



TaxNewsFlash

United States

No. 2024-432
November 12, 2024

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.

kpmg.com/socialmedia



The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at +1 202.533 3712, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)