

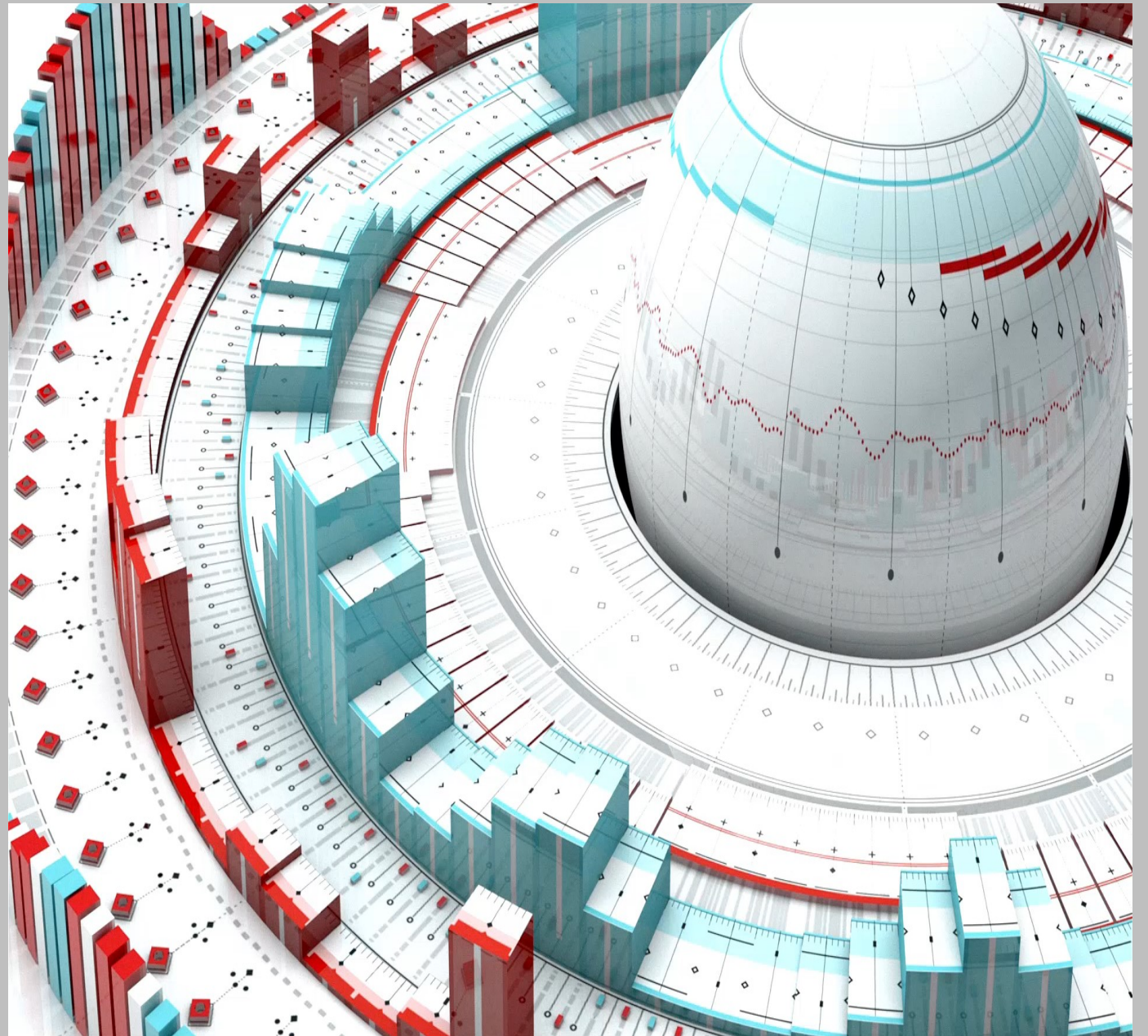
# INCOME AND ESTATE TAX UPDATE 2022

Presenters

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Two-Hour Live CLE/CPE Webinar





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Martin J Pezzner has a wealth of experience as a practicing attorney for over twenty-nine years. After graduating Wilkes College with a Bachelor of Science in accounting, he was employed by the Internal Revenue Service in Philadelphia, PA as a Tax Revenue Agent (Field Agent) for five years.

He also worked for one year in the Philadelphia IRS Appeals Office. While employed by the IRS, he became a CPA (1985) in the Commonwealth of Pennsylvania.

Mr. Pezzner received his Juris Doctorate Degree from the University of Dayton School of Law in 1989.



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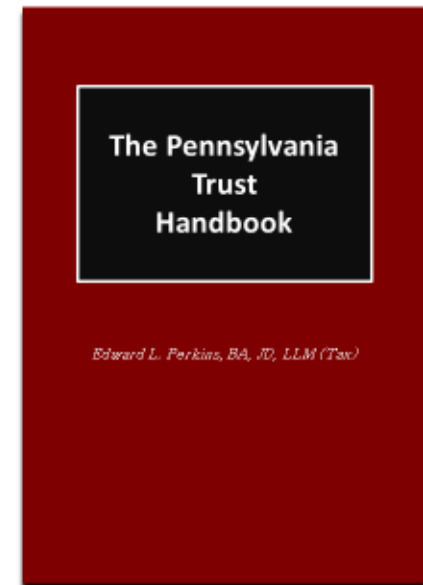
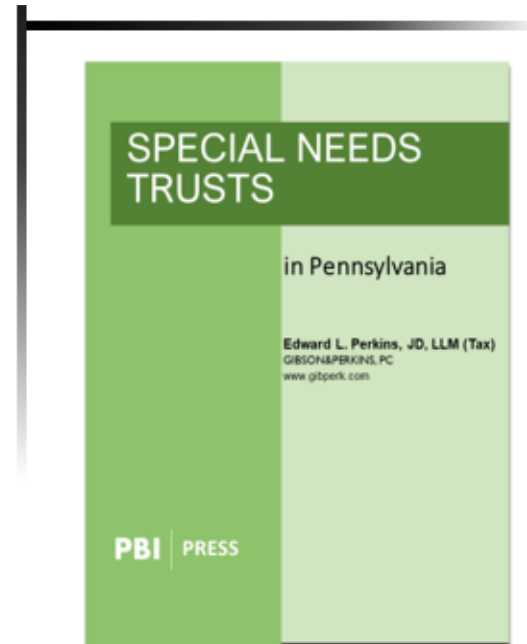
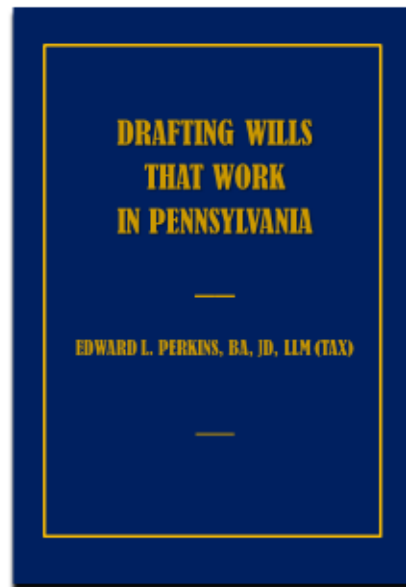


Edward L. Perkins, BA, JD, LLM(Tax), CPA



**Author of these books:**

- Drafting Wills That Work in Pennsylvania
- PBI – Special Needs Trusts in Pennsylvania
- PBI - The Pennsylvania Trusts Handbook



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# Estate Tax



# Estate and Gift Tax Exemption



- The lifetime estate and gift tax exemption for 2022 deaths is \$12,060,000, \$24,120,000 for couples if portability is elected by filing an estate tax return after the death of the first-to-die spouse, even if Form 706 isn't otherwise required. It is slated to fall back to \$5 million, adjusted for inflation, after 2025.
- Most tax-free gifts you make now won't trigger post-2025 estate tax bills.
- As a general rule, estates can use the higher lifetime exemption for gifts made before 2026 to calculate post-2025 estate taxes, per final regulations issued in 2019.
- But not all gifts would qualify. Under recently proposed regulations, completed gifts that are later included in the decedent's gross estate at death would be subject to the exclusion amount in effect in the year of the donor's death.
- Implicated strategies include grantor retained income trusts and transactions involving promissory notes.



## IRS Looks to Limit Estate Tax Break For Large Gifts in Tweak to Anti-Clawback Regulations

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The Treasury Department issued proposed regulations on Tuesday, April 26, 2022 in follow up to the anti-clawback regulations published on November 26, 2019.

The 2019 anti-clawback regulations were in response to increase of the federal estate tax exemption from \$5.45 million to \$11.4 million for 2019, which is currently \$12.06 million in 2022, but drops back to an inflation-adjusted estimated at \$6,600,000 on January 1, 2026.

The 2019 anti-clawback regulations adopted a special rule in these cases where the gift and estate tax exemption amount was larger at the time of the gift than at the donor's later date of death.

This special rule allows the taxpayer's estate to compute its estate tax credit using the higher exemption amount in force for gifts made during life or the date of death exemption amount.

This ability to use the higher exemption amount in force when the gift was made stopped the clawback potential.

# IRS Looks to Limit Estate Tax Break For Large Gifts in Tweak to Anti-Clawback Regulations

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The new proposed rules seek to clarify whether gifts made during life but treated as testamentary transfers should receive the benefit of this 2019 anti-clawback special rule.

Essentially, the new rules are designed to cover gifts where the donor has reserved a way of accessing the funds directly in the future. The rules thus target gifts with strings attached that allow continued access and that cause estate tax inclusion based on that access.

Examples of these 'gifts with strings' include Grantor Retained Annuity Trusts (GRATs), Qualified Personal Residence Trusts (QPRTs), and Grantor Retained Income Trusts (GRITs) of artwork.

The rules would NOT affect most Spousal Lifetime Access Trusts (SLATs), Irrevocable Life Insurance Trusts (ILITs), Charitable Remainder Trusts, Marital Trusts, Special Needs Trusts, and Credit Shelter Trusts (also known as Bypass Trusts).

# IRS Looks to Limit Estate Tax Break For Large Gifts in Tweak to Anti-Clawback Regulations

Under the new proposed rules, the 2019 anti-clawback special rule would generally not apply to transfers that are includible in gross estates.

Suppose Joe then dies in 2026, after the exemption has dropped to \$6.8 million adjusted for inflation.

The credit to use in computing the estate tax is based upon the \$6.8 million exemption at the date of death, not the higher value when Joe made the gift.



# Gift-Giving Strategies

- Take increasing interest rates into account in your gift-giving strategies.
- A rising rate favors some types of gifts:
- **Charitable Remainder Annuity Trusts.**
  - These trusts pay an annuity to the donor or another person for a set term, with the remainder going to charity.
  - The donor gets an up-front tax deduction for the value of the remainder, which is larger when a higher interest rate is used.
  - When rates are going up, IRS tables assume the charity will earn more from the trust.
  - So the future value of the donated asset is worth more, and the deduction is higher.



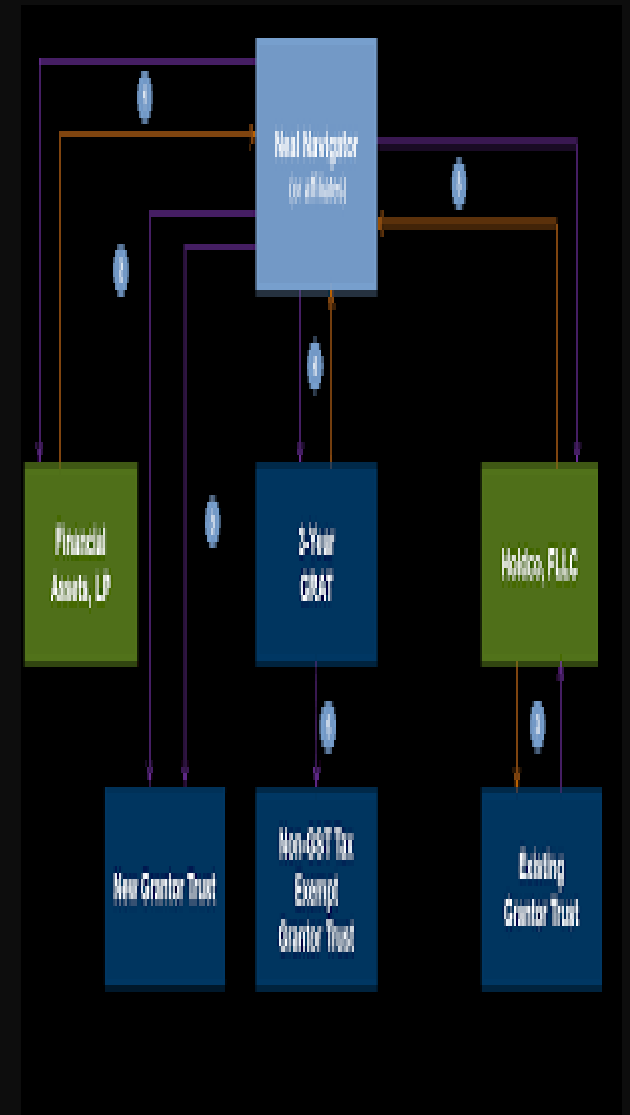
# Gift-Giving Strategies

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- **Personal residence trusts** also do well.
  - Here, the donor transfers the house to a relative but is allowed to keep using it for a period of time.
  - The home's value is discounted because the recipient doesn't get it right away.
  - Higher interest rates mean the value of the retained interest is larger, which produces a lower gift tax bill.

# Gift-Giving Strategies

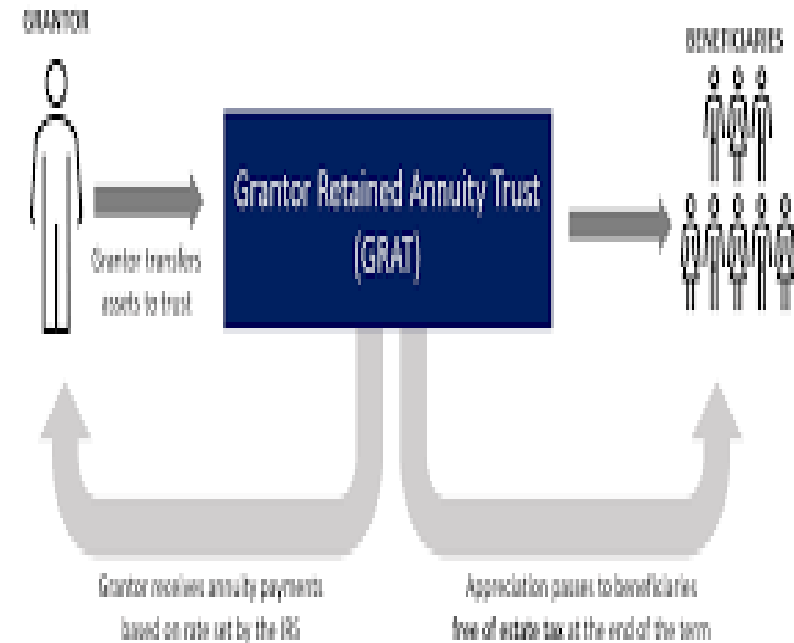
- Tarnished by rising interest rates: Charitable lead annuity trusts.
  - These trusts pay an annuity to a charity for a set term, with the remainder passing to the donor or someone such as a family member.
  - The donor gets to claim an immediate write-off for the present value of the charity's interest, which decreases as interest rates rise.
- Also hurt by higher rates: Grantor-retained annuity trusts, where the person who sets up the trust gets an annuity for a set term.
  - Any balance left after that time goes to whomever the grantor originally named. Higher rates boost the gift tax bill.





- Working on your estate and gift-giving plans? You might be thinking of using a GRAT...
- Grantor Retained Annuity Trust.
- If done right, a GRAT can freeze the value of appreciated assets while transferring appreciation to the next generation with little to no estate or gift tax.
- The individual who establishes the trust, known as the grantor, transfers assets into an irrevocable trust for a set term, while retaining the right to an annual stream of income plus interest based on IRS's applicable federal rate.
- At the end of the term, the assets are distributed to whomever the grantor named at the trust's creation.

# GRATS



# GRATs



- Lower interest rates favor GRATs by tamping down the amount of the gift.
- The actuarial value of the leftover assets in the GRAT is a taxable gift up front, but when interest rates are low, as they have been for years, it reduces the gift amount.
- This is especially true for trusts that are established as “zeroed-out” GRATs, which is typical nowadays.
- With a zeroed-out GRAT, the present value of the annuity to the grantor is set at the value of the assets placed into the trust, so the gift is zero.

# GRATs

- Let's look at other key tax benefits.
- If the assets appreciate at a higher rate than the federal interest rate at the time the GRAT is funded, the trust beneficiaries will receive the value of the extra growth tax-free when the trust expires and the assets are out of the grantor's estate.
- The potential estate tax savings can be enormous if the GRAT's assets appreciate significantly during the fixed term of the GRAT.
- But if the grantor dies during the GRAT's term, the assets are in the grantor's estate.
- If considering setting up a GRAT, do it before interest rates rise significantly.
- A higher rate tarnishes GRATs by cutting the estate- and gift-tax savings.



# GRATs

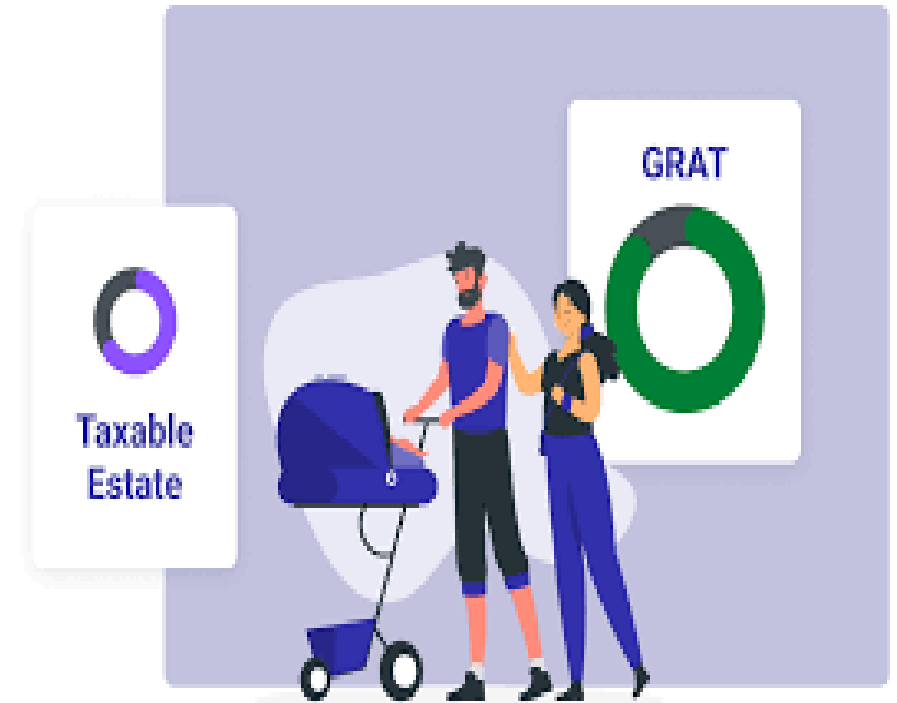
- President Biden wants to curb the use of GRATs to freeze estate tax values.
- He proposes a required 10-year minimum term on all newly created GRATs. It's common estate planning to set up a GRAT for a term of two to five or seven years.
- The risk of the grantor dying during the GRAT term and triggering a big estate tax bill is higher the longer the trust term, which is why Biden is calling for at least 10 years.
- He would also target zeroed-out GRATs by requiring that the value of the remainder interest at the time of the GRAT's creation would be no less than the greater of 25% of the value of the assets transferred to the GRAT or \$500,000.
- This would increase the gift amount from zero under zeroed-out GRATs and lead to a gift tax bill. Existing trusts would be exempted from this rule.

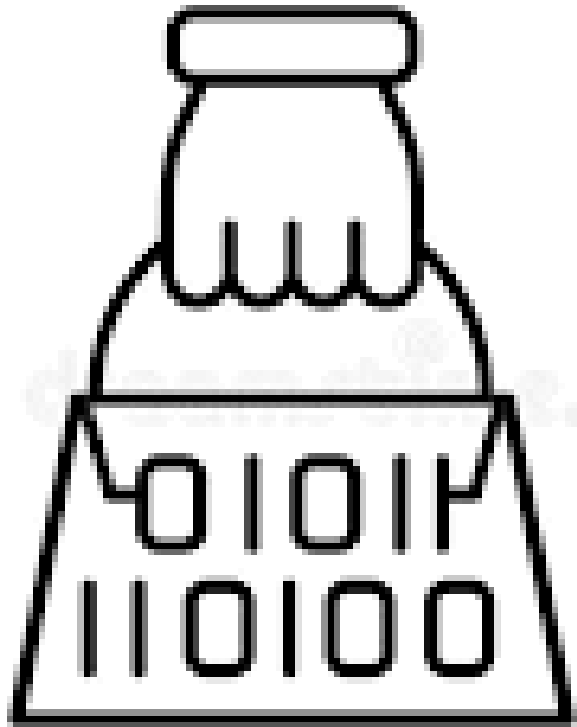


# GRATs

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- Biden's proposals won't likely be enacted anytime soon.
- Tax increases aren't at the top of Congress's to-do list.
- And, if the GOP gains control of both chambers in the Nov. elections, the chances of tax hikes are slim to none through at least 2024.
- It's up to Treasury and IRS to crack down on GRATs they view as abusive.
- For example, in a 2021 legal memo, IRS lawyers disregarded a taxpayer's GRAT because the valuation of the business assets put into the GRAT was shockingly low.
- IRS treated the entire transfer of the assets to the trust as an upfront taxable gift.





# Portability Elections

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- Abide by the rules for making federal estate tax portability elections.
- Portability allows a married decedent's unused estate and gift tax exemption to pass to the surviving spouse.
- But this isn't automatic.
- An estate elects portability by timely filing a complete estate tax return, even if it isn't otherwise required to do so because the assets and previous taxable gifts are below the normal filing threshold for Form 706...\$12,060,000 (\$24,120,000 for couples) for 2022 deaths.



# Portability Elections





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- There is relief for some small estates that fail to timely make the election.
- They must file Form 706 no later than the second anniversary of the decedent's death and include the following at the top of the form: "Filed Pursuant to Rev. Proc. 2017-34 to Elect Portability Under Section 2010(c) (5) (A)."
- This relief is only for those estates that are not otherwise required to file an estate tax return because they are too small.
- Small estates that missed the two-year date can seek a private letter ruling from IRS.

# Portability Elections

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-  The IRS issued a revenue procedure on July 8, 2022, that allows estates to elect "portability" of a deceased spousal unused exclusion (DSUE) amount as much as five years after the decedent's date of death.
-  In Rev. Proc. 2022-32, the IRS updates the simplified method in Rev. Proc. 2017-34 by extending the period within which the estate of a decedent may make the portability election under the simplified method to on or before the fifth anniversary of the decedent's date of death.
-  To be eligible to use the simplified method, the decedent must have been a citizen or resident of the United States on the date of death and the executor must not have been otherwise required to file an estate tax return under Sec. 6018(a), as determined based on the value of the gross estate and any adjusted taxable gifts.
-  The executor also must not have timely filed the estate tax return within nine months after the decedent's date of death or extended filing deadline.

# Claims Against the Estate



- IRS wants to tighten the rules on deducting claims against estates.
- Currently, estate tax deductions are allowed for claims over \$500,000 only when they are paid, without the need to calculate the claim's present value.
- These claims are generally deducted on amended returns if paid after filing Form 706.
- Smaller claims can be deducted on the estate tax return before they are paid.



# Claims Against the Estate

- Proposed regs would use present-value principles to calculate certain claims against the estate...those that both exceed \$500,000 and are paid at least three years after the death of the decedent.
- The proposed regs would limit the estate tax deduction for the claim to the present value of the paid amount as of the decedent's death.
- The present value of the payment would be computed by discounting the payment from the payment date to the decedent's date of death, using the applicable federal rate for the month in which the decedent's date of death occurs, compounded annually.

# Timing of Gift

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- Heed the timing rules for gifting a check to a family member, etc.
- The recipient must deposit a personal check for it to count as a gift for estate and gift tax purposes.
- The rules differ when gifting a cashier's check.
- The recipient must physically receive the cashier's check before it counts as a gift.
- In a recent case, a recipient initially refused a cashier's check made out by a decedent shortly before death.
- Four months later, the estate canceled the original check and paid the amount again, which was accepted and received.
- The cashier's check is included in the decedent's estate for estate tax purposes (Allison, D.C., Calif.).



# IRS Agrees With State Court That Trust Language Does Not Create a General Power of Appointment

In PLR 202217005 (April 29, 2022), the IRS stated that ambiguous language in a trust created a limited power of appointment, rather than a general power of appointment, based on the grantor's intentions in creating the trust.

The trust gave granddaughter a testamentary power to appoint the trust principal to *“a grandchild of my mother if such grandchild does not have at least one then living descendant....”*

The state court and the IRS agreed that this did not allow granddaughter to appoint the trust funds to herself, her estate, her creditors, or the creditors of her estate.

Dept. of Treas, “General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals,” (March 27, 2022), the Treasury's “Green Book” detailing the tax changes that will impact estate planning clients.

- Requiring realization and recognition of capital gains when a donor makes a gift of appreciated property or a decedent dies holding appreciated property;
- Requiring realization and recognition of gain on unrealized appreciation by a trust, partnership, or other non-corporate entity that owns property that has not been the subject of a recognition event within the prior 90 years;
- Treating a transfer of assets for consideration to a grantor trust that is not fully revocable by the deemed owner, as a realization and recognition event with respect to the appreciation in the value of the asset on the date of the transfer;
- Requiring that, if a taxpayer treats any promissory note as having a sufficient rate of interest to avoid the treatment of any foregone interest on the loan as income or any part of the transaction as a gift, that note subsequently must be valued for Federal gift and estate tax purposes by limiting the discount rate to the greater of the actual rate of interest of the note, or the applicable minimum interest rate for the remaining term of the note on the date of death;
- Providing that the GST exemption would apply only to direct skips and taxable distributions to beneficiaries no more than two generations below the transferor, and to younger generation beneficiaries who were alive at the creation of the trust; and taxable terminations occurring while any such person is a beneficiary of the trust.



# Business Tax



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# New Schedules K-2 and K-3

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- There's more reporting for U.S. partnerships with foreign partners or activities.
- Ditto for S corporations with international tax items.
- New Schedules K-2 and K-3 have been designed to provide greater clarity to partners and shareholders on how to compute their U.S. income tax liability with respect to foreign tax credits and other international tax items.
- As with Schedule K-1, the new K-2 and K-3 will be issued by the entity to each partner and shareholder, starting this year.



# Revoking a Restricted Stock Election



- IRS OKs revoking a restricted stock election soon after making the election.
- By making a section 83(b) election, recipients of restricted stock can choose to be taxed on the shares' value less any amount paid on the date the stock is granted, instead of on the vesting date.
- All future appreciation is then taxed as capital gain, so the election can pay off if little or no tax is due on the grant and the stock price rises.
- The election is generally irrevocable and must be filed with the Service within 30 days of the date of grant.
- Here, a taxpayer who timely filed a Section 83(b) election with IRS asked IRS to revoke it.
- The agency said yes because the man's revocation request was also filed within 30 days of the grant of the restricted shares to him.

# Deducting Deferred Pay - Hoops, LP, TC Memo. 2022-9



- A former NBA team owner shoots an air ball when deducting deferred pay.
- The owner of the Memphis Grizzlies sold the franchise in 2012, in a transaction in which the buyer acquired most of the assets and assumed the seller's liabilities, including \$11 million in deferred compensation owed to two of the team's players.
- The seller took an \$11 million deduction for the deferred pay on its 2012 tax return.
- IRS nixed the write-off on audit, and the Tax Court agrees with the disallowance.
- Nonqualified deferred pay is deductible in the year the employee includes the amount in income.
- This applies even when the seller uses the accrual method of accounting.
- No deferred payments were made to the players in 2012.

# Kohout, TC Memo. 2022-37 - Failing to prove Basis in a Partnership Interest Precludes Deducting Losses

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- In general, partners can take flow-through losses from partnerships on their returns only to the extent of their adjusted basis in their partnership interest.
- Partners have the burden of proof, and those who can't make this showing can't deduct losses.
- Here is a prime example.
- A man owned 1% of a partnership.
- The other 99% was owned by an S corporation, which the man wholly owned.
- The partnership had \$132,000 in losses for the year, and the man claimed he and the S corporation could deduct their pro rata share of the partnership's losses.
- But because neither he nor the S corporation could prove their adjusted basis in their partnership interests, the Tax Court disallowed the pass-through losses.



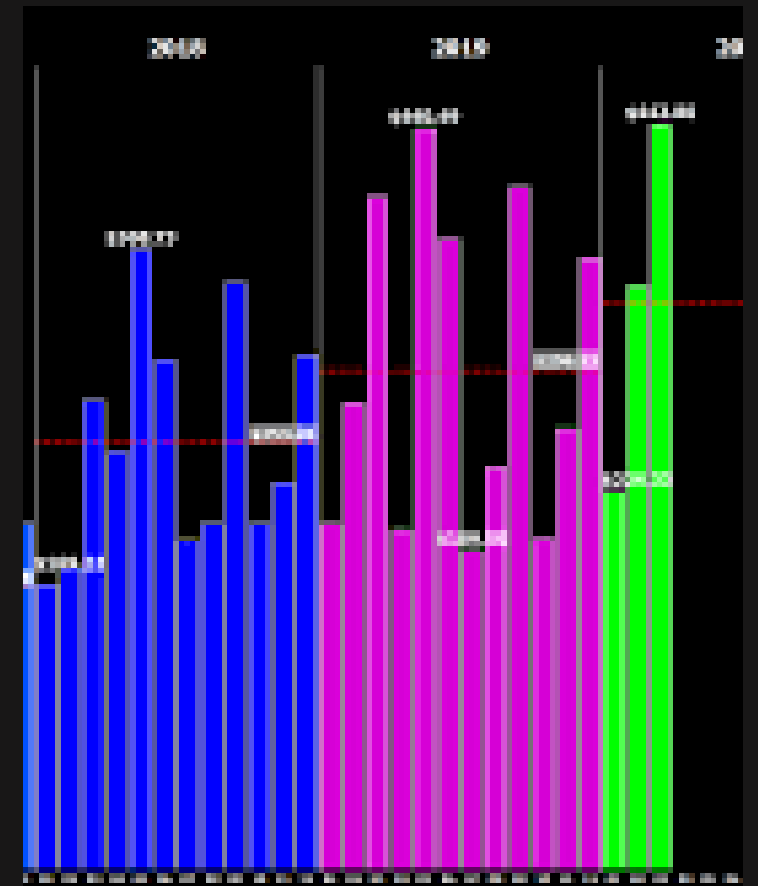
# Aspro, Inc., 8th Cir. - Payments from a Closely Held Corporation to its Shareholders



- Payments from a closely held corporation to its shareholders get scrutiny.
- A C corporation paid large year-end management fees to its three owners.
- An appeals court agreed with the Tax Court that, based on the facts and circumstances, the fees are nondeductible disguised distributions of profit.
- Among the relevant factors: The company made the payments without valuing the services the owners provided. It had no dividend-paying history.
- The percentage of the fees received by each owner roughly corresponded to their respective ownership interests in the company.
- And the firm had little taxable income after deducting the fees (Aspro, Inc., 8th Cir.).

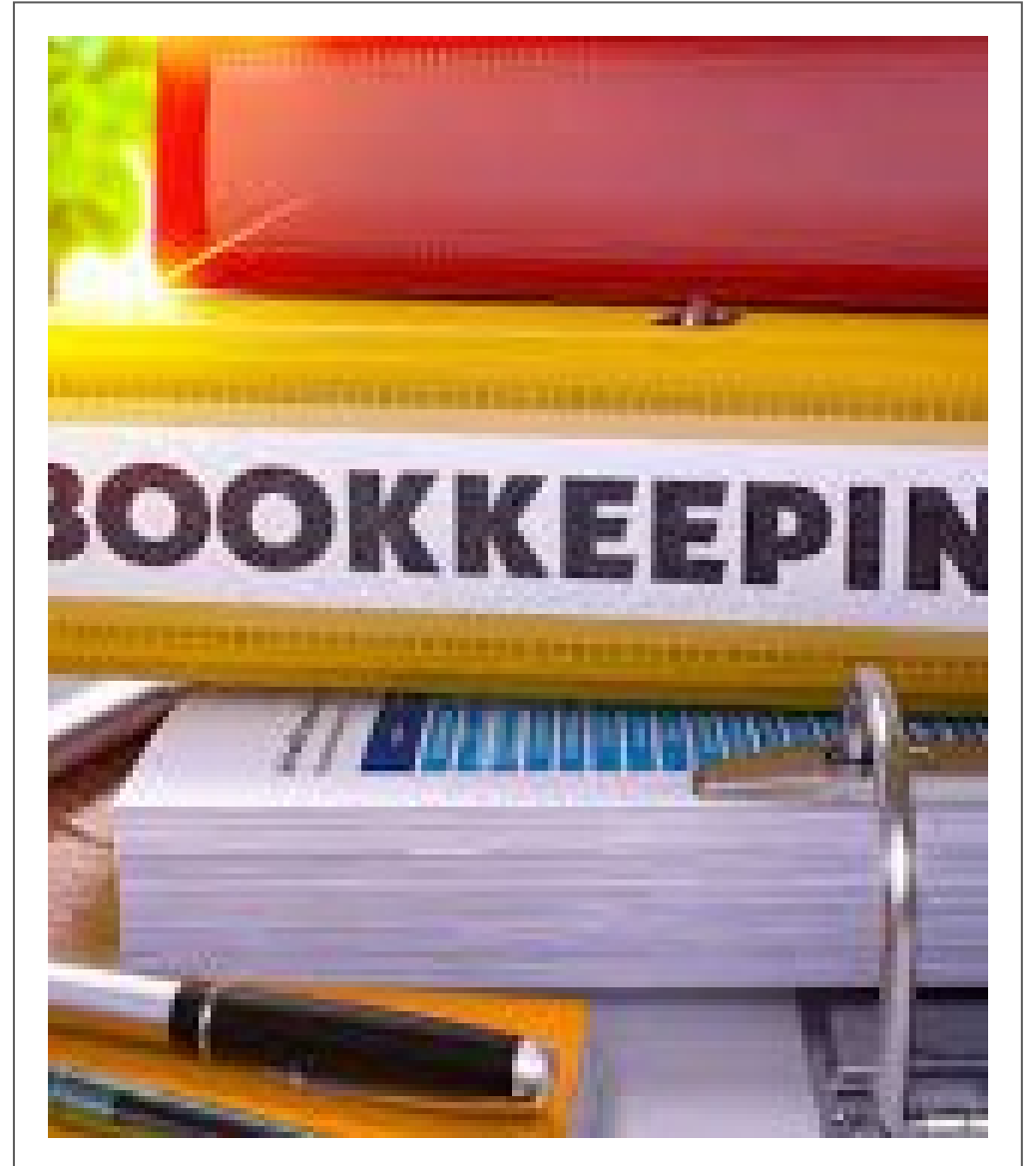
# Accumulated-Earnings Tax

- Is the low corporate tax rate triggering more accumulated-earnings-tax audits? It appears to be the case, tax pros say, noticing an uptick in these exams.
- The 2017 tax reform law lowered the C corporation tax rate to 21%.
- This low rate, when compared with the 37% top individual rate, makes C corp status beneficial, especially for firms that retain earnings rather than pay dividends to their owners.
- The accumulated earnings tax is 20% of earnings accumulated in excess of the larger of \$250,000 or accumulations needed for reasonable business needs, such as growth of the firm, debt retirement, shoring up the firm's pension plan or covering the loss of a principal customer.
- The minimum accumulation for service corporations is \$150,000.
- Firms with excess accumulated earnings and a history of not paying dividends, or paying small dividends, could face heat. Be sure to document the business purpose for accumulating earnings.
- Include a description of plans and decision making processes in corporate minutes and budget forecasting documents, to the extent that significant funds are set aside.



## Spencer, TC Summ. Op. 2022-8 - Shoddy Recordkeeping Costs a Business Owner

- Shoddy recordkeeping costs a business owner a huge chunk of money.
- He can only deduct less than half of his claimed vehicle expenses, the Tax Court says.
- He owned a fleet of 11 to 12 vehicles that he used in his business of providing nonemergency transportation to medical patients.
- Based on his records, IRS allowed on audit \$75,000 of his \$242,000 deduction over a two-year period.
- The business use of vehicles is subject to the tax law's strict substantiation rules, and he didn't meet this heightened requirement (Spencer, TC Summ. Op. 2022-8).



# Romana, TC Summ. Op. 2022-9 - The Cost of Business Clothing

- A nurse can deduct the cost of her business clothing and dry cleaning.
- Her employer required her to dress in clothes that reflected her job as a nurse.
- She wore clothes that resembled scrubs, which she bought at a department store.
- She deducted the cost of the clothes and dry cleaning on Schedule A of her 1040.
- The Tax Court allowed the write-off, saying her work clothes were not adaptable for personal use outside the workplace
- Note that employee business expense write-offs are halted through 2025.





# Enforcement



# Auditing Exempt Groups

- Want to know what IRS is looking for when it audits exempt groups?
- The Service has helpful audit guides that set forth exam techniques that are common to specific types of exempt organizations.
- There are handbooks on public charities, religious groups, private and charter schools, social clubs, business leagues, credit unions, charitable trusts, fund-raising activities and more.



# Auditing Child Care Providers



- IRS has given its agents marching orders for auditing child care providers.
- A new audit guide instructs auditors on what issues they should be looking for when examining folks in the child care industry...day care facilities, in-home care, after-school providers, church programs, babysitters and nannies, and the like.
- Agents will check whether the provider is reporting all taxable income, including cash receipts and government reimbursements for food and other items.
- They'll ensure deductions are proper, business-related and substantiated, with a special eye on the business use of the home for in-home day care facilities.
- Auditors will also focus on payroll tax issues and worker classification.

# Auditing Lawyers

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- IRS has an updated handbook instructing agents on auditing lawyers.
- Examiners will check to see that attorneys correctly reported all types of income, including contingent and referral fees, retainers and cash payments.
- Auditors will reconcile attorney trust accounts to other bank accounts owned by the lawyer.
- In addition, write-offs claimed for travel and entertainment will get extra scrutiny.
- And special attention will be paid to deductions taken for costs advanced by lawyers.



# Garnishment of 401(k)

- A criminal's 401 (k) can be garnished to pay restitution.
- He pled guilty to wire fraud after embezzling millions of dollars from his former employer.
- As part of his sentence, he was ordered to pay \$19 million in restitution to his victim.
- He didn't have enough liquid assets, so his 401 (k) was garnished to pay the funds.
- The criminal is taxed on the garnished amount...even though the distribution isn't voluntary.
- But the victim can't take all the funds.
- It isn't entitled to the portion of the 401 (k) balance that the account custodian withholds to cover income taxes.
- The man is not subject to the 10% additional tax on early withdrawals.
- Although he is younger than 59½, there is an exception to the 10% fine in the case of IRS tax levies.
- A district court says this exception applies here (Frank, D.C., Va.).



# Foreign Account Nonreporting



Appeals courts are split on an issue involving foreign account nonreporting:

Does the fine for a non-willful failure apply per account or per non-filed FBAR?

The statutory penalty for a non-willful failure to report a foreign account is \$10,000.

In 2021, two appeals courts opined on this issue.

The 5th Circuit Court of Appeals sided with IRS that the fine applies per account, and the 9th Circuit Court of Appeals issued a taxpayer-favorable decision.

The Service is following the 9th Circuit decision only in courts within that jurisdiction.

In all other cases, the agency takes the view that the penalty applies per account.

The losing taxpayer has now asked the Supreme Court to weigh in.

# Part-time Bookkeeper is Liable

- A part-time bookkeeper is liable for his employer's unpaid payroll taxes.
- He owes the 100% trust fund penalty for willful failure to deposit.
- He was an hourly employee of a doctor's office and took care of the business's payroll.
- Although he knew that taxes withheld from workers' paychecks weren't remitted to IRS, he claims he isn't a responsible person who willfully failed to pay over the taxes.
- He wasn't an officer or director, he had no ownership stake in the business, he had no check-signing authority, and he couldn't make payments on the firm's behalf.
- Despite this, the Tax Court sided with IRS, saying the collections settlement officer acted properly and did not abuse his or her discretion (Kazmi, TC Memo. 2022-13).

# What if You Can't Pay?

- What if you can't pay the tax you owe?
- Timely file your return or extension and pay what you can.
- Look into an IRS online installment agreement.
- If IRS accepts your plan, you can make the payments in monthly installments.
- You can also find out whether you are eligible to submit an offer in compromise, which lets you settle your federal income tax debt for less than what you owe.
- Check out [www.irs.gov/payments](http://www.irs.gov/payments) for the various options to pay your taxes.
- If you do file or pay late, see if you can qualify for a penalty waiver under IRS's first-time abatement policy.
- IRS will OK a taxpayer's request for a waiver of the late filing and late payment penalties for filers who pay or arrange to pay the tax due and have been tax-compliant for the past three years.





# Centralized Partnership Audit Regime

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- IRS is hoping that its new centralized partnership audit regime will help it audit more partnerships and make it easier to collect any additional taxes owed.
- Many big partnerships have multiple levels of ownership, with hundreds or thousands of partners.
- In the past, when the Revenue Service examined one of these behemoths and proposed changes, it had to track down myriad partners and make the adjustments to their returns.
- That required more personnel and resources than the agency had.



# Centralized Partnership Audit Regime

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- The new regime applies to partnership returns filed for post-2017 tax years.
- IRS is auditing the partnership's tax return and collecting tax from the partnership not the partners.
- Alternatively, the firm can opt to push out the tax to the partners on record for the audited tax year by issuing adjusted Forms K-1 to them, and the partners would then take the changes into account on their own tax returns.
- Partnerships with 100 or fewer partners can opt out of these centralized audit rules. See IRS Pub. 5388 for a one-page road map on the process, timeframes and more.



# Toth, 1st Cir. - Penalties for Willful Failure to Report Foreign Accounts

- Are the penalties for willful failure to report foreign accounts constitutional?
- The fine for willful failures can be as large as 50% of the account value, and if there are multiple years, it can exceed the amount in the reported account.
- Some say a penalty of that size is an excessive fine barred by the Eighth Amendment.
- An appeals court says they are constitutional in recently upholding a fine of over \$2 million against a U.S. citizen who didn't report her Swiss bank account.
- The court found that the penalty is not a fine for Eighth Amendment purposes. It is remedial...not punitive, and it's not tied to any criminal action.



# Cannabis in Worship Services

- Use of cannabis in worship services precludes tax exemption as a church, IRS says privately.
- The organization's stated purpose is to operate as a church, with worship services and religious teachings.
- The cultivation and consumption of cannabis is part of the group's religious rituals.
- This activity contravenes federal law, leading IRS to conclude that the group serves a substantial nonexempt purpose.



# TedPerkinsTax News

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# Benefits







# Taxability of Fringe Benefits

- Want to know whether fringe benefits offered to employees are taxable?
- The Service has a helpful guide to fringes, a detailed manual for employers that has been updated to reflect current law.
- It covers all kinds of workplace perks: Achievement awards, education assistance programs, parking and transit benefits, employer-provided cell phones and more.
- A table summarizes the withholding rules for the various categories of fringes. IRS Publication 15-B has all the details.



# Free Plane Tickets

- Free plane tickets for a retired pilot's adult relatives are taxable to him.
- United Airlines' retiree benefits program provides free airline tickets on a stand-by basis to retired pilots and their families.
- One man used this program a lot for himself, his spouse and his daughter.
- Everyone agrees the value of these airplane tickets is nontaxable to him.
- At dispute is whether he is taxed on the value of free tickets for other relatives, which was reported by United Airlines on Form 1099-MISC.
- He says no, but the Tax Court disagrees.
- The other relatives are not his dependents, so their free tickets aren't nontaxable fringe benefits (Mihalik, TC Memo. 2022-36).



# Required Minimum Distributions Rules

- A 10% fine hits most pre-age-59½ payouts from IRAs, 401 (k)s and the like.
- Taking substantially equal periodic payments is an exception to the penalty.
- Distributions must continue for the longer of five years or until the recipient hits 59½. Withdrawals must be based on the owner's life expectancy or the joint life expectancy of the owner and named beneficiary.
- If the payouts vary too much from year to year, all previous distributions taken from the account will be hit with the 10% levy. There are three ways to compute withdrawals and avoid the penalty:
  - **Required Minimum Distribution Method** - Divide your account balance by the number of years taken from the Revenue Service's life expectancy tables.
  - The **Fixed Amortization Method** - This is similar to a mortgage. You determine your annual payment by amortizing the account balance over a specific number of years, using the life expectancy tables and interest rates.
  - The **Fixed Annuitization Method** - Divide your account balance by an annuity factor and interest rate. IRS Notice 2022-6 has all the details.

## Required Minimum Distributions

- The 10-year rule for many non-spousal inherited IRAs is sowing confusion.
- Before 2020, IRA owners who died could leave their accounts to their children or other individual beneficiaries, who could then stretch RMDs over their own lifetimes.
- The SECURE Act changed this, forcing a 10-year clean-out for many beneficiaries of IRAs inherited after 2019. The funds must be distributed to them within 10 years of the owner's death.
- There are exceptions for surviving spouses, minor children and beneficiaries who are chronically ill, disabled or not more than 10 years younger than the deceased IRA owner.
- The old rules still apply for people who inherited IRAs before 2020, so that they can continue to take advantage of the stretch IRA strategy.
- Also, a surviving spouse still has the option to take an inherited IRA as his or her own.

# Required Minimum Distributions

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- A proposal on the 10-year payout rule for inherited IRAs is getting lots of flak.
- Many nonspousal beneficiaries of IRAs that are inherited after 2019 must clean out the account within 10 years.
- In Feb., IRS proposed regs on this rule.
- The dispute involves IRS's interpretation of how the 10-year rule works.
- Under the proposal, if the deceased IRA owner died before his or her first beginning date for taking required minimum distributions, then payouts needn't be distributed evenly over a 10-year period.
- Instead, beneficiaries can take annual payouts, they can wait until year 10 to take out all the money, or they can skip years, provided the IRA is fully depleted within 10 years.
- Tax and retirement pros are fine with this provision.
- It's the following that surprised them: If the deceased IRA owner died after the RMD beginning date, then annual RMDs must be paid to the beneficiary in years 1 through 9, with the rest of the account fully depleted by year 10.

# 529 Savings Plans

- 529 savings plans aren't just for college or graduate school.
- They can also help pay for elementary and secondary education. \$10,000 per student per year can be withdrawn from 529 accounts to pay tuition for elementary and secondary private and parochial schools.
- This \$10,000 cap doesn't apply to 529 plan withdrawals to pay for college. The state tax treatment of distributions from 529 plans for K-12 education doesn't always follow federal law.
- You can also use up to \$10,000 to pay off college debt. This \$10,000 is a lifetime limit, not an annual limit.
- 529 distributions for student loan repayments over \$10,000 are taxable to the extent of the excess and are subject to a 10% penalty.

# Excessive 401(k) Contributions

- People who make excessive contributions to 401 (k)s are on IRS's radar.
- The 401 (k) contribution deferral limit for 2021 was \$19,500...\$26,000 if 50 or older.
- But some folks with multiple 401 (k)s might put in more than the limit.
- This can happen, for example, when an employee with a workplace retirement plan changes jobs during the year and sets up a 401 (k) account with a new employer.
- Employees who paid in too much for 2021 can correct the error.
- They should notify the plan administrator and request that the excess amount and the earnings be distributed to them by April 15, 2022.
- If the excess is not withdrawn by that date, then the amount is included in taxable income for the year contributed and taxed a second time when ultimately paid out.





# Cryptocurrencies in Retirement Accounts

- The Dept. of Labor is scrutinizing cryptocurrencies in retirement accounts.
- It issued an advisory on cryptocurrency investment options by fiduciaries of 401 (k)s and other workplace retirement plans governed by ERISA...federal pension law.
- Per DOL, cryptocurrency investing is speculative and volatile and has risk issues involving fraud, theft and loss.
- DOL says it expects to open an investigation of plans that offer participants investments in cryptocurrencies.
- It will ask fiduciaries to demonstrate how they met their required duties of prudence and loyalty when choosing a cryptocurrency investment option for plan participants.



# Taxation Income and Deductions



# Capital Gains

- Individuals who buy stock in a C corporation with assets of \$50 million or less directly from the company after Sept. 27, 2010, and sell more than five years later can exclude 100% of their gain when they sell.
- The gain is exempt from the AMT, too.
- The exclusion is capped at the greater of 10 times share basis or \$10 million.
- Stock of companies in certain lines of business is not eligible.
- These include banking, brokerage, insurance, oil and gas, and personal services, such as law and consulting.





# Capital Gains

- A bid by Democratic lawmakers to narrow this break has lost steam.
- Their Build Back Better plan proposed to do away with the 100% gain exclusion for people with AGIs over \$400,000.
- Instead, only 50% of their gain would be excluded, with the remaining profit subject to capital gains tax plus the 3.8% surtax.
- Build Back Better has been torpedoed by infighting among Democratic lawmakers.
- Democratic leaders want to salvage some of BBB, but it's unclear what can survive.

# Medical Expenses

- The costs of special education can sometimes qualify as medical expenses.
- Itemizers can include in medical expenses on Schedule A the cost of tuition, meals and lodging for schools that furnish special education to help children overcome learning disabilities caused by mental or physical impairments.
- Any ordinary education received must only be incidental to the special education.
- Costs paid for private tutoring by specially trained teachers also qualify as medicals.
- You generally need to have a doctor's recommendation before taking the write-off.

# Medical Expenses



If you, your spouse or your dependent requires long-term care you may be able to deduct the unreimbursed costs as medical expenses on Schedule A to the extent your total medicals exceed 7.5% of adjusted gross income.

Long-term care expenses include the costs of assisted living, in-home care and nursing home services.

The long-term care must be medically necessary for a person who is chronically ill, meaning at least two activities of daily living can't be performed without help for 90 days or more.

Anyone in need of long-term care because of dementia or other cognitive impairment is also considered chronically ill if substantial supervision is needed to protect the individual's health and safety.

The chronic illness must be certified by a licensed health care practitioner.

The cost of meals and lodging at an assisted-living facility or a nursing home also count as medical expenses if a person is mainly there for medical care.

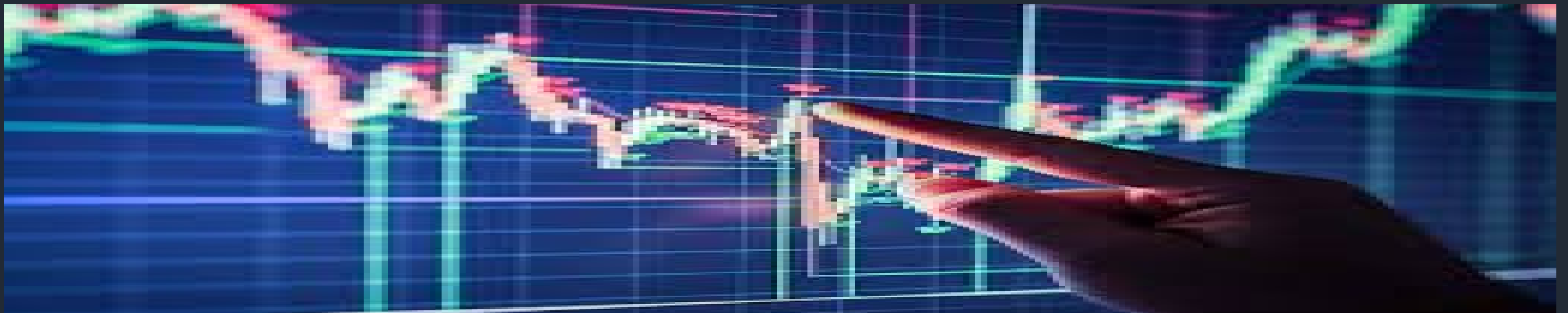


# Large Real Estate Losses

- The Service continues to eye returns that report large real estate losses... Especially those taken by taxpayers claiming to be real estate professionals.
- Real estate pros have to satisfy two time tests to beat the passive-activity loss rules and fully deduct their rental losses.
- They must spend over half of their working hours and more than 750 hours a year materially participating in real estate activities.
- Joint filers can't combine their hours to meet the tests.
- Take this case in which a couple deducted a big rental loss.
- The wife managed the two rentals, and the husband also devoted some time in addition to running his HVAC business on a full-time basis.
- Neither the husband nor the wife separately put in enough hours to qualify as a real estate pro, so the write-off is toast (Sezonov, TC Memo. 2022-40).

# Stock Traders

- Losses incurred by stock traders are generally short-term capital losses.
- But there's a way to fully deduct them.
- Make a Section 475(f) election.
- Traders who so elect must recognize gains and losses as if they'd sold their holdings for fair market value on the last day of the year.
- While the election is in effect, the deemed gains and losses are treated for tax purposes as ordinary income and loss.





A blue ballpoint pen with a silver-colored tip and barrel is positioned diagonally across the upper left portion of the image. The pen is resting on a document that features a bar chart with several blue bars of varying heights. The background is a light blue, slightly blurred surface, possibly a desk or a folder. The overall aesthetic is professional and clean.

# Reporting Requirements

# PPP Loans

- Firms with forgiven Paycheck Protection Program loans have special reporting.
- The forgiven PPP loans are not taxable, but you still need to report to IRS certain information relating to the loan forgiveness.
- You do this by attaching a statement to your tax return.
- See the instructions to Forms 1040 (self-employed individuals), 1065 (partnerships), 1120 (C corporations) or 1120-S (S corporations) for details.





# S Corporation Shareholders Basis

- Checking shareholder basis in S corporations is an IRS enforcement priority.
- S firm owners can deduct their share of company losses only up to their stock basis and loans that they make to the corporation.
- IRS knows that compliance in this area is deficient and is conducting audits.
- The exams occur at the shareholder level, where agents check whether the owners are properly tracking their basis.
- Many S firm owners must include basis information with their 1040s.
- This requirement applies to shareholders who report a loss, dispose of their stock or receive a distribution or loan repayment from the company during the year.
- The shareholder must check a box on line 28 of Schedule E And complete and attach new Form 7203 to their 1040.
- The 7203 replaces the shareholder stock basis and debt basis worksheets that in prior years were found in the Shareholder's Instructions for Schedule K-1 (Form 1120-S).

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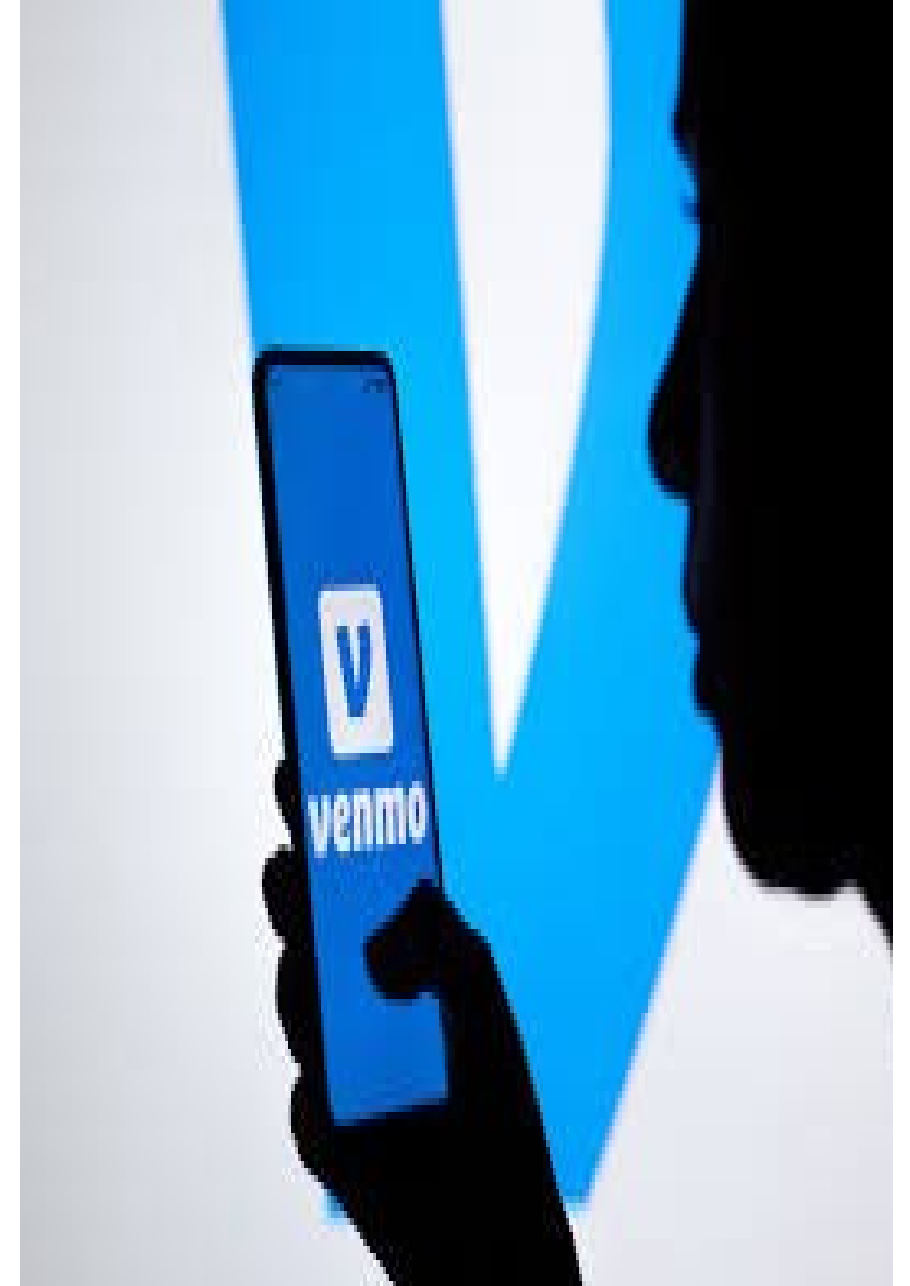
**FORM 7203**

**S Corporation  
Stock Basis**

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# Venmo Payments

- I use Venmo only to receive payments from friends and family members.
- Will I get a Form 1099-K next year if I am paid \$1,000 through the app?
- No, you shouldn't. Starting in 2023, third-party payment settlement networks, such as PayPal and Venmo, must send Form 1099-K to payees who are paid over \$600 in a year for goods or services, regardless of the number of transactions. (The reporting threshold for 2021 is higher...over \$20,000 and 200 transactions.)
- The change in the rule means more people than ever will get 1099-K forms that they will use when filling out individual income tax returns for 2022 and later.
- The 1099-K reporting is for money received for goods or services, IRS says.
- Venmo says on its website that this doesn't apply to friends-and-family payments.



# Child Care Costs

- Don't miss out on this tax break if you use a flex plan for child care costs: You can still claim the dependent care credit to the extent your expenses are more than the amount you paid through your flexible spending account.
- The maximum amount of dependent care costs you could fund through an FSA in 2021 was \$10,500. (The cap reverted back to \$5,000 for 2022 and later years.)
- But for 2021, the credit applies to as much as \$8,000 of expenses for one kid under the age of 13...\$16,000 of expenses for two or more children.
- Additionally, the maximum credit percentage is higher for 2021...50%, up from the normal 20%.
- And the income phase-out for the higher 50% credit is greater in 2021 than normal.





## Work Opportunity Tax Credit

- A marijuana dispensary can't take the work opportunity tax credit,
- IRS lawyers say in a memo to field agents.
- The WOTC is an income tax credit that is available to firms who hire veterans or economically disadvantaged workers.
- In denying the credit, the agency's attorneys relied on a federal tax statute that prohibits income tax deductions (other than cost of goods sold) and credits for growers and sellers of controlled substances that are illegal under U.S. law.

# Virtual Currency



- You can't use virtual currency to pay federal taxes that you owe to IRS.
- But people in Colo. will soon be able to use it for state tax payments and fees for state permits and licenses.
- Colo. expects to get the program up and running by this summer.
- If it goes well, more states could follow suit.
- Note this tax rule if you do pay your taxes or other bills in cryptocurrency: IRS treats virtual currency as property for federal income tax purposes.
- That means if you are using appreciated bitcoin or another form of digital currency to pay taxes or other expenses, you'll have taxable gain to the extent of appreciation in the currency between the date you acquired it and the date you actually spend it.



# Wash Sale Rules

- Consider selling the duds in your portfolio to offset capital gains from sales of winners.
- But beware of the sneaky wash-sale rule. If you purchase substantially identical securities up to 30 days before or after the sale, the capital loss is not deductible.
- Any suspended loss is added to the tax basis of the replacement securities.
- The wash-sale rule can catch you by surprise.
- For example, if you buy stock in an IRA after selling the same stock at a loss in your taxable investment account, or if you sell a mutual fund at a loss 25 days after the date a dividend is reinvested.
- Note that the rule doesn't apply to trades made completely within an IRA.
- You are fine if you sell securities in your IRA at a loss and buy them back in the IRA within 30 days.



# Tax Treatment of Lawsuit Settlement

- Here's a reminder on the tax treatment of damage or settlement awards: Proceeds received for physical injuries or physical illness are tax-free.
- On audit, IRS agents will look at the court petition, complaint or claim that was filed, showing the original grounds for the lawsuit.
- They'll review the settlement agreement to see how the document characterizes the amounts paid and received by the parties.
- Damages received for emotional distress are taxable...with two exceptions.
- Amounts paid for mental anguish that arises from physical injuries are tax-free.
- The same goes for reimbursements for medical treatment of emotional trauma.





# Taxation of Malpractice Proceeds

- Bad news for an injured woman who later sued her attorneys for malpractice: The settlement proceeds she received are taxable.
- While in a hospital setting, the woman sat in a broken wheelchair and hurt herself.
- She sued the hospital and lost.
- She then sued the lawyers representing her in her hospital lawsuit for malpractice and eventually settled with them.
- The proceeds she got weren't for physical injuries or illness, an appeals court says, affirming a 2021 Tax Court decision (Blum, 9th Cir.).

# Pro Bono Attorney Fees

- Plaintiffs aren't taxed on a court award of attorney fees to pro bono counsel who represented them in a case against the defendant, a district court confirms.
- Because the lawyer worked on a pro bono basis, the plaintiff has no obligation that would be discharged by the court's award of fees and costs, to be paid by the defendant to the plaintiff's lawyer (*Adams & Boyle, P.C. v. Slatery, D.C., Tenn.*) .



# TedPerkinsTax News

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A close-up photograph of a hand holding a pencil, poised over a document. The document contains a table with multiple columns of data, including numerical values and percentages. The background is softly blurred, showing a person's hands and a pen, suggesting a professional or academic setting.

# Legislative Update

# Secure Act 2.0

- More retirement-savings changes are likely. In late 2019, when lawmakers passed the SECURE Act to help participants in workplace plans and IRA owners bulk up retirement savings, they promised to do more. SECURE 2.0 has easily passed the House with strong bipartisan support.
- The bill is sponsored by Reps. Richard Neal (D-MA) and Kevin Brady (R-TX), the two men who spearheaded passage of the 2019 law.
- Odds of this or a similar bill becoming law: Very good. But the key question is when.
- The original SECURE Act took about seven months from House passage to enactment. Advocates hope that the timeframe isn't as long this year, but it's a given the Senate won't act quickly.

# Secure Act 2.0

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- Let's look at what is in SECURE 2.0. Among the bill's many easings: Raising the age for first taking required minimum distributions from 72 to 73 in 2023, 74 in 2030 and 75 in 2033.
- Letting people ages 62 to 64 stash more money in 401 (k)s and SIMPLEs. Annually indexing to inflation the \$1,000 IRA catch-up limit for people 50 and up, and the \$100,000 cap for qualified charitable distributions from traditional IRAs.
- Enhancing the saver's credit that low- and middle-incomers claim for retirement payins.
- Requiring employers to offer automatic enrollment in their 401 (k) or 403(b) plans with employee opt-out, subject to key exceptions.
- Letting firms offer student debt relief through workplace retirement plans.
- Lowering the excise tax for account owners who fail to take RMDs.
- Simplifying rules for retirement plans. Plus creating an online national database for lost accounts.



# Secure Act 2.0

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- Two main revenue-raising ideas would help offset the cost of the bill.
- The first would require that catch-up contributions to workplace retirement plans, such as 401 (k)s, be subject to Roth treatment.
- This means that the extra \$6,500 contributed by workers age 50 or older would automatically go into a Roth 401 (k) and come from post-tax salary rather than pretax wages.
- Another provision would allow workplace retirement plans to give participants the option of having any employer matching contributions put into Roth 401 (k) accounts.



# Secure Act 2.0

- One thing not in the bill: Requiring firms to offer payroll-deduction IRAs and enroll employees who don't opt out.
- House Democrats put forth such an idea last year, supported by President Biden, but the proposal ended up going nowhere.
- It would have required employers with more than 10 employees and in business for at least two years to offer their workers an automatic IRA option if the firm had no other retirement plan.
- Noncomplying firms would be hit with an excise tax.
- States are taking the lead on this. 14 states have enacted legislation to require employers without retirement plans to offer their workers automatic IRAs funded solely with employee payroll deductions.
- States with automatic IRA programs either in place or in the pre-implementation phase are Calif., Colo., Conn., Ill., Maine, Md., Mass., N.J., N.M., N.Y., Ore., Vt., Va. and Wash.
- Expect more to come on board, especially now that the Supreme Court declined to hear a case threatening Calif.'s law.

# Standard Mileage Rate

- With gas prices so high, will IRS raise the standard mileage rate midyear?
- It's not outside the realm of possibility.
- When the price of gasoline spiked in the first half of both 2008 and 2011, the Service boosted the standard mileage rate by 8¢ per mile and 4.5¢ per mile, respectively, effective for the final six months of those years.
- This year, the price at the pump has gone up dramatically since Jan. and could again shoot higher later this spring...maybe enough to trigger an adjustment.
- IRS's standard mileage allowances for 2022 are now 58.5¢ a mile for business driving, 18¢ a mile for medical travel and military moves, and 14¢ a mile for charitable trips.
- The mileage rate for charitable driving won't change because it is fixed by law.



# 1099-K Reporting

- A new law expanding the 1099-K reporting rules could be eased by Congress.
- Starting in 2023, third-party payment settlement networks must send 1099-Ks to payees who are paid over \$600 a year for goods or services.
- This reporting threshold is much lower than in prior years, when settlement agents had to send a 1099-K to payees who were paid more than \$20,000 and who had over 200 transactions. It does not apply to friends-and-family payments.
- So if you're receiving payments from friends or family members using cash payment apps, make sure the payee correctly designates the payment on the app as a non-business-related transaction.
- The changes are getting lots of flak. Because of the expanded reporting rules, millions more taxpayers will receive 1099-K forms in the mail, starting next year, causing lots of confusion. And it's anticipated that many forms will be sent in error.
- Some Democrats now want to revise the 1099-K reporting regime again. They're introducing bills to increase the 1099-K reporting threshold to \$5,000.

# IRS's Free File Program

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- Usage of IRS's Free File Program is anemic.
- Only 2% to 4% of eligible taxpayers use the program each year to electronically file the Form 1040 or 1040-SR.
- Free File lets individual taxpayers with adjusted gross income of \$73,000 or less use free commercial tax software to prepare and e-file their returns.
- Two years ago, there were 10 participating tax preparation firms. This year, there are eight.

# Fine-tune Withholding

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- You can fine-tune your withholding and estimated tax payments for 2022 if you unexpectedly owed money to IRS when you filed your 2021 return or your refund was larger or smaller than what you had otherwise expected.
- IRS has a tax withholding estimator on its website to help you figure out whether you are having the right amount of income tax withheld from wages, pensions, IRA distributions, etc.
- The tool asks about various sources of income, provides tips on tax credits and deductions, and estimates how much withholding to request. Employees, self-employeds and others can use this handy web tool.
- Estimated tax payments are for taxpayers who have taxable income
- that is not subject to income tax withholding.
- The first remittance for 2022 was due April 18, with remaining payments due June 15, Sept. 15 and Jan. 17, 2023.



# Backup Withholding

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- The Service wants to increase compliance with backup withholding.
- Backup withholding is generally required by payers of nonemployee compensation, interest, dividends, etc., for payees with a missing or invalid tax ID number.
- IRS is mailing notices to firms of mismatched names and TINs on 1099 forms.
- Companies who receive the letters should consider starting to withhold tax at a rate of 24% on future payments until a proper TIN is furnished by the payee.



# Tax Return Backlog

- IRS is using everything in its arsenal to tackle its backlog of 2020 returns and other filings, as well as unopened correspondence from taxpayers.
- There are about 20 million filings and letters from last year to sort through.
- The agency shifted 1,200 personnel from other areas to help with the backlog, and is in the process of moving around 700 more employees for this purpose.
- It wants to quickly hire and onboard 5,000 workers for its service centers and is holding job fairs, with another 5,000 new hires planned for later this year.
- These are all needed resources, but the problems won't go away quickly.
- Even IRS admits this, saying the goal is to end the pandemic backlog by year-end.



## IRS's processing of Paper-Filed Returns

- IRS's processing of paper-filed returns is antiquated and time-consuming.
- IRS workers must manually transcribe the information on paper returns for input into the computer systems by keystroking each digit and letter on the form.
- This takes lots of time and results in a significant amount of data entry errors.
- About 22% of paper returns transcribed by IRS employees in 2021 had such errors.
- The National Taxpayer Advocate has a solution: Use scanning technology. One option is to add bar codes to paper 1040s filed by people who use tax software to prepare their returns but then mail them to the Service instead of e-filing them.
- A second is to implement optical character recognition technology for paper returns.
- The NTA has directed IRS to put scanning in place for the 2023 filing season. We'll see what the Service says. It has until May 31 to respond to the directive.

# IRS Backlog

- IRS says it will get through its backlog of unprocessed returns by year-end.
- It's got a mountain of work ahead.
- Here's the build-up as of the end of April: 6.7 million individual returns filed on paper and received by IRS in 2021 and 2022. 2.3 million amended individual returns filed on Form 1040-X.
- 2.5 million Forms 941, which mainly involve the now-expired employee retention tax credit. And others.
- There are very, very long waits for refunds on paper-filed 1040 returns.
- At least six months, according to IRS's National Taxpayer Advocate Erin Collins.
- There is a bit of good news: IRS is current on its unopened mail.
- There are 300,000 pieces of unopened mail, which is typical for it on any given day.





# TedPerkinsTax News

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## *VERIFY YOUR ATTENDANCE*

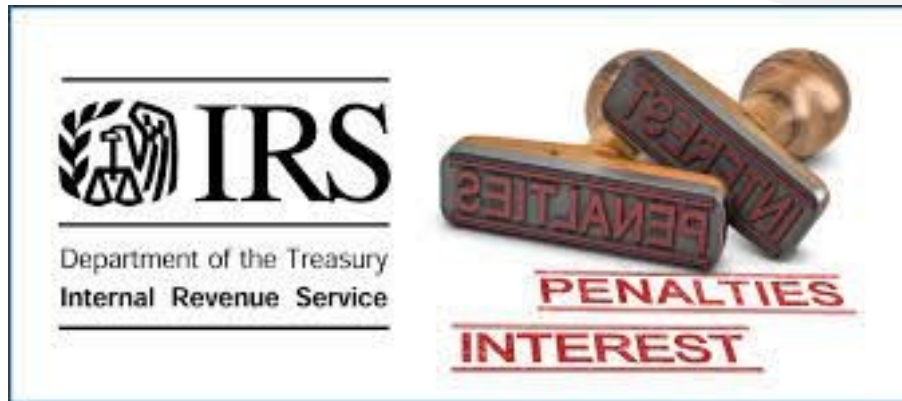
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# IRS Interest Rates

- IRS's interest rates on taxes are rising for the third quarter of 2022, the second consecutive increase.
- We expect the IRS rates to tick up again this year or next, when the Federal Reserve approves more interest rate increases.
- On overdue taxes, the Revenue Service will charge 5%.
- A higher 7% rate will be applied to corporations that owe more than \$100,000 in back taxes.
- On refunds, the agency will pay 5% to individuals and 4% to corporations.
- For corporate refunds that exceed \$10,000, the rate on the excess will be 2.5%.
- There is generally a 45-day waiting period before IRS starts paying interest on refunds.





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# Faxing a Return to an IRS Agent

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- Faxing a copy of a late partnership return to an IRS agent is filing a return, an appeals court says, reversing the Tax Court, which had ruled that the firm never filed its 2001 return because it didn't send the document to the IRS service center.
- An agent notified the firm in 2005 that IRS had never received the Form 1065 for 2001.
- The partnership then faxed a copy of it to the agent, who began an audit of the return.
- In 2010, the agent sent the firm a notice of adjustment.
- The firm claimed the notice was invalid because it was issued over three years after the company filed its return with the agent.
- A delinquent partnership return is filed when an IRS official asks for it, the partnership delivers it and the official receives it (Seaview Trading, LLC, 9th Cir.).



# Supreme Court Won't Take up a Challenge to the 2017 Tax Reform Law.

- The Supreme Court won't take up a challenge to the 2017 tax reform law.
- The issue involves the \$10,000 limit on deducting state and local taxes on Schedule A of the 1040. Conn., Md., N.J. and N.Y. sued the U.S. government, claiming the \$10,000 cap is unconstitutional.
- After lower courts dismissed the case, the states asked the Supreme Court to weigh in, but it declined to hear the case.

# Boechler, P.C. v. Commissioner – Taxpayer Win

- A win for a firm that filed a late Tax Court petition in a collection case.
- After the firm didn't pay a penalty, IRS sent a notice of determination sustaining a levy.
- The taxpayer had 30 days from the date on the letter to petition the Tax Court for a collection due-process hearing, but it mailed the petition on day 31.
- The statutory 30-day rule can be waived by a court for equitable reasons, the Supreme Court says, overruling decisions by the Tax Court and an appeals court.
- The high court sent the case back down to the Tax Court for that court to decide whether, based on the facts, it should review IRS's collection due-process determination, despite the taxpayer's late filing of its petition (Boechler, P.C. v. Commissioner).

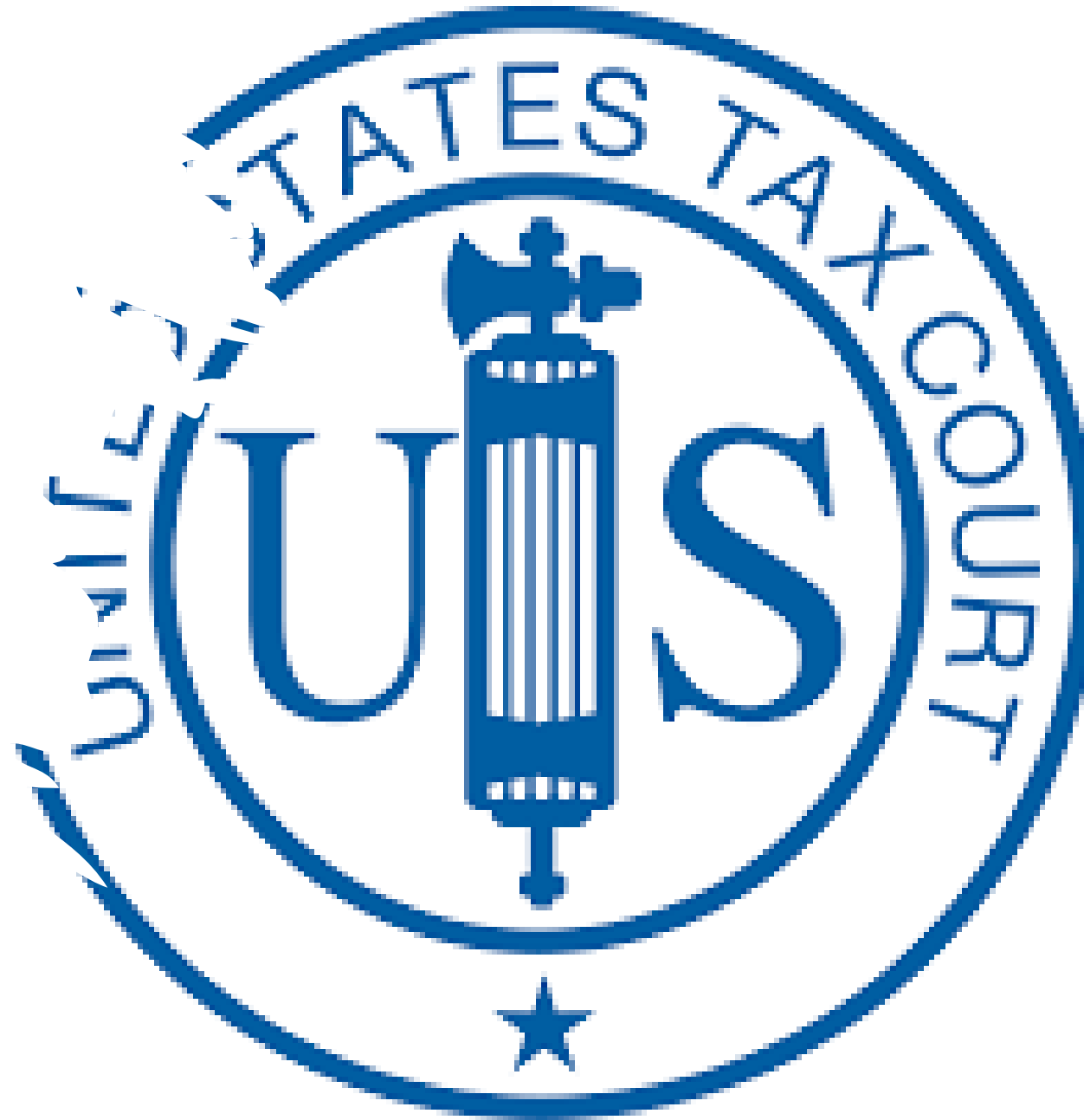


## In re Moore, D.C.- IRA Bankruptcy Exemption

- Monkey business with your IRA can cost you the bankruptcy exemption.
- Creditors typically can't grab funds in a debtor's IRA, but this rule doesn't apply when the bankruptcy debtor engages in prohibited transactions with the account.
- Here, an owner of a self-directed IRA who later filed bankruptcy got lucky.
- The bankruptcy trustee couldn't show by a preponderance of the evidence that the debtor played games with his IRA when he indirectly transferred IRA funds, funneled through his personal account, to third parties to satisfy the debts of a company owned by him.
- According to the court, the transactions don't amount to self-dealing, so the IRA exemption is preserved

# Late Filing of Tax Court Petition

- How broad is a recent Supreme Court decision on Tax Court filing deadlines?
- We don't know yet...but IRS lawyers say they are looking at this closely.
- In April, the high court gave a somewhat expected procedural victory to a taxpayer who filed a Tax Court petition one day late to request a collection due-process hearing.
- The Supreme Court said the statutory 30-day rule for filing a Tax Court petition in a collection due-process case can be waived by a court for equitable reasons.



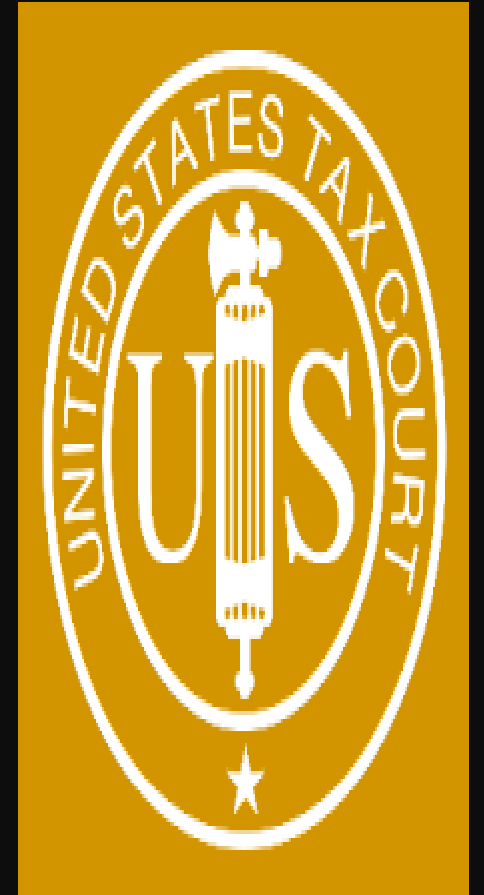
# Late Filing of Tax Court Petition



- One open question involves late Tax Court petitions in deficiency cases.
- Taxpayers generally have 90 days from the date of an IRS deficiency notice to either pay the tax or petition the Tax Court for relief.
- IRS and the Tax Court have claimed the 90-day rule is set by statute and can't be tolled for late petitions.

# Late Filing of Tax Court Petition

- There is a case now before the Tax Court on this exact issue.
- A firm filed a Tax Court petition on day 91, one day late.
- The Court tossed the case because of the late filing, and the taxpayer has asked the Court to reconsider, based on the recent Supreme Court decision.
- IRS argues that the high court's ruling doesn't apply to the 90-day statutory deadline for contesting deficiency notices.





## Questions

- If you have any questions during the program, please type them into the chat box and I will try to address them during the program.
- If your question is *not answered* during the program you will receive an ' e-mail response after the program is concluded.
  - If you have questions after the program is concluded please e-mail your question to –

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# TedPerkinsTax News

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