2023 NEW DEVELOPMENTS

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INTRODUCTION

This publication is produced by the Land Grant University Tax Education Foundation. The Land Grant University Tax Education Foundation is pleased to provide the *National Income Tax Workbook* to approximately 20,000 tax practitioners in tax schools taught in 30 states. This publication supplements the *2023 National Income Tax Workbook*. It includes new legislation, guidance, and procedures that were adopted in late 2023 and are important for filing 2023 tax returns. This publication also includes corrections and clarifications for material in the *2023 National Income Tax Workbook*.

The *2024 National Income Tax Workbook* and supplemental publications and courses will provide a comprehensive discussion of these changes. Please visit our website at taxworkbook.com for more information about online courses and tax workshops near you.

NOTE: These summaries have been edited and appear in a condensed form. Tax practitioners should read the entire original text before relying on it.

Agricultural and Natural Resource Tax Issues

Notice 2023-67
I.R.C. § 1033

The IRS provides guidance regarding an extension of the replacement period for livestock sold on account of drought in specified counties

Notice 2023-67 explains the circumstances under which the 4-year replacement period under I.R.C. § 1033(e)(2) is extended for livestock sold on account of drought. The Appendix to this notice contains a list of counties that experienced exceptional, extreme, or severe drought conditions during the 12-month period ending August 31, 2023. Taxpayers may use this list to determine if an extension is available.
[Notice 2023-67, 2023-42 I.R.B. 1075]

Beneficial Ownership Information Reporting

Financial Crimes Enforcement Network (FinCEN) Notice
31 C.F.R. Part 1010

The Financial Crimes Enforcement Network (FinCEN) has extended the initial beneficial ownership information (BOI) reporting deadline from 30 to 90 days for reporting companies created or registered in 2024.

On September 30, 2022, FinCEN published the Reporting Rule, with an effective date of January 1, 2024. The Reporting Rule requires certain corporations, limited liability companies, and other similar entities (reporting companies) to report certain identifying information about the beneficial owners who own or control such entities and the company applicants who form or register them. These requirements are intended to facilitate law enforcement and regulators to counter money laundering, the financing of terrorism, and other illicit activity.

Beneficial ownership information (BOI) is the identifying information of the individuals who directly or indirectly own or control a reporting entity. Beneficial ownership information that must be reported by an entity includes the full legal names, dates of birth, and addresses for all individuals who have substantial control or who own at least 25% of the entity.

The Reporting Rule requires reporting companies to report to FinCEN within prescribed time periods information about themselves, as well as information about two categories of individuals: (1) the beneficial owners of the reporting company; and (2) the company applicants, who are the individuals who filed a document to create the reporting company or register it to do business. For a domestic or foreign reporting company created or registered to do business in the United States before the rule's effective date of January 1, 2024, an initial BOI report must be filed by January 1, 2025. For a reporting company created or registered on or after January 1, 2024, the Reporting Rule required that an initial BOI report must be filed within 30 days of the earlier of the date on which it receives actual notice or public notice that it has been created or registered.

FinCEN amended the Reporting Rule to extend the period for certain reporting companies to file initial BOI reports. The extension is intended to give those entities additional time to understand the new reporting obligation and collect the necessary information to complete their filings. Reporting companies created or registered on or after January 1, 2024, and before January 1, 2025 have 90 days to submit their initial BOI reports, instead of 30 days. Reporting companies formed on or after January 1, 2025 must submit their initial BOI reports within 30 days.
[Financial Crimes Enforcement Network (FinCEN) Notice]

Cross-Reference

Unauthorized Practice of Law

Providing technical or interpretive advice on BOI reporting may constitute the practice of law. Until there is conclusive guidance on whether a non-attorney tax practitioner may provide BOI reporting services without violating the prohibition on unauthorized practice of law, tax practitioners should consult with their attorneys and insurers, and if necessary, advise clients to seek guidance from qualified legal counsel. See the “Ethics” chapter in the *2024 National Income Tax Workbook* for a complete discussion of whether BOI reporting constitutes the unauthorized practice of law and other ethical considerations in BOI reporting.

Financial Crimes Enforcement Network (FinCEN) Rule
31 C.F.R. Part 1010

The Financial Crimes Enforcement Network (FinCEN) has issued final rules explaining when a reporting company can use a FinCEN identifier instead of information about individual beneficial owners.

A FinCEN identifier is a unique identifying number that FinCEN will issue to individuals who have provided FinCEN with their BOI (individual FinCEN identifiers) and to reporting companies that have filed initial BOI reports (entity FinCEN identifiers). Once a beneficial owner or company has obtained a FinCEN identifier, the reporting entity may report the identifier in place of the otherwise required personal information in their BOI reports.

Proposed 31 C.F.R. 1010.380(b)(4)(ii)(B) provided that a reporting company may report another entity's FinCEN identifier and full legal name in lieu of the information required for the beneficial owners of the reporting company, but only if the following three conditions are met:

1. The entity has obtained a FinCEN identifier and provided that FinCEN identifier to the reporting company.
2. An individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through the entity.
3. The beneficial owners of the entity and of the reporting company are the same individuals.

FinCEN adopts the proposed rule, with certain revisions. The final rule incorporates changes to clarify the circumstances in which an entity FinCEN identifier could be used. These changes are to consistently refer to the entity whose FinCEN identifier the reporting company may use as "another entity" or "the other entity" rather than simply "the entity," to avoid confusion with the reporting company itself; and to make clear that it is an individual's ownership interest in another entity that allows the reporting company to report the other entity's FinCEN identifier in lieu of the individual's information.
[Financial Crimes Enforcement Network (FinCEN) Rule]

Consolidated Returns

REG-134420-10
I.R.C. §§ 1502, 1503, 1552, and 1563

Proposed regulations would modify the rules for affiliated groups of corporations that file consolidated federal income tax returns.

The IRS has proposed revisions to the consolidated return regulations to eliminate obsolete or otherwise outdated provisions, modernize the language and improve the clarity of the regulations, and facilitate taxpayer compliance.
[REG-134420-10]

Donor Advised Funds

REG 142338-08
I.R.C. § 4958

The IRS issued proposed regulations regarding excise taxes on taxable distributions made by a sponsoring organization from a donor advised fund.

Some charitable organizations (including community foundations) establish accounts to which donors may contribute and thereafter provide nonbinding advice or recommendations with regard to distributions from the account or the investment of assets in the account. These accounts are commonly referred to as donor advised funds (DAFs). I.R.C. § 4966 imposes excise taxes on taxable distributions made by sponsoring organizations from a DAF, and on the agreement of certain fund managers to the making of such distributions.

The proposed regulations define a DAF and provide exceptions to the definition of a DAF. The proposed regulations incorporate the statutory definition of taxable distribution, which is any distribution from a DAF to any natural person, or any other person unless the distribution is for a purpose specified in I.R.C. § 170(c)(2)(B) and the sponsoring organization exercises expenditure responsibility with respect to the distribution in accordance with I.R.C. § 4945(h). The proposed regulations provide for excise taxes on a taxable distribution payable by the DAF and each fund manager who knowingly agrees to the making of a taxable distribution.
[REG 142338-08]

Partnerships

REG-131756-11
I.R.C. §§ 267,707

Proposed regulations would update the rules regarding whether persons are treated as related persons who are subject to certain special rules pertaining to transactions with partnerships.

I.R.C. §§ 267 and 707 provide rules for the disallowance or deferral of deductions for losses and expenses in certain transactions between partnerships and related persons. In general, section 267(a)(1) provides that a taxpayer may not deduct a loss on the sale or exchange of property with a related person. Section 267(a)(2) sets forth a matching rule that provides that if because of a payee's method of accounting, an amount is not (unless paid) includible in the payee's gross income, the taxpayer (payer) may not deduct the otherwise deductible amount until the payee includes the amount in gross income if the taxpayer and payee are related persons. Section 707(b)(1) addresses the sale or exchange of property between a partnership and a partner owning, directly or indirectly, more than 50% of the capital or profit interest in the partnership.

The proposed regulations would clarify that a partnership is to be viewed as an entity, rather than as an aggregate of its partners, in applying the rules of sections 267 and 707(b). Therefore, the loss disallowance rules of sections 267(a)(1) and 707(b)(1), the gain recharacterization rules of section 707(b)(2), and the matching rule of section 267(a)(2) should be applied at the partnership level and not the partner level.
[REG-131756-11]

Reorganizations

REG-1176416-14
I.R.C. § 367

The IRS issued proposed regulations on triangular reorganizations and nonrecognition transactions involving foreign corporations.

The proposed regulations explain the treatment of property used to acquire parent stock or securities in connection with certain triangular reorganizations involving one or more foreign corporations; the consequences to persons that receive parent stock or securities pursuant to such reorganizations; and the treatment of certain subsequent inbound nonrecognition transactions following such reorganizations and certain other transactions. The proposed regulations affect corporations engaged in certain triangular reorganizations involving one or more foreign corporations, certain shareholders of foreign corporations acquired in such reorganizations, and foreign corporations that participate in certain inbound nonrecognition transactions.
[REG-1176416-14]

Business Tax Issues

Credits

REG-100908-23
I.R.C. §§ 30C, 45, 45L, 45U, 45V, 45Y, 45Z, 48C, 48E, and 179D

The IRS issued proposed regulations regarding increased credit or deduction amounts available for clean energy facilities and projects satisfying prevailing wage and registered apprenticeship requirements.

The Inflation Reduction Act of 2022 (IRA), Pub. L. No. 117–169, amended I.R.C. §§ 30C, 45, 45L, 45Q, 48, 48C, and 179D to provide increased credit or deduction amounts for taxpayers who satisfy certain requirements with respect to energy related facilities, projects, equipment, and investments. The IRA added I.R.C. §§ 45U, 45V, 45Y, 45Z, and 48E to provide new credits, which also contain provisions for increased credit amounts for taxpayers who satisfy certain requirements.

Increased credit amounts are available under sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E, and an increased deduction is available under section 179D, for taxpayers satisfying certain prevailing wage and registered apprenticeship (PWA) requirements. Increased credit amounts are available under sections 45L and 45U for taxpayers satisfying certain prevailing wage requirements.

The proposed regulations would provide guidance to taxpayers intending to claim the increased credit or deduction amounts and those intending to transfer increased credit amounts. Additionally, the proposed regulations would provide guidance for taxpayers that initially fail to satisfy the PWA requirements but seek to cure the failure by complying with certain correction and penalty procedures. Finally, the proposed regulations would provide rules concerning specific PWA recordkeeping and reporting requirements.
[REG-100908-23]

Notice 2023-65
I.R.C. § 45L

The IRS issued guidance on the credit for contractors who construct new energy efficient homes.

Eligible contractors who construct or substantially reconstruct and rehabilitate qualified new energy efficient homes can claim a tax credit of up to $5,000 per home. The actual amount of the credit depends on eligibility requirements such as the type of home, the home's energy efficiency, and with respect to multifamily dwelling units, whether prevailing wage requirements are met. To qualify, eligible contractors must construct or substantially reconstruct and rehabilitate a qualified new energy efficient home located in the United States. They also must own the home and have a basis in it during the construction, and they must sell or lease the home to a person for use as a residence.

For 2023 and after, homes must be eligible to participate in certain Energy Star programs and meet applicable energy saving requirements based on home type. For homes acquired in 2023 through 2032, the credit amount ranges from $500 to $5,000, depending on the certification achieved and standards met, which include Energy Star program requirements, Zero Energy Ready Home program requirements, and Prevailing wage requirements (for multifamily dwelling units only).

The guidance provided in this notice addresses the person that is eligible for the credit, determining the applicable amount of the credit, energy saving requirements, certification requirements, and substantiation requirements.
[Notice 2023-65, 2023-42 I.R.B. 1067]

Notice 2024-5
I.R.C. § 45W

The IRS issued a safe harbor for the commercial clean vehicle credit.

The amount of the I.R.C. § 45W credit for each qualified commercial clean vehicle is the lesser of 30% of the taxpayer's basis in the vehicle for a vehicle not powered by a gasoline or diesel internal combustion engine (15% in any other case), or the incremental cost of the vehicle. Section 45W(b)(2) provides that the incremental cost of a qualified commercial clean vehicle is the excess of the purchase price of such vehicle over the price of a comparable vehicle. The maximum credit allowed is $7,500 in the case of a qualified commercial clean vehicle that has a gross vehicle weight rating of less than 14,000 pounds, and $40,000 for all other vehicles.

Notice 2024-5 provides a safe harbor for the incremental cost of a qualified commercial clean vehicle placed in service in 2024. Under the safe harbor, the taxpayer can rely on the Department of Energy (DOE) analysis of incremental costs. For compact car PHEVs, the modeled incremental cost is $7,000. For all street electric vehicles with a gross vehicle weight rating of less than 14,000 pounds, the modeled incremental cost is $7,500.

In addition, the DOE Analysis provided an incremental cost analysis of current costs for several representative classes of street electric vehicles with a gross vehicle weight rating of 14,000 pounds or more. The IRS will accept a taxpayer's use of the incremental cost published in the DOE Analysis for the appropriate class of street electric vehicle to calculate the section 45W credit amount for clean vehicles placed in service during calendar year 2024.
[Notice 2024-5, 2024-2 I.R.B. ___]

Withdrawal Process for Employee Retention Credit Claims
I.R.C. § 3134

The IRS announced a process to withdraw employee retention credit claims.

When properly claimed, the employee retention tax credit (ERC) is a refundable tax credit designed for businesses that continued paying employees during the COVID-19 pandemic while their business operations were fully or partially suspended due to a government order, or they had a significant decline in gross receipts during the eligibility periods. The aggressive marketing of the ERC caused ineligible businesses to file a claim for the credit.

As part of a larger effort to protect small businesses and organizations from scams, the IRS announced a withdrawal process to help employers who filed an ERC claim and are concerned about its accuracy. This new withdrawal option allows certain employers that filed an ERC claim but have not yet received a refund to withdraw their submission and avoid future repayment, interest and penalties. Employers that submitted an ERC claim that's still being processed can withdraw their claim and avoid the possibility of getting a refund that they are not eligible for.

Claims that are withdrawn will be treated as if they were never filed. The IRS will not impose penalties or interest. However, for employers who willfully filed a fraudulent claim, or those who assisted or conspired in such conduct withdrawing a fraudulent claim will not exempt the employer from potential criminal investigation and prosecution.

Employers can use the ERC claim withdrawal process if of all the following apply:

1. They made the claim on an adjusted employment return (Forms 941-X, 943-X, 944-X, CT-1X).
2. They filed the adjusted return only to claim the ERC, and they made no other adjustments.
3. They want to withdraw the entire amount of their ERC claim.
4. The IRS has not paid their claim, or the IRS has paid the claim, but they have not cashed or deposited the refund check.

Taxpayers who are not eligible to use the withdrawal process can reduce or eliminate their ERC claim by filing an amended return. To withdraw an ERC claim, taxpayer should do the following:

- Taxpayers whose professional payroll company filed their ERC claim should consult with the payroll company. The payroll company may need to submit the withdrawal request for the taxpayer, depending on whether the taxpayer's ERC claim was filed individually or batched with others.
- Taxpayers who filed their ERC claims themselves, have not received, cashed or deposited a refund check and have not been notified their claim is under audit should fax withdrawal requests to the IRS. The IRS has set up a special fax line to receive withdrawal requests. This enables the agency to stop processing before the refund is approved. Taxpayers who are unable to fax their withdrawal can mail their request, but this will take longer for the IRS to receive.
- Employers who have been notified they are under audit can send the withdrawal request to the assigned examiner or respond to the audit notice if no examiner has been assigned.

See the instructions at IRS.gov/withdrawmyERC.
[Withdrawal Process for Employee Retention Credit Claims]

Announcement 2024-3
I.R.C. § 3134

The IRS launched a voluntary disclosure program for ERC errors.

Businesses that filed an erroneous ERC claim can pay back the money received. This Voluntary Disclosure Program includes the settlement of the ERC for purposes of a participant's employment tax obligations by eliminating their eligibility for the ERC while allowing a participant to retain 20% of the claimed ERC amount. Additionally, because the ERC reduces the income tax expense for qualified wages, this Voluntary Disclosure Program also resolves the issue of the corresponding adjustment to income tax expense for participants. Participants are not required to reduce wage expense with respect to any of the previously claimed ERC.

Any participant that has claimed the ERC and has received a credit or refund is eligible to participate in this Voluntary Disclosure Program, provided that the participant meets the following criteria:

1. The participant is not under criminal investigation and they have not been notified that the IRS intends to commence a criminal investigation.
2. The IRS has not received information from a third party alerting the IRS to the participant's noncompliance, nor has the IRS acquired information directly related to the noncompliance from an enforcement action.

3. The participant is not under an employment tax examination by the IRS for any tax period(s) for which the taxpayer is applying for this Voluntary Disclosure Program.
4. The participant has not previously received notice and demand for repayment of all or part of the claimed ERC.

[Announcement 2024-3, 2024-2 I.R.B. ___]

Deductions

REG-112916-23
I.R.C. § 170

> Proposed regulations implement the disallowance of deductions for certain conservation easement contributions by partnerships and S corporations.

Proposed regulations provide guidance under the new law that disallows deductions for certain charitable conservation contributions by partnerships and other pass-through entities. SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted as Division T of the Consolidated Appropriations Act, 2023, Pub. L. No. 117–328, I.R.C. § 605(a) and (b) added new subsections to the part of the tax law that provides rules for deductions for charitable contributions under I.R.C. § 170.

Generally, these regulations affect partnerships and S corporations that make conservation contributions and upper-tier partnerships, upper-tier S corporations, partners and S corporation shareholders that are allocated a portion of these contributions. The regulations provide definitions, explanations, computational guidance and examples of the new law, which disallows deductions if the amount of the contribution is more than two and a half times the sum of each partner's or shareholder's relevant basis in the partnership or S corporation.

The proposed regulations also provide guidance on the statutory exceptions to the new disallowance rule, particularly the exception for family partnerships and S corporations and the exception for contributions made outside a 3-year holding period. The proposed regulations also provide updates concerning substantiation and reporting rules for certain noncash charitable contributions made by a partnership or S corporation.

Notice 2023-63
I.R.C. § 174

> The IRS has provided guidance on the amortization of specified research or experimental expenditures.

Notice 2023-63 provides interim guidance to clarify the application of the I.R.C. § 174 amortization deduction for research and experimental expenditures. The notice addresses, in part, the capitalization and amortization of specified research or experimental expenditures.
[Notice 2023-63, 2023-39 I.R.B. 919]

Employee or Independent Contractor

Information Letter 2023-0012
I.R.C. § 3121

> The IRS declined to issue a worker classification ruling for a prospective employee.

I.R.C. § 3121(d)(2) defines an employee as any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. The question of whether an individual is an employee under the common law rules or an independent contractor is one of fact to be determined upon consideration of the facts and the application of the law and regulations in a particular case.

Letter ruling requests regarding employment status (employer/employee relationship) generally must be submitted as set forth in the current instructions for Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. However, the IRS cannot rule, for purposes of determining prospective employment status, whether an individual will be an employee or an independent contractor.
[Information Letter 2023-0012 (August 30, 2023)]

Losses

C.C.A. 202335014
I.R.C. §§ 172, 641

An electing small business trust can carry over a net operating loss passed through by an S corporation in which it is a shareholder.

The IRS Chief Counsel considers whether the S portion of an electing small business trust (ESBT) can carry to another tax year a net operating loss (NOL) attributable to a loss passed through to the ESBT by an S corporation of which it is a shareholder. Specifically, the memorandum considers the case of an S corporation that passed an NOL through to an ESBT, its sole shareholder. The basis limitation rules did not limit the loss but the loss exceeded the ESBT's income.

The memorandum notes that Treas. Reg. § 1.641(c)-1(a) generally provides that an ESBT is treated as two separate trusts for income tax purposes. The portion of an ESBT that consists of stock in one or more S corporations is treated as one trust (the S portion). The portion of an ESBT that consists of all the other assets in the trust is treated as a separate trust (the non-S portion).

Treas. Reg. § 1.641(c)-1(d)(2)(i) provides in general that the S portion takes into account the items of income, loss, deduction, or credit that are taken into account by an S corporation shareholder pursuant to I.R.C. § 1366 and the regulations thereunder. The rules otherwise applicable to trusts apply in determining the extent to which any loss, deduction, or credit may be taken into account in determining the taxable income of the S portion. The IRS Chief Counsel concludes that the S portion of the ESBT may carry the NOL from the S corporation to another tax year.
[C.C.A. 202335014 (May 11, 2023)]

Individual Tax Issues

Credits

Notice 2023-59
I.R.C. § 25C

The IRS has provided interim guidance on how taxpayers claim an energy efficient home improvement credit for a home energy audit.

Sections 13301(b) and (f) of the IRA amended I.R.C. § 25C(a) to allow a credit amount equal to 30% of the sum of the amounts that individual taxpayers pay or incur during a tax year for (1) qualified energy efficiency improvements installed during the year, (2) residential energy property expenditures, and (3) home energy audits. The credit limit for home energy audits is $150.

The IRS announced that it will publish proposed regulations on how taxpayers can claim an energy efficient home improvement credit for a home energy audit. The IRS has provided a transition rule for home energy audits conducted in 2023 if the taxpayer had a home energy audit conducted by an auditor who did not meet the definition of a qualified home energy auditor.
[Notice 2023-59, 2023-34 I.R.B. 564]

REG-113064-23
I.R.C. §§ 25E, 30D

> The IRS issued guidance on the transfer of clean vehicle credits.

The IRA provides taxpayers with credits for qualified new and previously owned clean vehicles acquired and placed in service during the tax year. Beginning January 1, 2024, in certain situations, taxpayers will be able to transfer the new and previously owned clean vehicle credits to eligible entities. Proposed regulations clarify how taxpayers can elect to transfer new and previously owned clean vehicle credits to dealers who are eligible to receive advance payments of either credit. Thus, the buyer can receive the credit at the time of purchase.

The proposed regulations also provide guidance for dealers to become eligible entities to receive advance payments of new or previously owned clean vehicle credits and provide guidance for recapturing the credit upon a return of the vehicle or upon a resale of the vehicle within 30 days of the date it was placed in service.
[REG-113064-23]

Rev. Proc. 2023-33
I.R.C. §§ 25E, 30D

> The IRS has provided guidance on dealer registration to receive clean vehicle credit transfers.

The revenue procedure includes procedures for how a dealer would register with the IRS to be eligible to receive the credit transfers from taxpayers and provides details on the registration process through IRS Energy Credits Online. It also provides procedures for the revocation and suspension of a registration if a dealer fails to comply with the program's requirements, and for the establishment of an advanced payment program to eligible entities. Finally, the revenue procedure provides new information for the timing and manner of submission of seller reports, as well as providing updated information on submission of written agreements by manufacturers to the IRS to be considered qualified manufacturers and on the method of submission of monthly reports by qualified manufacturers.
[Rev. Proc. 2023-33, 2023-43 I.R.B. 1135]

Rev. Proc. 2023-38
I.R.C. § 30D

> This revenue procedure updates the procedures for reporting by qualified manufacturers of new clean vehicles.

This revenue procedure updates the procedures under I.R.C. § 30D(d)(3) for qualified manufacturers to enter into a written agreement with the IRS under which such manufacturer agrees to make periodic written reports providing vehicle identification numbers and other information regarding vehicles eligible for a clean vehicle credit.
[Rev. Proc., 2023-28, 2023-51 I.R.B. 1544]

REG-132569-17

I.R.C. § 48

Proposed regulations would amend the regulations relating to the energy credit for the tax year in which eligible energy property is placed in service.

The I.R.C. § 48 energy credit provides taxpayers with a federal income tax credit for a percentage of the cost of placing specified energy property into service. The credit applies to solar and other specified energy property.

The proposed regulations would, in part, update the types of energy property eligible for the energy Credit. The proposed regulations would also provide additional requirements and rules generally applicable to energy property.
[REG-132569-17]

Deductions

Legal Advice Issued by Field Attorneys 20233201F

I.R.C. § 170

A taxpayer could not claim a charitable contribution deduction because there was no intent to make a charitable contribution.

The Associate Area Counsel (Large Business & International) determined that a taxpayer could not claim a charitable contribution deduction. The taxpayer claimed a deduction for a purported bargain sale of property to a nonprofit organization. The property had several recognized environmental conditions that had to be remediated and it was unsuitable for building in its current condition. The taxpayer claimed that the amount of the deduction was the difference between the appraised value and the sale price.

The IRS concludes that no deduction was allowed because the taxpayer did not intend to make a charitable contribution and there was nothing of value to contribute once the property was acquired by the nonprofit. The IRS also disagreed with the taxpayer's valuation of the property.
[Legal Advice Issued by Field Attorneys 20233201F (June 5, 2023)]

T.D. 9981

I.R.C. § 509

Final regulations provide guidance on the prohibition on certain gifts or contributions to Type I and Type III supporting organizations from persons who control a supported organization.

An organization described in I.R.C. § 501(c)(3) is classified as either a private foundation or a public charity. To be classified as a public charity, an organization must be described in I.R.C. § 509(a)(1), (2), or (3). Organizations described in section 509(a)(3) are known as supporting organizations. Supporting

organizations achieve their public charity status by providing support to one or more organizations described in section 509(a)(1) or (2), which are referred to as supported organizations.

A supporting organization that is operated, supervised, or controlled by one or more supported organizations is known as a Type I supporting organization. The relationship of a Type I supporting organization with its supported organization(s) is comparable to that of a corporate parent-subsidiary relationship. A supporting organization that is operated in connection with one or more supported organizations is known as a Type III supporting organization.

The final regulations define the term *control* for purposes of section 509(f)(2), which prohibits a Type I or Type III supporting organization from accepting any gift or contribution from any person who controls the governing body of the supported organization(s). The final regulations also set forth additional rules and requirements for Type III supporting organizations.
[T.D. 9981]

Income

Notice 2023-56
I.R.C. § 61

> The IRS has provided guidance on when refunds of state or local taxes made by state or local governments to individuals in 2023 and later years are included in income.

Notice 2023-56 describes certain types of state payments to individuals and the federal tax treatment of those payments. Most taxpayers receiving state tax refunds do not have to include the state tax refund in income for federal tax purposes. As a general rule, taxpayers who claim the standard deduction on their federal income tax returns do not owe federal income tax on state tax refunds.

Taxpayers who itemize their deductions on their federal income tax returns and receive a state tax refund must include the refund in income only if they deducted the state tax paid. Because of the $10,000 limit on itemized deductions for state income and property taxes, some itemizers are not able to deduct all of the state taxes they paid and do not need to include a refund in income.

Payments made by states under legislatively provided social benefit programs for the promotion of the general welfare are not included as income on an individual recipient's federal income tax return. To qualify for the general welfare exclusion, state payments must be paid from a governmental fund, be for the promotion of general welfare (that is, based on the need of the individual or family receiving such payments), and not represent compensation for services.
[Notice 2023-56, 2023-38 I.R.B.824]

IRS ISSUES

Collections

REG-127391-16
I.R.C. § 6335

> Proposed regulations would modernize the rules for sale of property seized by levy.

The proposed regulations provide for online sales and allow the IRS to choose the method of grouping property (or selling items separately) that will likely produce that highest overall sale amount and is most

feasible. The proposed regulations would also allow the IRS to establish the amount of payment due at the time of the sale.
[REG-127391-16]

Electronic Filing

Rev. Proc. 2023-31

I.R.C. § 6011

This revenue procedure explains how a taxpayer can request a hardship waiver of the requirement to file forms 8895-SSA and 5500-EZ electronically.

Rev. Proc. 2023-31 sets forth procedures for filers of Forms 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits and 5500-EZ, Annual Return of A One Participant (Owners/Partners and Their Spouses) Retirement Plan or A Foreign Plan, to request a hardship waiver of the requirement to file those forms electronically. Rather than set forth specific procedures, this revenue procedure refers filers to applicable publications, forms, instructions, or other guidance, including postings on the IRS.gov website, for the procedures for seeking a hardship waiver or administrative exemption from the requirements to file Forms 8955-SSA and 5500-EZ electronically.
[Rev. Proc. 2023-31, 2023-40 I.R.B. 1057]

I.R. 2023-199

The IRS updated its e-Signature Policy.

The IRS extended the ability of tax professionals to use digital signatures and encrypted email. The IRS will accept digital signatures on certain documents indefinitely. A list of allowable signature options is in I.R.M. Exhibit 10.10.1-2. In addition, the IRS will allow use of encrypted email when a tax professional is working directly with IRS personnel, through October 31, 2025.
[I.R. 2023-199 (October 30, 2023)]

I.R. 2023-182

Tax Pro Account

The IRS has added new capabilities to Tax Pro Account.

As part of a larger effort to improve technology, the IRS announced an expansion of the Tax Pro Account capabilities that allows tax professionals access to new services to help their clients. New additions to Tax Pro Account, available through IRS.gov, will help practitioners manage their active client authorizations on file with the Centralized Authorization File (CAF) database. Other enhancements will allow tax professionals to view their client's tax information, including balance due amounts. Tax Pro Account users can now also withdraw from their active authorizations online in real time.
[I.R. 2023-182 (September 29, 2023)]

Tax Shelter

A.M. 2023-006

The IRS Chief Counsel identifies a nongrantor trust structure marketed as a tax shelter.

This memorandum discusses a marketed trust structure that mistakenly interprets I.R.C. § 643 to remove certain trust income from current taxation. The structure claims to provide significant tax and asset protection advantages to individual taxpayers. The materials describe the trust by its purported characteristics, typically a combination of the terms non-grantor, irrevocable, discretionary, complex (or complex with simple provision), section 643, and spendthrift.

A third-party settlor, acting on behalf of the taxpayer, creates and nominally funds a trust with legal documents that are provided by the promoter. The taxpayer is appointed as the *compliance overseer*, with power to add and remove trustees and change beneficiaries of the trust.

The promotional materials claim that almost none of the income generated by the trust is subject to current federal income tax if the trustee allocates such income to corpus and refrains from making distributions to beneficiaries. The IRS Chief Counsel explains that the structure misinterprets section 643 and does not provided the claimed tax benefit.
[A.M. 2023-006 (August 9, 2023)]

Retirement Tax Issues

Notice 2023-62
SECURE 2.0 § 604

The IRS provided guidance on SECURE 2.0 catch up contributions and deferred the new Roth requirement.

Starting in 2024, a new Roth catch-up contribution rule applies to an employee who participates in a 401(k), 403(b), or governmental 457(b) plan, and whose prior-year social security wages exceeded $145,000. Notice 2023-62 provides guidance on this requirement to designate these catch-up contributions as Roth contributions. The notice also announces a 2-year administrative transition period.
[Notice 2023-62]

Tax Practice

Reporting

REG-122793-19
I.R.C. §§ 1001, 1012, 6045

The IRS issued proposed regulations that would require brokers to report customer sales and exchanges of digital assets.

For sales or exchanges of digital assets that take place on or after January 1, 2025, the proposed regulations would require brokers, including digital asset trading platforms, digital asset payment processors, and certain digital asset hosted wallet providers, to report gross proceeds on a newly developed Form 1099-DA and to provide payee statements to customers. Brokers, in certain circumstances, would also be required to include gain or loss and basis information for sales that take place on or after January 1, 2026, on these information returns and statements, so that customers have the information they need to prepare their tax returns.

The proposed regulations would also require real estate reporting persons, such as title companies, closing attorneys, mortgage lenders and real estate brokers, who are treated as brokers for dispositions of digital assets, to report the disposition of digital assets paid as consideration by real estate purchasers to

acquire real estate in real estate transactions that close on or after January 1, 2025. These real estate reporting persons would also be required to include on Form 1099-S the fair market value of digital assets paid to sellers of real estate in real estate transactions that close on or after January 1, 2025.

Finally, the proposed regulations set forth gain (or loss) computation rules, basis determination rules, and backup withholding rules applicable to digital asset sale and exchange transactions and propose many definitions. Prop. Treas. Reg. § 1.1001–7(b)(1)(i) provides the general rule for determining the amount realized on a sale or disposition of digital assets for cash, other property differing materially either in kind or in extent, or services. Under these rules, the amount realized is the sum of: the cash received; the fair market value of any property received (including digital assets), the issue price of a debt instrument received; and the fair market value of any services received; reduced by the allocable digital asset transaction costs. *Digital asset transaction costs* are defined as the amount paid, in cash, or property (including digital assets), to effect the disposition or acquisition of a digital asset and include transaction fees, transfer taxes, and any other commissions.
[REG-122793-19]

Notice 2023-74
I.R.C. § 6050W

The IRS delayed the new $600 Form 1099-K reporting threshold for third-party platform payments in 2023.

The IRS delayed the $600 Form 1099-K reporting threshold for third-party settlement organizations for calendar year 2023. It will consider 2023 as an additional transition year. As a result, reporting will not be required unless the taxpayer receives over $20,000 and has more than 200 transactions in 2023. The IRS is planning for a $5,000 threshold for tax year 2024 as part of a phase-in to implement the $600 reporting threshold
[Notice 2023-74, 2023-51 I.R.B. 1484]