



July 19, 2022-No. 2022-14

PPC's Five-Minute Tax Briefing

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**Highlights**

**OIC Rejected on File Closure Date:** If an Offer in Compromise (OIC) is not rejected within 24 months of submission, it is "deemed to be accepted" under [IRC Sec. 7122\(f\)](#). In April 2018, at the outset of a Collection Due Process (CDP) hearing, Mr. Brown submitted an OIC related to his \$50 million tax liability. In November 2018, the IRS closed the OIC file and returned it to Mr. Brown because "[o]ther investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted." In August 2020, the IRS issued a notice of determination sustaining the collection action. Mr. Brown filed a motion for summary judgment contending that his OIC was deemed accepted based on the date of the notice of determination. The Tax Court ruled that the OIC was rejected correctly by the IRS based on the date the file was closed. *Michael Brown*, [158 TC No. 9](#) (Tax Ct.).

**Proposed Regulations under IRC Sec. 1256:** The IRS has released proposed regulations (REG-130675-17) that define the term *foreign currency contract* under [IRC Sec. 1256](#) to include only foreign currency forward contracts. These proposed regulations do not change the status of foreign currency options that otherwise qualify as [Section 1256](#) contracts, and they do not define the term *forward contract*. For purposes of these proposed regulations, whether a derivative contract is properly characterized as a forward contract for U.S. federal income tax purposes is determined under current law. In addition, the IRS may consider applying existing anti-abuse rules and judicial doctrines to a contract and any related transactions in order to evaluate whether a transaction is properly characterized as a forward contract or whether a transaction characterized as some other type of

derivative contract should be treated as a forward contract. [Prop. Reg. 1.1256\(g\)-2](#) .

**Simplified Method for Extension of Portability Election:**Following intensive work during the past several months, the IRS announced that processing on a key group of individual tax returns filed during 2021 will be completed soon. Due to issues related to the pandemic and staffing limitations, the IRS began 2022 with a larger-than-usual inventory of paper tax returns and correspondence filed during 2021. The IRS took a number of steps to address this, and the agency is on track to complete processing of originally filed Form 1040 (individual tax returns without errors) received in 2021 this week. Business paper returns filed in 2021 will follow shortly after. The IRS continues to work on the few remaining individual tax returns filed in 2021 that have processing issues or require additional information from the taxpayer. [News Release IR 2022-128](#) .

**Supreme Court to Review Non-willful FBAR Penalty Case:**The IRS has provided a simplified method for certain taxpayers to obtain an extension of time to file a return on or before the fifth anniversary of the decedent's death to make a portability election under [IRC Sec. 2010\(c\)\(5\)\(A\)](#) . For purposes of federal estate and gift taxes, a portability election allows a Deceased Spousal Unused Exclusion (DSUE) amount to become available for application to the surviving spouse's subsequent transfers during life or at death. This simplified method applies to estates that are not normally required to file an estate tax return because the value of the gross estate and adjusted taxable gifts is under the filing threshold in [IRC Sec. 6018\(a\)](#) and is to be used in lieu of the letter ruling process. No user fee is required. [Rev. Proc. 2022-32](#) , superseding [Rev. Proc. 2017-34](#) .

## Other Current Releases

**Bankruptcy-Tax Claim Not Secured:**The IRS imposes a lien under [IRC Sec. 6321](#) for unpaid taxes on a delinquent taxpayer's property if the taxpayer fails to pay taxes. For the lien to attach to the debtor's property and secure the IRS' claim against the debtor, the IRS must file a Notice of Federal Tax Lien with the county where the taxpayer's residence is located. In *Stephenson* , the bankruptcy court determined that the IRS filed the tax lien against the taxpayer in the wrong county. The debtor in this case moved around often and used her mother's address on her tax return for convenience. The court found no legal support for filing the lien in her mother's county when there was no evidence that the taxpayer resided in her mother's home. Since the IRS did not properly file a lien against the debtor, the lien did not attach to the debtor's property. *Stephenson*, 129 AFTR 2022-2165 (Bkcty Ct TN).

**Employment Tax-Trust Fund Recovery Penalty Liability Not Eligible for Relief:** Corporate officers, Angela Chavis and her husband, withheld payroll taxes from their employees' wages but did not pay

those taxes over to the government. Failure to pay those taxes generated a Letter 1153, Notice of Trust Fund Recovery Penalty (TFRP), under [IRC Sec. 6672](#) , and Ms. Chavis did not protest the notice. During the Collection Due Process (CDP) hearing, Ms. Chavis challenged the liability amount and then requested innocent spouse relief under [IRC Sec. 6015](#) . The Tax Court agreed with the IRS appeals officer that Ms. Chavis's challenge was correctly denied because she did not protest the TFRP liability when she received the Letter 1153. She also was correctly denied innocent spouse relief because her TFRP liability did not arise from any liability shown on a joint federal income tax return. *Angela Chavis*, [158 TC No. 8](#) (Tax Ct.).

**Income Tax-Toyota Electric Vehicle Credit Phaseout:** Toyota is the latest auto manufacturer to sell enough plug-in electric vehicles to trigger a gradual phaseout of federal tax incentives for specified models sold in the U.S. In its U.S. sales report for the first half of 2022, Toyota Motor North America reported selling over 200,000 electric vehicles. The credit, provided by [IRC Sec. 30D](#) , is worth up to \$7,500 for purchasers of eligible vehicles but is reduced by half every six months starting two quarters after a company crosses the sales threshold. The IRS tracks the credit amounts for each vehicle make and model year that qualifies for the credit. The page was last updated in May and has not reflected that Toyota has sold over 200,000 electric vehicles. However, it has been confirmed by Toyota that beginning in October the credit will be \$3,750. For more information on the electric vehicle credit, go to [www.irs.gov/businesses/irc-30d-new-qualified-plug-in-electric-drive-motor-vehicle-credit](http://www.irs.gov/businesses/irc-30d-new-qualified-plug-in-electric-drive-motor-vehicle-credit) .

**Procedure-IRS Summons Correctly Not Quashed:** The IRS is barred from issuing a summons with respect to any person if a Justice Department (criminal) referral is in effect with respect to such persons under [IRC Sec. 7602\(d\)\(1\)](#) . The IRS issued a summons for information to Equity Investment Associates, LLC regarding a \$223 million deduction for a conservation easement. Equity sought to quash that summons, arguing that an existing criminal referral for its lone agent, Jack Fisher, must be treated as a referral for Equity itself. The district court rejected this argument because it held that a business entity is a distinct person from its agents. The Appeals court affirmed the federal district court's decision because the court only looks to whether the taxpayer itself (Equity, in this case) has been referred to the Justice Department; therefore, Equity cannot quash the summons. *Equity Investment Associates, LLC*, 130 AFTR 2d 2022-XXXX (CA 4).

**Procedure-Tax Relief for Victims of Severe Storms in Montana:** The IRS has provided tax relief for those affected by severe storms and flooding that took place starting on 6/10/22 in Carbon, Park, and Stillwater counties in Montana. The relief postpones various tax filing and payment deadlines that occurred beginning on 6/10/22. Affected individuals and businesses now have until 10/17/22 to file returns and pay any taxes that were originally due during the relief period. This includes all returns normally due on or after 6/10/22 and before 10/17/22 including (1) quarterly estimated income tax payments; (2) quarterly payroll and excise tax returns; (3) calendar-year 2021 returns for tax-exempt

organizations; and (4) extended calendar-year 2021 business returns. In addition, penalties on payroll and excise tax deposits due on or after 6/10/22 and before 6/27/22 will be abated, as long as the deposits were made by 6/27/22. News Release MT-2022-01.

**Procedure-Tax Relief for Victims of Severe Storms in Oklahoma:**The IRS has provided tax relief for those affected by severe storms, tornadoes and flooding that took place starting on 5/2/22 in Adair, Cherokee, Muskogee, Okmulgee, Pottawatomie, Seminole, and Tulsa counties in Oklahoma. The relief postpones various tax filing and payment deadlines that occurred beginning on 5/2/22. Affected individuals and businesses now have until 9/1/22 to file returns and pay any taxes that were originally due during the relief period. This includes all returns normally due on or after 5/2/22 and before 9/1/22 including (1) quarterly estimated income tax payments; (2) quarterly payroll and excise tax returns; and (3) calendar-year 2021 returns for tax-exempt organizations. In addition, penalties on payroll and excise tax deposits due on or after 5/2/22 and before 5/17/22 will be abated, as long as the deposits were made by 5/17/22. News Release OK-2022-02.

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