



# Current Federal Tax Developments

June 26, 2023

Kaplan Financial Education



Copyright 2023, Kaplan Inc.

## This Week We Look At:

IRS ends COVID-19 relief for high deductible health plans effective for plan years ending after 12/31/24

Taxpayer fails in attempt to get IRS permission to make a late §475(f) mark to market election

Taxpayer who filed Tax Court petition 11 seconds too late due to technology challenges has petition dismissed

Sherlock Holmes on tax research

2

<https://www.currentfederaltaxdevelopments.com>





## IRS Ends COVID-19 Relief Related to HDHPs for Plan Years Ending After December 31, 2024



Photo by [Martha Dominquez de Gouveia](#) on [Unsplash](#)

- Notice 2023-37, 6/23/23
  - HDHPs cannot provide benefits (aside from specified preventive care benefits) before insured meet their required deductibles
  - In Notice 2020-15, the IRS provided relief for what HDHPs could pay for before insured had met the minimum deductibles (COVID-19 testing and treatment)
  - Was announced due to the COVID-19 public health emergency

<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/irs-announces-end-of-covid-19-expansion-of-definition-of-preventive-care-for-hdhrs>

## IRS Ends COVID-19 Relief Related to HDHPs for Plan Years Ending After December 31, 2024



Photo by [Martha Dominquez de Gouveia](#) on [Unsplash](#)

- Notice 2023-37, 6/23/23
  - On April 10, 2023 the PHE was ended when the President signed H.J. Res. 7
  - Screenings for common and episodic illnesses (such as seasonal flu) are not considered preventive care and COVID-19 is labeled as the same type of screening
  - However, if COVID-19 is added to “A” or “B” rating by the USPSTF, then would be covered
  - New rules apply for years ending after December 15, 2024

<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/irs-announces-end-of-covid-19-expansion-of-definition-of-preventive-care-for-hdhp>



## IRS Denied Request for Permission to Make a Late §475(f) Mark to Market Election



Photo by [Pierre Bamin](#) on [Unsplash](#)

- Private Letter Ruling 202325003, 6/23/23
  - Daytraders either
    - Makes lots of money and are very successful or (far more likely)
    - Lose pretty much everything, creating multiple six figure losses (or more)
  - Capital loss rules generally restrict net loss per year to \$3,000 (big problem if they lose a lot)

<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/irs-denies-request-by-a-taxpayer-to-make-a-late-475f-election>



## IRS Denied Request for Permission to Make a Late §475(f) Mark to Market Election



Photo by [Pierre Bamin](#) on [Unsplash](#)

- Can elect under IRC §475(f) to
  - Market open positions held at the end of the year to market
  - Treat all gains/losses as ordinary
- Avoids the \$3,000 limitation on net losses claimed each year
- Allows the creation of net operating losses

<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/irs-denies-request-by-a-taxpayer-to-make-a-late-475f-election>



## IRS Denied Request for Permission to Make a Late §475(f) Mark to Market Election



Photo by [Pierre Bamin](#) on [Unsplash](#)

- Year in question was when CARES Act applied so
  - Could carryback an NOL for 5 years and no 80% limit
  - No net business loss limit either
- Key problem for taxpayer - election must be made by the unextended due date of the tax return for the year *before* the election is to be first applied (Revenue Procedure 99-17)
- Taxpayer ask for relief for a let regulatory election under 301.9100-1 or 30.9100-2

<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/irs-denies-request-by-a-taxpayer-to-make-a-late-475f-election>



## IRS Denied Request for Permission to Make a Late §475(f) Mark to Market Election



Photo by [Pierre Bamin](#) on [Unsplash](#)

- To get relief must show:
  - Taxpayer acted
    - Reasonably and
    - In good faith and
  - Allowing a late election would not prejudice the interests of the government
- IRS found taxpayer could show neither

<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/irs-denies-request-by-a-taxpayer-to-make-a-late-475f-election>





## IRS Denied Request for Permission to Make a Late §475(f) Mark to Market Election



Photo by [Pierre Bamin](#) on [Unsplash](#)

- Did not act reasonably and in good faith
- Had knowledge of results of trades made after April 15 -
- Did not accept that results of trades after that date didn't change the decision because he could have decided not to go forward
- Also prejudices the interests of the government as accounting method change required a §481(a) adjustment which presumptively fails this test

<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/irs-denies-request-by-a-taxpayer-to-make-a-late-475f-election>



## Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
  - Procrastination when technology is involved is tempting fate - and Mr. Sanders definitely did this
  - Just before 10:00 pm on the last day to file his petition he downloaded the PDF to fill in onto his smartphone
  - Around 11:00 pm he tried to file the petition from the phone - but for 44 minutes he tried and failed to get the petition filed

10

<https://www.currentfederaltaxdevelopments.com>



<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/taxpayers-issues-with-electronic-filing-of-tax-court-petition-not-sufficient-cause-to-excuse-filing-made-11-seconds-late>



## Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
  - He was finally able to transfer files to his Windows computer and start trying to file from there shortly before midnight
  - At 11:56pm he tried and failed to log in to the site
  - At 11:57pm he managed to get in, but was slowed down by
    - Other steps in the process online and
    - Having to refer to the instructions

11

<https://www.currentfederaltaxdevelopments.com>



<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/taxpayers-issues-with-electronic-filing-of-tax-court-petition-not-sufficient-cause-to-excuse-filing-made-11-seconds-late>



## Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
  - 9 seconds *after* midnight he began uploading the petition
  - 11 seconds *after* midnight the upload ended
  - DAWSON noted the date/time filed as 12/13/22 12:00 am (11 seconds past the end of 12/12/22)
  - Since petition had to be filed by 12/12, IRS moved to dismiss the petition
  - Taxpayer argued there must have been problems

12

<https://www.currentfederaltaxdevelopments.com>



<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/taxpayers-issues-with-electronic-filing-of-tax-court-petition-not-sufficient-cause-to-excuse-filing-made-11-seconds-late>



## Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
- General rule - petition filed when received by the court
  - Earlier this year, the Tax Court put forward this proposition for electronic filing in the *Nutt* case
  - Only counts when the process is complete, not when the process was begun by the taxpayer

13

<https://www.currentfederaltaxdevelopments.com>



<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/taxpayers-issues-with-electronic-filing-of-tax-court-petition-not-sufficient-cause-to-excuse-filing-made-11-seconds-late>



## Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
- Not equivalent to timely mailing under IRC §7502
  - While IRS allowed to write rules for electronic filing timely filing rules, only rules written are for filing of returns
  - There is no authorized electronic return transmitter for these filings
  - Even if those rules applied, his postmark would have been when return received by transmitter (so again in 12/13)

14

<https://www.currentfederaltaxdevelopments.com>



<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/taxpayers-issues-with-electronic-filing-of-tax-court-petition-not-sufficient-cause-to-excuse-filing-made-11-seconds-late>



## Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
  - System was not inaccessible
    - If system was inaccessible, then additional time would have been allowed to file
    - DAWSON records made it clear others successfully completed the process at the same time Mr. Sanders tried
    - The problems were tied to his systems and lack of knowledge about the process
    - Court also noted that he made the choice to start this process at the last minute

15

<https://www.currentfederaltaxdevelopments.com>



<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/taxpayers-issues-with-electronic-filing-of-tax-court-petition-not-sufficient-cause-to-excuse-filing-made-11-seconds-late>



## Eleven Seconds Late Tax Court Petition Dismissed Despite Taxpayer Technology Issues



- *Sanders v. Commissioner*, 160 TC No. 16, 6/20/23
  - But it's not fair!
    - Congress does not allow the Tax Court to grant equitable relief on the filing date
    - In fact, relief passed for inaccessible location/system by Congress reinforces their view they did not authorize the Tax Court to provide equitable relief

16

<https://www.currentfederaltaxdevelopments.com>



<https://www.currentfederaltaxdevelopments.com/blog/2023/6/25/taxpayers-issues-with-electronic-filing-of-tax-court-petition-not-sufficient-cause-to-excuse-filing-made-11-seconds-late>





## **Key Tax Research Mistakes - Looking for Facts to Fit the Answer You Want**

***“It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.”***

*Sherlock Holmes Quotation*

*“A Scandal in Bohemia”*

*Sir Arthur Conan Doyle*

## Key Tax Research Mistakes - Looking for Facts to Fit the Answer You Want

- "How to Be Sharp in Tax, Not a Texas Sharpshooter," Philip Wolf, *Tax Notes Today Federal*, June 16, 2023
- Many tax research errors occur because we research backwards or too quickly lock onto an answer whose result our client will like
  - The Sherlock Holmes quote is applicable here - we twist the information we find to force it to fit our preferred answer
  - Concept is often referred to as confirmation bias
    - We are highly skeptical of any information that goes against our theory but
    - Accept without critically looking at any information that seems to support our theory



## Key Tax Research Mistakes - Looking for Facts to Fit the Answer You Want

- Cases are especially susceptible to this issue
  - We ignore differences between the facts of cases we like and our client's actual situation (and our situation is always at least somewhat different)
  - We raise up the most minor difference between the facts of a case we don't like and our client's situation
- Clients are best served when reason forward, not backward
  - Find the relevant authorities to address the question without coming to a conclusion about the possible answers
  - Determine answers that could be supported and how likely they would be to prevail

**KAPLAN**