WASHINGTON TAX BRIEF

February 22, 2023
Meet the Team
Tax Policy & Advocacy

- Eileen Sherr, Director
- Jon Williamson, Senior Manager
- Reema Patel, Senior Manager
Topics for Today

1. Legislative Update and Outlook
2. IRS Advocacy Issues Update
4. Energy Tax Credit Update
5. CAMT & Stock Buyback Excise Tax Update
LEGISLATIVE UPDATE AND OUTLOOK
Inflation Reduction Act of 2022
Enacted 8/16/22

One Hundred Seventeenth Congress of the
United States of America

AT THE SECOND SESSION
Began and held at the City of Washington on Monday,
the third day of January, two thousand and twenty-two

An Act

To provide for reconciliation pursuant to title II of S. Con. Res. 14.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

TITLE I—COMMITTEE ON FINANCE
The Honorable Ron Wyden
Chairman
U.S. Senate Committee on Finance
21 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal
Chairman
U.S. House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Mike Crapo
Ranking Member
U.S. Senate Committee on Finance
21 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady
Ranking Member
U.S. House Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

Re: Tax Provisions in Senate Reconciliation Legislation Released on July 27, 2022

Dear Chairmen Wyden and Neal, and Ranking Members Crapo and Brady:

The American Institute of CPAs (AICPA) provides comments regarding important profession and tax policy issues that are in the Senate reconciliation legislation released on July 27, 2022. These comments are in addition to our letters previously submitted to Congress on October 1, 2021, November 10, 2021, December 14, 2021, and January 28, 2022, regarding important profession and tax policy issues in earlier versions of reconciliation considered over the past year.

The AICPA is a long-time advocate for a tax system based on principles of good tax policy. We look forward to working with Congress as the reconciliation package moves forward to ensure that the proposed changes are administrable, equitable, and meet the needs of both taxpayers and tax practitioners. In this regard, we highlight some of the key issues we have identified for your consideration. We note that the items listed are not in any priority order, and we may have additional comments and insights as we further analyze the reconciliation legislation. In addition, as Congress moves forward with reconciliation legislation, it is important that special care is given to transition rules and to provide sufficient time and flexibility to implement the transition rules and offer penalty relief as needed.

5 See AICPA Principles of Good Tax Policy (12 principles providing objective framework to evaluate policy proposals).

AICPA Tax Advocacy on BBA/Inflation Reduction Act

- Valuation issues in Green Book proposal: Aug. 24, 2021
- Partnership BBA support in Green Book: Aug. 30, 2021
- Tax provisions in House reconciliation legislation or being considered: Oct. 1, 2021
- Tax Legislative Compendium Proposals to Congress with a cover letter: Oct. 8, 2021
- Concerns with possible retroactive ERC sunset: Oct. 26, 2021
- Corporate profits minimum tax being considered in reconciliation legislation: Oct. 28, 2021
- Analysis of proposed reform(s) to Subchapter K (partnership taxation): Nov. 2, 2021
- Tax provisions in House Manager’s Amendment to Rules Committee reconciliation legislation or being considered: Nov. 10, 2021
- Tax provisions important to the profession in the Senate Finance Committee introduced reconciliation legislation: Dec. 14, 2021
- Retroactive effective dates in Senate Finance Committee introduced BBBA: Jan. 28, 2022
- Corporate profits minimum tax in reconciliation legislation being considered – Jun. 21, 2022
IRS Updates on Guidance on the Inflation Reduction act

Consolidated Appropriations Act, 2023 and SECURE 2.0

- P.L. 117-328 was enacted 12/29/22 – includes SECURE 2.0
  - Includes most provisions that become effective in 2024
  - Expands coverage and increases retirement savings
  - Simplifies and clarifies retirement plan rules
  - Expands automatic enrollment in retirement plans
- Journal of Accountancy article on SECURE 2.0
U.S. Federal Debt Limit

US hit federal debt limit on January 19
• $31.381 trillion

“Extraordinary measures” will push action until summer
• Accounting maneuver
• Treasury redeems and suspends certain payments, most involve federal employee retirement funds, to free cash to cover debt obligations

First major legislative hurdle for the new House majority and Speaker Kevin McCarthy
Legislation to be Considered?

- Form 1099K
- Business Interest Expense Deduction
- Child Tax Credit
- LIFO Relief for Auto Dealers
- Tax Extenders
- Trade Adjustment Assistance Reauthorization
- FY2024 Appropriations
- Tax Preparer Regulation
- Section 174 Research And Development Amortization Fix
Congress: Organizing Committees & Setting Agendas

- IRS Commissioner Confirmation
- Senate Finance Committee hearing 2/15/23
- National Taxpayer Advocate
- House Ways and Means Committee
  - “Agenda for Working Families”
  - Whistleblower line
- HWMC Chair 2/7/23 letter on IRS report on how spend $80 billion
- Digital Assets, Data Privacy
Family and Small Business Taxpayer Protection Act

- 1st bill introduced in 118th Congress
- Rescinds $80 B authorized to IRS by IRA ’22
- Passed House, 221 to 210, along party lines
- No chance of passage in the Senate
Fair Tax Act of 2023

- Eliminates income, payroll, estate and gift taxes
- Imposes a national sales tax
- 23% on consumption of property or services
- No funding is authorized for the IRS after FY2027
- The states have the responsibility for administering, collecting, and remitting the sales tax to the Treasury

Challenges:
- Regressive
- Government revenue collections?
- Simpler?
- Administration
On 2/7/23, AICPA suggested over 60 simplification and technical legislative proposals that were submitted to Congress, hoping some are included in the tax legislation.

AICPA proposed legislative changes to tax provisions:
- Needing attention
- Technical in nature
- Can be readily addressed
- Correcting technical problems in the Internal Revenue Code
- Simplifying existing provisions
- Promoting simplicity
- Making the tax code fairer
- Effectively promoting important policy objectives
- Improving tax administration
- That are generally noncontroversial
AICPA Tax Legislative Compendium

- General
  - Standardize definitions to avoid multiple meanings for the same term
- Corporations and shareholders
- Employee benefits
- Individuals
  - Harmonize and simplify education related tax provisions
  - Harmonize standard mileage rates for business, medical, armed forces moving expense, and charitable contribution purposes
- International tax
- Partnerships
- S corporations
- Tax administration
- Tax methods and periods
- Trust, estate, and gift tax
  - Modify the deadline for estate basis reporting to 2/15 after the year of distribution
  - Allow administrative relief for late portability, inter vivos qualified terminable interest property, and qualified revocable trust elections
Reducing the Deficit by Ensuring the Wealthy and Large Corporations Pay their Fair Share

In the last two years, the Administration cut the deficit by more than $1.7 trillion—the largest deficit reduction in American history. The President believes we need to continue that progress—and reward work, not wealth.

Since coming to office, the President has signed legislation to make the wealthy and large corporations pay their fair share and provide tax cuts for working families, while reducing the deficit. Under his plan, no one making under $400,000 per year will pay more in taxes.

Billionaire Minimum Tax. President Biden is a capitalist and believes that anyone should be able to become a millionaire or a billionaire. He also believes that it is wrong for America to have a tax code that results in America's wealthiest households paying a lower tax rate than working families. In a typical year, billionaires pay an average tax rate of just 8%. In the State of the Union, he'll call on Congress to pass his billionaire minimum tax. This minimum tax would make sure that the wealthiest Americans no longer pay a tax rate lower than teachers and firefighters.

Surcharge on corporate stock buybacks. Stock buybacks enable corporations to funnel tax-advantaged payouts to wealthy and foreign investors, instead of paying dividends that shareholders are required to pay taxes on. In addition, a number of experts have argued that CEOs—who are compensated mostly in stock—use buybacks to enrich themselves to the detriment of the long-term growth of the company. Last year, oil and gas companies made record profits and invested very little in domestic production and to keep gas prices down—instead they bought their own stock, giving all that profit to their CEOs and shareholders. President Biden signed into law a surcharge on corporate stock buyback, which reduces the differential tax treatment between buybacks and dividends and encourages businesses to invest in their growth and productivity as opposed to paying out corporate executives or funneling tax-preferred profits to foreign shareholders. In the State of the Union, the President will call for quadrupling the tax on corporate stock buybacks.

Corporate minimum tax. In 2020, 55 of the largest corporations that were profitable paid $0 in federal income tax. To end that unfairness in the tax code, President Biden signed into law a 15 percent minimum tax on the profits that large corporations—those with over $1 billion in profits—report to shareholders. This book minimum tax means that it will be harder for companies that say they’re earning a billion in profits to pay tax rates in the single digits on those profits. It also levels the playing field for companies—including small businesses—that are already paying their fair share.
2023 AICPA Priorities and Outlook

- Extenders: R&D amortization/expensing
- Form 1099K: Increase $600 threshold
- Mobile Workforce: A 30 day minimum standard for states to collect income tax for work across state lines
- Natural Disasters: Improve IRS authority to provide federal tax relief after a natural disaster
AICPA Comments on Extenders and Section 174 (R&D)

**Extenders in General**
- Expired or expiring in 2021, 2022 and 2023
- Uncertainty breeds complexity and confusion
- Tax, cash-flow or financial planning is difficult
- Policy goals are undermined
- Future changes should presume permanency

**Section 174 R&D Expenses**
- Retroactive extension until 12/31/25
- Further recommend permanent extension
- Permanency promotes simplicity, and avoids conflict and litigation
- Capitalization decreases administrability of the Code
Sec. 174 – AICPA Advocacy


Urges Congress to extend the effective date of amended IRC section 174 research and experimental expenditures amortization to amounts paid or incurred until tax years beginning after December 31, 2025

- Recommend at least a temporary four-year delay
- Allows for simplicity in tax compliance
- Minimize confusion related to identifying costs that should be capitalized versus expensed

Recommend permanent extension of deductions for Sec. 174 expenditures and reinstating other expired tax provisions

- Taxpayers need certainty to perform long-term tax, cash-flow or financial planning and reporting
Advocacy and Resources on Section 174 Research Costs Expensing

AICPA submitted comments to Congress on section 174
• October 1, 2021

AICPA resources on section 174
• Ask the experts — How to handle section 174 research and development costs for 2022 taxes
• The Tax Adviser article outlining the changes (July 2022)
AICPA encouraged Congress to raise the $600 threshold in 12/16/22 letter and also reached out to Treasury on it.

Congress did not act, but Treasury provided transitional relief for the low threshold just for 2022.

We continue to have conversations about permanently raising the threshold for 2023 and going forward.

The tax treatment is the same regardless of the threshold, but a higher threshold will mitigate confusion for payors, taxpayers, and the IRS.

- 1/3/23 – IRS updated Fact Sheet FAQs on Form 1099K
- AICPA continuing to consider proposed legislation
AICPA Advocacy on Form 1099-K Threshold

• 12/16/22 - AICPA submitted a letter asking for an increase in the $600 reporting threshold to COLA adjustment of $6,500; or $5,000.

• 12/23/22 – IRS issued IR-2022-26 and Notice 2023-10, deferring the lowered threshold for one year (2022).

• 1/3/23 – IRS updated Fact Sheet FAQs on Form 1099K

• AICPA continuing to consider proposed legislation
Mobile Workforce Taxation: 118th Congress

- AICPA Endorsed Bipartisan Federal Legislation (S. 1274)
- Pandemic-Fueled Rise in Remote and Mobile Work, More Industries Impacted by State Tax Withholding Complexities
- Bill to be Reintroduced in 2023
Permanent Disaster Relief: 118th Congress

- Bipartisan, Bicameral Stand-Alone Bills
- Flurry of Annual Disasters Brings Congressional Interest to Bills
- Congressional Bill Champions
- Building Cosponsor Lists in Balanced Fashion

AICPA Endorsed Bills – (117th Congress)

1) The Filing Relief for Natural Disasters Act (H.R. 3574, S. 2748)
2) The Disaster Retirement Savings Act (H.R. 6241 / S. 2583)
Filing Relief for Natural Disasters Act

H.R. 3574 – Judy Chu (D-CA) & John Katko (R-NY)
S. 2748 – Catherine Cortez Masto (D-NV),
John Kennedy (R-LA), and Chris Van Hollen (D-MD)

Trigger: Official state declared disaster declaration

Authority to issue tax deadline extensions

H.R. 6241, S. 2583 - The Disaster Retirement Savings Act
What to Watch in 2023

- **Implementation guidance on CAMT, energy credits**
  Notices, regulations

- **Changes in IRS funding**
  Proposed, not likely to pass

- **New Commissioner of IRS**
  Confirmation process

- **Preparer regulation**
  Remain vigilant
Has there been significant progress?

When will the IRS be at a “healthy level”?

Are surge teams and hiring efforts making a difference?

As of February 4, 2023, we had 1.84 million unprocessed individual returns. These include tax year 2022 returns, 2021 returns that need review or correction and late filed prior year returns. Of these, 1.73 million returns require error correction or other special handling, and 107,000 are paper returns waiting to be reviewed and processed. This work does not typically require us to correspond with taxpayers, but it does require special handling by an IRS employee so, in these instances, it is taking the IRS more than 21 days to issue any related refund.

How long you may have to wait: We continue to process tax returns that need to be manually reviewed due to errors. For returns received in the current year, we process individual tax returns for which refunds are due first. Tax returns reflecting tax owe are processed last, but if a payment is mailed with the tax return, the payment is separated upon receipt and deposited to ensure the taxpayer account is credited for the payment.

As the return is processed, whether it was filed electronically or on paper, it may be delayed because it has a mistake, is missing information, or there is suspected identity theft or fraud. If we can fix it without contacting you, we will. If we need more information or need you to verify you sent the tax return, we will send you a letter. The resolution of these issues could take more than 120 days depending on how quickly and accurately you respond, and how quickly we can complete the processing of your return. Taxpayers are encouraged to check Tax Season Refund Frequently Asked Questions.

What you should do: In most instances, no further action is needed. Whether you filed electronically or by paper, we will contact you by mail if we need more information or if we made a change to your return. If you filed electronically and received an acknowledgement, you do not need to take any further action other than promptly responding to any mail we send you.
IRS Expands Secure Digital Correspondence for Taxpayers

- **IR-2023-29** - Feb. 16, 2023 and IRS Fact Sheet **FS-2023-05**
- New online option (Document Upload Tool) to **upload documents to irs.gov securely**
- **Instead of mailing to respond to 9 CP series notices** to help resolve issues faster
- Receive nearly **instant confirmation** that documents were received by the IRS
- Regardless of whether you have an IRS **Online Account**
- Notice will provide a **url link and time-limited unique access code** to respond within 30 days of the date of the notice
- Can open link in any browser and input unique 10-digit alphanumeric code, first and last name, SSN/ITIN/EIN, and securely upload scans, photos, or digital copies of documents (max of 15MB per file, up to 40 files of JPEGs, PNGs or PDFs – each PDF limited to 120 pages)
- IRS employee assigned to the case can manage the transmitted documents
- The taxpayer’s documents are available to the IRS employee assigned to the case who can manage the transmitted documents
- The documents remain available indefinitely until the employee retrieves them, at which time they are archived for 180 days and then deleted from the system
- Access originates with the IRS, and it is **NOT available for certain documents (i.e, those requiring physical signatures)**
Nine notices added to project; more to come

In early 2023, the IRS began including online correspondence as an option on nine of the CP series notices, potentially affecting more than 500,000 taxpayers each year. Taxpayers who receive one of the following notices with the link and access code can choose to upload their documents:

- **CP04**, relating to combat zone status.
- **CP05A**, information request related to a refund.
- **CP06** and **CP06A**, relating to the Premium Tax Credit.
- **CP08**, relating to the Child Tax Credit.
- **CP09**, relating to claiming the Earned Income Tax Credit.
- **CP75**, relating to the EITC.
- **CP75A**, relating to the EITC.
- **CP75D**, relating to the EITC and other credits.

In addition, the IRS has identified 53 other notices that could be appropriate for this type of secure digital communications. The IRS will be assessing the viability of including these notices as well as continuing to look for additional suitable notices to provide this online feature.
Future Plans

- During 2021 testing on certain exam-related notices, 38% used document upload tool.
- IRS plans to expand this digital correspondence capability to:
  - Additional (at least 53 other) notices
  - Other taxpayer interactions – live interactions with taxpayers, including those over the phone and in person.
  - During live interactions, such as phone calls with taxpayers, IRS employees with direct contact with taxpayers will be able to offer secure digital communications and grant upload access by providing the link and unique access code.
  - Can help 500,000 taxpayers each year - time saving initiative - more efficient way to submit requested information.
- For taxpayers and tax professionals, this new capability reduces the correspondence burden, ensures tax compliance and improves the customer experience by providing quality service in a timely manner and enhancing a taxpayer's right to be informed throughout any IRS processes.
- For IRS employees, this reduces paper correspondence, decreases processing time and speeds case resolution.

IRS Expands Secure Digital Correspondence for Taxpayers
IRS Services: Developments

Ramping up IRS service levels

Influencing IRS’ strategic direction

• IRS report to Treasury on use of new funds
• Implementation of “IRS Next”

5,000 new customer service representatives hired

IRS pilot for PPS line

New IRS Commissioner?
IRS Services: Developments

• Improving IRS Taxpayer Service
  • Revitalize IRS Oversight Board
  • Adjust Individual Estimated Tax Payment Deadlines
  • Improve Practitioner Priority Service (PPS)
• Create IRS Third Party Relations Office
• Provide Limited Authority to IRS to Regulate Paid Tax Return Preparers
Recommendations to IRS

- **PAUSE**
  - Pause Automated Compliance Actions

- **ALIGN**
  - Align Account Holds with Time it Takes to Process Penalty Abatement Requests

- **OFFER**
  - Offer a Simplified Penalty Abatement Process

- **PROVIDE**
  - Provide Relief from Underpayment and Late Payment Penalties

Tax Professionals United for Taxpayer Relief Coalition
1. IRS TEMPORARILY SUSPENDS SOME NOTICES

2. MORE CAN AND MUST BE DONE

3. AICPA TESTIMONY AT SENATE FINANCE COMMITTEE HEARING (2/17/22)

4. HOT IRS SERVICE ISSUES
# 25 IRS Notices Being Suspended


15 notices


10 EO notices

- 2/9/22

- 3/25/22

for Forms 990, 5500, 940

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## Individual Taxpayer Notices

<table>
<thead>
<tr>
<th>Notice/Letter Number</th>
<th>Title</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CP80</td>
<td>Unfiled Tax Return</td>
<td>This notice is generally sent when the IRS credited payments and/or other credits to a taxpayer’s account for the tax period shown on the notice, but the IRS hasn’t received a tax return for that tax period.</td>
</tr>
<tr>
<td>CP59 and CP759 (in Spanish)</td>
<td>Unfiled Tax Return(s) - 1st Notice</td>
<td>IRS sends this notice when there is no record of a prior year return being filed.</td>
</tr>
<tr>
<td>CP516 and CP616 (in Spanish)</td>
<td>Unfiled Tax Returns – 2nd Notice</td>
<td>Request for information on a delinquent return as there is no record of a return filed.</td>
</tr>
<tr>
<td>CP518 and CP618 (in Spanish)</td>
<td>Final Notice – Return Delinquency</td>
<td>This is a final reminder notice when there is no record of a prior year(s) return filed.</td>
</tr>
<tr>
<td>CP501</td>
<td>Balance Due – 1st Notice</td>
<td>This notice is a reminder that there is an outstanding balance on a taxpayer’s accounts.</td>
</tr>
<tr>
<td>CP503</td>
<td>Balance Due – 2nd Notice</td>
<td>This notice is the second reminder that there is an outstanding balance on a taxpayer’s accounts.</td>
</tr>
<tr>
<td>CP504</td>
<td>Final Balance Due Notice - 3rd Notice, Intent to Levy</td>
<td>The IRS sends this notice when a payment has not been received for an unpaid balance. This notice is a Notice of Intent to Levy (Internal Revenue Code Section 6331 (d)).</td>
</tr>
<tr>
<td>2892C</td>
<td>Withholding Compliance letter</td>
<td>This letter is mailed to taxpayers who have been identified as having under-withholding of Federal tax from their wages. This letter provides instructions to the taxpayer on how to properly correct their tax withholding.</td>
</tr>
</tbody>
</table>

## Business Notices

<table>
<thead>
<tr>
<th>Notice/Letter Number</th>
<th>Title</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CP259 and CP259 (in Spanish)</td>
<td>Return Delinquency</td>
<td>IRS sends this notice when there is no record of a prior year return being filed.</td>
</tr>
<tr>
<td>CP518 and CP618 (in Spanish)</td>
<td>Final Notice – Return Delinquency</td>
<td>This is a final reminder notice that we still have no record of a prior year tax return(s).</td>
</tr>
</tbody>
</table>
IRS Tidbits

IRS status of operations link – What is open, what to expect, etc.

IRS special 2023 filing season alerts –

Local Taxpayer Advocate – First line of defense when IRS can’t help
• https://www.irs.gov/advocate/local-taxpayer-advocate

E-signature relief through October 31, 2023

Quarterly estimated payment due dates
• H.R. 4214, The Tax Deadline Simplification Act (117th Congress)

AICPA webpage on IRS Services
IRA ‘22 $80B appropriations to IRS

- Enforcement: $1.10B
- Operations Support: $3.20B
- IT Modernization: $4.80B
- Taxpayer Services: $25.30B
- Other: $45.60B

Total: $80.00B
Annual report released Jan. 11
10 most serious problems encountered by taxpayers
Recommendations for solving those problems

IRS efforts to improve customer service and reduce taxpayer burden
Most litigated issues
2023 Purple Book: annual legislative recommendations
IRS Issues Release on Taxability of State Payments

At least 19 states provided 2022 payments
Characterization of payment differs by state
IRS issued IR-2023-23 on Feb. 10
Many states not federally taxable
  • If related to general welfare and disaster relief:
  • CA, CO, CT, DE, FL, HI, ID, IL, IN, ME, NJ, NM,
  • NY, OR, PA, RI, (AK nuanced rules)
• Other states - tax benefit rule
  • Not taxable if std deduction or taxes > $10,000 cap
  • GA, MA, SC, VA
• IRS chart of state payments
• Journal of Accountancy article
IRS Priority Guidance Plan and AICPA Comments

- IRS plan for issuing guidance in the year
- AICPA submits comments of suggestions of needed guidance
- AICPA Technical Resource Panels discussions with IRS on needed guidance
AICPA Comments on IRS Appeals Regulations

• IRS issued proposed regulations on IRS Appeals

• AICPA comments (1/13/23)
  • Challenges to the validity of a Treasury regulation or Revenue Procedure/Notice
  • Section 9100 missed election relief and change in method of accounting
Filing Flexibility Principles

- Simplify Tax Administration
- Embrace Technological Advancements
- Promote Efficiency
- Streamline Information Perfection
- Improve Taxpayer Communication
Filing Flexibility Advocacy Concentration

- Reimagined extension process
- Optimizing IRS/tax practitioner communication
- Easier approach to “information perfection”
- Broader penalty relief
- Simpler safe harbor choices
- Changes to information reporting (1099) processes
K-2/K-3 UPDATE
Schedules K-2 & K-3 2022 Finalized Instructions

- Domestic Filing Exception modifications
  - Additional eligible partner types
  - Changes to notification requirements
- Other available exceptions
- 2021's FAQ 15 exception eliminated
- Clarified the use of country code "XX"
- Other changes and clarifications
Schedules K-2 & K-3: AICPA Advocacy

- Provide broader exceptions for filing Schedules K-2 and K-3
- Make permanent the 2021 tentative exemption from filing Schedules K-2 and K-3 for certain domestic partnerships
- Reduce compliance burden required for foreign tax credit and limit to significant and relevant information
- Provide *de minimis* rule for certain information requirements

February 24, 2022 Letter
August 31, 2022 Letter
November 30, 2022 Letter
ENERGY TAX CREDIT UPDATE
Energy Tax Credits – IRA Changes

• Changes from the Inflation Reduction Act
  • Extended and expanded expiring credits
  • Created new credits
  • Emphasis on:
    • Prevailing wages
    • Apprenticeship programs
    • Domestic content
  • Provided alternative credit monetization methods
    • Section 6417
    • Section 6418
Energy Tax Credits - Developments

- Requests for comment.
- Guidance for the prevailing wage and apprenticeship requirements have been published.
- Clean vehicle credit safe harbor and forthcoming regulations.
- Recent guidance
  - Notice 2023-17 provides an overview of the program under section 48(e)
  - Notice 2023-18 provides guidance on the funding of investments in qualified energy projects under section 48C
Energy Tax Credits – AICPA Advocacy

- Recommendations for Sections 6417 and 6418
- Facilitate effective use of sections by partnerships and S corporations
- Define and exemplify excessive payments and credit transfers
- Recommendations for prevailing wage and apprenticeship requirements
- Improved guidance on the determination of prevailing wages
- Enhanced reliance on contractors and subcontractors

December 2022 Comment Letter
January 2023 Comment Letter
INFLATION REDUCTION ACT

Get the guidance and resources you need to understand how the Inflation Reduction Act affects your tax outlook today and beyond.

- Legislative summary
- Clean energy credits chart
- Energy tax credits and ESG client letter
- Inside look at the Inflation Reduction Act | Tax Section Odyssey
- New IRS funding in the Inflation Reduction Act | Tax Section Odyssey
- Advocacy

www.aicpa.org/topic/tax/tax-policy-and-regulatory-change
Environmental, social and governance (ESG) Tax Task Force

Advocacy

• Notice 2022-50 and 2022-51
• Procedural guidance related to the Inflation Reduction Act

Resources

• Energy Tax Credits and ESG Client Letter
• Summary of Inflation Reduction Act Energy Credits
• ESG and taxation: A necessary part of a company’s strategic objectives, *The Tax Adviser*

[link to AICPA’s Sustainability/ESG resource center]
CAMT & STOCK BUYBACK EXCISE TAX UPDATE
Inflation Reduction Act
Corporate Provisions

15% minimum tax on certain large corporations

1% excise tax on stock repurchases
Corporate Minimum Tax

• A corporate alternative minimum tax imposes 15% minimum tax on adjusted financial statement income (AFSI) of applicable corporations, if an applicable corporation’s AFSI over three tax years ending with the relevant tax year exceeds $1 billion.

• It is estimated that this provision will impact approximately 150 of the largest corporations

• Book income to which the 15% applies is after adjusting for the AMT, foreign tax credit and any depreciation taken for tax purposes that exceeds any depreciation taken for book purposes.

• S corporations, regulated investment companies or real estate investment trusts are not included

• Effective for tax years beginning after 12-31-2022.

• It may impact financial planning, as this tax may affect earnings and profits, stock pricing and dividend distributions
Corporate Alternative Minimum Tax - Advocacy

- AICPA submitted comments to IRS and Treasury on Oct. 14, 2022, requesting immediate guidance.

- Treasury and IRS issued Notice 2023-7 on December 27, 2022, providing interim guidance on how the CAMT applies to corporations, certain partnerships, troubled corporations, and affiliated groups of corporations that file consolidated tax returns.

- Treasury and IRS issued Notice 2023-30 on February 17, 2023, providing interim guidance on certain insurance related issues for determination of AFSI.

- The Notice addressed some of AICPA’s comments from October, but many areas still need further clarification. AICPA is working on a 2nd CAMT comment letter for Notice 2023-7.

Some issues addressed in Notice 2023-7 include:

- Certain corporate transactions
- Safe Harbor Method
- Adjustments to AFSI for depreciation
Excise tax on stock repurchases

1. This is an excise and not an income tax.
2. It also applies to stock purchased by subsidiaries that are more than 50% owned by the parent.
3. The excise tax does not apply if repurchases are less than $1 million or if contributed to and employee pension plan, an employee stock ownership plan or other similar type plans.
4. This provision would apply to tax years beginning after 2022.
6. AICPA is working on a comment letter for Notice 2023-2.
Schedule UTP (Form 1120) & Instructions

• Schedule UTP (Uncertain Tax Positions) is required by corporations that have assets that equal or exceed $10 million and report tax positions that affect the U.S. federal income tax liabilities of certain corporations that issue or are included in the audited financial statements.

• AICPA submitted comments to Treasury and IRS on November 18, 2022, requesting clarification.

• On December 22, 2022, IRS issued a statement about Schedule UTP with revisions to instructions based on comments received.

• Treasury and IRS clarified what is included in the "amount" requested (columns (i) and (k)) plus narrowed the types of contrary authorities required to be disclosed in column (c).
Advocating for AICPA Priorities
While the ERC is an opportunity to consider for your business, the eligibility rules and credit calculations are complex with significant consequences if done improperly.

ERC Resource Library

- Chart — ERC: Fact or Fiction?
- Guidance — Notice 2021-20, Notice 2021-23, Notice 2021-49, IR-2022-183, Form 3949-A
- Podcast — Reconciling ERC claims with reality

www.aicpa.org/resources/toolkit/employee-retention-credit-guidance-and-resources
Proposed revisions to the Statements on Standards For Tax Services (SSTSSs)

Exposure draft with proposed revisions to standards issued August 2022

30 comment letters received

Task Force has reviewed comments and is updating draft revisions

Open meetings of AICPA Tax Executive Committee scheduled – April 25 and May 18

www.aicpa.org/ssts-update
Virtual Currency Digital Assets Tax Issues

No clear definition of virtual currency. No clear guidance on treatment of virtual currency

AICPA letter on needed IRS FAQs on 2022 Form 1040 digital assets question

AICPA letter on Form 1040 virtual currency question and AICPA letter on updated draft instructions
  • Clarify the meaning of virtual currency and define “digital assets”
  • Simplify the virtual currency question
  • Include additional elements into the Form 1040 instructions
  • Explain if a dependent had a virtual currency event but does not have a filing requirement

AICPA letter on section 6045 and section 6050I
  • Define broker
  • Explain filing requirements of form 8300 (cash payment over $10K)

https://us.aicpa.org/advocacy/tax/2022taxadvocacycommentletters.html
IRS guidance on Form 1040 digital assets question

• Reminder: IRS changed the wording of the question on 2022 Form 1040 related to digital assets.
  “At any time during 2022, did you:
  a) receive (as a reward, award, or payment for property or services); or
  b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?”

• On Jan. 24, 2023, IRS issued IR-2023-12
  • Reminded all taxpayers to:
    • Answer the question (regardless of whether there were transactions involving digital assets)
    • Report all digital asset income
  • Updated term to “digital assets” (from virtual currencies”)
Digital asset tax update

1/24/23, IRS issued IR-2023-12 (which refers to 2022 Form 1040 Instructions page 15)

- Updated term to “digital assets” (from virtual currencies”)
  - Defined as a digital representation of value which is recorded on a cryptographically secured, distributed ledger (or any similar technology)
  - Includes: convertible virtual currency and cryptocurrency, stablecoins, and non-fungible tokens (NFTs) (and if a particular asset has the characteristics of a digital asset)
  - Updates helpful and IR-2023-12 is authority to rely on, but AICPA suggested “virtual currencies” remain until “digital assets” defined in final regs ((8/29/22 AICPA comments)
  - Expanded and clarified instructions for answering the question
  - Clarifications helpful, but AICPA suggests more clarifications (8/29/22 and 12/16/22 AICPA comments)

12/23/22, IRS issued IR-2022-227 and Ann-2023-02

- Delayed additional broker reporting on dispositions of digital assets until final section 6045 regulations issued
  - Delay helpful, as AICPA requested delay in effective date until 2 years after the final regulations. (10/28/22 AICPA comments)
Digital asset tax comments

- AICPA Virtual Currency Task Force comments to IRS
  - **12/16/22** – on draft Form 1040 instructions
  - **10/28/22** – requesting guidance and delay on section 6045 and 6050I broker reporting requirements
  - **8/29/22** – on Form 1040 and instructions
  - **2/28/20, 5/30/18, and 6/10/16** – on needed virtual currency guidance and IRS Notice 2014-21
Virtual Currency/Digital Assets 2022
Proposed Federal Legislation

AICPA monitoring and analyzing legislation

- **H.R. 7614**, Digital Commodities Exchange Act of 2022
  - Introduced April 2022
  - [Bill summary](#)
- **S. 4356**, Responsible Financial Innovation Act (a/k/a Lummis-Gillibrand bill)
  - Introduced June 2022, [Bill overview](#)
- **S. 4760**, Digital Commodities Consumer Protection Act of 2022
  - Introduced August 2022
Tax Resources: digital assets

Resources:

- **AICPA Tax Section’s virtual currency and digital assets tax guidance and resources**
  - Includes links to comment letters, podcasts and more
- **Jan. 24, 2023 Journal of Accountancy article**
- IRS **Digital Assets** (with recent CCA 202302011 on crypto losses and CCA 202302012 on donating crypto), [FAQs](#), [Form 1040 Instructions](#) page 15.
Virtual Currency – State Tax Guidance

AICPA
• Tracking list of state guidance on taxation and reporting of digital assets

National Conference of State Legislatures (NCSL)
• State cryptocurrency 2022 legislation page and may have one for 2023

Multistate Tax Commission (MTC)
• Sales tax on digital products project
• Draft of detailed outline on sales taxation of digital products
Key state tax issues for the profession: For 2023 and beyond

**Tax on professional services** – governors looking to eliminate personal and corporate taxes ([one pager](#))

**Pass-through entity (PTE) taxes** – more states likely to enact and refine as workaround to federal SALT deduction cap ([AICPA state map](#), [links](#), [considerations](#))

**Mobile and remote workforce** – more states may enact 30-day threshold for nonresidents and may clarify rules and guidance ([AICPA article](#), [coalition](#))

**Student loan forgiveness** – several states may clarify state tax treatment ([AICPA chart](#))
States with Enacted or Proposed Pass-Through Entity (PTE) Level Tax
As of February 7, 2023

29 states (& 1 locality) that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:

AL, AR¹, AZ², CA, CO³, CT, GA¹, ID, IL, KS¹, LA, MA, MI, MD, MN, MO¹, MS¹, NC¹, NJ, NM¹, NY, OH¹, OK, OR¹, RI, SC, UT¹, VA, WI, and NYC¹

1 Effective in 2022 or later – on map (2022) or (2023)
2 Retroactive to 2018
3 Mandatory

6 states with proposed PTE tax bills:
HI – HB1362, SB 1437, in committee
IA - HSB 69, in committee
IN - SB 2, passed Senate 2/6/23
KY - HB 37, in committee
VT – HB61/SB45, HB 153, in committee
WV - HB 2608/SB 151, HB 2934/SB 496, HB 3245/SB 442 in committee

9 states with no owner-level personal income tax on PTE income:
AK, FL, NH, NV, SD, TN, TX, WA, WY

10 states with an owner-level personal income tax on PTE income that have not yet proposed or enacted PTE taxes:
DC, DE, HI, IA, ME, MT, NE, ND, PA, VT
Passthrough Entity Tax (PTET)

• New Tax Odyssey podcast: When to call an audible on the passthrough entity tax

• S-corp issues, state crediting complications, AMT, Trust issues, and more

• SALT Roadmap and Resource Center
  • Interactive reference library to access state and local tax info in one central place

• The Tax Adviser Article: Federal implications of passthrough entity tax elections (Nov. 22)
Other Tax Advocacy Issues
HOT TOPICS
Other Advocacy Issues

- AAR/BBA audit rules simplification
- Foreign tax credit proposed regulations
- Form 3520 suggestions
For more information about the Tax Policy and Advocacy team check out our website and comment letters page.

Website
https://us.aicpa.org/advocacy/tax

Comment letters
https://us.aicpa.org/advocacy/tax/2023taxadvocacycommentletters.html
• Uncovering the intricacies — Schedules K-2 and K-3
• Managing your risk with engagement letters
• Tax practice resiliency and due dates

• Reconciling ERC claims with reality
• Inside look at the Inflation Reduction Act
• State implications with the PTE tax
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State guidance on taxation and reporting of digital assets

Arizona provides income tax subtraction for crypto airdrops.

California requires sales tax on taxable item purchased with virtual currency.

Pennsylvania lists NFTs as taxable but may be retroactive to the state’s expansion of digital goods.

Wyoming states virtual currency is not subject to personal property tax.
ANNUAL TAX COMPLIANCE KIT
Your go-to resource for managing your tax season workflow

- Engagement letters
- Client organizers
- Tax return checklists
- Practice guides

Browse the Annual Tax Compliance Kit →
Schedules K-2 and K-3 report items of international tax relevance from the operations of pass-through entities. Get the latest updates in our resource library:

- Client information letter
- IRS guidance and draft forms
- AICPA advocacy
- Tax Section Odyssey podcasts
  - Uncovering the intricacies — Schedules K-2 and K-3
  - Making sense of new international passthrough reporting
  - Transitional challenges for Schedules K-2 and K-3

Visit the Schedules K-2 and K-3 library →
SALT Roadmap and Resource Center
Interactive reference library to access state and local tax info in one central place

California pass-through entity/general business taxes:
Access California business tax information for compliance obligations.

California allows a pass-through entity tax election for taxable years beginning on or after Jan. 1, 2021, and before Jan. 1, 2026.

Access the SALT Roadmap →
While the ERC is an opportunity to consider for your business, the eligibility rules and credit calculations are complex with significant consequences if done improperly.

ERC Resource Library
- Chart — ERC: Fact or Fiction?
- Guidance — ERC FAQs
- Podcast — Reconciling ERC claims with reality
Accountants Liability: Balancing Risk and Reward (Tax Focus)

March 17 and other dates available, 1pm ET | Webcast | 4 CPE credits

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