

## Current Federal Tax Developments 2022

Edward K. Zollars, CPA (Arizona)  
[www.currentfederaltaxdevelopments.com](http://www.currentfederaltaxdevelopments.com)  
[edzollars@currentfederaltaxdevelopments.com](mailto:edzollars@currentfederaltaxdevelopments.com)

Updated December 2022



### Key Changes for 2022

- One piece of major legislation: Inflation Reduction Act of 2022
- SECURE Act Proposed RMD regulations and IRS delay of impact of key provision in the regulations
- TCJA delayed “bad news” items:
  - §163(j) no longer can exclude depreciation, amortization and depletion in computing adjusted taxable income (ATI)
  - §174 research expense capitalization (five years unless foreign in which case its 15 years)



## The §163(j) Problem for 2022

- Because depreciation, amortization and depletion now reduce ATI, there is more of a restriction on deducting interest, especially for capital intensive businesses
  - May end up deciding to opt-out of bonus depreciation or even elect ADS to reduce issues with the interest deduction
  - Also have to consider the elections for real estate and farming businesses to eliminate exposure to §163(j) for using ADS depreciation only on certain assets
  - Remember the gross receipts exception is \$27,000,000 average for 2022 and \$29,000,000 for 2023

## Inflation Reduction Act of 2022

The most significant tax legislation  
enacted in 2022



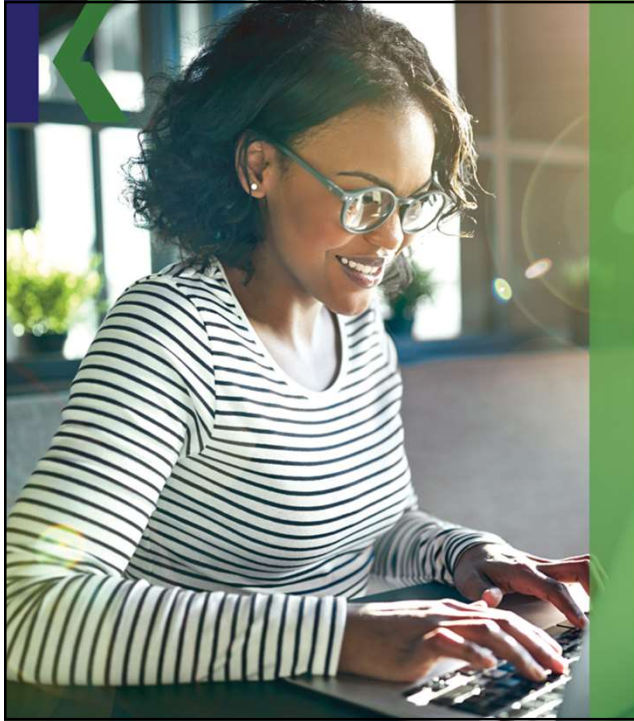
## Inflation Reduction Act of 2022

- Signed into law on August 16, 2022 (Date of enactment)
- While it's clear there are Build Back Better Act roots, most of BBBA did not make this bill and many provisions in the bill are very different from BBBA versions
- Bill includes
  - Two major large corporation revenue raisers
  - Extension of Premium Tax Credit provisions added in ARPA
  - Many energy related provisions, most of which are credits



## Inflation Reduction Act of 2022

- Most provisions take effect in 2023, but there are some items that impact 2022
- Looking at highlights today, not the entire act
  - Will only consider energy provisions that a number of clients of might make use of
  - Will only very briefly discuss two key large corporation provisions (minimum tax & excise tax on stock buy-backs)



## Tax Provisions Primarily Impacting Individuals and Small Businesses

Non-energy provisions of the bill that impact individuals and closely held businesses



## ARPA Premium Tax Credit Rules Extended Through 2025

- **Effective Date:** Extension will move the end of the special rules to December 31, 2025. Previously these rules would have expired at the end of 2022.
- ARPA provided lower percentage tables & got rid of cliff at 400% of Federal poverty line
- Otherwise, subsidized premiums would have gone up in 2023
- Percentages that had just been published by IRS



<b>Household income percentage of Federal poverty line:</b>	<b>Initial percentage</b>	<b>Final percentage</b>
Less than 133%	1.92%	1.92%
At least 133% but less than 150%	2.88%	3.84%
At least 150% but less than 200%	3.84%	6.05%
At least 200% but less than 250%	6.05%	7.73%
At least 250% but less than 300%	7.73%	9.12%
At least 300% but not more than 400%	9.12%	9.12%



## **ARPA Premium Tax Credit Rules Extended Through 2025**

- Table reverts to same table used in 2021 and 2022



Household income percentage of Federal poverty line:	Initial percentage	Final percentage
Up to 150%	0%	0%
At least 150% but less than 200%	0%	2.0%
At least 200% but less than 250%	2.0%	4.0%
At least 250% but less than 300%	4.0%	6.0%
At least 300% but less than 400%	6.0%	8.5%
400% and higher	8.5%	8.5%



## ARPA Premium Tax Credit Rules Extended Through 2025

- Can still get credit if household income exceed 400% of FPL if second lowest cost silver policy exceeds 8.5% of household income
- Note that the “affordable” percentage for employers remains at the inflation adjusted rate.



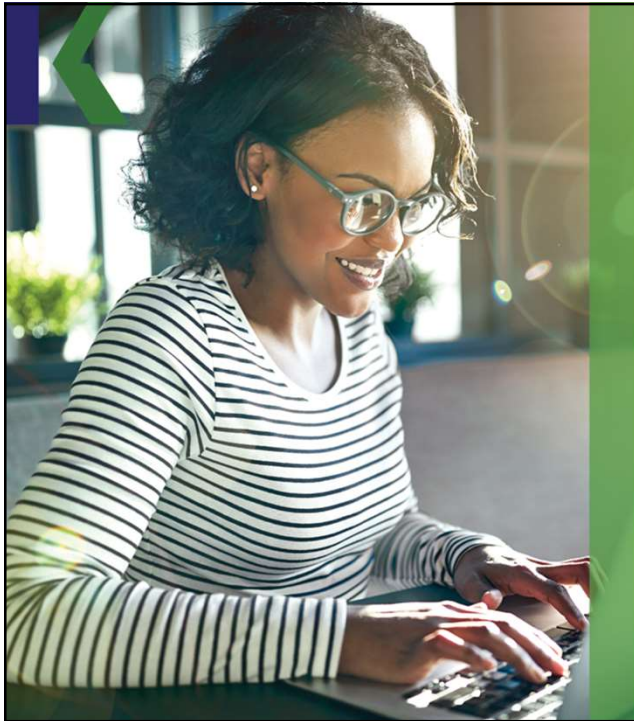
## Extension of Limitation on Excess Business Losses of Noncorporate Taxpayers

- **Effective Date:** Taxable years beginning after December 31, 2026.
- 2022 limit on excess business loss deduction is \$270,000/\$540,000
- In Tax Cuts and Jobs Act this limit was scheduled to go away after 2025 (though no one believed it would really--including Sen. Thune)
  - Was extended for one year in ARPA to raise funds for that bill
  - Got extended two more years to swap out extension of state and local tax cap (which is just as unlikely to ever go away) to pay for private equity partnership relief related to the corporate minimum tax (Thune amendment)



## Raise Limit to Using \$500,000 of R&D Credit Against Payroll Taxes for QSB

- **Effective Date:** Tax years beginning after December 31, 2022
- Research and development credit allowed certain qualified small businesses (QSB) to use up to \$250,000 a year of credit against employer payroll taxes for up to 5 years
- Will add an additional \$250,000 (so raise total to \$500,000 a year) to the special employer payroll tax offset



## Energy Tax Credits (Other Than Vehicles)

Other energy tax credits besides the cars in the bill



## Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- **Effective Date:** Generally, the new and revised provisions apply to property placed in service after December 31, 2022, and before January 1, 2033. However, the bill also moves the expiration date of the old law forward by one year so that the old rules will apply to 2022 tax returns. The requirement to provide a product identification number takes effect for property placed in service after December 31, 2024.





## Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- Restores the Nonbusiness Energy Property Credit (prior name) under 2021 rules for 2022
  - For many clients they've already used up the lifetime caps (\$500 with further limits on specific areas)
  - But if there is still room for the client, can pick up any remaining amounts on 2022 returns
- 2022 - get 30% credit on two prior categories (with revisions) but also a home energy audit
- Note that, unlike other items, a home energy audit only works for principal residence



## Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- Big change - no longer lifetime limits and limits get larger
  - Limits are now annual, so taxpayers can claim a credit every year
  - For most of the items, overall annual limit of \$1,200 per year
    - Qualified energy property - \$600
    - Exterior windows and skylights - \$600
    - Doors - \$250 in the case of any single exterior door and \$500 for all exterior doors and
    - Home energy audit - \$150



## Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- Notwithstanding the above rule, the maximum credit for heat pump and heat pump water heaters & biomass stoves and boilers is \$2,000
- Modifications related to qualified energy efficiency improvements
  - New standards for some items
  - Roofs no longer qualify
  - Air sealing materials or systems are added
- Now property only has to be used by the taxpayer as a residence, but not necessarily as their principal residence (except for home energy audits)



## Energy Efficient Home Improvement Credit - Extension, Expansion & Renaming of Credit

- Beginning in 2025 will have to provide a product identification number to claim a credit
  - Unique to each item to be assigned by manufacturer under rules to be proposed by the IRS
  - If number is not provided, credit will not be allowed--most likely electronic filing will reject if not provided



## Extension and Modification of Residential Clean Energy Credit

- **Effective Date:** Most changes are effective for property placed in service after December 31, 2021. However, changes related to battery storage technology and the definition of that technology take effect for expenditures made after December 31, 2022.
- Applied to solar electric, solar hot water, fuel cell, small wind energy, geothermal heat pump, and biomass fuel property installed in homes prior to 2034.



## Extension and Modification of Residential Clean Energy Credit

- Resets rates and extends the credit:
  - 30% for property placed in service after December 31, 2021, and before January 1, 2033,
  - 26% for property placed in service after December 31, 2032, and before January 1, 2034, and
  - 22% for property placed in service after December 31, 2033, and before January 1, 2035.
- Adds qualified battery storage technology expenditures to qualified expenditures for property placed in service after December 31, 2022



## Elective Payments and Transferable Credits

- **Effective date:** These provisions are effective for taxable years beginning after December 31, 2022.
- Meant to allow tax exempt organizations and entities with insufficient income tax liabilities to still get a benefit from certain energy related credits



## Elective Payments and Transferable Credits

- Elective Payment for tax-exempt organizations - applicable entities
  - Any organization exempt from income tax,
  - Any State or local government (or political subdivision thereof),
  - The Tennessee Valley Authority,
  - An Indian tribal government (as defined in IRC §30D(g)(9)),
  - Any Alaska Native Corporation (as defined in 43 USC 1602(m)), or
  - Any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas



## Elective Payments and Transferable Credits

- List of eligible credits found at in the materials
- Treated as a payment of income taxes (IRC §6417)



## Elective Payments and Transferable Credits

- Transfer of Certain Credits - can be transferred by any taxpayer that is not an applicable entity eligible to elect to treat credits as a payment of income taxes under IRC §6417.
- List of eligible credits found at page 14 of materials
- Would allow selling the credit (at a discount) to a taxpayer with taxable income or to a more profitable entity



## Other Energy Provisions Not Covered in Detail Today

- §45 Electricity produced from certain renewable resources, etc. – extended and modified
- §48 Energy credit – extended and modified
- §45Q Credit for carbon oxide sequestration –extended and modified
- §45U Zero-emission nuclear power production credit—new credit added
- §40A Biodiesel and renewable diesel used as fuel—extended
- §40 Alcohol, etc., used as fuel—extension
- §40B Sustainable aviation fuel credit—new credit added



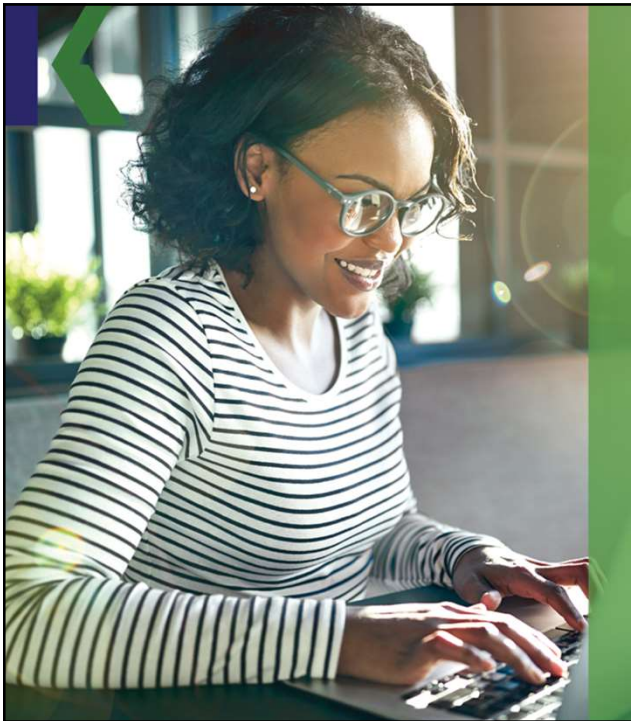
## Other Energy Provisions Not Covered in Detail Today

- §45V Credit for production of clean hydrogen—new credit added
- §179D Energy efficient commercial buildings deduction—modified
- §45L New energy efficient home credit—extended, increased and modified
- §48C Qualifying advanced energy project credit—revised
- §45X Advanced manufacturing production credit—new credit added
- §45Y Clean electricity production credit—new credit added
- §48E Clean electricity investment credit—new credit added



## Other Energy Provisions Not Covered in Detail Today

- §168(e)(3)(B) Green Energy Property Classified as 5-Year MACRS Property and
- §45Z Clean fuel production credit—new credit added



## Credits on Clean Energy Vehicles

Tesla and GM again qualify for a credit in 2023—but many clients will have income problems in qualifying and there are some issues with battery requirements



## Vehicle Credits

- Prior to IRA 2022 had
  - Single new qualified plug-in electric drive motor vehicle credit (subject to manufacturer unit limits) and
  - Alternative fuel refueling property credit



## Vehicle Credits

- IRA 2022
  - Revises and renames credit for new electric (and fuel cell) vehicles
  - Adds credit for buying a used clean vehicles
  - Adds commercial credit for clean vehicles and certain equipment
  - Extends and modifies alternative fuel refueling property credit





## New Clean Vehicle Credit

- **Effective date:** Applies to vehicles placed in service after December 31, 2022. The provision requiring final assembly take place in North America is effective for vehicles placed in service after August 15, 2022 except for vehicles eligible for the transition rule where the taxpayer makes the appropriate election.
- Renames the credit to the new clean vehicle credit



## New Clean Vehicle Credit

- Adds one change for remainder of 2022, with all other requirements remaining the same
- The final assembly of a vehicle must take place in North America for the vehicle to qualify for the credit.
  - Significant change from proposed BBBA - no prevailing wage rule and expands production to North America
  - Manufacturer unit limit rules still apply for 2022, so vehicles from Tesla and General Motors still cannot qualify (until next year)
  - Rule will continue to apply for 2023 and later years

# New Clean Vehicle Credit

- Final assembly test applies to all vehicles
  - Placed in service after August 15, 2022 unless
  - Was subject to a binding contract by August 15, 2022 and the taxpayer elects to apply the prior rules to that vehicle
- Department of Energy has published list of vehicles with (at least some units) with final assembly in North America
  - Will be updated by the Department of Energy
  - Still must verify your particular vehicle was actually assembled in North American plant by checking VIN (some are assembled at multiple locations around the world)

The screenshot shows the Alternative Fuels Data Center website. The main heading is "Inflation Reduction Act of 2022". Below this, there is a section titled "List of Vehicles with Final Assembly in North America". The text explains that the table provides a list of Model Year 2022 and early Model Year 2023 vehicles with final assembly in North America based on data submitted to the National Highway Traffic Safety Administration (NHTSA) and FuelEconomy.gov as of August 1, 2022. A note states that some manufacturers have reached a cap of 200,000 EV credits used and are therefore not currently eligible for the Clean Vehicle Credit.

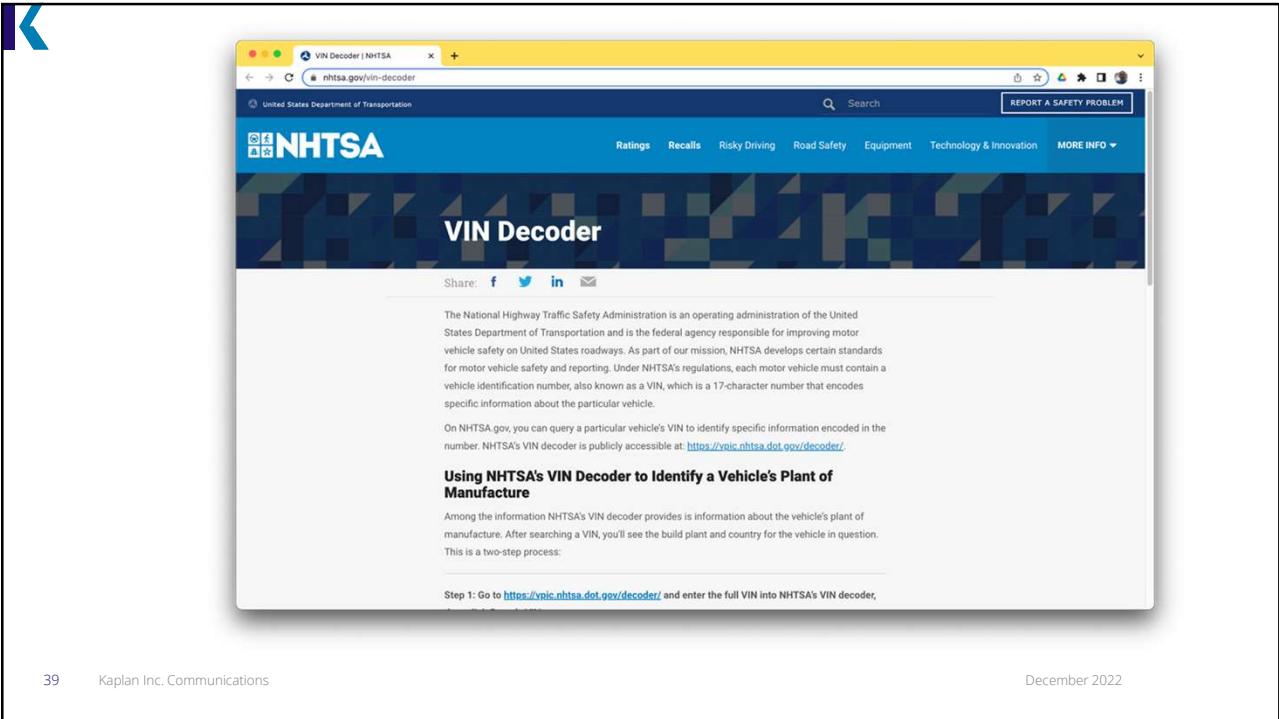
Electric Vehicles Assembled in North America		
Model Year	Vehicle	Note
2022	Audi Q5	
2022	BMW 330e	
2022	BMW X5	
2022	Chevrolet Bolt EUV	Manufacturer sales cap met
2022	Chevrolet Bolt EV	Manufacturer sales cap met
2022	Chrysler Pacifica PHEV	
2022	Ford Escape PHEV	
2022	Ford E-Series	



Model Year	Vehicle	Note
2022	Audi Q5	
2022	BMW 3-series Plug-In	
2022	BMW X5	
2022	Chevrolet Bolt EUV	Manufacturer sales cap met
2022	Chevrolet Bolt EV	Manufacturer sales cap met
2022	Chrysler Pacifica PHEV	
2022	Ford Escape PHEV	
2022	Ford F Series	
2022	Ford Mustang MACH E	
2022	Ford Transit Van	
2022	GMC Hummer Pickup	Manufacturer sales cap met
2022	GMC Hummer SUV	Manufacturer sales cap met
2022	Jeep Grand Cherokee PHEV	
2022	Jeep Wrangler PHEV	



2022	Lincoln Aviator PHEV	
2022	Lincoln Corsair Plug-in	
2022	Lucid Air	
2022	Nissan Leaf	
2022	Rivian EDV	
2022	Rivian R1S	
2022	Rivian R1T	
2022	Tesla Model 3	Manufacturer sales cap met
2022	Tesla Model S	Manufacturer sales cap met
2022	Tesla Model X	Manufacturer sales cap met
2022	Tesla Model Y	Manufacturer sales cap met
2022	Volvo S60	
2023	BMW 3-series Plug-In	
2023	Bolt EV	Manufacturer sales cap met
2023	Cadillac Lyriq	Manufacturer sales cap met
2023	Mercedes EQS	
2023	Nissan Leaf	



## New Clean Vehicle Credit

- Remainder of items take effect for vehicles placed in service after December 31, 2022 unless otherwise noted
- Computation of the maximum credit for a vehicle
  - \$3,750 if satisfies the critical minerals requirement for the tax year and
  - \$3,750 if satisfies the battery component requirements for the tax year
  - Total credit is \$7,500
  - Note - current DoE list does not take these requirements into account

40 Kaplan Inc. Communications December 2022



## New Clean Vehicle Credit

- Critical minerals requirement - percentage of value of applicable critical minerals which are
  - Either extracted or processed in the United States or a country we have a free trade agreement with or
  - Recycled in North America



## New Clean Vehicle Credit

- Percentages
  - 2023 - 40%
  - 2024 - 50%
  - 2025 - 60%
  - 2026 - 70%
  - 2027 and later - 80%
- Beginning in 2025 no credit allowed if any critical materials extracted, processed, or recycled by a foreign entity of concern



## New Clean Vehicle Credit

- Battery Component Requirement - percentage of value of components in the battery manufactured or assembled in North America is greater or equal to:
  - 2023 - 50%
  - 2024 or 2025 - 60%
  - 2026 - 70%
  - 2027 - 80%
  - 2028 - 90%
  - 2029 or later - 100%



## New Clean Vehicle Credit

- For battery component requirements the foreign entity of concern ban applies beginning in 2024
- Definition of new clean vehicle
  - Minimum battery capacity is 7 kilowatt hours (not really an issue, since that's smaller than what we see today)
  - Seller must provide report to buyer and the IRS regarding the vehicle
  - Includes a qualified fuel cell vehicle
  - Must be made by a qualified manufacturer (signs up with the IRS and meets standards)



## New Clean Vehicle Credit

- Modified adjusted gross income (only real adjustments are foreign/territorial income exclusions) limitations - can qualify based on year claiming the credit or the prior taxable year
  - \$300,000 - Married filing jointly and surviving spouse
  - \$225,000 - Head of household
  - \$150,000 - Single and married filing separately
- Note, this is a cliff test - \$1 of income can cause a \$7,500 increase in tax



## New Clean Vehicle Credit

- Manufacturer's suggested retail price limitation - will not apply if manufacturer's suggested retail price is greater than
  - \$80,000 for a van, sports utility vehicle or pickup truck or
  - \$55,000 for all other vehicles
- IRS to develop classification rules using criteria similar to that employed by the EPA and Department of Transportation
- VIN will have to be disclosed on the tax return to claim this credit



## New Clean Vehicle Credit

- Beginning in 2024, the taxpayer can transfer the credit to the dealer at the time of sale and get an immediate reduction in purchase price or rebate
  - Dealer must register with IRS and follow specific rules
  - Payment or reduction in price not taxable to the buyer, nor is it deductible to the dealer.
- Buyer will have to repay the credit (that is, have the amount added back as a tax) if it is determined when the buyer's tax return is filed that he/she/they don't qualify for the credit due to the MAGI limit
- The credit does not apply to vehicles placed in service after December 31, 2022



## Credit for Previously-Owned Clean Vehicles

- **Effective date:** Except for the transfer of a credit to a dealer rule, the credit will apply to vehicles acquired after December 31, 2022. The transfer of credit to a dealer rule will be delayed by one year, applying to vehicles acquired after December 31, 2023.
- Credit equal to lesser of:
  - \$4,000 or
  - 30% of the sales price of the vehicle





## Credit for Previously-Owned Clean Vehicles

- Previously-owned clean vehicle defined:
  - The model year of which is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle,
  - The original use of which commences with a person other than the taxpayer,
  - Which is acquired by the taxpayer in a qualified sale, and
  - Which--
    - Generally, meets the requirements to be eligible for the clean vehicle credit or
    - Is a clean fuel-cell vehicle which has a gross vehicle weight rating of less than 14,000 pounds



## Credit for Previously-Owned Clean Vehicles

- Qualified sale is a sale of a motor vehicle
  - By a dealer,
  - For a sales price that does not exceed \$25,000, and
  - Which is the first transfer since the date of the enactment of IRA 2022 to a qualified buyer other than the person with whom the original use of such vehicle commenced



## Credit for Previously-Owned Clean Vehicles

- Qualified buyer is a taxpayer
  - Who is an individual,
  - Who purchases such vehicle for use and not for resale,
  - Who is not eligible to be claimed as a dependent by another taxpayer, and
  - Who has not been allowed a credit under this section for any sale during the 3-year period ending on the date of the sale of such vehicle.
- Note - parents can't just "not claim" the child to qualify the child for this credit
- VIN must be provided by taxpayer to claim the credit



## Credit for Previously-Owned Clean Vehicles

- Lower modified adjusted gross income numbers for this credit - ½ of the ones for the new clean vehicle credit
  - \$150,000 - married filing jointly and surviving spouse
  - \$112,500 - head of household
  - \$75,000 - single and married filing separately
- MAGI computed in same manner as for the new clean energy credit



## Credit for Previously-Owned Clean Vehicles

- Same rules apply for transferring the credit to the dealer (including being first available in 2024)
- Credit is no longer available for vehicles placed in service after December 31, 2032



## New Credit for Qualified Commercial Clean Vehicles

- **Effective date:** The credit applies to vehicles acquired after December 31, 2022.
- Amount of the credit (initial credit) is the lesser of:
  - 15 percent of the basis of such vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or
  - The incremental cost of such vehicle
- The incremental cost of a qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over such price of a comparable vehicle.



## New Credit for Qualified Commercial Clean Vehicles

- Initial credit is limited to the lesser of the initial credit or:
  - In the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, \$7,500, and
  - In the case of a vehicle with a weight rating of 14,000 pounds or more, \$40,000.



## New Credit for Qualified Commercial Clean Vehicles

- A qualified commercial clean vehicle means any vehicle—
  - That meets the definition of a new clean vehicle for purposes of the new clean vehicle credit and is acquired for use or lease by the taxpayer and not for resale
  - Either—
    - Is treated as a motor vehicle for purposes of title II of the Clean Air Act and is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails), or
    - Is mobile machinery, as defined in IRC §4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways),



## New Credit for Qualified Commercial Clean Vehicles

- A qualified commercial clean vehicle means any vehicle (continued)—
  - Either—
    - Is propelled to a significant extent by an electric motor which draws electricity from a battery which has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or



## New Credit for Qualified Commercial Clean Vehicles

- A qualified commercial clean vehicle means any vehicle (continued)—
  - Either (continued)—
    - Is a motor vehicle which satisfies the following requirements:
      - Which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use, and



## New Credit for Qualified Commercial Clean Vehicles

- A qualified commercial clean vehicle means any vehicle (continued)—
  - Either (continued)—
    - Is a motor vehicle which satisfies the following requirements (continued):
      - Which, in the case of a passenger automobile or light truck, has received on or after the date of the enactment of this section a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and
    - Is of a character subject to the allowance for depreciation



## New Credit for Qualified Commercial Clean Vehicles

- Certain tax exempt entities can ignore the requirement that the asset be subject to depreciation:
  - the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,
  - an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter, or
  - any Indian tribal government described in section 7701(a)(40).



## New Credit for Qualified Commercial Clean Vehicles

- No double benefit allowed (can't claim new clean vehicle credit on same vehicle)
- Vehicle identification number must be provided to claim the credit
- Certain clean vehicle credit rules apply
- The credit will not apply to any vehicle acquired after December 31, 2032



## Alternative Fuel Refueling Property Credit

- **Effective date:** The delay in termination for credits under this section is effective for property placed in service after December 31, 2021. For all other provisions found in IRA 2022, the provisions are effective for property placed in service after December 31, 2022. Thus, the credit continues under the rules in place for 2021 for 2022, then is revised beginning in 2023.



## Alternative Fuel Refueling Property Credit

- Prior law version of credit extended through 2022
- Revised basic credit beginning in 2023
  - 6% up to a maximum credit of \$100,000 for qualified alternative fuel property subject to depreciation (business property) or
  - 30% up to a maximum of \$1,000 for any other qualified property



## Alternative Fuel Refueling Property Credit

- Commercial project qualifies for higher 30% credit if either the property is part of:
  - A project the construction of which begins prior to the date that is 60 days after the IRS issues guidance on meeting the prevailing wage and apprenticeship requirements or
  - A project that meets the prevailing wage and apprenticeship requirements





## Alternative Fuel Refueling Property Credit

- *Prevailing wage* requirement for a project:
  - Met for a project if the taxpayer ensures that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of any qualified alternative fuel vehicle refueling property which is part of such project shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Department of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.
  - Optionally can follow the correction and penalty provisions to be deemed to meet the prevailing wage requirement.



## Alternative Fuel Refueling Property Credit

- *Apprenticeship* requirement for a project:
  - The rules generally require that no less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility shall, subject to the apprentice to journeyworker ratio rule described at IRC §45(b)(8)(B), be performed by qualified apprentices.
    - 10% - construction begins before 2023
    - 12.5% - construction begins in 2023
    - 15% - construction begins after 2023



## Alternative Fuel Refueling Property Credit

- Changes in qualified property
  - The *bidirectional charging* equipment provision provides that property will not fail to be treated as qualified refueling property solely because the property—
    - Is capable of charging the battery of a motor vehicle propelled by electricity, and
    - Allows discharging electricity from such battery to an electric load external to such motor vehicle



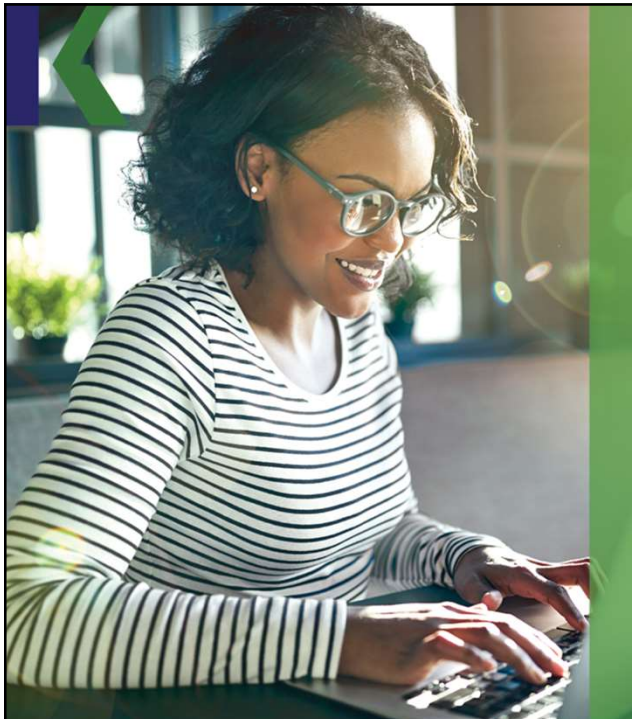
## Alternative Fuel Refueling Property Credit

- Changes in qualified property
  - Electronic charging stations for 2-3 wheeled vehicles:
    - The property otherwise meets the requirements to be qualified alternative fuel vehicle refueling property under IRC §30C,
    - Is of a character subject to depreciation, and
    - Is for recharging of a motor vehicle which—
      - Is manufactured primarily for use on public streets, roads, or highways (not including a vehicle operated exclusively on a rail or rails),
      - Has 2 or 3 wheels, and
      - Is propelled by electricity



## Alternative Fuel Refueling Property Credit

- Eligible census tract requirement-property must be in an eligible census tract which:
  - Is a low-income community described in IRC §45D(e), or
  - Is not an urban area.
- An urban area is “a census tract (as defined by the Bureau of the Census) which, according to the most recent decennial census, has been designated as an urban area by the Secretary of Commerce.”



## Provisions Mainly Applicable to Large and/or Public Corporations

These will generally have limited direct applicability to most of our clients except as it impacts the economy as a whole (assuming there is any significant impact)



## Provisions Mainly Applicable to Large or Public Corporations

- 15% corporate minimum tax based on adjusted financial statement income (\$1 billion or more average)
- 1% excise tax on repurchase of corporate stock (publicly traded companies)
- While there has been a lot of discussion about these items in the financial press, most of us won't be handling this issue from a tax perspective (more likely those in financial planning would study potential economic impact)



## Corporate Alternative Minimum Tax (IRC §56A, Act Section 10101)

- **Effective Date:** Tax years beginning after December 31, 2022.
- *Applicable corporation test* - corporations other than S corporations, RICs, or REITs that meet the average adjusted financial income test for one or more taxable years that are:
  - Prior to the current taxable year and
  - End after December 31, 2021.



## Corporate Alternative Minimum Tax (IRC §56A, Act Section 10101)

- A corporation meets the average annual adjusted financial statement income test for a taxable year if the average annual adjusted financial statement income of such corporation (determined without regard to section 56A(d)) for the 3-taxable-year period ending with such taxable year exceeds \$1,000,000,000.
- The tentative minimum tax applies at a rate of 15% of the adjusted financial statement income as determined under IRC §56A over the corporate AMT tax credit for the tax year.



## Corporate Alternative Minimum Tax (IRC §56A, Act Section 10101)

- The tax applies to the extent the tentative minimum tax exceeds the corporation's regular income tax for the year, including the base erosion and anti-abuse tax (BEAT) for the year
- The adjusted financial statement income begins with the net income or loss found on the taxpayer's applicable financial statement per IRC §451(b)(3).



## Corporate Alternative Minimum Tax (IRC §56A, Act Section 10101)

- Various adjustments, including substituting MACRS depreciation for GAAP depreciation are made to this income.



## 1% Excise Tax on Repurchase of Corporate Stock (Act Section 10201)

- **Effective Date:** repurchases of stock after December 31, 2022.
- The law imposes on each covered corporation a tax equal to 1% of the fair market value of stock the corporation repurchases.
- A covered corporation is a U.S. corporation which is traded on an established securities market (as defined in IRC §7704(b)(1)), or basically a publicly traded security.



## 1% Excise Tax on Repurchase of Corporate Stock (Act Section 10201)

- The tax does not apply in various circumstances:
  - To the extent that the repurchase is part of a reorganization (within the meaning of section 368(a)) and no gain or loss is recognized on such repurchase by the shareholder by reason of such reorganization,
  - In any case in which the stock repurchased is, or an amount of stock equal to the value of the stock repurchased is, contributed to an employer-sponsored retirement plan, employee stock ownership plan, or similar plan,
  - In any case in which the total value of the stock repurchased during the taxable year does not exceed \$1,000,000,



## 1% Excise Tax on Repurchase of Corporate Stock (Act Section 10201)

- The tax does not apply in various circumstances:
  - Under regulations prescribed by the Secretary, in cases in which the repurchase is by a dealer in securities in the ordinary course of business,
  - To repurchases by a regulated investment company (as defined in section 851) or a real estate investment trust, or
  - To the extent that the repurchase is treated as a dividend for income tax purposes.



## Any Other Changes Coming?



Photo by [Virgil Cayasa](#) on [Unsplash](#)

- May still see an extenders bill later this year or early next. Items we may see include:
  - An extension of 100% bonus depreciation (scheduled to drop to 80%)
  - Restore ability to expense research and experimental expenditures under IRC §174 (now have to amortize over 5 or 15 years beginning in 2022)
  - But may be tied to extension of the expanded child tax credit
  - Anything else Congress feels like extending...
- SECURE Act Version 2.0

## Proposed Regulations for SECURE Act Required Minimum Distributions

Proposed regulations contained a surprise (for many) requirements for distributions from inherited accounts—but a reprieve for 2021 and 2022 now delays any such requirement until 2023 at the earliest





## Effective Date Issues For Secure Defined Contribution Plan Minimum Distribution Rules (IRC §401(A)(9)(H))

- Application of Provision Upon Death of Designated Beneficiary Where Employee/Owner Died Before January 1, 2020
- Surviving Spouse Issues
- Participant in Multiple Plans Barred from Combining All as One (Aside from IRAs)



## Distributions Commencing in an Employee's Lifetime (REG. §1.401(A)(9)-2)

- No major changes here to RMD rules aside from pushing back the required beginning date
- Now set to April 1 of the year following the year the participant reaches age 72 up from age 70 ½ per the Act
- Does not apply until separation from service if the participant is
  - Not a 5% owner
  - And the account is not an IRA account



## Death Before Required Beginning Date (Reg. §1.401(A)(9)-3)

- Five-Year Rule – now applies only to other than *designated beneficiaries*
- Ten-Year Rule – applies to all *designated beneficiaries* except electing *eligible designated beneficiaries*
- Life Expectancy Rule – applies to electing *eligible designated beneficiaries* only



## Determination of the Designated Beneficiary (Reg. §1.401(A)(9)-4)

- Designated Beneficiary – effectively the same rules as before and the same September 30 after of death test
- Eligible Designated Beneficiaries – one of the following designated beneficiaries
  - The surviving spouse of the employee;
  - A child of the employee who has not reached the age of majority;
  - A disabled designated beneficiary;
  - A chronically ill designated beneficiary;



## Determination of the Designated Beneficiary (Reg. §1.401(A)(9)-4)

- Eligible Designated Beneficiaries – one of the following designated beneficiaries
  - A designated beneficiary not more than 10 years younger than the; or
  - A designated beneficiary of an employee if the employee died before the effective date of the 10-year rule added by the SECURE Act
- Multiple Beneficiaries and the Designated Eligible Beneficiary Rules



## Eligible Designated Beneficiaries

- Age of Majority for Minor Children of the Employee/Account Owner
  - Does not look to state law as many had thought when the law was passed
  - Rather sets rule that reach age of majority at the child's 21<sup>st</sup> birthday so there is single national standard (and a relatively late age)



## Eligible Designated Beneficiaries

- Disabled Beneficiaries – two tests based on age and a safe harbor
  - Attained age 18 before death of account holder
  - Has not obtained age 18 before death of the account holder
  - A determination by Social Security Administration of disability will be accepted by the IRS



## Eligible Designated Beneficiaries

- Chronically Ill Individual
  - Must be certified by a licensed healthcare professional as
    - Being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity,
    - Having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the previously described level of disability, or
    - Requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment



## Eligible Designated Beneficiaries

- Chronically Ill Individual
  - Activities of daily living are:
    - eating,
    - toileting,
    - transferring,
    - bathing,
    - dressing, and
    - continence



## Eligible Designated Beneficiaries

- Documentation Requirements for Disabled for Disabled or Chronically Ill Status
  - Provided to plan administrator by October 31 of the calendar year following death of the employee/IRA owner
  - Must provide all information required for each category in the submission



## Eligible Designated Beneficiaries

- Individual Not More Than 10 Years Younger Than the Employee
  - Look at actual *date* of birth
  - Some had wanted a *year* of birth test
  - So, if Joe, who died, was born on 5/10/1945 and his beneficiary was born:
    - 5/1/1955 then is an eligible designated beneficiary but
    - 5/12/1955 then is *not* an eligible designated beneficiary



## Special Rules For Trusts (Reg. §1.401(A)(9)-4(f) to (h))

- Some clarifications here but not a whole lot of changes
- Will leave for your reading at your leisure...



## RMDs from Defined Contribution Plans

- Impact of the SECURE Act 10-Year Rule—When Distribution of the Employee or Account Holder’s Entire Interest is Required
  - Ten-Year Limit for Designated Beneficiary Who Is Not an Eligible Designated Beneficiary
  - Ten-Year Limit Following the Death of an Eligible Designated Beneficiary
  - Ten-Year Limit After Minor Child of the Employee or Account Holder Reaches the Age of Majority
  - Life Expectancy Limit for Older Eligible Designated Beneficiaries



## IRS Relief Related to Inherited Accounts in “Pay” Status

- Notice 2022-53, 10/7/22
  - Delayed application of payout rule for years 1-9 – will apply *no earlier* than 2023
  - Relief from consequences of failing to take an RMD in 2021 or 2022
    - No penalty will be assessed
    - If penalty previously paid, can file a claim for refund
    - Note: you can’t put the money back into the account even if within 60 days as non-direct rollovers aren’t available for inherited accounts

# Top Ten Other Tax Developments

Afternoons get long, so we are going to cherry pick the 10 top developments to concentrate on earlier in the course to make sure we get them covered.



## Broad Beneficial Owner Reporting Rules for 2024

- RIN 1505-AB49, 9/30/22
  - Most closely held LLCs and corporations have to report in 2024
  - Report beneficial owners
    - More than 25% ownership interest
    - Substantial control
  - \$500 per day penalty for willful failure to file





## IRS Charitable Contribution Documentation Cases

- *Keefer v. United States*, USDC ND TX, Case No. 3:20-cv-00836, 7/6/22
  - Partnership readying to sell major asset at gain
  - Partner donates a 4% interest to DAF, but only gives rights to sales proceeds
  - Gets two documents the taxpayer claims were a contemporary written acknowledgement
  - Did not give entire asset
  - Also did not have a proper Donor Advised Fund CWA document-could not use disclosure before gift and receipt of gift did not indicate the DAF had full control



## IRS Charitable Contribution Documentation Cases

- Strict Compliance (not merely substantial) with IRC language is required for charitable contributions
  - *Izen v. Commissioner*, CA5, Docket No. 21-60679, 6/29/22
    - IRC §170(f)(12) mandates acknowledgment/documentation for contribution of items
    - Taxpayer and charity did not prepare Form 1098-C
    - Taxpayer argued that documents did have and actions should count as substantial compliance



## IRS Charitable Contribution Documentation Cases

- Strict Compliance (not merely substantial) with IRC language is required for charitable contributions
  - *Izen v. Commissioner*, CA5, Docket No. 21-60679, 6/29/22
    - Documents did not have Taxpayer Identification Number, a requirement under the law
    - Courts cannot use substantial compliance when actual actions are not in compliance with the law Congress wrote



## IRS Charitable Contribution Documentation Cases

- *Albrecht v. Commissioner*, TC Memo 2022-53, 5/25/22
  - Taxpayer made noncash contribution to museum
  - Strict substantiation rule for contemporaneous written acknowledgment
  - Deed refers to Gift Agreement not provided - found failed to state consideration received or that none was received



## AICPA Makes Recommendations on Research & Development Cost Guidance for Revised §174

- “Comments on Research & Experimental Expenditures under section 174,” Letter from AICPA Tax Executive Committee to Associate Chief Counsel Holly Porter, 5/26/22
- TCJA changes now require amortization
- AICPA asks for guidance to limit costs involved
- Also need guidance for software costs



## Options for Timing of Recognition of PPP Tax Exempt Income, Relief for Partnership Amended Returns

- Revenue Procedures 2021-48, 2021-49 and 2021-50, 11/18/21
  - Timing of tax-exempt income
    - Expenses paid with funds
    - Application for forgiveness
    - PPP forgiveness granted
  - Must amend if not fully forgiven
  - BBA relief allowed amended returns - but only through 12/31/21 so now are stuck with full blown Administrative Adjustment Request



## Employee Retention Credit Issues

- IRS to Begin Training Staff to Perform ERC Audits
  - Kristen A. Parillo, "IRS Gearing Up for Audits of Employee Retention Credits," Tax Notes Today Federal, 11/23/21
    - IRS representative speaking at New England IRS Representation Conference
    - Begin training in February-March, progress will determine when exam begin
    - Discussion of how the IRS will determine employers to examine



## Employee Retention Credit Issues

- AICPA Issues Fact Sheet on ERC Issues
  - "Employee retention credit: Fact or fiction?," AICPA & CIMA, 10/3/22
    - Tax Division members can download
    - Addresses a number of issues members hitting with heavy marketing from ERC shops
    - Why it will not necessarily apply to every small business
    - Difficulty of showing full/partial suspension - no federal order works for this



## IRS Extends Late Portability Election Relief to Five Years Following Date of Death

- Revenue Procedure 2022-32, 7/8/22
  - Portability election
  - Original Revenue Procedure 2017-34
  - IRS modifying late relief to attempt to get rid of PLR requests
  - Estates that qualify
  - Impact on the surviving spouse and estate
  - No letter rulings issued if this relief applies



## Schedules K-2 and K-3 (Forms 1065 and 1120S)

- Was meant to standardize what had previously been statements attached to Schedules K-1
- Much of what is here was required to be disclosed before, but now has a formal place to go
- But the real problem will arise from information necessary to complete Form 1116, page 1

# Form 1116

Form **1116** **Foreign Tax Credit** (Individual, Estate, or Trust) OMB No. 1545-0121  
 Department of the Treasury Internal Revenue Service (999) **2021** Attachment Sequence No. 19  
 Attach to Form 1040, 1040-SR, 1040-NR, 1041, or 990-T. Go to [www.irs.gov/Form1116](http://www.irs.gov/Form1116) for instructions and the latest information.

Name \_\_\_\_\_ Identifying number as shown on page 1 of your tax return \_\_\_\_\_

Use a separate Form 1116 for each category of income listed below. See *Categories of Income* in the instructions. Check only one box on each Form 1116. Report all amounts in U.S. dollars except where specified in Part II below.

- a Section 951A category income   
  c Passive category income   
  e Section 901(j) income   
  g Lump-sum distributions  
 b Foreign branch category income   
  d General category income   
  f Certain income re-sourced by treaty

**h Resident of (name of country) ▶**  
**Note:** If you paid taxes to only one foreign country or U.S. possession, use column A in Part I and line A in Part II. If you paid taxes to more than one foreign country or U.S. possession, use a separate column and line for each country or possession.

**Part I Taxable Income or Loss From Sources Outside the United States** (for category checked above)

i Enter the name of the foreign country or U.S. possession ▶	Foreign Country or U.S. Possession			Total (Add cols. A, B, and C.)
	A	B	C	
1a Gross income from sources within country shown above and of the type checked above (see instructions):				1a
b Check if line 1a is compensation for personal services as an employee, your total compensation from all sources is \$250,000 or more, and you used an alternative basis to determine its source. See instructions. ▶ <input type="checkbox"/>				

# Form 1116

**Deductions and losses (Caution: See instructions):**

2 Expenses <b>definitely related</b> to the income on line 1a (attach statement) . . . . .				
3 Pro rata share of other deductions <b>not definitely related</b> :				
a Certain itemized deductions or standard deduction (see instructions) . . . . .				
b Other deductions (attach statement) . . . . .				
c Add lines 3a and 3b . . . . .				
d Gross foreign source income (see instructions) . . . . .				
e Gross income from all sources (see instructions) . . . . .				
f Divide line 3d by line 3e (see instructions) . . . . .				
g Multiply line 3c by line 3f . . . . .				
4 Pro rata share of interest expense (see instructions):				
a Home mortgage interest (use the <i>Worksheet for Home Mortgage Interest</i> in the instructions) . . . . .				
b Other interest expense . . . . .				
5 Losses from foreign sources . . . . .				
6 Add lines 2, 3g, 4a, 4b, and 5 . . . . .				6
7 Subtract line 6 from line 1a. Enter the result here and on line 15, page 2 . . . . . ▶				7



# Form 1116

Form 1116 (2021)

Page **2**

## Part III Figuring the Credit

<b>9</b>	Enter the amount from line 8. These are your total foreign taxes paid or accrued for the category of income checked above Part I . . . . .	<b>9</b>	
<b>10</b>	Enter the sum of any carryover of foreign taxes (from Schedule B, line 3, column (xiv)) plus any carrybacks to the current tax year . . . . . (If your income was section 951A category income (box a above Part I), leave line 10 blank.)	<b>10</b>	
<b>11</b>	Add lines 9 and 10 . . . . .	<b>11</b>	
<b>12</b>	Reduction in foreign taxes (see instructions) . . . . .	<b>12</b>	( )
<b>13</b>	Taxes reclassified under high tax kickout (see instructions) . . . . .	<b>13</b>	
<b>14</b>	Combine lines 11, 12, and 13. This is the total amount of foreign taxes available for credit . . . . .	<b>14</b>	

# Form 1116

<b>15</b>	Enter the amount from line 7. This is your taxable income or (loss) from sources outside the United States (before adjustments) for the category of income checked above Part I. See instructions . . . . .	<b>15</b>	
<b>16</b>	Adjustments to line 15 (see instructions) . . . . .	<b>16</b>	
<b>17</b>	Combine the amounts on lines 15 and 16. This is your net foreign source taxable income. (If the result is zero or less, you have no foreign tax credit for the category of income you checked above Part I. Skip lines 18 through 24. However, if you are filing more than one Form 1116, you must complete line 20.) . . . . .	<b>17</b>	
<b>18</b>	<b>Individuals:</b> Enter the amount from line 15 of your Form 1040, 1040-SR, or 1040-NR. <b>Estates and trusts:</b> Enter your taxable income without the deduction for your exemption . . . . . <b>Caution:</b> If you figured your tax using the lower rates on qualified dividends or capital gains, see instructions.	<b>18</b>	
<b>19</b>	Divide line 17 by line 18. If line 17 is more than line 18, enter "1" . . . . .	<b>19</b>	
<b>20</b>	<b>Individuals:</b> Enter the total of Form 1040, 1040-SR, or 1040-NR, line 16, and Schedule 2 (Form 1040), line 2. <b>Estates and trusts:</b> Enter the amount from Form 1041, Schedule G, line 1a; or the total of Form 990-T, Part II, lines 2, 3, 4, and 6. Foreign estates and trusts should enter the amount from Form 1040-NR, line 16 . . . . . <b>Caution:</b> If you are completing line 20 for separate category <b>g</b> (lump-sum distributions), or, if you file Form 8978, Partner's Additional Reporting Year Tax, see instructions.	<b>20</b>	



## Form 1116

21	Multiply line 20 by line 19 (maximum amount of credit)	21	
22	Increase in limitation (section 960(c))	22	
23	Add lines 21 and 22	23	
24	Enter the <b>smaller</b> of line 14 or line 23. If this is the only Form 1116 you are filing, skip lines 25 through 32 and enter this amount on line 33. Otherwise, complete the appropriate line in Part IV. See instructions	24	
<b>Part IV Summary of Credits From Separate Parts III</b> (see instructions)			
25	Credit for taxes on section 951A category income	25	
26	Credit for taxes on foreign branch category income	26	
27	Credit for taxes on passive category income	27	
28	Credit for taxes on general category income	28	
29	Credit for taxes on section 901(j) income	29	
30	Credit for taxes on certain income re-sourced by treaty	30	
31	Credit for taxes on lump-sum distributions	31	
32	Add lines 25 through 31	32	
33	Enter the <b>smaller</b> of line 20 or line 32	33	
34	Reduction of credit for international boycott operations. See instructions for line 12	34	
35	Subtract line 34 from line 33. This is your <b>foreign tax credit</b> . Enter here and on Schedule 3 (Form 1040), line 1; Form 1041, Schedule G, line 2a; or Form 990-T, Part III, line 1a	35	

## Requirement to File Form 1116 Issue

- The K2/K3 instructions consistently refer to the filing only be required if:
  - The shareholder has creditable foreign taxes and
  - Must file Form 1116 to claim the foreign tax credit
- Thus, if a partner/shareholder qualifies to skip filing Form 1116 and just claim the credit for the year, that equity holder won't force the partnership/S corporation to prepare Schedules K-2 and K-3

## Form 1116 – The Election to Skip Completing It

- An election exists to ignore the FTC limits (which is what Form 1116 is really computing) and simply enter total creditable foreign taxes directly on Form 1040 Schedule 3, line 1

<b>SCHEDULE 3</b> <b>(Form 1040)</b>  Department of the Treasury Internal Revenue Service	<b>Additional Credits and Payments</b>  ▶ Attach to Form 1040, 1040-SR, or 1040-NR. ▶ Go to <a href="http://www.irs.gov/Form1040">www.irs.gov/Form1040</a> for instructions and the latest information.	OMB No. 1545-0074  <b>2021</b> Attachment Sequence No. <b>03</b>
	Name(s) shown on Form 1040, 1040-SR, or 1040-NR	

### Part I Nonrefundable Credits

1	Foreign tax credit. Attach Form 1116 if required . . . . .	1	
---	--	---	--

## Form 1116 – The Election to Skip Completing It

- An election exists to ignore the FTC limits (which is what Form 1116 is really computing) and simply enter total creditable foreign taxes directly on Form 1040 Schedule 3, line 1

<b>SCHEDULE 3</b> <b>(Form 1040)</b>  Department of the Treasury Internal Revenue Service	<b>Additional Credits and Payments</b>  ▶ Attach to Form 1040, 1040-SR, or 1040-NR. ▶ Go to <a href="http://www.irs.gov/Form1040">www.irs.gov/Form1040</a> for instructions and the latest information.	OMB No. 1545-0074  <b>2021</b> Attachment Sequence No. <b>03</b>
	Name(s) shown on Form 1040, 1040-SR, or 1040-NR	

### Part I Nonrefundable Credits

1	Foreign tax credit. Attach Form 1116 if required . . . . . 	1	
---	---	---	--



## Form 1116 Exception to Filing

- Election to not File Form 1116 (from the instructions)
  - *All of your foreign source gross income was “passive category income” (which includes most interest and dividends). See c. Passive Category Income, later. However, for this purpose, passive income also includes (a) income subject to the special rule for high-taxed income described later, and (b) certain export financing interest.*
  - *All the income and any foreign taxes paid on it were reported to you on a qualified payee statement. Qualified payee statements include Form 1099-DIV, Form 1099-INT, Schedule K-1 (Form 1041), Schedule K-3 (Form 1065), Schedule K-3 (Form 1120-S), or similar substitute statements.*
  - *Your total creditable foreign taxes aren’t more than \$300 (\$600 if married filing a joint return).*



## Form 1116 Exception to Filing

- Election to not File Form 1116 (from the instructions)
  - *Does not apply for trusts or estates*



## Form 1116 Exception to Filing

- Bottom line – must either
  - Have each partner provide information that the partner either (maybe true of S shareholders, but...)
    - Has no creditable taxes for 2021 or
    - Is an individual and meets the qualifications to bypass filing Form 1116 and claim the credit *or*
  - Provide the information on Schedule K-2 and (where not aware won't be needed) K-3 that could be relevant to foreign tax credit



## Disadvantages of Using the Election

- The main disadvantage of using the election is that no FTC carryovers can be used in a year when the election is made
- Of course, if taxpayer always uses this election there wouldn't be carryovers anyway
- But will need to check that this won't create an issue before going this route on an individual return



## Disadvantages of Using the Election

- Regardless, it appears the partnership can (but doesn't have to) skip preparing the Schedule K-2/K-3 if the equity holder has the option to skip
  - Note this may disadvantage the partner who wants to use a carryover and possibly could
  - Of course, a partner in that situation could simply refuse to provide information to the partnership to confirm he/she qualifies (if the partnership doesn't get the information, it has to prepare the full K-2 and K-3 anyway)



## Practical Steps

- If you prepare all of the equity holders' returns *and have permission to use their personal information for making this determination for the passthrough*, you will eventually have all information needed to see if K-2 or K-3 is really needed (hopefully before September 15)
- If not, you can attempt to get information on FTC status from all other equity holders (note you may end up having to educate these equity holders and their tax prepares on the whole area of the FTC)
- Or you may decide the less time-consuming route will be to just complete Schedules K-2 and K-3



## Avoiding Preparing the Form (Original Option)

- If the entity is willing to obtain evidence that no equity holder will need to file Form 1116 (or 1118 if a corporate partner), then the forms aren't needed. A partner wouldn't need to file Form 1116 if
  - He/she is eligible to use the election to bypass filing Form 1116 generally:
    - All foreign taxes from passive income,
    - All reported on 1099-DIV, 1099-INT, K-1 (Form 1041), K-3 (Form 1120-S) or K-3 (Form 1065) and
    - No more than \$300 (\$600 if MFJ filing status)
  - He/she has no creditable foreign taxes during the year or (possibly)
  - He/she will claim the deduction for foreign taxes in lieu of the foreign tax credit (not clear if this option works)



## IRS FAQ

- At <https://www.irs.gov/businesses/schedules-k-2-and-k-3-frequently-asked-questions-forms-1065-1120s-and-8865>
  - Published originally on February 16, 2022
  - Updated April 11, and 27, 2022
- 26 questions and answers to be dealt with



## April Key Clarifications in FAQ

- Major problem arose for entities with:
  - Foreign tax credit
  - Foreign income from mutual funds
- IRS instructions seemed to indicate you had to use a two-letter country code – could not use OC or Various
- Question 21 – clarifies that a partnership may enter the code “RIC” since that is allowed in the Form 1116 instructions in this case
- Software vendors should be allowing this now



## Draft Form 1065 Schedule K-2 and K-3 Instructions for 2022

- Released late on October 25
- Provides a revised “FAQ Question 15” exception to filing
- Key takeaway—will require sending notices to partners by **January 15, 2023** if you may be using this exception.
- Available at: <https://www.irs.gov/pub/irs-dft/i1065s23--dft.pdf> (at least until next year’s draft or they update this one)
- Keep watching IRS website for a final version of the form



## Page 3 of Draft K-2/K-3 Instructions

**Domestic filing exception (exception to filing Schedules K-2 and K-3).** A domestic partnership (as defined under section 7701(a)(2) and (4)) does not need to **(a)** complete and file with the IRS the Schedules K-2 and K-3, or **(b)** furnish to a partner the Schedule K-3 (except where requested by a partner after the 1-month date (defined in criteria number 4, below)) if each of the following four criteria are met with respect to the partnership's tax year 2022.



## Page 3 of Draft K-2/K-3 Instructions

1. **No or limited foreign activity.** During a domestic partnership's tax year 2022, the domestic partnership either has no foreign activity (as defined below), or, if it does have foreign activity, such foreign activity is limited to **(a)** passive category foreign income (determined without regard to the high-taxed income exception under section 904(d)(2)(B)(iii)); **(b)** upon which not more than \$300 of foreign income taxes allowable as a credit under section 901 are treated as paid or accrued by the partnership; and **(c)** such income and taxes are shown on a payee statement (as defined in section 6724(d)(2)) that is furnished or treated as furnished to the partnership.

**Foreign activity.** For purposes of the domestic filing exception, foreign activity means any of the following. **(a)** foreign income taxes paid or accrued (as defined in section 901 and the regulations thereunder); **(b)** foreign source income or loss (as determined in sections 861 through 865, and section 904(h), and the regulations thereunder); **(c)** ownership interest in a foreign partnership (as defined in sections 7701(a)(2) and (5)); **(d)** ownership interest in a foreign corporation (as defined in sections 7701(a)(3) and (5)); **(e)** ownership of a foreign branch (as defined in Regulations section 1.904-4(f)(3)(vii)); **(f)** ownership interest in a foreign entity that is treated as disregarded as an entity separate from its owner (as defined in Regulations section 301.7701-3).





## Page 3 of Draft K-2/K-3 Instructions

2. **U.S. citizen/resident alien partners.** During tax year 2022, all the direct partners in the domestic partnership are: **(a)** individuals that are U.S. citizens; **(b)** individuals that are resident aliens (as defined in section 7701(b)(1)(A) and the regulations thereunder); **(c)** domestic decedent's estates (that is, decedent's estates that are not foreign estates as defined in section 7701(a)(31)(A)), with solely U.S. citizen and/or resident alien individual beneficiaries; **(d)** domestic grantor trusts (that is, trusts described under sections 671 through 678) that are not foreign trusts as defined in section 7701(a)(31)(B)) and that have solely U.S. citizen and / or resident alien individual grantors and solely U.S. citizen and / or resident alien individual beneficiaries; or **(e)** domestic non-grantor trusts (that is, trusts subject to tax under section 641 that are not foreign trusts as defined in section 7701(a)(31)(B)) with solely U.S. citizen and/or resident alien individual beneficiaries.



## Page 3 of Draft K-2/K-3 Instructions

3. **Partner notification.** With respect to a partnership that satisfies criteria 1 and 2, partners receive a notification from the partnership either electronically or by mail dated no later than 2 months before the due date (without extension) for filing the partnership's tax year 2022 Form 1065. The notification must state that partners will not receive Schedule K-3 from the partnership unless the partners request the schedule.



## Page 3 of Draft K-2/K-3 Instructions

### 4. **No 2022 Schedule K-3 requests by the 1-month date.**

The partnership does not receive a request from any partner for Schedule K-3 information on or before the 1-month date. The “1-month date” is one month before the due date (without extension) of the partnership’s Form 1065. For tax year 2022 calendar year partnerships, the 1-month date is February 15, 2023.



## Page 3 of Draft K-2/K-3 Instructions

**Note.** If a partnership receives a request from a partner for the Schedule K-3 information after the 1-month date and has not received a request from any other partner for Schedule K-3 information on or before the 1-month date, the [\*domestic filing exception\*](#) is met and the partnership is not required to file the Schedules K-2 and K-3 with the IRS or furnish the Schedule K-3 to the non-requesting partners. However, the partnership is required to provide the Schedule K-3, completed with the requested information, to the requesting partner on the later of the date on which the partnership files the Form 1065 or one month from the date on which the partnership receives the request from the partner. See Example 4.



## Page 3 of Draft K-2/K-3 Instructions

**Note for partnerships that satisfy criteria 1 through 3, but do not satisfy criterion 4.** If the partnership received a request from a partner for Schedule K-3 information on or before the 1-month date and therefore the partnership does not satisfy criterion 4, the partnership is required to file the Schedules K-2 and K-3 with the IRS and furnish the Schedule K-3 to the requesting partner. The Schedules K-2 and K-3 are required to be completed only with respect to the parts and sections relevant to the requesting partner. For example, if a partner requests the information reported on Part III, Section 2 (Interest Expense Apportionment Factors), the partnership is required to complete and file Schedule K-2, Part III, Section 2 with respect to the partnership's total assets and Schedule K-3, Part III, Section 2 with respect to the requesting partner's distributive share of the assets. On the date that the partnership files Schedules K-2 and K-3 with the IRS, the partnership must provide a copy of the filed Schedule K-3 to the requesting partner. The partnership does not need to complete, attach, file, or furnish any other parts or sections of the Schedules K-2 and K-3 to the IRS, the requesting partner, or any other partner. The partnership should keep records of the information requested by the partner. See Example 3.



## Page 4 of Draft K-2/K-3 Instructions

If a partnership receives requests from partners for Schedule K-3 information both on or before the 1-month date and after the 1-month date, the partnership is required to file Schedules K-2 and K-3 as described in the prior paragraph only with respect to the partner requests received on or before the 1-month date. With respect to requests received after the 1-month date, the partnership is required to provide the Schedule K-3, completed with that partner's requested information, on the later of the date on which partnership files the Form 1065 or one month from the date on which the partnership receives the request from the partner. See Example 5.



## Page 4 of Draft K-2/K-3 Instructions

**Example 2.** Husband and wife, U.S. citizens, each own a 50% interest in USP, a domestic partnership. USP and husband and wife each have a tax year end of December 31. USP invests in a regulated investment company (RIC). With respect to tax year 2022, USP receives a Form 1099 from the RIC reporting \$100 of creditable foreign taxes paid or accrued on passive category foreign source income. USP does not have any foreign activity other than that from the RIC. Husband and wife receive notification from USP dated January 10, 2023, that they will not receive the Schedule K-3 unless they so request. Husband and wife do not request Schedule K-3 from USP for tax year 2022. USP qualifies for the [domestic filing exception](#), and, as such, USP need not complete Schedules K-2 and K-3.



## Page 4 of Draft K-2/K-3 Instructions

**Example 3.** The facts are the same as in Example 2 except that husband and wife each own a 40% interest in USP, and A, a U.S. citizen, owns a 20% interest in USP. A receives notice from USP dated January 10, 2023, that A will not receive the Schedule K-3 unless A so requests. A requests Schedule K-3 from USP for tax year 2022 and USP receives this request on February 1, 2023. USP does not qualify for the [domestic filing exception](#) because A requested the Schedule K-3 by the 1-month date. As such, USP must complete and file with the IRS the parts and sections of the Schedules K-2 and K-3 that are relevant to A. With respect to the Schedules K-2 and K-3 filed with the IRS, USP does not need to complete, attach, or file any parts or sections relevant to husband and wife. USP must provide a copy of the filed Schedule K-3 to A on the date that USP files its Form 1065. USP does not need to furnish a Schedule K-3 to husband and wife.



## Page 4 of Draft K-2/K-3 Instructions

**Example 4.** The facts are the same as in Example 3 except that USP receives the request from A on February 20, 2023. USP files Form 1065 on August 31, 2023. USP qualifies for the [domestic filing exception](#) because A requested the Schedule K-3 after the 1-month date. USP is not required to file the Schedules K-2 and K-3 with the IRS or furnish the Schedule K-3 to husband and wife. However, USP is required to provide the Schedule K-3, completed with the requested information, to A on August 31, 2023, the later of the date on which USP files the Form 1065 or one month from February 20, 2023.



## Page 4 of Draft K-2/K-3 Instructions

**Example 5.** The facts are the same as in Example 3 except that husband and wife request the Schedule K-3 and USP receives the request on February 20, 2023. USP files Form 1065 on August 31, 2023. USP does not qualify for the [domestic filing exception](#) because A requested the Schedule K-3 by the One-Month Date. As such, USP must complete and file with the IRS the parts and sections of the Schedules K-2 and K-3 that are relevant to A. With respect to the Schedules K-2 and K-3 filed with the IRS, USP does not need to complete, attach, or file any parts or sections relevant to husband and wife. USP must provide a copy of the filed Schedule K-3 to A on August 31, 2023. USP is required to provide a Schedule K-3, completed with the information requested by husband and wife, to husband and wife on August 31, 2023, the later of the date on which USP files the Form 1065 or one month from February 20, 2023.



## Page 4 of Draft K-2/K-3 Instructions

**Note.** If a partnership does not meet the [domestic filing exception](#), it may meet the Form 1116 Exemption to filing the Schedules K-2 and K-3. See below.



## Page 10 of Draft K-2/K-3 Instructions

**Form 1116 exemption exception.** Under section 904(j), certain partners are not required to file a Form 1116 (“Form 1116 exemption”). Also see Foreign Tax Credit—How To Figure the Credit. A domestic partnership is not required to complete Schedules K-2 and K-3 if all partners are eligible for the Form 1116 exemption and the partnership receives notification of the partners’ eligibility for such exemption by the 1-month date (as defined above). If a partnership receives notification from only some of the partners that they are eligible for the Form 1116 exemption, the partnership need not complete the Schedule K-3 for those exempt partners but must complete the Schedules K-2 and K-3 with respect to the other partners to the extent that the partnership does not qualify for the [domestic filing exception](#).

# Individual Tax Updates

IRS updates digital assets questions and a few other individual issues addressed

## IRS Issues Inflation Adjusted Amounts for 2023



Photo by [engin.akyurt](#) on [Unsplash](#)

- Revenue Procedure 2022-38, 10/21/22
  - Standard deduction
    - MFJ - \$27,700
    - HoH - \$20,800
    - Single - \$13,850
    - MFS - \$13,850
  - Age 65+/blind additional \$1,500/\$1,850

## IRS Issues Inflation Adjusted Amounts for 2023



Photo by [engin akyurt](#) on [Unsplash](#)

- Revenue Procedure 2022-38, 10/21/22
  - Maximum income for qualifying relative \$4,700
  - Small business accounting gross receipt level - \$29,000,000
  - Excess business loss - \$289,000/\$578,000
  - Foreign earned income exclusion - \$120,000

## IRS Issues Inflation Adjusted Amounts for 2023



Photo by [engin akyurt](#) on [Unsplash](#)

- Revenue Procedure 2022-38, 10/21/22
  - Unified credit for estate/gift tax - \$12,920,000
  - Annual present interest gift exclusion - \$17,000



## IRS Revises Questions on Digital Assets on Draft Form 1040



Photo by [Kanchanara](#) on [Unsplash](#)

- Draft 2022 Form 1040, 7/29/22
  - Question was first added to Schedule 1 in 2019
  - Moved to front page of Form 1040 in 2020 and 2021
  - Big changes
    - Asks how received items
    - Went to digital assets from virtual currency



## IRS Revises Questions on Digital Assets on Draft Form 1040

At any time during 2022, did you: (a) receive (as a reward, award, or compensation); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) . . .  Yes  No

## \$51 Million Payment Found Not to Be Alimony Under Pre-2019 Divorce Agreement



Photo by [Kelly Sikkema](#) on [Unsplash](#)

- *Redleaf v. Commissioner, CA6, Cases No. 21-2209 and No. 21-2224, 8/5/22*
  - \$51 million payment made to former spouse
  - Terms indicated under state law was meant as property settlement
  - Agreement did not have terms that would determine status
  - Found liability for payment would not end at death of recipient spouse

## IRS Updates Substantially Equal Payment Guidance



Photo by [Jp Valery](#) on [Unsplash](#)

- Notice 2022-6, 1/18/22
  - IRS had modified MRD tables effective for this year in revised regulations
  - Had promised to provide guidance on changes in substantially equal payment provisions
  - Addressed the new provision - new tables mandatory for payments commencing in 2023
  - Optional for payments commencing in 2022

## Lenders Told Not to Issue 1099-Cs on Student Loan Discharges Excluded from Income by ARPA



Photo by [Vasily Koloda](#) on [Unsplash](#)

- Notice 2022-01, 12/21/21
  - ARPA made discharge of student loans nontaxable through 2025
  - IRS notifies lenders not to issue Forms 1099-C for such discharges
  - Notes that doing so is likely to result in unnecessary notices to borrowers

## Foreclosure Proceeds Could Create Mortgage Interest, But Taxpayer Failed to Prove it Did



Photo by [Scott Webb](#) on [Unsplash](#)

- *Howland v. Commissioner*, TC Memo 2022-60, 6/13/22
  - Taxpayer had first and second mortgage - had a foreclosure
  - Proceeds paid off first mortgage, not enough to pay off second
  - Court disagreed with IRS that there could not be interest in this case
  - But, taxpayer unable to show amounts actually applied to interest

## Tacit Consent Found for Filing of Joint Income Tax Return



Photo by [Art Lasovsky](#) on [Unsplash](#)

- *Soni v. Commissioner*, TC Memo 2021-137, 12/1/21
  - Return not signed by one spouse, although was signature on return
  - She left all financial matters to spouse
  - Resisted signing documents - didn't trust wasn't being taken advantage of
  - Knew of filing obligation, did not file separate
  - Found to have given tacit consent

## IRS Releases Inflation Adjusted Retirement Plan Numbers for 2023



Photo by [Frederick Warren](#) on [Unsplash](#)

- Notice 2022-55, 10/21/22
  - Annual adjustments for retirement plans (including IRAs) and fringe benefits
  - Apply to 2023 tax years
  - Some key figures
    - Annual deferral \$22,500 (catch-up up to \$7,500)
    - Compensation - \$265,000



Item	2023	2022
Annual Benefit Under a Defined Contribution Plan (IRC §415(b)(1)(A))	\$ 265,000	\$ 245,000
Limitation for Defined Contribution Plans (IRC §415(c)(1)(A))	66,000	61,000
Limitation on Exclusion for Elective Deferrals (IRC §402(g))	22,500	20,500
Annual Compensation Limit (IRC §§401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii))	330,000	305,000
Key Employee in a Top Heavy Plan (IRC §416(i)(1)(A)(i))	215,000	200,000
Highly Compensated Employee (IRC §414(q)(1)(B))	150,000	135,000
Catch-up Contributions to Employer Plans Other than SIMPLEs (IRC §414(v)(2)(B)(i))	7,500	6,500
Catch-up Contributions to SIMPLE-IRAs and SIMPLE-401(k)s (IRC §414(v)(2)(B)(ii))	3,500	3,000
Annual Compensation Limitation for Certain Governmental Plans (IRC §401(a)(17))	490,000	450,000
Compensation Amount for Participation in a SEP (IRC §408(k)(2)(C))	750	650
Deferral Limitation for SIMPLE Retirement Accounts (IRC §408(p)(2)(E))	15,500	14,000
Limitation on Deferrals under IRC §457(e)(15) Governmental Plans and Tax-Exempt Organizations	22,500	20,500
Compensation Amount for an Officer Control Employee for Fringe Benefits (Reg. §1.61-21(f)(5)(i))	130,000	120,000
Compensation Amount for a Control Employee Based Solely on Compensation Reg. §1.61-21(f)(5)(iii))	265,000	245,000
IRA Deductible Contribution Amounts (IRC §219(b)(5)(A))	6,500	6,000



Item	2023	2022
Married participants filing a joint return or qualifying widow(er)	\$116,000 to \$129,000	\$109,000 to \$119,000
Other statuses except married filing separate	\$73,000 to \$83,000	\$68,000 to \$78,000
Married filing separate	\$0 to \$10,000	\$0 to \$10,000
Married individual filing a joint who is not an active participant but whose spouse is an active participant	\$218,000 to \$228,000	\$204,000 to \$214,000

# Business Tax Updates

Research credit issues and the IRS and other general business items

Current Federal Tax Developments

## IRS Memorandum Sets Information Requirements for Research Credit Refund Claims



Photo by [Talha Hassan](#) on [Unsplash](#)

- CCA 20214101F, 10/15/21
  - IRS creates a 22-page memorandum for items to be required for §41 refund claim
  - Information required to be provided listed
  - IRS phased-in program
    - 1/10/22 - 30 day grace period if claim defective (now one more year under this rule)
    - One year later - straight rejection

## IRS Updates Guidance on Amended Returns Containing Research Credit Claims



Photo by [Hans Reniers](#) on [Unsplash](#)

- “Memorandum for All Large Business and International and Small Business Self Employed Employees,” LB&I-04-0122-001, 1/3/22
  - Provides modifications to IRM to implement new program
  - One change is a 45 rather than 30 day grace period in the first year
  - Also clarified January 10 is based on postmark in FAQ

## More Information on New Research Credit



Photo by [Markus Winkler](#) on [Unsplash](#)

- “Research Credit Claims (Section 41) on Amended Returns Frequently Asked Questions,” IRS webpage, 2/9/22
  - IRS added to FAQ on website
  - Passthrough entity issue
    - If BBA audit, done by partnership
    - If not, each equity holder must do
  - Efiled amended return issues
  - When can go to appeals?

## News Release Noting CCA on Improperly Forgiven PPP Loan

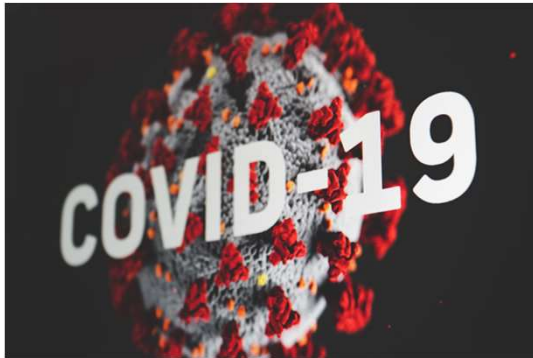


Photo by [Martin Sanchez](#) on [Unsplash](#)

- IRS advises that improperly forgiven Paycheck Protection Program loans are taxable, IR-2022-162, 9/21/22
  - References CCA 202237010
  - Emphasis on dealing with abuse of the programs
  - End of the web page refers to IRS for Form 3949-A, *Information Referral*
  - Presumably issues could be referred to DOJ and SBA for other actions

## Taxpayer Very Likely to Be Able to Retain “Deposits” and Thus Immediately Taxable



Photo by [Obi - @pixel6propix](#) on [Unsplash](#)

- *United States v. VanDemark*, CA6, Docket No. 21-3470, 6/30/22
  - Criminal tax conviction appeal
  - Began putting cash deposits in safe
  - Asked bank employee about IRS reporting rules
  - Argued conviction wrong - did not have “some guarantee” could keep funds (*Indiana Power & Light*)
  - Panel did not agree given control over refunds of deposits



## Retired Pilot Subject to Tax on Flights Taken by Relatives Under Airline Program



Photo by [Emiel Molenaar](#) on [Unsplash](#)

- *Mihalik v. Commissioner*, T.C. Memo. 2022-36, 4/13/22
  - Taxpayer was a retired United Airlines pilot
  - Various family members (apparently) had access to free flights
  - Exclusion for no additional cost fringes limited to spouse and dependent children
  - Also rejected idea this was a *de minimis* fringe benefit

## Management Fees Were Distributions, Not Ordinary and Necessary Business Expense



Photo by [金运](#) on [Unsplash](#)

- *Aspro v. Commissioner*, Case No. 21-1996, CA8, 4/26/22
  - For at least 20 years C corporation had paid management fees to owners
  - No formal agreement
  - No method provided for how it was computed
  - Court found no evidence was ordinary and necessary business expense
  - Treated as a distribution

## HSA Inflation Adjusted Numbers for 2023



Photo by [Hush Naidoo Jade Photography](#) on [Unsplash](#)

- Revenue Procedure 2022-24, 4/29/22
  - HSA Limits for 2023
    - Self-only: \$3,850
    - Family: \$7,750
  - HDHP Amounts
    - Deductible
      - Self-only: at least \$1,500
      - Family: at least \$3,000

## HSA Inflation Adjusted Numbers for 2023



Photo by [Hush Naidoo Jade Photography](#) on [Unsplash](#)

- Revenue Procedure 2022-24, 4/29/22
  - HDHP Amounts
    - Maximum out of pocket
      - \$7,500 self-only
      - \$15,000 family
  - Excepted benefit maximum amount newly available: \$1,950

## Comfortable and Professional Clothing Found to Be Deductible Business Expense



Photo by [MedicAlert UK](#) on [Unsplash](#)

- *Romana v. Commissioner*, TC Summary Opinion 2022-9, 6/16/22
  - Employer required nurse to wear comfortable and professional attire on the job
  - Acquired clothing that looked like scrubs and a lab coat
  - Actual scrubs provided for OR work
  - Found the clothing qualified for a deduction

## IRS Announces Increase in Mileage Rates for Last Six Months of 2022



Photo by [Dawn McDonald](#) on [Unsplash](#)

- Announcement 2022-13, 6/9/22
  - Congress members had written IRS in May to increase mileage - had done so in 2011
  - Will increase effective July 1, 2022
    - Business 62.5 cents per mile
    - Medical & moving: 22 cents per mile
  - Charitable mileage does not change - set by statute

## IRS Releases 2022 Depreciation Limits for Autos



Photo by [Grahame Jenkins](#) on [Unsplash](#)

- Revenue Procedure 2022-17, 3/16/22
  - This year came out much earlier than in 2021 (which was unusually delayed)
  - Only difference if bonus chosen (\$19,200 in year 1 vs. \$11,200)
  - Other years
    - 2nd - \$18,000
    - 3rd - \$10,800
    - Later years - \$6,460

## Remote Signature of Certain Plan Documents - the Final Relief?

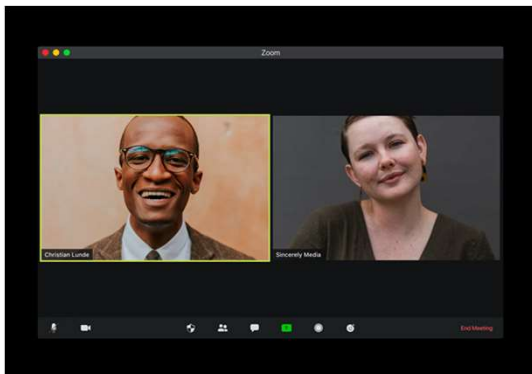


Photo by [visuals](#) on [Unsplash](#)

- Notice 2022-27, 5/13/22
  - COVID relief issued in 2020 to allow for
    - Remote notarization
    - Remote signing in front of plan representative
  - Was going to expire on June 30
  - Extended until December 31, 2022
  - Most likely last extension

## Form 1024 Must Be Filed Electronically



Photo by [Cookie the Pom](#) on [Unsplash](#)

- Revenue Procedure 2022-08, 1/3/2022
  - In 2020 the IRS forced §501(c)(3) organizations to file Form 1023 online
  - Expands this to Form 1024 for other §501(c) organizations and, if they elect, §521 organizations
  - Also change who can sign the form
    - Add more officials of organization
    - No longer can use POA
- Transition period for 90 days

## Retail Sale of Drugs Qualified §1202 Trade or Business



Photo by [Roberto Sorin](#) on [Unsplash](#)

- PLR 202221006, 5/27/22
  - Taxpayer was involved in retail sale of drugs
  - Filled prescriptions and had limited interactions with physicians or patients
  - Is this a health care for reputation business?
  - IRS finds it does not fall into either barred category

## Fact Property Is/Isn't a Real Estate Rental for Passive Rules Irrelevant for Self-Employment Income



Photo by [Ralph Kelly](#) on [Unsplash](#)

- Chief Counsel Advice 202151005, 12/23/21
  - Is there a link between rental for §469 and self-employment income exclusion under §1402(a)(1)?
  - IRS answers no - §469 treatment as rental doesn't impact other IRC provisions
  - Looks at what is a §1402(a)(1) rental of real estate
  - Two examples discussed

## IRS Finalizes Instructions for Reporting PPP Forgiveness Under Timing Options of Rev. Proc. 2022-48



Photo by [Digital Content Writers India](#) on [Unsplash](#)

- Form 1120S 2022 Instructions, 1/20/22
  - Rev. Proc. 2022-48 contained a reference to having updated reporting information on instructions, though the procedure could be used without waiting for instructions
  - Such instructions are out
  - Note required attachments, though seems to assume use of Rev. Proc. is mandatory (not sure that ties with the actual procedure)

## No Innocent Spouse Relief for Trust Fund Penalties



Photo by [Sandy Millar](#) on [Unsplash](#)

- *Chavis v. Commissioner*, 158 T.C. No. 8, 6/15/22
  - Was corporate Secretary, ex-husband President
  - Payroll taxes not paid
  - Did not appeal finding she was a responsible party
  - At CDP argued for innocent spouse
  - Tax Court holds innocent spouse does not apply to payroll tax matters

## Passthrough Entity Updates

The year of Form 7203, Schedules K-2 and K-3 and more

## No Relief for S Corporation K-1 for Post Divorce Return



Photo by [Enrique Macias](#) on [Unsplash](#)

- *Wheeler v. Commissioner*, TC Summary Opinion 2021-42, 12/9/21
  - Taxpayer in year of divorce did not report K-1 income
  - Stock transferred to ex-spouse per decree
  - Reported W-2 income but not K-1
  - However knew of business and was her income
  - Note issue for tax preparer

## LB&I New Campaign on §704(d)



Photo by [Joshua Hoehne](#) on [Unsplash](#)

- Partnership Losses in Excess of Partner's Basis Campaign, Large Business and International Active Campaigns, IRS webpage, 2/8/22
  - New campaign announced by IRS
  - Looks at partners claiming losses in excess of basis
  - Remember there are other limits, but partner is responsible for keeping basis
  - Likely tied to tax basis capital program



## Final Regulations Confirm No Signatures Needed on Section 754 Elections



Photo by [Scott Graham](#) on [Unsplash](#)

- TD 9963, 8/4/22
  - Election to adjust basis in certain situations
  - Previously had to sign election, scan it and attach as PDF
  - In 2017 proposed regulations on which taxpayers could rely proposed removing signature requirement
  - The IRS has now finalized these regulations without making any changes

## PLR Received for Lost S Corporation Status



Photo by [Rhodi Lopez](#) on [Unsplash](#)

- S corporations - a fragile entity
  - Must maintain qualification at all times - otherwise have PLR
  - One class of stock
  - Nonqualified shareholders
    - Nonresident alien
    - Corporation, partnerships
    - Trusts (the problem in this ruling)

## PLR Received for Lost S Corporation Status



Photo by [Rhodi Lopez](#) on [Unsplash](#)

### Quip heard often:

“There are no multiple owner S corporations. Rather, there are C corporations that erroneously believe they are S corporations.”

## PLR Received for Lost S Corporation Status



Photo by [Rhodi Lopez](#) on [Unsplash](#)

- PLR 202218004, 5/6/22
  - Another issue that crops up upon death of a shareholder
  - Trusts that can hold S shares - note the 2 year rules that often crop up on shareholder death
  - Estate was designed to save status - but trustees didn't follow the instructions in the trust
  - Further complication - corporation was going away

## PLR Received for Lost S Corporation Status



Photo by [Rhodi Lopez](#) on [Unsplash](#)

- PLR 202218004, 5/6/22
  - Did receive relief from the IRS
  - But the IRS never really disqualifies an S corporation!
    - Not really the issue here
    - Due diligence reviewers will advise buyers not to take on someone else's mistake
  - Look to professionals to pay for whole PLR process

## Form 7203 - Dealing With Basis for S Corporations



Photo by [Mediamodifier](#) on [Unsplash](#)

- Kristen A. Parillo, "New Basis Reporting Form Spotlights Role of Proper Documentation," *Tax Notes Today Federal*, 6/1/22
  - Why Form 7203 was created
  - Not an issue if records kept
  - When client doesn't track basis - options
  - Losses previously claimed in excess of basis - suspense account

## IRS Clarifies Schedule M-2 Reporting of Expenses Used for PPP Loan Forgiveness



Photo by [Mediamodifier](#) on [Unsplash](#)

- “2021 Instructions for Form 1120-S,” 1/20/22
  - In the draft forms the IRS indicated that expenses used for PPP loan forgiveness were to be used to reduce OAA
  - IRS says
    - Use other additions to remove from AAA
    - Do so even if the problem relates to amounts paid last year

## IRS Adds More K2/K3 FAQs on April 11



Photo by [Pawel Czerwinski](#) on [Unsplash](#)

- Schedules K-2 and K-3 Frequently Asked Questions (Forms 1065, 1120S, and 8865), 4/11/22
  - Gave the green light to using “RIC” for foreign income from mutual funds (Q 21)
  - Also gave OK to not filling in all of the form if not relevant (presumably means can pull the pages as well) Q 17
  - Also asks for comments



**18. What if I have a question or comment on the Schedules K-2 and K-3 or accompanying instructions? (added February 16, 2022)**

- The IRS welcomes additional feedback on the Schedules K-2 and K-3 and inquiries can be sent to [lbi.passthrough.international.form.changes@irs.gov](mailto:lbi.passthrough.international.form.changes@irs.gov).

**19. The partnership or S corporation does not qualify for the exception in FAQ #15. Is the partnership or S corporation required to complete all parts of Schedules K-2 and K-3? (added April 11, 2022)**

- According to page 1 of the Instructions to Schedules K-2 and K-3 (Form 1065) and page 1 of the Instructions to Schedules K-2 and K-3 (Form 1120-S), a partnership and S corporation are only required to complete the relevant portions of Schedules K-2 and K-3. See FAQ #17 for a link to the instructions.



**20. A filer otherwise required to file Forms 5471, 8865, and/or 8858 may qualify for an exception from filing those forms based on the Internal Revenue Code, IRS guidance, and/or instructions to those respective forms (for example, the multiple filer exception). If the filer qualifies for such exception, do the Instructions to the Schedules K-2 and K-3 nevertheless require a filer to complete Forms 5471, 8865, and/or 8858? (added April 11, 2022)**

- No. If the filer meets such an exception to filing Forms 5471, 8865, and/or 8858, the filer is not required to complete and attach those forms. However, the filer must still attach to the Forms 1065, 1120-S, and the tax return of the U.S. person filing Form 8865, any required statements to qualify for the exception to filing the Forms 5471, 8865, and/or 8858. Further, in the case of the Form 5471 multiple filer exception, the partnership or S corporation must provide on the Schedule K-3 to its partners or shareholders any information that the partnership or S corporation receives from the person required to file the Form 5471 and that is requested by the Instructions to the Schedules K-2 and K-3, such as Schedule Q (Form 5471) information, if applicable.



21. In Part II, Section 1 (Description) and Part III, Section 4, Lines 1 and 3 of Schedules K-2 and K-3 (Forms 1065, 1120-S, and 8865), is it possible to enter the code “RIC”? (added April 11, 2022)

- Yes, page 8 of the Instructions to the Schedules K-2 and K-3 (Form 1065) refers to the Instructions to Forms 1116 and 1118 for exceptions from the requirement to report gross income and taxes by foreign country or U.S. possession, including for regulated investment companies. See also page 8 of the Instructions to the Schedules K-2 and K-3 (Form 1120-S) and page 7 of the Instructions to the Schedules K-2 and K-3 (Form 8865). See FAQ #17 for a link to the instructions.



## Entity Type Governs the Ability to Opt Out of BBA Exam Regime



Photo by [Jon Tyson](#) on [Unsplash](#)

- IRS Emailed Counsel Advice 202147012, 11/26/21
  - Does an exempt organization partner bar opting out of the BBA centralized partnership audit regime?
  - Notes that the limits are on entity type, not exempt vs. non-exempt status
  - Have to look at the underlying entity type of the exempt organization

# Estate & Trust Tax Updates

We now get five years to file late portability elections for some taxpayers.

## IRS Proposes Regulations to Limit Potential Techniques Using Anti-Clawback Rules



Photo by [Chris King](#) on [Unsplash](#)

- REG-118913-21; 87 F.R. 24918-24923, 4/27/22
  - IRS had suggested they would have regulations to limit anti-clawback rules
  - Meant to limit anti-clawback where donor retains significant interest
  - Lists specific sections
  - Provides 18 month rule for terminating rights prior to date of death

## Trust Terms Cause Estate to Be Denied Both Charitable and Marital Deduction



Photo by [Mari Helin](#) on [Unsplash](#)

- CCA 202233014, 8/19/2022
  - CRT created at decedent's death
  - Unitrust amount
    - 25% had to be paid to surviving spouse
    - Remaining 75% could be distributed to charity or spouse
  - 75% payment value did not qualify for either marital or charitable deduction

## Tax Practice and Procedures Update

When is a tax return filed and additional procedural issues addressed



## Supreme Court Grants Cert on Issue of Computing FBAR Penalties



Photo by [Claire Anderson](#) on [Unsplash](#)

- Supreme Court Grant of Cert. 21-1195 BITTNER V. UNITED STATES, 6/21/22
  - FBAR penalty - per account or per form?
  - CA9 - per form (better for taxpayer)
  - CA5 - per account (not good for taxpayers)
  - In case before court makes difference between a \$2.72 million penalty or a \$50,000 one

## Providing Return to IRS Agent at Agent's Request Counts as Filing, Statute Began Running



Photo by [Kenny Eliason](#) on [Unsplash](#)

- *Seaview Trading LLC v. Commissioner*, CA9, Case No. 20-72416, 5/11/22
  - Statute under old TEFRA rules
    - Must file return to start statute
    - Regulations on what is a filing
  - Taxpayer contacted in 2005 by IRS agent, indicated no record of 2001 partnership filing
  - Provided agent with signed copy and certified mail receipt

## Providing Return to IRS Agent at Agent's Request Counts as Filing, Statute Began Running



Photo by [Kenny Eliason](#) on [Unsplash](#)

- *Seaview Trading LLC v. Commissioner*, CA9, Case No. 20-72416, 5/11/22
  - Exam commenced and in 2007 another signed copy of the return provided to IRS counsel
  - More than 3 years after 2007 copy provided IRS issued FPAA - taxpayer complains it's late
  - IRS says no, return never filed and Tax Court agreed - so case went to Ninth Circuit

## Providing Return to IRS Agent at Agent's Request Counts as Filing, Statute Began Running



Photo by [Kenny Eliason](#) on [Unsplash](#)

- *Seaview Trading LLC v. Commissioner*, CA9, Case No. 20-72416, 5/11/22
  - Taxpayer concedes cannot show return delivered to Ogden (will deal with this quirky admission later)
  - Regulations require return to be sent to designated service center and before date required to be filed
  - IRS says they never sent a copy to Ogden, so the statute never began running

## Providing Return to IRS Agent at Agent's Request Counts as Filing, Statute Began Running



Photo by [Kenny Eliason](#) on [Unsplash](#)

- *Seaview Trading LLC v. Commissioner*, CA9, Case No. 20-72416, 5/11/22
  - Majority finds that the taxpayer had not met requirements for a timely return proper filing
  - However, since return was not filed timely, *no regulations described how to file the return*
  - So providing the returns to the IRS agent amounted to a filing under plain meaning of the term

## Providing Return to IRS Agent at Agent's Request Counts as Filing, Statute Began Running



Photo by [Kenny Eliason](#) on [Unsplash](#)

- *Seaview Trading LLC v. Commissioner*, CA9, Case No. 20-72416, 5/11/22
  - Long dissent tears into the majority logic
    - Suggests was a results driven open with legal holdings that lead to absurd results
    - As long as taxpayer doesn't file on time, can give the return to any random IRS employee in dissent's view

## Providing Return to IRS Agent at Agent's Request Counts as Filing, Statute Began Running



Photo by [Kenny Eliason](#) on [Unsplash](#)

- *Seaview Trading LLC v. Commissioner*, CA9, Case No. 20-72416, 5/11/22
  - But what about that certified mail receipt
    - Concession was couldn't show delivered to Ogden
    - However, regulation provides that certified mail receipt provides *prima facie* evidence of delivery to the IRS

## Providing Return to IRS Agent at Agent's Request Counts as Filing, Statute Began Running



Photo by [Kenny Eliason](#) on [Unsplash](#)

- *Seaview Trading LLC v. Commissioner*, CA9, Case No. 20-72416, 5/11/22
  - But what about that certified mail receipt
    - But must show
      - Receipt stamped by USPS employee
      - Timely postmark
      - Properly addressed

## Providing Return to IRS Agent at Agent's Request Counts as Filing, Statute Began Running



Photo by [Kenny Eliason](#) on [Unsplash](#)

- *Seaview Trading LLC v. Commissioner*, CA9, Case No. 20-72416, 5/11/22
  - But what about that certified mail receipt
    - Appears there was some issue with the certified mail receipt
    - However, never actually presented that evidence for a ruling by the court
    - But note IRS also seemed confident it had issues

## IRS Offers Broad Penalty Relief for Certain 2019 and 2020 Returns



Photo by [Brett Jordan](#) on [Unsplash](#)

- Notice 2022-36, 8/24/22
  - Relief for specified 2019 and 2020 taxable year returns
  - Late filing penalty under §6651
    - Form 1040 series
    - Form 1041 series
    - Form 1120 series
  - Also penalties for Form 1065 and Form 1120S late filing
  - Information returns

## National Taxpayer Advocate Explains IRS Relief



- “NTA Blog: Good News: The IRS Is Automatically Providing Late Filing Penalty Relief for Both 2019 and 2020 Tax Returns. Taxpayers Do Not Need to Do Anything to Receive this Administrative Relief,” NTA Blog, 8/24/22
  - Failure to pay penalty not waived
  - Mechanics of the relief program
  - Impact on First Time Abatement Program

## Accountants Who Prepare Returns for Employing Entity and Related Parties



Photo by [Leon Dewijne](#) on [Unsplash](#)

- INFO 2021-0029, 12/30/21
  - Accountant prepared employer’s return, but also related partnerships and individuals
  - IRS points to regulations under §7701 for determining which returns the accountant is or is not a paid preparer for
  - Remember, paid preparers need to sign the return and must have (and pay for) a PTIN

**KAPLAN**