

*Breakfast* **Bites**<sup>®</sup>

**WINTER 2023  
ROUNDUP OF RECENT TAX  
DEVELOPMENTS**

William E. Sigler, Esq.

 **Maddin Hauser**  
Attorneys and Counselors

**Maddin, Hauser, Roth & Heller, P.C.**  
28400 Northwestern Hwy. Southfield, MI 48034  
p (248) 354-4030 f (248) 354-1422 maddinhauser.com



# ROUNDUP OF RECENT TAX DEVELOPMENTS

- Consolidated Appropriations Act, 2023
- SECURE Act 2.0
- Inflation Reduction Act
- Corporate Transparency Act
- Individuals
- Business
- Retirement
- Estate Planning
- Michigan
- City of Detroit
- Interim Results of the 2022 Filing Season



**CONSOLIDATED  
APPROPRIATIONS ACT,  
2023**

# CONSOLIDATED APPROPRIATIONS ACT, 2023

- 1.72 trillion omnibus spending bill
- A type of bill that packages many of the smaller ordinary appropriations bills into one larger single bill that can be passed with only one vote in each house
- Twelve different ordinary appropriations bills that need to be passed each year (one for each appropriations subcommittee) to fund the federal government and avoid a government shutdown

# CONSOLIDATED APPROPRIATIONS ACT, 2023

- **\$12.3 billion for IRS**
  - \$1.3 billion less than originally proposed
- **Includes:**
  - \$2.8 billion for taxpayer services
  - \$5.4 billion for enforcement
  - \$4.1 billion for operations support
  - \$-0- for business system modernization budget (which was \$275 million in 2022)

## Requires IRS to report to Congress:

- Within 60 days on the status of the Federal Contractor Tax Check System, including delays in providing certificates to vendors
- Within 120 days on steps taken to address security flaws, including protection of taxpayer information
- Within 180 days on compliance with the Foreign Account Tax Compliance Act

# SECURE ACT 2.0

# SECURE ACT 2.0

- Included within the **Consolidated Appropriations Act, 2023**
- Called **SECURE ACT 2.0** because it builds on the changes made by the *Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act)*
- **Originated as three separate bills:**
  - ❑ **SECURING A STRONG RETIREMENT ACT (H.R. 2954)** passed by the House of Representatives on March 29, 2022
  - ❑ **RETIREMENT IMPROVEMENT AND SAVINGS ENHANCEMENT TO SUPPLEMENT HEALTHY INVESTMENTS FOR THE NEST EGG (RISE & SHINE) ACT (S. 4353)** approved by the Senate Health, Education, Labor, and Pensions Committee on June 15, 2022
  - ❑ **ENHANCING AMERICAN RETIREMENT NOW (EARN) ACT** approved by the Senate Finance Committee on June 22, 2022
- **Had strong bi-partisan support**



# SECURE ACT 2.0: RETIREMENT PLANS

- **Auto-enrollment**

- ❑ Mandatory for new plans starting in 2025
- ❑ At least 3% of salary, no higher than 10%
- ❑ Escalates at 1% per year of service up to a minimum of 10% and a maximum of 15%
- ❑ An employee can opt out
- ❑ Employers with 10 or fewer employees exempt

## SECURE ACT 2.0: RETIREMENT PLANS

- **The 10-50% nonrefundable credit for contributions to retirement plans, IRAs and ABLE accounts is replaced**
  - ❑ New 50% federal match of non-Roth contributions deposited into taxpayer's plan by Treasury
  - ❑ Phases out at certain income thresholds
  - ❑ Maximum \$2,000
  - ❑ Effective after 12/31/2026

## Start-up Cost Credit for New Plans:

- **Employers with 50 or few employees**
  - ❑ Goes from 50% to 100% for 3 years
  - ❑ Max \$5,000 per year
- **Employers with 51-100 employees**
  - ❑ 50%
  - ❑ Max \$5,000 per year
- **Additional credit for up to \$1,000 of employer matching**

## SEP/SIMPLE Plans:

- **Employers may make additional discretionary contributions to SIMPLE plans**
  - ❑ Up to 10% of compensation
  - ❑ Maximum of \$5,000 (indexed)
  - ❑ Begins 2024
- **Annual deferral and catch-up limits to SIMPLE plans increased by 10% starting in 2024 for employers with 25 or fewer employees**
- **Employers of domestic employees (e.g., nannies) may provide benefits under a SEP starting in 2023**

# SECURE ACT 2.0: RETIREMENT PLANS

## Long-term Part-Time Workers:

- Employees working 500+ hours in 2 consecutive years must be eligible to defer
- Also applies to 403(b) plans
- Begins 2025

**Note:** Under SECURE 1.0 there was a similar 3-year rule starting in 2024

# SECURE ACT 2.0: RETIREMENT PLANS

## **Pension-linked (“sidecar”) emergency savings accounts:**

- Employers may automatically opt NHCEs into emergency savings accounts
- No more than 3% of salary
- \$2,500 cap
- Contributions over limit can be stopped or directed to Roth account
- Treated as Roth elective deferrals and may be matched up to the cap
- Up to 4 no-fee, no-tax withdrawals available per year
- Upon separation, account balance may be taken as cash or rolled into a Roth plan or IRA
- Begins 2024

# SECURE ACT 2.0: RETIREMENT PLANS

## Cash-out distributions:

- Currently, plan sponsors may “cash out” terminated participant balances under \$5,000 and, unless the participant elects otherwise, rollover cash outs over \$1,000 to an established IRA
- Starting in 2024, \$5,000 is increased to \$7,000
- An automatic portability provider (“APP”) will be permitted to rollover an automatic cash out IRA established with a participant’s prior employer-sponsored retirement plan into a subsequent eligible defined contribution employer-sponsored retirement plan, provided that:
  - ❑ The individual is an active participant in the subsequent plan;
  - ❑ The participant was given notice and did not opt out of the transaction; and
  - ❑ The APP acknowledges fiduciary status and meets certain other requirements.

# SECURE ACT 2.0: RETIREMENT PLANS

## Other retirement plan changes:

- Employees making “qualified student loan payments” can have those payments matched in the retirement plan starting in 2024
- Catch-up contributions increase to \$10,000 in 2025 for participants age 60-63
- 10% early distribution penalty waived for certain unforeseeable personal or family emergency expenses
  - ❑ One distribution up to \$1,000 per year
  - ❑ Option to repay within 3 years
  - ❑ Begins 2028



# SECURE ACT 2.0: RETIREMENT PLANS

## Other retirement plan changes – con't:

- Certain barriers to the availability of life annuities in qualified plans and IRAs eased starting in 2023
- Qualified longevity annuity contracts:
  - ❑ 25% of account balance limit eliminated
  - ❑ Cap raised to \$200,000
  - ❑ Begins immediately
- Starting in 2023, new 401(k) plans sponsored by sole proprietors or single-member LLCs may allow certain deferral contributions up to the date of the employer's tax return filing date for the first year of the plan
- Starting in 2024, discretionary plan amendments increasing benefits may be adopted by the due date of the employer's tax return

# SECURE ACT 2.0: RETIREMENT PLANS

## Other retirement plan changes – con't:

- Effective immediately, early distributions to terminally ill individuals are exempt from the 10% premature distribution penalty
- Roth IRAs are currently exempt from the RMD rules. Starting in 2024, this exemption is extended to Roth amounts in qualified plans.
- A surviving spouse is currently allowed to elect to treat a deceased IRA owner's IRA as the surviving spouse's own IRA for RMD purposes. Starting in 2024, this option is extended to qualified plans.
- Starting 3 years after enactment, distributions up to \$2,500 per year to pay premiums on long-term care insurance contracts are exempt from the 10% premature distribution penalty

# SECURE ACT 2.0: RETIREMENT PLANS

## Other retirement plan changes – con't:

- Starting in 2023, a SEP and a SIMPLE IRA are permitted to be designated as Roth IRAs
- Starting in 2024, all catch-up contributions to qualified plans must be made on a Roth basis
  - ❑ Exception for participants whose prior year wages do not exceed \$145,000 (indexed)
  - ❑ Not applicable to SIMPLE IRAs and SEP plans
  - ❑ This was one of the primary revenue raisers to get the Act within the 10-year budget window by which legislation is “scored” for cost purposes
- Plans may allow employees to designate employer matching or nonelective contributions as Roth contributions (effective immediately)

## Required Minimum Distributions (RMDs):

- Increase in required minimum distribution age:
  - ❑ Age 73 starting January 1, 2023
  - ❑ Age 75 starting January 1, 2033
- Beginning in 2023, the penalty for not taking an RMD is reduced from 50% to 25%, and decreased even further to 10% if corrected during a 2 year window.

## IRA charitable donations:

- Currently, individuals age 70-1/2 and older may transfer up to \$100,000 per year from an IRA to a public charity or private operating foundation
- Expanded to permit a one-time election to transfer up to \$50,000 to a qualifying charitable remainder annuity trust, a charitable remainder unitrust, or a charitable gift annuity
- The \$50,000 and \$100,000 limits will be indexed for inflation
- Effective for taxable years ending after the date of enactment

# SECURE ACT 2.0: INDIVIDUAL RETIREMENT ACCOUNTS (IRA)

## Other IRA changes:

- Catch-up limit for those age 50 and older is inflation indexed after December 31, 2023
- Beneficiaries of 529 college savings accounts are permitted tax and penalty free rollovers of up to \$35,000 over their lifetime to ROTH IRAs starting in 2024
- Effective immediately, corrective distributions of excess contributions to an IRA are no longer subject to the 10% premature distribution penalty

# INFLATION REDUCTION ACT

## Signed into law on August 16, 2022:

- New 15% corporate AMT on C corporations with more than \$1 billion in adjusted financial statement income, as defined under Section 56A (i.e., book income)
- Extends limitation on excess business losses of noncorporate taxpayers through tax years beginning before 2029
- Adds a 1% excise tax on repurchases of stock after 2022 by publicly traded companies



## Many Tax Credits and Related Provisions:

- Clean Energy Tax Credits
- Carbon Management
- Residential Energy Efficiency
- Energy Innovation
- Offshore Wind and Oil & Gas Systems
- Community Investment and Energy Justice
- Investments in the Permitting Process
- Clean Energy Financing
- Agriculture & Forestry

## New Advanced Manufacturing Production Tax Credit (IRC §45X)

- Tax credit for the production of clean energy technology components that are produced in the United States or by a U.S. possession
- Eligible components include solar components, wind turbine and offshore wind components, inverters, many battery components, and the critical minerals needed to produce these components
- Begins to phase out in 2029 and phases out completely in 2032

## Extension of Energy Investment Tax Credit (IRC §48)

- Extends the existing energy investment tax credit for applicable energy projects
- Ends in 2024 for most technologies and is replaced by the new tech-neutral Clean Electricity ITC (48E), which begins in 2025
- Extends date of construction in most cases to 2024 and maintains a 10% or 30% credit

## New Clean Electricity Investment Tax Credit (IRC §48E)

- This newly established ITC replaces the Energy ITC once it phases out at the end of 2024
- 48E is an emissions-based incentive that is neutral and flexible between clean electricity technologies
- Taxpayers choose between a PTC (45Y) and an ITC (48E).

## Clean Vehicle Credit (IRC §30D)

- Maintains the existing \$7,500 consumer credit for the purchase of a qualified new clean vehicle, including electric vehicles, plug-in hybrids, and hydrogen fuel cell vehicles
- Maximum of \$80,000 per vehicle for vans, SUVs and pickups and \$55,000 for other vehicles
- Income eligibility limit of \$150,000 or \$300,000 for joint filers
- Eliminates the previous manufacturer quota, which phased out the tax credit for manufacturers as they neared 200,000 clean vehicles sold

## New Previously Owned Clean Vehicle Credit (IRC §25E)

- Tax credit for the purchase of previously owned clean non-commercial vehicles, including electric vehicles and plug-in hybrids
- Credit is equal to the lesser of \$4,000 or 30% of the vehicle cost
- Sets a maximum sale price of \$25,000
- Model must be at least 2 years older than the year of sale
- Implements an income eligibility limit of \$75,000 or \$150,000 for joint filers

## New Commercial Clean Vehicle Credit (IRC §45W)

- For class 1-3 (under 14,000 lbs.) vehicles for commercial use, creates a \$7,500 tax credit tax for the purchase of electric vehicles or other qualified clean vehicles
- For class 4 and above (over 14,000 lbs.) vehicles for commercial use, increases the credit to \$40,000

## Credit for Residential Clean Energy (IRC §25D)

- Extends credit through 2034 for residential solar, wind, geothermal, and biomass fuel
- Maintains the previous credit rate but adjusts the project dates
- Applies a 30% credit for projects started between 2022 and 2032
- Credit decreases to 26% for projects started in 2033 and 22% for projects started in 2034
- Expands eligibility to battery storage technology



## Credit for Energy Efficiency Home Improvements (IRC §25C)

- Extends credit for energy efficiency home improvements through 2032
- Increases credit from 10% to 30%
- Replaces lifetime cap on credits with a \$1,200 annual credit limit, including \$600 for windows and \$500 for doors
- Increases limit to \$2,000 for heat pumps and biomass stoves Removes eligibility on roofs
- Updates language to reflect advances in energy efficiency
- Expands credit to cover the cost of home energy audits up to \$150 and electrical panel upgrades up to \$600

## Home Energy Performance-Based Whole House Rebates (HOMES)

- \$4.3 billion through 2031 to DOE to help state energy offices implement a HOMES rebate program to provide rebates to homeowners and aggregators for whole-house energy saving retrofits
- Additional funding can be provided to low- and moderate-income individuals, who earn less than 80% of the area median income

## High-Efficiency Electric Home Rebate Program

- \$4.5 billion through 2031 for grants from DOE to States and Tribes to implement a high-efficiency electric home rebate program
- Provides up to \$14,000 per household including \$8,000 for heat pumps, \$1,750 for heat pump water heaters, and \$840 for electric stoves
- Also includes rebates for improvements to electrical panels or wiring and home insulation or sealant
- Eligible recipients must fall below 150% of the area median income

## Funding the IRS and Improving Taxpayer Compliance

- \$3.2 billion for taxpayer services (e.g., pre-filing assistance and education, filing and account services, and taxpayer advocacy services)
- \$45.7 billion enforcement activities
- \$25.3 billion for operations support and administrative activities
- \$4.75 billion to modernize business systems
- \$15 billion to prepare and deliver to Congress a report on the cost of an IRS-run free “direct eFile” tax return system
- \$403 million to carry out the Inspector General Act of 1978 which, among other things, established the Office of Treasury Inspector General for Tax Administration
- \$105 million for the necessary expenses of the Office of Tax Policy to carry out its function of issuing regulations

# NEW EV TAX CREDIT

## Example:

### Facts:

The Inflation Reduction Act, which the President signed on August 16, 2022 created a \$7,500 tax credit for consumers who buy new electric vehicles.

### Question:

Do you qualify?

### Answer:

Maybe!

# NEW EV TAX CREDIT

- The credit is non-refundable, so you need at least \$7,500 in taxes
- Beginning in 2023:
  - A tax credit isn't available to single individuals with modified adjusted gross income over \$150,000
  - The cap is higher for others — \$225,000 for heads of household and \$300,000 for married couples who file a joint tax return
  - The test applies to income for the current or prior year, whichever is less
  - Sedans with a retail price of more than \$55,000 aren't eligible, nor are vans, SUVs or trucks over \$80,000

# NEW EV TAX CREDIT

- A new requirement for final assembly in North America was added that took effect on August 16, 2022
- If you bought a new Chevy Bolt in 2022 — an EV made in the U.S. — it did not qualify for the Clean Vehicle Credit because of the old 200,000-vehicle cap on the credits; but if you waited until January 1, 2023, those old 200,000-vehicle limit rules disappeared and you could once again get that EV tax credit
- After 2023, vehicles will not qualify for the EV tax credit if any components in the battery are manufactured or assembled by a “foreign entity of concern” (e.g., Huawei in China)

# NEW EV TAX CREDIT

- About half the credit or \$3,750 is based on where the battery components are made or assembled, e.g. –
  - 40% for EVs that go on sale before 2024
  - 50% for EVs that go on sale in 2024
  - 60% for EVs that go on sale in 2025
  - 70% for EVs that go on sale in 2026
  - 80% for EVs that go on sale after December 31, 2026



# NEW EV TAX CREDIT

- Just like battery components, the credit has requirements based on where the raw materials used in the battery come from that must be met to qualify for half of the credit or \$3,750:
  - 40% of “critical minerals” through end of 2023
  - 50% in 2024
  - 60% in 2025
  - 70% in 2026
  - 80% after 2026

# REPORTING RULES FOR CLEAN VEHICLE CREDITS

## Rev. Proc. 2022-42, released December 12, 2022:

- Initial guidance on how auto manufacturers and dealers can qualify their cars available for clean vehicle credits
- Manufacturer's generally must enter into written agreements with the IRS agreeing to make periodic written reports with VIN numbers for each vehicle sold
- Seller's likewise must make reports about each sale in order for the new or used vehicles sold to be eligible for the tax incentives

# 2023 EV CREDIT AVAILABILITY

## Notice 2023-1:

- Guidance on what cars and trucks qualify for the new clean vehicle tax credits in 2023
  - Includes only four manufacturers: Ford, Rivian, Stellantis, and Nissan
- Provides guidance on how it will calculate a vehicle's manufacturer's suggested retail price for purposes of qualifying for the credit
- Leaves open questions about how requirements for electric vehicle battery content will work

**Note:** Notice 2023-9 provides additional guidance on the commercial clean vehicle credit

# PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS

- Increased credit amounts and deductions may be available to certain taxpayers satisfying prevailing wage and apprenticeship requirements
  - ❑ Increased credits: IRC §30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C and 48E
  - ❑ Increased deductions: IRC §179D
  - ❑ Increased credits also available under IRC §45L and 45U if just a prevailing wage requirement is satisfied
- The prevailing wage requirement is met if laborers and mechanics are paid at rates not less than the prevailing rates for construction, alteration or repair of similar character in the locality where the facility is located as determined by the Secretary of Labor

# PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS

- The apprenticeship requirement is met if the following percentage of total labor hours is performed by qualified apprentices:
  - ❑ 10% if construction begins prior to 1/1/2023
  - ❑ 12.5% if construction begins after 12/31/2022 and before 1/1/024
  - ❑ 15% if construction begins after 12/31/2023

Notice 2022-61

The image features a dark blue background with a faint, repeating pattern of a modern building's facade. A central horizontal band is highlighted in a lighter shade of blue. The text 'CORPORATE TRANSPARENCY ACT' is centered within this band in a bold, white, sans-serif font. The text is enclosed in a thin, gold-colored rectangular border that is slightly offset from the edges of the central band.

# **CORPORATE TRANSPARENCY ACT**

# CORPORATE TRANSPARENCY ACT

- National Defense Authorization Act for Fiscal Year 2021 (NDAA)
- NDAA included significant reforms to the U.S. anti-money laundering and countering the financing of terrorism regime
- Division F of the NDAA consists of the Anti-Money Laundering Act of 2020, which includes the Corporate Transparency Act (CTA)
- Congress enacted the CTA to establish uniform beneficial ownership information reporting requirements to improve transparency for national security, intelligence, and law enforcement agencies in their efforts to detect and prevent money laundering and terrorist financing

# CORPORATE TRANSPARENCY ACT

- On September 29, 2022, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued regulations regarding the beneficial ownership reporting requirements
- The final rulemaking is effective January 1, 2024
- Reporting companies created or registered before January 1, 2024, will have one year (until January 1, 2025) to file their initial reports
- Reporting companies created or registered after January 1, 2024, will have 30 days after creation or registration to file their initial reports



# CORPORATE TRANSPARENCY ACT

## Several Exemptions:

- Financial institutions or certain issuers of securities in heavily regulated industries (e.g., banks, credit unions, broker-dealers, money services businesses registered with FinCEN, and issuers registered with the U.S. Securities and Exchange Commission)
- “Large operating companies”
  - Entity that employs more than 20 full time employees in the U.S.,
  - Has an operating presence at a physical office within the U.S., and
  - Filed a federal income tax or information return in the U.S. for the previous year demonstrating more than \$5,000,000 in gross receipts or sales
- Other types of legal entities, including certain trusts, will be excluded to the extent that they are not created by the filing of a document with a secretary of state or similar office

# CORPORATE TRANSPARENCY ACT

**A “reporting company” is a corporation, limited liability company, or other similar entity that is:**

- Created by the filing of a document with a secretary of state or similar office, or
- Formed under the law of a foreign country and registered to do business in the U.S. by the filing of a document with a secretary of state or a similar office

# CORPORATE TRANSPARENCY ACT

A “beneficial owner” is 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

## Examples:

- Senior officer of the reporting company;
- Having authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body); or
- Directing, determining, or having substantial influence over important decisions made by the reporting company

# CORPORATE TRANSPARENCY ACT

## Penalties for Noncompliance:

- Civil Penalties:
  - Not more than \$500 for each day that the violation continues
- Criminal Penalties:
  - Fines of not more than \$10,000, and
  - Imprisonment for not more than two years, or both
- Separate from the CTA, persons could face criminal liability under the federal criminal code, which prohibits knowingly and willfully providing false information or concealing a material fact to any of the three branches of the federal government

# INDIVIDUALS

# INFLATION ADJUSTED AMOUNTS

Tax Provision	2023	2022	2021
Standard deduction – MFJ	\$27,700	\$25,900	\$25,100
Standard deduction – Single	\$13,850	\$12,950	\$12,550
Standard deduction – HOH	\$20,800	\$19,400	\$18,800
Qualifying relative income limit	\$4,700	\$4,400	\$4,300
Maximum EIC for 3 or more qualifying children	\$7,430	\$6,935	\$6,728
Maximum EIC for 2 qualifying children	\$6,604	\$6,164	\$5,980
Maximum EIC for 1 qualifying child	\$3,995	\$3,733	\$3,618
Maximum EIC for no qualifying children	\$600	\$560	\$1,502
Child Tax Credit (per qualifying child) *	\$2,000	\$2,000	3,000/3,600
Refundable portion of child tax credit *	\$1,600	\$1,500	3,000/3,600
QBI threshold amount – MFJ	\$364,200	\$340,100	\$329,800
QBI threshold amount – Single & HOH	\$182,100	\$170,050	\$164,900
QBI threshold amount – MFS	\$182,100	\$170,050	\$164,925
Foreign earned income exclusion	\$120,000	\$112,000	\$108,700
AMT exemption – MFJ & QW	\$126,500	\$118,100	\$114,600
AMT exemption – Single & HOH	\$81,300	\$75,900	\$73,600
AMT exemption – MFS	\$63,250	\$59,050	\$57,300

\*For 2021 only, the Child Tax Credit is increased from \$3,000 to \$3,600 per child who has not yet attained age 6.

# HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS

- **Health FSAs**
  - Employees can contribute up to \$2,850 in 2022
  - Including a limited-purpose FSA restricted to dental and vision care, which can be used in tandem with an HSA

# HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS

- **Dependent Care FSAs**

- Set by statute, but not adjusted annually for inflation
- \$5,000 in MFJ in 2022
- \$2,500 in MFS in 2022
- The limits had been \$10,500 (MFJ) and \$5,250 (MFS) in 2021 under the American Rescue Plan Act of 2021



# HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS

- **Prior Law**

- 2 ½ month grace period for health or dependent care FSAs
- Health FSAs can additionally allow participants to roll over up to \$550 of unused funds from 2021 into 2022\*

\*Increased to \$570 for 2022 into 2023, and to \$610 for 2023 into 2023

# HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS

- **Consolidated Appropriations Act, 2021**
- **Both health and dependent care FSA participants could carry over unused balances**
  - From 2020 into 2021
  - From 2021 into 2022
- **Grace period for spending unused FSA funds extended to 12 months for 2020 and 2021**

*Notice 2021-15*

# HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS

- Employees who stopped participating in a health FSA during 2020 or 2021 may continue to be reimbursed through the end of the plan year in which their participation terminates, including grace periods (so, that could possibly extend into 2022 for an employee terminating in 2021 participating in a plan with a non-calendar fiscal year)
- Prior to CAA, a qualifying child generally had to be under age 13
- CAA changed age 13 to age 14 for plan years in which the regular enrollment period was on or before 1/31/2020 or, if the employee had an unused balance for that plan year, the subsequent plan year

# HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS

- Dependent care FSA funds that would have been excluded from income if used during 2020 or 2021 are excluded and not considered wages for 2021 and 2022, respectively
- As a result, unused amounts carried over are not taken into account in determining the annual limit applicable in the following year

*Notice 2021-26*

# HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS

## Example:

### Facts:

Suppose in 2021 you did not spend \$1,500 in your FSA. You can roll this amount over into your account for 2022. You can then make a contribution of up to \$2,850.

### Question:

How much will you have to spend in 2022?

### Answer:

If you contribute the maximum amount to your FSA in 2022, you'll have a total balance of \$4,350 to spend in 2022.

# NEW OPPORTUNITY TO CHANGE HEALTH COVERAGE

- **Cafeteria plan elections are generally irrevocable, except:**
  - ❑ Until the next annual renewal cycle; or
  - ❑ Pursuant to the “change in status” rules, e.g., where an employee marries and wishes to cover his or her spouse under the group health plan
- **Guidance issued on a new circumstance where a change in an election is permitted:**
  - ❑ An employee with family coverage may revoke his/her election and change to self-only coverage
  - ❑ Provided that it’s done to permit his/her spouse to enroll in a qualified health plan through a health insurance in the individual market

Notice 2022-41

# PREMIUM TAX CREDIT

## Background: Premium Tax Credit (PTC)

- Refundable credit design to subsidize health insurance purchased through an Exchange
- Based on percentage of income the cost of premiums represents ranging from:
  - 2% of income for those below 133% of the federal poverty line, to
  - 9.5% of income for those at 400% of the federal poverty line

*IRC §36B*

# PREMIUM TAX CREDIT

## Background: Advanced Premium Tax Credit (APTC)

- Taxpayer signs up for insurance through the exchange using prior year tax information
- Exchange then pays an amount to the health insurance provider
- Health insurance provider reduces the monthly health insurance premium paid by taxpayer
- Advance received reduces the PTC allowed on the tax return



# PREMIUM TAX CREDIT

## American Rescue Plan Act of 2021

- Changes the percentages to increase the affordability of health insurance for 2021 and 2022
- Also makes the PTC available to taxpayers with income above 400% of the federal poverty line if cost of premiums would exceed 8.5% of household income
- Extended for 3 years through 2025 by the Inflation Reduction Act of 2022

## PREMIUM TAX CREDIT

- Current regulations under Section 36B provide that if self-only coverage is affordable for an employee, then it is also affordable for the employee's spouse and dependents if filing a joint return
- Proposed regulations would base the affordability of employer sponsored minimum essential coverage on the employee's share of the cost covering the employee and those family members

# EMPLOYER LEAVE-BASED DONATION PROGRAM

## Employer leave-based donation program:

- Employees can forego vacation, sick or personal leave
- In exchange for employer making cash payments to Section 170(c) charitable organizations

## Notice 2022-28:

- Permits payments to qualified charities to aid victims of the Russian invasion of Ukraine
- Payments had to be made prior to January 1, 2023

# EMPLOYER LEAVE-BASED DONATION PROGRAM

## Employee not treated as constructively receiving:

- Gross income, or
- Wages

## Employer may deduct donations as:

- Charitable contribution under Section 170(c), or
- Business expense under Section 162

# STUDENT LOAN FORGIVENESS EXCLUSION

## American Rescue Plan Act of 2021:

- Excludes from gross income
- Discharge of indebtedness income relating to student loan debt
  - Including private student loans
  - Unless student is required to provide services to the discharging lender
- Effective for 2021-2025

*IRC § 108(f)(5)*

# PENALTY RELIEF FOR 2019 AND 2020 RETURNS

- IRS is providing relief from certain failure-to-file penalties with respect to returns for the 2019 and 2020 tax years
- Part of the ongoing COVID-19 pandemic relief declared by the President as a national emergency on March 13, 2020
- Abatement is automatic
- Provided that the returns were filed before September 30, 2022

Notice 2022-36

# CASES

# TAX REFUND NOT BINDING ON THE IRS

## Background:

- Prior to marriage in 2015, taxpayers separately enrolled in health insurance acquired through the marketplace
- Each elected to receive advance premium tax credit (APTC) payments
- Payments were applied by insurance companies to the cost of their premiums



# TAX REFUND NOT BINDING ON THE IRS

## 2015 Joint Tax Return:

- Attached Form 8692, *Premium Tax Credit*
- Claimed PTC of \$4,515
- Erroneously claimed \$3,200 had been paid on their behalf
- Actual APTC was \$7,950
- Elected alternate calculation, but did not complete Part V of Form 8962

# TAX REFUND NOT BINDING ON THE IRS

## IRS:

- Issued refund of \$4,187
- Later issued a notice of deficiency for \$7,950 following an audit
- Taxpayer's claimed IRS did not account for election to use alternate calculation
- IRS reduced deficiency to \$4,750
- In court, taxpayers argued that IRS was precluded from issuing a deficiency after previously providing a refund

# TAX REFUND NOT BINDING ON THE IRS

## Tax Court Rejected Taxpayer's Argument:

- “A refund is not binding on the Commissioner in the absence of a closing agreement, valid compromise, or final adjudication.”
  - *Meridian Mut. Ins. Co. v. Commissioner*, 44 T.C. 375 (1965), which was upheld by the 7th Circuit Court of Appeals in 1966
- “It is well settled that the granting of a refund does not preclude the Commissioner from issuing a notice of deficiency merely because he accepted a taxpayer's return and issued a refund.”
  - *Beer*, 6th Cir. 1984
- “Refunds are subject to final audit and adjustment, and thus are not final determinations that would preclude subsequent adjustment.”
  - *Clark*, 6th Cir. 1946

*Manzollilo*, T.C. Memo. 2022-107

# ELECTION REQUIRED TO ITEMIZE DEDUCTIONS

## Background:

- Taxpayer claimed to have filed a return, but had no record
- Filed an amended return claiming itemized deduction

## Tax Court:

- Section 63(e)(2) – election to itemize is made on return
- Section 63(e)(3) – permits a change of election
- But, since no return was filed, no election to itemize was made and no change is permitted

*Salter*, T.C. Memo. 2022-029, April 5, 2022

# CHARITABLE CONTRIBUTION SUBSTANTIATION REQUIREMENTS

## Background:

- Taxpayer made large contribution of native American artifacts to the Wheelwright Museum of the American Indian in NM
- A 5 page “Deed of Gift” was executed
- It stated that the gift was “unconditional and irrevocable” unless otherwise stated in the “Gift Agreement”
- No “Gift Agreement” was provided by the Museum

# CHARITABLE CONTRIBUTION SUBSTANTIATION REQUIREMENTS

## IRS:

- Denied deduction
- Did not contest that no consideration was given by the museum for the gift
- Determination was based on Deed of Gift not specifying that no goods or services were provided in exchange for the gift

## Court:

- Agreed with finding of IRS that reference to a “Gift Agreement” prevented a finding that no goods or services were provided

*Albrecht*, T.C. Memo. 2022-53, May 25, 2022

# NOL DEDUCTION NOT SUBSTANTIATED

- Deductions for NOL carryforwards disallowed by tax court
- Losses were incurred in 1999 and 2000, and the statute of limitations had run
- Taxpayer provided worksheets she prepared which showed a portion of each NOL being used as carryforward deductions in 2004, 2005 through 2008, 2012 and 2013
- Also provided business ledgers and the first two pages of each tax return from 2008 through 2013
- But, she failed to provide any support for the worksheets or any computation of the original NOL amount

Amos, T.C. Memo. 2022-109, November 10, 2022

# PAYMENTS TO EMPLOYEE IN RELATIONSHIP WITH BOSS ARE NOT GIFTS

- Taxpayer was in a relationship with her employer's CEO
- Company wired funds to taxpayer's account
- Taxpayer later separated: two separation agreements:
  - ❑ #1 – outstanding amount will be written off and taxpayer will be issued a 1099 (signed)
  - ❑ #2 – outstanding amount will be withheld from severance (not signed)
- A 1099 was issued, but the taxpayer did not include amount in income
- Tax court found that the amount was not a gift:
  - ❑ Recorded in books as a receivable
  - ❑ Signed settlement agreement
  - ❑ 1099

Fields, T.C. Summary Opinion 2022-22, November 10, 2022



# TRUSTS ARE NOMINEES OF THE TAXPAYER

- U.S. District Court holding that two trusts are an individual taxpayer’s “nominees”
- Therefore, federal tax liens to collect the individual’s \$16 million tax liability attach to the properties transferred to the trusts
- As a result, the court granted the government’s motion for an order to sell the properties

United States v. Shant Hovnanian et al.; No. 3:18-cv-15099 (December 27, 2022)

# NONCUSTODIAL PARENT RULES

## Section 152(e):

- Treats child as qualifying child of noncustodial parent
- Shifts right to claim dependency exemption and Child Tax Credit

## Two conditions:

- Custodial Parent “signs a written declaration”
- Noncustodial parent “attaches” it to his/her return

# NONCUSTODIAL PARENT RULES

## Background:

- “Shared parenting plan” signed by unmarried couple
- Subsequently modified by court order
- Taxpayer filed return claiming dependency exemption and Child Tax Credits
- No attachments, e.g., Form 8332, *Release/Revocation of Claim to Exemption for Child by Custodial Parent*

# NONCUSTODIAL PARENT RULES

## Court determination:

- Shared Parenting Plan remains in effect
- Regardless of subsequent court orders

*Hicks, Jr.*, T.C. Memo, 2022-10, February 23, 2022

# SETTLEMENT NOT DUE TO PHYSICAL INJURY

## Background:

- Taxpayer agreed to settlement with former employer
- “for alleged personal injuries, costs, penalties, and all other damages and claims”
- “for and on account of [the taxpayer’s] claims alleging compensatory damages, emotional injuries, penalties, and punitive damages”

## Court:

- Settlement was taxable
- To justify exclusion from income under Section 104(a)(2), the settlement must be in lieu of damages for physical injuries or physical sickness

Dern, T.C. Memo. 2022-90, August 30, 2022

## Background:

- Taxpayer sued claiming termination was in retaliation for reporting misuse of grant funds
- Settlement agreement described settlement payment as being for “alleged non-wage injuries, as non-economic emotional distress damages”
- Taxpayer argued in tax court that retaliation claim was rooted in a heated altercation which resulted in physical injury from the slamming of a door

## Court:

- Settlement agreement does not reference any physical injuries
- Complaint based on whistleblower statute

Tillman-Kelly, T.C. Memo. 2022-111, November 21, 2022

# CHIEF COUNSEL HAS FINAL SAY ON INNOCENT SPOUSE RELIEF

## Background:

- Wife separated from husband in 2000
- Husband sold tax-avoidance strategies
- IRS issued deficiencies for 1999, 2000 and 2001
- Husband and wife filed joint during those years, but husband did not tell wife about the notices of deficiency
- IRS issued another notice of deficiency in 2005, and three more in 2009
- Husband filed petition claiming innocent spouse relief
- Wife first learned of the deficiencies in 2010, hired an attorney, and ratified the petition

# CHIEF COUNSEL HAS FINAL SAY ON INNOCENT SPOUSE RELIEF

## Procedure:

- IRS Office of Chief Counsel referred issue to IRS' Cincinnati Centralized Innocent Spouse Operation (CCISO)
- CCISO concluded that wife should be granted relief
- Instead of accepting conclusion, Office of Chief Counsel requested that wife participate in a *Branerton* conference (*Branerton*, 61 T.C. 691 (1974)) to exchange documents and information and evaluate claim for relief



# CHIEF COUNSEL HAS FINAL SAY ON INNOCENT SPOUSE RELIEF

## Wife's Position:

- IRS had delegated innocent spouse relief to CCISO
- Chief Counsel's job is to defend CCISO's determination

## Chief Counsel:

- It's their responsibility for deciding what positions the IRS takes in litigation

## Tax Court:

- Decided with Chief Counsel
- Tax Court basically saying wife should have cooperated with Chief Counsel and followed through on all the proper procedures before going to Tax Court

*DelPonte, 158 T.C. No. 7, May 5, 2022*

# INNOCENT SPOUSE RULES: TAXPAYER FIRST ACT OF 2019

- **Section 6015 – three sources of relief for innocent spouses:**
  - ❑ 6015(b) – basic rule applying to all joint filers
  - ❑ 6015(c) – taxpayers who are no longer married, separated, or living apart for the past year
  - ❑ 6015(f) – equitable argument based on facts and circumstances
- **Taxpayer First Act of 2019 – new Section 6015(e):**
  - ❑ Review by tax court is de novo, i.e., an objective “fresh look”
  - ❑ But, the review is limited to:
    - (a) The administrative record (i.e., subject to (b), cannot introduce new evidence); and
    - (b) Newly discovered or previously unavailable evidence

# EMPLOYER NOT REQUIRED TO PROVIDE CORRECT TAX ADVICE

## Background:

- Taxpayer was an employee of the Department of Defense
- Moved between stations and relied on tax advice regarding the deduction of moving expenses
- The advice overlooked the changes made in 2017 by TCJA

## Court:

- Although the government provided tax advice, there was no indication that it had an obligation to provide accurate tax advice.

*Schneiter*, U.S. Court of Federal Claims, April 7, 2022



**BUSINESS**

# INFLATION ADJUSTED AMOUNTS

<b>Tax Provision</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>
Section 179 expense limit	\$1,160,000	\$1,080,000	\$1,050,000
Section 179 investment limit	\$2,890,000	\$2,700,000	\$2,620,000
Section 179 SUV limit	\$28,900	\$27,000	\$26,200

# LIMITATION ON EXCESS BUSINESS LOSSES OF NON-CORPORATE TAXPAYERS

- TCJA limited the deduction of non-corporate business losses in excess of \$250,000 (\$500,000 MFJ), adjusted annually for inflation, for tax years beginning before 1/1/2026
- CARES Act temporarily suspended the limitation for 2018-2020
- ARP extends the limitation on excess business losses to tax years beginning before 1/1/2027
- Inflation Reduction Act of 2022 extends it further to tax years beginning after 2026 and before 2029

*IRC §461(l)*

# LIMITATION ON EXCESS BUSINESS LOSSES OF NON-CORPORATE TAXPAYERS

## An excess business loss is:

- The taxpayer's aggregate deductions for the tax year from the taxpayer's trades or businesses, determined without regard to whether or not such deductions are disallowed for such tax year under the excess business loss limitation; over
- The sum of—
  - the taxpayer's aggregate gross income or gain for the tax year from such trades or businesses, plus
  - \$250,000, adjusted annually for inflation in tax years after 2018.
- For 2021, the amount is \$262,000 (\$524,000 for joint returns).
- For 2022, the amount is \$270,00 (\$540,00 for joint returns).
- For 2023, the amount is \$289,00 (\$578,00 for joint returns).

# LIMITATION ON EXCESS BUSINESS LOSSES OF NON-CORPORATE TAXPAYERS

## Example:

### Facts:

For 2022, Sam, a single taxpayer, has \$1 million of gross income and \$1.4 million of deductions from a retail business that is not a passive activity.

### Question:

What is his excess business loss?

### Answer:

His excess business loss is \$138,000 ( $\$1,400,000 - [\$1,000,000 + \$270,000]$ ).

Sam must treat his excess business loss of \$130,000 as an NOL carryforward to 2023.



# EMPLOYEE RETENTION CREDIT CLAIMS

- The IRS Small Business/Self-Employed Division has trained 300 auditors to examine claims involving employee retention credits
- The 300 revenue agents completed a 56-hour training course but won't be detailed to only ERC claims
- Criminal tax investigators are looking at enablers and promoters of the credits
- Volume is too great to handle exclusively through audits, so IRS is also considering:
  - soft letter campaign or
  - voluntary disclosure practice

# RELIEF FOR S CORPORATIONS

- Rev. Proc. 2022-19 details the areas in which the IRS will not ordinarily issue a PLR and, in doing so, amplifies and modifies Rev. Proc. 2022-3
- However, Rev. Proc. 2022-19 also allows S corporations and their shareholders to obtain relief in six frequently-encountered areas without requesting a private letter ruling
- The IRS identified these issues as not affecting the validity or continuation of a corporation's election to be treated as an S corporation or to treat its corporate subsidiary as a qualified subchapter S subsidiary (QSub)

# RELIEF FOR S CORPORATIONS

## Six key areas are:

- The one class of stock requirement and governing provisions, including “principal purpose” conditions;
- Disproportionate distributions;
- Certain inadvertent errors on or omissions from Forms 2553 (S election) or Form 8869 (QSub election), which Rev. Proc. 2013-130 and Rev. Proc. 2004-35 do not address;
- Missing administrative acceptance letters for an S election or QSub election;
- Federal income tax return filings inconsistent with an S election or a QSub election; and
- Potential retroactive corrections of nonidentical governing provisions (e.g., rights to distributions or liquidation proceeds that are not identical among shareholders).

# RELIEF FOR S CORPORATIONS

- The appendices to Rev. Proc. 2022-19 provide a sample corporate governing provision statement and a sample shareholder statement
- An officer and affected shareholders must complete and sign these statements to rely on Rev. Proc. 2022-19 for relief related to retroactive corrections of nonidentical governing provisions
- Rev. Proc. 2022-19 is effective October 11, 2022 and includes a transition rule for pending PLRs

# SECTION 754 ELECTION

- Section 754 elections require that the basis of partnership property be adjusted for:
  - Distributions, as provided in Section 734; and
  - Transfers, as provided in Section 743
- IRS has issued final regulations eliminating a requirement in the proposed regulations that that a Section 754 election filed with a partnership return be signed by a partner

TD 9963, August 5, 2022

## **Form 1099-K, *Payment Card and Third Party Network Transactions:***

- Prior to 2022, the threshold for filing a Form 1099-K was met if payments to recipient exceed \$20,000 from more than 200 donations
- Beginning in 2022, a Form 1099-K was to be required if payments exceeded \$600 regardless of the number of donations
- Applies to third party network transactions, i.e., any transaction that is settled through a third-party payment network
- Also required to be filed with IRS by a crowdfunding website (or the payment processor) and issued to persons receiving funds from a crowdfunding campaign, unless the contributors do not receive any goods or services in exchange for their contributions

FS-2022-20

## **Notice 2023-10 (IR-2022-226, December 23, 2022):**

- Delays implementation of the \$600 threshold for 2022 transactions
- Existing 1099-K reporting threshold of \$20,000 in payments from over 200 transactions remains in effect

# ACCOUNTING SERVICES FOR RUSSIANS BANNED

- U.S. Department of Treasury Office of Foreign Assets Control (OFAC), in a press release dated May 8, 2022, has determined that providing the following services to any person in the Russian Federation is prohibited under Executive Order (EO) 14071:
  - Accounting
  - Trust and Corporate Formation
  - Management Consulting
- Subject to sanctions under EO 14024



# CASES

# TAX HOME FOR BUSINESS PURPOSES

## Background:

- Taxpayer was a steamfitter on construction projects in Washington and Oregon
- He lived in Yakima where he was a member of the union and had most of his jobs
- During the years in question, he had jobs for 5 different employers that required him to be away from home
- He deducted travel expenses incurred in commuting on weekends between his home and the jobsite

# TAX HOME FOR BUSINESS PURPOSES

## Law:

- A taxpayer must be away from home to deduct reasonable and necessary travel expenses
- Courts have generally interpreted a taxpayer's home to refer to the vicinity of a taxpayer's principal place of business, rather than his personal residence
- But, under Rev. Rul. 73-529 a taxpayer's residence may be treated as his tax home if his principal place of business is temporary rather than indefinite

# TAX HOME FOR BUSINESS PURPOSES

## IRS:

- Taxpayer had no business reason for living in Yakima

## Court:

- Disagreed
- Taxpayer was a member of the local union and almost all of his work during the years at issue were in the union's footprint
- Therefore, the taxpayer was “away from home” for purposes of being able to deduct travel expenses

# TAX HOME FOR BUSINESS PURPOSES

## Side Note:

- The case involved an employee deducting unreimbursed employee business expenses which are temporarily nondeductible under TCJA
- Same rules would apply for the travel expenses of a self-employed individual

*Harwood, T.C. Memo. 2022-8, February 15, 2022*

# CASH PAYMENTS FOR CONTRACT LABOR DEDUCTIBLE

## Background:

- Taxpayer deducted contract labor expenses

	SCHEDULE C	CANCELLED CHECKS
2016	\$112,800	\$36,205
2017	\$72,000	\$47,265

- Testified that he paid 12 workers on average \$300 to \$400 per week
- Did not identify workers, but also produced bank records showing \$67,000 of cash withdrawals in 2016 and \$130,000 in 2017

# CASH PAYMENTS FOR CONTRACT LABOR DEDUCTIBLE

## Reg. §1.6001-1(a)

- Taxpayers are required to maintain books and records sufficient to establish income and deductions

## *Cohan*, 2<sup>nd</sup> Cir. 1930

- Tax Court disfavors a taxpayer “whose inexactitude is of his own making”

## Tax Court

- Found documentation lacking, but testimony credible
- Allowed deduction of \$46,800 in 2016 and \$19,500 in 2017

*Spencer*, T.C. Summary 2022-8, June 7, 2022

# REASONABLE COMPENSATION

## Background:

- Taxpayer owned a C corporation involved in land grading and excavating for construction projects
- Sustained losses during 2009-2011 which were partially offset by reductions in his salary
- In 2014, an outside CPA firm did a compensation study and determined that the taxpayer had been undercompensated during the period of 2000 through 2016 by \$5 million
- After a board meeting in 2015, the taxpayer was granted a \$5 million bonus



# REASONABLE COMPENSATION

## Result:

- When asked why he considered it acceptable to take out so much money in 2015 when he had been reluctant to do so in the past, the taxpayer testified that he needed to start getting money out of the company from an income tax perspective in anticipation of a possible sale of the company
- Court concluded that taxpayer had not adequately established that the amount paid was both reasonable and paid solely as compensation for services

*Clary Hood, Inc.*, T.C. Memo. 2022-15, March 2, 2022

# IMPROPER WORKER CLASSIFICATION

## Background:

- Pediatric Impressions Home Health (PIHH) provides in-home nursing services
- Before 2016, it employed approx. 99 nurses
- Starting in 2016, it began treating many of them as contractors
- Notwithstanding, the following practices continued:
  - PIHH performed background checks
  - PIHH supplied contracts for indefinite period
  - PIHH could fire nurses, but two weeks' notice was required for nurses to quit
  - PIHH had contracts with insurance companies and received payments
  - PIHH set work schedules
  - Patient's physician provided "plan of care" and PIHH ensured nurses followed it
  - PIHH required nurses to attend in-service training sessions
  - PIHH represented to patients and physicians that nurses worked for PIHH

# IMPROPER WORKER CLASSIFICATION

## IRS Position:

- PIHH improperly classified nurses for 2016-2018
- Assessed:
  - \$171,488 in additional employment taxes
  - \$3,255 failure to deposit penalty (Section 6656)
  - \$34,298 accuracy penalty (Section 6662(a))

# IMPROPER WORKER CLASSIFICATION

## Tax Court:

- Reviewed:
  - Degree of control
  - Opportunity for profit
  - Relative investments
  - Permanency of relationship
  - Skill and initiative required to perform job
- Concluded nurses were common law employees and upheld penalties

*Pediatric Impressions Home Health, Inc.*, T.C. Memo 2022-35 (Tax Ct.)

# MILEAGE LOG MUST BE CONTEMPORANEOUS

## Background:

- Taxpayer traveled for his consulting business
- Deducted car and truck expenses on Schedule C
- Produced a computer generated spreadsheet instead of a contemporaneous log

## Court:

- Substantiation requirements of Section 274(d) not satisfied
- Not contemporaneous

*Wolpert*, T.C. Memo. 2022-070, July 7, 2022

# IMPROPERLY FORGIVEN PPP LOANS

## Background:

- Taxpayer made representations that conditions for forgiveness of a PPP loan were satisfied
- Did not factually satisfy the conditions
- As a result, PPP loan was improperly forgiven

## Question:

- Can taxpayer exclude the forgiven loan from gross income?

## Answer:

- Loan forgiveness is taxable if it does not satisfy any of the exclusion from income rules

Ltr. Rul. 202237010, August 19, 2022

# S CORPORATION EXPENSE NOT DEDUCTIBLE ON SHAREHOLDER'S RETURN

## Background:

- Taxpayers owned an S corporation
- Made direct payments of property and utility expenses
- Claimed deductions on their personal returns
- Contended in court that the payments should be treated as capital contributions which the S corporation would then be entitled to deduct

## Court:

- A taxpayer cannot deduct expenses paid on behalf of another taxpayer
- Income of S Corporation must be matched at corporate level against expenses incurred to produce that income before the net income can flow through to the shareholders
- That matching is accomplished by reporting the income and expenses on the S corporation's return

T.C. Memo. 2022-97, September 21, 2022

# CORPORATION SHARES NOT TRANSFERRED OR ABANDONED

## Background:

- Taxpayer owned a 10% interest in a loan service provider that was an S corporation (EFI)
- Taxpayer was arrested in 2007 for securities fraud and jailed until 2012
- EFI went into bankruptcy in 2008
- In 2009, taxpayer's 10% interest was transferred to a receiver appointed by the court handling the criminal proceedings
- In 2016, taxpayer received a letter from the bankruptcy trustee stating that the receiver had abandoned taxpayer's EFI shares essentially leaving them in his name



# CORPORATION SHARES NOT TRANSFERRED OR ABANDONED

## **Audit:**

- Taxpayer never reported any income from EFI's 2015 K-1
- IRS issued a notice of deficiency

## **Taxpayer's Argument:**

- Receiver should have paid taxes
- Shares were abandoned by taxpayer

# CORPORATION SHARES NOT TRANSFERRED OR ABANDONED

## Court:

- Taxpayer was notified that receiver had abandoned the shares
- For the taxpayer to abandon the shares, there must be an affirmative act

## Comment:

- A bankruptcy estate is a separate entity from the taxpayer
- S corporation shareholders remain liable for taxes on income generated after a bankruptcy, even if they receive no benefit

*Yaguda*, T.C. Summary Opinion 2022-21, October 20, 2022

# CLIENT LISTS HAVE VALUE ON DISTRIBUTION FROM A PARTNERSHIP

## Background:

- Accounting firm had 3 partners who performed services through their limited liability entity
- One partner retired
- Remaining two decided to split into 2 separate limited liability entities and continue servicing their respective clients

# CLIENT LISTS HAVE VALUE ON DISTRIBUTION FROM A PARTNERSHIP

## Partnership:

- Made a special allocation to the 2 remaining partners equal to the value of their respective clients
- Reduced their capital accounts by the value of the reported distributions
- Created negative capital accounts
- So, pursuant to qualified income offset provision, the partnership made a special allocation of income to bring the 2 partners capital accounts up to zero

# CLIENT LISTS HAVE VALUE ON DISTRIBUTION FROM A PARTNERSHIP

## Partners' Reaction:

- Filed Forms 8082, *Notice of Inconsistent Treatment of Administrative Adjustment Request*
- Claimed “client distribution” had no value
- Claimed corresponding special allocation lacked substantial economic effect

# CLIENT LISTS HAVE VALUE ON DISTRIBUTION FROM A PARTNERSHIP

## Court:

- Client lists are intangible assets capable of valuation and distribution
- Borne out by prior dealings between the partners
- When a partner withdrew, the partner's capital account was reduced to zero
- When another partner joined, the partner's interest was based upon the revenue generated the partner's clients

T.C. Memo. 2022-105, October 13, 2022

## Background:

- Taxpayers owned more than 50% of a foreign corporation (a “CFC”)
- Under prior law, they did not pay tax on foreign earnings until they were distributed
- TCJA created the one-time Mandatory Repatriation Tax (MRT)
  - Imposed on U.S. persons owning 10% or more of a CFC
  - CFC profits after 1986, regardless of whether earnings are distributed
- Taxpayers challenged constitutionality

## Court Decision:

- The MRT is consistent with the Apportionment Clause of the U.S. Constitution
- Direct tax that is apportioned among the states by population
- Realization doesn't determine a tax's constitutionality
- No constitutional bar to Congress disregarding the corporate form to facilitate taxing a shareholder's income
- Retroactive effect does not violate the Fifth Amendment Due Process Clause

*Moore*, 9<sup>th</sup> Circuit Court of Appeals, June 7, 2022



# LIMITED PARTNER EXCEPTION TO SELF-EMPLOYMENT TAX

## History:

- Section 1402(a)(13), enacted in 1977, provides that a limited partner's distributive share of partnership income or loss generally isn't subject to self-employment tax, unless it's a guaranteed payment for services
- Proposed regulations were issued in 1997
- Congress, believing a legislative solution was warranted, put a moratorium on IRS issuing temporary or final regulations before 1998
- After the moratorium was lifted, the regulations were never finalized
- In *Renkemeyer, Campbell & Weaver LL v. Commr.*, 136 T.C. 137 (2011), the tax court concluded that attorneys in a LLP were not limited partners
- In March 2018, IRS launched a compliance campaign targeting service partners in LPs, LLPs and LLLs

# LIMITED PARTNER EXCEPTION TO SELF-EMPLOYMENT TAX

## Soroban Capital Partners LP v. Commissioner, Docket Nos. 16217-22 and 16218-22:

- Two tax court petitions filed in July 2022
- Involve limited partners in a NY hedge fund who received guaranteed payments for services, but not in their capacities as limited partners where they were prohibited from taking part in the hedge fund's management
- They are contesting the IRS' position that the amounts excluded in their capacity as limited partners (approx. \$141 million for 2016 and 2017) should have been included in net earnings from self-employment
- Practitioners are eyeing this case to see whether it resolves the limited partner issue (or, at least, whether a state-law limited partner is also a limited partner for self-employment tax purposes without also having to meet the functional test of *Renkemeyer*)

# RETIREMENT

# INFLATION ADJUSTED AMOUNTS

<b>Tax Provision</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>
Defined contribution plan contribution limit	\$66,000	\$61,000	\$58,000
401(k) elective deferral limit for under age 50	\$22,500	\$20,500	\$19,500
401(k) elective deferral limit for age 50 and older	\$30,000	\$27,000	\$26,000
SIMPLE elective deferral limit for under age 50	\$15,500	\$14,000	\$13,500
SIMPLE elective deferral limit for age 50 and older	\$19,000	\$17,000	\$16,500
IRA deduction limit for under age 50	\$6,500	\$6,000	\$6,000
IRA deduction limit for age 50 and older	\$7,500	\$7,000	\$7,000
Key employee definition for top-heavy plans	\$215,000	\$200,000	\$185,000
Highly compensated employee definition	\$150,000	\$135,000	\$130,000
Qualified plan compensation limit	\$330,000	\$305,000	\$290,000

# PROPOSED REGULATIONS ON RMD'S

- Issued on February 23, 2022, under the SECURE Act
- Address two important issues relating to RMDs
  - Delay in RBD to age 72\*
  - 10 year limit on RMDs after death
- Distributions taken in 2021 can be based on a “reasonable interpretation of the law”

\*now age 73 for 2023 under SECURE 2.0

REG-105954-20

# PROPOSED REGULATIONS ON RMD'S

- **Eligible Designated Beneficiary (“EDB”)**
  - The participant’s surviving spouse
  - The employee’s child who has not yet reached the “age of majority”
  - “Disabled”
  - “Chronically ill”
  - Not more than 10 years younger than the participant

# PROPOSED REGULATIONS ON RMD'S

- **Death before RBD:**

BENEFICIARY	DISTRIBUTION PERIOD
Not a “designated beneficiary”	5-year rule
Designated beneficiary, but not an EBD	10-year rule
EBD	Life Expectancy

# PROPOSED REGULATIONS ON RMD'S

- **Death after RBD:**

BENEFICIARY	DISTRIBUTION PERIOD
Not a “designated beneficiary”	5-year rule
Designated beneficiary, but not an EBD	Life Expectancy for 10 years with balance distributed in 10 <sup>th</sup> year
EBD	Life Expectancy



# PROPOSED REGULATIONS ON RMD'S

- **“Age of Majority” – age 21**
- **“Disability”**
  - Unable to engage in substantial gainful activity
  - A medically determinable physical or mental impairment that results in marked and severe functional limitations, and that can be expected to result in death or to be of long-continued and indefinite duration
  - Social Security Administration determination
- **“Chronically ill”**
  - Unable to perform at least two activities of daily living (such as eating, toileting, and dressing) without substantial assistance for a lengthy, indefinite period
  - Plan receives documentation of that status by October 31 of the year following the year of the employee’s death

*Note: The determination of disability or chronically ill is made as of the date the employee dies.*

# PROPOSED REGULATIONS ON RMD'S

## Illustration #1

### Facts:

Ed names his nephew, Adam, as beneficiary of his 401(k) account. Ed dies March 2, 2023. Adam is involved in an accident September 15, 2023, and as a result is chronically ill.

### Question:

Is Adam an EDB?

### Answer:

Adam is not an EDB because he was not chronically ill when Ed died.

# PROPOSED REGULATIONS ON RMD'S

## Illustration #2

### Facts:

Marie names her daughter, Donna, as beneficiary of her 403(b) account. When Marie dies at age 40, Donna is only 10 years old. At that time, she is not Disabled. However, five years later, Donna becomes disabled.

### Question:

Is Donna an EDB?

### Answer:

Donna is an EDB, because she is Marie's child who has not reached the age of majority. Ten years after Donna turns 21, the plan must distribute the entire account to Donna. Had she been disabled when Marie died, Donna would have been able to continue taking distributions throughout her life or life expectancy.

# PROPOSED REGULATIONS ON RMD'S

- **Trusts as beneficiaries**

- Previously, the regulations treated a trust as being, at most, one designated beneficiary, with an age equal to that of the oldest beneficiary of the trust
- In Private Letter Rulings, the IRS had allowed a more generous policy, particularly with regard to so-called “look-through” trusts
- The Proposal codifies those trust rules, and thereby expands available estate planning techniques
- If a trust satisfies the look-through rules, then the beneficiaries of the trust are considered designated beneficiaries

# PROPOSED REGULATIONS ON RMD'S

- **Special Needs Trusts:**
  - SECURE Act 2.0 includes a clarification that a third-party special needs trust (e.g., a trust established by a parent for a child with a disability) may have a charitable organization as the remainder beneficiary
  - Concern was that it might preclude qualification for lifetime distributions to the disabled beneficiary of the SNT after the account holder's death
  - Effective starting in 2023

# PROPOSED REGULATIONS ON RMD'S

- **50% penalty tax relief**
  - Penalty applies if a participant or beneficiary does not take an RMD
  - RMD rules require the participant or his/her estate to take an RMD for the year of death in the same manner as if the participant lived until the end of the year—i.e., by December 31 of the year of death
  - Proposed regs would waive the penalty provided that the beneficiary takes the RMD no later than his or her tax return due date (with extensions)

Note: SECURE 2.0 Act reduces the penalty to 25%. In addition, the penalty drops down to 10% if you take the necessary RMD by the end of the second year following the year it was due.

# PROPOSED REGULATIONS ON RMD'S

- **Effective date of the Proposed Regulations was January 1, 2022**
- **Notice 2022-53 provides that:**
  - The final RMD regulations will apply no earlier than 2023.
  - A defined contribution plan will not be treated as having failed to satisfy the RMD rules under Code Section 401(a)(9), as amended by the SECURE Act, merely because it did not make a "specified RMD"
  - If a beneficiary did not take a "specified RMD" the IRS will not assert that the 50% excise tax applies, and will refund any excise tax that has already been paid for a missed RMD in 2021

# PROPOSED REGULATIONS ON RMD'S

## A "specified RMD" is defined as:

- Any distribution that would be required to be made in 2021 or 2022 under a plan or IRA if that distribution would be required to be made to:
  - A designated beneficiary of an employee or IRA owner if the employee or IRA owner died in 2020 or 2021 and on or after their required beginning date, and the designated beneficiary is not an eligible designated beneficiary taking distributions under the life expectancy rule, or
  - A beneficiary of an eligible designated beneficiary if the eligible designated beneficiary died in 2020 or 2021 and they were taking distributions under the life expectancy rule



## **DOL Compliance Assistance Release No. 2022-01, dated March 10, 2022**

- 401(k) plan participant-directed investments in cryptocurrencies
- “Cautions plan fiduciaries to exercise extreme care before they consider adding a cryptocurrency option” to the investment menu of a self-directed 401(k) plan
- Calls into question the availability of cryptocurrencies through a plan’s brokerage window

# ARBITRATION OF ERISA CLAIMS

- Sixth Circuit has held that claims for breach of fiduciary duty under §502(a)(2) of ERISA, belong to the plan
- Plaintiffs asserting such claims for alleged harm to their individual retirement accounts in defined contribution plans may not be compelled to arbitrate those claims absent the plan's consent
- Arbitration clause was contained in the participants' employment agreements

*Hawkins v. Cintas Corporation, No. 21-3156, dated April 27, 2022*

# ESTATE PLANNING

# INFLATION ADJUSTED AMOUNTS

Tax Provision	2023	2022	2021
Estates basic exclusion amount	\$12,920,000	\$12,060,000	\$11,700,000
Annual exclusion for gifts	\$17,000	\$16,000	\$15,000

# PROPOSED CLAWBACK REGS

- TCJA doubled the estate and gift tax exemption from \$5 million to \$10 million, inflation adjusted until Jan. 1, 2026
- However, it wasn't clear under TCJA what happens if the taxpayer makes gifts while the higher exemption is in place and then dies after the higher exemption sunsets and the exemption is lower
- Reg. 20.2010-1(c)(1), published November 26, 2019, provided relief from the "clawback"
- Proposed regs released April 26, 2022, would exclude certain transactions from the anti-clawback rules

*REG-118913-21*

# PROPOSED CLAWBACK REGS

- **Proposed Regs would exclude:**
  - Transfers where the donor retains a life estate or other powers or interests described in Sections 2035 through 2038 and Sec. 2042, including gifts made within three years of death and life insurance policies with reversionary interests
  - Enforceable gifts of promissory notes if the promissory note has not yet been paid
  - Gifts of interests in family partnerships and LLCs under Sec. 2701 where the senior generation maintains a preferred equity interest
  - Gifts of interests in trusts, including GRATs and QPRTs, subject to the special valuation rules of Sec. 2702
  - The relinquishment of an interest involving any of the above transactions within eighteen months of the donor's death

# PROPOSED CLAWBACK REGS

## Question #6

### Facts:

Rob makes a completed gift of a promissory note in the amount of \$9,000,000 on January 1, 2022. The promissory note is Rob's only lifetime gift, and it remains unpaid as of the date of Rob's death on January 1, 2026, at which time the lifetime exemption amount for estate tax purposes has been adjusted to \$6,800,000. Is the note includible in Rob's estate?

### Answer:

The note is treated as includible in Rob's gross estate, and the anti-clawback rules do not apply to the original gift of the note in 2022. As a result, Rob's estate tax is calculated using the reduced \$6,800,000 lifetime exemption amount.

# PROPOSED CLAWBACK REGS

- **Two exceptions to the proposed regs:**
  - Transfers where the portion subject to gift tax is less than 5% of the total value of the transfer
  - Relinquishments of interests that are triggered by either the passage of time or the death of an individual if provided for in the terms of the original instrument effectuating the transfer



# PROPOSED ESTATE ADMINISTRATION REGULATIONS

## Published June 28, 2022 under Section 2053:

- Provide guidance on the use of present-value principles in determining the amount deductible by an estate for funeral expenses, administration expenses and certain claims against the estate;
- Provide guidance on the deductibility of interest expense accruing on tax and penalties owed by an estate and interest expense accruing on certain loan obligations incurred by an estate;
- Amend and clarify the requirements for substantiating the value of a claim against an estate that's deductible in certain cases; and
- Provide guidance on the deductibility of amounts paid under a decedent's personal guarantee.

87 Fed. Reg. 38331 (Federal Register: Guidance Under Section 2053 Regarding Deduction for Interest Expense and Amounts Paid Under a Personal Guarantee, Certain Substantiation Requirements, and Applicability of Present Value Concepts)

# PRESENT VALUE PRINCIPLES USED TO DETERMINING AMOUNT DEDUCTIBLE UNDER SECTION 2053

## The Proposed Regulations:

- Require calculating the present value of the amount of a deductible claim or expense that isn't paid or to be paid on or before the third anniversary of the decedent's date of death
- The discount rate to be used is the applicable federal rate determined under IRC Section 1274(d) for the month in which the decedent's date of death occurs, compounded annually
- Require a supporting statement to be filed with the Form 706 estate tax return showing any calculations of present value
- Provide that the expected date or dates of payment generally must be identified in a written appraisal document

# DEDUCTIBILITY OF INTEREST ON UNPAID ESTATE TAX

## Background:

- Section 2053(c)(1)(D) states that no deduction is allowed for interest payable under Section 6601 (underpayments) because of an election under Section 6166 to pay estate tax in installments
- Reg. §20.2053-3(a) permits the deduction of expenses actually and necessarily incurred in the administration of an estate
- Reg. §2053-1(b)(2) states that only expenses that are bona fide in nature are deductible

# DEDUCTIBILITY OF INTEREST ON UNPAID ESTATE TAX

## Proposed Regulations under Section 2053:

- Allows “non-section 6166 interest” to be deducted as an administrative expense if it is “bona fide”
  - Section 6161 extension for reasonable cause
  - Section 6163 deferral when value of a remainder or reversionary interest is includible in the gross estate, but the value is not available
  - Underpayment of a tax or deficiency
- “Non-section 6166 interest” may also be deductible if it meets the “actually and necessarily incurred” test, but that depends on the facts and circumstances

REG-130975-08, June 28, 2022

# INTEREST ON GRAEGIN LOANS

- A Graegin loan is a loan to the estate in order to facilitate the payment of estate taxes and other expenses of the administration of the estate, the interest of which is deductible under Section 2053(a)(2) of the Code (*Estate of Graegin v. Commissioner*, T.C. Memo. 1988-477)
- The idea behind the Graegin loan is that the full amount of the interest that will be paid over term of the loan is taken as a current deduction, dollar for dollar, from the gross estate.
- Example:
  - If an estate borrows \$10 million at 5% interest on a ten-year note, the loan can be structured with all principal and interest deferred until a balloon payment at the end of the term.
  - Up front, the entire \$5 million of interest ( $\$10 \text{ million} \times 5\% \times 10 = \$5 \text{ million}$ ) would be deductible from the gross estate, creating an estate tax savings of at least \$2mm (these loans by their terms cannot be prepaid (unless at that time all interest payable on the full note would be due.)

# INTEREST ON GRAEGIN LOANS

## The Proposed Regulations:

- Provide that interest expense is deductible *only if*, among other things, the loan's terms are actually and necessarily incurred in the administration of the decedent's estate and are essential to the proper settlement of the decedent's estate
- Provide a nonexclusive list of factors to consider in determining whether interest expense payable pursuant to such a loan obligation of an estate satisfies the applicable requirements, e.g.:
  - Whether the loan obligation is entered into by the executor with a lender who isn't a substantial beneficiary of the decedent's estate (or an entity controlled by such a beneficiary) at a time when there's no available alternative to obtain the necessary liquid funds to satisfy estate obligations.
  - If the loan obligation carried an extended loan term with a single balloon payment that doesn't correspond with the estate's ability to satisfy the loan
- In those cases, the interest accruing on the loan isn't necessarily incurred in the administration of the estate and therefore isn't deductible

# SUBSTANTIATING VALUE OF CLAIMS AGAINST ESTATE

- The proposed regulations revisit the “qualified appraiser” and “qualified appraisal” requirements in the context of valuing claims against an estate
- The proposed regulations require a written appraisal that adequately reflects the current value of the claim when the Form 706 estate tax return is being completed
- The current value of the claim should take into account post-death events occurring prior to the time a deduction is claimed, as well as those events reasonably anticipated to occur

# CLAIMS BASED ON DECEDENT'S PERSONAL GUARANTEE

- Under the Proposed Regulations, claims based on a decedent's personal guarantee of another's debt must be:
  - Bona fide, and
  - In exchange for adequate and full consideration in money or money's worth (as opposed to gratuitous, even if enforceable under applicable state law)
- In addition, the estate's right of contribution or reimbursement, if any, will reduce the amount deductible



# CLAIMS BASED ON DECEDENT'S PERSONAL GUARANTEE

## Test Provided Under the Proposed Regulations:

- A decedent's agreement to guarantee a bona fide debt of an entity in which the decedent had control (within the meaning of IRC Section 2701(b)(2)) at the time of the guarantee satisfies the requirement that the agreement be in exchange for adequate and full consideration in money or money's worth

## Alternative Test:

- If, at the time the guarantee is given, the maximum liability of the decedent under the guarantee didn't exceed the fair market value of the decedent's interest in the entity

## Potential Negative Inference:

- A decedent's personal guarantee in circumstances that fall outside these circumstances may not give rise to an estate tax deduction, even though the decedent may have had a substantial interest in the entity

# SIMPLIFIED METHOD TO EXTEND TIME FOR MAKING PORTABILITY ELECTION

**Effective July 8, 2022, the IRS issued Revenue Procedure 2022-32 to supersede Revenue Procedure 2017-34:**

- Allows for a late estate tax exemption portability election to be made up to five (5) years from a deceased spouse's death
- Previously, this window was only two (2) years from the deceased spouse's death

# SIMPLIFIED METHOD TO EXTEND TIME FOR MAKING PORTABILITY ELECTION

## Requirements:

- The decedent:
  - was survived by a spouse;
  - died after December 31, 2010, and
  - was a citizen or resident of the United States on his or her death
- The estate must not be required to file an Estate Tax Return;
- An Estate Tax Return was not timely filed; and
- All the requirements for relief under Revenue Procedure 2022-32 are satisfied

# SIMPLIFIED METHOD TO EXTEND TIME FOR MAKING PORTABILITY ELECTION

## Requirements for relief under Rev. Proc. 2022-32:

- The executor must file with the IRS a complete and properly prepared Estate Tax Return on or before the fifth (5<sup>th</sup>) anniversary of the decedent's death
- The executor states at the top of the Estate Tax Return that the return is "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A)"

**Note:** If the 5 year window in Rev. Proc. 2022-32 has passed, the surviving spouse can still request late election relief in a Private Letter Ruling from the IRS



**MICHIGAN**

# REPORTING ADJUSTMENTS FROM PARTNERSHIP LEVEL AUDITS

- L. 2022, S248 (P.A. 148) ("2022 Public Act 148") (see *State Tax Update*, 07/21/2022), created Chapter 18 within Part 3 of the Income Tax Act
- Generally, Chapter 18 requires final federal adjustments that arise from a partnership level audit or administrative adjustment request for partnerships adjustments subject to the federal Bipartisan Budget Act (BBA) of 2015 to be reported and paid in one of two ways:
  - The partnership may report adjustments to members, who must then separately report and pay their share of the applicable Michigan income tax due (i.e., the "push out" method) or,
  - The partnership may elect to report and pay any applicable Michigan income tax on behalf of its members (i.e., the "pay up" method")

# REPORTING ADJUSTMENTS FROM PARTNERSHIP LEVEL AUDITS

## Reporting Deadlines:

- A 90-day deadline:
  - For partnerships that "push out" adjustments, to report to each direct partner their share of the adjustments and, if applicable, pay any Michigan income tax on behalf of direct partners previously included on a composite return; and
  - For all partnerships to report certain preliminary information about the adjustments to the Department if it will be making the "pay up" election
- A 180-day deadline:
  - For direct members of a partnership under the "push out" method, to report their share of adjustments to the Department and to pay the Michigan income tax owed on those adjustments; and
  - For a partnership that made the "pay up" election, to pay the collective Michigan income tax owed on those adjustments

# REPORTING ADJUSTMENTS FROM PARTNERSHIP LEVEL AUDITS

## Effective Date:

- Chapter 18 is generally applicable for the reporting of certain federal adjustments for tax years beginning on and after January 1, 2018
- Because PA 148 was also given retroactive effect, Chapter 18 will further apply to federal adjustments that have a “final determination date” both prior to and after its date of enactment
- It is expected that the procedures for reporting federal adjustments under Chapter 18 will be available no later than January 1, 2023
- The 90-day and 180-day deadlines referenced above will be treated as beginning on January 1, 2023, for any federal adjustment subject to Chapter 18 that has a "final determination date" prior to that date

Notice Regarding the Implementation of 2022 Public Act 148, Mich. Dept. Treas., 08/26/2022



# MICHIGAN TAXATION OF FORGIVEN STUDENT LOANS

- On August 24, 2022, the President announced that:
  - The U.S. Department of Education will provide up to \$20,000 in debt cancellation to Pell Grant recipients with loans held by the Department of Education, and
  - Up to \$10,000 in debt cancellation to non-Pell Grant recipients if the borrower's individual income is less than \$125,000 (\$250,000 for households)
- The Michigan Department of Treasury subsequently issued guidance that forgiven student loans will not be subject to income tax in Michigan

Student Loan Forgiveness Not Subject to Income Tax in Michigan, Mich. Dept. Treas., 09/28/2022

# CITY OF DETROIT

# NEXUS WITH DETROIT

## Background:

- City asserted a nexus with the taxpayer for city income tax purposes
- Taxpayer's activities as a passive holding company were minimal
- Deposition testimony established that the taxpayer's listing of a Detroit address on documents was for "administrative convenience"
- The Michigan Tax Tribunal previously ruled that there was an insufficient nexus for city income tax purposes
- The case was remanded for the Tribunal to review its decision after the U.S. Supreme Court's decision in *Wayfair*

# NEXUS WITH DETROIT

## Law:

- Tribunal's previous determination was decided prior to *South Dakota v. Wayfair, Inc.* , 138 S. Ct. 2080 (2018)
- Tribunal had based its decision on the “physical presence” standard enunciated in *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904 (1992)
- The Tribunal noted that in wake of *Wayfair*, while the physical nexus is still good law, the U.S. Supreme Court ruled that a business could acquire an economic nexus regardless of where the business, employees or warehouses are located

## Ruling:

- The taxpayer lacked nexus with the city under the Commerce Clause because it was neither physically nor virtually present within the city
- The taxpayer did not:
  - Avail itself of the Detroit marketplace,
  - Its contacts with the city were minimal,
  - Those of its agents were excluded by the City of Detroit's Income Tax Ordinance, and
  - Overall its activities did not rise to the level of directed economic activity that occurred in *Wayfair*


*Apex Laboratories International Inc. v. City of Detroit*, Mich. Tax Tribunal, Dkt. No. 16-000724-R, 08/19/2022

# FEDERAL CLASS ACTION INVOLVING UNTIMELY MAILING OF ASSESSMENT NOTICES

**The U.S. Court of Appeals for the Sixth Circuit has held that a federal class action brought by Detroit homeowners challenging the untimely mailing of their property tax assessment notices can proceed:**

- Although various news outlets reported the extension, Detroit did not distribute individualized mailings to homeowners to inform them of the extended review period or the waiver of the Board of Assessors protest requirement
- The Court found that Detroit did not take reasonable steps to ensure this information would reach individual taxpayers
- The inconsistent Michigan state court precedents do not "convincingly demonstrate" that the relief appellants seek is available in state court

*Howard, et al. v. City of Detroit, et al.*, U.S. Ct. App. (6<sup>th</sup> Cir.), Dkt. No. 21-1261, 7/11/2022



# **INTERIM RESULTS OF THE 2022 FILING SEASON**

# RETURNS WAITING TO BE PROCESSED

Report provided by the Treasury Inspector General for Tax Administration (TIGTA) to the Secretary of the Treasury on October 13, 2022:

**Figure 1: Status of Paper Returns Waiting to Be Processed as of August 12, 2022**

Category	Returns			
	Individual	Business	Unspecified	Total
Received in Calendar Year 2021	0	135,240	0	135,240
Received in Calendar Year 2022	7,560,022	6,531,163	259,754	14,350,939
<b>Totals</b>	<b>7,560,022</b>	<b>6,666,403</b>	<b>259,754</b>	<b>14,486,179</b>

*Source: IRS Submission Processing Weekly Inventory Report, as of August 12, 2022.*



# TOLL-FREE TELEPHONE LINE WAIT TIMES

**Figure 2: Toll-Free Performance Statistics for Calendar Years 2021 and 2022**

Performance Statistics	Calendar Year	
	2021	2022
Assistor Calls Answered	15,400,000	7,783,000
Level of Service	16.4%	14.1%
Average Speed of Answer (Minutes)	20	30
Level of Access <sup>5</sup>	23.8%	28.0%

*Source: IRS management information reports (as of August 14, 2021, for Calendar Year 2021 and as of August 13, 2022, for Calendar Year 2022).*

## 4,000 NEW CUSTOMER SERVICE REPS

- The IRS has hired 4,000 new customer service representatives to help answer phones and provide other services for the 2023 tax filing season
- Many employees will be in place for the start of the 2023
- Others will join as their training is completed in the following weeks
- The IRS intends to add another 1,000 customer service representatives by the end of the year

IR-2022-191

*Breakfast* **Bites**<sup>®</sup>

**THANK YOU**



**William E. Sigler**

Shareholder

(248) 827-1865

(248) 359-6165

[wsigler@maddinhauser.com](mailto:wsigler@maddinhauser.com)

**MH** Maddin Hauser  
Attorneys and Counselors

**Maddin, Hauser, Roth & Heller, P.C.**

28400 Northwestern Hwy. Southfield, MI 48034

p (248) 354-4030 f (248) 354-1422 [maddinhauser.com](http://maddinhauser.com)

