

Current Federal Tax Developments

September 5, 2023

Kaplan Financial Education

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This Week We Look At:

HHS sends letter to DEA recommending that marijuana be reclassified as a Schedule III drug

General guidance issued determining tax status of 2023 state payments - and IRS asks for comments prior to giving additional guidance

IRS clarifies limits of 2007 CCA on ESBTs and NOLs

News release on electronic filing of Form 8300

2

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HHS Recommends Marijuana Be Reclassified as a Schedule III Drug



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- “US Health Officials Urge Moving Pot to Lower-Risk Tier,” Bloomberg, August 30, 2023
 - Letter issued August 29 to DEA head Anne Milgram recommending moving marijuana to Schedule III
 - DEA will initiate its own review
 - Only Schedule I and II drugs are subject to IRC §280E bar on deducting expenses aside from costs of sales
 - If this change is made, would completely change federal income taxation of cannabis businesses

3

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<https://www.bloomberg.com/news/articles/2023-08-30/hhs-calls-for-moving-marijuana-to-lower-risk-us-drug-category#xj4y7vzkg> (subscription required)

IRS Issues General Guidance on 2023 State Payments



Photo by [Alexander Grey](#) on [Unsplash](#)

- Notice 2023-56, August 30, 2023
 - IR-2023-23, issued in February, covered payments made in 2022
 - Certain states made similar payments in 2023 (though every state is at least somewhat different)
 - IRS decides to issue general guidance in this Notice
 - Does not give details about specific programs

<https://www.currentfederaltaxdevelopments.com/blog/2023/8/31/irs-releases-general-guidance-on-taxability-of-certain-2023-state-payments>

IRS Issues General Guidance on 2023 State Payments



Photo by [Alexander Grey](#) on [Unsplash](#)

- Notice 2023-56, August 30, 2023
 - Summarizes various provisions of the law that can apply
 - IRC §61(a)'s broad reach to include all accessions to wealth in gross income (so now look for an exclusion)
 - State tax refund
 - Looks at definition of what makes something a state tax refund
 - What the state calls it doesn't control
 - Is it limited by tax paid

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IRS Issues General Guidance on 2023 State Payments



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- Notice 2023-56, August 30, 2023
 - Summarizes various provisions of the law that can apply
 - When tax refunds are subject to federal tax
 - Tax benefit rule, IRC §111
 - But note SALT cap
 - As a practical matter, most taxpayers will not pay tax on a true tax refund

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IRS Issues General Guidance on 2023 State Payments



Photo by [Alexander Grey](#) on [Unsplash](#)

- Notice 2023-56, August 30, 2023
 - Summarizes various provisions of the law that can apply
 - General welfare exclusion
 - Social welfare program provided for general benefit
 - Paid from government fund
 - Based on need
 - Not compensation for services

<https://www.currentfederaltaxdevelopments.com/blog/2023/8/31/irs-releases-general-guidance-on-taxability-of-certain-2023-state-payments>

IRS Issues General Guidance on 2023 State Payments



Photo by [Alexander Grey](#) on [Unsplash](#)

- Notice 2023-56, August 30, 2023
 - Summarizes various provisions of the law that can apply
 - Disaster relief payments IRC §139
 - Relates to qualified disaster
 - Notes COVID-19 disaster ended on May 11, 2021
 - Must be paid “in connection with” the disaster

<https://www.currentfederaltaxdevelopments.com/blog/2023/8/31/irs-releases-general-guidance-on-taxability-of-certain-2023-state-payments>

IRS Issues General Guidance on 2023 State Payments



Photo by [Alexander Grey](#) on [Unsplash](#)

- Notice 2023-56, August 30, 2023
 - Summarizes various provisions of the law that can apply
 - Discusses state reporting obligations
 - Generally payments in course of business in excess of \$600 (IRC §6041(a))
 - Refund of state income taxes have reporting under IRC §6050E(a)

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IRS Issues General Guidance on 2023 State Payments



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- Notice 2023-56, August 30, 2023
 - Although gives examples, never discusses most specific 2023 state programs
 - One exception
 - 2022 programs were, for whatever reason, payment received in 2023
 - If program excludable in 2022, will be excludable in 2023

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IRS Issues General Guidance on 2023 State Payments



Photo by [Alexander Grey](#) on [Unsplash](#)

- Notice 2023-56, August 30, 2023
 - IRS looking for comments on more detailed guidance by October 16, 2023
 - Plan to issue additional guidance later (hopefully more state program specific like in 2022)

<https://www.currentfederaltaxdevelopments.com/blog/2023/8/31/irs-releases-general-guidance-on-taxability-of-certain-2023-state-payments>



ESBTs Can Carryover and Deduct NOLs from S Corporation Activities



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- CCA 202335014, September 1, 2023
 - Electing Small Business Trusts (ESBTs) - eligible to hold S corporation stock
 - Divide trust into S and not S portion
 - Generally only include “§1366 items” in the S portion of the trust
- CCA 200734019
 - Found ESBT could not deduct NOL transferred from estate against S income
 - S had generated the NOL at the estate level

<https://www.currentfederaltaxdevelopments.com/blog/2023/9/1/net-operating-carryovers-related-to-s-corporation-losses-recognized-by-esbts-may-be-carried-to-other-esbt-years>



ESBTs Can Carryover and Deduct NOLs from S Corporation Activities



Photo by [Santa Barbara](#) on [Unsplash](#)

- CCA 202335014, September 1, 2023
 - Some were concerned the IRS might take the position that the NOL in subsequent years is a §172 deduction, not a §1366 one
 - Memo cites (generally positively) an analysis in *S Corporations Federal Taxation* (May 2020 updated version), Blau, Richard D., Lemons, Bruce N., and Rohman, Thomas P.
 - That analysis found the IRS CCA did not have to mean a harsh approach was to be taken

<https://www.currentfederaltaxdevelopments.com/blog/2023/9/1/net-operating-carryovers-related-to-s-corporation-losses-recognized-by-esbts-may-be-carried-to-other-esbt-years>

ESBTs Can Carryover and Deduct NOLs from S Corporation Activities



Photo by [Santa Barbara](#) on [Unsplash](#)

- CCA 202335014, September 1, 2023
 - Reasons
 - No policy grounds - NOLs here originated under §1366
 - Result is unreasonable - could offset income from other S corporation if incurred in same year
 - Loss occurred before trust was an ESBT (memo does not agree with this one)
 - Suspended losses would be treated better for no apparent reason

<https://www.currentfederaltaxdevelopments.com/blog/2023/9/1/net-operating-carryovers-related-to-s-corporation-losses-recognized-by-esbts-may-be-carried-to-other-esbt-years>



ESBTs Can Carryover and Deduct NOLs from S Corporation Activities



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- CCA 202335014, September 1, 2023
 - Reasons
 - Reg §1.641(c)-1(j) does not imply any limit on use of NOLs during the ESBT's existence, only talks about unused NOLs at termination of the S portion
 - Memo author would have rejected the estate flow through NOL even if trust had existed at the same time - argues that is a special deduction under §642(h)(1)
 - But agrees fully in result - other NOLs can carry over

<https://www.currentfederaltaxdevelopments.com/blog/2023/9/1/net-operating-carryovers-related-to-s-corporation-losses-recognized-by-esbts-may-be-carried-to-other-esbt-years>

Forms 8300 Generally Must Be E-Filed Beginning on January 1, 2024

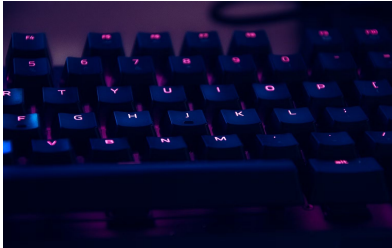


Photo by [Anas Alshanti](#) on [Unsplash](#)

- “Businesses must electronically file Form 8300, Report of Cash Payments Over \$10,000, beginning January 1, 2024,” IR-2023-157, August 30, 2023
 - Final regulations issued on expanded electronic filing mandate in February
 - Big change is trigger of mandates if file (in total) 10 or more information returns
 - Eliminates the \$10 million exception for e-filing corporate returns
 - Greatly expands partnership e-filing mandates as well

<https://www.currentfederaltaxdevelopments.com/blog/2023/9/1/irs-reminds-businesses-that-form-8300-for-cash-transactions-in-excess-of-10000-must-generally-be-filed-electronically-beginning-january-1-2024>

Forms 8300 Generally Must Be E-Filed Beginning on January 1, 2024



Photo by [Anas Alshanti](#) on [Unsplash](#)

- “Businesses must electronically file Form 8300, Report of Cash Payments Over \$10,000, beginning January 1, 2024,” IR-2023-157, August 30, 2023
 - Form 8300 is caught in this as well, but is electronically filed via FinCEN’s BSA E-Filing System (same one used for FBAR)
 - Business will need an account with FinCEN
 - Remember there is a 15-day deadline to get this filed, so want to set up the account before it’s needed

<https://www.currentfederaltaxdevelopments.com/blog/2023/9/1/irs-reminds-businesses-that-form-8300-for-cash-transactions-in-excess-of-10000-must-generally-be-filed-electronically-beginning-january-1-2024>



Forms 8300 Generally Must Be E-Filed Beginning on January 1, 2024



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- “Businesses must electronically file Form 8300, Report of Cash Payments Over \$10,000, beginning January 1, 2024,” IR-2023-157, August 30, 2023
 - Required for receipt of payment(s) of cash (or certain equivalents) of \$10,000 or more for a transaction
 - Attempts to skip just below the limits are also subject to reporting requirements
 - News release has information on obtaining the account, as well as links to videos on how to prepare and file the reports

<https://www.currentfederaltaxdevelopments.com/blog/2023/9/1/irs-reminds-businesses-that-form-8300-for-cash-transactions-in-excess-of-10000-must-generally-be-filed-electronically-beginning-january-1-2024>

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