



Current Federal Tax Developments

May 6, 2024

Kaplan Financial Education



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This Week We Look At:

IRS releases Fact Sheet on disaster provisions for retirement accounts added by SECURE 2.0 Act

DC Circuit reverses Tax Court ruling that IRS does not have assessment authority for failure to file a report under IRC §6038(b) (Form 5471)

Electric vehicle final regulations issued

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<https://www.currentfederaltaxdevelopments.com>



This Week We Look At:

Department of Justice begins process to move marijuana from Schedule I to Schedule III which would cause §280E to no longer limit deductions for cannabis businesses

Lack of any written records on time President/COO spent on activities or even estimate time spent on qualified research activities doomed attempt to claim a credit under IRC §41(a)

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<https://www.currentfederaltaxdevelopments.com>





Fact Sheet Released Discussing Disaster Relief Related to Retirement Programs Under SECURE Act 2.0



Photo by [Chris Gallagher](#) on [Unsplash](#)

- “Disaster relief frequently asked questions: Retirement plans and IRAs under the SECURE 2.0 Act of 2022,” FS-2024-19, May 3, 2024
- Section 331 of SECURE 2.0 provides the following special rules related to IRAs and retirement plans for disaster relief
 - Expanded distribution and tax relief
 - Relief to repay distributions taken for principal residence purchase/construction
 - Plan loan relief

<https://www.irs.gov/newsroom/disaster-relief-frequent-asked-questions-retirement-plans-and-iras-under-the-secure-20-act-of-2022#main-content>



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Photo by [Chris Gallagher](#) on [Unsplash](#)

- “Disaster relief frequently asked questions: Retirement plans and IRAs under the SECURE 2.0 Act of 2022,” FS-2024-19, May 3, 2024
 - Individuals who qualify for such relief if:
 - The individual’s principal residence at any time during the incident period of any qualified disaster is in the qualified disaster area with respect to that disaster, and
 - The individual has sustained an economic loss by reason of that qualified disaster.

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- “Disaster relief frequently asked questions: Retirement plans and IRAs under the SECURE 2.0 Act of 2022,” FS-2024-19, May 3, 2024
 - Economic losses include, but are not limited to:
 - Loss, damage to, or destruction of real or personal property from fire, flooding, looting, vandalism, theft, wind, or other cause,
 - Loss related to displacement from the individual's home, or
 - Loss of livelihood due to temporary or permanent layoffs.

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- “Disaster relief frequently asked questions: Retirement plans and IRAs under the SECURE 2.0 Act of 2022,” FS-2024-19, May 3, 2024
 - Employers are not required to adopt provisions to implement the expanded loan or distribution rules
 - Qualified disaster distributions are taxed over three years unless the taxpayer elects to pay the tax in a single year - and the taxpayer also repay that amount during the three years

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- "Disaster relief frequently asked questions: Retirement plans and IRAs under the SECURE 2.0 Act of 2022," FS-2024-19, May 3, 2024
- Qualified distribution for purposes of purchasing or constructing a principal residence is any distribution that is a qualified first-time homebuyer distribution from an IRA or a hardship distribution from an employer plan
 - Was to be used to purchase or construct a principal residence in a qualified disaster area, but which was not so used because of the qualified disaster (as defined in What is a qualified disaster?) that affected that area, and
 - Was received during the period beginning 180 days before the first day of the incident period of that qualified disaster and ending 30 days after the last day of that incident period.

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- “Disaster relief frequently asked questions: Retirement plans and IRAs under the SECURE 2.0 Act of 2022,” FS-2024-19, May 3, 2024
- Qualified residence distributions can be repaid ending on the date that is 180 after the later of:
 - The first day of the incident period with respect to the qualified disaster, or
 - The date of the disaster declaration with respect to the qualified disaster

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- “Disaster relief frequently asked questions: Retirement plans and IRAs under the SECURE 2.0 Act of 2022,” FS-2024-19, May 3, 2024
- Loan relief (again, a plan does not have to provide this relief)
 - Loan repayments can be delayed up to one-year if outstanding on or after the latest of:
 - The first day of the incident period with respect to the qualified disaster, or
 - The date of the disaster declaration with respect to the qualified disaster.

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- Loan relief (again, a plan does not have to provide this relief)
 - For any payment due from the first day of the disaster’s incident period to the date that is 180 days after the last day of the incident period, the due date for repayment may be delayed under the plan for up to one year

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 - Loan relief (again, a plan does not have to provide this relief)
 - Increased loan limit - can increase loan limit to the lesser of
 - The individual's vested benefit under the plan or
 - \$100,000

<https://www.irs.gov/newsroom/disaster-relief-frequent-asked-questions-retirement-plans-and-iras-under-the-secure-20-act-of-2022#main-content>

DC Circuit Reverses Tax Court Ruling on IRS Authority to Assess Penalties in Certain Cases



Photo by [CFPhotosin Photography](#) on [Unsplash](#)

- *Farhy v. Commissioner*, CA DC Circuit, Docket No. 23-1179, May 3, 2024
 - Can the IRS assess and administratively collect penalties under IRC §6038(b)?
 - Case involved \$500,000 of such penalties for failing to file Form 5471
 - Tax Court concluded in April 2023 that the IRS cannot use the assessment and administrative collection route, but rather must sue the taxpayer in U.S. District Court

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/d.c-circuit-reverses-tax-court-irs-penalty-assessment-authority/7jh5w>



DC Circuit Reverses Tax Court Ruling on IRS Authority to Assess Penalties in Certain Cases



Photo by [CFPhotosin Photography](#) on [Unsplash](#)

- *Farhy v. Commissioner*, CA DC Circuit, Docket No. 23-1179, May 3, 2024
 - The taxpayer and IRS disagreed on what each contended was the default reading of language in IRC §6201(a) (“assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties)”)
 - IRS contends “including” means this is a non-exclusive list and penalties default to assessable unless the law says otherwise
 - Taxpayer (and the Tax Court) hold the opposite view that penalties aren’t normally assessable

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/d.c-circuit-reverses-tax-court-irs-penalty-assessment-authority/7jh5w>

DC Circuit Reverses Tax Court Ruling on IRS Authority to Assess Penalties in Certain Cases



Photo by [CFPhotosin.Photography](#) on [Unsplash](#)

- *Farhy v. Commissioner*, CA DC Circuit, Docket No. 23-1179, May 3, 2024
 - Panel decides it doesn't need to come to a conclusion related to the default
 - Current monetary penalty was enacted to simplify what previously been a reduction of foreign tax credit (which still remains in the law)
 - The FTC reduction, directly affecting tax due, is clearly accessible
 - Also the dollar value penalty must be reduced by any FTC penalty

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/d.c-circuit-reverses-tax-court-irs-penalty-assessment-authority/7jh5w>

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- *Farhy v. Commissioner*, CA DC Circuit, Docket No. 23-1179, May 3, 2024
 - Congress's intent was to simplify the administration of the penalty and coordinate the penalties
 - It does not make sense that Congress intended this simplification to result in a bifurcated result (one part accessible, other part not)
 - As well, reasonable cause defense allowed for this penalty, and the law clearly establishes that the IRS is granted the authority to deal with that defense

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/d.c-circuit-reverses-tax-court-irs-penalty-assessment-authority/7jh5w>



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- *Farhy v. Commissioner*, CA DC Circuit, Docket No. 23-1179, May 3, 2024
 - Would also mean that the (c) penalty (FTC) would face Tax Court jurisdiction, but the (b) penalty (\$10,000 one) would have to go through District Court even though the penalties are integrated

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/d.c-circuit-reverses-tax-court-irs-penalty-assessment-authority/7jh5w>

Electric Vehicle Final Regulations Issued



Photo by [CHUTTERSNAPE](#) on [Unsplash](#)

- TD 9995, May 6, 2024
 - Deals with rules related to battery components, critical minerals and foreign-entities-of-concern issues
 - Also have rules for previously owned clean vehicles including the five-year lookback, dealer tax compliance issues, various issues
 - Includes “upfront” review of compliance with battery component and critical minerals rules
 - Manufacturers will a two-year transition period to remove foreign-entities-of-concern from their supply chain

<https://public-inspection.federalregister.gov/2024-09094.pdf>



Marijuana May Be Moved Off Schedule I to Schedule III, §280E Would No Longer Apply



Photo by [Matthew Brodeur](#) on [Unsplash](#)

- David Ovalle, Michael Scherer, Tyler Pager, Dan Diamond and Fenit Nirappil, "Attorney general moves to reclassify marijuana as lower-risk drug," *Washington Post* online, April 30, 2024
- IRC §280E denies deductions other than cost of sales to a business "trafficking in controlled substances (*within the meaning of schedule I and II of the Controlled Substances Act*) which is prohibited by Federal law or the law of any State in which such trade or business is conducted."
- DEA recommended on April 30, 2024 that such drugs be moved from Schedule I to Schedule III



Marijuana May Be Moved Off Schedule I to Schedule III, §280E Would No Longer Apply



Photo by [Matthew Brodeur](#) on [Unsplash](#)

- David Ovalle, Michael Scherer, Tyler Pager, Dan Diamond and Fenit Nirappil, "Attorney general moves to reclassify marijuana as lower-risk drug," *Washington Post* online, April 30, 2024
 - The Justice Department approved the recommendation the same day
 - Now moves on to the Office of Management and Budget, after which it would be published for public comment
 - Would not go into effect until months after initial publication if the rule is approved



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- David Ovalle, Michael Scherer, Tyler Pager, Dan Diamond and Fenit Nirappil, "Attorney general moves to reclassify marijuana as lower-risk drug," *Washington Post* online, April 30, 2024
 - Major impact for businesses operating in states where cannabis sales are now legal in some form
 - It does not make all such sales legal under federal law, but does allow for certain medical use
 - Would greatly reduce the federal income tax burden on such businesses, especially dispensaries, if it does go into effect



Inability to Even Estimate Time President/COO Spent Supervising Qualified Research Deadly to Research Credit



Photo by [Dijim Loic](#) on [Unsplash](#)

- *Moore v. Commissioner*, CA7 Docket No. 23-2681, April 30, 2024
 - Taxpayers had claimed a credit for increasing research activities relying in part on President/COO's supervision of research
 - All agree he did supervise research
 - However, had no written records of how he spent his time
 - Also, could not estimate, even approximately, how much time he spent was on IRC §41(d)(1) *qualified research*

Inability to Even Estimate Time President/COO Spent Supervising Qualified Research Deadly to Research Credit



Photo by [Djim Loic](#) on [Unsplash](#)

- *Moore v. Commissioner*, CA7 Docket No. 23-2681, April 30, 2024
 - Tax Court found that the utter lack of information on his time spent meant there was no way to calculate a proper credit for increasing activities under §41(a)(1)
 - The taxpayer did not argue it qualified under IRC §41(a)(2) or (3) which do not depend on an increase over a base



Inability to Even Estimate Time President/COO Spent Supervising Qualified Research Deadly to Research Credit



Photo by [Dijim Loic](#) on [Unsplash](#)

- *Moore v. Commissioner*, CA7 Docket No. 23-2681, April 30, 2024
 - Appellate panel found that the problem was not simply the lack of records (though noted that was a big problem).
 - Inability to come up with a number under method was fatal to the claim, as the panel agreed with the Tax Court that there was no way to compute a credit under §41(a)(1) in those circumstances

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