



Current Federal Tax Developments

June 17, 2024

Kaplan Financial Education



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This Week We Look At:

IRS provides last minute relief for payment of second quarter corporate estimated tax payments related to corporate alternative minimum tax

En-banc rehearing request denied in case of *Farhy v. Commissioner* by DC Circuit

CPA pleads guilty to tax charges related to syndicated conservation easement program

2

<https://www.currentfederaltaxdevelopments.com>



This Week We Look At:

Taxpayer Advocate warns of relying on generative AI for answering tax questions for consumer tax software - and there are just as big of issues for tax professionals

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IRS Extends Corporate AMT Estimated Tax Relief at the Last Minute Yet Again

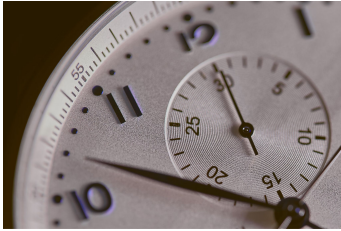


Photo by [Agê Barros](#) on [Unsplash](#)

- Notice 2047-47, June 14, 2024
 - Grants relief from estimated tax penalties on a corporation related to the AMT
 - For tax years beginning in 2024
 - For payments through and including August 15, 2024
 - Thus, 3rd quarter payments for 2024 will not get this relief
 - Issued due to confusion over when this tax will apply

Note 2024-47

<https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-renews-waiver-some-additions-tax-underpayments/7kcfw>



IRS Extends Corporate AMT Estimated Tax Relief at the Last Minute Yet Again



Photo by [Agê Barros](#) on [Unsplash](#)

- Notice 2047-47, June 14, 2024
 - Prior relief had expired on May 15, 2024, thus second quarter payments from calendar year corporations would have been required on June 17, 2024 - three days after this new relief was issued
 - Have been complaints about the IRS waiting until this late to decide to offer relief
 - So we will likely be watching for relief again in mid-September

Note 2024-47

<https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-renews-waiver-some-additions-tax-underpayments/7kcfw>



Taxpayer Denied En-Banc Rehearing of Decision on IRS's Ability to Assess Penalties for Form 5471 Issues



Photo by [Kajetan Powolny](#) on [Unsplash](#)

- *Alon Farhy v. Commissioner*, Order Denying Request for an En-Banc Rehearing, DC Circuit, June 13, 2024
 - Originally the Tax Court had ruled that the IRS lacked the ability to directly assess and collect taxes for penalties under IRC §6038(b) (Form 5471)
 - IRS appealed the decision to the DC Circuit
 - Three judge panel found that although the law was ambiguous, the situation of the enactment of what was meant to simplify the penalty did not lend itself to an interpretation that would have split the penalty into an accessible and non-assessible portion in some cases

Order:

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/en-banc-rehearing-denied-farhy-case/7kchr>



Taxpayer Denied En-Banc Rehearing of Decision on IRS's Ability to Assess Penalties for Form 5471 Issues



Photo by [Kajetan Powolny](#) on [Unsplash](#)

- *Alon Farhy v. Commissioner*, Order Denying Request for an En-Banc Rehearing, DC Circuit, June 13, 2024
 - Taxpayer asked for an en-banc rehearing of the case
 - In an en-banc hearing, all judges of the DC Circuit would have reheard and issued a new ruling on the matter
 - However the petition was found not to be one to be granted and no member of the Circuit asked for the rehearing
 - Thus, the original panel's hearing decision stands

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Order:

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/en-banc-rehearing-denied-farhy-case/7kchr>

DOJ Announces Guilty Plea in Criminal Case by CPA Who Was Promoting Syndicated Conservation Easements



Photo from Getty Images on Unsplash+

- “Georgia CPA Pleads Guilty to Promoting Syndicated Conservation Easement Tax Scheme Involving Fraudulent Charitable Deductions,” Release, US Department of Justice, June 13, 2024
- George CPA plead guilty to promoting an illegal charitable contribution scheme to high income clients
 - Two creators of the program had already been convicted and sentenced to 23 and 25 years
 - Faces a potential sentence of 5 years on one count and 3 years on another

Department of Justice Press Release:

<https://www.justice.gov/opa/pr/georgia-cpa-pleads-guilty-promoting-syndicated-conservation-easement-tax-scheme-involving>

DOJ Announces Guilty Plea in Criminal Case by CPA Who Was Promoting Syndicated Conservation Easements



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- “Georgia CPA Pleads Guilty to Promoting Syndicated Conservation Easement Tax Scheme Involving Fraudulent Charitable Deductions,” Release, US Department of Justice, June 13, 2024
- Partnership would acquire land and land-owning companies, aiming to make a charitable contribution of a qualified conservation easement
 - Appraisers would generate valuations saying that the easements a year later were worth over 10 times what had been paid for the land
 - Partnership claimed this inflated deduction and passed it out to the partners it sold interests to

Department of Justice Press Release:

<https://www.justice.gov/opa/pr/georgia-cpa-pleads-guilty-promoting-syndicated-conservation-easement-tax-scheme-involving>

DOJ Announces Guilty Plea in Criminal Case by CPA Who Was Promoting Syndicated Conservation Easements



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- “Georgia CPA Pleads Guilty to Promoting Syndicated Conservation Easement Tax Scheme Involving Fraudulent Charitable Deductions,” Release, US Department of Justice, June 13, 2024
 - CPA had
 - Known the scheme lacked economic substance
 - Clients solely received tax benefits from the partnerships and did not otherwise have involvement with the partnership
 - Encouraged some clients who purchased interests after the donation had been made to back date documents

Department of Justice Press Release:

<https://www.justice.gov/opa/pr/georgia-cpa-pleads-guilty-promoting-syndicated-conservation-easement-tax-scheme-involving>



DOJ Announces Guilty Plea in Criminal Case by CPA Who Was Promoting Syndicated Conservation Easements



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- “Georgia CPA Pleads Guilty to Promoting Syndicated Conservation Easement Tax Scheme Involving Fraudulent Charitable Deductions,” Release, US Department of Justice, June 13, 2024
 - CPA had
 - Earned over \$1 million in commissions off getting clients to participate in the program
 - His clients had claimed over \$14 million in illegal charitable contributions
 - Remember you are responsible for any such program you become involved with

Department of Justice Press Release:

<https://www.justice.gov/opa/pr/georgia-cpa-pleads-guilty-promoting-syndicated-conservation-easement-tax-scheme-involving>



Artificial Intelligence May Provide Erroneous Tax Information - Taxpayer Advocate

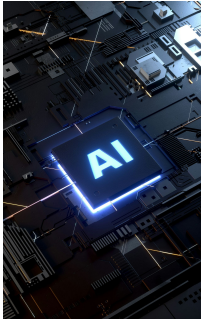


Photo from Getty Images on Unsplash+

- "Is AI Generated Tax Advice Making the Grade?", Taxpayer Advocate Service IRS, Tax Tips, June 11, 2024
 - Consumer tax software vendors had begun to offer AI chatbots to their customers to answer tax questions
 - The Taxpayer Advocate warned that these chatbots often provide erroneous information when asked more complex questions
 - Cited a *Washington Post* report where the software got between 30%-50% of the 16 complex questions wrong - and the questions aren't ones most of us would consider complex

Taxpayer Advocate Notice:

<https://www.taxpayeradvocate.irs.gov/news/tax-tips/is-ai-generated-tax-advice-making-the-grade/2024/06/>



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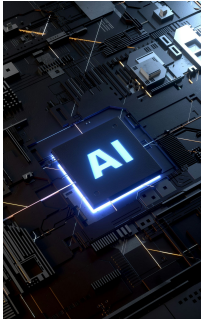


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- "Is AI Generated Tax Advice Making the Grade?", Taxpayer Advocate Service IRS, Tax Tips, June 11, 2024
- Tax pros need to be aware of issues with AI because many may be tempted to use Chatbots such as ChatGPT, Google Gemini or Microsoft Co-Pilot for tax research
 - The bots tend to be very confident in their answers - but often wrong, especially for the type of questions a tax professional would be most apt to ask the systems
 - They are large language models (LLMs) - and how those work explain the problem

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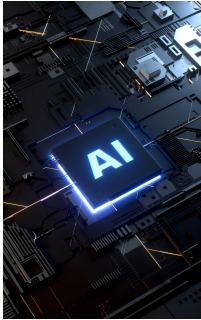


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- “Is AI Generated Tax Advice Making the Grade?”, Taxpayer Advocate Service IRS, Tax Tips, June 11, 2024
 - LLMs don’t
 - Consult a detailed database of correct answers to respond
 - Are not proper replacements for search engines (despite marketing often suggesting they serve as such)

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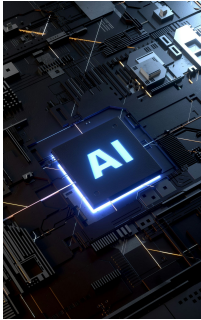


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 - LLMs look to craft a response to a query by building a response piece by piece determining, based on probabilities derived from its training data of text, what is the most likely expected next piece of an answer
 - If there are lots of articles and documents in its training that provide a correct answer, that's very likely to guide what it sees as the expected terms to put in its response--so it looks as if it understood and responded to the question.

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Artificial Intelligence May Provide Erroneous Tax Information - Taxpayer Advocate

Question to ChatGPT: Can you provide me details on the federal court decision that ruled that a taxpayer may claim a deduction for expenses for which the taxpayer lacks documentation, but which the taxpayer can show such expenses would have been incurred and there is a method to reasonably estimate what the taxpayer paid?

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OpenAI's Response: Certainly! The federal court decision you're referring to is likely the **Cohan v. Commissioner** case. This landmark case established the "Cohan Rule," which allows taxpayers to estimate expenses even if they lack detailed documentation, as long as there is a reasonable basis for the estimation.

Cohan v. Commissioner

Citation: 39 F.2d 540 (2d Cir. 1930)

Background:

- **George M. Cohan**, a well-known Broadway producer, songwriter, and performer, was involved in this case.
- The IRS disallowed many of Cohan's claimed deductions due to lack of detailed records.

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Court's Decision:

- The court acknowledged that Cohan undoubtedly incurred expenses in producing his shows and operating his business.
- Although Cohan did not have detailed records to substantiate all of his expenses, the court recognized that it was unreasonable to disallow all deductions just because precise documentation was lacking.
- **Judge Learned Hand** ruled that taxpayers should be allowed to make a reasonable estimation of expenses, based on credible evidence.

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Key Takeaways:

1. **Reasonable Estimation:** Taxpayers can estimate expenses if they can provide a reasonable basis for their estimates.
2. **Credibility of Evidence:** While exact records are not necessary, some credible evidence or testimony must support the estimation of expenses.
3. **Discretion of the Court:** The court has the discretion to determine what constitutes a reasonable estimation based on the circumstances.

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Implications:

- This ruling provides some flexibility for taxpayers who may not have meticulous records but can reasonably substantiate their expenses.
- It emphasizes the importance of maintaining as much documentation as possible, but acknowledges that a lack of perfect records should not result in the complete disallowance of legitimate expenses.

The Cohan Rule continues to influence tax court decisions, providing a framework for cases where taxpayers can show they incurred expenses but lack complete documentation.

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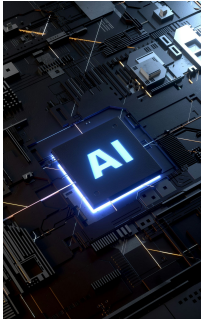


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- "Is AI Generated Tax Advice Making the Grade?", Taxpayer Advocate Service IRS, Tax Tips, June 11, 2024
- However, if you ask certain questions, you are likely to get what is effectively a "made up" answer that sounds like an answer to a tax question with made-up authorities such as question looking for
 - Cases supporting a position your client wants to take when that position itself has no real support
 - An answer where there has recently been a key development that renders prior articles and guidance outdated (and recent can be as far back as 2011 in one situation I've encountered)

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Artificial Intelligence May Provide Erroneous Tax Information - Taxpayer Advocate

Question for ChatGPT: Can you provide me information on how the common law mailbox rule can be used to prove timely filing of a US income tax return mailed at the Post Office on the final day for filing the return. Please give me citations to cases that support your position.

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The common law mailbox rule can be used to prove the timely filing of a U.S. income tax return when it was mailed at the Post Office on the final day for filing. This rule essentially presumes that a properly mailed document is deemed to be received by the addressee. In the context of tax filings, it means that if you can prove that you mailed your return on time, it is presumed to be filed on time, even if the IRS does not have a record of receiving it.

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Common Law Mailbox Rule and its Application:

1. **Common Law Mailbox Rule:**
 - The rule states that a document is considered filed when it is properly addressed, with sufficient postage, and deposited in the mail.
 - The burden of proof is on the taxpayer to establish that these conditions were met.
2. **IRS Position:**
 - The IRS generally requires physical evidence, such as a postmark or certified mail receipt, to establish timely mailing.
 - However, under the common law mailbox rule, testimony or other evidence of mailing can be used to establish timely filing.

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Key Cases Supporting the Common Law Mailbox Rule:

1. **Anderson v. United States**
 - **Citation:** 966 F.2d 487 (9th Cir. 1992)
 - **Summary:** The court held that credible testimony regarding the mailing of a tax return was sufficient to prove timely filing under the common law mailbox rule. The court emphasized the presumption of delivery if the taxpayer could show the document was properly mailed.
2. **Estate of Wood v. Commissioner**
 - **Citation:** 92 T.C. 793 (1989), aff'd, 909 F.2d 1155 (8th Cir. 1990)
 - **Summary:** The Tax Court accepted credible evidence from the taxpayer's representative that a return was mailed on time, despite the absence of a postmark or certified mail receipt. The court concluded that the testimony was sufficient to prove timely mailing.

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Key Cases Supporting the Common Law Mailbox Rule:

1. **Salo v. Commissioner**
 - o **Citation:** T.C. Memo 1989-40
 - o **Summary:** The Tax Court found that the taxpayer's credible testimony about mailing the return was adequate to establish timely filing. The court highlighted that under the common law mailbox rule, credible evidence of mailing can be used to prove timely filing.

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The screenshot shows the COURT LISTENER website interface. At the top, there is a navigation bar with links for 'About', 'FAQ', and 'Sign in / Register'. Below this is a secondary navigation bar with categories like 'Case Law', 'RECAP Archive', 'Oral Arguments', 'Judges', and 'Financial Disclosures', along with a 'Donate' button. The main content area displays the case title 'Ashdown v. Commissioner, 1989 T.C. Memo. 40' and identifies it as a 'United States Tax Court' case. It includes a 'Cited By (0)' section with a note that the case has not yet been cited in their system. An 'Authorities (13)' section lists several cases cited by this opinion, including 'Spies v. United States, 317 U.S. 492' and 'Robert W. Bradford v. Commissioner of Internal Revenue, 796 F.2d'. The case details section provides the filing date (January 25th, 1989), precedential status (Non-Precedential), citations (1989 T.C. Memo. 40, 56 T.C.M. 1160, 1989 Tax Ct. Memo LEXIS 37), and docket numbers (28686-83; 28687-83; 28688-83). The case name is listed as 'EDWARD H. ASHDOWN and DANIELLA L. ASHDOWN, ET AL.,¹ Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent' with the caption 'Ashdown v. Commissioner'. Docket numbers are listed as '28686-83; 28687-83; 28688-83' and the court as 'United States Tax Court'. Citations include 'T.C. Memo 1989-40; 1989 Tax Ct. Memo LEXIS 37; 56 T.C.M. (CCH) 1160; T.C.M. (RIA) 89040;' and the date 'January 25, 1989.'. The URL 'https://www.currentfederaltaxdevelopments.com' is visible at the bottom left, and the 'KAPLAN' logo is at the bottom right.

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How to Establish Proof of Mailing:

- **Testimony:** Credible testimony from the taxpayer or witnesses who observed the mailing can be sufficient.
- **Affidavits:** Sworn affidavits from individuals who can attest to the mailing date.
- **Mailing Records:** Keeping a log or other records of mailed items can support the claim.
- **Other Evidence:** Any other documentation that can corroborate the mailing date, such as a diary entry or business records.

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Limitations and Considerations:

- **IRS Regulations:** The IRS prefers physical proof of mailing, such as a postmark or certified mail receipt.
- **Court's Discretion:** The acceptance of the common law mailbox rule is subject to the discretion of the court and the credibility of the evidence presented.

Conclusion:

The common law mailbox rule allows taxpayers to prove timely filing of their tax returns through credible evidence of proper mailing. While the IRS prefers physical proof, courts have recognized credible testimony and other evidence under the common law mailbox rule, as demonstrated in cases like *Anderson v. United States*, *Estate of Wood v. Commissioner*, and *Salo v. Commissioner*.

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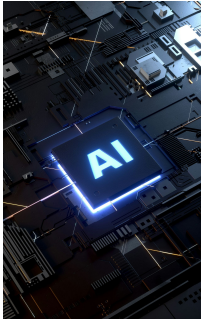


Photo from Getty Images on Unsplash+

- "Is AI Generated Tax Advice Making the Grade?", Taxpayer Advocate Service IRS, Tax Tips, June 11, 2024
 - In addition to citing the fictional *Salo* case, ChatGPT misstated the current law based on Reg. §300.7502-1 as revised by the IRS in 2011
 - Provides that certified and registered mail provides the proof of the postmark (Reg. §301.7502-1(c)(1)(iii)(B)(2)) and
 - Certified and registered mail are also the sole way to provide a prima facie case for delivery if actual delivery cannot be shown (Reg. 301.7502-1(e)(2))

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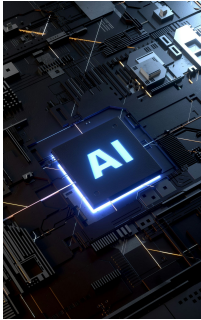


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- “Is AI Generated Tax Advice Making the Grade?”, Taxpayer Advocate Service IRS, Tax Tips, June 11, 2024
 - §7502(a) requires postmark date and actual delivery - courts have now ruled it supplants the common-law mailbox rule multiple times
 - ChatGPT’s answer is, at best, incomplete and misleading and, at worst, just flat out wrong
 - As well, citing to a non-existent case is almost certain to lead to a very bad result

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