

# FORVIS<sup>®</sup>

Tax

## 2023 Year-End Update

December 2023

# Your Presenters



**Jesse Palmer**

Director of Tax Quality Control

---



**Heather Alley**

Partner, Professional Standards Group

---



**Iris Laws**

Senior Manager, Professional Standards Group

---

# Included Topics

- Background discussion
- Planning opportunities
- Examples & observations

Policy Update	PTE Election
Employee Retention Credit (ERC)	Stock Buyback
Inflation Reduction Act (IRA)	Tax Planning Guide
Section 174	

# Policy Update

---

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registered with the U.S. Patent and Trademark Office.

# Near-Term Prospects for Tax Legislation

Divided government control—with one political party controlling the White House & Senate, & the other party controlling the House—will limit the scope of new tax & spending legislation.

## TCJA Business Tax Provisions

Current deductibility of Section 174 research expenditures

Four-year phase-out of Section 168(k) 'bonus' depreciation deductions

Tighter Section 163(j) interest deduction limitations

## Additional Areas of Potential Bipartisan Support

1099-K Information Reporting

SECURE 2.0 Technical Corrections

Broker Reporting on Digital Assets

Cryptocurrency

Housing Affordability

# 2025 & Beyond

## 2025 and Beyond

### Key TCJA tax provisions set to expire at end of 2025

Current 37% top individual ordinary income tax rate

20% deduction for pass-through business income

Higher standard deduction

Higher exemption amount and phase-out threshold for the individual alternative minimum tax

Increased estate tax exemption

\$2,000 child tax credit

\$10,000 SALT deduction cap

GILTI, BEAT & FDII become more restrictive

PwC | Tax policy outlook

OECD  
Pillar 1  
Pillar 2

# Corporate Transparency Act (CTA)

- Considering beneficial ownership information reporting requirements are not a requirement of the IRS, but instead FINCEN, taxpayers are encouraged to consult with their attorneys on this matter
- Certain taxpayers will have new beneficial ownership reporting requirements starting 1/1/24
- Exemptions apply for who must report—including large operating companies with at least 20 full-time employees & more than \$5 million in gross receipts or sales
- Applicable entities will need to file changes in ownership throughout the year
- Heavy penalties may apply—civil penalties (\$500/day) & possible criminal penalties apply for willful failure to report

# Employee Retention Credit (ERC)

---

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registered with the U.S. Patent and Trademark Office.



# Employee Retention Credit

- Two ways to qualify for the employee retention credit
  - Sustained a full or partial suspension of operations due to orders from an appropriate governmental authority due to COVID-19 during 2020 or the first three quarters of 2021, or
  - Experienced a significant decline in gross receipts during 2020 or a decline in gross receipts during the first three quarters of 2021

# Employee Retention Credit

## ERC 2020

- Required decrease in gross receipts is 50% compared to 2019
- Credit is 50% of annual qualified wages up to \$10,000 per employee
  - All wages between March 12 & January 1, 2020 count toward qualified wages for eligible businesses with less than 100 employees

## ERC 2021

- Required decrease in gross receipts is 20% compared to 2019
- Credit is 70% of quarterly qualified wages up to \$10,000 per employee
  - All wages between January 1 & September 30 count toward qualified wages for eligible businesses with 500 or less employees

# Employee Retention Credit

- At this point, an amendment to Form 941 is required to claim the credit
- For federal income tax purposes, the employer's payroll expense is reduced by the ERC wages less the incurred SSA tax
  - This would also trigger an amendment to the income tax return
- IR 2023-169 issued September 14, 2023 notified the public of a moratorium on processing of ERC claims through at least the end of the year

# Employee Retention Credit

- Several warnings on ERC have been issued by the IRS
  - Validity of ERC is responsibility of taxpayer
  - Aggressive promoters are pushing businesses to make improper ERC claims
    - Red flag warning signs (IR 2023-170)
  - Enhanced reviews, exams & investigations, procedures to be issued for withdrawal, & settlement program to be finalized
  - IRS Recommendation to seek out a trusted tax professional

# Inflation Reduction Act (IRA)

---

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registered with the U.S. Patent and Trademark Office.

# IRA – Clean Energy Credits

## Capital Expenditures

- Clean energy property
- Construction/renovation

## Manufacturing

- Manufacture of clean energy property
- Re-equip/expand manufacturing facility of clean energy property

## Carbon Sequestration

- Capture – Dispose or Utilize

## Alternative Fuels

- Clean Nuclear
- Biodiesel & others
- Clean Hydrogen
- Aviation Fuels

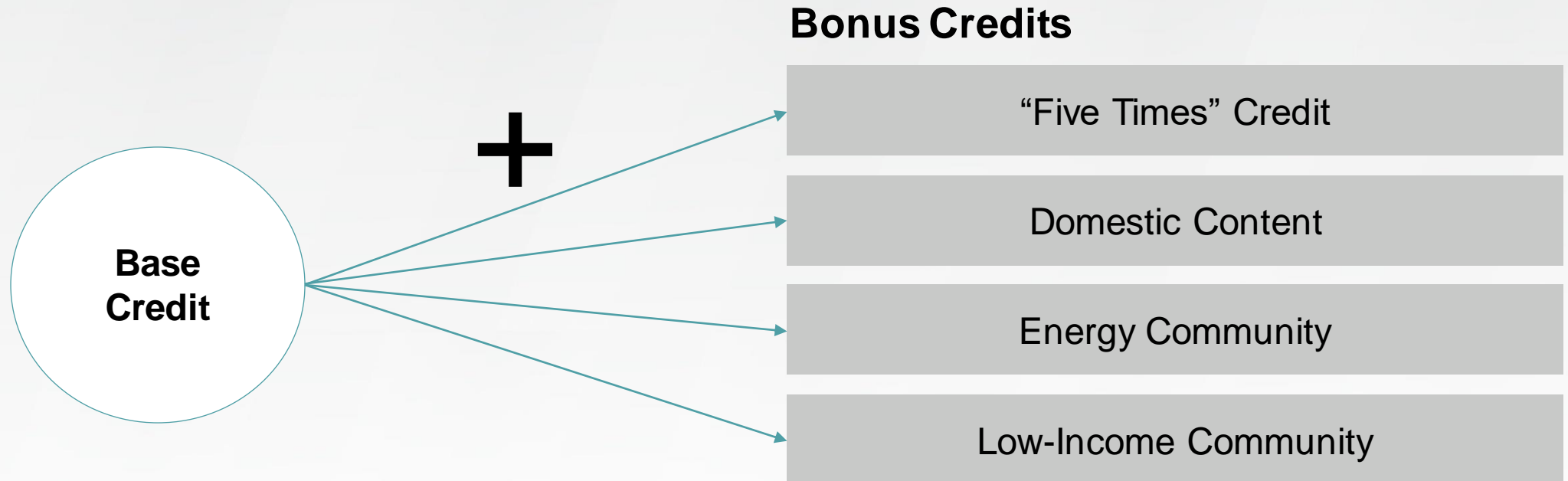
## Electric Vehicles

- Vehicles
- Charging stations
- Mobile machinery

## Energy Production

# Credit Mechanics

- General framework: “base” with “bonus” opportunities
- Once all is considered, IRA provides for higher credit amount opportunities
  - “Old” credit base generally cut 80% starting 1/1/2023



# Credit Mechanics – Example

Company X placed solar panels in service in 2023. The basis of the property is \$100,000. Assuming all bonus credit requirements are met, the credit calculation would be

## Pre-IRA

Description	Rate/ Calculation	Credit Amount
Base credit	30%	<b><u>\$30,000</u></b>

## Post-IRA

Description	Rate/Calculation	Credit Amount (Cumulative)
Base credit	6%	\$6,000
5 times bonus	x5	\$30,000
Domestic content	10%	\$40,000
Energy community	10%	<b>\$50,000</b>



# Bonus Credits – “Five Times” Bonus

- “Five Times” Bonus Credit – Either
  - Project less than 1 megawatt, OR
  - Prevailing wage & apprenticeship requirements (PWA)

Base x 5

## Prevailing Wage Requirement

- Pay at least prevailing wage to all laborers & mechanics on project
  - Employed by taxpayer, contractor, or subcontractor
  - Consider including in contracts
- Prevailing Wage determination: <https://www.sam.gov>
- Recordkeeping requirements
- Cost/benefit analysis of increased pay versus credit benefit

## Apprenticeship Requirement

- If four workers, must have at least one qualifying apprentice
- Request from qualifying apprenticeship programs
- Recordkeeping requirements
  - Daily “proof” required

# Updates & Clarifications – PWA: Penalty, Interest, Correction Payments

## Proposed Regs – Prevailing Wage & Apprenticeship (PWA)

- Penalty, interest, & correction payments
  - “Cure” now available – penalty & correction payments, allows for increased credit despite not meeting PWA requirements
  - “Cure” responsibility of transferor
  - Intentional disregard information available (facts & circumstances, increased cure)
  - Penalty waiver possible: correction payment made earlier of
    - 30 days after taxpayer’s awareness of error
    - Date increased credit claimed
    - Not underpaid for more than either
      - 10% of all pay periods, or
      - Shortcoming not more than 2.5% of prevailing wage

# Updates & Clarifications – PWA: General Guidance

## Proposed Regs – Prevailing Wage & Apprenticeship (PWA)

- General guidance
  - Secondary site – must meet PWA for that location if established for or dedicated exclusively to the project
  - Apprentices paid wages established by apprenticeship program
  - “Excess” apprentices based on ratio requirement paid prevailing wage
  - Davis-Bacon Act discussion
    - Dependencies: wage determinations, supplemental determination process, definitions
    - Departures: contracts, certified weekly payroll not required, enforcement process
  - Good Faith Exception (apprenticeship requirement)
    - Acknowledgement of request meets requirement
    - Follow-up request required within 120 days
    - Partial denial not full denial

# Updates & Clarifications – PWA: Documentation & Recordkeeping

Proposed Regs – Prevailing Wage & Apprenticeship (PWA)

- Documentation & Recordkeeping
  - Supplemental determination requests
  - Apprentice request in accordance with Good Faith Exception
  - Recordkeeping
    - Prevailing wage
    - Apprenticeship
- FORVIS solution underway

# Bonus Credits – Other: Background

## Domestic Content

### 10% bonus

---

- Steel & Iron – 100%
- Manufactured product – 40%

## Energy Community

### 10% bonus

---

- Brownfield Site
- Statistical area – specific requirements
- Census tract with (or adjoining) closed coal mine
- Website/map available (DOE website)

## Low-Income Housing

### 10%–20% bonus

---

- Eligible facilities
  - Solar facilities
  - Wind facilities

# Updates & Clarifications – Low Income

- Low-Income Communities bonus for solar & wind (Notice 2023-17)
  - Applications
    - DOE website portal
    - One application per facility per allocation year
    - 30-day period at the start of each program year
  - Capacity limitations for 2023 & 2024

Category 1: Located in a Low-Income Community	700 megawatts	10% Bonus
Category 2: Located on Indian Land	200 megawatts	10% Bonus
Category 3: Qualified Low-Income Residential Building Project	200 megawatts	20% Bonus
Category 4: Qualified Low-Income Economic Benefit Project	700 megawatts	20% Bonus

# Monetize the Credit

## Transferability – “Selling” Credits

- Taxable entities eligible
- Potentially expected discount: 10–20%
- Registration of projects required – more to come
- Exchanges/venues for transfer available
- Risk involved – recapture liability on transferee though PWA requirements stay with the transferor
  - Tax Insurance generally available
  - Contracts important

## Direct Pay – “Cash Back”

- Tax-exempt entities are mostly the only entities eligible for Direct Pay
- Cash instead of tax reduction
- Registration of projects required
- Taxable entities eligible for
  - Section 45X – Advanced Manufacturing Production Credit
  - Section 45Q – Carbon Sequestration
  - Section 45V – Production of Clean Hydrogen

# Updates & Clarifications – Transfers

- Transferring Credits (REG-101610-23)
  - Credits can only be sold for cash, & within a certain time frame to unrelated third parties
  - Cash received = tax-exempt income to transferor & not a deduction for the transferee
  - Transferee cannot resell or transfer the credit a second time
  - Taxpayers subject to Section 469 will normally characterize these credits as passive
  - No direct pay on transferred credits



# Updates & Clarifications – Direct Pay

- Direct pay (Reg-101607-23)
  - Election is applicable for the current year plus the next four years ending before January 1, 2033
  - Payment = treated as tax-exempt income
  - Entity election, **not** a partner election
  - Credit is reduced if tax-exempt financing & grants involved
  - Includes government instrumentalities (including public universities), subdivisions, & their agencies

# Updates & Clarifications – Registration

- Registration requirements (T.D. 9975 & FAQs)
  - Registration required to transfer credits or make direct pay election
  - Made on IRS electronic portal – planned operational fall of 2023
  - Registration number is unique to each credit property for one year
    - Renewal required annually for credits with multiple year applicability
    - Reported with annual tax returns & requisite credit Forms
      - Statement required to identify transferor, transferee, & other details of the credit
    - Note: Taxpayers not normally required to file an annual tax return (such as state or local governments) would file a Form 990-T with the registration number to claim direct pay

# Updates & Clarifications – Electric Vehicles

- Electric Vehicles
  - Section 45W - Qualified Commercial Clean Vehicle
    - Safe harbor for incremental cost – for street vehicles taxpayers can depend on cost analysis published by DOE
      - All street vehicles with GVWR less than 14,000 lbs. except compact PHEVs will not be limited by incremental cost
  - Section 30D- New Clean Vehicle credit
    - Released on March 31, 2023, REG-120080-22 includes
      - §1.30D-1 Credit for new clean vehicles
      - §1.30D-2 Definitions
      - §1.30D-3 Critical mineral & battery component requirements
      - §1.30D-4 Special rules

# IRA FORVIS Insights

- Direct pay not possible for credits purchased via transfer
- Consider whether beneficial to have at least a portion of funding to come from credit nontax-exempt sources (calculations could limit credit availability if tax-exempt funding is used)
- For credit transfers, the required transfer election statement should be completed prior to closing on the purchase
  - Buyer & seller information must match
  - Liability re-sent to the transferor if the transferee does not meet the credit requirements
    - Credit insurance is available
- Domestic content – direct cost vs. indirect cost details required from suppliers. Is this likely?
- FORVIS recommends specific language re: apprenticeship & prevailing wage in contracts with contractor & subcontractors. Helps to ensure compliance with PWA requirements & avoidance of recapture event

# TaxCred Pro for Clean Energy

- FORVIS tool available by 2024
- Explore available credits & general credit amounts
- Business & personal credits available

The screenshot displays the 'Form Editor' interface for a survey. The top navigation bar includes 'Home', 'Form Editor', 'Response Data', and 'Help'. Below this, the breadcrumb trail reads 'Survey > Question Sets > Individual Tab'. On the left sidebar, under 'Survey ABCD', 'Question Set 2' is selected, with an 'Add Question Set +' option below it. The main content area shows 'Question Set 2' with the title 'Questions regarding individual green energy contributions.' The first question is 'What type of green energy investment you would like to make, or green energy project you would like to be a part of (select all that apply)?' with a list of options: 'Previously Owned Clean Vehicle(s)', 'New qualified plug-in Electric Drive Motor Vehicle(s)', 'Qualified Energy Efficiency Improvements', 'Residential Energy Property Expenditures', 'Home Energy Audits', and 'None of the Above'. The second question is 'Was your investment made after 01/01/2023?' with a 'Yes' radio button option.

# How FORVIS Can Help

- Identify eligible credits
- Aid in project planning
  - Cost/benefit analysis
  - Contract considerations
  - Recommendations for certifications
  - Compliance & reporting requirements
  - Timing & location planning

# Who to Contact

FORVIS has professionals with experience in many of the credits within the IRA. Here are a few to reach out to:

Topic	Name	Email
General IRA- Leaders	Rich Boer Troy Taylor	<a href="mailto:rich.boer@forvis.com">rich.boer@forvis.com</a> <a href="mailto:troy.taylor@forvis.com">troy.taylor@forvis.com</a>
General IRA	Iris Laws	<a href="mailto:iris.laws@forvis.com">iris.laws@forvis.com</a>
Section 45 & 48	Derek Smith	<a href="mailto:derek.smith@forvis.com">derek.smith@forvis.com</a>
Solar Development	Brandon Hales	<a href="mailto:brandon.hales@forvis.com">brandon.hales@forvis.com</a>
Section 45Q	Bob Johnson	<a href="mailto:bob.johnson@forvis.com">bob.johnson@forvis.com</a>
Section 48C	Rich Boer	<a href="mailto:rich.boer@forvis.com">rich.boer@forvis.com</a>
Section 45L	Stuart Nofsinger	<a href="mailto:stuart.nofsinger@forvis.com">stuart.nofsinger@forvis.com</a>
Section 179D	Tricia Krajnak-Salazar & Robert Bradham	<a href="mailto:tricia.krajnaksalazar@forvis.com">tricia.krajnaksalazar@forvis.com</a> <a href="mailto:robert.bradham@forvis.com">robert.bradham@forvis.com</a>
Electric Vehicles	Adam Neporadny	<a href="mailto:adam.neporadny@forvis.com">adam.neporadny@forvis.com</a>
Section 45X	Josh Wheeler	<a href="mailto:josh.wheeler@forvis.com">josh.wheeler@forvis.com</a>



# PTE Election

---

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registered with the U.S. Patent and Trademark Office.

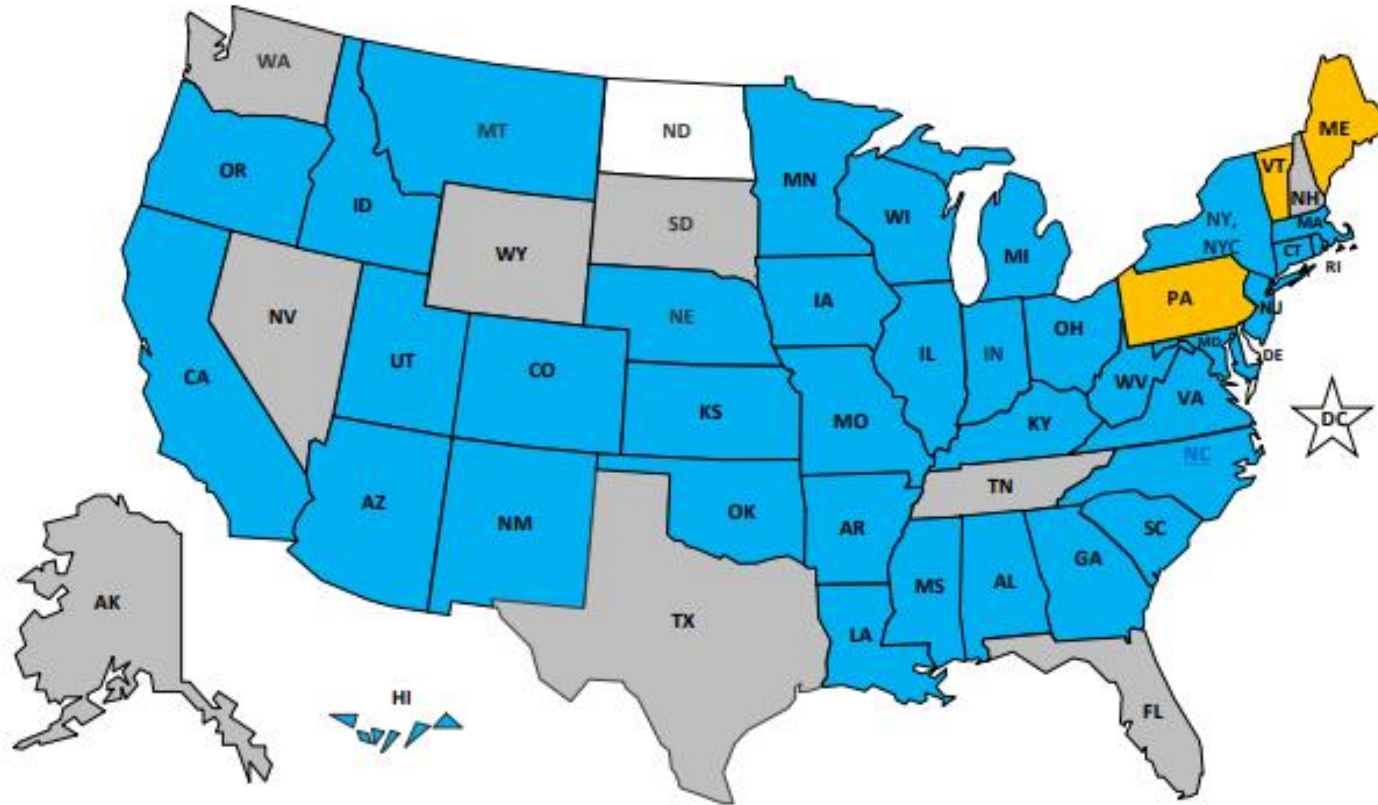


# Pass-Through Entity (PTE) Tax Election

- The TCJA created a cap on the State & Local Tax itemized deduction of \$10,000 (married filing jointly) & \$5,000 (married filing separately) for tax years beginning after 12/31/17 & before 1/1/2026
- IRS Notice 2020-75 indicates that the tax paid under a PTE election will be treated as a deduction of the PTE & is applicable to Specified Income Tax Payments made on or after November 9, 2020
- There are questions & issues that should be considered before a taxpayer makes a PTE election in any state

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

As of August 10, 2023



- 36 states (& 1 locality) that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:  
[AL](#), [AR](#)<sup>1</sup>, [AZ](#)<sup>1</sup>, [CA](#), [CO](#)<sup>3</sup>, [CT](#)<sup>4</sup>, [HI](#)<sup>2</sup>, [GA](#)<sup>1</sup>, [IA](#)<sup>1</sup>, [ID](#), [IL](#), [IN](#)<sup>1</sup>, [KS](#)<sup>1</sup>, [KY](#)<sup>1</sup> (& [KY](#)), [LA](#), [MA](#), [MI](#), [MD](#), [MN](#), [MO](#)<sup>1</sup>, [MS](#)<sup>1</sup>, [MT](#)<sup>2</sup>, [NC](#)<sup>1</sup>, [NE](#)<sup>3</sup>, [NJ](#), [NM](#)<sup>1</sup>, [NY](#), [OH](#)<sup>1</sup>, [OK](#), [OR](#)<sup>1</sup>, [RI](#), [SC](#), [UT](#)<sup>1</sup>, [VA](#), [WI](#), [WV](#)<sup>1</sup>, and [NYC](#)<sup>1</sup>
  - <sup>1</sup> Effective in 2022
  - <sup>2</sup> Effective in 2023 or later
  - <sup>3</sup> Retroactive to 2018
  - <sup>4</sup> Mandatory 2018-2023, elective starting 2024
- 3 states with proposed PTE tax bills:  
 ME - [LD 1891](#) introduced (session ended)  
 PA - [SB 659](#) and [HB 1584](#) introduced  
 VT - [SB45](#) passed Senate, in House (session ended)
- 9 states with no owner-level personal income tax on PTE income:  
 AK, FL, NH, NV, SD, TN, TX, WA, WY
- 3 states with an owner-level personal income tax on PTE income that have not yet proposed or enacted PTE taxes:  
 DC, DE, and ND



# Pass-Through Entity (PTE) Tax Election

- Given the complexity of the PTET regime, there are a variety of questions to consider:
  - What is the appropriate timing for the deduction of a PTET specified income tax payment (SITP)?
    - Generally in the year the payment is made (Notice 2020-75)
    - Is there flexibility for accrual basis taxpayers?
  - Generally the deduction resulting from SITPs are included in ordinary income trade or business income (non-separately stated income or loss). If taxpayers also have separately stated income, should any portion of the SITP deduction be allocated to this separately stated income?
    - Similarly, would interest expense “traced” to SITP also be separately stated/treated as nondeductible personal interest expense?
  - How are refunds resulting from PTET treated?
  - Some states allow for some owners to elect in & others to elect out of PTET regime. For S-Corporations with required pro-rata allocations & distributions, how would this work?

# Section 174 & R&D

---

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registered with the U.S. Patent and Trademark Office.

# §174 Research & Experimental Expenditures

- TCJA amendment effective for tax years beginning in 2022
  - Disallows deductions other than through amortization
  - Amortization deductions over five years (six tax years) or 15 years (16 tax years) if research conducted abroad
  - Software development costs specifically included in definition of specified research & experimental expenditures (SREEs)
  - No deduction of SREEs allowed on account of disposition, retirement, or abandonment of property with respect to which SREEs were paid or incurred
  - Corresponding changes to §41 & §280C

# §174 Research & Experimental Expenditures

- Complying with Section 174 capitalization represents an accounting method change
- If made in first tax year beginning after December 31, 2021 taxpayers may file a statement (in lieu of Form 3115) with original returns & include
  - Name, EIN of applicant that paid/incurred R&E expenses after 12/31/21
  - Beginning & ending dates of first taxable year change takes effect
  - Designated accounting method change number (DCN #265)
  - Description of the types of expenditures included as R&E expenditures
  - Amount of R&E expenditures paid or incurred during the year of change
  - Declaration the applicant is changing method of accounting for R&E expenditures to capitalize to capital account & amortize
- If made in later tax year a modified 481(a) adjustment & filing of form 3115 is required

# §174 Research & Experimental Expenditures

- Notice 2023-63 issued on 9/8/2023
  - Intention to issue proposed regulations
  - Interim guidance anticipated to align with forthcoming proposed regulations included in sections 3 through 9 of the notice
  - Provides taxpayers may rely on interim guidance of the Notice until issuance of proposed regulations if they consistently apply entirety of guidance in the Notice
  - Requests comments

# Stock Buybacks

---

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registered with the U.S. Patent and Trademark Office.



# Market Background of Section 4501

- Stock buybacks have increased in prevalence as compared to dividend distributions since passage of Rule 10b-18 in 1982
  - Provides issuers with legal safe harbor from liability for market manipulation under Securities & Exchange Act of 1934
  - Certain restrictions on volume, price, timing, & manner
- Significant growth in volume of repurchases since passage of Tax Cuts & Jobs Act of 2017, possibly because of lower corporate tax rates that increased disposable cash

# 4501 Statutory Mechanics

- Section 4501 imposes a buyback excise tax on "covered corporations" that repurchase more than \$1 million of their stock during the taxable year
  - A covered corporation is any domestic corporation whose stock is traded on an established securities market (Section 7704(b)(1))
    - A 50% or greater owned (by vote or value, directly or indirectly) U.S. subsidiary of a publicly traded foreign corporation is subject to the tax on purchases of foreign parent stock
    - Funding rule - An applicable specified affiliate is treated as acquiring stock of an applicable foreign corporation if the applicable specified affiliated funds by any means (distributions, debt, or capital contributions) the acquisition or repurchase of applicable foreign corporation stock & such funding is undertaken for a principal purpose of avoiding the stock repurchase of the excise tax
      - Two Year Per Se Rule
- The excise tax equals 1% of the fair market value of any stock repurchased during the taxable year *netted* against the value of any new stock issuances in such year
- Effective for tax years after December 31, 2022

# 4501 Exceptions

- Repurchases part of a reorganization under Section 368(a) & no gain or loss is recognized by the shareholder
- If the repurchased stock or its value is contributed to an employer-sponsored retirement plan, employee stock ownership plan, or something similar
  - Can count contributions after the year but before the filing deadline
- Dealer in ordinary securities
- RIC or REIT
- To the extent the repurchase is treated as a dividend

# 4501 IRS Guidance to Date

- IRS issued Notice 2023-2 on December 27, 2022
- The Notice provides taxpayers with interim guidance until regulations are published
- The Notice contains
  - a summary of the underlying relevant law
  - certain operating rules
  - a description of anticipated rules for reporting & the payment of excise tax liability
  - exclusive list of transactions that are treated as Section 317(b) redemptions but are not repurchases subject to the excise tax
  - exclusive list of economically similar transactions
  - non-exclusive list of transactions that are not economically similar
  - rules regarding the timing & fair market value of repurchased stock
  - examples of various transactions
- Announcement 2023-18 – IRS won't require reporting of the new excise tax on repurchases of corporate stock under Section 4501 before the time specified in upcoming final regulations, that the payment deadline will be the same as the filing deadline for quarterly returns, & that penalty relief applies during the transition period

# Tax Planning Guide

---

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registered with the U.S. Patent and Trademark Office.

# Tax Planning Guide

- Available for free now!
- [Linked here](#)
- Included
  - More detail on topics discussed today (& many others)
  - Federal, State & Local, International, Individual planning topics
- Timely updates to be made as guidance is issued