



Current Federal Tax Developments

February 19, 2024

Kaplan Financial Education



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This Week We Look At:

Insurers updating their advice on BOI engagements

SALT cap 2023 increase bill fails on a procedural vote in the House

Jury finds taxpayer did not willfully fail to file FBAR reports

IRS takes position third party payors liable for ERC refund repayment in addition to common law employers

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IRS sending out CP271 “soft letters” to those with open ERC refund claims

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S corporation has a failure of 9 trusts receiving shares from decedent

Taxpayer unsuccessfully argues she only should pay taxes on social security actually received

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Information from Insurers Regarding FBAR BOI Engagements

- “CAMICO Provides Clarification on BOI Coverage,” NJCPA website, February 12, 2024
 - Published two pages of guidance issued by CAMICO on BOI engagements
 - “CAMICO intends that coverage will respond to the typical CTA claim we anticipate receiving, particularly if at the time the services are rendered both the state in which the firm and client reside have not deemed that providing CTA-related services to be the unauthorized practice of law.”
 - Notes that, at the moment, no state has ruled on CTA services
 - Does warn insurance can’t cover criminal acts (most, but not all, states have criminal UPL statutes)
 - Notably indicates CAMICO has draft engagement and management representation letters

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https://www.njcpa.org/docs/default-source/stay-informed/camico-cta-coverage-considerations-for-cpa-firms-2-2024.pdf?sfvrsn=1604413a_1



Information from Insurers Regarding FBAR BOI Engagements

- “Risk Management and the Corporate Transparency Act (including sample engagement letter),” AON and AICPA Website, February 13, 2024
 - Has posted a detailed page for risk management and the CTA and, as noted, a sample engagement letter
 - Discusses issues that should be addressed for client acceptance
 - Has recommended documentation, especially of client representations
 - As noted, there is a sample engagement letter that they recommend be used as a starting point with the firm’s counsel

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https://www.cpai.com/Education-Resources/my-firm/Tax-Services/Risk-Management-and-the-Corporate-Transparency-Act?refID=renew&utm_source=internal&utm_medium=email&utm_campaign=boi_update&utm_term=feb2024&utm_content=#MyAccount



Information from Insurers Regarding FBAR BOI Engagements

- Both insurers now seem to accept that such engagements will be performed by their clients
- Advice still cautions about issues that can arise, but no longer uses phrases like “no state has ruled this is not UPL” but rather that “no state has ruled to what extent CTA work would be UPL” which frankly is the state of most everything
- The November FAQ revision by FinCEN that directed applicants needing assistance to accountants seems likely to have influenced this
- But there are risks here
 - Biggest one is taking on an engagement for which you lack adequate technical competence
 - While UPL remains a theoretical issue, the fact no state has moved on the issue suggest it’s also not a high priority issue
 - Remember there is a risk in not advising the client at a minimum of the issue

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https://www.cpai.com/Education-Resources/my-firm/Tax-Services/Risk-Management-and-the-Corporate-Transparency-Act?refID=renew&utm_source=internal&utm_medium=email&utm_campaign=boi_update&utm_term=feb2024&utm_content=#MyAccount



SALT Cap One Year Increase Bill Fails in a Procedural Vote



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

- HR 7160, "SALT Marriage Penalty Elimination Act," Failed to Pass a Procedural Vote, February 15, 2024
 - SALT cap relief for joint filers appears dead after a procedural vote for this bill along with a separate measure denouncing Biden's energy policies failed on a 195-225 vote
 - 18 Republicans and all Democrats voted against the rule
 - Mainly seems to be used for political posturing at this point
 - While you can never say never, this looks final...

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



IRS Loses FBAR \$21 Penalty Case as Jury Found in Favor of the Taxpayer



Photo by [Zbynek Burival](#) on [Unsplash](#)

- *United States v. Gaynor*, US District Court of the Middle District of Florida, No. 21-cv-00382, Jury Verdict, February 14, 2024
 - Taxpayer had gone through a “quiet disclosure” on Swiss accounts that varied between \$30.9 million and \$33 million
 - Did not follow IRS procedures to deal with delinquent FBARs - reported \$6.6 million in foreign interest, dividends and capital gains resulting in \$1 million in taxes
 - Jury found she had not willfully failed to report
 - As a jury factual finding doesn't really tell us much about how other cases will go

Third Party Payors Liable Along with Common Law Employers for ERC Underpayments per IRS



Photo by [Giorgio Trovato](#) on [Unsplash](#)

- AM-2024-001, February 5, 2024
 - Covers TPPs designated as an agent by application under IRC §3404, Reg. §31.3504-1 using Form 2678, *Employer/Payer Appointment of Agent*
 - Reg. §31.3504-1(a) provides that both are covered by all provisions of the law (including penalties) and regulations
 - IRC §3511(d)(1) provides payroll credits apply to the customer, but the memo argues it does not discuss liability for repayment of credits

<https://www.irs.gov/pub/iranoa/am-2024-001.pdf>

Third Party Payors Liable Along with Common Law Employers for ERC Underpayments per IRS



Photo by [Giorgio Trovato](#) on [Unsplash](#)

- AM-2024-001, February 5, 2024
 - IRS provided guidance to TPPs in Notice 2021-20 which imposed requirements on the TPP for the credit to be claimed
 - So IRS can seek to recover any disallowed ERC credit from either the common law employer or the TPP in the view of this memorandum

<https://www.irs.gov/pub/iraoa/am-2024-001.pdf>



IRS Sending Out “Soft Letters” to Those Who Have Filed ERC Credit Claims That Are in Process



Photo by [Goh Rhy Yan](#) on [Unsplash](#)

- CP271, X (formerly Twitter) post by Dan Chodan, CPA, <https://twitter.com/danchodan/status/1758478917822751221>, February 16, 2024
 - Two page letter and checklist being sent to those with claims in process
 - Warns that the IRS is aware of aggressive advertising for the ERC
 - Recommends “confirming you are eligible for the ERC amount...” and lists periods
 - If employer determines it is eligible is told to do nothing

<https://twitter.com/danchodan/status/1758478917822751221>



IRS Sending Out “Soft Letters” to Those Who Have Filed ERC Credit Claims That Are in Process



Photo by [Goh Rhy Yan](#) on [Unsplash](#)

- CP271, X (formerly Twitter) post by Dan Chodan, CPA, <https://twitter.com/danchodan/status/1758478917822751221>, February 16, 2024
 - But notes if the employer determines they are not eligible tells them how to withdraw the claim
 - Finally advises about amending if they want to reduce their claim
 - Provides a one page “abbreviated checklist” for ERC eligibility

<https://twitter.com/danchodan/status/1758478917822751221>



S Corporation Election Terminated Due to Failure to Make Required Elections for 9 Trusts



Photo from UnSpash+ and Woliul Hasan

- PLR 202407005, February 16, 2024
 - Decedent who owned S shares passes
 - Shares were in what appears to have been RLT which elected to be taxed as an estate under §645
 - When affairs settled, shares were distributed to 9 trusts
 - 8 of them were designed to be QSSTs
 - 1 was designed to be an ESBT
 - Unfortunately, no election was made in a timely fashion by any of the beneficiaries (for QSSTs) or the trustee for the ESBT

<https://www.taxnotes.com/research/federal/irs-private-rulings/letter-rulings-technical-advice/termination-s-corp-election-was-inadvertent/7j766>



S Corporation Election Terminated Due to Failure to Make Required Elections for 9 Trusts



Photo from UnSpash+ and Woliul Hasan

- PLR 202407005, February 16, 2024
 - Since trusts were not eligible S shareholders, S status terminated.
 - Applied and paid for a PLR, was granted relief
 - However, this is not the first time an estate plan clearly designed to have elections made by resulting trusts has seen all of the trusts fail to make the elections

<https://www.taxnotes.com/research/federal/irs-private-rulings/letter-rulings-technical-advice/termination-s-corp-election-was-inadvertent/7j766>

Taxpayer Pays Tax on Social Security Not Paid (OK, There's More to the Story)



Photo by [Markus Winkler](#) on [Unsplash](#)

- *Ecret v. Commissioner*, TC Memo 2024-23, February 14, 2024
 - Taxpayer was injured on the job in 2014 and began receiving workers compensation
 - In 2015 she applied for social security disability and was found to qualify with a letter issued in December 2017
 - Under 42 U.S.C. §424a(a) her social security payment would be limited based on the receipt of workers compensation based on a formula

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/social-security-benefits-are-income-even-if-not-received/7j71v>

Taxpayer Pays Tax on Social Security Not Paid (OK, There's More to the Story)



Photo by [Markus Winkler](#) on [Unsplash](#)

- *Ecret v. Commissioner*, TC Memo 2024-23, February 14, 2024
 - Initially SSA found the offset reduced her benefits to zero, but after an appeal SSA agreed that she was entitled to some cash - received \$6,120 and \$1,080 in federal withholding
 - Received Form 1099SSA showing benefits of \$55,248, \$19,866 attributable to the year benefits were paid and the remainder for prior years
 - IRC §86(d)(3) requires an adjustment for the offset

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/social-security-benefits-are-income-even-if-not-received/7j71v>



Taxpayer Pays Tax on Social Security Not Paid (OK, There's More to the Story)

(3) Workmen's compensation benefits substituted for social security benefits. For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit under a workmen's compensation act, the term "social security benefit" includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/social-security-benefits-are-income-even-if-not-received/7j71v>

Taxpayer Pays Tax on Social Security Not Paid (OK, There's More to the Story)



Photo by [Markus Winkler](#) on [Unsplash](#)

- *Ecret v. Commissioner*, TC Memo 2024-23, February 14, 2024
 - Taxpayer reported \$5,202 in taxable benefits, which was 85% of the \$6,120 cash payment received
 - Court noted that this provision was meant to equalize tax treatment with taxpayers in “reverse offset” states (where workers compensation is reduced by social security benefits)
 - IRS did agree that she was only liable for tax on the \$19,866 in total benefits before reduction that applied to 2019 (not the payment for the back years)

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/social-security-benefits-are-income-even-if-not-received/7j71v>

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