

# Executive Briefing: Annual Tax Update

*December 2023*



# Your Presenters



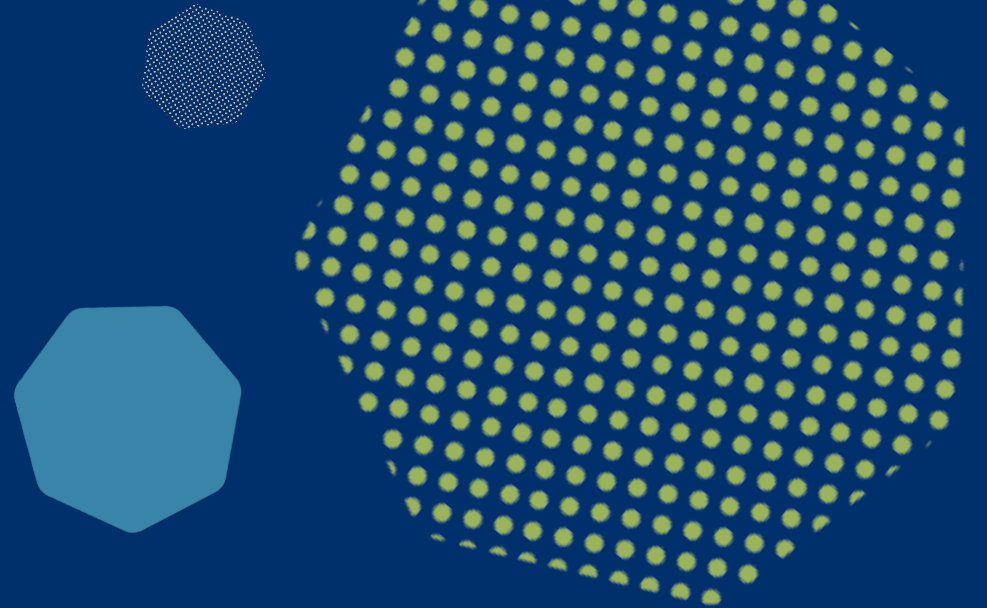
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A year of little change.



# What's new with income tax for 2023??



.....Not much

- 2023 Inflation adjustments have been released
- Provisions under the 2017 Tax Cuts and Jobs Act (TCJA) are continuing to roll out through 2025.
- Many TCJA provisions are set to expire at end of 2025.

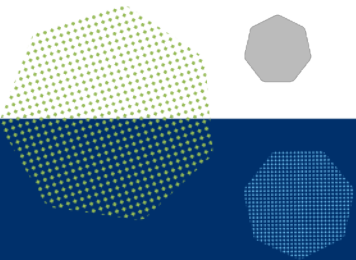
# Tax developments..

## IRS Audits

IR-2023-166, Sept. 8, 2023

**IRS announces sweeping effort to restore fairness to tax system with Inflation Reduction Act funding; new compliance efforts focused on increasing scrutiny on high-income, partnerships, corporations and promoters abusing tax rules on the books**

**Agency focus will shift attention to wealthy from working-class taxpayers; key changes coming to reduce burden on average taxpayers **while using Artificial Intelligence and improved technology** to identify sophisticated schemes to avoid taxes**





# Tax developments..

## Employee Retention Credit

R-2023-169, Sept. 14, 2023

**Moratorium on processing of new claims through year's end will allow IRS to add more safeguards to prevent future abuse, protect businesses from predatory tactics; IRS working with Justice Department to pursue fraud fueled by aggressive marketing**



The IRS has trained auditors examining ERC claims posing the greatest risk, and the IRS Criminal Investigation division is actively working to identify fraud and promoters of fraudulent claims for potential referral for prosecution to the Justice Department.

# Tax developments..

## Employee Retention Credit

IR-2023-193, Oct. 19, 2023

**IRS announces withdrawal process for Employee Retention Credit claims; special initiative aimed at helping businesses concerned about an ineligible claim amid aggressive marketing, scams**

WASHINGTON — As part of a larger effort to protect small businesses and organizations from scams, the Internal Revenue Service today announced the details of a special withdrawal process to help those who filed an Employee Retention Credit (ERC) claim and are concerned about its accuracy.

This new withdrawal option allows certain employers that filed an ERC claim but have not yet received a refund to withdraw their submission and avoid future repayment, interest and penalties. Employers that submitted an ERC claim that's still being processed can withdraw their claim and avoid the possibility of getting a refund for which they're ineligible.

The IRS created the withdrawal option to help small business owners and others who were pressured or misled by ERC marketers or promoters into filing ineligible claims. **Claims that are withdrawn will be treated as if they were never filed.** The IRS will not impose penalties or interest.



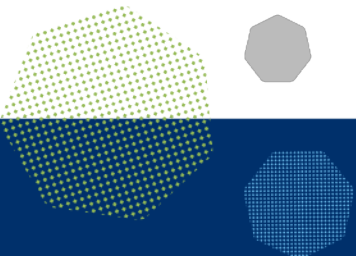
# Tax developments..

## Employee Retention Credit

November 3, 2023 – Generic Legal Advice Memorandum (GLAM)

In this memorandum, the IRS discussed whether an employer may rely on communications from the Occupational Safety and Health Administration (OSHA) on mitigating and preventing the spread of COVID -19, and whether these communications qualified as a “government order” for purposes of claiming a full or partial shutdown in claiming the Employee Retention Credit (ERC).

The conclusion of the GLAM is that the OSHA communications discussed within the GLAM were not considered “government orders” for purposes of qualifying for the ERC.





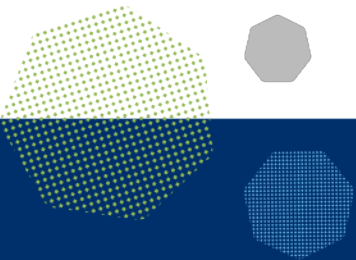
# Corporate Transparency Act



# Corporate Transparency Act

## Beneficial Ownership Information (BOI) Reporting

- Intended to enhance transparency in entity structures and ownership to combat money laundering, tax fraud and other illegal activities
- Domestic reporting companies
  - Corporations, Limited Liability Partnerships (LLP's), Limited Liability Companies (LLC's) or any other entity created by filing a document with a Secretary of State under the law of a State or Indian Tribe.
- Foreign reporting companies
  - Corporations, LLC's or other entity formed under the law of a foreign country that is registered to do business in any State or Tribal jurisdiction by the filing of a document with the Secretary of State.



# Corporate Transparency Act

## Beneficial Ownership Information Reporting

- Beneficial Owner
  - Exercises substantial control over a reporting company, or;
  - Owns or controls at least 25% of the ownership interests of a reporting company
- Information required to be reported to FinCEN (Financial Crimes Enforcement Network)
  - Name, Date of Birth, Address
  - Unique Identifier Number from recognized jurisdiction and PHOTO of that document (i.e., drivers license or passport)
- 23 different exemptions exist including publicly traded companies, nonprofits and certain large operating entities

# Corporate Transparency Act

## Beneficial Ownership Information Reporting

- Reporting will be accepted starting January 1, 2024
- Companies created or registered prior to January 1, 2024 will have until January 1, 2025 to report BOI
- Companies created or registered between January 1, 2024 and December 31, 2024 must report BOI within 90 days of notice of creation or registration (per FinCEN update on 12/1/2023).
- Companies created on or after January 1, 2025 must report BOI within 30 days of notice of creation or registration.

# Polling Question #1

- Have you contemplated to relevance of the Corporate Transparency Act to you or your business?
- No
- Yes
- Didn't know about it



# Tax Cuts and Jobs Act – Planning for Expiring Provisions - 2026



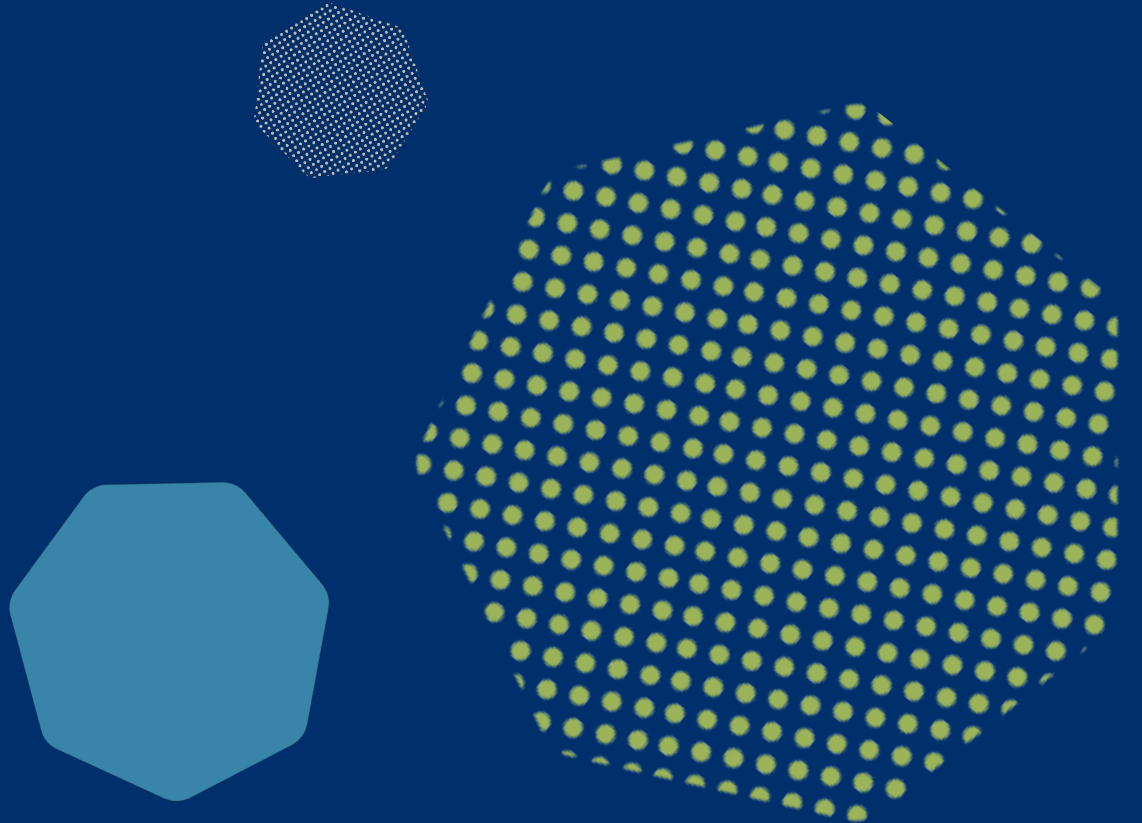


# Post-TCJA Tax Planning

## Expiring Provisions (December 31, 2025)

- Individual Tax Provisions
  - Tax Rates, Standard Deduction, Personal Exemptions and Child Tax Credits revert to pre-TCJA levels (highest rate of 39.6%)
  - SALT Cap of \$10,000 reverts to NO LIMITATION
- Business Tax Provisions
  - IRC Sec 199A - (deduction for pass-through business income – 20%) will expire.
  - Depreciation vs. Expensing (i.e. Bonus Depreciation) – Discussed later
- Estate and Gift Tax Provisions
  - Estate and Gift Tax exclusion will revert to \$5 million adjusted for inflation annually (currently \$13.61 million in 2024)

**2023: What planning should be considered under current and existing tax law?**



# Research & Development Expenses

- Effective for amounts paid or incurred in tax years beginning after December 31, 2021, taxpayers may no longer deduct research & development expenditures (IRC §174). These expenditures must be capitalized and amortized.

## Amortization Period

Domestic R&D

5 Years

Foreign R&D

15 Years

- Software Development – Amounts paid in connection with the development of any software shall be treated as a research & development expenditure.
- Notice 2023-63 (Sept. 8, 2023) – IRS Issued Guidance on Application of IRC §174
- State Non-Conformity (California, Georgia, Indiana, Mississippi, Tennessee, Texas and Wisconsin)

# Research and Development Credit – IRC Sec. 41

## Research & Development Credit against Payroll Taxes

- Eligible small business, generally
  - <\$5M in revenue
  - Revenue for less than 5 years.
- Eligible Small Businesses can reduce payroll taxes up to \$500,000 annually.
  - Starting in the first quarter of 2023, employers could elect to apply the payroll tax credit against their share of both the Social Security Tax (up to \$250,000 per quarter) and, if any remaining credit exists, Medicare Tax for the quarter.
- Election made on originally filed income tax return on Form 6765, Credit for Increasing Research Activities
  - The amount elected must then be reported on Form 8974 and attached to either Form 941, 943 or 944 (Payroll Tax Forms).
  - You can first claim the qualified small business payroll tax credit on the Payroll Tax Forms for the quarter that begins after you file your income tax return that makes the election on Form 6765.

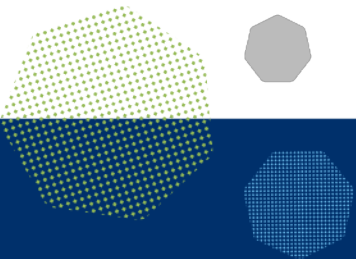
# Deductible Interest Expense - §163(j)

- Section 163(j), as amended by the TCJA, limited the amount of business interest allowed as a deduction to:
  - 30% of the taxpayer's adjusted taxable income (ATI) for the tax year.



# Deductible Interest Expense - §163(j)

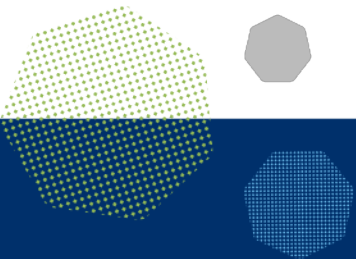
- ATI is computed as taxable income computed without regard to:
  - any item of income, gain, deduction, or loss that is not properly allocable to a trade or business,
  - business interest expense or business interest income,
  - the amount of any net operating loss (“NOL”) deduction,
  - the 20% deduction for certain passthrough income (199A),
- ✘ and in the case of tax years beginning before 1/1/2022, any deduction allowable for depreciation, amortization, or depletion.





# 163(j)(7) Election – Real estate Business/Farming Business

- Two types of business can elect out of the 163(j) interest limitation:
  - Real property trade or business
  - Farming businesses
- The election is *irrevocable*, and requires the electing business to utilize the Alternative Depreciation System with respect to certain of its assets.



# Excess Business Loss (EBL) Limitation

- Introduced in the Tax Cuts and Jobs Act (TCJA)
  - Limitation was set to expire at end of 2025.
- The Inflation Reduction Act extended the EBL limitation through the end of 2028.
- The aggregate amount of deductible business losses are limited for individual taxpayers.
- Losses in excess of the limitation carry forward as a Net Operating Loss.

	<u>MFJ</u>	<u>Single</u>
2022	\$540,000	\$270,000
2023	\$578,000	\$289,000
2024	\$610,000	\$305,000

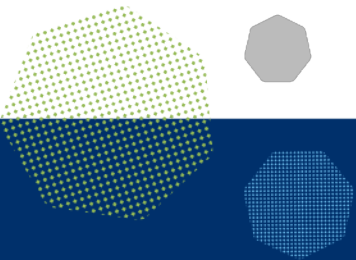
# Depreciation Planning

- Bonus Depreciation

- 100% - 2021-2022
- 80% - 2023
- 60% - 2024
- 40% - 2025
- 20% - 2026

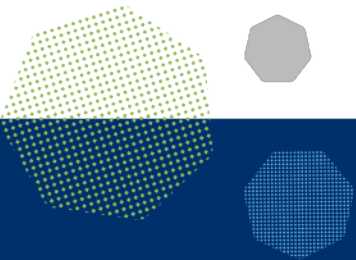
- §179 Depreciation

- Maximum expense election
  - 2022 - \$1,080,000
  - 2023 - \$1,160,000
  - 2024 - \$1,220,000
- Phaseout threshold
  - 2022 \$2,700,000
  - 2023 \$2,890,000
  - 2024 \$3,050,000



# Depreciation Planning

- Consider Cost Segregation Study
  - New construction
  - Building purchase
  - Remodel
- Consider elections to slow down depreciation
  - Manage tax rates
  - Manage Excess Business Losses
  - Manage Net Operating Losses



# IRC Section 1202 (Small Business Stock Gains Exclusion)

- Opportunity to exclude from Federal Tax (including the 3.8% Net Investment Income Tax) any capital gains realized from the sale of certain small business stock.
- Stock issued by Domestic C Corporation that is “qualified small business stock” that is an active entity operating in a “qualified trade or business”.
- Provides incentive for non-corporate taxpayers to invest in small businesses.
- 100% exclusion of any capital gains if the acquisition of the small business stock was after September 27, 2010 (reduced percentages for stock acquired prior to this date).
- Limited to the greater of \$10 million or 10 times the adjusted basis of the stock sold.



# Polling Question #2

Have you considered accelerating capital expenditures to take advantage of increased bonus depreciation in current year versus next year?

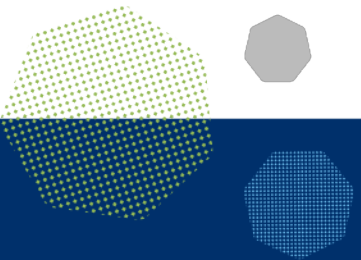
- Yes
- No





# LIFO Inventory

- Material and Labor Costs Are Increasing
- Consider making an election to account for your inventory on the LIFO (Last-in First-out) method of accounting



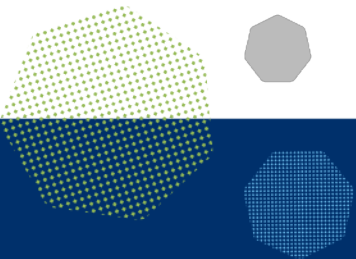
# S-Corporation vs. C-Corporation

## S-Corporation

- Single Tax
- 20% QBI Deduction (until 2025)
- Income passes through to shareholders

## C-Corporation

- Double Tax
- 21% Tax Rate
- Income taxed at corporation.



# Small Business Taxpayer Exception

Taxpayers with average gross receipts of less than \$27 million (\$29M for 2023 and \$30M for 2024):

May make an accounting method change to elect:

- To use the cash method of accounting.
  - To be exempt from requirement to maintain inventories.
    - However, taxpayers must:
      - Treat raw materials inventory as non-incidentals materials & supplies, or
      - Follow applicable financial statement treatment
  - To be exempt from the uniform capitalization (UNICAP) rules.
  - To be exempt from requirement to use percentage-of-completion accounting for long-term contracts to be completed in two years.



# Polling Question #3

Have you recently reviewed your business succession, and personal estate planning:

- Yes, Business Succession planning
- Yes, Estate Planning
- Yes, Both Business Succession Planning and Estate Planning.
- None of the above



# Estate Planning

- Estate & gift tax lifetime exclusion:
  - 2022 - \$12,060,000
  - 2023 - \$12,920,000
  - 2024 - \$13,610,000
  - Amount will be indexed for inflation each year through 2025
  - Estate & gift tax exemption is scheduled to revert back to 2017 amounts (adjusted for inflation) after December 31, 2025.
- Estate planning is still very important for administration of estate upon death.
- Annual exclusion amount for purposes of gifting
  - 2022 - \$16,000
  - 2023 - \$17,000
  - 2024 - \$18,000



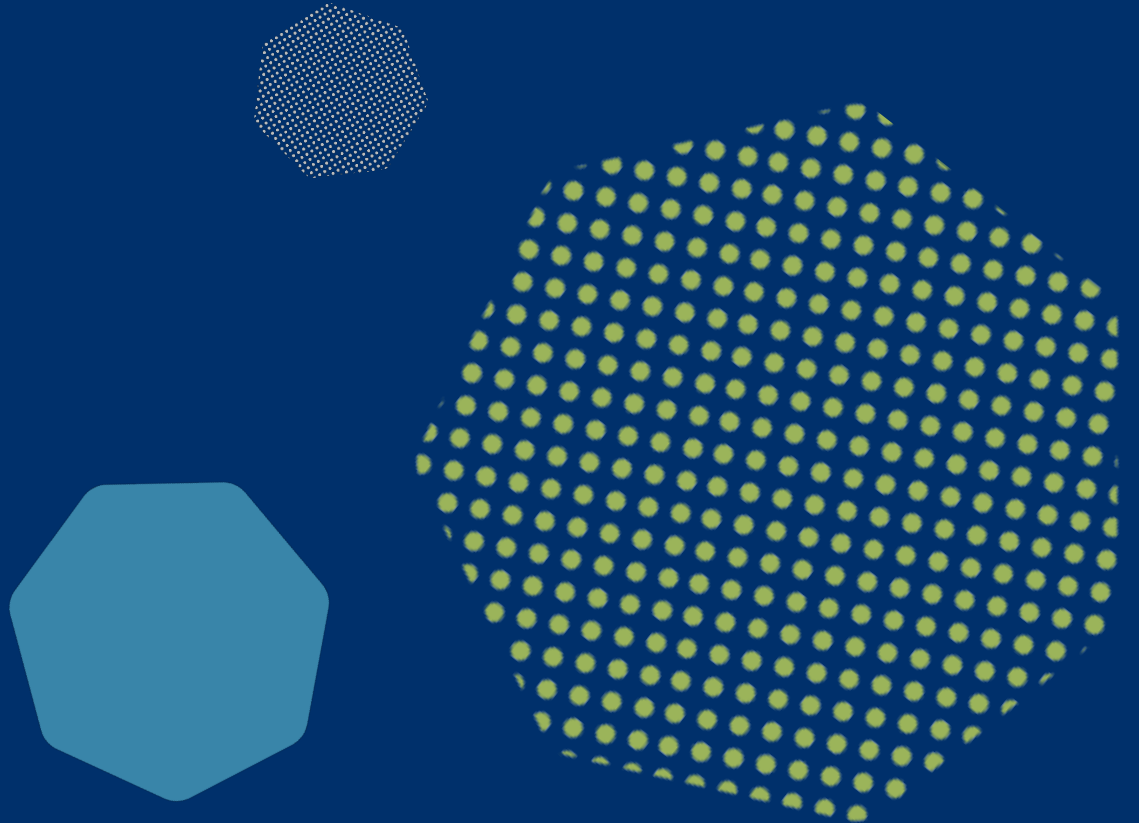
# Estate Planning

## Transfers During Lifetime

- Valuation Discounts
  - Lack of Marketability
  - Lack of Control
- Transfer by Gift
- Transfer by Sale
- Assets Grow Outside of your Estate
- Maintain Control of your business
  - Gift non-voting stock
  - Utilize trusts to hold stock



# SALT Update



# SALT CAP Workaround – “PTET” / “PTE” Tax

- The 2017 Tax Cuts and Jobs Act temporarily capped the deduction for aggregate state and local taxes, including income and property taxes (or sales taxes in lieu of income taxes), at \$10,000. The SALT cap is set to expire after 2025. For now, it mainly affects high-income earners who live or operate in high-tax states and itemize deductions.
- The SALT cap is primarily applicable to individuals—but not entities. Many states have passed laws to pay state and local taxes at the entity level. This so-called “workaround” benefits individual taxpayers for federal tax purposes.
- Individual PTE owners, who would have been subject to the \$10,000 SALT deduction cap if they had paid state and local taxes directly, see the benefit of taxes paid by the PTE reflected in a reduction of their shares of PTE income





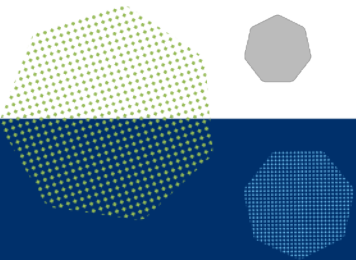
# SALT CAP Workaround – “PTET” / “PTE” Tax

State PTE tax - No two states are the same – Most state PTEs rules differ in the following:

- Who can make the election (CA can't have a limited p/s)
- Whether the tax is binding on all eligible partners
- Type of partners included (MO allows C Corp most do not)
- Income subject to tax (Apportioned, As a Corporation, Gross, etc.)
- Differences in tax rates (fixed or sliding scale)
- # of owner factors that can impact decision

Reasons Why State are Passing these Elections:

- Auditability – easier to audit a single taxpayer versus tracking down different owners.
- Compliance consistence on treatment of sourcing (allocation v apportionment).
- Surprised that we haven't seen more states be mandatory (i.e. CT).

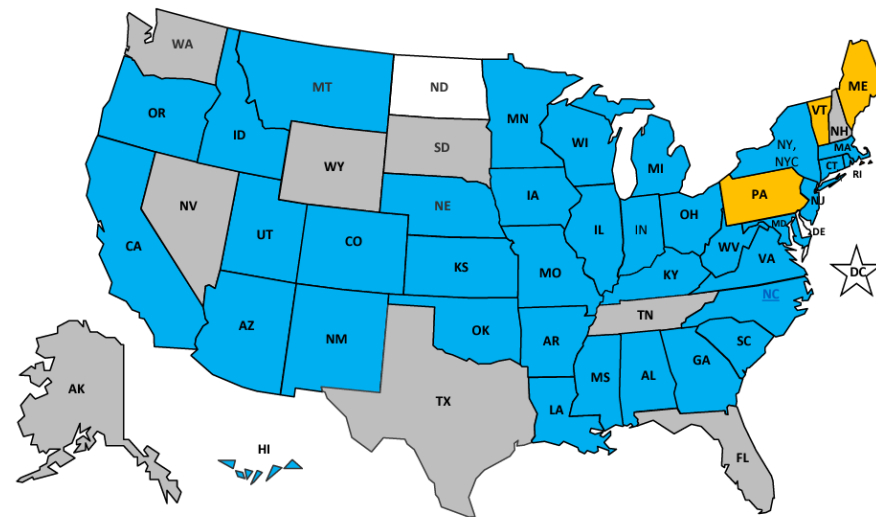


# SALT CAP Workaround – “PTET” / “PTE” Tax

- Challenges and complexities exist when an entity has income and resident partners in multiple states, states without PTET likely do not give partners a credit for taxes paid to other states (e.g. Pennsylvania).
- Current map (provided by AICPA)

## States with Enacted or Proposed Pass-Through Entity (PTE) Level Tax

As of November 12, 2023

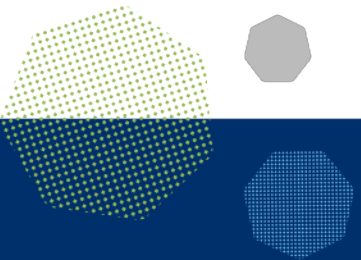


- 36 states (& 1 locality) that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:  
[AL](#), [AR](#)<sup>1</sup>, [AZ](#)<sup>1</sup>, [CA](#), [CO](#)<sup>3</sup>, [CT](#)<sup>4</sup>, [HI](#)<sup>2</sup>, [GA](#)<sup>1</sup>, [IA](#)<sup>1</sup>, [IL](#), [IN](#)<sup>2</sup>, [KS](#)<sup>2</sup>, [KY](#)<sup>1</sup> (& [KY](#)), [LA](#), [MA](#), [MI](#), [MD](#), [MN](#), [MO](#)<sup>1</sup>, [MS](#)<sup>1</sup>, [MT](#)<sup>2</sup>, [NC](#)<sup>1</sup>, [NE](#)<sup>3</sup>, [NJ](#), [NM](#)<sup>1</sup>, [NY](#), [OH](#)<sup>1</sup>, [OK](#), [OR](#)<sup>1</sup>, [RI](#), [SC](#), [UT](#)<sup>1</sup>, [VA](#), [WI](#), [WV](#)<sup>1</sup>, and [NYC](#)<sup>1</sup>
  - <sup>1</sup> Effective in 2022
  - <sup>2</sup> Effective in 2023 or later
  - <sup>3</sup> Retroactive to 2018
  - <sup>4</sup> Mandatory
- 3 states with proposed PTE tax bills:  
[ME](#) - [LD 1891](#) carried over to next session  
[PA](#) - [SB 659](#) referred to Finance  
[VT](#) - [SB45](#) passed Senate, failed in House
- 9 states with no owner-level personal income tax on PTE income:  
[AK](#), [FL](#), [NH](#), [NV](#), [SD](#), [TN](#), [TX](#), [WA](#), [WY](#)
- 3 states with an owner-level personal income tax on PTE income that have not yet proposed or enacted PTE taxes:  
[DC](#), [DE](#), and [ND](#)

# Polling Question #4

Yes or No – Have you taken advantage of the PTET workaround?

- Yes
- No



# State Income Tax Updates

## New Jersey

- **July 3, 2023 – P.L. 2023, c.96 signed into law**
  - Effective for privilege periods ending on or after July 31, 2023:
    - A non-New Jersey corporation will be deemed to have substantial nexus if it derives New Jersey receipts in excess of \$100,000 or has 200 or more separate transactions delivered to customers in the state during the corporation's taxable year
    - The “Finnigan Method”, which requires a Combined Group of companies to be treated as one taxpayer for purposes of sourcing the unitary receipts of the Combined Group. The numerator must include receipts from ALL of the group's members, regardless of their individual nexus to the state.
    - GILTI now to be treated as a dividend, thus qualifying for the effective 95% dividend received deduction when received from an 80% or more owned controlled foreign corporation.
    - NOL rules now conform to Federal 80% limitation
    - Several other changes to consider

# Sales Tax Updates

## The impact of Wayfair continues to be felt around the country

- **Economic nexus for remote sellers including transaction thresholds**
  - Currently 6 different categories of economic nexus thresholds:
    - \$100,000 (19 states)
    - \$100,000 and 200 transactions (21 states, Puerto Rico and D.C.)
    - \$100,000 and 100 transactions (1 state)
    - \$250,000 (2 states)
    - \$500,000 (2 states)
    - \$500,000 and 100 transactions (1 state)
  - Trend is for States to forgo the nexus transactions tests.
    - 10 states have chosen to forgo
    - 13 never adopted
    - More expected to forgo in 2024
  - Sales Tax Nexus studies continue to be of value as states continue to enforce the relatively new laws.
  - Voluntary Disclosure opportunities exist to mitigate impact and limit lookback periods

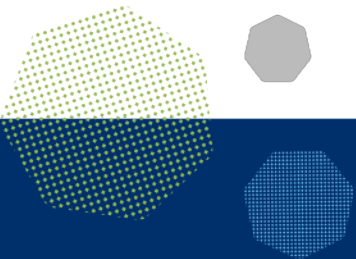


# State Activity – Nexus Questionnaires and Audits

States seeking additional revenue through expansion of tax base (see prior updates on nexus, taxation of services, etc.) and enforcement. Pivotal timing for sales/use tax as most states are now several years past “economic nexus” regulation enactment.

## Many things to consider beyond the obvious:

- Marketplace facilitator nexus
- Exempted or Excluded Sales (i.e., sale for resale, exempt property, etc.)
- Registration requirements and timing
- Potential for “Local” sales tax considerations
- Foreign entities, without physical presence, need to review their inbound business



# Questions



# THANK YOU!



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