

2022 Post-Filing Season Update

April 21, 2022

Highlights

- ✓ IRS Partially Clears Pandemic-Related Backlog
- ✓ Potential Bipartisan Legislation
- ✓ Important Guidance on Retirement Plans
- ✓ Guidance on Schedules K-2 and K-3 Offers Some Relief

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IRS Catching Up, Legislation on the Horizon

For the first time since 2019, the tax filing season has come to an end at the time prescribed by the Internal Revenue Code. Due to the COVID-19 pandemic, the filing deadline in 2020 was extended to mid-July, and to mid-May in 2021. However, with the busy filing period now behind us, it is helpful to look back and the most impactful tax events from the first part of the year.

The filing season for the 2021 tax year was more about what the Internal Revenue Service was doing to address issues caused by the COVID-19 pandemic, particularly the backlog of unprocessed paper returns and other correspondence, than it was about pushing new guidance or addressing issues directly related to the pandemic. For the first Spring since 2019, Congress was relatively quiet, leaving the agency to focus on that backlog over pushing new guidance for taxpayers and preparers for the season. And for now, it seems to be working as Commissioner Charles Rettig has stated the backlog should be reduced to “normal” levels by the end of calendar year 2022.

That said, the groundwork is being laid for some potential legislation coming down the pike. In particular, it looks like there will be changes forthcoming to rules governing retirement savings. The House passed its version of the “SECURE Act 2.0” with a near unanimous vote and the Senate is expected to take it up later this year.

Another thing to keep an eye out for is the fiscal year 2023 budget. The White House has put its request to Congress in, but as history has shown, what the White House asks for and what the White House gets are usually two very different things. But it is still important to see what the executive branch’s priorities are, as individual provisions could end up in other legislation at some point down the line, although the outcome of the mid-term elections could have a dramatic impact on that.

PROPOSED LEGISLATION

Securing a Strong Retirement Act of 2022

Although it does not affect the 2022 tax filing season, the progress of the Securing a Strong Retirement Act of 2022 during that time is worth noting as it received near bipartisan support in the House of Representatives (passing by a 414-5 vote) and is expected to move past the Senate later this year. Additionally, the bill could present opportunities for retirement planning and



savings that can be implemented at the time of passage, so it is important to keep an eye on it.

The Securing a Strong Retirement Act of 2022, known as SECURE Act 2.0, is designed to build upon the provisions of the original SECURE Act from 2019 and further ensure that more Americans can save for retirement and increase the amount they are able to save. The bill does this by expanding upon automatic enrollment programs, helping to ensure that small employers can easily and efficiently sponsor plans for employees, and enhancing various credits to make saving for retirement beneficial to both plan participants and plan sponsors. The bill also improves various investment options for plan participants, streamlines plan administration for plan fiduciaries, and makes important changes to required minimum distributions that will help retirees with plan selections and decisions that will enhance their ability to make better use of their retirement savings.

“Commissioner Charles Rettig has stated the backlog should be reduced to ‘normal’ levels by the end of calendar year 2022.”

The final details of the bill still need to be worked out as it is unknown whether the Senate will take up the House-passed version or vote on their own version, which could alter the final provisions.

 **COMMENT.** *You can find in-depth coverage of the proposed changes in the Securing a Strong Retirement Act of 2022 on CCH® AnswerConnect.*

Fiscal Year 2023 Budget

Much like the stalled Build Back Better Act, the White House signaled it wants higher income individuals to pay more in taxes, with adjustments to the marginal tax rate for those individuals as well as changes to long-term capital gains. The proposed budget also calls for an increase in the corporate tax rate and a few other tax changes, while upping the Treasury budget by 20 percent to facilitate improving customer service as well as ramping up enforcement activities targeting high earners and closing the tax gap.

DEVELOPMENTS FOR INDIVIDUALS

Educator Expense Deduction

Late in 2021, the IRS released inflation adjusted amounts for the 2022 tax year (Rev. Proc. 2021-45). This included an increased educator expense deduction; the first increase in that amount since the deduction was created in 2002. For 2022, educators are allowed to deduct up to \$300 of out-of-pocket expenses. For educators who are married and filing a joint return, the deduction rises to \$600, but at a maximum of \$300 per spouse. Eligible educators include anyone who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during the school year. Both public- and private-school educators qualify. Educators can deduct the unreimbursed cost of books, supplies, and other materials used in the classroom; equipment, including computer equipment, software, and services; COVID-19 protective items to stop the spread of the disease in the classroom; and professional development courses related to the curriculum they teach or the students they teach.

 **COMMENT.** *As this is the first time the limitation on the deduction has ever been increased, it would be helpful to advise clients who are educators of the increase, especially before buying supplies during the Summer in preparation for the 2022-2023 school year.*

Addressing Missing Economic Impact Payments

The IRS issued guidance for those who are missing Economic Impact Payments (EIPs) (IRS-2022-72). The agency reminded taxpayers to accurately claim any remaining third-round stimulus payment on their 2021 tax returns as the 2021 Recovery Rebate Credit (RRC). The IRS announced the completion of special mailings of all Letters 6475, Economic Impact Payment (EIP) to recipients of third-round of Economic Impact Payments. As required by law, the IRS is no longer issuing first-, second- or third-round EIPs. Individuals who are missing a stimulus payment or received less than the full amount may be eligible to claim an RRC on their 2020 or 2021 federal tax return. Most eligible individuals already received the full amount of their credit in advance and don't need to include any information about this payment when they file their 2021 tax return. Individuals may securely access their IRS Online Account to view

the total amount of the third-round Economic Impact Payment issued to them. Married individuals filing a joint return will each need to log into their own Online Account or check their Letter 6475.

 **COMMENT.** *For most individuals, the time to claim any missing EIPs on an original return has passed. However, there is still time to file an amended 2020 return for unclaimed first- or second-round EIPs, as well as an amended 2021 return for the third-round payments.*

Crowdfunding

The IRS stated that a crowdfunding website or its payment processor may be required to report distributions of money raised if the amount distributed meets certain reporting thresholds by filing Form 1099-K, Payment Card and Third Party Network Transactions (FS-2022-20). If Form 1099-K was required to be filed, the crowdfunding website or its payment processor must also furnish a copy of that form to the taxpayer to whom the distributions are made. Prior to 2022, the threshold for a crowdfunding website or payment processor to file and furnish a Form 1099-K was met if, during a calendar year, the total of all payments distributed to a person exceeded \$20,000 in gross payments resulting from more than 200 transactions or donations. For calendar years beginning after December 31, 2021, the threshold is lowered and is met if, during a calendar year, the total of all payments distributed to a taxpayer exceeded \$600 in gross payments, regardless of the number of transactions or donations. The American Rescue Plan Act of 2021 clarified that the crowdfunding website or its payment processor was not required to file Form 1099-K with the IRS or furnish it to the person to whom the distributions are made if the contributors to the crowdfunding campaign do not receive goods or services for their contributions.

Secure Act RMD Requirements

The IRS issued proposed regulations that would implement the required minimum distribution (RMD) changes made by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) (NPRM REG-105954-20). The proposed regulations would generally apply to calendar years beginning on or after January 1, 2022. For 2021 distribution calendar year, taxpayers must apply the existing regulations, but take into account a reasonable, good faith interpretation of the SECURE Act changes. Compliance with the proposed regulations satisfies the requirement to take into account SECURE Act changes.

The proposed regulations provide a number of changes, including:

- that if an employee in a plan who dies before the SECURE Act effective date has more than one designated beneficiary, whether the SECURE Act changes apply turns on the on when the oldest of those beneficiaries dies;
- that for ease of administration, the SECURE Act's effective date language applies to an employee who died before attaining age 70 ½ if the employee would have attained age 70 ½ on or after January 1, 2020;
- that a child of the employee reaches the age of majority on that child's 21st birthday for purposes of determining eligible designated beneficiary status; and
- that if the employee has a designated beneficiary who is an eligible designated beneficiary, the plan may provide either that the 10-year rule applies or that the life expectancy payments rule applies.

Payments from Individual Retirement Accounts

The IRS has provided guidance on whether a series of payments from an individual account under a qualified retirement plan is considered a series of substantially equal periodic payments within the meaning of Code Sec. 72(t)(2)(A)(iv) (Notice 2022-6). The guidance applies for purposes of determining whether a distribution from a non-qualified annuity contract is part of a series of substantially equal periodic payments within the meaning of Code Sec. 72(q)(2)(D).

Payments in a series are considered substantially equal periodic payments within the meaning of Code Sec. 72(t)(2)(A)(iv) if they are determined in accordance with one of the following three methods:

- *The required minimum distribution method.* The annual payment for each distribution year is determined by dividing the account balance for that distribution year by the number of years from the chosen life expectancy table for that distribution year. Under this method, the account balance, the number of years from the chosen life expectancy table, and the resulting annual payments are redetermined for each distribution year. This redetermination of the annual payment is not considered a modification of the series of substantially equal periodic payments, provided that the required minimum distribution method continues to be used and the same life expectancy tables continue to be used, except to the extent required in the notice.
- *The fixed amortization method.* The annual payment for each distribution year is determined as the amount that will result in the level amortization of the account balance over a specified number of years determined using

the chosen life expectancy table under the notice and an interest rate that is permitted pursuant to the notice.

- *The fixed annuitization method.* The annual payment for each distribution year is determined by dividing the account balance by an annuity factor that is the present value of an annuity of \$1 per year beginning at the employee's age and continuing for the life of the employee (or the joint lives of the employee and designated beneficiary).

Taxpayers may use one of the methods above to determine whether a distribution from a non-qualified annuity contract is part of a series of substantially equal periodic payments under Code Sec. 72(q)(2)(D). The guidance is applicable for any series of payments commencing on or after January 1, 2023, and it may be used for a series of payments commencing in 2022.

DEVELOPMENTS FOR BUSINESSES

Schedules K-2 and K-3

The IRS has provided further details on additional transition relief for certain domestic partnerships and S corporations preparing the new schedules K-2 and K-3 to further ease the transition to these new schedules (Notice 2021-39). Those eligible for the relief did not have to file the new schedules for tax year 2021. The new schedules K-2 and K-3 improve reporting by standardizing international tax information to partners and flowthrough investors, making it easier for them to report these items on their tax returns. The changes ease flow-through return preparation compliance by clarifying obligations and standardizing the format for reporting. Penalty relief for good-faith efforts to adopt new schemes is also provided. This transition relief, appearing in the new frequently asked questions (FAQs) on Schedules K-2 and K-3, allows an additional exception for the tax year 2021 filing requirements by certain domestic partnerships and S corporations.

The following conditions must be met to qualify for this exception:

- In tax year 2021, the direct partners in the domestic partnership are not foreign partnerships, foreign corporations, foreign individuals, foreign estates, or foreign trusts.
- In tax year 2021, the domestic partnership or S corporation had no foreign activity, including foreign taxes paid or accrued or ownership of assets that generate, have generated, or may reasonably be expected to generate foreign source income.
- In tax year 2020, the domestic partnership or S corporation did not provide to its partners or

shareholders nor did the partners or shareholders request the information regarding (on the form or attachments thereto): (1) Line 16, Form 1065, Schedules K and K-1 (line 14 for Form 1120-S), and (2) Line 20c, Form 1065, Schedules K and K-1 (Controlled Foreign Corporations, Passive Foreign Investment Companies, 1120-F, Code Sec. 250, Code Sec. 864(c)(8), Code Sec. 721(c) partnerships, and Code Sec. 7874) (line 17d for Form 1120-S).

- The domestic partnership or S corporation has no knowledge that the partners or shareholders are requesting such information for tax year 2021. If a partnership or S corporation qualifies for this exception, the domestic partnership or S corporation need not file Schedules K-2 and K-3 with the IRS or with its partners or shareholders. However, if the partnership or S corporation is subsequently notified by a partner or shareholder that all or part of the information contained on Schedule K-3 is needed to complete its tax return, then the partnership or S corporation must provide the information to the partner or shareholder. If a partner or shareholder notifies the partnership or S corporation before the partnership or S corporation files its return, the conditions for the exception are not met and the partnership or S corporation must provide the Schedule K-3 to the partner or shareholder and file the Schedules K-2 and K-3 with the IRS.

Notices of Employment Tax Determination

The IRS has provided guidance on when and how it will issue a notice of employment tax determination under Code Sec. 7436, and how taxpayers petition for Tax Court review of certain IRS determinations under Code Sec. 7436 (Rev. Proc. 2022-13). Under the guidance, the IRS will issue a Section 7436 notice as part of an audit if one or both of the following determinations is made and there is a controversy regarding the determination:

- (1) one or more individuals performing services for the taxpayer are to be reclassified as employees for federal employment tax purposes; or
- (2) the taxpayer is not entitled to "section 530" relief.

Even if a Section 7436 notice is not issued, a taxpayer can petition the Tax Court on an IRS determination on worker reclassification or "section 530" relief to the extent that the determination meets the requirements set forth in Tax Court opinions as explained in the guidance. Other determinations by the IRS in connection with proposing employment tax adjustments are not subject to review by the Tax Court. This revenue procedure is effective on February 7, 2022.