



**NEW YORK  
SOCIETY OF TAX  
& ACCOUNTING  
PROFESSIONALS**

Newsletter

**Your partner for success**

**Leonard Mandel**

**Tax Blast April and May 2023**

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## **TAX BLAST**

### **NEWS FOR THE TAX PROFESSIONAL**

### **APRIL MAY 2023**

<https://www.nystap.org>

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#### **INTERESTING TAX COURT CASE RULING**

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#### ***J.2, Horse Activity Was Not Conducted with Intention of Profit (M. Skolnick, CA-3)***

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Mar. 14, 2023

An appeals court ruled that horse activity was not conducted with the intention of profit. Two of the four taxpayers owned a horse farm company (C1). The Tax Court observed that the start-up phase for horse activity was five to ten years. C1's losses continued unabated after that timeframe. There was also sufficient evidence that C1 was not run in a business-like manner.

Further, the taxpayers had substantial income from sources other than C1. This also showed that their horse breeding activity was not engaged in for profit. C1 produced tax benefits. C1's annual losses reduced taxpayers' income tax liabilities for the tax years at issue to zero or close to it. Finally, the advantage derived from living at C1 outweighed the benefits that accrued to C1.

Affirming the Tax Court [Dec. 61,480\(M\)](#), 117 TCM 1319, T.C. Memo. 2019-64. [M. Skolnick](#), CA-3

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## SECURE LIMITED UPLOADS TO IRS

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IRS expands secure digital correspondence for taxpayers.  
FS-2023-05, February 2023

The Internal Revenue Service is applying technology to provide a more efficient way for taxpayers or their tax professionals to submit requested documentation online instead of mailing it to the IRS.

To help people understand this new feature, the IRS is providing additional details about this important new time-saving initiative.

The IRS Document Upload Tool enables digital correspondence with the taxpayer by providing a URL and a time-limited unique access code to a specific taxpayer so they can upload their documents to the IRS. Access originates with the IRS, and it is not available for certain documents, such as those requiring physical signatures.

Nine notices added to the project; more to come.

In early 2023, the IRS began including online correspondence as an option on nine of the CP series notices, potentially affecting more than 500,000 taxpayers each year. Taxpayers who receive one of the following notices with the link and access code can choose to upload their documents:

- [CP04](#), relating to combat zone status.
- [CP05A](#), information request related to a refund.
- [CP06](#) and [CP06A](#), relating to the Premium Tax Credit.
- [CP08](#), relating to the Child Tax Credit.
- [CP09](#), relating to claiming the Earned Income Tax Credit.
- [CP75](#), relating to the EITC.
- [CP75A](#), relating to the EITC.
- [CP75D](#), relating to the EITC and other credits.

In addition, the IRS has identified fifty-three other notices that could be appropriate for this type of secure digital communications. The IRS will be assessing the viability of including these notices as well as I continuing to look for additional suitable notices to provide this online feature.

How the process works

Language on the notice informs the taxpayer to, "Send us your documents using the Documentation Upload Tool within 30 days from the date of this notice." It includes the link and a unique access code.

- The taxpayer can open the link in any browser and then input their unique code, their first and last name and their Social Security number, Individual Taxpayer Identification or Employee Identification number.
- The taxpayer can then securely upload scans, photos, or digital copies of documents (maximum of 15MB per file, up to forty files).
- The taxpayer receives confirmation that the IRS received their documents, and the IRS employee assigned the case can manage the transmitted documents.

#### Benefits for taxpayers, tax administration

The ability for taxpayers to securely communicate with the IRS reduces their correspondence burden, supports tax compliance, and provides a means for immediate documentation delivery to the IRS. This aligns with the IRS's focus on the Taxpayer Bill of Rights by providing quality service in a timely manner and enhancing a taxpayer's right to be informed throughout any IRS processes.

For IRS employees, the Documentation Upload Tool reduces paper correspondence received and helps decrease processing time responding to taxpayer documentation, creating efficiency that helps the taxpayer.

#### How the tool works

The IRS initiates taxpayer digital access by sending a notice with a link and unique access code.

Taxpayers must use the provided link, input the 10-digit alphanumeric code, and provide their first and last name and one of these:

- Social Security number
- Individual Taxpayer Identification number
- Employee Identification number

They may then upload scans, photos or digital copies in JPEG, PNG, or PDF format, with a maximum file size of 15 MB per file. The taxpayer may upload up to 40 JPEGs, PNGs, or PDFs, with the latter limited to 120 pages, each.

The taxpayer's documents are available to the IRS employee assigned to the case and remain available indefinitely until the employee retrieves them, at which time they are archived for 180 days and then deleted from the system.

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## *WOOPS! Publication 17*

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### **Correction to the 2022 Publication 517, Excess Rental Allowance**

#### **For those of you who prepare returns for Ministers:**

On page 9 of the 2022 Publication 517, under Excess rental allowance, it states you should report your excess rental allowance on Form 1040 or 1040-SR, line 1a. For 2022, you should report these amounts on Form 1040 or 1040-SR, line 1h, and not line 1a. This will be corrected in the 2023 revision of Publication 517.



## **DATA SECURITY**

### **Protect Your Clients; Protect Yourself**

Go to [www.IRS.gov/ProtectYourClients](http://www.IRS.gov/ProtectYourClients) to download the complete Data Security Guide for Tax Professionals. See what steps you can take to better protect your clients and your business.

Here is a sampling from the Data Security Resources Guide:

- Security is every individual's responsibility. Learn to recognize phishing emails, especially those pretending to be from the IRS, e-Services, a tax software provider, or cloud storage provider. Never open a link or any attachment from a suspicious email. Remember: The IRS never initiates initial email contact with tax pros about returns, refunds, or requests for sensitive financial or password information.
- Install anti-malware/anti-virus security software on all devices (laptops, desktops, routers, tablets, and phones) and keep software set to automatically update.
- Use full-disk encryption and encrypt all sensitive files/emails.
- Back up sensitive data to a safe and secure external source not connected full-time to a network.
- Limit access to taxpayer data to individuals who need to know.

- Check your IRS e-Services account weekly for the number of returns filed with EFIN.

The Data Security Resource Guide for Tax Professionals also details the signs of data thefts, explains how to report thefts to IRS and provides links to important data theft resources on IRS.gov. Download your guide today. Reference: IRS Publication 5294

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## ***QUALIFIED LONG TERM CARE SERVICES***

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**Qualified Long-Term Care Services.** Qualified long-term care services are necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative services, and maintenance and personal care services (defined later) that are.

- : 1. Required by a chronically ill individual, and
- 2. Provided pursuant to a plan of care prescribed by a licensed health care practitioner.

**Chronically ill individual.** An individual is chronically ill if, within the previous 12 months, a licensed health care practitioner has certified that the individual meets either of the following descriptions.

- 1. The individual is unable to perform at least two activities of daily living without substantial assistance from another individual for at least 90 days, due to a loss of functional capacity. Activities of daily living are eating, toileting, transferring, bathing, dressing, and continence.
- 2. The individual requires substantial supervision to protect them from threats to health and safety due to severe cognitive impairment.

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## ***Sec. 199A Deduction for Engineering Firms: The Exception to the Exception***

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### **Exception to the exception**

While engineering certainly is a field where success depends upon the reputation and skill of owners and employees, architectural and engineering firms are in the enviable position of being the exception to the exception. They are by statute exempt from the SSTB list and are eligible for the full Sec. 199A deduction even if their income is above the SSTB threshold.

Before we get to the deduction, though, it is important to note that the TCJA also creates a new concept for pass-through entities called Qualified Business Income. A business's QBI is defined as ordinary income, but does not include capital gains/losses, dividends and interest, annuity payments, foreign currency gains/losses, reasonable compensation paid to the owner, or guaranteed payments made to a partner for services rendered.

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### ***S.12, New York—PERSONAL INCOME TAX: TAXPAYERS' APPLICATION FOR LITIGATION COSTS REJECTED***

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The New York State Division of Tax Appeals (DTA) determined that personal income taxpayers were not entitled to an award of costs incurred in litigating against the Division of Taxation (division) for denial of their claim for itemized deductions, because the division was justified in disallowing the deductions. In this matter, pursuant to a desk audit, the division disallowed the claimed itemized deductions for job expenses. Subsequently, the taxpayers filed a request for conciliation conference with the Bureau of Mediation and Conciliation Services and successfully established that they were entitled to the deductions. The taxpayers now sought an award of costs, arguing that the division was not substantially justified in disallowing their itemized deductions because the division failed to follow its regulations when it implemented the case identification and selection system (CISS) and that the CISS changed the division's procedures or practice requirements for calculating and collecting taxes and issuing personal income tax refunds.

Upon review, the DTA noted that the taxpayers did not provide any documentation to support the claimed deductions until the conciliation conference was held, even though the division had requested such information during the desk audit. Therefore, the division was justified in adjusting the refund amount by initially disallowing the deductions. Finally, the DTA stated that the taxpayers' arguments related to the CISS were without merit because the taxpayers failed to provide evidence as to whether the implementation of the CISS had any impact on the division's procedures or practice requirements with respect to the public. Moreover, even if the implementation of the CISS did change its procedures, the division has discretion to determine the procedures it employs in examining a given return. Accordingly, the taxpayers' petition was denied.

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### ***NYC Local Law 97***

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If you have real estate clients in New York City and the building is over 25,000 square feet you should be familiar with this legislation.

Buildings that are covered by NYC Local Law 97 can be found at this web site.

[https://www.nyc.gov/assets/buildings/pdf/LL97\\_CBL.pdf](https://www.nyc.gov/assets/buildings/pdf/LL97_CBL.pdf)

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## *E-SERVICE UPDATE*

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**IMPORTANT!** The IRS has stated that it will be transitioning E-services access for tax professionals to ID.me as of May 16th. Tax practitioners signing into E-services NOT using ID.me will receive the following warning:” *This sign-in option will not work after May 16, 2023. Please create a new account as soon as possible.*” I have included links to the two separate ways to validate identities using ID.me below. Hopefully, these instructions will assist tax professionals to complete the ID.me identification validation process.

Sometime this summer all users of IRS E-services will have to revalidate their identities using ID.me. ID.me instructions for verifying identities.

- Verifying identities using facial recognition -<https://help.id.me/hc/en-us/articles/4402761436823-IRS-How-do-I-verify-for-the-IRS-with-self-service->  
Verifying identities using live chat with ID.me agent <https://help.id.me/hc/en-us/articles/4457297927575-IRS-How-do-I-verify-with-a-Video-Chat-Agent->

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## **IRS JOINS SBA IN SUPPORT OF NATIONAL SMALL BUSINESS WEEK**

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The IRS will join the Small Business Administration again this year in support of their National Small Business Week, **April 30 - May 6, 2023**. During the week, the [IRS will also highlight its own small business resources](#) and share information to help small businesses thrive.



And, there's still time to [register for the National Small Business Week Two-Day Virtual Summit](#) hosted by the SBA and SCORE May 2 - 3. Attendees of this free virtual summit will learn new business strategies, meet other business owners and chat with industry experts. The two-day, action-packed event will also include educational sessions, online business resources and expert speakers.

Find all of the IRS's resources for the self-employed and businesses together on the [Small Business Week webpage](#).

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## PENSIONS AND THE SECURE 2.0 ACT

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For small employers, the SECURE 2.0 Act enhances the retirement plan startup credit, effective for tax years beginning after 2022. The amount of the credit is increased to 100 percent of startup costs for employers with 50 or fewer employees, and an additional credit for contributions is added for the first five years of a plan's existence. The Act also retroactively makes the startup credit (as expanded by the original SECURE Act) available to small employers that join a multiple employer plan (MEP) that was already in existence. The Act also adds credit for small employers who make military spouses immediately able to participate in the employer's retirement plan.

The SECURE 2.0 Act enhances the ability to make catch-up contributions. An increase in the contribution amount will be available for participants aged 60, 61, 62, or 63, effective for tax years after 2024. For most plans, this "second" catch-up limitation would be \$10,000, and \$5,000 for SIMPLE plans. Like the "standard" catch-up amounts, these limitations will also be subject to inflation adjustment. The annual limit on contributions to individual retirement accounts (IRAs) is also increased for participants aged fifty and older. The "catch-up" limit for IRAs is \$1,000. Unlike the catch-up amount for other plans, this amount is not subject to increases for inflation under current law. The Act makes the IRA catch-up amount adjusted annually for inflation for tax years beginning after 2023. Finally, the Act requires, effective for tax years beginning after 2023, that all catch-up contributions are subject to Roth (i.e., after-tax) rules, rather than only were allowed by the plans.

The Act also makes several changes to the rules on distribution. The age at which participants must begin taking required minimum distributions (RMDs) increased over a period of ten years. Starting in 2023, the age is increased to 73 for individuals who turn 72 after 2022 and age 73 before 2033. For individuals who turn 74 after 2032, RMDs must begin at age 75. It makes permanent the ability of a

taxpayer to make an early withdrawal without incurring a 10-percent penalty as result of a federally declared disaster. It also allows for penalty-free early withdrawals, after 2023, by a victim of domestic abuse, up to the lesser of \$10,000 or 50 percent of the present value of the accounts. After the date of enactment, a penalty-free early withdrawal may also be made by an individual diagnosed with a terminal illness. After 2023, a penalty-free withdrawal of up to \$1,000 is allowed due financial emergency.

If you want to contribute to the newsletter please contact me at [apri15@nyc.rr.com](mailto:apri15@nyc.rr.com).



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## *ANNUAL CONVENTION*

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Save the date for our all-day Annual Convention June 22, 2003, at Russo's on the Bay in Howard Beach, New York

