



# FEDERAL TAX WEEKLY

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## IRS Needs To Do More In Underserved Markets – TIGTA

The Internal Revenue Service needs to do more in underserved markets, according to a recent report from the Treasury Inspector General for Tax Administration.

“The IRS has made improvements to increase the accessibility and availability of customer service in underserved, underrepresented, and rural communities; however additional efforts are needed to improve the geographic outreach efforts in these communities,” a June 25, 2024, report states.

One of the problems identified in the report is that while there are various models that the agency uses to identify these populations, “there is no clear definition for these populations. Without a clear definition of what constitutes these populations, the IRS is unable to measure its progress in increasing accessibility and availability to these segments of taxpayers.”

The agency watchdog noted that not having a clear definition “presents a risk that the IRS will not meet the objectives of the SOP [Strategic Operating Plan] and as such, will not provide additional service where it is needed and to whom needs it.”

TIGTA also reported that the IRS’s data for determining locations to set up Taxpayer Assistance Centers is out of date and causing the agency to not reach these underserved populations. The agency is currently using demographic data from 2016 to identify the availability of TACs but, as TIGTA reports, citing U.S. Census Bureau data, “approximately 8.2 million people moved to different states in 2022. Considering the IRS is using data over six years old, the information is most likely outdated and therefore, the IRS may be incorrectly identifying where underserved and underrepresented populations are located.”

TIGTA also called for a more comprehensive communications strategy to reach these populations.

“[W]e identified that additional efforts are needed to market these efforts to increase taxpayer education and awareness as to these eligible services,” including TACs, Volunteer Income Tax Assistance, Low-Income Taxpayer Clinics, and Taxpayer Counseling for the Elderly, the report stated.

For example, IRS management stated that some events in rural communities had low attendance, with IRS management noting that the agency “relies on the local contact personnel within each community to help spread the word about these types of events,” TIGTA reported. “Intentional planning and focused marketing strategies could increase taxpayer participation.”

TIGTA made a number of recommendations it said the IRS agreed with.

# Proposed Regulations Allow Recapture of Interest on Excess COVID Employment Tax Credits

*Proposed Regulations, NPRM REG-109032-23*

The Treasury and IRS have proposed regulations allowing the IRS to assess as an underpayment of tax any overpayment interest paid to a taxpayer on an erroneous refund of the COVID-19 employment tax credits provided under the Families First Coronavirus Response Act (Families First Act) (P.L. 116-127, as amended and extended by Subtitle B of Title II of Division N of P.L. 116-260), the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), and the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2).

The proposed regulations affect businesses, tax-exempt organizations, and certain governmental entities that claim the following refundable credits:

- the paid sick leave credit and the paid family leave credit under the Families First Act and ARP, and
- the employee retention credit under the CARES Act and ARP.

## Recapture Regulations for Erroneous COVID Credit Refunds

In July 2023, final regulations were issued under Code Secs. 3111, 3131, 3132, 3134, and 3221 for the

## 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 28, 2024, to include Buena Vista, Butler, Calhoun, Cherokee, Clay, Dallas, Franklin, Hamilton, Hancock, Harrison, Humboldt, Iowa, Jackson, Kossuth, Marshall, Mitchell, Muscatine, Pottawattamie, Poweshiek, Shelby, Tama, and Wright counties.

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

administrative recapture of erroneously refunded COVID-19 credits (T.D. 9978). Under these regulations, erroneous refunds of COVID-19 credits are treated as underpayments of the taxes imposed under Code Sec. 3111(a) or (b), as applicable, and so much of the taxes imposed under Code Sec. 3221(a) as are attributable to the rate in effect under Code Sec. 3111(a) or (b), as applicable, and are subject to assessment and administrative collection procedures.

The recapture regulations allow the IRS to (1) prevent taxpayers from avoiding the purposes of the limitations under the COVID employment tax credit provisions, and (2) recover erroneous refund amounts efficiently while preserving taxpayers' administrative protections when they contest their tax liabilities and avoiding unnecessary costs and burdens associated with litigation.

Code Sec. 6611 requires the IRS to pay interest to taxpayers on overpayments of tax. The current recapture regulations do not address overpayment interest paid to a taxpayer on an erroneous refund.

## Recapture of Overpayment Interest

The proposed regulations would provide that any overpayment interest paid under

Code Sec. 6611 to an employer for an erroneous refund of the COVID-19 credits will be treated as an underpayment of the taxes imposed under Code Sec. 3111(a) or (b), as applicable, and so much of the taxes imposed under Code Sec. 3221(a) as are attributable to the rate in effect under Code Sec. 3111(a) or (b), as applicable. The IRS may assess and collect the interest in the same manner as the taxes.

## Request for Comments, Hearing

Written or electronic comments and requests for a public hearing must be received by Friday, August 16, 2024 (i.e., 45 days after the proposed regulations are published in the Federal Register).

Commenters are strongly encouraged to submit public comments electronically via Federal E-rulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-109032-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Paper submissions should be sent to CC:PA:01:PR (REG-109032-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

### REFERENCE KEY

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

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# IRS Releases Proposed Amendments to Regs Regarding Payment of Tax by Commercially Acceptable Means

*Proposed Regulations, NPRM REG-120137-19*

The IRS has released proposed amendments to regulations regarding the payment of tax by commercially acceptable means. The proposed amendments reflect changes to the law made by the Taxpayer First Act (TFA), (P.L. 116-25), that would allow the IRS to directly accept payments of tax by credit or debit card, without having to connect taxpayers to third-party payment processors.

## Background

Existing Reg. §301.6311-2 authorizes payment of taxes by credit or debit card so long as such payments are made in the manner and in accordance with the forms, instructions and procedures prescribed by the IRS Commissioner. Prior to passage of the TFA, Code Sec. 6311(d)(2) authorized the Secretary to enter into contracts to obtain services related to receiving payment of taxes by credit card or debit card, or charge card, but prohibited the Secretary from paying any fee or other consideration under any such contract. Currently, the IRS utilizes third-party processors to process payment of taxes by credit cards, which includes charge cards, and debit cards for which taxpayers pay a processing fee directly to the third-party processor. Third-party processors charge a variable percentage fee for payment by credit card and a flat fee for payment by debit card.

## Florida Disaster Relief Notice Updated

A June 25, 2024 notice granting relief to victims of severe storms, straight-line winds and tornadoes that began on May 10, 2024, in parts of Florida was updated by the IRS on June 28, 2024, to include Jefferson and Santa Rosa counties.

*Florida Disaster Relief Florida (FL-2024-06)*

Section 2303 of the TFA amended Code Sec. 6311(d)(2) by adding a discretionary exception whereby the Secretary is no longer prohibited from paying a fee under a contract related to receiving payment of taxes by credit or debit card to the extent that the Secretary ensures that any such fee is fully recouped from the persons paying taxes by credit or debit card pursuant to such contract. This provision enables the IRS to receive similar benefits as other entities that accept credit or debit cards, including guaranteed receipt of funds and reduction of paper check processing costs.

## Explanation of Provisions

The proposed regulations would amend existing Reg. §301.6311-2 to conform to the TFA's amendment to Code Sec. 6311(d)(2). Further, because the exception added to Code Sec. 6311(d)(2) by the TFA is discretionary, proposed Reg. §301.6311-2(e)(1) would continue to authorize the IRS to enter into those contracts with third-party processors in which it does not pay a fee for services relating to receiving payments of tax by credit or debit card. However, if the IRS pays a fee under such a contract, under Proposed Reg. §301.6311-2(e)(2), the IRS would fully recoup the amount of the fee paid to the third-party from the taxpayers by credit or debit card pursuant to the contract as a reimbursement fee. The taxpayer would be required to pay the reimbursement fee at the time of the credit or debit card tax payment.

Finally, Proposed Reg. §301.6311-2(e) would authorize the IRS to enter into contracts with third parties, regardless of whether the IRS pays a fee, but only if the contract provides a cost benefit to the government. The cost benefit to the government is derived from a reduction of check processing costs. Additionally, expanding taxpayers' payment options generally encourages tax compliance, so it is beneficial for both the government and taxpayers.

## Comments and Requests for Public Hearing

The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic and paper comments submitted will be made available at <https://www.regulations.gov> or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically.

## Proposed Applicability Date

The regulations are proposed to apply to payments of taxes and reimbursement fees made on or after the date the regulations are published as final regulations in the Federal Register.

# Automatic Change in Accounting Method Rules Updated for Reliance Regs Regarding Bad Debts Held by Regulated Financial Companies

Rev. Proc. 2024-30

The IRS has updated the automatic change in accounting method procedures in Rev. Proc. 2024-23 to include a change to the allowance charge-off method under Proposed Reg. §1.166-2(d)(1). This change is effective for tax years ending on or after December 28, 2023.

## Reliance Regulations

On December 28, 2023, the IRS issued proposed reliance regulations that updated guidance on whether a debt instrument held by a regulated financial company or member of a regulated financial group is worthless for federal income tax purposes.

Proposed Reg. §1.166-2(d) allows regulated financial companies and members of

regulated financial groups to use the allowance charge-off method. The allowance charge-off method permits amounts charged off from the allowance for credit losses, or pursuant to Statements of Statutory Accounting Principles (SSAP) standards, to be conclusively presumed to be worthless for federal income tax purposes. Because the allowance charge-off method determines the timing of the bad debt deduction, it is a change in method of accounting, which would require consent from the IRS.

## Change to the Allowance Charge-Off Method of Accounting

This change only applies to charge-offs, defined in Proposed Reg. §1.166-2(d)(4) (i) made by a regulated financial company or a member of a regulated financial

group on its applicable financial statement that occur on or after the beginning of the year of change. Banks that wish to change their method of accounting for bad debts from the IRC §585 reserve method to the allowance charge-off method must request consent from the IRS. In addition, any charge-offs that occurred prior to the year of change are accounted for under the taxpayer's former method of accounting.

Rev. Proc. 2024-30 also clarifies that a regulated financial company or a member of a regulated financial group that previously made a conformity election under Reg. §1.166-2(d)(3) and then changes its method of accounting to the allowance charge-off method is treated as having revoked its conformity election under Reg. §1.166-2(d)(3)(iv).

Rev. Proc. 2024-30 has modified Rev. Proc. 2024-23.

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

Iowa Disaster Relief Notice (IA-2024-08)

The president has declared a federal disaster area in Iowa. The disaster is due to severe storms, straight-line winds, tornadoes, and flooding that began on June 16, 2024. The disaster area includes:

- Buena Vista;
- Clay;
- Dickinson;
- Emmet;
- Lyon;
- O'Brien;
- Osceola;
- Plymouth; and
- Sioux 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 June 16, 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 June 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 16, 2024, and before November 1, 2024.

The IRS excused late penalties for employment and excise tax deposits due on

or after June 16, 2024, and before July 1, 2024, will be abated as long as the deposits are made by July 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 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: “4796-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.

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## IRS Reminds Disaster Victims of July 15 Deadline

*IR-2024-181*

The IRS reminded taxpayers in parts of Alaska, Maine and Rhode Island, that their 2023 federal tax returns and payments are due on July 15, 2024. The agency had postponed various tax filing and payment deadlines for disaster areas designated by the Federal Emergency Management

Agency (FEMA). The areas qualified for the deadline are:

- the Wrangell Cooperative Association of Alaska Tribal Nation;
- eight counties in Maine: Cumberland, Hancock, Knox, Lincoln, Sagadahoc, Waldo, Washington and York;
- four counties in Rhode Island: Kent, Newport, Providence and Washington.

In addition, taxpayers who require more time to file their returns, must file their extension requests on paper, using Form 4868, as e-file options for requesting an extension are not available after April 15, 2024. By filing this form, disaster-area taxpayers will have until October 15, 2024 to file, though tax payments are still due by June 15, 2024.

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## IRS Issues Warning on Clean Energy Tax Credit Scam

*IR-2024-182*

The IRS has issued a cautionary alert to taxpayers about a new scam exploiting clean energy tax credits. This emerging fraud involves deceitful tax preparers misrepresenting the rules for claiming clean energy tax credits as outlined in the Inflation Reduction Act (IRA).

The IRS has identified cases where tax returns prepared by unscrupulous individuals claim ineligible clean energy credits, misleading taxpayers into believing they can offset tax liabilities. Particularly affected are those filing Form 1040, who

find their returns manipulated to improperly claim credits against income tax from wages, Social Security, and retirement withdrawals. Commissioner Danny Werfel highlighted the issue, stating, “Scammers are capitalizing on the complexity of tax laws, enticing taxpayers to claim illegitimate credits.” He urged taxpayers to consult reputable tax professionals when dealing with complex credits like those for clean energy.

Under the IRA, purchased clean energy credits are subject to passive activity rules, typically restricting their use to offsetting tax from passive income. Most

taxpayers, lacking passive income, are ineligible for these credits, risking future IRS compliance actions and potential penalties. Taxpayers should verify their eligibility with trusted advisors before purchasing and claiming clean energy credits. More information is available on the Inflation Reduction Act page on the IRS website.

The IRS also cautioned against other prevalent scams, including those involving the Fuel Tax Credit and Sick and Family Leave Credit. Taxpayers are encouraged to report any fraudulent schemes or preparers using Form 14242.

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## IRS and Security Summit Launch Summer Education Series for Tax Professionals

*IR-2024-180*

The IRS and its Security Summit partners have announced the initiation of the summer Protect Your Clients; Protect

Yourself campaign aimed at helping tax professionals safeguard against the evolving threats of tax-related identity theft. This special summer campaign is part of an ongoing effort to enhance the security

of sensitive taxpayer information held by tax professionals.

IRS Commissioner Danny Werfel emphasized the importance of this initiative, stating, “Security threats against tax

professionals and their sensitive taxpayer information continue to evolve, and it's critical to stay on top of the latest developments to protect their business and their clients."

The campaign will feature eight news releases over the next eight weeks, beginning on July 9th, coinciding with the start of the IRS Nationwide Tax Forums in Chicago. These releases will provide crucial

information on maintaining strong security practices and responding to security incidents.

Sharonne Bonardi, executive director of the Federation of Tax Administrators, stressed the need for continued vigilance, highlighting that tax professionals are prime targets for identity thieves. The Security Summit's summer effort includes

educational sessions at the Nationwide Tax Forums, which will also take place in Orlando, Baltimore, Dallas, and San Diego. Julie Magee of Block Inc. and Taylor Rodier of Taxwell, co-chairs of the Summit's communications team, reiterated the necessity for tax professionals to stay informed about the latest security measures and threats.

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## Supreme Court Docket: U.S. Supreme Court Grants Certiorari in Whistleblower Case After Chevron Overruled

A petition for review was granted in the following case:

Liscak, M., CA-DC — In light of its recent decision in *Loper Bright Enterprises v. Raimondo*, 603 U. S. \_\_\_\_ (2024), overruling *Chevron, U.S.A., Inc., v. Natural Resources Defense Counsel, Inc.*, the U.S. Supreme Court granted certiorari in a whistleblower case.

Based on the whistleblower's information, the IRS opened an audit of a

taxpayer, but ultimately made an adjustment on an issue other than the issue raised by the whistleblower. A panel of the Court of Appeals for the D.C. Circuit held that the whistleblower was not entitled to the award under *Chevron* analysis because Code Sec. 7623(b) was an ambiguous statute and the IRS's interpretation of the statute under its Whistleblower Definitions Rule was a reasonable application of a valid rule. The Whistleblower

Definitions rule validly interpreted the statute to require awards only to whistleblowers who identify underpayments and provide information that advances to some substantial degree the IRS's recovery of those underpayments. The U.S. Supreme Court vacated the judgment of the CA-D.C. and remanded the case for further consideration in light of *Loper Bright Enterprises*.

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## Final Regulations on Procedural Rules for Reporting Excise Tax on Designated Drugs Adopted

T.D. 10003

The IRS released final regulations relating to the excise tax imposed on certain sales by manufacturers, producers, or importers of designated drugs. Specifically, the final regulations set forth procedural provisions relating to how taxpayers must report liability for such tax. The final regulations also exempt such tax from semimonthly deposit requirements. The final regulations affect manufacturers, producers, or importers of designated drugs dispensed,

furnished, or administered to individuals under the terms of Medicare during certain statutory periods. The proposed regulations (NPRM REG-115559-23) were published on October 2, 2023. After consideration of the public comments, the regulations finalized by the IRS adopt the proposed regulations with three non-substantive modifications. Specifically, the final regulations modify proposed §§40.0-1, 40.6011-1(d), and 40.6302(c)-1 by clarifying that the Code Sec. 5000D tax is imposed on "the sale of" designated

drugs. The language, as modified, more closely tracks the language of Code Sec. 5000D(a).

### Applicability Dates

The final regulations, which are effective on August 16, 2024, generally apply to calendar quarters beginning on or after October 1, 2023. For rules that apply before October 1, 2023, see 26 CFR part 40, revised as of April 1, 2024.

# TAX BRIEFS

## *Research Credit*

“Base period research expenses” encompassed a biotechnology corporation’s overlapping expenses during a three-year period used as a temporal comparison point by Code Sec. 41(c)(5)(A). A tax

provision coordinating one tax credit with another prohibited double-counting. If the taxpayer counted an overlapping expense as a “qualified clinical testing expense,” taking advantage of Code Sec. 45C’s generous credit, it could not simultaneously

claim the expense as a “qualified research expense” eligible for the Code Sec. 41 credit.

*United Therapeutics Corporation, CA-4,  
2024-1 USTC ¶150,168*