

2023 Federal Tax Update Individual Issues

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Schedule for Today

Individual Issues

- 8:00 a.m.-9:50 a.m.

Business Issues

- 10:00 a.m.-11:50 a.m.

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Organization of Materials

- Indexed Items for 2023 page A-1
 - Rev. Proc. 2022-38 page A-1
- Selected Provisions That Expired/Changed for 2023 page B-1
- Legislative Developments page C-1
- Recent Developments in Federal Income Taxation page D-1
- Clean Vehicle Tax Credits page E-1

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A. INDEXED ITEMS FOR 2023

REV. PROC. 2022-38

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Child Tax Credit - 2023

Outline page A-9

- For 2023, the child tax credit is \$2,000 per qualifying child
 - The credit is phased out for those with modified AGI over \$200,000 (single or head-of-household) or \$400,000 (married filing jointly)
 - To be a qualifying child, the child must be under the age of 17 as of the end of 2023
 - Up to \$1,600 of the credit is refundable in 2023
- The bad news:
 - The increased child tax credit of \$3,000/\$3,600 available in 2021 is back to \$2,000 for 2023
 - The credit is not available for 17-year-olds in 2023 as it was in 2021
 - The child tax credit is not fully refundable in 2023 as it was in 2021
- The good news – no advance payments of the CTC took place:
 - No reconciliation required on the tax return
 - Fewer taxpayers who are surprised to owe tax at filing

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Child Tax Credit - 2023

Outline page A-9

- For 2023, the credit for dependents other than a qualifying child remains at \$500
- Common examples:
 - A child aged 17 or older who is a dependent
 - An elderly parent who moves in with the family and is a dependent

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Expenses of School Teachers - 2023
Outline page A-12

- For 2023, the deduction for qualifying classroom expenses paid by elementary and secondary school teachers remains at \$300
 - Increased from \$250 to \$300 in 2022 (first increase in 20 years)
- Is an above-the-line deduction
- For married couples, if both spouses are teachers and have qualifying expenses, the maximum deduction is \$600 (up to \$300 each)

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Standard Deduction - 2023
Outline: pages A-13 and D-32

- Standard deduction:

Filing Status	2022	2023	2024
Single/MFS	\$12,950	\$13,850	\$14,600
Head-of-Household	\$19,400	\$20,800	\$21,900
MFJ & Surviving Spouses	\$25,900	\$27,700	\$29,200

- In 2023:
 - For individuals who can be claimed as dependents, the standard deduction cannot exceed the greater of \$1,250 (increased from \$1,150) or the sum of \$400 (unchanged) and the individual's earned income.
 - The additional standard deduction amount for those who are legally blind or age 65 or older is \$1,850 (unchanged) for those with the filing status of single or head of household (and who are not surviving spouses) and is \$1,500 (unchanged) for married taxpayers (\$3,000 on a joint return if both spouses are age 65 or older).

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Qualified Business Income Deduction - 2023

Outline: pages A-16 and A-17

- Threshold amounts and phase-in range amounts for the qualified business income deduction (§ 199A):

Filing Status	Threshold amount	Phase-in range amount
Married individuals filing jointly	\$364,200	\$464,200
Married individuals filing separately	\$182,100	\$232,100
All other returns	\$182,100	\$232,100

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Interest on Education Loans - 2023

Outline: page A-18

- For 2023, the \$2,500 maximum above-the-line deduction for interest paid on qualified education loans begins to phase out and is completely eliminated at the following levels of modified AGI:

Filing Status	Begins to phase out	Completely phased out
Married individuals filing jointly	\$155,000	\$185,000
All other returns	\$75,000	\$90,000

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B. SELECTED PROVISIONS THAT EXPIRED OR CHANGED FOR 2023

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Provisions That Expired or Changed For 2023

Outline: page B-1

Code Section	Topic	Change for 2023
21	Child and dependent care credit	<p>For 2023, the child and dependent care credit for a qualifying child under age 13 or a disabled dependent of any age ranges from 20% to 35% of:</p> <ul style="list-style-type: none"> • \$3,000 of qualifying expenses (for a maximum credit of \$1,050) for one child or dependent, or • \$6,000 of qualifying (for a maximum credit of \$2,100) for two or more children or dependents. <p>Credit is reduced compared to 2021 and is no longer fully refundable.</p>
24	Child tax credit	The child tax credit for 2023 is \$2,000 per qualifying child

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Provisions That Expired or Changed For 2023

Outline: page B-1

Code Section	Topic	Change for 2023
163(h)(3)(E)	Mortgage insurance premiums	The ability to treat mortgage insurance premiums as deductible home mortgage interest expired for tax years beginning after 2021.
170	Charitable contributions	The ability of non-itemizers to deduct up to \$300 of cash charitable contributions to public charities in addition to the standard deduction expired for tax years beginning after 2021.
170	Charitable contributions	For 2023, the charitable contribution deduction limit for a gift of cash to a public charity is 60 percent of one's adjusted gross income. The 100 percent limit expired as of December 31, 2021.

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C. LEGISLATIVE DEVELOPMENTS

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Legislative Developments
SECURE 2.0 Act of 2022
Outline page C-1

- Consolidated Appropriations Act, 2023, Pub. L. No. 117-328
 - Signed by the President on December 29, 2022.
 - Division T of the legislation contains the SECURE 2.0 Act of 2022.
 - Makes significant changes that affect retirement plans.
- What's not in SECURE 2.0
 - No elimination of or restriction on back-door Roth IRAs
 - No restrictions on Roth conversions for high-income taxpayers
 - No increase in required minimum distributions (RMDs) for high-income taxpayers with large retirement account balances
 - No change to the age at which qualified charitable distributions from an IRA can be made (age 70-1/2)
 - No clarification of how the 10-year rule applies to a person who inherits a retirement account and is not an eligible designated beneficiary.

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Age at Which RMDs Must Begin
Outline: page C-1; item B.3, page D-18

- SECURE 2.0 Act:
 - Increases the age at which RMDs must begin. In 2022, individuals who attained age 72 were required to begin taking RMDs. SECURE 2.0 increases the RMD age to age 73 in 2023 and to age 75 in 2033.
- Notice 2023-54 (7/14/23):
 - Automated payment systems must be updated to reflect the change in the age at which RMDs must begin and this may take time.
 - Therefore, those born in 1951 (who attain age 72 in 2023) might receive distributions in 2023 that are mischaracterized as RMDs (and therefore normally ineligible for rollover).
 - Individuals who receive such distributions from January 1 through July 31, 2023, had until September 30, 2023, to roll such mischaracterized distributions into an eligible retirement plan.
 - Applies to both employer-sponsored plans and IRAs.
 - The "one rollover every 12 months" rule for IRAs is not a bar.

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Reduced Penalties for Missed RMDs

Outline: page C-1; item B.4, page D-18

- SECURE 2.0 Act § 302:
 - Reduces the penalty for failure to take an RMD. Effective for 2023 and future years, SECURE 2.0 reduces the 50% penalty for an RMD shortfall to 25%. If the shortfall is corrected within a specified period, the penalty is further reduced to 10%.
 - Penalty is reduced to 10% if:
 1. An individual receives all past-due RMDs, and
 2. Files a tax return that reflects the excise tax on such RMDs before the earliest of three dates:
 - a. The date of mailing of a notice of deficiency with respect to the excise tax,
 - b. The date on which the excise tax is assessed, or
 - c. The last day of the second tax year that begins after the close of the tax year in which the excise tax is imposed (apparently, the close of the second tax year after year of the missed RMD).

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Surviving Spouses Can Defer RMDs

Outline: page C-1; item B.6, page D-19

- SECURE 2.0 Act § 327:
 - Deferral of RMDs for surviving spouses. If a participant dies before reaching the age at which RMDs must begin and has designated a spouse as the sole beneficiary, then the spouse may make an irrevocable election to be treated as the participant for purposes of receiving RMDs.
 - This will allow the surviving spouse to defer RMDs until the deceased spouse would have reached the RMD age.
 - This change is effective in 2024.
 - Example: H is age 62 and W is age 68. H passes away and W is sole beneficiary of his retirement account. W can elect to be treated as H to determine when RMDs must begin. W need not take RMDs until H would have turned 73.

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Changes to Employer Plan Catch-Up Contributions ***Outline: page C-2; item B.7, page D-19***

- SECURE 2.0 § 109:
 - Changes to employer plan catch-up contributions. Individuals age 50 and older can contribute an additional \$7,500 (2023 and 2024) to an employer-sponsored retirement plan.
SECURE 2.0:
 - Increased catch-up contributions for those ages 60-63. Effective in 2025, provides a special catch-up contribution for participants ages 60 to 63 equal to the greater of \$10,000 (adjusted annually for inflation) or 150 percent of the regular catch-up contribution amount for 2024.
 - Note: 150% of the 2024 regular catch-up contribution amount (\$7,500) is \$11,250, i.e., more than \$10,000.

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Expanded Penalty-Free Retirement Withdrawals ***Outline: page C-2; items B.11, B.12, and B.13, pages D-21-22***

- SECURE 2.0 Act:
 - Expanded penalty-free withdrawals. SECURE 2.0 modifies certain existing exceptions and adds some additional exceptions to the normal 10% penalty on premature withdrawals from qualified retirement plans, including exceptions for:
 - Emergency withdrawals: beginning in 2024, individuals can withdraw up to \$1,000 without a penalty for “unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses.” [S2.0 § 115]
 - Survivors of domestic abuse: beginning in 2024, no penalty applies to distributions up to \$10,000 (or 50% of the account value, if less) that are “made to an individual during the 1-year period beginning on any date on which the individual is a victim of domestic abuse [as defined] by a spouse or domestic partner.” [S2.0 § 314]
 - Those with a terminal illness: beginning in 2023, distributions are penalty-free if made to “an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 84 months or less after the date of the certification.” [S2.0 § 326]

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***IRAs: Qualified Charitable Distributions
and Catch-Up Contributions***
Outline: page C-2; items D.1 and D.2, page D-26

- SECURE 2.0 Act:
 - Enhances the ability to make qualified charitable distributions from IRAs. Individuals age 70-1/2 or older can transfer up to \$100,000 per year directly from one or more IRAs to one or more public charities and/or private operating foundations. SECURE 2.0:
 - Indexes the \$100,000 annual limit for inflation beginning in 2024.
 - Permits a taxpayer, beginning in 2023, to make a one-time \$50,000 (adjusted for inflation) distribution directly from an IRA to a charitable remainder unitrust, charitable remainder annuity trust, or charitable gift annuity and treat as if made to a charity. [S2.0 § 307]
 - Changes to IRA catch-up contributions. Individuals age 50 and older can contribute an additional \$1,000 annually to an IRA. SECURE 2.0:
 - Provides that this \$1,000 amount is to be adjusted annually for inflation beginning in 2024. [S2.0 § 108]

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No More Age Limit for IRA Contributions
[Not in Outline]

- Reminder:
 - A provision of the SECURE Act, Division O, Title I, § 107 of the 2020 Further Consolidated Appropriations Act, repealed Code § 219(d)(1)
 - Eliminates the age restriction (formerly 70-1/2) for contributions to a traditional IRA.
 - Also amends § 408(d)(8)(A), which allows taxpayers who are age 70-1/2 or older to make tax-free distributions to a charity from an IRA of up to \$100,000 per year.
 - The change reduces a taxpayer's ability to take such tax-free distributions for charity by the amount of deductible IRA contributions made after age 70-1/2.
 - The reduction appears to apply on a year-by-year basis.
 - Changes apply to contributions and distributions made for taxable years beginning after December 31, 2019.

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Rollovers from 529 Plans to Roth IRAs
Outline: page C-2; item F.1, page D-35

- SECURE 2.0 Act § 126:
 - Rollovers from 529 plans to Roth IRAs. Beginning in 2024, beneficiaries of 529 college savings plans that have been open for more than 15 years can roll over up to \$35,000 from the 529 plan to a Roth IRA during their lifetime (subject to annual Roth IRA contribution rules).
 - Requirements:
 - The § 529 account must have been maintained for the 15-year period ending on the date of the distribution,
 - The distribution does not exceed amount contributed to the § 529 plan (plus earnings) during 5-year period ending on date of the distribution,
 - The distribution is paid by direct trustee-to-trustee transfer to a Roth IRA maintained for benefit of designated beneficiary of the § 529 account,
 - Amount rolled over in current year cannot exceed annual limit on Roth IRA contributions (\$6,500 for 2023) reduced by aggregate IRA contributions made during year for benefit of designated beneficiary,
 - Lifetime limit of \$35,000.

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**D. RECENT DEVELOPMENTS IN
FEDERAL INCOME TAXATION**

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Notice 2023-3
2023-3 I.R.B. 388 (12/29/22)
Outline: item D.1, page D-9

- Standard mileage rate for business miles in 2023 goes up to 65.5 cents per mile (from 62.5 cents in second half of 2022).
- Medical/moving rate for 2023 is 22 cents per mile (unchanged from second half of 2022).
- Charitable mileage rate for 2023 remains fixed by § 170(i) at 14 cents.
- The portion of the business standard mileage rate treated as depreciation goes up to 28 cents per mile for 2023 (up from 26 cents from 2022).
- Reminders:
 - Unreimbursed employee business expenses are miscellaneous itemized deductions and therefore not deductible through 2025.
 - Moving expenses are not deductible through 2025 except for members of the military on active duty who move pursuant to military orders incident to a permanent change of station.

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Notice 2023-3
2023-3 I.R.B. 388 (12/29/22)
Outline: item D.1, page D-9

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

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

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Notice 2023-75 (11/1/23)
Outline: items B.1, page D-15

- Sets forth inflation-adjusted figures for benefits and contributions under qualified retirement plans for 2024.
- Among other figures:

Category	2022	2023	2024
Elective deferrals- 401(k) plans	20,500	22,500	23,000
Catch-up contributions to employer-sponsored plans (age 50+)	6,500	7,500	7,500
IRA contribution limit	6,000	6,500	7,000
Catch-up contributions to IRAs (age 50+)	1,000	1,000	1,000

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Proposed Regulations on RMDS (2/24/22)
No More Stretch RMDs from Non-Spousal Inherited Retirement Accounts
Outline: item B.2, page D-15

- A provision of the SECURE Act, Division O, Title IV, § 401 of the 2020 Further Consolidated Appropriations Act, amended Code § 401(a)(9)(E)
- Modifies the required minimum distribution (RMD) rules for inherited retirement accounts (defined contribution plans and IRAs).
- Requires all funds to be distributed by the end of the 10th calendar year following the year of death.
 - There appears to be no requirement to withdraw any minimum amount before that date.
- Current rules, which permit taking RMDs over many years, continue to apply to certain designated beneficiaries, including surviving spouses, children of the participant who have not reached the age of majority, and those not more than 10 years younger than the deceased individual.
- Applies to distributions with respect to those who die after 12/31/19⁸

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Proposed Regulations on RMDs (2/24/22)

87 F.R. 10504

Outline: item B.2, page D-15

- These proposed regulations update existing regulations to address the changes made by the SECURE Act as well as several other statutory changes.
- The proposed regulations adopt an interpretation of the 10-year rule that appears to differ from the plain language of the statute and from the interpretation of the legislation by most advisors.
- “For example, if an employee died after the required beginning date with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have required minimum distributions calculated using the beneficiary’s life expectancy as under the existing regulations for up to nine calendar years after the employee’s death. In the tenth year following the calendar year of the employee’s death, a full distribution of the employee’s remaining interest would be required.”

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Notice 2022-53

2022-45 I.R.B. 437 (10/7/2022)

Outline: item B.2.a, page D-16

- Provides relief to those required to take RMDs under the interpretation of the 10-year rule in the February 2022 proposed regulations.
- Generally, relief applies to beneficiaries who:
 - Are not eligible designated beneficiaries (i.e., are subject to the 10-year rule)
 - Inherited the account from an employee/IRA owner who died:
 - in 2020 or 2021, and
 - after the required beginning date for distributions, and
 - Were required to take RMDs in 2021 or 2022 under the interpretation of the 10-year rule in the proposed regulations.
- The 50% (or 25%) excise tax of § 4974 for failure to take RMDs will not apply. Those who paid the excise tax can seek a refund.

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Notice 2023-54
2023-31 I.R.B. 382 (7/14/23)
Outline: item B.2.b, page D-17

- Provides additional relief to those required to take RMDs under the interpretation of the 10-year rule in the February 2022 proposed regulations.
- Generally, relief applies to beneficiaries who:
 - Are not eligible designated beneficiaries (i.e., are subject to the 10-year rule)
 - Inherited the account from an employee/IRA owner who died:
 - in 2020, 2021, or 2022 and
 - after the required beginning date for distributions, and
 - Were required to take RMDs in 2021, 2022, or 2023 under the interpretation of the 10-year rule in the proposed regulations.
- The 50% (or 25%) excise tax of § 4974 for failure to take RMDs will not apply. Those who paid the excise tax can seek a refund.

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Notice 2023-54
2023-31 I.R.B. 382 (7/14/23)
Outline: item B.2.b, page D-17

- Example:
 - Owner passed away in 2020
 - At the time of his death, Owner was the owner of a traditional IRA
 - Owner's death occurred after the required beginning date for distributions from the IRA.
 - Beneficiary is the sole beneficiary of the IRA and is not an eligible designated beneficiary (therefore is subject to the 10-year rule)
 - Under the proposed regulations, Beneficiary must take RMDs for 2020 through 2029, and any remaining funds in the account must be distributed by the end of 2030
 - Pursuant to Notices 2022-53 and 2023-54, no excise tax will be imposed for the missed RMDs in 2021, 2022, or 2023.
 - Query: how much must Beneficiary withdraw in 2024?

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Notice 2023-27
2023-25 I.R.B. 634 (3/21/23)
Outline: item B.14, page D-23

- Announces future guidance that will treat certain nonfungible tokens (NFTs) as “collectibles” for purposes of § 408(m).
- NFTs are akin to electronic works of art, such as digital images, animations, or videos, that are bought and sold via the internet.
- Future guidance will determine whether an NFT is a collectible by applying a look-through rule
 - Example: a gem is a § 408(m) collectible, and therefore an NFT that certifies ownership of a gem constitutes a § 408(m) collectible.
- Impact of treating NFTs as collectibles:
 - If an IRA or a self-directed qualified plan acquires an NFT, then the IRA or plan is treated as distributing the NFT to the account owner.
 - The distribution is taxable to the account owner
 - A taxpayer’s gain on the sale of an NFT that is a capital asset will be collectibles gain taxed at a 28% rate
 - Treatment as a collectible also is relevant under other Code provisions

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Estate of Caan v. Commissioner,
161 T.C. No. 6 (10/18/23)
Outline: item D.3, page D-26

- Facts
 - The actor James Caan passed away in 2022.
 - At the time of his death, he had two IRAs with UBS. One of the IRAs held a nontraditional asset, a partnership interest in a private hedge fund.
 - Caan failed to notify UBS of the value of the hedge fund interest for 2014, as required by the IRA custodial agreement.
 - UBS distributed the interest to him and issued Form 1099-R
 - Caan established a rollover IRA with Merrill Lynch, which directed the hedge fund to liquidate Caan’s interest and transfer the cash to the rollover IRA.
- Issues:
 1. Was the transfer of cash to Merrill Lynch a valid rollover?
 2. If not, what was the value of the distribution from UBS to Caan?
- Held:
 1. No. The transfer was outside the 60-day rollover window and was not the same property in the UBS IRA.
 2. \$1.548 million

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Rev. Rul. 2023-14
2023-33 I.R.B. 484 (7/31/23)
Outline: item B.1, page D-29

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

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Notice 2023-56
2023-38 I.R.B. 824 (8/30/23)
Outline: item B.2, page D-29

- This notice addresses the federal tax treatment of payments an individual receives from state or local governments.
- The notice addresses the general tax treatment of a state refund of tax.
 - If the payment is a refund of tax, then it is not included in a taxpayer's gross income except to the extent required by the tax benefit rule, i.e., to the extent the taxpayer deducted the payment and received a tax benefit from the deduction in a prior year.
- The notice also addresses payments received from states that are eligible for exclusion under the general welfare exclusion.
 - **Example:** payments to eligible residents under an "Energy Relief Payment Program" to help those low-income residents who may not otherwise be able to afford to pay their heating bills.

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**Gregory v. Commissioner,
69 F.4th 762 (11th Cir. 5/30/23)
*Outline: item C.1.a, page D-31***

- Held: deductions allowed by § 183 (up to the amount for income from activities not engaged in for profit) are below-the-line deductions and are miscellaneous itemized deductions subject to the 2% floor of (or denial by) § 67.

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**Inflation Reduction Act (August 2022)
Credit-Energy Eff. Improvements to Principal Residence
*Outline: item D.4, page D-33***

- § 25C: credit for certain energy-efficient home improvements to a taxpayer's principal residence.
- Inflation Reduction Act (Aug. 2022):
 - Extended credit to property placed in service before January 1, 2033
 - Modified the credit for property placed in service after 12/31/2022:
 - Credit is:
 - 30% (increased from 10 percent) of amount paid or incurred for qualified energy efficiency improvements (such as insulation materials or systems, exterior windows, and exterior doors)
 - 30% of amount paid or incurred for residential energy property expenditures (such as high-efficiency furnaces, water heaters, and air conditioning systems)
 - 30% of amount paid or incurred for home energy audit (max. \$150)
 - Annual per-taxpayer limit of \$1,200 and per-item limit of \$600 38

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Inflation Reduction Act (August 2022)
Credit for Residential Clean Energy Property
Outline: item D.5, page D-34

- § 25D: credit qualified solar electric property, qualified solar water heating property, qualified fuel cell property, qualified small wind energy property, qualified geothermal heat pump property and qualified biomass fuel property.
 - Generally, properties must be installed in a dwelling unit located in the United States that is used by the taxpayer as a residence.
- Inflation Reduction Act (Aug. 2022):
 - Extended credit through 2034.
 - For qualified biomass fuel property, credit is available only for property placed in service through 2022
 - Beginning in 2023, credit is available for qualified battery storage technology.
 - Credit for all categories is:
 - 30% for property placed in service in 2022 through 2032
 - 26% for property placed in service in 2033
 - 22% for property placed in service in 2034.

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Estate of Hoenscheid v. Commissioner,
T.C. Memo. 2023-34 (3/15/23)
Outline: item B.2, page D-49

- Facts
 - Taxpayer and his two brothers held appreciated shares of stock in a corporation originally formed in 1927
 - Taxpayer donated some of his shares to a charitable organization two days before the planned sale of all of the stock in the corporation (including the shares held by the charitable organization).
- Main Issues:
 1. Did the anticipatory assignment of income doctrine require the taxpayer to recognize capital gain with respect to the shares sold by the charitable organization?
 2. Was the appraisal of the shares a qualified appraisal?
- Held:
 1. Yes, taxpayer must recognize the capital gain on the shares sold by the charitable organization.
 2. No, it was not a qualified appraisal. Taxpayer's charitable contribution deduction denied.

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**Hallmark Research Collective v. Commissioner,
159 T.C. No. 6 (11/29/22)
Outline: item E.2, page D-62**

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

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**Culp v. Commissioner,
75 F.4th 196 (3d Cir. 7/19/23)
Outline: item E.2.a, page D-62**

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

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**Pond v. United States,
69 F.4th 155 (4th Cir. 5/26/23).
*Outline: item E.6, page D-66***

- Held: regulations issued under § 7502 displace the common-law mailbox rule.
 - The taxpayer mailed a claim for refund (an amended return) for 2013 by regular, first-class mail.
 - Because he had not sent it by registered or certified mail, he was not entitled to the *presumption* of § 7502(c) that the document was delivered.
 - Nevertheless, the taxpayer had plausibly alleged that his claim was physically delivered to the IRS and had supported this claim with three specific factual allegations.
 - Therefore, it was inappropriate for the U.S. District Court to grant the government's motion to dismiss.

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**Bittner v. United States,
142 S. Ct. 2833 (6/21/23)
*Outline: item H.4, page D-81***

- A 5-4 decision.
- Issue: are penalties for non-willful failure to file an FBAR determined \$10,000 per offending account or just \$10,000?
- Held: Just \$10,000. The penalty is not determined per account.

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Estate of DeMuth v. Commissioner
132 A.F.T.R.2d 2023-5122 (3d Cir. 7/12/23)
Outline: item C.1, page D-86

- Taxpayer was diagnosed with an “end-stage medical condition.”
- His son held a power of attorney authorizing him to act for his father
- The son wrote 11 checks for the taxpayer intended as annual exclusion gifts.
- Of the 11 checks, 7 had not cleared the drawee bank on the date of taxpayer’s death.
- Issue: were the funds represented by these 7 checks completed gifts and therefore excluded from the gross estate?
- Held: No. The checks had not cleared the drawee bank on the date of death.

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Rev. Rul. 2023-2
2023-16 I.R.B. 658 (3/29/23)
Outline: item D.1, page D-89

- A relatively common estate-planning strategy involves the use of a so-called “intentionally defective grantor trust” (IDGT).
- Through an IDGT, a grantor can make a completed gift of property for estate and gift tax purposes under subtitle B chapter 11 of the IRC but still be taxed on the income from the property under subchapter J chapter 1 of the IRC.
- Section 1014(a) provides that a person acquiring property from a decedent acquires a basis in the property equal to the FMV of the property on the date of the decedent’s death.
- Issue: does a person acquiring property from an IDGT upon the grantor’s death have a stepped-up basis, i.e., a basis equal to the FMV of the property upon the donor’s death, under § 1014(a)?
- Held: No. Such an asset is acquired from the IDGT, not from the decedent.

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E. CLEAN VEHICLE CREDITS-

**THE NEW CLEAN VEHICLE CREDIT
AND
THE CREDIT FOR PREVIOUSLY
OWNED CLEAN VEHICLES**

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Credit for New Clean Vehicles
Outline: section E

- The Inflation Reduction Act (August 2022) significantly modified Code § 30D, which authorizes a credit for new clean vehicles
- Individuals and businesses qualify for the credit
- The credit is nonrefundable
 - If claimed on Form 1040, Schedule 3 (Additional Credits and Payments), and any excess credit cannot be carried forward
 - If claimed for business use on Form 3800 (General Business Credit), any excess credit can be carried forward
 - Note: a business cannot take both the clean vehicle credit of § 30D and the qualified commercial clean vehicle credit of § 45W. The business must choose one or the other.

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Credit for New Clean Vehicles

Outline: section E

- Amount of the credit:
 - For vehicles placed in service on or after April 18, 2023, the credit can be as high as \$7,500.
 - This figure has two components:
 - \$3,750 if the vehicle meets the critical minerals component
 - \$3,750 if the vehicle meets the battery components requirement
 - If a vehicle meets only one requirement, the credit is \$3,750; if it meets both, the credit is \$7,500. The manufacturer must certify which requirements are met.
 - For vehicles placed in service on or before April 17, 2023, the credit is \$2,500 if the vehicle draws propulsion energy from a battery with at least 7 kWh capacity, plus \$417 for each kWh in excess of 5 kWh
 - This means the minimum credit is \$3,751 if the battery has 7 kWh capacity, and will reach \$7,500 if the battery has ≥ 12 kWh capacity
 - Maximum credit is \$7,500

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Credit for New Clean Vehicles

Outline: section E

- Limits on the credit:
 - Maximum credit is \$7,500
 - Income limitations:
 - The credit is eliminated (not phased out) if modified adjusted gross income (MAGI) exceeds certain thresholds:
 - MFJ: \$300,000
 - Head of household: \$225,000
 - All other taxpayers: \$150,000
 - These thresholds are applied at the partner/shareholder level for credits claimed by individuals and passed through from a partnership or S corporation

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Credit for New Clean Vehicles

Outline: section E

- Limits on the credit (cont'd):
 - Price limitation:
 - The credit is available only if the manufacturer's suggested retail price (MSRP) does not exceed specified amounts:

■ Vans:	\$80,000
■ SUVs:	\$80,000
■ Pickup trucks:	\$80,000
■ All others:	\$55,000

Vehicle classifications can be obtained at <https://fueleconomy.gov/feg/tax2023.shtml>
 - The actual price paid for the vehicle does not matter; the MSRP governs
 - Example: Taxpayer wants to purchase a sedan with an MSRP of \$60,000. The dealer offers incentives of \$10,000, which reduce the price to \$50,000. Taxpayer is not eligible for the new clean vehicle credit.
 - The MSRP is the figure on the label and does not include destination charges or optional items added by the dealer, or taxes and fees. ⁵¹

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Credit for New Clean Vehicles

Outline: section E

- Qualifying vehicles:
 - To qualify for the credit, the vehicle must be placed in service on or after January 1, 2023, and meet all of the following requirements:
 - Is acquired by a taxpayer for original use
 - Not acquired for resale
 - Is made by a qualified manufacturer (check IRS index)
 - Has a gross vehicle weight of less than 14,000 pounds
 - Is powered to a significant extent by an electric motor with a battery capacity of 7 kilowatt hours or more and must be capable of being recharged from an external source of electricity (i.e., must be a plug-in vehicle)
 - Traditional hybrids that don't plug in thus would not qualify
 - Must have final assembly in North America

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Credit for New Clean Vehicles

Outline: section E

- Qualifying vehicles:
 - The easiest way to determine if a vehicle qualifies for the new clean vehicle credit is to use the Department of Energy's website:
 - <https://fuelconomy.gov/feg/tax2023.shtml>

Federal Tax Credits for Plug-in Electric and Fuel Cell Electric Vehicles
(Vehicles placed in service on or after April 18, 2023 and before January 1, 2024)

Make	Model	Model Year	Vehicle Type	Credit Amount	MSRP Limit	Assembled in N. America
Audi						
	Q5 PHEV 55 TFSI e quattro	2023-2024	PHEV	\$3,750	\$80,000	✓
Cadillac						
	LYRIQ	2023-2024	EV	\$7,500	\$80,000	✓
Chevrolet						
	Bolt	2022-2023	EV	\$7,500	\$55,000	✓
	Bolt EUV	2022-2023	EV	\$7,500	\$55,000	✓
Chrysler						
	Pacifica PHEV	2022-2024	PHEV	\$7,500	\$80,000	✓
Ford						
	E-Transit	2022-2023	EV	\$3,750	\$80,000	✓
	Escape Plug-in Hybrid	2022-2023	PHEV	\$3,750	\$80,000	✓

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Credit for New Clean Vehicles

Outline: section E

- Reporting:
 - To claim the credit:
 - Complete Form 8936 (Clean Vehicle Credits)
 - Report the credit as follows:
 - Individuals:
 - Report on Schedule 3 (Form 1040), line 6F
 - Businesses:
 - Partnerships and S Corporations report on Schedule K
 - All others, report on Form 3800 (General Business Credit)

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Credit for New Clean Vehicles

Outline: section E

- Transferring the Credit to the Dealer
 - General: Beginning January 1, 2024, buyers who *intend to use the vehicle predominantly for personal use* can choose to transfer their entire (not partial) new clean vehicle credit to the dealer
 - In this case, the dealer will receive an advance payment of the credit from the government instead of claiming the credit on the dealer's tax return
 - Effect: will reduce the purchase price of the vehicle
 - Risk: if a taxpayer transfers the credit to the dealer and, upon filing Form 1040 for the year discovers that the taxpayer exceeded the income limitation, the taxpayer must repay the credit to the IRS
 - Benefit: if the credit exceeds the buyer's tax liability for the year, the excess is not recaptured even though the credit is nonrefundable
 - Reporting: Buyers who transfer the credit to the dealer still must complete Form 8936 to report the transfer

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Credit for New Clean Vehicles

Outline: section E

- Transferring the Credit to the Dealer (cont'd)
 - At the time of sale, the dealer must provide the buyer with:
 - A written disclosure under penalty of perjury with the following information:
 - The MSRP of the new clean vehicle
 - The maximum amount of the credit allowable and any other incentive available for the purchase of such vehicle
 - The amount provided by the dealer to the buyer as a condition of the buyer making the transfer election
 - The MAGI limitations
 - A seller report that the dealer submits to the IRS
 - Buyer should obtain proof of successful submission to the IRS
 - If the seller report is not accepted by the IRS, the buyer cannot claim the credit

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Credit for Previously-Owned Clean Vehicles

Outline: section E

- The Inflation Reduction Act (August 2022) added Code § 25E, which authorizes a credit for previously-owned clean vehicles
- Only individuals qualify for the credit (not business entities)
- The credit is nonrefundable and any excess credit cannot be carried forward
- The buyer must be a qualified buyer, which means the taxpayer:
 - Is an individual
 - Who purchases the vehicle for use and not for resale
 - Who cannot be claimed as a dependent on another person's return, and
 - Who has not been allowed the credit for any sale during the 3-year period ending on the date of sale.

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Credit for Previously-Owned Clean Vehicles

Outline: section E

- Amount of the credit:
 - The credit is the lesser of:
 - \$4,000, or
 - 30% of the sale price of the vehicle
 - Note: this is the actual negotiated price of the vehicle since there is no MSRP for a used vehicle

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Credit for Previously-Owned Clean Vehicles

Outline: section E

- Limits on the credit:
 - Maximum credit is \$4,000
 - Income limitations:
 - The credit is eliminated (not phased out) if modified adjusted gross income (MAGI) exceeds certain thresholds:
 - MFJ: \$150,000
 - Head of household: \$112,500
 - All other taxpayers: \$75,000
 - The taxpayer can use the lesser of MAGI for the year the credit is taken or MAGI for the preceding year
 - Note: the credit is disallowed if the taxpayer can be claimed as a dependent by another person.

These figures are one-half of the figures for the credit for new clean vehicles

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Credit for Previously-Owned Clean Vehicles

Outline: section E

- Limits on the credit (cont'd):
 - Price limitation:
 - The credit is available only if the sale price does not exceed \$25,000
 - The sale price of a previously-owned clean vehicle means the total sale price agreed upon by the buyer and seller in a written contract at the time of sale, including any delivery charges and after the application of any incentives
 - The sale price does not include:
 - Separately-stated taxes and fees required by State or local law
 - Separate financing
 - Extended warranties
 - Insurance
 - The sale price of a previously-owned clean vehicle is determined before the application of any trade-in value.

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Credit for Previously-Owned Clean Vehicles

Outline: section E

- Qualifying vehicles:
 - To qualify for the credit, the vehicle must be acquired on or after January 1, 2023, and meet all of the following requirements:
 - The model year of the vehicle is at least 2 years earlier than the calendar year in which a taxpayer acquires the vehicle
 - The purchasing taxpayer is not the original user of the vehicle
 - Is acquired from a dealer (thus private sales are not credit-eligible)
 - Is the first transfer of the vehicle since August 16, 2022 (other than to the original owner) to a qualified buyer (should check vehicle's transfer history)
 - Is made by a qualified manufacturer (check IRS index)
 - Has a gross vehicle weight of less than 14,000 pounds
 - Is powered to a significant extent by an electric motor with a battery capacity of 7 kilowatt hours or more and must be capable of being recharged from an external source of electricity (i.e., must be a plug-in vehicle)


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Credit for Previously-Owned Clean Vehicles

Outline: section E

- Qualifying vehicles:
 - The easiest way to determine if a vehicle qualifies for the previously-owned clean vehicle credit is to use the Department of Energy's website:
 - <https://fueleconomy.gov/feg/taxused.shtml>

Federal Tax Credits for Pre-owned Plug-in Electric and Fuel Cell Vehicles

Make	Model	Model Year	Vehicle Type
BMW			
	330e	2016–2018, 2021	PHEV
	330e xDrive	2021	PHEV
	530e	2018–2021	PHEV
	530e xDrive	2018–2021	PHEV
	745e xDrive	2020–2021	PHEV
	i3 Sedan	2014–2021	EV

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Credit for Previously-Owned Clean Vehicles

Outline: section E

- Reporting:
 - To claim the credit:
 - Complete Form 8936 (Clean Vehicle Credits)
 - Report the credit as follows:
 - Individuals:
 - Report on Schedule 3 (Form 1040), line 6F

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Credit for Previously-Owned Clean Vehicles

Outline: section E

- Transferring the Credit to the Dealer
 - General: Beginning January 1, 2024, buyers who *intend to use the vehicle predominantly for personal use* can choose to transfer their entire (not partial) previously-owned clean vehicle credit to the dealer
 - The dealer will receive an advance payment of the credit from the government instead of claiming the credit on its return
 - Effect: will reduce the purchase price of the vehicle
 - Risk: if a taxpayer transfers the credit to the dealer and, upon filing Form 1040 for the year discovers that the taxpayer exceeded the income limitation, the taxpayer must repay the credit to the IRS
 - Benefit: if the credit exceeds the buyer's tax liability for the year, the excess is not recaptured even though the credit is nonrefundable
 - Reporting: Buyers who transfer the credit to the dealer still must complete Form 8936 to report the transfer

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Credit for Previously-Owned Clean Vehicles

Outline: section E

- Transferring the Credit to the Dealer (cont'd)
 - At the time of sale, the dealer must provide the buyer with:
 - A written disclosure under penalty of perjury with the following information:
 - The sale price of the previously-owned clean vehicle
 - The maximum amount of the credit allowable and any other incentive available for the purchase of such vehicle
 - The amount provided by the dealer to the buyer as a condition of the buyer making the transfer election
 - The MAGI limitations
 - The model year of the vehicle is at least two years prior to the calendar year of sale
 - The transfer is the first transfer of the vehicle since August 16, 2022, to a person other than the original owner
 - A seller report that the dealer submits to the IRS
 - Buyer should obtain proof of successful submission to the IRS

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