



# Current Federal Tax Developments

February 20, 2023

Kaplan Financial Education



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## This Week We Look At:

IRS announces program to accept upload of documents in response to some, but not all, notices to taxpayers

SECURE 2.0 Section 603 drafting glitch puts catch-up contributions at risk for 2024 as various parties push to get a fix

IRS will not automatically challenge §199A deduction for cannabis businesses-but W-2 wage problems may get in the way

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## IRS Adds Upload Options for Responses to Some (But Not All) Notices



- “Taxpayers can now upload more documents to IRS; new online option for 9 notices can help resolve issues faster,” IRS News Release IR-2023-29, 2/16/23
- “IRS expands secure digital correspondence for taxpayers,” IRS Fact Sheet FS-2023-05, February 2023
  - Provides a limited option to upload information to the IRS for certain notices

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IRS News Release:

<https://www.irs.gov/newsroom/irs-expands-secure-digital-correspondence-for-taxpayers>

IRS Fact Sheet:

<https://www.irs.gov/newsroom/irs-expands-secure-digital-correspondence-for-taxpayers>



## Fact Sheet 2023-05

FS-2023-05, February 2023

The Internal Revenue Service is applying technology to provide a more efficient way for taxpayers or their tax professional to submit requested documentation online instead of mailing it to the IRS.

To help people understand this new feature, the IRS is providing additional details about this important new time-saving initiative.

The IRS Document Upload Tool enables digital correspondence with the taxpayer by providing a URL and a time-limited unique access code to a specific taxpayer so they can upload their documents to the IRS. Access originates with the IRS, and it isn't available for certain documents, such as those requiring physical signatures.



## Fact Sheet 2023-05

### Nine notices added to project; more to come

In early 2023, the IRS began including online correspondence as an option on nine of the CP series notices, potentially affecting more than 500,000 taxpayers each year. Taxpayers who receive one of the following notices with the link and access code can choose to upload their documents:

- [CP04](#), relating to combat zone status.
- [CP05A](#), information request related to a refund.
- [CP06](#) and [CP06A](#), relating to the Premium Tax Credit.
- [CP08](#), relating to the Child Tax Credit.
- [CP09](#), relating to claiming the Earned Income Tax Credit.
- [CP75](#), relating to the EITC.
- [CP75A](#), relating to the EITC.
- [CP75D](#), relating to the EITC and other credits.

In addition, the IRS has identified 53 other notices that could be appropriate for this type of secure digital communications. The IRS will be assessing the viability of including these notice as well as continuing to look for additional suitable notices to provide this online feature.

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## Fact Sheet 2023-05

### How the process works

Language on the notice informs the taxpayer to, "Send us your documents using the Documentation Upload Tool within 30 days from the date of this notice." It includes the link and a unique access code.

- The taxpayer can open the link in any browser and then input their unique code, their first and last name and their Social Security number, Individual Taxpayer Identification or Employee Identification number.
- The taxpayer can then securely upload scans, photos or digital copies of documents (maximum of 15MB per file, up to 40 files).
- The taxpayer receives a confirmation that the IRS received their documents, and the IRS employee assigned the case can manage the transmitted documents.



## Fact Sheet 2023-05

### **Benefits for taxpayers, tax administration**

The ability for taxpayers to securely communicate with the IRS reduces their correspondence burden, supports tax compliance and provides a means for immediate documentation delivery to the IRS. This aligns with the IRS's focus on the Taxpayer Bill of Rights by providing quality service in a timely manner and enhancing a taxpayer's right to be informed throughout any IRS processes.

For IRS employees, the Documentation Upload Tool reduces paper correspondence received and helps decrease processing time responding to taxpayer documentation, creating efficiency that helps the taxpayer.



## Fact Sheet 2023-05

### How the tool works

The IRS initiates taxpayer digital access by sending a notice with a link and unique access code.

Taxpayers must use the provided link, input the 10-digit alphanumeric code and provide their first and last name and one of these:

- Social Security number
- Individual Taxpayer Identification number
- Employee Identification number

They may then upload scans, photos or digital copies in JPEG, PNG or PDF format, with a maximum file size of 15 MB per file. The taxpayer may upload up to 40 JPEGs, PNGs or PDFs, with the latter limited to 120 pages, each.

The taxpayer's documents are available to the IRS employee assigned to the case and remain available indefinitely until the employee retrieves them, at which time they're archived for 180 days and then deleted from the system.





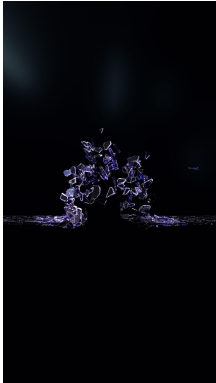
## Fact Sheet 2023-05

### Future plans

The IRS plans to expand this capability to additional notices and to live interactions with taxpayers, including those over the phone and in person. The goal is for IRS employees who have direct contact with taxpayers to be able to offer secure digital communications as an option wherever possible.



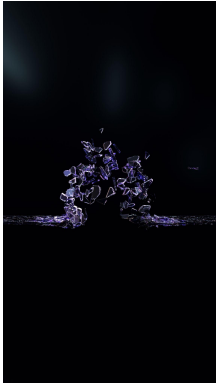
## SECURE Act 2.0 Drafting Error: No Catch-Up Contributions Beginning Next Year



- Caitlin Mullaney, "Response to SECURE 2.0 Catch-Up Contribution Error in Limbo," *Tax Notes Today*, February 16, 2023
  - Drafting error in Act Section 603 that was to require catch-up contributions be made in designated Roth accounts
  - Discovered by American Retirement Association, would eliminate catch-up contributions entirely beginning in 2024
  - Does this require a Congressional fix or could the IRS issue administrative guidance?



## SECURE Act 2.0 Drafting Error: No Catch-Up Contributions Beginning Next Year



- Caitlin Mullaney, "Response to SECURE 2.0 Catch-Up Contribution Error in Limbo," *Tax Notes Today*, February 16, 2023
  - Article notes that drafting errors are not that unusual in big bills (think about the qualified improvement property accidental 39 year life in TCJA)
  - One possible solution mentioned in the article would be to have Treasury issued guidance in anticipation of a legislative fix (as they did in Notice 2007-99)
  - But the problem is that there is no pending legislation or letter from key members of the taxwriting committees

See the *Bloomberg Tax* article "SECURE 2.0 Error Would Prohibit 401(k) Catch-up Contributions," by Austin R. Ramsey

<https://news.bloomberglaw.com/daily-labor-report/secure-2-0-error-would-prohibit-401k-catch-up-contributions> and

The *National Association of Plan Advisors* article "Major SECURE 2.0 Error Puts Catch-Ups in Jeopardy: ARA's Graff," by John Sullivan

<https://www.napa-net.org/news-info/daily-news/major-secure-20-error-puts-catch-ups-jeopardy-ara%E2%80%99s-graff>



## IRS Has Decided Not to Automatically Challenge §199A Deduction for Cannabis Operators



- Wesley Elmore, "ABA Section of Taxation Meeting: IRS Won't Challenge Passthrough Deduction for Cannabis Operators," *Tax Notes Today Federal*, February 14, 2023
  - A question that has arisen is whether the §199A deduction is barred under §280E for cannabis operators
  - Generally §280E bars most deductions and credits for business expenses of those trafficking in controlled substances
  - But does §199A fit the definition of what is barred in IRC §280E



## IRC §280E

No deduction or credit shall be allowed for any amount *paid or incurred* during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

IRC §280E

<https://www.taxnotes.com/research/federal/usc26/280E?highlight=280E>

## IRS Has Decided Not to Automatically Challenge §199A Deduction for Cannabis Operators



- Wesley Elmore, "ABA Section of Taxation Meeting: IRS Won't Challenge Passthrough Deduction for Cannabis Operators," *Tax Notes Today Federal*, February 14, 2023
  - Luke Ortner of the IRS Office of Chief Counsel (Small Business/Self-Employed) confirmed that the IRS will not automatically challenge this
  - However, W-2 wage limit may be a problem, as only deductible wages count in computing that limit
  - Thus, likely far more valuable to producers than retailers

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Reg. §1.199A-2(b)(4) which provides that W-2 wages must be used in computing QBI to be part of the limitation calculation

<https://www.taxnotes.com/research/federal/cfr26/1.199A-2/292gm-000044>

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