

June 26, 2023

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This Week We Look At:

IRS ends COVID-19 relief for high deductible health plans effective for plan years ending after 12/31/24

Taxpayer fails in attempt to get IRS permission to make a late §475(f) mark to market election

Taxpayer who filed Tax Court petition 11 seconds too late due to technology challenges has petition dismissed

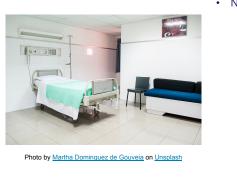
Sherlock Holmes on tax research

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IRS Ends COVID-19 Relief Related to HDHPs for Plan Years Ending After December 31, 2024



- Notice 2023-37, 6/23/23
 - HDHPs cannot provide benefits (aside from specified preventive care benefits) before insured meet their required deductibles
 - In Notice 2020-15, the IRS provided relief for what HDHPs could pay for before insured had met the minimum deductibles (COVID-19 testing and treatment)
 - Was announced due to the COVID-19 public health emergency

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https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/irs-announcesend-of-covid-19-expansion-of-definition-of-preventive-care-for-hdhps

IRS Ends COVID-19 Relief Related to HDHPs for Plan Years Ending After December 31, 2024



- On April 10, 2023 the PHE was ended when the President signed H.J. Res. 7
- Screenings for common and episodic illnesses (such as seasonal flu) are not considered preventive care and COVID-19 is labeled as the same type of screening
- However, if COVID-19 is added to "A" or "B" rating by the USPSTF, then would be covered
- New rules apply for years ending after Decemver 15, 2024

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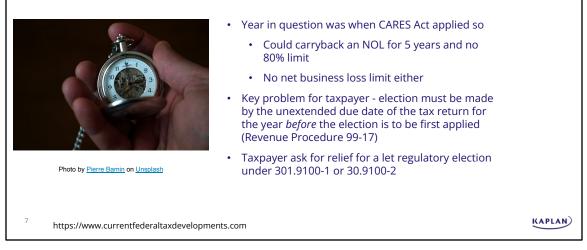
IRS Denied Request for Permission to Make a Late §475(f) Mark to Market Election



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IRS Denied Request for Permission to Make a Late §475(f) Mark to Market Election

To get relief must show:

- Taxpayer acted
 - Reasonably and
 - In good faith and
- Allowing a late election would not prejudice the interests of the government
- IRS found taxpayer could show neither

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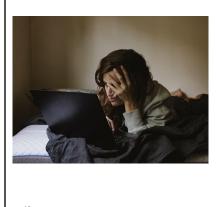
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IRS Denied Request for Permission to Make a Late §475(f) Mark to Market Election



Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- Sanders v. Commissioner, 160 TC No. 16, 6/20/23
 - Procrastination when technology is involved is tempting fate - and Mr. Sanders definitely did this
 - Just before 10:00 pm on the last day to file his petition he downloaded the PDF to fill in onto his smartphone
 - Around 11:00 pm he tried to file the petition from the phone but for 44 minutes he tried and failed to get the petition filed

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Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- Sanders v. Commissioner, 160 TC No. 16, 6/20/23
 - He was finally able to transfer files to his Windows computer and start trying to file from there shortly before midnight
 - At 11:56pm he tried and failed to log in to the site
 - At 11:57pm he managed to get in, but was slowed down by
 - Other steps in the process online and
 - Having to refer to the instructions

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https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/taxpayers-issu es-with-electronic-filing-of-tax-court-petition-not-sufficient-cause-to-excuse-filing-made-11-seconds-late

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Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- Sanders v. Commissioner, 160 TC No. 16, 6/20/23
 - General rule petition filed when received by the court
 - Earlier this year, the Tax Court put forward this proposition for electronic filing in the *Nutt* case
 - Only counts when the process is complete, not when the process was begun by the taxpayer

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Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- Sanders v. Commissioner, 160 TC No. 16, 6/20/23
 - Not equivalent to timely mailing under IRC §7502
 - While IRS allowed to write rules for electronic filing timely filing rules, only rules written are for filing of returns
 - There is no authorized electronic return transmitter for these filings
 - Even if those rules applied, his postmark would have been when return received by transmitter (so again in 12/13)

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Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
 - System was not inaccessible
 - If system was inaccessible, then additional time would have been allowed to file
 - DAWSON records made it clear others successfully completed the process at the same time Mr. Sanders tried
 - The problems were tied to his systems and lack of knowledge about the process
 - Court also noted that he made the choice to start this process at the last minute

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Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- Sanders v. Commissioner, 160 TC No. 16, 6/20/23
 - But it's not fair!
 - Congress does not allow the Tax Court to grant equitable relief on the filing date
 - In fact, relief passed for inaccessible location/system by Congress reinforces their view they did not authorize the Tax Court to provide equitable relief

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Key Tax Research Mistakes - Looking for Facts to Fit the Answer You Want

- Cases are especially susceptible to this issue
 - We ignore differences between the facts of cases we like and our client's actual situation (and our situation is always at least somewhat different)
 - We raise up the most minor difference between the facts of a case we don't like and our client's situation
- · Clients are best served when reason forward, not backward
 - Find the relevant authorities to address the question without coming to a conclusion about the possible answers
 - Determine answers that could be supported and how likely they would be to prevail

¹⁹ https://www.currentfederaltaxdevelopments.com

