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FinCEN will limit beneficial ownership reporting to foreign entities

Penalties and interest will not be imposed against domestic entities and their owners.

By Mike Giangrande, J.D., LL.M.
Federal Tax Editor

On Sunday, March 2, 2025, the U.S. Treasury Department announced that it will not enforce any penalties or fines associated with the beneficial ownership information (BOI) reporting rules under existing regulations. (https://home.treasury.gov/news/press-releases/sb0038) Additionally, FinCEN will not enforce any penalties or fines against U.S. citizens or domestic reporting companies, or their beneficial owners, even after it releases forthcoming rule changes.

The reason for the relief is that the Department of the Treasury will propose new rulemaking that will narrow the scope of the BOI reporting rules to apply to foreign reporting companies only. This means that domestic entities will not be required to file any BOI reports.

At this time, there is no information on what, if anything, will need to be done for domestic entities that have already filed, nor what FinCEN will do with the information that was previously reported.

We will continue to update you as information is released on this issue.

Spidell's BOI update webinar cancelled

As a result of this development, Spidell's BOI Reporting Update webinar has been canceled. Customers who were registered for the March 25, 2025, webinar should have already received an e-mail from Spidell with options to transfer to another webinar or request a refund. If you have not already received this e-mail, please contact our customer support team at:

(800) 277-2257

SECURE 2.0 provisions going into effect in 2025 and 2026

Taxpayers should make sure they are on top of these latest developments.

By Sandy Weiner, J.D.
Contributing Editor

Although the SECURE 2.0 Act was enacted at the end of 2022, many of the provisions are still being phased in. Below is a summary of the provisions going into effect in 2025 and 2026 and what plan participants should do to take advantage of the benefits provided and what employers should do to make sure they are in compliance with the new requirements.

Comment

SECURE 2.0 was passed with large bipartisan support. To date, we have not heard of any proposed changes to these provisions in Congress.

Employer catch-up contributions for employees ages 60-63

For taxable years after December 31, 2024, employees who are ages 60 through 63 during the taxable year and who are participants in employer-sponsored plans may increase their catch-up contributions to the greater of:

- 150% of the regular catch-up contribution limit that applies to employees ages 50 and older; or
- $10,000 (indexed for inflation beginning in 2026).
  (IRC §414(v)(2)(B)(i))

Example of catch-up contribution for ages 60–63: Sharon turns age 60 in 2025 and is still working and participating in her employer's 401(k) plan. She can contribute up to $34,750 to her 401(k) for 2025, calculated as follows:

Regular contribution limit		$23,500
<A> 150% of regular catch-up contribution for taxpayers ages 50 and older[1]	$11,250	
<B> $10,000	$10,000	
Greater of A or B		11,250
Sharon's maximum 401(k) contribution		$34,750

[1] $7,500 × 150%

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Practice Pointer

If Sharon chooses to maximize the amount of catch-up contributions she can make, she should work with her tax professional and do a withholding check to ensure she is not overwithholding.

Catch-up contributions for highly compensated employees

Beginning with the 2026 taxable year, catch-up contributions must be made to employer-provided qualified retirement plans on a Roth basis (after-tax) for employees with compensation in excess of $145,000 from their current employer in the prior taxable year. (IRC §414(v)(7)) This provision was originally slated to go into effect beginning with the 2024 tax year, but the IRS provided a two-year transition period.

The $145,000 amount is indexed for inflation. (IRS Notice 2024-80) However, the 2026 figure has not yet been announced.

This provision of the SECURE 2.0 Act affects employer-sponsored 401(k), 403(b), and governmental 457(b) plans. This new rule does not apply to SEP or SIMPLE plans.

The SECURE 2.0 provision requiring highly compensated employees to make catch-up contributions on a Roth basis is a mandatory provision. This means that an employer that only offers a traditional 401(k) without a Roth option cannot accept catch-up contributions from their highly compensated employees.

Practice Pointer

Employers should be in touch with their plan administrators now to ensure that they will be able to offer their highly compensated employees the option to make their catch-up contributions on a Roth basis beginning with the 2026 taxable year.

Employees should also work with their tax professionals to review their withholding obligations because Roth catch-up contributions are post-tax.

Qualified long-term care distributions

Effective after December 29, 2025, the SECURE 2.0 Act provides a new exception to early withdrawal penalties from defined contributions plans for "qualified long-term care distributions." (IRC §§72(t)(2)(N), 401(a)(39)) These distributions are still includible in the taxpayer's taxable income.

A qualified long-term care distribution is one that is made for the purpose of purchasing qualified long-term care insurance for the employee, the employee's spouse (but only if the taxpayers file a joint return), or other member of the employee's family (to be defined later through IRS regulations). Qualified long-term care distributions are the *lesser* of:

- The amount actually paid by the employee for qualified long-term care insurance for the year;
- 10% of the vested account balance; or
- $2,500 (inflation adjusted; $2,600 for 2025 (IRS Notice 2024-80)).

To qualify, the long-term care insurance must provide meaningful financial assistance for home-based or nursing home care, with benefits adjusted for inflation and consumer protections.

In addition, the employee must ensure that the insurer provide the following information to the plan:

- The name and taxpayer identification number of such issuer;
- A statement that the coverage is certified long-term care insurance;
- Identification of the employee as the owner of such coverage;
- Identification of the individual covered and such individual's relationship to the employee;
- The premiums owed for the coverage for the calendar year; and
- Such other information as the Secretary of the Treasury may require.

The SECURE 2.0 Act directed the IRS to develop forms and guidance to implement this provision. To date, this guidance has not been issued.

Practice Pointer

Employers should check with their plan administrator if this option is available under the plan. If so, employees who want to take these distributions will want to ensure that their insurer provide the long-term care statement to the plan administrator.

SECURE 2.0 mandated plan amendments

The SECURE 2.0 Act allowed retirement plans to begin implementing provisions of the SECURE 2.0 Act immediately but requires that the plans be actually amended by the last day of their first plan year beginning on or after January 1, 2025. (SECURE 2.0 Act §501) Governmental plans have until the last day of their first plan year beginning on or after January 1, 2027.

Practice Pointer

This provision should be implemented by the plan administrator, but employers should ensure that their retirement plan is in compliance.

The basics of the Small Employer Pension Plan Startup Costs Credit

Employers can offset the costs of starting a retirement plan with this valuable credit.

By Mike Giangrande, J.D., LL.M.
Federal Tax Editor

The Small Employer Pension Plan Startup Costs Credit is a tax credit available to small businesses (100 employers or fewer) that set up and begin contributing to an employer-sponsored retirement plan. The credit is calculated and claimed using IRS Form 8881, Credit for Small Employer Pension Plan Startup Costs and Auto-Enrollment.

The maximum Small Employer Pension Plan Startup Costs Credit was increased from 50% to 100% for employers with up to 50 employees by the SECURE 2.0 Act. (IRC §45E(e)(4)) The 50% credit still applies to employers of between 51 and 100 employees. Only those employees who are paid at least $5,000 in compensation in the prior year are included in the 50/100 employee thresholds.

The amount of the credit for the first credit year and each of the following two years is the greater of:

- $500; or
- The lesser of:
  - $250 for each employee who is not a highly compensated employee (as defined in IRC §414(q)); or
  - $5,000.

  (IRC §45E(b)(1))

Credit for employer contributions

The credit is also increased by an applicable percentage of employer contributions to an eligible employer plan, up to a $1,000 maximum credit per employee. (SECURE 2.0 Act §102(b); IRC §45E(f)) The increased credit is not available for elective deferrals as defined in IRC §402(g)(3) or for contributions to defined benefit plans.

Contributions made for employees who receive wages in excess of $100,000 are excluded from the calculation of the additional credit. (IRC §45E(f)(2)(C))

The applicable percentage is equal to:

- 100% for the first and second taxable years after the plan is established;
- 75% for the third taxable year after the plan is established;
- 50% for the fourth taxable year after the plan is established;
- 25% for the fifth taxable year after the plan is established; and
- 0% thereafter.

(IRC §45E(f)(3))

The credit is phased out for employers with 51 to 100 employees by 2% for each employee for the preceding taxable year in excess of 50 employees. (IRC §45E(f)(2))

Example of additional employer contribution credit: Booker, Inc. is an employer with 65 employees that established a small employer pension plan (a 401(k)) in 2023. Seven of the employees are paid salaries and wages greater than $100,000, so there are 58 employees eligible for the credit (65 total employees minus 7 whose compensation is greater than $100,000).

Under the terms of the 401(k) plan, Booker made employer contributions totaling $90,000 for each of its first five years (not including contributions made for those employees whose salary and wages are greater than $100,000). At least $1,000 was paid on behalf of each of the 58 eligible employees.

Booker's Small Employer Pension Plan Startup Costs Credit is calculated as follows:

	Year 1 (2023)	Year 2 (2024)	Year 3 (2025)	Year 4 (2026)
Employer contribution[1]	$58,000	$58,000	$58,000	$58,000
Credit percentage	× 100%	× 100%	× 75%	× 50%
Base credit amount	$58,000	$58,000	$43,500	$29,000
Total employees in excess of 50	15	15	15	15
Reduction percentage for employees over 50	× 2%	× 2%	× 2%	× 2%
Reduction percentage	30%	30%	30%	30%
Total reduction[2]	($17,400)	($17,400)	($13,050)	($ 8,700)
Credit[3]	$40,600	$40,600	$30,450	$20,300

1 Limited to $1,000 per eligible employee
2 Base credit × reduction percentage
3 Base credit – total reduction

In its first four years, Booker is able to claim tax credits totaling $131,950 to subsidize employer contributions to its new 401(k) plan.

Joining existing plans

The Small Employer Pension Plan Startup Costs Credit applies to the first three years a qualified employer joins an existing multiple employer plan, retroactive to taxable years beginning after December 31, 2019. (SECURE 2.0 Act §111; IRC §45E(d)(3)(A))

Before this provision was added by the SECURE 2.0 Act, the credit was only available for the first three years of the plan's existence, which prevented employers that joined an existing multiple employer plan from claiming the credit for the full three years (if at all).

Practice Pointer

Employers that were not eligible for this credit under the original SECURE Act provision can file amended returns and claim the expanded Small Employer Pension Plan Startup Costs Credit due to the retroactive nature of the existing plan provision.

No double benefit

The employer's income tax deduction for contributions to the retirement plan must be reduced by the amount of the credit claimed. (SECURE 2.0 Act §102(c); IRC §45E(e)(2))

Solo plans

Qualifying retirement plans must have at least one participant, but one-participant plans where the one participant is a highly compensated employee are excluded. (IRC §45E(d)(1)(B)) Highly compensated employees include anyone who was a 5% owner at any time during the current taxable year or the preceding taxable year. (IRC §414(q)(1))

Because of this limitation, one-participant retirement plans where the owner is the only participant do not qualify for the credit.

Military Spouse Participation Credit

The SECURE 2.0 added a new military spouse retirement plan eligibility credit under IRC §45AA, available to eligible small employers that maintain defined contribution plans with specific features that benefit military spouses.

For an eligible small employer, the credit is $200 for each military spouse who is an employee of the employer and who participates in an eligible defined contribution plan of the employer at any time during the tax year, plus up to $300 of the amount of qualified employer contributions to the plan during the tax year on behalf of the military spouse.

For each employee, the credit is limited to three successive tax years of the employer, beginning with the first tax year during which the employee began participating in the plan after it was adopted as an eligible defined contribution plan.

Estimated tax rules for individuals

Here's a reminder on the basics of estimated tax payments.

By Mike Giangrande, J.D., LL.M.
Federal Tax Editor

Individual taxpayers who do not pay enough tax through withholding generally must pay estimated tax payments to avoid underpayment penalties if they expect to owe tax of $1,000 or more when their income tax return for the year is filed.

Safe harbor rules to avoid underpayment penalties

In order to avoid underpayment of estimated tax penalties, taxpayers with $150,000 or less in AGI must pay at least the lesser of:

- 90% of their expected tax liability for the current year; or
- 100% of the total tax shown on their prior-year return.
  (IRS Publication 505, Tax Withholding and Estimated Tax)

For taxpayers whose AGI for the prior year was more than $150,000 ($75,000 if MFS), then these amounts are:

- 90% of their expected tax liability for the current year; or
- 110% of the total tax shown on their prior-year return.

Special rule for farmers and fishermen

If at least two-thirds of the taxpayer's gross income for either the current year or the prior year is from farming or fishing, then these amounts are:

- 66 2/3% (0.6667) of their expected tax liability for the current year; or
- 100% of the total tax shown on their prior-year return.

Farmers and fishermen who are also high earners can still use the more favorable farmer and fishermen rule.

Taxpayers excepted from making estimated tax payments

No matter how high a taxpayer's income, they are not required to pay estimates if they meet all three of the following conditions for the current tax year:

1. They had no tax liability for the prior year;
2. They were a U.S. citizen or resident alien for the whole year; and
3. Their prior tax year covered a full 12-month period.

Calculating and paying estimates

Estimated taxes are due every year on the following dates:

Estimated Tax Due Dates

Due date	For income earned
April 15	January 1–March 31
June 15	April 1–May 31
September 15	June 1–August 31
January 15 (following year)*	September 1–December 31
* Taxpayers are not required to make their fourth quarter estimated tax payment if they file their return by January 31 and pay any balance due by that date.	

Taxpayers use Worksheet 2-1 from IRS Publication 505 to determine their estimated tax liability for the year as well as their required installments. For federal purposes, taxpayers generally pay four equal installments. However, taxpayers who don't receive their income evenly throughout the year can use the annualized installment method to calculate their estimated tax liability for each quarterly period. (IRC §6654(d)(2))

The annualized income method annualizes the tax at the end of each period based on the taxpayer's income, deductions, and other items related to events that occurred from the beginning of the tax year through the end of the period. Taxpayers use Worksheet 2-7 from IRS Publication 505 to calculate their estimated tax liability using the annualized income installment method.

Calculating underpayment penalties

Taxpayers who do not pay at least the minimum required estimates must calculate underpayment penalties using Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts.

Penalties calculated on Form 2210 are done in a three-step process:

1. Calculate the required minimum estimated payments the taxpayer was required to pay;
2. Calculate the underpayment for each payment period (April 15, June 15, September 15, and January 15); and
3. Calculate the penalty by multiplying the number of days the underpayment for each quarter is past due by a daily penalty rate.

The daily penalty rate is equal to the federal short-term rate, plus three percentage points, divided by 365 days. (IRC §6621) The IRS publishes the penalty rate on a quarterly basis. For the first quarter of 2025, the penalty rate is 7% (the federal short-term rate, plus three percentage points). (www.irs.gov/payments/quarterly-interest-rates)

Adequate disclosures for uncertain tax return positions

Know the rules to help minimize taxpayer and tax preparer penalties.

By Mike Giangrande, J.D., LL.M.
Federal Tax Editor

Taxpayers face accuracy-related penalties equal to 20% of their underpayment if they substantially understate their income tax liability. (IRC §6662(a) and (b)(2)) Likewise, tax preparers face penalties of the greater of $1,000 or 50% of the tax preparation fee charged to their client for understatements attributable to an unreasonable position. (IRC §6694) These penalties are in addition to the regular underpayment penalties. (IRC §6651 et seq.)

Adequately disclosing uncertain tax return positions may eliminate the additional taxpayer and preparer penalties because the initial standard applied to a tax return position is that it must have substantial authority (defined later). If a return position is adequately disclosed, then the additional penalties are only applied if the taxpayer did not have a reasonable basis for their tax return position. Reasonable basis is a lower standard to meet than substantial authority.

Adequate disclosure

A taxpayer adequately discloses a tax position for 2024 tax returns (or short-year 2025 returns filed in 2025) if the position is disclosed on the taxpayer's return in compliance with Revenue Procedure 2024-44 or is disclosed on specified forms (discussed below).

Revenue Procedure 2024-44 sets forth circumstances where a taxpayer's disclosure on a return is adequate. Practitioners must be aware that even if they meet the disclosure requirements of Revenue Procedure 2024-44, the disclosure will not prevent imposition of the penalties if the item or position on the return:

- Does not have a reasonable basis;
- Is attributable to a tax shelter (or reportable transaction for purposes of the tax preparer penalty); or
- Is not properly substantiated, or the taxpayer failed to keep adequate books and records with respect to the item or position.

Certain tax return positions require specific disclosure. For example, state and local taxes deducted on Schedule A must list each type of tax and the amount paid, and casualty and theft losses require the information contained on Form 4684, Casualties and Thefts. These and other specific items are set forth in Revenue Procedure 2024-44.

For tax return positions not specifically listed in Revenue Procedure 2024-44, tax preparers must make their adequate disclosure on Form 8275, Disclosure Statement, or for reporting positions that are contrary to a regulation, on Form 8275-R, Regulation Disclosure Statement. Each form requires a detailed explanation for each uncertain tax return position.

Corporations may submit a Schedule UTP, Uncertain Tax Position Statement, in lieu of Form 8275 or 8275-R.

Taxpayer penalties

The 20% accuracy-related penalty is assessed against taxpayers that substantially understate their income tax liability. Generally, a substantial understatement of income tax is one that understates a taxpayer's income tax liability by the greater of 10% of the tax required to be shown on the return or $5,000. (Treas. Regs. §1.6662-4(d)(3)(iv)(A)) For C corporations, the thresholds are the lesser of:

- 10% of the tax required to be shown on the return for a taxable year (or, if greater, $10,000); or
- $10 million.

However, for any taxpayer claiming the IRC §199A deduction, a substantial understatement is the greater of 5% of the tax required to be shown on the return or $5,000. The reduction of the understatement threshold from 10% to 5% applies to any return where the IRC §199A deduction is claimed, even if the understatement does not pertain to the IRC §199A deduction directly.

The 20% accuracy-related penalty is reduced for understatements of tax that are attributable to the tax treatment of an item if there is either:

- Substantial authority for the taxpayer's position; or
- If the relevant facts affecting the tax treatment are adequately disclosed in the return or in a statement attached to the return, and there is a reasonable basis for the tax treatment of the item in question.

Preparer penalties

Tax return preparers are subject to penalties in the amount of $1,000 or 50% of the tax preparation fee charged for an unreasonable position on any return they prepare. A position is unreasonable unless the tax preparer can establish that:

- There was substantial authority for their position; or
- The position is disclosed on the return, and the tax preparer had a reasonable basis for the position.

Definitions

Substantial authority generally exists where the tax return position is supported by:

- A ruling or determination letter issued to that particular taxpayer; or
- Controlling precedent of a U.S. court of appeals to which the taxpayer has a right of appeal regarding the position. For example, California taxpayers have the right to appeal decisions to the Ninth Circuit Court of Appeals.
  (Treas. Regs. §1.6662-3(b)(3))

Reasonable basis is not clearly defined, but the regulations state that it is a relatively high standard of tax reporting, meaning that it is significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable.

Business solar credit changes for 2025 are not applicable to most smaller taxpayers

Business taxpayers, including rental properties, can claim a credit for the installation of solar electric property. For solar projects whose construction begins prior to January 1, 2025, the credit is claimed under the rules set forth in IRC §48, Energy Credit. For solar projects whose construction begins after December 31, 2025, the credit is claimed under the rules set forth in IRC §48E, Clean Electricity Investment Credit.

For solar projects with a capacity of less than 1 megawatt, the credit under both IRC §§48 and 48E is equal to 30% of the basis of the energy property placed in service. (IRC §§48(a)(9)(B), 48E(a)(2)(A)(ii)(I)) A high output residential solar panel produces about 450 watts of electricity, which means a project must exceed the size of over 2,200 high output residential-size solar panels to reach 1 megawatt.

Most business taxpayers and rental properties, even apartment complexes, that install solar panels for their own use will likely not exceed 1 megawatt. Therefore, these taxpayers will be largely unaffected by the business solar credit changes starting in 2025.

Form 6765 for claiming the IRC §41 Research Credit

The finalized form asks for significantly more information than prior versions of the form.

By Kathryn Zdan, EA
Editor

The IRS has finalized Form 6765, Credit for Increasing Research Activities, which underwent major revisions and now requires taxpayers to submit substantially more information about their research activities. Taxpayers claiming the IRC §41 Research Credit will need to be aware of the changes to the form and the increased reporting requirements so they can collect the necessary information. Form 6765 is applicable starting with the 2024 tax year, except for Section G as noted below.

The revised Form 6765 includes the following new sections:

- Section E for other business information;
- Section F summarizing the qualified research expenses (QREs); and
- Section G for reporting business component details.

Note: A business component is any product, process, computer software, technique, formula, or invention which is to be held for sale, lease, or license, or used by the taxpayer in a trade or business of the taxpayer. Any plant process, machinery, or technique for commercial production of a business component is treated as a separate business component (and not as part of the business component being produced).

Other sections of the form underwent minor revisions from previous versions of the form.

The updated form also includes:

- A new check box at the top of the form on Item A to indicate whether the taxpayer will make the IRC §280C reduced credit election; and
- A new Item B question asking the taxpayer if they are a member of a controlled group or business under common control. Item B also asks the taxpayer to provide additional information as an attachment if the taxpayer answers in the affirmative.

Section E

New Section E requests information on:

- The number of business components generating the QREs;
- The amount of the officers' wages included in the wages for qualified services (taxpayers will need to identify which individuals are considered officers);
- Whether the taxpayer acquired or disposed of any major portion of a trade or business in the tax year;
- Whether the taxpayer identified any new categories of expenses included in the current-year QREs; and
- Whether the taxpayer determined any of the QREs following the Accounting Standards Codification 730 Directive.

Note: Under the ASC 730 Directive, taxpayers that follow U.S. GAAP for book must disclose their research and development costs on their financial statements. The ASC 730 Directive only applies to taxpayers with assets equal to or greater than $10 million.

Section F

New Section F reports QRE wages, cost of supplies, rental or lease cost of computers, amount of contract research for business components, and the amount of all basic research payments. On prior versions of the form, this information was collected by Sections A and B.

Section F flows from Section G (if the taxpayer is required to fill out Section G). Therefore, taxpayers will need to fill out Section G first.

Section G

New Section G requires taxpayers to provide detailed information on each business component:

- The EIN of the controlled group member conducting the research activities on the business component;
- The entity's principal business activity code;
- The business component's name or a unique alphanumeric identifier;
- The business component type: product, process, or other (e.g., computer software, technique, formula, or invention);
- Identification of the software type for computer software business components (i.e., internal use software, dual function software, non-internal use software, or excepted from internal use software treatment);
- A description of information sought to be discovered (required only for amended tax returns);
- Quantification of wage QREs, by business component, based on whether they are direct research wages, direct supervision wages, or direct support wages for qualified services; and
- Quantification of QREs, by business component, based on whether they are supply costs, rental or lease of computer costs, and contract research expenses by business component.

Section G is optional for all filers for the 2024 tax year but will be required for all taxpayers beginning with the 2025 tax year (processed in 2026), except that Section G will be optional for:

- Qualified small business taxpayers that check the box to claim a reduced payroll tax credit; or
- Taxpayers with total qualified research expenditures equal to or less than $1.5 million, determined at the control group level, and equal to or less than $50 million of gross receipts, as determined under IRC §448(c)(3), claiming a Research Credit on an original filed return.

Qualified research

To qualify for the IRC §41 credit, a taxpayer's research activities must, among other things, involve a process of experimentation using science with a goal of improving a product or process the taxpayer uses in their business or holds for sale, lease, or license. Activities specifically excluded from qualifying for the credit include:

- Research after commercial production;
- Adaptation of an existing business product or process;
- Foreign research;
- Research funded by the customer; and
- Activities where there is no uncertainty about the taxpayer's method or capability to achieve a desired result.
  (IR-2019-42)

Qualified research must meet the following four tests:

1. **IRC §174 test:** The expenditures connected with the research must be eligible for treatment as expenses under IRC §174 (discussed above);
2. **Technological in nature test:** The research must be undertaken for the purpose of discovering technological information;
3. **Business component test:** The taxpayer must intend that the information to be discovered be useful in the development of a new or improved business component (e.g., product, process, computer software, technique, formula, or invention) that the taxpayer holds for sale, lease, or license or uses in its trade or business; and
4. **Process of experimentation test:** Substantially all of the research activities must constitute elements of a process of experimentation for a purpose relating to a new or improved function, performance, reliability, or quality. This test requires the use of the scientific method; simple trial and error is not sufficient.
   (IRC §41(d))

Tax documents to be added to taxpayer Online Account

The IRS will continue to add documents in an effort to modernize and provide taxpayers with secure access to their tax information.

By Kathryn Zdan, EA
Editor

The IRS will begin adding information return documents to taxpayers' IRS Individual Online Account, which will consolidate important tax records in one place. (IR-2025-28) The first information returns to be added are:

- Form W-2, Wage and Tax Statement; and
- Form 1095-A, Health Insurance Marketplace Statement.

These forms will be available for tax years 2023 and 2024 under the Records and Status tab in the taxpayer's Online Account. In the coming months, the IRS plans to add more information return documents to Individual Online Account.

Only information return documents issued in the taxpayer's name will be available in their Online Account. The taxpayer's spouse must log in to their own Online Account to retrieve their information return documents. This is true whether the taxpayers file a joint or separate return.

State and local tax information, including state and local tax information on Form W-2, will not be available on Individual Online Account.

Taxpayers should continue to keep for their records any copies sent to them by the issuer of the form.

Online Account, generally

In addition to accessing Forms W-2 and 1095-A, within their Online Account, taxpayers can:

- View key details from their most recent tax return, such as AGI;
- Request an IP PIN and view it throughout the year;
- Check refund status;
- Get account transcripts, including wage and income records;
- Sign tax forms like powers of attorney or tax information authorizations;
- View and edit language preferences and alternative media;
- Receive and view over 200 IRS electronic notices;
- View, make, and cancel payments; and
- Set up or change payment plans and check their balance.

IRS discontinues purchase of savings bonds with tax refund

In the What's New section of the 2024 Form 1040 instructions, the IRS announced that the program allowing taxpayers' refunds to be deposited into their TreasuryDirect® accounts to buy savings bonds, as well as the ability to buy paper bonds with a refund, has been discontinued.

Form 8888 (now simply titled "Allocation of Refund") is only used to split a direct deposit refund between two or more accounts or to split a refund between a direct deposit and a paper check.

Taxpayers can buy Series I bonds electronically using TreasuryDirect®:

https://treasurydirect.gov/savings-bonds/i-bonds/

The Tax Time Savings Bonds program was established in 2010 to give taxpayers, particularly low- and moderate-income individuals, the ability to buy paper Series I savings bonds using their tax refunds. Taxpayers could use Form 8888 to purchase up to $5,000 in Series I bonds using their income tax refund and could purchase Series I bonds for the taxpayer or anyone else, such as children or grandchildren.

For more information on the discontinuance of this program, see:

https://treasurydirect.gov/Research-Center/FAQ-IRS-Tax-Feature/

Social Security overpayment policy back in effect

The Social Security Administration (SSA) announced that it will increase the default overpayment withholding rate for Social Security beneficiaries to 100% of a person's monthly benefit. (SSA Press Release (March 7, 2025) Available at: www.ssa.gov/news/press/releases/2025/#2025-03-07-a)

Last March, the SSA announced that it would no longer intercept 100% of an individual's monthly benefit if the individual failed to respond to an overpayment notice and instead would apply a default withholding rate of 10% of monthly benefits. (www.ssa.gov/news/press/releases/2024/#3-2024-5; see "Rectifying overpaid Social Security benefits" in the May 2024 issue of *Spidell's Federal Taxletter®*.) The March 2024 announcement also addressed burden of proof regarding the cause of the overpayment, and the duration of repayment plans.

As of March 27, 2025, the SSA will begin mailing notices about the new 100% withholding rate. The withholding rate change applies to new overpayments related to Social Security benefits. The withholding rate for current beneficiaries with an overpayment before March 27 will not change, and no action is required. The withholding rate for Supplemental Security Income overpayments remains 10%.

Overpayments, generally

Social Security benefit overpayments can occur when an individual does not timely report work or other changes that can affect benefits or when an individual chooses to continue receiving payments during an appeal.

Social Security is required by law to adjust benefits or recover debts created by an overpayment.

If an overpayment has occurred, the recipient will receive a notice that explains why the individual was overpaid, the overpayment amount, repayment options, and appeal and waiver rights.

After Tax Court reconsideration due to *Loper Bright*, taxpayers still lose out

Merely invoking *Loper Bright* when an earlier decision relied on the *Chevron* standard is not enough.

By Mike Giangrande, J.D., LL.M.
Federal Tax Editor

In a rare move, the Tax Court agreed to reconsider its 2024 decision in ***Hamel v. Comm.***, TCM 2024-62. (***Hamel v. Comm.*** TCM 2025-19) In the 2024 decision, the court held that the taxpayers lacked jurisdiction to challenge penalties assessed by the IRS.

The origin of the two ***Hamel*** cases involve a 2005 final partnership administrative adjustment (FPAA) that, after years of back and forth, ultimately resulted in two notices of deficiency issued to the taxpayers on March 12, 2021. The notices of deficiency assessed over $2.7 million in taxes and penalties to the taxpayer and his late wife, Suzanne Hamel-Sommers, for the 1996 and 2001 taxable years.

The 2024 ***Hamel*** decision was decided on June 3, 2024, and relied on Treasury regulations in its decision, using the ***Chevron*** standard. (***Chevron U.S.A., Inc. v. Natural***

Resources Defense Council, Inc. (1984) 467 U.S. 837) On June 28, 2024, the Supreme Court issued its decision in ***Loper Bright Enterprises v. Raimondo*** ((2024) 144 S.Ct. 2244) that overruled the ***Chevron*** standard. Under ***Chevron***, courts largely deferred to a federal agency's reasonable interpretation of ambiguous statutes. Going forward under ***Loper Bright***, courts reviewing agency actions, such as regulations, must exercise their own independent judgment in deciding whether the federal agency in question has acted within its statutory authority.

Importantly, ***Loper Bright*** did not call into question prior cases that relied on the ***Chevron*** framework, so mere reliance on ***Chevron*** cannot constitute a special justification for overruling an earlier decision.

After reconsideration and a fresh look at the ***Hamel*** case in light of ***Loper Bright***, the Tax Court affirmed its 2024 ruling in the IRS's favor. In so holding, the Tax Court found that although the governing statutory provision was "unclear," Congress had expressly delegated rulemaking authority to Treasury to promulgate by regulation the partnership information required under the Internal Revenue Code. This authority was provided in IRC §7805(a), which provides general authority for the Treasury Secretary to adopt "all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue" unless the law specifies that the authority to adopt such guidance is granted elsewhere.

Thus, it appears that the Tax Court will still be granting deference to the IRS's regulatory guidance, citing a pre-***Loper Bright*** U.S. Supreme Court decision in which the Court noted that courts should generally defer to and uphold Treasury regulations which implement a congressional mandate in some reasonable manner. (***Nat'l Muffler Dealers Ass'n v. United States*** (1979) 440 U.S. 472, 476–77)

Correction

Note that the contribution limit and catch-up amounts have been corrected for 25 employees or fewer for 2025.

Employee Contribution Limits for SIMPLE IRAs and SIMPLE 401(k)s		
	2024	**2025**
26–100 employees[1]		
SIMPLE IRA	$16,000[2]	$16,500[3]
Catch-up (ages 50+)	*$3,500*	*$3,500*
Special catch-up (ages 60–63)	*N/A[5]*	*$5,250[5]*
25 employees or fewer		
SIMPLE IRA	$17,600[4]	$17,600[3,4]
Catch-up (ages 50+)	*$3,850[4]*	*$3,850[4]*
Special catch-up (ages 60–63)	*N/A*	*$5,250[3]*

1 If the employer has increased either its compensation deferral match from 3% to 4% or its nonelective contribution from 2% to 3% (whichever one applies to the employer's plan), then use the SIMPLE IRA contribution limits applicable to employers with 25 employees or fewer. (IRC §408(p)(2)(E))
2 IRS Notice 2023-75
3 IRS Notice 2024-80
4 110% of the 2024 amount applicable to employers with 26–100 employees. (IRC §408(p)(2)(E)(ii))

News Briefs

SSA will expedite increased benefit payments under the Social Security Fairness Act — The Social Security Administration (SSA) announced that it will immediately begin paying retroactive benefits and increased benefits to taxpayers who had previously been affected by the Windfall Elimination Provision (WEP) and the Government Offset Provision (GOP). Through March 4, 2025, SSA had already paid 1,127,723 people more than $7.5 billion in retroactive payments. (Social Security Press Releases, February 25, 2025, and March 4, 2025, available at: www.ssa.gov/news/press/releases/2025/)

The WEP and the GOP reduced the amount of Social Security benefits paid to government workers and the spousal and survivor Social Security benefits paid to families with retired government workers, prior to being repealed by the Social Security Fairness Act of 2023 (SSFA; H.R. 82 (P.L. 118-273)). The SSA's original estimate of taking a year or more to issue these payments now will only apply to complex cases that cannot be processed by automation.

See "Social Security legislation will increase benefits for millions" in the February 2025 issue of *Spidell's Federal Taxletter®* for details on the retroactive benefit increases.

Foreign-earned income exclusion waiver — The IRS has provided a waiver for taxpayers who failed to meet the foreign-earned income requirements of IRC §911(d)(1) due to adverse conditions in a foreign country that caused taxpayers to fail to meet the requirements for the 2024 tax year. (Rev. Proc. 2025-17) An individual who left the following countries beginning on the specified date will be treated as a qualified individual with respect to the period during which that individual was present in, or was a bona fide resident of, the country:

- Ukraine: January 13, 2024;
- Iraq: January 18, 2024;
- Haiti: January 23, 2024; and
- Bangladesh: August 4, 2024.

Individuals who left the countries listed above must establish a reasonable expectation that they would have met the §911(d)(1) requirements if not for those adverse conditions. Taxpayers who first established residency or were physically present in Ukraine after January 13, 2024, are not eligible for the waiver.

Typed name is a valid signature — Taxpayers who e-filed a petition with the Tax Court had validly signed it where they typed their names and contact information into the signature field. (***Donlan v. Comm.*** (February 19, 2025) 164 TC 3) The taxpayers used the Tax Court's DAWSON system to answer a series of questions that then generates and e-files a petition for the taxpayer. Whereas a generic PDF of the petition form on the Tax Court's website has a signature field, the DAWSON-generated version of the form has no way for the taxpayer to apply a signature.

The IRS argued that the court lacked jurisdiction because the taxpayers (or their representative) had not signed the petition. However, the Tax Court has specific rules allowing for electronic signatures. The Tax Court held that under Tax Court Rule 23(a)(3), "A person's name on a signature block on a paper that the person authorized to be filed electronically, and is so filed, constitutes the person's signature." Further, on page 42 of "Self-Represented (Pro Se) Electronic Filing Instructions," it is clear that the content that is autogenerated by DAWSON in the signature block serves as a signature.

A Tax Court ruling 30 years in the making — A taxpayer was liable for self-employment tax on income earned in 2019 from writing freelance movie reviews and selling movie memorabilia on eBay. (***Clark v. Comm.***, TCM 2025-13) The taxpayer reported the income on the Other Income line of his tax return rather than on Schedule C.

The taxpayer argued that he should not be liable for self-employment tax on the income he received from freelance movie review writing and selling movie-related memorabilia because the IRS has conceded that he is not liable. As proof, the taxpayer provided his refund that the IRS issued to him for 2019 and a letter from the Social Security Administration that said "[b]ased on information provided to us from the Internal Revenue Service, we are reducing the amount of your self-employment income on your Social Security earnings record from $46,380.00 to $0.00 for tax year 2019." However, the IRS issuing a refund does not represent a concession on the part of the agency, and the letter from the SSA was in regard to his earnings record, not his income tax liability.

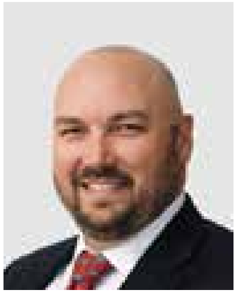
The taxpayer was also liable for the accuracy-related penalty because he has been self-employed for 30 years and admitted at trial that he always just pays the penalty for failure to pay estimated tax when he files his return each year (as he did for 2019).

Tax Court denies "forgotten" charitable deduction that coincidentally wipes out tax liability — Taxpayers were denied a charitable contribution deduction where they were unable to prove they had received contemporaneous appraisals for the items. (***Cade v. Comm.***, TCM 2025-20) The taxpayers filed their 2019 return reporting a $293,822 tax liability that they did not fully pay. The IRS initiated collection action for the remaining tax due. During their Collection Due Process hearing, the taxpayers argued they had forgotten to take a $284,553 charitable contribution deduction in 2019, which would eliminate their tax liability and generate a refund. The contribution was for "surplus" items including:

- 2,253 spring jackets valued at $39 each and 1,212 short-sleeve coveralls valued at $48 each;
- 16,200 granite cobblestones valued at $89,100; and
- 9,608 pieces of commercial vinyl tile worth $49,410 and 10 tubs of floor tile adhesive worth $435 per tub.

The Donee Acknowledgement section of Form 8283 was signed with an illegible signature, no printed name, and the title "pastor." The taxpayers could not produce contemporaneous written acknowledgement from the donee nor proof of the appraisers' qualifications, and they argued that Form 8283 itself served as contemporaneous written acknowledgement. Because the taxpayers were unable to provide authentic documentation and because Form 8283 did not contain the required statement of "[w]hether the donee organization provided any goods or services in consideration" for the donation as required under IRC §170(f)(8)(B), the deduction was denied.

2025 foreign housing expense limit released — The IRS has announced the adjusted foreign housing expense limitations for 2025. (Notice 2025-16) Section 4 of the notice allows taxpayers to apply the 2025 limitations to the 2024 tax year. Foreign housing expenses are the total of the taxpayer's foreign housing expenses for the year minus a base housing amount. The base housing amount is 16% of the maximum foreign-earned income exclusion ($130,000 for 2025) divided by 365 (366 if a leap year) then multiplied by the number of days the taxpayer qualified for the exclusion during the tax year. Assuming that the entire taxable year of a qualified individual is within the applicable period, the base housing amount for 2025 is $20,800 ($130,000 × 0.16).



Upcoming due dates

March 31:

- Electronic 1099s
- Electronic Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips

April 1:

- Electronic Forms 1097, 1098, 1099 (except Form 1099-NEC), 3921, 3922, and W-2G
- RMD from IRAs and defined contribution plans for first year after taxpayer turned 73 or retired

April 15:

- Individual, C corporation, and fiduciary returns or extension requests
- Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations (FATCA)
- FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)
- Extended due date for June 30 fiscal year C corporations
- Estimated tax payment (individuals and corporations)
- Last day to make contributions to IRAs and health savings accounts for prior year; last day to withdraw excess IRA contributions

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