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Social Security Wage Cap and Benefit Amounts Increase for 2025

SSA Press Release: Social Security Announces 2.5 Percent Benefit Increase for 2025; Social Security Fact Sheet: 2025 Social Security Changes

For 2025, the Social Security wage cap will be $176,100, and social security and Supplemental Security Income (SSI) benefits will increase by 2.5 percent. These changes reflect cost-of-living adjustments to account for inflation.

Wage Cap for Social Security Tax

The Federal Insurance Contributions Act (FICA) tax on wages is 7.65 percent each for the employee and the employer. FICA tax has two components:

- a 6.2 percent social security tax, also known as old age, survivors, and disability insurance (OASDI); and
- a 1.45 percent Medicare tax, also known as hospital insurance (HI).

For self-employed workers, the Self-Employment tax is 15.3 percent, consisting of:

- a 12.4 percent OASDI tax; and
- a 2.9 percent HI tax.

OASDI tax applies only up to a wage base, which includes most wages and self-employment income up to the annual wage cap.

For 2025, the wage base is $176,100. Thus, OASDI tax applies only to the taxpayer's first $176,100 in wages or net earnings from self-employment. Taxpayers do not pay any OASDI tax on earnings that exceed $176,100.

There is no wage cap for HI tax.

Maximum Social Security Tax for 2025

For workers who earn $176,100 or more in 2025:

- an employee will pay a total of $10,918.20 in social security tax ($176,100 × 6.2 percent);
- the employer will pay the same amount; and
- a self-employed worker will pay a total of $21,836.40 in social security tax ($176,100 × 12.4 percent).

Additional Medicare Tax

Higher-income workers may have to pay an Additional Medicare tax of 0.9 percent. This tax applies to wages and self-employment income that exceed:

- $250,000 for married taxpayers who file a joint return;
- $125,000 for married taxpayers who file separate returns; and
- $200,000 for other taxpayers.

The annual wage cap does not affect the Additional Medicare tax.

Benefit Increase for 2025

Finally, a cost-of-living adjustment (COLA) will increase social security and SSI benefits for 2025 by 2.5 percent. The COLA is intended to ensure that inflation does not erode the purchasing power of these benefits.

TTB Proposes Modernizing Permit Application Requirements for Wine Premises

A proposal to amend its regulations to modernize and streamline the application requirements for wine premises is made by the Alcohol and Tobacco Tax and Trade Bureau. The proposed amendments would also relax some reporting requirements associated with changes to the wine business. The aim of the proposed amendments is to significantly reduce the time needed to complete an application to establish and operate wine premises. Comments may be submitted in writing or through the TTB Internet website. The due date for comments on Notice 234 is December 2, 2024.

Notice, No. 234, Alcohol and Tobacco Tax and Trade Bureau, 89 FR 80160, October 2, 2024

Tax Gap Slightly Shrinks, IRS Reports

IR-2024-262

The Internal Revenue Service is estimated a slight decrease in the estimated tax gap for tax year 2022.

According to Tax Gap Projections for Tax Year 2022 report, the IRS is projecting the net tax gap to be $606 billion in TY 2022, down from the revised projected tax gap of $617 billion for TY 2021. The decrease track with a one-percent decrease in the true tax liability during that time.

The TY 2022 gross tax is projected to be $696 billion, and includes the following components:

- Underreporting (tax understated on timely filed returns) - $539 billion
- Underpayment (tax that was reported on time, but not paid on time) - $94 billion
- Nonfiling (tax not paid on time by those who did not file on time) - $63 billion

For TY 2022, the projected net tax gap broken down by tax type includes:

- Individual income tax - $447 billion
- Corporation income tax - $40 billion
- Employment taxes - $119 billion
- Estate tax and excise tax - less than $500 million in each category

The size of the tax gap “vividly illustrates the ongoing need for adequate funding for the IRS,” agency Commissioner Daniel Werfel said in a statement. “We need to focus both on compliance efforts to enforce existing laws as well as improving services to help taxpayers with their tax obligations to help address the tax gap.”

From TY 2021 to TY 2022, the voluntary compliance rate slightly increased from 84.9 percent to 85.0 percent and the net compliance rate rose slightly from 86.9 percent from 86.8 percent.

The agency stated in the report that the relatively static voluntary compliance rate was “largely expected since the projection methodology assumes that reporting compliance behavior has not changed since the TY 2014-2016 time frame,” although the voluntary compliance rate is projected to fall from 58 percent in TY 2021 to 55 percent in TY 2022.

Final Regulations Identify Certain Easement Transactions as Listed Transactions

T.D. 10007; IR-2024-259

The IRS issued final regulations identifying certain syndicated conservation easement transactions and substantially similar transactions as listed transactions. These listed transactions are a type of reportable transaction. Material advisors and certain participants in these listed transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The regulations affect participants in these transactions as well as material advisors.

REFERENCE KEY

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

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Background

The Treasury and Service previously issued NPRM REG-106134-22, identifying said transactions as listed transactions, and requested comments. After considering the comments, the Service issued these final regulations.

Open Years

If a taxpayer who is required to disclose a listed transaction for a tax year for which the statute of limitations has not expired prior to the identification of the listed transaction fails to do so, then the taxpayer's statute of limitations will continue to stay open for that tax year under Code Sec. 6501(c)(10).

Material Advisors

The effect of identifying a listed transaction is partly to require certain disclosures from material advisors. A material advisor is a person who makes a "tax statement," under Reg. §301.6111-3(b)(2)(ii), and derives gross income in excess of the "threshold amount." An appraiser engaged after an easement is put in place can be a material adviser based on statements or actions after an easement is put in place. As the resulting obligations imposed are limited to actions the person must take thereafter, the requirement is not retroactive.

Effect on Other Documents

Notice 2017-10 is obsoleted for transactions occurring after September 8, 2024.

Effective Date

These regulations are effective on September 8, 2024.

Listing Published of Parties Disbarred or Suspended from Practice Before IRS

The IRS's Office of Professional Responsibility has published the names of attorneys, certified public accountants (CPAs), enrolled agents, enrolled actuaries, enrolled retirement plan agents and appraisers who have been disbarred from practice before the IRS, have consented to suspensions from practice, have been placed under suspension from practice under the expedited proceeding provisions, or have consented to the issuance of a censure. Attorneys, CPAs, enrolled agents, enrolled actuaries and enrolled retirement plan agents are barred from accepting assistance from, or assisting, any disbarred or suspended practitioner if the assistance relates to a matter constituting practice before the IRS; further, they cannot knowingly aid or abet another person to practice before the IRS during the period of that person's suspension, disbarment or ineligibility.

Announcement 2024-34

Final Section 367(d) Regulations Address Certain Repatriations of Intangible Property

T.D. 9994

Final regulations under Code Sec. 367(d) terminate the continued application of certain tax provisions arising from a previous outbound transfer of intangible property when the intangible property is repatriated to certain U.S. persons (T.D. 9994). The final regulations adopt previously issued proposed regulations (REG-124064-19) with a few changes. The final regulations apply generally to subsequent dispositions of intangible property occurring on or after October 10, 2024.

Code Sec. 367(d) Outbound Transfer Rules and Prior Proposed Regulations

Generally, under Code Sec. 367(d) and its regulations, if a U.S. person (a U.S. transferor) transfers any intangible property to a foreign corporation (the transferee foreign corporation) in an exchange described in Code Sec. 351 or 361, the U.S. transferor is treated as having sold the intangible property in exchange for payments that are contingent upon the productivity, use, or disposition of the intangible property.

Specifically, the U.S. transferor is treated as receiving amounts that reasonably reflect the amounts that would have been received annually in the form of such payments over the useful life of the intangible property (an annual inclusion), or, in the case of a direct or indirect disposition of the intangible property following the transfer, at the time of the disposition (a lump-sum inclusion) (each, a Section 367(d) inclusion).

The Code Sec. 367(d) regulations generally preserve the application of the annual inclusion stream upon a subsequent transfer of the intangible property to a person related to the U.S. transferor, but if the transfer is to an unrelated person, the transfer is treated as a direct or indirect disposition of the intangible property that usually triggers a lump-sum inclusion.

Code Sec. 6038B and its regulations generally require information reporting about certain outbound transfers of property by a U.S. person, including outbound transfers of intangible property.

Because the Code Sec. 367(d) regulations do not distinguish between subsequent transfers to a related U.S. or foreign person, there is a concern that, in certain cases, the Code Sec. 367(d) regulations can inappropriately require the U.S. transferor to continue recognizing an annual Section 367(d) inclusion, even if the subsequent transfer is to a related U.S. person that will be subject to U.S. taxation on the income earned from the intangible property. The continued application of Code Sec. 367(d) in these situations could result in excessive U.S. taxation and may disincentivize certain repatriations of intangible property.

To address the above concerns, the IRS issued proposed regulations (NPRM REG-124064-19) that generally would terminate the application of Code Sec. 367(d) if the transferee foreign corporation repatriates the intangible property to a qualified domestic person and certain reporting requirements are satisfied. If there are multiple U.S. transferors with respect to the same intangible property, these requirements would apply separately as to each U.S. transferor. A "repatriation" denotes a subsequent transfer of intangible property to the U.S. transferor or a U.S. person related to the U.S. transferor. The proposed regulations also include a rule coordinating the application of Code Sec. 367(d) and the Code Sec. 904(d) foreign branch rules.

Final Code Sec. 367(d) Regulations

The final regulations adopt the proposed regulations with a few changes. Similar to the proposed regulations, the final regulations generally terminate the continued application of Code Sec. 367(d) if the transferee foreign corporation repatriates the intangible property to a qualified domestic person and the U.S. transferor satisfies certain Code Sec. 6038B reporting requirements.

Qualified domestic person. The final regulations adopt the definition of qualified domestic person from the proposed regulations without change. A qualified domestic person generally includes:

- the U.S. transferor that initially transferred the repatriated intangible property (an initial U.S. transferor);
- a U.S. person treated as the U.S. transferor in certain cases (a qualified successor); and
- a U.S. person that is an individual or a qualified corporation (a domestic corporation that is not a tax-exempt entity, RIC, REIT, DISC, or S corporation) that is related to the U.S. transferor or a qualified successor.

Consequences of repatriating intangible property. Similar to the proposed regulations, the final regulations generally require the U.S. transferor to recognize gain as a result of the repatriation. The manner in which the repatriation occurs will determine whether the U.S. transferor must recognize gain in connection with the repatriation transaction, with corresponding adjustments being made as to the transferee foreign corporation. The regulations, therefore, address the tax consequences under Code Sec. 367(d) as to the intangible property, but do not otherwise alter the tax treatment of the transaction by which the intangible property is repatriated.

The transferee foreign corporation makes the required adjustments under the current regulations, with minor clarifications, for cases in which the Code Sec. 367(d) repatriation rules apply (that is, the adjustments with respect to the U.S. transferor's partial annual inclusion for the year of the repatriation).

The final regulations also provide special rules to determine the qualified domestic person's basis in the repatriated intangible property.

Section 904(d) foreign branch income rules. The subsequent transfer rules in the Code Sec. 367(d) regulations, including the final repatriation rules, do not apply in the context of determining gross income attributable to the foreign branch income category, and each successive transfer is separately subject to the foreign branch income rules and will not terminate or otherwise impact the application of these rules to a prior transfer.

Reporting requirements and relief for failure to comply. As a condition for terminating the application of Code Sec. 367(d) with respect to repatriated intangible property, the final regulations require a U.S. transferor to provide the information described in Reg. §1.6038B-1(d)(2)(iv).

If a U.S. transferor fails to provide that information, the subsequent disposition of the transferred intangible property is generally subject to the Code Sec. 367(d) regulations. Nevertheless, a failure to comply is deemed not to have occurred (regardless of whether the U.S. transferor continued to include amounts in gross income after the subsequent disposition), and the reporting requirements are treated as satisfied as of the date of the subsequent disposition, if the U.S. transferor (i) promptly after becoming aware of the failure, provides the required information and a reasonable explanation for its failure to comply, (ii) timely files an amended return for the tax year of the subsequent disposition, and (iii) if under examination, provides a copy of the amended return to the IRS personnel conducting the examination.

Applicability date. The final regulations generally apply to subsequent dispositions of intangible property occurring on or after October 10, 2024 (the date of publication of the final regulations).

Proposed Regs Would Not Recognize Certain Wholly-Owned Tribal Entities as Separate Entities

Proposed Regulations, NPRM REG-113628-21; IR-2024-261

Proposed regulations would provide that entities that are wholly owned by Indian Tribes and organized or incorporated exclusively under the laws of the Tribes that own them generally are not recognized as separate entities for federal tax purposes. The proposed regs would also provide that, for purposes of making certain elective payment elections under Code Sec. 6417 (including determining eligibility for and the consequences of the elections), these entities and certain Tribal corporations chartered by the Department of the Interior (DOI) are treated as an instrumentality of one or more Indian Tribal governments or their subdivisions.

The proposed regs are scheduled to be published in the Federal Register on October 9, 2024. Comments are requested. A public hearing on the proposed regulations is scheduled for January 17, 2025, at 10 a.m. EST.

Tribal Entities Not Treated as Separate Entities

Under the proposed regulations, Tribal law entities that are entirely owned by Tribes would not be recognized as separate entities for federal tax purposes and would not be subject to federal income tax. The proposed regulations would also clarify that Tribal law entities entirely owned by Tribes may receive the value of certain energy credits under the Inflation Reduction Act by making a Code Sec. 6417 direct pay election.

These rules would apply to:

- Tribes incorporated under section 17 of the Indian Reorganization Act of 1934, or section 3 of the Oklahoma Indian Welfare Act; and
- most entities wholly owned by one or more Indian Tribal governments and organized or incorporated exclusively under the laws of the Indian Tribal government(s) that own them (wholly owned Tribal entity).

Applicability Dates

Until the final regulations are published in the Federal Register, entities that are not treated as separate entities under the proposed regs generally may rely on the proposed regs. However, the Indian Tribal government(s) that own the entity must apply the proposed regs consistently with the entity for all such tax years.

This option is not available for any tax period for a federal excise tax or employment tax with respect to which the entity was, as of the publication date, a party to any administrative or judicial proceeding.

Comments Requested

Comments must be received by January 7, 2025 (assuming the proposed regs are published on October 9, 2024). Commenters are encouraged to submit public comments electronically via the Federal eRulemaking Portal at https://www.regulations.gov (indicate IRS and REG-113628-21). Paper submissions may also be mailed to the IRS.

IRS Accelerates Work on Employee Retention Credit Claims

IR-2024-263

The IRS has made significant progress on Employee Retention Credit (ERC) claims, with processing underway on about 400,000 claims, worth approximately $10 billion. The IRS is separating eligible claims from the wave of ineligible ones, with checks being mailed for approved claims.

Further, the IRS has notified the opening of a consolidated claim procedure allowing third-party payers to resolve incorrect Employee Retention Credit (ERC) claims filed on behalf of multiple clients. Moreover, the IRS is continuing to work on denying improper ERC claims, conducting audits and pursuing investigation into potential fraud and abuse.

Additionally, the IRS reminded businesses that have received ERC payments to recheck eligibility requirements and consider the second Employee Retention Credit (ERC) Voluntary Disclosure Program (VDP), available until November 22, 2024, to correct improper claims at 15 percent discount. The IRS's claim withdrawal program remains open for businesses whose ERC haven't been paid yet. Full details are available in Ann. 2024-30. Finally, the IRS has offered the ERC Eligibility Checklist to help businesses understand eligibility requirements and suggest next steps.

Florida Victims of Hurricane Milton Granted Tax Relief

IR-2024-264

The IRS has extended tax relief to the victims of Hurricane in all of Florida until May 1, 2025, to file various individual and business tax returns and make tax payments. The relief applies to affected taxpayers all of Florida.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on October 5, 2024,. As a result, the affected taxpayers will now have until May 1, 2025, to file returns and pay any taxes that were originally due during this period. This includes individuals who had a valid extension to file their 2023 income tax return.

The May 1, 2025 deadline does apply to estimated income tax payments due on January 15, and April 15, 2025. In addition, the quarterly payroll and excise tax returns normally due on October 31, 2024, January 31, and April 30, 2025 are also now due on May 1, 2025. Penalties on payroll and excise tax deposits due on or after October 5, 2024, and before October 21, 2024, will be abated, as long as the deposits are made by October 21, 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 –"**3622-EM**"– 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.

FinCEN Provides FBAR Filing Extension for Hurricane Milton Victims

FinCEN FBAR Notice FIN-2024-NTC6

The Financial Crimes Enforcement Network (FinCEN) has announced that victims of Hurricane Milton have until May 1, 2025, to file their Report of Foreign Bank and Financial Account (FBAR) for the 2023 calendar year. FBAR filings for 2023 would otherwise be due on or before October 15, 2024.

FinCEN is offering this expanded relief to any area that is designated both by the Federal Emergency Management Agency (FEMA) as qualifying for individual or public assistance, and by the IRS as eligible for tax filing relief, as a result of Hurricane Milton. If the IRS designates other areas affected by this natural disaster as eligible for tax filing relief at a later date, the affected areas will automatically receive FBAR relief from FinCEN. Deadlines for FBAR filing will be the same as those provided in the IRS designations.

FBAR Filers Outside Disaster Area

FinCEN will work with any FBAR filer who lives outside the disaster area but who must consult records located in the affected areas to meet the deadline. FBAR filers who live outside the affected areas and are seeking assistance in meeting their filing obligations (including workers assisting the relief activities who are affiliated with a recognized government or philanthropic organization) should contact the FinCEN Regulatory Support Section at 800-767-2825 or electronically at frc@fincen.gov.

FBAR Filing Relief Available for Victims of Recent Natural Disasters

FinCEN Provides FBAR Filing Relief to Victims of Hurricane Beryl; Filers Have Until February 3, 2025 to File (FIN-2024-NTC1); FinCEN Provides FBAR Filing Relief to Victims of Hurricane Debby; Filers Have Until February 3, 2025 to File (FIN-2024-NTC2); FinCEN Provides FBAR Filing Relief to Victims of Tropical Storm Francine; Filers Have Until February 3, 2025 to File (FIN-2024-NTC3); FinCEN Provides FBAR Filing Relief to Victims of Hurricane Helene; Filers Have Until May 1, 2025 to File (FIN-2024-NTC4)

The Financial Crimes Enforcement Network (FinCEN) has extended the filing date of the Report of Foreign Bank and Financial Account (FBAR) for the 2023 calendar year for victims of certain recent natural disasters:

– victims of Hurricane Beryl, Hurricane Debby, and Tropical Storm Francine have until February 3, 2025, to file their FBARs for 2023;
– victims of Hurricane Helene have until May 1, 2025, to file their FBARs for 2023.

FBAR filings for calendar year 2023 would otherwise be due on or before October 15, 2024.

FinCEN is offering this expanded relief to any area that is designated both by the Federal Emergency Management Agency (FEMA) as qualifying for individual or public assistance, and by the IRS as eligible for tax filing relief, as a result of these disasters. If the IRS designates other areas affected by these natural disasters as eligible for tax filing relief at a later date, the affected areas will automatically receive FBAR relief from FinCEN. Deadlines for FBAR filing will be the same as those set forth in the IRS designations.

FBAR Filers Outside Disaster Area

FinCEN will work with any FBAR filer who lives outside the disaster areas but who must consult records located in the affected areas to meet the deadline.

FBAR filers who live outside the affected areas and who are seeking assistance in meeting their filing obligations (including workers assisting the relief activities who are affiliated with a recognized government or philanthropic organization) should contact the FinCEN Regulatory Support Section at 800-767-2825, or electronically at frc@fincen.gov.

FBAR Relief for Filers Affected by Terroristic Action in Israel

FinCEN FBAR Notice FIN-2024-NTC5

The Financial Crimes Enforcement Network (FinCEN) has announced that certain individuals and businesses affected by the terroristic action in the State of Israel throughout 2023 and 2024 that are required to file Reports of Foreign Bank and Financial Accounts (FBARs) have until September 30, 2025, to file their FBARs for the 2023 calendar year. FBAR filings for 2023 would otherwise be due on or before October 15, 2024.

This expanded relief is offered to any individuals or businesses that were provided tax relief by the IRS under Notice 2024-72. This FinCEN relief is separate from the relief that FinCEN provided on October 16, 2023, which was based on Notice 2023-71 and originally provided relief to taxpayers affected by the October 7, 2023, attacks in Israel. Consistent with the IRS relief, FinCEN is extending FBAR filing relief to taxpayers who, due to the terrorist attacks, may be unable to meet a tax filing or tax payment obligation, or to perform other time-sensitive tax-related actions, including FBAR filings. If the IRS offers tax relief to additional individuals and businesses covered by Notice 2023-71 or Notice 2024-72, those taxpayers will automatically receive the same FBAR filing relief from FinCEN.

Filers Outside Directly Impacted Areas

FinCEN will work with any FBAR filer who lives outside the areas directly impacted by the terroristic action in the State of Israel, but who must consult records located in the affected areas in order to meet the deadline. FBAR filers who live outside the affected areas and are seeking assistance in meeting their filing obligations (including workers assisting the relief activities who are affiliated with a recognized government or philanthropic organization) should contact the FinCEN Regulatory Support Section at 800-767-2825, or electronically at frc@fincen.gov.

IRS Grants Additional Dyed Diesel Fuel Penalty Relief

IR-2024-265

The IRS has announced that, in response to disruptions resulting from Hurricane Milton, it will not impose a penalty when dyed diesel fuel with a sulfur content that does not exceed 15 parts-per-million is sold for use or used on the highway throughout the state of Florida. This relief is in addition to the limited relief provided in response to Hurricane Helene.

This penalty relief is available to any person that sells or uses dyed diesel fuel for highway use. In the case of the operator of the vehicle in which the dyed diesel fuel is used, the relief is available only if the operator or the person selling such fuel pays the tax of 24.4 cents per gallon that is normally applied to diesel fuel for highway use. Ordinarily, dyed diesel fuel is not taxed, because it is sold for uses exempt from excise tax, such as to farmers for farming purposes, for home heating use and to local governments. The IRS will not impose penalties for failure to make semimonthly deposits of tax for dyed diesel fuel sold for use or used in diesel powered vehicles on the highway in the state of Florida during the relief period. This relief begins October 9, 2024, and will remain in effect through October 30, 2024.

Purchaser Was Beneficial Owner of Imported Foreign Tires

Texas Truck Parts & Tire, Incorporated, CA-5 2042-2 USTC ¶70,386

The taxpayer is a wholesaler and retailer of truck parts and tires for semi-tractors and semi-trailers that purchased tires wholesale from Chinese manufacturers. Code Sec. 4071 imposes tax liability against the manufacturer, producer, or importer of taxable tires sold. If a manufacturer, producer, or importer delivers a tire to its own store or outlet, it is liable for the tire's tax in the same manner as if it had been sold when delivered. When the taxpayer received these tires it failed to file quarterly excise tax returns under IRS Form 720 or to pay any excise tax on the tires because it was under the impression that the Chinese manufacturers were the importers of the tires under applicable law. The taxpayer was audited and the IRS determined that it, not the Chinese manufacturers, was the importer of the tires and therefore owed taxes. The taxpayer paid a portion of these taxes and filed an administrative claim for a refund. After the IRS failed to act on the claim, the taxpayer filed suit seeking a refund and the Government counterclaimed for the balance of taxes owed. The district court determined on summary judgment that the Chinese manufacturers imported the tires and were therefore liable for the tax. The Government appealed and the Fifth Circuit Court of Appeals reversed.

Beneficial Owner

In a case of first impression, the Fifth Circuit's main question was: When a party orders taxable articles to be shipped to the U.S. for resale and is otherwise uninvolved in the importation process, is that party the importer? According to the Court of Appeals, the answer is "yes" when they derive almost all of the benefits of the importation. While the Court of Appeals agreed with the district court that the taxpayer did not "bring" the tires to the U.S., the district court erred by failing to consider whether the taxpayer was the beneficial owner and the Chinese manufacturers merely nominal importers. The district court simply did not analyze this issue in the regulation. In this case, the Court of Appeals held that the taxpayer was, in fact, the beneficial owner, and therefore liable for the excise tax. Tax liability shifts from nominal importers—importers in form only—to beneficial owners—importers in substance.

Reversing and remanding a DC Tex. opinion.

Washington Round-up

Congressional Democratic request changes to verification for Direct File Users. A trio of Congress members – Sen. Elizabeth Warren (D-Mass.), Senate Finance Committee Chairman Ron Wyden (D-Ore.), and Rep. Katie Porter (D-Calif.) – are requesting the Internal Revenue Service change the taxpayer identification protocols for the Internal Revenue Service's Direct File program. In an October 8, 2024, letter to Treasury Secretary Janet Yellen and IRS Commissioner Daniel Werfel, the members requested that the agency "ensure that identification requirements imposed on taxpayers using Direct File are consistent with the requirements for those using commercial tax preparation providers and other tax filing options, with an appropriate balance between usability and security." The members allege that users of Direct File are at a "significant disadvantage" because the IRS requires verification through ID.me. "While we applaud the IRS' goal of protecting taxpayers from identity theft, it makes no sense to only require heightened identity verification for taxpayers using the Direct File service, while allowing identity thieves to continue to exploit the comparatively lax security of commercial tax prep services."

AICPA requests automatic FBAR and BOI disaster relief. The American Institute of CPAs is requesting the Financial Crimes Enforcement Network implement a policy that offers relief of Foreign Bank and Financial Accounts and Beneficial Ownership Information reporting requirements. "While FinCEN often has provided filing relief for FBAR filings to those affected by disasters, FinCEN does not automatically apply relief in all instances where the IRS has granted filing relief," AICPA noted in an October 3, 2024, letter to FinCEN Director Andrea Gacki, adding that since BOI has been implemented, FinCEN has not offered any disaster relief for BOI reporting requirements. "The AICPA recommends that FinCEN adopt a policy of automatically granting FBAR and BOI filing postponements to coincide with the IRS's extended due dates when the IRS grants postponements under section 7508A." It asks that the relief be instated for the duration and geographic scope similar to what the IRS provides. AICPA's 2024 tax policy and advocacy comment letters can be found at https://www.aicpa-cima.com/advocacy/article/2024-tax-policy-and-advocacy-comment-letters.

TAX BRIEFS

Charitable Contribution Deduction

The Tax Court held that a limited liability company overstated its charitable contribution deduction amount. The "borrow pit" carveout was a violation Code Sec. 170(h)(5)(B). It involved the removal of material containing minerals using a surface mining method.

Minerals, LLC, TC, Dec. 62,511(M)

Supreme Court Docket

Grigsby v. U.S, (CA-5)—The district court correctly rejected research and development tax credits claimed by an S corporation and upheld the resulting tax deficiency. The taxpayers were a married couple who were the shareholders of the S corporation. The S corporation's representative projects yielded no viable business components and were funded. Accordingly, the taxpayers were ineligible for the research tax credit under Code Sec. 41. The district court correctly found that the asserted products and processes did not satisfy the business components test because the taxpayers put forth no evidence of the alleged products, any assertions of new construction processes were inconsistent with their prior disclosures and the taxpayers did not specifically identify the new processes at issue. Further, the district court's decision to exclude the taxpayers' construction processes claim was not an abuse of discretion. Additionally, the district court correctly determined that the taxpayers put forth vague and conclusory statements regarding their construction processes without identifying even one new or improved process that resulted from the S corporation's work on the representative projects. Further, the district court correctly determined that three of the representative projects fail the "substantial rights" prong of the funded research exclusion because in each instance the S corporation transferred all rights to any new or improved construction processes to its contracting counterpart. Additionally, the fourth project was not contingent on the success of the research because the taxpayers admitted that none of S corporation's payments was for merely conducting research.