2023 Cumulative Update

For Students and Teachers

Federal Income Tax: Doctrine, Structure, and Policy Fifth Edition

by

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The Fifth Edition was current when it went to press on July 24, 2019. This update includes important subsequent developments, the principal ones being Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE), Coronavirus Aid, Relief, Economic Security Act (CARES), Consolidated Appropriations Act, 2021 (2021 CAA), and American Rescue Plan Act of 2021 (ARPA). **There has been no subsequent legislation that is appropriate for coverage in the basic income tax course. In particular, the Inflation Reduction Act of 2022 (2022 IRA), signed into law on August 16, 2022, which generally became effective on January 1, 2023, is, with respect to the federal income tax, most notable for what it did not do. It did not extend the expansion of the Earned Income Tax Credit, did not extend the expansion of the Child Tax Credit, did not extend the expansion of the Child and Dependent Care Credit, and did not postpone five-year and 15-year expensing of R&E costs.**

This is a cumulative update. New material appears in bold type.

Please do not hesitate to contact us directly with comments or questions.

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PART ONE: THE FUNDAMENTAL STRUCTURE OF THE FEDERAL INCOME TAX

Chapter 1: Taxonomy, History, and the Institutional Structure of Taxation in the United States

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The exception to *Chevron* applied in *King v. Burwell* has come to be known as "the major questions doctrine." The Supreme Court used it in *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587 (2022) to invalidate a regulation designed to effect a nation-wide shift of electric power generation to cleaner emission sources.

In a pair of recent cases, *Becerra v. Empire Health Foundation*, 142 S. Ct. 2354 (2022) and *AHA v. Becerra*, 142 S. Ct. 1896 (2022), the Supreme Court decided the validity of two different Medicare regulations promulgated by the U.S. Department of Health and Human Services. The Court declared invalid the regulation involved in the *AHA* case while the regulation at issue in the *Empire Health* case was upheld. In each case, the Court decided the matter by making its own determination of whether the regulation in question was the "best" interpretation of the underlying statue. The major questions doctrine was not invoked in either case and neither opinion applied or even cited *Chevron*, not even in a footnote. On the other hand, it was not expressly overruled. The result is continuing uncertainty regarding *Chevron's* present status.

Chapter 2: The Fundamental Structure of the Federal Income Tax

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The 2023 inflation-adjusted basic standard deduction amounts are $27.7K for joint-return filers, $20.8K for head-of-household filers, and $13.85K for all other individuals. See *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

Pages 78-79

In response to a global pandemic and stay-at-home orders across America, including for many IRS employees, Congress (in the CARES Act) postponed the due date for filing returns and paying taxes that would otherwise have been due on April 15 until July 15. This extension not only included 2019 income tax returns and payments due on April 15, but also included the first two estimated income tax payments for 2020 otherwise due on April 15 and June 15. In Notice 2021-21, 2021-15 I.R.B. 968, the IRS extended the due date for 2020 individual returns to May

17, 2021. No interest or penalties were assessed on any tax payments that were paid in full by either postponed due date.

Chapter 4: Rates and Allowances for Basic Maintenance

Pages 101-02

Section 199A(e)(2) specifies only two phaseout threshold categories: joint return filers and all other returns. Thus, it is puzzling that the IRS has added a separate threshold for married filing separately filers. The 2023 phase-out thresholds for § 199A, as indexed for inflation, are $364.2K for joint-filers, ($182.1K for married filing separately), and $182.1K for all other returns. Thus, taxpayers are fully phased-out at $464.2K for joint-filers, $232.1K for married filing separately filers, and $232.1K for all other returns, which means that taxpayers with taxable incomes equal to and above those amounts are fully subject to the alternative limit in § 199A(b)(2)(B) that is based on certain percentages of W-2 wages and unadjusted basis of qualified property in qualified trade or business. See *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

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The Respect for Marriage Act, which became effective on December 13, 2022, repealed the Defense of Marriage Act.

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The inflation-adjusted tax rate schedules for 2023 can be found in *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

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The 2023 inflation-adjusted basic standard deduction amounts are $27.7K for joint-return filers, $20.8K for head-of-household filers, and $13.85K for all other individuals. See *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445. The additional standard deduction amount for taxpayers age 65 or older or blind is $1.5K or, if the individual in either category is also unmarried and not a surviving spouse, $1.85K. Id.; § 63(f).

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The 2023 standard deduction amounts for an individual claimed as a dependent cannot exceed the greater of $1.25K or $400 plus the individual's earned income. *Rev. Proc.*

2022-38, 2022-45 I.R.B. 445. The 2023 regular standard deduction for unmarried individuals and married filing separately filers is $13.85K. See *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

Pages 117-18

ARPA made the following changes for 2021 only:

Child tax credit: added 17-year-olds to qualifying children, increased the credit to $3K per child ($3.6K for children under six), made the increase subject to certain phaseout rules, made the credit fully refundable, and directed the IRS to make periodic advance payments of 50 percent of the estimated amount of the credit in the second half of 2021. In July 2021, the IRS began making these payments in monthly installments. These changes had not been extended for subsequent tax years at the time this update was written.

Earned income tax credit: increased the maximum credit for childless taxpayers from $543 to $1,502, reduced the minimum age for childless claimants from 25 to 19 (24 for full-time students and 18 for qualified former foster and homeless individuals), and eliminated the maximum age of 64. These changes had not been extended for subsequent tax years at the time this update was written.

Child and dependent care credit: made the credit refundable, increased the amount of qualifying expenses from $3K to $8K in the case of one qualifying care recipient and from $6K to $16K if there are two or more qualifying care recipients. These changes had not been extended for subsequent years at the time this update was written.

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In its response to the financial devastation of the COVID-19 crisis, Congress enacted the "2020 Recovery Rebates." § 6428. They were new, one-time refundable tax credits up to $1.2K for every individual who had a Social Security number that was valid for work, and who was not claimed as a dependent by another taxpayer or characterized as a nonresident alien for tax purposes. Joint-filing taxpayers qualified for $2.4K (if one of the spouses was a member of the armed services, only one of the spouses had to have a Social Security number valid for work). Individuals with "qualifying children" under § 24(c) (who had a Social Security number that was valid for work) qualified for an additional $500 per "qualifying child" under age 17.

The credit phased out by $5 for every $100 over certain adjusted gross income thresholds ($150K for joint-filers, $112.5K for head-of-household filers, and $75K for all other taxpayers).

Therefore, individuals without any "qualifying children" did not receive an advance payment if their 2019 (or 2018) adjusted gross income was $198K, $136.5K, and $99K, respectively.

2021 CAA added § 6428A to the Code. This gave "eligible individuals" Additional Recovery Rebate Credits for 2020 of $1.2K for joint filers, and $600 for others, plus $600 for each qualifying child. Consistent with the first Recovery Rebate Credit, the credit phased out by $5 for every $100 over certain adjusted gross income thresholds ($150K for joint filers, $112.5K for head-of-household filers, and $75K for all other taxpayers). Therefore, individuals without any "qualifying children" were phased out of the Additional Recovery Rebate Credit if their adjusted gross income was equal to or greater than $174K (joint filers), $124.5K (heads-of-household), and $87K (all others). In response to criticism regarding the first Recovery Rebate Credit, Congress clarified that to receive the credit an individual had to be alive on January 1, 2020, and expanded the coverage to include joint filers if at least one spouse had a valid-for-work Social Security number.

ARPA added § 6428B to the Code. This allows eligible individuals a 2021 Recovery Rebate Credit. The maximum credit is $2.8K for joint filers and $1.4K for most other individuals, plus an additional $1.4K for each dependent. The credit is completely phased out at $160K AGI for joint filers and surviving spouses, $120K AGI for heads-of-household filers, and $80K AGI for other individuals. In response to criticism regarding the first two Recovery Rebate Credits, Congress expanded the credit coverage to include all dependents under §152 instead of only qualifying children. For this purpose, dependents include dependents of filers who do not have valid-for-work Social Security numbers.

Chapter 5: Deductions for Off-The-Bottom Personal Expenses

Page 140

The SECURE Act retroactively extended the medical expense deduction floor percentage of 7.5% (versus 10%) to include tax years before 2021 under § 213(f). The 2021 CAA made the 7.5% floor permanent.

PART TWO: VIEWING THE INCOME TAX THROUGH A CONSUMPTION-TAX LENS

Chapter 6: Viewing the Income Tax Through a Consumption-Tax Lens

Page 171

The maximum amount that a taxpayer can expense under § 179 for taxable years beginning in 2023 is $1.16M, reduced by eligible property placed in service during the year

in excess of $2.89M. Thus, at $4.05M of eligible property placed in service in 2023, taxpayers will not be eligible for any § 179 deduction. See *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

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To mitigate financial consequences from the global pandemic, Congress (under the CARES Act) increased the § 163(j) business interest expense limitation from 30% to 50% of a business's "adjusted taxable income" (ATI) for 2019 and 2020. Moreover, given the economic challenges in 2020, taxpayers could elect to use 2019 adjusted taxable income in lieu of 2020 adjusted taxable income pursuant to § 163(j)(10).

The business interest expense limitation of 50% had not been extended to 2023 and subsequent years at the time of this update. Therefore, the 2023 business interest expense limitation is 30% of ATI (and depreciation, amortization, and depletion are no longer added back in computing ATI after 2021). Nevertheless, § 163(j) does not apply to any business (other than a tax shelter) whose average annual gross receipts for the three years ending with the preceding tax year does not exceed $29M. See §§ 163(j)(3), 448(c); *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

Chapter 7: The Capitalization Principle in Practice

Page 188

The TCJA provides that beginning after December 31, 2021, research and experimentation costs must generally be capitalized and amortized over five years with respect to research conducted in the United States and 15 years with respect to foreign research. IRC § 174(a).

Page 189

For taxable years beginning in 2021, an entity (other than a tax shelter) meets the gross receipts test to use cash-method accounting under § 448(c) if its average annual gross receipts for the three-year period ending with the preceding tax year does not exceed $29M. *See Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

Page 200

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Page 202

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PART THREE: DIFFERENTIATING AMONG THE BUSINESS, INVESTMENT, AND PERSONAL SPHERES

Chapter 8: The Basic Framework Governing Business and Investment Deductions

Pages 217-18

In *Rev. Proc. 2019-38,* 2019-42 I.R.B. 942, the IRS provided a detailed safe harbor for treatment of rental real estate enterprises as a trade or business for purposes of determining QBI and the 20% deduction under § 199A. The safe harbor applies to all years after 2017.

Chapter 9: Defining the Personal Realm: Of Human Capital

Page 251

The SECURE Act retroactively extended the above-the-line deduction for "qualified tuition and related expenses" under § 222 through December 31, 2020. Section 222 had expired for tax years after 2017. The 2021 CAA repealed § 222 for years after 2020. Under the CARES Act, Congress added employer payments on employees' "qualified education loans" to the exclusion from gross income under § 127 for "educational assistance" payments made after March 27, 2020 through December 31, 2020. The 2021 CAA extended this through the end of 2025. § 127(c)(1)(B). However, Congress did not increase the overall cap of $5,250, which is not indexed for inflation. § 127(a)(2).

Chapter 10: Dual-Purpose Outlays

Page 259

In *Gregory v. Comm'r*, T.C. Memo 2021-115, the Tax Court held that the § 183(b)(2) deduction is a miscellaneous itemized deduction subject to the § 67(a) two-percent floor. (Recall that for tax years starting after 2017 and before 2026, § 67 is a complete disallowance rule.)

Page 269

In Chief Counsel Advice Memorandum 202111012, February 16, 2021, the IRS Chief Counsel concluded that the 2017 TCJA amendment to § 165(d) applies only to individual gamblers and not to entities, such as casinos, engaged in the business of gambling. Under *Mayo v. Comm'r*, 136 T.C. 81 (2011), those entities can deduct § 162 trade or business expenses that are not the direct cost of the wager itself. After 2025 (when the 2017 TCJA is scheduled to sunset), *Mayo* will also apply to individual gamblers.

Page 275

The 2021 CAA makes the 50% limitation under § 274(n)(1) inapplicable to expenses paid or incurred after 2020 and before 2023 for food or beverages provided by a restaurant. For this purpose, Notice 2021-25, 2021-17 I.R.B. 1, defines a restaurant as a business that "prepares and sells food or beverages to retail customers for immediate consumption" regardless of whether the consumption occurs on the businesses' premises. Beer, wine, or liquor stores; vending machines; newsstands; drugstores; kiosks; specialty food stores; grocery stores; convenience stores; and employer-provided dining facilities are excluded from the foregoing definition. **Because Congress did not extend this provision, the 50% reduction is again applicable beginning in 2023.**

Chapter 11: Allocating Costs Between the Income Production and Personal Realms

Pages 294, 301

The 2021 CAA makes the 50% limitation under § 274(n)(1) inapplicable to expenses paid or incurred after 2020 and before 2023 for food or beverages provided by a restaurant. For this purpose, Notice 2021-25, 2021-17 I.R.B. 1, defines a restaurant as a business that "prepares and sells food or beverages to retail customers for immediate consumption" regardless of whether the consumption occurs on the businesses' premises. Beer, wine, or liquor stores; vending machines; newsstands; drugstores; kiosks; specialty food stores; grocery stores; convenience stores; and employer-provided dining facilities are excluded from the foregoing definition. **Because Congress did not extend this provision, the 50% reduction is again applicable beginning in 2023.**

Part Four: Gross Income From Market Transactions

Chapter 12: Forms of Compensation Income

Page 319

For 2020, the CARES Act adds certain employer paid "qualified education loans" to the exclusion for employer-paid-for-education under § 127(c)(1)(B). The 2021 CAA extended this through the end of 2025.

Part Five: Wealth Transfers

Chapter 14: Recoveries for Personal Injury and Other Windfall Receipts

Page 356

In *Blum v. Comm'r*, T.C. Memo. 2021-18, the taxpayer indisputably suffered a personal physical injury but she lost the suit for damages that she brought against the alleged tort feasor. She then sued her attorneys for malpractice and received a $125K settlement which she excluded under § 104(a)(2) on the theory that the settlement was a substitute for the personal physical injury judgement she would have received if her attorneys hadn't mishandled the case. The court held that the settlement award was not received on account of a personal physical injury because the pleadings in the taxpayer's suit against the lawyers framed the action as a lawyer malpractice case as did the settlement agreement. Might the taxpayer have achieved a § 104(a)(2) exclusion if the pleadings and settlement agreement had used language consistent with the "substitute for personal injury judgement" theory? Alternatively, the taxpayer argued that she could exclude the malpractice recovery as a loss reimbursement under *Clark v. Comm'r*, infra page 704. The court held that *Clark* and similar reimbursement cases did not apply because the settlement payment compensated the taxpayer for her lawyer's professional failure rather than for the loss of the speculative amount she might have received if she had won her personal injury suit. The court did not discuss whether the taxpayer had any basis to offset against the settlement amount. Did she?

Page 357

The IRS ruled in December 2019, *PLR 201950004*, that a wrongful birth settlement to pay for the challenges of caring for a disabled child and to compensate the child's mother for her emotional distress due to her child's physical illness was excluded from gross income under § 104(a)(2) and Reg. § 1.104-1(c)(1).

Chapter 15: Gratuitous Transfers

Page 390

In IR-2021-70 (March 30, 2021), the IRS announced that "Emergency financial aid grants made by a federal agency, state, Indian tribe, higher education institution or scholarship-granting organization (including a tribal organization) to a student because of an event related to the COVID-19 pandemic are not included in the student's gross income."

Page 400

Under the CARES Act, Congress added employer payments on employees' "qualified education loans" to the exclusion from gross income under § 127 for "educational assistance" payments made after enactment of the CARES Act (March 27, 2020) through December 31, 2020. § 127(c)(1)(B). The 2021 CAA extended this through the end of 2025.

Chapter 16: Charitable Contributions

Page 403

Congress added § 62(a)(22) in the CARES Act, providing an above-the-line charitable deduction of up to $300 ($150 if married filing separately) for cash donations to qualifying public charities for 2020. The 2021 CAA extended this to 2021 but increased the limit for married filing jointly filers to $600 ($300 for unmarried and married filing separately filers). **This deduction had not been extended at the time this update was written.**

Page 407

The Further Consolidated Appropriations Act of 2019, PL 116-94, reduced the § 4090(a) tax on the net investment income of private foundations from 2% to 1.39%.

Page 412

The CARES Act allowed individual taxpayers to elect out of any deduction ceilings on cash contributions made to qualifying public charities in 2020. Any qualified contributions above 2020 modified AGI can be carried forward for up to five years. CARES Act, Pub. L. No. 116-136, § 2005(a)(2)(A), 34 Stat. 281 (2020) (not codified in § 170).

Chapter 17: Income-Shifting Strategies

Page 430

In Notice 2020-46, 2020-27 I.R.B. 7, the holdings in Notice 2014-68 were applied to employee waivers of vacation, sick or personal leave in exchange for employer cash contributions made before January 1, 2021, to § 170(c) organizations for the relief of COVID-19 pandemic victims in specified geographical areas.

In Notice 2022-28, 2022-23 I.R.B. 1182, the IRS applied the holdings in Notice 2014-68 to employee waivers of vacation, sick, or personal leave in exchange for employer cash contributions made before January 1, 2023 to § 170(c) organizations to aid victims of the 2022 invasion of Ukraine.

Page 432

The SECURE Act repealed the temporary tax rate change in the Kiddie Tax under § 1(j)(4) for tax years after 2019. However, for 2018 and 2019 taxpayers could elect to use the higher of the child's rate or the rate at which such income would be taxed if the income were attributed to the parent(s) in lieu of the 2017 TCJA imposed trust rates under § 1(e).

PART SIX: BORROWING, LENDING, AND INTEREST

Chapter 18: Borrowing, Lending, and Interest

Pages 468-69

To mitigate financial consequences from the global pandemic, Congress (in the CARES Act) increased the § 163(j) business interest expense limitation from 30% to 50% of a business's "adjusted taxable income" (ATI) for 2019 and 2020. Moreover, taxpayers could elect to use 2019 adjusted taxable income in lieu of 2020 adjusted taxable income pursuant to § 163(j)(10). Given the economic downturn caused by COVID-19 in 2020, electing to use 2019 adjusted taxable income likely provided a larger 2020 business interest deduction for many taxpayers. **The business interest expense limitation of 50% had not been extended to 2023 and subsequent years at the time of this update, therefore, the limit for 2023 and subsequent years is 30% of ATI (and depreciation, amortization, and depletion are no longer added back in computing ATI after 2021).**

Section 163(j) does not apply for 2023 to any business (other than a tax shelter) whose average annual gross receipts for the three years ending with the preceding tax year do not exceed $29M (as indexed for inflation). §§ 163(j)(3), 448(c); *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

Page 472

The SECURE Act retroactively extended the deduction for "qualified mortgage insurance" premiums for "Acquisition Indebtedness" as "Qualified Residence Interest" under § 163(h)(3)(E) through December 31, 2020. Section 163(h)(3)(E) had expired for tax years after 2017. The 2021 CAA extended this treatment of qualified mortgage insurance premiums through 2021.

Chapter 19: Cancellation-of-Debt Income

Page 497

In *Rev. Proc. 2020-11*, 2020-6 I.R.B. 406, the IRS extended safe-harbor relief from recognizing COD income where student loans are discharged either because schools closed or as a result of fraud. *Rev. Proc. 2018-39*, 2018-34 I.R.B. 319, provides similar relief for students whose higher education loans were discharged under a settlement resolving certain types of claims of unlawful business practices, including unfair, deceptive, and abusive acts and practices. Previously, the IRS provided exclusions from gross income for students who attended Corinthian College or American Career Institutes Inc., whose loans were discharged by the U.S. Department of Education. *Rev. Proc. 2015-57*, 2015-51 I.R.B. 863; *Rev. Proc. 2017-24*, 2017-7 I.R.B. 916.

Page 504

The SECURE Act retroactively extended the § 108(a)(1)(E) exclusion of COD income from the cancellation of "qualified principal residence indebtedness" through December 31, 2020. Section 108(a)(1)(E) had expired for tax years after 2017. The 2021 CAA extended § 108(a)(1)(E) to cover cancellations before 2026.

Part Seven: Realization and Recognition

Chapter 20: Debt and Property

Page 518

In *Howland v. Comm'r,* T.C. Memo 2022-60 (2022), petitioners had first and second mortgage debt on their personal residence. Petitioners defaulted on both debts and the lenders foreclosed. The sale proceeds satisfied the first mortgage debt. Sale proceeds received by the second mortgage creditor were less than the total amount owed but more than the unpaid interest. The terms of the second mortgage debt specified that petitioner's payments would be applied first to unpaid interest. Petitioners, cash method taxpayers, claimed the interest due on the second mortgage as a qualified residence interest expense deduction in the year of the foreclosure sale. Petitioners did not receive an interest expense information return from the second mortgage lender and there was no other evidence that the lender had applied any of its sales proceeds to petitioner's unpaid interest. The Tax Court held that in spite of the payment allocation term in the debt agreement, petitioners had failed to prove that any qualified residence interest had been paid and, therefore, no deduction was allowable.

In *Milkovich v. U.S.*, 24 F.4th 1 (9th Cir. 2022), taxpayers filed for bankruptcy and after the discharge their personal residence was subject to nonrecourse debt. Taxpayers defaulted and the creditor agreed to a third party sale in an arm's-length transaction at a price less than the amount of the unpaid debt. The creditor received the sale proceeds, and the nonrecourse debt was extinguished. The creditor gave taxpayer an interest expense information return for the amount it allocated to the accrued interest. Taxpayer, apparently using the cash method, deducted the interest accrued as qualified residence interest expense paid in the year of the sale. The Ninth Circuit applied the Tax Court's analysis in *Catalano v. Comm'r*, supra, to allow the deduction.

Chapter 23: Tax Accounting Methods

Page 593

For 2023, taxpayers (other than a tax shelter) whose average annual gross receipts for the three years ending with the preceding tax year do not exceed $29M (as indexed for inflation) may use the cash method of accounting and are excused from inventory accounting. See § 448, *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

PART EIGHT: CAPITAL RECOVERY

Chapter 26: Recoveries of Expense Items: The Effect of Annual Accounting on Basis and Basis Recovery

Page 690

The inflation-adjusted amounts for 2023 for the 15% capital-gains rate ranges are as follows: taxable income more than $89,250, but not more than $553,850, for joint-filers; more than $59.75K, but not more than $523.05K, for head-of-household filers; more than $44,625, but not more than $276.9K, for married filing separately filers; and more than $44.625K, but not more than $492.3K for single filers. The capital-gains rate of taxpayers with taxable incomes equal to and below the initial threshold ranges for 2023 is 0% and the capital-gains rate of taxpayers with taxable incomes above those ranges for 2023 is generally 20%. See *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

Pages 698-99

Under the CARES Act, Congress delayed the imposition of the 80% taxable income limitation on NOL deduction carryforwards until after 2020. In addition, any NOLs generated in 2018, 2019, or 2020 can be carried back five years and forward indefinitely. In ARPA, Congress extended the "excess business loss" limitation for non-corporate taxpayers under § 461(l) through 2026. **The 2022 IRA further extended the disallowance of excess business losses for any tax year beginning before January 1, 2029. Therefore, the combined effect is that excess business losses of noncorporate taxpayers are disallowed from 2021 through 2028. For taxable years after 2018, the $250,000 or $500,000 thresholds are adjusted for inflation and are $289,000 ($578,000 for joint returns) for 2023. See *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.**

For 2023, the gross receipts ceiling for using the completed-contract method is $29M. See *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.

Page 703

In *Anikeev v. Comm'r*, T.C. Memo. 2021-23, the joint filer taxpayers used two American Express cards to make purchases exceeding $6M over a two-year period. These resulted in card rewards of more than $300,000. Most of these card rewards were used to make American Express card purchases of (1) Visa gift cards that were promptly used to buy money orders that were then deposited in the taxpayers' bank accounts, (2) money orders that were deposited into taxpayers' bank accounts, and (3) cash infusions to reloadable debit cards. The IRS contended that the entire amount of card rewards was includable in gross income when issued by American Express because the rewards were rebates used to acquire cash equivalents and the purchase price adjustment approach illustrated in Rev. Rul. 76-96 is inapplicable to such purchases. Rev. Rul. 76-96 requires a basis reduction and the IRS asserts that cash equivalents must always have a basis equal to face amount. The taxpayers argued that the Rev. Rul. 76-96 and similar authorities made the card rewards totally excludable regardless of how they were used. The Tax Court held: (1) Visa gift cards are a product so that the principle in Rev. Rul. 76-96 made card rewards used to make American Express card purchases of Visa gift cards excludable, although basis in the gift cards had to be reduced to reflect the exclusion so that the taxpayers would have includable gains to the extent that the prices of future purchases with the gift cards exceeded the taxpayers' basis therein and (2) Rev. Rul. 76-96 was inapplicable to card rewards used to make direct American Express card purchases of money orders or cash infusions into reloadable debit cards. Those card rewards were includable in income when credited to the taxpayers' American Express card accounts.

Students might be interested in the underlying economics of the taxpayers' American Express card transactions. Virtually all of the more than $6M of card purchases were ultimately for purchases of money orders that were promptly deposited in the taxpayers' bank accounts from which the card charges were subsequently paid. Thus, the credit card purchases and the payments of card balances were essentially a circular flow of money that had no net cost to the taxpayers, except for small credit card fees and transaction expenses, but that produced a "return" of more than $300K of card rewards. The IRS asserted that this return was fully taxable when the card rewards were credited to the taxpayers' card accounts. The taxpayers argued that the rewards were tax-free rebates. The Tax Court made the bifurcated ruling explained above.

Pages 719-20

In *Mihelick v. United States*, 927 F. 3d 1138 (11th Cir. 2019), the 11th Circuit Court of Appeals held that § 1341 applied in the case of a divorcee repaying ½ of her former spouse' excessive compensation determined through litigation initiated by her sister-in-law. After Ms. Mihelick paid her ex-spouse her 50% share of the $600K overpayment she filed a refund claim under §§ 165 and 1341. Although the IRS refunded her ex-husband's repayment of $300K, the District Court denied Ms. Mihelick's refund claim as a matter of law through a summary judgment motion. Ms. Mihelick, represented by counsel, appealed the District Court's decision and prevailed. Indeed, the 11th Circuit opinion authored by Judge Rosenbaum begins as follows: "Inscribed above the main entrance of the Internal Revenue Service office in Washington, D.C., is a quotation from Supreme Court Justice Oliver Wendell Holmes Jr.: 'Taxes are what we pay for a civilized society.' An admirable outlook, yet even Justice Holmes would likely agree that it is uncivilized to impose taxes on citizens for income they did not ultimately receive. But that is precisely the result the government asks us to uphold today." Id. at 1138.

For a detailed discussion regarding issues related to the characterization of § 1341 deductions as "not MIDs" under § 67(b)(9) and the disallowance of MIDs for 2018-2025 in the 2017 TCJA, see Douglas A. Kahn, *Return of an Employee's Claim of Right Income*, 163 TAX NOTES 1819 (2019).

Page 722

In response to a global pandemic and stay-at-home orders across America, which applied to many IRS employees, Congress (in the CARES Act) automatically postponed the due date for filing 2019 returns and paying taxes (that otherwise would have been due on April 15) until July 15. This extension not only included 2019 income tax returns and payments due on April 15, but also included the first two estimated income tax payments for 2020 otherwise due on April 15 and June 15. In Notice 2021-21, 2021-15 I.R.B. 986, the IRS extended the due date for 2020 individual returns to May 17, 2021. No interest or penalties were assessed on any tax payments that were paid in full by the postponed due dates.

Chapter 28: Depreciation

Page 738

The TCJA provides that beginning after December 31, 2021, research and experimentation costs must generally be capitalized and amortized over five years with respect to research conducted in the United States and 15 years with respect to foreign research. IRC § 174(a).

Page 778

The maximum amount of § 179 deduction allowable for a sport utility vehicle in 2023, as indexed for inflation, is $28.9K. See *Rev. Proc. 2022-38,* 2022-45 I.R.B. 445.