Recent Developments in Federal Income Taxation

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CLE Number for Today's Webcast:

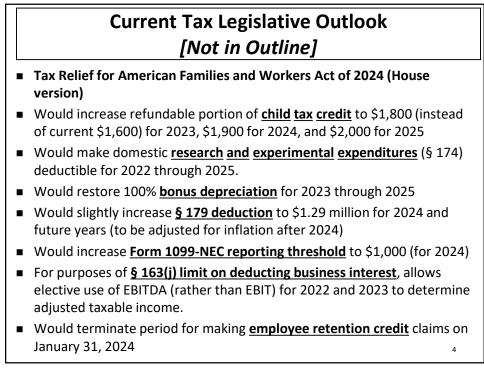
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Current Tax Legislative Outlook [Not in Outline]

- 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.

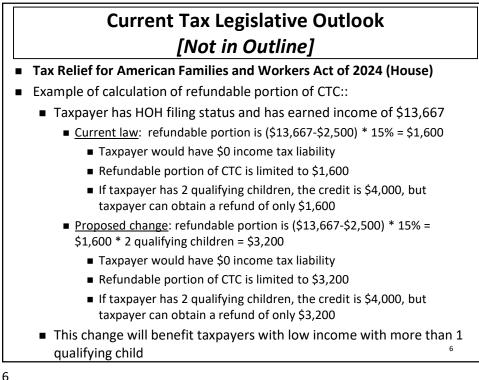
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Current Tax Legislative Outlook [Not in Outline]

- Tax Relief for American Families and Workers Act of 2024 (House)
- Child tax credit changes:
 - Would increase refundable portion of <u>child tax credit</u> 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





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.

 Standard mile 	Notice 2024-8 2024-2 I.R.B. 356 (12/14/23) <i>Outline: item D.1, page 2</i> Standard mileage rates for 2024 and the preceding two years:						
Category	2022		2023	2024			
	JanJun.	JulDec.					
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) <i>Outline: item E.1, page 3</i> 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			
3rd 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 9			

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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.
- <u>Issue</u>: 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."
- <u>Held</u>: 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.

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The IRS complied with this requirement.

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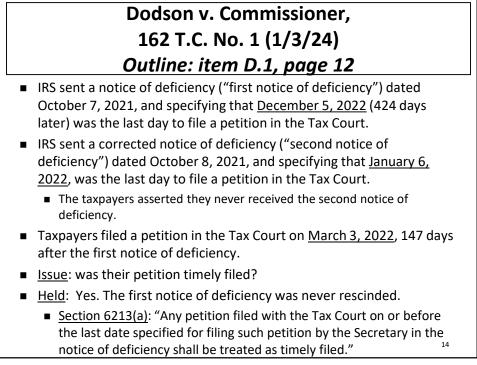
Minemyer v. Commissioner 131 A.F.T.R.2d 2023-364 (10th Cir. 01/19/23) *Outline: item A.1.c, page 8*

- 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)?
- <u>Held</u>: 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."

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.

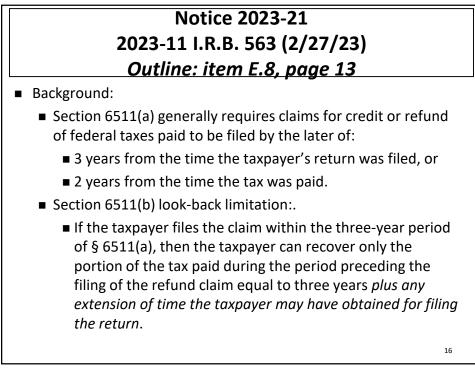
- But the supervisor approved it before the IRS issued the notice of deficiency and while the supervisor retained discretion.
- Issue: did the IRS comply with the supervisory approval requirement of § 6751(b)?
- <u>Held</u>: Yes.
 - The Ninth Circuit's decision in Laidlaw's Harley Davidson Sales, Inc. 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.

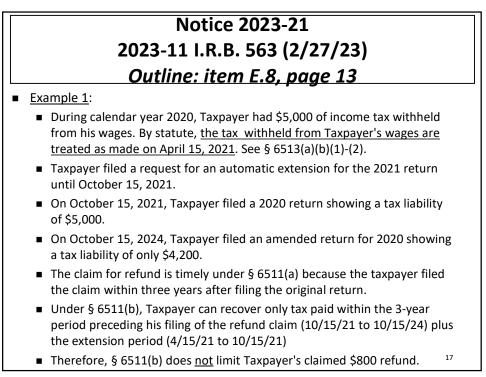


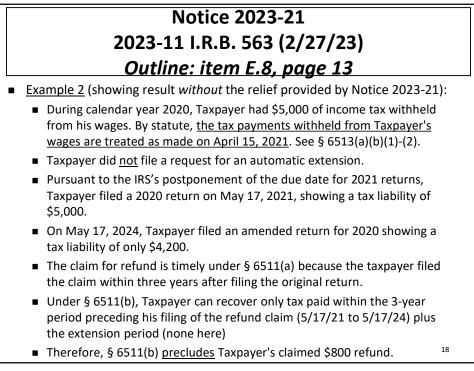
Notice 2023-21 2023-11 I.R.B. 563 (2/27/23) *Outline: item E.1, page 13*

- 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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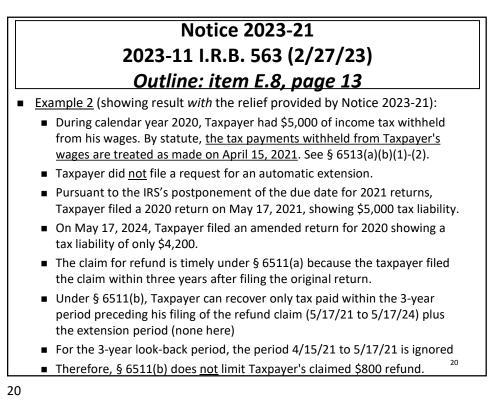




Notice 2023-21 2023-11 I.R.B. 563 (2/27/23) *Outline: item E.8, page 13*

- 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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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?
- <u>Held</u>: 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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