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INSIDE THIS ISSUE

Regulations Finalized on Statutory Disallowance of Deductions for Qualified Conservation Contributions by Partnership and S Corporations 1

Code Sec. 280E Not Applicable to Marijuana 2

Treasury Issues Regulations on Brokers' Sales and Exchanges of Digital Assets 4

Iowa Disaster Relief Notice Updated 4

Texas Disaster Relief Notice Updated 5

Identity Theft Victim Refunds, Poor Phone Metrics Named Challenges By National Taxpayer Advocate 5

Reference Price Provided for Marginal Well Production Credit 6

Final Regulations on Procedural Rules for Reporting Excise Tax on Stock Repurchases Adopted 6

Deadline for Filing Petition for Redetermination of Employment Status Not Jurisdictional 7

TIGTA Finds Productivity In Audits Of Taxpayers with More Than $10 Million in Income 7

IRS Sends Settlement Offer Letters to Select Taxpayers 8

ETAAC Issues Recommendations in 2024 Annual Report 8

FinCEN Proposed Rule Would Strengthen, Modernize Financial Institution AML/CFT Programs 8

New Mexico Victims of South Fork Fire, Salt Fire and Flooding Granted Tax Relief 9

Florida Victims of Severe Storms, Straight-Line Winds and Tornadoes Granted Tax Relief 9

Oklahoma Victims of Severe Storms, Straight-line Winds, Tornadoes, and Flooding Granted Tax Relief 10

Mississippi Victims of Severe Storms, Straight-Line Winds, Tornadoes and Flooding Granted Tax Relief 11

Tax Briefs 11

Regulations Finalized on Statutory Disallowance of Deductions for Qualified Conservation Contributions by Partnership and S Corporations

T.D. 9999

The Treasury and IRS have issued final regulations clarifying details of the statutory disallowance rule enacted in 2022 that disallows certain qualified conservation deductions to partnerships and S corporations.

Background

Code Secs. 170(f)(19) and 170(h)(7), added by the SECURE 2.0 Act of 2022, provide that a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes will not be a qualified conservation contribution if the disallowance rule applies. And any such contribution to which the disallowance rule applies will be treated as a tax-avoidance transaction.

The statutory rule disallows a qualified conservation deduction to partnerships or S corporations if the contribution amount exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis.

In November 2023, the Treasury and IRS issued proposed regulations (REG-112916-23) relating to the statutory disallowance rule and affecting both partnerships and S corporations that claim qualified conservation contributions and the partners and S corporation shareholders that receive distributive shares or pro rata shares of a noncash charitable contribution. The proposed regulations did not specifically address other types of passthrough entities.

The Final Regulations

The final regulations follow the proposed regulations in providing guidance on the statutory disallowance rule and definitions and appropriate formulas for calculating the relevant basis of a partner or an S corporation shareholder, as well as guidance on the three statutory exceptions to the statutory disallowance rule.

In addition, the final regulations (like the proposed regulations) contain reporting requirements for partners and S corporation shareholders that receive distributive or pro rata shares of any noncash charitable contribution made by a partnership or

S corporation, regardless of whether the contribution is a qualified conservation contribution (and regardless of whether the contribution is of real property or other noncash property).

The final regulations follow the proposed regulations in requiring that Forms 8283 filed by contributing partnerships and contributing S corporations include the sum of each ultimate member's relevant basis, and in providing that a partnership or S corporation filing a completed Form 8283 will be considered to have satisfied the requirements of Code Sec. 170(f)(19)(A)(i). The regulations also require all partners and shareholders of S corporations who receive an allocation of a noncash charitable contribution to file a separate Form 8283.

The final regulations—following the proposed regulations—clarify that there is no presumption that a qualified conservation contribution that is not disallowed would therefore be compliant with Code Sec. 170 or any other section of the Code, regulations, or other guidance. They also clarify that compliance with Code Sec. 170(h)(7) and with the regulations themselves does not constitute a safe harbor for purposes of any provision of law, including for determining the value of the contribution.

However, the final regulations make several modifications to the proposed regulations, as described below.

Re-Application of Reg. §1.170A-14 After Filing of Amended Return or AAR

The final regulations adopt the definitions contained in the proposed regulations, except that they alter the definition of "amount of qualified conservation contribution." Proposed Reg. §1.170A-14(j)(3)(ii) would have provided that if a contributing partnership or S corporation files an amended return or administrative adjustment request (AAR) claiming a different contribution amount than the initial amount, Reg. §1.170A-14 must be re-applied to the different amount. In response to a comment received, the final regulations limit the re-application provision by stating that if a partnership or S corporation files an amended return or AAR claiming a lower amount with respect to a qualified conservation contribution, the rules of Reg. §1.170A-14 are re-applied with respect to that lower amount only if the amended return or AAR is filed before the contributing partnership or S corporation is put on notice (as defined in the final regulations) of an IRS examination relating to the contribution. If a higher amount is claimed, Reg. §1.170A-14 is re-applied regardless, according to the final regulations.

Computation of Relevant Basis

The term "relevant basis" in Code Sec. 170(h)(7)(B)(i) refers to the portion of a partner's "modified basis" in the partnership that is allocable to the portion of real property subject to a conservation contribution. "Modified basis," in turn, is defined in Code Sec. 170(h)(7)(B)(ii) as the partner's adjusted basis in the partnership immediately before the contribution, but determined without reference to Code Sec. 752 and after taking into account required adjustments.

To clarify the statutory rule that modified basis is determined immediately before a qualified conservation contribution is made, the final regulations add a step to the list in Reg. §1.170A-14(I)(2). To take into account acquisitions of additional partnership interests or partial dispositions interest occurring after the beginning of the tax year but before the qualified conservation contribution, the added step requires the

Code Sec. 280E Not Applicable to Marijuana

The IRS reminded taxpayers that marijuana will remains a Schedule I controlled substance until a federal rule is published. Businesses that sell marijuana, even legalized sales will not be entitled to receive a refund or payment under Code Sec. 280E. Code Sec. 280E disallows all deductions or credits for any amount paid or incurred in carrying on any trade or business that consists of illegally trafficking in a Schedule I or II controlled substance within the meaning of the federal Controlled Substances Act. Although the Justice Department had published a notice of proposed rule-making with the Federal Register to initiate a formal process to consider rescheduling marijuana under the Controlled Substances Act, no final rule has been published to this date. Marijuana remains a Schedule I controlled substance and is therefore, subject to the limitations of Code Sec. 280E. Despite there being no change in the legislation, taxpayers are filing amended tax returns claiming the benefit under this section.

IR-2024-177

REFERENCE KEY

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

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"ultimate member" to increase the ultimate member's initial basis in additional interests so acquired and to decrease modified basis in interests disposed of.

The final regulations also add provisions clarifying how Code Sec. 704(c) property affect the computation of relevant basis. Final Reg. §1.170A-14(m)(2)(iii)(B) and (m)(2)(iv) provide that to determine a partner's portion of the adjusted basis in all of a contributing partnership's properties, the partnership must apportion among its partners its adjusted basis in each of its properties—except the portion of real property with respect to which the contribution is made—using the adjusted basis immediately before the contribution. The final regulation also adds a reference to Reg. §1.704-1(b)(3)(ii), which provides factors to consider in determining a partner's interest in a partnership, and requires that the apportionment reflect Code Sec. 704(c) principles.

To provide a parallel rule for an upper-tier partnership's apportionment of its adjusted bases to its properties, final Reg. §1.170A-14(m)(4)(iii)(A)(2) requires the upper-tier partnership to apportion among its partners its adjusted basis in each of its properties other than its interest in the lower-tier partnership, using the adjusted basis immediately before the qualified conservation contribution and applying principles similar to those in Code Sec. 704(b) (including the Reg. §1.704-1(b)(3)(ii) factors). Definitions in Reg. §1.170A-14(m)(4)(ii)(B) and (m)(2)(iii)(B) are modified accordingly.

Upper-Tier Partnership's Allocation of Items

To clarify that the regulations do not require an upper-tier partnership to allocate a qualified conservation contribution pro rata among its partners, final Reg. §1.706-3(a) provides that the upper-tier partnership must allocate the contribution among its partners in accordance with their interests in the qualified conservation contribution as of the time of day at which the contribution is made (rather than in proportion to their interests in the upper-tier partnership at that time of day).

Effect on 2015 Proposed Regulations

The Treasury and IRS clarify in the preamble to these final regulations that the final regulations do not withdraw proposed regulations issued under Code Sec. 706(d)(3) in 2015. To avoid confusion, the subsections of Reg. §1.706-3 are renumbered to match the numbering in the 2015 proposed regulations.

To further avoid any confusion, final Reg. §1.706-3(a) is modified to provide that an upper-tier partnership must allocate a qualified conservation contribution among its partners in accordance with their interests in the contribution regardless of the general rule in Code Sec. 706(d)(3), and that Reg. §1.706-4 does not apply to allocations subject to Reg. §1.706-3.

Definition of "Members of the Family"

In response to a comment received by the Treasury and IRS, final Reg. §1.170A-14(n)(3)(iii) is modified relative to its proposed form to provide that a decedent's estate is treated as a "member of the family" for purposes of Reg. §1.170A-14(n)(3)—which provides guidance under a family passthrough-entity exception for partnerships and S corporations—if the decedent was a member of the family at the time of death. Final Reg. §1.170A-14(n)(3)(iii) is modified, similarly, to provide that certain trusts are treated as members of the family.

Anti-Abuse Rule

Under Proposed Reg. §1.170A-14(n)(3)(iv)(A), the family passthrough-entity exception would not have applied unless at least 90 percent of the interests in property subject to a qualified conservation contribution were owned by one individual and members of that individual's family for at least one year before the date of the contribution.

The final regulations retain the one-year holding-period rule but clarify that Code Sec. 1223(1) and (2) do not apply to the determination of whether at least 90 percent of the property interests are owned for one year. The final regulations also provide that the one-year holding-period rule does not apply if the entire amount of the qualified conservation contribution is limited by Code Sec. 170(e) to the contributing partnership's or contributing S corporation's adjusted basis in the contribution.

Taxpayers to Whom the Disallowance Rule Does Not Apply

Final Reg. §1.170A-14(j)(1) includes a statement that the disallowance rule does not apply to qualified conservation contributions made directly by landowners that are not passthrough entities, such as individuals and C corporations.

Reporting Requirements

For clarity, the final regulations modify the recordkeeping requirements for allocation of modified basis in Reg. §1.170A-14(m)(6). The final regulations provide that the written statements required of contributing partnerships and S corporations with respect to the Reg. §.170A-14(n)(4) certified-historic-structure exception need not be maintained (nor does modified basis or relevant basis need to be computed) with respect to contributions that meet one of the exceptions in Reg. §1.170A-1(n)(2) or Reg. §1.170A-1(n)(4), unless the contribution also meets the Reg. §1.170A-14(n) exception.

Applicability Date

The final regulations, which are effective on June 24, 2024, generally apply to qualified conservation contributions made after December 29, 2022, and in partnership tax years ending after that date.

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Treasury Issues Regulations on Brokers' Sales and Exchanges of Digital Assets

T.D. 10000; IR-2024-178; FS-2024-23; Rev. Proc. 2024-28; Notice 2024-56; Notice 2024-57

The Treasury Department and IRS have issued regulations requiring brokers of digital assets to report certain sales and exchanges. The regulations address the reporting requirements enacted by the Infrastructure Investment and Jobs Act (P.L. 117-58). According to the IRS, the regulations will improve detection of noncompliance in the high-risk space of digital assets. In addition, the reporting requirements will provide taxpayers with the information needed to accurately report their digital asset activity. The regulations are part of the larger effort to ensure tax compliance from high-income individuals.

In addition to the broker reporting rules, the regulations establish the requirements for taxpayers to determine their basis, gain, and loss from digital asset transactions. The regulations also create backup withholding rules.

Reporting Requirements

Under the final regulations brokers must report the gross proceeds for sales or exchanges of digital assets taking place on or after January 1, 2025, on a new Form 1099-DA. In addition, the regulations require brokers to furnish their customers with payee statements. Beginning in 2026, brokers will also be required to include gain or loss and basis information for certain sales on these information returns and statements.

Real Estate Reporting

Under the final regulations, real estate reporting persons treated as brokers with respect to reportable real estate transactions would also be required to file information returns and furnish payee statements with respect to real estate purchasers who use digital assets to acquire real estate in transactions that close on or after January 1, 2026.

These real estate reporting persons would also be required to include the fair market value of digital assets paid to sellers of real estate in certain real estate transactions on Form 1099-S.

Brokers Impacted by the Regulations

These final regulations apply only to digital asset industry participants that take possession of the digital assets being sold by their customers, such as operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers, certain PDAPs, and digital asset kiosks, as well as to certain real estate reporting persons that are already subject to the broker reporting rules. Brokers that do not take possession of the digital assets being sold or exchanged, often referred to as decentralized or non-custodial brokers, are not subject to the new reporting requirements. The IRS will provide rules for these brokers in separate regulations.

The definitions of a processor of digital asset payments (PDAP) and PDAP sales applies only to transactions in which PDAPs take possession of the digital asset payment. The requirement that a person must receive the digital assets in order to be a PDAP covers all transactions. Proposed new digital asset middleman rules that apply to non-custodial industry participants were not finalized. The IRS continue to study this area. However, the acceptance of digital assets in return for cash, stored-value cards, or different digital assets by a physical electronic terminal or kiosk is identified as a facilitative service.

The final regulations include a rule allowing taxpayers to use a standing order or instruction to make adequate identifications of digital assets. A broker may also take into account customer provided acquisition information for purposes of identifying which units are sold, disposed of, or transferred under the identification rules. A new rule accommodates the unlikely circumstance in which the broker does not have any transfer-in date information about the units in the broker's custody.

Stablecoins and NFTs

Stablecoins pegged to a fiat currency are not excluded from the definition of "digital assets." The IRS will take into account any subsequent legislation regarding stablecoins. The final regs provide an alternative reporting method for certain stablecoin transactions. The final regs also provide an alternative reporting method for certain types of nonfungible tokens (NFTs). For PDAP transactions, the regulations require reporting on a transactional basis only if the customer's sales are above a de minimis threshold.

Iowa Disaster Relief Notice Updated

A June 6, 2024, notice granting relief to victims of severe storms, tornadoes and flooding that began on May 20, 2024, in parts of Iowa was updated by the IRS on June 25, 2024, to include Adams, Cedar and Jasper counties.

Iowa Disaster Relief Notice (IA-2024-04)

The IRS concluded that optional approaches to reporting dual classification assets generally are not appropriate, but special rules may apply to tokenized securities (which do not include stablecoins). Exceptions also apply to apply to dual classification assets that are cleared or settled on a limited-access regulated network, are section 1256 contracts, or are shares in money market funds. Additional special rules apply when a dual classification asset is a digital asset solely because its sale is cleared or settled on a limited-access regulated network.

Texas Disaster Relief Notice Updated

A May 28, 2024 notice granting relief to victims of severe storms, straight-line winds, tornadoes and flooding that began on April 26, 2024, in parts of Texas was updated by the IRS on June 20, 2024, to include Robertson county. Further, the notice was updated by the IRS on June 24, 2024, to include Coke, Fannin, Lynn, Panola, San Augustine, Shelby and Sterling counties.

Texas Disaster Relief Notice (TX-2024-13)

Delay on Information Reporting for Certain Transactions

Under Notice 2024-57, until the IRS issues further guidance, brokers will not have to file information returns or furnish payee statements on digital asset sales and exchanges for the following six types of transactions:

- Wrapping and unwrapping transactions,
- Liquidity provider transactions,
- Staking transactions,
- Transactions described by digital asset market participants as lending of digital assets,
- Transactions described by digital asset market participants as short sales of digital assets, and
- Notional principal contract transactions.

Transitional Relief

The IRS has provided general transitional relief in Notice 2024-56. Any broker who does not timely and accurately file information returns and furnish payee statements for sales and exchanges of digital assets during calendar year 2025, will not be subject to reporting penalties and backup withholding, provided that the broker makes a good faith effort to comply with the reporting obligations. In addition, more limited relief is provided from backup withholding for certain sales of digital assets during 2026 for brokers using the IRS's TIN-matching system in place of certified TINs. Finally, the Notice provides backup withholding relief for exchanges of digital assets in return for specified NFTs and real property and for certain sales effected by PDAPs.

Identity Theft Victim Refunds, Poor Phone Metrics Named Challenges By National Taxpayer Advocate

IR-2024-173

National Taxpayer Advocate Erin Collins identified a number of challenges facing the Internal Revenue Service, including getting refunds issued to identity theft victims and more clarity on measuring telephone customer service.

The items were identified in the NTA's mid-year report to Congress, issued June 26, 2024, in which the overall 2024 tax filing season was said to "generally ran smoothly."

"For most taxpayers, the filing season is the only time they interact with the IRS," Collins wrote. "After several years of abysmal taxpayer service during the COVID-19 pandemic, the IRS has now delivered two filing seasons that demonstrate the agency has restored service to pre-pandemic levels and has improved in most, but not all, areas of service. This is excellent news for most taxpayers."

One of the areas highlighted that needs improvement is getting refunds to victims of identity theft, a problem that has actually gotten worse in recent years.

The report notes that in the 2023 NTA annual report to Congress, it was reported that the agency "was taking about 19 months to identify the legitimate taxpayers and issue their refunds," according to a statement issued the same day as the report. "As of April 2024, the IRS was taking more than 22 months to resolve identity theft victims' assistance cases, plus several weeks to issue refunds, and it had approximately 500,000 unresolved cases in its inventory," up from 484,000 cases as of September 30, 2023.

"The IRS must prioritize assistance for these victims and fix this problem quickly," Collins wrote.

The report also criticizes the use of Accounts Management Customer Service Representative Level of Service as the principal and most widely cited measure of taxpayer service, which Collins asserts is causing the agency to "prioritize the wrong work, and it needs to be replaced."

"In my opinion, the AM LOS measure has taken on an outsized importance in recent years, as the IRS has allocated resources to hit ambitious by arbitrary

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goals that mean less than meets the eye and that consequently have required the IRS to neglect calls to non-AM telephone lines and workstreams like paper correspondence that I believe should receive higher priority," Collins wrote.

One issue that Collins pointed out is that the current LOS of 88 percent "leaves many observers with the impression that IRS employees answered 88 percent of taxpayer call," the statement notes. "In fact, IRS employees answered only 31 percent of taxpayer calls."

Collins also provided a specific example of why LOS can prioritize the wrong kinds of calls that actually help taxpayers who need specific assistance.

"One would expect a caller facing eviction because an IRS levy is leaving her unable to pay her rent would receive priority over a caller requesting an accounting transcript," the report notes. "But because the IRS's benchmark LOS measure is based solely on the percentage of calls it answers on the AM telephone lines, the agency places a lower priority on calls that don't factor in to the benchmark LOS calculation."

NTA Collins asserts that the achieving the LOS goal of 85 percent causes the agency to overstaff the AM telephone lines, which results in unproductive employee time (those employees spent 29 percent of their time waiting for calls during the 2024 filing season) and neglect of other priority work.

Reference Price Provided for Marginal Well Production Credit

The IRS has provided the applicable reference price for qualified natural gas production from qualified marginal wells during tax years beginning in 2024 for determining the marginal well production credit (MWC). The applicable reference price for tax years beginning in 2024 is $2.04 per 1,000 cubic feet (mcf). Also provided is the credit amount used for determining the MWC for tax years beginning in calendar year 2024. The credit amount is determined using the 2024 inflation adjustment factor of 1.5447 and the applicable reference price of $2.04 per mcf. Therefore, the credit amount for tax years beginning in calendar year 2024 is $0.77 per mcf.

Notice 2024-52

Final Regulations on Procedural Rules for Reporting Excise Tax on Stock Repurchases Adopted

T.D. 10002; IR-2024-179

The IRS released final regulations on the reporting and recordkeeping requirements related to the excise tax on stock repurchases implemented under the Inflation Reduction Act of 2022 (P.L. 117-169). The proposed regulations (NPRM REG-118499-23) were published on April 12, 2024, along with a second set of proposed regulations that provided operative rules related to the excise tax. The regulations finalized by the IRS are the final version of the proposed procedural regulations only.

The proposed regulations provided 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.

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.

The final regulations largely adopt the proposed regulations, which were consistent with earlier guidance issued in Notice 2023-2. Aside from some nonsubstantive changes, and a slight change to the effective date of the new regulations (discussed below), the lone change to the proposed regulations made in these final regulations was to clarify that the statutory exception from the excise tax under Code Sec. 4051(e)(5) for a RIC or REIT applies to all repurchases made during the year, but the recordkeeping requirements will nonetheless apply.

Applicability Date of Final Regulations

These final regulations apply to stock repurchase excise tax returns (and to the extent relevant, claims for refund) required to be filed after the date these final regulations are filed with the Federal Register, and during tax years ending after the date these final regulations are filed in the Federal Register, or June 28, 2024. This is a change from the proposed regulations, which provided that the date triggering application was upon publication in the Federal Register.

Deadline for Filing Petition for Redetermination of Employment Status Not Jurisdictional

Belagio Fine Jewelry, Inc., 162 TC—, Dec. 62,483

The Tax Court has held that the 90-day deadline under Code Sec. 7436(b)(2) for filing a petition for redetermination of employment status is not jurisdictional, based on the statute's text, context, and relevant historical treatment.

The taxpayer was a business that had not filed quarterly employment tax returns for the tax periods at issue. After an audit, the IRS issued to the taxpayer a notice of employment tax determination under Code Sec. 7436 which provided that the taxpayer had an employee during those periods, and determined employment tax deficiencies and penalties. The notice listed the last day to file a petition for redetermination, but the taxpayer's mailed petition arrived at the Tax Court one day after the 90-day deadline.

The IRS filed a motion to dismiss for lack of jurisdiction, alleging that the 90-day period to petition the Tax Court was jurisdictional, and therefore the taxpayer's failure to file within that period deprived the court of jurisdiction. The taxpayer argued that, even though the petition was untimely, the court did not lack jurisdiction because the 90-day deadline was a claim-processing rule, subject to equitable tolling.

Text, Context, and Historical Treatment

Code Sec. 7436(b)(2) states that if the IRS sends by certified or registered mail a notice of employment tax determination to a taxpayer, no proceeding may be initiated for redetermination unless the pleading is filed before the 91st day after the date of the IRS's mailing. Noting that a procedural requirement is treated as jurisdictional only if Congress "clearly states" that the deadline is jurisdictional, the Tax Court examined the text, context, and relevant historical treatment of this requirement, and denied the IRS's motion to dismiss.

Regarding the text, the court stated that the limitation does not speak in jurisdictional terms, but instead refers only to a consequence to a taxpayer for failure to comply with the 90-day deadline: that "no proceeding may be initiated." Nothing in the text of Code Sec. 7436(b)(2) restricts the court's ability to hear the case, consider pleadings, or to act upon motions. Further, Code Sec. 7436(b)(2) does not reference the Tax Court at all, which cuts against finding that Congress clearly intended the deadline to be jurisdictional.

The court determined that the statutory context supported the conclusion that Congress did not clearly state that the 90-day deadline in Code Sec. 7436(b)(2) is jurisdictional. Noting that the provision that conferred jurisdiction on the court to redetermine employment status was Code Sec. 7436(a), the court pointed out that the 90-day deadline was in a different subsection, that the jurisdictional grant did not expressly condition jurisdiction on compliance with the deadline, and that there was no express cross-reference between the jurisdictional grant and the deadline. The court also observed that other tax sections enacted around the same time as Code Sec. 7436 more clearly linked their jurisdictional grant to a filing deadline. Further, the court noted that Code Sec. 7436(b)(2) created exceptions that would be "unusual" for a jurisdictional requirement.

Finally, the court ruled that the relevant historical treatment of Code Sec. 7436 did not demonstrate that Congress clearly intended the 90-day deadline to be jurisdictional. The court noted that Code Sec. 7436 as well as similarly-worded statutes lacked a long line of Supreme Court cases interpreting their deadlines as jurisdictional. Further, the "prior-construction canon" – if a statute is reenacted using words or phrases that have been uniformly construed by inferior courts, then the later version of that statute preserving the wording is presumed to carry forward that interpretation – did not apply because Code Sec. 7436 was amended before the Tax Court's interpretation of the 90-day deadline as jurisdictional in *SECC Corporation*, Dec. 59,870.

The court also stated that it would not treat *SECC Corporation* as precedential for purposes of determining whether the 90-day deadline is jurisdictional. In that case, whether the failure to comply with the 90-day deadline should result in dismissal for lack of jurisdiction was not at issue.

TIGTA Finds Productivity In Audits Of Taxpayers with More Than $10 Million in Income

The Treasury Inspector General for Tax Administration recently found some productivity in the Internal Revenue Service's auditing of those reporting more than $10 million in total positive income as the agency moved away from targeting those individuals.

In 2020, the Department of the Treasury directed the IRS to audit a minimum of 8 percent of all high-income individual returns filed each year, with the IRS using returns with a total positive income of $10 million or more as its selection criteria. That directive was updated in August 2022 to ensure that no Inflation Reduction Act funds would be used to increase audit rates one taxpayers with incomes below $400,000.

In changing tactics, the IRS no longer issues it annual Audit Rate $10M Monitoring Report, which would identify if the agency met that 8 percent audit rate target.

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"The IRS complied with the 2020 Treasury Directive for three tax years, but ceased monitoring it at the end of Fiscal Year 2023," TIGTA stated in its June 20, 2024, report. However, as of December 2022, the agency no longer followed that directive "because these audits were unproductive having high no-charge rates," the report states.

The productivity of the audit, however, ultimately became a function of who was conducting the examination.

"TIGTA found that many of the examined returns pursuant to the 2020 Treasury Directive were productive depending on which IRS function conducted the examinations and which case selection methods were used," the Treasury watchdog found. "The Small Business/Self Employed Division's closed examinations of individual taxpayer returns with income of $10 million or more, in Tax Year 2016 through 2021, were generally more productive than income ranges below $10 million, yielding four tines more dollars assessed per return and two times more dollars assessed per hour when compared to examinations of returns with income of $400,000 to under $10 million."

According to the report, during the six years examined by TIGTA, the SB/SE Division assessed over $574 million, averaging approximately $124,389 per return and approximately $2,220 per hour for individual returns with TIP of $10 million or more.

The investigation also found that Large Business and International Division case selection methods used prior to the 2020 directive "resulted in better productivity metrics when compared to post-Treasury Directive results" One example was the no-change rate, which increased when comparing pre-directive tax years to post-directive tax years.

IRS Sends Settlement Offer Letters to Select Taxpayers

IR-2024-174

The IRS has announced the mailing of a time-limited settlement offer to certain taxpayers who have participated in Syndicated Conservation Easements (SCE) and substantially similar transactions that are under audit in the IRS's Large Business & International and Small Business and Self-Employed divisions. This additional step is being taken in the interest of sound tax administration.

All eligible taxpayers will be notified by way of letters with the applicable terms and timelines to respond to the communication. By choosing the settlement offer, taxpayers can curb the enforcement actions against them. Meanwhile taxpayers who are under examination and receive such a letter and elect not to participate will continue to face IRS enforcement actions. Taxpayers who have cases pending in the U.S Tax Court are not eligible for this settlement offer.

ETAAC Issues Recommendations in 2024 Annual Report

IR-2024-175

The IRS Electronic Tax Administration Advisory Committee (ETAAC) has released its 2024 annual report, which includes 12 recommendations—three directed to Congress and nine to the IRS. The committee's recommendations to the IRS focus on enhancing electronic filing and information sharing. Key suggestions include enabling API access to taxpayer information, developing alternatives to the self-select PIN, and promoting greater collaboration between the IRS, states, and industry partners. The recommendations to Congress include granting the IRS authority to regulate non-credentialed tax preparers, ensuring consistent funding for effective tax administration, and increasing funds for the National Taxpayer Advocate. IRS Commissioner Danny Werfel commended the ETAAC members for their advisory role in improving tax administration. The report was presented at a public meeting in Washington, D.C., where IRS Deputy Commissioner Douglas O'Donnell acknowledged the contributions of 11 committee members whose terms ended on June 26, 2024.

FinCEN Proposed Rule Would Strengthen, Modernize Financial Institution AML/CFT Programs

FinCEN Proposed Rule RIN-1506-AB52; FinCEN Fact Sheet: Proposed Rule to Strengthen and Modernize Financial Institution AML/CFT Programs; FinCEN Issues Proposed Rule to Strengthen and Modernize Financial' AML/CFT Programs

The Financial Crimes Enforcement Network (FinCEN) is proposing a rule to strengthen and modernize financial institutions' anti-money laundering and countering the financing of terrorism (AML/CFT) programs under part of the Anti-Money Laundering Act of 2020 (AML Act).

While financial institutions have long maintained AML/CFT programs under existing regulations, the proposed rule would explicitly require these institutions to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs with certain minimum components, including a mandatory risk assessment process. It also would require financial institutions to review government-wide AML/CFT priorities, and incorporate them into risk-based programs as appropriate, and would

provide for certain technical changes to program requirements.

The proposal also articulates certain broader considerations for an effective and risk-based AML/CFT framework as envisioned by the AML Act, and proposes regulatory amendments to promote clarity and consistency across its program rules for different types of financial institutions.

For these purposes, financial institutions include: banks; brokers or dealers in securities; casinos and card clubs; credit card systems operators; dealers in precious metals, precious stones, or jewels; futures commission merchants and introducing brokers in commodities; housing government sponsored enterprises; insurance companies; loan or finance companies; money services businesses; and mutual funds.

Request for Comments

Written comments may be submitted on or before the date that is 60 days after the proposed rule is published in the Federal Register.

Comments may be submitted by one of the following methods: (1) Federal E-rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2024–0013. (2) Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2024-0013.

New Mexico Victims of South Fork Fire, Salt Fire and Flooding Granted Tax Relief

New Mexico Disaster Relief Notice (NM-2024-05)

The president has declared a federal disaster area in New Mexico. The disaster is due to South Fork Fire, salt fire and flooding that began on June 17, 2024. The disaster area includes the counties of:

- Lincoln and Otero, and
- On lands of the Mescalero Apache Tribe.

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

New Mexico Filing Deadlines Extended

The IRS extended certain deadlines falling on or after June 17, 2024, and on or before November 1, 2024, 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.

New Mexico Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after June 17, 2024, and September 16, 2024, and before November 1, 2024. Further, taxpayers have until November 1, 2024, to perform other time-sensitive actions due on or after June 17, 2024 and before November 1, 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 assigned FEMA declaration number "4795-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.

Florida Victims of Severe Storms, Straight-Line Winds and Tornadoes Granted Tax Relief

Florida Disaster Relief Notice (FL-2024-06)

The president has declared a federal disaster area in Florida. The disaster is due severe storms, straight-line winds and tornadoes that began on May 10, 2024. The disaster area includes the counties of:

- Baker,
- Gadsden,
- Hamilton,
- Lafayette,

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- Leon,
- Liberty,
- Madison,
- Suwannee,
- Taylor, and
- Wakulla.

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

Florida Filing Deadlines Extended

The IRS extended certain deadlines falling on or after May 10, 2024, and on or before November 1, 2024, 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.

Florida Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after June 17, 2024, and September 16, 2024, and before November 1, 2024. Further, taxpayers have until November 1, 2024, to perform other time-sensitive actions due on or after May 10, 2024 and before November 1, 2024.

The IRS excused late penalties for employment and excise tax deposits due on or after May 10, 2024, and before May 28, 2024. But, the taxpayer must make the deposits by May 28, 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 assigned FEMA declaration number “4794-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.

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

Oklahoma Disaster Relief Notice (OK-2024-02)

The president has declared a federal disaster area in Oklahoma. The disaster is due to severe storms, straight-line winds, tornadoes, and flooding that began on May 19, 2024. The disaster area includes:

- Blaine;
- Caddo;
- Cluster;
- Delaware;
- Jackson;
- Mayes;
- Muskogee; and
- Rogers counties.

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

Oklahoma Filing Deadlines Extended

The IRS extended certain deadlines falling on or after May 19, 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.

Oklahoma Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax payments due on or after May 19, 2024, and before November 1, 2024. Further, taxpayers have until November 1, 2024, to perform other time-sensitive actions due on or after May 19, 2024, and before November 1, 2024.

The IRS excused late penalties for employment and excise tax deposits due on or after May 19, 2024, and before June 3, 2024, will be abated as long as the deposits are made by June 3, 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 2024 or 2023 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2024 or 2023 return should write

the FEMA disaster declaration number "4791-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.

Mississippi Victims of Severe Storms, Straight-Line Winds, Tornadoes and Flooding Granted Tax Relief

IR-2024-176

The IRS has extended tax relief to the victims of severe storms, straight-line winds, tornadoes and flooding in Mississippi until November 1, 2024, to file various individual and business tax returns and make tax payments. The relief applies to affected taxpayers in Hancock, Hinds, Humphreys, Madison, Neshoba and Scot counties.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on April 8, 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 8, 2024 and before April 23, 2024 will be abated as long as the deposits are made by April 23, 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 "4790-DR" on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit disasterassistance.gov for information on disaster recovery.

TAX BRIEFS

Collections

The SO did not abuse his discretion by not considering the taxpayer's petitioner's alleged amended tax return, which would purportedly lower tax liability and lower the proposed installment agreement amount. Because the taxpayer had a prior opportunity to dispute the underlying liability, she was not entitled to dispute the underlying liability at the CDP hearing. The SO also did not abuse his discretion in offering a proposed installment agreement that the taxpayer rejected.

Mathew, TC, Dec. 62,481(M)

Reconstruction of Income

A married couple never asked the Tax Court to disregard or amend a Schedule E adjustment and other issues. Nor did they argue that relying on the adjustment would be manifestly unjust or contrary to the trial evidence. Their own computation brief discussed the adjustment without asserting it was inaccurately phrased in any way. Therefore, the taxpayers forfeited the issue.

Kohout, CA-11, 2024-1 USTC ¶50,165

Retirement Plans

An individual was not entitled to her sister's death benefits arising from a pension plan (the plan) under the Employee Retirement Income Security Act (ERISA).

Liu, DC Calif., 2024-1 USTC ¶50,167

Tax-Exempt Organizations

The district court correctly affirmed the IRS's denial of a religious organization's application for tax-exempt status under Code Sec. 501(c)(3).

Iowaska Church of Healing, CA-D.C., 2024-1 USTC ¶50,166

Daystar Public Radio Inc., of Florida. no longer qualifies as an organization for which deductions for charitable contributions are allowed. The effective revocation date is January 1, 2018. However, contributions made to the organization before July 1, 2024, will generally be deductible, unless made by a person who (1) knew of

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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.

Announcement 2024-27

Understatement of Income

An individual failed to report taxable individual retirement account (IRA) distributions, taxable Social Security income, and partnership income. The taxpayer was not entitled to the innocent spouse relief under Code Sec. 6015.

Cotroneo, TC, Dec. 62,482(M)

Supreme Court Docket

A petition for review was denied in the following case:

I.B. Culp, CA-3—The Tax Court improperly determined that it lacked jurisdiction over a challenge to a Notice of Deficiency. The IRS properly mailed the Notice of Deficiency to the taxpayers' last known address, but their petition was not filed within 90 days of the filing. The Court of Appeals held that the 90-day deadline is not jurisdictional and the Tax Court should have determined whether the taxpayers were entitled to equitable tolling. The jurisdictional limitation related to remedies the Tax Court can order and not to the power to review untimely petitions.

A petition for review was denied in the following case:

VSHPHH Trust, CA-3—A trust was an individual taxpayer's third-party nominee, and the district court properly ordered the sale of one of the trust's properties to satisfy the taxpayer's outstanding. The record established that the taxpayer exercised substantial control over the property after it was transferred to the trust. The trust argued that it was not a third-party nominee under the six factors articulated in *Patras*, CA-3, 2013-2 USTC ¶50,597. However, five of these factors weighed in favor of treating the trust as a third-party nominee. Additionally, a delinquent taxpayer need not actually possess title to a piece of property for a nominee lien to attach. Accordingly, the district court did not err by concluding that the trust obtained title to the property as the taxpayer's third-party nominee.