



Current Federal Tax Developments

February 12, 2024

Kaplan Financial Education



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This Week We Look At:

No movement on tax bills this week - nor is final action at all likely to take place before March

E-Filing returns - good or bad idea? Two competing articles published this week

Taxpayer owes tax on IRA forfeited to government as part of criminal conviction

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<https://www.currentfederaltaxdevelopments.com>



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IRS discusses when CID voluntary disclosure program should be used instead of ERC voluntary disclosure program

IRS warns about EFIN scam emails

Taxpayer found to have submitted a late new refund claim rather than a revision to a timely filed informal claim

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IRS discusses when CID voluntary disclosure program should be used instead of ERC voluntary disclosure program

IRS warns about EFIN scam emails

Taxpayer found to have submitted a late new refund claim rather than a revision to a timely filed informal claim



No Movement on Tax Bills and None Likely Until March



Photo by [Alejandro Barba](#) on [Unsplash](#)

- Doug Sword, Cady Stanton, “Senate Border Traffic Jam Pushes Tax Bill Back Weeks, at Least,” *Tax Notes Today Federal*, February 7, 2024
 - Overwhelming 357-70 vote in favor of Tax Relief for American Families and Workers Act did not produce a rush to act on the bill in the Senate
 - Senate will be on recess from February 12 to 23
 - House won’t vote on the SALT cap bill until next week
 - Other priorities will likely consume the Senate’s attention initially when they return

<https://www.congress.gov/118/bills/hr7024/BILLS-118hr7024eh.pdf>



Article Warning Against E-Filing Published in Wall Street Journal Opinion Piece

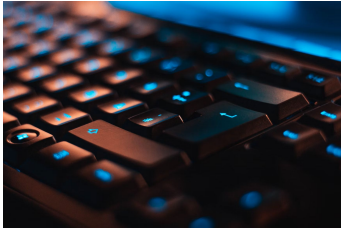


Photo by [Christian Wiediger](#) on [Unsplash](#)

- Jay Starkman, CPA, “Beware of E-Filing Your Tax Return,” *Wall Street Journal*, February 5, 2024
 - Jay asserts that “paper is more secure” to begin the article, citing the Wolters Kluwers malware issue from 2019 - though only really gives evidence of e-filing issues
 - 2019 malware issue affected the entire platform, so returns that were to be paper filed were similarly at risk
 - Notes issues with failures of CPA to actually e-file the returns (cases we’ve discussed) or notice they were never accepted

Jay Starkman’s article -

https://www.wsj.com/articles/beware-of-e-filing-your-tax-return-legal-trouble-for-error-privacy-risk-cyberattack-96d31111?mod=Searchresults_pos1&page=1

Journal of Accountancy article on Wolters Kluwers Axxess attack from 2019 -

<https://www.journalofaccountancy.com/news/2019/may/wolters-kluwer-services-of-fline-malware-attack-201921176.html>



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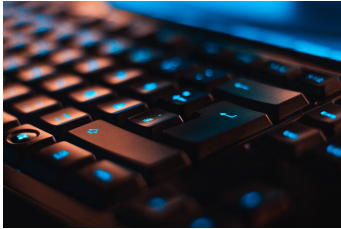


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- Jay Starkman, CPA, “Beware of E-Filing Your Tax Return,” *Wall Street Journal*, February 5, 2024
 - Also cited Tax Court late filing cases we’ve discussed in the past year (*Nutt* on the time zone issue and *Sanders* dealing with extreme procrastination.)
 - Also raises the spectre of ID.me and data leakage - but ID.me registration is not required for electronic filing and the data leakage risk is arguably the same when a client hires an outside tax preparer (they might lose data as well, something we just discussed)

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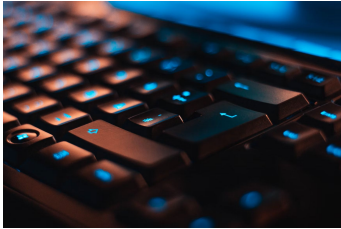


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- Jay Starkman, CPA, "Beware of E-Filing Your Tax Return," *Wall Street Journal*, February 5, 2024
 - The big problem is that the risks of sending all the data via the mail aren't considered - and there have been more than a few "check washing" cases reported along with documents stolen from mail boxes
 - Similarly, *Sanders* and *Nutt* didn't begin to attempt to file with the Tax Court until all post offices near them were closed - procrastination was the major problem and paper filing wasn't an option

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E-Filing Rebuttal Appears on Forbes Website

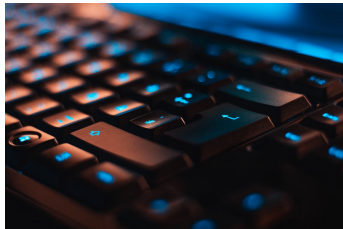


Photo by [Christian Wiediger](#) on [Unsplash](#)

- Amber Gray-Fenner, EA, “5 Reasons Why You Should E-File Your Tax Return,” *Forbes* online, February 7, 2024
 - Argues counter to the WSJ piece that e-filing is the best option
 - Notes that the security issues raised are from 5-10 years ago
 - Also notes that paper filed return have many more access points for physical compromise than do e-filed returns
 - Data entry errors are much more of a problem with paper returns, leading to IRS correspondence

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Amber Gray-Fenner’s article on Forbes -

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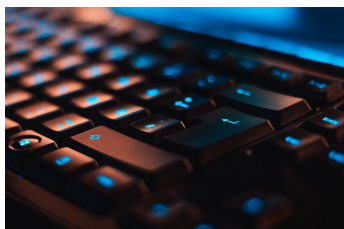


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- Amber Gray-Fenner, EA, "5 Reasons Why You Should E-File Your Tax Return," *Forbes* online, February 7, 2024
 - Notes the need to receive proof of acceptance of a return, whether e-filed by an individual or by a tax professional
 - However, if taxpayer relies on a professional to mail a document, that's also not protected (extensions run into this issue)
 - Paper filing's protection only works if the taxpayer navigates the rules at §7502(c) - something even professionals have failed to do (with court cases we've talked about on that one)

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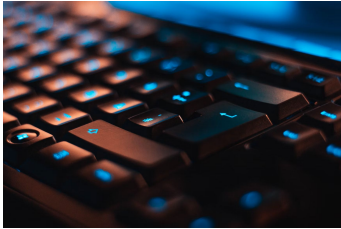


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- Amber Gray-Fenner, EA, “5 Reasons Why You Should E-File Your Tax Return,” *Forbes* online, February 7, 2024
 - As well, taxpayer likely practically will also want to confirm processing of the paper filed return.
 - ID.me does work under specific restrictions, and it’s necessary not just for access to IRS data
 - As well, e-filing gets confirmations back very quickly

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E-Filing: Conclusions

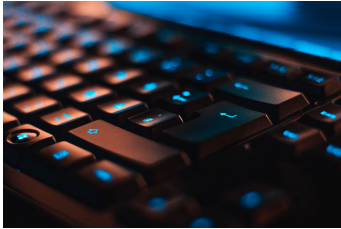


Photo by [Christian Wiediger](#) on [Unsplash](#)

- Any method used to file a tax return will come with advantages and risks
- My personal experience with many years of paper filing and electronic filing (an advantage of being in practice since 1982) is that e-filing has an overall relative advantage, both in reducing correspondence and in security
- Does not mean that in a specific case, the electronic option won't go wrong in a way that arguably wouldn't have happened with paper-just that the opposite result has been far more likely to be true (paper created problems e-filing would have solved).

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IRA Forfeited to the Government Taxable to the Original Beneficiary of the IRA



Photo by [Madison Agardi](#) on [Unsplash](#)

- *Hubbard v. Commissioner*, TC Memo 2024-16, February 6, 2024
 - Pharmacist was convicted for crimes related to distributions of controlled substances and listed chemicals
 - Various property was forfeited to the government upon his conviction, including T Rowe Price IRA
 - A 1099R was issued to the taxpayer for \$427,581
 - No return was filed for the tax year by the taxpayer
 - Forfeiture does not change the income tax consequences - tax is owed by the taxpayer

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/forfeited-ira-distribution-was-constructively-received-taxable/7j57d>

IRA Forfeited to the Government Taxable to the Original Beneficiary of the IRA



Photo by [Madison Agardi](#) on [Unsplash](#)

- *Hubbard v. Commissioner*, TC Memo 2024-16, February 6, 2024
 - Opinion notes that the courts have consistently found that this represents constructive receipt of the funds (and thus triggers tax)
 - Opinion distinguishes various cases the taxpayer attempted to use to escape paying the tax
 - Attempted to claim reasonable cause to escape penalties - was incarcerated, had no income, and (now-ex) wife did not forward the Form 1099-R
 - Non receipt of a Form 1099 is not reasonable cause

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/forfeited-ira-distribution-was-constructively-received-taxable/7j57d>

IRS Confirms ERC Voluntary Disclosure Program Does Not Protect Against Criminal Prosecution



Photo by [Harry Shelton](#) on [Unsplash](#)

- Nathan J. Richman, "IRS Confirms ERC Voluntary Disclosure Isn't for Willful Conduct," *Tax Notes Today Federal*, February 9, 2024
 - In IRS webcast on ERC voluntary disclosure program, Erik W. Anderson (IRS SB/SE Division) noted the lack of criminal prosecution protection if the taxpayer willfully filed a fraudulent ERC claim
 - For taxpayers looking for protection from prosecution, the IRS CID voluntary disclosure program may be more appropriate
 - Downside is that CID program participants don't get the generous terms of the ERC voluntary disclosure program

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<https://www.taxnotes.com/tax-notes-today-federal/credits/irs-confirms-erc-voluntary-disclosure-isnt-willful-conduct/2024/02/09/7j5gb> (subscription required)

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- Nathan J. Richman, "IRS Confirms ERC Voluntary Disclosure Isn't for Willful Conduct," *Tax Notes Today Federal*, February 9, 2024
 - ERC voluntary disclosure program potential benefits
 - Only repay 80% of credit refunded
 - No interest paid (including no repayment of interest received with refund)
 - No penalties
 - Full deduction for all wages paid
 - No inclusions of 20% of refund retained in income

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- Nathan J. Richman, "IRS Confirms ERC Voluntary Disclosure Isn't for Willful Conduct," *Tax Notes Today Federal*, February 9, 2024
 - Employers should consult with legal counsel before entering the ERC voluntary disclosure program
 - IRS also indicated
 - They are aware March 22 end of the program is during tax season
 - Nevertheless, there is no consideration being made of extending the program

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<https://www.currentfederaltaxdevelopments.com>



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IRS Warns That EFIN Scam Emails Are Being Sent to Tax Professionals



Photo by [Brett Jordan](#) on [Unsplash](#)

- “IRS warns tax professionals to be aware of EFIN scam email; special webinars offered next week,” IR-2024-36, February 8, 2024
 - Email impersonates the various professional tax software companies
 - Requests EFIN documents from tax professionals - claims is needed for verification to file tax returns
 - They then attempt to steal client data and tax professionals’ identities to file fraudulent returns for refunds
 - Consider this example email

<https://www.irs.gov/newsroom/irs-warns-tax-professionals-to-be-aware-of-efin-scam-email-special-webinars-offered-next-week>



IRS Warns That EFIN Scam Emails Are Being Sent to Tax Professionals

Dear [recipient_email_address],

Help us protect you.

Because many Electronic Filing Identification Numbers (EFINs) are stolen each year and used to file fraudulent tax returns, the IRS has asked software vendors, such as Software A, to verify who the EFIN owner is by getting a copy of the IRS issued EFIN document(s). Our records show that we do not have a document for one or more of the EFINs that you transmit with.

What this means for you: Until your EFIN is verified, you will be unable to transmit returns. Please provide a copy of your EFIN Account Summary from IRS e-Services, with a status of 'Completed', to Software B for verification.

To send us your EFIN Summary document:

1. Fax to Software B at 631-995-5984

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<https://www.currentfederaltaxdevelopments.com>



<https://www.irs.gov/newsroom/irs-warns-tax-professionals-to-be-aware-of-efin-scam-email-special-webinars-offered-next-week>



IRS Warns That EFIN Scam Emails Are Being Sent to Tax Professionals

PLEASE NOTE THAT YOUR PREPARER TAX IDENTIFICATION NUMBER (PTIN) APPLICATION CANNOT BE USED AS DOCUMENTATION FOR YOUR EFIN.

If you do not have the above documentation you can get a copy of your IRS Application Summary from IRS e-Services by following the below steps or call the IRS e-Services helpline at 866-255-0654.

1. Sign in to your IRS e-Services account
2. Choose your organization from the list provided and click Submit
3. Click the Application link to access your existing application
4. Click the e-File Application link
5. Select the existing application link that applies to your organization
6. Click the Application Summary link for the area of the application you wish to enter
7. Click the Print Summary link at the bottom of the summary presented on the screen

If you have any questions please contact the Compliance Department at xxx-xx-xxxx for assistance.

Thank you for your business. We look forward to serving you this coming season. Software B (edited)

<https://www.irs.gov/newsroom/irs-warns-tax-professionals-to-be-aware-of-efin-scam-email-special-webinars-offered-next-week>

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 - To protect against such scams, always independently contact your software company’s support line if any such email is received
 - Do not call phone numbers in the email
 - Don’t click links in the email
 - IRS will conduct webinars each day from February 12 - 16

<https://www.irs.gov/newsroom/irs-warns-tax-professionals-to-be-aware-of-efin-scam-email-special-webinars-offered-next-week>

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- “IRS warns tax professionals to be aware of EFIN scam email; special webinars offered next week,” IR-2024-36, February 8, 2024
 - Those who receive the scam email should contact TIGTA per the release
 - If a tax professional suspects data theft has occurred the IRS suggests contacting the local IRS Stakeholder Liaison as soon as possible (though I’d suggest contacting your attorney and insurance carrier first)

<https://www.irs.gov/newsroom/irs-warns-tax-professionals-to-be-aware-of-efin-scam-email-special-webinars-offered-next-week>



Refund Claim Received After Statute Closed Not Treated as Revision to Timely Informal But Flawed Claim



Photo by [Behnam Norouzi](#) on [Unsplash](#)

- *American Guardian Holdings, Inc. v. United States*, USDC ND Ill., Case No. 1:23-cv-01482, February 7, 2024
 - In 2019 taxpayer's accountant discovered an error in 2015 return, believing the tax had been overpaid by \$1,179,563
 - Prepared an amended return, but it appears the return as never actually sent to the IRS
 - Hired a new accountant in the fall of 2019
 - Prepared a new amended return that now showed no tax at all was due for 2015
 - Attached first amended return to the second

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/court-rejects-argument-deeming-refund-claim-timely/7j5dc>



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Photo by [Behnam Norouzi](#) on [Unsplash](#)

- *American Guardian Holdings, Inc. v. United States*, USDC ND Ill., Case No. 1:23-cv-01482, February 7, 2024
 - The second amended return's originally reported column came from the first (never filed) amended return, not the original tax return
 - IRS returned the amended return as not processible since the originally reported column did not agree with the original return (the only one filed with the IRS) and asks to correct the numbers (but did not provide a deadline for responding)

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/court-rejects-argument-deeming-refund-claim-timely/7j5dc>



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- *American Guardian Holdings, Inc. v. United States*, USDC ND Ill., Case No. 1:23-cv-01482, February 7, 2024
- Accountant prepared and submitted another amended return in February 2020 in response
 - This time also stated this return was meant to intend to allow the taxpayer to file a Form 1120-PC (property & casualty insurance company) instead of a Form 1120
 - Now, for the first time, the return showed a large negative income number of more than \$127,000,000

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/court-rejects-argument-deeming-refund-claim-timely/7j5dc>



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- *American Guardian Holdings, Inc. v. United States*, USDC ND Ill., Case No. 1:23-cv-01482, February 7, 2024
 - IRS argued that this claim was too late - one position they took was that even if the first two claims were an informal claim for refund, this last one wasn't a simple update to that claim but rather a totally different one
 - The Court agreed with the IRS that this was a completely new claim - and, as such, was filed late
 - Had an entirely different basis for the refund
 - Informal claim must appraise the IRS of the basis of the claim

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/court-rejects-argument-deeming-refund-claim-timely/7j5dc>

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