Recent Developments in Federal Income Taxation

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Section 174: Capitalization of Research or Experimental Expenditures

Outline: item B.1, page 3

- The 2017 Tax Cuts and Jobs Act, § 13206, amended Code § 174 to require the capitalization and amortization of specified research or experimental expenditures.
- The amortization period is 5 years (15 years for expenditures attributable to foreign research), beginning at the midpoint of the year in which the expenditures are paid or incurred.
- Applies to amounts paid or incurred in tax years beginning after 2021.
- The term "specified research or experimental expenditures":
  - Defined as research or experimental expenditures paid or incurred by the taxpayer during a tax year in connection with taxpayer's trade or business.
  - Includes expenditures for software development.
  - Includes depreciation and depletion
  - Does not include:
    - Amounts paid or incurred for ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas)

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Actavis Laboratories, FL, Inc. v. United States, 130 A.F.T.R.2d 2022-5601 (Ct. Fed. Cl. 8/19/22)

Outline: item B.2, page 4

- The taxpayer was a manufacturer of brand-name and generic drugs.
- The taxpayer sought FDA approval of generic drugs by submitting Abbreviated New Drug Applications (ANDAs).
- As required by the ANDA process, the taxpayer:
  - Certified to the FDA that existing patents on the drugs were invalid or would not be infringed by the sale or use of the generic version of the drug, and
  - Sent notice letters to the holders of the patents informing them of the certification.
- Issue: were legal fees incurred to defend patent infringement suits brought in response to the notice letters capital expenditures?
- Held: No. The legal fees were not costs incurred as part of the FDA approval process and therefore were not costs incurred to facilitate the acquisition of an intangible asset (an FDA-approved ANDA).

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100% Deduction of Restaurant Business Meals

Outline: item D.2, page 9

- Taxpayer Certainty and Disaster Tax Relief Act of 2020.
  - Part of the 2021 Consolidated Appropriations Act, Pub. L. No. 116-260, enacted on December 27, 2020.
- Amends § 274(n)(2)
  - Provides exceptions to normal 50 percent limitation on deducting business meals
  - Legislation adds a new exception:
    - Can deduct 100% of the cost of food or beverages provided by a restaurant paid or incurred before January 1, 2023
    - Applies to amounts paid or incurred after December 31, 2020.
- Notice 2021-25, 2021-17 I.R.B. 1118 (4/8/21).
  - A restaurant is “a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business’s premises.”
  - Your favorite food truck and street vendors are “restaurants,” but Whole Foods is not. Caterers that don’t operate restaurants? Who knows?

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100% Deduction of Restaurant Business Meals
Outline: item D.2.b, page 9

- Notice 2021-63, 2021-49 I.R.B. 835 (11/16/21).
  - Allows taxpayers to treat the meal portion of a per diem rate or allowance as being attributable to food or beverages provided by a restaurant.
  - Effect: can deduct 100% of the meal portion of a per diem even if the employee is not actually eating at a restaurant.

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Notice 2022-3
2022-2 I.R.B. 308 (12/17/21)
Outline: item D.3, page 10

- Standard mileage rate for business miles in 2022 goes up to 58.5 cents per mile (from 56 cents in 2021).
- Medical/moving rate for 2022 goes up to 18 cents per mile (from 16 cents in 2021).
- Charitable mileage rate remains fixed by § 170(i) at 14 cents.
- The portion of the business standard mileage rate treated as depreciation remains the same at 26 cents per mile for 2022 (unchanged from 2021).
- Reminders:
  - Unreimbursed employee business expenses are miscellaneous itemized deductions and therefore not deductible through 2025.
  - Moving expenses are not deductible through 2025 except for members of the military on active duty who move pursuant to military orders incident to a permanent change of station.

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Announcement 2022-13
2022-26 I.R.B. 1185 (6/10/22)
Outline: item D.3.a, page 10

- Standard mileage rates are increased for deductible transportation expenses paid or incurred on or after July 1, 2022, and to mileage allowances that are paid both (1) to an employee on or after July 1, 2022, and (2) for transportation expenses paid or incurred by the employee on or after July 1, 2022.

Category	**Jan. 1-Jun. 30, 2022**	**Jul. 1-Dec. 31, 2022**
Business mileage	58.5 cents	62.5 cents
Medical/moving	18 cents	22 cents
Charitable mileage	14 cents	14 cents

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Excess Business Losses and NOLs
Outline: item H.1, page 13

- 2017 TCJA changes to rules for net operating losses:
  - "Excess business losses" of noncorporate taxpayers disallowed by new § 461(*l*)
    - "Excess business loss" is amount by which taxpayer's aggregate trade or business deductions exceed aggregate gross income from those trades or businesses, plus $250,000 ($500,000 for joint filers), adjusted for inflation after 2018.
  - NOLS not carried back (only forward); capped at 80% of taxable income.
  - NOLs do not expire

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Excess Business Losses and NOLs
Outline: item H.1, page 13

- The CARES Act:
  - Suspended the disallowance of "excess business losses" for TY beginning before 2021
  - NOLS arising in 2018, 2019, and 2020:
    - May be carried back to each of the five preceding taxable years, then forward indefinitely.
  - For TY beginning before January 1, 2021 (generally, 2019 and 2020), the 80 percent taxable income limitation on NOL carryforwards does not apply.

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Excess Business Losses and NOLs
Outline: item H.1, page 13

- As enacted, § 461(*l*) was effective for tax years beginning before January 1, 2027.
- The Inflation Reduction Act (August 16, 2022), § 13903, extends the effective date of § 461(*l*) through tax years ending before January 1, 2029.

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Notice 2021-61 (11/4/21)
Notice 2022-55 (10/21/22)
Outline: items B.1-2, page 15

- Sets forth inflation-adjusted figures for benefits and contributions under qualified retirement plans for 2022 and 2023.
- Among other figures:

Category	2021	2022	2023
Elective deferrals- 401(k) plans	19,500	20,500	22,500
Catch-up contributions (age 50+)	6,500	6,500	7,500
IRA contribution limit	6,000	6,000	6,500

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Proposed Regulations on RMDs (2/24/22)
Increase in Age for RMDs to 72
Outline: item B.3, page 16

- A provision of the SECURE Act, Division O, Title I, § 114 of the 2020 Further Consolidated Appropriations Act, amended Code § 401(a)(9)(C)(i)(I)
- Increases the age at which required minimum distributions (RMDs) from a qualified plan (including IRAs) must begin from 70-½ to 72.
- RMDs now must begin by April 1 of the calendar year following the later of:
  - Calendar year in which the employee attains age 72, or
  - In the case of an employer plan, the calendar year in which the employee retires (does not apply to a 5-percent owner (as defined in § 416))
- Applies to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70-½ after that date.

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Proposed Regulations on RMDS (2/24/22) No More Stretch RMDs from Non-Spousal Inherited Retirement Accounts *Outline: item B.3, page 16*

- A provision of the SECURE Act, Division O, Title IV, § 401 of the 2020 Further Consolidated Appropriations Act, amended Code § 401(a)(9)(E)
- Modifies the required minimum distribution (RMD) rules for inherited retirement accounts (defined contribution plans and IRAs).
- Requires all funds to be distributed by the end of the 10th calendar year following the year of death.
  - There appears to be no requirement to withdraw any minimum amount before that date.
- Current rules, which permit taking RMDs over many years, continue to apply to certain designated beneficiaries, including surviving spouses, children of the participant who have not reached the age of majority, and those not more than 10 years younger than the deceased individual.
- Applies to distributions with respect to those who die after 12/31/19.

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Proposed Regulations on RMDs (2/24/22) 87 F.R. 10504 *Outline: item B.3, page 16*

- These proposed regulations update existing regulations to address the changes made by the SECURE Act as well as several other statutory changes.
- The proposed regulations adopt an interpretation of the 10-year rule that appears to differ from the plain language of the statute and from the interpretation of the legislation by most advisors.
- "For example, if an employee died after the required beginning date with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have required minimum distributions calculated using the beneficiary's life expectancy as under the existing regulations for up to nine calendar years after the employee's death. In the tenth year following the calendar year of the employee's death, a full distribution of the employee's remaining interest would be required."

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Notice 2022-53
2022-__ I.R.B. __ (10/7/22)
[Not in outline]

- Provides relief to those required to take RMDs under the interpretation of the 10-year rule in the February 2022 proposed regulations.
- Generally, relief applies to beneficiaries who:
  - Are not eligible designated beneficiaries (i.e., are subject to the 10-year rule)
  - Inherited the account from an employee/IRA owner who died:
    - in 2020 or 2021, and
    - after the required beginning date for distributions, and
  - Were required to take RMDs in 2021 or 2022 under the interpretation of the 10-year rule in the proposed regulations.
- The 50% excise tax of § 4974 for failure to take RMDs will not apply. Those who paid the excise tax can seek a refund.

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Possible Legislative Relief
SECURE Act 2.0
[Not in outline]

- H.R.2954 - Securing a Strong Retirement Act of 2022
  - Passed the House of Representatives on March 29, 2022
  - Referred to the Senate:
    - Senate Comm. on Finance passed EARN Act (S.B. 4808)
    - Senate Comm. on Health, Educ., Labor & Pensions is considering RISE and SHINE Act (S.B. 4353)
- House version would make several changes, including:
  - Increasing RMD age from 72 to 73 by 2022, to 74 by 2029, and to 75 by 2032.
  - Automatically enrolling employees in newly-created 401(k) or 403(b) plans at 3% contribution rate (increased annually to 10%), with the ability of employees to opt out.
  - Increase catch-up contribution limits for employees ages 62 to 64.
- The proposed legislation currently does not address the 10-year rule as interpreted by the proposed RMD regulations, but there is speculation that it will be amended to do so.

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McNulty v. Commissioner,
157 T.C. No. 10 (11/18/21)
Outline: item D.1, page 17

- The taxpayers, a married couple, established self-directed individual retirement accounts (IRAs).
  - They used the services of Check Book IRA LLC (Check Book), through its website.
  - The IRA became the sole member of a limited liability company (LLC) and transferred assets to the LLC.
  - Ms. McNulty and her husband were the LLC's managers.
  - The LLC invested in American Eagle Gold coins, which were shipped to the taxpayers' residence and kept in a safe there.
- Issue: did Ms. McNulty receive taxable distributions equal to the cost of the American Eagle Gold coins ($374,000 for 2015 and $37,380 for 2016)?
- Held: Yes. "An owner of a self-directed IRA may not take actual and unfettered possession of the IRA assets."
  - Taxpayers also were subject to accuracy-related penalties for substantial understatement of income tax.

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American Rescue Plan 2021 (Mar. 2021)
Cancellation of Student Loans
Outline: item B.1, page 17

- Section 9675 of the American Rescue Plan of 2021 amends Code § 108(f)(5) to provide that the cancellation of student loans is excluded from gross income.
- The definition of qualifying loans is broad enough to cover the vast majority of postsecondary educational loans.
- The exclusion does not apply if the lender is an educational organization or a private lender and the cancellation is on account of services performed for the lender.
- New § 108(f)(5) applies to discharges of loans that occur after December 31, 2020 and before January 1, 2026.
- Notice 2022-1 (12/21/21): instructs lenders that cancel student loans described in § 108(f)(5) not to issue Form 1099-C through 2025.

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Blum v. Commissioner
129 A.F.T.R.2d 2022-1170 (9th Cir. 6/2/22)
Outline: item B.2, page 18

- The taxpayer allegedly fell to the floor when she attempted to sit in a broken wheelchair while in the hospital for knee replacement surgery.
  - She brought legal action against the hospital for personal injuries.
  - The trial court in that action granted summary judgment for the hospital and the trial court's decision was affirmed on appeal.
- The taxpayer then brought a malpractice suit against the attorneys who had represented her. The law firm settled the malpractice action by paying the taxpayer $125,000.
- Issue: could the taxpayer exclude the settlement proceeds from her gross income under § 104(a)(2) as damages received on account of personal, physical injury or physical sickness?
- Held: No. There is no direct causal link between the damages and her injury. The settlement agreement specifically provided that her physical injuries did not result from the alleged attorney negligence.

Rev. Proc. 2021-45 (11/10/21)
Rev. Proc. 2022-38 (10/18/22)
Outline: item D.1-2, pages 18-19

- Standard deduction:

Filing Status	2021	2022	2023
Single/MFS	$12,550	$12,950	$13,850
Head-of-Household	$18,800	$19,400	$20,800
MFJ	$25,100	$25,900	$27,700

- Note: Rev. Proc. 2022-38 (10/18/22)
  - Provides most inflation-adjusted amounts for 2023.

Milkovich v. United States,
28 F.4th 1 (9th Cir. 3/2/22)
Outline: item D.3, page 19

- Taxpayers received a discharge in a chapter 7 bankruptcy proceeding.
- They sold their home in a short sale. The proceeds went to the mortgage lender, which applied $115,000 towards accrued but unpaid interest.
- Held: the taxpayers are entitled to deduct the mortgage interest.
  - *Estate of Franklin* (lack of economic substance) does not preclude a deduction.
  - Section 265 does not preclude a deduction.
  - Dissenting opinion by Judge Stearns.

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Inflation Reduction Act (August 2022)
Credit for Construction & Sale of Energy Efficient Homes
Outline: item D.5, page 20

- § 25C: credit for certain energy-efficient home improvements to a taxpayer's principal residence.
- Inflation Reduction Act (Aug. 2022):
  - Extended credit to property placed in service before January 1, 2033
  - Modified the credit for property placed in service after 12/31/2022:
    - Credit is:
      - 30% (increased from 10 percent) of amount paid or incurred for qualified energy efficiency improvements (such as insulation materials or systems, exterior windows, and exterior doors)
      - 30% of amount paid or incurred for residential energy property expenditures (such as high-efficiency furnaces, water heaters, and air conditioning systems)
      - 30% of amount paid or incurred for home energy audit (max. $150)
    - Annual per-taxpayer limit of $1,200 and per-item limit of $600

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Inflation Reduction Act (August 2022)
Credit for Residential Clean Energy Property
Outline: item D.6, page 21

- § 25D: credit qualified solar electric property, qualified solar water heating property, qualified fuel cell property, qualified small wind energy property, qualified geothermal heat pump property and qualified biomass fuel property.
  - Generally, properties must be installed in a dwelling unit located in the United States that is used by the taxpayer as a residence.
- Inflation Reduction Act (Aug. 2022):
  - Extended credit through 2034.
  - For qualified biomass fuel property, credit is available only for property placed in service through 2022
  - Beginning in 2023, credit is available for qualified battery storage technology.
  - Credit for all categories is:
    - 30% for property placed in service in 2022 through 2032
    - 26% for property placed in service in 2033
    - 22% for property placed in service in 2034.

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Leyh v. Commissioner
157 T.C. No. 7 (10/4/21).
Outline: item E.1, page 21

- In a written agreement, the taxpayer agreed to pay alimony to his wife until their final divorce decree.
- In 2015, the taxpayer paid $10,683 for his wife's health insurance premiums as pretax payroll reductions from his wages through his employer's cafeteria plan.
- The taxpayer excluded from his gross income the health care coverage premiums he and his wife received through his employer's cafeteria plan and also claimed a deduction for the $10,683 as alimony.
- Issue: Can the taxpayer deduct the amount paid as alimony?
- Held: Yes. This situation does not present an impermissible "double deduction" or its equivalent. His wife is required to include the payments in gross income. Section 265, which precludes deduction of amounts attributable to tax-exempt income, does not preclude a deduction.
  - In the 2017 Tax Cuts and Jobs Act, Congress repealed §§ 71 and 215 for divorce or separation instruments executed or modified after 2018.

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Aspro, Inc. v. Commissioner
32 F.4th 673 (8th Cir. 4/26/22).
Outline: item B.1.a, page 23

- Aspro was an Iowa C corporation for federal tax purposes engaged in the asphalt paving business.
- The company had three shareholders: Jackson Enterprises, Corp. (40%) (Jackson), Mannatt's Enterprises, Inc. (40%), and Mr. Dakovich, Aspro's president (20%).
- Each year relevant to this dispute, the shareholders received, among other forms of payment, substantial management fees that were deducted by Aspro.
- Issues:
  1. Whether the payments of "management fees" to its shareholders were in fact distributions of earnings, or
  2. Whether such fees were reasonable compensation for services rendered by Mr. Dakovich?
- Held: Aspro failed to show the management fees were paid wholly for services and agreed with the IRS that Aspro could not deduct management fees. Further, that Mr. Dakovich's compensation was unreasonably high. As such, the payments were considered to be constructive dividends.

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Corporate Changes in Inflation Reduction Act
August 16, 2022
Outline: item B.3, page 24

- The Inflation Reduction Act, § 138102, adds new Code section 4501
- Imposes excise tax of 1% on the value of any stock that is repurchased by a publicly traded corporation
  - Only repurchases that are treated as redemptions are subject to the tax. Repurchases that are treated as dividends are not.
- Certain exceptions apply, including:
  - Repurchases that are part of a tax-free reorganization, or
  - Repurchases in which total value of stock repurchased does not exceed $1 million
  - Repurchases in which stock repurchased is contributed to employer-sponsored retirement plan, stock ownership plan, or similar plan
- Applies to tax years beginning after December 31, 2021

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Corporate Changes in Inflation Reduction Act August 16, 2022 *Outline: item H.1, page 24*

- The Inflation Reduction Act, § 10101, amends Code section 55(b)
- Imposes a 15 percent AMT on corporations with average "adjusted financial statement income" measured over three years of over $1 billion.
- Does not apply to:
  - S corporations
  - Regulated investment companies
  - Real estate investment trusts
- Applies to tax years beginning after December 31, 2022

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Cross Refined Coal, LLC v. Commissioner, 45 F.4th 150 (D.C. Cir. 8/5/22) *Outline: item A.1, page 25*

- Former § 45(c)(7)(A) provided a tax credit for the production of refined coal.
- AJG, Inc. formed Cross Refined Coal, LLC, to operate a refined coal production facility.
- Because of limits on the refined coal tax credit, AJG carried forward unused credits.
- AJG recruited two other investors, who became members of Cross and who:
  - Contributed substantial amounts of capital to Cross, and
  - Actively participated in Cross's day-to-day operations.
- Cross's operations were made profitable only by the refined coal tax credit.
- Issue: was Cross Refined Coal, LLC a bona fide partnership for federal tax purposes?
- Held: Yes. All three members intended to carry on a business, and all three members shared in profits and losses.
  - Court rejected the government's argument that Cross could not be a partnership because there was no expectation of a *pre-tax* profit.

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Conservation Easements
Outline: item B.1, pages 28-34

- IRS has made a series of attacks on charitable contribution deductions for conservation easements
- Most successful IRS strategy: easement does not protect the property in perpetuity, as required by § 170(h)(2)(C) and (h)(5)(A).
- Recent cases disallowing large charitable contribution deductions for conservation easements:
  - *TOT Property Holdings, LLC v. Commissioner*, 1 F.4th 1354 (11th Cir. 6/23/21).
  - *Oakbrook Land Holdings, LLC v. Commissioner*, 28 F.4th 700 (6th Cir. 3/14/22)
  - Both cases disallowed donor's charitable contribution deduction because extinguishment language in the deed dictating what would happen if the easement were extinguished:
    - Failed to preserve donee's proportionate benefit, as required by Reg. § 1.170A-14(g)(6)(ii) .
    - Required that charitable-donee's benefit upon destruction or condemnation of the property be reduced by value of improvements to the property made by the taxpayer-donor after the contribution, contrary to Reg. § 1.170A-14(g)(6)(ii).

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Conservation Easements
Outline: item B.1, pages 28-34

- Issue: did Treasury comply with the Administrative Procedure Act in issuing Reg. § 1.170A-14(g)(6)(ii)?
  - IRS interprets the regulation as requiring that, in the event the easement is extinguished, the charitable-donee share in post-donation increases in value of the property attributable to improvements made by the taxpayer-donor after the contribution.
- Hewitt v. Commissioner, 21 F.4th 1336 (11th Cir. 12/29/21) *[item c, p.32]*:
  - Holds that Reg. § 1.170A-14(g)(6)(ii), as interpreted by the IRS, is arbitrary and capricious under the APA for failing to comply with procedural requirements and therefore is invalid.
- Oakbrook Land Holdings, LLC v. Commissioner, 28 F.4th 700 (6th Cir. 3/14/22) *[item d, p. 33]*:
  - Holds that Treasury complied with the APA in issuing Reg. § 1.170A-14(g)(6)(ii) and that the regulation is valid.

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Izen v. Commissioner,
129 A.F.T.R.2d 2022-2171 (5th Cir. 6/29/22)
Outline: item B.2.a, page 35

- Held: the taxpayer's deduction for a one-half interest in a 1969 model Hawker-Sidley private jet was disallowed.
- Section 170(f)(12) requires:
  - a more detailed contemporaneous written acknowledgement (CWA) for contributions of used motor vehicles, boats and airplanes, and
  - that the CWA be filed with the taxpayer's return.
- The taxpayer failed to obtain or file the CWA on Form 1098-C, and the documentation the taxpayer did submit did not comply with the statute's requirements.

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Laidlaw's Harley Davidson Sales, Inc. v. Comm'r
29 F.4th 1066 (9th Cir. 3/25/22)
Outline Item A.1.a, page 36

- An IRS revenue agent sent a 30-day letter informing the taxpayer that the IRS would assess a penalty under § 6707A for failure to report a listed transaction if the taxpayer did not respond.
- The revenue agent's supervisor did not approve the penalty until after the 30-day letter was sent and the taxpayer had filed a protest with IRS appeals.
- Issue: Whether the IRS complied with requirement of § 6751(b)(1) that the "initial determination" of the assessment of a penalty be "personally approved (in writing) by the immediate supervisor of the individual making such determination."
- Held: Yes. Contrary decision of U.S. Tax Court (154 T.C. 68 (1/16/20)) reversed.
  - When the IRS need not issue a notice of deficiency before assessing a penalty, the language of § 6751(b) contains no requirement that supervisory approval be obtained before the IRS formally communicates the penalty to the taxpayer.
  - Section 6751(b)(1) requires written supervisory approval before the assessment of the penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment.
    - The IRS complied with this requirement.

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Kroner v. Commissioner
48 F.4th 1272 (11th Cir. 9/13/22)
Outline Item A.1.b, page 37

- Issue: when the IRS *must issue a notice of deficiency* before assessing a penalty, can the IRS comply with the supervisory approval requirement of § 6751(b) by obtaining supervisory approval at any time before assessment of the penalty?
- Held: Yes. Contrary decision of U.S. Tax Court (154 T.C. 68 (1/16/20)) reversed.
  - "We disagree with Kroner and the Tax Court. We conclude that the IRS satisfies Section 6751(b) so long as a supervisor approves an initial determination of a penalty assessment before it assesses those penalties. *See Laidlaw's Harley Davidson Sales, Inc. v. Comm'r*, 29 F.4th 1066, 1071 (9th Cir. 2022). Here, a supervisor approved Kroner's penalties, and they have not yet been assessed. Accordingly, the IRS has not violated Section 6751(b)."

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Grajales v. Commissioner,
47 F.4th 58 (2d Cir. 8/24/22)
Outline: item A.2.a, page 39

- Taxpayer, who was in her 40s, withdrew funds from her employer-sponsored retirement plan.
- She did not report the withdrawn funds as income.
- IRS audited and required her to include the funds in income and also imposed the 10% penalty of § 72(t) for early withdrawal.
- Section 6751(b) requires that the "initial determination of … the assessment" of a penalty be "personally approved (in writing) by the immediate supervisor … or such higher level official as the Secretary may designate."
- Issue: is the 10-percent exaction of § 72(t) a "penalty" for purposes of the § 6751(b) supervisory approval requirement?
- Held: No. Section 6751(c) defines "penalty" to include "any addition to tax or any additional amount." The § 72(t) extraction is a "tax" and not subject to the § 6751(b) supervisory approval requirement.

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Notice 2022-36 (8/24/22)
Waiver of Late Filing Penalties
Outline: item A.5, page 41

- Applies to 2019 and 2020 income tax returns.
  - Returns had to be filed by September 30, 2022, to qualify for penalty relief.
- Also applies to certain late 1099 forms for:
  - 2019 if filed on or before August 1, 2020, and
  - 2020 if filed on or before August 1, 2021.
- Penalties are being automatically abated, refunded, or credited without the need for taxpayer action.

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Boechler, P.C. v. Commissioner
__ U.S. __ (4/21/22)
Outline: item F.1.a, page 44

- Following a collection due process (CDP) hearing, the IRS issued a notice of determination upholding proposed collection action.
- Under § 6330(d)(1), the taxpayer had 30 days to contest the determination by filing a petition with the U.S. Tax Court.
- The 30-day period expired on August 28, 2017.
- Taxpayer:
  - Mailed his petition to the Tax Court on August 29, 2017 (one-day late).
  - Argued that the 30-day period should be equitably tolled.
- Issue: is the 30-day period for filing a Tax Court petition to contest an IRS notice of determination jurisdictional and therefore not subject to equitable tolling?
- Held: No. This 30-day period is not jurisdictional and is subject to equitable tolling.

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Mann Construction, Inc. v. United States,
27 F.4th 1138 (6th Cir. 3/3/22)
Outline: item H.8, page 60

- In Notice 2007-83, the IRS concluded that certain trust arrangements involving cash value life insurance policies are listed transactions.
- The IRS imposed penalties on a corporation and its two shareholders under § 6707A for failing to disclose a transaction that, according to the IRS, was a transaction described in Notice 2007-83.
- Held: the IRS failed to comply with the Administrative Procedure Act in issuing Notice 2007-83 and the notice therefore is invalid.

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Trafigura Trading, LLC v. United States
29 F.4th 286 (5th Cir. 3/24/22)
Outline: item C.2, page 63

- Held: The tax imposed by § 4611 on oil exported from the United States is a tax on exports in violation of Article I, § 9 of the U.S. Constitution and therefore is unconstitutional.

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