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Direct File Comes in Under Budget, Future Still To Be Determined

IR-2024-122

The Internal Revenue Service reported that the Direct File pilot project came in under budget and early feedback and review suggests it was a successful demonstration of the potential of having a program that allows taxpayers to use the IRS website to prepare and file their taxes, although the fate of the program is still to be determined.

According to the agency, the Direct File pilot, which launched in 12 states and allowed taxpayers with relatively simple tax returns to prepare and file them on the IRS website, cost the agency $24.6 million. including a report to Congress. The agency only spent $2.4 million on the program's operational costs including customer service, cloud computing, and user authentication.

During an April 26, 2024, press conference call, Wally Adeyemo, deputy secretary of the Department of the Treasury, reported that based on feedback in a survey from those who participated in the pilot, "Direct File was an excellent product," with 90 percent of respondents ranked their experience "as excellent or above average, and 90 percent of the survey respondents who used customer support, they're also at excellent or above average."

The agency reported that 140,803 taxpayers filed their taxes, including more than 5,000 filings during the final week leading up the conclusion of the 2024 tax filing season. Additionally, more than 3.3 million taxpayers used the eligibility checker and more than 423,000 logged into Direct File and at least started the process of filing a return.

Adeyemo noted Direct File users claimed more than $90 million in refunds and saved an estimated $5.6 million in tax preparation fees on their federal tax returns alone, based on an average of paying $200 to have their taxes prepared for them. For those not receiving a refund, the agency reported $35 million in tax balances due from those using Direct File.

"Overall, usage was in line with our expectation for a limited pilot and exceeded what was necessary to provide sufficient data to evaluate" the program, IRS Commissioner Daniel Werfel said during the press call.

He noted that the spike in filings demonstrated that the program could handle the additional volume.

No decision has been made on whether the program will continue and neither Adeyemo nor Werfel offered any insight as to what specifically will be looked at to make the determination of Direct File's future. A senior Treasury official stated that the outcome of the coming national elections will not have an impact on the decision. Congressional GOP members have been vocal in their opposition to Direct File.

Final Regulations Govern Election to Transfer Applicable Credits

T.D. 9993; IR-2024-120

Final regulations largely adopt proposed and temporary regs governing an applicable taxpayer's election to transfer an applicable credit to unrelated buyers. The final regs generally apply to tax years ending on or after the date they are published in the Federal Register, which is scheduled for April 30, 2024. Temporary Reg. §1.6418-4, which covers the pre-filing registration process for eligible credit properties, will be removed 60 days after that date.

Definitions for Credit Transfer Election

The final regulations clarify several definitions that are relevant to the credit transfer election.

Eligible taxpayers: A partnership owned by applicable entities that has not elected to be an applicable entity under Code Sec. 6417 is an eligible taxpayer that may make the credit transfer election. However, persons without a United States internal revenue tax obligation, such as taxpayers that are subject only to taxes in U.S. territories, are not eligible taxpayers.

Eligible credit property: To the extent the energy investment credit is allowed for energy storage technology, that technology is eligible credit property. Eligible credit property for purposes of the carbon sequestration credit includes any component of a carbon capture equipment in a single process train; thus, the taxpayer does not have to own the entire train.

Specified credit portion: The IRS declined requests to allow an eligible taxpayer to divide credits horizontally (that is, by distinguishing the basic credit and each bonus credit) rather than vertically. Thus, a specified credit portion must be a portion (or all) of the entire credit allowed for a credit property. For example, an eligible taxpayer cannot retain the base energy investment credit and transfer only the domestic content bonus credit.

Making the Credit Transfer Election

The final regulations allow a grantor or other owner of any portion of a grantor trust to make the transfer election with respect to any eligible credit property held by the owned portion of the trust.

The IRS declined to allow the transfer of any credit for progress expenditures. The final regs also reiterate that except for the Code Sec. 45X advanced manufacturing production credit, the eligible taxpayer must own the eligible credit property. Thus, the transfer election cannot be made by a taxpayer that is allowed the carbon sequestration credit or the energy investment credit for property the taxpayer does not own. The final regs do not address transfer elections when unrelated taxpayers own separate units of property at a credit facility that may qualify for separate transferable credits, because the question relates more to who may be eligible for which credit.

The final regs allow an automatic six-month extension of the period for making the election, beginning with the date (without extensions) the eligible taxpayer's return is due. A transfer election may be made or revised on a superseding return, but not on an amended return or administrative adjustment request (AAR).

Registration Open for 2024 IRS Nationwide Tax Forums

IRS has opened registration for the Nationwide Tax Forum 2024, coming this summer to Chicago, Orlando, Baltimore, Dallas, and San Diego. The Forum is an annual outreach program is designed for the tax professional community. Attendees, including enrolled agents, certified public accountants, Annual Filing Season Program (AFSP) participants, and other tax professionals can earn up to 19 continuing education (CE) credits. The agenda for this year includes hot topics like beneficial ownership information, cybersecurity, tax scams and schemes, digital assets, and clean energy credits; a detailed listing of courses will be available by May.

"This is a historic time at the IRS, with change taking place across the agency with our ongoing transformation work," said IRS Commissioner Danny Werfel. The Forum highlights include a two-day expo with professional representatives and a case resolution program. In addition, IRS hiring staff will be on hand to talk with attendees about jobs currently open in examination and other areas. The agency has also increased the number of seminar courses available in Spanish. Attendees who act by the June 17 Early Bird deadline can take advantage of the lowest registration rate of $255 per person.

IR-2024-117

REFERENCE KEY

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

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However, an amended return or AAR may correct a numerical error with respect to a properly claimed transfer election. A transferee taxpayer may also use an amended return or AAR to take the transferred credit into account or correct its amount. The final regs provide details on how the eligible taxpayer must reflect corrections that increase or decrease the original transferred credit portion. The regs do not impose a reporting or notification requirement on the transferor or the transferee, but the parties may include such a requirement in the transfer contract.

The preamble notes that any payments received by brokers and others for facilitating credit transfers will be taxable because they are not payments for transferred credits. If the arrangement causes the credit to be transferred to the broker, the broker cannot retransfer it. The election does not apply to agreements that give a taxpayer a right to acquire a credit.

The anti-abuse rules are clarified to apply when tax avoidance is a principal purpose for the parties engaging in the transaction. References to the "average transfer price of an eligible credit" are replaced with "arm's length price."

The IRS declined to allow the transfer of any credit for progress expenditures. The final regs also reiterate that except for the Code Sec. 45X advanced manufacturing production credit, the eligible taxpayer must own the eligible credit property. Thus, the transfer election cannot be made by a taxpayer that is allowed the carbon sequestration credit or the energy investment credit for property the taxpayer does not own. The final regs do not address transfer elections when unrelated taxpayers own separate units of property at a credit facility that may qualify for separate transferable credits, because the question relates more to who may be eligible for which credit.

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IRS Bolsters Clean Energy Initiatives with Online Tools

With the funding from the Inflation Reduction Act (IRA), the IRS is helping taxpayers take advantage of clean energy credits. The IRS has created fully electronic processes and systems to improve compliance and fraud mitigation. The agency had announced the IRS Energy Credits Online Tool (IRS ECO), which allows dealers and sellers of clean vehicles to complete the entire process online and receive advance payments within 72 hours of the expiration of a cancellation period. The IRA/CHIPS Pre-filing Registration Tool allows taxpayers to take advantage of certain manufacturing investment, clean energy investment, and production tax credits through elective pay or transfer.

More than 900 entities have registered 59,000 facilities and properties for a direct payment or transfer of credit. Additionally, the IRS registered 13,200 dealers, acknowledged 96,800 advance payments, and paid over $665 million. The agency has developed new ways to engage end users and share messaging on IRA clean energy credits, including implementing a specialized customer service model that provides personalized services so taxpayers can receive prompt assistance with applying for clean energy credits. The IRS is committed to resolving any issues facing manufacturers, dealers, and sellers navigating the IRS' new ECO tool.

IR-2024-121

However, an amended return or AAR may correct a numerical error with respect to a properly claimed transfer election. A transferee taxpayer may also use an amended return or AAR to take the transferred credit into account or correct its amount. The final regs provide details on how the eligible taxpayer must reflect corrections that increase or decrease the original transferred credit portion. The regs do not impose a reporting or notification requirement on the transferor or the transferee, but the parties may include such a requirement in the transfer contract.

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Transferee's Credit

For purposes of determining the tax year the transferee takes the credit into account, the final regs provide that a 52-53 week tax year of an eligible taxpayer and transferee taxpayer is deemed to end on or close on the last day of the calendar month nearest to the last day of the 52–53-week tax year.

The IRS rejected requests to exempt transferred credits from the Code Sec. 469 passive activity loss rules absent any such carve out in the statute. The final regs generally adopt the proposed regs for grouping and material participation. However, they clarify that a transferee taxpayer who directly owns an interest in an eligible taxpayer's trade or business at the time the work was done is not deemed to fail the material participation requirements. A transferee that does not materially participate in the credit activity may use transferred credits against passive income tax liability.

The IRS declined to adopt comments regarding the transferred credit's effect on estimated taxes. The final regs still prohibit the transferee's re-transfer of the credit, but the IRS continues to collect comments on this no-chaining rule under Notice 2024-27, I.R.B. 2024-12, 715. The IRS also

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determined there was no need to modify or clarify the rules regarding transferee partnerships.

Pre-Filing Registration for Credit Transfer Properties

The final regulations largely adopt the proposed regulations that require the transferor to register a credit property before any credit is transferred. However, the IRS will consider ways to streamline the pre-filing registration process and will monitor it to determine if it can be made more efficient. For the latest guidance on the pre-filing registration process, the preamble directs taxpayers to IRS Publication 5884, Inflation Reduction Act (IRA) and CHIPS Act of 2022 (CHIPS) Pre-Filing Registration Tool User Guide and Instructions.

The IRS declined to allow taxpayers to group properties during the registration process unless properties may be grouped for the relevant credit. The IRS also declined to provide exceptions to the annual registration requirement, though repeat registrations may be streamlined in future guidance. Taxpayers cannot register properties before they are placed in service. The pre-filing registration process does not protect a credit property from future changes in the relevant credit.

Special Rules for Excessive Credit Transfers

The final regs largely adopt the proposed regs for excessive credit transfers, with some modifications. The IRS makes any excessive credit transfer determinations under established examination procedures and the final regulations do not except any taxpayers or calculations from this process.

The IRS declined requests for a rule that would allow a transferee to specify the order in which excessive credit transfers should be determined. The IRS also declined to clarify or modify the proposed regs regarding reasonable cause that would protect a transferee from the penalty for excessive credit transfers. However, the IRS clarified examples with respect to excessive credit transfers, and will continue to study possible inequities and unfair burdens.

The final regs clarify that a transferee taxpayer is not precluded from deducting the portion of the consideration paid to the eligible taxpayer for a specified credit portion that relates to an excessive credit transfer. This amount is equal to the total consideration paid in cash by the transferee taxpayer for its specified credit portion, multiplied by the ratio of the amount of the excessive credit transferred to the transferee taxpayer to the amount of the transferred specified credit portion claimed by the transferee taxpayer.

Other Special Rules for Credit Transfers: Recapture, Ineffective Transfers, Carryforwards, REITs

The final regs generally adopt the proposed regs regarding recapture of a transferred credit. However, they clarify that recapture liability applies proportionately to any transferee taxpayers and an eligible taxpayer that retains eligible credits determined with respect to the eligible credit property, and add formulas for determining the recapture amount for each of those taxpayers. The final rules also clarify the effect of these rules for partnership and their partners, and for S corporations and their shareholders.

The proposed regs regarding ineffective transfers are finalized. The final regs clarify that transferees may carry forward unused transferred credits.

Finally, with respect to real estate investment trusts (REITs), the final regs clarify that eligible credits that have not yet been transferred are disregarded for purposes of the REIT asset test. In addition, a REIT's transfer of a specified credit portion is not a sale of property for purposes of the seven sales safe harbor.

Final Regulations on Domestically Controlled Qualified Investment Entities

T.D. 9992

The IRS has issued final regulations on determining whether a qualified investment entity (QIE) is domestically controlled under Code Sec. 897(h), including the treatment of qualified foreign pension funds (QFPFs) for this purpose, and when foreign persons are considered to hold directly or indirectly stock in a QIE. The regulations primarily affect foreign persons that own stock in a QIE that would be a U.S. real property interest (USRPI) if the QIE were not domestically controlled.

This Treasury Decision finalizes regulations under Code Sec. 897 that were proposed in NPRM REG-100442-22, but does not finalize other proposed regulations addressing the treatment of certain entities, including QFPFs, for purposes of the exemption from taxation for foreign governments under Code Sec. 892. Those regulations will be addressed in a separate rulemaking.

USRPI Dispositions by Foreign Persons

Under Code Sec. 897(a), gain or loss of a nonresident alien individual or foreign corporation from the disposition of a USRPI is taken into account under Code Sec. 871(b)(1) or 882(a)(1) as if the individual or corporation were engaged in a trade or business within the United States during the tax year and such gain or loss was effectively connected with the trade or business. Code Sec. 897(h) provides that any distribution by a QIE to a nonresident alien individual, a foreign corporation, or other QIE, to the extent attributable to gain from sales or exchanges by the QIE of USRPIs, is treated as gain recognized by that nonresident alien individual, foreign corporation, or other QIE from the sale or exchange of a USRPI, subject to certain exceptions. Code Sec. 897(h)(2)

provides that a USRPI does not include an interest in a domestically controlled QIE (DC-QIE).

Code Sec. 897(l) provides an exception to Code Sec. 897(a) for certain foreign pension funds and their wholly owned subsidiaries. Under the exception, neither a QFPF, nor an entity all the interests of which are held by a QFPF, is treated as a nonresident alien individual or foreign corporation for Code Sec. 897 purposes.

The final regulations provide that a QFPF (including any part of a QFPF) or a qualified controlled entity (QCE) is a foreign person for purposes of the DC-QIE exception (the "QFPF DC-QIE rule"). The IRS disagreed with comments recommending that this rule should be withdrawn because it is an incorrect reading of the statute and contrary to congressional intent. The final regulations also make related changes to definitions in Reg. §1.897-1.

QIE Stock Held Directly or Indirectly

The final regulations provide guidance for determining if stock of a QIE is considered "held directly or indirectly" by foreign persons, for determining whether a QIE is domestically controlled under Code Sec. 897(h)(4)(B). Stock is held "indirectly" by taking into account stock of the QIE held through certain entities under a limited "look-through" approach, which balances the policies of the DC-QIE exception with the requirement to take into account indirect ownership of QIE stock by foreign persons. This is intended to prevent the use of intermediary entities to achieve results contrary to the purposes of the DC-QIE exception.

The proposed regulations had provided a domestic corporation look-through rule which treated non-publicly traded domestic C corporations as look-through persons if foreign persons hold a 25 percent or more interest by value in the corporation's stock. The IRS rejected comments calling for withdrawal of this look-through rule, and did not adopt specific recommendations provided to modify the rule. However, the IRS agreed to narrow the scope of the rule in the final regulations by increasing the amount of foreign ownership required to look through a non-public domestic C corporation from 25 percent or more to more than 50 percent.

The proposed regulations had also treated a "domestic C corporation"—defined as any domestic corporation other than a regulated investment company (RIC), a real estate investment trust (REIT), or an S corporation—as a non-look-through person. The final regulations align the treatment of certain RICs that are not QIEs with that of other publicly held entities that are not QIEs. Other revisions were also made regarding certain public entities.

Withholding on USRPI Dispositions

The final regulations revise rules in Reg. §§1.897-2(h)(3) and 1.1445-2(c)(3) to clarify the procedures available to a transferor to certify to a transferee that no withholding is required because the DC-QIE exception applies. The final regulations confirm that a domestic corporation may voluntarily provide a statement in response to a request from a transferor certifying that an interest in the corporation is not a USRPI because the corporation is a domestically controlled QIE, which the transferor may furnish to the transferee, provided the statement otherwise complies with the requirements of Reg. §1.897-2(h).

Applicability Date and Transition Rules

The final regulations generally apply to transactions occurring on or after the date that the final regulations are published in the Federal Register.

However, the final regulations include a transition rule that exempts existing structures from the final domestic corporation look-through rule for a 10-year period if they meet certain requirements. The requirements are intended to ensure that the final domestic corporation look-through rule does not apply to preexisting business arrangements, but only to the extent the QIE (1) does not acquire a significant amount of new USRPIs, and (2) does not undergo a significant change in ownership (subject to an exception for acquisitions of a USRPI or QIE interest under a previous binding commitment). If either of those thresholds is exceeded, the QIE at that time becomes subject to the final domestic corporation look-through rule like any other QIE.

IRS Begins Accepting Applications for LITC Matching Grants

IR-2024-118

The IRS began accepting applications for Low Income Taxpayer Clinic (LITC) matching grants from all qualified organizations. The application period runs through June 12, 2024. The funding and the period of performance for the grant will be January 1, 2025, through December 31, 2025. Applications must be submitted electronically by 11:59 p.m. Eastern Time on June 12, 2024. The funding number is TREAS-GRANTS-042025-001.

Currently, the following counties, states and territory do not have an LITC or have only partial coverage:

- Florida – Citrus, Hamilton, Hernando, Lafayette, Madison, Nassau, St. Johns, Sumter, Suwannee, Taylor, Brevard, Lake, Orange, Osceola, Seminole, and Volusia counties.
- Hawaii – the entire state.
- Kansas – the entire state.
- Montana – Blaine, Broadwater, Carbon, Carter, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Garfield, Golden Valley, Granite, Jefferson, Judith Basin, Lincoln, Madison, McCone, Mineral, Missoula, Musselshell, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Richland, Sanders, Sheridan, Stillwater, Sweet Grass, Toole,

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Treasure, Valley, Wheatland, and Wibaux counties.

- Nevada – the entire state.
- North Dakota – the entire state.
- South Dakota – the entire state.
- West Virginia – the entire state.
- The territory of Puerto Rico – the entire country.

"Low Income Taxpayer Clinics make a tremendous impact on the lives of taxpayers. Especially, for those with the most need," said National Taxpayer Advocate Erin M. Collins. "I encourage all qualifying organizations to apply for an LITC grant and join the community of clinics across the country that are making a real difference and changing lives," she added.

In light of the President's budget request and the uncertain timeline for final congressional action, the IRS will allow applicants to request up to $200,000 for the 2025 grant year. If, for FY 2025, Congress significantly reduces the overall LITC grant funding level or the per-clinic funding cap, the Service will adjust each grant recipient's award to reflect any limitations in place at that time.

The IRS will continue the ESL Education Pilot Program that was rolled out as part of the February 2023 supplemental funding opportunity.

Questions about the LITC Program or the grant application process can be addressed to the LITC Program Office by email at litcprogramoffice@irs.gov. Alternatively, taxpayers can contact Karen Tober by email at karen.tober@irs.gov.

There is a webinars, on May 7, 2024 at which taxpayers can get more information about the LITC Program and the application process. And more information on LITC grants can be found at https://www.irs.gov/pub/irs-pdf/p3319.pdf.

Washington Round-up

TIGTA prevents $3.5 billion in potentially improper pandemic payments. The Treasury Inspector General for Tax Administration announced that its Office of Investigations has helped the Internal Revenue Service prevent $3.5 million in potentially improper Employee Retention Credits and Sick and Family Leave Credits. The scheme involved individuals obtaining an Employee Identification Number and using them file business tax returns that improperly claimed ERC and Sick and Family Leave Credits. The business returns in these cases frequently were for businesses that were not active or operating.

AICPA endorses H.R. 8007. The American Institute of CPAs voiced its support and endorsement of the Disaster Lookback Parity Act of 2004 (H.R. 8007). "We are pleased that the legislation would make it that when the IRS extends a filing deadline due to a disaster declaration under section 7508A(a), taxpayers can recover amounts paid within three years plus the period of the disaster related extension, similar to the law for non-disaster related extensions of time to file," AICPA said in an April 16, 2024, letter to Rep. Gregory Murphy (R-N.C.) and Rep. Jimmy Panetta (D-Calif.). A copy of this and other 2024 tax policy and advocacy comment letters penned by the AICPA can be found at https://us.aicpa.org/advocacy/tax/2024taxadvocacycommentletters.html?.

TAX BRIEFS

Conservation Easement

A partnership was entitled to a charitable contribution deduction under Code Sec. 170 for its donation of a conservation easement to a tax-exempt organization. The taxpayer was liable for a 40 percent penalty under Code Sec. 6662(a) and (h) for a gross valuation misstatement.

Buckelew Farm, LLC, TC, Dec. 62,460(M)

Credit Card Rewards

The IRS Chief Counsel ruled that credit card reward liabilities become fixed and determinable under Code Sec. 461 when the cardholder has the right to redeem the rewards for cash or a statement credit. The taxpayer was a federally chartered bank that issued credit cards. The reward program did not have redemption thresholds. The rewards were redeemable immediately upon receipt at the close of the cardholder's billing period without an additional purchase required. Economic performance occurred when reward payments were made to the cardholder in the form of cash, a statement credit, or other goods or services. Credit card issuers can adopt the recurring item exception under Treas. Reg. §1.461-5 to deduct reward liabilities in the year that they become fixed and determinable. However, the rewards should be redeemed by the cardholder within eight and a half months after the close of that tax year.

Chief Counsel Advice Memorandum 202417021

Disguised Sale

In a case concerning the tax treatment of a structured distressed debt investment transaction (transaction) involving transfers of distressed foreign trade receivables through several purported domestic partnerships, the IRS' determination of adjusted loss deductions and penalties was sustained.

Piccirc LLC, TC, Dec. 62,458(M)

IRS

The IRS has released email advice prepared in less than two hours by attorneys in the IRS's Office of Chief Counsel. In Tax Analysts, CA-DC, 2007-2 USTC ¶50,553, the Court of Appeals for the D.C. Circuit ruled that the IRS could not rely on its so-called "two-hour" rule to avoid disclosure of email sent to IRS field personnel. The documents constitute Chief Counsel Advice, which the IRS is required to publicly disclose under Code Sec. 6110. The items listed below were released as a result.

Chief Counsel Advice Memorandum 202417013; Chief Counsel Advice Memorandum 202417014; Chief Counsel Advice Memorandum 202417015; Chief Counsel Advice Memorandum 202417016; Chief Counsel Advice Memorandum 202417017; Chief Counsel Advice Memorandum 202417018; Chief Counsel Advice Memorandum 202417019; Chief Counsel Advice Memorandum 202417020

Liens and Levies

An individual, who had unpaid tax liabilities, was not entitled to the equitable tolling of the deadline to file a petition to review a notice of determination concerning collection action.

Shaw, Jr, TC, Dec. 62,456(M)

Penalties

The IRS complied with the timely supervisory approval requirements under Code Sec. 6751 in a case involving accuracy-related penalties determined against a decedent's estate.

Glassman, Est, TC, Dec. 62,459(M)

The IRS's initial determination of an assessment was personally approved in writing by the immediate supervisor of the tax examiner involved. There was no abuse of discretion by the IRS. The taxpayers failed to file new returns before the IRS served a summons. The taxpayers' own evidence showed that there was a second purpose for the John Doe summons. Finally, the summons remained unresolved long enough to extend the statute of limitations period beyond the date that the IRS assessed the tax penalties.

Lamprecht, CA-D.C., 2024-1 USTC ¶50,146

Tax-exempt Organizations

Four organizations were denied tax-exempt status Code Sec. 501. The first organization failed to provide the requisite books and records for examination. The second organization dissolved administratively after ceasing to provide daycare services. The organization failed to distribute its assets for exempt purposes and is being operated as a for-profit entity. The third organization's primary activity was to provide financial support to members when their family loses a loved one. The organization served private rather than public interests. The last organization, a public benefit corporation with its specific function being charitable legal services, was not operated exclusively for exempt purposes. Its net earnings inure to private shareholders and individuals. In addition, the organization engaged in an amount of excess benefit transactions that weighed in favor of revocation.

IRS Letter Ruling 202417022; IRS Letter Ruling 202417023; IRS Letter Ruling 202417024; IRS Letter Ruling 202417028

Unreported Income

A married couple had unreported income. The taxpayer-husband was liable for additions to tax under Code Sec. 6651(f) for fraudulent failure to file, under Code Sec. 6651(a)(2) for failure to pay, and under Code Sec. 6654 for failure to pay estimated tax.

Joseph Belcik, et al, TC, Dec. 62,457(M)

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