

Current Federal Tax Developments (CFTD)

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Unit 1

Corporate Transparency Act Reporting
Regulations





FinCEN March FAQ and Documents

- FAQ issued by FinCEN on March 24, 2023
- One page PDF of key reporting dates
- Second one page PDF on beneficial ownership reporting



BENEFICIAL OWNERSHIP INFORMATION REPORT FILING DATES



FinCEN will begin accepting beneficial ownership information reports from reporting companies¹ that are not exempt² on January 1, 2024, the effective date of the reporting requirement.



INITIAL REPORTS



Existing reporting companies

Created or registered to do business in the United States before January 1, 2024.

Reports due by **January 1, 2025**.



Created or registered to do business in the United States on or after January 1, 2024.

Reports due within **30 calendar days** of receiving actual or public notice that the creation or registration of the reporting company is effective.



UPDATED REPORTS

Required when there is a change to previously reported information about the reporting company itself or its beneficial owners.

Updated reports due within **30 calendar days** after a change occurs.



CORRECTED REPORTS

Required when previously reported information was inaccurate when filed.

Corrected reports due within **30 calendar days** after the reporting company becomes aware or has reason to know of an inaccuracy.



More information can be found at www.fincen.gov/boi.

¹ There are two types of reporting companies: domestic and foreign. A **domestic reporting company** is any entity that is a corporation, a limited liability company (LLC), or created by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe. A **foreign reporting company** is any entity that is a corporation, LLC, or other entity that is formed under the law of a foreign country and registered to do business in any U.S. state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.

² There are 23 categories of entities that are exempt from the definition of reporting company. Please review FinCEN's final beneficial ownership information reporting rule, as well as FinCEN's reference materials published on www.fincen.gov/boi, for more details.





BENEFICIAL OWNERSHIP REPORTING – KEY QUESTIONS

This document is explanatory only and does not supplement or modify any obligations imposed by statute or regulation. Please refer to the beneficial ownership information reporting final rule, available at www.fincen.gov/boi, for details on specific provisions.

1. Does my company have to report its beneficial owners?

While certain types of entities are exempt, if you are a small corporation or LLC, you will likely be required to report your beneficial ownership information to FinCEN. A key factor in determining whether your company will have to report is whether you had to file a document with your state's secretary of state or a similar office to create your company or, for foreign companies, register it to do business in the United States.

2. Who is a beneficial owner of my company?

A beneficial owner is any individual who exercises substantial control over your company, or who owns or controls at least 25 percent of your company.

3. Does my company have to report its company applicants?

There can be up to two individuals who qualify as company applicants — (1) the individual who directly files the document that creates, or first registers, the reporting company; and (2) the individual that is primarily responsible for directing or controlling the filing of the relevant document. Your company is only required to report its company applicants if it is created or registered on or after January 1, 2024.

4. What specific information does my company need to report?

A reporting company will need to provide: (1) its legal name and any trade name or DBA; (2) its address; (3) the jurisdiction in which it was formed or first registered, depending on whether it's a U.S. or foreign company; and (4) its Taxpayer Identification Number (TIN).

For each of your company's beneficial owners and each company applicant (if required), your company will need to provide the individual's: (1) legal name; (2) birthdate; (3) address (in most cases, a home address); and (4) an identifying number from a driver's license, passport, or other approved document for each individual, as well as an image of the document that the number is from.

5. When and how should my company file its initial report?

If your company is created or registered before January 1, 2024, file by January 1, 2025. Otherwise, file within 30 calendar days of receiving actual or public notice from your state's secretary of state or similar office that your company was created or registered. FinCEN will accept reports electronically beginning January 1, 2024.

6. What if there are changes to or inaccuracies in reported information?

Your company will have 30 days to report any changes to reported information. For updates, the 30 days start from when the relevant change occurs. For corrections, the 30 days start after you become aware of, or have reason to know of, an inaccuracy in a prior report.



Filing Requirements

- Reporting companies are required to file these reports 31 USC §5336(b)(1)
- What entity types are covered?
 - LLCs
 - Corporations
 - Other entities required to register with a state, tribe, etc. or created by filing a document with the same governments
 - However, may be exempt from filing



Explanation of the Filing Requirements Under the Corporate Transparency Act

- Cannot file reports now - have to until January 1, 2024 (at least)
- When initial reports are required to be filed
 - A reporting company created or registered to do business before January 1, 2024 - **January 1, 2025**
 - A reporting company created or registered on or after January 1, 2024 - **30-day deadline** runs from the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier



Explanation of the Filing Requirements Under the Corporate Transparency Act

- Previously exempt entity becomes no longer exempt - **file a report within 30 calendar days** after the date that it no longer meets the criteria for any exemption



Explanation of the Filing Requirements Under the Corporate Transparency Act

- So key thing to note is that:
 - The January 1, 2025 date only applies if the entity exists by the end of 2023
 - Any entity formed in 2024 will only have 30 days to file that same initial report - and that's where things are first likely to go wrong
 - If counsel is involved in forming the entity, most likely the client will be advised to file
 - However, if a client decides to follow a "form your own LLC" TikTok video or otherwise does it on their own the risks are far higher
- Also, it appears that if an existing entity files early in 2024, they would immediately be subject to the update requirements we'll discuss later



Definition and Characteristics of a Reporting Company

- Domestic reporting company -
 - a corporation,
 - a limited liability company, or
 - any other entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.



Definition and Characteristics of a Reporting Company

- Foreign reporting company -
 - a corporation, limited liability company, or other entity formed under the law of a foreign country, and
 - registered to do business in any U.S. state or in any Tribal jurisdiction, by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.



Definition and Characteristics of a Reporting Company

- A “state” means
 - any state of the United States,
 - the District of Columbia,
 - the Commonwealth of Puerto Rico,
 - the Commonwealth of the Northern Mariana Islands,
 - American Samoa,
 - Guam,
 - the U.S. Virgin Islands, and
 - any other commonwealth, territory, or possession of the United States.



Exempt Entities

- The statute provides for 23 types of entities that are exempt from the requirements to file reports even though they otherwise would be a reporting company
- Important to note that ***there is no small business exemption from the filing requirements.***
- The main concern is all about small, non-operating companies or companies with minimal operations that exist primarily to confuse the ownership chain



Exempt Entities

- Certain types of securities reporting issuers.
- A U.S. governmental authority.
- Certain types of banks.
- Federal or state credit unions as defined in section 101 of the Federal Credit Union Act.
- Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act.



Exempt Entities

- Certain types of money transmitting or money services businesses.
- Any broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 15 of that Act (15 U.S.C. 78o).
- Securities exchanges or clearing agencies as defined in section 3 of the Securities Exchange Act of 1934, and that is registered under sections 6 or 17A of that Act.
- Certain other types of entities registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.



Exempt Entities

- Certain types of investment companies as defined in section 3 of the Investment Company Act of 1940, or investment advisers as defined in section 202 of the Investment Advisers Act of 1940.
- Certain types of venture capital fund advisers.
- Insurance companies defined in section 2 of the Investment Company Act of 1940.



Exempt Entities

- State-licensed insurance producers with an operating presence at a physical office within the United States, and authorized by a State, and subject to supervision by a State's insurance commissioner or a similar official or agency.
- Commodity Exchange Act registered entities.
- Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002.



Exempt Entities

- Certain types of regulated public utilities.
- Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.
- Certain pooled investment vehicles.
- Certain types of tax-exempt entities.
- Entities assisting a tax-exempt entity described in the prior bullet



Exempt Entities

- Large operating companies with at least 20 full-time employees, more than \$5,000,000 in gross receipts or sales, and an operating presence at a physical office within the United States. (This the exception that has the broadest applicability.)
- The subsidiaries of certain exempt entities.
- Certain types of inactive entities that were in existence on or before January 1, 2020



Exempt Entities

- Remember these exemptions are to be interpreted narrowly - so you must look at the details for any exemption you believe cover a particular organization
- These details are found in the Beneficial Ownership Information Reporting Regulations at 31 CFR § 1010.380(c)(2)



Large Operating Company

- Must meet all of the following requirements:
 - Employ more than 20 employees on a full time basis in the United States
 - Filed federal income tax returns in the previous year that reported more than \$5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of
 - other entities owned by the entity; and
 - other entities through which the entity operates
 - Has an operating presence at a physical office in the United States



Large Operating Company

- Counting employees for this test
 - Borrows definitions found in the regulations for the applicable large employer (ALE) provisions of the Affordable Care Act (ACA) for full time employees (does not count full time equivalents)
 - These regulations are found at
 - Treasury Reg. §54.4980H-1(a) (which provides definitions of employees and full time employees) and
 - Treasury Reg. §54.4980H-3 (which determines full time employees under the ACA for the ALE rules)



Large Operating Company

- Counting employees for this test
 - Employer ALE regulations allows aggregating certain group of related entities as a single employer
 - Full time employee
 - generally is an employee who is employed an average of at least 30 hours a week in a calendar month,
 - working 130 hours per month being treated as equivalent of being employed on average at least 30 hours a week in a calendar month



Large Operating Company

- Counting employees for this test
 - Definition of “United States” is modified from the ACA one. For this purpose, the “United States” is made up of:
 - The States of the United States,
 - the District of Columbia,
 - **the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and**
 - **the Territories and Insular Possessions of the United States.**
 - The last two categories are not part of the United States for ACA purposes



Large Operating Company

- \$5,000,000 test
 - Filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's
 - Form 1120 (including consolidated returns)
 - Form 1120-S,
 - Form 1065 or
 - Other applicable form



Large Operating Company

- \$5,000,000 test
 - Excludes gross receipts or sales from sources outside the United States, as determined under Federal income tax principles.
 - For corporations that file a consolidated return, the test will apply to the amount reported on the consolidated return for the group



Inactive Entity

- All of these had to have existed on January 1, 2020 (so over time we will have fewer of these)
- Is not engaged in active business;
- Is not owned by a foreign person, whether directly or indirectly, wholly or partially;
- Has not experienced any change in ownership in the preceding twelve month period;



Inactive Entity

- Has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve month period; and
- Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.



Definition of a Beneficial Owner

- If not otherwise excluded, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—
 - exercises **substantial control** over the entity; or
 - **owns or controls not less than 25 percent** of the ownership interests of the entity



Substantial Control

- Note - don't need to have any ownership to be in this category.
- An individual exercises substantial control if the individual:
 - Serves as a senior officer of the reporting company;
 - Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);



Substantial Control

- An individual exercises substantial control if the individual:
 - Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding (not an exclusive list):
 - The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
 - The reorganization, dissolution, or merger of the reporting company;
 - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;
 - The selection or termination of business lines or ventures, or geographic focus, of the reporting company;



Substantial Control

- An individual exercises substantial control if the individual:
 - Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding (not an exclusive list):
 - Compensation schemes and incentive programs for senior officers;
 - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;
 - Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; or
 - Has any other form of substantial control over the reporting company. (Catch-all category based on facts and circumstances of the situation).



Substantial Control

- Substantial control can be exercised (directly or indirectly) in any of the following manners:
 - Board representation;
 - Ownership or control of a majority of the voting power or voting rights of the reporting company;
 - Rights associated with any financing arrangement or interest in a company;
 - Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;



Substantial Control

- Substantial control can be exercised (directly or indirectly) in any of the following manners:
 - Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
 - any other contract, arrangement, understanding, relationship, or otherwise.



Ownership Interests

- Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;
- Any capital or profit interest in an entity;
- Any instrument convertible, with or without consideration, into any share or instrument described in the prior two bullets, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in the prior two bullets, regardless of whether characterized as debt;



Ownership Interests

- Any put, call, straddle, or other option or privilege of buying or selling any of the items described in the first three bullets without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or
- Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.



Ownership or Control of an Ownership Interest

- Direct or indirect through any contract, arrangement, understanding, relationship, or otherwise, including (again, not an exhaustive list):
 - Joint ownership with one or more other persons of an undivided interest in such ownership interest;
 - Through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual;



Ownership or Control of an Ownership Interest

- Direct or indirect through any contract, arrangement, understanding, relationship, or otherwise, including (again, not an exhaustive list):
 - With regard to a trust or similar arrangement that holds such ownership interest:
 - As a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;
 - As a beneficiary who:
 - Is the sole permissible recipient of income and principal from the trust; or
 - Has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or
 - As a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust; or



Ownership or Control of an Ownership Interest

- Direct or indirect through any contract, arrangement, understanding, relationship, or otherwise, including (again, not an exhaustive list):
 - Through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the reporting company.



Calculation of Total Ownership Interests

- Calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:
 - For corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage shall be the greater of:
 - the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or
 - the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; and



Calculation of Total Ownership Interests

- Calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:
 - If the facts and circumstances do not permit the calculations described the prior two bullets to be performed with reasonable certainty, any individual who owns or controls 25 percent or more of any class or type of ownership interest of a reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.



Senior Officers

- Holding the position *or exercising the authority of a*:
 - president,
 - chief financial officer,
 - general counsel,
 - chief executive officer,
 - chief operating officer,
 - or any other officer, regardless of official title, who performs a similar function.



Excluded Individuals (Not a Beneficial Owner)

- A minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section;
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
- An individual acting solely as an employee of a corporation, limited liability company, or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person (does not cover senior officers);
- An individual whose only interest in a corporation, limited liability company, or other similar entity is through a right of inheritance (future interest only); or
- A creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of ownership discussed earlier (that is, simply being a creditor won't make someone a beneficial owner).



Company Applicant

- Only required for entities created or registered on or after January 1, 2024
- Company applicant is:
 - For a domestic reporting company, the individual who directly files the document that creates the domestic reporting company;
 - For a foreign reporting company, the individual who directly files the document that first registers the foreign reporting company; and
 - Whether for a domestic or a foreign reporting company, the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.



No More than 2 Company Applicants

- The two would be:
 - the individual who directly files the document that creates, or first registers, the reporting company; and
 - the individual that is primarily responsible for directing or controlling the filing of the relevant document.
- If only one person was involved in filing the relevant document, then only that person should be reported as a company applicant.



Information to Be Provided

- About the entity*
- About beneficial owners* and
- About company applicants (only for entities formed after January 1, 2024)

* Must be continually updated so long as the entity is a reporting entity



Information About the Entity

- The full legal name of the reporting company;
- Any trade name or “doing business as” name of the reporting company;
- A complete current address consisting of:
 - In the case of a reporting company with a principal place of business in the United States, the **street address** of such principal place of business; and
 - In all other cases, the **street address** of the primary location in the United States where the reporting company conducts business
- The State, Tribal, or foreign jurisdiction of formation of the reporting company



Information About the Entity

- For a foreign reporting company, the State or Tribal jurisdiction where such company first registers; and
- The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the reporting company, or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.



Information About the Entity

- Entity must also indicate if is filing:
 - An initial report,
 - A correction of a prior report or
 - An update to a prior report



Information to Be Provided for Beneficial Owners and Company Applicants

- The full legal name of the individual;
- The date of birth of the individual;
- A complete current address consisting of:
 - In the case of a company applicant who forms or registers an entity in the course of such company applicant's business, the **street address of such business**; or
 - In any other case, the individual's **residential street address**



Information to Be Provided for Beneficial Owners and Company Applicants

- A unique identifying number and the issuing jurisdiction from one of the following documents:
 - A non-expired passport issued to the individual by the United States government;
 - A non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual;
 - A non-expired driver's license issued to the individual by a State; or
 - A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the prior three documents
- An image of the document from which the unique identifying number was obtained.



General Rules for Updated Reports

- If there is any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners, including any change with respect to who is a beneficial owner or information reported for any particular beneficial owner, the reporting company shall file an updated report in the form and manner specified **within 30 calendar days** after the date on which such change occurs.



General Rules for Updated Reports

- An updated report required to be filed shall reflect **any change with respect to required information previously submitted** to FinCEN concerning a **reporting company** or its **beneficial owners**
- **Newly exempt entities** - An updated report required to be filed shall indicate that the filing entity is no longer a reporting company.



General Rules for Updated Reports

- **Death of a beneficial owner** - If an individual is a beneficial owner of a reporting company by virtue of property interests or other rights subject to transfer upon death, and such individual dies, a change with respect to required information will be deemed to occur when the estate of the deceased beneficial owner is settled, either through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary deposition. The updated report shall, to the extent appropriate, identify any new beneficial owners.



General Rules for Updated Reports

- **Formerly a minor child** - If a reporting company has reported information with respect to a parent or legal guardian of a minor child, a change with respect to required information will be deemed to occur when the minor child attains the age of majority.
- **Changes to identifying document** - With respect to an image of an identifying document required to be reported, a change with respect to required information will be deemed to occur when the name, date of birth, address, or unique identifying number on such document changes



General Rules for Updated Reports

- And everything else:
 - Address change
 - Gifting interests to another party
 - Sale of interest
 - Anything either
 - On initial or updated report that is now different
 - Not on initial or updated report but now should be there
 - On either report that no longer should be there



Corrected Reports

- When an error is made in an initial or updated report, a corrected report is required
 - If any report under this section was inaccurate when filed and remains inaccurate, the reporting company shall file a corrected report within 30 calendar days after the date on which such reporting company becomes aware or has reason to know of the inaccuracy.
 - A corrected report filed within this 30-day period shall be deemed to satisfy the rules for a proper first report if filed within 90 calendar days after the date on which the inaccurate report was filed.
 - Note these are two different provisions - being outside either time limit can lead to penalties



Reporting Violation

- Subject to potential civil and/or criminal penalties - it is unlawful for any person to
 - willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance or
 - willfully fail to report complete or updated beneficial ownership information to FinCEN
- A person provides or attempts to provide beneficial ownership information to FinCEN if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application



Civil Penalties

- The civil penalty is not more than **\$500 for each day** that the violation continues or has not been remedied
- Note that there is no limit found in the statute for the amount of a civil penalty (you'll see some references to a \$10,000 cap, but that is only the criminal fine we'll talk about next)



Criminal Penalties

- The criminal penalties are:
 - A fine of not more than \$10,000;
 - Imprisonment for not more than 2 years or
 - Both

Unit 2

Inflation Reduction Act of 2022



Inflation Reduction Act of 2022

- Signed into law on August 16, 2022 (Date of enactment)
- While it's clear there are Build Back Better Act roots, most of BBBA did not make this bill and many provisions in the bill are very different from BBBA versions



Extension of Limitation on Excess Business Losses of Noncorporate Taxpayers

- **Effective Date:** Taxable years beginning after December 31, 2026.
- 2022 limit on excess business loss deduction is \$270,000/\$540,000
- In Tax Cuts and Jobs Act this limit was scheduled to go away after 2025 (though no one believed it would really--including Sen. Thune)
 - Was extended for one year in ARPA to raise funds for that bill
 - Got extended two more years to swap out extension of state and local tax cap (which is just as unlikely to ever go away) to pay for private equity partnership relief related to the corporate minimum tax (Thune amendment)



Raise Limit to Using \$500,000 of R&D Credit Against Payroll Taxes for QSB

- **Effective Date:** Tax years beginning after December 31, 2022
- Research and development credit allowed certain qualified small businesses (QSB) to use up to \$250,000 a year of credit against employer payroll taxes for up to 5 years
- Will add an additional \$250,000 (so raise total to \$500,000 a year) to the special employer payroll tax offset



Elective Payments and Transferable Credits

- **Effective date:** These provisions are effective for taxable years beginning after December 31, 2022.
- Meant to allow tax exempt organizations and entities with insufficient income tax liabilities to still get a benefit from certain energy related credits



Elective Payments and Transferable Credits

- Elective Payment for tax-exempt organizations - applicable entities
 - Any organization exempt from income tax,
 - Any State or local government (or political subdivision thereof),
 - The Tennessee Valley Authority,
 - An Indian tribal government (as defined in IRC §30D(g)(9)),
 - Any Alaska Native Corporation (as defined in 43 USC 1602(m)), or
 - Any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas
- List of eligible credits found in materials
- Treated as a payment of income taxes (IRC §6417)



Elective Payments and Transferable Credits

- Transfer of Certain Credits - can be transferred by any taxpayer that is not an applicable entity eligible to elect to treat credits as a payment of income taxes under IRC §6417.
- List of eligible credits found in materials (not quite the same as for tax exempt organizations)
- Would allow selling the credit (at a discount) to a taxpayer with taxable income or to a more profitable entity



Elective Payments and Transferable Credits

- Proposed and temporary regulations issued for both on June 21, 2023
 - Transfers ([REG-101610-23](#)) ([E&Y Tax News Update Article](#))
 - Direct-pay for exempt organizations ([REG-101607-23](#)) ([E&Y Tax News Update Article](#))
 - Taxpayers may rely on the regulations in the interim
 - Will involve registering online for tracking



Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- **Effective Date:** Generally, the new and revised provisions apply to property placed in service after December 31, 2022, and before January 1, 2033. However, the bill also moves the expiration date of the old law forward by one year so that the old rules will apply to 2022 tax returns. The requirement to provide a product identification number takes effect for property placed in service after December 31, 2024.



Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- Restores the Nonbusiness Energy Property Credit (prior name) under 2021 rules for 2022
 - For many clients they've already used up the lifetime caps (\$500 with further limits on specific areas)
 - But if there is still room for the client, can pick up any remaining amounts on 2022 returns
- 2022 - get 30% credit on two prior categories (with revisions) but also a home energy audit
- Note that, unlike other items, a home energy audit only works for principal residence



Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- Big change - no longer lifetime limits and limits get larger
 - Limits are now annual, so taxpayers can claim a credit every year
 - For most of the items, overall annual limit of \$1,200 per year
 - Qualified energy property - \$600
 - Exterior windows and skylights - \$600
 - Doors - \$250 in the case of any single exterior door and \$500 for all exterior doors and
 - Home energy audit - \$150



Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- Notwithstanding the above rule, the maximum credit for heat pump and heat pump water heaters & biomass stoves and boilers is \$2,000
- Modifications related to qualified energy efficiency improvements
 - New standards for some items
 - Roofs no longer qualify
 - Air sealing materials or systems are added
- Now property only has to be used by the taxpayer as a residence, but not necessarily as their principal residence (except for home energy audits)



Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- Beginning in 2025 will have to provide a product identification number to claim a credit
 - Unique to each item to be assigned by manufacturer under rules to be proposed by the IRS
 - If number is not provided, credit will not be allowed--most likely electronic filing will reject if not provided



Extension and Modification of Residential Clean Energy Credit

- **Effective Date:** Most changes are effective for property placed in service after December 31, 2021. However, changes related to battery storage technology and the definition of that technology take effect for expenditures made after December 31, 2022.
- Applied to solar electric, solar hot water, fuel cell, small wind energy, geothermal heat pump, and biomass fuel property installed in homes prior to 2034.



Extension and Modification of Residential Clean Energy Credit

- Resets rates and extends the credit:
 - 30% for property placed in service after December 31, 2021, and before January 1, 2033,
 - 26% for property placed in service after December 31, 2032, and before January 1, 2034, and
 - 22% for property placed in service after December 31, 2033, and before January 1, 2035.
- Adds qualified battery storage technology expenditures to qualified expenditures for property placed in service after December 31, 2022



Vehicle Credits

- Prior to IRA 2022 had
 - Single new qualified plug-in electric drive motor vehicle credit (subject to manufacturer unit limits) and
 - Alternative fuel refueling property credit



Vehicle Credits

- IRA 2022
 - Revises and renames credit for new electric (and fuel cell) vehicles
 - Adds credit for buying a used clean vehicles
 - Adds commercial credit for clean vehicles and certain equipment
 - Extends and modifies alternative fuel refueling property credit



New Clean Vehicle Credit

- **Effective date:** Applies to vehicles placed in service after December 31, 2022. The provision requiring final assembly take place in North America is effective for vehicles placed in service after August 15, 2022 except for vehicles eligible for the transition rule where the taxpayer makes the appropriate election.
- Renames the credit to the new clean vehicle credit



New Clean Vehicle Credit

- Adds one change for remainder of 2022, with all other requirements remaining the same
- The final assembly of a vehicle must take place in North America for the vehicle to qualify for the credit.
 - Significant change from proposed BBBA - no prevailing wage rule and expands production to North America
 - Manufacturer unit limit rules still apply for 2022, so vehicles from Tesla and General Motors still cannot qualify (until next year)
 - Rule will continue to apply for 2023 and later years



New Clean Vehicle Credit

- Final assembly test applies to all vehicles
 - Placed in service after August 15, 2022 unless
 - Was subject to a binding contract by August 15, 2022 and the taxpayer elects to apply the prior rules to that vehicle
- Department of Energy has published list of vehicles with (at least some units) with final assembly in North America
 - Will be updated by the Department of Energy
 - Still must verify your particular vehicle was actually assembled in North American plant by checking VIN (some are assembled at multiple locations around the world)



New Clean Vehicle Credit

- Remainder of items take effect for vehicles placed in service after December 31, 2022 unless otherwise noted
- Computation of the maximum credit for a vehicle
 - \$3,750 if satisfies the critical minerals requirement for the tax year and
 - \$3,750 if satisfies the battery component requirements for the tax year
 - Total credit is \$7,500
 - Note - current DoE list does not take these requirements into account



New Clean Vehicle Credit

- Critical minerals requirement - percentage of value of applicable critical minerals which are
 - Either extracted or processed in the United States or a country we have a free trade agreement with or
 - Recycled in North America



New Clean Vehicle Credit

- Percentages
 - 2023 - 40%
 - 2024 - 50%
 - 2025 - 60%
 - 2026 - 70%
 - 2027 and later - 80%
- Beginning in 2025 no credit allowed if any critical materials extracted, processed, or recycled by a foreign entity of concern



New Clean Vehicle Credit

- Battery Component Requirement - percentage of value of components in the battery manufactured or assembled in North America is greater or equal to:
 - 2023 - 50%
 - 2024 or 2025 - 60%
 - 2026 - 70%
 - 2027 - 80%
 - 2028 - 90%
 - 2029 or later - 100%



New Clean Vehicle Credit

- For battery component requirements the foreign entity of concern ban applies beginning in 2024
- Definition of new clean vehicle
 - Minimum battery capacity is 7 kilowatt hours (not really an issue, since that's smaller than what we see today)
 - Seller must provide report to buyer and the IRS regarding the vehicle
 - Includes a qualified fuel cell vehicle
 - Must be made by a qualified manufacturer (signs up with the IRS and meets standards)



New Clean Vehicle Credit

- Modified adjusted gross income (only real adjustments are foreign/territorial income exclusions) limitations - can qualify based on year claiming the credit or the prior taxable year
 - \$300,000 - Married filing jointly and surviving spouse
 - \$225,000 - Head of household
 - \$150,000 - Single and married filing separately
- Note, this is a *cliff* test - \$1 of income can cause a \$7,500 increase in tax



New Clean Vehicle Credit

- Manufacturer's suggested retail price limitation - will not apply if manufacturer's suggested retail price is greater than
 - \$80,000 for a van, sports utility vehicle or pickup truck or
 - \$55,000 for all other vehicles
- IRS to develop classification rules using criteria similar to that employed by the EPA and Department of Transportation
- VIN will have to be disclosed on the tax return to claim this credit



New Clean Vehicle Credit

- Beginning in 2024, the taxpayer can transfer the credit to the dealer at the time of sale and get an immediate reduction in purchase price or rebate
 - Dealer must register with IRS and follow specific rules
 - Payment or reduction in price not taxable to the buyer, nor is it deductible to the dealer.
- Buyer will have to repay the credit (that is, have the amount added back as a tax) if it is determined when the buyer's tax return is filed that he/she/they don't qualify for the credit due to the MAGI limit
- The credit does not apply to vehicles placed in service after December 31, 2032



Credit for Previously-Owned Clean Vehicles

- **Effective date:** Except for the transfer of a credit to a dealer rule, the credit will apply to vehicles acquired after December 31, 2022. The transfer of credit to a dealer rule will be delayed by one year, applying to vehicles acquired after December 31, 2023.
- Credit equal to lesser of:
 - \$4,000 or
 - 30% of the sales price of the vehicle



Credit for Previously-Owned Clean Vehicles

- Previously-owned clean vehicle defined:
 - The model year of which is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle,
 - The original use of which commences with a person other than the taxpayer,
 - Which is acquired by the taxpayer in a qualified sale, and
 - Which--
 - Generally, meets the requirements to be eligible for the clean vehicle credit or
 - Is a clean fuel-cell vehicle which has a gross vehicle weight rating of less than 14,000 pounds



Credit for Previously-Owned Clean Vehicles

- Qualified sale is a sale of a motor vehicle
 - By a dealer,
 - For a sales price that does not exceed \$25,000, and
 - Which is the first transfer since the date of the enactment of IRA 2022 to a qualified buyer other than the person with whom the original use of such vehicle commenced



Credit for Previously-Owned Clean Vehicles

- Qualified buyer is a taxpayer
 - Who is an individual,
 - Who purchases such vehicle for use and not for resale,
 - Who is not eligible to be claimed as a dependent by another taxpayer, and
 - Who has not been allowed a credit under this section for any sale during the 3-year period ending on the date of the sale of such vehicle.
- Note - parents can't just "not claim" the child to qualify the child for this credit
- VIN must be provided by taxpayer to claim the credit



Credit for Previously-Owned Clean Vehicles

- Lower modified adjusted gross income numbers for this credit - ½ of the ones for the new clean vehicle credit
 - \$150,000 - married filing jointly and surviving spouse
 - \$112,500 - head of household
 - \$75,000 - single and married filing separately
- MAGI computed in same manner as for the new clean energy credit



Credit for Previously-Owned Clean Vehicles

- Same rules apply for transferring the credit to the dealer (including being first available in 2024)
- Credit is no longer available for vehicles placed in service after December 31, 2032



New Credit for Qualified Commercial Clean Vehicles

- **Effective date:** The credit applies to vehicles acquired after December 31, 2022.
- Amount of the credit (initial credit) is the lesser of:
 - 15 percent of the basis of such vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or
 - The incremental cost of such vehicle
- The incremental cost of a qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over such price of a comparable vehicle.



New Credit for Qualified Commercial Clean Vehicles

- Initial credit is limited to the lesser of the initial credit or:
 - In the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, \$7,500, and
 - In the case of a vehicle with a weight rating of 14,000 pounds or more, \$40,000.



New Credit for Qualified Commercial Clean Vehicles

- A qualified commercial clean vehicle means any vehicle—
 - That meets the definition of a new clean vehicle for purposes of the new clean vehicle credit and is acquired for use or lease by the taxpayer and not for resale
 - Either—
 - Is treated as a motor vehicle for purposes of title II of the Clean Air Act and is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails), or
 - Is mobile machinery, as defined in IRC §4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways),



New Credit for Qualified Commercial Clean Vehicles

- A qualified commercial clean vehicle means any vehicle—
 - Either—
 - Is propelled to a significant extent by an electric motor which draws electricity from a battery which has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or
 - Is a motor vehicle which satisfies the following requirements:
 - Which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use, and



New Credit for Qualified Commercial Clean Vehicles

- A qualified commercial clean vehicle means any vehicle—
 - Either—
 - Which, in the case of a passenger automobile or light truck, has received on or after the date of the enactment of this section a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and
 - Is of a character subject to the allowance for depreciation



New Credit for Qualified Commercial Clean Vehicles

- Certain tax exempt entities can ignore the requirement that the asset be subject to depreciation:
 - the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,
 - an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter, or
 - any Indian tribal government described in section 7701(a)(40).



New Credit for Qualified Commercial Clean Vehicles

- No double benefit allowed (can't claim new clean vehicle credit on same vehicle)
- Vehicle identification number must be provided to claim the credit
- Certain clean vehicle credit rules apply
- The credit will not apply to any vehicle acquired after December 31, 2032.
- Note - key limits on the new clean vehicles don't apply here
 - No AGI limits even if this flows to an individual return
 - No manufacturer's list price limitations
 - Can be claimed by an auto leasing company even if the captive lessor of the vehicle manufacturer



Alternative Fuel Refueling Property Credit

- **Effective date:** The delay in termination for credits under this section is effective for property placed in service after December 31, 2021. For all other provisions found in IRA 2022, the provisions are effective for property placed in service after December 31, 2022. Thus, the credit continues under the rules in place for 2021 for 2022, then is revised beginning in 2023.



Alternative Fuel Refueling Property Credit

- Prior law version of credit extended through 2022
- Revised basic credit beginning in 2023
 - 6% up to a maximum credit of \$100,000 for qualified alternative fuel property subject to depreciation (business property) or
 - 30% up to a maximum of \$1,000 for any other qualified property
- Commercial project qualifies for higher 30% credit if either the property is part of:
 - A project the construction of which begins prior to the date that is 60 days after the IRS issues guidance on meeting the prevailing wage and apprenticeship requirements (**too late now to meet this test**) or
 - A project that meets the *prevailing wage* and *apprenticeship requirements*

Unit 3

SECURE 2.0 Act of 2022



SECURE 2.0 Act of 2022

- Follow-up to 2019's SECURE Act dealing with retirement accounts
- Does not have a "headline" change like the repeal of the stretch IRA, but may have a broader overall impact
- Effective dates range from immediate to a number of years down the line.
- Bill was signed into law on December 29, 2022
- Will look at selected key issues for this summary (lots of other provisions you likely want to look over)



Increase in Age for Required Beginning Date

- SECURE Act raised required beginning date to April 1 in year following the year the participant reached age 70 ½ to age 72
- Effective for those who had not attained age 72 by December 31, 2022 and who attain age 73 before January 1, 2033, the age increases to age 73 (so no one will have 4/1/24 as RBD based on age)
- Later increases to age 75
 - States applies to those who attain age 74 after December 31, 2022
 - Those born in 1959 end up with two RBDs as written



Expansion and Mandate of Automatic Enrollment in Retirement Plans

- Plan years beginning after December 31, 2024 (2025 calendar years)
- Initial percentage is at least 3% but no more than 10%
- Must provide for automatic increase by 1% each following year until it reaches at least 10% but no more than 15%
- A number of plans are exempted
 - All plans existing on December 29, 2022
 - Small businesses with 10 or fewer employees
 - New businesses (for first three years)
 - Governmental plans
 - Church plans



Small Employer Pension Plan Startup Credit

- Applies to taxable year beginning after December 31, 2022 (2023 calendar years)
- Credit for administrative costs is increased from 50% to 100% of such costs for employers with 50 or fewer employees (still at 50% for those with 51 to 100) in first 3 years
- Credit for employer matches up to \$1,000 of match per employee who is not a highly-compensated employee based on percentage that decreases over first five years
 - Years 1 & 2 - 100%
 - Year 3 - 75%
 - Year 4 - 50%
 - Year 5 - 25%
- Matching credit phases out as number of employees goes from 51 to 100.



Saver's Match

- Replaces current nonrefundable credit with new refundable one
- 50% of individual's contribution to IRAs, employer retirement plans and ABLE accounts up to a maximum \$2,000 credit
- Credit phases out between
 - \$41,000 and \$71,000 for MFJ
 - \$20,500 and \$35,500 for single and MFS
 - \$30,750 and \$53,250 for head of household
- Credit must be placed in retirement account as a federal matching contribution unless the credit is less than \$100 and participant elects to apply it against tax



IRA Catch Up Contributions Indexed for Inflation

- Taxable year beginning after December 31, 2023 (so 2024 will be the 1st year)
- Catch-up contributions for IRAs will be indexed for inflation
- Will move in \$100 increments



Higher Employer Plan Catch-Up Limits for Those Age 60-63

- Taxable years beginning after December 31, 2024 (2025 is first year)
- If employer plan allows for catch-up contributions, participants age 60-63 will be allowed higher catch-up contributions equal to greater of
 - \$10,000 or
 - 50% more than regular catch-up contributions
- \$10,000 is indexed for inflation beginning in 2026



Student Loan Payments Can Be Used to Qualify for Employer Deferrals

- Contributions for plan years beginning after December 31, 2023 (2024 calendar years)
- Can separately test participants who receive contributions based on student loan payments



Small Immediate Incentives to Participate in Plans

- Effective for plan years beginning after December 29, 2022
- Allows employers to provide small incentives to employees who participate in the retirement plan, but cannot be paid from plan assets
- Senate summary suggests offering gift cards - but note that such an incentive would appear to be taxable income to the employee (cannot meet *de minimis* test for IRC §132 per long-standing IRS regulations and case law)



Penalty-Free Withdrawal from Retirement Plans for Individual in Case of Domestic Abuse

- Effective for distributions made after December 31, 2023
- Domestic abuse survivor can take penalty free distribution from certain plans for various reasons, including escaping an unsafe situation
- Lesser of \$10,000 or ½ of the participants' account
- Can repay the distribution for up to 3 years and get a refund of the income tax paid on the distribution



Exemption to Penalty on Early Distributions from Qualified Plans for Individuals with a Terminal Illness

- Effective for distributions made after December 29, 2022
- No premature distribution tax for distributions made for an individual with a terminal illness
- Expected to result in death within 84 months (7 years)



Exemption from Premature Distribution Tax for Certain Emergency Expense Withdrawals

- Distributions after December 31, 2023 (2024 calendar years)
- Can come from retirement plans such as 401(k) plans and IRAs
- Exception covers payments for emergency expenses, which are unforeseeable or immediate financial needs relating to personal or family emergency expenses
- Only one distribution per year for no more than \$1,000 qualifies for this exception
- Would still have to pay regular income tax on the distribution
- 3 year repayment period
 - Can return funds within 3 years and recover any tax paid
 - But cannot take another distribution under this rule until first distribution is repaid or the 3 year period expires



Emergency Savings Accounts Linked to Individual Account Plans

- Plan years beginning after 2023
- Employer can modify their plans to offer non-highly compensated employees pension linked emergency savings accounts
 - Can automatically opt employees into these accounts but no more than 3% deferral
 - Maximum in the account is \$2,500
 - Any additional amounts in excess of \$2,500 redirected to employee's Roth defined contribution plan



SIMPLE Plan Contribution Increases

- Effective for taxable years beginning after December 31, 2023 (2024 calendar years)
- Increases regular contribution and catch-up contribution limit by 10%
 - No conditions imposed on plans on employers with no more than 25 employees
 - For those with 26 to 100 employees, increase only applies if employer either:
 - Makes a 4% match or
 - Makes a 3% across the board contribution



ABLE Account Age Modification

- Taxable years beginning after December 31, 2025 (2026 calendar years)
- Currently disability must have occurred by the year the beneficiary attained age 26
- New law will raise that age to 46



Rollover of Long-Term 529 Plans to Roth IRAs

- Effective for distributions made after December 31, 2023 (calendar year 2024)
- Only applies if 529 account has been open for more than 15 years
- Maximum lifetime conversion limited to \$35,000 for each beneficiary
- Annual rollover limited to maximum Roth IRA contribution amounts (ignoring AGI limits)



Reduction in Excise Tax for Failure to Take Required Minimum Distributions

- Taxable years beginning after December 29, 2022 (2023 calendar year)
- Penalty reduced from prior 50% level
 - 10% penalty if corrected before IRS imposes the tax
 - 25% penalty otherwise
- Key question - will this actually lead to more taxpayers paying this tax as previously the IRS had routinely waived the 50% penalty



Individual Retirement Plan Statute of Limitations for Excise Tax on Excess Contributions and Certain Accumulations

- Effective as of December 29, 2022
- Statutes begin to run on date the individual's Form 1040 was filed (or would have been due if no Form 1040 required)
 - 3 year statute for "certain accumulations" (failure to take RMDs)
 - For excess contributions
 - 6 year statute generally
 - Statute does not begin to run until return filed in case of bargain sales



One Time Option to Make Qualified Charitable Distribution (QCD) to Split-Interest Charity

- Effective for taxable years beginning after December 29, 2022 (2023 calendar years)
- Can make a one-time transfer to the following split-interest charities from an IRA as a QCD
 - Charitable remainder annuity trust
 - Charitable remainder unitrust
 - Charitable gift annuities
- Maximum amount is \$50,000 (unlikely to make sense for that amount except to a CGA)



Inflation Indexing of Annual Qualified Charitable Distribution from IRA Amounts

- Effective for distributions made in taxable years following December 29, 2022 (2023 calendar years)
- Index the \$100,000 limit for inflation
- Note that this means we'll have a 2023 amount in excess of \$100,000



Repayment of Qualified Birth or Adoption Distributions Limited to 3 Years

- Applies to distributions made after the date of enactment of this Act and retroactively to the 3 year period beginning on the day after the date such distribution was received
- SECURE Act created this class of distribution which were exempt from 10% additional tax for premature distributions but subject to regular income tax
- SECURE Act allow amounts to be put back in retirement account as a rollover, but did not impose a tax limit
- Time limit imposed to assure money goes back in while taxpayer can still get the taxes refunded



Retroactive Elective Deferrals for Sole Proprietors (Section 317)

- Effective for plan years beginning after December 31, 2023 (2024 calendar years)
- Must be sole proprietor (not owner of S corporation) with no employees (so very limited exception)
- *Only for first year* the employee deferral and the employer contribution can both be made up until the extended due date of the proprietor's return
- In later years the standard rules apply (so can't wait to make the elective deferral portion of the contribution)



Tax Treatment of IRA Involved in a Prohibited Transaction

- Effective for taxable years beginning after December 29, 2022
- If an individual engages in a prohibited transaction with regard to an IRA, the IRA is disqualified as of the beginning of the tax year
- Law clarifies that if individual has multiple IRA accounts, the disqualification only impacts the IRA account to which the prohibited transaction relates
- Will want to keep IRA investments at risk for prohibited transactions in separate (likely self-directed) IRAs



Roth Employer Plan Distribution Rules

- Effective for taxable years beginning after December 31, 2023
- Makes designated Roth accounts in retirement plans subject to the same rules as Roth IRAs
- No distribution required during the lifetime of the employee



Surviving Spouse Election to Be Treated as an Employee

- Effective for calendar years beginning after December 31, 2023
- Surviving spouse can step into the shoes of deceased employee and treated as if he/she is the employee
- Essentially gives spouse same rights as have when he/she treats the IRA as his/her own
- Most likely to be of use for closely held entities



Special Rules for Use of Retirement Funds in Connection with Qualified Federally Declared Disasters

- Effective for disasters occurring after January 26, 2021
- Allows up to \$22,000 to be distributed for affected individuals (note this is far less than Congress allowed in the past)
- Can be taken into gross income over 3 years and can be repaid
- Also have special rules for distributions to purchase a home and larger amounts can be borrowed from the plan



SIMPLE and SEP Roth IRAs

- Effective for taxable years beginning after December 31, 2022
- Employees can be offered the option to elect to treat employee and employer contributions as Roth contributions



Elective Deferrals Generally Limited to Regular Contribution Limit

- Effective for taxable years beginning after December 31, 2023
- For employees with compensation in excess of \$145,000, catch-up contributions can only be made to designated Roth accounts in the plan
- Note that this will tend require plans wanting to accept catch-up contributions to add Roth account provisions to the plan
- Due to drafting error, Congressional action may be needed or there will be no catch-up contributions beginning next year.



Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions

- Effective as of December 29, 2022
- Plans are allowed (but not required) to provide employees with right to elect to receive matching or nonelective contributions as Roth contributions



Charitable Conservation Easements

- Effective for contributions made after December 29, 2022
- Law disallows a charitable deduction for a qualified conservation contribution if the deduction claimed exceeds two and one half times the sum of each partner's relevant basis in the contributing partnership
- Does not apply if
 - the contribution meets a 3 year holding period test
 - substantially all of the contributing partnership is owned by members of a family or
 - the contribution relates to the preservation of a certified historic structure.
- Big change for earlier proposal is that it does not apply retroactively

Unit 4

Individual Income Tax Developments



Cryptocurrency Received for Staking Taxable per IRS Ruling



Photo by [Rodion Kutsaiev](#) on [Unsplash](#)

- Revenue Ruling 2023-14, 7/31/23
 - In Notice 2014-21 the IRS had ruled that cryptocurrency received from mining was taxable when received by the miner
 - Mining is the term for a “proof of work” method of updating the related blockchain and being rewarded with coin for being the first to do so
 - However, due to scaling and energy concerns, staking has become a more popular method for validating additions to the various blockchains



Cryptocurrency Received for Staking Taxable per IRS Ruling



Photo by [Rodion Kutsaiev](#) on [Unsplash](#)

- Revenue Ruling 2023-14, 7/31/23
 - In staking (proof-of-stake), pledge coins to allow validator to attempt to properly confirm transactions to the blockchain and will receive coins in exchange
 - While most assumed the IRS would take the same position as with mining, the IRS had avoided specifically ruling on this
 - In fact, a case is in progress that tried to force the issue to court (*Jarrett v. United States*, now at CA6)



Cryptocurrency Received for Staking Taxable per IRS Ruling

Facts for the Ruling

- Transactions in M, a cryptocurrency, are validated by a proof-of-stake consensus mechanism.
- On Date 1, Taxpayer A, a cash-method taxpayer, owns 300 units of M. A stakes 200 of the units of M and validates a new block of transactions on the M blockchain, receiving 2 units of M as validation rewards.
- Pursuant to the M protocol, during a brief period ending on Date 2, A lacks the ability to sell, exchange, or otherwise dispose of any interest in the 2 units of M in any manner.
- The following day, on Date 3, A has the ability to sell, exchange, or otherwise dispose of the 2 units of M.



Cryptocurrency Received for Staking Taxable per IRS Ruling



Photo by [Rodion Kutsaiev](#) on [Unsplash](#)

- Revenue Ruling 2023-14, 7/31/23
 - Includible in income in the year the taxpayer obtains *dominion and control* over the validation rewards
 - In the example, that would be the year containing Date 3
 - FMV determined based on the value of the coin at the time on Date 3 when *dominion and control* obtained



Cryptocurrency Received for Staking Taxable per IRS Ruling



Photo by [Rodion Kutsaiev](#) on [Unsplash](#)

- Revenue Ruling 2023-14, 7/31/23
 - Limits of the ruling
 - Only applies to cash basis taxpayers
 - Did not cover gas or transaction fees
 - Does not address other IRC areas, such as IRC §83
 - Presumably we will see challenges to this position in court

Firefighter's Legal Settlement Payment for Sexual Harassment Was Not Exempt from Income Taxation



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141 Kaplan Inc. Communications

August 2023

- *Montes v. Commissioner*, US Tax Court Bench Opinion, Docket No. 17332-21, June 29, 2023
 - Another case dealing with the taxation of legal settlements - general rule is that they are taxable
 - One possible exclusion is found at IRC §104(a)(1) for personal physical injuries or personal physical illness
 - Taxpayer is a woman who achieved her goal to become a San Francisco firefighter

Firefighter's Legal Settlement Payment for Sexual Harassment Was Not Exempt from Income Taxation



Photo by [LOGAN WEAVER | @LGNWVR](#) on [Unsplash](#)

142 Kaplan Inc. Communications

August 2023

- *Montes v. Commissioner*, US Tax Court Bench Opinion, Docket No. 17332-21, June 29, 2023
 - She was subjected to extreme levels of harassment on the job, including sabotaging her equipment, and did "doing disgusting and extremely unsanitary things to her personal property."
 - She filed complaints with superiors and eventually filed suit against the city
 - Had a settlement, for which one term was to receive \$382,797.70

Firefighter's Legal Settlement Payment for Sexual Harassment Was Not Exempt from Income Taxation



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143 Kaplan Inc. Communications

August 2023

- *Montes v. Commissioner*, US Tax Court Bench Opinion, Docket No. 17332-21, June 29, 2023
 - Agreement stated payment
 - “will be considered and treated as general damages for personal injury, including allegations of emotional injury. This amount will not be considered or treated as back wages.”
 - Inclusive of all of plaintiffs general damages

Firefighter's Legal Settlement Payment for Sexual Harassment Was Not Exempt from Income Taxation



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144 Kaplan Inc. Communications

August 2023

- *Montes v. Commissioner*, US Tax Court Bench Opinion, Docket No. 17332-21, June 29, 2023
 - Original complaint had no allocations of physical injury
 - IRC §104(a)(2) only applies to payments for physical injuries or physical illness
 - Law also provides emotional distress shall not be treated as a physical injury or physical sickness
 - So entire balance was included in income

Firefighter's Legal Settlement Payment for Sexual Harassment Was Not Exempt from Income Taxation



Photo by [LOGAN WEAVER | @LGNWVR](#) on [Unsplash](#)

- *Montes v. Commissioner*, US Tax Court Bench Opinion, Docket No. 17332-21, June 29, 2023
 - What about penalties?
 - She sought advice from a CPA who advised her the payment was not taxable
 - Court found that she had acted reasonably to determine her tax liability
 - Thus, no penalty applied to the underpayment

Taxpayer Must Include IRA Distributions in Income Even Though Triggered by a Fraud



Photo by [Grant Durr](#) on [Unsplash](#)

- *Gomas v. United States*, US District Court for the Middle District of Florida, Case No. 8:22-CV-01271, July 17, 2023
 - Taxpayer inherited an online business from his brother
 - Discovered business manager was stealing inventory and mismanaging the business
 - Moved the business to where he lived and put his stepdaughter in charge (turns out retaining the original business manager would have been a better choice...)



Taxpayer Must Include IRA Distributions in Income Even Though Triggered by a Fraud



Photo by [Grant Durr](#) on [Unsplash](#)

- *Gomas v. United States*, US District Court for the Middle District of Florida, Case No. 8:22-CV-01271, July 17, 2023
 - Wanted to shut down business, but stepdaughter convinced him to let her continue to run the business
 - Moved business to her home, got \$20,000 to build a fence for the business which no one seems to have ever seen or confirmed got built - but this is still not the big problem



Taxpayer Must Include IRA Distributions in Income Even Though Triggered by a Fraud



Photo by [Grant Durr](#) on [Unsplash](#)

- *Gomas v. United States*, US District Court for the Middle District of Florida, Case No. 8:22-CV-01271, July 17, 2023
 - Told her stepfather that the former manager and other employees had opened merchant service sub-accounts using his personal information
 - Now company (and he) were liable for missing funds
 - Convinced the couple they needed to hire an attorney to prevent stepfather from going to prison



Taxpayer Must Include IRA Distributions in Income Even Though Triggered by a Fraud



Photo by [Grant Durr](#) on [Unsplash](#)

- *Gomas v. United States*, US District Court for the Middle District of Florida, Case No. 8:22-CV-01271, July 17, 2023
 - In reality none of this was true-but they sent her money to hire and make payments to an attorney she claimed to have hired.
 - Took funds from Mr. Gomas' retirement accounts to make these payments and pay tax on those large distributions
 - Ended up taking over \$1.1 million dollars from accounts, over \$700,000 to daughter



Taxpayer Must Include IRA Distributions in Income Even Though Triggered by a Fraud



Photo by [Grant Durr](#) on [Unsplash](#)

- *Gomas v. United States*, US District Court for the Middle District of Florida, Case No. 8:22-CV-01271, July 17, 2023
 - Turns out daughter turned to friends and family for other frauds (\$200,000)-but they got suspicious and determined she was fraudulently requesting funds
 - Family informed parents two years after she took all of the funds to drain his retirement account



Taxpayer Must Include IRA Distributions in Income Even Though Triggered by a Fraud



Photo by [Grant Durr](#) on [Unsplash](#)

- *Gomas v. United States*, US District Court for the Middle District of Florida, Case No. 8:22-CV-01271, July 17, 2023
 - Filed an amended return to remove the retirement plan distributions from income
 - IRS disallowed the refund claim, as did the District Court



Taxpayer Must Include IRA Distributions in Income Even Though Triggered by a Fraud



Photo by [Grant Durr](#) on [Unsplash](#)

- *Gomas v. United States*, US District Court for the Middle District of Florida, Case No. 8:22-CV-01271, July 17, 2023
 - Taxpayer claimed did not obtain the benefit of the distribution
 - Problem was they transferred the funds to their checking account
 - Would have been different if daughter had forged documents to empty the account

Taxpayer Must Include IRA Distributions in Income Even Though Triggered by a Fraud



Photo by [Grant Durr](#) on [Unsplash](#)

- *Gomas v. United States*, US District Court for the Middle District of Florida, Case No. 8:22-CV-01271, July 17, 2023
 - Taxpayer argued the payments to daughter were for a business expense
 - No actual legal fees were ever paid
 - He had no business to which any expenses could be attached - was a personal criminal and civil case (or would have been had any of it been real)
 - Was simply theft – and post-TCJA it was a nondeductible loss

Deed Did Not Qualify as Contemporaneous Written Acknowledgment (CWA), Charitable Deduction Denied

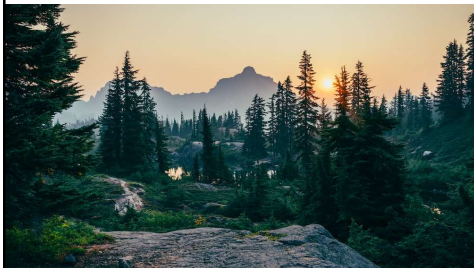


Photo by [Sergei A](#) on [Unsplash](#)

- *Brooks v. Commissioner*, TC Memo 2022-122, 12/19/22
 - CWA rules of IRC §170(f)(8)
 - Required if > \$250 and must contain
 - Amount of cash and description of property
 - Whether any goods or services were provided
 - Description and good faith estimate of the value or a statement none were provided
 - Per IRC §170(f)(8)(C), must have no later than earlier of due date of the return or date the return is filed



Deed Did Not Qualify as Contemporaneous Written Acknowledgment (CWA), Charitable Deduction Denied



Photo by [Sergei A](#) on [Unsplash](#)

- *Brooks v. Commissioner*, TC Memo 2022-122, 12/19/22
 - Taxpayer donated land easement and issued a deed
 - Had boilerplate that the easement was made “for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration and in consideration of the covenants, mutual agreements, conditions and promises herein contained.”
 - Did not have any other document that could serve as a CWA, so taxpayer contended the deed was a CWA



Deed Did Not Qualify as Contemporaneous Written Acknowledgment (CWA), Charitable Deduction Denied



Photo by [Sergei A](#) on [Unsplash](#)

- *Brooks v. Commissioner*, TC Memo 2022-122, 12/19/22
 - Problems:
 - Deed did not have a clause indicating it was the entire agreement
 - If that had existed, then prior cases could have allowed this to suffice as the CWA
 - Words “donation” and “herein” did not serve to state this was the entire agreement and nothing was given in return
 - Fact there actually were no other agreements wasn’t relevant



Deed Did Not Qualify as Contemporaneous Written Acknowledgment (CWA), Charitable Deduction Denied



Photo by [Sergei A](#) on [Unsplash](#)

- *Brooks v. Commissioner*, TC Memo 2022-122, 12/19/22
 - With no CWA, the court denied the entire deduction as that is what the statute provides for (unambiguous text controls)
 - The IRS has been raising documentation issues in many exams claiming large contributions and has been successful in a number of court cases
 - Be sure to double check the documentation requirements are fulfilled on any large charitable contributions claimed



Hobby Loss Deductions Are Miscellaneous Itemized Deductions



Photo by [Ibrahim Mushan](#) on [Unsplash](#)

- *Gregory v. Commissioner*, Case No. 22-10707, CA11, May 30, 2023
 - Taxpayer was not challenging finding that yacht activity was covered by IRC §183 (activity not engaged in for a profit)
 - Generally, under §183(b) deductions that would otherwise be allowed under §162 if there was a profit motive only allowed to the extent of gross income
 - But what type of deduction is it? And where would it be claimed on the return?



Hobby Loss Deductions Are Miscellaneous Itemized Deductions



Photo by [Ibrahim Mushan](#) on [Unsplash](#)

- *Gregory v. Commissioner*, Case No. 22-10707, CA11, May 30, 2023
- General rules for determining how exclusion or deduction is reported
 - IRC §61 defines gross income broadly
 - IRC §62 lists deductions allowed in arriving at adjusted gross income (“above the line”)
 - IRC §67 lists itemized deductions that aren’t miscellaneous, with all others being miscellaneous deductions subject to limitations (including now §67(g) denial)



Hobby Loss Deductions Are Miscellaneous Itemized Deductions



Photo by [Ibrahim Mushan](#) on [Unsplash](#)

- *Gregory v. Commissioner*, Case No. 22-10707, CA11, May 30, 2023
- IRC §183(b) doesn’t explicitly state what type of deduction it is
- CA11 notes that no Court of Appeals has previously looked at this issue



Hobby Loss Deductions Are Miscellaneous Itemized Deductions

CA11 Analysis - Law Provides Unambiguous Answer (Not a Good One for Taxpayer)

The language of the relevant statutory provisions settles this question. See *Mamani v. Berzain*, 825 F.3d 1304, 1309 (11th Cir. 2016). We presume that the Internal Revenue Code “says . . . what it means and means . . . what it says.” See *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992). We therefore begin our statutory interpretation with the words of the statutes themselves. *Harris v. Garner*, 216 F.3d 970, 972 (11th Cir. 2000) (en banc). Still, “[s]tatutory provisions are not written in isolation.” *In re Shek*, 947 F.3d 770, 776 (11th Cir. 2020). A provision’s meaning must consider both the “particular statutory language at issue” and “the language and design of the statute as a whole.” *Id.* at 777 (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988)).



Hobby Loss Deductions Are Miscellaneous Itemized Deductions

CA11 Analysis - Law Provides Unambiguous Answer (Not a Good One for Taxpayer)

Three provisions of Section 183 are relevant. First, *Section 183(a) prohibits all hobby loss deductions except for those allowable in Section 183(b)*. I.R.C. §183(a) (stating that, if an “activity engaged in by an individual or an S Corporation” is “not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section”).



Hobby Loss Deductions Are Miscellaneous Itemized Deductions

CA11 Analysis - Law Provides Unambiguous Answer (Not a Good One for Taxpayer)

Second, Section 183(b)(1) grants activities not engaged in for profit (e.g., hobbies) the same deductions “allowable under this chapter . . . without regard to whether or not such activity is engaged in for profit.” Id. §183(b)(1).



Hobby Loss Deductions Are Miscellaneous Itemized Deductions

CA11 Analysis - Law Provides Unambiguous Answer (Not a Good One for Taxpayer)

Third, and this is the disputed provision, Section 183(b)(2) allows “a deduction equal to the amount of deductions . . . allowable under this chapter . . . only if such activity were engaged in for profit.” Id. §183(b)(2). But the amount of this deduction cannot exceed the difference between the hobby’s gross income and the deductions allowed under Section 183(b)(1). See *id.* Thus, the law caps a Section 183(b)(2) deduction at the amount of the hobby’s “gross income” minus the deductions claimed under Section 183(b)(1).



Hobby Loss Deductions Are Miscellaneous Itemized Deductions

CA11 Analysis - Law Provides Unambiguous Answer (Not a Good One for Taxpayer)

Section 183 does not expressly answer these questions. In this respect, Section 183(b)(2) resembles many other Code provisions that identify an allowable deduction but do not account for that deduction's placement above or below the line. ...

Because the text of Section 183 does not tell us how to treat the hobby loss deduction it provides, we must turn to other provisions of the Code to answer that question. See *Hagans v. Comm'r of Soc. Sec.*, 694 F.3d 287, 296 (3d Cir. 2012) ("When a statute is 'complex and contains many interrelated provisions,' it may be 'impossible to attach a plain meaning to provisions in isolation.'" (quoting *Clery ex rel. Clery v. Waldman*, 167 F.3d 801, 807 (3d Cir. 1999))). Those provisions are Section 62, Section 63, and Section 67. As explained below, those provisions establish that Section 183(b)(2) deductions are below-the-line and must exceed two percent of a taxpayer's adjusted gross income before they become deductible.



Hobby Loss Deductions Are Miscellaneous Itemized Deductions



Photo by [Ibrahim Mushan](#) on [Unsplash](#)

- *Gregory v. Commissioner*, Case No. 22-10707, CA11, May 30, 2023
- Taxpayer claims §183(b) does define -
 - They say it is a framework and the deduction is still a §162 one
 - Majority finds the reference to §162 merely serves to calculate a deduction only allowed under §183(b)



Hobby Loss Deductions Are Miscellaneous Itemized Deductions



Photo by [Ibrahim Mushan](#) on [Unsplash](#)

- *Gregory v. Commissioner*, Case No. 22-10707, CA11, May 30, 2023
- Alternatively, they argue that it reduces gross income (so it is netted at IRC §61)
- Majority ground that they are confusing above the line deductions (which reduce gross income) with gross income



Hobby Loss Deductions Are Miscellaneous Itemized Deductions



Photo by [Ibrahim Mushan](#) on [Unsplash](#)

- *Gregory v. Commissioner*, Case No. 22-10707, CA11, May 30, 2023
- Concurring opinion arrived at same result, but in a different fashion
 - Found that since §183(b) didn't provide the answer else, had to look outside the IRC (no reason given for why extra information couldn't be in IRC)
 - Found that TCJA conference report listed §183 deductions as miscellaneous, showing Congressional intent



Hobby Loss Deductions Are Miscellaneous Itemized Deductions



Photo by [Ibrahim Mushan](#) on [Unsplash](#)

- *Gregory v. Commissioner*, Case No. 22-10707, CA11, May 30, 2023
- Concurring opinion arrived at same result, but in a different fashion
 - Personally don't like this logic - by this logic Sections 62 and 67 are irrelevant
 - Virtually no IRC provision granting a deduction states where to deduction it-rather relies on §§62 and 67
 - Also, the years in question predate TCJA - so why would a TCJA report be relevant?

Unit 5

Business Tax Update

IRS Takes Position Program Marketed to Law Firms Does Not Work to Delay Recognition of Fees



Photo by [David Veksler](#) on [Unsplash](#)

- AM 2022-007, 12/16/22
 - Program argues it works based on *Childs v. Commissioner*, 103 TC No. 36
 - Had negotiated agreement for client in physical injury case
 - Had firm's fee paid to a third party, who would invest it (based on firm's input) and pay out balance in 10 years
 - Firm borrowed just under ½ of the fee from the third party one month later

IRS Takes Position Program Marketed to Law Firms Does Not Work to Delay Recognition of Fees



Photo by [David Veksler](#) on [Unsplash](#)

- AM 2022-007, 12/16/22
 - In *Childs* insurer agreed to pay fee over time
 - Insurer ought annuity to pay it out, but law firm had no control and insurer remained liable if annuity failed to pay
 - Since they used Executive Life, that liability detail because a real world issue for the insurer

IRS Takes Position Program Marketed to Law Firms Does Not Work to Delay Recognition of Fees



Photo by [David Veksler](#) on [Unsplash](#)

- AM 2022-007, 12/16/22
 - IRS attacks the program for various reasons
 - Anticipatory assignment of income
 - First, argued this was much like the *Banks* situation
 - Second, noted law firm retained control over the asset - liability of defendant/insurer was extinguished once payment made to third party

IRS Takes Position Program Marketed to Law Firms Does Not Work to Delay Recognition of Fees



Photo by [David Veksler](#) on [Unsplash](#)

- AM 2022-007, 12/16/22
 - Economic benefit doctrine
 - Transfer of assets to law firm selected third party put award beyond the reach of creditors of original payor
 - *Childs* did not address the economic benefit doctrine

IRS Takes Position Program Marketed to Law Firms Does Not Work to Delay Recognition of Fees



Photo by [David Veksler](#) on [Unsplash](#)

- AM 2022-007, 12/16/22
 - Section 83
 - Was a funded promise to pay
 - Since service performed for client, transfer of portion of award to third party created a funded promise - not subject to claims against client

IRS Takes Position Program Marketed to Law Firms Does Not Work to Delay Recognition of Fees



Photo by [David Veksler](#) on [Unsplash](#)

- AM 2022-007, 12/16/22
 - Even if it was treated as a deferred payment arrangement, §409A would apply (and get a worse tax result)
 - 3rd party contractor rule did not apply, since plan was not between law firm and service recipient
 - Fails §409 both due to initial election timing requirements and substituted payment rule

News Release Noting CCA on Improperly Forgiven PPP Loan

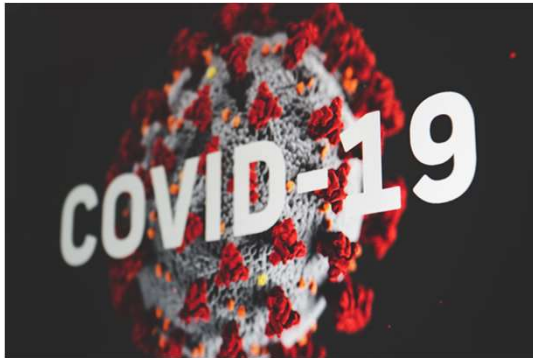


Photo by [Martin Sanchez](#) on [Unsplash](#)

- IRS advises that improperly forgiven Paycheck Protection Program loans are taxable, IR-2022-162, 9/21/22
 - References CCA 202237010
 - Emphasis on dealing with abuse of the programs
 - End of the web page refers to IRS for Form 3949-A, *Information Referral*
 - Presumably issues could be referred to DOJ and SBA for other actions

Taxpayer Very Likely to Be Able to Retain “Deposits” and Thus Immediately Taxable



Photo by [Obi - @pixel6propix](#) on [Unsplash](#)

- *United States v. VanDemark*, CA6, Docket No. 21-3470, 6/30/22
 - Criminal tax conviction appeal
 - Began putting cash deposits in safe
 - Asked bank employee about IRS reporting rules
 - Argued conviction wrong - did not have “some guarantee” could keep funds (*Indiana Power & Light*)
 - Panel did not agree given control over refunds of deposits



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

- Chief Counsel Advice 202323006, June 9, 2023
 - Employer pays for major medical coverage which pays for preventive care
 - Also offers employees a wellness plan that includes a \$1,000 monthly indemnity payment if the employee participates in the various wellness programs under the major medical plan
 - Question is whether the \$1,000 can be excluded from income by the employees?



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

- Chief Counsel Advice 202323006, June 9, 2023
 - IRS rules that the \$1,000 payments are includable as income
 - The \$1,000 was not reimbursing the employee for expenses paid (the major medical policy paid for these items)
 - Employee could get the payment even though the employee incurred no expenses

Value of Employer Provided Housing Did Not Qualify for Exclusion under IRC §119



Photo by [Breno Assis](#) on [Unsplash](#)

- *Smith v. Commissioner*, TC Memo 2023-6, 1/12/23
 - Taxpayer took job with defense contractor in Australia
 - Employer provided housing, noted that it would be taxable
 - Originally reported it as taxable, but later amended to claim refund
 - Court found was no on the employer's premises, thus could not be excluded

IRS Issues Chief Counsel Advice on Substantiation Rules for Cafeteria Plans with FSAs and Dependent Care Assistance Programs



- Chief Counsel Advice 202317020, 4/28/23
 - Cafeteria plans under IRC §125 allow employers to allow deferrals from employee wages
 - But as with any tax benefit program, this comes with strings attached
 - A big string involves insuring that medical FSA and dependent care reimbursements be properly documented--and there are no exceptions under the Proposed Regulations

IRS Issues Chief Counsel Advice on Substantiation Rules for Cafeteria Plans with FSAs and Dependent Care Assistance Programs



- Chief Counsel Advice 202317020, 4/28/23
 - Starts with two broad questions
 - IRS gives a series of fact patterns and results
 - IRS uses this to emphasize **there are no shortcuts.**

Fourth Circuit - Reasonable Compensation for a C Corporation Not to Be Tested by Single Criteria

- *Clay Hood, Inc. v. Commissioner*, Case No. 22-1573, CA4, May 31, 2023
 - IRS looks to see if amounts treated as salary for a C corporation owner is really a disguised dividend
 - Opposite bias as we see for S corporations
 - In this case the salary program was created to deal with future changes (likely ownership)



Fourth Circuit - Reasonable Compensation for a C Corporation Not to Be Tested by Single Criteria

- *Clay Hood, Inc. v. Commissioner*, Case No. 22-1573, CA4, May 31, 2023
 - Reasonable compensation under
 - IRC §162(a) - payment must be for personal services actually rendered
 - Regulations indicate to look at reasonableness “under all the circumstances”
 - Taxpayer argued Court should use a single reasonable return test based on CA7 2009 decision in *Menard, Inc.*
 - Court of Appeals rejects this view



Fourth Circuit - Reasonable Compensation for a C Corporation Not to Be Tested by Single Criteria

- *Clay Hood, Inc. v. Commissioner*, Case No. 22-1573, CA4, May 31, 2023
 - Reasonable compensation under IRC §162(a) - payment must be for personal services actually rendered
 - Regulations indicate to look at reasonableness “under all the circumstances”
 - Taxpayer argued Court should use a single reasonable return test based on CA7 2009 decision in *Menard, Inc.*
 - Court of Appeals rejects this view



Fourth Circuit - Reasonable Compensation for a C Corporation Not to Be Tested by Single Criteria

- *Clay Hood, Inc. v. Commissioner*, Case No. 22-1573, CA4, May 31, 2023
 - Found Tax Court properly applied other factors
 - No dividend had ever been paid
 - No structured system for owner compensation
 - Compensation not in line with comparable executives - amount allowed was in the 99th percentile



Fourth Circuit - Reasonable Compensation for a C Corporation Not to Be Tested by Single Criteria

- *Clay Hood, Inc. v. Commissioner*, Case No. 22-1573, CA4, May 31, 2023
 - But found the Tax Court improperly found penalty relief only applied for one year
 - CA4 allowed relief for both years based on reliance on qualified professional advice
 - For taxpayer, seems to have put too much reliance on a single opinion that *might* have required taking statements with a grain of salt

Management Fees Were Distributions, Not Ordinary and Necessary Business Expense



Photo by [金运](#) on [Unsplash](#)

- *Aspro v. Commissioner*, Case No. 21-1996, CA8, 4/26/22
 - For at least 20 years C corporation had paid management fees to owners
 - No formal agreement
 - No method provided for how it was computed
 - Court found no evidence was ordinary and necessary business expense
 - Treated as a distribution

AICPA Makes Recommendations on Research & Development Cost Guidance for Revised §174



Photo by [Louis Reed](#) on [Unsplash](#)

- “Comments on Research & Experimental Expenditures under section 174,” Letter from AICPA Tax Executive Committee to Associate Chief Counsel Holly Porter, 5/26/22
 - TCJA changes now require amortization
 - AICPA asks for guidance to limit costs involved
 - Also need guidance for software costs

Research & Experimental Expenditures Accounting Method Change Procedure



Photo by [Louis Reed](#) on [Unsplash](#)

- Revenue Procedure 2023-8, 12/12/22
 - TCJA requires amortization of research & experimental expenditure for tax years beginning in 2022
 - Permission granted if change made in 1st year required by attaching a statement to the tax return
 - For later years will need to file a Form 3115
 - May be redoing this if Congress does retroactively change this

Research & Experimental Expenditures Accounting Method Change Procedure



Photo by [Louis Reed](#) on [Unsplash](#)

- Revenue Procedure 2023-11, December 29, 2022
 - Revises Rev. Proc. 2023-8 to reduce audit protection provided to later years ([PWC Article](#)) ([Revenue Procedure 2023-11](#))
 - Did minor change in date to transition rule (now expired)

IRS Ends COVID-19 Relief Related to HDHPs for Plan Years Ending After December 31, 2024



Photo by [Martha Dominguez de Gouveia](#) on [Unsplash](#)

- Notice 2023-37, 6/23/23
 - HDHPs cannot provide benefits (aside from specified preventive care benefits) before insured meet their required deductibles
 - In Notice 2020-15, the IRS provided relief for what HDHPs could pay for before insured had met the minimum deductibles (COVID-19 testing and treatment)
 - Was announced due to the COVID-19 public health emergency

IRS Ends COVID-19 Relief Related to HDHPs for Plan Years Ending After December 31, 2024



Photo by [Martha Dominguez de Gouveia](#) on [Unsplash](#)

- Notice 2023-37, 6/23/23
 - On April 10, 2023 the PHE was ended when the President signed H.J. Res. 7
 - Screenings for common and episodic illnesses (such as seasonal flu) are not considered preventive care and COVID-19 is labeled as the same type of screening
 - However, if COVID-19 is added to "A" or "B" rating by the USPSTF, then would be covered
 - New rules apply for years ending after December 15, 2024

IRS Announces 2024 HSA and Excepted Benefit HRA Inflation Adjusted Limits



Photo by [Julia Zyablova](#) on [Unsplash](#)

- Revenue Procedure 2023-23, May 16, 2023
 - Increases higher than in the past due to recent inflation numbers
 - Annual contribution limit
 - Self only \$4,150 (\$3,850 for 2023)
 - Family coverage \$8,300 (\$7,750 for 2023)
 - Minimum HDHP Deductible
 - Self-only \$1,600 (\$1,500 for 2023)
 - Family coverage \$3,200 (\$3,000 for 2023)

IRS Announces 2024 HSA and Excepted Benefit HRA Inflation Adjusted Limits



Photo by [Julia Zyablova](#) on [Unsplash](#)

- Revenue Procedure 2023-23, May 16, 2023
 - Maximum out-of-pocket expenses
 - Self-only \$8,050 (\$7,500 in 2023)
 - Family coverage \$16,100 (\$15,000 in 2023)
 - Excepted benefit HRAs maximum amount newly available in the plan year - \$2,150 (\$1,950 in 2023)

IRS Issues Retirement/IRA Plan Limits for 2023



Photo by [Towfiqu barbhuiya](#) on [Unsplash](#)

- Notice 2022-55, 10/21/22
 - Elective deferral limit - \$22,500, catch-up contribution \$7,500
 - Limit on amount allocated to defined contribution account under §415 - \$66,000
 - Annual compensation limit - \$330,000
 - IRA deductible contribution amount - \$6,500

Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Case involves the §965 transition tax enacted as part of TCJA
 - Imposed a tax on undistributed income on shareholders of certain shareholders of foreign corporations
 - The taxpayers in *Moore* argued this violated the 16th Amendment as they claim the income is not yet realized.

Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Trial court granted summary judgement and the Ninth Circuit affirmed on appeal
 - The Ninth Circuit opinion contained a statement that realization was not a requirement for income to be subject to tax
 - Supreme Court received a request to hear an appeal, and granted certiorari on June 26
 - So what does this mean for our clients?

Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Transition tax was imposed in 2017 or 2018 years
 - IRS has six years to assess tax on this amount under IRC §965(k)
 - Taxpayers could elect to pay tax over eight year period under IRC §965(h)
 - Amounts deferred are liabilities of and assessed in the first year (see LB&I-04-0922-0019)



Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Case will be heard next term, with a decision very likely coming after the April 15, 2024 installment payments are made
 - Statutes of limitations on refunds
 - IRC §6511(a) later of
 - 3 years after return filed or
 - 2 years after payment made



Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - For most taxpayers who elected to pay via installments
 - Original return is closed for refund claims (3 year period has ended)
 - However, have 2 payments within the 2 year periods right now
 - But one paid at April 15, 2022 will have statute expire early next year

Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - As well, will need to continue making payments even if case drags out - could be referred back to trial court for a factual determination
 - Protective refunds - keeping the statute open while awaiting the outcome of a contingency
 - Internal Revenue Manual has guidance on the filing of such claims

Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Describes reason such claims are filed (IRM 4.10.11.2.1.3(4) (09-04-200))
 - One such contingency relates to matters pending before a court (IRM 21.5.3.4.7.3(1) (10-01-2018))
 - Describes details that must be included in such a claim (IRM 4.10.11.2.1.3(4) (09-04-2020))

Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Mechanics of filing - appears to start with a Form 1040X (or other proper amended return form) for the year the 965 tax was calculated
 - While we can't ask for tax back from that year, appears we can change the tax computed (to zero if taxpayers prevail)
 - Would then need to specify we are asking for specific refunds and mention any additional later payments

Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Must be in claim:
 - The taxpayer's name,
 - Address,
 - Tax identification number, and
 - Signature.



Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Must be in claim:
 - Identify the contingency (*Moore* case)
 - Nature of the claim (validity of 965 tax and refund of amounts paid within 2 years of claim filing)
 - Years for which refund is sought (right now likely 2022 and 2023 payments)



Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Other issues
 - May need to update claim to add later installments paid
 - Due to unique nature of the return the tax is attached to and then following installment payments, the IRS may issue special guidance
 - Is some risk could have the IRS open an exam into the original tax calculation

Supreme Court to Hear Case on Validity Of §965 Transition Tax



Photo by [Anna Sullivan](#) on [Unsplash](#)

- *Moore v. United States*, cert. granted, Case 22-800, June 26, 2023
 - Will the Supreme Court overturn the tax?
 - You can never be sure what the court will end up doing
 - However, many observers believe the case was taken up solely due to holding in Ninth Circuit decision
 - Could very well sustain the tax (realization by the corporation is good enough) but overturn position that realization isn't required to subject income to tax

Retail Sale of Drugs Qualified §1202 Trade or Business



Photo by [Roberto Sorin](#) on [Unsplash](#)

- PLR 202221006, 5/27/22
 - Taxpayer was involved in retail sale of drugs
 - Filled prescriptions and had limited interactions with physicians or patients
 - Is this a health care for reputation business?
 - IRS finds it does not fall into either barred category

IRS Objects to Use of Valuation Prepared 7 Months Before GRAT Established



Photo by [Sharon McCutcheon](#) on [Unsplash](#)

- CCA 202152018, 12/30/21
 - Company valuation prepared at year end for §409A plan
 - Also sought interested buyers--and there was interest
 - Months later funded a GRAT using 1st valuation
 - Later funded a CRT and go new valuation
 - IRS position is GRAT is invalid

IRS Announces 2023 Auto Depreciation and Lease Inclusion Tables



Photo by [Aleksandr Popov](#) on [Unsplash](#)

- Revenue Procedure 2023-14, 1/18/23
 - New limits for §280F for 2023
 - Table 1 has limits when bonus depreciation applies
 - Table 2 has limits if not using bonus depreciation
 - Also have lease inclusion table

IRS Points Out Warning Signs for Misleading ERC Scams



Photo by [Muhammad Daudy](#) on [Unsplash](#)

- *"IRS alerts businesses, tax-exempt groups of warning signs for misleading Employee Retention scams; simple steps can avoid improperly filing claims,"* IRS News Release IR-2023-105, 5/25/23
 - Yet another IRS release warning employers about overly aggressive ERC marketing
 - Promoters continue to heavily market contingent fee arrangements to file ERC claims

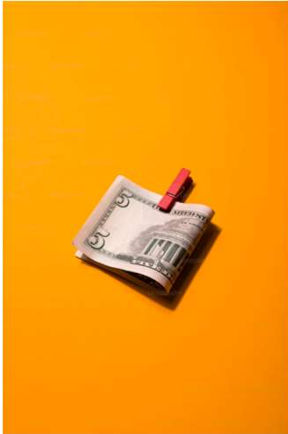
Incremental Cost Safe Harbors Provided for \$45W Commercial Clean Vehicle Credit



Photo by [CHUTTERSNAAP](#) on [Unsplash](#)

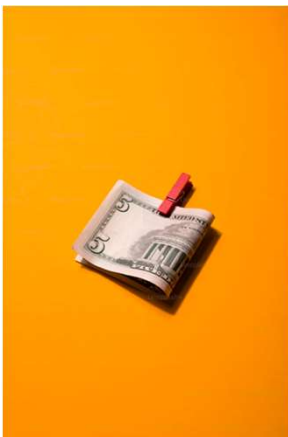
- Notice 2023-9, 12/29/22
 - Provides safe harbor for incremental cost limit on \$45W credit
 - Looks at Department of Energy study
 - Except for compact PHEV, differences are at least \$7,500 for vehicles under 14,000 pounds
 - Can use study numbers for PHEV and vehicles in excess of 14,000 pounds

Customer ERC Payroll Tax Refunds Will Be Applied by IRS Against Outstanding PEO Liabilities



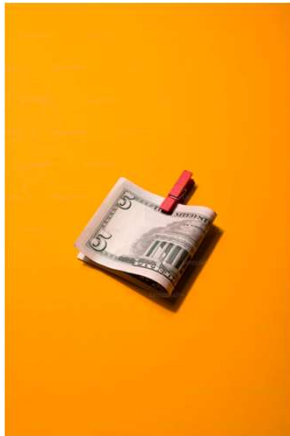
- ECC 202319015, May 12, 2023
 - In an email response (ECC 201319015), the Internal Revenue Service (IRS) examined the scenario where a Professional Employer Organization (PEO) submits a claim for refund on behalf of one of its clients regarding the Employee Retention Credit (ERC).
 - The IRS specifically explored the implications when the PEO possesses outstanding tax liabilities.
 - The conclusion reached in the response asserts that the IRS holds the authority to allocate the refund towards the PEO's outstanding tax obligations.

Customer ERC Payroll Tax Refunds Will Be Applied by IRS Against Outstanding PEO Liabilities



- ECC 202319015, May 12, 2023
 - This issue would not be limited solely to ERC claims
 - Client concerns if this happens:
 - They will not receive the ERC refund that they are owed.
 - They may be held indirectly responsible for the PEO's outstanding tax liabilities.
 - PEO will not be able to continue providing their services.
 - PEO will go out of business.

Customer ERC Payroll Tax Refunds Will Be Applied by IRS Against Outstanding PEO Liabilities



- ECC 202319015, May 12, 2023
 - Potential mitigations:
 - Make sure that the PEO has a good reputation
 - Attempt to find evidence that the PEO financially stable
 - Consider using a CPEO
 - Be prepared to switch to a different PEO if necessary (and if this offset happens, it's almost certainly necessary)

Reasonable Cause Found for Elderly Attorney's Late Filing and Payment of Payroll Tax Reports

- *Tracy v. Commissioner*, T.C. Summ. Op. 2023-20, May 30, 2023
 - Elderly attorney was attempting to shut down his law firm
 - Had numerous problems with his own illnesses and infirmities and caring for his terminally ill spouse
 - Had another attorney handling most client work and assistant handling administrative issues, including payroll tax compliance and payment issues



Reasonable Cause Found for Elderly Attorney's Late Filing and Payment of Payroll Tax Reports

- *Tracy v. Commissioner*, T.C. Summ. Op. 2023-20, May 30, 2023
 - Penalties under §6651(a)(1) and (2) can be waived if taxpayer can establish the failure
 - Was due to reasonable cause and
 - Not due to willful neglect
 - IRM Sections 20.1.1.3.2.2.1 (11-25-2011) applies to claims of reasonable cause due to death, serious illness, or unavoidable absence



Reasonable Cause Found for Elderly Attorney's Late Filing and Payment of Payroll Tax Reports

- *Tracy v. Commissioner*, T.C. Summ. Op. 2023-20, May 30, 2023
 - IRS denied most relief. Key factors in this case that normally are seen as either not being reasonable cause or showing willful neglect were:
 - Ability to continue business as normal
 - Failure to properly supervise party put in charge of filing
 - And simply attempting to delegate filing duty



Reasonable Cause Found for Elderly Attorney's Late Filing and Payment of Payroll Tax Reports

- *Tracy v. Commissioner*, T.C. Summ. Op. 2023-20, May 30, 2023
 - Tax Court found the specific circumstances explained those issues
 - Wasn't really doing work at the business - only open due to ethical obligations
 - Used same system to handle payroll taxes as he had for 60 years
 - Did not supervise mainly due to his infirmities and challenges



Reasonable Cause Found for Elderly Attorney's Late Filing and Payment of Payroll Tax Reports

- *Tracy v. Commissioner*, T.C. Summ. Op. 2023-20, May 30, 2023
 - Don't expect this result in most cases unless your taxpayer faces the myriad of problems that faced this attorney
 - But it does remind us to argue for why the taxpayer's case is different from those that the IRS will attempt to rely upon

AICPA Issues Fact Sheet on ERC Issues

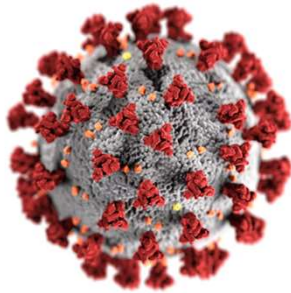


Photo by [CDC](#) on [Unsplash](#)

- “Employee retention credit: Fact or fiction?,” AICPA & CIMA, 10/3/22
 - Tax Division members can download
 - Addresses a number of issues members hitting with heavy marketing from ERC shops
 - Why it will not necessarily apply to every small business
 - Difficulty of showing full/partial suspension - no federal order works for this

DOL Warns Plan Fiduciaries About Offering Digital Asset Investment Options



Photo by [Kanchanara](#) on [Unsplash](#)

- “401(k) Plan Investments in ‘Cryptocurrencies’”, Department of Labor Compliance Assistance Release No. 2022-01, 3/10/22
 - Covers all types of digital assets
 - Reminds fiduciaries about duties involving investment offerings
 - Lists special problems with such offerings
 - Threatens investigative program



CPA Who Never Read Schedule B Instructions (I'm Not an Attorney) Hit with Personal FBAR Penalties

- *United States v. Kronowitz*, USDC SD Fla., Case No. 19-cv-62648-BLOOM/Valle, 6/3/21
 - CPA with 60 years in tax practice did not file FBAR for himself
 - Stated hadn't read Schedule B instructions since "not an attorney" and concerned with "serving clients"
 - Did answer "No" to Schedule B questions
 - Court found willfulness based on gross negligence



Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

- H.R. 3936, "Tax Cuts for Working Families Act", H.R. 3937, "Small Business Jobs Act", and H.R. 3938, "Build It In America Act", June 9, 2023
 - Three separate bills were introduced by the Chair of Ways & Means
 - We have to assume introducing three rather than a single bill was not a random act
 - One of the bills (with only a single provision) is rumored to exist to attempt to placate Northeastern Republican Representatives



Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

- H.R. 3936, “Tax Cuts for Working Families Act”, June 9, 2023
 - Makes changes to the standard deduction
 - Increases the amount temporarily (2024 and 2025)
 - Renames it to the *guaranteed deduction*
 - Rumored to be an offer in lieu of removing or increasing the SALT cap



Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

- H.R. 3937, “Small Business Jobs Act”, June 9, 2023
 - Raises the annual payment amount at which Forms 1099 have to be issued
 - Also retroactively repeals revisions to Form 1099K found in the IRA 2022
 - Liberalizes treatments of §1202 stock
 - Increases §179 expensing amounts
 - Establishes rules for “rural opportunity zones”
 - Information reporting for opportunity funds



Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

- H.R. 3938, “Build It In America Act”, June 9, 2023
 - Largest bill in the package - and one that is unlikely to become law without some major changes
 - Won’t pass the Senate in its current state
 - Contains three short term patches for the TCJA business revenue raisers
 - Also repeals or revises a number of IRA 2022 credits (Democrats highly unlikely to accept this)



Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

- H.R. 3938, “Build It In America Act”, June 9, 2023
 - Business short term fixes to
 - §174 research and experimental expense amortization - but adds a separate provision for expensing
 - Sets bonus depreciation to 100% through 2025, lowers bonus for 2026 from 40% to 20% and then keeps at 20% permanently
 - Has §163(j) business interest deduction ATI computed using EBITDA through 2025



Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

- These are starting points only and having them as three bills suggests that one of the bills may be for “messaging” not actual passage
- Ways & Means reported out all of the bills on strict party line votes
- Getting bills to the House floor may be more complicated
- Since the Senate would certainly insist on major changes, don't take actions based on the assumption that these bills will become law unchanged.

Unit 6

Passthrough Entities Update

AICPA Adds More Comments to IRS on PTET SALT Issues



Photo by [Faran Raufi](#) on [Unsplash](#)

- AICPA Tax Executive Committee Letter, “RE: Additional Guidance Needed on Section 461 Accrual Basis Taxpayers and Notice 2020-75, Forthcoming Regulations Regarding the Deductibility of Payments by Partnerships and S Corporations for Certain State and Local Taxes”, 10/4/22
 - Taxpayer’s method of accounting & deductions
 - Recurring item exception
 - Election made after end of year

IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

- PLR 202323001, June 9, 2023
 - Taxpayer is a partnership that purchased assets subject to bonus depreciation
 - Was not aware using bonus would have a negative state income tax impact on some partners
 - Issue not raised by tax adviser either
 - Now asking for ability to make a late election



IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

- PLR 202323001, June 9, 2023
 - Date for electing not to use bonus depreciation
 - Due date including extensions for return
 - However, set by regulation not by statute
 - IRS position is they cannot grant relief for dates set by statute unless Congress specifically provides for such relief
 - But can request IRS grant relief for late elections when date set by regulations - but must ask for a letter ruling (and pay for it)



IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

- PLR 202323001, June 9, 2023
 - IRS most often grants such relief if adviser
 - Admits they should have advised client of the issue but did not do so
 - Taxpayer not making the election based on hindsight-the issue was knowable when the election was due
 - But there are numerous costs associated with this relief

Taxpayers Denied Loss Deduction for Multiple Reasons



Photo by [chris robert](#) on [Unsplash](#)

- *Dunn v. Commissioner*, TC Memo 2022-112, 11/29/22
 - Taxpayers had a partnership with rentals
 - Auto not owned by the partnership, no contemporaneous records
 - Two rentals also not titled in the name of the partnership
 - No records to back up adequate basis in partnership interests

Taxpayers Denied Loss Deduction for Multiple Reasons



Photo by [chris robert](#) on [Unsplash](#)

- *Dunn v. Commissioner*, TC Memo 2022-112, 11/29/22
 - No records or information to show taxpayers had adequate amounts at risk
 - Passive activity loss problem
 - Did not elect to combine rentals
 - Not qualified as real estate professionals
 - Couldn't show material participation

LB&I New Campaign on §704(d)



Photo by [Joshua Hoehne](#) on [Unsplash](#)

- Partnership Losses in Excess of Partner's Basis Campaign, Large Business and International Active Campaigns, IRS webpage, 2/8/22
 - New campaign announced by IRS
 - Looks at partners claiming losses in excess of basis
 - Remember there are other limits, but partner is responsible for keeping basis
 - Likely tied to tax basis capital program

Final Regulations Confirm No Signatures Needed on Section 754 Elections



Photo by [Scott Graham](#) on [Unsplash](#)

- TD 9963, 8/4/22
 - Election to adjust basis in certain situations
 - Previously had to sign election, scan it and attach as PDF
 - In 2017 proposed regulations on which taxpayers could rely proposed removing signature requirement
 - The IRS has now finalized these regulations without making any changes

PLR Received for Lost S Corporation Status



Photo by [Rhodi Lopez](#) on [Unsplash](#)

- S corporations - a fragile entity
 - Must maintain qualification at all times - otherwise have PLR
 - One class of stock
 - Nonqualified shareholders
 - Nonresident alien
 - Corporation, partnerships
 - Trusts (the problem in this ruling)

PLR Received for Lost S Corporation Status



Photo by [Rhodi Lopez](#) on [Unsplash](#)

Quip heard often:

“There are no multiple owner S corporations. Rather, there are C corporations that erroneously believe they are S corporations.”

PLR Received for Lost S Corporation Status



Photo by [Rhodi Lopez](#) on [Unsplash](#)

- PLR 202218004, 5/6/22
 - Another issue that crops up upon death of a shareholder
 - Trusts that can hold S shares - note the 2 year rules that often crop up on shareholder death
 - Estate was designed to save status - but trustees didn't follow the instructions in the trust
 - Further complication - corporation was going away

PLR Received for Lost S Corporation Status



Photo by [Rhodi Lopez](#) on [Unsplash](#)

- PLR 202218004, 5/6/22
 - Did receive relief from the IRS
 - But the IRS never really disqualifies an S corporation!
 - Not really the issue here
 - Due diligence reviewers will advise buyers not to take on someone else's mistake
 - Look to professionals to pay for whole PLR process

LLC Operating Agreement with §704(b) Language Terminated S Corporation Status



Photo by [Scott Graham](#) on [Unsplash](#)

- PLR 202247004, 11/25/22
 - S corporation originally formed with 2 shareholder and no issues
 - Later adopted a revision to the operating agreement that added partnership §704(b) language
 - Liquidation under §704(b) rules could result in different distribution rights
 - S status terminated once adopted
 - IRS granted relief after PLR applied (and paid) for

IRS Provides Automatic Relief for Certain S Corporation Problems



Photo by [Jon Tyson](#) on [Unsplash](#)

- Revenue Procedure 2022-19, 10/11/19
 - Agreements and Arrangements with No Principal Purpose to Circumvent One Class of Stock Requirement
 - Governing Provisions That Provide for Identical Distribution and Liquidation Rights
 - Procedures for Addressing Missing Shareholder Consents, Errors with Regard to a Permitted Year, Missing Officer's Signature, and Other Inadvertent Errors and Omissions

IRS Provides Automatic Relief for Certain S Corporation Problems



247 Photo by [Jon Tyson](#) on [Unsplash](#)
Kaplan Inc. Communications

- Revenue Procedure 2022-19, 10/11/19
 - Procedures for Verifying S Elections or QSub Elections
 - Procedures for Addressing a Federal Income Tax Return Filing Inconsistent with an S Election or a QSub Election
 - Procedures for Retroactively Correcting One or More Non-Identical Governing Provisions

August 2023

IRS Provides Automatic Relief for Certain S Corporation Problems



248 Photo by [Jon Tyson](#) on [Unsplash](#)
Kaplan Inc. Communications

- Revenue Procedure 2022-19, 10/11/19
 - Note: IRS will now not issue PLRs in areas where this procedure offers automatic relief

August 2023

Form 7203 - Dealing With Basis for S Corporations



Photo by [Mediamodifier](#) on [Unsplash](#)

- Kristen A. Parillo, "New Basis Reporting Form Spotlights Role of Proper Documentation," *Tax Notes Today Federal*, 6/1/22
 - Why Form 7203 was created
 - Not an issue if records kept
 - When client doesn't track basis - options
 - Losses previously claimed in excess of basis - suspense account

Final Instructions for Schedules K-2 and K-3 for Form 1120-S for 2023



Photo by [Nejc Soklić](#) on [Unsplash](#)

- 2022 S Corporation Instructions for Schedules K-2 and K-3 (Form 1120-S), December 20, 2022
 - No change from December 5 draft instructions
 - So can avoid filing but not necessarily easy to do
 - But consider if your software may make it easier to just create the forms (some have a check box for a 100% US operation)



Final Partnership 2022 Partnership Schedules K-2 and K-3 Instructions Released



Photo by [Greg Rosenke](#) on [Unsplash](#)

- 2022 Partnership Instructions for Schedules K-2 and K-3 (Form 1065), 12/28/22
 - Did not make any changes to domestic filing exception from the early December 2nd draft instructions
 - No relief for tiered partnerships
 - Is it worth the bother? Depends heavily on tax software support.



IRS Releases Various Draft 2023 Partnership Income Tax Forms



Photo on [Unsplash+](#)

- Draft Forms 1065, Schedule K-1 (Form 1065) and Schedule K-3 (Form 1065), June 30, 2023
 - Draft of the various forms released, each with certain changes made
 - However, we don't have the draft instructions yet, so some changes are unclear and there are likely to be some surprises in those
 - IRS did announce earlier this year that some changes were coming related to debts shown on Schedule K-1



IRS Releases Various Draft 2023 Partnership Income Tax Forms



Photo on [Unsplash+](#)

- Draft Forms 1065, Schedule K-1 (Form 1065) and Schedule K-3 (Form 1065), June 30, 2023
 - Draft Form 1065 changes some questions on Schedule B
 - Asks for total adjustments for the year for §734(b) and 743(b) adjustments
 - Also asks about repurchase of foreign stock tax liability on new Form 7208
 - Adds digital asset question identical to Form 1040 one



IRS Releases Various Draft 2023 Partnership Income Tax Forms



Photo on [Unsplash+](#)

- Draft Forms 1065, Schedule K-1 (Form 1065) and Schedule K-3 (Form 1065), June 30, 2023
 - Draft Schedule K-1 changes
 - Was decrease in percentages of capital, income or loss due to sale or exchange question
 - Check boxes for debts from lower tier partnerships or

IRS Releases Various Draft 2023 Partnership Income Tax Forms



Photo on [Unsplash+](#)

- Draft Forms 1065, Schedule K-1 (Form 1065) and Schedule K-3 (Form 1065), June 30, 2023
 - Draft Schedule K-3 changes
 - Removed Part I, Box 7 Form 8858 information attached box
 - In Part II, Section 2 removed gray for boxes for specifically allocating interest to foreign source income
 - Added questions in Part XIII Foreign Partner's Distributive Share of Deemed Sale Items on Transfer of Partnership Interest

Entity Type Governs the Ability to Opt Out of BBA Exam Regime



Photo by [Jon Tyson](#) on [Unsplash](#)

- IRS Emailed Counsel Advice 202147012, 11/26/21
 - Does an exempt organization partner bar opting out of the BBA centralized partnership audit regime?
 - Notes that the limits are on entity type, not exempt vs. non-exempt status
 - Have to look at the underlying entity type of the exempt organization

Unit 7

Tax Practice Update



Current Federal Tax Developments

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Program began in 2020 for a small number of forms
 - Extended twice and number of forms expanded
 - Key item: electronic filing authorizations
 - Includes entities
 - Does not apparently mandate KBA

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Acceptable signatures include
 - Typed name on signature block
 - Scanned or digitized signatures
 - Handwritten on electronic signature pad
 - Handwritten on screen with stylus
 - Signature created by 3rd party software

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Acceptable file formats - common types supported by Office 365
 - TIFF
 - JPG/JPEG
 - PDF
 - MS Office Suite or
 - ZIP

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 11-C, Occupational Tax and Registration Return for Wagering
 - Form 637, Application for Registration (For Certain Excise Tax Activities)
 - Form 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return
 - Form 706-A, U.S. Additional Estate Tax Return

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 706-GS(D), Generation-Skipping Transfer Tax Return for Distributions
 - Form 706-GS(D-1), Notification of Distribution from a Generation-Skipping Trust
 - Form 706-GS(T), Generation-Skipping Transfer Tax Return for Terminations
 - Form 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 706 Schedule R-1, Generation Skipping Transfer Tax
 - Form 706-NA, U.S. Estate (and Generation-Skipping Transfer) Tax Return
 - Form 706-NA, U.S. Estate (and Generation-Skipping Transfer) Tax Return
 - Form 730, Monthly Tax Return for Wagers

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 1066, U.S. Income Tax Return for Real Estate Mortgage Investment Conduit
 - Form 1120-C, U.S. Income Tax Return for Cooperative Associations
 - Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation
 - Form 1120-H, U.S. Income Tax Return for Homeowners Associations

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 1120-IC DISC, Interest Charge Domestic International Sales – Corporation Return
 - Form 1120-L, U.S. Life Insurance Company Income Tax Return
 - Form 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons
 - Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts
 - Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies
 - Form 1120-SF, U.S. Income Tax Return for Settlement Funds (Under Section 468B)

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 1127, Application for Extension of Time for Payment of Tax Due to Undue Hardship
 - Form 1128, Application to Adopt, Change or Retain a Tax Year
 - Form 2678, Employer/Payer Appointment of Agent
 - Form 3115, Application for Change in Accounting Method

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
 - Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner
 - Form 4421, Declaration – Executor’s Commissions and Attorney’s

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes
 - Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues
 - Form 8038-G, Information Return for Tax-Exempt Governmental Bonds

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 8038-GC; Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales
 - Form 8283, Noncash Charitable Contributions
 - Form 8453 series, Form 8878 series, and Form 8879 series regarding IRS e-file Signature Authorization Forms

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 8802, Application for U.S. Residency Certification
 - Form 8832, Entity Classification Election
 - Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent

IRS Makes Permanent Limited e-Signature Program First Used in the Pandemic



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- “Details on using e-signatures for certain forms,” FS-2021-12, September 1, 2021
 - Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement; and
 - Elections made per Internal Revenue Code Section 83(b).

IRS Opens Up Site to Electronically Submit Certain Power of Attorney Forms



Photo by [Samantha Borges](#) on [Unsplash](#)

- IRM Procedural Update, "Tax Pro Account - New Online System Interface," July 6, 2021
 - New Tax Pro Account website
 - <https://www.irs.gov/tax-professionals/use-tax-pro-account>
 - Can submit 2848 and 8821
 - Limited program - many forms still need to be mailed in
 - Client will need to set up IRS online account to sign the form

Amended Return With Digital Signature Treated as Not Properly Filed



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- *Mills v. United States*, United States Court of Federal Claims, 7/14/21
 - Tax consultant recommended amending returns
 - First tried having representative sign
 - When IRS rejected and demanded a signature, used electronic signature
 - Court found IRS had not approved the use of this for a paper filing

Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
 - Procrastination when technology is involved is tempting fate - and Mr. Sanders definitely did this
 - Just before 10:00 pm on the last day to file his petition he downloaded the PDF to fill in onto his smartphone
 - Around 11:00 pm he tried to file the petition from the phone - but for 44 minutes he tried and failed to get the petition filed

Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
 - He was finally able to transfer files to his Windows computer and start trying to file from there shortly before midnight
 - At 11:56pm he tried and failed to log in to the site
 - At 11:57pm he managed to get in, but was slowed down by
 - Other steps in the process online and
 - Having to refer to the instructions

Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
 - 9 seconds *after* midnight he began uploading the petition
 - 11 seconds *after* midnight the upload ended
 - DAWSON noted the date/time filed as 12/13/22 12:00 am (11 seconds past the end of 12/12/22)
 - Since petition had to be filed by 12/12, IRS moved to dismiss the petition
 - Taxpayer argued there must have been problems

Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
 - General rule - petition filed when received by the court
 - Earlier this year, the Tax Court put forward this proposition for electronic filing in the *Nutt* case
 - Only counts when the process is complete, not when the process was begun by the taxpayer

Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
 - Not equivalent to timely mailing under IRC §7502
 - While IRS allowed to write rules for electronic filing timely filing rules, only rules written are for filing of returns
 - There is no authorized electronic return transmitter for these filings
 - Even if those rules applied, his postmark would have been when return received by transmitter (so again in 12/13)

Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
 - System was not inaccessible
 - If system was inaccessible, then additional time would have been allowed to file
 - DAWSON records made it clear others successfully completed the process at the same time Mr. Sanders tried
 - The problems were tied to his systems and lack of knowledge about the process
 - Court also noted that he made the choice to start this process at the last minute

Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
 - But it's not fair!
 - Congress does not allow the Tax Court to grant equitable relief on the filing date
 - In fact, relief passed for inaccessible location/system by Congress reinforces their view they did not authorize the Tax Court to provide equitable relief

Notice on Reliance on IRS FAQs



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- “General Overview of Taxpayer Reliance on Guidance Published in the Internal Revenue Bulletin and FAQs,” IRS website, 10/15/21
 - IRS has increased use of FAQs following TCJA
 - Concerns about reliance
 - Explains reliance on IRB items
 - IRS provides can't rely for law result
 - But works for penalties

IRS Responds to Losses in Court on the APA and Listed Transaction Notice Process



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- Announcement 2022-28, 12/6/22
 - IRS has lost multiple cases on using Notices to add to listed transactions
 - *Mann Construction Inc. v. United States*, 27 F.4th 1138 (6th Cir. 2022)
 - *Green Valley Investors LLC v. Commissioner*, 159 T.C. No. 5 (2022)
 - *CIC Services LLC v. IRS*, USDC TN, No. 3:17-cv-00110 (2022)

IRS Responds to Losses in Court on the APA and Listed Transaction Notice Process



Photo by [Jon Tyson](#) on [Unsplash](#)

- Announcement 2022-28, 12/6/22
 - Courts found the IRS failed to follow the notice and comment requirements of the APA in this case
 - Did not agree that Congress had excluded this process from APA or that the guidance was merely interpretative
 - IRS still will challenge the issue outside the Sixth Circuit but...

IRS Responds to Losses in Court on the APA and Listed Transaction Notice Process



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- Announcement 2022-28, 12/6/22
 - Will begin issuing proposed regulations, beginning with the syndicated conservation easement found in Notice 2017-10
 - Proposed Reg. §1.6011-9 issued December 9, 2022, expect to finalize in 2023
 - Also indicates more are to come and warns about needing to file disclosures once finalized

IRS Responds to Losses in Court on the APA and Listed Transaction Notice Process



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- Announcement 2022-28, 12/6/22
 - Impact of the APA decisions
 - Note that §6707A is unique in that IRS has to identify listed transactions (so invalidating the notice removes the penalty)
 - Also decisions pay special attention to legislative nature of this quirky situation

IRS Responds to Losses in Court on the APA and Listed Transaction Notice Process



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- Announcement 2022-28, 12/6/22
 - Impact of the APA decisions
 - None of the cases ruled on the merits of the transactions themselves, just the disclosure issue
 - So doesn't mean these transactions are more likely to prevail in court than before in terms of the tax benefits

IRS Responds to Losses in Court on the APA and Listed Transaction Notice Process



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- Announcement 2022-28, 12/6/22
 - Impact of the APA decisions
 - Not clear how many other notices would be seen as legislative rather than interpretative
 - Even if Notice invalidated, taxpayer must justify position based on the law—here it's easy because it's no longer a listed transaction

No Outside Proof of Timely Filing Allowed in Court of Claims Even Though Tax Court Would Have Allowed



Photo by [Alex Perz](#) on [Unsplash](#)

- *McCaffery v. United States*, Case No. 1:19-CV-01112, US Court of Federal Claims, 8/9/21
 - Taxpayer mailed in amended return on last day for filing
 - Did not use certified, registered, etc.
 - No postmark was applied to the envelope
 - US Court of Claims would not allow taxpayer to present evidence return was mailed by the due date

Fourth Circuit Holds That IRC §7502 Totally Supplants Common Law Mailbox Rule



Photo by [Alex Perz](#) on [Unsplash](#)

- *Pond v. United States*, Docket No. 22-1537, CA4, 5/26/23
 - IRS fouled up at conclusion of audit, treated overpayment uncovered as an underpayment
 - Compounding the problem, the taxpayer went ahead and paid the amount shown
 - After the fact, gives information to CPA who pointed out the error
 - Taxpayer files a claim for refund but did not use certified or registered mail

Fourth Circuit Holds That IRC §7502 Totally Supplants Common Law Mailbox Rule



Photo by [Alex Perz](#) on [Unsplash](#)

- *Pond v. United States*, Docket No. 22-1537, CA4, 5/26/23
 - US District Court dismissed his claim as untimely
 - §7502 supplants the common law mailbox rule
 - Taxpayer is not able to prove physical delivery - his positions aren't plausible
 - Taxpayer appealed dismissal to Fourth Circuit

Fourth Circuit Holds That IRC §7502 Totally Supplants Common Law Mailbox Rule



Photo by [Alex Perz](#) on [Unsplash](#)

- *Pond v. United States*, Docket No. 22-1537, CA4, 5/26/23
 - But the panel did not agree with the US District Court finding the taxpayer could not prove physical delivery
 - §7502 would not address timely physical delivery, so if timely physical delivery is proven then the failure to use certified or registered mail won't be a problem

Accountants Who Prepare Returns for Employing Entity and Related Parties



Photo by [Leon Dewijne](#) on [Unsplash](#)

- INFO 2021-0029, 12/30/21
 - Accountant prepared employer's return, but also related partnerships and individuals
 - IRS points to regulations under §7701 for determining which returns the accountant is or is not a paid preparer for
 - Remember, paid preparers need to sign the return and must have (and pay for) a PTIN

AICPA Proposes Revisions to Statements on Standards for Tax Services



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- Revised Statements on Standards for Tax Services: An Exposure Draft and Invitation to Comment, American Institute of Certified Public Accountants, 8/29/22
 - Proposed reorganization
 - Proposed data protection standard
 - Proposed tools standard
 - Proposed representation standard
 - Comments about tax practice quality control

KAPLAN