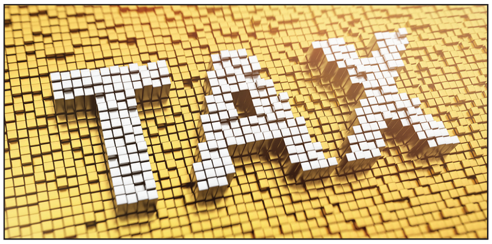

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Tax News and Industry Updates

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HSA Inflation Adjusted Amounts

Cross References

- IRC §223
- Rev. Proc. 2023-23
- Rev. Proc. 2022-24

The IRS recently announced inflation adjusted amounts for Health Savings Accounts (HSAs) for 2024. These amounts are reflected in the chart below in comparison to 2023.

HSA Limitations

Annual contribution is limited to:	2024	2023
Self-only coverage, under age 55	$4,150	$3,850
Self-only coverage, age 55 or older	$5,150	$4,850
Family coverage, under age 55	$8,300	$7,750
*Family coverage, age 55 or older	$9,300	$8,750
Minimum annual deductibles:		
Self-only coverage	$1,600	$1,500
Family coverage	$3,200	$3,000
Maximum annual deductible and out-of-pocket expense limits:		
Self-only coverage	$8,050	$7,500
Family coverage	$16,100	$15,000

continued in next column

HSA Limitations continued

* Assumes only one spouse has an HSA. See IRS Pub. 969 if both spouses have separate HSAs.

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Direct File

Cross References

- IR-2023-103, May 16, 2023

The Internal Revenue Service has submitted a report to Congress evaluating a Direct File option for taxpayers and is taking steps to begin a pilot project for the 2024 filing season following a directive from the Treasury Department.

The report to Congress, required by the Inflation Reduction Act, evaluated the feasibility of providing taxpayers with the option of a free, voluntary, IRS-run electronic filing system, commonly referred to as "Direct File."

The report finds that many taxpayers are interested in using a free IRS-provided tool to prepare and file taxes, and that the agency is technically capable of delivering a Direct File program. It also concludes that effective execution of a Direct File program would require sustained budget investment and careful management of the potential program's operational complexity.

The report focuses on three areas: taxpayer opinions, cost and feasibility. The report also includes an analysis conducted by an independent third party, as required by the statute. The report also lays out the potential benefits and challenges associated with the IRS implementing a Direct File program.

"The IRS is committed to delivering significantly improved services by providing taxpayers with tools, information and assistance to make it easier to comply with their tax filing obligations. Direct File—used by numerous tax jurisdictions around the world—has long been discussed as an option for improving the customer experience for taxpayers in the U.S.," said IRS Commissioner Danny Werfel. "The IRS review looked at the potential operational and administrative requirements of such a system. Ultimately, the results show there is taxpayer interest in an optional Direct File program and such a program is technically feasible. Any path forward should start with a limited pilot to assess operational factors described in this study."

As directed by Treasury, the IRS will move to gather further information through the implementation of a scaled Direct File pilot in the 2024 filing season to further assess customer support and technology needs and the ability to overcome the potential operational challenges identified in the report. Additional details on the Direct File pilot will be available in coming months.

The IRS report relied on information from the agency's Taxpayer Experience Survey (TES), which surveyed thousands of taxpayers on these topics. The IRS also reviewed and incorporated findings from an independently conducted survey by the MITRE Corporation.

The IRS supplemented data from these taxpayer surveys with user research and usability testing that was conducted using a basic internal prototype to better understand first-hand taxpayer perspectives.

The IRS report also includes a separate, independent analysis done by New America and Professor Ariel Jurow Kleiman on the Direct File concept.

Note: Direct File is not the same as IRS Free File. IRS Free File is a public-private partnership between the IRS and private tax preparation software companies who offer their tax preparation software for free to certain taxpayers through irs.gov. Taxpayers eligible to use this service are generally taxpayers with AGI of $73,000 or less. Taxpayers with AGI above $73,000 are given the option to use free fillable IRS forms (in PDF format) to file their taxes online, equivalent to a paper filed 1040 return.

Direct File is a government-operated electronic free-file tax return system (tax software created and run directly by the IRS) that would be available for all. Supporters claim a government free-file tax return system would reflect good government and well serve taxpayers. Critics voice skepticism about the IRS taking on the dual roles of both tax collector and tax preparer, arguing that it could create a power imbalance between taxpayers and the government.

A spokesperson for the IRS said that a key goal is to "look for ways to make filing taxes as easy as possible." Many tax professionals believe that the way to make filing taxes as easy as possible is for Congress to stop creating complicated tax laws, eliminate tax loopholes, and simplify how taxes are calculated.

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IRS Warns Taxpayers About Refund Scam

Cross References

• IR-2023-123, July 3, 2023

The Internal Revenue Service is warning taxpayers to be on the lookout for a new scam mailing that tries to mislead people into believing they are owed a refund.

The new scheme involves a mailing coming in a cardboard envelope from a delivery service. The enclosed letter includes the IRS masthead and wording that the notice is "in relation to your unclaimed refund."

Like many scams, the letter includes contact information and a phone number that do not belong to the IRS. But it also seeks a variety of sensitive personal information from taxpayers—including detailed pictures of driver's licenses—that can be used by identity thieves to try obtaining a tax refund and other sensitive financial information.

"This is just the latest in the long string of attempts by identity thieves posing as the IRS in hopes of tricking people into providing valuable personal information to steal identities and money, including tax refunds," said IRS Commissioner Danny Werfel. "These scams can come in through email, text or even in special mailings. People should be careful to watch out for red flags that clearly mark these as IRS scams."

The Security Summit—a coalition between the IRS, state tax administrators and the nation's tax industry—continue to warn people to protect their personal information to protect against tax-related identity theft as well as scams like this.

In this new scam, there are many warning signs that can be seen in many similar schemes via email or by text. An unusual feature of this scam is that it tries tricking people to email or phone very detailed personal information in hopes of stealing valuable information.

The letter tells the recipients they need to provide "Filing Information" for their refund. This includes some awkwardly worded requests like this:

"A Clear Phone of Your Driver's License That Clearly Displays All Four (4) Angles, Taken in a Place with Good Lighting."

The letter proceeds for more sensitive information including cellphone number, bank routing information, Social Security number and bank account type, followed by a poorly worded warning:

"You'll Need to Get This to Get Your Refunds After Filing. These Must Be Given to a Filing Agent Who Will Help You Submit Your Unclaimed Property Claim. Once You Send All The Information Please Try to Be Checking Your Email for Response From The Agents Thanks"

This letter contains a variety of warning signs, including odd punctuation and a mixture of fonts as well as inaccuracies.

For example, the letter states the deadline for filing tax refunds is October 17; the deadline for people on extension for their 2022 tax returns is actually October 16, and those owed refunds from last year have time beyond that. And the IRS handles tax refunds, not "unclaimed property."

Important reminders about scams. The IRS and Security Summit partners regularly warn people about common scams, including the annual IRS Dirty Dozen list.

Taxpayers and tax professionals should be alert to fake communications posing as legitimate organizations in the tax and financial community, including the IRS and states. These messages can arrive in the form of an unsolicited text or email to lure unsuspecting victims to provide valuable personal and financial information that can lead to identity theft, including phishing and smishing.

The IRS never initiates contact with taxpayers by email, text or social media regarding a bill or tax refund.

As a reminder: Never click on any unsolicited communication claiming to be the IRS as it may surreptitiously load malware. It may also be a way for malicious hackers to load ransomware that keeps the legitimate user from accessing their system and files.

Individuals should never respond to tax-related phishing or smishing or click on the URL link. Instead, the scams should be reported by sending the email or a copy of the text/SMS as an attachment to phishing@irs.gov. The report should include the caller ID (email or phone number), date, time and time zone, and the number that received the message.

Taxpayers can also report scams to the Treasury Inspector General for Tax Administration or the Internet Crime Complaint Center. The Report Phishing and Online Scams page at IRS.gov provides complete details. The Federal Communications Commission's Smartphone Security Checker is a useful tool against mobile security threats.

The IRS also warns taxpayers to be wary of messages that appear to be from friends or family but that are possibly stolen or compromised email or text accounts from someone they know. This remains a popular way to target individuals and tax preparers for a variety of scams. Individuals should verify the identity of the sender by using another communication method; for instance, calling a number they independently know to be accurate, not the number provided in the email or text.

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Real Estate Professional

Cross References

- *Teague,* T.C. Summary 2023-16

The taxpayer deducted $23,967 in total rental real estate losses for 2017 from his three cabins in Maine. The IRS determined that the taxpayer actively participated in a real estate activity. However, because of the income phase-out rules, only $1,540 of his $23,967 loss was allowed. The taxpayer claimed he was a real estate professionals and thus not subject to the income phase-out rules.

To qualify as a real estate professional, a taxpayer must show that:

1) He spent more than 750 hours during the tax year in real property trades or businesses in which he materially participated, and
2) More than one-half of the personal services he performed in trades or businesses were performed in real property trades or businesses in which he materially participated.

The taxpayer's family regularly visited the cabins on weekend excursions during the summer. The taxpayer kept a paddleboat, a kayak, and inner tubes at the cabins. The wife and children went swimming and boating in the afternoons, and sometimes the taxpayer joined them. On occasion, the wife and children returned home while the taxpayer stayed at the cabins to continue working on them.

The taxpayer was a licensed real estate agent. He has a history of purchasing, renovating, and selling residential properties for profit. Most of the work performed during 2017 on his real estate activity was spent rehabilitating two of his three cabins.

The taxpayer did not maintain any records showing how much time he spent participating in rental real estate activities.

The taxpayer was also employed full time as a sales representative for Comcast. He was responsible for Comcast sales to approximately 60 small apartment complexes. He met with property managers a few days per week, and on other days he took orders over the phone. Property managers sent the taxpayer leads for potential customers whom he contacted directly to provide Comcast service. He conducted most of this business remotely and visited the Comcast office only two or four hours per week. His position required him to be on call, and he occasionally took calls to make sales on weekends.

In court, the taxpayer contended that they qualify as real estate professionals if the total time that he and his wife spent working on the cabins were counted. However, in the case of a joint return, the requirements for qualification as a real estate professional are satisfied only if either spouse separately meets the requirements. Since the taxpayer did not claim that his wife separately qualifies as a real estate professional, her time is not included in the hour requirements.

The taxpayer also gave several inconsistent estimates of the amount of time he worked for Comcast. Because he testified on one occasion that he worked 40 hours per week and that on another occasion he testified that he worked 1,840 hours per year for Comcast, the court concluded that he worked for Comcast 40 hours per week for 46 weeks during 2017.

The taxpayer testified that he worked 1,993 hours on the cabins during 2017. The taxpayer provided numerous photos taken by the wife and several receipts for building supplies and furnishings. The photos show the taxpayer was present at the cabins at least 62 days. The receipts show on which days the taxpayer purchased supplies, but does not show how many hours he worked on the cabins. The taxpayer also reconstructed a mileage log that shows when he went to the cabins and his mileage, but the logs do not show how many hours he spent working on the cabins. The taxpayer's only evidence of the time spent was his own oral testimony that he worked an average of 12 hours per day for the 102 days he claims he was at the cabins (1,224 total hours) and another 769 hours driving to and from the cabins and searching for and obtaining materials and furnishings for the cabins.

The court accepted the taxpayer's testimony that he was at the cabins 102 days in 2017. However, the court did not accept that he averaged 12 hours of work per day for those 102 days. The taxpayer's claim fails to take into account time he spent eating and participating in recreation activities with his family and friends or Comcast work interruptions.

While at the cabins, the taxpayer had breakfast, sometimes lunch, and dinner with his family. The family kept a paddleboat, a kayak, and inner tubes on the property. The taxpayer sometimes used this equipment, and he occasionally took his wife and children on the boat for quick tubing tours and similar activities. The taxpayer testified that on hot days he took a few minutes to jump in the lake and cool off for a few minutes. His wife testified that during a weeklong summer vacation to the cabins, the family worked in the morning, swam in the lake for a couple of hours in the afternoon, and then worked a little more in the evening. Because of these other activities, the court stated it did not believe that the taxpayer consistently worked an average of 12 hours every day he was at the cabins.

The court also noted the taxpayer's time estimates lacked credibility because it increased after the taxpayer became fully aware of the number of hours required to prevail in this case. The taxpayer initially believed that he need work only 750 hours on the cabins during 2017 to qualify as a real estate professional. Before the trial in an email to the IRS, he stated that he spent 816 hours working at the cabins, not the 1,224 hours that he claimed at trial. As of the date of that email, the taxpayer knew about the 750-hour requirement, but he did not know about the requirement that he work more hours in real property trades or businesses than in his Comcast position.

The court concluded that the taxpayer did not prove he worked more than 1,840 hours on the Maine cabins in 2017 and that he thus did not qualify as a real estate professional.

Note: Another issue not examined in detail in court is the fact that the taxpayer did not make an election to group all of his rental activities into one activity. Thus, the hour requirement needed to be met separately for each rental real estate property. Because he could not prove his total time for all properties exceeded his Comcast hours, this issue was moot.

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Changes to COVID-19 Coverage and Payment Requirements

Cross References

- IR-2023-86, April 18, 2023

Under the Families First Coronavirus Response Act (FFCRA), enacted on March 18, 2020, group health plans and health insurance issuers offering group or individual health insurance coverage, including grandfathered health plans, are required to provide benefits for certain items and services related to diagnostic testing for the detection of SARS-CoV-2 (the virus that causes COVID-19) or the diagnosis of COVID-19.

This requirement applies to items or services furnished during any portion of the public health emergency beginning on or after March 18, 2020.

The CARES Act, enacted on March 27, 2020, amended the FFCRA to include a broader range of diagnostic items and services that plans and issuers must cover without any cost-sharing requirements, prior authorization, or other medical management requirements.

These requirements were to continue until the public health emergency ends.

The IRS is reporting that the public health emergency for COVID-19 is scheduled to end on May 11, 2023. As a result, plans and issuers are not required to provide coverage for items and services related to diagnostic testing for COVID-19 that are furnished after May 11, 2023. If they provide such coverage, they may impose cost-sharing requirements, prior authorization, or other medical management requirements for the items or services.

See irs.gov/newsroom for links to more information about the ending of the COVID-19 coverage requirements.

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COVID-19 Expenses and Preventive Care

Cross References

• Notice 2023-37

On February 10, 2023, the Federal Emergency Management Agency gave notice in the Federal Register that the national COVID-19 emergency would end on May 11, 2023. On April 10, 2023, the President signed H.J. Res. 7 ending the national emergency under the National Emergencies Act. As a result, the IRS has issued guidance regarding benefits relating to testing for and treatment of COVID-19 that can be provided by a health plan that otherwise satisfies the requirements to be a high deductible health plan (HDHP) under IRC section 223. The guidance also clarifies whether certain items and services are treated as preventive care under IRC section 223.

In general, an HDHP is not permitted to provide benefits for any year until the minimum deductible for that year is satisfied. However, IRC section 223(c)(2)(C) provides a safe harbor for the absence of a deductible for preventive care. Thus, a plan will not fail to be treated as an HDHP by reason of failing to have a deductible for preventive care.

In March 2020, the IRS issued Notice 2020-15 which stated that a plan will not fail to be an HDHP merely because the health plan provides benefits for medical care services and items related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible.

With the end of the national COVID-19 emergency, the relief described in Notice 2020-15 applies only with respect to plan years ending on or before December 31, 2024. For subsequent plan years, an HDHP is not permitted to provide health benefits associated with testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum deductible (for self-only or family coverage) for an HDHP, except as otherwise provided in Notice 2023-37.

Notice 2023-37 also noted the list of infectious diseases screening services that meet the preventive care safe harbor, which includes screening for Bacteriuria, Chlamydial Infection, Gonorrhea, Hepatitis B Virus Infection, Hepatitis C, Human Immunodeficiency Virus (HIV) Infection, Syphilis, and Tuberculosis Infection.

Screenings for common and episodic illnesses, such as the flu, do not meet the preventive care safe harbor. Accordingly, the IRS states that screening (i.e. testing) for COVID-19 does not meet the preventive care safe harbor.

However, there is one exception to this rule that has to do with the District Court's decision in *Braidwood Management Inc. v. Becerra*. The court vacated any and all actions taken to enforce the Public Health Services (PHS) Act's preventive service coverage requirements in response to an "A" or "B" rating from the United States Preventive Services Task Force (USPSTF). Plans and issuers must continue to cover, without cost sharing, items and services recommended with an "A" or "B" rating by the USPSTF. As a result, the IRS guidance states that items and services recommended with an "A" or "B" rating by the USPSTF are treated as preventive care for purposes of IRC section 223, regardless of whether these items and services must be covered, without cost sharing, under the PHS Act. If COVID-19 testing were to be recommended with an "A" or "B" rating by the USPSTF sometime in the future, then that testing would be treated as preventive care under IRC section 223, regardless of whether it must be covered, without cost sharing, under the PHC Act.

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