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## GAO Calls For Improvement On Direct File Costs And Benefits

The U.S. Government Accountability Office (GAO) is calling on the Internal Revenue Service to improve the information related to the costs and benefits of the Direct File pilot program.

In a report published April 9, 2024, GAO said it "found IRS has not produced comprehensive cost and benefit estimates needed to inform decision-making post pilot. Collecting relevant data during the pilot would allow IRS to improve its estimates."

GAO noted that in May 2023, IRS reported to Congress that the annual cost of operating the Direct File system could range anywhere from $64 million to $249 million and accounted for the wide range against a number of unknown variables, such as the number of people who actually use the system.

However, the government watchdog noted that the "Direct File cost estimates that IRS provided in its May 2023 report to Congress did not fully align with best practices for cost estimation," noting that the agency's cost estimates "did not address other recommended practices, such as ensuring all costs were included and documented. A review by the Treasury Inspector General for Tax Administration found that IRS had no documentation to support the underlying data, analysis, or assumptions used for Direct File cost estimates. We found that as well."

GAO added that it found "insufficient documentation to provide a reasonable assurance that the pilot will capture the necessary data to inform more complete cost estimates."

And while IRS is focused on being able to evaluate critical operational aspects of Direct File, GAO said the agency is risking "missing time-sensitive opportunities to inform cost estimates in several categories," including:

- Customer service costs;
- Technology costs;
- Cost of integrating state returns;
- Cost of supporting additional tax situations; and
- Additional labor costs.

"A full accounting of all labor, material, and other efforts required to develop and run a Direct File system can help inform post pilot decision-making," the report states. "Complete cost information informs decisions about whether the pilot should be made permanent and decisions about program design tradeoffs such as what additional tax situations to support."

As far as understanding the benefits, GAO reported that IRS will be looking at a number of benefits to taxpayers, such as analyzing "the extent to which taxpayers take credits and deductions they may be eligible for but did not previously take. However, IRS's pilot evaluation plans do not identify metrics to evaluate the extent to which additional taxpayers claim benefits to which they are entitled."

GAO also noted that the agency's pilot evaluation plans have also not identified metrics for evaluating potential benefits related to reducing paper returns and errors.

The report reiterates that a decision on the future of Direct File has not been made, echoing recent comments offered by IRS Commissioner Daniel Werfel.

In its response to the findings, IRS noted that it agreed with GAO "that the pilot provides opportunities for the IRS to improve its cost estimates. Information gathered throughout the duration of the pilot will allow us to develop an accurate baseline for this novel government service," and the agency said it working to get as complete a picture on the costs to inform the decision on the future of the program.

## TTB Establishes New and Modified American Viticultural Areas in California

Effective April 15, 2024, the Contra Costa AVA in Contra Costa County, California is established by the Alcohol and Tobacco Tax and Trade Bureau and the boundary of the San Francisco Bay and Central Coast AVAs are expanded to entirely encompass the new Contra Costa AVA.

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

*Secs. 9.75, 9.157, and 9.291, 27 CFR, Part 9; Treasury Decision TTB-191, Alcohol and Tobacco Tax and Trade Bureau, 89 FR 18797, March 15, 2024*

# Proposed Regulations Provide Guidance on the Excise Tax on Stock Repurchases

*IR-2024-101; NPRM REG-115710-22; NPRM REG-118499-23*

The IRS has issued proposed regulations that would provide guidance on the application of the new excise tax on repurchases of corporate stock made after December 31, 2022 (NPRM REG-115710-22). Another set of proposed rules would provide guidance on the procedure and administration for the excise tax (NPRM REG-118499-23).

## Code Sec. 4501 and IRS Guidance

Beginning in 2023, Code Sec. 4501 subjects a covered corporation to an excise tax equal to one percent of the fair market value of its stock that is repurchased by the corporation during the tax year. A covered corporation for this purpose is any domestic corporation the stock of which is traded on an established securities market.

Repurchase includes stock redemptions and economically similar transactions as determined by the IRS. The amount of repurchase subject to the tax is reduced by the value of new stock issued to the public or employees during the year. Repurchase of the covered corporation's stock by its specified affiliate (a more-than-50-percent owned domestic subsidiary or partnership) also subjects the covered corporation to the excise tax.

The excise tax does not apply if the total amount of stock repurchases during the year is less than $1 million and in certain other situations.

Notice 2023-2, 2023-3 I.R.B. 374, provides initial guidance regarding the application of the excise tax. It describes rules expected to be provided in forthcoming proposed regulations for determining the amount of stock repurchase excise tax owed, along with anticipated rules for reporting and paying any liability for the tax.

## Proposed Operative Rules under Code Sec. 4501 (NPRM REG-115710-22)

The proposed regulations would provide general rules regarding the application and computation of the stock repurchase excise tax, the statutory exceptions, and the application of Code Sec. 4501(d). Specifically, the proposed regulations would provide guidance addressing the following:

- Certain issues related to the effective date and transition relief, including:
  - — repurchases before January 1, 2023, are not taken into account for purposes of applying the de minimis exception;
  - — in the case of a covered corporation that has a tax year that both begins before January 1, 2023, and ends after December 31, 2022, that covered corporation may apply the netting rule to reduce the fair market value of the covered corporation's repurchases

**REFERENCE KEY**

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

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during that tax year by the fair market value of all issuances of its stock during the entirety of that tax year;
  - contributions to an employer-sponsored retirement plan during the 2022 portion of a tax year beginning before January 1, 2023, and ending after December 31, 2022, should be taken into account for purposes of Code Sec. 4501(e)(2);
  - the date of repurchase for a regular-way sale of stock on an established securities market is the trade date.
- Definition of stock and the application of the excise tax to various types of stock, options, and financial instruments. The proposed regulations generally would maintain the definition of "stock" from Notice 2023-2, but would exclude "additional tier 1 preferred stock"; therefore, unless the limited-scope exception regarding additional tier 1 preferred stock applies, the stock repurchase excise tax would apply to preferred stock in the same manner as to common stock.
- Rules for valuation of stock. Generally, the proposed regulations would adopt the valuation approach of Notice 2023-2 that the fair market value of stock repurchased or issued is the market price of the stock on the date the stock is repurchased or issued, respectively.
- Rules for timing of issuances and repurchases. The approach that stock generally should be treated as repurchased when tax ownership of the stock transfers to the covered corporation or to the specified affiliate (as appropriate) would generally be retained.
- Rules regarding becoming or ceasing to be a covered corporation and determining specified affiliate status.
- Rules regarding Code Sec. 301 distributions, and complete and partial liquidations.
- Treatment of taxable transactions, including LBOs and other taxable "take private" transactions.
- Treatment of Code Sec. 304 transactions, reorganizations, and Code Sec. 355 transactions.
- Application of the statutory exceptions, including repurchase as part of a reorganization, contributions to employer-sponsored retirement plans, the de minimis exception, repurchases by dealers in securities, repurchases by RICs and REITs, and the dividend exception.
- Application of the netting rule (the adjustment for stock issued by a covered corporation, including stock issued or provided to employees of a covered corporation or its specified affiliate).
- Considerations for mergers and acquisitions with post-closing price adjustments and troubled companies.

Application of Code Sec. 4501(d).

## Applicability Dates of Proposed Operative Rules

The proposed regulations, other than the proposed regulations under Code Sec. 4501(d), would generally apply to repurchases of stock of a covered corporation occurring after December 31, 2022, and during tax years ending after December 31, 2022, and to issuances and provisions of stock of a covered corporation occurring during tax years ending after December 31, 2022. However, certain rules that were not described in Notice 2023-2 would apply to repurchases, issuances, or provisions of stock of a covered corporation occurring after April 12, 2024, and during tax years ending after April 12, 2024.

Except as described below, so long as a covered corporation consistently follows the provisions of the proposed regulations, the covered corporation may rely on these proposed regulations with respect to (1) repurchases of stock of the covered corporation occurring after December 31, 2022, and on or before the date of publication of final regulations in the Federal Register, and (2) issuances and provisions of stock of the covered corporation occurring during tax years ending after December 31, 2022, and on or before the date of publication of final regulations in the Federal Register.

In addition, so long as a covered corporation consistently follows the provisions of Notice 2023-2 corresponding to the rules in the proposed regulations, the covered corporation may choose to rely on Notice 2023-2 with respect to (1) repurchases of stock of a covered corporation occurring after December 31, 2022, and on or before April 12, 2024, and (2) issuances and provisions of stock of a covered corporation occurring during taxable years ending after December 31, 2022, and on or before April 12, 2024.

A covered corporation that relies on the provisions of Notice 2023-2 corresponding to the proposed rules with respect to (1) repurchases occurring after December 31, 2022, and on or before April 12, 2024, and (2) issuances and provisions of stock of a covered corporation occurring during tax years ending after December 31, 2022, and on or before April 12, 2024, may also choose to rely on the provisions of the proposed regulations with respect to (1) repurchases occurring after April 12, 2024, and on or before the date of publication of final regulations in the Federal Register, and (2) issuances and provisions of stock of a covered corporation occurring after April 12, 2024, and on or before the date of publication of final regulations in the Federal Register.

Special applicability dates are provided for the proposed rules under Code Sec. 4501(d).

## Rules Regarding Procedure and Administration (NPRM REG-118499-23)

The IRS has also proposed regulations with guidance on the manner and method of reporting and paying the stock repurchase excise tax. These proposed regulations provide requirements for return and recordkeeping, the time and place for filing the return and paying the tax, and tax return preparers.

Consistent with Notice 2023-2, the proposed regulations add rules on procedure and administration in proposed subpart B of the proposed Stock Repurchase

## Washington Disaster Relief Notice Updated

A February 28, 2024, notice granting relief to victims of wildfires that began on August 18, 2023, in parts of Washington was updated by the IRS on April 4, 2023, to include Whitman county.

*Washington Disaster Relief Notice (WA-2024-01)*

Excise Tax Regulations (26 CFR part 58) under Code Secs. 6001, 6011, 6060, 6061, 6065, 6071, 6091, 6107, 6109, 6151, 6694, 6695, and 6696.

In addition to requiring the excise tax to be reported on IRS Form 720, Quarterly Federal Excise Tax Return, the proposed regulations include items relevant to tax forms other than Form 720 (such as Form 1120, U.S. Corporation Income Tax Return, and Form 1065, U.S. Return of Partnership Income) to assist in identifying transactions subject to the tax.

## Applicability Date of Proposed Procedural Rules

Proposed Reg. §58.6001-1 would be applicable to repurchases, adjustments, or exceptions required to be shown in any stock repurchase excise tax return required to be filed after the date of publication of final regulations in the Federal Register.

The rest of the proposed regulations would be applicable to stock repurchase excise tax returns and claims for refund required to be filed after the date of publication of final regulations in the Federal Register.

## Effect on Other Documents

Notice 2023-2, 2023-3 I.R.B. 374, is obsoleted for repurchases, issuances, and provisions of stock of a covered corporation occurring after April 12, 2024.

## Requests for Comments

Written or electronic comments and requests for a public hearing with respect to the proposed operative rules must be received by the date that is 60 days after April 12, 2024, the date of publication in the Federal Register. Comments and requests for a public hearing on the proposed procedural rules must be received by the date that is 30 days after publication in the Federal Register.

## Current Plan Liability Rates Set for April 2024

For pension plan years beginning in April 2024, the IRS has released:

- the 30-year Treasury bond weighted average interest rate,
- the unadjusted segment rates,
- the unadjusted segment rates, and
- the minimum present value segment rates.

### Corporate Bond Rate

The three 24-month average corporate bond segment rates applicable for April 2024 (without adjustment for the 25-year average segment rate limits are as follows):

- 4.75 for the first segment rate,
- 5.18 for the second, and
- 5.16 for the third.

### April 2024 Adjustment Segment Rate

The April 2024 adjusted segment rates for plan years beginning in 2023 are:

- 4.75 for the first segment rate
- 5.18 for the second segment, and
- 5.74 for the third segment.

The rates for plan years beginning in 2024 are:

- 4.75 for the first segment rate,
- 5.18 for the second segment, and
- 5.59 for the third segment.

### 30-Year Treasury Weighted Average

For plan years beginning in April 2024, the 30-year Treasury weighted average securities rate is 3.32, with a permissible range of 2.99 to 3.49 under Code Sec. 431(c)(6)(E)(ii)(l).

The rate of interest on 30-year Treasury securities for March 2024 is 4.36 percent.

The minimum present value segment rates under Code Sec. 417(e)(3)(D) for March 2024 are:

- 4.99 for the first segment rate,
- 5.19 for the second, and
- 5.37 for the third.

*Notice 2024-34*

# Proposed Regs Supplement Procedures, Request Comments on Provisional Emissions Rate for Clean Hydrogen Production and Investment Credits

*NPRM REG-117631-23; IR-2024-102*

A supplement to proposed regulations addresses how to obtain a provisional emissions rate (PER) from the Department of Energy (DOE) for purposes of the clean hydrogen production and energy investment credits. Comments are requested.

The PER application process and the related information collection were originally described in NPRM REG-117631-23 (December 26, 2023). The process references the DOE's process for applicants to request an emissions value from the DOE that could then be used to file a petition with the IRS for determination of a PER as detailed in Proposed Reg. §1.45V-4. To file the petition, the applicant will attach a copy of the letter from the DOE stating the emissions value to Form 7210, Clean Hydrogen Production Credit, or Form 3468, Investment Credit.

### DOE Emissions Value Request Process

The proposed regs described how to obtain an emissions value from the DOE based on the DOE's analytical assessment of the lifecycle greenhouse gas (GHG) emissions associated with a hydrogen production facility's production pathway. Among other requirements, an applicant must:

1. complete a front-end engineering and design (FEED) study or similar indicia of project maturity, as determined by the DOE, such as project specification and cost estimate sufficient to inform a final investment decision; and
2. request an emissions value from the DOE. An emissions value is the DOE's analytical assessment of the lifecycle GHG emissions rate of the facility's hydrogen production process.

### FEED Study

DOE has determined that at this time, a FEED study completed based on an Association for Advanced Cost Engineering Class 3 Cost Estimate is necessary to sufficiently indicate commercial project maturity for robust emissions analysis. The IRS continues to seek comments as to whether there are alternative appropriate pathways for demonstrating project readiness.

### Emissions Value Request Application

To request an emissions value from the DOE, applicants must submit specific sections of the FEED study, along with a completed Emissions Value Request Form. The Emissions Value Request Form may contain additional information that may be beneficial to the DOE in completing a lifecycle GHG analysis of the hydrogen production pathway, but such optional information is not required.

To file an Emissions Value Request Application, applicants would first be required to send an email to the DOE at 45VemissionsRequest@ee.doe.gov. The DOE would then send the applicant an email with a link to a secure folder where the applicant would upload the Emissions Value Request Application.

Additional information about the emissions value request process will be available at https://www.reginfo.gov.

### Comments Requested

The IRS requests comments on the DOE's Emissions Value Request Application process, including:

1. whether additional procedures should be implemented to effectuate the Emissions Value Request Application process;
2. information to be collected and whether additional information should be considered by the DOE in evaluating an Emissions Value Request Application; and
3. any other aspects of the emissions value request process.

Comments should be submitted by May 11, 2024, at https://www.reginfo.gov/public/do/PRAMain. A copy of the comments may also be submitted to the DOE at 45VemissionsRequest@ee.doe.gov.

Once approved by the Office of Management and Budget (OMB), notice will be given in the Federal Register that the emissions value request process is open.

## IRS Did Not Violate Individual's Fifth Amendment Due Process Rights; No Abuse of Discretion Found

*R.J. Mukhi, TC, Dec. 62,446*

An IRS settlement officer (SO) did not violate an individual's Fifth amendment due process rights, and no abuse of discretion was found. The taxpayer had filed a Tax Court petition challenging an IRS notice of determination related to nearly $11 million of foreign reporting penalties Code Sec. 6038(b) and Code Sec. 6677.

An appeals officer (AO) that had been assigned to the case was not present during any of the conferences with the taxpayer, and the record did not indicate that he had extensive conversations with the SO. After the SO was informed that the AO was assigned to the underlying liability issue, communication between the two appeared limited to the AO informing the SO that he had previously considered the issues and directing the SO to a memorandum the AO had previously drafted. The AO logged only 45 minutes in his case activity report once he was assigned to the collection due process (CDP) hearing.

Further, there was no evidence that the AO's involvement impeded the SO's impartiality. After the SO received the memorandum, he compared the issues in the memorandum to those raised by the taxpayer and determined that they were identical. The SO then reviewed the AO's analysis and researched the law the AO had relied upon and consulted the record. Only after this research did the SO determine that he agreed with the AO's findings on the underlying liability. The SO exercised his independent authority to determine whether the foreign reporting penalties were properly assessed. Therefore, any involvement by AO did not bear on SO's impartiality.

The taxpayer asserted that the SO could not have performed a complete review of the underlying liability challenges because he logged three hours on the issue. However, the SO made other entries into his case report indicating he worked on the underlying liability issue but reported the time as zero. Further, the SO's case report detailed how he considered each issue raised by the taxpayer and made a determination based on his research confirming the AO's s determination. Thus, the taxpayer's Fifth amendment and CDP rights were not violated because of AO's limited involvement.

### Taxpayer's OICs

The SO did not abuse his discretion in rejecting the taxpayer's offers-in-compromise (OICs) because the taxpayer's offers were significantly less than his reasonable collection potential (RCP) as determined by the Centralized Offer in Compromise Unit (COICU) and the SO. Moreover, the SO had performed an in-depth review of the taxpayer's financial documentation to determine his RCP. Additionally, the SO communicated to the taxpayer his intent to reject the OICs and allowed the taxpayer additional time to submit a revised OIC or additional supporting documents. However, the taxpayer did not provide either. The SO's review was not arbitrary or capricious as it complied with the applicable IRS guidance relevant to analyzing an OIC.

### Penalties

Penalties imposed under Code Sec. 6677 were not fines and therefore did not implicate the excessive fines clause of the Eighth Amendment. The taxpayer did not cite any relevant cases in support of his assertion that the Code Sec. 6677 penalties violated the excessive fines clause. These penalties clearly served the purpose of protecting revenue and reimbursing the government for the heavy expense of investigation and fraud. As evident from the consolidated deficiency case related to the tax years and transactions that formed IRS's basis for the penalties, the taxpayer's failure to comply with his reporting obligations allegedly allowed him to avoid his federal income tax liabilities for years. Further, there was an overwhelming volume of precedent holding that civil tax penalties are not fines.

Finally, the IRS lacked authority to assess the penalties under Code Sec. 6038(b) and was not entitled to proceed with collection actions as they related to these penalties. The Tax Court upheld its holding in *A. Farhy*, Dec. 62,191.

## Dirty Dozen: IRS Warns of Social Media Advice on Tax Filing and More

*IR-2024-98; IR-2024-100; IR-2024-104; IR-2024-105*

As part of the annual Dirty Dozen tax scams effort, the IRS warns of asocial media advice on tax filing, spearphishing attacks, illegal tax scams targeting wealthy taxpayers, and promoters selling bogus tax avoidance strategies.

### Social Media Advice on Tax Filing

The IRS warned taxpayers to beware of bad tax information on social media, as part of the annual Dirty Dozen. There have been widespread misinformation on tax filing, to lure honest taxpayers, potentially even leading to identity theft and tax problems. There have been umpteen inaccurate tax information on social media, prompting taxpayers to submit false information in hopes of getting a higher refund. The agency warned taxpayers to be wary of trusting any internet advice, as some of the misleading content are driven by criminal profit motive, others are simply trying to gain attention and clicks. They will post anything, no matter how wrong or outlandish, if it garners more attention. "There are many ways to get good tax information, including @irsnews on social media and from trusted tax professionals. But people should be careful with who they're following on social media for tax advice," said IRS Commissioner Danny Werfel. Taxpayers who knowingly file fraudulent tax returns potentially face significant civil and criminal penalties, warned the IRS.

On day eight of the Dirty Dozen scam series, the agency cited two recent schemes in circulation online- one is where the scammers provide fraudulent advice on Form W-2. In this scheme, the scam artists suggest people make up large income and withholding figures, as well as the employer its coming from. Later, they instruct taxpayers to file bogus returns electronically in hopes of getting a substantial refund. The IRS and Social Security Administration have been working with payroll companies and large employers to verify W-2 information. There have been wildly inaccurate claims made about the Form 8944, to include its use by taxpayers to receive a refund from the IRS, even if the taxpayer has a balance due. Although Form 8944 is a legitimate tax form, it is meant for tax return preparers who are requesting a waiver so they can file tax returns on paper instead of electronically. It is not a form the average taxpayer can use to avoid tax bills.

### Spearphishing Attacks

As part of the annual Dirty Dozen tax scams effort, IRS warned tax professionals and businesses to remain vigilant against spearphishing attacks. Spearphishing is a more targeted version of phishing, wherein the scammers target specific individuals, organizations or businesses, typically using malicious emails. While this scam is a year round threat, during tax season tax professionals and businesses are the most common victims. Through spearphishing emails, cybercriminals impersonate real taxpayers seeking help with their taxes, using fake emails to get sensitive data or gain access to a tax professional's client information from their computer systems. Tax professionals have been alerted to look out for a surge in a particular type of spearfishing known as "new client" scams, where identity thieves pose as potential clients using fake emails.

"Cyberattacks pose a threat to not just the livelihood of the businesses, but the sensitive tax and personnel information that identity thieves can use to try filing fake tax returns," said IRS Commissioner Danny Werfel. "Taking simple steps by using extra caution when opening emails, clicking on links or sharing private client information can prevent tax professionals from being taken advantage of by cybercriminals." To avoid such attacks, tax pros and businesses should avoid suspicious links and not download attachments from unkown senders. In addition, call the potential client to confirm the email is from them and use security software products with anti-phishing tools. Lastly, tax pros and businesses should always be cautious and look out for any suspicious requests or unusual behavior before sharing any sensitive information or responding to an email.

## Illegal Tax Scams

The IRS warned wealthy individuals about tax traps designed by dishonest promoters and shady tax practitioners. These scams claim to reduce taxes. These take many different forms, ranging from inflated art donation deductions to aggressive Charitable Remainder Annuity Trusts (CRATS) and detailed shelters that maneuver to delay paying gains on property.

High-income taxpayers can be vulnerable to being pulled into these aggressive schemes and scams, said IRS Commissioner Danny Werfel. "Taxpayers should be extra careful on tax maneuvers that seem too good to be true. Beware of advertisements for seemingly ideal tax structures that distort tax laws and leave victims with civil or criminal tax penalties," he added.

One scam includes art promoters encouraging taxpayers to buy various types of art at a "discounted" price. These encourage purchasers to donate the art after waiting at least one year and to claim a tax deduction for an inflated fair market value. This will be substantially more than they paid for the artwork.

In CRAT scams, an appreciated property is transferred to a CRAT. Taxpayers wrongly claim the transfer of the appreciated assets to the CRAT, which gives those assets a step-up in basis to fair market value as if they had been sold to the trust. Through a misapplication of the law, the beneficiary treats the remaining payment as an excluded portion representing a return of investment for which no tax is due. Taxpayers who seek to achieve this inaccurate result do so by misapplying the rules.

Finally, promoters look for taxpayers seeking to defer the recognition of gain upon the sale of appreciated property. They then organize an abusive shelter through selling them monetized installment sales.

To report an abusive tax scheme or a tax return preparer, taxpayers can use the online Form 14242, Report Suspected Abusive Tax Promotions or Preparers. More information can be found at https://www.irs.gov/businesses/small-businesses-self-employed/abusive-tax-schemes-and-abusive-tax-return-preparers-irs-lead-development-center.

## Bogus Tax Avoidance Strategies

The IRS has wrapped up the 2024 Dirty Dozen campaign, with a warning to taxpayers to beware of promoters selling bogus tax avoidance strategies. Promoters have been peddling elaborate bogus schemes to reduce taxes and make handsome profits. Fraudulent schemes can threatening taxpayers can include exploitative agreements related to syndicated conservation easements and micro-captive insurance arrangements. Some of these schemes even have an international aspect such as concealing money and digital-assets in foreign accounts. "Taxpayers should be wary of anything that seeks to completely eliminate a legitimate tax responsibility," said IRS Commissioner Danny Werfel.

Generally, taxpayers can claim a charitable contribution deduction for the fair market value of a conservation easement transferred to a charity if the transfer meets the requirements under Code Sec. 170. Promoters in abusive agreements are offering easement transactions wherein the investor has the opportunity to claim charitable contribution deductions and corresponding tax savings that significantly exceed the amount the investor invested. The IRS has been committed to ensuring compliance with the conservation easement deduction law after the Congress amended the Code Sec. 170 to curb certain abusive transactions. Similarly, micro-captives involve schemes that lack many of the requisite attributes of a legitimate insurance. While many of these schemes are promoted and advertised online, the one thing in common to all are that they promise tax savings that are "too good to be true" and will likely cause legal harm to taxpayers who use them. The IRS warned taxpayers that the agency remains vigilant of these attempts to game the system. With abusive transactions and schemes being of high priority. The agency will challenge and impose penalties, where appropriate.

# Applicable Terminal Charge and SIFL Rates for Determining Value of Noncommercial Flights on Employer-Provided Aircraft Issued

*Rev. Rul. 2024-8*

The IRS has released the applicable terminal charge and the Standard Industry Fare Level (SIFL) mileage rate for determining the value of noncommercial flights on employer-provided aircraft in effect for the first half of 2024 for purposes of the taxation of fringe benefits. Further, in March 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) was enacted, directing the Treasury Department to allot up to $25 billion for domestic carriers to cover payroll expenses via grants and promissory notes, known as the Payroll Support Program (PSP). Therefore, the IRS has provided the SIFL Mileage Rate. The value of a flight is determined under the base aircraft valuation formula by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in Reg. §1.61-21(g)(7) and then adding the applicable terminal charge.

For flights taken during the period from January 1, 2024, through June 30, 2024, the terminal charge is $55.05, and the SIFL rates are: $.3012 per mile for the first 500 miles, $.2296 per mile 501 through 1,500 miles, and $.2208 per mile over 1,500 miles.

# Washington Round-up

**AICPA, state societies express BOI concerns.** The American Institute of CPAs, along with 54 state CPA societies, in an April 3, 2024, letter to the U.S. Department of the Treasury and the Financial Crimes Enforcement Network, expressed "grave concerns with the rollout and continued push to implement the Financial Crimes Enforcement Network's Beneficial Ownership Information (BOI) reporting requirements without regard for the impact to the small business community." The groups asserted that many small businesses will be caught off guard by the requirements and failure to file penalties and added that the recent legal ruling that found the Corporate Transparency Act unconstitutional will only add to the confusion surrounding the BOI reporting requirements. AICPA and the societies asked the government to suspend all enforcement actions until all cases related to the Corporate Transparency Act are resolved but continue allowing small businesses to voluntarily comply if they so choose.

**Foreign income transparency laws need better enforcement.** Witnesses testified before an April 10, 2024, hearing of the Senate Budget Committee that the government needs to do a better job enforcing the Foreign Account Tax Compliance Act. "We also need to make sure that the IRS has the resources needed to fully leverage the data disclosed under FACTA in order to collect taxes that are owed," Zorka Milin, policy director of the Financial accountability and Corporate Transparency Coalition, told the committee. Stephen Curtis, president of Cross Border Analytics Inc., added that the IRS is "overmatched, understaffed, underfunded, and operating with vast information and resource asymmetries against sophisticated taxpayers with virtually unlimited resources." However, Daniel Bunn, president and CEO of the Tax Foundation, suggests that the problem may be with the FACTA policy rather than more enforcement of it. "We have seen a spike in U.S. citizens who are often living abroad revoking their U.S. citizenship to avoid the high burden of compliance with FACTA. So that, to me, suggests there's a problem with the underlying policy of citizenship-based taxation."

**Call to make Sec. 199A deduction permanent.** As discussion and debate over the expiring tax provisions in the Tax Cuts and Jobs Act heats up, the House Small Business Committee heard a call to make permanent to Sec. 199A business deduction. During an April 10, 2024, hearing, Raymond Huff, president of HJB Convenience Corp., told committee members that the Sec. 199A deduction helps to provide a level of fairness that allows small businesses to compete with larger C corporations. Sec. 199A, which allows up to a 20 percent deduction of qualified business income and other deductions for small businesses, "allowed me to reinvest in my business, expand to open new stores, and hire more employees," Huff testified. "It did what it was intended to do. It created a level playing field." He said it is more important now in the aftermath of the COVID-19 pandemic to help businesses like his return to or maintain profitability.

**Direct File users claim more than $50 million in refunds.** The Internal Revenue Service said that taxpayers who have participated in the Direct File pilot "have claimed more than $50 million in refunds and saved millions in filing fees," a U.S. Department of the Treasury official said, adding that "we saw steady growth, including several days in the final full week of the filing season with more than 5,000 returns accepted each day." Eligible taxpayers can use Direct File until 11:59 pm on April 15, 2024, with those in Massachusetts able to use Direct File until 11:59 pm on April 17, 2024. Taxpayers who had their returns rejected will have until 11:59 pm on April 20, 2024, to fix their rejected returns.

# TAX BRIEFS

### *Civil Penalties*

In a supplemental opinion, an individual was held liable for accuracy-related penalties and Code Sec. 6664(c) reasonable cause exception was found to be inapplicable.

*Kroner, TC, Dec. 62,449(M)*

### *Collections*

A married couple's petition to review determination of collection action was dismissed because it was filed after expiration of the 30-day filing period specified in Code Sec. 6330(d)(1).

*Stephens, TC, Dec. 62,448(M)*

Two IRS settlement officers (SOs) did not abuse their discretion in sustaining a Notice of Federal Tax Lien (NFTL) filing against an individual for unpaid tax liabilities. Finding no disputes of material facts, the IRS' motion for summary judgment and sustain the proposed collection action was granted.

*Zienkowski, TC, Dec. 62,447(M)*

An individual (T1) failed to file taxes for the tax years at issue. Further, the transfer of remainderman interest to T2 and T3 in a Lady Bird Deed was not in exchange for full consideration. Therefore, T2 and T3 did not qualify as purchasers under Code Sec. 6323(h)(6). T1 had fraudulent intent to underreport the tax liability amount owed for each of the years at issue. Subsequently, the IRS assessed fraud penalties under Code Sec. 6663.

*Voshelle, DC Fla., 2024-1 USTC ¶50,142*

### *Exempt Organizations*

The income received by a non-profit association for certifying facilities to standards of an unaffiliated third party for the tax years at issue was not subject to the unrelated business income tax imposed by Code Sec. 511. A substantial causal relationship between the association's Code Sec. 501(c)(6) purposes and the third party's standard certifications existed.

*IRS Letter Ruling 202415003*

### *Gross Income*

In consolidated cases, several individuals and married couples were not entitled to exclude settlement payment they received from their gross income under Code Sec. 104(a)(2).

*Finnegan, Est, TC, Dec. 62,450(M)*

### *REITs*

Independent retirement living communities (communities) managed by a corporation that elected to be taxed as a real estate investment trust (REIT) did not meet the definition of "health care facility" under Code Sec. 856(e)(6)(D)(ii). While the communities offered some of the services found in congregate care health care facilities, the emphasis of the amenities and services provided at the managed communities was not the health and wellbeing of the residents. One of the taxpayer's properties met the definition of congregate care facility under Code Sec. 856(e)(6)(D)(ii), and, therefore, constituted a "qualified health care property" under Code Sec. 856(e)(6)(D)(i). The property's compliance with state health care regulations such as initial and periodic health screening, active management in procuring health care services when required by residents and provision of such health care services through a licensed health care provider pursuant to a written agreement caused the property to have an emphasis on the health and wellbeing of its residents.

*IRS Letter Ruling 202415001*