

FEDERAL TAX WEEKLY

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Senate Finance Committee Leadership Issues Proposals To Improve IRS

The leadership of the Senate Finance Committee has issued a discussion draft of bipartisan legislative proposals to make administrative and procedural improvements to the Internal Revenue Service.

These fixes were described as “common sense” in a joint press release issued by committee Chairman Mike Crapo (R-Idaho) and Ranking Member Ron Wyden (D-Ore.)

“As the tax filing season gets underway, this draft legislation suggests practical ways to improve the taxpayer experience,” the two said in the joint statement. “These adjustments to the laws governing IRS procedure and administration are designed to facilitate communication between the agency and taxpayers, streamline processes for tax compliance, and ensure taxpayers have access to timely expert assistance.”

The draft legislation, currently named the Taxpayer Assistance and Services Act, covers a range of subject areas, including:

- Tax administration and customer service;
- American citizens abroad;
- Judicial review;
- Improvements to the Office of the Taxpayer Advocate;
- Tax Return Preparers;
- Improvements to the Independent Office of Appeals;
- Whistleblowers;
- Stopping tax penalties on American hostages;
- Small business; and
- Other miscellaneous issues.

A summary of the legislative provisions can be found at https://www.finance.senate.gov/imo/media/doc/tas_act_discussion_draft_section_by_section.pdf.

Some of the policies include streamlining the review of offers-in-compromise to help taxpayers resolve tax debts; clarifying and expanding Tax Court jurisdiction to help taxpayers pursuing claims in the appropriate venue; expanding the independent of the National Taxpayer Advocate; increasing civil and criminal penalties on tax professionals that do deliberate harm; and extending the so-called “mailbox rule” to electronic submissions to provide more certainty that submissions to the IRS are done in a timely manner.

National Taxpayer Advocate Erin Collins said in a statement that the legislation “would significantly strengthen taxpayer rights in nearly every facet of tax administration.”

Likewise, the American Institute of CPAs voiced its support for the legislative proposal.

Melaine Lauridsen, vice president of Tax Policy and Advocacy at AICPA, said in a statement that the proposal “will be instrumental in establishing a foundation that helps simplify some of the laborious tax filing processes and allows taxpayers to better meet their tax obligation. We look forward to working with Senators Wyden and Crapo as this discussion draft moves forward.”

Final Micro-Captive Regulations Issued

T.D. 10029

The IRS issued final regulations that identify transactions that are the same as, or substantially similar to, certain micro-captive transactions as listed transactions. These are a type of reportable transaction, along with certain other micro-captive transactions as transactions of interest, another type of reportable transaction. Material advisors and certain participants in these listed transactions and transactions of interest are required to file disclosures with the IRS. They are subject to penalties for failure to disclose.

Background

Notice 2016-66, I.R.B. 2016-47, 745, identified certain micro-captive transactions as transactions of interest. It also alerted persons involved with said identified transactions that certain responsibilities may arise from their involvement. Subsequently, NPRM REG-109309-22 identified taxpayers who filed returns reflecting the tax benefits of a transaction under Reg. §1.6011-10(a) as participants in a listed transaction. It also identified taxpayers who file returns reflecting the tax benefits of a transaction under Reg. §1.6011-11(a) as participants in a transaction of interest.

Substantially Similar Transactions

These final regulations incorporate non-substantive changes to the description of the election under Code Sec. 831(b), partly defining the term “Captive,” to better reflect the statute. Reg. §§1.6011-10(e) and 1.6011-11(e) were added to these final

IRS Offers Tips to Make Tax Time Easier

The IRS provided six tips to help taxpayers file their 2024 tax returns more easily. Taxpayers should follow these steps for a smoother filing process:

- Gather all necessary tax paperwork and records to ensure a complete and accurate tax return.
- Report all types of income to avoid receiving an IRS notice or bill.
- File electronically with direct deposit to receive refunds faster and avoid paper returns.
- Consider IRS free resources to assist eligible taxpayers in filing.
- Choose tax filing options based on personal circumstances and comfort level with tax preparation.
- Use online resources at IRS.gov to find tax answers, check refund status, or pay taxes. The IRS encourages taxpayers to stay informed by:
 - following IRS official social media accounts and email subscription lists for the latest tax updates and alerts; and
 - visiting the IRS.gov Let Us Help You page for additional tax-related information.

IR-2025-19

regulations to provide more clarity on when a transaction is considered substantially similar under Reg. §1.6011-4(c)(4) to the identified transactions. The term “substantially similar” has also been defined by cross-reference to Reg. §1.6011-4(c)(4).

Constitutionality

Taxpayers remain free to engage in any captive insurance transaction, regardless of whether such transaction are identified in Reg. §1.6011-10 or Reg. §1.6011-11. However, there may be federal tax consequences if the transaction is not a valid captive insurance transaction.

Self-Insurance

The Service noted that transactions under Reg. §1.6011-11 have many of the characteristics of self-insurance. As such, taxpayers who deduct amounts paid to captives in such transactions may be engaged, in self-insurance.

Loss Ratio Computation Period

The transaction of interest loss ratio computation period would be increased to a period of up to 10 years. If the captive has not been existence for 10 years, it would be all years of the captive’s existence. The Treasury and IRS considered alternative computation periods. Both agencies determined that a difference of one year in the computation periods between the micro-captive listed transaction and the micro-captive transaction of interest, when the loss ratio thresholds differed, added unnecessary complexity. Therefore, the IRS would not adopt recommendations to replace the loss ratio factors with a metric evaluating pricing methodology.

Effective Date

These regulations are effective on January 14, 2025.

REFERENCE KEY

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

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Proposed BEAT Regulations Address Qualified Derivative Payments on Securities Lending Transactions

Proposed Regulations, NPRM REG-107895-24

The IRS has issued proposed base erosion and anti-abuse tax (BEAT) regulations that provide guidance on the determination and reporting of qualified derivative payments (QDPs) with respect to securities lending transactions.

Background

Code Sec. 59A imposes a tax on certain large corporate taxpayers (applicable taxpayers) with respect to base erosion payments made to foreign related parties (base erosion and anti-abuse tax (BEAT)). The BEAT is equal to the base erosion minimum tax amount for the tax year. Generally, a base erosion payment is any deductible amount paid or accrued by an applicable taxpayer to a foreign related person. The base erosion tax benefit is the deduction allowed for the tax year for the base erosion payment.

QDPs are not treated as base erosion payments if they are properly reported to the IRS. QDP is generally any payment made by a taxpayer pursuant to a derivative if it meets the requirements in Code Sec. 59A(h)(2)(A). Only the securities leg of a securities lending transaction—that is, the part of the contract providing for the borrowing and return of the securities, without regard to any obligation to provide cash collateral—may be treated as a derivative for purposes of the QDP rules. The aggregate amount of QDPs is determined as provided by the BEAT netting rule in Reg. §1.59A-2(e)(3)(vi). For intercompany securities lending transactions, however, the cash collateral component of a securities lending transaction, and the payment of interest thereon, are not taken into account for purposes of the BEAT netting rule.

In general, a payment qualifies for the QDP exception if the taxpayer satisfies certain reporting requirements in Reg. §1.6038A-2(b)(7)(ix) and Reg.

§1.59A-6(b)(2). If a taxpayer fails to satisfy these reporting requirements, those payments are not eligible for the QDP exception and are treated as base erosion payments, unless another exception applies. The QDP reporting rules of Reg. §1.6038A-2(b)(7)(ix) apply to tax years beginning on or after June 7, 2021. Before these rules are applicable, a taxpayer is treated as satisfying the QDP reporting requirements to the extent that the taxpayer reports, in good faith, the aggregate amount of QDPs.

The IRS has published final regulations under Code Sec. 59A (T.D. 9885 and T.D. 9910). In a series of notices, the IRS has announced the intention to defer the applicability date of Reg. §1.6038A-2(b)(7)(ix) (regarding the reporting requirements for QDPs) until tax years beginning on or after January 1, 2027 (Notice 2021-36, 2021-26 IRB 1227; Notice 2022-30, 2022-28 IRB 70; Notice 2024-43, 2024-25 IRB 1737). This means that Reg. §1.59A-6(b)(2)(i) will not apply until tax years beginning on or after January 1, 2027.

Proposed Changes to the Rules for Determining QDPs

The proposed regulations would provide that mark-to-market gains and losses on the securities leg of an intercompany securities lending transaction are not treated as QDPs and therefore are not netted with QDPs nor required to be included in QDP reporting. Mark-to-market gains and losses on other derivative transactions (including other derivative transactions that provide for physical delivery) must be included in QDP reporting.

The proposed regulations would not alter the rule that substitute payments and other payments to foreign related parties must be reported under Reg. §1.59A-6(b)(2)(i) and Reg. §1.6038A-2(b)(7)(ix). Those amounts must be taken into account on a consistent basis when determining the amount of the

taxpayer's base erosion payment, for example on a cash, accrual or mark-to-market basis, in a manner that does not omit or duplicate any payment. The proposed rule also achieves the compliance objectives of the QDP reporting requirement without imposing additional burden on taxpayers to create new systems to track mark-to-market gains and loss with respect to intercompany securities lending transactions.

The proposed regulations would provide a conforming amendment to the definition of a base erosion payment in the context of the securities leg of a securities lending transaction to provide that the BEAT netting rule under Reg. §1.59A-2(e)(3)(vi) does not apply to net QDPs with mark-to-market gains and losses on securities lending transactions. Consequently, only amounts paid to a foreign related party under a securities lending transaction that do not qualify as a QDP will be taken into account for purposes of the numerator of the base erosion percentage. The BEAT netting rule continues to apply to determine the deductions attributable to securities lending transactions for purposes of the denominator of the base erosion percentage.

Proposed Changes to the QDP Reporting Rules

The proposed regulations would provide that a taxpayer may report the amount actually paid to foreign related parties for QDP reporting purposes if the taxpayer can associate the substitute payment on securities borrowed and other payments made pursuant to a securities loan with a specific recipient. The "lottery" method of Reg. §1.6045-2(f)(2)(ii) is not applicable for this purpose. In response to any challenges in determining whether the recipient of a substitute payment and other payments is a foreign related party of the taxpayer, the proposed regulations would provide an alternative rule that treats the substitute payments that a taxpayer pays with respect to borrowed securities as having been paid

first to foreign related parties (but not in excess of the amount of the payments received by the foreign related parties).

Proposed Applicability Dates

Proposed Reg. §1.59A-3(b)(2)(iv) (application of BEAT netting rule to securities lending transactions) and Proposed Reg.

§1.59A-6(b)(3)(iii) and (iv) (QDP rules relating to securities lending transactions) would apply to tax years beginning on or after the date that final regulations are filed with the Federal Register. Proposed Reg. §1.6038A-2(b)(7)(ix) (rules relating to QDP reporting) would apply to payments made in tax years beginning on or after January 1, 2027.

Requests for Comments and Public Hearing

Written or electronic comments and requests for a public hearing must be submitted in accordance with the directions in the NPRM and must be received by April 14, 2025.

IRS Appeals Officers and Team Managers Not U.S. Officers; Not Appointed Under Appointments Clause

Tooke III, 164 TC No. 2, Dec. 62,610

The Tax Court ruled that IRS Appeals Officers and Team Managers were not “Officers of the United States.” Therefore, they did not need to be appointed under the Appointments Clause.

The taxpayer filed income taxes for tax years 2012 (TY) through TY 2017, but he did not pay tax. During a Collection Due Process (CDP) hearing, the taxpayer raised constitutional arguments that IRS Appeals and associated employees serve in violation of the Appointments Clause and the constitutional separation of powers.

No Significant Authority

The court noted that IRS Appeals officers do not wield significant authority. For instance, the officers do not have

authority to examine witnesses, unlike Tax Court Special Trial Judges (STJs) and SEC Administrative Law Judges (ALJs). The Appeals officers also lack the power to issue, serve, and enforce summonses through the IRS’s general power to examine books and witnesses.

The court found no reason to deviate from earlier judgments in *Tucker v. Commissioner* (*Tucker I*), 135 T.C. 114, Dec. 58,279; and *Tucker v. Commissioner* (*Tucker II*), CA-DC, 676 F.3d 1129, 2012-1 USTC ¶50,312). Both judgments emphasized the court’s observations in the current case. In *Buckley v. Valeo*, 424 U.S. 1 (per curiam), the Supreme Court similarly held that Federal Election Commission (FEC) commissioners were not appointed in accordance with the Appointments Clause, and thus none of them were permitted to exercise “significant authority.”

The taxpayer lacked standing to challenge the appointment of the IRS Appeals Chief and officers under the Appointments Clause, and the removal of the Chief under the separation of powers doctrine.

IRC Chief of Appeals

The taxpayer failed to prove that the Chief’s tenure affected his hearing and prejudiced him in some way, under standards in *United States v. Smith*, 962 F.3d 755 (4th Cir. 2020) and *United States v. Castillo*, 772 F. App’x 11 (3d Cir. 2019). The Chief did not participate in the taxpayer’s CDP hearing, and so the Chief did not injure the taxpayer. The taxpayer’s injury was not fairly traceable to the appointment (or lack thereof) of the Chief, and the Chief was too distant from the case for any court order pointed to him to redress the taxpayer’s harm.

IRS Provides 2025 Tax Filing Assistance Options

IR-2025-18

The IRS has opened the 2025 tax filing season and is accepting and processing federal individual tax year 2024 returns. Following are some options that will help taxpayers in filing tax returns in 2025:

- Use free tax filing options through IRS Free File, IRS Direct File, Volunteer Income Tax Assistance, and Tax Counseling for the Elderly programs.

- Expect most refunds in less than 21 days, with Earned Income Tax Credit (EITC) refunds for many available by March 3.
- Report all taxable income on the tax return and wait to file until receiving all income and informational documents.
- Choose a trusted tax professional.
- Be aware of tax scams.
- Create or access your IRS Online Account to view tax details, request IP

PINs, sign forms, manage payments, and receive notices.

The IRS provides in-person assistance at Taxpayer Assistance Centers nationwide, with improvements for the 2025 filing season including new scam alerts, redesigned notices, mobile-adaptive tax forms and virtual assistants to assist with refunds and other questions. Taxpayers can obtain free help preparing and filing taxes electronically by visiting IRS.gov.

Washington Round-up

Bessent confirmed as Treasury secretary. The Senate confirmed Scott Bessent as secretary of the Department of the Treasury. With a bipartisan majority vote of 68-29 on January 28, 2025, with 16 Democrats joining the Republicans in approving him, Bessent became the 79th Treasury secretary. During his January 16, 2025, confirmation hearing with the Senate Finance Committee, Bessent called extending the expiring provisions of the Tax Cuts and Jobs Act “the single most important economic issue of the day.”

IRS still has paper processing issues, according to GAO. The Government Accountability Office, in a report published January 30, 2025, stated that during the 2024 tax filing season, the Internal

Revenue Service processed 98 percent of the nearly 174 million individual and business tax returns it received as of April 19, 2024, adding that the agency “continued to face challenges with timely processing returns.” GAO found that IRS did not meet its goal of processing paper returns within an average 13 days. The average was 20 days for the 2024 tax season, according to the government watchdog. GAO also found that customer service “generally improved”, but responses to taxpayer mail “continue to be delayed, with 66 percent considered late as the filing season’s end.”

AICPA recommends form updates for taxpayers affected by disasters. The American Institute of CPAs, in a January 30, 2025, letter to the Internal Revenue

Service, is calling on the agency to “add a check box and a space for the FEMA declaration number to the first page” of a number of tax forms “in order for taxpayers to indicate that they are affected taxpayers, either because they are located in a disaster area or their records, principal place of business, or accountant were inside the declared area.” AICPA identified seven specific forms for this update – Forms 1040, 1065, 1120, 990, 1041, 706, and 709 – but said the list was “nonexhaustive.” A copy of this and all AICPA tax policy and advocacy comment letters submitted in 2025 can be found at <https://www.aicpa-cima.com/advocacy/article/2025-tax-policy-and-advocacy-comment-letters>.

TAX BRIEFS

Charitable Contribution

A married couple misstated the valuation of a charitable contribution. The Tax Court agreed with the IRS’s expert witness’ opinion regarding the value of the property. The taxpayers were liable for the 40 percent gross valuation misstatement penalty under Code Sec. 6662(h)(1).

Leo, TC, Dec. 62,611(M)

Liens and Levies

The Tax Court correctly determined that the IRS did not abuse its discretion in sustaining the proposed levy against an individual. The taxpayer failed to show he was eligible for a collection alternative or demonstrate the existence of a genuine issue of material fact.

Hartmann, CA-3, 2025-1 USTC ¶150,102

The IRS Office of Appeals correctly upheld a proposed levy against an individual to collect unpaid income tax liabilities for the tax years at issue.

Besore, TC, Dec. 62,612(M)

Medical Expense Deduction

The IRS ruled that medical costs and fees of assisted reproductive technologies; and other medical care directly attributable to a married couple were deductible under Code Sec. 213, including sperm donation. However, payments related to products and services involving assisted reproductive technologies not being performed on taxpayers were not deductible under Code Sec. 213. The taxpayers used a pregnancy surrogate, in vitro fertilization (IVF), and a third party’s donated egg.

IRS Letter Ruling 202505002

Penalties

A limited liability company (LLC) classified as a TEFRA partnership could not substantiate its assertions that the IRS failed to comply with the supervisory approval requirements under Code Sec. 6751(b) before imposing penalties related to disallowance of a charitable contribution deduction for a conservation easement. Accuracy-related penalties under

Code Sec. 6662 were upheld for substantial understatement of income tax and gross valuation misstatement. The increased penalty under Code Sec. 6662A was also upheld for reportable transaction understatement.

Park Lake II, LLC, TC, Dec. 62,613(M)

Supreme Court Docket

A petition for review was filed in the following case:

F.W. Bibeau, CA-8—An individual’s self-employment income from his law practice was not exempt from federal taxation. The taxpayer was an enrolled member of the Minnesota Chippewa Tribe. The taxpayer argued that the Indian Citizenship Act (the Act) lacked clear and precise language authorizing Congress to tax Indians. Further, the taxpayer argued that Congress must expressly authorize the federal taxation of Indians before income taxes can be levied. However, Indians, as citizens of the United States, are generally subject

to taxation. Since the Act took effect in 1924, all native-born Indians have been U.S. citizens, and the Code does not grant tax exemptions solely because a taxpayer is an Indian. Additionally, the taxpayer's argument cuts against the well-established legal proposition that Indians

are subject to federal income tax unless specifically exempted by treaty or statute.

Tax-Exempt Organizations

Two organizations were denied tax-exempt status for not operating exclusively for exempt purposes under Code Sec. 501.

In both the cases, the organizations were denied tax-exempt status because they did not meet either the operational or organizational tests and did not serve a clear exempt purpose.

[IRS Letter Ruling 202505023](#); [IRS Letter Ruling 202505024](#)