

# **Recent Developments in Federal Income Taxation**

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**Notice 2023-3**  
**2023-3 I.R.B. 388 (12/29/22)**  
***Outline: item D.1, page 2***

- Standard mileage rate for business miles in 2023 goes up to 65.5 cents per mile (from 62.5 cents in second half of 2022).
- Medical/moving rate for 2023 is 22 cents per mile (unchanged from second half of 2022).
- Charitable mileage rate for 2023 remains fixed by § 170(i) at 14 cents.
- The portion of the business standard mileage rate treated as depreciation goes up to 28 cents per mile for 2023 (up from 26 cents from 2022).
- 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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**Notice 2023-3**  
**2023-3 I.R.B. 388 (12/29/22)**  
***Outline: item D.1, page 2***

- Standard mileage rates for 2023 and the preceding two years:

Category	2021	2022		2023
		Jan.-Jun.	Jul.-Dec.	
Business mileage	56 cents	58.5 cents	62.5 cents	65.5 cents
Medical/moving	16 cents	18 cents	22 cents	22 cents
Charitable mileage	14 cents	14 cents	14 cents	14 cents

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## Prevailing Wage and Apprenticeship Requirements Proposed Regulations (8/30/23)

### *Outline: item F.1.b, page 4*

- Inflation Reduction Act (Aug. 2022)
  - Amended several Code provisions and enacted others that authorize tax credits (or deductions)
  - Examples:
    - Deduction (§ 179D) for making commercial buildings energy efficient
    - Credit (§ 45L) for contractors building and selling energy-efficient homes
  - Generally, the credit or deduction is 5 times the normal amount if prevailing wage and apprenticeship requirements are satisfied
- Notice 2022-61 (11/30/22): provides initial guidance on PWA requirements
- Proposed regulations: 88 F.R. 60018 (8/30/23):
  - State that, generally, taxpayer satisfies prevailing wage requirement by ensuring laborers and mechanics employed are paid at rates not less than those set forth by Department of Labor
  - Permit taxpayers to cure failure to satisfy PWA with a penalty
  - Provide guidance on types of records needed to demonstrate compliance with PWA requirements

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## Rev. Proc. 2023-14 2023-6 I.R.B. 466 (1/18/23) *Outline: item G.1, page 5*

### Section 280F depreciation limits for passenger automobiles

#### 2023 Passenger Automobiles with § 168(k) first year recovery:

1 <sup>st</sup> Tax Year	\$20,200
2 <sup>nd</sup> Tax Year	\$19,500
3rd Tax Year	\$11,700
Each Succeeding Year	\$6,960

#### 2023 Passenger Automobiles (no § 168(k) first year recovery):

1st Tax Year	\$12,200
2nd Tax Year	\$19,500
3rd Tax Year	\$11,700
Each Succeeding Year	\$6,960

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**Rev. Proc. 2023-23**  
**2023-22 I.R.B. 883 (5/16/23)**  
***Outline: item A.1, page 6***

Health Savings Account Limitations				
Category	Self-Only Coverage		Family Coverage	
	2023	2024	2023	2024
Limit on Deds. for Contribs. to HSAs	\$3,850	\$4,150	\$7,750	\$8,300
High-Deductible Health Plan				
• Min. Deductible	\$1,500	\$1,600	\$3,000	\$3,200
• Limit on Out-of- Pocket Exps.	\$7,500	\$8,050	\$15,000	\$16,100

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**Rev. Rul. 2023-14**  
**2023-33 I.R.B. 484 (7/31/23)**  
***Outline: item B.1, page 7***

- Held: A cash method taxpayer who receives additional units of cryptocurrency as a reward for participating in a validation process by staking the taxpayer's holdings through a cryptocurrency exchange has gross income equal to the fair market value of the units received in the year in which the taxpayer gains dominion and control over the validation rewards.

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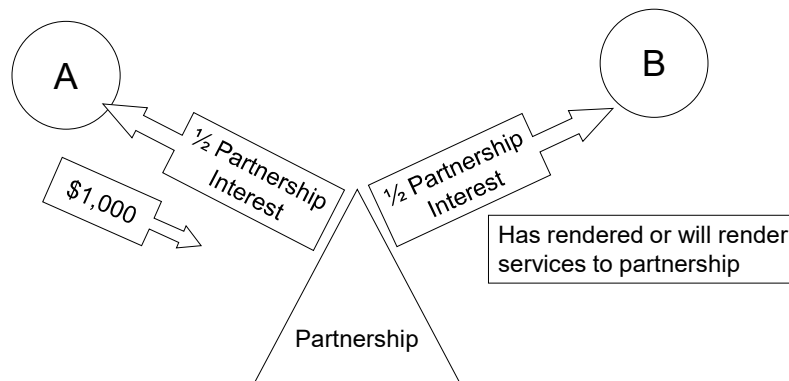
**ES NPA Holding, LLC v. Commissioner,  
T.C. Memo. 2023-55 (5/3/23)  
*Outline: item G.1, page 8***

- Background:
  - A person providing services to a partnership might receive either:
    - Capital Interest, or
    - Profits Interest
  - Under Rev. Proc. 93-27:
    - "if a person receives a profits interest for the provision of services to or for the benefit of a partnership in a partner capacity or in anticipation of being a partner, then the IRS will not treat the receipt of such an interest as a taxable event for the partner or the partnership."
    - Profits Interest: "[A] partnership interest other than a capital interest." Rev. Proc. 93-27, § 2.01.
    - Capital Interest: "[A]n interest that would give the holder a share of the proceeds if the partnership assets were sold at fair market value and then the proceeds were distributed in a complete liquidation of the partnership." Rev. Proc. 93-27, § 2.01.

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**ES NPA Holding, LLC v. Commissioner,  
T.C. Memo. 2023-55 (5/3/23)  
*Outline: item G.1, page 8***



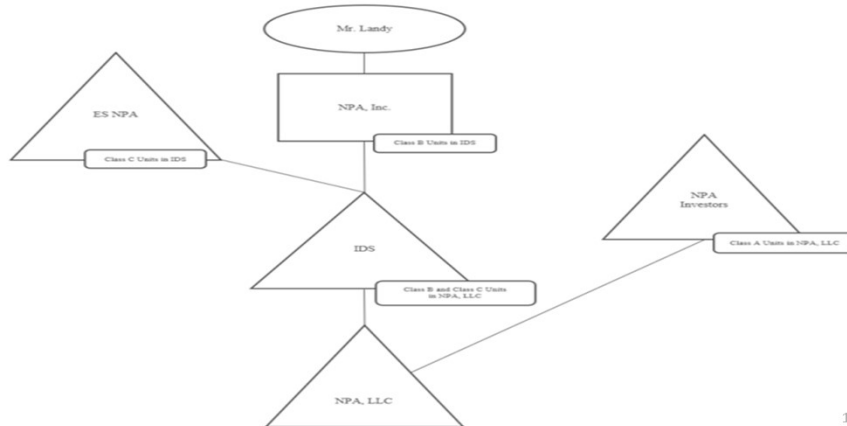
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**ES NPA Holding, LLC v. Commissioner,  
T.C. Memo. 2023-55 (5/3/23)**

***Outline: item G.1, page 8***

- In a tiered partnership structure, ES NPA, LLC (“ES NPA”) received a partnership interest in IDS (which was an indirect partnership interest in NPA, LLC) in exchange for services provided to NPA, Inc.



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**ES NPA Holding, LLC v. Commissioner,  
T.C. Memo. 2023-55 (5/3/23)**

***Outline: item G.1, page 8***

- Issues:
  1. Did Rev. Proc. 93-27 apply to ES NPA’s receipt of a partnership interest in IDS (which was indirectly a partnership interest in NPA, LLC) in exchange for services that ES NPA had provided to NPA, Inc.?
  2. If Rev. Proc. 93-27 applies, was the partnership interest that ES NPA received a profits interest or a capital interest?
- Held:
  1. Yes, Rev. Proc. 93-27 applies.
    - Court rejects IRS’s argument that Rev. Proc. 93-27 did not apply because ES NPA had not provided services to IDS, the partnership in which it received an interest.
  2. Yes, the partnership interest that ES NPA received was a profits interest.
    - Court rejects IRS’s argument that assets of the underlying partnership had been undervalued and that the interest was really a capital interest.

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## **Conservation Easements**

### ***Outline: item B.1, page 10***

- New legislation:
  - Consolidated Appropriations Act, 2023, Pub. L. No. 117-328
    - Signed by the President on December 29, 2022.
  - Section 605 of the legislation provides rules regarding conservation easements, including:
    - Disallows charitable deductions for qualified conservation contributions by partnerships (and S corporations and other pass-through entities) if the claimed deduction exceeds 2.5 times the sum of a partner's "relevant basis" in the partnership making the contribution.
      - Relevant basis is the partner's "modified basis" allocable to the real property in question. Modified basis is essentially outside basis determined without regard to partnership liabilities.
  - Applies to contributions made after December 29, 2022.

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## **Conservation Easements**

### ***Outline: item B.1, page 10***

- New legislation (cont'd):
  - Exceptions to disallowance of charitable deductions for qualified conservation contributions by partnerships (and S corporations and other pass-through entities):
    1. Partnerships making conservation easement contributions after a three-year holding period applicable at both the partnership- and partner-level
    2. "Family partnerships" (as defined) making conservation easement contributions; and
    3. Partnerships making conservation easement contributions relating to historic structures.
      - Requires certain reporting of conservation easement contributions made by partnerships.

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## **Conservation Easements**

### ***Outline: item B.1, page 10***

- New legislation (cont'd):
  - Consolidated Appropriations Act, 2023, Pub. L. No. 117-328
    - Signed by the President on December 29, 2022.
  - An uncodified provision, § 605(d), directs Treasury to publish “safe harbor deed language for extinguishment clauses and boundary line adjustments” relating to qualified conservation contributions.
  - Purpose:
    - To allow donors of conservation easements granted with language that does not conform to Treasury Regulations to make corrections
  - Example:
    - Land is worth \$100,000. Landowner donates conservation easement to local land trust. The easement is valued at \$20,000 (20% of land value).
    - Five years later, when the land has risen in value to \$200,000, the state takes the land by eminent domain and pays \$200,000 for the taking.
    - How much does the land trust receive? \$20,000 or \$40,000?

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## **Conservation Easements**

### ***Outline: item B.1.a, page 11***

- Notice 2023-30, 2023-17 I.R.B. 766 (4/10/23):
  - Provides safe harbor deed language regarding boundary line adjustments and extinguishment of conservation easements
  - Sets forth process and timeline for amending existing, non-conforming deeds:
    - Corrective, amended deeds must:
      - Be properly executed by the donor and the donee
      - Be recorded by July 24, 2023, and
      - Relate back to the effective date of the original deed.

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**Estate of Hoenscheid v. Commissioner,  
T.C. Memo. 2023-34 (3/15/23)  
Outline: item B.2, page 12**

■ Facts

- Taxpayer and his two brothers held appreciated shares of stock in a corporation originally formed in 1927
- Taxpayer donated some of his shares to a charitable organization two days before the planned sale of all of the stock in the corporation (including the shares held by the charitable organization).

■ Main Issues:

1. Did the anticipatory assignment of income doctrine require the taxpayer to recognize capital gain with respect to the shares sold by the charitable organization?
2. Was the appraisal of the shares a qualified appraisal?

■ Held:

1. Yes, taxpayer must recognize the capital gain on the shares sold by the charitable organization.
2. No, it was not a qualified appraisal. Taxpayer's charitable contribution deduction denied.

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**Stanojevich v. Commissioner,  
160 T.C. No. 7 (4/10/23)  
Outline: item A.1, page 13**

■ Facts

- Taxpayer was the trustee of a "grantor-type" trust.
- He filed income tax returns for the trust (Form 1041) for several years.
- The returns reported gross income and reported tax withheld equal to the amount of the tax withheld.
- The returns reported that the trust had no tax liability and had made overpayments of tax.
- The IRS imposed frivolous return penalties (§ 6702(a)) on the taxpayer of \$5,000 per year and issued a notice of federal tax lien.
- Following a CDP hearing, taxpayer filed a Tax Court petition.

- Issue: could the taxpayer be subject to frivolous return penalties when the returns were not his personal returns, but rather the trust's returns?

- Held: Yes. nothing in § 6702 conditions the imposition of the penalty on a person's filing of his or her personal return. Congress considered it appropriate to impose the § 6702(a) penalty personally on a trustee who files a frivolous return on behalf of a trust.

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