

# FEDERAL TAX WEEKLY

## INSIDE THIS ISSUE

IRS Will Process Tax Returns, Refunds Despite Government Shutdown .....	1
House Approves Treasury, IRS Funding Bill; Considered DOA in Senate .....	2
Grassley Outlines Focus on Tax Reform Permanence .....	2
U.S. Tax, Federal Courts Impacted by Government Shutdown .....	2
New Version of Free File Available .....	3
Proposed Regs Update and Clarify Exempt Bond Retirement.....	3
Tax Briefs .....	4

## IRS Will Process Tax Returns, Refunds Despite Government Shutdown

*IR-2019-1*

The IRS has announced that it will begin processing tax returns on January 28, 2019, despite the partial federal government shutdown. Taxpayer refunds will also be processed as scheduled.

“We are committed to ensuring that taxpayers receive their refunds notwithstanding the government shutdown. I appreciate the hard work of the employees and their commitment to the taxpayers during this period,” said IRS Commissioner Chuck Rettig. “IRS employees have been hard at work over the past year to implement the biggest tax law changes the nation has seen in more than 30 years,” he added.

The IRS will be recalling a significant portion of its workforce, currently furloughed as part of the government shutdown. The IRS also stated that additional details for the filing season will be included in an updated Fiscal Year (FY) 2019 Lapsed Appropriations Contingency Plan.

The filing deadline to submit 2018 tax returns is Monday, April 15, 2019, for most taxpayers. However, taxpayers who usually file early need not wait to file their returns.

### Tax Refunds

Congress had directed the payment of all tax refunds through a permanent, indefinite appropriation (31 U.S.C. 1324). The IRS stated that it has consistently been of the view that it has authority to pay refunds despite a lapse in annual appropriations. Although in 2011 the Office of Management and Budget (OMB) directed the IRS not to pay refunds during a lapse, OMB reviewed the relevant law at Treasury’s request and concluded that IRS may pay tax refunds during a lapse.

Before the shutdown occurred, the IRS had released its FY2019 Lapsed Appropriations Contingency Plan, which stated refunds are generally not issued during a government shutdown.

### Government Shutdown

The partial government shutdown has become the longest in U.S. history. At the time this newsletter went to press, Democratic and Republican lawmakers continued to disagree about the best way forward in reconciling funding for both the federal government and President Donald Trump’s border security request.

# House Approves Treasury, IRS Funding Bill; Considered DOA in Senate

The House approved a stand-alone bill on January 9 to fully reopen Treasury and the IRS during the partial federal government shutdown. However, the stand-alone IRS bill is likely dead on arrival in the Senate.

## Government Shutdown

The government shutdown has surpassed the previously longest shutdown (21 days) in U.S. history. The IRS, having already furloughed close to 90 percent of its employees, has been significantly impacted by the shutdown.

The Democratic-controlled House approved the IRS funding bill by a 240-to-188 vote. Eight Republican lawmakers voted yes alongside Democrats.

House Ways and Means Committee Chairman Richard Neal, D-Mass., encouraged the Senate to approve the IRS funding bill in a January 9 statement. “Democrats are committed to fully funding the government, and with this bill, we are one step closer to re-opening Treasury and the IRS and to getting more than 70,000 government employees across the country back to work,” Neal said. “Immediate action is needed to ensure Americans receive the tax refunds they rely on in a timely fashion, to protect Treasury employees from missing more paychecks, and to avert chaos during filing season and beyond.”

## White House Disagreement

However, President Donald Trump called a January 9 meeting with Democratic leadership at the White House a “total waste of time.” During the meeting, Trump reportedly asked if Democrats would be willing to later fund his border security request if he ended the partial government shutdown now. Senate Minority Leader Chuck Schumer, D-N.Y., and House Speaker Nancy Pelosi, D-Calif., reportedly responded “No.”

Congressional Republicans continue to criticize Democratic leadership for their unwillingness to negotiate with Trump. Meanwhile, Democrats maintain that Trump’s border security requests are ineffective and will not be granted.

# Grassley Outlines Focus on Tax Reform Permanence

Making permanent tax reform’s individual and small business tax cuts is a priority for the Senate’s top tax writer. Senate Finance Committee (SFC) Chairman Chuck Grassley, R-Iowa, wants to make permanent several Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) provisions:

- the doubled child tax credit;
- lowered individual tax rates; and
- the 20-percent passthrough deduction for small businesses.

## Permanent Tax Policy

“Permanent tax policy provides much needed certainty for families and businesses across the country,” Grassley said in a January 10 op-ed. “I plan to focus on improving retirement savings, protecting the rights of taxpayers and ensuring the Internal Revenue Service (IRS) is modernized, efficient and doesn’t step beyond its purpose,” he added.

Grassley also stated that he will prioritize enhancing global competitiveness of U.S. businesses, as well as encouraging research, development and innovation. “I have faith that these priorities can be done on a bipartisan basis,” Grassley said. “Last Congress, I introduced legislation with every Democratic member of the Senate Finance Committee, and I want to continue reaching across the aisle to put forward smart and effective legislation.”

# U.S. Tax, Federal Courts Impacted by Government Shutdown

The U.S. Tax Court remains closed under the partial government shutdown, which began on December 22, 2018. The court shut down on December 28, but trial

sessions scheduled in Los Angeles, New York City, and Phoenix for the week of January 14 were expected to proceed as scheduled.

## U.S. Tax Court

During the week of January 28, 2019, however, the Tax Court’s trial sessions

### REFERENCE KEY

USTC references are to **U.S. Tax Cases**  
Dec references are to **Tax Court Reports**

FEDERAL TAX WEEKLY, 2019 No. 3. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.  
© 2019 CCH Incorporated and its affiliates. All rights reserved.

scheduled in the following cities are canceled:

- El Paso, Texas - Judge Elizabeth A. Copeland;
- Los Angeles, California - Judge Patrick J. Urda;
- New York, New York - Judge Joseph H. Gale;
- Philadelphia, Pennsylvania - Special Trial Judge Diana L. Leyden;
- San Diego, California - Special Trial Judge Peter J. Panuthos; and
- Lubbock, Texas - Judge Elizabeth A. Copeland.

The Tax Court has posted information about its operations during the shutdown on its website ([www.ustax-court.gov](http://www.ustax-court.gov)).

## Federal Courts

The Federal Judiciary, which oversees most federal courts, is expected to

## New Version of Free File Available

The IRS is providing an improved version of Free File, an online software program, to help eligible taxpayers navigate the new tax reform law and electronically prepare their tax returns. The updated version features a number of changes, strengthening the program to make it more taxpayer friendly.

Taxpayers can visit [www.irs.gov/freefile](http://www.irs.gov/freefile) to find the Free File software product that matches their situation. The public-private partnership between the IRS and the Free File Alliance provides free, brand-name tax software and free electronic filing to taxpayers who earned \$66,000 or less in 2018. Each partner sets its own eligibility standards, generally based on age, income or state residency. Taxpayers can also use the IRS2Go app to access Free File.

For taxpayers who earned more than \$66,000 in 2018, there is Free File Fillable Forms, the electronic version of IRS paper forms which will be available when the IRS begins the filing season on January 28.

IR-2019-2

remain in operation through January 18. Currently, federal courts are operating by using court fee balances and other “no-year” funds, according to the U.S. Courts

website ([www.uscourts.gov](http://www.uscourts.gov)). Further, some federal courts have issued orders suspending or postponing certain civil cases.

# Proposed Regs Update and Clarify Exempt Bond Retirement

NPRM REG-141739-08

Proposed regulations would unify and clarify the rules for retiring tax-exempt bonds. The proposed regulations would also provide special rules for tender option bonds, including variable rate demand bonds.

## Existing Rules

The current rules for refunding exempt bonds are found in Notice 88-130, 1988-2 CB 543, and Notice 2008-41, 2008-1 CB 742. These notices are similar, but Notice 2008-41 was intended to coordinate the retirement standards for exempt bonds with regulations that were issued in 1996 to govern modifications of debt instruments. However, issuers were allowed to apply either notice.

## Proposed Regs

The proposed regulations generally provide retirement standards that follow Notice 2008-41, with some technical refinements. Thus, a tax-exempt bond is retired if:

- a significant modification to the terms of the bond occurs under Reg. §1.1001-3;
- the issuer or its agent acquires the bond in a way that liquidates or extinguishes the bondholder’s investment; or
- the bond is otherwise redeemed; for example, if it is redeemed at maturity.

The issuer is the state or local governmental unit that actually issues the bonds, plus any related party. Thus, the acquisition of an exempt bond by a conduit borrower that is not a related party to the actual issuer does not retire the bond.

When a modification causes a deemed exchange that retires a bond under Reg. §1.1001-3, the bond is treated as a new bond issued at the time of the modification. In contrast, a bond that is acquired by the issuer or its agent is generally retired. However, if the issuer resells the acquired bond, it is treated as a new bond issued at the time of resale. In either case, when a retired bond is treated as a newly issued bond, the issuer must consider whether the new bond refunds the retired bond under the Reg. §1.150-1(d) rules that define a refunding issue.

## Exceptions

The proposed regulations provide three exceptions that limit retirements of exempt bonds. One general exception applies to all tax-exempt bonds, and is adopted from Notice 2008-41. The other two exceptions are intended to prevent the special features of tender option bonds from resulting in a retirement. The proposed regulations largely adopt Notice 2008-41’s definition of “tender option bond.”

## Applicability Dates

The regulations are proposed to apply to actions taken at least 90 days after they are published as final. However, issuers may apply the proposed regulations before that date. The IRS expect the final regulations to obsolete Notice 88-130 and Notice 2008-41.

## Comments and Requests for Public Hearing

The IRS must receive comments and requests for a public hearing on the proposed regulations by March 1, 2019.

## Bankruptcy

A bankruptcy court lacked subject-matter jurisdiction to hear an adversary proceeding initiated by two sole shareholders of a debtor S corporation (debtor) because the proceeding involved only the tax liabilities of these nondebtor shareholders and not the tax liability of the debtor. The taxpayers argued that they should receive a distribution from the bankruptcy estate to pay an anticipated tax liability, which they claimed would be triggered by a distribution of funds to the debtor out of a settlement. However, because the debtor was a pass-through entity, any tax attributes would pass through to the taxpayers in their capacity as sole shareholders of the debtor. Further, the court did not have jurisdiction to determine the tax liability of a nondebtor.

*In re Awa Fabrication and Construction, LLC, BC-DC Ala., 2019-1 USTC ¶50,126*

## Declaratory Relief

The district court lacked subject matter jurisdiction over an individual's request to seek declaratory relief. The individual purchased life insurance policies but did not want a determination of whether his life insurance policies complied with the federal law. The individual also did not challenge the IRS's assessment of his tax liability. Instead, the individual requested a declaration of what the law meant, generally. The individual failed to present a true controversy, which is fundamental to the court's jurisdiction.

*Montanarella, DC Ariz., 2019-1 USTC ¶50,128*

## Disclosure of Returns

An individual was properly denied unlawful disclosure claims and conspiracy claims against IRS agents. The taxpayer failed to object to the magistrate judge's report recommending the dismissal of his constitutional claims against the IRS agents. The dismissal of the taxpayer's claims that the IRS agents conspired with state officials to have him detained, and that the IRS agents conspired to subject African American businesses to unreasonable searches and

seizures, was neither plainly erroneous nor manifestly unjust. The taxpayer did not allege that the purpose of the agents' actions was motivated by any discriminatory animus or selective prosecution.

*Taylor, CA-11, 2019-1 USTC ¶50,123*

## Estate Tax

A tax lien for unpaid estate tax was enforceable against an estate's property. The estate did not file a federal estate tax return, but a delegate of the Treasury Secretary assessed federal estate tax, penalties and interest against the estate, based on the date-of-death value of the decedent's property, which largely consisted of one parcel of real estate. A default judgment was entered against the decedent's estate and trust that held title to the property. As a result, the estate and trust could not claim that either entity had an interest that would have priority to the tax liens. The executor and trustee, in his individual capacity, did not establish that he had an interest in the property. The tax lien arose on the day that the estate tax was assessed and attached to all of the estate's property.

*Mengedoht, DC Neb., 2019-1 USTC ¶60,707*

## FOIA

The IRS's search for responsive records with respect to a married couple's Freedom of Information Act (FOIA) request was inadequate. The IRS did not invoke an exemption and merely declined to search the Whistleblower Office.

*Montgomery, DC D.C., 2019-1 USTC ¶50,129*

## Foreign Tax Law

Certain U.S. pension plans' motion to dismiss a case in connection with the Danish tax authority was denied. The Danish tax authority claimed that the U.S. entities had defrauded it of millions of dollars by submitting tax refund claims in which the entities falsely claimed to own stocks in Danish companies. The U.S. entities asserted that the case should be dismissed because the "revenue rule" prohibits courts from hearing claims by foreign sovereigns that seek direct or indirect enforcement

of their tax laws. However, nothing in the complaints sought enforcement of Danish tax law. The claims, as pleaded, were not for tax revenue but for money stolen by virtue of fraud.

*In Re Skat Tax Refund Scheme Litigation, DC N.Y., 2019-1 USTC ¶50,130*

## Liens and Levies

The Federal Claims Court lacked subject matter jurisdiction over an individual's tax lien and unlawful collections claims. The individual had not paid taxes for the tax years at issue and therefore, had not satisfied the full payment rule to allow tax refund jurisdiction. Further, the individual had not exhausted all administrative remedies by filing an administrative claim for refund before filing suit with the court, and had not provided the court with the appropriate information for a tax refund claim.

*Wall, FedCl, 2019-1 USTC ¶50,124*

## Partnerships

A Tax Court determination that partners of a limited partnership recognized capital losses and were not entitled to ordinary abandonment loss on the disposal of their partnership interests was vacated and remanded. The Tax Court had erred in assuming that the private equity firm partner made an election pursuant to a partnership agreement, which would result in the firm being entitled to receive preferred consideration. No such election had been made.

*Watts, CA-11, 2019-1 USTC ¶50,127*

## Refund Claims

The Tax Court lacked jurisdiction to review an individual's refund claim. While the Tax Court has jurisdiction to review an IRS determination, the individual failed to provide the court with the IRS notice of determination or deficiency being challenged. Therefore, the individual failed to submit any document that would confer jurisdiction on the court. In addition, the Tax Court lacked jurisdiction to grant the relief the individual sought.

*Bass, CA-6, 2019-1 USTC ¶50,122*