



Tax News & Views

Health care edition

Direct Pay Election: Proposed and Temporary Regulations Issued

The Inflation Reduction Act of 2022 (P.L. 117-169) (IRA) includes significant sustainability-related tax provisions as well as changes to credit eligibility requirements and new options for credit utilization. Prior to the IRA, entities not subject to tax were faced with needing unrelated business income as well as complex structuring or matching to avail themselves of many general business credits. Now, under the IRA, a direct pay option is available for applicable entities and may be used to monetize credits. On June 14, 2023, the IRS and Treasury released proposed regulations (REG-101607-23) under IRC section 6417 (the "Proposed Regulations"). In addition, the IRS and Treasury issued temporary regulations (T.D. 9975) setting forth mandatory information and registration requirements for direct-payment elections (the "Temporary Regulations").

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Direct Pay Election: Proposed and Temporary Regulations Issued

Supreme Court to Hear Challenge to IRC section 965 Transition Tax

House Introduces the American Confidence in Elections Act

Did you know?

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Generally, a direct-payment election may be made by any applicable entity. The Proposed Regulations provide that an “applicable entity” includes, but is not limited to, section 501(a) tax-exempt organizations, governments of any U.S. territory, State, the District of Columbia, Indian tribal governments, or any political subdivision, agency or instrumentality thereof. Agencies and instrumentalities of the United States are not defined as applicable entities. The Proposed Regulations also provide that nonprofits under State law that do not have federal tax-exempt status are not applicable entities.

With respect to applicable entities, the amount of any applicable credit is determined without regard to certain governmental and tax-exempt use restrictions and by treating any property as used in a trade or business of the applicable entity. This rule allows applicable entities to take advantage of applicable credits outside of the unrelated business taxable income context, apply the capitalization and depreciation rules, and subject general limitations on the use of credits. The preamble also states that the rules do not create any presumption that the trade or business is related or unrelated to an exempt organization’s exempt purpose.

A direct-payment election is made on the applicable entity or electing taxpayer’s original return for the taxable year in which the applicable credit is determined but only after a registration number has been obtained pursuant to pre-filing registration requirements. This return must be filed not later than the due date (including extensions). For entities not required to file income tax returns, the direct-payment election must be made by the 15th day of the fifth month after the entity’s taxable year unless an additional six-month extension of time is granted pursuant to additional guidance that has not yet been published. The direct-payment election cannot be made on an amended return or by filing an administrative adjustment request under Internal Revenue Code (IRC) section 6227. There is no late-election relief available under IRC section 9100.

Supreme Court to Hear Challenge to IRC section 965 Transition Tax

As part of the Tax Cuts and Jobs Act of 2017, Congress enacted the section 965 transition tax. In general, section 965 required U.S. shareholders to pay a one-time transition tax on the untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the U.S. The section 965 tax liability was generally applicable in the 2017 and/or 2018 tax years. However, taxpayers could elect to pay their section 965 tax liability in eight yearly installments. On June 26, 2023, the Supreme Court has agreed to hear a constitutional challenge to the IRC section 965 transition tax. *Moore v. United States*, No. 22-800, (36 F.4th 930 (9th Cir. 2022)), cert. granted (U.S. June 26, 2023). In the case, the taxpayers argue that IRC section 965 violates the Apportionment Clause of the Constitution. While uncertain, it is possible the

Supreme Court’s decision could also impact other international IRC provisions, including Global Intangible Low-Taxed Income (GILTI), Subpart F, passive foreign investment company (PFIC), and mark-to-market rules. If the Supreme Court invalidates the IRC section 965 transition tax, taxpayers may be entitled to a refund of such tax if the applicable refund statute of limitations remains open.

House Introduces the American Confidence in Elections Act

On July 11, 2023, House Representative Ryan Steil introduced the American Confidence in Elections (“ACE”) Act (H.R. 4563), which includes a number of provisions that will strengthen election integrity and restrict oversight of tax-exempt organizations by limited donor disclosure. Specifically, the ACE Act would raise from \$5,000 to \$50,000 the gross receipts threshold for filing Form 990, Return of Organization Exempt from Income Tax; prohibit an IRC section 501(c)(3) organization from directly funding a state or local government office that administers elections; and prohibit Treasury and the IRS from publishing new or revised guidance on IRC section 501(c)(4) social welfare organizations.

Did you know?

Form 8986 Reporting Partner’s Share of Adjustments Due September 15

The Bipartisan Budget Act of 2015 (“BBA”) requires partnerships to follow certain filing requirements and allows the IRS to collect any understatement of tax at the partnership level (imputed underpayment or IU) or elect to “push out” the adjustments to the partners on Form 8986. Partnerships, S corporations, nongrantor trusts, and decedents’ estates (“Passthrough Partners”) that receive a Form 8986 generally must either “push out” the adjustments included on the Form 8986 or become liable for an imputed underpayment based on the adjustments. BBA partnerships furnish partners Form 8986 when adjustments are made to a prior year return because of an IRS audit, or an Administrative Adjustment Request and the BBA partnerships has elected to push out the adjustments. For partnerships with an adjustment year ending on December 31, 2022, the “push out or pay date” is September 15, 2023, the extended due date of the partnership’s adjustment year return.

Latest on Tax law changes

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Technology, Media & Telecommunications

OECD Pillar Two: Transforming the financial close and consolidation process for MNEs

July 27 | 1 p.m. ET | 17 GMT

The Organization for Economic Cooperation and Development (OECD) projects that the Pillar Two global minimum tax will net more than \$220 billion annually from nearly 8,000 multinational companies. This new tax requires more than 150 new data points and an additional level of account at most local levels. Tax, Finance, IT, and Operations will need to work together to satisfy Pillar Two requirements in advance of Q1 2024 reporting. Participants will be able to identify Pillar Two readiness and financial reporting requirements for their organization.

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