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Treasury Secretary Nominee Bessent Calls TCJA Extension the "Single Most Important Issue"

Scott Bessent, nominee to take over as secretary of the Department of the Treasury, is calling on Congress to make permanent the expiring provisions of the Tax Cuts and Jobs Act.

In fact, he called passage of the TCJA permanent extension "the single most important economic issue of the day" during questioning at a January 16, 2025, confirmation hearing hosted by the Senate Finance Committee.

"This is pass/fail," Bessent said. "If we do not fix these tax cuts, if we do not renew and extend, then we will be facing an economic calamity," adding that the instability that will follow allowing the non-permanent TCJA provisions to expire would lead to a tax increase for the middle and working class.

Bessent, with no government experience but a wealth of experience in global finance as well as teaching at Yale University, told the committee that his "life's work in the private sector has given me a deep understanding of the economy and markets."

Much of his policy discussion echoed many of the Republican priorities, including at one point saying that the United States does not "have a revenue problem. We have a spending problem," but throughout the hearing did not provide a specific target of where spending should be cut.

One area he did offer a firm commitment on is maintaining the Internal Revenue Service's Direct File program for at least the 2025 filing season.

"I will commit that for this tax season, that Direct File will be operative, and the American taxpayers who choose to use it will," he said. "If confirmed, I will consult and study the program and understand it better and make that that it works to serve the IRS's three goals of collections, customer service, and privacy."

Bessent also came out in the hearing against Pillar Two of the Organisation for Economic Co-operation and Development's framework for international taxation, calling it a "grave mistake" for any country to implement it, adding that taxation of U.S. companies "is a sovereign issue" and he will respect Congress' authority to create tax policy. "I will work with you to undo what I think has been a terrible policy."

In the area of enforcement, Bessent told the committee that he was in favor of upgrading IRS system and utilizing artificial intelligence to help with enforcement efforts but stopped short of committing to targeting wealthy taxpayers who have the means to hire accountants and lawyers to potentially shield them from their tax obligations.

"If confirmed, I will come back to you with a plan for upping collections," Bessent said, but pushed back on the notion of specifically targeting wealthy taxpayers as part of the plan, telling committee Ranking Member Ron Wyden (D-Ore.) that "you seem to believe that the wealthy cheat more."

He did suggest that if processes such as AI can help find tax cheats, regardless of income status, he will use it and other means to engage in enforcement activities.

Outgoing Treasury Deputy Assistant Levine Pushes OECD Agreement

Outgoing Treasury Deputy Assistant Secretary of International Tax Affairs Scott Levine used the DC Bar's 2025 Tax Conference to push for the United States to continue its participation in the Organisation for Economic Co-operation and Development's multinational tax agreement.

In a pre-recorded video keynote address presented January 15, 2025, to conference attendees, Levine called the goals of the current OECD development as not representing Democratic or Republican goals. "Rather I'm confident that they represent bipartisan U.S. international tax policy goals, regardless of one's views on the OECD two-pillar solution."

He continued: "The goals of stabilizing the international tax system, simplifying the increasingly intricate patchwork of countries, international tax rules, increasing taxpayer certainty and protecting taxpayer information are not controversial among U.S. stakeholders. It is the effort related to these goals that make up the bulk of the U.S. efforts at forums like the OECD Committee on Fiscal Affairs, the Global Forum on Transparency, and Exchange of Information for tax purposes and the inclusive framework stability."

Levine noted that there remains a lot of instability particularly in the digital economy and the OECD "has served as an indispensable forum to debate and negotiate a possible framework for the future taxation of this ever-growing sector of the global economy."

Overall, Levine asserted that negotiations on this and other issues "without the United States could lead to a fragmented global tax system that could harm U.S. economic interests. To be sure, we cannot depend on others to represent U.S. interests in such negotiations, the result would be, at best, more uncertainty and higher costs for U.S. companies and U.S. consumers as they navigate a patchwork of conflicting tax rules in different countries."

Final Regulations on Resolving Federal Tax Controversies Issued

T.D. 10030

The IRS has issued final regulations detailing the Independent Office of Appeals' process for resolving federal tax controversies under the Taxpayer First Act of 2019 (P.L. 116-25). While the Appeals process remains broadly accessible, certain exceptions apply, such as challenges to the validity of regulations or notices without an unreviewable court decision. Taxpayers must meet procedural and timing requirements, including completing the IRS's review and filing timely requests, to qualify for Appeals consideration.

These regulations clarify the definition of federal tax controversies, encompassing disputes over IRS administrative determinations, and outline topics eligible for Appeals review. They also provide exceptions for frivolous arguments, criminal prosecutions, and specific technical determinations. Procedural safeguards ensure consistent application of tax laws while promoting efficient resolution of disputes. Stakeholder comments influenced refinements to the regulations, which aim to balance taxpayer rights and administrative feasibility.

Effective 30 days after publication in the Federal Register, the regulations align with the IRS's goal of fostering fairness, transparency, and public confidence. By codifying rules for Appeals access, they strengthen the framework for resolving disputes without litigation and uphold the intent of the Taxpayer First Act to modernize IRS operations.

Proposed Regulations Implement Catch-Up Contribution Changes

Proposed Regulations, NPRM REG-101268-24; IR-2025-7

The IRS proposed rules to implement the Roth catch-up contribution requirement added by the SECURE 2.0 Act of 2022 (P.L. 117-328) and other statutory changes to catch-up contributions. The proposed regulation would affect 401(k) plans, 403(b) plans, governmental plans, SEPs and SIMPLE plans, and their participants.

Retirement plans such as 401(k) plans and 403(b) plans may permit participants who are 50 and over to make

REFERENCE KEY

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

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additional elective deferrals, known as catch-up contributions. The SECURE 2.0 Act amended the catch-up contribution provision to allow an increased contribution limit for participants aged 60 through 63 and an increased contribution limit for certain SIMPLE plans. The proposed changes to existing regulations under Code Sec. 414(v) would reflect these changes. Although they would not be applicable until six months after the date they are finalized, the IRS would permit a taxpayer to apply these regulations to tax years beginning after 2024.

In addition, the SECURE 2.0 Act requires catch-up contributions to be made on a Roth basis for participants whose wages exceed $145,000 (as adjusted for inflation), effective after 2023. However, the IRS issued guidance that treats the first two tax years after 2023 as an administrative transition period. As a result, catch-up contributions are not required to be designated Roth contributions until 2026. Also, this requirement does not apply to SEPs and SIMPLE IRA plans. Although the Roth catch-up contribution regulations would not be applicable until 6 months after the date they are finalized, the IRS would allow plans to apply the new rules to contributions in tax years beginning after 2023.

To implement the Roth catch-up contribution requirement, the IRS proposed to allow plans to treat participant-designated pre-tax contributions as deemed Roth catch-up contributions if the participant's wages exceed the statutory threshold. In addition, the proposal would have plans look at FICA wages to determine if participants meet the $145,000 threshold, and the threshold would not need to be pro-rated for a participant's first year. The proposed regulations would also provide correction methods for violations of the new rules.

The IRS acknowledged that plans are not required to allow Roth contributions at all. In this case, the proposed regulations would prohibit participants in such a plan whose wages exceed the $145,000 threshold from making any catch-up contributions.

Current Plan Liability Rates Set for January 2025

For pension plan years beginning in January 2025, the IRS has released the 30-year Treasury bond weighted average interest rate, the unadjusted segment rates, the adjusted rates and the minimum present value segment rates.

- the 30-year Treasury bond weighted average interest rate,
- the unadjusted segment rates,
- the adjusted rates, and
- the minimum present value segment rates.

Corporate Bond Rate

The three 24-month average corporate bond segment rates applicable for January 2025 (without adjustment for the 25-year average segment rate limits) are as follows:

- 5.00 for the first segment rate,
- 5.27 for the second, and
- 5.40 for the third.

January 2025 Adjustment Segment Rate

The January 2025 adjusted segment rates for plan years beginning in 2023 are:

- 5.00 for the first segment rate,
- 5.27 for the second and
- 5.74 for the third.

The January 2025 adjusted segment rates for plan years beginning in 2024 are:

- 5.00 for the first segment rate,
- 5.27 for the second and
- 5.59 for the third.

The January 2025 adjusted segment rates for plan years beginning in 2025 are:

- 5.00 for the first segment rate,
- 5.27 for the second and
- 5.50 for the third.

30-Year Treasury Weighted Average

For plan years beginning in January 2025, the 30-year Treasury weighted average securities rate is 3.82, with a permissible range of 3.44 to 4.01 under Code Sec. 431(c)(6)(E)(ii)(l).

The rate of interest on 30-year Treasury securities for December 2024 is 4.58 percent.

The minimum present value segment rates under Code Sec. 417(e)(3)(D) for December 2024 are:

- 4.65 for the first segment rate,
- 5.28 for the second and
- 5.63 for the third.

Notice 2025-13

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Proposed Regs Address Excecutive Compensation Deduction Limit

Proposed Regulations, NPRM REG-118988-22

The Treasury Department and IRS have issued proposed regulations that would amend Reg. §1.162-33 to incorporate the changes to the definition of "covered employee" under Code Sec. 162(m) by the American Rescue Plan Act of 2021 (American Rescue Act) (P.L. 117-2). The American Rescue Act increased the number of employees subject to for the Code Sec. 162(m) $1,000,000 compensation deduction limit by adding the five highest compensated employees to the definition of covered employee, effective for tax years beginning after December 31, 2026. The proposed regulations also include a technical correction to Example 23 in Reg. §1.162-33(c)(1)(vi)(W)(2).

Background

Code Sec. 162(m) limits a publicly held corporation's deduction to compensation paid to covered employees to $1 million per tax year. Currently, an employee is a "covered employee" if:

(1) the employee is the principal executive officer (PEO) or principal financial officer (PFO) of the corporation any time during the tax year, or was an individual acting in such a capacity;

(2) the total compensation of such employee for the tax year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the three highest compensated officers for the tax year (other than employees that satisfy requirement (1)); or

(3) the employee was a covered employee of the taxpayer corporation (or any predecessor) under requirement (1) or (2) for any preceding tax year beginning after December 31, 2016.

2024 Tax Year-In-Review: Wolters Kluwer Tax Briefing Now Available

Unsurprisingly in an election year, 2024 ended without any major tax legislation passed by Congress. However, the IRS was quite busy with many new initiatives, like Direct File, changes to reporting requirements for Form 1099-K, and the ongoing saga of the Employee Retention Credit. In a big twist, the Supreme Court weighed in as well with a couple tax-related rulings. All in all, while it was slow on the Hill, the rest of the tax world was anything but.

Since 1913, Wolters Kluwer has provided tax professionals with the most comprehensive, ongoing, practical and timely analysis of the federal tax law. In the spirit of this tradition, Wolters Kluwer is providing you with review of the tax-related events of 2024.

Wolters Kluwer's Tax Briefing highlighting the events of 2024 is now available at: https://engagetax.wolterskluwer.com/2024TaxYearInReview. This Wolters Kluwer Tax Briefing gives tax practitioners a look back at what happened in 2024.

The American Rescue Act expanded the definition of a covered employee to also include employees who are among the five highest compensated employees for tax years beginning after December 31, 2026. The amendment to include the five highest compensated employees is in addition to those already treated as covered employees. The effect of this change is that beginning in 2027 covered employees will include the eight highest paid employees, plus the PEO and the PFO.

Note that the five highest compensated employees may change on an annual basis, and they are not subject to requirement (3) above.

Five Highest Compensated Employees

The proposed regulations adopt the current regulation's definition of compensation for purposes of determining the five highest compensated employees. However, they use Code Sec. 3401(c) to define an employee for purposes of the five highest compensated employees. Under Code Sec. 3401(c) an "employee" includes both common law employees and officers of a corporation. Thus, an employee that is not an officer in the corporation may be a covered employee as one of the five highest compensated employees. Accordingly, under the proposed regulations, a covered employee may include an individual who is both one of the five highest compensated employees for the current tax and also a covered employee on the basis of being a covered employee for a preceding tax year.

An employee for purposes of the purposed regulations also includes individuals who are not employed by the taxpayer corporation or the affiliated group but function as employees of the publicly held corporation. In those circumstances, amounts paid by the taxpayer corporation to the individual or to a third party to obtain the services performed by the individual are considered "compensation" for purposes of Code Sec. 162(m). This rule is necessary to prevent the avoidance of Code Sec. 162(m) through the use of third-party payors.

The proposed regulations clarify that any employee of an affiliated group of the taxpayer corporation may be a one of the five highest compensated employees and use the current regulation's definition of an affiliated group. The IRS notes that an individual may perform services for members of an affiliated group that contains more than one publicly held corporation and might also contain one or more corporations that are not publicly held corporations. Thus, the proposed regulations provide an individual's status as a covered employee for purposes of being one of the five highest compensated employees is determined separately with respect to each publicly held corporation in an affiliated group, excluding compensation taken into account with

respect to another publicly held corporation of the affiliated group.

Because an affiliated group may include a foreign corporation, compensation and other expenses of a foreign corporation may be disallowed under Code Sec. 162(m) in certain circumstances. To assist taxpayers with compliance, the proposed regulations include an explicit rule regarding remuneration paid by a controlled foreign corporation that is a member of a publicly held corporation's affiliated group.

Applicability Dates

The proposed regulations are proposed to apply to compensation that is otherwise deductible for tax years beginning after the later of December 31, 2026, or the date of publication of a Treasury Decision adopting them as final regulations in the Federal Register. The technical correction of the current regulations is proposed to apply to tax years ending on or after the date that the regulations are published as final in the federal register.

Comments Requested

The IRS has requested comments on the proposed regulations. Specifically, the IRS requests comments on the application of these proposed regulations to controlled foreign corporations, and whether the proposed regulations should apply to controlled foreign corporations that are not members of an affiliated group.

Written or electronic comments and requests for a public hearing must be received by March 17, 2025. Taxpayers should submit comments or a requests for a public hearing electronically via the Federal eRulemaking Portal at http://www.regulations.gov (indicate IRS and REG-118988-22) . Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Alternatively, comments may be mailed to CC:PA:01:PR (REG-118988-22), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

Regulations Proposed Addressing Corporate Separation, Incorporation, and Reorganization Matters

Proposed Regulations, NPRM REG-112261-24; Proposed Regulations, NPRM REG-116085-23

The IRS has issued proposed regulations regarding certain matters relating to corporate separations, incorporations, and reorganizations qualifying, in whole or in part, for nonrecognition of gain or loss (NPRM REG-112261-24). The matters addressed include distributions and retentions of controlled corporation stock, assumptions of liabilities by controlled corporations, exchanges of property between distributing corporations and controlled corporations, and distributions and transfers of consideration to distributing corporation shareholders and creditors.

Proposed regulations modifying the reporting requirements for corporate separations and other Code Sec. 355 transactions have also been issued (NPRM REG-116085-23).

Proposed Regulations on Corporate Separations, Incorporations, and Reorganizations

The proposed regulations are intended to establish a comprehensive set of rules to implement certain core definitional and operative provisions of subchapter C that address corporate separations, incorporations, and reorganizations. The proposed regulations would implement those statutory provisions for all corporate M&A transactions, in a manner that reflects the three objectives described in section 2.01 of Notice 2024-38 (that is, the compliance objective, the increased certainty objective, and the transaction facilitation objective). The guidance provided in Notice 2024-38 and comments received with respect to such guidance are considered in the development of the proposed regulations.

Some of the issues addressed by these proposed regulations include the following:

(1) Distinction between delayed distributions and retentions, and rules for qualifying retentions, including:
   - proposed safe harbor to address Code Sec. 355(a)(1)(D)(ii) risk;
   - facts-and-circumstances test for determining compliance with Code Sec. 355(a)(1)(D)(i);
   - consistent voting requirements;
   - plan of distribution rules;
   - treatment of delayed distributions and retentions;
   - timing requirement for control distribution;
   - requirements for nonrecognition treatment.

(2) Non-substantive modifications to Section 355 regulations;

(3) Proposed rules regarding plan of reorganization and party to a reorganization;

(4) Application of substance-over-form, agency, and other relevant theories to intermediated exchanges and direct issuance transactions including proposed rules on general requirements for deemed distribution treatment distributing corporation debt, qualifying direct issuance transactions, and other issues;

(5) Federal income tax treatment and consequences of post-distribution payments;

(6) Effect of transaction related to divisive reorganization on controlled securities;

(7) Replacement of distributing debt;

(8) Application of 357 to assumptions of liabilities;

(9) Solvency and continued viability of distributing corporation and controlled corporation;

Proposed Applicability Dates of Proposed Regulations on Corporate Separations, Incorporations, and Reorganizations

The proposed regulations providing substantive guidance on corporate separations,

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incorporations, and reorganizations are proposed to apply to transactions occurring after the date of publication of the final regulations in the Federal Register (publication date), but only if the earliest of the following dates with respect to the transaction occurs after the publication date (general applicability date):

- the date of the first public announcement;
- the date of entry by the taxpayer into a written agreement;
- the date of approval by the board of directors of the taxpayer;
- the date of a court order (or a plan confirmed, or a sale approved, by order of a court) in a title 11 or similar case, only if the taxpayer was a debtor in a case before such court; or
- the date a ruling request is submitted to the IRS.

Proposed Reg. §§1.355-2(e), 1.355-4, and 1.355-10 would be applicable to section 355 transactions occurring after the general applicability date.

Proposed Reg. §§1.357-1 through 1.357-4 would be applicable to assumptions of liabilities in transactions intended to qualify under Code Sec. 351 or Code Sec. 361 occurring after the general applicability date.

Proposed Reg. §§1.361-1 through 1.361-5 would be applicable to exchanges under Code Sec. 361 occurring after the general applicability date. Proposed Reg. §§1.368-1(c), 1.368-2(f), 1.368-3(a)(5), and 1.368-4 would be applicable to transactions occurring after the general applicability date.

Proposed Regulations on Reporting for Corporate Separations and Other Section 355 Transactions

The IRS has also issued proposed regulations that would require multiyear tax reporting for corporate separations and related transactions under Code Sec. 355. The information to be reported would establish the taxpayer's position that the corporate separation and related transactions qualify for nonrecognition treatment. These proposed regulations would affect corporations and their shareholders and security holders.

The proposed regulations would enhance reporting requirements by requiring all covered filers to file an annual report for each Section 355 transaction (Form 7216, Multi-Year Reporting Related to Section 355 Transactions) that would be attached to the filer's federal income tax return. This is intended to improve the IRS's ability to administer Code Sec. 355 (and related Code provisions), and ensure that transactions intended to qualify under Code Sec. 355 and related provisions satisfy the requirements for nonrecognition treatment. The proposed regulations would apply to all types of Section 355 transactions with a covered filer.

Effect on Other Documents; Comments and Public Hearing

The following revenue rulings are proposed to be obsoleted for transactions occurring after the date of publication of the final regulations addressing corporate separations, incorporations, and reorganizations: Rev. Rul. 2007-8, 2007-1 C.B. 469; Rev. Rul. 95-74, 1995-2 C.B. 36; Rev. Rul. 79-258, 1979- 2 C.B. 143; Rev. Rul. 75-469, 1975-2 C.B. 126; Rev. Rul. 75-321, 1975-2 C.B. 123; Rev. Rul. 57-518, 1957-2 C.B. 253.

Written or electronic comments and requests for a public hearing regarding the proposed regulations addressing corporate separations, incorporations, and reorganizations, and the proposed regulations modifying the reporting requirements for Section 355 transactions must be received by March 17, 2025 (the date that is 60 days after the proposed regulations are published in the Federal Register), following the directions provided in the respective NPRMs.

IRS Issues Guidance on Calculating Qualifying Payment Amount

Notice 2025-12

The IRS has provided the combined percentage increase for calculating the qualifying payment amount for items and services furnished during 2025 under Code Secs. 9816 and 9817. For items and services provided in 2025, the percentage increase to adjust the median contracted rate from 2024 to 2025 is 1.0317904930. Group health plans and group and individual health insurance issuers would round any resulting qualifying payment amount to the nearest dollar.

Background

The No Surprises Act was enacted as Title I of Division BB of the Consolidated Appropriations Act, 2021. These provisions provide protections against surprise medical bills in certain circumstances. The No Surprises Act generally limits a patient's cost-sharing amount to a "qualifying payment amount," which is determined by increasing the median contracted rate by the percentage increase in the consumer price index.

Guidance for Calculation

To adjust qualifying payment amounts that were based on January 31, 2019 rates, the qualifying payment amounts for items and services furnished in 2025 are calculated by multiplying the 2024 adjusted qualifying payment amounts by the percentage increase from 2024 to 2025, that is, 1.0317904930.

For an item or service furnished in 2022 for which a plan or issuer did not have sufficient information to calculate the median of the contracted rates in 2019, the plan or issuer calculated the qualifying payment amount by multiplying the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2021, drawn from any eligible database, by the percentage increase from 2023 to 2024, which was 1.0543149339. To calculate the qualifying payment amount for items and services furnished in 2025, the 2024 adjusted qualifying payment amounts are multiplied by 1.0317904930.

Similarly, in the case of a newly covered item or service furnished in 2025, when 2025 is the first coverage year for the item or service with respect to the plan or coverage, the plan or issuer must calculate the qualifying payment amount by multiplying the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2024, drawn from any eligible database, by the percentage increase of 1.0317904930.

Guidance on Tax Treatment of Paid Family and Medical Leave Contributions and Benefits Issued

Rev. Rul. 2025-4; IR-2025-16

The IRS has issued a revenue ruling addressing the federal tax treatment of contributions and benefits under state-administered paid family and medical leave (PFML) programs. The ruling clarifies how these contributions and benefits are classified for income tax, employment tax, and reporting purposes, with distinctions drawn between employer and employee contributions.

PFML Contributions

Mandatory contributions made by employers under PFML programs are classified as excise taxes deductible as ordinary and necessary business expenses under Code Sec. 164. These payments are deemed state-imposed obligations for the purpose of funding public programs and are not included in employees' gross income under Code Sec. 61. In contrast, mandatory contributions withheld from employees' wages are treated as state income taxes under Code Sec. 164(a)(3). Employees may deduct these amounts on their federal tax returns if they itemize deductions, subject to the state and local tax (SALT) deduction cap under Code Sec. 164(b)(6).

The ruling further specifies the treatment of benefits paid under PFML programs. Family leave benefits, which provide wage replacement during caregiving periods, are included in the recipient's gross income under Code Sec. 61 but are not considered wages for federal employment tax purposes under Code Sec. 3121. By comparison, medical leave benefits attributable to employee contributions are excluded from gross income under Code Sec. 104(a)(3). However, medical leave benefits attributable to employer contributions are partially taxable under Code Sec. 105 and are subject to FICA taxes.

The ruling also addresses scenarios where employers voluntarily cover portions of employees' contributions, referred to as "employer pick-ups." Such pick-ups are treated as additional compensation, included in employees' gross income under Code Sec. 61, and are subject to federal employment taxes. Employers, however, may deduct these payments as ordinary business expenses under Code Sec. 162.

To ensure compliance, the IRS requires states and employers to report benefits exceeding $600 annually under Code Sec. 6041 using Form 1099. Additionally, benefits subject to employment taxes must be reported on Form W-2.

The ruling modifies prior guidance and includes a transition period for 2025 to allow states and employers to adjust their systems to meet reporting and compliance requirements. This clarification provides a framework for managing the tax implications of PFML programs, ensuring consistent treatment across jurisdictions.

Effective Date

This revenue ruling is effective for payments made on or after January 1, 2025. However, transition relief is provided to the states, the District of Columbia, and employers from certain withholding, payment, and information reporting requirements for state-paid medical leave benefits paid made during calendar year 2025.

Effect on Other Guidance

Rev. Rul. 81-194, Rev. Rul. 81-193, Rev. Rul. 81-192, and Rev. Rul. 81-191 are amplified to include the holdings in this revenue ruling that are applicable to the facts in those rulings. Rev. Rul. 72-191, as modified by Rev. Rul. 81-192, is further modified.

California Victims of Wildfires and Straight-line Winds Granted Tax Relief

IR-2025-10; California Disaster Relief Notice (CA-2025-1)

The IRS has extended tax relief to the victims of wildfires and straight-line winds in Los Angeles County, California.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on January 7, 2025. As a result, the affected taxpayers will now have until October 15, 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 2024 income tax return.

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The October 15, 2025, deadline applies to estimated income tax payments due on January 15, 2025. In addition, the quarterly payroll and excise tax returns normally due on January 31, April 30 and July 31, 2025 are also now due on October 15, 2025. Penalties on payroll and excise tax deposits due on or after January 7, 2025, and before January 22, 2025, will be abated, as long as the deposits are made by January 22, 2025.

The affected taxpayers do not need to contact the IRS to obtain this relief. The IRS will work with taxpayers who live 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 must 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 (2025), or the return for the prior year (2024). Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number –"4856-DR"– on any return claiming a loss. The IRS requests that taxpayers see Publication 547 and visit disasterassistance.gov for disaster recovery information.

Safe Harbors Updated for Code Sec. 45W Commercial Clean Vehicle Credit for 2025

Notice 2025-9

The IRS has updated the safe harbors regarding the incremental cost and retail price equivalent (RPE) for purposes of the Code Sec. 45W qualified commercial clean vehicle credit. The safe harbors are effective for qualified vehicles placed in service in calendar year 2025.

Commerical Clean Vehicle Credit

A taxpayer may claim a credit for each qualified commercial clean vehicle acquired after 2022 and placed in service during a tax year beginning before 2033 for use in the taxpayer's trade or business. The credit is generally equal to the lesser of 15 percent of the basis of the vehicle (30 percent if the vehicle is not powered by a gasoline or diesel internal combustion engine) or the incremental cost of the vehicle. The maximum credit is $40,000, or $7,500 if the vehicle's GVWR is less than 14,000 pounds.

Incremental cost is the excess of the vehicle's purchase price over the price of a comparable vehicle that is powered solely by a gasoline or diesel internal combustion engine. Notice 2024-5 provides a safe harbor regarding the incremental cost of certain qualified commercial clean vehicles placed in service in calendar year 2024, based on the Department of Energy (DOE) Analysis. The DOE updated the Analysis for January 2025 explicitly identifying the RPEs factors applied to the component and vehicle manufacturing costs to account for additional indirect costs and profits when modeling the incremental cost of a class of vehicle.

2025 Safe Harbors

For any qualified vehicle not previously placed in service, the IRS will accept a taxpayer's use of the modeled incremental cost published in the DOE's January 2025 Report for the appropriate class of clean vehicle to establish the incremental cost of a qualified vehicle placed in service by the taxpayer on or after January 1, 2025.

For any qualified vehicle previously placed in service, the IRS will accept a taxpayer's application of the modeled incremental cost of the qualified vehicle when new, as determined by reference to the IRS safe harbor guidance that corresponds to the model year of such vehicle found in the regulations. A taxpayer may use this safe harbor with respect to any qualified commercial clean vehicle placed in service by the taxpayer after 2022.

In cases where taxpayers do not use a modeled incremental cost safe harbor, the IRS will accept taxpayers' use of the RPEs published in the DOE's January 2025 Report for the appropriate class of clean vehicle to calculate the incremental cost of qualified commercial clean vehicles.

Notice 2023-9 and Notice 2024-5 are modified.

IRS Releases First Annual Table of GHG Emissions Rates for Code Secs. 45Y and 48E Facilities

Rev. Proc. 2025-14

The IRS has released the first Annual Table of greenhouse gas (GHG) emissions rates for certain types of categories or facilities to determine eligibility for the Code Sec. 45Y clean electricity production credit or Code Sec. 48E clean electricity investment credit. A qualified facility for purpose of the credits must have a GHG emissions rate of not greater than zero.

The Code requires the IRS to publish an annual table with GHG emissions rates for types or categories of facilities. The first

Annual Table provides that the types or categories of facilities that have a GHG emissions rate of not greater than zero include wind, hydropower, marine and hydrokinetic, solar, geothermal, nuclear fission, fusion energy, and water energy recovery property (WERP) if it derives energy from a source that is a type or category of one of the other facilities. The Annual Table is effective beginning January 15, 2025, and until an updated table is issued.

Clean Electricity Investment Credit

Under Code Sec. 48E, a taxpayer may claim a credit equal to a percentage of their qualified investment in a qualified facility or energy storage technology placed in service after 2024. The taxpayer's qualified investment is the basis of qualified property (generally, tangible personal property) placed in service during the tax year that is part of a qualified facility. It also includes the basis of energy storage technology and expenditures for interconnection property placed in service during the tax year. A qualified facility is a facility used for electricity generation with an anticipated GHG emissions rate of not greater than zero.

For purposes of the Code Sec. 48E investment credit, a taxpayer may rely on the Annual Table in effect as of the date the taxpayer began construction on a facility to determine the facility's GHG emissions rate. The facility must continue to operate as a type of facility that is described in the Annual Table for the entire tax year.

Clean Electricity Production Credit

Under Code Sec. 45Y, a taxpayer may claim a credit for each kilowatt (KWh) of clean electricity produced at a qualified facility that is placed in service after 2024 and sold to an unrelated buyer during the tax year. A qualified facility is a facility that is used for the generation of electricity and has a GHG emissions rate no greater than zero. A qualified facility's GHG emissions rate is the amount of greenhouse gases emitted into the atmosphere, expressed as grams of CO2e per KWh.

For purposes of the Code Sec. 45Y production credit, a taxpayer may rely on the Annual Table in effect as of the date the taxpayer began construction on a facility to determine the facility's GHG emissions rate for any tax year that is within the 10-year period from when the facility is placed in service. The facility must continue to operate as a type of facility that is described in the Annual Table for the entire tax year.

IRS Updates Elective Safe Harbor for Domestic Content Bonus Credit

Notice 2025-8

The IRS has updated the elective safe harbor for the domestic content bonus credit (First Updated Elective Safe Harbor) provided in Notice 2024-41 including the table of assigned cost percentages for each manufactured product and component. A taxpayer may rely on the updated safe harbor for the domestic content bonus credit requirements for any applicable project the construction begins 90 days after any future modification or withdrawal of the updated safe harbor.

Domestic Content Bonus Credit

The Inflation Reduction Act of 2022 (P.L. 117-169), amended the Code Sec. 45 renewable electricity production credit and Code Sec. 48 energy credit to provide a domestic content bonus credit amount for certain qualified facilities or energy projects placed in service after 2022. The legislation also added Code Sec. 45Y clean electricity production credit and Code Sec. 48E clean electricity investment credit which include a domestic content bonus credit amount for certain investments in qualified facilities or energy storage technologies placed in service after 2024.

Notice 2023-38 and Notice 2024-41 describe the requirements for the domestic content bonus credit. This included a safe harbor regarding the classification of certain components in representative types of qualified facilities, energy projects, or energy storage technologies. Notice 2024-41 also provides a safe harbor that taxpayers may elect to use to classify applicable project components and to calculate the domestic cost percentage in an applicable project (elective safe harbor) to qualify for the domestic content bonus credit amounts.

Elective Safe Harbor

The elective safe harbor allows a taxpayer to use cost percentage information from the Department of Energy (DOE) in calculating the domestic cost percentage and satisfying the adjusted percentage rule. The classifications and cost percentages provided in the table in Notice 2024-41 (Table 1) are accepted by the IRS for the identified manufactured products and manufactured product components for purposes of determining compliance with the steel or iron requirement and calculating the domestic cost percentage.

Notice 2025-8 updates the elective safe harbor (First Updated Elective Safe Harbor) as follows:

- The Solar PV table is expanded into two distinct tables, one for Photovoltaic (PV) Ground-mount (Tracking and Fixed) Applicable Projects and one for PV Rooftop (MLPE and String) Applicable Projects. This includes an updated associated cost percentages for each table.
- The Land-Based Wind Table is modified by renaming terms in Applicable Project Component table and listed as a Manufactured Product Component.

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- Modifications are made including providing updated assigned cost percentages for the Manufactured Products and Manufactured Product Components relating to the Battery Electric Storage System (BESS) (Updated Assigned Cost Percentages for BESS).
- A qualified facility, energy project, or energy storage technology that meets the 80/20 Rule, may use the classifications and cost percentages provided in the table or the First Updated Elective Safe Harbor (as applicable) to qualify for the domestic content bonus credit amount.
- Updated definitions are provided for representative types of Applicable Projects and definitions for certain Applicable Project Components and Manufactured Product Components.

Notice 2023-38 and Notice 2024-41 are modified.

Energy Credit FAQs Updated

FS-2025-1; IR-2025-17

The IRS issued updates to frequently asked questions (FAQs) about the Energy Efficient Home Improvement Credit (Code Sec. 25C) and the Residential Clean Energy Property Credit (Code Sec. 25D). The updates supersede earlier FAQs posted in FS-2024-15. Information on reliance is available at https://www.irs.gov/newsroom/general-overview-of-taxpayer-reliance-on-guidance-published-in-the-internal-revenue-bulletin-and-faqs.

Energy Efficient Home Improvement Credit

The Energy Efficient Home Improvement Credit applies to qualifying property placed in service on or after January 1, 2023, and before January 1, 2033. The credit is limited to $2,000 per taxpayer per taxable year in the aggregate for electric or natural gas heat pump water heaters, electric or natural gas heat pumps, and biomass stoves or boilers.

Thus, taxpayers can claim a total credit of $3,200 if they have sufficient expenditures in property categories (or a home energy audit) subject to the $1,200 limitation and in property categories subject to the $2,000 limitation.

A taxpayer can claim the credit only for qualifying expenditures incurred for an existing home, or for an addition to or renovation of an existing home, but not for a newly constructed home.

Residential Clean Energy Property Credit

One of the FAQs mentions that this credit is a nonrefundable personal tax credit. A taxpayer claiming a nonrefundable credit can only use it to decrease or eliminate tax liability.

The credit is generally limited to 30 percent of qualified expenditures made for property placed in service between 2022 and 2032. However, the credit allowed for qualified fuel cell property expenditures is 30 percent of the expenditures, up to a maximum credit of $500 for each half kilowatt of capacity of the qualified fuel cell property.

Automatic Consent Procedure Provided for Non-Life Insurance Companies to Revoke Section 831(b) Election

Rev. Proc. 2025-13

The IRS has provided a streamlined procedure for non-life insurance companies that have elected the application of the alternative tax under Code Sec. 831(b) to obtain the IRS's automatic consent to revoke the election (Rev. Proc. 2025-13).

Background

Code Sec. 831(b) provides an alternative tax to the tax imposed by Code Sec. 831(a) for certain non-life insurance companies (alternative tax). The alternative tax applies to every non-life insurance company if (1) the company's net written premiums (or, if greater, direct written premiums) for the tax year do not exceed $2,200,000 (adjusted for inflation), (2) the company meets the diversification requirements in Code Sec. 831(b)(2)(B), and (3) the company makes an election to apply the alternative tax (Section 831(b) Election) for the tax year.

The non-life insurance company must make a Code Sec. 831(b) Election by the due date (taking into account any extensions of time to file obtained by the taxpayer) of the tax return for the first tax year for which the election is effective. A Section 831(b) Election applies to the tax year for which it is made and for all subsequent tax years for which the election requirements are met and that a Section 831(b) Election, once made, may be revoked only with the IRS's consent. To secure the IRS's consent, a taxpayer seeking revocation of its Section 831(b) Election has been required to submit a request for a letter ruling under the procedures set forth in Rev. Proc. 2025-1, 2025-1 I.R.B. 1 ((or successor) and pay a user fee.

Comments on proposed regulations that would designate certain micro-captive transactions as listed transactions (REG-109309-22) requested a streamlined process by which the IRS will approve requests for revocation of a Section 831(b) Election.

Procedure to Obtain Automatic Consent to Revoke Code Sec. 831(b) Election

In response to the comments received on the proposed regulations, Rev. Proc. 2025-13 provides a streamlined procedure for a taxpayer that has made a Section 831(b) Election to obtain the IRS's automatic consent to revoke the election, effective for the tax year for which consent is sought (the revocation year). The revocation year may be the tax year in which consent is sought or the first preceding tax year provided the taxpayer timely submits the revocation request described in section 4.02 of this revenue procedure.

Scope. Rev. Proc. 2025-13 applies to a taxpayer that has made a Section 831(b) Election that has not been revoked and has no net operating losses arising in a tax year to which the Section 831(b) Election applied that can be carried over to the revocation year.

Procedure. A taxpayer within the scope of Rev. Proc. 2025-13 may obtain the automatic consent to revoke its Section 831(b) Election by submitting the revocation request described in section 4.02 of the revenue procedure. A user fee is not required for this revocation request. A revocation request must meet the following requirements (a model revocation request letter is also provided in section 5 of the revenue procedure):

- The request must identify the taxpayer and contain the taxpayer's taxpayer identification number, address, and telephone number; must state that the taxpayer requests automatic consent to revocation of its Section 831(b) Election under this revenue procedure; and must identify the revocation year.
- The request must include representations that the taxpayer (a) has made a Section 831(b) Election that is in effect as of the date of filing the request; (b) has no net operating losses arising in a tax year that was prior to the revocation year to which the Section 831(b) Election applied that can be carried over to the revocation year; (c) is timely submitting the request (as provided in section 4.02(3) of this revenue procedure) no later than the date on which it files its timely-filed (including extensions) federal income tax return for the revocation year; and (d) will not make a Section 831(b) Election for the five tax years following the revocation year
- The request must be signed in accordance with Rev. Proc. 2025-1 (or successor), dated, and submitted no later than the date on which the taxpayer files its timely-filed (including extensions) federal income tax return for the revocation year.
- The request must be accompanied by a declaration provided in this revenue procedure that is signed in accordance with Rev. Proc. 2025-1 (or successor).

Taxpayers within the scope of this revenue procedure may choose not to seek the IRS's automatic consent to revoke their Section 831(b) Election under this revenue procedure and instead may submit a request for a letter ruling granting consent to revoke the Section 831(b) Election under Rev. Proc. 2025-1 (or successor) and pay the applicable user fee.

Effective Date of the Procedure

Rev. Proc. 2025-13 applies to a request to revoke a Section 831(b) Election submitted on or after January 13, 2025.

If, before January 13, 2025, a taxpayer submitted a request for a letter ruling to revoke its Section 831(b) Election, and the request is pending with the national office on January 13, 2025, the taxpayer may choose to seek the IRS's automatic consent to revoke its Section 831(b) Election under this revenue procedure by notifying the national office contact person assigned to the letter ruling request before February 12, 2025, that the taxpayer chooses to convert the request for a letter ruling to a request for automatic consent under this revenue procedure. This notification must make the representations set forth in section 4.02(2) of this revenue procedure; identify the revocation year for which automatic consent is requested, which may be the tax year for which revocation was requested in the pending letter ruling request or a later tax year; and be accompanied by the declaration described in section 4.02(4) of this revenue procedure.

If the taxpayer timely notifies the national office that it chooses to convert the request for a letter ruling to a request for automatic consent under this revenue procedure, the national office will send a letter to the taxpayer acknowledging its request and will return the user fee submitted with the request for a letter ruling.

Automatic Approval Procedures Provided for Certain Exempt Entities to Change Tax Year

Rev. Proc. 2025-6

Procedures are provided for certain entities to receive automatic approval to change their annual accounting period. The procedures apply to certain entities that are not required to file either a federal income tax return or an annual information return, but previously filed a Form 990-T solely to make an elective payment election.

Background

The regulations under Code Sec. 6417 provide that an applicable entity that is not required to file a federal income tax return under Code Sec. 6011 or an annual information return under Code Sec. 6033(a), but is filing an annual return solely to make an elective payment election under Code Sec. 6417, adopts a tax year upon filing an initial Form 990-T to make the elective payment election. The applicable entity may choose to adopt a either a calendar or fiscal year. The applicable entity must

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maintain adequate books and records, including a reconciliation of any differences between its regular books of account and those using its chosen tax year, to support making an elective payment election on the basis of its chosen tax year.

A taxpayer that wants to change its annual accounting period and use a new tax year generally must obtain the approval of the Commissioner. To secure approval, a taxpayer generally must Form 1128, Application to Adopt, Change, or Retain a Tax Year.

In-Scope Applicable Entity

An applicable entity must be:

- an organization exempt from the tax imposed by subtitle A of the Code because it is the government of any U.S. territory or a political subdivision thereof;
- a State, the District of Columbia, or political subdivision thereof;
- a Tribal entity that is (1) an Indian Tribal government or a subdivision thereof, (2) a Tribe incorporated under § 17 of the Indian Reorganization Act of 1934, as amended, or incorporated under § 3 of the Oklahoma Indian Welfare Act, as amended, that seeks to make an elective payment election with respect to any applicable Code Sec. 6417 credit, or (3) a wholly owned entity organized or incorporated under the laws of the Indian Tribal government(s) that owns it and that seeks to make an elective payment election with respect to any applicable Code Sec. 6417 credit; or
- an agency of an above applicable entity.

An applicable entity described above must satisfy the following conditions to qualify as an "in-scope" applicable entity:

- it is not required to file either a federal income tax return under Code Sec. 6011 or an annual information return under Code Sec. 6033(a);
- it has adopted a tax year by filing a Form 990-T for the sole purpose of making an elective payment election under § 6417; and
- it desires to change its tax year to match the accounting period used in keeping its books and records.

The procedures of this revenue procedure do not apply to entities that have either filed a federal income tax return under Code Sec. 6011 or filed an annual information return under Code Sec. 6033(a) and were required to use their established tax year when making an elective payment election under Code Sec. 6417.

Procedure

An in-scope applicable entity that desires to change its tax year may effectuate the change by timely filing Form 990-T for the first effective year with the appropriate Internal Revenue Service Center. The Form 990-T generally must be filed by the fifteenth day of the fifth month following the close of the short period. The Form 990-T should indicate that a change of annual accounting period is being made and include a statement describing the present annual accounting period and the proposed annual accounting period. The in-scope applicable entity is not required to file Form 1128 with the Form 990-T.

An in-scope applicable entity that complies with all applicable provisions of this revenue procedure will have obtained the approval of the Commissioner for a change in annual accounting period, beginning with the first effective year.

The books and records of the in-scope applicable entity must be closed as of the last day of the first effective year. An in-scope applicable entity must continue to maintain adequate books and records.

An in-scope applicable entity that timely files Form 8868, Application for Extension of Time to File an Exempt Organization Return or Excise Taxes Related to Employee Benefit Plans, is granted an automatic extension of six months from the original due date of Form 990-T to request a change in accounting period. If the entity is also filing the Form 990-T to make an elective payment election, the Form 8868 extends the due date for that election as well.

EFFECTIVE DATE

This revenue procedure is effective for changes in annual accounting periods of in-scope applicable entities for which the first effective year begins on or after January 1, 2024, and the period for filing the Form 990-T for such year has not yet expired.

TAX BRIEFS

Disbarments

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 2025-1

Exempt Organizations

An organization was denied tax-exempt status under Code Sec. 501. The organization was formed for the purpose of maintenance and management of a private property. Thus, it was found that the

organization was not a "community" as described under Code Sec. 501(c)(4) and did not significantly benefit the general public from its operations.

IRS Letter Ruling 202502006

FinCEN Penalties

The Financial Crimes Enforcement Network (FinCEN) has revised guidance on inflation adjustments to its civil monetary penalties as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended. This rule adjusts certain maximum civil monetary penalties within the jurisdiction of FinCEN to the amounts required by that Act. The final rule is effective on January 17, 2025.

FinCEN Final Rule

IRS

The IRS has announced the appointment of eighteen new members to the Internal Revenue Service Advisory Council (IRSAC) for the year 2025. Established in 1953, IRSAC serves as an organised public forum where representatives of the taxpaying public, the tax professional community, businesses of all sizes, tax-exempt and government entities, and information reporting interests provide feedback and recommendations to the IRS. The Council submits its annual report at a public meeting each November.

For 2025, Christine Freeland, CPA and President of Christine Z. Freeland, CPA PC, has been appointed as the IRSAC Chair. The newly appointed members to the Council to serve three-year terms are: Grace Allison, Pablo Blank, Selvan Boominathan, Caroline Bruckner, Samuel Cohen, Kendra Cooks, Omeed Firouzi, David Gannaway, Jared Goldberger, David Heywood, Manuela Markarian, Charles Markham, Mark Matkovich, Sarah Narkiewicz, Adam Robbins, Tralynna Scott, Kristofer Thiessen, and Rolanda Watson.

IR-2025-13

Qualified Business Unit

The IRS has issued corrections to a rule on the determination of taxable income or loss and foreign currency gain or loss with respect to a qualified business unit (QBU), (T.D. 10016). These corrections are effective on January 17, 2025.

T.D. 10016, Correcting Amendment

Unreported Income

Six individual taxpayers failed to substantiate the exclusion of significant unreported income from taxation, as the Court was unpersuaded by their claim that the income came from the sale of nontaxable gifts. Income identified in undisclosed bank accounts was treated as taxable and allocated under Code Sec. 1366 to the taxpayers as S corporation shareholders. Additionally, the Court affirmed the IRS's reallocation of income under Code Sec. 482 to ensure related-party transactions adhered to arm's-length standards. Further, fraud penalties under Code Sec. 6663 were upheld for four taxpayers, while accuracy-related penalties under Code Sec. 6662 were affirmed for the remaining two for substantial understatements of income.

Sehati, TC, Dec. 62,604(M)

User Fees

The IRS issued corrections to user fee for requests for tax treaty limitation of benefits determinations. The correct user fee for requests received after February 1, 2025 is $66,800.

Rev. Proc. 2025-1, I.R.B. 2025-1, is modified.

Rev. Proc. 2025-12

Wine and Distilled Spirits

The regulations that administer wine and distilled spirits containers are amended to add 13 standards of fill for wine and 15 for distilled spirits. The Alcohol and Tobacco Tax and Trade Bureau (TTB) also amended its regulations to eliminate the distinction between standards of fill for distilled spirits in cans versus other containers. These regulatory amendments were made in response to industry member requests to use a wider range of container sizes.

***Regulations**, 27 CFR Parts 4, 5, 24, Secs. 4.37, 4.72, 5.203, 24.255; **Treasury Decision TTB–200**, Alcohol and Tobacco Tax and Trade Bureau, 90 FR 1868, effective January 10, 2025*

Supreme Court Docket

A petition for review was denied in the following case:

RSBCO, CA-5 - A district court erred by incompletely and incorrectly delineating allowable "impediments" that would excuse untimely filing in jury instructions. A jury awarded the taxpayer (limited partnership) a refund of its payment of an IRS-imposed penalty for failure to file timely information returns. The challenged jury instruction could have affected the outcome of the case. Therefore, the Court of Appeals for the Fifth Circuit vacated the verdict and remanded for a new trial. The award to the taxpayer for attorney fees and costs was also vacated.

A petition for review was granted in the following case:

J. Zuch, CA-3— An appeals court ruled that the Tax Court had jurisdiction under Code Sec. 6330 to review a taxpayer's challenge to her tax liability even though there was no longer a dispute over the proposed levy. A pre-levy hearing before the Tax Court was dismissed as moot because the underlying liability had been paid. The Tax Court had jurisdiction to review the taxpayer's underlying tax liability in collection due process (CDP) hearings under Code Sec. 6330(d)(1) even if though the levy was no longer being enforced and the tax was satisfied. The Tax Court also had jurisdiction to review how the IRS offset the taxpayer's overpayments against her tax liability.

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