NATIONAL SOCIETY OF TAX PROFESSIONALS

2022 FEDERAL TAX UPDATE & REVIEW COURSE

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The 2022 Federal Tax Update and Review

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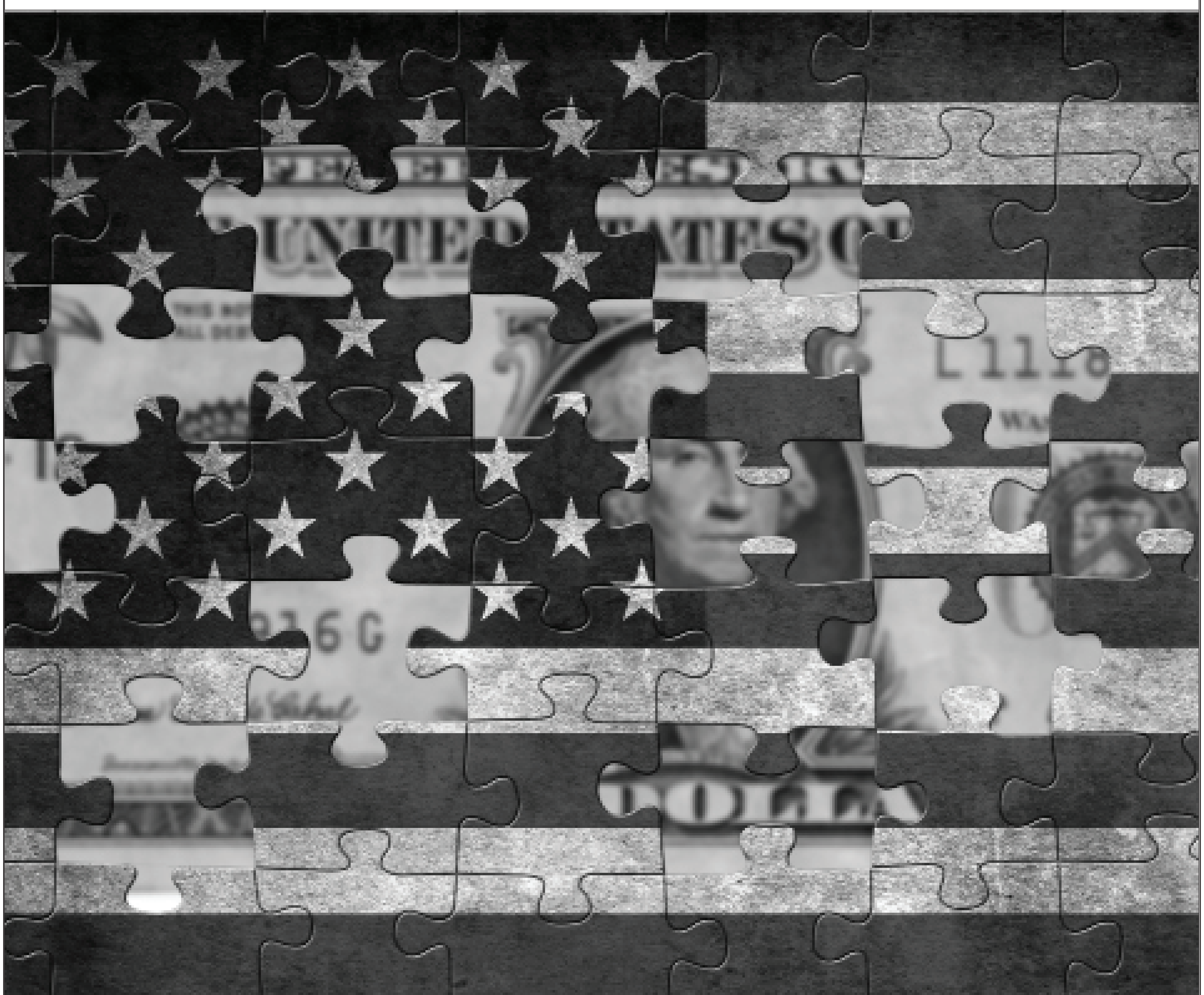
I. Introduction to the Inflation Reduction Act of 2022



I. Introduction to the Inflation Reduction Act of 2022

A. Background, Purpose and Goals of Public Law 117-169 (H.R. 5376)

1. On Tuesday **August 16, 2022**, President Biden signed the "Inflation Reduction Act of 2022" (IRA of 2022) following its passage along party lines in both the U.S. Senate and House of Representatives. The Legislation contains a scaled down version of the President's "Build Back Better" Legislation which was passed in the House of Representatives on **November 19, 2021** but never came to the floor of the Senate. The **Inflation Reduction Act of 2022** makes major investments in healthcare, domestic energy production and manufacturing, and climate change but does <u>not</u> address directly the current issues of the inflation at the pump and on the grocery shelves.

   Tax Professional Focus: The focus of this presentation is a summary of selected tax related provisions. The **Inflation Reduction Act of 2022** extends some provisions which expired *after* **December 31, 2021** and some provisions that were scheduled to expire *after* **December 31, 2022**. The Legislation also increases and expands **post-December 31, 2022** credits to business and individual taxpayers that:

   1. purchase new or used clean vehicles,
   2. purchase new commercial clean vehicles,
   3. make residences and commercial buildings more energy efficient,
   4. build or manufacture more energy efficient homes, and
   5. produce clean energy fuels.

2. The **Inflation Reduction Act of 2022** aims to combat inflation, climate change, and health care costs. Topline estimates include **$740 billion** in total revenue raised, **$437 billion** in total investments, and over **$300 billion** in total deficit reduction.

   Tax Professional Awareness: The **$300 billion** deficit reduction will be cancelled out by President Biden's **August 24, 2022** Executive Order to forgive student loan debt of up to **$20,000** 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.

Borrowers are eligible for this relief if their individual adjusted gross income was *less than* **$125,000** or *less than* **$250,000** for a married couple filing a joint return. In addition, as a result of the **American Rescue Plan Act of 2021**, this debt relief will be excluded from gross income for federal income tax purposes. The adjusted gross income threshold for the forgiveness is based on *either* the **2020** or **2021** tax years. Applicants have up to **December 31, 2023** to apply for the forgiveness.

Also included in the Executive Order is the continued "student loan repayment pause" which was supposed to end on **August 31, 2022**. It is now extended until **December 31, 2022** with payments scheduled to resume in **January 2023**.

3. There are investing implications across sectors, including health care, energy, technology, and more. The Legislation includes **$350 billion** in new expanded incentives for energy efficiency, renewable and clean energy investments, fleet decarbonization, infrastructure improvements and other sustainability-related investments. When these incentives are combined with those of the **Infrastructure Investments and Jobs Act** (IIJA) enacted on **November 19, 2021**, the federal government is poised to make substantial investments in clean energy and sustainability through the next decade.

4. The Legislation also introduces provisions dealing with:

    a. New **§6417** Direct pay options,

    b. New **§6418** transferability of credits,

    c. Expansion of **§48C** Advance Energy Project Credit,

    d. Creation of **§45X** Advanced Manufacturing Production Credit,

    e. Fleet decarbonization incentives,

    f. Renewal energy credits,

    g. New **§45Y** Clean Energy Production Tax Credit

    h. New **§45V** Credit for Hydrogen Production

    i. **§48C** Advanced Energy Project Credit extension,

    j. New **§45U** Zero Emissions Nuclear Power Production Credit, and

k. Other new or expanded tax credits, grants and incentives for investments in clean energy and sustainability.

Tax Professional Awareness: The **Infrastructure Investments and Jobs Act** already alloted **$200 Billion** towards sustainability-related programs. The **Inflation Reduction Act of 2022** allocates over **$280 Billion** more in sustainability tax credit budget provisions to be awarded through **2031**. It also appropriated over **$65 billion** in sustainability grant funding. The following is a summary of the breakdown of the appropriation of different credits and grants amounts:

- Clean energy production credits (**$92b**)
- Clean energy investment credits (**$65b**)
- Advanced manufacturing credits (**$37b**)
- Non-commercial credits (**$31b**)
- Carbon capture use and sequestration (CCUS) and hydrogen credits (**$16b**)
- Clean/renewal fuel credits (**$9b**)
- Fleet/EV credits (**$5b**)
- Energy efficient buildings credits (**$2b**)
- Clean energy grants (**$59b**)
- Clean or low emission vehicle/fuel grants (**§6b)**

5. The Legislation includes a provision that would allow the U.S. Department of Health and Human Services to negotiate prices of certain prescription drugs in Medicare and Medicaid. The Congressional Budget Office estimates that **$288 billion** will be saved by allowing Medicare to negotiate for some prescription drug prices.

6. In addition, savings would be generated by requiring drug manufacturers to pay a rebate for drugs whose prices increase faster than inflation under Medicare and would create several reforms in the Medicare drug program, also known as Medicare **Part D**, including a **$2,000** cap on out-of-pocket drug spending for seniors beginning in **2025**.

7. The investing implications for drug pricing caps appear to be limited to the makers of **10** high-cost drugs beginning in **2026**, ramping up to **20** drugs by **2029**. If the drug makers do not negotiate with Medicare, then a tax of up to **95%** of the sales of the drug can be enforced. Only older drugs are subject to negotiation after a period of **9 years**. More complex biologic drugs are subject to negotiation after **13 years**.

   Medicare Part D Reforms: The Legislation enacts a number of changes to the structure of **Medicare Part D**. These changes include:

   (1) **capping** out-of-pocket costs at **$2,000** in **2025**;
   (2) **eliminating** the **5% cost-sharing** in the catastrophic phase of **Part D in 2024**;
   (3) **limiting** premium growth to **6%** each year from **2024-2030**;
   (4) **limiting** cost sharing for insulin to **$35** per month for people with Medicare, *beginning* in **2023**;
   (5) **eliminates** cost sharing for adult vaccines covered under **Medicare Part D** as of **2023**; and
   (6) **expands** eligibility for full **Part** D Low-Income Subsidies (LIS) in **2024** to low-income beneficiaries with incomes up to **150%** of the poverty level.

   Trump-era Rebate Rule Delay: The **Inflation Reduction Act of 2022** delays the implementation of the Trump Administration's so-called drug "rebate rule" *until* **2032**, *rather than* take effect in **2027**.

   The "rebate rule" eliminated the anti-kickback safe harbor protections for prescription drug rebates negotiated between drug manufacturers and pharmacy benefit managers (PBMs) or health plan sponsors in **Medicare Part D** and **enforced the discounts at the point of sale**.

8. The Legislation also extends the "American Rescue Plan Act of 2021's" expanded and enhanced **§36B** premium tax credit for **3 years** to **December 31, 2025**. The **§36B** premium tax credit is reported on **Form 8962.**

9. There are energy and climate change provisions included in the Legislation with funding of almost **$369 billion**. The Legislation addresses funds to reduce carbon emissions and increase energy innovation. It will also allow for the creation of low carbon energy technologies while pushing the administration's objectives to create high paying jobs and on-shoring domestic manufacturing while seeking to reduce emissions by approximately **40%** by **2030**.

Tax Professional Awareness: In fulfilling the Administration's objectives of creating high paying jobs, the base credit amounts are increased by bonus credit amounts, creating a **two-tier credit regime** for several credit provisions.

10. The Legislation creates a **10-year** plan for many energy tax incentives and uses the Internal Revenue Code to create a technology-neutral approach to incentivize the deployment of low carbon technologies. There are a number of provisions included to support conventional energy development in the United States although imposing additional excise taxes and raising the excise taxes on coal and oil production and storage.

11. The Legislation raises revenue with a few, but significant, changes to the Internal Revenue Code as follows:

    a. New **§55(b)(2)** imposition of a **15%** corporate alternative minimum tax (**CAMT**),

    b. Newly created **§4501**, **1%** excise tax on stock-buy backs by publicly traded companies,

    c. reinstating the Superfund tax on petroleum and oil,

    d. increased excise tax on coal at two different levels, and

    e. providing **$80 Billion** in additional funding to the Internal Revenue Service over the next **10 years**, and allowing "how" the funds will be used at the discretion of the IRS Commissioner over the **10-year** period.

12. New **§55(b)(2)** provides that the corporate alternative minimum tax applies to the "adjusted financial statements of income" of:

    a. U.S. corporations with **3-year average** "adjusted book income" greater than **$1 billion**, and

    b. foreign corporations with average U.S. income in excess of **$100 million**.

Tax Professional Note: According to the Joint Committee on Taxation, about **150** of the largest US corporations would be subject to the new corporate minimum tax.

13. New **§4501** imposes a **1%** excise tax on "stock buybacks" net of new issuances of stock, effective for "repurchases" after **December 31, 2022**. Exempt from the tax are stocks contributed to retirement accounts, pensions, and employee-stock ownership plans (ESOPs). The Congressional Budget Office estimates this provision will generate **$313 billion** in tax revenue. All "covered corporations" would be subject to the **1%** excise tax on stock buybacks, beginning on **January 1, 2023**. As a result, there may be an increase in buyback activity before then in order to get out ahead of the new law.

    After the law goes into effect, there could be some shift in behavior to distributing capital via dividends compared with buybacks. If that does in fact create more corporate distributions then this will cause current recognition to shareholders in the form of **15%** and **20%** preferential rates.

    Tax Professional Awareness: New **§4501** imposes the **1%** excise tax on each "covered corporation" on the fair market value of any stock of the corporation that is repurchased by such corporation during the tax year. A repurchase is defined for this purpose to be:

    a. a redemption within the meaning of **§317(b)** with regard to a stock of a "covered corporation", and

    b. any transaction "determined by the secretary" to be economically similar.

    A "covered corporation" for purposes of the **§4501**, **1%** excise tax, is any publicly traded domestic corporation whose stock is traded on an established securities market and certain "subsidiary purchases" (i.e. an affiliate of a covered corporation). The tax does not apply to a foreign corporation if the repurchase is by a foreign controlled subsidiary.

14. **Overview of New Excise Tax on Stock Repurchases**: The **Inflation Reduction Act of 2022** creates a new excise tax on stock repurchases of more than **$1 million** by publicly traded U.S. corporations. The excise tax equals **1%** of the fair market value of the stock repurchased during the year. That amount is reduced by the fair market value of stock issued during the tax year, including stock issued to employees of the corporation or its subsidiaries.

The excise tax also applies to repurchases of stock of a publicly traded foreign corporation by the foreign corporation's domestic affiliate. The excise tax applies to repurchases of stock made after **December 31, 2022**. One of the issues which needs to be resolved is when will the excise tax be collected?

Many excise taxes are collected on a quarterly basis using IRS **Form 720.** The new **§4501**, **1%** excise tax amount will be measured on an annual basis and the tax is assessed on the net of repurchases less issuances of stock. As a result, there could be a repurchase early in the year and an issuance of stock later in the year in a different quarter. The IRS needs to provide guidance on this issuance as to when the tax assessed.

Tax Professional Legislative Awareness: The Legislation lacks Committee Reports and gives broad rule making by the Treasury and IRS on Regulations and guidance on the **§55** corporate alternative minimum tax and the **§4501** excise tax on the stock buy back. Other federal agencies have been granted significant funds and have significant authority and will be allocating and determining the implementation of many new rules and decisions on how to deploy funding.

15. Unlike previous iterations of the bill, the **Inflation Reduction Act of 2022** does <u>not</u> contain the sweeping tax provisions aimed at increasing taxes on individuals as was in the **2021 Build Back Better Legislation** and the Administrations "Green Book" proposals released in **May 2022**. It is the Administration's intent to continue for passage of those provisions in future proposals.

16. The new law provides for **$369 billion** in "energy security and climate change" investments, with the aim of reducing carbon emissions roughly **40%** by **2030**. Details include "clean energy" tax credits such as **$9 billion** in home energy rebate programs and a tax credit up to **$7,500** for the purchase of zero-emission vehicles, applying only to vehicles that cost below **specified amounts** for sedans vs. **specified amounts** for vans and pick-up trucks and sport utility vehicles.

17. The bill also provides tax credits for fossil fuel companies, as well as permitting reform legislation to be passed before the end of the fiscal year for legacy domestic energy and transmission projects. The intended aim is for these investments to broadly lower costs by building out existing energy and new renewable systems.

18. There are investing implications in terms of tax credits for:

    a. fossil fuel companies,

    b. producers of nuclear energy under **§45U**,

    c. hydrogen energy from clean sources under **§45V**,

    d. biofuels, and

    e. carbon capture technology under **§45Q.**

19. There are also incentives for producers of:

    a. residential rooftop solar systems,

    b. heat pumps,

    c. small wind energy systems, and

    d. there are incentives for sourcing domestically manufactured steel, iron, and other products.

20. The following lists a summary of the provisions in the Legislation including:

    a. Tax Revenue Raisers in the form of:

        i. **15%** Corporate Alternative Minimum Tax (**CAMT**) under **§55**,

        ii. **1%** Excise Tax on Stock Buy Backs under **§4501**,

        iii. Extension of **§461(l)(1)** excess Loss Limitations for noncorporate taxpayers, (**Form 461**) (created by **TCJA**)

        iv. Additional **$80B** of Internal Revenue Service Enforcement Funding,

        v. Additional excise taxes on oil under **§4611** and coal under **§4112**,

    b. Healthcare Issues in the form of:

        i. **§36B** Premium Tax Credit expansion and extension on **Form 8962** thereby extending the provisions of the **American Rescue Plans Act of 2021**,

        ii. Medicare Drug Pricing Negotiation

        iii. Inflation Rebates under **Sec. 11101 Medicare Part B** rebate by manufacturers

        iv. Medicare Part D Prescription Benefit Changes and Other Notable Health Provisions

c. Energy and Climate Tax Incentives in the form of:

   i. Energy Generation
   ii. Energy Manufacturing
   iii. Carbon Sequestration
   iv. Clean Fuels
   v. Clean Vehicles
   vi. Energy Efficiency
   vii. Superfund

d. Various Governmental Agencies are allocated funds for environmental, climate, and energy investments as follows:

   i. U.S. Department of Agriculture
   ii. U.S. Environmental Protection Agency
   iii. U.S. Department of Energy
   iv. U.S. Department of Interior
   v. U.S. Department of Transportation
   vi. General Services Administration
   vii. U.S. Department of Commerce
   viii. U.S. Postal Service
   ix. U.S. Department of Housing and Urban Development
   x. U.S. Department of Homeland Security
   xi. U.S. Department of Defense
   xii. Federal Permitting Improvement Steering Council
   xiii. Federal Energy Regulatory Commission
   xiv. White House Council on Environmental Quality
   xv. Government Accountability Office
   xvi. Office of Management and Budget

B. Overview of the Additional Funding for IRS Appropriation and Enforcement in Inflation Reduction Act of 2022 (H.R. 5376)

1. Now that the IRS will definitely receive the long-sought additional funding provided for under the **Inflation Reduction Act of 2022**, questions remain as to "**how**" the agency will spend its' appropriation.

2. The **Inflation Reduction Act of 2022** will provide the IRS with approximately **$80 billion** in addition to its regular appropriations through **September 30, 2031**. The Legislation allocates the additional **$80 billion** as follows:

    a. **$45.6 billion** for enforcement,

    b. **$25.3 billion** for operations support,

    c. **$4.8 billion** for technology modernization, and

    d. **$3.2 billion** for taxpayer services.

3. Under the **enforcement category**, the **$45,637,400,000,** which is greater than **57%** of the total appropriation to the IRS, is appropriated to cover the following expenditures:

    a. Determining and collecting owed taxes, (closing the **Tax Gap**)

    b. Providing legal and litigation support,

    c. Conducting criminal investigations,

    d. Monitoring digital assets and carrying out related compliance activities, and

    e. Enforcing criminal statute violations and other financial crimes pursuant to internal revenue laws.

4. Under the **operations support category**, the **$25,326,400,000** is almost **31.7%** of the total additional appropriation and designated to cover the following expenditures:

    a. Rent payments,

    b. Facilities services,

    c. Postage,

    d. Security,

    e. Research,

f. Telecommunications,

g. Maintenance, and

h. Information technology development.

5. Under the **technology modernization category**, the **$4,750,700,000** is over **5.9%** of the additional appropriation and will be used for the following expenditures:

   a. Modernize the IRS' computer systems,

   b. Upgrade related in-house technologies,

   c. Developing callback technology, and

   d. Maintaining legacy systems.

6. Under the **taxpayer services category**, the **$3,181,500,000,** which is almost **4%** of the additional appropriation and will be allocated to the following expenditures:

   a. Prefiling assistance and education,

   b. Filing and account services, and

   c. Taxpayer advocacy services.

7. The Congressional Budget Office (**CBO**) reported that as a result of this funding, they estimate that the IRS will raise **$124 billion** in additional revenue through **2031**.

8. Act Sec. 10301 of the **Inflation Reduction Act of 2022** states that the appropriations are to be used at the "discretion of the IRS Commissioner" and are made available until **September 30, 2031**.

9. **Incoming Agents:** Much speculation has centered on a key part of the IRS' **$80 billion** funding package through **2031**. There are many questions on how audit rates will be affected for certain taxpayers. Some Republicans in Congress have rallied behind the message that an invigorated IRS would bring an "army" of auditors-as described by Senate Finance Committee ranking member Mike Crapo of Idaho in an **August 6, 2022**, statement-to squeeze revenue from low- and middle-income families.

10. The provision has put the Biden Administration on the defensive to fend off assertions that it will increase audits among the lower earning individuals, prompting a commitment by the IRS Commissioner that individuals under the **$400,000** earnings threshold will not see an increase in their audit rates. Although **57%** of the **$80 billion** is allocated to IRS enforcement activities, Treasury Secretary Janet Yellen has directed the IRS not to use the additional funding that the **Inflation Reduction Act of 2022** provides to increase audit rates on small businesses or households making under **$400,000** annually.

11. A Treasury report clarified that the investment is aimed "against those with the highest incomes, and audit rates will not rise relative to recent years for those earning less than **$400,000** in actual income." The Biden administration and leading Democratic tax-writers in Congress have maintained since last year that **$400,000** is indeed the threshold, and no individuals or businesses making less than that amount will be effected by the additional funds allocated for enforcement.

    Tax Professional Note: In an **August 10, 2022**, letter to IRS Commissioner Rettig, Secretary Yellen said that she is directing "that any additional resources, including any new personnel or auditors that are hired, shall not be used to increase the share of small businesses or households below the **$400,000** threshold that are audited relative to historic levels. Instead, enforcement resources will focus on high-end noncompliance," Yellen wrote. "There, sustained, multiyear funding is so critical to the agency's ability to make the investments needed to pursue a robust attack on the "tax gap" by targeting crucial challenges, like large corporations, high-net-worth individuals and complex pass-throughs."

12. **Potential Consequences to Taxpayers**: For years, the IRS has been criticized for not auditing high-income individuals at the same rate as low-income individuals. Between **2011-2018**, audit rates on individuals making over **$1 million** per year fell by **80%**. A **2021** study published by the National Bureau of Economic Research found that the top **1%** of Americans **failed** to report approximately **20%** of their income to the IRS.

13. A **2019** IRS study found that the "net tax gap", which is defined as the difference between the amount of tax owed and the amount of tax that is actually paid, for tax years **2011-2013** was **$381 billion** annually. Another study used those numbers to extrapolate that between **2020-2029** the net tax gap will be **$750 billion** annually. However, an increase in well-targeted enforcement, focusing on audits of high-income individuals, as well as increased information reporting requirements may shrink the "tax gap".

14. It is unclear how the IRS will select high-earners and corporations for these new audits. Recently, the IRS has used campaigns to focus its resources and increase scrutiny on certain compliance issues. Current campaigns include micro-captives, syndicated conservation easements, and virtual currency transactions.

    Tax Professional Awareness: Senator Mike Crapo, a Republican Senator from Idaho, proposed a Statutory Amendment **No. 5404** to the Legislation that explicitly called for **none** of the additional **$80 billion** appropriation under the "Inflation Reduction Act of 2022" to be used to audit taxpayers and small business owners under $400,000, but the vote was **50-50** with **all 50** Republican Senators voting for the amendment and **all 50** Democratic Senators voting against the amendment.

    Tax Professional Update: On **August 17, 2022**, the day after the President signed the **Inflation Reduction Act of 2022** into law, the Secretary of the Treasury again addressed the increase in audit concerns. In a memo, the Secretary wrote to the IRS Commissioner reaffirming that the enforcement investments should spare households and businesses earning **$400,000** or less. The memo stated: "Instead, they will allow the IRS to work to end the two-tiered tax system, where most Americans pay what they owe, but those at the top of the distribution often do not,"

    Previous versions of the bill included language **requiring** the IRS to submit, within **six months**, a plan for "how" it would use the new appropriation. That requirement was scrapped during last-minute talks. In lieu of a legislative mandate, Yellen directed Rettig to deliver such a plan by the same deadline. Her memo included the following statement:

"I would like the IRS to work closely with the deputy [Treasury] secretary to identify specific operational initiatives and associated timelines that will improve taxpayer service, modernize technology, and increase equity in our system of tax administration by pursuing tax evasion by those at the top who today do not pay their tax bill."

15. Given that the IRS has had success this year with the rollout of voice chat bots that help taxpayers quickly access certain information without the need for waiting on hold, it's likely that enhancing both voice and chat bot capabilities will be a priority. The **Inflation Reduction Act of 2022** also gives the IRS **$15 million** to design a service allowing taxpayers to electronically file returns with the agency without the need for a third-party preparer.

16. Also with extra funding, the National Taxpayer Advocate Erin Collins may get action on her **March 2022** Taxpayer Advocate Directive (**TDA**) for **2D bar-coding**. The Advocate has stated that the paper-return process could be significantly expedited if fields could be automatically populated by scanning a bar-code on a paper return, as opposed to manual line-by-line entry. The idea has the support of Republicans on the Senate Finance Committee.

17. The IRS must engage with the software industry before the technology can be used for **Forms 1040.** In an **August 2, 2022**, appeal of the deputy commissioner's partial modification and rescission of the **TDA**, Advocate Collins reiterated that **2D bar-coding** would cost only **$8.4 million**. In the appeal she stated to the IRS Commissioner "In **March 2022**, at the time I issued the **TDA**, my understanding was that **2D bar-coding** could realistically be implemented in time for the **2023** filing season because:

    a. it is a tried-and-true technology in use for more than **20 years** by many state tax agencies and

    b. tax return software companies have had significant experience converting return information into **2-D bar-codes** for the states over this time."

Tax Professional Awareness: On **March 29, 2022**, the Taxpayer Advocate issued a "Taxpayer Advocate Directive" (**TAD**), directing the IRS to implement scanning technology by the start of the **2023** filing season so that paper returns can be machine-read and employees of the IRS would not have to keystroke each digit on the return into the IRS systems. IRS leaders have indicated that they not likely to implement **2-D barcoding**. The Taxpayer Advocate reported to Congress on **June 22, 2022** in her mid-year report that the error rate in transcribing individual returns last year was **22%**.

C. §461(l)(1)(B): Extension of Limitation on Excess Business Losses of Noncorporate Taxpayers Form 461

1. **§461(l)(1)(B)**: Prior to the "Tax Cuts and Jobs Act" (**TCJA**), the Statute did not have a provision which limited the "excess business loss" of noncorporate taxpayers.
2. **§461(l)(1)(B)** provides for a limitation on an "excess business loss" of the taxpayer for the taxable year.
3. An "excess business loss" is defined as the excess of the aggregate deductions which are attributable to the trade or business over the sum of:
    a. the aggregate gross income or gain attributable to such trade or business, plus
    b. **$250,000** or **$500,000** in the case of a joint return.
4. Any current year disallowed loss shall be treated as a Net Operating Loss under **§172** in the subsequent tax year and subject to the **80%** taxable income limitation rules in the subsequent years
5. The "excess business loss" limitation is indexed annually to inflation for tax years beginning after **December 31, 2018**, in **$1,000** increments.
6. The amounts are the following for tax years **2019-2022**:
    a. for **2019**, the amounts were **$255,000** or **$510,000** for a married filing a joint return.
    b. for **2020**, the amounts were **$259,000** or **$518,000** for a married filing a joint return.

c. For **2021**, the amounts were **$262,000** or **$524,000** for married filing a joint return.

d. For **2022**, the amounts are **$270,000** or **$540,000** for married filing a joint return.

e. For **2023**, the amounts are **$289,000** or **$578,000** for married filing a joint return.

7. Limitations are applied at the partner or S Corporation shareholder level. C Corporations are not subject to this limitation.

8. Under **Tax Cuts and Jobs Act**, the provision was effective for tax years beginning after **December 31, 2017**, and before **January 1, 2026**.

9. The provision was temporarily suspended retroactively to **January 1, 2018**, for years **2018-2020** as a result of the **CARES Act**.

10. The **American Rescue Plan Act of 2021** had extended the provision to **December 31, 2026**. President Biden's Green Book proposal is to make **§461(l)(1)(B)** a permanent provision.

11. **New Law**: Act Sec. 13903(b)(1)extends **§461(l)(1)(B)** for **3 years** for any tax year beginning before **December 31, 2029**.

12. **Effective Date:** This extension is effective for tax years beginning after **December 31, 2026**. (Act Sec. 13903(b)(2))

D. §36B: American Rescue Plan Act of 2021 Premium Tax Credit Rules Remain in Effect for 2023-2025 Form 8962

1. **§36B(a)** provides that a refundable premium tax credit (**PTC**) is available on a sliding-scale basis for individuals and families who are enrolled in an "Exchange-purchased qualified health plan", and who are not eligible for other qualifying coverage or affordable employer-sponsored health insurance plans providing minimum value.

2. **§36B(b)(2)** provides that the **PTC** is limited to the excess of the premiums for the "applicable second lowest cost silver plan" (the applicable benchmark plan) covering the taxpayer's family offered by the Exchange over the taxpayer's "contribution amount" which is the taxpayer's "required share" of premium which they must pay.

3. **§36B(b)(3)** provides that the taxpayer's "required share" equals the taxpayer's "household income" multiplied by an "applicable percentage" for the tax year. The "applicable percentage" for a tax year is based on the taxpayer's income level relative to the federal poverty line (**FPL**) for the year. Within each income tier, a taxpayer's "applicable percentage" increases in a linear manner from the initial to the final premium percentage.

4. **§36B(b)(3)(A)(iii)(I)** provides that the "applicable percentage" table is indexed based on the rates of premium growth relative to the rates of income growth. The "American Rescue Plan Act of 2021" (**ARPA**) suspended indexing for the **2021** and **2022** tax years and substituted a statutory table with lower "applicable percentages", which resulted in a higher **PTC** for those years.

5. **Income Limit**: **§36B(c)(1)** provides that the **PTC** is generally available to individuals with "household income" between **100%** and **400%** of the **FPL**. Under the "American Rescue Plan Act of 2021", individuals with household income above **400%** of the **FPL** were eligible for the **§36B PTC** for tax years beginning in **2021** and **2022**, but not for later years.

6. **New Law**: As amended by Act Sec. 12001(a), **§36B(b)(3)(A)(iii)** provides that the **Inflation Reduction Act of 2022** extends the above **ARPA** rules for three additional years through **December 31, 2025**. The Act suspends indexing of the applicable percentage table for tax years beginning in **2023 through 2025**. Therefore, as a result the following "applicable percentages" will continue to apply for **2023-2025**:

Household Income Relative to FPL:	**Initial Percentage**	**Final Percentage**
Up to **150%**	**0%**	**0%**
150% to 200%	0%	2.0%
200% to 250%	2.0%	4.0%
250% to 300%	4.0%	6.0%
300% to 400%	6.0%	8.5%
400% and higher	**8.5%**	**8.5%**

Tax Professional Awareness: The table above is the same table that applied for tax years beginning in **2021** and **2022**.

Tax Professional Note: Because a taxpayer's "required share" is less under the above table than it otherwise would have been, the **§36B PTC** amount will be greater and the credit will be available to more taxpayers. Under pre-Act law, a taxpayer might have had to spend as much as **9.12%** of "household income" on health insurance premiums in **2023**. However, under the extension of the provision by the **Inflation Reduction Act of 2022**, that amount is capped at **8.5%** for **2023-2025**.

Tax Professional Awareness: According to the Congressional Budget Office, under pre-**American Rescue Plan Act of 2021** law, a **21-year-old** with income at **150%** of **FPL** in **2021** would be eligible for a **§36B PTC** of about **$3,500.** However, under the **American Rescue Plan Act of 2021**, and now the **Inflation Reduction Act of 2022**, that same individual's **§36B PTC** increases to about **$4,300.** (Congressional Budget Office Cost Estimate, Revised **February 17, 2021**, p. 11)

7. As amended by Act Sec. 12001(b), **§36B(c)(1)(E)** provides that taxpayers with "household Income" greater than **400%** of **FPL** remain eligible for **PTC** for tax years beginning in **2023** through **2025**. Therefore, the **§36B PTC** is available to taxpayers with household incomes that exceed **400%** of the **FPL**, as it was in **2021** and **2022**.

   Example: Don is a **45-year-old** single individual with "household income" of **$58,000.** This places him at **450%** of the **FPL** in **2021**. Under pre-**American Rescue Plan Act of 2021** law, he would not have been eligible for the **§36B PTC**. However, under the **American Rescue Plan Act of 2021** and now the **Inflation Reduction Act of 2022**, he is eligible for a **§36B PTC** of about **$1,250.** (Congressional Budget Office Cost Estimate, Revised **February 17, 2021**, p. 12).

   Tax Professional Awareness: This change allows more people to claim the **§36B PTC** for **2023 through 2025** than would have qualified under pre-Act law.

8. **Effective Date**: These amendments apply to tax years beginning after **December 31, 2022**. (Act Sec. 12001(c))

E. §25C: Extension, Increase, and Modifications of Nonbusiness Energy Property Credit Form 5695, Page 2

1. Before the enactment of the "**Inflation Reduction Act of 2022**", **§25C(g)(2)** provided that the **§25C** "Nonbusiness Energy Property Credit" had **expired** on **December 31, 2021**. Prior to **January 1, 2022**, **§25C(a)** provided that individual taxpayers were allowed a personal credit for specified "nonbusiness energy property expenditures" placed in service in their principal residence that was in the United States. Therefore any second home did not qualify for the credit.

2. **§25C(a)** provided that the credit for a tax year was an amount equal to the sum of:

   a. **10%** of the amount paid or incurred by the taxpayer for "qualified energy efficiency improvements" installed during that year, and

   b. the amount of the "residential energy property expenditures" paid or incurred by the taxpayer during that year.

3. **§25C(c)** provided that "qualified energy efficiency improvements" were any "energy efficient building envelope components" that met specified energy efficiency certification requirements. The "building envelope" includes the following items of a taxpayer's "principal residence" specifically and permanently designed to reduce heat gain or heat loss:

   a. exterior windows that meet or exceed the version **6.0 Energy Star** Program requirements,

   b. exterior doors that meet or exceed the version **6.0 Energy Star** Program requirements,

   c. skylights that meet or exceed the version **6.0 Energy Star** Program requirements, and

   d. metal roofs with appropriate pigmented coatings or asphalt roofs with appropriate cooling granules that must meet or exceed the **Energy Star** program requirements in effect at the time of purchase or installation.

Tax Professional Reminder: §25C(b)(2) provides a limited credit of only **$200** for windows. In addition, the credit does not include amounts paid for any on-site preparation, assembly, or original installation of the building envelope component.

In addition, the **§25C** credit is not allowed for any amounts provided for by "subsidized energy financing". "Subsidized energy financing" is defined as amounts provided under a federal, state, or local program where the principal purpose is to provide subsidized financing for projects designed to conserve or produce energy.

Tax Professional Awareness: For purposes of the allowable credit, a taxpayer can rely on a manufacture's **certification** in writing that a building envelope component is an eligible building envelope component". The taxpayer does not need to attach the **certification** to the tax return but must keep it for their records.

4. **§25C(b)(3)** provides credits for residential energy property costs of fixed dollar amounts ranging from **$50** to **$300** for "energy-efficient building property" including:

    a. qualified natural gas, propane, or oil furnaces,

    b. qualified natural gas, propane, or oil hot water boilers,

    c. electric heat pumps,

    d. certain electric heat pump water heaters,

    e. central air conditioners which, achieves the highest efficient tier established by the Consortium for Energy Efficiency as in effect on **January 1, 2009**,

    f. certain advanced main air circulating fans used in natural gas, propane or oil furnaces and natural gas, propane, or oil water heaters having an annual electricity use of not more than **2%** of the total annual energy use of the furnace based on Department of Energy test procedures (limited to **$50**), and

    g. natural gas, propane or oil water heaters.

    Tax Professional Note: Residential energy property costs include any labor costs properly allocable to on-site preparation, assembly, or original installation of the energy property.

5. This amount is subject to a lifetime cap of **$500,** and the credit is reported on IRS **Form 5695** on **page 2**.

Tax Professional Awareness: All of these energy improvements must meet **Energy Star Program requirements** and other criteria established by the 2009 International Energy Conservation Code as in effect on the date of enactment of the "American Recovery and Reinvestment Act of 2009".

In addition, the credits are only available for the taxpayer's **principal residence** which is in the United States which would be the residence allowable for the **§121 exclusion** for which the taxpayer would be owning and occupying the residence for a cumulative period of **2** out of **5** years prior to the date of sale. In addition, any improvements made must be for a component which can reasonably be expected to remain in use for at least **5** years. Also **§25C(f)** provides that the taxpayer must reduce the adjusted basis of the principal residence by the amount of the credit allowed.

Tax Professional Note: Married Taxpayers With More Than One Home: If both the taxpayer and spouse owned and lived apart in **separate main homes**, then the limit on the amount of the credit applies to **each spouse separately**. If filing separate returns, both spouses would complete a separate **Form 5695.** If filing a joint return, then you will calculate **each spouse's §25C** energy efficient home improvement credit as follows:

1. Complete lines **17a through 17c** and **19 through 24** of a separate **Form 5695** for each main home.
2. Calculate the amount to be entered on **line 24** of both forms (but not more than **$500** for each form) and enter the combined amount on **line 24** of one of the forms.
3. On **line 25,** of the form with the combined amount on **line 24**, cross out the preprinted **$500** and enter **$1,000.**
4. On the dotted line to the **left of line 25**, enter "More than one main home". Then, complete the rest of this form, including **line 18**. The amount on **line 18** can *exceed* **$500.**
5. Attach both **Forms 5695** to the joint return.

Joint Occupancy: If the taxpayer owned a home jointly with someone *other than* a spouse, then each owner must complete their own **Form 5695.** To calculate the credit, there are no maximum qualifying costs for insulation, exterior doors, and a metal or asphalt roof. Enter the amounts taxpayer paid for these items on the appropriate lines of **Form 5695, Part II**. For windows and residential energy property costs, the amount allocable to the taxpayer is the *smaller of*:

1. The amount the taxpayer paid, or
2. The maximum qualifying cost* of the property multiplied by a **fraction**. The **numerator** is the amount each taxpayer paid and **denominator** is the total amount paid by **all** owners.

*$2,000 for windows, **$300** for energy-effecitent building property; **$150** for qualified natural gas, propane, or oil furnace or hot water boiler; or **$50** for an advanced main air circulating fan.

Tax Professional Awareness: In order to meet the energy efficient requirements based on the type of "energy-efficient building property" the following must be satisfied:

- An electric heat pump water heater that yields a Uniform Energy Factor of *at least* **2.0** in the standard Department of Energy test procedure.
- An electric heat pump that achieves the highest efficiency tier established by the Consortium for Energy Efficiency (CEE) as in effect on **January 1, 2009**.
- A central air conditioner that achieves the highest efficiency tier that has been established by the CEE as in effect on **January 1, 2009**.
- A natural gas, propane, or oil water heater that has a Uniform Energy Factor of at least 0.82 or a thermal efficiency of at least **90%**.
- A natural gas, propane, or oil furnace or hot water boiler that achieves an annual fuel utilization rate of at least 95.
- An advanced main air circulating fan used in a natural gas, propane, or oil furnace that has an annual electricity use of not *more than* **2%** or the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

Manufacturer's Certification: For purposes of taking the **§25C** credit, the taxpayer can rely on a manufacturer's certification in writing that a product is qualified energy property. The certification does not have to be attached to the return. The taxpayer is required to keep the certification in their records.

6. The **Inflation Reduction Act of 2022** extends the **§25C** existing provisions retroactively for **2022**. However the **§25C** provision are amended beginning in the tax years beginning after **December 31, 2022**.

7. **New Law**: Under the **Inflation Reduction Act of 2022**, **§25C(g)(2)** now provides that taxpayers may take the credit for "energy-efficient property" placed in service before **January 1, 2033**, as amended by **Act Sec. 13301(a).**

   Tax Professional Legislative Update: The Legislation changes the name of **§25C** from "Nonbusiness Energy Property Credit" to the "Energy Efficient Home Improvement Credit"

8. **Increased Credit**: **§25C(a)** now provides an increased credit for a tax year to an amount equal to **30%** of the sum of:

   a. the amount paid or incurred by the taxpayer for "qualified energy efficiency improvements" installed during that year, and

   b. the amount of the "residential energy property expenditures" paid or incurred by the taxpayer during that year as amended by Act Sec. 13301(b).

9. **§25C(a)** also now provides for an increased credit for amounts spent under **§25C(a)(3)** for a "home energy audit" as amended by Act Sec. 13301(f)(1). New **§25C(b)(6)(A)** provides that the amount of the increase due to a home energy audit cannot exceed **$150,** as amended by Act Sec. 13301(f)(1) of the Act.

10. **Qualified Energy Efficiency Improvements: Amended §25C(c)**:

    a. **revises** the energy efficiency certification requirements for building envelope components,

    b. **eliminates** treatment of roofs as building envelope components, and

    c. **adds** air sealing insulation to the definition of a "building envelope component", as amended by Act Sec. 13301(d) of the Act.

Tax Professional Note: Improvements to or replacements of panel board, sub-panel boards, branch circuits, or feeders used with qualifying property are also costs which are eligible for the credit.

11. **Residential Energy Property Expenditures**: **§25C(d)** now provides that the definition of "residential energy property expenditures" is substantially revised. It includes the **repeal** of the requirement that "residential energy property expenditures" must be made with respect to the taxpayer's **principal residence**, as amended by Act Sec. 13301(e) of the Act.

12. The term "residential energy property" means expenditures made by the taxpayer for "qualified property" which is:

    a. installed on or in connection with a "dwelling unit" located in the United States and used by the taxpayer as a residence, and

    b. originally placed in service by the taxpayer, and

    c. reasonably expected to remain in use for at least **5 years**.

13. The term "residential energy property" includes expenditures for **labor costs** properly allocable to the on-site preparation, assembly or original installation of the property.

14. **Annual Limitation in-lieu of a Lifetime Limitation**: The Act **repeals** the "lifetime credit limitation." Amended **§25C(b)** now **limits** the allowable credit to **$1,200** per taxpayer **per year**. In addition, there are **annual limits** of **$600** for credits with respect to "residential energy property expenditures", which are windows, and skylights, and **$250** for any **exterior** door with a **$500** total limit for all **exterior** doors.

    Example #1: §25C "residential energy property expenditure" credit. In **2023** Don spends **$2,500** on **Energy Star** most-efficient windows, **$700** on one Energy Star exterior door and **$900** on a second **Energy Star** exterior door. Don's credit is calculated as follows:

    Total Windows **$2,500** x **30%** = **$750**: the credit is the lesser of **$750** or **$600.** Therefore, Don's credit for all windows is **limited** to **$600.**

    Exterior Door #1: **$700** x **30%** = **$210**: the credit is the lesser of **$250** or **$210.** Therefore, Don's credit for Door #1 is **limited** to **$210.**

Exterior Door #2: **$900** x **30%** = **$270**: the credit is the lesser of **$250** or **$270.** Therefore, Don's credit for Door #2 is **limited** to **$250.**

The maximum credit for all doors is **$500.** Don's credit for all doors is **limited** therefore to the lesser of **$500** for Door #1 for **$210** and Door #2 for **$250** for a total of **$460.**

Don's total "residential energy property expenditure" credit in **2023** is **$1,060** which is **$600** for all windows and **$460** for all **exterior** doors.

Example #2: Don adds air sealing insulation to his home in **2023** at a cost of **$5,000.** His maximum credit is the lesser of **30%** x **$5,000** = **$1,500** or **$1,200.** Therefore, Don's maximum credit for **2023** is **$1,200.**

15. Not withstanding these limitations, a **separate $2,000 annual limit** applies with respect to amounts paid or incurred for:

    a. specified heat pumps,

    b. heat pump water heaters, and

    c. biomass stoves and boilers.

    *These items are amended by Act Sec. 13301(c).

Example: The heat pump and biomass exception: The **$1,200** annual limit and the **$600** residential energy property limit do not apply to heat pumps and biomass stoves and boilers. Heat pumps and biomass stoves and boilers have a **separate annual credit cap** of **$2,000.** Therefore, a taxpayer could spend up to **$6,667** on a new heat pump or biomass stove or boiler and still be eligible for the full credit of **30%** × **$6,667** = **$2,000.**

Example: In **2023**, Don spends **$5,000** to upgrade their home's insulation and **$6,600** to install a new heat pump. His credit is calculated as follows:

Insulation: lesser of **30%** x **$5,000** = **$1,500** or **$1,200**:	**$1,200**
Heat Pump: lesser of **30%** x **$6,600** = **$1,980** or **$2,000**:	**$1,980**
Total Credit for 2023	**$3,180**

Tax Professional Awareness: The Legislation also provides that the required energy-efficiency standards are modified and changed to update overtime *without* additional legislative action by Congress.

16. **New §25C(a)(3) Home Energy Audit**: The credit is increased by amounts spent for a "home energy audit" as amended by Act Sec. 13301(f)(1). **§25C(e)** provides that a "home energy audit" is defined as an inspection and **written report** with respect to a "dwelling unit" located in the United States and owned or used by the taxpayer as the taxpayer's "principal residence" under **§121** which:

    a. identifies the most significant and cost-effective energy efficiency improvements with respect to such dwelling unit, including an estimate of the energy and cost savings with respect to each such improvement, and

    b. is conducted and prepared by a "home energy auditor" that meets the **certification** or other requirements specified by the Secretary in regulations and other guidance, as prescribed by the Secretary not later than **365 days** after the date of enactment, as amended by Act Sec. 13301(f)(3)(A).

17. **§25C(b)(6)(A)** provides that the additional credit amount allowed with respect to a "home energy audit" cannot exceed **$150.** Added by Sec. 13301(f)(2) of the Act. **§25C(b)(6)(B)** provides that there is a "substantiation requirement". **No** credit shall be allowed unless the taxpayer includes with the taxpayer's return, **information** or **documentation** as the Secretary may require.

18. **Lack of Substantiation**: **§6213(g)(2)** is amended by providing under **§25C(b)(6)(B)** that an **omission** of information or documentation will **disallow** the credit.

19. **§25C(h)(1) Identification Number Requirement**: The Act provides that no credit shall be allowed with respect to any item of "specified property" placed in service after **December 31, 2024**, unless the item is:

    a. produced by a "qualified manufacturer", and

    b. the taxpayer includes the "qualified product identification number" of the item on the return of tax for the tax year. Added by Act Sec. 13301(g)(1).

20. **§25C(h)(2)** provides that the term "qualified product identification number" is the product identification number assigned to an item of "qualified property" by the "qualified manufacturer" under a methodology that will ensure that the number (including any alphanumeric) is unique to each such item. This provision is added by Act Sec. 13301(g)(1).

21. **§25C(h)(3)** provides that a "qualified manufacturer" is any manufacturer of "specified property" which enters into an agreement with the Secretary which provides that the manufacturer will comply with the "product identification number requirements" as added by Act Sec. 13301(g)(1). The manufacturer must label the item with such number in such manner as the Secretary may provide and must make periodic written reports (at such times and in such manner as the Secretary may provide) of the product identification numbers.

22. An **omission** of a correct product identification number is treated as provided under **§6213(g)(2)(S)** as a mathematical or clerical error subject to the summary assessment and abatement procedure for such error. Added by Act Sec. 13301(g)(2))

    Tax Professional Reminder: A summary assessment disallows the taxpayer the right to submit a petition to Tax Court for resolution.

23. **Effective Dates.** These provisions **generally apply** to property placed in service after **December 31, 2022**, as specified by Act Sec. 13301(i)(1).

    However, the **extension** of the credit by Act Sec. 13301(a) for the "**$500** lifetime credit" applies to property placed in service after **December 31, 2021**, as amended by Act Sec. 13301(j)(2).

    The **identification number requirement** added by Act Sec. 13301(g) applies to property placed in service after **December 31, 2024**, as amended by Act Sec. 13301(j)(3).

F. §25D: Extension and Modification of Residential Clean Energy Credit

Form 5695, Page 1

1. Before the enactment of the **Inflation Reduction Act of 2022**, **§25D(a)** provided that individual taxpayers were allowed a personal tax credit, known as the "residential energy efficient property" (**REEP**) credit, for:

    a. solar electric,

    b. solar hot water,

    c. fuel cell,

    d. small wind energy,

    e. geothermal heat pump, and

    f. biomass fuel property **installed in homes**. *Prior to* **2023**, the tax credit for biomass fuel was allowed with standalone storage. In **post-2022** years the credit for biomass fuel must have *at least* **3 kilowatt hours** of storage and be **connected** to the taxpayer's dwelling unit.

2. **§25D(h)** provided that the credit was allowed for property installed in homes for tax years beginning before **January 1, 2024**.

3. **§25D(b)(1)** provided that for property placed in service after **December 31, 2019**, and before **January 1, 2023**, the **REEP** credit rate had an "applicable percentage" which was **26%**. Therefore, the **REEP** credit was **26%** of the taxpayer's "qualified expenditures" of the items reported above. **§25D(g)(2)** provided that there was a **dollar limit** applied to the credit for **fuel cell property**.

    §25D(g)(3) provided that for property placed in service after **December 31, 2022**, and before **January 1, 2024**, the "applicable percentage" was scheduled to be **22%.**

4. **New Law**: Act Sec. 13302(a)(1) **amends** the law and now **§25D(h)** provides that the credit is available for property installed in years before **2035**. The Act also makes the credit available for "qualified battery storage technology" expenditures and provides a definition of those expenditures in **§25D(a)(6)** as amended by Act Sec. 13302(b)(1), and **§25D(d)(6)** is amended by Act Sec. 13302(b)(2).

5. **§25D(d)(6)** defines the term "qualified battery storage technology expenditure" as an expenditure for battery storage which:

    a. Is installed in connection with a "dwelling unit" located in the United States and used as a residence by the taxpayer, and

    b. Has a capacity of not less than 3 kilowatt hours.

6. Under the Act, **§25D(g)** now provides that the "applicable rate" is:

    a. **26%** for property placed in service before **January 1, 2022**,

    b. **30%** for property placed in service after **December 31, 2021**, and before **January 1, 2033**,

    c. **26%** for property placed in service after **December 31, 2032**, and before **January 1, 2034**, and

    d. **22%** for property placed in service after **December 31, 2033**, and before **January 1, 2035**.

    These are all amended by Act Sec. 13302(a)(2).

7. **Effective Dates**: These provisions **generally apply** to expenditures made after **December 31, 2021**, as amended by Act Sec. 13302(d)(1). However, the allowance of the credit for "qualified battery storage technology expenditures", and the definition of that technology, apply to expenditures made after **December 21, 2022**, as amended by Act Sec. 13302(d)(2).

    Example #1: Don installs a **$20,000** solar panel system on his dwelling unit that he uses as a home in **2022**. His credit is **30%** of the cost of the **$20,000** expenditure for the system. As a result, his credit is **$6,000.**

    Example #2: If Don waits to install the **$20,000** solar panel system on his dwelling unit that he uses as a home in **2033,** then his credit will be only **26%** of the **$20,000** expenditure for the system. As a result, his credit will be limited to **$5,200.**

    Tax Professional Reminder: the **§25D** Residential Clean Energy Credit is not a refundable credit but it can be carried forward to reduce the taxpayer's tax liability in future years.

8. **Qualified Solar Electric Property Costs Defined**: "Qualified solar electric property costs" are costs for property that uses solar energy to generate electricity for use in a taxpayer's home located in the United States. No costs relating to a solar panel or other property installed as a roof (or portion thereof) will **fail** to qualify *solely because* the property constitutes a structural component of the structure on which it is installed.

    a. Some solar roofing **tiles** and solar roofing **shingles** serve the function of both traditional roofing and solar electric collectors, and therefore serve functions of both solar electric generation and structural support. These solar roofing tiles and solar roofing shingles can qualify for the credit. This is in **contrast** to structural components such as a roofs' decking or rafters that serve only a roofing or structural function and therefore do not qualify for the credit.

    b. The home does not have to be the taxpayer's main home. It only has to be a "dwelling unit" that the taxpayer uses as a home. A home is where the taxpayer lives and can include a house, houseboat, mobile home, cooperative apartment, condominium, and a manufactured home that conforms to Federal Manufactured Home Construction and Safety Standards.

    c. If a taxpayer made energy saving improvements to *more than* one home that the taxpayer used as a residence, then the total of those costs are allowed to be reported on one **Form 5695.**

    d. The taxpayer must reduce the basis of the home by the amount of any **§25D** credit allowed.

9. **Qualified Solar Water Heating Property Costs Defined**: "Qualified solar water heating property costs" are costs for property to heat water for use in a taxpayer's home located in the United States if *at least* **half** of the energy used by the solar water heating property for such purpose is derived from the sun. No costs relating to a panel or other property installed as a roof (or portion thereof) will **fail** to qualify *solely because* the property constitutes a structural component of the structure on which it is installed.

a. Some solar roofing **tiles** and solar roofing **shingles** serve the function of both traditional roofing and solar electric collectors, and therefore serve functions of both solar electric generation and structural support. These solar roofing **tiles** and solar roofing **shingles** can qualify for the credit. This is in **contrast** to structural components such as a roofs' decking or rafters that serve only a roofing or structural function and therefore do not qualify for the credit.

b. In order to qualify for the credit, the property must be **certified** for performance by the nonprofit Solar Rating Certification Corporation, or a comparable entity endorsed by the government of the **state** in which the property is installed. The home does not have to be the taxpayer's main home.

10. **Qualified Small Wind Energy Property Costs:** "Qualified small wind energy property costs" are costs for property that uses a wind turbine to generate electricity for use in connection with the taxpayer's home located in the United States. The home does not have to be the taxpayer"s main home.

11. **Qualified Geothermal Heat Pump Property Costs**: "Qualified geothermal heat pump property costs" are costs for qualified geothermal heat pump property installed on or in connection with the taxpayer's home located in the United States. "Qualified geothermal heat pump property" is any equipment that uses the ground or ground water as a thermal energy source to heat the taxpayer's home or as a thermal energy sink to cool the home. In order to qualify for the credit, the geothermal heat pump property must meet the requirements of the Energy Star program that are in effect at the time of purchase. The home does not have to be the taxpayer's main home.

12. **Qualified Biomass Fuel Property Costs**: "Qualified biomass fuel property costs" are costs for property which uses the burning of biomass fuel to heat a "dwelling unit" located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit and has a thermal efficiency rating of *at least* **75%** (measured by the higher heating value of the fuel). Biomass fuel means any plant derived fuel available on a renewable or recurring basis.

13. **Qualified Fuel Cell Property Costs:** "Qualified fuel cell property costs" are costs for qualified fuel cell property installed on or in connection with the taxpayer's **main home** located in the United States. "Qualified fuel cell property" is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means. In order to qualify for the credit, the fuel cell property must have a "nameplate capacity" of *at least* **one-half kilowatt** of electricity using an electrochemical process and an electricity-only generation efficiency *greater than* **30%**.

    Tax Professional Awareness: Costs allocable to a swimming pool, hot tub, or any other energy storage medium which has a function *other than* the function of such storage does not qualify for the **§25D** residential clean energy credit.

14. **Joint Occupancy Related Issues**: If a taxpayer occupied their home jointly with someone *other than* their spouse, then each occupant must complete their own **Form 5695.** In order to properly calculate the credit, the maximum qualifying costs that can be taken into account by **all** occupants for "qualified fuel cell property costs" is **$1,667** for *each* **one-half kilowatt** of capacity of the property. The amount **allocable** to a taxpayer for "qualified fuel cell property costs" is the *lesser of*:

    a. The amount the taxpayer actually paid, or

    b. The maximum qualifying cost of the property multiplied by a **fraction**.

    The **numerator** is the amount the taxpayer actually paid and the **denominator** is the total amount paid by all other occupants.

    These rules do not apply to married individuals filing a joint return.

    Example: Don owns a house with Donna where they both reside. In **2022**, they installed qualified fuel cell property at a cost of **$20,000** with a **kilowatt capacity of 5**. Don paid **$12,000** towards the cost of the property and Donna paid the remaining **$8,000.** The amount to be **allocated** is **$16,670** (**$1,667** x **10** (**kilowatt capacity x 2**)). The amount of cost allocable to Don is **$10,002** (**$16,670** x **$12,000**/**$20,000**). The amount of cost allocable to Donna is **$6,668** (**$16,670** x **$8,000**/**$20,000**).

15. **Applicable Costs for All §25D Property**: For purposes **§25D** credits, costs are treated as being paid:

a. when the original installation of the item is completed, or

b. in the case of costs connected with the reconstruction of the taxpayer's home, when the original use of the reconstructed home begins.

16. For purposes of the **§25D** residential clean energy credit, costs connected with the **construction** of a home are treated as being paid when the taxpayer's **original use** of the constructed home begins. If *less than* **80%** of the use of an item is for nonbusiness purposes, then only that portion of the costs that is *allocable* to the nonbusiness use can be used to determine the **§25D** credit.

17. If the taxpayer receives a subsidy from a public utility for the purchase or installation of an energy conservation product and that subsidy was not included in the taxpayer's gross income, then the taxpayer must reduce the cost of the product by the amount of that subsidy *before* calculating the **§25D** credit. This rule also applies if a third party (such as a contractor) receives the subsidy on the taxpayer's behalf.

Tax Professional Awareness: Applying the §25C and §25D credits to condominiums and cooperative housing associations: If a cooperative housing association installs property or improvements that qualify for a credit under **§25C** or **§25D**, **then** the tenant-stockholders of the corporation can claim the credit in much the same way they claim an itemized deduction for property taxes. Therefore, the expenditure is allocated to the tenant-stockholder on their "proportionate share" of the expenditure.

Example: Don is an owner in a housing cooperative owns **55 shares**, which is **2.8947%** of the total outstanding stock in the corporation's **1,900 shares**. If the building spends **$60,000** in **2025** to replace some of the windows with **Energy Star** most efficient windows, then Don can report on his **2025** personal tax return that he spent **$1,737** on the windows and claim a **§25C** credit of **$521.**

Also, if Don spent the **$1,737** on his own for the windows without going through the housing cooperative, then he is still eligible for the **§25C** credit. Refer to the Office of Chief Counsel's letter in IRS **Information Letter 2010-0244**, which ruled that when a tenant-stockholder arranges for and purchases the improvement themselves, they are entitled to a credit based on the entire expenditure.

G. §179D Accelerated Cost Recovery for Green Building Property

1. **§179D(a)** provides for an accelerated cost recovery **deduction** for "energy efficient commercial building" (**EECB**) property for the year placed in service. **§179D(b)** provides that the maximum amount of the deduction allowed for a year was calculated by multiplying a statutory dollar amount (**$1.80**), adjusted for inflation (**$1.88** for **2022**), by the square footage of the building. Then, the product was reduced by the total **EECB** property deductions taken related to the building in all prior years to arrive at the "applicable limitation".

2. **EECB** property must satisfy certain installation requirements. **§179D(c)** provided that those requirements included **certification** of being part of a plan for annual energy and power savings of **50% or more**, based on a comparison to the most recent Reference Standards of "STANDARD 90.1-2007" published jointly by two engineering societies the "American Society of Heating, Refrigerating, and Air-Conditioning Engineers" and the "Illuminating Society of North America".

3. **§179D(d)(1)** provided that if a taxpayer did not satisfy that **certification**, then a partial deduction could be claimed if certain building systems satisfied energy-savings targets established by the IRS.

4. **§179D(d)(4)** provided that there was a separate rule for allocation of the deduction when **EECG** property was installed on/in "government" property.

5. **New Law:** The **Inflation Reduction Act of 2022** amends **§179D(c)(1)(D)** and **lowers** the minimum **EECB** efficiency standard required for deduction benefits from a **50%** reduction in total annual energy and power costs to a **25%** reduction. This is amended by Act Sec. 13303(a)(2).

6. The Act **modifies the formula** for calculating the maximum deduction. The Act switches to an "applicable dollar value" (**ADV**) multiplication factor, which is variable based on the percentage of total annual energy and power cost reductions for the building. The **ADV** is **$0.50,** and it can be increased by **$0.02** for each percentage point cost reduction over **25%** (capped at **$1**). On **October 18, 2022**, the IRS issued **Rev. Proc. 2022-38** and the **ADV** for **2023** is increased to **$0.54** but not above **$1.07.**

7. **§179D(b)** provides additionally, that for the past deductions reduction factor, instead of totaling from all prior years, the lookback is the three (four in some situations) immediately preceding tax years. This is amended by Act Sec. 13303(a)(1).

8. The Act also provides an opportunity to exponentially increase the **ADV**. **§179D(b)(3)** provides that if, among other things, the "prevailing wage" and "apprenticeship requirements" are satisfied, then the **ADV** is **$2.50** increased by **$0.10** per eligible cost reduction percentage point, capped at **$5.00.** This provision is amended by Act Sec. 13303(a)(1). For **2023**, the **ADV** is increased to **$2.68** but not above **$5.36.** The increased **$0.10** eligible cost reduction percentage point is increased to **$0.11.**

9. Under **§179D(c)(2)**, the Act updates the rules for determining what non-IRS standards and methods are incorporated for application to a taxpayer for any given year, as modified by Act Sec. 13303(a)(3).

10. **§179D(c)(2)(B)** includes a change from the two-years-before-start-of-construction incubation period for the applicable "most recent" version to a four-years-before-placed-in-service period. This is modified by Act Sec. 13303(a)(4); and **§179D(d)(1)** is renumbered and modified by Act Sec. 13303(c).

11. Former **§179D(d)(1)** which allowed for **partial deductions** has been **eliminated** and struck by Act Sec. 13303(a)(5).

12. Renumbered **§179D(d)(3)** provides more detailed criteria for the allocation of the deduction when **EECB** property is installed on/in "tax-exempt" (replacing "government") property. This section was renumbered and modified by Act Sec. 13303(a)(6).

13. The Act establishes an **election** for a new "alternative deduction" for "energy efficient building retrofit" (Retrofit) property which is taken in the year of qualifying final certification. The "alternative deduction" requires a "qualified retrofit plan", and it looks to "percentage reductions in energy use intensity" rather than "total annual energy and power costs". The building must be *at least* **5 years** old.

14. **§179D(f)** provides that the "alternative deduction" cannot exceed the "aggregate adjusted basis" of Retrofit property placed in service pursuant to the plan. This provision is added by Act Sec. 13303(a)(7) following the elimination by Act Sec. 13303(a)(5).

15. The Act also adds a modification of deduction timing for **§312(k)(3)(b)(ii) REIT** earnings and profits. This is added by Act Sec. 13303(b).

16. **Effective Date:** These provisions, except for the "alternative deduction" for Retrofit property, apply to tax years beginning after **December 31, 2022**. The provisions of **§179D** for the "alternative deduction" apply to property **placed in service** after **December 31, 2022**, if such property is placed in service pursuant to "qualified retrofit plan" **established** after **December 31, 2022**. This change is enacted from Act Sec. 13303(d).

H. §45L: Extension, Increase, and Modifications of New Energy Efficient Home Credit (Builder's Credit) Form 8908

1. Before the enactment of the **Inflation Reduction Act of 2022**, **§45L(g)** provided that a New Energy Efficient Home Credit (**NEEHC**) was available to eligible contractors for "qualified new energy efficient homes" **acquired by a homeowner** before **January 1, 2022**. **§45L(c)** provided that a home had to satisfy "specified energy saving requirements" in order to qualify for the credit.

2. **§45L(a)(2)** provided that the credit was either **$1,000** or **$2,000,** depending on which "energy efficiency requirements" the home satisfied.

3. **New Law**: The Act has amended **§45L(g)** and now makes the credit available for "qualified new energy efficient homes" acquired before **January 1, 2033**, as amended by Act Sec. 13304(a).

4. **§45L(a)(2)** now provides that the amount of the credit is increased, and can be **$500, $1,000, $2,500,** or **$5,000,** depending on which "energy efficiency requirements" the home satisfies, as amended by Act Sec. 13304(b). **§45L(g)(1)** provides that the amount of the credit also depends on whether the construction of the home meets the prevailing "wage requirements" as amended by Act Sec. 13304(d). The issue of "wage requirements" will be discussed below.

5. **Energy Saving Requirements**: **§45L(c)(1)(B)** provides that a "dwelling unit" qualifies for the credit if it's **certified** as a "zero energy ready home" under the "zero energy ready home program" of the Department of Energy as in effect on **January 1, 2023** (or any successor program determined by the Secretary), and it satisfies a set of requirements based up the **type of home**, as amended by Act Sec. 13304(c).

6. Under the "single-family home requirements," a **§45L(c)(2)** provides that a "dwelling unit" qualifies for the credit if it meets:

   a. in the case of a "dwelling unit" **acquired** before **January 1, 2025**, the "Energy Star Single-Family New Homes National Program Requirements **3.1"**, **or**

   b. in the case of a "dwelling unit" **acquired** after **December 31, 2024**, the "Energy Star Single-Family New Homes National Program Requirements **3.2"**, **plus**

   the most recent **Energy Star Single-Family New Homes Program Requirements** applicable to the location of such dwelling unit (as in effect on the latter of **January 1, 2023**, or **January 1** of two calendar years before the date the dwelling unit was **acquired**); **or**

   alternatively, the "dwelling unit" meets the most recent **Energy Star Manufactured Home National Program Requirements** as in effect on the latter of **January 1, 2023**, or **January 1** of two calendar years before the date the dwelling unit is **acquired**, as amended by Act Sec. 13304(c).

7. Under the multi-family home requirements, **§45L(c)(3)** provides that a dwelling unit qualifies for the credit if:

   a. the "dwelling unit" meets the most recent Energy Star Multi-family New Construction **National** Program Requirements (as in effect on either **January 1, 2023**, or **January 1** of three calendar years before the date the dwelling was **acquired**, whichever is later), **and**

   b. the dwelling unit meets the most recent Energy Star Multi-family New Construction **Regional** Program Requirements applicable to the **location** of the dwelling unit (as in effect on either **January 1, 2023**, or **January 1** of three calendar years before the date the dwelling was acquired, whichever is later). Amended by Act Sec. 13304(c).

8. **Prevailing Wage Requirements**: New **§45L(g)(2)(A)** provides that under the "prevailing wage requirements", for any "qualified residence", the taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractors and subcontractor or subcontractor in the construction of the residence are paid wages at rates not less than the "prevailing rates" for construction, alteration, or repair of a similar character **in the locality** in which the residence is located as most recently determined by the Secretary of Labor. Amended by Act Sec. 13304(d).

9. **§45L(g)((2)(B)** provides that **failure** to satisfy the "prevailing wage requirements" can be cured under rules similar to those of **§45L(b)(7)(B)**, as amended by Act Sec. 13304(d).

   Tax Professional Awareness: §45L(b)(7)(B) (as amended by Act Sec. 13101(f)) provides that a taxpayer that **fails** to satisfy the "prevailing wage requirements" will be deemed to have satisfied those requirements if it pays to each affected worker an amount equal to the difference between the amount actually paid and the amount which would have been paid under the prevailing wages rules, plus interest, and pays a **$5,000** penalty per affected worker. The penalty is **$10,000** for "intentional disregard" for the law.

10. **Effect on Basis of Property Generating a New Energy Efficient Home Credit (NEEHC)**: **§45L(e)** provides under the Act, that the reduction in the increase in the basis of property resulting from an expenditure generating an **NEEHC** by an amount equal to the **NEEHC** does not apply in determining the adjusted basis of any property under the **§42** low-income housing credit). Amended by Act Sec. 13304(e).

11. **Regulations**: **§45L(g)(3)**, as added by Act Sec. 13304(d), provides that the IRS is to prescribe regulations and other guidance as necessary to carry out the purposes of the "prevailing wage requirements", including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the "prevailing wage requirements".

12. **Effective Date**: These provisions **generally apply** to "dwelling units" **acquired** after **December 31, 2022**. (Act Sec. 13304(f)(1)) However, the **extension of the credit** by **Act Sec. 13304(a)** applies to dwelling units **acquired** after **December 31, 2021**. (Act Sec. 13304(f)(2)), (**see Item 2. above under New Law**).

I. §30D: New Clean Vehicle Credit: Form 8936

1. Before the enactment of the **Inflation Reduction Act of 2022**, **§30D(a)** provided that a taxpayer could claim a credit for **each** "new qualified plug-in electric drive motor vehicle" (**NQPEDMV**) placed in service during the tax year.

2. **§30D(b)** provides that the amount of the **NQPEDMV** credit is the sum of:

   a. **$2,500**; plus

   b. for a vehicle that draws propulsion energy from a battery with not less than **5 kilowatt hours** of capacity, **$417** for each kilowatt hour of capacity in excess of **5 kilowatt hours**, but not in excess of **$5,000.**

   Therefore, the maximum credit is **$7,500,** regardless of weight.

3. **§30D(d)(1)** provides that a vehicle is an **NQPEDMV** if it meets certain requirements, including being propelled to a significant extent by an **electric motor** that has a capacity of at least **four kilowatt hours** and is capable of being recharged from an external source of electricity.

4. **§30D(e)** provides that the credit phases out beginning in the second calendar quarter after a manufacturer sells its' **200,000th** plug-in electric drive motor vehicle for use in the U.S. after **2009**.

5. For tax years before **2022**, a credit was also allowed for "qualified fuel cell motor" vehicles. **§30B** provides that a "qualified fuel cell motor vehicle" was a motor vehicle that was propelled by power from cells that convert chemical energy directly into electricity by combining oxygen with hydrogen fuel and that meets other requirements.

   Tax Professional Awareness: The **§30D** credit attributable to depreciable property (vehicles used for business or investment purposes) is treated as a **§38** general business credit. Any credit not attributable to depreciable property is treated as a personal credit.

   Partnerships and Subchapter-S Corporations are required to file **Form 8936** in order to claim the credit. All other taxpayers are not required to complete or file **Form 8936** if their only source for the credit is a partnership or Subchapter-S corporation. Instead the individual partners and shareholders can report the **§30D** credit directly on **Form 3800, Part III line 1(y)** as a General Business Credit. The partnership reports the **§30D** credit on **Schedule K-1** in **box 15** with a **Code P** and Subchapter-S corporations report the pass-through of the **§30D** credit on **Schedule K-1** in **box 13** with a **Code P**.

6. **New Law**: Act Sec. 13401(i)(1) amended **§30D** and now the **NQPEDMV** credit has been retitled the "Clean Vehicle Credit".

7. **Manufacturer Limitation Eliminated**: Act Sec. 13401(d) amended **§30D(e)** and the **limitation** on the number of vehicles eligible for the credit has been **eliminated**. Act Sec. 13401(k)(5) amends **§30D** and the **elimination** of the manufacturer **limitation** applies to **vehicles sold** after **December 31, 2022**.

8. **Calculation**: The Act changes how the "clean vehicle credit" is calculated. **§30D(b)** provides that taxpayers shall be eligible for a **$3,750** credit for meeting the "critical minerals requirement" and a separate **$3,750** credit for meeting the "battery component requirement", as amended by Act Sec. 13401(a), discussed below.

9. Act Sec. 13401(k)(3) provides that the change in the calculation rules applies to vehicles placed in service after the date on which the proposed guidance, described below in **§30D(e)(3)(B)**, is issued.

10. **Final Assembly Requirement**: In order to qualify for the credit, the Act also requires that "final assembly" of the vehicle occurs in **North America** (the "final assembly requirement"). As amended by Act Sec. 13401(b), **§30D(d)(1)(G)** provides that "final assembly" means the process by which a manufacturer produces a "new clean vehicle" at, or through use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle. Act Sec. 13401(k)(2), provides that the "final assembly requirement" **applies to vehicles sold after the date of enactment of the Act.**

Tax Professional Awareness: On **August 16, 2022**, the Treasury and IRS issued guidance in the form of frequently asked questions (**FAQs**) on changes regarding which vehicles qualify for the new EV credits under the **Inflation Reduction Act of 2022** (**IRA**), which was enacted the same day. The only change that goes into effect immediately is the Legislation's new requirement that the EV tax credit can only be used for electric vehicles "for which "final assembly occurred in North America." Therefore, certain electric vehicles are newly eligible for the tax credit while others are no longer eligible. Tax credits for "pre-owned" and "commercial clean vehicles" take effect in **2023** and more guidance will be released in the coming months, according to the **FAQs**.

The guidance listed a **two-step process** to check whether a vehicle's "final assembly" occurred in North America as follows:

First, consumers and dealers can check the Department of Energy's Alternative Fuels Data Center (**AFDC**) to see a list of Model Year 2022 and early **2023** electric vehicles that likely meet the North America final assembly requirement.

Second, they can enter the Vehicle Identification Number (VIN) into the National Highway Traffic Safety Administration's **VIN Decoder tool** and refer to the "Plant Information" field, which lists the "build plant" and country for the vehicle.

11. **Definition of New Clean Vehicle**: Act Sec. 13401(c)(1)(B)(iii)(I)) changes the definition of "new clean vehicle" (formerly known as an **NQPEDMV**) as follows:
    a. **§30D(d)(1)(F)(i)** provides that the "minimum battery capacity" is increased from four to **seven kilowatt-hours**,
    b. **§30D(d)(1)(H)** provides that the **seller** of a new clean vehicle is required to furnish a report to the buyer and the IRS (the "report requirement") containing:
        i. the name and taxpayer identification number of the buyer,
        ii. the vehicle identification number (**VIN**) of the vehicle, unless, in accordance with any applicable rules promulgated by the U.S. Department of Transportation, the vehicle is not assigned a **VIN**,
        iii. the battery capacity of the vehicle,
        iv. **verification** that the original use of the vehicle commences with the taxpayer; and

v. the maximum Clean Vehicle credit allowable to the buyer with respect to the vehicle.

These changes are amended by Act Sec. 13401(c)(1)(B)(v).

12. **§30D(d)(6)** provides that the term "new clean vehicle" includes any new "qualified fuel cell motor vehicle" as defined in **§30B(b)(3)** that meets the "final assembly and report requirements", as amended by Act Sec. 13401(c)(1)(D).

13. **§30D(d)(1)(C)** provides that the credit may only be claimed for vehicles made by a "qualified manufacturer", as amended by Act Sec. 13401(c)(1)(B)(ii).

14. **§30D(d)(3)** provides that in order to be a "qualified manufacturer", a manufacturer must enter into a **written agreement** with the IRS under which the manufacturer agrees to make periodic reports to the IRS providing **VINs** and other information related to each vehicle it manufactures that is required by the IRS, as amended by Act Sec. 13401(c)(1)(C)(iii).

15. **Critical Mineral Requirement**: As amended by Act Sec.13401(e)(1), **§30D(e)(1)(A)** provides that the "critical mineral requirement" is met for a vehicle if, with respect to the **battery** of the vehicle, the" percentage of the value" of the "applicable critical minerals", as defined **§45X(c)(6)** contained in the **battery** that were:

    a. **extracted** or **processed** in the United States or in any country with which the United States has a **free trade agreement** in effect, or

    b. **recycled** in North America, (**40%** for vehicles placed in service before **2024** increasing over time)

    is equal to or greater than the "applicable percentage", as certified by the "qualified manufacturer", in such form or manner as prescribed by the IRS.

16. As added by Act Sec. 13502(a), **§45X(c)(6)** provides that "critical minerals" include aluminum, antimony, barite, beryllium, cerium, cesium, chromium, cobalt, dysprosium, europium, fluorspar, gadolinium, germanium, graphite, indium, lithium, manganese, neodymium, nickel, niobium, tellurium, tin, tungsten, vanadium, yttrium, arsenic, bismuth, erbium, gallium, hafnium, holmium, iridium, lanthanum, lutetium, magnesium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, terbium, thulium, titanium, ytterbium, zinc, and zirconium.

17. The "applicable percentage" is different for **different tax years** and increases over time. As amended by Act Sec. 13401(e)(1), **§30D(e)(1)(B)** provides that for vehicles **placed in service** in different years the "applicable percentages" are as follows:

    a. for **2023**, the applicable percentage is **50%**,

    b. for **2024** or **2025**, the applicable percentage is **60%**,

    c. for **2026**, the applicable percentage is **70%**,

    d. for **2027**, the applicable percentage is **80%**,

    e. for **2028**, the applicable percentage is **90%**; and

    f. for **2029** and later years, **100%**.

18. **§30D(d)(7)(A)** provides that the term "new clean vehicle" does not include any vehicle placed in service after **December 31, 2024**, with respect to which **any** of the "applicable critical minerals" were **extracted, processed**, or **recycled by** a foreign entity of concern (as defined in section 40207(a)(5) of the **Infrastructure Investment and Jobs Act** (42 U.S.C. 18741(a)(5)). **§30D(d)(7)(A)** is added by Act Sec. 13401(e)(2) of the **Inflation Reduction Act of 2022**.

19. **Battery Component Requirement**: **§30D(e)(2)(A)** provides that the "battery component requirement" is met with respect to a vehicle if, with respect to the vehicle's battery, the "percentage of the value" of the components contained in the battery that were **manufactured or assembled in North America** is equal to or greater than the "applicable percentage", (as certified by the qualified manufacturer, in such form or manner as prescribed by the IRS), as amended by Act Sec. 13401(e)(1).

20. As amended by Act Sec. 13401(e)(1), **§30D(e)(2)(B)** provides that the same "applicable percentages" apply as for the "critical mineral requirement". As a result, the "applicable percentages" are as follows **depending on when** the vehicles are **placed in service**:

    a. for **2023**, the applicable percentage is **50%**,

    b. for **2024** or **2025**, the applicable percentage is **60%**,

    c. for **2026**, the applicable percentage is **70%**,

    d. for **2027**, the applicable percentage is **80%**,

e. for **2028**, the applicable percentage is **90%**; and

f. for **2029** and later years, **100%**.

21. **§30D(d)(7)(B)** provides that the term "new clean vehicle" does not include any vehicle placed in service after **December 31, 2023**, with respect to which **any** of the components contained in the battery of the vehicle were manufactured or assembled by a foreign entity of concern. (Amended by Act Sec. 13401(e)(2))

22. **IRS Guidance Requirement**: The IRS is required to issue such regulations or other guidance as it determines necessary to carry out the purposes of **§30D(e)** (the "critical mineral and battery component requirements"), including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of **§30D(e). §30D(e)(3)** provides that the IRS is required to issue proposed guidance no later than **December 31, 2022**, as amended by Act Sec. 13401(e)(1).

    Tax Professional Note: The "critical mineral and battery component requirements" apply to vehicles placed in service after the date on which this proposed guidance is issued. (Act Sec. 13401(k)(3))

23. **Manufacturer's Suggested Retail Price Limitation**: **§30D(d)(11)** provides that the "clean vehicle credit" is not allowed for a vehicle with a "manufacturer's suggested retail price" in excess of the "applicable limitation". For vans, sport utility vehicles, and pickups, the "applicable limitation" is **$80,000.** For any other vehicle, the "applicable limitation" is **$55,000.** (As amended by Act Sec. 13401(f))

24. **Modified Adjusted Gross Income Limitation**: **§30D(d)(10)** provides that no "clean vehicle credit" is allowed for any tax year if the **lesser of** the modified adjusted gross income (**MAGI**) of the taxpayer for the **current** or **preceding** tax year **exceeds** the "threshold amount" based on the taxpayer's filing status. The "threshold amounts" based on filing status are as follows:

    a. **$300,000** (for taxpayers filing joint returns or surviving spouses),

    b. **$225,000** (for heads of household), or

    c. **$150,000** (for other taxpayers).

25. For this purpose, Act Sec. 13401(f) states that **MAGI** is defined as adjusted gross income increased by any amount excluded from gross income under:

    a. **§911** foreign earned income and housing exclusions,

    b. **§931** income from Guam, American Samoa, or the Northern Mariana Islands, and

    c. **§933** income from Puerto Rico.

26. **Transfer of Credit**: **§30D(g)** provides that the taxpayer who acquires a new clean vehicle can elect, on or before the **purchase date**, to transfer the clean vehicle credit to the dealer who sold the vehicle in return for full payment of the credit amount. Making the election cannot limit the use or value of any other dealer or manufacturer incentive to buy the vehicle, nor can the availability or use of the incentive limit the ability of the taxpayer to make the election. Amended by Act Sec. 13401(g).

27. **§30D(g)(2)** provides that the **dealers must register** with the IRS and meet other requirements in order to offer the election to their purchasers. Amended by Act Sec.13401(g).

28. **§30D(g)(5)** provides that the dealer's payment to the purchaser is not income to the purchaser, nor deductible by the dealer. Amended by Act Sec. 13401(g).

29. **§30D(g)(7)** provides that the IRS will make "advance payments" to dealers in an amount equal to the cumulative amount of the "new vehicle credits" allowed with respect to any vehicles sold by the dealer for which the "election to transfer" the credit has been made. Rules similar to the rules of new **§6417(d)(6)** (excess elective payments of applicable credits) apply to "excess advance payments" of clean vehicle credits to dealers. Any "advance payments" are treated in the same manner as a refund due from a credit provision referred to in 31 USC 1324(b)(2) (relating to refunds of internal revenue collections). **§30D(g)(7)** is amended by Act Sec. 13401(g).

30. **§30D(g)(10)** provides that if a buyer who has elected to transfer the credit for a new clean vehicle to the dealer and has received a payment from the dealer in return, but whose **MAGI** exceeds the "applicable limit" discussed above, is required to **recapture** the amount of the payment. The buyer's income tax for the tax year in which the vehicle is placed in service is increased by the amount of the payment received by the buyer from the dealer. Amended by Act Sec. 13401(g).

Tax Professional Awareness: The rule allowing **transfer** of the clean vehicle credit applies to vehicles placed in service after **December 31, 2023**. (Act Sec. 13401(k)(4))

31. **Other Rules**: **§30D(d)(8)** provides that only one clean vehicle credit is allowed per vehicle. (Amended by Act Sec. 13401(f))

32. **§30D(d)(9)** provides that no clean vehicle credit is allowed with respect to any vehicle unless the taxpayer includes the **VIN** on the taxpayer's return. (Amended by Act Sec. 13401(f))

33. **Expiration**: **§30D(h)** provides that no clean vehicle credit will be allowed with respect to any vehicle placed in service after **December 31, 2032**. (Amended by Act Sec. 13401(h))

34. **Transition Rule**: A taxpayer who, after **December 31, 2021**, and before the **date of enactment** of the Act, **purchased**, or **entered into a written binding contract to purchase**, an **NQPEDMV** and placed the **NQPEDMV** in service on or after the date of enactment, **may elect** to treat the **NQPEDMV** as being **placed in service** before the date of enactment of the Act. (Act Sec. 13401(l))

    Tax Professional Note: This means that the taxpayer may **elect** to apply the old rules under **§30D** to the vehicle. The old rules are subject to the **manufacturer limitation** of **200,000** vehicles and no modified **AGI** test.

    Tax Professional Awareness on the Issue of a Written Binding Contract: Generally, a written contract is binding if it is enforceable under State law. In addition, it does not limit damages to a specified amount, such as by use of a liquidated damages provision or the forfeiture of a deposit. While the enforceability of a contract under State law is a facts-and-circumstances determination to be made under relevant State law, if a customer has made a significant non-refundable deposit or down payment, then it is an indication of a binding contract.

    In general, for federal income tax purposes a contract provision that limits damages to an amount equal to *at least* **5 percent** of the total contract price is not treated as limiting damages to a specified amount. For example, if a customer has made a non-refundable deposit or down payment of **5 percent** of the total contract price, then it is an indication of a binding contract. A contract is binding *even if* subject to a condition, as long as the condition is not within the control of either party. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions.

35. **Effective Date**: Except as provided above, the provision applies to vehicles placed in service after **December 31, 2022**. (Act Sec. 13401(k)(1))

J. §25E: New Credit for Previously Owned Clean Vehicles

1. As added by Act Sec. 13402(a) of the **Inflation Reduction Act of 2022**, new **§25E** provides that a "qualified buyer" who acquires and places in service a "previously owned clean vehicle" after **December 31, 2022**, is allowed an income tax credit equal to the lesser of:

   a. **$4,000,** or

   b. **30%** of the vehicle's sale price.

2. No credit is allowed if the **lesser of** the taxpayer's modified adjusted gross income (**MAGI**), based on filing status, for the **year of purchas**e or the **preceding year** exceeds:

   a. **$150,000** for a joint return or surviving spouse,

   b. **$112,500** for a head of household, or

   c. **$75,000** for others.

3. **Previously Owned Clean Vehicle Defined**: **§25E(c)(1)** provides that a "previously owned clean vehicle" is a motor vehicle, the model year of which is at least **two years** earlier than the calendar year in which the taxpayer acquires it. The original use of the vehicle starts with a person other than the taxpayer and is acquired in a "qualified sale," and which generally meets the requirements applicable to vehicles eligible for the clean vehicle credit for new vehicles or is a "clean fuel-cell vehicle" with a gross weight rating of less than **14,000** pounds. This new provision is added by Act Sec. 13402(a).

4. **Qualified Sale**: **§25E(c)(2)** provides that a "qualified sale" is a sale of a motor vehicle **by a dealer** for a price of **$25,000** or less, which is the "first transfer" since the Act's enactment to a "qualified buyer" other than the "original buyer" of the vehicle. New **§25E)(c)(2)** is added by Act Sec. 13402(a).

5. **Qualified Buyer**: **§25E(c)(3)** provides that a "qualified buyer" is an individual taxpayer who purchases the vehicle for use and not for resale, who is not a tax dependent of another taxpayer, and has not been allowed a credit for a "previously owned clean vehicle" during the **three-year period** ending on the sale date. (Added by Act Sec. 13402(a))

   Tax Professional Note: The provision therefore allows a taxpayer to be eligible for the credit **every 3 years** after the purchase of the first previously owned clean vehicle. Therefore, if the taxpayer purchases a vehicle on **January 1, 2023**, which is the effective date, then they are eligible again on **January 1, 2026**, **January 1, 2029** and **January 1, 2032**. The provision is scheduled to expired after **December 31, 2032**.

   TAX PROFESSIONAL ALERT: Children who are (or can be) claimed as dependents by their parents are not "qualified buyers", even if they have enough income to have to file a return. It makes no difference if the parent chooses not to claim the child as a dependent, because the dependency deduction is still "allowable" to the parent.

6. **Transfer of the Credit**: For vehicles acquired after **2023** (Act Sec. 13402(e)(2)), purchasers of "previously owned clean vehicles" will be able to elect up to the time of sale to 'transfer the credit" to the selling dealer in exchange for cash, or a partial payment or a down payment on the vehicle in an amount equal to the credit otherwise allowable to the buyer.

   Such an election will not limit the buyer from using other dealer or manufacturer provided incentives. Any payment or credit resulting from the election will not be includible in the buyer's income or be deductible by the dealer. **§25E(f)** provides that the IRS will establish a program to make "advance credit payments" of credits to "registered dealers" of transferred credits. (As added by Act Sec. 13402(b))

7. **Effective Date and Termination of the Credit**. The "previously owned clean vehicle credit" applies to vehicles acquired after **December 31, 2022**, but will not be allowed for any vehicle acquired after **December 31, 2032**. (Act Sec. 13402(e))

The "credit transfer" provision applies to vehicles acquired after **December 31, 2023**. (Act Sec. 13402(e)(2))

K. §45W: New Credit for Qualified Commercial Clean Vehicles

1. The **Inflation Reduction Act of 2022** creates a new **§45W** "qualified commercial clean vehicle credit' for "qualified vehicles" acquired and placed in service after **December 31, 2022**. The credit is a component of the **§38** general business credit. (As added by Act Sec. 13403(a) and (c)). The credit is for qualified clean vehicles that are not propelled by an internal combustion engine placed in service by the taxpayer.

2. **Amount of the Credit: §45W(b)** provides that the credit per vehicle is the **lesser of**:

   a. **15%** of the vehicle's basis (**30%** for vehicles not powered by a gasoline or diesel engine) or

   b. the "incremental cost" of the vehicle over the cost of a comparable vehicle powered solely by a gasoline or diesel engine.

3. The maximum credit per vehicle is:

   a. **$7,500** for vehicles with gross vehicle weight ratings of less than **14,000** pounds, or

   b. **$40,000** for heavier vehicles.

   (As added by Act Sec. 13403(a))

4. **Qualified Commercial Clean Vehicle Defined**: **§45W(c)** provides that the vehicle must be acquired for use or lease by the taxpayer, and not for resale. It must be manufactured for use on public streets, roads, and highways, or be "mobile machinery" as defined in **§4053(8).** The vehicle must have a battery capacity of not less than **15 kilowatt hours** (**7 kilowatt hours** for vehicles weighing less than **14,000** pounds) and be charged by an "external electricity source". "Qualified commercial fuel cell vehicles" are also eligible for the credit. "Qualifying vehicles" must be depreciable property. Only vehicles made by "qualified manufacturers", who have **written agreements** with and provide periodic reports to the Treasury, can qualify. (As added by Act Sec. 13403(a))

5. **Technical Requirements**: Special rules apply to vehicles placed in service by tax-exempt entities. This credit is not allowed if a credit was allowed under **§30D**, the general "clean vehicle credit". (As added by Act Sec. 13403(a))

6. **§45W(d)** provides that a vehicle identification number (**VIN**) is required on the tax returns claiming the credit. (As added by Act Sec. 13403(a))

7. **Coming Guidance**: **§45W(f)** provides that the IRS will issue regulations or other guidance deemed necessary or appropriate to carry out **§45W**, including determination of the "incremental cost" of a qualified commercial clean vehicle. (As added by Act Sec. 13403(a))

8. **Effective Dates**: The "qualified commercial clean vehicle credit" applies to vehicles acquired after **December 31, 2022**. (Act Sec. 13403(c)) **§45W(g)** provides that no credit will be available for vehicles acquired after **December 31, 2032**. (As added by Act Sec. 13403(a))

   Tax Professional Note: The vehicle must meet the requirements of **§30D(d)(1)**, which requires that the final assembly of the vehicle occurs in North America.

   Tax Professional Awareness: In **Notice 2022-46**, the IRS has made a request for Comments on Credits for Clean Vehicles so that IRS and Treasury can properly provide guidance on the new credit and effective dates of the various changes.

L. §30C: Alternative Fuel Vehicle Refueling Property Credit: Form 8911

1. Before the enactment of the **Inflation Reduction Act of 2022**, **§30C** provided that a tax credit was available for the cost of any "qualified alternative fuel vehicle refueling property" placed in service by a business or at a taxpayer's principal residence before **January 1, 2022**.

2. **§30C** provided that the credit was equal to **30%** of the cost of the property placed in service by the taxpayer during the tax year at a given location, limited to:

   a. **$30,000** per location for qualifying property subject to an allowance for depreciation, or

b. **$1,000** for property at a taxpayer's principal residence for personal use. If a taxpayer changes principal residences during the tax year and placed refueling property in service in **both** locations, then the taxpayer is eligible for a **$2,000** maximum credit.

Tax Professional Awareness: Individual taxpayers who are partners or Subchapter-S shareholders are not required to file **Form 8911** if the credit is passed through from the entity and reported on **Schedule K-1**. The entity must file **Form 8911.** Individual taxpayers in this situation would report their passed through credit amount directly on **Form 3800, Part III, line(s**) as a **§38** General Business Credit. A partnership reports the pass through of the credit in **box 15** of **Schedule K-1** with a **Code P**. A Subchapter-S corporation reports the pass through of the credit in **box 13 of Schedule K-1** also with a **Code P**.

Individual taxpayers who cannot use all of the credit in the current tax year loses any unused portion. Therefore, the credit is nonrefundable an cannot be carried back or forward to other tax years.

3. **New Law**: The Act amends **§30C(g)** to extend the credit to "eligible property" placed in service before **January 1, 2033**. (As amended by Act Sec. 13404(a); Act Sec. 13404(f)(2))

4. Effective for eligible property placed in service after **December 31, 2022** (Act Sec. 13404(f)(1)), the Act makes certain additional changes to **§30C** as presented below.

5. The Act amends **§30C(a)** and extends the credit for depreciable property at a rate of **6%** (As amended by Act Sec. 13404(b)(1)), increasing to **30%** if certain "prevailing wage and apprenticeship requirements" are met (Act Sec. 13404(d)), and **§30C(b)** subjects the credit to an overall limit of **$100,000.** (As amended by Act Sec. 13404(b)(2)(B))

6. The Act modifies the definition of "eligible property" to include "bidirectional charging equipment" (Act Sec. 13404(b)(3)) and provides that the credit is available for "electric charging stations for two- and three-wheeled vehicles that are intended for use on public roads". (Act Sec. 13404(c))

7. Under the Act, the **credit limitation** under **§30C(b)** applies per single item of "qualified alternative fuel vehicle refueling property" instead of all such property at an individual location. (As amended by Act Sec. 13404(b)(2)(A)) Beginning in **2023** "charging or refueling property" will only be eligible for the credit if placed in service within a "low-income or rural census tract". (Act Sec. 13404(e))

   Tax Professional Awareness: Therefore, for **2022** the existing rules apply, but for **2023** through **2032**, the changes to the rules discussed above will apply.

M. §48C: Qualifying Advanced Energy Project Credit

1. **§48C(a)** provides a general rule that for purposes of the **§46** investment credit, the "qualifying advanced energy project credit" for any taxable year is an amount equal to **30%** of the "qualified investment" for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

2. **§48C(b)** provides that the credit is measured by the taxpayer's basis in the eligible property placed in service by the taxpayer during the taxable year which is part of a "qualifying advanced energy project".

3. **§48C(b)(3)** provides for a **limitation** on the amount which is treated as the qualified investment for all taxable years with respect to any "qualifying advanced energy project". The amount shall not exceed the amount designated by the Secretary as eligible for the credit.

4. **§48C(c)(1)(A)(i)** provides in general that a "qualified advanced energy manufacturing project" is a project that re-equips, expands, or establishes a manufacturing facility for the production of:

   a. Property designed to be used to produce energy from the sun, wind, or geothermal deposits or other renewable resources;

   b. Fuel cells, micro-turbines, or an energy storage system for use with electric or hybrid-electric motor vehicles;

   c. Electric grid modernization technology to support the transmission of intermittent sources of renewable energy, including storage of that energy;

d. Property designed to capture and sequester manufacture carbon dioxide emissions;

e. Property designed to refine or blend renewable fuels to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies);

f. **§30D** new qualified plug-in electric drive motor vehicles or components that are designed specifically for use with these vehicles, including electric motors, generators, and power control units; or

g. equipment that re-equips a manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least **20%**,

h. other advanced energy property designed to reduce greenhouse gas emissions, as may be determined by the Secretary.

5. **§48C(c)(1)(B)** provides for **exceptions** to the term "qualifying advanced energy project". Such term shall not include any portion of a project for the production of any property which is used in the refining or blending of any **transportation fuel** (other than renewable fuels).

6. **§48C(c)(2)** defines the term "eligible property": The term "eligible property" means any property which is necessary for the production of property described above which is:

   a. tangible personal property, or

   b. other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

7. **§48C(d)(1)(A) addresses the establishment of a qualifying advanced energy project program**. In general, not later than **180 days** after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

8. **§48C(d)(1)(B)** provides for an amount of the credit. The total amount of credits that may be allocated under the program shall not exceed **$2,300,000,000.**

9. **§48C(e)** provides for a denial of double benefit. A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under the:
   a. **§48** energy credit,
   b. **§48A** qualifying advanced coal project credit, or
   c. **§48B.** Qualifying gasification project credit
10. **New Law:** The **Inflation Reduction Act of 2022** amends **§48C(d)** and provides an additional **$10 billion** in allocations with at least **$4 billion** to be allocated to projects within specified census tracts. However, new **§48C(e)(2)** provides that credits may not be allocated to projects located in census tracts having projects that have received prior allocations under **§48C(d).** (As added by Act Sec. 13501(a))
11. New **§48C(e)(4)** provides a two tiered credit regime with the base rate for the credit at **6%**, and with the **30%** credit rate allowed for projects meeting "certain prevailing wage and registered apprenticeship requirements". (As added by Act Sec. 13501(a))
12. **§48C(e)(3)** provides for an application process and that taxpayers must apply with the Treasury Department for **certification**, and the projects would have to be placed in service within **two years** of certification. (As added by Act Sec. 13501(a))
13. There is a denial of a double benefit. The credit will not available if a credit is allowed under:
    a. **§48** energy credit,
    b. **§48A** qualifying advanced coal project credit,
    c. **§48B** Qualifying gasification project credit,
    d. **§48E** Clean Energy Investment Credit, Created by the **Inflation Reduction Act of 2022**,
    e. **§48Q** Created by the **Inflation Reduction Act of 2022**, and
    f. **§48V** Created by the **Inflation Reduction Act of 2022**. (Act Sec. 13501(d))
14. The Act expands the **§48C** credit to include projects that re-equip, expand, or establish a manufacturing or industrial facility for the production or recycling of:
    a. energy storage systems and components;

b. grid modernization equipment and components;

c. property designed to remove, use, or sequester carbon oxide emissions;

d. equipment designed to refine, electrolyze, or blend any fuel, chemical, or product which is renewable or low-carbon and low-emission;

e. property designed to produce energy conservation technologies;

f. electric and hybrid vehicles; and

g. property that re-equips an industrial manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least **20%** or that re-equips, expands, or establishes an industrial facility for the processing, refining or recycling of critical materials. Amended **§48C(a)** as amended by Act Section 13501(b))

15. **Effective Date:** These changes are effective **January 1, 2023**. (Act Sec. 13501(e))

N. §45Z New Clean Fuel Production Credit

1. **The Inflation Reduction Act of 2022** creates a new clean fuel production credit for low-emissions "transportation fuel", as added by Act Sec. 13704. **§45Z(d)(5)** provides that "transportation fuel" is a fuel suitable for use in a highway vehicle or aircraft that meets certain emissions rate and processing requirements. (As added by Act Sec. 13704(a))

   Tax Professional Note: While the fuel must be suitable for use in a highway vehicle or aircraft, it may be used for other purposes.

2. **Eligibility for Credit**: **§45Z(a)(1(A)** provides that the taxpayer must produce the fuel at a "qualified facility" and sell it to an unrelated person for use either:

   a. in the production of a fuel mixture or in a trade or business, or

   b. sell the fuel at retail to another person and place it in such person's fuel tank. Added by Act Sec. 13704(a))

3. **§45Z(d)(4)** provides that a "qualified facility" is a facility used to produce transportation fuels, other than a facility eligible for hydrogen production credits under **§45V.** (Added by Act Sec. 13704(a))

4. **§45Z(f)(1)** provides that the taxpayer must produce the fuel in the United States while being registered with IRS as a producer of clean fuel. (As added by Act Sec. 13704(a))

5. **Credit Amount**: **§45Z(a)(2)** and **§45Z(a)(3)** provide that the credit "base amount" is **$0.20** per gallon (**$0.35** per gallon for aviation fuel) multiplied by an applicable emissions factor. If "prevailing wage and apprenticeship requirements" are met, then there is a higher base amount ("alternative amount") of **$1.00** per gallon (**$1.75** per gallon for aviation fuel) applies. (As added by Act Sec. 13704(a))

6. **§45Z(b)** provides that the emissions factor is calculated using an annually published emissions rate table. (Added by Act Sec. 13704(a))

7. **§45Z(c)** provides that the applicable "base amount" is adjusted for inflation for the calendar year in which the sale of the transportation fuel occurs. (Added by Act Sec. 13704(a))

8. **Effective Date**: **§45Z(g)** provides that the credit applies to transportation fuel produced after **December 31, 2024** (Act Sec. 13704(c)) but will not be available for transportation fuel sold after **December 31, 2027**. (Added by Act Sec. 13704(a))

O. Other Energy Credits Newly Created, Expanded and Extended as a Result of the Inflation Reduction Act of 2022

1. The **Inflation Reduction Act of 2022** also includes the following energy provisions:

   a. **§45X Advanced Manufacturing Production Credit (AMPC)**: As added by Act Sec. 13502(a). The **AMPC** applies to components produced and sold to an unrelated person after **December 31, 2022**. (Act Sec. 13502(c))

      Eligible components include:

      (1) Solar energy components
      (2) Wind energy components
      (3) Inverter
      (4) Qualifying battery components
      (5) Certain critical minerals

The credit varies by eligible component and applies to production in the United States.

b. **§45Y Clean Energy Production Credit**: Act Sec. 13701 establishes a new credit for clean energy production. The credit is available for **facilities placed in service** after **2024** until certain emissions targets are achieved or **2032**, whichever is later. The credit is available for generating **electricity** that has a **zero** greenhouse gas emission rate. The base rate of the credit is **$0.003**/kWh with a top rate of **$0.015**/kWh. "Prevailing wage and apprenticeship requirements" must be met for the higher rate. **§6417** direct pay provisions apply as well as **§6418** transferability of the credits.

Tax Professional Note: New clean energy production credit is an emissions-based incentive that does not favor a particular clean technology. Taxpayers will choose between the new clean energy production credit or the new clean energy investment credit. Effective Date. This applies to facilities placed in service after **December 31, 2024**. (Act Sec. 13701(c))

c. **§48E Clean Energy Investment Credit**: Creates a new credit for investments in clean energy. This credit is available for **property placed in service after 2024** until certain emissions targets are met or **2032**, whichever is later.

Tax Professional Note: The new **§48E** clean energy investment credit is an emissions-based incentive that does not favor a particular clean technology. Taxpayers will need to choose between a production credit and an investment credit. Effective Date. This applies to property placed in service after **December 31, 2024**. (Act Sec. 13702(c))

The **§48E** credit is available for electricity generating facilities and energy storage technology. The facility must generate a green house gas emissions rate not greater than zero.

- Extends the **§40** second-generation biofuel producer credit through **December 31, 2024**.
- Base rate is **6%** with a top rate of **30%** and "prevailing wage and apprenticeship" rules are in place for the higher rates.
- **§6417** Direct pay rules apply as well as the **§6418** Transferability of credits.

d. Increase in Qualified Small Business Payroll Tax Credit for Increasing Research Activities

P. Other Provisions in the Inflation Reduction Act of 2022

1. The Legislation also impacts the following sections of the Internal Revenue Code:

   a. **§4611(f)(2)** provides that there is an Increase and reinstatement in hazardous substance super-fund tax on crude oil and petroleum products for each barrel of oil refined in or entered into the United States and it will be indexed to inflation on an annual basis effective **January 1, 2023**. (Added by Act Sec. 13601(c)),

   b. **§168(e)(3)(B)(viii)** provides that property classified as **MACRS 5-year property** is extended to certain "green energy property". **§168(e)(3)(B)** provides that certain specified categories of property are classified as being **5-year property** (e.g., automobiles).

2. **New Law**: The **Inflation Reduction Act of 2022** adds three categories of "green energy property" to the **§168(e)(3)(B)**, **MACRS 5-year property** classification as follows:

   a. **Qualified Facility**: This is a facility defined under **§45Y(b)(1)(A)** for the new Clean Electricity Production Credit.

   b. **Qualified Property**: This is certain property defined under **§48E(b)(2)** for the new Clean Electricity Investment Credit which is a "qualified investment" defined under **§48E(b)(1).**

   c. **Energy Storage Technology**: This is property defined under **§48(c)(6)** for the Energy Credit, but without application of the termination date for that provision. The **MACRS** provision adopts that definition via a citation to **§48E(c)(2).** (As added by Act Sec. 13703)

3. **Effective Date**: These **MACRS** classification provisions apply to facilities and property placed in service after **December 31, 2024**. (Act Sec. 13703(b))

Tax Professional Awareness of Prevailing Wage and Apprenticeship Requirements: The **Inflation Reduction Act of 2022** replaced the prior law credit regime for certain credits with a two-tier system requiring taxpayers to meet "prevailing wage and apprenticeship requirements" in order to qualify for the "bonus" credit amount (i.e**.,100%** of the maximum available tax credits. If such requirements are not satisfied, then the project is only eligible for the "**base" credit amount**, (i.e., **20%** of the maximum amounts.

Tax Professional Note: The "prevailing wage and apprenticeship requirements" are deemed met for projects that begin construction prior to **60 days after** relevant guidance is published. For the **Production Tax Credits** and **Investment Tax Credits**, these requirements are also met for facilities with a maximum net output of *less than* **1 megawatt**.

Summary: Certain **Inflation Reduction Act** established credit provisions provide that *only* **20%** of the full credit amount is allowed *unless* **one** of the following requirements is satisfied:

i. the facility's maximum net output is *less than* **1 megawatt**;

ii. construction of the facility began prior to (or within 60 days after) the release of guidance on the prevailing wage and apprenticeship requirements; or

iii. the "prevailing wage and apprenticeship requirements" are satisfied.

Prevailing Wage: Act **§13101(f)(7)**: Under the "prevailing wage requirement," the taxpayer must ensure that any employed laborers, mechanics, contractors, or subcontractors are paid prevailing wages for the locality during the construction of such project and any subsequent alterations or repairs.

Tax Professional Awareness: In the case of **Investment Tax Credit**-eligible projects, this post-placed-in-service period includes, the **five-year period** *beginning on* the date the project is placed in service and, in the case of **Production Tax Credit**, the entire applicable credit period.

If a taxpayer **fails** to meet this requirement, then the taxpayer may "cure the failure" by:

i. paying each worker, the difference between actual wages paid and the prevailing wage plus interest, and
ii. paying a **$5,000** penalty (**$10,000** in the case of intentional disregard) for each worker paid below the prevailing wage.

Apprenticeship - Act §13101(f)(8): In order to claim the "bonus" rate, taxpayers also must ensure that no fewer than the "applicable percentage" of total labor hours are performed by qualified apprentices. The "applicable percentage" is as follows:

a. **10%** for projects **beginning construction** *before* **2023**,

b. **12.5%** for projects **beginning construction** *during* **2023**, and

c. **15%** for projects **beginning construction** thereafter.

Tax Professional Note: Each contractor and subcontractor who employs **four or more** individuals must employ *at least* **one** "qualified apprentice". When a taxpayer **fails** to meet this requirement, it can still qualify for the "bonus" rate by paying a **penalty** equal to **$50** (**$500** in the case of intentional disregard of the requirement) *multiplied by* the **total labor hours** the apprenticeship requirement was not satisfied. The Act also includes certain "good faith effort" exceptions.

Q. §6417 Elective Direct Payments and §6418 Transferable Credits for Energy Property and Electricity Produced from Certain Renewable Resources, Etc.

1. **§6417 Elective Direct Payments**: Act Sec. 13801(a) of the **Inflation Reduction Act of 2022** creates **§6417** which provides, with respect to "certain applicable credits", that "applicable entities" can **elect** to be treated as making a payment against their income tax (for the tax year with respect to which such credit was determined) equal to the amount of such credit.

2. **Applicable Credits**: Act Sec. 13801(a) added new **§6417** that provides that the "applicable credits" are for the credits under the following:

a. **§30C** alternative fuel vehicle refueling property allowed, pursuant to **§30C(d)(1)** and treated as a general business credit listed in **§38(b)**,

b. **§45** credit for renewable electricity production as is attributable to qualified facilities that are originally placed in service after **December 31, 2022**,

c. **§45Q** credit for carbon oxide sequestration as is attributable to carbon capture equipment that is originally placed in service after **December 31, 2022**. (Limited **5-year** direct pay option),

d. **§45U(a)** credit for zero-emission nuclear power production,

e. **§45V** credit for production of clean hydrogen as is attributable to "qualified clean hydrogen production facilities" that are originally placed in service after **December 31, 2022**. (Limited **5-year** direct pay option),

f. In the case of a tax-exempt entity described in **§168(h)(2)(A)(i)**, **§168(h)(2)(A)(ii)**, or **§168(h)(2)(A)(iv)**,

g. **§45W** credit for qualified commercial vehicles determined by reason of **§45W(d)(3)**,

h. **§45X(a)** credit for advanced manufacturing production. (Limited **5-year** direct pay option),

i. **§45Y(a)** credit for clean electricity production,

j. **§45Z(a)** credit for clean fuel production,

k. **§48** credit for energy,

l. **§48C** credit for a qualifying advanced energy project, and

m. **§48E** credit for clean electricity investment credit.

3. **Applicable Entities**: Act Sec. 13801(a) creates **§6417(d)(1)(A)** which provides that an "applicable entity" is:

   a. any organization exempt from income tax,

   b. any State or local government (or political subdivision thereof),

   c. the Tennessee Valley Authority,

d. an Indian tribal government, as defined in **§30D(g)(9)**,

e. any Alaska Native Corporation (as defined in 43 USC 1602(m)), or

f. any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.

4. **Transferable Credits**: The Act Sec. 13801(b) creates **§6418(a)** which provides that "eligible taxpayers" can transfer "certain eligible credits" to other taxpayers.

5. **Eligible Credits**: Act Sec. 13801(b) created **§6418(f)(2)** which provides that the "eligible credits" are defined as the following:

   a. **§30C** credit for alternative fuel vehicle refueling property which, pursuant to **§30(C)(d)(1)**, is treated as a general business credit listed in **§38(b).**

   b. **§45(a)** credit for renewable electricity production,

   c. **§45Q(a)** credit for carbon oxide sequestration,

   d. **§45U(a)** credit for zero-emission nuclear power production.

   e. **§45V(a)** credit for clean hydrogen production,

   f. **§45X(a)** credit for advanced manufacturing production,

   g. **§45Y(a)** credit for clean electricity production credit,

   h. **§45Z(a)** credit for clean fuel production,

   i. **§48** energy credit,

   j. **§48C** credit for a qualifying advanced energy project, and

   k. **§48E** credit for clean electricity investment.

6. **Eligible Taxpayers**: Act Sec. 13801(b) adds **§6418(f)(2)** which provides that an "eligible taxpayer" is any taxpayer which is <u>not</u> described **§6417(d)(1)(A)** (i.e., any taxpayer that is <u>not</u> an "applicable entity". Therefore, they are for profit entities.

7. **Effective Date**: These elective payment and transferable credit provisions apply to tax years beginning after **December 31, 2022**. (Act Sec. 13801(g))

R. §4112 Coal Excise Tax Rates Permanently Extended

1. Under pre-**Inflation Reduction Act of 2022** law, **§4121(e)** provided that for sales after **December 31, 2021**, the **manufacturers excise tax on coal**, which funds the Black Lung Disability Trust Fund, applied at the following reduced rates:

   a. **50¢** per ton for coal from **underground mines** and

   b. **25¢** per ton for coal from **surface mines**,

   not to exceed **2%** of the sales price.

2. **New Law**: Under Act Sec. 13901(a), amended **§4121(b)** provides that for sales in calendar quarters beginning after the date of enactment of the Act, the reduced rates are **eliminated**, and the "regular coal excise tax rates" apply.

   Tax Professional Awareness: Therefore, for sales in calendar quarters beginning after the date of enactment, no reduced coal excise tax rates apply. Instead, the excess tax applies at the "regular rates", which are:

   a. **$1.10** per ton for coal from **underground mines**, and

   b. **55¢** per ton for **surface mined** coal,

   not to exceed **4.4%** of sales price.

3. **Effective Date**: Act Sec. 13901(b) provides that this provision is effective for sales in calendar quarters beginning after the date of enactment.

   Tax Professional Note: Since the date of enactment was **August 16, 2022**, the provision applies to quarters beginning after **September 30, 2022**.

S. §4611: Hazardous Substance Superfund Tax on Crude Oil and Petroleum Products Reinstated and Increased

1. Prior to the **Inflation Reduction Act of 2022**, **§4611(c)(2)(B)** provided that through **2025,** crude oil received at a U.S. refinery, and petroleum products entered into the U.S. for consumption, use, or warehousing, are subject to a **9¢-per-barrel environmental excise tax**, which funds **the Oil Spill Liability Trust Fund**. In addition, there was a separate excise tax of **9.7¢-per-barrel** for **Hazardous Substance Superfund** tax that **expired** in **1995**.

2. **New Law**: Under the Act Sec. 13601(a)(2)(A), **§4611(c)(2)** provides that beginning after **2022**, the **Hazardous Substance Superfund** tax is **reinstated** to apply to the above-described crude oil and petroleum products at an increased tax rate of **16.4¢-per-barrel**.

3. As amended by Act Sec. 13601(a)(2)(B), **§4611(c)(3)** provides that for any tax year after **2023**, the **16.4¢-per-barrel** rate is adjusted for inflation (based on the cost-of-living adjustment determined under **§1(f)(3))**, modified to measure inflation since **2022**.

   Tax Professional Awareness: Therefore, for tax years **2023 through 2025**, the above-described crude oil and petroleum products are subject to both:

   a. **9¢-per-barrel Oil Spill Liability** tax; and

   b. a **16.4¢-per-barrel Hazardous Substance Superfund** tax for **2023** and increased for inflation thereafter. After **2025**, such crude oil and petroleum products are subject to only the inflation-adjusted **Hazardous Substance Superfund** tax.

4. **Effective Date:** These provisions are effective **January 1, 2023**. (Act Sec. 13601(c))

II. Lingering Provisions of the "CARES Act": H.R. 748, Public Law 116-136, Enactment Date March 27, 2020

II. Lingering Provisions of the "CARES Act": H.R. 748, Public Law 116-136, Enactment Date March 27, 2020

A. Background of the CARES Act

1. On **March 27, 2020** President Trump signed a **$2.2** Trillion Bill into law in order to support the U.S. economy during the pandemic as COVID-19 continued to upend nearly every aspect of life in America. The purpose of the Legislation was to relieve Americans suffering from the economic drought caused by the sudden advance of the pandemic. The Legislation contains provisions which lent billions of dollars to small businesses with a provision which allows these business loans to be forgiven. The Legislation supported small businesses, enhanced unemployment insurance and provided federal loans to industries severely impacted by the COVID-19 pandemic.

2. In addition, the **CARES Act** legislation provided **tax relief** and **tax incentives** for individuals and businesses. The majority of the **tax relief** was crafted to provide and increase liquidity in the United States economy. This was to be accomplished mainly through the **easing of limitations** on trade or business deductions, as well as the **deferral** of taxes and the **allowance of business losses**. In addition, there was a **Recovery Rebate** distributed to individuals whether they were required to file an income tax return or not. The IRS refers to the **Recovery Rebate** as an **Economic Impact Payment**.

B. Summary of the Tax Provisions in the CARES Act

1. The **CARES Act** Legislation impacted businesses and most **individual** taxpayers. The remaining provisions of the Legislation are addressed in the following:

   a. **§223(c)(1)** Health Savings Account (**HSA**) eligibility opportunities (Sec. 3701 of the Act),

   b. **§223(c)(2)** relief for **HSA** eligibility and High Deductible Health Plan (**HDHP**) issues (Sec. 3701 of the Act),

   c. **§223(d)** Qualified Medical Care Expense availability for the use of the **HSA** funds (Sec. 3702 of the Act),

d. **§127** Employer Student Loan Payment **exclusion** allowance (Sec. 2206 of the Act),

e. **§221(e)** Interest on Education Loans as related to **§127** Employer Student Loan Payment Exclusion allowance (Sec. 2206 of the Act),

f. **§72(t) 10%** penalty relief for coronavirus-related **distributions** from **IRAs** and pension plans (Sec. 2202 of the Act),

g. **§72(p)** increase in allowable loan amounts from retirement plans for "coronavirus related distribution" issues (Sec. 2202 of the Act), and

h. **§172** Net Operating Losses (Sec. 2303 of the Act),

i. **§461(l)(1)** Excess Business Losses of Noncorporate Taxpayers (Sec. 2304 of the Act),

j. **§168(e)** Depreciation of Qualified Improvement Property (**QIP**) also known as the "retail glitch" (Sec. 2307 of the Act),

Tax Professional Note: The **exclusion** for employer paid student loans was **extended** by the by the "Consolidated Appropriations Act of 2021" for **5 years** to **December 31, 2025**.

C. §72(t) Penalty Waiver Provided for Coronavirus Related Distributions and Waiver of the 60 Day Rollover Rule: Sec. 2202 of the CARES Act.

1. A distribution from a **§401(a)** qualified retirement plan, a **§403(b)** tax sheltered annuity plan, a **§457(b)** eligible deferred compensation plan of a State or local government employer or a **§408** Individual Retirement Account (**IRA**) generally is included in gross income in the year of the distribution. All of these plans are referred to collectively as "eligible retirement plan".

   Tax Professional Update: The **Consolidated Appropriation Act of 2021** included "defined benefit pension plans" as a qualifying plan *retroactive* to the date of enactment of the **CARES Act** which was **March 27, 2020**.

2. In addition, there is a general rule that a distribution from a qualified retirement plan, a **§403(b)** plan, or an **IRA** plan, received *before* the taxpayer reached at **59½** , is also subject to an additional **§72(t)** penalty, referred to as the "early withdrawal tax". It is assessed on the amount which is **includible** in the taxpayer's gross income.

   Tax Professional Education Awareness: The **10%**, **§72(t)** penalty does <u>not</u> apply to distributions from a governmental **§457(b)** plan.

3. There are *exceptions* to the general rule for the assessment of the **10%**, **§72(t)** penalty. As a result of the COVID-19 crisis, Sec. 2202(a)(1) of the **CARES Act** provided relief from the **10%**, **§72(t)** penalty for a "coronavirus-related distribution". A "coronavirus-related distribution" is defined as a distribution from an "eligible retirement plan" made *on or after* **January 1, 2020** and *before* **December 31, 2020** (Sec. 2202(a)(4)(A) of the **CARES Act**).

4. In addition, a "coronavirus-related distribution" was allowed to be made to an individual:

   a. who was diagnosed with the virus SARS-COV-1, or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (**CDC**), or,

   b. whose spouse or dependent (as defined in **§152)** was diagnosed with such virus or disease by such a test, or

   c. who experienced "adverse financial consequences" as a result of the coronavirus (Act Sec. 2202(a)(4)(ii)(III) of the **CARES Act**).

5. Act Sec. 2202(a)(4)(ii)(III) of the **CARES Act** provides that for the purposes of "adverse financial consequences", it could have included consequences from *any* of the following:

   a. being quarantined,

   b. being furloughed or laid off or having to work hours reduced due to such virus or disease,

   c. being unable to work due to lack of childcare due to such virus or disease,

   d. closing or reducing hours of business owned or operated by the individual due to such virus or disease, or

e. other factors determined by the Secretary of the Treasury or the Secretary's designate.

Tax Professional Awareness: Sec 2202(a)(4)(ii)(III) of the **CARES Act** provided that an employee could self-certify that the distribution was "coronavirus-related" as follows: "The administrator of an eligible retirement plan" was allowed to rely on an employee's certification that the employee satisfies the conditions in determining whether any distribution is a "coronavirus distribution".

Sec. 2202(c)(4)(C) of the **CARES Act** provides that the term "eligible retirement plan" has the meaning given in **§402(c)(8)(B)** of the Code, which means that the self-certification rules also pertain to IRA distributions.

6. In addition to waiving the **§72(t)**, **10%** penalty, the **CARES Act** also waived the **60**-day rollover rule for "qualified coronavirus distributions". Under the general rule, distributions from an employer-provided qualified retirement plan are eligible to be rolled over tax free into another employer-provided qualified retirement plan or an IRA plan. This can be achieved by contributing the amount of the distribution to another plan or **IRA** plan *within* **60** days of the distribution, or by a "direct rollover" by the plan to another plan or **IRA** plan**.**

7. Relief is sometimes provided from certain natural disasters in the form of **disaster distributions** and loans which allow residents of a Presidentially Declared Disaster Area to borrow or withdraw *up to* **$100,000** to rebuild homes, etc. The same type of relief was provided by the **CARES Act**. Act Sec. 2202(a)(2)(A) provided that the **aggregate** amount of distributions received by an individual which may be treated as a "coronavirus-related distribution" shall not *exceed* **$100,000.**

Tax Professional Note: §72(p) provides that the amount of a qualified plan distribution which is eligible for a loan is the *lesser of*:

a. **one-half** of the present value of the nonforfeitable accrued benefit of the employee under the plan, or

b. **$50,000.**

For purposes of a “coronavirus related distribution”, the **CARES Act** Sec.2202(b)(1)(A) provides that the amount in **§72(p)(2)(A)(i)** of the Code shall be applied by “substituting **$100,000** for **$50,000**” and also provides that **§72(p)(2)(A)(ii)** will substitute “the **present value** of the nonforfeitable accrued benefit of the employee plan “for **one-half** of the present value of the nonforfeitable accrued benefit of the employee under the plan”.

8. Sec. 2202(a)(5) of the **CARES Act** provides that any amount required to be included in gross income as a result of a “coronavirus-related distribution” is included in income *ratably* over the **three-year-period** *beginning with* the year of the **distribution** *unless* the individual *elects* <u>not</u> to have the ratable inclusion apply.

9. Any portion of a “coronavirus-related distribution” may, at *any* time *during* the **three-year period,** *beginning* the date *after* the date on which the **distribution** was received, be **recontributed** in one or more contributions to an eligible retirement plan to which a rollover can be made. Any amount **recontributed** *within* the **three-year period** is treated as a rollover and therefore <u>not</u> includible in the gross income of the recipient.

10. The **recontributed** amounts are treated as though they were eligible rollover distributions that were transferred in a direct trustee to trustee transfer *within* **60** days with the result that the original distribution is <u>not</u> includible in gross income. In addition, the receiving plan does <u>not</u> have to be the plan from which the distribution was withdrawn. However, it must be to a plan which a rollover contribution could be made.

EXAMPLE #1: <u>If</u> an individual received a “coronavirus-related distribution” in **2020**, <u>then</u> under the general rule that amount was included in gross income in the year of the distribution and the following two years in **2021** and **2022** and is <u>not</u> subject to the **§72(t)**, **10%** early withdrawal penalty.

<u>If</u> however in **2022**, the amount of the “coronavirus-related distribution” is **recontributed** in full to an eligible retirement plan, <u>then</u> the individual should file **amended** returns for **2020** and **2021** in order to file a claim for refund of the tax attributable to the amounts previously included in gross income in **2020** and **2021**.

In addition, if a *portion* of the distribution has not yet been included in gross income at the time of **recontribution**, then that remaining amount is not includible in gross income in that tax year.

EXAMPLE #2: Don had a "coronavirus-related distribution" on **November 11, 2020** for the full **$100,000** maximum distribution. In **2020**, he was in a **12%** marginal federal income tax bracket and included **1/3** of the amount in his **2020** gross income.

In **2021**, he also included the required **1/3** amount in his gross income and had a marginal bracket of **24%**.

In **2022**, Don has had a great year and is in the **37%** marginal federal income tax bracket. Since he had such a good year, he decides that he will **recontribute** the full **$100,000** back into a qualified pension plan as allowed under the **CARES Act**. At this point, he files an amended return for **2020** and **2021** and does not include the remaining **1/3** in his **2022** gross income.

EXAMPLE #3: Based on the data above, in **EXAMPLE #2** everything is the same *except that* Don decides not to **amend** his **2020** return because the tax rate is only **12%** and he wants to keep the cash for future investment. As a result, he only amends the **2021** return and does not include the **1/3** in his **2022** gross income.

EXAMPLE #4: In **2022** Don has a tax bracket of **37%** and in **2021** his bracket was **35%**. However, in **2020**, his marginal bracket will be at **22%** if he **elects** to amend his return and include the full **$100,000** in his **2020** gross income.

In this case he can **amend** his **2020** return and pay the additional tax and interest.

In additional, he can also **amend** his **2021** return and receive a credit for the tax paid.

In **2022**, he would not include any amount in his gross income.

Tax Professional Research Issue: Recontributions of a "coronavirus-related distribution" should have been reported on the IRS **Form 8915-E**, Qualified **2020** Disaster Retirement Plan Distributions and Repayments (Use for Coronavirus-Related Distribution).

Tax Professional Awareness: The **Form 8915-F** for **2021** was updated to report the **one-third inclusion** amount for **2021** and the **recontribution** of any coronavirus-related distributions. Any recontribution for **2022** will also be reported on **Form 8915**-F.

D. §127 Exclusion of Certain Employer Payments of Employee Student Loans: Sec. 2206 of the CARES Act

1. **§127** provides that an employee may **exclude** *up to* **$5,250** from gross income for educational assistance provided by an employee's employer. In addition, **§3121(a)** provides that the educational assistance is **excluded** from Social Security and Medicare taxes. **§3401(a)(19)** provides that the educational assistance is **excluded** from Unemployment taxes.

2. In order for the **exclusion** to apply, certain requirements must be satisfied as follows:

   a. the educational assistance must be provided pursuant to a **separate written plan** of the employer,

   b. the employer's "educational assistance" program must not discriminate in favor of highly compensated employees, and

   c. no *more than* **5%** of the amounts paid or incurred by the employer *during* the year for "educational assistance" under a "qualified educational assistance program" may be provided for the **class of individuals** consisting of:

      (1) *more than* **5%** owners of the employer, and
      (2) the spouses and dependents of such owners.

3. Prior to the **CARES Act**, **§127** provided that for purposes of the **exclusion**, "educational assistance" meant the payment by an employer of expenses incurred by, or on behalf of, the employee for education of the employee including, but not limited to, tuition, fees and similar payments, books, supplies, and equipment. "Educational assistance" also includes the provision by the employer of courses of instruction for the employee, including books, supplies, and equipment.

4. **Reg**. **§1.127-2(c)** states that "educational assistance" does not include payment for or the provision of:

a. tools or supplies that may be **retained** by the employee *after* completion of a course,

b. meals, lodging or transportation, or,

c. any education including sports, games, or hobbies. **Reg. §1.127-2(c)(4)** states that the education need not be job-related or part of a degree program. "Educational assistance" qualifies for the **exclusion** *only if* the employer does not give the employee a choice between "educational assistance" and other renumeration includible in the employee's income.

5. The **exclusion** for employer-provided "educational assistance" applies *only* with respect to education provided to the employee. The employer's costs for providing such "educational assistance" are generally deductible as a trade or business expense under **§162.** The **exclusion** did not apply, for example, to assistance provided to the spouse or a child of the employee.

6. **Deduction for Student Loan Interest**: Under **§221**, certain individual taxpayers may claim an above-the-line deduction for interest paid on student loans. Only interest paid on a "qualified education loan" is eligible for the deduction. **§221(d)(1)-(3)** provides that a 'qualified education loan" generally is defined *as any* indebtedness incurred to pay for the costs of attendance at an "eligible educational institution" on *at least* a half-time basis. The payments may be for attendance of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred.

   Tax Professional Reminder: The maximum allowable qualified student loan interest deduction per year is **$2,500** per return. The deduction is phased out based on the taxpayer's *modified* adjusted gross income and filing status and reduced to zero at the upper threshold levels. Dependents are not eligible to claim the student loan interest deduction.

7. The **CARES Act expands** the definition of the term "educational assistance" which is **excludable** from gross income and from wages to include, *any* payments of principal or interest made by an employer on a "qualified education loan" incurred by an employee of the employer. The term "qualified education loan" is defined in **§221(d)(1).**

The **exclusion** applies to payments made directly to the employee or to a lender. Under the **CARES Act** the provision did <u>not</u> apply to payments made *on or after* **January 1, 2021**.

Tax Professional Legislative Update: As a result of the "Consolidated Appropriations Act of 2021" enacted on **December 27, 2020**, the **exclusion** for employer provided student loan debt assistance has been **extended** for **5 years** for the period of **2021-2025.**

Tax Professional Awareness: §221(d)(1) defines the term "qualified education loan" to mean *any* indebtedness incurred by the taxpayer *solely* to pay "qualified higher education expenses" which are:

a. Incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

b. Paid or incurred within a reasonable period of time *before or after* the indebtedness was incurred, and

c. Attributable to education furnished *during* a period in which the recipient was an eligible student.

Therefore, as a result of the **CARES Act**, an employer could pay the employee's qualifying debt on education of a spouse or dependent.

8. Payments made under this provision are subject to:

   a. the general requirements of **§127**, including the **$5,250** annual cap,

   b. the requirement that assistance be provided pursuant to a **separate written plan** of the employer, and

   c. the nondiscrimination requirements.

9. **§221(e)(1)** as amended by the **CARES Act** provides that the employee may <u>not</u> claim a deduction on their **Form 1040** or **Form 1040-SR** under **§221** for interest paid on student loans on an amount for which an **exclusion** is allowable under the provision *even if* the full interest is reported on **Form 1098-E**. Therefore <u>no</u> double dipping is allowed by the taxpayer.

E. Delay of Payment of Employer Payroll Taxes: Sec. 2302 of the CARES Act

1. Sec. 2302(a) of the **CARES Act** provides a general rule that the payment for "applicable employment taxes" for the "payroll tax deferral period" shall not be due *before* the "applicable date".

2. Sec. 2302(a)(2) provides that an employer shall be treated as having made **all** timely deposits of "applicable employment taxes" that are required to be made for such taxes during the "payroll tax deferral period" if such payments are made not *later than* the "applicable date".

3. Sec. 2302(a)(3) provided an *exception* to the general rules. The general rules of deferral did not apply to any taxpayer if such taxpayer has had:

   a. indebtedness forgiven under Section 1106 of the **CARES Act** with respect to a Paycheck Protection Program (**PPP**) loan received under Section 1102 of the **CARES Act**, (however, deferral is now allowed as a result of amendments made by the "Payroll Protection Program Flexibility Act of 2020" (**PPPFA** of **2020**), or

   b. indebtedness forgiven under Section 1109 of the **CARES Act**.

   Tax Professional Awareness: Section 1102 is the loan provided under the **SBA**, for the Paycheck Protection Program (**PPP**) and Section 1106 is the forgiveness of the loan if used for the applicable costs for: payroll costs, covered rent, covered utilities, covered mortgage interest. Section 1109 of the **CARES Act** is the debt forgiven under U.S. Treasury Program Management Authority.

4. Sec. 2302(b) of the **CARES Act** addresses the Self-Employed Contributions Act (**SECA**). Sec. 2302(b)(1) provides that in general, the payment for **50%** of the taxes imposed under **§1401(a)** of the Code for the payroll tax deferral period shall not be due *before* the "applicable date". "Applicable date" is defined in **Item #**6 below.

5. Sec. 2302(d) of the **CARES Act** provides definitions pertaining to the **Delay of Payment of Employer Payroll Taxes**. Sec. 2302(d)(1) defines the term "applicable employment taxes" to mean the following:

   a. the taxes imposed by **§3111(a)** (**OASDI**),

b. so much of the taxes imposed under **§3211(a)** as attributable to the rate in effect under **§3111(a)** (**6.2%**) of the **OASDI**, and

c. so much of the taxes imposed under **§3221(a)** as attributable to the rate under **§3111(a)** (**6.2%**) of **RRTA**.

6. Sec. 2302(d)(2) defines the term "applicable date" to mean:

   a. **December 31, 2021** with respect to **50%** of the deferred tax, and

   b. **December 31, 2022** with respect to the **remaining amounts** of the deferred tax.

   Tax Professional Awareness: The IRS notifies the taxpayer that a deferred payment is due and sends a separate reminder Notice for each separate payroll period where the taxpayer deferred a **2020** payroll tax.

7. Sec. 2302(d) provides that there has been an **appropriation** of the Treasury's general fund for the transfer to the **OASDI** and **RRTA**.

8. Sec. 2302(f) provides for the **regulatory authority** that the Secretary of the Treasury shall issue such regulations and guidances as necessary to carry out the purpose of the **delayed payments**, including rules for the administration and enforcement for liability of third parties.

   IRS ADMINISTRATIVE ALERT: On **June 21, 2021**, the IRS Office of Chief Counsel issued an **Internal Revenue Service Memorandum PMTA 2021-07** stating that if *any portion* of an employer's **§3111(a)** taxes, or so much of the tax imposed under **§3221(a)**, is not deposited by the "applicable installment due dates" then the **deferral of the deposit due date is invalidated for all of the employer's deferred taxes** under **§3111(a)** or **§3221(a)** *rather than* just the remaining delinquent portion. In addition, the result is that the **§6656** penalty for **failure to deposit taxes** is applicable to the **entire deferral amount**. The **Memorandum** provides the following examples:

   Example #1: If an employer **defers the deposit** of its' portion of the **§3111(a)** tax (the employer's portion of social security tax) in the amount of **$50,000,** and deposits and pays **$25,000** on **December 31, 2021** but **fails** to make any additional deposits or payments by **December 31, 2022**, then the employer is liable for a **§6656** penalty on the **entire $50,000,** if there is no **exception** to the penalty due to reasonable cause.

As a result, the deposits are *only* valid provided "all such deposits are made not *later than* the applicable date." If *any* portion of the deposit is not made by the applicable date, whether **December 31, 2021**, as to the first installment, or **December 31, 2022**, as to the second installment, then the **deferral is completely invalid**.

In that event, the deposits were due on the usual deposit due dates provided in **Reg**. **§31.6302-1** and **Reg**. **§31.6302-2**, which would be the due dates used in determining any penalties under **§6656**.

Example #2: Assume that an employer is liable for **§3111(a)** tax, which is the employer's share of social security tax. Under **CARES Act** section 2302(a), these taxes are not due *until* the "applicable due dates" of **December 31, 2021** and **December 31, 2022**. The employer is also required to deposit these taxes under **§6302** and its' implementing regulations. Assume that *any* **failure to deposit** is not due to reasonable cause, and no other exception is applicable.

Additionally assume that an employer has deferred, under **CARES Act** section 2302(a)(2), the deposit for the maximum amount of the employer's **§3111(a)** tax for the **2020** tax year allowed to be **deferred**, and that this maximum amount deferred is a deposit of **$50,000** of **§3111(a)** taxes. As a result, under **CARES Act** section 2302(d)(3), the employer **must** deposit **$25,000** by **December 31, 2021**, and the remaining **$25,000** by **December 31, 2022**.

If, for the **2020** tax year, the employer deposits **$5,000** on **December 31, 2021**, and makes no other deposits *before* **December 31, 2021**, then the **10%** penalty under **§6656(b)(1)(A)(iii)**, for **failure to deposit** tax for *more than* **15 days**, applies to the **entire $50,000,** and the penalty amount would be **$5,000.**

Because the first installment of **$25,000,** due on **December 31, 2021**, was not deposited by that date, the **deferral** is **invalidated** as to the **entire $50,000.** If, on **February 7, 2022**, the IRS issues a notice demanding payment of the balance of the first installment, and the employer does not pay the full amount demanded by **February 17, 2022**, then the penalty rate increases to **15%**.

Example #3: If, for the **2020** tax year, the employer deposits **$25,000** on **December 31, 2021**, and deposits the **remaining $25,000** on **February 28, 2023**, then the **10%** penalty under **§6656(b)(1)(A)(iii)**, for **failure to deposit** tax for *more than* **15 days**, applies to the **entire $50,000,** and the penalty amount would be **$5,000.** Because the second installment of **$25,000,** due on **December 31, 2022**, was not timely deposited, the **deferral** is **invalidated** as to the **entire $50,000.**

If, on **February 6, 2023**, the IRS issues a notice demanding payment of the second installment of **$25,000,** and the employer does not pay the full amount demanded by **February 16, 2023**, then the penalty rate increases to **15%**.

Tax Professional Awareness: The following statement was at the end of the **June 21, 2021** Memorandum:

"This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views."

Please contact Alexander Wu at **(202) 317-6845** or by email if you have any further questions.

Editor's Note: The **Memorandum** was not released publicly *until* **August 23, 2021**.

F. §223 Health Savings Account (HSA) Eligibility

1. A Health Savings Account (**HSA**) is a trust established for the exclusive purposes of paying for qualified medical expenses of the beneficiary of the account. In order to be eligible for an **HSA**, an individual must be covered under a high deductible health plan (**HDHP**). In addition, **§223(c)(1)(A)** provides that the beneficiary of the plan cannot be covered under *any* health plan which is not a **HDHP** and which provides coverage for any benefit which is covered under the **HDHP**.

2. Various types of coverages are disregarded for purposes of determining whether an individual is covered *only by* an **HDHP**. **§223(c)(1)(B)** provides that disregarded coverage includes coverage for accident, disability, dental care, vision care or long-term care. It also includes certain permitted insurance and coverage under a Health **FSA**. Such coverage can be provided *without* having to satisfy a deductible requirement.

3. **§223(d)(2)** provides that an **HSA** can make distributions to pay or reimburse "qualified medical expenses" and **§223(d)(2)(A)** provides that these include a medicine or drug *only if* it is a **prescribed** drug or is insulin.

   Tax Professional Note: For purposes of **prescribed** drugs this rule holds true *even if* the drug is available *without* a prescription.

4. As a result of the **CARES Act**, new subsection **§223(c)(2)(E)** provides that for plan years *beginning on or before* **December 31, 2021**, a plan is treated as a high deductible health plan (**HDHP**) *even if* it does not impose a deductible for telehealth or other remote care services.

5. **§223(c)(1)(B)(ii)** is updated and provides that telehealth and remote care are added to the list of coverage items that are disregarded for determining **HDHP** deductibles (but only for plan years *beginning on or before* **December 31, 2021**).

   Tax Professional Legislative Update: The allowance of using the **HSA** for telehealth expired on **December 31, 2021** and there was temporary *lapse* to **pre-CARES Act** law for the period of **January 1, 2022** and **March 31, 2022**. President Biden signed the **Consolidated Appropriations Act of 2022** to approve the delayed Budget for the fiscal year **October 1, 2021**-**September 30, 2022**.

   H.R. 2471, P.L. 117-103 *re-enacted* the provision allowing telehealth to be provided below the deductible amount in high-deductible health plans effective **April 1, 2022** through **December 31, 2022**.

Tax Professional Note: Because of the COVID-19 pandemic, people have been, and many will continue to be, physically distancing for a period of time, and being able to visit the doctor's office will be an issue. As a result, telehealth services and other remote care services permit patients and medical practitioners to interact **electronically** *rather than* face to face for providing medical care. In addition, telehealth services are generally less costly than actual office visits. While telehealth services are eligible expenses for use with an **HSA** plan, the **Consolidated Appropriations Act of 2022** continues to provides **temporary relief** from any requirement that a plan participant must meet the minimum deductible *before* the expenses can be covered by the **HSA** plan.

6. IRS **Notice 2020-15** provides additional relief for using the **HSA** plan by providing relief for an **HSA** to cover expenses related to COVID-19. Health plans that otherwise qualify as **HDHPs** will not lose that status merely because they cover costs of testing for treatment of COVID-19 *before* the plan deductible amount has been met. In addition, any vaccination costs counts as preventative care and can be paid for by an **HDHP**.

7. The effective date of the amendments to **§223** are effective on **March 27, 2020**, the enactment date of the **CARES Act**.

   Tax Professional Awareness: On **May 12, 2020**, the IRS issued two separate Notices addressing **HSA** plans and High Deductible Health Care (**HDHC**) plans. They are **Notice 2020-29** and **Notice 2020-30**.

   The Notices discuss issues addressing telehealth and other remote care services *before* satisfying the **HDHP** deductible or despite receiving coverage for services outside of the **HDHP**. In addition, the Notices address qualified expenses which may be reimbursed for **HSAs**, **Archer MSAs**, Health **FSAs** and **HRAs** and the allowance of menstrual care product reimbursements.

G. Sec. 3702 of the CARES Act: Inclusion of Certain Over-the-Counter (OTC) Medical Products as Qualified Medical Expenses

1. The Internal Revenue Code has specified provisions for medical care expenses that are eligible for use, distribution or reimbursement from plans classified as:

   a. Health Savings Accounts (**HSA**),

   b. Archer Medical Savings Accounts (**Archer MSA**),

   c. Health Reimbursement Arrangements (**HRA**), and

   d. Flexible Spending Account (**FSA**).

2. **§105(b)** provides that amounts received as **reimbursements** for medical care are **excluded** from gross income. Under pre-**CARES Act** legislation **§106(f)** provided that these amounts for medical expenses included the costs of medicine, but reimbursements for medicines or drugs only met the definition of medical expenses if the medicine or drug was a **prescribed** drug or insulin. As a result, this meant that reimbursements by **FSAs**, **HRAs** and other employer health plans for the cost of nonprescription drugs were not **excludable** from gross income.

3. As a result of amendments made by the **CARES Act**, **§106(f)**, **§220(d)(2)(A)** and **§223(d)(2)(A)** provide that over-the-counter medicines, drugs and menstrual care products are now treated as medical expenses. Therefore, the requirement that individuals obtain a prescription in order to be reimbursed for over-the-counter medicines and drugs has been **eliminated** for amounts paid or incurred *after* **December 31, 2019** for:

   a. Health Savings Accounts, (**HSA**s),

   b. Archer Medical Savings Accounts (**Archer MSAs**),

   c. Health Flexible Spending Accounts (**FSAs**), and

   d. Health Reimbursement Arrangements (**HRAs**).

   Tax Professional Note: The provisions allowing the use of these plans for over-the-counter medication as qualified medical expenses as well as the inclusion of menstrual care products as qualified medical expenses are **permanent changes** and appear not specifically related to providing taxpayer relief due to the COVID-19.

4. Menstrual care products paid or incurred *after* **December 31, 2019**, are now treated as "qualified medical expenses" for use with **HSAs, Archer MSAs,** a **Health FSA** and **HRAs**. Menstrual care products are defined as a tampon, pad, liner, cup, sponge or similar product used by individuals with respect to menstruation or other genital-tract secretions.

5. Sec. 3702(d) of the **CARES Act** provides for **effective dates**. Sec. 3702(d)(1) provides for **Distributions From Savings Accounts** and the effective date shall apply for amounts paid *after* **December 31, 2019**. Sec. 3702(d)(2) provides for **reimbursements** and the effective date shall apply to expenses **incurred** *after* **December 31, 2019**.

H. §461(l)(1)(B) Limitation on Excess Business Losses for Taxpayers Other Than Corporations: Sec. 2304 of the CARES Act

1. **§461(a)** provides a general rule that the amount of *any* deduction or credit allowed for the imposition of income tax shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income.

2. Prior to the "Tax Cuts and Jobs Act" (**TCJA**), the Statute did <u>not</u> have a provision which **limited** the *excess* business losses of **noncorporate** taxpayers.

3. As a result of the **TCJA**, **§461(l)(1)(B)** provided for a **limitation** on an **excess business loss** of the taxpayer for the taxable year, for tax years **2018-2025**.

4. An **excess business loss** is defined as the *excess* of the aggregate deductions which are attributable to the trade or business *over* the **sum of**:

   a. the aggregate gross income or gain attributable to such trade or business, **plus**

   b. **$250,000** or **$500,000** in the case of a married joint return.

   Tax Professional Awareness: The addition of this provision led to the IRS to create **Form 461** Limitation on Business Losses.

5. As a result of the **CARES Act**, the provision had been **suspended** *retroactively* for tax years *beginning in* **2018, 2019** and **2020**. Therefore, the **limitation** would *only* apply to tax years *beginning after* **December 31, 2020** and *before* **January 1, 2026**.

Tax Professional Awareness: Taxpayers who were impacted by the **limitation**, need to **amend** their **2018** and **2019** tax returns in order to receive a refund or credit or a carryback adjustment of an **NOL** if the returns were already filed *prior to* the enactment of the **CARES Act** on **March 27, 2020**.

6. Any *excess* disallowed loss shall be treated as a Net Operating Loss (**NOL**) under **§172** in the subsequent tax year. If the taxpayer did have an *excess* amount disallowed in **2018** and it was carried into **2019** as an **NOL**, and the **2019** had already been filed *before* the enactment of the **CARES Act**, then the taxpayer will have to **amend both** the **2018** return for the **§461(l)(1)(B) limitation** and claim a refund or a credit for **2018** and will also need to **amend** the **2019** return in order to **reduce** the **NOL** amount which could generate an additional amount of tax liability for **2019** and impact the amount of **NOL** carryforward to **2020** and beyond.

   Tax Professional Note: The limitation under **§461(l)(1)(B)** is indexed annually to inflation in **$1,000** increments for tax years *beginning after* **December 31, 2018**. For **2019** the amounts were increased to **$510,000** for married joint returns and **$255,000** for all other taxpayers.

   In **2020**, the amounts were **$518,000** and **$259,000** respectfully. If the losses are from a pass-through entity, then the limitations are applied at the partner or S Corporation shareholder level. For **2021** the amounts are **$524,000** and **$262,000** respectfully. The amounts for **2022** are **$540,000** and **$270,000** respectfully. The projected amounts for **2023** are **$289,000** for non-married taxpayers and **$578,000** for a married couple filing a joint return.

§461(l)(1)(B) Limitation Amounts:

Tax Year	**Married Joint**	**All Others**
2018	$500,000	$250,000
2019	$510,000	$255,000
2020	$518,000	$259,000
2021	$524,000	$262,000
2022	**$540,000**	**$270,000**
2023	$578,000	$289,000

7. The **TCJA** made the provision effective for tax years *beginning after* **December 31, 2017**, and *before* **January 1, 2026**.

8. The "American Rescue Plan Act of 2021" extended the provision for 1-year to **December 31, 2026**.

   Tax Legislative Update: The **Inflation Reduction Act of 2022** extended the provision **3 years** to **December 31, 2029**.

   Tax Professional Legislation Awareness: The Biden Administration is proposing that **§461(l)(1)(B)** become a permanent provision.

I. §168(e)(6) Technical Amendments Regarding Qualified Improvement Property (QIP): Sec. 2307 of the CARES Act

1. **§168(d)(5)(E)(viii)** provides that "qualified improvement property" (**QIP**) is **15-year MACRS** property for purposes of capitalization and depreciation.

2. **§168(d)(6)(A)** provides that in general the term "qualified improvement property" means *any* improvement **made by the taxpayer** to an **interior** portion of a building which is **nonresidential** real property if such improvement is **placed in service** *after* the date such building was **first placed in service**.

   Tax Professional Note: The requirement that the building was first placed in service prevents the construction of the improvement from being treated as **15-year** property. Nonresidential real estate is **39-year MACRS** property.

3. **§168(d)(6)(B)** provides that certain improvements are not included in the definition of **QIP**. Such term shall not include any improvement for which the expenditure is attributable to:

   a. the enlargement of the building,

   b. any elevator or escalator, or

   c. the internal structural framework of the building.

4. "Qualified improvement property" (**QIP**) placed in service *after* **December 31, 2017**, is generally depreciable over **15 years**. This rule expresses Congress's intent as reported in the Committee Reports in **TCJA** but was omitted from the Legislation. **§168(b)(3)(G)** provided that **QIP** is depreciated using a straight-line method and has a half-year convention.

   Tax Professional Reminder: QIP is generally eligible for additional first-year depreciation deduction under **§168(k). §179(e)(1)** provides that **QIP** is also eligible for **§179** expensing. **Reg**. **§1.168(k)-1(a)(2)(iii)** (bonus depreciation) states that the amount of the additional first-year depreciation is determined *after* making any basis adjustments for any **§179** expensing.

5. The amendment made by the **CARES Act** clarifies that **QIP** is **15-year property** under **MACRS** and **20-year property** under **ADS**.

   Tax Professional Note: The amendment reverses **T.D. 9874** with the result that "qualified improvement property" (**QIP**) may be eligible for additional first-year depreciation under **§168(k).**

   If **QIP** placed in-service *after* **2017** was improperly depreciated as a **39-year property** (**40** under **ADS**) then the taxpayer may be eligible to:

   a. file an amended return, or

   b. file an administrative judgment under **§6227**, or

   c. file IRS **Form 3115** "Application in Change in Accounting Method" to a change to properly treat such property as **15-year property** (**20** year **ADS**).

6. In addition, a taxpayer wanting to **make, revoke,** or **withdraw** an *election* for such property under **§168(g)(7)** for an *election* under **ADS**, or **§168(k)(7)** for an *election out* of the first-year depreciation deduction under **§168(k)** or **§168(k)(10)** for an *election* to use **50%** allowance under **§168(k)** for certain property placed in service during certain periods, may be eligible to do so by:

   a. filing an amended return, or

   b. filing an administrative adjustment request, or

c. filing IRS **Form 3115** (**§446(e)**, **Rev. Proc. 2020-25** and Section 6 of **Rev. Proc 2019-43, 2019-48 I.R.B. 1107**, as modified by **Rev. Proc. 2020-25**).

7. The **CARES Act** amendment also clarifies that **15-year MACRS** (20-year ADS) recovery property *only* applies if the **QIP** is **made by the taxpayer**. **§168(d)(6)(A)** provides that if a taxpayer purchases a building in a taxable transaction, then any **QIP** previously placed in service by the seller with respect to such building does not qualify as "qualified improvement property" for the purchaser. Therefore, the purchaser has **39-year MACRS property**.

   Tax Professional Note: The amendment made for **QIP** was known as the "retail glitch" after the enactment of the "Tax Cuts and Jobs Act" (**TCJA**). It specifically includes restaurants, retail establishments and tenant spaces which have all been hit severely by the coronavirus crisis. It also provided faster depreciation going into **2020** as the **39 year** life is cut down almost by **2/3** to **15 years**.

   The principal item to remember is that landlords are not eligible for **§179** deductions because they are not in the trade or business of resale to customers; whereas the tenant is, and therefore qualifies for **§179** expensing deduction and bonus depreciation. Landlords could qualify for bonus depreciation depending on the improvement.

III. Continuing Provisions of the Consolidated Appropriations Act of 2021: H.R. 133, Enactment Date December 27, 2020

III. Continuing Provisions of the Consolidated Appropriations Act of 2021: H.R. 133, Enactment Date December 27, 2020

A. Background and Introduction

1. On Monday **December 21, 2020** both Congressional Chambers passed year end Legislation "Consolidated Appropriations Act of 2021" which provided appropriations for the fiscal year budget ending **September 30, 2021** as well as an omnibus package containing **5593** pages of Legislation in **Public Law 116-260**.

2. On Sunday **December 27, 2020**, the President signed the Legislation into law. As a result of the President's signature, the enactment date referred to throughout this session is **December 27, 2020**.

3. The "Consolidated Appropriations Act of 2021" (**CAA, 2021**) included many federal tax provisions. There are **31** separate Divisions in the Legislation being cited from **Division A to Division EE.** The **CAA, 2021** has tax provisions which include:

    - Individual Provisions,
    - Business Provisions,
    - Expiring Tax Extender Provisions,
    - Excise Tax Provisions,
    - Energy Related Provisions,
    - Payroll Tax Provisions,
    - Pension Provisions, and
    - Health Provisions.

    The total appropriation for this Legislation was **$748 Billion.** This was for emergency relief, not including the support for State, Local and Tribal Governments. That was a separate cost of another **$160 Billion** for a total cost of **$908 Billion**.

B. Individual Tax Provisions of the Consolidated Appropriations Act, 2021 (CAA, 2021)

1. The federal tax provisions in **CAA, 2021** are addressed in **Division M, Division N** and **Division EE**. These divisions are titled as follows:

    a. **Division M**: "Coronavirus Response and Relief Supplemental Appropriations Act, 2021",

    b. **Division N**: "Additional Coronavirus Response and Relief of 2020", and

    c. **Division EE**: "Taxpayer Certainty and Disaster Tax Relief Act of 2020" (**TCDTRA**).

2. In each of these **Divisions** there are continuing tax provisions that impact individual taxpayers in areas such as:

    a. **§62(a)(2)(D)(ii)** Educator Expense Deduction Applying to Personal Protective Equipment (**PPE**), and

    b. **§6306(d)(3)** Disclosure to prevent certain taxpayers from being subject to private tax debt collection by agencies outside of the IRS.

C. §62(a)(2)(D)(ii) Educator Expense Deduction Includes Personal Protective Equipment (PPE)

1. The **$250** eligible educator deduction now includes the costs paid or incurred *after* **March 12, 2020** for:

    a. personal protective equipment (**PPE**),

    b. disinfectant, and

    c. other supplies used for the *prevention of the spread* of COVID-19

2. The Legislation required that the IRS issue regulations or provide guidance to clarify what items are covered for the allowable deduction no later than **February 28, 2021**. The IRS did provide guidance on **February 4, 2021** in Information Release **IR-2021-28.** The IRS also released **Rev. Proc. 2021-15**. COVID-19 protective items include, but are not limited to:

    - face masks;
    - disinfectant for use against COVID-19;
    - hand soap;
    - hand sanitizer;
    - disposable gloves;
    - tape, paint or chalk to guide social distancing;
    - physical barriers (for example, clear plexiglass);
    - air purifiers; and
    - other items recommended by the Centers for Disease Control and Prevention (**CDC**) to be used for the prevention of the spread of COVID-19.

    Tax Professional Reminder: The personal protective equipment provision is a permanent provision.

3. The educator expense deduction provisions permit "eligible educators" to deduct up to **$250** of qualifying expenses per year (**$500** if married filing jointly and both spouses are eligible educators, but not *more than* **$250** each).

    Tax Professional Update: The provision is indexed to inflation in **$5** increments for tax years *beginning after* **December 31, 2018**. The allowable deduction amount increases to **$300** in **2022**.

4. "Eligible educators" include any individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide **in a school** for *at least* **900 hours** during a school year.

D. §6306 Disclosures to Prevent Certain Taxpayers from Being Subject to Private Debt Collection

1. **§6306(d)(3)** *excludes* supplemental social security (**SSI**) and social security disability insurance (**SSDI**) beneficiaries from the IRS private debt collection program *beginning on* **January 1, 2021**.

2. **New Law**: The IRS and Social Security Administration need statutory authority to share information in order to determine which taxpayers are **SSI** or **SSDI** beneficiaries and eligible for exclusion from the IRS program. The provision provides the authority needed to share such information and make **§6306(d)(3)** work as intended. (**§6013(k)(15)** and Section 1106 of the Social Security Act, as amended by **COVIDTRA** Sec. 283)

E. Temporary Special Rules for Health and Dependent Care Flexible Spending Arrangements

1. A **§125** cafeteria plan may permit the **carryover of unused** amounts remaining in a **Health FSA** as of the **end of a plan year**, in order to pay or reimburse a plan participant for medical care expenses incurred *during the following* **plan year**. There is a *carryover limit* which was **$550** for **2020**. This is sometimes referred to as the "carryover rule" per IRS **Notice 2013-71, 2013-47 IRB 532, and Notice 2020-33, 2020-22 IRB**.

2. **New Law Provisions**: The "Taxpayer Certainty and Disaster Tax Relief Act of 2020" (**TCDTR)** *expands the carryover* period for **2020**, and **2021**. The provision also allows employers to *extend* the normal **2 1/2 month grace period** for plan years *ending in* **2020** and **2021**, to **12 months** *after the end* of such plan year for any **unused benefits** and **contributions** to "health flexible spending" and "dependent care flexible spending" arrangements.

3. In addition, an employer may *allow* an employee who ceases to participate in the plan *during* **calendar year 2020** or **2021** to continue to receive **reimbursements** from unused benefits or contributions *through the end* of the **plan year** in which the employee's participation **ceased**, *including any* **extended grace period**.

4. The **TCDTR** also provides a **special carry forward** rule for "dependent care" flexible spending arrangements where the dependent *aged out during* the pandemic. (**TCDTR** Sec. 214). The **maximum** age of an eligible dependent is **12 years** old. This means that the funds can be used for the child who is **age 13** for unused amounts from a **2020** plan year carried over into the **2021** plan year. It also means that any unused amounts from a **2021** plan year can be carried over to **2022**.

F. Introduction to the Business Tax Provisions of CAA, 2021

1. The "COVID Related Tax Relief Act of 2020" (**COVIDTRA**) and the "Taxpayer Certainty and Disaster Tax Relief Act of 2020" (**TCDTR**), are both part of the "Consolidated Appropriations Act, 2021" (**CAA, 2021**), and both Acts contain numerous federal income tax provisions related to businesses. Below is a selected summary of those provisions:

   a. Clarification of tax treatment of Paycheck Protection Program (**PPP**) "covered loan forgiveness" in section 1106 of the **CARES Act**,

   b. Clarification of tax treatment of certain loan forgiveness and other business financial assistance under the **CARES Act** and second round **PPP** loans (**PPP2**),

   c. **§6050P** Authority of the Treasury to waive certain information reporting requirements,

   d. **§172** Farmers' net operating loss changes, and

   e. **§274(n) 50%** limit on business meal deduction is suspended for meals provided by restaurants in **2021** and **2022**.

G. 100% Business Meal Deduction Allowed for Meals Provided by Restaurants in 2021 and 2022

1. **§274(n)(1)** provides that taxpayers may generally deduct the ordinary and necessary food and beverage expenses associated with operating a trade or business, including meals consumed by employees traveling away from home for work. The deduction is generally limited to **50%** of the otherwise allowable amount.

2. **§274(n)(2)** provides certain *exceptions* to this **50% limit**. However, under pre-Act law, there was no *exception* for meals provided by a restaurant.

   New Law Change: Under the Act, **§274(n)(2)(D)** provides that the **50% limit** does not apply to expenses for food or beverages **provided by a restaurant** that are **paid or incurred** *after* **December 31, 2020**, and *before* **January 1, 2023**, as amended by **TCDTR Sec. 210**.

H. Congress Passes Tax Extenders and Excise Tax Provision: Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTR)

1. As previously stated, part of the **Consolidated Appropriations Act of 2021** (**CAA, 2021**), includes the "**Taxpayer Certainty and Disaster Tax Relief Act of 2020**" (**TCDTR**). **TCDTR** contains numerous tax extenders along with some excise tax provisions. The **extended** provisions include:

   a. **permanent** provisions

   b. provisions that are **extended** for **one year**, with an expiration date of **December 31, 2021**,

   c. provisions that are **extended** for **five years**, with an expiration date of **December 31, 2025**, which coincides with the expiring provisions from the Tax Cuts and Jobs Act (**TCJA**).

2. The **permanent** provisions included in the Legislation are as follows:

   a. **§213** medical expense **deduction** floor to **7½%**,

b. **§179D** energy efficiency commercial building **deduction**,

c. **§139B exclusion** provided to volunteer Firefighters and emergency medical responders, and

d. **§25A** lifetime learning **credit** with an increase in the phase-out range based on filing status.

3. The **extended** provisions included in the Legislation are as follows:

   a. **§51** Work Opportunity **Credit**, *until* **12/31/2025**,

   b. **§108(a)(l)(E) exclusion** for discharge of qualified principal residence, indebtedness, *until* **12/31/2025**,

   c. **§45S credit** for employers providing paid family and medical leave, *until* **12/31/2025**,

   d. **§127 exclusion** for employer paid student loan debt, *until* **12/31/2025**,

   e. **§163(h)(3)(E)** mortgage insurance premiums as qualified residence interest **deductions**, *until* **12/31/2021**. As of this writing, the provision has not been extended.

   Tax Professional Note: There are additional extended provisions related to other allowable deductions and **energy credits**. Some of the energy provisions have been extended by the **Inflation Reduction Act of 2022** which is presented in a separate chapter of this presentation.

I. Increased Income Limitation on §25A Lifetime Learning Credit

1. **§25A** provides that the total allowed for education credits is the **sum of** the:

   a. American Opportunity Tax Credit (**AOTC**), and

   b. Lifetime Learning Credit.

2. Under pre-Act law, **§25A(d)** provided for different phase-out rules applied for the **AOTC** and the Lifetime Learning Credit.

3. **Law Update**: The Act **removes** the different phase-out rules for the **AOTC** and **Lifetime Learning Credit** and replaces them with a single phase-out amount effective for tax years *beginning after* **December 31, 2020**. (**§25A(d)(l)**, as amended by Act Sec. 104(a)). These phase-out amounts *begin* at **$80,000** for all taxpayers *except* married joint which *begins* at **$160,000.** The phase-out amount *ends* at **$90,000** for all taxpayers *except* married joint which *ends* at **$180,000.** The phase-out threshold amounts are not indexed for inflation.

4. The Legislation also **repealed** the **§222** tuition and fees deduction for tax years *beginning after* **December 31, 2020**. (Act Sec. 104(b), 104(c)). This means that **2020** was the last year for filing **Form 8917.**

J. §108(a)(1)(E) Exclusion from Gross Income of Discharge of Qualified Principal Residence Indebtedness

1. Under pre-**Disaster Act** law, **§108(a)(1)(E)** provided that for tax years *beginning before* **January 1, 2021**, the **Discharge of Qualified Principal Residence Indebtedness**, of *up to* **$2,000,000** (**$1,000,000** for married taxpayers filing separately), was **excluded** from gross income. The **Consolidated Appropriation Act of 2021** *decreases* the allowable **exclusion** amount to **$750,000.** However, for a filing status of married filing separately, the amount is *only* **$375,000.**

   Tax Professional Awareness: The original provision was created as a result of the **2007 Mortgage Relief Act** as a temporary provision and was only supposed to be in effect for **2007** and **2008**. Before **2007** ended, it was extended to **2010**. The provision has expired and been reinstated for a decade. Also note that the exclusion amount is now the same as the amount for the **§163** interest expense deduction limitation for an acquisition debt on or after **December 15, 2017**.

2. **Current Law:** The **Disaster Act** *extends* this **exclusion** for **five** years to **December 31, 2025**. As a result, the provision is for all **Discharges of Principal Residence Indebtedness** *before* **January 1, 2026**.

3. The **Disaster Act** also provides that the **exclusion** applies to any "qualified principal residence indebtedness" that is discharged pursuant to a **binding written agreement** entered into *before* **January 1, 2026**.

   Tax Professional Awareness: The taxpayer reports the **§108(a)(1)(E) exclusion** on IRS **Form 982** "Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section **1082** Basis Adjustment)". In order to properly report the **exclusion** amount, the taxpayer must check the **Box** on **Line 1(e)** of the **Form 982.** If the taxpayer stays in the home *after* the discharge of indebtedness takes place, then the taxpayer must also *reduce* the **basis** of the property for the amount of the **exclusion** and report that amount on **Line 10(b)**.

4. **§108(h)(4)** provides that if *any* loan is discharged, in whole or in part, and *only* part of the loan is "*qualified principal residence indebtedness*", then the mortgage forgiveness **exclusion** applies *only* to the amount discharged that *exceeds* the amount of the loan (as determined immediately *before* the discharge) which is not "*qualified principal residence indebtedness*".

EXAMPLE #1: The taxpayer's principal residence is secured by a debt of **$600,000,** of which **$400,000** is "*qualified principal residence indebtedness*". If the residence was sold by the bank for **$350,000** and **$250,000** of debt is discharged, then *only* **$50,000** of the debt that is discharged may be **excluded** from gross income as follows:

Total debt on the Principal Residence on the date of Cancellation	**$600,000**
Qualified Principal Residence **Debt** on date of Cancellation	($400,000)
Nonqualified debt reported on **Form 1040, Schedule 1, line 8 Other Income**	**$200,000**
Total debt forgiveness per **Form 1099-C**	($250,000)
Exclusion for home mortgage debt relief reported on **Form 982, line 2**	**($50,000)**

The remaining **$200,000** of **nonqualified debt** may qualify in whole or in part for one of the *other* exclusions available in **§108(a)** (e.g., the insolvency exclusion). The taxpayer must report the transaction on **Form 982** "Reduction of Tax Attributes Due to Discharge of Indebtedness (and **§1082** Basis Adjustments)". The taxpayer should also be issued a **Form 1099-C** Cancellation of Debt by the creditor no *later than* **January 31**, following the year of debt forgiveness.

5. **§108(h)(2)** provides that the *qualified principal residence indebtedness* is "acquisition indebtedness" under **§163(h)(3)(B)** with respect to the taxpayer's "principal residence", with a **$750,000** limit (**$375,000** for married individuals filing separately).

6. **§108(h)(5)** provides that "principal residence" has the same meaning as under the **§121** home sale **exclusion** rules for the **$250,000**/**$500,000** amounts.

   Tax Professional Reminder: "Acquisition indebtedness" of a principal residence is indebtedness incurred in the acquisition, construction, or substantial improvement of an individual's **principal residence** that is **secured by** the residence. It includes refinancing of debt to the extent the amount of the refinancing does not *exceed* the amount of the refinanced indebtedness. (Joint Committee on Taxation JCX-86-07)

7. **§108(h)(1)** provides that if the taxpayer **retains ownership** of the home, then the **basis** of the taxpayer's principal residence is *reduced* by the **excluded** amount, but not below zero.

   Tax Professional Note: The mortgage forgiveness **exclusion** *only* applies with respect to a taxpayer's **principal** residence. Therefore, while interest for a taxpayer's second home may be deductible, any debt forgiven with respect to a taxpayer's second home is not excludable from the taxpayer's gross income.

8. **§108(a)(2)** provides that an **insolvent taxpayer** (*other than* one in a Title **11** bankruptcy) can *elect* to have the **§108(a)(1)(E)** mortgage forgiveness **exclusion** not apply, and can instead rely on the **§108(a)(1)(B) exclusion** for insolvent taxpayers.

9. If there is a gain on the foreclosure of a principal residence, then it may be partially or completely **excluded** from gross income under the provisions of **§121** for *up to* **$250,000** or **$500,000** depending on filing status of the taxpayer.

10. If the taxpayer did not qualify for the **2-out-of-5** year ownership and use test, then the taxpayer could still qualify for the *partial* **exclusion** due to a change in employment, health or "unforeseen circumstances". **Reg**. **§1.121-3** states that safe-harbor events include events such as an involuntary conversion, job loss, and events identified by the IRS as "unforeseen circumstances".

    NSTP Webinar Awareness: **NSTP** offers a webinar on the **§121** Home Sale Exclusion. Go to the website at http://www.nstp.org/ and click on Education and Webinars.

    Example of Restructuring the Principal Residence Debt:

    Don has owned his principal residence since **2010**. The basis of the home is **$500,000** and he carried a **$450,000, 30-year** mortgage at the time of acquisition. In the current year, Don runs into financial trouble and cannot afford to make the payments at the level supported by his lower income. He now owes **$400,000** on the home and the value of the property is still at **$500,000.**

    The lender restructures the loan for Don and brings the period of the loan back up to **30 years** lowering Don's monthly payment and also reduces the mortgage down to **$360,000.** As a result, the bank issues **IRS Form 1099-C** to Don for the **$40,000** of debt forgiveness. Don files **Form 982** reporting **$40,000** on **line 1e** and, also on **line 10b**. In addition, Don **reduces the basis** of his home to **$460,000.** When Don sells the principal residence in the future, he will measure his gain or loss using the **$460,000** reduced basis amount and not the **$500,000** purchase price.

11. Lenders are required to issue **IRS Form 1099-C** by **January 31** following the year of debt forgiveness for taxpayers whose debt was reduced or eliminated.

    Tax Professional Note: The "foreclosure by the bank" or the "abandonment of the principal residence by the taxpayer" takes place in the current year causing a **deemed sale** of the property in the **current year**. If the debt is not forgiven at the same time as the foreclosure or abandonment takes place then, the lender should issue **IRS Form 1099-A** "Acquisition or Abandonment of Secured Property".

However, the **discharge of indebtedness** is a *separate* transaction which could take place in a **subsequent** tax year and perhaps several years later until the lender actually forgives the debt.

12. **Form 1099-C** "Cancellation of Debt" must report the amount of debt forgiven and the fair market value (**FMV**) of any property given up through foreclosure. The IRS states that taxpayers review the form carefully and notify the lender immediately if any of the information reported is incorrect and cautions that special attention should be paid to the amount of debt forgiven in Box **2** and **FMV** in Box **7**.

    Tax Professional Note: The most difficult issue that the taxpayer faces is the **FMV** at the time the debt is discharged. Generally, **FMV** is the price at which the property is sold or if no sale takes place, a willing buyer and willing seller would agree to a given price where neither is under any pressure to buy or sell and are aware of all the facts surrounding the condition of the property. In a situation where the taxpayer has to surrender the property to the creditor in exchange for a cancellation of debt, the taxpayer may not agree with the **FMV** reported in the **Form 1099-C**. In this circumstance, if the taxpayer could afford a professional appraisal of the property prior to the transfer of the property, then this may be the better course of action in order to determine the proper **FMV**.

    Tax Professional Research Recommendation: IRS **Publication 4681** "*Canceled Debts, Foreclosures, Repossessions and Abandonments*".

    NSTP Webinar Awareness: For a webinar on understanding the requirements of the **Form 1099-A** vs. **1099-C**, go to the NSTP Website at **http://www.nstp.org**/ and click on Education and Webinars.

K. §163(h)(3)(E) Treatment of Mortgage Insurance Premiums as Qualified Residence Interest

1. Under pre-**Disaster Act** law, **§163(h)(3)(E)** provides that **mortgage insurance premiums** paid or accrued *before* **January 1, 2021**, by a taxpayer in connection with "acquisition indebtedness" with respect to the taxpayer's "qualified residence" were treated as deductible "qualified residence interest". The mortgage insurance premium deduction is subject to a **phase-out** based on the taxpayer's adjusted gross income (**AGI**). The maximum amount allowed as a deduction for a tax year was **$1,000.** The amount was reduced to **$500** for a married taxpayer filing a separate income tax return from his or her spouse. The deduction is reported on **Schedule A**, **line 8(d).**

   CAA2021 Law: The **Disaster Act** only *extended* the allowable deduction for mortgage insurance premiums for **one year** to **December 31, 2021**.The amount allowable as a deduction is **phased out** ratably by **10%** for *each* **$1,000** by which the taxpayer's adjusted gross income (**AGI**) *exceeds* **$100,000.** In the case of a married individual filing a separate income tax return from his or her spouse, the deduction amount is **$500,** and the adjusted gross threshold income amount is **$50,000.** As a result of the **phase-out**, the deduction is not allowed once the married taxpayers' **AGI** *exceeds* **$110,000.** This amount is **$55,000** in the case of a married individual filing a separate income tax return from his or her spouse.

   Tax Professional Note: The deduction is probably of little use to most taxpayers because of the increase in the standard deduction enacted by the "Tax Cuts and Jobs Act" especially for a married couple filing a joint return with a standard deduction amount in **2022** of **$25,900.** For taxpayers who are single where the standard deduction is **$12,950** in **2022**, it may have some value if the provision does get extended.

   TAX PROFESSIONAL ALERT: As of this writing, the provision has not been extended *after* **December 31, 2021** and is currently **expired**.

L. §213(f) Reduction in Medical Expense Deduction Floor of 7.5%

1. Under prior legislation, for tax years *beginning before* **January 1, 2021**, **§213(a)** provided that individual taxpayers' could claim itemized deductions for unreimbursed medical expenses to the extent that such medical expenses *exceeded* **7.5%** of their **AGI**. In order to claim the **Medical Deduction**, taxpayers must first *elect* to *itemize* their deductions on **Schedule A** of **IRS Form 1040** or **IRS Form 1040-SR** instead of claiming the amount of the allowed Standard Deduction based on their filing status.

   Current Law: The **Consolidated Appropriations Act of 2021** made the threshold of **7.5%** of **AGI** a **permanent** provision.

   Tax Professional Note: For most taxpayers the provision is not applicable *during* the period of **2022-2025** because of the increased standard deduction amounts provided under the "Tax Cuts and Jobs Act." This is especially true for married couples **age 65 and over** who have a standard deduction amount of **$25,900** and an additional standard deduction amount of **$1,400** each for a total of **$28,700.** Medicare will cover many of their medical costs and for those with a supplemental health plan the amount paid out of pocket will not be enough to qualify for the **7½%** floor. In addition, most taxpayers who are **age 65** and older generally do not have a mortgage and their **§164** tax deduction is limited to **$10,000.** In addition, many do not have the wherewithal to make sizable charitable contributions that would get them *over* the **$28,700** amount. If the couple is age **70 ½** and over then they should also be making any charitable contributions using their **IRA** account and contribute under the provisions of the "Qualified Charitable Distribution" (**QCD**) rules.

M. §1391 Empowerment Zone Tax Incentives

1. **§1391** provides for incentives for "Empowerment Zones." The designation of an economically depressed census tract as an "Empowerment Zone" provides for businesses and individual residents within such a **Zone** eligible for "special empowerment zone tax incentives." These incentives include:

a. the **20%** wage credit under **§1396** for the "**Empowerment Zone Employment Credit**" which is for the first **$15,000** of "qualified zone wages" paid or incurred for services performed by a "qualified empowerment zone employee" as defined in **§1396(d)(1)**,

b. tax-exempt bond financing under **§1394**, for the Tax-exempt "enterprise zone facility bonds". In this situation **95%** or more of the net proceeds are to be used to provide financing directly to the "enterprise zone facility", and

c. *deferral* under **§1397B** "**Nonrecognition of Gain on Rollover of Empowerment Zone Investment**". This is the *deferral* of capital gains tax on sale of "qualified assets" sold and replaced. This is reflected on the first line of the **Schedule D** of **Form 1040** or **Form 1040-SR**.

2. Under pre-**Disaster Act** law, **Empowerment Zone Designations** expired on **December 31, 2020**.

   Current Law: The **Disaster Act** *extends* the period for **5 years** for which the **designation** of an "empowerment zone" is in effect through **December 31, 2025**. **(§1391(d)(1)(A)(ii)).**

3. The **Disaster Act** also provides that where a *nomination* of an empowerment zone included a termination date of **December 31, 2020**, the termination will <u>not</u> apply with respect to the **designation** <u>if</u>, *after the date of the enactment* of the **Disaster Act**, (**December 27, 2020**) the entity that made such *nomination* **amends** the *nomination*, in such manner as the **IRS** may provide, in order to provide for a **new** termination date. This applies to tax years *beginning after* **December 31, 2020**.

   Tax Professional Awareness: The purpose of the extension period of the Empowerment Zone Investment is to spur the economy in economically depressed areas.

   Tax Education Awareness: **NSTP** has a **5 hour CPE webinar** presented on **July 21, 2021** by Nina Tross at the Napa Special Topics Seminar titled "Tax Benefits of Investing in Opportunity Zones and Empowerment Zones". Go to **NSTP's** website at https://www.nstp.org and **click on Education** and **Webinars**.

N. §25C Nonbusiness Energy Property

1. **§25C(a)** provides a credit for purchases of nonbusiness energy property. **§25C(a)(1)** provides a credit of **10%** of the amounts paid or incurred by the taxpayer for "qualified energy efficiency improvements" to the "building envelope". **§25C(b)(1)** provides for a lifetime limitation of *only* **$500.**

2. The "building envelope" includes the following items of a taxpayer's "principal residence" specifically and permanently designed to reduce heat gain or heat loss:

    a. exterior windows,

    b. exterior doors,

    c. skylights, and

    d. metal roofs or asphalt roofs.

    Tax Professional Reminder: **§25C(b)(2)** provides a **limited credit** of *only* **$200** for windows.

3. **§25C(b)(3)** provides credits of **fixed dollar amounts** ranging from **$50** to **$300** for "energy-efficient building property" including:

    a. furnaces,

    b. boilers,

    c. electric heat pumps,

    d. water heaters,

    e. central air conditioners which, achieves the highest efficient tier established by the Consortium for Energy Efficiency as in effect on **January 1, 2009**, and

    f. advanced main circulating fans (limited to **$50**).

4. This amount is subject to a *lifetime cap* of **$500.** As a result, for those taxpayers who have already reached the **$500** *lifetime cap*, these taxpayers will not be impacted by the **extension** of this provision.

5. The credit is reported on **IRS Form 5695** on **page 2**.

   Tax Professional Awareness: All of these energy improvements must meet Energy Star Program requirements and other criteria established by the 2009 International Energy Conservation Code as in effect on the date of enactment of the "American Recovery and Reinvestment Act of 2009". In addition, the credits are *only* available for the taxpayer's **principal residence** which is in the United States which would be the residence allowable for the **§121 exclusion** for which the taxpayer would be owning and occupying the residence for a cumulative period of **2** out of **5** years *prior* to the date of sale. In addition, any improvements made must be for a component which can reasonably be expected to remain in use for *at least* **5** years. Also, **§25C(f)** provides that the taxpayer must *reduce* the adjusted basis of the principal residence by the amount of the credit allowed.

   Extended Law: The **Disaster Act** only *extended* this credit **one year** through **December 31, 2021**. (**§25C(g)2)**). The **Inflation Reduction Act of 2022** enacted on **August 16, 2022** extended these provisions retroactively to **January 1, 2022**. However, the Legislation made significant changes for years **2023-2032** which is discussed in a separate chapter of this presentation.

O. §45S Employer Tax Credit for Paid Family and Medical Leave

1. **§45S** provides an employer **credit** for Paid Family and Medical Leave, which permits *eligible* employers to claim an *elective* general business credit based on *eligible wages* paid to *qualifying employees* with respect to family and medical leave.

   The provision for the **credit** was enacted as part of the **Tax Cuts and Jobs Act** (**TCJA**) and was originally applicable *only* for tax years **2018** and **2019**. It was extended for **one year** by the **SECURE Act** for **2020**.

2. The **credit** is equal to:

   a. **12.5%** of *eligible wages* **if** the rate of payments is **50%** of such wages normally paid, and

b. is *increased* by **0.25%** percentage points (but not above **25%**) for each percentage point that the rate of payment *exceeds* **50%**.

3. The **maximum** amount of family and medical leave that may be taken into account with respect to any qualifying employee is **12** weeks per tax year.

   TAX PROFESSIONAL ALERT: The credit is not allowed if the **State** provides that employers are **mandated** to provide payment for medical and family leave. The credit *only applies* for the *portion* of the period not **mandated** by State Law.

   Current Law: The **Disaster Act** *extends* this credit for **5** years through **2025.**

4. The **§45S** credit is calculated on **IRS Form 8994** "Employer Credit for Paid Family Medical Leave" and reported on **Form 3800, Part III, line 1j** as a **§38** General Business Credit.

5. In order to be eligible for the credit, an employer must have a **written policy** that meets several requirements and provides *at least* **two weeks** of paid family and medical leave to full-time employees and have a pro-rated amount of paid leave for part-time employees.

6. In order to have a "qualifying leave" the events can be for any or all of the following reasons specified in the **FMLA** such as:

   a. Birth of an employee's child,

   b. Care for the child,

   c. Placement of a child with the employee for adoption or foster care,

   d. To care for the employee's spouse, child or parent who has a serious health condition,

   e. A serious health condition that makes the employee unable to perform the functions of their job, or

   f. Any qualifying emergency due to an employee's spouse, child, or parent being on covered active duty in the Armed Forces. This includes the taxpayer being notified of an impending order to covered active duty.

P. §51 Work Opportunity Tax Credit

1. **§51(a)** provides an *elective* general business credit under **§38** to employers hiring individuals who are members of one or more of **ten** targeted groups under the **Work Opportunity Tax Credit Program**.

    Current Law: §51(c)(4), as *amended by* the **Disaster Act** *extends* this credit for **5 years** for tax years *beginning after* **December 31, 2020**, and *before* **January 1, 2026**

2. **§51(a)** provides that the amount of the Work Opportunity Credit is **40%** of the first **$6,000** of "qualified first year wages".

3. **§51(b)(1)** defines "qualified wages" to mean wages paid or incurred by the employer during the taxable year to individuals who are members of a targeted group.

4. **§51(b)(2)** defines "qualified first year wages" to mean "qualified wages" attributable to service rendered during the **1-year** period *beginning with* the date the individual begins work for the employer.

5. **§51(b)(3)** provides that there is a **limitation** on the wages that are taken into account for purposes of the credit. The amount is **$6,000** per year for any individual in the targeted group. **§51(d)(3)(A)(ii)** provides that for a qualified veteran, the amount is **$12,000, $14,000** or **$24,000** per year depending on specific qualifications under **§51(d)(3)(A).**

6. **§51(d)(1)(A)-(J)** define an individual who is a member of a targeted group as follows:

    (A) a qualified IV-A recipient as defined in **§51(d)(2)**,

    (B) a qualified veteran as defined in **§51(d)(3)**,

    (C) a qualified ex-felon as defined in **§51(d)(4)**,

    (D) a designated community resident as defined in **§51(d)(5)**,

    (E) a vocational rehabilitation referral as defined in **§51(d)(6)**,

    (F) a qualified summer youth employee as defined in **§51(d)(7)**,

(G) a qualified supplemental nutrition assistance program benefits recipient as defined in **§51(d)(8)**,

(H) a qualified SSI recipient as defined in **§51(d)(9)**,

(I) a long-term family assistance recipient, as defined in **§51(d)(10)**, or

(J) a qualified long-term unemployment recipient as defined in **§51(d)(15).**

7. The credit is calculated on **Form 5884** "Work Opportunity Credit" or **Form 5884-C** for use by tax exempt organizations, and is reported as a **§38** General Business Credit on **Form 3800, page 3, Part III, line 4b.**

IV. Selected Provisions of the SECURE Act: Enactment Date December 20, 2019

IV. Selected Provisions of the SECURE Act: Enactment Date December 20, 2019

On **December 17, 2019**, the **House of Representatives** passed the **Setting Every Community Up for Retirement Enhancement Act (SECURE Act)**. The **SECURE Act** was part of the **Further Consolidated Appropriations Act, 2020 (P.L. 116-94)**. The Legislation was subsequently passed by the **Senate** on **December 19, 2019**. The Legislation was then sent to President Trump for signature and he signed the full package into law on **December 20, 2019**. Therefore, any reference to the "Enactment Date" means **December 20, 2019**.

A. Repeal of Maximum Age for Traditional Individual Retirement Account (IRA) Contributions: Section 107 of the SECURE Act

1. Under pre-**SECURE Act** law, an individual taxpayer who had **earned** income and had attained age **70 ½** by the close of a year was <u>not</u> permitted to make contributions to a traditional **IRA** plan. This restriction did <u>not</u> apply to a taxpayer who had **earned** income and made **contributions** to a **Roth IRA** plan.

   Current Law: Updated **§219(d)(1)** provides that for **contributions** made for **tax years** *beginning after* **December 31, 2019**, the **SECURE Act** repeals the prohibition on **contributions** to a **traditional IRA** by an individual who has **earned** income and has attained age **70 ½**.

2. **Coordination with Qualified Charitable Distribution (QCD) Rules**:

   a. **§408(d)(8)(A)** provides for an **annual exclusion** from gross income for a taxpayer's Required Minimum Distribution (**RMD**) amount.

      The amount of the **exclusion** <u>cannot</u> *exceed* **$100,000.** The **exclusion** is available for otherwise taxable traditional **IRA** distributions that are Qualified Charitable Distributions (**QCDs**). These **distributions** are specifically **excluded** from a taxpayer's gross income.

b. In addition, the "qualified charitable distributions" cannot be claimed as a **charitable contribution deduction** on a taxpayer's return if the taxpayer *elects* to itemize deductions on **Schedule A**. In other words, **no double dipping is allowed!** Also, the "qualified charitable distributions" are not subject to the **60% AGI** limitation that applies for deducting charitable contributions *during* the period **2018-2025** and **50%** *after* **2025**.

c. In general, **§408(d)(A)** provides that a **QCD** is one that is made:

   i. *on or after* the **IRA owner** has *already* attained age **70 ½,** and

   ii. the **RMD** is distributed directly by the **IRA** plan administrator to a **§170(b)(1)(A)** charitable organization (*other than* a **§509(a)(3)** organization (private foundation) or a donor advised fund as defined in **§4966(d)(2)).**

Tax Professional Awareness: Although the age for an **RMD** has been changed from age **70 ½ to age 72**, the benefit of the taxpayer to have a "qualified charitable distribution" remained at age 70 ½. In addition, it is important to remember that the taxpayer may not qualify for the **QCD** *until* the day the taxpayer has actually reached **age 70 ½**.

3. Taxpayers who qualify for the **exclusion** can transfer *up to* **$100,000** in Qualified Charitable Distributions "**QCD**" from an **IRA**. Married taxpayers filing jointly can *each* have a "**QCD**" of **$100,000** if they *each* have their own **IRA.**

4. **§408(a)(6)** provides that the required minimum distribution (**RMD**) rules under **§401(a)(9)** for qualified retirement plans must be applied to traditional **IRAs**.

5. **§170** provides that an individual taxpayer may be eligible to deduct contributions made to charitable organizations described under **§170(b)(1)(A).**

Tax Professional Awareness: As a result of the "**Tax Cuts and Jobs Act**" (**TCJA**) increasing the standard deduction, many taxpayers may not be able to receive the benefit of making charitable contributions. Therefore, the *election* to make a Qualified Charitable Distributions (**QCD**) allows them to receive the full income tax benefit of a charitable contribution *without the need to elect* to itemized deductions on **Schedule A**.

6. **§408(d)(1)** provides a general rule for the tax treatment of IRA **distributions**. It provides that any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee in the manner provided under the annuity rules of **§72.**

   Tax Professional Education Point: If a taxpayer made **nondeductible contributions** to a traditional **IRA**, then a *portion* of each of the **distributions** would be non-taxable *until* all the **nondeductible contributions** have been recovered. This amount is calculated by *multiplying* the *ratio* of **nondeductible contributions** *over* the account **balance** *by* the amount of the total **distribution** during the tax year. This results in the **§72 exclusion ratio**.

$$\frac{\text{Nondeductible Contributions}}{\text{Account Balance}} \times \text{Distribution} = \textbf{\S 72 Exclusion Amount}$$

Tax Professional Note: The full distribution amount must be reported on the **Form 1040** and **Form 1040-SR**, page **1**, line **4a**, and any portion included in gross income is reported on line **4b** with "**QCD**" notated in the margin. In many cases the inclusion amount could be **zero**.

TAX PROFESSIONAL ALERT: The distribution rules are specific to **direct transfers** by the **IRA trustee** to the qualifying charitable organization. Therefore, a **distribution** to the taxpayer who then **transfers** the **IRA** to the charity does not receive an **exclusion** from gross income.

While the charitable contribution deduction will be allowable, the inclusion will increase the taxpayer's adjusted gross income, which triggers issues with other provisions. With the increased standard deduction amounts allowed *after* the enactment of the **TCJA**, the taxpayer could find themselves with wasted charitable contributions for federal income tax purposes. An increase in **AGI** could also cause an increase in the taxpayer's medicare premiums **two years later**.

Tax Professional Reminder: The **exclusion** from gross income does not apply to distributions made from **§408(k) SEPs**, or **§408 SIMPLEs** if the taxpayer is still contributing to any of these plans.

7. **§408(d)(8)(D)** provides that the annuity rules of **§72** will not apply if the aggregate qualifying distribution is not *greater than* **$100,000.** As a result, the entire distribution will be *deemed* to be income first. As a result, the charity absorbs the income portion, and the taxpayer **retains** the **nontaxable portion** of the **IRA** contribution.

Example #1: Don has reached age **70 ½** and has a **traditional IRA** balance of **$100,000. $80,000** of this **$100,000** total amount is deductible contributions, and growth on those contributions. Therefore he has **nondeductible contributions** of **$20,000.** The trustee made a **direct distribution** to a qualifying charitable organization of **$80,000.** Under the general annuity rules of **§72**, a *portion* of the distribution is a nontaxable return of **nondeductible contributions**. Under the **normal §72** rules, the income *exclusion* would *only be* **$16,000** as follows:

Current year distribution **$80,000** x	Nondeductible contributions **$20,000**
	Total value at prior year end **$100,000** = **20%**
Therefore **20%** x **$80,000** =	**$16,000** return of nondeductible contributions.

Distribution reported on line **4a** on page **1** of **Form 1040** or **Form 1040-SR**	**$80,000**
Less: Normal Exclusion Amount	**(16,000)**
§72 Taxable Portion (**line 4b**) "**QCD**"	**$64,000**

However, in a "**QCD**" transactions the results are as follows:

Distribution reported on line **4a** on page **1** of **Form 1040** or **Form 1040-SR**	**$80,000**
Less: Exclusion Amount which is a fully taxable amount to the charity	**(80,000)**
§72 Taxable Portion (**line 4b**) "**QCD**" in which there is no inclusion to Don	**$-0-**

§408(d)(8)(D) provides that the **entire $80,000 distribution** is *deemed* to consist of income which is allocated to the charity. Therefore, the entire **$80,000** is treated as taxable income and the entire **$80,000** is *deemed* to be a qualifying charitable distribution ("**QCD**") and therefore **excluded** from gross income.

As a result, nothing is includible in Don's gross income and the charitable contribution is not deducted. Also, the remaining **$20,000** in the **IRA** is deemed to be **$20,000** of **nondeductible contributions**. Therefore, it will not be taxed when distributed to the **IRA beneficiary** in a subsequent tax year.

Tax Professional Planning Point: Since the **$20,000** in this example is now all **nondeductible contributions**, it is the perfect time for the taxpayer to **convert** the balance to a **Roth IRA** and have tax free growth for the rest of the taxpayer's life.

Tax Professional Note: An owner of an **IRA** who makes an **IRA** qualified charitable distribution (**QCD**) in an amount which is *at least* the amount of the **RMD** for that tax year is *deemed* to have satisfied the **RMD** required under **§408(a)(6)** and will not be required to take another **RMD**.

On **January 10, 2007**, the IRS issued **Notice 2007-7 (2007-5 IRB)** which states that if a check was written from an **IRA** made payable to an eligible charitable organization and is delivered by the **IRA** owner to the charitable organization, then the payment is treated as a **direct payment** by the **IRA** plan administrator to the charity and qualifies for the **exclusion** from gross income.

Example: Don's **IRA** plan administrator provides a checkbook to **IRA** owners. Don wrote a check for **$5,000** from this **IRA checkbook** and delivered it directly to his charity. This transaction qualifies for the "**QCD**" **exclusion**.

Tax Professional Note: The **IRA** may also distribute a payment to the charity even if the taxpayer had an outstanding pledge to the charity.

Tax Professional Reminder: In order for the transfer to be **excluded** from the taxpayers gross income, the charitable contribution must be entirely deductible under the **substantiation requirements** for charitable contributions. This means that the donor must obtain sufficient **substantiation** by the filing date of the tax return in order to satisfy the **exclusion**. Review the substantiation rules in the **Schedule A** instructions, the Statue and the Regulations under **§170.**

8. As a result of the **SECURE Act**, effective for distributions made for **tax years** *beginning after* **December 31, 2019**, **§408(d)(8)(A)** provides that the amount of a taxpayer's **QCD** that is **excluded** from gross income for a tax year is *reduced by* (but not below zero) the *excess of*:

   a. the **total** amount of **IRA deductions** allowed to the taxpayer **for all** tax years *ending on* or *after* the date the taxpayer attains **age 70½**, *over*

   b. the **aggregate** amount of such reductions for **all** tax years *preceding* the current tax year (**§408(d)(8)(A)** as amended by the **SECURE Act Sec. 107(b)**).

Tax Professional Note: Both Sec. 107(b) of the **SECURE Act** and **§408(d)(8)(A)** provide that an individual may not offset the amount of any required minimum distribution (**RMD**) from the individual's **IRA** plan by the amount of any **post-age 70 ½** contributions for the same taxable year. Contributions and distributions are each separate transactions and are independently reported by the financial institution to the IRS.

The following is an **Example** of rules on the **reduction** of the **excluded** amount of qualified charitable distributions (**QCD**) caused by a deduction of **post-age 70 ½ IRA contributions**:

Don turned **70 ½** years old *before* **January 1, 2020**. He deducts **$5,000** for allowable **IRA contributions** for year **2020** and **2021** for a total of **$10,000.** In **2022**, Don makes a **QCD** for **$6,000.** As a result, the **excluded** amount of the **QCD** is the **$6,000** *reduced by* the aggregate amount of the **post-age 70 ½ deductible contributions** of **$10,000.** Therefore, nothing can be **excluded** from gross income because the **QCD** of **$6,000** is **reduced** by the **deducted contribution** of **$10,000**:

Qualified Charitable Distribution (**QCD**) in **2022**	$6,000*
Less: Aggregate Balance of **IRA** Deduction from **2020-2021**	($10,000)
Excess but not below zero	**($4,000)****

***Not excluded**

**Carried forward to the subsequent tax year

In **2023**, Don makes another **QCD** for **$6,000.** As a result, the remaining **$4,000** of the aggregate amount of **post-age 70 ½ contributions** that were **deducted** *reduces* the **excluded** amount of any **QCD**. As a result, Don will have an **excluded QCD** of **$2,000** as follows:

Qualified Charitable Distribution (**QCD**) in **2023**	$6,000
Less: Aggregate Balance of **IRA** Deduction from **2020-2021**	($4,000)*
Balance allowed as **QCD** in **2023**	**($2,000)**

***Not excluded**

If Don makes additional **deductible IRA contributions** in future years, then his aggregate balance will be increased against any future **QCD** that he makes.

B. Increase in Age for Required Beginning Date for Mandatory Distributions

1. The Code provides that employer-provided qualified retirement plans such as a **§401(k)**, **§403(b)** or **§457(b)** plans, and **traditional IRA's**, and individual retirement annuities are subject to Required Minimum Distribution (**RMD**) rules. The **RMD** rules require benefits to be distributed or begin being distributed by the "Required Beginning Date" (**RBD**).

2. *Prior to* the **SECURE Act**, the **RBD** for **IRA's** was **April 1** *following the calendar year* in which the traditional **IRA** owner attains **age 70 ½**.

3. For employer-sponsored retirement plans, for a **non-5%** company owner, the **RBD** was **April 1** *following the later of*:

   a. the calendar year in which the employee attained **70 ½**, or

   b. retired from service with the employer.

4. For employer-sponsored retirement plans, for an employee who was a **5%** owner, the **RBD** was the same as for traditional **IRAs** *even if* the employee continued to work past the age of **70 ½**.

5. There were a number of payout choices available where an **IRA owner** or qualified retirement plan account **owner** died *before* the **RBD**, and the **spouse** was the account's beneficiary. Under pre-**SECURE Act** law, one of the allowable choices permitted the **surviving spouse** to *delay* distributions from the **decedent** spouse's account *until* the **December 31** of the year in which the **decedent** *would have attained age* **70 ½**.

   Current Law: As a result of the **SECURE Act**, the **RBD** for traditional **IRAs** is now **April 1** *following* the calendar year in which the **IRA** owner attains **age 72**, *instead of* **age 70 ½**.

   For **employer-sponsored** retirement plans, **§401(a)(9)(C)(i)(I)** provides that for a **non-5%** company owner, the **RBD** is **April 1** *following the later of*:

   a. the calendar year in which the employee attains **age 72** *instead of* **70 ½**, or

b. retires from service with the employer.

For **employer-sponsored** retirement plans **§401(a)(9)(C)(ii)(I)** provides that when an employee is a **5% owner**, the **RBD** is the same as for traditional **IRAs** *even if* the employee-owner continues to work past **age 72** (**§401(a)(9)(C)(i)(I)** and **§401(a)(9)(C)(ii)(I)** as amended by the Act Sec. 114).

Effective Date: The updated Required Beginning Date (**RBD**) changes were effective for distributions **required** to be made *beginning after* **December 31, 2019**, with respect to individuals who **attained age 70 ½** *after* **December 31, 2019**.

Tax Professional Planning Point: For a taxpayer who is a **5%** owner who is reaching **age 72** and is selling their trade or business, and who does not want to be required to have an **RMD**, should continue working for the new owners as an employee and have the new owner setup a new employer pension plan.

As a result, the selling taxpayer should **rollover** their old company pension plan into the new employer's pension plan. As a result, the taxpayer will not be required to receive the first **RMD** *until* the **April 1** *after* the taxpayer retires.

C. Modification of Post-Death Required Minimum Distribution (RMD) Rules

1. The Code provides that Required Minimum Distribution (**RMD**) rules apply to tax-favored employer-sponsored retirement plans and traditional **IRA** plans. During the lifetime of an employee or traditional **IRA** owner, the individual's interest in these plans is **required** to be distributed over:

    a. the life or life expectancy of the employee or traditional **IRA** owner, or

    b. over the joint lives or joint life expectancy of the employee or traditional **IRA** owner and a **designated** beneficiary.

2. *Prior* to the **SECURE Act**, the **after-death** minimum distributions rules varied depending on whether:

a. an employee or traditional **IRA** owner died *before, on, or after* the Required Beginning Date (**RBD**), and

b. there was a **designated** beneficiary to receive the benefit.

3. Under the regulations, a **designated** beneficiary generally must be an individual. If an employee or traditional **IRA** owner died *on or after* the Required Beginning Date (**RBD**), then the basic statutory rule was that the **remaining interest** must be distributed *at least as* rapidly as under the method of distribution being used *before* the **death of the owner** of the account.

4. If an employee or traditional **IRA** owner died *before* the Required Beginning Date (**RBD**) and any portion of the benefit was payable to a **designated** beneficiary, then the statutory rule was that distributions were generally **required** to begin *within* **one year** of the employee's or traditional **IRA** owner's death (or such late date as prescribed in regulations). The distributions were allowed to be paid over the life or life expectancy of the **designated** beneficiary.

5. If the **designated** beneficiary of the employee or traditional **IRA** owner was the individual's surviving spouse, then the distributions were not required to begin *until* the year in which the **employee** or traditional **IRA owner** would **have attained age 70 ½**.

6. If the **surviving** spouse died *before* the employee or **IRA** owner *would have* attained age **70 ½**, then the after-death rules applied *after* the death of the **spouse** *as though* the **spouse** were the employee or **IRA** owner.

7. If an employee or traditional **IRA** owner died **before** the Required Beginning Date (**RBD**) and there was no **designated** beneficiary, then the entire **remaining interest** of the employee or **IRA** owner **must generally** be distributed *by the end* of the **fifth calendar year** *following* the individual **owner's** death. This is known as the **5-year rule**.

SECURE Act Law Change: Generally effective for **distributions** with respect to employees or traditional **IRA** owners who die *after* **December 31, 2019**, the **SECURE Act** *modifies* the Required Minimum Distribution (**RMD**) rules with respect to "defined contribution plan" and traditional **IRA** balances (including annuity contracts purchased from insured companies under defined contribution plans or **IRAs**) upon the **death** of the account owner. There are *exceptions* to the general rule discussed below.

Tax Professional Proposed Regulation Update: As a result of the **SECURE Act**, **§401(a)(9)(H)(i)** provides that the general rule is that *after* an employee or traditional **IRA** owner dies, the remaining account balance **must** be distributed to **designated** beneficiaries *within* **10 years** *after* the date of the **death** of the account **owner**. This rule applies **regardless** of whether the employee or traditional **IRA** owner dies *before, on,* or *after* the Required Beginning Date (**RBD**), *unless* the **designated beneficiary** is an "eligible **designated** beneficiary" (**§401(a)(9)(H)(i)** as amended by the **SECURE Act Sec. 401(a)(1)**).

The Committee Report explains that under the new **10-year rule**, the remaining account balance **must** be distributed *by the end* of the **tenth calendar year** *following* the year of the employee or traditional **IRA** owner's death. It was believed that this meant that the **10-year rule** would follow the old **5-year rule** where the survivor did not have to take an annual distribution and only had to take the money out by the end of the **5th year after the decedent's death**.

On **June 14, 2022**, the AICPA sent a letter to the IRS recommending that the final regulations treat the 10-year rule similar to the pre-SECURE Act **5**-year rule and just require that the total of all distributions take place by the end of the **10-year period** after the owner's year of death.

However, on Friday **October 7, 2022**, the IRS issued **Notice 2022-53** "Certain Required Minimum Distributions for **2021** and **2022**". In **Section II** of the **Notice**, IRS states that the "applicable date of the Final Regulations" will apply no earlier than the **2023 distribution calendar year**.

In **Section IV** of the **Notice**, IRS provides Guidance for Certain RMDs for **2021** and **2022**.

Tax Professional Guidance for Certain RMDs for 2021 and 2022: Guidance for Defined Contribution Plans That Did Not Make a Specified RMD:

a. A defined contribution plan that **failed** to make a **specified RMD** (as defined in **Section IV.C of this Notice 2022-53**) will not be treated as having **failed** to satisfy **§401(a)(9)** *merely because* it did not make that distribution.

Guidance for Certain Taxpayers Who Did Not Take a Specified RMD: To the extent a taxpayer did not take a **specified RMD**, the IRS will not assert that the **50%** excise tax is due under **§4974.** If a taxpayer has already paid an excise tax for a missed **RMD** in **2021** that constitutes a **specified RMD**, then that taxpayer may “request” a refund of that **§4974**, **50%** excise tax.

Definition of Specified RMD: For purposes of this Notice only, a **specified RMD** is *any* distribution that, under the interpretation included in the proposed regulations, would be required to be made pursuant to **§401(a)(9)** in **2021** or **2022** under a defined contribution plan or IRA that is subject to the rules of **§401(a)(9)(H)** for the year in which the employee (or designated beneficiary) died if that payment would be required to be made to:

b. a designated beneficiary of an employee under the plan (or IRA owner) if:
   (1) the employee (or IRA owner) died in **2020** or **2021** and *on or after* the employee’s (or IRA owner’s) required beginning date (**RBD**), and
   (2) the designated beneficiary is not taking lifetime or life expectancy payments pursuant to **§401(a)(9)(B)(iii)**; **or**

c. a beneficiary of an “eligible designated beneficiary” (including a designated beneficiary who is treated as an “eligible designated beneficiary” pursuant to **§401(b)(5)** of the **SECURE Act**) if:
   (1) the eligible designated beneficiary died in **2020** or **2021, and**
   (2) that eligible designated beneficiary was taking lifetime or life expectancy payments pursuant to **§40(a)(9)(B)(iii).**

8. An *exception* to the **10-year rule for post-death** Required Minimum Distributions (**RMDs**) applies to an "*eligible* **designated** beneficiary". An "*eligible* **designated** beneficiary" is defined as an individual who, with respect to the employee or traditional **IRA** owner, on the date of his or her death, is:

    a. the **surviving spouse** of the employee or **IRA** owner,

    b. a **child** of the employee or **IRA** owner has not reached majority,

    c. a **chronically ill** individual as specifically defined in **§401(a)(9)(E)(ii)(IV)**, and

    d. any other individual who is not *more than* **ten years younger** than the employee or **IRA** owner.

    Tax Professional Awareness: On **June 14, 2022**, the IRS issued proposed regulations pertaining to the **SECURE Act** and discussed the definition of an "eligible designated beneficiary" who is a "child of the deceased employee or IRA owner who has not reached the **age of majority**': Since the determination is generally made at the State level, it would depend on the State where the child resided. Therefore, the proposed regulations provide that a child of the deceased employee or IRA owner will reach the "**age of maturity**" on the child's **21st birthday**.

    Note that **47** states and the District of Columbia provide that he "**age of majority**" is **18 years old**. Alabama and Nebraska provide that the "**age of majority**" is **19 years old** and Mississippi provides that the "**age of majority**" is **21 years old**.

    Also note that **§401(a)(9)(F)** provides that payments under a **defined benefit plan** or annuity contract that are made to an employee's child, can be made until such child reaches the "**age of majority**" if the child has not completed a course of education and is under the **age of 26**. As a result of this issue, the proposed regulations provide that If the **defined benefit plan** has used a prior definition of "**age of majority**" then they can retain that plan provision.

9. Under the *exception*, **§401(a)(9)(E)** provides that following the **death** of the employee or traditional **IRA** owner, the remaining account balance generally may be distributed (similar to pre-Act law) over the life or life expectancy of the "*eligible* **designated** beneficiary", *beginning* in the year *following* the year of death (**§401(a)(9)(E)** and **§401(a)(9)(H)(ii)** as amended by the **SECURE Act Sec. 401(a)(1);** Committee Reports).

10. **§401(a)(9)(E)(ii)** provides that following the **death** of an "*eligible* **designated** beneficiary", the account balance **must** then be distributed *within* **10 years** *after* the death of the "*eligible* **designated** beneficiary" (**§401(a)(9)(H)(iii)** as amended by the **SECURE Act Sec. 401(a)(2)**).

11. **§401(a)(9)(E)(iii)** provides that *after* a **child** of the employee or traditional **IRA** owner reaches the **age of majority**, then the balance in the account **must** be distributed *within* **10 years** *after* that date, (**§401(a)(9)(E)(iii)** as amended by the **SECURE Act Sec. 401(a)(2)**).

    Effective Date: The above changes generally apply to distributions with respect to employees or traditional **IRA** owner who die *after* **December 31, 2019**. (**SECURE Act Sec. 401(b)(1)**).

12. Additionally, the modification to the after-death minimum distribution rules, does not apply to a qualified annuity as specially defined in the **SECURE Act §401(a)(4)(B)**, that is a binding annuity contract, in effect on the date of enactment (**December 20, 2019**), and at all times thereafter. (**SECURE Act Sec. 401(b)(4)**).

    The following examples illustrate the post 2019 death rules on required distributions:

    EXAMPLE #1: Don dies in the current year and leaves his traditional **IRA** to his **designated** beneficiary Joe who was born **7** years *after* Don. Joe is an "*eligible* **designated** beneficiary" because he is not *more than 10 years younger than* Don. As a result, the balance in the **IRA** at Don's death may be paid over **Joe's** life or life expectancy. If Joe dies *before* the traditional **IRA** account is depleted, then the remaining balance must be paid out within **10 years** *after* **Joe's** death to Joe's designated beneficiary.

EXAMPLE #2: Don dies in the current year and leaves his **IRA** to his **designated** beneficiary **Joe**, his brother, who was born **15** years *after* Don. In this situation, **Joe** is not an "*eligible* **designated** beneficiary" because he is *more than* **10 years** *younger than* Don. Therefore, the balance in the traditional **IRA** at Don's death must be paid out to Joe *within* **10 years** *after* **Don's** death.

D. §131 Difficulty-of-Care Payments Treated as Compensation for Retirement Contribution Limits: Section 116 of the SECURE Act

1. **§131(a)(1)** provides a general rule for an **exclusion** from gross income from the receipt of payments for foster care. As a result, generally a foster care provider does not include any "qualified foster care payments" in their gross income.

2. **§131(b)(1)** provides that "qualified foster care payments" are defined to include *any* payment made pursuant to a foster care program of a State or political subdivision which is paid by:

   a. a State or political subdivision thereof, or

   b. a qualified foster care placement agency, and which is *either*:

      i. paid to the foster care provider for caring for a qualified foster individual in the foster care provider's home, or

      ii. a "difficulty of care" payment.

3. **§131(c)(1)** provides that a "difficulty of care" payment is compensation for providing the **additional** care needed for certain "qualified foster individuals". Such payments are provided when a "qualified foster individual" has a physical, mental, or emotional disability for which the State has determined that:

   a. there is a **need** for additional compensation to care for the individual,

   b. the care is provided in the **home** of the foster care provider, and

   c. the payments are **designated** by the payor as **compensation** for such purpose.

4. Since “difficulty of care” payments are generally **excluded** from gross income, home healthcare workers receiving *only such* payments were not eligible to participate in tax-qualified retirement plans or individual retirement accounts (**IRAs**). This is because “difficulty of care” payments are not considered compensation or earnings upon which contributions to such plans or accounts may be made.

5. **Section 116(b)** of the **SECURE Act** adds **§415(c)(8)** which provides for contributions to a **defined contribution plan** *retroactively* to years *beginning after* **December 31, 2015**. In addition, **§408(o)(5)** provides for **IRA** contributions *after* the **enactment date** of **December 20, 2019**. The result of the **SECURE Act** provides for home healthcare workers to have “difficulty of care” payments to be treated as compensation for purposes of calculating the contribution limits to defined contribution plans and **IRAs** (**§415(c)(8)** and **§408(o)(5)** as amended by **SECURE Act Sec. 116)**).

E. §139B Benefits for Volunteer Firefighters and Emergency Medical Responders

1. **§61(a)** provides that everything is income from whatever source derived *unless* there is a specific exception, exemption, or exclusion. Generally, a reduction in the property tax of a person who volunteers their services as emergency responders under a **State** law program is includible in gross income.

2. However, for tax years *beginning after* **December 31, 2007**, and *before* **January 1, 2011**, **§139B** provided an **exclusion** for any “qualified State or local tax benefit” and any “qualified reimbursement payment” (up to **$30** per month) provided to members of qualified volunteer emergency response organizations.

3. A “qualified state or local tax benefit” was defined as any reduction or rebate of state and local real property taxes, personal property taxes, or income taxes provided by state or local governments on account of services performed by individuals as members of a qualified volunteer emergency response organization.

4. For tax years *beginning after* **December 31, 2019**, the **SECURE Act** reinstated for **year 2020** *only*, the **exclusions** for "qualified State or locate tax benefits and qualified reimbursement payments" provided to members of qualified volunteer emergency response organizations. The **SECURE Act** also *increased* the **exclusion** amount for qualified reimbursement payments up to **$50** for *each* **month** during which a volunteer performs services. (**§139B** as amended by the **SECURE Act Sec. 301**).

   Tax Professional Legislative Update: As a result of the "Consolidated Appropriations Act of 2021", **§139B** has been made a **permanent provision**.

F. §529 Plan Distributions for Qualified Higher Education Expenses Expanded

1. **§529(b)(1)** provides that a State or its agency or instrumentality may establish or maintain a program that allows a person to prepay or contribute to an account for a designated beneficiary's "qualified higher education expenses". In addition, an "eligible educational institution" may establish or maintain a program that allows a person to prepay a designated beneficiary's "qualified higher education expenses". These programs are collectively referred to as **§529** Qualified Tuition Programs**.**

2. **§529(c)(3)** provides that **distributions**, including any **distributions** attributable to the earnings from a **§529** plan are <u>not</u> included in gross income <u>if</u> the **distributions** do <u>not</u> *exceed* the designated beneficiary's "qualified higher education expenses".

3. Prior to the **SECURE Act**, "qualified higher education expenses" meant tuition, fees, books, supplies, and equipment **required** for the enrollment or attendance of a designated beneficiary at an "eligible educational institution". "Qualified higher education expenses" also includes expenses for special needs services in the case of a "special needs beneficiary" that are incurred in connection with such enrollment or attendance.

4. "Qualified higher education expenses" generally also include room and board for students who are enrolled in a program of study at least half-time. "Qualified higher education expenses" also include the purchase of any computer technology or equipment, or internet access or related services, <u>if</u> such technology or services are to be used *primarily* by the beneficiary *during any* of the years a beneficiary is enrolled at an "eligible educational institution".

5. As a result of the **Tax Cuts and Jobs Act** (**TCJA**), for distributions made *after* **December 31, 2017**, a designated beneficiary may receive up to **$10,000** in aggregate **§529** distributions on an **annual basis** for expenses for **tuition** in connection with enrollment or attendance at an elementary or secondary public, private, or religious school. To the extent that such distributions do <u>not</u> *exceed* **$10,000,** they are treated in the same manner as distributions for "qualified higher education expenses" and are **excluded** from gross income.

6. **§221** provides that certain individuals who have paid **interest** on "qualified education loans" may claim an **above-the-line-deduction** for such **interest** expense, subject to a maximum annual deduction limit of **$2,500.** The deduction is phased-out ratably as the taxpayer's *modified* **AGI** *exceeds* a specified threshold amount based on the taxpayer's filing status. For **2019-2022** the phase-out applies to taxpayers with a *modified* **AGI** between **$70,000** and **$85,000.** For **2023**, the amounts are **$75,000** to **$90,000.** The threshold amount for a married couple filing a joint return is phased-out between **$140,000** and **$170,000** of *modified* **AGI** in **2022**. For **2023**, the amount is **$155,000** to **$185,000.** The phase-out threshold amount is indexed annually to inflation in **$5,000** increments.

7. The **SECURE Act** also added **§529(c)(9)(B)** and expands the definition of "qualified higher education expenses" to include "qualified student loan repayments". **§529(c)(9)(B)** provides that the amount of distributions shall <u>not</u> exceed **$10,000** for "qualified student loan repayments". These "qualified student loan repayments" include principal and/or interest paid on a "qualified education loan". The **$10,000** amount is a maximum **cumulative amount** and therefore, *any* prior year distributions are subtracted from the maximum **$10,000** to determine the limit of any current year distribution amount.

8. **§529(c)(9)(C)(ii)** also provides a special rule for "qualified student loan repayments" which allows such amounts to be distributed to a **sibling** of a designated beneficiary (i.e., a brother, sister, stepbrother, or stepsister) as amended by the **SECURE Act Sec. 302(b)**.

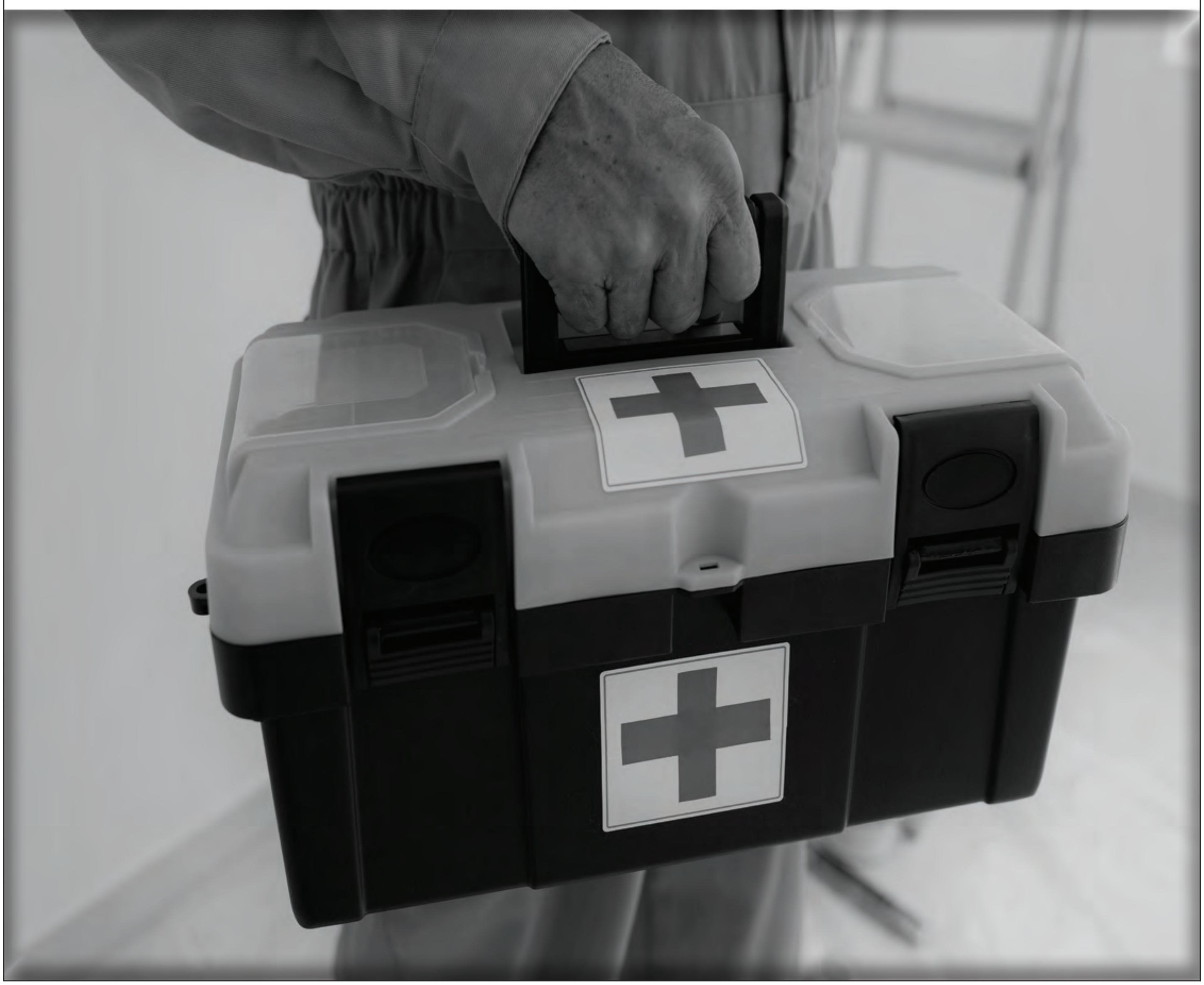
9. **§221(e)(1)** provides that the **deduction** for **interest** paid by the taxpayer during the tax year on a "qualified education loan" is **disallowed** to the extent the interest was paid from tax-free distribution from a **§529** plan. **Therefore, no double dipping**! (As amended by **SECURE Act Sec. 302(b)(2)**).

   Tax Professional Awareness: The taxpayer should be issued a **Form 1098-E** for the amount of qualified student loan interest that was paid. In order not to deduct the interest paid with the **excluded §529** payments, the Tax Professional will need to ask if any distributions were made from the **§529** plan. If there was a distribution, then the plan administrator should issue a **Form 1099-Q**. Also note that there should be a limited number of **Forms 1098-E** issued in **2022** since the repayment of student loans has been extended to **December 31, 2022**.

10. For **distributions** made *after* **December 31, 2018**, the **SECURE Act** retroactively *expanded* **§529** education savings accounts to cover costs associated with "registered apprenticeships" provided under **§529(c)(8)** as amended by **SECURE Act Sec. 302(a).**

11. **§529(c)(8)** provides that for purposes of a "registered apprenticeship" the term "qualified higher education expense" shall include a reference to expenses for fees, books, supplies, and equipment required for the participation of a designated beneficiary in an apprentice program "registered" and certified with the Secretary of Labor under section 1 of the National Apprenticeship Act (29 U.S. C. 50).

V. Continuing Provisions of the American Rescue Plan Act of 2021: Enacted March 11, 2021



V. Continuing Provisions of the American Rescue Plan Act of 2021: Enacted March 11, 2021

A. Individual Provisions of the American Rescue Plan Act Impacting 2022 Returns

1. On **Thursday, March 11, 2021**, President Biden signed the **"American Rescue Plan Act of 2021"** (**ARPA**, P.L. 117-2). The **American Rescue Plan Act of 2021** included federal tax provisions which provided more COVID-19 relief for individual taxpayers. Most of the provisions enacted were only for tax year **2021**. However, a few provisions are continued for **2022** as follows:

   a. increased **§32 EITC** disqualified income amount,

   b. new percentage tables for **§36B** Premium Tax Credit, and

   c. **§108(f)(5)** Discharge of Student Loan Debt.

B. Taxpayers May Have Up to $10,000 of "Disqualified" Income and Still Claim the §32 Earned Income Tax Credit

1. Prior to the enactment of the **American Rescue Plan Act of 2021**, **§32(i)(1)** provided that a taxpayer who had "disqualified income" (i.e., certain types of investment income) over **$2,200** (adjusted for inflation) for the tax year could <u>not</u> claim the earned income tax credit (**EITC**). For tax year **2021**, the inflation-adjusted amount of disqualified income was **$3,650** *before* the law was changed.

2. **Current Law**: Under the **American Rescue Plan Act of 2021**, **§32(i)(1)** now provides that the threshold amount for "disqualified income" is raised to **$10,000.** (As amended by **ARPA** Sec. 9624(a)). In addition, **§32(i)(1)** also provides that the **$10,000** amount will be adjusted annually for inflation for tax years *beginning after* **2021**. (As amended by **ARPA** Sec. 9624(b)(1)) The amount for **2022** is **$10,300.** For **2023**, the amount of disqualified income is **$11,000.**

3. **Effective Date**: This provision applies to the tax years *beginning after* **December 31, 2020** and is a **permanent provision**. (**ARPA** Sec. 9624(c))

C. New Percentage Tables Increase the §36B Premium Tax Credit for 2021 and 2022 and Taxpayers With Household Income Over 400% of the Federal Poverty Level Now Eligible for the §36B Premium Tax Credit

1. **§36B(a)** provides that a **refundable** premium tax credit (**PTC**) is available on a sliding-scale basis for individuals and families with a "household income" between **100%** and **400%** of the federal poverty level (**FPL**).

2. **§36B(c)(1)** provides that the credit is available for taxpayers who are enrolled in an "exchange-purchased qualified health plan", and who are not eligible for other qualifying coverage or affordable employer-sponsored health insurance plans providing minimum essential coverage.

3. **§36B(b)(2)** provides that the **PTC** is **limited** to the *excess* of the premiums for the applicable second lowest cost silver plan (the applicable benchmark plan) covering the taxpayer's family offered by the Exchange over the taxpayer's contribution amount called the "required share" as calculated on IRS **Form 8962.**

4. **§36B(b)(3)** provides that the taxpayer's "required share" equals the taxpayer's "household income" multiplied by an "applicable percentage" for the tax year. The "applicable percentage" for a tax year is based on the taxpayer's income level relative to the **FPL** for the year and is adjusted annually for inflation. Within each income tier, a taxpayer's "applicable percentage" increases in a linear manner from the initial to the final premium percentage.

5. Prior to the **American Rescue Plan Act of 2021**, the "applicable percentage" table for tax years *beginning in* **2021** was to have been as follows:

Household Income Relative to FPL	Initial Percentage	Final Percentage
Less than **133%**	**2.07%**	**2.07%**
At least **133%** but *less than* **150%**	**3.10%**	**4.14%**
At least **150%** but *less than* **200%**	**4.14%**	**6.52%**
At least **200%** but *less than* **250%**	**6.52%**	**8.33%**
At least **250%** but *less than* **300%**	**8.33%**	**9.83%**
At least **300%** but not more than **400%**	**9.83%**	**9.83%**

Tax Professional Reminder: Under pre-**ARPA** law, individuals with "household income" *above* **400%** of the **FPL** were not eligible for the **PTC**.

6. **Current Law**: Under the **American Rescue Plan Act of 2021**, **§36B(b)(3)(A)** now provides that the following "applicable percentages" apply for tax years *beginning in* **2021** and **2022** (As amended by **ARPA** Sec. 9661(a)):

Household Income Relative to FPL	Initial Percentage	Final Percentage
Up to **150%**	**0.0%**	**0.0%**
150% *up to* **200%**	**0.0%**	**2.0%**
200% *up to* **250%**	**2.0%**	**4.0%**
250% *up to* **300%**	**4.0%**	**6.0%**
300% *up to* **400%**	**6.0%**	**8.5%**
400% and **higher**	**8.5%**	**8.5%**

Tax Professional Note: Now that the taxpayer's required share is *less* under the new tables for **2021** and **2022**, the taxpayer's **§36B PTC** will be *greater*. Under pre-**ARPA** law, a taxpayer might have had to spend as much as **9.83%** of "household income" on health insurance premiums. Under the **American Rescue Plan Act of 2021**, that amount is now **capped** at **8.5%**.

Tax Professional Awareness: According to the Congressional Budget Office, under pre-**ARPA** law, a **21-year-old** with income at **150%** of **FPL** in **2021** would be eligible for a **§36B PTC** of about **$3,500.** However, now under the **American Rescue Plan Act of 2021**, that same individual's **§36B PTC** will increase to about **$4,300.** (Congressional Budget Office Cost Estimate, Revised **February 17, 2021**, p. 11).

7. **Taxpayers with Household Income Over 400% of FPL Made Eligible for §36B PTC**: For tax years *beginning in* **2021** or **2022**, **§36B(c)(1)** now provides that the **§36B PTC** is available to taxpayers with "household incomes" that *exceed* **400%** of the **FPL**. (As amended by **ARPA** Sec. 9661(c)). As a result, this change increases the number of taxpayers who are eligible for the **§36B PTC**.

Example: Don is a **45-year-old** single individual with household income of **$58,000.** This places him at **450%** of the **FPL** in **2021**. He would not have been eligible for the **§36B PTC** under pre-**ARPA** law. However, now, under the **American Rescue Plan Act of 2021**, he is eligible for a **§36B PTC** of about **$1,250.** (Congressional Budget Office Cost Estimate, Revised **February 17, 2021**, p. 12).

8. Effective Date: These amendments apply to tax years *beginning after* **December 31, 2020** and *before* **January 1, 2023**. (**ARPA** Sec. 9661(c))

   Tax Professional Legislation Awareness: The **Inflation Reduction Act of 2022** enacted on **August 16, 2022** has extended the provisions of the **American Rescue Act of 2021** for **3 years** to **December 31, 2025**.

D. Discharge of Student Loan Debt

1. Before the enactment of the **American Rescue Plan Act of 2021**, **§108(f)** provided that **§108** provided **exceptions** to the general rule requiring the **inclusion** of cancellation of indebtedness (**COD**) income from the discharge of student loans for:

   a. discharges in exchange for a provision requiring certain work for a certain period by certain professionals (e.g., a doctor in a public hospital in a rural area), or

   b. discharges on account of the death or total and permanent disability of a student as enacted under **TCJA**. The IRS also provided additional relief from **COD** resulting from certain student loan discharges (e.g., for certain taxpayers who had loans discharged under the Department of Education's Closed School process or the Defense to Repayment discharge process).

2. **Current Law:** After the enactment of the **American Rescue Plan Act of 2021**, **§108(f)(5)** provides for an **exclusion** of certain discharges of student loans from gross income, *after* **December 31, 2020**, and *before* **January 1, 2026**. (As amended by **ARPA** Sec. 9675(a)) The "student loan discharge" **exclusion** applies to these types of loans provided under:

   a. **§108(f)(5)(A)** which are loans provided expressly for post-secondary educational expenses if the loan was made, insured, or guaranteed by a federal, state, or local governmental entity or an eligible educational institution that receives funds from such government entity. (As amended by **ARPA** Sec. 9675(a)),

b. **§108(f)(5)(B)** for Private education loans. (As amended by **ARPA** Sec. 9675(a)),

c. **§108(f)(5)(C)** for any loan made by any educational institution qualifying as a **50%** charity (for purposes of the income tax charitable deduction) if the loan is made under an agreement with any governmental entity (described in **item (a).** above), or any private education lender that provided the loan to the educational organization, or under a program of the educational institution that is designed to encourage its students to serve in **occupations** with unmet needs or in **geographic areas** with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or a tax-exempt charitable organization. (As amended by **ARPA** Sec. 9675(c)),

d. **§108(f)(5)(D)** for any loan made by an educational organization qualifying as a **50%** charity or by an tax-exempt organization to refinance a loan to an individual to assist the individual in attending any educational organization but *only if* the refinancing loan is under a program of the refinancing organization which is designed as described in **item (c)**. (As amended by **ARPA** Sec. 9675(a))

3. **§108(f)(5)** also provides that the discharge of a loan made by *either* an educational institution or a private education lender is not excluded under the above rules if the discharge is on account of services performed for *either* the organization or for the private education lender. (As amended by **ARPA** Sec. 9675(a))

Tax Professional Note: The **exclusion** applies to a partial or a full discharge of a student loan.

Tax Professional Awareness: Under President Biden's **August 24, 2022** Executive Order to forgive student loan debt of up to **$20,000** 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, borrowers are eligible for this relief if their individual income is *less than* **$125,000** and up to **$250,000** for a married couple filing a joint return. In addition, as a result of the **American Rescue Plan Act of 2021**, this debt relief will be excluded from gross income for federal income tax purposes. The details on which tax years the forgiveness will be based on has not been specified as of this writing. Some reports speculate **2020** through **2022** are being discussed and others report the lesser in **2020** or **2021**.

As of this writing the following states have determined that they will not conform to the federal provision on the Executive Order:

a. Arkansas

b. California

c. Indiana

d. Minnesota

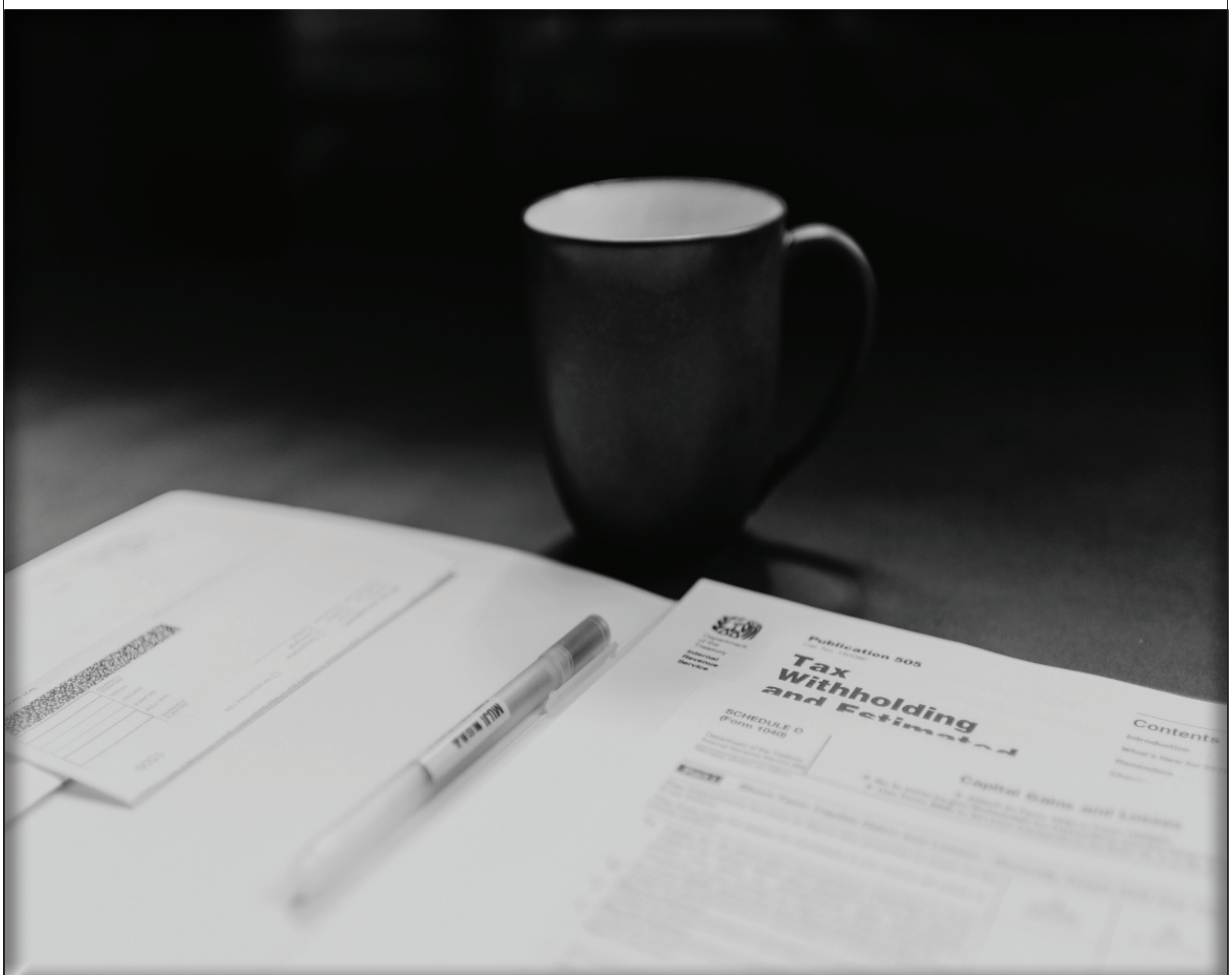
e. Mississippi

f. North Carolina and

g. Wisconsin

Also included in the Executive Order is the continued “student loan repayment pause” which was supposed to end on **August 31, 2022**. It is now extended until **December 31, 2022** with payments scheduled to resume in **January 2023**.

VI. Understanding and Analysing the Importance of Adjusted Gross Income



VI. Understanding and Analysing the Importance of Adjusted Gross Income

A. The Tax Professional's Role: Focus on Adjusted Gross Income (AGI)

1. Most taxpayers are aware of **deductions** that reduce their *taxable income*. Generally, these items are deductible on **Schedule A** as specific *elected* itemized deductions. As the result of the **"Tax Cuts and Jobs Act"** many taxpayers will reduce their taxable income by the **increased standard deduction amounts** instead of *electing* to itemize deductions. If the taxpayer is receiving Qualified Business Income (**QBI**) from a qualifying pass-through entity, then they may also be eligible for the **§199A** Qualified Business Income Deduction. The tax professional, however should also be looking for deductions which reduce the Adjusted Gross Income (**AGI**) which are now the items reported on the updated **2022 Schedule 1, Part II of the 2022 Form 1040 and Form 1040-SR.** The results of the **Schedule 1,** flow to the **Form 1040** and **Form 1040-SR, page 1, line 10**.

2. With the creation of the **Tax Reform Act of 1986**, Congress began to shift the focus to provisions affected by **AGI** and *modified* **AGI**. The initial attack was the creation of the **§469** Passive Activity Loss (**PAL**) rules which disallow any trade or business losses where the taxpayer does not "materially participate". In addition, the Legislation provided that rental real estate losses are also not allowed, for taxpayers with a *modified* **AGI** *greater than* **$100,000** who only "actively participate" in the management of the rental property. It is important for the tax professional to remember that this threshold of **$100,000** is not indexed to inflation. As a result, a taxpayer whose *modified* **AGI** was *under* the threshold in *prior* tax years may not qualify to use the losses in subsequent years where their income has increased beyond the thresholds. This results in the rental loss being **suspended** in the current tax year. The phase-out range is **$100,000** to **$150,000** of modified **AGI**.

3. **The Tax Reform Act of 1986** also provided for the **disallowance of deductible IRA contributions** under **§219** when a taxpayer's *modified* **AGI** is above a certain threshold amount based on the taxpayer's **filing status**. These **threshold** amounts are indexed annually to inflation in **$1,000** increments. The **contribution** amounts to an **IRA** are indexed in **$500** increments.

4. The **Taxpayer Relief Act of 1997** created several new deductions, credits, and exclusions that were presented to the American taxpayer as tax relief to the **middle-class**. This Legislation provided the **§24** Child Tax Credit and **§25A** Hope and Lifetime Education Credit. However, Congress did not define **middle-class** by standard of living, but instead, by **levels of AGI** and *modified* **AGI** and tied it to the taxpayer's filing status. As a result, **§24** Child Tax Credit and **§25A** Hope and Lifetime Education Credit were not available to all taxpayers.

5. Many of the provisions of the **Economic Growth and Tax Relief Reconciliation Act of 2001** focused on **AGI** and *modified* **AGI** and increased threshold amounts for many middle-class taxpayers who were left behind by the **1997 Act**. Subsequent legislation, including the **American Recovery and Reinvestment Act of 2009**, the **2010 Affordable Care Act**, and the **Tax Relief and Job Creation Act of 2010** created provisions subject to **AGI** and *modified* **AGI** phase-out rules.

6. As a result of the **2010 Affordable Care Act**, some taxpayers with an **AGI** beyond specified threshold amounts based on filing status, are subject to an additional tax under **§1411** of **3.8%** on their net investments income reported on **Form 8960.** Some taxpayers will even lose their **§36B** Premium Assistance Credit because their *modified* **AGI** is *greater than* specified amounts tied into the Federal Poverty Level (**FPL**). The **§36B** Premium Assistance Credit is reported on **Form 8962** and is called the Premium Tax Credit (**PTC**).

Tax Professional Note: The **"Tax Cuts and Jobs Act"** also provides for different *modified* **AGI** thresholds on the existing provisions of the **§24** Child Tax Credit (**CTC**) and the temporary **§24** Credit for Other Dependents (**COD**).
The IRS refers to this credit as the Other Dependent Credit (**ODC**). The **AGI** phase-out threshold was increased for every filing status. As a result, more taxpayers are allowed to use the benefits of the **§24** credits.

Tax Professional Legislative Awareness: Other recent legislation includes the **CARES Act**, **Consolidated Appropriations Act of 2021**, and the **American Rescue Plan Act of 2021** and **Inflation Reduction Act of 2022**, and each of them contains provisions for individual taxpayers where the benefits are phased-out based on filing status and adjusted gross income (**AGI**) or *modified* adjusted gross income (**MAGI**).

7. As a result of the manner in which legislation is crafted, tax professionals should focus, review and analyze their planning issues around the **importance of AGI** and *modified* **AGI**. If income can be shifted to a future year in order to take advantage of current year opportunities, then the taxpayer may be able to save tax dollars.

8. In some cases, a taxpayer may want to shift the income to the current tax year in order to balance **AGI** and *modified* **AGI** in two tax periods and not hinder the threshold levels in either year.

B. AGI: The Most Important Number on the Tax Return

1. Because of the various phase-out provisions in the Code, today's tax professional must be more conscious of changes in a client's tax life at all times. The tax professional should be able to foresee and explain the true tax effect of an increase or decrease to their client's **AGI** and the impact of **modifications** to various provisions where there is a *modified* **AGI** test.

2. Because of the various phase-in and phase-out provisions, the **tax bracket** itself should not be the only focus. The planning of a transaction and the **actual calculations** should be taking place well *before* the time of preparing the return.

Tax Professional Note: The phase-in and phase-out of tax provisions can result in a substantial tax liability that has **nothing** to do with the rates themselves. It could be especially critical for Social Security recipients who normally have little or no inclusion of their Social Security benefits.

They could find that a **$10,000** capital gain taxed at a preferential long-term capital gain rate of **zero** causes a tax to be imposed on other sources of income at ordinary rates. In addition, it would cause Social Security benefits to be taxed or cause their Social Security benefits to be taxed at a higher marginal tax bracket. In addition, this could cause them to be severely underpaid for the current year which might impose a penalty for underpayment of estimated taxes under **§6654.** In addition, the taxpayer could be subject to increased withholding or estimated tax responsibilities for the next year.

Tax Professional's Focal Point: The tax professional needs to analyze how an **increase** or **decrease** in a particular client's **AGI** or *modified* **AGI** affects the **net tax liability** for that specific client. The tax professional also needs to know which **modifiers** impact a specific provision.

C. Defining Gross Income and Adjusted Gross Income (AGI)

1. Before tax professionals can understand the effects of changes in a taxpayer's **AGI**, they must first understand what is included in **gross income** and how the law defines **adjusted gross income**.

2. **§61(a)** provides a **general rule** that gross income means **all** income from whatever source derived *unless* there is a specific **exception, exemption,** or **exclusion** allowable under the Statute.

Tax Professional Note: It is very important that clients are alerted to the fact that the starting point for determining gross income is that **EVERYTHING** is included in gross income *unless* there is a specific **exception, exemption,** or **exclusion** that it is not income. Therefore, "found money" is included in gross income. In today's world, taxpayers are dealing in virtual currencies like Bitcoin, bartering systems, and crowdfunding, such as Go Fund Me, Kickstarter, Indiegogo causes, etc.

The IRS issued **Notice 2014-21, 2014-16 I.R.B. 938**, addressing the tax treatment of transactions using *virtual currencies* such as Bitcoin and other similar currencies. The sale or other exchange of virtual currencies or use of *virtual currencies* to pay for goods and services, or holding *virtual currencies* as an investment, generally has tax consequences that could result in a tax liability. **Notice 2014-21**, describes how existing general tax principles apply to transactions using *virtual currency*. **Notice 2014-21** provides guidance in the form of answers to frequently asked questions. In addition, the question dealing with virtual currencies is required to be answered by **all** the taxpayers filing a **series 1040** return. The **2022 Form 1040** asks At anytime during **2022,** did you:

(a) receive (as a reward, award, or compensation) or
(b) sell, exchange, gift or otherwise dispose of a digital asset (or a financial interest in a digital asset)?"

Taxpayers and tax professionals need to be aware of the changing environment and the impact on determining gross income. In today's world, income is generated through the use of Airbnb, Uber, Lyft, etc. The term that the IRS had originally introduced was the "Shared Economy!" Another term now being used is the "Gig Economy". The IRS has also expanded its' website dedicating a new area to the "Gig Economy Tax Center".

Tax Professional Education Fact: The "Gig Economy" is a derivative of a "music gig" where the musicians and entertainers "played a gig" and they were considered to be independent contractors earning money without direction from an "employer" and on their own to choose their music and be on their own to report the income and pay the tax.

3. **§62(a)** provides a general rule that the term "adjusted gross income" means gross income **minus** the following deductions:

   a. **§62(a)(1)** Trade or business deductions,

   b. **§62(a)(2)** Certain trade and business deductions of employees:

      i. Reimbursed expenses of employees,

      ii. Certain expenses of performing artists,

      iii. Certain expenses of officials,

      iv. Certain expenses of elementary and secondary school teachers,

      v. Certain expenses of members of reserve components of the Armed Forces of the United States,

   c. **§62(a)(3)** Losses from sale or exchange of property,

   d. **§62(a)(4)** Deductions attributable to rents and royalties,

   e. **§62(a)(5)** Certain deductions of life tenants and income beneficiaries of property,

   f. **§62(a)(6)** Pension, profit sharing and annuity plans of self-employed individuals,

   g. **§62(a)(7)** Retirement savings under **§219**,

   h. **§62(a)(8)** Repealed,

   i. **§62(a)(9)** Penalties incurred because of premature withdrawal of funds of time savings accounts or deposits,

   j. **§62(a)(10)** Alimony allowed under **§215** (**TCJA** implications for **post 2018** divorces and separations),

   k. **§62(a)(11)** Reforestation expenses allowed under **§194**,

   l. **§62(a)(12)** Certain required payments of supplemental unemployment compensation benefits,

   m. **§62(a)(13)** Jury duty pay remitted to employer,

   n. **§62(a)(14)** Deduction for clean-fuel vehicles and certain refueling property under **§179A**,

o. **§62(a)(15)** Moving expenses allowed under **§217** (**TCJA** implications),

p. **§62(a)(16)** Archer **MSA**s allowed under **§220**,

q. **§62(a)(17)** Interest on education loans allowed under **§221**,

r. **§62(a)(18)** Higher education expenses allowed under **§222** (Repealed *after* **2020** as a result of the "Consolidated Appropriations Act of 2021"),

s. **§62(a)(19)** Health Savings Accounts allowed under **§223**,

t. **§62(a)(20)** Costs involving discrimination suits involving a claim of unlawful discrimination as defined under **§62(e)**,

u. **§62(a)(21)** Attorney's fees relating to awards to whistle-blowers.

D. Partial Chart of Provisions Affected by AGI or Modified AGI for Tax Year 2022

The following is a partial chart presenting the **2022** provisions subjected to the **limitations** of **AGI** or *modified* **AGI** as defined for each separate provision:

Tax Provision	Filing Status	Phase-out Begins	Phase-out Ends	Phase-out Range
1. **§23** Adoption Credit **(1)**	Married Joint Surviving Spouse	**$223,410**	**$263,410**	**$40,000**
	Single Head of Household	**$223,410**	**$263,410**	**$40,000**
	Married Separate **(A)**	No credit allowed	N/A	N/A

Tax Provision	Filing Status	Phase-out Begins	Phase-out Ends	Phase-out Range
2. **§24(b)** Child Tax Credit of **$2,000** **(2)** (1-child) **Form 1040, Page 2 (WS)** (If taxpayer has *only* **one** qualifying child)	Married Joint	**$400,000**	**$439,001**	**$39,001**
	Single Head of Household	**$200,000**	**$219,001**	**$19,001**
	Married Separate	**$200,000**	**$219,001**	**$19,001**
3. **§25A** American Opportunity Tax Credit and **§25A** Lifetime Learning Credit **(2), (4)** **Form 8863**	Married Joint	**$160,000**	**$180,000**	**$20,000**
	Single Head of Household	**$80,000**	**$90,000**	**$10,000**
	Married Separate	No credit allowed	N/A	N/A
4. **§135** Exclusion of U.S. Savings Bond Interest for Qualified Education Expenses **(1)** **Form 8815**	Married Joint	**$128,650**	**$158,650**	**$30,000**
	Single Head of Household	**$85,800**	**$100,800**	**$15,000**
	Married Separate	N/A	N/A	N/A

Tax Provision	Filing Status	Phase-out Begins	Phase-out Ends	Phase-out Range
5. **§137** Employer Adoption Assistance **(1)** **Form 8839**	Married Joint	**$223,410**	**$263,410**	**$40,000**
	Surviving Spouse	**$223,410**	**$263,410**	**$40,000**
	Single Head of Household	**$223,410**	**$263,410**	**$40,000**
	Married Separate **(A)**	No credit allowed	N/A	N/A
6. **§219** Deductible IRA **(1)** **Form 1040, Schedule 1**, line **20 (WS)**	Married Joint	**$109,000**	**$129,000**	**$20,000**
	Single Head of Household	**$68,000**	**$78,000**	**$10,000**
	Married Separate	**$ -0-**	**$10,000**	**$10,000**
7. **§219** Deductible IRA for Spouses who are Not Active Participants **(1) Form 1040, Schedule 1, Line 20 (WS)**	Married Joint	**$204,000**	**$214,000**	**$10,000**
8. **§221** Student Loan Interest Deduction **Form 1040, Schedule 1, line 21 (WS)**	Married Joint	**$145,000**	**$175,000**	**$30,000**
	Single Head of Household	**$70,000**	**$85,000**	**$15,000**
	Married Separate	N/A	N/A	N/A

Tax Provision	Filing Status	Phase-out Begins	Phase-out Ends	Phase-out Range
9. **§408A** Roth IRA Contributions **(1)** **(WS)**	Married Joint	**$204,000**	**$214,000**	**$10,000**
	Single Head of Household	**$129,000**	**$144,000**	**$15,000**
	Married Separate **(A)**	**$ -0-**	**$10,00**	**$10,000**
10. **§469** Passive Activity Loss **(2)** **Form 8582**	Married Joint, Single, Head of Household	**$100,000**	**$150,000**	**$50,000**
	Married Separate **(A)**	**$50,000**	**$75,000**	**$25,000**
11. **§530** Coverdell Educational Savings Plans **(2)** **(WS)**	Married Joint	**$190,000**	**$220,000**	**$30,000**
	Single, Head of Household, Married Separate	**$95,000**	**$110,000**	**$15,000**

Other Provisions Affected by AGI or Modified AGI:

Provision:

1. **§21** Dependent Care Credit **Form 2441 (2)**.
2. **§22** Credit for Elderly or Permanently and Totally Disabled Schedule R **(2).**
3. **§25B** Retirement Contributions Savings Credit **Form 8880 (1).**
4. **§32** Earned Income Credit Schedule **EIC (1).**
5. **§36B** Premium Assistance Credit **Form 8962** Premium Tax Credit **(1)** (Special provisions *only* for **2020-2022** as a result of the **American Rescue Plan Act of 2021**). However, the **Inflation Reduction Act of 2022** has extended the provision for **3 years** to **December 31, 2025**.

6. **§86** Social Security Benefits **Form 1040,** page **1**, line **6a** (WS) **(2).**

7. **§213** Medical Deduction Allowances *after* 7 ½% of **AGI** for tax year. Now a **permanent** provision as a result of the **Consolidated Appropriations Act of 2021 (WS).**

8. **§1411(a)** Medicare Tax on Net Investment Income of **3.8% Form 8960 (2).**

9. **§6654** Quarterly estimated tax payments safe harbor rules **Form 2210 (2).**

Legend:

(1) Indexed annually to inflation

(2) Not indexed to inflation

(A) Not allowed if taxpayers lived together on *any* one day of the tax year

(**WS**) Worksheet calculation

Tax Professional Reminder: Throughout this course the tax professional should be aware of **AGI** and the modifications to **AGI** as they affect the various provisions pertaining to each of their clients. While this course discusses the reduction of tax rates in general and the favorable treatment of capital gains, qualified dividends, accelerated depreciation, etc., the tax professional cannot lose sight of the big picture.

E. §6654 Safe Harbor Rules for Required Estimated Tax Payments

1. For purposes of avoiding an estimate tax penalty, **§6654(d)(1)(B)** provides that a safe harbor amount must be paid. That amount is the *lessor of*:

   a. **100%** of the *prior* year tax, or

   b. **90%** of the *current* year tax.

2. For individuals whose adjusted gross income for the *preceding* tax year was *more than* **$150,000,** the **100%** is increased to **110%**.

F. §530 Coverdell Education Savings Plans

§530 Coverdell Education Savings Plans	
• Maximum **$2,000** nondeductible annual **contribution** limit for beneficiaries *under* **age 18** *except for* Special Needs Beneficiaries • Tax-deferred growth on **contributions** • Tax-free **distributions** for qualified expenses • Funds can be used to pay for qualified education expenses for K-12 plus post-secondary education • Qualified Education Expenses include room and board	• Contribution deadline: **April 15th** *after* the close of the tax year • Eligible for married filing separate status • Subject to phase-out provisions • Permanent provision as the result of **American Taxpayer Relief Act** • Not indexed to inflation • Distribution of funds required to be made *within* **30 days** of the beneficiary's **30th** birthday *except for* a Special Needs Beneficiary

1. **The Taxpayer Relief Act of 1997** created a provision which allowed taxpayers to contribute to an education plan called an "Educational IRA" with a maximum annual contribution of **$500** which had to be deposited into the account by **December 31** of the current tax year.

2. The **2001 Tax Act** changed the name to **Coverdell Education Savings Plan** and made significant changes which include:

   a. increasing the annual **contribution** limit to **$2,000** per beneficiary, and

   b. allowing the contribution to be made up to the due date of the return *without* extensions.

3. The maximum **$2,000** contribution amount is <u>not</u> indexed to inflation.

4. **§530(c)(1)** provides that the contributions are phased-out as *modified* **AGI** increases beyond certain thresholds. The phase-out range for a married couple begins as *modified* **AGI** rises above **$190,000** which is twice the **$95,000** amount allowed for single taxpayers. The threshold amounts are <u>not</u> indexed to inflation.

Coverdell Phase-Out Ranges

Filing Status	Phase-out Begins	Phase-out Ends	Range
Married Joint	$190,000	$220,000	$30,000
Married Separate	$95,000	$110,000	$15,000
Single	$95,000	$110,000	$15,000
Head of Household	$95,000	$110,000	$15,000

Tax Professional Note: For purposes of this test, *modified* **AGI** adds back the amounts **excluded** under **§911**, **§931** or **§933** as follows:

§911 Excluded income of citizens or residents of the United States living abroad, reported on **Form 2555,**

§931 Income from sources within Guam, American Samoa or the Norther Mariana Islands, and

§933 Income from sources within Puerto Rico.

5. The **2001 Tax Act expanded** the definition of "qualified education expenses" to include not *only* college costs but also tuition, fees and expenses for kindergarten through 12th grade. This education can be provided at a public, private or religious school. It also includes uniforms, transportation and supplementary items or services.

6. The law also provides that the cost to purchase computers or other technological equipment used by the student while in school will be "qualified educational expenses". This cost includes internet access and related services.

   Tax Professional Note: Distributions can be used to pay for room and board if required or provided by a public, private, or religious school in connection with such enrollment or attendance.

7. The law allows a taxpayer to take tax-free distributions from a **§530** Coverdell Plan and still claim **§25A** American Opportunity Tax Credit or **§25A** Lifetime Learning Credit in the same tax year. This provision applies *only if* they are not the same expenses.

8. The law provides that the **deadline** for making a **§530** Coverdell Savings Plan **contribution** is **April 15th** of the *following* tax year which is the due date of the original return.

9. **Provisions For Special Needs Beneficiaries**: **§530(b)(1)(E)** provides a general rule that funds remaining in a Coverdell Plan *after* the beneficiary reaches **age 30** must be distributed to the beneficiary *within* **30** days *after* the beneficiary reaches **age 30**. There is an **exception** for a "special needs beneficiary" and the **distribution deadline** is not applicable. In addition, Congress also provided that the rule prohibiting **contributions** to a Coverdell Plan *after* the beneficiary reaches **age 18** does not apply to a "special needs beneficiary".

   Tax Professional Note: The regulations define "special needs beneficiary" to include an individual who requires additional time to complete education because of a physical, mental, or emotional condition including a learning disability.

   Tax Professional Research Recommendation: For more information refer to IRS Publication 970: Tax Benefits for Education.

   Tax Education Awareness: NSTP offers a webinar titled **"Federal Income Tax Benefits Pertaining to Education" (Webinar EE)**. Go to http://www.nstp.org and click on Education and Webinars.

G. §221 Student Loan Interest Deduction

- Modified **AGI** phase-out ranges *begins at* **$70,000** for single and head of household, and at **$145,000** for joint filers in **2022.** In **2023**, the amounts are $75,000 and **$155,000** respectfully.
- Permanent provision as a result of the **American Taxpayer Relief Act of 2012.**
- Maximum deduction **$2,500** for all taxpayers *except* married filing separate.

Student Loan Interest Deduction Phase-Out Ranges for 2022 and 2023

Married Joint: 2022	**$145,000**	**$175,000**	**$30,000**
Married Joint: **2023**	$155,000	$185,000	$30,000
Married Separate	N/A	N/A	N/A
Single and Head of Household: **2022**	**$70,000**	**$85,000**	**$15,000**
Single and Head of Household: **2023**	$75,000	$90,000	$15,000

1. **§221** provides that taxpayers can claim an above-the-line deduction of up to **$2,500** for interest paid on "qualified education loans".

   Tax Professional Education Point: For purposes of this deduction, *modified* **AGI** means **AGI** determine *without* regard to:

   §911 Excluded income of citizens or residents of the U.S. living abroad, and

   §933 Excluded income from sources within Puerto Rico.

   and after the application of:

   §86 Social Security and Tier 1 Railroad Retirement Benefits,

   §135 Income from U.S. Savings Bonds used to pay higher education tuition and fees,

   §137 Exclusion of amounts received for adoption assistance programs,

§219 Deductible IRA contributions, and

§469 Passive activity loss deductions.

Tax Professional Research Recommendation: For more information refer to IRS Publication 970: Tax Benefits for Education.

Tax Education Awareness: NSTP offers a webinar titled "Federal Income Tax Benefits Pertaining to Education" (Webinar EE). Go to **http://www.nstp.org and click on Education and Webinars.**

H. §219 Traditional IRA Contribution Limits for Purposes of a Deductible IRA

- The maximum **deductible** contribution amount is **$6,000** in **2022** and **$6,500** in **2023.**
- Additional contribution of **$1,000** is allowed for taxpayers, **age 50 and over** on the last day of the tax year
- **Phase-out ranges** are adjusted annually for inflation in multiples of **$1,000.**
- **Contributions** are indexed in **$500** increments.

1. **§219(g)(8)** provides that the contribution phase-out limit will be rounded to the nearest multiple of **$1,000.** The other limitations for making IRA contributions still apply. These limitations include the requirement that the taxpayer and spouse are both participants in an employer's qualified plan and have earned income.

   Tax Professional Legislative Proposal: The **SECURE 2.0** legislation indexes the **$1,000** additional contributions in **$100** increments for tax years *beginning after* **December 31, 2022**.

Tax Professional Reminder: §219(d)(1) provides that for contributions made for **tax years** *beginning after* **December 31, 2019**, the **SECURE Act** repeals the prohibition on **contributions** to a **traditional IRA** by an individual who has **earned** income and has attained age **70 ½**. Therefore the contribution for a **deductible** IRA is allowable **regardless of age**.

The *modified* **AGI** limits are applied as follows:

Phase-Out Range Based on Filing Status

Year	Married Joint	Range	Single/HOH	Range
2019	\$103,000 - \$123,000	\$20,000	\$64,000 - \$74,000	\$10,000
2020	\$104,000 - \$124,000	\$20,000	\$65,000 - \$75,000	\$10,000
2021	\$105,000 - \$125,000	\$20,000	\$66,000 - \$76,000	\$10,000
2022	**\$109,000 - \$129,000**	**\$20,000**	**\$68,000 - \$78,000**	**\$10,000**
2023	\$116,000 - \$136,000	\$20,000	\$73,000 - \$83,000	\$10,000

Note: For a married couple filing **separate** returns, the phase-out range is **\$-0- to \$10,000** in **2022** and **2023,** *if* they lived together for **any one day**, during the tax year.

TAX PROFESSIONAL ALERT: Amounts received as alimony under **§71** are *deemed* to be *earned income* and eligible for contributions to an **IRA**. Due to the changes in the **"Tax Cuts and Jobs Act",** any divorce or separation agreement executed *after* **December 31, 2018**, or modified *after* **December 31, 2018**, will <u>not</u> be included in gross income. As a result, the amount received as alimony and <u>not</u> included in gross income will <u>not</u> be eligible for an **IRA** contribution.

2. **§219(g)(7)** provides that <u>if</u> an individual is <u>not</u> an active participant in an employer-sponsored retirement plan but the spouse is, <u>then</u> the deduction for the contribution to the traditional IRA is phased out if the joint return reports *modified* **AGI** between **\$204,000** to **\$214,000** in **2022** and **\$218,000** to **\$228,000** in **2023**.

Married Joint Phase-Out Range			
Year	Begins	Ends	Range
2019	$193,000	$203,000	$10,000
2020	$196,000	$206,000	$10,000
2021	$198,000	$208,000	$10,000
2022	**$204,000**	**$214,000**	**$10,000**
2023	$218,000	$228,000	$10,000

Tax Professional Note: §219(f) provides that an individual is not an active participant under a plan for any taxable year which such individual *elects*, pursuant to the plan, not to participate in such plan. The eligibility to defer compensation under a **§401(k)** plan does not make an individual an active participant in the plan if the taxpayer **declines** to make the deferral election and no other contributions or forfeitures are allocated to the taxpayer's account for the plan year. IRS **Notice 87-16, Q & A #24, 19878-1 CB446** states the following:

Question #24: If an individual who is eligible to make elective deferrals under a CODA declines to make elective deferrals for a year, and no other contributions or forfeitures are allocated to such individual's account for the plan year ending with or within the individual's taxable year, is such an individual an active participant for that year?

Answer #24: No. An individual shall not be an active participant merely due to eligibility to participate in a CODA.

Tax Professional Education Fact: For the purposes of this provision, **§219(g)(3)** provides that **AGI** is determined *after* the application of:

§86 Social Security and Tier 1 Railroad Retirement Benefits, and

§469 Passive activity losses;

and *without* regard to:

§135 Income from U.S. Savings Bonds used to pay higher education tuition fees,

§137 Exclusion of amounts received for adoption assistance programs,

§219 Deductible IRA contributions,

§221 Interest on education loans,

§222 Deduction for qualified tuition and fees (repealed *after* **2020**), and

§911 Excluded income of citizens or residents of the U.S. living abroad

Tax Professional Research Recommendation: For more information refer to IRS Publications 590-A Individual Retirement Accounts (IRAs)

I. §408A Roth IRA Contribution Limits

- Contribution amount: **$6,000** in **2022** and **$6,500** in **2023**.
- Additional contribution of **$1,000** for taxpayers age **50** and over on the last day of the tax year
- The threshold amounts for **phase-out** are adjusted for inflation in **$1,000** increments
- The **contributions** are indexed in **$500** increments

2022 phase-out range:

Filing Status	Begins	Ends	Range
Married Joint	$204,000	$214,000	$10,000
Single/HOH/MFS	$129,000	$144,000	$15,000

2023 phase-out range:

Filing Status	Begins	Ends	Range
Married Joint	$218,000	$228,000	$10,000
Single/HOH/MFS	$138,000	$153,000	$15,000

For married taxpayers filing **separate** returns the allowable contribution will continue to be phased out ratably for *modified* **AGI** between **$-0-** and **$10,000.** Contributions are not allowed for spouses filing separately **if** they lived together on any one day during the tax year.

1. **§408A(c)(3)(C)(i)** provides that a taxpayer may make a contribution to a Roth IRA as long as the *modified* **AGI** does not exceed the "applicable dollar amount".

J. Medicare Part B and Part D Premiums: Rules for Beneficiaries with Higher Incomes

1. **The Medicare Modernization Act of 2003** changed how **Medicate Part B** premiums are calculated for some higher income beneficiaries. According to the Social Security Administration (**SSA**) the majority of Medicare beneficiaries are not affected.

2. For most beneficiaries, the government pays **75%** of **Part B** standard premiums and the beneficiary pays **25%** of the premium.

3. Since **2007**, higher income beneficiaries have been paying a larger percentage of their **Part B** premium based on the income they reported to the IRS on their tax return from **two years prior** to when the premiums are due. Therefore, a Medicare beneficiary's **2023** premiums are based on their *modified* **AGI** reported on their **2021 Form 1040** or **Form 1040-SR**. If the **SSA** does not have the information from a **2020** return, then they will use the information from the **2019** return.

4. In **2022**, higher income beneficiaries are paying a monthly premium equal to **35%, 50%**, **65%**, or **80%** of the total premium cost depending on their **AGI** from **2020**. According to the **SSA**, *less than* **5%** of Medicare beneficiaries are affected.

5. *Modified* **AGI** is defined as **AGI** plus:

   a. Tax-exempt interest,

   b. **§135** excluded EE Bond interest, and

   c. **§911** foreign earned income and housing exclusion.

6. The IRS gives the taxpayer's filing status and *modified* **AGI** to the Social Security Administration to determine if the taxpayer has an "Income Related Monthly Adjustment Amount" (**IRMAA**). The Social Security Administration will then assess any additional monthly premium.

7. The **2022** standard premium is **$170.10.**

8. The following chart reports the amounts of monthly **Medicare Part B** Premiums for **2022** based on modified **AGI** and filing status from the taxpayer's **2020 Form 1040**:

Filing	Modified AGI	Monthly Premiums	Increase Per Beneficiary	Cumulative Increase
Single & Head of Household	≤ $91,000	$170.10	NA	N/A
	$91,001 - $114,000	$238.10	$68.00	$68.00
	$114,001 - $142,000	$340.20	$102.10	$170.10
	$142,001 - $170,000	$442.30	$102.10	$270.20
	$170,001 - $500,000	$544.40	$102.10	$374.30
	> $500,000	$578.40	$34.00	$408.30
Married Joint	≤ $182,000	$170.10	N/A	NA
	$182,001 - $228,000	$238.10	$68.00	$68.00
	$228,001 - $284,000	$340.20	$102.10	$170.10
	$284,001 - $340,000	$442.30	$102.10	$272.20
	$340,001 - $750,000	$544.40	$102.10	$374.30
	≥ $750,000	$578.40	$34.00	$408.20
Married Separate	< $91,000	$170.10	N/A	N/A
	$91,001 - $409, 000	$544.30	$374.20	$374.20
	≥ $409,000	$578.30	$34.00	$408.20

Tax Professional Note: If the taxpayer is affected by the **IRMAA**, then they are also subject to increased **Part D** premiums.

The Prescription Drug Plan Premium is determined by the plan that each individual Medicare recipient chose from their provider. The increase in **Part D** premiums due to **IRMAA** are based on the following levels of modified **AGI**:

Filing Status	Modified AGI	Increase-Monthly Premiums	Cumulative Increase
Single & Head of Household	≤ $91,000		N/A
	$91,001 - $114,000	$12.40	$12.40
	$114,001 - $142,000	$19.70	$32.10
	$142,001 - $170,000	$19.60	$51.70
	$170,001 - $500,000	$19.60	$71.30
	≥ $500,000	$6.60	$77.90
Married Joint	≤ $182,000		N/A
	$182,001 - $228,000	$12.40	$12.40
	$228,001 - $284,000	$19.70	$32.10
	$284,001 - $340,000	$19.60	$51.70
	$340,001 - $750,000	$19.60	$71.30
	≥ $750,000	$6.60	$77.90
Married Separate	≤ $91,000		N/A
	$91,001 - $409,000	$71.30	$71.30
	≥ $409,000	$6.60	$77.90

Tax Professional Education Point: For more information on issues dealing with appeals, subsequent changes in income, filing status and one-time increases to income go to the Social Security Administration website at https://www.ssa.gov/benefits/medicare/mediinfo.html or call toll-free at **1-800-772-1213** (TTY **1-800-325-0778**).

Tax Professional Detail: What if the beneficiary disagrees with the additional assessment?

If the beneficiary disagrees with the decision regarding income-related monthly adjustment amounts, then they have the right to appeal. Request an appeal in writing by completing a *Request for Reconsideration* (**Form SSA-561-U2**) or contact the local Social Security office to file an appeal. The appeal form is online at https://www.ssa.gov/ or request a copy through the toll-free number at **1-800-772-1213** (TTY **1-800-325-0778**). The recipient does not need to file an appeal if they are requesting a new decision because they experienced one of the events listed below and it made the income go down or if the recipient has shown the Social Security Administration the information used is incorrect.

If one disagrees with the amount of **MAGI** received from the IRS, then the information has to be corrected with the IRS. If the SSA determines that the beneficiary must pay a higher amount for Medicare prescription drug coverage and the beneficiary does not have this coverage, then call the Centers for Medicare & Medicaid Services (CMS) at 1-800-MEDICARE (**1-800-633-4227** (TTY **1-877-486-2048**) to make a correction. Social Security receives the information about prescription drug coverage from CMS.

What If the Beneficiary's Income has gone down?

If the beneficiary's income has gone down due to *any* of the following situations and the change makes a difference in the income level SSA considers, then contact the SSA to explain the new information.

The beneficiary may need a new decision about the income-related monthly adjusted amount if:

- beneficiary married, divorced, or became widowed;
- beneficiary or spouse stopped working or reduce work hours;
- beneficiary or spouse lost income-producing property due to a disaster or other event beyond their control;

- beneficiary or spouse experience a scheduled cessation, termination, or reorganization of an employer's pension plan; or
- beneficiary or spouse received a settlement from an employer's pension plan; or
- beneficiary or spouse received a settlement from an employer or former employer because of the employer's closure, bankruptcy, or reorganization.

If any of the above applies, then the SSA needs the **documentation verifying** the event and the reduction in income. The documentation provided should be related to the event and may include a death certificate, a letter from an employer about retirement, or something similar. If the beneficiary filed a federal income tax return for the year in question, then a signed copy of the return needs to be shown to the **SSA**.

Tax Professional Awareness: The Social Security Administration offers **Form SSA-44** to be filed by a beneficiary who has had a major life-changing event and their income has decreased. The **Form SSA-44** is used to request a reduction in the income-related monthly adjustment amount.

Form SSA-561-U2 is available for requesting a reconsideration for Supplemental Security Income (**SSI**) or Special Veterans Benefits (**SVB**) Reconsideration.

VII. The 2023 Tax Season Emergency Room: Data at the Tax Professional's Fingertips

VII. The 2023 Tax Season Emergency Room: Data at the Tax Professional's Fingertips

A. §1 Tax Rate Schedules for 2022 and 2023

2022 Taxable Income and Bracket Threshold Amounts

Filing Status	10%	12%	22%	24%	32%	35%	37%
Single	$10,275	$41,775	$89,075	$170,050	$215,950	$539,900	>$539,900
Head of Household	$14,650	$55,900	$89,050	$170,050	$215,950	$539,900	>$539,900
Married Joint & Surviving Spouse	$20,550	$83,550	$178,150	$340,100	$431,900	$647,850	>$647,850
Married Separate	$10,275	$41,775	$89,075	$170,050	$215,950	$323,925	>$323,925
Estates & Trusts	$2,750	N/A	N/A	$9,850	N/A	$13,450	>$13,450

2023 Taxable Income and Bracket Threshold Amounts*

Filing Status	10%	12%	22%	24%	32%	35%	37%
Single	$11,000	$44,725	$95,375	$182,100	$231,250	$578,125	>$578,125
Head of Household	$15,700	$59,850	$95,350	$182,100	$231,250	$578,100	>$578,100
Married Joint & Surviving Spouse	$22,000	$89,450	$190,750	$364,200	$462,500	$693,750	>$693,750
Married Separate	$11,000	$44,725	$95,375	$182,100	$231,250	$346,875	>$346,875
Estates & Trusts	$2,900	N/A	N/A	$10,550	N/A	$14,450	>$14,450

*** Treasury finalized these amounts on October 18, 2022 in Revenue Procedure 2022-38**

Capital Gain Rates for Long-Term Capital Gains and Qualified Dividends:

Long-term capital gains are taxed using break-points and different rates than ordinary income under the marginal tax brackets as follows for **2022-2023**:

2022 Capital Gain Breakpoints					
	Single	Married Joint	Married Separate	Head of Household	Estates & Trusts
Rates	Over	Over	Over	Over	Over
0%	$0	$0	$0	$0	$0
15%	$41,675	$83,350	$41,675	$55,800	$2,800
20%	$459,750	$517,200	$258,600	$488,500	$13,700

Capital Gain Rates for Long-Term Capital Gains and Qualified Dividends:

2023 Capital Gain Breakpoints					
	Single	Married Joint	Married Separate	Head of Household	Estates & Trusts
Rates	Over	Over	Over	Over	Over
0%	$0	$0	$0	$0	$0
15%	$44,625	$89,250	$44,625	$59,750	$3,000
20%	$492,300	$553,850	$276,900	$523,050	$14,650

B. §63 Standard Deduction Amounts

1. **§63(c)** provides for a basic standard deduction amount based on filing status and they are annually indexed to inflation. For years **2019–2023** the amounts are as follows:

Filing Status	2019	2020	2021	2022	2023
Married Joint and Surviving Spouse	$24,400	$24,800	$25,100	**$25,900**	$27,700
Single (*other than* Head of Household or Surviving Spouse)	$12,200	$12,400	$12,550	**$12,950**	$13,850
Head of Household	$18,350	$18,650	$18,800	**$19,400**	$20,800
Married Filing Separate	$12,200	$12,400	$12,550	**$12,950**	$13,850

Tax Professional Note: As a result of the **"Tax Cuts and Jobs Act",** the standard deduction amounts have increased significantly. As a result, more taxpayers will use the standard deduction instead of *electing* to itemize deductions on **Schedule A**.

2. The Code provides for an **additional standard deduction** for married taxpayers age **65** or over or blind. The amount is **$1,400** in **2022** and **$1,500** in **2023** for each spouse.

3. For a taxpayer with a filing status of single or head of household who is age **65** or over or blind, the **additional standard deduction** is **$1,750** in **2022** and $**1,850** in **2023**.

4. **§151 Dependents** for the purposes of an individual who can be claimed as a dependent on another's return of a minor child (Kiddie Tax), the basic standard deduction for **2022** is the *greater of*:

   a. **$1,150** , or
   b. **$400** plus, the individual's **earned** income.

   For **2023**, the amounts are the *lesser of*:

   a. **$1,250,** or
   b. **$400** plus the individual's earned income.

However, the **standard deduction** amount of the child may not exceed the regular standard deduction amount for that individual. The amount is **$12,950** in **2022** and $**13,850** in **2023**.

5. **Kiddie Tax**: The exemption form the "kiddie" tax for **2022** is **$2,300.** It will be **$2,500** in **2023**. A parent will be able to *elect* to include a child's income on the parent's return for **2022** if the child's income is *more than* **$1,150** and *less than* **$11,500.** In **2023**, the amounts are *more than* **$1,250** and *less than* **$12,500.**

6. **§152** Exemption Amount: While the dependency exemption deduction under **§151** is reduced to **zero** for the period **2018-2025**, this reduction is not taken into account for other purposes of the Code, such as who is a "qualifying relative" for family credit purposes, and eligibility for head of household filing status. For **2022**, the amount is **$4,400.** In **2023**, the amount is **$4,700.**

C. §32 Earned Income Credit Limitations for 2022 and Projected Limits for 2023

1. The following data from **Rev. Proc. 2021-47** issued on **November 29, 2021**, reports the **2022** minimum amount of earned income for which the maximum **§32** Earned Income Tax Credit (**EITC**) is allowed for all eligible taxpayers:

Number of Qualifying Children	Credit Percentage	Earned Income Amount	Maximum Credit
0	7.65%	$7,320	$560
1	34%	$10,980	$3,733
2	40%	$15,410	$6,164
3 or more	45%	$15,410	$6,935

2. The phase-out amount of the allowable **2022, §32 EITC** for **single, head of household,** and **surviving spouse** taxpayers *begins* and *ends* as follows:

Number of Qualifying Children	Phase-out Percentage	Phase-out Begins	Phase-out Ends
0	7.65%	$9,160	$16,480
1	15.98%	$20,130	$43,492
2	21.06%	$20,130	$49,399
3 or more	21.06%	$20,130	$53,057

3. The phase-out amount of the allowable **2022, §32 EITC** for **joint** filers *begins* and *ends* as follows:

Number of Qualifying Children	Phase-out Percentage	Phase-out Begins	Phase-out Ends
0	7.65%	$15,290	$22,610
1	15.98%	$26,260	$49,622
2	21.06%	$26,260	$55,368
3 or more	21.06%	$26,260	$59,187

4. On **Ocotber 18, 2022** the IRS issues **Rev. Proc. 2022-38** and reported that the **2023** minimum amount of *earned* income for which the maximum **§32** Earned Income Tax Credit (**EITC**) is allowed for all eligible taxpayers:

Number of Qualifying Children	Credit Percentage	Earned Income Amount	Maximum Credit
0	7.65%	$7,840	$600
1	34%	$11,750	$3,995
2	40%	$16,510	$6,604
3 or more	45%	$16,510	$7,430

5. The phase-out amount of the allowable **2023, §32 EITC** for **single, head of household,** and **surviving spouse** taxpayers *begins* and *ends* as follows:

Number of Qualifying Children	Phase-out Percentage	Phase-out Begins	Phase-out Ends
0	7.65%	$9,800	$17,120
1	15.98%	$21,560	$46,560
2	21.06%	$21,560	$52,918
3 or more	21.06%	$21,560	$56,840

6. The phase-out amount of the allowable **2023, §32 EITC** for joint filers *begins* and *ends* as follows:

Number of Qualifying Children	Phase-out Percentage	Phase-out Begins	Phase-out Ends
0	7.65%	$16,370	$24,210
1	15.98%	$28,120	$53,120
2	21.06%	$28,120	$59,478
3 or more	21.06%	$28,120	$63,398

Tax Professional Note: Taxpayers must use IRS tables to determine the amount of their earned income tax credit. While these tables are based on the inflation-adjusted figures set out above, because the credit under the tables is the same for everyone within a **$50 range** there may be slight differences between the credit under the tables and the credit the taxpayer would determine using those inflation-adjusted figures.

7. **§32(i)** provides for a denial of the earned income credit for individuals who have excessive investment income. No credit shall be allowed for the taxable year if the aggregate amount of "disqualified income" *exceeds* a specified dollar amount indexed to inflation on an annual basis. "Disqualified income" is investment income *greater than* allowable deductions.

8. The “disqualified amount” for **2021** was supposed to be **$3,650,** however, due to the legislative changes enacted in the **American Rescue Plan Act of 2021**, the amount is increased to **$10,000.** It is indexed to inflation for tax years *beginning after* **December 31, 2021**. The amount is **$10,300** for **2022**. The amount for **2023** is **$11,000.**

   Tax Professional Legislative Update: **§32(c)(1)(A)(ii)** provides that those taxpayers *without* a qualifying child must be age **25** but *under* the age of **65** at the end of the tax year and may not qualify as a dependent of another taxpayer.

   Tax Professional Reminder: The **2015 PATH Act** updated **§6402(m)** and provides that for credits and refunds made *after* **December 31, 2016**, no credit or refund for a tax year will be made *before* the **15th** day of the second month *following the close* of the tax year (**February 15**).

   Tax Professional Research Recommendation: For more information refer to IRS Publications:

   Pub. 3: Armed Forces Tax Guide

   Pub. 596: Earned Income Credit (**EIC**)

D. §25A American Opportunity Tax Credit (AOTC)

1. The **§25A AOTC** was created as a result of the “American Recovery and Reinvestment Act of 2009”. The **§25A**, **AOTC** was supposed to be a temporary provision for **2009** and **2010** only and temporarily replace the **§25A Hope Credit**. The **§25A** American Opportunity Tax Credit was extended by the “Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010” and again in **2014** by the “Student and Family Tax Simplification Act”. It was supposed to expire *after* **2017** and revert back to the **§25A Hope Credit**. Instead, it was made a **permanent** provision by the **PATH Act** on **December 18, 2015** and as a result, the **Hope Credit** was permanently **repealed**.

a. **Program Integrity Provisions**: Effective for returns, and any amendment or supplement to a return, filed *after* **December 18, 2015**, the **PATH Act** prohibited an individual from *retroactively* claiming the **§25A AOTC** by amending a return (or filing an original return if the individual failed to file) for *any prior* year in which the individual or a student for whom the credit was claimed did not have an **ITIN**.

b. In addition, for tax years *beginning after* **December 31, 2015**, the paid preparer due diligence penalty under **§6695(g)**, which applied with respect to the **§32** earned income tax credit (**EITC**), also began to apply to those who fail to exercise due diligence in determining liability for the **§25A AOTC**. The **§6695(g)** penalty is **$500** indexed to inflation in **$5** increments.

For **2022**, the penalty amount is **$560** for **each failure**. For **2023**, the amount is projected to increase to **$600** per failure.

Tax Professional Awareness: The IRS has issued **Form 886-H-AOC** "Supporting Documents to Prove American Opportunity Credit" which provides guidance stating the information the taxpayer needs in order to verify that they are eligible to claim the **§25A** American Opportunity Credit as reported or their tax return.

This will assist the Tax Professional in performing their due diligence requirements supporting **Form 8867.**

Tax Professional Educational Awareness: **NSTP** offers a self-study webinar titled "Due Diligence: Challenges Facing Paid Return Preparers". The webinar was a Live-streamed presentation on **October 27, 2021** presented by NSTP's Director of Education. The webinar discussed the issues which need to be understood in order to properly fill out IRS **Form 8867** "Paid Preparer's Due Diligence Checklist".

c. Also, for tax years *beginning after* **December 31, 2015**, the provision in **§32(k)** that bars individuals from claiming the **§32 EITC** for **10** years if they are convicted of fraud, or **two** years if they intentionally disregarded the rules, also applies to the **§25A AOTC**, as does the rule in **§6213(g)(2)(K)** that allows the IRS to disallow credit *without* a formal audit if they are claimed in a period during which the taxpayer is barred from doing so due to fraud or reckless or intentional disregard.

d. For tax years *beginning after* **December 31, 2015**, **§25A(i)(6)** is updated and provides that expenses **paid** *after* that date for education furnished in academic periods *beginning after* **December 31, 2015**, a taxpayer claiming the **§25A AOTC** must report the Employer Identification Number (**EIN**) of the educational institution to which the taxpayer makes qualified payments under the credit.

Tax Professional Note: According to the **PATH Act**, the taxpayer must have **Form 1098-T** in order to claim any education credits.

e. Finally, for expenses paid *after* **December 31, 2015**, **§6050(b)(2)(B)(i)** is updated and provides that for education furnished in academic periods *beginning after* that date, higher education institutions are required to report, on **Form 1098-T**, *only* "qualified tuition and related expenses" actually **paid** *rather than* choosing between **amounts paid** and **amounts billed** as under prior law.

f. **§25A(a)(1)** provides that the amount of the **AOTC** is equal to the **sum of**:

   i. **100%** of qualified tuition and related expenses **paid** by the taxpayer *up to* the first **$2,000** (**100%** x **$2,000** = **$2,000**) **plus**,

   ii. **25%** of such expenses **paid** *up to* the next **$2,000** (**25%** x **$2000** = **$500**).

   - This results in a maximum credit of **$2,500.**

g. The qualified tuition and related expenses are for education furnished to an *eligible student* during *any* academic period *beginning in* such a taxable year. The credit is allowed for expenses paid in **2022** for an academic period *beginning in* **2022** or in the first *three* months of **2023**.

h. **§25A(i)(2)** provides that the credit is allowed for the first **4** years of post-secondary education.

i. **§25A(i)(3)** provides that *qualified tuition* and related expenses include required course material as well as tuition fees.

j. **§25A(i)(4)** provides a phase-out threshold limitation and the credit is reduced by the amount which bears a *ratio* to such credit as the *excess of*:

   - The taxpayer's *modified* **AGI**, *over* **$80,000** (**$160,000** married joint), bears to **$10,000** (**$20,000** married joint).

Filing Status	Phase-out Begins	Phase-out Ends	Range
Single, Head of Household	**$80,000**	**$90,000**	**$10,000**
Married Joint	**$160,000**	**$180,000**	**$20,000**

Tax Professional Note: These *modified* **AGI** amounts are not indexed to inflation. As a result, if a taxpayer's income rises from one year to the next, then the credit would be phased out or completely disallowed.

k. **§25A(i)(5)** provides that the **AOTC** is also allowed as a credit against the Alternative Minimum Tax (**AMT**).

l. **§25A(i)(6)** provides that **40%** of the credit may be *refundable*.

EXAMPLE #1: The following illustrates the calculation of the **§25A AOTC** and the phase-out provisions. A married couple is eligible for a maximum **§25A** American Opportunity Tax Credit of **$2,500** *if* their *modified* **AGI** is **$160,000** or below. The taxpayers have other personal credits that are allowed to be used *before* the education credit and their net tax liability is now **zero**. Under **§25A(i)(6)** they are permitted to have a *refundable* credit of **40%** of their **$2,500** maximum credit and as a result can claim a **$1,000** *refundable* credit which is calculated as follows:

§25A Maximum Opportunity Tax Credit	**$2,500**
§25A(i)(6) Refundable Portion	**x 40%**
Refundable credit calculated on **Form 8863, page 1, line 8** and reported on **Form 1040** or **Form 1040-SR**, page **2** line **29**	**$1,000**

EXAMPLE #2: Same as above *except* now the *modified* **AGI** is **$165,000.** As a result the taxpayer must first calculate the phase-out of the maximum **$2,500 §25A AOTC** as follows:

Modified **AGI**	**$165,000**
Less: Phase-out threshold	(160,000)
Excess **AGI**	**$5,000**

Excess / **Phase-out Range** = **$5,000** / **$20,000** = ¼ x **$2,500** = **$625**

§25A Maximum Credit Available	**$2,500**
Less: Credit not allowed due to phase-out provision	($625)
Credit Available	**$1,875**
§25A(i)(6) Refundable provision	**x 40%**
Refundable credit calculated on **Form 8863, pages 1, line 8** and reported on **Form 1040** or **Form 1040-SR**, page **2** line **29**	**$750**

Tax Professional Reminder: Once the taxpayer's *modified* **AGI** is *greater than* **$90,000** (**$180,000** married joint) the **refundable** portion is completely phased out.

Tax Professional Reminder: A taxpayer can claim both the **§25A** American Opportunity Credit and the **§25A** Lifetime Learning Credit on the same return but not for the same student.

The following is a Comparison of Education Credits for **2022** from **Form 8863** Instructions:

Description	**American Opportunity Credit**	**Lifetime Learning Credit**
Maximum Credit	Up to $2,500 credit per eligible student	Up to $2,000 credit per return
Upper Limit on modified adjusted gross income (MAGI)	$180,000 if married filing jointly; $90,000 if single, head of household, or qualifying widow(er). These amounts are not indexed annually to inflation.	$180,000 if married filing jointly; $90,000 if single, head of household, or qualifying widow(er). These amounts were increased to match the phase-out provisions of the AOTC as provided by the Consolidated Appropriations Act of 2021 beginning January 1, 2021.
Refundable or Nonrefundable	40% of credit may be refundable; the rest of the credit is nonrefundable.	Nonrefundable credit limited to the amount of tax the taxpayer must pay on taxable income.
Number of years of postsecondary education	Available ONLY if the student had not completed the first 4 years of postsecondary education before 2022.	Available for all years of postsecondary education and for courses to acquire or improve job skills.
Type of program required	Student must be pursuing a program leading to a degree or other recognized education credential.	Student does not need to be pursuing a program leading to a degree or other recognized education credential.

Description	**American Opportunity Credit**	**Lifetime Learning Credit**
Number of courses	Student **must** be enrolled *at least* **half-time** for *at least* **one** academic period *beginning during* **2022** (or the first **3** months of **2023** if the qualified expenses were paid in **2022**).	Available for one or more courses
Felony drug conviction	As of the end of **2022**, the student had not been convicted of a felony for possessing or distributing a controlled substance.	Felony drug convictions do not make the student ineligible.
Qualified Expenses	Tuition, required enrollment fees, and course materials that the student needs for a course of study whether or not the materials were bought at the educational institution as a condition of enrollment or attendance.	Tuition and required enrollment fees (including amounts required to be paid to the institution for course-related books, supplies, and equipment).
TIN needed by filing due date	Filers and students **must** have an **ITIN** by the due date of their **2022** return (including extensions).	Instructions Currently Blank on this Issue
Educational Institution's **EIN**	Taxpayer **must** provide the educational institution's employer identification number (**EIN**) on **Form 8863.**	Instructions Currently Blank on this Issue
Payments for academic periods	Payments made in **2022** for academic periods *beginning in* **2022** or *beginning in* the first **3** months of **2023**	

E. §24 Child Tax Credit (CTC)

1. The allowance of the **refundable** credit for taxpayers with *earned* income *greater than* **$3,000** and *less than* **3** qualifying children was supposed to expire *after* **2017**. The law provided that earned income *greater than* **$3,000** was multiplied by **15%** in order to calculate the *refundable* credit.

   a. The **PATH Act** precludes retroactive claims of the **CTC** by preventing taxpayers from amending a return, or filing an original return, for *any prior* year in which the taxpayer or the qualifying child did not have an Individual Taxpayer Identification Number (**ITIN**) in order to claim the credit.

   b. Effective for years *beginning after* **December 31, 2015**, the rules in **§32(k)** that bar individuals from claiming the **EITC**, apply to the **CTC**. The **PATH Act** also added a provision barring individuals from claiming the credit for:

      - **10** years if they are convicted of fraud; or
      - **2** years if they intentionally disregard the rules.

   c. In addition, for tax years *beginning after* **December 31, 2015**, the paid preparer due diligence penalty under **§6695(g)**, which originally only applied to the **§32 EITC**, applies to those who **fail to exercise due diligence** in determining eligibility for the **§24 CTC**.
   The penalty is **$500** for **each failure** and is indexed to inflation in **$5** increments. The amount for **2022** returns is **$560** for *each* failure to properly determine the eligibility for specified tax benefits required when filing IRS **Form 8867** "Paid Preparer's Due Diligence Checklist". The projected penalty for **2023** is **$600.**

Tax Professional Awareness: In addition to **Form 8867** for purposes of performing "due diligence", refer to **IRS Form Series 886-H** which includes the following IRS Forms:

- **Form 886-H-DEP**: Supporting Documents for Dependency Exemptions
- **Form 886-H-ITIN**: Dependent: Related Tax Benefits and Credits-Explanation of Items (Discusses **CTC** and Additional **CTC**.)

- **Form 886-H-EIC**: Documents You Need to Send to Claim the Earned Income Credit on the Basis of a Qualifying Child or Children

Tax Professional Awareness: The IRS now provides sample templates for schools Health Care providers, and Child Care Providers for proof of residency.

- **Form 886-H-AOC**: Supporting Documents to Prove American Opportunity Credit
- **Form 886-H-AOTC-MAX:** American Opportunity Tax Credits Available for a Maximum of 4 Years
- **Form 886-H-HOH**: Supporting Documents to Prove Head of Household Filing Status

Tax Professional Education Update: On **November 5, 2018**, the IRS and the Treasury Department released final regulations explaining the paid preparer penalty rules in **Treasury Decision 9842**. **NSTP** offers a self-study course titled "Challenges Facing Paid Return Preparer's". The webinar was presented on **October 27, 2021** by **NSTP's** Director of Education and the course covers the regulations in **Treasury Decision 9842.**

2. **§24(d)(4) Refundable Portion of Child Tax Credit**
   a. The **§24** Child Tax Credit (**CTC**) provides a credit for a qualifying dependent child *under* **age 17**.
   b. **§24(b)(2)** provides that the credit is subject to phase-out provisions based on the filing status.
   c. **§24(d)** provides that a *portion* of the **CTC** is **refundable** (**Form 8812**) for certain taxpayers to the extent of
      - **15%** of the taxpayer's *earned* income *in excess* of a threshold amount, or
      - the taxpayer has **3** or more "qualifying children".
   d. As a result of the **"Tax Cuts and Jobs Act"** the following changes are provided:
      i. the **CTC** has increased from **$1,000** to **$2,000** for each qualifying child, for the period of **2018-2025**, and

ii. the **phase-out range** has been increased significantly based on the filing status. For married joint returns the phase-out *begins at* **$400,000** of *modified* **AGI** and for all other taxpayers it begins to phase-out at **$200,000.**

iii. the *portion* of the **CTC** that is *refundable* has also been increased for certain taxpayers to the extent that their *earned* income is *in excess of* **$2,500** and is multiplied by **15%**,

iv. the **qualifying child** must have a **Social Security Number (SSN)** *before* the due date of the return *including* extensions,

v. **taxpayer** claiming the **CTC** can have *either* a Social Security Number or an **ITIN**,

vi. the qualifying child **must be** a U.S. Citizen or U.S. Resident

Tax Professional Update: The refundable credit amount for earned income *greater than* **$2,500** provides a maximum refundable **§24 CTC** of **$1,400** indexed to inflation. For **2022** the refundable amount increases at **$1,500.** For **2023**, the refundable credit amount increases to **$1,600** per "qualifying child".

Tax Professional Reminder: The **2015 PATH Act** updated **§6402(m)** and provides that no credit or refund for a tax year will be made *before* the **15th** day of the second month *following the close* of the tax year (**February 15**) if the taxpayer claimed the **§24** Additional Child Tax Credit (**ACTC**).

Tax Professional Education Point: The **refundable §24 CTC** was created in order to provide that working taxpayers who did not receive all of their payroll tax money back through the **§32 EIC** have the opportunity to receive it through the additional **§24 CTC**. **IRS Form 8812** is used to calculate the **refundable** additional **CTC**. The credit is reported on the updated **2022 Form 1040** and **Form 1040-SR,** on page **2**, line **28**.

As a result of the "Tax Cuts and Jobs Act" (**TCJA**), the **§24** Credit for Other Dependents of **$500** also requires that the paid tax preparer due diligence provisions of **§6695(g)** are followed and requires the filing of IRS **Form 8867** and record retention requirements.

Tax Professional Research Recommendation: For more information refer to IRS Publication 972: Child Tax Credit.

F. Annual Gift Tax Exclusion Amount and Estate Tax Lifetime Exclusion Amount

1. The general rule states that taxpayers are required to file a IRS **Form 709** U.S. Gift Tax Return for transfers of property to any donee.

2. There is an *annual* gift exclusion filing requirement amount per done of **$16,000** in **2022.** In **2023** the amount is **$17,000.**

3. Married couples have an annual gift tax **exclusion** filing requirement amount of *up to* **$32,000** in **2022.** In **2023** the amount is **$34,000.**

4. The **exclusion** amount is indexed annually for inflation, but subjected to an incremental increase amount of **$1,000** *before* the **exclusion** amount is increased. These annual exclusion amounts can be transferred *without filing* the **Form 709** gift tax return. Transfers of gifts to **citizen spouses** have an **unlimited exclusion** amount and **Form 709** is not required to be filed.

5. In **2022**, gifts to non-citizen spouses are **limited** to **$164,000.** The amount is projected to increase to **$175,000** in **2023**.

6. The estate and gift tax applicable *lifetime exclusion* is **$10,000,000** indexed to inflation. The **exclusion** was increased as a result of the **"Tax Cuts and Jobs Act".** The amount is **$12,060,000** in **2022**. In **2023** the **exclusion** amount is projected to increase to **$12,920,000**.

7. **§6039F(a)** provides that for **2022**, a U.S. person receiving aggregate foreign gifts *exceeding* **$100,000** from a nonresident alien individual or a foreign estate must file **Form 3520.**

8. For **2022**, if a U.S. person received *more than* **$17,339** from a foreign corporation or foreign partnership, then they must also file **Form 3520.** In **2023**, the amount is projected to increase to **$18,567.**

Tax Professional Note: Tax Professionals need to review the requirements for **§6039D** and the questions on **Form 1040, Schedule B**, **Part III** concerning reporting foreign accounts and assets.

G. Social Security Withholding Limits and Specified Pension Contribution Amounts

1. The Social Security wage base in **2022** is **$147,000.** The maximum **FICA** tax is **$9,114.00.** On **October 13, 2022** the Social Security Administration announced that the **2023** wage base will be **$160,200.** That is an increase of **$13,200.** Therefore, the maximum **FICA** tax in **2023** is **$9,932.40** and it is an increase of **$818.40** for both the employee and employer share of tax. Self-employed taxpayers will pay **$19,864.80.** The increase in tax is **$1,636.80.**

2. **§401(k)** Elective deferral limitation is **$20,500** in **2022.** On **Friday, Ocotber 21, 2022**, the IRS issued **Notice 2022-55** and in **2023** the amount is **$22,500.**

3. **§403(b)** Elective deferral limitation is **$20,500** in **2022.** In **2023,** the amount is **$22,500.**

   Tax Professional Note: For **§401(k)** and **§403(b)** plans, a catch-up contribution provision is available for those taxpayers who are age **50 or older** by the **last** day of tax year. The projected amount is **$6,500** in **2022** and the amount is **$7,500** in **2023.**

4. **§457(b)(2)** and **§457(c)(1)** Tax-exempt and government plans: The limitation on deferrals under deferred compensation plans of state and local governments and tax-exempt organizations is **$20,500** in **2022** and in **2023** the amount is **$22,500**.

5. **§415(c)(1)(A)** Defined contribution plan limit is **$61,000** in **2022**. This includes self-employed **SEPs**. In **2023**, the amount is **$66,000.**

6. **§401(a)(17)**, **§404(l)**, **§408(k)(3)(C)** and **§408(k)(6)(D)(ii) Annual compensation limit** on the amount of the plan participant's compensation that can be eligible in determining contributions and benefits is **$305,000** in **2022.** In **2023**, the amount is **$330,000.**

7. **§408(k)(2)(C) SEP** participation threshold: The amount of compensation that an eligible employee must have in order to be a simplified employee pension plan participant is **$650** in **2022** and the amount is **$750** in **2023.**

8. **§408(p)(2)(A)(ii) SIMPLE plans**: The maximum elective employee salary reduction contribution to a **SIMPLE plan** is increased to **$14,000** in **2022.** In **2023**, the amount is **$15,500.**

   Tax Professional Research Recommendation: For more information refer to IRS Publication 560 Retirement Plans for a Small Business (SEP, SIMPLE and Qualified Plans).

H. §213(d)(10) Long-Term Care Insurance Premium Deductions Based on Age

1. **§213(d)(10)** provides a general rule that the amounts paid for insurance that cover the costs of qualified long-term care services are deductible as medical expenses up to a specified dollar amount based on the taxpayer's age at the end of the tax year.

Those limits for years **2019–2023** are as follows:

Annual Limits					
Age Range	2019	2020	2021	**2022**	2023
≤ 40 Years Old	$420	$430	$450	**$450***	$480
41-50	$790	$810	$850	**$850***	$890
51-60	$1,580	$1,630	$1,690	**$1,690***	$1,790
61-70	$4, 220	$4,350	$4,520	**$4,510**	$4,770
> 70	$5,270	$5,430	$5,650	**$5,640**	$5,960
***No change in 2022**					

Tax Professional Research Recommendation : For more information, refer to IRS Publication 502 Medical and Dental Expenses.

Tax Education Alert: **NSTP** offers a webinar title "**Reviewing the Deductibility of Medical Expenses on Schedule A of Form 1040**" (**Webinar S**). Go to http://www.nstp.org and click on "Education" and "Webinars" for more information.

I. §101(g)(3)(D) Excluded Benefits from Qualified Long-Term Care Coverage

1. **§101(g)(3)(D)** provides that amounts received under a **qualified long-term care insurance contract** are generally **excluded** as amounts received for personal injuries and sickness subject to a **per diem limitation** for tax years **2019–2023** as follows:

Years	Amounts
2019	$370
2020	$380
2021	$400
2022	**$400**
2023	$420

Tax Professional Note: If the payments are for specific reimbursements, then these limits do not apply. The gross long-term care benefits paid are reported to the taxpayer on IRS **Form 1099-LTC** in **Box 1**.

Tax Education Alert: **NSTP** offers a webinar titled **"Reviewing the Deductibility of Medical Expenses on Schedule A of Form 1040"** (**Webinar S**). Go to **http://www.nstp.org**/ and click on "Education" and "Webinars" for more information.

J. Automobiles: §280F Year 2022 Luxury Auto Deprecation Dollar Limits, Lease Inclusion Add-Back Amounts and §162 Standard Mileage Rates

1. The IRS annually issues the inflation-adjusted depreciation limits for business autos placed in service during the current tax year and the annual income inclusion amounts for business autos first leased during the current tax year. The information is updated in **Rev. Proc. 2022-17**

2. **§280F(d)(7)(B)(i)** provides that annual **§168(k)** depreciation and expensing deductions for **luxury autos** are limited to specific dollar amounts. These amounts are adjusted each hear for changes to the **automobile component** of the Chained Consumer Price Index for all Urban Consumers (**C-CPI-U**).

3. The depreciation limits for luxury autos placed in service during **2020-2022** are as follows per Rev. Proc. 2022-17 Table 2:

	2020	2021	**2022**
1st Tax Year	$10,100	$10,200	**$11,200**
2nd Tax Year	$16,000	$16,400	**$18,000**
3rd Tax Year	$9,700	$9,800	**$10,800**
Each Succeeding Year	$4,350	$5,860	**$6,460**
Authority	Rev. Proc. 2020-37	Rev. Proc. 2021-31	Rev. Proc. 2022-17

Tax Professional Note: The applicable first-year depreciation limit is **$19,200.** The **$8,000** for qualifying vehicles under **§168(k)** bonus depreciation was extended by the **"Tax Cuts and Jobs Act"** for tax years *beginning after* **December 31, 2017**.

Tax Professional Reminder: Heavy SUVs (defined as those that are built on a truck chassis and are rated at *more than* **6,000** pounds gross loaded vehicle weight) are exempt from the luxury-auto dollar caps because they fall outside of **§280F(f)(5)** definition of a passenger auto. They are **§1245** property.

Under **§179(b)(6)**, not more than **$25,000** of the cost of a heavy SUV placed in service after **October 22, 2004** and used **100%** for business may be expensed under **§179.** As a result of the Tax Cuts and Jobs Act the **$25,000** deduction is indexed annually to inflation in **$100** increments for tax years beginning after **December 31, 2018**. The amount is **$27,000** in **2022** and **$28,900** in **2023**.

However, SUVs are **MACRS §1245** property and therefore the **100%** bonus depreciation rules apply.

4. Luxury auto dollar limits must be reduced proportionately if business and/or investment use is *less than* **100%**.

   EXAMPLE: If a self-employed person places a **luxury auto** in service *during* **2022** and uses it **60%** for business and **40%** for personal driving, then the first-year dollar limit would be **$11,520** (**60%** of **$19,200**). (including bonus depreciation)

5. If qualified business use of luxury auto in its placed-in-service year does not exceed **50%** of total use, then it must be depreciated using a **straight-line ADS** method of depreciation *instead of* accelerated **MACRS**. The luxury auto depreciation dollar caps still apply.

   EXAMPLE: If a self-employed taxpayer uses a **$25,000 Luxury Auto 40%** for business, then the first year cost-recovery allowance using the half-year convention would be **$1,120** which is the *lesser of*:

   a. **$1,120** (which is **10%** first year straight-line allowance for 5-year property applied to the **$11,200,** which is the **40%** business-use portion of the **$25,000** cost of the car), or
   b. **$4,480** (**40%** of the **$11,200** first-year cap),

   Tax Professional Note: The dollar limits artificially cap the depreciation deductions normally available for five-year property.

6. **§280F(b)(2)** provides that if qualified business use **declines** to **50% or less** of total use *after* the first year, then the taxpayer must **switch to** the straight-line depreciation method in that year which could result in some **recapture** as well. The recapture amount is reported on **Form 4797, Page 2, Part IV**.

   The result is then reported on the "other income" line of all business returns. If the taxpayer is a sole proprietorship, then the recapture inclusion amount is reported as "other income" on **Schedule C**, **Line 6**, which would then increase the self-employment income on **Schedule SE.**

7. If a taxpayer leases a business auto, then they may deduct the part of the lease payment representing its business or investment use. If the business or investment use is **100%**, then the full lease cost is deductible. However, **§280F(c)** provides that taxpayers must include a certain amount in income during each year of the lease to partially offset the lease deduction. The add-back amount varies with the initial fair market value of the leased auto and the year of the lease, and is adjusted annually for inflation.

8. Tables are available that report the lease *income inclusion amount* for passenger autos, light trucks and vans with a lease term *beginning* in **2022**. The lease income inclusion Table 3 amounts do not apply at all *unless* the **FMV** of a passenger auto *exceeds* **$56,000.** This is the result of the **"Tax Cuts and Jobs Act"**. (See **Rev Proc. 2022-17, Table 3**)

9. The **§162** Standard Mileage Rates for automobiles for **2019-2023** are reported below:

Category	**Annual Mileage Rates**				
	2019	**2020**	**2021**	**2022****** 1/1 to 6/30	**2022****** 7/1 to 12/31
Business	58 cents	57.5 cents	56 cents	**58.5 cents**	**62.5 cents**
Medical	20 cents	17 cents	17 cents	**18 cents**	**22 cents**
Moving	18 cents*	17 cents*	16 cents*	**18 cents***	**22 cents***
Charitable***	14 cents	14 cents	14 cents	**14 cents**	**14 cents**

* **Note**: The moving expense mileage rate is *only* available to members of the United States Armed Forces who move in connection with a permanent change of station pursuant to a military order. Effective tax years **2018-2025** as a result of the "Tax Cuts and Jobs Act".

The **2023 Standard Mileage Rates were not announced when this book went to print.

***Rates for Charitable are set by statute.

**** Special Rules for **2022** Notice 2022-3 12/17/2021 and Information Release 2022-124, 6/9/2022.

Tax Professional Research Recommendation: For more information, refer to IRS Publication 463 Travel, Entertainment, Gift, and Car Expenses.

K. §55 Alternative Minimum Tax (AMT) Threshold Amounts

1. The Alternative Minimum Tax (**AMT**) was created in the late **1960's** to prevent high-income taxpayers from avoiding the individual income tax. This parallel tax income system requires high-income taxpayers to calculate their tax bill twice: once under the ordinary income marginal tax bracket system and again under the **AMT** system. The taxpayer then pays the higher of two amounts. The **AMT** is calculated on IRS **Form 6251.**

2019-2023 Alternative Minimum Tax Exemption Amounts:					
Filing Status	**2019**	**2020**	**2021**	**2022**	**2023**
Unmarried Individuals	$71,700	$72,900	$73,600	**$75,900**	$81,300
Married Filing Jointly	$111,700	$113,400	$114,600	**$118,100**	$126,500
Married Filing Separately	$55,850	$56,700	$57,300	**$59,050**	$63,250
Estates and Trusts	$25,000	$25,400	$25,700	**$26,500**	$28,400
Kiddie Tax* **§55(d)(4)(A)(iii)** provides that no special exemption amount applies for **2018-2025**.					

2. In **2022**, the **28% AMT** rate applies to excess Alternative Minimum Taxable Income (**AMTI**) of **$206,100** for all taxpayers *except for* married couples filing separate returns which is **$103,050.** In **2023**, the amounts are projected to be **$220,700** and **$110,350** respectfully.

3. The **AMT** exemption amount phases out at **25** cents **per dollar** once a taxpayer's **AMTI** hits a specified threshold amount. In **2022**, the exemption amount will start phasing out at **$539,900** in **AMTI** for single filers, and married separate. It is **$1,079,800** for married taxpayers filing jointly. In **2023**, the amounts are **$578,100** and **$1,156,300** respectfully. The exemtption is completely phased-out at **$903,350** and **$1,662,300** respectuflly

2019-2022 Alternative Minimum Tax Exemption Phaseout Threshold Amounts:					
Filing Status	**2019**	**2020**	**2021**	**2022**	**2023**
Unmarried Individuals	$510,300	$518,400	$523,600	**$539,900**	$578,100
Married Filing Jointly	$1,020,600	$1,036,800	$1,047,200	**$1,079,800**	$1,156,300
Married Filing Separately	$510,300	$518,400	$523,600	**$539,900**	$578,150
Estates and Trusts	$83,500	$84,800	$85,700	**$88,300**	$94,600

L. Other Emergency Room Threshold Amounts

1. **§274 Qualified Transportation Fringe Benefits**: For tax year **2022**, the monthly limitation for **qualified parking** and the monthly limitation for the **qualified transportation** fringe benefits is **$280.** In **2023**, the amount is **$300.**

   Tax Professional Reminder: As a result of the **TCJA**, the qualified transportation amount is <u>not</u> deductible by the employer for tax years *beginning after* **December 31, 2017**. Reimbursed **bicycle** transportation is **$20** per month, but it is <u>not</u> excluded from the employee's gross income for tax years *after* **2017**.

2. **§125 Limit on Health FSA Salary Reduction Contributions under a Cafeteria Plan**: For taxable years *beginning in* **2022**, the dollar limitation for employee salary reductions for contributions to **§125** health flexible spending arrangements is **$2,850.** In **2023** the amount is **$3,050.** The carryover amount during the **2 ½ month** grace period is **$570** in **2022** and **$610** in **2023**.

   Tax Professional Note: The "Consolidated Appropriations Act of 2021" expanded the grace period for the carryover of any unused benefits and contributions made for **2021** for **§125** health and dependent care spending arrangments from **2 ½** months to **12** months *after the end* of the plan year. In addition, there are special carryforward rules for the "dependent care" flexible spending arrangements where the dependent aged out during the COVID pandemic. The maximum age of an eligible dependent is **12** years old.

As a result, the funds can be used for a child who is age **13** for any unused amounts from the **2021** plan year carried over into the **2022** plan year.

3. **§6698(b)(1)** provides that the penalty for the failure to file **Form 1065** Partnership Return is **$220** in **2022** for *each* **Schedule K-1** of the partnership for a maximum period of **12 months.** The amount is **$235** in **2023** for *each* **Schedule K-1** for a maximum period of **12 months**.

4. **§6699(b)(1)** provides that the penalty for the failure to file **Form 1120S** Corporation Return is **$220** in **2022** for *each* **Schedule K-1** for a maximum period of **12 months.** The amount is **$235** for *each* **Schedule K-1** for a maximum period of **12 months** in **2023**.

5. **§911 Foreign Earned Income and Housing Cost Exclusion**: The **Foreign Earned Income Exclusion** under **§911(b)(2)(D)(i)** is **$112,000** in **2022** and **$120,000** in **2023**. The **Foreign Housing Cost Exclusion** is **$15,680** in **2022** and **$16,800** in **2023**.

6. **§223(b)(2)** provides that there is an **annual limitation** on the **deduction** allowed for a Health Savings Account (**HSA**). For an individual taxpayer with self-only coverage, the limitation is **$3,650** for **2022** and **$3,850** in **2023**. For taxpayers with family coverage, the amount is **$7,300** in **2022** and **$7,750** in **2023**. If the taxpayer is age **55** or older **anytime** during the year, then they can contribute an extra **$1,000.** In order to qualify for the deduction, the taxpayer must have a high deductible health coverage plan in force.

Individual Self-Only		**Family Coverage**	
2022	**2023**	**2022**	**2023**
$3,650	**$3,850**	$7,300	**$7,750**

7. **§23** provides for a nonrefundable Adoption Credit and **§137** provides for an Employer Adoption Assistance Exclusion. The amounts have been increased in **2022** and **2023**. The adoption credit and the employer assistance are **$14,890** in **2022** and **$15,950** in **2023**.

The phase-out ranges of the credit and exclusion are as follows:

Tax Year	Phase-out Threshold	Range	Credit
2019	$211,160 - $251,160	$40,000	$14,080
2020	$214,520 - $254,520	$40,000	$14,300
2021	$216,670 - $256,670	$40,000	$14,400
2022	**$223,410 - $263,410**	**$40,000**	**$14,890**
2023	$239,230 - $279,230	$40,000	$15,950

8. The **§179** Expense Election Deduction reported on IRS **Form 4562** is indexed annually to inflation. The amount in **2022** is **$1,080,000** and is increased to **$1,160,000** for **2023**. The amount of the allowable deduction is phased-out *beginning at* **$2,700,000** in **2022** and at **$2,890,000** in **2023**.

9. **Educator Expenses**: For **2022** the educator deduction is increased from the **$250** amount to **$300.** It will remain at **$300** for **2023**.

10. **§135 Interest Exclusion for Qualified Higher Education Costs**: **§135** provides that interest income from U.S. Savings Bonds acquired after **December 31, 1989** is excluded from gross income if the taxpayer's modified **AGI** is *less than* a specified threshold amount based on filing status. The bonds must be **EE** or **I** bonds. The bonds must be issued to someone who has already reached the **age of 24**.

    For **2022**, the modified **AGI** amount is **$85,800** for all taxpayers *except for* a married couple filing joint return where the amount is **$128,650.** For **2023**, the amount is **$91,850** and **$137,800** respectfully. The exclusion is completely phased-out at **$106,850** and **$167,800** respectfully.

Tax Professional Awareness: The exclusion is not available to a taxpayer who files a married separate return.

11. **§36B** Premium Tax Credit Limitations on Repayment: If the amount of advance **PTC** payments paid to an insurance company on behalf of a taxpayer exceeds the amount of premium tax credit allowed, then the excess is owned as an additional income tax liability. The amount is indexed annually to inflation based on the taxpayer's Household Income.

- For **2022** the maximum amount that a taxpayer must repay is as follows:

Filing Status	Federal Poverty Level	Amount
Unmarried	200%	$325
	200%-300%	$825
	300%-400%	$1,400
All Other Taxpayers	200%	$650
	200%-300%	$1,650
	300%-400%	$2,800

- For 2023 the amounts are as follows:

Filing Status	Federal Poverty Level	Amount
Unmarried	200%	$350
	200%-300%	$900
	300%-400%	$1,500
All Other Taxpayers	200%	$700
	200%-300%	$1,800
	300%-400%	$3,000

M. §25B Elective Deferrals and IRA Contributions: Saver's Credit

1. **§25B(c)** provides that an "eligible individual" may claim a nonrefundable credit for contributions and elective deferrals to certain retirement plans and individual retirement accounts (IRAs). An "eligible individual" must be at least **18 years of age** at the close of the tax year.

2. The individual cannot be claimed as a dependent on another taxpayer's return and cannot be a full-time student. The taxpayer calculates the credit on IRS **Form 8880.**

3. The retirement savings credit (or saver's credit) is equal to an "applicable percentage" of up to **$2,000** in "qualified retirement savings contributions". The "applicable percentage" is **10%**, **20%** or **50 percent**, depending on the taxpayer's filing status and adjusted gross income (**AGI**). Therefore, the maximum credit is **$1,000.** The credit is in addition to the exclusion or deduction from gross income for making elective deferrals and **IRA contributions**. Qualified retirement savings plan contributions are the sum of:

    a. **§219(e)** contributions to a traditional or Roth IRA, other than rollover contributions,
    b. **§401(k)** elective deferrals of compensation to an account,
    c. **§403(b)** tax-sheltered annuity,
    d. **§402(g)(3)** SIMPLE plan or SEP plan,
    e. **§457(b)** elective deferrals of compensation to a plan of a state or local government or a tax-exempt organization,
    f. **§4974(c)** voluntary employee contributions to any qualified retirement plan, and
    g. **§529A** contributions to the individual's own ABLE account for tax years beginning in **2018** through **2025**.

4. The amount of **contributions** taken into account is **reduced by** any **distributions** from these qualified retirement plans over a test period. The test period is the year of the contribution, the two preceding tax years, and the year after the contribution year up to the due date of the return for the contribution year (including extensions). Contributions are not reduced by a distribution that qualifies as a trustee-to-trustee transfer or as a rollover distribution to another qualified retirement account.

5. For **2022**, the **AGI** ceilings are as follows;

   a. for the **50-percent** credits: **$41,000** for joint returns, **$30,750** for heads of household, and **$20,500** for other taxpayers,

   b. for the **20-percent** credit, the **AGI** ceilings are **$44,000** for joint returns, **$33,000** for heads of household and **$22,000** for all others, and

   c. for the **10-percent** credit, the **AGI** ceilings are **$68,000** for joint returns, **$51,000** for heads of household and **$34,000** for all others. See **Notice 2021-61**.

2022 Modified Adjusted Gross Income

Joint Return		Head of Household		All other cases		Applicable Percentage
Over	Not over	Over	Not over	Over	Not Over	
$0	$41,000	$0	$30,750	$0	$20,500	50%
$41,000	$44,000	$30,750	$33,000	$20,750	$22,000	20%
$44,000	$68,000	$33,000	$51,000	$22,000	$34,000	10%
$68,000	—	$51,000	—	$34,000	—	0%

2023 Modified Adjusted Gross Income

Joint Return		Head of Household		All other cases		Applicable Percentage
Over	Not Over	Over	Not Over	Over	Not Over	
$0	**$43,500**	**$0**	**$32,625**	**$0**	**$21,750**	**50%**
$43,500	**$47,500**	**$32,625**	**$35,625**	**$21,750**	**$23,750**	**20%**
$47,500	**$73,000**	**$35,625**	**$54,750**	**$23,750**	**$36,500**	**10%**
$73,000	—	**$54,750**	—	**$36,500**	—	**0%**

N. Employer Deferral Plans and §401(k), 403(b) and §457(b) Designated Roth Elections

1. In **2022**, the contribution limit for elective deferrals to **§401(k)**, **§403(b)**, and **§457(b)** plans is **$20,500.** In **2023**, the amount is **$22,500.**

Tax Professional Note: The employee has the option to treat **§401(k)**, **§403(b)**, and **§457(b)** contributions as designated Roth contributions. However, the distributions are subjected to the Required Minimum Distribution (**RMD**) Rules.

2. The catch-up rule for taxpayers age **50** or older also applies. It is **$6,500** for **2022** and **$7,500** in **2023**.

3. The law provides that participants in certain **§401(k)**, **§403(b)**, and **§457(b)** plans can *elect* to have all or a portion of their deferral amount treated as a designated Roth contribution. In order to do so, a *separate account* must be set up by the plan sponsor.

4. Deferrals treated as a designated Roth contribution will be included in the individual's income in the year of deferral. **Form W-2 Box 14** indicates an *elected* Roth contribution "**AA**" for **§401(k)** plan, "**BB**" for a **§403(b)** plan, and "**EE**" for **§457(b)** plan.

   TAX PROFESSIONAL ALERT: "Qualifying distributions" from the account will be tax-free, but there is a required minimum distribution (**RMD**) at age **72.**

   Tax Professional Planning Point: Taxpayers do not have a *modified* **AGI** threshold for contributions to Designated Roth Accounts. Therefore, contributions can be made at any income level and filing status. Designated Roth Accounts can be rolled over to a Roth IRA, so the taxpayer could avoid the **RMD** from the Designated Roth Account by moving the money *before* reaching **72.**

   Note however, that in order to have a qualified Roth account, the taxpayer must have the Roth IRA open for *at least* **5 years** and be **59 ½** years old *before* taking any distribution of the earnings.

O. §6721 Penalties for Failure to File Correct Information Returns

1. **§6721(a)** imposes a penalty under a general rule in the case of any:
   a. **Failure to file** an information return with the Secretary *on or before* the required filing date; and
   b. **Failure to include all** of the information required to be reported on the return or the inclusion of incorrect information.

2. The penalty per failure is **$250** indexed to inflation with a maximum penalty of **$3,000,000,** which is also indexed to inflation. For **2022**, the amounts are **$290** and **$3,553,000.** For **2023**, the penalty is **$310** per failure, and increases the maximum penalty to **$3,783,000.**

3. **§6721(b)** provides for a reduction of the penalties where the failure is corrected *on or before* the day **30** days *after* the required filing date.

4. **§6721(b)(1)** provides that if any failure is corrected in the specified period, then the **$250** penalty will be reduced to **$50** and the total penalty of **$3,000,000** is reduced to **$500,000** (with all amounts indexed to inflation).

   Tax Professional Education Fact: The reduced penalties of **$50** and **$500,000** are referred to as **"first tier"** penalties. Indexed to inflation, the maximum penalty is **$585,500** in **2022** and **$630,500** in **2023**.

5. **§6721(b)(2)** provides for what is referred to as **"second tier"** penalties and provides for reductions in the maximum **"third tier"** penalties of **$250** and **$3,000,000.**

   Tax Professional Update: The **$50** per return reduced amount is increased to **$60** for **2023**.

6. **§6721(b)(2)** provides that the penalties will be reduced if the failures are corrected on or *before* **August 1**. It provides that if any failure is corrected *after* the **30th** day referred to in **§6721(b)(1)**, but *before* **August 1** of the calendar year in which the required filing date occurs, then the per return penalty and the maximum penalty will be reduced.

7. If the returns are corrected by the **August 1** date, then the **$290** penalty is reduced to **$110** in **2022**. The maximum penalty of **$3,000,000** is reduced to **$1,500,000.** For **2022**, the maximum penalty is indexed to inflation is **$1,766,500.** In **2023**, it increases to **$120** per return and a maximum penatly amount of **$1,891,500.**

8. **§6721(d)(1)** provides that the maximum **third tier** penalty for small business filers, which is defined as businesses with annual gross receipts under or equal to **$5,000,000,** is **$1,000,000**; the second-tier penalty is **$500,000** and the first-tier penalty is **$175,000.**

2019 – 2023 Maximum Penalties for Small Businesses

	Penalty	2019 *	2020 *	2021 *	2022 *	2023 *
First-Tier	$175,000	$194,500	$197,500	$199,500	**$206,000**	$220,500
Second-Tier	$500,000	$556,500	$565,000	$571,000	**$588,500**	$630,500
Third-Tier	$1,000,000	$1,113,000	$1,130,500	$1,142,000	**$1,177,500**	$1,261,000

***Indexed to Inflation**

9. **§6721(e)** provides for increased penalties for intentional disregard. If one or more failures are due to intentional disregard of the filing requirement or correct information reporting requirement, then the reduced penalties imposed *under* **§6721(b)-(d)** will not apply and the minimum penalty shall be increased to **$250** indexed to inflation. As a result, the penalty for **2022** is **$290** and **$310** for **2023**.

P. §6722 Penalties for Failure to Furnish Correct Payee Statements

1. **§6722(a)** provides a general rule that in the case of *each failure to furnish* correct payee statements by any person with respect to payee statements, a penalty shall be imposed. The penalty per failure is **$250** and a maximum penalty shall not exceed **$3,000,000** (indexed to inflation).

2. **§6722(b)** imposes the penalties for any:

   a. **Failure to furnish** a payee statement *on or before* the date prescribed to the person to whom the statement is required to be furnished, and

   b. **Failure to include all** of the information required to be reported on a payee statement or the inclusion of **incorrect** information.

3. Prior to **2011**, **§6722** did <u>not</u> have a three-tier system similar to **§6721** for the **failure to file** correct information returns. Legislative changes amended **§6722** to provide a tiered system and maximum penalty amounts similar to **§6721.** As a result, **§6722** imposes penalties as follows:

Penalties	**Penalty-Per-Failure**	**2019 ***	**2020 ***	**2021 ***	**2022 ***	**2023 ***
First-Tier	**$50**	$556,500	$565,000	$571,000	**$588,500**	$630,500
Second-Tier	**$110**	$1,666,500	$1,696,000	$1,713,000	**$1,766,500**	$1,891,500
Third-Tier	**$280**	$3,339,000	$3,392,000	$3,426,000	**$3,533,000**	$3,783,000
***Indexed to Inflation**						

TAX PROFESSIONAL ALERT: The **§6722** penalty is amended to provide limitations on penalties for small businesses and increased penalties for intentional disregard that mirror the **§6721** penalties. The indexing provision is also in effect for **§6722** and therefore the penalty amounts for **2022** and **2023** are the same as the amounts for the penalties under **§6721.**

VIII. Review of Selected Provisions of the "Tax Cuts and Jobs Act" (TCJA)

VIII. Review of Selected Provisions of the "Tax Cuts and Jobs Act" (TCJA)

A. Background on Individual and Business Provisions

1. The **Tax Cuts and Jobs Act** (**TCJA**) Legislation included the most sweeping reform of the Internal Revenue Code not seen since the **Tax Reform Act of 1986.** This comprehensive tax overhaul continues to dramatically change the provisions governing both businesses and individuals. For tax years *beginning after* **December 31, 2017**, and *before* **January 1, 2026**, the enactment of the **TCJA** changes tax provisions for **individual taxpayers**, as follows:

   a. **§1** income tax **rates and brackets** for each filing status, which are indexed annually for inflation,

   b. increase in the **§63 standard deduction** for each filing status, which are indexed annually for inflation,

   c. suspending the **§151** personal and dependency **exemptions** for all taxpayers,

   d. an increase in the **§24** Child Tax Credit (**CTC**) for a qualifying child, as well as an increase in the refundable portion of the additional Child Tax Credit reported on IRS **Form 8812,**

   e. creation of the **§24 Credit for Other Dependant (COD)** referred to by the IRS as the "Other Dependent Credit" (**ODC**), for those dependents not eligible for the Child Tax Credit,

   f. limiting the **§164** state and local tax (**SALT**) deduction for those taxpayers that *elect* to itemize deductions on **Schedule A**,

   g. temporarily reduced the **§213** medical expense threshold for tax years **2017** and **2018** to **7 ½%** for all taxpayers who *elect* to itemize deductions on **Schedule A**. The provision was extended by the **Disaster Act** for tax years **2019** and **2020** and then was made permanent by the **Consolidated Appropriations Act of 2021**,

h. creation of the **§199A** deduction for non-corporate taxpayers with Qualified Business Income (**QBI**) from pass-through entities including a Sole-Proprietorship,

i. increase in the **§55** Alternative Minimum Tax (**AMT**) individual exemption amounts and an increase in the Alternative Minimum Tax (**AMT**) base *before* the exemption *begins* to be phased out,

j. a zero **§5000A** "shared responsibility payment" amount for lack of having minimum essential health insurance coverage for the taxpayer and their dependents for **months** *beginning after* **December 31, 2018**,

k. the elimination of the **§165** personal casualty and theft losses *except* for those losses attributable to a Presidentially Declared Disaster Area,

l. the temporary repeal of the **§217** Deduction for Moving Expenses and the **§132** Employer Moving Expense Reimbursement Exclusion, *except* for certain members of the United States Armed Forces,

m. the reduction of the **acquisition debt** limit under **§163** home mortgage interest deduction. The **acquisition debt** limit is **$750,000** (**$375,000** for married filing separately), for post-**December 15, 2017** acquisitions of a principal residence and one second home. There is also a temporary repeal of the **§163** Home Equity Loan interest deduction, and

n. the temporary repeal of the **§67** deductibility of Miscellaneous Itemized Deductions subject to the **2%** Adjusted Gross Income Threshold.

2. As far as **individuals who invest in a trade or business** are concerned, the Legislation made the following changes:

   a. increase in the dollar amount allowed for the expensing of qualifying property under the **§179** Expense Election Deduction and an increase to the phase-out range,

b. increased the **§168(k)** Bonus Depreciation Amount to **100%** for qualified assets acquired and placed in service *after* **September 27, 2017**, and *before* **January 1, 2023**,

c. changed the rules on qualifying for a **§1031** Like-Kind Exchange transaction,

d. created a **§199A** Qualified Business Income Deduction,

e. repealed the **§199** Domestic Income Production Deduction for tax years *ending after* **December 31, 2017**,

f. changed the **§274** rules on business entertainment deductions,

g. created **§461(l)(1)(B)** which limits the amount of "excess business losses" for noncorporate taxpayers. This provision was then temporarily suspended retroactively for tax years **2018-2020** by the **CARES Act** and is reinstated for tax years **2021-2025**. The **American Rescue Plan Act of 2021** extended the provision to **December 31, 2026**.

Tax Professional Legislative Update: The **§461(l)(1)(B)** "excess business loss" provision has been extended for **3 years** as a result of the newly enacted **Inflation Reduction Act of 2022** on **August 16, 2022**. This extends the provision to **December 31, 2029**.

Tax Professional Legislative Proposal: The President's Green Book is to make the provision permanent.

h. limits the deductibility of **post 2017** Net Operating Loss (**NOL**) carryovers and carrybacks. This provision was *retroactively* **amended** by the **CARES Act** and imposed a **5-year carryback** period for all taxpayers for tax years **2018-2020**. The *election* to forgo the carryback period under **§172(b)(3)** was available.

3. As far as **business provisions** are concerned, the Legislation:

   a. permanently reduced the **§11** corporate tax rate to **21%** for **all** corporations including Personal Service Corporations (**PSC**),

b. repealed the **§55** corporate Alternative Minimum Tax (**AMT**) and the immediate use of the **AMT** credits. The use of the credits was amended and accelerated by the **CARES Act** to use **100%** of the credits *before* the **2021** tax year,

c. imposed new limits under **§163(j)** on business interest deductions for large business. This provision was amended by the **CARES Act** to increase the use of the business interest deduction for years **2018-2021**,

d. made changes involving expensing of qualifying property under the **§179** Expense Election Deduction by increasing the dollar limitations and increasing the phase-out range,

e. increased the **§168(k)** Bonus Depreciation Amount to **100%** for qualified assets acquired and placed in service *after* **September 27, 2017**, and *before* **January 1, 2023**,

f. created a new employer credit under **§45S** for Paid Family and Medical Leave *only* for tax years **2018** and **2019.** This provision was again extended to tax year **2020** as a result of the **Disaster Act**. The provision was again **extended** for **5 years** to **December 31, 2025**, by the **Consolidated Appropriations Act of 2021**,

g. changed the rules on qualifying for a **§1031** Like-Kind Exchange transaction,

Tax Professional Awareness: The President's proposal is to **limit** the allowable deferral amount of an exchange to **$500,000** annually. The limit for a married couple filing a joint return would be **$1,000,000.**

h. created **§199A** Qualified Business Income Deduction for owners of all business entities *except* C-Corporations,

i. repealed the **§199** Domestic Income Production Deduction for tax years *ending after* **December 31, 2018** for corporations,

j. changed the **§274** rules on business entertainment deductions,

k. limits the deduction on **§172**, **post 2017 NOL** carryovers and carrybacks.

4. The Legislation also made significant changes to the tax treatment of foreign income and foreign taxpayers, including the exemption from U.S. tax for certain foreign income. It also includes the deemed repatriation of off-shore income under **§965**, reported on IRS **Form 965.** It has been termed as a "transaction tax".

5. The Legislation increased the **lifetime exclusion** from estate and gift taxes for estates of decedents, and gifts during a person's lifetime by doubling the amount of the exclusion to **$10,000,000** and indexing it annually to inflation. For **2022**, the exclusion amount is **$12,060,000.** For 2023 the exclusion increases to **$12,920,000.**

6. There are also changes to various provisions in specific industries such as insurance, beer, wine and spirits and Exempt Organizations.

B. Tax Cuts and Jobs Act H.R.1 Pre vs. Post Law Change Provisions: Generally Effective January 1, 2018, Through December 31, 2025 (Unless Specified)

Provision:	Post Law Change
1. **§1** Individual Tax Rates and Brackets	• There are 7 brackets ranging as follows: **10%**, **12%**, **22%**, **24%**, **32%**, **35%**, **37%** • Indexed annually to inflation for tax years *beginning after* **2018**, (**§1(j)(3))** • Scheduled to Sunset *after* **2025.** • The President's Green Book **proposal** is to reinstate the **39.6%** rate for high income taxpayers.
2. **§151** Personal and Dependency Exemptions	Repealed and scheduled to Sunset *after* **2025.** Code Sections affected: • **§151(d)** individual exemption • **§642(b)(2)(C)** estates and trust • **§3402(a)(2)** for purpose of withholding requirements • **§6334(d)** for purposes of levies • The amount in **2022** is **$4,400.** In **2023**, it is **$4,700.**

<table>
<tr><th><u>Provision:</u></th><th><u>Post Law Change</u></th></tr>
<tr><td>3. §213 Medical Expense Deductions</td><td>§213(f) provided for an AGI threshold of 7.5% until December 31, 2020.
• The Consolidated Appropriations Act of 2021 made it a permanent provision.</td></tr>
<tr><td>4. §63(c)(7) Standard Deduction Amounts Based on Filing Status</td><td>
<table>
<tr><th><u>Filing Status</u></th><th><u>2022</u></th><th><u>2023</u></th></tr>
<tr><td>• Married Joint and Surviving Spouse</td><td>$25,900</td><td>$27,700</td></tr>
<tr><td>• Head of Household</td><td>$19,400</td><td>$20,800</td></tr>
<tr><td>• Single</td><td>$12,950</td><td>$13,850</td></tr>
<tr><td>• Married Separate</td><td>$12,950</td><td>$13,850</td></tr>
</table>
• Indexed in $50 increments for Married Joint and Surviving Spouse and in $25 increments for all other filers beginning after 2018.
• Retained Additional Standard Deduction for taxpayers age 65 or older or blind under §63(f). The amount per spouse is $1,400 in 2022 and $1,500 in 2023 for married filed joint return. For those taxpayers with a filing status of single or head of household, the amount is $1,750 in 2022 and $1,850 in 2023.</td></tr>
</table>

Provision:	Post Law Change
5. **§164** State and Local Taxes (**SALT**) including Income Taxes, Real Estate, Personal Property Taxes, Sales Taxes and Foreign Income Taxes	**§164(b)(6)** repealed the unlimited deduction with an overall limit on **Schedule A** of only: • **$10,000** for all taxpayers *except* there is a **$5,000** limit for a married filing separate. • No prepayment allowed for taxes not imposed and obligated to pay in the current tax year. • The IRS issued **Rev. Rul. 2019-11** providing guidance on the inclusion of income of recovered from state and local taxes in the current tax year when the taxpayer deducted state and local taxes in a prior year (**§111** Tax-benefit rule). • The IRS also issued a Program Manager Technical Advise (**PMTA**) explaining the interplay between the **$10,000** limitation on State and Local tax deduction and the amounts that are *excepted from* the general disallowance of expenses in connection with the business use of a home under **§280A(b).** The **PMTA** provides examples for calculation on IRS **Form 8829.** • Foreign real estate taxes are not deductible. • Foreign income taxes are allowable *in excess of* the **$10,000**/**$5,000** limitation *if elected* in lieu using the **§27** Foreign Tax Credit on **Form 1116.** The tax is reported on **line 6** of **Schedule A**. • The cap on the allowance of taxes was the biggest single reason that the *election* of itemized deductions decreased from *less than* **30%** of all individual returns filed to just over **10%** of all returns filed in **2018-2020.** • Reinstated *after* **2025.**

Provision:	Post Law Change
6. **§163** Home Mortgage Interest Deduction	Retains the deductibility for interest for existing debt *on or before* **December 15, 2017**, for "acquisition indebtedness" *up to* **$1,000,000** (**$500,000** for married separate). • **§163(h)(3)(F)** limits "acquisition indebtedness" to **$750,000** for post-**December 15, 2017** acquisitions on a Principal Residence and one second home (**$375,000** for married separate). • "Acquisition indebtedness" is any debt incurred to "buy, build, or substantially improve" a principal residence and one second home. The fact that the lending institution labels the debt "home equity debt" does not make is so if the proceeds of the loan are invested in the home. The home must be the collateral for the debt. • Repeals deduction on "home equity indebtedness".
7. **§165** Casualty or Theft Losses	**§165(h)(3)** provides for the repeal of casualty or theft losses *except for* Presidentially Declared Disaster Area Losses (Under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 2016) with no **10% AGI** test but a **$500** floor. • Allowed as an Additional Standard Deduction Amount, therefore the taxpayer does not have to *elect* to itemize deductions on **Schedule A** in order to take advantage of the casualty loss. • Not added back for Alternative Minimum Tax (**AMT**) purposes. • **FEMA** Disaster Declaration Number must be reported on **Form 4684** for each disaster. • Business Casualty losses are unchanged and still an allowable deduction.
8. **§170** Charitable Contributions	**§170(b)(1)(C)** provides that charitable contributions are retained with a **60% AGI** limitation and a **5-year** carryforward of the unused current year deduction. • Sunset for taxable years *beginning after* **December 31, 2025**. • For tax years *after* **December 31, 2017**, **§170(e)(1)** provides that no charitable contribution deduction is allowed for contributions to an institution of higher education in exchange for which the payor "received the right to purchase" tickets or seating to an athletic event. • There is no Sunset provision for this repeal.

Provision:	Post Law Change
9. **§212** Tax Return Preparation Fee Deduction	Temporarily repealed, and effective for tax years *beginning after* **December 31, 2017**, and *before* **January 1, 2026**. • Tax Preparers should allocate a reasonable amount of their fee specifically for **Schedule C, E, F** etc. These fees can still be deducted on these schedules. • Sunsets *after* **2025.**
10. **§67** Miscellaneous Itemized Deductions Subject to a **2% AGI** Test	Repealed with a Sunset *after* **2025.** These *include* expenses for: • the production or collection of income under **§212** including legal fees • tax preparation fees • union dues • unreimbursed job expenses • home office expenses • professional dues • education costs • work-related education expenses • professional liability insurance premiums • tools and supplies purchased for employment • etc. **Accountable Plan:** It is recommended that employees who have unreimbursed business expenses, discuss a possible reduction of their compensation and submit all of their **§162** ordinary and necessary employee trade or business expenses to the employer under an **accountable plan**. This allows the deduction at the employer level, and both the employee and employer save Social Security and Medicare taxes.
11. **§68** Phase-out of the overall Itemized Deduction Amount (**PEASE Provision**)	Repealed effective for tax years *beginning after* **December 31, 2017**, and *before* **January 1, 2026**. • Simplifies calculation for taxpayers *electing* to itemize deductions on **Schedule A**. • The Biden proposal reinstates the provision for specified taxpayers.

<table>
<tr><th>Provision:</th><th>Post Law Change</th></tr>
<tr><td>12. §55 Alternative Minimum Tax (AMT) for Individuals</td><td>
AMT is retained but with an increase in the §55(d) exemption amounts based on filing status as follows:
• For 2021 and 2022 the amounts are:
<table>
<tr><th></th><th>2022</th><th>2023</th></tr>
<tr><td>• Joint and Surviving Spouse</td><td>$118,100</td><td>$126,500</td></tr>
<tr><td>• Single and Head of Household</td><td>$75,900</td><td>$81,300</td></tr>
<tr><td>• Married Separate</td><td>$59,050</td><td>$63,250</td></tr>
<tr><td>• Estates & Trusts</td><td>$26,500</td><td>$28,400</td></tr>
<tr><td colspan="3">• Kiddie Tax*
*The AMT does <u>not</u> apply to the kiddie tax for years 2018-2025</td></tr>
</table>
• Exemption phaseout beginning point after the TCJA was increased to $500,000 for a Single taxpayer and HOH.
• The exempt amount was increased to $1,000,000 for Married Joint and Surviving Spouse.
• The exemption amount and the phase-out thresholds above are indexed annually to inflation after 2018.
• In 2022, the amounts are $539,900 and $1,079,800 respectfully.
• For 2023, the amounts are $578,150 and $1,156,300 respectfully.
• In 2022, for a single taxpayer and HOH, the exemption is completely phased out when the AMTI reaches $843,500. In 2023, it is completely phased out at $903,350.
• For a married couple filing jointly, the exemption is completely phased out when the AMTI reached $1,552,200 in 2022 and at $1,662,300 in 2023.
• For a married taxpayer filing separately, the exemption is completely phased out when the AMTI reaches $776,100 in 2022 and at $831,150 in 2023.
• The changes under the Tax Cuts and Jobs Act simplifies the final tax liability calculation for virtually every taxpayer and removed almost 5 million taxpayers from paying an AMT.
</td></tr>
</table>

<table>
<tr><th><u>Provision:</u></th><th><u>Post Law Change</u></th></tr>
<tr><td>13. §1(j)(5) Long-Term Capital Gain and Qualified Dividends Preferential Rates of 0%, 15%, 20% on Taxable Income</td><td>Retains “break points” that existed under pre-Act law <u>but</u> indexes them for inflation using a “Chained Consumer Price Index for all Urban Consumers” (C-CPI-U) for tax years beginning after December 31, 2017.

Zero bracket still exists up to a breakpoint.
The 15% and 20% breakpoints are indexed to inflation in $50 increments beginning after December 31, 2018.
The 15% Taxable Income Breakpoint for 2021-2023 based on filing status are as follows:

<table>
<tr><th></th><th><u>2021</u></th><th><u>2022</u></th><th><u>2023</u></th></tr>
<tr><td>• Joint and Surviving Spouse</td><td>$80,800</td><td>$83,350</td><td>$89,250</td></tr>
<tr><td>• Married Separate</td><td>$40,400</td><td>$41,675</td><td>$44,625</td></tr>
<tr><td>• Head of Household</td><td>$54,100</td><td>$55,800</td><td>$59,750</td></tr>
<tr><td>• Single</td><td>$40,400</td><td>$41,675</td><td>$44,625</td></tr>
<tr><td>• Trusts and Estates</td><td>$2,700</td><td>$2,800</td><td>$3,000</td></tr>
</table>

20% Taxable Income Breakpoint for 2021-2023 based on filing status are as follows:

<table>
<tr><th></th><th><u>2021</u></th><th><u>2022</u></th><th><u>2023</u></th></tr>
<tr><td>• Joint and Surviving Spouse</td><td>$501,600</td><td>$517,200</td><td>$553,850</td></tr>
<tr><td>• Married Separate</td><td>$250,800</td><td>$258,600</td><td>$276,925</td></tr>
<tr><td>• Head of Household</td><td>$473,750</td><td>$488,500</td><td>$523,050</td></tr>
<tr><td>• Single</td><td>$445,850</td><td>$459,750</td><td>$492,300</td></tr>
<tr><td>• Trusts and Estates</td><td>$13,250</td><td>$13,700</td><td>$14,650</td></tr>
</table>

The President’s proposal is to repeal the 20% preferential rate for those specified taxpayers with taxable income greater than $1,000,000.
</td></tr>
<tr><td>14. §1(f)(3) Annual Indexing of Provisions to inflation</td><td>Changed from Consumer Price Index (CPI) to the “Changed Consumer Price Index for all Urban Consumers” (C-CPI-U)

Results in an increase in government Revenue of $128B over 10 years, the change is permanent.
</td></tr>
</table>

Provision:	Post Law Change
15. **§24** Child Tax Credit (**CTC**)	Increased to **$2,000** with a **$1,400** refundable credit, indexed annually to inflation *up to* the base of **$2,000** per qualifying child *under* age **17**. • The amount for **2022** is **$1,500.** • The refundable credit amount will increase to **$1,600** in **2023**. • A social security number (**SSN**) is required as the identifying number for the "qualifying child" who is *under* the age of **17** at the end of the tax year. • The qualifying child must reside in the United States. • **§24(h)** increases the phase-out threshold to **$200,000** for Single taxpayers and **$400,000** for Married Joint. The **$200,000** and **$400,000** are not indexed to inflation. Decreased the *earned income* threshold for refundability from **$3,000** to **$2,500** for taxpayers with *less than* **3** qualifying children. The calculation is determined on IRS **Form 8812.** • If a dependent does not meet the qualifying child test, then the law adds a *nonrefundable* Certain Other Dependent Credit of **$500** (**SSN** is not required as the identifying number). The IRS is referring to this as "Other Dependent Credit" (**ODC**). • The **ODC** is available to the taxpayer who has a qualifying individual who is an older child, parent or other relative. It can be someone not related to the taxpayer who lived with the taxpayer the entire year who is a U. S. citizen, U.S. national, or U.S. resident alien who has an **SSN** or a **ITIN**.

Provision:	Post Law Change
16. **§215** Alimony Deduction and **§71** Alimony Income	The **deduction** and **inclusion** are repealed *beginning* **January 1, 2019**, for any divorce or separation agreement executed or *modified after* **December 31, 2018**. • For **modifications**, the agreement must expressly provide that the new amendments apply. • The Legislation does not change the Code provisions pertaining to child support. • **Tax Professional Note**: The reason for the change in alimony was due to the non-compliance on the reporting of alimony received. According to the IRS data from **2014** tax returns filed with the **§215** alimony deduction on over **567,000** returns, only **19%** reported **§71** alimony income for a Tax Gap shortage of **$644M** on an annual basis. The requirements under **§71** are as follows: • The payment must be in money, • There must be a legal separation agreement or a valid divorce decree in force, • The agreement does not say the payments are not alimony, • The taxpayers did not live in the same property when the payments were made and received, and • The payments end at the death of the recipient or there is a remarriage or other specific items such as a period certain or the spouse can fully support them self.
17. **§274** Allowance of Meals for Convenience of the Employer	The legislation provided for a **50%** limit on deductibility of business meals provided to employees through an in-house cafeteria or otherwise on the premises of employer. • The **50%** limit is repealed entirely, effective for tax years *beginning after* **December 31, 2025** • The **exclusion** from gross income for the employee is still allowed, but the employer will not be able to deduct the cost *after* **2025**. • The **Consolidated Appropriations Act of 2021** allows a **100%** deduction for **2021** and **2022** for food and beverages provided by a restaurant.
18. **§132** Employer Moving Expense Reimbursement Exclusion	• **§132(g)** provides that an **exclusion** for moving expenses is repealed *except* for members of the United States Armed Services who move in connection with a permanent change of station pursuant to a military order.

Provision:	Post Law Change
19. **§11** Corporate Graduated Tax Rates	Repealed the graduated rate structure and imposes a flat **21%** rate on **all** corporate taxpayers. Therefore, the Personal Service Corporate (**PSC**) flat rate of **35%** was also decreased to **21%**. • Effective for tax years *beginning after* **December 31, 2017** and currently is a permanent provision. • President Biden's Green Book proposal increases the **21%** flat rate to a flat **28%** flat rate.
20. **§179** Expense Deduction Election Amounts	**§1245** personal property is eligible for the **§179** Expense Election Deduction with a **$1,000,000** limitation indexed annually to inflation, • Increased the phased-out amount to *begin at* **$2.5M** of acquisitions and also indexes the provision annually to inflation. • The allowable deduction and the phase-out are indexed annually to inflation *after* **2018** in **$10,000** increments. • For **2019** the limit is **$1,020,000** and the phase-out *begins at* **$2,555,000.** • For **2020** the limit is **$1,040,000** and the phase-out *begins at* **$2,590,000.** • For **2021** the limit is **$1,050,000** and the phase-out *begins at* **$2,620,000.** • For **2022** the limit is **$1,080,000** and the phase-out *begins at* **$2,700,000.** • For **2023** the limit is **$1,160,000** and the phase-out begins at **$2,890,000.** • There is no sunset provision.
21. **§448** Cash Basis Accounting Method	The cash basis method of accounting is allowed if a gross receipts test is met by the taxpayer. • The **gross receipts test** is an average of **$25M** for the **3** *prior* years and is indexed to inflation *after* **2018**, in **$1M** increments. The amount for **2019-2021** is **$26,000,000.** • The amount for **2022** is **$27,000,000.** • The amount for **2023** is **$29,000,000.** • This provision allows more small businesses to use what is termed the "check-book" method of accounting which removes the complexity of the accrual method of accounting for small businesses. • For taxpayers making the change, IRS **Form 3115** will need to be filed for the year of the change. The IRS has issued an automatic change in **Rev. Proc. 2018-40.**

Provision:	Post Law Change
22. **§274** Business Entertainment Deduction (Amusement or Recreation)	Repealed the **entertainment** costs directly "related to "or "associated with" a business discussion but retains the **50%** food and beverage deduction. • Costs for clubs which are an entertainment facility, and tickets to entertainment or sporting events are eliminated. • **IRS** released final regulations to reflect changes on **October 7, 2020**. **See T.D. 9925, IR 2020-2025.** • **100%** deduction allowed for Christmas Office Parties and other company events which are defined as costs associated for the **sole** benefit of all employees and their families. • The **Consolidated Appropriations Act of 2021** allows a **100%** deduction for years **2021** and **2022** for food provided by a restaurant.
23. **§529(c)(7)** College Savings Account Plans Expand Use to Elementary and Secondary Schools	**§529** Qualified Tuition Programs (**QTP**) allow funds to be used for "qualified higher education expenses" for colleges, universities, vocational school, or other post-secondary schools eligible to participate in a student aid program of the Department of Education. • **TCJA** expanded the use of **§529** plan funds for "qualified higher education expenses" to include **tuition** in connection with enrollment or attendance at an elementary or secondary public, private, or religious school. • Annual distributions for this purpose are limited to **$10,000** per student no matter how many **§529** plans exist. • Effective for distributions *after* **December 31, 2017**. • There is no sunset provision. • The **SECURE Act** provides for the use of *up to* **$10,000** of **§529** plan funds for the use of payment of "qualified student loan debt" for principal or interest. It is allowed for the payment of debt of the beneficiary of the **§529** plan as well as siblings and step-siblings. • If the proceeds of the **§529** plan are used to pay "qualifying student loan interest", then the interest will not be allowed to also be deducted under **§221** even though reported on IRS **Form 1098-E**. • **Tax Professional Reminder**: Since the enactment of the **CARES Act** student loans have not been required to be paid. Therefore there will be minimal issuance of **1098-E** forms.

Provision:	Post Law Change
24. **§168(k)** Bonus Depreciation Immediate Expensing of Qualified Property	Allows an unlimited deduction (**100% Bonus**) for **5** years for all qualifying tangible and intangible qualifying property acquired and placed in service *after* **September 27, 2017**, and *before* **January 1, 2023**. • **§168(k)(2)(A)(ii)** provides that the deduction is allowed for **purchased used** property for most taxpayers. • Allowed for films, television shows and theatrical productions. • The **100%** Bonus Depreciation is on a decreasing scale for years **2023-2026 as follows**: **80%** - 2023 **60%** - 2024 **40%** - 2025 **20%** - 2026 **0%** - 2027 • There are separate rules for assets with longer production lives. • There are also separate rules for plants bearing fruit (Grafting). • On **September 21, 2020**, the IRS issued **Information Release 2020-2016** finalizing the regulations for **100%** bonus depreciation.

Provision:	Post Law Change
25. **§172** Net Operating Losses (**NOL**) for Both Individuals and Businesses	**Pre-TCJA** law allowed for a deduction of **100%** of the **NOL** amount with a **2**-year carryback requirement and a **20**-year carryforward period. • Farming losses had a **5**-year carryback period. • Net Operation Losses (**NOLs**) arising in tax years *beginning after* **2017** may *only* reduce **80%** of a taxpayer's taxable income in carryback or carryforward years. • There was a **repeal** of the **2-year** carryback period *except* for farms and insurance companies for years *beginning after* **2017**. • Under the **TCJA**, farmers and Insurance Companies can still *elect* to forego the **2-year** carryback period under **§172(b)(3).** • The **TCJA repealed** the **20-year** carryforward limitation, therefore unlimited carryforward period allowed effective for tax years *beginning after* **December 31, 2017**. • The **CARES Act** *temporarily* **repealed** the provisions of the **TCJA** *retroactively* to tax years *beginning after* **December 31, 2017**, and *ending before* **January 1, 2021**. It also provided for **5-year** carryback period for **all** taxpayers. The **CARES Act** provided that taxpayers could still *elect* to forego the carryback on a timely filed return. However the **election** for **2018-2020** had to be made on the first tax return due *after* **March 27, 2020**. The **2020** returns for calendar year taxpayers was **April 15, 2021**. If a valid extension was filed then the taxpayer had until **October 15, 2021**. Since the date has passed, taxpayers **must** now carryback the losses **5 years**. • There was an **exception** for those taxpayers impacted by any Presidentially Declared Disasters. They had *until* **January 3, 2022** to make the election if they filed a **valid** extension of time to file. • The **Consolidated Appropriations Act of 2021** provides that farmers can retain any **2-year** carryback period that was used for **2018** and/or **2019.** • Farmers can use a **5-year** carryback period if they prefer. In addition, if the farmer *elected* to forego the **2-year** carryback period for **2018** and/or **2019**, they can now have a **2-year** or **5-year** carryback period. In addition, they are permitted to **amend** the carryback period **2018-2019** and *elect* to forego the carryback and carryforward losses forever.

Provision:	Post Law Change
26. **§461(l)(1)(B)** Limitation on Excess Business Losses of **Noncorporate** Taxpayers	Prior to the **TCJA**, the Statute did not have a provision which limited the excess business loss of **noncorporate** taxpayers. **§461(l)(1)(B)** provides for a **limitation** on an **excess business loss** of the taxpayer for the taxable year. • An **excess business loss** is defined as the *excess* of the aggregate deductions which are attributable to the trade or business *over* the **sum of**: a. the aggregate gross income or gain attributable to such trade or business, **plus** b. **$250,000** or **$500,000** in the case of a joint return. • Any current year disallowed loss shall be treated as a Net Operating Loss under **§172** in the subsequent tax year and subject to the **80%** limitation rules. • The excess business loss limitation is indexed annually to inflation for tax years *beginning after* **December 31, 2018**, in **$1,000** increments. • The amount in **2019** is **$255,000** or **$510,000** for married filing a joint return. • For **2020**, the amount is **$259,000** or **$518,000** if married filing a joint return. • For **2021**, the amount is **$262,000** or **$524,000** for married filing a joint return. • For **2022**, the amount is **$270,000** or **$540,000** for married filing a joint return. • For **2023,** the amount is **$289,000** or **$578,000** for married filing a joint return. • Limitations are applied at the partner or S Corporation shareholder level. • C Corporations are not subject to this limitation. • Effective for tax years *beginning after* **December 31, 2017**, and *before* **January 1, 2026** • The provision was temporarily suspended **retroactively** to **January 1, 2018**, for years **2018-2020** as a result of the **CARES Act**. • The **American Rescue Plan Act of 2021** extended the provision **one-year** to **December 31, 2026**. • The **Inflation Reduction Act of 2022** extended the provision **3-years** to **December 31, 2029**. • President Biden's Green Book proposal is to make **§461(l)(1)(B)** a permanent provision.

Provision:	Post Law Change
27. **§2010(c)** Estate and Gift Tax Lifetime Exclusion	• The current Lifetime Exclusion is indexed annually to inflation. The **TCJA** retained the Estate and Gift Tax but doubled the lifetime **exclusion** for deaths *after* **December 31, 2017**, and *before* **January 1, 2026**. • **§2010(c)(3)(C)** provides that the exclusion is **$11,400,000** in **2019** • In **2020**, the amount is **$11,580,000.** • In **2021**, the amount is **$11,700,000.** • In **2022**, the amount is **$12,060,000.** • In **2023**, the amount is **$12,920,000.**
28. **§163(j)** Net Business Interest Deduction	• Prior to **TCJA**, the law did not provide for a limitation on the deduction of business interest. • **TCJA** provides for a limitation of **30%** of the adjusted *taxable income* for businesses with average gross receipts *greater than* **$25M** during the **3** prior years under the provisions of **§448(c).** • The provision is indexed to inflation in **$1,000,000** increments *after* **December 31, 2018**. • The amount for **2019-2021** is **$26,000,000.** • The amount for **2022** is **$27,000,000.** • The amount for **2023** is **$29,000,000.** • Any interest not allowed as a deduction in a current year is allowed as a carryforward in the subsequent tax year subject to the same limitations. • The limitation is calculated and reported on IRS **Form 8990** Limitation on Business Interest Expense Under **§163(j)** • The limitation is effective for tax years *beginning after* **December 31, 2017**. • The **CARES Act** has made retroactive changes to **§163(j)** in order to provide a greater interest deduction amount for tax years **2018-2020.**

Provision:	Post Law Change
29. **§1031** Like-Kind Exchanges	Allows for the deferral of a realized gain or loss on the disposition of business or investment property if specified date tests are met for **identification** and **acquisition** of the qualified replacement property and reports the transaction on **Form 8824.** • Qualified replacement property no longer applies to **§1245** personal property exchanged for **§1245** personal property *after* **December 31, 2017**. • The deferral of realized gain and loss is now only allowed for the **§1250** property, which is real estate transactions in the United States. • There was a transition rule for exchanges of personal property if the taxpayer had *either* disposed or acquired the replacement property *before* **December 31, 2017**, and completed the transactions within the specified time limits of **45** days to identify the property and **180** days to take a title of the property in **2018** . • **§1031(h)** now provides that real property in the United States and foreign real property are not like-kind • President Biden's Green Book proposal limits the deferral amount to **$500,000.** For a married couple filing a joint return the amount would be **$1,000,000.**
30. **§199A** Qualified Business Income	Prior to the **TCJA**, the Statute did not have a provision allowing a deduction for Qualified Business Income (**QBI**). • **§199A** provides for a maximum **20%** deduction for qualified business-related income subject to a number of *limitations* and qualifications, threshold amounts, and phase-in rules based on statutory formulas and types of qualifying businesses and filing status. • Effective for tax years **2018-2025.**
31. **§408A(d)(6)(B)** Unwinding a Roth Conversion	• As a result of the **TCJA**, Roth Contributions can no longer be recharacterized as a recontribution to a traditional IRA if completed by the due date of the tax return plus extensions. • **§408(d)(6)(B)(iii)** repeals the recharacterization of a Roth Conversion back to a traditional IRA. • Taxpayers may no longer reverse a rollover or conversion to a Roth IRA. • Effective for tax years *beginning after* **December 31, 2017**, with no sunset provision.

Provision:	Post Law Change
32. **§5000A** Requirement to Maintain Minimum Essential Coverage (MEC) for Individuals and Families	• The provisions of the Affordable Care Act (**ACA)** require that every individual have insurance coverage which meets the "Minimum Essential Coverage" (**MEC**) requirements or have an "exemption from coverage" or pay a "Shared Responsibility Payment". • **§5000A(c)** provides for the elimination of the penalty for individuals failing to maintain "Minimum Essential Coverage" (**MEC**) by making the penalty amount **zero.** • Repeal of the penalty is for the **months** *beginning after* **December 31, 2018**. **Tax Professional Note:** Employers are still subject to the shared responsibility penalty
33. **§217** Moving Expense Deduction	• As a result of the **TCJA**, qualified moving expenses are no longer allowed to be deducted by employees or self-employed individuals. • **§217(k)** provides that moving expense deductions are repealed *except* for members of the United States Armed Forces who move in connection with a permanent change of station pursuant to a military order.
34. **§402(c)** Rollover Period for the Rollover of Qualified Plan Loan Offset Amounts	If an employee borrows from a qualified employer pension plan, then they are required to pay the loan back. • If they leave the employer, then the unpaid amount is a "deemed distribution" and required to be paid back *after* they separate from service. • The taxpayer could also be subject to the **§72(t)** penalty for early withdraw. • **§402(c)(3)** now allows a rollover contribution period *after* the separation from service to be the **due date** for filing the income tax return (including extensions) *instead of as under* the old rule of *within* **60 days** *after* separation from service • The provision is effective for taxable years *beginning after* **December 31, 2017**, *without* a sunset provision.

Provision:	Post Law Change
35. Rollovers to **§529A** (**ABLE**) Programs from **§529** Qualified Tuition Programs (**QTP**)	• Prior to the **TCJA** the Statute did not have a provision allowing the rollover of **§529 QTP** to a **§529A**, **Able Program. ABLE** is short for "Achieving a Better Life Experience" . • **§529(c)(3)** allows the rollover from a **§529 QTP** to a **§529A ABLE** program, provided that the **ABLE** account is owned by the beneficiary of the **§529** Plan or a member of the beneficiary's family. • Annual contribution limitations apply, which is the same amount as the annual gift tax exclusion amount for **Form 709** Gift Tax Return filing requirements. (**$16,000** in **2022** and **$17,000** in **2023**). • In addition, if the beneficiary has "earned income" during the tax year then they are permitted to have an additional contribution amount under **§529A(b)(2)(B)(ii)** which provides that the amount is the *lesser of*: (1) the Federal Poverty Level (**FPL**) for a one-person household for the *prior* year, or (2) the individual's compensation in the *current* year. • Effective for distributions from **§529** Plans *after* the date of enactment (**December 22, 2017**) and *before* **January 1, 2026**. • **Contribution** qualifies for the **§25B** Savers Credit on IRS **Form 8880.** Rollovers do not qualify for the credit. **Tax Professional Note**: The IRS released Final Regulations concerning contributions to **ABLE Accounts** in **October of 2020**, with an effective date of **January 1, 2021**.
36. **§108(f)(5)** Exclusion from Gross Income on Student Loan Debt Discharge	• Prior to **TCJA** the Statute did not have a provision allowing the **exclusion** for discharge of qualified Student Loan Debt from Gross Income of a qualifying individual. • **§108(f)(5)** now provides that the eligible student loans that are discharged on account of the death or total permanent disability of the student will be **excluded** from gross income. • The provision is for loans discharged *after* **December 31, 2017**, and *before* **January 1, 2026**. • The Social Security Administration now provides information on qualifying loans to the IRS, therefore eliminating the need for the estate of a deceased taxpayer or the disabled individual to apply.

Provision:	Post Law Change
37. **§6695(g)** Due Diligence Requirement for Head Of Household Filing Status	• Prior to the **TCJA** the Statute did not have a provision requiring that paid income tax preparers perform due diligence in determining the eligibility of a Head of Household filing status. • The original proposal in the **TCJA** was to eliminate the Head of Household filing status and remove the benefits of the filing status. • **§6695(g)** imposes an additional due diligence requirement on paid tax preparers in determining the eligibility for a taxpayer to file with a status of Head of Household. • **TCJA** provides for imposing a **$500** penalty indexed annually to inflation. • In **2022**, the amount of the penalty is **$560.** • In **2023** the penalty is increased to **$600.** • There is no limit on the number of individual penalties that can be assessed against the paid preparer. • Refer to due diligence requirements for **EITC**, **CTC**, A**CTC**, **ODC**, **AOTC** (**From 8867**). • The provision is effective for tax years *beginning after* **December 31, 2017**. • There is no sunset provision.
38. **§460** Inventory Accounting Rules	• Prior to the **TCJA** specified businesses with gross receipts of ≤ **$1M** and ≤ **$10M** did not need to account for inventory. • As a result of the Legislation certain taxpayers are exempt from the requirements to account for inventory if the average gross receipts test of ≤ **$25M** is met over the *prior* **3** years. This amount is indexed annually to inflation in **$1M** increments. For **2019-2021** the amount was **$26,000,000.** • The amount is **$27,000,000** in **2022**. • The amount is **$29,000,000** in **2023**. • The purpose is to relieve small businesses of the burden of capitalization of costs and focusing on more of a "check-book" approach of accounting. • For taxpayers making the change, IRS **Form 3115** will need to be filed for the year of the change. The IRS has issued an automatic change in **Rev. Proc. 2018-40**

Provision:	Post Law Change
39. **§168(k)** Bonus Depreciation for Luxury Autos under **§280F**	• Bonus depreciation for qualifying assets is **100%** of the acquisition costs. However, there are additional **limitations** for luxury automobiles. • **§168(k)(2)(F)** provides for an increase in the first-year depreciation to **$8,000** for luxury autos placed in *service after* **December 31, 2017**. • Taxpayers may *elect* out of bonus depreciation for passenger automobiles. • The provision is applicable for **used** autos placed in service for tax years *beginning after* **2017**.
40. **§280F** Annual Depreciation Limit for Luxury Autos	**TCJA** increased the luxury automobile deprecation rules. Luxury automobile depreciation for vehicles placed in service in **2022** are as follows per **Rev. Proc. 2022-17, Table 2:** • **$11,200** year one • **$18,000** year two • **$10,800** year three • **$6,460** year four and all subsequent years in the recovery period. • **§280F(d)(7)** provides that the amounts will be indexed to inflation in **$100** increments for property placed in service in *after* **December 31, 2018**.
41. **§179** Expense Election for Heavy SUVs (**§1245** property)	• **§179(b)(5)** provides for a limitation of **$25,000** on Heavy SUVs with a gross loaded weight *greater than* **6,000 lbs**. • **§179(b)(6)** provides that the **$25,000** limitation is now indexed annually to inflation in **$100** increments for tax years *beginning after* **December 31, 2018**. • For **2020**, the amount is **$25,900.** • In **2021**, the amount has increased to **$26,200.** • For **2022**, the amount is increased to **$27,000.** • For **2023**, the amount is increased to **$28,900.**

Provision:	Post Law Change
42. **§179** Property to Include Certain Real Estate Property	• Prior to the **TCJA**, qualified real property did not include improvements to nonresidential real property under **§168(e).** • **§179(f)** provides that the definition of qualified real property eligible for expensing under **§179** is changed to include" qualified real property" • The law expands the definition of "qualified real property" under **§168(e)** to include **improvements** to nonresidential real property placed in service to include: • Roofs • Heating Systems • Ventilation and Air Conditioning Systems • Fire Protection • Alarm Systems • Security Systems.
43. **§168(d)(3)(B)** Cost Recovery of Certain Farm Equipment and Machinery	• Prior to the **TCJA**, specified farm equipment and machinery had a statutory life of **7** years if the original use commenced with the taxpayer. • Specified farm equipment does not include grain bins, cotton ginning assets, fencing or land improvements. • The **TCJA** shortened the recovery period from **7** years to **5** years for qualifying machinery and equipment which is **new** property. • The **TCJA** eliminates the rule requiring use of **150%** declining balance method on property used in a farming business. • The provision is effective for property placed in service *after* **December 31, 2017.**There is no sunset provision.
44. **§55** Corporate Alternative Minimum Tax (**AMT**)	• The corporate **AMT** was repealed for tax years *beginning after* **2017**. • **§53(e)** provides that the **AMT** credit is refundable and can offset regular tax liability in an amount equal to **50%** (**100%** for tax years *beginning in* **2021**) of the *excess* of the minimum tax credit for the tax year *over* the amount of the credit *allowable* for the year against the regular tax liability. • As a result of the **CARES Act**, there are changes that accelerate the use of the **AMT** credits **retroactive** to **2018.** • As a result of the **Inflation Reduction Act of 2022**, a modified Corporate **AMT** has been resurrected for corporations with greater than **$1B** of book income. The old **AMT** was based on taxable income. It is projected that only 150 companies will be impacted.

Provision:	Post Law Change
45. **§132(f)** Qualified Transportation Fringe Benefits Provided by Employers for Mass Transit and Parking	• Prior to the **TCJA**, the law provided for an **exclusion** from an employee's gross income of *up to* **$250** per month (indexed to inflation) for mass transit and parking, and **$20** for qualified bicycle commuting. • **§132(j)(8)** repeals the **exclusion** for **qualified** bicycle commuting for taxable years *beginning after* **December 31, 2017**, and *before* **January 1, 2026**. • As a result of the repeal, employer reimbursement for **bicycle** commuting will be taxable to employees for both income tax and employment tax purposes. • The transportation fringe benefits for mass transit and parking are still **excluded** from the employee's gross income. The maximum **exclusion** amount is **$270** per month for **2020** and **2021**. • For **2022**, the amount is **$280.** • For **2023**, the amount is **$300.** • The amount of the benefit provided to the employee for mass transit and parking is <u>not</u> deductible as a business expense for the employer.

Provision:	**Post Law Change**
46. **§45S** Credit for Employer Paid Family and Medical Leave on IRS **Form 8994**: “Employer Credit for Paid Family Medical Leave” (**FMLA**)	Prior to the **TCJA**, the Statute did not provide a credit for employer paid family and medical leave. • **TCJA** created **§45S** and provided for tax years **2018** and **2019** only, a **12.5%** credit of wages paid, if the rate of pay is **50%** of wages normally paid. • The credit can increase *up to* a **25%** credit as wages *exceed* **50%**. • No credit is allowed if a State Mandated Benefit is required. • In order to be eligible for the credit, an employer must have a **written policy** that meets several requirements and provides 2 weeks of paid family and medical leave to full-time employees and have a prorated amount of paid leave for part-time employees. • In order to have “qualifying leave” the events can be for any or all of the reasons specified in the **FMLA** such as: • Birth of an employee’s child, • Care for a child, • Placement of a child with the employee for adoption or foster care, • To care for the employee’s spouse, child or parent who has a serious health condition, • A serious health condition that makes the employee unable to perform the functions of their job, and • Any qualifying emergency due to an employee’s spouse, child, or parent being on covered active duty in the Armed Forces. This includes the taxpayer being notified of an impending order to covered active duty. • The **Disaster Act** extended the provision for **2020** only. • The **Consolidated Appropriations Act of 2021** extended the provision **5 years** to **December 31, 2025**.

IX. Overview of the §199A Qualified Business Income Deduction

IX. Overview of the §199A Qualified Business Income Deduction

A. Mastering the "Pass-through Deduction Puzzle

1. **The Tax Cuts and Jobs Act** added a temporary deduction for noncorporate taxpayers under **§199A** Qualified Business Income (**QBI**). The allowed deduction is also referred to as the "pass-through" deduction. The **QBI** Deduction does not impact:

   a. Self-Employment Tax (**S/E Tax**),

   b. Alternative Minimum Tax (**AMT**),

   c. Net Investment Income Tax (**NIIT**), or

   d. Adjusted Gross Income (**AGI**).

      - The **§199A** Deduction *only* reduces **taxable income** and *only* impacts the liability for **federal income tax**.

2. The **QBI** deduction is calculated **after** the rest of the **Form 1040** return is completed. Under current legislation, the **§199A** Deduction is *only* allowed for tax years *beginning after* **December 31, 2017**, and *before* **January 1, 2026**.

3. The **QBI** Deduction is generally **20%** of a taxpayer's **§199A** "qualified business income" (**QBI**) from a partnership, S corporation, sole proprietorship, estates and trusts. It is defined as the **net** amount of items of income, gain, deduction, and loss with respect to a qualified trade or business.

4. Certain types of investment-related items are not included in **QBI**, e.g., capital gains or losses, dividends, and interest income (*unless* the interest is properly allocable to the business).

   Tax Professional Note: For ease of applying the Law, nothing reported on **Schedule B** and **Schedule D** of the taxpayer's **Form 1040** or **Form 1040-SR** is included as a Qualified Business Income *except for* **REIT** dividends. In addition, employee compensation and guaranteed payments to a partner are not included in the definition of **QBI**.

5. **§199A(a)** provides for a Qualified Business Income Deduction (**QBID**) and allows that in the case of a taxpayer *other than* a corporation, there shall be allowed as a deduction for any taxable year, an amount equal to the *lesser of*:

   a. **20%** of the "combined qualified business income amount" of the taxpayer, or

   b. an amount equal to **20%** of the *excess* (if any) of:

      i. the taxable income of the taxpayer (*before* the **QBI** deduction) for the taxable year, **minus**

      ii. the net capital gain (as defined in **§1(h)(11)**) of the taxpayer for such taxable year.

   Tax Professional Awareness: **§1(h)(11)** is the preferential tax rate assessed on long-term capital gains and qualified dividends.

6. **§199A(b)** provides for a "combined qualified business income amount". In general, the term "combined qualified business income amount" means, with respect to any taxable year, an amount equal to:

   a. the sum of the amounts determined for *each* qualified trade or business carried on by the taxpayer, **plus**

   b. **20%** of the aggregate amount of the qualified **REIT** dividends and qualified publicly traded partnership (**PTP**) income of the taxpayer for the taxable year.

   Example of Combined Business Income: Don has two separate trades or businesses that are both qualified trades or businesses for purposes of **§199A.** In **Year 1**, Don has Qualified Business Income of **$20,000** from **Qualified Business A** and has a Qualified Business Loss of **$50,000** from **Qualified Business B**.

   Since the combined current year amounts are negative, the taxpayer is <u>not</u> permitted a deduction for **Year 1** and has a carry-over of a qualified business **loss** of **$30,000** to **Year 2**.

The qualified business **loss** is reported as if it is a **separate** trade or business in the next year.

Year 1 Combined Business Income (Loss) Calculation:

Qualified Trade or Business **A**	$20,000
Qualified Trade or Business **B**	(50,000)
Net Qualified Business Gain (Loss)	**$(30,000)**

In **Year 2**, Don has Qualified Business Income of **$20,000** from qualified Business A and he has Qualified Business Income of **$50,000** from qualified Business B. In order to determine the **§199A** deduction for **Year 2**, Don reduces the total **$70,000** current **Year 2** amount of qualified business income from qualified **Business A** and **Business B** by the **$30,000** prior year carryover qualified business **loss**. (Committee Report)

Year 2 Combined Business Income (Loss) Calculation:

Qualified Trade or Business **A**	$20,000
Qualified Trade or Business **B**	50,000
Total **Year 2** Qualified Business Income	$70,000
Less: Net Qualified Business Loss Carried forward from Year 1 (treated as a separate Qualified Trade or Business)	**(30,000)**
Net Qualified Business Income for Year 2 Eligible as **QBI**	**$40,000**

7. A taxpayer can claim a **§199A** deduction for income from many types of trades or businesses carried on by the taxpayer. Specified Service Trades or Businesses (**SSTB**) are also eligible, subject to other specific limitations.

8. The **§199A** deduction is available to taxpayers in Specified Services Trades or Businesses (**SSTB**), such as healthcare professionals, law, **accounting**, actuarial science, performing artists, consulting, athletics, financial services, brokerage services, including investing and investment management, trading or dealing in securities, partnership interests, or commodities, and any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees. **Reg. §1.199A-5(b)** provides guidance for defining a Specified Service Trade or Business (**SSTB**).

   Tax Professional Note: Architecture and engineering are not Specified Service Trades or Businesses (**SSTB**) for purposes of **§199A.** They can be qualified trades or businesses if they otherwise qualify. However, also be aware that they are still defined as Personal Service Corporations (**PSCs**) for purposes of **C Corporation** issues.

9. Taxpayers whose taxable income, *before* the **QBI** Deduction, that *exceeds* the applicable threshold amount of **$157,500** (**$315,000** in the case of a joint return) are subject to limitations based on the allowable W-2 wages and the trade or business's Unadjusted Basis Immediately After Acquisition (**UBIA**) of all qualified property. **SSTB**s are subject to additional **limitations**.

   Tax Professional Note: The applicable threshold amounts are indexed annually to inflation for tax years *beginning after* **December 31, 2018**.

Filing Status	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**
Lower Limits						
Unmarried Individuals	$157,500	$160,700	$163,300	$164,900	**$170,050**	$182,100
Married Filing Jointly	$315,000	$321,400	$326,600	$329,800	**$340,100**	$364,200
Married Filing Separately	$157,500	$160,725	$163,300	$164,925	**$170,050**	$182,100

Phase-out Range for 2020:	**Lower Limit**	**Upper Limit**	**Range**
Unmarried Individuals	$163,300	$213,300	$50,000
Married Filing Jointly	$326,600	$426,600	$100,000
Married Filing Separately	$163,300	$213,300	$50,000

Phase-out Range for 2021:	**Lower Limit**	**Upper Limit**	**Range**
Unmarried Individuals	$164,**900**	$214,**900**	$50,000
Married Filing Jointly	$329,850	$429,850	$100,000
Married Filing Separately	$164,**925**	$214,**925**	$50,000

Phase-out Range for 2022:	**Lower Limit**	**Upper Limit**	**Range**
Unmarried Individuals	$170,050	$220,050	$50,000
Married Filing Jointly	$340,100	$440,100	$100,000
Married Filing Separately	$170,050	$220,050	$50,000

Phase-out Range for 2023:	**Lower Limit**	**Upper Limit**	**Range**
Unmarried Individuals	$182,100	$232,100	$50,000
Married Filing Jointly	$364,200	$464,200	$100,000
Married Filing Separately	$182,100	$232,100	$50,000

10. The **§199A QBI** deduction is taken for Partnerships and S Corporations at the individual partner or shareholder level. The amounts are reported to the taxpayers on the **Schedule K**-1 of the Partnership or the S-Corporation. The Fiduciary of an Estate or Trust can also pass-through the amounts on the beneficiary **Schedule K**-1. In addition, Trust and Estates are also eligible for the deduction on IRS **Form 1041.** Any allowable W-2 wages and the **UBIA** are apportioned between the Trust or Estate and the beneficiaries based on the Distributable Net Income (**DNI**).

11. **§199A(g)** provides that specified agricultural or horticultural cooperatives are also eligible for the deduction under special rules and have *only* a **9%** deduction instead of a **20%** deduction.

12. **§199A** Qualified Business Income includes only income effectively connected with a U.S Trade or Business. However, qualified business income from sources *within* Puerto Rico are eligible for the deduction but **all** of the taxpayer's income will be subject to inclusion for U.S. purposes. Therefore, a U.S. income tax return will be required to be filed in order to deduct the **§199A** amount.

13. Under current Legislation, the deduction will <u>not</u> apply to tax years *beginning after* **December 31, 2025**.

14. **§199A(b)(3)** provides a special rule for taxpayers with Qualified Business Income (**QBI**) who have a taxable income, *before* the **QBI** deduction, *above* the lower limit of the applicable threshold amounts of **$157,500**/**$315,000** (indexed annually to inflation). There is an **exception** that may still allow a full or limited **20%** deduction.

    This **exception** is derived by calculating the **QBI component** and requires an investment in people and property. It places a **limit** on the deduction to the *greater of:*

    a. **50%** of the allowable W-2 wages paid by the business, or

    b. the total of **25%** of the allowable W-2 wages paid by the business, **plus**

        - **2.5%** of the **unadjusted** basis immediately after acquisition (**UBIA**) of the qualified property. Qualified property is tangible depreciable property of the business **at the end of the tax year**.

15. If the **QBI** is from a Specified Service Trade or Business (**SSTB**) as defined in **§199A(d)(2)**, then the limitation is based on the "applicable percentage" of qualified income, gain, deduction or loss and the allowable W-2 wages and Unadjusted Basis Immediately After Acquisition (**UBIA**) of qualified property of the taxpayer, allocable to such **SSTB**.

16. **§199A(d)(3)(B)** defines "applicable percentage" as **100%** reduced by the percentage equal to the *ratio of:*

    a. the taxable income *in excess* of the applicable threshold amount, bears to

    b. **$50,000**/**$100,000** for a joint return

    Tax Professional Education Fact: **§199A(b)(6)(A)** provides that in order to be "qualified property", the property's "depreciable period" cannot end *before the close* of the tax year. The "depreciable period" **begins** on the date the taxpayer first places the property in service. **§199A(b)(6)(B)** provides that the period **ends** on the *later of:*

    i. the date **10 years** *after* the placed-in-service date, or

    ii. the *last day of the last full year* in the "applicable recovery period" that would apply under Modified Accelerated Cost Recovery System (**MACRS**) depreciation without regard to the alternative depreciation system (**ADS**). Therefore, if the "applicable recovery period" was **7 years**, then the depreciable period would end on the date which is **10 years** *after* the placed in service date. If the "applicable recovery period" was **15 years**, then the "depreciable period" would end *after* **15 years**.

    The Committee Report states that property that is sold is no longer available for use in a trade or business and is not taken into account in determining the qualified property limitation (**Conference Report on H.R. 1, Tax Cuts and Jobs Act (H. Report.115-466), p.38**)

    Tax Professional Note: It is important to remember that a taxpayer could purchase the property on the last day of the tax year and if placed in service on that day and used for the production of Qualified Business Income, then the **2.5%** would be calculated on the **unadjusted** basis for the full year.

- If the taxpayer sold the property on the last day of the year, then the seller does not receive the deduction for the **2.5%** even though it had been held and used for the production of Qualified Business Income the whole year.

B. Examples of Taxpayers with §199A Qualified Business Income (QBI)

Example #1: In **2022**, the taxpayer is single and has net self-employment income of **$55,000.**

§199A Qualified Business Income (**QBI**)		**$55,000**
Less: ½ Self Employment Tax		**(A)** (3,886)
Adjusted Gross Income		$51,114
Less: Standard Deduction		(12,950)
§199A(e)(1) Taxable Income *before* the **QBI** Deduction		**$38,164**
§199A QBI Deduction is calculated as the *lesser of:*		
20% of **QBI** of **$55,000** - **$3,886** (**A**) = **$51,114**	$10,223	
or		
20% of Taxable Income of **$38,164**	**$7,633**	
Therefore, the **QBI** Deduction is **$7,633.**		
Adjusted Gross Income		$51,114
Less: Standard Deduction		(12,950)
Less: §199A QBI Deduction		**(7,633)**
Taxable Income		**$30,531**

Taxpayer is in a **12%** marginal bracket. As a result, the income tax savings from the **§199A** Qualified Business Income Deduction is **$916** (**$7,633** · **12%**).

Example #2: In **2022**, the taxpayer is married and files a joint return with their spouse.

§199A Qualified Business Income (**QBI**) from self-employment		$45,000
Spouse's W-2 wages		**45,000**
Total Income		$90,000
Less: ½ Self Employment Tax		**(A)** (3,179)
Adjusted Gross Income		$86,821
Less: Standard Deduction		(25,900)
§199A(e)(1) Taxable Income *before* the **QBI** Deduction		**$60,921**
§199A QBI Deduction is calculated as the *lesser of:*		
20% of **QBI** of **$45,000** – **(A) $3,179** = **$41,821**	**$8,364(B)**	
or		
20% of Taxable Income of **$60,921**	$12,184	

Therefore, the **QBI** Deduction is **$8,364. (B)**

Adjusted Gross Income	$86,821
Less: Standard Deduction	(25,900)
Less: QBI Deduction	**(B) (8,364)**
Taxable Income	**$52,557**

The taxpayers are in a **12%** marginal tax bracket. As a result, the income tax savings from the **§199A** Qualified Business Income Deduction is **$1,004** (**12%** ·**$8,364**).

C. §199A Qualified Business Income Deduction for a Self-Employed Taxpayer: Reg. §1.199A-3(b)(1)(vi)

Example #1: A married couple both age **65** or older are filing a joint return and using IRS **Form 1040-SR**. They have the following income in the current tax year

Salary	$27,000
Taxable Interest	1,000
Qualified Dividends	2,000
Net **Schedule C** Income (Taxpayer)	$78,000
Long-term Capital Gains	3,000
Taxable IRA Distributions	10,000
Taxable Pension Distributions	9,000
Taxable Social Security	50,000
Gross Income	**$180,000**

Adjustments in determining their Gross Income are as follows:

Deductible part of taxpayer's self-employment	$5,511
Maximum Solo **§401(k)** contribution on taxpayer's net Sole-proprietorship income	$38,998
Self-employed health insurance from Medicare payments withheld from Social Security benefits	3,991
IRA Contributions for spouse's wages	6,500
Student Loan Interest	2,500
Total Adjustments to Gross Income	**$57,500**

Gross Income	$180,000
Less: Total Adjustments to Gross Income	(57,500)
Adjusted Gross Income	**$122,500**

- In **2022**, the married couple has a Standard Deduction of **$25,900.** Because they are both age **65** or older at the end of the tax year, they each have an Additional Standard Deduction of **$1,400.** Therefore, the total standard deduction amount is **$28,700.**
- The couple's Taxable Income *before* the **§199A** deduction and **§1(h)(11)** adjustment is **$93,800.**

Adjusted Gross Income	$122,500
Less: Standard Deduction	(28,700)
Taxable Income *before* the **§1(h)(11)** Adjustment	93,800
Less: §1(h)(11) Adjustment for Qualified Dividends and LTCG	(5,000)
Taxable Income *before* **§199A QBI** Deduction	**$88,800**

The general rule under **§199A(a)** provides that the net qualified business income deduction is **20%** of the *lessor of*:

a. the combined **QBI**, which in this case is the **$78,000** of **Schedule C** income
20% of **$78,000** = **$15,600**
or

b. the taxable income *before* the **QBI** deduction, which in this case is **$93,800** minus the **§1(h)(11)** income adjustment which is the long-term capital gain of **$3,000** and the qualified dividends of **$2,000.** Therefore, the net taxable income *before* the **§199A QBI** deduction is **$88,800,** and **20%** of **$88,800** = **$17,760**

So it seems that the *lesser* amount is the **$15,600** from the **Schedule C** net sole-proprietor income? **Or is it?**

In the final regulations, at **Reg. §1.199A-3(b)(1)(vi),** the IRS determined that the net combined **QBI** was to be **reduced by** specific items pertaining to self-employment items for Sole-proprietors, partners of partnerships and shareholders of Subchapter S Corporations.

The allowable deductions used in determining a taxpayer's **AGI**, are also used in reducing the net **QBI**. These items include:

- **§162(l)** Self-employed health insurance premiums
- **§164(f)** Deductible part of self-employment tax, and
- **§404** Pension contributions such as a **SEP**, **Solo §401(k)**, etc

In our example, the taxpayer has:

• **§162(l)** Self-employed Health Insurance Premiums	$3,991
• **§164(f)** Deductible Self-employment tax	5,511
• Solo **§401(k)** Contributions	$38,998
Total Reduction to **§199A QBI**	**$48,500(A)**
Schedule C Income	$78,000
Less: Specified Adjustments noted above under (**A**)	(48,500)
Net Combined **§199A QBI**	**$29,500**

As a result, the Net **Schedule C** pass-through of **$78,000** is reduced by these adjusting items, resulting in a net **§199A** Qualified Business Income of only **$29,500.**
So instead of calculating **20%** of **$78,000,** the calculation is **20%** of *only* **$29,500.**

As a result, the calculation of **20%** (as redefined in **Reg. §1.199A-3(b)(1)(vi)**) is on the *lesser of*:

Net **§199A QBI** of **$29,500** x **20%**	**$5,900**

or

Taxable income before **§1(h)(11)** reduction	$93,800
Less: §1(h)(11): Qualified Dividends and Long-term Capital Gain	(5,000)
Taxable Income *before* **§199A QBI** Deduction	**$88,800**

20% x **$88,800** = **$17,760**

As a result, the *lesser* amount is **$5,900.** The couple is in a **22%** marginal tax bracket, so the **§199A QBI** Deduction of **$5,900** results in an income tax savings of **$1,298.**

Example #2: Same facts as in **Example #1** above *except* the taxpayer does not contribute to the **Solo §401(k)** plan.

The couple still has a total income of **$180,000,** but the reduction to the net **QBI** from the **$78,000** in the sole-proprietorship is only reduced by the deductible part of the **§164(f)** self-employment tax and the **§162(l)** self-employed health insurance premium deduction as follows:

Sole Proprietor **Schedule C**	$78,000
Less: §164(f) ½ self-employment tax	(5,511)
§162(l) self-employed Health Insurance Premiums	(3,991)
Net **§199A QBI**	**$68,498**

The taxable income *before* the **§199A QBI** deduction is now:

Gross Income	$180,000
Less: Adjustments to Gross Income	(18,502)
Adjusted Gross Income	$161,498
Less: Standard Deduction Amounts	(28,700)
Taxable Income *before* the **§1(h)(11) QBI** Deduction	$132,798
Less: LTCG and Qualified Dividends	(5,000)
Taxable Income *before* **§199A QBI** Deduction	**$127,798**

The **QBI** deduction is **20%** of the *lessor of:*

20% of Net **§199A QBI $68,498**	$13,700
or	
20% of Taxable Income *before* the **QBI** deduction	**$25,560**

20% x **$127,798=$25,560.** Since the *lesser* amount is **$68,498,** the **QBI** deduction is **$13,700.** As a result, the taxpayers are in a **22%** marginal tax bracket and the tax savings resulting from the **QBID** is **$3,014.**

Tax Professional Planning Point and Client Discussion Issue: Because of **Reg. §1.199A-3(b)(1)(vi)**, taxpayers now need to review whether or not contributing the maximum amount to a self-employed pension plan is the best thing to do since the contribution reduces the taxable income for purposes of the **QBI** Deduction.
The pension contribution reduces the tax, but it also reduces the **QBI** Deduction at the same time which increases the tax. As a result, the Tax Professional will need to run the calculations for determining the right balance between the benefit of the pension contribution and the reduction of the **QBI** Deduction at different contribution amounts.

TAX PROFESSIONAL ALERT: **§6662** provides that a taxpayer may be subject to a **20%** accuracy-related penalty for substantial understatement of income tax for the tax year. In general, a substantial understatement exists when the tax understatement is *more than the greater of*:

1. **10%** of the tax required to be shown on the return, or
2. **$5,000**

For the taxpayer who claims the **§199A** deduction, **§6662(d)(1)(C)** has been added to provide that the **20%** penalty will be imposed if the understatement is *more than the greater of*:

1. **5%** of the tax required to be shown on the return, or
2. **$5,000**

D. Reg. §1.199A-5: Specified Service Trade or Businesses (SSTB) and the Trade or Business of Performing Services as an Employee

1. Determination of a **SSTB** is based on the following:

   (a) **Scope and Effect**:

   (1) **Scope:** This section provides guidance on Specified Service Trades or Businesses (**STTBs**) and the trade or business of performing services as an employee.

   - This **paragraph (a)** describes the *effect* of being an **SSTB** or the trade or business of performing services as an employee.
   - **Paragraph (b)** of this section provides **definitional guidance** on **SSTBs**.

- **Paragraph (c)** of this section provides **special rules** related to **SSTB**s.
- **Paragraph (d)** of this section provides **guidance** on the trade or business of performing services as an employee.
- The provisions of this section apply **solely** for purposes of **§199A.**

(2) **Effect of being an SSTB**: If a trade or business is a **SSTB**, then no **QBI**, W-2 wages, or **UBIA** of qualified property from the **SSTB** may be taken into account by any individual whose taxable income *before* the **QBI** deduction **exceeds** the phase-in range as defined in **§1.199A-1(b)(4),** *even if* the item is derived from an activity that is not itself a specified service activity. The **SSTB** limitation also applies to income earned from a Publicly Traded Partnerships (**PTP**).

- If a trade or business conducted by a relevant pass-through entity (**RPE**) is an **SSTB**, then this limitation applies to any direct or indirect individual owners of the business, regardless of whether the owner is passive or participated in any specified service activity. However, the **SSTB limitation** does not apply to individuals with taxable income below the threshold amount as defined in **§1.199A-1(b)(12)**.
- A **phase-in rule**, provided in **§1.199A-1(d)(2)**, applies to individuals with taxable income (*before* the **QBI** deduction) **within the phase-in range**, allowing them to take into account a certain "applicable percentage" of **QBI**, W-2 wages, and **UBIA** of qualified property from an **SSTB**. The phase-in rule also applies to income earned from a **PTP**.
- A **direct or indirect** owner of a trade or business engaged in the performance of a specified service is engaged in the performance of the specified service for purposes of **§199A** and this section, regardless of whether the owner is passive or participated in the specified service activity.

(b) **Definition of a specified service trade or business**: *Except* as provided in **paragraph (c)(1)** of this section, the term Specified Service Trade or Business (**SSTB**) means any of the following:

(1) Listed **SSTB**s: Any trade or business involving the performance of services in one or more of the following fields:

i. **Health** as described in **paragraph (b)(2)(ii)** of this section;

ii. **Law** as described in **paragraph (b)(2)(iii)** of this section;

iii. **Accounting** as described in **paragraph (b)(2)(iv)** of this section;

iv. **Actuarial science** as described in **paragraph (b)(2)(v)** of this section;

v. **Performing arts** as described in **paragraph (b)(2)(vi)** of this section;

vi. **Consulting** as described in **paragraph (b)(2)(vii)** of this section;

vii. **Athletics** as described in **paragraph (b)(2)(viii)** of this section;

viii. **Financial services** as described in **paragraph (b)(2)(ix)** of this section;

ix. **Brokerage services** as described in **paragraph (b)(2)(x)** of this section;

x. **Investing and investment management** as described in **paragraph (b)(2)(xi)** of this section;

xi. **Trading** as described in **paragraph (b)(2)(xii)** of this section;

xii. **Dealing in securities** (as defined in **§475(c)(2))**, partnership interests, or commodities (as defined in **§475(e)(2))** as described in **paragraph (b)(2)(xiii)** of this section; or

xiii. **Any trade or business** where the "principal asset" of such trade or business is the "reputation or skill" of one or more of its employees or owners as defined in **paragraph (b)(2)(xiv)** of this section.

(c) **Trade or business of performing services as an employee**:

(1) **In general**: The trade or business of performing services as an employee is not a trade or business for purposes of **§199A** and the regulations thereunder. Therefore, no items of income, gain, loss and deduction from the trade or business of performing services as an employee constitute **QBI** within the meaning of **§199A** and **Reg. §1.199A-3**.

Except as provided in **paragraph (d)(3)** of this section, income from the trade or business of performing services as an employee refers to all wages (within the meaning of **§3401(a))** and other income earned in a capacity as an employee, including payments described in **Reg. §1.6041-2(a)(1)** (other than payments to individuals described in **§3121(d)(3)**) and **Reg. §1.6041-2(b)(1)**.

(2) **Employer's Federal Employment tax classification of employee immaterial**: For purposes of determining whether wages are earned in a capacity as an employee as provided in **paragraph (d)(1)** of this section, the treatment of an employee by an employer as anything other than an employee for Federal employment tax purposes is immaterial. Thus, <u>if</u> a worker should be properly classified as an employee, <u>then</u> it is of <u>no</u> consequence that the employee is treated as a non-employee by the employer for Federal employment tax purposes.

(3) **Presumption that former employees are still employees**:

(i) **Presumption**: Solely for purposes of **§199A(d)(1)(B)** and **paragraph (d)(1)** of this section, an individual that was properly treated as an employee for Federal employment tax purposes by the person to which he or she provided services and who is **subsequently treated** as other than an employee by such person with regard to the provision of **substantially the same services** directly or indirectly to the person (or a related person), is **presumed for three years** *after ceasing* to be treated as an employee for Federal employment purposes, to be in the trade or business of performing services as an employee with regard to such services. As provided in **paragraph (d)(3)(ii)** of this section, this presumption may be rebutted upon a showing by the individual that, under Federal tax law, regulations, and principles (including common-law employee classification rules), the individual is performing services in a capacity other than as an employee. This presumption applies regardless of whether the individual provides services directly or indirectly through an entity or entities.

(ii) **Rebuttal of Presumption**: Upon notice from the IRS, an individual rebuts the presumption in **paragraph (d)(3)(i)** of this section by providing records, such as contracts or partnership agreements that provide sufficient evidence to corroborate the individual's status as a non-employee.

(iii) **Examples**: The following examples illustrate the provision of **paragraph (b)(3)** of this section. Unless otherwise provided, the individual in each example has taxable income in excess of the threshold amount.

Example #1: Don is employed by PRS, a **partnership**, as a full-time employee and is treated as such for Federal employment tax purposes. Don quits his job for PRS and enters into a contract with PRS under which Don provides substantially the same services that he previously provided to PRS in his capacity as an employee.

Because Don was treated as an employee for services he provided to PRS, and now is no longer treated as an employee with regard to such services, he is presumed (**solely** for purposes of **§199A(d)(1)(B)** and **paragraphs (a)(3)** and **(d)** of this section) to be in the trade or business of performing services as an employee with regard to his services performed for PRS.

Unless the presumption is rebutted with a showing that, under Federal tax law, regulations, and principles (including common-law employee classification rules), that Don is <u>not</u> an employee, then any amounts paid by PRS to Dan with respect to such services will <u>not</u> be **QBI** for purposes of **§199A.** The presumption would apply even if, instead of contracting directly with PRS, Don formed a disregarded entity, or an S corporation, and the disregarded entity or the S corporation entered into the contract with PRS.

Example #2: Don is an attorney employed as an associate in a law firm (**Law Firm 1**) and was treated as such for Federal employment tax purposes. Don and the other associates in **Law Firm 1** have taxable income below the threshold amount.

Law Firm 1 terminates its employment relationship with Don and its other associates. Don and the other former associates form a new partnership, **Law Firm 2**, which contracts to perform legal services for **Law Firm 1**. Therefore, in form, Don is now a partner in L**aw Firm 2** which earns income from providing legal services to **Law Firm 1**.

Don continues to provide **substantially** the same legal services to **Law Firm 1** and its clients. Because Don was previously treated as an employee for services he provided to Law Firm 1, and now is <u>no</u> longer treated as an employee with regard to such services, he is presumed (solely for purposes of **§199A(d)(1)(B)** and **paragraphs (a)(3)** and **(d)** of this section) to be in the trade or business of performing services as an employee with respect to the services he provides to **Law Firm 1** indirectly through **Law Firm 2**.

Unless the presumption is rebutted with a showing that, under Federal tax law, regulations, and principles (including common-law employee classification rules), Don's distributive share of **Law Firm 2** income (including any guaranteed payments) will <u>not</u> be **QBI** for purposes of **§199A.** The results in this example would <u>not</u> change if, instead of contracting with **Law Firm 1, Law Firm 2** was instead admitted as a partner in **Law Firm 1**.

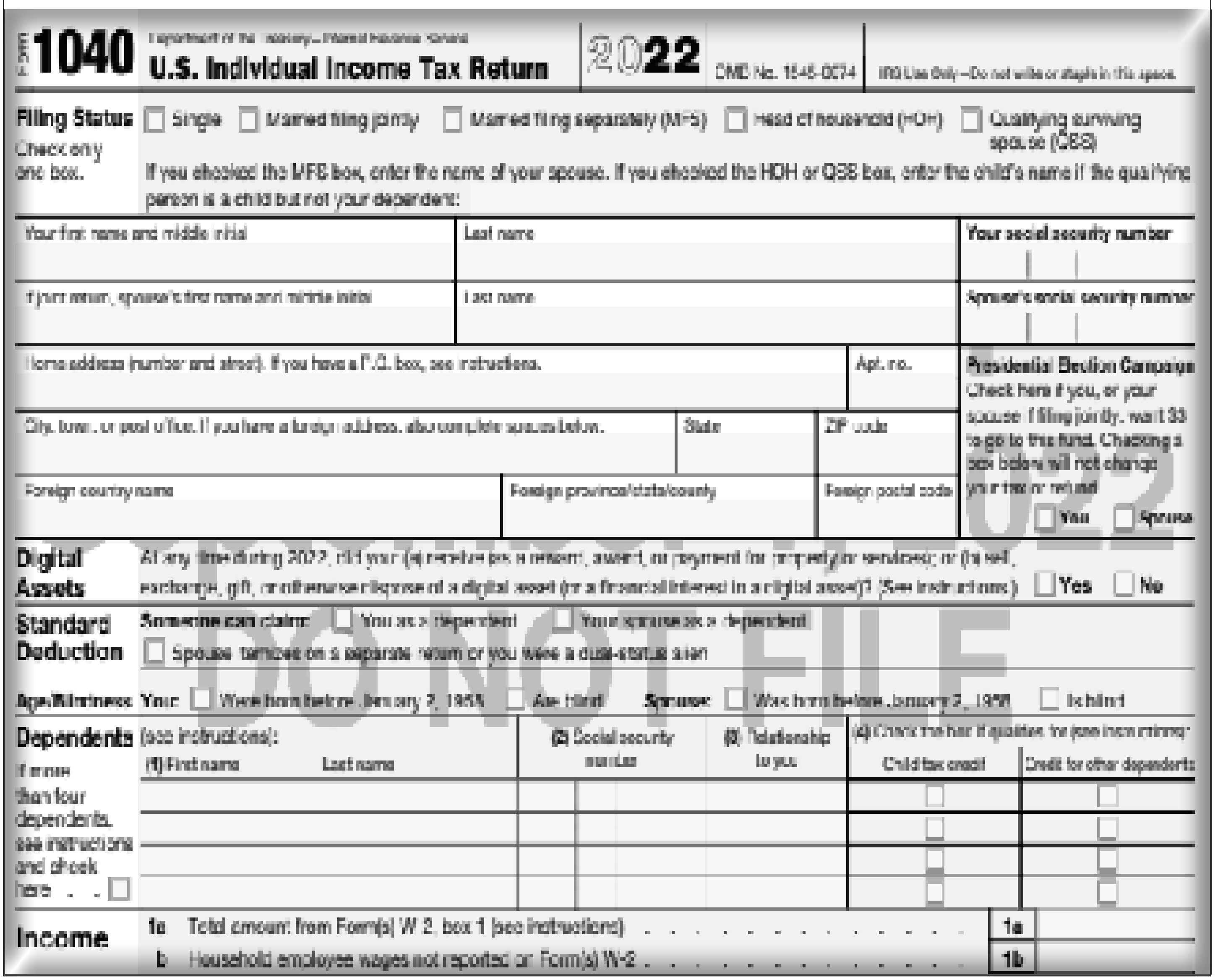
Example #3: Don is an engineer employed as a senior project engineer in an engineering firm, (**Engineering Firm**). **Engineering Firm** is a partnership and structured such that *after* **10 years**, senior project engineers are considered for partner if certain career milestones are met. *After* **10 years**, Don meets those career milestones and is admitted as a partner in **Engineering Firm**. As a partner in **Engineering Firm**, Don shares in the net profits of **Engineering Firm**, and also otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

Don is presumed (solely for purposes of **§199A(d)(1)(B)** and **paragraphs (a)(3)** and **(d)** (of this section) to be in the trade or business of performing services as an employee with respect to the services he provides to **Engineering Firm**.

However, Don is able to rebut the presumption by showing that he became a **partner** in **Engineering Firm** as a career milestone, shares in the overall net profits in Engineering Firm, and otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

Example #4: Don is a financial advisor employed by a financial advisory firm, **Advisory Firm**, a partnership for Federal tax purposes, as a full-time employee and is treated as such for Federal employment tax purposes. Don has taxable income *below* the threshold amount. **Advisory Firm** is a partnership and offers Don the opportunity to be admitted as a partner. Don elects to be admitted as a partner to **Advisory Firm** and is admitted as a partner to **Advisory Firm**. As a partner in **Advisory Firm**, Don shares in the net profits of **Advisory Firm**, is obligated to **Advisory Firm** in ways that Don was not previously obligated as an employee, is no longer entitled to certain benefits available only to employees of **Advisory Firm**, and has materially modified his relationship with **Advisory Firm**. Don's share of net profits is not subject to a floor or capped at a dollar amount. Don is presumed (solely for purposes of **§199A(d)(1)(B)** and **paragraphs (a)(3)** and **(d)** of this section) to be in the trade or business of performing services as an employee with respect to the services Don provides to **Advisory Firm**. However, Don is able to rebut the presumption by showing that Don became a partner in **Advisory Firm** by sharing in the profits of **Advisory Firm**, materially modifying Don's relationship with **Advisory Firm**, and otherwise satisfying the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

X. Draft Forms



Form **1040** Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return **2022** OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

Filing Status Check only one box.
☐ Single ☐ Married filing jointly ☐ Married filing separately (MFS) ☐ Head of household (HOH) ☐ Qualifying surviving spouse (QSS)
If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent:

Your first name and middle initial | Last name | **Your social security number**
If joint return, spouse's first name and middle initial | Last name | **Spouse's social security number**
Home address (number and street). If you have a P.O. box, see instructions. | Apt. no.
City, town, or post office. If you have a foreign address, also complete spaces below. | State | ZIP code
Foreign country name | Foreign province/state/county | Foreign postal code

Presidential Election Campaign Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund. ☐ You ☐ Spouse

Digital Assets At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) ☐ Yes ☐ No

Standard Deduction **Someone can claim:** ☐ You as a dependent ☐ Your spouse as a dependent
☐ Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness **You:** ☐ Were born before January 2, 1958 ☐ Are blind **Spouse:** ☐ Was born before January 2, 1958 ☐ Is blind

Dependents (see instructions):
If more than four dependents, see instructions and check here . . ☐

(1) First name Last name	(2) Social security number	(3) Relationship to you	(4) Check the box if qualifies for (see instructions): Child tax credit	Credit for other dependents
			☐	☐
			☐	☐
			☐	☐
			☐	☐

Income
1a Total amount from Form(s) W-2, box 1 (see instructions) **1a**
b Household employee wages not reported on Form(s) W-2 . . . . **1b**

DO NOT FILE

DRAFT FORMS

- FORM 1099-K
- FORM 1040
- FORM 1040-SR
- SCHEDULE 1 (FORM 1040)
- SCHEDULE 2 (FORM 1040)
- SCHEDULE 3 (FORM 1040)
- SCHEDULE A (FORM 1040)
- SCHEDULE B (FORM 1040)
- SCHEDULE C (FORM 1040)
- SCHEDULE D (FORM 1040)
- SCHEDULE E (FORM 1040)
- SCHEDULE EIC (FORM 1040)
- SCHEDULE F (FORM 1040)
- SCHEDULE H (FORM 1040)
- SCHEDULE K-1 (FORM 1041)
- SCHEDULE K-1 (FORM 1065)
- SCHEDULE K-1 (FORM 1120-S)

DRAFT FORMS

- SCHEDULE SE (FORM 1040)
- FORM 461
- FORM 5695
- FORM 6251
- FORM 6252
- FORM 7203
- FORM 8283
- FORM 8606
- FORM 8812
- FORM 8814
- FORM 8815
- FORM 8824
- FORM 8839
- FORM 8863
- FORM 8867
- FORM 8880
- FORM 8888
- FORM 8908

DRAFT FORMS

- FORM 8911
- FORM 8915-C
- FORM 8915-D
- FORM 8915-F
- FORM 8919
- FORM 8936
- FORM 8959
- FORM 8960
- FORM 8962

X. Draft Forms

1010 ☐ VOID ☐ CORRECTED

DRAFT AS OF September 8, 2022 DO NOT FILE

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.

FILER'S TIN

PAYEE'S TIN

1a Gross amount of payment card/third party network transactions
$

OMB No. 1545-2205

Form **1099-K**

(Rev. April 2022)

For calendar year 20 ____

Payment Card and Third Party Network Transactions

Check to indicate if FILER is a (an):
Payment settlement entity (PSE) ☐
Electronic Payment Facilitator (EPF)/Other third party ☐

Check to indicate transactions reported are:
Payment card ☐
Third party network ☐

1b Card Not Present transactions
$

2 Merchant category code

3 Number of payment transactions

4 Federal income tax withheld
$

Copy A
For Internal Revenue Service Center

File with Form 1096.

For Privacy Act and Paperwork Reduction Act Notice, see the **current General Instructions for Certain Information Returns.**

PAYEE'S name

Street address (including apt. no.)

City or town, state or province, country, and ZIP or foreign postal code

PSE'S name and telephone number

Account number (see instructions)

2nd TIN not. ☐

5a January $	**5b** February $
5c March $	**5d** April $
5e May $	**5f** June $
5g July $	**5h** August $
5i September $	**5j** October $
5k November $	**5l** December $

6 State	**7** State identification no.	**8** State income tax withheld
		$
		$

Form **1099-K** (Rev. 4-2022) Cat. No. 54118B www.irs.gov/Form1099K Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

Instructions for Payee

You have received this form because you have either (a) accepted payment cards for payments, or (b) received payments through a third party network in the calendar year reported on this form. Merchant acquirers and third party settlement organizations, as payment settlement entities (PSEs), must report the proceeds of payment card and third party network transactions made to you on Form 1099-K. The PSE may have contracted with an electronic payment facilitator (EPF) or other third party payer to make payments to you.

If you have questions about the amounts reported on this form, contact the FILER whose information is shown in the upper left corner on the front of this form. If you do not recognize the FILER shown in the upper left corner of the form, contact the PSE whose name and phone number are shown in the lower left corner of the form above your account number.

Note: For more information on understanding your Form 1099-K, go to *www.irs.gov/KnowYour1099K*.

If the Form 1099-K is related to your business, see Pub. 334 for more information. If the Form 1099-K is related to your work as part of the gig economy, see *www.irs.gov/GigEconomy*.

See the separate instructions for your income tax return for using the information reported on this form.

Payee's taxpayer identification number (TIN). For your protection, this form may show only the last four digits of your TIN (social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN)). However, the issuer has reported your complete TIN to the IRS.

Account number. May show an account number or other unique number the PSE assigned to distinguish your account.

Box 1a. Shows the aggregate gross amount of payment card/third party network transactions made to you through the PSE during the calendar year.

Note: The aggregate gross amount is the total dollar amount of total reportable payment transactions made to you, without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts. The dollar amount of each transaction is determined on the date of the transaction.

Box 1b. Shows the aggregate gross amount of all reportable payment transactions made to you through the PSE during the calendar year where the card was not present at the time of the transaction or the card number was keyed into the terminal. Typically, this relates to online sales, phone sales, or catalogue sales. If the box for third party network is checked, or if these are third party network transactions, Card Not Present transactions will not be reported.

Box 2. Shows the merchant category code used for payment card/third party network transactions (if available) reported on this form.

Box 3. Shows the number of payment transactions (not including refund transactions) processed through the payment card/third party network.

Box 4. Shows backup withholding. Generally, a payer must backup withhold if you did not furnish your TIN or you did not furnish the correct TIN to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, and Pub. 505. Include this amount on your income tax return as tax withheld.

Boxes 5a–5l. Show the gross amount of payment card/third party network transactions made to you for each month of the calendar year.

Boxes 6–8. Show state and local income tax withheld from the payments.

Future developments. For the latest information about developments related to Form 1099-K and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/Form1099K*.

Free File Program. Go to *www.irs.gov/FreeFile* to see if you qualify for no-cost online federal tax preparation, e-filing, and direct deposit or payment options.

Form **1040** Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return **2022** OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

Filing Status Check only one box.
☐ Single ☐ Married filing jointly ☐ Married filing separately (MFS) ☐ Head of household (HOH) ☐ Qualifying surviving spouse (QSS)
If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent:

Your first name and middle initial	Last name	**Your social security number**
If joint return, spouse's first name and middle initial	Last name	**Spouse's social security number**

Home address (number and street). If you have a P.O. box, see instructions.			Apt. no.	**Presidential Election Campaign** Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund. ☐ **You** ☐ **Spouse**
City, town, or post office. If you have a foreign address, also complete spaces below.		State	ZIP code	
Foreign country name	Foreign province/state/county		Foreign postal code	

Digital Assets At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) ☐ **Yes** ☐ **No**

Standard Deduction **Someone can claim:** ☐ You as a dependent ☐ Your spouse as a dependent
☐ Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness **You:** ☐ Were born before January 2, 1958 ☐ Are blind **Spouse:** ☐ Was born before January 2, 1958 ☐ Is blind

Dependents (see instructions): If more than four dependents, see instructions and check here . . ☐

(1) First name Last name	**(2)** Social security number	**(3)** Relationship to you	**(4)** Check the box if qualifies for (see instructions): Child tax credit	Credit for other dependents
			☐	☐
			☐	☐
			☐	☐
			☐	☐

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a Form W-2, see instructions.

Attach Sch. B if required.

Standard Deduction for—
- Single or Married filing separately, $12,950
- Married filing jointly or Qualifying surviving spouse, $25,900
- Head of household, $19,400
- If you checked any box under *Standard Deduction*, see instructions.

1a	Total amount from Form(s) W-2, box 1 (see instructions)			1a	
b	Household employee wages not reported on Form(s) W-2			1b	
c	Tip income not reported on line 1a (see instructions)			1c	
d	Medicaid waiver payments not reported on Form(s) W-2 (see instructions)			1d	
e	Taxable dependent care benefits from Form 2441, line 26			1e	
f	Employer-provided adoption benefits from Form 8839, line 29			1f	
g	Wages from Form 8919, line 6			1g	
h	Other earned income (see instructions)			1h	
i	Nontaxable combat pay election (see instructions)	1i			
z	Add lines 1a through 1h			1z	
2a	Tax-exempt interest	2a	**b** Taxable interest	2b	
3a	Qualified dividends	3a	**b** Ordinary dividends	3b	
4a	IRA distributions	4a	**b** Taxable amount	4b	
5a	Pensions and annuities	5a	**b** Taxable amount	5b	
6a	Social security benefits	6a	**b** Taxable amount	6b	
c	If you elect to use the lump-sum election method, check here (see instructions) ☐				
7	Capital gain or (loss). Attach Schedule D if required. If not required, check here ☐			7	
8	Other income from Schedule 1, line 10			8	
9	Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your **total income**			9	
10	Adjustments to income from Schedule 1, line 26			10	
11	Subtract line 10 from line 9. This is your **adjusted gross income**			11	
12	**Standard deduction or itemized deductions** (from Schedule A)			12	
13	Qualified business income deduction from Form 8995 or Form 8995-A			13	
14	Add lines 12 and 13			14	
15	Subtract line 14 from line 11. If zero or less, enter -0-. This is your **taxable income**			15	

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 11320B Form **1040** (2022)

Form 1040 (2022) Page **2**

Tax and Credits

16	**Tax** (see instructions). Check if any from Form(s): **1** ☐ 8814 **2** ☐ 4972 **3** ☐ ____	16	
17	Amount from Schedule 2, line 3	17	
18	Add lines 16 and 17	18	
19	Child tax credit or credit for other dependents from Schedule 8812	19	
20	Amount from Schedule 3, line 8	20	
21	Add lines 19 and 20	21	
22	Subtract line 21 from line 18. If zero or less, enter -0-	22	
23	Other taxes, including self-employment tax, from Schedule 2, line 21	23	
24	Add lines 22 and 23. This is your **total tax**	24	

Payments

If you have a qualifying child, attach Sch. EIC.

25	Federal income tax withheld from:		
a	Form(s) W-2	25a	
b	Form(s) 1099	25b	
c	Other forms (see instructions)	25c	
d	Add lines 25a through 25c	25d	
26	2022 estimated tax payments and amount applied from 2021 return	26	
27	Earned income credit (EIC)	27	
28	Additional child tax credit from Schedule 8812	28	
29	American opportunity credit from Form 8863, line 8	29	
30	Reserved for future use	30	
31	Amount from Schedule 3, line 15	31	
32	Add lines 27, 28, 29, and 31. These are your **total other payments and refundable credits**	32	
33	Add lines 25d, 26, and 32. These are your **total payments**	33	

Refund

Direct deposit? See instructions.

34	If line 33 is more than line 24, subtract line 24 from line 33. This is the amount you **overpaid**	34	
35a	Amount of line 34 you want **refunded to you**. If Form 8888 is attached, check here ☐	35a	
b	Routing number ____ **c** Type: ☐ Checking ☐ Savings		
d	Account number ____		
36	Amount of line 34 you want **applied to your 2023 estimated tax**	36	

Amount You Owe

37	Subtract line 33 from line 24. This is the **amount you owe**. For details on how to pay, go to *www.irs.gov/Payments* or see instructions	37	
38	Estimated tax penalty (see instructions)	38	

Third Party Designee

Do you want to allow another person to discuss this return with the IRS? See instructions ☐ **Yes.** Complete below. ☐ **No**

Designee's name | Phone no. | Personal identification number (PIN)

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See instructions. Keep a copy for your records.

Your signature	Date	Your occupation	If the IRS sent you an Identity Protection PIN, enter it here (see inst.)
Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.)
Phone no.	Email address		

Paid Preparer Use Only

Preparer's name	Preparer's signature	Date	PTIN	Check if: ☐ Self-employed
Firm's name				Phone no.
Firm's address				Firm's EIN

Go to *www.irs.gov/Form1040* for instructions and the latest information. Form **1040** (2022)

Form **1040-SR** Department of the Treasury—Internal Revenue Service
U.S. Tax Return for Seniors **2022** OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

Filing Status
Check only one box.

☐ Single ☐ Married filing jointly ☐ Married filing separately (MFS)
☐ Head of household (HOH) ☐ Qualifying surviving spouse (QSS)

If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent:

Your first name and middle initial	Last name		**Your social security number**
If joint return, spouse's first name and middle initial	Last name		**Spouse's social security number**
Home address (number and street). If you have a P.O. box, see instructions.		Apt. no.	**Presidential Election Campaign** Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund.
City, town, or post office. If you have a foreign address, also complete spaces below.	State	ZIP code	
Foreign country name	Foreign province/state/county	Foreign postal code	☐ You ☐ Spouse

Digital Assets At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) . . . . . . ☐ Yes ☐ No

Standard Deduction **Someone can claim:** ☐ You as a dependent ☐ Your spouse as a dependent
☐ Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness { **You:** ☐ Were born before January 2, 1958 ☐ Are blind
Spouse: ☐ Was born before January 2, 1958 ☐ Is blind

Dependents (see instructions):
If more than four dependents, see instructions and check here ☐

(1) First name Last name	(2) Social security number	(3) Relationship to you	(4) Check the box if qualifies for (see instructions): Child tax credit	Credit for other dependents
			☐	☐
			☐	☐
			☐	☐
			☐	☐

Income
Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.
If you did not get a Form W-2, see instructions.

1a	Total amount from Form(s) W-2, box 1 (see instructions)			1a	
b	Household employee wages not reported on Form(s) W-2			1b	
c	Tip income not reported on line 1a (see instructions)			1c	
d	Medicaid waiver payments not reported on Form(s) W-2 (see instructions)			1d	
e	Taxable dependent care benefits from Form 2441, line 26			1e	
f	Employer-provided adoption benefits from Form 8839, line 29			1f	
g	Wages from Form 8919, line 6			1g	
h	Other earned income (see instructions)			1h	
i	Nontaxable combat pay election (see instructions)	1i			
z	Add lines 1a through 1h			1z	

Attach Schedule B if required.

2a	Tax-exempt interest	2a		b Taxable interest	2b	
3a	Qualified dividends	3a		b Ordinary dividends	3b	
4a	IRA distributions	4a		b Taxable amount	4b	
5a	Pensions and annuities	5a		b Taxable amount	5b	
6a	Social security benefits	6a		b Taxable amount	6b	
c	If you elect to use the lump-sum election method, check here (see instructions) ☐					
7	Capital gain or (loss). Attach Schedule D if required. If not required, check here ☐				7	

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 71930F Form **1040-SR** (2022)

Form 1040-SR (2022) Page 2

	8	Other income from Schedule 1, line 10	8	
	9	Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your **total income**	9	
	10	Adjustments to income from Schedule 1, line 26	10	
	11	Subtract line 10 from line 9. This is your **adjusted gross income**	11	
Standard Deduction See *Standard Deduction Chart* on the last page of this form.	12	**Standard deduction or itemized deductions** (from Schedule A)	12	
	13	Qualified business income deduction from Form 8995 or Form 8995-A	13	
	14	Add lines 12 and 13	14	
	15	Subtract line 14 from line 11. If zero or less, enter -0-. This is your **taxable income**	15	
Tax and Credits	16	**Tax** (see instructions). Check if any from: **1** ☐ Form(s) 8814 **2** ☐ Form(s) 4972 **3** ☐ ________	16	
	17	Amount from Schedule 2, line 3	17	
	18	Add lines 16 and 17	18	
	19	Child tax credit or credit for other dependents from Schedule 8812	19	
	20	Amount from Schedule 3, line 8	20	
	21	Add lines 19 and 20	21	
	22	Subtract line 21 from line 18. If zero or less, enter -0-	22	
	23	Other taxes, including self-employment tax, from Schedule 2, line 21	23	
	24	Add lines 22 and 23. This is your **total tax**	24	
Payments	25	Federal income tax withheld from:		
	a	Form(s) W-2 — 25a		
	b	Form(s) 1099 — 25b		
	c	Other forms (see instructions) — 25c		
	d	Add lines 25a through 25c	25d	
	26	2022 estimated tax payments and amount applied from 2021 return	26	
If you have a qualifying child, attach Sch. EIC.	27	Earned income credit (EIC) — 27		
	28	Additional child tax credit from Schedule 8812 — 28		
	29	American opportunity credit from Form 8863, line 8 — 29		
	30	Reserved for future use — 30		
	31	Amount from Schedule 3, line 15 — 31		
	32	Add lines 27, 28, 29, and 31. These are your **total other payments and refundable credits**	32	
	33	Add lines 25d, 26, and 32. These are your **total payments**	33	

Go to *www.irs.gov/Form1040SR* for instructions and the latest information. Form **1040-SR** (2022)

Form 1040-SR (2022) Page **3**

Refund

34 If line 33 is more than line 24, subtract line 24 from line 33. This is the amount you **overpaid** . . . 34

35a Amount of line 34 you want **refunded to you.** If Form 8888 is attached, check here . . . ☐ 35a

Direct deposit? See instructions.

b Routing number c Type: ☐ Checking ☐ Savings

d Account number

36 Amount of line 34 you want **applied to your 2023 estimated tax** . . . 36

Amount You Owe

37 Subtract line 33 from line 24. This is the **amount you owe**. For details on how to pay, go to *www.irs.gov/Payments* or see instructions 37

38 Estimated tax penalty (see instructions) . . . 38

Third Party Designee

Do you want to allow another person to discuss this return with the IRS? See instructions . . . ☐ **Yes.** Complete below. ☐ **No**

Designee's name | Phone no. | Personal identification number (PIN)

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See instructions. Keep a copy for your records.

Your signature	Date	Your occupation	If the IRS sent you an Identity Protection PIN, enter it here (see inst.)
Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.)
Phone no.	Email address		

Paid Preparer Use Only

Preparer's name	Preparer's signature	Date	PTIN	Check if: ☐ Self-employed
Firm's name				Phone no.
Firm's address				Firm's EIN

Go to *www.irs.gov/Form1040SR* for instructions and the latest information. Form **1040-SR** (2022)

Form 1040-SR (2022) Page **4**

Standard Deduction Chart*

Add the number of boxes checked in the "Age/Blindness" section of *Standard Deduction* on page 1 . . . . . .

IF your filing status is. . .	AND the number of boxes checked is. . .	THEN your standard deduction is. . .
Single	1	$14,700
	2	16,450
Married filing jointly	1	$27,300
	2	28,700
	3	30,100
	4	31,500
Qualifying surviving spouse	1	$27,300
	2	28,700
Head of household	1	$21,150
	2	22,900
Married filing separately**	1	$14,350
	2	15,750
	3	17,150
	4	18,550

* Don't use this chart if someone can claim you (or your spouse if filing jointly) as a dependent, your spouse itemizes on a separate return, or you were a dual-status alien. Instead, see instructions.

** You can check the boxes for your spouse if your filing status is married filing separately and your spouse had no income, isn't filing a return, and can't be claimed as a dependent on another person's return.

Go to *www.irs.gov/Form1040SR* for instructions and the latest information. Form **1040-SR** (2022)

SCHEDULE 1
(Form 1040)

Department of the Treasury
Internal Revenue Service

Additional Income and Adjustments to Income

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/Form1040* for instructions and the latest information.

OMB No. 1545-0074
2022
Attachment Sequence No. 01

Name(s) shown on Form 1040, 1040-SR, or 1040-NR | **Your social security number**

Part I Additional Income

1	Taxable refunds, credits, or offsets of state and local income taxes			1	
2a	Alimony received			2a	
b	Date of original divorce or separation agreement (see instructions):				
3	Business income or (loss). Attach Schedule C			3	
4	Other gains or (losses). Attach Form 4797			4	
5	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E			5	
6	Farm income or (loss). Attach Schedule F			6	
7	Unemployment compensation			7	
8	Other income:				
a	Net operating loss	8a	( )		
b	Gambling	8b			
c	Cancellation of debt	8c			
d	Foreign earned income exclusion from Form 2555	8d	( )		
e	Income from Form 8853	8e			
f	Income from Form 8889	8f			
g	Alaska Permanent Fund dividends	8g			
h	Jury duty pay	8h			
i	Prizes and awards	8i			
j	Activity not engaged in for profit income	8j			
k	Stock options	8k			
l	Income from the rental of personal property if you engaged in the rental for profit but were not in the business of renting such property	8l			
m	Olympic and Paralympic medals and USOC prize money (see instructions)	8m			
n	Section 951(a) inclusion (see instructions)	8n			
o	Section 951A(a) inclusion (see instructions)	8o			
p	Section 461(l) excess business loss adjustment	8p			
q	Taxable distributions from an ABLE account (see instructions)	8q			
r	Scholarship and fellowship grants not reported on Form W-2	8r			
s	Nontaxable amount of Medicaid waiver payments included on Form 1040, line 1a or 1d	8s	( )		
t	Pension or annuity from a nonqualifed deferred compensation plan or a nongovernmental section 457 plan	8t			
u	Wages earned while incarcerated	8u			
z	Other income. List type and amount:	8z			
9	Total other income. Add lines 8a through 8z			9	
10	Combine lines 1 through 7 and 9. Enter here and on Form 1040, 1040-SR, or 1040-NR, line 8			10	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 71479F **Schedule 1 (Form 1040) 2022**

Schedule 1 (Form 1040) 2022 Page **2**

Part II Adjustments to Income

11	Educator expenses		**11**
12	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106		**12**
13	Health savings account deduction. Attach Form 8889		**13**
14	Moving expenses for members of the Armed Forces. Attach Form 3903		**14**
15	Deductible part of self-employment tax. Attach Schedule SE		**15**
16	Self-employed SEP, SIMPLE, and qualified plans		**16**
17	Self-employed health insurance deduction		**17**
18	Penalty on early withdrawal of savings		**18**
19a	Alimony paid		**19a**
b	Recipient's SSN		
c	Date of original divorce or separation agreement (see instructions):		
20	IRA deduction		**20**
21	Student loan interest deduction		**21**
22	Reserved for future use		**22**
23	Archer MSA deduction		**23**
24	Other adjustments:		
a	Jury duty pay (see instructions)	**24a**	
b	Deductible expenses related to income reported on line 8l from the rental of personal property engaged in for profit	**24b**	
c	Nontaxable amount of the value of Olympic and Paralympic medals and USOC prize money reported on line 8m	**24c**	
d	Reforestation amortization and expenses	**24d**	
e	Repayment of supplemental unemployment benefits under the Trade Act of 1974	**24e**	
f	Contributions to section 501(c)(18)(D) pension plans	**24f**	
g	Contributions by certain chaplains to section 403(b) plans	**24g**	
h	Attorney fees and court costs for actions involving certain unlawful discrimination claims (see instructions)	**24h**	
i	Attorney fees and court costs you paid in connection with an award from the IRS for information you provided that helped the IRS detect tax law violations	**24i**	
j	Housing deduction from Form 2555	**24j**	
k	Excess deductions of section 67(e) expenses from Schedule K-1 (Form 1041)	**24k**	
z	Other adjustments. List type and amount:	**24z**	
25	Total other adjustments. Add lines 24a through 24z		**25**
26	Add lines 11 through 23 and 25. These are your **adjustments to income**. Enter here and on Form 1040 or 1040-SR, line 10, or Form 1040-NR, line 10a		**26**

Schedule 1 (Form 1040) 2022

SCHEDULE 2 (Form 1040)

Department of the Treasury
Internal Revenue Service

Additional Taxes

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/Form1040* for instructions and the latest information.

OMB No. 1545-0074
2022
Attachment Sequence No. **02**

Name(s) shown on Form 1040, 1040-SR, or 1040-NR	**Your social security number**

Part I Tax

1	Alternative minimum tax. Attach Form 6251	1	
2	Excess advance premium tax credit repayment. Attach Form 8962	2	
3	Add lines 1 and 2. Enter here and on Form 1040, 1040-SR, or 1040-NR, line 17	3	

Part II Other Taxes

4	Self-employment tax. Attach Schedule SE			4	
5	Social security and Medicare tax on unreported tip income. Attach Form 4137	5			
6	Uncollected social security and Medicare tax on wages. Attach Form 8919	6			
7	Total additional social security and Medicare tax. Add lines 5 and 6			7	
8	Additional tax on IRAs or other tax-favored accounts. Attach Form 5329 if required. If not required, check here ☐			8	
9	Household employment taxes. Attach Schedule H			9	
10	Repayment of first-time homebuyer credit. Attach Form 5405 if required			10	
11	Additional Medicare Tax. Attach Form 8959			11	
12	Net investment income tax. Attach Form 8960			12	
13	Uncollected social security and Medicare or RRTA tax on tips or group-term life insurance from Form W-2, box 12			13	
14	Interest on tax due on installment income from the sale of certain residential lots and timeshares			14	
15	Interest on the deferred tax on gain from certain installment sales with a sales price over $150,000			15	
16	Recapture of low-income housing credit. Attach Form 8611			16	

(continued on page 2)

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 71478U **Schedule 2 (Form 1040) 2022**

Schedule 2 (Form 1040) 2022 Page **2**

Part II Other Taxes *(continued)*

17	Other additional taxes:			
a	Recapture of other credits. List type, form number, and amount:	**17a**		
b	Recapture of federal mortgage subsidy, if you sold your home see instructions	**17b**		
c	Additional tax on HSA distributions. Attach Form 8889	**17c**		
d	Additional tax on an HSA because you didn't remain an eligible individual. Attach Form 8889	**17d**		
e	Additional tax on Archer MSA distributions. Attach Form 8853	**17e**		
f	Additional tax on Medicare Advantage MSA distributions. Attach Form 8853	**17f**		
g	Recapture of a charitable contribution deduction related to a fractional interest in tangible personal property	**17g**		
h	Income you received from a nonqualified deferred compensation plan that fails to meet the requirements of section 409A	**17h**		
i	Compensation you received from a nonqualified deferred compensation plan described in section 457A	**17i**		
j	Section 72(m)(5) excess benefits tax	**17j**		
k	Golden parachute payments	**17k**		
l	Tax on accumulation distribution of trusts	**17l**		
m	Excise tax on insider stock compensation from an expatriated corporation	**17m**		
n	Look-back interest under section 167(g) or 460(b) from Form 8697 or 8866	**17n**		
o	Tax on non-effectively connected income for any part of the year you were a nonresident alien from Form 1040-NR	**17o**		
p	Any interest from Form 8621, line 16f, relating to distributions from, and dispositions of, stock of a section 1291 fund	**17p**		
q	Any interest from Form 8621, line 24	**17q**		
z	Any other taxes. List type and amount:	**17z**		
18	Total additional taxes. Add lines 17a through 17z			**18**
19	Reserved for future use			**19**
20	Section 965 net tax liability installment from Form 965-A	**20**		
21	Add lines 4, 7 through 16, and 18. These are your **total other taxes**. Enter here and on Form 1040 or 1040-SR, line 23, or Form 1040-NR, line 23b			**21**

Schedule 2 (Form 1040) 2022

SCHEDULE 3 (Form 1040) Department of the Treasury Internal Revenue Service	**Additional Credits and Payments** Attach to Form 1040, 1040-SR, or 1040-NR. Go to *www.irs.gov/Form1040* for instructions and the latest information.	OMB No. 1545-0074 **2022** Attachment Sequence No. 03

Name(s) shown on Form 1040, 1040-SR, or 1040-NR	**Your social security number**

Part I Nonfrundable Credits

1	Foreign tax credit. Attach Form 1116 if required			1	
2	Credit for child and dependent care expenses from Form 2441, line 11. Attach Form 2441			2	
3	Education credits from Form 8863, line 19			3	
4	Retirement savings contributions credit. Attach Form 8880			4	
5	Residential energy credits. Attach Form 5695			5	
6	Other nonrefundable credits:				
a	General business credit. Attach Form 3800	6a			
b	Credit for prior year minimum tax. Attach Form 8801	6b			
c	Adoption credit. Attach Form 8839	6c			
d	Credit for the elderly or disabled. Attach Schedule R	6d			
e	Alternative motor vehicle credit. Attach Form 8910	6e			
	Qualified plug-in motor vehicle credit. Attach Form 8936	6f			
g	Mortgage interest credit. Attach Form 8396	6g			
h	District of Columbia first-time homebuyer credit. Attach Form 8859	6h			
i	Qualified electric vehicle credit. Attach Form 8834	6i			
j	Alternative fuel vehicle refueling property credit. Attach Form 8911	6j			
k	Credit to holders of tax credit bonds. Attach Form 8912	6k			
l	Amount on Form 8978, line 14. See instructions	6l			
z	Other nonrefundable credits. List type and amount: ______	6z			
7	Total other nonrefundable credits. Add lines 6a through 6z			7	
8	Add lines 1 through 5 and 7. Enter here and on Form 1040, 1040-SR, or 1040-NR, line 20			8	

(continued on page 2)

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 71480G **Schedule 3 (Form 1040) 2022**

Schedule 3 (Form 1040) 2022 Page 2

Part II Other Payments and Refundable Credits

9	Net premium tax credit. Attach Form 8962			9	
10	Amount paid with request for extension to file (see instructions)			10	
11	Excess social security and tier 1 RRTA tax withheld			11	
12	Credit for federal tax on fuels. Attach Form 4136			12	
13	Other payments or refundable credits:				
a	Form 2439	13a			
b	Credit for qualified sick and family leave wages paid in 2022 from Schedule(s) H for leave taken before April 1, 2021	13b			
c	Reserved for future use	13c			
d	Credit for repayment of amounts included in income from earlier years	13d			
e	Reserved for future use	13e			
f	Deferred amount of net 965 tax liability (see instructions)	13f			
g	Reserved for future use	13g			
h	Credit for qualified sick and family leave wages paid in 2022 from Schedule(s) H for leave taken after March 31, 2021, and before October 1, 2021	13h			
z	Other payments or refundable credits. List type and amount:	13z			
14	Total other payments or refundable credits. Add lines 13a through 13z			14	
15	Add lines 9 through 12 and 14. Enter here and on Form 1040, 1040-SR, or 1040-NR, line 31			15	

Schedule 3 (Form 1040) 2022

SCHEDULE A (Form 1040)

Department of the Treasury Internal Revenue Service

Itemized Deductions

Go to *www.irs.gov/ScheduleA* for instructions and the latest information.

Attach to Form 1040 or 1040-SR.

Caution: If you are claiming a net qualified disaster loss on Form 4684, see the instructions for line 16.

OMB No. 1545-0074

2022

Attachment Sequence No. **07**

Name(s) shown on Form 1040 or 1040-SR | **Your social security number**

DRAFT AS OF July 21, 2022 DO NOT FILE

Medical and Dental Expenses		**Caution:** Do not include expenses reimbursed or paid by others.		
	1	Medical and dental expenses (see instructions)	1	
	2	Enter amount from Form 1040 or 1040-SR, line 11 [2]		
	3	Multiply line 2 by 7.5% (0.075)	3	
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-		4
Taxes You Paid	5	State and local taxes.		
	a	State and local income taxes or general sales taxes. You may include either income taxes or general sales taxes on line 5a, but not both. If you elect to include general sales taxes instead of income taxes, check this box ☐	5a	
	b	State and local real estate taxes (see instructions)	5b	
	c	State and local personal property taxes	5c	
	d	Add lines 5a through 5c	5d	
	e	Enter the smaller of line 5d or $10,000 ($5,000 if married filing separately)	5e	
	6	Other taxes. List type and amount: ______	6	
	7	Add lines 5e and 6		7
Interest You Paid **Caution:** Your mortgage interest deduction may be limited. See instructions.	8	Home mortgage interest and points. If you didn't use all of your home mortgage loan(s) to buy, build, or improve your home, see instructions and check this box ☐		
	a	Home mortgage interest and points reported to you on Form 1098. See instructions if limited	8a	
	b	Home mortgage interest not reported to you on Form 1098. See instructions if limited. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address ______	8b	
	c	Points not reported to you on Form 1098. See instructions for special rules	8c	
	d	Reserved for future use	8d	
	e	Add lines 8a through 8c	8e	
	9	Investment interest. Attach Form 4952 if required. See instructions	9	
	10	Add lines 8e and 9		10
Gifts to Charity **Caution:** If you made a gift and got a benefit for it, see instructions.	11	Gifts by cash or check. If you made any gift of $250 or more, see instructions	11	
	12	Other than by cash or check. If you made any gift of $250 or more, see instructions. You **must** attach Form 8283 if over $500	12	
	13	Carryover from prior year	13	
	14	Add lines 11 through 13		14
Casualty and Theft Losses	15	Casualty and theft loss(es) from a federally declared disaster (other than net qualified disaster losses). Attach Form 4684 and enter the amount from line 18 of that form. See instructions		15
Other Itemized Deductions	16	Other—from list in instructions. List type and amount: ______		16
Total Itemized Deductions	17	Add the amounts in the far right column for lines 4 through 16. Also, enter this amount on Form 1040 or 1040-SR, line 12		17
	18	If you elect to itemize deductions even though they are less than your standard deduction, check this box ☐		

For Paperwork Reduction Act Notice, see the Instructions for Form 1040. Cat. No. 17145C **Schedule A (Form 1040) 2022**

SCHEDULE B (Form 1040)

Department of the Treasury
Internal Revenue Service

Interest and Ordinary Dividends

Go to *www.irs.gov/ScheduleB* for instructions and the latest information.
Attach to Form 1040 or 1040-SR.

OMB No. 1545-0074

2022

Attachment Sequence No. **08**

Name(s) shown on return | **Your social security number**

Part I Interest

(See instructions and the Instructions for Form 1040, line 2b.)

Note: If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

			Amount
1	List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see the instructions and list this interest first. Also, show that buyer's social security number and address:	**1**	
2	Add the amounts on line 1	**2**	
3	Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815	**3**	
4	Subtract line 3 from line 2. Enter the result here and on Form 1040 or 1040-SR, line 2b	**4**	

Note: If line 4 is over $1,500, you must complete Part III.

Part II Ordinary Dividends

(See instructions and the Instructions for Form 1040, line 3b.)

Note: If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the ordinary dividends shown on that form.

			Amount
5	List name of payer:	**5**	
6	Add the amounts on line 5. Enter the total here and on Form 1040 or 1040-SR, line 3b	**6**	

Note: If line 6 is over $1,500, you must complete Part III.

Part III Foreign Accounts and Trusts

Caution: If required, failure to file FinCEN Form 114 may result in substantial penalties. Additionally, you may be required to file Form 8938, Statement of Specified Foreign Financial Assets. See instructions.

You must complete this part if you (**a**) had over $1,500 of taxable interest or ordinary dividends; (**b**) had a foreign account; or (**c**) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

		Yes	**No**
7a	At any time during 2022, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions		
	If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements		
b	If you are required to file FinCEN Form 114, list the name(s) of the foreign country(-ies) where the financial account(s) are located:		
8	During 2022, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions		

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 17146N **Schedule B (Form 1040) 2022**

SCHEDULE C (Form 1040)

Department of the Treasury Internal Revenue Service

Profit or Loss From Business

(Sole Proprietorship)

Go to *www.irs.gov/ScheduleC* for instructions and the latest information.

Attach to Form 1040, 1040-SR, 1040-NR, or 1041; partnerships must generally file Form 1065.

OMB No. 1545-0074

2022

Attachment Sequence No. **09**

Name of proprietor | **Social security number (SSN)**

A Principal business or profession, including product or service (see instructions) | **B Enter code from instructions**

C Business name. If no separate business name, leave blank. | **D Employer ID number (EIN)** (see instr.)

E Business address (including suite or room no.)

City, town or post office, state, and ZIP code

F Accounting method: **(1)** ☐ Cash **(2)** ☐ Accrual **(3)** ☐ Other (specify)

G Did you "materially participate" in the operation of this business during 2022? If "No," see instructions for limit on losses ☐ **Yes** ☐ **No**

H If you started or acquired this business during 2022, check here ☐

I Did you make any payments in 2022 that would require you to file Form(s) 1099? See instructions ☐ **Yes** ☐ **No**

J If "Yes," did you or will you file required Form(s) 1099? ☐ **Yes** ☐ **No**

Part I Income

1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked ☐	1	
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	
4	Cost of goods sold (from line 42)	4	
5	**Gross profit.** Subtract line 4 from line 3	5	
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7	**Gross income.** Add lines 5 and 6	7	

Part II Expenses. Enter expenses for business use of your home **only** on line 30.

8	Advertising	8		18	Office expense (see instructions)	18	
9	Car and truck expenses (see instructions)	9		19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions):		
11	Contract labor (see instructions)	11		a	Vehicles, machinery, and equipment	20a	
12	Depletion	12		b	Other business property	20b	
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13		21	Repairs and maintenance	21	
				22	Supplies (not included in Part III)	22	
				23	Taxes and licenses	23	
				24	Travel and meals:		
14	Employee benefit programs (other than on line 19)	14		a	Travel	24a	
15	Insurance (other than health)	15		b	Deductible meals (see instructions)	24b	
16	Interest (see instructions):			25	Utilities	25	
a	Mortgage (paid to banks, etc.)	16a		26	Wages (less employment credits)	26	
b	Other	16b		27a	Other expenses (from line 48)	27a	
17	Legal and professional services	17		b	**Reserved for future use**	27b	

28	**Total expenses** before expenses for business use of home. Add lines 8 through 27a	28	
29	Tentative profit or (loss). Subtract line 28 from line 7	29	
30	Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method. See instructions. **Simplified method filers only:** Enter the total square footage of (a) your home: ______ and (b) the part of your home used for business: ______. Use the Simplified Method Worksheet in the instructions to figure the amount to enter on line 30	30	
31	**Net profit or (loss).** Subtract line 30 from line 29. • If a profit, enter on both **Schedule 1 (Form 1040), line 3,** and on **Schedule SE, line 2.** (If you checked the box on line 1, see instructions.) Estates and trusts, enter on **Form 1041, line 3.** • If a loss, you **must** go to line 32.	31	

32 If you have a loss, check the box that describes your investment in this activity. See instructions.

- If you checked 32a, enter the loss on both **Schedule 1 (Form 1040), line 3,** and on **Schedule SE, line 2.** (If you checked the box on line 1, see the line 31 instructions.) Estates and trusts, enter on **Form 1041, line 3.**
- If you checked 32b, you **must** attach **Form 6198.** Your loss may be limited.

32a ☐ All investment is at risk.
32b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 11334P **Schedule C (Form 1040) 2022**

Schedule C (Form 1040) 2022 Page **2**

Part III Cost of Goods Sold (see instructions)

33 Method(s) used to value closing inventory: **a** ☐ Cost **b** ☐ Lower of cost or market **c** ☐ Other (attach explanation)

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation . . . ☐ **Yes** ☐ **No**

35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35	
36	Purchases less cost of items withdrawn for personal use	36	
37	Cost of labor. Do not include any amounts paid to yourself	37	
38	Materials and supplies	38	
39	Other costs	39	
40	Add lines 35 through 39	40	
41	Inventory at end of year	41	
42	**Cost of goods sold.** Subtract line 41 from line 40. Enter the result here and on line 4	42	

Part IV Information on Your Vehicle.

Complete this part **only** if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month/day/year) ____/____/____

44 Of the total number of miles you drove your vehicle during 2022, enter the number of miles you used your vehicle for:

a Business ____________ **b** Commuting (see instructions) ____________ **c** Other ____________

45 Was your vehicle available for personal use during off-duty hours? . . . ☐ **Yes** ☐ **No**

46 Do you (or your spouse) have another vehicle available for personal use? . . . ☐ **Yes** ☐ **No**

47a Do you have evidence to support your deduction? . . . ☐ **Yes** ☐ **No**

b If "Yes," is the evidence written? . . . ☐ **Yes** ☐ **No**

Part V Other Expenses.

List below business expenses not included on lines 8–26 or line 30.

48	**Total other expenses.** Enter here and on line 27a	48	

Schedule C (Form 1040) 2022

SCHEDULE D
(Form 1040)

Department of the Treasury
Internal Revenue Service

Capital Gains and Losses

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/ScheduleD* for instructions and the latest information.
Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.

OMB No. 1545-0074
2022
Attachment Sequence No. **12**

Name(s) shown on return | **Your social security number**

Did you dispose of any investment(s) in a qualified opportunity fund during the tax year? ☐ **Yes** ☐ **No**
If "Yes," attach Form 8949 and see its instructions for additional requirements for reporting your gain or loss.

Part I **Short-Term Capital Gains and Losses—Generally Assets Held One Year or Less** (see instructions)

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	**(d)** Proceeds (sales price)	**(e)** Cost (or other basis)	**(g)** Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	**(h) Gain or (loss)** Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b .				
1b Totals for all transactions reported on Form(s) 8949 with **Box A** checked				
2 Totals for all transactions reported on Form(s) 8949 with **Box B** checked				
3 Totals for all transactions reported on Form(s) 8949 with **Box C** checked				

4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824 . .	**4**	
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	**5**	
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your **Capital Loss Carryover Worksheet** in the instructions	**6**	( )
7 **Net short-term capital gain or (loss).** Combine lines 1a through 6 in column (h). If you have any long-term capital gains or losses, go to Part II below. Otherwise, go to Part III on the back	**7**	

Part II **Long-Term Capital Gains and Losses—Generally Assets Held More Than One Year** (see instructions)

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	**(d)** Proceeds (sales price)	**(e)** Cost (or other basis)	**(g)** Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	**(h) Gain or (loss)** Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b .				
8b Totals for all transactions reported on Form(s) 8949 with **Box D** checked				
9 Totals for all transactions reported on Form(s) 8949 with **Box E** checked				
10 Totals for all transactions reported on Form(s) 8949 with **Box F** checked.				

11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824	**11**	
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	**12**	
13 Capital gain distributions. See the instructions	**13**	
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your **Capital Loss Carryover Worksheet** in the instructions	**14**	( )
15 **Net long-term capital gain or (loss).** Combine lines 8a through 14 in column (h). Then, go to Part III on the back	**15**	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 11338H **Schedule D (Form 1040) 2022**

Part III **Summary**

16 Combine lines 7 and 15 and enter the result . . . . **16** ______

- If line 16 is a **gain**, enter the amount from line 16 on Form 1040, 1040-SR, or 1040-NR, line 7. Then, go to line 17 below.
- If line 16 is a **loss**, skip lines 17 through 20 below. Then, go to line 21. Also be sure to complete line 22.
- If line 16 is **zero**, skip lines 17 through 21 below and enter -0- on Form 1040, 1040-SR, or 1040-NR, line 7. Then, go to line 22.

17 Are lines 15 and 16 **both** gains?

☐ **Yes.** Go to line 18.

☐ **No.** Skip lines 18 through 21, and go to line 22.

18 If you are required to complete the **28% Rate Gain Worksheet** (see instructions), enter the amount, if any, from line 7 of that worksheet . . . . **18** ______

19 If you are required to complete the **Unrecaptured Section 1250 Gain Worksheet** (see instructions), enter the amount, if any, from line 18 of that worksheet . . . . **19** ______

20 Are lines 18 and 19 both zero or blank and you are not filing Form 4952?

☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 16. **Don't** complete lines 21 and 22 below.

☐ **No.** Complete the **Schedule D Tax Worksheet** in the instructions. **Don't** complete lines 21 and 22 below.

21 If line 16 is a loss, enter here and on Form 1040, 1040-SR, or 1040-NR, line 7, the **smaller** of:

- The loss on line 16; or
- ($3,000), or if married filing separately, ($1,500)

} . . . . **21** (   )

Note: When figuring which amount is smaller, treat both amounts as positive numbers.

22 Do you have qualified dividends on Form 1040, 1040-SR, or 1040-NR, line 3a?

☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 16.

☐ **No.** Complete the rest of Form 1040, 1040-SR, or 1040-NR.

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

Attach to Form 1040, 1040-SR, 1040-NR, or 1041.
Go to *www.irs.gov/ScheduleE* for instructions and the latest information.

OMB No. 1545-0074

2022

Attachment Sequence No. 13

Name(s) shown on return | **Your social security number**

Part I Income or Loss From Rental Real Estate and Royalties

Note: If you are in the business of renting personal property, use **Schedule C**. See instructions. If you are an individual, report farm rental income or loss from **Form 4835** on page 2, line 40.

A Did you make any payments in 2022 that would require you to file Form(s) 1099? See instructions . . . . . ☐ **Yes** ☐ **No**

B If "Yes," did you or will you file required Form(s) 1099? . . . . ☐ **Yes** ☐ **No**

1a	Physical address of each property (street, city, state, ZIP code)
A	
B	
C	

1b	Type of Property (from list below)	**2** For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.		**Fair Rental Days**	**Personal Use Days**	**QJV**
A			**A**			☐
B			**B**			☐
C			**C**			☐

Type of Property:

1 Single Family Residence	3 Vacation/Short-Term Rental	5 Land	7 Self-Rental
2 Multi-Family Residence	4 Commercial	6 Royalties	8 Other (describe)

			Properties:	
Income:		**A**	**B**	**C**
3 Rents received	**3**			
4 Royalties received	**4**			
Expenses:				
5 Advertising	**5**			
6 Auto and travel (see instructions)	**6**			
7 Cleaning and maintenance	**7**			
8 Commissions	**8**			
9 Insurance	**9**			
10 Legal and other professional fees	**10**			
11 Management fees	**11**			
12 Mortgage interest paid to banks, etc. (see instructions)	**12**			
13 Other interest	**13**			
14 Repairs	**14**			
15 Supplies	**15**			
16 Taxes	**16**			
17 Utilities	**17**			
18 Depreciation expense or depletion	**18**			
19 Other (list)	**19**			
20 Total expenses. Add lines 5 through 19	**20**			
21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file **Form 6198**	**21**			
22 Deductible rental real estate loss after limitation, if any, on **Form 8582** (see instructions)	**22**	( )	( )	( )

23a Total of all amounts reported on line 3 for all rental properties	**23a**	
b Total of all amounts reported on line 4 for all royalty properties	**23b**	
c Total of all amounts reported on line 12 for all properties	**23c**	
d Total of all amounts reported on line 18 for all properties	**23d**	
e Total of all amounts reported on line 20 for all properties	**23e**	

24 Income. Add positive amounts shown on line 21. **Do not** include any losses	**24**	
25 Losses. Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	**25**	( )
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Schedule 1 (Form 1040), line 5. Otherwise, include this amount in the total on line 41 on page 2 .	**26**	

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 11344L **Schedule E (Form 1040) 2022**

Schedule E (Form 1040) 2022 | Attachment Sequence No. **13** | Page **2**

Name(s) shown on return. Do not enter name and social security number if shown on other side. | **Your social security number**

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note: If you report a loss, receive a distribution, dispose of stock, or receive a loan repayment from an S corporation, you **must** check the box in column **(e)** on line 28 and attach the required basis computation. If you report a loss from an at-risk activity for which **any** amount is **not** at risk, you **must** check the box in column **(f)** on line 28 and attach **Form 6198**. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section . . . ☐ **Yes** ☐ **No**

28	**(a)** Name	**(b)** Enter **P** for partnership; **S** for S corporation	**(c)** Check if foreign partnership	**(d)** Employer identification number	**(e)** Check if basis computation is required	**(f)** Check if any amount is not at risk
A			☐		☐	☐
B			☐		☐	☐
C			☐		☐	☐
D			☐		☐	☐

	Passive Income and Loss		Nonpassive Income and Loss		
	(g) Passive loss allowed (attach **Form 8582** if required)	**(h)** Passive income from **Schedule K-1**	**(i)** Nonpassive loss allowed (see **Schedule K-1**)	**(j)** Section 179 expense deduction from **Form 4562**	**(k)** Nonpassive income from **Schedule K-1**
A					
B					
C					
D					
29a Totals					
b Totals					

30	Add columns (h) and (k) of line 29a . . .	**30**	
31	Add columns (g), (i), and (j) of line 29b . . .	**31**	( )
32	**Total partnership and S corporation income or (loss).** Combine lines 30 and 31 . . .	**32**	

Part III Income or Loss From Estates and Trusts

33	**(a)** Name	**(b)** Employer identification number
A		
B		

	Passive Income and Loss		Nonpassive Income and Loss	
	(c) Passive deduction or loss allowed (attach **Form 8582** if required)	**(d)** Passive income from **Schedule K-1**	**(e)** Deduction or loss from **Schedule K-1**	**(f)** Other income from **Schedule K-1**
A				
B				
34a Totals				
b Totals				

35	Add columns (d) and (f) of line 34a . . .	**35**	
36	Add columns (c) and (e) of line 34b . . .	**36**	( )
37	**Total estate and trust income or (loss).** Combine lines 35 and 36 . . .	**37**	

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder

38	**(a)** Name	**(b)** Employer identification number	**(c)** Excess inclusion from **Schedules Q**, line 2c (see instructions)	**(d)** Taxable income (net loss) from **Schedules Q**, line 1b	**(e)** Income from **Schedules Q**, line 3b

39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below .	**39**	

Part V Summary

40	Net farm rental income or (loss) from **Form 4835**. Also, complete line 42 below . . .	**40**	
41	**Total income or (loss).** Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Schedule 1 (Form 1040), line 5 . . .	**41**	
42	**Reconciliation of farming and fishing income.** Enter your **gross** farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120-S), box 17, code AD; and Schedule K-1 (Form 1041), box 14, code F. See instructions .	**42**	
43	**Reconciliation for real estate professionals.** If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040, Form 1040-SR, or Form 1040-NR from all rental real estate activities in which you materially participated under the passive activity loss rules . . .	**43**	

Schedule E (Form 1040) 2022

SCHEDULE EIC (Form 1040)

Department of the Treasury
Internal Revenue Service

Earned Income Credit

Qualifying Child Information

Complete and attach to Form 1040 or 1040-SR only if you have a qualifying child.
Go to *www.irs.gov/ScheduleEIC* for the latest information.

OMB No. 1545-0074

2022

Attachment Sequence No. **43**

Name(s) shown on return | **Your social security number**

If you are separated from your spouse, filing a separate return, and meet the requirements to claim the EIC (see instructions), check here ☐

Before you begin:

- See the instructions for Form 1040, line 27, to make sure that **(a)** you can take the EIC, and **(b)** you have a qualifying child.
- Be sure the child's name on line 1 and social security number (SSN) on line 2 agree with the child's social security card. Otherwise, at the time we process your return, we may reduce your EIC. If the name or SSN on the child's social security card is not correct, call the Social Security Administration at 800-772-1213.
- If you have a child who meets the conditions to be your qualifying child for purposes of claiming the EIC, but that child doesn't have an SSN as defined in the instructions for Form 1040, line 27, see the instructions.

CAUTION

- *You can't claim the EIC for a child who didn't live with you for more than half of the year.*
- *If your child doesn't have an SSN as defined in the instructions for Form 1040, line 27, see the instructions.*
- *If you take the EIC even though you are not eligible, you may not be allowed to take the credit for up to 10 years. See the instructions for details.*
- *It will take us longer to process your return and issue your refund if you do not fill in all lines that apply for each qualifying child.*

Qualifying Child Information	Child 1	Child 2	Child 3
1 Child's name If you have more than three qualifying children, you have to list only three to get the maximum credit.	First name / Last name	First name / Last name	First name / Last name
2 Child's SSN The child must have an SSN as defined in the instructions for Form 1040, line 27, unless the child was born and died in 2022 or you are claiming the self-only EIC; see instructions. If your child was born and died in 2022 and did not have an SSN, enter "Died" on this line and attach a copy of the child's birth certificate, death certificate, or hospital medical records showing a live birth.			
3 Child's year of birth	Year ____ ____ ____ ____ *If born after 2003* ***and*** *the child is younger than you (or your spouse, if filing jointly), skip lines 4a and 4b; go to line 5.*	Year ____ ____ ____ ____ *If born after 2003* ***and*** *the child is younger than you (or your spouse, if filing jointly), skip lines 4a and 4b; go to line 5.*	Year ____ ____ ____ ____ *If born after 2003* ***and*** *the child is younger than you (or your spouse, if filing jointly), skip lines 4a and 4b; go to line 5.*
4a Was the child under age 24 at the end of 2022, a student, and younger than you (or your spouse, if filing jointly)?	☐ **Yes.** *Go to line 5.* ☐ **No.** *Go to line 4b.*	☐ **Yes.** *Go to line 5.* ☐ **No.** *Go to line 4b.*	☐ **Yes.** *Go to line 5.* ☐ **No.** *Go to line 4b.*
b Was the child permanently and totally disabled during any part of 2022?	☐ **Yes.** *Go to line 5.* ☐ **No.** The child is not a qualifying child.	☐ **Yes.** *Go to line 5.* ☐ **No.** The child is not a qualifying child.	☐ **Yes.** *Go to line 5.* ☐ **No.** The child is not a qualifying child.
5 Child's relationship to you (for example, son, daughter, grandchild, niece, nephew, eligible foster child, etc.)			
6 Number of months child lived with you in the United States during 2022 • If the child lived with you for more than half of 2022 but less than 7 months, enter "7." • If the child was born or died in 2022 and your home was the child's home for more than half the time he or she was alive during 2022, enter "12."	________ months *Do not enter more than 12 months.*	________ months *Do not enter more than 12 months.*	________ months *Do not enter more than 12 months.*

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 13339M **Schedule EIC (Form 1040) 2022**

Purpose of Schedule

After you have figured your earned income credit (EIC), use Schedule EIC to give the IRS information about your qualifying child(ren). See the instructions for Form 1040, line 27, for information on who may be a qualifying child.

To figure the amount of your credit or to have the IRS figure it for you, see the instructions for Form 1040, line 27.

Special rule for separated spouses. You can claim the EIC if you are married, not filing a joint return, had a qualifying child who lived with you for more than half of 2022, and either of the following applies.

- You lived apart from your spouse for the last 6 months of 2022.
- You are legally separated according to your state law under a written separation agreement or a decree of separate maintenance and you didn't live in the same household as your spouse at the end of 2022.

If you meet these requirements, check the box at the top of Schedule EIC.

Qualifying child doesn't have an SSN. If you have a child who meets the conditions to be your qualifying child for purposes of claiming the EIC, but that child doesn't have an SSN as defined in the instructions for Form 1040, line 27, and you are otherwise eligible, you can claim the self-only EIC. To claim the self-only EIC with a qualifying child, complete and attach Schedule EIC to your Form 1040 or 1040-SR. Complete line 1 and lines 2 through 6 for Child 1. If Child 1 has an ITIN, an ATIN, or an SSN that is not considered a valid SSN as defined in the instructions for Form 1040, line 27, enter it on line 2. Otherwise, leave line 2 blank.

Taking the EIC when not eligible. If you take the EIC even though you are not eligible and it is determined that your error is due to reckless or intentional disregard of the EIC rules, you will not be allowed to take the credit for 2 years even if you are otherwise eligible to do so. If you fraudulently take the EIC, you will not be allowed to take the credit for 10 years. You may also have to pay penalties.

Future developments. For the latest information about developments related to Schedule EIC (Form 1040) and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/ScheduleEIC*.

Qualifying Child

A qualifying child for the EIC is a child who is your...

Son, daughter, stepchild, eligible foster child, brother, sister, stepbrother, stepsister, half brother, or half sister, or a descendant of any of them (for example, your grandchild, niece, or nephew)

AND

was...

Under age 19 at the end of 2022 and younger than you (or your spouse, if filing jointly)
or
Under age 24 at the end of 2022, a student, and younger than you (or your spouse, if filing jointly)
or
Any age and permanently and totally disabled

AND

Who is not filing a joint return for 2022
or is filing a joint return for 2022 only to claim
a refund of withheld income tax or estimated tax paid

AND

Who lived with you in the United States for more than half of 2022.

CAUTION *You can't claim the EIC for a child who didn't live with you for more than half of the year, even if you paid most of the child's living expenses. The IRS may ask you for documents to show you lived with each qualifying child. Documents you might want to keep for this purpose include school and childcare records and other records that show your child's address.*

TIP *If the child didn't live with you for more than half of the year because of a temporary absence, birth, death, or kidnapping, see* Exception to time lived with you *in the instructions for Form 1040, line 27.*

CAUTION *If the child was married or meets the conditions to be a qualifying child of another person (other than your spouse, if filing a joint return), special rules apply. For details, see* Married child *or* Qualifying child of more than one person *in the instructions for Form 1040, line 27.*

SCHEDULE F (Form 1040)

Department of the Treasury Internal Revenue Service

Profit or Loss From Farming

Attach to Form 1040, Form 1040-SR, Form 1040-NR, Form 1041, or Form 1065.
Go to *www.irs.gov/ScheduleF* for instructions and the latest information.

OMB No. 1545-0074

2022

Attachment Sequence No. **14**

Name of proprietor | **Social security number (SSN)**

A Principal crop or activity | **B Enter code from Part IV** | **C** Accounting method: ☐ Cash ☐ Accrual | **D Employer ID number (EIN)** (see instr.)

E Did you "materially participate" in the operation of this business during 2022? If "No," see instructions for limit on passive losses ☐ Yes ☐ No

F Did you make any payments in 2022 that would require you to file Form(s) 1099? See instructions ☐ Yes ☐ No

G If "Yes," did you or will you file required Form(s) 1099? ☐ Yes ☐ No

Part I **Farm Income—Cash Method.** Complete Parts I and II. (Accrual method. Complete Parts II and III, and Part I, line 9.)

1a	Sales of purchased livestock and other resale items (see instructions)	1a			
b	Cost or other basis of purchased livestock or other items reported on line 1a	1b			
c	Subtract line 1b from line 1a			1c	
2	Sales of livestock, produce, grains, and other products you raised			2	
3a	Cooperative distributions (Form(s) 1099-PATR)	3a	3b Taxable amount	3b	
4a	Agricultural program payments (see instructions)	4a	4b Taxable amount	4b	
5a	Commodity Credit Corporation (CCC) loans reported under election			5a	
b	CCC loans forfeited	5b	5c Taxable amount	5c	
6	Crop insurance proceeds and federal crop disaster payments (see instructions):				
a	Amount received in 2022	6a	6b Taxable amount	6b	
c	If election to defer to 2023 is attached, check here ☐		6d Amount deferred from 2021	6d	
7	Custom hire (machine work) income			7	
8	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)			8	
9	**Gross income.** Add amounts in the right column (lines 1c, 2, 3b, 4b, 5a, 5c, 6b, 6d, 7, and 8). If you use the accrual method, enter the amount from Part III, line 50. See instructions			9	

Part II **Farm Expenses—Cash and Accrual Method.** Do not include personal or living expenses. See instructions.

10	Car and truck expenses (see instructions). Also attach **Form 4562**	10		23	Pension and profit-sharing plans	23	
				24	Rent or lease (see instructions):		
11	Chemicals	11		a	Vehicles, machinery, equipment	24a	
12	Conservation expenses (see instructions)	12		b	Other (land, animals, etc.)	24b	
13	Custom hire (machine work)	13		25	Repairs and maintenance	25	
14	Depreciation and section 179 expense (see instructions)	14		26	Seeds and plants	26	
				27	Storage and warehousing	27	
15	Employee benefit programs other than on line 23	15		28	Supplies	28	
				29	Taxes	29	
16	Feed	16		30	Utilities	30	
17	Fertilizers and lime	17		31	Veterinary, breeding, and medicine	31	
18	Freight and trucking	18		32	Other expenses (specify):		
19	Gasoline, fuel, and oil	19		a		32a	
20	Insurance (other than health)	20		b		32b	
21	Interest (see instructions):			c		32c	
a	Mortgage (paid to banks, etc.)	21a		d		32d	
b	Other	21b		e		32e	
22	Labor hired (less employment credits)	22		f		32f	

33	**Total expenses.** Add lines 10 through 32f. If line 32f is negative, see instructions	33	
34	**Net farm profit or (loss).** Subtract line 33 from line 9	34	

If a profit, stop here and see instructions for where to report. If a loss, complete line 36.

35 Reserved for future use.

36 Check the box that describes your investment in this activity and see instructions for where to report your loss:

a ☐ All investment is at risk. b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 11346H **Schedule F (Form 1040) 2022**

Schedule F (Form 1040) 2022 Page **2**

Part III **Farm Income—Accrual Method** (see instructions)

37	Sales of livestock, produce, grains, and other products (see instructions)	37	
38a	Cooperative distributions (Form(s) 1099-PATR) 38a ___ 38b Taxable amount	38b	
39a	Agricultural program payments 39a ___ 39b Taxable amount	39b	
40	Commodity Credit Corporation (CCC) loans:		
a	CCC loans reported under election	40a	
b	CCC loans forfeited 40b ___ 40c Taxable amount	40c	
41	Crop insurance proceeds	41	
42	Custom hire (machine work) income	42	
43	Other income (see instructions)	43	
44	Add amounts in the right column for lines 37 through 43 (lines 37, 38b, 39b, 40a, 40c, 41, 42, and 43)	44	
45	Inventory of livestock, produce, grains, and other products at beginning of the year. Do not include sales reported on Form 4797 — 45		
46	Cost of livestock, produce, grains, and other products purchased during the year — 46		
47	Add lines 45 and 46 — 47		
48	Inventory of livestock, produce, grains, and other products at end of year — 48		
49	Cost of livestock, produce, grains, and other products sold. Subtract line 48 from line 47*	49	
50	**Gross income.** Subtract line 49 from line 44. Enter the result here and on Part I, line 9	50	

* If you use the unit-livestock-price method or the farm-price method of valuing inventory and the amount on line 48 is larger than the amount on line 47, subtract line 47 from line 48. Enter the result on line 49. Add lines 44 and 49. Enter the total on line 50 and on Part I, line 9.

Part IV **Principal Agricultural Activity Codes**

CAUTION *Do not file Schedule F (Form 1040) to report the following.*

- *Income from providing agricultural services such as soil preparation, veterinary, farm labor, horticultural services if your principal source of income is from providing such services. Instead, see instructions for Schedule C (Form 1040).*
- *Income from breeding, raising, or caring for dogs, cats, or other pet animals. Instead, see instructions for Schedule C (Form 1040).*
- *Income from managing a farm for a fee or on a contract basis. Instead, see instructions for Schedule C (Form 1040).*
- *Sales of livestock held for draft, breeding, sport, or dairy purposes. Instead, see instructions for Form 4797.*

These codes for the Principal Agricultural Activity classify farms by their primary activity to facilitate the administration of the Internal Revenue Code. These six-digit codes are based on the North American Industry Classification System (NAICS).

Select the code that best identifies your primary farming activity and enter the six-digit number on line B.

Crop Production

111100 Oilseed and grain farming
111210 Vegetable and melon farming
111300 Fruit and tree nut farming
111400 Greenhouse, nursery, and floriculture production
111900 Other crop farming

Animal Production

112111 Beef cattle ranching and farming
112112 Cattle feedlots
112120 Dairy cattle and milk production
112210 Hog and pig farming
112300 Poultry and egg production
112400 Sheep and goat farming
112510 Aquaculture
112900 Other animal production

Forestry and Logging

113000 Forestry and logging (including forest nurseries and timber tracts)
113110 Timber tract operations
113210 Forest nurseries and gathering of forest products
113310 Logging

Schedule F (Form 1040) 2022

SCHEDULE H (Form 1040)

Department of the Treasury
Internal Revenue Service

Household Employment Taxes

(For Social Security, Medicare, Withheld Income, and Federal Unemployment (FUTA) Taxes)

Attach to Form 1040, 1040-SR, 1040-NR, 1040-SS, or 1041.

Go to *www.irs.gov/ScheduleH* for instructions and the latest information.

OMB No. 1545-0074

2022

Attachment Sequence No. **44**

Name of employer

Social security number

Employer identification number

Calendar year taxpayers having no household employees in 2022 don't have to complete this form for 2022.

A Did you pay **any one** household employee cash wages of $2,400 or more in 2022? (If any household employee was your spouse, your child under age 21, your parent, or anyone under age 18, see the line A instructions before you answer this question.)

☐ **Yes.** Skip lines B and C and go to line 1a.

☐ **No.** Go to line B.

B Did you withhold federal income tax during 2022 for any household employee?

☐ **Yes.** Skip line C and go to line 7.

☐ **No.** Go to line C.

C Did you pay **total** cash wages of $1,000 or more in **any** calendar **quarter** of 2021 or 2022 to **all** household employees? (**Don't** count cash wages paid in 2021 or 2022 to your spouse, your child under age 21, or your parent.)

☐ **No. Stop.** Don't file this schedule.

☐ **Yes.** Skip lines 1a–9 and go to line 10.

Part I Social Security, Medicare, and Federal Income Taxes

1a	Total cash wages subject to social security tax	1a	
b	Qualified sick and family leave wages paid in 2022 for leave taken after March 31, 2020, and before April 1, 2021, included on line 1a	1b	
2a	Social security tax. Multiply line 1a by 12.4% (0.124)	2a	
b	Employer share of social security tax on qualified sick and family leave wages paid in 2022 for leave taken after March 31, 2020, and before April 1, 2021. Multiply line 1b by 6.2% (0.062)	2b	
c	Total social security tax. Subtract line 2b from line 2a	2c	
3	Total cash wages subject to Medicare tax	3	
4	Medicare tax. Multiply line 3 by 2.9% (0.029)	4	
5	Total cash wages subject to Additional Medicare Tax withholding	5	
6	Additional Medicare Tax withholding. Multiply line 5 by 0.9% (0.009)	6	
7	Federal income tax withheld, if any	7	
8a	Total social security, Medicare, and federal income taxes. Add lines 2c, 4, 6, and 7	8a	
b	Nonrefundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021	8b	
c	Nonrefundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021, and before October 1, 2021	8c	
d	Total social security, Medicare, and federal income taxes after nonrefundable credits. Add lines 8b and 8c and then subtract that total from line 8a	8d	
e	Refundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021	8e	
f	Refundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021, and before October 1, 2021	8f	
g	Qualified sick leave wages for leave taken before April 1, 2021	8g	
h	Qualified health plan expenses allocable to qualified sick leave wages reported on line 8g	8h	
i	Qualified family leave wages for leave taken before April 1, 2021	8i	
j	Qualified health plan expenses allocable to qualified family leave wages reported on line 8i	8j	
k	Qualified sick leave wages for leave taken after March 31, 2021, and before October 1, 2021	8k	
l	Qualified health plan expenses allocable to qualified sick leave wages reported on line 8k	8l	
m	Qualified family leave wages for leave taken after March 31, 2021, and before October 1, 2021	8m	
n	Qualified health plan expenses allocable to qualified family leave wages reported on line 8m	8n	

9 Did you pay **total** cash wages of $1,000 or more in **any** calendar **quarter** of 2021 or 2022 to **all** household employees? (**Don't** count cash wages paid in 2021 or 2022 to your spouse, your child under age 21, or your parent.)

☐ **No. Stop.** Include the amount from line 8d above on Schedule 2 (Form 1040), line 9. Include the amounts, if any, from line 8e on Schedule 3 (Form 1040), line 13b, and line 8f on Schedule 3 (Form 1040), line 13h. If you're not required to file Form 1040, see the line 9 instructions.

☐ **Yes.** Go to line 10.

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 12187K **Schedule H (Form 1040) 2022**

Schedule H (Form 1040) 2022 Page **2**

Part II Federal Unemployment (FUTA) Tax

			Yes	No
10	Did you pay unemployment contributions to only one state? If you paid contributions to a credit reduction state, see instructions and check "**No**"	10		
11	Did you pay all state unemployment contributions for 2022 by April 18, 2023? Fiscal year filers, see instructions	11		
12	Were all wages that are taxable for FUTA tax also taxable for your state's unemployment tax?	12		

Next: If you checked the "**Yes**" box on **all** the lines above, complete Section A.
If you checked the "**No**" box on **any** of the lines above, skip Section A and complete Section B.

Section A

13 Name of the state where you paid unemployment contributions ____________

14 Contributions paid to your state unemployment fund . . . 14

15 Total cash wages subject to FUTA tax . . . 15

16 **FUTA tax.** Multiply line 15 by 0.6% (0.006). Enter the result here, skip Section B, and go to line 25 . 16

Section B

17 Complete all columns below that apply (if you need more space, see instructions):

(a) Name of state	(b) Taxable wages (as defined in state act)	(c) State experience rate period From	To	(d) State experience rate	(e) Multiply col. (b) by 0.054	(f) Multiply col. (b) by col. (d)	(g) Subtract col. (f) from col. (e). If zero or less, enter -0-.	(h) Contributions paid to state unemployment fund

18 Totals . . . 18

19 Add columns (g) and (h) of line 18 . . . 19

20 Total cash wages subject to FUTA tax (see the line 15 instructions) . . . 20

21 Multiply line 20 by 6.0% (0.06) . . . 21

22 Multiply line 20 by 5.4% (0.054) . . . 22

23 Enter the **smaller** of line 19 or line 22.
(If you paid state unemployment contributions late or you're in a credit reduction state, see instructions and check here) . . . ☐ 23

24 **FUTA tax.** Subtract line 23 from line 21. Enter the result here and go to line 25 . . . 24

Part III Total Household Employment Taxes

25 Enter the amount from line 8d. If you checked the "**Yes**" box on line C of page 1, enter -0- . . . 25

26 Add line 16 (or line 24) and line 25 . . . 26

27 Are you required to file Form 1040?

☐ **Yes. Stop.** Include the amount from line 26 above on Schedule 2 (Form 1040), line 9. Include the amounts, if any, from line 8e on Schedule 3 (Form 1040), line 13b, and line 8f on Schedule 3 (Form 1040), line 13h. **Don't** complete Part IV below.

☐ **No.** You may have to complete Part IV. See instructions for details.

Part IV Address and Signature — Complete this part **only** if required. See the line 27 instructions.

Address (number and street) or P.O. box if mail isn't delivered to street address | Apt., room, or suite no.

City, town or post office, state, and ZIP code

Under penalties of perjury, I declare that I have examined this schedule, including accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete. No part of any payment made to a state unemployment fund claimed as a credit was, or is to be, deducted from the payments to employees. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Employer's signature | Date

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
	Firm's name			Firm's EIN	
	Firm's address			Phone no.	

Schedule H (Form 1040) 2022

661117

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0092

Schedule K-1 (Form 1041) **2022**

Department of the Treasury
Internal Revenue Service

For calendar year 2022, or tax year

beginning / / 2022 ending / /

Beneficiary's Share of Income, Deductions, Credits, etc.

See back of form and instructions.

Part I Information About the Estate or Trust

A Estate's or trust's employer identification number

B Estate's or trust's name

C Fiduciary's name, address, city, state, and ZIP code

D ☐ Check if Form 1041-T was filed and enter the date it was filed

E ☐ Check if this is the final Form 1041 for the estate or trust

Part II Information About the Beneficiary

F Beneficiary's identifying number

G Beneficiary's name, address, city, state, and ZIP code

H ☐ Domestic beneficiary ☐ Foreign beneficiary

Part III Beneficiary's Share of Current Year Income, Deductions, Credits, and Other Items

1	Interest income	**11**	Final year deductions
2a	Ordinary dividends		
2b	Qualified dividends		
3	Net short-term capital gain		
4a	Net long-term capital gain		
4b	28% rate gain	**12**	Alternative minimum tax adjustment
4c	Unrecaptured section 1250 gain		
5	Other portfolio and nonbusiness income		
6	Ordinary business income		
7	Net rental real estate income		
		13	Credits and credit recapture
8	Other rental income		
9	Directly apportioned deductions		
		14	Other information
10	Estate tax deduction		

*See attached statement for additional information.

Note: A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

For IRS Use Only

For Paperwork Reduction Act Notice, see the Instructions for Form 1041. *www.irs.gov/Form1041* Cat. No. 11380D **Schedule K-1 (Form 1041) 2022**

Schedule K-1 (Form 1041) 2022 Page **2**

This list identifies the codes used on Schedule K-1 for beneficiaries and provides summarized reporting information for beneficiaries who file Form 1040 or 1040-SR. For detailed reporting and filing information, see the Instructions for Schedule K-1 (Form 1041) for a Beneficiary Filing Form 1040 or 1040-SR and the instructions for your income tax return.

	Report on
1. Interest income	Form 1040 or 1040-SR, line 2b
2a. Ordinary dividends	Form 1040 or 1040-SR, line 3b
2b. Qualified dividends	Form 1040 or 1040-SR, line 3a
3. Net short-term capital gain	Schedule D, line 5
4a. Net long-term capital gain	Schedule D, line 12
4b. 28% rate gain	28% Rate Gain Worksheet, line 4 (Schedule D Instructions)
4c. Unrecaptured section 1250 gain	Unrecaptured Section 1250 Gain Worksheet, line 11 (Schedule D Instructions)
5. Other portfolio and nonbusiness income	Schedule E, line 33, column (f)
6. Ordinary business income	Schedule E, line 33, column (d) or (f)
7. Net rental real estate income	Schedule E, line 33, column (d) or (f)
8. Other rental income	Schedule E, line 33, column (d) or (f)
9. Directly apportioned deductions	
Code	
A Depreciation	Form 8582 or Schedule E, line 33, column (c) or (e)
B Depletion	Form 8582 or Schedule E, line 33, column (c) or (e)
C Amortization	Form 8582 or Schedule E, line 33, column (c) or (e)
10. Estate tax deduction	Schedule A, line 16
11. Final year deductions	
A Excess deductions – Section 67(e) expenses	Schedule 1 (Form 1040), line 24k (also see the beneficiary's instructions)
B Excess deductions - Non-miscellaneous itemized deductions	See the beneficiary's instructions
C Short-term capital loss carryover	Schedule D, line 5
D Long-term capital loss carryover	Schedule D, line 12; line 5 of the wksht. for Sch. D, line 18; and line 16 of the wksht. for Sch. D, line 19
E Net operating loss carryover – regular tax	Schedule 1 (Form 1040), line 8a
F Net operating loss carryover – minimum tax	Form 6251, line 2f
12. Alternative minimum tax (AMT) items	
A Adjustment for minimum tax purposes	Form 6251, line 2j
B AMT adjustment attributable to qualified dividends	See the beneficiary's instructions and the Instructions for Form 6251
C AMT adjustment attributable to net short-term capital gain	See the beneficiary's instructions and the Instructions for Form 6251
D AMT adjustment attributable to net long-term capital gain	See the beneficiary's instructions and the Instructions for Form 6251
E AMT adjustment attributable to unrecaptured section 1250 gain	See the beneficiary's instructions and the Instructions for Form 6251
F AMT adjustment attributable to 28% rate gain	See the beneficiary's instructions and the Instructions for Form 6251
G Accelerated depreciation	See the beneficiary's instructions and the Instructions for Form 6251
H Depletion	See the beneficiary's instructions and the Instructions for Form 6251
I Amortization	See the beneficiary's instructions and the Instructions for Form 6251
J Exclusion items	2023 Form 8801

13. Credits and credit recapture	
Code	*Report on*
A Credit for estimated taxes	Form 1040 or 1040-SR, line 26
B Credit for backup withholding	Form 1040 or 1040-SR, line 25c
C Low-income housing credit	See the beneficiary's instructions
D Rehabilitation credit and energy credit	See the beneficiary's instructions
E Other qualifying investment credit	See the beneficiary's instructions
F Work opportunity credit	See the beneficiary's instructions
G Credit for small employer health insurance premiums	See the beneficiary's instructions
H Biofuel producer credit	See the beneficiary's instructions
I Credit for increasing research activities	See the beneficiary's instructions
J Renewable electricity, refined coal, and Indian coal production credit	See the beneficiary's instructions
K Empowerment zone employment credit	See the beneficiary's instructions
L Indian employment credit	See the beneficiary's instructions
M Orphan drug credit	See the beneficiary's instructions
N Credit for employer-provided child care and facilities	See the beneficiary's instructions
O Biodiesel and renewable diesel fuels credit	See the beneficiary's instructions
P Credit to holders of tax credit bonds	See the beneficiary's instructions
Q Credit for employer differential wage payments	See the beneficiary's instructions
R Recapture of credits	See the beneficiary's instructions
Z Other credits	See the beneficiary's instructions
14. Other information	
A Tax-exempt interest	Form 1040 or 1040-SR, line 2a
B Foreign taxes	Schedule 3 (Form 1040), line 1 or Schedule A, line 6
C Reserved for future use	
D Reserved for future use	
E Net investment income	Form 4952, line 4a
F Gross farm and fishing income	Schedule E, line 42
G Foreign trading gross receipts (IRC 942(a))	See the Instructions for Form 8873
H Adjustment for section 1411 net investment income or deductions	Form 8960, line 7 (also see the beneficiary's instructions)
I Section 199A information	See the beneficiary's instructions
Z Other information	See the beneficiary's instructions

Note: If you are a beneficiary who does not file a Form 1040 or 1040-SR, see instructions for the type of income tax return you are filing.

651121

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0123

Schedule K-1 (Form 1065) **2022**

Department of the Treasury
Internal Revenue Service

For calendar year 2022, or tax year

beginning / / 2022 ending / /

Partner's Share of Income, Deductions, Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

C IRS center where partnership filed return:

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's SSN or TIN (Do not use TIN of a disregarded entity. See instructions.)

F Name, address, city, state, and ZIP code for partner entered in E. See instructions.

G ☐ General partner or LLC member-manager ☐ Limited partner or other LLC member

H1 ☐ Domestic partner ☐ Foreign partner

H2 ☐ If the partner is a disregarded entity (DE), enter the partner's:

TIN ______ Name ______

I1 What type of entity is this partner? ______

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here . ☐

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	%	%
Loss	%	%
Capital	%	%

Check if decrease is due to sale or exchange of partnership interest . . ☐

K Partner's share of liabilities:

	Beginning	Ending
Nonrecourse . . .	$	$
Qualified nonrecourse financing . . .	$	$
Recourse . . .	$	$

Check this box if item K includes liability amounts from lower-tier partnerships ☐

L **Partner's Capital Account Analysis**

Beginning capital account . . .	$
Capital contributed during the year . .	$
Current year net income (loss) . . .	$
Other increase (decrease) (attach explanation)	$
Withdrawals and distributions . . .	$ ( )
Ending capital account	$

M Did the partner contribute property with a built-in gain (loss)?

☐ **Yes** ☐ **No** If "Yes," attach statement. See instructions.

N **Partner's Share of Net Unrecognized Section 704(c) Gain or (Loss)**

Beginning	$
Ending	$

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	**14**	Self-employment earnings (loss)
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	**15**	Credits
4a	Guaranteed payments for services		
4b	Guaranteed payments for capital	**16**	Schedule K-3 is attached if checked . . . . . ☐
4c	Total guaranteed payments	**17**	Alternative minimum tax (AMT) items
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends	**18**	Tax-exempt income and nondeductible expenses
6c	Dividend equivalents		
7	Royalties		
8	Net short-term capital gain (loss)	**19**	Distributions
9a	Net long-term capital gain (loss)		
9b	Collectibles (28%) gain (loss)	**20**	Other information
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)		
11	Other income (loss)		
12	Section 179 deduction	**21**	Foreign taxes paid or accrued
13	Other deductions		

22 ☐ More than one activity for at-risk purposes*

23 ☐ More than one activity for passive activity purposes*

*See attached statement for additional information.

For IRS Use Only

For Paperwork Reduction Act Notice, see the Instructions for Form 1065. www.irs.gov/Form1065 Cat. No. 11394R **Schedule K-1 (Form 1065) 2022**

671121

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0123

Schedule K-1 (Form 1120-S) **2022**

Department of the Treasury
Internal Revenue Service

For calendar year 2022, or tax year

beginning / / 2022 ending / /

Shareholder's Share of Income, Deductions, Credits, etc.

See separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number

B Corporation's name, address, city, state, and ZIP code

C IRS Center where corporation filed return

D Corporation's total number of shares
Beginning of tax year . . . . . .
End of tax year . . . .

Part II Information About the Shareholder

E Shareholder's identifying number

F Shareholder's name, address, city, state, and ZIP code

G Current year allocation percentage . . . %

H Shareholder's number of shares
Beginning of tax year . . . . . .
End of tax year . . . .

I Loans from shareholder
Beginning of tax year . . . . . . $
End of tax year . . . . $

For IRS Use Only

Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	13	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
5a	Ordinary dividends		
5b	Qualified dividends	14	Schedule K-3 is attached if checked . . . . . ☐
6	Royalties	15	Alternative minimum tax (AMT) items
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)	16	Items affecting shareholder basis
10	Other income (loss)		
		17	Other information
11	Section 179 deduction		
12	Other deductions		

18 ☐ More than one activity for at-risk purposes*
19 ☐ More than one activity for passive activity purposes*

* See attached statement for additional information.

For Paperwork Reduction Act Notice, see the Instructions for Form 1120-S. www.irs.gov/Form1120S Cat. No. 11520D **Schedule K-1 (Form 1120-S) 2022**

SCHEDULE SE (Form 1040)

Department of the Treasury
Internal Revenue Service

Self-Employment Tax

Go to *www.irs.gov/ScheduleSE* for instructions and the latest information.

Attach to Form 1040, 1040-SR, or 1040-NR.

OMB No. 1545-0074

2022

Attachment Sequence No. **17**

Name of person with self-employment income (as shown on Form 1040, 1040-SR, or 1040-NR) | Social security number of person with **self-employment** income

Part I Self-Employment Tax

Note: If your only income subject to self-employment tax is **church employee income**, see instructions for how to report your income and the definition of church employee income.

A If you are a minister, member of a religious order, or Christian Science practitioner **and** you filed Form 4361, but you had $400 or more of **other** net earnings from self-employment, check here and continue with Part I . . . . ☐

Skip lines 1a and 1b if you use the farm optional method in Part II. See instructions.

1a	Net farm profit or (loss) from Schedule F, line 34, and farm partnerships, Schedule K-1 (Form 1065), box 14, code A			1a	
b	If you received social security retirement or disability benefits, enter the amount of Conservation Reserve Program payments included on Schedule F, line 4b, or listed on Schedule K-1 (Form 1065), box 20, code AH			1b	( )

Skip line 2 if you use the nonfarm optional method in Part II. See instructions.

2	Net profit or (loss) from Schedule C, line 31; and Schedule K-1 (Form 1065), box 14, code A (other than farming). See instructions for other income to report or if you are a minister or member of a religious order			2	
3	Combine lines 1a, 1b, and 2			3	
4a	If line 3 is more than zero, multiply line 3 by 92.35% (0.9235). Otherwise, enter amount from line 3 **Note:** If line 4a is less than $400 due to Conservation Reserve Program payments on line 1b, see instructions.			4a	
b	If you elect one or both of the optional methods, enter the total of lines 15 and 17 here			4b	
c	Combine lines 4a and 4b. If less than $400, **stop**; you don't owe self-employment tax. **Exception:** If less than $400 and you had **church employee income**, enter -0- and continue			4c	
5a	Enter your **church employee income** from Form W-2. See instructions for definition of church employee income	5a			
b	Multiply line 5a by 92.35% (0.9235). If less than $100, enter -0-			5b	
6	Add lines 4c and 5b			6	
7	Maximum amount of combined wages and self-employment earnings subject to social security tax or the 6.2% portion of the 7.65% railroad retirement (tier 1) tax for 2022			7	147,000
8a	Total social security wages and tips (total of boxes 3 and 7 on Form(s) W-2) and railroad retirement (tier 1) compensation. If $147,000 or more, skip lines 8b through 10, and go to line 11	8a			
b	Unreported tips subject to social security tax from Form 4137, line 10	8b			
c	Wages subject to social security tax from Form 8919, line 10	8c			
d	Add lines 8a, 8b, and 8c			8d	
9	Subtract line 8d from line 7. If zero or less, enter -0- here and on line 10 and go to line 11			9	
10	Multiply the **smaller** of line 6 or line 9 by 12.4% (0.124)			10	
11	Multiply line 6 by 2.9% (0.029)			11	
12	**Self-employment tax.** Add lines 10 and 11. Enter here and on **Schedule 2 (Form 1040), line 4**			12	
13	**Deduction for one-half of self-employment tax.** Multiply line 12 by 50% (0.50). Enter here and on **Schedule 1 (Form 1040), line 15**	13			

Part II Optional Methods To Figure Net Earnings (see instructions)

Farm Optional Method. You may use this method **only** if **(a)** your gross farm income[1] wasn't more than $9,060, **or (b)** your net farm profits[2] were less than $6,540.

14	Maximum income for optional methods	14	6,040
15	Enter the **smaller** of: two-thirds (2/3) of gross farm income[1] (not less than zero) **or** $6,040. Also, include this amount on line 4b above	15	

Nonfarm Optional Method. You may use this method **only** if **(a)** your net nonfarm profits[3] were less than $6,540 and also less than 72.189% of your gross nonfarm income,[4] **and (b)** you had net earnings from self-employment of at least $400 in 2 of the prior 3 years. **Caution:** You may use this method no more than five times.

16	Subtract line 15 from line 14	16	
17	Enter the **smaller** of: two-thirds (2/3) of gross nonfarm income[4] (not less than zero) **or** the amount on line 16. Also, include this amount on line 4b above	17	

[1] From Sch. F, line 9; and Sch. K-1 (Form 1065), box 14, code B.
[2] From Sch. F, line 34; and Sch. K-1 (Form 1065), box 14, code A—minus the amount you would have entered on line 1b had you not used the optional method.
[3] From Sch. C, line 31; and Sch. K-1 (Form 1065), box 14, code A.
[4] From Sch. C, line 7; and Sch. K-1 (Form 1065), box 14, code C.

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 11358Z **Schedule SE (Form 1040) 2022**

Form **461**

Department of the Treasury
Internal Revenue Service

Limitation on Business Losses

Attach to your tax return.

Go to *www.irs.gov/Form461* for instructions and the latest information.

OMB No. 1545-2283

2022

Attachment Sequence No. **64**

Name(s) shown on return | **Identifying number**

Part I **Total Income/Loss Items**
See instructions if you are filing a tax return other than Form 1040 or 1040-SR.

1	Reserved for future use	**1**	
2	Enter amount from Schedule 1 (Form 1040), line 3	**2**	
3	Enter amount from Form 1040 or 1040-SR, line 7	**3**	
4	Enter amount from Schedule 1 (Form 1040), line 4	**4**	
5	Enter amount from Schedule 1 (Form 1040), line 5	**5**	
6	Enter amount from Schedule 1 (Form 1040), line 6	**6**	
7	Reserved for future use	**7**	
8	Enter other income, gain, or losses from a trade or business not reported on lines 1 through 7	**8**	
9	Combine lines 1 through 8	**9**	

Part II **Adjustment for Amounts Not Attributable to Trade or Business**
See instructions if you are filing a tax return other than Form 1040 or 1040-SR.

10	Enter any income or gain reported on lines 1 through 8 that is not attributable to a trade or business	**10**	
11	Enter any losses or deductions reported on lines 1 through 8 that are not attributable to a trade or business. See instructions	**11**	
12	Subtract line 11 from line 10	**12**	

Part III **Limitation on Losses**

13	If line 12 is a negative number, enter it here as a positive number. If line 12 is a positive number, enter it here as a negative number	**13**	
14	Add lines 9 and 13	**14**	
15	Enter $270,000 (or $540,000 if married filing jointly)	**15**	
16	Add lines 14 and 15. If less than zero, enter the amount from line 16 as a positive number on Schedule 1 (Form 1040), line 8p. See instructions if you are filing a tax return other than a Form 1040 or 1040-SR. If zero or greater, do not attach this form to your tax return	**16**	

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 16654I Form **461** (2022)

Form **5695**

Department of the Treasury
Internal Revenue Service

Residential Energy Credits

Go to *www.irs.gov/Form5695* for instructions and the latest information.
Attach to Form 1040, 1040-SR, or 1040-NR.

OMB No. 1545-0074

2022

Attachment Sequence No. **158**

Name(s) shown on return | **Your social security number**

Part I **Residential Clean Energy Credit** (See instructions before completing this part.)

Note: Skip lines 1 through 11 if you only have a **credit carryforward from 2021**.

1	Qualified solar electric property costs	1	
2	Qualified solar water heating property costs	2	
3	Qualified small wind energy property costs	3	
4	Qualified geothermal heat pump property costs	4	
5	Qualified biomass fuel property costs	5	
6a	Add lines 1 through 5	6a	
b	Multiply line 6a by 30% (0.30)	6b	
7a	Qualified fuel cell property. Was qualified fuel cell property installed on, or in connection with, your main home located in the United States? (See instructions.)	7a	☐ Yes ☐ No

Caution: If you checked the “No” box, you cannot take a credit for qualified fuel cell property. Skip lines 7b through 11.

b Print the complete address of the main home where you installed the fuel cell property.

Number and street | Unit No.

City, State, and ZIP code

8	Qualified fuel cell property costs	8	
9	Multiply line 8 by 30% (0.30)	9	
10	Kilowatt capacity of property on line 8 above . x $1,000	10	
11	Enter the smaller of line 9 or line 10	11	
12	Credit carryforward from 2021. Enter the amount, if any, from your 2021 Form 5695, line 16	12	
13	Add lines 6b, 11, and 12	13	
14	Limitation based on tax liability. Enter the amount from the Residential Clean Energy Credit Limit Worksheet (see instructions)	14	
15	**Residential clean energy credit.** Enter the smaller of line 13 or line 14. Also include this amount on Schedule 3 (Form 1040), line 5	15	
16	Credit carryforward to 2023. If line 15 is less than line 13, subtract line 15 from line 13	16	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 13540P Form **5695** (2022)

Part II **Energy Efficient Home Improvement Credit**

17a	Were the qualified energy efficiency improvements or residential energy property costs for your main home located in the United States? (see instructions)	**17a**	☐ Yes ☐ No
	Caution: If you checked the "No" box, you cannot claim the energy efficient home improvement credit. Do not complete Part II.		
b	Print the complete address of the main home where you made the qualifying improvements. **Caution:** You can only have one main home at a time.		
	Number and street / Unit No.		
	City, State, and ZIP code		
c	Were any of these improvements related to the construction of this main home?	**17c**	☐ Yes ☐ No
	Caution: If you checked the "Yes" box, you can only claim the energy efficient home improvement credit for qualifying improvements that were not related to the construction of the home. Do not include expenses related to the construction of your main home, even if the improvements were made after you moved into the home.		
18	Lifetime limitation. Enter the amount from the Lifetime Limitation Worksheet (see instructions)	**18**	
19	Qualified energy efficiency improvements (original use must begin with you and the component must reasonably be expected to last for at least 5 years; do not include labor costs) (see instructions).		
a	Insulation material or system specifically and primarily designed to reduce heat loss or gain of your home that meets the prescriptive criteria established by the 2009 IECC	**19a**	
b	Exterior doors that meet or exceed the version 6.0 Energy Star program requirements	**19b**	
c	Metal or asphalt roof that meets or exceeds the Energy Star program requirements and has appropriate pigmented coatings or cooling granules which are specifically and primarily designed to reduce the heat gain of your home	**19c**	
d	Exterior windows and skylights that meet or exceed the version 6.0 Energy Star program requirements — **19d**		
e	Maximum amount of cost on which the credit can be figured — **19e** $2,000		
f	If you claimed window expenses on your Form 5695 prior to 2022, enter the amount from the Window Expense Worksheet (see instructions); otherwise enter -0- — **19f**		
g	Subtract line 19f from line 19e. If zero or less, enter -0- — **19g**		
h	Enter the smaller of line 19d or line 19g	**19h**	
20	Add lines 19a, 19b, 19c, and 19h	**20**	
21	Multiply line 20 by 10% (0.10)	**21**	
22	Residential energy property costs (must be placed in service by you; include labor costs for onsite preparation, assembly, and original installation) (see instructions).		
a	Energy-efficient building property. Do not enter more than **$300**	**22a**	
b	Qualified natural gas, propane, or oil furnace or hot water boiler. Do not enter more than **$150**	**22b**	
c	Advanced main air circulating fan used in a natural gas, propane, or oil furnace. Do not enter more than **$50**	**22c**	
23	Add lines 22a through 22c	**23**	
24	Add lines 21 and 23	**24**	
25	Maximum credit amount. (If you jointly occupied the home, see instructions)	**25**	$500
26	Enter the amount, if any, from line 18	**26**	
27	Subtract line 26 from line 25. If zero or less, **stop;** you cannot take the energy efficient home improvement credit	**27**	
28	Enter the smaller of line 24 or line 27	**28**	
29	Limitation based on tax liability. Enter the amount from the Energy Efficient Home Improvement Credit Limit Worksheet (see instructions)	**29**	
30	**Energy efficient home improvement credit.** Enter the smaller of line 28 or line 29. Also include this amount on Schedule 3 (Form 1040), line 5	**30**	

Form **6251**

Department of the Treasury
Internal Revenue Service

Alternative Minimum Tax—Individuals

Go to *www.irs.gov/Form6251* for instructions and the latest information.
Attach to Form 1040, 1040-SR, or 1040-NR.

OMB No. 1545-0074

2022

Attachment Sequence No. 32

Name(s) shown on Form 1040, 1040-SR, or 1040-NR | **Your social security number**

Part I Alternative Minimum Taxable Income (See instructions for how to complete each line.)

1	Enter the amount from Form 1040 or 1040-SR, line 15, if more than zero. If Form 1040 or 1040-SR, line 15, is zero, subtract line 14 of Form 1040 or 1040-SR from line 11 of Form 1040 or 1040-SR and enter the result here. (If less than zero, enter as a negative amount.)	1	
2a	If filing Schedule A (Form 1040), enter the taxes from Schedule A, line 7; otherwise, enter the amount from Form 1040 or 1040-SR, line 12	2a	
b	Tax refund from Schedule 1 (Form 1040), line 1 or line 8z	2b	( )
c	Investment interest expense (difference between regular tax and AMT)	2c	
d	Depletion (difference between regular tax and AMT)	2d	
e	Net operating loss deduction from Schedule 1 (Form 1040), line 8a. Enter as a positive amount	2e	
f	Alternative tax net operating loss deduction	2f	( )
g	Interest from specified private activity bonds exempt from the regular tax	2g	
h	Qualified small business stock, see instructions	2h	
i	Exercise of incentive stock options (excess of AMT income over regular tax income)	2i	
j	Estates and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	2j	
k	Disposition of property (difference between AMT and regular tax gain or loss)	2k	
l	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	2l	
m	Passive activities (difference between AMT and regular tax income or loss)	2m	
n	Loss limitations (difference between AMT and regular tax income or loss)	2n	
o	Circulation costs (difference between regular tax and AMT)	2o	
p	Long-term contracts (difference between AMT and regular tax income)	2p	
q	Mining costs (difference between regular tax and AMT)	2q	
r	Research and experimental costs (difference between regular tax and AMT)	2r	
s	Income from certain installment sales before January 1, 1987	2s	( )
t	Intangible drilling costs preference	2t	
3	Other adjustments, including income-based related adjustments	3	
4	**Alternative minimum taxable income.** Combine lines 1 through 3. (If married filing separately and line 4 is more than $776,100, see instructions.)	4	

Part II Alternative Minimum Tax (AMT)

5 Exemption.

IF your filing status is...	AND line 4 is not over...	THEN enter on line 5...
Single or head of household	$ 539,900	$ 75,900
Married filing jointly or qualifying widow(er)	1,079,800	118,100
Married filing separately	539,900	59,050

If line 4 is **over** the amount shown above for your filing status, see instructions. — 5

6	Subtract line 5 from line 4. If more than zero, go to line 7. If zero or less, enter -0- here and on lines 7, 9, and 11, and go to line 10	6	
7	• If you are filing Form 2555, see instructions for the amount to enter. • If you reported capital gain distributions directly on Form 1040 or 1040-SR, line 7; you reported qualified dividends on Form 1040 or 1040-SR, line 3a; **or** you had a gain on both lines 15 and 16 of Schedule D (Form 1040) (as refigured for the AMT, if necessary), complete Part III on the back and enter the amount from line 40 here. • **All others:** If line 6 is $206,100 or less ($103,050 or less if married filing separately), multiply line 6 by 26% (0.26). Otherwise, multiply line 6 by 28% (0.28) and subtract $4,122 ($2,061 if married filing separately) from the result.	7	
8	Alternative minimum tax foreign tax credit (see instructions)	8	
9	Tentative minimum tax. Subtract line 8 from line 7	9	
10	Add Form 1040 or 1040-SR, line 16 (minus any tax from Form 4972), and Schedule 2 (Form 1040), line 2. Subtract from the result Schedule 3 (Form 1040), line 1 and any negative amount reported on Form 8978, line 14 (treated as a positive number). If zero or less, enter -0-. If you used Schedule J to figure your tax on Form 1040 or 1040-SR, line 16, refigure that tax without using Schedule J before completing this line. See instructions	10	
11	**AMT.** Subtract line 10 from line 9. If zero or less, enter -0-. Enter here and on Schedule 2 (Form 1040), line 1	11	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 13600G Form **6251** (2022)

Part III **Tax Computation Using Maximum Capital Gains Rates**

Complete Part III only if you are required to do so by line 7 or by the Foreign Earned Income Tax Worksheet in the instructions.

12	Enter the amount from Form 6251, line 6. If you are filing Form 2555, enter the amount from line 3 of the worksheet in the instructions for line 7	12	
13	Enter the amount from line 4 of the Qualified Dividends and Capital Gain Tax Worksheet in the Instructions for Form 1040 or the amount from line 13 of the Schedule D Tax Worksheet in the Instructions for Schedule D (Form 1040), whichever applies (as refigured for the AMT, if necessary). See instructions. If you are filing Form 2555, see instructions for the amount to enter	13	
14	Enter the amount from Schedule D (Form 1040), line 19 (as refigured for the AMT, if necessary). See instructions. If you are filing Form 2555, see instructions for the amount to enter	14	
15	If you did not complete a Schedule D Tax Worksheet for the regular tax or the AMT, enter the amount from line 13. Otherwise, add lines 13 and 14, and enter the **smaller** of that result or the amount from line 10 of the Schedule D Tax Worksheet (as refigured for the AMT, if necessary). If you are filing Form 2555, see instructions for the amount to enter	15	
16	Enter the **smaller** of line 12 or line 15	16	
17	Subtract line 16 from line 12	17	
18	If line 17 is $206,100 or less ($103,050 or less if married filing separately), multiply line 17 by 26% (0.26). Otherwise, multiply line 17 by 28% (0.28) and subtract $4,122 ($2,061 if married filing separately) from the result	18	
19	Enter: • $83,350 if married filing jointly or qualifying widow(er), • $41,675 if single or married filing separately, or • $55,800 if head of household.	19	
20	Enter the amount from line 5 of the Qualified Dividends and Capital Gain Tax Worksheet or the amount from line 14 of the Schedule D Tax Worksheet, whichever applies (as figured for the regular tax). If you did not complete either worksheet for the regular tax, enter the amount from Form 1040 or 1040-SR, line 15; if zero or less, enter -0-. If you are filing Form 2555, see instructions for the amount to enter	20	
21	Subtract line 20 from line 19. If zero or less, enter -0-	21	
22	Enter the **smaller** of line 12 or line 13	22	
23	Enter the **smaller** of line 21 or line 22. This amount is taxed at 0%	23	
24	Subtract line 23 from line 22	24	
25	Enter: • $459,750 if single, • $258,600 if married filing separately, • $517,200 if married filing jointly or qualifying widow(er), or • $488,500 if head of household.	25	
26	Enter the amount from line 21	26	
27	Enter the amount from line 5 of the Qualified Dividends and Capital Gain Tax Worksheet or the amount from line 21 of the Schedule D Tax Worksheet, whichever applies (as figured for the regular tax). If you did not complete either worksheet for the regular tax, enter the amount from Form 1040 or 1040-SR, line 15; if zero or less, enter -0-. If you are filing Form 2555, see instructions for the amount to enter	27	
28	Add line 26 and line 27	28	
29	Subtract line 28 from line 25. If zero or less, enter -0-	29	
30	Enter the smaller of line 24 or line 29	30	
31	Multiply line 30 by 15% (0.15)	31	
32	Add lines 23 and 30	32	
	If lines 32 and 12 are the same, skip lines 33 through 37 and go to line 38. Otherwise, go to line 33.		
33	Subtract line 32 from line 22	33	
34	Multiply line 33 by 20% (0.20)	34	
	If line 14 is zero or blank, skip lines 35 through 37 and go to line 38. Otherwise, go to line 35.		
35	Add lines 17, 32, and 33	35	
36	Subtract line 35 from line 12	36	
37	Multiply line 36 by 25% (0.25)	37	
38	Add lines 18, 31, 34, and 37	38	
39	If line 12 is $206,100 or less ($103,050 or less if married filing separately), multiply line 12 by 26% (0.26). Otherwise, multiply line 12 by 28% (0.28) and subtract $4,122 ($2,061 if married filing separately) from the result	39	
40	Enter the **smaller** of line 38 or line 39 here and on line 7. If you are filing Form 2555, do not enter this amount on line 7. Instead, enter it on line 4 of the worksheet in the instructions for line 7	40	

Form **6251** (2022)

Form **6252**

Department of the Treasury
Internal Revenue Service

Installment Sale Income

Attach to your tax return.
Use a separate form for each sale or other disposition of property on the installment method.
Go to *www.irs.gov/Form6252* for the latest information.

OMB No. 1545-0228
2022
Attachment Sequence No. **67**

Name(s) shown on return | **Identifying number**

1 Description of property

2a Date acquired (mm/dd/yyyy) **b** Date sold (mm/dd/yyyy)

3 Was the property sold to a related party? See instructions. If "Yes," complete Part III for the year of sale and 2 years after the year of the sale unless you received the final payment during the tax year. If "No," skip line 4 . ☐ Yes ☐ No

4 Did you sell the property to an intermediary? If "Yes," provide the name and address of the intermediary on line 27 ☐ Yes ☐ No

Part I Gross Profit and Contract Price. Complete this part for all years of the installment agreement.

5	Selling price including mortgages and other debts. **Don't** include interest, whether stated or unstated		5
6	Mortgages, debts, and other liabilities the buyer assumed or took the property subject to (see instructions)	6	
7	Subtract line 6 from line 5	7	
8	Cost or other basis of property sold	8	
9	Depreciation allowed or allowable	9	
10	Adjusted basis. Subtract line 9 from line 8	10	
11	Commissions and other expenses of sale	11	
12	Income recapture from Form 4797, Part III (see instructions)	12	
13	Add lines 10, 11, and 12		13
14	Subtract line 13 from line 5. If zero or less, **don't** complete the rest of this form. See instructions		14
15	If the property described on line 1 above was your main home, enter the amount of your excluded gain. See instructions. Otherwise, enter -0-		15
16	**Gross profit.** Subtract line 15 from line 14		16
17	Subtract line 13 from line 6. If zero or less, enter -0-		17
18	**Contract price.** Add line 7 and line 17		18

Part II Installment Sale Income. Complete this part for all years of the installment agreement.

19	Gross profit percentage (expressed as a decimal amount). Divide line 16 by line 18. (For years after the year of sale, see instructions.)		19
20	If this is the year of sale, enter the amount from line 17. Otherwise, enter -0-		20
21	Payments received during year (see instructions). **Don't** include interest, whether stated or unstated		21
22	Add lines 20 and 21		22
23	Payments received in prior years (see instructions). **Don't** include interest, whether stated or unstated	23	
24	**Installment sale income.** Multiply line 22 by line 19		24
25	Enter the part of line 24 that is ordinary income under the recapture rules. See instructions		25
26	Subtract line 25 from line 24. Enter here and on Schedule D or Form 4797. See instructions		26

Part III Related Party Installment Sale Income. Don't complete if you received the final payment this tax year.

27 Name, address, and taxpayer identifying number of related party

28 Did the related party resell or dispose of the property ("second disposition") during this tax year? ☐ Yes ☐ No

29 **If the answer to question 28 is "Yes," complete lines 30 through 37 below unless one of the following conditions is met. Check the box that applies.**

- a ☐ The second disposition was more than 2 years after the first disposition (other than dispositions of marketable securities). If this box is checked, enter the date of disposition (mm/dd/yyyy)
- b ☐ The first disposition was a sale or exchange of stock to the issuing corporation.
- c ☐ The second disposition was an involuntary conversion and the threat of conversion occurred after the first disposition.
- d ☐ The second disposition occurred after the death of the original seller or buyer.
- e ☐ It can be established to the satisfaction of the IRS that tax avoidance wasn't a principal purpose for either of the dispositions. If this box is checked, attach an explanation. See instructions.

30	Selling price of property sold by related party (see instructions)	30
31	Enter contract price from line 18 for year of first sale	31
32	Enter the **smaller** of line 30 or line 31	32
33	Total payments received by the end of your 2022 tax year (see instructions)	33
34	Subtract line 33 from line 32. If zero or less, enter -0-	34
35	Multiply line 34 by the gross profit percentage on line 19 for year of first sale	35
36	Enter the part of line 35 that is ordinary income under the recapture rules. See instructions	36
37	Subtract line 36 from line 35. Enter here and on Schedule D or Form 4797. See instructions	37

For Paperwork Reduction Act Notice, see page 4. Cat. No. 13601R Form **6252** (2022)

Form **7203** (Rev. December 2022) Department of the Treasury Internal Revenue Service

S Corporation Shareholder Stock and Debt Basis Limitations

Attach to your tax return.
Go to *www.irs.gov/Form7203* for instructions and the latest information.

OMB No. 1545-2302
Attachment Sequence No. **203**

Name of shareholder | **Identifying number**

A Name of S corporation | **B** Employer identification number

C Stock block (see instructions):

D Check applicable box(es) to indicate how stock was acquired:
(1) ☐ Original shareholder **(2)** ☐ Purchased **(3)** ☐ Inherited **(4)** ☐ Gift **(5)** ☐ Other:

E Check if you have a Regulations section 1.1367-1(g) election in effect during the tax year for this S corporation ☐

Part I Shareholder Stock Basis

1	Stock basis at the beginning of the corporation's tax year			1	
2	Basis from any capital contributions made or additional stock acquired during the tax year			2	
3a	Ordinary business income (enter losses in Part III)	3a			
b	Net rental real estate income (enter losses in Part III)	3b			
c	Other net rental income (enter losses in Part III)	3c			
d	Interest income	3d			
e	Ordinary dividends	3e			
f	Royalties	3f			
g	Net capital gains (enter losses in Part III)	3g			
h	Net section 1231 gain (enter losses in Part III)	3h			
i	Other income (enter losses in Part III)	3i			
j	Excess depletion adjustment	3j			
k	Tax-exempt income	3k			
l	Recapture of business credits	3l			
m	Other items that increase stock basis	3m			
4	Add lines 3a through 3m			4	
5	Stock basis before distributions. Add lines 1, 2, and 4			5	
6	Distributions (excluding dividend distributions)			6	
	Note: If line 6 is larger than line 5, subtract line 5 from line 6 and report the result as a capital gain on Form 8949 and Schedule D. See instructions.				
7	Stock basis after distributions. Subtract line 6 from line 5. If the result is zero or less, enter -0-, skip lines 8 through 14, and enter -0- on line 15			7	
8a	Nondeductible expenses	8a			
b	Depletion for oil and gas	8b			
c	Business credits (sections 50(c)(1) and (5))	8c			
9	Add lines 8a through 8c			9	
10	Stock basis before loss and deduction items. Subtract line 9 from line 7. If the result is zero or less, enter -0-, skip lines 11 through 14, and enter -0- on line 15			10	
11	Allowable loss and deduction items. Enter the amount from line 47, column (c)			11	
12	Debt basis restoration (see net increase in instructions for line 23)			12	
13	Other items that decrease stock basis			13	
14	Add lines 11, 12, and 13			14	
15	**Stock basis at the end of the corporation's tax year.** Subtract line 14 from line 10. If the result is zero or less, enter -0-			15	

Part II Shareholder Debt Basis

Section A—Amount of Debt (If more than three debts, see instructions.)

	Description	**(a)** Debt 1 ☐ Formal note ☐ Open account	**(b)** Debt 2 ☐ Formal note ☐ Open account	**(c)** Debt 3 ☐ Formal note ☐ Open account	**(d)** Total
16	Loan balance at the beginning of the corporation's tax year				
17	Additional loans (see instructions)				
18	Loan balance before repayment. Add lines 16 and 17				
19	Principal portion of debt repayment (this line doesn't include interest)				
20	Loan balance at the end of the corporation's tax year. Subtract line 19 from line 18				

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 56396V Form **7203** (Rev. 12-2022)

Form 7203 (Rev. 12-2022) Page **2**

Part II **Shareholder Debt Basis** *(continued)*

Section B—Adjustments to Debt Basis

	Description	(a) Debt 1	(b) Debt 2	(c) Debt 3	(d) Total
21	Debt basis at the beginning of the corporation's tax year				
22	Enter the amount, if any, from line 17				
23	Debt basis restoration (see instructions)				
24	Debt basis before repayment. Add lines 21, 22, and 23				
25	Divide line 24 by line 18				
26	Nontaxable debt repayment. Multiply line 25 by line 19				
27	Debt basis before nondeductible expenses and losses. Subtract line 26 from line 24				
28	Nondeductible expenses and oil and gas depletion deductions in excess of stock basis				
29	Debt basis before losses and deductions. Subtract line 28 from line 27. If the result is zero or less, enter -0-				
30	Allowable losses in excess of stock basis. Enter the amount from line 47, column (d)				
31	**Debt basis at the end of the corporation's tax year.** Subtract line 30 from line 29. If the result is zero or less, enter -0-				

Section C—Gain on Loan Repayment

	Description	(a) Debt 1	(b) Debt 2	(c) Debt 3	(d) Total
32	Repayment. Enter the amount from line 19				
33	Nontaxable repayments. Enter the amount from line 26				
34	**Reportable gain.** Subtract line 33 from line 32				

Part III **Shareholder Allowable Loss and Deduction Items**

	Description	(a) Current year losses and deductions	(b) Carryover amounts (column (e)) from the previous year	(c) Allowable loss from stock basis	(d) Allowable loss from debt basis	(e) Carryover amounts
35	Ordinary business loss					
36	Net rental real estate loss					
37	Other net rental loss					
38	Net capital loss					
39	Net section 1231 loss					
40	Other loss					
41	Section 179 deductions					
42	Charitable contributions					
43	Investment interest expense					
44	Section 59(e)(2) expenditures					
45	Other deductions					
46	Foreign taxes paid or accrued					
47	**Total loss.** Add lines 35 through 46 for each column. Enter the total loss in column (c) on line 11 and enter the total loss in column (d) on line 30					

Form **7203** (Rev. 12-2022)

Form **8283** (Rev. November 2022) Department of the Treasury Internal Revenue Service

Noncash Charitable Contributions

Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over $500 for all contributed property.

Go to *www.irs.gov/Form8283* for instructions and the latest information.

OMB No. 1545-0074

Attachment Sequence No. **155**

Name(s) shown on your income tax return	**Identifying number**

Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of $5,000 or Less and Publicly Traded Securities—List in this section **only** an item (or a group of similar items) for which you claimed a deduction of $5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than $5,000. See instructions.

Part I Information on Donated Property—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)
A		☐	
B		☐	
C		☐	
D		☐	
E		☐	

Note: If the amount you claimed as a deduction for an item is $500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						
E						

Section B. Donated Property Over $5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)—Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than $5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is generally required for items reportable in Section B. See instructions.

Part I Information on Donated Property

2 Check the box that describes the type of property donated.

- **a** ☐ Art* (contribution of $20,000 or more)
- **b** ☐ Qualified Conservation Contribution
- **c** ☐ Equipment
- **d** ☐ Art* (contribution of less than $20,000)
- **e** ☐ Other Real Estate
- **f** ☐ Securities
- **g** ☐ Collectibles**
- **h** ☐ Intellectual Property
- **i** ☐ Vehicles
- **j** ☐ Clothing and household items
- **k** ☐ Other

* Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

** Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note: In certain cases, you must attach a qualified appraisal of the property. See instructions.

3	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If any tangible personal property or real property was donated, give a brief summary of the overall physical condition of the property at the time of the gift.	(c) Appraised fair market value
A			
B			
C			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	(h) Amount claimed as a deduction (see instructions)	(i) Date of contribution (see instructions)
A						
B						
C						

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 62299J Form **8283** (Rev. 11-2022)

Form 8283 (Rev. 11-2022) Page **2**

Name(s) shown on your income tax return | **Identifying number**

Part II **Partial Interests and Restricted Use Property (Other Than Qualified Conservation Contributions)—** Complete lines 4a through 4e if you gave less than an entire interest in a property listed in Section B, Part I. Complete lines 5a through 5c if conditions were placed on a contribution listed in Section B, Part I; also attach the required statement. See instructions.

4a Enter the letter from Section B, Part I that identifies the property for which you gave less than an entire interest ______
If Section B, Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Section B, Part I: **(1)** For this tax year . . . ______
(2) For any prior tax years . ______

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization in Section B, Part V, below):

Name of charitable organization (donee)

Address (number, street, and room or suite no.) | City or town, state, and ZIP code

d For tangible property, enter the place where the property is located or kept ______

e Name of any person, other than the donee organization, having actual possession of the property ______

		Yes	No
5a	Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?		
b	Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire?		
c	Is there a restriction limiting the donated property for a particular use?		

Part III **Taxpayer (Donor) Statement—** List each item included in Section B, Part I above that the appraisal identifies as having a value of $500 or less. See instructions.

I declare that the following item(s) included in Section B, Part I above has to the best of my knowledge and belief an appraised value of not more than $500 (per item). Enter identifying letter from Section B, Part I and describe the specific item. See instructions.

Signature of taxpayer (donor) | Date

Part IV **Declaration of Appraiser**

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

Sign Here
Appraiser signature | Date
Appraiser name | Title

Business address (including room or suite no.) | **Identifying number**

City or town, state, and ZIP code

Part V **Donee Acknowledgment**

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ______

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file **Form 8282**, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? . . . . ☐ **Yes** ☐ **No**

Name of charitable organization (donee)	**Employer identification number**	
Address (number, street, and room or suite no.)	City or town, state, and ZIP code	
Authorized signature	Title	Date

Form **8283** (Rev. 11-2022)

Form **8606**

Department of the Treasury
Internal Revenue Service

Nondeductible IRAs

Go to *www.irs.gov/Form8606* for instructions and the latest information.
Attach to 2022 Form 1040, 1040-SR, or 1040-NR.

OMB No. 1545-0074
2022
Attachment Sequence No. **48**

Name. If married, file a separate form for each spouse required to file 2022 Form 8606. See instructions.		Your social security number
Fill in Your Address Only if You Are Filing This Form by Itself and Not With Your Tax Return	Home address (number and street, or P.O. box if mail is not delivered to your home)	Apt. no.
	City, town or post office, state, and ZIP code. If you have a foreign address, also complete the spaces below (see instructions).	
	Foreign country name / Foreign province/state/county	Foreign postal code

Part I **Nondeductible Contributions to Traditional IRAs and Distributions From Traditional, SEP, and SIMPLE IRAs**

Complete this part only if one or more of the following apply.

- You made nondeductible contributions to a traditional IRA for 2022.
- You took distributions from a traditional, SEP, or SIMPLE IRA in 2022 **and** you made nondeductible contributions to a traditional IRA in 2022 or an earlier year. For this purpose, a distribution does not include a rollover (other than a repayment of a qualified disaster distribution, if any, from 2022 Form(s) 8915-F (see instructions)), qualified charitable distribution, one-time distribution to fund an HSA, conversion, recharacterization, or return of certain contributions.
- You converted part, but not all, of your traditional, SEP, and SIMPLE IRAs to Roth IRAs in 2022 **and** you made nondeductible contributions to a traditional IRA in 2022 or an earlier year.

1	Enter your nondeductible contributions to traditional IRAs for 2022, including those made for 2022 from January 1, 2023, through April 18, 2023. See instructions			1	
2	Enter your total basis in traditional IRAs. See instructions			2	
3	Add lines 1 and 2			3	
	In 2022, did you take a distribution from traditional, SEP, or SIMPLE IRAs, or make a Roth IRA conversion? — **No** → Enter the amount from line 3 on line 14. Do not complete the rest of Part I. — **Yes** → Go to line 4.				
4	Enter those contributions included on line 1 that were made from January 1, 2023, through April 18, 2023			4	
5	Subtract line 4 from line 3			5	
6	Enter the value of **all** your traditional, SEP, and SIMPLE IRAs as of December 31, 2022, plus any outstanding rollovers. Subtract certain repayments of qualified disaster distributions, if any, from 2022 Form(s) 8915-F (see instructions)	6			
7	Enter your distributions from traditional, SEP, and SIMPLE IRAs in 2022. **Do not** include rollovers (other than repayments of qualified disaster distributions, if any, from 2022 Form(s) 8915-F (see instructions)), qualified charitable distributions, a one-time distribution to fund an HSA, conversions to a Roth IRA, certain returned contributions, or recharacterizations of traditional IRA contributions (see instructions)	7			
8	Enter the net amount you converted from traditional, SEP, and SIMPLE IRAs to Roth IRAs in 2022. Also, enter this amount on line 16	8			
9	Add lines 6, 7, and 8 — 9				
10	Divide line 5 by line 9. Enter the result as a decimal rounded to at least 3 places. If the result is 1.000 or more, enter "1.000"	10	× .		
11	Multiply line 8 by line 10. This is the nontaxable portion of the amount you converted to Roth IRAs. Also, enter this amount on line 17	11			
12	Multiply line 7 by line 10. This is the nontaxable portion of your distributions that you did not convert to a Roth IRA	12			
13	Add lines 11 and 12. This is the nontaxable portion of all your distributions			13	
14	Subtract line 13 from line 3. This is **your total basis in traditional IRAs for 2022 and earlier years**			14	
15a	Subtract line 12 from line 7			15a	
b	Enter the amount on line 15a attributable to qualified disaster distributions, if any, from 2022 Form(s) 8915-F (see instructions). Also, enter this amount on 2022 Form(s) 8915-F, line 18, as applicable (see instructions)			15b	
c	**Taxable amount.** Subtract line 15b from line 15a. If more than zero, also include this amount on 2022 Form 1040, 1040-SR, **or** 1040-NR, line 4b			15c	
	Note: You may be subject to an additional 10% tax on the amount on line 15c if you were under age 59½ at the time of the distribution. See instructions.				

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 63966F Form **8606** (2022)

Form 8606 (2022) Page **2**

Part II **2022 Conversions From Traditional, SEP, or SIMPLE IRAs to Roth IRAs**

Complete this part if you converted part or all of your traditional, SEP, and SIMPLE IRAs to a Roth IRA in 2022.

16	If you completed Part I, enter the amount from line 8. Otherwise, enter the net amount you converted from traditional, SEP, and SIMPLE IRAs to Roth IRAs in 2022	**16**	
17	If you completed Part I, enter the amount from line 11. Otherwise, enter your basis in the amount on line 16 (see instructions)	**17**	
18	**Taxable amount.** Subtract line 17 from line 16. If more than zero, also include this amount on 2022 Form 1040, 1040-SR, or 1040-NR, line 4b	**18**	

Part III **Distributions From Roth IRAs**

Complete this part only if you took a distribution from a Roth IRA in 2022. For this purpose, a distribution does not include a rollover (other than a repayment of a qualified disaster distribution (from 2022 Form(s) 8915-F (see instructions)), qualified charitable distribution, one-time distribution to fund an HSA, recharacterization, or return of certain contributions (see instructions).

19	Enter your total nonqualified distributions from Roth IRAs in 2022, including any qualified first-time homebuyer distributions, and any qualified disaster distributions from 2022 Form(s) 8915-F (see instructions)	**19**	
20	Qualified first-time homebuyer expenses (see instructions). **Do not** enter more than $10,000 reduced by the total of all your prior qualified first-time homebuyer distributions	**20**	
21	Subtract line 20 from line 19. If zero or less, enter -0-	**21**	
22	Enter your basis in Roth IRA contributions (see instructions). If line 21 is zero, **stop here**	**22**	
23	Subtract line 22 from line 21. If zero or less, enter -0- and skip lines 24 and 25. If more than zero, you may be subject to an additional tax (see instructions)	**23**	
24	Enter your basis in conversions from traditional, SEP, and SIMPLE IRAs and rollovers from qualified retirement plans to a Roth IRA. See instructions	**24**	
25a	Subtract line 24 from line 23. If zero or less, enter -0- and skip lines 25b and 25c	**25a**	
b	Enter the amount on line 25a attributable to qualified disaster distributions, if any, from 2022 Form(s) 8915-F (see instructions). Also, enter this amount on 2022 Form(s) 8915-F, line 19, as applicable (see instructions)	**25b**	
c	**Taxable amount.** Subtract line 25b from line 25a. If more than zero, also include this amount on 2022 Form 1040, 1040-SR, **or** 1040-NR, line 4b	**25c**	

Sign Here Only if You Are Filing This Form by Itself and Not With Your Tax Return	Under penalties of perjury, I declare that I have examined this form, including accompanying attachments, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge. Your signature	Date

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
	Firm's name			Firm's EIN	
	Firm's address			Phone no.	

Form **8606** (2022)

SCHEDULE 8812 (Form 1040)

Department of the Treasury
Internal Revenue Service

Credits for Qualifying Children and Other Dependents

Attach to Form 1040, 1040-SR, or 1040-NR.

Go to *www.irs.gov/Schedule8812* for instructions and the latest information.

OMB No. 1545-0074

2022

Attachment Sequence No. 47

Name(s) shown on return | **Your social security number**

Part I Child Tax Credit and Credit for Other Dependents

1	Enter the amount from line 11 of your Form 1040, 1040-SR, or 1040-NR			1	
2a	Enter income from Puerto Rico that you excluded	2a			
b	Enter the amounts from lines 45 and 50 of your Form 2555	2b			
c	Enter the amount from line 15 of your Form 4563	2c			
d	Add lines 2a through 2c			2d	
3	Add lines 1 and 2d			3	
4	Number of qualifying children under age 17 with the required social security number	4			
5	Multiply line 4 by $2,000			5	
6	Number of other dependents, including any qualifying children who are not under age 17 or who do not have the required social security number	6			
	Caution: Do not include yourself, your spouse, or anyone who is not a U.S. citizen, U.S. national, or U.S. resident alien. Also, do not include anyone you included on line 4.				
7	Multiply line 6 by $500			7	
8	Add lines 5 and 7			8	
9	Enter the amount shown below for your filing status. • Married filing jointly—$400,000 • All other filing statuses—$200,000			9	
10	Subtract line 9 from line 3. • If zero or less, enter -0-. • If more than zero and not a multiple of $1,000, enter the next multiple of $1,000. For example, if the result is $425, enter $1,000; if the result is $1,025, enter $2,000, etc.			10	
11	Multiply line 10 by 5% (0.05)			11	
12	Is the amount on line 8 more than the amount on line 11?			12	
	☐ **No. STOP.** You cannot take the child tax credit, credit for other dependents, or additional child tax credit. Skip Parts II-A and II-B. Enter -0- on lines 14 and 27. ☐ **Yes.** Subtract line 11 from line 8. Enter the result.				
13	Enter the amount from the **Credit Limit Worksheet A**			13	
14	Enter the smaller of line 12 or 13. **This is your child tax credit and credit for other dependents** **Enter this amount on Form 1040, 1040-SR, or 1040-NR, line 19.**			14	

If the amount on line 12 is more than the amount on line 14, you may be able to take the **additional child tax credit** on Form 1040, 1040-SR, or 1040-NR, line 28. Complete your Form 1040, 1040-SR, or 1040-NR through line 27 (also complete Schedule 3, line 11) before completing Part II-A.

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 59761M **Schedule 8812 (Form 1040) 2022**

Schedule 8812 (Form 1040) 2022 Page **2**

Part II-A Additional Child Tax Credit for All Filers

Caution: If you file Form 2555, you cannot claim the additional child tax credit.

15	Check this box if you **do not** want to claim the additional child tax credit. Skip Parts II-A and II-B. Enter -0- on line 27 . . . . . . ☐		
16a	Subtract line 14 from line 12. If zero, **stop here**; you cannot take the additional child tax credit. Skip Parts II-A and II-B. Enter -0- on line 27	16a	
b	Number of qualifying children under 17 with the required social security number: ________ x $1,500. Enter the result. If zero, **stop here**; you cannot claim the additional child tax credit. Skip Parts II-A and II-B. Enter -0- on line 27	16b	
	TIP: The number of children you use for this line is the same as the number of children you used for line 4.		
17	Enter the **smaller** of line 16a or line 16b	17	
18a	Earned income (see instructions) . . . 18a		
b	Nontaxable combat pay (see instructions) . . . 18b		
19	Is the amount on line 18a more than $2,500? ☐ **No.** Leave line 19 blank and enter -0- on line 20. ☐ **Yes.** Subtract $2,500 from the amount on line 18a. Enter the result . . . 19		
20	Multiply the amount on line 19 by 15% (0.15) and enter the result	20	
	Next. On line 16b, is the amount $4,500 or more? ☐ **No.** If you are a bona fide resident of Puerto Rico, go to line 21. Otherwise, skip Part II-B and enter the **smaller** of line 17 or line 20 on line 27. ☐ **Yes.** If line 20 is equal to or more than line 17, skip Part II-B and enter the amount from line 17 on line 27. Otherwise, go to line 21.		

Part II-B Certain Filers Who Have Three or More Qualifying Children and Bona Fide Residents of Puerto Rico

21	Withheld social security, Medicare, and Additional Medicare taxes from Form(s) W-2, boxes 4 and 6. If married filing jointly, include your spouse's amounts with yours. If your employer withheld or you paid Additional Medicare Tax or tier 1 RRTA taxes, see instructions . . . 21		
22	Enter the total of the amounts from Schedule 1 (Form 1040), line 15; Schedule 2 (Form 1040), line 5; Schedule 2 (Form 1040), line 6; and Schedule 2 (Form 1040), line 13 . . . 22		
23	Add lines 21 and 22 . . . 23		
24	**1040 and 1040-SR filers:** Enter the total of the amounts from Form 1040 or 1040-SR, line 27, and Schedule 3 (Form 1040), line 11. **1040-NR filers:** Enter the amount from Schedule 3 (Form 1040), line 11. . . . 24		
25	Subtract line 24 from line 23. If zero or less, enter -0-	25	
26	Enter the **larger** of line 20 or line 25	26	
	Next, enter the **smaller** of line 17 or line 26 on line 27.		

Part II-C Additional Child Tax Credit

27	**This is your additional child tax credit. Enter this amount on Form 1040, 1040-SR, or 1040-NR, line 28**	27	

Schedule 8812 (Form 1040) 2022

Form **8814**

Department of the Treasury
Internal Revenue Service

Parents' Election To Report Child's Interest and Dividends

Go to *www.irs.gov/Form8814* for the latest information.
Attach to parents' Form 1040, 1040-SR, or 1040-NR.

OMB No. 1545-0074
2022
Attachment Sequence No. **40**

Name(s) shown on your return | **Your social security number**

Caution: The federal income tax on your child's income, including qualified dividends and capital gain distributions, may be less if you file a separate tax return for the child instead of making this election. This is because you cannot take certain tax benefits that your child could take on his or her own return. For details, see *Tax benefits you cannot take* in the instructions.

A Child's name (first, initial, and last) | **B Child's social security number**

C If more than one Form 8814 is attached, check here . . . ☐

Part I Child's Interest and Dividends To Report on Your Return

1a	Enter your child's **taxable** interest. If this amount is different from the amounts shown on the child's Forms 1099-INT and 1099-OID, see the instructions . . .		1a
b	Enter your child's **tax-exempt** interest. **Do not** include this amount on line 1a	1b	
2a	Enter your child's ordinary dividends, including any Alaska Permanent Fund dividends. If your child received any ordinary dividends as a nominee, see the instructions . . .		2a
b	Enter your child's qualified dividends included on line 2a. See the instructions	2b	
3	Enter your child's capital gain distributions. If your child received any capital gain distributions as a nominee, see the instructions . . .		3
4	Add lines 1a, 2a, and 3. If the total is $2,300 or less, skip lines 5 through 12 and go to line 13. If the total is $11,500 or more, **do not** file this form. Your child **must** file his or her own return to report the income . . .		4
5	Base amount. Enter 2,300 . . .		5
6	Subtract line 5 from line 4 . . .		6
	If both lines 2b and 3 are zero or blank, skip lines 7 through 10, enter -0- on line 11, and go to line 12. Otherwise, go to line 7.		
7	Divide line 2b by line 4. Enter the result as a decimal (rounded to at least three places) . . .	7 .	
8	Divide line 3 by line 4. Enter the result as a decimal (rounded to at least three places) . . .	8 .	
9	Multiply line 6 by line 7. Enter the result here. See the instructions for where to report this amount on your return . . .	9	
10	Multiply line 6 by line 8. Enter the result here. See the instructions for where to report this amount on your return . . .	10	
11	Add lines 9 and 10 . . .		11
12	Subtract line 11 from line 6. Include this amount in the total on Schedule 1 (Form 1040), line 8z. In the space next to that line, enter "Form 8814" and show the amount. If you checked the box on line C above, see the instructions. Go to line 13 below . . .		12

Part II Tax on the First $2,300 of Child's Interest and Dividends

13	Amount not taxed. Enter 1,150 . . .	13
14	Subtract line 13 from line 4. If the result is zero or less, enter -0- . . .	14
15	**Tax.** Is the amount on line 14 less than $1,150? ☐ **No.** Enter $115 here and see the **Note** below. ☐ **Yes.** Multiply line 14 by 10% (0.10). Enter the result here and see the **Note** below.	15

Note: If you checked the box on line C above, see the instructions. Otherwise, include the amount from line 15 in the tax you enter on Form 1040,1040-SR, or 1040-NR, line 16. Be sure to check box 1 on Form 1040, 1040-SR, or 1040-NR, line 16.

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 10750J Form **8814** (2022)

Form **8815**

Department of the Treasury
Internal Revenue Service

Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989

(For Filers With Qualified Higher Education Expenses)

Go to *www.irs.gov/Form8815* for the latest information.

Attach to Form 1040 or 1040-SR.

OMB No. 1545-0074

2022

Attachment Sequence No. **167**

Name(s) shown on return | **Your social security number**

1	(a) Name of person (you, your spouse, or your dependent) who was enrolled at or attended an eligible educational institution	(b) Name and address of eligible educational institution

If you need more space, attach a statement.

2	Enter the total qualified higher education expenses you paid in 2022 for the person(s) listed in column (a) of line 1. See the instructions to find out which expenses qualify			2	
3	Enter the total of any nontaxable educational benefits (such as nontaxable scholarship or fellowship grants) received for 2022 for the person(s) listed in column (a) of line 1. See instructions			3	
4	Subtract line 3 from line 2. If zero or less, **stop**. You **cannot** take the exclusion			4	
5	Enter the total proceeds (principal and interest) from all series EE and I U.S. savings bonds **issued after 1989** that you **cashed during 2022**			5	
6	Enter the interest included on line 5. See instructions			6	
7	If line 4 is equal to or more than line 5, enter "1.000." If line 4 is less than line 5, divide line 4 by line 5. Enter the result as a decimal (rounded to at least three places)			7	× .
8	Multiply line 6 by line 7			8	
9	Enter your modified adjusted gross income. See instructions	9			
	Note: If line 9 is $100,800 or more if single, head of household, or qualifying widow(er); or $158,650 or more if married filing jointly, **stop**. You **cannot** take the exclusion.				
10	Enter: $85,800 if single, head of household, or qualifying widow(er); $128,650 if married filing jointly	10			
11	Subtract line 10 from line 9. If zero or less, skip line 12, enter -0- on line 13, and go to line 14	11			
12	Divide line 11 by: $15,000 if single, head of household, or qualifying widow(er); $30,000 if married filing jointly. Enter the result as a decimal (rounded to at least three places)			12	× .
13	Multiply line 8 by line 12			13	
14	**Excludable savings bond interest.** Subtract line 13 from line 8. Enter the result here and on Schedule B (Form 1040), line 3			14	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 10822S Form **8815** (2022)

General Instructions

Section references are to the Internal Revenue Code.

Future Developments

For the latest information about developments related to Form 8815 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/Form8815*.

Purpose of Form

If you cashed series EE or I U.S. savings bonds in 2022 that were issued after 1989, you may be able to exclude from your income part or all of the interest on those bonds. Use this form to figure the amount of any interest you may exclude.

Who Can Take the Exclusion

You can take the exclusion if all four of the following apply.

1. You cashed qualified U.S. savings bonds in 2022 that were issued after 1989.
2. You paid qualified higher education expenses in 2022 for yourself, your spouse, or your dependents.
3. Your filing status is any status except married filing separately.
4. Your modified adjusted gross income (AGI) is less than: $100,800 if single, head of household, or qualifying widow(er); $158,650 if married filing jointly. See the instructions for line 9 to figure your modified AGI.

U.S. Savings Bonds That Qualify for Exclusion

To qualify for the exclusion, the bonds must be series EE or I U.S. savings bonds issued after 1989 in your name, or, if you are married, they may be issued in your name and your spouse's name. Also, you must have been age 24 or older before the bonds were issued. A bond bought by a parent and issued in the name of his or her child under age 24 does not qualify for the exclusion by the parent or child.

Recordkeeping Requirements

Keep the following records to verify interest you exclude.

• Bills, receipts, canceled checks, or other documents showing you paid qualified higher education expenses in 2022.

• A written record of each post-1989 series EE or I bond that you cashed. Your record must include the serial number, issue date, face value, and total redemption proceeds (principal and interest) of each bond. You can use Form 8818, Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989, as your written record.

Specific Instructions

Line 1

Column (a). Enter the name of the person who was enrolled at or attended an eligible educational institution or for whom you made contributions to a Coverdell education savings account (Coverdell ESA) or a qualified tuition program (QTP). This person must be you, your spouse, or your dependent(s) claimed on Form 1040 or 1040-SR. An eligible educational institution is generally any accredited public, nonprofit, or private college, university, vocational school, or other postsecondary institution. The institution must be eligible to participate in the student aid programs administered by the Department of Education. Virtually all accredited postsecondary institutions meet this requirement.

Column (b). Enter the name and address of the institution. If the person was enrolled at or attended more than one, list all of them. Also, if you contributed to a Coverdell ESA for the person, enter "Coverdell ESA" and the name and address of the financial institution where the account is located. For contributions to a QTP, enter "QTP" and the name and address of the program.

Line 2

Qualified higher education expenses include tuition and fees required for the enrollment or attendance of the person(s) listed on line 1, column (a), at the institution(s) listed in column (b). They also include contributions to a Coverdell ESA or a QTP for the person(s) listed on line 1. Qualified expenses do not include expenses for:

• Room and board; or

• Courses involving sports, games, or hobbies that are not part of a degree- or certificate-granting program.

Do not include on line 2 expenses that were:

• Covered by nontaxable educational benefits paid directly to, or by, the educational institution;

• Used to figure an education credit on Form 8863; or

• Used to figure the nontaxable amount of a distribution from a Coverdell ESA or QTP.

Line 3

Enter on this line the total qualified higher education expenses included on line 2 that were covered by nontaxable educational benefits. These benefits include the following.

• Scholarship or fellowship grants excludable from income under section 117. See chapter 1 of Pub. 970 for more information.

• Veterans' educational assistance benefits.

• Employer-provided educational assistance benefits that are not included in box 1 of your Form(s) W-2.

• Payments, waivers, or reimbursements of educational expenses under a QTP.

• Any other payments (but not gifts, bequests, or inheritances) for educational expenses that are exempt from income tax by any U.S. law.

Do not include on line 3 nontaxable educational benefits paid directly to, or by, the educational institution.

Example. You paid $10,000 of qualified higher education expenses in 2022 to the college your son attended. None of the expenses are used to figure an education credit or the nontaxable amount of a Coverdell ESA or QTP. You claim your son as a dependent on your 2022 tax return. Your son received a $2,000 nontaxable scholarship grant for 2022, which was paid directly to him. In this case, enter $10,000 on line 2 and $2,000 on line 3.

Line 6

If you reported any of the interest before 2022, see Pub. 550 for the amount to enter. Otherwise, enter the amount from Form 8818, line 8 (if you used that form to record the bonds cashed), or use the following worksheet to figure the amount to enter.

Line 6 Worksheet (keep a copy for your records)

1.	Enter the amount from Form 8815, line 5	1.	
2.	Enter the face value of all post-1989 paper series EE bonds cashed in 2022	2.	
3.	Multiply line 2 by 50% (0.50)	3.	
4.	Enter the face value of all electronic series EE bonds (including post-1989 series EE bonds converted from paper to electronic format) and all series I bonds cashed in 2022	4.	
5.	Add lines 3 and 4	5.	
6.	Subtract line 5 from line 1. Enter the result here and on Form 8815, line 6	6.	

Form 8815 (2022) Page **4**

Line 9

Follow these steps before you fill in the Line 9 Worksheet below.

Step	Action
1	If you received social security benefits, use Pub. 915 to figure the taxable amount of your benefits.
2	If you are claiming both the premium tax credit (PTC) and self-employed health insurance deduction, see *Self-Employed Health Insurance Deduction and PTC* in Pub. 974, Premium Tax Credit, and complete the appropriate worksheets.
3	If you made contributions to a traditional IRA for 2022 and you were covered by a retirement plan at work or through self-employment, use Pub. 590-A to figure your IRA deduction.
4	Complete the following lines on your Form 1040 or 1040-SR and Schedule 1 (Form 1040) if they apply.
5	If any of the following apply, see Pub. 550. • You are filing Form 2555 (relating to foreign earned income) or Form 4563 (exclusion of income for residents of American Samoa). • You have employer-provided adoption benefits for 2022. • You are excluding income from Puerto Rico. • You have investment interest expense attributable to royalty income.

IF you use . . .	THEN complete lines . . .
Form 1040 or 1040-SR	2a, 3b–6b, and 7
Schedule 1 (Form 1040)	1–9, 11*–20, and 23–25

* For purposes of figuring the amount to put on Form 8815, line 9, do not reduce your educator expenses, if any, by the amount on Form 8815, line 14.

Line 9 Worksheet (keep a copy for your records)

1. Enter the amount from line 2 of Schedule B (Form 1040) **1.** ______
2. Add the amounts from Form 1040 or 1040-SR, lines 1z, 3b, 4b, 5b, 6b, and 7, and the amounts from Schedule 1 (Form 1040), lines 1 through 7 and 9. Enter the total **2.** ______
3. Add lines 1 and 2 . . . . **3.** ______
4. Enter the total of the amounts from Schedule 1 (Form 1040), lines 11 through 20, 23, and 25 . . . **4.** ______
5. Subtract line 4 from line 3. Enter the result here and on Form 8815, line 9 . . . . **5.** ______

Form **8824**

Department of the Treasury
Internal Revenue Service

Like-Kind Exchanges

(and section 1043 conflict-of-interest sales)

Attach to your tax return.

Go to *www.irs.gov/Form8824* for instructions and the latest information.

OMB No. 1545-1190

2022

Attachment Sequence No. **109**

Name(s) shown on tax return | **Identifying number**

Part I Information on the Like-Kind Exchange

Note: Only real property should be described on lines 1 and 2. If the property described on line 1 or line 2 is real property located outside the United States, indicate the country.

1 Description of like-kind property given up:

2 Description of like-kind property received:

3 Date like-kind property given up was originally acquired (month, day, year) . . . . **3** MM/DD/YYYY

4 Date you actually transferred your property to the other party (month, day, year) . . . . **4** MM/DD/YYYY

5 Date like-kind property you received was identified by written notice to another party (month, day, year). See instructions for 45-day written identification requirement . . . . **5** MM/DD/YYYY

6 Date you actually received the like-kind property from other party (month, day, year). See instructions **6** MM/DD/YYYY

7 Was the exchange of the property given up or received made with a related party, either directly or indirectly (such as through an intermediary)? See instructions. If "Yes," complete Part II. If "No," go to Part III . . . . ☐ **Yes** ☐ **No**

Note: Do not file this form if a related party sold property into the exchange, directly or indirectly (such as through an intermediary); that property became your replacement property; and none of the exceptions on line 11 applies to the exchange. Instead, report the disposition of the property as if the exchange had been a sale. If one of the exceptions on line 11 applies to the exchange, complete Part II.

Part II Related Party Exchange Information

8 Name of related party | Relationship to you | Related party's identifying number

Address (no., street, and apt., room, or suite no.; city or town; state; and ZIP code)

9 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party sell or dispose of any part of the like-kind property received from you (or an intermediary) in the exchange? . . . . ☐ **Yes** ☐ **No**

10 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of any part of the like-kind property you received? . . . . ☐ **Yes** ☐ **No**

If both lines 9 and 10 are "No" and this is the year of the exchange, go to Part III. If both lines 9 and 10 are "No" and this is ***not*** *the year of the exchange, stop here. If either line 9 or line 10 is "Yes," complete Part III and report on this year's tax return the deferred gain or (loss) from line 24* ***unless*** *one of the exceptions on line 11 applies.*

11 If one of the exceptions below applies to the disposition, check the applicable box.

a ☐ The disposition was after the death of either of the related parties.

b ☐ The disposition was an involuntary conversion, and the threat of conversion occurred after the exchange.

c ☐ You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as one of its principal purposes. If this box is checked, attach an explanation. See instructions.

For Paperwork Reduction Act Notice, see the instructions. Cat. No. 12311A Form **8824** (2022)

Form 8824 (2022) Page **2**

Name(s) shown on tax return. Do not enter name and social security number if shown on other side. | **Your social security number**

Part III Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received

Caution: If you transferred **and** received (**a**) more than one group of like-kind properties, or (**b**) cash or other (not like-kind) property, see ***Reporting of multi-asset exchanges*** in the instructions.

Note: Complete lines 12 through 14 **only** if you gave up property that was not like-kind. Otherwise, go to line 15.

12	Fair market value (FMV) of other property given up. See instructions	12	
13	Adjusted basis of other property given up	13	
14	Gain or (loss) recognized on other property given up. Subtract line 13 from line 12. Report the gain or (loss) in the same manner as if the exchange had been a sale	14	
	Caution: If the property given up was used previously or partly as a home, see ***Property used as home*** in the instructions.		
15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses you incurred. See instructions	15	
16	FMV of like-kind property you received	16	
17	Add lines 15 and 16	17	
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses **not** used on line 15. See instructions	18	
19	**Realized gain or (loss).** Subtract line 18 from line 17	19	
20	Enter the smaller of line 15 or line 19, but not less than zero	20	
21	Ordinary income under recapture rules. Enter here and on Form 4797, line 16. See instructions	21	
22	Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies. See instructions	22	
23	**Recognized gain.** Add lines 21 and 22	23	
24	Deferred gain or (loss). Subtract line 23 from line 19. If a related party exchange, see instructions	24	
25	**Basis of like-kind property received.** Subtract line 15 from the sum of lines 18 and 23. See instructions	25	

Part IV Deferral of Gain From Section 1043 Conflict-of-Interest Sales

Note: This part is to be used **only** by officers or employees of the executive branch of the federal government or judicial officers of the federal government (including certain spouses, minor or dependent children, and trustees as described in section 1043) for reporting nonrecognition of gain under section 1043 on the sale of property to comply with the conflict-of-interest requirements. This part can be used **only** if the cost of the replacement property is more than the basis of the divested property.

26 Enter the number from the upper right corner of your certificate of divestiture. (**Do not** attach a copy of your certificate. Keep the certificate with your records.) ______ – ______

27 Description of divested property ______

28 Description of replacement property ______

29	Date divested property was sold (month, day, year)	29	MM/DD/YYYY
30	Sales price of divested property. See instructions	30	
31	Basis of divested property	31	
32	**Realized gain.** Subtract line 31 from line 30	32	
33	Cost of replacement property purchased within 60 days after date of sale	33	
34	Subtract line 33 from line 30. If zero or less, enter -0-	34	
35	Ordinary income under recapture rules. Enter here and on Form 4797, line 10. See instructions	35	
36	Subtract line 35 from line 34. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797. See instructions	36	
37	**Deferred gain.** Subtract the sum of lines 35 and 36 from line 32	37	
38	**Basis of replacement property.** Subtract line 37 from line 33	38	

Form **8824** (2022)

Form **8839**

Department of the Treasury
Internal Revenue Service

Qualified Adoption Expenses

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/Form8839* for instructions and the latest information.

OMB No. 1545-0074
2022
Attachment Sequence No. **38**

Name(s) shown on return | **Your social security number**

Part I **Information About Your Eligible Child or Children—**You **must** complete this part. See instructions for details, including what to do if you need more space.

1	(a) Child's name First	(a) Child's name Last	(b) Child's year of birth	Check if child was— (c) born **before 2005** and disabled	(d) a child with special needs	(e) a foreign child	(f) Child's identifying number	(g) Check if adoption became final in 2022 or earlier
Child 1				☐	☐	☐		☐
Child 2				☐	☐	☐		☐
Child 3				☐	☐	☐		☐

Caution: If the child was a foreign child, see **Special rules** in the instructions for line 1, column (e), before you complete Part II or Part III. If you received **employer-provided adoption benefits**, complete Part III on the back next.

Part II **Adoption Credit**

			Child 1	Child 2	Child 3
2	Maximum adoption credit per child. Enter $14,890 (see instructions)	2			
3	Did you file Form 8839 for a prior year for the same child? ☐ **No.** Enter -0-. ☐ **Yes.** See instructions for the amount to enter.	3			
4	Subtract line 3 from line 2	4			
5	**Qualified adoption expenses** (see instructions)	5			
	Caution: Your qualified adoption expenses may not be equal to the adoption expenses you paid in 2022.				
6	Enter the **smaller** of line 4 or line 5	6			

7	Enter modified adjusted gross income (see instructions)	7	
8	Is line 7 more than $223,410? ☐ **No.** Skip lines 8 and 9, and enter -0- on line 10. ☐ **Yes.** Subtract $223,410 from line 7	8	
9	Divide line 8 by $40,000. Enter the result as a decimal (rounded to at least three places). Do not enter more than 1.000	9	× .

			Child 1	Child 2	Child 3
10	Multiply each amount on line 6 by line 9	10			
11	Subtract line 10 from line 6	11			

12	Add the amounts on line 11	12	
13	Credit carryforward, if any, from prior years. See your Adoption Credit Carryforward Worksheet in the 2021 Form 8839 instructions	13	
14	Add lines 12 and 13	14	
15	Enter the amount from line 5 of the Credit Limit Worksheet in the instructions	15	
16	**Adoption Credit.** Enter the smaller of line 14 or line 15 here and on Schedule 3 (Form 1040), line 6c. If line 15 is smaller than line 14, you may have a credit carryforward (see instructions)	16	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 22843L Form **8839** (2022)

Form 8839 (2022) Page **2**

Part III Employer-Provided Adoption Benefits

			Child 1	Child 2	Child 3		
17	Maximum exclusion per child. Enter $14,890 (see instructions)	**17**					
18	Did you receive employer-provided adoption benefits for a prior year for the same child? ☐ **No.** Enter -0-. ☐ **Yes.** See instructions for the amount to enter.	**18**					
19	Subtract line 18 from line 17	**19**					
20	Employer-provided adoption benefits you received in 2022. This amount should be shown in box 12 of your 2022 Form(s) W-2 with code **T**	**20**					
21	Add the amounts on line 20					**21**	
22	Enter the **smaller** of line 19 or line 20. But if the child was a child with special needs and the adoption became final in 2022, enter the amount from line 19	**22**					
23	Enter modified adjusted gross income (from the worksheet in the instructions)	**23**					
24	Is line 23 more than $223,410? ☐ **No.** Skip lines 24 and 25, and enter -0- on line 26. ☐ **Yes.** Subtract $223,410 from line 23	**24**					
25	Divide line 24 by $40,000. Enter the result as a decimal (rounded to at least three places). Do not enter more than 1.000	**25**	× .				
26	Multiply each amount on line 22 by line 25	**26**					
27	**Excluded benefits.** Subtract line 26 from line 22	**27**					
28	Add the amounts on line 27					**28**	
29	**Taxable benefits.** Is line 28 more than line 21? ☐ **No.** Subtract line 28 from line 21. Also, include this amount, if more than zero, on line 1f of Form 1040, 1040-SR, or 1040-NR. ☐ **Yes.** Subtract line 21 from line 28. Enter the result as a negative number. Also, enter the result on line 1f of Form 1040, 1040-SR, or 1040-NR.					**29**	

TIP

You may be able to claim the adoption credit in Part II on the front of this form if any of the following apply.

- You paid adoption expenses in 2021, those expenses were not fully reimbursed by your employer or otherwise, and the adoption was not final by the end of 2021.
- The total adoption expenses you paid in 2022 were not fully reimbursed by your employer or otherwise, and the adoption became final in 2022 or earlier.
- You adopted a child with special needs and the adoption became final in 2022.

Form **8839** (2022)

Form **8863**

Department of the Treasury
Internal Revenue Service

Education Credits
(American Opportunity and Lifetime Learning Credits)

Attach to Form 1040 or 1040-SR.
Go to *www.irs.gov/Form8863* for instructions and the latest information.

OMB No. 1545-0074

2022

Attachment Sequence No. **50**

Name(s) shown on return | **Your social security number**

CAUTION: *Complete a separate Part III on page 2 for each student for whom you're claiming either credit before you complete Parts I and II.*

Part I Refundable American Opportunity Credit

1	After completing Part III for each student, enter the total of all amounts from all Parts III, line 30	1	
2	Enter: $180,000 if married filing jointly; $90,000 if single, head of household, or qualifying widow(er)	2	
3	Enter the amount from Form 1040 or 1040-SR, line 11. If you're filing Form 2555 or 4563, or you're excluding income from Puerto Rico, see Pub. 970 for the amount to enter	3	
4	Subtract line 3 from line 2. If zero or less, **stop**; you can't take any education credit	4	
5	Enter: $20,000 if married filing jointly; $10,000 if single, head of household, or qualifying widow(er)	5	
6	If line 4 is: • Equal to or more than line 5, enter 1.000 on line 6 • Less than line 5, divide line 4 by line 5. Enter the result as a decimal (rounded to at least three places)	6	.
7	Multiply line 1 by line 6. **Caution:** If you were under age 24 at the end of the year **and** meet the conditions described in the instructions, you **can't** take the refundable American opportunity credit; skip line 8, enter the amount from line 7 on line 9, and check this box ☐	7	
8	**Refundable American opportunity credit.** Multiply line 7 by 40% (0.40). Enter the amount here and on Form 1040 or 1040-SR, line 29. Then go to line 9 below.	8	

Part II Nonrefundable Education Credits

9	Subtract line 8 from line 7. Enter here and on line 2 of the Credit Limit Worksheet (see instructions)	9	
10	After completing Part III for each student, enter the total of all amounts from all Parts III, line 31. If zero, skip lines 11 through 17, enter -0- on line 18, and go to line 19	10	
11	Enter the smaller of line 10 or $10,000	11	
12	Multiply line 11 by 20% (0.20)	12	
13	Enter: $180,000 if married filing jointly; $90,000 if single, head of household, or qualifying widow(er)	13	
14	Enter the amount from Form 1040 or 1040-SR, line 11. If you're filing Form 2555 or 4563, or you're excluding income from Puerto Rico, see Pub. 970 for the amount to enter	14	
15	Subtract line 14 from line 13. If zero or less, skip lines 16 and 17, enter -0- on line 18, and go to line 19	15	
16	Enter: $20,000 if married filing jointly; $10,000 if single, head of household, or qualifying widow(er)	16	
17	If line 15 is: • Equal to or more than line 16, enter 1.000 on line 17 and go to line 18 • Less than line 16, divide line 15 by line 16. Enter the result as a decimal (rounded to at least three places)	17	.
18	Multiply line 12 by line 17. Enter here and on line 1 of the Credit Limit Worksheet (see instructions)	18	
19	**Nonrefundable education credits.** Enter the amount from line 7 of the Credit Limit Worksheet (see instructions) here and on Schedule 3 (Form 1040), line 3	19	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 25379M Form **8863** (2022)

Form 8863 (2022) Page **2**

Name(s) shown on return	**Your social security number**

CAUTION

Complete Part III for each student for whom you're claiming either the American opportunity credit or lifetime learning credit. Use additional copies of page 2 as needed for each student.

Part III **Student and Educational Institution Information.** See instructions.

20 Student name (as shown on page 1 of your tax return)	**21** Student social security number (as shown on page 1 of your tax return)

22 Educational institution information (see instructions)

a. Name of first educational institution	**b.** Name of second educational institution (if any)
(1) Address. Number and street (or P.O. box). City, town or post office, state, and ZIP code. If a foreign address, see instructions.	**(1)** Address. Number and street (or P.O. box). City, town or post office, state, and ZIP code. If a foreign address, see instructions.
(2) Did the student receive Form 1098-T from this institution for 2022? ☐ Yes ☐ No	**(2)** Did the student receive Form 1098-T from this institution for 2022? ☐ Yes ☐ No
(3) Did the student receive Form 1098-T from this institution for 2021 with box 7 checked? ☐ Yes ☐ No	**(3)** Did the student receive Form 1098-T from this institution for 2021 with box 7 checked? ☐ Yes ☐ No
(4) Enter the institution's employer identification number (EIN) if you're claiming the American opportunity credit or if you checked "Yes" in **(2)** or **(3).** You can get the EIN from Form 1098-T or from the institution. __ __ – __ __ __ __ __ __ __	**(4)** Enter the institution's employer identification number (EIN) if you're claiming the American opportunity credit or if you checked "Yes" in **(2)** or **(3).** You can get the EIN from Form 1098-T or from the institution. __ __ – __ __ __ __ __ __ __

23	Has the American opportunity credit been claimed for this student for any 4 tax years before 2022?	☐ Yes — **Stop!** Go to line 31 for this student.	☐ No — Go to line 24.
24	Was the student enrolled at least half-time for at least one academic period that began or is treated as having begun in 2022 at an eligible educational institution in a program leading towards a postsecondary degree, certificate, or other recognized postsecondary educational credential? See instructions.	☐ Yes — Go to line 25.	☐ No — **Stop!** Go to line 31 for this student.
25	Did the student complete the first 4 years of postsecondary education before 2022? See instructions.	☐ Yes — **Stop!** Go to line 31 for this student.	☐ No — Go to line 26.
26	Was the student convicted, before the end of 2022, of a felony for possession or distribution of a controlled substance?	☐ Yes — **Stop!** Go to line 31 for this student.	☐ No — Complete lines 27 through 30 for this student.

CAUTION

*You **can't** take the American opportunity credit and the lifetime learning credit for the **same student** in the same year. If you complete lines 27 through 30 for this student, don't complete line 31.*

American Opportunity Credit

27	Adjusted qualified education expenses (see instructions). **Don't enter more than $4,000**	**27**	
28	Subtract $2,000 from line 27. If zero or less, enter -0-	**28**	
29	Multiply line 28 by 25% (0.25)	**29**	
30	If line 28 is zero, enter the amount from line 27. Otherwise, add $2,000 to the amount on line 29 and enter the result. Skip line 31. Include the total of all amounts from all Parts III, line 30, on Part I, line 1	**30**	

Lifetime Learning Credit

31	Adjusted qualified education expenses (see instructions). Include the total of all amounts from all Parts III, line 31, on Part II, line 10	**31**	

Form **8863** (2022)

Form **8867**

(Rev. November 2022)

Department of the Treasury
Internal Revenue Service

Paid Preparer's Due Diligence Checklist

Earned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC) (including the Additional Child Tax Credit (ACTC) and Credit for Other Dependents (ODC)), and Head of Household (HOH) Filing Status

To be completed by preparer and filed with Form 1040, 1040-SR, 1040-NR, 1040-PR, or 1040-SS.
Go to *www.irs.gov/Form8867* for instructions and the latest information.

OMB No. 1545-0074

For tax year 20 ______

Attachment Sequence No. **70**

Taxpayer name(s) shown on return	Taxpayer identification number
Preparer's name	Preparer tax identification number

Part I Due Diligence Requirements

Please check the appropriate box for the credit(s) and/or HOH filing status claimed on the return and complete the related Parts I–V for the benefit(s) claimed (check all that apply). ☐ EIC ☐ CTC/ACTC/ODC ☐ AOTC ☐ HOH

		Yes	No	N/A
1	Did you complete the return based on information for the applicable tax year provided by the taxpayer or reasonably obtained by you? (See instructions if relying on prior year earned income.)	☐	☐	
2	If credits are claimed on the return, did you complete the applicable EIC and/or CTC/ACTC/ODC worksheets found in the Form 1040, 1040-SR, 1040-NR, 1040-PR, 1040-SS, or Schedule 8812 (Form 1040) instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed?	☐	☐	☐
3	Did you satisfy the knowledge requirement? To meet the knowledge requirement, you must do both of the following. • Interview the taxpayer, ask questions, and contemporaneously document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status. • Review information to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status and to figure the amount(s) of any credit(s)	☐	☐	
4	Did any information provided by the taxpayer or a third party for use in preparing the return, or information reasonably known to you, appear to be incorrect, incomplete, or inconsistent? (If "**Yes**," answer questions 4a and 4b. If "**No**," go to question 5.)	☐	☐	
a	Did you make reasonable inquiries to determine the correct, complete, and consistent information?	☐	☐	
b	Did you contemporaneously document your inquiries? (Documentation should include the questions you asked, whom you asked, when you asked, the information that was provided, and the impact the information had on your preparation of the return.)	☐	☐	
5	Did you satisfy the record retention requirement? To meet the record retention requirement, you must keep a copy of your documentation referenced in question 4b, a copy of this Form 8867, a copy of any applicable worksheet(s), a record of how, when, and from whom the information used to prepare Form 8867 and any applicable worksheet(s) was obtained, and a copy of any document(s) provided by the taxpayer that you relied on to determine eligibility for the credit(s) and/or HOH filing status or to figure the amount(s) of the credit(s)	☐	☐	
	List those documents provided by the taxpayer, if any, that you relied on: ______________________ ______________________ ______________________			
6	Did you ask the taxpayer whether he/she could provide documentation to substantiate eligibility for the credit(s) and/or HOH filing status and the amount(s) of any credit(s) claimed on the return if his/her return is selected for audit?	☐	☐	
7	Did you ask the taxpayer if any of these credits were disallowed or reduced in a previous year?	☐	☐	☐
	(If credits were disallowed or reduced, go to question 7a; if not, go to question 8.)			
a	Did you complete the required recertification Form 8862?	☐	☐	☐
8	If the taxpayer is reporting self-employment income, did you ask questions to prepare a complete and correct Schedule C (Form 1040)?	☐	☐	☐

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 26142H Form **8867** (Rev. 11-2022)

Form **8867**

(Rev. November 2022)

Department of the Treasury
Internal Revenue Service

Paid Preparer's Due Diligence Checklist

Earned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC) (including the Additional Child Tax Credit (ACTC) and Credit for Other Dependents (ODC)), and Head of Household (HOH) Filing Status

To be completed by preparer and filed with Form 1040, 1040-SR, 1040-NR, 1040-PR, or 1040-SS.
Go to *www.irs.gov/Form8867* for instructions and the latest information.

OMB No. 1545-0074

For tax year 20 ______

Attachment Sequence No. **70**

Taxpayer name(s) shown on return	Taxpayer identification number
Preparer's name	Preparer tax identification number

Part I Due Diligence Requirements

Please check the appropriate box for the credit(s) and/or HOH filing status claimed on the return and complete the related Parts I–V for the benefit(s) claimed (check all that apply). ☐ EIC ☐ CTC/ACTC/ODC ☐ AOTC ☐ HOH

		Yes	No	N/A
1	Did you complete the return based on information for the applicable tax year provided by the taxpayer or reasonably obtained by you? (See instructions if relying on prior year earned income.)	☐	☐	
2	If credits are claimed on the return, did you complete the applicable EIC and/or CTC/ACTC/ODC worksheets found in the Form 1040, 1040-SR, 1040-NR, 1040-PR, 1040-SS, or Schedule 8812 (Form 1040) instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed?	☐	☐	☐
3	Did you satisfy the knowledge requirement? To meet the knowledge requirement, you must do both of the following. • Interview the taxpayer, ask questions, and contemporaneously document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status. • Review information to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status and to figure the amount(s) of any credit(s)	☐	☐	
4	Did any information provided by the taxpayer or a third party for use in preparing the return, or information reasonably known to you, appear to be incorrect, incomplete, or inconsistent? (If "**Yes**," answer questions 4a and 4b. If "**No**," go to question 5.)	☐	☐	
a	Did you make reasonable inquiries to determine the correct, complete, and consistent information?	☐	☐	
b	Did you contemporaneously document your inquiries? (Documentation should include the questions you asked, whom you asked, when you asked, the information that was provided, and the impact the information had on your preparation of the return.)	☐	☐	
5	Did you satisfy the record retention requirement? To meet the record retention requirement, you must keep a copy of your documentation referenced in question 4b, a copy of this Form 8867, a copy of any applicable worksheet(s), a record of how, when, and from whom the information used to prepare Form 8867 and any applicable worksheet(s) was obtained, and a copy of any document(s) provided by the taxpayer that you relied on to determine eligibility for the credit(s) and/or HOH filing status or to figure the amount(s) of the credit(s)	☐	☐	
	List those documents provided by the taxpayer, if any, that you relied on: ______________________________ ______________________________ ______________________________			
6	Did you ask the taxpayer whether he/she could provide documentation to substantiate eligibility for the credit(s) and/or HOH filing status and the amount(s) of any credit(s) claimed on the return if his/her return is selected for audit?	☐	☐	
7	Did you ask the taxpayer if any of these credits were disallowed or reduced in a previous year? **(If credits were disallowed or reduced, go to question 7a; if not, go to question 8.)**	☐	☐	☐
a	Did you complete the required recertification Form 8862?	☐	☐	☐
8	If the taxpayer is reporting self-employment income, did you ask questions to prepare a complete and correct Schedule C (Form 1040)?	☐	☐	☐

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 26142H Form **8867** (Rev. 11-2022)

Form **8880**

Department of the Treasury
Internal Revenue Service

Credit for Qualified Retirement Savings Contributions

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/Form8880* for the latest information.

OMB No. 1545-0074
2022
Attachment Sequence No. 54

Name(s) shown on return | Your social security number

CAUTION

You ***cannot*** *take this credit if* ***either*** *of the following applies.*

- *The amount on Form 1040, 1040-SR, or 1040-NR, line 11, is more than $34,000 ($51,000 if head of household; $68,000 if married filing jointly).*
- *The person(s) who made the qualified contribution or elective deferral (a) was born after January 1, 2005; (b) is claimed as a dependent on someone else's 2022 tax return; or (c) was a* ***student*** *(see instructions).*

			(a) You	(b) Your spouse
1	Traditional and Roth IRA contributions, and ABLE account contributions by the designated beneficiary for 2022. **Do not** include rollover contributions	1		
2	Elective deferrals to a 401(k) or other qualified employer plan, voluntary employee contributions, and 501(c)(18)(D) plan contributions for 2022 (see instructions)	2		
3	Add lines 1 and 2	3		
4	Certain distributions received **after** 2019 and **before** the due date (including extensions) of your 2022 tax return (see instructions). If married filing jointly, include **both** spouses' amounts in **both** columns. See instructions for an exception	4		
5	Subtract line 4 from line 3. If zero or less, enter -0-	5		
6	In each column, enter the **smaller** of line 5 or $2,000	6		

7 Add the amounts on line 6. If zero, **stop**; you can't take this credit . . . **7**

8 Enter the amount from Form 1040, 1040-SR, or 1040-NR, line 11* . . . **8**

9 Enter the applicable decimal amount from the table below.

If line 8 is—		And your filing status is—		
Over—	But not over—	Married filing jointly	Head of household	Single, Married filing separately, or Qualifying surviving spouse
		Enter on line 9—		
---	$20,500	0.5	0.5	0.5
$20,500	$22,000	0.5	0.5	0.2
$22,000	$30,750	0.5	0.5	0.1
$30,750	$33,000	0.5	0.2	0.1
$33,000	$34,000	0.5	0.1	0.1
$34,000	$41,000	0.5	0.1	0.0
$41,000	$44,000	0.2	0.1	0.0
$44,000	$51,000	0.1	0.1	0.0
$51,000	$68,000	0.1	0.0	0.0
$68,000	---	0.0	0.0	0.0

9 x 0.

Note: If line 9 is zero, **stop**; you can't take this credit.

10 Multiply line 7 by line 9 . . . **10**

11 Limitation based on tax liability. Enter the amount from the Credit Limit Worksheet in the instructions **11**

12 **Credit for qualified retirement savings contributions.** Enter the **smaller** of line 10 or line 11 here and on Schedule 3 (Form 1040), line 4 . . . **12**

* See Pub. 590-A for the amount to enter if you claim any exclusion or deduction for foreign earned income, foreign housing, or income from Puerto Rico or for bona fide residents of American Samoa.

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 33394D Form **8880** (2022)

Form **8880**

Department of the Treasury
Internal Revenue Service

Credit for Qualified Retirement Savings Contributions

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/Form8880* for the latest information.

OMB No. 1545-0074
2022
Attachment Sequence No. **54**

Name(s) shown on return | **Your social security number**

CAUTION

*You **cannot** take this credit if **either** of the following applies.*

- *The amount on Form 1040, 1040-SR, or 1040-NR, line 11, is more than $34,000 ($51,000 if head of household; $68,000 if married filing jointly).*
- *The person(s) who made the qualified contribution or elective deferral (a) was born after January 1, 2005; (b) is claimed as a dependent on someone else's 2022 tax return; or (c) was a **student** (see instructions).*

			(a) You	(b) Your spouse
1	Traditional and Roth IRA contributions, and ABLE account contributions by the designated beneficiary for 2022. **Do not** include rollover contributions	1		
2	Elective deferrals to a 401(k) or other qualified employer plan, voluntary employee contributions, and 501(c)(18)(D) plan contributions for 2022 (see instructions)	2		
3	Add lines 1 and 2	3		
4	Certain distributions received **after** 2019 and **before** the due date (including extensions) of your 2022 tax return (see instructions). If married filing jointly, include **both** spouses' amounts in **both** columns. See instructions for an exception	4		
5	Subtract line 4 from line 3. If zero or less, enter -0-	5		
6	In each column, enter the **smaller** of line 5 or $2,000	6		

7 Add the amounts on line 6. If zero, **stop**; you can't take this credit . . . 7

8 Enter the amount from Form 1040, 1040-SR, or 1040-NR, line 11* . . . 8

9 Enter the applicable decimal amount from the table below.

If line 8 is—		And your filing status is—		
Over—	But not over—	Married filing jointly	Head of household	Single, Married filing separately, or Qualifying surviving spouse
		Enter on line 9—		
---	$20,500	0.5	0.5	0.5
$20,500	$22,000	0.5	0.5	0.2
$22,000	$30,750	0.5	0.5	0.1
$30,750	$33,000	0.5	0.2	0.1
$33,000	$34,000	0.5	0.1	0.1
$34,000	$41,000	0.5	0.1	0.0
$41,000	$44,000	0.2	0.1	0.0
$44,000	$51,000	0.1	0.1	0.0
$51,000	$68,000	0.1	0.0	0.0
$68,000	---	0.0	0.0	0.0

9 x 0.

Note: If line 9 is zero, **stop**; you can't take this credit.

10 Multiply line 7 by line 9 . . . 10

11 Limitation based on tax liability. Enter the amount from the Credit Limit Worksheet in the instructions 11

12 **Credit for qualified retirement savings contributions.** Enter the **smaller** of line 10 or line 11 here and on Schedule 3 (Form 1040), line 4 . . . 12

* See Pub. 590-A for the amount to enter if you claim any exclusion or deduction for foreign earned income, foreign housing, or income from Puerto Rico or for bona fide residents of American Samoa.

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 33394D Form **8880** (2022)

Form **8888** (Rev. November 2022) Department of the Treasury Internal Revenue Service

Allocation of Refund (Including Savings Bond Purchases)

Go to *www.irs.gov/Form8888* for the latest information.

Attach to your income tax return.

OMB No. 1545-0074

For calendar year 20 ____

Attachment Sequence No. **56**

Name(s) shown on return | **Your social security number**

Part I Direct Deposit

Complete this part if you want us to directly deposit a portion of your refund to one or more accounts.

1a Amount to be deposited in first account (see instructions) **1a**

b Routing number ☐☐☐☐☐☐☐☐☐ **c** ☐ Checking ☐ Savings

d Account number ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

2a Amount to be deposited in second account **2a**

b Routing number ☐☐☐☐☐☐☐☐☐ **c** ☐ Checking ☐ Savings

d Account number ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

3a Amount to be deposited in third account **3a**

b Routing number ☐☐☐☐☐☐☐☐☐ **c** ☐ Checking ☐ Savings

d Account number ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Part II U.S. Series I Savings Bond Purchases

Complete this part if you want to buy paper bonds with a portion of your refund.

CAUTION *If a name is entered on line 5c or 6c below, co-ownership will be assumed unless the beneficiary box is checked. See instructions for more details.*

4 Amount to be used for bond purchases for yourself (and your spouse, if filing jointly) **4**

5a Amount to be used to buy bonds for yourself, your spouse, **or** someone else **5a**

b Enter the owner's name (First then Last) for the bond registration

c If you would like to add a co-owner or beneficiary, enter the name here (First then Last). If beneficiary, also check here . . ☐

6a Amount to be used to buy bonds for yourself, your spouse, **or** someone else **6a**

b Enter the owner's name (First then Last) for the bond registration

c If you would like to add a co-owner or beneficiary, enter the name here (First then Last). If beneficiary, also check here . . ☐

Part III Paper Check

Complete this part if you want a portion of your refund to be sent to you as a check.

7 Amount to be refunded by check **7**

Part IV Total Allocation of Refund

8 Add lines 1a, 2a, 3a, 4, 5a, 6a, and 7. The total must equal the refund amount shown on your tax return **8**

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 21858A Form **8888** (Rev. 11-2022)

Form **8908**
(Rev. December 2022)
Department of the Treasury
Internal Revenue Service

Energy Efficient Home Credit

Attach to your tax return.
Go to *www.irs.gov/Form8908* for instructions and the latest information.

OMB No. 1545-1979
Attachment Sequence No. **153**

Name(s) shown on return | **Identifying number**

1a	Enter the total number of qualified energy efficient homes including qualified energy efficient manufactured homes meeting the 50% standard that were sold or leased before 2023 to another person for use as a residence during the tax year. See instructions	**1a**	
b	Multiply line 1a by $2,000	**1b**	
2a	Enter the total number of qualified energy efficient manufactured homes meeting the 30% standard that were sold or leased before 2023 to another person for use as a residence during the tax year. See instructions	**2a**	
b	Multiply line 2a by $1,000	**2b**	
3a	Enter the total number of qualified energy efficient homes eligible to participate in the Energy Star Residential New Construction Program or the Energy Star Manufactured New Homes Program (or the Energy Star Multifamily New Construction Program if prevailing wage requirements are met) meeting the single or multifamily home requirements but not certified as a Zero Energy Ready Home that were sold or leased after 2022 to another person for use as a residence during the tax year. See instructions	**3a**	
b	Multiply line 3a by $2,500	**3b**	
4a	Enter the total number of qualified energy efficient homes eligible to participate in the Energy Star Residential New Construction Program or the Energy Star Manufactured New Homes Program (or the Energy Star Multifamily New Construction Program if prevailing wage requirements are met) and certified as a Zero Energy Ready Home that were sold or leased after 2022 to another person for use as a residence during the tax year. See instructions	**4a**	
b	Multiply line 4a by $5,000	**4b**	
5a	Enter the total number of qualified energy efficient homes eligible to participate in the Energy Star Multifamily New Construction Program meeting the multifamily home requirements but not meeting the prevailing wage requirements and not certified as a Zero Energy Ready Home that were sold or leased after 2022 to another person for use as a residence during the tax year. See instructions	**5a**	
b	Multiply line 5a by $500	**5b**	
6a	Enter the total number of qualified energy efficient homes eligible to participate in the Energy Star Multifamily New Construction Program not meeting the prevailing wage requirements but certified as a Zero Energy Ready Home that were sold or leased after 2022 to another person for use as a residence during the tax year. See instructions	**6a**	
b	Multiply line 6a by $1,000	**6b**	
7	Energy efficient home credit from partnerships and S corporations (see instructions)	**7**	
8	Add lines 1b, 2b, 3b, 4b, 5b, 6b, and 7. Partnerships and S corporations, report this amount on Schedule K. All others, report this amount on Form 3800, Part III, line 1p	**8**	

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 37718T Form **8908** (Rev. 12-2022)

Form **8911**
(Rev. December 2022)
Department of the Treasury
Internal Revenue Service

Alternative Fuel Vehicle Refueling Property Credit

Attach to your tax return.
Go to *www.irs.gov/Form8911* for instructions and the latest information.

OMB No. 1545-0123
Attachment Sequence No. **151**

Name(s) shown on return | **Identifying number**

Part I Total Cost of Refueling Property

1	Total cost of qualified alternative fuel vehicle refueling property placed in service during the tax year (see *What's New* in the instructions)	1	

Part II Credit for Business/Investment Use Part of Refueling Property

2	Business/investment use part (see instructions)	2	
3	Section 179 expense deduction (see instructions)	3	
4a	Subtract line 3 from line 2	4a	
b	Enter any amount included on line 4a attributable to property placed in service after 2022 as part of a project subject to project requirements that were not met (see instructions)	4b	
c	Subtract line 4b from line 4a	4c	
5a	Multiply line 4b by 6% (0.06)	5a	
b	Multiply line 4c by 30% (0.30)	5b	
c	Add lines 5a and 5b	5c	
6	Maximum business/investment use part of credit (see instructions)	6	
7	Enter the **smaller** of line 5c or line 6	7	
8	Alternative fuel vehicle refueling property credit from partnerships and S corporations (see instructions)	8	
9	**Business/investment use part of credit.** Add lines 7 and 8. Partnerships and S corporations, stop here and report this amount on Schedule K. All others, report this amount on Form 3800, Part III, line 1s	9	

Part III Credit for Personal Use Part of Refueling Property

10	Subtract line 2 from line 1. If zero, stop here; **do not** file this form unless you are claiming a credit on line 9	10	
11	Multiply line 10 by 30% (0.30)	11	
12	Maximum personal use part of credit (see instructions)	12	
13	Enter the **smaller** of line 11 or line 12	13	
14	Regular tax before credits: • Individuals. Enter the sum of the amounts from Form 1040, 1040-SR, or 1040-NR, line 16, and Schedule 2 (Form 1040), line 2. • Other filers. Enter the regular tax before credits from your return.	14	
15	Credits that reduce regular tax before the alternative fuel vehicle refueling property credit:		
a	Foreign tax credit — 15a		
b	Certain allowable credits (see instructions) — 15b		
c	Add lines 15a and 15b	15c	
16	Net regular tax. Subtract line 15c from line 14. If zero or less, enter -0- and stop here; **do not** file this form unless you are claiming a credit on line 9	16	
17	Tentative minimum tax (see instructions): • Individuals. Enter the amount from Form 6251, line 9. • Other filers. Enter the tentative minimum tax from your alternative minimum tax form or schedule.	17	
18	Subtract line 17 from line 16. If zero or less, stop here; **do not** file this form unless you are claiming a credit on line 9	18	
19	**Personal use part of credit.** Enter the **smaller** of line 13 or line 18 here and on Schedule 3 (Form 1040), line 6j; or the appropriate line of your return. If line 18 is smaller than line 13, see instructions	19	

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 37721Q Form **8911** (Rev. 12-2022)

Form **8915-C**

Department of the Treasury
Internal Revenue Service

Qualified 2018 Disaster Retirement Plan Distributions and Repayments

Go to *www.irs.gov/Form8915C* for instructions and the latest information.
For coronavirus-related distributions, see Form 8915-F.
Attach to 2022 Form 1040, 1040-SR, or 1040-NR.

OMB No. 1545-0074

2022

Attachment Sequence No. **915**

Name. If married, file a separate form for each spouse required to file 2022 Form 8915-C. See instructions.	**Your social security number**

Fill in Your Address Only if You Are Filing This Form by Itself and Not With Your Tax Return

Home address (number and street, or P.O. box if mail is not delivered to your home)		Apt. no.
City, town or post office, state, and ZIP code. If you have a foreign address, also complete the spaces below. See instructions.		If this is an amended return, check here . ☐
Foreign country name	Foreign province/state/county	Foreign postal code

Part I Qualified 2018 Disaster Distributions From Retirement Plans (Other Than IRAs)

1	Enter the amount, if any, from your 2020 Form 8915-C, line 11. If you checked the box on that line, enter -0-			1	
2a	Enter the amount, if any, from your 2021 Form 8915-C, line 8	2a			
b	Enter the amount, if any, from your 2021 Form 8915-C, line 3	2b			
3a	Subtract line 2b from line 2a. If zero or less, enter -0-. This is your excess repayment from 2021	3a			
b	Enter the amount from line 3a that you have already carried back to a prior year .	3b			
4	Subtract line 3b from line 3a			4	
5	Enter the total amount of any repayments you made before filing your 2022 tax return. But don't include repayments made later than the due date (including extensions) for that return or after the 3-year cutoff date. Don't use this form to report repayments of qualified disaster distributions for disasters other than qualified 2018 disasters. See instructions			5	
6	Add lines 4 and 5			6	
7	**Amount subject to tax in 2022.** Subtract line 6 from line 1. If zero or less, enter -0-. Include this amount in the total on 2022 Form 1040, 1040-SR, or 1040-NR, line 5b			7	

Part II Qualified 2018 Disaster Distributions From Traditional, SEP, SIMPLE, and Roth IRAs

8	Enter the amount, if any, from your 2020 Form 8915-C, line 27. If you checked the box on that line, enter -0-			8	
9a	Enter the amount, if any, from your 2021 Form 8915-C, line 17	9a			
b	Enter the amount, if any, from your 2021 Form 8915-C, line 12	9b			
10a	Subtract line 9b from line 9a. If zero or less, enter -0-. This is your excess repayment from 2021	10a			
b	Enter the amount from line 10a that you have already carried back to a prior year .	10b			
11	Subtract line 10b from line 10a			11	
12	Enter the total amount of any repayments you made before filing your 2022 tax return. But don't include any repayments made later than the due date (including extensions) for that return or after the 3-year cutoff date. Don't use this form to report repayments of qualified disaster distributions for disasters other than qualified 2018 disasters. See instructions			12	
13	Add lines 11 and 12			13	
14	**Amount subject to tax in 2022.** Subtract line 13 from line 8. If zero or less, enter -0-. Include this amount in the total on 2022 Form 1040, 1040-SR, or 1040-NR, line 4b			14	

Sign Here Only if You Are Filing This Form by Itself and Not With Your Tax Return

Under penalties of perjury, I declare that I have examined this form, including accompanying attachments, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name			Firm's EIN	
Firm's address			Phone no.	

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 72465B Form **8915-C** (2022)

Form **8915-D**

Department of the Treasury
Internal Revenue Service

Qualified 2019 Disaster Retirement Plan Distributions and Repayments

Go to *www.irs.gov/Form8915D* for instructions and the latest information.
For coronavirus-related distributions, see Form 8915-F.
Attach to 2022 Form 1040, 1040-SR, or 1040-NR.

OMB No. 1545-0074

2022

Attachment Sequence No. **915**

Name. If married, file a separate form for each spouse required to file 2022 Form 8915-D. See instructions.			**Your social security number**
Fill in Your Address Only if You Are Filing This Form by Itself and Not With Your Tax Return	Home address (number and street, or P.O. box if mail is not delivered to your home)		Apt. no.
	City, town or post office, state, and ZIP code. If you have a foreign address, also complete the spaces below. See instructions.		If this is an amended return, check here ☐
	Foreign country name	Foreign province/state/county	Foreign postal code

Part I Qualified 2019 Disaster Distributions From Retirement Plans (Other Than IRAs)

1	Enter the amount, if any, from your 2020 Form 8915-D, line 11. If you checked the box on that line, enter -0-			1	
2	Enter the amount, if any, from your 2021 Form 8915-D, line 11. If you checked the box on that line, enter -0-			2	
3	Add lines 1 and 2			3	
4a	Enter the amount, if any, from your 2021 Form 8915-D, line 19	4a			
b	Enter the amount, if any, from your 2021 Form 8915-D, line 14	4b			
5a	Subtract line 4b from line 4a. If zero or less, enter -0-. This is your excess repayment from 2021	5a			
b	Enter the amount from line 5a that you have already carried back to a prior year	5b			
6	Subtract line 5b from line 5a			6	
7	Enter the total amount of any repayments you made before filing your 2022 tax return. But don't include repayments made later than the due date (including extensions) for that return. Don't use this form to report repayments of qualified disaster distributions for disasters other than qualified 2019 disasters. See instructions			7	
8	Add lines 6 and 7			8	
9	**Amount subject to tax in 2022.** Subtract line 8 from line 3. If zero or less, enter -0-. Include this amount in the total on 2022 Form 1040, 1040-SR, or 1040-NR, line 5b			9	

Part II Qualified 2019 Disaster Distributions From Traditional, SEP, SIMPLE, and Roth IRAs

10	Enter the amount, if any, from your 2020 Form 8915-D, line 26. If you checked the box on that line, enter -0-			10	
11	Enter the amount, if any, from your 2021 Form 8915-D, line 27. If you checked the box on that line, enter -0-			11	
12	Add lines 10 and 11			12	
13a	Enter the amount, if any, from your 2021 Form 8915-D, line 35	13a			
b	Enter the amount, if any, from your 2021 Form 8915-D, line 30	13b			
14a	Subtract line 13b from line 13a. If zero or less, enter -0-. This is your excess repayment from 2021	14a			
b	Enter the amount from line 14a that you have already carried back to a prior year	14b			
15	Subtract line 14b from line 14a			15	
16	Enter the total amount of any repayments you made before filing your 2022 tax return. But don't include any repayments made later than the due date (including extensions) for that return. Don't use this form to report repayments of qualified disaster distributions for disasters other than qualified 2019 disasters. See instructions			16	
17	Add lines 15 and 16			17	
18	**Amount subject to tax in 2022.** Subtract line 17 from line 12. If zero or less, enter -0-. Include this amount in the total on 2022 Form 1040, 1040-SR, or 1040-NR, line 4b			18	

Sign Here Only if You Are Filing This Form by Itself and Not With Your Tax Return

Under penalties of perjury, I declare that I have examined this form, including accompanying attachments, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature | Date

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
	Firm's name			Firm's EIN	
	Firm's address			Phone no.	

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 73793G Form **8915-D** (2022)

Form **8915-F**
(Rev. January 2023)
Department of the Treasury
Internal Revenue Service

Qualified Disaster Retirement Plan Distributions and Repayments

Go to *www.irs.gov/Form8915F* for instructions and the latest information.
Attach to Form 1040, 1040-SR, or 1040-NR.

OMB No. 1545-0074
Attachment Sequence No. **915**

Name. If married, file a separate form for each spouse required to file Form 8915-F. See instructions. | **Your social security number**

Before you begin (see instructions for details):

- Form 8915-F replaces Form 8915-E for 2021 and later years. Form 8915-E was used for coronavirus-related and other 2020 disaster distributions.
- Form 8915-F is also used for 2021 and later disaster distributions.
- See Appendix B in the instructions for the list of qualified disasters and their FEMA numbers for the year you check in item B next.
- "This year" (as used on this form) is the year of the form you check in item A next. For example, if you check 2022, "this year" is 2022.

Complete items A and B below. Complete item C and check the box in item D for the coronavirus, as applicable.

A Tax year for which you are filing form (check only one box): ☐ 2021 ☐ 2022 ☐ 2023 ☐ 2024 ☐ Other ______

B Calendar year in which disaster occurred (check only one box): ☐ 2020 ☐ 2021 ☐ 2022 ☐ 2023 ☐ Other ______

C FEMA number for each of your disasters for the year checked in item B above. Use item D, **not** item C, for the coronavirus.

(1) ________ (2) ________ (3) ________ (4) ________ (5) ________ (6) ________

D If your disaster is the coronavirus, check this box ☐ Don't list the coronavirus in item C.

Which lines on this form should I use? See CHARTS 1 and 2 below.

CHART 1: Use if you checked the box for coronavirus in item D above and you *don't* have any disaster in item C.

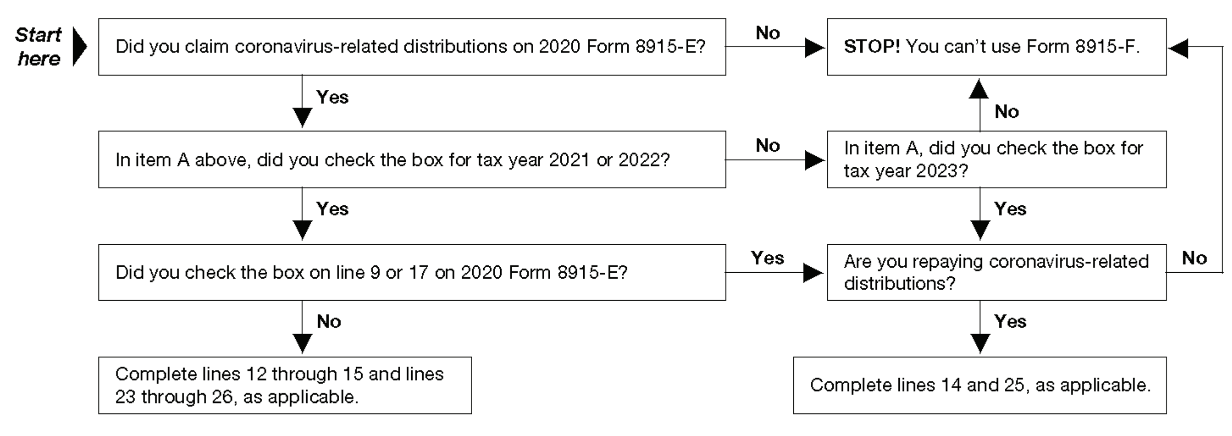
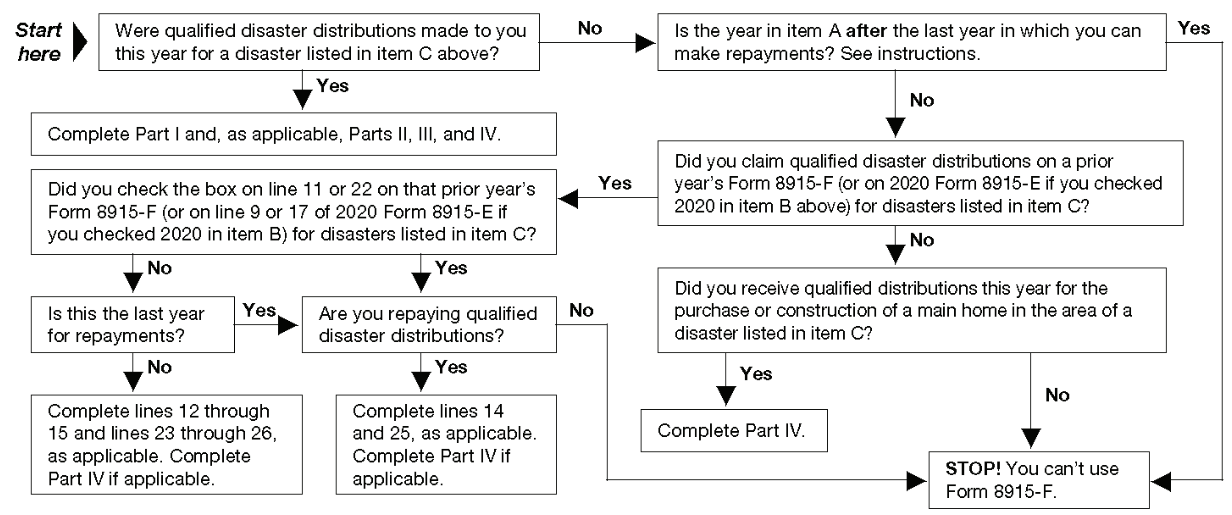


CHART 2: Use if CHART 1 doesn't apply to you. See the instructions for specific details.



Form 8915-F (Rev. 1-2023) Page **2**

Part I **Total Distributions From All Retirement Plans (Including IRAs)** (see instructions)

Provide the information requested below for the disasters in item C earlier for which you are reporting qualified disaster distributions in this part.

Disaster FEMA number*	Disaster beginning date*	Disaster ending date*

*See Appendix B at the end of the instructions for the FEMA number, and for disaster beginning and ending dates. If more than two disasters, see instructions and check this box . . . . ☐

Date first distribution made this year

Date last distribution made this year

Complete lines 1a through 1e first. If line 1e is zero, stop. Do not complete Part I.

			(a) **Available distributions for this year** (see instructions)	**(b)** **Qualified disaster distributions for the disasters in item C** (see instructions)
1	**Qualified disaster distribution limits (see instructions).**			
a	Do the following. • Skip lines 1a through 1d. And, on line 1e, enter $100,000 times the number of disasters you entered in item C earlier **if**: • You checked 2020 in item B earlier and either you didn't file 2020 Form 8915-E or you only reported the coronavirus disaster on 2020 Form 8915-E, **or** • You checked a year other than 2020 in item B and this is the first year you are filing a Form 8915-F for disasters for the year checked in item B. • **Otherwise**, on line 1a, enter $100,000 times the number of different qualified disasters you have reported in item C on prior-year Forms 8915-F for disasters for the year you checked in item B. (Include, in your disaster number, if you checked 2020 in item B, qualified disaster(s) (other than the coronavirus) reported in Part I of 2020 Form 8915-E.) Also, complete lines 1b through 1e	**1a**		
b	Enter the total qualified disaster distributions made to you in prior year(s) for all disasters (except the coronavirus) for the year you checked in item B	**1b**		
c	Subtract line 1b from line 1a	**1c**		
d	Enter $100,000 times the number of qualified disasters, for the year checked in item B, that you reported in item C but didn't report in item C on a prior year's Form 8915-F, or in Part I of 2020 Form 8915-E if you checked 2020 in item B. Don't count the coronavirus in the number of qualified disasters	**1d**		
e	**Total available qualified disaster distribution amount for this year.** Enter the sum of lines 1c and 1d. **If the amount on line 1e is zero, do NOT complete Part I**	**1e**		
2	Enter, in column (a), distributions from retirement plans (other than IRAs) made this year	**2**		
3	Enter, in column (a), distributions from traditional, SEP, and SIMPLE IRAs made this year	**3**		
4	Enter, in column (a), distributions from Roth IRAs made this year	**4**		
5	Enter on line 5, column (a), the sum of lines 2 through 4 in column (a) reduced by the total distributions from lines 2 through 4 in column (a) that aren't qualified disaster distributions. • See instructions if the years checked in items A and B are the same; more than one disaster is listed in item C; **and** the total on line 5, column (a), exceeds $100,000. • **Otherwise**, enter on line 5, column (b), the smaller of the amount on line 5, column (a), or line 1e. Then enter on lines 2 through 4 in column (b) the amounts from lines 2 through 4, respectively, in column (a) **allocated, if needed**, by any reasonable method so that the sum of lines 2 through 4 in column (b) equals the amount on line 5, column (b)	**5**		
6	**Total qualified disaster distributions.** Enter the amount from line 5, column (b). The 10% additional tax (25% for SIMPLE IRAs) for early withdrawals is waived for this amount. See Parts II and III, later, for the tax on this amount		**6**	
7	**Taxable amount.** Enter the excess of the sum of lines 2 through 4 in column (a) over the amount on line 6. Report this excess as IRA and/or pension and annuity distributions, as applicable, in accordance with the instructions for your tax return. All or part of the amount on line 7 may be eligible for the tax benefits in Part IV. See instructions		**7**	

Form **8915-F** (Rev. 1-2023)

Form 8915-F (Rev. 1-2023) Page **3**

Part II Qualified Disaster Distributions From Retirement Plans (Other Than IRAs) for the Coronavirus and Disaster(s) Listed in Item C

8	Did you enter an amount on line 2, column (b)? ☐ **No.** Skip lines 8 through 11, and go to line 12. ☐ **Yes.** Enter the amount from line 2, column (b)	8	
9	Enter the applicable cost of distributions, if any. See instructions	9	
10	Subtract line 9 from line 8. This is the taxable amount of your other-than-IRA retirement plan qualified disaster distributions	10	
11	The entire taxable amount on line 10 will be spread over 3 years unless you elect to have it taxed in this year. **If you elect NOT to spread the taxable amount over 3 years, check this box ☐ and enter the amount from line 10 (see instructions). Otherwise, enter the amount from line 10 divided by 3.0.** You must check the box on this line if you check the box on line 22	11	
12	Enter the amount, if any, from Worksheet 2 in the instructions. This is your income for prior years from other-than-IRA retirement plan qualified disaster distributions	12	
13	Add lines 11 and 12. This is your total income this year from other-than-IRA retirement plan qualified disaster distributions	13	
14	**Total repayment.** Enter the amount, if any, from Worksheet 3. This is your total repayment for this year of other-than-IRA retirement plan qualified disaster distributions	14	
15	**Amount subject to tax this year.** Subtract line 14 from line 13. If zero or less, enter -0-. Include this amount in the total on line 5b of this year's Form 1040, 1040-SR, or 1040-NR. See instructions	15	

Before you begin: Complete this year's Form 8606, Nondeductible IRAs, if required.

Part III Qualified Disaster Distributions From Traditional, SEP, SIMPLE, and Roth IRAs for the Coronavirus and Disaster(s) Listed in Item C

16	Did you enter an amount on line 3, column (b), or line 4, column (b)? ☐ **Yes.** Go to line 17. ☐ **No.** Skip lines 17 through 22, and go to line 23.		
17	Did you receive a qualified disaster distribution from a traditional, SEP, SIMPLE, or Roth IRA that is required to be reported on this year's Form 8606? ☐ **Yes.** Go to line 18. ☐ **No.** Skip lines 18 and 19, and go to line 20.		
18	Enter the amount, if any, from this year's Form 8606, line 15b. But if you are entering amounts here and on other Forms 8915-F for this year, only enter on line 18 the amount on Form 8606, line 15b, attributable to Form 8915-F distributions for this form. See the instructions for Form 8606, line 15b	18	
19	Enter the amount, if any, from this year's Form 8606, line 25b. But if you are entering amounts here and on other Forms 8915-F for this year, only enter on line 19 the amount on Form 8606, line 25b, attributable to Form 8915-F distributions for this form. See the instructions for Form 8606, line 25b	19	
20	Enter the amount from line 3, column (b), if any. Don't include on line 20 any amounts reported on Form 8606	20	
21	Add lines 18, 19, and 20. This is the taxable amount of your IRA qualified disaster distributions	21	
22	The entire taxable amount on line 21 will be spread over 3 years unless you elect to have it taxed in this year. **If you elect NOT to spread the taxable amount over 3 years, check this box ☐ and enter the amount from line 21 (see instructions). Otherwise, enter the amount from line 21 divided by 3.0.** You must check the box on this line if you check the box on line 11	22	
23	Enter the amount, if any, from Worksheet 4 in the instructions. This is your income for prior years from IRA qualified disaster distributions	23	
24	Add lines 22 and 23. This is your total income this year from IRA qualified disaster distributions	24	
25	**Total repayment.** Enter the amount, if any, from Worksheet 5. This is your total repayment for this year of IRA qualified disaster distributions	25	
26	**Amount subject to tax.** Subtract line 25 from line 24. If zero or less, enter -0-. Include this amount in the total on line 4b of this year's Form 1040, 1040-SR, or 1040-NR. See instructions	26	

Form **8915-F** (Rev. 1-2023)

Form 8915-F (Rev. 1-2023) Page **4**

Before you begin: Complete this year's Form 8606, Nondeductible IRAs, if required.

Part IV Qualified Distributions for the Purchase or Construction of a Main Home in the Area of Disaster(s) Listed in Item C

Caution: Complete Part IV if, this year, you received a qualified distribution (as defined in the instructions) for a disaster listed in item C earlier. If you repay the distribution, in whole or in part, after this year, see the instructions. For the applicability of Part IV to other years for disasters listed in item C, see the instructions.

Disaster FEMA number*	Disaster beginning date*	Disaster ending date*

*See Appendix B at the end of the instructions for the FEMA number, and for disaster beginning and ending dates.

Date first distribution received this year ____________ Date last distribution received this year ____________

27	Did you receive a qualified distribution from a traditional, SEP, SIMPLE, or Roth IRA that is required to be reported on this year's Form 8606? ☐ **Yes.** Complete lines 28 through 32 only if you also had qualified distributions not required to be reported on this year's Form 8606; otherwise, stop here. ☐ **No.** Go to line 28.		
28	Enter the total amount of qualified distributions you received this year for the purchase or construction of a main home. Don't include any amounts reported on this year's Form 8606. Also, don't include any distributions you reported on line 8 or 20, or on other Forms 8915 for this year, if any	28	
29	Enter the applicable cost of distributions, if any. See instructions	29	
30	Subtract line 29 from line 28	30	
31	Enter the total amount of any repayments you made. See instructions for allowable repayments. Don't include any repayments treated as rollovers on this year's Form 8606. See instructions	31	
32	**Taxable amount.** Subtract line 31 from line 30. If the distribution is: • From an IRA, include this amount in the total on line 4b of this year's Form 1040, 1040-SR, or 1040-NR. • From a retirement plan (other than an IRA), include this amount in the total on line 5b of this year's Form 1040, 1040-SR, or 1040-NR. **Note:** You may be subject to an additional tax on the amount on line 32. See instructions.	32	

Form **8915-F** (Rev. 1-2023)

Form **8919**

Department of the Treasury
Internal Revenue Service

Uncollected Social Security and Medicare Tax on Wages

Go to *www.irs.gov/Form8919* for the latest information.
Attach to your tax return.

OMB No. 1545-0074
2022
Attachment Sequence No. **61**

Name of person who must file this form. If married, complete a separate Form 8919 for each spouse who must file this form.	**Social security number**

Who must file. You must file Form 8919 if **all** of the following apply.

- You performed services for a firm.
- You believe your pay from the firm wasn't for services as an independent contractor.
- The firm didn't withhold your share of social security and Medicare taxes from your pay.
- One of the reasons listed below under *Reason codes* applies to you.

Reason codes. For each firm listed below, enter in column (c) the applicable reason code for filing this form. If none of the reason codes apply to you, but you believe you should have been treated as an employee, enter reason code G, and **file Form SS-8 on or before the date you file your tax return.**

A I filed Form SS-8 and received a determination letter stating that I am an employee of this firm.

C I received other correspondence from the IRS that states I am an employee.

G I filed Form SS-8 with the IRS and haven't received a reply.

H I received a Form W-2 and a Form 1099-MISC and/or 1099-NEC from this firm for 2022. The amount on Form 1099-MISC and/or 1099-NEC should have been included as wages on Form W-2. **(Don't file Form SS-8 if you select reason code H.)**

	(a) Name of firm	**(b)** Firm's federal identification number (see instructions)	**(c)** Enter reason code from above.	**(d)** Date of IRS determination or correspondence (MM/DD/YYYY) (see instructions)	**(e)** Check if Form 1099-MISC and/or 1099-NEC was received.	**(f)** Total wages received with no social security or Medicare tax withholding and not reported on Form W-2
1					☐	
2					☐	
3					☐	
4					☐	
5					☐	

6	**Total wages.** Combine lines 1 through 5 in column (f). Enter here and on Form 1040, 1040-SR, or 1040-NR, line 1g			6	
7	Maximum amount of wages subject to social security tax	7	147,000		
8	Total social security wages and social security tips (total of boxes 3 and 7 on Form(s) W-2), railroad retirement (RRTA) compensation (subject to the 6.2% rate), and unreported tips subject to social security tax from Form 4137, line 10. See instructions	8			
9	Subtract line 8 from line 7. If line 8 is more than line 7, enter -0- here and on line 10			9	
10	Wages subject to social security tax. Enter the smaller of line 6 or line 9			10	
11	Multiply line 10 by 0.062 (social security tax rate)			11	
12	Multiply line 6 by 0.0145 (Medicare tax rate)			12	
13	Add lines 11 and 12. Enter here. Include as tax on your annual tax return (Schedule 2 (Form 1040), line 6; Form 1040-PR, Part I, line 6; or Form 1040-SS, Part I, line 6). See the instructions there			13	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 37730B Form **8919** (2022)

Future Developments

For the latest information about developments related to Form 8919 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/Form8919*.

What's New

Increase in wage amount subject to social security tax. On line 7, the maximum amount of wages subject to social security tax has increased from $142,800 to $147,000 for 2022.

General Instructions

Purpose of form. Use Form 8919 to figure and report your share of the uncollected social security and Medicare taxes due on your compensation if you were an employee but were treated as an independent contractor by your employer. By filing this form, your social security earnings will be credited to your social security record. See *www.irs.gov/ICorEE* for more information.

CAUTION

Don't use this form:

• For services you performed as an independent contractor. Instead, use Schedule C (Form 1040), Profit or Loss From Business, to report the income. And use Schedule SE (Form 1040), Self-Employment Tax, to figure the tax on net earnings from self-employment.

• To figure the social security and Medicare tax owed on tips you didn't report to your employer, including any allocated tips shown on your Form(s) W-2 that you must report as income. Instead, use Form 4137, Social Security and Medicare Tax on Unreported Tip Income.

Firm. For purposes of this form, the term "firm" means any individual, business enterprise, company, nonprofit organization, state, or other entity for which you performed services. This firm may or may not have paid you directly for these services.

Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. File Form SS-8 if you want the IRS to determine whether you are an independent contractor or an employee. See the form instructions for information on completing the form. **If you select reason code G, you must file Form SS-8 on or before the date you file Form 8919. Don't attach Form SS-8 to your tax return. Form SS-8 must be filed separately.**

Form 8959, Additional Medicare Tax. A 0.9% Additional Medicare Tax applies to Medicare wages, Railroad Retirement Tax Act compensation, and self-employment income over a threshold amount based on your filing status. Use Form 8959 to figure this tax. See *www.irs.gov/ADMTfaqs* for more information.

Specific Instructions

Lines 1 through 5. Complete a separate line for each firm. If you worked as an employee for more than five firms in 2022, attach additional Form(s) 8919 with lines 1 through 5 completed. Complete lines 6 through 13 on only one Form 8919. The line 6 amount on that Form 8919 should be the combined totals of all lines 1 through 5 of all your Forms 8919.

Column (a). Enter the name of the firm for which you worked. If you received a Form 1099-MISC and/or 1099-NEC from the firm, enter the firm's name exactly as it is entered on Form 1099-MISC and/or 1099-NEC.

Column (b). The federal identification number for a firm can be an employer identification number (EIN) or a social security number (SSN) (if the firm is an individual). An EIN is a nine-digit number assigned by the IRS to a business. Enter an EIN like this: XX-XXXXXXX. Enter an SSN like this: XXX-XX-XXXX. If you received a Form 1099-MISC and/or 1099-NEC from the firm, enter the firm's federal identification number that is entered on Form 1099-MISC and/or 1099-NEC. If you don't know the firm's federal identification number, you can use Form W-9, Request for Taxpayer Identification Number and Certification, to request it from the firm. If you are unable to obtain the number, enter "unknown."

Column (c). Enter the reason code for why you are filing this form. Enter only one reason code on each line. If none of the reason codes apply to you, but you believe you should have been treated as an employee, enter reason code G, and **file Form SS-8 on or before the date you file your tax return. Don't attach Form SS-8 to your tax return. Form SS-8 must be filed separately.**

Enter reason code C if you were designated as a "section 530 employee" by the IRS. You are a section 530 employee, for these purposes, if you were determined to be an employee by the IRS prior to January 1, 1997, but your employer was granted relief from payment of employment taxes under section 530 of the Revenue Act of 1978.

Enter reason code H if you received both a Form W-2 and a Form 1099-MISC and/or 1099-NEC from the firm and the amount on the Form 1099-MISC and/or 1099-NEC should have been included as wages on Form W-2 as an amount you received for services you provided as an employee. If reason code H applies to your situation, **don't file Form SS-8**. Examples of amounts that are sometimes erroneously included on Form 1099-MISC and/or 1099-NEC that should be reported as wages on Form W-2 include employee bonuses, awards, travel expense reimbursements not paid under an accountable plan, scholarships, and signing bonuses. Generally, amounts paid by an employer to an employee aren't reported on Form 1099-MISC and/or 1099-NEC. Form 1099-MISC and/or 1099-NEC is used for reporting nonemployee compensation, rents, royalties, and certain other payments.

CAUTION

If you enter reason code G, you or the firm that paid you may be contacted for additional information. Use of this reason code isn't a guarantee that the IRS will agree with your worker status determination. If the IRS doesn't agree that you are an employee, you may be billed for the additional tax, penalties, and interest resulting from the change to your worker status.

Column (d). Complete only if reason code A or C is entered in column (c).

Line 6. Also enter this amount on Form 8959, line 3, if you are required to file that form.

Line 8. For railroad retirement (RRTA) compensation, don't include an amount greater than $147,000, which is the amount subject to the 6.2% rate for 2022.

Form **8936** (Rev. December 2022) Department of the Treasury Internal Revenue Service

Qualified Plug-in Electric Drive Motor Vehicle Credit

(Including Qualified Two-Wheeled Plug-in Electric Vehicles and New Clean Vehicles)

Attach to your tax return.

Go to *www.irs.gov/Form8936* for instructions and the latest information.

OMB No. 1545-2137

Attachment Sequence No. **69**

Name(s) shown on return | **Identifying number**

Note: This credit is for qualified plug-in electric drive motor vehicles placed in service before 2023, qualified two-wheeled plug-in electric vehicles acquired before but placed in service in 2022, and new clean vehicles placed in service after 2022. See separate instructions for vehicle definitions and other requirements.

Part I Tentative Credit

Use a separate column for each vehicle. If you need more columns, use additional Forms 8936 and include the totals on lines 12 and 19.		**(a)** Vehicle 1	**(b)** Vehicle 2
1 Year, make, and model of vehicle	**1**		
2 Vehicle identification number (see instructions)	**2**		
3 Enter date vehicle was placed in service (MM/DD/YYYY)	**3**		
4a If the vehicle is a two-wheeled vehicle, enter the cost of the vehicle. If the vehicle has at least four wheels, see instructions	**4a**		
b Phase-out percentage (see instructions)	**4b**	%	%
c Tentative credit. Multiply line 4a by line 4b	**4c**		

Next: If you did NOT use your vehicle for business or investment purposes and did not have a credit from a partnership or S corporation, skip Part II and go to Part III. All others, go to Part II.

Part II Credit for Business/Investment Use Part of Vehicle

5 Business/investment use percentage (see instructions)	**5**	%	%
6 Multiply line 4c by line 5. If the vehicle has at least four wheels, leave lines 7 through 10 blank and go to line 11	**6**		
7 Section 179 expense deduction (see instructions)	**7**		
8 Subtract line 7 from line 6	**8**		
9 Multiply line 8 by 10% (0.10)	**9**		
10 Maximum credit per vehicle	**10**	2,500	2,500
11 For vehicles with four or more wheels, enter the amount from line 6. If the vehicle is a two-wheeled vehicle, enter the smaller of line 9 or line 10	**11**		

12 Add columns (a) and (b) on line 11	**12**	
13 Qualified plug-in electric drive motor vehicle credit from partnerships and S corporations (see instructions)	**13**	
14 **Business/investment use part of credit.** Add lines 12 and 13. Partnerships and S corporations, stop here and report this amount on Schedule K. All others, report this amount on Form 3800, Part III, line 1y	**14**	

Note: Complete Part III to figure any credit for the personal use part of the vehicle.

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 37751E Form **8936** (Rev. 12-2022)

Form 8936 (Rev. 12-2022) Page 2

Part III **Credit for Personal Use Part of Vehicle**

			(a) Vehicle 1	(b) Vehicle 2
15	If you skipped Part II, enter the amount from line 4c. If you completed Part II, subtract line 6 from line 4c. If the vehicle has at least four wheels, leave lines 16 and 17 blank and go to line 18	15		
16	Multiply line 15 by 10% (0.10)	16		
17	Maximum credit per vehicle. If you skipped Part II, enter $2,500. If you completed Part II, subtract line 11 from line 10	17		
18	For vehicles with four or more wheels placed in service before 2023, enter the amount from line 15. If the vehicle is a two-wheeled vehicle, enter the smaller of line 16 or line 17. For vehicles placed in service after 2022, see instructions	18		

19	Add columns (a) and (b) on line 18	19	
20	Enter the amount from Form 1040, 1040-SR, or 1040-NR, line 18	20	
21	Personal credits from Form 1040, 1040-SR, or 1040-NR (see instructions)	21	
22	Subtract line 21 from line 20. If zero or less, enter -0- and stop here. You cannot claim the personal use part of the credit	22	
23	**Personal use part of credit.** Enter the **smaller** of line 19 or line 22 here and on Schedule 3 (Form 1040), line 6f. If line 22 is smaller than line 19, see instructions	23	

Form **8936** (Rev. 12-2022)

Form **8959**

Department of the Treasury
Internal Revenue Service

Additional Medicare Tax

If any line does not apply to you, leave it blank. See separate instructions.
Attach to Form 1040, 1040-SR, 1040-NR, 1040-PR, or 1040-SS.
Go to *www.irs.gov/Form8959* for instructions and the latest information.

OMB No. 1545-0074
2022
Attachment Sequence No. **71**

Name(s) shown on return | **Your social security number**

Part I Additional Medicare Tax on Medicare Wages

1	Medicare wages and tips from Form W-2, box 5. If you have more than one Form W-2, enter the total of the amounts from box 5	1	
2	Unreported tips from Form 4137, line 6	2	
3	Wages from Form 8919, line 6	3	
4	Add lines 1 through 3	4	
5	Enter the following amount for your filing status: Married filing jointly . . . $250,000 Married filing separately . . . $125,000 Single, Head of household, or Qualifying surviving spouse . . . $200,000	5	
6	Subtract line 5 from line 4. If zero or less, enter -0-	6	
7	Additional Medicare Tax on Medicare wages. Multiply line 6 by 0.9% (0.009). Enter here and go to Part II	7	

Part II Additional Medicare Tax on Self-Employment Income

8	Self-employment income from Schedule SE (Form 1040), Part I, line 6. If you had a loss, enter -0- (Form 1040-PR or 1040-SS filers, see instructions.)	8	
9	Enter the following amount for your filing status: Married filing jointly . . . $250,000 Married filing separately . . . $125,000 Single, Head of household, or Qualifying surviving spouse . . . $200,000	9	
10	Enter the amount from line 4	10	
11	Subtract line 10 from line 9. If zero or less, enter -0-	11	
12	Subtract line 11 from line 8. If zero or less, enter -0-	12	
13	Additional Medicare Tax on self-employment income. Multiply line 12 by 0.9% (0.009). Enter here and go to Part III	13	

Part III Additional Medicare Tax on Railroad Retirement Tax Act (RRTA) Compensation

14	Railroad retirement (RRTA) compensation and tips from Form(s) W-2, box 14 (see instructions)	14	
15	Enter the following amount for your filing status: Married filing jointly . . . $250,000 Married filing separately . . . $125,000 Single, Head of household, or Qualifying surviving spouse . . . $200,000	15	
16	Subtract line 15 from line 14. If zero or less, enter -0-	16	
17	Additional Medicare Tax on railroad retirement (RRTA) compensation. Multiply line 16 by 0.9% (0.009). Enter here and go to Part IV	17	

Part IV Total Additional Medicare Tax

18	Add lines 7, 13, and 17. Also include this amount on Schedule 2 (Form 1040), line 11 (Form 1040-PR or 1040-SS filers, see instructions), and go to Part V	18	

Part V Withholding Reconciliation

19	Medicare tax withheld from Form W-2, box 6. If you have more than one Form W-2, enter the total of the amounts from box 6	19	
20	Enter the amount from line 1	20	
21	Multiply line 20 by 1.45% (0.0145). This is your regular Medicare tax withholding on Medicare wages	21	
22	Subtract line 21 from line 19. If zero or less, enter -0-. This is your Additional Medicare Tax withholding on Medicare wages	22	
23	Additional Medicare Tax withholding on railroad retirement (RRTA) compensation from Form W-2, box 14 (see instructions)	23	
24	**Total Additional Medicare Tax withholding.** Add lines 22 and 23. Also include this amount with federal income tax withholding on Form 1040, 1040-SR, or 1040-NR, line 25c (Form 1040-PR or 1040-SS filers, see instructions)	24	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 59475X Form **8959** (2022)

Form **8960**

Department of the Treasury
Internal Revenue Service

Net Investment Income Tax— Individuals, Estates, and Trusts

Attach to your tax return.
Go to *www.irs.gov/Form8960* for instructions and the latest information.

OMB No. 1545-2227
2022
Attachment Sequence No. 72

Name(s) shown on your tax return | **Your social security number or EIN**

Part I Investment Income

☐ Section 6013(g) election (see instructions)
☐ Section 6013(h) election (see instructions)
☐ Regulations section 1.1411-10(g) election (see instructions)

1	Taxable interest (see instructions)		1
2	Ordinary dividends (see instructions)		2
3	Annuities (see instructions)		3
4a	Rental real estate, royalties, partnerships, S corporations, trusts, etc. (see instructions)	4a	
b	Adjustment for net income or loss derived in the ordinary course of a non-section 1411 trade or business (see instructions)	4b	
c	Combine lines 4a and 4b		4c
5a	Net gain or loss from disposition of property (see instructions)	5a	
b	Net gain or loss from disposition of property that is not subject to net investment income tax (see instructions)	5b	
c	Adjustment from disposition of partnership interest or S corporation stock (see instructions)	5c	
d	Combine lines 5a through 5c		5d
6	Adjustments to investment income for certain CFCs and PFICs (see instructions)		6
7	Other modifications to investment income (see instructions)		7
8	Total investment income. Combine lines 1, 2, 3, 4c, 5d, 6, and 7		8

Part II Investment Expenses Allocable to Investment Income and Modifications

9a	Investment interest expenses (see instructions)	9a	
b	State, local, and foreign income tax (see instructions)	9b	
c	Miscellaneous investment expenses (see instructions)	9c	
d	Add lines 9a, 9b, and 9c		9d
10	Additional modifications (see instructions)		10
11	Total deductions and modifications. Add lines 9d and 10		11

Part III Tax Computation

12	Net investment income. Subtract Part II, line 11, from Part I, line 8. Individuals, complete lines 13–17. Estates and trusts, complete lines 18a–21. If zero or less, enter -0-		12
	Individuals:		
13	Modified adjusted gross income (see instructions)	13	
14	Threshold based on filing status (see instructions)	14	
15	Subtract line 14 from line 13. If zero or less, enter -0-	15	
16	Enter the smaller of line 12 or line 15		16
17	Net investment income tax for individuals. Multiply line 16 by 3.8% (0.038). **Enter here and include on your tax return** (see instructions)		17
	Estates and Trusts:		
18a	Net investment income (line 12 above)	18a	
b	Deductions for distributions of net investment income and deductions under section 642(c) (see instructions)	18b	
c	Undistributed net investment income. Subtract line 18b from line 18a (see instructions). If zero or less, enter -0-	18c	
19a	Adjusted gross income (see instructions)	19a	
b	Highest tax bracket for estates and trusts for the year (see instructions)	19b	
c	Subtract line 19b from line 19a. If zero or less, enter -0-	19c	
20	Enter the smaller of line 18c or line 19c		20
21	Net investment income tax for estates and trusts. Multiply line 20 by 3.8% (0.038). **Enter here and include on your tax return** (see instructions)		21

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 59474M Form **8960** (2022)

Version A, Cycle 4

Form **8962**

Department of the Treasury
Internal Revenue Service

Premium Tax Credit (PTC)

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/Form8962* for instructions and the latest information.

OMB No. 1545-0074
2022
Attachment Sequence No. **73**

Name shown on your return | Your social security number

A. You cannot take the PTC if your filing status is married filing separately unless you qualify for an exception. See instructions. If you qualify, check the box ☐

Part I Annual and Monthly Contribution Amount

1	Tax family size. Enter your tax family size. See instructions	1	
2a	Modified AGI. Enter your modified AGI. See instructions	2a	
b	Enter the total of your dependents' modified AGI. See instructions	2b	
3	Household income. Add the amounts on lines 2a and 2b. See instructions	3	
4	Federal poverty line. Enter the federal poverty line amount from Table 1-1, 1-2, or 1-3. See instructions. Check the appropriate box for the federal poverty table used. **a** ☐ Alaska **b** ☐ Hawaii **c** ☐ Other 48 states and DC	4	
5	Household income as a percentage of federal poverty line (see instructions)	5	%
6	Reserved for future use		
7	Applicable figure. Using your line 5 percentage, locate your "applicable figure" on the table in the instructions	7	
8a	Annual contribution amount. Multiply line 3 by line 7. Round to nearest whole dollar amount **8a** — **b** Monthly contribution amount. Divide line 8a by 12. Round to nearest whole dollar amount	8b	

Part II Premium Tax Credit Claim and Reconciliation of Advance Payment of Premium Tax Credit

9 Are you allocating policy amounts with another taxpayer or do you want to use the alternative calculation for year of marriage? See instructions.
☐ **Yes.** Skip to Part IV, Allocation of Policy Amounts, or Part V, Alternative Calculation for Year of Marriage. ☐ **No.** Continue to line 10.

10 See the instructions to determine if you can use line 11 or must complete lines 12 through 23.
☐ **Yes.** Continue to line 11. Compute your annual PTC. Then skip lines 12–23 and continue to line 24.
☐ **No.** Continue to lines 12–23. Compute your monthly PTC and continue to line 24.

Annual Calculation	(a) Annual enrollment premiums (Form(s) 1095-A, line 33A)	(b) Annual applicable SLCSP premium (Form(s) 1095-A, line 33B)	(c) Annual contribution amount (line 8a)	(d) Annual maximum premium assistance (subtract (c) from (b); if zero or less, enter -0-)	(e) Annual premium tax credit allowed (smaller of (a) or (d))	(f) Annual advance payment of PTC (Form(s) 1095-A, line 33C)
11 Annual Totals						
Monthly Calculation	**(a)** Monthly enrollment premiums (Form(s) 1095-A, lines 21–32, column A)	**(b)** Monthly applicable SLCSP premium (Form(s) 1095-A, lines 21–32, column B)	**(c)** Monthly contribution amount (amount from line 8b or alternative marriage monthly calculation)	**(d)** Monthly maximum premium assistance (subtract (c) from (b); if zero or less, enter -0-)	**(e)** Monthly premium tax credit allowed (smaller of (a) or (d))	**(f)** Monthly advance payment of PTC (Form(s) 1095-A, lines 21–32, column C)
12 January						
13 February						
14 March						
15 April						
16 May						
17 June						
18 July						
19 August						
20 September						
21 October						
22 November						
23 December						

24	Total premium tax credit. Enter the amount from line 11(e) or add lines 12(e) through 23(e) and enter the total here	24	
25	Advance payment of PTC. Enter the amount from line 11(f) or add lines 12(f) through 23(f) and enter the total here	25	
26	Net premium tax credit. If line 24 is greater than line 25, subtract line 25 from line 24. Enter the difference here and on Schedule 3 (Form 1040), line 9. If line 24 equals line 25, enter -0-. Stop here. If line 25 is greater than line 24, leave this line blank and continue to line 27	26	

Part III Repayment of Excess Advance Payment of the Premium Tax Credit

27	Excess advance payment of PTC. If line 25 is greater than line 24, subtract line 24 from line 25. Enter the difference here	27	
28	Repayment limitation (see instructions)	28	
29	Excess advance premium tax credit repayment. Enter the smaller of line 27 or line 28 here and on Schedule 2 (Form 1040), line 2	29	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 37784Z Form **8962** (2022)

Form 8962 (2022) Page **2**

Part IV Allocation of Policy Amounts

Complete the following information for up to four policy amount allocations. See instructions for allocation details.

Allocation 1

30	**(a)** Policy Number (Form 1095-A, line 2)	**(b)** SSN of other taxpayer	**(c)** Allocation start month	**(d)** Allocation stop month
	Allocation percentage applied to monthly amounts	**(e)** Premium Percentage	**(f)** SLCSP Percentage	**(g)** Advance Payment of the PTC Percentage

Allocation 2

31	**(a)** Policy Number (Form 1095-A, line 2)	**(b)** SSN of other taxpayer	**(c)** Allocation start month	**(d)** Allocation stop month
	Allocation percentage applied to monthly amounts	**(e)** Premium Percentage	**(f)** SLCSP Percentage	**(g)** Advance Payment of the PTC Percentage

Allocation 3

32	**(a)** Policy Number (Form 1095-A, line 2)	**(b)** SSN of other taxpayer	**(c)** Allocation start month	**(d)** Allocation stop month
	Allocation percentage applied to monthly amounts	**(e)** Premium Percentage	**(f)** SLCSP Percentage	**(g)** Advance Payment of the PTC Percentage

Allocation 4

33	**(a)** Policy Number (Form 1095-A, line 2)	**(b)** SSN of other taxpayer	**(c)** Allocation start month	**(d)** Allocation stop month
	Allocation percentage applied to monthly amounts	**(e)** Premium Percentage	**(f)** SLCSP Percentage	**(g)** Advance Payment of the PTC Percentage

34 Have you completed all policy amount allocations?

☐ **Yes.** Multiply the amounts on Form 1095-A by the allocation percentages entered by policy. Add all allocated policy amounts and non-allocated policy amounts from Forms 1095-A, if any, to compute a combined total for each month. Enter the combined total for each month on lines 12–23, columns (a), (b), and (f). Compute the amounts for lines 12–23, columns (c)–(e), and continue to line 24.

☐ **No.** See the instructions to report additional policy amount allocations.

Part V Alternative Calculation for Year of Marriage

Complete line(s) 35 and/or 36 to elect the alternative calculation for year of marriage. For eligibility to make the election, see the instructions for line 9. To complete line(s) 35 and/or 36 and compute the amounts for lines 12–23, see the instructions for this Part V.

35	**Alternative entries for your SSN**	**(a)** Alternative family size	**(b)** Alternative monthly contribution amount	**(c)** Alternative start month	**(d)** Alternative stop month
36	**Alternative entries for your spouse's SSN**	**(a)** Alternative family size	**(b)** Alternative monthly contribution amount	**(c)** Alternative start month	**(d)** Alternative stop month

Form **8962** (2022)

XI. Tax Court Cases

XI. Tax Court Cases

Federal Tax Day - Current,J.3,Individual Entitled to Child Tax Credit and Dependency Exemption (Hicks Jr., TCM),(Feb. 24, 2022)

An individual was allowed to claim dependency exemption deduction and child tax credit for one child for the tax year at issue. The taxpayer had two children who were minors. The taxpayer and his partner never married and were living separately during the tax year at issue. The children lived with the taxpayer's partner and the taxpayer provided over one-half of the children's support for the tax year at issue. Following the adoption of a Shared Parenting Plan, the taxpayer and his partner agreed to claim the children alternatively every year for tax purposes unless the parties reached another agreement in writing. However, the state court issued an order and judgment entitling the taxpayer to claim dependency exemption for both the children each year. Accordingly, the taxpayer filed his tax return for the tax year at issue and claimed dependency exemption deductions and child tax credits for both the children. However, the taxpayer failed to attach a Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent and the necessary declaration to his return. Upon reviewing the taxpayer's return, the IRS disallowed the claimed deductions and determined a deficiency for the tax year at issue. At trial, the court held that the children were not the taxpayer's "qualifying children" under Code Sec. 152(c)(1)(B) since they did not have the same principal place of abode as the taxpayer. Moreover, since the children were considered the taxpayer's partner's qualifying children, they were not the qualifying relatives of the taxpayer for the tax year at issue. Nonetheless, the court looked at the extenuating circumstances of the state court order and the Shared Parenting Plan. Since, the Shared Parenting Plan satisfied the requirements applicable to written declarations for the purposes of Code Sec. 152(e), the taxpayer was allowed to rely on it to satisfy the written declaration requirement. Accordingly, the taxpayer was entitled to one dependency exemption deduction for the tax year at issue. Finally, the taxpayer was also entitled to the child tax credit for one child as the taxpayer was treated as having only one qualifying child for the tax year at issue.

J.L. Hicks, Jr., TC Memo. 2022-10, Dec. 62,011(M)

Other References:

- Code Sec. 24
- CCH Reference - FED ¶3770.30
- Code Sec. 151
- CCH Reference - FED ¶8005.30
- Code Sec. 152
- CCH Reference - FED ¶8250.56

Federal Tax Day - Current,J.1,Entity Not Allowed to Deduct Compensation to Individual (Clary Hood Inc., TCM),(Mar. 3, 2022)

An entity was not allowed to deduct the full amount of compensation paid to an individual. Further, the taxpayer was subject to accuracy-related penalties for substantial understatement for a tax year at issue. The taxpayer was a subchapter C corporation that dealt with construction. The taxpayer was formed by a married couple that served as the taxpayer's sole shareholders and members of the board of directors. Even after its tremendous success, the taxpayer never declared or paid a cash dividend to its shareholders, i.e. the owners, at any time during the review period. An executive that worked at the taxpayer believed the owner (husband) was undercompensated in prior years and brought this issue to the board. Having performed preliminary computations to determine the amount the taxpayer undercompensated the owner during the review period, the executive reached a figure of $5 million. Accordingly, following a board resolution, the owner was paid the compensation amount for two consecutive years each. Upon auditing the taxpayer's returns, the IRS timely issued a notice of deficiency determining that portions of the owner's purported compensation for the years at issue exceeded reasonable compensation under Code Sec. 162(a)(1) and disallowed these portions. The notice also included accuracy-related penalties under Code Sec. 6662 for underpayments due to substantial understatements of tax. In response to the notice of deficiency, the taxpayer timely filed a petition disputing the disallowed amounts and the penalties.

Multifactor Approach Vs. Independent Investor Test

At trial, the IRS challenged, from a tax perspective, whether the dramatic increase in the owner's purported compensation during the tax years at issue constituted deductible compensation or a means of draining corporate profits through a disguised dividend. The taxpayer contended that the court should follow the independent investor test in determining whether the purported compensation paid to the owner was reasonable. Traditionally, the U.S. Court of Appeals for the Fourth Circuit (to which this case would be appealable to) required consideration of multiple factors in determining reasonable compensation (multifactor approach) that included: the employee's qualifications; the nature, extent, and scope of the employee's work; the size and complexities of the business; a comparison of salaries paid with gross income and net income; the prevailing general economic conditions; comparison of salaries with distributions to stockholders; the prevailing rates of compensation for comparable positions in comparable concerns; and the salary policy of the taxpayer as to all employees. While at least one Court of Appeals has found value in this approach, the U.S. Court of Appeals for the Fourth Circuit had not adopted any iteration of the independent investor test. Moreover, the Tax Court generally applied the multifactor approach unless a case was appealable to a Court of Appeals which has expressly applied the independent investor test. Accordingly, the court applied the multifactor approach to determine the reasonableness of the taxpayer's purported compensation paid to the owner on the basis of the precedent of the Tax Court and, more importantly, of the Court of Appeals for the Fourth Circuit. Here, the factors addressing comparable pay by comparable concerns, the taxpayer's shareholder distribution history, the setting of the owner's compensation in the years at issue, and the owner's involvement in the taxpayer's business were the most relevant and persuasive factors. Nonetheless, the court held that the taxpayer was not entitled to deduct the full amount of the purported compensation paid to the owner because it failed to adequately establish how the entire amount was both reasonable and paid solely as compensation for his services to the taxpayer during the review period. Further, in determining the appropriate dollar amount, the court used expert testimony.

Penalties

With respect to the penalties, the taxpayer sought advice on the owner's potential compensation and the applicable tax consequences from an accounting firm for both the tax years at issue. For the first tax year at issue, the taxpayer satisfied the requirements and demonstrated reasonable reliance in good faith on the accounting firm's advice. The record did not show evidence of foul play. However, for the second tax year, the taxpayer failed to substantiate its belief in the accounting firm's advice for repeating the compensation payment to the owner.

C. Hood, TC Memo. 2022-15, Dec. 62,016(M)

Other References:

- Code Sec. 162
- CCH Reference - FED ¶8637.171
- Code Sec. 6662
- CCH Reference - FED ¶39,652.34
- Code Sec. 6664
- CCH Reference - FED ¶39,661.65

Tax Court Memoranda (Current), Jessica Walters v. Commissioner., U.S. Tax Court, CCH Dec. 62,019(M), T.C. Memo. 2022-017, 123 T.C.M. 1103, (Mar. 7, 2022)

Jessica Walters v. Commissioner.

U.S. Tax Court, CCH Dec. 62,019(M); Dkt. No. 13060-15, 13097-15, TC Memo. 2022-17, 123 TCM 1103, March 7, 2022.

[Appealable, barring stipulation to the contrary, to CA-11.—CCH.]

[Code Secs. 183and 6662]

Partnership: For-profit activity: Real estate business: Penalties, civil: Accuracy-related penalty.–

A partnership was engaged in for-profit activity under Code Sec. 183. The taxpayers (husband, wife and daughter) were all partners in a partnership. The partnership purchased the preserve and began plans to build a green home on the lot. Once construction and renovations were complete, the house was kept open for tours. The partnership depicted the property as a model show home in advertisements and interviews. However, the taxpayer husband averaged 11 days per month at the property and occasionally used the golf course. Further, the taxpayers often visited the property during holiday weekends. The partnership did not realize a profit from its green contracting/ consulting work from its inception through the years in issue. Moreover, the partnership report net rental real estate income on its returns for the tax years at issue. Upon examining the taxpayers' returns, the IRS determined deficiencies and accuracy-related penalties. The taxpayers successfully petitioned the court for a redetermination. The main issue was whether the partnership was engaged in a for-profit green construction/ consulting business through the construction and promotion of the property. In determining this, the court considered the nonexclusive list of objective factors provided in Reg §1.183-2(b). Since the court found in favor of the taxpayers on the for-profit issue of the partnership, there were no deficiencies. Therefore, the taxpayers were not subject to the accuracy-related penalties determined by the IRS.—CCH.

Robert B. Gardner III and Vivian D. Hoard, for petitioners; John T. Arthur, Ashley Y. Smith, and Courtney S. Bacon, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

WELLS, Judge: Respondent determined the following deficiencies in petitioners' Federal income tax and accuracy-related penalties pursuant to section 6662(a) [1] for their 2011 and 2012 tax years (years in issue).

[*2] *Docket No.*	*Year*	*Deficiency*	*Penalty*
13060-15	2011	$13,159	
	2012	2,750	
13097-15	2011	76,910	
	2012	1,543	

In issue in these cases are (1) whether a mutually owned partnership was engaged in for-profit activities during the years in issue and (2) whether petitioners are liable for penalties under section 6662(a).

FINDINGS OF FACT

Petitioner Jessica Walters (petitioner daughter) resided in North Carolina when she timely filed her petition, and petitioners David Walters (petitioner husband) and Jean Walters (petitioner wife) resided in Georgia when they timely filed their petition. Petitioners are all partners of D&J Properties (sometimes referred to as the partnership), a Georgia partnership, with petitioner wife and petitioner husband each holding a 47.4% interest and petitioner daughter holding a 5.2% interest. Petitioner husband serves as the managing partner of the partnership.

I. *Petitioner Husband and Petitioner Wife's La-Z-Boy Stores*

After establishing three successful businesses in Michigan during the late 1970s and early 1980s, petitioner husband and petitioner wife were presented with the opportunity of establishing La-Z-Boy, Inc., furniture stores in the Atlanta, Georgia, area. Petitioner husband and petitioner wife sold their businesses in Michigan and in 1986 opened two La-Z-Boy stores in Georgia. By 1988 they had opened two more La-Z-Boy stores.

In 1990, after analyzing where customers lived in relation to the stores' locations, petitioner husband and petitioner wife jointly purchased a stand-alone building (i.e., not physically attached to a **[*3]** shopping complex) to house a La-Z-Boy store closer to where customers lived. Over the next several years petitioner husband and petitioner wife continued to expand the La-Z-Boy business and opened several stand-alone La-Z-Boy stores in Georgia. D&J Properties owned three buildings that housed the La-Z-Boy stores. At the time, the La-Z-Boy stores produced approximately $20 million in annual revenue.

II. ***Petitioner Husband's and Petitioner Daughter's Environmental Experience***

The United States Green Building Council (USGBC) was established during the 1990s and led the development of a rating system for environmentally friendly (eco-friendly or green) buildings. The rating system later became known as Leadership in Energy and Environmental Design (LEED) certification. Petitioner husband became aware of LEED early on and took time to learn about the various LEED methods for efficient building design. During the construction of one stand-alone store, petitioner husband incorporated various LEED methods to make the building more eco-friendly.

In 1994 petitioner husband invested in Waste Alternative, a private company that focused on removing plastic waste from Florida streams, and he subsequently joined its board of directors. Petitioner husband remained on the board for three years until the company was successfully sold for a profit.

As green construction organizations developed over the years, petitioner husband followed the industry, attending several seminars. Through these seminars petitioner husband became acquainted with what was required to obtain certification of a building under LEED standards. Over the last ten years, petitioner husband has guest-lectured at Western Carolina University in their construction management program.

In the late 1990s petitioner daughter received her undergraduate degree in environmental science and political science. After receiving her degree, petitioner daughter obtained her law degree from a school that offered a focus on environmental law. During law school, petitioner daughter interned at the Carolina Mountain Land Conservancy where she met various individuals, including land developers, who invested in eco-friendly developments.

[*4] III. ***Transition to Eco-Friendly Commercial and Residential Construction/Consulting Business***

After completing law school, petitioner daughter expressed her wish not to enter into the furniture store business with petitioner husband and petitioner wife. In 2004 petitioners considered transitioning D&J Properties into an eco-friendly commercial and residential construction/consulting business by entering the green real estate market. As part of that plan, the partnership sold its La-Z-Boy furniture stores but retained ownership of the three stand-alone buildings that housed the stores.

Through connections petitioner daughter made at her internship with the conservancy, petitioners became aware of Balsam Mountain Preserve (BMP). BMP is a low-density housing development in the mountains of North Carolina that places particular emphasis on land conservation. The development sells its landowners club memberships which include access to a golf course, tennis courts, a restaurant, hiking and mountain biking trails, horseback riding, and an educational facility that offers hikes and lessons on fly-fishing and on flora and fauna identification. In addition to private residences BMP has ten cottages, featuring geothermal water and solar heating systems, where prospective owners may stay.

In February 2006 the partnership purchased a lot in BMP. In May 2006 contractors involved in building green structures met with petitioners to inspect the BMP property and begin plans to build a green home (Balsam Home) on the lot. Throughout the home design process, petitioner husband met with a landscape architect regarding grading and vegetation plans for the entire property. In May 2007 the partnership signed a contract with a general contractor for the construction of Balsam Home.

Balsam Home was constructed with various eco-friendly systems and materials. In 2008, while still under construction, Balsam Home received the Energy Star Qualified Home Certificate, which certified that the home met energy standards established by the United States Environmental Protection Agency. Balsam Home was completed in 2009 and was awarded the USGBC LEED for Homes Gold Certificate (the highest LEED certification for homes) in April 2010. Balsam Home has (among other things) a wine cellar, a dry sauna, a putting green, indoor and outdoor fireplaces, a dog wash, and a fully functional greenhouse.

[*5] At the beginning of construction in 2006, D&J Properties secured a construction loan for Balsam Home. In 2009 the construction loan was converted to a permanent loan, and the lending bank required that the permanent loan list the names of petitioner husband and petitioner wife (rather than D&J Properties) as the borrowers. In 2014, in accordance with the request of petitioner husband and petitioner wife, the loan was retitled and D&J Properties was listed as the borrower.

As construction neared completion D&J Properties received an invitation from BMP to participate in a "Fall Festival of Color" held the last weekend of October 2009. In an email to the contractors who had worked on Balsam Home, petitioner husband explained that, as part of the invitation, he would moderate a panel which would consist of the various contractors who had worked on Balsam Home. Petitioner husband also explained that at an open house at Balsam Home:

current [BMP] property owners and sales prospects will tour the home and have the opportunity to speak with key subs and members of our team. We [the partnership] have also invited various folks from local, regional, and national media to join us and have prepared an editorial/pictorial press kit for their publications.

Petitioner husband signed the email "D&J Properties, c/o Dave Walters [petitioner husband]."

In October 2010, petitioner husband worked with a reporter at the *Atlanta Journal-Constitution* on an article on Balsam Home, although it is unclear whether the article was ultimately published. From 2010 and until at least the time of trial, D&J Properties advertised as a green company in the *Western North Carolina Green Building Directory* and listed Balsam Home as D&J Properties' address. D&J Properties also engaged in other marketing campaigns that highlighted Balsam Home and its features.

From the time Balsam Home was completed, petitioners kept the house open for tours. The partnership depicted Balsam Home as a model show home in advertisements and interviews. Individuals viewing the home would see the various certificates awarded to Balsam Home prominently displayed on the entryway walls. Additionally, pamphlets about green construction and a book highlighting the various green construction features of Balsam Home were placed on a coffee table for viewers. When petitioners were at their respective personal **[*6]** residences, the broker in charge of BMP had access to and would provide tours of Balsam Home.

The upkeep of Balsam Home is labor intensive; the various features of the home do not permit the home to remain unattended for extended periods. Petitioners employed a landscaping crew to assist with maintenance but performed most of it themselves. Additionally, petitioner husband occasionally used the golf course.

Petitioners paid for memberships with BMP (which permitted them access to the golf course and the restaurant). Records for 2010 show that petitioners chose the more expensive of two memberships (which provided access to the golf course) and that petitioners listed petitioner wife's mother and petitioner husband's father on the membership agreement. Membership invoices for 2006 and 2007 are addressed to petitioner husband and petitioner wife with D&J Properties listed directly below their names.

Petitioners also registered six cars with BMP: the company vehicle for D&J Properties, and one vehicle each for petitioner husband, petitioner wife, petitioner daughter, petitioner wife's mother, and petitioner husband's father. There were two landline phone numbers connected to Balsam Home. As of the time of trial, one landline number, which was not advertised as the phone number for D&J Properties, contained the following voicemail: “Hello, you've reached the Walters. Leave a message and we'll call you back.” At the driveway entrance for Balsam Home a sign reads “Walters 4900.”

Petitioners placed wine in the Balsam Home wine cellar, and a photo from 2014 shows about eight bottles of wine stored there. Additionally, the 2014 photos show two bikes stored in the garage/storage area and clothing in the primary bedroom closet. During 2011 and 2012 petitioners maintained a DirecTV account for Balsam Home.

Petitioner husband averaged 11 days per month at Balsam Home in 2011 and 6 days per month between January and October 2012. The record does not specify how often petitioner husband was at Balsam Home in November and December of 2012 nor how often petitioner wife or petitioner daughter was at Balsam Home during the years in issue. Petitioners often visited Balsam Home during holiday weekends.

[*7] IV. *D&J's Other Endeavors*

D&J Properties was involved in discussions for projects other than Balsam Home. These projects, or project conceptions, included a hotel and club development, several development projects at BMP, the development of some cottages, and a refurbishment project. According to its records, D&J Properties was involved with some of these projects for periods ranging from one day to two years. However, nothing in the record suggests that any of these projects graduated from planning into development, or, if they did, that D&J Properties was involved in the development.

V. *Petitioners' Business Records*

Petitioners kept separate books for each D&J Properties project. When writing checks for the business, petitioners would include a numerical code to identify which property the expense was associated with. Petitioners met with their accountant quarterly to review the partnership's financial statements. The partnership's business credit card records reflect expenses for multiple car and gas payments in

Georgia, pharmacies, a PGA Golf Tournament, travel to Michigan, a vet bill, and over $18,000 for Atlanta Braves season tickets.

VI. *D&J Prxoperties' Finances*

D&J Properties did not realize a profit from its green contracting/consulting work from its inception through the years in issue. D&J Properties reported net rental real estate income of $413,379 for 2009, $448,864 for 2010, $471,666 for 2011, and $78,831 for 2012 on its tax returns. During the years in issue D&J Properties still owned the three stand-alone buildings in Georgia.

By the end of 2012 only one of the properties owned by D&J Properties had a tenant. In 2013, after borrowing money from petitioner husband's father to avoid foreclosure, D&J Properties sold one of the Georgia properties. In 2014 D&J Properties sold another Georgia property. At the time of trial D&J Properties owned one building in Georgia, which had been vacant since December 2011 except for a temporary tenant during Halloween each year.

As of 2014 petitioner husband and petitioner wife reported on a loan application that their joint monthly income was around $42,000 and that they held over $3 million in assets comprising their partnership **[*8]** interests in D&J Properties (the titleholder of Balsam Home) and their personal residence.

OPINION

The main issue in these cases is whether D&J Properties was engaged in a for-profit green construction/consulting business through the construction and promotion of Balsam Home, as petitioners contend, or whether petitioners used Balsam Home for personal use and enjoyment, as respondent contends. We will review first which party bears the burden of proof and then decide whether the partnership was engaged in a for-profit activity. Because we hold below that the partnership engaged in a for-profit activity, we need not decide whether petitioners should be liable for penalties under section 6662(a).

I. *Burden of Proof*

As a general rule, the Commissioner's determination of a taxpayer's liability in a notice of deficiency is presumed correct, and the taxpayer bears the burden of proving that the determination is incorrect. Rule 142(a); *Welch v. Helvering* [3 ustc ¶1164], 290 U.S. 111, 115 (1933). In certain circumstances, if the taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the proper tax liability, then section 7491(a)(1) shifts the burden of proof to the Commissioner. *See Higbee v. Commissioner* [Dec. 54,356], 116 T.C. 438, 440–41 (2001). At trial and in their opening posttrial brief, petitioners contend that they met the requirements of section 7491 and that the burden, therefore, should shift to respondent. Because we decide this case on the preponderance of the evidence, we need not decide which party has the burden of proof. *See Knudsen v. Commissioner* [Dec. 57,582], 131 T.C. 185, 189 (2008), *supplementing* [Dec. 57,174(M)], T.C. Memo. 2007-340.

II. *For-Profit Business*

Generally, taxpayers may deduct business-related and investment expenses. *See* §§162, 212. However, under section 183(a), taxpayers may not deduct expenses for an activity "if such activity is not engaged in for profit." [2] When a partnership is involved in a section 183 analysis, the existence of the requisite profit objective is determined at the partnership level. *Brannen v. Commissioner* [Dec. 38,894], 78 T.C. 471, 505 (1982), *aff'd* [84-1 ustc ¶9144], 722 F.2d 695 (11th Cir. 1984). The analysis typically **[*9]** focuses on the actions of the partners who manage the affairs of the partnership and upon whom other partners rely to make partnership decisions. *See id*. at 504–05. Therefore, whether the construction and maintenance of Balsam Home by D&J Properties constituted a for-profit activity depends on whether the partnership, through the actions of its managing partners, had a bona fide profit objective or intent. *See id*.

Treasury Regulation §1.183-2(b) provides a nonexclusive list of objective factors to be considered in deciding whether an activity is engaged in for profit. *Allen v. Commissioner*, 72 T.C. 28, 33 (1979). The factors are: (1) the manner in which the taxpayer carries on the activity; (2) the expertise of the taxpayer or the taxpayer's advisors; (3) the time and effort expended by the taxpayer in carrying on the activity; (4) the expectation that assets used in the activity may appreciate in value; (5) the success of the taxpayer in carrying on other similar activities; (6) the taxpayer's history of income or loss with respect to the activity; (7) the amount of occasional profits, if any, which are earned; (8) the financial status of the taxpayer; and (9) whether elements of personal pleasure or recreation are involved. Treas. Reg. §1.183-2(b). No single factor is determinative, and all facts and circumstances should be considered. *Id.*; *see also Abramson v. Commissioner* [Dec. 42,919], 86 T.C. 360, 371 (1986). Moreover, we do not resolve the issue of profit objective by simply comparing the number of factors indicating profit objective with those indicating the lack of such an objective. Treas. Reg. §1.183-2(b). We will separately address each factor below.

A. *Manner in Which the Taxpayer Carried On the Activity*

The fact that the taxpayer carries on the activity in a businesslike manner and maintains complete books and records may indicate that the activity was engaged in for profit. *Id*. subpara. (1).

Petitioners contend that the record clearly demonstrates that the partnership carried on Balsam Home (and, more broadly, its green construction consulting business) in a businesslike manner. Petitioners point to the display of accolades, pamphlets, and books detailing Balsam Home's green features for individuals touring Balsam Home as evidence that the home was run in a businesslike manner as a show home rather than a private residence. Furthermore, petitioners cite the partnership's accounting method of coding each expense to the correct business project and consistent meetings with an accountant as support for their position.

[*10] Respondent, on the other hand, contends that D&J Properties was an alter ego and that petitioners' spending was not businesslike because there were too many personal purchases. For support, respondent points to car maintenance and gas bills, the PGA Golf Tournament, Atlanta Braves season tickets, a vet bill, and pharmacy charges (among others) that were purchased with the partnership's business credit cards. Respondent contends that further examples of petitioners' using Balsam Home and the amenities at BMP for personal pleasure rather than business include (1) purchasing the more expensive BMP club membership, (2) including petitioner husband's father and petitioner wife's mother on the membership form, and (3) maintaining a phone line with a voicemail for petitioners by name (rather than just D&J Properties).

The businesslike handling of Balsam Home is unclear. Although D&J Properties marked each expense on its business records with a numerical code, it was never fully explained what the code numbers represented or, more importantly, why expenses that appear personal in nature were deemed to be business expenses. On the other hand, Balsam Home always stood ready for tours—the accolades, pamphlets, and books were on continual display, and the BMP broker in charge had access to and provided tours of Balsam Home. Additionally, Balsam Home was consistently advertised as a show home through marketing and communications.

While the partnership's books are replete with what might appear on their face to be personal purchases, the partnership maintained thorough records which might support a conclusion that it operated Balsam Home in a businesslike manner. The thoroughness of the records would have allowed the partnership to abandon unprofitable operating methods or improve its techniques in the future, which is consistent with having a bona fide profit objective. *See* Treas. Reg. §1.183-2(b)(1). Moreover, Balsam Home continually stood ready for tours and was held out to be a green residential show home. Considering the foregoing, we conclude that this factor is neutral.

B. *The Expertise of the Taxpayer or the Taxpayer's Advisors*

A taxpayer's expertise, research, and study of an activity, as well as his consultation with experts, may be indicative of a profit objective. Treas. Reg. §1.183-2(b)(2).

[*11] Petitioners contend that petitioner husband has extensive knowledge in “green building science” as displayed through the construction of the eco-friendly stand-alone building in Georgia and the various seminars he has taken over the years regarding eco-friendly construction. Petitioners also highlight the fact that they sought out various green experts within the construction world on behalf of the partnership to ensure Balsam Home would qualify for LEED certification.

Respondent contends, however, that petitioners do not have any particular expertise in eco-friendly residential construction. Respondent states that the seminars taken by petitioner husband were insufficient for him to qualify as an expert. Respondent also contends that petitioners did not sufficiently consult with individuals in the industry because they never consulted with successful eco-friendly consulting/construction businesses “regarding specifics of profitab[ility] or any other aspects of the industry.”

We conclude that petitioners' individual knowledge in the eco-friendly construction field is sufficient for this factor to weigh in their favor, as petitioners used this knowledge to collectively further the business of the partnership. Petitioner daughter had years of formal education related to environmental conservation. Likewise, petitioner husband not only became acquainted with the LEED program when he first oversaw the construction of the stand-alone building in Georgia, but he also continued to take classes and immerse himself in understanding eco-friendly construction. Additionally, petitioners sought a number of experts in green construction (the builders employed to design and construct Balsam Home) and eco-friendly building certification (the experts who ensured Balsam Home would qualify for LEED certification). As Balsam Home was the center of their marketing efforts, such efforts furthered the business goals of the partnership. Taken together, these facts indicate that petitioners sought or acquired expertise that would enable D&J Properties to turn the operation of Balsam Home into a profitable activity. *See Golanty v. Commissioner* [Dec. 36,111], 72 T.C. 411, 432 (1979) (explaining that taxpayers seek or acquire knowledge consistent with seeking a profit if they consult experts or educational texts to learn about the business side of an operation), *aff'd without published opinion*, 647 F.2d 170 (9th Cir. 1981). Accordingly, we conclude that this factor weighs in favor of the partnership's having a profit objective.

[*12] C. *The Time and Effort Expended by the Taxpayer in Carrying On the Activity*

The fact that the taxpayer devotes much of his personal time and effort to carrying on an activity, particularly if the activity does not have substantial personal or recreational aspects, may indicate an intention to derive a profit. Treas. Reg. §1.183-2(b)(3).

Petitioners contend that the countless hours of overseeing the construction of Balsam Home, advertising, meeting with real estate developers, attending seminars, hosting seminars, and ensuring Balsam Home received various residential green certifications all furthered D&J Properties' green real estate venture. Petitioner husband testified that petitioners continuously worked on Balsam Home while they were there, particularly doing outdoor work, so that it would be in working condition and ready to show. He further testified that when petitioners used the amenities at BMP (i.e., the restaurant or the golf course) it was to further the partnership's business relationship with either BMP or prospective builders. Petitioner husband testified that they often visited Balsam Home on holidays because more people would be at BMP during that time.

Respondent contends that petitioners were often at Balsam Home not to network but to enjoy the area, focusing on the fact that petitioners visited the area during holidays and that petitioner husband spent a substantial amount of time at Balsam Home. Respondent also contends that because petitioners hired landscapers for the property, petitioner husband's testimony regarding his outdoor work is false.

We find petitioner husband's testimony credible. We believe that although petitioners employed a landscaping crew to assist with maintenance, they performed most of the maintenance themselves. Additionally, petitioners' work in furtherance of D&J Properties' business was not limited to the upkeep of Balsam Home or spending time at BMP. Petitioners engaged with potential clients, consistently advertised in the *Western North Carolina Green Building Directory*, and attempted to have various articles published about Balsam Home and the green building industry. Petitioner husband's time dedicated to learning about eco-friendly building likewise shows that petitioners expended substantial time and effort in acquiring knowledge to develop the partnership's green consulting business. We conclude that this factor weighs in favor of the partnership's having a profit objective.

[*13] D. *Expectation That Assets Used in the Activity May Appreciate in Value*

An expectation that assets used in the activity may appreciate in value may be an indication of a profit objective. *Engdahl v. Commissioner* [Dec. 36,167], 72 T.C. 659, 668 (1979); Treas. Reg. §1.183-2(b)(4). Respondent concedes this factor, stating that because the asset (Balsam Home) is real estate, the expectation is that the home would appreciate in value.

E. *Success of the Taxpayer in Carrying On Similar or Dissimilar Activities*

The fact that the taxpayer has engaged in similar or dissimilar activities in the past and converted them from unprofitable to profitable enterprises may indicate that he is engaged in the present activity for profit, even though the activity is presently unprofitable. Treas. Reg. §1.183-2(b)(5).

Petitioners contend that the success they had in establishing three profitable businesses in Michigan, selling those businesses, and then establishing multiple successful La-Z-Boy stores in Georgia along with constructing stand-alone buildings, supports their claim that the partnership entered the green real estate industry with a profit objective. Respondent contends that (1) petitioners themselves are not successful entrepreneurs, as they have not reported a profit from their business dealings in Georgia or for D&J Properties since 2009, and (2) petitioners were not seeking success in the green construction industry but, rather, wanted to use the losses to offset any gains they received from the commercial properties in Georgia.

We disagree with respondent. We do not find the lack of profit in the real estate business unreasonable or altogether surprising. As we further explain in our discussion of the sixth factor below, the partnership's business was in the real estate industry, which, starting in 2008, became a largely unprofitable industry because of the "Great Recession."

Regarding respondent's second point, we are persuaded that petitioners themselves have experience in successfully entering new markets, as evidenced by their selling their businesses in Michigan to start again in Georgia. Petitioners appear to have tried to replicate that success with D&J Properties when they sold their La-Z-Boy assets in 2004 and invested those funds in the green real estate market through **[*14]** the partnership. Additionally, petitioner husband had success with an eco-friendly business when he sat on the board of Waste Alternative and the company was sold for a profit. We conclude that this factor weighs in favor of the partnership's having a profit objective.

F. *The Taxpayer's History of Income or Loss with Respect to the Activity*

A series of losses during the initial or startup stage of an activity may not necessarily be an indication that the activity lacks a profit objective. However, where losses continue to be sustained beyond the period which customarily is necessary to bring such an operation to profitable status, such continued losses, if not explainable, may be indicative that the activity is not engaged in with a profit objective. If losses are sustained because of unforeseen or fortuitous circumstances which are beyond the control of the taxpayer, such as depressed market conditions, such losses would not be an indication that the activity lacks a profit objective. Treas. Reg. §1.183-2(b)(6).

The parties agree that the partnership has not realized a profit from its green residential construction/consulting business. Petitioners contend that this lack of profit is due to the unfortunate timing of the partnership's entering the green real estate market at the forefront of the "Great Recession." Respondent contends that the economic downturn, alone, is insufficient to support the notion that petitioners were in a business for profit.

Petitioner husband's interest and expertise in green and efficient business ventures began during the 1990s. Petitioners decided to transition into an eco-friendly commercial and residential construction/consulting business as early as 2004. The Great Recession began at the end of 2007.

Balsam Home, the center of the partnership's marketing strategy, was not completed until 2009. Nothing in the record suggests whether the failure to generate a profit from 2004 until the Great Recession was due to the lack of profit objective or, in the alternative, to typical losses from the initial or startup stage of the partnership's transition to the green real estate market. Neither does the record illuminate whether the partnership was likely to become profitable after construction of Balsam Home were it not for the Great Recession. The record does not establish that the economic downturn alone explains the continued sustained losses, but neither can the effect of the economic downturn be ignored. We conclude that this factor is neutral.

[*15] G. *The Amount of Occasional Profits, if Any, Which Were Earned*

The amount and frequency of occasional profits earned from the activity may also indicate a profit objective. An opportunity to earn a substantial ultimate profit in a highly speculative venture is ordinarily sufficient to indicate that the activity is engaged in for profit even though losses or only occasional small profits are actually generated. Treas. Reg. §1.183-2(b)(7).

Petitioners contend that while the partnership did not make a profit from its green real estate venture, a substantial ultimate profit from its various activities related to Balsam Home was expected. Petitioners point to discussions with clients suggesting that two of their projects had substantial earning potential. Respondent, however, contends petitioners have not provided any credible evidence for these anticipated profits. Respondent further contends that the communications and connections petitioners made on behalf of the partnership were only after Balsam Home was completed, thereby undermining their claim that a substantial profit opportunity existed when the partnership entered the green real estate market.

While petitioners suggest that the green real estate market is highly speculative, the record does not support that conclusion. We have previously found that the residential real estate market is not highly speculative, *Pouemi v. Commissioner* [Dec. 60,383(M)], T.C. Memo. 2015-161, at *10, *aff'd per curiam* [2016-1 ustc ¶50,199], 633 F. App'x 186 (4th Cir. 2016), and petitioners have not explained why they considered the green residential real estate market to be highly speculative. On the basis of the foregoing, we conclude that this factor favors respondent.

H. *The Financial Status of the Taxpayer*

Substantial income from sources other than the activity, particularly if the losses from the activity generate substantial tax benefits, may indicate that the activity is not engaged in for profit. Treas. Reg. §1.183-2(b)(8).

Petitioners contend that neither the partnership nor its members had substantial income from other sources, indicating that the partnership sought profit specific to the Balsam Home green real estate venture. Petitioners draw attention to the fact that (1) by the end of 2012 only one of the partnership's three buildings in Georgia had a tenant, (2) in 2013 petitioners had to borrow money from petitioner **[*16]** husband's father to avoid foreclosure on one of the properties, (3) in 2013 and 2014 the partnership had to sell two of the buildings, and (4) the remaining building had only periodic tenants once a year.

Respondent contends that petitioners themselves have amassed a large amount of wealth, which supports a conclusion that the partnership did not have a profit objective. Respondent points out that the successful La-Z-Boy stores brought in over $20 million annually and that in 2014 petitioner husband and petitioner wife reported income of over $40,000 per month and owned over $3 million in assets.

Upon the initial construction of Balsam Home, petitioners were indeed benefiting from significant rental income from the partnership-owned Georgia properties and the deductions associated with Balsam Home allowed them to offset that income. However, that rental income was not steady during the years in issue. For instance, between 2011 and 2012 petitioners' net rental income decreased by nearly $400,000. Additionally, petitioner wife credibly testified during trial that to make the monthly mortgage payments for Balsam Home, petitioner husband and petitioner wife had to use funds from their savings.

We agree that petitioner husband and petitioner wife's stated monthly income of $40,000 supports respondent's contention that they had significant income to offset. However, we are unpersuaded by the reference to income derived from the sale of their La-Z-Boy stores in 2004, which occurred years before the construction of Balsam Home. Lastly, the over $3 million in assets comprised their respective interests in Balsam Home (which was appraised at around $3 million) and their personal residence. Overall, the facts of this case show a varying income, particularly over the years in issue. We conclude that this factor is neutral.

I. *Elements of Personal Pleasure or Recreation*

The presence of personal motives in the carrying on of an activity may indicate that the activity is not engaged in for profit, especially where there are recreational or other personal elements involved. Treas. Reg. §1.183-2(b)(9).

Petitioners contend that the partnership did not build Balsam Home for their personal enjoyment and that all their trips to BMP were work related. During trial, petitioners testified that they did not go to Balsam Home for pleasure but to keep the house in operating condition so that it was always ready to show at a moment's notice. Petitioners **[*17]** maintained that the only amenities they used at BMP were the restaurant and the golf course on three occasions for networking purposes. Additionally, petitioner husband testified he placed wine in the cellar to prepare Balsam Home to be photographed. The broker in charge at BMP testified that BMP has the most people present during holidays and that BMP governance does not allow business signage to be used in front of homes.

Respondent contends that petitioners built Balsam Home for personal pleasure and highlights the various amenities at Balsam Home and BMP. Respondent points to the facts that petitioners (1) listed all of their vehicles on the membership form, (2) included “the Walters” in the voicemail for one of the landlines and for the signage in front of the home (rather than D&J Properties), (3) stored wine bottles in the wine cellar, and (4) purchased an extensive cable package. Respondent points out that petitioner husband used the golf course at BMP.

We appreciate the fact that it can be difficult to separate from business use the pleasure an owner may receive from visiting a home in a mountain resort, particularly when attempting to prove a negative (that petitioners did not build or visit Balsam Home for their personal pleasure or recreation).

Overall, the record neither supports nor refutes the presence of pleasure or recreation as a primary motivating factor in building and operating Balsam Home. We conclude that this factor is neutral.

III. *Conclusion*

The factors of this case support a conclusion that the partnership was engaged in a for-profit activity. We recognize that the partnership's efforts were not perfectly executed, but its actions overall fall in favor of a conclusion that it was seeking a profit.

Because we find for petitioners on the for-profit issue, there are no deficiencies and hence no penalties under section 6662(a). We have considered the parties' other arguments and have concluded that the arguments are either without merit or unnecessary to address.

Decisions will be entered for petitioners.

Footnotes

[1] Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure. Monetary amounts are rounded to the nearest whole number.

[2] The limited exceptions to section 183(a) under subsection (b) are unapplicable to these cases.

Tax Court Memoranda (Current), Jan E. Pocock v. Commissioner., U.S. Tax Court, CCH Dec. 62,061(M), T.C. Memo. 2022-055, 123 T.C.M. 1293, (Jun. 6, 2022)

Jan E. Pocock v. Commissioner.

U.S. Tax Court, CCH Dec. 62,061(M); Dkt. No. 2558-17, 23569-17L, TC Memo. 2022-55, 123 TCM 1293, June 6, 2022.

[Appealable, barring stipulation to the contrary, to CA-11.—CCH.]

[Code Sec. 6015]

Innocent spouse relief: Streamlined relief: Joint and several liability: Equitable relief.–

An individual was entitled to streamlined relief from joint and several liability pursuant to Code Sec. 6015(f) because she satisfied the various threshhold requirements and streamlined relief elements. The IRS' contention that the taxpayer and her former spouse were hiding his assets from an inherited estate was speculative because there was no evidence that the former spouse attempted to thwart collection of any judgments against him in favor of the estate. Moreover, there was no evidence that the taxpayer schemed with her former spouse to hide assets from the estate. Further, the taxpayer did not knowingly participate in the filing of the fraudulent joint returns because she had no knowledge that her former spouse was claiming fictitious withholdings from nonexistent businesses. In addition, the taxpayer fulfilled the seventh threshhold requirement because the tax liabilities arose from the reversal of the withholding credits which were attributable to the taxpayer's husband and not to the taxpayer. Moreover, other elements which favoured streamlined relief were: (1) economic hardship requirement because she could not liquidate her assets to make even a partial payment of the tax liabilities and still meet her reasonable basic living expenses; and (2) abuse requirement because regardless of the taxpayer's knowledge or beliefs, that knowledge was negated since the taxpyer's former spouse abused and physically intimidated her.—CCH.

Jan E. Pocock, *pro se*; Miriam C. Dillard and A. Gary Begun, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

VASQUEZ, Judge: In docket No. 2558-17, petitioner seeks review of respondent's determination that she is not entitled to section 6015 relief with respect to joint federal income tax returns filed by her former spouse for taxable years 2006 and 2007. [1] In docket No. 23569-17L, petitioner seeks review of a determination by the Internal Revenue Service (IRS) Office of Appeals (Appeals) denying her section 6015 relief and upholding a notice of intent to levy for taxable year 2008. We consolidated these cases for trial, briefing, and opinion. **[*2]** The issue for decision is whether petitioner qualifies for relief from her 2006, 2007, and 2008 federal income tax liabilities under section 6015(f). We resolve this issue in petitioner's favor.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. We incorporate the First Stipulation of Facts and accompanying exhibits by this reference. Petitioner resided in Florida when she filed her Petitions.

Petitioner's marriage

In 1972 petitioner graduated from Michigan State University with a degree in art education and returned to her hometown in the suburbs of Detroit, Michigan. There she met Douglas Pocock, a Vietnam veteran and aspiring salesperson. They were married in 1973. They have two children: Hailey DeRosa (Hailey), born in 1978, and Brett Pocock (Brett), born in 1980.

In the 1980s Mr. Pocock started a roofing installation business in Michigan with the help of petitioner's brother, Jack Givens. Mr. Givens owned a manufacturing business that made the roofing material that Mr. Pocock installed. Mr. Pocock's business was initially successful but then fell into arrears. Because these arrears affected Mr. Givens's business, relations between the brothers-in-law soured.

Finding herself in the middle of the dispute, petitioner sought to get a better understanding of the situation. One day, while Hailey and Brett were at school, petitioner confronted Mr. Pocock and pressed him for answers about his business problems. Mr. Pocock responded by picking up an antique glass vase, a gift of petitioner's grandmother, and hurling it at petitioner. She ducked out of the way, but the shattered vase damaged her favorite painting and dented their wall.

As Mr. Pocock stormed out of the house, petitioner realized that pressing her husband about finances was a line she could not cross without jeopardizing her safety. However, she did not consider divorce. Having been raised in the Christian faith, petitioner had a longstanding belief in the institution of marriage. She also believed a two-parent household would benefit her children. **[*3]** After his roofing installation business collapsed, Mr. Pocock and petitioner pursued a franchising opportunity involving window blinds. After that venture failed in 1986, the Pocock family moved to Florida.

Petitioner's new life in Florida started favorably. In 1987 she secured a job as a substitute schoolteacher and became a full-time art teacher the following year. Mr. Pocock started a construction cleanup business and secured a contract with Disney Parks. Although Mr. Pocock was still prone to outbursts in their rental home, petitioner took comfort in their improving financial situation. Just as things were looking up, however, Mr. Pocock's construction cleanup business collapsed. In 1990 he left petitioner and moved to Daytona Beach. Petitioner and Mr. Pocock had little contact for the next two years.

Petitioner and Mr. Pocock reconnected in 1992 after he agreed to participate in Christian counseling. Despite their marital problems, petitioner continued to believe a two-parent household would benefit her children. Newly reunited, the Pocock family moved into another rental home. Over the next few years, Mr. Pocock pursued various real estate ventures while petitioner worked as a schoolteacher.

The Pocock household was often tense, especially when the family was experiencing financial stress. During those times, questioning or disturbing Mr. Pocock could result in an explosive reaction. As Brett recounted at trial: “You didn't poke the bear. You learned how to avoid the situation.” When family members failed to abide by that strategy, “bad things would happen.” On several occasions, Brett suffered physical abuse at the hands of his father.

Mr. Pocock also dominated conversations during family meals and other gatherings. If a family member expressed a dissenting viewpoint, he became verbally abusive—sometimes, in front of household guests. Mr. Pocock was also verbally abusive to Marion Givens, petitioner's mother. On one occasion, he harangued Mrs. Givens when she told him a dish he had washed was still dirty. Over time, petitioner stopped inviting guests over and felt increasingly isolated.

Mr. Pocock's “money brokering” business

In 1997 petitioner left her teaching job to become a traveling salesperson for a golf clothing company. Meanwhile Mr. Pocock spent an increasing amount of time on the family computer. He told petitioner he was using it to start a “money brokering” business. As petitioner understood it, Mr. Pocock sought out investors and connected them with **[*4]** medical professionals who were looking to sell or consolidate their practices. According to Mr. Pocock, he was compensated by commission at the closing of a deal.

It was difficult for petitioner to glean additional information about Mr. Pocock's “money brokering” business. When petitioner tried to broach the subject with him, Mr. Pocock normally responded with terse and dismissive answers. If petitioner continued to press him for information, then Mr. Pocock turned to longwinded tangents that made little sense to her. If she continued to question him, then Mr. Pocock became violent, kicking household objects and throwing tools against the wall. After such an outburst, he normally became remorseful and acquiescent until the pattern repeated itself.

Home purchase

Mrs. Givens moved in with the Pocock family in 1999. With the addition of Mrs. Givens, an 87-year-old widow with burgeoning health issues, the Pococks' rental home began to feel cramped. Unhappy with her new living conditions, Mrs. Givens offered to help petitioner and Mr. Pocock buy a new home. Soon thereafter, they contracted to purchase a home in Winter Springs, Florida (Winter Springs home), for $228,990.

Mrs. Givens, petitioner, and Mr. Pocock financed the purchase and closing costs via a mortgage of $108,950 and cash of $121,639. Of the $121,639, Mrs. Givens contributed $110,190, and petitioner contributed $11,449. Petitioner's contribution came from a checking account she maintained at Seminole Schools Federal Credit Union (Seminole account). At the time, petitioner held the Seminole account jointly with Mr. Pocock.

Petitioner, Mr. Pocock, and Mrs. Givens took title to the home on February 28, 2000.

Bank accounts

Petitioner and Mr. Pocock opened a joint account at Huntington Bank (Huntington) in 2000. In 2008 they opened several joint checking and savings accounts at Washington Mutual Bank (WAMU), where Mr. Pocock also maintained a personal checking account.

Mr. Pocock maintained tight control over his and petitioner's mail, which included statements for the Huntington and the WAMU joint accounts. He installed an electronic contraption in the front of the **[*5]** house that rang whenever someone opened the mailbox. Mr. Pocock normally retrieved the mail immediately upon delivery. Petitioner, who was afraid to enter her husband's home office, did not review monthly statements for the Huntington and the WAMU joint accounts.

Petitioner conducted her personal banking out of the Seminole account. She regularly reviewed statements for that account.

Federal income tax refunds: 1995–2005

As described above, Mr. Pocock claimed to earn periodic commissions from his “money brokering” business. In reality he was fraudulently overstating his federal income tax withholdings and living off the resulting refunds.

During their marriage Mr. Pocock prepared his and petitioner's joint income tax returns. Other than providing Forms W–2, Wage and Tax Statement, and other tax-related information to her husband, petitioner was not involved in the preparation of the joint returns. Petitioner did not review or sign the returns before they were filed. Having grown up in a household where her father handled the family's tax matters, petitioner was accustomed to relying on Mr. Pocock to prepare the returns.

For taxable years 1995 through 2005, Mr. Pocock fraudulently claimed large refunds on his and petitioner's joint returns by overstating his income and federal income tax withholdings. [2] Because the IRS did not examine or otherwise correct those returns, respondent's account transcripts for those years show balances of zero. [3]

On the joint returns for 1995 through 2005, Mr. Pocock reported federal income tax and withholding as follows:

[*6]

Tax year	***Filing date***	***Total tax***	***Withholding***	***Ove***
1995	9/4/1997	$26,593	$80,674	
1996	9/8/1997	58,768	98,523	
1997	2/3/1999	61,475	172,406	
1998	12/10/1999	56,158	169,968	
1999	5/4/2001	58,745	174,898	
2000	8/29/2002	51,244	194,170	
2001	12/30/2002	55,060	208,836	

2002	1/11/2005	52,803	219,628	166,825
2003	1/14/2005	47,488	184,828	137,340
2004	10/21/2005	35,253	193,627	158,104
2005	1/17/2008	53,435	149,012	95,577

After receiving the above-described joint returns, the IRS issued Mr. Pocock and petitioner the following refund checks comprising the reported overpayments and, for some years, interest: [4]

Tax year	***Issue date***
1997	4/30/1999
1998	2/13/2000
2000	9/27/2002
2001	3/21/2003
2002	4/8/2005
2003	4/1/2005
2004	7/14/2006
2005	2/15/2008

Petitioner, who believed that Mr. Pocock was earning periodic commissions from his “money brokering” business, endorsed the refund checks for 1997 and 2004. Occasionally she asked about the status of their tax filings, but he never gave her a clear answer. When he showed petitioner the 2004 refund check, Mr. Pocock explained that it was part of his compensation for the closing of a deal. It was difficult for petitioner to press him further on the subject since doing so could result in a violent reaction.

Mr. Pocock signed petitioner's name on the refund checks for 2000, 2001, 2002, 2003, and 2005 before depositing them into the **[*7]** Huntington or the WAMU joint account. [5] The refund checks were the Pocock family's primary source of income, and Mr. Pocock used the funds to cover the mortgage and other shared living expenses, home improvements, tuition for Brett, furniture, and one cruise trip. Although she did not review statements for the Huntington and the WAMU joint accounts, petitioner was aware Mr. Pocock was making those payments.

When Mr. Pocock's and petitioner's funds ran low, Mrs. Givens covered the bulk of the family's living expenses.

Estate theft

In March 2004 Mr. Pocock's mother, Virginia Pocock, passed away. He was appointed the personal representative of her estate.

In October 2005 petitioner learned from her sister-in-law that Mr. Pocock had misappropriated funds from the estate. The news shocked and angered petitioner and Mrs. Givens. She gave further thought to divorcing Mr. Pocock but was afraid to uproot Mrs. Givens, who had invested a substantial portion of her savings in the Winter Springs home. Mrs. Givens insisted that Mr. Pocock be removed from the deed.

On October 26, 2005, Mr. Pocock was removed as personal representative of his mother's estate. The record includes an unsigned stipulation between Mr. Pocock and the successor personal representative. Thereon he agreed to pay damages of $30,000 within 15 days of the probate court's approval of the agreement.

Chastened by the family's discovery, Mr. Pocock fell into one of his remorseful and acquiescent phases. He agreed to live in a separate part of the house from petitioner and Mrs. Givens. On January 31, 2006, he issued a quitclaim deed releasing his interest in the Winter Springs home to petitioner and Mrs. Givens. After receiving the 2004 refund check in July 2006, he wrote petitioner a $140,000 check. Petitioner deposited the check into her Seminole account, from which she had removed Mr. Pocock as a joint owner. [6]

[*8] ***Years in issue: 2006, 2007, and 2008***

After she stopped working as a golf clothing salesperson in 2004, petitioner worked a series of jobs at a testing service, a fabric store, and a life insurance company when she was not caring for her mother. As was her custom, she gave Mr. Pocock her Forms W–2 and other tax information for 2006, 2007, and 2008 but did not review or sign the returns. Petitioner did not think to file separate returns because she was unaware they had any tax problems. Furthermore, it remained risky to question Mr. Pocock about financial matters.

As he had for previous years, Mr. Pocock overstated his income and federal income tax withholding on his and petitioner's 2006, 2007, and 2008 joint returns. He did so by attaching to the returns false Forms W–2 and Forms 1099–MISC, Miscellaneous Income, for the purported entities Deadline, Inc., The Buyers Representative, and BEC Funding. The information returns for those entities reported wages or nonemployee compensation paid to Mr. Pocock, along with substantial federal income tax withholdings. [7] In fact, Mr. Pocock never worked for or received compensation from those entities. Nor did those entities withhold federal income tax on his behalf.

With respect to petitioner, the 2006, 2007, and 2008 joint returns included the Forms W–2 and other tax information she had provided to Mr. Pocock. Those documents were genuine.

Mr. Pocock filed his and petitioner's joint return for 2006 on July 11, 2008. It reported total tax of $67,479, federal income tax withholding of $168,665, excess Social Security withholding of $626, and a telephone excise credit of $40. On August 8, 2008, the IRS refunded the $101,852 overpayment to Mr. Pocock and petitioner by check, which petitioner endorsed. Mr. Pocock made a split deposit of the check into the WAMU joint accounts and his personal account.

By March 2009, the funds from that deposit were largely depleted. Bank statements in the record reflect frequent debits for online and retail purchases, restaurants, and miscellaneous recurring payments. **[*9]** On April 14, 2009, Mr. Pocock filed his and petitioner's joint return for 2007. Thereon he reported total tax of $67,269, income tax withholding of $169,784, and excess Social Security withholding of $581. On May 8, 2009, the IRS issued a $103,096 refund check. After signing petitioner's name on the back of the check, Mr. Pocock deposited it into one of the WAMU joint accounts.

By October 2009, the funds from that deposit were largely depleted. Bank statements in the record reflect frequent debits for online and retail purchases, restaurants, and miscellaneous recurring payments (including the home mortgage).

In April 2009 Mr. Pocock filed a joint return for 2008. Thereon he claimed a refund of $108,253 after reporting total tax of $61,498, income tax withholding of $169,007, and excess Social Security withholding of $744. This time, however, the IRS did not issue a check.

Examination, collection activity, and criminal investigation

When the 2008 refund check did not materialize, Mr. Pocock contacted an IRS customer service office for help. That office connected him with the Taxpayer Advocate Service (TAS), which opened a case to investigate the status of the refund. The TAS investigation drew the attention of the IRS Examination Division, which commenced an examination of Mr. Pocock and petitioner's joint returns for 2006, 2007, and 2008.

Soon thereafter, the IRS reversed and assessed the overstated withholding credits for those years. [8] Account transcripts for 2006 and 2008 show liabilities (including interest and other accruals) of $276,892 and $114,309, respectively. The record does not include an account transcript for 2007. [9] Because the IRS reversed the overstated withholding credit for that year, we infer that petitioner's liability for 2007 is at least the amount of the reported overpayment, $103,096.

In October 2010 petitioner learned about the liabilities via letter from the IRS. Mr. Pocock was out of the house when the mail arrived, giving petitioner a rare chance to intercept it. When he returned, **[*10]** petitioner questioned Mr. Pocock about the letter and pressed him for answers about how the liabilities could be so high. In response, he slammed petitioner against a wall. After he went to sleep that night, petitioner hid his gun, afraid he might use it.

Mr. Pocock and petitioner retained Taxpayer Resolution Services Co. (TRS) to represent them before the IRS. On November 24, 2010, TRS submitted a request for a collection due process (CDP) hearing on behalf of Mr. Pocock and petitioner in response to a notice of intent to levy for 2008. Thereafter, the IRS Criminal Investigation Division (CI) launched an investigation of the joint returns, causing Appeals to suspend the CDP hearing.

On June 30, 2011, CI Special Agents (SAs) Rita Adam and Richard Kim made an unannounced visit to the Winter Springs home. The SAs interviewed Mr. Pocock and petitioner separately. During their interview of petitioner, the SAs presented her with copies of the returns for 2005 through 2008 and the refund checks for 1997, 1998, and 2000 through 2007. Petitioner stated that she had not signed the 2005, 2006, 2007, and 2008 returns. She also acknowledged that she had endorsed the 1997, 2004, and 2006 refund checks but denied signing the others. CI did not recommend petitioner for criminal prosecution.

However, CI continued to investigate Mr. Pocock and, after some internal delays, recommended that he be criminally prosecuted. A grand jury investigation followed, but the U.S. Attorney's Office for Orlando, Florida, ultimately declined prosecution. CI received notice of that decision in October 2015. [10]

Medical treatment, divorce, and other developments

In July 2011 Mr. Pocock's primary care physician recommended that he seek mental health treatment. He was diagnosed with post-traumatic stress disorder arising from his military service. After receiving the diagnosis, Mr. Pocock sought treatment. With medication and therapy, his demeanor began to soften. In the years that followed, he became less reactive and easier to engage. **[*11]** Mr. Pocock's improving mental health was not enough to save his marriage, however. After learning he was under criminal investigation, petitioner also discovered that Mr. Pocock was accruing debt under her name. The destruction of her credit was petitioner's final straw. She asked Mr. Pocock for a divorce.

On September 8, 2011, petitioner and Mr. Pocock jointly filed a petition for simplified dissolution of marriage with the 18th Judicial Circuit Court in and for Seminole County, Florida. On November 9, 2011, the circuit court entered its final judgment of dissolution of marriage (final judgment). The final judgment incorporated petitioner and Mr. Pocock's marital settlement agreement, which provided that Mr. Pocock was responsible for all of their joint debts. The agreement also provided: “The parties agree that due to [his] medical situation and lack of finances to pay for housing, [petitioner] will allow [Mr. Pocock] to live under one roof. He will pay rent in the amount of $800 per month.”

Petitioner agreed to continued cohabitation with Mr. Pocock because of his ongoing medical issues. Additionally, she was still caring for Mrs. Givens, who was nearly 100 years of age. Mrs. Givens was prone to the occasional fall, and petitioner relied on Mr. Pocock to help lift her up.

Mrs. Givens passed away on July 17, 2013. Around that time, Mr. Pocock was hospitalized with lung embolisms and began experiencing vision problems. Meanwhile, petitioner and her brother, Mr. Givens, listed the Winter Springs home for sale. They sold the property in November 2013 for $315,000. Petitioner used her share of the proceeds to purchase a home in Leesburg, Florida (Leesburg home), for $160,000. Petitioner purchased the property without a mortgage, and it remains unencumbered.

Petitioner has resided at the Leesburg home with Mr. Pocock since November 2013. They live in separate parts of the house and treat each other as roommates. At the time of trial, Mr. Pocock paid petitioner monthly rent of $873. Petitioner relies on the certainty of that payment and is fearful of finding an alternate roommate, who “could disappear at any moment.”

Administrative and judicial proceedings

In January 2013 petitioner filed Form 8857, Request for Innocent Spouse Relief (request for relief), for 2006, 2007, and 2008. Respondent's **[*12]** Cincinnati Centralized Innocent Spouse Operation evaluated petitioner's 2006 and 2007 tax years but routed 2008 to Appeals, where her CDP hearing for that year remained pending. On November 3, 2016, respondent issued petitioner final determination letters denying her request for relief for 2006 and 2007. Petitioner timely filed a Petition with this Court seeking review of respondent's determinations for those years.

Meanwhile, the end of the criminal investigation allowed for the resumption of petitioner's and Mr. Pocock's CDP hearing for 2008. [11] Appeals allowed each spouse a separate hearing. During petitioner's hearing, Appeals considered her request for relief. The Appeals officer (AO) assigned to the case acknowledged that petitioner would suffer economic harm in the absence of relief. Nevertheless, the AO recommended denying relief after concluding that petitioner, among other things, had reason to know of the overstated withholding credits.

On October 19, 2017, Appeals issued a Notice of Determination Concerning Collection Action(s) Under Section 6330 and Your Request for Relief from Joint and Several Liability under Section 6015. Therein Appeals determined to deny petitioner relief under section 6015 and sustain the proposed collection action for 2008.

Petitioner timely filed a Petition with this Court seeking review of both determinations. After we consolidated these cases for trial, briefing, and opinion, trial was held in Tampa, Florida.

Before trial, petitioner submitted to respondent Form 433–A, Collection Information Statement for Wage Earners and Self-Employed Individuals. Thereon petitioner reported total assets of $191,625. That amount comprised (1) the Leesburg home, valued at $180,000, (2) two vehicles with a value of $850, (3) furniture, art, and jewelry valued at $6,000, and (4) $4,775 held in bank accounts.

Petitioner, who was 68 years old at the time of trial, suffered from hip pain that made work difficult. She planned to undergo hip replacement surgery after trial. Her monthly income was $1,855. That amount comprised her wages, Social Security, and $873 rental payment from Mr. Pocock. Before trial, petitioner applied to the Central Florida **[*13]** Educators Federal Credit Union (credit union) for a $110,000 loan. The credit union denied her application because she had insufficient income.

OPINION

Generally, married taxpayers may elect to file a joint federal income tax return. §6013(a). If a joint return is made, the tax is computed on the spouses' aggregate income, and each spouse is fully responsible for the accuracy of the return and is jointly and severally liable for the entire amount of tax shown on the return or found to be owing. §6013(d)(3); *Butler v. Commissioner* [Dec. 53,869], 114 T.C. 276, 282 (2000). Nevertheless, under certain circumstances, a spouse who has made a joint return may seek relief from joint and several liability under procedures set forth in section 6015. Section 6015 provides a spouse with three alternatives: (1) full or partial relief under subsection (b); (2) proportionate relief under subsection (c); and (3) if relief is not available under subsection (b) or (c), equitable relief under subsection (f).

The parties stipulated that petitioner is not entitled to relief under section 6015(b) or (c). Accordingly, our review is limited to section 6015(f).

I. *Jurisdiction, standard of review, and burden of proof*

There are three jurisdictional bases for the Court to review a taxpayer's entitlement to section 6015 relief. *See Maier v. Commissioner* [Dec. 54,937], 119 T.C. 267, 270–71 (2002), *aff'd* [2004-1 ustc ¶50,179], 360 F.3d 361 (2d Cir. 2004). First, a spouse can file a petition pursuant to section 6015(e)(1). *See id*. Second, the Court can review the claim in the context of a CDP case under section 6330(d)(1). *See id*. at 271. Third, the claim can be asserted by a spouse as an affirmative defense in a proceeding to redetermine a deficiency pursuant to section 6213(a). *See id*. at 270.

Section 6015(e)(1)(A) provides that a taxpayer may file a Tax Court petition to determine the appropriate relief available to the taxpayer under section 6015. The petition must be filed (1) within 90 days after the Commissioner's mailing of a notice of his final determination of relief to the taxpayer or (2) if the Commissioner has not yet mailed such a notice, at any time after six months have passed since the taxpayer's election for relief was "filed" (in the case of section 6015(b) and (c)) or the request for relief was "made" (in the case of section 6015(f)). **[*14]** With respect to 2006 and 2007, petitioner timely filed a Petition contesting respondent's final determination notices denying relief under section 6015. Accordingly, this Court has jurisdiction under section 6015(e)(1) to determine the appropriate relief available to petitioner for 2006 and 2007.

As for 2008, the notice of determination comprised a determination to sustain the proposed levy and a final determination to deny petitioner section 6015 relief. Because petitioner filed a Petition contesting respondent's denial of section 6015 relief within 90 days of the notice, we have jurisdiction under section 6015(e)(1) to determine the appropriate relief available to petitioner for 2008. *See Francel v. Commissioner* [Dec. 61,444(M)], T.C. Memo. 2019-35, at *37–40 (reviewing the taxpayer's innocent spouse claim under section 6015(e)(1) where the taxpayer raised the claim at a CDP hearing, the notice of determination discussed that claim, and the taxpayer's petition assigned error to the denial of innocent spouse relief).

In resolving section 6015(f) cases brought under section 6015(e)(1), we employ a de novo standard and scope of review. [12] *Porter v. Commissioner* [Dec. 57,792], 132 T.C. 203, 210 (2009). Petitioner generally bears the burden of proving that she is entitled to equitable relief under section 6015(f). *See id.*; *see also* Rule 142(a)(1).

II. *Section 6015(f) relief*

As directed by section 6015(f), the Commissioner has prescribed procedures to determine whether a requesting spouse is entitled to equitable relief from joint and several liability. Those procedures are set forth in Rev. Proc. 2013-34, §4, 2013-43 I.R.B. 397, 399–403. Although the Court considers those procedures when reviewing the Commissioner's determination, the Court is not bound by them. *See Pullins*, 136 T.C. at 438–39; *Molinet v. Commissioner* [Dec. 59,931(M)], T.C. Memo. 2014-109, at *6. The Court's determination ultimately rests on an evaluation of all the facts and circumstances. *Porter*, 132 T.C. at 210.

Pursuant to the revenue procedure, the Commissioner conducts a multistep analysis when determining whether a requesting spouse is **[*15]** entitled to equitable relief under section 6015(f). *See* Rev. Proc. 2013-34, §4. The requirements for relief under the revenue procedure are categorized as threshold or mandatory requirements, streamlined elements, and equitable factors. A requesting spouse must satisfy each threshold requirement to be considered for relief. *See id*. §4.01, 2013-43 I.R.B. at 399–400. If the requesting spouse meets the threshold requirements, the Commissioner will grant equitable relief if the requesting spouse meets each streamlined element. *See id*. §4.02, 201343 I.R.B. at 400. Otherwise, the Commissioner will determine whether equitable relief is appropriate by evaluating the equitable factors. *See id*. §4.03, 2013-43 I.R.B. at 400–03.

A. *Threshold requirements*

The requesting spouse must meet seven threshold requirements to be considered for relief under section 6015(f): (1) the requesting spouse filed a joint return for the taxable year for which relief is sought; (2) relief is not available to the requesting spouse under section 6015(b) or (c); (3) the claim for relief is timely filed; (4) no assets were transferred between the spouses as part of a fraudulent scheme; (5) the nonrequesting spouse did not transfer disqualified assets to the requesting spouse; (6) the requesting spouse did not knowingly participate in the filing of a fraudulent joint return; and (7) absent certain enumerated exceptions, the tax liability from which the requesting spouse seeks relief is attributable to an item of the nonrequesting spouse. Rev. Proc. 2013-34, §4.01.

Respondent concedes that threshold requirements (1), (2), (3), and (5) have been met. However, respondent contends that petitioner has not satisfied threshold requirements (4), (6), and (7).

Before we address each requirement in turn, we will comment on the credibility of the parties' witnesses. “As a trier of fact, it is our duty to listen to the testimony, observe the demeanor of the witnesses, weigh the evidence, and determine what we believe.” *Kropp v. Commissioner* [Dec. 53,866(M)], T.C. Memo. 2000-148, 2000 Tax Ct. Memo LEXIS 178, at *9. In *Diaz v. Commissioner* [Dec. 31,442], 58 T.C. 560, 564 (1972), we observed that the process of distilling truth from the testimony of witnesses, whose demeanor we observe and whose credibility we evaluate, “is the daily grist of judicial life.” **[*16]** At trial petitioner called herself, Brett, Hailey, and Mr. Givens as witnesses. We found each of them to be credible and forthright. We also found respondent's sole witness, SA Adam, to be credible and forthright.

1. *Threshold requirement (4): no assets transferred between spouses as part of a fraudulent scheme*

Rev. Proc. 2013-34, §4.01, does not define “fraudulent scheme.” However, Treasury Regulation §1.6015-1(d) states that a “fraudulent scheme includes a scheme to defraud the Service or another third party.” The basic badges of fraud demonstrate an intent to misrepresent, conceal, or hide information. *See Spies v. United States* [43-1 ustc ¶9243], 317 U.S. 492, 499 (1943); *Recklitis v. Commissioner* [43-1 ustc ¶9243], 91 T.C. 874, 910 (1988). This Court has previously found a fraudulent scheme when spouses transferred property with the intent to hide such transfers. *See Chen v. Commissioner* [Dec. 56,581(M)], T.C. Memo. 2006-160, 2006 Tax Ct. Memo LEXIS 163, at *14–15 (finding that transfers to “hide the trail of fraud” and fraudulent intent precluded relief under section 6015(f)).

According to respondent, Mr. Pocock transferred assets to petitioner as part of a fraudulent scheme in 2006 and 2008. In 2006 he deeded petitioner and Mrs. Givens his interest in the Winter Springs home and wrote petitioner a check for $140,000. In 2008 he transferred title for his truck to petitioner. Respondent contends that those transfers were part of a scheme to defraud the Estate of Virginia Pocock, from which he had stolen funds. [13]

The record contains no evidence that petitioner schemed with her husband to hide assets from the estate. Nor is there evidence that she concealed from or misrepresented to her in-laws facts about the above-described transfers. To the contrary, Mr. Pocock's quitclaim deed on the Winter Springs home was publicly recorded.

There is also no evidence that Mr. Pocock attempted to thwart collection of any judgments against him in favor of the estate. Although the parties stipulated the opening of a probate case in a Florida circuit court, respondent has directed us to no filings evidencing an attempt by Mr. Pocock to evade collection of a judgment. The only probate document before us is an unsigned stipulation between Mr. Pocock and the successor personal representative of the estate. Under the terms of **[*17]** that stipulation, Mr. Pocock would pay damages of $30,000 within 15 days of the probate court's approval of the agreement. There is nothing in the record to suggest that he thwarted the consummation or satisfaction of that agreement. Accordingly, respondent's contention that Mr. Pocock and petitioner were hiding Mr. Pocock's assets from the estate is fatally speculative.

Via Simultaneous Answering Brief, respondent also asserts that the transfers were fraudulent under Florida's Uniform Fraudulent Transfer Act (FUFTA). FUFTA provides, in part, that a transfer is fraudulent if the debtor did not receive reasonably equivalent value and the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. Fla. Stat. §726.106(1) (2021). Because respondent's FUFTA argument appeared for the first time in a Simultaneous Answering Brief, we decline to consider it. [14] *See Spireas v. Commissioner* [Dec. 60,684(M)], T.C. Memo. 2016-163, at *35 n.9 ("We are generally reluctant to consider arguments advanced for the first time in a party's answering brief, and we will decline to do so here."), *aff'd* [2018-1 ustc ¶50,196], 886 F.3d 315 (3d Cir. 2018); *see also DiLeo v. Commissioner* [2018-1 ustc ¶50,196], 96 T.C. 858, 891–92 (1991), *aff'd* [92-1 ustc ¶50,197], 959 F.2d 16 (2d Cir. 1992); *Shelby U.S. Distribs., Inc. v. Commissioner* [Dec. 35,888], 71 T.C. 874, 885 (1979). Accordingly, we need not consider the interplay between state fraudulent transfer law and threshold requirement (4).

Hence, on the basis of the record in these cases, we hold that no assets were transferred as part of a fraudulent scheme.

2. *Threshold requirement (6): did not knowingly participate in the filing of a fraudulent return*

Rev. Proc. 2013-34, §4.01(6), 2013-43 I.R.B. at 399, provides that the requesting spouse must not knowingly participate in the filing of a fraudulent joint return. This Court has found such participation where the requesting spouse signed fraudulent joint returns with knowledge of the inaccuracies reported thereon. *See Durland v. Commissioner* [Dec. 60,649(M)], T.C. Memo. 2016-133, at *98 (holding that requesting spouse knowingly participated in filing of fraudulent joint returns by signing them with knowledge of omitted income). Petitioner concedes that the joint returns fraudulently overstated Mr. Pocock's federal income tax withholdings. **[*18]** We must therefore determine whether she was aware of the overstated withholdings when the returns were filed.

Petitioner credibly testified that her involvement in return preparation was limited to providing information returns to her husband. She did not review the returns before they were filed and, therefore, could not have signed them with knowledge of the inaccurately reported withholding credits. Even if she had reviewed and signed the returns, those actions alone would not have alerted her to the overstated withholding credits. The returns did not look false on their face, as SA Adam acknowledged at trial. The SA credibly testified: "[W]hen you just look at the returns, you don't necessarily see anything that would make you think that they were incorrectly prepared or self-prepared."

Respondent asserts that petitioner knew about the fraudulent refund scheme because she was aware of the abnormally large refund checks. Respondent cites petitioner's endorsement of the 1997, 2004, and 2006 refund checks as evidence of her knowledge of and participation in the fraudulent refund scheme.

However, petitioner credibly testified that Mr. Pocock had represented that the large refunds arose from his "money brokering" deals. Although he was not trustworthy, Mr. Pocock's behavior made it difficult for petitioner to question him about his business. When she attempted to do so, he gave her terse and confusing answers before resorting to verbal and physical intimidation. Mr. Pocock kept the details of his business further shrouded by using a mailbox buzzer to keep tight control of the mail. Petitioner's son, Brett, corroborated those dynamics at trial. He credibly testified that the family knew not to disturb Mr. Pocock when he was in front of the computer. Doing so was "risky" because it could "provoke anger." Consequently, Brett was unable to explain to his friends what his father did for a living.

Accordingly, we find it more likely than not that petitioner did not know that Mr. Pocock was claiming fictitious withholdings from nonexistent businesses. Because she had no knowledge of the overstated withholding credits, we hold that she did not knowingly participate in the filing of the fraudulent joint returns.

[*19] 3. ***Threshold requirement (7): tax liability attributable to an item of the nonrequesting spouse***

Rev. Proc. 2013-34, §4.01(7), 2013-43 I.R.B. at 399, requires that "[t]he income tax liability from which the requesting spouse seeks relief [be] attributable (either in full or in part) to an item of the nonrequesting spouse or an underpayment resulting from the nonrequesting spouse's income" unless a specific exception applies. The Commissioner may consider granting relief regardless of whether the underpayment or understatement is attributable to the requesting spouse if any of the following exceptions applies: (1) attribution is solely due to operation of community property law; (2) nominal ownership; (3) misappropriation of funds; (4) abuse; or (5) fraud committed by the nonrequesting spouse. *See id*.

Petitioner argues that she satisfies this threshold requirement because Mr. Pocock prepared the fictitious information returns and claimed the overstated withholding credits without her knowledge. Respondent counters that, because petitioner benefited from the resulting tax refunds, the liabilities at issue are attributable to her. We agree with petitioner.

In deciding the issue of to whom inaccurate, false, or "phony" tax items are attributable, the Court has generally attributed such items to the spouse who wrongfully reported or claimed them. *See Leith v. Commissioner* [Dec. 60,649(M)], T.C. Memo. 2020-149, at *7 n.6 (attributing disallowed deductions claimed on Schedule C, Profit or Loss From Business, to the spouse named thereon as the proprietor); *Lawson v. Commissioner* [Dec. 49,922(M)], T.C. Memo. 1994-286 (attributing recharacterized loss to the spouse who had mischaracterized stock sale as an ordinary loss rather than a capital loss); *Davis v. Commissioner* [Dec. 48,175(M)], T.C. Memo. 1992-240 (attributing phony deduction claimed on Schedule A, Itemized Deductions, to spouse who claimed it), *aff'd without published opinion*, 26 F.3d 130 (9th Cir. 1994). [15] **[*20]** In these cases Mr. Pocock prepared the joint returns, which included fictitious Forms W–2 and 1099–MISC from nonexistent entities. Those forms reported substantial withholdings from wages and nonemployee compensation purportedly paid to Mr. Pocock. Because the liabilities at issue arose from the reversal of the withholding credits derived therefrom, they are attributable to Mr. Pocock and not to petitioner. Petitioner has therefore satisfied the seventh threshold requirement of Rev. Proc. 2013-34, §4.01.

B. *Streamlined determination elements*

Having determined that petitioner satisfies the threshold requirements, we next consider whether she is entitled to a streamlined determination. *See* Rev. Proc. 2013-34, §4.02.

The requesting spouse is eligible for a streamlined determination by the Commissioner only in cases in which the requesting spouse establishes that she (1) is no longer married to the nonrequesting spouse (marital status requirement), (2) would suffer economic hardship if not granted relief (economic hardship requirement), and (3) did not know or have reason to know that the nonrequesting spouse would not or could not pay the underpayment of tax reported on the joint income tax return, or did not know or have reason to know that there was an understatement or deficiency on the joint income tax return (lack of knowledge requirement). *Id*. The requesting spouse must establish that she satisfies each of the three elements to receive a streamlined determination granting relief. *Id*.

1. *Marital status requirement*

For purposes of this element, a requesting spouse is "no longer married to the nonrequesting spouse" if the requesting spouse is divorced from the nonrequesting spouse as of the date of the Commissioner's determination. *See id*. §4.03(2)(a)(i), 2013-43 I.R.B. at 400. The Seminole County circuit court granted petitioner and Mr. Pocock a divorce on November 9, 2011, which predates respondent's determinations to deny petitioner relief. Accordingly, petitioner satisfies this requirement.

Respondent acknowledges that petitioner's marital status would normally favor relief. Nevertheless, respondent urges us to discard the plain text of the revenue procedure because petitioner continues to live with Mr. Pocock. Respondent relies on *Ohrman v. Commissioner* [Dec. 55,332(M)], T.C. Memo. 2003-301, 2003 Tax Ct. Memo LEXIS 303, at *12–13, *36, *aff'd*, **[*21]** [2006-1 ustc ¶50,128], 157 F. App'x 997 (9th Cir. 2005), in which the Court upheld a denial of innocent spouse relief to a taxpayer who had resided with her spouse after their legal separation. In doing so, the Court gave little weight to the taxpayer's legal separation because she had obtained it "to shield as many assets and as much of the family's income as possible" from tax collection. *See id*. at *25–26. Respondent contends that petitioner and Mr. Pocock are similarly using state family law to shield assets while continuing to cohabitate. We disagree.

Petitioner credibly testified that she divorced Mr. Pocock because she discovered he was assuming debt in her name. We specifically find that the destruction of petitioner's credit was the final straw of a disintegrating marriage. [16] Petitioner's attempt to salvage her credit is distinguishable from the actions of the *Ohrman* taxpayers. In *Ohrman* the Commissioner issued the taxpayers a notice of proposed changes pertaining to a tax return under examination. *Id*. at *8. Thereafter, the parties entered a separation agreement under which the nonrequesting spouse transferred assets worth $782,000 to the requesting spouse. *Id*. at *9–11. Because the notice of proposed changes preceded the settlement agreement, the Court concluded that the principal purpose of the agreed-upon transfer was tax avoidance. *Id*. at *24–26.

In contrast respondent concedes that tax avoidance was not the principal purpose of Mr. Pocock's asset transfers to petitioner. Those transactions—namely, the 2006 release of his interest in the Winter Springs home, the 2006 transfer of $140,000, and the 2008 transfer of his truck to petitioner—preceded the examination that resulted in the liabilities at issue. Accordingly, *Ohrman* is distinguishable from the cases at bar. [17] We therefore hold that petitioner satisfies the marital status requirement.

2. ***Economic hardship requirement***

Economic hardship exists if satisfaction of the tax liability, in whole or in part, would result in the requesting spouse's being unable to **[*22]** meet her reasonable basic living expenses. Rev. Proc. 2013-34, §4.03(2)(b), 2013-43 I.R.B. at 401. The requesting spouse would suffer economic hardship if two requirements are met: (1) either (a) the requesting spouse's income is below 250% of the federal poverty level (FPL) or (b) the requesting spouse's monthly income exceeds her reasonable basic monthly living expenses by $300 or less, and (2) the requesting spouse does not have assets from which she can make payments toward the tax liability and still meet reasonable basic living expenses. *Id*. If the requesting spouse fails to satisfy either requirement, the Commissioner “will consider all facts and circumstances (including the size of the requesting spouse's household) in determining whether the requesting spouse would suffer economic hardship if relief is not granted.” *Id*.

On brief, respondent concedes that petitioner's monthly income is $1,855. That amount comprises petitioner's monthly wages, Social Security, and $873 rental payment from Mr. Pocock.

Despite that concession, respondent argues that petitioner's economic outlook is incomplete without considering Mr. Pocock's disability and other monthly income. However, petitioner's monthly income includes the $873 payment she receives from Mr. Pocock. Respondent has not directed us to any evidence that Mr. Pocock pays petitioner more than that amount. Even if we were to consider petitioner and Mr. Pocock as a single economic unit, we doubt it would yield a different result. The record includes a letter from respondent's Collections Division to petitioner and Mr. Pocock, stating: “We determined that you don't have the ability to pay the money you owe at this time.” [18]

Thus, we find that petitioner's annual income is $22,260 ($1,855 × 12), which is lower than 250% of the applicable FPL. [19] Petitioner therefore satisfies the first prong of the economic hardship test.

The second prong of the test requires consideration of whether petitioner has any assets from which she can make payments towards **[*23]** the tax liabilities and still meet reasonable basic living expenses. On her Form 433–A, petitioner reported total assets of $191,625, $180,000 of which is attributable to the Leesburg home. Because the liabilities for the years in issue are at least $485,297, petitioner does not have sufficient assets to satisfy them.

To be sure, respondent correctly notes that the Leesburg home is unencumbered. However, we doubt petitioner could access the equity in the property without selling it. [20] The record includes a statement of credit denial from a credit union, and petitioner credibly testified that her work prospects were diminishing on account of physical ailments. Given these circumstances, we do not believe petitioner could liquidate her assets to make even a partial payment of the liabilities and still meet her reasonable basic living expenses. She therefore satisfies the second prong of the economic hardship test.

In the light of the foregoing, we hold that petitioner satisfies the economic hardship requirement.

3. *Lack of knowledge requirement*

The facts here are atypical for underpayment cases because the joint returns showed overpayments from overstated withholdings—not taxes due. [21] Because these cases involve inaccurate returns, we find caselaw and other authorities on understatements to be instructive.

If the requesting spouse knew or had reason to know of the item giving rise to the understatement as of the date the joint return was filed, this factor will weigh against relief. Rev. Proc. 2013-34, §4.03(2)(c)(i)(A), 2013-43 I.R.B. at 401. A requesting spouse has knowledge or reason to know of an understatement if she actually knew of the understatement or if a reasonable person in similar circumstances would have known of the understatement. Treas. Reg. §1.6015-2(c). We **[*24]** must therefore consider whether petitioner actually knew or had reason to know of the overstated withholdings.

a. *Actual knowledge*

For the reasons explained *supra* part II.A.2, we find that petitioner did not have actual knowledge of the overstated withholdings.

b. *Constructive knowledge*

We now consider whether petitioner had reason to know of the overstated withholdings when the returns were filed. Rev. Proc. 2013-34, §4.03(2)(c)(iii), 2013-43 I.R.B. at 402, states:

The facts and circumstances that are considered in determining whether the requesting spouse had reason to know of an understatement, or reason to know whether the nonrequesting spouse could or would pay the reported tax liability, include, but are not limited to, the requesting spouse's level of education, any deceit or evasiveness of the nonrequesting spouse, the requesting spouse's degree of involvement in the activity generating the income tax liability, the requesting spouse's involvement in business or household financial matters, the requesting spouse's business or financial expertise, and any lavish or unusual expenditures compared with past spending levels.

Taxpayers are generally presumed to have constructive knowledge of information reported on returns that they signed. *Hayman v. Commissioner* [93-1 ustc ¶50,272], 992 F.2d 1256, 1262 (2d Cir. 1993), *aff'g* [Dec. 48,160(M)], T.C. Memo. 1992-228. In addition, taxpayers have a duty to inquire into the amounts of their tax liabilities. *Price v. Commissioner* [89-2 ustc ¶9598], 887 F.2d 959, 965 (9th Cir. 1989); *Butler*, 114 T.C. at 284; *Wiener v. Commissioner* [Dec. 57,555(M)], T.C. Memo. 2008-230. Failure to fulfill the duty to inquire may constitute reason to know that the tax would not be paid. *Sleeth v. Commissioner* [Dec. 61,557(M)], T.C. Memo. 2019-138, at *12, *aff'd* [2021-1 ustc ¶50,109], 991 F.3d 1201 (11th Cir. 2021). Innocent spouse relief is not available to those who choose to ignore information in their possession. *Charlton v. Commissioner* [Dec. 53,879], 114 T.C. 333, 340 (2000); *Sleeth* [Dec. 53,879], T.C. Memo. 2019-138, at *12.

Petitioner did not have a clear idea of how Mr. Pocock was earning his purported commissions. Mr. Pocock exhibited a high degree of evasiveness about the details of his purported "money brokering" business. He kept close watch of the mail and refused to give clear **[*25]** answers about what he was doing to generate periodic six-figure payouts. Petitioner's involvement in return preparation was limited to providing Mr. Pocock her Forms W–2 and other tax information. These facts tend to support a finding that she did not have reason to know of the overstated withholdings.

However, other facts in the record suggest that petitioner had a duty to inquire about the joint returns that she failed to uphold. Although petitioner did not sign the joint returns at issue, she consented to their filing by regularly relying on Mr. Pocock to file them on her behalf. Having endorsed the refund checks for 1997, 2004, and 2006, petitioner was aware that Mr. Pocock regularly claimed six-figure refunds on their joint returns. She was also aware that Mr. Pocock had stolen from his mother's estate and was therefore untrustworthy. Given these facts, petitioner could not reasonably trust Mr. Pocock to file accurate returns. Furthermore, before Mr. Pocock commenced his fraudulent refund scheme, he moved from one failed business venture to another. His sudden funding of household improvements and other joint expenses with six-figure checks was therefore lavish compared to past spending levels. Such a development would normally warrant an inquiry.

In a vacuum, these circumstances would compel a holding that petitioner had reason to know of the overstated withholdings. However, we do not so hold because petitioner was a victim of spousal abuse.

c. *Abuse*

Notwithstanding the requesting spouse's knowledge or beliefs, that knowledge may be negated if the nonrequesting spouse abused the requesting spouse or maintained control of the household finances by restricting the requesting spouse's access to financial information such that the nonrequesting spouse's actions prevented the requesting spouse from questioning or challenging payment of the liability. Rev. Proc. 2013-34, §4.02(3)(a), 4.03(2)(c)(i) and (ii). "Abuse comes in many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate the requesting spouse, or to undermine the requesting spouse's ability to reason independently and be able to do what is required under the tax laws." *Id.* §4.03(2)(c)(iv), 2013-43 I.R.B. at 402; *see, e.g., Stephenson v. Commissioner* [Dec. 58,519(M)], T.C. Memo. 2011-16. This Court takes all facts and circumstances into account in determining the presence of abuse, *see* Rev. Proc. 2013-34, §4.01, and requires substantiation, or at a **[*26]** minimum, specificity, with regard to allegations of abuse, *see Nihiser v. Commissioner* [Dec. 57,445(M)], T.C. Memo. 2008-135. A generalized claim of abuse is insufficient. *See Thomassen v. Commissioner* [Dec. 57,445(M)], T.C. Memo. 2011-88, *aff'd* [2014-1 ustc ¶50,226], 564 F. App'x 885 (9th Cir. 2014); *Knorr v. Commissioner* [Dec. 55,752(M)], T.C. Memo. 2004-212.

In these cases the record provides a detailed account of Mr. Pocock's abuse and physical intimidation of petitioner. Petitioner credibly testified that he threw a glass vase at her head when she pressed him for information about a business dispute with her brother. From that incident, petitioner realized that questioning him about business or finances was a risky endeavor. When petitioner attempted to do so in later years, he responded by kicking and throwing household objects. In addition to physically intimidating petitioner, he restricted petitioner's access to financial information. He was evasive about the nature of his business and kept tight control of the mail. Consequently, it was difficult for petitioner to question him about his "money brokering" business and, by extension, the joint returns.

Medical records in evidence corroborate petitioner's account of Mr. Pocock's behavior—in particular, a letter from Mr. Pocock's therapist referencing "abusive behaviors" towards family members and others. Petitioner's son Brett provided further corroboration at trial. Brett credibly testified that the household he grew up in was often tense, especially when the family was experiencing financial stress. During those periods, the family "didn't poke the bear" by engaging with Mr. Pocock. Brett credibly testified about physical abuse he suffered from his father when he did so.

Respondent contends that certain actions by petitioner undermine her allegations of abuse. According to respondent, petitioner confronted Mr. Pocock about finances on several occasions without any apparent fear of retaliation. Respondent asserts that petitioner had no trouble (1) removing him from the joint Seminole account, (2) getting him to relinquish his interest in the Winter Springs home, and (3) negotiating the division of their liabilities in their uncontested divorce proceeding.

With respect to the latter action, Mr. Pocock was receiving mental health treatment at the time of the divorce in 2011. Petitioner credibly testified that medication and therapy softened his irritability and reactivity. Furthermore, Mr. Pocock was particularly vulnerable in 2011 since he was the target of a criminal investigation. Given these **[*27]** changed circumstances, petitioner's uncontested divorce does not undercut allegations of earlier abuse.

With respect to the removals of Mr. Pocock from the joint account and the deed, petitioner and her daughter Hailey credibly testified that he exhibited recurring periods of remorse. It was during one of those periods when he assented to the removals. We doubt Mr. Pocock would have been as acquiescent if petitioner had questioned him about their tax returns, given that the refunds were his primary source of income. In fact, when petitioner did so in 2010, he slammed her against a wall. That incident frightened petitioner enough that she hid his gun.

Considering the totality of petitioner's circumstances when the joint returns were filed, we do not believe petitioner could have questioned their accuracy without risking her safety. [22] Because Mr. Pocock's abusive behavior prevented petitioner from questioning the accuracy of the joint returns or payment of the liabilities thereon, she satisfies the lack of knowledge requirement.

III. *Conclusion*

We find that petitioner is entitled to streamlined relief from joint and several liability pursuant to section 6015(f) for the years in issue. We have considered all arguments made in reaching our decision and, to the extent not mentioned, we conclude that they are moot, irrelevant, or without merit. [23]

To reflect the foregoing,

Appropriate decisions will be entered for petitioner.

Footnotes

[1]Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure. We round all monetary amounts to the nearest dollar.

[2]Respondent notified Mr. Pocock that petitioner was seeking relief from joint and several liability and that he had a right to intervene in these cases. Mr. Pocock did not exercise his right to intervene.

[3]At trial respondent's counsel stated that she had considered taking action to reopen those years for examination. See §6501(c)(1) ("In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed … at any time."). However, she ultimately decided otherwise, explaining: "I don't know if we will collect what we have here [for taxable years 2006, 2007, and 2008]. It seemed like … not a wise use of resources."

[4]For taxable years 1995, 1996, and 1999, the record does not include copies of refund checks or establish where they were deposited.

[5]Although the record includes a copy of the 1998 refund check, it does not reveal where the check was deposited.

[6]Mr. Pocock also transferred title for his truck to petitioner in 2008. Respondent concedes on brief that tax avoidance was not the principal purpose of the 2006 and 2008 transfers.

[7]For example, Mr. Pocock attached to the joint 2006 return a Form W–2 and a Form 1099–MISC from Deadline, Inc., and BEC Funding, respectively. The Form W–2 reported wages of $263,282 and withholding of $99,590. The Form 1099–MISC reported nonemployee compensation of $86,557 and withholding of $34,322.

[8]The amount of an overstated withholding credit may be summarily assessed and is not subject to the deficiency procedures prescribed in section 6213. *See* §6201(a)(3); *Bregin v. Commissioner* [Dec. 37,173], 74 T.C. 1097, 1104–05 (1980).

[9]Stipulated Exhibit 70–J purports to be a copy of the 2007 account transcript but is instead a duplicate copy of the transcript for 2008.

[10]By the time the IRS sent the case to the U.S. Department of Justice, the criminal period of limitations for 2005 and 2006 had expired. According to SA Adam, the U.S. Attorney's Office had concerns about the period of limitations for the remaining years.

[11]On June 16, 2016, respondent's Collection Division issued a letter to petitioner and Mr. Pocock regarding their 2006 and 2007 liabilities. Therein the Collection Division stated that it was placing them in "currently not collectible" status for those years.

[12]The Petitions in these cases were filed before Congress enacted section 6015(e)(7), which generally limits our review to the administrative record. Because section 6015(e)(7) does not apply to petitions filed before the provision's effective date, *see Sutherland v. Commissioner*, 155 T.C. 95, 104 (2020), our scope of review remains de novo, *see Pullins v. Commissioner* , 136 T.C. 432, 438 (2011).

[13]The above-described transfers occurred before the IRS examined the joint returns for the years in issue. Respondent concedes that those transfers were not made for tax avoidance purposes.

[14]In any event the record does not establish that Mr. Pocock was or became insolvent when the transfers at issue occurred. The bank statements in the record do not account for the 1998 refund check of $115,137, which is greater than the $30,000 judgment referenced in the unsigned stipulation.

[15]Although some of the cited cases arose under former section 6013(e), our caselaw interpreting that section remains instructive in interpreting similar terms in cases under section 6015. *See Alt v. Commissioner* [Dec. 54,961], 119 T.C. 306, 313–14 (2002), *aff'd* [2004-1 ustc ¶50,279], 101 F. App'x 34 (6th Cir. 2004); *Juell v. Commissioner* [Dec. 57,039(M)], T.C. Memo. 2007-219, 2007 Tax Ct. Memo LEXIS 222, at *15 n.2. The terms "attributable ... to an item of the nonrequesting spouse" of Rev. Proc. 2013-34, §4.01(7), are similar to the terms "attributable to grossly erroneous items of one spouse" of former section 6013(e). The analysis for attributing items to one spouse or the other is essentially the same.

[16]We do not believe petitioner and Mr. Pocock are continuing to live as de facto spouses. We credit petitioner's testimony that her post-divorce relationship with Mr. Pocock is akin to that of a roommate. Practical concerns, such as ongoing health issues and economic constraints, explain their post-divorce cohabitation to our satisfaction.

[17]Other cases cited by respondent are also distinguishable. *Cf. Doyel v. Commissioner* [2006-1 ustc ¶50,128], T.C. Memo. 2004-35 (upholding denial of innocent spouse relief to taxpayer who, among other things, remained married to nonrequesting spouse); *Von Kalinowski v. Commissioner* [Dec. 54,226(M)], T.C. Memo. 2001-21 (same).

[18]That determination is consistent with the AO's acknowledgment in his memorandum denying relief that the economic hardship factor favors petitioner. It is also consistent with respondent's counsel's acknowledgment at trial that the chances of collecting the liabilities at issue are doubtful at best.

[19]At the time of trial, 250% of the FPL for a family of one in Florida was $30,350. *See* Annual Update of the HHS Poverty Guidelines, 83 Fed. Reg. 2642, 2643 (Jan. 18, 2018).

[20]Respondent does not contend that petitioner could sell the home and still meet her reasonable basic living expenses. To the contrary, respondent states on brief: "Respondent is not arguing that petitioner should have to sell the home in order to pay the tax liability."

[21]In a typical underpayment case, the knowledge factor considers whether the requesting spouse knew or had reason to know that the nonrequesting spouse would not or could not pay the tax liability at the time of filing the joint return. Rev. Proc. 2013-34, §4.03(2)(c)(ii), 2013-43 I.R.B. at 401.

[22]Given her allegations of abuse, one might question why petitioner continues to reside with Mr. Pocock. Petitioner credibly testified that her economic situation necessitates having a roommate. She believes her living arrangement with Mr. Pocock is more reliable than a typical rental situation, a sentiment which we observed to be genuine. Since 2011, Mr. Pocock's anger and reactivity have softened with medication and counseling. Given these changed circumstances, petitioner's living arrangement does not contradict her allegations of earlier abuse.

[23]Because petitioner's section 6015(f) relief renders the proposed levy for 2008 moot, we need not consider whether Appeals' determination to sustain the collection action was an abuse of discretion.

Federal Tax Day - Current,J.1,Individual Not Entitled to Deduct Schedule C Other Expenses; Car and Truck Expenses Also Disallowed (Kinney, TCM),(Jul. 29, 2022)

An individual was not entitled to deduct Schedule C: (1) other expenses; and (2) car and truck expenses because he failed to establish that said expenses were incurred during the tax year at issue and that the expenses were ordinary and necessary to his business. The taxpayer was an attorney and had reported his principal business as providing consulting, teaching and technical services.

Taxpayer's Averments

The taxpayer argued that he had paid all business expenses reported on his original Schedule C and also sought a deduction for additional expenses for the tax year at issue on the basis of a revised Schedule C offered at trial. Further, the taxpayer claimed that his expenses incurred were "ordinary and necessary" to protect his business from destruction by those taking advantage of void orders and/or improper rulings to the detriment of the taxpayer’s ongoing business, goodwill and properties. Moreover, the taxpayer argued that his vehicles were used for his business operations, because they were as commercial vehicles.

Schedule C Other Expenses

The taxpayer argued that the litigation expenses arose when he was engaged in a professional capacity as an attorney representing his client’s interests rather than his own. However, the taxpayer’s expenses such as court filings fees and copying, printing, and mailing costs were personal and nondeductible since they were associated with the taxpayer’s disbarment, vexatious litigant declaration, and prior property disputes with his neighbors. Moreover, the taxpayer failed to provide evidence that his lawsuits and appeals were filed to protect his Schedule C self-employment business from destruction; therefore, the associated expenses were not ordinary and necessary expenses associated with his self-employment business. Further, the taxpayer was not entitled to deduct the cost of his life insurance policy since he did not provide proof that he was not directly or indirectly a beneficiary of the policy. Additionally, the taxpayer was not entitled to deduct the cost of his three turbo tax subscriptions or PTIN registration as ordinary and necessary business expenses for his Schedule C business because apart from his own selfserving trial testimony, there was no documentary evidence to substantiate these expenses.

Schedule C Car and Truck Expenses

The taxpayer incorrectly concluded that because his two vehicles are registered as commercial vehicles they were not classified as passenger automobiles. Further, the taxpayer failed to present a contemporaneous travel log or other sufficient evidence necessary to meet the strict substantiation requirements of Code Sec. 274(d).

C.G. Kinney, TC Memo. 2022-81, Dec. 62,090(M)

Other References:

- Code Sec. 162
- CCH Reference - FED ¶8520.5172
- Code Sec. 274
- CCH Reference - FED ¶14,417.30

Federal Tax Day - Current,J.2,Taxpayer Denied Deductions for Failing to Substantiate Expenses (Eze, TCM),(Aug. 5, 2022)

An individual was denied deductions for car and other expenses for failing strict substantiation requirements of Code Sec. 274(d). The taxpayer did not prove locations allegedly visited in connection with either his Schedule C1 or his Schedule C2 business. The taxpayer's calendar entries were not made contemporaneously with the alleged travel.

The court also ruled that the taxpayer could have incurred some travel expenses in conducting his consulting business. But the court was not authorized to estimate expenses under the *Cohan rule* for deductions under Code Sec. 274. If it were authorized to estimate vehicle expenses, the court would need a reliable basis for doing so, which the taxpayer did not present.

Further, most of the other expenses reported were allegedly incurred to purchase construction materials and tools. The taxpayer failed to convince the court that he purchased items listed on documents. These items were not purchased for the taxpayer's Schedule C2 home improvement business. If his residential construction business existed, he provided no evidence that would enable us to determine its actual scope and scale.

N.C. Eze, TC Memo. 2022-83, Dec. 62,093(M)

Other References:

- Code Sec. 162
- CCH Reference - FED ¶8520.5172
- Code Sec. 274
- CCH Reference - FED ¶14,408A.56
- CCH Reference - FED ¶14,417.22

Federal Tax Day - Current,J.1,Individual Was Liable for Frivolous Tax Return Penalty; No Abuse of Discretion Found (Clarkson, TCM),(Sep. 8, 2022)

An individual was liable for a frivolous tax return penalty for each Form 1040 that he filed as his submissions satisfied all three conditions specified in Code Sec. 6702(a) for a frivolous return. Each of the taxpayer's 14 submissions purported to be a tax return. Each submission was made on a Form 1040 and bore his original signature. The taxpayer repeatedly characterized his submissions as tax returns. Further, each Form 1040 reported zero taxable income. The taxpayer conceded that he received payments from a corporation and argued that private sector employees were not subject to federal income tax. However, the Tax Court concluded that because this was a frivolous argument, his Forms 1040 indicated on their face that his self-assessment was substantially incorrect. Additionally, the Secretary long ago identified as frivolous the position that a taxpayer can elect to file a tax return reporting zero taxable income and zero tax liability even if he received taxable income.

Further, written supervisory approval of the proposed penalties was secured several months before the penalties were assessed. The taxpayer's alleged factual disputes were entirely speculative. Additionally, the settlement officer (SO): (1) properly verified that the requirements of applicable law or administrative procedure were met; (2) considered any relevant issues the taxpayer raised; and (3) considered whether any proposed collection action balanced the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action was no more intrusive than necessary. Additionally, the taxpayer proposed no collection alternative. Accordingly, finding no abuse of discretion in any respect, the court granted the IRS's motion and sustained the collection action.

Finally, the court did not impose a penalty under Code Sec. 6673(a)(1) as it did not have an occasion to warn the taxpayer about the risk of taking up a frivolous position. However, the court advised the taxpayer that he was likely to be penalized if he continued to raise frivolous arguments.

E.D. Clarkson, TC Memo. 2022-92, Dec. 62,103(M)

Other References:
Code Sec. 6330
CCH Reference - FED ¶38,184.14
Code Sec. 6673
CCH Reference - FED ¶39,790.44
Code Sec. 6702
CCH Reference - FED ¶40,043.32

Federal Tax Day - Current,J.1,Individual Had Unreported Income; Additions to Tax Imposed (Ashford, TCM),(Sep. 30, 2022)

An individual, who had received wages from the air force and a certain amount from an individual retirement account (IRA), had unreported income. The taxpayer had failed to file tax returns for two tax years at issue for which the IRS had prepared substitutes for returns (SFRs) on the basis of third-party reporting.

Compensation and Other Income

The taxpayer relied on a Social Security Administration (SSA) statement which mentioned a concession by the IRS that he did not have self-employment income for one tax year. However, the taxpayer's argument conflicted with stipulated facts, so it had no merit. The taxpayer and the IRS had already stipulated that he had received a certin amount in wages from the air force and they also stipulated the authenticity of a wage and income transcript. Further, the taxpayer argued that the deficiencies were invalid because: (1) they were based on dummy returns and (2) the IRS had purportedly lost his examination file. The taxpayer's contention that the IRS must file an SFR before determining a deficiency was frivolous. Moreover, the taxpayer had not identified or even attempted to describe any specific documents the IRS purportedly lost. Lastly, the taxpayer did not address his liability for Code Sec. 72(t) additional tax on brief. Therefore, the tax court conceded the issue and sustained the IRS' determination.

Additions to Tax and Frivolous Penalty

The taxpayer was held liable for additions to tax because he asserted that the record lacked evidence of the IRS' compliance with Code Sec. 6751(b)(1) supervisory approval. However, the additions to tax under Code Secs. 6651(a) and 6654 are excepted from Code Sec. 6751(b)(1), and they may be assessed without supervisory approval. Further, the IRS contended that a penalty was appropriate because the taxpayer advanced frivolous arguments throughout this proceeding. However, the tax court used its discretion and declined to impose a penalty because this was the taxpayer's first case in the tax court. The taxpayer was cautioned that he risked penalties under Code Sec. 6673(a)(1) if he presseed similar arguments in future.

W.T. Ashford, TC Memo. 2022-101, Dec. 62,112(M)

Other References:
Code Sec. 61
CCH Reference - FED ¶5800.40
Code Sec. 6651
CCH Reference - FED ¶39,475.23
Code Sec. 6673
CCH Reference - FED ¶39,790.25

XII. IRS Announcements

XII. IRS Announcements

Federal Tax Day - Current,C.1,Keep Donation Deduction For Non-Itemizers, Panelists Tell Finance Cmte,(Mar. 21, 2022)

The now-expired charitable donation tax deduction for taxpayers who do not file an itemized return should be reinstated, witnesses told members of the Senate Finance Committee.

"Every day that this lifeline remains expired is a blow to our charitable recovery and a missed opportunity to those in need," Daniel Cardinali, president and CEO of Independent Sector, told members of the committee during a March 17 hearing as he endorsed the reinstatement of the deduction.

The temporary deduction was included as part of the CARES Act to help spur additional donations that could help people adversely affected by the COVID-19 pandemic, a move that appears to have been a success in terms of generating donations to qualified non-profit organizations. Non-itemizing taxpayers could deduct up to $300 from their returns. That provision expired at the end of last year.

And the inclusion of that deduction had an impact. Committee member Sen. James Lankford (R-Okla.) noted that compared to 2019, after the $300 deduction was enacted in the CARES Act, "gifts of less than $250 grew by 15 percent in 2020. Contrary to most examples of growth and giving during the times crisis typically, the growth in these small gifts outpaced the growth in larger contributions about 1.5 times."

He further noted that compared to 2019, "there was a 28 percent increase in $300 donations on the final day of 2020. That is the exact amount of actually what the donation amount was, so there’s obviously some connection there and I wonder what that would have been if the number would have been higher for that time period as well."

Sen. Langford also cited data from The Fundraising Effectiveness Project, which found that compared to 2019, in 2020, the overall number of donors grew by 7 percent and new donors increased by 18 percent, while overall giving increased by more than 10 percent.

However, there was some diverging opinions from the panelists on how the deduction should be reinstated, with suggestions ranging from simply continuing the deduction with a possible increase in the cap to altering the structure altogether.

"I urge you in the strongest possible terms to restore the non-itemizer charitable deduction quickly and to significantly increase or eliminate the cap," Cardinali said.

C. Eugene Steuerle, co-founder of The Urban-Brookings Tax Policy Center, argued that the $300 deduction for non-itemizers amounted to nothing more than a gift to taxpayers without being an effective raiser of funds for charitable organizations.

In his written testimony to the committee, he noted that since "most donors already give more than $300 annually, the subsidy created an incentive for almost no one. And the IRS has almost no way to audit bogus claims, effectively making the $300 deduction available to any non-itemizer, whether they donate to charity or not."

Steuerle’s research showed that The CARES Act deduction "provided charitable recipients with as little as $100 million at a cost of $1.5 billion in forgone federal revenue."

Instead of a higher or unlimited cap, he suggested a floor based on a percentage of adjusted gross income would be more effective.

A "floor of 1.9 percent would just about break even for the government under the law in place after 2017 but before COVID-19, while raising contributions by about $2.5 billion "he wrote in his testimony. "If Congress were to restore subsidies to pre-2017 levels, a revenue-neutral floor of less than 1 percent would efficiently promote giving."

Steuerle also suggested that there needs to be improvements to the Internal Revenue Service's oversight and enforcement when it comes to charitable donations to ensure that they are better tracked to limit the amount of fraud associated with claiming the charitable donation deduction.

By Gregory Twachtman, Washington News Editor

IRS

Collection Financial Standards

Disclaimer: *IRS Collection Financial Standards are intended for use in calculating repayment of delinquent taxes. These Standards are effective on April 25, 2022 for purposes of federal tax administration only. Expense information for use in bankruptcy calculations can be found on the website for the U.S. Trustee Program.*

We have added links below for all of the standards to enable you to download a PDF version for printing. Please note that the standards change, so if you elect to print them, check back periodically to assure you have the latest version.

Related Topic

- Tools

General

Collection Financial Standards are used to help determine a taxpayer's ability to pay a delinquent tax liability. Allowable living expenses include those expenses that meet the necessary expense test. The necessary expense test is defined as expenses that are necessary to provide for a taxpayer's (and his or her family's) health and welfare and/or production of income.

National Standards for food, clothing and other items apply nationwide. Taxpayers are allowed the total National Standards amount monthly for their family size, without questioning the amount actually spent.

National Standards have also been established for minimum allowances for out-of-pocket health care expenses. Taxpayers and their dependents are allowed the standard amount monthly on a per person basis, without questioning the amount actually spent.

Maximum allowances for monthly housing and utilities and transportation, known as the Local Standards, vary by location. In most cases, the taxpayer is allowed the amount actually spent, or the local standard, whichever is less.

Generally, the total number of persons allowed for necessary living expenses should be the same as those allowed as dependents on the taxpayer's most recent year income tax return.

If the IRS determines that the facts and circumstances of a taxpayer's situation indicate that using the standards is inadequate to provide for basic living expenses, we may allow for actual expenses. However, taxpayers must provide documentation that supports a determination that using national and local expense standards leaves them an inadequate means of providing for basic living expenses.

National Standards: Food, Clothing and Other Items

National Standards have been established for five necessary expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous.

The National Standard for Food, Clothing and Other Items includes an amount for miscellaneous expenses. This miscellaneous allowance is for expenses taxpayers may incur that are not included in any other allowable living expense items, or for any portion of expenses that exceed the Collection Financial Standards and are not allowed under a deviation.

The standards are derived from the Bureau of Labor Statistics Consumer Expenditure Survey. The survey collects information from the Nation's households and families on their buying habits (expenditures), income and household characteristics.

Additional information and the standard amounts are available on our National Standards for Food, Clothing and Other Items web page. You may also download the standards PDF in PDF format for printing.

National Standards: Out-of-Pocket Health Care Expenses

Out-of-Pocket Health Care standards have been established for out-of-pocket health care expenses including medical services, prescription drugs, and medical supplies (e.g. eyeglasses, contact lenses, etc.).

The table for health care allowances is based on Medical Expenditure Panel Survey data and uses an average amount per person for taxpayers and their dependents under 65 and those individuals that are 65 and older.

The out-of-pocket health care standard amount is allowed in addition to the amount taxpayers pay for health insurance.

You may also download the standards PDF in PDF format for printing. Additional information and the standard amounts are available on our Out-of-Pocket Health Care Standards web page.

Local Standards: Housing and Utilities

The housing and utilities standards are derived from U.S. Census Bureau, American Community Survey and BLS data, and are provided by state down to the county level. The standard for a particular county and family size includes both housing and utilities allowed for a taxpayer's primary place of residence. Housing and utilities standards are also provided for Puerto Rico.

Housing and Utilities standards include mortgage or rent, property taxes, interest, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and Internet service. The tables include five categories for one, two, three, four, and five or more persons in a household.

Additional information and the standard amounts are available by state or territory on our Housing and Utilities Standards web page. You may also download the standards PDF in PDF format for printing. Please be advised that the housing and utilities document is 108 printed pages.

Local Standards: Transportation

The transportation standards for taxpayers with a vehicle consist of two parts: nationwide figures for monthly loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by Census Region and Metropolitan Statistical Area (MSA). A conversion chart has been provided with the standards that lists the states that comprise each Census Region, as well as the counties and cities included in each MSA. The ownership cost portion of the transportation standard, although it applies nationwide, is still considered part of the Local Standards.

The ownership costs provide maximum allowances for the lease or purchase of up to two automobiles if allowed as a necessary expense. A single taxpayer is normally allowed one automobile.

The operating costs include maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking and tolls.

If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense. In both of these cases, the taxpayer is allowed the amount actually spent, or the standard, whichever is less.

There is a single nationwide allowance for public transportation based on BLS expenditure data for mass transit fares for a train, bus, taxi, ferry, etc. Taxpayers with no vehicle are allowed the standard, per household, without questioning the amount actually spent.

If a taxpayer owns a vehicle and uses public transportation, expenses may be allowed for both, provided they are needed for the health, and welfare of the taxpayer or family, or for the production of income. However, the expenses allowed would be actual expenses incurred for ownership costs, operating costs and public transportation, or the standard amounts, whichever is less.

Additional information and the standard amounts are available on our Transportation Standards web page. You may also download the standards PDF in PDF format for printing.

Six Year Rule for Repayment of Tax Liability

The Collection Financial Standards are used in cases requiring financial analysis to determine a taxpayer's ability to pay. The vast majority of installment agreements secured by Collection employees are streamlined agreements, which require little or no financial analysis and no substantiation of expenses.

In cases where taxpayers cannot full pay and do not meet the criteria for a streamlined agreement, they may still qualify for the six-year rule. The timeframe for this rule was increased in 2012 from five years to six years.

The six-year rule allows for payment of living expenses that exceed the Collection Financial Standards, and allows for other expenses, such as minimum payments on student loans or credit cards, as long as the tax liability, including penalty and interest, can be full paid in six years.

Taxpayers are required to provide financial information in these cases, but do not have to provide substantiation of reasonable expenses.

Recent Revisions

April 25, 2022

There were no changes to the methodology for calculating the Collection Financial Standards for 2022.

The data for the Operating Costs section of the Transportation Standards are provided by Census Region and Metropolitan Statistical Area (MSA) on the Transportation Standards web page. In 2022, the MSAs did not change.

The revised standards are effective for financial analysis conducted on or after April 25, 2022.

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IRS Fact Sheet

Internal Revenue Service
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Security Summit partners urge tax pros to create plan for data safety

FS-2022-34, August 2022

With data security incidents continuing, the Internal Revenue Service, state tax agencies and the tax industry – known as the Security Summit -- urge tax professionals to develop a security plan.

Not only is a security plan good practice, but the IRS also reminds tax professionals that federal law, enforced by the Federal Trade Commission, requires all professional tax preparers to create and implement a written data security plan.

Each year, the Security Summit partners highlight a "Protect Your Clients; Protect Yourself" summer campaign aimed at tax professionals. This fact sheet complements a series of five news releases issued to coincide with the Nationwide Tax Forums, which helps educate tax professionals on security and other important topics.

There are many aspects to running a successful business in the tax preparation industry, including reviewing tax law changes, learning software updates and managing and training staff. One often overlooked but critical component is creating a Written Information Security Plan or WISP.

Having a WISP protects businesses and clients while providing a blueprint of action in the event of a security incident. In addition, a WISP can help if other events occur that can seriously disrupt a tax professional's ability to conduct normal business, including fire, flood, tornado, earthquake and theft.

It is often difficult to know where to start when developing a WISP. That is why the Security Summit, led by the Tax Professional Working Group, with input from the software and tax community, developed a plain language sample plan tax pros can use to make their own WISP. The sample plan is available on IRS.gov.

A security plan should be appropriate to the company's size, scope of activities, complexity and the sensitivity of the customer data it handles. There is no one-size-fits-all WISP. For example, a sole practitioner can use a more abbreviated and simplified plan than a 10-partner accounting firm.

Developing a WISP

A good WISP should focus on three areas:

- Employee management and training.
- Information systems.
- Detecting and managing system failures.

A good resource is the FTC's Data Breach Response Guide.

As a part of the plan, the FTC requires each firm to:

- Designate one or more employees to coordinate its information security program.
- Identify and assess the risks to customer information in each relevant area of the company's operation and evaluate the effectiveness of the current safeguards for controlling those risks.
- Design and implement a safeguards program, and regularly monitor and test it.
- Select service providers that can maintain appropriate safeguards.
- Evaluate and adjust the program considering relevant circumstances, including changes in the firm's business or operations, or the results of security testing and monitoring.

Follow-up

A good security plan requires regular maintenance and upkeep. Here are tips to keep a WISP effective:

- Once completed, tax professionals should keep their WISP in a format that others can easily read, such as PDF or Word. Making the WISP available to employees for training purposes is also encouraged. Storing a copy offsite or in the cloud is a recommended best practice in the event of a physical disaster.

- It is important to understand that a WISP is intended to be an evergreen document. It is important to regularly review and update any security plan, along with adjusting the plan to accommodate changes to the size, scope and complexity of a tax professional's business.
- As part of a security plan, the IRS also recommends tax professionals create a data theft response plan, which includes contacting their IRS Stakeholder Liaison to report a theft. Also see the FTC data breach response requirements listed above.

Additional resources

Tax professionals also can get help with security recommendations by reviewing IRS Publication 4557, Safeguarding Taxpayer Data, and Small Business Information Security: The Fundamentals, by the National Institute of Standards and Technology. The IRS Identity Theft Central pages for tax pros, individuals and businesses have important details as well.

Publication 5293, Data Security Resource Guide for Tax Professionals, provides a compilation of data theft information available on IRS.gov. Also, tax professionals should stay connected to the IRS through subscriptions to e-News for Tax Professionals and social media.

For more information, see IRS.gov.

IRS News Release

Internal Revenue Service
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Security Summit releases new data security plan to help tax professionals; new WISP simplifies complex area

IR-2022-147, Aug. 9, 2022

WASHINGTON – The Security Summit partners today unveiled a special new sample security plan designed to help tax professionals, especially those with smaller practices, protect their data and information.

The special plan, called a Written Information Security Plan or WISP, is outlined in a 29-page document that's been worked on by members of the Security Summit, including tax professionals, software and industry partners, representatives from state tax groups and the IRS.

Federal law requires all professional tax preparers to create and implement a data security plan. The Security Summit group – a public-private partnership between the IRS, states and the nation's tax industry – has noticed that some tax professionals continue to struggle with developing a written security plan.

In response to this need, the Summit – led by the Tax Professionals Working Group – has spent months developing a special sample document that allows tax professionals to quickly set their focus in developing their own written security plans.

"Tax professionals play a critical role in our nation's tax system," said Carol Campbell, director of the IRS Return Preparer Office and co-lead of the Summit tax professional group. "But for many tax professionals, it is difficult to know where to start when developing a security plan. The Summit members worked together on this guide to walk tax pros through the many considerations needed to create a Written Information Security Plan to protect their businesses and their clients, as well as comply with federal law."

Each year, the Security Summit partners highlight a "Protect Your Clients; Protect Yourself" summer campaign aimed at tax professionals. This is the fourth in a series of five tips for this year's effort. These are issued each Tuesday to coincide with the Nationwide Tax Forums, which help educate tax professionals on security and other important topics.

There are many aspects to running a successful business in the tax preparation industry, including reviewing tax law changes, learning software updates and managing and training staff. One often overlooked but critical component is creating a WISP.

"There's no way around it for anyone running a tax business. Having a written security plan is a sound business practice – and it's required by law," said Jared Ballew of Drake Software, co-lead for the Summit tax professional team and incoming chair of the Electronic Tax Administration Advisory Committee (ETAAC). "The sample provides a starting point for developing your plan, addresses risk considerations for inclusion in an effective plan and provides a blueprint of applicable actions in the event of a security incident, data losses and theft."

Security issues for a tax professional can be daunting. The Summit team worked to make this document as easy to use as possible, including special sections to help tax professionals get to the information they need.

"We have tried to stay away from complex jargon and phrases so that the document can have meaning to a larger section of the tax professional community," said Campbell. "It is not intended to be the final word in Written Information Security Plans, but it is intended to give tax professionals a place to start in understanding and attempting to draft a plan for their business."

A security plan should be appropriate to the company's size, scope of activities, complexity and the sensitivity of the customer data it handles. There is no one-size-fits-all WISP. For example, a sole practitioner can use a more abbreviated and simplified plan than a 10-partner accounting firm, which is reflected in the new sample WISP from the Security Summit group.

Once completed, tax professionals should keep their WISP in a format that others can easily read, such as PDF or Word. Making the WISP available to employees for training purposes is encouraged. Storing a copy offsite or in the cloud is a recommended best practice in the event of a natural disaster.

Additional resources

Tax professionals also can get help with security recommendations by reviewing IRS Publication 4557, Safeguarding Taxpayer Data, and Small Business Information Security: The Fundamentals by the National Institute of Standards and Technology. The IRS Identity Theft Central pages for tax pros, individuals and businesses have important details as well.

Publication 5293, Data Security Resource Guide for Tax Professionals, provides a compilation of data theft information available on IRS.gov. Also, tax professionals should stay connected to the IRS through subscriptions to e-News for Tax Professionals and social media.

The IRS also recommends tax professionals create a data theft response plan, which includes contacting the IRS Stakeholder Liaisons to report a theft.

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Federal Tax Day - Current,I.2,AICPA Concerned Over IRS Practitioner Priority Service Line Problems,(Aug. 12, 2022)

The American Institute of CPAs highlighted several challenges that tax practitioners are experiencing with the use of the Internal Revenue Service's Practitioner Priority Service (PPS) line.

In an August 9, 2022, letter to the agency, AICPA called the "plummeting" PPS line level of service "an area of continuing concern."

"Anecdotally, we are hearing from tax practitioners everyday regarding their significant PPS line challenges and the impact those challenges have on their interactions with IRS on behalf of taxpayers,"the letter states.

The letter highlights issues with the handling of power of attorney, transcripts, and account management versus automated collections, as well as provides some general recommendations.

In the area of power of attorney, AICPA offered several recommendations, including having customer service representatives provide a fax number at the start of the call if a practitioner states that the POA likely is not on file and where "a delegated POA is presented and appears in order, do not require the first POA be posted to the CAF [Central Authorization File] before recognizing the delegated POA."

AICPA also noted that customer service representatives "are often inconsistent on what is required to be completed on a POA for it to be valid," and called for better training of the representatives. The organization noted that the agency "should allow use of POAs that are signed by the taxpayer and the representative calling in—even if it is not yet signed by other listed representatives. While the Internal Revenue Manual (IRM) provides that IRS staff are to accept the POAs, the IRM is not universally followed in this regard."

In the area of transcripts, AICPA asked IRS to restore customer service representatives' ability to provide internal screen-print type transactions as well as the IRS message line that existed solely to provide internal and other types of transcripts to practitioners as they waited.

"PPS CSRs have indicated lately that they will not provide internal screen-print type transcripts by fax or secure mailbox; they are only willing to use U.S. mail, which takes 4 to 6 weeks for receipt," AICPA stated, adding that the delay makes it more difficult to resolve issues in a timely manner.

AICPA also called for the elimination of the so-called "law line."

"Practitioners should not need to consult with IRS staff on interpretations of law—the practitioners should be competent in those areas. Moreover, the breadth of knowledge of the 'law line' staff is often not high or incorrect information is given,"the letter states

The organization suggested the law line staff be utilized in other areas of the PPS line to help alleviate long wait times.

Another suggestion forwarded by AICPA was that the IRS restore the ability of accounts management (AM)staff to grant cycle holds for accounts not in collection.

"Recently, AM has been unwilling to grant cycle holds, referring such requests to ACS [automated collection system]," the letter states. "Restoring authority to grant cycle holds with AM before an account goes to Collection will return more speed and efficiency in resolving issues, will eliminate needless Collection Due Process cases, and will keep more cases out of the Taxpayer Advocate Service as well."

That being said, AICPA suggested that automated collection system be empowered to resolve more account issues, such as penalty abatement and other account-related issues and authorize PPS CSRs to grant 180-day holds where correspondence was sent in.

Other general recommendations included staffing the PPS line with "highly trained, highly empowered personnel;" discontinuing the practice of asking practitioners for their social security number and date of birth; and enhance the new automatic return call system; providing more supervisor availability; and enabling PPS CSRs to handle international issues.

Office of Chief Counsel
Internal Revenue Service
memorandum

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UILC: 61.00-00

date: August 19, 2022

to: Carolyn A. Schenck
National Fraud Counsel

Katrine Shelton, Senior Counsel
SBSE, Area 7

from: Sue-Jean Kim
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel (Income Tax & Accounting)

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subject: Proper Treatment of Improperly Forgiven PPP Loans

This Chief Counsel Advice responds to your request for assistance. You have requested advice on whether a taxpayer whose Paycheck Protection Program (PPP) loan was forgiven even though the taxpayer did not qualify for the forgiveness must include the PPP loan proceeds in gross income under section 61 of the Internal Revenue Code.

This advice may not be used or cited as precedent.

Issue

If a taxpayer makes one or more representations that he or she satisfies the conditions for forgiveness of a PPP loan under 15 U.S.C. §§ 636m and 636(a)(37)(J) ("qualifying forgiveness"), but does not factually satisfy the conditions for a qualifying forgiveness[1], and as a result, has the PPP loan forgiven improperly, may the taxpayer exclude the amount of the forgiven loan from gross income under 15 U.S.C. § 636m(i) or § 276(b)(1) of the COVID-related Tax Relief Act of 2020 (CTRA 2020)?

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1 A variety of fact patterns may establish that the taxpayer was not eligible for forgiveness under the statute and related regulatory guidance. For example, the taxpayer may have used the funds for personal expenditures. No implication is intended from the facts in the Situation presented below that it limits the reasons why a particular forgiveness is not a qualifying forgiveness.

POSTS-124403-21 2

Conclusion

If a taxpayer who does not factually satisfy the conditions for a qualifying forgiveness causes its lender to forgive the PPP loan by inaccurately representing that the taxpayer satisfies them, the taxpayer may not exclude the amount of the forgiven loan from gross income under 15 U.S.C. § 636m(i) or section 276(b)(1) of the CTRA 2020.

Background on the Paycheck Protection Program Loans

A. PPP loans

PPP loans are loans made in accordance with the terms, conditions and processes under the PPP. There were two rounds, or draws, of PPP loans. The first was provided under section 1102 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020) (CARES Act), to assist small businesses in the United States adversely affected by the COVID-19 pandemic in paying payroll costs and other eligible expenses. The second was provided under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. No. 116-260, div. N, title III, 134 Stat. 1993 (December 27, 2020) (Economic Aid Act), which amended and extended the existing PPP provisions. The PPP is administered by the Small Business Administration (SBA) as part of its "7(a) Loan Program" under § 7(a) of the Small Business Act (15 U.S.C. § 636(a)). For both rounds of PPP loans (collectively, "covered loans"), the lender may forgive, and the SBA may guarantee, the full principal amount, if certain criteria are met as described below. *See* 15 U.S.C. §§ 636(a)(36), (a)(37), and 636m.

To implement the PPP, the SBA issued regulatory interim final rules (IFRs) in the Federal Register in 2020 and 2021, including the Consolidated IFR implementing updates to the PPP ("Consolidated IFR"),[2] and the IFR on Loan Forgiveness Requirements and Loan Review Procedures ("Loan Forgiveness IFR").[3] The Consolidated IFR provides general rules governing covered loans and qualifying forgiveness of those loans, and the Loan Forgiveness IFR further details the SBA rules on qualifying forgiveness.

Lenders participating in the PPP may make PPP loans, fully guaranteed by the SBA, to eligible recipients only under specified terms, conditions and processes of the program. An "eligible recipient"[4] is an individual or entity that is eligible to receive a covered loan. A prospective recipient is eligible to receive a covered loan if the recipient (i) is a small business concern (as determined by the SBA), independent contractor, eligible self-employed individual, sole proprietor, business concern, or a certain type of tax-exempt

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[2] 86 Fed. Reg. 3692 (January 14, 2021).
[3] 86 Fed. Reg. 8283 (Feb. 5, 2021).
[4] For purposes of PPP Second Draw Loans, the term "eligible entity" is substituted for "eligible recipient." *See* 15 U.S.C. § 636(a)(37)(A)(i).

organization as specified by the authorizing statutes; and (ii) was in business on February 15, 2020, and either had employees or independent contractors whom the recipient paid for services or was an eligible self-employed individual, sole proprietor, or independent contractor.[5]

PPP loan proceeds may be used only for "eligible expenses," namely, payroll costs, rent, interest on the business's mortgage, utilities, and other specified operations expenditures, subject to repayment and additional liability if the proceeds are misused.[6] The application for a PPP loan requires that a prospective recipient attest to eligibility, verify certain financial information, and meet other legal qualifications.[7] The SBA allows lenders to rely on prospective recipients' certifications and documentation to determine whether to originate PPP loans. Similarly, the SBA allows lenders to rely on loan recipients' certifications and documentation in determining whether to forgive PPP loans. Lenders are held harmless for recipients' failure to comply with program criteria if they act in good faith and comply with relevant statutory and regulatory requirements.[8]

A PPP loan bears a non-compounding interest rate of one percent and matures in five years.[9] The recipient must generally make the first repayment in 24 weeks after the loan disbursement. If, however, the recipient applies for forgiveness of any portion of the loan within 10 months following the 24 weeks after the disbursement, the repayment of the principal (and interest) is not due unless and until the SBA notifies the recipient that the forgiveness request is rejected.[10]

B. Qualifying forgiveness of a PPP loan

Qualifying forgiveness occurs in the PPP if the PPP loan recipient satisfies the forgiveness criteria set forth in 15 U.S.C §§ 636m and 636(a)(37)(J), the participating lender forgives the PPP loan in whole or in part, and the forgiveness amount does not exceed the full principal amount of the PPP loan. While the term "qualifying forgiveness" does not appear in the statute or regulations, for purposes of this memorandum, it reflects PPP loan forgiveness that is authorized by 15 U.S.C. §§ 636m and 636(a)(37)(J) and that is described in the aforementioned IFRs. To receive qualifying forgiveness on a PPP loan, at least 60 percent of the PPP loan amount must be used for payroll costs, while up to 40 percent of the PPP loan amount may be used for other specified costs.[11] In addition, the qualifying forgiveness amount may not exceed the sum of specified costs that were incurred and paid during a covered

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[5] Consolidated IFR, Part III, B.1.a through 1.g., 2.a. through 2.c., 86 Fed. Reg. 3692, 3695-3698. *See also* 15 U.S.C. § 636(a)(36)(D), (a)(37)(A)(iv).
[6] Consolidated IFR, Part III, B.11, 86 Fed. Reg. 3692, 3704-3705. *See also* 15 U.S.C. § 636(a)(36)(F).
[7] Consolidated IFR, Part III, B.12.ix, 86 Fed. Reg. 3692, 3706. *See also* 15 U.S.C. § 636(a)(36)(G).
[8] Consolidated IFR, Part III, A, C.3, 86 Fed. Reg. 3692, 3694, 3707-3708. *See also* 15 U.S.C. § 636(a)(36)(G).
[9] Consolidated IFR, Part III, B.5 and B.6, 86 Fed. Reg. 3692, 3703.
[10] Consolidated IFR, Part III, B.9, 86 Fed. Reg. 3692, 3703-3704.
[11] Consolidated IFR, Part III, B.9, 86 Fed. Reg. 3692, 3706-3707. *See also* 15 U.S.C. § 636m(d)(8).

period.[12] The specified costs consist of payroll costs, interest on covered mortgage obligations, covered rent obligations, covered utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures.[13]

To receive qualifying forgiveness of a PPP loan, a PPP loan recipient must submit the application, including documentation and representations required by the statute and by the SBA.[14] To request forgiveness of a PPP loan, the loan recipient must attest to eligibility for forgiveness, including verifying that the loan proceeds were properly expended on eligible expenses and that the amount applied for forgiveness satisfies all the limitations relating to specified costs, and meet other legal requirements.

Once the lender grants qualifying forgiveness to a PPP loan recipient in compliance with the terms, conditions and processes of the PPP, the lender may treat the amount forgiven as "canceled indebtedness." The SBA, as the guarantor, is required to remit the same amount to the lender within 90 days from the date when the lender approves the qualifying forgiveness.[15] If the SBA later determines that a given forgiveness was not a qualifying forgiveness, the SBA may seek repayment of the loan.[16] Civil and criminal remedies (including recoupment of the improperly forgiven amount) are also available in coordination with the Department of Justice. *See, e.g.*, SBA Inspector General Report no. 22-13 (May 26, 2022).

Section § 636m(i)(1) of the United States Code, Title 15, provides that "no amount shall be included in the gross income of the eligible recipient by reason of forgiveness of indebtedness described in subsection (b)". Similarly, § 276(b)(1) of the CTRA 2020, which was enacted as Subtitle B of Division N of the Consolidated Appropriations Act, 2021, Public Law 116-260, provides that "no amount shall be included in the gross income of an eligible entity (within the meaning of [15 U.S.C. § 636(a)(37)(J)]) by reason of forgiveness of indebtedness described in clause (ii) of such paragraph, . . . " 134 Stat. 1182, 1979 (Dec. 27, 2020).

Situation

Taxpayer X applied for and received a first draw PPP loan in 2020. Taxpayer X did not use the loan proceeds for eligible expenses and applied for forgiveness of the PPP loan in 2020 as if she were entitled to a qualifying forgiveness. In the loan forgiveness

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[12] Consolidated IFR, Part III, B.9, 86 Fed. Reg. 3692, 3706-3707; IFR on Loan Forgiveness, Part IV, 86 Fed. Reg. 8283, 8286-8294. *See also* 15 U.S.C. § 636m(a)(4)(covered period), (b). For the PPP Second Draw Loans, the same terms and conditions of qualifying forgiveness are provided at 15 US.C. § 636(a)(37)(J).

[13] Consolidated IFR, Part III, B.9, 86 Fed. Reg. 3692, 3706-3707; IFR on Loan Forgiveness, Part IV, 1, 3 and 4, 86 Fed. Reg. 8283, 8286-8290. *See also* 15 U.S.C. § 636m(b).

[14] IFR on Loan Forgiveness, Part IV, 2, 86 Fed. Reg. 8283, 8287-8288. *See also* 15 U.S.C. § 636m(e).

[15] IFR on Loan Forgiveness, Part IV, 2.a, 86 Fed. Reg. 8283, 8287-8288. *See also* 15 U.S.C. § 636m(c)(3).

[16] IFR on Loan Forgiveness, Part V, 1.e., 86 Fed. Reg. 8283, 8295.

application submitted to the PPP lender, Taxpayer X failed to include all relevant facts that would indicate that she was not eligible for a qualifying forgiveness of the PPP loan. Based on the omissions and misrepresentations on that application, Taxpayer X received forgiveness of her PPP loan from the lender.

Law and Analysis

There is no accession to wealth under section 61(a) upon receipt of PPP loan proceeds, as the PPP loan is issued by a bank, includes an interest rate and maturity date, and includes an obligation for the eligible recipient to repay. *See Commissioner v. Tufts*, 461 U.S. 300, 307 (1983); *Commissioner v. Indianapolis Power & Light Co.*, 493 U.S. 203, 207-8 (1990). Once a participating lender forgives a loan originated under the PPP, however, the recipient of the loan proceeds enjoys an accession to wealth in the amount of the loan that is forgiven. Under general principles of Federal income taxation, the amount forgiven must be included in the loan recipient's gross income. However, section 636m(i) of the United States Code, Title 15, and § 276(b)(1) of the CTRA 2020 provide express exceptions to the rule that forgiveness of a PPP loan constitutes gross income.

Thus, a taxpayer who received a PPP loan that is forgiven may exclude the forgiven amount of the PPP loan from gross income if the forgiveness is described in section 636m(i) and § 276(b)(1) of the CTRA 2020. These exclusions apply only to a qualifying forgiveness of a PPP loan. Forgiveness of a PPP loan is a qualifying forgiveness only if the use of the loan proceeds satisfies the conditions relating to specified costs (as described in 15 U.S.C. § 636m(b), (d)). To receive a qualifying forgiveness, the loan recipient must apply for the forgiveness in accordance with the specific procedures set forth in the statute and associated regulations.

Failure to meet these conditions means that there is no qualifying forgiveness, and thus the exclusions would not apply to the forgiven PPP loan. As the Second Circuit concludes in discussing the forgiveness provision of the PPP (15 U.S.C. § 636m) in *Springfield Hosp., Inc.*, 28 F.4th 403, 424 (2nd Cir. 2022):

> [F]orgiveness is neither automatic nor guaranteed. A borrower must apply for forgiveness, which will only be granted if specified criteria are met, *see* 15 U.S.C. § 636m(b)–(d), and the CARES Act places several additional conditions upon obtaining forgiveness [including that the funds are "used for statutorily authorized purposes"].[17]

[17] The Court of Appeals for the Second Circuit reversed and vacated the bankruptcy court's decision that the PPP was a grant program for purposes of section 525(a) of the Bankruptcy Code, an anti-discrimination provision which applies to government "grants." The Second Circuit analyzed the PPP to determine whether the PPP loans were "loans" or "grants" for purposes of the Bankruptcy Code, and concluded that "[the] forgiveness option, favorable as it is, cannot alter the structure of what a loan forgiveness program fundamentally is—namely, a program to forgive *loans*." 28 F.4th at 424 (emphasis in original).

Turning to the Situation described above, because the forgiveness of Taxpayer X's PPP loan was based on omissions and misrepresentations, the loan that Taxpayer X received did not fall within the scope of loans that could be forgiven under 15 U.S.C. § 636m. The forgiveness of that loan accordingly did not constitute a qualifying forgiveness described in 15 U.S.C. § 636m, and may not be excluded from Taxpayer X's gross income under 15 U.S.C. § 636m(i). The exclusion provision applies only to a PPP loan that meets the conditions of a qualifying forgiveness. Similarly, the exclusion applies only if the loan recipient is an eligible recipient. Thus, even if the loan forgiveness is otherwise a qualifying forgiveness, the exclusion is inapplicable if the loan recipient is not an eligible recipient.[18] Because section 636m(i) does not apply to forgiveness of her PPP loan, Taxpayer X must include the forgiven amount in her gross income. This result follows from the application of the general principles of Federal income taxation to the amount forgiven in determining the proper tax treatment.[19]

Section 61(a) generally provides that "gross income means all income from whatever source derived." This result applies to all payments that are "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion" constitute taxable income. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). In 2020, the year of forgiveness and release from the obligation to repay, Taxpayer X had undeniable accessions to wealth, clearly realized, and over which she had complete dominion under the principles of *Glenshaw Glass*. Furthermore, notwithstanding the ability of the SBA to pursue repayment in the case of misuse of funds, Taxpayer X retained the PPP loan proceeds in 2020 under a claim of right.

The claim of right doctrine derives originally from the Supreme Court decision in *North American Oil Consolidated v. Burnet*, 286 U.S. 417 (1932). The court there stated that "[i]f a taxpayer receives earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent." *Id. at* 424. This doctrine applies regardless of whether the taxpayer acquires the proceeds lawfully; *see James v. United States*, 366 U.S. 213, 219 (1961) (applying the *North American Oil Consolidated* approach "[w]hen a taxpayer acquires earnings, lawfully or unlawfully, without the consensual recognition, express or implied, of an obligation to repay and without restriction as to their disposition"). The ability of the SBA to pursue repayment of the improperly forgiven PPP loan does not preclude the application of the claim of right doctrine to Taxpayer X in 2020. *See United States v. Lewis*, 340 U.S. 590 (1951)

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[18] See 15 USC § 636m(i)(1); IFR on Loan Forgiveness, Part V, 1.e., 86 Fed. Reg. 8283, 8295. The same is true for eligible entities in the case of PPP Second Draw Loans. See § 276(b)(1) of the CTRA 2020.

[19] If the SBA later determines that Taxpayer X had her loan improperly forgiven and, consequently, Taxpayer X pays back the SBA in a later year, the repayment that Taxpayer X makes may result in a deductible expense under section 162 or a deductible loss under section 165 for the later year. Whether Taxpayer X may claim a deduction under section 162 or 165 for the later year depends on all facts and circumstances.

(taxpayer received a bonus in 1944 and was required to repay the bonus in 1946 after being informed the original payment was erroneous; the court found that the taxpayer held the bonus under a claim of right in 1944 and rejected his argument that he could amend his 1944 return to reflect the subsequent repayment).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you have any questions, please call M. Duke Osborne at (202) 317-7006.

IRS

Highlights from the Summer 2022 Tax Security Summit

IRS Tax Tip 2022-132, August 29, 2022

The IRS, state tax agencies and the tax industry – working together as the Security Summit recently concluded its summer series, Protect Your Clients; Protect Yourself. This campaign was a reminder for tax pros to focus on fundamentals of security and watch out for emerging issues when using cloud-based services for their practice.

Here's a look back at key messages from the latest Security Summit.

Identity Protection PINs provide an important defense against tax-related identity theft. The IP PIN is a critical defense against identity thieves. The IRS and its Security Summit partners need tax pros to let their clients know that IP PINs are now available to anyone who can verify their identity.

Tax pros beware of evolving email and cloud-based schemes to steal taxpayer data. Tax pros using cloud-based systems to store and prepare tax returns and information should use multi-factor authentication. Specifically, they should use multi-factor authentication to reduce the risk of identity thieves gaining access to their online accounts. For more information about multi-factor authentication, people should visit the Cybersecurity and Infrastructure Security Agency website.

All tax pros should watch for the tell-tale signs of identity theft. Identity thieves continue to target the tax community. All tax pros should learn the signs of data theft so they can react quickly to protect clients.

Security Summit creates new data security plan to help tax professionals. Federal law requires all professional tax preparers to create and implement a data security plan**.** The IRS and its Security Summit partners recently unveiled a new sample security plan called a Written Information Security Plan or WISP PDF. This essential plan is designed to help tax pros, especially those with smaller practices, protect their data and information.

Ways tax pros can help clients battle identity theft risk. Tax professionals should be proactive and take the following critical steps to secure their computer systems and protect client data:

- Use virtual private networks or VPNs to prevent potential eavesdropping in shared environments.
- Be cautious of requests for personal or financial information via email, telephone, text and social media.
- Be cautious of downloads, even from trusted sites.
- Change default passwords, choose strong passwords, and consider using a password manager.

More information:

- Publication 4557, Safeguarding Taxpayer Data PDF
- Small Business Information Security: The Fundamentals PDF
- Identity Theft Central
- Publication 5293, Data Security Resource Guide for Tax Professionals PDF

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IRS News Release

Internal Revenue Service
Media Relations Office
Washington, D.C.

Media Contact: 202.317.4000
Public Contact: 800.829.1040
www.irs.gov/newsroom

IRS: Hurricane Ian victims in Florida qualify for tax relief; Oct. 17 deadline, other dates extended to Feb. 15

IR-2022-168, Sept. 29, 2022

WASHINGTON — Hurricane Ian victims throughout Florida now have until Feb. 15, 2023, to file various federal individual and business tax returns and make tax payments, the Internal Revenue Service announced today.

The IRS is offering relief to any area designated by the Federal Emergency Management Agency (FEMA). This means that individuals and households that reside or have a business anywhere in the state of Florida qualify for tax relief. The current list of eligible localities is always available on the disaster relief page on IRS.gov.

The tax relief postpones various tax filing and payment deadlines that occurred starting on Sept. 23, 2022. As a result, affected individuals and businesses will have until Feb. 15, 2023, to file returns and pay any taxes that were originally due during this period.

This means individuals who had a valid extension to file their 2021 return due to run out on Oct. 17, 2022, will now have until Feb. 15, 2023, to file. The IRS noted, however, that because tax payments related to these 2021 returns were due on April 18, 2022, those payments are not eligible for this relief.

The Feb. 15, 2023, deadline also applies to quarterly estimated income tax payments due on Jan. 17, 2023, and the quarterly payroll and excise tax returns normally due on Oct. 31, 2022, and Jan. 31, 2023. Businesses with an original or extended due date also have the additional time including, among others, calendar-year corporations whose 2021 extensions run out on Oct. 17, 2022. Similarly, tax-exempt organizations also have the additional time, including for 2021 calendar-year returns with extensions due to run out on Nov. 15, 2022.

In addition, penalties on payroll and excise tax deposits due on or after Sept. 23, 2022, and before Oct. 10, 2022, will be abated as long as the deposits are made by Oct. 10, 2022.

The IRS disaster relief page has details on other returns, payments and tax-related actions qualifying for the additional time.

The IRS automatically provides filing and penalty relief to any taxpayer with an IRS address of record located in the disaster area. Therefore, taxpayers do not need to contact the agency to get this relief. However, if an affected taxpayer receives a late filing or late payment penalty notice from the IRS that has an original or extended filing, payment or deposit due date falling within the postponement period, the taxpayer should call the number on the notice to have the penalty abated.

In addition, the IRS will work with any taxpayer who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227. This also includes workers assisting the relief activities who are affiliated with a recognized government or philanthropic organization.

Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred (in this instance, the 2022 return normally filed next year), or the return for the prior year (2021). Be sure to write the FEMA declaration number – DR-4673-FL − on any return claiming a loss. See Publication 547 for details.

IRS News Release

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The tax relief is part of a coordinated federal response to the damage caused by Hurricane Ian and is based on local damage assessments by FEMA. For information on disaster recovery, visit disasterassistance.gov.

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IRS

IRS: Hurricane Ian victims in the Carolinas qualify for tax relief; Oct. 17 deadline, other dates extended to Feb. 15

IR-2022-173, October 5, 2022

WASHINGTON — Hurricane Ian victims throughout both North Carolina and South Carolina now have until February 15, 2023, to file various federal individual and business tax returns and make tax payments, the Internal Revenue Service announced today. This is similar to relief announced last week for Ian victims in Florida.

The IRS is offering relief to any area designated by the Federal Emergency Management Agency (FEMA). This means that individuals and households that reside or have a business anywhere in both the Carolinas and Florida qualify for tax relief. The current list of eligible localities is always available on the disaster relief page on IRS.gov.

The tax relief postpones various tax filing and payment deadlines that occurred starting on September 25, 2022 in South Carolina and September 28 in North Carolina. As a result, affected individuals and businesses will have until February 15, 2023, to file returns and pay any taxes that were originally due during this period.

This means individuals who had a valid extension to file their 2021 return due to run out on October 17, 2022, will now have until February 15, 2023, to file. The IRS noted, however, that because tax payments related to these 2021 returns were due on April 18, 2022, those payments are not eligible for this relief.

The February 15, 2023, deadline also applies to quarterly estimated income tax payments due on January 17, 2023, and the quarterly payroll and excise tax returns normally due on October 31, 2022, and January 31, 2023. Businesses with an original or extended due date also have the additional time including, among others, calendar-year corporations whose 2021 extensions run out on October 17, 2022. Similarly, tax-exempt organizations also have the additional time, including for 2021 calendar-year returns with extensions due to run out on November 15, 2022.

In addition, in South Carolina, penalties on payroll and excise tax deposits due on or after September 25, 2022, and before October 11, 2022, will be abated as long as the deposits are made by October 11, 2022. In North Carolina, penalties on payroll and excise tax deposits due on or after September 28, 2022, and before October 13, 2022, will be abated as long as the deposits are made by October 13, 2022.

The IRS disaster relief page has details on other returns, payments and tax-related actions qualifying for the additional time.

The IRS automatically provides filing and penalty relief to any taxpayer with an IRS address of record located in the disaster area. Therefore, taxpayers do not need to contact the agency to get this relief. However, if an affected taxpayer receives a late filing or late payment penalty notice from the IRS that has an original or extended filing, payment or deposit due date falling within the postponement period, the taxpayer should call the number on the notice to have the penalty abated.

In addition, the IRS will work with any taxpayer who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227. This also includes workers assisting the relief activities who are affiliated with a recognized government or philanthropic organization.

Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred (in this instance, the 2022 return normally filed next year), or the return for the prior year (2021). Be sure to write the FEMA declaration number – 3585-SC for South Carolina or 3586-NC for North Carolina – on any return claiming a loss. See Publication 547 for details.

The tax relief is part of a coordinated federal response to the damage caused by Hurricane Ian and is based on local damage assessments by FEMA. For information on disaster recovery, visit disasterassistance.gov.

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IRS News Release

Internal Revenue Service
Media Relations Office
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www.irs.gov/newsroom

IRS sending letters to over 9 million potentially eligible families who did not claim stimulus payments, EITC, Child Tax Credit and other benefits; Free File to stay open until Nov. 17

IR-2022-178, Oct. 13, 2022

WASHINGTON – Starting this week, the Internal Revenue Service is sending letters to more than 9 million individuals and families who appear to qualify for a variety of key tax benefits but did not claim them by filing a 2021 federal income tax return. Many in this group may be eligible to claim some or all of the 2021 Recovery Rebate Credit, the Child Tax Credit, the Earned Income Tax Credit and other tax credits depending on their personal and family situation.

The special reminder letters, which will be arriving in mailboxes over the next few weeks, are being sent to people who appear to qualify for the Child Tax Credit (CTC), Recovery Rebate Credit (RRC) or Earned Income Tax Credit (EITC) but haven't yet filed a 2021 return to claim them. The letter, printed in both English and Spanish, provides a brief overview of each of these three credits.

"The IRS wants to remind potentially eligible people, especially families, that they may qualify for these valuable tax credits," said IRS Commissioner Chuck Rettig. "We encourage people who haven't filed a tax return yet for 2021 to review these options. Even if they aren't required to file a tax return, they may still qualify for several important credits. We don't want people to overlook these tax credits, and the letters will remind people of their potential eligibility and steps they can take."

Claiming the credits

These and other tax benefits were expanded under last year's American Rescue Plan Act and other recent legislation. Even so, the only way to get the valuable benefits is to file a 2021 tax return.

Often, individuals and families can get these expanded tax benefits, even if they have little or no income from a job, business or other source. This means that many people who don't normally need to file a tax return should do so this year, even if they haven't been required to file in recent years.

For this mailing, Treasury's Office of Tax Analysis identified individuals who don't typically have a tax return filing requirement because they appear to have very low incomes, based on Forms W-2, 1099s and other third-party statements available to the IRS.

The letters are similar to a special IRS mailing made in September 2020 encouraging 9 million potential non-filers to submit a tax return for the first Economic Impact Payment. This is part of an ongoing effort to encourage people who aren't normally required to file to look into possible benefits available to them under the tax law. Every year, people can overlook filing a tax return when they may be entitled tax credits and a refund.

People can file a tax return even if they haven't yet received their letter. The IRS reminds people that there's no penalty for a refund claimed on a tax return filed after the regular April 2022 tax deadline. The fastest and easiest way to get a refund is to file an accurate return electronically and choose direct deposit.

Free File to stay open until Nov. 17

To help people claim these benefits, without charge, Free File will remain open for an extra month this year, until Nov. 17, 2022. Available only at IRS.gov/FreeFile, Free File enables people whose incomes are $73,000 or less to file a return online for free using brand-name software. Free File is sponsored by the Free File Alliance, a partnership between the IRS and the tax-software industry.

People can also visit ChildTaxCredit.gov/file to file a 2021 income tax return. Individuals whose incomes are below $12,500 and couples whose incomes are below $25,000 may be able to file a simple tax return to claim the 2021 Recovery Rebate Credit—which covers any stimulus payment amounts from 2021 they may have missed—and the Child Tax Credit. Individuals do not need to have children in order to use ChildTaxCredit.gov/file to find the right filing solution for them.

Further details on these expanded tax benefits

The three credits include:

- An expanded Child Tax Credit: Families can claim this credit, even if they received monthly advance payments during the last half of 2021. The total credit can be as much as $3,600 per child.
- A more generous Earned Income Tax Credit: The law boosted the EITC for childless workers. There are also changes that can help low- and moderate-income families with children. The credit can be as much as $1,502 for workers with no qualifying children, $3,618 for those with one child, $5,980 for those with two children and $6,728 for those with at least three children.
- The Recovery Rebate Credit: Those who missed out on last year's third round of Economic Impact Payments (EIP3) may be eligible to claim the RRC. Often referred to as stimulus payments, this credit can also help eligible people whose EIP3 was less than the full amount, including those who welcomed a child in 2021. The maximum credit is $1,400 for each qualifying adult, plus $1,400 for each eligible child or adult dependent.

Besides these three credits, many filers may also qualify for two other benefits with a tax return filed for 2021:

- An increased Child and Dependent Care Credit: Families who pay for daycare so they can work or look for work can get a tax credit worth up to $4,000 for one qualifying person and $8,000 for two or more qualifying persons.
- A deduction for gifts to charity: Most tax-filers who take the standard deduction can deduct eligible cash contributions they made during 2021. Married couples filing jointly can deduct up to $600 in cash donations and individuals can deduct up to $300 in donations. In addition, itemizers who make large cash donations often qualify to deduct the full amount in 2021.

Further details on all these benefits are available in a fact sheet, FS-2022-10, posted earlier this year on IRS.gov.

Helpful reminders

The IRS urges everyone to make sure they have all their year-end 2021 tax statements in hand before filing their 2021 return. Besides all W-2s and 1099s, this includes two statements issued by the IRS -- Letter 6419, showing their total advance Child Tax Credit payments, and Letter 6475, showing their total EIP3 payments. People can also use IRS Online Account to see the total amounts of their third round of Economic Impact Payments or advance Child Tax Credit payments. For married couples who received joint payments, each spouse will need to sign into their own account to retrieve their separate amounts.

Whether or not they use Free File, anyone can find answers to their tax questions, forms and instructions and easy-to-use tools online at IRS.gov. They can use these resources to get help when they need it, at home, at work or on the go.

Claiming these credits has no effect on the ability of someone to be eligible for federal benefits like Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Claiming these credits also has no effect on an individual's immigration status or their ability to get a green card or immigration benefits

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Federal Tax Day - Current,I.1,Social Security Wage Cap and Benefit Amounts Increase for 2023 (SSA Fact Sheet),(Oct. 14, 2022)

For 2023, the Social Security wage cap will be $160,200, and social security and Supplemental Security Income (SSI) benefits will increase by 8.7 percent. These changes reflect cost-of-living adjustments to account for inflation.

Wage Cap for Social Security Tax

The Federal Insurance Contributions Act (FICA) tax on wages is 7.65 percent each for the employee and the employer. FICA tax has two components:

- a 6.2 percent social security tax, also known as old age, survivors, and disability insurance (OASDI); and
- a 1.45 percent Medicare tax, also known as hospital insurance (HI).

For self-employed workers, the Self-Employment tax is 15.3 percent, consisting of:

- a 12.4 percent OASDI tax; and
- a 2.9 percent HI tax.

OASDI tax applies only up to a wage base, which includes most wages and self-employment income up to the annual wage cap.

For 2023, the wage base is $160,200. Thus, OASDI tax applies only to the taxpayer's first $160,200 in wages or net earnings from self-employment. Taxpayers do not pay any OASDI tax on earnings that exceed $160,200.

There is no wage cap for HI tax.

Maximum Social Security Tax for 2023

For workers who earn $160,200 or more in 2023:

- an employee will pay a total of $9,932.4 in social security tax ($160,200 x 6.2 percent);
- the employer will pay the same amount; and
- a self-employed worker will pay a total of $19,864.8 in social security tax ($160,200 x 12.4 percent).

Additional Medicare Tax

Higher-income workers may have to pay an Additional Medicare tax of 0.9 percent. This tax applies to wages and self-employment income that exceed:

- $250,000 for married taxpayers who file a joint return;
- $125,000 for married taxpayers who file separate returns; and
- $200,000 for other taxpayers.

The annual wage cap does not affect the Additional Medicare tax.

Benefit Increase for 2023

Finally, a cost-of-living adjustment (COLA) will increase social security and SSI benefits for 2023 by 8.7 percent. The COLA is intended to ensure that inflation does not erode the purchasing power of these benefits.

Social Security Fact Sheet: 2023 Social Security Changes

Other References:

- Code Sec. 1401

- CCH Reference - FED ¶32,543.01
- CCH Reference - FED ¶32,543.07
- CCH Reference - FED ¶32,543.26

- Code Sec. 1402

- CCH Reference - FED ¶32,580.01

2023 Social Security Wage Base Increases to $160,200

1. The Social Security Administration (SSA) has announced that the maximum earnings subject to Social Security tax (Social Security wage base) will increase from $147,000 to **$160,200** in **2023** (an increase of **$13,200**). The maximum Social Security employer contribution will increase **$818.40** in **2023**.

2. For **2023,** the FICA tax rate for both employers and employees is **7.65%** (**6.2%** for OASDI and **1.45%** for Medicare).

3. **For 2023, an employer must withhold**:

   a. **6.2%** Social Security tax on the first **$160,200** of employee wages (maximum tax is **$9,932.40**; i.e., **6.20% × $160,200**), plus;

   b. **1.45%** Medicare tax on the first **$200,000** of employee wages, plus;

   c. **2.35%** Medicare tax (regular **1.45%** Medicare tax + **0.9%** additional Medicare tax) on all employee wages *in excess of* **$200,000**.

4. Social Security and Supplemental Security Income (SSI) benefits will increase **by 8.7% in 2023**. The **average monthly Social Security benefit** will increase from **$1,681 to $1,827**, and the maximum federal SSI monthly payment to an individual will increase from **$841 to $914**.

5. The maximum federal **SSI monthly** payment to a couple will increase from **$1,261 to $1,371 in 2023**.

6. The amount of earnings that is required in order to be credited with a quarter of Social Security coverage will increase from **$1,510 to $1,640**.

7. The retirement earnings test remains in effect for individuals *below* normal retirement age (**age 65 to 67**, depending on year of birth) who continue to work while collecting Social Security benefits. For affected individuals, **$1** in benefits will be withheld for every **$2** in earnings *above* **$21,240** in **2023** (up from $19,560 in 2022).

8. For working individuals collecting benefits who reach normal retirement age (NRA) in 2023, **$1** in benefits will be withheld for every **$3** in earnings *above* **$56,520** (up from $51,960 in 2022), until the month that the individual reaches NRA. After that month, there is no limit on earnings.

Social Security Wage Base to Increase in 2023

The **Social Security Wage Base** will increase from **$147,000** to **$160,200** in **2023**, higher than the **$155,100** high-cost and low-cost estimate published in the **June 6, 2022, Annual Report of the Board of Trustees in the Social Security Administration Press Release.**

The **Medicare** Tax rate for **2022** remains at **1.45%** of all covered earnings for employers and employees. The withholding of the **Additional Medicare Tax** of **0.9%** applies to earned income of *more than* **$200,000.** The assessment of the tax for single filers is **$200,000** and **$250,000** for a married couple filing a joint income tax return. While employers are required to withhold the additional **0.9%** on covered wages *over* **$200,000**, there is no corresponding employer tax.

The **annual adjustment** to the **Social Security Wage Base** is based on the increase in average wages. Some states and localities index the annual adjustments to their minimum wage to increases to the Consumer Price Index **(CPI).** Because of current high inflation, some jurisdictions have announced significant increases for **2023**. As an example, SeaTac, Washington's minimum wage will increase from **$17.54** to **$19.06** effective **January 2023**. These higher minimum wage rates could contribute to a **substantial increase** to the **Social Security Wage Base in 2024.**

Description	**2023**	**2022**	**Increase**
Social Security tax rate for **employees**	6.2%	6.2%	-0-
Social Security tax rate for **employers**	6.2%	6.2%	-0-
Social Security wage base	**$160,200.00**	**$147,000.00**	**$ 13,200.00**
Maximum Social Security tax for **employees & employers**	**$ 9,932.40**	**$ 9,114.00**	**$ 818.40**
Medicare tax rate for **employers**	1.45%	1.45%	-0-
Medicare tax rate for **employees**	1.45%*	1.45%	-0-
Medicare tax rate for **employees** on wages *above* **$200,000***	2.35% (1.45% Medicare +0.9% Additional Medicare)	2.35% (1.45% Medicare +0.9% Additional Medicare)	-0-
Medicare wage base	**No limit**	**No limit**	N/A

* Employers must withhold the Additional Medicare Tax of **0.9%** of Medicare wages *over* **$200,000**. There is no corresponding **employer** tax.

IRS

Rebuilding records after a natural disaster is an essential step in recovery

IRS Tax Tip 2022-160, October 19, 2022

Tax records are not a first priority for those affected by natural disasters nor should they be. However, these records may be necessary to get federal assistance or insurance reimbursement. It is important for victims of a disaster to reconstruct their records to help prove and document their losses.

Here are some steps to help people reconstruct important records they may need as they begin to recover and rebuild.

Tax records

- Get free tax return transcripts immediately using Get Transcript on IRS.gov.
- Order transcripts by calling 800-908-9946 and following the prompts.

Financial statements

- People can gather past statements from their credit card company or bank.
- These records may be available online. People can also contact their bank to get paper copies of these statements.

Property records

- Homeowners can get documents related to property by contacting the title company, escrow company or bank that handled the purchase of their home or other property.
- Taxpayers who made home improvements can get in touch with the contractors who did the work and ask for statements to verify the work and cost. They can also get written descriptions from friends and relatives who saw the house before and after any improvements.
- Those who inherited property can check court records for probate values. If a trust or estate existed, taxpayers can contact the attorney who handled the trust.
- People with no records available should check the county assessor's office for old records that might address the value of the property.
- Car owners can research the current fair-market value for most vehicles. Resources are available online and at most libraries. These include Kelley's Blue Book, the National Automobile Dealers Association and Edmunds.

More Information:

- Publication 547, Casualties, Disasters, and Thefts
- Publication 584, Casualty, Disaster, and Theft Loss Workbook
- Publication 584-B, Business Casualty, Disaster, and Theft Loss Workbook
- Publication 976, Disaster Relief
- Small Business Administration
- DisasterAssistance.gov

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IRS

Employers warned to beware of third parties promoting improper Employee Retention Credit claims

IR-2022-183, October 19, 2022

WASHINGTON — The Internal Revenue Service today warned employers to be wary of third parties who are advising them to claim the Employee Retention Credit (ERC) when they may not qualify. Some third parties are taking improper positions related to taxpayer eligibility for and computation of the credit.

These third parties often charge large upfront fees or a fee that is contingent on the amount of the refund and may not inform taxpayers that wage deductions claimed on the business' federal income tax return must be reduced by the amount of the credit.

If the business filed an income tax return deducting qualified wages before it filed an employment tax return claiming the credit, the business should file an amended income tax return to correct any overstated wage deduction.

Businesses are encouraged to be cautious of advertised schemes and direct solicitations promising tax savings that are too good to be true. Taxpayers are always responsible for the information reported on their tax returns. Improperly claiming the ERC could result in taxpayers being required to repay the credit along with penalties and interest.

What is the ERC?

The ERC is a refundable tax credit designed for businesses who continued paying employees while shutdown due to the COVID-19 pandemic or had significant declines in gross receipts from March 13, 2020, to December 31, 2021. Eligible taxpayers can claim the ERC on an original or amended employment tax return for a period within those dates.

To be eligible for the ERC, employers must have:

- sustained a full or partial suspension of operations due to orders from an appropriate governmental authority PDF limiting commerce, travel, or group meetings due to COVID-19 during 2020 or the first three quarters of 2021,
- experienced a significant decline in gross receipts during 2020 PDF or a decline in gross receipts during the first three quarters of 2021 PDF, or

- qualified as a recovery startup business PDF for the third or fourth quarters of 2021.

As a reminder, only recovery startup businesses are eligible for the ERC in the fourth quarter of 2021. Additionally, for any quarter, eligible employers cannot claim the ERC on wages that were reported as payroll costs in obtaining PPP loan forgiveness or that were used to claim certain other tax credits.

To report tax-related illegal activities relating to ERC claims, submit Form 3949-A, Information Referral PDF. You should also report instances of fraud and IRS-related phishing attempts to the Treasury Inspector General for Tax Administration at 800-366-4484.

Go to IRS.gov to learn more about eligibility requirements and how to claim the Employee Retention Credit :

- For qualified wages paid after March 12, 2020, and before January 1, 2021 – Notice 2021-20 PDF, Notice 2021-49 PDF, and Revenue Procedure 2021-33 PDF
- For qualified wages paid after December 31, 2020, and before July 1, 2021 – Notice 2021-23 PDF, Notice 2021-49 PDF and Revenue Procedure 2021-33 PDF
- For qualified wages paid after June 30, 2021, and before October 1, 2021 – Notice 2021-49 PDF and Revenue Procedure 2021-33 PDF
- For qualified wages paid after September 30, 2021, and before January 1, 2022 – Notice 2021-49 PDF and Notice 2021-65 PDF

Additional Information

- Employee Retention Credit - 2020 vs 2021 Comparison Chart
- Form 941-X Instructions (April 2022 Revision) PDF – for use in conjunction with Form 941 Instructions from relevant calendar quarter
- Form 941 Instructions (December 2021 Revision) PDF
- Form 941 Instructions (2020 Revisions) PDF
- Form 943 PDF, 943-X PDF, 944 PDF, 944-X PDF, CT-1 PDF and CT-1-X Instructions PDF

Page Last Reviewed or Updated: 19-Oct-2022

IRS News Release

Internal Revenue Service
Media Relations Office
Washington, D.C.
Media Contact: 202.317.4000
Public Contact: 800.829.1040
www.irs.gov/newsroom

IRS: Deadline to file 2019 and 2020 tax returns to get COVID penalty relief postponed in declared disaster areas

IR-2022-185 Oct. 19, 2022

WASHINGTON – The Internal Revenue Service reminds taxpayers in areas covered by certain Federal Emergency Management Agency (FEMA) disaster declarations they may have more time to file their returns to qualify for the penalty relief under Notice 2022-36 for their 2019 and 2020 tax returns.

Under Notice 2022-36, penalties for late-filing certain tax returns, as well as penalties for not reporting certain required information on the Form 1065 or Form 1120-S, are waived or abated if the relevant return was filed on or before Sept. 30, 2022. But individuals and households that reside or have a business in recently declared FEMA disaster areas have postponed deadlines to file the return to get this relief, as noted below.

- Areas with a deadline of **Nov. 15, 2022,** include:
  - Counties in Missouri identified under FEMA's Major Disaster Declaration 4665.
  - Counties in Kentucky identified under FEMA's Major Disaster Declaration 4633.
  - The island of St. Croix in the U.S. Virgin Islands.
  - Members of the Tribal Nation of the Salt River Pima Maricopa Indian Community.

- Areas with a deadline of **Feb. 15, 2023,** include:
  - Florida,
  - Puerto Rico,
  - North Carolina,
  - South Carolina,
  - Areas in Alaska identified under FEMA's Major Disaster Declaration 4672 and
  - Hinds County, Mississippi.

The relief under Notice 2022-36 applies to the failure-to-file penalty that is typically assessed at a rate of 5% per month, up to 25% of the unpaid tax when a federal income tax return is filed late. This relief applies to forms in both the Form 1040 and 1120 series, as well as others listed in Notice 2022-36, posted on IRS.gov.

Unlike the failure-to-file penalty, the failure-to-pay penalty and interest will still apply to any unpaid tax. The failure-to-pay penalty is normally 0.5% (one-half-of-one percent) per month, up to 25%. The interest rate is currently 6%, compounded daily.

Penalty relief for 2019 and 2020 returns is not available in some situations, such as where a fraudulent return was filed, where the penalties are part of an accepted offer in compromise or a closing agreement, or where the penalties were finally determined by a court. This relief is limited to the penalties that the notice specifically states are eligible for relief. For ineligible penalties, such as the failure-to-pay penalty, taxpayers may use existing penalty relief procedures, such as applying for relief under the reasonable cause criteria or the First Time Abate program. Visit IRS.gov/penaltyrelief for details.

Different relief applies to 2021 returns. Visit the disaster relief page on IRS.gov for more information about tax year 2021.

Internal Revenue Service
Media Relations Office
Washington, D.C.
Media Contact: 202.317.4000
Public Contact: 800.829.1040
www.irs.gov/newsroom

IRS News Release

More information:
IR-2022-175, IRS: Don't miss this important Oct. 17 tax extension deadline
IR-2022-163, Reminder: File 2019 and 2020 returns by Sept. 30 to get COVID penalty relief

-30-

IRS

Reminder: Service providers, others may receive 1099-Ks for sales over $600 in early 2023

IR-2022-189, October 24, 2022

WASHINGTON — The Internal Revenue Service reminds taxpayers earning income from selling goods and/or providing services that they may receive Form 1099-K, Payment Card and Third-Party Network Transactions, for payment card transactions and third-party payment network transactions of more than $600 for the year.

There is no change to the taxability of income; the only change is to the reporting rules for Form 1099-K. As before, income, including from part-time work, side jobs or the sale of goods, is still taxable. Taxpayers must report all income on their tax return unless it is excluded by law, whether they receive a Form 1099-NEC, Nonemployee Compensation; Form 1099-K; or any other information return.

The IRS emphasizes that money received through third-party payment applications from friends and relatives as personal gifts or reimbursements for personal expenses is not taxable.

The American Rescue Plan Act of 2021 (ARPA) lowered the reporting threshold for third-party networks that process payments for those doing business. Prior to 2022, Form 1099-K was issued for third party payment network transactions only if the total number of transactions exceeded 200 for the year and the aggregate amount of these transactions exceeded $20,000. Now a single transaction exceeding $600 can trigger a 1099-K.

The lower information reporting threshold and the summary of income on Form 1099-K enables taxpayers to more easily track the amounts received.

Generally, greater income reporting accuracy by taxpayers also lowers the need and likelihood of later examination.

Consider making estimated tax payments

Income taxes must generally be paid as taxpayers earn or receive income throughout the year, either through withholding or estimated tax payments.

If the amount of income tax withheld from one's salary or pension is not enough, or if they receive other types of income, such as interest, dividends, alimony, self-employment income, capital gains, prizes and awards, they may have to make estimated tax payments.

If they are in business for themselves, individuals generally need to make estimated tax payments. Estimated tax payments are used to pay not only income tax, but other taxes as well, such as self-employment tax and alternative minimum tax.

Publication 17, Your Federal Income Tax (For Individuals), provides general rules to help taxpayers pay the income taxes they owe.

Additional helpful information is available in Chapter 5, Business Income, of Publication 334, Tax Guide for Small Business; Publication 525, Taxable and Nontaxable Income and on IRS.gov at Understanding Your Form 1099-K.

Form 1099-K, its instructions and a set of answers to frequently asked questions are available on IRS.gov.

Page Last Reviewed or Updated: 25-Oct-2022

Federal Tax Day - Current,J.2,Taxpayer Had to Know of Understatements, Not Entitled to Innocent Spouse Relief (Soler, TCM),(Jul. 19, 2022)

An individual was not entitled to innocent spouse relief from joint and several liability under Code Sec. 6015(b) or (f) for the tax years at issue. The taxpayer did not prove to lack reason to know of the understatements. The mere attachment of Schedules C to the tax returns would raise questions about the validity of the returns. Although the taxpayer chose not to participate in an audit, she admittedly knew that it was happening and even briefly spoke to the examining IRS revenue agent. The taxpayer unreasonably and inexplicably failed to review one of the tax returns in which she had reason to know of the understatement.

The taxpayer and her husband timely and jointly filed Form 1040 for each tax year at issue. The returns were prepared by the husband and were signed by both. The taxpayer was (1) college educated; (2) the primary income earner for her household; and (3) had some regular involvement in the household finances.

Further, the taxpayer also failed the threshold conditions under Rev. Proc. 2013-34, I.R.B. 2013-43, 397, for Code Sec. 6015(f) relief. The neutral factors included that the taxpayer was still married to and residing with her husband. The taxpayer's income exceeded the 250 percent of the federal poverty guidelines. Moreover, she failed to show that her monthly income exceeded her reasonable basic living expenses by $300 or less. The taxpayer was also not in poor health when she requested relief. The factor against the taxpayer was her failure to fulfill her duty of inquiry on the understatements.

J.A. Soler, TC Memo. 2022-78, Dec. 62,087(M)

Other References:

- Code Sec. 6015
- CCH Reference - FED ¶35,192.51

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Professional Liability

THE HARTFORD

The most important coverage you need as a tax preparer is professional liability insurance. It protects your business and personal assets from claims of wrongful acts (errors, omission or negligence) committed by you or an employee while performing professional duties. Consider these examples:

- A client sues you after an audit reveals errors were made on a return.
- After a tax return is filed, a client is forced to pay IRS penalties and interest due to a mistake in your services.

To help protect you from this risk, The Hartford has partnered with Target Professional Programs to provide coverage for business professionals. Knowing the risks and potential damage of a lawsuit can help save your company during a crucial time. Liability insurance will help protect your accounting or financial services business assets -and help cover the cost of your defense if you're sued.

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NSTP

The ATP Program is endorsed by NSTP.

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- Full time or Part-Time Firms with up to 10 Tax Professionals
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- The ATP Program is available in all states AK, HI, & LA

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  - Notary Public

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