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# 2024 Year-End Tax Planning

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Dive into Withum's Tax Planning Guide for your annual year-end individual and business tax planning tips, including top planning considerations for specific scenarios.

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Speak with Withum's Private Client Services Team to determine what tax savings may be available to you.

# PRIVATE CLIENT SERVICES: INDIVIDUAL TAX PLANNING

## 2024 Individual Tax Brackets and Rates

| RATE | SINGLE | MARRIED FILING JOINTLY | HEAD OF HOUSEHOLD |
|---|---|---|---|
| | TAXABLE INCOME OVER | | |
| 10% | $0 | $0 | $0 |
| 12% | $11,600 | $23,200 | $16,550 |
| 22% | $47,150 | $94,300 | $63,100 |
| 24% | $100,525 | $201,050 | $100,500 |
| 32% | $191,950 | $383,900 | $191,950 |
| 35% | $243,725 | $487,450 | $243,700 |
| 37% | $609,350 | $731,200 | $609,350 |

## 2025 Individual Tax Brackets and Rates

| RATE | SINGLE | MARRIED FILING JOINTLY | HEAD OF HOUSEHOLD |
|---|---|---|---|
| | TAXABLE INCOME OVER | | |
| 10% | $0 | $0 | $0 |
| 12% | $11,925 | $23,850 | $17,000 |
| 22% | $48,475 | $96,950 | $64,850 |
| 24% | $103,350 | $206,700 | $103,350 |
| 32% | $197,300 | $394,600 | $197,300 |
| 35% | $250,525 | $501,050 | $250,500 |
| 37% | $626,350 | $751,600 | $626,350 |

## 2024 Standard Deduction

SINGLE AND MARRIED FILING SEPARATELY
**$14,600**

MARRIED FILING JOINTLY AND SURVIVING SPOUSES
**$29,200**

HEAD OF HOUSEHOLD
**$21,900**

## 2025 Standard Deduction

SINGLE AND MARRIED FILING SEPARATELY
**$15,000**

MARRIED FILING JOINTLY AND SURVIVING SPOUSES
**$30,000**

HEAD OF HOUSEHOLD
**$22,500**

## 2024 Individual Long-Term Capital Gains Tax Brackets

| RATE | SINGLE | MARRIED FILING JOINTLY | HEAD OF HOUSEHOLD |
|---|---|---|---|
| | Taxable Income (including Capital Gains) Over | | |
| 0% | $0 | $0 | $0 |
| 15% | $47,025 | $94,050 | $63,000 |
| 20% | $518,900 | $583,750 | $551,350 |

## 2025 Individual Long-Term Capital Gains Tax Brackets

| RATE | SINGLE | MARRIED FILING JOINTLY | HEAD OF HOUSEHOLD |
|---|---|---|---|
| | Taxable Income (including Capital Gains) Over | | |
| 0% | $0 | $0 | $0 |
| 15% | $48,350 | $96,700 | $64,750 |
| 20% | $533,400 | $600,050 | $566,700 |

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## General Income Tax Planning

- Postpone income until 2025 and accelerate deductions into 2024.
  - Doing so may enable you to claim larger deductions, credits, and other tax breaks for 2024 that are phased out over varying levels of adjusted gross income (AGI).
  - Postponing income also is desirable for taxpayers who anticipate being in a lower tax bracket next year due to changed financial circumstances.

- Long-term capital gain from sales of assets held for more than one year is taxed at 0%, 15% or 20%, depending on your taxable income. If you hold long-term, appreciated capital assets, and are in the 0% rate bracket, consider selling enough long-term assets to maximize the 0% rate in 2024.
- The 3.8% net investment income (NII) tax will apply depending on your modified adjusted gross income (MAGI) and NII for the year. You should consider ways to minimize or eliminate (e.g., through deferral) additional NII for the year, while trying to reduce MAGI other than NII.
- The 0.9% additional Medicare tax applies to individuals for whom the sum of their wages received with respect to employment and/or self-employment income exceeds a threshold amount ($250,000 for joint filers, $125,000 for married filing separately, and $200,000 in other cases). Employers must withhold the additional Medicare tax from wages in excess of $200,000, regardless of filing status or other income. Thus, you can minimize the additional Medicare tax by deferring income to 2025.
- Consider asking your employer to increase withholding of state and local taxes (or you can pay estimated state and local tax payments) before year-end to pull the deduction of those taxes into 2024. Remember that state and local tax deductions are limited to $10,000 per year until 2026, so this strategy is not a good one to the extent it causes your 2024 state and local tax payments to exceed $10,000.

- Consider relocating your residency and domicile for the purpose of reducing or eliminating your state income tax. For example, common states where people move to reduce state income taxes are Florida, Texas, Wyoming, and Nevada.
- Consider increasing the amount you set aside for next year in your employer's health flexible spending account (FSA).
- Consider contributing to a health savings account (HSA).

> For 2024, individuals with a high deductible health plan can contribute $4,150 for self-only coverage and $8,300 for family coverage.

- If you've made any energy home efficient improvements you may be eligible for a tax credit.  The credit applies to a wide range of home upgrades including insulation, windows, doors, and energy efficient appliances.

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- If you were in a federally declared disaster area, you may want to settle an insurance or damage claim in 2024 to maximize your casualty loss deduction. Confirmation regarding whether the damaged area is categorized by the IRS as a federal casualty loss or qualified disaster loss is important to avoid the 10% AGI limitation. A taxpayer can make an election to deduct a disaster loss in a federally declared disaster area for the year before the year in which the loss occurs.

A calendar-year taxpayer who suffers a disaster loss in 2024 has until October 15, 2025, to make this election to deduct the loss for 2024.

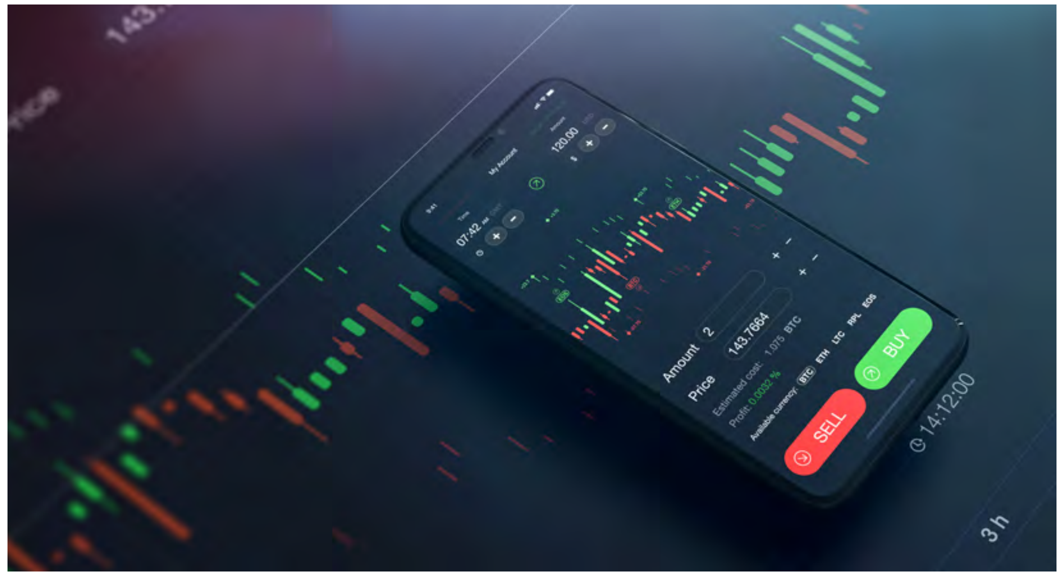
- If eligible, consider making a qualified charitable distribution (QCD) to support your favorite charities. A taxpayer can transfer up to $105,000 in 2024, which can help you reduce taxable income without itemizing. QCDs can also count towards your required minimum distributions (RMD). See the RMD section for more information.
- Donating to a donor-advised fund can be a strategic way to manage your charitable giving and accelerate your deductions.
- A 529 plan, also known as a qualified tuition plan, is a tax-advantaged savings plan aimed at encouraging savings for education expenses. These plans are sponsored by states, state agencies, or educational institutions, and contributions are treated as completed gifts for federal gift tax purposes. Although contributions are not federally deductible or limited, each state may have their own aggregate limits per beneficiary and allowable deduction.


- You may contribute up to $2,000 per beneficiary annually to a tax-exempt Coverdell Education Savings Account (Coverdell ESA) for individuals under 18 (or special needs beneficiaries of any age). The maximum contribution is gradually reduced for those with a modified AGI between $190,000 and $220,000 for joint filers and between $95,000 and $110,000 for others.

## Capital Gain Planning

- **Should I sell stocks/bonds now or wait for the new year?** Capital gain rates are always top of mind, especially for those with substantial unrealized gains or business owners looking to sell their businesses. An increase in capital gain rates, even by a few percentage points, could make the difference between selling now or later.
- With the volatility of the market, many have seen a decrease in the value of their stocks. If there is a decision to sell loss stock in 2024, individuals should remember that capital losses can be used only to offset realized capital gain and an additional $3,000 of ordinary income each year.

- While individuals might be motivated to sell stock during 2024 to capture the capital loss and purchase the same stock at a lower cost, the wash-sale rule could apply. The wash-sale rule prohibits selling an investment for a loss and replacing it with the same or a "substantially identical" investment within 30 days before or after the sale. If you have a wash-sale, the loss will be deferred until the replacement investment is sold.
- The "wash sale" rule stops taxpayers from claiming a loss on the sale of stock or securities if they buy and sell substantially identical stock or securities within a 61-day window (30 days before or after the sale date). This means you can't sell stock to create a tax loss and then repurchase it the next day. However, there are strategies to partially maintain an investment position while still realizing a tax loss, such as waiting to buy the same securities at least 31 days after sale or shift investments to similar securities in different companies in the same line of business.
- Donating appreciated stock to charity can be a smart tax strategy. When you donate stock that has increased in value, you avoid paying capital gains tax on the appreciation. Additionally, if you held the stock for more than one year, you can claim a charitable deduction for the full market value of the stock at the time of the donation, which can reduce your taxable income. This way, both you and the charity benefit more than if you sold the stock and donated the cash proceeds.



## Tax-Advantaged Accounts

- It may make sense to convert all or part of your eligible retirement accounts (e.g., traditional IRA) to a Roth IRA before year-end. However, such a conversion may increase your AGI for 2024, and possibly reduce tax breaks that are tied to AGI (or MAGI).
- Consider taking versus delaying RMD from your IRA or 401(k) (or other employer-sponsored retirement plan).
- The IRS announced it will not impose penalties on failures to take specified RMDs for the 2024 taxable year in relation to inherited IRAs.

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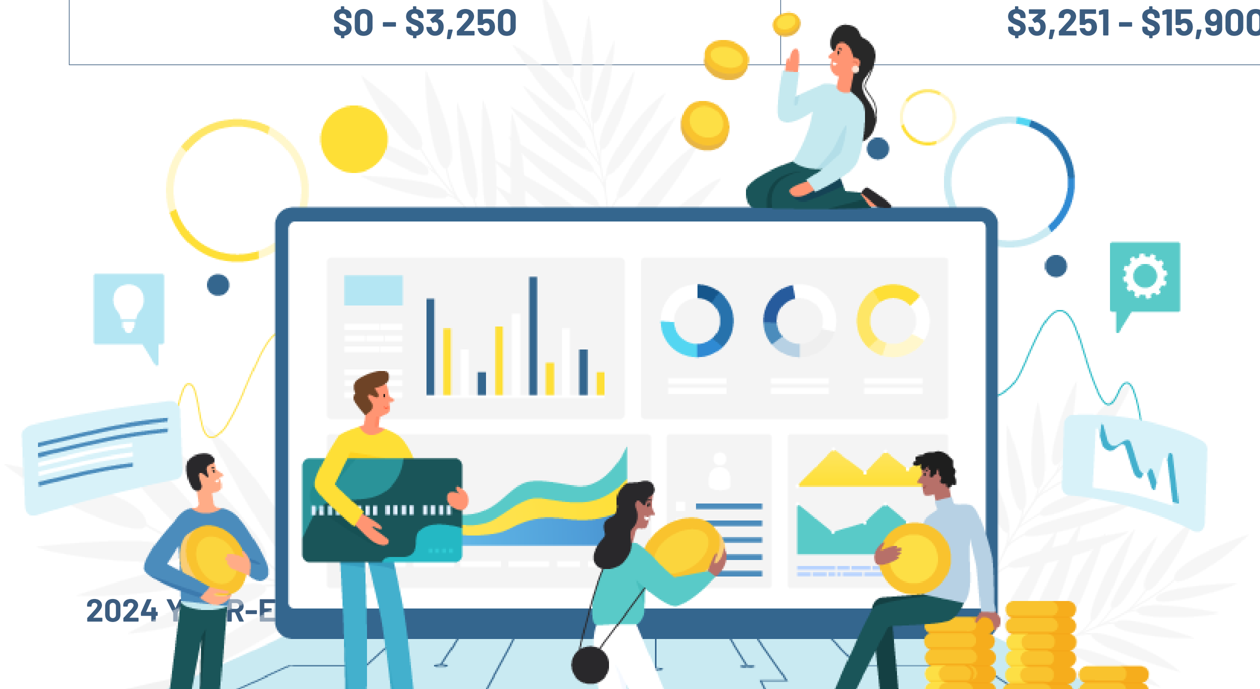
# Trusts and Estates

## 2025 Trust and Estate Income Tax Brackets and Rates

| IF TAXABLE INCOME IS BETWEEN: | YOUR TAX IS: |
|---|---|
| **$0 - $3,150** | 10% of the taxable income |
| **$3,151 - $11,450** | $315 plus 24% of the excess over $3,150 |
| **$11,451 - $15,650** | $2,307 plus 35% of the excess over $11,450 |
| **$15,651 and above** | $3,777 plus 37% of the excess over $15,650 |

## 2025 Trust and Estate Long-Term Capital Gains Tax Brackets

| LONG-TERM CAPITAL GAINS | | |
|---|---|---|
| 0% | 15% | 20% |
| $0 - $3,250 | $3,251 - $15,900 | $15,901 and above |



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## Trust and Estate Income Tax Planning

When comparing individual tax brackets and rates to those of trusts and estates, it's apparent that trusts and estates reach the highest tax rates much quicker than individuals. Careful consideration should be paid to whether a distribution of income from an estate or a complex trust to a beneficiary would result in less total tax paid on the same income taxed at the individual level versus the estate or trust level. Distributions of income in this scenario would shift the income from being taxed on the estate or trust's tax return to the individual tax return of the beneficiary receiving the distribution. If the beneficiary is in a lower tax bracket than the trust, this would result in overall tax savings.

Another planning opportunity surrounding trust distributions is utilization of the 65-day election under Section 663(b). This annual election allows a trust an additional 65 days after year-end to pay distributions to beneficiaries and report those distributions on the prior year's tax return. This flexibility provides the opportunity to distribute the exact amount of income needed to optimize tax savings and can be paired with the point above regarding the tax brackets and rates to achieve the most favorable outcome for trusts and estates and their beneficiaries.

It's important to note that the above strategies surrounding distributions apply to trusts that are taxed as complex trusts. Not all trusts are taxed as complex trusts - many estate plans incorporate irrevocable trusts taxed as grantor trusts, which offer the grantor the ability to be the owner of trust assets for income tax purposes but not for estate tax purposes. In this case, distributions would not carry out taxable income when paid to beneficiaries. For the reasons above and perhaps others (such as the grantor's liquidity), it may be worth exploring whether a trust

currently taxed as a grantor trust can be taxed as a complex trust in future years to take advantage of these planning opportunities.

## Estate Planning

Estate tax continues to be a hot topic as the lifetime exemption continues to rise with inflation adjustments and is set to decrease in 2026.

- The current lifetime exemption is $13.61 million per person (and increasing to $13.99 million in 2025). If you have not done so already and are comfortable making transfers of assets to the next generation, it might be a good idea to take advantage of the $13.61 million per individual ($27.22 million for a married couple) lifetime exemption in 2024.
- **AN IMPORTANT NOTE:** The gift and estate tax lifetime exemption doubled with the passage of the Tax Cuts and Jobs Act, which is effective for tax years 2018 through 2025. The legislation was drafted so that the exemption will automatically decrease in 2026 absent any action from Congress. Those who are interested in making gifts and have sufficient assets to do so are encouraged to gift sooner rather than later; absent a change in tax law, the exemption amount

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is scheduled to decrease in 2026 to approximately $7 million per individual ($14 million for a married couple).

- For 2024, the gift tax annual exclusion limit is $18,000 per donor per donee. This is the amount that can be gifted from assets in your estate to an individual without triggering the gift tax or use of your lifetime exemption. Married couples can double the gift tax annual exclusion limit to $36,000 if they elect to split gifts on their gift tax returns or make gifts from their community property. Basic strategies surrounding use of the gift tax annual exclusion that may or may not yet be included in your overall gifting plan to consider include:
  + Giving $18,000 to each of several family members, or $36,000 each between you and your spouse. These would be nontaxable gifts that would reduce your and your spouse's gross estates.
  + Front-loading 529 plans with up to five years of annual exclusion gifts of cash at once. For example, between you and your spouse, a one-time gift to a 529 plan could be made in 2024 totaling $180,000. However, this would limit annual exclusion gifts over the following five years to that plan's beneficiary specifically.
  + Forgive loans (such as intra-family loans or promissory notes) annually up to the amount of the annual exclusion.

Other strategies that do not use any gift/estate tax exemption are the direct payment of tuition and medical expenses and gifts to your spouse. Tuition and medical expense payments are not treated as a taxable gift and do not use any of your lifetime exemption amount as long as the payments are made directly to the educational or health care institution. These can be made on anyone's behalf and are not limited to immediate family members.

Additionally, gifts to a spouse, assuming you are both U.S. citizens, qualify for the unlimited marital deduction and are not subject to gift tax.

For those worried about giving away too much, Spousal Lifetime Access Trusts (SLATs) are worth considering. SLATs have become popular over the past few years due to their flexible terms and the increased lifetime exemption amounts. SLATs allow a donor-spouse to use a significant portion of their exemption by transferring assets to a trust while maintaining indirect access to the assets transferred through the beneficiary-spouse.

## Planning in a High-Interest Rate Environment

Inflation and interest rates affect so many aspects of our lives – groceries, mortgages, business loans, and so forth – and we often forget that they affect our estate planning strategies as well. When the Federal Reserve increases the fed funds rate, there are usually increases to other rates, including the applicable federal

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rates (AFRs) and the section 7520 rate (the GRAT hurdle rate), both of which are integral parts of estate planning.

When interest rates are elevated, even slightly, we look for silver linings. Interest rate changes are particularly relevant for estate planning techniques that involve split gifts, like those made to qualified personal residence trusts (QPRTs), charitable remainder trusts (CRTs), and grantor retained annuity trusts (GRATs), as well as for more straight-forward transactions like intra-family loans. The popularity of split gifts in these environments is a product of the way a gift's value is calculated, which is by taking the fair market value of the gift and subtracting the retained interest. In a high-interest rate environment, the value of the taxable gift is further reduced. If the taxable gift is lower, less exemption is used when making the gift.

## QPRTs AND CRTs

With QPRTs, you transfer your home into a trust, retain the right to live in it for a specified period of time, and then gift that property to designated beneficiaries (usually children/family members) at the end of the QPRT term. Each piece of that split-interest gift is valued at the time the transfer is made. A higher interest rate means the value of the retained interest to live in the home is higher, which means that by default, the value of the remaining interest, or taxable gift, is lower. This is a tax-efficient way to keep a home in the family for generations. Two important points surrounding QPRTs are choosing the appropriate term during which you retain the right to remain in the home, and whether you remain in the home after it passes to your beneficiaries. Should you pass away during the QPRT term, the value of the home is brought back into your estate, so careful consideration should be paid to how many years you choose for the QPRT term. You may also continue living in the home after it passes to your beneficiaries, but fair market value rent must be

paid to the beneficiaries from that point on. Keep in mind that the payment of rent will remove assets from your gross estate.

With CRTs, you establish an income stream to a beneficiary for a defined period, followed by a gift to charity. The charitable deduction — the second part of the gift — is equal to the present value of the remainder interest passing to charity, meaning that the higher the interest rates, the higher the charitable deduction, which is a positive outcome for income tax purposes. It's best to use low-basis assets with CRTs because you won't recognize gain on the contribution, but the full fair market value will be used to compute the value of the income interest and the charitable deduction.

## Intra-Family Loans and GRATs

Other useful strategies in rising rate environments include intra-family loans and GRATs. These may also appeal to those who have used a significant portion of their lifetime exemption. With intra-family loans, you make a loan to a family member using the AFRs set forth by the IRS. While AFRs are high, they're typically lower than average mortgage rates, for example, so if you have a family member who needs liquidity, this could be a good solution.

GRATs are used to transfer appreciation in assets to named beneficiaries without the imposition of gift tax. They are particularly relevant for those who have used up their exemption amounts and are looking to transfer more wealth out of their estate. The grantor transfers an asset into a GRAT while retaining an annuity interest for a period of time, and to the extent that asset appreciates in value over the Sec. 7520 hurdle rate during that period, that appreciation passes to your beneficiaries gift tax-free. A common GRAT strategy is to establish short-term, rolling GRATs to mitigate mortality risks and avoid adverse effects of fluctuations in the GRAT asset values.

## Sale to an Intentionally Defective Grantor Trust

Another strategy for those that may not have much of their lifetime exemption remaining is a sale to an intentionally defective grantor trust (IDGT). This works much like a GRAT in that it's a freezing technique where an appreciating asset is sold at the then-fair-market-value to an irrevocable trust in exchange for an installment note. This becomes a transaction that is disregarded for income tax purposes and removes the future appreciation on the asset from the seller's estate at minimal or even no gift tax cost. Typically, there is a "seed" gift to fund the trust up front of at least 10 percent of the sales price should the trust not have liquidity to facilitate the note.

## Retirement Plans as Part of Your Estate Planning

Recent changes involving retirement plan accounts within an estate plan are significant enough that you may want to review your estate plan to be sure beneficiary designations still reflect the intended income tax consequences, especially if the account

is left to a trust. The income tax consequences of these accounts may vary depending on the type of account and the type of designated beneficiary.

It is crucial to understand how these assets will be taxed for the recipient, especially when the recipient is a trust. The age of the decedent and the type of beneficiary (e.g., surviving spouse, trust, charity, etc.) will affect how quickly the accounts must be liquidated, and therefore taxed, when in the hands of the beneficiary.

The **SECURE Act** significantly affected the required minimum distributions, or RMDs, for a beneficiary that inherits a retirement plan account after January 1, 2020.

Certain inherited accounts will need to be fully depleted after 10 years, so timing and planning for these distributions for income tax and cash flow purposes is pivotal.

The estate and income tax consequences of these retirement accounts can make them an ideal asset to leave to a charity if you are charitably inclined. This shifts the income tax burden away



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▶ PRIVATE CLIENT SERVICES: INDIVIDUAL TAX PLANNING
+ INDIVIDUAL TAX BRACKETS AND RATES
+ GENERAL INCOME TAX PLANNING
+ CAPITAL GAIN PLANNING
+ TAX-ADVANTAGED ACCOUNTS
+ TRUSTS AND ESTATES
+ TRUST AND ESTATE INCOME TAX PLANNING
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+ INTRA-FAMILY LOANS AND GRATs
+ SALE TO AN INTENTIONALLY DEFECTIVE GRANTOR TRUST
+ RETIREMENT PLANS AS PART OF YOUR ESTATE PLANNING
+ REQUIRED MINIMUM DISTRIBUTIONS
+ CONTRIBUTION LIMITS

**Speak with Withum's Private Client Services Team to determine what tax savings may be available to you.**

from both your estate and your heirs to an entity not subject to income taxes.

Roth conversions have also become increasingly popular as the tax law has grown in complexity for these assets. A Roth conversion allows the taxpayer to convert a pre-tax account to an after-tax account so that the income tax liability is generated by the taxpayer before death. This strategy avoids income tax consequences for the estate or beneficiary and the payment of the tax by the taxpayer reduces their gross estate.

## Required Minimum Distributions

There are a few things to keep in mind for retirement planning at year-end. RMDs, which begin at age 73 (except for Roth IRAs), are one consideration. There is a complex set of rules around when distributions from inherited IRAs must be taken, so beneficiaries should work with their Withum Wealth planners for the correct guidance.

RMDs are classified as ordinary income and can push individuals into a higher tax bracket for a particular calendar year. Those who do not need the income may consider making a qualified charitable distribution from their IRA. This allows charitably inclined individuals to direct up to $105,000 from their IRA each year (at age 70½ and older) to a public charity, reducing the RMD — and thus, taxable income — by that amount.

## Contribution Limits

In 2024, the maximum amount that can be contributed to an employer-sponsored plan is $23,000, with a $7,500 catch-up contribution for those 50 and older. Beginning in 2025, there will be a special catch-up for those aged 60 to 63 for the greater of $10,000 or 150% of the regular catch-up amount in effect for the taxable year that is indexed for inflation.

For IRAs, the contribution limit for 2024 is $7,000, with a $1,000 catch-up contribution for those 50 and older. The deadline for 2024 IRA contributions is April 15, 2025. The contribution limit for 2025 remains the same — $7,000 per person with a $1,000 catch-up contribution for those 50 and older.

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# TAX STRATEGIES FOR BUSINESSES

**The corporate tax rate is currently a flat 21% rate. There is also a 15% corporate alternative minimum tax (CAMT) based on book income for companies with average annual adjusted financial statement income exceeding $1 billion.**

## Limits on Deduction of Business Interest

Every business, regardless of its form, is generally subject to a disallowance of a deduction for net interest expense in excess of 30% of its adjusted taxable income (ATI). The interest expense limitation is applied at the partnership level but flows through to the partners and reduces the partner's outside basis in their partnership interest. The interest expense limitation is applied at the C and S corporation levels, remaining at the entity level until excess taxable income can be generated to utilize interest previously disallowed.

A taxpayer may reduce the amount of disallowed interest by increasing the amount of capitalized interest, which is not subject to disallowance. Several provisions under the code, including sections 263(a), 263A, and 266, require or allow taxpayers to capitalize interest to inventory or property. Please work with your tax advisor for future planning.

### EXEMPTIONS FROM THE LIMITATION ON BUSINESS INTEREST DEDUCTIONS:

- An exception from these rules applies for taxpayers (other than tax shelters) with average annual gross receipts for the three-tax year period ending with the prior tax year that do not exceed $30 million.

- Real property trades or businesses can elect out of the provision, but they must use ADS to depreciate nonresidential real property, residential rental property, and qualified improvement property (and ADS generally has longer recovery periods than MACRS). Any asset with a class life of less than 15-years can still be depreciated using MACRS and take advantage of bonus depreciation (60% in 2024 and 40% in 2025).
- An exception from the limitation on the business interest deductions is also provided for floor plan financing (i.e., financing for the acquisition of motor vehicles, boats, or farm machinery for sale or lease and secured by such inventory).
- Expansion of small businesses that are able to use the cash (as opposed to accrual) method of tax accounting. To qualify as a small business, a taxpayer must, among other things,

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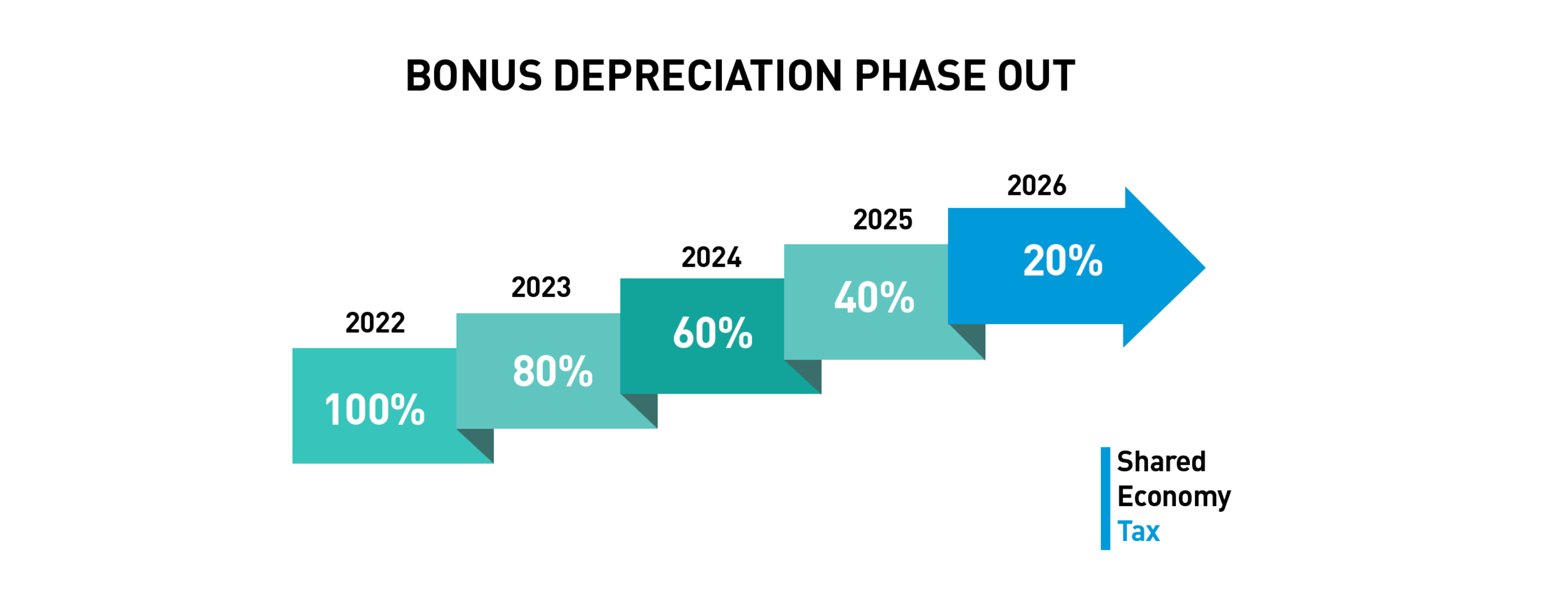
satisfy a gross receipts test. For the 2024 taxable year, the gross receipts test is met if using the preceding three-year testing period, the average annual gross receipts do not exceed $30 million. Cash method taxpayers may find it easier to shift income between tax years, e.g., by deferring billings until next year or by accelerating expenses such as paying bills early.

**NOTE:** If a taxpayer can meet the small business gross receipts test, other advantages include not being required to follow UNICAP, being allowed to utilize a simplified method to track inventory, and not being required to utilize the percentage for completion method for long-term contracts.

- Consider making expenditures that qualify for the liberalized business property expensing option.

## BONUS DEPRECIATION

For property placed in service during 2024, the bonus depreciation percentage has decreased from 100% (in 2022) to 60%. The depreciation percentage will continue to decrease 20% each year until bonus depreciation is no longer available for property placed in service in 2027. Planning should occur with your tax advisor on how to optimize bonus depreciation.



## SECTION 179 EXPENSING

Section 179 allows taxpayers to completely expense qualified assets in the year of purchase, instead of having to depreciate them over time. The total section 179 deduction for 2024 is $1,220,000. In addition, the amount of section 179 deduction is reduced by the amount of section 179 property placed in service that exceeds $3,050,000. Therefore, a section 179 deduction is not allowed for a taxpayer who placed more than $4,270,000 of section 179 property into service in the 2024 taxable year.

+ Expensing is generally available for most depreciable property (other than buildings), off-the-shelf computer software, and business-use vehicles (though restrictions apply).
+ Expensing is also available for "qualified improvement property" (generally, any interior improvement to a building's interior, but not for enlargement of a building, elevators or escalators, or the internal structural framework), as well as roofs, HVAC, fire protection, alarm, and security systems.
+ The expensing deduction is not prorated for the time that the asset is in service during the year. Thus, property acquired and placed in service in the last days of 2024, rather than at the beginning of 2025, can result in a full expensing deduction for 2024.
+ Section 179 expensing, unlike bonus depreciation, can give rise to state income tax benefits.
+ 179D Expensing: The energy efficient commercial buildings deduction under Sec. 179D provides taxpayers with an incentive to make certain commercial building properties more energy efficient, including improvements to interior lighting, HVAC and water systems, windows, and roofing. Sec. 179D provides additional opportunities for taxpayers, including as much as $5.65 per square foot (sq. ft.) in the 2024 taxable year in immediate deductions to encourage the construction of energy-efficient buildings. Due to the Inflation Reduction Act, there is an opportunity for energy efficient retrofits of older buildings to become eligible for the deduction. In addition, taxpayers that design buildings owned by governmental entities, tax exempt organizations, and Indian tribal governments could also benefit because those entities are now able to allocate the Sec. 179D deduction to the person "primarily responsible" for the design. Unlike section 179, there is no limitation based on the amount of assets placed in services.

## DE MINIMIS SAFE HARBOR ELECTION

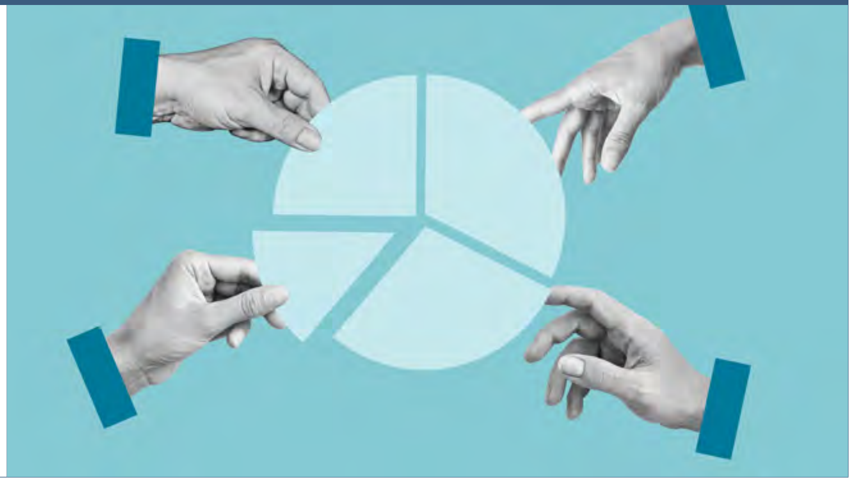
Also known as the book-tax conformity election, this election is an administrative convenience that allows businesses to deduct small-dollar (i.e., up to $2,500 or $5,000 per invoice) expenditures for the acquisition or production of property that otherwise would have to be capitalized, other than amounts paid for inventory or land. The election must be reflected for financial accounting purposes or the books and records of the company as well.

## COST SEGREGATION BENEFITS

Cost segregation is a strategic tax savings tool that allows companies and individuals who have purchased, constructed, expanded, or remodeled any kind of real estate to immediately increase their cash-flow by accelerating their depreciation deductions and deferring their federal and state income taxes. Cost segregation is recognized as an engineering-based tax study accepted by the IRS. The primary goal of cost segregation is to identify, segregate, and reclassify the various building-related assets from either nonresidential real property (39 years) or residential rental property (27.5 years) to a shorter depreciable tax life (e.g., 3, 5, 7, 15, or 20 years). The reclassification of these assets into the shorter depreciable tax lives allows you to take an immediate deduction (60% bonus depreciation) in 2024. However, remember that the 60% bonus depreciation will be reduced by 20% in each year until it disappears completely in 2027. Therefore, if you are planning any type of real estate transaction, the time to pull the trigger is now!

**OTHER COST SEGREGATION SERVICES INCLUDE:**

- Look-back studies to recapture depreciation deductions from prior tax years without amending your tax return
- Repair and maintenance studies
- Section 179D studies relating to energy-efficient commercial buildings
- Purchase price allocation studies



## INCOME ACCELERATION + ESTIMATED TAX PAYMENT PLANNING

Certain corporations (other than large corporations) that anticipate a small net operating loss (NOL) for 2024 and substantial net income in 2025 may find it worthwhile to accelerate just enough of their 2025 income (or to defer just enough of their 2024 deductions) to create a small amount of net income for 2024. This will permit the corporation to base its 2025 estimated income tax installment payments on the relatively small amount of income shown on its 2024 tax return, rather than having to pay estimated taxes based on 100% of its much larger 2025 taxable income.

- Consider whether to elect into bonus depreciation for the 2024 taxable year and review de minimis safe harbor capitalization policies
- Review compensation plans to avoid accelerated deduction
- To reduce 2024 taxable income, consider deferring a debt cancellation event until 2025
- To reduce 2024 taxable income, consider disposing of a passive activity in 2024 if doing so will allow you to deduct suspended passive activity losses
- Consider electing out of installment sale treatment or avoid like-kind exchange transactions

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## EMPLOYEE RETENTION TAX CREDIT

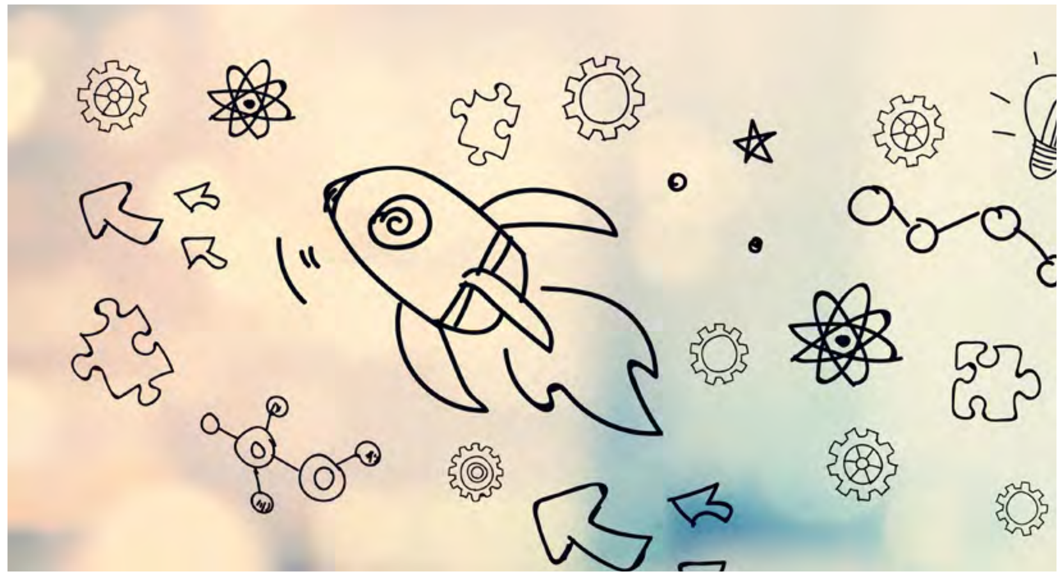
Employers who experienced a greater than 50% reduction in gross receipts in any calendar quarter in 2020, relative to the same calendar quarter in 2019, or a greater than 20% reduction in gross receipts in any of the first three calendar quarters in 2021, relative to the same calendar quarters in 2019 (or greater than 20% reduction in Q4 2020 relative to Q4 2019), may be eligible to claim the employee retention credit (ERC). The ERC amount is a maximum of up to $5,000 per employee for the 2020 taxable year, and up to $7,000 per employee per quarter in the first three calendar quarters of 2021. In addition to the gross receipts decline, an employer can also claim the ERC if it was subject to a governmental order that limited its travel, commerce, or group meetings due to COVID-19. The statute of limitations to file 2020 ERC claims expired this past April, but claims for the 2021 ERC can be filed until April 15, 2025.

## ERC RECOVERY STARTUP BUSINESSES

Businesses that began carrying on a trade or business after February 15, 2020, had average annual gross receipts of less than $1 million, and do not qualify under the gross receipts or full or partial suspension of operations tests, can receive an ERC of up to $50,000 for each of Q3 & Q4 2021 (max credit of $100,000 for 2021).

## RESEARCH AND EXPERIMENTAL (R&E) EXPENDITURES

Starting in 2022 through 2024, companies are required to amortize their R&E costs over five years (and fifteen years for research conducted outside the U.S.), instead of deducting them immediately each year. This change requires companies to perform a detailed analysis on what costs fall under section 174 for capitalization versus section 162 as an immediate ordinary and necessary business expense. The amount of R&E costs that



require capitalization is generally more expansive than the types of qualified research expenditures included in the R&D credit under section 41.

The IRS released Notice 2023-63, as modified by Notice 2024-12, to provide additional guidance surrounding section 174 expenditures. It is effective for tax years ending after September 8, 2023. Businesses should work closely with their tax advisor to understand and properly apply this new guidance, including the review of contract research agreements.

## 1% STOCK BUYBACK EXCISE TAX

The Inflation Reduction Act of 2022 included a new provision requiring covered corporations to pay a 1% tax on the fair market value of any corporate stock that they redeem after December 31, 2022. A covered corporation is a domestic corporation that has stock traded on an established securities market. The definition of a covered corporation could apply to domestic special purpose acquisition companies (SPACs).

Although the deadline for completing reporting and payment obligations related to the excise tax was delayed, the IRS issued final regulations on June 28, 2024 providing guidance on how to report and pay the 1% tax. These final regulations require that the stock repurchase excise tax be reported on Form 720, Quarterly Federal Excise Tax Return, due for the first full calendar quarter after the end of the corporation's taxable year, with the Form 7208, Excise Tax on Repurchase of Corporate Stock, attached. Forms 720 and 7208 due for taxable years ending after December 31, 2022, and on or before June 30, 2024, must be filed by the third quarter due date for Form 720, which is October 31, 2024.

### SECTION 1202 STOCK

For certain C corporations satisfying an active trade or business requirement, shareholders that hold original issuance stock for more than five years can be eligible to have gain on the sale of such stock excluded from tax to the extent of the greater of $10 million or 10 times their original tax basis.

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# CASH INCENTIVES FOR CLEAN ENERGY INVESTMENTS

**One of the most significant changes stemming from the Inflation Reduction Act of 2022 is the ability for for-profit and not-for-profit entities to convert their clean energy credits to cash.**

For-profit entities can apply clean energy credits against their federal income tax due. If no federal income tax is due, most clean energy credits can be carried back three taxable years or forward 22 taxable years. However, for-profit entities that would like to monetize a credit quickly can conduct a one-time transfer (i.e., sale) of select clean energy credits to an unrelated party for cash under section 6418.

While in previous taxable years, not-for-profits were limited to capturing the cash benefits related to clean energy credits directly, unless they had unrelated business income tax, under the Inflation Reduction Act of 2022, all not-for-profits are incentivized to invest in clean energy infrastructure through the direct payment program regardless of tax liability. The newly created direct payment option under section 6417 generally allows tax-exempt entities and state or political subdivisions to receive a cash tax refund for applicable credits.

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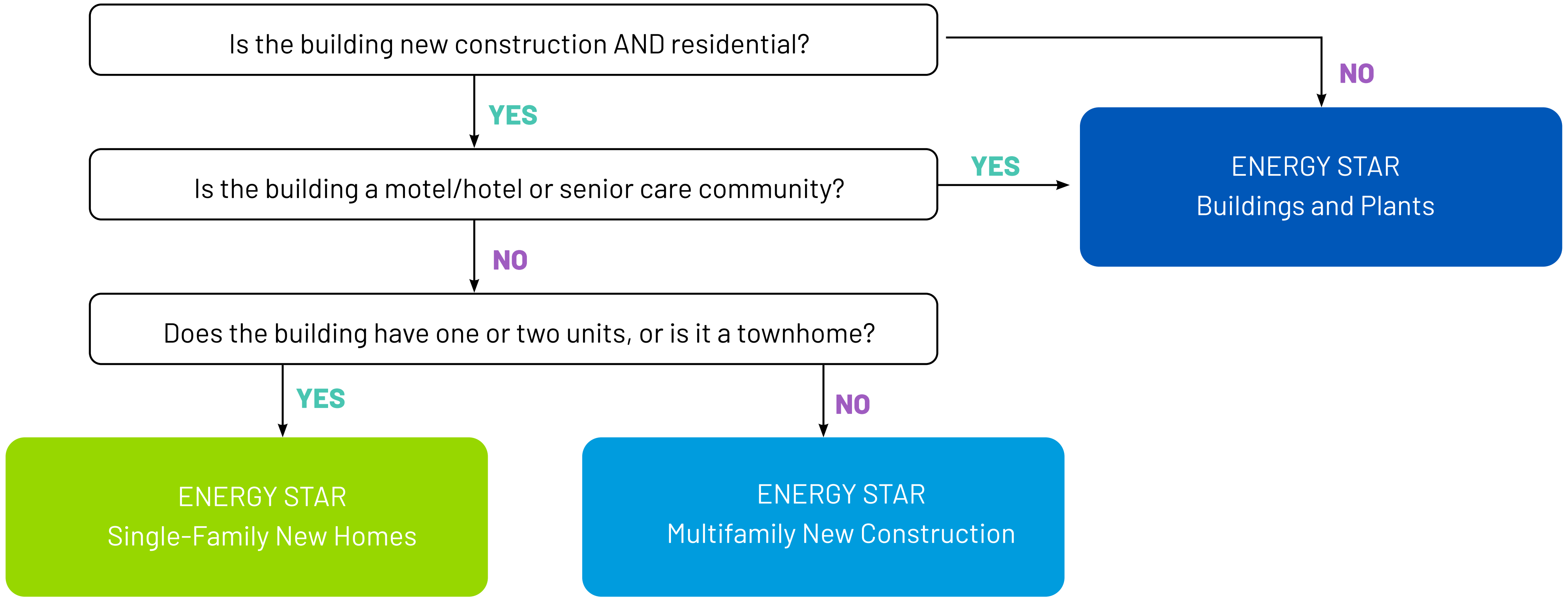
The Inflation Reduction Act extended and modified nine existing federal credits and introduced eight new federal credit opportunities.

## SOME OF THE CREDIT HIGHLIGHTS INCLUDE:

**QUALIFIED COMMERCIAL CLEAN VEHICLES (NEW)** — A credit can be claimed for clean vehicle purchases between 2024 and 2032 for an amount not exceeding $7,500 per vehicle (with a gross vehicle less than 14,000 pounds) or $40,000 (for all other vehicles). For clean vehicles purchased for a trade or business, the critical mineral and battery component is not applicable.

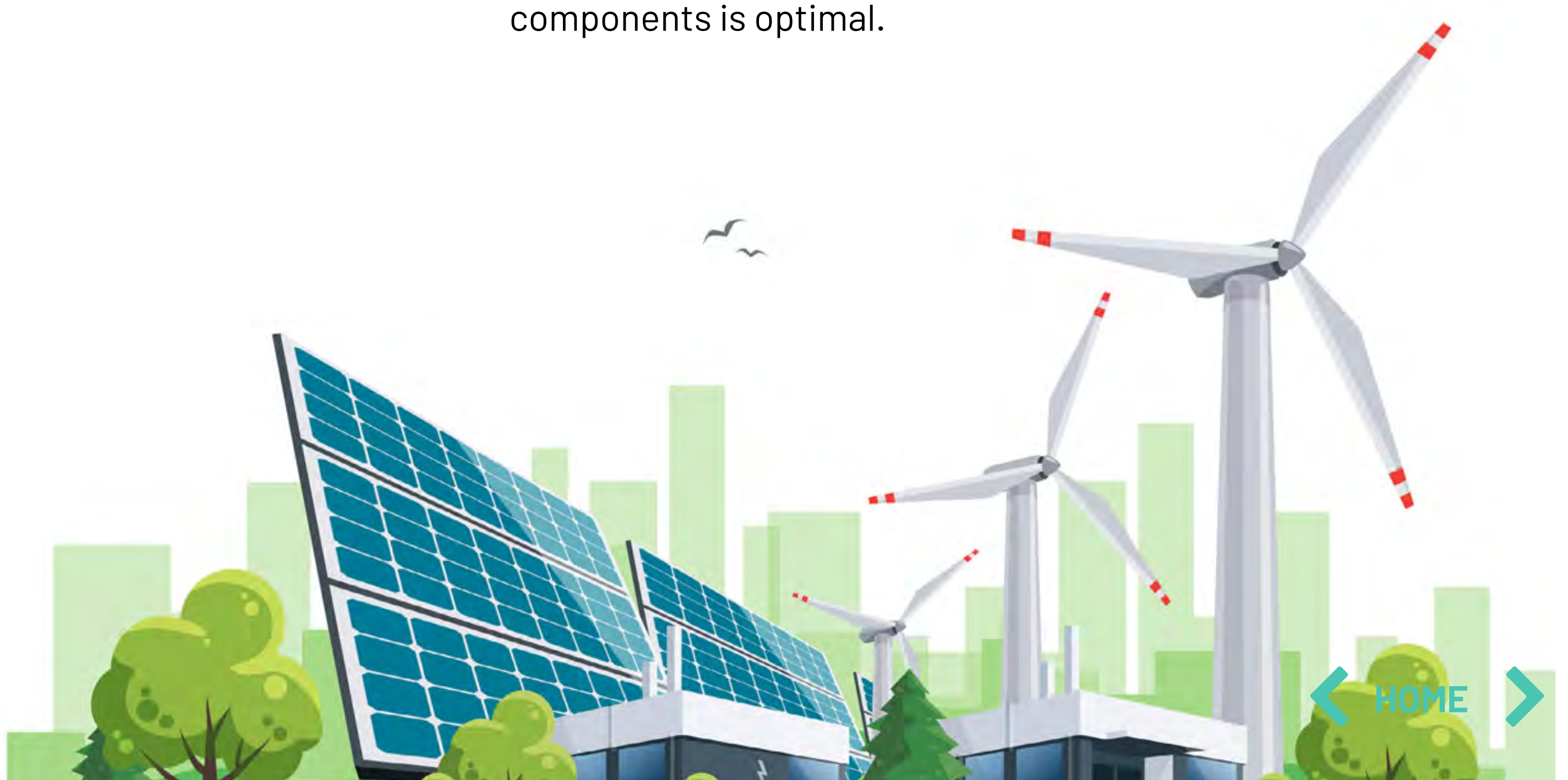
**ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY/CHARING STATIONS (MODIFIED)** — A credit can be claimed up to 30% (providing prevailing wage and apprenticeship requirements are met) of the cost basis for qualified clean-fuel vehicle refueling property located in an eligible census tract. The maximum credit increased from $30,000 to $100,000 and is now applied on a per-property basis under the modified law (as opposed to per-project basis).

**CONTRACTOR ENERGY EFFICIENT HOME CREDIT (MODIFIED)** — The maximum credit allowable to contractors for the construction of new energy-efficient homes was increased from $2,000 to $5,000. In addition, the law was modified to allow a credit for the construction of Energy Star multifamily new construction, with a maximum credit of $5,000 provided.



**ENERGY TAX INVESTMENT CREDIT (MODIFIED)** — The credit was extended to energy projects that begin construction before January 1, 2025, and the list of energy projects that qualify was expanded. Solar energy projects, qualified small wind energy projects, and qualified fuel cell properties are still viable, but energy projects were expanded to include energy storage technology, qualified biogas property, and microgrid controllers. For clean energy projects starting construction after December 31, 2024, the investment credit will transition to the requirements under Section 48E. Section 48E requires the energy project to generate electricity and have greenhouse gas emissions not greater than zero. Based on the proposed regulations, non-combustion and gas electricity generation from wind, hydropower, solar, geothermal, nuclear fission and fusion, and waste energy recovery property deriving energy from the previously listed sources are included energy projects under Section 48E. However, combustion and gas facilities may find it more challenging to fall under the Section 48E additional requirements, and combined heat and power systems and separate energy storage technology will no longer be included as energy projects. In addition, the credits obtainable can be as high as 50% of the cost basis if the prevailing wage and apprenticeship, domestic content and energy community requirements are met.

**ADVANCED MANUFACTURING PRODUCTION TAX CREDIT (NEW)** — The IRS provides a new credit for eligible components related to solar energy, wind, inverters, qualifying batteries, and applicable critical minerals if produced in the U.S. The amount of the credit varies based on the component being manufactured. For-profit businesses can elect for this credit to be refundable over a five-year period, even when no federal tax liability exists (i.e., start-up companies). Alternatively, manufacturing companies can delay the election to receive a refund, and instead sell the credit, until the manufacturing of eligible components is optimal.



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# Purchase of Discounted Clean Energy Credits Applied Against Federal Tax Liability

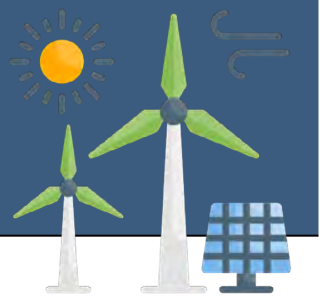
**The purchase of clean energy credits by an unrelated party for the utilization against their own federal tax liability was a significant change in tax law provided under the Inflation Reduction Act, that is often utilized as a tax planning opportunity for C corporations and high net worth individuals.**

The sales industry for clean energy credits is currently experiencing significant growth, with the market for transferable tax credits booming. Crux, a sustainable finance technology company that helps clean energy and decarbonization projects get financed in the United States, has estimated that by the end of 2024, U.S. clean energy tax credit transactions will total $20 to $25 billion. Experts predict this trend will continue rapidly in the future.

The purchase of clean energy credits from a seller must be made in cash, and will not result in taxable income or expense for the seller or purchaser respectively.

## CREDITS THAT ARE AVAILABLE TO PURCHASE INCLUDE:

- Energy Credit (48)
- Clean Electricity Investment Credit (48E)
- Renewable Electricity Production Credit (45)
- Clean Electricity Production Credit (45Y)
- Advanced Manufacturing Production Credit (45X)
- Clean Hydrogen Production Credit (45V)
- Clean Fuel Production Credit (45Z)
- Carbon Oxide Sequestration Credit (45Q)
- Credit for Alternative Fuel Vehicle Refueling/Recharging Property (30C)



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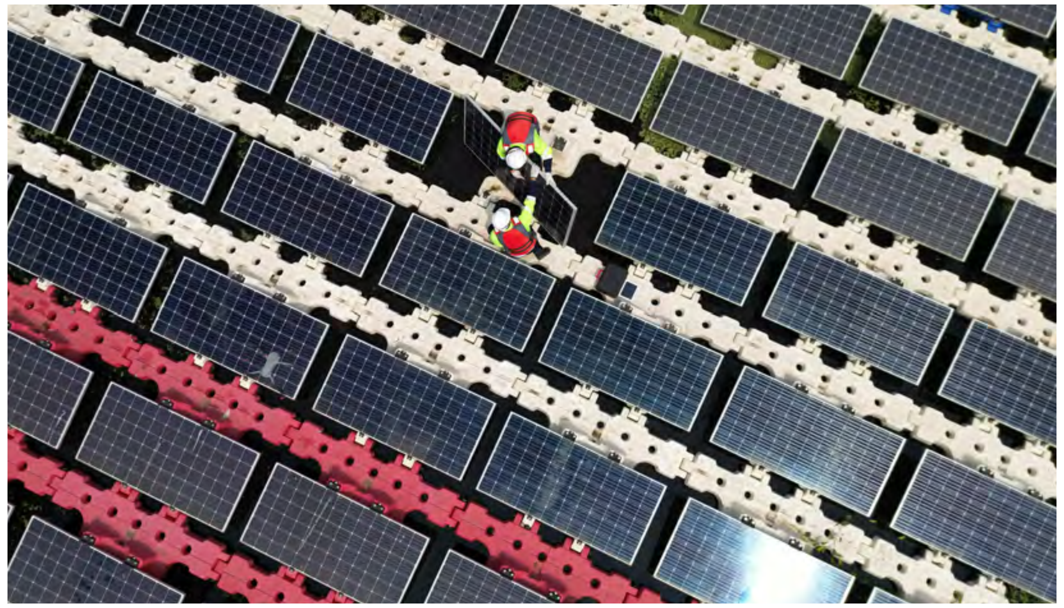
- TAX STRATEGIES FOR BUSINESSES
  - LIMITS ON DEDUCTION OF BUSINESS INTEREST
  - BONUS DEPRECIATION
  - SECTION 179 EXPENSING
  - DE MINIMIS SAFE HARBOR ELECTION
  - COST SEGREGATION BENEFITS
  - INCOME ACCELERATION + ESTIMATED TAX PAYMENT PLANNING
  - EMPLOYEE RETENTION TAX CREDIT
  - ERC RECOVERY STARTUP BUSINESSES
  - RESEARCH AND EXPERIMENTAL EXPENDITURES
  - 1% STOCK BUYBACK EXCISE TAX
  - SECTION 1202 STOCK
- CASH INCENTIVES FOR CLEAN ENERGY INVESTMENTS
  - PURCHASE OF DISCOUNTED CLEAN ENERGY CREDITS APPLIED AGAINST FEDERAL TAX LIABILITY

**Speak with Withum's Business Tax Services Team to determine what tax savings may be available to you.**

The purchase of clean energy credits generally ranges from $0.91 to $0.96 per $1 of credit received. In addition, the purchase, or intended purchase, of clean energy credits can be considered when calculating estimated tax payments.

For example, C corporation has a federal income tax liability of $10,000,000 and is seeking to identify $7,500,000 of clean energy credits for purchase in the 2024 taxable year. A calendar year C corporation generally must make estimated tax payments by April 15th, June 15th, September 15th and December 15th during the taxable year. As the C corporation only expects to pay a tax liability of $2,500,000 in cash, the quarterly estimated tax payments made on the applicable dates is $625,000. C corporation identifies clean energy tax credit in June of 2024 that would be applied amongst the earlier federal estimated tax payment dates. C corporation purchases half of the desired credit, or $3,750,000 credit in August of 2024 and the remaining $3,750,000 in January of 2025. C corporation



pays to add $0.94 cents for the credit, or only $7,050,000 for a $7,500,000 credit, saving $450,000 in federal tax payments, and is not assessed late payment penalties related to estimated tax payments as they intended to purchase clean energy credits at the beginning of 2024.

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- INTERNATIONAL TAX CONSIDERATIONS
  - IS YOUR FOREIGN INCOME TAXED UNDER GILTI?
  - FOREIGN TAX CREDIT
  - CORPORATE TRANSPARENCY ACT
  - REPATRIATION OF INTANGIBLE PROPERTY
  - CORPORATE ALTERNATIVE MINIMUM TAX
  - CASH REPATRIATION
  - DID YOUR ORGANIZATION ADOPT REMOTE WORK POLICY?
  - TAXATION OF THE DIGITAL ECONOMY
  - TRANSFER PRICING
  - FIVE PRACTICAL ACTIONS TO TAKE TODAY TO IMPROVE YOUR TRANSFER PRICING HEALTH

**Speak with Withum's International Tax Services Team to determine what tax savings may be available to you.**

# INTERNATIONAL TAX CONSIDERATIONS

Taxation on foreign subsidiary income while Subpart F remains in effect.

Foreign-Derived Intangible Income (FDII): beneficial tax rate of intangible income, available only to corporations.

Foreign Tax Credits (FTCs): you can claim a credit only for foreign taxes that are imposed on you by a foreign country – generally only income, war profits and excess profits taxes qualify for the credit.

Corporate Transparency Act (CTA) enacted in 2021 and takes effect in 2024. This requires beneficial owner reporting to FinCen to enhance transparency in entity structures and ownership to combat money laundering, tax fraud, and other illicit activities.

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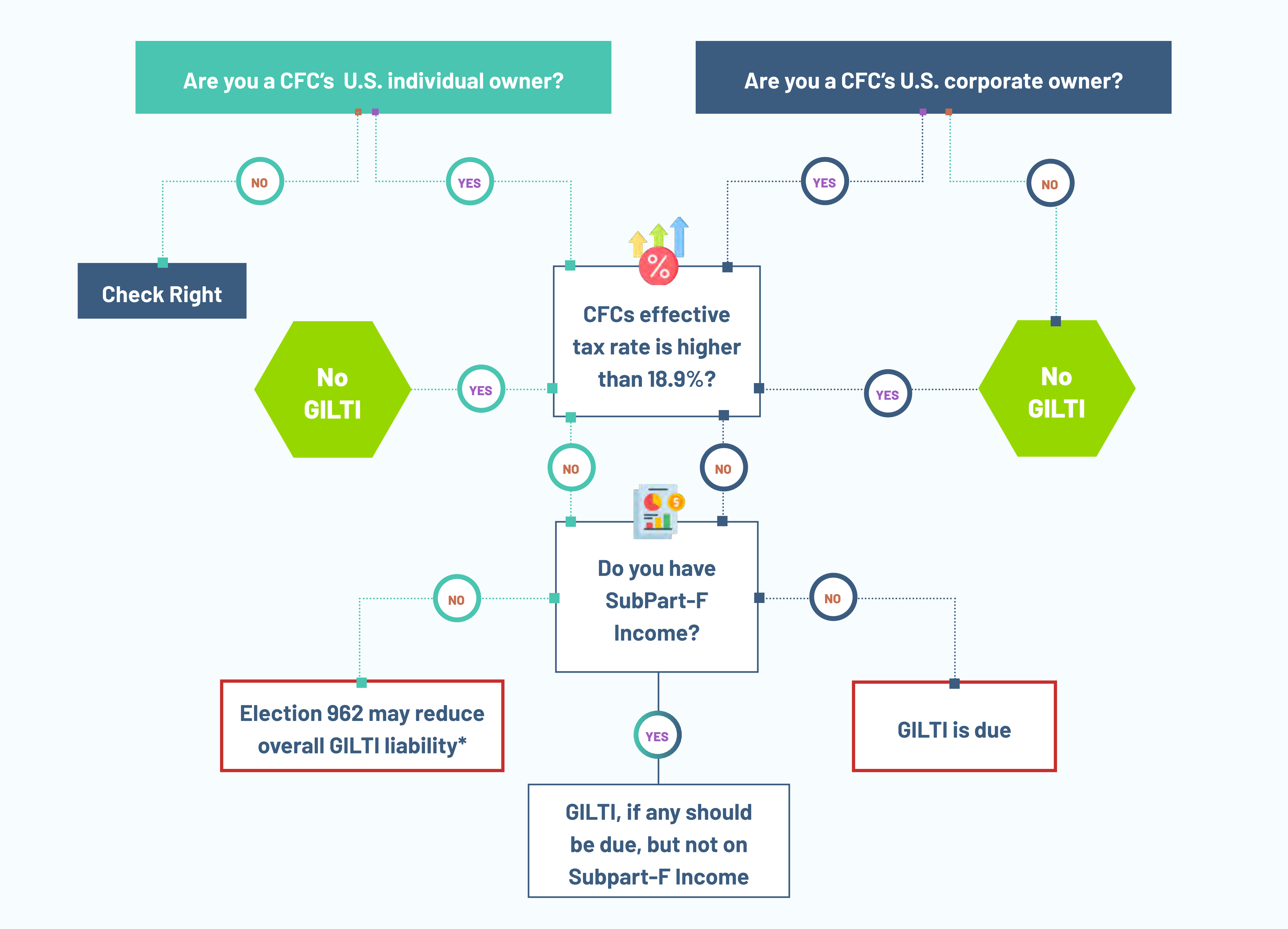
# IS YOUR FOREIGN INCOME TAXED UNDER GILTI?




"962 ELECTION" TREATS INDIVIDUALS AS A CORPORATION, REDUCING GILTI INCLUSION, IF ANY, AND ENABLING TAX CREDITS TO LOWER U.S. TAX ON INCOME.

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## DID YOU SELL GOODS OR SERVICES ABROAD?

Non-U.S. end users

1. **FDII DEDUCTION**
   This deduction lowers the U.S. tax rate to 13.125%

2. **INDIRECT TAX COMPLIANCE**
   Non-U.S. registration or VAT or GST collection obligations may be required

3. **WITHHOLDING TAXES**
   W8 Forms and certificates may be required from non-U.S. persons receiving payments from you

4. **TRANSFER PRICING DOCUMENTATION**
   If applicable, be sure to have a robust and updated set of documents

5. **TRADE AGREEMENTS**
   Certain trade agreements might impact the tariffs applied to exported goods

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## Foreign Tax Credit

- The 2022 final foreign tax credits regulations required a detailed analysis of the foreign tax regime to determine creditability, the result of which was onerous and challenging. These regulations had four aspects to determine creditability of a foreign tax: realization, gross receipts, cost recovery and attribution. (read more about it here: Let's Talk: Final Regulation Changes to the Foreign Tax Credit).
- Temporary relief was released in 2023 for determining eligibility of foreign taxes for U.S. credit purposes. No foreign tax whose base is gross receipts or gross income satisfies the net income requirement, except in the case of a foreign tax whose base consists solely of investment income that is not derived from a trade or business, or wage income (or both). Additionally, taxpayers may disregard the rules regarding the jurisdiction to tax excluded income rule and the source-based attribution requirements promulgated in the final regulations, at least through the year-ended December 31, 2023.
- It is important to note the language provided by the relief precludes foreign digital service taxes from being creditable.

## Corporate Transparency Act

- Each "Reporting Company" shall submit to FinCEN a report that identifies each "Beneficial Owner"
  - **Reporting Company:** a domestic or foreign corporation, LLC or "similar entity." Note there are more than 23 exceptions from reporting.
  - **Beneficial Owner:** an individual who, directly or indirectly, exercises substantial control over the entity or owns or controls 25% of the ownership interests of the entity.
- Entities in existence before January 1, 2024 are required to report by January 1, 2025. Proposed rules require entities created in 2024 to report to FinCen within 90 days of formation.
- Substantial penalties for failure to report.

## Repatriation of Intangible Property

- The U.S. Treasury released final regulations for Section 367(d) on October 9, 2024, providing guidance on the treatment of intangible property that was previously expatriated to a foreign corporation where the transfer was subject to Section 367(d) and subsequently repatriated back to the United States. The final regulations apply to IP repatriations occurring on or after October 10, 2024.
- Section 367(d) applied to outbound transfers of intangibles to foreign corporations deem that the intangible was transferred in exchange for an annual royalty for the useful life of the property, not to exceed 20 years.
- Under the prior regulations, intangibles that were previously transferred to a foreign corporation and subject to on-going annual royalty inclusions under Section 367(d) would continue to be subject to the annual royalty inclusion even when the intangible is subsequently repatriated back to a U.S. transferee resulting in excessive taxation and prevent taxpayers from repatriating intangibles back into the United States.
- The final regulations generally follow the proposed regulations and provide guidance that would terminate the continued application of the deemed royalty from the repatriated intangible property when the intangible is repatriated back to a "qualified domestic person" (such as the U.S. transferor or a party related to the U.S. transferor) where the income from

the intangible would once again be subject to U.S. federal income tax. In addition, upon repatriation, the original U.S. transferor of the intangible property may be required to recognize gain.

- These regulations may provide an incentive for multinational companies who previously expatriated IP to repatriate that IP to extinguish the on-going 367(d) deemed royalty.

## CAMT (Corporate Alternative Minimum Tax)

- On September 12, 2024, the U.S. Treasury and the IRS issued Proposed Regulations (112129-23) to implement the CAMT introduced by the Inflation Reduction Act (IRA) of 2022, effective for taxable years starting after December 31, 2022. These regulations aim to define and establish general rules for determining tax basis and identifying covered taxpayers. Additionally, Notice 2024-66 was issued to provide tax relief for CAMT estimated tax payments until January 1, 2025.
- The IRA introduced a 15% CAMT on Applicable Corporations.

  + Applicable Corporations: (i) U.S C Corporations with average annual book income over $1 billion in the last 3 years and (ii) foreign-parented U.S. C Corporations with book income over $100 million if the aggregated foreign group has over $1 billion in book income.
  + Tax basis: 15% on the adjusted financial statement income (AFSE)
  + CAMT liability = Tentative Corporate Minimum Tax – Regular Tax Liability + BEAT liability.
  + Any CAMT liability due creates credit carryforward against future Regular Tax Liability.

- According to Proposed Regulations (112129-23) and Notice 2024-66, both issued on September 12, 2024:

  + A safe harbor for Applicable Corporation status determination is provided, which simplifies the AFSI calculation for most corporations.
  + Penalties for an Applicable Corporation's failure to pay estimated tax with respect to its CAMT are waived for a taxable year that begins after December 31, 2023, and before January 1, 2025.
  + Treasury and the IRS request comments on the proposed rules by December 12, 2024.
  + A public hearing is scheduled for January 16, 2025.

# Transactions with Related Partners

**WHAT SHOULD YOU KNOW IN TERMS OF TRANSFER PRICING?** Business are required to prepare and maintain documentation supporting their transfer pricing positions. This documentation should demonstrate that the intercompany transactions are priced at arm's length.


**DOCUMENTATION GENERALLY INCLUDES:** Functional, Comparability and Economic Analysis; Intercompany Agreements; Guidlines and protocols to justify the pricing, risk allocation, and profit level indicators

**DOCUMENTATION RETENTION:** Keep transfer pricing documentation for about seven years as the IRS may ask for it during audits.

**INTERNATIONAL TAX COMPLIANCE MAY BE REQUIRED:** You might need to file Form 5471 and related schedules for transactions involving related parties and Controlled Foreign Corporations (CFCs).

**ADVANCE PRICING AGREEMENTS (APAs):** APAs with the IRS create upfront pricing agreements, reducing transfer pricing dispute risks.

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# CASH REPATRIATION

U.S. corporations may be eligible for Dividends Received Deduction. Please check legal requirements. ($245,246)

Foreign Tax Credit (FTC) may also be available

This chart refers to the U.S. corporations owning foreign corporations*

| % Ownership | DRD |
|---|---|
| >10% | 100% |

Please check out new IRS Notice on FTC (2023-55)

***IRS Denies CFCs' DRD.** A CFC that receives a dividend from its owned lower-tier foreign corporation doesn't get the DRD because the recipient is neither a domestic corporation nor a U.S. shareholder for the foreign corporation (IRS Memorandum 202436010, July 31, 2024)

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# DID YOUR ORGANIZATION ADOPT REMOTE WORK POLICY?

## EMPLOYERS

### 01
**PERMANENT ESTABLISHMENT RISK**

While working remotely, your non-U.S. employees may create a taxable presence for your organization in his or her jurisdiction

### 02
**VISAS / SOCIAL INSURANCE / PAYROLL WITHHOLDING**

U.S. employees working outside of the U.S. may require VISAs (although some countries offer "Digital Nomad" Visas). US employers to be subject to local Social Insurance Taxes (unless a Totalization Agreement applies). Local income tax withholding and remission may also be required.

## EMPLOYEES

### 01
**WORK PERMITS/ DIGITAL NOMAD VISAS**

While working remotely, if the host country does not provide a "Digital Nomad Visa" program, which allows you to remain a U.S. employee subject ONLY to U.S. tax, you will be required to obtain necessary working permits and be subject to local Social Insurance tax (unless a Totalization Agreement applies, and local income taxes).

### 02
**FOREIGN-EARNED INCOME EXCLUSION (FEIE)**

U.S. employees may be eligible for FEIE up to $120,000 (2023). To qualify, you must meet the physical presence test or the bona fide residence test.

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## Taxation of the Digital Economy

**136 countries agreed to implement a global minimum tax of 15% on October 8, 2021, effectively ending decades of tax competition aimed at luring foreign investment with low-income tax rates.**

- The agreement would only impact large multinational companies with $750 million or more in worldwide sales.
- Initially, implementation of the agreement was targeted for 2023. However, few countries have enacted the local legislation required to implement these minimum taxes.
- Many countries have also enacted indirect taxes (VAT/GST) on digital services that are delivered to local customers. Applicability thresholds are generally much lower (e.g., 10,000 Euros of sales), and liability for such taxes may extend to other participants of the service supply chain.

## Transfer Pricing

**As the biggest tax uncertainty for global businesses, transfer pricing continues to be a hot topic around the world.**

There is ever-increasing scrutiny on cross-border transactions in both U.S. as well as rest-of-world markets so navigating this complex area should be proactive, not left to chance. Establishing a consistent global strategy that reflects the economic substance of the overall business and is compliant with transfer pricing regulations in all countries, puts taxpayers in a position of strength. Multinationals of any size should take action to control the narrative, to tell the story of their global business and set expectations for the world tax authorities in terms of profit (or loss) expectations in each market, depending on their relative local contribution to the overall business.

A strategic, proactive approach to transfer pricing is critical. In both the global as well as the domestic arenas, it is about planning and compliance. Planning for transfer pricing that supports the unique aspects of the business and leaderships priorities, including optimal tax efficiencies, streamlined cashflow management, minimized transfer pricing audit risk, and protection of intellectual property. Taxpayers need to be diligent in their compliance, ensuring preparation of robust transfer pricing documentation annually. In addition, the contemporaneous documentation study must align with both the intercompany legal agreements and the substance of the accounting/financial statements.

Transfer pricing is not only related to the transfer of products/tangible goods. It is also about accounting for intercompany services provided between entities, intercompany financing, and licensing of marketing and technology intangibles. Along with determining the arm's length pricing, or profit element, companies need to analyze and make assumptions about how their costs are allocated in a quantifiable manner between entities. While transfer pricing is typically at the federal level consideration, state tax auditors are jumping in on the domestic action as well.

Understanding complex and diverse transfer pricing regulations around the world can feel daunting, but Withum can help break it all down and prioritize your company's efforts. There are also practical steps to take today to understand your position and where the challenges or opportunities may be. We present the top 5 things you can do to easily assess/ improve your current transfer pricing position.

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- INTERNATIONAL TAX CONSIDERATIONS
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  - REPATRIATION OF INTANGIBLE PROPERTY
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  - TAXATION OF THE DIGITAL ECONOMY
  - TRANSFER PRICING
  - FIVE PRACTICAL ACTIONS TO TAKE TODAY TO IMPROVE YOUR TRANSFER PRICING HEALTH


**Speak with Withum's Global Transfer Pricing Team to determine what tax savings may be available to you.**

## Five Practical Actions to Take Today to Improve Your Transfer Pricing Health

### ONE

**COMPLIMENTARY HEALTH CHECK ON YOUR TRANSFER PRICING PRACTICES + POLICIES**

Let Withum look at where you are today and advise you on your risk levels. If we discover areas of concern or opportunities, we will help you to take a practical approach in prioritizing your limited time and budget to address.

### TWO

**UNDERSTAND THE TRANSFER PRICING TRIGGERS AROUND THE WORLD**

Often, transfer pricing is too locally focused, and the bigger global picture gets missed. Withum can help you ensure you have a consistent global strategy and to understand the thresholds in each country in which you operate to comply with all TP regulations. Also, organizations like the OECD and websites are dedicated to collecting this information.

### THREE

**IMPLEMENT COMPLIANCE WITH TRANSFER PRICING REGULATIONS TO LOWER RISK IN EACH MARKET**

We get it, no one is excited about annual compliance. There is no better way to smooth an audit process (tax authority or financial audit) and move the focus away from transfer pricing than to present an annual TP compliance report. Not to mention the 100% protection from penalties that could be 20% or 40% of the proposed income adjustment.

### FOUR

**CONFIRM TRANSFER PRICING IS CONSISTENT – TP REPORT, ACCOUNTING, + LEGAL AGREEMENTS**

These three things always match. It starts with the TP benchmarking analysis and report to establish arm's length – market rate – pricing. Then create journal entries, the substance of how the business operates. Settle the intercompany accounts, rather than accrue indefinitely. Intercompany legal agreements will then support the activity between entities.

### FIVE

**REVIEW AND REFRESH INTERCOMPANY LEGAL AGREEMENTS**

Check description of transactions, entity names, transfer pricing used, and the date... all these things should be updated regularly. No need to sign new agreements every year, but if dated, it's time to refresh and re-sign to support the independent relationship.

# CHARITABLE CONTRIBUTIONS

**For 2024, donors may claim a tax deduction for contributions of cash of up to 60% (for non-cash assets held more than one year up to 30%) of one's AGI.**

Donation amounts in excess of these limits may be carried over for up to five tax years. For example, consider an individual who has $10 million of AGI and makes a $10 million cash contribution in 2024. The income tax deduction will be limited to $6,000,000, and $4,000,000 of the charitable contribution can be carried forward for the next five tax years.


In addition, some donors may find that the total of their itemized deductions for 2024 will be slightly below the level of their standard deduction. In that circumstance, it could be beneficial to combine or "bunch" 2024 and 2025 charitable contributions into one year (2024), itemize deductions on their 2024 tax returns, and take the standard deduction on the 2025 tax returns.

In addition to achieving a large charitable impact in 2024, this strategy could produce a larger two-year deduction than two separate years of itemized deductions, depending on income level, tax filing status, and contribution amounts each year. With proper planning, there is still time left in 2024 to take advantage of this benefit and aggregate contributions.

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# EDUCATION SAVINGS AND CREDITS

**Raising children and helping them pursue their educational goals can be highly rewarding but extremely expensive. Fortunately, there are several tax breaks that can offset some of these costs.**

## 529 Plans

If you're saving for education expenses, consider a 529 plan (names for section 529 of the Internal Revenue Code). These tax-advantaged plans—sponsored by states, state agencies, and educational institutions—are investment accounts that offer tax benefits when the money is spent on qualified education expenses for the beneficiary.

Unlike other tax-advantaged accounts, there is no limit on contributions to 529 plans. States can and typically do set their own limits, with a maximum contribution limit that ranges between $235,000 and $575,000.

Once invested, money in a 529 plan grows tax-deferred and is not subject to federal income tax when applied toward qualified education expenses. Contributions are not deductible from federal income taxes, but some states offer tax deductions or tax credits on 529 plan contributions.

Note that contributions may trigger gift tax consequences if you earmark more than the gift tax exclusion ($18,000 for 2024) for any one beneficiary in a tax year, though individuals can elect to contribute up to 5 years of gifts (i.e., $90,000) to a 529 plan in 2024 and treat the contribution as if it were spread over a 5-year period for gift-tax purposes.

In addition, unused money from a 529 plan can be rolled over on a tax-free basis to a Roth IRA established in the name of the beneficiary. Among other limitations, the 529 plan must have been open for 15 years and the account holders cannot roll over contributions made in the last five years. Rollovers are subject to the annual Roth IRA contribution limit, and there's a $35,000 lifetime cap on 529-to-Roth transfers.

## Coverdell Education Savings Accounts (ESAs)

These accounts are similar to 529 plans in that contributions are not deductible for federal purposes, but plan assets can grow tax-deferred, and distributions used to pay qualified education expenses without the imposition of income tax. In addition, you

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choose how to invest the money in the account, typically on behalf of the beneficiary.

Unlike 529 plans, there is an income eligibility limit and a relatively low limit on contributions. The annual maximum is $2,000 per beneficiary—and less for higher earners—which means if you (as a parent) contribute all $2,000, grandparents and other individuals are not allowed to make additional contributions to the account during the year.

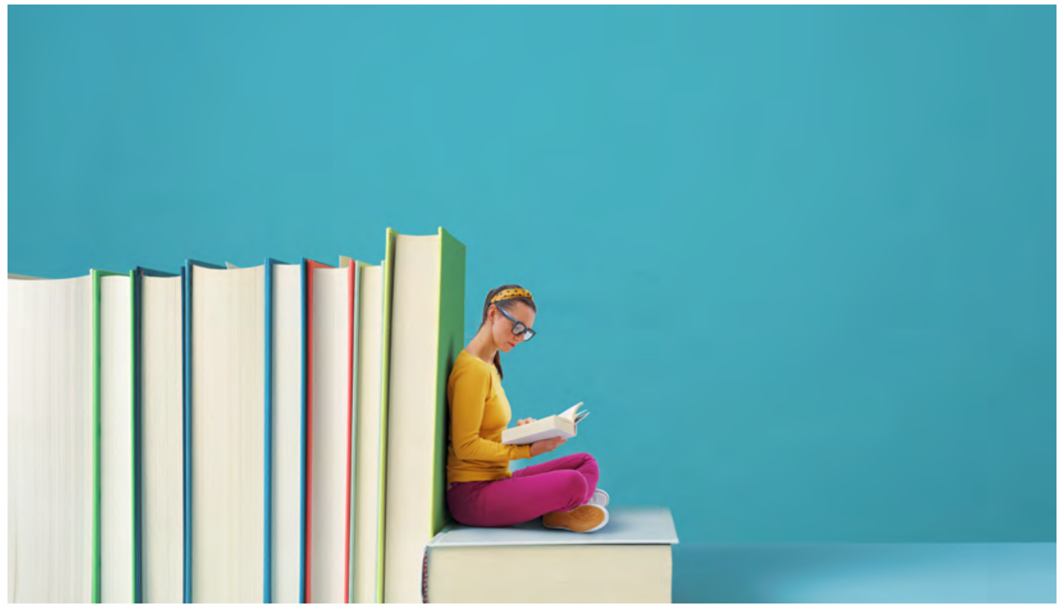
ESAs are worth considering if you would like to have direct control over how your contributions are invested or if you want to pay elementary or secondary school expenses in excess of $10,000. Note as well that your child can be the beneficiary of both a 529 plan and an ESA, and you can contribute to both accounts in the same year.

## Education Credits

There are also several potential tax credits you can claim if you have children in college or are currently in school.

## Lifetime Learning Credit

If you are paying post-secondary education expenses beyond the first four years, you may benefit from the Lifetime Learning credit (up to $2,000 per tax return).



## American Opportunity Credit

This tax break covers 100% of the first $2,000 of tuition and related expenses and 25% of the next $2,000 of expenses. The maximum credit per student is $2,500 per year for the first four years of post-secondary education.

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# HSAs AND FSAs

**Health savings accounts (HSAs) and flexible spending accounts (FSAs) are programs with tax benefits that you can use to save on health care cost.**

## HSAs

If you provide employees with a qualified high-deductible health plan (which typically has lower premiums/plan contributions and higher deductibles than a traditional health plan), you can also offer them an HSA.

HSAs are an elective benefit that an employer can offer as a way for employees to set aside tax-advantaged medical savings to pay for copays, deductibles, and other qualified medical expenses. The HSA works much like a standard checking account (often including a debit card), and it is up to the employee to track their contributions, expenses, and reimbursements.

Note that contributions to an HSA are limited to $4,150 for self-only coverage and $8,300 for family coverage in 2024, and $4,300 for individual coverage and $8,550 for family coverage in 2025.

## FSAs

An FSA is another type of employer-established plan that pays for qualified medical expenses but with pre-tax dollars. Employers and employees may both contribute to the FSA, and an FSA is not limited to high-deductible plans like an HSA.

Unlike an HSA, funds in an FSA are subject to an annual use-it-or-lose-it rule, meaning any funds that are unspent by the end of each plan year are forfeited to the account holder's employer.

The FSA contribution limit is $3,200 per person in 2024 and $3,300 in 2025.

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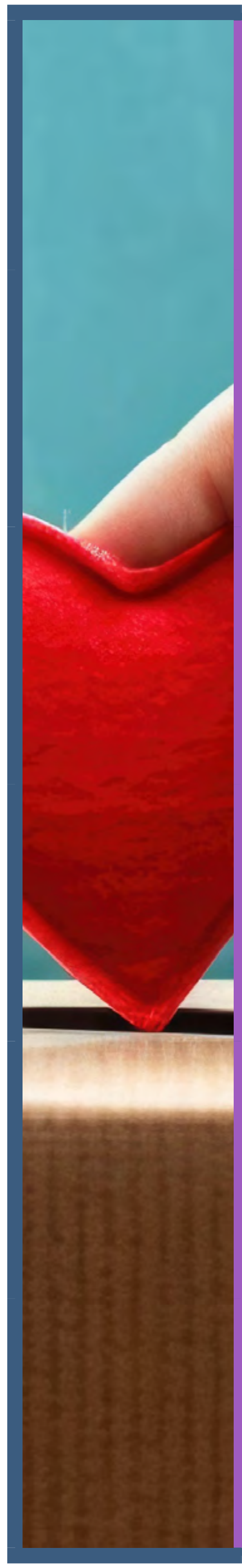
## Charitable Gifting



- Consider bunching charitable deductions in 2024, or making contributions to a donor-advised fund, so you increase your charitable deduction and therefore your itemized deductions fall above the standard deduction. The benefit on a donor-advised fund is that you can deduct the charitable contribution this year and allocate charitable funds from the donor-advised fund to individual charities in later years.
- Consider donating appreciated securities rather than selling such securities and donating the cash proceeds. This approach eliminates the capital gain tax you would pay on the sale and provides a deduction for the charitable contribution.
- Alternatively, consider selling depreciated securities from your portfolio to harvest the tax losses and then donating the cash proceeds. By doing so, you can recognize a tax loss that can offset any capital gain for the year or up to $3,000 of ordinary income, and you will receive a charitable deduction for your cash donation.
- Make gifts sheltered by the annual gift tax exclusion before the end of the year. The exclusion applies to gifts of up to $18,000 made in 2024 to each of an unlimited number of individuals. The annual exclusion increases to $19,000 in 2025.
- Consider making 2024 charitable donations via qualified charitable distributions from an IRA. When you reach age 70½, the amount of the contribution is neither included in your gross income nor deductible as an itemized deduction and the amount of the qualified charitable distribution reduces the amount of your RMD, which can result in tax savings.
- In 2024, individuals can make a deductible cash contribution of an amount up to 60% of their AGI. Deductions for non-cash assets held more than one year are limited to 30% of AGI.

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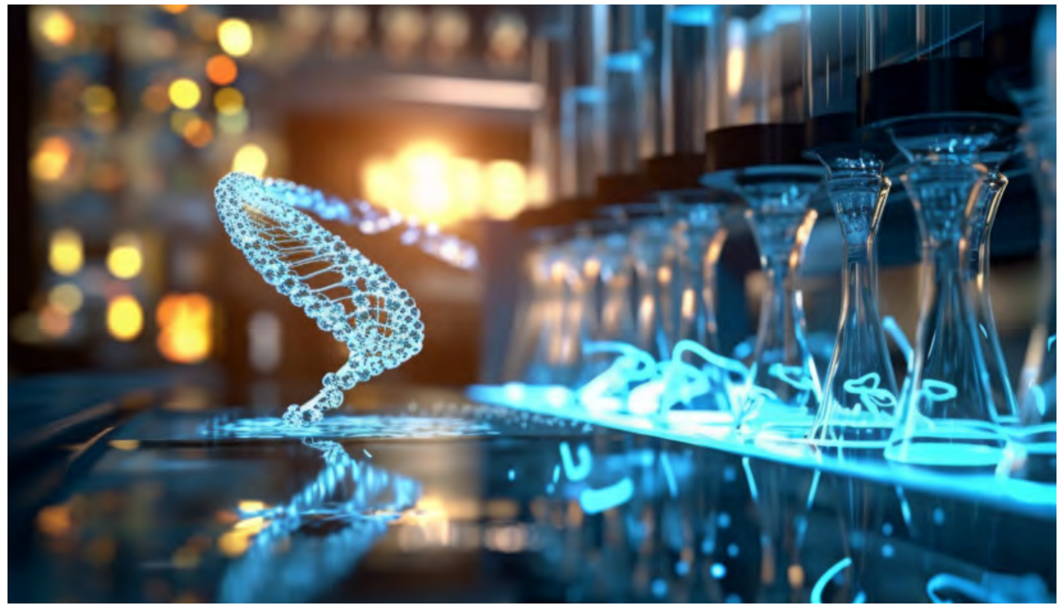
**Speak with Withum's Research & Development Team to determine what credits or incentives may be available to you.**

# RESEARCH AND DEVELOPMENT (R&D) TAX CREDITS

With the continued requirement to amortize 2024 R&E expenditures, more companies are finding themselves in a position to pay income taxes. This is primarily because NOLs incurred after December 31, 2017, are subject to an 80% taxable income limitation. To minimize the cash tax impact of federal income tax payments, R&D Tax Credit studies should be considered. The Research and Development (R&D) Tax Credit is broad and applies to many industries. Taxpayers do not need to be engaged primarily in R&D to qualify, nor do they need to be in a positive tax position (recent changes allow for "start-up" businesses to monetize the R&D Tax Credit via a payroll tax offset). You may benefit from the R&D Tax Credit if you answer "yes" to any of the following questions:



| YES | NO | |
|---|---|---|
| ○ | ○ | Are you seeking to develop new or improved functionality, performance, reliability, or quality for a product, process, computer software, technique formula, or invention? |
| ○ | ○ | Do you have technical-type employees (e.g., engineers, scientists, researchers, CAD technicians, developers, etc.) creating/improving upon products or processes or developing software in the United States? |
| ○ | ○ | Do you incur U.S.-based contractor payments, supplies, or cloud computing expenses (AWS, Google Cloud, etc.) for creating products or developing software in the United States? |
| ○ | ○ | Do you pay income taxes or was your business incorporated within the past five years? |

# STATE AND LOCAL TAX PLANNING

**Now that the dust has started to settle on post-Wayfair sales tax nexus requirements, states are switching their sales tax efforts to finding ways to expand the sales tax base. With economic nexus standards now firmly in place, the focus is on broadening the scope of things that are subject to tax such as software, services and digital advertising.**

In addition, while the U.S. Supreme Court in Wayfair addressed only sales tax nexus, states are applying economic nexus standards for both sales tax and income tax.

> In 2023, New Jersey became the first state to officially adopt the economic nexus standard (i.e., $100,000 sales or 200 transactions) for both corporation business taxes and sales taxes.

Economic nexus presents risk and opportunity for taxpayers. States use differing sourcing rules and methodologies to assign sales to a particular state for multistate businesses. Although a business might have economic nexus in a state, with proper planning, income tax burdens can be alleviated or reduced with a sales-sourcing analysis, which ensures sales are correctly apportioned among the states. As states continue to adopt single-factor sales apportionment coupled with market-based sourcing, many businesses are actively reexamining their sales sourcing approaches to reduce state taxes.

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## SALT Deduction Limitation Workaround

- The majority of states have now passed legislation to circumvent the $10,000 state and local tax (SALT) deduction limitation (36 states in total including NJ and NY). In addition, New York City is allowing eligible entities to circumvent the SALT deduction limitation for taxable years beginning on or after January 1, 2022.
- The IRS has confirmed that pass-through entity tax (PTET) elections are effective workarounds to the SALT deduction limitation and allow businesses to fully deduct state and local taxes from their taxable income.
- State income tax refunds related to PTETs may create taxable income at the federal level. Careful consideration and planning should take place when electing PTET payments and the impact of individual withholding and estimated tax payments.
- In addition, the implementation of these new provisions by the states has not been smooth. For example, New York has been sending out Notices to taxpayers disallowing the taxpayer's credit for taxes paid to other states because, according to the Notice, the PTET tax that was imposed in the other state was not substantially similar to the New York PTET. Taxpayers receiving these Notices should examine them carefully because they may have been issued in error.

## State Tax Credits

- State and local governments offer a variety of tax credits and incentive programs aimed at attracting businesses, stimulating investment, and retaining businesses currently operating within their borders. If your business is growing, or you are thinking about relocating, it is important to closely examine what credits and incentives may be applicable if making a large capital investment in a state or increasing your employee count in a state.
- Determining the best market for your business to incorporate and/or operate is a critical decision — do not overlook the tax credits and incentives that may be available. The credits may result in sufficient tax savings to sway the determination of whether to stay in a current location or move to a new one.
- Common opportunities from states and/or localities may target:

+ Small and mid-size businesses
+ Job creation
+ Geography, such as distressed zones, enterprise zones, or tax-increment finance districts
+ Angel investors
+ Not-for-Profits
+ Innovative businesses
+ Capital investments
+ Specifically targeted industries, such as technology, manufacturing, agriculture, or film
+ Energy credits

## Sales and Use Tax Planning Considerations

**With economic nexus here to stay, sales and use taxes are likely a significant financial burden for multi-state businesses if proper procedures are not in place and appropriately maintained. The issues of taxability review, the use of marketplace facilitators, and exemption certificate management have garnered more analysis in a post-Wayfair world.**

**COMPANIES SHOULD REGULARLY REVIEW THEIR SALES AND USE TAX PROCESS AND PROCEDURES, INCLUDING, BUT NOT LIMITED TO:**

### Nexus

- Physical presence and economic nexus for sales tax purposes should be reviewed throughout the year to identify jurisdictions where additional collection and self-assessment responsibilities may exist.
  - Understanding where your business has sales tax nexus is essential for complying with state and local tax laws. Failing to collect and remit the appropriate sales tax can result in significant tax liabilities, plus penalties and other legal issues.
  - Without knowing where you have nexus, you may inadvertently accrue tax liabilities in multiple jurisdictions. Identifying your nexus creating activities allows you to calculate and collect tax from customers when applicable, and pay the correct amount of sales tax to avoid penalties and interest. There can be serious consequences to a business not knowing where it established nexus since several states have formed nexus units to search for non-compliant businesses.
  - Identifying sales tax nexus helps streamline your business operations. You can implement accurate tax collection procedures, reduce the administrative burden, and catch potential errors in tax calculations.
  - Tax authorities may audit your business to ensure compliance. If you know where you have nexus and maintain accurate records of collected taxes, the whole audit process is much smoother and less stressful.
  - A business that works in the digital environment should closely monitor state developments regarding the taxability of items such as Software as a Service (SaaS), digital advertising and other online services, as states are eyeing these as potential sources of new revenue,
  - Remote retailers, marketplace sellers, and marketplace facilitators should review if they are compliant with state and local sales and use tax laws and marketplace facilitator rules as states have new tools to address the taxation of these type of sales and are aggressive in using them.
- Companies should review their sales and use tax reserves and disclosures under ASC 450 to verify potential liabilities are properly accounted for.

## CHANGING TAX LAWS AND DEFINITIONS

- Most state sales tax statutes were written decades ago, prior to the advent of the internet. These tax statutes may no longer be adequate to address the digital economy. States are addressing these inadequacies by updating regulations and statutes. For example, Texas has recently updated its rules on data processing to address computerized services.
- State definitions of taxable digital goods and services and cloud-based products are constantly evolving — and digital goods and services that were previously exempt are now taxable in several states. Maryland has been litigating its tax on digital advertising for several years and if it ultimately wins other states are certain to follow.

**The following states have proposed sales tax legislation related to on streaming services.**

| | |
|---|---|
| MASSACHUSETTS | **H.4631/S.2771 (2024):** Establish a comprehensive statewide policy concerning streaming entertainment services and the recovery of municipal costs for the management and maintenance of digital infrastructure by imposing a 5% gross receipts tax from the sale or provision of streaming entertainment services. |
| MICHIGAN | **HB 4965 (2023):** Amends the Uniform Video Services Act to provide that the term video services does not include direct-to-home satellite services or streaming content and to specify that it only includes services provided by a video service provider. |
| MISSOURI | **HB 2057/SB 872 (2024) (enacted):** Modifies provisions relating to video services subject to franchise fees to explicitly exclude all streaming services. |
| NEW YORK | **AB 5900/SB 2581 (2023):** Establishes a 5% excise tax on direct broadcast satellite services to fund the community media investment fund and video streaming services. |
| VIRGINIA | **HB 30/SB 30 (2024):** Imposes sales tax on several services including software application services, computer-related services, website hosting and design, data storage; and streaming services for personal consumption (i.e., business to business exemption). |
| VERMONT | **SB 181 (2023):** Imposes a 5% tax on the gross sales of streaming entertainment providers. |

Any time a business launches a new product or service line, it should perform a taxability analysis and review recent state tax developments regularly. For example,states like New York have been pushing the limits on what qualifies as taxable software or taxable digital services, (e.g., information services, data processing), which can potentially impact a company's tax liability.

## COMPLIANCE

- Companies should review their people, processes, and technology to identify how to comply with sales tax responsibilities in multiple states and localities.
- It may be necessary to implement third-party software to help maintain accurate sales tax rates and apply the proper sales tax to invoices. Note it's important to verify the proper tax codes are selected in the third-party software because the invoices could be improperly calculating sales tax on your invoices to customers.
- The volume of state and local tax-related forms and deadlines can require significant time for employees to properly manage the sales and use tax functions. Errors could lead to substantial penalties, interest, or even liens on the responsible officer's properties.
- As such, companies should consider outsourcing their sales and use tax compliance to reduce risks and concentrate on higher-value activities.
- Please note sales tax could be a significant factor in the event of a merger, acquisition, or request for funding. If the sales tax function is not reviewed periodically, a due diligence review may uncover exposures. Therefore, companies should periodically perform a review of their sales and use tax procedures.

## REFUNDS

- Many vendors are conservative when applying sales taxes to purchases of products and services to be competitive in the market.
- Exemptions for certain purchases may provide opportunities for significant recoveries of sales and use taxes erroneously paid to vendors or accrued and remitted to a jurisdiction.
- An annual review of purchases should be conducted to identify potential refunds because some vendors may have not charged sales tax in error.
- In addition, new refund opportunities may exist because of the determinations in recent state tax court cases.

# State and Local Income Tax Planning Considerations

**A BUSINESS SHOULD BE CONSIDERING STATE AND LOCAL INCOME TAX NEXUS AND SALES SOURCING ASSESSMENT, IF:**

- Revenue streams are derived from multi-state customers/clients
- Business receipts are sourced due to varying state rules, based on the following:
  - Location where services benefit the customer
  - Location of customer's billing address
  - Location of customer's headquarters
  - Location of customer's primary interaction/contacts with the business
  - Location of customer's order location
  - Location of the customer's customer (i.e., ultimate customer), or
  - Other metrics (e.g., IP address analysis) that could result in a varied sourcing approach
- Sales could be subject to special industry sourcing rules, such as financial services, publishing, broadcasting, technology (e.g., SaaS, data processing), advertising, and transportation
- The business has significant tax in any out-of-state jurisdiction

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## States Are Generally Lowering Tax Rates

Several states have recently enacted corporate or personal income tax rate changes. While the majority of state statutory rate changes have lowered tax rates for individuals and businesses, California enacted the nation's highest personal income tax rate (14.4%) and New Jersey enacted the Nation's highest corporate income tax rate (11.5%). Companies should review Deferred Tax Asset estimates to determine if state income tax rate changes will affect those calculations.

**FOLLOWING IS A SUMMARY OF THE STATES THAT HAVE RECENTLY ENACTED RATE CHANGES:**

| STATE | STATE LOWERED CORPORATE TAX RATE | STATE LOWERED INDIVIDUAL INCOME TAX RATE | STATE INCREASED CORPORATE TAX RATE | STATE INCREASED PERSONAL INCOME TAX RATE |
|---|---|---|---|---|
| ARKANSAS | X | X | | |
| CALIFORNIA | | | | X |
| GEORGIA | | X | | |
| INDIANA | | X | | |
| IOWA | X | X | | |
| KANSAS | X | | | |
| KENTUCKY | | X | | |
| MICHIGAN | | | | X |
| MISSISSIPPI | | X | | |
| MISSOURI | | X | | |
| MONTANA | | X | | |
| NEBRASKA | X | X | | |
| NEW HAMPSHIRE | | X | | |
| NEW JERSEY | | | X | |
| NORTH CAROLINA | | X | | |
| OHIO | | X | | |
| PENNSYLVANIA | X | | | |
| SOUTH CAROLINA | | X | | |
| WEST VIRGINIA | | X | | |

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## Recent Income/Franchise Tax Nexus Developments

**In the aftermath of Wayfair, the Multistate Tax Commission (MTC) has targeted one of the remaining legal barriers that businesses have to shield themselves from state assertions of income tax economic nexus – P.L. 86-272.**


On August 4, 2021, the MTC voted to adopt a revision to its "Statement of Information" whereby a business could lose P.L. 86-272 protection solely by engaging with customers through the internet. In 2022, New York and California issued guidance that they were adopting the MTC's revised Statement of Information. Currently, there are legal challenges to the adoption of the MTC guidance in both states. The taxpayer was recently successful in overturning the state's adoption the MTC guidance in California; however, the case was decided on procedural grounds and the court did not reach the question of whether the MTC guidance violated federal law. Other legal challenges are sure to follow.

Effective July 31, 2023, New Jersey adopted the MTC's P.L. 86-272 revisions. It is expected many other states may adopt the MTC's guidance implicitly through their MTC conformity provisions. The loss of P.L. 86-272 protection may result in additional income tax filing obligations for many businesses. The federal law known as P.L. 86-272 was passed over 60 years ago, and it prohibits a state from imposing a net income tax on businesses that only sell tangible personal property (TPP) and whose activities in a respective state do not exceed the solicitation of orders. For many years, even preceding the Wayfair case, for income tax, it has been generally accepted that economic nexus has been the law of the land unless a business was otherwise protected by limiting its activities to those outlined in P.L. 86-272.

The MTC's Guide provides examples of when the use of an interactive website will exceed P.L. 86-272 Protection, including:

- Providing post-sale customer assistance via an electronic chat or website email
- A career or employment page that accepts applications for non-sales positions
- The use of "cookies" on a customer's device to gather information on shopping trends or to track inventory
- Transmission of remote product patches, upgrades, or updates via the internet

- The offering of extended warranty plans
- Use of marketplace facilitators, such as the fulfillment center, which maintains inventory
- Other interactive internet-related activities

+ The MTC's revised statement adoption by multiple states could result in significant income tax liabilities for many remote businesses, as many of these businesses use a website or app to interact with their customers. Even if businesses have performed a nexus or P.L. 86-272 review in the past, they should consider having such studies refreshed, considering many of the developments over the last several years. Furthermore, the state application of the MTC rules is certain to be challenged. It is important to stay abreast of developments in this area. The MTC's guidance greatly expands the list of activities that are not protected by P.L. 86-272 and it is likely that some state courts will reject the MTC's interpretation of the federal statute. Furthermore, the state application of the MTC rules is certain to be challenged. It is important to stay abreast of developments in this area. The MTC's guidance greatly expands the list of activities that are not protected by P.L. 86-272 and it is likely that some state courts will reject the MTC's interpretation of the federal statute.

## State and Local Tax Workarounds

One of the centerpiece provisions of the 2017 TCJA was the $10,000 cap on state and local taxes (SALT) that individuals (including pass-through businesses) could claim as an itemized deduction on their federal income tax returns. The SALT deduction limitation profoundly impacted many business owners and residents in high-tax states such as NJ, NY, CA, CT, and MA.

States responded by enacting pass-through entity taxes (PTETs) as a workaround to mitigate the impact of the SALT deduction limitation for the owners of pass-through entities. 36 states have enacted PTETs, making the availability of PTETs the rule rather than the exception. In theory, the utility of PTETs will cease on January 1, 2026, when the $10,000 SALT deduction limitation expires, but we anticipate that some states may retain their PTET elections in the event the SALT deduction limitation is extended or to bring AMT relief. A number of states linked their PTET rules to the TCJA rules. In the event that the TCJA sunsets, an analysis is required to determine which states will automatically continue their program versus a state that will require legislative action in order to continue their program.

## PRIOR TO MAKING A PASS-THROUGH ENTITY ELECTION, THERE ARE SEVERAL KEY ISSUES THAT BUSINESSES NEED TO CONSIDER:

- **IRS APPROVAL:** The IRS indicated in Notice 2020-75 that it intends to allow PTETs. However, the IRS has not issued any further guidance on the issue.
- **FEDERAL TAX BENEFIT IMPLICATIONS:** It is possible that the PTET benefit may be limited if some taxpayers are subject to the federal tax benefit rule.
- **RESIDENT CLIENTS:** Resident partners/shareholders participating in a PTET (elective or mandatory) may not receive a credit for taxes paid to another state on their resident state income tax return.
- **DUAL ESTIMATE PAYMENT REQUIREMENTS:** In some states, a passthrough entity needs to make estimated payments against the PTET. This may not alleviate the owners' obligations to make estimated payments in their personal capacity. While the tax only gets paid once, this may cause cash flow issues from having to make two estimated tax payments.
- **REFUNDABILITY ISSUES:** In most states, the PTET becomes a fully refundable credit on the owners' personal income tax returns. However, in some states, the credit is not fully refundable, and/or excess credit is carried forward to future years, where it may expire if not fully used.
- **OTHER CONSIDERATIONS:** Business owners should keep in mind that the election to pay tax at the entity level is subject to each business's facts and circumstances and may vary depending on specific state provisions. Additionally, the administrative cost of making a PTET (e.g., additional filings) may consume some of the savings.

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## Telecommuting

As the economy continues to evolve, widespread remote working and state budget shortfalls have increased the focus on state and local taxes. Although telecommuting raises many concerns, some of the central issues put into focus are:

| Income and Sales | Tax Nexus Income Tax Apportionment | State Payroll Withholding |
|---|---|---|

Nexus, with respect to telecommuting, is generally straightforward. An employee's presence in a state creates nexus unless the company is engaged in activities that are protected by P.L. 86-272. For income tax apportionment, in some states, the consequence of an employee working from a different state could affect sales sourcing, payroll, and the property factor. For example, the New York City UBT (for non-corporate entities) uses cost-ofperformance sourcing, which can lower taxes if employees leave New York to telework in nearby states. Such sourcing is generally determined based on where the services are performed.

Payroll withholding also presents challenges. Most states source employee wages to the state where the employee performs the services; however, with "Convenience of the Employer" rules, such as those in New York, there is added complexity. These rules, some of which preceded the pandemic, essentially require non-resident wages to be sourced to the state's office where the employee is assigned, even if the employee works remotely in another state. The New York Division of Tax Appeals recently upheld the state's implementation of the convenience of the employer rule but there will likely be more litigation to come on this issue.

**THIS COULD RESULT IN DOUBLE WITHHOLDING REQUIREMENTS FOR THE EMPLOYER. SOME OF THE KEY ISSUES IMPACTING PAYROLL WITHHOLDING DECISIONS INCLUDE:**

- Temporary versus permanent employee relocations
- States that employ reciprocity agreements
- States with convenience of the employer rules

**Employee mobility and telecommuting are here to stay, and businesses must adapt and plan for the many tax issues that arise.**

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## Considerations for Changing Residency

**Now that working from home has become more common, are you considering a move to another state? Perhaps to a low-tax or no-tax state? If so, you are not alone, and here are some of the things you should be considering for income tax purposes.**

In order to change one's domicile, an individual must physically move to a new jurisdiction with the concurrent intent to make the new jurisdiction their fixed and permanent home. Individuals domiciled in a state are subject to that state's taxing authority on all their income. An individual who is required to pay tax as a nonresident in a state, even though they are domiciled elsewhere, is only subject to tax on income derived from sources originating outside his or her state of domicile (e.g., wages earned while working in a nonresident state, pass-through entity income).

Domicile is the place you regard as your permanent home — the place to which you intend to return after a period of absence (e.g., a vacation, a short-term business relocation, educational leave). As a practical matter, you can only have one domicile at any point in time, although you may have multiple residences. Once established, domicile continues until you affirmatively establish a new domicile.

**DETERMINING WHERE AN INDIVIDUAL IS DOMICILED REQUIRES A SUBJECTIVE ANALYSIS OF SEVERAL FACTORS, INCLUDING, BUT NOT LIMITED TO:**

| | | | | |
|---|---|---|---|---|
|  |  |  |  |  |
| The individual's home (considering the size, nature, value, and use of the residences) when an individual maintains more than one home | Active involvement in a trade or business in a state | Where the individual spent the majority of their time (which is different than spending less than 183 days in a state) | Location of "near and dear" possessions | Family connections |

Additional factors demonstrating an intent to permanently move include voter registration and obtaining a driver's license and vehicle registration in the new state. The burden of proof is upon the person asserting a change of domicile. They must maintain sufficient records to demonstrate an intention to abandon their previous domicile and establish a fixed and permanent home in a new one. Proper planning and understanding of the residency rules in the states the taxpayer is leaving and moving to are critical for individuals contemplating a change of domicile.

**ADDITIONAL CONSIDERATIONS WHEN PLANNING A CHANGE OF DOMICILE INCLUDE:**

- Whether an individual will remain subject to tax on their wages in the state they left pursuant to an Office of Convenience rule
- Modeling potential tax savings by relocating to a low or no-tax state
- Analyzing other costs associated with moving to a new state (e.g., real estate taxes, homeowners insurance premiums)
- Implementation of proper domicile planning, considering the facts and circumstances, documentation requirements, and other rules when putting in place a plan to mitigate audit risks

+ State Tax Authorities in high-tax states are aggressively examining taxpayers' claims that they broke their domicile and demanding substantial documentation to back up the taxpayer's assertions. Failing to prepare for a tax examination at the outset of a move jeopardizes the ability to ultimately prevail at the audit. Failing to plan = planning to fail.

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## State and Local Tax – Items To Consider

| | |
|---|---|
| Review existing and pre-Wayfair Nexus footprint, including inventory held by marketplace facilitators | Develop nexus and taxability matrix |
| Assess post-Wayfair filing obligations | Review purchases to identify potential sales tax refund opportunities |
| Evaluate income tax, sales and use tax, and other indirect tax nexus | Review and consider automation needs |
| Determine potential tax exposure for prior periods | Prepare and file registrations as necessary |
| Consider options to limit exposure (e.g., Voluntary Disclosure Agreements, amnesty, etc.) | Develop SALT processes to meet compliance requirements |
| Assist with communication to stakeholders in the organization | Prepare for tax audits |
| Review product and service mix | Address changes in the organization (e.g., new lines of business, modified sales force activity, marketplace Facilitator/provider inventory locations, etc.) |
| Analyze sales sourcing of all revenue streams on a state basis for determining income tax nexus | Continue to monitor changes to economic nexus and tax laws |

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If have question on your insurance, employee benefits and pension plan, please contact a member of our Withum Insurance Advisory Team.

## INSURANCE, EMPLOYEE BENEFITS AND PENSION

**As the year draws to a close, it's essential to take a comprehensive look at your insurance policies. Reviewing your coverage now can help you identify potential savings and ensure you're adequately protected against any surprises. Here are some of the factors to consider in terms on your insurance, employee benefits and pension plans.**

**INSURANCE REVIEW:** Year-end is a great time to review all your insurance. Changed circumstances and policy modifications can greatly impact your cost and coverage. Don't overpay or be caught by surprise, particularly if you are a trustee.

**HEALTH INSURANCE:** Health insurance is one of the largest expenses for individuals and companies. And it keeps rising every year. Alternative platforms and other options may exist to reduce costs without any loss in benefits to start the new year. For employer based plans, tax deductibility also can be maximized through payroll but is often overlooked.

**PENSION PLANS:** A pension plan can be used to increase deductions for closely-held business owners up to $400,000. It is best suited to smaller companies with consistent cash flow. The plan must be implemented by the return due date, but benefits can be enhanced by implementing before year-end.

**REDUCE TAXABLE INVESTMENT INCOME:** Structures exist to reduce or eliminate the income tax on future investment income. They work particularly well for trusts and individuals with substantial ordinary investment income or those contemplating the sale of a closely-held business or other major asset.

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**If you'd like a complimentary portfolio review (CPR) by a qualified Withum Wealth Advisor, complete this form and we will connect you to the appropriate professional.**

Yes, Get My Complimentary Portfolio Review

# WEALTH MANAGEMENT STRATEGIES

**At Withum Wealth, we believe that a large part of long-term financial success is planning ahead.**

For this year-end planning guide, we have included a list of actions to consider in this dynamic financial environment. In addition, we include a brief article about important portfolio considerations as you approach retirement, offering guidance on asset allocation, Social Security, Roth conversions, and Medicare to help you refine your strategy for a secure retirement.

## Portfolio Allocation Considerations When Approaching Retirement

For much of the past, retiring at age 65 was the norm. However, retirement looks different for each of us today. Many clients are choosing to retire later for a variety of reasons—whether it's the need to boost savings, a passion for their career, or a desire to stay engaged and avoid boredom. As you approach 60, it's crucial to reassess key areas of your financial plan:

- How much will you need to retire comfortably?
- When should you start taking Social Security?
- Is your investment portfolio aligned with your retirement timeline?
- Should you consider Roth conversions?
- And how do you navigate Medicare?

The Withum Wealth Team will help you explore these important questions and offer guidance to help you refine your retirement strategy.  While offering a broad overview to encourage thoughtful planning, but remember, retirement is personal — what works for one person may not work for another. A detailed, tailored wealth analysis is the best way to ensure you're on the right track.

A key starting point in retirement planning is understanding your retirement expenses. We need an accurate estimate of these to determine how much money you will need to retire. First, look at your detailed current expenditures. We can provide a worksheet to assist you with this. Then, consider what will change in retirement. For example, many retirees have increased travel expenses but spend less on work attire and commuting. You might want to help fund 529s for your grandchildren or buy a second home. Your Medicare expenses will vary based on your income level. This is just a small list of things to consider when developing a post-retirement budget.

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**Another question arises:** At what age should we begin taking Social Security? When to take Social Security is both a quantitative and qualitative decision. It is quantitative to the extent that the monthly amount you can receive increases about 8% per year until age 70, and we can calculate when you'll "break even" if you begin taking it later than Full Retirement Age. For healthy clients with a family history of longevity (and no immediate cash need), it often makes sense to wait. Conversely, those with health concerns or fears about the sustainability of the Social Security system may choose to claim earlier.

As you near retirement, it might make sense to shift your asset allocation to reduce risk, typically by increasing exposure to less volatile assets like bonds and cash. We use "might" because asset allocation should be tailored to individual circumstances. For those with significantly more than enough money to cover their retirement expenses, the portion intended for beneficiaries can be invested more aggressively. Those who need growth to achieve their retirement goals may need to maintain higher allocations in equities. Assessing your individual needs and objectives with a wealth plan will enable us to determine the appropriate asset allocation for you.

Roth conversions can be a powerful tool, especially if your income dips in the years between retirement and the start of Social Security or Required Minimum Distributions (RMDs). Again, everyone's situation is unique. Why convert? If most of the assets you have for retirement are qualified, you may have large Required Minimum Distributions you must take as you age. This could push you into high tax brackets, potentially even higher than during your working years. In this case, you would likely benefit from "smoothing out" your tax brackets, potentially saving significant tax dollars over the rest of your lifetime. This strategy also has the benefit of leaving your beneficiaries with untaxed distributions and is particularly attractive for those whose children are high earners.

Even if you do not retire at age 65, you are entitled to Medicare. You are eligible for Medicare Part A (hospital coverage) if you are 65 or older and meet the citizen and residency requirements. You can purchase Part B (doctor visits, outpatient services, and preventive care); the cost depends on your income level. There are several decisions to make regarding the type of coverage and which prescription plan you prefer. For many more details and nuances related to Medicare coverage.

As you approach retirement, the most important thing you can do is create a wealth plan to assess your unique situation. Even if you are nearing the end of your work life, you can still do things to increase your chances of a financially secure retirement.

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**If you are interested in working with a financial planner to create a wealth plan, please contact us. We genuinely enjoy guiding our clients through this period of their lives and believe that with the right plan, your retirement can be a time of financial security and peace of mind.**

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# Year-End Planning Checklist

## BUDGETING

- Review and reassess your goals and priorities
- Revisit your 2024 budget and prepare a budget for 2025
  - Be sure to include savings for your retirement and other goals
- Calculate your net worth and see how it compares to your financial plan
- Evaluate whether you have sufficient cash in your emergency fund (3-6 months living expenses)

## PORTFOLIO REVIEW

- Review your asset allocation and compare it to your targets
- Review your capital gain situation for the year
  - Consider tax loss harvesting if you are in a high tax bracket
  - Consider realizing gains if you are in the 0% Long Term Capital Gains tax bracket

## RETIREMENT SAVINGS

- If you were born in 1951 or earlier, satisfy your RMDs by December 31, 2024
  - Consider using Qualified Charitable Distributions for your charitable donations
- Review your 2024 retirement contributions for any IRA or 401(k) accounts
  - Make sure you are deferring enough to employer plans to receive the full amount of any employer match
  - Contribute to a Roth IRA if you have earned income and your MAGI is below the income restrictions:

| 2024 MAGI LIMITS | |
|---|---|
| SINGLE | MARRIED FILING JOINTLY |
| **$146,000-$161,000** | **$230,000-$240,000** |

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## RETIREMENT SAVINGS (Continued)

- Increase your Roth retirement account holdings without increasing your current income tax
  - If your employer's retirement plan allows after-tax contributions and in-plan conversions, take advantage of this strategy
  - If you have no pre-tax IRA accounts, do a backdoor Roth contribution
- Make your 2025 employer benefit elections (see below)
  - If you will be 50 or over during the year, then you are eligible to contribute additional "catch-up" amounts
- If you are retired and not yet taking RMDs, consider completing some Roth conversions (filling up your current tax or IRMAA bracket)
- Review the beneficiaries for all your accounts

## GIFTING

- Take advantage of the $18,000 per donee annual gift exclusion in 2024
- Consider your gifting strategy:
  - Use qualified charitable distributions if you need to take RMDs
  - Donate appreciated stock to avoid paying capital gains tax
  - Combine several years of gifting to maximize your itemized deduction
- Consider contributing to a 529 plan

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- WEALTH MANAGEMENT STRATEGIES
  - PORTFOLIO ALLOCATION CONSIDERATIONS WHEN APPROACHING RETIREMENT
  - YEAR-END PLANNING CHECKLIST
  - RETIREMENT PLANS 2024 - 2025
  - FINANCIAL PLANNING IN UNCERTAIN TIMES

Speak with a member of the Withum Wealth Management Team to craft a financial future designed specifically for you

## RETIREMENT PLANS 2024 - 2025*

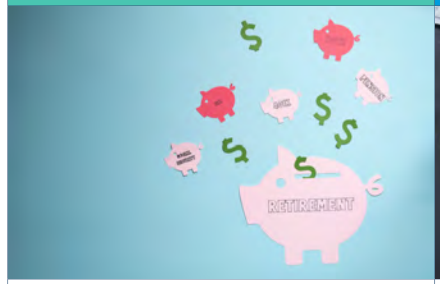
| | 2024 | 2025 |
|---|---|---|
| 401(K), 403(B)-402(G)(1) - MAXIMUM EMPLOYEE ELECTIVE DEFERRAL | $23,000 | $23,500 |
| DEFINED CONTRIBUTION PLAN TOTAL LIMIT (EMPLOYEE + EMPLOYER) | $69,000 | $70,000 |
| SOLO 401K MAXIMUM CONTRIBUTION (EMPLOYEE + EMPLOYER) | $69,000 | $70,000 |
| CATCH-UP CONTRIBUTION FOR THE PLANS ABOVE (AGE 50 OR OLDER, ABOVE ANNUAL LIMIT) | $7,500 | $7,500 |
| NEW: CATCH-UP CONTRIBUTION AGE 60-63 | N/A | $11,250 |
| IRA CONTRIBUTION LIMIT | $7,000 | $7,000 |
| IRA CATCH-UP CONTRIBUTION (AGE 50 OR OLDER, ABOVE ANNUAL LIMIT) | $1,000 | $1,000 |
| ROTH IRA CONTRIBUTION LIMIT | $7,000 | $7,000 |
| ROTH IRA CATCH-UP CONTRIBUTION (AGE 50 OR OLDER, ABOVE ANNUAL LIMIT) | $1,000 | $1,000 |
| SEP IRA MAXIMUM CONTRIBUTION | $69,000 | $70,000 |
| SIMPLE MAXIMUM CONTRIBUTIONS | $16,000 | $16,500 |
| SIMPLE CATCH-UP CONTRIBUTION (AGE 50 OR OLDER, ABOVE ANNUAL LIMIT) | $3,500 | $3,500 |
| NEW: CATCH-UP CONTRIBUTION AGE 60-63 | N/A | $5,250 |

**The IRS publishes the official adjustments for the next year in late October or early November. Estimated figures are calculated using the published inflation numbers by the same rules the IRS uses as stipulated by law.*

# Financial Planning in Uncertain Times

## ESTABLISH A GAME PLAN AND BE OPPORTUNISTIC.

Many of our planning strategies can serve as an effective foundation for optimizing goals and objectives. During periods of market and/or political uncertainty, it is important not to lose sight of these foundational strategies.



### Roth Conversions

Coverting IRA assets to a Roth IRA allows clients to remain in control of their marginal tax bracket while shifting resources to another financial "bucket"

**EXAMPLE** – converting investments intended for long-term growth while in an unusually low-income tax bracket can be a great way to help mitigate income tax drag on portfolios and reduce future RMDs.


### Tax Loss Harvesting

(For Taxpayers who are not in the 0% long-term capital gains tax bracket) Realize positions at a loss as frequently as possible. Losses can be carried forward indefinitely to offset capital gains and $3,000 of ordinary income.

**EXAMPLE** – sell a position in an ETF to realize a $2,500 loss and reinvest in a similar ETF to keep a similar market exposure.

### Maximize + Reallocate 401(k) Contributions

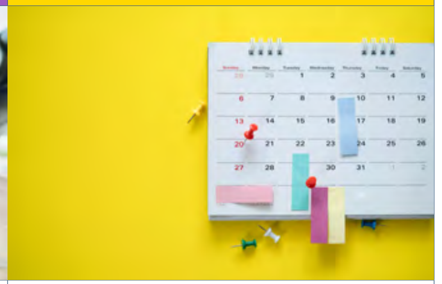
Plan to increase contributions for the year ahead.

**EXAMPLE** – set a reminder to log in (or ask the appropriate payroll person) and increase your contribution percentage of pay to coincide with the first payroll of January.

### Review Budget and Personal Balance Sheet

Reducing unnecessary spending can free up cash to save and invest. Eliminate credit card debt.

**EXAMPLE** – automate savings and investments into a brokerage account and reduce discretionary spending where possible. It is prudent to ensure financial stability in case economic conditions worsen.



### Review Your Financial Plan

Reevaluating your financial plan on a recurring basis (perhaps annually) helps to keep your plan current.

**EXAMPLE** – contact your advisor to update your plan based on changes in goals, income, and any "what if" scenarios you would like to stress test.

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# CHECK OUT OUR YEAR-END PLANNING WEBINAR SERIES

**Successful Year-End Planning Steps for Your Business**

Join Withum's tax experts for a timely and in-depth review of the most important tax planning strategies you can take now to minimize your business' tax bill this year.

REGISTER NOW


**Year-End Tax Strategies for High-Net Worth Individuals**

As the year draws to a close, it's crucial for High-Net Worth Private Clients to review and optimize their tax strategies to ensure maximum efficiency.

REGISTER NOW


**Essential State and Local Tax Year-End Planning Strategies**

Join us for an insightful webinar designed to help businesses and individuals navigate the complexities of state and local tax (SALT) planning as the year ends.

REGISTER NOW


**International Services and Transfer Pricing Year-End Planning Strategies**

For businesses operating in multiple countries or individuals with assets and income in multiple countries.

REGISTER NOW

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**Contact our Withum Tax Professionals to discuss planning ideas applicable to your situation.**

LEARN MORE

CONTACT US

No action should be taken without advice from a Withum Tax Professional because tax law changes frequently, which can have a significant impact on this guide and your specific planning possibilities. Reach out to discuss your individual situation as year-end approaches.

withum.com/tax