

Recent Developments in Federal Income Taxation

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First Wednesday Tax Update

February 14, 2024

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CLE Number for Today's Webcast:

174226940

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Current Tax Legislative Outlook

[Not in Outline]

■ Tax Relief for American Families and Workers Act of 2024

- Approved January 19, 2024, by House Ways and Means Committee (40-3).
- Passed on January 31, 2024, by House of Representatives (357-70).
- Timing in the Senate is unclear.
- Many Senators advocate the normal mark-up process by the Senate Finance Committee, which will result in amendments to the House version.
 - This would require a conference of the House and Senate to secure legislative approval.

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Current Tax Legislative Outlook

[Not in Outline]

■ Tax Relief for American Families and Workers Act of 2024 (House version)

- Would increase refundable portion of child tax credit to \$1,800 (instead of current \$1,600) for 2023, \$1,900 for 2024, and \$2,000 for 2025
- Would make domestic research and experimental expenditures (§ 174) deductible for 2022 through 2025.
- Would restore 100% bonus depreciation for 2023 through 2025
- Would slightly increase § 179 deduction to \$1.29 million for 2024 and future years (to be adjusted for inflation after 2024)
- Would increase Form 1099-NEC reporting threshold to \$1,000 (for 2024)
- For purposes of § 163(j) limit on deducting business interest, allows elective use of EBITDA (rather than EBIT) for 2022 and 2023 to determine adjusted taxable income.
- Would terminate period for making employee retention credit claims on January 31, 2024

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Current Tax Legislative Outlook *[Not in Outline]*

- **Tax Relief for American Families and Workers Act of 2024 (House)**
- Child tax credit changes:
 - Would increase refundable portion of **child tax credit** to \$1,800 (instead of current \$1,600) for 2023, \$1,900 for 2024, and \$2,000 for 2025
 - Would change calculation of maximum refundable portion for 2023-2025:
 - Currently, maximum refundable portion is 15% of the amount by which earned income exceeds \$2,500
 - The legislation would make the maximum refundable portion 15% of the amount by which earned income exceeds \$2,500 times the number of qualifying children
 - Would permit use of prior-year earned income in determining CTC for 2024 and 2025
 - Would adjust basic \$2,000 credit for inflation for 2024 and 2025

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Current Tax Legislative Outlook *[Not in Outline]*

- **Tax Relief for American Families and Workers Act of 2024 (House)**
- Example of calculation of refundable portion of CTC::
 - Taxpayer has HOH filing status and has earned income of \$13,667
 - Current law: refundable portion is $(\$13,667 - \$2,500) * 15\% = \$1,600$
 - Taxpayer would have \$0 income tax liability
 - Refundable portion of CTC is limited to \$1,600
 - If taxpayer has 2 qualifying children, the credit is \$4,000, but taxpayer can obtain a refund of only \$1,600
 - Proposed change: refundable portion is $(\$13,667 - \$2,500) * 15\% = \$1,600 * 2 \text{ qualifying children} = \$3,200$
 - Taxpayer would have \$0 income tax liability
 - Refundable portion of CTC is limited to \$3,200
 - If taxpayer has 2 qualifying children, the credit is \$4,000, but taxpayer can obtain a refund of only \$3,200
 - This change will benefit taxpayers with low income with more than 1 qualifying child

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Notice 2024-8
2024-2 I.R.B. 356 (12/14/23)
Outline: item D.1, page 2

- Standard mileage rate for business miles in 2024 goes up to 67 cents per mile (from 65.5 cents in 2023).
- Medical/moving rate for 2024 is 21 cents per mile (*down* from 22 cents in 2023).
- Charitable mileage rate for 2024 remains fixed by § 170(i) at 14 cents.
- The portion of the business standard mileage rate treated as depreciation goes up to 30 cents per mile for 2024 (up from 28 cents in 2023).
- 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 2024-8
2024-2 I.R.B. 356 (12/14/23)
Outline: item D.1, page 2

- Standard mileage rates for 2024 and the preceding two years:

| Category | 2022 | | 2023 | 2024 |
|--------------------|------------|------------|------------|----------|
| | Jan.-Jun. | Jul.-Dec. | | |
| Business mileage | 58.5 cents | 62.5 cents | 65.5 cents | 67 cents |
| Medical/ moving | 18 cents | 22 cents | 22 cents | 21 cents |
| Charitable mileage | 14 cents | 14 cents | 14 cents | 14 cents |

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Rev. Proc. 2024-13
2029-6 I.R.B. ____ (2/6/24)
Outline: item E.1, page 3

Section 280F depreciation limits for passenger automobiles

2024 Passenger Automobiles with § 168(k) first year recovery:

| | |
|--------------------------|----------|
| 1 st Tax Year | \$20,400 |
| 2 nd Tax Year | \$19,800 |
| 3 rd Tax Year | \$11,900 |
| Each Succeeding Year | \$7,160 |

2024 Passenger Automobiles (no § 168(k) first year recovery):

| | |
|----------------------|----------|
| 1st Tax Year | \$12,400 |
| 2nd Tax Year | \$19,800 |
| 3rd Tax Year | \$11,900 |
| Each Succeeding Year | \$7,160 |

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Laidlaw's Harley Davidson Sales, Inc. v. Comm'r
29 F.4th 1066 (9th Cir. 3/25/22)
Outline: item A.1.a, page 5

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

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Kroner v. Commissioner
48 F.4th 1272 (11th Cir. 9/13/22)
Outline: item A.1.b, page 6

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

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Minemyer v. Commissioner
131 A.F.T.R.2d 2023-364 (10th Cir. 01/19/23)
Outline: item A.1.c, page 8

- **Issue:** when the IRS *must issue a notice of deficiency* before assessing a penalty, when must the IRS comply with the supervisory approval requirement of § 6751(b)?
- **Held:** Before the IRS issues the notice of deficiency. Contrary decision of U.S. Tax Court (T.C. Memo. 2020-99 (7/1/20)) reversed.
 - “We agree with these assessments of § 6751(b)(1) and hold that its plain language does not require approval before proposed penalties are communicated to a taxpayer.”
 - “We are persuaded by the Second Circuit’s reasoning and hold that with respect to civil penalties, the requirements of § 6751(b)(1) are met so long as written supervisory approval of an initial determination of an assessment is obtained on or before the date the IRS issues a notice of deficiency.”

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Kraske v. Commissioner
161 T.C. No. 7 (10/26/23)
Outline: item A.1.d, page 9

- In a case appealable to the Ninth Circuit, an IRS revenue agent communicated to the taxpayer an accuracy-related penalty before the agent's supervisor had approved it.
 - But the supervisor approved it before the IRS issued the notice of deficiency and while the supervisor retained discretion.
- Issue: did the IRS comply with the supervisory approval requirement of § 6751(b)?
- Held: Yes.
 - The Ninth Circuit's decision in *Laidlaw's Harley Davidson Sales, Inc. v. Comm'r*, 29 F.4th 1066 (9th Cir. 3/25/22), was not squarely on point because it dealt with a penalty for which a NOD was *not* required.
 - Therefore, the Tax Court was not bound under *Golsen* to follow the *Laidlaw* decision in this case.
 - Nevertheless, the Tax Court applied the rationale of the *Laidlaw* decision. The penalty was approved before assessment and with discretion.¹³

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Dodson v. Commissioner,
162 T.C. No. 1 (1/3/24)
Outline: item D.1, page 12

- IRS sent a notice of deficiency ("first notice of deficiency") dated October 7, 2021, and specifying that December 5, 2022 (424 days later) was the last day to file a petition in the Tax Court.
- IRS sent a corrected notice of deficiency ("second notice of deficiency") dated October 8, 2021, and specifying that January 6, 2022, was the last day to file a petition in the Tax Court.
 - The taxpayers asserted they never received the second notice of deficiency.
- Taxpayers filed a petition in the Tax Court on March 3, 2022, 147 days after the first notice of deficiency.
- Issue: was their petition timely filed?
- Held: Yes. The first notice of deficiency was never rescinded.
 - Section 6213(a): "Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed."¹⁴

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Notice 2023-21
2023-11 I.R.B. 563 (2/27/23)
Outline: item E.1, page 13

- Extends the look-back period of § 6511(b) that limits the amount refundable for 2019 and 2020 returns.
- Previously, the IRS *postponed* the due date for 2019 individual returns to July 15, 2020, and *postponed* the due date for 2020 individual returns to May 17, 2021.
 - A postponement is not an extension
- Without the relief provided by this notice, many taxpayers would be precluded from obtaining 2019 and 2020 refunds.

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Notice 2023-21
2023-11 I.R.B. 563 (2/27/23)
Outline: item E.8, page 13

- Background:
 - Section 6511(a) generally requires claims for credit or refund of federal taxes paid to be filed by the later of:
 - 3 years from the time the taxpayer's return was filed, or
 - 2 years from the time the tax was paid.
 - Section 6511(b) look-back limitation:
 - If the taxpayer files the claim within the three-year period of § 6511(a), then the taxpayer can recover only the portion of the tax paid during the period preceding the filing of the refund claim equal to three years *plus any extension of time the taxpayer may have obtained for filing the return.*

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Notice 2023-21
2023-11 I.R.B. 563 (2/27/23)
Outline: item E.8, page 13

- **Example 1:**
 - During calendar year 2020, Taxpayer had \$5,000 of income tax withheld from his wages. By statute, the tax withheld from Taxpayer's wages are treated as made on April 15, 2021. See § 6513(a)(b)(1)-(2).
 - Taxpayer filed a request for an automatic extension for the 2021 return until October 15, 2021.
 - On October 15, 2021, Taxpayer filed a 2020 return showing a tax liability of \$5,000.
 - On October 15, 2024, Taxpayer filed an amended return for 2020 showing a tax liability of only \$4,200.
 - The claim for refund is timely under § 6511(a) because the taxpayer filed the claim within three years after filing the original return.
 - Under § 6511(b), Taxpayer can recover only tax paid within the 3-year period preceding his filing of the refund claim (10/15/21 to 10/15/24) plus the extension period (4/15/21 to 10/15/21)
 - Therefore, § 6511(b) does not limit Taxpayer's claimed \$800 refund.

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Notice 2023-21
2023-11 I.R.B. 563 (2/27/23)
Outline: item E.8, page 13

- **Example 2** (showing result *without* the relief provided by Notice 2023-21):
 - During calendar year 2020, Taxpayer had \$5,000 of income tax withheld from his wages. By statute, the tax payments withheld from Taxpayer's wages are treated as made on April 15, 2021. See § 6513(a)(b)(1)-(2).
 - Taxpayer did not file a request for an automatic extension.
 - Pursuant to the IRS's postponement of the due date for 2021 returns, Taxpayer filed a 2020 return on May 17, 2021, showing a tax liability of \$5,000.
 - On May 17, 2024, Taxpayer filed an amended return for 2020 showing a tax liability of only \$4,200.
 - The claim for refund is timely under § 6511(a) because the taxpayer filed the claim within three years after filing the original return.
 - Under § 6511(b), Taxpayer can recover only tax paid within the 3-year period preceding his filing of the refund claim (5/17/21 to 5/17/24) plus the extension period (none here)
 - Therefore, § 6511(b) precludes Taxpayer's claimed \$800 refund.

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Notice 2023-21
2023-11 I.R.B. 563 (2/27/23)
Outline: item E.8, page 13

- Extends the look-back period of § 6511(b) that limits the amount refundable for 2019 and 2020 returns.
- This notice provides:
 - For 2019 returns, the period beginning April 15, 2020, and ending July 15, 2020, is disregarded in determining the beginning of the § 6511(b) lookback period, and
 - For 2020 returns, the period beginning April 15, 2021, and ending May 17, 2021, is disregarded in determining the beginning of the § 6511(b) lookback period.

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Notice 2023-21
2023-11 I.R.B. 563 (2/27/23)
Outline: item E.8, page 13

- Example 2 (showing result *with* the relief provided by Notice 2023-21):
 - During calendar year 2020, Taxpayer had \$5,000 of income tax withheld from his wages. By statute, the tax payments withheld from Taxpayer's wages are treated as made on April 15, 2021. See § 6513(a)(b)(1)-(2).
 - Taxpayer did not file a request for an automatic extension.
 - Pursuant to the IRS's postponement of the due date for 2021 returns, Taxpayer filed a 2020 return on May 17, 2021, showing \$5,000 tax liability.
 - On May 17, 2024, Taxpayer filed an amended return for 2020 showing a tax liability of only \$4,200.
 - The claim for refund is timely under § 6511(a) because the taxpayer filed the claim within three years after filing the original return.
 - Under § 6511(b), Taxpayer can recover only tax paid within the 3-year period preceding his filing of the refund claim (5/17/21 to 5/17/24) plus the extension period (none here)
 - For the 3-year look-back period, the period 4/15/21 to 5/17/21 is ignored
 - Therefore, § 6511(b) does not limit Taxpayer's claimed \$800 refund.

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**Hallmark Research Collective v. Commissioner,
159 T.C. No. 6 (11/29/22)
*Outline: item E.2, page 14***

- A unanimous, reviewed decision of the U.S. Tax Court.
- Issue: is the 90-day period specified in § 6213(a) for filing a Tax Court petition in response to a notice of deficiency jurisdictional, and is it subject to equitable tolling?
- Held: Yes, the 90-day period is jurisdictional. The period is not subject to equitable tolling.
 - U.S. Supreme Court's decision in *Boechler, P.C. v. Commissioner*, ___ U.S. ___ (4/21/22), does not dictate a contrary result.

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**Culp v. Commissioner,
75 F.4th 196 (3d Cir. 7/19/23)
*Outline: item E.2.a, page 15***

- Issue: is the 90-day period specified in § 6213(a) for filing a Tax Court petition in response to a notice of deficiency jurisdictional, and is it subject to equitable tolling?
- Held: No, the 90-day period is not jurisdictional. The period is subject to equitable tolling.
 - Section 6213(a): "Within 90 days ... after the notice of deficiency authorized in section 6212 is mailed ..., the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. ... The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition."

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**Nguyen v. Commissioner,
T.C. Memo. 2023-151 (12/20/23)
Outline: item E.2.b, page 16**

- Issue: is the 90-day period specified in § 6213(a) for filing a Tax Court petition in response to a notice of deficiency jurisdictional, and is it subject to equitable tolling?
- Held: Yes, the 90-day period is jurisdictional. The period is not subject to equitable tolling.
- The taxpayer resided in the Tenth Circuit, and therefore any appeal of the Tax Court's decision would be decided by the Tenth Circuit.
 - The Tenth Circuit has previously agreed with the Tax Court's view that the 90-day period specified in § 6213(a) for filing a Tax Court petition in response to a notice of deficiency is jurisdictional. *Armstrong v. Commissioner*, 15 F.3d 970, 973 n.2 (10th Cir. 1994); *Foster v. Commissioner*, 445 F.2d 799, 800 (10th Cir. 1971).
- The Tax Court follows the precedent of the U.S. Court of Appeals to which the case is appealable. *Golsen v. Commissioner*, 54 T.C. 742 (1970).
- Therefore, the Tax Court will not follow the Third Circuit's decision in *Culp* in cases appealable to other Circuits.

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**Organic Cannabis Foundation, LLC, v. Comm'r,
161 T.C. No. 4 (9/7/23)
Outline: item E.3, page 16**

- IRS filed a notice of federal tax lien for three years.
 - Under section 6320(a)(3)(b), taxpayer had 30-days to request a collection due process (CDP) hearing with IRS Appeals.
- The taxpayer timely requested a CDP hearing for two of the years.
- For 2018, the taxpayer filed a request for a CDP hearing one day late.
- Because the CDP request for 2018 was late, the IRS held an equivalent hearing for that year, from which the taxpayer normally has no right of judicial review in the Tax Court.
- IRS Appeals issued an adverse notice of determination for all three years and taxpayer filed a petition in the Tax Court.
- Issue: is the 30-day period in section 6320(a)(3)(b) for requesting an administrative CDP hearing subject to equitable tolling?
- Held: Yes. Case remanded to IRS Appeals to determine whether equitable tolling was warranted.

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