

FEDERAL TAX WEEKLY

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Inflation Reduction Act Withstands Constitutional Challenge

Astrazeneca Pharmaceuticals LP, DC Del, 2024-1 USTC ¶170,385

A U.S. district court rejected taxpayers' claims that the Inflation Reduction Act of 2022 (P.L. 117-169) (IRA) was unconstitutional under the Fifth Amendment. The taxpayers, AstraZeneca Pharmaceuticals LP and AstraZeneca AB, challenged the constitutionality of the Drug Price Negotiation Program created by the IRA along with the lawfulness of certain guidance promulgated by the Centers for Medicare and Medicaid Services (CMS) to implement the program. The district court denied the taxpayers' motion for summary judgment, granted the government's motion for summary judgment, and determined that the taxpayers do not have Article III standing to challenge the lawfulness of the guidance since they have not identified a property interest protected by the Constitution that is put in jeopardy by the program.

In 2022, provisions contained in the IRA directed the Secretary, through CMS, to "establish a Drug Price Negotiation Program." As originally enacted in 2003, Medicare Part D barred the Secretary (and thus CMS) from interfering with the negotiations between drug manufacturers and pharmacies and prescription drug plan sponsors, and from requiring a particular formulary or instituting a price structure for the reimbursement of covered Part D drugs. To carry out the program, the IRA requires CMS to enter into agreements with manufacturers of selected drugs and to negotiate maximum fair prices for such selected drugs for defined price applicability periods. While the IRS does not require manufacturers to enter into negotiation agreements, it provides a powerful incentive to negotiate a maximum fair price with CMS: If a manufacturer of a selected drug wants to continue to participate in Medicare, it must either agree to negotiate a maximum fair price for that drug or pay an excise tax of at least 65 percent and up to 95 percent on all (both Medicare and non-Medicare) sales of the drug under Code Sec. 5000D.

The taxpayers alleged that CMS's Guidance violates the Administrative Procedure Act, however the court determined that the articulated injury was not sufficient to provide standing for these claims. The taxpayers also contended that the IRA is unconstitutional and violates AstraZeneca's Fifth Amendment right to due process. The Fifth Amendment prohibits the government from depriving a person of life, liberty, or property, without due process of law. The taxpayers alleged that the IRA violates the right to due process by directing the Secretary to fix selected drug prices at the "lowest" level, without affording adequate procedural safeguards, stripping manufacturers of any ability to meaningfully negotiate a reasonable price for their products, dispensing with traditional hearing and notice-and-comment rulemaking procedures, and vesting CMS with unchecked authority to finalize its decisions without any process for administrative or judicial review. The government did not challenge the taxpayers' standing to assert this claim, but says the court should grant it summary judgment on this issue because the taxpayers are not legally compelled to provide Medicare beneficiaries with drugs and therefore the IRA's imposition of caps on the amount the government will reimburse taxpayers for drugs sales does not

deprive them of a protected property interest for purposes of the Fifth Amendment. The district court agreed.

The district court “distilled to its essence” the protected property interest at issue is the ability to sell their drugs to Medicare at prices above the ceiling prices and negotiated maximum fair prices established by the IRA. Neither the IRA nor any other federal law requires the taxpayers to sell their drugs to Medicare beneficiaries. On the contrary, participation in the Medicare program is voluntary. The IRA simply establishes maximum prices the government will pay for selected drugs. These prices are lower than the prices CMS has been paying for the selected drugs. The whole point of the program is to lower the prices of selected drugs that lack generic competition and account for a disproportionate share of Medicare’s expenses. With the opportunity to sell products to more than 49 million Medicare and Medicaid beneficiaries, the IRA offers a powerful incentive to induce drug manufactures to participate in the

2024 Foreign Housing Expense Amounts Released

The IRS has provided the foreign housing expense exclusion/deduction amounts for tax year 2024. Generally, a qualified individual whose entire tax year is within the applicable period is limited to maximum housing expenses of \$37,950 for 2024. The computation of the base housing amount is tied to the maximum foreign earned income exclusion. The base housing amount is 16-percent of the maximum exclusion amount (computed on a daily basis), multiplied by the number of days in the applicable period that fall within the tax year. The notice also provides a table containing adjusted limitations on housing expenses based on geographic differences in housing costs relative to housing costs in the United States, in lieu of the otherwise applicable limitation of \$37,950, for 2024.

Notice 2023-26, I.R.B. 2023-13, 577, is superseded.

[Notice 2024-31](#)

program and negotiate with CMS maximum fair prices for selected drugs. That incentive is a potential economic opportunity that the taxpayers are free to accept or reject. According to the district court, drug manufacturers don’t like the IRA because lower prices mean lower profits. However taxpayers’ “desire” or “expectation” to sell

their drugs to the government at the higher prices it once enjoyed does not create a protected property interest. Since the taxpayers have no legitimate claim of entitlement to sell their drugs to the Government at any price other than what the government is willing to pay, their due process claim fails as a matter of law.

Code Sec. 501(c)(3) Status Did Not Constitute Receipt of Federal Financial Assistance

Buettner-Hartsoe, CA-4, 2024-1 USTC 50,137

The Fourth Circuit, reversing a U.S. District Court decision, ruled that Code Sec. 501(c)(3) status does not constitute receipt of federal financial assistance. An individual (taxpayer) was harassed, assaulted, and bullied at a school (S1). S1 was organized as a nonprofit and had federal tax exempt status under Code Sec. 501(c)(3).

The Supreme Court held that federal financial assistance includes assistance through an intermediary. This includes direct assistance or assistance through an intermediary, but it does not include mere beneficiaries. Tax exemption was distinguishable from the federal grants in *Grove City College v. Bella*, 465 U.S. 555, 563–70 (1984), as tax exemption is an indirect benefit, as opposed to federal financial aid through indirect means.

The donors did not receive any federal funds by claiming a charitable deduction. Instead, they were merely allowed to donate the full pre-tax amount of their donation. Thus, the charitable contribution deduction was not federal financial assistance for Title IX purposes.

Reversing and remanding a DC Md. decision.

REFERENCE KEY

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

FEDERAL TAX WEEKLY, 2024 No. 15. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.
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Taxpayers Entitled to Automatic, Mandatory Postponement Period to File Petition; Postponement Regulation Invalid

M.K. Abdo, 162 TC —, No. 7, Dec. 62,444

The Tax Court ruled that Reg. §301.7508A-1(g)(1) and (2) were invalid to an extent. The court held that Code Sec. 7508A(d) provided for an unambiguously self-executing postponement period for filing a petition for redetermination of a deficiency. Taxpayers were entitled to an automatic, mandatory 60-day postponement period to file their Tax Court petition.

The IRS had issued a notice of deficiency, dated December 2, 2019, which specified March 2, 2020, as the last day for the taxpayers to petition the Tax Court. The taxpayers, who lived in Ohio at all relevant times, mailed the petition on March 17, 2020. On March 31, 2020, the President issued a major disaster declaration with respect to Ohio because of the COVID-19 pandemic. The declaration identified the disaster conditions as “beginning on January 20, 2020, and continuing.”

The IRS moved to dismiss, arguing that the taxpayers failed to file their petition within the time prescribed by Code Secs. 6213(a) and 7502, and that the Tax Court lacked jurisdiction to redetermine

Energy Efficient Property and Improvement Rebate Guidance Issued

The IRS has issued an announcement that addresses the federal income tax treatment of rebates on the purchase of energy efficient property and improvements. Taxpayers who receive rebates for the purchase of energy efficient homes are not required to include the value of those rebates as income on their tax returns, however they must reduce the basis of the property when they sell it by the amount of the rebate.

The Inflation Reduction Act (IRA) statutory language describes performance-based incentives and electrification product subsidies as rebates. The IRS will treat amounts received from the Department of Energy home energy rebate programs funded through the IRA as a reduction in the purchase price or cost of property for eligible upgrades and projects. Accordingly, the consumer that has received an IRA is not required to report the value of the rebate as income.

Announcement 2024-19; IR-2024-97

the income tax deficiency. The taxpayers contended that Code Sec. 7508A(d) entitled them to an automatic, mandatory postponement period from January 20, 2020, the earliest incident date specified in the Ohio disaster declaration, to March 21, 2020, to file their petition.

The Tax Court applied the analysis under *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). The court concluded that, in the context of a federal disaster declaration containing an incident date, Code Sec. 7508A(d) was not reasonably susceptible of different interpretations with respect to whether a qualified taxpayer was automatically entitled to a mandatory extension to file a petition with the Tax Court. Further, the language of Code Sec. 7508A(d) spoke of the defined postponement period in mandatory terms, and the heading used the term “mandatory” itself.

The Tax Court also agreed with the taxpayers that the IRS’s interpretation conflicted with both the plain wording and the mandatory and specific nature of Code Sec. 7508A(d). Postponement of any Code Sec. 7508(a)(1) act would not be mandatory if

it needed to be triggered by a discretionary act of the Treasury Secretary, who could use his discretion not to act at all. Accordingly, the taxpayers were qualified taxpayers entitled to an automatic 60-day postponement period starting from the incident date specified in the Ohio disaster declaration. Since the taxpayer’s petition was mailed before the 60-day period ended, it was timely, and the Tax Court had jurisdiction in this case.

Finally, the IRS contended that the regulations issued under Code Sec. 7508A applied to this case and were entitled to *Chevron* deference. Having concluded that Code Sec. 7508A(d) unambiguously provided for a mandatory, automatic extension of at least 60 days for the time to file a petition, the Tax Court concluded that deference to Treas. Reg. § 301.7508A-1(g)(1) and (2) was unwarranted. Further, the court ruled that Reg. §301.7508A-1(g)(1) and (2) were invalid to the extent they limited the non-pension-related time-sensitive acts that are postponed for the mandatory 60-day postponement period to the acts determined to be postponed by the Treasury Secretary’s exercise of authority under Code Sec. 7508A(a).

IRS Warns of Schemes and Scams in “Dirty Dozen” Campaign

IR-2024-87; IR-2024-89; IR-2024-91; IR-2024-92; IR-2024-96

The IRS is warning taxpayers of common harmful schemes and scams in this week’s portion of its annual “dirty dozen” campaign.

Scammers Offering to Set Up Online Accounts

The IRS is warning taxpayers to beware of scammers attempting to help set up an online account on the IRS website. The IRS Online Account is a tool that provides

convenient access to an individual’s tax information. This site allows taxpayers to log in and get the latest on their payment history, current balance, see copies of select IRS notices, and more. The third-party helper scam begins with swindlers posing as a “helpful” third party who offers to help

create a taxpayer's IRS Online Account at IRS.gov. These scammers make it seem like a complicated task requiring assistance. The goal for these criminals is to acquire personal tax and financial information to file fraudulent returns and commit identity theft.

"As the IRS and the Security Summit partners strengthen our internal defenses, scammers evolve to come up with new ways to try to steal valuable information from taxpayers," said IRS Commissioner Danny Werfel. According to the IRS, the only place individuals should go to create an IRS Online Account is IRS.gov; and people should not use third-party assistance, other than the approved IRS authentication process through IRS.gov, to create their IRS Online Account.

Fraudulent Fuel Tax Credit Claims

Taxpayers should beware of promoters who push improper Fuel Tax Credit Claims. The IRS has seen an increased number of fictitious claims for fuel tax credits, and the agency has heightened scrutiny on this scam. "These promoters frequently charge a large fee to the taxpayer to make these false claims. While the scammers drive away with the fees, the taxpayers are left behind with a bad claim and all the risk and responsibility to make it right," said IRS Commissioner Danny Werfel. The Fuel Tax Credit is available only for off-highway business and farming use and not for most taxpayers.

With the newly implemented identity theft screening filters and processing systems, scrupulous claims will be caught by the agency. Falsely claiming the Fuel Tax Credit is a fraudulent practice that may result in fines and federal criminal prosecution and imprisonment. Taxpayers should seek advice from a qualified tax professional about the legitimacy of a particular tax credit. The IRS urges taxpayers to report those who promote abusive tax

practices and tax preparers who intentionally file incorrect returns.

Offer in Compromise Mills

As in the previous years, fraudulent Offer in Compromise (OIC) mills have been misleading taxpayers with promises to settle taxpayer debts at steep discounts for pennies on the dollar. Although the OIC is a legitimate program of the IRS, not all taxpayers qualify for this benefit. This program is an option for those who may be unable to pay their full tax liability, or if doing so creates a financial hardship. In such instances, the IRS determines their eligibility for OIC agreement. The OIC agreement will always be between the taxpayer and agency, and never include a third party.

"The IRS wants to help taxpayers who qualify for this program, but there are very specific requirements for people to qualify. A good first step is for taxpayers to take a few minutes and explore our free resources on IRS.gov. They can find out if they might qualify for this program – and at the same time avoid paying someone a hefty fee," said IRS Commissioner Danny Werfel. Taxpayers can review their eligibility by using the IRS Offer in Compromise Pre-Qualifier tool for free.

Fake Charities Committing Tax-Related Identity Fraud

The IRS is warning taxpayers about groups masquerading as charitable organizations to attract donations from unsuspecting contributors. Scammers often use fake charities in natural disasters and other tragic events as a cover to not only obtain money but also gather sensitive personal and financial information that can be exploited for tax-related identity fraud. When taxpayers decide to contribute funds or goods to an organization, they may qualify for a deduction on their tax return, but only if they itemize their deductions. Charitable

donations are valid only when directed toward IRS-recognized tax-exempt organizations. Individuals can use the Tax-Exempt Organization Search (TEOS) tool on IRS.gov to ensure legitimacy.

Taxpayers should beware of scammers who might use email or manipulate caller IDs and target groups including seniors and those with limited English proficiency. The IRS advised taxpayers to:

- not give in to pressure to make payments;
- avoid any charity that requests gift card numbers or wire transfers
- verify the legitimacy of the charity; and
- avoid sharing too much information.

'Ghost Preparers'

The IRS warns taxpayers to beware of 'Ghost preparers' who encourage taxpayers to file false returns. 'Ghost preparers' are an annual threat during tax season; they take advantage of tax credits and benefits for which taxpayers don't qualify. "By trying to make a fast buck, these scammers prey on seniors and underserved communities, enticing them with bigger refunds by including bogus tax credit claims or making up income or deductions. But after the tax return is filed, these ghost preparers disappear, leaving the taxpayer to deal with consequences ranging from a stolen refund to follow-up action from the IRS," said IRS Commissioner Danny Werfel. Another threat by these unscrupulous practitioners is that they steal taxpayer identities to claim false refunds themselves.

Taxpayers are ultimately responsible for all the information on their income tax return, regardless of who prepares it. The IRS encourages taxpayers to use a trusted tax professional or refer to the Directory of Federal Tax Return Preparers with Credentials and Select Qualifications listed on the IRS website to help choose which tax preparer is the right fit. Some warning signs of an unscrupulous preparer include refusal to sign tax returns or digital form, asking for cash-only hefty fees, and inventing false income.

Maine Victims of Severe Storms and Flooding Granted Tax Relief

IR-2024-93

The IRS has extended tax relief to the victims of severe storms and flooding in Maine until July 15, 2024, to file various individual and business tax returns and make tax payments.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on January 9, 2024. As a result, the affected taxpayers will now have until July 15, 2024, to file returns and pay any

taxes that were originally due during this period.

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

Affected taxpayers do not need to contact the IRS to obtain this relief. Also, the IRS will work with taxpayers who live 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 (2024), or the return for the prior year (2023). Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number – “4764-DR” – on any return claiming a loss. The IRS requests taxpayers see Publication 547 and visit disasterassistance.gov for information on disaster recovery.

Rhode Island Victims of Severe Storm and Flooding Granted Tax Relief

Rhode Island Disaster Relief Notice (RI-2024-05); Rhode Island Disaster Relief Notice (RI-2024-06); IR-2024-94

Victims of severe storm and flooding that began on December 17, 2023 and January 9, 2024, in parts of Rhode Island will receive tax relief from the IRS. Individuals who reside or have a business in the following Rhode Island counties may qualify for relief:

- Kent;
- Providence; and
- Washington.

Filing and Payment Deadlines Extended

Individuals and businesses have until July 15, 2024, to:

- make estimated tax payments due on January 16, April 15, and June 17, 2024; and
- file quarterly payroll and excise tax returns normally due on January 31 and April 30, 2024.

Individuals with filing extensions have until July 15, 2024, to file their 2023

returns; and calendar-year businesses with filing extensions have until July 15, 2024 to file. This includes partnerships and S corporations, C corporations and, tax-exempt organizations.

Waiver of Late Deposit Penalties

Penalties on payroll and excise tax deposits due on or after December 17, 2023, and before January 2, 2024, will be abated as long as the tax deposits are made by January 2, 2024, for RI-2024-05.

Penalties on payroll and excise tax deposits due on or after January 9, 2024, and before January 24, 2024, will be abated as long as the tax deposits are made by January 24, 2024, for RI-2024-06.

Automatic Extensions in Disaster Areas

The extended filing and payment deadlines are automatic for any taxpayer with an IRS address in the disaster area. These taxpayers

do not have to contact the IRS to qualify for the extended deadlines. However, an affected taxpayer who receives a late filing or late payment notice should contact the IRS at 866-562-5227.

Casualty Losses

Affected taxpayers in a federally declared disaster area have the option of claiming disaster-related casualty losses on their federal income tax return for either the year in which the event occurred, or the prior year. Taxpayers choosing to claim their losses on their 2023 returns have until October 15, 2025, to make this election. Affected taxpayers claiming the disaster loss on their return should put FEMA disaster declaration number, 4765-DR (for RI-2024-05) or 4766-DR (for RI-2024-06) on any return.

Taxpayers Outside Disaster Area

The IRS will work with other taxpayers affected by the disaster who live outside

the disaster area. These taxpayers should contact the IRS if they have tax or business

records in the affected area or are assisting relief activities and are affiliated with

a recognized government or philanthropic organization.

Taxpayers Affected by Terrorist Attacks in Israel Granted Relief

IR-2024-90

The IRS has extended relief to the taxpayers affected by the terrorist attacks in the State of Israel. Affected taxpayers have until October 7, 2024, to file various individual and business tax returns and make tax payments. The relief applies to:

- individual or business whose principal residence or place of business is in Israel, the West Bank or Gaza;
- individual, business or sole proprietor or estate or trust whose books, records or tax preparer is located in the covered area;
- anyone killed, injured, or taken hostage due to the terrorist attacks; and
- individual affiliated with a recognized government or philanthropic organization and who is assisting in the covered area.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on October 7, 2023. As a result, the affected taxpayers will now have until October 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 October 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 October 7, 2024.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS has automatically identified taxpayers whose address of record is in Israel, Gaza or the West Bank. These taxpayers will be provided relief to these taxpayers, based on addresses shown on previously filed returns.

The IRS will work with taxpayers who live outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Eligible taxpayers, or their representatives, whose filing address is outside the covered area can obtain relief by calling the IRS disaster hotline at 866-562-5227. International callers may call 267-941-1000.

Charitable Contribution Deductions No Longer Allowed for Organizations

Announcement 2024-15

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

- Gods Clear View Ministries, of Pennsylvania. Effective revocation date: January 1, 2018.
- Institute for Specialized Literature, Inc., of California. Effective revocation date: July 1, 2021.

However, contributions made to the organization before April 8, 2024, will generally be deductible, unless made by a person who (1) knew of the revocation, (2) was aware that the revocation was imminent, or (3) was responsible, in whole or in part, for the activities or deficiencies that gave rise to the loss of qualification.

If the organization files suit, in a timely manner, for declaratory judgment under Code Sec. 7428, challenging the revocation of its status as an eligible donee of

deductible charitable contributions, Code Sec. 170 contributions will continue to be deductible. Protection under Code Sec. 7428(c) would begin on March 25, 2024. The maximum amount of individual contributions protected would be \$1,000, with a husband and wife treated as one taxpayer. This protection is not afforded to anyone who was responsible, in whole or in part, for the acts or omissions of the organization that resulted in revocation of qualification.

IRS Urges Taxpayers to File Electronically

IR-2024-88

With the April 15, 2024 tax filing deadline approaching, the IRS reminds taxpayers to file their federal income tax returns and electronically for hassle free process. E-filing reduces tax return errors as tax software does the calculations, flags common errors and prompts taxpayers for missing information. In addition, choosing direct deposit ensures a refund within 21 days. Taxpayers can track their refund status within 24 hours after e-filing a tax

return through “Where’s my refund?” tool. There are a several electronic filing options, including IRS Free File for taxpayers with income of \$79,000 or less in 2023 and Volunteer Income Tax Assistance (VITA) for eligible people in the community by IRS certified volunteers.; IRS Direct File is open to all eligible taxpayers in 12 pilot states, while MilTax is available for military members, and some veterans, with no income limit.

The IRS encourages taxpayers to make use of direct pay option to ensure quicker

refunds; however other modes of payments are accepted. Taxpayers who are unable to pay the full amount by the tax deadline, can apply for an online payment plan. They can receive an immediate response of payment plan acceptance or denial without calling or writing to the IRS. Those unable to file their return by the deadline, can apply for a filing extension by the tax deadline. However, this does not give an extension to pay the taxes.

Taxpayers Reminded of First Quarter Deadline for Estimated Tax Payments

IR-2024-95

The IRS has reminded taxpayers, including self-employed individuals, retirees, investors, businesses and corporations, of the April 15 deadline for first quarter estimated tax payments for tax year 2024. Taxpayers who are self-employed or in the gig economy are required to make estimated tax payments. Retirees, investors and others frequently need to make these payments because a significant portion of

their income is not subject to withholding. When estimating quarterly tax payments, taxpayers should include all forms of earned income, including part-time work, side jobs or the sale of goods or services commonly reported on Form 1099-K.

Following recent disasters, eligible taxpayers in Tennessee, Connecticut, West Virginia, Michigan, California, and Washington have an extended deadline for 2024 estimated tax payments until June 17, 2024. Eligible taxpayers in Alaska,

Maine and Rhode Island have until July 15, 2024, and eligible taxpayers in Hawaii have until August 7, 2024.

Taxpayers can use Form 1040-ES, Estimated Tax for Individuals, for comprehensive instructions on computing their estimated taxes. The IRS recommends that taxpayers use the Tax Withholding Estimator tool to accurately determine the appropriate amount of tax to withhold from their paychecks.

TAX BRIEFS

Collateral Estoppel

A married couple was not entitled to relitigate their claim for a refund which was withheld by the IRS as federal income taxes from a distribution of the taxpayer-husband’s retirement plan.

Palaniappan, DC Ariz., 2024-1 USTC ¶150,135

Exempt Organizations

Five organizations were denied tax-exempt status Code Sec. 501. The first organization, an unincorporated association that assesses the needs of local business and supports rural community businesses,

failed to meet the operational test, due to serving the private interests of its members. The second organization, incorporated to engage student athletes to lend their name, image, and likeness to charitable organizations in the vicinity served the private interests of a particular university’s sports team. The third organization, an unincorporated organization organized exclusively as a homeowner’s association, failed both the organizational test and operational test. The fourth organization was not organized and operated exclusively for exempt purposes, but rather for maintaining the

private road used by its members. The fifth organization failed to provide records to establish that it was observing conditions required for continuation of exempt status.

IRS Letter Ruling 202414005; IRS Letter Ruling 202414007; IRS Letter Ruling 202414008; IRS Letter Ruling 202414009; IRS Letter Ruling 202414010

Litigation Costs

The district court did not abuse its discretion in denying an individual’s motion for reasonable litigation costs as a prevailing party.

Scott, CA-11, 2024-1 USTC ¶150,138

Low-Income Housing Credit

The IRS has published additional amounts of unused housing credit carryovers allocated to qualified states under Code Sec. 42(h)(3)(D) for calendar year 2023. The IRS allocates the national pool of unused credits each year in response to requests from qualified state housing credit agencies.

Rev. Proc. 2024-18 supplements Rev. Proc. 2023-32, I.R.B. 2023-41, 1064.

[Rev. Proc. 2024-18](#)

Net Operating Loss

An individual was not entitled to claimed net operating loss (NOL) carryforwards for tax years 2014 and 2015. The taxpayer failed to (1) provide sufficient evidence of the underlying NOLs; and (2) show that any such NOL was still available to carry forward for tax years 2014 or 2015, rather than having been absorbed in the intervening years. Finally, the taxpayer failed to prove that she acted with reasonable cause and in good faith. Therefore, she was liable for an accuracy-related penalty.

[Amos, CA-11, 2024-1 USTC ¶50,139](#)

Partnerships

The IRS has corrected proposed regulations modifying existing regulations; to allow election to exclude certain unincorporated organizations that are organized exclusively to produce electricity from the application of partnership tax rules. The IRS is accepting written or electronic comments, and requests for a public hearing and must be received by May 10, 2024.

[Proposed Regulations, NPRM REG-101552-24, Correction](#)

Penalties

The IRS complied with the requirements of Code Sec. 6751(b)(1) by securing timely supervisory approval for all penalties included in the notice of deficiency issued against a corporation and its subsidiaries.

[Amgen Inc. & Subsidiaries, TC Memo, Dec. 62,445\(M\)](#)

Private Foundations

An organization was reclassified from a Type III Supporting organization to a private non operating foundation under Code Sec. 509. The trustee of the foundation restated the agreement of the trust to state that the residue of trust assets would be used to establish perpetual trusts for a few named organizations. The organization no longer meets the requirements to be a Type III Supporting Organization, as it failed to meet the responsiveness test as well as the integral part test.

[IRS Letter Ruling 202414006](#)

Third-Party Summons

An appeals court ruled that a summons could be enforced because a treaty with Spain applied to non-residents. The treaty was the Convention Between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Together with a Related Protocol. Moreover, the legitimacy of Spain's investigation was irrelevant to whether the IRS acted in good faith.

The taxpayer was not a resident of either country. He conceded to paying non-resident income taxes in Spain. His other actions included being a business owner in Spain and a bank account holder or beneficiary in the United States. The IRS

established a prima facie, with the court referencing *United States v. Powell*, 379 U.S. 48, 57-58 (1964). The court stated that under Powell's first factor, the summons was issued for a legitimate purpose. The taxpayer failed to refute that factor on appeal.

Unpublished opinion affirming, per curiam, an unreported DC Fla. decision.

[Rabassa, CA-112024-1 USTC ¶50,140](#)

Trust Fund Recovery Penalty

An individual was not an officer, director, or shareholder of a corporation. He never prepared or signed any federal employment or other tax returns on behalf of the corporation. The taxpayer was not a responsible person under Code Sec. 6672. Therefore, he was not subject to the trust fund recovery penalty and, thus, entitled to a refund.

[Powell, Jr., DC Pa., 2024-1 USTC ¶50,136](#)

Supreme Court Docket

A petition for review was denied in the following case:

D.E. Stone, CA-11- A district court rightly ruled that Code Sec. 7623 does not provide any standards cabining or limiting the IRS's discretion in deciding whether to begin enforcement actions based on whistleblower claims. Referencing *Heckler v. Chaney*, 470 U.S. 821, 837-38 (1985), the court stated that the Service was not required to take enforcement actions against multiple Real Estate Mortgage Conduits (REMICs) based on its discretion to determine enforcement priorities. The IRS was entrusted by Congress with determining the government's best interest to pursue specific allegations. Finally, the Administrative Procedure Act's (APA) waiver of sovereign immunity did not apply. Therefore, the district court lacked subject-matter jurisdiction.