

FEDERAL TAX WEEKLY

INSIDE THIS ISSUE

IRS Names Elizabeth Askey Chief of Independent Office of Appeals 1

IRS Excludes Some VA Disability Benefits from Annual Income for Low-Income Housing Credit and Exempt Facility Bonds 1

FinCEN Withdraws Proposed Special Measure Against ABLV Bank .. 2

IRS Opens New Supplemental Claim Process to Help Third-Party Payers Resolve Employee Retention Credit Claims 2

Applicable Terminal Charge and SIFL Rates for Determining Value of Noncommercial Flights on Employer-Provided Aircraft Issued 3

AFRs Issued For October 2024 3

IRS Rules Regulated Exchange Was Qualified Board or Exchange 4

IRS Warns Taxpayers About Scams by Offer in Compromise Mills 4

Tax Briefs 4

IRS Names Elizabeth Askey Chief of Independent Office of Appeals

IR-2024-245

The IRS has named Elizabeth Askey as the Chief of the IRS Independent Office of Appeals (Appeals), overseeing strategy and operations for the office that resolves tax disputes without litigation. Askey has been acting as Chief since April 2023, after serving as Deputy Chief since December 2022, and is responsible for 1,750 employees nationwide.

Askey brings extensive experience from both within and outside the IRS. Commissioner Danny Werfel praised her leadership and expertise, emphasizing her role in supporting the Appeals team in resolving tax controversies fairly. Appeals operates independently from the IRS compliance functions, such as examination and collection, ensuring impartial resolutions.

Before joining Appeals, Askey served as Deputy Division Counsel for the Large Business and International Division. She has a background in tax controversy and policy from her time in private practice and roles at the Department of the Treasury. She holds degrees from Bryn Mawr College and Harvard Law School and is admitted to practice before multiple federal courts.

IRS Excludes Some VA Disability Benefits from Annual Income for Low-Income Housing Credit and Exempt Facility Bonds

Rev. Proc. 2024-38

The IRS updated procedures for determining a veteran's annual income for purposes of the low-income housing credit and exempt facility bonds for qualified residential rental projects. The new procedures incorporate the alternative income eligibility requirements for the Department of Housing and Urban Development–Veterans Affairs Supportive Housing (HUD–VASH) program, as set forth in the HUD-VASH notice published in the Federal Register on August 13, 2024, 89 F.R. 65769.

HUD-VASH Notice

The HUD-VASH notice sets forth the policies and procedures for determining eligibility for and the amount of tenant-based and project-based Section 8 Housing Choice

Voucher rental assistance under the HUD-VASH program. In an effort to ensure that homeless veterans are not excluded from the program because of their VA service-connected disability benefits, the notice waives certain rules for calculating annual income and directs a public housing agency (PHA) to determine a HUD-VASH applicant's annual income by excluding all of the applicant's VA service-connected disability benefits.

IRS Guidance

The IRS guidance adopts the HUD-VASH notice for purposes of the low-income housing credit and exempt facility bonds. Specifically, in determining income of prospective and current tenants who, as of the date of the income determination, are receiving or are approved to receive assistance under the HUD-VASH program and are covered by the HUD-VASH waiver, the tenant's annual income does not include the

FinCEN Withdraws Proposed Special Measure Against ABLV Bank

The Financial Crimes Enforcement Network (FinCEN) has withdrawn a 2018 proposed rule prohibiting U.S. financial institutions from opening or maintaining a correspondent account for or on behalf of ABLV Bank, AS (ABLV), a Latvian bank which FinCEN had found to be a financial institution of primary money laundering concern. Soon after FinCEN issued its 2018 notice of proposed rulemaking, the European Central Bank (ECB) determined that ABLV and its Luxembourg subsidiary were failing or likely to fail. The ECB later withdrew ABLV's banking license, and the subsidiary was ordered dissolved. The bank is in the advanced stage of an irrevocable liquidation process supervised by the Government of Latvia. Further, Latvian authorities have made significant efforts to identify and address ABLV's past illicit activity, and criminal charges have been brought against the bank's owners and senior managers. As a result, FinCEN has determined that ABLV is no longer a financial institution of primary money laundering concern.

FinCEN Proposed Rule RIN 1506-AB39; FinCEN Withdraws Finding and Notice of Proposed Rulemaking Regarding ABLV Bank, AS

tenant's service connected VA disability benefits.

The guidance applies to income determinations on or after October 24, 2024. However, it may also be applied to income

determinations with respect to residential rental projects financed with exempt bonds with an issue date before October 24, 2024.

IRS Opens New Supplemental Claim Process to Help Third-Party Payers Resolve Employee Retention Credit Claims

IR-2024-246

The IRS announced that the agency is opening a supplemental claim process to help third-party payers and their clients resolve incorrect claims for the Employee Retention Credit (ERC). This supplemental claim process lets a third-party payer (TPP) that filed a prior claim with multiple clients "withdraw" only some clients while maintaining the claims of the qualifying clients.

A supplemental claim is an adjusted employment tax return that allows a TPP

to correct and/or consolidate previous claims that they filed on or before January 31, 2024, if those claims have not yet been processed by the IRS. The supplemental claim process is for TPPs to which all of the following apply:

- The TPP has filed one or more claims aggregating Employee Retention Credits for itself and/or clients using the TPP's Employer Identification Number.
- The TPP made the claim on an adjusted employment tax return (Forms 941-X, 943-X, 944-X or CT-1X).

- The IRS has not processed any of the claims the TPP is including in the supplemental claim.

A TPP must prepare one supplemental claim for each tax period filed on or before January 31, 2024. Each claim must include the correct amount of ERC and any other corrections for that tax period. The TPP should use the adjusted employment tax return for their type of business – Form 941-X, Form 943-X, Form 944-X or Form CT1-X – to prepare the supplemental claim. The TPP should not include

REFERENCE KEY

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

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ERC amounts that were filed after January 31, 2024. TPPs can submit a supplemental claim using a computer or mobile device to fax the documents by 11:59 p.m., November 22, 2024.

Applicable Terminal Charge and SIFL Rates for Determining Value of Noncommercial Flights on Employer-Provided Aircraft Issued

Rev. Rul. 2024-20

The IRS has released the applicable terminal charge and the Standard Industry Fare Level (SIFL) mileage rate for determining the value of noncommercial flights on employer-provided aircraft in effect for the second half of 2024 for purposes of the taxation of fringe benefits. Further, in March 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) was enacted, directing the Treasury Department to allot up to \$25 billion for domestic carriers to cover payroll expenses via grants and promissory notes, known as the Payroll Support Program (PSP). Therefore, the IRS has provided the SIFL Mileage Rate. The value of a flight is determined under the base aircraft valuation formula by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in Reg.

AFRs Issued For October 2024

Rev. Rul. 2024-21

The IRS has released the short-term, mid-term, and long-term applicable interest rates for October 2024.

Applicable Federal Rates (AFR) for October 2024

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	4.21%	4.17%	4.15%	4.13%
110% AFR	4.64%	4.59%	4.56%	4.55%
120% AFR	5.06%	5.00%	4.97%	4.95%
130% AFR	5.49%	5.42%	5.38%	5.36%
Mid-Term				
AFR	3.70%	3.67%	3.65%	3.64%
110% AFR	4.08%	4.04%	4.02%	4.01%
120% AFR	4.45%	4.40%	4.38%	4.36%
130% AFR	4.83%	4.77%	4.74%	4.72%
150% AFR	5.59%	5.51%	5.47%	5.45%
175% AFR	6.52%	6.42%	6.37%	6.34%
Long-Term				
AFR	4.10%	4.06%	4.04%	4.03%
110% AFR	4.52%	4.47%	4.45%	4.43%
120% AFR	4.93%	4.87%	4.84%	4.82%
130% AFR	5.35%	5.28%	5.25%	5.22%

Adjusted AFRs for October 2024

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	3.20%	3.17%	3.16%	3.15%
Mid-term adjusted AFR	2.81%	2.79%	2.78%	2.77%
Long-term adjusted AFR	3.10%	3.08%	3.07%	3.06%

The Code Sec. 382 adjusted federal long-term rate is 3.10%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 3.42%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.90% and 3.39%, respectively, however, under Code Sec. 42(b)(2), the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 4.4%.

§1.61-21(g)(7) and then adding the applicable terminal charge.

For flights taken during the period from July 1, 2024, through December 31, 2024,

the terminal charge is \$54.30, and the SIFL rates are: \$.2971 per mile for the first 500 miles, \$.2265 per mile 501 through 1,500 miles, and \$.2178 per mile over 1,500 miles.

IRS Rules Regulated Exchange Was Qualified Board or Exchange

Rev. Rul. 2024-22

The IRS has ruled that Bourse de Montréal (MX), a regulated exchange (the entity) of Québec, Canada that offers electronic trading, is a qualified board or exchange within the meaning of Code Sec. 1256(g)(7)(C) as long as the entity held a valid Order of Registration under the Commodity Futures Trading Commission (CFTC) foreign boards of trade (FBOT) registration system. Under the CFTC FBOT registration system, the CFTC may issue an Order of Registration to an FBOT, allowing the FBOT to provide direct access to its electronic trading and order matching system from the U.S.

On August 25, 2015, the CFTC granted an Order of Registration to MX

under the CFTC FBOT registration system. Rev. Rul. 86-7, C.B. 1986-1, 295, determined that the Mercantile Division of the Montréal Exchange was a qualified board or exchange within the meaning of Code Sec. 1256(g)(7)(C). The Mercantile Division of the Montréal Exchange was an exchange associated with the entity that had ceased operations and was dormant.

Applicability Date

This revenue ruling is effective for the “contracts” entered into by the entity on or after November 1, 2024. Further, the ruling defined “contracts” as futures

contracts and futures contract options that are traded on or subject to the rules of the entity, that are described in Code Sec. 1256(g)(1)(A), and that are not covered by the exception in Code Sec. 1256(b)(2). Further, the IRS granted consent to a taxpayer to change its method of accounting for the entity’s contracts entered into on or after November 1, 2024, to the Code Sec. 1256 mark-to-market method for the first tax year during which the taxpayer holds such contracts.

Effect on Other Documents

Rev. Rul. 86-7 is obsolete.

IRS Warns Taxpayers About Scams by Offer in Compromise Mills

IR-2024-243

The IRS has issued a warning to taxpayers to be cautious of unscrupulous promoters claiming to offer help in resolving unpaid taxes through the IRS Offer in Compromise (OIC) program. These fraudulent entities, often referred to as OIC mills, use aggressive marketing tactics and promise to settle tax debts for “pennies-on-the-dollar,” charging excessive fees with no results. IRS Commissioner Danny Werfel cautioned taxpayers about these deceptive practices, emphasizing that many OIC mills make empty promises and charge steep fees,

leaving taxpayers worse off financially without resolving their tax issues.

The IRS’s Offer in Compromise program is a legitimate method for eligible taxpayers to settle their tax liabilities for less than the full amount owed. It is typically available to those who cannot pay their tax debt in full or would experience financial hardship by doing so. Eligibility is based on an individual’s financial situation, including income and equity in assets. Taxpayers can work directly with the IRS to resolve their debts without the need for third-party companies that often make misleading promises.

While some companies offer genuine assistance with OIC filings, others exploit taxpayers by charging excessive fees for services that can be done directly through the IRS. These OIC mills have consistently been listed on the IRS’s Dirty Dozen list of scams, putting both taxpayers and tax professionals at risk of losing money and sensitive personal information. The IRS advised taxpayers to learn more about the Offer in Compromise program and determine their eligibility. Taxpayers can use the IRS Offer in Compromise Pre-Qualifier tool or their Individual Online Account to check eligibility.

TAX BRIEFS

Business Expense Deduction

An individual was not entitled to deduct gasoline expenses due to lack of substantiation. The taxpayer was liable for

additions to tax under Code Sec. 6651 for failure to timely file his tax return and pay tax.

Ottuso, TC, Dec. 62,509(M)

An individual was not entitled to deductions for amounts paid to a Government Agency, pursuant to a court order, in relation to the violation of law. Further, the

taxpayer was not entitled to deduction for the forgiveness, by the taxpayer's wholly owned S corporation, of debt issued to the taxpayer's customers. The exception, under Code Sec. 162(f)(2), to the general disallowance rule did not apply because the order did not identify the payments as restitution or an amount paid to come into compliance with the law and the taxpayer failed to establish that either the amount paid or the debt forgiven constituted restitution.

Chief Counsel Advice Memorandum 202439015

Energy Tax Incentives

An entity did not qualify as a designer of an energy efficient commercial building property (EECBP). The taxpayer improperly took the Code Sec. 179D deduction. The entity was merely an installer of the EECBP. Finally, the entity was limited to implementing the technical specifications created by multiple architect of records, by reviewing the specifications.

Oehler, DC Ill., 2024-2 USTC ¶150,199

Entities

The IRS ruled that a partnership's net income should be computed by only taking into income and loss of its subsidiaries that are allocated to the taxpayer. This was to compute the taxpayer's required payment under Code Sec. 7519(b). The taxpayer represented that steps involving restructuring were not undertaken to create a deferral period greater than that of taxpayer's predecessor entity's tax year, or to make a Code Sec. 444 election following the termination of predecessor's election. The taxpayer represented that the restructuring and transfer of assets did not violate the anti-abuse rule of section Reg. 1.444-1T(b)(5)(iii).

IRS Letter Ruling 202439002

Estate Tax

A decedent's gross estate did not include the value of proceeds from two life

insurance policies that were owned by an irrevocable trust. The policies were valid and assignable, including to a third-party investor that lacked an insurable interest under state (Maryland) law. Because there was no violation of Maryland's insurable interest doctrine, the estate had no claim under Maryland law to bring an action to recover benefits from the entity, which according to the government would cause the insurance proceeds to be includible in the gross estate.

Becker, Est., TC Memo. 2024-89, Dec. 62,507(M)

A decedent's estate included the date-of-death value of assets transferred to a family limited partnership (FLP) shortly before her death. Because the nephew was the general manager of the FLP's general partner and acted as the decedent's agent, the decedent effectively held the right to essentially all of the income from the transferred assets.

Estate of Anne Milner Fields, Deceased, TC Memo. 2024-90, Dec. 62,508(M)

Gross Income

A married couple failed to report taxable income received from a corporation owned by the taxpayer-husband. The taxpayers were liable for a penalty under Code Sec. 6662(a) for substantial understatement. The taxpayers were deemed to have admitted liability for the penalty. Further, the taxpayers were liable for a penalty under Code Sec. 6651(a) for failure to timely file tax returns.

Feathers, TC, Dec. 62,503(M)

Transition Tax

The IRS Chief Counsel ruled that a "dealer in commodities" under Reg. §1.965-1(f)(13) would conduct business of buying and selling commodities in a relevant market without converting the commodities into another form of property. The Service issued guidance on whether specified

foreign corporations were considered to hold commodities in their capacity as a dealer for purposes of the specified commodity exception.

Chief Counsel Advice Memorandum 202439014

Supreme Court Docket

A petition for review was filed in the following case:

Anderson, CA-10—The IRS was entitled to disallow a married couple's claim for deduction of legal expenses because the taxpayers failed to show that the business purpose of the expenses. The taxpayers described the legal expenses as investigatory legal expenses, and contended that the fees were incurred entirely to investigate the conduct of the taxpayer-husband's former colleague. Further, the taxpayers stated that the expenses were incurred to investigate potential corporate sabotage and intellectual property theft by the taxpayer-husband's former colleague. However, the taxpayer-husband was charged with and convicted of various counts of sexual abuse of a minor. The taxpayer's documentation did not show that the legal expenses incurred were entirely paid for investigatory work related to the taxpayer's business. There was no evidence that any of the legal expenses during the first tax year at issue went toward researching, investigating or analyzing the corporate sabotage or espionage allegations. Further, the criminal acts were alleged to have occurred at the taxpayers' home where the taxpayer-husband tutored the minor. Those activities were personal, occurring at the taxpayers' private residence. The charges did not involve the taxpayer's gene therapy business or any other trade or business or activity engaged in for the production or collection of income. Any economic loss on the taxpayer's gene therapy business following the conviction was a collateral consequence and not its origin.