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CPAs & BUSINESS ADVISORS

TCOSCPA – Tax Update

November 9, 2022

PRESENTER

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FROM BUILD BACK BETTER TO INFLATION REDUCTION ACT

FROM BBB TO THE IRA

- Original Build Back Better proposed between $3 and $5 trillion of programs, including new and enhanced "green energy" programs:
  - With a variety of corresponding tax increases as pay fors.
- BBB not enacted.
- Inflation Reduction Act enacted via reconciliation and signed into law on August 16, 2022.

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INFLATION REDUCTION ACT

- What is not included with IRA (as compared to BBB):
  - Statutory rate increases.
  - Changing gift/estate statutes.
  - SALT deduction.
  - Modification of the carried interest rules.

- What is included with the IRA:
  - Corporate minimum book tax.
  - Share buy-back tax.
  - ~$80 billion for the IRS.
  - AND according to the current administration, roughly $379 billion in various incentives to promote energy efficiency and "green" energy.

THE RETURN OF BUILD BACK BETTER – SENATE STYLE

Recap: The House passed its "Build Back Better" reconciliation bill last year.

Renamed to "Inflation Reduction Act of 2022" and includes the following tax increases:

- **A 15% minimum "book tax" on corporations with an average annual adjusted financial statement income in excess of $1 billion.**
  - The Inflation Reduction Act bill replaces depreciation that is normally claimed on the financial statement with the year's tax depreciation.
- **Places a 1 percent excise tax on corporate "net" stock buybacks.**
  - The levy only applies if there is an excess of redemptions over new issues for the year.
- **Limitation on the Excess Business Losses of Noncorporate Taxpayers.**
  - Extended for 2 years to apply to tax years ending before January 1, 2029.
- **Permanently extend the Black Lung Disability Trust Fund tax.**
- **Reinstate Superfund Tax on crude oil and imported petroleum products.**

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$370 BILLION OF ENHANCED ENVIRONMENTAL INCENTIVES

- Extension, expansion of incentives for traditional alternative energy sources such as solar, wind, biomass, and geothermal (§§45,48) generally for construction beginning before 2025.
  - Extension for section 45 and 48 credits –Solar credits revived to 30% for 2022.
  - Additional 10% credit for placement in an "energy facility" or low-income community.
    - Energy facilities include Brownfield sites, areas with significant fossil fuel employment and census tracts where a coal mine closed after 1999 or a coal-fired unit was retired after 2009 and adjacent tracks.
  - 10% Bonus for meeting domestic content standards.
  - BUT – must meet prevailing wage and apprenticeship tests for full credit (for §48 – 30% vs. 6%).

IRA PROVISIONS – ENVIRONMENTAL POWER PRODUCTION

- Production tax credits (§45) and investment credits (§48) extended for property placed in service before 2025 (Modified versions scheduled to be effective in 2025).
- Includes solar, wind, geothermal, fuel cell, microturbines, waste to energy, etc.
- NEW -- methane extraction from biofuels.
- Size of credit can vary:
  - 6% base credit.
  - 30% credit if prevailing wage requirements met or deemed met.
  - 40% credit if wage requirements and domestic content standards are met.
  - 50% credit if all of above plus located in an energy community.

WAGE AND APPRENTICESHIP REQUIREMENTS IN THE IRA

- In order to claim the full amount of most credits after 2022, wage and apprenticeship requirements must be met 60 days after guidance is published.
- Wage requirement – laborers and mechanics must be paid the most recently published prevailing wage rates for the locality in which the project is located. Applies for duration of construction and 5 years after placed in service.
  - Expected to be rules similar to those requiring wages paid on Federal government contracts.
- Apprenticeship requirement - Qualified apprentices must perform a minimum percentage of total labor hours on the project based on the year in which construction begins (10% in 2022, 12.5% in 2023, and 15% in later years).
  - Any contractor or subcontractor that employs 4 or more individuals to perform construction on a project must employ at least one qualifying apprentice UNLESS apprentices were requested, and the request was denied or not responded to within 5 business days.

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IRA PROVISIONS – ALTERNATIVE FUELS AND VEHICLES

- Credits for biodiesel, renewable diesel, biodiesel mixtures, alternative fuels, alternative fuel mixtures and second- generation biofuels retroactively extended through 2024.
- Credits for sustainable aviation fuel established.
- $7,500 per car clean vehicle credits modified beginning in 2023:
  - Vehicle sales caps eliminated.
  - Domestic content requirements established.
  - Credits limited based on cost of car ($55,000/$80,000) and AGI of purchaser ($300,000 MFJ).
- Used clean vehicle credit (lesser of $4,000 or 30% of price).
- Alternative fuel vehicle refueling property credits modified and restored.

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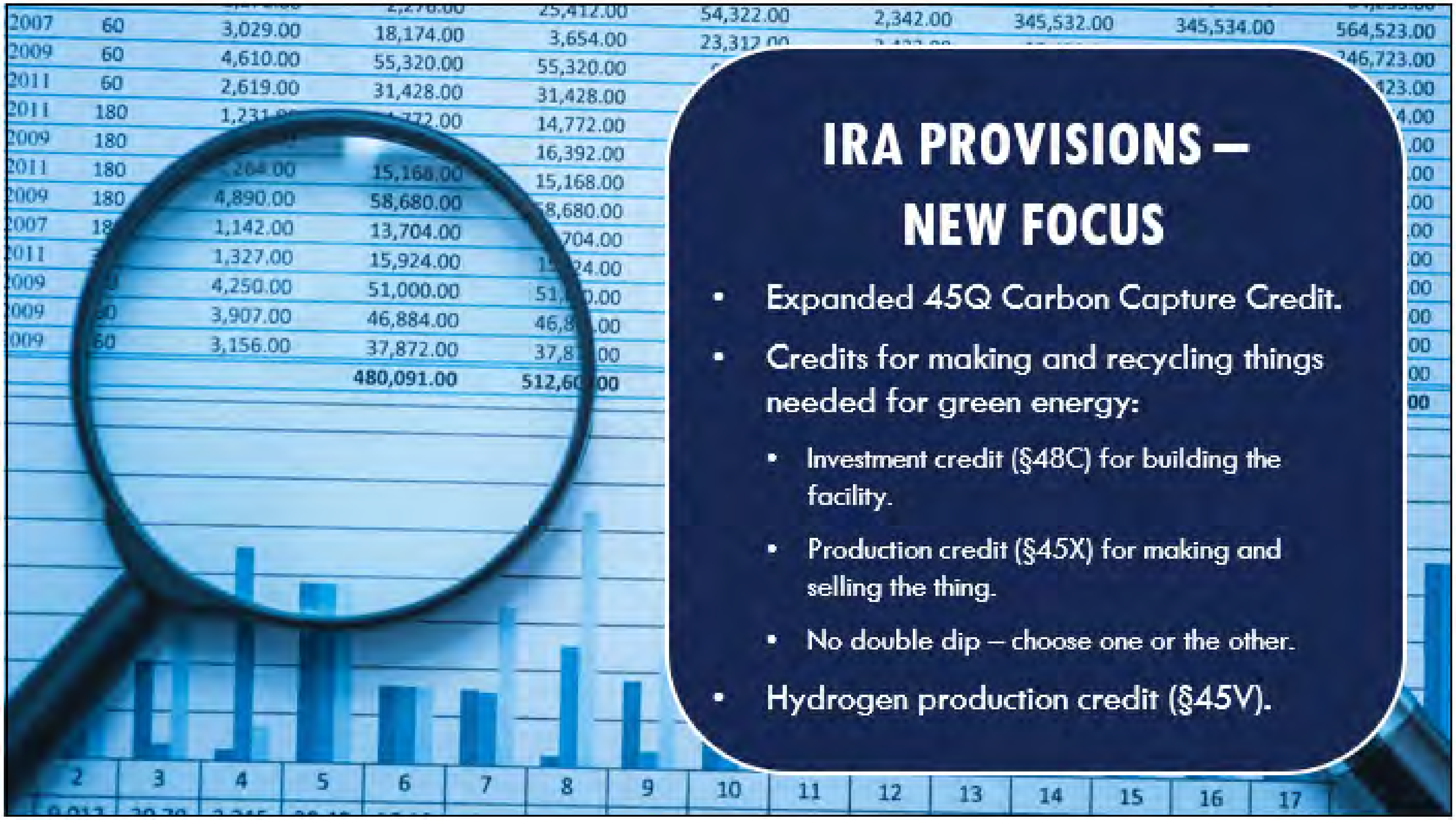
IRA PROVISIONS – NEW FOCUS



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REFUNDABLE CREDITS / SALE FOR CASH

REFUNDABLE CREDITS FOR APPLICABLE ENTITIES (TAX EXEMPTS, TRIBES, POLITICAL SUBS,. ETC.)

- 30C Alt. fuel vehicle refueling property
- 45(a) Renewable source electricity
- 45U Zero emission nukes
- 45Y Clean electricity production
- 45Z Clean fuel production
- 48 Energy credit
- 48C Advanced energy project credit
- 48E Clean energy investment credit

BROADLY REFUNDABLE

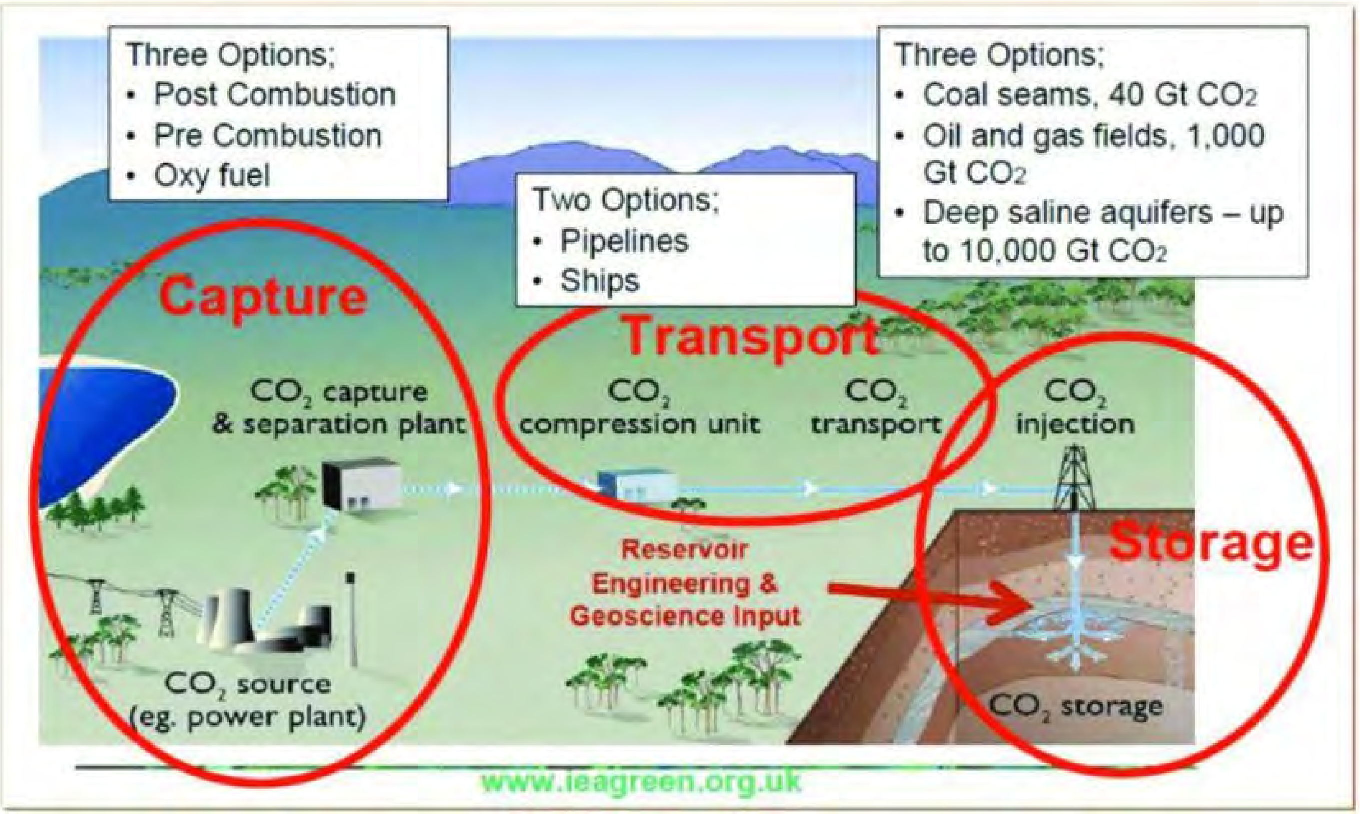
- 45Q Carbon capture equipment
- 45V Clean hydrogen production
- 45X Advanced manufacturing production

NOTE: If listed credit is not refundable, generally can be sold for cash.

NOTE: May not be available if credit would otherwise be disallowed (passive, etc.)

CARBON CAPTURE SEQUESTRATION 101

CARBON CAPTURE SEQUESTRATION



Carbon Capture Sequestration (CCS) mitigates the emission of CO_2 by capturing it at the point of combustion and subsequently storing it in geological formations.

CCS can sustain a transition period in the world's energy use and help mitigate alarmingly high CO_2 levels in the atmosphere.

The most important source of atmospheric CO_2 is the burning of fossil fuels as part of our energy consumption. The burning of oil, coal and natural gas account for over 80% of CO_2 emissions we use for energy.

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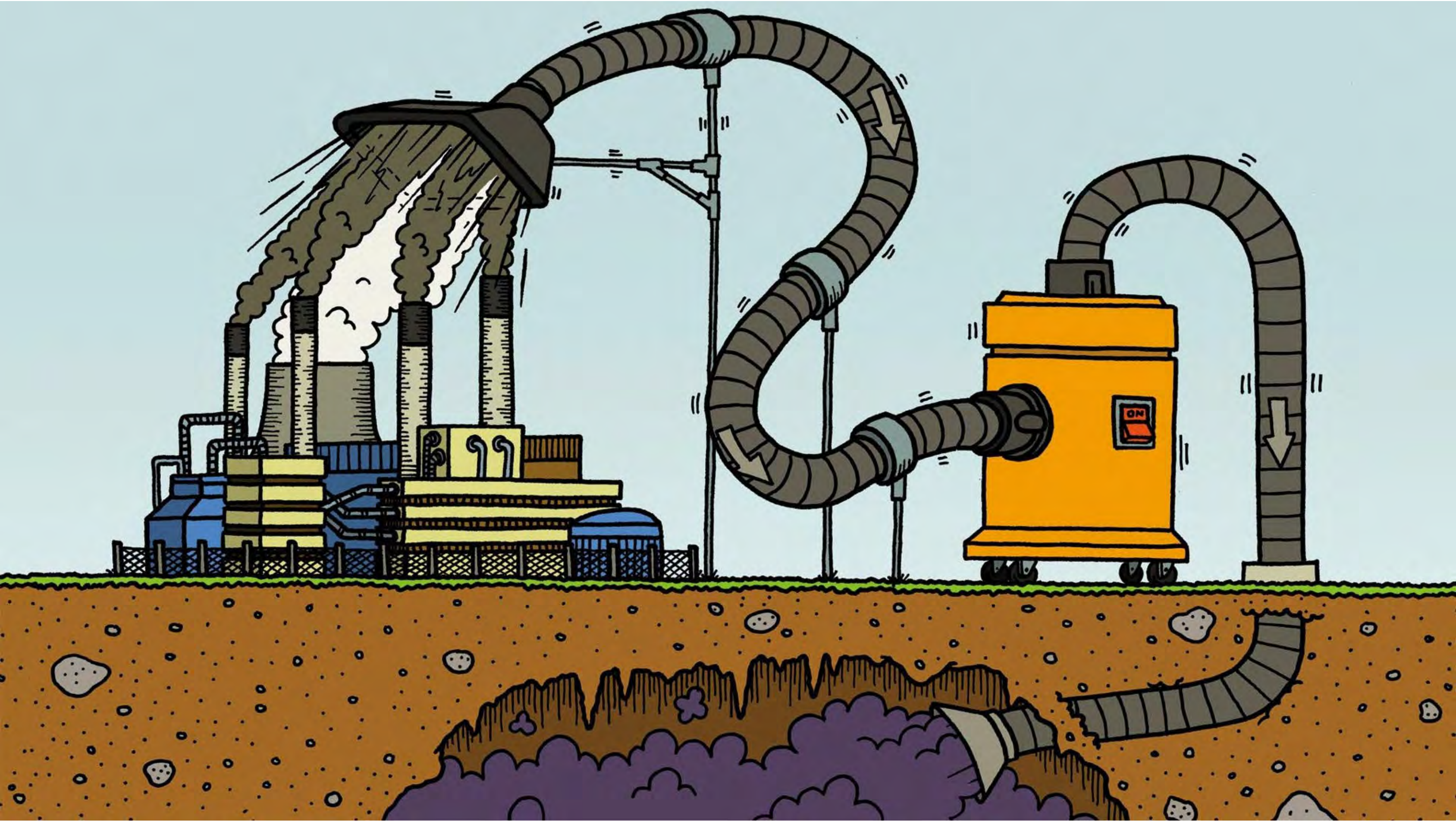
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SECTION 45Q PROVIDES A MONETARY INCENTIVE

PRIOR LAW

- If sequestered, a section 45Q credit worth $34.81 per ton in 2022, increasing by $3.04 each year to $50 per ton in 2026 and thereafter indexed for inflation.
- If used as a tertiary injectant a section 45Q credit worth 25.15 per ton in 2022, increasing by $2.465 each year to $35 per ton in 2026 and thereafter indexed for inflation.

INFLATION REDUCTION ACT OF 2022

- If sequestered, a section 45Q credit worth $85 per ton ($17 if wage and apprenticeship rules not met), indexed for inflation after 2026.
- If used as a tertiary injectant a section 45Q credit worth $60 per ton ($12 if wage and apprenticeship rules not met) indexed for inflation after 2026.

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ECO ACCOUNTING FOR CCS PROJECTS

EXPLORATION

- Review vendor contracts
- Carbon Intensity Score
- Partnership issues
- Monetizing the credit
- Scenario planning
- IRA interpretation
- Understanding the regulations
- State Credits
- Consultations with IRS National Office

CREATION

- Placed-in-Service timing
- Accelerated and Bonus Depreciation
- Cost Segregation
- Research & Development
- Section 48C
- Combined Heat & Power
- Section 45Q
- Prevailing Wage
- Soft costs, such as environmental costs
- Fixed Asset Ledger
- 179D Energy Deduction

OPERATION

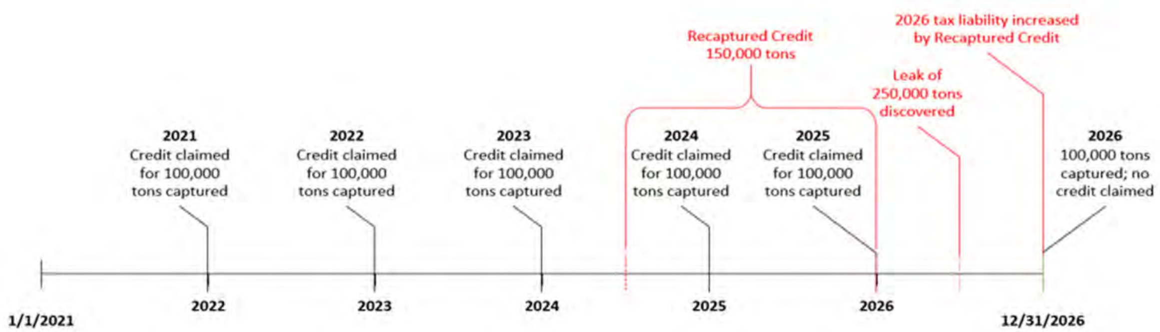
- Carbon accounting software
- Environmental, Social, Governance (ESG) disclosures
- Tax Form 8933
- Model Certificates
- Tax strategy and adaptation
- Election strategy
- IRS Controversy

SECTION 45Q CREDIT RECAPTURE

- IRS Final Regulations limit recapture liability in two ways:
  - The recapture period is limited to the 3 years preceding the date a leak is discovered (the lookback period).
  - The recapture period ends on the earlier of (i) 3 years after the end of the last taxable period for which credits were claimed, or (ii) the date monitoring is no longer required under Subpart RR or the ANSI ISO standard.
- The amount of the recaptured Section 45Q credit is treated as an increase in tax liability for the year in which the recapture occurs.
- The IRS has made clear that taxpayers may obtain third-party recapture insurance to protect against the recapture of tax credits.

LOOKBACK RULE EXAMPLE

- For example, assume that a taxpayer claimed credits for 100,000 tons of captured carbon oxide each year from 2021 to 2026 and a leak of 250,000 tons is discovered in 2026.
  - First the 2026 credit for 100,000 tons is eliminated (because the leaked carbon oxide exceeds the otherwise claimed carbon oxide for 2026).
  - Next, the remaining 150,000 tons of escaped carbon oxide offsets the 100,000 tons claimed in 2025.
  - The remaining 50,000 tons of escaped carbon oxide offsets half the carbon oxide claimed in 2024.



MONETIZING SECTION 45Q CREDITS

IRS SAFE HARBOR GUIDANCE

- Revenue Procedure 2020-12 provides a safe harbor under which the IRS will respect a partnership's allocation of up to 99% of Section 45Q credits to a tax equity investor.
- IRS safe harbor is more generous than the safe harbor for tax equity investments in wind projects.
- Key limitations include:
  - Value of tax equity investor's return may not be reduced by
    - unreasonable fees compared with fees for projects that do not qualify for the Section 45Q credit, or
    - disproportionate rights to distributions, or
    - issuances of interests in Project Holdco for less than fair market value consideration
  - No person involved with Project Holdco may guarantee or otherwise insure Investor's ability to claim Section 45Q credits (or their cash equivalent), or the return of capital if the IRS challenges the credit.

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IRS SAFE HARBOR GUIDANCE

- Tax Equity Contributions and Payments
  - Initial contribution (or payment to Sponsor in exchange for its partnership interest) to be made at commercial operation date (COD).
    - At least 20% of total anticipated fixed and contingent contributions.
  - May make additional fixed payments:
    - With initial payment, fixed payments must equal at least 50% of total expected payments, other than contributions to fund operating costs.
    - "Paygo" contributions based on amount of carbon oxide captured.
  - Periodic contributions to fund tax equity's share of costs of operating Equipment.
- Allocations
  - Up to 99% of income, gain, loss, deduction and credits allocated to tax equity investor for 12-year Section 45Q credit period beginning at COD.
  - Thereafter, at least 5% allocated to tax equity investor.
- Options
  - Tax equity may have right to sell its partnership interest to Sponsor Member at specified times for fair market value at that time.
    - Option exercise price may not exceed FMV (e.g., may not be greater of FMV or projected return), but may take into account arrangements entered into in the ordinary course and negotiated at arms length.

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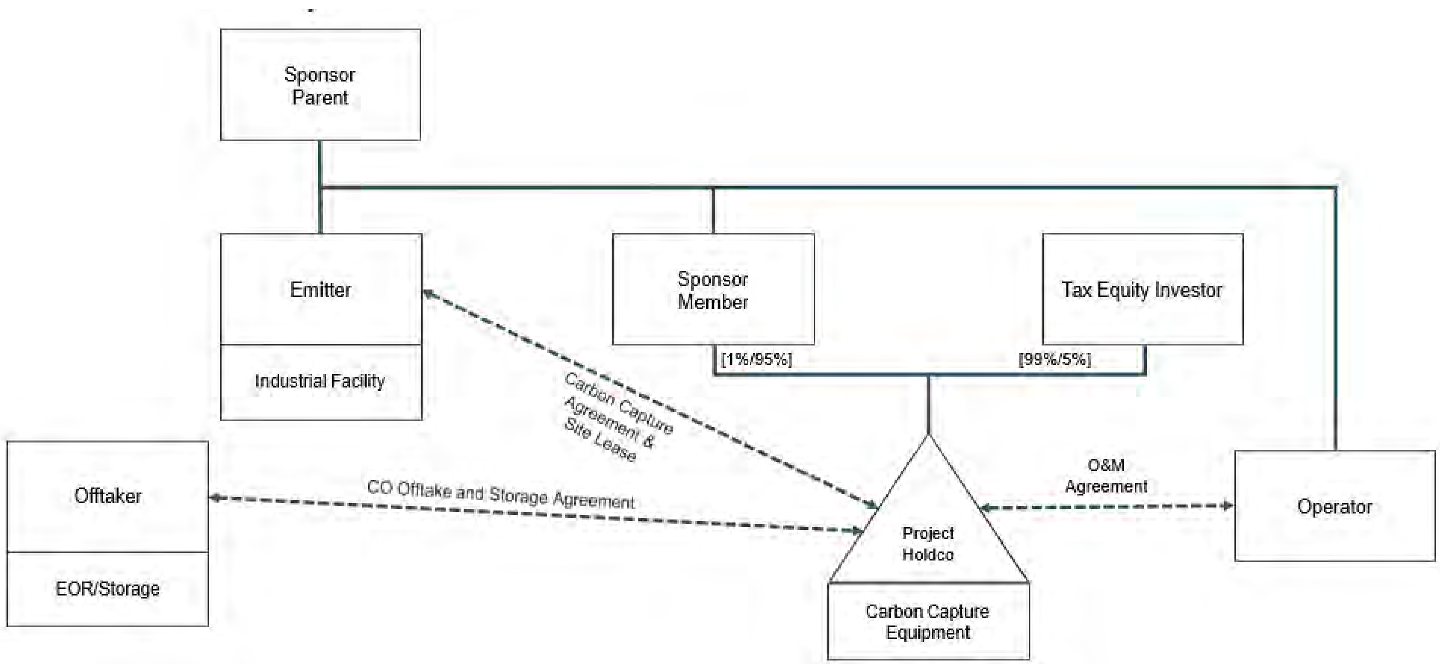
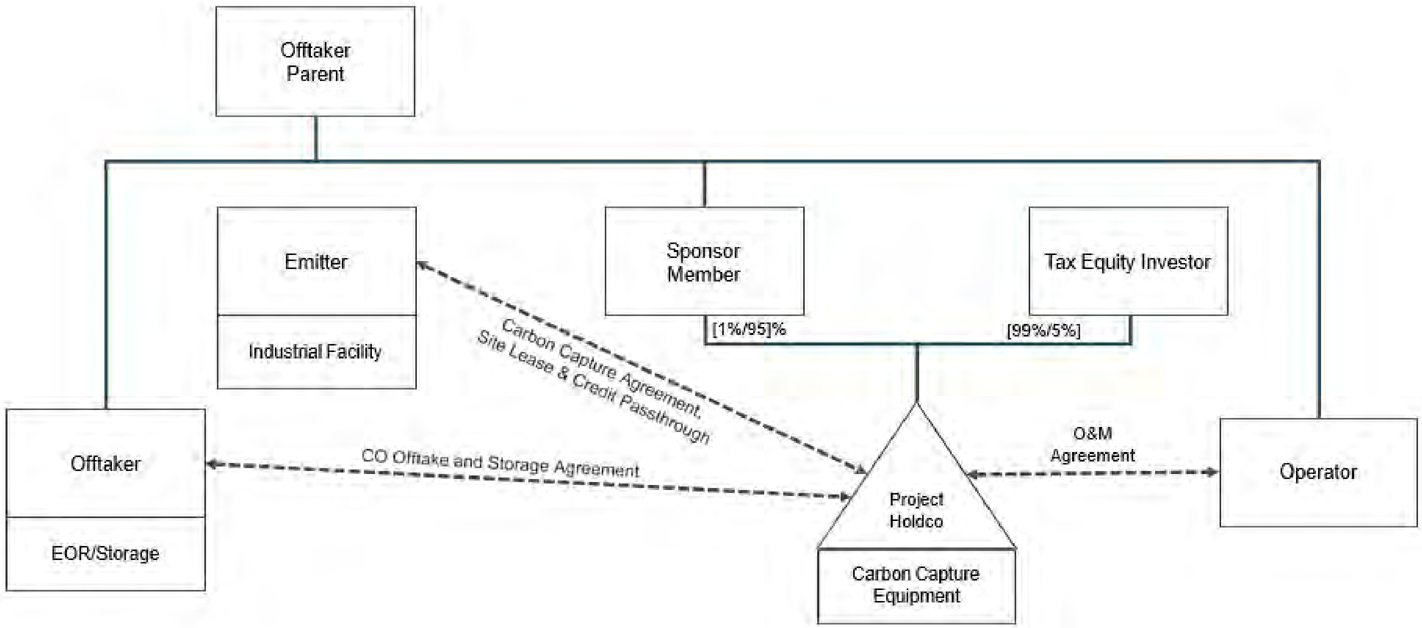
STRUCTURE WITH EMITTER PARENT



STRUCTURE WITH OFFTAKER PARENT



Energy Efficient Commercial Buildings Deduction (§179D)

New Energy Efficient Home Credit (§45L)

10 YEARS OF CERTAINTY

§179D and §45L were introduced in the Energy Policy Act of 2005

§179D and §45L were included as annual tax extenders

§179D was made permanent at $1.80/SF in the Consolidated Appropriations Act of 2021

§45L was extended through 2022 in the Inflation Reduction Act of 2022

§179D and §45L were enhanced through 2032 in the Inflation Reduction Act of 2022

10 YEARS OF MATERIALITY

§179D and §45L were enhanced through 2032 in the Inflation Reduction Act of 2022

§179D goes up from $1.88/square foot in 2022 to as high as $5.00/square foot in 2023-2032

§45L goes up from $2,000/unit in 2022 to as high as $5,000/unit in 2023-2032

STACKING BY INDUSTRY

RESIDENTIAL

- §45L credit
- §179D deduction
- Cost Segregation
- Partial Dispositions
- Repairs & Maintenance
- Utility Sales Tax Exemption

MANUFACTURING

- §179D deduction
- Cost Segregation
- Qualified Improvement Property
- Partial Dispositions
- Repairs & Maintenance
- Utility Sales Tax Exemption

NONPROFIT

- §179D Energy Deduction Allocation Program (E-DAP)
- §48 Energy Credit
- Employee Retention Credit

SECTION 179D ENERGY EFFICIENT DEDUCTION

Section 179D is available for HVAC, building envelope and lighting projects, up to $5.00 deduction per square foot.

§179D ENERGY EFFICIENT DEDUCTION

Private

- Extended permanently
- Form 3115 back to January 1, 2006
- Building owners or tenants
- Energy modelers
- Professional Engineers licensed in state

Designers of Public

- Extended permanently
- Amended returns in open tax year
- Exempt Org assigns to designers
- Architects, Engineers and Contractors
- Energy modelers
- Professional Engineers licensed in state

ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION – PRIOR VS. TODAY

SECTION 179D PRIOR

- $1.80-$1.88 deduction per square foot
- Lighting, HVAC and Envelope
- Life-time cap
- Started in 2006 and has since been made permanent
- Applies to private owners, and designers of government buildings

SECTION 179D IN THE IRA

- Status quo for 2022

Starting in 2023 through 2032:

- Base Deduction: $0.50 to $1.00 per SF
- Bonus Deduction: $2.50 to $5.00 per SF
- Lighting, HVAC and Envelope
- **Three-year cap**
- **Enhancement for REITs**
- Applies to private owners, and designers of government, **Indian tribal government and certain tax-exempt entities buildings**

INDUSTRY WINNERS

Square Footage Industries

- Manufacturing
- Hotels
- Casinos
- Warehouses
- Parking Garages
- Hospitals

§45L OVERVIEW

- $500-$5,000 credit per qualifying unit
- Residential, 3-stories or less thru 2022

  All residential 2023-32
- Sold/leased in an open tax year and prior to 1/1/2032
- Buildings with 10+ units - not a requirement, but yields a better value proposition
- The first step is a discovery call and provisional assessment

§45L NEW ENERGY EFFICIENT HOME CREDIT – TWO WAYS

Sold

- Home Development
- Condominiums

Rented

- Apartments
- Student Living
- Senior Living
- Townhomes

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AFFORDABLE HOUSING BOOM

- §45L credit will not reduce the Low-Income Housing Tax Credit (LIHTC) basis.
- For LIHTC properties without excess basis you can now stack the §45L credit.

§45L NEW ENERGY EFFICIENT HOME CREDIT – PRIOR VS. TODAY

SECTION 45L PRIOR

- Expired at the end of 2021
- Units sold/leased in an open tax year
- 3-stories or less
- $1,000 credit per manufactured home
- $2,000 credit per unit for single family and multifamily homes

SECTION 45L IN THE IRA

- $2,000 per unit extended through 2022

Starting in 2023 through 2032:

- **Any number of stories (sky is the limit)**
- **No basis reduction for LIHTC affordable housing**

Multifamily homes:

- Base Credit : $500 or $1,000 per unit
- Bonus Credit : $2,500 or $5,000 per unit
- *Single family and manufactured homes:*
- Base Credit : $2,500 or $5,000 per unit

INDUSTRY WINNERS

Nonprofit & Designers

- §179D Energy Deduction Allocation Program (E-DAP):
    - Senior Living over 3 stories or no kitchen in units
    - Tribal Governments
    - Healthcare
    - Schools
- §48 Energy Credit

INDUSTRY WINNERS

Residential and Affordable Housing

- §179D and §45L can be stacked
- Low Income Housing Tax Credit (LIHTC) and §45L can be stacked
- §179D E-DAP for nonprofit residential (senior living)

OTHER TAX PLANNING CONSIDERATIONS FOR BUSINESSES

EXPIRED/EXPIRING PROVISIONS

- **NOL's** – CARES Act allowed for a 5-year carryback for 2018 – 2020 NOL's, but 2021 and later NOL's must be carried forward and the NOL deduction is limited to 80% of taxable income.

- **199A** – The IRC Sec. 199A deduction that allows a noncorporate taxpayer a 20% deduction on qualified income, is still scheduled to sunset in 2025.

- **Tax Extenders** – Forty tax provisions affecting individuals and businesses expired in 2021.
  - Accelerated Depreciation for Business Property on an Indian Reservation.
  - Indian Employment Credit.
  - Credit for Alternative Fuel Refueling Property (CNG & Electric Vehicle Charging Stations). Extended by Inflation Reduction Act for 2022.
- **Meals** – Deduction reduced to 50% starting in 2023.

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FIXED ASSETS

- Section 179 up to $1,080,000.
- 100% bonus depreciation is phasing out after 2022.
- Sec. 179D deduction for energy-efficient building improvements (current expense v. 39-year depreciation).
- Fixed asset studies to minimize 39-year property.

Limitations on Business Interest Reverting to Pre-CARES Act

- For 2022 Section 163(j) limits business interest payments for taxpayers with gross receipts of $27 million or more.
- For 2022, the business interest limitation is back to 30% of ATI — and depreciation, amortization, and depletion are no longer added back in computing ATI.
- The amount of deductible business interest expense cannot exceed the sum of:
  - The taxpayer’s business interest income,
  - 30% of the taxpayer’s adjusted taxable income (ATI), and
  - The taxpayer’s floor plan financing interest (if applicable).

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QUALIFIED OPPORTUNITY ZONE INCENTIVES

- If capital gains are reinvested in a Qualified Opportunity Zone (QOZ) through a Qualified Opportunity Fund (QOF), taxpayers may defer and partially reduce capital gains recognition.
- QOZ – a low-income population census tract that is designated by a state as a QOZ.
- QOF – a self-certified entity taxed as a partnership or corporation that holds at least 90 percent of its assets in QOZ property.
- Important – only the gain amount needs to be reinvested, not the entire proceeds from the sale.

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BUSINESS LOSS LIMITS

The 2017 TCJA tax law imposed limited on business losses that can be claimed on individual returns. These limits were waived for 2018-2020, but are back for years after 2020 and before 2029. The 2022 limits are $270,000 for single taxpayers and $540,000 on joint returns.

Research and Development Costs

- Under TCJA, the expensing of R&D costs was allowed through December 31, 2021.
- Beginning in January 2022, that provision has expired, and companies must now amortize their R&D costs over a five-year period, beginning in the midpoint of their tax year.

For example: Company A incurs $100,000 of R&D costs in December 2021 and Company B incurs the same $100,000 of R&D costs in January 2022. Because the costs are incurred before January 2022, Company A is allowed a deduction of $100,000 on its income tax return for tax year 2021. Company B, however, is only allowed a deduction of $10,000 (the costs are amortized over five years, but the amortization begins with the midpoint of the year, so only half a year of amortization is allowed) on their income tax return for tax year 2022.

PARTNERSHIP K-2/K-3

IRS recently published draft schedule K-2/K-3 instructions with new "domestic filing exception":

1. No or limited foreign activity.
2. Only U.S. citizen/resident alien partners.

Partner Notification Requirement – Due date for notifications on 2022 Partnership Returns is January 15, 2023. Notice needs to state that partners will not receive schedule K-3 unless the partners request it.

- If partnership does not receive a request from any partner on or before the 1-month date, then no schedule K-3 required.
- For tax year 2022 calendar year partnerships, the 1-month date is February 15, 2023.
- If partnership received a request after the 1-month date, schedules K-2/K-3 are not required to be included in filing copy of the return. However, the partnership is still required to provide schedule K-3 to the requesting partner.

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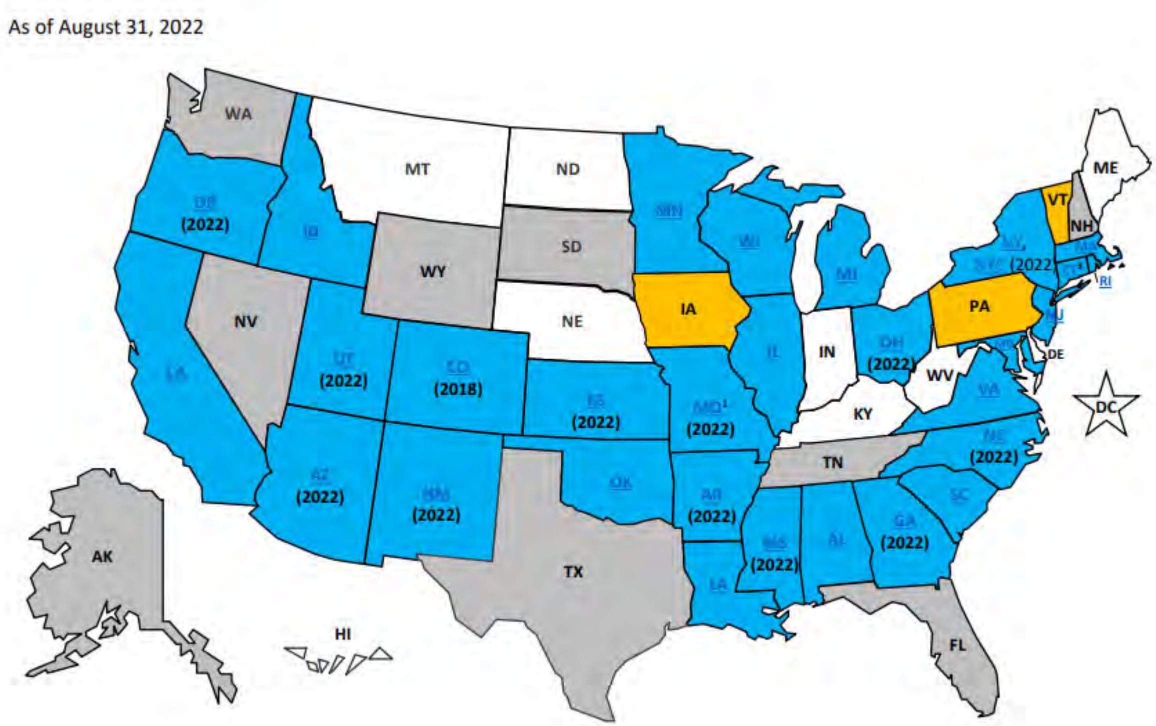
OPTIONAL STATE ENTITY-LEVEL TAXES

BACKGROUND: THE SALT CAP

The 2017 TCJA limits deductions for state and local taxes on Schedule A to $10,000. The effect of this is to take this deduction away from pass-through businesses.

STATE LEVEL TAXES



A number of states have enacted optional entity-level taxes that come with a shareholder credit for entity taxes paid, as a way to avoid the $10,000 SALT cap.

WHICH STATES

- **Enacted:** Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Kansas, Louisiana, Massachusetts, Maryland, Minnesota, Michigan, Mississippi, Missouri, New Jersey, New Mexico, New York (and NYC), North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, Virginias, and Wisconsin
- **Proposed:** Iowa, Pennsylvania, and Vermont.

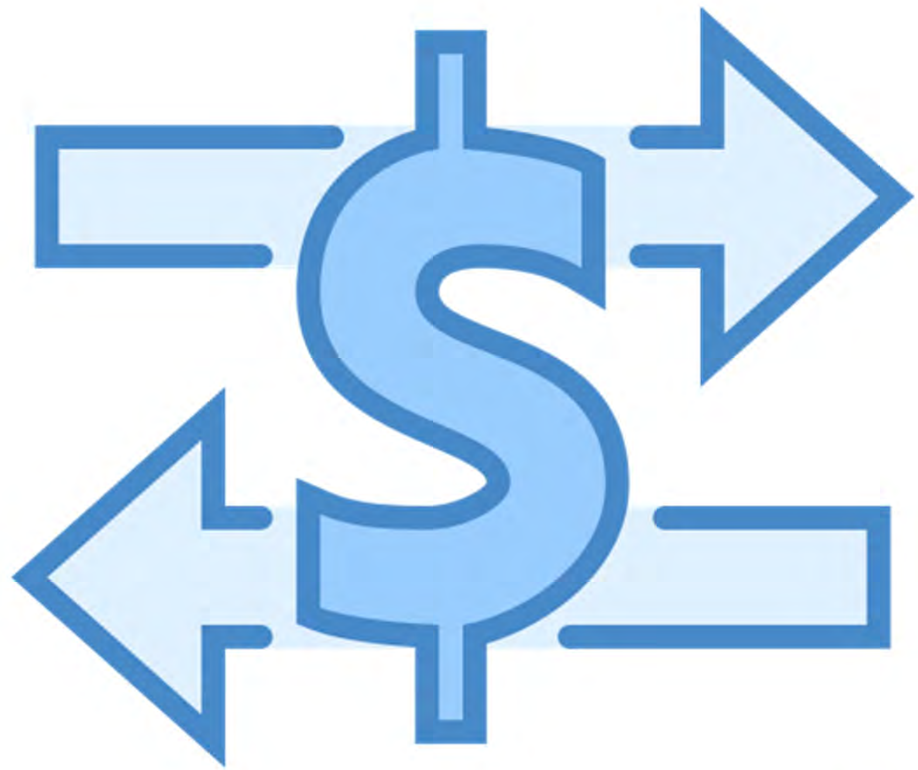
ESTATE AND GIFT ISSUES

Recent bills have no estate or gift tax changes:

- Lifetime exemption unchanged
- Rates unchanged
- So far specific estate planning tools untouched

Estate Tax & Gift Tax

- 2022 Gift exclusion amount is $16,000 per person.
- Lifetime estate exemption will fall back to $5 million in 2026 (From the current $12,060,000).
  - The exemption as of the sunset date is expected to be somewhere between $6 million and $7 million per person.



UPDATE - IRS OPERATIONS AND RECENT IRS GUIDANCE

IRA - SPECIFICS ON THE IRS $80 BILLION

The measure appropriates the following amounts for the IRS in fiscal 2022:

- $45.6 billion for tax enforcement activities, including legal and litigation support, criminal investigations, and digital asset monitoring and compliance activities.
- $25.3 billion for operations support, including rent payments, other IRS-wide administration activities, research and statistics of income, and information technology development.
- $4.75 billion for business systems modernization to provide a more personalized customer service.
- $3.18 billion for taxpayer services, including pre-filing assistance and education, filing and account services, and taxpayer advocacy services.

Amounts would remain available through fiscal 2031. The IRS would be granted hiring flexibilities when using funds provided by the measure.

The measure specifies that the IRS funding boost isn't intended to increase taxes on individuals making less than $400,000.

"These resources are absolutely not about increasing audit scrutiny on small businesses or middle-income Americans. As we have been planning, our investment of these enforcement resources is designed around Treasury's directive that audit rates will not rise relative to recent years for households making under $400,000." ~Charles Rettig, IRS Commissioner

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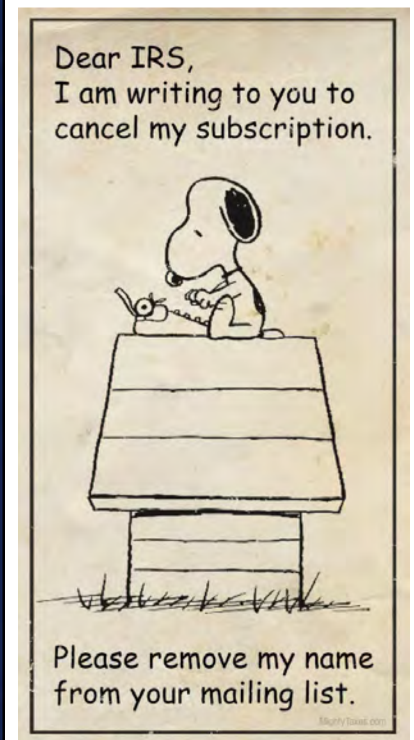
IRS BACKLOG

BIG PROBLEM: THE BACKLOG

"In the coming months, the IRS must work through its backlog of tax returns and be current in processing its correspondence while focusing on rebuilding itself to become a more efficient and taxpayer-centric organization. In the coming years, the IRS must modernize its operations to better meet taxpayer needs, reduce administrative burdens, and improve the delivery of services."

Erin Collins
Taxpayer Advocate
Report to Congress, 2022



IRS OPERATIONS - DELAYS

- Continuing service delays due to pandemic:
  - Live phone support
  - Processing tax returns filed on paper
  - Answering mail from taxpayers
  - Reviewing tax returns – even those filed electronically
- Unprocessed individual returns (2021 Forms 1040) – 9.7 million as of August 5 (1.8 million require error correction).
- Unprocessed amended individual returns (Forms 1040-X) – 2.1 million as of August 6th.
- Unprocessed quarterly employer returns - 4.7 million as of August 10th.

IRS OPERATIONS – DELAYS (CONTINUED)

- Forms 1139 and 1045:
  - IRS - "Currently, we cannot provide a timeframe"
  - Anecdotes – taking 4 to 6 months to get refunds – sometimes longer…
- Unprocessed Forms 941-X – Massive ERC Backlog:
  - IRS - "Working hard to get through the backlog"
  - IRS - "Please don't file a second return or contact IRS about the status of your return"

IRS WARNING REGARDING IMPROPER ERC CLAIMS

IR-2022-183, October 19, 2022

WASHINGTON — The Internal Revenue Service today warned employers to be wary of third parties who are advising them to claim the Employee Retention Credit (ERC) when they may not qualify. Some third parties are taking improper positions related to taxpayer eligibility for and computation of the credit.

These third parties often charge large upfront fees or a fee that is contingent on the amount of the refund and may not inform taxpayers that wage deductions claimed on the business' federal income tax return must be reduced by the amount of the credit.

If the business filed an income tax return deducting qualified wages before it filed an employment tax return claiming the credit, the business should file an amended income tax return to correct any overstated wage deduction.

Businesses are encouraged to be cautious of advertised schemes and direct solicitations promising tax savings that are too good to be true. Taxpayers are always responsible for the information reported on their tax returns. Improperly claiming the ERC could result in taxpayers being required to repay the credit along with penalties and interest.

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IRS OPERATIONS – DELAYS (CONTINUED)

- IRS Resources:
  - Where's My Refund?
  - Where's My Amended Return?
  - IRS Operations During COVID-19
  - Taxpayer Advocate Service (TAS)
    - Independent organization within the IRS – advocates for taxpayers
    - EB Tax Controversy group submitting more requests for TAS assistance
      - Seeing more penalties being assessed (often in error)
      - Delays in assigning TAS cases
        - Pre-COVID – typically within 10-14 days
        - Now taking at least 45 days

ANOTHER BIG PROBLEM: HIRING

"During our walkthroughs at the Tax Processing Centers, on-site management expressed frustration and concern with the ability to fill needed positions. As of August 17, 2021, the IRS completed its hiring efforts for Fiscal Year 2021 and achieved just under 67 percent of its hiring goal for Submission Processing."

Treasury Inspector General for Tax Administration
March 9, 2022

ACTION ITEMS FOR THE IRS

- Prioritize the development of accessible, robust online accounts.
- Expand customer callback technology to all IRS toll-free telephone lines.
- Reduce barriers to e-filing tax returns.
- Utilize scanning technology for individual income tax returns prepared electronically but submitted on paper.
- Expand digital acceptance and transmission of documents and digital signatures.
- Offer videoconferencing options to taxpayers.

Source: National Taxpayer Advocate, Report to Congress, 2022

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WHO OWNS? GETTING READY FOR THE NEW RULES ON BENEFICIAL OWNERSHIP DISCLOSURE

NEW OWNER REPORTING REQUIREMENTS TAKE EFFECT IN 2024

- Applies to:
  - Domestic entities formed by filing with a secretary of state.
  - Foreign entities registered to do business in the US.

WHAT MUST BE REPORTED?

- Entities will be required to report to the Financial Crimes Enforcement Network (FinCEN) information regarding:
  - Beneficial owners, and
  - Company Applicants

WHAT INFORMATION?

Name of Beneficial Owner

Birthdate of Owner

Address of Owner

"A unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document)"

BENEFICIAL OWNERS

- Any individual who "directly or indirectly":
  - "Exercises substantial control" over a reporting company, or
  - "Owns or controls" at least 25% of the "ownership interests" of a company:
    - *This definition excludes minors if parent or guardian info is reported; nominees, etc.; certain employees; those whose only interest is via inheritances; and creditors.*

COMPANY APPLICANT

- FinCEN defines a company applicant to be only two persons:
  - The individual who directly files the document that creates the entity, or in the case of a foreign reporting company, the document that first registers the entity to do business in the United States.
  - The individual who is primarily responsible for directing or controlling the filing of the relevant document by another.
    - "*The rule, however, does not require reporting companies existing or registered at the time of the effective date of the rule to identify and report on their company applicants.*"

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EXEMPTIONS FROM THESE RULES

The rules provide 23 exemptions. “Many of these exempt entities are already subject to substantial federal and/or state regulation or already have to provide their beneficial ownership information to a governmental authority.”

EXEMPTIONS INCLUDE

1. Securities reporting issuer
2. Governmental Entity
3. Bank
4. Credit Union
5. Depository Institution Holding company
6. Money services business registered with FinCEN
7. Securities broker or dealer
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment adviser
11. Venture capital fund advisor
12. Insurance Company
13. State-licensed insurance provider
14. Commodity Exchange Act registered entity
15. Accounting firm registered under Sarbox Sec. 102
16. Public utility
17. Financial market utility
18. Pooled investment vehicle
19. Tax-exempt entity
20. Entity assisting a tax-exempt entity
21. **Large operating company**
22. Subsidiary of certain exempt entities
23. **Inactive entity**

LARGE OPERATING COMPANY

- Employs more than 20 full-time employees in the U.S.
- Has an "operating presence at a physical office within the United States," and
- Filed a federal tax or information return demonstrating more than $5 million "in gross receipts or sales":
  - This means all companies with 20 or fewer employees or less than $5 million receipts will have to file.

INACTIVE ENTITY

- In existence before January 1, 2020.
- Is not engaged in active business.
- Is not owned by a foreign person "whether directly or indirectly, wholly or partially".
- Has not experienced any change in ownership in the preceding 12 months.
- Has not sent or received any funds over $1,000 "either directly or through any financial account in which the entity or any affiliate of the entity had an interest" in the prior 12 months.
- Does not otherwise old any type of assets including ownership interests.

TIMING OF REPORTS – EXISTING COMPANIES

- Reporting companies created or registered before January 1, 2024, will have one year (until January 1, 2025) to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 30 days after receiving notice of their creation or registration to file their initial reports.
- Reporting companies have 30 days to report changes to the information in their previously filed reports and must correct inaccurate information in previously filed reports within 30 days of when the reporting company becomes aware or has reason to know of the inaccuracy of information in earlier reports.

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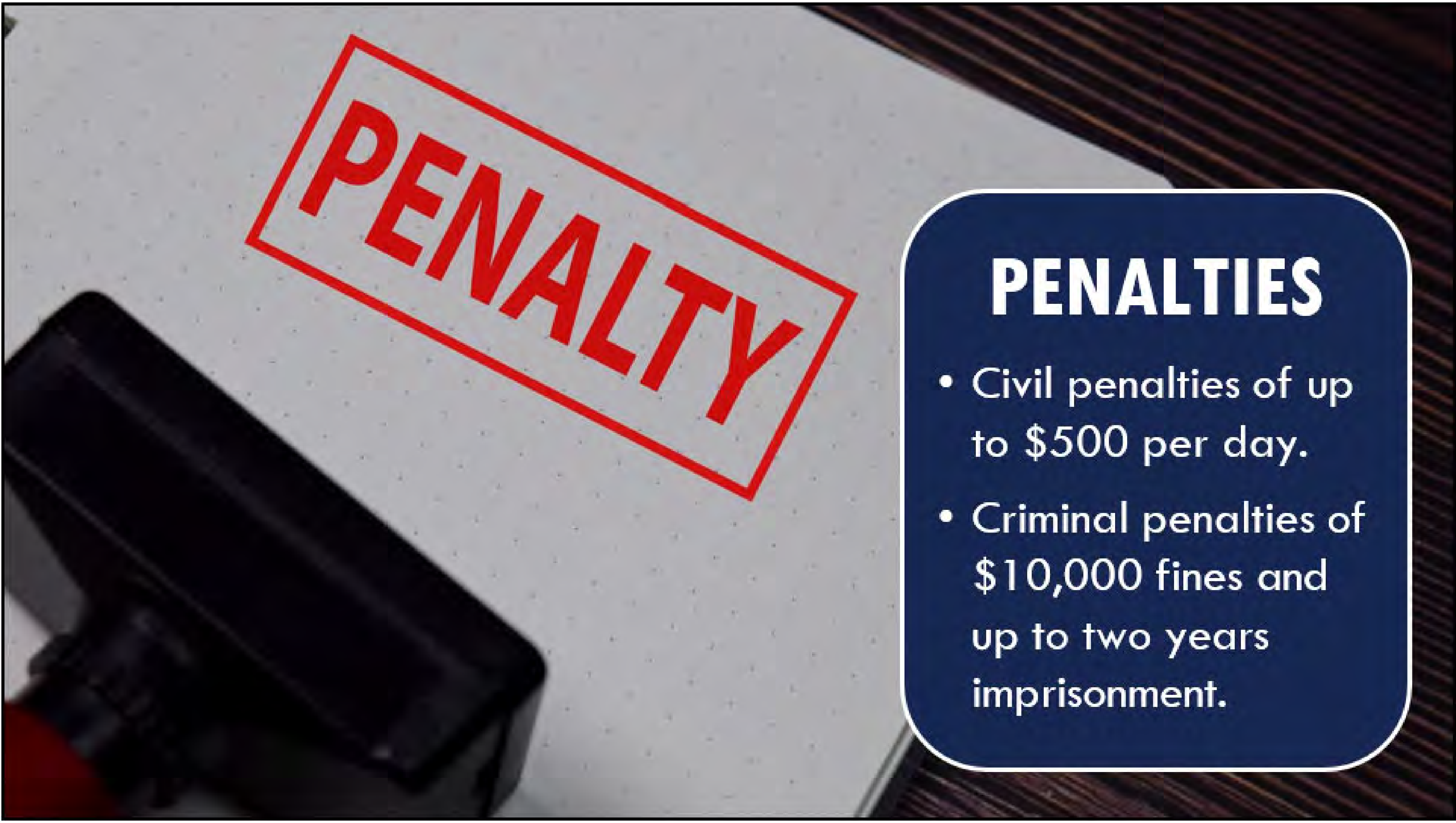
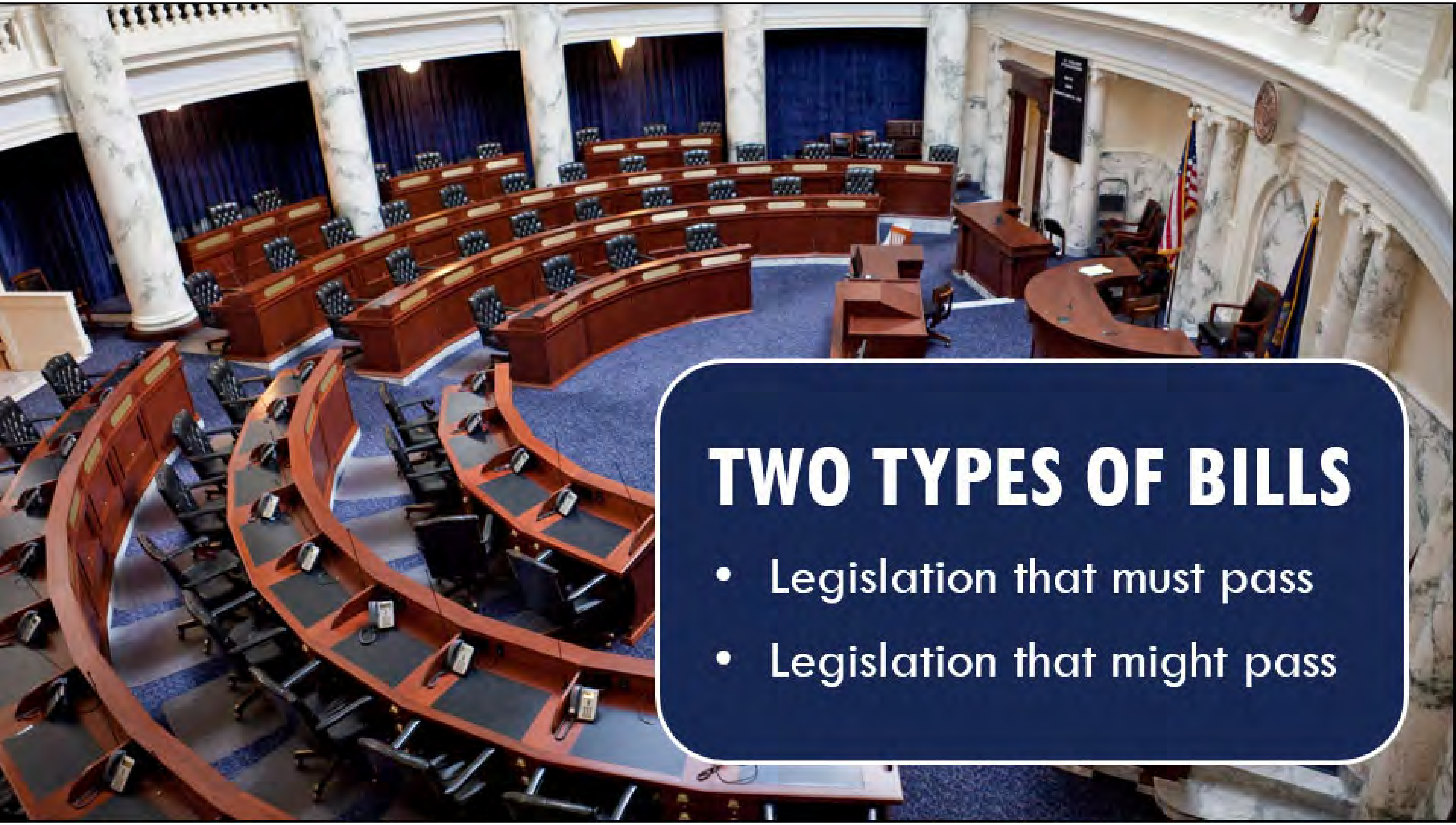
TIMING OF REPORTS – COMPANIES FORMED AFTER 2023

- New companies must report within 30 days of:
  - The date the company receives notice that creation or registration is effective, or
  - The secretary of state provides public notice that the company has been created or registered.
  - Exempt companies have 30 days to file if their exemption is lost.


PENALTY
PENALTIES
• Civil penalties of up to $500 per day.
• Criminal penalties of $10,000 fines and up to two years imprisonment.

LEGISLATIVE AGENDA FOR THE REST OF THE CALENDAR YEAR


TWO TYPES OF BILLS
• Legislation that must pass
• Legislation that might pass

LEGISLATION THAT MUST PASS

Fund the Federal Government beyond December 16, 2022

Pass the National Defense Authorization Act (NDAA)

LEGISLATION THAT MIGHT PASS

- Retirement Legislation: SECURE Act 2.0/EARN Act/Rise and Shine and Starter 401(k) Act
- Extenders Package
- Opportunity Zone Enhancements
- Social Security Expansion Act

OKLAHOMA Tax Commission

OKLAHOMA TAX COMMISSION

LEGISLATIVE UPDATE

2022

SUMMARY OF SELECTED 2022 OKLAHOMA TAX LEGISLATION

HB 3081 - Effective January 1, 2023

HB 3081 enacts a new, non-refundable income tax credit for amounts invested for strategic industrial development enhancement (SIDE) projects effective for tax years 2023 through 2027. This credit is to be allocated by the Oklahoma Department of Commerce (Commerce) to a qualifying project and is transferable. Credits allocated by Commerce will not exceed $12 million per year.

In order to generate the proposed SIDE income tax credit, a project sponsor must submit a project application to Commerce. The proposed credit will generally be an amount that may not exceed 10% of an eligible entity's qualified economic development expenditures for a qualifying project as determined by Commerce. Qualified initial infrastructure expenditures may be earned at a rate of 50% of qualified initial infrastructure expenditures. The project tax credit amount may not exceed $3 million for qualified initial infrastructure expenditures per qualifying project or $6 million for qualified economic development expenditures per qualifying project[1]. The project tax credit may consist of a combination based on qualified economic development expenditures and qualified initial infrastructure expenditures. If the credits are combined, the project tax credit amount may not exceed $6 million per qualifying project. Commerce will issue the project tax credit amounts subject to a review of eligible expenditures[2].

SUMMARY OF SELECTED 2022 OKLAHOMA TAX LEGISLATION

HB 3081 - Effective January 1, 2023 (continued)

SIDE credits allocated by Commerce that are not used may be assigned to a qualifying project affiliate[3] by written agreement at any time during the five years following the tax year the qualified expenditure occurred. The qualifying project affiliate and the eligible taxpayer[4] must jointly file a copy of a written assignment agreement containing name, address, and taxpayer identification number of the parties to the assignment, as well as the tax year the eligible expenditures occurred, the amount of credit, and the tax year or years which the credit may be claimed, with the Oklahoma Tax Commission (OTC) within 30 days of the assignment.

1. The project tax credit amount that may be claimed or assigned to a qualifying project affiliate in any year may not exceed 1/3 of the project tax credit amount awarded beginning in the year that construction is initiated.
2. Commerce must promulgate rules to permit verification of project eligibility of the proposed credit, including precertification. Any certificate of verification for the proposed credit issued by Commerce is binding on the OTC as to eligibility to claim the credit. The OTC may also promulgate rules and take any other actions to administer the proposed credit.
3. Qualifying project affiliate may be a customer, vendor, project investor, or strategic finance partner of the eligible entity subject to the Oklahoma corporate or individual income tax.
4. Although not defined, "eligible taxpayer" is assumed to be the eligible entity.

SUMMARY OF SELECTED 2022 OKLAHOMA TAX LEGISLATION

HB 3418 - Effective May 26, 2022

HB 3418 enacts an income tax deduction based on the cost of business assets that are qualified property or qualified improvement property covered under Section 168 of the Internal Revenue Code, effective for tax year 2022 and subsequent tax years. The qualified property will be eligible for 100% Oklahoma bonus depreciation and may be deducted as an expense incurred by the taxpayer during the taxable year during which the property is placed in service.

SUMMARY OF SELECTED 2022 OKLAHOMA TAX LEGISLATION

HB 4085 - Effective November 1, 2022

HB 4085 enacts the Oklahoma Rural Jobs Act. which authorizes a new non refundable, non-saleable[5] "state tax credit" against a "state tax liability".[6] Commerce is required to authorize capital investments eligible for no more than $15 million in tax credits in any calendar year.[7] Upon making a capital investment in a rural fund, a rural investor earns a vested right to a credit against such entity's state tax liability that may be utilized on each credit allowance date of such capital investment in an amount equal to the applicable percentage[8] for such credit allowance date multiplied by the purchase price paid to the rural fund for the capital investment.

Also, this measure amends 68 O.S. § 205 to authorize the OTC and Commerce, in administration of the Oklahoma Rural Jobs Act, to disclose information regarding tax credits claimed pursuant to the Oklahoma Rural Jobs Act.

5. Credits earned by or allocated to a partnership, limited liability company, or S-corporation may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders, and a rural fund shall notify Commerce of the names of the entities that are eligible to utilize transfer of a capital investment upon such allocation, change or transfer. Such allocation shall not be considered a sale of the credits.
6. "State tax liability" means the tax imposed under 68 O.S. §§ 2355, 2355.IP-4 or 2370 or 36 O.S. §§ 624 or 628. An insurance company claiming a credit against state premium tax or retaliatory tax or any other tax imposed by 36 O.S. §§ 624 or 628 will not be required to pay any additional retaliatory tax under 36 O.S. §628 as a result of claiming the credit. The credit may fully offset any retaliatory tax imposed by 36 O.S. § 628.
7. Commerce may not accept any applications for this credit after December 31, 2032.
8. Applicable percentage is 0% for the first 2 credit allowance dates and 15% for the next 4 credit allowance dates.

SUMMARY OF SELECTED 2022 OKLAHOMA TAX LEGISLATION

SB 1857 - Effective January 1, 2023

SB 1857 amends 68 O.S. § 2357.22 to extend the credit for investments in qualified clean-burning motor vehicle fuel property to tax year 2028 and to expand the definition of "qualified clean-burning motor vehicle fuel property" to include a motor vehicle originally propelled by a hydrogen fuel cell electric fueling system, as well as related hydrogen fueling property. The maximum allowable credit amount for a qualifying natural gas, liquefied petroleum gas or hydrogen fuel cell vehicle in excess of 26,501 pounds is increased from $50,000 to $100,000, and total annual credit limits for tax years 2023 through 2028 are applied as follows:

- $10 million for qualified clean burning fuel property propelled by compressed natural gas, liquefied natural gas, or liquefied petroleum gas, property related to the delivery of compressed natural gas, liquefied natural gas or liquefied petroleum gas, and property directly related to the compression and delivery of natural gas.
- $10 million for property originally equipped so that the vehicle may be propelled by a hydrogen fuel cell electric fueling system and property directly related to the delivery of hydrogen.
- $10 million for property which is metered-for-fee, public access recharging system for motor vehicles propelled in whole or in part by electricity.

If total credits exceed $10 million in any calendar year for any applicable property, the OTC will permit the excess but will factor such excess into the percentage adjustment formula for subsequent years. The OTC will annually calculate and publish by the first day of the affected year the percentage by which the credits will be reduced so the total annual amount of credits used to offset tax does not exceed $10 million for any applicable property. The formula used for the percentage adjustment is $10 million divided by the credits claimed in the second preceding tax year.

Q&A

Thank You!

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