



# Current Federal Tax Developments

August 21, 2023

Kaplan Financial Education

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## This Week We Look At:

Limited relief likely coming for beneficial ownership reporting

IRS being challenged in attempt to treat state law limited partners as receive SE income

Rent your home to your business for 13 days each year plan mainly failed

Advance memo states IRS objection to a marketed trust tax avoidance plan

IRS memo explains credit unions can only claim COVID ERC on 2021 wages

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## OIRA Considering Rule for Beneficial Ownership Reporting Deadline Extension for Certain Entities



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- RIN: 1506-ZA02, August 14, 2023
  - Not a lot of information about the proposed rule change aside from the title
  - “Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024”
  - Note that it only refers to entities created in 2024 - seems most likely the earliest due date will be January 1, 2025 for all entities rather than triggering a 30 day deadline
  - But we need to wait and read the rule when published

<https://www.reginfo.gov/public/do/eoDetails?rrid=326962>

## Cases Going Forward on Whether IRS Can Find Limited Partner Has SE Income Based Purely on Activity



Photo by [Brett Jordan](#) on [Unsplash](#)

- Plaintiff's Petition, *Point72 Asset Management LP et al. v. Commissioner*, August 11, 2023
  - Entity has a corporate general partner that holds a 0.01% interest in the partnership
  - All remaining interests held by 100% shareholder of the corporation as a limited partner
  - IRS argues that shareholder's LP allocation should be treated as self-employment income
  - This is one of a few such cases - what is meant by "limited partnership" in IRC §1402(a)(13)?

<https://www.taxnotes.com/research/federal/court-documents/court-petitions-and-briefs/partnership-disputes-net-earnings-from-self-employment-adjustments/7h2st>



## Court Drastically Reduces Deduction for Taxpayers Attempting to Exploit Augusta/Masters Rule



Photo by [Stephan Becher](#) on [Unsplash](#)

- *Sinopoli v. Commissioner*, TC Memo 2023-105, August 14, 2023
  - A popular “your accountant won’t tell you this” (or “your accountant doesn’t know this”) piece of advice floating around social media and other locations involve renting your home to your business (preferably that is an entity)
  - The “kept secret” or “not known by accountants” provision they have found is IRC §280A(g)

<https://www.currentfederaltaxdevelopments.com/blog/2023/8/15/tax-court-greatly-reduces-rent-deduction-for-s-corporation-where-taxpayer-attempted-to-take-advantage-of-the-masters-rule>



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### IRC §280(g)

**(g) Special rule for certain rental use.** Notwithstanding any other provision of this section or section 183, if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then--

(1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and

(2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61.

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- *Sinopoli v. Commissioner*, TC Memo 2023-105, August 14, 2023
  - Two physicians owned a Planet Fitness franchise, held in an S corporation
  - They claimed to hold monthly meetings in each physician's home
  - Computed a rent based on common area space in their home times a per foot meeting space rate in their area
  - Claimed a deduction of over \$290,000 for 3 years, excluded amount from income

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- *Sinopoli v. Commissioner*, TC Memo 2023-105, August 14, 2023
  - Court found that their problem was not with the exclusion from income, but rather the deduction at the S corporation level
  - Noted that prices negotiated between related parties are always subject to special scrutiny
  - As well, expense must meet “ordinary and necessary” test and must provide proof of business purpose

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  - Doctors could only, at best, document 1 meeting per month
  - IRS established that space for 500 to 1000 for meeting rented at \$500 per day (or portion of day)
  - Court found the \$500 was “more than generous” as meetings were only 2 owners and only required a very small amount of the space in the home

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## IRS Memo Outlines Abusive Marketed Trust Plan, Recommends Ways to Attack the Plan for Agents



Photo by [Julius Drost](#) on [Unsplash](#)

- AM 2023-006, August 18, 2023
  - Deals with the (Maybe Copyrighted) “Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trust” promotion
  - Materials found being distributed by attorneys, accountants, enrolled agents, and unlicensed tax advisers
  - Claims to be a magic system to eliminate tax on income generated by various assets by selling them to a trust (that has been amazingly overlooked by tax professionals for decades--or perhaps not...)

<https://www.currentfederaltaxdevelopments.com/blog/2023/8/19/promotional-materials-for-marketing-trust-based-shelter-erroneously-confuses-various-definitions-of-income-for-trust-income-taxation>

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Photo by [Julius Drosi](#) on [Unsplash](#)

- AM 2023-006, August 18, 2023
  - The many meanings of income in the context of trusts and income taxation
    - Income (unmodified) or accounting income (found in IRS texts, including forms and instructions)
    - Gross income
    - Taxable income
    - Distributable net income (DNI)
  - They are *not* the same

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- AM 2023-006, August 18, 2023
  - Claim trustee can designate any income as an “extraordinary dividend” covered by IRC §643(a)(4) and allocate it to corpus
  - Such item (and capital gains) allocable to corpus are excluded from distributable net income under IRC §643(a)
  - Then takes the (absolutely unsupported by any authority) position this means neither the trust nor the beneficiaries will pay tax on that designated corpus

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- AM 2023-006, August 18, 2023
  - At this point the wheels come off (your client just became the tax version of Sebastien Buemi at the 2010 F1 Chinese Grand Prix)
  - Memo points that IRC §643(a) and (b) both indicate that "taxable income" <> DNI
  - DNI rather just serves as a limit on the income distribution deduction the trust can claim and how much income the beneficiaries will pick up on their return

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The Sebastien Buemi "where did the front wheels go" incident referred to.

<https://youtu.be/ZMZJ3ZaEclQ?si=iyKsrQIVxdG1oDsM>

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- AM 2023-006, August 18, 2023
  - However, if the income doesn't end up taxable to the beneficiary (or beneficiaries) then the trust owes tax on the income
  - Tells agents to:
    - Make sure the trust pays income on any sums excluded from DNI
    - Disallow any deduction from income claimed due to the treatment of the item as corpus

<https://www.currentfederaltaxdevelopments.com/blog/2023/8/19/promotional-materials-for-marketing-trust-based-shelter-erroneously-confuses-various-definitions-of-income-for-trust-income-taxation>

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- AM 2023-006, August 18, 2023
  - This comes straight from the tax scam textbook, with a new version created once enforcement starts against the last one
    - Grab some obscure provision of the IRC you are sure many advisers aren't fully up to speed on (trust income is one clear example)
    - Maybe put a nondisclosure agreement on it to prevent any party the taxpayer consults from seeking assistance

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  - Tax advantage of the adviser's imposter syndrome
    - The adviser may simply assume this expert must be right
    - Or adviser may consent because he/she doesn't want to seem unsure, and saying yes is the best way (so appear "strong")

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## Credit Unions Can Claim ERC on 2021, But Not 2020, Wages (If They Otherwise Qualify)



Photo by [Jonathan Cooper](#) on [Unsplash](#)

- CCA 202333001, August 18, 2023
  - IRS issues specialized ruling dealing with credit unions and the ERC
  - CARES Act 2020 version of the ERC barred any instrumentality of the government from receiving the ERC
  - IRS concludes a credit union meets the test as an instrumentality of the US government (Rev. Rul. 57-128 and federal statutes creating credit unions)

<https://www.currentfederaltaxdevelopments.com/blog/2023/8/19/credit-unions-can-qualify-for-employee-retention-tax-credit-for-2021-wages-but-not-those-paid-in-2020>



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- CCA 202333001, August 18, 2023
  - Taxpayer Certainty and Disaster Tax Relief Act of 2020 made a revision the CARES Act ERC for the 1st and 2nd quarter of 2021 allowing such instrumentalities that were described in IRC §501(c)(1) and exempt under §501(a) to receive the ERC for those quarters (but not back in 2021)
  - Credit unions meet those requirements, thus can get the credit for Q1 & Q2 of 2021

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## Credit Unions Can Claim ERC on 2021, But Not 2020, Wages (If They Otherwise Qualify)



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- CCA 202333001, August 18, 2023
  - American Rescue Plan Act codified the COVID ERC at IRC §134 and extended it to the 3rd and 4th Quarter with the same provision
  - Eventually the 4th Quarter version was modified to only apply to recovery startup businesses
  - But, again, if the credit union otherwise qualifies it can obtain the ERC for those quarters (obviously only as a RSB for Q4 2021)

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