
CHANNELS OF TAX LAW (MIS)INFORMATION

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This Article sheds light on a pervasive phenomenon. In a variety of contexts, third parties provide information about tax law to taxpayers. The information provided by these third parties may guide the tax planning and compliance decisions of taxpayers, some of whom may act upon the information without seeking advice from a tax professional. In some cases, the information is accurate and potentially helpful. In other cases, it is inaccurate and potentially misleading.

This Article describes concrete examples of real estate companies and home mortgage lenders providing information about the tax consequences of home ownership; car companies delivering information about tax credits available to purchasers of electric and hybrid vehicles; sellers of other products dispensing information about associated tax credits; drugstores and other sellers of health products distributing information about health flexible spending accounts; student loan providers broadcasting information about the deduction for student loan interest; debt collectors describing to debtors the tax consequences of nonpayment; employers, schools, and pediatricians providing information about potential benefits of tax filing; and more. The collection of examples is based, in part, on information gleaned from an examination of websites of leading companies in various industries. Some of the examples are taken from cases involving contract law or consumer protection law.

This Article discusses several important implications that follow from an examination of these examples. First, in many cases, third parties transmit information contained in informal IRS guidance. As a result, for better

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or for worse, they magnify the impact of informal IRS guidance, which underscores the need to ensure that informal IRS guidance does not steer taxpayers in the wrong direction. Second, many of the examples entail information that is, in substance, less accurate for taxpayers with lower incomes, which has troubling equity implications. Third, an examination of the examples suggests the need for an evaluation of existing legal doctrine. Fourth, some of the examples represent topics that the IRS could discuss when alerting taxpayers to tax misinformation. Finally, some modifications to existing law could amplify the positive impact of helpful information.

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I. INTRODUCTION

Paid professionals prepare a little more than half of all individual income tax returns.¹ Many taxpayers who do not turn to paid preparers make use of tax return filing software² or seek assistance from Volunteer Income Tax Assistance programs.³ Numerous taxpayers also obtain advice from the IRS itself. The IRS website received 648.5 million visits during the 2022 tax filing season,⁴ and, during the 2023 filing season, IRS helpline representatives answered approximately 9 million phone calls.⁵

At various points in time during the year—when taxpayers are not necessarily in communication with a tax preparer or thinking about filing tax returns—they also encounter tax law information dispensed by a multitude of third parties. Third parties provide information to guide taxpayers’ planning or compliance decisions.⁶ In other words, third parties seek to influence or inform taxpayers’ decisions about whether to engage in transactions or their decisions about tax filing.⁷ In some instances, the information is accurate and potentially helpful.⁸ In other instances, the information is inaccurate and potentially misleading.⁹

To consider an example of the latter, imagine a potential home buyer consults the first-time home buyer’s guide on a real estate company’s website. In it, they can read the following: “Many first-time home buyers are eligible for tax credits, such as . . . [m]ortgage interest: [y]our mortgage must be on a home that’s eligible for these types of deductions, your mortgage has to be secured by your home, and you must have a mortgage that’s lower than \$1 million to deduct mortgage interest.”¹⁰ In reality, tax legislation enacted in 2017 reduced the cap from

1. U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-467T, PAID TAX RETURN PREPARERS: IN A LIMITED STUDY, PREPARERS MADE SIGNIFICANT ERRORS (2014), <https://www.gao.gov/assets/gao-14-467t.pdf> [<https://perma.cc/SZR2-JQGX>] (“For tax year 2011, an estimated 56 percent of about 145 million individual tax returns were completed by a paid preparer.”).

2. See, e.g., Jay A. Soled & Kathleen DeLaney Thomas, *Regulating Tax Return Preparation*, 58 B.C. L. REV. 152, 156 n.29 (2017) (quoting an IRS commissioner’s testimony that “[e]ach year, paid preparers are called upon by taxpayers to complete about 80 million returns, or about 56 percent of the total individual income tax returns filed, while another 34 percent of taxpayers use tax preparation software, for a total of 90 percent who seek some form of assistance”).

3. For instance, in 2016, volunteer income tax assistance (“VITA”) programs prepared approximately 1.5 million tax returns. TREASURY INSPECTOR GEN. FOR TAX ADMIN., 2017-40-088, IMPROVEMENTS ARE NEEDED TO ENSURE THAT THE VOLUNTEER INCOME TAX ASSISTANCE GRANT PROGRAM EXTENDS TAX RETURN PREPARATION TO UNDERSERVED POPULATIONS 5 (2017), <https://web.archive.org/web/20250210093403/https://www.oversight.gov/sites/default/files/documents/reports/2017-10/201740088fr.pdf> [<https://perma.cc/564N-T37R>]; U.S. GEN. ACCT. OFF., TAX ADMINISTRATION: SELECTED IRS FORMS, PUBLICATIONS, AND NOTICES COULD BE IMPROVED 4 (1993), <https://www.gao.gov/assets/ggd-93-72.pdf> [<https://perma.cc/8WF4-SR55>].

4. TREASURY INSPECTOR GEN. FOR TAX ADMIN., 2024-400-006, FINAL RESULTS OF THE 2023 FILING SEASON 10 (2023), <https://www.tigta.gov/sites/default/files/reports/2023-11/2024400006fr.pdf> [<https://perma.cc/9QH3-V38Z>].

5. *Id.* at 12.

6. See discussion *infra* Part II.

7. See discussion *infra* Part II.

8. See discussion *infra* Section II.E.

9. See discussion *infra* Section II.E.

10. Sarah Ford, *First Time Home Buyer FAQ*, REDFIN, <https://www.redfin.com/guides/down-payment-for-first-time-home-buyer> [<https://perma.cc/WJ6N-CNPU>] (last visited Dec. 28, 2025).

\$1 million to \$750,000.¹¹ Also, many homeowners do *not* benefit from a home mortgage interest deduction.¹² In 2018, 18% of U.S. homeowners claimed the deduction,¹³ which is slightly less than half of the 37% of U.S. homeowners who had a mortgage.¹⁴ Finally, while the guide initially refers to tax “credits,” as it notes later, tax law provides a deduction (not a credit) for home mortgage interest.¹⁵ Indeed, all the tax benefits that the guide lists are deductions rather than credits.¹⁶

Other sellers of commercial products and services also dispense tax law information on their websites with varying degrees of accuracy. Examples include home mortgage lenders,¹⁷ car companies,¹⁸ drugstores,¹⁹ student loan providers,²⁰ and numerous other sellers.²¹ The information is often accompanied by recommendations to consult with a tax professional.²² Frequently, the information also refers the reader to IRS publications or an IRS website for more information.²³

Other third parties also dispense tax law information. For instance, debt collectors include information about the tax consequences of nonpayment in debt collection letters.²⁴ Charitable organizations provide information about the charitable contribution deduction.²⁵ Employers share tax law information with their employees in various ways. In some jurisdictions, for instance, employers are required to provide employees with information about the earned income tax credit (the “EITC”).²⁶ Employers also share information with employees about the tax treatment of various benefits employers provide.²⁷ Schools (or related educational organizations) share tax law information with parents and guardians

11. This is true for tax years beginning after December 31, 2017 and before January 1, 2026. I.R.C. § 163(h)(3)(F)(i)(II). In those years, the higher \$1,000,000 cap only applies if the debt was incurred on or before December 15, 2017, or, in some cases, it applies to debt incurred on or before April 1, 2018, if the taxpayer, before December 15, 2017, entered into a binding contract to purchase a home. *Id.* § 163(h)(3)(F)(i)(III)–(IV).

12. *See infra* note 442 and accompanying text.

13. MARK P. KEIGHTLEY, CONG. RSCH. SERV., R46685, AN ANALYSIS OF THE GEOGRAPHIC DISTRIBUTION OF THE MORTGAGE INTEREST DEDUCTION: BEFORE AND AFTER THE 2017 TAX REVISION (P.L. 115-97) 5 (2021), <https://crsreports.congress.gov/product/pdf/R/R46685> [<https://perma.cc/E67U-JVRX>].

14. U.S. BUREAU OF LAB. STATS., CONSUMER UNIT CHARACTERISTICS: PERCENT HOMEOWNER WITH MORTGAGE: ALL CONSUMER UNITS (2024), <https://fred.stlouisfed.org/series/CXU980230LB0101M> [<https://perma.cc/62N5-SST3>].

15. As discussed in more detail below, a deduction is less valuable to taxpayers than a credit of the same amount. *See infra* notes 89–92 and accompanying text.

16. Ford, *supra* note 10.

17. *See infra* Subsection II.A.1.

18. *See infra* Subsection II.A.2; notes 274–78 and accompanying text.

19. *See infra* Subsection II.A.4.

20. *See infra* notes 281–97 and accompanying text.

21. *See infra* Subsections II.A.3, II.A.5, and II.A.6.

22. *See infra* notes 102, 120, 132–34, 140, 142, 145, 151, 173, 278, 289, and 363 and accompanying text (providing examples of information accompanied by recommendations to consult with tax professional).

23. *See infra* notes 120, 127, 149, 210, 225, 289, 292, and 299 and accompanying text (providing examples referring users to IRS publications or an IRS website).

24. *See infra* Section II.C.

25. *See infra* Section II.D.

26. *See infra* Section II.E.

27. *See infra* Section II.E.

of their students—in some cases, they are required to share information about the EITC.²⁸ Recently, a Boston pediatricians' office began sharing information about the child tax credit and other potential benefits of tax filing with parents and guardians of their patients.²⁹

A growing body of existing literature focuses on the IRS's role in providing informal guidance to taxpayers.³⁰ Existing literature also explores various aspects of the role of tax return preparers and other tax professionals in dispensing tax advice to their clients.³¹ For example, existing literature examines factors that drive taxpayers to seek professional filing assistance³² and discusses the type of advice that return preparers provide.³³

Unlike the bodies of literature described above, the focus of this Article is on the tax law information dispensing role of third parties (meaning not the taxpayer and not the IRS) other than tax return preparers or other tax professionals. Examining the roles of these parties is important because they, too, interact with taxpayers and may influence their tax planning and compliance decisions.³⁴ Moreover, some taxpayers may act upon the information third parties provide without seeking advice from a tax professional.³⁵

To be sure, the role of third parties in tax law has not been ignored. Existing literature discusses the role that third parties play in facilitating tax compliance by providing factual information about transactions to the IRS.³⁶ In some

28. See *infra* Section II.F.

29. See *infra* Section II.G.

30. See Joshua D. Blank & Leigh Osofsky, *Simplexity: Plain Language and the Tax Law*, 66 EMORY L.J. 189, 192 (2017) [hereinafter Blank & Osofsky, *Simplexity*]; Joshua D. Blank & Leigh Osofsky, *Automated Legal Guidance*, 106 CORN. L. REV. 179, 184 (2020) [hereinafter Blank & Osofsky, *Automated Legal Guidance*]; Joshua D. Blank & Leigh Osofsky, *Automated Agencies*, 107 MINN. L. REV. 2115, 2118 (2023); Joshua D. Blank & Leigh Osofsky, *The Inequity of Informal Guidance*, 75 VAND. L. REV. 1093, 1096 (2022) [hereinafter Blank & Osofsky, *Inequity*]; Emily Cauble, *Detrimental Reliance on IRS Guidance*, 2015 WIS. L. REV. 421, 422 (2015) [hereinafter Cauble, *Detrimental Reliance*]; Emily Cauble, *Administering Facts-and-Circumstances-Based Tax Tests*, 76 BAYLOR L. REV. 249, 253 (2024) [hereinafter Cauble, *Administering Facts-and-Circumstances-Based Tax Tests*]; Andrea Monroe, *Hidden in Plain Sight: IRS Publications and A New Path to Tax Reform*, 21 FLA. TAX REV. 81, 84 (2017).

31. See, e.g., Leslie Book, *Study of the Role of Preparers in Relation to Taxpayer Compliance with Internal Revenue Laws*, 1 (Villanova Univ. Charles Widger Sch. of L., Working Paper No. 117, 2008), <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1121&context=wps> [<https://perma.cc/TH3Z-J4QE>]; Pippa Browde, *A Consumer Protection Rationale for Regulation of Tax Return Preparers*, 101 MARQ. L. REV. 527, 529 (2017); Sagit Leviner, *The Role Tax Preparers Play in Taxpayer Compliance: An Empirical Investigation with Policy Implications*, 60 BUFF. L. REV. 1079, 1079 (2012). See Soled & Thomas, *supra* note 2, at 152.

32. See, e.g., Leviner, *supra* note 31, at 1087–90.

33. See, e.g., Book, *supra* note 31, at 4–7, 11–13; Browde, *supra* note 31, at 548–49; Leviner, *supra* note 31, at 1090–1116; Soled & Thomas, *supra* note 2, at 171–73; Steven Klepper, Mark Mazur & Daniel Nagin, *Expert Intermediaries and Legal Compliance: The Case of Tax Preparers*, 34 J.L. & ECON. 205, 209 (1991).

34. See *supra* notes 6–7 and accompanying text.

35. See *supra* note 1 and accompanying text (noting that paid professionals prepare a little more than half of all individual income tax returns).

36. See, e.g., William A. Drennan, *Strict Liability and Tax Penalties*, 62 OKLA. L. REV. 1, 22 (2009) (“Noncompliance is rampant among individuals operating a business, particularly those receiving cash payments.”); Leandra Lederman, *Statutory Speed Bumps: The Roles Third Parties Play in Tax Compliance*, 60 STAN. L. REV. 695, 697 (2007) [hereinafter Lederman, *Statutory Speed Bumps*]; Leandra Lederman & Joseph C. Dugan, *Information Matters in Tax Enforcement*, 2020 BYU L. REV. 145, 146–48 (2020) (describing IRS estimates of

contexts, third parties provide information to the IRS because they are required to do so. For instance, if an employer pays a salary to an employee, the employer must withhold and pay to the IRS a portion of the payment, to be applied against the employee's ultimate tax liability, and the employer must provide a W-2 Form to the employee and to the IRS that reports the employee's salary, the tax withheld, and other information.³⁷ As existing literature notes, taxpayers are less likely to underreport income that is subject to third party reporting.³⁸

In addition to complying with explicit requirements to provide information to the IRS, third parties' actions implicitly provide factual information about transactions to the IRS, and substantive tax law leverages this information by tying tax treatment to the actions of third parties in various contexts, as Professor Lederman has noted.³⁹ For instance, tax law provides more favorable treatment to an employee's expenses when they are reimbursed by an employer, and this feature of substantive tax law implicitly uses the employer's judgment as a check on the business justification for the expense.⁴⁰ Thus, in some contexts,

voluntary compliance across different types of income); Leandra Lederman, *Tax Compliance and the Reformed IRS*, 51 KAN. L. REV. 971, 975–76 (2003) (“[I]t may not be surprising that ‘voluntary’ compliance rates are much higher for the types of income subject to information reporting (many of which also are subject to withholding) than for those that are not.”) (footnote omitted); Sagit Leviner, *A New Era of Tax Enforcement: From ‘Big Stick’ to Responsive Regulation*, 42 U. MICH. J. L. REFORM 381, 400–01 (2009) (“[T]ax enforcement findings generally support the conclusion that taxpayers are highly responsive to perceived or actual risk of detection in their compliance decisions. According to IRS estimates, compliance is most likely where the risk of detection is significant, such as where third-party reporting or withholding exists. . . . In contrast, non-farm sole proprietor income, which is subject to little third-party reporting or withholding, has a significantly higher rate of misreporting”) (footnote omitted); Susan Cleary Morse, Stewart Karlinsky & Joseph Bankman, *Cash Businesses and Tax Evasion*, 20 STAN. L. & POL’Y REV. 37, 39 (2009) (“By far the most important determinant of tax compliance is income source. Taxpayers report cash income less accurately than income subject to third party reporting and/or withholding.”) (footnote omitted); Joel Slemrod, Brett Collins, Jeffrey Hoopes, Daniel Reck & Michael Sebastiani, *Does Credit-Card Information Reporting Improve Small-Business Tax Compliance?*, 149 J. PUB. ECON. 1, 1 (2017); Joel Slemrod, *Cheating Ourselves: The Economics of Tax Evasion*, 21 J. ECON. PERSPS. 25, 44 (2007); Dennis J. Ventry, Jr., *Cooperative Tax Regulation*, 41 CONN. L. REV. 431, 434–35 (2008) (comparing compliance rates across different types of income).

37. INTERNAL REVENUE SERV., FORM W-2 (2025), <https://www.irs.gov/pub/irs-pdf/fw2.pdf> [<https://perma.cc/AFA6-BEVQ>]. For additional discussion of third-party information reporting and withholding requirements, see Lederman, *Statutory Speed Bumps*, *supra* note 36, at 697–98 (“As is well known, in a variety of situations, the federal government requires third parties to report to the government, with a copy to the taxpayer, amounts the payor transferred to the taxpayer Moreover, in some situations, the payor, such as an employer, must also withhold taxes from the payment and remit those taxes to the government.”). In some other contexts, third parties share information with the IRS because they must comply with information reporting requirements (but not withholding requirements). For instance, if a U.S. individual earns interest income on a bank account, the income is generally not subject to withholding, but the bank will provide the individual and the IRS a Form 1099 reporting the amount of interest income. INTERNAL REVENUE SERV., FORM 1099-INT (2024), <https://www.irs.gov/pub/irs-pdf/f1099int.pdf> [<https://perma.cc/V7FH-B5NK>].

38. See *supra* note 36 and accompanying text.

39. Lederman, *Statutory Speed Bumps*, *supra* note 36, at 698–99, 715–20.

40. *Id.* at 699 (“[T]he tax law often fails to extend the favorable tax treatment afforded particular reimbursed expenses or losses to similar but unreimbursed items. This distinction does not reflect different tax treatment of equivalent events, as prior scholarship suggests. Instead, it reflects the enforcement benefits that a reimbursement provides—including the presence of a third party who implicitly has ‘vouched’ for the bona fides of the taxpayer’s claim.”) (footnotes omitted).

substantive tax law grants to third parties a role in implicitly providing factual information about transactions to the IRS.⁴¹

The focus of this Article is on a different information providing role of third parties. Rather than analyzing their role in explicitly or implicitly providing information *about transactions to the IRS*, it focuses on their role in providing information *about tax law to taxpayers* especially in contexts where the information seems to be aimed at guiding taxpayers' planning or compliance decisions.⁴² It draws upon literature that discusses this phenomenon in some contexts, and it seeks to examine the phenomenon in a broader way—bringing together examples that have been discussed and shedding light on some new examples as well. Regarding examples that have been discussed, first, Professor Faulhaber has analyzed the role of charitable organizations in providing information about the charitable contribution deduction.⁴³ Based on an examination of information provided by 500 organizations, she found that many provide information that could lead readers to think they are eligible for a deduction when, in fact, they are not.⁴⁴ As she notes, information provided by charitable organizations is one example of a more general phenomenon—“marketing [related to tax benefits undertaken] by private third-party beneficiaries.”⁴⁵ Second, Professor Marian has examined legal requirements obligating issuers of securities to disclose information about investors' potential tax consequences.⁴⁶ Third, Cranor, Goldin & Kotb have studied the impact of laws requiring employers to notify employees about the EITC.⁴⁷ Fourth, Professors Oei and Ring have studied how Uber and Lyft drivers obtain tax law information from each other on online discussion forums.⁴⁸

This Article discusses these examples as well as many others. It provides concrete illustrations of real estate companies and home mortgage lenders providing information about the tax consequences of home ownership;⁴⁹ car companies delivering information about tax credits available to purchasers of

41. See discussion *supra* notes 39–40.

42. Somewhat relatedly, Professors Thomas and Scharff have catalogued various instances of “fake news” about tax law that could perpetuate general misconceptions. Kathleen DeLaney Thomas & Erin Scharff, *Fake News and The Tax Law*, 80 WASH. & LEE L. REV. 803, 807 (2023). In particular, they compiled a “dataset of tax stories flagged as ‘false’ or ‘untrue’ by reputable, third-party news sources.” *Id.* at 803. Examples include (1) “stories that mischaracterized or fabricated elements of [political] candidates’ tax plans,” (2) stories that falsely report on the adoption of a new tax or a tax increase, (3) stories that falsely indicated that taxpayers would have to repay their COVID relief payments, (4) stories that misinformed taxpayers about the filing deadline, and (5) stories that mischaracterized “the distribution of the tax burden or how the government spends tax revenue.” *Id.* at 850–67.

43. Lilian V. Faulhaber, *The Hidden Limits of the Charitable Deduction: An Introduction to Hypersalience*, 92 B.U. L. REV. 1307, 1310 (2012).

44. *Id.* at 1330.

45. *Id.* at 1341.

46. Omri Marian, *Reconciling Tax Law and Securities Regulation*, 48 U. MICH. J. L. REFORM 1, 2 (2014).

47. Taylor Cranor, Jacob Goldin & Sarah Kotb, *Does Informing Employees About Tax Benefits Increase Take-up? Evidence from EITC Notification Laws*, 72 NAT'L TAX J. 397, 398 (2019).

48. Shu-Yi Oei & Diane M. Ring, *The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums*, 8 COLUM. J. TAX L. 56, 59 (2017).

49. See *infra* Subsection II.A.1.

electric and hybrid vehicles;⁵⁰ sellers of other products dispensing information about associated tax credits;⁵¹ drugstores and other sellers of health products distributing information about health flexible spending accounts;⁵² student loan providers broadcasting information about the deduction for student loan interest;⁵³ debt collectors describing to debtors the tax consequences of nonpayment;⁵⁴ employers, schools, and pediatricians providing information about potential benefits of tax filing;⁵⁵ and more. Its broad collection of examples is based, in part, on information gleaned from an examination of websites of leading companies in various industries.⁵⁶ Some of the examples are also taken from cases in which parties, with varying degrees of success, brought claims rooted in contract law or consumer protection law, stemming from inaccurate or potentially misleading statements about tax law.⁵⁷

Examining the various examples as part of a broader phenomenon reveals several important patterns and implications. First, in many cases, third parties transmit information contained in informal IRS guidance.⁵⁸ As a result, for better or for worse, they magnify the impact of informal IRS guidance, which underscores the need to ensure that informal IRS guidance does not steer taxpayers in the wrong direction.⁵⁹

Second, many of the instances of inaccurate or potentially misleading information may be more likely to misdirect taxpayers with lower incomes, with troubling equity implications.⁶⁰ In part, this is true for a ubiquitous reason—anytime individuals fare better when they are aware of the intricacies of complex rules, individuals with lower incomes may be less able to afford needed expert advice.⁶¹ While this reason is familiar (although, to be clear, no less troubling because of its familiarity), potentially misleading tax information may disproportionately affect taxpayers with lower incomes for an additional reason.⁶² In particular, in some cases, the substance of the information itself is systematically less accurate for taxpayers with lower incomes.⁶³

Third, a general analysis of third parties' tax law (mis)information providing role underscores the need for an evaluation of existing legal doctrine governing the flow of information.⁶⁴ In at least some contexts, existing requirements may lead to third parties providing information that is more likely to generate,

50. *See infra* Subsection II.A.2.

51. *See infra* Subsection II.A.3.

52. *See infra* Subsection II.A.4.

53. *See infra* notes 286–96 and accompanying text.

54. *See infra* Section II.C.

55. *See infra* Sections II.E., II.F., II.G.

56. *See infra* Section II.A.

57. *See infra* Section II.C, notes 165–75, 178–85, and 300–311, and accompanying text.

58. *See infra* Section IV.A.

59. *See infra* Section IV.A.

60. *See infra* Section IV.B.

61. *See infra* notes 491–92 and accompanying text.

62. *See infra* notes 494–97 and accompanying text.

63. *See infra* Section IV.B.

64. *See infra* Section IV.C.

than eliminate, confusion.⁶⁵ In particular, some disclosure requirements dictate that third parties specify just one of the reasons why a tax benefit may be unavailable but do not require that third parties describe other, significant reasons.⁶⁶

Fourth, identifying specific examples of inaccurate or potentially misleading information can facilitate the IRS's efforts to correct taxpayers' misunderstandings in various ways.⁶⁷ Of course, undertaking such steps (as well as undertaking steps to ensure that its own informal guidance conveys accurate impressions) requires additional resources. Therefore, the need for IRS action in this area represents one more reason why the current steps to scale back IRS funding are detrimental.⁶⁸ Finally, analyzing the role of third parties reveals modifications to existing law that could compound the positive impact of helpful information they provide.⁶⁹

This Article proceeds as follows. Part I presents examples of tax law information provided by third parties. Part II describes dimensions along which the examples differ and explains why the differences matter. In particular, first, the examples vary in terms of whether the information provider has a direct financial stake in the transaction about which they are providing information. Second, some communications are broadcast to the public generally while others involve one-on-one conversations between parties to a transaction. Third, some information is shared by parties who engage in numerous, similar transactions while other information is provided by parties engaged in only one transaction. Fourth, in some cases, applicable law requires that a party provide tax law information, while, in other cases, the party provides the information voluntarily. Fifth, the examples vary in terms of whether the information provided is accurate or, instead, inaccurate or at least potentially misleading. Sixth, the examples vary in that, in some cases, the information is about tax compliance while, in other cases, it is about tax planning. After discussing these sources of variation and why they matter, Part III turns to a discussion of implications, including what the analysis suggests regarding steps that the IRS and lawmakers should take. Finally, Part IV concludes the Article.

II. EXAMPLES OF TAX LAW (MIS)INFORMATION PROVIDED BY THIRD PARTIES

In a variety of contexts, third parties provide taxpayers with information about tax law. Examples include sellers of services, products and other property who provide information about the tax treatment of what they sell; securities issuers and sponsors of other investment products who provide information about

65. See *infra* Section IV.C.

66. See *infra* Section IV.C.

67. See *infra* Section IV.D.

68. For a discussion of other detrimental effects, see Kristen A. Parillo, *IRS Layoffs Could Spark Use of Abusive Tax Shelters, Tax Pros Say*, TAX NOTES (Apr. 2, 2025), <https://www.taxnotes.com/tax-notes-today-federal/audits/irs-layoffs-could-spark-use-abusive-tax-shelters-tax-pro-says/2025/04/02/7rv4f> [<https://perma.cc/UP4T-HSQD>]; John Hickey, *How to Lose a Trillion Dollars*, TAX NOTES (Apr. 7, 2025), <https://www.taxnotes.com/tax-notes-federal/compliance/how-lose-trillion-dollars/2025/04/07/7rv41> [<https://perma.cc/G2LR-NWTX>].

69. See *infra* Section IV.E.

the tax treatment of investments or proposed transactions; debt collectors who provide information about the tax treatment of not repaying debt; recipients of charitable contributions who provide information about the charitable contribution deduction; employers who provide information on a variety of tax topics to their employees; schools that provide information about potential benefits of tax filing to parents and guardians of their students; and pediatricians who provide similar information to parents and guardians of their patients.⁷⁰ This Part will present examples of information provided by third parties in each of these categories.

A. *Sellers of Services, Products, and Other Property*

Sellers of services, products, and other property provide information to potential buyers and the public generally about the tax consequences of purchasing the services, products, or property that they sell.⁷¹ This Part will offer various illustrations.

1. *Real Estate Companies, Banks, and Other Mortgage Lenders*

Real estate companies, banks, and other mortgage lenders dispense information to the public about the potential tax benefits of home ownership, including the U.S. federal income tax deductions for home mortgage interest and property taxes.⁷² Before examining some of the information they provide, this section will briefly overview the relevant tax law. To that end, one important threshold note is in order: in July 2025, Congress enacted a number of tax law changes. Because all of the websites were examined prior to these changes, this Article will focus on describing tax law as it existed prior to the changes.

Homeowners can claim U.S. federal income tax deductions for home mortgage interest and property taxes if they itemize deductions rather than claim the standard deduction.⁷³ If a taxpayer claims the standard deduction, then they

70. This list is not exhaustive. Other sources of tax law information include friends and family. In response to a 2021 IRS survey, 36% of respondents described family or friends as a “somewhat valuable” source of tax advice or information and 18% described them as a “very valuable” source. INTERNAL REVENUE SERV., DEP’T OF THE TREASURY, PUB. 5296, COMPREHENSIVE TAXPAYER ATTITUDE SURVEY (CTAS) 2021 33 (2022), <https://www.irs.gov/pub/irs-prior/p5296--2022.pdf> [<https://perma.cc/9JAX-K64A>]. In addition, Professors Oei and Ring have studied how Uber and Lyft drivers share information with each other via online forums. Oei & Ring, *supra* note 48. Also, non-tax lawyers may provide information about the tax treatment of various events and transactions. Libraries share tax information with the public, often referring them to IRS forms, IRS publications, the IRS website, and information about VITA programs. *See, e.g., Federal Tax Forms*, MADISON PUB. LIBR., <https://www.madisonpubliclibrary.org/resources/eresources/federal-tax-forms> [<https://perma.cc/8QPM-YDV4>] (last visited Dec. 29, 2025); *Free Tax Assistance*, N.Y. PUB. LIBR., <https://www.nysl.org/community/services/income-tax-information> [<https://perma.cc/LC36-9YGB>] (last visited Dec. 29, 2025); *Get Help with Your Taxes at CPL*, CHI. PUB. LIBR. (Feb. 3, 2020), <https://www.chipublib.org/news/get-help-with-your-taxes-at-cpl-3/> [<https://perma.cc/GJP9-Z7DT>].

71. *See infra* Subsections II.A.1–II.A.6.

72. *See infra* Subsection II.A.1.

73. *See* I.R.C. § 62(a) (omitting the deductions for property taxes and home mortgage interest from the list of deductions used to compute adjusted gross income that are allowed if an individual does not elect to itemize);

deduct a flat dollar amount, adjusted annually for inflation.⁷⁴ For 2024, for instance, the standard deduction is \$14,600 for single taxpayers and \$29,200 for married taxpayers filing a joint return.⁷⁵ If, instead, the taxpayer opts to itemize deductions, the taxpayer will deduct an amount equal to certain actual expenses incurred by the taxpayer, subject to various limitations.⁷⁶ Generally, taxpayers itemize deductions only when their total allowable itemized deductions are higher than the standard deduction.⁷⁷ Because this is more often true for taxpayers with higher incomes, taxpayers with higher incomes are more likely to claim itemized deductions.⁷⁸

In part because taxpayers with higher incomes are more likely to itemize, the deductions for home mortgage interest and property taxes disproportionately benefit such taxpayers.⁷⁹ The Congressional Budget Office estimates that, for 2019, the home mortgage interest deduction resulted in an aggregate tax expenditure of \$28 billion,⁸⁰ 84% of which accrued to taxpayers in the highest income quintile and 0.1% of which accrued to taxpayers in the lowest income quintile.⁸¹ Regarding the state and local tax deduction (which includes the deduction for property taxes), the Congressional Budget Office estimates that, for 2019, this deduction resulted in an aggregate tax expenditure of \$22 billion,⁸² 78% of which accrued to taxpayers in the highest income quintile and 0.2% of which accrued to taxpayers in the lowest income quintile.⁸³

These tax deductions disproportionately benefit higher income taxpayers, in part, because they are more likely to claim the deductions in the first place and more likely to claim larger amounts of these deductions.⁸⁴ This stems, to a degree, from the fact that homeownership rates are higher for taxpayers with higher incomes.⁸⁵ For example, over the 2010–2017 time period, the home ownership rate for households with incomes less than \$30,000 was estimated to be 36%, compared to 84% for households with incomes greater than or equal to

I.R.C. § 63(d) (defining itemized deductions as deductions other than those allowed in arriving at adjusted gross income and other than those listed in Section 63(b)).

74. I.R.C. § 63(c). A larger standard deduction is available in some cases. *Id.*

75. Rev. Proc. 2023-34, 2023-48 I.R.B. 1287.

76. I.R.C. §§ 63(b), (d), (e).

77. See John R. Brooks II, *Doing Too Much: The Standard Deduction and the Conflict Between Progressivity and Simplification*, 2 COLUM. J. TAX L. 203, 210 (2011) (“This structure results in a taxpayer deducting from AGI an amount no less than the standard deduction in computing tax, and often more, if the taxpayer’s itemized deductions exceed his standard deduction amount.”).

78. See David M. Schizer, *Limiting Tax Expenditures*, 68 TAX L. REV. 275, 315 (2015).

79. *Id.*

80. Bilal Habib, CONG. BUDGET OFF., THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN 2019 25 (Oct. 27, 2021), www.cbo.gov/publication/57413 [<https://perma.cc/3CK5-BCZ4>].

81. *Id.* at 14.

82. *Id.* at 12.

83. *Id.* at 14.

84. See, e.g., Schizer, *supra* note 78, at 315.

85. See *infra* notes 86–88 and accompanying text.

\$150,000.⁸⁶ Home ownership rates also vary by race.⁸⁷ For example, in 2019, home ownership rates were: 45% for Black families, 47.6% for Hispanic families, and 73.7% for White families.⁸⁸

In addition, a larger share of the tax benefits of home ownership is bestowed upon higher income taxpayers because the provisions governing home mortgage interest and property taxes allow for deductions rather than credits.⁸⁹ A deduction reduces a taxpayer's *taxable income* while a credit directly reduces a taxpayer's *tax liability*.⁹⁰ To illustrate this distinction, assume a taxpayer is subject to a 15% tax rate on all income. Assume, without taking into account a given deduction or credit, the taxpayer's taxable income is \$1,000. If this taxpayer claims a \$100 deduction, the deduction will reduce the taxpayer's taxable income from \$1,000 to \$900, resulting in a \$15 reduction in tax liability (15% of \$100). If, instead, this taxpayer claimed a \$100 credit, the credit would reduce the taxpayer's tax liability by \$100 (from \$150 to \$50). Because the amount of tax savings produced by a deduction depends upon a taxpayer's tax rate and because tax rates increase as income increases, a tax deduction of a given amount produces more tax savings for higher income taxpayers.⁹¹ Thus, the fact that the home mortgage interest deduction and property tax deduction are structured as deductions offers a partial explanation for their tendency to bestow a larger benefit on higher income taxpayers.⁹²

Even if a homeowner does itemize deductions, these tax benefits are subject to important limitations. Regarding home mortgage interest, a taxpayer can deduct interest paid on "acquisition indebtedness" with respect to any "qualified residence" of the taxpayer.⁹³ Debt is "acquisition indebtedness" if it is incurred to acquire, construct, or substantially improve a "qualified residence," and it is secured by that residence.⁹⁴ In addition, for tax years beginning after December 31, 2017, the amount of debt treated as "acquisition indebtedness" cannot exceed \$750,000 (or \$375,000 for a married individual filing a separate return).⁹⁵ A

86. Jeffrey M. Jones, *Older Americans Buck Trend of Decreased Homeownership*, GALLUP (July 26, 2017), https://news.gallup.com/poll/214514/older-americans-buck-trend-decreased-homeownership.aspx?g_source=&g_medium=&g_campaign=titles [<https://perma.cc/3KB9-PV4E>].

87. See Dorothy Brown, *Shades of the American Dream*, 87 WASH. U. L. REV. 329, 348–54 (2009); Beverly I. Moran & William Whitford, *A Black Critique of the Internal Revenue Code*, 1996 WIS. L. REV. 751, 779–80 (1996).

88. Janet Holtzblatt, Laura Kawano, Robert McClelland & Gabriella Garriga, *Taxation of Capital Income Is Not Race Neutral*, TAX POL'Y CTR. (Sep. 28, 2023), <https://www.taxpolicycenter.org/taxvox/taxation-capital-income-not-race-neutral> [<https://perma.cc/82F7-6XDQ>].

89. *Id.*

90. See, e.g., Schizer, *supra* note 78, at 315 (noting that credits, unlike deductions, "reduce the tax itself instead of taxable income").

91. See Holtzblatt et al., *supra* note 88.

92. *Id.*

93. I.R.C. §§ 163(h)(1), (h)(2)(D), (h)(3)(A)(i).

94. *Id.* § 163(h)(3)(B)(i).

95. *Id.* §§ 163(h)(3)(B)(ii), (h)(3)(F)(i)(II). In these years, the higher \$1,000,000 cap only applies if the debt was incurred on or before December 15, 2017, or, in some cases, it applies to debt incurred on or before April 1, 2018, if the taxpayer, before December 15, 2017, entered into a binding contract to purchase a home. *Id.* § 163(h)(3)(F)(i)(II)–(IV).

“qualified residence” includes the taxpayer’s principal residence and, subject to certain limitations, one other residence the taxpayer selects.⁹⁶

At least one study suggests that individuals do not fully understand their eligibility for the home mortgage interest deduction.⁹⁷ In particular, Goldin and Listokin report that approximately 29% of the respondents to a survey conducted in 2011 demonstrated mistaken impressions about their eligibility, with 20% mistakenly thinking they were eligible and 9% mistakenly thinking they were not.⁹⁸

Regarding the property tax deduction, under law in effect at the time the websites were examined, for tax years beginning after December 31, 2017 and before January 1, 2026, the total deduction claimed by a taxpayer for state and local income taxes (or sales taxes in lieu of income taxes) plus property taxes is capped at \$10,000 (or \$5,000 in the case of a married individual filing a separate return).⁹⁹ For example, if a taxpayer incurred state income taxes of \$7,000 plus property taxes of \$4,000, resulting in a total of \$11,000, their deduction for federal income tax purposes would be capped at \$10,000 during years when this cap is in effect.¹⁰⁰

With this background information in mind, consider again the example provided at the start of this Article—the real estate company’s website’s first-time home buyer’s guide that states:

“Many first-time home buyers are eligible for tax credits, such as:

- Mortgage interest: Your mortgage must be on a home that’s eligible for these types of deductions, your mortgage has to be secured by your home, and you must have a mortgage that’s lower than \$1 million to deduct mortgage interest
- Real estate taxes: Municipal and state governments charge real estate taxes based on the value of your home, which you may be able to deduct.”¹⁰¹

Unless they follow the guide’s closing recommendation to talk to a tax professional,¹⁰² this information may cause potential buyers to overestimate the tax benefits of home ownership in several ways.¹⁰³ First, tax legislation enacted in

96. *Id.* § 163(h)(4)(A).

97. See Jacob Goldin & Yair Listokin, *Tax Expenditure Salience*, 16 AM. L. & ECON. REV. 144, 159 (2013).

98. *Id.* As Professors Thomas and Scharff note, this survey took place prior to the enactment of legislation that resulted in significantly fewer taxpayers benefiting from the home mortgage interest deduction, suggesting that “there is reason to believe such taxpayer confusion has only increased since then.” Thomas & Scharff, *supra* note 42, at 815.

99. I.R.C. § 164(b)(6)(B).

100. See *id.*

101. See Ford, *supra* note 10. The guide also mentions the possibility of deducting private mortgage insurance. That deduction has expired. I.R.C. § 163(h)(3)(E)(iv).

102. For this recommendation, see Ford, *supra* note 10.

103. This sets aside more subtle ways in which the statement may misdirect readers by steering them to ignore the extent to which tax benefits are capitalized into the price of homes. For discussion of taxpayers’ tendency to overlook this factor, see Edward J. McCaffery, *Cognitive Theory and Tax*, 41 UCLA L. REV. 1861, 1918–20 (1994). The statement might also mislead some into underestimating the benefit in that it says that, to be eligible, the amount of the mortgage must be lower than a threshold. In fact, if the amount of the mortgage

2017 reduced the cap on the amount of debt from \$1 million to \$750,000.¹⁰⁴ Second, the guide refers to the tax benefits as “tax credits” initially (although it does later refer to them correctly as deductions), and, as discussed above, a tax credit of a given amount results in more tax savings than a deduction of the same amount.¹⁰⁵ Moreover, studies show that many individuals fail to understand the distinction between a credit and a deduction.¹⁰⁶ On the one hand, the common failure to understand the distinction might suggest that referring to the benefits as credits rather than deductions makes little difference to readers.¹⁰⁷ On the other hand, a failure to understand that there is a distinction between credits and deductions might exacerbate the effects of using inaccurate terminology.¹⁰⁸ If a reader is already pre-disposed to think that a deduction offers the same benefit as a credit, for instance, using the terms interchangeably will not disabuse them of this notion.¹⁰⁹ Third, the guide makes no mention of the \$10,000 cap on the deduction for state and local taxes.¹¹⁰

Fourth, the guide states that “many” buyers are eligible for the tax benefits.¹¹¹ In fact, in 2018, only 18% of U.S. homeowners claimed the home mortgage interest deduction.¹¹² For comparison purposes, in 2018, 37% of U.S. homeowners had a mortgage.¹¹³

Likewise, many homeowners do not claim the property tax deduction. For instance, in 2021, real estate taxes were deducted on approximately 8% of the

exceeded the applicable threshold (*i.e.*, \$750,000 for the 2025 tax year), the taxpayer could potentially deduct some (but not all) of the interest.

104. This is true for tax years beginning after December 31, 2017. I.R.C. § 163(h)(3)(F)(i)(II). In those years, the higher \$1,000,000 cap only applies if the debt was incurred on or before December 15, 2017 or, in some cases, it applies to debt incurred on or before April 1, 2018 if the taxpayer, before December 15, 2017, entered into a binding contract to purchase a home. *Id.* §§ 163(h)(3)(F)(i)(III)–(IV).

105. See Ford, *supra* note 10.

106. For example, a 2020 article reporting the results of a survey of 1,131 U.S. individuals noted that the responses of only 49.5% of participants indicated a correct understanding of the distinction between a tax credit and a tax deduction. Elizabeth Lyon & J.R. Catlin, *Consumer Misconceptions about Tax Laws: Results from a Survey in the United States*, 43 J. CONSUMER POL’Y 807, 822 (2020).

107. *Id.* (providing evidence that this failure to understand is common).

108. *Id.* (providing evidence that this failure to understand is common).

109. *Id.* (providing evidence that this failure to understand is common).

110. See Ford, *supra* note 10.

111. *Id.*

112. KEIGHTLEY, *supra* note 13, at 5.

113. See U.S. BUREAU OF LAB. STATS, *supra* note 14. Given its reference to the \$1 million cap, the company may have developed the guide prior to 2017. In 2017, other changes to tax law did have the effect of reducing the number of taxpayers who claim itemized deductions. See *How Did the TCJA and OBBBA Change the Standard Deduction and Itemized Deductions?*, TAX POL’Y CTR. (May 2020), https://www.taxpolicycenter.org/sites/default/files/briefing-book/how_did_the_tcja_change_the_standard_deduction_and_itemized_deductions_1 [<https://perma.cc/5RV2-UGUH>]. However, even pre-2017, many homeowners did not claim the home mortgage interest deduction. In 2011, for instance, among homeowners who had mortgages, 73% claimed the home mortgage interest deduction. MARK P. KEIGHTLEY, CONG. RSCH. SERV., R41596, THE MORTGAGE INTEREST AND PROPERTY TAX DEDUCTION: ANALYSIS AND OPTIONS 8 (2014), <https://crsreports.congress.gov/product/pdf/R/R41596/9> [<https://perma.cc/M4CD-LEWT>].

returns filed by individual taxpayers.¹¹⁴ For comparison purposes, in 2021, the homeownership rate in the U.S. was approximately 65%.¹¹⁵

Moreover, as noted above, homeowners with lower incomes are less likely to claim the home mortgage interest and property tax deductions.¹¹⁶ Therefore, the guide's suggestion that these tax benefits are available is more likely to miss the mark in the case of potential buyers with lower incomes.¹¹⁷

This real estate company's buyer's guide is not unique. Other real estate companies also tout the tax benefits of home ownership on their websites. For example, one provides a quote from its founders, stating, "From a financial point of view, in the United States, the tax savings on mortgage interest alone usually make up most of the difference between rent and a mortgage payment—the tax write-offs you get at the end of year will generally help you save a significant amount of money."¹¹⁸ Another's buyer's guide declares, "From the pride you feel by being a homeowner to the tax deductions associated with home ownership, the benefits are plenty."¹¹⁹ Later, the same guide informs potential home buyers, "You will have a number of new tax considerations, including new deductibles such as mortgage insurance and property tax to claim. If you're not sure what you'll be eligible to claim, consider visiting a tax consultant or visit IRS.gov."¹²⁰ The deduction for mortgage insurance was unavailable under law in effect at the time the website was visited.¹²¹

One more ran an article on an affiliated blog in 2018 that described various tax benefits of home ownership and, despite the 2018 date, referred to a \$1 million (rather than \$750,000 cap) on home mortgage debt.¹²² Regarding the home mortgage interest deduction, it stated, "Claiming this tax break is easy. Each year, your lender will send you Form 1098 listing the interest you paid during the previous year. Simply enter this number on Form 1040 Schedule A—under itemized deductions—and claim your tax break."¹²³ It is worth noting that, when using tax preparation software, users will be prompted to enter the amount of

114. INTERNAL REVENUE SERV., DEP'T OF THE TREASURY, PUB. 1304, INDIVIDUAL INCOME TAX RETURNS COMPLETE REPORT 146 (2021) (reporting that a deduction for real estate taxes was claimed on 12,779,463 returns); *id.* at 6 (reporting that the total number of individual income tax returns filed was 160,824,340).

115. U.S. CENSUS BUREAU, HOMEOWNERSHIP RATE IN THE UNITED STATES (2024), <https://fred.stlouisfed.org/series/RHORUSQ156N> [<https://perma.cc/ZNZ6-APCA>]. Pre-2017, claiming the deduction was more common but still not universal. In 2011, for example, 54% of homeowners claimed a deduction for property taxes. KEIGHTLEY, *supra* note 113, at 6.

116. *See supra* notes 80–86 and accompanying text.

117. This follows from the fact that taxpayers with lower incomes are less likely to claim the tax deductions mentioned in the guide. *See supra* notes 80–86 and accompanying text.

118. *Part One: Your First-Time Homebuyer's Guide*, KELLER WILLIAMS REALTY, LLC (Nov. 21, 2023, at 09:25 CT), <https://www.kw.com/blog/part-one-your-first-time-homebuyers-guide> [<https://perma.cc/KF3Y-CDL6>].

119. *Homebuyer's Guide*, REMAX, at 1 https://peak-static-prod.remax.eng.remax.tech/web/pdf/24_206_US_home_buyers_guide.pdf [<https://perma.cc/7F3P-3VDS>] (last visited Dec. 29, 2025).

120. *Id.* at 9.

121. I.R.C. § 163(h)(3)(E)(iv).

122. Sam Shalom, *Tax Breaks for First Time Home Buyers*, COLDWELL BANKER BLUE MATTER (Mar. 15, 2018), <https://blog.coldwellbanker.com/tax-breaks-first-time-home-buyers/> [<https://perma.cc/EFH5-RFSC>].

123. *Id.*

interest that they paid and may not realize that the interest does not, ultimately, affect their tax liability when the software automatically determines they are better off claiming the standard deduction.¹²⁴ Therefore, some homeowners who do not benefit from the deduction may mistakenly think that they do even after they file a return.¹²⁵

A final example offers a more complete description of tax benefits. It informs potential buyers, for instance, “Generally, your mortgage will only come into play on your taxes if you itemize deductions, and the total amount of the deductions—including mortgage interest—amounts to more than the standard deduction.”¹²⁶ Similar to some of the other examples, it also refers users to the IRS webpage and IRS publications for more information.¹²⁷

Banks and other mortgage lenders also provide information about the home mortgage interest deduction.¹²⁸ One bank’s website includes an article describing factors for borrowers to consider when deciding whether to repay a mortgage early.¹²⁹ The article states, “In most cases, mortgage interest is tax deductible. That’s a nice savings. Once you pay off your loan, the related tax break goes away, too.”¹³⁰ Again, for most borrowers, home mortgage interest is effectively not deductible.¹³¹ The small print at the bottom of the webpage warns, “This site is for educational purposes. The material provided on this site is not intended to provide legal, investment, or financial advice . . . For specific advice about your unique circumstances, you may wish to consult a qualified professional.”¹³² Along similar lines, another bank’s article regarding early repayment states, “Before, you decide to pay off your mortgage early, consider the following . . . Your

124. For somewhat related discussion, see Lawrence Zelenak, *Complex Tax Legislation in the TurboTax Era*, 1 COLUM. J. TAX L. 91, 102 (“The fundamental problem is that the AMT turns the tax system into a black box for those taxpayers to whom it applies. TurboTax or a paid preparer will tell the taxpayer his overall tax liability, but the taxpayer may not focus on the portion of that liability attributable to the AMT.”).

125. *Id.*

126. Susan Kelleher, *Tax Breaks for Homeowners*, ZILLOW (Mar. 26, 2024), <https://www.zillow.com/learn/tax-breaks-for-homeowners/> [<https://perma.cc/EEM5-WZCG>]. It does include some unfortunate inaccuracies. For instance, it refers to the IRS (rather than Congress) as the source of the cap on the amount of debt that qualifies. This inaccuracy is representative of the frequent tendency to incorrectly refer to the IRS as responsible for creating tax law. For discussion of this tendency, see, for example, Michelle Ye Hee Lee, *Who Wrote the ‘IRS Code’? Hint: It Wasn’t the Internal Revenue Service*, WASH. POST (Apr. 13, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/04/13/who-wrote-the-irs-code-hint-it-wasnt-the-internal-revenue-service/> [<https://perma.cc/N33G-G3TZ>].

127. Kelleher, *supra* note 126.

128. For additional examples, see Victoria Araj, *Are Closing Costs Tax-Deductible?*, ROCKET MORTG. (May 27, 2024), <https://www.rocketmortgage.com/learn/are-closing-costs-tax-deductible> [<https://perma.cc/XDK3-AYP6>]; Sarah Sharkey, *8 Tax Deductions for Homeowners: Your Breaks and Benefits*, ROCKET MORTG. (Apr. 14, 2024), <https://www.rocketmortgage.com/learn/tax-deductions-for-homeowners> [<https://perma.cc/NL5N-LCGK>]; Erik J. Martin, *Mortgage Interest Deduction: What It Is and What Qualifies*, BANKRATE (Mar. 25, 2024), <https://www.bankrate.com/mortgages/mortgage-interest-deduction/#how-long> [<https://perma.cc/T7Q3-X3QQ>].

129. *Pay off Your Mortgage Early or Save? How to Decide*, CAP. ONE (July 25, 2018), <https://www.capitalone.com/bank/money-management/life-events/pay-off-mortgage-or-save/> [<https://perma.cc/HD7M-PMBQ>] [type=image].

130. *Id.*

131. See *supra* notes 112–13 and accompanying text.

132. *Pay off Your Mortgage Early or Save*, *supra* note 129.

mortgage payments may provide you with benefits that other types of credit don't, such as a potential tax deduction. Consult your tax advisor."¹³³

Another bank provides information about home equity loans that states, "The interest paid may be tax-deductible; consult a tax professional to assess your situation."¹³⁴ Tax law changes enacted in 2017 included important modifications to the rules applicable to home equity loans.¹³⁵ Prior to those changes, in addition to being able to deduct interest on up to \$1,000,000 (or half of that amount in the case of a married individual filing a separate return) of acquisition indebtedness (debt incurred to acquire, construct, or substantially improve a qualified residence), taxpayers could deduct interest on up to \$100,000 (or half of that amount in the case of a married individual filing a separate return) of home equity indebtedness, at least to the extent that the fair market value of the residence exceeded the amount of acquisition indebtedness.¹³⁶ There were no restrictions on the use of the funds borrowed in the case of home equity indebtedness. Subsequently, however, for tax years beginning after December 31, 2017, taxpayers can only deduct interest on up to \$750,000 (or half of that amount in the case of a married individual filing a separate return) of acquisition indebtedness.¹³⁷ They cannot, in addition, deduct interest on home equity indebtedness.¹³⁸ Money borrowed under a home equity line of credit could qualify as acquisition indebtedness, but only if the taxpayer uses the funds to substantially improve the residence and subject to the dollar cap on acquisition indebtedness.¹³⁹ The website's article includes the following footnote (although the footnote does not accompany the statement quoted above), "Interest on home equity loans/lines that are not considered home acquisition debt may not be tax deductible. Please consult your tax advisor."¹⁴⁰

Another bank's website features an article that states, "There may be tax benefits for homeowners with deductions for mortgage interest and property taxes."¹⁴¹ Cautionary language at the bottom of the page recommends consulting a tax advisor.¹⁴² The bank also provides an article aimed at informing employers about the possibility of offering their employees home mortgage subsidies.¹⁴³ It

133. *Ways to Pay off Your Mortgage Faster*, WELLS FARGO, https://www.wellsfargo.com/mortgage/learn/pay-down-mortgage-faster/?utm_medium=www-redirect&utm_source=mortgage--learning--homeownership--ways-to-potentially-pay-down-mortgage-faster [<https://perma.cc/J5HY-WJYV>] (last visited Dec. 29, 2025).

134. *Choice Home Equity Line of Credit*, PNC, <https://www.pnc.com/en/personal-banking/borrowing/home-equity-loans/home-equity-line-of-credit.html> [<https://perma.cc/4XYK-BLL4>] (last visited Dec. 29, 2025).

135. I.R.C. § 163(h)(3)(F)(i)(II).

136. *Id.* §§ 163(h)(2)(D), 163(h)(3)(A)(ii), 163(h)(3)(C).

137. *Id.* § 163(h)(3)(F)(i)(II).

138. *Id.* § 163(h)(3)(F)(i)(I).

139. *Id.* § 163(h)(3)(A)(i).

140. *Choice Home Equity Line of Credit*, *supra* note 134.

141. *Putting Homeownership Within Reach for a Diverse Workforce*, US BANK (Sep. 7, 2022), <https://www.usbank.com/home-loans/mortgage/housing-insights/putting-home-ownership-within-reach-for-diverse-workforce.html> [<https://perma.cc/5GE6-AZJH>].

142. *Id.*

143. *Mortgage Buydowns and Subsidies in Today's Talent-Focused Relocation Policies*, US BANK (Sep. 19, 2022), <https://www.usbank.com/financialiq/improve-your-operations/increase-efficiency/mortgage-buy-downs-and-subsidies-in-today-talent-focused-relocation-policies.html> [<https://perma.cc/4D4F-Y49C>].

states, “Although subject to limitations, the employee may be able to claim a deduction for mortgage interest to offset the tax impact of receiving the buydown/subsidy benefit. This results in a greater financial impact for the transferee compared with other options with a similar cost to the company.”¹⁴⁴ It includes the same cautionary language.¹⁴⁵

In addition, the bank’s website hosts an article that dispenses information about how various significant events can affect tax filing.¹⁴⁶ The article provides information about the home mortgage interest deduction and the possibility of deducting interest on a home equity line of credit.¹⁴⁷ That information includes the following, “If you take the standard deduction on your taxes, becoming a homeowner is a good time to do the math to see if itemizing your taxes will save you more money.”¹⁴⁸ Clicking on “itemizing your taxes” takes the reader to another article that provides information about itemized deductions versus the standard deduction which, in turn, includes various hyperlinks that take the reader to informal guidance on the IRS’s webpage.¹⁴⁹

2. *Sellers of Electric and Hybrid Vehicles*

Car companies’ websites provide potential purchasers with information about tax credits (which were available at the time the websites were visited but changed by subsequently enacted legislation). For example, clicking on a particular hybrid vehicle on one company’s webpage took users to a page with a prominent banner stating, “Get up to \$3,750 in Tax Credits on the [particular hybrid vehicle].”¹⁵⁰ Clicking on the phrase “offer details” displayed next to the banner generated a pop-up box that advised users to “consult with [their] own tax or legal professional to determine [their] individual eligibility.”¹⁵¹ The pop-up box described some specific factors that could affect eligibility, including the fact that taxpayers may be ineligible if their adjusted gross income exceeds certain thresholds or if the MSRP of the vehicle exceeds \$80,000.¹⁵² The pop-up window also cautioned “the amount of your tax savings will depend on your individual tax circumstances.”¹⁵³ One way in which tax savings could vary is that the credit is non-refundable, meaning if the amount of the credit exceeds the taxpayer’s tax liability (prior to factoring in the credit), they will not receive the credit’s full

144. *Id.*

145. *Id.*

146. *What You Need to Know When Filing Your Taxes After a Major Life Event*, US BANK (Feb. 21, 2024), <https://www.usbank.com/financialiq/manage-your-household/personal-finance/how-your-taxes-can-change-after-a-major-life-event.html> [<https://perma.cc/7E7B-3H6V>].

147. *Id.*

148. *Id.*

149. *Credits and Deductions for Individuals*, INTERNAL REVENUE SERV., <https://www.irs.gov/credits-and-deductions-for-individuals> [<https://perma.cc/Q7HX-PURM>] (last visited Dec. 29, 2025).

150. *Pricing and Incentives*, FORD, <https://www.ford.com/suvs-crossovers/escape/performance/> [<https://perma.cc/6KDE-R5DV?type=image>] (last visited Dec. 29, 2025).

151. *Id.*

152. *Id.*

153. *Id.*

benefit.¹⁵⁴ In such a case, however, they could, in effect, get the full benefit by transferring the credit to the seller for a reduction in purchase price.¹⁵⁵

Finally, the pop-up window referred users to a government webpage for more information.¹⁵⁶ That webpage provides general information about federal tax credits for electric and hybrid vehicles.¹⁵⁷ It also includes an automated tool that prompts users to answer a series of questions by selecting responses from drop down menus.¹⁵⁸ The questions ask for the car's make and model in addition to other information.¹⁵⁹ For each available model, the tool informs users to check with the dealer because not every version of the listed model will necessarily qualify.¹⁶⁰

Many other car sellers provide similar information about tax credits on their websites.¹⁶¹ Some car sellers provide online tools that allow users to provide information—such as their household income—to obtain guidance about their credit eligibility.¹⁶² As one website describes it, users can “Adjust the eligibility filters to personalize the results.”¹⁶³ The tools are accompanied by cautionary language.¹⁶⁴

In 2007, a plaintiff filed a complaint against Toyota, alleging violation of the California Consumer Legal Remedies Act, violation of the California Unfair Competition Law, and negligent misrepresentation.¹⁶⁵ The claims stemmed from statements that Toyota made on its webpage and in a press release about a tax

154. I.R.C. § 30D.

155. *Topic H—Frequently Asked Questions About Transfer of New Clean Vehicle Credit and Previously Owned Clean Vehicles Credit*, INTERNAL REVENUE SERV., <https://www.irs.gov/newsroom/topic-h-frequently-asked-questions-about-transfer-of-new-clean-vehicle-credit-and-previously-owned-clean-vehicles-credit> [<https://perma.cc/R7QD-U8U4>] (last visited Dec. 29, 2025).

156. *Pricing and Incentives*, *supra* note 150.

157. *Federal Tax Credits for Plug-in Electric and Fuel Cell Electric Vehicles Purchased in 2023 or After*, U.S. DEP'T ENERGY, <https://www.fueleconomy.gov/feg/tax2023.shtml> [<https://perma.cc/4T9U-Q6KA>] (last visited Dec. 29, 2025).

158. *See Pricing and Incentives*, *supra* note 150.

159. *See id.*

160. *Id.*

161. *See, e.g., Hybrid Incentives Finder*, CHRYSLER, <https://web.archive.org/web/20240708180625/https://www.chrysler.com/pacifica/incentives/hybrid-incentives.html> [<https://perma.cc/V58K-WSB2>] (last visited Dec. 29, 2025). Clicking on the footnote, 1, following “federal tax credits” brings up a pop-up regarding consulting a tax advisor. *Id.*; *Prologue Current Offers*, HONDA, <https://automobiles.honda.com/prologue?source=https://automobiles.honda.com/prologue/warranty&statusCode=302> [<https://perma.cc/VAA8-JY8A>] (last visited Dec. 29, 2025); *Lincoln Hybrid Vehicles*, LINCOLN, <https://web.archive.org/web/20240708184717/https://www.lincoln.com/hybrid-electric-vehicles/#federal-tax-incentives> [<https://perma.cc/S759-VV6W?type=image>] (last visited Dec. 29, 2025); *Electric Vehicle Affordability*, CHEVROLET, <https://web.archive.org/web/20240617191235/https://www.chevrolet.com/electric/affordability> [<https://perma.cc/LM59-TMAL>] (last visited Dec. 29, 2025).

162. *Electric Vehicle and Charger Incentives*, ACURA, <https://web.archive.org/web/20240708182907/https://electric.acura.com/> [<https://perma.cc/J2E5-8YH2>] (last visited Dec. 29, 2025); *Maximize Your EV Incentives*, NISSAN, <https://www.nissanusa.com/vehicles/electric-cars/incentives/> [<https://perma.cc/VX3T-GD28>] (last visited Dec. 29, 2025).

163. *See Electric Vehicle and Charger Incentives*, *supra* note 162.

164. *Id.*

165. *Girard v. Toyota Motor Sales, U.S.A., Inc.*, No. CV 07-2281 DSF, 2007 WL 9735325, at *3 (C.D. Cal. Aug. 6, 2007).

credit for hybrid vehicles.¹⁶⁶ The plaintiff purchased a hybrid vehicle and later learned that he was not entitled to a tax credit because he was subject to the alternative minimum tax, which, under law in effect at the time, made him ineligible for the tax credit.¹⁶⁷ In an unpublished opinion, the district court granted Toyota's motion to dismiss for failure to state a claim,¹⁶⁸ a decision affirmed by the Ninth Circuit Court of Appeals in another unpublished opinion.¹⁶⁹ The district court reasoned that Toyota's statements were unlikely to mislead a "reasonable consumer."¹⁷⁰ Toyota's webpage was not lengthy and included various, conspicuous disclaimers.¹⁷¹ One of the disclaimers specifically cautioned that the tax benefit might "be substantially reduced or eliminated if you are subject to the Alternative Minimum Tax, commonly known as AMT."¹⁷² The webpage also advised that buyers consult a tax or accounting professional.¹⁷³ The press release, likewise, included a disclaimer cautioning that readers should consult their own tax advisors, so that the court concluded that it, too, could not mislead a "reasonable consumer" into believing that every purchaser would be entitled to the credit.¹⁷⁴ The court did note, however, that the press release "tread[ed] a finer line" than the webpage, in part because it did not specifically mention the AMT (which turned out to be the reason the plaintiff was ineligible for the credit).¹⁷⁵

3. *Sellers of Other Products Subsidized by Tax Credits*

Sellers of other products subsidized by tax credits also dispense tax law information. For example, sellers provide information about geothermal tax credits¹⁷⁶ and solar tax credits.¹⁷⁷

166. *Id.* at *1–2.

167. *Id.* at *1.

168. *Id.* at *6.

169. *Girard v. Toyota Motor Sales, U.S.A., Inc.*, 316 Fed. App'x 561, 562 (9th Cir. 2008).

170. *Girard*, 2007 WL 9735325 at *5.

171. *Id.*

172. *Id.* at *1–2.

173. *Id.*

174. *Id.* at *5.

175. *Id.*

176. *See, e.g., Tax Credits & Incentives*, WATER-FURNACE, <https://www.waterfurnace.com/residential/about-geothermal/incentives> [<https://perma.cc/2M7K-VFPC>] (last visited Dec. 29, 2025); *Understanding the Federal Tax Incentives for Geothermal Heat Pumps*, WATER-FURNACE, <https://www.waterfurnace.com/literature/collateral/BR1507MW-tax-credit-residential.pdf> [<https://perma.cc/QXU6-MYXN>] (last visited Dec. 29, 2025) (click on the text "View Residential Tax Incentive Guide" on the prior citation).

177. *See* Alix Langone & Jacob Marsh, *Federal Solar Tax Credit in 2024: How Does It Work?*, ENERGY-SAGE (Apr. 18, 2024), <https://web.archive.org/web/20240618142343/https://www.energysage.com/solar/solar-tax-credit-explained/> [<https://perma.cc/ZQ29-JCSG>]; *Go Solar with the Most Experienced and #1 Rated Solar Company* in the U.S.*, SUNPOWER, https://web.archive.org/web/20240618142535/https://go.sunpower.com/home-solar-savings-estimate/home-solar/?ps_brand=1&utm_source=google&utm_medium=cpc&utm_target=85728726902&utm_content=474790538557&utm_campaign=G_S_Brand_Other_Tier%204-6&cfd=G_S_Brand_Other_Tier%204-6&gad_source=1&gclid=Cj0KCQjw97SzBhDaARIsAFHXUWCU_mgwdXTVFrXJdBA2ISIP2uI4eWeZm2JbP3NsnVviloT_6fa9mlaAvbsEALw_wcB [<https://perma.cc/LQ5G-BT8T>] (last visited Dec. 29, 2025); *Solar Panel Tax Credit*, UNBOUND SOLAR (Jan. 6, 2021), <https://unboundsolar.com/blog/federal-solar-tax-credit-guide> [<https://perma.cc/2SBR-7YRX>]; *Federal Solar Tax Credit*, SOLAR.COM, <https://web>

In 1986, the state of Arizona successfully brought a claim against sellers of solar water heaters under the Arizona Consumer Fraud Act.¹⁷⁸ The sellers engaged in a variety of deceptive sales practices—one of which involved overstating the dollar amount of a tax credit purchasers would receive.¹⁷⁹ The sellers attempted to argue that the overstatement was not willful but was the result of “confusing tax laws.”¹⁸⁰ The court was, however, persuaded by “conflicting testimony which indicated that the relevant sections of the tax code were not confusing and that [the sellers] should have known that the tax information was false.”¹⁸¹

The sellers also asserted that the overstatement of the amount of the tax credit could not form the basis for a fraud-based claim because it was a statement of law not fact.¹⁸² The court disagreed noting that “the basis for the fraud might be viewed as a misrepresentation as to the status of the law or as a misrepresentation of the facts to be applied.”¹⁸³ The credit was overstated because the sellers based the amount of the credit on the total purchase price for the product instead of reducing it by the value of “non-solar items” that were included in the purchase price, as required by applicable tax law.¹⁸⁴ Thus, the misrepresentation might be characterized as a false statement of fact—namely, a false statement regarding the portion of the price attributable to “non-solar items”—rather than as a false statement about tax law’s requirement to exclude the portion of the price attributable to non-solar items.¹⁸⁵

4. *Drugstores and Other Sellers—Information Regarding FSAs*

Drugstores and other sellers provide customers with information about the ability to use health Flexible Spending Account (“FSA”) funds on products that they sell.¹⁸⁶ Before considering examples of the information they provide, some background on health FSAs is necessary.

If an individual’s employer provides the option to participate in a health FSA, the individual can elect to participate and can specify a dollar amount of their compensation (up to an applicable cap) that will be contributed to the FSA for each upcoming year.¹⁸⁷ For 2024, the cap on the amount that can be contributed is \$3,200.¹⁸⁸ Amounts contributed to a health FSA are not subject to income

archive.org/web/20240618142836/https://www.solar.com/learn/federal-solar-tax-credit/ [https://perma.cc/J9YS-CVRC] (last visited Dec. 29, 2025).

178. *State ex rel. Corbin v. United Energy Corp. of Am.*, 725 P.2d 752, 754 (Ariz. Ct. App. 1986).

179. *Id.* at 754–55.

180. *Id.* at 759.

181. *Id.*

182. *Id.* at 760.

183. *Id.*

184. *Id.* at 755.

185. *Id.* at 755, 760.

186. *FSA/HSA Eligible Items Online & In-Store*, WALGREENS, https://www.walgreens.com/topic/store/fsa/shop_fsa.jsp [https://perma.cc/3QGV-QCRG] (last visited Dec. 29, 2025).

187. *See* I.R.C. § 125(i) (setting a \$2,500 cap, inflation adjusted).

188. Rev. Proc. 2023-34, 2023-48 I.R.B. 1292.

taxation but can only be used for certain purposes.¹⁸⁹ In particular, funds in a health FSA may be used for certain medical expenses of the employee, the employee's spouse, the employee's dependents, and certain other persons.¹⁹⁰ Medical expenses include items that would qualify for a medical expense deduction.¹⁹¹ Generally, expenses qualify for this deduction if they are paid "for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body" as well as in certain other circumstances.¹⁹² Deductible medical expenses, however, do not include "expenditure[s] which [are] merely beneficial to the general health of an individual."¹⁹³ In some cases, drawing the line between deductible medical expenses and expenses that are "merely beneficial" to "general health" involves a nuanced application of a facts-and-circumstances-based test.¹⁹⁴ In addition, beginning in 2020, FSA eligible expenses include costs of over-the-counter medicine (regardless of whether it is prescribed) and menstrual care products.¹⁹⁵ Prior to 2020, expenses incurred for medicine or drugs were FSA eligible only if they were prescribed or were insulin.¹⁹⁶

Health FSAs are subject to a "use-it-or-lose-it" rule, meaning the employee forfeits any amounts not spent on eligible expenses that remain in the account at the end of the year.¹⁹⁷ However, each employer's plan can either: (1) provide a grace period of up to 2 and ½ months¹⁹⁸ or (2) allow up to a certain amount of unused funds at the end of any year to be carried forward to the following year.¹⁹⁹ For 2024, the cap on the amount that can be carried forward is \$640.²⁰⁰ A plan can include either (or neither) of these two features but not both.²⁰¹ If the employer makes the first option available to the fullest extent allowed, for instance,

189. See I.R.C. § 125(a).

190. See *id.* § 105(b).

191. See *id.*

192. See *id.* § 213(d)(1)(A).

193. Treas. Reg. § 1.213-1(e)(1)(ii).

194. See, e.g., Emily Cauble, *Questions the IRS Will Not Answer*, 97 IND. L.J. 523, 535–42 (2022); Katherine T. Pratt, *Inconceivable? Deducting The Costs of Fertility Treatment*, 89 CORN. L. REV. 1121, 1141 (2004) ("Much of the case law under § 213 involves taxpayers trying to deduct as a medical expense the cost of an item, such as a pool or a vacation, which is usually purchased for nonmedical personal reasons.").

195. See I.R.C. § 106(f).

196. *Id.* ("[E]xpenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin."). This section was struck by The CARES Act in 2020. Coronavirus Aid, Relief, and Economic Security Act. Pub. L. 116-136 §3703(c), 134 Stat. 281 (2020).

197. See Notice 2005-42, 2005-23 I.R.B. 1204.

198. *Id.* at 1205 (allowing for employers to provide a grace period that extends beyond the end of the year to use amounts for eligible expenses rather than forfeit the contributions, but specifying that the grace period cannot extend beyond the fifteenth day of the third calendar month after the end of the preceding year).

199. Notice 2013-71, 2013-47 I.R.B. 532. The amount that can be carried over was later inflation adjusted by making it equal to 20% of the maximum amount that can be contributed to an FSA (which is an inflation adjusted figure). Notice 2020-33, 2020-22 I.R.B. 870.

200. Rev. Proc. 2023-34, 2023-48 I.R.B. 1292, § 3.16.

201. Notice 2013-71, 2013-47 I.R.B. 532 ("This modification permits § 125 cafeteria plans to be amended to allow up to \$500 [this dollar amount was later adjusted] of unused amounts remaining at the end of a plan year in a health FSA to be paid or reimbursed to plan participants for qualified medical expenses incurred during the following plan year, provided that the plan does not also incorporate the grace period rule.") (emphasis added).

an employee is given 2 and ½ months in 2025 to spend on eligible expenses any amounts remaining in the account at the end of 2024.²⁰² If the employer makes the second option available to the fullest extent allowed and there is some amount remaining in an employee's account at the end of 2024, the employee can use up to \$640 of that amount on eligible expenses anytime in 2025.²⁰³

The IRS has provided guidance regarding how employers can comply with the requirement to substantiate the FSA eligibility of expenses.²⁰⁴ In some cases, the rules allow the use of various simplifying assumptions and procedures. For example, assume the employer provides employees with debit cards that can be used to spend health FSA funds and assume employees certify that they will use the cards only for eligible expenses.²⁰⁵ Assume the “card[s] can only be used at merchants and service providers that have merchant category codes related to health care.”²⁰⁶ The substantiation requirements are met without any further need for review or verification if the seller, at the time of sale, “provides information to verify to the employer (including electronically. . .) that the charge is for a medical expense.”²⁰⁷ Relatedly, verification can occur automatically if “the payment card processor provides a system for approving and rejecting card transactions using inventory control information (e.g., stock keeping units (“SKUs”)) with merchants who need not be health care providers.”²⁰⁸

With that background information in mind, consider some examples of information that drugstores and other sellers provide. First, regarding health FSAs' “use it or lose it” feature, on one drugstore's website, a prominent banner at the top of the page that lists FSA eligible products declares, “Maximize your FSA funds FSA dollars are ‘use or lose’ so spend your dollars **now** before they expire.”²⁰⁹ The bottom of the page includes some general information about FSAs and includes a link to an IRS publication for more information.²¹⁰ It makes no mention of possible grace periods or the ability to carry some funds over to the following year.²¹¹

It is true that FSA funds are not available indefinitely, and some plans may not be structured to include a grace period or the ability to carry over some funds to the following year.²¹² That said, the webpage certainly does not go out of its way to inform customers about the fact that their plans may provide some relief from the “use it or lose it” rule.²¹³ Moreover, grace periods and the ability to carry over funds to the subsequent year were not always permitted—the former

202. Notice 2005-42, 2005-23 I.R.B. 1205; Rev. Proc. 2023-34, 2023-48 I.R.B. 1287.

203. Rev. Proc. 2023-34, 2023-48 I.R.B. 1292, § 3.16.

204. See, e.g., Notice 2007-2, 2007-2 I.R.B. 254 (amending Rev. Rul. 2003-43, 2003-21 I.R.B. 935); Notice 2006-69, 2006-31 I.R.B. 107.

205. Notice 2006-69, 2006-31 I.R.B. 107.

206. *Id.*

207. *Id.*

208. *Id.*

209. *FSA/HSA Eligible Items Online & In-Store*, *supra* note 186.

210. *Id.*

211. *See id.*

212. See Notice 2005-42, 2005-23 I.R.B. 1204.

213. See *FSA/HSA Eligible Items Online & In-Store*, *supra* note 186.

has been authorized since 2005 and the latter since 2013.²¹⁴ The fact that these features were not always allowed and the fact that different plans adopt different features might compound the extent to which the website's statement causes customers to think the funds will expire sooner than they do.²¹⁵ Consequently, the statement might encourage customers to go on a medical shopping spree, even if the FSA funds remain available longer.²¹⁶ This potential effect runs counter to one of the IRS's articulated rationales for allowing carryover of some unused funds to the subsequent year, namely, "the desirability of minimizing incentives for unnecessary spending at the end of a year or grace period."²¹⁷

Another drugstore provides information about the possibility of rolling over some funds to the following year that states that the amount of the carryover is capped at \$500²¹⁸—as of 2020, this is no longer accurate because the \$500 cap has been replaced by an inflation adjusted figure.²¹⁹ The same webpage also informs customers that "in most cases" FSA funds will not rollover but "in some cases" their employers may allow an extra 2.5 months or allow rollover of \$500 to the following year.²²⁰ At least according to one source of data, in fact, 42% of plans allow for a rollover, 26% of plans allow for a grace period, and only 33% provide for neither.²²¹ The website does helpfully (and counter to its commercial interests) advise, "don't put more money into your FSA account than you think you will spend in one year."²²²

Drugstores and other sellers also provide customers with information about FSA eligibility of various products.²²³ Often the statements are accompanied by the recommendation that the customer checks with their plan administrator.²²⁴ At least one also refers customers to an IRS publication.²²⁵

In some instances, drugstores provide information about FSA eligibility that is outdated in a way that cuts against their commercial interests, informing customers that over-the-counter medication is ineligible without a doctor's prescription.²²⁶ In one instance, later, the same page does note that, "with the passing of the 2020 CARES Act, many new items and categories are now eligible without a prescription."²²⁷

214. Notice 2013-71, 2013-47 I.R.B. 533; Notice 2005-42, 2005-23 I.R.B. 1204.

215. See *FSA/HSA Eligible Items Online & In-Store*, *supra* note 186 (for the website's statement).

216. See *id.* (for the website's statement).

217. Notice 2013-71, 2013-47 I.R.B. 533.

218. *FSA Eligible Products*, CVS, <https://web.archive.org/web/20240703085337/https://www.cvs.com/shop/merch/FSA?widgetID=mlmy0rle&mc=0> [<https://perma.cc/C8CG-SRLL>] (last visited Dec. 29, 2025).

219. Notice 2020-33, 2020-22 I.R.B. 870.

220. *FSA Eligible Products*, *supra* note 218.

221. *FSA Database*, EMP. BENEFIT RSCH. INST., <https://www.ebri.org/health/fsa-database> [<https://perma.cc/WEC9-8DBH>] (last visited Dec. 29, 2025).

222. *FSA Eligible Products*, *supra* note 218.

223. See, e.g., *id.*; *FSA/HSA Eligible Items Online & In-Store*, *supra* note 186.

224. *FSA Eligible Products*, *supra* note 218; *FSA/HSA Eligible Items Online & In-Store*, *supra* note 186.

225. *FSA/HSA Eligible Items Online & In-Store*, *supra* note 186.

226. *FSA Eligible Products*, *supra* note 218; *FSA/HSA Eligible Items Online & In-Store*, *supra* note 186 (under "fast facts about FSAs").

227. *FSA/HSA Eligible Items Online & In-Store*, *supra* note 186 (under "[h]ow has the CARES Act impacted FSA eligible items?").

If a user types into the search bar on one drugstore's website an entry like, "FSA eligible humidifier," the search will return various results including one that is labeled "FSA eligible."²²⁸ The search results are not accompanied by a recommendation to check with a plan administrator or other caveats.²²⁹ This example is noteworthy because the cost of a humidifier is the type of expense that might, depending on the circumstances, be treated as a deductible medical expense or as a non-deductible expense for general health.²³⁰ In one letter ruling, the IRS concluded that the cost of a humidifier was a deductible medical expense when it was recommended by a doctor to treat allergies.²³¹ In other cases, the item might not qualify.²³²

One online seller specializes in providing information about FSAs and selling FSA eligible products.²³³ On its website, it provides what it describes as "[t]he most comprehensive . . . eligibility list available on the web."²³⁴ This description is accompanied by the disclaimer that FSA plans can vary so that customers should check with their plan administrators.²³⁵

On some items, the information this online seller provides is more nuanced than information provided by the IRS itself. For example, as Professors Blank and Osofsky have noted, informal IRS guidance advises taxpayers that the cost of artificial teeth qualifies for a medical expense deduction.²³⁶ While this may be true in many cases, as Professors Blank and Osofsky note, the expense of artificial teeth obtained for purely cosmetic purposes would not qualify.²³⁷ Some informal IRS guidance does not alert users to this caveat.²³⁸ By contrast, the online seller declares, "[a]rtificial teeth reimbursement is eligible, unless they are for a cosmetic purpose."²³⁹

On other items, the online seller's information replicates some of the oversimplifications contained in informal IRS guidance. For example, as Professors Blank and Osofsky have observed, informal IRS guidance informs users that

228. See *FSA Eligible Humidifier*, CVS, <https://www.cvs.com/search?searchTerm=fsa%20eligible%20humidifier> [<https://perma.cc/B272-MWSK>] (last visited Dec. 29, 2025).

229. Likewise, clicking the "FSA eligible" label does not bring up any caveats. *Id.*

230. See *supra* notes 191–93 and accompanying text; see *infra* note 243 and accompanying text.

231. I.R.S. Priv. Ltr. Rul. 80-09-080 (Dec. 6, 1979). The IRS has also issued a news alert advising that taxpayers consider the cost of "warm steam vaporizers" when considering how much to contribute to an FSA. *IRS: 2024 Flexible Spending Arrangement Contribution Limit Rises by \$150*, INTERNAL REV. SERVS. (May 29, 2025), <https://www.irs.gov/newsroom/irs-2024-flexible-spending-arrangement-contribution-limit-rises-by-150-dollars> [<https://perma.cc/L5ME-R6KZ>].

232. Consider that the FSAFeds website notes that a humidifier is eligible with a letter of medical necessity. *Eligible Health Care FSA (HC FSA) Expenses*, U.S. OFFICE OF PERS. MGMT., <https://www.fsafeds.gov/explore/hcfesa/expenses?take=100&skip=100> [<https://perma.cc/8RPN-MK4T>] (last visited Dec. 29, 2025).

233. *Who We Are*, HEALTH-E COMMERCE, <https://www.health-e-commerce.com/about> [<https://perma.cc/2XH7-ZWC5>] (last visited Dec. 29, 2025).

234. *The Complete FSA Eligibility List*, FSA STORE, <https://fsastore.com/fsa-eligibility-list> [<https://perma.cc/RT3N-AXP5>] (last visited Dec. 29, 2025).

235. *Id.*

236. Blank & Osofsky, *Automated Legal Guidance*, *supra* note 30, at 210–11.

237. *Id.* at 211.

238. *Id.*

239. *Artificial Teeth: FSA Eligibility*, FSA STORE, <https://fsastore.com/fsa-eligibility-list/a/artificial-teeth> [<https://perma.cc/HQ63-237U>] (last visited Dec. 29, 2025).

teeth whitening expenses do not qualify as medical expenses for tax purposes.²⁴⁰ While this is likely true in most cases, Professors Blank and Osofsky provide an example of a hypothetical taxpayer whose teeth whitening expenses might potentially qualify.²⁴¹ On this topic, the online seller, like IRS guidance, indicates that teeth whitening expenses are categorically ineligible.²⁴²

On some items (like humidifiers and exercise equipment), the online seller's main page notes that an item is eligible with a letter of medical necessity.²⁴³ Clicking on the item to read the details reveals the more complete explanation that it "may" be eligible with a letter of medical necessity.²⁴⁴ The details note further that it is not eligible for "general use or wellbeing" or that "personal use is not eligible."²⁴⁵

Indeed, in various instances, courts and the IRS have concluded that a doctor's recommendation is not sufficient to convert an expense incurred for general wellbeing into an eligible medical expense.²⁴⁶ If customers of the online seller simply view the statement on the main page without reading all the details, they may come away with the mistaken impression that the expense is automatically eligible with a doctor's recommendation. Even if they do read the details, they may not appreciate the full significance of the caveats that the product is not eligible for "general use or wellbeing" or that "personal use is not eligible."²⁴⁷

240. Blank & Osofsky, *Automated Legal Guidance*, *supra* note 30, at 214–15.

241. In particular, they discuss a situation in which a taxpayer receives teeth whitening services to correct discoloration caused by chemotherapy received as a cancer treatment. *Id.* The IRS has issued a Revenue Ruling concluding that teeth whitening services undertaken to correct discoloration due to age do not qualify that notes that the discoloration was not caused by a "disfiguring disease or treatment." Rev. Rul. 2003-57, 2003-22 I.R.B. 959. This statement suggests that teeth whitening services that do correct discoloration caused by a "disfiguring . . . treatment" might qualify, as Professors Blank and Osofsky note. Blank & Osofsky, *Automated Legal Guidance*, *supra* note 30, at 214–15. It is not certain, however, that the IRS would agree with this analysis given that the Revenue Ruling also notes that "[t]he discoloration is not a deformity." Rev. Rul. 2003-57, 2003-22 I.R.B. 959.

242. *The Complete FSA Eligibility List*, *supra* note 234; *Teeth Whitening: FSA Eligibility*, FSA STORE, <https://fsastore.com/fsa-eligibility-list/t/teeth-whitening> [<https://perma.cc/R26T-779W>] (last visited Dec. 29, 2025).

243. See *The Complete FSA Eligibility List*, *supra* note 234 (noting that both a humidifier and exercise equipment are "ELIGIBLE W/ LMN"). LMN is the page's abbreviation for "letter of medical necessity." *Id.*

244. See *id.*

245. See *id.*

246. See, e.g., *Havey v. Comm'r* 12 T.C. 409, 410, 413 (1949) (holding that trip expenses were ineligible despite the existence of a doctor's recommendation); *Ochs v. Comm'r*, 195 F.2d 692, 694 (2d Cir. 1952) (holding that expenses incurred to send the taxpayer's and his spouse's children to boarding school to facilitate spouse's cancer recovery did not constitute medical expenses despite the presence of a doctor's recommendation); *Rodgers v. Comm'r*, 241 F.2d 552, 555–56 (8th Cir. 1957) (holding that costs of trips to states with milder climates did not constitute deductible medical expenses despite the existence of a doctor's recommendation); *Haines v. Comm'r of Internal Revenue*, 71 T.C. 644, 649 (1979) (concluding that the cost of installing a pool at the taxpayer's home was ineligible notwithstanding the fact that a doctor recommended it, although the doctor's testimony did suggest that installing the pool was not a necessity); *Lepson v. Comm'r*, 44 T.C.M. (CCH) 19 (T.C. 1982) (disallowing a medical expense deduction for the cost of a tractor and snow blower recommended by the taxpayer's physician); I.R.S. Priv. Ltr. Rul. 5903195230A (Mar. 19, 1959) (disallowing a medical expense deduction for the cost of a dishwasher recommended by a doctor when the taxpayer's spouse developed eczema); I.R.S. Priv. Ltr. Rul. 80-19-025 (Feb. 12, 1980) (disallowing a medical expense deduction for the cost of a dishwasher recommended by a doctor when the taxpayer had a heart condition).

247. See *The Complete FSA Eligibility List*, *supra* note 234.

For instance, they may not understand that, even with a doctor's recommendation, use could still be considered "merely beneficial" to "general health."²⁴⁸

The online seller does provide a "Money-Back Guarantee"—assuring customers that, if they purchase an item from the seller and their FSA administrator denies the claim "for the sole reason that the product(s) is not eligible," the online seller will provide a full refund, provided that the customer complies with various procedural requirements.²⁴⁹ It is not entirely clear what the "sole reason" caveat excludes, but arguably it could be read to disallow a refund if a customer's claim for an item like a humidifier or exercise equipment is denied because the customer's use is merely for improvement of general health rather than to treat a specific condition.²⁵⁰ If so, a customer who does not read (or who reads but does not fully understand) all details about the product's eligibility may purchase it under the mistaken assumption that it qualifies and have no recourse under the terms of the guarantee.²⁵¹

It appears that other sellers have also exaggerated—perhaps even more misleadingly—the effect of having a doctor's recommendation. In a recent alert, the IRS warned the public that some sellers have been "misrepresenting nutrition, wellness and general health expenses" as FSA eligible.²⁵² The alert noted that some sellers have claimed that simply providing a doctor's note "based merely on self-reported health information" will allow "non-medical food, wellness and exercise expenses" to qualify.²⁵³

5. *Administrators of Health FSAs*

Employers who offer a health FSA may utilize a third-party administrator who provides debit cards for employees to access their FSA funds. As Professor Lederman has observed, because of their role in requesting information from employees and allowing or disallowing claims, these administrators, implicitly, serve the role of providing information about expense eligibility *to the IRS*.²⁵⁴

These administrators also explicitly (and implicitly via claim approval or disallowance) provide information about the tax treatment of FSAs *to taxpayers*.²⁵⁵ One administrator's website touts the tax benefits of a health FSA, stating,

248. Treas. Reg. § 1.213-1(e)(1)(ii).

249. *Our 100% FSA Eligible, Money-Back Guarantee Policy*, FSA STORE, <https://fsastore.com/fsa-eligible-guarantee-policy.html> [<https://perma.cc/A2SG-W5SK>] (last visited on Dec. 29, 2025).

250. *Id.*

251. *Id.*

252. *IRS Alert: Beware of Companies Misrepresenting Nutrition, Wellness and General Health Expenses as Medical Care for FSAs, HSAs, HRAs and MSAs*, INTERNAL REV. SERVS. (Mar. 6, 2024), <https://www.irs.gov/newsroom/irs-alert-beware-of-companies-misrepresenting-nutrition-wellness-and-general-health-expenses-as-medical-care-for-fsas-hsas-hras-and-msas> [<https://perma.cc/2F3P-2C24>].

253. *Id.* For additional discussion of this alert, see Leigh Osofsky, *Wellness and the Tax Law*, 59 GA. L. REV. 443, 468 (2025).

254. Lederman, *Statutory Speed Bumps*, *supra* note 36, at 715.

255. See, e.g., *Flexible Spending Accounts (FSAs) for Employers*, OPTUM BUS., <https://business.optum.com/en/financial-solutions/health-benefit-accounts/flexible-spending-accounts.html> [<https://perma.cc/9P5H-433W>] (last visited Dec. 29, 2025); *FSA Guide: Spend Smarter. Save More on Healthcare.*, HEALTHEQUITY,

“[b]ecause of the tax savings on contributions, you can save an average of 30 percent on qualified medical expenses”; the “30 percent” is accompanied by a footnote stating, “The example used is for illustrative purposes only; actual savings may vary. The figure is based on average tax rates, including state, federal and FICA taxes.”²⁵⁶ An employee with a lower-than-average tax rate (which, given the progressive tax rate structure, would be an employee with income lower than average) would receive a lower tax benefit.²⁵⁷

Some companies that administer FSAs provide lists of eligible items²⁵⁸ and ineligible items²⁵⁹ or tools that can be used to verify FSA eligibility of various expenses.²⁶⁰ With respect to the humidifier example mentioned above, one list notes that it is eligible with a letter of medical necessity,²⁶¹ and one tool’s search results likewise indicate that it is eligible with a doctor’s letter.²⁶² Similarly, regarding exercise equipment, one list notes that it “may” be eligible with a letter of medical necessity,²⁶³ and one tool’s search results note that it is eligible with a doctor’s letter.²⁶⁴ As discussed above, it is possible that this information may cause some readers to overestimate the legal effects of a doctor’s recommendation and think an expense qualifies even when it is an ineligible cost of an item that is “merely beneficial” to “general health.”²⁶⁵

Some items on the list replicate oversimplifications that appear in IRS informal guidance.²⁶⁶ For instance, one notes that artificial teeth expenses are FSA eligible without noting that, in some cases, they might be disallowed as expenses of cosmetic procedures.²⁶⁷ Another, however, does alert readers to the cosmetic procedures caveat with respect to artificial teeth expenses.²⁶⁸ On some items, the information diverges from IRS guidance and may overcorrect for IRS simplifications. For instance, one notes that teeth whitening expenses are eligible with a doctor’s letter.²⁶⁹

<https://www.healthequity.com/learn/flexible-spending-account> [<https://perma.cc/W2QX-65DQ>] (last visited Dec. 29, 2025).

256. *FSA Guide*, *supra* note 255.

257. For discussion of how tax expenditures in the form of income exclusions generally provide a greater tax benefit to higher income taxpayers, see Schizer, *supra* note 78, at 315 (“[E]xclusions and deductions are more valuable in a higher bracket. Excluding a dollar—that is, not paying tax on it—saves thirty-five cents for someone taxed at 35%, but only twenty-five cents for someone taxed at 25%.”).

258. See, e.g., *FSA Qualified Medical Expenses (QME)*, HEALTHEQUITY, <https://www.healthequity.com/fsa-qme> [<https://perma.cc/BWR7-NTK2>] (last visited Dec. 29, 2025).

259. *Non-Qualified Expenses*, HEALTHEQUITY, <https://www.healthequity.com/hsa-qme> [<https://perma.cc/Y9WB-FE84>] (last visited Dec. 29, 2025).

260. *Medical Expense Eligibility Tool*, OPTUM NOW, <https://now.optum.com/qualified-expenses> [<https://perma.cc/7E67-F969>] (last visited Dec. 29, 2025).

261. *Flexible Spending Accounts (FSAs) for Employers*, *supra* note 255.

262. *Medical Expense Eligibility Tool*, *supra* note 260.

263. *FSA Qualified Medical Expenses*, *supra* note 258.

264. *Medical Expense Eligibility Tool*, *supra* note 260.

265. See *supra* notes 246–48 and accompanying text.

266. For discussion of some of these oversimplifications, see *supra* notes 236–45 and accompanying text.

267. *Medical Expense Eligibility Tool*, *supra* note 260.

268. *FSA Qualified Medical Expenses*, *supra* note 258.

269. *Medical Expense Eligibility Tool*, *supra* note 260.

Some companies not only administer FSAs but also sell health products. One such company touts the “hassle-free” nature of buying directly from them, stating, “FSA users can skip the receipts” when they use the administrator’s card to buy from them because “purchases are automatically approved, hassle-free.”²⁷⁰ This may overstate the “hassle” of buying elsewhere.²⁷¹ As noted above, the IRS allows automatic verification for purchases generally in a variety of cases,²⁷² and, indeed, the website notes earlier, “More than 80% of payment card* claims are automatically verified as eligible expenses and do not require any additional paperwork.”²⁷³

6. *Other Sellers of Services, Products, and Other Property*

The examples above are not exhaustive. In a variety of other contexts, sellers of services, products, and other property provide tax law information to potential buyers. For example, a car seller’s website dispenses information about the ability of business owners to claim deductions after purchasing a car and includes a tool that they can use to estimate their tax savings.²⁷⁴ The bonus tax depreciation and expensing rules that the website references are not limited to car purchases,²⁷⁵ although readers of the website might think that they are. In addition, unless the car is used exclusively for business purposes, the buyer’s ability to claim deductions may be limited.²⁷⁶ Except for referring to the provisions as “incentives for small business owners,” the website includes no discussion regarding the required business use of the vehicle.²⁷⁷ The website does caution users that they should consult a tax professional.²⁷⁸

Websites that allow people in need of caregivers to find them and vice versa provide tax law information.²⁷⁹ Some also offer services to facilitate compliance with tax law.²⁸⁰

Lenders provide potential borrowers with information about the ability to deduct interest on student loans.²⁸¹ Subject to various requirements, borrowers are allowed to deduct interest paid on student loans, up to a maximum of \$2,500 per year.²⁸² The deduction is subject to a phase out, meaning that the amount

270. *Id.*

271. *Id.*

272. *See supra* notes 204–08 and accompanying text.

273. *Flexible Spending Accounts (FSAs) for Employers*, *supra* note 255.

274. *Incentives for Small Business Owners*, JEEP, <https://www.jeep.com/tax-benefits-for-businesses.html> [<https://perma.cc/7ZRT-FMWL>] (last visited Dec. 29, 2025).

275. I.R.C. §§ 168(k), 179.

276. *Id.* § 280F(b).

277. *Incentives for Small Business Owners*, *supra* note 274.

278. *Id.*

279. Tom Breedlove, *Nanny Taxes: A Complete Guide*, CARE (Dec. 5, 2024), <https://www.care.com/hp/nanny-tax-guide/> [<https://perma.cc/9FT2-M8X3>]; *Guide to Paying Nanny Taxes in 2024*, SITTERCITY (Nov. 1, 2024), <https://www.sittercity.com/parents/guide-to-nanny-taxes#exit> [<https://perma.cc/WX6P-Y6XA>].

280. For further discussion, see Ariel Jurow Kleiman, Shayak Sarkar & Emily Satterthwaite, *Taxing Nannies*, 110 IOWA L. REV. 111, 115 (2024).

281. *See infra* notes 286–99.

282. I.R.C. §§ 221(a), (b)(1).

allowed as a deduction declines—eventually to \$0—as income increases above a specified threshold.²⁸³ For 2024, the phase-out begins for taxpayers whose “modified adjusted gross income” is more than \$80,000 (or \$165,000 in the case of married taxpayers filing joint returns), and the deduction is fully phased out when “modified adjusted gross income” is \$95,000 or more (or \$195,000 or more in the case of married taxpayers filing a joint return).²⁸⁴

Providers of student loans dispense information about the deduction on their websites.²⁸⁵ An article on one website notes, “you may be eligible to deduct up to \$2,500 of interest as an adjustment to your taxable income.”²⁸⁶ Clicking on a hyperlink takes the reader to another page with a more complete description of requirements, including mention of the income-based phase out.²⁸⁷ However, it appears to refer to only the income level at which the phase out ends, and the dollar figures it mentions are outdated.²⁸⁸ It does refer users to an IRS publication for more information and recommends speaking with a tax professional.²⁸⁹

Another lender’s website hosts an article with more complete information.²⁹⁰ It lists 2019 numbers when describing the phase-out but it notes that the numbers apply for 2019.²⁹¹ It also refers users to a tool on the IRS’s website—the Interactive Tax Assistant—that they can use to determine their eligibility for a deduction.²⁹² Another website features an article that describes advantages and disadvantages of student loans compared to borrowing money under a home equity line of credit.²⁹³ With respect to student loans, it states that interest “can qualify for a deduction of up to \$2,500.”²⁹⁴ A hyperlink takes the reader to an article containing a more complete discussion.²⁹⁵ Both articles caution that readers should consult a tax advisor.²⁹⁶ Another lender’s website hosts an article that provides information about the deduction, including a statement

283. *Id.* §§ 221(b), (f).

284. Rev. Proc. 2023-34, 2023-48 I.R.B. 1287.

285. *See infra* notes 286–99.

286. Kayla Cannon, *Tax Deductions for Student Loans and Other Tax Breaks*, SALLIE MAE (Mar. 11, 2025), <https://www.salliemae.com/blog/what-to-know-about-student-loan-tax-credits/> [https://perma.cc/62SC-B8TN].

287. *Get Student Loan Tax Benefits and Forms*, SALLIE MAE BANK, <https://www.salliemae.com/student-loans/manage-your-private-student-loan/student-loan-tax-information-and-forms/> [https://perma.cc/ERT9-KQ NQ] (last visited on Dec. 29, 2025).

288. *Id.*

289. This follows from the fact that deductions save tax at the taxpayer’s tax rate. *See, e.g.*, Schizer, *supra* note 78, at 315.

290. *Can I Deduct Student Loan Interest from My Taxes?*, COLLEGE AVE (Mar. 2, 2020), <https://www.collegeave.com/articles/can-i-deduct-interest-from-my-student-loans-on-my-taxes/> [https://perma.cc/N9LF-372R].

291. *Id.*

292. *See Can I Deduct Student Loan Interest from My Taxes?*, *supra* note 290. That link redirects the user to the I.R.S. tax assistant calculator page. *Can I Claim a Deduction for Student Loan Interest?*, INTERNAL REV. SERVS., <https://www.irs.gov/help/ita/can-i-claim-a-deduction-for-student-loan-interest> [https://perma.cc/Q85P-W4L5] (last visited Dec. 29, 2025).

293. Kim Franke-Folstad, *Home Equity Line of Credit (HELOC) vs Student Loans*, SOFI (July 17, 2024), <https://www.sofi.com/learn/content/heloc-vs-student-loans/> [https://perma.cc/84HA-VCNV].

294. *Id.*

295. Austin Kilham, *How the Student Loan Interest Deduction Works & Who Qualifies*, SOFI (June 27, 2025), <https://www.sofi.com/learn/content/student-loan-tax-deduction-guide/> [https://perma.cc/SEW9-2RM7].

296. *Id.*; Franke-Folstad, *supra* note 293.

that estimates the amount of tax savings from the deduction for taxpayers in the 22% tax bracket (typically the highest tax rate that could apply to a taxpayer unless their income was high enough that the deduction was subject to a phase out).²⁹⁷ For taxpayers with lower incomes, the amount of tax savings would be less than the tax savings for taxpayers in the 22% bracket.²⁹⁸ The article also refers users to the IRS's Interactive Tax Assistant if they want help determining their eligibility.²⁹⁹

A search for cases in which a contracting party seeks rescission or reformation of a contract after learning that the contract's tax consequences are different than expected yields additional examples. For instance, in *Levy v. Outdoor Resorts of South Carolina*, a couple successfully sought rescission of an agreement to purchase a lot in a recreational vehicle resort.³⁰⁰ The seller of the lot agreed to arrange to rent the lot during some of the time that the lot was not used by the couple (and to share half of the rental income with them).³⁰¹ The seller represented that, as a result, the couple could claim depreciation deductions for some costs associated with the lot.³⁰² Because the lot was not rented for a sufficient amount of time, the couple was unable to claim tax deductions.³⁰³ The court noted that a reasonable fact finder could conclude that the seller was aware that the tax treatment was a "material fact in the [buyers'] decision to enter into the contract."³⁰⁴

By contrast, in *Bellin v. Pulsifer*, the buyer and the seller each owned a ½ interest in a pizza business.³⁰⁵ They entered into an agreement for the seller to transfer their ½ interest to the buyer at a specified price.³⁰⁶ The buyer later asserted that the seller had misrepresented the transaction's tax consequences, and, alternatively, the buyer argued for reformation of the contract based on mutual mistake.³⁰⁷ The seller had incorrectly informed the buyer that the buyer could deduct the amount spent to purchase the seller's interest.³⁰⁸ The lower court granted summary judgment to the seller, which was affirmed on appeal.³⁰⁹ The court noted that there was no indication that the seller's statement about tax deductibility was made in bad faith.³¹⁰ The court also stated that the buyer's "explanation that she agreed to an overvalued contract price in the belief that the

297. *How to Catch a (Tax Deduction) Break on your Student Loans*, CITIZENS, [https://www.citizensbank.com/learning/student-loan-interest-deduction.aspx? \[https://perma.cc/9ZCT-YZ6N\]](https://www.citizensbank.com/learning/student-loan-interest-deduction.aspx? [https://perma.cc/9ZCT-YZ6N]) (last visited Dec. 29, 2025).

298. *Id.*

299. *Id.*

300. 405 S.E.2d 387, 388 (S.C. 1991).

301. *Id.* at 389.

302. *Id.*

303. *Id.*

304. *Id.* at 391.

305. 599 N.Y.S.2d 704, 704 (App. Div. 3rd Dept. 1993).

306. *Id.*

307. *Id.* at 705.

308. *Id.*

309. *Id.*

310. *Id.*

price was tax deductible was a miscalculation on her part which is not sufficient to invoke reformation of the contract.”³¹¹

B. Issuers of Securities and Sponsors of Other Investment Products

Issuers of securities and other parties selling investment products provide tax law information to potential investors. Indeed, in some cases, applicable law requires that they provide information about potential tax consequences.³¹² As Professor Marian has catalogued, issuers have occasionally faced lawsuits stemming from the information they provided (or lack thereof).³¹³ Many of the cases involve failure to disclose tax benefits received by insiders (rather than providing incomplete or inaccurate information about the plaintiffs’ tax treatment).³¹⁴ Some cases, however, involve failure to disclose information that could affect the plaintiffs’ tax treatment. For instance, in *Herbst v. International Tel. & Tel. Corp.*, the court allowed a class action lawsuit to proceed based upon a company’s failure to disclose a risk that the IRS could challenge the tax-deferred treatment of a merger (where the risk existed because the company failed to disclose certain facts when obtaining a letter ruling from the IRS).³¹⁵ While the IRS had not challenged the transaction’s tax treatment, the plaintiffs’ theory was that, had the risk been known, they would have demanded more consideration for their shares to compensate for the risk.³¹⁶

As another example, in *Ikon Office Solutions*, some parties to a securities law class action objected to a settlement based on the failure of the settlement notice to inform plaintiffs about the tax consequences of the settlement.³¹⁷ They proposed that the notice should inform plaintiffs that proceeds may be taxable or non-taxable and they should consult their own tax advisors.³¹⁸ The court did not order inclusion of the requested language, writing,

“While the objectors have included an opinion letter stating that, in some circumstances, the disbursement might be treated as a nontaxable return of capital, there are numerous caveats to that statement even in the letter. All things considered, singling out one of many potential tax consequences seems more likely to create than alleviate confusion. Generic language stating that it is advisable to consult a tax specialist is preferable.”³¹⁹

Consistent with this court’s reasoning, Professor Marian has observed that providing information about all the possible ways in which any investor’s tax treatment might vary—given the multitude of ways in which tax treatment can

311. *Id.*

312. For additional discussion, see Marian, *supra* note 46, at 2–3, 9.

313. *Id.* at 34–40.

314. *Id.* at 34–36.

315. *Herbst v. Int’l Tel. & Tel. Corp.*, 495 F.2d 1308, 1309, 1314 (2d Cir. 1974); see Marian, *supra* note 46, at 38–39.

316. *Herbst*, 495 F.2d at 1314.

317. *In re Ikon Off. Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 188 (E.D. Pa. 2000); see also Marian, *supra* note 46, at 40.

318. *In re Ikon Off. Sols., Inc.*, 194 F.R.D. at 188.

319. *Id.*

turn on the particular characteristics of each investor—is not feasible.³²⁰ For that reason, issuers typically carve out some topics and types of investors from the scope of their disclosures.³²¹ As a result, as he notes, any investors who did read the disclosures might “erroneously assume that the tax consequences described therein apply to them.”³²²

In many ways, this concern parallels the challenge facing the IRS (or any party) when it tries to communicate tax law in plain language. As Professors Blank and Osofsky have observed, to make its informal guidance more readable, the IRS often omits exceptions and caveats.³²³ While doing so may make the guidance more readable and useful for taxpayers to whom the exceptions and caveats do not apply, it has the potential to mislead taxpayers whose treatment is governed by the omitted exceptions and caveats.³²⁴

C. Debt Collectors

An examination of existing case law adjudicating challenges under the Fair Debt Collection Practices Act (“FDCPA”) makes clear that debt collectors provide information to debtors about the tax consequences of paying less than the amount owed.³²⁵ Before turning to the cases, a brief overview of applicable tax law is in order. Generally, when a taxpayer borrows money, they do not include the borrowed proceeds in their income for tax purposes.³²⁶ Tax law, in effect, does not treat the borrowed proceeds as income because the taxpayer has not, by borrowing, benefited from an increase in wealth given that the taxpayer takes on an offsetting obligation to repay the amount borrowed.³²⁷ If, however, the taxpayer’s obligation to repay the borrowed proceeds is later forgiven, the taxpayer generally must include, in income, the amount that is forgiven, which constitutes discharge of indebtedness income.³²⁸ For example, if a taxpayer borrows \$1000 in year one, and, in year two, \$200 of that amount is forgiven so that the taxpayer is required to repay only \$800, the taxpayer realizes \$200 of discharge of indebtedness income in year two. The taxpayer did not include \$1,000 in income in year one because the tax system assumed the taxpayer would repay the \$1,000 so that they were not made \$1,000 better off by borrowing. When it turns out that the taxpayer does not, in fact, have to repay \$200 of that amount, the taxpayer must include \$200 in income.

320. Marian, *supra* note 46, at 19.

321. *Id.*

322. *Id.*

323. Blank & Osofsky, *Simplexity*, *supra* note 30, at 200.

324. *Id.* at 242.

325. *See infra* notes 336–54 and accompanying text.

326. Boris I. Bittker, Martin J. McMahon, Lawrence A. Zelenak & Bruce A. McGovern, Fed. Income Tax’n of Individuals § 4.10 (June 2025) (“Borrowed funds are excluded from gross income even though they increase a taxpayer’s assets and can be used as he sees fit.”).

327. *Id.* (“Because of the obligation to repay, the receipt of a loan produces no increase in net worth and thus no gain.”).

328. I.R.C. § 61(a)(11).

But the requirement to include in income discharge of indebtedness income is subject to numerous exceptions.³²⁹ To name just two, a borrower can exclude from income discharge of indebtedness income that occurs in bankruptcy or when the taxpayer is insolvent (at least to the extent they are insolvent in the latter case).³³⁰

To backstop the debtor's obligation to include in income discharge of indebtedness income, creditors who forgive debts have information reporting obligations in some cases.³³¹ In particular, certain creditors must file a Form 1099-C with the IRS if they cancel debt of any person unless the amount of any cancellation is less than \$600.³³² By filing this form, the creditor provides information to the IRS about the transaction, which makes it easier for the IRS to discover any debtor's failure to pay tax on discharge of indebtedness income.³³³ The creditor's obligation to file a Form 1099-C, however, does not align precisely with the debtor's obligation to include the discharged debt in income for two general reasons. First, even if the debtor can exclude the discharged debt from income (*i.e.*, because the debtor is insolvent) generally the creditor must report information about the transaction to the IRS on Form 1099-C as long as the amount cancelled is at least \$600.³³⁴ Second, even if the creditor is not required to file a Form 1099-C (because, for instance, the amount of debt discharged is less than \$600), the debtor must still include in income discharge of debt, assuming no exception applies (such as the debtor being insolvent).³³⁵

Now, consider the cases. In *Dunbar v. Kohn Law Firm, S.C.*, the plaintiffs received debt collection letters that offered to settle debt for less than the amount owed and stated, "This settlement may have tax consequences."³³⁶ The plaintiffs alleged that the statements were misleading because they were insolvent so they could exclude debt cancellation from income.³³⁷ The Seventh Circuit affirmed the lower courts' decisions to dismiss for failure to state a claim.³³⁸ As the Seventh Circuit explained, "The challenged statement is not false or misleading because 'may' does not mean 'will' and insolvent debtors might become solvent before settling their debt, triggering the possibility of tax consequences."³³⁹ The

329. *Id.* § 108.

330. *Id.* § 108(a)(1)(A)–(B). In such a case, however, the taxpayer may have to adjust various tax attributes that could cause the taxpayer to recognize more income later. *Id.*; *id.* § 108(b).

331. *Id.* § 6050P(a), (b).

332. *Id.*; Treas. Reg. § 1.6050P-1(a) (as amended in 2016).

333. For discussion of the fact that income that is subject to third party reporting is less likely to go unreported, see *supra* notes 36–38 and accompanying text.

334. Treas. Reg. § 1.6050P-1(a)(3) (as amended in 2016) ("Except as otherwise provided in this section, discharged indebtedness must be reported regardless of whether the debtor is subject to tax on the discharged debt under sections 61 and 108 or otherwise by applicable law."). In some instances, reporting is not required when debt is discharged in bankruptcy. *Id.* § 1.6050P-1(d) (as amended in 2016).

335. I.R.C. §§ 61(a)(11), 108.

336. 896 F.3d 762, 764 (7th Cir. 2018).

337. *Id.* Even if the taxpayer excludes the discharged debt from income, they may have to reduce tax attributes as noted above. See I.R.C. § 108. In that sense, the settlement has potential tax consequences even if excluded from income, although this was not an issue the court discussed.

338. *Dunbar*, 896 F.3d at 764.

339. *Id.*

court was not persuaded by the plaintiffs' argument that "most recipients of debt-collection letters are insolvent and therefore would incur no tax liability from a discharged debt."³⁴⁰ Likewise, in a number of other cases, courts have granted debt collectors' motions to dismiss for failure to state a claim under the FDCPA based upon statements that settling a debt "may have tax consequences."³⁴¹

By contrast, plaintiffs have been more successful when they allege violations of the FDCPA based upon statements that indicate that a creditor may report the cancelled debt to the IRS when, in fact, reporting is unlikely given that the amount of debt forgiven does not exceed \$600.³⁴² For example, in *Heredia v. Capital Management Services, L.P.*, the plaintiff received a debt collection letter that included a variety of settlement offers, none of which resulted in forgiving more than \$600 of debt.³⁴³ The letter stated, "Settling a debt for less than the balance owed may have tax consequences and [the creditor] may file a 1099C form."³⁴⁴ The court noted that, just as in *Dunbar*, stating that the settlement "may have tax consequences" is not misleading.³⁴⁵ However, declaring that the creditor "may file a 1099C form" is misleading because, given the amount of debt forgiveness, filing the form was not required and the creditor did not contradict the plaintiff's assertion that the creditor would never file the form unless required.³⁴⁶ The court elaborated on one further distinction between these two statements, writing, "Only the debtor knows whether, given her financial situation as a whole, she will have to pay taxes on the forgiven debt. The creditor, however, knows whether it will have to file a 1099C form or not."³⁴⁷

It is worth reiterating that the creditor's obligation to file a Form 1099-C does not align precisely with the debtor's obligation to include the discharged debt in income.³⁴⁸ Existing case law elevates the importance of the creditor providing correct information about whether they will issue a Form 1099C over providing complete information about the debtor's tax treatment.³⁴⁹ While there is a practical rationale for drawing this distinction (namely, the court's observation about information that the creditor possesses), it is worth noting that what ultimately matters to the taxpayer is whether they must include the discharged debt in income.³⁵⁰

340. *Id.* at 765. The court also called into question a northern district of Illinois decision that had found similar reasoning persuasive. *Id.* at 767.

341. *See* *Ceban v. Cap. Mgmt. Servs., L.P.*, No. 17-CV-4554, 2018 WL 451637, at *1 (E.D.N.Y. Jan. 17, 2018); *Taylor v. Fin. Recovery Servs., Inc.*, 252 F. Supp. 3d 344, 347 (S.D.N.Y. 2017); *Remington v. Fin. Recovery Servs., Inc.*, No. 3:16-cv-865, 2017 WL 1014994 (D. Conn. Mar. 15, 2017); *Everett v. Fin. Recovery Servs., Inc.*, 1:16-cv-01806-JMS-MPB, 2016 WL 6948052, at *1 (S.D. Ind. Nov. 28, 2016); *Antista v. Fin. Recovery Servs., Inc.*, No. 2:17-cv-3567, 2018 WL 259771, at *3 (D.N.J. Jan. 2, 2018).

342. *See, e.g.*, *Heredia v. Cap. Mgmt. Servs.*, 942 F.3d 811, 814 (7th Cir. 2019).

343. *Id.* at 814.

344. *Id.*

345. *Id.* at 815.

346. *Id.* at 815.

347. *Id.* at 815–16.

348. *See supra* notes 334–35 and accompanying text.

349. *See Heredia*, 942 F.3d at 815–16.

350. *See supra* note 328 and accompanying text.

In a number of cases similar to *Heredia*, plaintiffs' claims under the FDCPA have survived motions to dismiss for failure to state a claim.³⁵¹ These include cases in which: (1) the debt collection letter stated that the debt collector was "required to file a form 1099C with the Internal Revenue Service for any cancelled debt of \$600 or more" without clarifying that only cancelled principal (not interest) counted towards the \$600 and the letter provided a total amount of debt owed that included principal and interest;³⁵² (2) the debt collection letter stated that "any indebtedness of \$600.00 or more, which is discharged as a result of a settlement, may be reported to the IRS as taxable income" in a case in which the amount discharged could not have exceeded \$600 and the quoted language could be misinterpreted to mean that the \$600 threshold is triggered when the amount of the debt (rather than the amount of the debt that is discharged) exceeds \$600;³⁵³ and (3) the amount of debt forgiven could not have exceeded \$600 and the debt collection letter stated, "We will report forgiveness of debt as required by IRS regulations. Reporting is not required every time a debt is canceled or settled, and might not be required in your case."³⁵⁴

D. Recipients of Charitable Contributions

Recipients of charitable contributions provide potential donors with information about the charitable contribution deduction.³⁵⁵ Like the home mortgage interest deduction and property tax deduction discussed above in Section II.A, the charitable contribution deduction is an itemized deduction.³⁵⁶ As a result, it generally cannot be claimed by taxpayers who claim the standard deduction, and the vast majority of taxpayers claim the standard deduction.³⁵⁷ For example, for the 2020 tax year, the IRS estimates that 87.5% of tax returns claimed the standard deduction.³⁵⁸ Furthermore, as noted above, itemized deductions tend to be claimed only by taxpayers with higher incomes.³⁵⁹ According to Congressional Budget Office estimates, the charitable contribution deduction resulted in a total tax expenditure of \$43 billion in 2019, 93% of which benefitted taxpayers in the

351. For an additional example, see *Leonard v. Cap. Mgmt. Servs., LP*, 364 F. Supp. 3d 198 (W.D.N.Y. 2019). For an example of a court reaching a contrary conclusion, however, see *Prather v. Allied Interstate, LLC*, No. 3:18-cv-00043, 2018 WL 7627485 (N.D. Ga. Dec. 14, 2018).

352. *Kaff v. Nationwide Credit, Inc.*, No. 13-cv-5413, 2015 WL 12660327, at *1 (E.D.N.Y. Mar. 31, 2015).

353. *Balon v. Enhanced Recovery Co., Inc.*, 190 F. Supp. 3d 385, 387 (M.D. Pa. 2016).

354. *Schultz v. Midland Credit Mgmt.*, 905 F.3d 159, 161 (3d Cir. 2018).

355. See *Faulhaber*, *supra* note 43, at 1309.

356. See I.R.C. § 62(a) (omitting the charitable contribution deduction from the list of deductions used to compute adjusted gross income that are allowed if an individual does not elect to itemize); *Id.* § 63(d) (defining itemized deductions as deductions other than those allowed in arriving at adjusted gross income and other than those listed in Section 63(b)).

357. Michael Parisi, *Statistics of Income: Individual Income Tax Returns, Preliminary Data, Tax Year 2020*, INTERNAL REVENUE SERV. (2022), <https://www.irs.gov/pub/irs-soi/soi-a-inpr-id2201.pdf> [<https://perma.cc/4U> V3-VWNR]. Taxpayers who do not itemize can claim a limited charitable contribution deduction. I.R.C. Section 170(p).

358. *Id.*

359. See *Schizer*, *supra* note 78 and accompanying text.

top income quintile and 0.1% of which benefited taxpayers in the lowest income quintile.³⁶⁰

Professor Faulhaber suggested that information provided by charities may cause donors to overestimate their ability to claim a charitable contribution deduction.³⁶¹ In a 2012 article, she reports that, “Out of 500 randomly selected organizations that alerted potential donors of the tax benefits of donating, 351 told potential donors that donations were either ‘tax-deductible’ or ‘fully tax-deductible’; 117 slightly tempered this statement by telling potential donors that donations were deductible ‘to the extent allowable by law.’”³⁶² She further reported that just “16 of the 500 organizations suggested that the donor ‘consult with [a] tax advisor.’”³⁶³

Notwithstanding the tendency of charitable organizations to communicate in this way, at least one study suggests that individuals tend to *underestimate* their eligibility for the charitable contribution deduction and its benefits.³⁶⁴ In particular, Goldin and Listokin report that, in response to a 2011 survey, approximately 46% of respondents who itemized deductions mistakenly thought they were ineligible for the charitable contribution deduction, while 11% of respondents who claimed the standard deduction mistakenly thought they were eligible.³⁶⁵ Moreover, respondents tended to underestimate the magnitude of the tax subsidy.³⁶⁶ As Professors Thomas and Scharff observe, it is worth noting that the survey was conducted prior to legislative changes that had the effect of making significantly fewer taxpayers eligible for the deduction.³⁶⁷

Other survey evidence sheds light on individuals’ perceptions of the effect of a charitable contribution deduction. A survey of 1,131 U.S. individuals asked participants about the amount of tax liability reduction that follows from donating \$100 to charity, and only 58.8% of respondents noted correctly that the reduction in tax liability is less than \$100, while 25.2% of respondents indicated that tax liability would decline by exactly \$100.³⁶⁸

360. CONG. BUDGET OFF., THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN 2019, at 12, 14 (2021), <https://www.cbo.gov/system/files/2021-10/57413-TaxExpenditures.pdf> [<https://perma.cc/3CKS-BCZ4>].

361. Faulhaber, *supra* note 43, at 1316.

362. *Id.* at 1330.

363. *Id.*

364. Jacob Goldin & Yair Listokin, *Tax Expenditure Salience*, 16 AM. L. & ECON. REV. 144, 156–57 (2014).

365. *Id.*

366. *Id.* at 158.

367. Thomas & Scharff, *supra* note 42, at 814–15. Regarding the effect of legislative changes on taxpayer eligibility for the deduction, see, for example, *How Did the TCJA Affect Incentives for Charitable Giving?*, TAX POL’Y CTR. (Jan. 2024), <https://www.taxpolicycenter.org/briefing-book/how-did-tcja-affect-incentives-charitable-giving> [<https://perma.cc/CH2V-CL52>].

368. Lyon & Catlin, *supra* note 106, at 816.

E. Employers

Employers provide employees with tax law information in a variety of ways. As one example, some jurisdictions require that employers provide employees with information about the earned income tax credit (the “EITC”).³⁶⁹ The EITC is a tax credit that represents an important anti-poverty tool, providing some degree of economic relief for some taxpayers with incomes below specified thresholds.³⁷⁰ Eligibility for the EITC and the amount of the EITC depend on a variety of factors including, among others, the amount of the taxpayer’s earned income and how many “qualifying children” the taxpayer can claim.³⁷¹ For 2024, the maximum amount of the credit is \$632 for a taxpayer with no qualifying children; \$4,213 for a taxpayer with one qualifying child; \$6,960 for a taxpayer with two qualifying children; and \$7,830 for a taxpayer with three or more qualifying children.³⁷²

Not all taxpayers who are eligible for the EITC claim it. In 2016, an estimated 20% of taxpayers who were eligible did not claim the EITC.³⁷³ In terms of the dollar amount of benefits foregone, an estimated 15% of potential benefits went unclaimed in 2016.³⁷⁴ State and local laws requiring that employers provide employees with information about the EITC are designed to address this shortfall.³⁷⁵ But a study of the effectiveness of these notification laws found “no evidence that EITC notification laws increase EITC take-up.”³⁷⁶ By contrast, as the study’s authors note, other studies have found that more taxpayers do claim the credit when the IRS sends notices to taxpayers who have filed returns and appear to be eligible but did not claim the EITC, accompanied by forms they can use to claim the credit.³⁷⁷ In addition, outreach by the IRS to taxpayers who have not filed returns, encouraging them to file by providing them with information about free IRS filing options, increased filing rates by about one percentage point with 80% of those who were encouraged to file claiming a tax refund, generally because of the EITC and/or the Child Tax Credit.³⁷⁸

Employers provide employees with tax information about other topics as well. To take another example, imagine an employee of a corporation receives shares of corporate stock as compensation, subject to the condition that the employee cannot transfer the stock for a specified period of time and will forfeit the stock if their employment is terminated during that time period. After that time

369. For further discussion, see, for example, Cranor et al., *supra* note 47, at 397–98, 402–04.

370. See, e.g., Susannah Camic Tahk, *The Tax War on Poverty*, 56 ARIZ. L. REV. 791, 797–803 (2014).

371. I.R.C. § 32.

372. Rev. Proc. 2023-34, 2023-48 I.R.B. 1291.

373. *Do All People Eligible for the EITC Participate?*, TAX POL’Y CTR. (Jan. 2024), <https://www.taxpolicycenter.org/briefing-book/do-all-people-eligible-eitc-participate#:~:text=The%20IRS%20and%20Census%20Bureau,benefits%20are%20claimed%20each%20year> [<https://perma.cc/2M7W-FH58>].

374. *Id.*

375. See Cranor et al., *supra* note 47, at 397–98, 402–04.

376. *Id.* at 398.

377. *Id.*

378. Jacob Goldin, Tatiana Homonoff, Rizwan Javaid & Brenda Schafer, *Tax Filing and Take-up: Experimental Evidence on Tax Preparation Outreach and Benefit Claiming*, 206 J. PUB. ECON. 1, 1–2 (2022).

period, the employee's interest in the stock vests. The employee's tax treatment will depend on whether the employee files an election (a "Section 83(b) election") within thirty days of receiving the stock.³⁷⁹ Generally speaking, if the employee predicts that the stock will increase in value and predicts that they will continue to hold the stock until it vests, the employee is likely well-advised to file the election.³⁸⁰ If it later turns out that the stock does not increase in value or that the employee forfeits the stock, the employee may come to regret having made the election.³⁸¹

If an employee makes a Section 83(b) election and later wishes they had not, the employee must obtain a letter ruling from the IRS to revoke the election.³⁸² Revocation is allowed only if the employee was operating "under a mistake of fact as to the underlying transaction."³⁸³ While doubtlessly some employers provide accurate information, an examination of letter rulings in which the IRS denied relief to revoke Section 83(b) elections reveals examples of employers (at least allegedly) providing inaccurate or misleading information about Section 83(b) elections.³⁸⁴ In one, a taxpayer made the election after receiving "inaccurate and misleading" advice about its tax consequences from the in-house counsel of the taxpayer's employer.³⁸⁵ In another, a taxpayer received a packet of paperwork at the time of the initial grant with "sign here" stickers affixed at various spots, including on a Section 83(b) election form so that the taxpayer signed the form without considering its consequences and based on the assumption that signing was necessary to receive the grant.³⁸⁶ In a third, a taxpayer made the election because corporate officers allegedly assured the taxpayer of continued employment and misleadingly advised the taxpayer that the election was easily revocable if the taxpayer's employment ended.³⁸⁷

Finally, employers provide employees with information about the tax consequences of various other benefits they offer. To take one example, employers provide employees information about the tax consequence of health FSAs, discussed above in Subsections II.A.4 and II.A.5. A 2017 study examined the effectiveness of emails sent by employers to federal employees about FSAs and found that the emails did not tend to increase the FSA participation rate.³⁸⁸ This was true across three variations of email messages – one that noted that employees could "save money" by participating, a second that noted that an average employee could "save \$949," and a third that noted that participation would, on

379. I.R.C. § 83(b).

380. See, e.g., BORIS I. BITTKER & LAWRENCE LOKKEN, FEDERAL TAXATION OF EMPLOYEE COMPENSATION ¶ 2.5 (2025).

381. *Id.* ("The election has a cost: If the property is subsequently forfeited, the taxpayer may not deduct the amount previously included in income.")

382. See I.R.C. § 83(b)(2); Treas. Reg. § 1.83-2(f) (2016).

383. Treas. Reg. § 1.83-2(f) (2016).

384. See, e.g., I.R.S. Priv. Ltr. Rul. 8418037 (Jan. 26, 1984).

385. *Id.*

386. I.R.S. Priv. Ltr. Rul. 200212021 (Dec. 20, 2001).

387. I.R.S. Priv. Ltr. Rul. 8224047 (Mar. 16, 1982).

388. Jessica Leight & Nicholas Wilson, *Framing Flexible Spending Accounts: A Large-Scale Field Experiment on Communicating the Return on Medical Savings Accounts*, HEALTH ECON., 1–14 (2019).

average, produce “savings of 36.5%.”³⁸⁹ The authors of the study noted that failure to read (and failure to read all of the details) may offer a partial explanation for the lack of effect—50% of recipients opened the emails and 1% clicked the link that provided them with information that described the benefits of participating.³⁹⁰ The authors also note that the findings are consistent with lack of information being not the only (or primary) barrier to participation.³⁹¹

F. Schools

In some jurisdictions, schools or related governmental agencies are also required to provide families with information about the EITC in some cases.³⁹² It is possible that these notices might reach some taxpayers who do not claim the EITC and do not receive notices from an employer.³⁹³ With respect to this possibility, it is worth noting that self-employed individuals (who would not receive information from an employer) tend to be more likely to fail to claim the EITC.³⁹⁴ Of course, many factors other than lack of information can explain the lower rate of claiming the EITC in the case of self-employed individuals.³⁹⁵

G. Pediatricians

A Boston pediatricians’ office provides parents and guardians with information about tax filing and provides tax filing assistance on site.³⁹⁶ For some taxpayers, tax filing can offer key economic benefits—including receipt of the EITC and receipt of the Child Tax Credit.³⁹⁷ The Boston pediatricians’ office surveyed clients who used the on-site tax filing service, and, of the 244 clients who responded to the survey, 21% had not previously filed tax returns, and 14%

389. *Id.* at 2.

390. *Id.*

391. *Id.*

392. *See, e.g.*, Cal. REV & TAX § 19853(b)(1) (“The state departments and agencies that serve those who may qualify for VITA or state and federal antipoverty tax credits, including the federal and the California EITC, as defined in subdivision (e) of Section 19852 [to include “The State Department of Education with respect to information from the free or reduced-price meal program and National School Lunch Program”], shall notify their program recipients that they may be eligible for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, at least once per year during the months of January through March, or, alternatively, shall provide both notifications during a regularly scheduled contact with a recipient by telephone, mail, or electronic communication, or by an in-person communication.”); *Id.* § 19853(b)(2) (“State departments or agencies that serve those who may qualify for VITA or state and federal antipoverty tax credits, including the federal and the California EITC, as defined in subdivision (e) of Section 19852, and that do not directly communicate with persons or households with persons who may qualify for VITA, CalFile, and state and federal antipoverty tax credits, including the federal and the California EITC, may communicate indirectly through agencies, districts, or regulated entities that serve eligible persons or households with eligible persons.”).

393. *See Do All People Eligible for the EITC Participate?*, *supra* note 373.

394. *Id.*

395. *Id.*

396. Howard Gleckman, *How Doctors Are Expanding Access to the Earned Income Tax Credit*, TAX POL’Y CTR. (Aug. 17, 2018), <https://www.taxpolicycenter.org/taxvox/how-doctors-are-expanding-access-earned-income-tax-credit> [https://perma.cc/TE55-VY3J].

397. *Id.*

reported receiving the EITC for the first time.³⁹⁸ Unlike the employer-provided EITC information discussed above, this program involves not only providing information about filing but also making filing easier, which may increase its effectiveness.³⁹⁹

III. CATEGORIZATION OF TAX INFORMATION AND TAX INFORMATION PROVIDERS

The examples described above vary along a number of dimensions. First, they vary in terms of whether or not the information provider has a direct financial stake in the transaction about which they are providing information. Second, some of the communications are broadcast to the public generally while others involve one-on-one conversations between parties to a transaction. Third, some information is shared by parties who engage in numerous, similar transactions while other information is provided by parties engaged in only one transaction. Fourth, in some cases, applicable law requires that a party provide tax law information, while, in other cases, the party provides the information voluntarily. Fifth, the examples vary in terms of whether the information provided is accurate or, instead, inaccurate or at least potentially misleading. Sixth, the examples vary in that, in some cases, the information is about tax compliance (in other words, tax filing) while, in other cases, it is about tax planning. This Part will elaborate on each of these sources of variation, in turn, and describe why the different types of variation may be significant.

A. *Motivation of Information Provider*

The potential motivations of the information providers vary across the different examples. In some cases, the information provider has no direct financial stake in the transaction about which they are providing tax information, while in other cases they do. Employers, schools, and pediatricians providing information about the EITC and the child tax credit fall in the former category, for instance.⁴⁰⁰ By contrast, the examples described above in Section II.A, debt collectors providing information about the tax ramifications of nonpayment, and recipients of charitable contributions providing information about the charitable contribution deduction fall in the latter category. Legal constraints aside, we might expect that information providers with a direct financial stake in a transaction will have

398. Lucy E. Marcil et al., *Free Tax Services in Pediatric Clinics*, 141 PEDIATRICS 1 (2018). See also Michael K. Hole, Lucy E. Marcil & Robert J. Vinci, *Improving Access to Evidence-Based Antipoverty Government Programs in the United States*, 171 JAMA PEDIATRICS 211 (2017).

399. See Cranor et al., *supra* note 47, at 399 (making a similar observation about notices sent by the IRS accompanied by forms by stating, “the IRS-provided EITC notices . . . may raise take-up either by increasing awareness or by simplifying the credit-claiming process. By focusing on employer-provided notices, our results can isolate the effect of interventions that provide awareness alone, without a change in the credit-claiming process”).

400. See *supra* Sections II.E–II.G.

less incentive to ensure that recipients of the information do not overestimate the transaction's tax benefits. As Professor Faulhaber notes,

Charitable organizations, for example, have every reason to make strong claims about the deductibility of donations if they believe . . . that these claims will induce taxpayers to give more in donations. They have far fewer reasons to temper these strong claims by explaining the limits of the deductibility of charitable contributions in detail, and it appears that they do not feel the need to do so.⁴⁰¹

B. *Breadth of the Audience*

The breadth of the audience varies across the different examples. At one extreme, many of the examples involve communications that are broadcast to the public generally. This is true of the information contained on websites of real estate companies,⁴⁰² banks,⁴⁰³ sellers of electric vehicles and other products subsidized by tax credits,⁴⁰⁴ drugstores and other sellers of health-related products,⁴⁰⁵ health FSA administrators,⁴⁰⁶ and recipients of charitable contributions.⁴⁰⁷

At the other end of the spectrum, some examples involve communications directed towards a specific recipient. This includes statements that gave rise to the contract-law-based challenges described above in Subsection II.A.6—namely, the statement made by the seller of a recreational vehicle lot to a particular buyer⁴⁰⁸ and the statement made by the seller to the buyer of an interest in a pizza business.⁴⁰⁹

This source of variation matters for two reasons. First, the breadth of the audience may affect whether there is any legal remedy for inaccurate information, and what the doctrinal basis is for a legal remedy.⁴¹⁰ Second, the breadth of the audience affects the communicator's ability to ensure the information is tailored and accurate.⁴¹¹ If the communication is directed to the public generally—or even if it is directed to more than one taxpayer—the communicator will have a more difficult time ensuring that the information is complete, accurate and not potentially misleading, given the myriad ways in which tax consequences depend on the characteristics of a particular taxpayer.⁴¹² If the communication is

401. Faulhaber, *supra* note 43, at 1341.

402. *See supra* Subsection II.A.1.

403. *See supra* Subsection II.A.1.

404. *See supra* Subsections II.A.2 and II.A.3.

405. *See supra* Subsection II.A.4.

406. *See supra* Subsection II.A.5.

407. *See supra* Section II.D.

408. *See supra* notes 300–04 and accompanying text.

409. *See supra* notes 305–11 and accompanying text.

410. For instance, in some cases, general communications by a commercial seller may fall within exceptions from applicable regulations.

411. *See* Marian, *supra* note 46, at 10–11.

412. *See id.* (“The nonfinancial tax disclosure requirements put issuers in an impossible position. Even if investors are all ‘reasonable’ and they all invest in the same security, different investors still face different tax consequences from their investments. For example, investors face different tax rates depending on their tax

delivered to one particular recipient, the communicator is better positioned to request relevant information and ensure that the information is accurate and complete.⁴¹³ While senders have greater ability to tailor one-on-one communications, however, they may not avail themselves of the opportunity to do so. For instance, the debt collector letters described above in Section II.C involve communications sent to specific recipients, but the debt collector likely sent form letters to all recipients, with some modifications.⁴¹⁴ Along similar lines, the employees of companies that provide information to the public generally on company websites may, very well, share that same information with individual customers in one-on-one communications.⁴¹⁵

One additional observation regarding how audience breadth interacts with the tailored nature of information warrants emphasis. Some of the websites described above include interactive tools that allow potential customers to input information to obtain a description of their tax consequences.⁴¹⁶ For example, one car seller's website includes an online tool that customers can use to estimate their tax savings resulting from the purchase of a car under the expensing rules.⁴¹⁷ While, initially, the availability of online tools might seem to represent a way to tailor to each customer's specific facts broadly available information, closer analysis reveals that such tools may, in some sense, represent the worst of both worlds.⁴¹⁸ On the one hand, by allowing users to input their own information, the tools may create the impression that the information provided is tailored and accurate so that users are less likely to think they need to verify the information elsewhere.⁴¹⁹ Indeed, one website describes its online tool as allowing users to "[a]djust the eligibility filters to personalize the results."⁴²⁰ On the other hand, if the tools do not collect and base their responses upon all potentially relevant information, their responses may still be inaccurate.⁴²¹ For instance, the car seller's online tool that estimates tax savings from the expensing rules collects some necessary information (the tax year, the cost of the car, and the customer's tax rate), but it does not collect other key information (such as how the

bracket, tax status, or how long they held the security. Some investors may have losses they can use to offset gains while others do not have losses or otherwise are unable to take advantage of such losses. Some may face different tax regimes altogether because they are classified as 'foreign' or 'domestic' taxpayers. Investors' classification as 'corporations,' 'individuals,' 'partnerships,' or any other tax law category, inevitably changes their tax consequences.").

413. In that case, the various factors that could affect tax treatment could be determined.

414. In one case, for instance, the court notes, "Although CMS sends form letters, it personalizes those letters, offering an individualized payment option, and often multiple options, to debtors to clear their debt." *Id.*

415. For example, possibly some of the information that companies make available on their websites generally is shared by their employees when dealing with customers.

416. See *supra* notes 162–63, 274 and accompanying text.

417. *Incentives for Small Business Owners*, JEEP, <https://www.jeep.com/tax-benefits-for-businesses.html> [<https://perma.cc/7ZRT-FMWL>] (last visited Dec. 29, 2025).

418. For similar observations in the context of tools used by government agencies, see Blank & Osofsky, *Automated Legal Guidance*, *supra* note 30, at 184.

419. For similar observations in the context of tools used by government agencies, see *id.* at 185.

420. *Electric Vehicle and Charger Incentives*, ACURA, <https://www.acura.com/why-go-electric> [<https://perma.cc/J2E5-8YH2>] (last visited Dec. 29, 2025).

421. *Incentives for Small Business Owners*, *supra* note 417.

taxpayer will use the car).⁴²² Parallel concerns plague an interactive online tool used by the IRS to dispense informal guidance to taxpayers.⁴²³

C. *Frequency of Transactions*

In the context of some of the examples, both parties are involved in a one-off transaction. This is true, for instance, in the case of the seller of an interest in a pizza business who provided information to the buyer about the tax consequences of the purchase.⁴²⁴ In the context of other examples, one of the parties is a repeat player—engaging in many similar transactions. This is true, for example, of many of the sellers described above in Subsections II.A.1—II.A.5, the seller of recreational vehicle lots discussed above in Subsection II.A.6, debt collectors discussed above in Section II.C, and recipients of charitable contributions discussed above in Section II.D.

This source of variation matters because if one of the parties is a repeat player, they are better positioned to obtain accurate information about the transaction's tax treatment.⁴²⁵ This is particularly true with respect to aspects of tax treatment that do not vary depending on the tax characteristics of the other party (or that vary in limited ways).⁴²⁶ On a related note, in the context of some of the examples, one of the parties may have more knowledge and expertise about relevant tax law than the other, while, in the context of other examples, they may stand on more even footing.⁴²⁷

Arguably, when one party is a repeat player so that they are better positioned to acquire relevant tax expertise (or when they do have more relevant tax expertise), the law should be more inclined to grant a legal remedy when the information they provide is inaccurate.⁴²⁸ At least in the context of some doctrines, it is possible that courts already take this into account. For instance, although not explicitly discussed by the courts, this justification could explain why a court granted legal relief to the buyer in the recreational vehicle lot case⁴²⁹ while a court did not grant legal relief to the buyer in the case involving the sale of an interest in the pizza business.⁴³⁰

422. *Id.*

423. For discussion of this tool and related concerns, see Blank & Osofsky, *Automated Legal Guidance*, *supra* note 30, at 185.

424. *See supra* notes 305–11 and accompanying text.

425. This may offer an explanation for the court's decision in the case involving sale of solar water heaters discussed above. *See supra* notes 180–81 and accompanying text.

426. *See supra* notes 180–81 and accompanying text.

427. Likewise, this may offer an explanation for the court's decision in the case involving sale of solar water heaters discussed above. *See supra* notes 180–81 and accompanying text.

428. Along somewhat similar lines, Professor Field notes, "tax transition risk-shifting agreements are most likely to be normatively desirable when sophisticated parties contract with each other." Heather M. Field, *Allocating Tax Transition Risk*, 73 *TAX L. REV.* 157, 161 (2020).

429. *See supra* notes 300–04 and accompanying text.

430. *See supra* notes 305–11 and accompanying text.

D. *Voluntariness*

In some cases, applicable law requires that a party provide tax law information. For instance, applicable law requires securities issuers to provide tax information in some cases, as discussed above in Section II.B, and, in some cases, employers and schools are required to provide tax information to various parties as discussed above in Sections II.E and II.F. In other cases, a party provides the information voluntarily.⁴³¹ This distinction matters for two reasons. One, it likely affects the source (and, in some cases, the availability) of a legal remedy if the information provided is inaccurate.⁴³² Two, it affects the steps that lawmakers would take if they wanted to adjust the scope and type of information that a party provides.⁴³³

E. *Existence and Types of Inaccuracy*

In some of the examples, a third party provides bare bones information that could never be inaccurate in any meaningful sense. For instance, some third parties simply alert individuals to the potential benefits of tax filing and provide them with information about how they can file.⁴³⁴

By contrast, some third parties provide information that is inaccurate or, at least, potentially misleading.⁴³⁵ The ways in which the statements are inaccurate or potentially misleading vary. In some cases, the information is flatly wrong. For instance, some websites refer to the cap on “acquisition indebtedness” as \$1,000,000 rather than \$750,000,⁴³⁶ some websites note that the cost of mortgage insurance may be deductible which was incorrect as of when the websites were visited,⁴³⁷ at least one website refers to the cap on the amount of health FSA funds that can be carried forward to the following year as \$500 when it is, in fact, a higher, inflation-adjusted figure,⁴³⁸ some websites incorrectly note that certain products are only FSA eligible with a prescription,⁴³⁹ and at least one lender’s website provides outdated figures for the income level at which the student loan interest deduction is phased out without referring to the figures as applicable to a particular year.⁴⁴⁰ In all of these cases, the inaccurate information is outdated—

431. See *supra* Section II.G.

432. This is also true of many of the examples described above in Section II.A.

433. For instance, misleading information provided by an issuer of securities can form the basis for a legal claim, as discussed above in Section II.B.

434. In other words, when lawmakers require disclosure, they could adjust the applicable rules to specify the types of information that should be disclosed.

435. See, e.g., *supra* Sections II.E (discussion of employers notifying employees about the EITC), II.F (schools), and II.G (pediatricians).

436. See *supra* Part II.

437. See *supra* notes 101, 122 and accompanying text.

438. See *supra* notes 101, 119–21 and accompanying text.

439. See *supra* notes 218–19 and accompanying text.

440. See *supra* note 226 and accompanying text.

441. See *supra* notes 286–89 and accompanying text.

the information provider may have either failed to update posted information to reflect legal changes or based posted information upon outdated sources.⁴⁴¹

In other cases, statements are potentially misleading because they affirmatively exaggerate the likelihood that tax consequences justify a purchasing or borrowing decision. For example, some real estate companies and banks indicate that *most* or *many* homeowners benefit from a home mortgage interest deduction when, in fact, a large share of homeowners do not.⁴⁴² Along similar lines, one drugstore company's website notes that, "in most cases" FSA funds will not roll-over but "in some cases" plans may allow an extra 2.5 months or allow rollover of some funds to the following year.⁴⁴³ Existing data suggests that the inverse is true—in *most* cases, plans allow for rollover of some funds or a grace period but, in *some* cases, funds will not rollover.⁴⁴⁴

In another set of cases, statements are potentially misleading because they do not fully discuss caveats or exceptions. For example, commercial sellers or FSA administrators indicate that products like humidifiers or exercise equipment are health FSA eligible with a doctor's recommendation without explaining (or, at least without clearly explaining) instances in which this may be untrue.⁴⁴⁵ In some cases, the sellers may be engaged in the type of intentionally unscrupulous behavior the IRS warned taxpayers about in a recent alert.⁴⁴⁶

In other cases, the potentially misleading nature of the information may stem from an effort to explain, in simple terms, law that is complex. Particularly when tax treatment depends upon the facts and circumstances of each individual case and varies based upon each taxpayer's unique circumstances, making clear any universal statements about tax treatment is a difficult endeavor.⁴⁴⁷ For this reason, Professor Marian has observed that securities issuers cannot feasibly disclose every possible tax consequence faced by every type of investor.⁴⁴⁸ As a result, they omit certain topics from the scope of their disclosures, and, if an investor reads the disclosure, they might "erroneously assume that the tax consequences described therein apply to them."⁴⁴⁹ Relatedly, as Professors Blank and Osofsky note, informal IRS guidance sometimes leaves out details, exceptions, and caveats to present tax law as simpler than it actually is.⁴⁵⁰ Many of the examples they identify involve efforts by the IRS to explain aspects of tax law that are heavily dependent on the facts and circumstances of each particular case.⁴⁵¹ While omitting the exceptions and caveats may make the guidance more readable for users whose tax treatment is not affected by the omitted details,

441. See *supra* notes 435–40.

442. See *supra* Subsection II.A.1.

443. See *supra* note 220 and accompanying text.

444. See *supra* note 221 and accompanying text.

445. See *supra* notes 243–45 and 261–65 and accompanying text.

446. See *supra* notes 252–53 and accompanying text.

447. See Marian, *supra* note 46, at 10–11.

448. *Id.* at 19.

449. *Id.*

450. Blank & Osofsky, *Simplexity*, *supra* note 30, at 193–94.

451. See Cauble, *Administering Facts-and-Circumstances-Based Tax Tests*, *supra* note 30, at 251–52.

doing so has the potential to mislead users whose tax treatment is governed by the exceptions and caveats.

Variations on the type of inaccuracy are significant for three reasons. First, information providers may have an easier time addressing and preventing some inaccuracies.⁴⁵² Flatly incorrect statements, for instance, may be easier to avoid and correct than statements that might be misread because they omit exceptions and caveats.⁴⁵³ Second, the availability of a legal remedy, in some cases, may turn on the type of inaccuracy.⁴⁵⁴ While not invariably the case, if an information provider simply omits some caveats and warns users that the information does not cover all details so that they should check with their own tax advisor, users who regret acting based upon the information may find themselves without an effective legal remedy.⁴⁵⁵

Third, the inability to cover every possible exception and caveat is less likely to plague the equivalent of what Professor Marian describes as “dual-level” tax disclosure in the securities law context.⁴⁵⁶ As he explains and defines it, “dual-level” tax disclosure is information about the issuer’s tax treatment that could affect how investors are taxed (such as whether the issuer is a corporation or a partnership for tax purposes).⁴⁵⁷ As he notes, an issuer providing “dual-level” tax disclosure serves a useful purpose because “dual-level” tax disclosure relays information in the possession of the issuer and from which investors can determine their own tax treatment.⁴⁵⁸ By contrast, covering all the relevant tax outcomes becomes unwieldy when the issuer wades into informing investors about tax treatment that turns on investor-level tax characteristics (such as the investor’s tax classification, the investor’s tax bracket, the period of time during which the investor held the security, gains and losses the investor recognized from other sources, and a multitude of other factors).⁴⁵⁹ Thus, with respect to investor-level tax information, there is a heightened risk that, as one court put it, “singling out one [or some] of many potential tax consequences” may be “more likely to create than alleviate confusion.”⁴⁶⁰ For that reason, that court suggested including with a settlement notification “[g]eneric language stating that it is advisable to consult a tax specialist.”⁴⁶¹ That court’s suggestion aligns with

452. See *supra* note 453 and accompanying text.

453. Correcting outdated information would, for instance, generally not require including additional information but would merely require updating the information already provided.

454. See *supra* notes 165–75 and accompanying text.

455. For instance, consider the claim brought against a car seller regarding information provided about tax credits discussed above. *Supra* notes 165–75 and accompanying text.

456. Marian, *supra* note 46, at 49.

457. *Id.* at 49–51.

458. *Id.* at 50 (“All investors, average and non-average, will find in dual-level disclosures the information that—together with their personal tax information—allows them to calculate the tax cost associated with the investment.”); *id.* at 57 (“Issuers will not be required to generate any new information because they already hold all the dual-level tax information.”).

459. *Id.* at 10–11, 13–14.

460. *Karcich v. Stuart (In re Ikon Office Sols., Inc.)*, 194 F.R.D. 166, 188 (E.D. Pa. 2000). See also Marian, *supra* note 46, at 40 (discussing this case).

461. *In re Ikon Office Sols., Inc.*, 194 F.R.D. at 188.

Professor Marian's proposal for how securities disclosure requirements should address investor-level information.⁴⁶²

Conceptual equivalents to the distinction between "dual-level" tax information and "investor-level" tax information arise outside of the securities law context.⁴⁶³ To take some examples, consider, first, a company selling an electric vehicle to a buyer. The seller could quite usefully inform potential buyers about whether the characteristics of a particular electric vehicle (including its technical features and its MSRP) make it so that a buyer is potentially eligible for a tax credit provided the purchase occurred while the credit was available. This is the equivalent of "dual-level" tax information.⁴⁶⁴ It is information the buyer needs to determine eligibility for the credit, it is information that the seller is in a better position to access than the buyer, and it is the same across all buyers of any specific car at any particular MSRP. When turning to buyer-specific characteristics (the equivalent of investor-level information), rather than informing buyers about just some of the factors that could affect eligibility for the credit (like the buyer's income), it might be less misleading if sellers either (1) described, in detail, how all of the buyer's facts could affect the availability and amount of the credit or (2) warned buyers that many factors (including, but not limited to, their income) could affect eligibility and, in some cases, make the buyer entirely ineligible so they should consult their own tax advisors.⁴⁶⁵

As a second example, consider a charitable organization informing potential donors about the tax consequences of donating. When the organization indicates that it is an eligible recipient of charitable contributions, it provides useful, "dual-level" tax information.⁴⁶⁶ If the organization wades into providing information about each donor's tax treatment, it might be less misleading to either: (1) describe, in detail, how all of any donor's facts could affect the tax treatment of donating and the amount of any resulting tax benefit or (2) warn donors that many factors (including, but not limited to, whether they claim the standard deduction) could affect the tax consequences of donating and, potentially, make it so that donating provides no tax benefit, so they should consult their own tax advisors.⁴⁶⁷

462. Marian, *supra* note 46, at 47–49.

463. *Id.* at 46 (explaining this distinction in the securities law context).

464. *Id.* at 50 (explaining the concept of "dual-level" tax information).

465. For discussion of various factors that affect eligibility for the credit, see *supra* Subsection II.A.2.

466. For discussion of when organizations are eligible recipients, see, e.g., Bittker et al., *supra* note 326, at § 25:2.

467. Somewhat relatedly, Professor Faulhaber notes,

[G]iven that the determination of whether a taxpayer can deduct a charitable contribution is a complicated one, based on the way in which a host of tax provisions apply to each individual taxpayer, it may make sense that many of the marketing materials issued by charitable organizations refer to the benefits of the deduction in the broadest of terms, without identifying any possibly relevant limitations. The result, however, is that . . . private third-party beneficiaries have presented it in such a way as to both increase the salience of the deduction and decrease the salience of its limitations

Faulhaber, *supra* note 43, at 1342.

F. Information about Compliance versus Planning

In some cases, third parties provide information about compliance—alerting taxpayers to the potential benefits of tax filing and providing information about how to file.⁴⁶⁸ In other cases, they dispense information about planning—describing the tax consequences of engaging in a potential transaction.⁴⁶⁹

This distinction matters because recipients of inaccurate planning information may be more likely to rely upon it to their detriment than recipients of inaccurate compliance information.⁴⁷⁰ When a third party simply tells a taxpayer that filing a tax return may entitle them to certain tax benefits, the taxpayer may avoid taking any missteps based upon the information as long as they seek tax filing assistance (or use tax return filing software).⁴⁷¹ In other words, the intervention of an expert (or software) at the compliance stage can ensure the taxpayer claims accurate tax treatment. Of course, not all taxpayers will obtain accurate information prior to filing, so inaccurate information at the compliance stage could lead some taxpayers astray.

Assuming that taxpayers are less likely to seek guidance at the planning stage than they are at the tax return filing stage, they might be even more likely to act based upon incorrect planning information and discover too late that it is wrong.⁴⁷² For example, imagine a taxpayer purchases a home and takes on a loan of a given amount because, based on information provided by a real estate company or a bank, they believe they are entitled to a home mortgage interest deduction and a property tax deduction. Imagine they do not verify the tax consequences prior to purchasing the home. When they later file a tax return, imagine they claim the standard deduction. If so, they will not, in fact, benefit from the home mortgage interest deduction and property tax deduction, and they may come to regret, too late, the decision to purchase (or, at least, the decision to purchase for a particular price and to take on a particular amount of debt).⁴⁷³

In some cases, planning information might also affect compliance in such a way that the taxpayer does not suffer harm but, instead, harm is borne by the public generally in the form of loss of tax revenue.⁴⁷⁴ For example, imagine the seller of a product provides information that leads a taxpayer to believe,

468. This is true, for instance, of the EITC information provided by employers and schools described above in Section II.E and Section II.F and the tax filing information provided by the pediatricians' office described above in Section II.G.

469. This is true, for instance, of many of the examples in Section II.A.

470. See Emily Cauble, *Taxpayers' Tax Election Regrets*, 77 TAX LAW 77, 121 (2023) (noting that some taxpayers may seek tax advice only in the context of obtaining tax return preparation assistance).

471. See Soled & Thomas, *supra* note 2, at 168 (noting "taxpayers now routinely rely upon tax return preparers and tax return preparation software").

472. See, e.g., Leviner, *supra* note 31, at 1087–90 (describing the "key role tax preparers assume" in the tax return filing stage).

473. See also Faulhaber, *supra* note 43, at 1338 (noting that, if taxpayers overestimate the tax benefits they receive from the home mortgage interest deduction, that "could potentially lead to increased consumption, either because taxpayers buy homes that they would not have purchased or because taxpayers buy more expensive homes than they otherwise would have purchased").

474. This occurs if the misreporting is never detected.

incorrectly, that the product is FSA eligible. The taxpayer purchases the product using FSA funds. If the taxpayer's plan administrator later denies the claim, the taxpayer suffers harm if they regret the purchase upon discovering it was ineligible. If, however, the claim is not challenged by the plan administrator and the error is never uncovered by the IRS, the taxpayer suffers no harm, but less tax revenue is collected. In this example, misleading information interacts with tax self-reporting so that information that leads a user astray imposes costs not on the misled user but, instead, on the public generally.⁴⁷⁵

IV. IMPLICATIONS

As described above in Part II, third parties provide taxpayers with information about tax law in a variety of contexts, in ways that vary along numerous dimensions as explained in Part III. An examination of third parties' information-providing role has several important implications. First, in many of the Part II examples, third parties broadcast information contained in informal IRS guidance. As a result, for better or for worse, they magnify the impact of informal IRS guidance, which underscores the need to ensure that informal IRS guidance does not steer taxpayers in the wrong direction. Second, many of the examples identified in Part II entail information that is, in substance, less accurate for taxpayers with lower incomes, which has troubling equity implications. Third, an examination of third parties' tax law (mis)information providing role suggests the need for an evaluation of existing legal doctrine governing the flow of information which, in some cases, may be incoherent. Fourth, some of the examples contained in Part II represent appropriate topics for IRS alerts. Of course, issuing IRS alerts and undertaking steps to ensure that IRS informal guidance conveys accurate impressions require additional resources.⁴⁷⁶ Therefore, the need for IRS action in this area represents one more reason why the current steps to scale back IRS funding are detrimental.⁴⁷⁷ Finally, modifications to existing law could compound the positive impact of helpful information provided by third parties. Each of these implications is discussed, in turn, below.

A. Amplification of IRS Informal Guidance

In a number of the examples described above in Part II, a commercial seller's website refers users to informal IRS guidance (such as IRS publications) for additional information that they might consider before making a purchasing or borrowing decision.⁴⁷⁸ Informal IRS guidance serves a useful role in many cases by making tax law more understandable to a non-expert audience. Despite

475. The public bears the cost in the form of less tax revenue collection.

476. See, e.g., Blank & Osofsky, *Simplexity*, *supra* note 30, at 252–53 (noting that, for instance “red-flagging”—referring to the possibility of the IRS updating IRS publications to “red-flag IRS simplifications explicitly (through footnotes, notations, interactive online links, appendices, or other means)—would “impose an additional requirement on a resource-constrained IRS”).

477. See *supra* note 68 and accompanying text (for discussion of other detrimental effects).

478. See *supra* notes 120, 127, 149, 210, 225, 289, 292, and 299 and accompanying text.

this, Professors Blank and Osofsky have catalogued examples of statements in informal IRS guidance that could mislead users—sometimes the guidance is unduly unfavorable (*e.g.*, it might lead users to believe, incorrectly, that they are not entitled to deductions or credits) and sometimes the guidance is unduly favorable (*i.e.*, it might lead users to believe, incorrectly, that they are entitled to deductions or credits).⁴⁷⁹

Because of unduly *unfavorable* informal IRS guidance, a taxpayer might refrain from claiming a tax credit or deduction to which they are, in fact, entitled. This results in inequity, particularly if taxpayers who are not well-advised are more likely to follow unduly unfavorable guidance.⁴⁸⁰ Unduly *favorable* guidance has tax-revenue-reducing and inequitable effects. A taxpayer who follows unduly favorable guidance and is not audited pays less tax than they owe, leading to the government collecting less tax revenue than intended.⁴⁸¹ By contrast, if the taxpayer's return is audited and the error is discovered, they will owe additional tax liability, interest, and potential penalties.⁴⁸² Moreover, the chances of audit are not the same for all taxpayers. A recent study estimated that Black taxpayers are audited at rates that are between 2.9 and 4.7 times the audit rate of non-Black taxpayers.⁴⁸³ In addition, EITC recipients are audited with greater frequency than other taxpayers.⁴⁸⁴

At the tax return filing stage, use of tax return preparation software or assistance from a tax return preparer might spare some taxpayers from being misled by inaccuracies in informal tax guidance.⁴⁸⁵ This is not, however, invariably true. As others have noted, TurboTax incorporates IRS publications into the information that it shares with users in various ways.⁴⁸⁶ In addition, taxpayers with incomes below specified thresholds are eligible for free tax filing assistance through Volunteer Income Tax Assistance (“VITA”) programs, and, as others have noted, VITA volunteers may be trained based on IRS publications.⁴⁸⁷ Thus, the message of informal IRS guidance is amplified at the tax filing stage.

479. Blank & Osofsky, *Simplexity*, *supra* note 30, at 207–28; Blank & Osofsky, *Automated Legal Guidance*, *supra* note 30, at 210–17.

480. Blank & Osofsky, *Simplexity*, *supra* note 30, at 243–44; Blank & Osofsky, *Automated Agencies*, *supra* note 30, at 2172; Blank & Osofsky, *Inequity*, *supra* note 30, at 1129–30; Cauble, *Detrimental Reliance*, *supra* note 30, at 463–65.

481. See Blank & Osofsky, *Simplexity*, *supra* note 30, at 242.

482. For further discussion, see Cauble, *supra* note 451, at 255.

483. See Hadi Elzayn et al., *Measuring and Mitigating Racial Disparities in Tax Audits* 24 (Stan. Inst. For Econ. Pol’y Rsch., Working Paper, 2023), <https://drive.google.com/file/d/1kA7CG3cLq6eWmwBVgTDOIMhxuGZwRJ5O/view?pli=1> [<https://perma.cc/2NRH-TET6>]; see also Steven A. Dean, *Filing While Black: The Casual Racism of the Tax Law*, 2022 UTAH L. REV. 801, 802 (2022) (“ProPublica has shown, for example, that because of the perils of filing income taxes while Black, the five most heavily audited counties in the United States are Black and poor.”).

484. See Margot L. Crandall-Hollick, *Audits of EITC Returns: By the Numbers*, CONG. RSCH. SERV. (June 13, 2022), <https://www.congress.gov/crs-product/IN11952> [<https://perma.cc/KN9Z-Y8UB>].

485. See Soled & Thomas, *supra* note 2, at 168 (noting “taxpayers now routinely rely upon tax return preparers and tax return preparation software”).

486. Blank & Osofsky, *Simplexity*, *supra* note 30, at 229–30; Monroe, *supra* note 30, at 94–96.

487. Monroe, *supra* note 30, at 96–98.

The examples described above in Part II illustrate how informal IRS guidance's reach is also extended at the tax planning stage. Many commercial sellers' websites refer users to informal IRS guidance for additional information that they might consider before making a purchasing or borrowing decision.⁴⁸⁸ If a taxpayer follows this advice—even if they seek expert assistance at the filing stage that disabuses them of their misunderstandings—it may be too late if they already made planning decisions that they now regret.⁴⁸⁹ This additional channel through which informal IRS guidance is distributed underscores the need to take steps to reduce the likelihood that it will mislead users.⁴⁹⁰

B. Unequal Inaccuracy

A skeptical reader might wonder whether there is anything unique about tax law information. In a variety of contexts, commercial sellers and others dispense information about complex topics that might be inaccurate or incomplete and that is more likely to mislead consumers or other contracting parties if they are not well advised.⁴⁹¹ The results are inequitable, especially given that consumers with lower incomes are likely less able to afford expert advice.⁴⁹²

Two responses to this observation are warranted. First, in some cases, tax law information is one specific example of this more general phenomenon.⁴⁹³ However, the familiarity of the phenomenon does not make it less troubling.

Second, in some cases, tax law information is different in that substantively the information is more likely to inaccurately overstate the tax benefits of a transaction as applied to taxpayers with lower incomes. This is true, for instance, when a commercial seller or charitable organization provides information about a tax benefit that is only available to taxpayers who itemize deductions.⁴⁹⁴ It is also true when a company that administers FSAs, for instance, provides information about the tax savings from participating that is based upon an average tax rate.⁴⁹⁵

From an equity standpoint, the fact that some information is less accurate for taxpayers with lower incomes is troubling.⁴⁹⁶ Moreover, this equity concern

488. For example, see *supra* notes 120, 127, 149, 210, 225, 289, 292, and 299 and accompanying text.

489. Cauble, *Detrimental Reliance*, *supra* note 30, at 455–56.

490. For discussion of some of those steps, see Blank & Osofsky, *Simplexity*, *supra* note 30, at 251–63; Cauble, *supra* note 30, at 285–94.

491. See, e.g., *supra* Section II.A (providing examples in the tax context).

492. See Brian Galle, *Hidden Taxes*, 87 WASH. U. L. REV. 59, 100 (2009) (“Increasing the difficulty of identifying the burden of a tax may shift its incidence, if different taxpayers differ in their willingness or ability to identify the tax.”); David Gamage & Darien Shanske, *Three Essays on Tax Salience: Market Salience and Political Salience*, 65 TAX L. REV. 19, 74–75 (2011) (describing potential distributional concerns that could arise from hidden taxes but also noting the possibility that adjustments to the tax rate structure could compensate for distributional concerns); Deborah H. Schenk, *Exploiting the Salience Bias in Designing Taxes*, 28 YALE J. ON REGUL. 253, 295–97 (2011) (describing reasons to think that low salience taxes may or may not give rise to distributional concerns).

493. See, e.g., *supra* Section II.A (providing examples in the tax context).

494. See *supra* Subsection II.A.1 and Section II.D.

495. See *supra* note 257 and accompanying text.

496. See *supra* note 492 (regarding distributional concerns connected to low salience taxes generally).

arises even in contexts—like the charitable giving context—where taxpayers’ overestimating a tax benefit might lead to more behavior that the provision is intended to encourage.⁴⁹⁷

C. *Incoherent Legal Requirements*

The prevalence of inaccurate or potentially misleading information suggests the need for an examination of the statutory, regulatory, and judicial rules and doctrines that affect sellers’ obligations to provide tax law information and that may offer legal relief when they provide inaccurate information. At least in some contexts, legal requirements may be somewhat incoherent.

To take just one example, consider the Federal Truth in Lending Act (“TILA”), implemented by Regulation Z.⁴⁹⁸ It includes requirements governing advertising for both open-end credit (which generally would include home equity loans) and closed-end credit (which generally would include mortgages).⁴⁹⁹ While its definition of “advertising” is broad enough to include “commercial message[s]” distributed in “any medium that promote[], directly or indirectly, a credit transaction,”⁵⁰⁰ the official comments indicate that the term does not encompass “educational materials that do not solicit business.”⁵⁰¹ At least some of the articles on bank websites that describe the tax consequences of home mortgage debt or home equity loans in general terms may fall within this exception. One includes a disclaimer specifically stating, “This is not a Consumer Credit Advertisement and is intended for real estate agent use only. This information is provided to assist real estate agents and is not a consumer credit advertisement as defined by Regulation Z.”⁵⁰² It may be worth noting, however, that once the information is available, it may be picked up and used by generative AI tools which could use it to dispense “answers” to tax questions that may not be accompanied by a similar disclaimer.⁵⁰³

For any communication that does fall within the scope of the term “advertising,” Regulation Z specifies that, with respect to open-end credit, “An

497. Professor Faulhaber has noted that taxpayers’ overestimating the tax benefits of charitable giving may be less concerning than their overestimating the benefits of homeownership, for example, given that, in the former case, the overestimation may simply lead to more of the behavior that a tax provision is intended to encourage. Faulhaber, *supra* note 43, at 1334–35 (describing this potential positive effect in the context of charitable giving); *id.* at 1336 (“In the context of other tax provisions, however, the increased consumption resulting from hypersalience may be of greater concern. One provision that illustrates this concern is the home mortgage interest deduction . . .”).

498. 12 C.F.R. § 1026.

499. 12 C.F.R. §§ 1026.16(d)(4), 1026.24(h).

500. *Id.* § 1026.2(a)(2).

501. Truth in Lending (Regulation Z), 63 Fed. Reg. 16674 (Apr. 6, 1998) (to be codified at 12 C.F.R. pt. 226).

502. *Putting Homeownership Within Reach for a Diverse Workforce*, U.S. BANK (Sep. 7, 2022), <https://www.usbank.com/home-loans/mortgage/housing-insights/putting-home-ownership-within-reach-for-diverse-workforce.html> [<https://perma.cc/L7XD-HWAZ>].

503. *See Is AI Generated Tax Advice Making the Grade?*, TAXPAYER ADVOCATE SERV. (June 11, 2024), <https://www.taxpayeradvocate.irs.gov/news/tax-tips/is-ai-generated-tax-advice-making-the-grade/2024/06/> [<https://perma.cc/VBU3-XZXV>].

advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard.”⁵⁰⁴ Curiously, it does not include a general, parallel statement in the provision governing closed-end credit.⁵⁰⁵ With respect to both types of transactions, it does provide that, if certain types of advertisements indicate that the amount of a loan could exceed the fair market value of the customer’s home, the advertisement must “clearly and conspicuously state” that: (1) “interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes” and (2) the borrower “should consult a tax adviser for further information regarding the deductibility of interest and charges.”⁵⁰⁶

Regulation Z also requires that the closing documents for certain mortgages include similar language.⁵⁰⁷ Regulation Z does not require that closing documents inform borrowers about any other reasons they may be unable to deduct home mortgage interest.⁵⁰⁸ For many homeowners, the other, key reason that the interest is not deductible is that they claim the standard deduction.⁵⁰⁹ If such a borrower read the only required disclosure about the deduction, they would read something like the following:

Tax Deductions

If you borrow more than this property is worth, the interest on the loan amount above this property’s fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.⁵¹⁰

The borrower may mistakenly interpret it to mean that the interest on any portion of the loan that does *not* exceed the value of their home automatically *is* deductible.⁵¹¹ In other words, specifying just one of the reasons why interest may not be deductible while omitting other, significant reasons is vulnerable to the critique raised by a court in a different context that “singling out one of many potential tax consequences seems more likely to create than alleviate confusion.”⁵¹²

504. 12 C.F.R. § 1026.16(d)(4).

505. *Id.* § 1026.24(h).

506. *Id.* §§ 1026.16(d)(4), 1026.24(h).

507. *Id.* § 1026.38(p)(5).

508. *Id.*

509. *See supra* Subsection II.A.1.

510. *Form Closing Disclosure*, CONSUMER FIN. PROT. BUREAU (Dec. 17, 2024, at 11:00 ET), https://files.consumerfinance.gov/f/201311_cfpb_kbyo_closing-disclosure.pdf [<https://perma.cc/LJB4-AEUC>]. For the requirements, see 12 C.F.R. § 1026.38(p)(5).

511. *See infra* note 512 and accompanying text.

512. *See* Marian, *supra* note 46, and accompanying text.

D. *IRS Alerts*

As discussed above in Subsection II.A.4, the IRS recently issued an alert, warning taxpayers to beware of sellers who misrepresent the FSA eligibility of exercise equipment and other products.⁵¹³ Professors Thomas and Scharff have also proposed other steps that the IRS could take to combat “fake news” about tax law, noting instances where the IRS could make use of “proactive social media campaign[s].”⁵¹⁴ Likewise, based on a study of Uber and Lyft drivers’ online discussions, Professors Oei and Ring recommended that the IRS provide tax law information to drivers or require that Uber and Lyft provide tax law information to their drivers.⁵¹⁵ Some of the examples identified in Part II represent potential topics on which the IRS could issue alerts or use other channels to fact check information provided by sellers of products and services, debt collectors, and other parties.

E. *Compounding the Positive Impact of Helpful Information*

Some examples feature third parties providing information to taxpayers about the potential benefits of filing with the goal of increasing the uptake of key tax benefits like the EITC and the Child Tax Credit.⁵¹⁶ In some cases, state and local governments require that parties provide the information with the goal of increasing uptake of these benefits.⁵¹⁷ If the provided information results in non-filers learning about tax benefits for the first time, lawmakers could magnify the information’s impact by allowing taxpayers more time to file returns for past years to claim benefits to which they would have been entitled. For instance, if analysis showed that schools were an effective channel for informing parents and guardians about the Child Tax Credit and some parents and guardians learned about the credit for the first time when they had school-age children, granting taxpayers more time to claim the credit for prior years could magnify the information’s influence.

IV. CONCLUSION

In a variety of contexts, third parties provide taxpayers with information about tax law to influence or inform taxpayers’ decisions about whether to engage in transactions or their decisions about tax filing.⁵¹⁸ In some instances, the information is accurate and potentially helpful. In those cases, some modifications to existing law—such as granting taxpayers more time to file returns to claim benefits to which they are entitled—could amplify the positive impact of helpful information.

513. See *supra* notes 252–53 and accompanying text.

514. Thomas & Scharff, *supra* note 42, at 876.

515. Oei & Ring, *supra* note 48, at 106.

516. See *supra* Sections II.E., II.F., and II.G.

517. See *supra* Sections II.E and II.F.

518. See *supra* Part II.

In other instances, the information is inaccurate and potentially misleading. In a variety of contexts, the information is, in substance, less accurate for taxpayers with lower incomes, which has troubling equity implications.⁵¹⁹ In addition, while legal doctrine governs the flow of information about tax law in some contexts, some of the contours of the legal doctrine are incoherent.⁵²⁰ For instance, in some cases, applicable law requires warning taxpayers about only some reasons why a tax benefit may be unavailable.⁵²¹

Finally, in many cases, third parties pass along information contained in informal IRS guidance, making it all the more necessary for the IRS to ensure that its informal guidance is not misleading and, relatedly, making sufficient funding of the IRS all the more crucial.

519. *See supra* Section IV.B.

520. *See supra* Section IV.C.

521. *See supra* note 512 and accompanying text.