



# FEDERAL TAX WEEKLY

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## Estate Tax Value of Corporation Not Reduced by Contractual Redemption Obligation

*Connelly, Exr. SCT, 2024-1 USTC ¶160,140*

In a unanimous decision, the Supreme Court has held that a closely held corporation's contractual obligation to redeem a deceased partner's shares at fair market value was not necessarily a liability that reduced the corporation's value for estate tax purposes.

The decedent and his brother owned all of the shares of the corporation. To ensure that the company remained in family control, the brothers entered into an agreement with the corporation to give the surviving brother the option to purchase the deceased brother's share or, if the survivor did not buy the shares, required the company to redeem the shares. The company obtained life insurance on each brother to fund the redemption. Following the decedent's death, the company used a portion of the life insurance proceeds to buy his shares at a price agreed-upon by the decedent's brother and son. The executor reported the value of the decedent's shares on the federal estate tax return as the agreed-upon value. Granting summary judgment to the government, the lower court concluded that, in order to determine the value of the decedent's shares, the valuation of the company included the life insurance proceeds (*T. Connelly, Exr.*, DC Mo., 2021-2 USTC ¶160,729, aff'd, CA-8, 2023-1 USTC ¶160,737).

### Life Insurance Included in Valuation

The parties agreed that the value of the decedent's shares were computed based on the corporation's fair market value, and the life insurance proceeds were an asset that increased the fair market value. The estate argued that the obligation to redeem the shares offset the value of the life insurance used to fund the redemption. The government disagreed, asserting that the corporation's obligation to redeem the shares did not reduce the value of those shares. Using a simple example, the court explained that a redemption has no economic impact on the shareholders because the shareholders' interest before and after the redemption are the same. Therefore, a contractual obligation to redeem shares at fair market value would not, on its own, reduce the value of those shares. A willing buyer would not reduce the share's value by the corporation's obligation to redeem those shares at fair market value.

### Impact on Succession Planning

The executor claimed that succession planning for closely held corporations would be more difficult if life insurance proceeds were included in the corporation's valuation. However, the brothers chose the structure for their agreement and had other options, including a cross-purchase agreement.

# IRS Updates New Clean Vehicle Credit Rules for Seller Reports and Qualified Manufacturer Battery Reports

Rev. Proc. 2024-26; IR-2024-158

The IRS updated guidance for the new clean vehicle credit with respect to existing procedures for:

- seller report updates and rescissions;
- a qualified manufacturer's attestations, certifications and documentation demonstrating its compliance with the critical mineral and battery components requirements; and
- a qualified manufacturer's submission of its compliant battery ledger for upfront review by the IRS and the Department of Energy (DOE).

## Updating and Rescinding Seller Reports for New Clean Vehicles

The seller of a new clean vehicle must notify the IRS as quickly as possible if:

- it discovers an error on its time-of-sale report,
- the sale is canceled before the vehicle is placed in service, or
- the buyer returns the vehicle within 30 days of placing it in service.

The seller provides the applicable notice by following directions on the IRS Energy Credits Online Portal on the IRS website. Within three calendar days, the seller must provide the buyer with notice of the correction, rescission or update. The seller also has three calendar days to notify the buyer if the IRS rejects its submission.

If the seller receives an advance payment of the credit with respect to a returned vehicle or a canceled sale, or if the payment was made in error, the seller must return the payment as directed in the instructions on the IRS Energy Credits Online Portal.

## Qualified Manufacturer's Critical Mineral and Battery Component Reports for New Clean Vehicles

The \$7,500 new clean vehicle credit has two components:

- A \$3,750 credit applies if the vehicle's battery satisfies the applicable threshold for critical minerals.
- A \$3,750 credit applies if the vehicle's battery satisfies the applicable threshold for battery components.

However, no credit is allowed if a foreign entity of concern (FEOC) was involved with the critical minerals or battery components.

For vehicles placed in service in calendar year 2024, the qualified manufacturer does not have to provide information to comply with the critical mineral and battery component threshold requirements. In addition, for new clean vehicles for which the qualified manufacturer submits a periodic written report on or after May 6, 2024, and before January 1, 2027, qualifying critical mineral content may be calculated under the Reg. §1.30D-3(a)(4) safe harbor based on total values in the battery.

For new clean vehicles anticipated to be placed in service after December 31, 2024, the qualified manufacturer must provide information to the DOE to establish that a vehicle satisfied both the critical mineral and battery components tests. Today's guidance details the required information.

## Qualified Manufacturer's Compliant Battery Ledger for Post-2024 New Clean Vehicles

For calendar years beginning January 1, 2025, qualified manufacturers of new clean

vehicles must provide information to the IRS and the DOE to establish a compliant-battery ledger, as provided in Reg. §1.30D-6(d). The qualified manufacturer must first submit the attestation of the projected number of FEOC-compliant batteries and other information described for upfront review.

The IRS or the DOE will make a template report and workbook available before July 1 of the year prior to the calendar year for which the compliant-battery ledger is being established. Qualified manufacturers are encouraged, but not required to use these templates to ensure a more streamlined review process. A qualified manufacturer that submits a workbook spreadsheet must include visible formulas, not just values.

For purposes of the transition rule for impracticable-to-trace battery materials with respect to written reports before 2027, the qualified manufacturer's report submitted during the upfront review process must demonstrate how it will comply with the FEOC restriction for vehicles placed in service after December 31, 2026, at the latest. Today's guidance details the information the manufacturer must include in the report. It also describes the timelines for DOE review, requests for additional information, and notification to the IRS, as well as the IRS determination as to whether the qualified manufacturer satisfies the report requirement.

For vehicles that have been or are expected to be placed in service during calendar year 2024, the qualified manufacturer generally must submit its compliant battery information and attestations by September 1, 2025. However, these submissions do not have to include information related to applicable critical minerals and associated constituent materials.

### REFERENCE KEY

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

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## Effect on Other Documents

Rev. Proc. 2023-33, 2023-43 I.R.B. 1135, and Rev. Proc. 2023-38, 2023-51 I.R.B. 1544, are modified.

## 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 June 5, 2024, to include Craig, McClain, Nowata, and Ottawa counties.

[Oklahoma Disaster Relief Notice \(OK-2024-01\)](#)

## IRS Updates

# Lists of Statistical Area and Coal Closure Tracts for Energy Community Bonus Credits

*Notice 2024-48; IR-2024-157*

The IRS provided new information taxpayers may use to determine whether they meet certain requirements for the Statistical Area Category or the Coal Closure Category for purposes of the energy community bonus credit.

These bonus credits are available now under the Code Sec. 45 energy production tax credit and the Code Sec. 48 energy investment credit. For facilities and properties placed in service after 2024, the bonus credit will also be available under the Code Sec. 45Y clean energy production credit and the Code Sec. 48E clean energy investment credit. However, the guidance does not apply to the energy community bonus credit under the Code Sec. 48C credit for qualifying advanced energy projects.

## Energy Community Categories

There are three types of energy communities:

- The brownfield category;
- The statistical area category (SAC), comprising the metropolitan statistical areas (MSAs) and non-metropolitan statistical areas (non-MSAs); and
- The coal closure category.

Information about the brownfield and statistical area categories was previously provided in Notice 2023-29, 2023-29 I.R.B. 1, and updated by Notice 2023-47, 2023-29 I.R.B. 318, and Notice 2024-30, 2024-16 I.R.B. 878.

## Updated Census Tracts

The guidance released today provides two new appendices.

Appendix 1 is a list of MSAs and non-MSAs that qualify as energy communities because they meet the Fossil Fuel Employment threshold, and they have an unemployment rate at or above the national average unemployment rate for calendar year 2023, based on 2023 calendar year county unemployment rates

released on April 19, 2024, by the Local Area Unemployment Statistics (LAUS) program of the Bureau of Labor Statistics (BLS). The energy community status for these MSAs and non-MSAs is applicable as of May 31, 2024, and will continue until the Treasury Department and the IRS issue an updated list based on unemployment rates for 2024.

Appendix 2 lists newly identified census tracts with either a coal mine closure or a coal-fired electric generating unit retirement, and census tracts that directly adjoin the census tracts with coal closures. Appendix 2 should be combined with Appendix C to Notice 2023-29 and Appendix 3 to Notice 2023-47 to provide the full list of coal closure census tracts.

The guidance does not include any information pertaining to the brownfield category.

# IRS Extends Tax Relief to Victims of East Palestine Train Disaster

*Notice 2024-46; IR-2024-156; East Palestine train derailment frequently asked questions, Updated on date, 2024*

The IRS, pursuant to a general delegation by the Secretary, has determined that the February 3, 2023 derailment of a freight train operated by a common carrier in East

Palestine, Ohio (the derailment) is a qualified disaster for purposes of Code Sec. 139. Accordingly, certain payments made by the common carrier to individuals affected by the derailment (affected individuals) are excludable from gross income as qualified disaster relief payments under Code Sec. 139(a).

## Payments Excludable from Gross Income

Specifically, the following types of payments to affected individuals are excludable from gross income as qualified disaster relief payments: payment or reimbursement of relocation expenses,

including for hotels, meals, gas or other fuel, pet boarding, replacement of clothing and other personal items, payment or reimbursement of expenses for the repair and rehabilitation of homes and surrounding environment, medical expenses, prescription medications, the one-time inconvenience payments of \$1,000 and compensation to certain affected individuals who sold their homes if the sale was completed after the derailment.

Further, the following types of payments are not qualified disaster relief payments and are includible in gross income: (1) payments made for the replacement of income, such as lost wages; (2) payments of any type made to businesses; or (3) payments made by the common carrier to access the track for remediation or to access creeks or streams for cleaning.

## Upper Cumberland AVA Established in Tennessee

The Upper Cumberland American viticultural area is established in all or portions of Cumberland, Fentress, Macon, Putnam, Overton, Smith, Warren, and White Counties, Tennessee by the Alcohol and Tobacco Tax and Trade Bureau. This AVA contains approximately 2,186,689 acres.

*Regulation Sec. 9.294, Treasury Decision TTB-194, Alcohol and Tobacco Tax and Trade Bureau, 89 FR 42363, effective June 14, 2024*

### Procedure for Affected Individuals to Exclude Qualified Disaster Relief Payments

Affected individuals who received payments from the common carrier and who have not yet filed their income tax returns for the year the payment was received should not include any qualified disaster relief payments described above on their Form 1040, except to the extent the

expenses reimbursed by the common carrier were (or are expected to be) also compensated for by insurance or otherwise.

Affected individuals who have filed their 2023 income tax returns may amend their returns by filing Form 1040-X to exclude any qualified disaster relief payments described above that were previously included on their original 2023 individual income tax returns. Affected individuals can obtain additional information regarding filing an amended return.

## Congress Did Not Authorize IRS Notice Without Notice and Comment

*Green Rock LLC, CA-11, 2024-1 ustc ¶50,159,*

A district court properly determined that the IRS violated the Administrative Procedures Act by issuing Notice 2017-10, I.R.B. 2017-4 without public notice and comment.

### Background

Notice 2017-10 requires taxpayers and their advisors to comply with reporting requirements when claiming deductions for donations of conservation easements. A material advisor for syndicated conservation-easement arrangements and transactions covered by listed transaction Notice 2017-10 sought to set aside Notice 2017-10 under the Administrative Procedures Act (APA), claiming that as a legislative rule it was issued without notice-and-comment procedures, and as arbitrary and capricious and otherwise contrary to law. A federal agency enacting regulations must ordinarily comply with the notice-and-comment procedures in the APA.

Participation in certain reportable transactions, meaning transactions that the IRS determines have the potential for tax avoidance or evasion, must be disclosed under Code Sec. 6707A(c)(1). Failure to disclose triggers sanctions and penalties.

Listed transactions are transactions that have been specifically identified as tax-avoidance transactions under Code Sec. 6707A(c)(1), which are subject to significant reporting and recordkeeping requirements. The IRS identifies listed transactions through notices and revenue rulings. A material advisor—one who provides material aid, assistance, or advice, is also subject to penalties for disclosure violations.

Recently, several litigants have challenged listing notices in the wake of *CIC Servs., LLC v. IRS*, SCt, 2021-1 ustc ¶50,150, which held that a material advisor could seek a preliminary injunction against enforcement of a revenue notice because it was a challenge to the reporting requirements of the notice and not the collection of the tax.

### Notice and Comment Requirement Applied

Exemption from the notice and comment requirements must be express. The Court of Appeals found no express provision exempting the notice and comment provisions in the APA in Code Sec. 6707A. Although Code Sec. 6707A established civil penalties to support existing Treasury regulations, which provide a procedure for identifying listed transactions, by notice, regulation, or other form of published guidance, the regulation could not displace the notice-and-comment requirements of the APA.

Penalties and criminal sanctions were what render a listing notice a legislative rule subject to notice and comment. Listed transactions were issued in a different regulatory context. Pre-2004 listed transactions were not backed by statutory penalties at the time of their issuance. Finally, although Congress codified other portions of the regulation, it did not adopt the Treasury's listing process.

Affirming a DC Ala. opinion, 2023-1 USTC ¶50,161.

# IRS Records Key Milestone With 1 Million Submissions Received Through Document Upload Tool

IR-2024-155

The IRS announced a key milestone in the agency's transformation work; with Document Upload Tool (DUT) accepting one million submissions. Initially, the DUT was launched in a limited format, which has greatly expanded in 2023 with the funding from the Inflation Reduction Act (IRA). During the first six months of

the fiscal year, the agency saw more than 265,000 taxpayers making use of the tool, with the number rapidly growing monthly.

"The Document Upload Tool is a key part of our ambitious initiative to transform the IRS into a virtually paperless agency, and we continue to see increased use of this by taxpayers," said IRS Commissioner Danny Werfel. The tool essentially offers taxpayers and tax professionals the option

to respond digitally to eligible IRS notices by securely uploading required documents online through IRS.gov. The IRS estimates that more than 94% of individual taxpayers will have the option of no longer having to send mail to the IRS, potentially replacing up to 125 million paper documents per year, easing the paperwork burden for both them and the IRS.

## Inflation Adjusted Credit Rate for Carbon Dioxide Sequestration Released

The IRS has released the inflation adjustment factor for the credit for carbon dioxide (CO<sub>2</sub>) sequestration under Code Sec. 45Q for 2024. The inflation adjustment factor is 1.3877, and the credit is \$27.75 per metric ton of qualified CO<sub>2</sub> under Code Sec. 45Q(a)(1), and \$13.88 per metric ton of qualified CO<sub>2</sub> under Code Sec. 45Q(a)(2). The aggregate amount of qualified CO<sub>2</sub> taken into account for purposes of Code Sec. 45Q was 75,000,000 metric tons based on the most recent annual reports filed with the IRS.

Notice 2024-39

## AI Used In Audit Selection For Tax Gap Estimation Needs More Transparency – GAO

The Internal Revenue Service's use of artificial intelligence in selecting tax returns for National Research Program audits that are used to estimate the tax gap needs more documentation and transparency, the U.S. Government Accountability Office stated.

In a report issued June 5, 2024, the federal government watchdog noted that while the agency uses AI to improve the efficiency and selection of audit cases to help identify noncompliance, "IRS has not completed its documentation of several elements of its AI sample selection models, such as key components and technical specifications."

GAO noted that the IRS began using AI in a pilot in tax year 2019 for sampling

tax returns for NRP audits. The current plan is to use AI to create a sample size of 4,000 returns to measure compliance and help inform tax gap estimates, although GAO expressed concerns about the accuracy of the estimates with that sample size.

"For example, NRP historically included more than 2,500 returns that claimed the Earned Income Tax Credit, but the redesigned sample has included less than 500 of these returns annually," the report stated.

IRS told GAO that it "is exploring ways to combine operational audit data with NRP audit data when developing its tax gap estimates. IRS officials also told us that if IRS can reliably combine these data for

tax gap analysis, IRS might be better positioned to identify emerging trends in non-compliance and reduce the uncertainty of the estimates due to the small sample size."

The report also highlighted the fact that the agency "has multiple documents that collectively provide technical details and justifications for the design of the AI models. However, no set of documents contains complete information and IRS analyst could use to run or update the models, and several key documents are in draft form."

"Completing documentation would help IRS retain organizational knowledge, ensure the models are implemented consistently, and make the process more transparent to future users," the report stated.



# Iowa Victims of Severe Storms, Tornadoes, and Flooding Granted Tax Relief

*Iowa Disaster Relief Notice (IA-2024-04)*

The president has declared a federal disaster area in Iowa. The disaster is due to severe storms, straight-line winds, tornadoes, and flooding that occurred on May 20, 2024. The disaster area includes:

- Adair;
- Montgomery;
- Polk;
- Story counties.

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 May 20, 2024, and before November 1, 2024, have been postponed to November 1, 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.

## Iowa Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after May 20, 2024, and before November 1, 2024. Further, taxpayers have until November 1, 2024, to perform other time-sensitive actions due on or after May 20, 2024, and before November 1, 2024.

The IRS excused late penalties for employment and excise tax deposits due on or after May 20, 2024, and before June 4,

2024, will be abated as long as the deposits are made by June 4, 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: "4784-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.:

# West Virginia Victims of Severe Storms, Straight-Line Winds, Tornadoes, Flooding, Landslides and Mudslides Granted Tax Relief

*IR-2024-160*

The IRS has extended tax relief to the victims of severe storms, straight-line winds, tornadoes, flooding, landslides and mudslides in West Virginia until November 1, 2024, to file various individual and business tax returns and make tax payments. The relief applies to affected taxpayers in Boone, Brooke, Cabell, Fayette, Hancock, Kanawha, Lincoln, Marshall, Nicholas, Ohio, Preston, Putnam, Tyler, Wayne and Wetzel counties.

## Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on April 2, 2024. As a result, the affected taxpayers will now have until November 1, 2024, to file returns and pay any taxes that were originally due during this period.

The November 1, 2024 deadline does apply to estimated income tax payments due on April 15, June 17 and September 16, 2024. In addition, the quarterly payroll and excise tax returns normally due

on April 30, July 31 and October 31, 2024, are also now due on November 1, 2024. Penalties on payroll and excise tax deposits due on or after April 2, 2024 and before April 17, 2024 will be abated as long as the deposits are made by April 17, 2024.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayers who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers qualifying for relief

who live outside the disaster area need to contact the IRS at 866-562-5227.

## Casualty Losses

Individuals and businesses in a federally declared disaster area who suffered

uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred (2024), or the return for the prior year (2023). Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number –

“4783-DR” – on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit [disasterassistance.gov](https://disasterassistance.gov) for information on disaster recovery.

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# Kentucky Victims of Severe storms, Straight-line Winds, Tornadoes, Landslides and Mudslides Granted Tax Relief

IR-2024-159

The IRS has extended tax relief to the victims of severe storms, straight-line winds, tornadoes, landslides and mudslides in parts of Kentucky until November 1, 2024, to file various individual and business tax returns and make tax payments. The relief applies to affected taxpayers in San Diego county.

## Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on April 2, 2024. As a result, the affected taxpayers will now have until November 1, 2024, to file returns and pay any taxes that were originally due during

this period. This includes individuals who had a valid extension to file their 2023 income tax return that was due on April 15, 2024.

The June 17, 2024 deadline does apply to estimated income tax payments due on April 15, 2024. In addition, the quarterly payroll and excise tax returns normally due on April 30, 2024, July 31 and October 31, 2024 are also now due on November 1 2024. Penalties on payroll and excise tax deposits due on or after April 2, 2024 and before April 17, 2024 will be abated as long as the deposits are made by April 17, 2024.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayers who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the

affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227.

## Casualty Losses

Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred (2024), or the return for the prior year (2023). Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number – “4782-DR” – on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit [disasterassistance.gov](https://disasterassistance.gov) for information on disaster recovery.

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# Charitable Contribution Deductions No Longer Allowed for Organizations

Announcement 2024-22; Announcement 2024-23

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

- Love Louder, of Virginia. Effective revocation date: January 1, 2021.
- Best Florida Beer, Inc., of Florida. Effective revocation date: January 1, 2018.

■ FUNCTIONAL HEALTH INC., of Georgia. Effective revocation date: January 1, 2018.

However, contributions made to the organization before June 10, 2024, will generally be deductible, unless made by a person who (1) knew of the revocation, (2) was aware that the revocation was imminent or (3) was responsible, in whole or in part, for the activities or deficiencies that gave rise to the loss of qualification.

If the organization files suit, in a timely manner, for declaratory judgment under

Code Sec. 7428, challenging the revocation of its status as an eligible donee of deductible charitable contributions, Code Sec. 170 contributions will continue to be deductible. Protection under Code Sec. 7428(c) would begin on June 10, 2024. The maximum amount of individual contributions protected would be \$1,000, with a husband and wife treated as one taxpayer. This protection is not afforded to anyone who was responsible, in whole or in part, for the acts or omissions of the organization that resulted in revocation of qualification.

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

■ **FUNCTIONAL HEALTH INC.**, of Georgia. Effective revocation date: January 1, 2018.

However, contributions made to the organization before June 10, 2024, will generally be deductible, unless made by

a person who (1) knew of the revocation, (2) was aware that the revocation was imminent or (3) was responsible, in whole or in part, for the activities or deficiencies that gave rise to the loss of qualification.

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

Sec. 170 contributions will continue to be deductible. Protection under Code Sec. 7428(c) would begin on January 1, 2018. The maximum amount of individual contributions protected would be \$1,000, with a husband and wife treated as one taxpayer. This protection is not afforded to anyone who was responsible, in whole or in part, for the acts or omissions of the organization that resulted in revocation of qualification.

## Washington Round-up

**Yellen calls for Child Tax Credit expansion.** Department of the Treasury Secretary Janet Yellen once again called for the expanded Child Tax Credit to be reinstated. Testifying June 4, 2024, before a subcommittee of the Senate Appropriations Committee during a hearing to discuss the President's fiscal 2025 budget request, she acknowledged that when it was in effect during the COVID-19 pandemic, there was a 46 percent reduction in child poverty and added that research suggests the expansion will lead to long-term gains in children's health, education, and earnings. "I think this is something that can have a profound effect on children and their well-being and future," she said, adding that the budget request includes funds to make the expansion permanent.

**Businesses Push Boundaries When IRS Underfunded.** Businesses tend to take a more aggressive stance when it comes to tax issues when the Internal Revenue Service has its budget cut compared when

the agency is fully funded, according to new research issued by the American Accounting Association. According to the study, "IRS Audit Detection Risk and Firm Tax Behavior: Can Tax Fraud Be Deterred By Increasing IRS Budgets?" researchers found that "concurrent IRS resources provide better evidence than past audit rates to measure the likelihood of tax fraud or aggressive tax decisions. We find that firms increase their tax aggressiveness and likelihood of committing tax fraud with declining IRS resources suggesting that firms account for IRS resources when making their tax decisions." Even after controlling for various firm-level time variant characteristics that have been found to be related to tax decisions and the number of corporate filings in a given year, "we still find support for higher levels of IRS resources constraining tax aggressiveness and the likelihood of committing tax fraud at firms," the study states.

**IRS taking longer to process identity theft cases.** National Taxpayer Advocate

Erin Collins noted that it is taking longer for the Internal Revenue Service to process identity theft victim assistance (IDTVA) cases for taxpayers. According to a June 6, 2024, blog post, in fiscal year 2023, the average processing time was 556 days. As of April 2024, the processing time has jumped to 675 days. The spike has been attributed to shifting personnel within the agency. "For the past two filing seasons, the IRS has reallocated resources, including employees who work IDTVA cases, to prioritize answering phone calls to meet Treasury's goal of the IRS achieving an 85 percent Level of Service on its general toll-free phone lines. Although the IRS has met the goal the past two filing seasons, it came at the expense of tax-related identity theft victims, compromising the taxpayer rights to quality service and to pay no more than the correct amount of tax." She called on the IRS to get IDTVA processing time down to its target of 120 days or fewer.

## TAX BRIEFS

### Bankruptcy

A consent order was not a final determination of an individual's tax liability. After the plan was confirmed, the IRS discovered additional taxes that the taxpayer owed. After the discovery, the Service sent the taxpayer notices of deficiency for those additional taxes. The appeals court ruled

that the consent order merely determined the amount of taxes that the bankruptcy estate would pay.

*Breland, Jr., CA-11, 2024-1 USTC ¶150,158*

### Collection

An individual's request for review of a determination by the IRS Appeals in a collection

due process (CDP) case was denied. The taxpayer had unpaid tax due to the IRS for three tax years, along with the penalty imposed for late payment. In response to the unpaid amounts, the IRS issued levy notices and advised the taxpayer of his option to request a CDP hearing with the IRS Appeals.

*Schwartz, TC, Dec. 62,475(M)*



### *Net Operating Loss*

A married couple was not entitled to claim a net operating loss (NOL) on their joint tax return. Since the taxpayer-husband's limited liability company paid the pension liabilities and was a separate legal entity for the tax year at issue, the taxpayers were not entitled to claim an NOL on their personal returns. Additionally, the taxpayers failed to demonstrate the payment for the pension liabilities was made on or before the day on which the taxpayers' return was due.

*Spiezio, TC, Dec. 62,476(M)*

### *Notice of Deficiency*

A married couple's motion for summary judgment relating to the issuance of two notices of deficiency was denied and the IRS' motion for summary judgment was granted. Moreover, the taxpayers remained unidentified partners for purposes of Code Sec. 6229(e), since they failed to comply with the foregoing specified regulatory requirements under Reg. §301.6223(c)-1T. Consequently, the notices of deficiency, which were issued to the taxpayers, were valid.

*Hamel, TC, Dec. 62,474(M)*

### *Whistleblower Awards*

The IRS Whistleblower Office (WBO) correctly determined to award an individual 15 percent of the proceeds of the income tax and employment tax examinations that were related to the individual's information.

*Smith, TC, Dec. 62,477(M)*