



Current Federal Tax Developments

May 20, 2024

Kaplan Financial Education

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This Week We Look At:

DOJ issues proposed rule that would remove cannabis businesses from loss of most business deductions under IRC §280E

Filing date relief issued for those impacted by Ohio tornadoes from March

IRS National Fraud Counsels speaks on ERC exams in ABA Tax Section webinar

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This Week We Look At:

Tax adviser files suit to attempt to force the IRS to start processing ERC claims

Tax Court imposes penalty for raising frivolous claims against taxpayer who argued wages are not income (among other things)

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DOJ Submits Formal Proposed Rule to Reschedule Marijuana to Schedule III, Would Impact IRC §280E



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

- Proposed Rule, Docket No. DEA-1362; A.G. Order No. 5931-2024, "Schedules of Controlled Substances: Rescheduling of Marijuana," May 16, 2024
 - DOJ has now formally announced the proposed rule to move marijuana to schedule III that was reported to be coming a couple of weeks earlier
 - Once published in the Federal Register there will be 60 days for comments to be received and 30 days for parties to file a request for a public hearing
 - The key income tax impact revolves around IRC §280E

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Proposed Rule Text:

<https://www.dea.gov/sites/default/files/2024-05/Scheduling%20NPRM%20508.pdf>

DOJ Press Release:

<https://www.justice.gov/opa/pr/justice-department-submits-proposed-regulation-re-schedule-marijuana>

DOJ Q&A Related to Rescheduling:

<https://www.justice.gov/olc/media/1352141/dl?inline>

IRC §280E: <https://www.taxnotes.com/research/federal/usc26/280E>

Wesley Elmore, "IRS Preparing for Tax Implications of Marijuana Rescheduling," Tax Notes Today, May 8, 2024 (subscription required)

<https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration/irs-pr-paring-tax-implications-marijuana-rescheduling/2024/05/08/7jhkb>



DOJ Submits Formal Proposed Rule to Reschedule Marijuana to Schedule III, Would Impact IRC §280E

IRC §280E

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of 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.

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- Proposed Rule, Docket No. DEA-1362; A.G. Order No. 5931-2024, "Schedules of Controlled Substances: Rescheduling of Marijuana," May 16, 2024
 - Does not make marijuana fully legal under federal law, but does remove the bar on deductions
 - Key impacts are on state legal cannabis businesses
 - Very big impact on dispensaries, as they have only limited costs in costs of sale
 - Lesser (but still significant) impact on producers
 - In neither case does §280A UNICAP apply (though will if this is adopted)

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- Proposed Rule, Docket No. DEA-1362; A.G. Order No. 5931-2024, "Schedules of Controlled Substances: Rescheduling of Marijuana," May 16, 2024
- In a May 8 story, *Tax Notes Today* reported that IRS Commissioner Daniel Werfel, testifying at a hearing of the House Appropriations Financial Services and General Government subcommittee, reported that the agency will be looking to work with the cannabis community on the impact

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Filing Date Relief for Certain Taxpayers Impacted by Ohio Tornadoes



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

- IR-2024-141, May 16, 2024
 - Relief is for tornadoes that began on March 14, 2024
 - Covers individuals and households that reside or have a business in Auglaize, Crawford, Darke, Delaware, Hancock, Licking, Logan, Mercer, Miami, Richland and Union counties (as well as any counties later added to the disaster area)
 - Pushes back most filing deadlines that fall between March 14, 2024 and September 3, 2024

IRS News Release:

<https://www.irs.gov/newsroom/irs-announces-tax-relief-for-taxpayers-impacted-by-tornadoes-in-ohio-various-deadlines-postponed-to-sept-3-2024>



Filing Date Relief for Certain Taxpayers Impacted by Ohio Tornadoes



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

- IR-2024-141, May 16, 2024
 - Specifically pushes to September 3 the following (among others)
 - Individual income tax returns and payments normally due on April 15, 2024.
 - 2023 contributions to IRAs and health savings accounts for eligible taxpayers.
 - Quarterly estimated income tax payments normally due on April 15 and June 17, 2024.
 - Quarterly payroll and excise tax returns normally due on April 30, 2024, and July 31, 2024.

IRS News Release:

<https://www.irs.gov/newsroom/irs-announces-tax-relief-for-taxpayers-impacted-by-tornadoes-in-ohio-various-deadlines-postponed-to-sept-3-2024>



Filing Date Relief for Certain Taxpayers Impacted by Ohio Tornadoes



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

- IR-2024-141, May 16, 2024
 - Specifically pushes to September 3 the following (among others)
 - Calendar-year partnership and S corporation returns normally due on March 15, 2024.
 - Calendar-year corporation and fiduciary returns and payments normally due on April 15, 2024.
 - Calendar-year tax-exempt organization returns normally due on May 15, 2024.
 - Extensions can still be requested through September 3, 2024 but must be filed on paper

IRS News Release:

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Filing Date Relief for Certain Taxpayers Impacted by Ohio Tornadoes



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- IR-2024-141, May 16, 2024
 - Different period and relief for payroll and excise tax deposits - those due on or after March 14, 2024, and before March 29, 2024, will be abated as long as the deposits were made by March 29, 2024.
 - Release also has information on other tax relief
 - Casualty loss - federally declared disaster
 - Exclusion of qualified disaster relief payments
 - Retirement plan relief provisions (IRAs and employee plans)

IRS News Release:

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IRS National Fraud Counsel Discusses ERC Exam in ABA Section of Taxation Webcast



Photo by [Jon Tyson](#) on [Unsplash](#)

- Nathan J. Richman, "Employee Retention Credit Auditors Are Digging Deep," *Tax Notes Today Federal*, May 15, 2024
 - IRS National Fraud Counsel Carolyn Schenck spoke on May 14 on the issue of ERC exams
 - Noted "...the government is looking for substantiation to understand the nature of the business, its size, how it was impacted, as well as to make sure the entity is actually entitled."

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Article (subscription required):

<https://www.taxnotes.com/tax-notes-today-federal/audits/employee-retention-credit-auditors-are-digging-deep/2024/05/15/7jrmh>



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- Nathan J. Richman, "Employee Retention Credit Auditors Are Digging Deep," *Tax Notes Today Federal*, May 15, 2024
 - Specific requests mentioned:
 - Any records that the taxpayer relied on for the conclusion that their operations were partially suspended by a government order,
 - Any records showing a decline in gross receipts,
 - Documentation of qualifying employees and what they were paid,

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- Nathan J. Richman, “Employee Retention Credit Auditors Are Digging Deep,” *Tax Notes Today Federal*, May 15, 2024
 - Specific requests mentioned:
 - Relevant communications with employees or customers, and
 - Copies of some previously filed tax returns, among other items
 - IRS agents will summonses when they don’t get information from either the taxpayer or any other party

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- Nathan J. Richman, "Employee Retention Credit Auditors Are Digging Deep," *Tax Notes Today Federal*, May 15, 2024
 - Letters for return of excess credits
 - 2020 letters are begun to be sent out
 - 2021 letters will begin soon
 - No specific date set to end the moratorium on processing ERC claims

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- Nathan J. Richman, "Employee Retention Credit Auditors Are Digging Deep," *Tax Notes Today Federal*, May 15, 2024
 - Withdrawal options still available though not under terms of the voluntary withdrawal program
 - Suggested that taxpayers concerned about criminal prosecution should consider the IRS general voluntary disclosure program
 - Also, James Creech of Baker Tilley US LLP noted that some county and local documents are becoming hard to find, so it's important to secure copies now

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Lawsuit Filed to Attempt to Force IRS to Start Processing ERC Claims Again



Photo by [Wesley Tinney](#) on [Unsplash](#)

- Complaint, *Stenson Tamaddon, LLC v. United States, et al*, USDC Ariz., May 14, 2024
 - Seeking an injunction requiring the IRS to begin again processing ERC claims
 - Also seeks to bar the IRS from enforcing Notice 2021-20 when the agency denies ERC claims
 - A client of this adviser filed the suit we discussed late last year arguing for the same bar on enforcing Notice 2021-20 (*Southern California Emergency Medicine, Inc. v. Werfel, et al*, USDC CD Ca., December 1, 2023)

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Complaint:

<https://www.taxnotes.com/research/federal/court-documents/court-petitions-and-briefs/tax-advisory-firm-challenges-employee-retention-credit-rule/7jrqm>



Lawsuit Filed to Attempt to Force IRS to Start Processing ERC Claims Again



Photo by [Wesley Tinney](#) on [Unsplash](#)

- Complaint, *Stenson Tamaddon, LLC v. United States, et al*, USDC Ariz., May 14, 2024
 - Basis for the attack on Notice 2021-20 is much the same in both suits - the IRS violated the Administrative Procedures Act in issuing the guidance
 - This one attacks the IRS suspension of processing - expect the IRS to argue that the parties have the right to go straight to District Court and the plaintiff to argue that asking that is unreasonable

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Complaint:

<https://www.taxnotes.com/research/federal/court-documents/court-petitions-and-briefs/tax-advisory-firm-challenges-employee-retention-credit-rule/7jrqm>

Tax Court Sanctions Taxpayer Arguing That Wages Are Not Income



Photo by [Tingey Injury Law Firm](#) on [Unsplash](#)

- *Wendell, et al v. Commissioner*, TC Docket No. 4784-23, May 13, 2024
 - IRS motion for summary judgment granted in the case
 - Anesthesiologist claimed \$500,000 of wages he received was not income under federal law
 - Court not very impressed with taxpayers' arguments, including "the tattered legal argument that the income tax is an unconstitutional unapportioned direct tax."

Court order:

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/penalties-imposed-argument-wages-are-not-income/7jrmk>



Tax Court Sanctions Taxpayer Arguing That Wages Are Not Income



Photo by [Tingey Injury Law Firm](#) on [Unsplash](#)

- *Wendell, et al v. Commissioner*, TC Docket No. 4784-23, May 13, 2024
 - §61 - gross income is income from all sources, does not exclude “compensation for services” as the taxpayers contend - and courts have ruled this way for decades
 - Court imposed a \$5,000 penalty under IRC §6673(a)(1)(B) for arguing a “frivolous or groundless” position (maximum fine is \$25,000) - in addition to §6662(a) 20% accuracy related penalty of \$26,956.80

Court order:

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/penalties-imposed-argument-wages-are-not-income/7jrmk>

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