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Deductibility of FDIC special assessments not limited under section 162(r)

The IRS concluded in Office of Chief Counsel memorandum* AM 2024-003 (released November 8, 2024, and dated September 11, 2024) that the deductibility of Federal Deposit Insurance Corporation (FDIC) special assessments imposed under a final rule (88 Fed. Reg. 83,329) on November 29, 2023 to recover the loss to the Deposit Insurance Fund arising from the protection of certain uninsured depositors, is not subject to the limitations for deductibility under section 162(r) and is not subject to capitalization under section 263(a).

The IRS further concluded that the liability to pay the FDIC special assessments was fixed under the all events test of section 461 in 2023 (even though the final rule wasn't effective until April 1, 2024 and the first payment wasn't due until June of 2024), and in that year the amount of the liability had been determined with reasonable accuracy. However, as a payment liability, economic performance for the special assessment liability will generally not occur until the liability is paid in 2024. In addition, the IRS concluded that the liability to pay the FDIC special assessments does not qualify for the recurring item exception of section 461(h)(3) because it is a liability described in Treas. Reg. § 1.461-4(g)(7) ("other" liabilities). Therefore, the special assessment paid in June 2024 would be deductible in 2024 and could not be claimed in 2023 using the recurring item exception.

*The IRS Office of Chief Counsel issues memoranda to IRS personnel who are national program executives and managers to assist them by providing authoritative legal opinions on certain matters, such as industry-wide issues. The memoranda cannot be used or cited as precedent.

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