeds,

investments proceeds, or transferred proceeds. However, proceeds does not include investment proceeds (or transferred proceeds allocable to investment proceeds) received from investing in a qualified student loan or a qualified mortgage loan.

## Effective Date

This notice applies to bonds sold on or after April 15, 2024. An issuer may apply this notice to bonds sold before April 15, 2024.

Notice 2015-78, I.R.B. 2015-48, 690, is amplified.

# Mileage Award Agreements Subject to Tax

*British Airways PLC, FedCl, 2024-1 USTC ¶70,384*

The Court of Federal Claims has held that mileage award agreements are subject to tax. The taxpayer contends that the government's interpretation of Code Sec. 4261(e)(3)(A) is inconsistent with congressional intent and that Congress did not intend that provision to apply to payments between air carriers for frequent-flyer miles (FFMs) that passengers earn for air travel. It argues that the purpose of Code Sec. 4261(e)(3)(A) is to impose the excise tax under Code Sec. 4261(a) on payments that financial institutions and other businesses make to air carriers for FFMs that customers earn for purchasing goods and services other than air travel. These include the miles customers may earn by using a credit card. The taxpayer sought refunds of the excise taxes it paid under Code Sec. 4261(e)(3)(A). The government filed two motions to dismiss, which were denied, and a motion for summary judgment which was granted.

The taxpayer has reciprocal mileage award agreements with several U.S.

domestic airlines where members of the domestic airlines' frequent-flyer programs can earn FFMs in those programs by purchasing tickets for and flying on the taxpayer's flights. Members of taxpayer's frequent-flyer program, in turn, can earn miles in that program by purchasing tickets for and flying on the domestic airlines' flights. The taxpayer compensates the domestic airlines on a per-mile basis for the FFMs they award to its passengers under the agreements. The central issue in this case is whether the taxpayer's payments to the domestic airlines are subject to the 7.5% excise tax that Code Sec. 4261(a) imposes on "the amount paid for taxable transportation of any person." The government's position is that the payments are subject to the excise tax pursuant to Code Sec. 4261(e)(3)(A), which states that the "amount paid for taxable transportation" within the meaning of Code Sec. 4261(a) includes "[a]ny amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for . . . any transportation of persons by air."

## Statutory Interpretation

According to the Court of Federal Claims, the issue is one of statutory interpretation: whether the taxpayer's payments to the domestic airlines in accordance with the terms of their mileage award agreements constituted amounts paid "for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air" within the meaning of Code Sec. 4261(e)(3)(A). Code Sec. 4261(e)(3)(A) is inherently incompatible with the notion that the Code Sec. 4261(a) excise tax applies "only to the customer's payment" or "only to the payments made by, or on behalf of, the passengers." Therefore, the court concluded that the taxpayer's payments to the domestic airlines fall within the plain language of Code Sec. 4261(e)(3)(A) and that the legislative history of the provision is consistent with its plain language—and certainly not "clearly contrary" to it.

# Proposed Amendments Relating to Disclosure of Specified Return Information Issued; No Action Required by Taxpayers

*Proposed Regulations, NPRM REG-123376-22*

The IRS issued proposed amendments to the regulations relating to the disclosure of specified return information to the Bureau of the Census (Bureau). These would (1) ensure the efficient and appropriate transfer of return information to the Bureau; and (2) would permit the disclosure of additional return information to the Secretary

of Commerce. These proposed regulations would require no action by taxpayers and would have no effect on their tax liabilities.

## Improved Administration Efficiency

The amendments would permit the Bureau to (1) publish statistical information; (2)

enhance the use of administrative records; (3) improve the quality of program estimates; and (4) support the reduction of burden. For example, complications could occur when a data element in the regulations is described as located on a particular document which is later updated or superseded.

The Secretary of Commerce's letter listed additional items of return information

requested based on the Bureau's specific need for each item of information. The Treasury and the Service agreed to amend Reg. §301.6103(j)(1)-1.

For tax year (TY) 2018, the Bureau was unable to receive return information pertaining to annuities and pensions. The IRS was only authorized to provide the Bureau with data pertaining to pensions and annuities, not IRAs. Moreover, the IRS

could not provide the Bureau with return information from the combined pension-annuities-IRA line item.

The proposed regulations includes amendments to Reg. §301.6103(j)(1)-1(d) (Proposed Reg. §301.6103(j)(1)-1(d)) to require that all projects that use return information disclosed under these regulations be approved by the IRS Director of Statistics of Income, their successor or delegate.

## Proposed Applicability Date

The amendments to Reg. §301.6103(j)(1)-1 are proposed to apply to disclosures of return information under Code Sec. 6103(j)(1)(A) made on or after March 29, 2024.

---

## Hawaii Victims of Wildfires Granted Tax Relief

IR-2024-82

The IRS has extended tax relief to the victims of wildfires in Hawaii until August 7, 2024, to file various individual and business tax returns and make tax payments. The relief applies to affected taxpayers in Hawaii.

### Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on August 8, 2023. As a result, the affected taxpayers will now have until August 7, 2024, to file returns and pay any taxes that were originally due during this period. This includes individuals who had

a valid extension to file their 2022 income tax return.

The August 7, 2024 deadline does apply to estimated income tax payments due on September 15, 2023, and January 16, April 15 and June 17, 2024. In addition, the quarterly payroll and excise tax returns normally due on October 31, 2023, and January 31, April 30 and July 31, 2024, are also now due on August 7, 2024.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayers 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.

### Casualty Losses

Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred (2023), or the return for the prior year (2022). Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number – "4724-DR" – on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit [disaster-assistance.gov](https://www.irs.gov/disaster-assistance.gov) for information on disaster recovery.

---

## Alaska Victims of Severe Storms, Landslides, and Mudslides Granted Tax Relief

Alaska Disaster Relief Notice (AK-2024-04)

The president has declared a federal disaster area in the Wrangell Cooperative Association of Alaska Tribal Nation. The disaster is due to severe storms, landslides, and mudslides that began on November 20, 2023. The disaster area includes:

- the Wrangell Cooperative Association of Alaska Tribal Nation

Taxpayers who live or have a business in the disaster area may qualify for tax relief.

### Alaska Filing Deadlines Extended

The IRS extended certain deadlines falling on or after November 20, 2023, and before July 15, 2024, have been postponed to July 15, 2024. This extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift and generation-skipping transfer tax returns;

- the Form 5500 series returns;
- annual information returns of tax-exempt organizations, and
- employment and certain excise tax returns.

However, the extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098, or 1099 series or Forms 1042-S, 3921, 3922 or 8027.

### Alaska Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax

payments due on or after November 20, 2023, and before July 15, 2024. Further, taxpayers have until July 15, 2024, to perform other time-sensitive actions due on or after November 20, 2023, and before July 15, 2024.

The IRS excused late penalties for employment and excise tax deposits due on or after November 20, 2023, and before December 5, 2023, will be abated as long as the deposits are made by December 5, 2023.

## Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may get relief by claiming their losses on their 2022 or 2023 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2022 or 2023 return should write the FEMA disaster declaration number:

"4763-DR" at the top of the return. This will allow the IRS to speed refund processing.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return; and submit it to the IRS.

---

## IRS Criminal Investigation Releases COVID Fraud Conviction Statistics

*IR-2024-83*

The IRS released statistics that showed 1,644 tax and money-laundering cases related to COVID fraud, totaling \$9 billion investigated by the Criminal Investigation (CI). CI is the law enforcement arm of the IRS, responsible for conducting financial crime investigations, including tax fraud, narcotics trafficking, money-laundering, public corruption,

healthcare fraud, identity theft and more. CI has obtained a 98.5% conviction rate in prosecuted COVID-related fraud cases, with over 795 people indicted and 373 individuals sentenced by February 29, 2024.

Recently, the investigation wing sentenced a man to 10 years in prison for his role as the mastermind behind a sprawling conspiracy to fraudulently obtain loans amid the COVID-19 pandemic. Another

man was sentenced to 94 months in prison and ordered to pay more than \$4.2 million to the SBA after being convicted of conspiracy to commit wire fraud, wire fraud and money laundering. The CI also encouraged the public to share information regarding known or suspected fraud tied to the CARES Act by contacting their local CI field office. Contact information for each CI field office is listed in the division's annual report.

---

## IRS Commences Annual Dirty Dozen 2024

*IR-2024-84; IR-2024-85*

The IRS commenced the annual Dirty Dozen list warning taxpayers to be vigilant against phishing and smishing scams. The filing season triggers email and text scams, preying on the vulnerability of taxpayers. "People can be anxious to get the latest information about their refund or other tax issues, so scammers frequently try using the IRS as a way to trick people. The IRS urges people to be extra cautious about unsolicited messages and avoid clicking any links in an unsolicited email or text if they are uncertain," said IRS Commissioner Danny Werfel. These fraudsters and identity thieves attempt to trick taxpayers into clicking a suspicious link and revealing personal or financial information. The most common approach in this season is to impersonate the IRS

to gain easy access to taxpayers or tax professionals.

The IRS annual Dirty Dozen campaign was started in 2002 to raise awareness and protect taxpayers and tax professionals from common tax scams and schemes. The most common schemes to peak during tax season are phishing and smishing. Phishing is where a fraudulent email is sent to the taxpayer, claiming to be from the IRS and offering tax refund or threatening with false criminal charges. While, smishing is a text message or a smartphone message, wherein the scammers refer to some unusual activity in the taxpayer's account or some solutions with link to restore the account. IRS reminded taxpayers to be alert to fake communications posing as a legitimate tax or financial organization. Further, the agency assured that most communication from IRS will be through

regular mail and never through email, text or social media. Finally, if taxpayers have been victim to these scams, they should report it.

### IRS Dirty Dozen Warns of Questionable ERC Claims

In day two of the IRS Dirty Dozen, the agency issued warning to businesses to stay clear of unscrupulous and aggressive promoters of questionable claims for the Employee Retention Credit (ERC). When claimed properly, the ERC is a refundable credit designed for businesses that continued paying employees during COVID-19 pandemic while their businesses were not fully operational. However, this well-intentioned program came under aggressive, misleading marketing that oversimplified

or misrepresented eligibility rules; leading to ineligible and incorrect claims. In response, the IRS announced a moratorium on processing new claims filed after September 14, 2023.

The IRS continues to take special steps to counter the aggressive marketing around ERC. In addition, the compliance work on ERC claims continue to expand

through audits and criminal investigations, with the claims topping \$1 billion. While this effort is in order, the agency urged businesses to carefully review the ERC guidelines before submitting a claim. In addition, businesses can pursue the claim withdrawal process if they need to ask the IRS not to process an ERC claim for any tax period that hasn't been paid

yet. The eligibility depends on specific facts and circumstances. The IRS has dozens of resources to help people learn about and check ERC eligibility. Finally, the IRS reminded employers who submitted claims to review the ERC requirements and talk to a trusted tax professional about their eligibility amid misleading marketing around the credit.

---

## IRS Announced 25th Annual Advance Pricing and Mutual Agreement Report for Calendar Year 2023

*Announcement 2024-16*

The IRS announced the 25th annual advance pricing and mutual agreement report covering the calendar year 2023. This announcement, based on the report submitted by the Secretary of

the Treasury contains the advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program). The report for the year 2023 describes the experience, structure, and activities of the APMA Program during calendar year 2023.

The information on the structure, composition, and operation of the APMA Program is provided in Part I of this report. While Part II presents statistical data; and Part III includes general descriptions of various elements of the APAs executed in 2023.

---

## Washington Round-up

**Secretary Yellen promotes IRA energy tax credits.** Department of the Treasury Secretary Janet Yellen was on the road promoting the energy tax credits found in the Inflation Reduction Act. Speaking March 27, 2024, at solar cell manufacturer Suniva in Norcross, Ga., Yellen noted that in the wake of the rising energy prices due to Russia's invasion of the Ukraine, the IRA "makes it cheaper for families to install solar on their rooftops. It saves them money on the front end and then on household energy payments for years to come. You can use credits when putting batteries in your garage to store the energy that the panels produce." She also highlighted other energy credits, such as for installing a heat pump, energy-efficient windows, doors, insulation and other improvements. She also promoted the IRA's tax credits for producing clean energy, noting that companies "have announced over \$675 billion in clean energy and manufacturing investments since the start of this Administration," adding that "more than half of new generation capacity added to the U.S. grid came from solar."

**IRS backlog remains a concern.** The Treasury Inspector General for Tax Administration remains concerned about the ongoing backlog of unprocessed returns in the wake of the COVID-19 pandemic, specifically with inventories of suspended returns – tax returns in the Rejects, Unpostables, and Files functions. In a report issued March 18, 2024, TIGTA also noted that Accounts Management function inventories also remained above pre-pandemic levels. As of October 28, 2023, "there were 4.3 million Accounts Management cases, excluding amended returns, awaiting processing compared to 4.4 million as of October 29, 2022. Of these 4.3 million Accounts Management cases, 2.8 million were aged cases." TIGTA also expressed concern regarding delays in refunds for Tax Year 2020 returns. The agency watchdog "identified 121,449 Tax Year 2020 tax accounts with overpayments totaling \$783.3 million that were delayed or erroneously held from issuance. This occurred because of errors in programming changes made by the IRS."

**GAO recommends IRS update its IT modernization plans.** The U.S.

Government Accountability Office is calling on the Internal Revenue Service to complete its planning and improve reporting for its information technology modernization programs. In a March 2024 report, the federal government watchdog noted that while projects to modernize IT programs in the Strategic Operating Plan for spending the supplemental funding provided by the Inflation Reduction Act have been modified, "plans showing changes to the scope of future work, milestones, and efforts to retire legacy systems have not yet been updated." GAO reported that the updated would be completed in version two of the roadmap, which is expected "very soon." The report added that completing "the roadmap and then updating ongoing IT modernization plans to reflect revisions driven by the strategic plan are essential to the transformation's success." GAO also called for improved reporting on the achievement of goals and the cost related to those actions.



## *Business Expense Deductions*

A corporation had overstated its costs of goods sold (COGS) and was not entitled to deduct certain business expenses due to lack of substantiation. The taxpayer conceded that it overstated COGS. Further, the taxpayer and its director were liable for additions to tax under Code Sec. 6651(a)(1) for failure to timely file and civil fraud penalties under Code Sec. 6663.

*Midwest Medical Aesthetics Center, TC, Dec. 62,437(M)*

A married couple's claimed deductions under Code Sec. 162 on their tax returns for amounts paid to purported captive insurance companies and to an entity, were disallowed because the purported captive insurance companies' elections under Code Sec. 831(b) were invalid.

*Patel, TC, Dec. 62,439(M)*

## *Charitable Contribution Deduction*

A partnership was entitled to an easement deduction equal to the easement's fair market value. Further, the taxpayer was liable for a penalty under Code Sec. 6662(h) for a gross valuation misstatement because the amount of the claimed deduction was more than 200 percent of the fair market value.

*Savannah Shoals, LLC, TC, Dec. 62,440(M)*

## *Collections*

The IRS did not abuse its discretion in determining to proceed with collection of an assessment made against an individual for a trust fund recovery penalty (TFRP).

*Taylor, TC, Dec. 62,438(M)*

The IRS Independent Office of Appeals did not abuse its discretion in sustaining collection actions against an individual. An individual continued her pattern of frivolous filings despite the Tax Court's warnings. Accordingly, the Tax Court exercised its discretion to impose a modest penalty under Code Sec. 6673.

*Wycoff, TC, Dec. 62,443(M)*

An appeals court ruled that the IRS could not deprive the Tax Court of jurisdiction by taking an individual's (taxpayer) tax refunds and applying them to that liability. Congress granted the Tax Court jurisdiction to review decisions made by the IRS Office of Appeals in collection due process (CDP) hearings under Code Sec. 6330(d)(1).

*Zuch, CA-3, 2024-1 USTC ¶150,131*

## *Domestic Production Activities Deduction*

A corporation was not entitled to deductions under Code Sec. 199 of receipts from certain "domestic production activities."

*Direct Supply, Inc., CA-7, 2024-1 USTC ¶150,132*

## *Gross Income*

A married couple had unreported income for the tax years at issue. The taxpayer failed to report constructive dividends from their car-for-hire businesses on their tax returns. Additionally, the taxpayer-husband was liable for civil fraud penalties under Code Sec. 6663.

*Gondal, TC, Dec. 62,441(M)*

A 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.

*IRS Letter Ruling 202413009*

## *REITs*

Storage fees received by a limited liability company from unrelated third parties under storage agreements for the use of space at properties were rents from real property within the meaning of Code Sec. 856(d). The taxpayer represented that under each storage agreement, the rent attributable to the lease of personal property in connection with, the lease of real property would not exceed 15 percent of the total rent for the tax year paid by the tenant for both the leased real and personal property. Further, the amenities provided by the taxpayer would not give rise to impermissible tenant service income (ITSI) within the meaning of Code Sec. 856(d)(7).

*IRS Letter Ruling 202413004*

## *Trust Fund Taxes*

An individual taxpayer failed to prove genuine issue of material fact. The taxpayer failed to pay the assessment for not collecting trust fund taxes. He further failed to raise a triable issue of fact as to the amount of the assessment. There was no evidence presented to support that the amount due was incorrect. Nor did the taxpayer indicate the proper amount of his tax liability.

*Colasuonno, DC N.Y., 2024-1 USTC ¶150,133*