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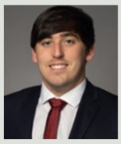
2022 Tax Year Update

December 2022

Welcome!



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Agenda

- Legislative Changes
- New Guidance Issued by IRS & Treasury
- Gift & Estate Tax Planning
- Additional 2022 Tax Developments
- Year-End Planning Reminders

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Legislative Changes

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Inflation Reduction Act of 2022 (IRA)

- Based on the Build Back Better framework
  - Passed by the House in November 2021
  - Originally included the Biden Administration's policy goals
  - Passed by the Senate in August 2022 after months of negotiations by Senate Democrats & Senator Joe Manchin
  - Signed into law on August 16, 2022 by President Biden
- Includes social, tax, & climate provisions
  - Medicare prescription drug pricing
  - Extension of health insurance premium subsidies under the Affordable Care Act
  - Tax provisions
  - Climate & energy provisions

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IRA: Corporate Alternative Minimum Tax (AMT)

- Imposes a 15% minimum tax on corporations with >$1 billion in income reported on their financial statements, or "book income," with some adjustments, beginning in tax years after 2022
- Applies to certain U.S. corporations part of foreign-parented multinational group, & corporations that have been in existence for less than three years
- Excludes S corporations, regulated investment companies, & real estate investment trusts

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IRA: Excise Tax on Repurchase of Stock

- Applies to stock of domestic corporations that are traded on an established securities market
- Excise tax = 1% fair market value of stock repurchased by corporation during tax year
  - Not applicable if total value of stock repurchased for tax year does not exceed $1M
  - Some carveouts & netting provisions
  - Anti-abuse provisions
- Effective for purchases of stock after December 31, 2022

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IRA: Extension of Limitation on Excess Business Losses

- Extends application of the excess business loss limitation for non-corporate taxpayers by two years so that rules are applicable for tax years beginning after December 31, 2020 & before January 1, 2029

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IRA: Clean Vehicle Credit

- Updates the new qualified plug-in electric drive motor vehicle credit under Sec. 30D(a)
- Requires final assembly of the vehicle to occur in North America (applies to vehicles sold after August 16, 2022)
- Changes how credit is calculated after issuance of guidance
  - $3,750 credit for meeting the critical minerals requirements, &
  - $3,750 credit for meeting the battery component requirement
- Credit may only be claimed for vehicles made by a qualified manufacturer with an MSRP below certain amounts, & by taxpayers with modified adjusted gross income below the limits (applies to vehicles placed in service after December 31, 2022)

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IRA: Clean Vehicle Credit

- The taxpayer who acquires a new clean vehicle can elect, on or before the purchase date, to transfer the clean vehicle credit to the dealer who sold the vehicle in return for full payment of the credit amount
  - Dealers must register with the IRS & meet other requirements to offer the election to their purchasers
  - IRS will make advance payments to dealers
  - Applies to vehicles placed in service after December 31, 2023

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IRA: Qualified Commercial Clean Vehicles

- New qualified commercial clean vehicle credit for qualified vehicles acquired & placed in service after December 31, 2022
- A component of the Sec. 38 general business credit
- Credit equal to lesser of
  - 15% of the vehicle's basis (30% for vehicles not powered by a gasoline or diesel engine) or
  - The "incremental cost" of the vehicle over the cost of a comparable vehicle powered solely by a gasoline or diesel engine
- Maximum credit is $7,500 for vehicles with gross vehicle weight ratings of <14,000 pounds or $40,000 for heavier vehicles

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IRA: Qualified Commercial Clean Vehicles

- Vehicle must be acquired for use or lease by the taxpayer, & not for resale
- Must have battery capacity of not <15 kw hours & be recharged by an external electricity source (7 kw hours if gross vehicle weight rating is <14,000 pounds)
- Qualified fuel cell vehicles are also eligible
- Must be depreciable property
- Only vehicles made by qualified manufacturers, who have written agreements with & provide periodic reports to the Secretary
- Applies to vehicles acquired after December 31, 2022 through December 31, 2032

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IRA: Credit for Previously-Owned Clean Vehicles

- New income tax credit equal to the lesser of $4,000 or 30% of the vehicle's sale price
- No credit allowed if the lesser of the taxpayer's modified AGI for the year of purchase or the preceding year exceeds $150,000 for joint returns & surviving spouse, $112,500 for head of household, or $75,000 for others
- Vehicle eligibility
  - At least two model years earlier than the calendar year in which the taxpayer acquires the vehicle
  - The original use starts with a person other than the taxpayer
  - Acquired in a qualified sale
  - Meets certain clean vehicle requirements for new vehicles, or is a clean fuel-cell vehicle with a gross weight rating of <14,000 pounds

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IRA: Credit for Previously-Owned Clean Vehicles

- Qualified sale by a dealer for a price of $25,000 or less
- Qualified buyer = individual who purchases the vehicle for use & not for resale, who is not a tax dependent of another taxpayer, & has not been allowed a credit for previously-owned clean vehicles during the three-year period ending on the sale date
- Applies to vehicles acquired after December 31, 2022 through December 31, 2032
- Similar credit transfer provisions as seen in the Clean Vehicle Credit applies to vehicles acquired after 2023

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IRA: Alternative Fuel Vehicle Refueling Property Credit

- Tax credit for the cost of any qualified alternative fuel vehicle refueling property (charging stations) placed in service by a business or a taxpayer's principal residence before January 1, 2022
  - IRA extends the credit through December 31, 2032 (old rules for 2022)
- Starting in 2023
  - Extends the credit for depreciable property at a rate of 6%, increasing to 30% if certain prevailing wage & apprenticeship requirements are met
  - $100,000 per item credit limit for depreciable property, $1,000 for all other property
  - Modifies definition of eligible property to confirm bidirectional charging equipment is included as eligible property
  - Makes the credit available for electric charging stations for two- & three-wheeled vehicles intended for use on public roads
  - Charging or refueling property will only be eligible for the credit if placed in service within a low-income or rural census tract

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Polling Question #1

- What is the maximum value of the credits for new vehicles?
  - $2,500
  - $3,750
  - $5,000
  - $7,500

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IRA: Section 45 Renewable Electricity Production Tax Credit (PTC)

- Extends the required construction commencement date to the end of 2024 from the end of 2022 for six types of facilities
- Extends to the end of 2024 the ability to elect to treat certain PTC-eligible facilities as qualifying for the Section 48 investment tax credit instead
- Base amount of credit is reduced from 1.5 cents per kilowatt hour produced to 0.3 cents per kilowatt hour produced
- Base amount would increase if certain employment & wage criteria are met
- Domestic content bonus allows a 10% increase to the credit if certain requirements are met
- Another bonus is available if the qualified facilities are in applicable energy communities

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IRA: Section 48 Energy Investment Tax Credit (ITC)

- Available for all businesses & investors, not just producers for sale
- Changes the date before which construction must begin for Type 2 solar property, qualified fuel cell property, qualified microturbine property, cogeneration property, qualified small wind property, & waste energy recovery property to January 1, 2025
  - Also changes the date before which construction must begin for ground water heating & cooling property to January 1, 2035
- Expanded the definition of eligible energy property for property placed in service after 2022
- Reduces the credit base of each classification by 80%, but provides for incentive increases based on apprenticeship, wage, & "domestic content"
- The Section 48 energy ITC is expanded to include certain wind & solar facilities located in low-income communities or on American Indian land or are part of a low-income residential building project or low-income economic benefit project

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IRA: Section 45Q Carbon Oxide Sequestration Credit

- The Section 45Q Carbon Oxide Sequestration Credit (CSC) is extended to & enhances the CSC for qualified facilities if construction begins before 2033
- Minimum carbon capture requirements for the CSC are lowered
- The credit amounts for property placed in service after certain dates have also been changed
- Incentives to the credit amount are added for certain apprenticeship & wage targets

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IRA: Other Energy Related Credits

- The Section 40A Credit for Biodiesel & Renewable Diesel & Section 6426 Credit for Alternative Fuels are extended through December 31, 2024. These credits were slated to terminate at the end of 2022.
- Same extension applies to the Section 40 Second Generation Biofuel Credit
- Creates a new Sustainable Aviation Fuel Credit, Section 40B, & eliminates the previous biodiesel aviation fuel credit under Section 40A
  - Base credit is $1.25 per gallon of sustainable aviation fuel sold or used in a qualified fuel mixture in 2023 & 2024
  - Credit includable in taxable income

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IRA: Credit for Production of Clean Hydrogen

- Credit amount per kilogram of clean hydrogen is based on emissions rates & is a % of a base rate of $0.60 per kilogram
- The credit is for a ten-year period beginning when the facility is placed in service
- Incentive rates apply for meeting certain apprenticeship & wage targets

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IRA: Nonbusiness Energy Property Credit

- The Section 25C Nonbusiness Energy Property Credit is increased from 10% to 30% for both energy efficient improvements & residential energy property expenditures
- Replaces a $500 lifetime limit with an annual credit limit of $1,200
- Credit is extended through 2032, had terminated at the end of 2021. Existing credit will apply to expenditures made in 2022, the new credit provision will apply to expenditures made after 2022
- Starting in 2025, taxpayers claiming the credit will be required to include a product identification number with the tax return claiming the credit

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IRA: Residential Energy Efficient Property Credit

- The Section 25D Residential Energy Efficient Property Credit is extended through 2034, it was originally scheduled to end at the end of 2023
- Credit is renamed the Residential Clean Energy Credit
- Includes a new provision for credit related to battery storage technology expenditures at a taxpayer's personal residence
- Credit amount
  - 30% for property placed in service from 2022 through 2032
  - 26% for property placed in service during 2033
  - 22% for property placed in service during 2034

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IRA: New Energy Efficient Home Credit

- The Section 45L New Energy Efficient Home Credit is extended through 2032. The credit had expired at the end of 2021, but the old 45L credit is extended for homes sold by the contractor in 2022. The new credit amounts & other modifications apply for dwelling units acquired from the contractor after 2022
- Creates a new category of eligible dwelling unit for a $5,000 credit. This is a home that is qualified as a zero-energy ready home under Department of Energy guidelines
- Most other single-family units that qualify will receive a $2,500 credit
- Dwelling units that are part of a multifamily building are eligible for smaller credits unless certain apprenticeship & wage standards are met
- Under the prior rules, the maximum credit was $2,000

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IRA: Energy Efficient Commercial Buildings Deduction

- The Section 179D Energy Efficient Commercial Buildings Deduction is modified in several ways
  - The prior credit amount of $1.80 per square foot is modified to a base of $0.50, plus $0.02 for each percentage point by which the total annual energy costs of the building are certified to be reduced by >25%. The total amount cannot be in excess of $1.00
  - If certain employment & wage requirements are met by the contractor for its laborers & mechanics, the factors above increase to $2.50 from $0.50, $0.10 from $0.02, & $5.00 from $1.00
  - Eliminates the allowance of partial deductions

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IRA: Energy Efficient Commercial Buildings Deduction

- The IRA stablishes an election for a new alternative deduction for energy efficient building retrofit (Retrofit) property which is taken in the year of qualifying final certification
  - The retrofit plan must call for a 25% or more reduction in the building's energy use intensity. The plan must also call for certification of milestones by a qualified professional
  - The Retrofit Deduction is based on that specific building's reduction in energy use intensity
  - Retrofit Deduction can only be claimed after in service for one year & the reduction in the energy use intensity is known
  - The Retrofit Deduction is capped at the cost of the retrofit expenditures made
  - The Retrofit Deduction is effective for property placed in service after December 31, 2022 while all other provisions are effective for taxable years beginning after December 31, 2022

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IRA: Direct Pay

- Allows eligible taxpayers to treat certain tax credits as a direct payment of taxes
- Eligible taxpayers, generally
  - Tax-exempt entities
  - States & political subdivisions
  - Tennessee Valley Authority
  - Indian tribal governments
  - Alaska Native Corporations
  - Rural electricity cooperatives
- Generally, election should be made by due date (including extensions) of tax return
  - Available through 12/31/32
  - Irrevocable election for the year

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IRA: Direct Pay – Eligible Credits

- Section 30C – Certain alternative fuel vehicle refueling property
- Section 45(a) – Renewable electricity production credit
- Section 45Q(a) – Credit for carbon oxide sequestration
- Section 45U(a) – Zero-emission nuclear power production credit
- Section 45V(a) – Clean hydrogen production credit
- Section 45X(a) – Advanced manufacturing production credit
- Section 45Y(a) – Clean electricity production credit
- Section 45Z(a) – Clean fuel production credit
- Section 48 – Energy credit
- Section 48C – Qualifying advanced energy project credit
- Section 48E – Clean electricity investment credit

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IRA: Transfer of Certain Credits

- Credits "transferable" so that transferee gets the benefit
  - All or any portion of the credit may be transferred
  - Transferee can't be related to the Transferor
- If consideration paid for the credit, must be
  - In cash
  - Not income to transferor (if partnership/S Corp, considered tax-exempt ("TE") income)
  - Not deductible to transferee
- Basis of property is reduced by the amount of the credit
- Election made by due date (including extensions) of tax return
- Credit required to be taken in the taxable year in which the credit is determined or taken in the following year
- Transferee cannot transfer the credits again
- Credit only transferable at the level where the eligible property held

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IRA: Transfer of Certain Credits

- Recapture can apply
- 20% penalty if credit found to be excessive. Exceptions for reasonable cause
- Energy credits carryforward & carryback changed
  - Carryback – three years
  - Carryforward – 22 years
  - Must be used in the earliest year able
  - Applies to taxable years beginning after 2022

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IRA: Transfer of Certain Credits – Eligible Credits

- Section 30C – Certain alternative fuel vehicle refueling property
- Section 45(a) – Renewable electricity production credit
- Section 45Q(a) – Credit for carbon oxide sequestration
- Section 45U(a) – Zero-emission nuclear power production credit
- Section 45V(a) – Clean hydrogen production credit
- Section 45X(a) – Advanced manufacturing production credit
- Section 45Y(a) – Clean electricity production credit
- Section 45Z(a) – Clean fuel production credit
- Section 48 – Energy credit
- Section 48C – Qualifying advanced energy project credit
- Section 48E – Clean electricity investment credit

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IRA: Prevailing Wage, Apprenticeship, & Domestic Content Requirements

- Taxpayers may qualify for a higher credit amount (alternative amount/"bonus" rate) if certain prevailing wage & apprenticeship requirements are met
  - Wage requirement: not less than the prevailing rates
    - During construction & the applicable alteration/repair period beginning when placed in service ("PIS")
    - Recapture possible if requirement not met
  - Apprenticeship requirement: % of work done by qualified apprentices
    - % depends on year, can range from 10% to 15%
    - Applies: employ 4 or more individuals for construction
    - Registered apprenticeship program
- Domestic Content Bonus Credit
  - Credit increased by 10%
  - Required to be produced in the U.S.

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IRA: IRS Funding

- IRA gives the IRS an additional $80 billion over the course of 10 years to fund
  - Taxpayer services
  - Tax enforcement activities
  - Business system modernization
- Instructs the IRS to establish a task force to design an IRS-run, free, mobile-friendly "direct-file" tax return system, & to provide an initial report to Congress within nine months

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CHIPS & Science Act of 2022

- Creating Helpful Incentives to Produce Semiconductors (CHIPS) & Science Act of 2022
- Passed on July 28, 2022 to promote domestic manufacturing of semiconductor chips
- Started out as the United States Innovation & Competition Act of 2021 (USICA), passed by the Senate, & the America COMPETES Act of 2022, passed in the House earlier this session

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CHIPS Act – Advanced Manufacturing Investment Credit

- Established to incentivize the manufacturing of semiconductors
- Equal to 25% of qualified costs
- Qualified property
  - Tangible property with respect to which depreciation or amortization is allowable
  - Constructed, reconstructed, or erected by the taxpayer or acquired by the taxpayer (if the original use of the property commences by the taxpayer)
  - Integral to the operation of an advanced manufacturing facility whose primary purpose is manufacturing semiconductors or semiconductor manufacturing equipment
- Available to property placed in service after December 31, 2022, & for which construction begins before January 1, 2027
  - Note: for property that begins construction after January 1, 2023, the credit applies to basis attributable only to construction after August 9, 2022
- Taxpayers may elect to treat the credit as payment against tax (“direct pay”)

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CHIPS Act – Other Notable Highlights

- CHIPS for America Fund
  - $52.7 billion for development of domestic manufacturing capabilities, R&D, & workforce development programs
  - Funding will be distributed via grants, loans, & loan guarantees
  - Applications for funding will be available in February 2023
  - Recipients are barred from using the money to buy stock of the company or parent company or to pay dividends; also, cannot materially expand chip manufacturing capacity in China, North Korea, Iran, or Russia
- Funding for building up STEM workforce & expanding rural STEM education; as well as to create 20 regional technology & innovation hubs to focus on technology development, job creation, & expanding U.S. innovation capacity

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New Guidance Issued in 2022

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Final Foreign Tax Credit Regulations

- On January 4, 2022, Treasury & the IRS published final regulations addressing various FTC topics including the definitions of creditable foreign income tax & in-lieu-of income tax, the timing rules for claiming an FTC, the allocation & apportionment of foreign income taxes, & the disallowance of an FTC or deduction under §245A(d)
- The final regulations also clarify certain foreign-derived intangible (FDII) income rules

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Final Foreign Tax Credit Regulations

- Definition of Creditable Foreign Income Tax
- Net gain requirement
  - Realization
  - Gross receipts requirement
    - Alternative gross receipts test is eliminated
  - Cost recovery requirement
    - Non-confiscatory gross basis tax rule is still eliminated
  - Attribution requirement
  - Jurisdictional nexus requirement
    - Activities-based nexus
    - Source-based nexus
    - Situs-based nexus

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Final Foreign Tax Credit Regulations

- Definition of “In-Lieu-Of Tax”
- Timing rules for claiming an FTC
  - Accrual basis taxpayers
  - Section 905(a) election
  - Election to claim a provisional FTC for contested taxes
  - Partnerships & other pass-through entities
  - Correcting improper accruals

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Final Foreign Tax Credit Regulations

- Disallowance of FTC or deduction under Sec. 245A(d)
- Denies FTC & deduction for foreign income taxes attributable to: (1) "section 245A(d)" income of a domestic corporation, a successor of a domestic corporation, or a foreign corporation; or (2) "non-inclusion income" of a foreign corporation
- Anti-avoidance rule is retained
- Confirms that §245A(d) disallows an FTC or deduction for foreign income taxes paid or accrued with respect to a §245A dividend even if the §245A(a) deduction is not claimed

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Proposed Regulations Under Sec. 1256

- Issued July 6 in response to *Wright v. Commissioner*, 809 F.3d 877, 885 (6th Cir. 2016)
  - Holding: A contract is a foreign currency contract if the settlement of the contract depends on the value of a foreign currency even if the contract does not mandate settlement
  - Holding was contrary to IRS position that options are not contracts for Sec. 1256 purposes & therefore do not need to be marked to market
- Proposed regulations provide that foreign currency contracts subject to Sec. 1256 mark-to-market rules include only forward contracts on a foreign currency are 1256(g)(2) "foreign currency contracts" (& excluding foreign currency options)
- However, proposed regulations do not define the term "forward contract"

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Proposed Regulations on Tax Controversies

- Proposed regulations on the resolution of federal tax controversies by the IRS Independent Office of Appeals without litigation & requests for referral to Appeals after issuance of a notice of deficiency
- Implement portions of the Taxpayer First Act of 2019
- Defines "federal tax controversy," 301.7803-2(b)(2)
- Lists 24 exceptions to the general availability of Appeals consideration of a federal tax controversy
- List requirements a taxpayer must meet before Appeals may consider the tax controversy

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Streamlining the Section 754 Election Statement

- Final regulations on the requirements for making a valid election to adjust the basis of partnership property in the case of a distribution of property by the partnership or a transfer of an interest in the partnership
- Finalize proposed regulations issued in October 2017
- Eliminates compliance burden by eliminating the signature requirement for making a Sec. 754 election
- The final regulations are effective beginning August 5, 2022

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Superfund Excise Taxes

- Infrastructure Investment & Jobs Act reinstated the excise taxes imposed on certain chemicals & imported chemical substances under Sections 4661 through 4672 beginning July 1, 2022
- Affects taxpayers that manufacture, produce, or import certain chemicals found in fuels & industrial products
- Reported on IRS Form 6627, Environmental Taxes, which is required to be attached to the tax return made on Form 720, Quarterly Federal Excise Tax Return
- Noticed 2022-15 provides relief for the third & fourth calendar quarters of 2022, & the first calendar quarter of 2023, regarding the failure to deposit penalties imposed by section 6656 as those penalties relate to the Superfund chemical taxes

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Rev. Proc. 2022-19

- Taxpayer assistance procedures to resolve certain issues involving S corporations & their shareholders without requiring a PLR
  1. Agreements & Arrangements with No Principal Purpose to Circumvent One Class of Stock Requirement
  2. Governing Provisions That Provide for Identical Distribution & Liquidation Rights
  3. Procedures for Addressing Missing Shareholder Consents, Errors with Regard to a Permitted Year, Missing Officer's Signature, & Other Inadvertent Errors & Omissions
  4. Procedures for Verifying S Elections or QSub Elections
  5. Procedures for Addressing a Federal Income Tax Return Filing Inconsistent with an S Election or a QSub Election
  6. Procedures for Retroactively Correcting One or More Non-Identical Governing Provisions

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Rev. Proc. 2022-19

- Eligibility for the retroactive relief is conditioned upon all of the following requirements being met
  1. The corporation has (or had) one or more non-identical governing provisions
  2. The corporation has not made, & for federal income tax purposes is not deemed to have made, a disproportionate distribution to its shareholders
  3. The corporation timely filed a return on Form 1120-S for each taxable year beginning with the taxable year in which the first non-identical governing provision was adopted & ending with the taxable year immediately preceding the year in which the corporation made a request for corrective relief under this Revenue Procedure
  4. Before any non-identical governing provision is discovered by the IRS, all of the requirements described in the revenue procedure are satisfied

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Notice 2022-39

- Provides rules for making a one-time claim for the alternative fuels credit for the first, second, & third calendar quarters of 2022
  - The credit expired at the end of 2021, but was extended through 2024 by the Inflation Reduction Act in August 2022
- File Form 8849, "Claim for Refund of Excise Taxes" + Schedule 4 "Certain Fuel Mixtures & the Alternative Fuel Credit" covering all three quarters
- Maintain adequate records to substantiate eligibility for the claim
- Register with the IRS to make the claim by filing Form 637, "Application for Registration (For Certain Excise Tax Activities)"
- All 2022 one-time alternative fuel claims must be submitted between October 13, 2022 & April 11, 2023

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Gift & Estate Tax Planning

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2022 Estate & Gift Tax Limitations

Estate Tax Limit		
	2022	2023
A filing is required for estates with combined gross assets & prior taxable gifts exceeding	$12,060,000	$12,920,000

Although estates falling below the filing threshold are not required to file, a return still could help the estate take advantage of portability, e.g., *transferring unused estate exemption amounts between spouses*

Annual Gift Tax Exclusion		
	2022	2023
Exclusion per person	$16,000	$17,000

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Estate & Gift Tax Planning Opportunities

- Elect to split gifts between a taxpayer & spouse
- Sales to intentionally defective grantor trusts or gifts to grantor-retained annuity trusts
- Funding a spousal lifetime access trust

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Polling Question #2

- What is the annual gift tax exclusion for 2023?
  - No Limit
  - $15,000
  - $16,000
  - $17,000

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2022 Wealth Transfer Strategies

- Gifting your business
- Family limited partnerships (FLP)
- Self-canceling installment notes
- Wealth transfer strategies for those with estate tax exposure
  - Grantor retained annuity trust (GRAT)
  - Charitable lead annuity trust (CLAT)
  - Intentionally defective grantor trust (IDGT)
  - Other intra-family transfers
- Wealth transfer strategies for those without estate tax exposure

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Utilizing Roth IRAs

- Individual retirement plan that allows taxpayers to contribute post-tax dollars, subject to income limitations & contribution limitations
  - For 2022, phased out at modified gross incomes of $214,000 for married filing jointly & $144,00 for all other taxpayers
  - For 2022, contribution limits are $6,000 for taxpayers under 50
    - Additional $1,000 catch-up for taxpayers over 50
- Benefits
  - Investment vehicle allowing tax-free withdrawals
  - Can be used as a wealth transfer vehicle
- SECURE Act eliminated “stretch out” option for inherited IRAs unless beneficiary is an “eligible designated beneficiary,” making Roth IRAs subject to the 10-year liquidation period requirement
- Proposed regulations would require annual distributions to continue if the account owner was required to take RMDs prior to their death

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2022 Charitable Tax Planning Considerations

- Qualified Charitable Distributions (QCD) from IRAs
- Contributions to DAFs
- Charitable Trusts
- Gifts of Appreciated Securities
- Tax Rate Consideration

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529 Savings Plans

- Two significant federal income tax advantages
  - Tax-deferred growth
  - Tax-free withdrawals if used for qualified education expenses
- Other advantages
  - Low maintenance
  - Favorable financial aid treatment
  - Owner control
- Disadvantages
  - State income tax recapture
  - Limited investment choices
  - Fees
  - Ownership rules

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Additional 2022 Tax Developments

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Depreciation of Autos & Certain Trucks, Vans, & SUVs

	2022		2023	
	Autos	Trucks, Vans, & SUVs*	Autos	Trucks, Vans, & SUVs*
First-Year Depreciation**	$11,200	$11,200	Not available	
Second-Year Depreciation	$18,000	$18,000	Not available	
Third-Year Depreciation	$10,800	$10,800	Not available	
Fourth-Year Depreciation & Each Succeeding Tax Year	$6,460	$6,460	Not available	

**Generally, applies to trucks & vans with gross (loaded) vehicle weight of no more than 6,000 lbs. For SUVs, the table generally applies to vehicles with a gross unloaded vehicle weight of no more than 6,000 lbs*

***First-year depreciation is increased by $8,000 if the vehicle qualifies for bonus depreciation*

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2022 Section 179 Limitations

- Up to $1,080,000 for 2022 (adjusted annually for inflation)
- Phase out beginning at $2,700,000 of assets placed in service for 2022
- Definition of qualified property expanded to include certain improvements to nonresidential real property, including roofs, HVAC systems, fire protection & alarm systems, & security systems

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Increased Standard Deduction

Basic Standard Deduction		
	2022	2023
Married-Joint or Surviving Spouse	$25,900	$27,700
Head of Household	$19,400	$20,800
Single	$12,950	$13,850
Married-Separate	$12,950	$13,850
Dependent of Another	$1,150	$1,250

An additional standard deduction amount is available for eligible individuals who have attained age 65 or are blind. For 2022, the additional standard deduction amounts are $1,750 for an unmarried individual & $1,400 for a married person filing jointly or separately, or a surviving spouse. For 2023, those amounts are increased to $1,850 & $1,500, respectively

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2022 AMT Exemption & Phase-Out

- TCJA temporarily increased individual alternative minimum tax (AMT) exemption
- Amounts for 2022
  - $75,900 for single filers (other than surviving spouses)
  - $118,100 for joint filers or surviving spouses
  - $59,050 married filing separate
  - $26,500 for estates & trusts
- Temporarily increased phase-out threshold to begin at $539,900 for single filers & married filing separate ($1,079,800 joint filers)

Expires after December 31, 2025

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Potential AMT Triggers

- Having a high household income
- Realizing a large capital gain
- Exercising stock options

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Qualified Business Income Deduction

	2022		2023	
	Threshold Amount	Full Phase-In Amount	Threshold Amount	Full Phase-In Amount
Married-Joint or Surviving Spouse	$340,100	$440,100	$364,200	$464,200
Married-Separate	$170,050	$220,050	$182,100	$232,100
All Other Taxpayers	$170,050	$220,050	$182,100	$232,100

Amounts based on taxable income

When taxable income exceeds the threshold amount, the W-2 wage & qualified property limitations are partially applied until taxable income reaches the full phase-in amount. For specified service trades or businesses, a reduction of actual qualified business income also is phased in over this range

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Standard Mileage Rates

	2022	2023
Business	58.5 Cents Per Mile (January 1 – June 30) 62.5 Cents Per Mile (July 1 – December 31)	Not Available
Charitable	14 Cents Per Mile	14 Cents Per Mile
Medical & Moving	18 Cents Per Mile	Not Available

**Some mileage rates not available at time of presentation*

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Healthcare Updates

Health Savings Accounts

	2022	2022	2023	2023
	Self-Only Coverage	**Family Coverage**	**Self-Only Coverage**	**Family Coverage**
Deductible Contributions	$3,650	$7,300	$3,850	$7,750
High-Deductible Health Plan – Minimum Deductible	$1,400	$2,800	$1,500	$3,000
Maximum Out-of-Pocket Expenses	$7,050	$14,100	$7,500	$15,000

Out-of-pocket expenses generally do not include the cost of insurance premiums. Individuals & their spouses who have reached age 55 before the close of the tax year may make additional contributions in 2022 & 2023 up to $1,000. A one-time transfer from an individual retirement account, health flexible spending account, or health reimbursement arrangement can be made to an HAS

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Retirement Plan Limits

Individuals 50 & over can make elective catch-up contributions to their retirement accounts. The catch-up amounts are in addition to the existing contribution limits, making the maximum allowed elective deferral retirement contributions

	2022	2023
401(k), 403(b), 457, & SAR-SEP Plans – Younger than Age 50	$20,500	$22,500
401(k), 403(b), 457, & SAR-SEP Plans – Age 50 & Older	$27,000	$30,000
Traditional & Roth IRAs – Younger than Age 50	$6,000	$6,500
Traditional & Roth IRAs – Age 50 & Older	$7,000	$7,500
SIMPLE Plans – Younger than Age 50	$14,000	$15,500
SIMPLE Plans – Age 50 & Older	$17,000	$19,000

Elective deferrals are amounts an employee instructs the employer to take out of regular pay & put into a pension account. Employers with profit-sharing plans are required to contribute funds to employees' pension accounts. The total sum of an employee's combined pension contributions can't exceed $61,000 for 2022 & $66,000 for 2023

An employer's tax deduction for contributions can't exceed 25% of all employees' annual compensation, taking into account individual compensation

The annual benefit limitation for defined benefit plans is a limit of $245,000 for 2022 & $265,000 for 2023

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Year-End Planning Reminders

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Bonus Depreciation

- Taxpayers may deduct 100% of the cost of bonus eligible property in the first year for property acquired & placed in service after September 27, 2017, & before January 1, 2023
- Bonus rate will decrease by 20% each year until it fully phases out to 0% for assets placed in service in 2027
  - 100% will be allowed for property placed in service through 2022
  - 80% for 2023
  - 60% for 2024
  - 40% for 2025
  - 20% for 2026
- Definition of qualified property expanded in 2018 by removing requirement that original use begin with taxpayer

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Fringe Benefits

- Moving expenses
- De minimis fringe benefits
- Employee gifts & awards
- Employer-provided vehicles

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Large Business & International Compliance Campaigns

- As of October 2022, the IRS has 54 active LB&I campaigns
- New campaign added in 2022
  - Partnership in Losses in Excess of Basis
- Other campaigns to consider in year-end planning
  - S corporation campaigns
  - Sale of partnership interests
  - Syndicated conservation easement transactions
  - Virtual currency
    - *"At any time during 2022, did you (a) receive (as a reward, award, or compensation); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?"*

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Accounting for R&E Expenses

- For tax years beginning in 2022, businesses are no longer able to immediately deduct the full cost of R&E expenditures
- Instead, the TCJA requires companies to amortize their costs over five years for research conducted inside the United States
  - For research conducted abroad, amortization of 15 years is required
  - Software development costs are now specifically included in the definition of Section 174 costs

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Why Is This Change So Significant?

- Cash flow planning & cash taxes
- Financial statement impact & considerations within Accounting Standards Codification (ASC) 740
- Consideration of state tax conformity issues
- Accounting method change considerations international tax provisions
- Implications for increased adjusted taxable income under §163(j), potentially limiting the amount of disallowed interest in a given period
- Timing differences between the deduction for generally accepted accounting principles versus tax
- Classification of expenses as §162, ordinary & necessary business expenses, versus §174
- Software development – Buy or build, onshore or offshore?

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Impact on Taxpayers Going Forward

- Potential IRS guidance
- Evaluate location of R&E
- How to prepare
- Timing of implementation

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Payroll Tax Deferral

- Failure to deposit payroll employment taxes deferred under the CARES Act by the applicable due dates will result in a penalty under Section 6656 that runs from the original due date & applies to the entire deferred amount, *i.e.,* employers are potentially liable for penalties on the full amount of tax deferred if they fail to pay any portion when due
  - Timely if 50% of the deferred amount was paid by December 31, 2021, & remainder by December 31, 2022
  - Since the dates fall on a weekend, IRS confirmed actual due dates are January 3, 2022 & January 3, 2023

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Business Interest Expense §163(j) Deduction

- For tax years beginning after December 31, 2021, the addback for depreciation, depletion, & amortization will no longer be included in the computation of adjusted taxable income
- May result in businesses having more interest expense disallowed for tax purposes

	Taxable income
+/-	Items of income, gain, deduction or loss not properly allocable to trade/business
+	Business interest expense
-	Business interest income
+	Net operating loss
+	Pass-through business deduction
+	Depletion, depreciation & amortization (taxable years beginning **before** January 1, 2022, only)

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Business Interest Expense §163(j) Deduction

- Calculation of "adjusted taxable income" could have a major impact for taxpayers that are capital intensive & leveraged
  - Depreciation & amortization is only added back when calculating "adjusted taxable income" for taxable years beginning before January 1, 2022
  - Calendar year taxpayers will no longer addback depreciation starting with their 2022 tax years
- The test or limit does not apply to
  - Businesses with average annual gross receipts of $27 million or less for the three prior tax years (affiliated group basis)
    - Threshold is $26 million for 2019, 2020, & 2021 tax returns
    - $27 million for 2022 & indexed for inflation
- Excess deduction that was disallowed carried forward indefinitely

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Polling Question #3

- For the purpose of the 163j limitation, which addback will no longer be allowed for the calculation of adjusted taxable income?
  - Depreciation
  - Amortization
  - Depletion
  - All the Above

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Schedules K-2 & K-3 Reminders for Pass-through Entities

- Reports items of international tax relevance
  - New requirement beginning with 2021 Form 1065 & Form 1120S
- IRS granted relief from reporting for 2021, provided
  - In 2021, the domestic partnership or S corporation had no direct foreign owners
  - In 2021, the domestic partnership or S corporation had no foreign activity including foreign taxes paid or accrued or assets that generate, have generated, or may reasonably be expected to generate foreign source income
  - For 2020, the entity did not provide information to its owners on Line 16 of Schedule K/K-1 (1065) or Line 14 of Schedule K/K-1 (1120S) to report foreign transactions
  - For 2020, the entity did not provide information to its owners on Line 20c of Schedule K/K-1 (1065) or Line 17d of Schedule K/K-1 (1120s) to report various international items
  - The domestic partnership or S corporation has no knowledge that the partners or shareholders are requesting such information for tax year 2021

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Corporate Net Operating Loss (NOL)

- **NOL deduction limitations on utilization**
  - 80% of taxable income
  - Applies to losses generated in tax years beginning after December 31, 2017, & not utilized prior to 2021
- **No carryback**
  - Applies to losses arising in tax years beginning after December 31, 2020
  - Property/casualty insurance companies & certain farm losses have special carryback rules
- **Carried forward indefinitely**
  - Applies to losses arising in tax years beginning after December 31, 2017
- **NOL limitations for pre-2018 losses**
  - Rules remained the same, losses can be carried back two years & forward 20 years
  - No taxable income limit, can offset 100% of taxable income if NOL is large enough

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Employee Retention Credit Year-End Considerations

- For 2021
  - Credit is equal to 70% (vs. 50%) of qualified wages (maximum wages of $10,000 per employee per quarter)
  - Maximum number of quarters for 2021 is three quarters (Q1 through Q3)
  - Could result in a refundable credit of $175,000/quarter for a company with 25 employees, *i.e.*, $7,000 * 25. This equates to $525,000 of refundable credits if eligible for all three quarters in 2021
  - If company has fewer than 500 full-time employees & other qualifications are met, this credit can be a home run
  - Not allowed to "double count" qualified wages. For example, qualified wages for ERC purposes would not include wages that were used to obtain PPP loan forgiveness
- More restrictive rules apply to both the 2020 ERC credit & to those companies with more than 500 full-time employees

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Employee Retention Credit Year-End Considerations

- Eligibility
  - Test 1 – Significant decline in gross receipts
    - 2021 – >20% decline in gross receipts, quarter over quarter 2021 compared to 2019
      - Election to use previous quarter for revenue reduction test – provides a business the ability to claim the ERC for two 2021 quarters even though only suffered the 20% decline for one quarter in 2021, *i.e.*, a "twofer"
    - 2020 – >50% decline in gross receipts, quarter over quarter 2020 compared to 2019
  - Test 2 – Full or partial suspension of operations due to government order

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Employee Retention Credit Year-End Considerations

- Impact to taxable income – must reduce wage expense by the amount of the credit when the wages were incurred
- If credits were not claimed on originally filed return, will get claimed by amending the applicable payroll tax return Form 941
- If income tax returns have already been filed, will need to amend them to reduce the wage expense by the amount of the credit
- There are some consulting firms around the nation taking aggressive positions on these credits
  - Improperly claiming the ERC could result in taxpayers being required to repay the credit along with penalties & interest

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Pass-Through Entity (PTE) Tax Election

- The TCJA created a cap on the State & Local Tax itemized deduction of $10,000 (married filing jointly) & $5,000 (married filing separately) for tax years beginning after 12/31/17 & before 1/1/2026
- IRS Notice 2020-75 indicates that the tax paid under a PTE election will be treated as a deduction of the PTE & is applicable to Specified Income Tax Payments made on or after November 9, 2020
- There are questions & issues that should be considered before a taxpayer makes a PTE election in any state

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States with a PTE Election (effective tax year beginning on or after)

- Alabama (1/1/21)
- Arizona (12/31/21)
- Arkansas (1/1/22)
- California (1/1/21)
- Colorado (1/1/22)
- Connecticut (1/1/18)
- Georgia (1/1/22)
- Idaho (1/1/21)
- Illinois (12/31/21)
- Kansas (1/1/22)
- Louisiana (1/1/19)
- Maryland (12/31/19)
- Massachusetts (1/1/21)
- Michigan (1/1/21)
- Minnesota (12/31/20)
- Mississippi (1/1/22)
- Missouri (*ending* on or after 12/31/22)
- New Jersey (1/1/20)
- New Mexico (1/1/22)
- New York (1/1/21)
- New York City (1/1/23)
- North Carolina (1/1/22)
- Ohio (1/1/22)
- Oklahoma (1/1/19)
- Oregon (1/1/22)
- Rhode Island (1/1/19)
- South Carolina (1/1/21)
- Utah (1/1/22)
- Virginia (1/1/21)
- Wisconsin (S-Corps 1/1/18; Other PTEs 1/1/19)

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Other Year-End Planning Reminders

- Business Meals
  - The CARES Act allows taxpayers to temporarily deduct 100% of business-related meals (food or beverages) provided by a restaurant
  - Applies to expenses incurred in 2021 & 2022 but will revert to the 50% allowable deduction after December 31, 2022
- Last-In First-Out (LIFO) Inventory Opportunities
  - Allows a manufacturer, distributor, or retailer to assume that its goods sold during the year are first sold from its most recently produced or purchased inventory cost of the most recently purchased or manufactured inventory
  - Helps alleviate some of the negative impact of increasing costs & inflation

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Polling Question #4

- What % of expense on meals are deductible for the 2022 tax year?
  - Non-Deductible
  - 50%
  - 75%
  - 100%

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