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This issue includes:

- Inflation-adjusted tax figures for 2024 released
- Trusts held to have transferee liability for taxable gain generated *after* a sale of stock by the trusts
- IRS denies virtually all business deductions in overly aggressive business arrangement
- Appeals Court vacates District Court ruling that invalidated required IRS reporting related to §419 plans

INSURANCE PRODUCTS	MAY LOSE VALUE	NOT A DEPOSIT
NOT BANK GUARANTEED	NOT FDIC INSURED	
NOT INSURED BY ANY GOVERNMENT AGENCY		

LIFE-5115 12/23

Inflation-adjusted tax figures for 2024 released

IRS Rev. Proc. 2023-34, IRS Notice 2023-75.

The IRS made several releases of updated 2024 tax numbers in recent weeks including IRS Revenue Procedure 2023-34 and IRS Notice 2023-75. We summarize those reports below with numbers of most interest to our readers. Watch for our **Fingertip Tax Guide** to be published at the end of 2023, which will contain a fuller recitation of the adjusted rates and limitations effective for tax year 2024.

Category	2024	Notes
Applicable Exclusion Amount (§2010(c))	$13,610,000	Increase of $690,000
Generation-Skipping Transfer Tax Exclusion (§2631(c))	$13,610,000	Increase of $690,000
Annual Gift Tax Exclusion (§2503(b))	$18,000 (per donee per donor)	Increase of $1,000
Annual Exclusion Gifts to Noncitizen Spouse (§2523(i))	$185,000	Increase of $10,000
Special Use Valuation Reduction Limitation (§2032A(a)(2))	$1,390,000	Increase of $80,000
Exemption Amounts for AMT (§55(d)(1))	$133,300 (Married filing jointly) $85,700 (Single)	Up from $126,500 in 2023 Up from $81,300 in 2023
Standard Deduction (§63(c)(2))	$29,200 (Married filing jointly) $14,600 (Single)	Up from $27,700 in 2023 Up from $13,850 in 2023
Qualified Transportation Fringe Benefit Limit (§132(f)(2))	$315 (Transit pass) $315 (Qualified parking)	Up from $300 in 2023 Up from $300 in 2023
Long-Term Care/Chronic Illness per diem limit (§7702B(d)(4))	$410	Down from $420 in 2023

Eligible Long-Term Care Premium (§213(d)(10)):

EOY Attained Age	Limitation on Premiums
40 or less	$470
>40 <50	$880
>50 <60	$1,760
>60 <70	$4,710
>70	$5,880

Income Tax Brackets (summary):

2024	Married Joint	Single	Estates and Trusts
10.0%	$23,200	$11,600	$3,100
12.0%	$94,300	$47,150	N/A
22.0%	$201,050	$100,525	N/A
24.0%	$383,900	$191,950	$11,150
32.0%	$487,450	$207,350	N/A
35.0%	$731,200	$609,350	$15,200
37.0%	$731,200	$609,350	$15,200

Qualified Business Income threshold amounts (§199A(e)(2)) and phase-in range amounts (§199A(b)(3)(B) and §199A(d)(3)(A)):

	Threshold amount	Phase-in range
Married filing jointly	$383,900	$483,900
Married filing separately	$191,950	$241,950
Any other filing status	$191,950	$241,950

Trusts held to have transferee liability for taxable gain generated *after* a sale of stock by the trusts

Dillon Trust Company LLC v. United States, **Nos. 17-1898T, 17-2022T, 17-2023T (Fed. Cl.), Oct. 31, 2023.**

Facts

Trusts (a group of trusts created in the 1930s by a grantor for the benefit of their descendants) owned assets worth approximately $90 million consisting mainly of stock of two corporations. The corporations in turn owned blue-chip stock and prime farmland with a relatively low basis of approximately $16 million. A new generation of beneficiaries of the Trusts were due benefits, so the Trusts set about liquidating the remaining assets they held. The corporations ceased operations and sold off most of their physical assets, retaining only cash, the blue-chip stocks, and outstanding notes receivable due in three years. The Trusts invited and received bids to purchase the stock of the corporations. Buyer won with a bid of $86.8 million. Buyer was a holding company incorporated by a single shareholder only a month before the purchase and financed the entire stock purchase with a bank loan. As a result of the stock sale, the corporations passed on to Buyer significant unrealized gains on the underlying assets. Within hours of the stock sale, Buyer sold the corporations' investment portfolios of blue-chip stocks, triggering substantial realized, taxable gains to the corporations. Buyer then caused the corporations to enter financial transactions designed to generate losses to offset the gains. The Trusts were not a party to any of these dealings after the sale of the stock to Buyer. Buyer holding company reported on its federal income tax returns for the year gains of $73.2 million and losses of $74.1 million. The IRS issued a notice of deficiency, characterized the loss transactions as fraudulent, and assessed unpaid taxes in the amount of $25.6 million and a gross valuation misstatement penalty of $10.2 million. The IRS notified the Trusts that they might be held liable as transferees under IRC §6901 for Buyer's unpaid taxes, penalties, and interest. The Trusts paid the assessed transferee liabilities in full, approximately $79.9 million and then filed this action for a refund.

Holding

The Court begins by noting that the family of the Trusts' grantor (the "Family"), most members of which were beneficiaries of the Trusts, was very involved in the management of the Trusts. The family office of the Family provided virtually all the accounting, investment, and advisory services to the Trusts and made monthly reports to the Family. Based on this deep involvement, the Court determined that the Family and the Trusts were aware of the tax consequences of each of the alternatives available for converting the assets of the Trusts to liquidity. If the corporations sold their assets and then liquidated while they were owned by the Trusts, the gains from the sale of the assets would be taxed at the corporate level, and then taxed again at the trust level when the corporations were liquidated. By choosing to structure the arrangement as a series of transactions culminating with a sale of the stock, the Trusts transferred a significant portion of this potential tax liability to Buyer. Furthermore, the Court found that the Trusts (and the Family and the family office) were aware that the Buyer was a hastily created holding company with no capital, financing the stock purchase entirely with debt. Buyer would thus not be able to pay both the tax liability and the debt maintenance on the purchase money loan. However, IRC §6901 provides that the IRS may collect any deficiency or underpayment of income tax from a party other than the originally liable taxpayer if they are "transferees" of the taxpayer's property, who have a "liability, at law or

in equity." Section 6901(a) provides that "[t]he liability, at law or in equity, of a transferee of property [of a taxpayer]" shall be "assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the cases of the taxes with respect to which the liabilities were incurred." The Court found the Trusts were transferees as shareholders of dissolved corporations (citing regulations) and as the beneficiaries of the Trusts were to receive the proceeds of the transactions generating the liability. The Court further found these transferees as liable under the fraudulent conveyance law of the local jurisdiction because they received a transfer from an insolvent Buyer. The Court spent some time showing how the Trusts and the Family knew or should have known that the Buyer intended to default on its rightful tax liability.

Takeaway

Despite the Court's inference of complicity in the fraud by the Family and the Trusts, strictly speaking it is not necessary for the Court's holding. Even had the Trusts been completely ignorant of the dishonest intentions of the Buyer, they still would have transferee liability under the Court's analysis. The IRS can usually leap past an insolvent taxpayer to the transferee to satisfy an outstanding tax liability.

IRS denies virtually all business deductions in overly aggressive business arrangement

***Kunjlata J. Jadhav, et vir.,* T.C. Memo. 2023-140, November 21, 2023.**

Facts

Taxpayer holds a PhD in chemistry and worked full-time as an executive for a manufacturer of pine oil products. Taxpayer also ran a sole proprietorship marketing company, MC, that identified new markets for chemical producers and connected them with potential customers. MC earned commissions on sales to the customers Taxpayer identified. MC quickly became quite profitable, adding to the significant income that Taxpayer already earned as an executive. Taxpayer's family acquired a number of residential properties, two of which their children used as residences while attending university. Taxpayer engaged Promoter to advise him on how to reduce the tax liability attributable to the income of MC. Promoter recommended renting each residence to MC for business purposes, such as for meetings, at a market rate, but for no longer than 14 days per residence per year. MC would then deduct the rental cost paid under IRC §162 as a necessary and ordinary business expense. Promoter assumed (without factual support) that the market rental of one residential property was $2,500 per day and for three other properties was $2,000 per day. Furthermore, Promoter stated that under IRC §280A(g) Taxpayer was not required to include in taxable income any rental of a dwelling unit for less than 15 days a year. Under Promoter's plan, this would generate a §162 deduction of $119,000 per year for MC and tax-free income to Taxpayer in the same amount, netting the tax savings on the deduction to MC. Taxpayer executed Promoter's plan and amassed over $308,000 in deduction and rental income over four tax years. Promoter also recommended creating a separate subchapter C corporation to provide for free consulting to MC and use the fees to provide nonqualified deferred compensation plans for Taxpayer (and for his sons) that were not possible in MC because it is a pass-through entity. Taxpayer's returns for the four years were audited and the IRS denied MC's rental deductions under IRC §162. The IRS also issued notices of deficiency to Taxpayer personally for underreported income for excluding the amounts

received from MC, purportedly as rental income, which resulted in an increase in pass-through income after denying the deductions. The IRS also questioned deferred compensation arrangements for Taxpayer's sons as employees of the new C corporation. Taxpayer appealed to the Tax Court.

Holding

The Tax Court held for the IRS across the board. The Court starts with a standard enunciation: the determination of the IRS is presumed correct and the burden is on a taxpayer to show that the determination is in error. Deductions are a matter of "legislative grace" and taxpayers must demonstrate that they are entitled to a deduction claimed. With respect to the deductions by MC for rental expenses, the Court noted that MC was quite diligent in its recordkeeping with respect to all of its other business expense deductions. However, it kept practically no records, invoices, receipts, etc. for the rental expenses. To be "necessary" within the meaning of §162, an expense needs to be appropriate and helpful to the taxpayer's business. The requirement that an expense be "ordinary" connotes that "the transaction which gives rise to it must be of common or frequent occurrence in the type of business involved."

In the context of rentals, where the owners of the rental property are also the renters, it is necessary to determine, as a matter of fact, if the payments are in fact rent and not something else disguised as rent. Given that Taxpayer offered no support for the amount of rent charged (which was what Promoter "assumed," also without support), under the facts and circumstances before it, the Court held that the amount of the rental was not reasonable. Taxpayer offered no valuation evidence at trial on which the Court could base an estimate, so the Court was forced to uphold the IRS denial of deduction in its entirety.

Takeaway

There is an old saying in tax law that "pigs get fat and hogs get slaughtered." Done properly, with legitimate business purpose and substantiation in the record, some of what Taxpayer attempted could have been acceptable and useful to the business and resulted in saving Taxpayer some tax cost. But it has to be a genuine need and business benefit. From the very beginning, all of Taxpayer's planning appeared plainly to be a cardboard façade to hide the truth. The irony is that it could have been the truth all along.

Appeals Court vacates District Court ruling that invalidated required IRS reporting related to §419 plans

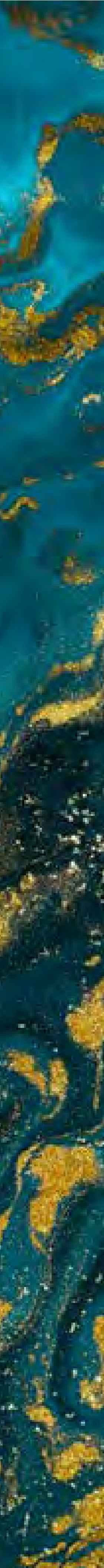
***Mann Construction, Inc., et al v. US,* No. 23-01138 (USCA 6th Cir.) November 20, 2023.**

As many of our readers are keenly aware, on October 17, 2007, the IRS issued IRS Notice 2007-83 that described certain welfare benefit funds that utilized cash value life insurance, which arrangements were being promoted at that time promising federal income and employment tax benefits. The described arrangements were known variously as "419 plans" or "single-employer plans" and often were structured as a voluntary employees' beneficiary association (VEBA). The Notice denied the promoted benefits for the arrangements described and alerted taxpayers and their representatives that these transactions are tax avoidance transactions and identified certain transactions using trust arrangements involving cash value life insurance policies, and substantially similar transactions, as listed transactions. Under IRC §6011 and Treas. Reg. §1.6011-4, a taxpayer that has participated in a listed transaction is required to file a disclosure statement containing a description of the taxpayer's transaction, the identity of all parties involved, and the potential tax treatment and benefits expected. In the current case, in 2013, Petitioner Corporation created trusts for its two Owners and then deducted the cost of paying

premiums on permanent life insurance policies owned by the trusts. In 2019, the IRS determined that the trusts were transactions described by IRS Notice 2007-83 and imposed penalties under the Notice against Petitioner Corporation and each of the Owners for failure to file disclosure statements as required. Each paid the penalties and then filed for a redetermination and a refund. When the IRS failed to reverse its determination and grant a refund, Petitioner Corporation and the Owners filed this action in District Court. In their initial action, the taxpayers alleged that in issuing its Notice in 2007, the IRS violated the requirements of the Administrative Procedure Act governing the process for issuing regulations and sought an order and judgment setting aside the Notice, a declaration that it was unlawful, and an order that the Notice did not apply to their trusts. In 2022, the Court held for the taxpayers and set aside the Notice. Taxpayers then moved the District Court to enforce the mandate by "vacating and setting aside IRS Notice 2007-83," ordering the IRS to refund the 2013 penalties with interest, and rescinding penalties for the subsequent years. Before the Court ruled on the motion, the IRS refunded the past penalties with interest, abated the unpaid penalties, and agreed not to apply the Notice to these taxpayers or anyone else within the Sixth Circuit. The District Court nonetheless set aside the Notice and vacated it nationwide. The IRS appealed. The Court of Appeals found that the refund and agreement by the IRS not to apply the Notice to taxpayers' plans mooted the original action brought by the taxpayers. Thus, the action by the District Court no longer had jurisdiction to set aside and vacate the Notice nationwide.

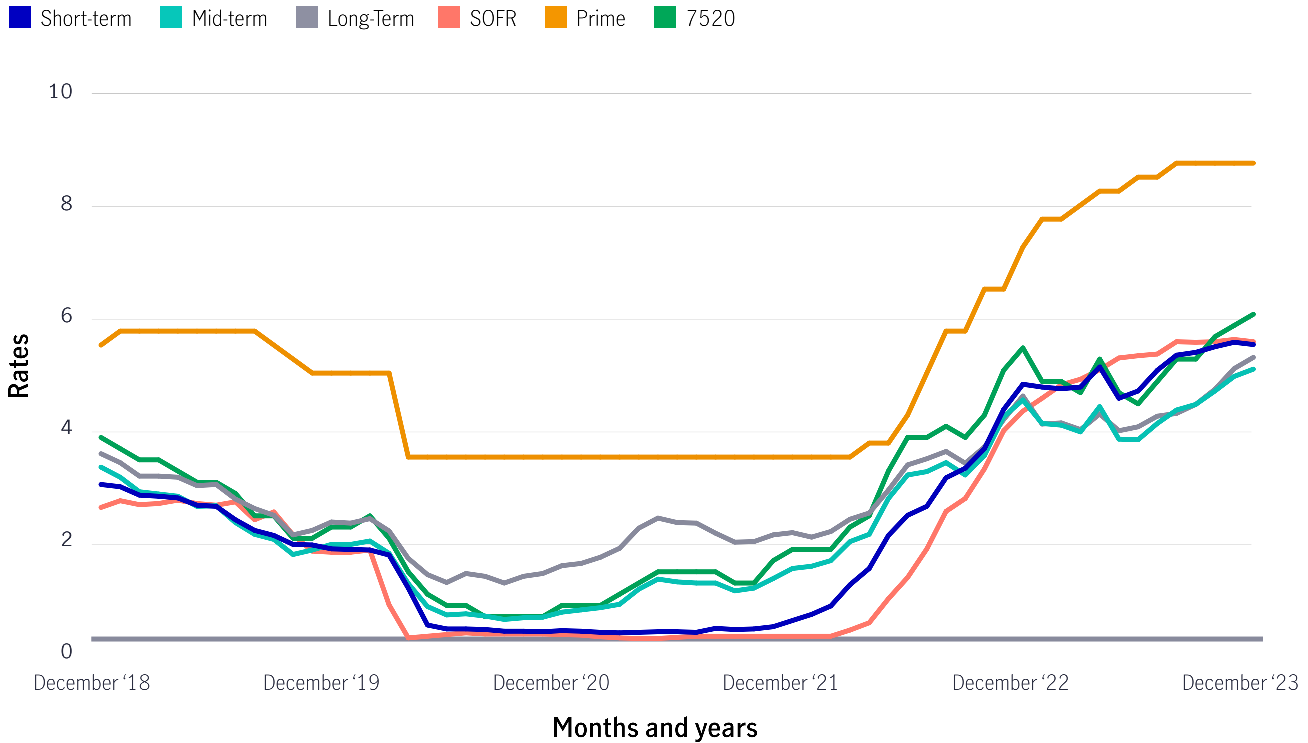
Takeaway

While this outcome is dramatic and avoided reversing or affecting the treatment of a large number of plans, there was never any chance that a different outcome would be allowed to resurrect the abusive variations of so-called 419 plans. The IRS will likely remedy any likely procedural flaws in the history of the Notice with new, carefully crafted pronouncements.



The following are historical graphs of various rates that are commonly used by the Advanced Markets group

Short, Mid, Long Term Applicable Federal Rate (AFR), 7520, SOFR, Prime Rates from December 2018 – December 2023



Take a look at how rates compare this month to last month*

	Short-term AFR	Mid-term AFR	Long-term AFR	7520	SOFR	Prime
December 2023	5.26%	4.82%	5.03%	5.80%	5.31%	8.50%
November 2023	5.30%	4.69%	4.83%	5.60%	5.35%	8.50%

*For more information on these rates, please visit https://www.irs.gov/applicable-federal-rates

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