

Current Federal Tax Developments

Week of October 24, 2022

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CURRENT FEDERAL TAX DEVELOPMENTS
WEEK OF OCTOBER 24, 2022
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IRS APPEARS TO START PILOT PROGRAM AIMED AT THWARTING AUTOMATED CALLING TO CERTAIN PHONE LINES

Nathan A. Richman, “IRS Looking to Block Line-Jumping for Phone Calls,” *Tax Notes Today Federal*, 10/18/22

On Monday at the American Bar Association Section of Taxation meeting, Timothy McCormally of the IRS Office of Professional Responsibility was quoted by *Tax Notes Today Federal* as announcing “a practitioner priority hotline enhancement which is an effort to deal with robocalls into the IRS, and specifically the autodialer programs...”¹

The article went on to quote Mr. McCormally as stating that the IRS would use an artificial intelligence tool to sort out automated calls and prevent “line-cutting through technology.”² While the article did not provide a date when the pilot program would begin to be rolled out, the article quoted Mr. McCormally as saying that it would be soon.³

It appears “soon” may have been four days later or there is a massive coincidence. On Friday, October 21 user @IbnDhabi on Twitter reported:

It looks like they started this morning with the practitioner line. They are now asking questions like what’s the sum of $4 + 1$. And enQ wrote as of this morning that their suspending their services..⁴

The report appeared to be confirmed by the referenced posting on enQ’s website on the same morning:

EnQ is temporarily suspending services to: Practitioner Priority Service Business, Correspondence Examination Individual/Business, and Automated Underreporter due to changes on the IRS call center. Please direct your calls to other departments while we work on a solution.⁵

¹ Nathan A. Richman, “IRS Looking to Block Line-Jumping for Phone Calls,” *Tax Notes Today Federal*, October 18, 2022, <https://www.taxnotes.com/tax-notes-today-federal/tax-technology/irs-looking-block-line-jumping-phone-calls/2022/10/18/7f83k> (subscription required)

² Nathan A. Richman, “IRS Looking to Block Line-Jumping for Phone Calls,” *Tax Notes Today Federal*, October 18, 2022

³ Nathan A. Richman, “IRS Looking to Block Line-Jumping for Phone Calls,” *Tax Notes Today Federal*, October 18, 2022

⁴ https://twitter.com/IbnDhabi/status/1583310906309496832?s=20&t=2wWgNI3y_AQB22wzr5XjTQ

⁵ enQ Website, October 21, 2022, <https://callenq.com/> retrieved October 21, 2022

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Based on this report, it appears that enQ at a minimum is planning to try and work around the IRS changes implemented on Friday morning. As well, the posting only references three IRS lines being involved, which would seem to confirm the report of a pilot test being run by the IRS.

What is likely to happen next? enQ would appear to be getting ready to attempt to go back online with an automated system that could deal with the IRS attempt to identify automated calling systems. If the current filter only asks such simple math questions, it seems as if a workaround is possible.

But if that happens, the question then becomes if the IRS has other systems they roll out as their latest one is eventually overcome by the automated systems. So, we could be in a long period of IRS filters that identify and block automated calls, followed by automated system fixes that bypass the IRS systems after which the cycle repeats again.

INFLATION ADJUSTED AMOUNTS ISSUED BY IRS FOR 2023

Revenue Procedure 2022-38, 10/18/22

The IRS has released Revenue Procedure 2022-38⁶ that contains most of the other inflation adjusted numbers for 2023 taxes.

As the numbers relate to the law as it existed at the date of publication of the procedure, something that could change based on pending Congressional action, the procedure contains the following warning:

This revenue procedure sets forth inflation-adjusted items for 2023 for various Code provisions as in effect on October 18, 2022. The inflation adjusted items for the Code sections set forth in section 3 of this revenue procedure are generally determined by reference to § 1(f) of the Code. To the extent amendments to the Code are enacted for 2023 after October 18, 2022, taxpayers should consult additional guidance to determine whether these adjustments remain applicable for 2023.⁷

The numbers are arranged by IRC Section number in this annual publication of inflation adjusted numbers. Some of the key figures are discussed below.

Kiddie Tax: . For taxable years beginning in 2023, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is \$1,250. This \$1,250 amount is the same as the amount provided in § 63(c)(5)(A), as adjusted for inflation. The same \$1,250 amount is used

⁶ Revenue Procedure 2022-38, October 21, 2022, <https://www.irs.gov/pub/irs-drop/rp-22-38.pdf>

⁷ Revenue Procedure 2022-38, October 21, 2022

for purposes of § 1(g)(7) to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax." For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2023 must be more than \$1,250 but less than \$12,500.⁸

Maximum Capital Gains Rate. The procedure provides the following brackets for capital gain rates purposes for 2022.

For taxable years beginning in 2023, the Maximum Zero Rate Amount under § 1(h)(1)(B)(i) is \$89,250 in the case of a joint return or surviving spouse (\$44,625 in the case of a married individual filing a separate return), \$59,750 in the case of an individual who is a head of household (§ 2(b)), \$44,625 in the case of any other individual (other than an estate or trust), and \$3,000 in the case of an estate or trust. The Maximum 15-percent Rate Amount under § 1(h)(1)(C)(ii)(I) is \$553,850 in the case of a joint return or surviving spouse (\$276,900 in the case of a married individual filing a separate return), \$523,050 in the case of an individual who is the head of a household (§ 2(b)), \$492,300 in the case of any other individual (other than an estate or trust), and \$14,650 in the case of an estate or trust.⁹

Adoption. The procedure provides the following numbers related to the adoption credit for 2023.

For taxable years beginning in 2023, under § 23(a)(3) the credit allowed for an adoption of a child with special needs is \$15,950. For taxable years beginning in 2023, under § 23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to \$15,950. The available adoption credit begins to phase out under § 23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$239,230 and is completely phased out for taxpayers with modified adjusted gross income of \$279,230 or more. See section 3.19 of this revenue procedure for the adjusted items relating to adoption assistance programs.¹⁰

⁸ Revenue Procedure 2022-38, Section 3.02, October 18, 2022

⁹ Revenue Procedure 2022-38, Section 3.03, October 18, 2022

¹⁰ Revenue Procedure 2022-38, Section 3.04, October 18, 2022

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The related numbers for adoption assistance programs for 2023 are provided as follows.

For taxable years beginning in 2023, under § 137(a)(2), the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is \$15,950. For taxable years beginning in 2023, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for adoptions by the employee is \$15,950. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$239,230 and is completely phased out for taxpayers with modified adjusted gross income of \$279,230 or more. (See section 3.04 of this revenue procedure for the adjusted items relating to the adoption credit.)¹¹

Alternative Minimum Tax: The exemption amounts for the alternative minimum tax for 2023 are:

- Joint Returns or Surviving Spouses - \$126,500
- Unmarried Individuals (other than Surviving Spouses) - \$81,300
- Married Individuals Filing Separate Returns - \$63,250
- Estates and Trusts - \$28,400

The exemptions start to phase out in 2023 at:

- Joint Returns or Surviving Spouses – begins at \$1,156,300, completely phased out at \$1,662,300
- Unmarried Individuals (other than Surviving Spouses) – begins at \$578,150, completely phased out at \$903,350
- Married Individuals Filing Separate Returns – begins at \$578,150, completely phased out at \$831,150

¹¹ Revenue Procedure 2022-38, Section 3.19, October 18, 2022

- Estates and Trusts – begins at \$94,600, completely phased out at \$208,200¹²

Classroom Expenses of Elementary and Secondary School Teachers.

For taxable years beginning in 2023, under § 62(a)(2)(D) the amount of the deduction allowed under § 162 that consists of expenses paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom is \$300.¹³

Standard Deduction. The base standard deductions for 2023 are:

- Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(j)(2)(A)) - \$27,700
- Heads of Households (§ 1(j)(2)(B)) - \$20,800
- Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(j)(2)(C)) - \$13,850
- Married Individuals Filing Separate Returns (§ 1(j)(2)(D)) - \$13,850¹⁴

The standard deduction for an individual claimed as a dependent in 2023 can exceed the greater of:

- \$1,250 or
- The sum of \$400 and the person's earned income.¹⁵

The additional standard deduction for those who are aged 65 or greater or those who are blind is \$1,500. This additional deduction is increased to \$1,850 if the individual is also unmarried and not a surviving spouse.¹⁶

Cafeteria Plans: For plan years beginning in 2023, the dollar limitation for voluntary employee salary reductions for contributions to health flexible spending arrangements is \$3,050. If the cafeteria plan

¹² Revenue Procedure 2022-38, Section 3.11, October 18, 2022

¹³ Revenue Procedure 2022-38, Section 3.13, October 18, 2022

¹⁴ Revenue Procedure 2022-38, Section 3.13(1), October 18, 2022

¹⁵ Revenue Procedure 2022-38, Section 3.13(2), October 18, 2022

¹⁶ Revenue Procedure 2022-38, Section 3.13(3), October 18, 2022

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permits the carryover of unused amounts, the maximum carryover amount is \$610.¹⁷

Maximum Income for Qualifying Relative. For 2023, the maximum gross income for any qualifying relatives to be able to be claimed as a dependent is \$4,700.¹⁸

Section 179 Numbers. For 2023, the following key numbers apply to IRC §179 expensing:

- Maximum cost of property for which a §179 election is made: \$1,160,000
- Limit on costs for sports utility vehicle taken into account under IRC §179: \$28,900
- The amount available for §179 expensing is phase out beginning when total §179 property placed in service during the year exceed \$2,890,000.¹⁹

§199A Qualified Business Income Numbers. For 2023, the threshold amount and end of the phase in range are:

- Married Individuals Filing Joint Returns – threshold amount is \$364,200 and the phase-in range ends at \$464,200
- Married Individuals Filing Separate Returns – threshold amount is \$182,100 and the phase-in range ends at \$232,100
- All Other Returns - threshold amount is \$182,100 and the phase-in range ends at \$232,100.²⁰

Small Accounting Methods. For 2023, the maximum gross receipt level to qualify for various benefits under the small accounting methods of the Tax Cuts and Jobs Act (cash basis of accounting, exemption from §163(j) interest rules, non-§471(c) inventory methods, exemption from §263A, and treatment as a small contractor) is \$29,000,000.²¹

¹⁷ Revenue Procedure 2022-38, Section 3.16, October 18, 2022

¹⁸ Revenue Procedure 2022-38, Section 3.24, October 18, 2022

¹⁹ Revenue Procedure 2022-38, Section 3.25, October 18, 2022

²⁰ Revenue Procedure 2022-38, Section 3.27, October 18, 2022

²¹ Revenue Procedure 2022-38, Section 3.31, October 18, 2022

Excess Business Loss. For 2023, the limit for an excess business loss under IRC §461(l) is \$289,000 (\$578,000 for joint returns).²²

Foreign Earned Income Exclusion. For 2023, the foreign earned income exclusion is \$120,000.²³

Unified Credit Against Estate Tax. The basic exclusion amount for decedents dying in 2023 is \$12,920,000.²⁴

Annual Exclusion for Present Interest Gifts. The annual exclusion for a gift of a present interest in 2023 will be \$17,000.²⁵

Qualified Small Employer Health Reimbursement Arrangement (QSEHRA). The limit on reimbursement for an employer plan to qualify as an QSEHRA is \$5,850 (\$11,800 for family coverage).²⁶

COST OF LIVING RETIREMENT AND FRINGE BENEFIT AMOUNTS FOR 2023 PUBLISHED BY THE IRS

Notice 2022-55, 10/21/22

The IRS issued inflation adjusted retirement plan and fringe benefit numbers for 2022 in Notice 2022-55.²⁷

Item	2023	2022
Annual Benefit Under a Defined Contribution Plan (IRC §415(b)(1)(A))	\$ 265,000	\$ 245,000
Limitation for Defined Contribution Plans (IRC §415(c)(1)(A))	66,000	61,000
Limitation on Exclusion for Elective Deferrals (IRC §402(g))	22,500	20,500

²² Revenue Procedure 2022-38, Section 3.32, October 18, 2022

²³ Revenue Procedure 2022-38, Section 3.39, October 18, 2022

²⁴ Revenue Procedure 2022-38, Section 3.41, October 18, 2022

²⁵ Revenue Procedure 2022-38, Section 3.41, October 18, 2022

²⁶ Revenue Procedure 2022-38, Section 3.62, October 18, 2022

²⁷ Notice 2022-55, October 21, 2022, <https://www.irs.gov/pub/irs-drop/n-22-55.pdf>

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Item	2023	2022
Annual Compensation Limit (IRC §§401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii))	330,000	305,000
Key Employee in a Top Heavy Plan (IRC §416(i)(1)(A)(i))	215,000	200,000
Highly Compensated Employee (IRC §414(q)(1)(B))	150,000	135,000
Catch-up Contributions to Employer Plans Other than SIMPLEs (IRC §414(v)(2)(B)(i))	7,500	6,500
Catch-up Contributions to SIMPLE-IRAs and SIMPLE-401(k)s (IRC §414(v)(2)(B)(ii))	3,500	3,000
Annual Compensation Limitation for Certain Governmental Plans (IRC §401(a)(17))	490,000	450,000
Compensation Amount for Participation in a SEP (IRC §408(k)(2)(C))	750	650
Deferral Limitation for SIMPLE Retirement Accounts (IRC §408(p)(2)(E))	15,500	14,000
Limitation on Deferrals under IRC §457(e)(15) Governmental Plans and Tax-Exempt Organizations	22,500	20,500
Compensation Amount for an Officer Control Employee for Fringe Benefits (Reg. §1.61-21(f)(5)(i))	130,000	120,000
Compensation Amount for a Control Employee Based Solely on Compensation Reg. §1.61-21(f)(5)(iii))	265,000	245,000
IRA Deductible Contribution Amounts (IRC §219(b)(5)(A))	6,500	6,000

The Notice defines the ranges over which deductible IRA contributions phase out for individuals who are active participants in a qualified retirement plan are provided as:

Item	2023	2022
Married participants filing a joint return or qualifying widow(er)	\$116,000 to \$129,000	\$109,000 to \$119,000
Other statuses except married filing separate	\$73,000 to \$83,000	\$68,000 to \$78,000
Married filing separate	\$0 to \$10,000	\$0 to \$10,000
Married individual filing a joint who is not an active participant but whose spouse is an active participant	\$218,000 to \$228,000	\$204,000 to \$214,000

The adjusted gross income range over which the ability of a taxpayer to make a Roth IRA contribution phases out is as follows:

Item	2023	2022
Married participants filing a joint return or qualifying widow(er)	\$218,000 to \$228,000	\$204,000 to \$214,000
Single and head of household	\$138,000 to \$148,000	\$129,000 to \$144,000
Married filing separate	\$0 to \$10,000	\$0 to \$10,000