



FEDERAL TAX WEEKLY

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House Passes Tax Disaster Relief Bill

The House of Representatives passed The Federal Disaster Tax Relief Act of 2023 by an overwhelming bipartisan majority.

H.R. 5863 was approved in the lower chamber of Congress by a 382-7 vote on May 21, 2024. It would exclude from gross income any qualified wildfire relief payments.

The bill defines a qualified relief payment as “any amount received by or on behalf of an individual as compensation for loss, expenses, or damages (including compensation for additional living expenses, lost wages (other than compensation for lost wages paid by the employer which would have otherwise paid such wages) incurred as a result of a qualified wildfire disaster, but only to the extent the losses, expenses, or damages compensated by such payment are not compensated for by insurance or otherwise.”

The tax relief provision would be in affect from tax year 2020 through tax year 2025.

H.R. 5863 also classifies payments made to victims of the East Palestine train derailment from federal, state, or local governments; Norfolk Southern Railway; or any subsidiary, insurer, or agent of Norfolk Southern Railway or related parties as qualified disaster relief payments.

The bill was passed earlier this year as part of The Tax Relief for American Families and Workers Act, which also received significant bipartisan support before it was carved out and the provision was voted on individually. That larger tax relief package has stalled in the Senate, although Senate Finance Committee Chairman Ron Wyden has repeatedly said the bill is not dead yet.

IRS Extends Free File Program Through 2029

IR-2024-145

The IRS has announced the extension of the Free File program through October 2029, following a new five-year agreement with Free File Inc. This public-private partnership between the IRS and several tax preparation software companies will continue offering free online tax preparation and filing software to eligible taxpayers. This year, Free File saw a 7.3 percent increase in usage, with 2.9 million returns filed as of May 11, up from 2.7 million the previous year. IRS Commissioner Danny Werfel emphasized the program's importance in aiding taxpayers to file their taxes for free.

The Free File program, now in its 22nd filing season, ensures that taxpayers with an Adjusted Gross Income (AGI) of \$79,000 or less can access free software, while those with higher AGIs can use the IRS's Free File Fillable Forms. Ken Corbin, Chief of IRS Taxpayer Services, highlighted the program's significance, noting that it has helped tens of millions of taxpayers over the past two decades. Additionally, the IRS introduced a Direct File pilot, enabling electronic filing directly with the IRS, which attracted several hundred thousand taxpayers. The IRS also reported increased activity at Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) sites, with 2.6 million returns prepared this year.

IRS Receives Certificate of Excellence in Accountability Reporting for Second Year

IR-2024-143

The IRS has received the Certificate of Excellence in Accountability Reporting (CEAR) award for the second consecutive year. The Association of Government Accountants (AGA) honored the IRS at a ceremony on May 16 for its fiscal year (FY) 2023 Agency Financial Report (AFR). This award, the highest recognition in federal government financial

management and performance reporting, highlighted outstanding accountability reporting. Additionally, the IRS was recognized as “Best in Class” for “Excellent overall Management’s Discussion and Analysis.” IRS Commissioner Danny Werfel expressed pride in these achievements, emphasizing the agency’s commitment to accountability.

The AGA praised the FY 2023 AFR for being highly informative, well-organized,

and accessible to readers unfamiliar with IRS operations. This report covered the period from October 1, 2022, to September 30, 2023, and demonstrated the IRS’s dedication to financial and performance accountability. The IRS plans to release its 2024 Financial Report in November, continuing its adherence to the Office of Management and Budget’s Circular A-136, Financial Reporting Requirements, as a component of the U.S. Department of the Treasury.

Qualified Derivative Payment Reporting Under BEAT Rules Deferred Until 2027

Notice 2024-43

The IRS intends to amend the base erosion and anti-abuse tax (BEAT) regulations under Code Secs. 59A and 6038A to defer the applicability date of the reporting of qualified derivative payments (QDPs) until tax years beginning on or after January 1, 2027. Until these reporting rules apply, the current transition period rules for QDP reporting will continue to apply.

Background

Final BEAT regulations adopted with T.D. 9885 include rules under Code Secs. 59A and 6038A addressing the reporting of QDPs, which are not treated as base erosion payments for BEAT purposes. The final regulations generally

apply to tax years ending on or after December 17, 2018.

In general, a payment qualifies for the QDP exception if the taxpayer satisfies certain reporting requirements. Reg. §1.6038A-2(b)(7)(ix) requires a taxpayer subject to the BEAT to report on **Form 8991, Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts**, the aggregate amount of QDPs for the tax year and make a representation that all payments satisfy the requirements of Reg. §1.59A-6(b)(2). If a taxpayer fails to satisfy these reporting requirements, those payments are not eligible for the QDP exception and are treated as base erosion payments, unless another exception applies.

The QDP reporting rules of Reg. §1.6038A-2(b)(7)(ix) apply to tax years beginning on or after June 7, 2021. Before these rules are applicable, there is a

transition period during which a taxpayer is treated as satisfying the QDP reporting requirements to the extent that the taxpayer reports, in good faith, the aggregate amount of QDPs on **Form 8991**, Schedule A (Reg. §1.59A-6(b)(2)(iv) and Reg. §1.6038A-2(g)).

In Notice 2022-30, I.R.B. 2022-28, 70, the IRS announced the intention to extend the transition period through tax years beginning before January 1, 2025, while it is studying the interaction of the QDP exception, the BEAT netting rule in Reg. §1.59A-2(e)(3)(vi), and the QDP reporting requirements. The IRS has not yet issued regulations amending the applicability date of Reg. §1.6038A-2(g). Since the IRS continues to study these provisions, it has determined that it is appropriate to further extend the transition period.

REFERENCE KEY

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

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Deferred Applicability Date of QDP Reporting and Taxpayer Reliance

The IRS intends to amend Reg. §1.6038A-2(g) to provide that the QDP

reporting rules of Reg. §1.6038A-2(b)(7)(ix) will apply to tax years beginning on or after January 1, 2027. Until these rules apply, the transition period rules described above will continue to apply. Taxpayers may rely on this Notice before

the amendments to the final regulations are issued.

Notice 2022-30 is modified, and as so modified, is superseded.

Phase-In Period for Dividend Equivalent Payment Regulations Extended Further

Notice 2024-44

Taxpayers have been provided with additional guidance for complying with the Code Sec. 871(m) regulations on dividend equivalent payments for 2025, 2026, and 2027. The Treasury Department and the IRS intend to amend the regulations to delay the effective/applicability date of certain rules. The phase-in period provided in Notice 2022-37, I.R.B. 2022-37, 234, has also been extended for two years.

Dividend Equivalent Payments

A dividend equivalent amount is essentially an amount directly or indirectly determined by reference to a U.S. dividend. Code Sec. 871(m) treats dividend equivalent payments as U.S. source payments. These payments are subject to 30-percent withholding (or a lower treaty rate) if received by a nonresident alien or foreign corporation.

The Code Sec. 871(m) regulations include final and temporary regulations under Code Secs. 871(m), 1441, 1461, and 1473.

Phase-in Year for Delta- One and Non-Delta-One Transactions Extended

The effective/applicability date for the specified notional principal contract (NPC) rules under Reg. §1.871-15 (d)(2) and the specified equity-linked instrument (ELI) rules under Reg. §1.871-15(e) will

be revised. These rules will not apply to any payment made with respect to any non-delta-one transaction issued before January 1, 2027.

The IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the Code Sec. 871(m) regulations in enforcing those regulations:

- for any delta-one transaction in 2017 through 2026; and
- for any non-delta-one transaction that is a Code Sec. 871(m) transaction under Reg. §1.871-15(d)(2) or (e) in 2027.

Further, the period when the IRS will take into account the extent to which a qualified derivatives dealer (QDD) made a good faith effort to comply with the Code Sec. 871(m) regulations and the relevant provisions of the 2023 Qualified Intermediary (QI) Agreement is extended through 2026.

The IRS will consider a QDD to satisfy the obligations that apply specifically to a QDD under its 2023 QI Agreement for years before 2027 if the QDD makes a good faith effort to comply with the relevant provisions of the 2023 QI Agreement, to the extent applicable to the QDD.

Simplified Standard for Determining Combined Transactions Extended

The period during which the simplified standard under Notice 2016-76, I.R.B. 2016-51, 834, applies for withholding agents to determine whether transactions entered into were combined transactions is extended to include 2025 and 2026.

Transactions entered into in 2017 through 2026 that are combined under the simplified standard will continue to be treated as combined for future years. They will not stop being combined transactions by applying Reg. §1.871-15(n) (the combined transaction rule in the regulations), or by disposing of less than all of the potential Code Sec. 871(m) transactions that are combined under this rule.

Transactions entered into in 2017 through 2026 that are not combined under the simplified standard will not become combined transactions by applying Reg. §1.871-15(n) to them in future years, unless a reissuance or other event causes the transactions to be retested to determine whether they are Code Sec. 871(m) transactions.

Phase-in Relief for QDDs Extended

For QDDs, Reg. §1.871-15(q)(1), Reg. §1.871-15(r)(3), and Reg. §1.1441-1(b)(4)(xxii)(C) will be amended so that a QDD will not be subject to tax on dividends and dividend equivalents received in 2025 and 2026 in its equity derivatives dealer capacity or withholding on those dividends (including deemed dividends). A QDD will be required to compute its Code Sec. 871(m) amount using the net delta approach beginning in 2027.

A QDD will remain liable under Code Sec. 881(a)(1) for tax on dividends and dividend equivalents that it receives in any other capacity, and on any other U.S. source FDAP payments that it receives (whether or not in its equity derivatives

dealer capacity). A QDD is also responsible for withholding on dividend equivalents it pays to a foreign person on a Code Sec. 871(m) transaction.

A QDD does not have to perform a periodic review (as otherwise required by the 2023 QI Agreement) or provide factual information specified in Appendix I of the 2023 QI Agreement with respect to its QDD activities for 2025 or 2026. Treasury and the IRS anticipate incorporating into the 2023 QI Agreement the waiver of a QDD's periodic review and the other transitional provisions for QDDs for 2025 and 2026.

Transition Rules Extended

Withholding agents may apply the qualified securities lender (QSL) transition rules described in Notice 2010-46, I.R.B. 2010-24, 757, for payments made in calendar years 2025 and 2026.

Anti-Abuse Rule

The anti-abuse rule in Reg. §1.871-15(o) will continue to apply during the phase-in years. This means that a transaction that would not otherwise be treated as a Code

Sec. 871(m) transaction (including as a result of the new guidance) might still be a Code Sec. 871(m) transaction under the anti-abuse rules.

Taxpayer Reliance

Taxpayers and withholding agents can rely on the new guidance before the Treasury and IRS amend the Code Sec. 871(m) regulation or issue other guidance.

Termination of QTIP Trusts Did Not Result in Gift Tax

S.J. Anenberg, Est., 162 TC —, No. 9, Dec. 62,468

A donor's estate was not liable for gift tax resulting from the termination of qualified terminable interest property (QTIP) trusts and the distribution of property to the donor and the subsequent sale of stock formerly held by the QTIP trusts in exchange for promissory notes.

The QTIP trusts were created when the donor's husband died and were funded with shares of stock in a closely-held corporation. The trusts were later terminated with the consent of the donor and the trust beneficiaries. As a result of the termination, the donor received all of the trusts' assets. The donor gifted her stepsons shares of stock. That same year, she sold nearly all of remaining shares to trusts benefiting her stepsons and their children. In exchange, she received

interest-bearing promissory notes. On her gift tax return, the donor reported the gifts made to the stepsons and took the position that the sale of the shares to the trusts was not a taxable gift.

Transfer Not a Gift

The court assumed that if the donor relinquished her interest in the trusts in exchange for the shares, it was a disposition. Thus, Code Sec. 2519(a) would treat her as transferring, but necessarily gifting, all of the interests in the shares other than the qualifying income interest. The donor's deemed transfer of the remainder interests in the shares held in trust, other than her qualifying income interest, resulted in her actual receipt of the shares unencumbered. As a result, the termination of the marital trusts did not result in a

gratuitous transfer by the donor. Without a gratuitous transfer, there was no gift.

Sale for Promissory Notes Not a Gift

Code Sec. 2519 would not apply to the sale because, as the court assumed, the termination of the trusts and the distribution of the trust assets constituted a disposition of the donor's qualifying income interest for life in the QTIP. As a result, the sale of the shares would be covered by the ordinary gift and estate tax rules, rather than the QTIP rules. If the termination and distribution was not a disposition, the donor's qualifying interest for life in the QTIP no longer existed at that time. Accordingly, her sale of the shares for the promissory notes could not trigger Code Sec. 2519.

Nebraska Victims of Severe Storms, Straight-line Winds and Tornadoes, Granted Tax Relief

Nebraska Disaster Relief Notice (NE-2024-12)

The president has declared a federal disaster area in Nebraska. The disaster is due to severe storms, straight-line winds and

tornadoes that began on April 25, 2024. The disaster area includes:

- Douglas; and
- Washington counties.

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

Nebraska Filing Deadlines Extended

The IRS extended certain deadlines falling on or after April 25, 2024, and before September 3, 2024, have been postponed

to September 3, 2024. This extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift and generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations, and
- employment and certain excise tax returns.

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

Nebraska Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after April 25, 2024, and before September 3, 2024. Further,

Oklahoma Disaster Relief Notice Updated

A May 6, 2024 notice granting relief to victims of severe storms, straight-line winds, tornadoes, and flooding that began on April 25, 2024, in parts of Oklahoma was updated by the IRS on May 21, 2024, to include Cotton, Johnston, Pittsburg, and Tillma counties.

Oklahoma Disaster Relief Notice (OK-2024-01)

taxpayers have until September 3, 2024, to perform other time-sensitive actions due on or after April 25, 2024, and before September 3, 2024.

The IRS excused late penalties for employment and excise tax deposits due on or after April 25, 2024, and before May 10, 2024, will be abated as long as the deposits are made by May 10, 2024.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may get relief by claiming their losses on their 2022 or

2023 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2022 or 2023 return should write the FEMA disaster declaration number: "4778-DR " at the top of the return. This will allow the IRS to speed refund processing.

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

Iowa Victims of Severe Storms and Tornadoes, Granted Tax Relief

Iowa Disaster Relief Notice (IA-2024-03)

The president has declared a federal disaster area in Iowa. The disaster is due to severe storms and tornadoes that began on April 26, 2024. The disaster area includes:

- Clarke,
- Harrison,
- Mills,
- Polk,
- Pottawattamie,
- Ringgold,
- Shelby, and
- Union

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

Iowa Filing Deadlines Extended

The IRS extended certain deadlines falling on or after April 26, 2024, and before

October 15, 2024, have been postponed to October 15, 2024. This extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift and generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations, and
- employment and certain excise tax returns.

Iowa Payment Deadlines Extended

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

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after April 26, 2024, and before October 15, 2024. Further, taxpayers have until October 15, 2024, to perform other time-sensitive actions due on or after April 26, 2024, and before October 15, 2024.

The IRS excused late penalties for employment and excise tax deposits due on or after April 26, 2024, and before May 13, 2024, will be abated as long as the deposits are made by May 13, 2024.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may get relief by claiming their losses on their 2023 or 2024 return. Individuals may deduct

personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2023 or 2024 return should write the FEMA disaster declaration number: "4779-DR" at the top of the return.

This will allow the IRS to speed refund processing.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should add the

disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return and submit it to the IRS.

TAX BRIEFS

Civil Penalties

A corporation engaged in the sale of gravel and soil and in real estate investments, was not held liable for a 20-percent accuracy-related penalty under Code Sec. 6662(a). The taxpayer did not engage in a sham transaction or otherwise assigned income in contravention of the terms of the transaction and properly recognized the income

received by a related entity pursuant to the transaction.

Parkway Gravel, Inc. and Subsidiaries, TC, Dec. 62,469(M)

Partnerships

The Tax Court dismissed an IRS TEFRA proceeding for lack of jurisdiction, finding that the taxpayer, a limited liability

company (LLC) taxed as a partnership, had complied with the statutory requirements for making an election into the Bipartisan Budget Act of 2015 (BBA) procedures and was not equitably estopped from arguing that its election was valid.

SN Worthington Holdings LLC, TC, Dec. 62,470