



Current Federal Tax Developments

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Kaplan Financial Education

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This Week We Look At:

Online scams and tax deductions - why how that online scammer you found on a dating site manages to take your money can make a big tax difference

IRS announces next steps in ERC program, will begin sending some checks in September

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<https://www.currentfederaltaxdevelopments.com>





Online Scams - Why the Approach Used to Take a Victim's Money Makes a Big Tax Difference



Photo by [Nadine Shaabana](#) on [Unsplash](#)

- Nathan Richman, "Pig Butchering' Theft Losses May Evade TCJA Restrictions," *Tax Notes Today Federal*, August 8, 2024
 - Discusses the tax implications of an online scam referred to as "pig butchering"
 - Begins by striking up an online conversation with the intended victim, often via romance/dating sites
 - Conversation begins without initial ask for funds
 - But instead of asking for funds for a sudden emergency, the talk turns to investments (often, but not always, crypto based)

<https://www.taxnotes.com/research/federal/usc26/165>

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 - Shows "evidence" of investment gains they've obtained and offers to assist the intended victim
 - Taken to a legitimate looking website (may even imitate a legitimate site) where the victim deposits cryptocurrency with the fake organization
 - Will show investment activity along with gains
 - But funds are long gone
 - Is there a tax deduction here?

https://www.senate.gov/legislative/LIS/roll_call_votes/vote1182/vote_118_2_00230.htm



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- Nathan Richman, "Pig Butchering' Theft Losses May Evade TCJA Restrictions," *Tax Notes Today Federal*, August 8, 2024
 - IRC §165(a) deals with deductions for losses in general
 - The loss is clearly a theft loss - traditionally covered by IRC §165(c)(3)

<https://www.taxnotes.com/research/federal/usc26/165>



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IRC §165(a)

(a) General rule. There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

<https://www.taxnotes.com/research/federal/usc26/165>



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IRC §165(c)(3)

(c) Limitation on losses of individuals. In the case of an individual, the deduction under subsection (a) shall be limited to --

...

(3) except as provided in subsection (h), losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or **from theft**.

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- Nathan Richman, "Pig Butchering' Theft Losses May Evade TCJA Restrictions," *Tax Notes Today Federal*, August 8, 2024
- IRC §165(h)(5) added by the Tax Cuts and Jobs Act bars a deduction for any *personal casualty loss* for years 2018 through 2025
- You would think that getting scammed in a romance related scheme would be a textbook *personal casualty loss*

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IRC §165(h)(5)(A)

(5) Limitation for taxable years 2018 through 2025.

(A) In general. In the case of an individual, except as provided in subparagraph (B), any personal casualty loss which (but for this paragraph) would be deductible in a taxable year beginning after December 31, 2017, and before January 1, 2026, **shall be allowed as a deduction under subsection (a) only to the extent it is attributable to a Federally declared disaster** (as defined in subsection (i)(5)).

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 - But there is a definition of a personal casualty loss found at IRC §165(h)(3)(B)
 - But initially this doesn't look helpful because it applies to losses under IRC §165(c)(3)

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IRC §165(h)(3)(B)

(3) Definitions of personal casualty gain and personal casualty loss. For purposes of this subsection --

...

(B) Personal casualty loss. The term "personal casualty loss" means any loss described in subsection (c)(3). For purposes of paragraph (2), the amount of any personal casualty loss shall be determined after the application of paragraph (1).

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- Nathan Richman, "Pig Butchering' Theft Losses May Evade TCJA Restrictions," *Tax Notes Today Federal*, August 8, 2024
 - But it turns out the crypto-romance loss isn't actually covered by IRC §165(c)(3) because of a clause it's easy to skim past
 - Rather, since it was a *transaction entered into for a profit* it seems covered by IRC §165(c)(2) (or if a trade or business, §165(c)(1))

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IRC §165(c)

(c) Limitation on losses of individuals. In the case of an individual, the deduction under subsection (a) shall be limited to --

(1) losses incurred in a trade or business;

(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3) except as provided in subsection (h), losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

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 - Article points this out - while there may have been an initial romance/friendship "hook", the transaction that created the loss was entered into by the taxpayer for a profit
 - But what if the taxpayer is rather tricked into transferring funds to the other party based on a false story of an emergency?
 - That one is a §165(c)(3) personal casualty loss and not deductible

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 - Attorney quoted in the article believes the pig butchering crypto position has substantial authority and perhaps even is at the more likely than not level
 - Just like those who invested in the Madoff scheme, these individuals believed they were investing in real assets even though they weren't

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 - Also discussed whether it might be possible to deduct some more recent retirement fund scams
 - Told their retirement funds are being stolen (caller may claim to be from law enforcement)
 - The funds are withdrawn and moved to somewhere "safe" at the direction of "law enforcement"
 - Scammer walks off with the funds

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 - It is not as clear that this is going to qualify as a transaction entered into for profit
 - Cites an attorney in the article that advisers may want to consider a "reasonable basis" position with disclosure in such cases

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IRS Announces New Phase in ERC Refund Claim Program - Will Process Claims Through January 31



Photo by [Levi Meir Clancy](#) on [Unsplash](#)+

- IR-2024-203, Aug. 8, 2024
 - IRS issues news release announcing progress in handling ERC claims
 - IRS had announced last fall that it was putting in place a moratorium on processing ERC claims, not processing those received after September 14, 2023
 - It later announced it had divided a portion of the pre-September 14 claims into
 - High risk claims
 - Low risk claims
 - Others needing more information

<https://www.irs.gov/newsroom/irs-moves-forward-with-employee-retention-credit-claims-agency-accelerates-work-on-complex-credit-as-more-payments-move-into-processing-vigilance-monitoring-continues-on-potentially-improper-claims>



IRS Announces New Phase in ERC Refund Claim Program - Will Process Claims Through January 31



Photo by [Levi Meir Clancy](#) on [Unsplash](#)+

- IR-2024-203, Aug. 8, 2024
 - The IRS announced it had sent out 28,000 disallowance notices to high risk claims
 - A number of professionals report that the IRS appears have made certain errors here or should have requested information
 - As well, some of these notices went out without having the proper information on the taxpayer's rights to appeal
 - Still, the IRS claims the vast majority of these are correct

<https://www.irs.gov/newsroom/irs-moves-forward-with-employee-retention-credit-claims-agency-accelerates-work-on-complex-credit-as-more-payments-move-into-processing-vigilance-monitoring-continues-on-potentially-improper-claims>



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- IR-2024-203, Aug. 8, 2024
 - The IRS also announced it was processing 50,000 low risk claims in order to issue refund checks
 - Agency is beginning the process
 - Expects to begin issuing checks for these claims in September
 - Also expects to be able to add more claims to the low risk category and process refunds

<https://www.irs.gov/newsroom/irs-moves-forward-with-employee-retention-credit-claims-agency-accelerates-work-on-complex-credit-as-more-payments-move-into-processing-vigilance-monitoring-continues-on-potentially-improper-claims>



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- IR-2024-203, Aug. 8, 2024
 - The IRS also will begin investigating some post-September 14 claims
 - Will look again to initially classify the claims into the three categories
 - Will cover claims received after September 14, 2023 and up through January 31, 2024
 - Note that the January 31 date is date proposed for the early end to the program by legislation in Congress

<https://www.irs.gov/newsroom/irs-moves-forward-with-employee-retention-credit-claims-agency-accelerates-work-on-complex-credit-as-more-payments-move-into-processing-vigilance-monitoring-continues-on-potentially-improper-claims>

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