Current Federal Tax Developments

Week of December 27, 2021

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SECTION: 61
US AND MALTA ISSUE COMPETENT AUTHORITY AGREEMENT TO ADDRESS PROMOTED TAX SHELTER INVOLVING MALTA PENSIONS

Citation: Competent Authority Agreement: United States and Malta, 12/21/21

The United States and Malta have entered into a Competent Authority Agreement (CAA)[1] on the meaning of a "pension fund" under the Malta-US income tax treaty. While that might seem like a matter of little consequence, the agreement is meant to quash what the IRS had identified in July as a 2021 "Dirty Dozen" scam that was being used to escape tax on the sale of appreciated property.[2]

The July 2021 IRS news release summarized the promoted program as follows:

> **Potentially abusive use of the US-Malta tax treaty**
>
> Some U.S. citizens and residents are relying on an interpretation of the U.S.-Malta Income Tax Treaty (Treaty) to take the position that they may contribute appreciated property tax free to certain Maltese pension plans and that there are also no tax consequences when the plan sells the assets and distributes proceeds to the U.S. taxpayer. Ordinarily gain would be recognized upon disposition of the plan's assets and distributions of the proceeds. The IRS is evaluating the issue to determine the validity of these arrangements and whether Treaty benefits should be available in such instances and may challenge the associated tax treatment.[3]

In August of 2021, the *Wall Street Journal* published an article describing the structure in more detail.[4]

The CAA provides additional details on the structures being used:

> It has come to the attention of the competent authorities that U.S. citizens and residents are establishing personal retirement schemes in

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[1] Competent Authority Agreement: United States and Malta, December 21, 2021, https://www.irs.gov/pub/irs-utl/malta-competent-authority-arrangement-pension-funds.pdf (retrieved December 22, 2021)

[2] "IRS wraps up its 2021 "Dirty Dozen" scams list with warning about promoted abusive arrangements," IR-2021-144, July 1, 2021, https://www.irs.gov/newsroom/irs-wraps-up-its-2021-dirty-dozen-scams-list-with-warning-about-promoted-abusive-arrangements (retrieved December 22, 2021)

[3] "IRS wraps up its 2021 "Dirty Dozen" scams list with warning about promoted abusive arrangements," IR-2021-144, July 1, 2021

[4] Laura Saunders, "Quirks in a U.S. Treaty With Malta Turn Into a Tax Play," *Wall Street Journal* online, August 20, 2021, https://www.wsj.com/articles/taxes-malta-pension-plan-11629418826?mod=article_inline (retrieved December 22, 2021, subscription required)

> Malta under the Retirement Pensions Act of 2011 with no limitation based on earnings from employment or self-employment, and are making contributions to these schemes in forms other than cash (e.g., securities). Questions have arisen in the United States about whether these personal retirement schemes are "pension funds" for purposes of applying the Treaty.[5]

The CAA provides details on what the Treaty provisions cover (and exclude from tax) and what they do not:

> The competent authorities confirm that a fund, scheme or arrangement established in a Contracting State that, except in the case of a qualified rollover from a pension fund established in the same Contracting State,
>
> > (a) is allowed to accept contributions from a participant in a form other than cash, or
> >
> > (b) does not limit contributions by reference to earned income from personal services (including self-employment) of the participant or the participant's spouse,
>
> is not operated principally to administer or provide pension or retirement benefits within the meaning of paragraph 1(k) of Article 3 of the Treaty, and is therefore not a "pension fund". The competent authorities therefore also confirm that distributions from this type of fund, scheme or arrangement are not "pensions or other similar remuneration" in consideration of past employment for purposes of paragraph 1(b) of Article 17 of the Treaty. This type of fund, scheme, or arrangement includes a personal retirement scheme established in Malta under the Retirement Pensions Act of 2011.[6]

The CAA goes on to clarify how this applies to U.S. citizens and residents:

> Accordingly, U.S. citizens and residents may not claim benefits under paragraph 1(b) of Article 17 and Article 18 of the Treaty with respect to the type of fund, scheme or arrangement described in the paragraph immediately above, including a personal retirement scheme established in Malta under the Retirement Pensions Act of 2011. Additionally, these funds, schemes or arrangements may not apply paragraph 2(e) of Article 22 of the Treaty to be treated as a qualified resident and may not claim the benefits of paragraph 3 of Article 10 of the Treaty.
>
> The competent authorities confirm that the interpretation in this Arrangement reflects the original intent of the Contracting States regarding the definition of "pension fund" for purposes of the Treaty.[7]

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[5] Competent Authority Agreement: United States and Malta, December 21, 2021

[6] Competent Authority Agreement: United States and Malta, December 21, 2021

[7] Competent Authority Agreement: United States and Malta, December 21, 2021

The IRS issued a news release at the same time as the CAA was released on the agreement.[8] The release reminds taxpayers that the IRS had already identified this sort of arrangement as problematical and advises taxpayers who entered into such arrangements to consult an independent tax adviser. Independent would mean in this context an adviser other than one who was a promoter of the arrangement.

> The IRS put taxpayers on notice earlier this year that it was reviewing the use of Maltese personal retirement schemes. The IRS is actively examining taxpayers who have set up these arrangements and recognizes that other taxpayers may have filed tax returns claiming Treaty benefits as a result of their participation in these arrangements. These taxpayers should consult an independent tax advisor prior to filing their 2021 tax returns and take appropriate corrective actions on prior filings.[9]

The paragraph presumably is meant to suggest that taxpayers who push forward with such an arrangement will face penalties and other actions that those who voluntarily take actions to undo their participation and return any already claimed benefits will avoid.

The IRS adds a paragraph warning against similar attempts to exploit other treaty provisions:

> The IRS also cautions taxpayers against entering into any substantially similar arrangements that would seek to misconstrue the provisions of a bilateral income tax treaty of the United States to avoid income tax.[10]

The release goes on to threaten both civil and criminal enforcement activities:

> IRS enforcement, both the civil and criminal divisions, is committed to pursuing abuse and those who market and participate in abusive transactions.[11]

Clearly the IRS is expecting such threats to dissuade taxpayers from pursuing similar schemes, as well as getting any individual who participated in such programs to come forward voluntarily. Of course, this, at the moment, represents a threatened IRS position in civil and criminal proceedings, one that they may not pursue in some, many or most cases and that they may or may not be able to persuade a court is correct.

However, most clients are not keen to take positions that have a possibility of leading to significant civil penalties or where Treasury is making any claims of potential criminal charges (regardless of how likely they are to pursue them). Certainly any

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[8] "United States, Malta sign a competent authority arrangement (CAA) confirming pension fund meaning," IR-2021-253, December 21, 2021, https://www.irs.gov/newsroom/united-states-malta-sign-a-competent-authority-arrangement-caa-confirming-pension-fund-meaning (retrieved December 22, 2021)

[9] "United States, Malta sign a competent authority arrangement (CAA) confirming pension fund meaning," IR-2021-253, December 21, 2021

[10] "United States, Malta sign a competent authority arrangement (CAA) confirming pension fund meaning," IR-2021-253, December 21, 2021

[11] "United States, Malta sign a competent authority arrangement (CAA) confirming pension fund meaning," IR-2021-253, December 21, 2021

taxpayer who entered into such an arrangement without understanding the significant risk that the IRS would not agree with this treatment and might look to impose significant penalties if the position is not upheld by a court needs to seriously consider taking the IRS's suggestion to seek independent advice—the fact that the party promoting this did not make the risk and potential consequences of challenges to the arrangement clear would be a good indication that a "second opinion" on this from an adviser not associated with or recommended by the promoter would be a reasonable step.

Ultimately, I'd expect at least some of these arrangements to end up in the courts, at which time we'll see if the IRS can persuade the Courts that these are and always have been abusive tax schemes in violation of the law. But any taxpayer who does not want to finance and go through such a court proceeding, risking the possibility of loss (with resultant penalties, potentially both civil and criminal) for the hope of a (potentially very) large tax benefit needs to, in consultation with an independent tax professional[12], consider the most appropriate actions to take from this point forward.

SECTION: 108
LENDERS INSTRUCTED NOT TO ISSUE FORMS 1099C FOR STUDENT LOAN DISCHARGES EXCLUDED FROM INCOME BY ARPA PROVISION

Citation: Notice 2022-01, 12/21/21

American Rescue Plan Act Section 9675 revised IRC §108(f)(5) to provide a temporary rule for the exclusion from income of certain discharges of student loan debt. In Notice 2021-01[13] the IRS provides that lenders are not to issue Forms 1099-C, *Cancellation of Debt*, for discharges that qualify for this relief.

The Notice describes the income exclusion as follows:

> Under this special rule, gross income does not include any amount which would otherwise be includible in gross income by reason of the discharge (in whole or in part) after December 31, 2020, and before January 1, 2026, of loans provided for postsecondary educational expenses, whether the loan was provided through the educational institution or directly to the borrower. Such loans must have been made, insured, or guaranteed by the United States, or an instrumentality or agency thereof, a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or an eligible educational institution. Additionally,

[12] Given the IRS implied a threat of criminal penalties, prudence suggests that this independent tax adviser first consulted be a licensed attorney since the tax preparer privilege open to CPAs and EAs under IRC §7525 does not apply in criminal matters. An attorney will evaluate the exposure to criminal liability given all facts and then may determine that the use of a CPA or EA is appropriate for any amended returns to be prepared.

[13] Notice 2022-01, December 21, 2021, https://www.irs.gov/pub/irs-drop/n-22-01.pdf (retrieved December 21, 2021)

> certain private education loans and loans made by certain educational organizations qualify for this special rule.[14]

The Notice provides that the lender should not issue a Form 1099-C for this discharge, explaining it is likely to generate an erroneous notice from the IRS to the borrower:

> When all or a portion of a student loan described in section 108(f)(5) is discharged after December 31, 2020 and before January 1, 2026, an applicable entity is not required to, and should not, file a Form 1099-C information return with the IRS or furnish a payee statement to the borrower under section 6050P as a result of the discharge. The filing of an information return with the IRS, although not required, could result in the issuance of an underreporter notice (IRS Letter CP2000) to the borrower through the IRS's Automated Underreporter program, and the furnishing of a payee statement to the borrower could cause confusion for a taxpayer with a tax-exempt discharge of debt.[15]

SECTION: 1402
DEFINITION OF RENTAL FOR PASSIVE ACTIVITIES RULES DOES NOT REQUIRE SAME CLASSIFICATION FOR SELF-EMPLOYMENT INCOME TREATMENT

Citation: Chief Counsel Advice 202151005, 12/23/21

In Chief Counsel Advice 202151005[16] the IRS discusses the lack of linkage between what is a rental for passive activity purposes under IRC §469(c)(2) and the exclusion of real estate rentals from self-employment income under IRC §1402(a)(1). The memorandum also discusses the application of the self-employment tax rules to two specific situations.

Rental Activities Under §469(c)(2) and the Self-Employment Income Exclusion for Real Estate Rentals Under IRC §1402(a)(1)

The memorandum begins by looking at the question of whether a determination that an activity is a rental activity under the passive activity rules of IRC §469(c)(2) determines if the activity involves "rentals from real estate" excluded from self-employment income under IRC §1402(a)(1).

Under IRC §469(c)(2), for purposes of the passive activity rules, a rental activity is a passive activity unless it meets the real estate professional rules of IRC §469(c)(7). The

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[14] Notice 2022-01, SECTION 2, December 21, 2021

[15] Notice 2022-01, SECTION 3, December 21, 2021

[16] Chief Counsel Advice 202151005, December 23, 2021, https://www.taxnotes.com/research/federal/irs-private-rulings/legal-memorandums/label-doesn%e2%80%99t-determine-rental-self-employment-tax-exclusion/7cqp3 (retrieved December 23, 2021)

IRS has issued regulations under IRC §469 that define what is and is not a rental activity for purposes of IRC §469(c)(7).

IRC §1402(a)(1) provides that there shall be excluded from self-employment income "rentals from real estate and from personal property leased with the real estate." However, the memorandum concludes that a determination that an activity is or is not a rental under the passive activity rules does not control if the income from the activity will be excluded from self-employment income as a rental from real estate under IRC §1402(a)(1).

The memorandum summarizes the rules for considering an activity as a rental under the passive activity rules for a taxpayer who is not a real estate professional:

> Under § 469(c), a passive activity is generally any trade or business activity in which the taxpayer does not materially participate or any rental activity. Treas. Reg. § 1.469-1T(e)(3)(ii)(A) provides that an activity involving the use of tangible property is not a rental activity for a taxable year if for the taxable year the average period of customer use for the property is seven days or less.[17]

The memorandum goes on to note that the regulations specifically provide that characterizations under the passive activity rules do not impact the treatment of items under other IRC provisions:

> Treas. Reg. § 1.469-1T(d)(1) provides that the characterization of items of income or deduction as passive activity gross income or passive activity deductions does not affect the treatment of items of income or deduction under provisions of the Code other than § 469. Therefore, whether amounts are passive activity gross income under Treas. Reg. § 1.469-2T(c) or passive activity losses under Treas. Reg. § 1.469-2T(b) is not determinative of whether those amounts are rentals from real estate under § 1402(a)(1) and Treas. Reg. § 1.1402(a)-4.[18]

Thus, the determination under the passive activity rules won't control whether an activity is a rental of real estate for self-employment tax purposes. The memorandum concludes "whether an activity is a "rental activity" under § 469(c)(2) is not determinative of whether the exclusion in § 1402(a)(1) applies."[19]

The passive activity rules can impact whether a deduction will be considered for other tax provisions, including reducing self-employment income if the passive activity provisions suspend the deduction of a loss, as the memorandum explains:

> However, under Treas. Reg. § 1.469-1T(d)(3) a deduction that is disallowed for a taxable year under § 469 and the regulations thereunder is not taken into account as a deduction that is allowed for

[17] Chief Counsel Advice 202151005, December 23, 2021

[18] Chief Counsel Advice 202151005, December 23, 2021

[19] Chief Counsel Advice 202151005, December 23, 2021

> the taxable year in computing the amount subject to any tax imposed by subtitle A of the Internal Revenue Code.[20]

Although not directly addressed in the answers in the memorandum, if an activity was deemed to be part of self-employment income due to not meeting the rental of real estate definition in IRC §1402(a)(1), a loss still might not reduce self-employment income for a year if a deduction for the loss was barred by the passive activity rules.

Applying the Self-Employment Rental Real Estate Exclusion

So now we turn to the application of the rules under IRC §1402(a) to see if the activity is or is not part of self-employment income. The memorandum quotes from the regulations as follows:

> Treas. Reg. § 1.1402(a)-4(c)(1) provides that rentals from living quarters, where no services are rendered for the occupants, are generally considered rentals from real estate under § 1402(a)(1), except in the case of real estate dealers. However, Treas. Reg. § 1.1402(a)-4(c)(2) provides,
>
> > Payments for the use or occupancy of rooms or other space where services are also rendered to the occupant . . . are included in determining net earnings from self-employment. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only.
>
> Treas. Reg. § 1.1402(a)-4(c)(2) lists examples of situations where services are rendered for the convenience of occupants, such as hotels, boarding homes, warehouses, and storage garages.[21]

The memorandum also points the reader to the Tax Court's 1978 *Bobo* decision:

> In *Bobo v. Commissioner*, 70 T.C. 706 (1978), *acq.* 1983-2 C.B. 4, the Tax Court considered a mobile home park that provided leased trailer park units with utility hookups, sewage facilities, and laundry facilities. The Tax Court held that the net rental income from the rental of the trailer park units was excluded from the owners' NESE[22] under § 1402(a)(1). The court relied on *Delno, infra*, in setting the standard for when services are considered not rendered for the occupant,
>
> > [Section 1402(a)(1)] should be applied to exclude only payments for use of space, and, by implication, such services as are required to maintain the space in condition for occupancy. If the owner performs additional services of such substantial nature that compensation for them can be said to

[20] Chief Counsel Advice 202151005, December 23, 2021

[21] Chief Counsel Advice 202151005, December 23, 2021

[22] Net self-employment income

> constitute a material part of the payment made by the tenant, the "rent" received then consists in part of income attributable to the performance of labor which is not incidental to the realization of return from passive investment.

Bobo at 709 (citing *Delno v. Celebrezze*, 347 F.2d 159, 166 (9th Cir. 1965) (relating to parallel Social Security eligibility provisions). Again relying on *Delno*, the Tax Court first determined that the phrase, "'usually or customarily rendered' . . . must be read with emphasis upon the closing phrase 'for occupancy only.'" *Bobo* at 710. The court reasoned that an analysis of whether services are rendered solely for the convenience of the occupants pursuant to Treas. Reg. § 1.1402(a)-4(c))(2) is a question of fact based on "whether [the services rendered] are required to maintain the space in condition for occupancy and, if not, whether [the services rendered] are substantial." *Id.* at 710-11; see also *Johnson v. Commissioner*, 60 T.C. 829, 832-33 (1973) (stating, "any service not clearly required to maintain the property in condition for occupancy be considered work performed for the tenant, and not for the conservation of invested capital," in support of a narrow construction of the exclusion from NESE for rental real estate).

Ultimately, the court determined that, even though the trailer park furnished laundry services that were "clearly rendered for the convenience of the tenant and not to maintain the property in condition for occupancy," the tenants' payments for the laundry services were not "substantial enough to classify all the tenants' [rental] payments as received for 'services to the occupants.'" *Id.* at 711 (citing Treas. Reg. § 1.1402(a)-4(c)(2)). Accordingly, the court held the payments at issue were rental from real estate excluded from NESE.[23]

Using these cited sources and others, the memorandum then looks at two fact situations. The memorandum describes the first situation as follows:

> The taxpayer is an individual who directly and solely owns and rents, in the course of a trade or business, a fully furnished vacation property via an online rental marketplace. The taxpayer is not a real estate dealer within the meaning of Treas. Reg. § 1.1402(a)-4(a). The taxpayer provides linens, kitchen utensils, and all other items to make the vacation property fully habitable for each occupant. In addition, the taxpayer provides daily maid services, including delivery of individual use toiletries and other sundries, access to dedicated Wi-Fi service for the rental property, access to beach and other recreational equipment for use during the stay, and prepaid vouchers for ride-share services between the rental property and the nearest business district. For the year at issue, the average period of customer use of the vacation property is seven days, and therefore the activity is not considered a rental activity for purposes of § 469 pursuant to Treas. Reg. § 1.469-1T(e)(3)(ii)(A) In addition, the taxpayer materially participates in the activity within the meaning of § 469(h)(1) and Treas. Reg. § 1.469-5T

[23] Chief Counsel Advice 202151005, December 23, 2021

> and, therefore, the activity is not a passive activity within the meaning of § 469(c).[24]

In this situation, the IRS finds the activity does generate self-employment income, not being an exempt rental of real estate under IRC §1402(a)(1):

> The net rental income in Fact Situation 1 is not excluded from NESE under § 1402(a)(1) because the taxpayer provides substantial services beyond those required to maintain the space in a condition suitable for occupancy. See *Bobo*, 70 T.C. at 710; Rev. Rul. 83-139. Whether services are considered rendered for the occupant is based on the particular facts and circumstances in each case. See *Hopper*, 94 T.C. at 548 (1990). Here, the payments made to the taxpayer for these services are for the convenience of the property's occupants. The services go beyond those clearly required to maintain the space in a condition for occupancy and are of such a substantial nature that the compensation for these services can be said to constitute a material portion of the rent. Thus, the payments are not excluded under § 1402(a)(1) but rather are included in NESE. The characterization of this activity as not a passive activity within the meaning of § 469(c) does not affect whether the activity is excluded from NESE under § 1402(a)(1).[25]

In a footnote, the IRS notes that if the activity was treated as a passive rental activity under §469 and incurred a loss that was suspended, that loss would not reduce self-employment income as was noted earlier:

> If the activity were a rental activity under Treas. Reg. § 1.469-1T(e)(3) and, therefore, a passive activity under § 469(c), a loss generated by this activity would still be limited for purposes of computing NESE under § 1.469-1T(d)(3).[26]

That is, while the loss is still a loss from self-employment, the fact a deduction is not allowed will serve to bar reducing self-employment income.

The second fact pattern is outlined as follows:

> The taxpayer is an individual who directly and solely owns and rents, in the course of a trade or business, a fully furnished room and bathroom in a dwelling via an online rental marketplace. The taxpayer is not a real estate dealer. Occupants only have access to the common areas of the home to enter and exit the room and bathroom and have no access to other common areas such as the kitchen and laundry room. The taxpayer cleans the room and bathroom in between each occupant's stay. For the year at issue, the average period of customer use of the vacation property is seven days, and therefore the activity is not considered a rental activity for purposes of § 469 pursuant to Treas. Reg. § 1.469-1T(e)(3)(ii)(A). In addition, the taxpayer materially

[24] Chief Counsel Advice 202151005, December 23, 2021

[25] Chief Counsel Advice 202151005, December 23, 2021

[26] Chief Counsel Advice 202151005, December 23, 2021

> participates in the activity within the meaning of § 469(h)(1) and Treas. Reg. § 1.469-5T, and, therefore, the activity is not a passive activity within the meaning of § 469(c).[27]

In this case, the memorandum concludes this activity is an excluded rental of real estate for purposes of determining self-employment income:

> The net rental income from Fact Situation 2 is excluded from NESE under § 1402(a)(1) because the taxpayer does not provide substantial services beyond those required to maintain the space in a condition suitable for occupancy. See *Bobo*, 70 T.C. 706 at 710; Rev. Rul. 83-139. Services the taxpayer provides to clean and maintain the property to bring it to a suitable condition for occupancy are not relevant in applying Treas. Reg. § 1.1402(a)-4(c)(2) because such services are not furnished primarily for the convenience of the property's occupants. See *Hopper*, 94 T.C. at 547. Further, services provided for the convenience of occupants must be substantial, and whether provided services are substantial depends on the facts and circumstances of each case. See *id.* at 548. Specifically, the services provided for the convenience of the occupants must be of such a substantial nature that compensation for them can be said to constitute a material part of the payments made by the occupants. See *id.* at 546 (citing *Delno*, 347 F.2d at 166). No such services are provided in Fact Situation 2. The characterization of this activity as not a passive activity within the meaning of § 469(c) does not affect whether the activity is excluded from NESE under § 1402(a)(1).[28]

SECTION: 6428B
IRS DESCRIBES LETTERS TO BE SENT TO TAXPAYERS DOCUMENTING AMOUNTS PAID FOR THIRD ECONOMIC IMPACT PAYMENTS AND 2021 ADVANCE PAYMENT OF CHILD TAX CREDIT

Citation: "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience," IR-2021-255, 12/22/21

In News Release IR-2021-255[29] the IRS gave information on the letters that will be sent to taxpayers documenting the amounts of the Advance Child Tax Credit and third

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[27] Chief Counsel Advice 202151005, December 23, 2021

[28] Chief Counsel Advice 202151005, December 23, 2021

[29] "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience,"

round of Economic Impact Payments that will provide information necessary to complete the taxpayers' 2021 individual income tax returns.

The letters that taxpayers will receive are:

- Letter 6419, 2021 Advance CTC
- Letter 6475, Your Third Economic Impact Payment[30]

The release states "[t]he IRS urged people receiving these letters to make sure they hold onto them to assist them in preparing their 2021 federal tax returns in 2022."[31]

Advance Child Tax Credit Letter

The release provides the following information on the letter to be sent regarding advance payments of the Child Tax Credit made in 2021:

> To help taxpayers reconcile and receive all of the Child Tax Credits to which they are entitled, the IRS will send Letter 6419, *2021 advance CTC*, starting late December 2021 and continuing into January. The letter will include the total amount of advance Child Tax Credit payments taxpayers received in 2021 and the number of qualifying children used to calculate the advance payments. People should keep this and any other IRS letters about advance Child Tax Credit payments with their tax records.[32]

The release explains why this information will be important to retain for use in preparing 2021 individual income tax returns:

> Families who received advance payments will need to file a 2021 tax return and compare the advance Child Tax Credit payments they received in 2021 with the amount of the Child Tax Credit they can properly claim on their 2021 tax return.

IR-2021-255, December 22, 2021, https://www.irs.gov/newsroom/irs-issues-information-letters-to-advance-child-tax-credit-recipients-and-recipients-of-the-third-round-of-economic-impact-payments-taxpayers-should-hold-onto-letters-to-help-the-2022-filing-season (retrieved December 22, 2021)

[30] "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience," IR-2021-255, December 22, 2021

[31] "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience," IR-2021-255, December 22, 2021

[32] "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience," IR-2021-255, December 22, 2021

> The letter contains important information that can make preparing their tax returns easier.[33]

The IRS release also notes that the IRS will, in addition to sending this letter, provide a website[34] where taxpayers can obtain the amount of advance payments received in 2021.[35]

Third Economic Impact Letter

The release also contains information about the Third Economic Impact Payment:

> The IRS will begin issuing Letter 6475, *Your Third Economic Impact Payment*, to EIP recipients in late January. This letter will help Economic Impact Payment recipients determine if they are entitled to and should claim the Recovery Rebate Credit on their tax year 2021 tax returns that they file in 2022.[36]

This letter will not contain all payments a taxpayer has received for Economic Impact Payments during 2021. The second round of Economic Impact Payments issued in early 2021 were reported and reconciled on the 2020 income tax return. For 2021 returns, only payments related to the round of payments authorized by the American Rescue Plan Act are relevant:

> Letter 6475 only applies to the third round of Economic Impact Payments that was issued starting in March 2021 and continued through December 2021. The third round of Economic Impact Payments, including the "plus-up" payments, were advance payments of the 2021 Recovery Rebate Credit that would be claimed on a 2021 tax return. Plus-up payments were additional payments the IRS sent to people who received a third Economic Impact Payment based on a 2019 tax return or information received from SSA, RRB or VA; or to people who may be eligible for a larger amount based on their 2020 tax return.[37]

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[33] "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience," IR-2021-255, December 22, 2021

[34] https://www.irs.gov/credits-deductions/child-tax-credit-update-portal

[35] "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience," IR-2021-255, December 22, 2021

[36] "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience," IR-2021-255, December 22, 2021

[37] "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience," IR-2021-255, December 22, 2021

As with the CTC letter, the IRS points out the importance of this information found in the letter:

> Like the advance CTC letter, the Economic Impact Payment letters include important information that can help people quickly and accurately file their tax return.[38]

SECTION: 7508A
HURRICANE IDA RELIEF EXTENDED TO FEBRUARY 15, 2021

Citation: "Hurricane Ida tax relief extended to February 15 for part or all of six qualifying states," IRS News Release IR-2021-254, 12/22/21

The IRS has announced an additional extension of time for certain tax relief for all or part of six qualifying states related to Hurricane Ida.[39] Before this news release, affected taxpayers had until January 3, 2022 to file various tax returns and make various tax payments. The news release has moved that date to February 15, 2022.

While the IRS did not provide a reason for granting this extension, it seems likely that complaints that January 3, 2022 was during the IRS's annual shutdown of both the individual and business electronic filing systems had a role in this relief. Those filing on the original January 3, 2022 extended relief date would have been required to file the returns in paper form rather than electronically.

The IRS has been experiencing significant delays in processing paper filed returns since the beginning of the COVID-19 pandemic, and on December 20, 2021 reported that the agency still had 6.2 million unprocessed individual returns.[40] The IRS notes that returns filed on paper received prior to April 2021 have been processed if they did not have errors or required additional review—but note that is well before the final unextended due date for filing such returns.

Advisers were concerned about the impact of filing returns during the IRS shutdown of the electronic filing systems, especially when such returns could contain overpayments the taxpayer wished to have applied to 2021 returns. February 15, 2022 will be after both the individual and business electronic filing systems are restarted for the new year.

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[38] "IRS issues information letters to Advance Child Tax Credit recipients and recipients of the third round of Economic Impact Payments; taxpayers should hold onto letters to help the 2022 Filing Season experience," IR-2021-255, December 22, 2021

[39] "Hurricane Ida tax relief extended to February 15 for part or all of six qualifying states," IRS News Release IR-2021-254, December 22, 2021, https://www.irs.gov/newsroom/hurricane-ida-tax-relief-extended-to-february-15-for-part-or-all-of-six-qualifying-states (retrieved December 24, 2021)

[40] "IRS Operations During COVID-19: Mission-critical functions continue," IRS website, December 20, 2021 update, https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue (retrieved December 24, 2021)

The news relief indicates the following areas are covered by the relief:

> The updated relief covers the entire states of Louisiana and Mississippi, as well as parts of New York, New Jersey, Connecticut and Pennsylvania. The current list of eligible localities is always available on the Around the Nation section of the disaster relief page on IRS.gov.
>
> The updated relief postpones various tax filing and payment deadlines that occurred starting on dates that vary by state:
>
> - August 26, 2021 for Louisiana,
> - August 28, 2021 for Mississippi,
> - August 31, 2021 for Pennsylvania and
> - September 1, 2021 for New York, New Jersey and Connecticut.[41]

The release goes on to describe the relief granted for filing of income tax returns:

> As a result, affected individuals and businesses will have until February 15, 2022, to file returns and pay any taxes that were originally due during this period. This means individuals who had a valid extension to file their 2020 return that ran out on October 15, 2021, will now have until February 15, 2022, to file. The IRS noted, however, that because tax payments related to these 2020 returns were due on May 17, 2021, those payments are not eligible for this relief.
>
> …
>
> The February 15 deadline also applies to the quarterly payroll and excise tax returns normally due on November 1, 2021, and January 31, 2022. Businesses with an original or extended due date also have the additional time including, among others, calendar-year partnerships and S corporations whose 2020 extensions ran out on September 15, 2021, and calendar-year corporations whose 2020 extensions ran out on October 15, 2021. It also applies to calendar-year tax-exempt organizations whose 2020 extensions ran out on November 15, 2021.[42]

The news release provides guidance on affected estimated tax payments that would have been due during the period from the beginning of the relief through February 15 that indicates individual taxpayers whose 3rd and 4th quarter estimated tax payments for

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[41] "Hurricane Ida tax relief extended to February 15 for part or all of six qualifying states," IRS News Release IR-2021-254, December 22, 2021

[42] "Hurricane Ida tax relief extended to February 15 for part or all of six qualifying states," IRS News Release IR-2021-254, December 22, 2021

2021 were due during that period will now be able to make those payments with their individual income tax returns:

> The February 15 extended deadline also applies to quarterly estimated income tax payments that were due on September 15, 2021, and January 18, 2022. This means that taxpayers in these areas can now skip making their estimated tax payments for both the third and fourth quarters of 2021 and instead include them when they file their 2021 return.[43]

The notice provides information on returns that the IRS will automatically identify as qualifying for this relief, as well as how to claim this relief in cases where the return is not automatically identified as qualifying by the agency:

> The IRS automatically provides filing and penalty relief to any taxpayer with an IRS address of record located in the disaster area. Therefore, taxpayers do not need to contact the agency to get this relief. However, if an affected taxpayer receives a late filing or late payment penalty notice from the IRS that has an original or extended filing, payment or deposit due date falling within the postponement period, the taxpayer should call the number on the notice to have the penalty abated.
>
> In addition, the IRS will work with any taxpayer who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227. This also includes workers assisting the relief activities who are affiliated with a recognized government or philanthropic organization.[44]

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[43] "Hurricane Ida tax relief extended to February 15 for part or all of six qualifying states," IRS News Release IR-2021-254, December 22, 2021

[44] "Hurricane Ida tax relief extended to February 15 for part or all of six qualifying states," IRS News Release IR-2021-254, December 22, 2021