

# FEDERAL TAX WEEKLY

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## IRS Announces Limited Relief From Micro-Captive Reportable Transaction Penalties

Notice 2025-24

The IRS announced relief from penalties under Code Sec. 6707A(a) for taxpayers involved in micro-captive reportable transactions that fail to file certain disclosure statements under Code Sec. 6011 and Reg. §1.6011-10(h)(2) or Reg. §1.6011-11(h)(2) by April 14, 2025. This relief applies only if the taxpayers file the required disclosure statement with the Office of Tax Shelter Analysis (OTSA) by July 31, 2025.

### Background

The Treasury and IRS announced that taxpayer-participants must file initial disclosure statements with OTSA by April 14, 2025, as required by the Participant Later Identified Transaction rule. These would cover taxpayers who filed returns (1) reflecting their participation in such transactions; and (2) for which the period of limitations for assessment of tax had not ended on or before January 14, 2025. Stakeholders had raised concerns regarding the ability of participants to timely comply with their initial filing obligations with respect to Later Identified Micro-Captive Listed Transactions and Later Identified Micro-Captive Transactions of Interest.

### Limited Waiver of Penalties

The IRS will waive the participant penalty under Code Sec. 6707A(a) with respect to *Later Identified Micro-captive Listed Transaction* and *Later Identified Micro-captive Transaction of Interest* disclosure statements if they are completed meeting the requirements of Reg. §1.6011-4(d) and the instructions to Form 8886, *Reportable Transaction Disclosure Statement*. This applies to taxpayer participants that file the required disclosure statement with OTSA by July 31, 2025. Taxpayers concerned about meeting the due date for such disclosure statements can request an extension of the due date for their tax return.

Finally, the Service will waive the material advisor penalty under Code Sec. 6707(a) for the disclosure statements if they are completed according to the requirements of Reg. §301.6111-3(d) and the instructions to Form 8918, *Material Advisor Disclosure Statement*. This would apply if the material advisor files the required disclosure statement with OTSA by July 31, 2025.

# Petition Filed Before Receiving Determination; Court Lacked Jurisdiction

*Solid Ground Transportation, Inc., CA-7, 2025-1 USTC ¶150,136*

The Tax Court lacked jurisdiction over a first petition because the IRS had not yet mailed notice about disqualification. Therefore, the Tax Court should have dismissed it.

## Background

The taxpayer established an Employee Stock Ownership and Profit-Sharing Plan in 2013. After the Service investigated the taxpayer and the plan, an IRS agent sent two letters to the taxpayer. The taxpayer filed a petition to declare that its plan's trust was tax exempt from tax year 2013 onward before receiving a determination.

## Population Figures Provided for Calculating Low-Income Housing Tax Credits

State and local housing credit agencies that allocate low-income housing tax credits and states and other issuers of tax-exempt private activity bonds have been provided with a listing of the proper population figures to be used when calculating the 2025:

- calendar-year population-based component of the state housing credit ceiling under Code Sec. 42(h)(3)(C)(ii);
- calendar-year private activity bond volume cap under Code Sec. 146; and
- exempt facility bond volume limit under Code Sec. 142(k)(5)

These figures are derived from the estimates of the resident populations of the 50 states, the District of Columbia, and Puerto Rico, which were released by the Bureau of the Census on December 19, 2024. The figures for the insular areas of American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands are the midyear population figures in the U.S. Census Bureau's International Database.

*Notice 2025-18*

The taxpayer later filed another petition contesting the IRS' determination from 2018 onward.

The Tax Court ruled that it did not need to decide whether it had jurisdiction because both petitions related to "the same plan and period." It therefore incorrectly concluded that the petitions were duplicative and the court could dismiss the first one.

## Appeals Court Decision

The appeals court noted that Code Sec. 7476 states that there must be a determination. The taxpayer filed the first petition before receiving a determination. Therefore, the Tax Court therefore lacked jurisdiction over the first petition.

Vacating and remanding an unreported tax court opinion.

# Individual Not Entitled to Forfeiture Loss Deduction for Public Policy Reasons

*Hampton, TC Memo. 2025-32, Dec. 62,642(M)*

An individual was not entitled to deduct flowthrough loss from the forfeiture of his S Corporation's portion of funds seized by the U.S. Marshals Service for public policy reasons. The taxpayer pleaded guilty to charges of bribery, fraud, and money laundering. Subsequently, the U.S. Marshals

Service seized money from several bank accounts held in the name of the name of the taxpayer or his wholly owned corporation. The S corporation claimed a loss deduction related to its portion of the asset seizures on its return and the taxpayer reported a corresponding passthrough loss on his return.

However, Courts have uniformly held that loss deductions for forfeitures in

connection with a criminal conviction frustrate public policy by reducing the "sting" of the penalty. The taxpayer maintained that the public policy doctrine did not apply here, primarily because the S corporation was never indicted or charged with wrongdoing. However, even if the S corporation was entitled to claim a deduction for the asset seizures, the public policy doctrine barred the taxpayer

## REFERENCE KEY

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

FEDERAL TAX WEEKLY, 2025 No. 16. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.  
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from reporting his passthrough share. The public policy doctrine is not so rigid or formulaic that it applies only when the convicted person himself hands over a fine or penalty.

## Charitable Contribution Deductions Partially Allowed; Penalty Imposed

*WT Art Partnership LP, TC Memo. 2025-30, Dec. 62,640(M)*

A limited partnership was partially entitled to charitable contribution deductions under Code Sec. 170 for donations of Chinese paintings to a museum. The Tax Court found that although the partnership failed to satisfy certain appraisal requirements, it acted with reasonable cause and in good faith under the applicable statutory exception.

### Appraisals Were Not "Qualified Appraisals"

The Court held that the appraisals submitted by the partnership were not "qualified appraisals" within the meaning of Code Sec. 170(f)(11)(E) because

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

The IRS has released the applicable terminal charge and the Standard Industry Fare Level (SIFL) mileage rate for determining the value of noncommercial flights on employer-provided aircraft in effect for the first half of 2025. The rates are used for taxation of fringe benefits. The value of a flight is determined under the base aircraft valuation formula by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in Reg. §1.61-21(g)(7) and then adding the applicable terminal charge.

For flights taken during the period from January 1, 2025, through June 30, 2025, the terminal charge is \$52.44, and the SIFL rates are: \$.2869 per mile for the first 500 miles, \$.2187 per mile for 501 through 1,500 miles, and \$.2103 per mile over 1,500 miles.

*Rev. Rul. 2025-9*

they were prepared by individuals who did not meet the definition of a "qualified appraiser." The appraisers lacked verifiable education and experience specific to the property type and did not regularly perform appraisals for compensation, rendering the reports defective under Code Sec. 170(f)(11)(D).

Despite these deficiencies, the Court determined that the partnership satisfied the reasonable cause exception under Code Sec. 170(f)(11)(A)(ii)(II). The Court noted the partnership's prior IRS audit experience, its engagement with professionals, and its good-faith efforts to comply with appraisal requirements as grounds for relief from the dis-allowance.

### Penalty Imposed for One Valuation

The Court also determined that the valuation of one painting was significantly overstated. Thus, the claimed deduction was reduced, and the resulting valuation was used to recompute the allowable charitable contribution for that year.

A gross valuation misstatement penalty under Code Sec. 6662(h) was imposed for one of the tax years at issue. The Court found that the overstatement met the statutory threshold for the penalty and that no exception applied. However, no penalties were imposed for the other two tax years, as the misstatements in those years did not rise to the level required for penalty imposition.

## Conduct Did Not Affect Constitutional Interest; Failed To Allege Legal Injury

*J. Ream, DC Ohio, 2025-1 USTC ¶150,142*

An individual could not establish an intention to engage in conduct affected with a constitutional interest or that he faced a certainly impending threat of prosecution, failing to plausibly allege a legal injury. The taxpayer wished to distill whiskey in his home for his family's personal consumption. The taxpayer wanted a legal order declaring

that the federal regulations that prohibit home distilling were unconstitutional.

Without establishing that he suffered an injury, the taxpayer lacked standing to seek pre-enforcement review of federal prohibition on home distilling.

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regulations that prohibit home distilling were unconstitutional.

The court, referencing *Hobby Distillers Ass'n v. Alcohol & Tobacco Tax & Trade Bureau*, 740 F. Supp. 3d at 519, observed that the taxpayer did not possess a still for business purposes that could easily be transported to his residence. The taxpayer cited no cases showing the government enforcing Code Sec. 5601(a)(6).

# Updated IRS Practice Units Issued

The IRS Large Business and International (LB&I) has issued an updated Practice Unit in the areas:

- Allocation and Apportionment of Deductions for Nonresident Alien Individuals;

- Allocation and Apportionment of Deductions for Nonresident Alien Individuals; and
- Allowance of Deductions and Credits on 1120-F Delinquent Returns.

Practice Units provide IRS staff with explanations of general tax concepts, as well as

information on specific types of transactions. Practice Units are not official pronouncements of law or directives and cannot be used, relied upon or cited as such. Practice units can be found at <https://www.irs.gov/businesses/corporations/practice-units>.

## IRS Encourages Individuals To Access or Set Up IRS Online Account

IR-2025-43

The IRS is urging taxpayers to access or register for an IRS Online Account. Designed to offer a secure and user-friendly experience, the online account allows individuals to conveniently view their return data, make payments, track refunds, and manage tax documents from one location. Account holders can also request an Identity Protection PIN, sign tax authorizations, adjust language

settings, and receive hundreds of IRS notices electronically.

Updates to the system allow users to retrieve essential tax forms directly through their accounts. Recent enhancements enable individuals to access Forms W-2, 1095-A, and 1099-NEC, along with other critical information returns such as 1099-INT, 1099-DIV, 1099-MISC, 1099-SA, 1099-R, and W-2G. These records, reported by employers, financial institutions, and government agencies, are

available for both 2023 and 2024 and can be found under the Records and Status tab.

Taxpayers can also use the platform to manage and update payment plans, check their current balance, and download account transcripts including wage and income details. The IRS continues to expand this digital tool to reduce paperwork, simplify compliance, and assist individuals in preparing accurate returns. More information about the service is available through the IRS Online Account FAQ page.

## Washington Round-up

### Framework in place for TCJA extension.

Congress has solidified the path to making the expiring provisions of the Tax Cuts and Jobs Act permanent. The House of Representatives, in a 216-214 vote on April 10, 2025, with two Republicans crossing the aisle to join all Democrats in opposition, follows passage by the Senate on April 5 by a 51-48 vote with two Republicans crossing the aisle to join all Democrats in opposition of the framework. The passed framework will allow the TCJA and other tax-related policy proposals to be passed

via the reconciliation process, which only requires a simple majority in both chambers to pass and be sent forth to the White House for signature. The tax cuts that will be forthcoming with the TCJA will be covered by significant budget reductions of \$5 trillion across federal spending.

**IRS compliant with assessment extension request.** The Treasury Inspector General for Tax Administration noted in a report released in late March that the IRS “was compliant with the legal requirements related to requests to extend the assessment

statute. Specifically, the IRS complied with the legal requirement to notify taxpayers and their authorized representatives on their rights when requesting an extension of the statute of limitations for assessing additional taxes and penalties.” Of the audit cases TIGTA examined, it “did not identify any instances in which the IRS failed to provide notice to taxpayers of their rights to decline to extend the assessment statute of limitations or to request that any extension be limited to a specific period of time or specific issues.”

## TAX BRIEFS

### Child Tax Credit

An individual was not entitled to child tax credit (CTC) because her child did

not qualify as her dependent. The taxpayer was the noncustodial parent of the child. The child did not live with the

taxpayer for more than one-half of the year, so he was not her “qualifying child.” Further, the child instead lived with the

custodial parent for the entire tax year at issue.

*Correll, TC, Dec. 62,641(M)*

### **Compensation for Injuries**

An individual was partially entitled to exclude from gross income the settlement proceeds received from a municipality under Code Sec. 104(a)(2). The Tax Court found that a portion of the payment was compensation for physical injuries and related emotional distress resulting from a false arrest and was therefore excludable from gross income. However, the remainder of the settlement related to non-physical claims and was includible under Code Sec. 61 based on the payor's intent.

*Zajac, III, TC, Dec. 62,643(M)*

### **Domestic Production Activities Deduction**

A corporation was not entitled to claim the domestic production activities deduction under Code Sec. 199. The taxpayer's agreements with its plan sponsors specifically designated its software as a service and the taxpayer did not license or otherwise dispose of its software as set out in Code Sec. 199 and the regulations promulgated thereunder.

*Express Scripts, Inc., DC Mo., 2025-1 ustrc ¶50,135*

### **Employee Compensation**

The Tax Court properly applied the presumption of correctness to the IRS' determinations regarding an individual's wages and refund. The taxpayer argued that the

compensation received by him did not qualify as "wages" because he and his ex-wife were not "employees" under Code Sec. 3401(c). However, the Court of Appeals rejected the taxpayer's argument because the statute provides that the term "employee" includes government officers and employees.

*V. Manente, CA-3, 2025-1 ustrc ¶50,144*

### **ERISA**

An individual's state law claims were preempted by Employee Retirement Income Security Act of 1974 (ERISA). The individual, a plan participant in a long-term disability benefits plan administered by her employer, argued that the plan was maintained and by a church or by a convention or association of churches which is exempt from tax under Code Sec. 501. However, the individual's employer was neither a church nor a principal-purpose organization.

*Peterson, DC Mass., 2025-1 ustrc ¶50,143*

### **Exempt Organizations**

Two organizations were denied tax-exempt status for not operating exclusively for exempt purposes under Code Sec. 501. In the 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 202515015; IRS Letter Ruling 202515016*

### **IRS**

The IRS has released email advice prepared in less than two hours by attorneys in the IRS's Office of Chief Counsel. In Tax Analysts, CA-DC, 2007-2 ustrc ¶50,553, the Court of Appeals for the D.C. Circuit ruled that the IRS could not rely on its so-called "two-hour" rule to avoid disclosure of email sent to IRS field personnel. The documents constitute Chief Counsel Advice, which the IRS is required to publicly disclose under Code Sec. 6110. The items listed below were released as a result.

*Chief Counsel Advice Memorandum 202515013; Chief Counsel Advice Memorandum 202515014*

### **Retiree Medical Benefits**

The IRS ruled that a proposed amendment to a qualified defined benefit pension plan allowing medical benefits to be paid from the plan's Code Sec. 401(h) account to active employees eligible for in-service distributions at age 59½ would not violate Code Sec. 401(h) or Reg. §1.401-14. Under the plan, eligible employees may begin receiving pension distributions in accordance with Code Sec. 401(a)(36), without separating from service. The IRS concluded that such employees qualify as "retired" under the regulatory definition for purposes of receiving medical benefits under Code Sec. 401(h).

*IRS Letter Ruling 202515012*