



Current Federal Tax Developments

June 12, 2023

Kaplan Financial Education



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This Week We Look At:

3 proposed tax bills introduced by Chair of House Ways & Means Committee

Wellness indemnification payment is taxable income to employee and subject to payroll taxes

IRS grants request to make election to skip claiming bonus depreciation when partnership discovers claiming bonus is bad news at the state level for certain partners

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Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

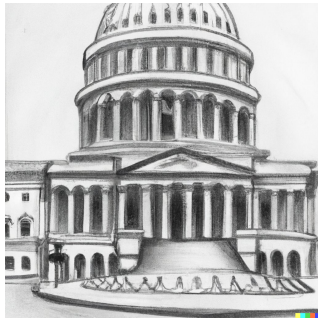


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- H.R. 3936, "Tax Cuts for Working Families Act", H.R. 3937, "Small Business Jobs Act", and H.R. 3938, "Build It In America Act", June 9, 2023
 - Three separate bills were introduced by the Chair of Ways & Means
 - We have to assume introducing three rather than a single bill was not a random act
 - One of the bills (with only a single provision) is rumored to exist to attempt to placate Northeastern Republican Representatives

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Introduced Bills

<https://www.congress.gov/118/bills/hr3936/BILLS-118hr3936ih.pdf>

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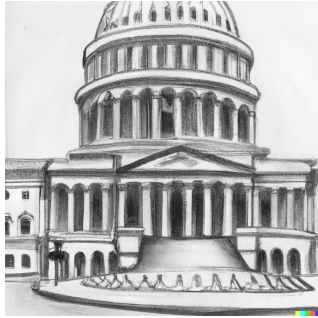


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- H.R. 3936, "Tax Cuts for Working Families Act", June 9, 2023
 - Makes changes to the standard deduction
 - Increases the amount temporarily (2024 and 2025)
 - Renames it to the *guaranteed deduction*
 - Rumored to be an offer in lieu of removing or increasing the SALT cap

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Explanation

The proposal adds a new bonus guaranteed deduction for taxable years beginning after December 31, 2023, and before January 1, 2026. The bonus guaranteed deduction is allowed in addition to the basic guaranteed deduction and additional guaranteed deduction (i.e., the guaranteed deduction is the sum of the basic guaranteed deduction, the additional guaranteed deduction, and, if applicable, the bonus guaranteed deduction).

For taxable years beginning in 2024, the amount of the bonus guaranteed deduction is \$2,000 for an unmarried individual (other than a head of household or a surviving spouse) and a married individual filing a separate return, \$3,000 for a head of household, and \$4,000 for married individuals filing a joint return and a surviving spouse. For taxable years beginning in 2025, these amounts are indexed for inflation. The bonus guaranteed deduction does not apply to taxable years beginning after December 31, 2025.

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Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

Phase-Out

The bonus guaranteed deduction is phased out at a five-percent rate for taxpayers with modified AGI above certain thresholds. This threshold is \$200,000 for an unmarried individual (other than a head of household or a surviving spouse) and a married individual filing a separate return, \$300,000 for a head of household, and \$400,000 for married individuals filing a joint return and a surviving spouse. Modified AGI means AGI increased by any amount excluded from gross income under sections 911 (foreign earned income exclusion), 931 (exclusion of income for a bona fide resident of American Samoa), or 933 (exclusion of income for a bona fide resident of Puerto Rico).

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Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

Phase-Out

In 2024, after application of the five-percent phaseout the bonus guaranteed deduction is fully eliminated at \$240,000 of modified AGI for an unmarried individual (other than a head of household or a surviving spouse) and a married individual filing a separate return, at \$360,000 for a head of household, and at \$480,000 for married individuals filing a joint return and a surviving spouse.¹¹ Figure 1 below, illustrates the amount of the guaranteed deduction under the proposal in comparison with the amount of the standard deduction under present law allowed to different categories of taxpayers by modified AGI for 2024.

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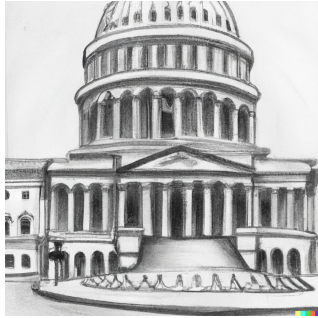


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- H.R. 3937, “Small Business Jobs Act”, June 9, 2023
 - Raises the annual payment amount at which Forms 1099 have to be issued
 - Also retroactively repeals revisions to Form 1099K found in the IRA 2022
 - Liberalizes treatments of §1202 stock
 - Increases §179 expensing amounts
 - Establishes rules for “rural opportunity zones”
 - Information reporting for opportunity funds

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Information Reporting Limits Raised Beginning for 2024 Payments

The proposal increases the information reporting threshold under sections 6041 and 6041A to \$5,000 in a calendar year, with the threshold amount (including the threshold for reporting of direct sales) to be indexed annually for inflation in calendar years after 2024.

The proposal also makes a conforming change to the dollar threshold in section 3406 with respect to information reporting required under sections 6041 and 6041A to align with the new \$5,000 reporting threshold. Under the proposal, both the information reporting thresholds and the backup withholding thresholds are for transactions that equal or exceed \$5,000 (indexed for inflation for calendar years after 2024)

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Proposed Bills Introduced to Begin Tax Negotiations for Any Significant 2023 Tax Bills

Repeal of IRA Changes to Third Party Payment Network Reporting

The proposal reverts to the previous de minimis reporting exception for third party settlement organizations. A third party settlement organization is not required to report unless the aggregate value of third party network transactions with respect to a participating payee for the year exceeds \$20,000 and the aggregate number of such transactions with respect to a participating payee exceeds 200.

The obligations of a merchant acquiring entity are unchanged. For example, if a business that provides a web-based rental platform for short-term travelers is considered a third party settlement organization, it does not have to provide a Form 1099-K to property owners participating on its web-based platform who have received payments of \$20,000 or less. Alternatively, if a company is considered a merchant acquiring entity, it must issue a Form 1099-K to all participating payees who have received payments of any amount starting with the first dollar.

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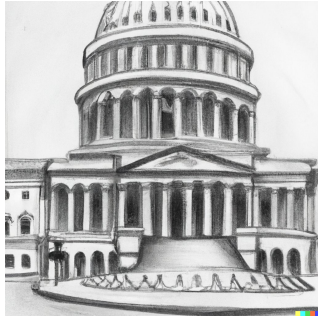


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- H.R. 3938, “Build It In America Act”, June 9, 2023
 - Largest bill in the package - and one that is unlikely to become law without some major changes
 - Won’t pass the Senate in its current state
 - Contains three short term patches for the TCJA business revenue raisers
 - Also repeals or revises a number of IRA 2022 credits (Democrats highly unlikely to accept this)

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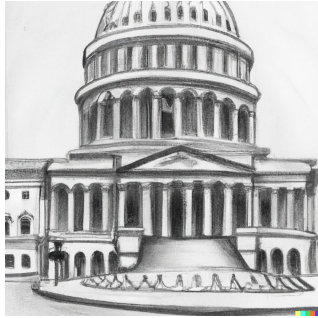


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- H.R. 3938, “Build It In America Act”, June 9, 2023
 - Business short term fixes to
 - §174 research and experimental expense amortization - but adds a separate provision for expensing
 - Sets bonus depreciation to 100% through 2025, lowers bonus for 2026 from 40% to 20% and then keeps at 20% permanently
 - Has §163(j) business interest deduction ATI computed using EBITDA through 2025

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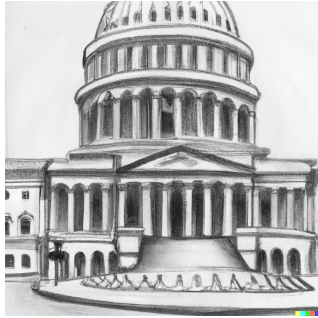


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- These are starting points only and having them as three bills suggests that one of the bills may be for “messaging” not actual passage
- Expect the bills to pass the Committee this week
- Getting bills to the House floor has become more complicated
- Since the Senate would certainly insist on major changes, don't take actions based on the assumption that these bills will become law unchanged.

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Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes



Image generated by DALL-E-2

- Chief Counsel Advice 202323006, June 9, 2023
 - Employer pays for major medical coverage which pays for preventive care
 - Also offers employees a wellness plan that includes a \$1,000 monthly indemnity payment if the employee participates in the various wellness programs under the major medical plan
 - Question is whether the \$1,000 can be excluded from income by the employees?

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

The Program Facts

An Employer provides comprehensive health coverage for its employees through a group health insurance policy. The comprehensive health coverage provides preventive care benefits, such as reimbursements for the cost of flu shots and other vaccinations, without any cost sharing for covered individuals. The coverage constitutes accident or health coverage for purposes of the exclusion for employer-provided accident or health coverage under §106(a).

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

The Program Facts

In addition to the health coverage, the Employer provides all employees, regardless of enrollment in other comprehensive health coverage, with the ability to enroll in coverage under a fixed-indemnity health insurance policy that would qualify as an accident and health plan under §106. Employees pay monthly \$1,200 premiums for the fixed-indemnity health insurance policy by salary reduction through a §125 cafeteria plan. The only payments that the insurance company receives with respect to the insurance provided to the employees are the premium payments. In other words, the Employer has no liability for any costs incurred by the insurance company that may exceed the premiums paid by its employees.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

The Program Facts

The Employer's fixed-indemnity health insurance policy is a voluntary program primarily intended to supplement its employees' other health coverage through the provision of wellness benefits. The first type of wellness benefit provided by the fixed-indemnity health insurance policy is a payment of \$1,000 if an employee participates in certain health or wellness activities. This benefit is limited to one payment per month. Use of preventive care, such as vaccinations, under a comprehensive health plan in which an employee is enrolled, qualifies the employee for the payment for the month.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

The Program Facts

The fixed-indemnity health insurance policy provides wellness counseling, nutrition counseling, and telehealth benefits at no additional cost. The employee is responsible for any costs associated with receiving any health-related activity, although in many cases all or part of the cost of the health-related activity will be provided at no cost or is covered by other insurance. The fixed-indemnity health insurance policy also provides a benefit for each day that the employee is hospitalized. Under the fixed-indemnity health insurance policy, the wellness benefits are paid from the insurance company to the Employer, which then pays out the wellness benefit to employees via the Employer's payroll system

<https://www.irs.gov/pub/irs-wd/202323006.pdf>

Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes



Image generated by DALL-E-2

- Chief Counsel Advice 202323006, June 9, 2023
 - IRS rules that the \$1,000 payments are includable as income
 - The \$1,000 was not reimbursing the employee for expenses paid (the major medical policy paid for these items)
 - Employee could get the payment even though the employee incurred no expenses

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

Inclusion in Employee's Income

Wellness indemnity payments under an employer-funded, fixed-indemnity insurance policy (including where the premium for the coverage is paid by employee salary reduction through a cafeteria plan under section 125 of the Internal Revenue Code (Code)) are includible in the gross income of the employee if the employee has no unreimbursed medical expenses related to the payment.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

Inclusion in Employee's Income

The exclusion under §105(b) is limited to amounts paid solely to reimburse expenses incurred for medical care and does not apply to amounts which the taxpayer would be entitled to receive irrespective of whether expenses for medical care are incurred. The exclusion from income in §105(b) does not apply to payments when the employee has no unreimbursed medical expense either because the activity that triggers the payment does not cost the employee anything or because the cost of the activity is reimbursed by other coverage.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

Inclusion in Employee's Income

The fixed indemnity health insurance policy pays \$1,000 per month without regard to whether the employee has any unreimbursed health insurance expenses. Thus, the payment is included in the employee's gross income.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

Payroll Taxes

Because the payment is provided in connection with the employee's employment, it is included in remuneration and treated as "wages" for employment tax purposes. The exclusions from "wages" for medical expenses would not apply because the payments are not for medical expenses.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

Payroll Taxes

The taxable wellness indemnity benefits are provided by employers to employees as remuneration for employment under benefit plans funded by employers and, thus, fit within the basic definition of wages under §3121(a). To the extent the taxable wellness indemnity benefits are not paid under a worker's compensation law, they do not qualify for the exception from wages provided by §3121(a)(2)(A). Although the payments are made on account of sickness or accident disability, the parenthetical in §3121(a)(2)(A) removes the payments from the exclusion because they are not received under a workers' compensation law. Moreover, the taxable wellness indemnity benefits cannot qualify for the §3121(a)(2)(B) exception because the payments are not made on account of medical or hospitalization expenses in connection with sickness or accident disability.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

Payroll Taxes

Temporary Treasury Regulation §32.1(d) specifically bases inclusion in the definition of “payments on account of sickness or accident disability” subject to FICA tax on the payment being “includible in gross income under §105(a).” All the exceptions from treatment as payments on account of sickness or accident disability that are specifically mentioned in §32.1(d) support the conclusion that the payments subject to FICA taxes under the regulations are only those payments that are includible in gross income under §105(a) of the Code. The specifically listed numbered exceptions in Temporary Treasury Regulation §32.1(d) and the amounts excludable under §104(a)(2), (4), and (5) of the Code are all amounts that are excludable from gross income.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

Payroll Taxes

It is, therefore, clear that Temporary Treasury Regulation §32.1(d) was not intended to provide an exception from FICA wages for payments that are includible in gross income. The taxable wellness indemnity benefits would be excludable under §32.1(d)(1) to the extent that they are expended for medical care as described in §105(b) of the Code and Treasury Regulation §1.105-2. However, because the taxable wellness indemnity benefits do not qualify for the Temporary Treasury Regulation §32.1(d)(1) exception, and no other exception applies, they are subject to FICA.

A similar analysis applies for purposes of the similar exception under §3306(b)(2)(A) of the Code with respect to FUTA taxes. Thus, the taxable wellness indemnity benefits are also subject to FUTA taxation.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

Wage Withholding Required

Section 3402(a) of the Code, relating to U.S. Federal Income Tax Withholding (FITW), generally requires every employer making a payment of wages to deduct and withhold upon those wages a tax determined in accordance with prescribed tables or computational procedures. The term “wages” is defined in §3401(a) for FITW purposes as all remuneration for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash with certain specific exceptions. Among the specific exceptions are several exceptions related to the provision of medical insurance and benefits. See §3401(a)(20), 3401(a)(21), and 3401(a)(22). No statutory exception applies to the taxable wellness indemnity benefits.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



Wellness Indemnification Payment Treated as Taxable Wages by Employees and for Payroll Taxes

Wage Withholding Required

The taxable wellness indemnity benefits are not sick pay (because they are not dependent upon an absence from work), and there is no exception from the definition of wages under §3401(a) that applies to the payments. Thus, as wages under §3401(a), the taxable wellness indemnity benefits are subject to FITW under the general FITW rules rather than the rules applicable to sick pay.

<https://www.irs.gov/pub/irs-wd/202323006.pdf>



IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact



Image generated by DALL-E-2

- PLR 202323001, June 9, 2023
 - Taxpayer is a partnership that purchased assets subject to bonus depreciation
 - Was not aware using bonus would have a negative state income tax impact on some partners
 - Issue not raised by tax adviser either
 - Now asking for ability to make a late election

<https://www.irs.gov/pub/irs-wd/202323001.pdf>



IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

Facts of the Situation

Taxpayer is treated as a partnership for federal income tax purposes and files a Form 1065, U.S. Income Tax Return for Partnership Income, on a calendar year basis. Taxpayer's overall method of accounting is the accrual method.

During the Taxable Year, Taxpayer placed in service property that is classified as 5-year property or 7-year property and is qualified property under § 168(k)(2) of the Code (collectively, classes of property). On its timely filed federal tax return for the Taxable Year, Taxpayer deducted the additional first year depreciation for the classes of property.

<https://www.irs.gov/pub/irs-wd/202323001.pdf>



IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

Facts of the Situation

Taxpayer engaged Firm to prepare its federal income tax return for the Taxable Year. Taxpayer reviewed this federal income tax return prior to its filing, but was not aware at that time of certain unfavorable state tax implications to one or more partners of Taxpayer stemming from Taxpayer's deduction of the additional first year depreciation on its federal income tax return for its Taxable Year. These implications were discovered after the Taxpayer filed its federal income tax return on Date¹, in connection with a partner's State income tax return.

<https://www.irs.gov/pub/irs-wd/202323001.pdf>



IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

Facts of the Situation

Firm was also not aware that Taxpayer's claiming the additional first year depreciation deduction on its federal income tax return for the Taxable Year would result in unfavorable State tax implications that impacted one or more partners of Taxpayer. As a result, Firm did not advise Taxpayer to make the election not to deduct the additional first year depreciation for the classes of property placed in service during the Taxable Year.

Accordingly, Taxpayer requests an extension of time pursuant to §§301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election under §168(k)(7) not to deduct the additional first year depreciation deduction for all classes of property that are qualified property under §168(k) and placed in service by Taxpayer during the Taxable Year

<https://www.irs.gov/pub/irs-wd/202323001.pdf>

IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact



Image generated by DALL-E-2

- PLR 202323001, June 9, 2023
 - Date for electing not to use bonus depreciation
 - Due date including extensions for return
 - However, set by regulation not by statute
 - IRS position is they cannot grant relief for dates set by statute unless Congress specifically provides for such relief
 - But can request IRS grant relief for late elections when date set by regulations - but must ask for a letter ruling (and pay for it)

<https://www.irs.gov/pub/irs-wd/202323001.pdf>



IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

Regulatory Election Relief

Under §301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§301.9100-2 and 301.9100-3 to make a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of §301.9100-2.

<https://www.irs.gov/pub/irs-wd/202323001.pdf>



IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

Regulatory Election Relief

Section 301.9100-3(a) provides that requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

<https://www.irs.gov/pub/irs-wd/202323001.pdf>

IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact



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- PLR 202323001, June 9, 2023
 - IRS most often grants such relief if adviser
 - Admits they should have advised client of the issue but did not do so
 - Taxpayer not making the election based on hindsight-the issue was knowable when the election was due
 - But there are numerous costs associated with this relief

<https://www.irs.gov/pub/irs-wd/202323001.pdf>



IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

IRS Relief

Based solely on the facts and representations submitted, we conclude that the requirements of §§301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of 60 calendar days from the date of this letter ruling to make the election not to deduct the additional first year depreciation under §168(k) for all classes of qualified property placed in service by Taxpayer during the Taxable Year.

<https://www.irs.gov/pub/irs-wd/202323001.pdf>

IRS Grants Permission to Make Late Election to Skip Bonus Depreciation Due to Lack of Understanding of State Tax Impact

IRS Relief

This election must be made by Taxpayer filing an amended Form 1065 for the Taxable Year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of qualified property placed in service by Taxpayer during the Taxable Year.

<https://www.irs.gov/pub/irs-wd/202323001.pdf>

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