



2025 WICPA TAX CONFERENCE

YOUR SOURCE FOR KEY UPDATES & INSIGHTS ON TIMELY ISSUES

HIGHLIGHTED TOPICS:



WISCONSIN TAX UPDATE

Get the latest updates on Wisconsin case law as well as recent legislative and administrative developments that have occurred in the past year



HOT TAX PRACTICE & PROCEDURE & ETHICS ISSUES

Get the latest "hot" IRS practice and procedure and ethics issues, along with mistakes practitioners should avoid



FEDERAL TAX UPDATE: UNPACKING OBBA

Take a deep dive into the One Big Beautiful Bill Act and learn what matters most to your clients

MONDAY, NOV. 10 & TUESDAY, NOV. 11
BROOKFIELD CONFERENCE CENTER & WICPA CPE LIVESTREAM

MATERIALS AT A GLANCE

The following materials are from the Monday afternoon sessions of the 2025 WICPA Tax Conference held on Monday, Nov. 10 & Tuesday, Nov. 11, including:

- Social Security Planning & Strategies
- State Income Tax Considerations of Pass-Through Entity Tax Filings (Composite, Withholding & PTET)
- BBB Breakdown: Impact Your Clients' Cashflow
- Navigating Real Estate Taxes: Concepts & Strategies for CPAs
- OBBBA in Action: Strategic Tax Planning With Energy Incentives & Bonus Depreciation
- Tax Challenges in M&A Structuring & Pre-Closing Reorganizations
- Hot Tax Practice & Procedure & Ethics Issues & Their Impact on the Practitioner

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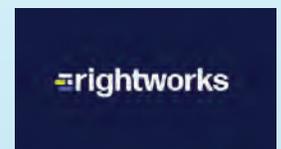
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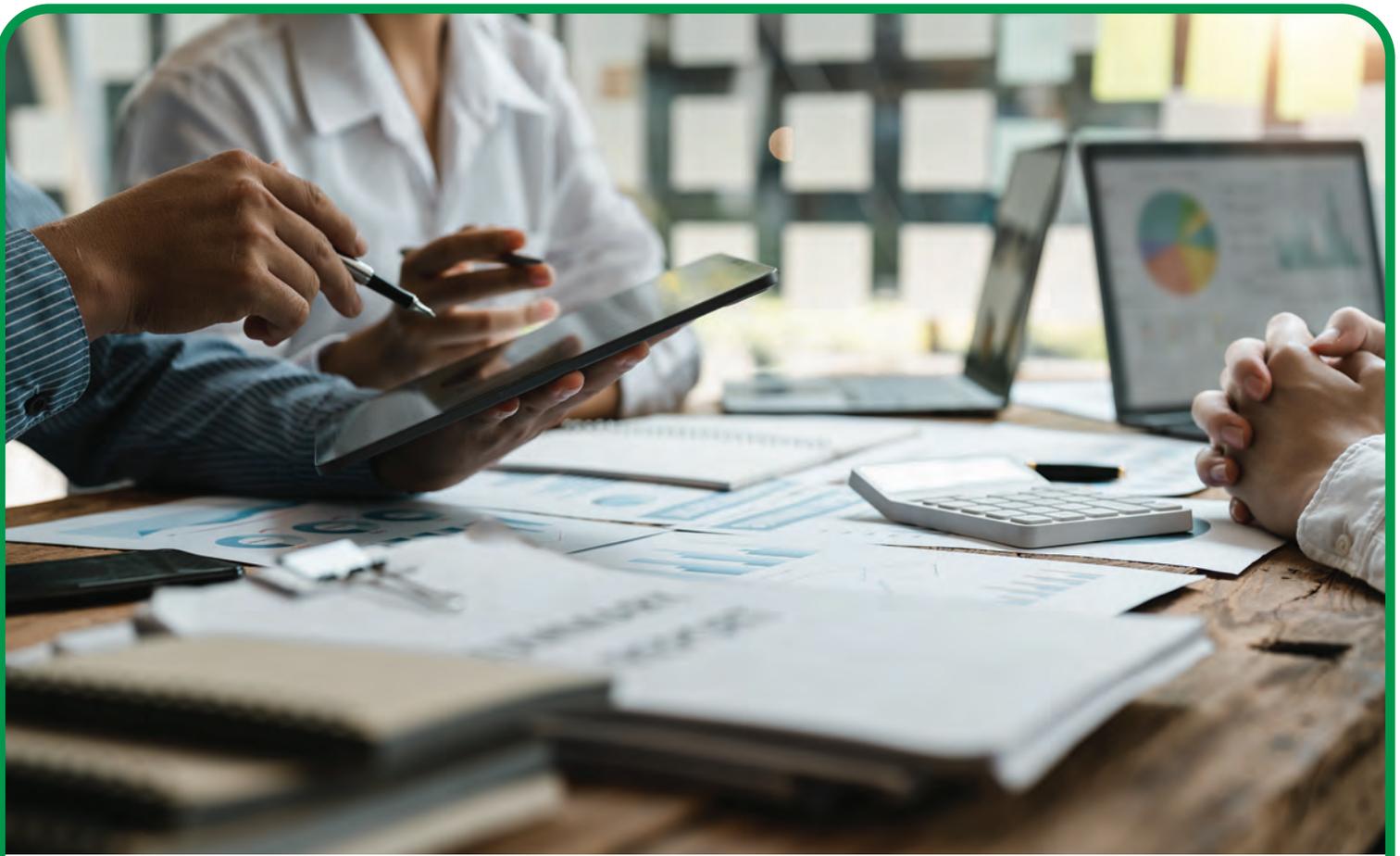
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75%

of accounting firms believe they would only be able to survive **three to seven days** after a ransomware attack.

Source: www.cpapracticeadvisor.com



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75%

of accounting firms believe they would only be able to survive **three to seven days** after a ransomware attack.

Source: www.cpapracticeadvisor.com

CPA firms are increasingly targeted due to their access to sensitive financial information. Since 2014 reported data breaches of CPA firms have increased **over 80%** with ransomware extortion incidents rising to **over 40%** since 2018.

Choosing Ontech to manage your CPA firm's IT & protect your data can offer several advantages:

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- Compliance with Regulations:** Ontech helps ensure your firm complies with industry regulations and standards, such as the AICPA Code of Professional Conduct and IRS guidelines for safeguarding taxpayer data.
- Proactive Monitoring and Support:** We provide continuous monitoring to detect & respond to potential threats quickly. This proactive approach minimizes downtime and keeps your operations running smoothly.
- Customized Solutions:** Our team offers tailored IT solutions to meet the specific needs of CPA firms. This includes secure cloud services, data backup and recovery, and network management.
- Training and Awareness:** They also provide training for your staff to recognize and respond to cyber threats, enhancing your firm's overall security posture.

Our tailored solutions, transparent billing, and commitment to minimizing technical issues make it an ideal choice for CPA's and accountants. Let us help safeguard your critical data!



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FTC SAFEGUARD CHECKLIST

WHO'S AFFECTED & WHAT'S REQUIRED



The **FTC Safeguards Rule** applies to “**financial institutions**”, including:



Car Dealerships



Retailers



Tax Preparers



Accounting Firms



Loan Companies



Any Business **Collecting Financial Data!**

Here's What's Required To Stay Compliant:



Designate a Qualified Individual

Assign someone (**internal or outsourced**) to be responsible for your information security program.



Conduct a Risk Assessment

Identify internal and external risks to customer data. This is ongoing, **not a one-time event!**



Train Your Team

Security is everyone's responsibility, so your employees need ongoing training on data protection and phishing awareness. **We can help with this!**



Monitor Your Service Providers

If you outsource IT, payroll, marketing, or data processing, **those vendors must also comply.**



Keep It Updated

Regularly review and **adjust** your security program as your business or threats evolve.



Implement Safeguards

Based on your risk assessment, put the right controls in place. **These typically include:**

- Access controls (who can access what, and why)
- Encryption of customer data
- Multi-Factor Authentication (MFA)
- Secure data disposal policies
- Logging and monitoring access and activity



Create an Incident Response Plan

Be ready with a plan if (**or when**) a data breach occurs. The FTC expects a **structured response strategy.**

Why It Matters: *Non-compliance can lead to:*



Hefty fines



Damaged reputation



Loss of trust with customers

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*based on 2020 Client Retention Rates

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NOVEMBER 2025



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2026
WICPA

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- ★ Young Professional

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The individual nominated must be a WICPA member.

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- ⦿ Recognition for your WICPA involvement
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* To receive free conference registration:

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- select topics
- contact speakers
- introduce speakers at conferences

2025 CONFERENCES Accepting Volunteers

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20

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MAY
13

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21

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FALL CONFERENCE

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16

NOT-FOR-PROFIT
ACCOUNTING CONFERENCE

NOV.
10-11

TAX
CONFERENCE

NOV.
20

ACCOUNTING & AUDITING
CONFERENCE

For more information or to join, email tammy@wicpa.org.





Social Security Planning & Strategies



Date: November 10, 2025

Session Agenda



- **Social Security Basics**
 - How Benefits are Calculated
- **Claiming Strategies**
 - Early, FRA, After FRA? What is right for you?
- **Dual-Benefit Strategies**
 - Spousal, Survivor, Divorced
- **Working While Claiming - Earnings Test**
- **Taxation of Benefits**
- **Medicare Impact (IRMMA & Timing)**
- **Recent Legislative Update – “One Big Beautiful Bill”**
- **Action Checklist & Resources**
- **Q&A**



Who is Spectrum?

20 Year Partnership



About Spectrum Investment Advisors



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in assets as of 3/31/2025¹

30 years

as Professional Retirement Plan Advisors

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¹ \$4.01 billion under advisement, \$403 million under management.

² Registration with the SEC does not imply a certain level of skill or training.



Manuel Rosado, MBA

President/Partner



Manuel, an industry expert, serves as President and Partner at Spectrum. He is instrumental in setting the firm's strategic direction and overseeing its day-to-day operations. With a deep understanding of fiduciary standards and behavioral finance, Manuel has a proven track record of helping companies implement successful retirement programs. His expertise in applying these concepts to investment management enables him to deliver actionable solutions that drive positive outcomes for the firm.

Industry Start Date: 1989

Spectrum Start Date: 2005

Fun Fact: Manuel coached multiple youth sports including high school volleyball and enjoys travel, golf, pickleball, and the outdoors.

Accreditations, Certifications & Education

- MBA - Finance, Concordia University-Wisconsin
- BA - Business Administration, Taylor University
- Certified Behavioral Finance Analyst (CBFA) certification from the AGI Center for Behavioral Finance
- Investment Adviser Representative License (Series 65)

Organization Involvement

- Taylor University Board of Trustees – Board Vice Chair
- Eastbrook Academy - Board Member
- Port Washington State Bank - Bank Director



Michael McDonald

Wealth Manager



Mike is a Wealth Manager for Spectrum Wealth Management™. Committed to learning the unique needs of each client, Mike is responsible for personal financial planning, private wealth management and individual retirement plan reviews.

Industry Start Date: 2011

Spectrum Start Date: 2011

Fun Fact: Mike golfs competitively and was the 2011 Wisconsin State Amateur Champion.

Accreditations, Certifications & Education

- Bachelor's degree in Advertising from Marquette University
- Investment Advisor Representative license (Series 65)

Organization Involvement

- Kettle Moraine YMCA - Board of Directors (Dec. 2024-Present)
- Mequon-Thiensville Chamber of Commerce - Past President (2022-2023) (Board of Directors: 2018-2023)
- Mequon-Thiensville Chamber of Commerce - Young Professionals Committee (2017-Present)



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Wealth Management

Turn financial goals into reality.

- Holistic planning
-
- Asset management
-
- Income strategies
-
- Rollovers | IRAs
-
- Individual | Family | Trust

Guiding Principles



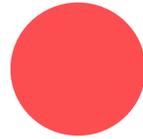
We Are Understanding

By involving and connecting with clients, partners, and colleagues at a deeper level



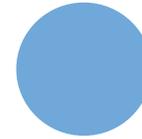
We Are Engaging

By delivering a fulfilling experience and thinking more like a partner than a provider



We Are Passionate

By approaching daily work with energy and enthusiasm to make a positive impact in people's lives



We Act With Integrity

By putting clients first and being guided by strong ethical principles



We Are Accountable

By acting as a fiduciary, leading by example, keeping everyone informed, delivering results, and embracing growth



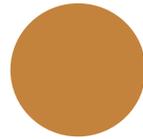
We Live Balanced Lives

By being fully present at work and at home



We Function as a Team

By collaborating, trusting each other, and helping others succeed to achieve more



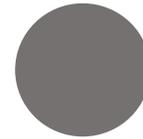
We Give Back

By getting involved in our community and making it a better place to live and work



We Celebrate

By enjoying the ride, honoring accomplishments, and letting happiness shine through



We Think Long-Term

By stewarding resources and making thoughtful decisions that will benefit future generations



Awards and Recognition

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We are recognized as industry leaders for our work in the board room and break room.



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Our award-winning workplace culture isn't just about us, it's about the ripple effect it creates for our clients. A collaborative, happy team enables us to serve our clients better and help them reach their goals.



Spectrum was named a 2025 Top DC Advisor Team by the National Association of Plan Advisors (NAPA) on March 20, 2025. The award is based on self reported assets under advisement as of December 31, 2024. | Spectrum was named a 2023 Top Retirement Planning Services Provider in February 2023. These awards were based on data from 2022 respectively. Spectrum paid a licensing fee for use of this designation and logo. Best & Brightest Award: Spectrum was named a winner by the National Association for Business Resources for the 2025 Milwaukee's Best and Brightest Companies to Work For® on December 13, 2024. Responses to the survey were based on the time period of June 11, 2024 through December 1, 2024. Spectrum paid a licensing fee for use of this logo.. | Spectrum Investment Advisors was named a winner in the micro category for the Milwaukee Business Journal's 2024 Best Places to Work. The rating was given on September 11, 2024 and results were based on the year 2024. Spectrum paid a licensing fee for use of this logo. | Spectrum was named a 2024 Best Places to Work for Financial Advisers by InvestmentNews February 28, 2024 and was also recognized for this on achievement in 2020, 2022, & 2023. These awards were based on data from 2022 and 2023 respectively. Spectrum paid a licensing fee for use of this designation and logo. | Spectrum was named a Best Place to Work in Money Management for 2022 by Pensions & Investments (P&I). The rating was awarded on December 12, 2022 and previously on December 6, 2021, December 2, 2020, December 9, 2019 and December 4, 2017. The recognition is based on data from 2022, 2021, 2020, 2019 and 2017 respectively. Spectrum paid a licensing fee to Pension & Investments for use of this designation and logo.

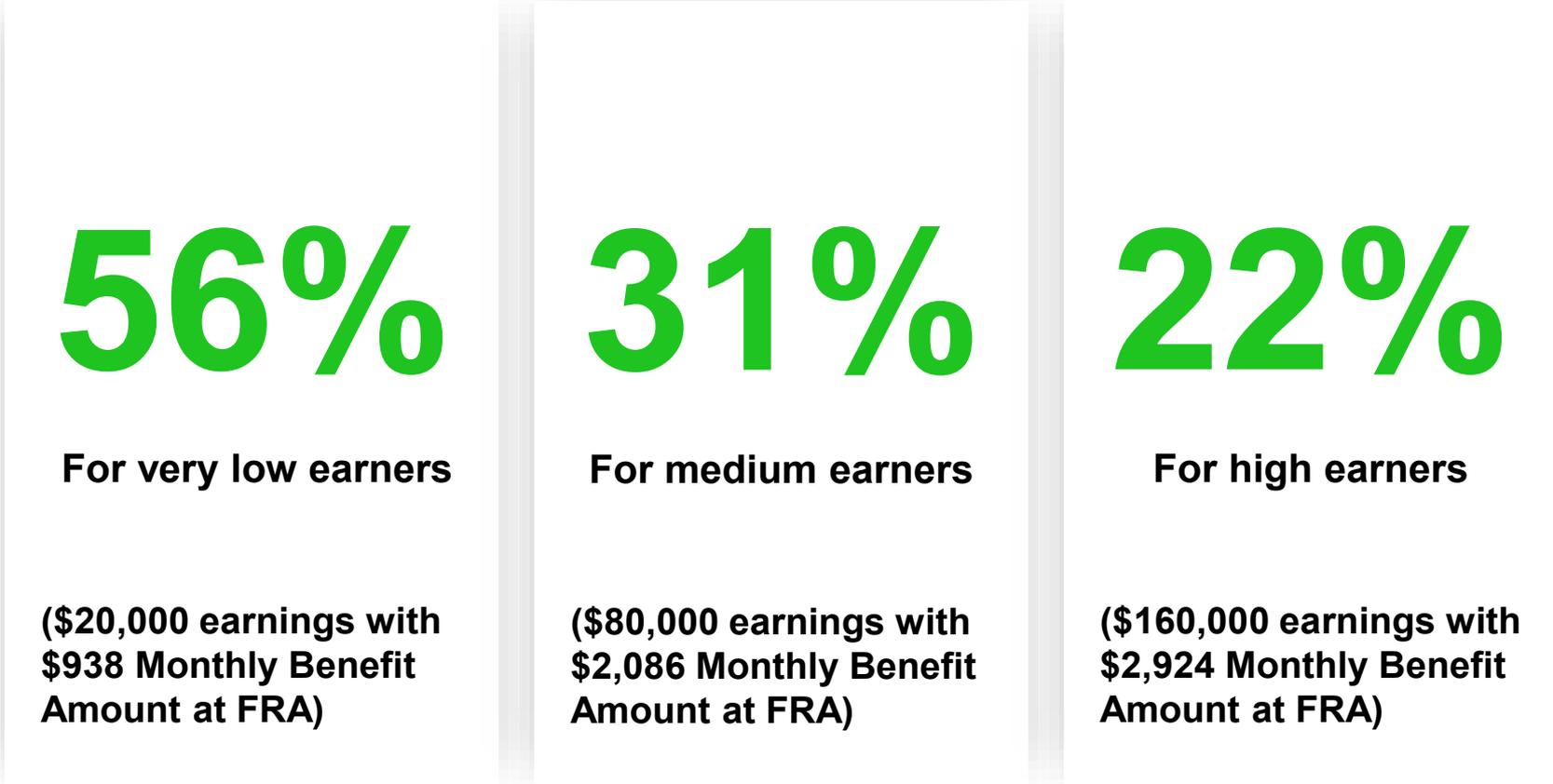


Social Security

Your Personal Plan

Social Security Income Replacement

How much of our pre-retirement income will Social Security replace?¹



Source: Field Guide to Social Security – 2025 – Transamerica; ¹"Sources of Retirement Income Study Outline," The American College of Financial Services, 2022



How is Your Social Security Benefit Calculated?

PIA (Primary Insurance Amount)

is based on your **35** highest-earning years of work

Eligibility

typically requires **10** years in the workforce (or 40 quarters)

Full Retirement Age

FRA is the age when you'll become eligible for full, unreduced retirement benefits

Annual Statement

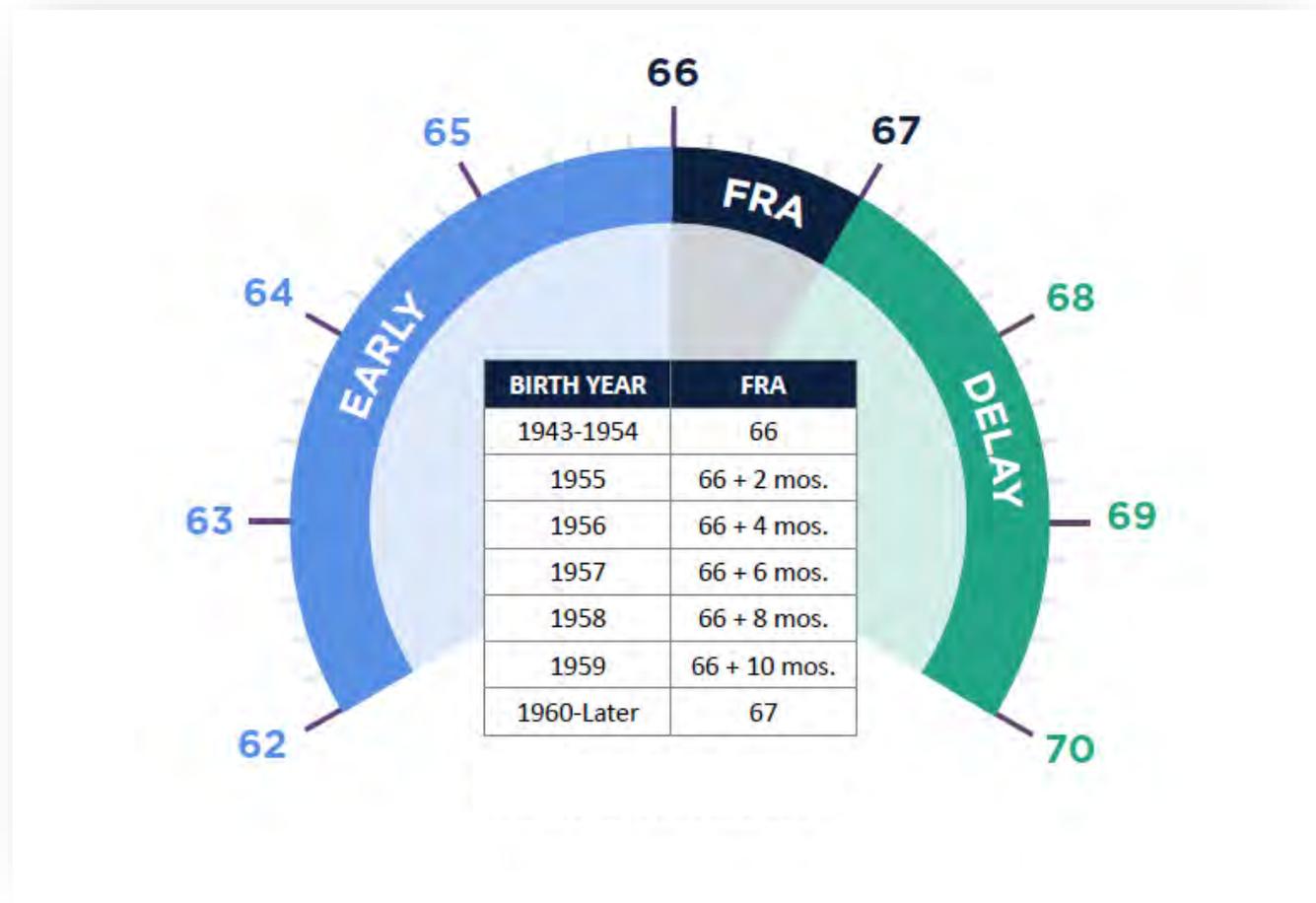
depicts the estimate for what your monthly benefits may be & are mailed to Americans 60+ not already receiving benefits or having online access

Accessing ssa.gov/myaccount is the first step to verify your identity & review your income history & calculation

Source: Field Guide to Social Security – 2025 – Transamerica



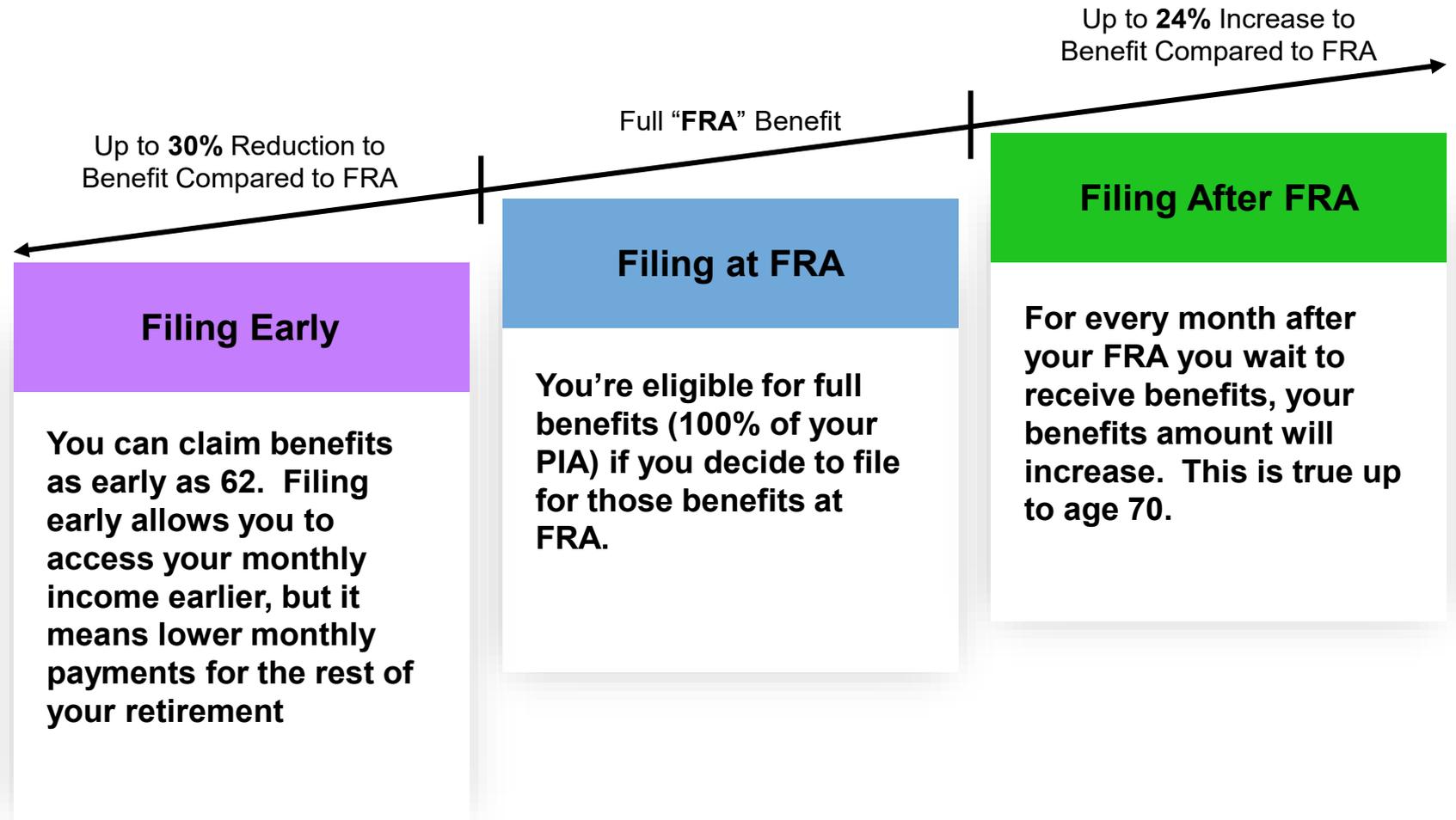
What is Full Retirement Age for You?



Source: Hartford Funds - The Untapped Potential of Social Security: Claiming Strategies for Couples 2025; *Retirement Planner: Benefits By Year Of Birth*, ssa.gov, 2024



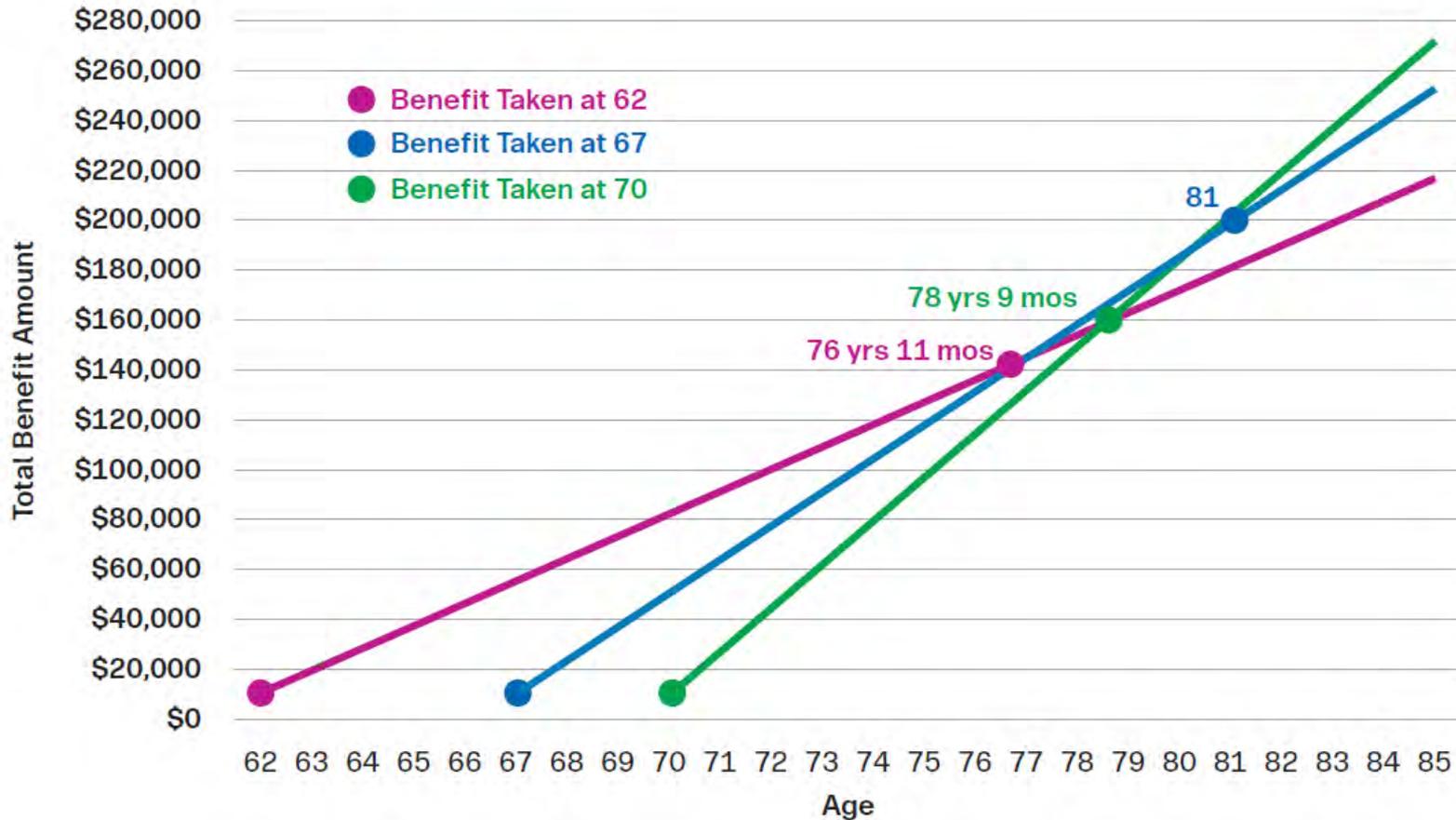
Claiming Benefits



Source: Field Guide to Social Security – 2025 – Transamerica



Hypothetical Break-Even Ages

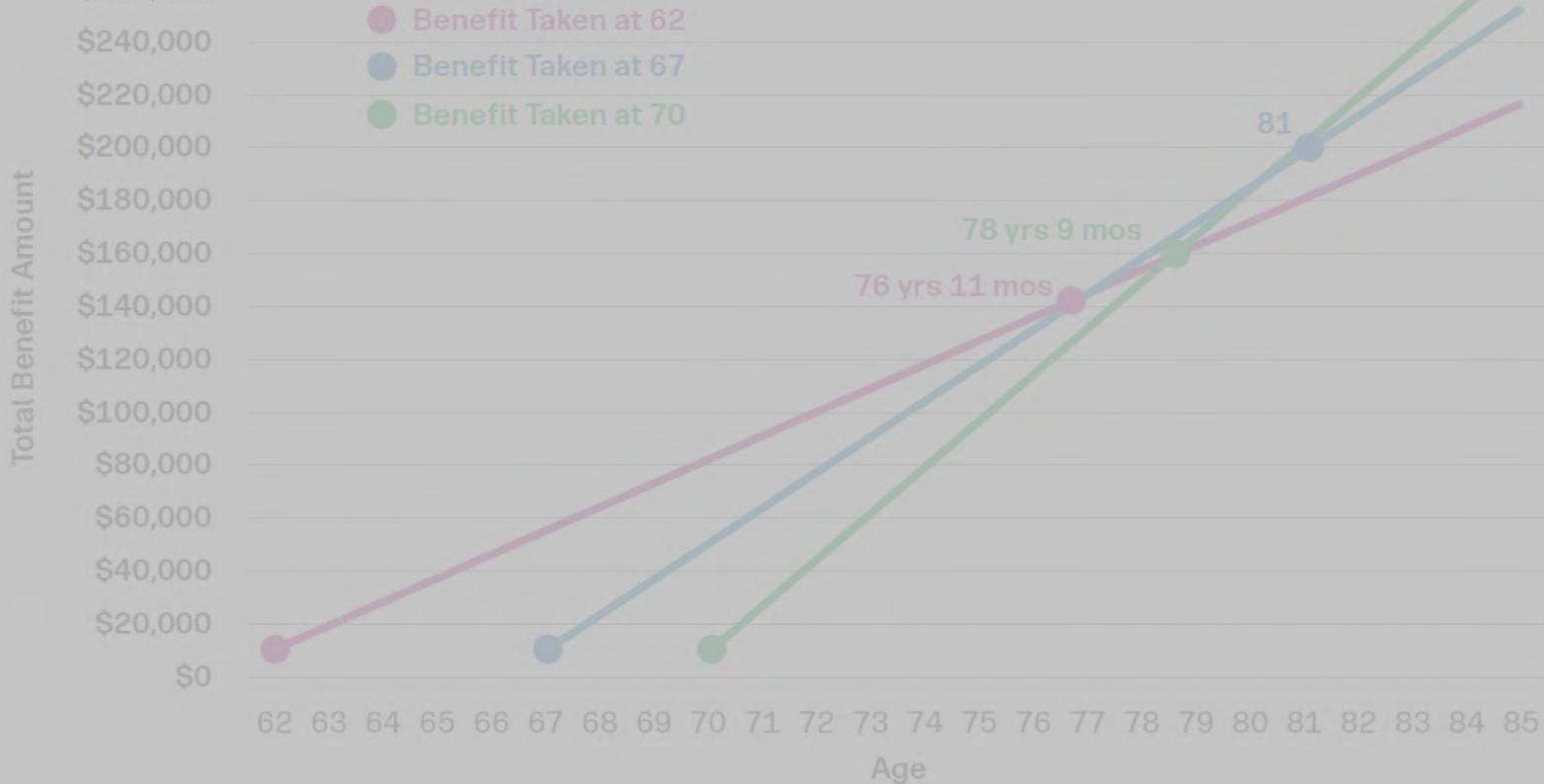


Source: Field Guide to Social Security – 2025 – Transamerica; Calculations assume a PIA of \$1,000 and a FRA of 66. This example is hypothetical and does not guarantee or predict an actual situation. Totals do not include cost of living adjustments. Example illustrates \$725/mo. at age 62; \$1,000/mo at 66; \$1,280/mo. at 70. Chart derived using information provided by the Social Security Administration, "Retirement Planner: Delayed Retirement Credits" and "Retirement Planner: Can You Take Your Benefits Before Full Retirement Age," 2019.



Hypothetical Break-Even Ages

The longer you wait to collect benefits, the larger your monthly check will be →



Source: Field Guide to Social Security – 2025 – Transamerica; Calculations assume a PIA of \$1,000 and a FRA of 66. This example is hypothetical and does not guarantee or predict an actual situation. Totals do not include cost of living adjustments. Example illustrates \$725/mo. at age 62; \$1,000/mo at 66; \$1,280/mo. at 70. Chart derived using information provided by the Social Security Administration, "Retirement Planner: Delayed Retirement Credits" and "Retirement Planner: Can You Take Your Benefits Before Full Retirement Age," 2019.



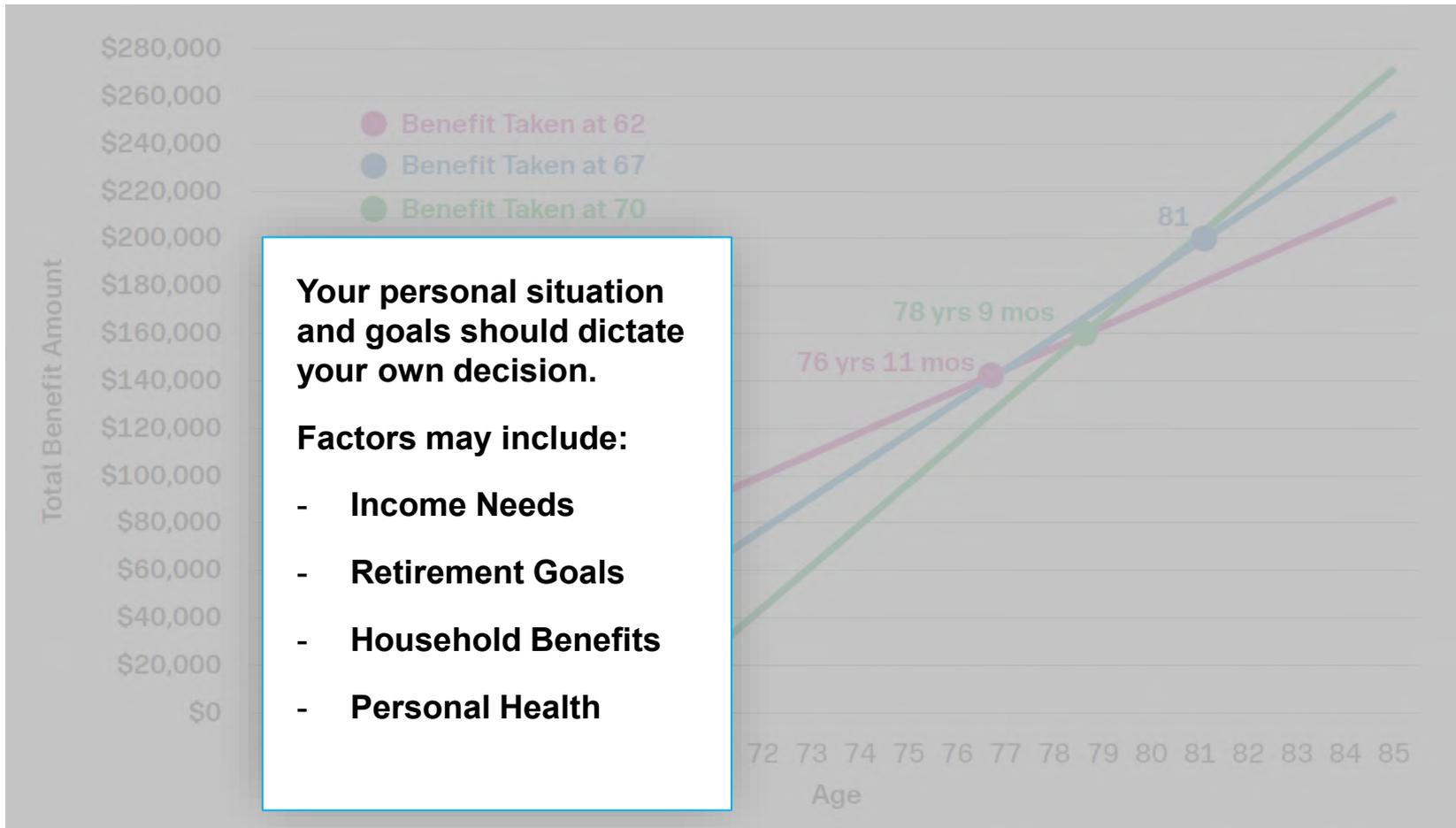
Hypothetical Break-Even Ages



Source: Field Guide to Social Security – 2025 – Transamerica; Calculations assume a PIA of \$1,000 and a FRA of 66. This example is hypothetical and does not guarantee or predict an actual situation. Totals do not include cost of living adjustments. Example illustrates \$725/mo. at age 62; \$1,000/mo at 66; \$1,280/mo. at 70. Chart derived using information provided by the Social Security Administration, "Retirement Planner: Delayed Retirement Credits" and "Retirement Planner: Can You Take Your Benefits Before Full Retirement Age," 2019.



Hypothetical Break-Even Ages



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Working While Claiming - Earnings Test

You can work and still receive benefit – BUT there are rules.

Under FRA

\$1 of benefits withheld for every \$2 in earnings above the limit for years prior to reaching FRA

\$23,400 per year

Individual reaches FRA in 2025

\$1 of benefits withheld for every \$3 in earnings above the limit for months prior to reaching FRA

\$62,160 per year

Month individual reaches FRA and beyond

Reduction no longer applies

Unlimited

Source: Field Guide to Social Security – 2025 – Transamerica; "Fact Sheet: 2025 Social Security Changes," Social Security Administration, 2024



Social Security Strategies

Claiming Strategies - Individual

Individual Benefits – Considerations

Financial situation

Health & longevity

Years in the workforce

Remember – calculation is based on your TOP 35 years of reported income (inflation adjusted)

Other retirement assets:

- Retirement income sources
- Investment approach

Lifestyle expectations

Source: Field Guide to Social Security – 2025 – Transamerica; "When to Start Receiving Benefits," Social Security Administration, 2024

*Some exceptions exist.

**Those who qualify for divorced-spouse benefits may collect before former spouse files, but they must have been divorced for two years.



Claiming Strategies - Spousal

Spousal Benefits – General Guidelines*

Must be married for at least one year

Filing for spousal benefits at your FRA, your benefit will be equal to 50% of your spouse's PIA

You can't collect benefits on your current spouse's record until THEY file for their own benefit

&

You must be 62 or older to qualify

Amount is reduced if taken before FRA, and doesn't increase if delayed

These rules also apply for divorced-spouse benefits, as long as the marriage lasted at least 10 years and the beneficiary spouse is currently unmarried**

Source: Field Guide to Social Security – 2025 – Transamerica; "When to Start Receiving Benefits," Social Security Administration, 2024

*Some exceptions exist.

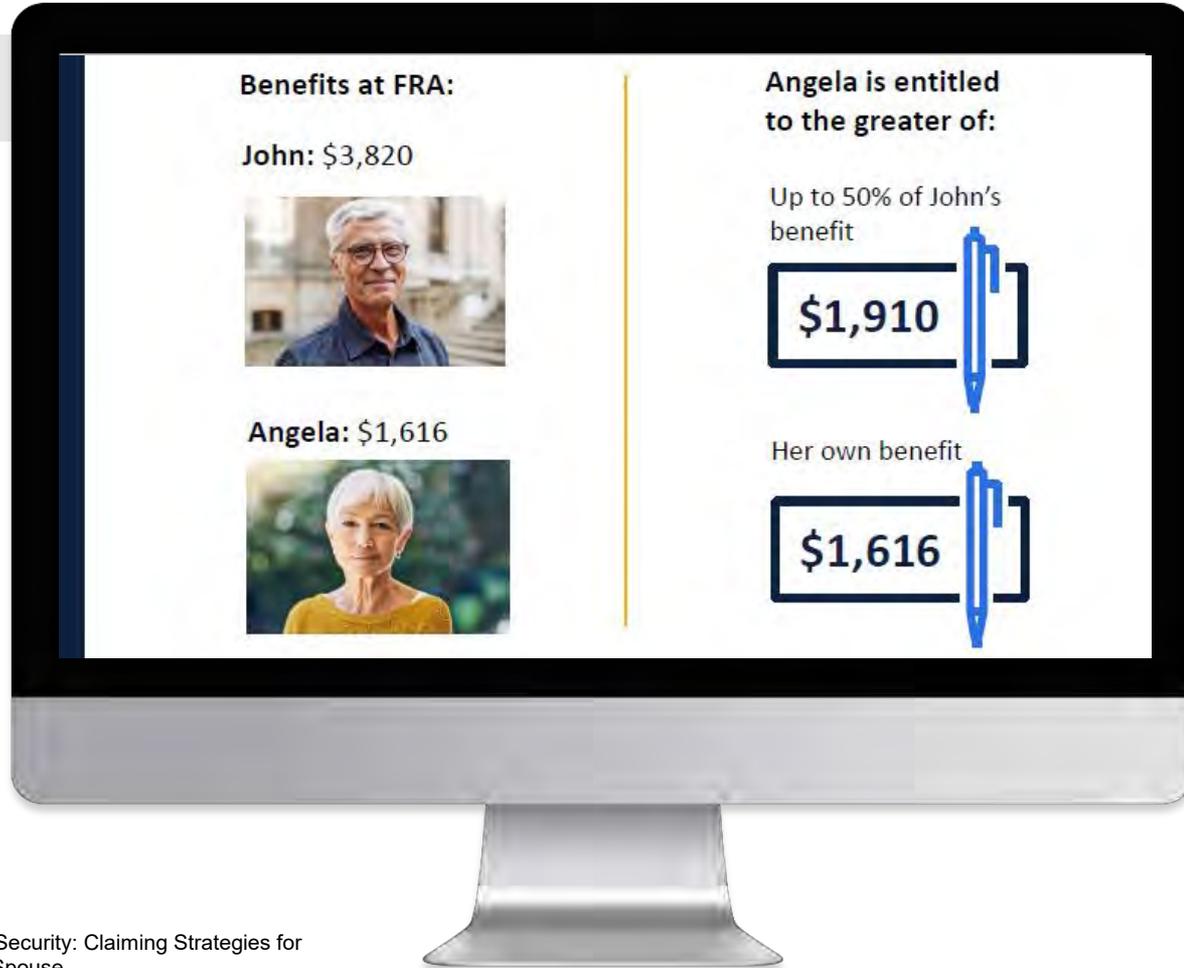
**Those who qualify for divorced-spouse benefits may collect before former spouse files, but they must have been divorced for two years.



Claiming Strategies - Spousal

Thinking individually

Angela would need to await John's election to claim his own benefit, before option of Spousal Benefit becomes available



Source: Hartford Funds - The Untapped Potential of Social Security: Claiming Strategies for Couples 2025; Benefits For Your Family/Benefits For Your Spouse, ssa.gov/benefits/retirement/planner/applying7.html, 1/24



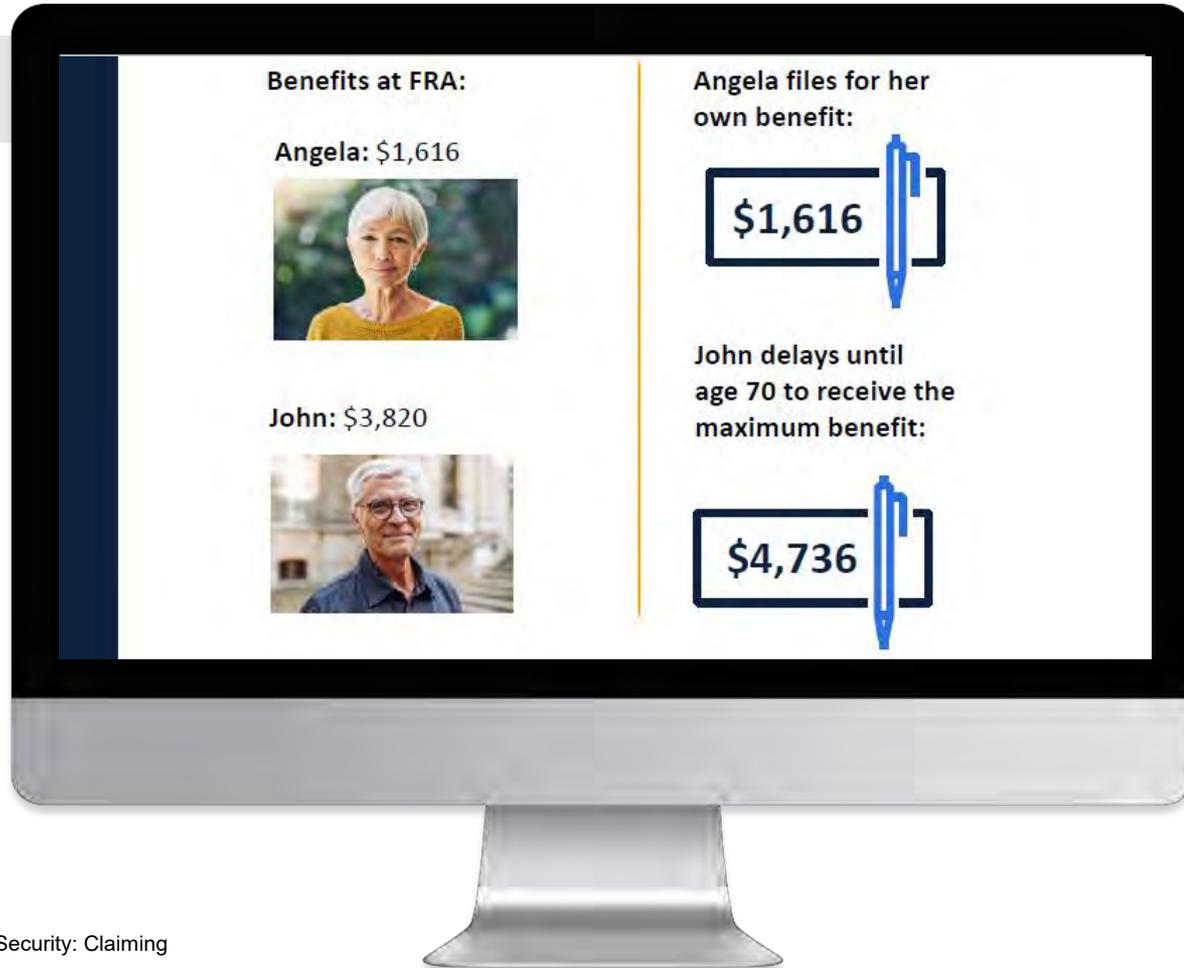
Claiming Strategies - Spousal

Thinking jointly

General rule:

Lower-earning spouse claims earlier

Higher-earning spouse delays filing



Source: Hartford Funds - The Untapped Potential of Social Security: Claiming Strategies for Couples 2025



Claiming Strategies – Surviving Spouse

Thinking jointly

- **Couple must have been married for at least 9-months (and surviving spouse must not remarry before age 60)**
- **By Angela's waiting until her own FRA, she receives 100% of John's survivor benefit**

John: \$3,820



Angela: \$1,910



If John passes away, Angela is entitled to the survivor benefit:

100% of John's benefit

\$3,820

Source: Hartford Funds - The Untapped Potential of Social Security: Claiming Strategies for Couples 2025; Note: The benefit amounts shown on this slide do not reflect COLA increases, which could result in higher actual amounts. Benefits For Your Family/Benefits For Your Spouse, ssa.gov/benefits/retirement/planner/applying7.html, 1/24



A Quick Note on Medicare - IRMMA & Timing

1. Automatic Enrollment

- If you **ARE** already receiving Social Security benefits when you turn 65, you are **automatically enrolled** in **Medicare Part A** (hospital insurance) and **Part B** (medical insurance) – you can opt out of Part B if you are still working and covered by credible coverage elsewhere.

2. Manual enrollment

- If you **ARE NOT yet collecting Social Security**, you need to proactively enroll during your **Initial Enrollment Period (IEP)**, which is a 7-month window spanning 3 months before, the month of, and 3 months after your 65th birthday

3. Strategies

- As Part B has a premium, a strategy to delay Social Security and Part B if you still have employer coverage could be useful

Source: medicare.gov



A Quick Note on Medicare - IRMMA & Timing (I Guess it Wasn't Quick)

1. IRMMA (Income-Related Monthly Adjustment Amount)

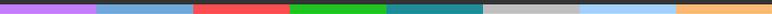
- Higher income retirees pay more for Medicare Parts B and D
- 2 Year Lookback
 - IRMMA is based on Modified Adjusted Gross Income (MAGI) from 2 years prior (2025 premiums use 2023 income)
 - 2025 thresholds for married couples start at \$206,000 MAGI

2. Strategies that Impact IRMMA

- Roth Conversions:
 - Handling conversion before Medicare enrollment can reduce income & IRMMA later on
- Required Minimum Distributions (RMDs):
 - Coordinating start of Social Security and RMDs can help reduce IRMMA spikes
- Capital Gains and One-Time Distributions:
 - Plan large asset sales or conversions earlier than two years before Medicare starts (if possible)

Source: medicare.gov





Legislative Update Impacting Social Security Benefits

Recent Legislative Update – Social Security Fairness Act (Jan. 2025)

1. Repeals both the Windfall Elimination Provision (WEP) and Government Pension Offset (GPO)

- This increases benefits to millions who notably earn non-covered pensions (namely: teachers, firefighters, police and others for example)
- Status – Social Security is implementing and recomputing those affected and their revised benefits
 - If you are already retired AND filed for Social Security, you don't need to do anything extra to receive your modified benefit.
- Those impacted should
 - Review your own personal benefits via your SSA.gov account access
 - Assess income history related to the recalculation timeline to confirm if adjustments apply to you

Source: This material was created for educational and informational purposes only and is not intended as ERISA, tax, legal or investment advice. If you are seeking investment advice specific to your needs, such advice services must be obtained on your own separate from this educational material.



Recent Legislative Update – “One Big Beautiful Bill” (July 2025)

1. Impacts starting in 2025

- Anticipated that nearly 88%¹ of beneficiaries will pay no Federal Income Tax on their Social Security benefit

	Millions of Beneficiaries	Percent of Beneficiaries
Seniors aged 65 and over receiving Social Security income	58.5	100%
Seniors with exemptions & deductions exceeding taxable Social Security income*		
... under current law	37.2	64%
... under OBBB	51.4	88%¹

- Result is calculated and based on senior deductions, not elimination of tax rules.
- This offsets or absorbs the taxable portion of benefits for many

Source: ¹https://www.whitehouse.gov/articles/2025/07/no-tax-on-social-security-is-a-reality-in-the-one-big-beautiful-bill/?utm_source=chatgpt.com. *Includes seniors who receive Social Security income but have no such income in their AGI. Note: Calculations are for tax year 2026 and correspond to the version of the Senate OBBB text published on June 16, 2025. In that version, the standard deduction for 2026 was \$16,000. In the version published June 28, 2026, the 2026 standard deduction will be based on the inflation-indexed value that exceeds \$16,000. Source: U.S. Treasury, June 24, 2025.



Recent Legislative Update – “One Big Beautiful Bill” (July 2025)

2. Impacts starting in 2025 (Cont’d)

- **New \$6,000 senior deduction** (per eligible person, phases out at higher incomes: MAGI above \$75,000 for single; \$150,000 for joint filers):
 - Effective 2025-2028; stacking on top of the existing additional standard deduction for age 65+ (\$1,600-\$3,200 age-based increase)
- **2025 COLA adjustment** (already in effect)
 - Benefits increased by 2.5% starting with January 2025 benefit checks
- **Operational Change: electronic payments ONLY**
 - SSA completed the shift away from paper checks to direct deposit/debit card in later 2025.
 - Any beneficiaries still receiving checks will need to set up electronic delivery

Source: Hartford Funds – “Navigating the Social Security Fairness Act: What You Need to Know: (2025)



Action Checklist & Resources

1. Remember to access ssa.gov/myaccount to verify your identity & review your income history & calculation – helps to defend against fraud
2. If you have a dual benefit household, think beyond just individual benefits – think strategy!
3. Plan for longevity
4. Social Security affords you choices – plan accordingly and build a plan for YOUR household

Important Disclosures

- Spectrum was named a 2024 (2023, 2022 and 2020) Best Places to Work for Financial Advisers by InvestmentNews. To qualify, a firm must have at least 15 employees and have been in business for one year. There is no charge to register. Winners are selected, in partnership with Best Companies Group, from a two-part survey completed by employers and employees. Scores from the employee survey represent three-quarters of the weight of final rankings.
- Spectrum was named a winner by the National Association for Business Resources for the 2024 Milwaukee's Best and Brightest Companies to Work For®. Spectrum is one of 47 winners. An independent research firm evaluates each company's entry based on key measures in various categories.
- Spectrum Investment Advisors was named a winner for the Milwaukee Business Journal's 2019 Fastest Growing Firms. To be selected, a company must have revenue between \$3 million and \$500 million and have recorded a profit for the past three years. The 26 firms with the highest percentage of growth from 2016 to 2018 were selected as winners. Accounting firm CliftonLarsonAllen LLP, was used in the verification process.
- Spectrum was selected as a winner for 2019 OED Business of the Year in the medium category. Winners were selected by the Business Development Committee, made up of business and government leaders throughout Ozaukee County, at Ozaukee Economic Development (OED). The program recognizes companies that have seen significant business and job growth over the past five years and are strong community partners.
- Spectrum was listed among 607 Registered Investment Advisors on Financial Advisor Magazine's 2021 RIA Survey and Ranking. To be eligible for the ranking, firms must be independent registered investment advisors, file their own ADV statement with the SEC, and provide financial planning and related services to individual clients.
- Spectrum was given honorable mention for the Metropolitan Milwaukee Association of Commerce (MMAC) 2021 Focus on the Future Awards in the Talent category. The program honors businesses for their contributions to the Milwaukee region's economy. To apply, businesses and organizations must write a 250-word essay describing its success in the category of their choice.
- Spectrum Investment Advisors was named a winner in the micro category for the Milwaukee Business Journal's 2022 Best Places to Work. Eligible firms are located in the Milwaukee area and have 10 or more full time employees. Of the Business Journal's 180 firm nominations, 63 winners were selected in five categories. Participating firms had a large percentage of employees complete an online survey created and scored by the Business Journal's program partner, Quantum Workplace. Winners were chosen based on highest scores in areas such as: personal engagement, communication and resources, teamwork, retention, alignment with goals, trust with co-workers and senior leaders, manager effectiveness and job satisfaction.
- Spectrum was named to PLANADVISER's 2018 Top 100 Retirement Plan Advisers List. The list is compiled from responses to the PLANADVISER Retirement Plan Adviser Survey. The list is drawn solely from a set of quantitative variables and information in the survey supplied by the advisers themselves. For an adviser to be eligible for recognition in the Top 100, he or she had to submit a completed entry to the annual Retirement Plan Adviser Survey. A sub-segment of the questions was used to determine eligibility for the Top 100. Respondents are allocated into a category in which they are evaluated—these categories are defined by the number of advisers, plus support staff, in the practice. Spectrum is one of 29 advisers in the Large Teams category. A large team is a practice with 11-35 advisers and support staff, at least 150 plans, or at least \$3.5 billion in assets under advisement.
- Spectrum was named a 2024 Top DC Advisor Team by the National Association of Plan Advisors (NAPA), which is a compilation of leading individual advisor teams, ranked by self-reported defined contribution assets under advisement. The 2024 list is made up of 332 teams with more than \$100 million in DC assets under advisement. NAPA was created by and for retirement plan advisers and is the only advocacy group exclusively focused on the issues that matter to retirement plan advisers.
- Spectrum Investment Advisors was named a Best Place to Work in Money Management for 2021, (and previously in 2020, 2019 and 2017) by Pensions & Investments (P&I). The 7th survey and recognition program is dedicated to identifying and recognizing the best employers in the money management industry. P&I partnered with Best Companies Group, an independent research firm, to conduct a two-part survey process of employers and their employees. To be eligible for consideration, companies must be for-profit or not-for-profit business or public agency, have a facility in the U.S., have a minimum of 20 full and/or part-time employees working in the United States, be in business a minimum of 1 year and have at least \$100 million of discretionary assets under management.
- Spectrum Investment Advisors has been chosen as a finalist for 401(k) Specialist's 2017 Top Advisors by Participant Outcomes (TAPO) for the month of July. 401(k) Specialist magazine and website are specifically focused on providing retirement plan advisors with the information needed to assist the retirement plan sponsors and participants they serve. The 401(k) Specialists Top Advisors by Participant Outcomes finalists are selected monthly out of advisors who chose to respond to the survey. An independent panel of industry experts then convenes annually to select the overall winner from the monthly finalists. The rating is not indicative of the advisors' future performance.
- Spectrum was named a 2023 Top Retirement Planning Services Provider by HR Magazine in February 2023. This award is based on data from 2022 respectively. Spectrum paid a licensing fee for use of this designation and logo.
- Registration with the SEC does not imply a certain level of skill or training.
- AIF®, Accredited Investment Fiduciary, certifies that the recipient has specialized knowledge of fiduciary standards of care and their application to the investment management process.
- CFA®, Chartered Financial Analyst, designation is globally recognized and attests to a charterholder's success in a rigorous and comprehensive study program in the field of investment management and research analysis.
- CFP®, CERTIFIED FINANCIAL PLANNER™, administered by CFP Board, identifies to the public those individuals who have met rigorous professional standards and have agreed to adhere to the principles of integrity, objectivity, competence, fairness, confidentiality, professionalism and diligence when dealing with clients.
- CEBS, Certified Employee Benefit Specialist, certifies that the recipient has a comprehensive understanding of compensation and employee benefit principles and concepts.
- CPFA, Certified Plan Fiduciary Advisor, certifies that the recipient has the expertise required to act as a plan fiduciary or help plan fiduciaries manage their roles and responsibilities.
- CPA, Certified Public Accountant, a designation given by the American Institute of CPAs
- CRC®, Certified Retirement Counselor®, a professional development program accredited by the National Commission for Certifying Agencies that enables financial professionals to address the challenges facing today's retirees.
- GFS®, Global Financial Steward, the financial service industry's first leadership and stewardship designation. Designees undergo training in a new body of research called LeaderMetrics®, which is a framework that is used to evaluate the effectiveness of a decision-maker who is serving in a critical leadership role.
- QPA, Qualified Pension Administrator, a credential created by the American Society of Pension Professionals and Actuaries (ASPPA) to recognize professionals who are qualified to perform the technical and administrative functions of qualified plan administration.
- QKA, Qualified 401(k) Administrator, a credential offered for retirement plan professionals who work primarily with 401(k) plans.
- CPFCS®, The Certified Personal Finance Counselor® provides professional development and training for those working with consumers in a one-on-one setting. Certification ensures that individuals have been trained and tested in counseling skills and the fundamentals of personal finance management.
- NQPA, Nonqualified Plan Advisor, a credential offered by the National Association of Plan Advisors certifying proficiency in Nonqualified plans.
- Series 65 certification is achieved by passing the North American Securities Administrators Association Series 65 exam, which qualifies candidates to be investment adviser representatives.
- An officer of Spectrum Investment Advisors, Inc. is a member of Retirement Advisor Council (RAC). This advertisement is not an endorsement by RAC of the products or services offered by Spectrum Investment Advisors, Inc. The Retirement Advisor Council advocates for successful qualified plan and participant retirement outcomes through the collaborative efforts of experienced, qualified retirement plan advisers, investment firms and asset managers, and defined contribution plan service providers.
- The WICPA, Wisconsin Institute of Certified Public Accountants, is the premier professional organization for Wisconsin CPAs, with nearly 8,000 members working in public accounting, industry, government, nonprofit and education.
- The WICPA is not affiliated with Spectrum Investment Advisors, Inc. and this presentation is not an endorsement by WICPA of the products or services offered by Spectrum Investment Advisors.
- Past performance is no guarantee of future results. Returns shown for periods longer than one year are annualized.
- Morningstar®, a leading provider of independent investment research in North America, Europe, Australia & Asia.
- ASPPA, the American Society of Pension Professionals & Actuaries, is a national organization for career retirement plan professionals. The membership consists of the many disciplines supporting retirement income management and benefits policy.
- planadviser and PLANSPONSOR magazines are the trusted information and solutions resource for America's retirement benefits decision makers.
- Spectrum has the ability to be an ERISA 3(21) Investment Advisor and 3(38) Investment Manager. A 3(21) Investment Advisor provides counsel and guidance, including one-on-one investment advice, but does not have discretion. A 3(38) Investment Manager is one that has been specifically appointed to have full discretionary authority and control to make investment decisions including the selection, monitoring and replacement of plan investment options.
- Spectrum may be compensated based on the assets in 401(k) plans, which Spectrum advises upon and, as such, may have a financial incentive to recommend employees' rollover their assets into those plans.

Important Disclosures

- Standardized returns assume reinvestment of dividends and capital gains. It depicts performance without adjusting for the effects of taxation or any applicable maximum sales charges but are adjusted to reflect ongoing fund expenses. If adjusted for taxation or maximum sales charges the performance quoted would be significantly reduced. The investment return and principal value of an investment will fluctuate thus an investor's shares when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than return data quoted herein.
- Marshall's Spectrum Investing Concept® uses colors to communicate investments by helping identify asset classes and market cycles. It does not guarantee against loss.
- The performance quoted represents the reinvestment of dividends and capital gains, is net of expenses and does not reflect the maximum sales charge. Such a cost, if taken into consideration, will reduce the performance quoted.
- Investment scores are intended to help plan sponsors identify suitable products and are not meant to be predictive of future performance.
- Morningstar category averages and corresponding category index are used for benchmark comparisons. Category average performance is net of costs. One cannot invest directly in the category averages or indexes.
- Data has been received from sources believed reliable, but data cannot be guaranteed as to accuracy, completeness, or fitness for a particular purpose.
- This report is for informational purposes only and should not be construed as a recommendation or solicitation to buy or to sell any security, policy, or investment.
- Benchmark Disclosures: Morningstar Category Averages: Morningstar classifies mutual funds into peer groups based on their holdings. The Category Average calculates the average return of mutual funds that fall within the category during the given time period. The following indexes and their definitions provide an approximate description of the type of investments held by mutual funds in each respective Morningstar Category. One cannot invest directly in an index or category average. **10-Year Treasury Note** is a loan to the US government. Its yield is its rate of return and guides other interest rates. **90 day US T-Bill** – The total return of the benchmark 90-day US Treasury Bill. This figure is calculated by Morningstar using the average weekly auction rates for 90-day T-bills during the month. **Stable Value** – Stable value funds are capital preservation investment options available in 401(k) plans and other types of savings plans. They are invested in a high quality, diversified fixed income portfolio that are protected against interest rate volatility by contracts from banks and insurance companies. **Real Estate: DJ US Select REIT Index** – Measures the performance of publicly traded real estate trusts (REITs) and REIT-like securities to serve as proxy for direct real estate investment. **Large Cap Growth: S&P 500 Growth Index** – Measures the performance of growth stocks drawn from the S&P 500 index by dividing it into growth and value segments by using three factors: sales growth, the ratio of earnings change to price and momentum. **Intermediate-Term Bonds: Bloomberg Barclays US Agg Bond Index** – Measures the performance of investment grade, US dollar-denominated, fixed-rate taxable bond market, including Treasuries, government-related and corporate securities, MBS, ABS and CMBS. **Large Cap Blend: S&P 500 Index** – A market capitalization-weighted index composed of the 500 most widely held stocks whose assets and/or revenue are based in the US.
- Large Cap Value: S&P 500 Value Index** – Measures the performance of value stocks of the S&P 500 index by dividing into growth and value segments by using three factors: sales growth, the ratio of earnings change to price and momentum. **Mid Cap Value/Mid Cap Growth: S&P MidCap 400 Index** – A market cap weighted index that covers the complete market cap of the S&P 400 Index. All S&P 400 index stocks are represented in both and/or each Growth and Value index. **Mid Cap Blend: S&P MidCap 400 Index** – Measures the performance of mid-sized US companies, reflecting the distinctive risk and return characteristics of this market segment. **Small Cap Blend: Russell 2000 Index** – Measures the performance of the small-cap segment of the US equity universe. It includes approximately 2000 of the smallest securities based on a combination of their market cap and current index membership. **Small Cap Value: Russell 2000 Value Index** – Measures the performance of small-cap value segment of Russell 2000 companies with lower price-to-book ratios and lower forecasted growth values. **Small Cap Growth: Russell 2000 Growth Index** – Measures the performance of small-cap growth segment of Russell 2000 companies with higher price-to-value ratios and higher forecasted growth values. **S&P 1500 Composite Index** – Combines three leading indices, the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600 to cover approximately 90% of the US market capitalization. **Foreign Large Cap Blend (International): MSCI EAFE NR Index** – This Europe, Australasia, and Far East index is a market-capitalization-weighted index of 21 non-US, developed country indexes. **Health: S&P 1500 Health Care Index** – Measures the performance of health care (sector) segment of US equity securities. It comprises those companies included in the S&P Composite 1500 that are classified as members of the Global Industry Classification Standard (GICS) Health Care (sector). **Natural Resources: S&P North American Natural Resources Index** – Measures the performance of US traded securities classified by the Global Industry Classification Standard (GICS) energy and materials excluding the chemicals industry and steel but including energy companies, forestry services, producers of pulp and paper and plantations. **Equity Precious Metals: FTSE Gold Mines Index** – Measures the performance of the worldwide market in the shares of companies whose principal activity is the mining of gold.
- Information contained is not for public distribution.
- Availability of investments is subject to change.
- Investments in specialized industry sectors carry additional risks, which are outlined in the prospectus.
- Investing in mutual funds involves risk, including the possible loss of principal.
- Bonds are subject to default risk and interest rate risk. Bond values are subject to change in price as interest rates rise or fall.
- Small and mid-cap stocks are generally more volatile than large-cap stocks.
- Stock investing involves risk including loss of principal.
- Additional costs may include: contract charges, plan recordkeeping expenses, advisor costs and/or asset-based costs specific to qualified retirement plans.
- Investors should consider the investment objectives, risks, charges and expenses of the investment company carefully before investing. The prospectus contains this and other important information about the investment company. You can obtain a prospectus from your financial representative or provider's website. Read carefully before investing.**

State Income Tax Considerations of Pass-Through Entity Tax Filings (Composite, Withholding & PTET)

NOVEMBER 10, 2025

With You Today



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Agenda for Today

1

Overview of key aspects of Wisconsin's elective PTE income tax and a comparison to other states

2

Case Study 1: Two Common 'Traps'

3

Case Study 2: State PTE Taxes Should Always be Elected, Correct?

4

Wisconsin and Other States' Non-Resident Owner Withholding

Compare and Contrast Key Aspects of Wisconsin's PTE Tax and Other States' PTE Taxes

Comparison of Wisconsin's Elective PTE Tax to Other States' Elective PTE Tax

Key Issues Applied to Wisconsin PTE Tax and Other States		
Issues	Wisconsin PTE Tax	Other States' PTE Taxes
<i>Eligible Entities and Issues Related to the Election</i>		
What types of entities can make the state PTE tax election?	Entities treated as S Corporations and Partnerships for Federal Income Tax	Same
Can a lower tier PTE make the PTE election?	Yes	Varies by State
Is the PTE required to submit non-resident withholding if the PTE elects to pay the state PTE income tax?	No	Varies by State

Comparison of Wisconsin's Elective PTE Tax to Other States' Elective PTE Tax

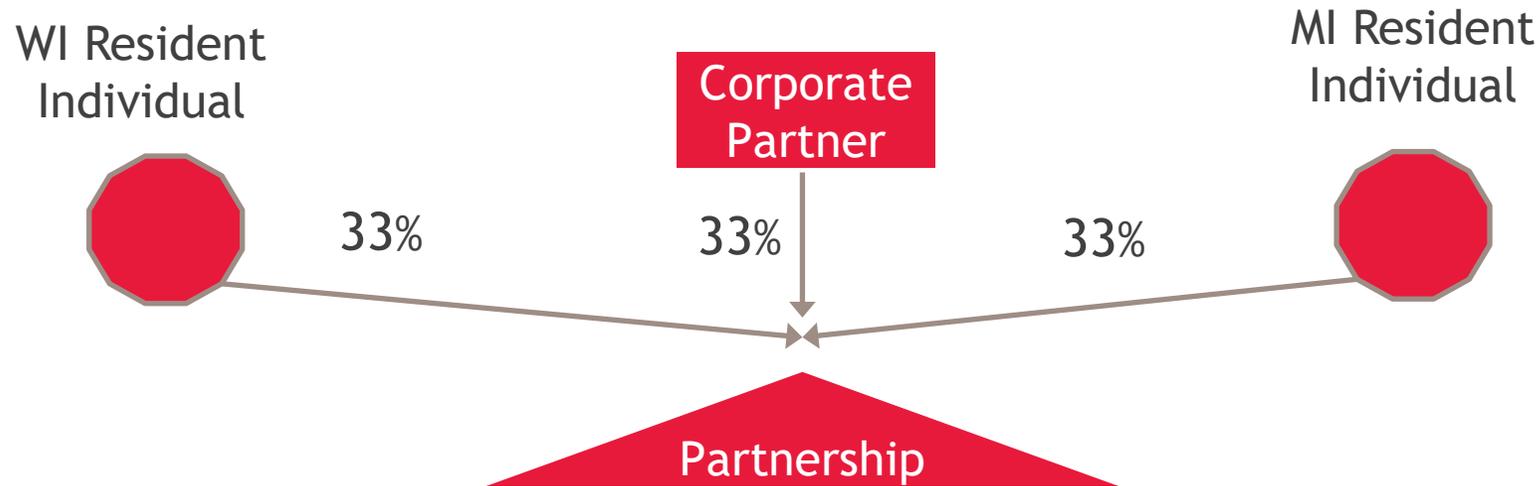
Key Issues Applied to Wisconsin PTE Tax and Other States		
Issues	Wisconsin PTE Tax	Other States' PTE Taxes
State PTE Income Tax Computational Issues		
Does the PTE income tax base include K-1 Income that flows to 'persons' other than individuals, trusts and estates?	Yes, tax base includes K-1 income that flows to C Corporations, including tax-exempt owners	Varies but many states omit K-1 income that flows to C Corporations
Is the amount of income included in the PTE tax base different for resident vs. non-resident owners?	Yes	Varies
Does the PTE have to take into account owner level limitations (e.g., passive activity and At-Risk limitations) when computing the state's PTE tax?	Yes, PAL and At-Risk Limitations Have to be Applied When Computing the PTE's WI PTE tax base	No
Can income that flows to a tax-exempt partner be excluded from the computation of the state PTE tax base?	No	Varies by State
Does the PTE take into account deductions from an IRC Section 754 Election when computing the state PTE tax?	Yes	No
Can the PTE take a credit for taxes paid to other states by the PTE and on behalf of the owners to other states?	Yes, for certain income tax payments	No

Comparison of Wisconsin's Elective PTE Tax to Other States' Elective PTE Tax

Key Issues Applied to Wisconsin PTE Tax and Other States		
Issues	Wisconsin PTE Tax	Other States' PTE Taxes
Impacts on PTE Owners		
Implications to owner when PTE makes the state PTE election?	Owner Excludes Income/Loss that Flows Through From PTE	2/3 of States Give a Credit, 1/3 of States Allow Exclusion
Does a non-resident owner of the PTE have to file an income tax return when the PTE elects the state's PTE tax?	No	Varies by State
Are there situations where the PTE owner(s) have to recognize income for Federal income tax purposes as a result of the state tax PTE election?	No	Yes - in states that give the owner a refundable credit

Case Study 1: Two Common 'Traps'

Case Study 1: Two Common 'Traps'



Facts:

- Partnership does business in Michigan and Wisconsin with an apportionment of 40% and 70%, respectively
- Partnership made the MI and WI PTE tax elections
- Partnership has \$15 million in income
- Partnership is a passive activity to the WI Resident. WI Resident had a \$4 million passive activity loss from Partnership in the prior year. Partnership made the WI PTE election in the prior year. The MI Resident partner is active in Partnership.
- The Michigan and Wisconsin partners have no other income outside of the K-1 income
- The Wisconsin partner made a \$68,000 ES payment to Michigan.
- The Corporate partner has a 35% Wisconsin apportionment factor.

Case Study 1: Two Common ‘Traps’

Income Allocation of Partnership Income Before Michigan & Wisconsin PTE Elections

	Michigan Resident	Corporate Partner	Wisconsin Resident
Total Taxable Income of the partnership	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000
TIMES: Ownership %	33.33%	33.33%	33.33%
Each Respective Partner's K-1 Income Allocation	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000
TIMES: Portion of Income Sourced to Michigan	40.0%	40%	40%
Allocated Income Sourced to Michigan	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000

Michigan PTE Tax Election Computation

Michigan Source Income to Michigan Resident	\$ 2,000,000
Michigan Source Income to Wisconsin Resident	2,000,000
Income Allocated to Corporate Partners	-
EQUALS: MI PTE Taxable Income of Partnership	\$ 4,000,000
TIMES: MI PTE Tax Rate	4.25%
Michigan PTE Tax Due	\$ 170,000

- The Michigan PTE tax computation is a ‘tailored’ computation. Income that flows to a C Corporation partner is excluded from the computation.

Case Study 1: Two Common ‘Traps’

Wisconsin PTE Tax Election Computation

	Michigan Resident	Corporate Partner	Wisconsin Resident
Current Year K-1 Income from Partnership	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000
LESS: Passive Activity Loss Carryover From PY	-	-	4,000,000
Current Year Income after Loss Carryover	5,000,000	5,000,000	1,000,000
TIMES: Wisconsin Apportionment %	70%	35%	N/A
Income Subject to Wisconsin PTE Tax	3,500,000	1,750,000	1,000,000
TIMES: Wisconsin PTE Tax Rate	7.9%	7.9%	7.9%
Total Wisconsin PTE Tax Per Partner	\$ 276,500	\$ 138,250	\$ 79,000
	Total Wisconsin PTE Tax		\$ 493,750

- The Wisconsin PTE tax computation is also a very ‘tailored’ computation. WI PTE tax is the only PTE tax that applies owner level limitations at the PTE level.
- Income that flows to a C Corporation partner is included in the computation. The unusual computational approach with a C Corporation partner is that the apportionment percentage computed at the PTE is not used but instead the corporate partner’s WI apportionment percentage is supposed to be used in the calculation.

Case Study 1: Two Common ‘Traps’

Revised Partnership Schedule K Income After Michigan and Wisconsin PTE Elections

Partnership Taxable Income	\$ 15,000,000
LESS: Michigan PTE Tax Expense	170,000
LESS: Wisconsin PTE Tax Expense	493,750
Partnership Taxable Income After Michigan & Wisconsin PTE Tax Expense	\$ 14,336,250

Income Allocation of Partnership Income After Michigan & Wisconsin PTE Elections

	Michigan Resident	Corporate Partner	Wisconsin Resident
Total Schedule K Income of Partnership	\$ 14,336,250	\$ 14,336,250	\$ 14,336,250
TIMES: Ownership %	33.33%	33.33%	33.33%
Each Respective Partner's K-1 Income Allocation	\$ 4,778,750	\$ 4,778,750	\$ 4,778,750

- Since Partnership is conducting a trade or business, the elective state PTE income taxes should be treated as trade or business expenses under IRC §162 instead of a tax expense under IRC §164. This means that the state income tax is not subject to the limitation under IRC §164(b)(6) but instead is deducted against the non-separately stated income of Partnership.

Case Study 1: Two Common ‘Traps’

How the Income Allocation *Should* be Done with the Michigan & Wisconsin PTE Tax Elections

	Michigan Resident	Corporate Partner	Wisconsin Resident
Total Taxable Income of Partnership Before Deduction	\$ 15,000,000	\$ 15,000,000	\$ 15,000,000
TIMES: Ownership %	33.33%	33.33%	33.33%
Each Respective Partner's Income Allocation Before Deduction	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000
LESS: Michigan PTE Tax Paid on Each Partner's Income	85,000	-	85,000
LESS: Wisconsin PTE Tax Paid on Each Partner's Income	276,500	138,250	79,000
<i>Actual</i> Income Allocation by Partner	\$ 4,638,500	\$ 4,861,750	\$ 4,836,000
Difference in Expected K-1 Income Allocation	\$ 140,250	\$ (83,000)	\$ (57,250)

- The allocation of the state income tax expense is incorrect. The Michigan Resident partner is not allocated enough of the state PTE tax expense.
- Can this be fixed?

Case Study 1: Two Common ‘Traps’

- Since the Michigan and Wisconsin PTE Tax Computations for entities taxed as partnerships are ‘tailored’, the ‘normal’ allocation of the state income tax expense will not be correct.
- A ‘tailored’ tax computation is used by a variety of states (e.g., Arizona, California, Colorado, New York, New Jersey and Massachusetts)
- ‘Correct’ allocation of the Michigan and Wisconsin PTE income tax expense can only be accomplished if the partnership has a special allocation provision in its partnership agreement related to the PTE tax expenses. A tax professional that specializes in the Federal income tax rules as applied to partnerships must be consulted to correctly implement a special allocation.
- In states that have a ‘tailored’ PTE tax base for electing S corporations (e.g., Arizona, California, Massachusetts and Wisconsin) the state PTE tax expense allocation will often not be consistent with how the PTE tax credit/income exclusion is allocated. This CANNOT be fixed because in order for the S corporation to maintain a valid S Corporation election it has to allocate net income (including the ‘embedded’ PTE state tax expense) consistent with stock ownership
- In all of the states that provide a credit to the owners, the credit calculation will not ‘track’ with how the expense is allocated so this expense ‘misallocation’ should not create an issue with each owners’ credit amount

Case Study 1: Two Common 'Traps'

Michigan Income Tax - Wisconsin Resident Partner	
Individual's K-1 Income From Partnership	\$ 4,778,750
LESS: Suspended Loss Released in Current Year	4,000,000
Individual's Federal AGI	\$ 778,750
ADD: State Income Taxes Deducted	221,250
Total Income After Modifications but Before Apportionment	\$ 1,000,000
TIMES: Michigan Apportionment Percentage	40%
Michigan Taxable Income	400,000
TIMES: Michigan Income Tax Rate	4.25%
Michigan Income Tax	\$ 17,000
LESS: Michigan ES Payment	68,000
LESS: PTE Credit	85,000
Michigan Tax Due / (Refund)	\$ (136,000)

- Since the Wisconsin resident partner has a suspended loss from the prior year, the application of this suspended loss on their Michigan return will produce a Michigan income tax refund. This is because the Wisconsin resident is permitted to take into account the suspended loss on their return, but Partnership cannot take the suspended loss into account when its MI PTE tax is computed.
- Does the Wisconsin resident have to recognize the \$136,000 refund in Federal gross income?

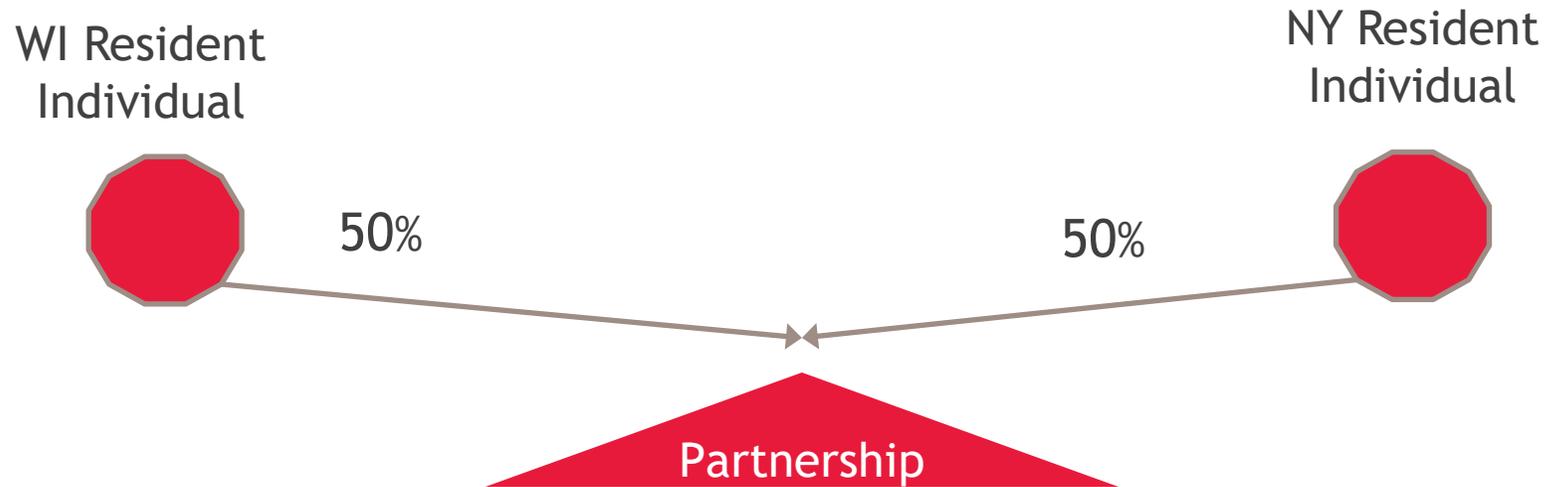
Impact on Owners with ‘Special’ Situations if a State PTE Tax is Elected

Does the Wisconsin resident have to include the entire \$136,000 refund in Federal AGI in the year received?

- Likely no
- The Tax Court has addressed a very similar issue related to refundable state income tax credits created to incentivize taxpayers to restore property. See *Maines v. Comm’r* 144 T.C. 123, 2015
- The framework created in *Maines* is that when a taxpayer receives a refund of a refundable state income tax credit then the treatment is as follows:
 - The granting of the credit is not an income event
 - The application of the credit against a taxpayer’s calculated state income tax liability is not an income event
 - Any portion of the credit refunded to the taxpayer (or credited forward to the next tax year) is an ‘accretion to wealth’ and includable in gross income

Case Study 2: State PTE Taxes Should *Always* be Elected, Correct?

Case Study 2: PTEs Should Always Elect State PTE Taxes, Correct?



Facts:

- Partnership does business in New York and Wisconsin with an apportionment of 10% and 90%, respectively
- Partnership made the NY and WI PTE tax elections
- Partnership has \$80 million in capital gain income from the sale of its business. Partnership has zero ordinary income.
- Partnership is a passive activity to the WI Resident. WI Resident had a \$20 million passive activity loss from Partnership in the prior year. Partnership did not make the WI PTE election in the prior year. The NY Resident partner is active in Partnership.
- The New York and Wisconsin partners have no other income outside of the K-1 income
- Partnership has a special allocation provision to allocate the state PTE tax expense correctly

Case Study 2: PTEs Should Always Elect State PTE Taxes, Correct?

Income Allocation of Partnership Income and Estimated State Income Tax		
	New York Resident	Wisconsin Resident
Total Taxable Income of the partnership	\$ 80,000,000	\$ 80,000,000
TIMES: Ownership %	50.00%	50.00%
Each Respective Partner's K-1 Income Allocation	\$ 40,000,000	\$ 40,000,000
TIMES: Respective State Income Tax Rates	10.9%	7.65%
Estimated State Income Tax on Current Year K-1 Income	\$ 4,360,000	\$ 3,060,000

"Back of the Napkin " Estimated Benefit of New York and Wisconsin PTE Tax Elections	
Estimated State Income Tax on Current Year K-1 Income	\$ 7,420,000
TIMES: Federal Income Tax Rate	37%
Estimated Federal Income Tax Benefit of Making State PTE Elections	\$ 2,745,400

- It is often assumed that if a state has an elective state PTE income tax, then a PTE should always elect to pay the tax because it must be better to deduct state income tax instead of having those taxes reported as an itemized deduction. Is this true?

Case Study 2: PTEs Should Always Elect State PTE Taxes, Correct?

New York PTE Tax Election Computation

	New York Resident	Wisconsin Resident
Current Year K-1 Income from Partnership	\$ 40,000,000	\$ 40,000,000
TIMES: New York Apportionment %	N/A	10%
Income Subject to New York PTE Tax	40,000,000	4,000,000
TIMES: New York PTE Tax Rate (uses only highest rate)	10.9%	10.9%
Total New York PTE Tax Per Partner	\$ 4,360,000	\$ 436,000
Total New York PTE Tax	\$ 4,796,000	

Wisconsin PTE Tax Election Computation

	New York Resident	Wisconsin Resident
Current Year K-1 Income from Partnership	\$ 40,000,000	\$ 40,000,000
LESS: Passive Activity Loss Carryover From PY	-	-
LESS: 30% Subtraction for Capital Gains	12,000,000	12,000,000
Current Year Income after Loss Carryover	28,000,000	28,000,000
TIMES: Wisconsin Apportionment %	90%	N/A
Income Subject to Wisconsin PTE Tax	25,200,000	28,000,000
TIMES: Wisconsin PTE Tax Rate	7.9%	7.9%
Total Wisconsin PTE Tax Per Partner Before Credits	\$ 1,990,800	\$ 2,212,000
LESS: Credit for Taxes Paid to Another State	N/A	214,200
Total Wisconsin PTE Tax Per Partner After Credits	\$ 1,990,800	\$ 1,997,800
Total Wisconsin PTE Tax	\$ 3,988,600	

- The New York PTE tax requires 100% of the K-1 income that flows to a NY resident partner to be included in the tax base. Only NY source income is included in the calculation for non-resident partners.
- Since Partnership did not elect the WI PTE tax in the prior years, when losses flowed to the WI Resident partner, the suspended losses released are not permitted to be used by Partnership.
- The 30% capital gain exclusion that is available for WI's personal income tax is permitted to be taken by a PTE that elects the WI PTE tax.
- When computing the other state tax credit, the 30% capital gain exclusion will reduce the amount of credit available because it is considered non-taxed income. A PTE can't take the NY source income divided by the WI income to get the % of WI tax that is creditable.

Case Study 2: PTEs Should Always Elect State PTE Taxes, Correct?

New York Income Tax - Wisconsin Resident Partner

Individual's K-1 Income From Partnership	\$ 40,000,000
LESS: Suspended Loss Released in Current Year	20,000,000
Total Income Before Apportionment	\$ 20,000,000
TIMES: New York Apportionment Percentage	10%
New York Taxable Income	2,000,000
TIMES: New York Income Tax Rate	10.9%
New York Income Tax	\$ 218,000
LESS: New York PTE Credit	436,000
New York Tax Due / (Refund)	\$ (218,000)

New York Income Tax - New York Resident Partner

Individual's K-1 Income From Partnership	\$ 40,000,000
LESS: Suspended Loss Released in Current Year	-
Total Income Before Apportionment	\$ 40,000,000
TIMES: New York Apportionment Percentage	N/A
New York Taxable Income	40,000,000
TIMES: New York Income Tax Rate	10.9%
New York Income Tax Before Credit for Taxes Paid to Other States	\$ 4,360,000
LESS: Credit for Taxes Paid to Wisconsin	1,990,800
New York Income Tax After Credit for Taxes Paid to Other States	\$ 2,369,200
LESS: New York PTE Credit	4,360,000
New York Tax Due / (Refund)	\$ (1,990,800)

- When suspended losses are 'released', both IRC §465 and IRC §469 state that the losses are to be treated as 'deductions' in the year the losses are used.
- Since Partnership is not permitted to take into account the suspended loss that the WI Resident has for the NY PTE tax, it causes the amount of tax paid (and the refundable credit) to be too large.
- When a PTE has multi-state operations, the way the NY PTE tax is computed with respect to NY resident partners tends to create a PTE credit that is usually too large.

Case Study 2: PTEs Should Always Elect State PTE Taxes, Correct?

NY and WI Residents' Net Tax Cost (Including Partners' Share of Partnership's NY and WI PTE Tax) - With PTE Elections

	NY Resident	WI Resident
Partners' Share of Wisconsin PTE Tax	\$ 1,990,800	\$ 1,997,800
ADD: Partners' Share of Partnership's NY Tax	4,360,000	436,000
ADD: Total New York Personal Income Tax	(1,990,800)	\$ (218,000)
Itemized Deduction for State Income Taxes (limited to \$10,000) - Assumed to be Fully Used by Property Taxes	\$ -	\$ -
TIMES: Highest Federal Income Tax Rate	37%	37%
LESS: Year 1 Benefit of Income Taxes Deducted on Schedule A	\$ -	\$ -
New York and Wisconsin State Tax Expense in K-1 Income	6,350,800	2,433,800
TIMES: Year 1 Capital Gain Tax Rate	20%	20%
LESS: Year 1 Benefit of Income Tax Expense on Schedule E	1,270,160	486,760
Year 2 Federal Income Tax Gross Income Inclusion	1,990,800	218,000
TIMES: Highest Federal Ordinary Income Tax Rate	37%	37%
ADD: Year 2 FIT Due on Gross Income Inclusion of Refund of Refundable Credit	736,596	80,660
Total Net Tax Cost After Making NY and WI PTE Elections	<u>\$ 3,826,436</u>	<u>\$ 1,809,700</u>

Total Federal and State Tax Cost with NY and WI State PTE Elections \$5,636,136

- One caution when state PTE taxes are being considered in connection with the sale of a business is often the state income tax deduction is taken against capital gain income if there is not sufficient ordinary income to absorb the deduction.
- Since the income inclusion is considered an 'accretion to wealth', the income should be recognized as 'other income' which means it gets taxed as ordinary income. There are some positive ramifications.

Case Study 2: PTEs Should Always Elect State PTE Taxes, Correct?

Total State Tax if No PTE Elections are Made

New York Income Tax - Wisconsin Resident Partner (without PTE Elections)

Individual's K-1 Income From Partnership	\$ 40,000,000
LESS: Suspended Loss Released in Current Year	20,000,000
Total Income Before Apportionment	\$ 20,000,000
TIMES: New York Apportionment Percentage	10%
New York Taxable Income	2,000,000
TIMES: New York Income Tax Rate	10.9%
New York Tax Due / (Refund)	\$ 218,000

Wisconsin Income Tax - Wisconsin Resident Partner (without PTE Elections)

Individual's K-1 Income From Partnership	\$ 40,000,000
LESS: Suspended Loss Released in Current Year	20,000,000
Total AGI	\$ 20,000,000
LESS: 30% Capital Gain Subtraction	12,000,000
Wisconsin Taxable Income	\$ 8,000,000
TIMES: Wisconsin Income Tax Rate	9.65%
Wisconsin Income Tax After Credit for Taxes Paid to Other States	\$ 772,000
LESS: Credit for Taxes Paid to New York	77,200
Wisconsin Income Tax After Credit for Taxes Paid to Other States	\$ 694,800

- Owner level tax attributes that are available to a partner or an S Corporation shareholder will often make it unfavorable to elect state PTE income taxes.
- Be careful when computing the Wisconsin Credit for Taxes Paid to other states when the income at issue is capital gain income. Need to make sure a credit is not taken on the 30% of capital gain income that is included in the other state's tax base but not in the Wisconsin tax base.

Case Study 2: PTEs Should Always Elect State PTE Taxes, Correct?

Total State Tax if No PTE Elections are Made

New York Income Tax - New York Resident Partner (without PTE Elections)

Individual's K-1 Income From Partnership	\$ 40,000,000
LESS: Suspended Loss Released in Current Year	-
Total Income Before Apportionment	\$ 40,000,000
TIMES: New York Apportionment Percentage	N/A
New York Taxable Income	40,000,000
TIMES: New York Income Tax Rate	10.9%
New York Income Tax Before Credit for Taxes Paid to Other States	\$ 4,360,000
LESS: Credit for Taxes Paid to Wisconsin	2,702,000
New York Income Tax After Credit for Taxes Paid to Other States	\$ 1,658,000

- When computing the credit for taxes paid the computation is the lesser of the other state tax paid or the resident state tax on that same income.

Wisconsin Income Tax - New York Resident Partner (without PTE Elections)

Individual's K-1 Income From Partnership	\$ 40,000,000
LESS: Suspended Loss Released in Current Year	-
Total AGI	\$ 40,000,000
LESS: 30% Capital Gain Subtraction	12,000,000
Wisconsin Taxable Income Before Apportionment	\$ 28,000,000
TIMES: Wisconsin Apportionment %	90%
Wisconsin Taxable Income	\$ 27,999,999
TIMES: Wisconsin Income Tax Rate	9.65%
Wisconsin Tax Due	\$ 2,702,000

Case Study 2: PTEs Should Always Elect State PTE Taxes, Correct?

Total State Tax if No PTE Elections are Made

NY and WI Residents' Net Tax Cost - No PTE Elections				
	NY Resident		WI Resident	
Partners' Wisconsin Income Tax		\$ 2,702,000		\$ 694,800
ADD: Total New York Personal Income Tax		1,658,000		\$ 218,000
Itemized Deduction for State Income Taxes (limited to \$10,000) - Assumed to be Fully Used by Property Taxes	\$	-	\$	-
TIMES: Highest Federal Income Tax Rate		37%		37%
LESS: Year 1 Benefit of Income Taxes Deducted on Schedule A	\$	-	\$	-
New York and Wisconsin State Tax Expense in K-1 Income		-		-
TIMES: Year 1 Capital Gain Tax Rate		20%		20%
LESS: Year 1 Benefit of Income Tax Expense on Schedule E		-		-
Year 2 Federal Income Tax Gross Income Inclusion		-		-
TIMES: Highest Federal Ordinary Income Tax Rate		37%		37%
ADD: Year 2 FIT Due on Gross Income Inclusion of Refund of Refundable Credit		-		-
Total Net Tax Cost After Making NY and WI PTE Elections		<u>\$ 4,360,000</u>		<u>\$ 912,800</u>
Total Federal and State Tax Cost with No PTE Elections			\$5,272,800	
Total Federal and State Tax Cost with NY and WI State PTE Elections			\$5,636,136	
Total Benefit / (Cost) of Making State PTE Elections			\$ (363,336)	

- Do not assume that elective state PTE elections should always be made. Need to be very careful with 'tailored' state PTE taxes and when the owners of a PTE have owner level attributes that can alter the total tax paid.

Case Study 2: PTEs Should Always Elect State PTE Taxes, Correct?

- There are multiple ‘special’ situations which can cause problems if state PTE tax elections are being considered. A non-exhaustive list of problematic situations are:
 - At-Risk Suspended Losses
 - Passive Activity Suspended Losses
 - IRC Section 163(j) carryovers for partners in a partnership
 - Net Operating Losses (including NOLs created as a result of IRC §461(l))
- The degree of impact will depend on what type of PTE tax is at issue:
 - Refundable credit PTE states are the least problematic (unless an income character shift occurs)
 - Non-refundable credit PTE states can create issues if the PTE credit carryover cannot be used in a future tax year
 - A PTE tax that provides an exclusion/deduction to the owners can cause extra state income tax to be paid if one of the ‘special’ situations is present
- If the client has income from sources other than the PTE, this will make it more likely that a refundable state PTE credit will not be a gross income inclusion....this is very counter-intuitive!!

Non-Resident Income Tax Withholding

Wisconsin and Other States' Non-Resident Owner Withholding

- Non-resident owner income tax withholding is very 'mechanical' and often will not result in an amount of withholding that equals the actual amount of tax due on the non-resident owner's state income tax return. Examples of situations that create this disconnect:
 - At-Risk and Passive Activity Suspended Losses
 - State Net Operating Losses including losses created under IRC §461(l)
 - Partnerships that recognize cancellation of debt income
 - A PTE owner that owns multiple PTEs that are doing business in the withholding state with state losses coming from one or more of the PTEs
 - Partnerships that have non-deductible interest under IRC §163(j)
- Be careful with which types of owners that non-resident income tax withholding is required to be remitted for.
- Some states have 'opt-out' provisions that allow a PTE to not withhold on a non-resident owner.
 - **EXAMPLE:** Wisconsin allows an exemption from withholding if a PTE owner timely files and gets approved an affidavit on Form PW-2



Questions?



About BDO USA

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Speakers



Samual Koch
EPSA



Michael Nobile
EPSA

Guiding CPA's & Their Clients Through Tax Reform



epsa
USA

Today

- › NEW LEGISLATION: WHAT YOU NEED TO KNOW
 - › THE ONE BIG BEAUTIFUL BILL ACT
 - › IMPACTS ON BUSINESSES
- › R&D TAX CREDIT
 - › QUALIFICATION
 - › CREDIT CALCULATION
 - › CLAIMING THE R&D CREDIT
 - › CASE STUDIES
- › 179D Deduction
 - › About the Deduction
 - › Eligibility & Industry Requirements
 - › Leveraging 179D
 - › Filing Requirements
 - › 179D Process
- › Action Steps
- › Q&A



THE ONE BIG BEAUTIFUL BILL ACT

➤ What the OBBBA Changed

1



Section 174 Repealed

2



**One Year to decide strategy
for 174 Unamortized Expenses**

3



179d Being Phased Out

4



**Deadline to Capture Grandfathered
Projects**



IMPACTS ON BUSINESSES

THE IMPACT: How Changes Effect You

1



No amortization of R&D expenses, they are immediately deductible

2



One year to deduct remaining 174 expenses in 2025 or spread over 2025 and 2026

3



Projects will no longer be able to qualify for 179d after June 30th 2026

4



Projects started before Jun 30th 2026 qualify and can be captured in the year they are completed

A photograph of two men in business suits sitting at a table. The man on the left is looking at a laptop, while the man on the right is pointing at a document. A large yellow arrow graphic points from the top right towards the center. The text 'About the R&D Tax Credit' is overlaid in white on the left side of the image.

About the R&D Tax Credit

1981

Economic Recovery Tax Act

R&D Spending eligible for Tax Credits

Key Features:

- Largest Tax Cut in US History
- Highest income tax bracket decreased, from 70% to 50%
- Bottom tax bracket cut, from 14% to 11%
- Featured incentives for small business and retirement savings

2015

PATH Act

R&D Tax Credit Become Permanent on the Tax Code

Key Features:

- R&D Credits can be claimed year after year
- Start-Ups are now eligible to use the R&D Credit for payroll tax offset

With the R&D tax credit becoming permanent through the PATH Act, companies may now receive tax credits and refunds spanning the current tax year and three previous years of R&D activity

R&D TAX CREDIT: IN GENERAL

FEDERAL R&D CREDIT GENERAL INFORMATION:

- Federal tax incentive
- Reduces income tax liability on a dollar-for-dollar basis
- Can be claimed in the current tax year and retrospectively for the 3 prior years*
- Unused credits are carried back one year and can be carried forward up to 20 years
- Can be used to offset the employer portion of Social Security tax liability for new companies**



STATE R&D TAX CREDIT GENERAL INFORMATION:

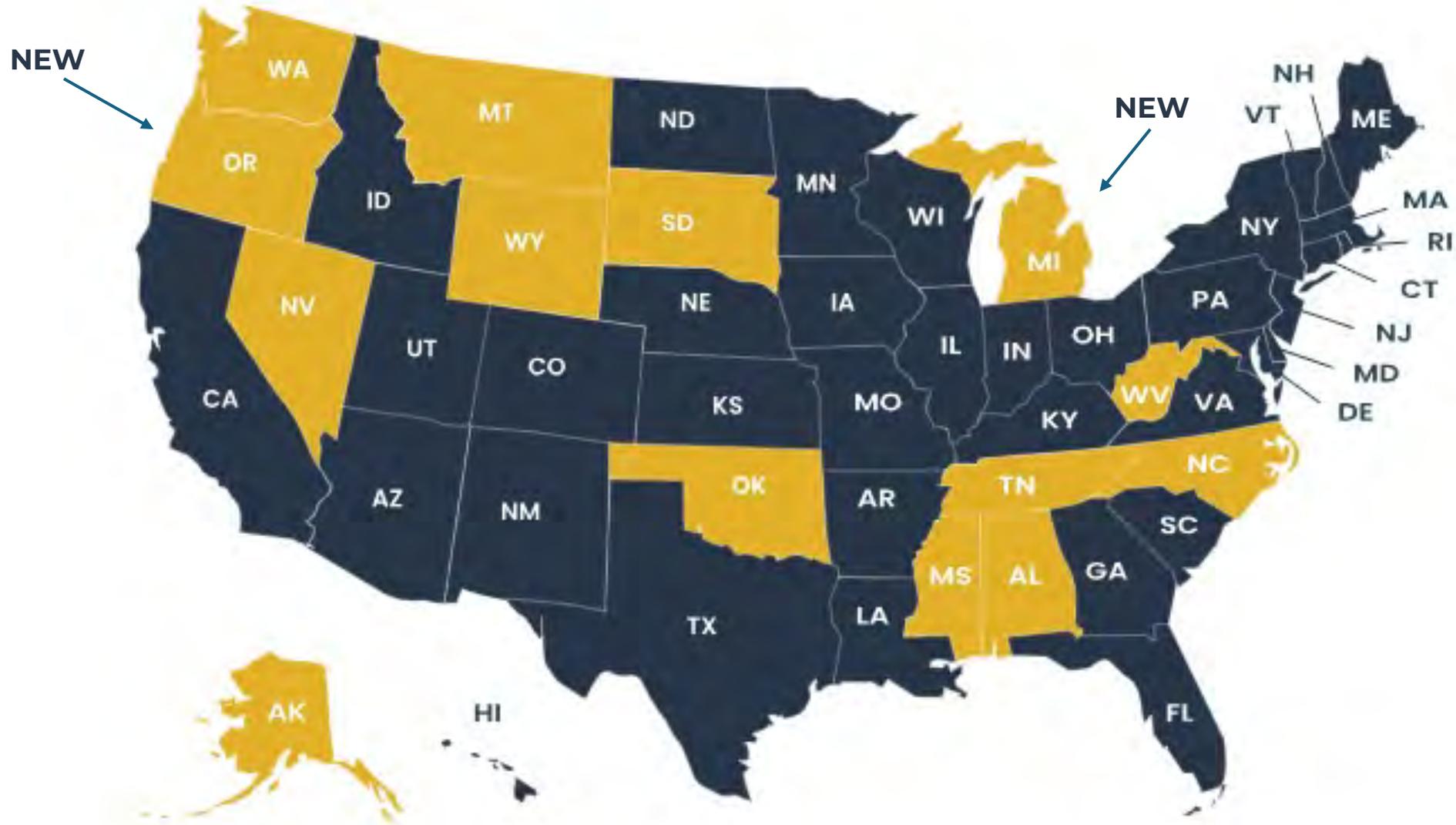
- Qualification and calculation varies depending on each State
- Can be claimed in addition to or independently from the Federal R&D Tax Credit

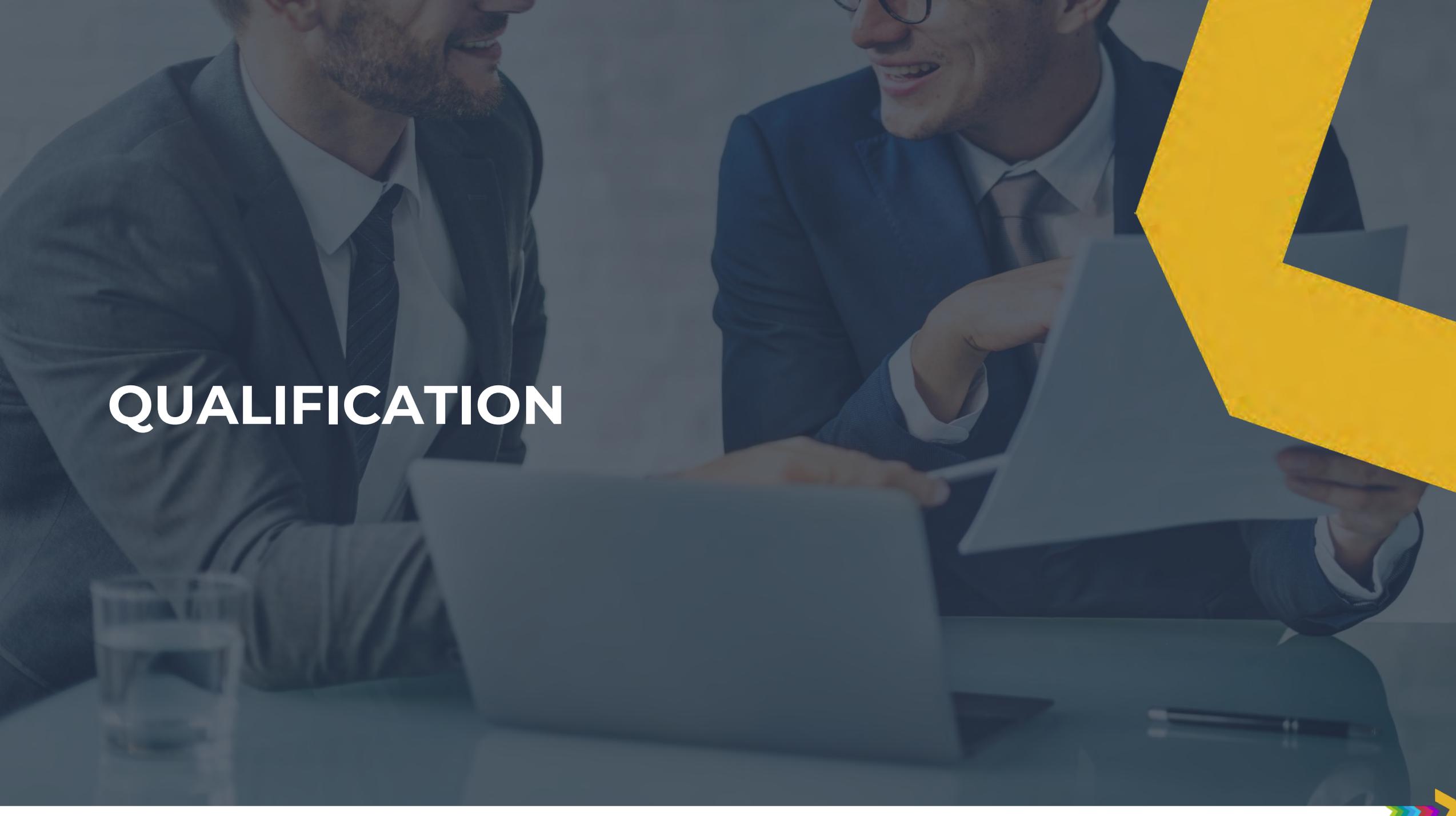


**Statute of limitations is generally 3 years from the date the tax return was filed*

***Qualifying Criteria: Less than \$5M in gross receipts during the credit year and no gross receipts for any tax year preceding the five-tax-year period ending with the credit year*

ELIGIBLE STATE R&D TAX CREDITS



A photograph of two men in business suits sitting at a table. The man on the left is looking at a laptop, while the man on the right is pointing at a document. A large yellow arrow graphic points from the right side of the image towards the center. The word 'QUALIFICATION' is overlaid in white text on the left side of the image.

QUALIFICATION

➤ **CRITERIA FOR ELIGIBILITY: 4-PART TEST**

1



BUSINESS COMPONENT/PERMITTED PURPOSE

New or improved business component

2



ELIMINATION OF UNCERTAINTY

Appropriate design, methodology, or capability

3



PROCESS OF EXPERIMENTATION

Systematic trial and error

4



TECHNICAL IN NATURE

Principles of physical or biological sciences, engineering, or computer science

➤ DEBUNKING MISCONCEPTIONS

COMPANY MUST BE DEVELOPING SOMETHING NEW TO THE WORLD TO TAKE ADVANTAGE OF THE R&D CREDIT – FALSE!

- “Discovery” Rule was officially eliminated in the early 2000s
- Just needs to be “new to the taxpayer”

COMPANY CANNOT CLAIM THE CREDIT IF IT IS BEING PAID FOR THE WORK – FALSE!

- “Funded” is an exclusion, but does not hinge on whether taxpayer is paid
- Must look at contract to determine which party bears the economic risk and who maintains substantial rights

COMPANY MUST BE PROFITABLE TO USE THE R&D CREDIT – FALSE!

- Credit can be used to offset income tax liability and carry forward up to 20 years!
- Can also be used to offset payroll tax, if eligible



EXCLUSIONS UNDER §41(d) – R&D TAX CREDIT

- Exclusions:
 - **Research after Commercial Production**
 - Adaptation
 - Duplication
 - Surveys, Studies, Research Relating to Management Functions
 - Internal-Use Software
 - Foreign Research
 - Research in the Social Sciences
 - **Funded Research**



ELIGIBLE R&D EXPENSES

Supplies used for research



QUALIFIED RESEARCH EXPENSES (QREs)



Employee Wages



Contractors /1099s



Rental or lease of computers / Cloud hosting



ELIGIBLE ARCHITECTURE R&D ACTIVITIES

including, but not limited to:

- Iterative process of design development
- Conceptual and schematic design development through construction documents
- Development of master plans
- Site planning based on existing site conditions
- Design of energy efficient building systems
- Code compliance of the design



ELIGIBLE ARCHITECTURE JOB ROLES

including, but not limited to:

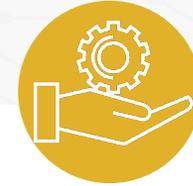
- Architect
- Designer
- Project Manager
- Associate
- Partner
- Principal
- Drafter



ELIGIBLE ENGINEERING R&D ACTIVITIES

including, but not limited to:

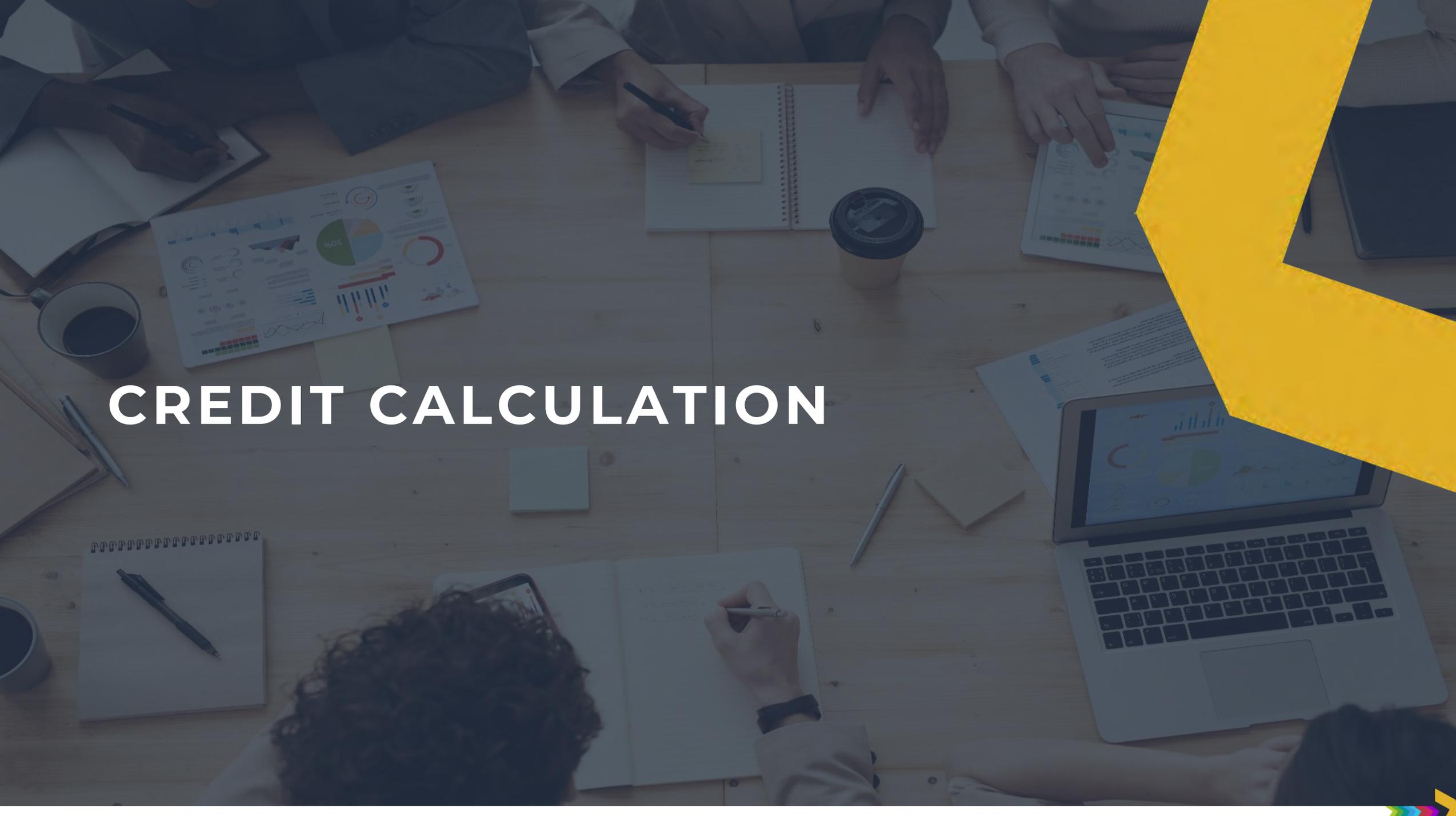
- Design and evaluation of structural and mechanical systems
- Design and development of MEP and HVAC systems
- Computer aided design modeling and simulation
- Development of system automation and custom controls
- Site specific drainage, roadway, grading, and foundation design
- Evaluation of site constraints, structural loads, and system integration to meet engineering requirements



ELIGIBLE ENGINEERING SECTORS

including, but not limited to:

- Structural Engineering
- Mechanical Engineering
- Civil Engineering
- Electrical Engineering
- Chemical Engineering



CREDIT CALCULATION

➤ **BASE AMOUNT**

REGULAR CREDIT

- Formula: $20\% \times (\text{current year QREs} - \text{Base Amount})$
- Base Amount is the greater of:
 - Fixed Base % \times Average Annual Gross Receipts (AGR) (prior 4 years)
 - 50% of current year QREs
- Fixed Base % is calculated using Gross Receipts (GRs) and QREs (to a max of 16%)
 - If the taxpayer was conducting R&D prior to 1984 we use 1984-1988 QREs and GRs
 - Otherwise, QREs and GRs from the first 10 years after 1994 in which they were conducting R&D

ALTERNATIVE SIMPLIFIED CREDIT (ASC)

- Formula: $14\% \times (\text{current year QREs} - \text{Base Amount})$
- Base Amount is the sum of the QREs of the prior 3 tax years divided by 6
- If any of the 3 prior tax years did not have QREs, the formula is changed to $6\% \times \text{current year QREs}$

Revenue Procedure 2011-42 is the IRS guidance on statistical sampling

- The sampling plan must be appropriate and valid
- A written **sampling plan is required** prior to the execution of the sample
 - Note that under the draft of the new 6765, the sampling plan must be attached if a sample was used

Two types of samples allowed: **Attribute and Variable**

- **Attribute Sample:**
 - Each sampled item is tested for the 'attribute' of being qualified or not qualified
 - The result is an estimated proportion of the sampling population that is qualified
 - The R&D tax credit is a bad use case for this kind of sampling
- **Variable Sample:**
 - Each sampling unit has a variable attached before sampling (in the R&D case, QREs)
 - The variable (QREs) of the sampled items are tested for accuracy
 - The result is an estimate of the total QREs of the sampling population



CLAIMING THE R&D TAX CREDIT

HOW TO CLAIM THE R&D TAX CREDIT

Highlights:

- Complete and file Form 6765 with your federal tax return
- Choose your calculation method
 - *Regular Credit or Alternative Simplified Credit (ASC)*
- Maintain contemporaneous documentation
- Stay updated on key changes to forms

Form 6765 (Rev. December 2024) Department of the Treasury Internal Revenue Service		Credit for Increasing Research Activities Attach to your tax return. Go to www.irs.gov/Form6765 for instructions and the latest information.		OMB No. 1545-0019	
Name(s) shown on return				Identifying number	
A Are you electing the reduced credit under section 280C? See instructions.				Yes <input type="checkbox"/> No <input type="checkbox"/>	
B Are you a member of a controlled group or business under common control?				Yes <input type="checkbox"/> No <input type="checkbox"/>	
If "Yes," complete and attach the required statement. See instructions for required attachment.					
Section A—Regular Credit. Skip this section and go to Section B if you are electing or previously elected (and are not revoking) the alternative simplified credit.					
1	Certain amounts paid or incurred to energy consortia (see instructions)			1	
2	Basic research payments to qualified organizations (see instructions)	2			
3	Qualified organization base period amount	3			
4	Subtract line 3 from line 2. If zero or less, enter -0-			4	
Note: Complete Section F before going to line 5.					
5	Total qualified research expenses (QREs). Enter amount from line 48	5			
6	Enter fixed-base percentage, but not more than 16% (0.16). See instructions	6			%
7	Enter average annual gross receipts. See instructions	7			
8	Multiply line 7 by the percentage on line 6	8			
9	Subtract line 8 from line 5. If zero or less, enter -0-	9			
10	Multiply line 5 by 50% (0.50)	10			
11	Enter the smaller of line 9 or line 10			11	
12	Add lines 1, 4, and 11			12	
13	If you elect to reduce the credit under section 280C, then multiply line 12 by 15.8% (0.158). If not, multiply line 12 by 20% (0.20) and see instructions for the statement that must be attached.			13	
Section B—Alternative Simplified Credit. Skip this section if you are completing Section A.					
14	Certain amounts paid or incurred to energy consortia (see the line 1 instructions)			14	
15	Basic research payments to qualified organizations (see the line 2 instructions)	15			
16	Qualified organization base period amount (see the line 3 instructions)	16			
17	Subtract line 16 from line 15. If zero or less, enter -0-			17	
18	Add lines 14 and 17			18	
19	Multiply line 18 by 20% (0.20)			19	
Note: Complete Section F before going to line 20.					
20	Total qualified research expenses (QREs). Enter amount from line 48	20			
21	Enter your total QREs for the prior 3 tax years. If you had no QREs in any 1 of those years, skip lines 22 and 23	21			
22	Divide line 21 by 6.0	22			
23	Subtract line 22 from line 20. If zero or less, enter -0-	23			
24	Multiply line 23 by 14% (0.14). If you skipped lines 22 and 23, multiply line 20 by 6% (0.06)	24			
25	Add lines 19 and 24			25	
26	If you elect to reduce the credit under section 280C, then multiply line 25 by 79% (0.79). If not, enter the amount from line 25 and see the line 13 instructions for the statement that must be attached.			26	

For Paperwork Reduction Act Notice, see separate instructions. Cal. No. 1370GH Form **6765** (Rev. 12-2024)

R&D TAX CREDITS: WHAT'S CHANGING?

NEW FORM 6765

Highlights:

- Requires reporting of information regarding each business component on the form (Section G)
- **Section G is optional for QSBs and taxpayers with \leq \$1.5M QREs and \leq \$50M GRs**
- Officers wages must be broken out if they are included in wage QREs
- Statistical sampling plan must be attached (if a statistical sample was used)

Form 6765 (Rev. 12-2024)

Page **3**

Section G—Business Component Information. Complete lines 49(a) through 49(f) for each business component you are required to report. See instructions. Attach additional sheets if necessary to capture all business components.

BC	49(a) EIN of the controlled group member conducting the research activities on this business component	49(b) Controlled group member's principal business activity code	49(c) Business component's name or unique alphanumeric identifier (see instructions)	49(d) Business component type (select one from available options)
1				
2				
3				
4				
5				
6				
7				



SECTION G: BREAKING DOWN BUSINESS COMPONENTS



COLUMNS	WHAT IT COVERS
49(a)	EIN for the business component
49(b)	NAICS code
49(c)	BC identifier (project identifier like name or number consistent with client books)
49(d)	Component type (“Product”, “Process,” “All Others”)
49(e)	If Software: classify as IUS, DFS, Non-IUS, or Excepted IUS
49(f)	Only for amended returns (refund or claiming higher credit)
50-56	QREs broken out by type (wages, supplies, etc.)





CASE STUDIES - R&D



CASE STUDY: ARCHITECTURE



R&D Tax Credit's Claimed:
\$195,285



Tax Years:
2018-2021



Company Size (per year)

- Revenue: \$800k-2.3M
- Wages: \$450k– 1.1M



of Employees: 23
of Qualified R&D Employees: 18



Company History:

- Sole Proprietorship
- Started in 2016
- Growing 30% per year

➤ **CASE STUDY:** Architecture
MASTER PLANNING



R&D Tax Credit's Claimed:
\$1,347,500



Tax Years:
2019-2022



Company Size (per year)

- Revenue: \$32.3
- Wages: \$16.6M



of Employees: 169
of Qualified R&D Employees: 125



Company History:

- C Corp
- 5% growth average

➤ 4 WAYS TO OPTIMIZE THE R&D CREDIT

Investigate all relevant buckets of R&D expenses

Evaluate historic base methodology for each year

Determine eligible state credits in addition to the federal credit

Use stat sampling methodology to capture all eligible projects

› WHAT YOU SHOULD DO

Evaluate clients who amortized R&E in 2022 - 2024 – consider amending (if eligible) to expense and reduce tax liability

Start conversations with clients early and determine whether to deduct the remaining unamortized balance for tax year 2025 or split 50/50 over 2025 and 2026.

Monitor any further guidance regarding these changes

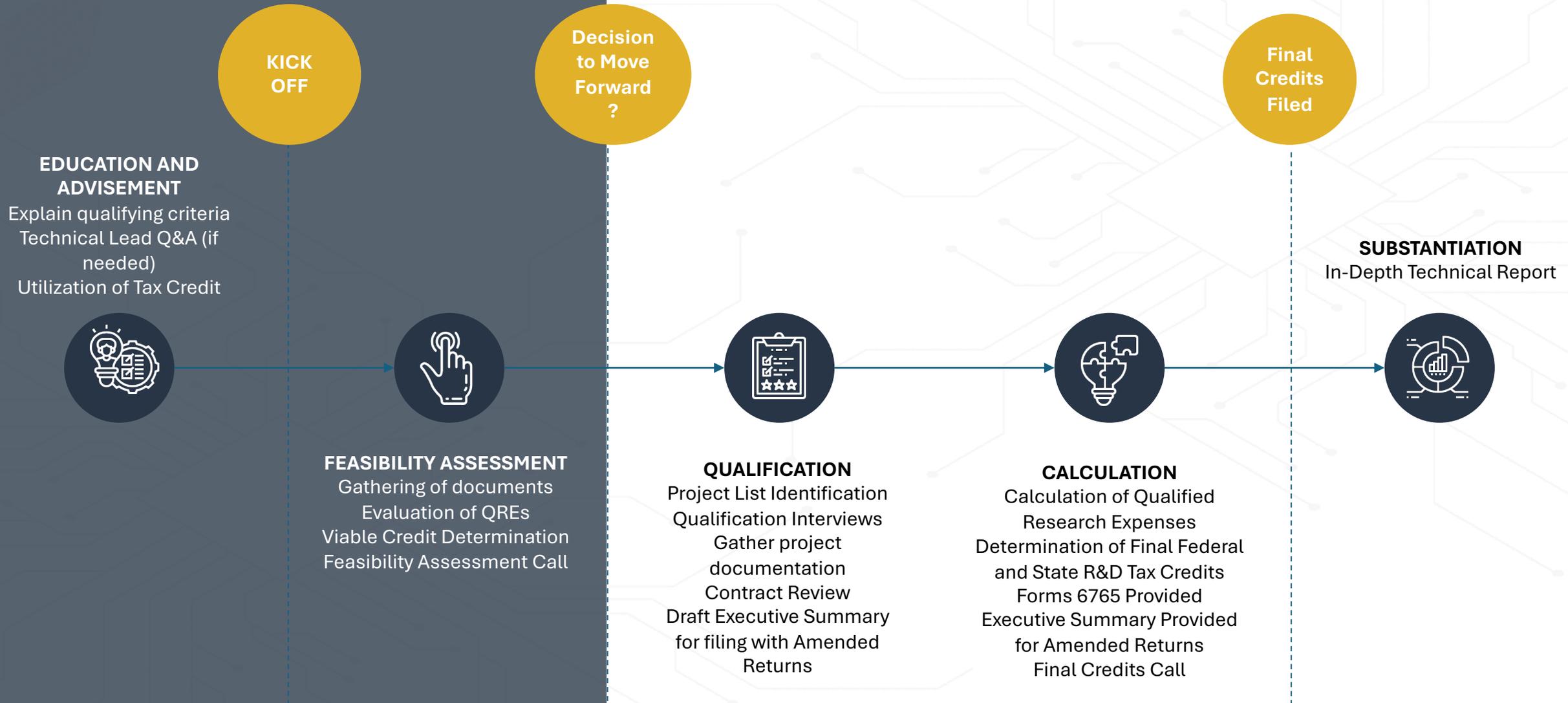
Identify if your clients have any foreign R&E expenses and ensure proper amortization over a 15-year period, if not doing so already.

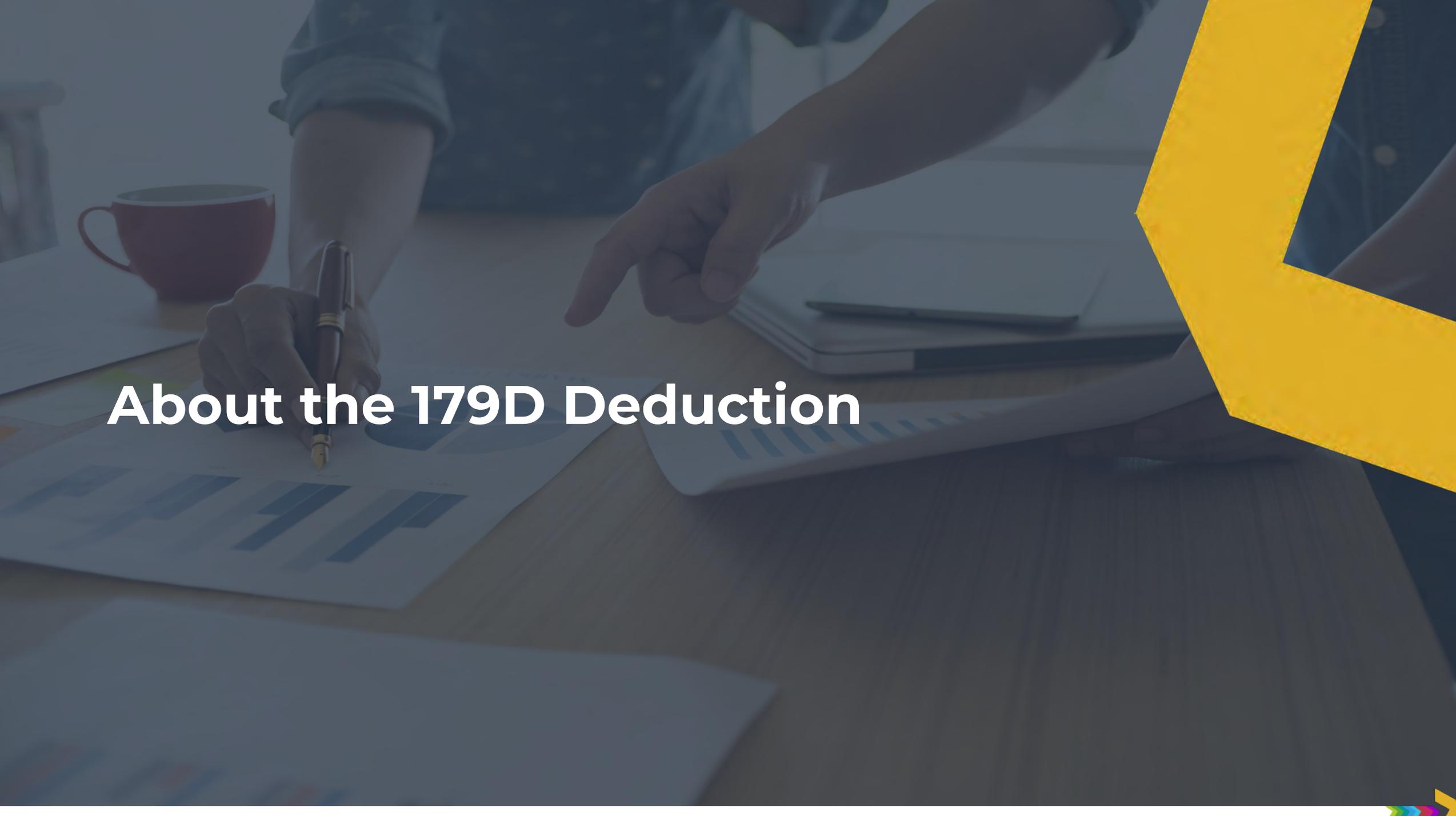
Review Section. 70302 of the OBBBA to get all the details of the changes.

See if your clients are eligible candidates for the R&D tax credit!



OUR STUDY PROCESS





About the 179D Deduction

The 179D Deduction

- Also known as the Energy-Efficient Commercial Buildings Deduction
- Encourages the implementation of **energy-efficient features** in **commercial buildings**
- Part of the Energy Policy Act of 2005 and has been **extended and modified** through subsequent legislation.
- The Deduction is **calculated for the tax year in which the certificate of occupancy** of the building is **issued**.

Why does the 179D Deduction Exist?

- Designed to encourage building owners to reduce energy consumption by rewarding them with tax savings for energy efficient building design and engineering improvements

Impact of IRA and OBBA on 179D

- The Inflation Reduction Act (IRA) further increased the deduction if company meets certain enhanced qualifications
- **OBBA terminated the 179D deduction. To qualify now, construction must begin on or before June 30, 2026.**

A photograph of a business meeting. A person's hand is pointing at a document on a table. Another person's hand is holding a pen over the document. A red cup is visible on the table. The image is overlaid with a dark blue semi-transparent layer. A large yellow arrow graphic points from the right side towards the center. The text 'ELIGIBILITY & INDUSTRY REQUIREMENTS' is written in white, bold, uppercase letters across the middle of the image.

ELIGIBILITY & INDUSTRY REQUIREMENTS

➤ TAX-EXEMPT COMMERCIAL BUILDINGS:

Owners of tax-exempt buildings cannot take advantage of tax deductions, but they can allocate their deductions to the firms ***designing*** the building and its energy efficiency improvements.



✓ Medical Facilities



✓ Schools
Colleges



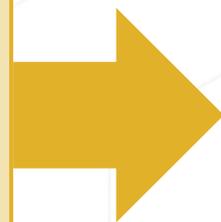
✓ Government



✓ Religious
Building



✓ Non-Profit Organizations



- ✓ **Architecture Firms**
- ✓ **MEP Engineering Firms**
- ✓ **Structural Engineering Firms**
- ✓ **Design/Build Contractors**
- ✓ **Environmental Consultant**

➤ NOTICE 2008-40: WHO QUALIFIES AS A DESIGNER?

In a 2024 case, ***United States of America v. Oehler*** the tax court denied the 179D Deduction under IRC §179D to a lighting contractor for work they performed upon public schools since it failed to meet the definition of a “designer”.

The Court looked to the IRS's Notice 2008-40 to determine who qualifies as a designer for the 179D deduction. The relevant takeaways include:

Definition of a Designer:

- A person who creates the technical specifications for installing energy-efficient commercial building property or partially qualifying property.
- Examples include architects, engineers, and environmental consultants
- **Excludes individuals who only install, repair, or maintain the property.**

Government Entity's Role:

- Responsible for identifying the primary designer.
- May allocate the deduction among multiple designers.





Leveraging 179D for Maximum Savings

THE 179D DEDUCTION - QUALIFICATION



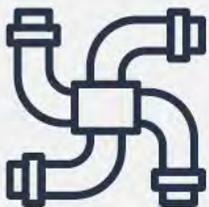
ELIGIBLE ENERGY EFFICIENT DESIGN



Building envelope
Energy efficient construction or improvements to walls, windows, roofs, and doors



Lighting Systems
Construction or improvements to building lights for energy efficiency



Heating, ventilation, and air conditioning (HVAC) systems
Improvements relating to energy efficient HVAC systems

The IRA clarifies that the **reference standard** for improvement of projects placed in service is as follows:

Date Placed in Service	Reference Standard 90.1	Required Energy Reduction
Before 1/1/2015	ASHRAE 90.1-2001	50%
After 12/31/2014 and before 1/1/2023	ASHRAE 90.1-2007	50%
After 1/1/2023 and before 1/1/2027	ASHRAE 90.1-2007	25%
After 12/31/2026 and before 1/1/2029	ASHRAE 90.1-2019	TBD
After 12/31/2028	ASHRAE 90.1-2022	TBD

HOW IS THE 179D CALCULATED?

Energy Simulation & Deduction Calculation

1. Energy Simulation Model:

1. Created by qualified professionals using approved software.
2. Estimates energy usage *before* and *after* improvements.

2. Baseline Energy Cost:

1. Represents energy usage *without* improvements.

3. Proposed Energy Cost:

1. Reflects energy usage *after* improvements.

4. Energy Cost Reduction:

1. **Formula:** Baseline Cost - Proposed Cost.

5. Deduction Calculation:

1. Based on energy savings compared to ASHRAE 90.1-2007 standards.
2. **Partial Deductions:** Available for upgrades in lighting, HVAC, or building envelope systems meeting specific targets.

MAJOR CHANGES TO THE 179D DEDUCTION

Increase in Amount of Deduction

Increased from \$1.88/sq.ft. to:

\$5.36/sq. ft. for 2023

\$5.65/sq. ft. for 2024

\$5.81/sq.ft for 2025

Extended allocation for A&E firms

- Previously for **government building**
- Now extended to **non-profit organizations**



MAJOR CHANGES TO THE 179D DEDUCTION

No More Lifetime Limit Restriction

- IRA Act eliminated the lifetime limit to the 179D deduction
- Now the deduction can be taken every three years (for the same building), previously was limited to a one time allocation

Prevailing Wages & Apprenticeship (PW&A)

- New Requirements to comply with PW&A to get the full amount of the deduction
- This requirement is waived for buildings that commenced construction prior to 2023 and were completed thereafter.

➤ PW&A REQUIREMENT

PREVAILING WAGE REQUIREMENT:

- All laborers and mechanics employed by the taxpayer, contractor, or subcontractor associated with the project **must be paid at least the prevailing wage rates** determined by the Department of Labor (DoL – Davis-Bacon Act) for the type of work performed in the geographic (typically state) location of the building.

APPRENTICESHIP REQUIREMENT:

- **Labor Hours:** taxpayer must ensure at least **12.5% in 2023 (15% after)** of the total labor hours are performed by qualified apprentices from a registered program or union
- **Participation:** any claimant employing **4 or more** laborers or mechanics *must* hire at least one qualified apprentice
- **Ratio requirement:** Daily apprentice-to-journey worker ratios set by DOL or state.

*** BOTH requirements must be met to claim higher deduction*

*** Taxpayers are EXEMPT from having to meet PW&A requirements if the beginning of construction started BEFORE January 29, 2023*

KEY ADJUSTMENTS

IRS 179D Deduction Updates (Inflation Adjusted)

<u>Tax Year</u>	<u>PWA Status</u>	<u>Deductions per Square</u>	<u>Energy savings</u>
		<u>Foot</u>	
2022	n/a	\$0.63 - \$1.88	>50% or eligibility to claim a \$0.63 per square foot deduction for upgrades that result in less energy savings
2023	Met or Exempt	\$2.68 - \$5.36	Additional \$0.11 for each percentage point > 25% energy savings (max 50%)
	Not Met	\$0.54 - \$1.07	Additional \$0.02 for each percentage point > 25% energy savings (max 50%)
2024	Met or Exempt	\$2.83 - \$5.65	Additional \$0.11 for each percentage point > 25% energy savings (max 50%)
	Not Met	\$0.57 - \$1.13	Additional \$0.02 for each percentage point > 25% energy savings (max 50%)
2025	Met or Exempt	\$2.90 - \$5.81	Additional \$0.12 for each percentage point > 25% energy savings (max 50%)
	Not Met	\$0.58 - \$1.16	Additional \$0.02 for each percentage point > 25% energy savings (max 50%)



**179D Deduction Claimed:
\$423,000**



Tax Year
2022



Company Size in 2022

- Total Gross Receipts: \$10 million



Projects that Qualified in 2022

- Airport (150,000 sq. ft.)
- University (75,000 sq. ft.)



Key Factors of Success

- Full Building Envelope and HVAC Design done



**179D Deduction Available:
\$1,206,000**



**Tax Year
2023**



Company Size in 2023

- Total Gross Receipts: \$10 million



Projects that Qualify in 2023

- Airport (150,000 sq. ft.)
- University (75,000 sq. ft.)



Key Factors of Success

- Full Building Envelope and HVAC Design done



FILING REQUIREMENTS

Form 7205

Starting with Tax Year 2022, the Form 7205 is required to be filed to claim the deduction.

Form 7205 (Rev. December 2023) Department of the Treasury Internal Revenue Service		Energy Efficient Commercial Buildings Deduction Attach to your tax return. Go to www.irs.gov/Form7205 for instructions and the latest information.					OMB No. 1545-2004	
Name(s) shown on return						Identifying number		
Claiming deduction as (check one): <input type="checkbox"/> Building owner <input checked="" type="checkbox"/> Designer of energy efficient property (EEP)								
Part I Building and EEP Information (see instructions)								
1	(a) Address of building	(b) Date EEP placed in service (see instructions)	(c) Energy efficient commercial building property (EECBP) system computed energy savings percentage, or energy efficient building retrofit property (EEBRP) energy use intensity reduction	(d) Check if Increased Deduction Amount criteria are met (see instructions)	(e) Check if EEBRP was installed under a Qualified Retrofit Plan	(f) Potential amount per square foot	(g) Building square footage	(h) Potential section 179D deduction amount (multiply column 1(f) by column 1(g))
A	██████████ Lake Charles, LA	6/1/2023	51.20%	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ 5.36	72,075.00	\$ 386,322.00
B	██████████ Johnstown, PA 15904	12/21/2023	50.45%	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ 5.36	14,562.00	\$ 78,052.32
C	██████████ Natchitoches, LA 71457	6/1/2023	50.28%	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ 5.36	72,075.00	\$ 386,322.00
D	██████████ Ocoee, FL 34761	11/27/2023	51.90%	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ 5.36	91,363.00	\$ 489,705.68

Form 7205

Starting with Tax Year 2022, the Form 7205 is required to be filed to claim the deduction.

Part II Computation of Energy Efficient Commercial Buildings Deduction Amount (see instructions)							
2	(a) Total per square foot amount claimed in prior years (see instructions)	(b) Subtract column 2(a) from the maximum amount allowed (see instructions)	(c) Check if the amount in column 2(b) is greater than or equal to column 1(f)	(d) If column 2(c) is checked, enter amount from column 1(h), skip column 2(e) and column 2(f) and go to column 2(g)	(e) Check if the amount from column 2(b) is less than the amount in column 1(f)	(f) If column 2(e) is checked, multiply column 2(b) by column 1(g)	
A	\$ -	\$ 5.36	<input checked="" type="checkbox"/>	\$ 386,322.00	<input type="checkbox"/>		
B	\$ -	\$ 5.36	<input checked="" type="checkbox"/>	\$ 78,052.32	<input type="checkbox"/>		
C	\$ -	\$ 5.36	<input checked="" type="checkbox"/>	\$ 386,322.00	<input type="checkbox"/>		
D	\$ -	\$ 5.36	<input checked="" type="checkbox"/>	\$ 489,705.68	<input type="checkbox"/>		
	(g) Cost of EEP placed in service during the tax year (see instructions if building ownership percentage is less than 100%)	(h) Enter the greater of column 2(d) or column 2(f) (see instructions if building ownership percentage is less than 100%)	(i) Enter the lesser of column 2(g) or column 2(h)	(j) Designers enter the amount of the section 179D deduction allocated to you as the designer (see instructions)	(k) Section 179D deduction for the building (designers, enter the lesser of column 2(i) or column 2(j); building owners, enter the amount from column 2(i))		
A	\$ 7,901,144.00	\$ 386,322.00	\$ 386,322.00	\$ 386,322.00	\$ 386,322.00		
B	\$ 678,473.00	\$ 78,052.32	\$ 78,052.32	\$ 78,052.32	\$ 78,052.32		
C	\$ 7,806,141.00	\$ 386,322.00	\$ 386,322.00	\$ 386,322.00	\$ 386,322.00		
D	\$ 765,020.00	\$ 489,705.68	\$ 489,705.68	\$ 489,705.68	\$ 489,705.68		
3	Total section 179D deduction. Add amounts from column 2(k). Enter here and on the appropriate line of your return. See instructions					3	

➤ Form 7205

Starting with Tax Year 2022, the Form 7205 is required to be filed to claim the deduction.

Part III Certification Information for Each Property Listed in Part I (see instructions)			
4	(a) Name of Qualified Individual completing certification	(b) Date of certification	(c) Employer of Qualified Individual
A	[REDACTED] PE, CEM	8/23/2024	[REDACTED]
B	[REDACTED] PE	8/23/2024	[REDACTED]
C	[REDACTED] PE, CEM	8/23/2024	[REDACTED]
D	[REDACTED] PE, CEM	8/23/2024	[REDACTED]
Part IV Designer Allocation Information for Each Property Listed in Part I (to be completed by Designer only)			
5	(a) Identified owner of building	(b) Date of allocation	(c) Name of building owner's authorized representative completing allocation
A	[REDACTED] Management Corporation	6/26/2024	[REDACTED]
B	[REDACTED] County Airport	5/21/2024	[REDACTED]
C	[REDACTED] Management Corporation	6/26/2024	[REDACTED]
D	[REDACTED] Health	7/4/2024	[REDACTED]

A person is writing on a document with a pen while another person points at it. A red cup and papers are on the desk. The text "179D PROCESS" is overlaid in white.

179D PROCESS

➤ GATHERING SUPPORTING DOCUMENTATION

- ✓ Project Contract Agreements
- ✓ Property cost detail, such as a contractor pay application, AIA Form G703, or similar documentation
- ✓ Temporary Certificate of Occupancy (TCO) or Certificate of Occupancy (CO)

CONTINUATION SHEET AIA DOCUMENT G703 (Instructions on reverse side) PAGE 08 PAGES

AIA Document G703, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO.: 18
 APPLICATION DATE: 9/20/2023
 PERIOD TO: 9/30/2023
 ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G ÷ C)	I BALANCE TO FINISH (C - G)	J RETAINAGE (IF VARIABLE) STATE
			FROM PREVIOUS APPLICATION (D - E)	THIS PERIOD					
BASE CONTRACT									
32	24: POLISHED CONCRETE	101,061.00	101,061.00	0.00	0.00	101,061.00	100	0.00	68.57
38	25: MASONRY	25,014.00	25,014.00	0.00	0.00	25,014.00	100	0.00	16.97
34	26: MISC. METALS	349,573.00	349,573.00	0.00	0.00	349,573.00	100	0.00	237.19
35	27: ROUGH CARPENTRY	5,221.00	5,221.00	0.00	0.00	5,221.00	100	0.00	3.54
36	28: MILLWORK-MATERIAL	47,581.00	47,581.00	0.00	0.00	47,581.00	100	0.00	32.28
37	29: MILLWORK-LABOR	15,988.00	15,988.00	0.00	0.00	15,988.00	100	0.00	10.85
38	30: METAL PANELS	6,156.00	6,156.00	0.00	0.00	6,156.00	100	0.00	4.18
39	31: WATERPROOFING/CAULKING	11,799.00	11,799.00	0.00	0.00	11,799.00	100	0.00	8.01
40	32: INSULATION	22,572.00	22,572.00	0.00	0.00	22,572.00	100	0.00	15.32
41	33: EIFS	5,130.00	5,130.00	0.00	0.00	5,130.00	100	0.00	3.48
42	34: FIRESTOPPING	5,130.00	5,130.00	0.00	0.00	5,130.00	100	0.00	3.48
43	35: ALUM.CURTAIN/GLASS	82,811.00	82,811.00	0.00	0.00	82,811.00	100	0.00	56.15
44	36: DOORS/FRAMES/HDW-MATERIAL	78,438.00	78,438.00	0.00	0.00	78,438.00	100	0.00	53.22
45	37: DRS/FRMS/HDW-LABOR	14,437.00	14,437.00	0.00	0.00	14,437.00	100	0.00	9.60
46	38: DRYWALL/CEILING/FRAMING	398,525.00	398,525.00	0.00	0.00	398,525.00	100	5.00	270.40
47	39: PATCHING WALLS	5,643.00	5,643.00	0.00	0.00	5,643.00	100	0.00	3.83
48	40: TEMP. WALLS	7,070.00	7,070.00	0.00	0.00	7,070.00	100	0.00	4.80
49	41: CERAMIC TILE	18,468.00	18,468.00	0.00	0.00	18,468.00	100	0.00	12.53

AIA DOCUMENT G703 • CONTINUATION SHEET FOR G702 • 1993 EDITION • AIA® • ©1993 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20005-5202 • WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution. G703-1092

TOWNSHIP OF COLLIER



CERTIFICATE OF OCCUPANCY

This certifies that _____
 DESCRPTION OF BUILDING OR STRUCTURE: SINGLE FAMILY - ONE STORY TYPICAL TWO STORY OFFICE, ETC.

Located at _____
 NUMBER AND STREET PLUS STORE NUMBER OR LOT NUMBER WHERE APPROPRIATE
 650 Ridge Road, Pittsburgh, PA 15205

Use Group _____ E _____ Construction Type _____ 1B _____ Zoning District _____ PEDD
EDITION OF CODE BOOK SECTION OF CODE BOOK DATE OF ORDINANCE

Special Conditions _____
HAZARDOUS MATERIALS FIRE ARMS CERAMIC TILE, ETC.

Occupant _____ Same as Owner _____ Owner _____ Greater PA Regional Council of Carpenters
 650 Ridge Road
 Pittsburgh, PA 15205

CERTIFICATE NO. _____ 08-138
 Construction Code Edition 2006 IBC ISSUED January 14, 2010

Date of Final Inspection _____ January 14, 2010
 CODE ENFORCEMENT OFFICER, COLLIER TOWNSHIP

➤ ALLOCATION LETTER

Allocation Letter Requirements

- Contact Information for the authorized representative of the building owner and designer
- Address of the building
- Cost of the property
- Placed-in-service date
- Amount of the deduction
- Perjury penalties statement

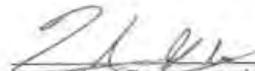
Contractor/Designer 179D Tax Deduction Public Building Allocation Form

Public Building Authorized Representative Information	
Agency:	County Community College
Rep. Name:	VP of Finance
Address:	Pottstown, PA 19464
Telephone Number:	215 641

Contractor/Designer Authorized Representative Information	
Company:	Architects
Rep. Name:	
Address:	Bethlehem, PA
Telephone Number:	610-865-2621 x54

Public Building Information	
Address of public owned building where property was installed:	See Attached Exhibit "A"
Cost of property:	
Date property was placed in service:	2023
Amount of 179D deduction allocated to Contractor/Designer (Percentage)	100%
Signature of authorized representative of Contractor/Designer:	

Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete. The authorized owner representative is not responsible for the verification of the energy efficient commercial building property. The designer/contractor receiving the allocation is solely responsible for obtaining the required certification, onsite verification, and ensuring their accuracy.



 Authorized Representative of Public Building
 Vice President of Finance

4/25/24

 Date

› SITE VISIT

- **Purpose** – to provide on-site verification of:
 - completed project
 - Site is in-service/operational
 - Installed equipment matches provided documents by taxpayer and building owner
- **Qualified Individual**
 - Is a properly licensed Professional Engineer in the applicable jurisdiction of the building



Figure 9. HVAC system



Figure 10. HVAC system



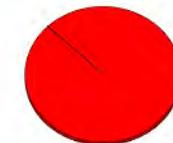
Figure 11. Envelope system

Annual Energy Consumption by Enduse

	Electricity kWh	Natural Gas MBtu	Steam Btu	Chilled Water Btu
Space Cool	0.867	-	-	-
Heat Reject	28	-	-	-
Refrigeration	-	-	-	-
Space Heat	0.043	110.00	-	-
Hot Water	-	-	-	-
Hot Water	-	-	-	-
Water Pump	1.004	-	-	-
Water Pump	3.975	-	-	-
D.H. Equip	-	-	-	-
Misc. Equip	40.022	-	-	-
Task Lights	-	-	-	-
Area Lights	32.046	-	-	-
Total	81.022	110.00		



Electricity



Natural Gas

FORM 7205 & CERTIFICATION REPORT

Form 7205
 (Rev. December 2023)
 Department of the Treasury
 Internal Revenue Service

Energy Efficient Commercial Buildings Deduction
 Attach to your tax return.
 OMB No. 1545-2004
 Go to www.irs.gov/Form7205 for instructions and the latest information.

Name(s) shown on return _____ Identifying number _____

Claiming deduction as (check one): Building owner Designer of energy-efficient property (DEP)

Part I Building and EEP Information (see instructions)

1	(a) Address of building	(b) Date EEP placed in service (see instructions)	(c) Energy efficient commercial building property (EECBP) system computed energy savings percentage, or energy efficient building retrofits property (EEBRP) energy use intensity reduction	(d) Check if increased Deduction Amount criteria are met (see instructions)	(e) Check if EEERP was installed under a Qualified Retrofits Plan	(f) Potential amount per square foot	(g) Building square footage	(h) Potential section 179D deduction amount (multiply column (f) by column (g))
A	Pontiac, MI	8/1/2023	50.43%	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ 5.36	11,845.00	\$ 63,489.20
B	Muskegon Heights, MI	6/1/2023	50.19%	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ 5.36	62,475.00	\$ 334,866.00
C	0	1/0/1900	0%	<input type="checkbox"/>	<input type="checkbox"/>	\$ -	-	\$ -
D	0	1/0/1900	0%	<input type="checkbox"/>	<input type="checkbox"/>	\$ -	-	\$ -

Part II Computation of Energy Efficient Commercial Buildings Deduction Amount (see instructions)

2	(a) Total per square foot amount claimed in prior years (see instructions)	(b) Subtract column 2(a) from the maximum amount allowed (see instructions)	(c) Check if the amount in column 2(b) is greater than or equal to column 1(f)	(d) If column 2(c) is checked, enter amount from column 1(f), skip column 2(e) and column 2(f) and go to column 2(g)	(e) Check if the amount from column 2(b) is less than the amount in column 1(f)	(f) If column 2(e) is checked, multiply column 2(b) by column 1(f)
A	\$ -	\$ 5.36	<input checked="" type="checkbox"/>	\$ 63,489.20	<input type="checkbox"/>	
B	\$ -	\$ 5.36	<input checked="" type="checkbox"/>	\$ 334,866.00	<input type="checkbox"/>	
C	\$ -	\$ 5.36	<input type="checkbox"/>		<input type="checkbox"/>	
D	\$ -	\$ 5.36	<input type="checkbox"/>		<input type="checkbox"/>	

3 Total section 179D deduction. Add amounts from column 2(f). Enter here and on the appropriate line of your return. See instructions.

3	(g) Cost of EEP placed in service during the tax year (see instructions if building ownership percentage is less than 100%)	(h) Enter the greater of column 2(b) or column 2(f) (see instructions if building ownership percentage is less than 100%)	(i) Enter the lesser of column 2(g) or column 2(h)	(j) Designers enter the amount of the section 179D deduction allocated to you as the designer (see instructions)	(k) Section 179D deduction for the building (designers, enter the lesser of column 2(i) or column 2(j); building owners, enter the amount from column 2(i))
A	\$ 4,750,000.00	\$ 63,489.20	\$ 63,489.20	\$ 63,489.20	\$ 63,489.20
B	\$ 1,871,681.85	\$ 334,866.00	\$ 334,866.00	\$ 334,866.00	\$ 334,866.00
C	\$ -	\$ -	\$ -	\$ -	\$ -
D	\$ -	\$ -	\$ -	\$ -	\$ -

Part III Certification Information for Each Property Listed in Part I (see instructions)

4	(a) Name of Qualified Individual completing certification	(b) Date of certification	(c) Employer of Qualified Individual	(d) Address of Qualified Individual
A		1/26/2024		
B		1/26/2024		
C	0	1/0/1900	0	0
D	0	1/0/1900	0	0

Part IV Designer Allocation Information for Each Property Listed in Part I (to be completed by Designer only)

5	(a) Identified owner of building	(b) Date of allocation	(c) Name of building owner's authorized representative completing allocation	(d) Address of building owner's authorized representative
A	Oakland County	12/1/2023		
B	Muskegon Housing Commission	1/26/2024		
C	0	1/0/1900	0	0
D	0	1/0/1900	0	0

Certification

EPAct 2005
 26 USC § 179D
 Federal Energy Tax Deduction

Oakland County, MI
 2023

➤ REQUIREMENTS FOR A 179D STUDY

Tax form
required to
claim 179D

Form
7205

Signed
Allocation
Letter

For designers
claiming the
deduction

Certification
& Site Visit

Performed by a
Qualified Individual

Energy
Modeling

Must use DoE
approved software



A group of business professionals are gathered around a table in a meeting. They are looking at laptops and tablets, appearing to be in a collaborative work environment. A large, bright yellow arrow graphic is positioned on the right side of the image, pointing towards the right. The overall scene is dimly lit, with a blue tint, suggesting a professional and focused atmosphere.

Action Steps For Businesses

➤ ACTION STEPS

1



Start conversations to determine whether to deduct unamortized balance for tax year 2025 or split 50/50 over 2025 and 2026.

2



Identify current projects that qualify for 179d

3



Evaluate value of 179d and R&D credit

4



Understand how one, the other, or both can be utilized now or in the future

A person is writing on a document with a pen while another person points at it. A red cup is visible on the left. A yellow graphic element is on the right. The text "Q&A" is centered on the document.

Q&A



Samuel Koch
EPSA USA
skoch@epsa.com



Michael Nobile
EPSA USA
mnobile@epsa.com

THANK YOU!



Navigating Real Estate Taxes: Concepts & CPA Strategies

Vrakis CPAs + Advisors | Will Bares, CPA

ABOUT ME... WILL BARES

Registered CPA in Wisconsin

Graduated with MST from UWM – Milwaukee

Focus in Construction and Real Estate

+14 years of experience

Own a duplex



About Vrakas

Founded in 1971 by Bob Vrakas

Need for middle market CPAs

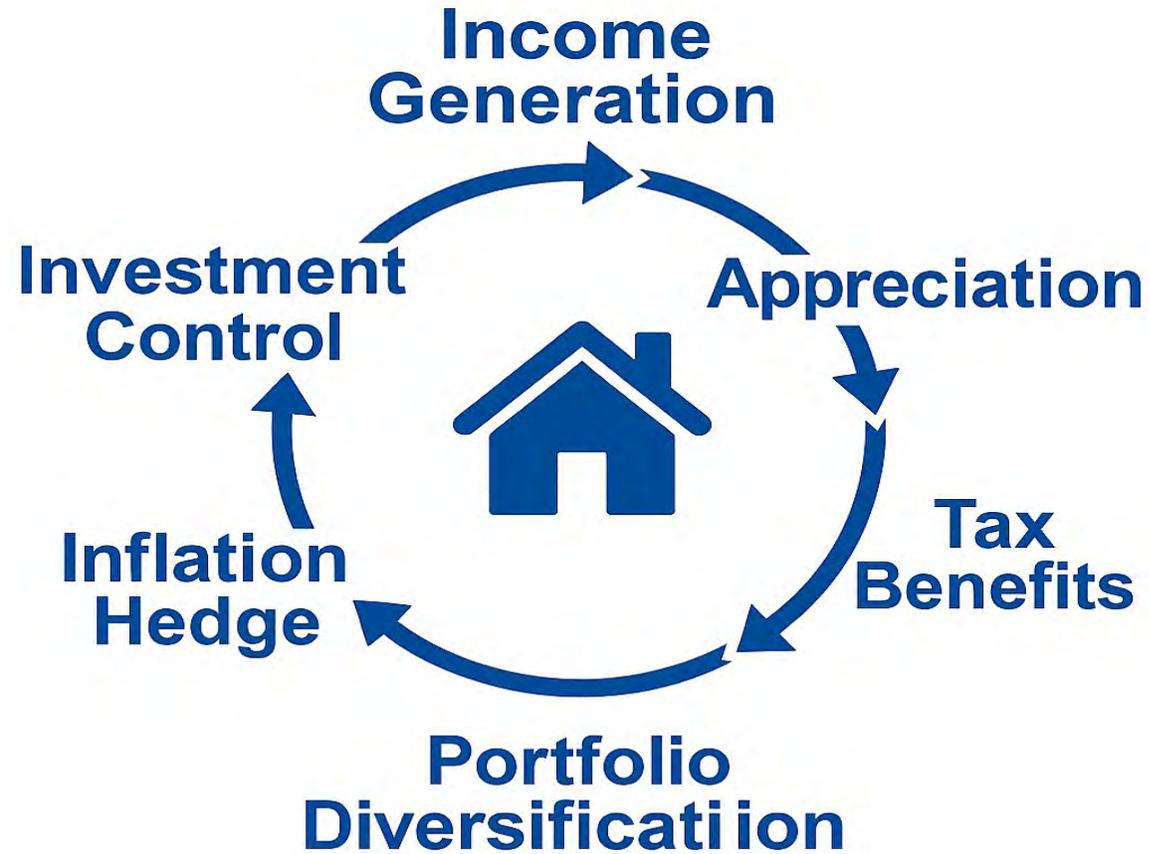
Today, we are a full service accounting firm serving a wide range of industries and sizes

Over 100+ professionals

Brookfield, Kenosha, Chicago, & Madison



WHY INVEST IN REAL ESTATE



MAKE A PLAN

What are your Investment goals?

What type of real estate are you investing in?

How do you plan to finance the property?

Will you be self managing or hiring a property manager?

Are you going it alone or will you have partners?



Feature	Partnership (LLC/LP/GP)	S Corporation	C Corporation
Ownership Flexibility	Very flexible; multiple classes, no limit on owners	Limited to 100 shareholders; only one class of stock	Unlimited shareholders; multiple classes allowed
Eligible Owners	Individuals, entities, trusts, foreigners	U.S. citizens/residents only; no entities	Individuals, entities, foreigners, trusts
Taxation	Pass-through; income/loss flows to owners	Pass-through; income/loss flows to owners	Double taxation: entity pays tax, then shareholders pay tax on dividends
Self-Employment Tax	Generally applies to active members/partners for ordinary income. Rental income is exempt.	Flow through income is exempt. Shareholder-employee has wage to pay FICA and payroll taxes.	Shareholder-employees pay FICA on salary, not dividends
Basis for Losses	Capital + share of nonrecourse and recourse liabilities. At risk rules section 465	Capital with direct loan debt basis	Capital only (no debt basis)
Distribution Flexibility	Highly flexible; can allocate income/losses as desired. Cost basis property distributions	Pro rata based on ownership. FMV property distributions	Pro rata based on ownership
Special Allocations	Allowed (e.g., depreciation, profits) Section 704(b) and 704(c) allocations	Not allowed	Not allowed
Section 754 Election	Available	Not available	Not available

TAX WEAPONS TO CONSIDER – FIXED ASSETS

100% Bonus Depreciation vs. Section 179

Cost Segregations

Section 1031 – Like Kind Exchanges

Repairs vs. Capitalization



DEPRECIATION VS. 179 EXPENSE

Bonus depreciation

- Bonus depreciation allows for immediate expensing and is currently at 100%.
 - Effective 1/20/2025
- Assets under construction.
- Elections out

Section 179 Expense

- Section 179 allows for immediate expensing but is limited for real estate (QIP).
- Limited to zero income (cannot create a loss)
- State Conformity.



FIXED ASSET COST RECOVERY

Cost Segregations

- Cost benefit Analysis.
- Timing difference.

Section 1031 – Like Kind Exchanges

- Gain deferral limited to Section 1250 property.
- Don't touch the money!
- Delaware Statutory Trust -> REIT

Repairs vs. Capitalization

- Betterment!
- Capitalization Policy.
- De Minimis Election.



TAX WEAPONS TO CONSIDER - ELECTIONS

Real Estate Grouping election (IRC Section 469)

Real Property Trade or Business Election

Section 754 election

Entity tax election (Increased SALT Limit)



GROUPING ELECTION

Real Estate Grouping Rental Activities

- Real Estate Professionals can group multiple rental activities to meet material participation requirements and simplify compliance

Disclosure and Binding Election

- The grouping election must be disclosed on tax returns and remains binding unless significant changes occur

Documentation Requirements

- Maintaining detailed records like calendars, emails, and contracts is essential to support the grouping election and participation

Audit Risk and Compliance

- Proper documentation mitigates audit risk; failure to comply may lead to penalties and passive activity reclassification



REAL ESTATE PROFESSIONALS

Real Estate Professional Definition

- A real estate professional is a taxpayer who meets IRC §469 criteria to treat rental activities as non-passive.

Qualification Requirements

- Taxpayer must spend over 750 hours annually and more than 50% of personal services in real estate trades or businesses

Real Property Trades Examples

- Includes development, construction, acquisition, rental, management, leasing, and brokerage activities in real estate



MATERIAL PARTICIPATION

Test #	Test Name	Description
1	500-Hour Rule	Participated in the activity for more than 500 hours during the tax year.
2	Substantially All Participation	Your participation was substantially all the participation in the activity.
3	100-Hour Rule	Participated more than 100 hours , and no one else participated more.
4	Significant Participation Activities	Participated in multiple significant activities , totaling over 500 hours .
5	Five of Ten Years	Materially participated in the activity for any 5 of the last 10 years .
6	Three-Year Personal Service Rule	Materially participated in a personal service activity for any 3 prior years .
7	Facts and Circumstances Test	Regular, continuous, and substantial involvement based on all facts .

PASSIVE VS. NONPASSIVE REAL ESTATE INCOME

Feature	Passive Income	Nonpassive Income
Definition	Income from activities in which the taxpayer does not materially participate	Income from activities in which the taxpayer materially participates
Common Sources	Rental real estate, limited partnerships	Real estate development, brokerage, construction, active rentals
Material Participation	Fails all 7 IRS tests	Meets one of the 7 IRS tests (e.g., 500+ hours)
Loss Limitations	Subject to Passive Activity Loss (PAL) rules under IRC §469	Not subject to PAL, but limited by basis, at-risk, and excess business loss rules
Tax Treatment	Losses may be suspended and carried forward	Losses deductible in current year (subject to other limitations)
NIIT Exposure	Subject to Net Investment Income Tax (NIIT)	Generally not subject to NIIT



REAL PROPERTY TRADE OR BUSINESS ELECTION

Section 163(j) interest expense limitation

- Opt out of Section 163(j) so Business Interest becomes fully deductible.
- Election changes the classification from non-exempt property to exempt property.
- Limited to specific activities.
- Irrevocable.

Switch to ADS Depreciation

- Nonresidential Real Property.
- Residential Real Property.
- Qualified Improvement property.



MACRS VS. ADS DEPRECIATION

Feature	MACRS (Modified Accelerated Cost Recovery System)	ADS (Alternative Depreciation System)
Purpose	Standard depreciation for most real estate assets	Required for certain property types and situations
Recovery Period	Residential: 27.5 years Nonresidential: 39 years	Residential: 30 years Nonresidential: 40 years
Method	Accelerated (200%/150% declining balance, then straight-line)	Straight-line only
Bonus Depreciation	Eligible (subject to current tax law)	Not eligible
Section 179	Limited for real estate	Limited for real estate
Required For	Most U.S. taxpayers, unless ADS is mandated	Foreign use property, tax-exempt use property, certain elections (e.g., real property trade or business for QBI/163(j))

SECTION 754 ELECTION

Basis Alignment (Up and Down)

- Additional Cost basis (alignment of inside and outside basis).
- Additional depreciation expense.
- Irrevocable.
- Can be complicated.
- There is relief if you missed an election (Reg. 301.9100-2/3)

Events to consider

- Sale or exchange of partnership interest.
- Redemption of interest.
- Death of a Partner (watch your bonus!).
- Mandatory step down event (\$250,000 loss).



TAX WEAPONS TO CONSIDER – PERSONAL RENTALS

14-day rule

- If you rent for ≤ 14 days/year and use the property personally for ≥ 14 days (or 10% of rental days), the income is not taxable

Schedule E vs. Schedule C

- Schedule E: Use if you provide minimal services (e.g., linens, basic cleaning).
 - Property depreciates at 27.5 years
- Schedule C: Use if you offer substantial services (e.g., daily housekeeping, meals, concierge)
 - Property depreciates at 39 years

Material Participation & Nonpassive Treatment

- If you materially participate in a short-term rental (average stay ≤ 7 days), it may be treated as nonpassive, allowing losses to offset W-2 or business income
- You must meet one of the IRS's material participation tests
- This may trigger self-employment tax and longer depreciable lives (Hotel Rules)



TAX WEAPONS TO CONSIDER

Your Tax Professional!



LEGISLATIVE UPDATES: BIG BEAUTIFUL BILL

Section 199A Extended

- Permanent
- There is now a \$400 minimum deduction for active QBI with at least \$1000 of QBI
- Phase-out threshold increase from \$50k to \$75K for single and \$100k to \$150K for MFJ with subsequent adjustments for inflation after 2026

100% bonus depreciation extension if acquired after January 19, 2025

- Class life of 20 years or less

SALT Deduction Cap

- Increased from \$10,000 to \$40,000
- Phases back down to \$10,000 for high earners

Section 179 expanded

- More than just inflationary
- Deduction limit increased from \$1.22 to \$2.5 million



LEGISLATIVE UPDATES: BIG BEAUTIFUL BILL

Qualified Production Property eligibility for bonus

- Part of a qualified production activity
- Within the US
- Original use started with the taxpayer (new property)
- Construction began after Jan. 19, 2025, and before Jan. 1, 2029
- Designated by election
- Placed in service before Jan. 1, 2031
- 10-year recapture if property ceases to qualify
- Transition election back to 40% (or elect out entirely)

LEGISLATIVE UPDATES: BIG BEAUTIFUL BILL

Opportunity Zones

- Designed to spur investment in economically distressed areas
- Investing capital gains on or after 1/1/27
- 10% basis step up after 5 years
- Gains recognized on 5th anniversary of investment date
- 100% Substantial improvement
- Rolling 10-year designations of new designated zones
- 10 year appreciation is tax free with a 30-year basis stepped up (capped)



Enhanced Rural OZs

- 30% basis step up (from 10%)
- Entirely in a rural area (Pop. <50,000 people)
- Substantial improvement reduced to 50%
- Enhanced reporting and compliance requirements for fund managers. Large penalties for noncompliance
- Reinstatement of certain zone designations that were set to expire

LEGISLATIVE UPDATES: BIG BEAUTIFUL BILL

Green Credits Phase out

- 20C - Energy efficient home improvement credit (expires 12/31/2025)
- 25D- Residential clean energy credit (expires 12/31/2025)
- 45L - New energy efficient home credit (expires 6/30/2026)
- 179D - Energy efficient commercial buildings deduction (expires 6/30/2026)
- 30C - Alternative fuel vehicle refueling property credit (expires 6/30/2026)



Questions?

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November 4, 2025

Strategic Tax Planning with Energy Incentives & Bonus Depreciation

One Big Beautiful Bill

BY: STEVEN BARNES, AIA, LEED AP

WIPFLI

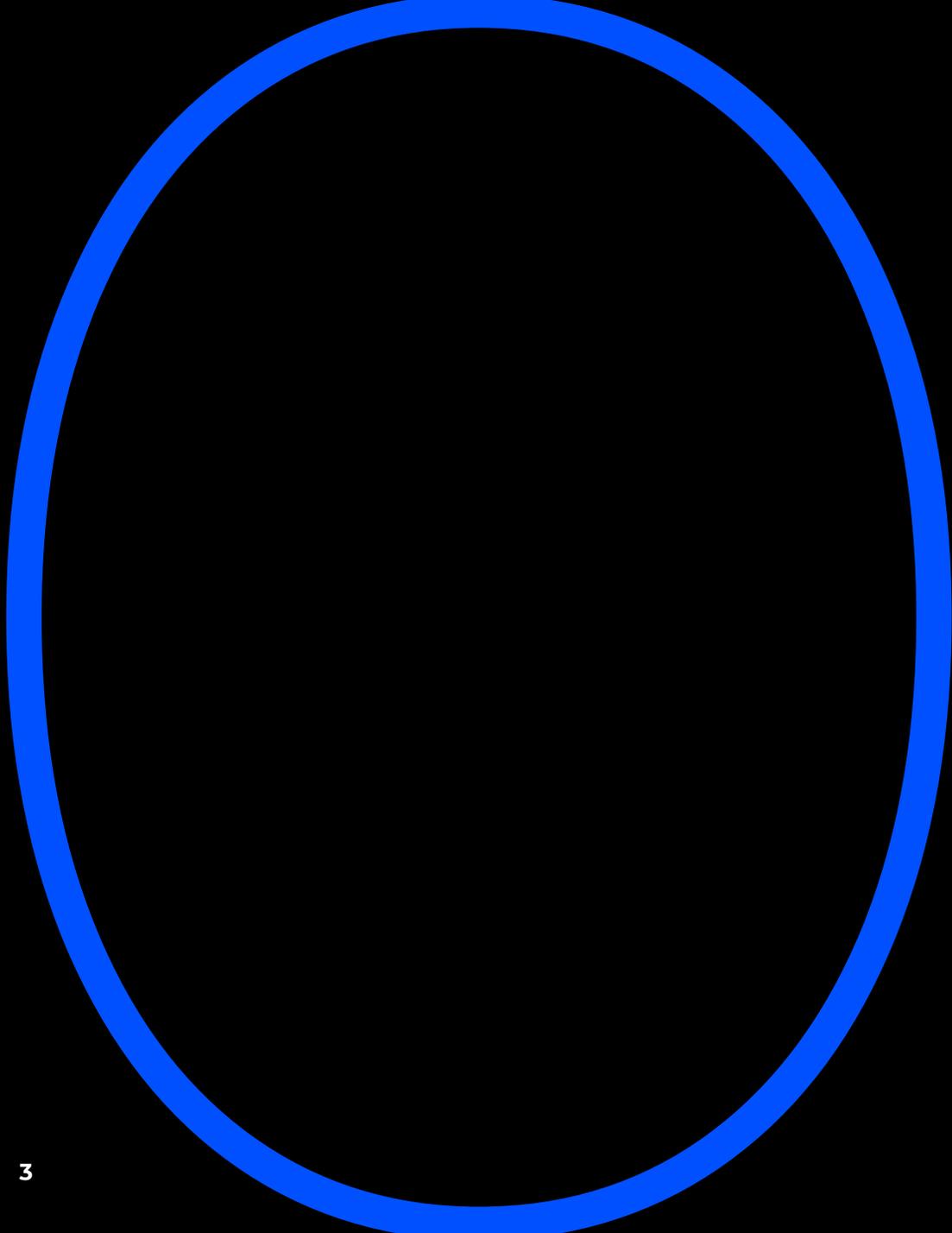
Overview

Cost Segregation Fundamentals and Bonus **03**

Qualified Production Property **10**

Energy Incentives **15**

Case Studies **22**



**Cost
Segregation
Fundamentals
&
Bonus**

What is cost segregation?

The Goal of Cost Segregation Studies

Strategic Tax Planning Tool

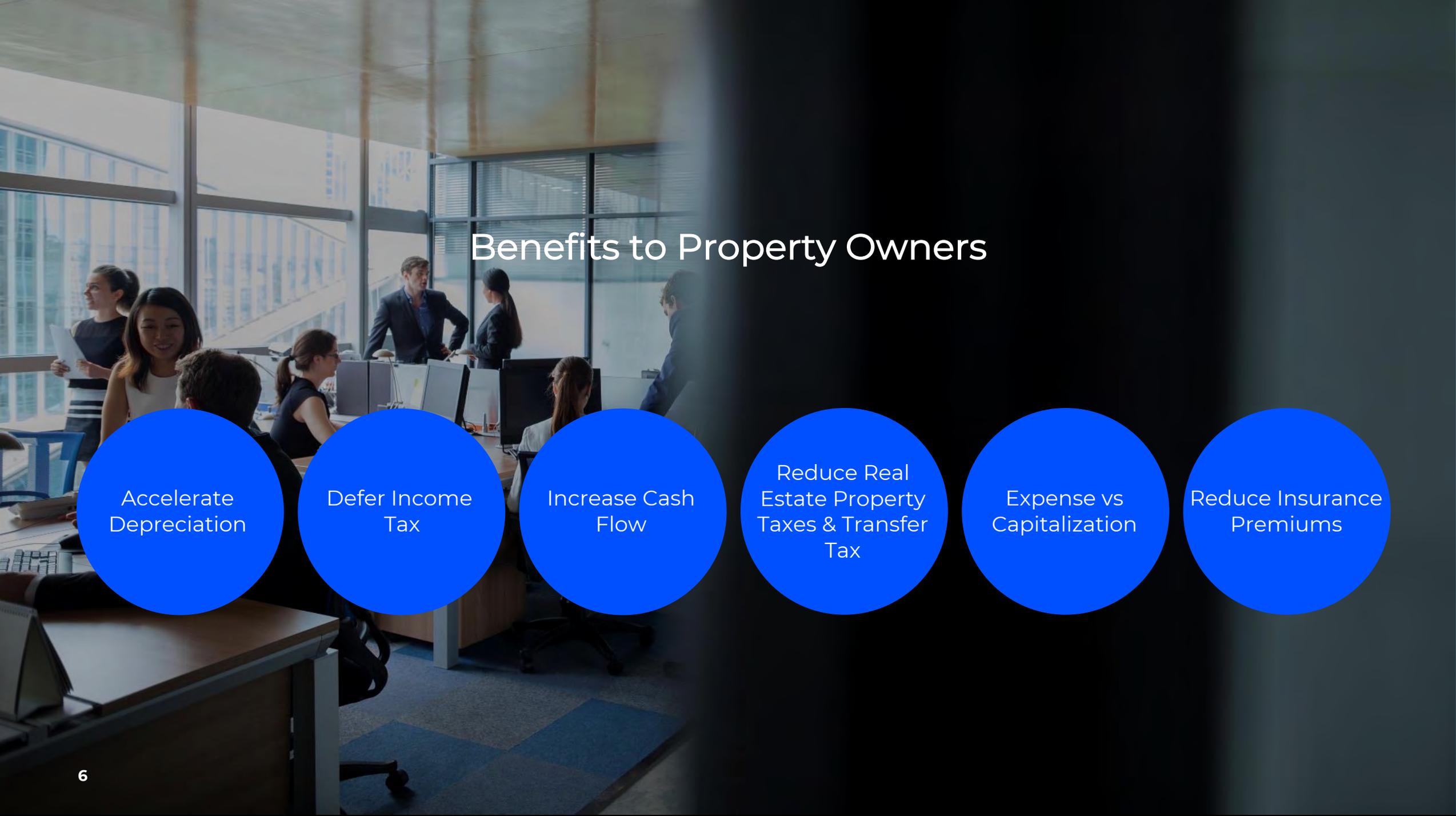
- Could be applied to new construction, expansion and additions, remodels, and acquisition of real estate

Reclassify Federal Depreciation Lives

- Reclassify federal tax depreciation rates of real property from one lump-sum asset listed in a fixed asset system as “building” with a recovery period of 39 to 27.5 years to multiple detailed entries that identify separate assets with shorter recovery periods, such as 5, 7, or 15 years

Other Benefits

- Setting up a framework for your federal tax depreciation
- Property Tax



Benefits to Property Owners

Accelerate
Depreciation

Defer Income
Tax

Increase Cash
Flow

Reduce Real
Estate Property
Taxes & Transfer
Tax

Expense vs
Capitalization

Reduce Insurance
Premiums



Detailed Engineering Approach

Project Cost Analysis

- Collect and review all relevant financial documents.
- Identify and verify total project costs, including construction, acquisition, and soft costs.

Site Inspection

- Conduct a physical inspection of the property.
- Document and photograph building components and land improvements.

Engineering-Based Cost Allocation

- Use engineering principles to break down building components.
- Reclassify assets into appropriate depreciation categories (e.g., 5, 7, 15, or 39 years).

Reporting and Documentation

- Prepare a detailed, audit-ready report.
- Include asset classifications, depreciation schedules, and supporting documentation.

How Much Does a CSS Cost?

The fee for a cost segregation study will range depending on the building size, building type, number of tenants, and other physical characteristics

Typically, fees can range from \$2,500 to \$20,000

Whatever the situation, the fee for a cost segregation should be based on time and materials or fixed fee basis and NEVER on a contingency basis. (% of savings)

The IRS specifically states in the Audit Techniques Guide that, examiners should closely scrutinize studies performed on contingency fees.

Permanent 100% Bonus Depreciation

OBBA Permanently Restores 100% Bonus

- 100% bonus depreciation for qualified property acquired and placed in service after Jan. 19, 2025. This reverses the phasedown schedule enacted under the Tax Cuts and Jobs Act (TCJA), which would have reduced bonus depreciation to 40% for property placed in service in 2025 and eliminated it entirely by 2027.
 - Qualifying property includes property used in a trade or business or for the production of income and falls within any of the following categories:
 - Is MACRS property that has a recovery period of 20 years or less.
 - Qualified Improvement Property. This includes improvements made to the interior of commercial (“nonresidential”) property after the property was initially placed in service for tax purposes by any taxpayer.
 - Computer software.
 - Qualified films, television shows, and live theatrical productions.
- While bonus depreciation applies to many assets identified in a cost segregation study, it’s important to remember that roofs and HVAC systems in nonresidential buildings are not eligible for bonus depreciation. However, these components may still qualify for Section 179 expensing, provided they are installed in buildings that have already been placed in service.



**Qualified
Production
Property**

What is Qualified Production Property?

Can I expense all of my manufacturing improvements under the Qualified Production Property (QPP) rules?

The OBBBA introduces a new provision—Section 168(n), which permits 100% immediate expensing for certain nonresidential real property used in qualified production activities within the U.S. This change dramatically accelerates depreciation for property that would otherwise be subject to a 39-year recovery period, providing significant upfront tax benefits.



To be qualified production property (QPP) for the accelerated deduction, property must meet several criteria:

- Property must be non-residential real property.
- Construction must begin after Jan. 19, 2025, and before Jan. 1, 2029, and it must be placed in service in the U.S. before Jan. 1, 2031.
- The original use of the property must begin with the taxpayer.
- The property must be used by the taxpayer as an integral part of a qualified production activity, which includes manufacturing, production and refining of qualified products.
- Qualified products generally include any tangible personal property but do not include food that is served onsite (i.e., a restaurant does not qualify as QPP).
- Production includes only agricultural and chemical production.
- The taxpayer must elect to treat the property as QPP.
- The alternative depreciation system may not apply to such property.

Additional Thoughts

- The language in OB3 itself carves out spaces “used for offices, administrative services, lodging, parking, sales activities, research activities, software development or engineering activities, or other functions unrelated to the manufacturing, production, or refining of tangible personal property.” There is also an “integral” test, which generally means essential to the completeness of the manufacturing activity. Mobility: Mobile homes are manufactured to be movable and are often sold by retailers like other goods.
- The manufacturing must substantially transform the product. We look to the rules of § 954 to figure that out. As far as I know, that section has two rules, a facts-and-circumstances test and a safe harbor based on a cost analysis. (Production is also limited to agricultural and chemical production.) Ownership Structure: In many cases, the land and the mobile home are owned separately.



**Energy
Incentives**

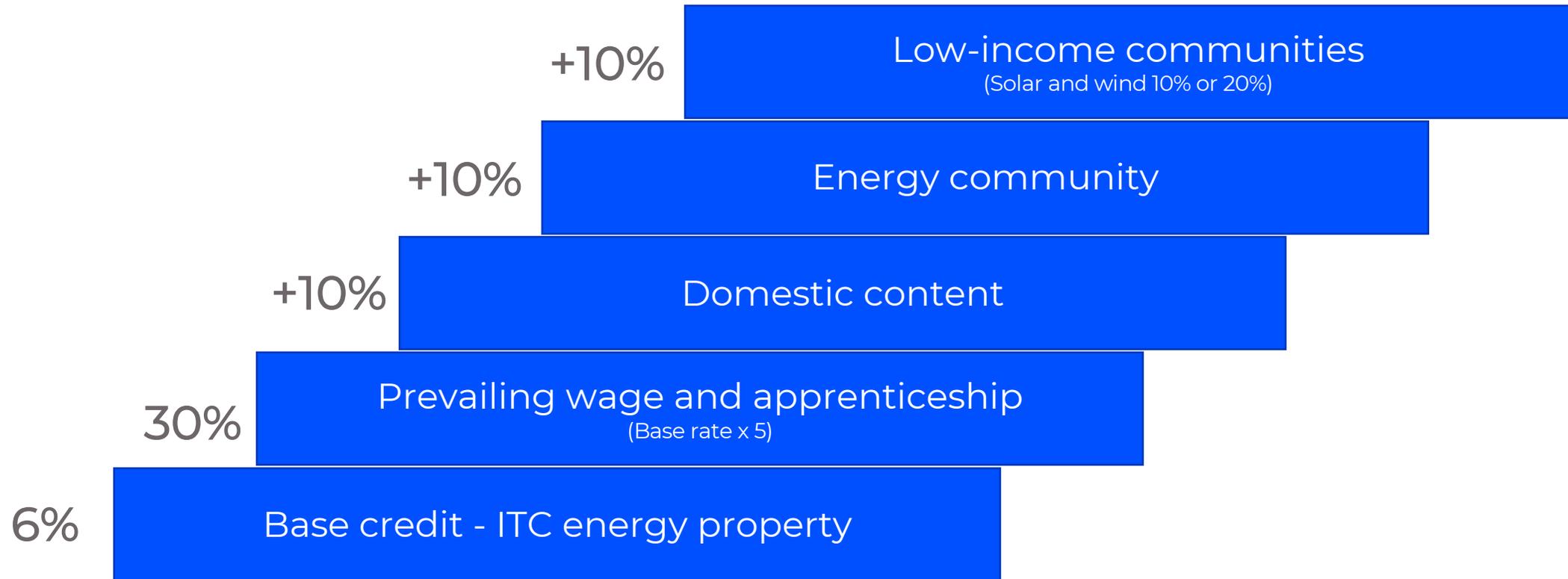
Solar and Wind Projects

Technology-neutral clean electricity PTC (§ 45Y) and ITC (§ 48E) changes:

- Wind and solar projects that **began construction by July 4, 2026**, do not face a placed-in-service deadline for ITC or PTC eligibility.
- Wind and solar projects that **begin construction after July 4, 2026**, must be placed in service by December 31, 2027, for technology-neutral ITC or PTC.
- Notice 2025-42 defines beginning of construction
- Foreign entity of concern (FEOC) rules
- Credits are still eligible for transferability or direct pay for tax-exempt organizations (assuming FEOC rules are met)
- § 168 change: Five-year depreciation for wind or solar energy property terminated for property the construction of which begins after December 31, 2024.
- § 48E domestic content percentage ramp-up now matches § 45Y.

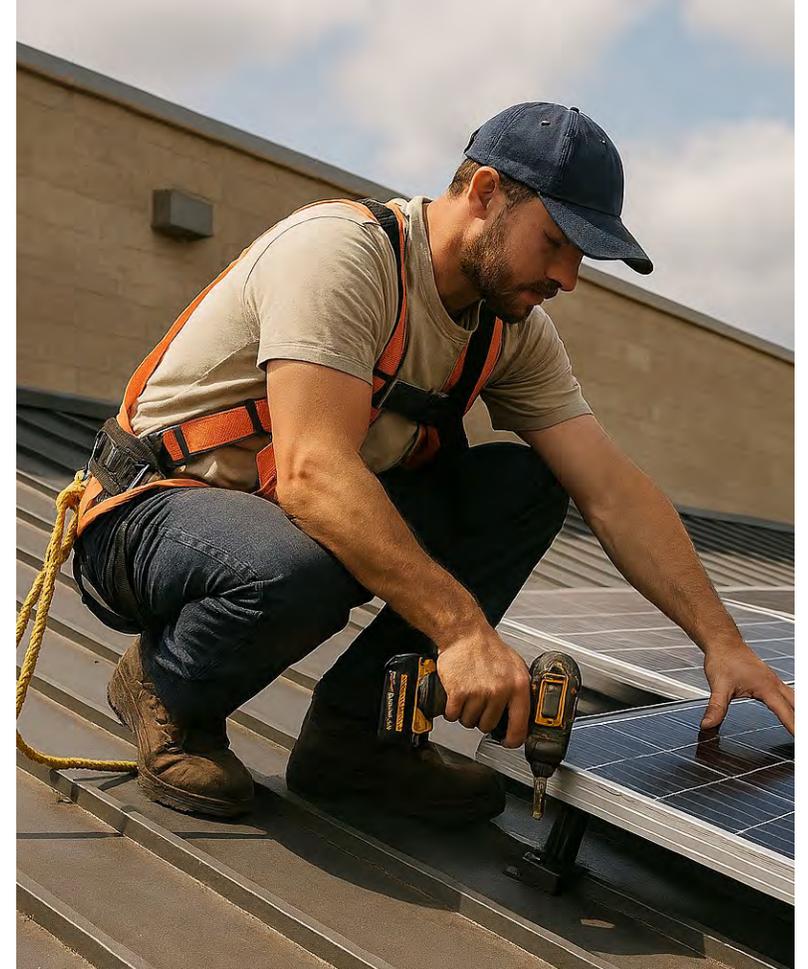


Enhancement of credits



IRS Begin Construction Guidance Under Executive Order

- 5% safe harbor removed for larger projects. Solar facilities over 1.5 megawatts (MW) and all wind facilities may no longer use the 5% safe harbor. Instead, they must rely solely on the physical work test.
- Physical work test preserved. Despite criticism, the IRS left the physical work test unchanged. Activities like foundation excavation and transformer work continue to qualify.
- Continuity safe harbor narrowed. The four-year safe harbor remains, but the “continuous efforts” fallback was eliminated. Projects missing the four-year cutoff must satisfy the more rigorous “continuous construction” standard.
- Small facilities retain flexibility. Solar facilities under 1.5 MW can still use the 5% safe harbor, subject to the integrated operations test.
- Limited scope. The new rules apply only to the wind/solar repeal. Other provisions (FEOC, domestic content, prevailing wage, and other technologies) continue under existing guidance.
- No retroactivity. Projects that began construction before September 2, 2025, remain governed by prior rules.



Geothermal Systems

ITC (§ 48):

- One Big Beautiful Bill did not affect geothermal systems' tax credit eligibility
- Potential changes to geothermal depreciation
- Credits still good till 2032
- Credits are still eligible for transferability or direct pay for tax-exempt organizations
- Limited-use geothermal property rules eliminated.



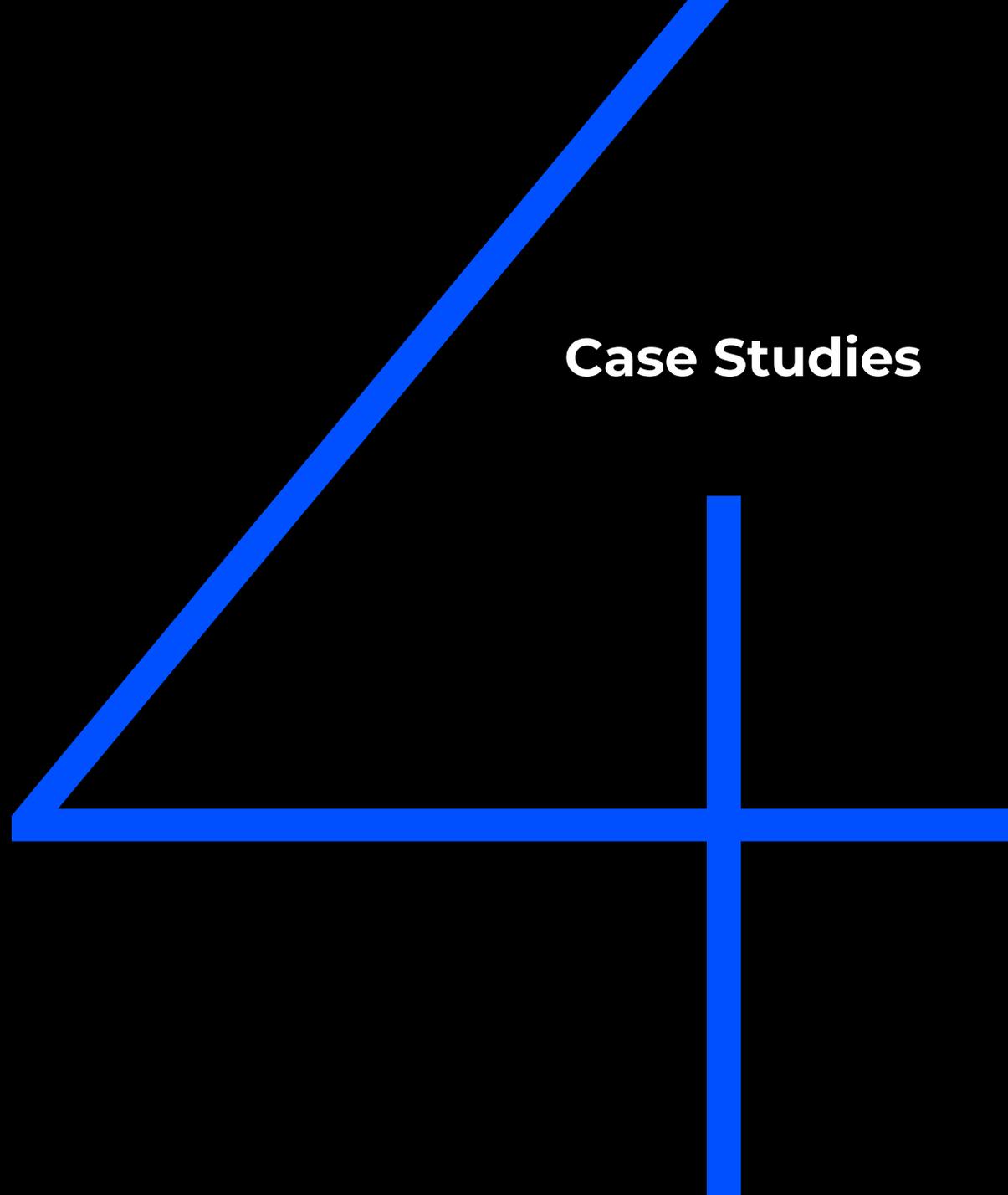
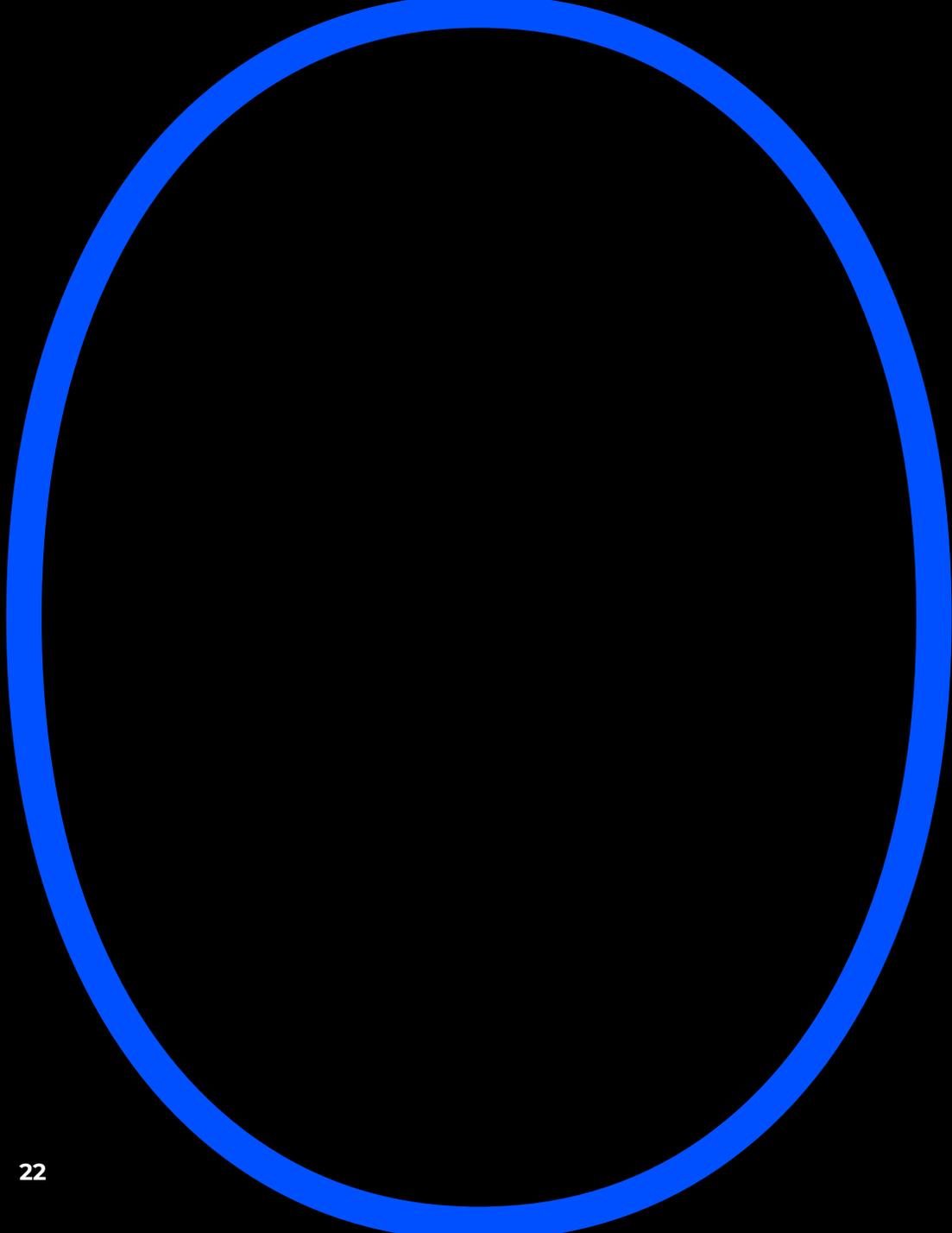
179D - Commercial Buildings Energy-Efficiency Tax Deduction

- Enables building owners to claim a tax deduction for installing qualifying systems in buildings.
 - The interior lighting systems (exterior lighting does not qualify);
 - The heating, cooling, ventilation (HVAC), and hot water systems; or
 - The building envelope (e.g., windows and roofing).
- **§ 179D** Energy-efficient commercial buildings deduction terminates for property the construction of which begins after June 30, 2026.
- Bonus deduction: the local prevailing wage and apprenticeship percentage hours must be met
- Maximum deduction increased from \$1.88 p/sq ft to \$5.00 p/sq ft (plus inflation riders)
- The same building can recertify if energy improvements are made every 3 years.



Foreign entity of concern (FEOC) rules

- Extensive new terminology:
 - **Prohibited foreign entity (PFE):** SFEs and FIEs determined as of last day of tax year (first day in first tax year).
 - **Specified foreign entity (SFE):**
 - Foreign entity of concern under William M. (Mac) Thornberry National Defense Authorization Act of FY 2021 (P.L. No. 116-283), § 9901(8)(A), (B), (D), or (E).
 - Chinese military company operating in U. S. under P.L. 116-283, § 1260H.
 - Included on the list due to Uyghur Forced Labor Prevention Act.
 - Certain entities listed in § 154(b) of NDAA of FY 2024.
 - “Foreign-controlled entity,” i.e., covered nation (China, Iran, North Korea or Russia) governments or agencies, instrumentalities or agencies, citizens or nationals (except U.S. citizens, nationals or lawful permanent residents of the U.S.), organized businesses and subsidiaries of these.



Case Studies

Newly Developed Mobile Home Community



Southwest mobile home community valued at \$6M, offering 102 sites, premium amenities like a pool and pool house, and utilities via septic and well.

Net-Present Value (2025)

\$800,000

Tax Savings – Addition
Deduction (2025)

\$1,800,000

Due to client confidentiality clauses in our tax engagement letters, we cannot disclose the client names in our service descriptions below.

[Click to edit Master text styles](#)

NEW CONSTRUCTION, UPGRADES

68,000 square-foot pharmaceutical facility addition with an investment in a geothermal system.

The deduction available to the owner was **\$382,000**, and they also received **\$900,000** credit through the investment tax.

\$382K

Deduction for designer

\$900K

Direct pay credit through investment tax

ENERGY COST REDUCTION

Developer improved 14 locations with energy-efficient upgrades that resulted in a 42% reduction in average energy costs, saving nearly \$150K annually.

Wipfli advisors analyzed these savings against the federal program Section 179D requirements and helped the client receive a \$1M deduction in addition to the energy savings.

14

Energy-efficient locations

\$150K

Annual energy cost savings

Client impacts

Due to client confidentiality clauses in our tax engagement letters, we cannot disclose the client names in our service descriptions below.

LED SAVINGS

An 86,500 square-foot distribution facility upgraded all the lighting to LEDs with control and management systems

The project reduced energy costs by 25% or more and received a **\$303,000** deduction allocated to the designer.

\$303K **25%**

Deduction allocated to designer

Reduction in energy costs

NEW CONSTRUCTION, UPGRADES

68,000 square-foot pharmaceutical facility addition with an investment in a geothermal system.

The deduction available to the owner was **\$382,000**, and they also received **\$900,000** credit through the investment tax.

\$382K **\$900K**

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ENERGY COST REDUCTION

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14 **\$150K** **\$1M**

Energy-efficient locations

Annual energy cost savings

179D deduction



Final Remarks



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2025 WICPA Tax Conference



November 10, 2025

Tax Challenges in M&A Structuring and Pre-Closing Reorganizations



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Jordan Bergmann is a partner in the Tax, Benefits & Estate Planning Practice Group at Foley & Lardner LLP. He advises clients on a broad range of domestic tax matters, with a significant focus on the tax aspects of mergers and acquisitions. Jordan guides clients through complex M&A transactions — from full company sales to creatively structured deals that include retained equity for selling shareholders. He plays a lead role in negotiating equity rollover arrangements, ensuring both tax efficiency and alignment with his clients’ broader objectives.

Beyond his M&A practice, Jordan counsels privately held businesses on a wide array of tax and corporate issues. He assists with entity selection, designs equity compensation arrangements for partnerships, and structures the tax components of new investments. Jordan also has extensive experience with the Qualified Small Business Stock exclusion under Internal Revenue Code Section 1202, offering clients practical strategies to maximize its benefits.



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John Sikora is a Shareholder in the Tax, Real Estate and M&A sections at von Briesen & Roper, s.c. He represents clients in tax planning and the buying and selling of businesses and real estate. John has taught the tax practice and procedure course and the corporate income tax course at Marquette University Law School and the taxation of partnerships and S corporations course at the University of Wisconsin-Milwaukee masters program. He has been a frequent presenter to the State Bar of Wisconsin and the WICPA, has presented to the ABA Tax Section, has authored articles for the Journal of Taxation, Journal of Real Estate Taxation, TAXES – The Tax Magazine and other tax publications. He is a former chair of the Board of Directors of the State Bar of Wisconsin Taxation Section, a former editor of the *Wisconsin State Bar Tax News*, has been included in *The Best Lawyers in America*[®], Tax (2003-2023), and was named Best Lawyers[®] Tax "Lawyer of the Year", Milwaukee for 2013.

AGENDA

Paradigm: “asset vs. equity” with pre-closing structuring

Focus: F reorganizations, rollovers, debt-financed acquisitions

Seller-side tax analysis and protections

Key traps: S status, anti-churning, deferred items, state taxes



Two principal
reasons Buyers
usually want
asset treatment
– tax and
nontax

- Step-up in basis for amortization/depreciation
- Isolation of unwanted liabilities (subject to successor rules)

But, “straight” asset sale deal often conflicts with business needs of both parties or transaction efficiency and equity sale may therefore be preferred by both for non-income tax reasons

- Issues regarding assignment of assets
- Issues regarding assignability of assets
- Lien/debt issues
- Title issues
- Transfer tax cost
- Issues regarding assignability of contracts
- Third party consents
- Intellectual property issues
- Licensing/permit/regulatory issues
- Employee issues – termination/transfer/contract/benefits/other
- Retention of EIN by business entity



**And, most asset
sale deals have
undesirable
income tax
results for Seller**

- Ordinary income relating to recapture of depreciation/amortization
- Ordinary income regarding other items such as relating to unrecognized income – method of accounting; inventory matters
- Potential acceleration of income items
- Tax issues relating to post-closing liquidation of selling entity
- Other

More Specifically, as to Pass Through Entities

■ Federal Tax Cost

- Sale of business assets commonly results in additional tax cost for Sellers
- Asset sale treatment requires allocation among 7 classes of assets
- Class V to VII can result in depreciation recapture and ordinary income treatment
- Cost is rate arbitrage (ordinary rate less capital gain rate)

■ State Tax Cost

- Business income apportionment vs. state of residence
- Entity level taxes
 - CA S Corporation Tax
 - New York City General Corporation Tax
 - Can be benefit under PTE Election regime
- Other state and local Taxes
 - Ohio CAT
 - NYC tax on S Corporations

Some of the Income Tax Tension between Seller and Buyer can be Managed/Negotiated with Gross-Up

- Gross-up intended to compensate Seller, in whole or large part, for extra tax burden associated with the increased asset sale income tax cost
- Buyer is often willing to pay a gross-up as the income tax benefit to Buyer of future depreciation/amortization deductions often exceeds the gross-up
- Important
 - Seller doing walk away money calculation early
 - Negotiating gross-up issue early, before LOI
- Negotiating early is key as it affects Buyer thinking about pricing of deal

The Gross-Up

- Gross-up math = $\text{amount} / (1 - \text{tax rate})$
- Negotiate rate, audit/indemnity exposure, state taxes
- Purchase price allocation impacts recapture/ordinary income
- 199A, state sourcing, and covenant allocation issues
- Identify actual incremental costs, not simply timing differences

But, Even with a Gross-Up, the Nontax Issues with Asset Sale Will Remain

- Fortunately, there are structuring means to address them, to achieve asset sale treatment while closing transaction in the form of an equity sale deal
- Some used:
 - S Corporation – Stock sale with §338(h)(10) or §336(e) election
 - S Corporation – F Reorganization, conversion to LLC, sale of LLC
 - Partnership – Sell equity in Rev. Rul. 99-6 Transaction
 - Partnership – Sell equity with 754 Election

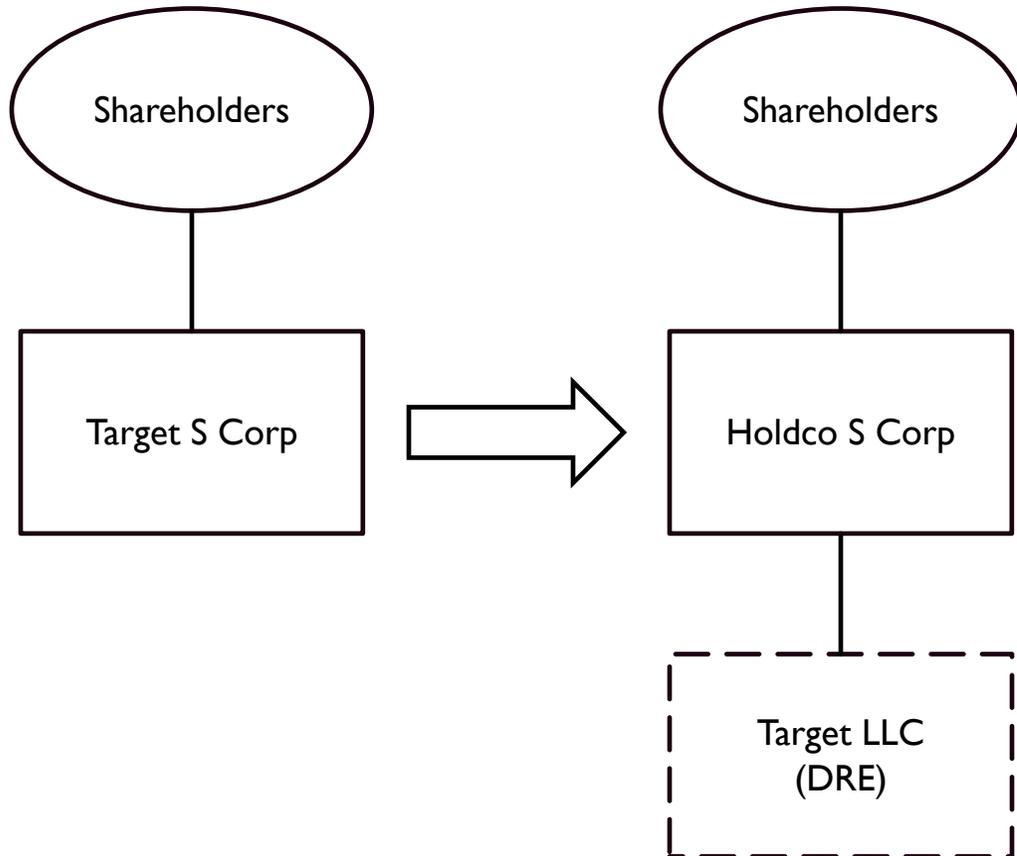
When 338(h)(10)/336(e) Works (and When Not)

- Joint elections convert stock sale to deemed asset sale
 - Target treated as selling assets to a new corporation
 - Target then treated as liquidating
- Target liabilities remain, making indemnities or rep and warranty insurance (RWI) critical
- Relies on a valid S Election
 - Should not be made if there are questions about the validity of the S Election
- Deemed liquidation generally precludes tax-free rollovers

S Corporation Qualification Risks

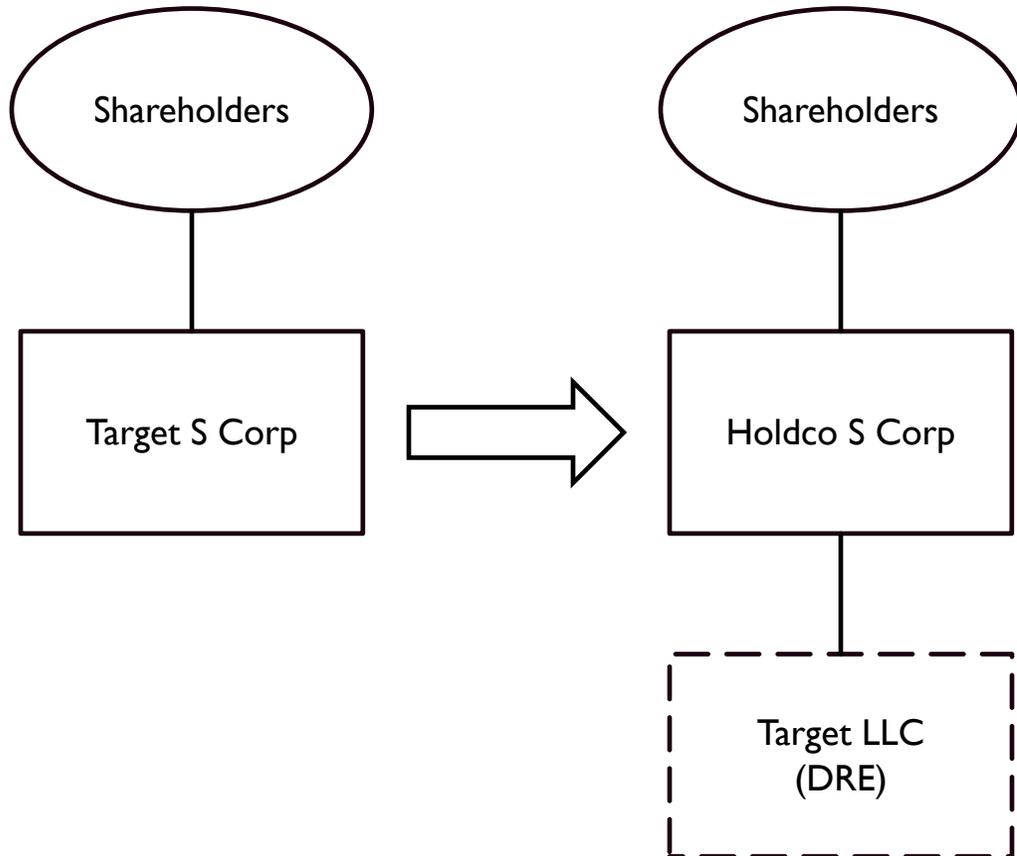
- Single class of stock
- Shareholder Limitations
 - U.S. residents & citizens
 - No corporations or partnerships
 - Limited trusts – QSST, ESBT, & grantor trusts
- LLCs with S election and operating agreement traps
 - Self-help may be available in Rev. Proc. 2022-19
- Disproportionate distributions
- Spousal consents
- Buy-sell terms
- Remediation: § 1362(f) relief, structure around via F reorg

F Reorganization: Core Mechanics



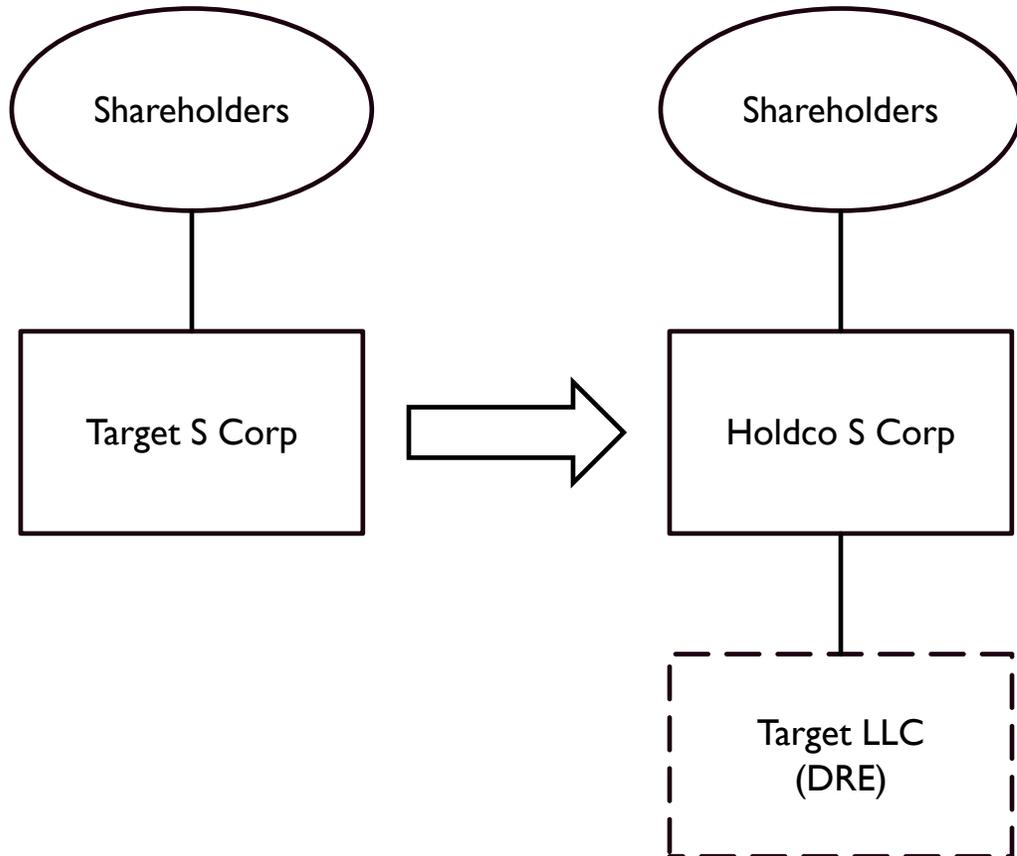
- Shareholders contribute Target S Corp to Holdco S Corp (same owners)
- Holdco S Corp makes QSub election for Target S Corp (Form 8869)
- S election carries to Holdco S Corp (Rev. Rul. 2008-18; no new 2553)
- Target S Corp often converts to LLC pre-closing (state law conversion)

“F in a Bubble” Principles



- F Reorganization can occur within larger sale without taint (Reg. §1.368-2(m))
- Resulting corporation treated as functional equivalent of transferor
- No COI/COBE required for F Reorganization
- Newco must be “clean” (only de minimis pre-F Reorganization assets/attributes)

F Reorg Practicalities



- EINs: Newco new EIN; Oldco retains its EIN
 - Conversion to LLC should result in retention of EIN as well
- QSub effective date limitations (mailing date matters)
- Service Center processing moves S election administratively
- Multi-target structures don't qualify as F Reorganization (consider C/D reorg)

F Reorganization vs. Drop-Down Tradeoffs

- Buyer step-up: present for both
- Successor/transfer taxes: jurisdiction-dependent
 - E.g., Wisconsin view of DRE transfers
- Transferee liability and open C corp years issues differ
- Contract/permit and EIN continuity considerations

Rollovers: Structures and Constraints

- Rollover means Seller retains some equity (part sold for cash; part rolled)
- Many reasons Buyers prefer rollovers:
 - Retains Seller interest in business, transition matters
 - Reduces funds needed to close deal
 - Other
- Structures vary – key for Sellers to be sure nonrecognition treatment exists
- E.g.: F reorg → LLC → partial sale + partnership formation (§721)
- Other rollover structures
- S Corp disproportionate rollovers generally not feasible
- Alternative: retain equity at TopCo or use blocker structures

Anti-Churning and Amortization of Intangibles

- §197(f)(9) >20% related party rule; pre-8/10/1993 businesses
- If seller retains >20% post-closing partnership, step-up barred on goodwill
 - Related party rules are technical and need to be closely reviewed
- Workarounds: pre-closing partnership + §754; Example Reg. 1.197-2(k)
- Timing: practitioners use short pre-closing periods 3
 - Partnership created 5-7 days before Closing
 - Document intent carefully

Debt-Financed Acquisitions and Rollover Nuances

- Debt-financed distributions to sellers face §707 disguised sale rules
- Guarantees must be bona fide
- Liability shifts under §752 affect consideration and basis
- Align with financing covenants and tax distributions

Partnership Tax: Basis, Liabilities, 704(c)

- Unitary basis; allocate by FMV for partial interest sales
- Liability reduction treated as consideration (§752(d))
- Choose 704(c) method: traditional, curative, remedial
 - For 754 transactions, parties should align on traditional
- Define tax distributions, step-up benefits, and audit control

Deferred Items: Compensation and Revenue

- Deferred comp, bonuses: deductibility timing (§404(a)(5), §83(h))
- Buyer assumption may trigger income/deduction on final return
- §451/§455 deferred revenue accelerates if obligation ceases/transfers
- Model P&L and tax impacts into purchase price mechanics

Seller-Side Protections

- Tax reps/warranties: S/QSub validity; disregarded status; step-up
- Survival through SOL + buffer; no cap/basket for taxes common
- Special indemnities for S election defects, payroll/sales taxes
- Consider tax insurance (S status, step-up, legacy C tax)

Private Equity Patterns and Expectations

- Preference for F reorg + LLC equity sale for step-up and flexibility
- Rollover alignment, governance, PR control, and tax distributions
- Blockers for buyer; ensure parity for rollover sellers
- Integration of tax structure with financing and management equity

Key Takeaways

1

Use F reorg to de-risk step-up, enable rollovers, manage S risks

2

Model anti-churning, deferred items, and state taxes early

3

Lock in seller protections; consider tax insurance

4

Tight sequencing, filings, and documentation drive results

Thank you.



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HOT TAX PRACTICE, PROCEDURE AND ETHICS ISSUES 2025

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Michael Goller leverages his more than three decades of experience, accounting degree and strong relationships within the IRS to be an especially effective tax lawyer. He assists clients with federal and state tax controversy, tax litigation and tax planning. He is a shareholder in Reinhart's Tax and Corporate Law practices.

His clients vary from large public corporations to mid-sized, private businesses. He's a self-described "tax geek who litigates," pairing his outgoing personality with extensive, detailed knowledge and a dedicated work ethic. He represents clients involved in complex disputes with the IRS, the U.S. Department of Justice and various other authorities and has an impressive track record of favorable settlements.

Michael enjoys sharing his expertise through writing and speaking engagements on a variety of tax controversy, litigation and planning topics. He is a longtime faculty member at the University of Wisconsin-Milwaukee's Lubar School of Business and teaches Tax Practice and Procedure in the Graduate Tax Program. Michael is the founder of the Hastings Society for Economic Development, a group dedicated to the discussion of economic principles and how they can further the common good.

Outside the office, he enjoys cooking haute cuisine, having taken cooking classes in both Italy and France. In fact, over the years, Michael has raised significant funds for a variety of charities by auctioning his services as a chef. He spends time with his wife and daughter, plays golf and loves to travel.

Education

- ♦ J.D., cum laude, Marquette University Law School
- ♦ B.S., Marquette University (Accounting)

Bar Admissions

Wisconsin

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- IRS Update – Hiring, What’s “Hot” – What’s Not
- Loper Bright – What do IRS Regulations now mean? Ethical Concerns
- Ethical Issues when challenging a Regulation
- IRS Appeals Office Issues
- Cost Segregation Issues – Hot Issue, Ethical Concerns
- Employment Tax Issues
- Valuation Issues and Ethical Concerns
- Valuation Penalties and Reasonable Cause
- Privilege Waiver Issues

Contents (cont.)

- Other “Hot” Issues
- High “Net Worth” Audits
- Airplane Cases
- Family Office – Planning
- Responding to Information Requests – Ethical and Practical Issues
- Hobby Loss Issues
- Burden of Proof Issues
- Deadline Traps - Refunds
- Passive Loss Cases

IRS Update

Hiring

- Significant hiring had occurred, however, audits have not picked up a lot yet
- FY 9/30/25 – Was expected to see big increase in audits
- FY 9/30/26 - ??
- But
 - D. of G. E. - DOGE
 - Shut Down – Fall 2025
- Still some very “Hot Issues”

What is Ethics?

- Practical
- Literal/Technical

Loper Bright – How important is an IRS (o any) regulation?

- Loper Bright Enterprises et al. v. Raimondo et al. and Relentless, Inc. v. Dept. of Commerce, 603 U.S. 369, 144 S.Ct. 2244 (2024) and companion case

Corner Post v. Board of Governors of the Federal Reserve System, 603 U.S. 799, 144 S.Ct. 2440 (2024)

Loper

- The Court, not the Agent determines the “best reading of the statute”.
- Loper overruled Chevron U.S.A. v. NAT. Resources Defense Counsel, Inc. 467 U.S. 837 (1984)
- Administrative Procedures Act
 - Section 706 – Courts will decide “all relevant questions of law.”
 - Section 553 – Contains a detailed notice and comment period for government regulations
 - Section 533(b) – APA Section 553 procedures apply to “legislative” regulations. Do not apply to “interpretive” regulations

Loper (cont.)

Why all the concern with the IRS?

- I.R.C. §§ 7805(a) “. . . the Secretary shall prescribe all needful rules and regulations for enforcement of this title [26 of the U.S.C.], . . .”
- Mayo Foundation for Medical Education and Research v. U.S., 562 U.S. 44 (2011) FICA Reg. upheld under Section 7805(a)

Loper (cont.)

- The Administrative Procedures Act (5 U.S.C. §§ 551 et seq.) **requires courts to exercise independent judgment when deciding whether an Agency has acted within its statutory authority; courts may not defer to the Agency interpretation of the law simply because the statute is ambiguous**
- Corner Post
- Statute of limitations to challenge regulations starts when there is a harm suffered by virtue of the Reg.

Background

Relevant Cases

- Skidmore v. Swift Co., 323 U.S. 134 (1944) Skidmore Deference - courts will defer to an agency depending on the thoroughness of its consideration, validity of its reasoning, consistency with other pronouncements and all those factors which give it a power to persuade
- The doctrine survives after Loper. Loper holds that courts may defer to the agency if the agency's interpretation has the "power to persuade." The "**best read of a statute is that the agency may well be authorized to exercise a degree of discretion.**"
Loper, Slip. Op. at 17

Background (cont.)

- Chevron USA Inc. v. National Reserve Defense Counsel, 467 U.S. 837 (1984) – two famous factors used to make a Reg. legally binding
 - Regulation must be consistent with the plain meaning of the statute
 - Regulation is not an unreasonable interpretation of the statute

Post Loper

- Varian Medical Systems v. Comm’r, 163 T.C. No. 4 (Aug. 26, 2024)
 - Section 254A v. Section 78 effective dates
 - Treas. Reg. 1.78-1 clarifies dates. Reg. was issued under Sections 245A and 7805. The court noted a “change in unambiguous provisions of the statute” is not allowed. *Id.*
- There is a basic difference between filling a gap left by Congress and rewriting rules Congress enacted. *Id.* (Citing Loper at 2263)
- When, however, Congress has delegated authority to an agency, the court’s role is to fix the boundaries of that delegated authority. *Id.*

Post Loper (cont.)

- Schwarz et al. v. Comm’r, Dkt. No. 12347-20 (Tax Court Order (November 5, 2024)). Case was decided Schwarz v. Comm’r, T.C. Memo 2024-55. Granted Rule 161 Morton to Reconsider. Farming and ecotourism business. The issue is deference to IRS resolutions under Section 183. Parties are briefing the issue.
- 3M Company et al. v. Comm’r, [No. 23-3772] _ F.3d_ (8th Cir. 10.1.25)
- Citing Loper, the Court, when making the required “best reading of the statute” found that some parts of the Section 482 regulations went beyond Section 482

Case To Watch

- Tribune Media Co. v. Comm’r, T.C. Memo. 2021-122 Appeal Pending Dkts. 23-1135, 23-1136, 23, 1243 (7th Cir.)
- Section 1374 built-in gain on contribution of controlling interest in Chicago Cubs to a partnership.
 - At issue is the partnership anti abuse rule under §1.701-2(a)(1).
 - Is this a Reg. authorized under 7805(a) a mere summary of anti abuse law traceable to Gregory v. Helvering or, should the Reg. be afforded nothing more than Skidmore deference

SALT Ramifications – Examples

- WI – Tetra Tech EC, Inc. v. W. WDOR, 382 Wis.2d 496 (2018)
 - Not bound by agency but will give “due weight” to the agencies experience, technical competence, and specialized knowledge under Section 227.57(10), Wis. Stats.
 - Very disjointed opinion
- IL – Hartney Fuel Oil v. Hamer, 998 N.E. 2d 1227 (Ill. 2013)
 - Illinois Department of Revenue regulations are entitled to substantial weight and deference. Regulations enjoy a presumption of validity
- FL – Amendment 6 to Florida’s Constitution now requires courts to interpret statues de novo. FLA. CONT. art. V §21(11/6/2018)

Ethical Issues When Challenging a Regulation

Ethical Issues When Challenging a Regulation

- Form 8275 v. Form 8275-R
- Disclosure Issues
- Circular 230, AICPA Rules, State Bar Rules
- Practical Realities

IRS Appeals Office Issues – Challenging a Regulation

IRS Appeals Office

How does appeals work

- Section 7803(e) – Codified the Internal Revenue Service Independent Office of Appeals §7803(e)(1). Purpose is to resolve cases, without litigation on a basis which is “fair and impartial.” §7803(e)(3)(A)
- Final Regulations (effective 1.15.2025) – Clarifies when Appeals is not available to a Taxpayer - §301.7803-2.

Getting to Appeals

- 30 day letter
- Protest – Skinny or fat – pros and cons
- Do an FOIA request
- Exam's "T-letter"

Settling the Case at Appeals

- Hazards of litigation
- Does the IRS have uniform settlement guidelines?
- What to do if you hit a “brick wall”?

IRS Appeals Office Issues – Challenging a Regulation (cont.)

- There are 24 specific exemptions to Appeals jurisdiction. See §301.7803-2(c). Examples:
 - Exemption (12) – cannot appeal a notice under 7345 of Revocation of Passport for a Delinquent Tax Debt
 - Exemption (19) – Appeals cannot consider whether a regulation is invalid unless there is an unreviewable decision from a federal court invalidating the part of the regulation at issue
 - Exemption (20) – Same as 19 only for an IRS Notice or Rev. Proc.

Comment: A Loper type challenge will likely not be considered by Appeals.

Should an Accuracy Related Penalty Still Apply (*for those who ponder deep tax thoughts*)

- Section 6662(a) & (b)(1)
 - Statute that imposes a 20% penalty for disregard of the rules and regulations
 - Now that a regulation is entitled to for less deference, what does this do to the statute? Especially with a Section 6664 Reasonable Cause Defense. Should Congress change the Statute (LOL)

Note: You can avoid this trigger with disclosure if there is good faith and adequate books and records are maintained. Reg. § 1.6662-3(c)(i)

Disregard of Rules or Regulations

- Is defined as any "careless, reckless, or intentional disregard"
 - Section 6662(c)



Cost Segregation Cases - Hot



Cost Segregation

What is it and what is the planning goal?

- Engineering based analysis that breaks down real property components into different asset classes.
 - Rather than depreciating a building over 27.5 years (residential) or 39 years (commercial), identify property that typically has a 5, 7, or 15 year class life. These items generally qualify for bonus depreciation.

Cost Segregation (cont.)

- Hotter issue after OBBB reinstated 100% bonus depreciation for qualified property (e.g., MACRS – 20 years or less placed in service on or after 1/19/25).
 - Immediately expense shorter life assets

Cost Segregation (cont.)

- New Section 168 (n) - 100% depreciation for Qualified Production Property
- For a mixed use facility the Taxpayer will need to allocate to production and non-production components
 - ❖ Comment: What do “manufacturing” and “production” mean? Not defined.

This is Real Money, Not Just a Timing Issue

A cost segregation analysis can help with more than just timing.

1. Partial Asset Disposition – If segregated assets are disposed of during their holding period, the remaining basis is written off.
2. When selling assets, allocate less value to shorter life assets to limit depreciation recapture (*i.e.*, less OI more 1231 gain).
3. Basis step up on death. So buy → 1031 → *die (morbid, but good tax planning)*

IRS Attack on Cost Segregation Studies

- Publication 5653 (Rev. 6-2022) “Cost Segregation and Audit Technique Guide”
- Revisions were not large but whenever the IRS revises an audit manual, there will be audits

IRS Attack on Cost Segregation Studies (cont.)

- IRS cites AmeriSouth v. Comm’r TC Memo 2012-67 (2012)
- IRS Pub. 5653, Cost Segregation Audit Technique Guide
- **Trap – Cost segregation study right after a 1031.**

Ethical Concerns

Watch the numbers on audit.

- IRS cannot disallow the depreciation and disallow the same expense as passive
 - Recalculate and check any revised gain
- Need a good cost segregation study
- How to correctly retain an expert
- May need credible testimony about holding property until death
- Diligence – Cir. 230 § 10.22
- Reliance on written advice – Cir. 230 § 10.22, 10.37(b)
- Document any purchase price allocation
- Penalty issues
 - Educate client about risks

Ethical Obligation to Talk About Penalty Avoidance

- Under IRS Circular 230, practitioners must advise the client of any penalties that are reasonably likely to apply and the practitioner must discuss the possibility of penalty avoidance via disclosure. §10.34(c)

Cost Seg. and the Change in Accounting Method Trap

- This can be big.
- Need to educate the client
- Section 6501(a) and a Section 481 adjustment
- § 446(a) – “Taxable income is computed under the method of accounting on the basis of which the taxpayer regularly computes his income . . .”
- § 446(c) – Lists permissible methods - cash, accrual, any other method permitted by Chapter 1 of the Code and “any combination of the foregoing methods permitted under regulations prescribed by the Secretary.”
- A change in accounting method occurs when, under the lifetime income test, income changes. Does the change result in more or less income over the taxpayer’s lifetime? If so, it is not a CIAM. *Hyatt Hotels Corp & Subsidiaries*, 2023-122 (2023) (citing *Peoples Band & Tire Co. v. Comm’r*, 412 F.2d. 1341, 1344 (7th Cir. 1969))

Cost Seg. and the Change in Accounting Method Trap (cont.)

- Treas. Reg. 1.446-1(e)(ii)(d)(2)(i) – A change in the “depreciation or amortization period of recovery, or convention of a depreciable or amortizable asset” is a CIAM. (Reg. was issued under 7805)
- IRS view is that the statute and this reg. cover a change from depreciable to non depreciable classification (*i.e.*, depreciable property to land)
- The argument will be that an allocation to land increases basis. Basis reduces gain and thus Gross Income and (after deductions) Taxable Income. Depreciation does not reduce Gross Income but is deducted from Gross Income to arrive at Taxable Income. So, assuming the property is sold, life time Taxable Income is the same.
 - Comment: What about 1031 exchanges and step-up-at-death? Or, what if land is sold and the increased basis will reduce the Section 1231 gain, and possibly reduce future 199A deductions, which is a new deduction for years 2018, forward. Some of the properties at issue were depreciated pre 2018. So the change results in less life than Taxable Income than if no change occurred??

Employment Tax Issues

- Employer v. Independent Contractor
- ERC

Section 530 of the Revenue Act of 1978



- Generally allows taxpayer to treat worker as not being an employee for employment tax, but not income tax or other purposes
- Must have reasonable basis and meet certain requirements

Section 530 of the Revenue Act of 1978 (cont.)

- *Reasonable basis* for treating a worker as an independent contractor exists if the taxpayer reasonably relied on
 1. Past IRS audit practice with respect to the taxpayer, or
 2. Published rulings or judicial precedent, or
 3. Long-standing recognized practice in the industry of which the taxpayer is a member, or
 4. If the taxpayer has any "other reasonable basis" for treating a worker as an independent contractor.

Section 530 of the Revenue Act of 1978

- Additional requirements
 1. The taxpayer must not have treated the worker as an employee for any period
 2. All federal tax returns, including information returns, must have been filed on a basis consistent with treating such worker as an independent contractor
 3. The taxpayer (or a predecessor) must treat all workers holding substantially similar positions consistently for purposes of employment taxes
 - The "similar worker consistency requirement"

Statute of Limitations in Employment Tax Cases

Section 6513 governs when a return is deemed to be filed for purposes of Section 6511 (i.e., for purposes of whether a claim for refund is timely filed). Subsection (c) pertains to Social Security Taxes and Income Tax Withholding (i.e., the taxes reported on a Form 941). Section 6513(c) provides that:

If a **return** for any period ending with or within a calendar year **is filed before April 15** of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year. § 6513(c)(1). (Emphasis added.)

Thus, when a Form 941 for a period is filed before April 15 of the following period, the tax return is considered filed on April 15 of that following year.

Interest-Free Adjustments

- Generally, for employment tax (*i.e.*, Form 941 obligations), if the adjustment to the Form 941 (*i.e.*, the tax deficiency) is
 - paid on or before the due date of the 941 for the period in which the error is “ascertained”,
 - the amount of the underpayment shall be paid without interest being charged.
- An error is ascertained when resolved at examination or with appeals.

Interest-Free Adjustments (cont.)

- IRC Section 6205(a); Treas. Reg. 31.6205-1 Rev. Rul. 2009-39 and I.R.M. 4.23.8.3 (5-17-2018)
- Generally, for employment tax (*i.e.*, Form 941 obligations), if the adjustment to the Form 941 (*i.e.*, the tax deficiency) is
 - Paid on or before the due date of the 941 for the period in which the error is "ascertained,"
 - The amount of the underpayment shall be paid without interest being charged
- An error is ascertained when resolved at examination or with appeals

Interest-Free Adjustments (cont.)

- If, however, the case is not resolved at Appeals and the taxpayer receives a notice and demand for payment from the IRS, the adjustment will not be interest free
- In addition, the taxpayer will not be allowed an interest free adjustment where a prior audit found that additional tax was due with respect to the same issue

ERC Ethics Issues

- Merits of the credit
- 6063 – Civil fraud
- 6662 – Accuracy related penalty
- 6651 – Failure to pay .5% per month to 25%
- Probably Section 6676 does not apply (Statute refers to income tax)

Appraisal/Valuation Report Challenges – “Hot” IRS Issue

Valuation Checklist

What does the client want:

- High value
- Low value
- The Cover Letter – Summary
- Who is the retaining party and other intended users?
- Use the Correct Definition of Fair Market Value ("FMV"), FMV for a gift, Treas. Reg. Section 25.2512-1 defines fair market value as
 - [T]he price at which property would change hands between a willing buyer and a willing seller, Neither being under any compulsion to buy or sell and both having reasonable knowledge of the Relevant facts

Valuation Checklist (cont.)

- The "as of" or date
- Purpose of the valuation and intended use (e.g. estate and gift tax purposes)
- Type of asset and interest being valued (*i.e.* a minority interest . . .)
- Control Rights - in any
- Access to Liquidity
- The Scope of Work
- Information Considered
- Methodologies Utilized
- Fair Market Value Conclusion

Valuation Checklist (cont.)

- The Report- Body
- Standard of value – Define FMV again
- Purpose of the valuation
- What is being valued?
- Prior transactions if any
- Rights, preferences, and privileges of interest being valued
- Economic overview / market conditions
- Company specific information
- Methodologies used to determine FMV (Holding Company v. Active Business)

Valuation Checklist (cont.)

- Discounts. Do not rely only on case law. Berg Estate v. Comm’r, T.C. Memo 1991-279
- Explain the weight given to each methodology used. Otherwise if one methodology is rejected, the whole report may fail. True Estate v. Comm’r T.C. Memo 2001-167 aff’d., 390 F.3d 1210 (10th Cir 2004)
- Tax Affecting Earnings if an S Corp. or Partnership. Calculation both ways. Recent Cases, Kress, Estate of Jones. If do not tax affect, can the marketability discount be increased
- 2703 – Watch it
- Do I need a “good” Form 8283?
- Do I need a “good” receipt/acknowledgement

Valuation Checklist (cont.)

- Justify the discount rate being used in the calculation
- Statement of qualifications that meets Tax Court Rule 143
- Exhibits showing calculations
- What is the FMV of the interest being valued?
- Signed certification

Traps for the Unwary When Obtaining Valuation/ Appraisal Reports

- *Exelon v. Comm'r*, 906 F.3d 513 (7th Cir. 2018)
 - SILO tax shelter
 - Appraisal of power plant found to lack credibility because the attorney interfered with the integrity and independence of the appraiser by providing wording and conclusions the lawyer expected to see so that the lawyer could issue a tax opinion
 - Loss on (1) valuation issue; and (2) reasonable cause defense to a penalty
- Need an appraiser who understands the process
- Be careful about "educating" an appraiser
- Assume whatever is sent to the expert will be made available to the IRS – What can I ethically say valuation expert.

Low Valuation Issues (e.g., Charitable Donations)

Three Concerns

- Form 8283
- Qualified Appraisal
- The Receipt/Acknowledgement from the Donee
- Section 170(f)(11)(A)(i) provides that no charitable contribution deduction is allowed unless the taxpayer meets certain requirements
- (B) requires the taxpayer to “include with the return . . . a description of such property and such other information as the Secretary may require . . .”
- (D) requires that for donations over \$500,000 the taxpayer must “attached to the return a qualified appraisal of [the donated] . . . property.”
- (H) – IRS can issue regulations

Qualified Appraisal and Form 8283 Issues

Appraisal Issues for In Kind Donation

- Reg. 1.170A-13(c)(2)(A) must attach a qualified appraisal to the return; and (2)(B) must attach the appraisal summary (*i.e.*, Form 8283)
- Reg. 1.170A-13(f)(2) and (3) – Donee must provide a contemporaneous written acknowledgement as to whether the
- Donor received any goods or services from the Donee. Must be received by the earlier of the filing or extended due date of the tax return.
- Reg. 1.170A-13(c)(4)(iv)(H) – Reasonable Cause for Failing to Attach Appraisal Summary (may help with appraisal and receipt)

Qualified Appraisal and Form 8283 Issues

Appraisal Issues for In Kind Donations (cont.)

- Arguments

Qualified Appraisal

- Taxpayer must provide sufficient information to permit the IRS to evaluate the reported contributions, as intended by Congress. See Mohamed v. Comm'r T.C. Memo 2012-152, quoting the Estate of Clause v. Comm'r 122 T.C. 115, 122 (2009). The qualified appraisal and Form 8283 that was attached to the 1040 meet this test

Form 8283

- Note: RERI Holding I, LLC et al v. Comm'r, 149 T.C. No. 1 No. 17-1266 (5/24/19) Aff'd USCA DC (2019) case disallowed a \$33 Million charitable contribution deduction because basis was missing on the Form 8283. Does not indicate if the taxpayer attempted to “fix” the Form 8283

Bad Form 8283 – Solutions

- Further, Treasury Regulation Section 1.170A-13(c)(4) and (c)(4)(iv)(H) note that a taxpayer is allowed to explain if he or she has reasonable cause for an inadequate Form 8283. The same regulation allows the IRS to request that a taxpayer provide a correct Form 8283 within 90 days. If this request is complied with the charitable deduction will not be disallowed as long as the taxpayer's error was in good faith. See Treas. Reg. § 170A-13(c)(4)(iv)(H).
- In the instant case the Service has not requested that the alleged defects noted in the Revised Lead Sheets on the Form 8283 be corrected."

Inadequate Form 8283 - Solutions

- Strategy
- “While the Service has never requested that the defects on the Form 8283 alleged in the Revised Lead Sheets at issue be corrected, a new Form 8283 is being faxed to you. The Taxpayer is providing the IRS with a new Form 8283 that is signed by the appraiser and donee. Also, the basis of the donation at issue is included on this form.
- As noted in the instructions to Form 8283, failure to attach a correct Form 8283 to a tax return will not result in a contribution deduction being disallowed if the failure is due to reasonable cause and not willful neglect. See instructions to Form 8283 at 8 (Rev. December 2021).

WT Apt Partnership LP v. Comm'r, T.C. Memo 2025-030 (4.9.2025)

- Reasonable cause exemption does exist.
 - May help with an inadequate qualified appraisal or receipt/acknowledgement

Get a Good Appraisal – Section 2703 Trap

- 2703(a) – When valuing property for Gift, estate or GST purposes, cannot consider any option agreement or right to acquire or use the property at a price below fair market value.
- 2703(b) – Exception to (a) if the restriction is
 1. A bona fide business arrangement;
 2. Not a device to transfer property to Members of the transfer's family for less than fair market value; and
 3. Terms similar to arms-length transactions. See Est. of Amlie v. Comm'r, T.C. Memo 2006-76

Valuation Traps

1. Assumption Letter and/or in the Report – avoid this assumption:

“This valuation assumes there are no Internal Revenue Code Chapter 14 or other federal or state laws or regulations that will have a material impact on the value of the property being appraised. Specifically, we assume the LLC meets the legal requirements of IRC Sections 2703 and 2704 of Chapter 14 if the Internal Revenue Code as they apply to the specific facts and the LLC Agreement. In addition, we have assumed that the terms and conditions of the ____ Agreement are not more restrictive than applicable state law.”

Helpful Report Language – Assumes agreement is not considered to the extent it is more restrictive than state law.

“The following factors generally have an upward impact on the discount for lack of marketability but were not given weight in the valuation due to the special valuation rules in Chapter 14 of the Internal Revenue Code.”

Valuation Traps

2. Helpful Report Language – Assumes agreement is not considered to the extent it is more restrictive than state law.

“The following factors generally have an upward impact on the discount for lack of marketability but were not given weight in the valuation due to the special valuation rules in Chapter 14 of the Internal Revenue Code.”

Traps and Models (cont.)

3. Watch Local Law - Wisconsin LLC law – Pre and Post 12/31/2022. Common trap if states that adopted the Uniform Limited Liability Company Law (WULLCL) (e.g., Missouri LLC formed before 8.28.2022 could so elect)

Pre 1.1.2023 (caution if the LLC predates 2023, it may have elected to stay under this law – Check the State Department of Financial Institutions for a “Statement of Nonapplicability”) Wisconsin example

183.0604. Distribution upon dissociation. Except as otherwise provided in this subchapter, upon an event of dissociation under s. 183.0802 that does not cause dissolution of the limited liability company, a dissociating member is entitled to receive any distribution to which the member is entitled under an operating agreement and, if not otherwise provided in an operating agreement, **within a reasonable time after dissociation, the dissociating member is entitled to receive a distribution in complete redemption of the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company.**

Traps and Models (cont.)

Post 12.31.2022

183.0404 Sharing of and right to distributions before dissolution.

(1) Except to the extent necessary to comply with any transfer effective under s. [183.0502](#) or charging order in effect under s. [183.0503](#), any distributions made by a limited liability company before its dissolution and winding up must be made proportionally among members and dissociated members on the basis of the value of the contributions made by each such member, as stated in the records required to be kept under s. 183.0402(2) or, in the case of a company treated as a partnership for tax purposes, the partnership capital account of each such member as computed for tax reporting purposes.

(2) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

Ethical Concerns

- Need a good appraisal
- How to correctly retain an expert
- Watch the details and requirements
- Hot audit issue
- Diligence
- Reliance on written advice
- Valuation penalties under 6662(h), 20% and 40% Substantial (65% or less of "correct" amount) and Gross (40% or less of the "correct" amount)

Valuation Penalties

- Four Penalties - two in the gift tax context and two in the income tax context. These "triggers" are mathematical:
 - Substantial Valuation Misstatement (income tax)¹
 - Substantial Estate or Gift Tax Valuation Understatement²
 - Gross Valuation Misstatement (income tax)³
 - Gross Estate or Gift Tax Valuation Understatement⁴

1. Return value is 150% or more of the correct value - 20% penalty.
2. Return value is 65% or less of the correct value - 20% penalty.
3. Return value is 200% or more of the correct value - 40% penalty.
4. Return value is 40% or less of the correct value - 40% penalty.

Valuation Penalties (cont.)

- Estate and Gift Tax Understatement of Value
 - Substantial Valuation Misstatement
 - There is a 20% penalty of the portion of the underpayment of tax attributed to undervaluation if the value on the estate or gift tax return is 65% or less of the amount determined to be correct
 - Section 6662(a), (b)(5), (g)
- Gross Valuation Misstatement
 - There is 40% of the tax attributable to the undervaluation if the amount reported on the estate or gift tax return is 40% less of the value determined to be correct
 - Section 6662(h)(1), (2)(C)
 - There is no penalty if the underpayment of tax is \$5,000 or less
 - Section 6662(g)(2)

Income Tax Overstatement of Value *e.g.*, a Charitable Contribution

- Substantial Valuation Misstatement
 - There is a 20% penalty applicable to any underpayment attributable to a Substantial Valuation Misstatement
 - Section 6662(b)(3)
 - A substantial valuation misstatement occurs if the value (or adjusted basis) of any property claimed on a return claimed income is 150% or more of the correct amount
 - Section 6662(e)
 - The penalty is not imposed unless the misstatement results in an underpayment of greater than \$5,000 (\$10,000 for a C-corporation)
 - Section 6662(b)(2)

Gross Valuation Misstatement

- There is a 40% penalty in the case of a Gross Valuation Misstatement.
- A Gross Valuation Misstatement occurs if the value of the property is 200% or more of the correct value section.
- The standard is automatically met if the correct value is zero.
 - Treas. Reg. Section 1.6662-5(g).
- Example
 - Donor claims a deduction under Section 170 for the donation of property to a qualified charity

Reasonable Cause and the Income Tax Valuation Penalties

- A reasonable cause exception under Section 6664 can apply when the underpayment is attributable to a substantial (but not a Gross) understatement with regard to a charitable contribution if the following occurs:
 - The claimed value of the property is based upon a qualified appraisal by a qualified appraiser;
 - The taxpayer also made a good faith investigation of the value of the contributed property; and
 - The taxpayer acted with reasonable cause and in good faith
 - Section 6664(c)(3)

Comment

Review the definitions of a qualified appraiser and appraisal in Treas. Reg. Section 1.170A-13(c)(3) and (5)

Reasonable Cause

- A showing of reasonable cause and good faith avoids the estate and gift tax penalties except does not apply to a gross valuation misstatement on a Charitable Contribution Section 6664(c)(2)
 - Section 6664(c)(1)

Reliance - General Rule

Reasonable Cause – IRS Regulation

- In order to establish reasonable cause and good faith the taxpayer must show the following:
 - The advice received was based on all pertinent facts and circumstances and the laws that relate to those facts and circumstances.
 - The advice was not based on unreasonable assumptions and did not unreasonably rely on the taxpayer's or someone else's statement findings, etc.
 - The advice was not based on the invalidity of a regulation unless certain disclosure requirements are met.
 - See Treas. Reg. Section 1.6664-4(c)

Reasonable Cause

- Defined as Ordinary Business Care and Prudence
- Section 6662 Penalty can be avoided by showing reasonable cause (in most-cases)
- Proof of Reasonable Cause, when arguing reliance on a professional – 3 part test
 - Advisor was competent and had significant expertise to justify reliance
 - Taxpayer gave advisor adequate and necessary information
 - Taxpayer relied in good faith upon the advisor

Privilege Issues

Privileges In a Tax Setting

- Federal Rules of Evidence – Rule 501- Privileges in General
 - Rule 501 provides that common law governs a claim of privilege unless provided otherwise by the Constitution, a federal statute, or rules prescribed by the Supreme Court. In a civil case, state law governs
- There are a Number of Relevant Privileges
 - Attorney-Client
 - Accountant-client or practitioner privilege
 - Work Product Doctrine
 - Each can be waived
 - There are exceptions to this privilege
 - Spousal Privilege

Attorney-Client Privilege (cont.)

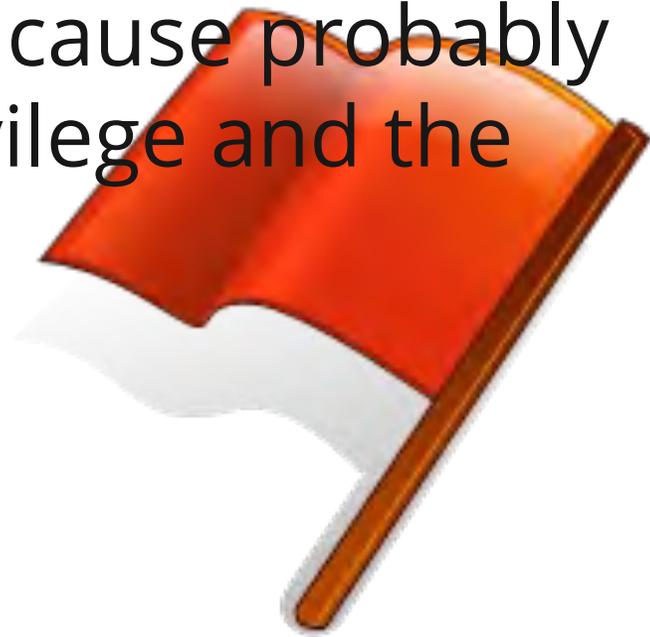
- The Kovel Letter
- The Privilege Can Extend Communications with the Attorney's Agents
- So long as a client's communication is made to an agent of an attorney (*i.e.*, a CPA that has been retained by the attorney) in confidence, for the purpose of obtaining Legal Advice from the lawyer, it is privileged. United States v. Schwimmer, 892 F.2d 237, 243 (2d Cir. 1989)
- What is a Kovel Letter?
- This rule, generally known as the Kovel rule. The application of the Kovel rule can be difficult in situations where non-legal services, such as preparing a tax return, are provided with legal services because it is difficult to distinguish between communications made for the preparation of a tax return and those made for the provision of legal services. Because the Kovel rule rests on the attorney-client privilege, the protection of the Kovel rule is lost anytime the attorney-client privilege is lost.
- When to use a Kovel Letter
- Comment: The key is the facilitation of communication between the lawyer and client

Section 7525 Privilege

- With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federal authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney. Section 7525(a)
- Keep the privileged, privileged

Raising Reasonable Cause Can Waive a Privilege

- CAUTION:
- Raising the assertion of reliance on professional advice constitutes reasonable cause probably waives the attorney/client privilege and the Section 7525 privilege



Raising Reasonable Cause Can Waive a Privilege (cont.)

- IRM 20.1.5.6.4 (January 24, 2013)
(If the taxpayer claims a tax memorandum or advice is privileged, the IRS will not abate the penalty)
- Comment: Would the IRS assert a penalty to force a privilege waiver?

Other “Hot Issues”

- Partnership Audits (BBA)
- High Net Worth Audits
- Real Estate Professional Status
- Airplane Cases
- Family Office Planning
- The Research Credit – IRS and State cases
- Refund claim Traps
 - Ethics and ERC Audits

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- IRS Announces New Pass-Through Unit to Scrutinize Wealthy
- By David van den Berg
- Law360 (September 20, 2023, 6:33 PM EDT) – The Internal Revenue Service will launch a new group focused on scrutinizing pass-through organizations as part of its broader plan for beefing up enforcement work against the wealthy, according to an agency statement. . . [A] new unit scrutinizing pass-through organizations is part of a previously announced plan. . . to ramp up enforcement work against high-income earners, corporations and partnerships.
- The agency said the initiative will drill down on large or complex pass-throughs. . . to ramp up enforcement work against high-income earners, corporations and partnerships. . .
- The pass-through group will be housed in the IRS' Large Business & International Division, according to the agency. The pass-through entity's workforce will eventually also include current employees in both Large Business & International and the Small-Business & Self-Employed divisions, the agency said. The IRS' statement also said the pass-through group will include the more than 3,700 revenue agents it plans to hire for expanded enforcement work geared toward large corporations and complex partnerships. . .

IRS Announces New Pass-Through Unit to Scrutinize Wealthy (cont.)

- The IRS' strategic plan for the funding increase provided by the Inflation Reduction Act called for expanded enforcement work against large partnerships and said the agency would hire specialized compliance workers and train others to help ensure pass-through entities comply with the law. . .
- Greater resources are needed to evaluate the compliance of pass-through entities, especially large and complex ones, and pass-through audit rates dropped because of funding cuts, the agency said. . . [its] the strategic plan. The agency audited 4.4% of pass-throughs in 2010, and the rate dropped to 0.1% in 2017, the most recent year with nearly all audits closed, according to the plan, which was released in April.
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High Net Worth Issues

- Responding to Information Document Requests can be very burdensome, with a number of practical and ethical concerns
- IRS Counsel is often involved through the audit
- Often if information is not produced by the IDR deadline the IRS will issue a pre-summons letter and then an IRS summons

High Net Worth Issues

- Some examples of the broad scope of high net worth audits include
 - Estate and Gift Tax Issues
 - **Valuation Issues**
 - Executive Compensation
 - C corporation and S corporation Issues
 - **Noncash Charitable Contributions**
 - **Partnership and LLC Issues**
 - Passive Activity Loss
 - Foreign Trusts
 - Foreign Bank Account Reporting
 - Basis and At-Risk Issues
 - Transfer Pricing Issues
 - **Private Airplane Issues**
 - **Business v. Personal Use of Assets – Section 183 & 162**

Private Airplanes Cases - Hot



What is the Tax Planning Technique?

- Sutherland Lumber – Southwest Inc. v. Comm’r, 255 F.3d 495 (8th Cir. 2001)
- SIFL planning

Airplane Cases

- Need 51% business use to take accelerated depreciation. The first 25% of business use cannot be a rental to a related party or personal use treated as a fringe benefit.
- Depreciation and the Section 280F trap
- Entertainment Facility trap
 - No deduction is allowed for an entertainment facility. §274(a)(1)(B). Exception Transportation entertainment facilities are deductible if the facility is used in pursuit of a trade or business. §1.274-2(b)(1)(iii)(1); TAM9608004. (Planning – Document business need for the plane)
 - Take the time to do good flight logs
 - Watch the 280F depreciation recapture
 - FAA rules require a dry lease. Make sure you do not violate Section 280F

Airplane Cases

- IRS Activity
 - IRS Notice – IR – 2024-46 (2/21/24) – IRS Notice of more audits
 - LB&I “Campaign” Issue
 - Checklist
 - Flight Logs
 - Business Purposes – Document (162 + 183)
 - 280F
 - PE v. PNE Flights – Document
 - Entity – Partnership or Corporation
 - Dry Lease
 - FAA – Part 91 or 135
 - State Tax Issues – Fly Away States

Airplane Cases (cont.)

- Use a Partnership or Corporate structure
- SIFL or §274-10(e)
- Personal Entertainment v. Non-Personal Entertainment
- SIFL is much more favorable than §274-10(e)
- Avoid Schedule C Structure – CCA 202117012 (4/30/21)
 - IRS: Can not pay a fringe benefit to a sole proprietor so income is not SIFL income. Simply disallow all personal expenses. Unclear how to measure expenses.

Airplane Cases (cont.)

- Section 280F
 - Leasing and Fringe Benefit Traps
 - Here's a new one – a single member LLC is not a single member LLC
 - New IRS training materials issued November, 2024

Airplane Cases (cont.)

- Section 183 – Hobby Loss
 - Business Plan
 - Factors §1.183-2(b) – See Schwarz v. Comm’r, Tax Court Dkt. 12347-20 (case pending)

Family Office Planning

- Lender Mgmt LLC V. Comm'r,
T.C. Memo 2017-25
- Family office takes a profits interests in investments and is treated as a trade or business
- Has to be a real trade or business – 162 and 183 issues
- Pending issues
 - Planes
 - Cost Seg
 - Real Estate Professional
 - Not For Profit
 - Professional Gambler

Family Office Planning

- Section 183 concerns
 - Section 183(a) – Disallows expenses of not-for-profit activities
 - Section 183 on its face applies to “an individual on an S- corporation” Section 183(a) applies to partnership and trusts as well.
Note Section 183 creates presumptions
 - Section 183 does not apply to C-corporations. However 162 still applies to a C-corporation and IRS regulations state that “no inference can be drawn from Section 183 and the regulations thereunder that any activity of a [C] corporation. . . is or is not a business or engaged in for profit.” Treas. Reg. 1.183-7(a)
 - Sorry – Slapping a hobby into a C-corporation does not work (at least not well)

Responding to Information Requests – Ethical Issues

Due Diligence – Ethical Issues

- Due Care – AICPA Code of Professional Conduct, Section 50 Article V.
- Model Rule of Prof. Res. 1.3
- Wis. SCR 20:1.3
- Missouri Supreme Court Rule (4-1.3)

Circular 230 - Prompt Disposition of Matters and Responses to Requests for Information §10.20 and §10.23

- If the IRS makes proper request for records or information, a practitioner must promptly respond to the request unless the practitioner reasonably has the good-faith belief that the information is privileged
- A practitioner may not unreasonably delay the prompt disposition of any matter before the IRS



Prompt Disposition of Matters and Responses to Requests for Information §10.20 and §10.23 (cont.)

- The practitioner must make a reasonable inquiry of the practitioner's client as to who has possession or control of the requested information
 - However, a practitioner need not make inquiry of any other persons or verify information provided by the client

Comment: Consider these rules when responding to a "wealth squad" IDR, a detailed LB&I IDR or a very broad discovery request.

Prompt Disposition of Matters and Responses to Requests for Information §§10.20 and 10.23 (cont.)

- Where the documents or information requested by the IRS are not in the possession of the practitioner or client, the practitioner must promptly provide the IRS employee seeking the information with any information the practitioner has about who has possession or control of the requested information

Comment

This rule certainly seems to raise Section 7525 and attorney-client concerns

Acknowledgement of IDR after 1.1.26



IRS Acknowledgement IDR-- Happens at the end of the audit

- In recent years IRS issued to most LB&I taxpayers an IDR that attempts to box the taxpayer into certain facts
- How to respond to the IDR?
- Why noncompliance is not an option:
 - Burden of proof issues
 - Rule of evidence issues (must make info available to opponent)
 - Penalty issues--arguing reasonable cause
 - IRS appeals uses a nonresponse as a basis for not appealing
 - Qualified offer issues

Acknowledgement IDR

- Use the acknowledgement IDR to support your claim
- See this in most cases
- IRS is no longer issuing these after 1.1.2026

Burden of Proof

Switching the Burden of Proof to the IRS

- Burden of proof can be important in valuation cases
- This is especially so if the IRS does not obtain a good valuation report

Make Sure During the Audit That the Burden of Proof Will Switch at Trial

- Burden to IRS
 - In most civil controversies, a rebuttable presumption existed that the IRS's determination of tax liability is correct
 - *i.e.*, the taxpayer has the burden of proving the IRS is wrong
 - Section 7491 switched the burden to the government in any non-criminal court proceedings, regarding a factual issue, if the taxpayer introduces credible evidence, which is relevant to determination of its liability

Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- Qualification
 - Code section 7491, which switches the burden of proof to the IRS, applies only to litigation in the courts between the taxpayer and the IRS
 - In order to obtain a shift in the burden of proof, the taxpayer must first comply with all requirements of the code section

Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- Comply with substantiation requirements contained in the Code and Regulations;
- Cooperate fully with the IRS;
- Exhaust all administrative remedies available to the taxpayer, such as going to the IRS Appeals office; and
- Produce credible evidence at trial.

Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

The requirement to prove credible evidence means that the burden technically starts out on the taxpayer, but shifts to the government unless the taxpayer produces evidence that would enable the court to find in favor of the taxpayer, absent any contrary evidence being produced by the IRS and ignoring the judicial presumption of IRS correctness

Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

Finally, the shift in the burden of proof applies to all income, gift, estate, generation-skipping, taxes and all penalties in addition to tax

- However, it does not apply to corporations, partnerships or trusts with the net worth exceeding \$7 million (book value)
- **Is some planning possible**

Deadline Traps - Refunds

DO NOT BLOW CRITICAL DEADLINES

- The Three Principal Claim for Refund forms are as follows:
- Form 1040X is used to claim a refund of individual income taxes
- Form 1120X is used to claim a refund of an overpayment of corporate income tax
- Form 843 is used to claim a refund of any tax other than income tax as well as penalties and interest
- Informal claims are possible - but not recommended

DO NOT BLOW CRITICAL DEADLINES

- If a return is filed or the tax is paid prior to the due date, for statute of limitations purposes, the return is treated as filed and the tax is treated as paid on "the last possible day" the return could have been filed without being delinquent
- The early payment of the tax rule occurs when a taxpayer's wages are subject to withholding or estimated tax payments are made
- The amount of the claim is limited by whether the taxpayer has fallen under the three-year statute of limitations or two-year statute of limitations

DO NOT BLOW CRITICAL DEADLINES

- Code Section 6511 provides that a claim for refund must be filed within three years of the date the underlying return was filed or within two years of the date the tax was paid, whichever is later

Amended Returns and Mail Box Rule of Section 7502

- An amended return showing tax due - no mail box rule (not “required” to be filed)
- Return claiming a refund of tax – mail box rule applies (return is “required” to be filed) CCA 20152003 - but be smart. Avoid the fight

The Protective Refund Claims

- Use the correct form
- Can you just send a letter?
- Comment: Big problem if this is missed

Hot Issue, Refund Claim Traps For The Unwary

- Trap for the Unwary
 - The claim is formally denied on IRS Letter 105C. This starts a two-year clock from filing a complaint in Court. The IRS is now routinely issuing Letter 105C.
- Comment: Trap for the unwary—a Form 907, which extends the two-year clock, requires a special power of attorney. The form also requires high level authority to sign.

Contents of Refund Claim

- Make your claim as broad as possible
- Watch out for the "variance doctrine"
- Courts will only allow a taxpayer to bring suit on a claim for refund on the grounds raised in the claim for refund. Thus, care should be taken to assure that all grounds have been stated in the claim for refund

Do Not Wait to File a Refund Claim

- NOL Example
- Audit Example
- IRS Letter 105C Example

Passive Loss Cases



Passive Losses and the Real Estate Professional

- Section 469
- Rental Real Estate
- Real Estate Professional
- Proving Material Participation
- Make a Grouping Election – watch limited partnership trap

Passive Loss Rules

- Limit a taxpayer from deducting losses and excess credits from a passive activity against income from nonpassive activities. I.R.C. § 469(a)
- A passive activity is one that:
 - Involves the conduct of a trade or business in which the taxpayer does not materially participate. I.R.C. § 469(c)(1)
 - Is a rental activity. I.R.C. § 469(c)(2)

Passive Loss Rules (cont.)

- Establishing Material Participation
 - A taxpayer materially participates in an activity if, and only if, the taxpayer meets one of the following seven tests:
 - Work done in a taxpayer's capacity as an investor does not count toward the 500 Hour test, unless the taxpayer is directly involved in the day-to-day management or operations of the activity. Treas. Reg. § 1.469-5T(f)(2)(ii)
 - Investor activities include studying and reviewing financial statements or reports on an activity, preparing studies or analyses of the activity's finances or operations for the taxpayer's own use, and monitoring the activity's finances or operations in a nonmanagerial capacity

Passive Loss Rules (cont.)

- Facts and circumstances. Treas. Reg. § 1.469-5T(a)(7)
 - Taxpayer can establish material participation by regular, continuous and substantial involvement in an activity based on all the facts and circumstances
 - Must participate in activity for more than 100 hours. Treas. Reg. § 1.469-5T(b)(2)(iii)
 - Caution! Services performed in the management of an activity are disregarded unless:
 - No other individual is compensated for performing management services in connection with such activity; and
 - No other individual performs management services that exceed the hours spent by the taxpayer. Treas. Reg. § 1.469-5T(b)(2)(ii)

Passive Loss Rules (cont.)

- A taxpayer must establish hours of participation under the seven tests
 - Any reasonable means of proof is sufficient to establish hours of participation. Treas. Reg. § 1.469-5T(f)(4)
 - Courts and the IRS are skeptical when a taxpayer makes extravagant claims on the number of hours of participation
 - Courts generally do not accept "post-event ballpark guesstimate" of hours unless supported by credible testimony and other objective evidence
 - Taxpayers are recommended to keep careful records of participation
 - Practice Tip
 - Use an affidavit
 - A client interview
 - Keep good logs

Passive Loss Rules (cont.)

- Special Rules for Real Estate Rental Activities
 - Taxpayers who qualify as "real estate professionals" may treat their real estate rental activities as nonpassive upon a showing of material participation.
I.R.C. § 469(c)(7)
 - To qualify as a "real estate professionals"

Passive Loss Rules (cont.)

- For individuals:
 - The taxpayer must satisfy the two following requirements:
 - More than one half of all personal services performed in trades or businesses must be performed in the real property trades or businesses; and
 - More than 750 hours of services must be performed in real property trades or businesses in which the taxpayer materially participates.
I.R.C. § 469(c)(7)(B)
 - Personal services include any work performed by the individual in the connection with a trade or business, except for:
 - Worked performed by an individual in the individual's capacity as an investor. Treas. Reg. § 1.469-9(d)(4)

Passive Loss Rules (cont.)

- Services performed as an employee, unless the employee is a 5% owner of the employer. I.R.C. § 469(c)(7)(D)(ii)
 - Practice Tip: When looking to purchase Real Estate (*e.g.*, Apartment Buildings), document that the activity is not investment activity
- Services of the taxpayer's spouse cannot be combined to satisfy either of the two requirements. Treas. Reg. § 1.469-9(c)(4)
- Caution! Rental activities held through a passthrough entity constitute a single interest if the entity grouped its real estate as a single activity. Treas. Reg. § 1.469-9(h). However, if a taxpayer owns directly or indirectly a 50% or greater interest in the passthrough entity, each interest in rental real estate is treated as a separate interest unless the taxpayer makes his or her own election to treat all interests in real estate as a single activity.

Questions?

THANK YOU!

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