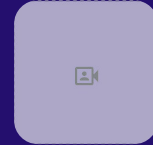




Current Federal Tax Developments

March 18, 2024

Kaplan Financial Education



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This Week We Look At:

FinCEN gives formal notice of appeal of CTA BOI case

Deadline rapidly approaching for entering first ERC voluntary disclosure program

Arizona lawmakers write the IRS about tax status of 2023 state rebates

Court of Appeals finds it is barred from hearing appeal of Tax Court dismissal of small case

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FinCEN Files Notice of Appeal in Alabama Case



Photo by [David Veksler](#) on [Unsplash](#)

- Notice of Appeal, *National Small Business United, et al v. Yellen, et al*, USDC ND Alabama, March 11, 2024
 - As expected, FinCEN filed formal notice that the agency will appeal the case
 - Appeal will be heard by the Eleventh Circuit Court of Appeals
 - Could see FinCEN ask for a stay of the decision pending appeal

https://fincen.gov/sites/default/files/shared/54_Notice_of_Appeal.pdf



Deadline Rapidly Approaching for Current ERC Voluntary Disclosure Program



Photo by [Towfiq barbhuiya](#) on [Unsplash](#)

- “March 22 deadline approaching to resolve incorrect Employee Retention Credit claims; IRS urges businesses to review questionable claims to avoid future compliance action,” IRS News Release IR-2024-72, March 15, 2024
 - Current voluntary disclosure program ends on Friday, March 22
 - Program offers a significant discount on amount to be repaid vs. IRS exam route
 - 80% of credit repaid
 - No interest, no penalties

<https://www.irs.gov/newsroom/march-22-deadline-approaching-to-resolve-incorrect-employee-retention-credit-claims-irs-urges-businesses-to-review-questionable-claims-to-avoid-future-compliance-action>



Deadline Rapidly Approaching for Current ERC Voluntary Disclosure Program



Photo by [Towfiq barbhuiya](#) on [Unsplash](#)

- “March 22 deadline approaching to resolve incorrect Employee Retention Credit claims; IRS urges businesses to review questionable claims to avoid future compliance action,” IRS News Release IR-2024-72, March 15, 2024
 - Must provide disclosure of advisers that worked with the employer
 - Big downside: No protection from criminal prosecution for those applying to the program
 - IRS also reminds employer of “limited time” withdrawal program for those who haven’t received or cashed a refund check

<https://www.irs.gov/newsroom/march-22-deadline-approaching-to-resolve-incorrect-employee-retention-credit-claims-irs-urges-businesses-to-review-questionable-claims-to-avoid-future-compliance-action>



Deadline Rapidly Approaching for Current ERC Voluntary Disclosure Program



Photo by [Towfiq barbhuiya](#) on [Unsplash](#)

- “March 22 deadline approaching to resolve incorrect Employee Retention Credit claims; IRS urges businesses to review questionable claims to avoid future compliance action,” IRS News Release IR-2024-72, March 15, 2024
 - IRS also announces the agency has not yet resumed processing claims received after September 2023 moratorium
 - Older claims continue to be worked, but will take much longer
 - What happens next?

<https://www.irs.gov/newsroom/march-22-deadline-approaching-to-resolve-incorrect-employee-retention-credit-claims-irs-urges-businesses-to-review-questionable-claims-to-avoid-future-compliance-action>



Arizona Lawmakers (Including Ways & Means Member) Question IRS Ruling on 2023 Rebates



Photo by [Anastasiya Badun](#) on [Unsplash](#)

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- Letter from Reps. Schweikert (R-AZ), Ciscomani (R-AZ) and Stanton (D-AZ), March 13, 2024
 - Follows lawsuit filed by Arizona Attorney General
 - Questions IRS ruling that certain state payments made in 2023 are taxable, unlike similar payments made by other states in 2022
 - Complained about how Arizona was notified
 - December 2023 orally informed in video meeting
 - Only got written response following Arizona AG challenge



<https://www.taxnotes.com/research/federal/legislative-documents/congressional-tax-correspondence/lawmakers-urge-irs-reverse-decision-tax-arizona-rebate/7j9mm>



Arizona Lawmakers (Including Ways & Means Member) Question IRS Ruling on 2023 Rebates



Photo by [Anastasiya Badun](#) on [Unsplash](#)

- Letter from Reps. Schweikert (R-AZ), Ciscomani (R-AZ) and Stanton (D-AZ), March 13, 2024
 - Complains IRS never provided complete analysis of why most 2022 payments were treated as excluded from income
 - Most have assumed IRS tied COVID-19 emergency to exclusion under Section 139, but not totally clear what are the limits on a general welfare exclusion
 - Could have an impact on other state programs the IRS also rejected

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<https://www.taxnotes.com/research/federal/legislative-documents/congressional-tax-correspondence/lawmakers-urge-irs-reverse-decision-tax-arizona-rebate/7j9mm>



Court of Appeals Finds It Cannot Hear Appeal of Tax Court Dismissal of Small Case



Photo by [Pete Alexopoulos](#) on [Unsplash](#)

- *Foley v. Commissioner*, CA2, Case No. 23-1296, March 13, 2024
 - IRS issued a Notice of Deficiency in 2018 giving 90 days to file a petition in Tax Court to challenge the proposed tax
 - Taxpayer, claiming he never received the Notice, filed a petition 1,393 days after the Notice was issued
 - In the petition, he elected the small case procedures under IRC §7463
 - Tax Court dismissed the case, finding the petition was not timely filed

<https://www.taxnotes.com/research/federal/court-documents/court-op%C3%A5inions-and-orders/second-circuit-holds-small-tax-case-dismissal-not-appealable/7j9l6>



Court of Appeals Finds It Cannot Hear Appeal of Tax Court Dismissal of Small Case

IRC §7463(b)

“(b) Finality of decisions. A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any other court and shall not be treated as a precedent for any other case.”

<https://www.taxnotes.com/research/federal/court-documents/court-op%C3%A5inions-and-orders/second-circuit-holds-small-tax-case-dismissal-not-appealable/7j9l6>



Court of Appeals Finds It Cannot Hear Appeal of Tax Court Dismissal of Small Case



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- *Foley v. Commissioner*, CA2, Case No. 23-1296, March 13, 2024
 - Taxpayer nevertheless filed a petition with the Second Circuit challenging the dismissal, arguing it should not count as a decision
 - IRS argues that the Court of Appeals has no jurisdiction per IRC §7463(b)
 - Court agrees - the Tax Court's finding was a decision

<https://www.taxnotes.com/research/federal/court-documents/court-op%C3%A5inio ns-and-orders/second-circuit-holds-small-tax-case-dismissal-not-appealable/7j9l6>



Court of Appeals Finds It Cannot Hear Appeal of Tax Court Dismissal of Small Case



Photo by [Pete Alexopoulos](#) on [Unsplash](#)

- *Foley v. Commissioner*, CA2, Case No. 23-1296, March 13, 2024
 - Panel avoided dealing with Circuit split on whether 90-day filing rule is jurisdictional
 - *Culp v. Commissioner*, 75 F.4th 196, 200–02 (3d Cir. 2023) - not jurisdictional
 - *Tilden v. Commissioner*, 846 F.3d 882, 886–87 (7th Cir. 2017)
 - Taxpayer’s position inherently argued that the Tax Court decision was jurisdictional, not based on the merits of his case

<https://www.taxnotes.com/research/federal/court-documents/court-op%C3%A5inio ns-and-orders/second-circuit-holds-small-tax-case-dismissal-not-appealable/7j9l6>



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